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12-24-80
Vol. 45—No. 249
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BOOK 2:
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federal register

Book 1 of 2 Books
Wednesday, December 24, 1980

Highlights

84997 **Special Events** Interior/NPS publishes request for comments amending demonstrations and special events in Washington, D.C. and its environs regarding the inauguration; effective 12–24–80, comments by 1–23–81

85082 **Handicapped** ED proposes regulations regarding nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal Financial Assistance; Comments by 2–9–81

84967 **Fuel** DOE/ERA publishes final rule regarding calculation for cost of using alternate fuels; effective 1–23–81

85160 **Medicare** HHS/Sec'y announces Medicare's monthly hospital insurance premium for the uninsured aged for the 12 months beginning 7–1–81; effective 7–1–81

85161 **Medicare** HHS/Sec'y announces monthly actuarial rates for aged and disabled enrollees in Medicare Supplementary Medical Insurance program; effective 7–1–81

85144, 85145 **Grant Programs—Education** ED invites applications for grants under the College Library Resources Program, Library Career Training Program, and Strengthening Research Library Resources Program (3 documents)

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Highlights

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

84967 **Nuclear Material** NRC publishes confirmation of 12–24–80 effective date regarding implementation of the United States/International Atomic Energy Agency Application of Safeguards Agreement

85052 **Improving Government Regulations** NCUA publishes semi-annual agenda of regulations; effective 12–5–80

84998 **Grant Programs—Clean Water** EPA issues class deviation for construction of treatment works grants; effective 12–16–80

84953 **Courts** Administrative Conference of the United States publishes regulations regarding recommendation on the "Race to the Courthouse"

85077 **Income Tax** Treasury/IRS proposes regulations relating to deferred compensation plans maintained by State and local governments and rural electric cooperatives; comments by 2–23–81

85400 **Clean Air** EPA publishes regulations regarding fair and consistent application of rules, regulations and policy throughout the country by assuring that the actions of each individual EPA Regional Office is consistent with one another and national policy; effective 2–23–81 (Part IX of this issue)

85084 **Improving Government Regulations** EPA agenda of regulations postponed until January 1981

85048 **Banks** FHLBB amends proposed regulation governing service corporation investments of Federal associations; comments by 2–15–81

85422, 85430 **Education** ED amends regulations regarding Library Career Training Program and revises regulations regarding the Strengthening Research Library Resources Program (2 documents)

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85256 Panama Canal Commission

85244 **Sunshine Act Meetings**

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Rules and Regulations

Federal Register
Vol. 45, No. 249
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 302

Committees of the Administrative Conference; Amendment of Bylaws

AGENCY: Administrative Conference of the United States.

ACTION: Final rule.

SUMMARY: The Conference amends a portion of its bylaws to revise the list of standing committees of the Conference.

DATES: Adopted and effective December 11, 1980.

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, Executive Secretary of the Administrative Conference, 2120 L Street, NW., Washington, D.C. 20037 (202/254–7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvement to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States.

The Act empowers the Assembly of the Conference to adopt bylaws and regulations for carrying out the functions of the Conference, including the creation of such committees as it considers necessary for the conduct of studies and the development of proposed recommendations. At its Twenty-Second Plenary Session, the Assembly adopted an amendment to Section 3 of the Conference bylaws to revise the structure of its nine standing committees. This amendment establishes a new Committee on Interagency Coordination to replace the former Committee on Compliance and Enforcement Proceedings; establishes a new Committee on Regulation of Business by merging the former Ratemaking and Economic Regulation Committee and the Licenses and Authorizations Committee into a single entity; and splits the former Committee on Rulemaking and Public Information into two entities, a Committee on Rulemaking, and a separate Committee on Public Access and Information. Under other provisions of Section 3, which remain unchanged, the committees' titles do not act as jurisdictional limitations, and the Chairman of the Conference retains authority to redefine committee responsibilities and to make project assignments as he or she sees fit. The purpose of this amendment is to provide a sharper focus and more consistent theme for each committee's work, thus improving the quality of committee deliberation and stimulating the interest and participation of the members.

Accordingly, the first sentence of Section 3 of the Bylaws of the Administrative Conference (1 CFR 302.3) is amended to read as follows:

§ 302.3 Committees.

The Conference shall have the following standing committees:

1. Committee on Agency Decisional Processes;
2. Committee on Agency Organization and Personnel;
3. Committee on Grants, Benefits, and Contracts;
4. Committee on Informal Action;
5. Committee on Interagency Coordination;
6. Committee on Judicial Review;
7. Committee on Public Access and Information;
8. Committee on Regulation of Business; and
9. Committee on Rulemaking.

Dated: December 18, 1980.

Richard K. Berg,
Executive Secretary.

[FR Doc. 80-40074 Filed 12-23-80; 8:45 am]
BILLING CODE 6110-01-M

1 CFR Part 305

Recommendation on the "Race to the Courthouse"

AGENCY: Administrative Conference of the United States.

ACTION: Recommendation.

SUMMARY: The Conference issues Recommendation No. 80–5 to eliminate or simplify the "race to the courthouse" in appeals from agency action.

DATES: This recommendation was adopted December 11, 1980, and issued December 18, 1980.

FOR FURTHER INFORMATION CONTACT: James V. DeLong, Research Director of the Administrative Conference, 2120 L Street, NW, Washington, D.C. 20037. 202–254–7020.

SUPPLEMENTARY INFORMATION: Recommendation 80–5 is addressed to a problem arising under section 2112(a) of title 28, U.S. Code, which provides that, when petitions for judicial review of the same agency order are filed in two or more courts of appeals, the court in which the first petition was filed has initial jurisdiction of the proceeding to the exclusion of any other court. Where two or more petitioners for review of the same agency order have different forum preferences for the review proceeding, the result is frequently a costly and unseemly "race to the courthouse" which discredits the administrative and judicial processes.

The recommendation calls on Congress to amend section 2112(a) to provide that, if petitions to review the same agency order are filed in two or more courts of appeals within ten days after issuance of the order, the choice of which court to take initial jurisdiction of the proceeding should be made by random selection from among the circuits where petitions have been filed. This initial assignment would still be subject to the provision in section 2112(a) for transfer of the proceedings to another court for the convenience of the parties in the interest of justice. In the absence of such legislation, the recommendation calls on the agencies to specify in advance a time at which their orders are deemed to be issued for purposes of judicial review, and it urges the Supreme Court to provide by rule for a random selection procedure, in situations where petitions are filed simultaneously in two or more courts, to

select one court to determine where the agency record shall be filed.

This recommendation was adopted at the Twenty-Second Plenary Session of the Conference pursuant to the Administrative Conference Act, 5 U.S.C. be filed by the agency in the court in which the first petition was filed, and that court then has jurisdiction of the review proceeding to the exclusion of others. This provision has become less and less useful as the choice of forum remain in effect for no more than 15 days, unless extended by the chosen court or a transferee court, and subject to revocation or modification by the chosen court or a transferee court; and that, if the court in which the record is filed determines that it lacks jurisdiction or venue is improperly laid

functions from the Office of Administrative Services to the Office of Information Systems and Services of this Office. Another technical change is also included.

FOR FURTHER INFORMATION CONTACT:

"Claims Group, Accounting and Financial Management Division."

§ 31.3 [Amended]

2. The reference to "§ 1.8" in § 31.3 is changed to "§ 11.8".

require timely implementation of new group life insurance plans. The immediate effective date makes possible OPM's preparation and distribution of forms and materials necessary to make the new insurance available within the

select one court to determine where the agency record shall be filed.

This recommendation was adopted at the Twenty-Second Plenary Session of the Conference pursuant to the Administrative Conference Act, 5 U.S.C. 571–576. It is based on a draft prepared by the Conference's Committee on Judicial Review, which was published for comment on September 17, 1980 [45 FR 61636]. The final recommendation differs from the draft principally in the omission of the last paragraphs of Part A and Part B, which were thought to be unnecessarily detailed. In addition, the second paragraph of Part A was amended to call for a 15-day limit on any judicial stay entered in the period before a specific court was chosen to control further proceedings, and a number of other minor changes of language were made. All comments received and the transcript of the discussion of this recommendation at the Plenary Session are available for public inspection at the Conference's office at Suite 500, 2120 L Street, NW, Washington, D.C.

1. The table of contents to 1 CFR Part 305 is amended by adding the following new section:

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNDITED States

* * * * *

Sec.

305.80–5 Eliminating or Simplifying the "Race to the Courthouse" in Appeals from Agency Action [Recommendation No. 80–5].

2. Section 305.80–5 is added to Part 305, as follows:

§ 305.80–5 Eliminating Or Simplifying the "Race to the Courthouse" In Appeals From Agency Action (Recommendation No. 80–5).

(a) Many agency actions subject to direct review in the courts of appeals involve more than one private party that may legitimately consider itself aggrieved by the agency action. In most such cases, a single court of appeals is not specified by statute as the reviewing court, and venue may lie in more than one such court. Many lawyers believe that one court of appeals is likely to be more receptive than another to their clients' arguments in an agency review proceeding. The choice of the reviewing court has therefore assumed large importance in the review of some actions of some agencies.

(b) A statute, 28 U.S.C. 2112(a), provides that, when petitions for appellate review of the same order are filed in two or more courts of appeals, the record of the agency proceeding is to be filed by the agency in the court in which the first petition was filed, and that court then has jurisdiction of the review proceeding to the exclusion of others. This provision has become less and less useful as the choice of forum has become more significant in lawyers' minds and races to the courthouse have proliferated and methods of conducting the races have become more refined. Races are now sometimes decided by seconds or fractions of seconds, if they can fairly be said to have been decided at all. (There is no single finish line to cross or tape to break; time stamping machines in clerks' offices are not synchronized.) Moreover, races will be even harder to judge as agencies adopt regulations designed to make the races fairer and more civilized, specifying the date and time at which agency orders are deemed to have been issued.

(c) The spectacle of the race to the courthouse is an unedifying one that tends to discredit the administrative and judicial processes and subject them to warranted ridicule. It will require Congressional action to bring the final curtain down on the spectacle. Our first and principal recommendation is addressed to Congress. It calls for simple random selection of the reviewing court when a race ends in a dead heat or near dead heat. Pending Congressional action, there are actions that the agencies and the courts themselves can take to ameliorate the present sorry situation, and we also make recommendations addressed to the agencies and to the Judiciary for such interim actions.

Part A. Recommendation to Congress.

1. Congress should amend 28 U.S.C. § 2112(a) to provide that, if petitions to review the same agency order have been filed in two or more courts of appeals within ten days after the order was issued, the agency is to notify an appropriate official body, such as the Administrative Office of the United States Courts, of that fact; that the appropriate official body, on the eleventh day after the issuance of the order, is to choose from among the circuits in which petitions have been filed according to a scheme of random selection and notify the agency of that choice; and that the agency is then to file the record of the proceeding in the court so chosen, which will take jurisdiction and conduct the review proceeding, subject to the existing power, which would not be changed, to transfer the case to any other court of appeals for the convenience of the parties in the interest of justice.

2. The amended Section 2112(a) should provide further that a court of appeals in which a petition for review has been filed that has jurisdiction to entertain the petition may, in a case of pressing need, issue a stay of the agency order during the period in which no court has been chosen to take jurisdiction of the proceeding, the stay to remain in effect for no more than 15 days, unless extended by the chosen court or a transferee court, and subject to revocation or modification by the chosen court or a transferee court; and that, if the court in which the record is filed determines that it lacks jurisdiction or venue is improperly laid but that jurisdiction and venue may be proper in another circuit, the court is to notify the official body administering the system of random selection of that fact, and that body then will choose from among the remaining courts in which petitions have been filed according to the same scheme of random slection.

Part B. Recommendation To the Agencies.

In the absence of legislation, those agencies whose actions have resulted or are likely to result in races to the courthouse should specify in advance a time at which their orders are to be deemed issued or their actions are otherwise ripe for judicial review. Such agencies should do this by generic regulation if possible and, if that is not possible, by specifying times of issuance or ripeness case by case.

Part C. Recommendation To the Judiciary.

In the absence of further legislation the Supreme Court should promulgate a rule under which, if petitions to review the same agency order are filed in two or more courts of appeals simultaneously (for example, within one minute of one another), the Administrative Office of the United States Courts is to be informed of that fact, and the Administrative Office is then to choose one court, according to a scheme of random selection, from among the circuits in which such simultaneous petitions are pending, which court shall then determine where the record is to be filed pursuant to 28 U.S.C. § 2112(a).

Dated: December 18, 1980

Richard K. Berg,

Executive Secretary.

[FR Doc. 80–40114 Filed 12–23–80; 8:45 am]

BILLING CODE 6110–01–M

GENERAL ACCOUNTING OFFICE

4 CFR Parts 31, 33, 34 and 82

Claims and Records; Reorganization and Technical Amendments

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: This rule amends Parts 31, 33 and 34 of Title 4, Code of Federal Regulations as amended by FR Doc. 80–10249, appearing on page 22873 of the issue for April 4, 1980; and also amends Parts 31 and 82 of Title 4, Code of Federal Regulations. These amendments were made necessary because of reorganizations within this Office that redesignated the former "Financial and General Management Studies Division" the "Accounting and Financial Management Division" and which transferred certain records management functions from the Office of Administrative Services to the Office of Information Systems and Services of this Office. Another technical change is also included.

FOR FURTHER INFORMATION CONTACT:

Richard T. Cambosos, Attorney-Advisor, Office of General Counsel, United States General Accounting Office, 441 G Street, NW., Washington, D.C. 20548, (202) 275–5544.

SUPPLEMENTARY INFORMATION: FR Doc. 80–10249, appearing on page 22873 of the issue for April 3, 1970, amended Parts 31, 33, and 34 of Title 3, Code of Federal Regulations, to change the reference to "Claims Division" appearing in these parts to "Claims Group, Financial and General Management Studies Division." Subsequently, the "Financial and General Management Studies Division" was redesignated the "Accounting and Financial Management Division" of this Office.

Additionally, in FR Doc. 80–31931, the amendment numbered 3 appearing on page 68374 of the issue for October 15, 1980, redesignated "Part 1" to be "Part 11" of Title 4, Code of Federal Regulations. Consequently, the reference to "§ 1.8" appearing in § 31.3 of Title 4, Code of Federal Regulations must be changed to "§ 11.8" to conform with the prior amendment.

Finally, the reference to "Office of Administrative Services" appearing in § 82.1(a) of Title 4, Code of Federal Regulations is changed to "Office of Information Systems and Services." This change was made necessary because the record management functions formerly performed by the Office of Administrative Services were transferred to the Office of Information Systems and Services of this Office. Accordingly, Title 4, Code of Federal Regulations is amended as follows:

PART 31—CLAIMS AGAINST THE UNITED STATES: GENERAL PROCEDURES

PART 33—DECEASED CIVILIAN OFFICERS AND EMPLOYEES: PROCEDURES FOR SETTLEMENT OF ACCOUNTS

PART 34—DECEASED MEMBERS OF THE ARMED FORCES AND NATIONAL GUARD: PROCEDURES FOR SETTLEMENT OF ACCOUNTS

1. The reference to "Claims Group, Financial And General Management Studies Division" appearing in Parts 31, 33, and 34 as amended by FR Doc. 80–10249, appearing on page 22873 of the issue for April 4, 1980, is changed to "Claims Group, Accounting and Financial Management Division."

§ 31.3 [Amended]

2. The reference to "§ 1.8" in § 31.3 is changed to "§ 11.8".

PART 82—FURNISHING RECORDS OF GENERAL ACCOUNTING OFFICE IN JUDICIAL PROCEEDINGS

§ 82.1 [Amended]

3. The reference to "Office of Administrative Services" in § 82.1(a) is changed to "Office of Information Systems and Services".

Milton J. Socolar,

Acting Comptroller General of the United States.

[FR Doc. 80–40093 Filed 12–23–80; 8:45 am]

BILLING CODE 1610–01–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872, and 873

Basic Life Insurance, Standard Optional Life Insurance, Additional Optional Life Insurance, and Family Optional Life Insurance

AGENCY: Office of Personnel Management.

ACTION: Interim regulations, with comments invited for consideration in final rulemaking.

SUMMARY: The Office of Personnel Management is issuing interim regulations governing the second phase of implementation of the Federal Employees' Group Life Insurance Act of 1980 (FEGLI), approved October 10, 1980, which has changed the FEGLI program from a two-part to a four-part package consisting of basic insurance and three optional plans.

DATES:

Effective date: The interim regulations are effective on December 24, 1980, unless otherwise specified.

Comment date: Comments must be received by February 23, 1981.

ADDRESS: Send written comments to Mr. Craig B. Pettibone, Director, Office of Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT:

John Landers (202) 632–4634.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(d)(3) of title 5, United States Code, the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to give immediate and timely effect to provisions of Pub. L. 96–427 which require timely implementation of new group life insurance plans. The immediate effective date makes possible OPM's preparation and distribution of forms and materials necessary to make the new insurance available within the statutory time limit.

Introduction

The FEGLI program has been amended by Pub. L. 96–427, the Federal Employees' Group Life Insurance Act of 1980, approved October 10, 1980. The Act makes four major changes in the FEGLI program by (1) increasing basic FEGLI protection (beginning in October 1981) for employees under age 45 with no corresponding increase in withholdings, (2) requiring employees who retire or become entitled to receive workers' compensation after 1989 to continue paying premiums for unreduced basic insurance coverage to age 65, (3) permitting retiring employees to choose either the current post-retirement basic life insurance protection, which ultimately declines to 25 percent of the face value, or post-retirement coverage that, for an additional contribution, reduces at a lesser rate or not at all, and (4) adding to the existing $10,000 optional insurance two new optional insurance plans affording additional life insurance on employees in multiples of one to five times annual pay, as well as life insurance on family members.

The Act allows OPM from 60 to 180 days in which to implement the increased post-retirement basic insurance coverage and to make available the two new optional plans. OPM implemented the offering of increased post-age 65 basic life insurance at the earliest date permitted under the law, December 9, 1980 (see 45 FR 80472, December 5, 1980). The present interim regulations govern the two new optional plans, establish premium rates for coverage under them, and reduce the rates under the existing basic insurance and standard optional insurance effective on the first day of the first pay period beginning on or after April 1, 1981.

All employees will be given the opportunity to enroll for basic and optional coverages during an open enrollment period from March 1 through 31, 1981. Elections will be effective on or after April 1, 1981.

New Rates for Basic Insurance and Standard Optional Insurance

The Office of Personnel Management has re-evaluated the premium rates for basic insurance and standard optional insurance on the basis of experience. The new rates will be effective on the

first day of the first pay period beginning on or after April 1, 1981. The biweekly rate for basic insurance for employees is reduced from 25.5 cents to 24 cents per $1,000 of the employee's basic insurance amount. The biweekly multiplying, the pay is rounded to the next higher multiple of $1,000. (When the annual pay is an exact multiple of $1,000, the exact rate is used.)

Additional optional insurance coverage may not exceed 5 times the annual rate

death of a spouse and $2,500 upon the death of a child. The benefit is paid to the employee, unless the employee dies before the payment can be made, in which case the benefit is paid to the employee's beneficiary for basic insurance.

program. The regulations provide that all waivers and declinations of existing basic and optional insurance filed before March 1981 are automatically canceled.

All non-excluded employees will be required to complete a Life Insurance

1981. A waiver of all coverage is effective at the end of the pay period in which it is received in the employing office.

Continuation of Insurance During Retirement or Receipt Workers'

cost of the coverage are taken from salary. Following reemployment which is qualifying for a supplemental annuity, the individual may continue the reemployment-acquired insurance. If the reemployment period does not continue long enough for a supplemental annuity

first day of the first pay period beginning on or after April 1, 1981. The biweekly rate for basic insurance for employees is reduced from 25.5 cents to 24 cents per $1,000 of the employee's basic insurance amount. The biweekly rates for the $10,000 of standard optional insurance will be:

Age	Current rate	New rate
Under 35	$0.60	$0.60
35-39	1.00	0.80
40-44	1.70	1.40
45-49	2.40	2.20
50-54	3.50	3.20
55-59	7.50	7.50
60 or over	9.00	9.00

Additional Optional Insurance

Pub. L. 96-427 authorizes OPM to purchase a group life insurance policy, without competitive bidding, which will make available to each employee who is insured for basic insurance additional optional life insurance. This coverage is referred to in the regulations as "additional optional insurance." Employees pay the full cost of coverage. There is no Government contribution.

The biweekly cost per $1,000 of the additional optional insurance is:

Age	Rate
Under 35	$.05
35-39	.07
40-44	.12
45-49	.20
50-54	.30
55-59	.60
60 or over	.95

Employees must affirmatively elect the additional optional insurance in order to obtain the coverage. All employees who are serving in positions which are not excluded from FEGLI coverage must either elect or decline the additional optional insurance during an open enrollment period to be held Government-wide from March 1 through 31, 1981. Only those employees who enroll for basic insurance are allowed to elect additional optional insurance. An employee who fails to elect this coverage during that period will not be allowed to enroll at a later date unless he/she meets the requirements discussed below, or the employing agency determines within 6 months that the employee was not able to elect the coverage due to reasons beyond his/her control.

The additional optional insurance is offered in multiples of 1, 2, 3, 4, or 5 times the annual rate of basic pay payable to the employee. Before multiplying, the pay is rounded to the next higher multiple of $1,000. (When the annual pay is an exact multiple of $1,000, the exact rate is used.) Additional optional insurance coverage may not exceed 5 times the annual rate of basic pay payable for positions at level II of the Executive Schedule under 5 U.S.C. 5313, rounded to the next higher $1,000. Covered persons may elect to reduce or stop additional optional insurance coverage at any time, though the opportunity to re-elect or increase multiples is strictly limited by the regulations.

After March 31, 1981, an employee who does not have additional optional insurance will be allowed to elect it if he/she is enrolled (or enrolls) for basic insurance and (1) he/she is under age 50, (2) at least 1 year has elapsed since the date of the declination, and (3) he/she submits satisfactory medical evidence of insurability. An employee who satisfies all three requirements will be allowed to elect the additional optional insurance or to increase the number of multiples of this coverage. Also, an employee under age 36 may elect additional optional insurance without showing medical insurability if he/she has basic insurance and elects the coverage in timely fashion (usually within 60 days after the event permitting the election) following the birth, adoption or other acquisition of a child, as defined by the regulations. These interim regulations will also permit an employee under age 50 who has in force at least 1 multiple of pay under the additional optional insurance plan to increase the number of multiples without showing medical insurability upon the employee's marriage or acquisition of a child. The employee must elect the increase in timely fashion (usually within 60 days after the event permitting the increase). The regulations limit the number of multiples acquired on the basis of the occurrence of an event to the number of family members (spouse and/or children) acquired with the event, e.g., 1 new multiple for a single birth, 2 new multiples upon birth of twins.

Family Optional Insurance

Pub. L. 96-427 authorizes OPM to purchase a group life insurance policy, without competitive bidding, which shall make available to each employee covered for basic insurance an amount of optional insurance on his/her family members. This coverage is referred to in the regulations as "family optional insurance." Employees pay the full cost of coverage. There is no Government contribution. The amount of family optional insurance is $5,000 upon the death of a spouse and $2,500 upon the death of a child. The benefit is paid to the employee, unless the employee dies before the payment can be made, in which case the benefit is paid to the employee's beneficiary for basic insurance.

The biweekly cost of the family insurance is:

Age	Rate
Under 35	$0.50
35-39	0.60
40-44	0.70
45-49	0.90
50-54	1.30
55-59	2.00
60 or over	3.00

Employees must affirmatively elect the family optional insurance in order to obtain coverage. All employees who are serving in positions which are not excluded from FEGLI coverage must either elect or decline the family optional insurance during the March 1981 open enrollment period. Only those employees who enroll for basic insurance are allowed to elect the family optional insurance. An employee who fails to elect this coverage during March 1981 will be allowed to enroll at a later date only in the event that he/she marries, or upon the birth or adoption of a child, or other acquisition of a child, as defined in the regulations, or if the employing agency determines within 6 months that the employee was not able to elect the coverage due to reasons beyond his/her control.

Under the definition of a family member for the purposes of the FEGLI law "child" means an unmarried dependent child who is under the age of 22, or who is 22 years of age or older and incapable of self-support because of a mental or physical disability which existed before the child became 22 years of age. These interim regulations provide the criteria to be used in determining the question of dependency, and in determining whether a child is to be considered incapable of self-support within the meaning of the FEGLI law. These regulations are similar to those in effect under Civil Service Retirement and Federal Employees Health Benefits regulations (see 45 FR 76087, November 18, 1980).

Open Enrollment Period

Because of the significant changes in the FEGLI program brought about by Pub. L. 96-427, OPM will hold an open enrollment period during the month of March 1981. Employees will be allowed to elect insurance irrespective of age, health or past participation in the program. The regulations provide that all waivers and declinations of existing basic and optional insurance filed before March 1981 are automatically canceled.

All non-excluded employees will be required to complete a Life Insurance Election form during March 1981, whether or not they are already participating in the FEGLI program. Employees who are already covered for basic insurance will continue that coverage unless they waive it. Employees who are already covered for standard optional insurance ($10,000) will lose that portion of their coverage unless they affirmatively re-elect it during March 1981. In the event that an employee does not complete the Life Insurance Election form during March 1981, employing agencies will file an election of basic insurance and a declination of all optional coverages on his/her behalf on March 31, 1981. However, if within 6 months an agency determines that an employee was unable to complete the form during March for reasons beyond his/her control, the employee will be allowed 31 days from the date of the agency's determination in which to complete the form.

Effective Dates

Open enrollment period elections will generally become effective on the first day on or after April 1, 1981, on which an employee actually enters on duty in a pay status. An employee who is on leave and an employee who does not actually return to duty at his/her workplace on or after April 1, 1981, does not satisfy this requirement.

New hires during the month of March 1981 who are eligible for life insurance will be immediately covered for basic insurance from the time they actually enter on duty in pay status, unless they file a waiver of coverage before the end of the first pay period. These new hires will have the standard optional insurance on the first day they actually enter on duty in a pay status on or after the date on which they file an election of that coverage. However, additional optional insurance and family optional insurance coverage, if elected during March, become effective on the first day on or after April 1, on which the employee actually enters on duty in a pay status.

An employee who is already covered for standard optional insurance during March 1981 and who declines that coverage while retaining basic insurance will continue to be insured for both basic insurance and the standard optional insurance through the end of the pay period which includes March 31, 1981. A waiver of all coverage is effective at the end of the pay period in which it is received in the employing office.

Continuation of Insurance During Retirement or Receipt Workers' Compensation

An employee who retires on an immediate annuity, or who becomes entitled to receive workers' compensation under the Federal Employees Compensation Act because of disease or injury to himself/herself is entitled to continue as many multiples of additional optional insurance as have been in force for not less than: (1) the 5 years of service immediately preceding the date of retirement or entitlement to compensation or (2) the full period(s) of service during which the insurance was available to him/her. The same participation requirement for continuation of insurance exists under the law for standard optional insurance and family optional insurance. The optional coverages may continue for as long as the individual continues to be enrolled for basic insurance while the individual continues to receive annuity or workers' compensation and is held by the Department of Labor to be unable to return to duty. Withholdings for the full cost of the optional insurance continue to be taken from the annuity or compensation payments until the month following the month in which the individual becomes 65 years of age and is retired or receiving compensation.

Beginning with the second calendar month after a retiree or compensationer become 65 years of age the optional coverages begin to reduce by 2 percent a month. The maximum reduction for the standard optional insurance is 75 percent of the face value. For additional optional insurance and family optional insurance this reduction continues until the insurance stops completely after 50 months. Once the reductions have begun, there are no withholdings from annuity or compensation for the optional coverages.

Reemployed Annuitants

There shall be no change in the current treatment of reemployed annuitants with respect to standard optional insurance coverage during reemployment. Retirees who are continuing standard optional insurance during retirement and who are reemployed in non-excluded positions will have the standard optional insurance coverage as employees unless the coverage is declined or waived, and the standard optional insurance as a retiree is suspended during reemployment. Withholdings for the full cost of the coverage are taken from salary. Following reemployment which is qualifying for a supplemental annuity, the individual may continue the reemployment-acquired insurance. If the reemployment period does not continue long enough for a supplemental annuity benefit to attach, the suspended insurance may be reinstated following separation from the reemployment.

These interim regulations provide for the same treatment with regard to family optional insurance of reemployed annuitants. However, the additional optional insurance of reemployed annuitants who have this coverage as retirees will not be automatically suspended upon reemployment. A reemployed annuitant in a non-excluded position will have the opportunity to elect either to continue additional optional insurance as a retiree or to have that coverage suspended and have additional optional insurance as an employee during reemployment. Following reemployment which is qualifying for a supplemental annuity, the individual may then continue the additional optional insurance acquired as a reemployed annuitant or the suspended additional opti nal insurance may be reinstated (if any remains after the post-age 65 reductions). If reemployment does not qualify the person for a supplemental annuity, any suspended additional optional insurance which remains in effect may be reinstated following separation from reemployment.

Waiver of Collection of Overpayment

Pub L. 96-427 amends the FEGLI law to allow an agency which has failed to withhold the proper FEGLI deductions from an individual's salary, annuity or compensation to waive the collection of the corresponding overpayments of salary, annuity or compensation if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency waives the collection of any unpaid amount, it must still submit to OPM the uncollected FEGLI withholdings and contributions for deposit to the Employees' Life Insurance Fund.

Current Civil Service Retirement regulations, 5 CFR Part 831, provide standards for waiver of overpayments from the Civil Service Retirement Fund. These interim regulations provide that waivers of collections of life insurance deductions will be governed by the same standards. In cases where OPM fails to withhold proper FEGLI deductions from annuity. Agency standards for waivers of overpayments from salary will be those which the

agency must follow under 4 CFR Subchapter G, Chapter I, which implements the provisions of 5 U.S.C. 5584 allowing agencies to waive collections of over-paid salary or allowances.

These interim regulations also make a percent after age 65) shall have withheld from his/her payments basic life insurance withholdings at the monthly rate (for annuitants) of $0.52 for each $1,000 of the BIA or at the weekly rate (for compensationers) of $0.120 for each $1,000 of the BIA.

Subpart B—Coverage

§ 871.202 Election or declination.

(a) Except as otherwise provided in paragraph (b) of this section, each employee shall, on the form entitled Life Insurance Election, elect or decline

declination an employee must affirmatively elect the coverage by filing the Life Insurance Election form with his/her employing office, subject to the provisions of § 871.205.

§ 871.205 Cancellation of declination.

of a retired employee, OPM may waive the collection of the unpaid insurance deductions in accordance with section 8707(d) of title 5, United States Code. OPM shall use the standards for waiver of overpayments found under Subpart N of Part 831 of this chapter when

OPM, subject to a 31-day extension of coverage.

(8) In Part 871, § 871.601 and § 871.604(b) are revised to read as follows:

agency must follow under 4 CFR Subchapter G, Chapter I, which implements the provisions of 5 U.S.C. 5584 allowing agencies to waive collections of over-paid salary or allowances.

These interim regulations also make a technical amendment to 5 CFR 870.601(b) (see 45 FR 80472, December 5, 1980) needed to correct a reference in that paragraph to a non-existent paragraph (h). The reference is changed to paragraph (g) of the same section.

At the time OPM publishes final regulations, uniform nomenclature changes and editorial revisions will be added throughout Parts 870 and 871.

OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is amending Parts 870 and 871 of Title 5, Code of Federal Regulations, and adding new Parts 872 and 873, as follows:

PART 870—BASIC LIFE INSURANCE

(1) In Part 870, paragraphs (a), (b), and (f)(1) of § 870.401 are revised, effective on the first day of the first pay period beginning on or after April 1, 1981, to read as follows:

Subpart D—Withholdings and Contributions

§ 870.401 Withholdings and contributions.

(a) During any period in any part of which an insured employee is in pay status, $0.24 for each $1,000 of the employee's BIA shall be withheld from the biweekly pay of the employee. The amount withheld from the pay of an employee who is paid on other than a biweekly basis is determined at a proportionate rate, adjusted to the nearest cent.

(b) The amount withheld from the pay of an insured employee whose annual pay is paid during a period shorter than 52 workweeks is the sum obtained by converting the biweekly rate of $0.24 for each $1,000 of the employee's BIA to an annual rate and prorating the annual rate over the number of installments of pay regularly paid during the year.

* * * * *

(f)(1) Except as provided under paragraph (g) of this section, an insured person who elects continued basic life insurance coverage during receipt of annuity or compensation payments as provided under §§ 870.601(c)(2) or 870.701(c)(2) (maximum reduction of 75 percent after age 65) shall have withheld from his/her payments basic life insurance withholdings at the monthly rate (for annuitants) of $0.52 for each $1,000 of the BIA or at the weekly rate (for compensationers) of $0.120 for each $1,000 of the BIA.

* * * * *

(2) In Part 870, § 870.601(b) is revised to read as follows:

Subpart F—Retired Employees

§ 870.601 Eligibility for life insurance.

* * * * *

(b) An employee who meets the requirements under paragraphs (a) or (g) of this section for continuation or reinstatement of life insurance shall execute a written election on a form furnished by OPM at the time entitlement to continuation or reinstatement of the insurance arises. To be considered valid, the election form must be received in OPM before final adjudication of the employee's application for annuity or supplemental annuity. In the absence of a valid election, the insured shall be deemed to have filed a valid election under paragraph (c)(2) of this section.

* * * * *

(3) The heading of Part 871 is revised, effective April 1, 1981, to read as follows:

PART 871—STANDARD OPTIONAL LIFE INSURANCE

(4) In Part 871, § 871.101 is revised, effective April 1, 1981, to read as follows:

Subpart A—Administration and General Provisions

§ 871.101 Actions on the policy.

Optional life and accidental death and dismemberment benefits (referred to in this part as "standard optional insurance") shall be payable in accordance with an amendment to the policy purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, NY 10010, under section 8709 of title 5, United States Code, to provide group insurance coverage (referred to in this part as "basic insurance"). Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligations undertaken by the United States should be brought against the insurance company.

(5) In Part 871, § 871.202 and § 871.204(b) are revised, and §§ 871.204(d) and 871.205(e) are added, effective March 1, 1981, to read as follows:

Subpart B—Coverage

§ 871.202 Election or declination.

(a) Except as otherwise provided in paragraph (b) of this section, each employee shall, on the form entitled Life Insurance Election, elect or decline standard optional insurance within 31 days after becoming eligible, unless during earlier employment he/she filed an election or declination which remains in effect.

(b) On a determination by an employing office, within 6 months after a person becomes eligible, that he/she was unable, for cause beyond his/her control to elect or decline the standard optional insurance within the prescribed time limit, the employee shall elect or decline the standard optional insurance within 31 days after he/she is advised of that determination. Standard optional insurance in that case is retroactive to the first day of the first pay period beginning after the date the person became eligible, or after April 1, 1981, whichever is later, and the person shall pay the full cost of the insurance from that date for the time that he/she is in a pay status or retired and under age 65.

(c) A person who does not file a Life Insurance Election form with his/her employing office does not have standard optional insurance.

§ 871.204 Declination.

* * * * *

(b) A cancellation of standard optional insurance becomes effective and standard optional insurance stops at the end of the pay period in which the declination or waiver is received in the employing office, except that a declination of standard optional insurance (which is not also a waiver of basic insurance) which is filed during the period from March 1, 1981 through March 31, 1981, becomes effective and standard optional insurance stops at the end of the pay period which includes March 31, 1981.

* * * * *

(d) For the purpose of having standard optional insurance as an employee, an election of insurance under this part filed on or before February 28, 1981, is deemed to have been canceled effective at the end of the pay period which includes March 31, 1981, unless the employee does not actually enter on duty in pay status during the first pay period which begins on or after April 1, 1981, in which case the election is deemed to have been canceled on the first day after the end of such pay period that the employee actually enters on duty in pay status. In order to retain or obtain standard optional insurance as an employee after the date of such declination an employee must affirmatively elect the coverage by filing the Life Insurance Election form with his/her employing office, subject to the provisions of § 871.205.

§ 871.205 Cancellation of declination.

* * * * *

(c) Declinations of standard optional insurance filed on or before February 28, 1981, are automatically canceled effective on the first day an employee whose declination is so canceled actually enters on duty in pay status on or after April 1, 1981, and the standard optional insurance is effective on the date of cancellation of the declination, provided that the employee has filed an affirmative election of standard optional insurance on the form entitled Life Insurance Election during the period from March 1, 1981 through March 31, 1981. An employee whose pre-March 1981 declination is so canceled and who does not file the form with his/her employing office during the period from March 1, 1981 through March 31, 1981, shall be deemed to have declined standard optional insurance on March 31, 1981, except that an employee who fails to file the form during that period due to cause beyond his/her control shall be allowed to enroll belatedly under the conditions prescribed under § 871.202(b).

(6) In Part 871, § 871.401(c) is revised, and § 871.401(g) is added, effective on the first day of the first pay period beginning on or after April 1, 1981, to read as follows:

Subpart D—Withholdings

§ 871.401 Withholdings.

* * * * *

(c) The biweekly full cost of the $10,000 of standard optional insurance (and for a person in receipt of annuity or compensation for work injury, of standard optional life insurance), until determined by OPM on the basis of experience to be otherwise, is:

For persons under age 35	$0.60
For persons ages 35 through 39	$0.80
For persons ages 40 through 44	$1.40
For persons ages 45 through 49	$2.20
For persons ages 50 through 54	$3.20
For persons ages 55 through 59	$7.50
For persons age 60 or over	$9.00

The amount withheld from the pay of a person paid on other than a biweekly period or insured for more than $10,000 shall be determined at a proportionate rate, adjusted to the nearest cent.

* * * * *

(g)(1) If OPM fails to withhold proper amounts of standard optional life insurance deductions from the annuity of a retired employee, OPM may waive the collection of the unpaid insurance deductions in accordance with section 8707(d) of title 5, United States Code. OPM shall use the standards for waiver of overpayments found under Subpart N of Part 831 of this chapter when determining whether a waiver of collection of the unpaid deductions may be granted, and shall follow the procedures under Subpart M of Part 831 of this chapter when applying the standards.

(2) If, under section 8707(d) of title 5, United States Code, an agency waives the collection of unpaid insurance deductions from an individual's pay, annuity or compensation, the agency shall submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8708 of title 5, United States Code, to OPM for deposit to the Employees' Life Insurance Fund. An agency will make its determination on the waiver of collection of an overpayment of pay in accordance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G.

(7) In Part 871, paragraph (b) of § 871.501 is revised, paragraphs (c) and (d) are redesignated (d) and (e), and paragraph (c) is added, to read as follows:

Subpart E—Termination and Conversion

§ 871.501 Termination and conversion of insurance.

* * * * *

(b) If, because of a declination or waiver, an insured employee has not had the standard optional insurance during the full period(s) of service during which it was available to him/her, or for the 5 years of service immediately preceding the date on which that coverage stops, whichever is less, the optional insurance stops, subject to a 31-day extension standard optional life insurance coverage, on the date that his/her basic life insurance is continued or reinstated under the provisions of § 870.601 (during retirement) or § 870.701 (during receipt of compensation) of this chapter.

(c) If, at the time of an individual's election under §§ 870.601(b) or 870.701(b) of this chapter, he/she elects no basic life insurance during receipt of annuity or compensation (as provided under §§ 870.601(c)(1) and 870.701(c)(1) of this chapter), the standard optional insurance stops at the end of the month in which the election is received in OPM, subject to a 31-day extension of coverage.

* * * * *

(8) In Part 871, § 871.601 and § 871.604(b) are revised to read as follows:

Subpart F—Retired Employees and Employees Compensation

§ 871.601 Amount of insurance.

The amount of standard optional life insurance which is continued during receipt of annuity or compensation reduces by 2 percent a month effective at the beginning of the second calendar month after (a) the date the insurance would otherwise have stopped, or (b) the retiree's or compensationer's 65th birthday, whichever is later, with a maximum reduction of 75 percent.

§ 871.604 Reemployed retired employees.

* * * * *

(b) Standard optional insurance acquired during reemployment may be continued after termination of the reemployment of the retired employee:

(1) Qualifies for a supplemental annuity or acquires a new retirement right,

(2) Continues his/her basic insurance under paragraphs (c)(2), (c)(3) or (c)(4) of § 870.601 of this chapter, and

(3) Has had standard optional insurance in force for the 5 years of service immediately preceding separation from reemployment or for the full period(s) of service during which it was available to him/her, whichever is less.

If the standard optional life insurance acquired during reemployment is so continued, any suspended standard optional life insurance stops with no 31-day extension of coverage or right of conversion.

(9) Part 872 is added to read as follows:

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

Subpart A—Administration and General Provisions

Sec.

872.101 Actions on the policy.

872.102 Payment of benefits; designations of beneficiary.

872.103 Correction of an error, mistake, or omission.

Subpart B—Coverage

872.201 Eligibility.

872.202 Election or declination.

872.203 Effective date of insurance.

872.204 Declination.

872.205 Cancellation of declination.

872.206 Reconsideration.

Subpart C—Amount of Insurance

Sec.

872.301 Amount of employee's insurance.

Subpart D—Withholdings

872.401 Withholdings.

is insured for basic insurance and for whom an uncanceled declination of additional optional insurance is not in effect is eligible to elect the additional optional insurance, if his/her periodic pay, after all other deductions, is

employee is the office that administers his/her retirement sytem, and, for an employee or former employee in receipt of compensation for work injury under subchapter I of chapter 81 of title 5, United States Code, is the Department

elect additional optional insurance under this paragraph.

(3) An employee who has in force additional optional insurance of at least 1 multiple of annual pay but less than 5 multiples of annual pay may increase

(c) A former employee and an employee who is continuing basic life insurance during receipt of compensation is not eligible to cancel a declination under this section, nor to increase multiples of additional optional

Code, rounded to the next higher multiple at $1,000.

Subpart D—Withholdings

§ 872.401 Withholdings.

(a) During any period in any part of

Subpart C—Amount of Insurance

Sec.
872.301 Amount of employee's insurance.

Subpart D—Withholdings

872.401 Withholdings.

Subpart E—Termination and Conversion

872.501 Termination and conversion of insurance.

Subpart F—Retired Employees and Employees Compensation

872.601 Amount of insurance.
872.602 Termination of annuity compensation.
872.603 Waiver or supension of annuity or compensation.
872.604 Reemployed retired employees.

Authority: 5 U.S.C. 8716. Interprets and applies 5 U.S.C. 8714b.

Subpart A—Administration and General Provisions

§ 872.101 Actions on the policy.

Optional life insurance (referred to in this part as "additional optional insurance") shall be payable in accordance with an amendment to the policy purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, N.Y. 10010, pursuant to section 8709 of title 5, United States Code, to provide group insurance coverage (referred to in this part as "basic insurance"). Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligations undertaken by the United States, should be brought against the insurance company.

§ 872.102 Payment of benefits; designations of beneficiary.

Additional optional insurance in force on a person at the date of his/her death shall be paid, on receipt of a valid claim, in the same order of precedence and under the same conditions as are applicable to basic insurance. A designation of beneficiary for basic insurance is also a designation of beneficiary for additional optional insurance unless the insured person specifies otherwise in his/her designation.

§ 871.103 Correction of an error, mistake, or omission.

The Associate Director for Compensation may order correction of an error, mistake, or omission upon a showing satisfactory to the Associate Director that it would be against equity and good conscience not to do so.

Subpart B—Coverage

§ 872.201 Eligibility.

Each employee, as defined in section 8701 of title 5, United States Code, who is insured for basic insurance and for whom an uncanceled declination of additional optional insurance is not in effect is eligible to elect the additional optional insurance, if his/her periodic pay, after all other deductions, is sufficient to cover its full cost

§ 872.202 Election or declination.

(a) Except as otherwise provided in paragraph (b) of this section, each employee shall, on the form entitled Life Insurance Election, elect or decline the additional optional insurance within 31 days after becoming eligible, unless during earlier employment he/she filed an election or declination which remains in effect. The 31-day time limit begins to run on the first day after February 28, 1981, on which an individual meets the definition of an employee under 5 U.S.C. 8701.

(b) On a determination by an employing office, within 6 months after a person becomes eligible, that he/she was unable, for cause beyond his/her control to elect the additional optional insurance within the prescribed time limit regulation, the employee shall elect or decline the optional insurance within 31 days after he/she is advised of that determination. Additional optional insurance in that case is retroactive to the first day of the first pay period beginning after the date the person became eligible, or after April 1, 1981, whichever is later, and the person shall pay the full cost of the insurance from that date for the time that he/she is in a pay status or retired and under age 65.

(c) A person who does not file a Life Insurance Election form with his/her employing office does not have the additional optional insurance.

§ 872.203 Effective date of insurance.

(a) The effective date of an election of additional optional insurance is the first day on or after April 1, 1981, that an employee actually enters on duty in a pay status on or after the day the election is received in his/her employing office.

(b) An election of additional optional insurance remains in effect until canceled as provided in § 872.204. For an employee whose additional optional insurance has stopped for a reason other than a declination or waiver, additional optional insurance is reinstated on the first day he/she actually enters on duty in a pay status in a position in which he/she again becomes eligible.

§ 872.204 Declination.

(a) An insured person may at any time cancel his/her additional optional insurance by filing with his/her employing office (which for a retired employee is the office that administers his/her retirement sytem, and, for an employee or former employee in receipt of compensation for work injury under subchapter I of chapter 81 of title 5, United States Code, is the Department of Labor) a declination of additional optional insurance or a waiver of basic insurance coverage. An insured person may at any time reduce the number of his/her multiples of additional optional insurance by filing a Life Insurance Election form with his/her employing office.

(b) A cancellation of additional optional insurance becomes effective and additional optional insurance stops at the end of the pay period in which the declination or waiver is received in the employing office. A reduction in the number of additional optional insurance multiples is effective at the end of the pay period in which the Life Insurance Election form is received in the employing office.

(c) A declination or reduction in multiples of additional optional insurance remains in effect until it is canceled as provided in § 872.205.

§ 872.205 Cancellation of declination.

(a)(1) An employee who has declined the additional optional insurance may elect it if (A) he/she is under age 50, (B) at least 1 year has elapsed since the effective date of his/her last declination or waiver, and (C) he/she furnishes satisfactory evidence of insurability.

(2) An employee who has declined additional optional insurance may elect it upon his/her marriage or the acquisition of an unmarried dependent child within the meaning of section 8701(d) of title 5, United States Code, and Subpart G of Part 873 of this chapter, except that the election must be received in the employing office before the employee's 36th birthday. In order to be valid, the election must be filed with the employing office on the Life Insurance Election form during the 60-day period following the date of the event which permits the election. This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event, or if the individual separates from covered service prior to completion of the 60-day time limit. This extension of the time limit is limited to coincide with the 31-day time limit for electing insurance following employment in a covered position. The number of multiples which an employee may obtain upon acquisition of a spouse or child is limited to the number of family members (spouse and/or children) acquired with the event which permits the employee to

elect additional optional insurance under this paragraph.

(3) An employee who has in force additional optional insurance of at least 1 multiple of annual pay but less than 5 multiples of annual pay may increase the number of multiples if he/she meets the requirements of paragraph (a)(1) of this section.

(4) An employee who has in force additional optional insurance of at least 1 multiple of annual pay but less than 5 multiples of annual pay may elect to increase the number of multiples upon his/her marriage or the aquisition of an unmarried dependent child within the meaning of section 8701(d) of title 5, United States Code, and Subpart G of Part 873 of this chapter, except that the election must be received in the employing office before the employee's 50th birthday. In order to be valid, the election to increase multiples must be filed with the employing office on the Life Insurance Election form during the 60-day period following the date of the event which permits the increase. This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event, or if the individual separates from covered service prior to completion of the 60-day time limit. This extension of the time limit is limited to coincide with the 31-day limit for electing insurance following employment in a covered position. The number of multiples which an employee may add upon acquisition of a spouse or child is limited to the number of family members (spouse and/or children) acquired with the event which permits the employee to increase multiples.

(b)(1) The effective date of the additional optional insurance for an employee who has complied with paragraphs (a)(1) or (a)(3) of this section is the first day he/she actually enters on duty in a pay status, on or after the day his/her election is received in his/her employing office following the approval of his/her Request for Insurance by the Office of Federal Employees' Group Life Insurance.

This approval is revoked automatically and the additional optional insurance does not become effective if the employee fails to submit his/her election or meet the pay and duty status requirement within 31 days following the date of the approval.

(2) The effective date of an election under paragraphs (a)(2) or (a)(4) of this section is the first day the employee actually enters on duty in a pay status, on or after the day his/her election is received in the employing office.

(c) A former employee and an employee who is continuing basic life insurance during receipt of compensation is not eligible to cancel a declination under this section, nor to increase multiples of additional optional insurance.

§ 872.206 Reconsideration.

(a) *Who may file.* An individual or annuitant may request the OPM to reconsider an agency decision or an initial decision of OPM denying additional optional insurance coverage.

(b) *Agency decision.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the written decision stating the right to reconsideration by OPM. The time limit may be extended as provided in paragraph (e) of this section.

(c) *Initial OPM decision.* An OPM decision shall be considered an initial decision when rendered by OPM in writing and stating the right to reconsideration. However, a decision initially rendered at the highest level of review available within OPM will not be subject to reconsideration.

(d) *Reconsideration.* A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, claim number, if applicable, and reasons for the request.

(e) *Time limit.* A request for reconsideration of an initial decision must be filed within 30 calendar days from the date of the initial decision. OPM may extend the time limit for filing when the individual shows that he/she was not notified of the time limit and was not otherwise aware of it, or that he/she was prevented by circumstances beyond his/her control from making the request within the time limit.

(f) *Final decision.* After consideration, OPM shall issue a final decision which shall be in writing and shall fully set forth the findings and conclusions of OPM.

Subpart C—Amount of Insurance

§ 872.301 Amount of employee's insurance.

An eligible employee may elect additional optional insurance of 1, 2, 3, 4, or 5 multiples of his/her annual pay. For this purpose, each multiple is equal to the lowest multiple of $1,000 which is not less than the current rate of the employee's annual pay as determined under § 870.302 of this chapter. A multiple shall not exceed the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of title 5, United States Code, rounded to the next higher multiple at $1,000.

Subpart D—Withholdings

§ 872.401 Withholdings.

(a) During any period in any part of which an insured employee is in a pay status there shall be withheld from his/her pay the full cost of his/her additional optional insurance as specified in paragraph (c) of this section.

(b) Subject to the provisions of § 872.604, for any period before the first of the month following his/her 65th birthday during which an insured retired employee (or employee or former employee in receipt of compensation for work injury) receives annuity (or compensation), there shall be withheld from his annuity (or compensation) the full cost of his/her additional optional insurance as specified in paragraph (c) of this section.

(c) The biweekly full cost per $1,000 of additional optional insurance in force, until determined by OPM on the basis of experience to be otherwise, is:

For persons under age 35—$0.05
For persons ages 35 through 39—$0.07
For persons ages 40 through 44—$0.12
For persons ages 45 through 49—$0.20
For persons ages 50 through 54—$0.30
For persons ages 55 through 59—$0.60
For persons age 60 or over—$0.95

The amount withheld from the pay of a person paid on other than a biweekly period shall be determined at a proportionate rate, adjusted to the nearest one-tenth of one cent.

(d) For the purposes of this section, a person is deemed to attain 35, 40, 45, 50, 55, or 60 years of age on the first day of his/her pay period beginning on or after January 1 of the year following the one in which his/her corresponding birthday occurs.

(e) The amount withheld from the pay of an insured person whose annual pay is paid during a period shorter than 52 workweeks is the sum obtained by converting the biweekly rate for his/her age group to an annual rate and prorating the annual rate over the number of installments of pay regularly paid during the year.

(f) The amount withheld from the pay of an insured employee whose amount of insurance changes during a pay period is based on the last amount of insurance in force during the pay period.

(g)(1) If OPM fails to withhold proper amounts of insurance deductions from the annuity of a retired employee, OPM may waive the collection of the unpaid insurance deductions in accordance with section 8707(d) of title 5, United States Code. OPM shall use the standards for waiver of overpayments

found under Subpart N of Part 831 of this chapter when determining whether a waiver of collection of the unpaid deductions may be granted, and shall follow the procedures under Subpart M of Part 831 of this chapter when applying the standards.

work injury, or annuity, after all other deductions, is insufficient to cover the full cost of the additional optional insurance.

(e) During the 31-day extension of additional optional insurance coverage under this section, a person may, upon

full cost of the insurance for the period of waiver or suspension during which the person is under age 65.

(b) If suspension of annuity or compensation is because of reemployment, the reemployment office shall withhold the full cost of the

extension of coverage or right of conversion.

(10) Part 873 is added to read as follows:

PART 873—FAMILY OPTIONAL LIFE

employing office does not have the family optional insurance.

§ 873.102 Payment of benefits.

Family optional insurance in force on a spouse or child at the date of his/her death shall be paid to the employee or former employee whose pay, annuity or compensation is subject to withholding

§ 873.203 Effective date of insurance.

(a) The effective date of an election of family optional insurance is the first day on or after April 1, 1981, that an

found under Subpart N of Part 831 of this chapter when determining whether a waiver of collection of the unpaid deductions may be granted, and shall follow the procedures under Subpart M of Part 831 of this chapter when applying the standards.

(2) If, under section 8707(d) of title 5, United States Code, an agency waives the collection of unpaid insurance deductions from an individual's pay, annuity or compensation, the agency shall submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8708 of title 5, United States Code, to OPM for deposit to the Employees' Life Insurance Fund. An agency will make its determination on the waiver of collection of an overpayment of pay in accordance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G.

Subpart E—Termination and Conversion

§ 872.501 Termination and conversion of insurance.

(a) The additional optional insurance of an insured employee stops when his/her basic insurance stops as provided in § 870.501 of this chapter subject to a 31-day extension of additional optional insurance coverage.

(b) If, because of a declination or waiver, an insured employee has not had the additional optional insurance during the full period(s) of service during which it was available to him/her, or for the 5 years of service immediately preceding the date on which the insurance stops, whichever is less, the additional optional insurance stops, subject to a 31-day extension of additional optional insurance coverage, on the date that his/her basic life insurance is continued or reinstated under the provisions of § 870.601 (for retirement) or § 870.701 (during receipt of compensation) of this chapter.

(c) If, at the time of an individual's election under §§ 870.601(b) or 870.701(b) of this chapter (for basic life insurance during receipt of annuity or compensation), he/she elects no basic life insurance (as provided under §§ 870.601(c)(1) or 870.701(c)(1) of this chapter), the additional optional insurance stops at the end of the month in which the election is received in OPM, subject to a 31-day extension of coverage.

(d) The additional optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation for work injury, or annuity, after all other deductions, is insufficient to cover the full cost of the additional optional insurance.

(e) During the 31-day extension of additional optional insurance coverage under this section, a person may, upon application and without medical examination convert all or any part of his/her additional optional insurance to an individual policy of life insurance at rates applicable to his/her attained age and class of risk unless, within 3 calendar days after the date his/her additional optional insurance stopped, he/she returns to a position in which he/she is not excluded from coverage.

Subpart F—Retired Employees and Employees Compensation

§ 872.601 Amount of insurance.

(a) Each multiple of additional optional insurance continued during receipt of annuity or compensation reduces by 2 percent a month effective at the beginning of the second calendar month after (1) the date the insurance would otherwise have stopped, or (2) the insured's 65th birthday, whichever is later. At 12:00 PM on the day preceding the 50th reduction the insurance stops, with no extension of coverage or right of conversion.

(b) The number of multiples of additional optional insurance which may be continued during receipt of annuity or compensation is the smallest number of multiples in force during (1) the 5 years of service immediately preceding separation from employment or entitlement to compensation, or (2) the full period(s) of service during which the additional optional insurance was available to the employee.

§ 872.602 Termination of annuity or compensation.

If the annuity or compensation for work injury paid to an insured person is terminated, or if the Department of Labor finds that an insured person receiving compensation for work injury is able to return to duty, additional optional insurance held as a retired employee or person receiving compensation stops, with no 31-day extension of coverage or right of conversion, on the date of that termination or finding.

§ 872.603 Waiver of suspension of annuity or compensation.

(a) Except as provided in paragraph (b) of this section, when annuity or compensation for work injury is waived or suspended, additional optional insurance continues. When payment of the annuity or compensation is resumed, the employing office shall withhold the full cost of the insurance for the period of waiver or suspension during which the person is under age 65.

(b) If suspension of annuity or compensation is because of reemployment, the reemployment office shall withhold the full cost of the insurance during each pay period of reemployment.

§ 872.604 Reemployed retired employees.

(a)(1) A retired employee appointed to a position in which he/she is not excluded from basic insurance by law or regulation is eligible for additional optional insurance as an employee, unless he/she has on file an uncanceled waiver of basic insurance or declination of additional optional insurance. If he/she has additional optional insurance as a retired employee, that insurance (and any applicable annuity withholdings) continues as if the individual were not reemployed, unless (i) the person files with his/her employing office within 31 days following the date of reemployment an election of additional optional insurance on the Life Insurance Election form, in which case the additional optional insurance (and corresponding annuity withholdings) as a retiree is suspended effective on the date that the additional optional insurance as an employee becomes effective, or (ii) the person files a waiver of basic insurance.

(2) Except as provided in paragraph (b) of this section, the additional optional insurance acquired as an employee stops, with no 31-day extension or right of conversion, on the date reemployment terminates and any suspended additional optional insurance which remains in force after applicable monthly reductions after age 65 (and corresponding annuity withholdings, if any) is reinstated on the day following termination of the reemployment.

(b) Additional optional insurance acquired during reemployment may be continued after termination of the reemployment if the retired employee:

(1) Qualifies for a supplemental annuity or acquires a new retirement right,

(2) Continues his/her basic insurance under paragraphs (c)(2), (c)(3), or (c)(4) of § 870.601 of this chapter, and

(3) Has had additional optional insurance in force for the 5 years of service immediately preceding separation from reemployment or for the full period(s) of service during which it was available to him/her, whichever is less. If the additional optional insurance acquired during reemployment is so continued, any suspended additional optional insurance stops with no 31-day

extension of coverage or right of conversion.

(10) Part 873 is added to read as follows:

PART 873—FAMILY OPTIONAL LIFE INSURANCE

Subpart A—Administration and General Provisions

Sec.

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Authority: 5 U.S.C. 8716. Interprets and applies 5 U.S.C. 8714c.

Subpart A—Administration and General Provisions

§ 873.101 Actions on the policy.

Optional life insurance on family members (referred to in this part as "family optional insurance") shall be payable in accordance with an amendment to the policy purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, N.Y. 10010, pursuant to section 8709 of title 5, United States Code, to provide group insurance coverage (referred to in this part as "basic insurance"). Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligations undertaken by the United States, should be brought against the insurance company.

§ 873.102 Payment of benefits.

Family optional insurance in force on a spouse or child at the date of his/her death shall be paid to the employee or former employee whose pay, annuity or compensation is subject to withholding under § 873.401, except that in the event that payment is not made prior to the death of the employee, the insurance shall be paid to the person(s) eligible for the basic insurance on the employee or former employee.

§ 873.103 Correction of an error, mistake, or omission.

The Associate Director for Compensation may order correction of an error, mistake, or omission upon a showing satisfactory to the Associate Director that it would be against equity and good conscience not to do so.

Subpart B—Coverage

§ 873.201 Eligibility.

Each employee, as defined by section 8701 of title 5, United States Code, who is insured for basic insurance and for whom an uncanceled declination of family optional insurance is not in effect is eligible to elect the family optional insurance, if his/her periodic pay, after all other deductions, is sufficient to cover its full cost.

§ 873.202 Election or declination.

(a) Except as otherwise provided in paragraph (b) of this section, each employee shall, on the form entitled Life Insurance Election, elect or decline the family optional insurance within 31 days after becoming eligible, unless during earlier employment he/she filed an election or declination which remains in effect. The 31-day time limit begins to run on the first day after February 28, 1981, on which an individual meets the definition of an employee under 5 U.S.C. 8701.

(b) On a determination by an employing office, within 6 months after a person becomes eligible, that he/she was unable, for cause beyond his/her control to elect or decline the family optional insurance within the prescribed time limit, the employee shall elect or decline the family optional insurance within 31 days after he/she is advised of that determination. Family optional insurance in that case is retroactive to the first day of the first pay period beginning after the date the person became eligible, or after April 1, 1981, whichever is later, and the person shall pay the full cost of the insurance from that date for the time that he/she is in a pay status or retired and under age 65.

(c) A person who does not file a Life Insurance Election form with his/her employing office does not have the family optional insurance.

§ 873.203 Effective date of insurance.

(a) The effective date of an election of family optional insurance is the first day on or after April 1, 1981, that an employee actually enters on duty in a pay status on or after the day the election is received in his/her employing office.

(b) An election of family optional insurance remains in effect until canceled as provided in § 873.204. For an employee whose family optional insurance has stopped for a reason other than a declination or waiver, family optional insurance is reinstated on the first day he/she actually enters on duty in a pay status in a position in which he/she again becomes eligible.

§ 873.204 Declination.

(a) An employee may at any time cancel his/her family optional insurance by filing with his/her employing office (which for a retired employee is the office that administers his/her retirement system, and, for an employee or former employee in receipt of compensation for work injury under subchapter I of chapter 81 of title 5, United States Code, is the Department of Labor) a declination of family optional insurance or a waiver of basic insurance coverage.

(b) A cancellation of family optional insurance becomes effective and family optional insurance stops at the end of the pay period in which the declination or waiver is received in the employing office.

(c) A declination of family optional insurance remains in effect until it is canceled as provided in § 873.205.

§ 873.205 Cancellation of declination.

(a) An employee who has declined the family optional insurance may elect it upon his/her marriage or the acquisition of a child. In order to be valid, the election must be filed with the employing office on the Life Insurance Election form during the 60-day period following the date of the event which permits the election. This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event, if the individual separates from covered service prior to completion of the 60-day time limit, or if the event occurs during the period following a waiver of basic insurance when he/she is not eligible to cancel the waiver. This extension of the time limit is limited to coincide with the 31-day time limit for electing insurance following employment in a covered position, or with the 31-day period

following the first day on which the individual becomes eligible to cancel a waiver of basic insurance.

(b) The effective date of the family optional insurance for an employee who

Subpart D—Withholdings

§ 873.401 Withholdings.

(a) During any period in any part of which an insured employee is in a pay

United States Code, to OPM for deposit to the Employees' Life Insurance Fund. An agency will make its determination on the waiver of collection of an overpayment of pay in accordance with 5 U.S.C. 5584 as implemented by 4 CFR

(f) During the 31-day period following the death of an insured employee, or during the 31-day extension of family optional insurance under this section, each one of the employee's or former employee's family members as defined

insurance for the period of waiver or suspension during which the person is under age 65.

(b) If suspension of annuity or compensation is because of reemployment, the reemploying office

the definition of "family member" under 5 U.S.C. 8701(d).

§ 873.702 Proof of dependency.

(a) A child is considered to have been dependent on an employee or former

following the first day on which the individual becomes eligible to cancel a waiver of basic insurance.

(b) The effective date of the family optional insurance for an employee who has complied with paragraph (a) of this section is the first day he/she actually enters on duty in a pay status, on or after the day his/her election is received in his/her employing office and basic insurance is in force.

(c) A former employee and an employee who is continuing basic insurance as a compensationer is not eligible to make the election provided in paragraph (a) of this section.

§ 873.206 Reconsideration.

(a) *Who may file.* An individual or annuitant may request the OPM to reconsider an agency decision or an initial decision of OPM denying family optional insurance coverage.

(b) *Agency decision.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the written decision stating the right to reconsideration by OPM. The time limit may be extended as provided in paragraph (e) of this section.

(c) *Initial OPM decision.* An OPM decision shall be considered an initial decision when rendered by OPM in writing and stating the right to reconsideration. However, a decision initially rendered at the highest level of review available within OPM will not be subject to reconsideration.

(d) *Reconsideration.* A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, claim number, if applicable, and reasons for the request.

(e) *Time limit.* A request for reconsideration of an initial decision must be filed within 30 calendar days from the date of the initial decision. OPM may extend the time limit for filing when the individual shows that he/she was not notified of the time limit and was not otherwise aware of it, or that he/she was prevented by circumstances beyond his/her control from making the request within the time limit.

(f) *Final decision.* After reconsideration, OPM shall issue a final decision which shall be in writing and shall fully set forth the findings and conclusions of OPM.

Subpart C—Amount of Insurance

§ 873.301 Amount of employee's insurance.

The amount of family optional insurance is $5,000 payable upon the death of a spouse and $2,500 payable upon the death of a child.

Subpart D—Withholdings

§ 873.401 Withholdings.

(a) During any period in any part of which an insured employee is in a pay status there shall be withheld from his/her pay the full cost of his/her family optional insurance as specified in paragraph (c) of this section.

(b) Subject to the provisions of § 873.604, for any period before the first of the month following his/her 65th birthday during which an insured retired employee (or employee or former employee in receipt of compensation for work injury) receives annuity (or compensation), there shall be withheld from his annuity (or compensation) the full cost of his/her family optional insurance as specified in paragraph (c) of this section.

(c) The biweekly full cost of family optional insurance in force, until determined by OPM on the basis of experience to be otherwise, is:

For persons under age 35—$0.50
For persons ages 35 through 39—$0.60
For persons ages 40 through 44—$0.70
For persons ages 45 through 49—$0.90
For persons ages 50 through 54—$1.30
For persons ages 55 through 59—$2.00
For persons age 60 or over—$3.00

The amount withheld from the pay of a person paid on other than a biweekly period shall be determined at a proportionate rate, adjusted to the nearest cent.

(d) For the purposes of this section, a person is deemed to attain 35, 40, 45, 50, 55, or 60 years of age on the first day of his/her pay period beginning on or after January 1 of the year following the one in which his/her corresponding birthday occurs.

(e)(1) If OPM fails to withhold proper amounts of insurance deductions from the annuity of a retired employee, OPM may waive the collection of the unpaid insurance deductions in accordance with section 8707(d) of title 5, United States Code. OPM shall use the standards for waiver of overpayments found under Subpart N of Part 831 of this chapter when determining whether a waiver of collection of the unpaid deductions may be granted, and shall follow the procedures under Subpart M of Part 831 of this chapter when applying the standards.

(2) If, under section 8707(d) of title 5, United States Code, an agency waives the collection of unpaid insurance deductions from an individual's pay, annuity or compensation, the agency shall submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8708 of title 5, United States Code, to OPM for deposit to the Employees' Life Insurance Fund. An agency will make its determination on the waiver of collection of an overpayment of pay in accordance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G.

Subpart E—Termination and Conversion

§ 873.501 Termination and conversion of insurance.

(a) The family optional insurance of an insured employee stops when his/her basic insurance stops as provided in § 870.501 of this chapter subject to a 31-day extension of family optional insurance coverage.

(b) If, because of a declination or waiver, an insured employee has not had the family optional insurance during the full period(s) of service during which he/she was serving in a position subject to this part, or for the 5 years of service immediately preceding the date on which the insurance stops, whichever is less, the family optional insurance stops, subject to a 31-day extension of family optional insurance coverage, on the date that his/her basic life insurance is continued or reinstated under the provisions of § 870.601 (for retirement) or under the provisions of § 870.701 (during receipt of compensation) of this chapter.

(c) If, at the time of an individual's election under §§ 870.601(b) or 870.701(b) of this chapter (for basic life insurance during receipt of annuity or compensation), he/she elects no basic life insurance (as provided under §§ 870.601(c)(1) or 870.701(c)(1) of this chapter), the family optional insurance stops at the end of the month in which the election is received in OPM, subject to a 31-day extension of coverage.

(d) The family optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation for work injury, or annuity, after all other deductions, is insufficient to cover the cost of the family optional insurance.

(e) During the 31-day extension of family optional insurance coverage under this section, a person may, upon application and without medical examination, convert his/her family optional insurance to an individual policy of life insurance at rates applicable to his/her attained age and class of risk unless, within 3 calendar days after the date his/her family optional insurance stopped, he/she returns to a position in which he/she is not excluded from coverage.

(f) During the 31-day period following the death of an insured employee, or during the 31-day extension of family optional insurance under this section, each one of the employee's or former employee's family members as defined by 5 U.S.C. 8701(d) may, upon application and without medical examination, convert the amount of family optional insurance coverage in force (maximums of $5,000 for a spouse and $2,500 for a child) to an individual policy of life insurance at rates applicable to his/her attained age and class of risk unless, within 31 days after the date the employee's or former employee's family optional insurance stopped, he/she returns to a position in which he/she is not excluded from coverage. The family member's right of conversion does not attach if the employee or former employee exercises his/her right of conversion under paragraph (e) of this section.

(g) The amount of an individual policy as provided under paragraphs (e) or (f) of this section shall not be less than $1,000.

Subpart F—Retired Employees and Employees Compensation

§ 873.601 Amount of insurance.

The amount of family optional insurance (on each family member) continued during receipt of annuity or compensation reduces by 2 percent a month effective at the beginning of the second calendar month after (1) the date the insurance would otherwise have stopped, or (2) the retiree's or compensationer's 65th birthday, whichever is later. At 12:00 PM on the day preceding the 50th reduction the insurance stops, with no extension of coverage or right of conversion.

§ 873.602 Termination of annuity or compensation.

If the annuity or compensation for work injury paid to an insured person is terminated, or if the Department of Labor finds that an insured person receiving compensation for work injury is able to return to duty, family optional insurance held as a retired employee or person receiving compensation stops, with no 31-day extension of coverage or right of conversion, on the date of that termination or finding.

§ 873.603 Waiver or suspension of annuity or compensation.

(a) Except as provided in paragraph (b) of this section, when annuity or compensation for work injury is waived or suspended, family optional insurance continues. When payment of annuity or compensation is resumed, the employing office shall withhold the full cost of the insurance for the period of waiver or suspension during which the person is under age 65.

(b) If suspension of annuity or compensation is because of reemployment, the reemploying office shall withhold the full cost of the insurance during each pay period of reemployment.

§ 873.604 Reemployed retired employees.

(a)(1) A retired employee appointed to a position in which he/she is not excluded from basic insurance coverage by law or regulation is eligible for family optional insurance as an employee. If he/she has family optional insurance as a retired employee, that insurance (and any corresponding withholdings) is suspended on the day preceding his/her first day in a pay status under the appointment and, unless he/she files with his/her employing office a declination of family optional insurance (or a waiver of basic insurance), he/she acquires family optional insurance as an employee.

(2) Except as provided in paragraph (b) of this section, the family optional insurance acquired as an employee stops, with no 31-day extension or right of conversion, on the date reemployment terminates and any suspended family optional insurance which may remain in force following reductions is reinstated on the day following termination of the reemployment.

(b) Family optional insurance acquired during reemployment may be continued after termination of the reemployment if the retired employee:

(1) Qualifies for a supplemental annuity or acquires a new retirement right,

(2) Continues his/her basic insurance under paragraphs (c)(2), (c)(3), or (c)(4) of § 870.601 of this chapter, and

(3) Has had family optional insurance in force for the 5 years of service immediately preceding separation from reemployment or for the full period(s) of service during which it was available to him/her, whichever is less.

If the family optional insurance acquired during reemployment is so continued, any suspended family optional insurance stops with no 31-day extension of coverage or right of conversion.

Subpart G—Definition of Family Member

§ 873.701 Definition of family member.

For the purposes of this part, the terms "spouse" and "child" shall mean a spouse and unmarried dependent child within the meaning of these terms under the definition of "family member" under 5 U.S.C. 8701(d).

§ 873.702 Proof of dependency.

(a) A child is considered to have been dependent on an employee or former employee if he/she is:

(1) A legitimate child,

(2) An adopted child,

(3) A stepchild or recognized natural child who lived with the employee or former employee in a regular parent-child relationship,

(4) A recognized natural child for whom a judicial determination of support had been obtained, or

(5) A recognized natural child to whose support the employee or former employee made regular and substantial contribution.

(b) The following are examples of proof of regular and substantial support. More than one of the following proofs may be required to show support.

(1) Evidence of eligibility as a dependent child for benefits under State or Federal programs,

(2) Proof of inclusion of the child as a dependent on the employee's or former employee's income tax returns,

(3) Canceled checks, money orders, or receipts, for periodic payments from the employee or former employee for or on behalf of the child,

(4) Evidence of goods or services which show regular and substantial contributions,

(5) Any other evidence which the Office of Federal Employees' Group Life Insurance shall find to be sufficient proof of support or of paternity or maternity.

(c) The Office of Federal Employees' Group Life Insurance may deny an individual coverage as a dependent child, if:

(1) Evidence shows that the employee or former employee did not recognize the child as his/her own despite a willingness to support the child, or

(2) Evidence calls the child's paternity or maternity into doubt, despite the employee's or former employee's recognition and support of the child.

(d) For the purposes of an employee's election of family optional insurance upon the acquisition of a child, as provided in § 873.205, the employing agency shall base any requisite determination of dependency on the criteria expressed in paragraphs (a), (b), and (c) of this section.

§ 873.703 Child incapable of self-support.

(a) Upon receipt of a claim for family optional insurance in the event of death of a child over the age of 21 years, the Office of Federal Employees' Group Life Insurance shall determine, on the basis

of such evidence as it deems necessary, whether the deceased child was incapable of self-support because of a mental or physical disability which existed before becoming 22 years of age.

(b) In the event of an employee's election of family optional insurance

recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Charles R. Brader,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-40453 Filed 12-23-80; 12:25 pm]

BILLING CODE 3410-02-M

1. Request from Bayvet Division of Cutter Laboratories, Inc., to delete and/or replace proprietary name "Chemagro" with proprietary name "Gutter."

2. Request from Ralston Purina Company that Purina Wound Protector,

Done at Washington, D.C., this 19th day of December 1980.

J. K. Atwell,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-40281 Filed 12-23-80; 8:45 am]

BILLING CODE 3410-34-M

the above referenced 10 CFR Part 75, changes thereto, and changes to 10 CFR Parts 40, 50, 70, 150, and 170 are effective on December 24, 1980.

Dated at Bethesda, Md. this 16th day of December, 1980.

For the Nuclear Regulatory Commission,

of such evidence as it deems necessary, whether the deceased child was incapable of self-support because of a mental or physical disability which existed before becoming 22 years of age.

(b) In the event of an employee's election of family optional insurance under § 873.205, where the opportunity to elect is based solely on the acquisition of a child over age 21, the employee shall submit to the employing office at the time of filing the election, a certificate of the physician that the child is incapable of self-support because of a physical or mental disability which existed before the child became 22 years of age, and can be expected to continue for more than 1 year. The certificate shall include a statement of the name of the child, the nature of his/her disability, the period of time it has existed, and its probable future course and duration. The certificate shall be signed by the physician and show his/her office address.

(5 U.S.C. 8716)

[FR Doc. 80-40201 Filed 12-23-80; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 502]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period December 26, 1980–January 1, 1981. Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: December 26, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on October 14, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on December 22, 1980 at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navels deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is slow.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

1. Section 907.802 is added as follows:

§ 907.802 Navel Orange Regulation 502.

Order. (a) The quantities of navel oranges grown in Arizona and California which may be handled during the period December 26, 1980, through January 1, 1981, are established as follows:

(1) District 1: 500,000 cartons;

(2) District 2: unlimited cartons;

(3) District 3: unlimited cartons;

(4) District 4: unlimited cartons.

(b) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-40453 Filed 12-23-80; 12:25 pm]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 83

Screwworms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the approval of pesticides permitted by the Department for use in the treatment of livestock affected with screwworms. This action is necessary to delete the names of proprietary brands of pesticide products from the approved list, some of which are no longer marketed, and to provide information on the generic pesticides which are approved for such treatment of livestock. The effect of this action is to identify in the regulations only certain generic pesticides as effective for the treatment of animals affected with screwworms and to provide information on how to obtain the names of proprietary brands of such pesticides.

EFFECTIVE DATE: January 26, 1981.

FOR FURTHER INFORMATION CONTACT: Dr. Floyd Smith, USDA, APHIS–VS, Sheep, Goat, Equine and Ectoparasites Staff, Room 733, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8233. The Final Impact Statement describing the options considered in developing final rule and the impact of implementing each option is available on request from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

On Friday June 6, 1980, there was published in the **Federal Register** (45 FR 38071–38072) a proposed rule concerning the approval of pesticides permitted by the Department for use in the treatment of livestock affected with screwworms. A 60-day comment period was provided which expired August 5, 1980.

A total of 3 comments were received as follows:

1. Request from Bayvet Division of Cutter Laboratories, Inc., to delete and/or replace proprietary name "Chemagro" with proprietary name "Gutter."

2. Request from Ralston Purina Company that Purina Wound Protector, EPA Registration Number 602–191, be made part of § 83.8(b), to 9 CFR Part 83.

3. Request from Carson Chemicals, Inc., that Screwworm Bomb, EPA Registration Number 2382–80 be made part of Section 83.6(b), to 9 CFR Part 83.

As proprietary names will no longer be used in the CFR after the effective date of this final rule, we will make the corrections and additions in Veterinary Services Memorandum 556.1, Supplement No. 1, which will be available to the public as provided in new footnote 2 of 83.8(b). Since there were no adverse comments on the proposed amendment, it will be implemented as proposed. The comments received confirm the need for such an amendment since the change of proprietary names and the introduction of new proprietary formulas is an ongoing process.

Accordingly, Part 83, Title 9, Code of Federal Regulations, is amended in the following respects:

1. Section 83.8(b) is revised to read:

§ 83.8 Permitted pesticides and approved procedures.

* * * * *

(b) Proprietary brands of coumaphos and ronnel, which are registered by the Environmental Protection Agency for use on livestock for screwworms under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (7 U.S.C. 135 et seq.), are permitted for the treatment of livestock for purposes of this part only when used in accordance with directions on the labels in connection with their registrations under the provisions of FIFRA.[2]

2. A footnote 2 to § 83.8(b) is added to read:

[2] Names of proprietary brands of the pesticides permitted by the Department for the treatment of livestock for purposes of this part may be obtained from the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Sheep, Goat, Equine, and Ectoparasites Staff, Screwworm Eradication Program, Hyattsville, Maryland 20782. Veterinary Services personnel may not make any warranty or representations, express or implied, concerning the use of these pesticides and shall not be responsible for any loss, damage, or injury as a result of the use of any pesticide.

3. Section 83.8(c) is deleted in its entirety.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1 through 4, 33 Stat. 1264 and 1265, as amended (21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, 134f; 37 FR 28464, 28477; 38 FR 19141))

Done at Washington, D.C., this 19th day of December 1980.

J. K. Atwell,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-40231 Filed 12-23-80; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40, 50, 70, 75, 150 and 170

Safeguards on Nuclear Material—Implementation of US/IAEA Agreement

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmation of Effective Date.

SUMMARY: The Commission is providing notice of the entry into force of the US/IAEA Safeguards Agreement on December 9, 1980 and of the effective date of regulations to implement that Agreement.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. E. Morgan, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Phone 301–443–5903).

SUPPLEMENTARY INFORMATION: On July 31, 1980, the Nuclear Regulatory Commission published in the **Federal Register** (45 FR 50705) a new Part 75 to Title 10 of the Code of Federal Regulations and amendments to 10 CFR Parts 40, 50, 70, 150, and 170 to implement the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America (US/IAEA Safeguards Agreement). Further, on November 4, 1980, the Nuclear Regulatory Commission published in the **Federal Register** (45 FR 73012) minor clarifying amendments to 10 CFR Parts 70 and 75, with regard to reporting under the US/IAEA Safeguards Agreement.

The Notice accompanying the rules stated that the effective date of both of these rulemaking actions were contingent "Upon the Agreement's entry into force and publication of notice thereof in the **Federal Register.**" Notice is hereby given that on December 9, 1980, in accord with Article 24 of the Agreement, the United States provided written notification to the International Atomic Energy Agency that constitutional and statutory requirements of the United States for the entry into force of the US/IAEA Agreement had been met. Accordingly, the above referenced 10 CFR Part 75, changes thereto, and changes to 10 CFR Parts 40, 50, 70, 150, and 170 are effective on December 24, 1980.

Dated at Bethesda, Md. this 16th day of December, 1980.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 80-40117 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 503 and 504

[Docket No. ERA-R-80-17]

Calculation for the Cost of Using Alternate Fuels Under the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is issuing this final rule which provides the methodology for the cost calculation to be used by new and existing facilities seeking certain exemptions from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA) (42 U.S.C. § 8301 *et seq.*).

EFFECTIVE DATE: This final rule shall become effective. January 23, 1981.

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presentation of appropriate supporting evidence to ERA.

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including all anticipated exchanges of energy with other utilities and

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III. Procedural Matters

I. Background

Proposed rules implementing Sections 211(a)(1), 212(a)(1)(A), 311(a)(1), and 312(a)(1)(A) of FUA, which provide for exemptions from the Act's prohibitions for facilities which demonstrate that the cost of using an altenate fuel "substantially exceeds" the cost of using imported petroleum, were published on November 17, 1978, at 43 FR 53974, 54005 and 54030, and on January 29, 1979, at 44 FR 5808, 5820 and 5840 and public comments were solicited. An interim rule was subsequently published on May 17, 1979, at 44 FR 28950, 28979 and 28999, and on July 23, 1979, at 44 FR 43176, 43191 and 43209, and additional comments were requested.

After considering the comments received, ERA determined that it would be inappropriate to adopt the interim rule, and the cost calculation provisions of the interim rule were subsequently revoked. ERA issued a Notice of Proposed Rulemaking (NOPR) on June 23, 1980 (45 FR 42190) proposing a new methodology for the cost calculation provisions which are being adopted in final form here. A public hearing was held on July 31, 1980. The written comment period, originally scheduled to close on August 20, 1980, was extended to October 20, 1980.

II. Comments

(a) *Cost calculation methodology.*—The overwhelming majority of commenters favored the use of the net proposed present value technique to compare the cost of using imported petroleum to the cost of using an alternate fuel because this method closely follows private sector investment decision evaluation procedures. ERA has adopted this approach. For additional discussion of this methodology, see the preamble to the NOPR (45 FR 42191, June 23, 1980).

(b) *Specification of discount rates.*—The statutory definition of cost (Section 103(a)(20) of FUA) requires that the cost calculation procedures use a discount rate to determine the cost of capital. In the NOPR, the discount rate was tentatively set—in real terms without inflation—at 7.7 percent for major fuel burning installations (MFBIs) and at 2.9 percent for powerplants.

These rates are the means of samples of firms' real, after tax, weighted average marginal costs of capital as determined in a study performed for ERA. The study addressed a sample of 118 Class A and Class B utilities and a sample of 54 energy-intensive industrial firms. The mean of the utility sample was 2.9 percent per annum, and the mean of the industrial sample was 7.7 percent per annum. ERA decided to use this particular study as a basis for setting the discount rates because it focused on the population deemed by ERA to be most likely affected by FUA. A summary of the study was published in the Federal Register (44 FR 43222–23, July 23, 1979). ("Costs of Capital and Rates of Return for Industrial Firms and Class A & B Electric Utility Firms," prepared for the Department of Energy Division of Coal Regulations by Ernst & Ernst, June 1979.)

Note.—ERA has received numerous comments that ERA's 2.9% (for utilities) and 7.7% (for MFBIs) discount rates are much lower than those employed by industry. The perceived difference is because ERA's presumed discount rates are after tax and do not include inflation, whereas common industrial usage frequently includes both of these factors. For typical companies, an industrial discount rate of 20.5% (including taxes and inflation) and ERA's 7.7% (excluding taxes and inflation) would be equivalent, as are a utility discount rate of 16.8% and ERA's 2.9%. [The typical company used in the above illustration is assumed to have: (1) 27.0% cost of common equity, (2) debt/equity ratio of 1.0, (3) cost of debt of 14%, (4) no preferred equity, (5) 46% taxes, and (6) 9.6% inflation (based on the GNP deflator from 3rd quarter, 1979 to the 3rd quarter, 1980). The typical utility used in the above illustration is assumed to have: (1) 22.3% cost of common equity, (2) debt/equity ratio of 2.0, (3) 14% cost of debt, (4) no preferred equity, (5) 46% taxes, and (6) 9.6% inflation.]

Many commenters criticized the use of these discount rates and the methodology used to compute them. The most significant criticisms were that (i) individual firms should be permitted to use their own discount rates rather than a national average, (ii) these discount rates are not appropriate for use by government and municipal facilities, and (iii) ERA should have used an inflation indicator other than the previous year's GNP deflator to compute real discount rates.

In light of these comments, ERA has modified the rule to permit a petitioner to use either the specified 7.7% or 2.9% discount rates, whichever is appropriate, or the firm's actual cost of capital as computed by the methodology contained in Appendix I to the final rule for existing facilities (45 FR 53711–53712, August 12, 1980). The purpose of this modification is to permit the use of firm-specific discount rates and to recognize the fact that different facilities have different costs of capital.

Under the NOPR, ERA proposed using the previous year's GNP deflator as the appropriate measure to determine the expected rate of inflation for use in computing real costs of capital. Some commenters suggested that an estimated rate of inflation computed over the equipment's useful life should be used. Others suggested that a weighted average of several years' inflation should be used. These commenters did not, however, furnish supporting evidence or data sufficient to implement the suggested proposals or to persuade ERA that their proposals were clearly superior to ERA's. ERA will continue to examine and may initiate, if appropriate, a further rulemaking on accounting for inflation and computing the cost of capital in the coming year.

(c) *Fuel inventories*

In the NOPR, ERA proposed specific inventory levels for powerplants and presumptive inventory levels for installations to be used for purposes of the cost calculations (45 FR 42192, June 23, 1980).

ERA received several comments on the actual levels of inventory specified. Some commenters stated that while a 21 day supply is sufficient for oil inventories, industrial installations generally stock a 30 to 60 day supply of coal because the coal supply is more susceptible to interruptions such as railroad problems, strikes, and mine shutdowns. One commenter suggested that a 45 day supply for oil and a 90 day supply for coal are typical. Without regard to the fact that utility inventories may be specified by a state regulatory authority, ERA recognizes from these comments that all inventory levels may not be industry or firm specific.

Some commenters suggested that all fuel inventory levels, not just those for installations, should be rebuttable with appropriate evidentiary presentations. ERA agrees and has changed the cost calculation requirements to provide for an alternative to specified fuel inventory level guidelines. However, the petitioner must use equivalent fuel supply inventories. Under the rules issued today, a petitioner will be permitted to use these guidelines or it's own firm-specific inventory requirements upon

presentation of appropriate supporting evidence to ERA.

Some commenters indicated that fuel inventories of 78 days for powerplants which use natural gas are excessive because natural gas is not generally stored on the site. ERA agrees and has revised the regulation to specify no required fuel inventory for natural gas fired facilities if the gas supply is uninterruptible. if the gas supply is interruptible, however, an appropriate inventory of back-up fuel must be included.

(d) *Future fuel prices*

In the NOPR, ERA proposed two methodologies to incorporate expected changes in future fuel prices for the purposes of the cost calculation. One method would involve adding a fixed annuity to the price of oil based upon projected future increases in the price of oil relative to that of coal and other alternate fuels (see Appendix II–B of the NOPR). The other proposed method would permit petitioners to use either the explicit price trajectories for oil and alternate fuels or a four dollar per barrel maximum fixed annuity (see Appendix II–A of the NOPR).

To develop the price trajectories and the annuity proposed in Appendix II–A and Appendix II–B, EPA examined a variety of fuel price projections and then calculated the equivalent annuities as described in the NOPR (45 FR 42192–7, June 23, 1980). To determine the change in real imported oil price relative to that of coal, ERA assumed the standard cost calculation parameters associated with a new installation going on line in 1980, having a 40 year useful life, and using a 7.7 percent discount rate.

ERA evaluated five forecasts made by three different sources: (1) Energy Information Administration (EIA) of DOE: high, medium, and low scenarios: (2) Data Resources, Inc. (DRI); and (3) Wharton Econometric Forecasting Associates, Inc. (Wharton). The results of the evaluation are contained in the NOPR.

ERA's use of a single set of trajectories in Appendix II–A was criticized as too general. Commenters suggested that there is sufficient regional variability and uncertainty in the projections for both coal and oil prices to warrant the use of fuel- and region-specific or firm-specific trajectories. Several commenters also suggested that the trajectories be expressed by a range of values to accommodate forecast uncertainty.

One commenter suggested that allowing the petitioner to use either the fixed annuity or the explicit trajectories (proposed in Appendix II–A) was preferable because it limited the effect of uncertain trajectories. The sole use of the fixed annuity method (proposed in Appendix II–B) was universally rejected by commenters because it fails to accommodate facilities with short remaining useful lives.

ERA has adopted Appendix II–A as Appendix II and deleted Appendix II–B. ERA recognizes that establishing realistic trajectories for oil, coal, and other alternate fuels is an uncertain undertaking. Consequently, ERA has decided to mitigate this uncertainty by offering petitioners the choice of using either the specified set of trajectories or the fixed annuity method as designated by ERA. ERA is aware of the potential importance of regional coal trajectories. However, ERA does not have sufficient data to publish such trajectories at this time. ERA is hereby soliciting comments on the need for and a method to calculate regional coal price trajectories. ERA intends to review the specified set of trajectories—both oil and coal—and the designated fixed annuity value periodically. Any changes in these values will be effected only after appropriate notice and an opportunity for public comment.

(e) *Operation, maintenance, and fuel costs*

(1) *Powerplants*

ERA received comments on the proposed methods for computing annual cash outlays for operation, maintenance, and fuel costs of powerplants. These costs could be calculated through use of (i) an economic dispatch analysis, (ii) a 70% capacity factor, or (iii) an average annual capacity factor over a five year period (for existing powerplants only). In response to comments, ERA has deleted the use of the five year average capacity factor method for existing powerplants.

A number of commenters felt that the required dispatch analysis placed an unreasonable burden on petitioners because ERA required that analysis to cover the utility's electric region rather than its service area. They also maintained that this type of dispatch analysis would be virtually impossible for small utilities to accomplish and would not reflect the actual dispatch of units in the system.

Further, one commenter suggested that Section 103(a)(20) of FUA clearly contemplated that conversion costs would be analyzed based on the dispatching system actually used by the utility in operating its powerplants.

ERA has considered the comments on which service area should be used for the dispatch analysis and has decided to change the rule to specify that the area which must be used in the dispatch analysis is the petitioner's dispatch area including all anticipated exchanges of energy with other utilities and powerpools. ERA has also modified the rule to allow the petitioner to conduct the dispatch analysis for a representative (not atypical) year to determine a unit's proposed capacity factor when burning an alternate fuel.

Many commenters criticized ERA's 70% capacity factor, suggesting that the 70% capacity factor is too high, particularly for existing facilities, and fails to recognize the decline in capacity factor with increasing unit age.

ERA emphasizes that this 70% capacity factor would only be used as an alternative to a dispatch analysis—which has been considerably simplified in the final rule. ERA believes that this capacity factor is reasonable since the availability of coal fired powerplants is generally greater than 70%. Since annual capacity factor is determined by both powerplant availability and dispatch, 70% is a reasonable expectation of the annual capacity factor.

(2) *Powerplants and installations*

The proposed rule required that a certification, subject to penalties, be made that (a) the proposed powerplant would not use more oil than the dispatch analysis showed it would use, or (b) the proposed installation would not use more oil than the maximum which could have been specified and still receive an exemption.

In response to comments, ERA agrees that imposing this provision by rule is not necessary and has eliminated the certification requirement.

(f) *Useful life*

The NOPR specified a presumptive useful life of 40 years for MFBIs and 35 years for non-nuclear powerplants. A useful life of 40 years was specified for nuclear powerplants.

ERA received many comments criticizing these presumptive useful lives. Some commenters suggested that ERA revise the rule and adopt the concept of the "economic useful life" as is being considered by Congress in current tax reform efforts. This would take into consideration such things as technological obsolescence which could become increasingly significant as new alternate fuels become commercially available.

Another commenter suggested that boilers do not actually have useful lives of 40 years, but are essentially rebuilt to attain 40 year life spans. It was suggested that ERA should allow use of the period of time the boiler is initially scheduled to be in operation as part of a facility (planned facility life) as its useful life, rather than setting 40 years as a rebuttable presumption.

One commenter reviewed a report entitled "Major Fuel Burning Installation (MFBI) Combustion Age Study" prepared by Radian Corporation, a DOE contractor. The commenter concluded that the report did not justify a 40 year

necessarily required to be set forth in the regulations and has therefore eliminated the consultation provision in the final rule.

(h) *Substantially exceeds premium*

Many commenters criticized the

Some commenters criticized ERA for proposing that natural gas be priced at the Btu equivalent price of #6 residual fuel oil which meets appropriate local air quality standards. The commenters suggested that ERA in its proposal made no adjustment for the obvious and

present worth of future revenue requirements.

Based on a review of the comments received, we believe there is no significant difference between the basic methodology used by ERA and those suggested by commenters. Therefore,

coal or other alternate fuel in "such powerplant" during a period of remaining useful life.

The NOPR required an analysis of replacement capacity using alternate fuels, notwithstanding the fact that the existing facility was not itself

therefore has redefined the term so that it may vary from year to year to reflect anticipated rates.

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One commenter reviewed a report entitled "Major Fuel Burning Installation (MFBI) Combustion Age Study" prepared by Radian Corporation, a DOE contractor. The commenter concluded that the report did not justify a 40 year useful life. While the study does not establish a 40 year useful life for installations, it does not conclude otherwise. What it does conclude is that useful life is based primarily on the care, maintenance, and use of the facility.

ERA has adopted useful life guidelines of 40 years for MFBIs and 35 years for non-nuclear powerplants in the final rule which ERA believes is the reasonable expected physical lives of these facilities. ERA continues to believe that the relevant lifetime is an approximation of the physical life of the facility and not some other measure such as economic or tax life. Accordingly, a petitioner will be permitted to use the useful life guidelines as set by ERA or present evidence as to why a different useful life should be used. ERA will accept evidence related only to the projected physical useful life of the facility.

(g) *Consultation with State regulatory authorities*

One commenter criticized the consultation provisions of the proposed rule as failing to provide, in cost determinations involving powerplants, a sufficient role for consultation with State regulatory authorities in establishing a working definition of costs or in formulating the cost test rule itself. The commenter also pointed out that the rule, as written, requires consultation only on exemption requests and not on proposed prohibition orders.

With regard to the role of State regulatory authorities in defining and determining the cost test rules for powerplants, all interested parties, including the various State authorities, have had ample notice and opportunity for public comment on each item in the proposed cost calculations in this rulemaking.

With regard to consultation on a case-by-case basis, ERA also welcomes and encourages the participation of State regulatory agencies in the exemption process, and generally consults with the various State authorities on a case-by-case basis. ERA has always submitted individual petitions to the appropriate State authority and allowed an opportunity to comment and consult, where appropriate, in individual cases to satisfy the requirement of FUA. In addition, ERA will also submit proposed prohibition orders in individual cases to State regulatory authorities for comment. However, ERA does not believe that this procedure is necessarily required to be set forth in the regulations and has therefore eliminated the consultation provision in the final rule.

(h) *Substantially exceeds premium*

Many commenters criticized the proposed substantially exceeds premium which ERA has chosen to limit to $1 per barrel. Some suggested that although it was an improvement over the social costs and benefits analysis under the interim rule, the substantially exceeds component of the cost calculation was still impermissibly based on the social costs of continuing to burn oil or the social benefits of converting to coal. Furthermore, commenters maintained that ERA is mixing social costs with private costs, a method which they alleged is contrary to FUA, stating that Section 103(a)(20), the statutory definition of cost, emphasizes private costs rather than social costs.

Other commenters suggested that the substantially exceeds premium should be zero. Still another commenter was concerned that assigning a premium was a way of imposing an import fee without revenue gains, a practice which he asserted is not authorized by FUA.

In contrast, another commenter suggested that a $1 per barrel premium was not in consonance with the current prevailing "social risk" of using imported petroleum. He maintained that a premium somewhere between $4 and $10 would be more appropriate considering the great risks of supply disruption, the low volume in strategic storage, and the lack of adequate programs to promote import reductions or respond to supply disruptions.

For the reasons set forth in the NOPR, ERA continues to believe that a $1 per barrel premium is appropriate. In addition, ERA would like to clarify some apparent confusion with respect to the substantially exceeds premium. ERA believes that the costs to build, operate, and maintain a facility are required by the statute to be private costs. ERA does not believe that the premium required to use imported petroleum as set forth in the statutorily mandated substantially exceeds standard is a private cost, but rather represents the social value to the Nation, as embodied in the substantially exceeds premium, of not burning a barrel of imported petroleum. This is not a cost item per se, but reflects a judgment of the value, in dollars, of complying with the statutory requirement of not using imported petroleum unless the cost of an alternative fuel substantially exceeds the cost of using imported petroleum.

(i) *Natural gas price*

Some commenters criticized ERA for proposing that natural gas be priced at the Btu equivalent price of #6 residual fuel oil which meets appropriate local air quality standards. The commenters suggested that ERA in its proposal made no adjustment for the obvious and considerable differences in the prices of petroleum and natural gas. In addition, commenters stated that the proposal did not take into account the fact that the facility may be designed to burn only natural gas and therefore the price of fuel actually consumed at the facility should be used in the cost calculations.

ERA has reviewed the comments and has decided not to change its treatment for pricing natural gas because FUA specifically requires that a comparison be made between the cost of burning alternate fuel and the cost of burning imported petroleum (Sections 211(a)(1), 212(a)(1)(A), 311(a)(1), and 312(a)(1)(A)). The petroleum replacement product for natural gas is generally #6 residual fuel oil or in some instances #2 distillate. Since #6 residual oil is lower priced than #2 distillate, it would be to the advantage of a petitioner to use #6 residual oil price. Therefore, ERA will require the petitioner who wants to burn natural gas to use the price of the #6 residual fuel oil which meets the air quality standards in his area as the fuel price on an equivalent Btu basis.

(j) *Allowance for funds used during construction (AFUDC)*

Several commenters stated that AFUDC is not accounted for in the cost test calculations. AFUDC is the net cost of borrowed funds used during the period of construction and includes a reasonable rate of return on other funds when so used.

The cost calculation treats cash flows as they occur, discounted to their present value. Thus in our view, the net present value calculation in the cost calculation implicitly treats AFUDC by recognizing the timing of capital outlays while the plant is under construction.

Because the net present value calculation employed in the cost test NOPR implicitly treats AFUDC in the discount rate, it would be improper for ERA to provide further for AFUDC.

(k) *Revenue requirements*

Several commenters suggested that ERA use a revenue requirements model as the FUA cost calculation for utilities. One commenter observed that a revenue requirements calculation will give results consistent with the net present value method used by ERA. Another commenter suggested that ERA use a levelized annual revenue requirements model. Still another commenter observed that the ERA methodology is essentially the computation of the present worth of future revenue requirements.

Based on a review of the comments received, we believe there is no significant difference between the basic methodology used by ERA and those suggested by commenters. Therefore, ERA has decided a change in the basic methodology is unwarranted.

(l) *Longer lead time required for coal facility than oil facility*

One commenter thought that ERA should consider the impact of differentials in construction time for a facility. Generally coal-fired facilities require a longer lead time for construction, which could be an important consideration in fuel selection. ERA believes that firms usually account for longer lead times in their planning process. Therefore, ERA will only consider the impact of longer lead times in extraordinary circumstances where a petitioner clearly demonstrates these circumstances could not have been anticipated in the planning process. In such an exceptional case, the effect of a longer lead time can be incorporated in the cost calculation by allowing the inclusion of such items as purchased energy or rental units.

(m) *Replacement facility*

One commenter stated that in the proposed rule on the cost calculation for existing facilities, ERA had in essence negated the exemption provisions of FUA by requiring that petitioners consider the cost of a replacement facility if a compatible alternate fuel is not available for an existing unit. This comment is particularly significant with regard to existing natural gas fired powerplants, which are subject to the 1990 prohibitions on the use of natural gas (Section 301(a)(1) of FUA).

Section 312(a)(1)(A) of FUA specifies the criteria for granting permanent exemptions for existing facilities. It states that a permanent exemption shall be granted whenever "an adequate and reliable supply of coal or other alternate fuels of the quality necessary to conform with the design and operational requirements for use as a primary energy source will not be available to *such power plant* . . . at a cost . . . which, based on best practical estimates, does not substantially exceed the cost . . . of using imported petroleum as a primary energy source *during the remaining useful life of the powerplant* . . ." (Emphasis added.) This statutory language appears to support the position of the commenter that comparing the cost of a replacement facility utilizing an alternate fuel to the cost of continuing to operate a natural gas powerplant is inappropriate, since the statute refers to the cost of using coal or other alternate fuel in "such powerplant" during a period of remaining useful life.

The NOPR required an analysis of replacement capacity using alternate fuels, notwithstanding the fact that the existing facility was not itself technically capable of burning the alternate fuels. The NOPR required that the cost associated with an alternate fuel fired replacement facility of equal design be compared to the cost of continued operation of the existing unit on natural gas.

ERA believes that these existing natural gas fired powerplants are technically capable of burning alternate fuels, including high-Btu gas from coal. The question therefore is not one of technical capability but rather whether alternate fuels will be available to the facility. It is further the view of ERA that it will be difficult, if not impossible, for a petitioner at this time to demonstrate that "despite diligent good faith efforts . . . it is unlikely that an adequate supply of coal or other alternate fuel . . . will not be available. . . ." (Section 312(a)(1)(A) of FUA) for any meaningful period of time in the future. For natural gas fired facilities, therefore, ERA suggests that permanent exemptions under Section 312(a) of FUA, lack of alternate fuel supply, site limitations, or environmental requirements, not be applied for at this time. In the alternative, petitioners may wish to seek temporary exemptions until such time as the statutory criteria for permanent exemption under Section 312 of FUA can be satisfied. Temporary exemptions are available for existing facilities which can demonstrate compliance with the criteria contained in Section 311 of FUA. In view of the limited life of a temporary exemption, ERA has determined that the cost calculation does not require consideration of the costs asssociated with a replacement facility for the purposes of this exemption.

The cost calculation does permit the comparison to include the costs of using alternate fuels in a replacement facility where the petitioner desires to do so for a temporary exemption. ERA has not, however, made a final decision on whether petitioners seeking a permanent exemption must compare the cost of using an alternate fuel in a replacement facility. ERA will continue to study this issue and will adopt its decision by rule.

(n) *Other technical changes*

The proposed cost test equations included a term for the marginal Federal income tax rate which was specified as constant from year to year. ERA realizes that a firm's marginal tax rate may vary over the useful life of the facility and therefore has redefined the term so that it may vary from year to year to reflect anticipated rates.

One commenter suggested that the powerplants being compared should have the same net continuous capability (ERA assumes the commenter meant unit output, not input), rather than design capacity (turbine generator nameplate rating). ERA agrees that the difference between net continuous output and design capacity could be significant for some powerplants. Therefore, ERA has revised the rule to allow the petitioner to compare two powerplants with either the same design capacity or the same maximum sustained energy per unit of time that could be produced.

Several commenters suggested that § 503.6(d)(11) of the proposed rule which discussed uncertainty and risk in the cost estimates should be made more explicit, and that allowances should be made for contingencies. ERA believes that risk can be quantified in the cost calculation procedure and therefore sees no reason to make any changes to the rule in this regard.

One commenter conceived of a case where the cost calculation could extend over a fifty year period and asked whether the price and inflation indices (Table II–1 in Appendix II) could be extended to fifty years. Accordingly, ERA has extended the indices to the year 2030.

(o) *Miscellaneous items*

ERA has modified §§ 503.6(b)(1) and 504.12(b)(1) of the proposed rule to make it clear that the petitioner need only consider delaying the use of alternate fuel if the cost estimates that the petitioner supplies, as prescribed, are expected to change over the first ten years of the exemption. This expectation need only be based upon the information which exists at the time the petition is submitted.

When considering Federal income taxes in the calculation, the relevant tax credits, depreciation methodology, and marginal Federal income tax rates for a specific exemption will be those prescribed by Federal law in effect, or which are known with certainty will be in effect at the time the decision is rendered. For example, if an investment tax credit is due to expire in a certain year, the petitioner must treat it as if it will expire in that year. ERA has modified §§ 503.6(d)(6) and 504.12(d)(7) of the proposed rule to clarify this treatment of Federal income taxes.

One commenter suggested that not including the capital cost of lost capacity was equivalent to not recognizing the economic consequences of losing an important asset. However,

one should bear in mind that the inclusion or exclusion of the capital cost due to derating is simply an analytical option to present the most favorable case for the petitioner and is not meant to actually deprive a petitioner of a

investments, annual expenses, and the effect of depreciation and taxes on cash flow. To demonstrate eligibility for a permanent exemption, a petitioner must use the proecedures specified in the general cost test (paragraph (b) of this

of using imported petroleum. Unless the cost estimates as prescribed below will not materially change during the first ten years of operation of the unit (given the best information available at the time the petition is filed), the petitioner must

OM_i = Annual cash outlay in year i (in dollars) for all operations and maintenance expenses except fuel (*i.e.*, all non-capital and non-fuel cash outlays caused by putting the capital investments (I) into service). This may include labor, materials, insurance, taxes (except

an alternate fuel is not used as the primary energy source until the start of the second year of operation and that imported petroleum or natural gas is used for the first year of operation. All cash outlays should reflect postponed use of alternate fuel.

(1) A petitioner may be eligible for a temporary exemption if he demonstrates that the cost of using an alternate fuel in an alternate fuel capable unit will substantially exceed the cost of using imported petroleum or natural gas in an alternate fuel capable unit over the

one should bear in mind that the inclusion or exclusion of the capital cost due to derating is simply an analytical option to present the most favorable case for the petitioner and is not meant to actually deprive a petitioner of a valuable asset. If a petitioner does not need to consider the capacity lost due to derating to obtain the exemption, excluding those costs will simplify the calculation. As previously set forth in § 504.12(d)(3) of the proposed rule, the cost calculation for an existing facility provides for the optional inclusion of capital costs due to derating.

III. Procedural Matters

A final regulatory analysis relating to the cost calculations as contemplated by Executive Order No. 12044 is attached to this final rule.

This final rule must be submitted to the Office of Management and Budget (OMB) for clearance under the provisions of the Federal Reports Act. Any compliance with the data collection provisions of this final rule may require revision or additions as a result of OMB's action.

(Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, 92 Stat. 3289 (42 U.S.C. 8301 *et seq.*); Executive Order 12009 (42 FR 46267, September 15, 1977))

In consideration of the foregoing, §§ 503.6 and 504.12, as amended, of Subchapter E of Chapter II, Title 10 of the Code of Federal Regulations entitled "Alternate Fuels" are hereby adopted as a final rule and are effective January 23, 1981.

Issued in Washington, D.C., on December 17, 1980

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

§ 503.6 Cost calculations for new powerplants and installations.

(a) *General.*

(1) This calculation compares the cost of using alternate fuel to the cost of using imported petroleum. It must be performed for each alternate fuel and/or alternate site that the petitioner is required to examine.

(2) The cost of using an alternate fuel (see the definition in § 500.2) as a primary energy source will be deemed to substantially exceed the cost of using imported petroleum if the difference between the cost of using alternate fuel and the cost of using imported oil is greater than zero.

(3) There are two comparative cost calculations—a general cost test and a special cost test. Both take into consideration cash outlays for capital investments, annual expenses, and the effect of depreciation and taxes on cash flow. To demonstrate eligibility for a permanent exemption, a petitioner must use the proecedures specified in the general cost test (paragraph (b) of this section). To demonstrate eligibility for a temporary exemption, the petitioner may apply the procedures specified in either the general cost test or the special cost test (paragraph (c) of this section).

(4) The general cost test differs from the special cost test with respect to (i) the time period over which costs are calculated, and (ii) the types of fuel-consuming equipment being considered. For the general cost test, the petitioner must compare the cost of using an alternate fuel in an alternate fuel capable unit with the cost of using imported petroleum or natural gas in an oil/natural gas capable unit over the lifetime of these facilities. For the special cost test, the petitioner must compare the cost of using alternate fuel against that of using imported petroleum/natural gas in an alternate fuel capable unit over the period of the desired temporary exemption.

(b) *Cost calculation—general cost test.*

(1) A petitioner may be eligible for a permanent exemption if he can demonstrate that the cost of using an alternate fuel from the first year of operation substantially exceeds the cost of using imported petroleum. Unless the cost estimates as prescribed below will not materially change during the first ten years of operation of the unit (given the best information available at the time the petition is filed), the petitioner must also demonstrate that the cost of using an alternate fuel beginning at any time within the first ten years of operation and using imported petroleum or natural gas until such time (*i.e.*, delayed use of alternate fuel) would substantially exceed the cost of using only imported petroleum.

(2) The petitioner would only be eligible for a temporary exemption if the computed costs of delayed alternate fuel use, commencing at the start of the second through eleventh years of operation, do not always substantially exceed the cost of using only imported petroleum. The length of the temporary exemption would be the minimum period from the start of operation in which the cost of using alternate fuel substantially exceeds the cost of using imported petroleum.

(3) To conduct the general cost test, calculate, the difference (DELTA) between the cost of using an alternate fuel (COST(ALTERNATE)) and the cost of using imported petroleum (COST(OIL)) using Equations 1 through 3 below and the comparison procedures in paragraph (b)(5) of this section.

EQ 1 DELTA = COST (ALTERNATE) − COST (OIL)

where COST(ALTERNATE) and COST(OIL) are determined by:

$$\text{EQ 2} \qquad \text{COST} = I + \sum_{i=1}^{N} \frac{(OM_i + FL_i)(1-t_i)}{(1+k)^i}$$

and I (capital investment) is:

$$\text{EQ 3} \qquad I = \sum_{i=-g}^{N} \frac{I_i - ITC_i - S_i - t_i(DPR_i)\left(\frac{IX_e}{IX_i}\right)}{(1+k)^i}$$

(4) The terms in Equations 2 and 3 are defined as follows:

i = Year. i is a specified year either before year 0 or after year 0. Year 0 is the year before the unit becomes operational. For example, in the third year before the unit becomes operational, i would equal −2, and in the third year following commencement of operations of the unit, i would equal +3. Years are represented by 52 week periods prior to or following the date on which the unit becomes operational. Outlays before the unit becomes operational are future valued to the year before the unit becomes operational (year 0), and outlays after the unit becomes operational are present valued to the year before the unit becomes operational. Year 0 must be the same for the units being compared.

g = The number of years prior to the year before the unit becomes operational (year 0) that (1) a cash outlay is first made for capital investments, or (2) an investment tax credit is first used—whichever occurs first.

N = The useful life of the unit (see paragraph (d)(5) of this section).

I_i = Yearly cash outlay (in dollars) from the year outlays first occur to the last year of the unit's useful life for capital investments. (See paragraph (d)(2) of this section for the items that must be included.)

OM_i = Annual cash outlay in year i (in dollars) for all operations and maintenance expenses except fuel (*i.e.*, all non-capital and non-fuel cash outlays caused by putting the capital investments (I) into service). This may include labor, materials, insurance, taxes (except income taxes), etc. (See paragraph (d)(3) of this section.)

S_i = Salvage value of capital investment (in dollars) in year i.

FL_i = Annual cash outlay for delivered fuel expenses (in dollars) in year i. (See paragraph (d)(3) of this section for FL_i calculation instructions and Appendix II of these regulations for the procedures to determine fuel price.)

k = The discount rate expressed as a fraction (see paragraph (d)(4) of this section).

ITC_i = Federal investment tax credit used in year i resulting from capital investments (see paragraph (d)(6) of this section).

DPR_i = Depreciation in year i resulting from capital investments (see paragraph (d)(6) of this section).

t_i = Marginal income tax rate in year i (see paragraph (d)(6) of this section).

IX_i = Inflation index value for year i (see Table II–1 in Appendix II).

IX_e = Inflation index value for the year e, the year before the asset is placed in service.

(5) The step-by-step procedure that follows shows the comparison that the petitioner must make. It outlines the equipment, fuel, and time comparisons.

(i) Compute the cost of using an alternate fuel (COST (ALTERNATE)) in an alternate fuel-capable unit throughout the useful life of the unit using Equations 2 and 3.

(ii) Compute the cost of using oil or natural gas (COST (OIL)) in an oil or natural gas-fired unit throughout the useful life of the unit using Equations 2 and 3.

(iii) Using Equation 1, compute the difference (DELTA) between COST(ALTERNATE) and COST(OIL). If the difference (DELTA) is less than or equal to zero, a petitioner is not eligible for a permanent or temporary exemption using the general cost test and need not complete the remainder of the general cost test calculation. However, he still may be eligible for a temporary exemption using the special cost test (paragraph (c) of this section). If the difference (DELTA) is greater than zero and if the cost estimates will not materially change during the first ten years of operation (given the best information available at the time the petition is filed), the petitioner has completed the test and is eligible for a permanent exemption. However, if the costs will change during the first ten years, the petitioner must complete the remainder of the general cost test—the delayed use calculations which follow.

(iv) Recompute COST(ALTERNATE) with Equations 2 and 3, assuming that an alternate fuel is not used as the primary energy source until the start of the second year of operation and that imported petroleum or natural gas is used for the first year of operation. All cash outlays should reflect postponed use of alternate fuel.

(v) Successively recompute COST(ALTERNATE) with Equations 2 and 3, assuming that the alternate fuel use is postponed until the start of the third year, fourth year, and so on, through the beginning of the eleventh year of operation (with imported petroleum or natural gas used in the years preceding alternate fuel use).

(vi) Compute the difference (DELTA) between each of the ten COST(ALTERNATE)s calculated in (iv) and (v) above and the COST(OIL) calculated in (ii) above.

(vii) If *all* the DELTAs computed in (iii) and (vi) above are greater than zero, the petitioner is eligible for a permanent exemption. If one or more of the DELTAs is less than or equal to zero, he is eligible for a temporary exemption for the period beginning at the start of the first year of operation and terminating at the beginning of the first year in which a DELTA is zero or less.

(c) *Cost calculations—special cost test.*

$$\text{EQ 5} \qquad \text{COST} = I \times \frac{\sum_{i=1}^{P} (1+k)^{-i}}{\sum_{i=1}^{N} (1+k)^{-i}} + \sum_{i=1}^{P} \frac{(OM_i + FL_i)(1-t_i)}{(1+k)^i}$$

Capital investment (I) is calculated with Equation 3 (paragraph (b)(3) of this section).

(3) The terms in Equation 5 are the same as those in Equation 2 with the addition of P, the length of the proposed temporary exemption in years. (See paragraph (b)(4) of this section for other terms.)

(4) The step-by-step procedure that follows shows the comparisons which must be made.

(i) Using Equation 5, compute the cost of using an alternate fuel (COST(ALTERNATE)) in an alternate fuel-capable unit assuming the length of the proposed exemption in years is one year.

(ii) Likewise, compute the cost of using oil or natural gas (COST(OIL)) in an alternate fuel and imported petroleum or natural gas-capable unit assuming the length of the proposed exemption is one year.

(iii) Compute the difference (DELTA) between COST (ALTERNATE) and COST(OIL) using Equation 4.

(iv) Repeat the calculations made in (i), (ii), and (iii) above, assuming the length of the proposed exemption is two years, three years, four years, and so on, up through the period of the proposed exemption.

(v) A petitioner is eligible for a temporary exemption for the period beginning at the start of the first year of operation and terminating at the beginning of the first year in which a DELTA is zero or less.

(d) *Information on parameters used in the calculations.*

(1) All estimated expenditures, except fuel, shall be expressed in real terms (unadjusted for inflation) by using the prices in effect at the time the petition is submitted. Instructions for fuel price calculations are contained in Appendix II.

(2) Capital investment yearly cash outlays (I_i), must include all items that are capital investments for Federal income tax purposes. All purchased equipment that has a useful life greater than one year, capitalized engineering costs, land, construction, environmental

offsets, fuel inventory, transmission facilities, piping, etc., that are necessary for the operation of the unit must be included. However, an item must only be included if a cash outlay is required after the decision has been made to build the unit; sunk costs must not be

that incorporates the benefits of economically dispatching units and provides consistent treatment in the alternate fuel and oil or natural gas cases being compared.

(C) Use a dispatch analysis to project the energy produced by the powerplant

investment (I) of the unit with the longer life (computed with Equation 3) by the following adjustment factor (A):

$$\text{EQ 6} \qquad A = \frac{\sum_{i=1}^{0} (1+k)^{-i}}{\sum_{i=1}^{N} (1+k)^{-i}}$$

(11) All cash outlays must be net of any government subsidies or grants.

(e) *Evidence in support of the cost calculation.* All petitions for exemption requiring the use of the cost calculation shall include, but not be limited to, the

(3) There are two comparative cost calculations—a general cost test and a special cost test. Both take into consideration cash outlays for capital investments, annual expenses, and the effect of depreciation and taxes on cash

the cost estimates as prescribed below will not change materially during the first ten years of operation of the unit with an alternate fuel (given the best information available at the time the petition is filed), the petitioner must also

offsets, fuel inventory, transmission facilities, piping, etc., that are necessary for the operation of the unit must be included. However, an item must only be included if a cash outlay is required after the decision has been made to build the unit; sunk costs must not be included (*e.g.*, if the firm owns the land, its purchase price may not be included).

Note.—The guidelines for the fuel inventory for powerplants not using natural gas shall be: (a) all powerplants with only steam driven turbines—78 days, (b) all powerplants with only combustion turbines—142 days, (c) all powerplants with combined cycles—both steam driven turbines and combustion turbines—142 days. The fuel inventory for installations not using natural gas shall be the greater of: (1) 21 days fuel supply, or (2) sufficient fuel to fill sixty (60) percent of the storage volume where whatever amount is chosen is equivalent in terms of number of days supply for both the base case and the alternate fuel case being compared. The fuel inventory for all facilities using natural gas shall be zero unless the gas supply is interruptible in which case an appropriate inventory of back-up fuel must be included. The petitioner may utilize alternative fuel inventories by demonstrating through engineering or process requirements evidence that another level of inventory is appropriate. However, the petitioner must use equivalent fuel supply inventories as described above. Fuel supplies must be computed using annual fuel consumption rates.

(3)(i) The annual cash outlays for operations and maintenance expense (OM_i) and fuel expense (FL_i) for a powerplant may be computed by one of the following three methods; however, the one chosen must be consistently applied throughout the analysis.

(A) Assume the energy produced by the powerplant equals seventy (70) percent of design capacity times 8760 hours for each year during the life of the powerplant, and compute cash outlays for operations, maintenance, and fuel expenses for the powerplant.

(B) Economically dispatch the new powerplant. The cash outlays for operations, maintenance, and fuel expenses of all powerplants being dispatched (where oil and natural gas are priced according to the procedures of Appendix II) are the corresponding expenses for the purpose of the cost calculation. The dispatch analysis area must be that area with which the firm currently dispatches, anticipates dispatching, and will be interconnected. It must also include all anticipated exchanges of energy with other utilities or powerpools. The outlays for operations, maintenance, and fuel may also be estimated using a methodology that incorporates the benefits of economically dispatching units and provides consistent treatment in the alternate fuel and oil or natural gas cases being compared.

(C) Use a dispatch analysis to project the energy produced by the powerplant for a representative (not atypical) year of operation when consuming an alternate fuel. Compute the cash outlays for operations, maintenance, and fuel expenses for the powerplant based upon the level of energy production estimated for the representative year. The dispatch analysis and fuel expenses for the cost calculation must include oil and natural gas priced according to the procedures of Appendix II.

(ii) When computing the annual cash outlays for operations and maintenance expense (OM_i) and fuel expense (FL_i) for an installation, specify the firing rates and the length of time each firing rate will be maintained.

(4) The discount rate (k) for analyses of powerplants is 2.9 percent or that which is computed as specified in Appendix I (45 FR 53711–2, August 12, 1980). The discount rate (k) for analyses of installations is 7.7 percent or that which is computed as specified in Appendix I. The inflation index (IX) is shown in Table II–1 of Appendix II. ERA will modify these specified rates from time to time as required by changed conditions after public notice and an opportunity to comment. However, the relevant set of specified rates for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever set is more favorable to the petitioner.

(5)(i) The useful life (N) of all powerplants except nuclear will be thirty-five (35) years. The useful life of a nuclear powerplant will be forty (40) years. The useful life of major fuel burning installations will be forty (40) years. The petitioner or ERA may utilize alternative useful life projections based upon a demonstration that such projections are more appropriate for the particular facility. Such a demonstration must consist of suitable engineering evidence, historical information, or other relevant factors applicable only to the physical life of the facility.

(ii) If the units being compared have different useful lives, the petitioner will have to modify his calculation so that the two cash flows being compared have the length of the shorter useful life. To do this, (A) use the shorter of the two useful lives in Equations 2 and 5 for both units, and (B) multiply capital investment (I) of the unit with the longer life (computed with Equation 3) by the following adjustment factor (A):

$$\text{EQ 6} \qquad A = \frac{\sum_{i=1}^{Q} (1+k)^{-i}}{\sum_{i=1}^{R} (1+k)^{-i}}$$

where:

R = The useful life of the facility with the longer life.

Q = The useful life of the facility with the shorter life.

k = The discount rate (see paragraph (d)(4) above).

(6) All Federal investment tax credits (ITC_i) and depreciation (DPR_i) values are those used for Federal income tax purposes and must be applied consistently throughout the analysis and in a manner consistent with the Federal tax laws. All investment tax credits allowed under Federal tax law must be reflected in the computations. In general, accelerated depreciation cannot be used for gas- or oil-fired boilers. Otherwise the petitioner must use the method of depreciation which results in the greatest present value of the cash flow due to the tax and depreciation effect. The marginal income tax rate (t_i) is the firm's anticipated marginal Federal income tax rate in year i. The relevant investment tax credits, depreciation methodology, and marginal Federal income tax rates for a specific exemption petition will be those prescribed by Federal law in effect (or those tax parameters which are known with certainty will be in effect) at the time a decision is rendered. (However, if an investment tax credit expires in a certain year the law which is in effect at the time the petition is submitted, the petitioner must assume that it will in fact expire in that year.)

(7) If powerplants are being compared, the design capacities or the maximum sustained energy per unit of time that could be produced must be the same. If installations are being compared, the maximum sustained energy per unit of time that could be produced must be the same.

(8) All estimated cash outlays must be computed in accordance with generally accepted accounting principles consistently applied.

(9) The scope of the estimates of relevant costs (as discussed above) of units being compared must be the same.

(10) All allowances for uncertainty and risk in the cost estimates must be explicit.

(11) All cash outlays must be net of any government subsidies or grants.

(e) *Evidence in support of the cost calculation.* All petitions for exemption requiring the use of the cost calculation shall include, but not be limited to, the following information:

(1) A detailed accounting of all cash outlays, investment tax credits, and anticipated salvage for capital investments. Include a description of and a cost estimate for all major construction and equipment. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates.

(2) A detailed accounting of all annual cash outlays for fixed and variable operations and maintenance expenses including a description of all major elements and the formulas used to compute them. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates.

(3) A detailed accounting of all annual cash outlays for delivered fuel expenses including the formulas used to compute them. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates. The fuel price and characteristics for each alternate fuel should also be included.

(4) A detailed accounting of the depreciation for each capital asset, including the depreciable base, tax life, and methods used. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates.

(5) If a different useful life than is suggested by ERA (paragraph (d)(5) above) is being used, all critical assumptions should be stated and sufficient data included to support that position.

(6) If the petitioner's unit is an installation, a brief economic and technical justification of anticipated firing rates considering other units at the site.

§ 504.12 Cost calculations for existing powerplants and installations.

(a) General.

(1) This calculation compares the cost of using alternate fuel to the cost of using imported petroleum. It must be performed for each alternate fuel and/or alternate site that the petitioner is required to examine.

(2) The cost of using an alternate fuel (see § 500.2) as a primary energy source will be deemed to substantially exceed the cost of using imported petroleum if the difference between the cost of using alternate fuel and the cost of using imported petroleum is greater than zero.

(3) There are two comparative cost calculations—a general cost test and a special cost test. Both take into consideration cash outlays for capital investments, annual expenses, and the effect of depreciation and taxes on cash flow. To demonstrate eligibility for permanent exemption, a petitioner must use the procedures specified in the general cost test (paragraph (b) of this section). To demonstrate eligiblity for a temporary exemption, the petitioner may apply the procedures specified in either the general cost test or the special cost test (paragraph (c) of this section).

(4) The general cost test differs from the special cost test with respect to the time period over which costs are calculated. For the general cost test, the petitioner must compare the cost of using an alternate fuel with the cost of using oil or natural gas over the remaining useful life of the facility. For the special cost test, the petitioner must compare the cost of using alternate fuel against that of using imported petroleum or natural gas over the period of the desired temporary exemption.

(5) ERA will use the procedures outlined in this section to perform part of the financial feasibility finding required by § 504.6.

(b) *Cost calculation—general cost test.*

(1) A petitioner may be eligible for a permanent exemption if he can demonstrate that the cost of using an alternate fuel from the first year of the exemption substantially exceeds the cost of using imported petroleum. Unless the cost estimates as prescribed below will not change materially during the first ten years of operation of the unit with an alternate fuel (given the best information available at the time the petition is filed), the petitioner must also demonstrate that the cost of using an alternate fuel beginning at any time within the first ten years of the exemption and using imported petroleum or natural gas until such time (*i.e.*, delayed use of alternate fuel) would substantially exceed the cost of using only imported petroleum.

(2) The petitioner would only be eligible for a temporary exemption if the computed costs of delayed alternate fuel use, commencing at the start of the second through eleventh years of operation from when alternate fuel would be used, do not always substantially exceed the cost of using only imported petroleum. The length of the temporary exemption would be the minimum period in which the cost of using alternate fuel substantially exceeds the cost of using imported petroleum.

(3) To conduct the general cost test, calculate the difference (DELTA) between the cost of using an alternate fuel (COST(ALTERNATE)) and the cost of using imported petroleum (COST(OIL)) using Equations 1 through 3 below and the comparison procedures in paragraph (b)(5) of this section.

$$\text{EQ 1} \qquad \text{DELTA} = \text{COST(ALTERNATE)} - \text{COST(OIL)}$$

where COST(ALTERNATE) and COST(OIL) are determined by:

$$\text{EQ 2} \qquad \text{COST} = I + \sum_{i=-g}^{N} \frac{(OM_i + FL_i)(1-t_i)}{(1+k)^i}$$

and I (capital investment) is:

$$\text{EQ 3} \qquad I = ID + \sum_{i=-g}^{N} \frac{I_i - ITC_i - S_i - t_i(DPR_i)\left(\frac{IX_e}{IX_i}\right)}{(1+k)^i}$$

(4) The terms in Equations 2 and 3 are defined as follows:

i = Year. i is a specified year either before year 0 or after year 0. Year 0 is the year before the proposed exemption becomes effective or, in the case of a financial feasibility finding, the year before alternate fuel use would begin. For example, in the third year before the proposed exemption becomes effective (or the unit would begin using alternate fuel, in the case of a financial feasibility finding), i would equal −2, and in the third year following commencement of the proposed exemption (or commencement of alternate fuel use), i would equal +3. Years are represented by 52 week periods prior to or following the date on which the proposed exemption would begin (or on which alternate fuel use would begin). Outlays before the proposed exemption becomes effective are future valued to the year before the proposed exemption becomes effective (year 0), and outlays after the proposed exemption becomes effective are present valued to the year before the proposed exemption becomes effective.

g = The number of years prior to the year before the proposed exemption becomes

effective (year 0) that (1) a cash outlay is first made for capital investments, (2) an investment tax credit is first used, or (3) replacement energy is required while the facility would be shut down for conversion—whichever occurs first.

remaining useful life of the unit using Equations 2 and 3.

(iii) Using Equation 1, compute the difference (DELTA) between COST(ALTERNATE) and COST(OIL). If the difference (DELTA) is less than or COST(ALTERNATE) is calculated in paragraph (b)(5) (iv) and (v) of this section and the COST(OIL) calculated in paragraph (b)(5)(ii) of this section.

(vii) If *all* the DELTAs computed in (iii) and (vi) above are greater than zero,

years, four years, and so on, up through the period of the proposed exemption.

(v) A petitioner is eligible for a temporary exemption terminating at the beginning of the first year in which a DELTA is zero or less.

powerplants with only combustion turbines—142 days, (c) all powerplants with combined cycles—both steam driven turbines and combustion turbines—142 days. The fuel inventory for installations not using natural gas shall be the greater of: 1) 21 days fuel supply, or 2) sufficient fuel to fill sixty (60)

powerplants being dispatched (where oil and natural gas are priced according to the procedures of Appendix II) are the corresponding expenses for the purpose of the cost calculation. The dispatch analysis area of the cost calculation.

effective (year 0) that (1) a cash outlay is first made for capital investments, (2) an investment tax credit is first used, or (3) replacement energy is required while the facility would be shut down for conversion—whichever occurs first. Years 0 and g must be the same for both the proposed conversion and no-conversion cases.

N = The remaining useful life of the unit (see paragraph (d)(6) of this section).

ID = Capital investment required to recover "lost" capacity. "Lost" capacity is the design capacity of or maximum sustained energy per unit of time that could be produced by a powerplant, or the maximum sustained energy per unit of time that could be produced by an installation, lost due to derating (see Equation 6, paragraph (d)(3) of this section). If a replacement facility is being evaluated, ID is the capital cost associated with an alternate fuel-fired replacement facility.

I_i = Yearly cash outlay (in dollars) from the year outlays first occur to the last year of the unit's useful life for capital investments. (See paragraph (d)(2) of this section for the items that must be included.)

OM_i = Annual cash outlay in year i (in dollars) for all operations and maintenance expenses except fuel (*i.e.*, all non-capital and non-fuel cash outlays). This may include labor, materials, insurance, taxes (except income taxes), etc. (See paragraph (d)(4) of this section.) Operations and maintenance expenses for "replacement energy" may be accounted for here. "Replacement energy" is that energy which substitutes for the output of a unit during the period of conversion to alternate fuel use.

S_i = Salvage value of capital investment (in dollars) in year i.

FL_i = Annual cash outlay for delivered fuel expenses (in dollars) in year i. Expenses for fuel to generate "replacement energy" above may be accounted for here. (See paragraph (d)(4) of this section for FL_i calculation instructions and Appendix II of these regulations for the procedures to determine fuel price.)

k = The discount rate expressed as a fraction (see paragraph (d)(5) of this section).

ITC_i = Federal investment tax credit used in year i resulting from capital investments (see paragraph (d)(7) of this section).

DPR_i = Depreciation in year i resulting from capital investments (see paragraph (d)(7) of this section).

t_i = Marginal income tax rate in year i (see paragraph (d)(7) of this section).

IX_i = Inflation index value for year i (see Table II–1 in Appendix II).

IX_e = Inflation index value for the year e, the year before the asset is placed in service.

(5) The step-by-step procedure that follows shows the comparison that the petitioner must make. It outlines the equipment, fuel, and time comparisons.

(i) Compute the cost of using an alternate fuel (COST(ALTERNATE)) throughout the remaining useful life of the unit using Equations 2, 3, and 6.

(ii) Compute the cost of using oil or natural gas (COST(OIL)) throughout the remaining useful life of the unit using Equations 2 and 3.

(iii) Using Equation 1, compute the difference (DELTA) between COST(ALTERNATE) and COST(OIL). If the difference (DELTA) is less than or equal to zero, a petitioner is not eligible for a permanent or temporary exemption using the general cost test and need not complete the remainder of the general cost test calculation. However, he still may be eligible for a temporary exemption using the special cost test (paragraph (c) of this section). If the difference (DELTA) is greater than zero and if the cost estimates will not materially change during the first ten years of operation of the unit with alternate fuel (given the best information available at the time the petition is filed), the petitioner has completed the test and is eligible for a permanent exemption. However, if the costs will change during the first ten years, the petitioner must complete the remainder of the general cost test—the delayed use calculations which follow.

(iv) Recompute COST(ALTERNATE) with Equations 2, 3, and 6, assuming that an alternate fuel is not used as the primary energy source until the start of the second year and that oil or natural gas is used for the first year. All cash outlays should reflect postponed use of alternate fuel.

(v) Successively recompute COST(ALTERNATE) with Equations 2, 3, and 6, assuming that the alternate fuel use is postponed until the start of the third year, fourth year, and so on, through the beginning of the eleventh year after the proposed exemption would be effective (with imported petroleum or natural gas used in the years preceding alternate fuel use).

(vi) Compute the difference (DELTA) between each of the ten COST(ALTERNATE)s calculated in paragraph (b)(5) (iv) and (v) of this section and the COST(OIL) calculated in paragraph (b)(5)(ii) of this section.

(vii) If *all* the DELTAs computed in (iii) and (vi) above are greater than zero, the petitioner is eligible for a permanent exemption. If one or more of the DELTAs is less than or equal to zero, he is eligible for a temporary exemption terminating at the beginning of the first year in which a DELTA is zero or less.

(c) *Cost calculations—special cost test.*

(1) A petitioner may be eligible for a temporary exemption if he demonstrates that the cost of using an alternate fuel will substantially exceed the cost of using imported petroleum (or natural gas) over the period of the proposed exemption. The period of the proposed temporary exemption may not exceed ten years. The petitioner must demonstrate that the cost of using an alternate fuel substantially exceeds the cost of using imported petroleum for a period of one year, two years, three years, and so forth, through the period of the proposed exemption. ERA will limit the duration of a temporary exemption to the shortest time possible.

(2) To conduct the test, calculate the difference (DELTA) between the cost of using an alternate fuel (COST(ALTERNATE)) and the cost of using imported petroleum (COST(OIL)) using Equations 4 and 5 below, Equation 3 (paragraph (b)(3) of this section), and the comparison procedures in paragraph (c)(4) of this section.

EQ 4 DELTA = COST (ALTERNATE) – COST (OIL)

where COST(ALTERNATE) and COST(OIL) are determined by:

$$\text{EQ 5} \qquad \text{COST} = I \times \frac{\sum_{i=1}^{P} (1+k)^{-i}}{\sum_{i=1}^{N} (1+k)^{-i}} + \sum_{i=1}^{P} \frac{(OM_i + FL_i)(1-t_i)}{(1+k)^i}$$

Capital investment (I) is calculated with Equation 3 (paragraph (b)(3) of this section).

(3) The terms in Equation 5 are the same as those in Equation 2 with the addition of P, the length of the proposed temporary exemption in years. (See paragraph (b)(4) of this section for other terms.)

(4) The step-by-step procedure that follows shows the comparisons which must be made.

(i) Using Equation 5, compute the cost of using an alternate fuel (COST(ALTERNATE)) assuming the length of the proposed exemption is one year.

(ii) Likewise, compute the cost of using imported petroleum or natural gas (COST(OIL)) assuming the length of the proposed exemption is one year.

(iii) Compute the difference (DELTA) between COST(ALTERNATE) and COST(OIL) using Equation 4.

(iv) Repeat the calculations made in paragraphs (c)(4) (i), (ii), and (iii) of this section assuming the length of the proposed exemption is two years, three years, four years, and so on, up through the period of the proposed exemption.

(v) A petitioner is eligible for a temporary exemption terminating at the beginning of the first year in which a DELTA is zero or less.

(d) *Information on parameters used in the calculations.*

(1) All estimated expenditures, except fuel, shall be expressed in real (uninflated) terms by using the prices in effect at the time the petition is submitted. Instructions for fuel price calculations are contained in Appendix II.

(2) Capital investment yearly cash outlays (I_i) must include all items that are capital investments for Federal income tax purposes. All purchased equipment that has a useful life greater than one year, capitalized engineering costs, land, construction, environmental offsets, fuel inventory, transmission facilities, piping, etc., that are necessary for the conversion of the unit must be included. However, an item must only be included if a cash outlay is required after the decision has been made to convert (or not to convert) the unit; sunk costs must not be included (*e.g.*, if the firm owns the land, its purchase price may not be included).

Note.—The Guidelines for the fuel inventory for powerplants not using natural gas shall be: (a) all powerplants with only steam driven turbines—78 days, (b) all powerplants with only combustion turbines—142 days, (c) all powerplants with combined cycles—both steam driven turbines and combustion turbines—142 days. The fuel inventory for installations not using natural gas shall be the greater of: 1) 21 days fuel supply, or 2) sufficient fuel to fill sixty (60) percent of the storage volume where whatever amount is chosen is equivalent in terms of the number of days supply for both the base case and the alternate fuel case being compared. The fuel inventory of all facilities using natural gas shall be zero unless the gas supply is interruptible in which case an appropriate inventory of back-up fuel must be included. Include the salvage value of any fuel in inventory which cannot be used as a result of this conversion. The petitioner may utilize alternative fuel inventories by demonstrating through engineering or process requirements evidence that another level of inventory is appropriate. However, the petitioner must use equivalent fuel supply inventories as described above. Fuel supplies must be computed using annual fuel consumption rates.

(3)(i) Capital investment (ID), if any, required (A) to recover the design capacity or maximum sustained energy per unit of time that could be produced but would be lost due to derating or (B) to build an alternate fuel-fired replacement facility, if appropriate, must be computed with Equation 6 if, for the purposes of this calculation, it is elected to recover that capacity. COST computed with Equation 2 or 5 must yield the least cost solution.

$$\text{EQ 6} \qquad ID = \frac{\sum_{i=1}^{N} (1+k)^{-i}}{\sum_{i=1}^{M} (1+k)^{-i}} \times \sum_{i=-g}^{M} \frac{ID_i - ITCD_i - SD_i - t_i(DPRD_i)\left(\frac{IX_e}{IX_i}\right)}{(1+k)^i}$$

(ii) M, ID_i, $ITCD_i$, SD_i, and $DPRD_i$, are the useful life, yearly investment cash outlays, investment tax credits, salvage values, and depreciation, respectively, resulting from the purchase of equipment required to recover the design capacity or maximum sustained energy per unit of time that could be produced, lost due to derating. All definitions and information which apply to N, I_i, ITC_i, S_i, and DPR_i (see paragraph (b)(4) of this section), also apply to M, ID_i, $ITCD_i$, SD_i, and $DPRD_i$, respectively, except that M, ID_i, $ITCD_i$, SD_i, and $DPRD_i$, are limited to equipment required to recover the loss due to derating. All other terms are as in Equation 3 (paragraph (b)(3) of this section). In the case of a replacement facility, if appropriate, ID is the capital cost associated with that alternate fuel-fired replacement facility.

(iii) If an election is made not to recover the loss due to derating (for the purpose of this calculation), ID equals zero.

(4)(i) The annual cash outlays for operations and maintenance expense (OM_i) and fuel expense (FL_i) for a powerplant may be computed by one of the following three methods; however, the one chosen must be consistently applied throughout the analysis.

(A) Assume the energy produced by the powerplant equals seventy (70) percent of design capacity times 8760 hours for each year during the remaining useful life of the powerplant, and compute cash outlays for operations, maintenance, and fuel expenses for the powerplant.

(B) Economically dispatch the powerplant in which conversion to alternate fuel is being considered and, if appropriate, the additional powerplant required due to derating or replacement. The cash outlays for operations, maintenance, and fuel expenses of all powerplants being dispatched (where oil and natural gas are priced according to the procedures of Appendix II) are the corresponding expenses for the purpose of the cost calculation. The dispatch analysis area of the cost calculation. The dispatch analysis area must be that area with which the firm currently dispatches, anticipates dispatching, and will be interconnected. It must also include all anticipated exchanges of energy with other utilities or powerpools. The outlays for operations, maintenance, and fuel may also be estimated using a methodology that incorporates the benefits of economically dispatching units and provides consistent treatment in the alternate fuel and oil or natural gas cases being compared. If the design capacity lost due to derating or replacement is recovered, as discussed in paragraph (d)(3) of this section, the petitioner must employ this method (or that described in paragraph (d)(4)(i)(C) of this section for calculating operations, maintenance, and fuel expenses.

(C) Use a dispatch analysis to project the energy produced by the powerplant for a representative (not atypical) year of operation when consuming an alternate fuel. Compute the cash outlays for operations, maintenance, and fuel expenses for the powerplant based upon the level of energy production estimated for the representative year. The dispatch analysis and fuel expenses for the cost calculation must include oil and natural gas priced according to the procedures of Appendix II.

(ii) The annual cash outlays for operations and maintenance expenses (OM_i) and fuel expenses (FL_i) for an installation may be computed by the method specified in (A) below. A second method (B) may be used unless the energy or steam produced by the alternate fuel-fired unit would be less than that computed using method A.

(A) Base the computations on the actual power or steam generation schedule of the installation in which conversion is being considered and, if appropriate, the additional installation required due to derating of the facility being converted. If power output lost due to derating is recovered for the purpose of this calculation (see paragraph (d)(3) of this section), the petitioner must employ this method for calculating operations, maintenance, and fuel expenses.

(B) If the installation has been in operation for at least two years, assume it will annually generate an amount of energy or steam equal to the average amount of energy or steam produced annually for the last five years or the

length of operation of the installation if it is less than five years.

(5) The discount rate (k) for analyses of powerplants is 2.9% or that which is computed as specified in Appendix I (45 FR 52771, August 12, 1980). The

Q = The unextended remaining useful life of the facility.

k = The discount rate (see paragraph (d)(5) above).

(7) All Federal investment tax credits, (ITC_i and $ITCD_i$) and depreciation (DPR_i

elements and the formulas used to compute them. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates.

(2) A detailed accounting of all annual

paragraphs (b)(6) and (c)(6) of this section and in Tables II-1 and II-2 from time to time after public notice and an opportunity to comment. Revisions shall become effective after final publication. However, the relevant set of parameters at the time a decision is rendered, whichever is more favorable to the petitioner.

(b) *Fuel price computation—option 1.*

(1) If it is planned to use 10 percent domestically refined [1] petroleum product

is submitted (see Table II–1 and paragraph (b)(6)(iii) below).

(6) The petitioner shall use the following parameters for Equations II–1, II–2, and II–3 of this appendix:

length of operation of the installation if it is less than five years.

(5) The discount rate (k) for analyses of powerplants is 2.9% or that which is computed as specified in Appendix I (45 FR 53711–2, August 12, 1980). The discount rate (k) for analyses of installations is 7.7% or that which is computed as specified in Appendix I. The inflation index (IX) is shown in Table II–1 of Appendix II. ERA will modify these specified rates from time to time as required by changed conditions after public notice and an opportunity to comment. However, the relevant set of specified rates for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever set is more favorable to the petitioner.

(6)(i) The remaining useful life (N) of a powerplant shall be thirty-five (35) years minus the age of the plant when it would begin using an alternate fuel. The remaining useful life of a major fuel burning installation shall be forty (40) years minus the age of the plant when it would begin using an alternate fuel. The petitioner or ERA may utilize an alternative useful life projection based upon a demonstration that such projections are more appropriate for the particular facility. Such a demonstration must consist of suitable engineering evidence, historical information, or other relevant factors. If the unit's remaining useful life would be extended as the result of the conversion or refurbishment, that extension must be included in the remaining useful life.

(ii) If the life of a unit would be extended, the petitioner will have to modify his calculation so that the two cash flows being compared have the length of the unextended remaining useful life. To do this, (1) use the unextended useful life in Equations 2 and 5 for the unit when it is both converted and unconverted, and (2) multiply the capital investment term (I) for the converted unit (computed with Equation 3) by the following adjustment factor (A):

$$\text{EQ 7} \qquad A = \frac{\sum_{i=1}^{O} (1+k)^{-i}}{\sum_{i=1}^{R} (1+k)^{-i}}$$

where:

R = The extended remaining useful life of the facility.

Q = The unextended remaining useful life of the facility.

k = The discount rate (see paragraph (d)(5) above).

(7) All Federal investment tax credits, (ITC_i and $ITCD_i$) and depreciation (DPR_i and $DPRD_i$) values are those used for Federal income tax purposes and must be applied consistently throughout the analysis and in a manner consistent with the Federal tax laws. All investment tax credits allowed under Federal tax law must be reflected in the computations. In general, accelerated depreciation cannot be used for gas- or oil-fired boilers. Otherwise the petitioner must use the method of depreciation which results in the greatest present value of the cash flow due to the tax and depreciation effect. The marginal income tax rate (t_i) is the firm's anticipated marginal Federal income tax rate in year i. The relevant investment tax credits, depreciation methodology, and marginal Federal income tax rates for a specific exemption or financial feasibility finding will be those prescribed by Federal law in effect (or those tax parameters which are known with certainty will be in effect) at the time a decision is rendered. (However, if an investment tax credit expires in a certain year under the law which is in effect at the time the petition is submitted, the petitioner must assume that it will in fact expire in that year.)

(8) All estimated cash outlays must be computed in accordance with generally accepted accounting principles consistently applied.

(9) The scope of the estimates of relevant costs (as discussed above) of units being compared must be the same.

(10) All allowances for uncertainty and risk in the cost estimates must be explicit.

(11) All cash outlays must be net of any government subsidies or grants.

(e) *Evidence in support of the cost calculation.* All petitions for exemption requiring the use of the cost calculation shall include, but not be limited to, the following information:

(1) A detailed accounting of all cash outlays, investment tax credits, and anticipated salvage for capital investments. Include a description of and a cost estimate for all major construction and equipment. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates.

(2) A detailed accounting of all annual cash outlays for fixed and variable operations and maintenance expenses including a description of all major elements and the formulas used to compute them. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates.

(3) A detailed accounting of all annual cash outlays for delivered fuel expenses including the formulas used to compute them. All critical assumptions should be stated and sufficient data included to support the petitioner's estimates. The fuel price and characteristics for each alternate fuel should also be included.

(4) A detailed accounting of the depreciation for each capital asset, including the depreciable base, tax life, and sufficient data included to support the petitioner's estimates.

(5) If a different useful life than is suggested by ERA (paragraph (d)(6)(i) above) is being used for the purpose of calculating the remaining useful life, all critical assumptions should be stated and sufficient data included to support the useful life chosen.

(6) If the petitioner's unit is an installation, a brief economic and technical justification of the power or steam generation schedule considering other units at the site.

Appendix II—Fuel Price Computation

(a) *Introduction.* This appendix provides the equations and parameters needed to specify the price of delivered fuels used in computing the cost of using imported petroleum and the cost of using an alternate fuel in Parts 503 and 504 of these regulations. The delivered price of imported petroleum or natural gas used to calculate delivered fuel expenses must reflect (1) the price of imported petroleum, (2) the effects of future real increases in imported petroleum prices, and (3) substantially exceeds premium. The delivered price of an alternate fuel used to calculate delivered fuel expenses must reflect the petitioner's delivered price of the alternate fuel and the effects of real increases in the price of that alternate fuel. Paragraphs (b) and (c) below provide alternative procedures to account for projected real increases in the prices of fuels. The petitioner may compute his fuel prices by either of these procedures as long as the same procedure is applied consistently throughout the cost analysis. Table II-1 of this appendix contains the price indices used in option 1 (paragraph (b)) and the inflation index used in computing depreciation in Parts 503 and 504 of these regulations. ERA will change the parameters specified in

paragraphs (b)(6) and (c)(6) of this section and in Tables II-1 and II-2 from time to time after public notice and an opportunity to comment. Revisions shall become effective after final publication. However, the relevant set of parameters for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever is more favorable to the petitioner.

(b) *Fuel price computation—option 1.*

(1) If it is planned to use 10 percent domestically refined [1] petroleum product in the facility, the petroleum product price (PFE_i) is computed with Equation II–1.

$$\text{EQ II-1} \qquad PFE_i = (PF + PICO - PCCO)\frac{OPX_i}{OPX_u} + PREM$$

where:

PICO = Price of imported crude oil per barrel. The most recent refiner acquisition cost of imported crude oil as reported in the Federal Register monthly notice for the DOE Domestic Crude Oil Allocation (Entitlements) Program.[2]

PCCO = Price of composite crude oil per barrel. The most recent weighted average cost of total reported crude oil receipts as reported in the Federal Register notice for the DOE Entitlements Program.[2]

PF = The current market price of the petitioner's fuel oil per barrel at the time the petition is submitted (f.o.b. the facility). Alternatively, if the petitioner does not currently have a supplier of fuel oil or is using natural gas, he should use a simple average of the market prices of fuel oil available to him (capable of being burned in the facility and meeting air quality requirements) sold in his area by at least three suppliers.

PFE_i = Price of fuel oil per barrel in year i.

OPX_i = Oil price index value for year i (see Table II–1).

OPX_u = Oil price index value for year u, the year in which the petition is submitted.

PREM = Substantially exceeds premium added to the price of oil (see paragraph (b)(6) below).

(2) If it is planned to use 100 percent imported petroleum product in the facility, the petroleum price (PFE_i) is computed with Equation II–2.

$$\text{EQ II-2} \qquad PFE_i = (PF + ENT)\left[\frac{OPX_i}{OPX_u}\right] + PREM$$

The terms in Equation II–2 are the same as those in Equation II–1 with the addition of:

ENT = ½ × EP × DOSR for residual fuel oil if an entitlement has been received by the importer, or 0 for all other products or if an entitlement has not been received by the importer;[2]

EP = Entitlement price reported in the Federal Register monthly notice for the DOE Entitlements Program.

DOSR = National domestic oil supply ratio reported in the Federal Register monthly notice for the DOE Entitlements Program.

(3) If it is planned to use a combination of domestically refined and imported petroleum product in the facility, use a weighted average of the prices computed with Equations II–1 and II–2. If it cannot reasonably be estimated what fraction of petroleum product is imported, assume that 100 percent of the fuel is domestically refined.

(4) If it is planned to use natural gas in the facility, Equations II–1 and II–2 must be used, as appropriate, to calculate the price of fuel (PFE_i), along with the price of the No. 6 residual fuel oil (PF) which meets the air quality standards in the petitioner's area.

(5) The delivered price of alternate fuel (PFA_i) must reflect the real escalation rate of alternate fuel and must be computed with Equation II–3.

$$\text{EQ II-3} \qquad PFA_i = APF\left[\frac{APX_i}{APX_u}\right]$$

The terms of Equation II–3 are defined as follows:

PFA_i = Price of alternate fuel in year i.

APF = The current market price of the alternate fuel (f.o.b. the facility).

APX_i = Alternate fuel price index value of year i (see Table II–1 and paragraph (b)(6)(iii) below).

APX_u = Alternate fuel price index for the year u, the year in which the petition is submitted (see Table II–1 and paragraph (b)(6)(iii) below).

(6) The petitioner shall use the following parameters for Equations II–1, II–2, and II–3 of this appendix:

(i) The substantially exceeds premium, PREM, is $1.00 per barrel of oil equivalent.

(ii) The oil price index values, OPX, and OPX_u are specified in Table II–1.

(iii) The alternate fuel price index values, APX_i and APX_u, depend on the type of alternate fuel to be used.

(A) If the alternate fuel is solid coal, the petitioner must use the alternate fuel price index for coal in Table II–1.

(B) For all other alternative fuels, the petitioner may use either the alternate fuel price index for coal in Table II–1 or his own substantiated escalation rates and the equation for APX_i in footnote 3 to this appendix.

(c) *Fuel price computation—option 2.*

(1) If it is planned to use 100 percent domestically refined petroleum product in the facility, the petroleum product price (PFE_i) is computed with Equation II–4.

EQ–4 PFE_i = (PF + PICO − PCCO) + PREM + FUTR

where the terms are the same as those in Equation II–1 with the addition of FUTR, the premium added to the price of oil to account for projected escalation in oil prices as compared to escalation in alternate fuel prices (see paragraph (c)(6) of this section).

(2) If it is planned to use 100 percent imported petroleum product in the facility, the petroleum price (PFE_i) is computed with Equation II–5.

EQ II–5 PFE_i = (PF + ENT) + PREM + FUTR

where the terms are the same as those in Equations II–2 and II–4.

(3) If it is planned to use a combination of domestically refined petroleum and imported petroleum product in the facility, use a weighted average of the prices computed with Equations II–4 and II–5. If it cannot reasonably be estimated what fraction of petroleum product is imported, assume that 100 percent of it is domestically refined.

(4) If it is planned to use natural gas in the facility, Equations II–4 and II–5 must be used, as appropriate, to calculate the price of fuel (PFE_i), along with the price of the No. 6 residual fuel oil (PF) which meets the air quality standards in the petitioner's area.

[1] Footnotes are at end of section

(5) The price of alternate fuel (PFA) must be the current market price of the alternate fuel (f.o.b. the facility).

(6) The petitioner shall use the following parameters for Equations II–4 and II–5 of this appendix.

$$OPX_i = \prod_{j=1980}^{i} (1 + Ro_j)$$

analyses, and two social benefit analyses were performed and are discussed here.

A. Aggregate Analyses of FUA

The quantitative impacts of policy

(1) A $4/bbl addition* to the current cost of fuel based on world oil prices** would result in:

—virtually all new powerplants, except peakload units, having to use coal or nuclear power,

large boiler and whose real cost of capital is 10% would be exempted at this rate when the boiler is operated at a capacity factor of less than 22% (Point A, Figure 1). If the firm was constrained to use the mean of 7.7%, however, the

(5) The price of alternate fuel (PFA) must be the current market price of the alternate fuel (f.o.b. the facility).

(6) The petitioner shall use the following parameters for Equations II–4 and II–5 of this appendix.

(i) The substantially exceeds premium, PREM, is $1.00 per barrel of oil equivalent.

(ii) The premium added to the price of oil to account for projected escalation in oil prices compared to escalation in alternate fuel prices, FUTR, is $4.00 per barrel of oil equivalent.

Table II–1.—*Price and inflation indices for use in the cost calculations* [1]

Year	Crude oil price index (OPX)	Alternate fuel price index for coal (APX)	Inflation index (IX)
1980	1.000	1.000	1.000
1981	1.016	1.039	1.096
1982	1.032	1.080	1.189
1983	1.049	1.122	1.281
1984	1.066	1.165	1.369
1985	1.083	1.211	1.453
1986	1.111	1.229	1.525
1987	1.140	1.247	1.586
1988	1.169	1.266	1.634
1989	1.200	1.285	1.683
1990	1.231	1.304	1.733
1991	1.257	1.316	1.785
1992	1.283	1.328	1.839
1993	1.310	1.340	1.894
1994	1.338	1.352	1.951
1995	1.366	1.364	2.009
1996	1.382	1.372	2.070
1997	1.399	1.381	2.132
1998	1.415	1.389	2.196
1999	1.432	1.397	2.262
2000	1.450	1.406	2.329
2001	1.450	1.414	2.399
2002	1.450	1.422	2.471
2003	1.450	1.431	2.545
2004	1.450	1.440	2.622
2005	1.450	1.448	2.700
2006	1.450	1.457	2.781
2007	1.450	1.466	2.865
2008	1.450	1.474	2.951
2009	1.450	1.483	3.039
2010	1.450	1.492	3.131
2011	1.450	1.512	3.224
2012	1.450	1.531	3.321
2013	1.450	1.551	3.421
2014	1.450	1.571	3.523
2015	1.450	1.592	3.629
2016	1.450	1.612	3.738
2017	1.450	1.633	3.850
2018	1.450	1.655	3.966
2019	1.450	1.676	4.085
2020	1.450	1.698	4.207
2021	1.450	1.720	4.333
2022	1.450	1.742	4.463
2023	1.450	1.765	4.597
2024	1.450	1.788	4.735
2025	1.450	1.811	4.877
2026	1.450	1.835	5.024
2027	1.450	1.858	5.174
2028	1.450	1.883	5.330
2029	1.450	1.907	5.490
2030	1.450	1.932	5.654

[1] For the purposes of these regulations, the Virgin Islands, Puerto Rico, the U.S. territories and possessions, and all the Status are domestic sources.

[2] When the DOE entitlements programs are terminated, PICO, PCQO, and ENT will all equal zero.

[3] The index values OPX, APX, and IX in Table II–1 were calculated using the rates (see Table II–2) for the real increase in oil price (Ro), coal price (Ra), and inflation (INF), respectively and the following equations:

$$OPX_i = \prod_{j=1980}^{i} (1 + Ro_j)$$

$$APX_i = \prod_{j=1980}^{i} (1 + Ra_j)$$

$$IX_i = \prod_{j=1980}^{i} (1 + INF_j)$$

where:

i = Calendar year of index, and

π = Product of terms with index j ranging from 1980 to i.

If the petitioner chooses to supply his own escalation rates for an alternate fuel, as provided in option 1 (paragraph (b)(6)(iii) (B) and (C) of Appendix II), he must use the equation for APX_i to calculate the appropriate index values.

Table II–2.—*Rates of fuel price increase and inflation used in Table II–1*

Year (j)	Ro	Ra	INF
1980	0.000	0.000	0.000
1981	.016	.039	.096
1982	.016	.039	.085
1983	.016	.039	.077
1984	.016	.039	.069
1985	.016	.039	.061
1986	.026	.015	.050
1987	.026	.015	.040
1988–90	.026	.015	.030
1991–95	.021	.009	.030
1996–2000	.012	.006	.030
2001–10	.000	.006	.030
2011–30	.000	.013	.030

Final Regulatory Analysis for the Purposes of the Fuel Use Act Cost Calculations

I. Introduction

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has issued the final rule on the cost calculation provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA). This regulatory analysis was prepared in conjunction with that final rule. Comments on the substance of the rule by the public are examined and addressed in the preamble to the proposed rule (45 FR 24190–9, June 23, 1980) and in the preamble to the final rule published this date.

II. Impact Analysis

This section describes the analyses which have been done in support of the final rule on the cost calculations. Two aggregate analyses, two microeconomic analyses, and two social benefit analyses were performed and are discussed here.

A. Aggregate Analyses of FUA

The quantitative impacts of policy alternatives available to DOE in implementing FUA were assessed by the Energy Information Administration (EIA) of DOE in two analyses. [The findings and limitations of these analyses were referenced and discussed in earlier FUA rulemakings (43 FR 54058–61, November 17, 1978; 44 FR 28954–6, May 17, 1979; and 45 FR 42209–12, June 23, 1980).] The results of these analyses have only slight relevance to an analysis of the current impact of FUA, because they are limited by the unforseen obsolescence of the assumptions used to derive them, particularly the rapid divergence in the prices of oil and coal, the response of utilities and consumers to these price changes, and the effect of these parameters on natural gas demand, pricing, and displacement of imported petroleum. Because ERA was able to draw only the broadest conclusions from these evaluations—that FUA would reduce the amount of imported petroleum to some extent and that in a high oil/coal price differential environment, the effect of an increment added to the price of oil would be small—ERA chose to perform several additional analyses which would provide a more timely evaluation of FUA's impact than the previous analyses.

B. Microeconomic Analyses of FUA

The effects of FUA were reexamined by ERA after it became apparent that the usefulness of the aggregate analyses were limited. In the first microeconomic analysis (reported in "An Assessment of Various Cost Test Levels on Different Types of Installations," dated May 8, 1980, Financial Analysis Branch, Office of Fuels Conversion, ERA), ERA used its limited experience with initial petitions submitted under the interim regulations to infer the broad classes of facilities (by size and application) that would be required to burn an alternate fuel, given both the effects of increasingly higher fuel price escalation rates and a substantially exceeds increment added to the price of oil. DOE found that:

(1) A $4/bbl addition* to the current cost of fuel based on world oil prices** would result in:
- —virtually all new powerplants, except peakload units, having to use coal or nuclear power,
- —most new industrial boilers at new sites having to use coal, and
- —new, large industrial boilers replacing or expanding existing facilities and operating at least two shifts per day having to use coal.

(2) A $6/bbl addition* would have a marginal impact ($2 over the above $4) resulting in:
- —older existing coal-capable powerplants converting to coal, and
- —new, industrial boilers replacing or expanding existing facilities and operating at least one shift per day having to use coal (given minimal site restrictions).

(3) A $8/bbl addition* would have a marginal impact ($2 over the above $6) resulting in:
- —new industrial boilers replacing or expanding existing facilities, operating one shift per day, and having an atypical capital cost and/or additional site restrictions, having to use coal, and
- —new industrial boilers with gasifiers operating continuously at new sites, having to use lo-Btu coal gasification.

This analysis is limited because of incomplete data and because ERA has not been able to quantify the amounts of imported petroleum which would be saved at each level of stringency. However, it does give some indication of what types of individual facilities would likely be impacted which could not be done by the aggregate analyses.

ERA performed the second microeconomic analysis using the same facilities data as was used in the first analysis (included in the public record for the proposed rulemaking) to evaluate the sensitivity of a petitioner's exemption domain to his real, after tax cost of capital. The contractor study (summarized at 44 FR 43222–23, July 23, 1979) which determined the 7.7% mean cost of capital for industrial firms indicated a standard deviation of 2.4%. Thus many of the firms sampled had real capital costs higher than 7.7% and would be penalized if constrained to the mean rate. The extent of this imposed penalty is illustrated in Figures 1 and 2. For example, a firm that is purchasing a large boiler and whose real cost of capital is 10% would be exempted at this rate when the boiler is operated at a capacity factor of less than 22% (Point A, Figure 1). If the firm was constrained to use the mean of 7.7%, however, the boiler would only receive an exemption if operated at a capacity factor of less than 18% (Point B, Figure 1).

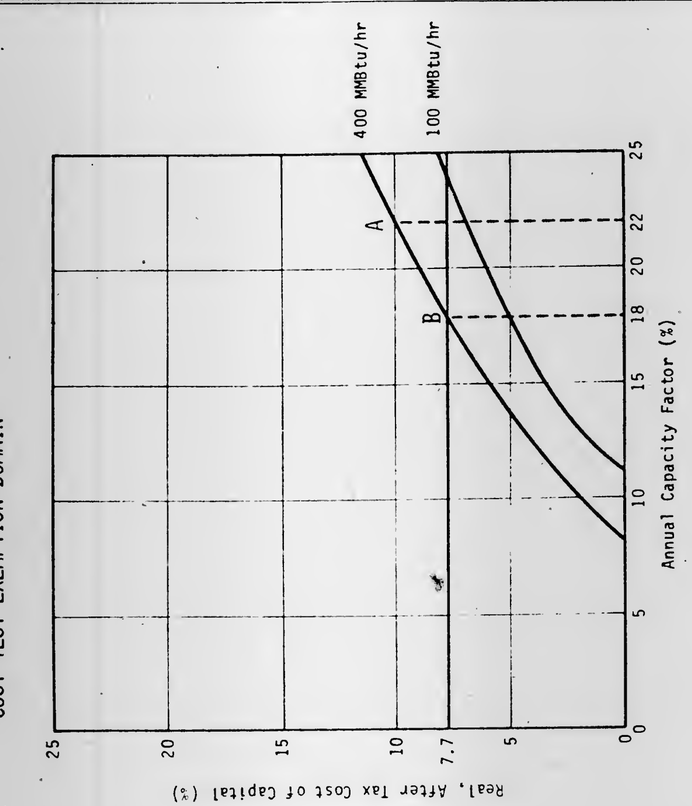
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*This addition to the cost of fuel as calculated in the FUA cost tests has two components, one attributable to the additive effect of the substantially exceeds cost premium. The other component is the present value of future increases in real fuel prices calculated as an annuity.

**From a base price of $30 per barrel.

FIGURE 1

COST TEST EXEMPTION DOMAIN



LOCUS OF POINTS WITH A NET PRESENT VALUE OF ZERO AS A FUNCTION OF:

* ANNUAL CAPACITY FACTOR,
* COST OF CAPITAL, AND
* UNIT SIZE.

ASSUMED FUEL PRICES ARE:

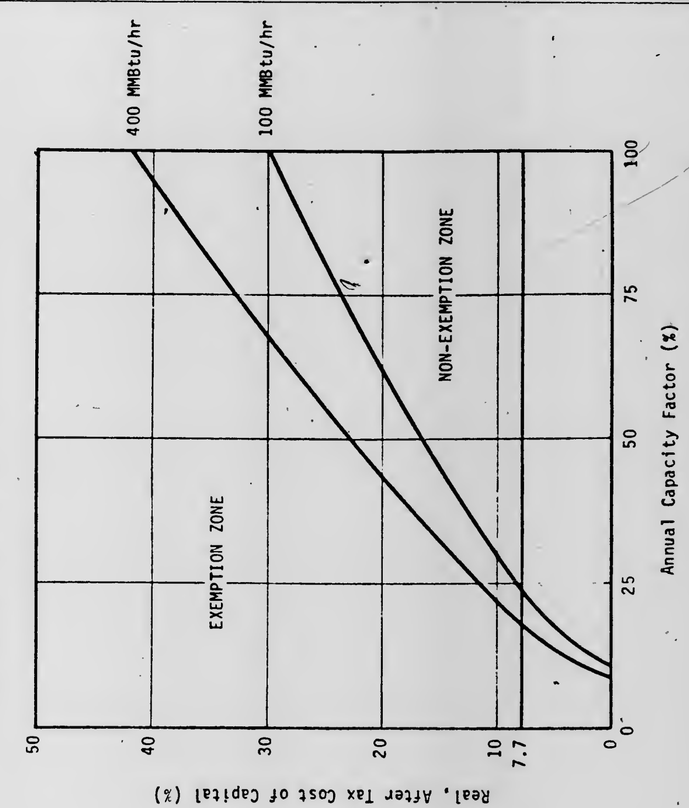
* $4.50/MMBtu - OIL
  and
* $2.00/MMBtu - COAL.

SUBSTANTIALLY EXCEEDS PREMIUM IS $1.00.

7.7% IS THE MEAN COST OF CAPITAL FOR INDUSTRIAL FIRMS.

FIGURE 2

COST TEST EXEMPTION DOMAIN



LOCUS OF POINTS WITH A NET PRESENT VALUE OF ZERO AS A FUNCTION OF:

* ANNUAL CAPACITY FACTOR,
* COST OF CAPITAL, AND
* UNIT SIZE.

ASSUMED FUEL PRICES ARE:

* $4.50/MMBtu - OIL
  and
* $2.00/MMBtu - COAL.

SUBSTANTIALLY EXCEEDS PREMIUM IS $1.00.

7.7% IS THE MEAN COST OF CAPITAL FOR INDUSTRIAL FIRMS.

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While this analysis is also limited for the same reasons as the first microeconomic analysis, it does give an indication of the effect of allowing the directly relevant to the substantially exceeds premium used in FUA.

For this social premium analysis, P&E relied in part on EIA forecasts which suggest that a five dollar increase in oil sensitive to specific conditions in the world petroleum market. However, the size of the aggregate premium is less sensitive to market conditions as influences on different components tend

42192–9, June 23, 1980), believes imported oil prices will increase faster than inflation. ERA could propose a cost calculation which accounts for explicit increases in fuel prices in the future. Alternatively, ERA could propose that a discussed earlier estimated that, in the context of varying levels of risk of disruption of oil imports, an appropriate social premium would range from $4 up to $10. This is estimated to be the value that should be associated with its conflicts of interest regulations (12 CFR 563.33) and making other changes initiated by the Management Official Interlocks Act ("Act"). This Act (title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, 12

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While this analysis is also limited for the same reasons as the first microeconomic analysis, it does give an indication of the effect of allowing the petitioner to use his own cost of capital as the discount rate in the cost calculation.

C. Social Benefits of FUA

There are very real benefits to be gained for the United States by reducing petroleum imports. DOE's Office of Policy and Evaluation analysed the benefits of reduced oil imports as described in the preamble to the interim FUA regulations (44 FR 28955–56, May 17, 1979) under the headings "Oil Import Reduction Premium," "National Security Benefits," "Balance of Payments Benefits," and "Legal Emissions Under the Clean Air Act," incorporated herein by reference.

A completely different analysis has been substituted for the prior analysis and was performed so as to provide a fresh point of departure for the proposed rule. This analysis was based on the concept of a "social premium" as the most straightforward way of signaling the market place that imported oil costs more to the economy than its per-barrel price.

This new analysis is part of a continuing study being performed for general policy purposes in the Office of Policy and Evaluation (P&E) [Preliminary results of the analysis are reported in "The Energy Problem: Costs and Policy Options," dated May 23, 1980 (Staff Working Paper), Office of Gas and Integrated Analysis, Policy and Evaluation, Department of Energy. A copy of this paper is included in the public file.]. This preliminary analysis examined the energy problem in the context of high and uncertain prices, vulnerability to supply disruptions, and vulnerability to strategic threats of disruption used to gain foreign policy, military, or economic concessions by analysing three different world views with varying levels of risk of disruptions.

The major goal of the analysis was to quantify certain general policy conclusions:

- that very large strategic oil stockpiles should be built rapidly if serious future disruptions are anticipated;
- that contingency plans, such as a very high short term tariff, should be used to mitigate the cost of disruption if one occurs; and
- that measures beyond deregulation of energy prices should be taken to reduce imports.

Only the quantification of this last conclusion, which is discussed below, is directly relevant to the substantially exceeds premium used in FUA.

For this social premium analysis, P&E relied in part on EIA forecasts which suggest that a five dollar increase in oil prices would reduce imports by a million barrels per day within seven years. This relationship between costs and import reductions was combined (in the P&E analysis of May 1980) with an examination of the benefits of varying levels of import reduction in several situations:

- different estimates of the risk of a disruption,
- different degrees of preparation to deal with a disruption through contingency plans and draw-downs from a strategic petroleum stockpile,
- differing amounts of common action by our allies, and
- other policies to promote import reductions such as natural gas deregulation, oil backout programs in the utility sector, and conservation programs.

In general, the analysis found that the premium level should be higher when there is a greater risk of disruption, less effective preparation to deal with a disruption, a higher level of oil imports, more cooperation among allies, or an inadequate package of other policies to promote import reductions. It also provided several overlapping ranges of estimates of the social premium, varying between $4 and $10.* The appropriate range could be selected to suit a view on the risks of an import disruption based on answers to certain questions about long term energy policy, *e.g.*, will we stockpile oil and develop contingency plans, will there be effective cooperation among our allies, etc. As all of these questions cannot be answered at this time, DOE has not yet settled upon a particular probabilistic estimate of the risks of disruption.

This P&E analysis did not attempt to re-estimate separately the social benefits of balance of payments changes from reduced oil imports or the costs of increased legal air emissions under the Clean Air Act. The analysis did estimate the price effect from lower world oil prices (a result of decreased demand) and the benefits from decreased vulnerability to sudden supply disruptions (a result of decreased reliance on interruptible foreign supplies). The size of these particular components of the premium can be quite sensitive to specific conditions in the world petroleum market. However, the size of the aggregate premium is less sensitive to market conditions as influences on different components tend to be off-setting. The security component tends to be greatest when the price effect is smallest, and vice versa. If OPEC matches any U.S. demand reduction with decreased production in order to maintain prices, then the security component will be large. If OPEC maintains production, then the U.S. or its allies will continue to be dependent on OPEC oil and the security component will be small, but prices will necessarily fall in order for OPEC to maintain production levels in the face of reduced demand.

D. Decision Summary

There are three key decisions which will determine the impact of the FUA cost calculation regulation. These are:

- the allowed cost of capital rate,
- the specification of future fuel prices, and
- the level of the substantially exceeds premium.

1. Allowed cost of capital.

The Act requires exemption petitioners to employ the discounted present value of the best practicable estimates of the cost of using oil or natural gas compared to those of using an alternate fuel. Through an analysis of the preliminary data available at the time of the proposed rulemaking, ERA evaluated the impact of the real cost of capital on the circumstances (*e.g.*, functional and use characteristics of the unit) under which an industrial boiler would be exempted from the FUA prohibitions. The results of this analysis (discussed above) indicated that imposition of a mean rate for the cost of capital would impose a significant burden on those petitioners whose rates exceed the mean values. Consequently, ERA has modified its position from that in the proposed rule and will allow petitioners to use either the previously specified cost of capital rates or the firm-specific rate as calculated by the methodology in Appendix I of the final rule (45 FR 53711–12, August 12, 1980).

2. Specification of fuel prices.

To implement the statutory provision that exemption applicants compare the present value costs of using alternate fuel to those of using imported oil, ERA had to determine how to specify future fuel price behavior and how to equate natural gas to the mandated imported oil cost standard.

a. *Future fuel prices.* DOE, in consensus with other forecasters (45 FR 42192–9, June 23, 1980), believes imported oil prices will increase faster than inflation. ERA could propose a cost calculation which accounts for explicit increases in fuel prices in the future. Alternatively, ERA could propose that a single annuity value used to represent future increases in petroleum over coal prices, or a combination of these two approaches. ERA believes that use of an explicit increase in prices is conceptually more precise than a single premium, which does not accurately account for the varying remaining lifetimes of existing facilities nor the impact of the different discount rates used for utilities and industrial firms.

ERA examined a variety of recent fuel price projections, those published by the DOE Energy Information Administration and two widely used private forecasting services—Data Resources, Inc. (DRI) and Wharton Econometric Forecasting Associates (Wharton).

As discussed in the preamble to the proposed cost calculation rule (45 FR 42192–6, June 23, 1980), ERA computed the equivalent premium associated with each forecast for a new industrial facility* and found that these premiums ranged up to $13.75 per barrel. Because of the wide variation in these forecasts of future price behavior, ERA is adopting what it believes to be a reasonably conservative limit of a four dollar per barrel annuity added to the price of petroleum in combination with specific fuel price escalation rates based on the EIA "Medium Scenario" as the most appropriate to FUA implementation at this time.

b. *Natural gas price.* The statutory cost test requires a comparison of the cost of alternate fuel with the cost of imported petroleum and does not specifically mention how natural gas should be treated. The petroleum replacement product for natural gas is generally number 6 residual fuel oil, or in some instances, number 2 distillate. Since number 6 residual fuel oil is the more prevalent replacement product for natural gas and lower in price than number 2 distillate, ERA has priced natural gas equivalent to number 6 residual fuel oil in the final rule. ERA will continue to examine the ramifications of this decision, particularly as it impacts the FUA requirement for powerplants to be off natural gas by 1990.

3. Level of substantially exceeds premium.

The preliminary analysis performed by the Office of Policy and Evaluation discussed earlier estimated that, in the context of varying levels of risk of disruption of oil imports, an appropriate social premium would range from $4 up to $10. This is estimated to be the value that should be associated with reductions in the level of oil imports. However, ERA has no reason to believe that the impact of imposing the full amount of the social premium in addition to the fuel price escalation factor (based on the EIA Medium Scenario) would result in significant additional oil imports savings.

Therefore, in light of the statutory requirements that the cost exemption be granted only if the cost of an alternate fuel substantially exceeds the cost of imported oil, ERA is adopting a conservative premium of $1 per barrel at this time.

[FR Doc. 80-40311 Filed 12-23-80; 8:45 am]

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*A $4 to $10 range would be the appropriate range if there were virtually no oil in strategic storage. A $2 to $6 range would be the appropriate range if there were several billion barrels of oil in strategic storage. At this time, ERA believes that the $4 to $10 range is the more appropriate.

*The premium is equal to an equivalent annuity added to the price of imported petroleum for a facility with a 40 year life and 7.7

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 80-759]

Final Amendments Concerning Director and Officer Management Interlocks

Dated: December 4, 1980

AGENCY: Federal Home Loan Bank Board (Federal Savings and Loan Insurance Corporation).

ACTION: Final amendments.

SUMMARY: These amendments delete Board rules superseded by the Management Official Interlocks Act ("Act"), which prohibits "management officials" from serving as directors, officers or managers of nonaffiliated depository organizations that the Act defines as "in competition." The prohibitions contained in the Act incorporate, and in many cases strengthen, Board rules that concern the composition of an insured institution's board of directors, and that prohibit a salaried officer of an insured institution from serving as a salaried officer of another competing depository organization.

EFFECTIVE DATE: December 4, 1980.

FOR FURTHER INFORMATION, PLEASE CONTACT:
Patricia C. Trask, Attorney, (202) 377-6442, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By resolution No. 80-6 of January 6, 1980 (45 FR 1916; January 9, 1980), the Board proposed deleting certain provisions of its conflicts of interest regulations (12 CFR 563.33) and making other changes initiated by the Management Official Interlocks Act ("Act"). This Act (title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, 12 U.S.C. 3201 *et seq.*, effective March 10, 1979) applies to all depository institutions including banks, savings and loans (and holding companies of both), and credit unions.

Although the public comment period of this proposal closed March 9, 1980, the Board postponed adopton of final amendments while reviewing the impact of other conflict of interest guidelines in 12 CFR 563.33(a)(1) through (a)(4) to determine whether additional amendments would be appropriate. Public comment was specifically requested on the advisability of retaining, amending, or deleting those guidelines.

Public response to the proposal was very light. In addition to comment from the Federal Home Loan Banks, the Board received seven comment letters: four from Federally-chartered associations, two from thrift industry trade groups, and one from a law firm. On the basis of these comments and other information available to the Board, the regulatory amendments are adopted as proposed with one change: the proposed disclosure exemption, being no longer necessary as a result of other amendments, is not adopted. The amendments are discussed below under the heading, "Discussion of Comments and Changes."

Background

A. The Management Official Interlocks Act

The Act prohibits "management officials" from serving as directors, officers or managers of nonaffiliated depository organizations that the Act defines as *per se* in competition. The Act defines the term "management official" broadly to include:

. . . An employee or officer with management functions, a director (including an advisory or honorary director), a trustee of a business organization under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

Section 203 of the Act prohibits management official interlocks between depository organizations located in the same, contiguous or adjacent cities, towns, or villages, as well as between their depository institution affiliates. In addition, management official interlocks between depository organizations, as well as between their depository

institution affiliates, located within the same SMSA, are prohibited if one of the depository organizations has total assets of $20 million or more. Section 204 of the Act prohibits management official interlocks between two large

provisions. Paragraph 563.33(a)(1) suggests that a majority of an association's directors live or work in the association's normal lending territory; paragraphs 563.33(a)(2), (a)(3) and (a)(4) establish guidelines

establishing an independent board of directors. This purpose would, of course, be weakened if salaried employees and officers were too heavily represented on the board. In the absence of substantial justification for changing this provision,

superseded by title II, and is therefore deleting § 563.33 (a)(5) in its entirety.

C. Section 563.33, paragraph (c)

This provision prohibits any salaried officer of an insured institution from also serving as a salaried officer of

provisions of the Management Official Interlocks Act and the need to provide clear direction for insured institutions preparing their annual reports. Therefore, the Board finds that publication of the amendments for the 30-day period specified in 12 CFR 508.14

1632), F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389-4261), Daniel L. Rhoads, Attorney, Board of Governors of the Federal Reserve System (202/452-3711), Rebecca Laird, Senior Associate General Counsel, Federal Home Loan

institution affiliates, located within the same SMSA, are prohibited if one of the depository organizations has total assets of $20 million or more. Section 204 of the Act prohibits management official interlocks between two large depository organizations having assets exceeding $1 billion and $500 million respectively, as well as between their affiliates, regardless of where in the United States the depository organizations are located.

B. Board Conflict of Interest Regulations Section 563.33

Section 563.33 of the Rules and Regulations for Insurance of Accounts (12 CFR 563.33) was adopted by the Board in 1976 as part of the conflict of interest regulations. Generally, § 563.33—

1. delineates guidelines regarding composition of the board of directors of insured institutions;

2. prohibits salaried officers of insured institutions from serving concurrently as salaried officers of other financial institutions; and

3. prohibits employees and officers of insured institutions from working for affiliated persons unless the insured institutions are compensated.

Compliance with the § 563.33(a) guidelines is voluntary, with two exceptions:

1. Institutions insured subsequent to September 30, 1976, the effective date of the regulation, are required to comply with the guidelines as a condition of insurance. Compliance may be enforced through a cease-and-desist order.

2. Institutions insured prior to September 30, 1976, were given the option to agree in writing to comply with the guidelines. Institutions that submitted an agreement to comply were released from any previously established conditions of insurance affecting composition of the institution's board of directors. Compliance, following written receipt of the agreement, is no longer voluntary and may be enforced through a cease-and-desist order.

For all other insured institutions, noncompliance with any of the provisions of the guidelines triggers disclosure as provided for in § 563.45 of the Insurance Regulations.

Discussion of Comments and Changes

A. Section 563.33, paragraphs (a)(1) through (a)(4)

The Board reviewed and evaluated the experience of insured institutions with the conflict of interest guidelines in § 563.33(a)(1) through (a)(4) as well as considered public comment on these provisions. Paragraph 563.33(a)(1) suggests that a majority of an association's directors live or work in the association's normal lending territory; paragraphs 563.33(a)(2), (a)(3) and (a)(4) establish guidelines concerning director service by salaried employees, family members, and attorney from the same law firm. Because the Board believed that compliance with the prohibitions of title II would not substantially increase the burden of conforming with these guidelines, no regulatory amendments to these provisions were proposed.

Most comments addressing these provisions confirmed the Board's assessment, and also recommended that they be retained. One commenter stated:

> . . . These four directives are helpful to associations in designing a well-structured, fairly balanced board of directors. We believe the principles outlined in the remaining guidelines are well founded. Strict adherence to them will assist associations in avoiding any semblance of conflict-of-interest situations insofar as director influence is concerned.

One comment addressed specifically to paragraph (a)(1) suggested that an institution's "normal lending territory" be clarified. Another recommended that this geographic area be limited to the community or communities delineated in the institution's Community Reinvestment Act statement. The Board does not agree that there exists a need for either change, and therefore declines to amend that paragraph at this time. The phrase "normal lending territory" is defined at 12 CFR 561.22(a), as amended by Board Resolution No. 80–700 of November 10, 1980 (45 FR 76095; November 18, 1980), to mean:

> • • • The area (1) within the State in which such institution's principal office is located; (2) within any portion of a circle with a radius of 100 miles from the principal office which is outside of such State; and (3) other territory in which the institution was operating on June 27, 1934.

Three comments on paragraph (a)(2) were received. One argued for expanding the number of salaried officers or employees who may serve as directors from one-third to one-half of the board where the insured institution is a wholly-owned subsidiary of a diversified holding company. The second recommended reducing the percentage to one-fourth for all covered institutions and holding companies. The third comment favored the existing percentage, which was seen as quite liberal.

This guideline's purpose is to provide a check on management operations by establishing an independent board of directors. This purpose would, of course, be weakened if salaried employees and officers were too heavily represented on the board. In the absence of substantial justification for changing this provision, the Board believes it reasonable to allow the one-third limitation to remain unchanged.

B. Section 563.33, paragraph (a)(5)

Paragraph 563.33(a)(5) contains guidelines that: limit the number of directors permitted to interlock, specify the kinds of financial institutions that such directors may serve, and designate positions of compensated service such directors may occupy.

Title II prohibits most of the management interlocks listed in the (a)(5) guidelines. Because the title II prohibitions extend to all "management officials," its prohibitions against interlocking service are far more comprehensive than the (a)(5) guidelines' recommendations, which address only service by directors.

The continued existence of the (a)(5) guidelines after enactment of the Act has generated substantial industry confusion. Because violations of title II can only be remedied by discontinuance of the prohibited interlock, an insured institution fully in compliance with the § 563.33 (a)(5) guidelines may well be in violation of the prohibitions of title II. Conversely, an insured institution in full compliance with title II is not automatically in compliance with the (a)(5) guidelines.

Therefore, on December 21, 1979, by Resolution No. 79–682, the Board amended § 563.45(b)(3)(i) of the Insurance Regulations to provide that an insured institution need not prepare an Annual Report Form for the audit period preceding its 1980 annual meeting if the sole trigger for disclosure is the institution's noncompliance with the guidelines set forth in § 563.33(a)(5). The amendment in § 563.45 (b)(3)(i) allows management officials whose service is grandfathered under section 206 of the Act to continue to serve the insured institution even though that continued service results in the institution's noncompliance with the (a)(5) guidelines. In adopting the amendment to § 563.45(b)(3)(i), the Board indicated that the one year extension for compliance would allow adequate time to revise or delete guidelines determined to have been superseded by the Act.

After carefully considering the interrelationship of the Act's prohibitions and the guidelines, as well as public comment, which unanimously supported deletion, the Board believes that the (a)(5) guidelines have been superseded by title II, and is therefore deleting § 563.33 (a)(5) in its entirety.

C. Section 563.33, paragraph (c)

This provision prohibits any salaried officer of an insured institution from also serving as a salaried officer of another nonaffiliated financial institution after the insured institution's 1978 annual meeting if the other financial institution or any holding company affiliate financial institution has an office either (1) within the same county or SMSA as the insured institution, or (2) within any county or SMSA from which the insured institution receives more than $5 million or 5% of its savings accounts.

The Board believes that deletion of § 563.33(c) is warranted because of its limited usefulness, and because title II reflects a Congressional determination that only the listed restrictions, which do not include a rule similar to § 563.33(c), are needed to preclude salaried officers of insured institutions from serving as officers of other competing depository organizations. It would therefore be consistent with Congressional intent to delete § 563.33(c). Public comment also supports this deletion.

D. Section 563.45, subparagraph (b)(3)

The Board is not adding new subdivision (ii) to § 563.45(b)(3) as proposed. Because it is sometimes necessary to shore up the management of problem institutions with expertise from well-managed institutions, the Board has occasionally found it necessary to request management officials serving on the boards of other competing depository institutions to serve on the board of a problem insured institution located in the same community. The resulting interlocking arrangement may, however, violate the § 563.33 guidelines subjecting the problem institution and, in some cases, the beneficiary institution, to disclosure.

The proposed amendment to paragraph 563.45(b)(3) would have provided an exemption from the requirement that interlocking relationships be disclosed in an insured institution's annual report as a result of noncompliance with the guidelines set forth in paragraph 563.33(a). However, since subparagraph (a)(5) and paragraph (c) of § 563.33 have been deleted, interlocking relationships are no longer encompassed by that section, and, as a result, supervisory exemption from disclosure is obviated.

The Board believes that it is in the public interest to adopt these amendments to be effective immediately in recognition of the superseding provisions of the Management Official Interlocks Act and the need to provide clear direction for insured institutions preparing their annual reports. Therefore, the Board finds that publication of the amendments for the 30-day period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date is unnecessary and not in the public interest.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below, effective December 4, 1980.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

§ 563.33 [Amended]

1. Amend § 563.33 by removing paragraph (a)(5) and paragraph (c), and by redesignating paragraph (d) as paragraph (c).

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1435a, 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., 1071)

By the Federal Home Loan Bank Board.

Robert D. Linder,
Acting Secretary.

[FR Doc. 80-40154 Filed 12-23-80; 8:45 am]

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DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

12 CFR Part 1204

[Docket No. D-0014]

Interest in Deposits; Penalty for Early Withdrawals of IRA/Keogh Time Deposit Funds

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Final rule.

SUMMARY: The Depository Institutions Deregulation Committee ("Committee") has adopted a rule providing that where a time deposit held in an Individual Retirement Account ("IRA") or Keogh (H.R. 10) plan is paid before maturity within seven days of the establishment of the IRA or Keogh plan, the minimum required early withdrawal penalty is the forfeiture only of the interest earned on the time deposit.

EFFECTIVE DATE: December 15, 1980.

FOR FURTHER INFORMATION CONTACT: Debra A. Chong, Attorney, Office of the Comptroller of the Currency (202/447–1632), F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389–4261), Daniel L. Rhoads, Attorney, Board of Governors of the Federal Reserve System (202/452–3711), Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377–6446), Allan Schott, Attorney-Advisor, Treasury Department (202/566–6798), or Anthony F. Cole, Deputy General Counsel, Depository Institutions Deregulation Committee (202/452–3612).

SUPPLEMENTARY INFORMATION:

Effective June 2, 1980, the Committee revised the penalty required to be imposed by depository institutions (federally insured commercial banks, mutual savings banks, and savings and loan associations) on withdrawals of time deposit funds prior to maturity (12 CFR 1204.103, 45 FR 37801). Under the revised rule, where a time deposit with an original maturity of less than three months, or any portion thereof, is paid before maturity, the minimum required penalty is a forfeiture of an amount equal to the amount of interest that could have been earned on the funds withdrawn at the nominal rate of interest being paid on the deposit had the funds remained on deposit until maturity. Where funds are withdrawn prior to maturity from a time deposit with an original maturity of three months to one year or from a time deposit with an original maturity of more than one year, the minimum required penalty is, respectively, a forfeiture of an amount at least equal to three months or six months of interest earned, or that could have been earned, on the funds withdrawn at the nominal rate of interest being paid on the deposit regardless of the length of time the funds withdrawn have remained on deposit.

Questions have been raised by a number of depository institutions concerning a conflict between the penalty rule and Internal Revenue Service ("IRS") regulations regarding IRAs. The penalty rule requires a reduction or invasion of principal where time deposit funds are withdrawn in the early months after the date of deposit. IRS regulations, however, provide that if specified required disclosure statements are not given to an IRA depositor seven days before the IRA is established, the depositor must be given the right to revoke the IRA within seven days of its establishment. The regulations further provide that if the depositor exercises the right of revocation, he or she must be refunded the entire amount of the consideration paid for the IRA (26 CFR 1.408–1(d)(4)(ii)(A) (1) and (2) and (iii)(B)(14)).

Many depository institutions provide the required disclosure statement to depositors at the time the IRA is initially established and the funds are invested in a time deposit. In such circumstances, insured commercial banks, savings and loan associations, and mutual savings banks, effective December 15, 1980, the Committee amends Part 1204 (Interest on Deposits) by adding § 1204.113 as

that may be raised through the continued use of finders fees is limited to 85 percent of the amount of domestic small-denomination time and savings deposits on which finders fees had been

small-denomination time and savings deposits over the ten-quarter period ending June 30, 1980. The base for the phaseout is the amount of domestic small-denomination time and savings

§ 1204.114 Phaseout of finders fees.

(a) Notwithstanding the provisions of 12 CFR § 1204.110, during the period from December 31, 1980 through June 30, 1982 (the "phaseout period"), any fee

utilize as finders fees any merchandise it owned on December 1, 1980.

(4) Any advertisement, announcement or solicitation concerning the continued availability of finders fees during the

Many depository institutions provide the required disclosure statement to depositors at the time the IRA is initially established and the funds are invested in a time deposit. In such circumstances, if the depository subsequently decides to revoke the IRA within seven days and withdraws the time deposit funds, the institution is required under the current early withdrawal penalty rule to impose a penalty that will result in a forfeiture of principal. Invading principal, however, conflicts with the IRS provisions requiring that a depositor be refunded the entire amount of the consideration paid for the account under such circumstances. Although there is no conflict if the depository institution provides the disclosure statement seven days before the IRA is opened, for reasons of customer and administrative convenience many institutions choose to provide the disclosure simultaneously with the opening of the account.

In order to facilitate the administration and offering of retirement accounts, the Committee has adopted a rule eliminating the conflict between the current penalty rule and IRS regulations regarding IRAs. Although the conflicting IRS provisions do not apply to Keogh (H.R. 10) plans, in the interest of administrative simplicity, the rule also will apply to Keogh (H.R. 10) plans. Under this rule, where a time deposit held in an IRA or Keogh (H.R. 10) plan is withdrawn before maturity within seven days of the establishment of the IRA or Keogh, the minimum required early withdrawal penalty is the forfeiture of the interest earned on the time deposit, and no invasion of principal is required as under the current rule. Early withdrawals of IRA or Keogh time deposits made more than seven days after the opening of the IRA or Keogh will continue to be subject to the current early withdrawal penalty rule.

This action was taken by the Committee in view of the adverse effect on depository institutions and retirement savers occasioned by the conflict between the early withdrawal penalty rule and IRS regulations. In view of these considerations, and because this amendment relieves a restriction, the Committee finds that application of the notice and public participation provisions of 5 U.S.C. 553 to this action would be contrary to the public interest and that good cause exists for making this action effective in less than 30 days.

Pursuant to its authority under Title II of Public Law 96-221, 94 Stat. 142 (12 U.S.C. 3501 *et seq.*), to prescribe rules governing the payment of interest and dividends on deposits of federally insured commercial banks, savings and loan associations, and mutual savings banks, effective December 15, 1980, the Committee amends Part 1204 (Interest on Deposits) by adding § 1204.113 as follows:

PART 1204—INTEREST ON DEPOSITS

. . . . .

§ 1204.113 Early Withdrawal of IRA and Keogh (H.R. 10) Plan Time Deposits.

Notwithstanding the provisions of 12 CFR 1204.103, where a time deposit, or any portion thereof, held in an Individual Retirement Account established in accordance with 26 U.S.C. 408 is paid before maturity within seven days after the establishment of the Individual Retirement Account pursuant to the provisions of 26 CFR 1.408-(1)(d)(4), or where a time deposit, or any portion thereof, held in a Keogh (H.R. 10) plan established in accordance with 26 U.S.C. 401 is paid before maturity within seven days after the establishment of the Keogh (H.R. 10) plan, a depositor shall forfeit an amount at least equal to the interest earned on the amount withdrawn at the nominal (simple interest) rate being paid on the deposit.

By order of the Committee, December 18, 1980.

Normand R. V. Bernard,
Executive Secretary of the Committee.

[FR Doc. 80-40062 Filed 12-23-80; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 1204

[Docket No. D-0012]

Interest on Deposit; Phaseout of Finders Fees

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Final rule.

SUMMARY: The Depository Institutions Deregulation Committee ("Committee") has adopted a final rule permitting a phaseout of finders fee programs over an 18-month period for those depository institutions that can demonstrate that finders fees accounted, on average, for 25 percent or more of their outstanding domestic small-denomination time and savings deposits over the ten-quarter period ending June 30, 1980. The base for the phaseout is the amount of domestic small-denomination time and savings deposits outstanding on June 30, 1980, on which finders fees had been paid. This based amount may not be exceeded during the phaseout period. The maximum amount of small-denomination time and savings deposits that may be raised through the continued use of finders fees is limited to 85 percent of the amount of domestic small-denomination time and savings deposits on which finders fees had been paid maturing in the semi-annual period ending June 30, 1981, and 60 percent and 40 per cent of the amount of such deposits maturing in the semi-annual periods ending December 31, 1981 and June 30, 1982, respectively.

EFFECTIVE DATE: December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Debra A. Chong, Attorney, Office of the Comptroller of the Currency (202/447-1632), F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389-4261), Daniel L. Rhoads, Attorney, Board of Governors of the Federal Reserve System (202/452-3711), Allan Schott, Attorney-Advisor, Treasury Department (202/566-6798), Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377-6446), or Anthony F. Cole, Deputy General Counsel, Depository Institutions Deregulation Committee (202/452-3612).

SUPPLEMENTARY INFORMATION: At its September 9 meeting, the Committee adopted a rule, effective December 31, 1980, defining finders fees (fees paid to a person who introduces a depositor to an institution) as a payment of interest to the depositor for purposes of determining compliance with interest rate ceilings limitations (45 FR 68641). This action was taken in view of the increased use of finders fees and the consideration that finders fees, in some cases, may be used to circumvent interest rate ceilings. In taking this action, the Committee was aware that some institutions may have relied extensively on the use of finders fees to attract or retain deposits and that immediate application of the rule on December 31, 1980, could cause hardship for such institutions. Accordingly, the Committee requested public comment on a proposal to provide a two-year phaseout of finders fee programs for those institutions that could demonstrate that finders fees had accounted, on average, for 25 percent or more of their outstanding domestic small-denomination time and savings deposits over the ten-quarter period ending June 30, 1980.

After consideration of the more than 80 comments received on the proposal (73 opposed, 5 in favor), the Committee has adopted a final rule permitting a phaseout of finders fee programs over an 18-month period for those institutions that can demonstrate that finders fees accounted, on average, for 25 per cent or more of their outstanding domestic small-denomination time and savings deposits over the ten-quarter period ending June 30, 1980. The base for the phaseout is the amount of domestic small-denomination time and savings deposits outstanding on June 30, 1980, on which finders fees had been paid. This base amount may not be exceeded during the phaseout period. The maximum amount of small-denomination time and savings deposits that may be raised through the continued use of finders fees is limited to 85 per cent of the amount of domestic small-denomination time and savings deposits on which finders fees had been paid maturing in the semi-annual period ending June 30, 1981, 60 per cent of the amount of such deposits maturing in the semi-annual period ending December 31, 1981, and 40 per cent of the amount of such deposits maturing in the semi-annual period ending June 30, 1982. Any maturing domestic small-denomination time deposit on which a finders fee had been paid and that is renewed, whether or not a finders fee is paid upon renewal, must be included in the amount of deposits obtained through the use of finders fees for purposes of determining compliance with the above percentage limitations.

Under the rule, an institution will be required to obtain advance certification from its primary federal supervisor that it satisfies the eligibility criteria necessary to qualify for the phaseout. In addition, all finders fees must be paid in cash, except that an institution may utilize as finders fees any merchandise it owned on December 1, 1980. In order to minimize any potential adverse effect on competing depository institutions during the phaseout of finders fees, a qualifying institution will not be permitted to advertise the continued availability of finders fees by television, radio, or other mass media of general circulation (such as newspapers and magazines). However, direct contact with depositors or former sponsors of depositors or display or distribution of promotional materials in an institution's offices will be permitted.

Pursuant to its authority under Title II of Public Law 96-221, 94 Stat. 142 (12 U.S.C. 3501 *et seq.*), to prescribe rules governing the payment of interest and dividends on deposits of federally insured commercial banks, savings and loan associations, and mutual savings banks, effective December 31, 1980, the Committee amends Part 1204 (Interest on Deposits) by adding § 1201.114 as follows:

PART 1204—INTEREST ON DEPOSITS

. . . . .

§ 1204.114 Phaseout of finders fees.

(a) Notwithstanding the provisions of 12 CFR § 1204.110, during the period from December 31, 1980 through June 30, 1982 (the "phaseout period"), any fee paid by a qualifying depository institution to a person who introduces a depositor to the institution (a "finders fee") shall not be regarded as a payment of interest to the depositor for purposes of determining compliance with interest rate ceilings, if the institution complies with all of the requirements set forth in subsection (b). For purposes of this section, a qualifying depository institution is a depository institution that has been certified by its primary federal supervisor to have demonstrated that finders fees have accounted for 25 per cent or more of its outstanding domestic small-denomination (under $100,000) time and savings deposits, on average, over the ten-calendar quarter period ending June 30, 1980.

(b) A qualifying depository institution must comply with all of the following requirements to be eligible for the phaseout granted under subsection (a) of this section:

(1) During the phaseout period, the maximum amount of small-denomination (under $100,000) time and savings deposits that may be raised through the use of finders fees may not exceed 85 per cent of the amount of domestic small-denomination (under $100,000) time and savings deposits on which finders fees had been paid that mature in the semi-annual period ending June 30, 1981, 60 per cent of the amount of such deposits that mature in the semi-annual period ending December 31, 1981, and 40 per cent of the amount of such deposits that mature in the semi-annual period ending June 30, 1982. Provided, however, that during the phaseout period, the amount of small-denomination (under $100,000) time and savings deposits on which finders fees are paid may not exceed the amount of domestic small-denomination (under $100,000) time and savings deposits outstanding on June 30, 1980 on which finders fees had been paid.

(2) Any maturing domestic small-denomination (under $100,000) deposit on which a finders fee had been paid and that is renewed, whether automatically or otherwise, whether or not a finders fee is paid upon renewal, must be included in the amount of deposits raised through the use of finders fees for the purpose of determining compliance with the above per cent limitations.

(3) All finders fees must be paid in cash, except that an institution may utilize as finders fees any merchandise it owned on December 1, 1980.

(4) Any advertisement, announcement or solicitation concerning the continued availability of finders fees during the phaseout period by an institution shall be limited to contacting directly the institution's depositors or former sponsors of depositors or to displaying or distributing promotional materials in an institution's offices. During the phaseout period, an institution shall not advertise the continued availability of finders fees by television, radio, billboards or other mass media of general circulation (such as newspapers, magazines).

By order of the Committee, December 18, 1980.

Normand R. V. Bernard,
Executive Secretary of the Committee.

[FR Doc. 80-40059 Filed 12-23-80 8:45 am]

BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 298

[Docket No. 33314; ER 1123A]

Classification and Exemption of Air Taxi Operators

December 18, 1980.

AGENCY: Civil Aeronautics Board.

ACTION: Affirmation of interim rule.

SUMMARY: The CAB is affirming an interim rule increasing the maximum capacity of aircraft permitted for use by air taxi operators from 30 to 60 seats. The change is made at the Board's own initiative.

The affirmation is adopted on December 18, 1980 although the rule was effective May 17, 1979.

FOR FURTHER INFORMATION CONTACT: Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: On September 6, 1978, the Board issued a notice of proposed rulemaking (EDR-361, 43 FR 39587, September 6, 1978), increasing the size of aircraft permitted for use by air taxi operators from 30 to 60 seats. Congress then passed the Airline Deregulation Act of 1978, Pub. L. 85-726, October 24, 1978. Section 416 of that Act provides a statutory exemption from certification for air carriers operating aircraft with less than 56 rather than 60 seats as provided in the Notice of Proposed Rulemaking (NPRM). Although the statutory limitation was passed after the NPRM, the Deregulation Act gave the Board power to increase

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the size limit if required in the public interest.

The Board issued a rule (ER-1123, 44 FR 30080, May 24, 1979), raising the seat limitation to 60 seats as proposed in

narrow issue, the Board affirms the final rule raising the capacity of aircraft permitted for use by air taxi operators to 60 seats.

(Secs. 204(a) and 416(b), Pub. L. 85-726, as

maintain service beyond the intended termination date. The Board has the authority under section 419 of the Act to compel carriers to maintain their service at a community.

The Board also proposed to require a

United stated that all new scheduled flights would have to be given distinct flight numbers to avoid duplication with those that it proposed to terminate. It would have to continually update its computer reservation system as the

would be most likely to create confusion.

We do not consider this rule, as modified, to be beyond our statutory authority, in conflict with section 401(e)(4) of the Act, or contrary to the

§ 234.5, requires carriers' published schedules to conform to the schedule filed with the Board. This obligation remains unchanged. A carrier will have to continue to list some flights that it is proposing to terminate in its Part 231

the size limit if required in the public interest.

The Board issued a rule (ER–1123, 44 FR 30080, May 24, 1979), raising the seat limitation to 60 seats as proposed in EDR–361, accompanied by a request for comments (EDR–380, 44 FR 30080, May 24, 1979), in light of the Deregulation Act provision. The rule was effective May 17, 1979. The Board reasoned that the 60-seat limitation was preferable to a 56-seat limitation because the former would include the Nihon YS–11 aircraft and other aircraft that might be developed to efficiently serve small and medium-sized communities. As pointed out in ER–1123, there is a natural gap between 60-seat or smaller aircraft and the jet aircraft operated by most certificated carriers.

Comments were submitted by the Consumer Airline Association of America (the "CAAA"), Hawaiian Airlines and DHL Airlines. The CAAA fully supported the 60-seat limitation for the reasons set forth in ER–1123. Hawaiian Airlines argued that commuter carriers with over 30 seats should not be exempt from the regulations relating to baggage liability and denied boarding compensation on the grounds that is is inequitable to require certificated carriers to comply with the consumer-protection provisions while granting an exemption to commuter carriers operating comparable aircraft. In addition, it argued that air taxi passengers should be given the same protections and benefits provided to certificated carriers passengers. DHL Airlines and the CAAA filed comments vigorously opposing Hawaiian's arguments. The CAAA alleged that Hawaiian Airlines set forth no facts showing that Hawaiian has been or could be affected by the rule. DHL Airlines argued that the current exemption does not give commuter carriers any competitive advantage over certificated carriers. However, the 60-seat limitation aids consumers, because DHL can offer lower fares to passengers willing to accept non-jet service with fewer consumer protections.

ER–1123 continues the exemption of all air taxis from the denied boarding compensation and baggage liability rules. Although the Board is investigating the costs and benefits of the current rule and possible alternatives, the current exemption remains in effect for the reasons stated in ER–1123. In requesting comments, the Board was primarily concerned with whether the public interest required the Board to raise the 56-seat ceiling for air taxis to 60 seats. Because no adverse comments have been received on that narrow issue, the Board affirms the final rule raising the capacity of aircraft permitted for use by air taxi operators to 60 seats.

(Secs. 204(a) and 416(b), Pub. L. 85–726, as amended, 72 Stat. 743, 771; 49 U.S.C. 1324, 1386)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–40199 Filed 12–23–80; 8:45 am]

BILLING CODE 6320–01–M

14 CFR Part 323

[Regulation PR–228; Procedural Regulations Amendment No. 4 to Part 323; Docket: 37905]

Terminations, Suspensions, and Reductions of Service

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is amending its rules to require airlines to maintain schedule listings of some flights for which a termination or suspension notice has been filed, until discontinuance is permitted by the Board. The CAB is also limiting the effectiveness of a termination notice to 90 days after the intended date stated in that notice, except when the carrier is required to serve longer by the Board.

DATES:

Adopted: December 18, 1980.

Effective: Section 323.16 becomes effective on January 23, 1981. Section 323.17 is effective December 18, 1980.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428; (202) 673–5442.

SUPPLEMENTARY INFORMATION: By PDR–70, 45 FR 20116, March 27, 1980, the Board proposed to add two new sections to 14 CFR Part 323, its rule governing notices that airlines must file prior to terminating, suspending, or reducing air service at a community. It proposed to require carriers to continue to list in the Official Airline Guide, and other published schedules, flights for which a termination notice has been filed. The flight would have to be listed until the Board decided not to require the carrier to continue the service, although notice could be added indicating that the flight may be discontinued subject to government approval. This requirement would ensure that the affected community would not be "erased from the airline map" and that the public would have schedule information in the event the Board required the carrier to maintain service beyond the intended termination date. The Board has the authority under section 419 of the Act to compel carriers to maintain their service at a community.

The Board also proposed to require a carrier that does not discontinue service within 60 days of the date stated in its notice, or within 60 days after the Board permits the discontinuance, to file a new notice before any later discontinuance. The Board felt that the effectiveness of a termination notice should be limited to 60 days after the ending date projected in the notice, so that the Board and other carriers could keep abreast of "real" levels of service, and the public would not be surprised by a sudden cessation of that service.

No commenter objected to the second proposal. Eastern did suggest that carriers be allowed 90 days to suspend a flight for which they gave a 90-day notice. It stated that this would avoid the possibility that a carrier would have to file a new 90-day notice before the expiration of the original 90-day notice period. We have decided to accede to Eastern's request and, further, to apply the 90-day period to 60-day and 30-day notices as well. We have decided that a 90-day period will not undermine the public's reliance on those notices in planning for changes in service. Delays longer than 90 days in carrying out the proposed suspension will require the filing of a new notice. New notices will be subject to the same procedures as the original ones.

The Airline Passenger Association was the only commenter in complete agreement with the first proposal. The others (Piedmont, American, Delta, Eastern, Frontier, Pacific Southwest Airlines, Trans World Airlines, United, USAir, and Ozark) either opposed it altogether or sought some modifications.

Frontier questioned the Board's statutory authority to adopt a rule requiring carriers to maintain their schedule listings. United contended that it would violate the spirit of deregulation to impose additional procedures, beyond those required by the Act on carriers wishing to leave a market. United viewed this as contrary to the free-exit provisions of the Act. Transamerica suggested that the rule may conflict with section 401(e)(4) of the Act, which forbids the Board from imposing certificate restrictions that restrict a carrier's scheduling.

Several airlines foresaw problems if the rule were adopted. They were concerned that it would increase public confusion, add to the complexity of the OAG, increase carrier costs, and impose a burden on carriers because of the large number of flights affected.

United stated that all new scheduled flights would have to be given distinct flight numbers to avoid duplication with those that it proposed to terminate. It would have to continually update its computer reservation system as the proposed deletion were approved, and convey this additional information to reservation agents. United also claimed that the continued schedule listing would prompt more people to make reservations on soon-to-be-cancelled flights and thus require it to re-ticket and provide explanations to many more passengers. Similar concerns were expressed by other commenters. According to United, these added responsibilities would require thousands of additional man-hours and, together with the added publication costs, would amount to several hundred thousand dollars in compliance costs without furthering the provision of essential service at the communities affected.

In the carriers' view, this rule would cause public confusion because a requirement to continue schedule listings might give the public false impression that a particular carrier was serving a point after the Board had allowed that carrier to terminate service there. This would occur when a carrier learned that it could terminate service after its new schedule has been published or submitted to the OAG.

Finally, United stated that conforming amendments to Parts 231 and 234 of the Board's rules would be necessary if this proposal were adopted.

After reviewing these comments, the Board has decided to adopt the rule, but to narrow its scope. Sixty-day notices for suspensions of the last nonstop or single-plane service in a market (§ 323.3(b)) will not be covered by this rule. Also, 90-day notices must be filed by an airline wishing to terminate all its service at a multi-carrier point (§ 323.3(a)(1)) will not be covered by this rule. Schedule listings for these flights will not have to be maintained at the end of the notice period. This should significantly reduce the compliance burden of carriers and the impact on their costs. Since fewer flights will be affected, the OAG should not become noticeably more complex.

Instead, the rule will apply only to 90-day notices (30 days for commuters) that are filed when a carrier intends to reduce service to a point below the essential level. The Board is required by section 419 of the Act to prohibit these terminations or reductions until replacement service is found. Thus, these are the flights that are most likely to be continued after the intended termination date and for which deletion from the OAG or other schedule listing would be most likely to create confusion.

We do not consider this rule, as modified, to be beyond our statutory authority, in conflict with section 401(e)(4) of the Act, or contrary to the spirit of deregulation. The Deregulation Act (Pub. L. 95–504) provides, as a general rule, that an airline may leave a community that it does not wish to serve. It includes, however, an exception to that rule, section 419, that requires the Board to prohibit an airline from exiting a community if its departure would leave that community without at least essential air service. The Board has discretion in its administration of the essential service program. We find that requiring airlines to maintain some schedule listings is important to the implementation of this program. This rule will ensure that the public is aware that there is still air service to the community that is the subject of the notice. Failure to ensure this would to some extent cut off that community from the national air transportation system, contrary to section 419(f) of the Act.

We do not view section 401(e)(4) of the Act to be a bar to the adoption of this rule. That provision does not apply to a requirement that carriers maintain some schedule listings. Section 401(e)(4) prohibits the Board from imposing certificate conditions that restrict an air carrier from adding to or changing its schedule. The rule adopted here will not require an airline to offer a flight at any particular time. It merely requires a carrier to continue to list some flights that it offers until the Board permits their termination.

We do not agree that this rule would increase public confusion, it is possible, as some commenters claimed, that a carrier will be listed as serving a point after the Board has allowed it to terminate service there. This would occur only if a replacement carrier had instituted service after the publication deadline for the schedule listing. While this may create some confusion, it will be less than that caused under the current system, where the former carrier may withdraw its listing and leave no carrier listed as serving the point even though there is new air service from a replacement carrier. The absence of any listing may lead potential passengers to conclude that the point is without air service. Under this rule, potential passengers will now have the information needed to contact the former carrier, who can direct them to its replacement.

We also do not agree that this rule calls for a change in Parts 231 or 234. Part 231 requires carriers to file their schedules with the Board. Part 234, § 234.5, requires carriers' published schedules to conform to the schedule filed with the Board. This obligation remains unchanged. A carrier will have to continue to list some flights that it is proposing to terminate in its Part 231 schedule until the Board allows it to end that service. As with other schedule listings, the carrier may place an asterisk next to the flight with a notice stating that it will be terminated subject to government approval.

Since carriers could partially avoid the requirements of this rule by filing several notices immediately, the Board finds good cause to make § 323.17 (limiting the effectiveness of notices to 90 days) effective immediately. Section 323.16 (requiring the maintenance of some schedule listings) will apply to those notices filed after January 23, 1981.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 323, *Terminations, Suspensions, and Reductions of Service*, as follows:

Part 323—Terminations, suspensions, and reduction of service

1. The authority for Part 323 is revised to read:

Authority: Secs. 204, 401, 411, 416, 419, Pub. L. 85–726, as amended, 72 Stat. 743, 754, 769, 771, 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1381, 1386, 1389.

2. The table of contents is amended by adding two new sections, to read:

Sec.

. . . . .

323.16—Listings in schedule publications.
323.17—Delays in discontinuing service.

3. New §§ 323.16 and 323.17 are added, to read:

§ 323.16 Listings in schedule publications.

Each air carrier filing a notice under paragraphs (a)(2), (a)(3), (a)(4), or (c) of § 323.3 shall continue to list the affected flights in all generally-distributed schedule publications in which the flight was listed before the notice. The listings shall continue until the Board permits the flights to be discontinued. The listings may include a notice stating that the flights are "to be discontinued as of (date) subject to government approval."

§ 323.17 Delays in discontinuing service.

If transportation that is the subject of a notice under this part is not discontinued within 90 days of the intended date stated in the notice, a new notice must be filed before the service may be discontinued. However, if the Board requires the carrier to provide service beyond the stated date, the carrier need not file a new notice if it discontinues the service within 90 days after the Board permits it to do so.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–40197 Filed 12–23–80; 8:45 am]

BILLING CODE 6320–01–M

uniform application form for associated persons by 46 states, all national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD").[3]

disqualifications.[9] Furthermore, certain revisions to the form were necessary so that it would continue to be accepted as a uniform form by the states and the self-regulatory organizations.[10]

information regarding the self-regulatory organizations and jurisdictions with which the associated person is to be registered and the identity of the prospective employer. It also indicates

DEPARTMENT OF THE TREASURY
Customs Service

19 CFR Part 162

[T.D. 81–1]

further held that the interest of the Government in enforcement does not outweigh the possibility of wrongful forfeiture due to lack of opportunity for a hearing. The existence of voluntary remission or mitigation procedures on

V 45 D E 2 4 8 0 UMI

By the Civil Aeronautics Board:
Phyllis T. Kaylor,
Secretary.
[FR Doc. 80-40197 Filed 12-23-80; 8:45 am]
BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34-17388]

Form U-4, The Uniform Application for Securities Industry Registration

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of revised Form U-4.

SUMMARY: The Commission is adopting revised Form U-4, the Uniform Application for Securities Industry Registration, which was developed and submitted to the Commission by an ad hoc committee of the North American Securities Administrators Association ("NASAA," the organization of state securities administrators). The revised form will, among other things, reflect the provisions of the Securities Acts Amendments of 1975 (the "1975 Amendments").

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. York, Division of Market Regulation, Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C. 20549, (202) 272-2376.

SUPPLEMENTARY INFORMATION: The Commission solicited comments to the proposed revisions of Form U-4 in Securities Exchange Act Release No. 16977 (July 10, 1980).[1] This action adopts the revised form, essentially as proposed, with minor modifications made in response to comments on the proposal.

Background

Form U-4, the Uniform Application for Securities Industry Registration,[2] is the personnel form which the Commission requires to be filed by a registered broker or dealer who is not a member of a registered national securities association, on behalf of associated persons of such broker or dealer. The present Form U-4 is also accepted as a uniform application form for associated persons by 46 states, all national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD").[3]

The form was developed by an ad hoc committee of the North American Securities Administrators Association ("NASAA," the organization of state securities administrators) which included representatives from the Commission, the NASD, the New York Stock Exchange, Inc., ("NYSE"), and other self-regulatory organizations. It was adopted in its present format in 1975.[4]

The form was adopted prior to the enactment of the Securities Acts Amendments of 1975 (the "1975 Amendments") and therefore did not reflect fully and accurately the provisions of Section 3(a)(39) (D) and (E)[5] and Section 15(b)(4)(A)[6] of the amended Securities Exchange Act of 1934 (the "Act"). Section 3(a)(39) of the Act designates five categories wherein a person is subject to a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization.[7] Section 15(b)(4) of the Act indicates the type of conduct for which the Commission may impose limitations upon a broker or dealer and persons associated with a broker or dealer.[8]

Therefore, the NASAA ad hoc committee reconvened to consider the necessary revisions of the form. In addition to reflecting the 1975 Amendments it was apparent that certain other revisions of Form U-4, both in format and substance, were appropriate. For example, the committee decided to solicit additional data from the applicant so that the form could be used as a basis for completing Item 10(a) of Form BD relating to statutory disqualifications.[9] Furthermore, certain revisions to the form were necessary so that it would continue to be accepted as a uniform form by the states and the self-regulatory organizations.[10]

The NASAA ad hoc committee completed its work on Form U-4 in February 1980 and submitted the revised form to the NASAA Uniformity Committee in April 1980. Subsequently, the Uniformity Committee requested comments from the NASAA membership concerning the revised form.

In addition to the comments of the NASAA membership, the NASAA Uniformity Committee sought public reaction to the revised form prior to adoption by the Board of Directors. Accordingly, the Commission published for comment the proposed revisions of Form U-4 in Securities Exchange Act Release No. 16977 (July 10, 1980).

The NASAA ad hoc committee met in September 1980 to consider the comments received by NASAA and the Commission concerning the revised form. The majority of the comments supported the revised form. However, the committee decided to make the following changes to the previously proposed form: 1) the name of the form has been changed (see footnote 2); 2) the certification clauses on page 4 have been rewritten for improved clarity; and 3) the form has been adapted for computer use. Subsequently, the NASAA Board of Directors adopted the form as amended and recommended by the advisory committee. The Commission has also reviewed the public comments and concurs with the actions of the ad hoc committee. As a result, the Commission adopts the revised Form U-4.

II. The Revised Form U-4

The overall structure of the revised form is similar to the old form. The first part of the form is to be completed by both the applicant and the broker or dealer with which the applicant will be associated. It contains general

[1] 45 FR 47853 (July 17, 1980); 20 SEC Docket 640.

[2] 17 CFR 249.502. Formerly, the Uniform Application for Securities and Commodities Industry Registration. Because the commodities industry does not use Form U-4, reference to that industry has been omitted from the name of the form.

[3] In regard to representatives associated with brokers or dealers, the term "application" is somewhat inappropriate since, unless a disqualifying condition exists or the requisite examination requirements is not met, acceptance of the form for filing automatically qualifies the individual.

[4] Securities Exchange Act Release No. 11424 (May 16, 1975), 7 SEC Docket 2.

[5] 15 U.S.C. 78c (1976).

[6] 15 U.S.C. 78o (1976).

[7] The substance of Section 3(a)(39) (D) and (E) of the Act is reflected in questions 26B and 29B of the revised Form U-4.

[8] The substance of Section 15(b)(4)(A) of the Act is reflected in questions 28A of the revised Form U-4.

[9] An affirmative answer to those questions on Form U-4 relating to statutory disqualifications will alert a broker or dealer that Item 10(a) of Form BD must be amended to reflect this information.

[10] During its April 1980 meeting, the NASAA membership approved the implementation of a Central Registratinn Depository ("CRD"), to be activated on January 1, 1981. The initial focus of the CRD is a consolidated nationwide system for registering securities agents. Therefore, Form U-4 is essential to the orderly development of the CRD program.

information regarding the self-regulatory organizations and jurisdictions with which the associated person is to be registered and the identity of the prospective employer. It also indicates the capacity in which the applicant will be employed and whether or not he or she has passed an examination for registration or been granted a waiver or qualified for an exemption.

The second part of the form, to be completed by the applicant, contains information concerning the person's personal and educational background and business associations; a series of questions concerning any disciplinary proceedings or court actions brought against such person; and information about criminal convictions. The form also requires various certifications by both the broker or dealer and the applicant.

Several changes in format have been made in order to improve clarity and eliminate duplicative information. As noted above, new questions have been added in order to include information required by the 1975 Amendments and Item 10(a) of Form BD. The revised Form U-4 continues to request the information required by Rule 17a-3(a)(12) and therefore may be used by a broker or dealer to satisfy the record retention requirements imposed by that rule.[11]

Accordingly, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations by revising § 249.502.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

§ 249.502 Form U-4, personnel form, to be filed by registered brokers or dealers not members of a registered national securities association, for associated persons of such brokers or dealers.

Copies of the revised form have been filed with the Office of the Federal Register as part of the original document. Copies may be obtained from the Office of Publications, 500 North Capitol Street NW., Washington, D.C. 20549.

By the Commission.

George A. Fitzsimmons,
Secretary.
[FR Doc. 80-40087 Filed 12-23-80; 8:45 am]
BILLING CODE 8010-01-M

[11] 17 CFR § 240.17a-3(a) (12). Rule 17a-3(a)(12) requires an associated person to complete a questionnaire or application for employment to be approved by the member, broker or dealer. The information required by Rule 17a-3(a) (12) is covered in the background section and several of the questions of Form U-4. *See, e.g.*, questions 27F and 28C of the revised form

DEPARTMENT OF THE TREASURY
Customs Service

19 CFR Part 162

[T.D. 81-1]

Recordkeeping, Inspection, Search, and Seizure; Waiver of Bond Requirement for Property Seized in Violation of Customs Laws Because of Inability To Post Bond

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to allow the district director of Customs, upon satisfactory proof of a person's financial inability to post bond, to waive the requirement for a bond if that person's property, valued not in excess of $10,000, was seized in violation of the Customs laws. The bond requirement has been held unconstitutional because it may deprive the person whose property has been seized of an opportunity for a judicial hearing to determine liability solely because of inability to post a bond.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Joseph Priddy, Entry, Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5746).

SUPPLEMENTARY INFORMATION:

Background

Under section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608), a person may file a claim for property valued not in excess of $10,000, which was seized in violation of the Customs laws. The claim must be filed with the district director of Customs within 20 days of the publication of the notice of seizure. Upon filing the claim and posting a bond in the penal sum of $250, the claim is transmitted by the district director to the U.S. attorney who commences condemnation proceedings which determine liability. Section 162.47(b), Customs Regulations (19 CFR 162.47(b)), implements the bond requirement of section 608.

The U.S. Court of Appeals in *Wiren v. Eide*, 542 F. 2d 757, (9th Cir. 1976), held the application of the bond requirement in section 608 to be unconstitutional with respect to indigent persons on due process and equal protection grounds. The Court concluded that the Fifth Amendment prohibits the Government from depriving an individual whose property has been seized of an opportunity for a hearing solely because of inability to post a bond. The Court further held that the interest of the Government in enforcement does not outweigh the possibility of wrongful forfeiture due to lack of opportunity for a hearing. The existence of voluntary remission or mitigation procedures on the part of Customs does not affect the decision.

Currently, § 162.47 does not conform with the Court decision or with actual practice which is to waive the bond upon satisfactory proof of financial inability to post the bond. This document amends § 162.47 to allow the district director to waive the bond requirement upon satisfactory proof by the person claiming an interest in the seized property of financial inability to post the bond.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Inasmuch as this amendment grants rights not presently provided and places no affirmative duty on the public, notice and public procedure are found to be unnecessary pursuant to 5 U.S.C. 553(b)(B), and, pursuant to 5 U.S.C. 553(d), a delayed effective date is not required.

Inapplicability of E.O. 12044

The document is not subject to the Treasury Department directive published in the Federal Register on November 8, 1978 (43 FR 52120), implementing Executive Order 12044, "Improving Government Regulations," because the subject matter was in process before May 22, 1978, the effective date of the directive.

Regulation Determined to be Nonsignificant

In the directive implementing Executive Order 12044, the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the Federal Register and codfied in the Code of Federal Regulations to be "significant." However, regulations which are nonsubstantive, essentially procedural, do not materially change existing or establish new policy, and do not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected, may, with Secretarial approval, be determined not to be significant. Accordingly, it has been determined that this document does not meet the Treasury Department criteria in the directive for "significant" regulations.

Drafting Information

The principal authors of this document were Shannon McCarthy and John Elkins, Regulations and Research

Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Amendment to the Regulations

suspended—will be liable for the possible assessment of special dumping duties. Further, a deposit of estimated antidumping duties must be placed on all such entries made on and after publication of this order in the Federal

as estimated normal customs duties on the merchandise are deposited, a 6.7 percent *ad valorem* deposit of estimated antidumping duties, pending liquidation of entries of the subject merchandise, or withdrawals from warehouse, for

Dated: December 18, 1980.

Rowland E. Cross,
Chairman, Joint Board for the Enrollment of Actuaries.
[FR Doc. 80-40150 Filed 12-23-80; 8:45 am]
BILLING CODE 4810-25-M

Abuse by DoD Personnel," August 25, 1980.

§ 62a.2 Applicability.

The provisions of this Part apply to the Office of the Secretary of Defense,

their particular Military Service. This education shall be completed before the recruit reports to the first permanent duty station.

(B) *Officer and Warrant Officer Candidates.* Education for cadets,

Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Amendment to the Regulations

§ 162.47 [Amended]

Section 162.47, Customs Regulations (19 CFR 162.47), is amended by:

(1) Substituting the words "Except as provided in paragraph (e) of this section, the" for "The" in the first sentence of paragraph (b),

(2) Adding the words ", if required," after "bond" in paragraphs (c) and (d), and

(3) Adding a new paragraph (e) to read as follows:

§ 162.47 Claim for property subject to summary forfeiture.

* * * * *

(e) *Waiver of bond.* Upon satisfactory proof of financial inability to post the bond, the district director shall waive the bond requirement for any person who claims an interest in the seized property.

(R.S. 251, as amended, secs. 608, 624, 46 Stat. 755, as amended, 759 (19 U.S.C. 66, 1608, 1624))

William T. Archey,

Acting Commissioner of Customs.

Approved: December 15, 1980.

Richard J. Davis,

Assistant Secretary of the Treasury.

[FR Doc. 80-40325 Filed 12-23-80; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 353

Antidumping Duty Order; Electric Motors From Japan

AGENCY: International Trade Administration, U.S. Commerce Department.

ACTION: Final rule: Antidumping duty order.

SUMMARY: After conducting separate investigations under the Antidumping Act of 1921, as amended, and the Tariff Act of 1930, as amended, the U.S. Department of Commerce and the U.S. International Trade Commission have determined that certain electric motors imported from Japan are being sold at less than fair value and that these sales are materially injuring a U.S. industry. All unappraised entries of this merchandise made on and after June 20, 1980—the date from which final assessment of duty has been suspended—will be liable for the possible assessment of special dumping duties. Further, a deposit of estimated antidumping duties must be placed on all such entries made on and after publication of this order in the Federal Register.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Raymond G. Busen, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, Washington, D.C. 20230 (202-377-1777).

SUPPLEMENTARY INFORMATION: On June 20, 1980, the Department of Commerce (the Department) published its preliminary determination, stating that it had reason to believe or suspect that certain industrial electric motors imported from Japan are being, or are likely to be, sold in the United States at less than fair value (45 FR 41687). This determination did not cover submersible well pump motors, which were excluded from the investigation. On November 6, 1980, after a 60-day extension of its deadline for making a final determination on this case, the Department announced that it had found that certain large motors were being sold at less than fair value and that it was suspending its investigation for small motors (45 FR 73723).

In accordance with section 735(b) of the Tariff Act of 1930, as amended (93 Stat. 170, 19 U.S.C. 1673d(b)), the U.S. International Trade Commission determined that an industry in the United States is being materially injured by reason of imports of the motors subject to the Department's final determination. On December 12, 1980, it notified the Department of this decision.

In accordance with section 736 of the Act (93 Stat. 172, 19 U.S.C. 1673e), I direct U.S. Customs officers to assess an antidumping duty equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price for all entries of certain large motors imported from Japan, as herein defined, subject to the "Withholding of Appraisement" notice published in the Federal Register on June 20, 1980 (45 FR 41687) and all future entries of said merchandise until further notice.

For the purpose of this notice, the term "certain large electric motors" means electric motors of not less than 150 hp but not greater than 500 hp, not including submersible well pump motors, provided for in item numbers 682.4545, 682.4600, 682.5010, and 682.5030 of the Tariff Schedules of the United States Annotated. On or after the date of publication of this notice, Customs officers shall require, at the same time as estimated normal customs duties on the merchandise are deposited, a 6.7 percent *ad valorem* deposit of estimated antidumping duties, pending liquidation of entries of the subject merchandise, or withdrawals from warehouse, for consumption.

I hereby make public this determination, which constitutes an antidumping duty order with respect to large electric motors from Japan.

Accordingly, Annex I, Part 353 of the Commerce Regulations (45 FR 8208) is being amended by adding the following to the list of antidumping duty orders currently in effect:

Merchandise	Country	Decision
Electric Motors	Japan	(45 FR)

(Sec. 736 of the Act (93 Stat. 172, 19 U.S.C. 1673e), and § 353.48 of the Department of Commerce Regulations (19 CFR 353.48, 45 FR 8204).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

December 19, 1980.

[FR Doc. 80-40289 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-25-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

20 CFR Part 903

Access to Records; Correction

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Final rule; correction.

SUMMARY: This document corrects the numbering of the subdivisions of a paragraph in the final regulations issued by the Joint Board for the Enrollment of Actuaries relating to records pertaining to individuals which were published on January 8, 1976 (41 FR 1493, 1496). The subdivisions were designated in Roman numerals. They should have been designated by Arabic numerals.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie S. Shapiro, Executive Director, Joint Board for the Enrollment of Actuaries (202) 376-0767.

Accordingly, the subdivisions numbered (i) through (v) of 20 CFR 903.5(f) are corrected to read (1) through (5).

(5 U.S.C. 552a)

Dated: December 18, 1980.

Rowland E. Cross,

Chairman, Joint Board for the Enrollment of Actuaries.

[FR Doc. 80-40150 Filed 12-23-80; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR 62a

[DoD Instruction 1010.5][1]

Education and Training in Alcohol and Drug Abuse Prevention

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule establishes the Department of Defense education and training policy for the prevention of alcohol and drug abuse by military and civilian personnel in compliance with the provisions of Part 62 of this title, "Alcohol and Drug Abuse by DoD Personnel," that became effective August 25, 1980. The Department of Defense shall conduct a program to educate and train all military and civilian personnel aimed toward preventing alcohol and drug abuse and take other effective measures to combat problems caused by alcohol and drug abuse.

EFFECTIVE DATE: December 5, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. J. Mazzuchi, Office of the Assistant Secretary of Defense (Health Affairs), Office of Drug and Alcohol Abuse Prevention, The Pentagon, Telephone 202-695-6800.

Accordingly, 32 CFR Chapter I, is amended by adding Part 62a, reading as follows:

PART 62a—EDUCATION AND TRAINING IN ALCOHOL AND DRUG ABUSE PREVENTION

Sec.

62a.1 Purpose.
62a.2 Applicability.
62a.3 Definitions.
62a.4 Policy.
62a.5 Responsibilities.

Authority: 10 U.S.C. 133.

§ 62a.1 Purpose.

This Instruction states the DoD education and training policy in execution of Part 62, "Alcohol and Drug Abuse by DoD Personnel," August 25, 1980.

§ 62a.2 Applicability.

The provisions of this Part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies. The term "Military Service" refers to the Army, Navy, Air Force, and Marine Corps.

§ 62a.3 Definitions.

(a) *Training.* Those teaching and learning functions that develop or improve the competence of health care professionals and paraprofessionals and those DoD personnel responsible for supervision or execution of alcohol and drug abuse prevention programs.

(b) *Education.* Those teaching and learning functions that indoctrinate, orient, or inform personnel about the DoD alcohol and drug abuse prevention programs and resources.

(c) *DoD Civilian Employee.* A permanent employee of the Department of Defense who is a U.S. citizen and who is paid from appropriated or nonappropriated funds.

§ 62a.4 Policy.

(a) The Department of Defense shall educate and/or train all military commanders, military and civilian supervisors, and program personnel concerning DoD alcohol and drug abuse prevention policy and effective measures to alleviate problems associated with alcohol and drug abuse. Other military and civilian members shall also be provided appropriate alcohol and drug abuse education. To the extent feasible, education shall be offered to family members on a voluntary basis.

(b) Specific education or training shall be developed for each of the following groups and shall include references to both the military and civilian aspects of the program.

(1) *Military Personnel.* (i) *At Initial Entry.* (A) *Enlisted Personnel.* The emphasis of initial entry alcohol and drug abuse education shall be on prevention. Desired behavior, credible role models, and healthy alternatives shall be presented as well as the disciplinary, career, and health consequences of abuse. Recruits shall also be made aware of counseling and treatment resources and procedures and their responsibilities, not only to themselves but to their peers. Alcohol and drug abuse instruction shall be compatible with the indoctrination of recruits in the standards of discipline, performance, and behavior required by their particular Military Service. This education shall be completed before the recruit reports to the first permanent duty station.

(B) *Officer and Warrant Officer Candidates.* Education for cadets, midshipmen, and other officer and warrant officer candidates shall, in addition to § 62a.4(6)(1)(i)(A), emphasize the duties and responsibilities of junior leaders in the alcohol and drug abuse prevention effort, to include their responsiblities in creating and maintaining military discipline and enforcement of the law. The causes, symptoms and prevalence of abuse, intervention and referral techniques, and post-treatment responsibilities of junior leaders shall also be addressed. Education shall be completed before commissioning or within 90 days after entry on active duty.

(C) *Health Care Professionals.* During initial orientation classes, training shall be conducted in the diagnosis, counseling, treatment, and referral of alcohol and drug abusers, as appropriate, and in the DoD policy regarding abuse.

(D) *Program Staff.* Training shall normally be conducted and completed not more than 60 days after assignment for professionals and paraprofessionals assigned to alcohol and drug abuse program staffs in those areas relevant to their specific duties.

(ii) *At Permanent Change of Station (PCS).* (A) *Service Members (E-1 through E-4).* Education shall be conducted within 60 days after each PCS and shall emphasize the legal consequences of abuse under both the Uniform Code of Military Justice and the local laws, and the alternatives to abuse available at the local installation and neighboring community.

(B) *Leaders (E-5 through E-9 and Officers).* Education shall be conducted within 60 days after each PCS and shall emphasize the command-unique elements of the alcohol and drug abuse program, the scope of the local alcohol and drug abuse problem, local military and civilian resources, opportunities for continuing education and training, and their responsibilities for the maintenance of military discipline and the enforcement of the Uniform Code of Military Justice.

(iii) *During Professional or Military Education.* (A) *Junior Officers (0-1 through 0-3) and Noncommissioned Officers (E-5 through E-7).* Education shall emphasize the responsibilities of junior leaders in the alcohol and drug abuse prevention program, with particular emphasis on deterrence and detection methods, enforcement, counseling, motivation skills.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

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intervention and referral techniques, and methods for monitoring the progress of identified abusers in the unit.

(B) *Middle Grade Officers (0-4 and 0-5) and Senior Noncommissioned Officers (E-8 ad E-9).* Education shall

(ii) *Supervisors.* Orientation shall be conducted within the first 6 months after designation of supervisory responsibilities. Orientation shall emphasize the role of the supervisor in the alcohol and drug abuse prevention

32 CFR Part 354

[DoD Directive 5105.21; Amendment No. 2]

Defense Intelligence Agency; Incorporating Organizational Changes

Program," August 5, 1954; and 32 CFR 156:

* * * * * *

(g) Clear DIA civilian personnel and such other individuals as may be

(Title 10, U.S.C. Section 2202)

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 19, 1980.

ADDRESSES: Written comments should be directed to: Manus J. Fish, Regional Director, National Capital Region, National Park Service, 1100 Ohio Drive, SW. Washington, D.C. 20242.

FOR FURTHER INFORMATION CONTACT:

intervention and referral techniques, and methods for monitoring the progress of identified abusers in the unit.

(B) *Middle Grade Officers (0–4 and 0–5) and Senior Noncommissioned Officers (E–8 ad E–9).* Education shall emphasize the role and responsibilities of senior leaders in the function of their installation or major command's alcohol and drug abuse prevention program. Areas of particular focus shall be the influence of the senior leader's attitude about alcohol and drug abuse on subordinates, the reasons for and benefits derived from the DoD alcohol and drug abuse program, and the problem of stigma and strategies for diminishing it.

(C) *Senior Grade Officers (0–6 and above.)* Education shall emphasize the need for vigorous command support for the alcohol and drug abuse program, the law enforcement, prevention, and performance aspects of the problem, the federal response, and the intervention techniques for senior and executive-level personnel.

(D) *Health Care Personnel.* Continuing education and training shall be provided for health care professionals in those areas of alcohol and drug abuse relevant to their duties. Areas of particular focus shall be intervention, diagnosis, counseling, treatment, and referral.

(E) *Program Staff.* Continuing education and training shall be made available for the program staff, especially for those involved in the rehabilitation process. Areas of particular focus shall be intervention, counseling, and educational techniques.

(iv) *After an Alcohol or Drug-Related Incident.* Motivational education shall be provided for identified abusers who are not physically or psychologically dependent. Normally, education shall be conducted after duty hours and shall focus on the influence of the peer group on behavior, the identification and clarification of the attendee's attitudes and values, the impact and consequences of continued abuse, and the application of decisionmaking skills to resolution of the attendee's alcohol and/or drug abuse problem.

(2) *DoD Civilian Employees.* (i) *Nonsupervisors.* Orientation shall be conducted on DoD policy and Military Service or DoD Component programs regarding alcohol and drug abuse within the first 6 months of initial employment by the Department of Defense. Orientation shall emphasize the legal, career, and health consequences of abuse and the counseling, treatment, and rehabilitation opportunities available.

(ii) *Supervisors.* Orientation shall be conducted within the first 6 months after designation of supervisory responsibilities. Orientation shall emphasize the role of the supervisor in the alcohol and drug abuse prevention program, the symptoms of abuse, especially as they relate to job performance, intervention and referral techniques, and the post-treatment responsibilities of the supervisor. Continuing education shall also be made available on a regular basis by local commands, with the focus on the command-unique elements of the program and local prevention and treatment resources.

(iii) *Program Staff.* Training shall be conducted for professionals and paraprofessionals assigned to alcohol and drug abuse program staffs in those areas relevant to their specific duties. Training shall be completed not more than 60 days after assignment. Continuing education and training shall also be made available for the program staff, especially for those involved in the rehabilitation process. Areas of particular focus shall be intervention, counseling, and educational techniques.

(3) *Family Members, Military and Civilian.* (i) *DoD Dependents School Students.* Education shall be conducted annually as part of the overall health curriculum for those in grades 1 through 12.

(ii) *Family Members (Outside the United States).* Education shall be provided on a voluntary basis and shall emphasize the local alcohol and drug abuse situation, local alcohol and drug abuse laws, counseling, treatment, and rehabilitation opportunities and procedures, and alternatives to abuse available at the local installation and neighboring community.

(iii) *Family Members in U.S. Locations.* Education shall be offered on a voluntary basis to the extent feasible.

§ 62a.5 Responsibilities.

The *Secretaries of the Military Departments* and other *Heads of DoD Components* shall implement the policy in this Part.

December 17, 1980.

M. S. Healy,

OSD Federal Register Liaison Office, Washington Headquarters Services, Department of Defense.

[FR Doc. 80-40002 Filed 12-23-80; 8:45 am]

BILLING CODE 3810-10-M

32 CFR Part 354

[DoD Directive 5105.21; Amendment No. 2]

Defense Intelligence Agency; Incorporating Organizational Changes

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule amendment.

SUMMARY: This amendment is issued to incorporate organizational changes and to expand § 354.7, Delegation of Authority, in that it now authorizes the Director, Defense Intelligence Agency, to enter into and administer contracts under established DoD regulations.

EFFECTIVE DATE: December 2, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. A. Ehlers, Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense: Washington, D.C. 20301, The Pentagon. 202–695–4281.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–18244 appearing in the **Federal Register** on July 1, 1977 (42 FR 33734) the Office of the Secretary of Defense published the charter of the Director, Defense Intelligence Agency, effective May 19, 1977. Amendment No. 1 was published as FR Doc. 79–19262, appearing in the **Federal Register** on June 20, 1979 (44 FR 36032). This rule further revises Part 354.

Accordingly, 32 CFR, Chapter 1, Part 354, is amended as follows:

PART 354—DEFENSE INTELLIGENCE AGENCY

1. Section 354.4 is amended as follows:
a. By revising subparagraph (c).
2. Section 354.7 is amended as follows:
a. By revising subparagraphs (f) introductory text, (g), (m), (p), and (q), and adding subparagraph (t).

Section 354.4 now reads as follows:

§ 354.4 Organization and Administration.

* * * * *

(c) Staff supervision of the DIA for the Secretary of Defense will be exercised by the Assistant Secretary of Defense (Communications, Command, Control, and Intelligence) with respect to resources, and by the Deputy Under Secretary of Defense (Policy Review) with respect to policy.

* * * * *

Section 354.7 now reads as follows:

§ 354.7 Delegation of Authority.

* * * * *

(f) In accordance with the provisions of 5 U.S.C. § 7532; Executive Order 10450, "Government Personnel Security Program," August 5, 1954; and 32 CFR 156:

* * * * *

(g) Clear DIA civilian personnel and such other individuals as may be appropriate for access to classified Defense material and information in accordance with the provisions of 32 CFR 156 and Executive Order 11652, "Classification and Declassification of National Security Information and Material," March 8, 1972.

* * * * *

(m) Establish and use imprest funds for making small purchases of material and services other than personal for DIA when it is determined more advantageous and consistent with the best interests of the Government, in accordance with the provisions of DoD Directive 5100.71,[1] "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973.

* * * * *

(p) Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DIA, pursuant to subsection III.A and V.B. of DoD Directive 5200.8,[2] "Security of Military Installations and Resources," July 29, 1980.

(q) Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD Directive 5025.1,[2] "Department of Defense Directives System," October 16, 1980.

* * * * *

(t) Enter into and administer contracts, directly or through another DoD Component or other Federal Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the Defense Intelligence Agency. Contracting will be accomplished in accordance with applicable laws, DoD regulations and the Defense Acquisition Regulation. To the extent that any law or executive order specifically limits the exercise of such authority to persons at the Secretarial level of the Military Department, such authority will be exercised by the appropriate Under Secretary of Defense.

* * * * *

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

[2] See footnote to paragraph (m) of this section.

(Title 10, U.S.C. Section 2202)

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 19, 1980.

[FR Doc. 80-40279 Filed 12-23-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 50

Demonstrations and Special Events; Interim Rule With Request for Comments

AGENCY: National Park Service, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: This interim regulation with request for comments amends National Park Service regulations governing demonstrations and special events in Washington, D.C. and its environs. This interim regulation sets aside the entire White House Sidewalk (south 1600 Pennsylvania Ave., N.W. sidewalk) and Lafayette Park, except for approximately the northeast quadrant, for the exclusive use of the Inaugural Committee on January 20, 1981. This amendment does not affect the availability of other park areas in the White House area. The other park areas, including approximately the northeast quadrant of Lafayette Park and the Ellipse, are available for demonstration activities in accord with the provisions of 36 CFR 50.19.

The need for this interim rule arose when the United States District Court for the District of Columbia ruled that the Department of the Interior must promulgate regulations specifically governing demonstration activities in the White House area on Inauguration Day. The United States Court of Appeals for the District of Columbia Circuit affirmed the District Court's ruling on December 9, 1980.

This is both an interim regulation, effective immediately, and a request for comments. This interim regulation is necessary in order to comply with the District Court's order as affirmed by the United States Court of Appeals.

DATES: This interim regulation is effective on December 24, 1980 and will remain in effect until revoked, replaced or modified by a final rulemaking publication. Written comments, suggestions, or objections regarding this interim regulation will be accepted until January 23, 1981.

ADDRESSES: Written comments should be directed to: Manus J. Fish, Regional Director, National Capital Region, National Park Service, 1100 Ohio Drive, SW. Washington, D.C. 20242.

FOR FURTHER INFORMATION CONTACT: Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240. Telephone 202–343–4338.

George Berklacy, Associate Regional Director, Public Affairs, National Capital Region, National Park Service, Department of the Interior, 1100 Ohio Drive, SW, Washington, D.C. 20242. Telephone 202–426–6690.

SUPPLEMENTARY INFORMATION: The following persons participated in the writing of this regulation: Richard G. Robbins, Office of the Solicitor, R. Craig Lawrence, Assistant United States Attorney and Jim McDaniel National Capital Region, National Park Service.

The United States District Court for the District of Columbia in *Saffron* v. *Wilson*, 481 F. Supp. 257 (D.D.C. 1979) ruled that the plaintiff who was arrested for demonstrating in the Inaugural area in 1973 is

> * * * entitled to exercise his First amendment rights in the White House vicinity on Inaugural Days, free from the threat of arbitrary and capricious interference by defendants, and subject to restriction only pursuant to narrowly-drawn regulations that specify objective criteria, which regulations permit adequate time for judicial review of any restriction imposed (except under emergency conditions), and which regulations satisfy the standards enunciated in *A Quaker Action Group v. Morton*, 170 U.S. App. D.C. 124, 516 F.2d 717 (D.C. Cir. 1975) * * *

Following an appeal by the Government of this ruling, the United States Court of Appeals for the District of Columbia Circuit affirmed the decision of the District Court (Unpublished Opinion, No. 79–2236, December 9, 1980).

In addition to the obligation imposed upon the Department of the Interior by the Court, the Department has obligations to the Inaugural Committee in accord with the provisions of the Inaugural Ceremonies Act of August 6, 1956 (70 Stat. 1049) as amended by the Act of January 30, 1968 (82 Stat. 4), D.C. Code § 1–1201 *et seq.* This Act specifically authorizes the Secretary of the Interior to grant permits to the Inaugural Committee for the use of Federal reservations or grounds in the District of Columbia.

This regulation is intended to fulfill the obligations of the Department of the Interior to provide access for demonstration conduct in the vicinity of the White House on Inauguration Day

and to provide areas for use by the Inaugural Committee for Inaugural activities. The regulation sets aside the entire White House Sidewalk and Lafayette Park except for approximately

adding a new subparagraph 50.19(d)(1)(vii) as follows:

§ 50.19 Demonstrations and special events.

* * * * *

FOR FURTHER INFORMATION CONTACT: Mr. Harvey Pippen, Jr., Director, Grants Administration Division (PM–216), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460,

Concur:

C. William Carter,

Acting Assistant Administrator for Planning and Management (PM–208).

Dated: December 8, 1980.

comments received in response to the proposal notices of November 15, 1979 (44 FR 65781) and September 18, 1980 (45 FR 62163) may be examined during normal business hours at the following

approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the State's submission to determine if the condition is fully met. After review is complete, a **Federal Register** notice will be published

and to provide areas for use by the Inaugural Committee for Inaugural activities. The regulation sets aside the entire White House Sidewalk and Lafayette Park except for approximately the northeast quadrant for the exclusive use of the Inaugural Committee for Inaugural activities. Access to this area will be controlled by the Inaugural Committee pursuant to a reserved ticket system. Approximately the northeast quadrant of Lafayette Park and other park areas in the White House area and elsewhere are left available for demonstration activities. Permits for use of the areas will be granted under the National Park Service's regular demonstration permit system as set forth in 36 CFR 50.19. In accord with that system, permits will be granted on a first-come-first-served basis.

There are legitimate government interests in devoting the front of the White House to Inaugural ceremonies on this one special day every four years and these interests cannot be successfully furthered if individuals are entitled to be admitted for demonstration or other purposes unrelated to the Inauguration. Moreover, the regulation narrowly restricts the area necessary to further the legitimate government interests while providing ready access to the immediately adjacent and other nearby areas for demonstration conduct.

Impact Analysis: The National Park Service has determined that this document is not a significant rule requiring preparation of a regulatory analysis under Executive Order 12044 and Part 14 of Title 43 of the Code of Federal Regulations.

Public Participation

It is the policy of the National Park Service, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding these interim regulations to the address noted at the beginning of this rulemaking.

Authority: Sec. 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. § 3); 245 DM I (44 FR 23384); Act of Aug. 6, 1956 (70 Stat. 1049) as amended Act of Jan. 30, 1968 (82 Stat. 4); D.C. Code Ann. § 8–108 (1973); and National Park Service Order No. 77 (38 FR 7478), as amended.

Russell E. Dickenson,
Director, National Park Service.

Approved: December 18, 1980.

In consideration of the foregoing, § 50.19 of Title 36 of the Code of Federal Regulations is accordingly amended by adding a new subparagraph 50.19(d)(1)(vii) as follows:

§ 50.19 Demonstrations and special events.

* * * * *

(d) * * *

(1) * * *

(vii) *Inaugural Ceremonies.* The White House Sidewalk and Lafayette Park, exclusive of the northeast quadrant, for the exclusive use of the Inaugural Committee on January 20, 1981.

[FR Doc. 80-40129 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL 1711-4]

Grants for Construction of Treatment Works; Clean Water Act

AGENCY: Environmental Protection Agency.

ACTION: Deviation to Rule.

SUMMARY: Under the authority of 40 CFR 30.1000, the Environmental Protection Agency (EPA) has issued a class deviation from 40 CFR 35.930–5(b) of EPA's construction grant regulations. We are publishing the class deviation as part of this document.

Section 35.930–5(b) states in part that to receive 85 percent funding any innovative/alternative work must be Step 2, Step 3 or Step 2+3 work.

EPA believes that goals of the construction grant program can be furthered through the consideration of innovative and alternative concepts during the Step 1 facility planning phase. This class deviation allows 85 percent funding for Step 1 facility planning when innovative or alternative concepts are incorporated into the facility plan.

EPA regional offices will determine which facility plan activities will receive the 85 percent funding. Selected activities must fully meet the criteria contained in Part 35 Appendix E for innovative and alternative technology.

Activities which do not fully meet the criteria in Appendix E for innovative and alternative technology are not covered in this deviation. The EPA Regional Offices will review these activities on a case-by-case basis, and if they believe 85 percent innovative and alternative funding is appropriate, the Regional Offices can request the Director, Grants Administration Division to approve a project specific deviation from 40 CFR 35.930–5(b).

EFFECTIVE DATE: December 16, 1980.

FOR FURTHER INFORMATION CONTACT:
Mr. Harvey Pippen, Jr., Director, Grants Administration Division (PM–216), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755–0850.

C. William Carter,
Acting Assistant Administrator for Planning and Management (PM–208).

December 16, 1980.

Eckardt C. Beck,
Assistant Administrator for Water and Waste Management (WH–556).

December 8, 1980.

United States Environmental Protection Agency

Date: December 16, 1980.

Subject: Class Deviation from 40 CFR 35.930–5(b).

From Harvey Pippen, Jr., Director, Grants Administration Division (PM–216).

To: Regional Administrators.

This is in response to Henry Longest's September 8, 1980, request for a class deviation from 40 CFR 35.930–5(b) "innovative and alternative technology." This regulation states that to receive 85 percent innovative/alternative (I/A) funding the work must be Step 2, Step 3, or Step 2+3 work. Mr. Longest requested a class deviation to extend the 85 percent I/A funding available under section 202(a)(2) of the Clean Water Act to those portions of Step 1 facility planning which fully meet the definitions and criteria in 40 CFR Part 35 Appendix E. Mr. Longest requested this class deviation to facilitate the implementation of a Program Operation Memorandum promoting the expanded use of Step 1 facility planning funds to encourage grantees to consider a broader range of options for wastewater treatment facilities.

Allowing the use of I/A set-aside funds for the study of I/A alternatives during facility planning will:

(1) Promote cost-effective and environmentally sound solutions to municipal wastewater treatment-related problems.

(2) Promote cost-effective solutions to broader environmental problems in conjunction with municipal point source pollution abatement.

(3) Enhance facility planning and lead to higher quality project planning.

(4) Address a wide range of significant secondary impacts arising from the construction and operation of public owned treatment works.

I am approving a class deviation from 40 CFR 35.930–5(b) to allow EPA Regional Offices to provide additional 10 percent funding, by way of grant amendment, for completed portions of Step 1 work which fully satisfy the innovative and alternative technology guidelines contained in Appendix E to 40 CFR Part 35. If the innovative or alternative work does not meet the criteria specified in Appendix E, the Region may request a deviation on a case-by-case basis.

Dated: December 16, 1980.

Concur:

C. William Carter,
Acting Assistant Administrator for Planning and Management (PM–208).

Dated: December 8, 1980.

Concur:

Eckardt C. Beck,
Assistant Administrator for Water and Waste Management (WH–556).

[FR Doc. 80-40302 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-29-M

40 CFR Part 52

[A 4 FRL 1708-6]

Approval and Promulgation of Implementation Plans; Kentucky: Conditional Approval of Kentucky's Particulate Part D Plan Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: EPA today announces conditional approval of Kentucky's total suspended particulate (TSP) nonattainment (Part D) plan revisions. The revisions submitted by the Commonwealth contain minor deficiencies which Kentucky has agreed to correct by October 15, 1981. Correction of the deficiencies will not require extensive time or resources from the Commonwealth. The time period allowed for making the corrections is necessary since the Commonwealth's legislature must adopt certain rules before the deficiencies can be corrected. If the deficiencies are not corrected by October 15, 1981, EPA will disapprove the applicable portions of the revisions.

This notice responds to comments received pursuant to EPA's November 15, 1979 proposal notice (44 FR 65781), and EPA's September 18, 1980 reproposal and reopening of comment period notice (45 FR 62163). Comments received in response to the November 15, 1979 notice (44 FR 65781), and EPA responses to those comments as stated in 45 FR 62163, September 18, 1980, will not be repeated in this notice if a commenter references or repeats a previous comment, and EPA's position regarding its previous response has not changed. If a commenter references a previous comment and offers additional comment on the same issue, then EPA's previous response will be referenced and additional information will be offered, as necessary. Any comment not previously addressed by EPA will be fully responded to in this notice.

EFFECTIVE DATE: December 24, 1980.

ADDRESSES: Copies of the materials submitted by Kentucky and the comments received in response to the proposal notices of November 15, 1979 (44 FR 65781) and September 18, 1980 (45 FR 62163) may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Library, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT:
Melvin Russell of EPA Region IV's Air Programs Branch at the Region IV address above, or call (404) 881–3286 or FTS 257–3286.

SUPPLEMENTARY INFORMATION:

Background

EPA proposed conditional approval of Kentucky's TSP Part D State Implementation Plan (SIP) revisions in the November 15, 1979, **Federal Register**, (44 FR 65781). Extensive comments were received in response to the November 15, 1979 notice. After reviewing the comments along with the material submitted by Kentucky, EPA presented its position in the September 18, 1980 **Federal Register**, (45 FR 62163), Reproposal and Reopening of Comment Period for Kentucky's Particulate Part D Plan Revisions. In the September 18, 1980 notice EPA: (1) Responded to comments received in response to the November 15, 1979 notice, that relate directly to deficiencies found to exist in Kentucky's TSP plan revisions. (2) Clarified those deficiencies noted in the November 15, 1979 notice. (3) Described additional deficiencies discovered in the Kentucky revisions after publication of the November 15, 1979 notice.

EPA is taking final action to conditionally approve certain elements of Kentucky's plan. A discussion of conditional approval and its practical effect appears in a supplement to the General Preamble, 44 FR 38583 (July 2, 1979). The conditional approval requires the State to submit additional materials by the deadline specified in today's notice. There will be no extension of the conditional approval deadline which is being promulgated today. EPA will follow the procedures described below when determining if the State has satisfied the conditions.

1. If the State submits the required additional documentation according to schedule, EPA will publish a notice in the **Federal Register** announcing receipt of the material. The notice of receipt will also announce that the conditional approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the State's submission to determine if the condition is fully met. After review is complete, a **Federal Register** notice will be published proposing or taking final action either to find the condition has been met and approved the plan, or to find the condition has not been met, withdraw the conditional approval and disapprove the plan. If the plan is disapproved the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the State fails to submit in a timely manner the required materials needed to meet a condition, EPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved and Section 110 (a)(2)(I) restrictions on growth are in effect.

Discussion

The following comments and EPA responses relate to the November 15, 1979 **Federal Register** proposal (44 FR 65781) and the September 18, 1980 **Federal Register** reproposal (45 FR 62163), and are addressed in the manner described above in the SUMMARY section.

1. Comment: Several commenters argued that EPA's policy of conditional approval is not sanctioned by the Clean Air Act and is not a legally effective procedure for lifting the construction moratorium imposed under Section 110(a)(2)(I). The commenters believe that EPA must promulgate a Federal SIP and comply with procedural requirements for such promulgation if the Administrator finds a state plan inadequate. The commenters also claim that conditional approval circumvents the procedural safeguards of Section 307 of the Act and coerces state modification of the plan through threat of disapproval.

EPA Response: A discussion of conditional approval and its practical effect appears in supplements to the April 4, 1979 General Preamble (44 FR 20372) published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), and November 23, 1979 (44 FR 67182).

The Administrator believes that he has inherent authority under the CAA to condition approval of a SIP upon a State's agreement to correct minor deficiencies expeditiously, and that conditional approval is a reasonable approach to the complicated process of plan development which is consistent with the intent of Congress, with the language of the Act and with the Administrator's obligations thereunder.

The Act and existing SIPs provide for a moratorium on construction of major new sources of pollution if a revised plan which satisfies the requirement of Part D is not in effect by July 1, 1979. The purpose of the moratorium on new

Conditional approval also provides procedural safeguards equivalent to those available when the Administrator promulgates a plan. In the case of Kentucky, for example, the Administrator has proposed to

EPA Response: EPA responded to comments regarding RACT in the September 18, 1980 **Federal Register** (45 FR 62163), in Part A, sections 1, 2, 3. Therein EPA explained at length its legal and technical position regarding

EPA Response: The area was designated nonattainment on March 3, 1978 in the **Federal Register** beginning on page 8962. The **Federal Register** noted that even though the designations were immediately effective, EPA

Register, (45 FR 62163 at pages 62167, Response number 6, and 62169, Deficiency number 10). EPA here references that response and deficiency, as its position regarding this issue has not changed.

documented. EPA would have no objections to the proposed regulation. However, in the absence of such a test procedure, EPA would recommend an opacity standard such as, no visible emissions during pushing should equal or exceed 20 percent opacity except for 6 seconds per push (averaged over a number of

The Act and existing SIPs provide for a moratorium on construction of major new sources of pollution if a revised plan which satisfies the requirement of Part D is not in effect by July 1, 1979. The purpose of the moratorium on new sources in not to punish a state for failure to control pollution, but rather to prevent the problem from getting worse. The moratorium would postpone construction that would worsen a violation of a national standard until after an acceptable plan is in effect that assures timely attainment of the standard. Where a plan has been revised so as to be in substantial compliance with the requirements of Part D, and the state provides assurances that any remaining deficiencies will be remedied within a short period, imposition of the moratorium on new sources during that period would not serve the Congressional purpose. Therefore, under such circumstances EPA interprets the Act to permit the plan to be conditionally approved as satisfying Part D requirements.

When a state submits a SIP containing minor deficiencies, and the state provides assurances that it will submit corrections on a specified schedule, EPA will conditionally approve the plan. A conditional approval will mean that the moratorium on new sources will not apply unless the state fails to submit corrections by the specified date, or unless the corrections are ultimately determined to be inadequate. Conditional approval is not granted without strong assurance by the appropriate state officials that the deficiencies will be corrected on schedule.

Conditional approval is also consistent with the Administrator's obligation under Section 110(c)(1)(C). That subsection requires the Administrator to promulgate regulations for a state if "the state fails, within 60 days after notification by the Administrator or such later period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H)." When the Administrator proposes conditional approval, he is essentially notifying the state that further revisions are required to make the plan or regulations fully approvable. If the state fails to satisfy the Administrator's conditions, the Administrator will disapprove the plan or regulations and may then promulgate regulations to correct the deficiency. The state is simply offered the option of correcting the inadequacies itself.

Conditional approval also provides procedural safeguards equivalent to those available when the Administrator promulgates a plan. In the case of Kentucky, for example, the Administrator has proposed to conditionally approve certain provisions. The commenters have had an opportunity to submit extensive written comments and receive EPA's response. This final conditional approval may be challenged in the appropriate United States Court of Appeals within 60 days of the publishing of such conditional approval. The rulemaking and judicial review procedures thus provide opportunities for comment and review similar to those provided for promulgation under Section 307(d).

2. Comment: Commenters questioned what rules are in effect if a plan or regulation is conditionally approved.

EPA Response: EPA intends that the conditionally approved requirements be effective unless the conditional approval is withdrawn for failure to meet the conditions. As noted in the General Preamble, 44 FR 20373–30374, April 4, 1979: "The new requirement does not supersede or replace the old requirement until the source comes into compliance with the new requirement. Instead, the existing requirement must remain an enforceable provision of the SIP, and must co-exist with the new requirement in the applicable implementation plan. The present emission control requirement must be retained because the source must be prevented from operating without controls (or with less stringent controls) while it is moving toward compliance with (or challenging) the new requirement."

3. Comment: Commenters argue that sources are prejudiced by the results in 2 above, since they are required to comply with rules that may be significantly altered.

EPA Response: Because conditional approval is applicable only to plans or regulations with relatively minor deficiencies, it is highly improbable that conditionally approved provisions will be substantially changed. In addition, notices of proposed and final conditional approval, such as today's final action, provide adequate notice to sources of the requirements they will ultimately have to meet if the conditions are met.

4. Comment: Several commenters took issue with EPA's interpretation of reasonably available control technology (RACT), its technical applicability and the legal grounds for enforcing the technical standards.

EPA Response: EPA responded to comments regarding RACT in the September 18, 1980 **Federal Register** (45 FR 62163), in Part A, sections 1, 2, 3. Therein EPA explained at length its legal and technical position regarding the application of RACT to TSP sources affected by Kentucky's nonattainment plan revisions. EPA here references those responses, as its position regarding this issue has not changed.

5. Comment: Several commenters disagree with EPA's position regarding Kentucky Regulation 401 KAR 61:005, as it applies to performance testing for demonstration of compliance purposes. The commenters contend that it should be the state's discretion to determine if performance testing is necessary.

EPA Response: EPA maintains that a performance test should be required for demonstration of compliance. The state may exercise some discretion in determining when and for which sources the demonstration is to occur, but the *means* of demonstration should be a performance test. The performance test is the only certain method of demonstrating compliance under operating conditions.

6. Comment: One commenter contends that Kentucky Regulation 401 KAR 50:055 Section 6, Alternative Emission Reduction Plans, should not be required to contain a provision for public hearing, since any proposals submitted pursuant to this section must be submitted as a SIP revision, and Kentucky regulations already require public hearing procedures for all SIP revisions.

EPA Response: EPA does require that all alternative Emission Reduction Plans be submitted to EPA as SIP revisions; however, 401 KAR 50:055, Section 6, does not indicate that this rule will apply. If Section 6 is amended to clearly state that all alternative emission reduction plans will be submitted to EPA as SIP revisions, then the requirement for public hearing will be inherently met.

7. Comment: Several commenters specifically take issue with EPA's position regarding control of intermittent emissions from various iron and steel making processes.

EPA Response: EPA responded to these commenters at length in the September 18, 1980 **Federal Register** (45 FR 62163); Responses number 3 and 5 and Deficiencies number 6, 7, and 8. EPA here references those responses and deficiencies, as its position regarding this issue has not changed.

8. Comment: One commenter believed that EPA was repromulgating the designation of the City of Newport as nonattainment for TSP, and sought to challenge that designation.

EPA Response: The area was designated nonattainment on March 3, 1978 in the **Federal Register** beginning on page 8962. The **Federal Register** noted that even though the designations were immediately effective, EPA solicited comments for 60 days and stated that EPA would republish revised designations as appropriate. The names and addresses of EPA personnel were included in order that comments on specific State designations could be directed to the appropriate EPA Regional Offices. The nonattainment designation of the City of Newport, Campbell County, Kentucky, was finalized on September 11, 1978, 43 FR 40412 at page 40425. Since the commenter was incorrect in his belief that EPA was repromulgating the desigation in the November 15, 1979 notice, any challenges to that original designation are both untimely and outside the scope of this rulemaking proceeding.

9. Comment: One commenter stated that the requirement for RACT on stationary sources in the City of Newport is unwarranted and would be of insignificant benefit since the TSP nonattainment problem is due to rural fugitive dust.

EPA Response: Fugitive dust, in an industrialized area such as Newport, cannot be considered "rural" fugitive dust. Windblown dust, in this and similar situations is contaminated by the various components which reflect the industrial make-up and transportation activities in the area, and hence, may adversely affect health. The implementation of RACT on stationary sources is necessary to comply with the requirements of Section 172(a), 172(b)(2) and 172(b)(3) of the Clean Air Act.

10. Comment: One commenter took issue with EPA's proposal to disapprove Kentucky Regulation 401 KAR 61:015. In the September 18, 1980 **Federal Register**, 45 FR 62163 at page 62169, EPA proposed to disapprove Section 8(2)(d) of the regulation regarding Existing Indirect Heat Exchangers, because Section 8(2)(d) of the regulation allows sources which are not subject to more strict emission limits, as a result of Kentucky's 1979 revisions, an extension of time (until 1982) to achieve compliance. The commenter contends that it is within Kentucky's discretion to extend the final compliance dates to December 31, 1982, and that it is not within EPA's authority to disapprove this portion of the regulation. This comment was also submitted in response to the November 15, 1979 **Federal Register**, (45 FR 65781).

EPA Response: EPA responded to this issue in the September 18, 1980 **Federal Register**, (45 FR 62163 at pages 62167, Response number 6, and 62169, Deficiency number 10). EPA here references that response and deficiency, as its position regarding this issue has not changed.

11. Comment: One commenter requested clarification of EPA's recommendations regarding Kentucky regulation 401 KAR 61:080, Steel Plants Using Existing Basic Oxygen Process Furnaces (BOF). In the September 18, 1980 **Federal Register** (45 FR 62163 at page 62169, EPA stated its belief that available information supports a standard for BOF shops which would restrict the opacity of emissions discharged from BOF shops, excluding discharges from control devices, to less than 20 percent opacity except for either three minutes in any consecutive 60 minute period of time or on a three minute moving average. The commenter requested clarification of whether the three minutes are consecutive or additive, and what is meant by "a three minute moving average."

EPA Response: (1) The three minutes in any consecutive 60 minute period are the result of additive fifteen second readings, therefore if any 60 minute sampling period reveals a total of 12 or more fifteen second periods during which times an opacity of 20 percent or more is observed, the unit is considered to be in violation. (2) The "three minute moving average" means that the check for violations is made for a three minute time period which is continuously changing to include the latest fifteen second reading recorded and the eleven consecutive readings which preceded it. If the average opacity for any three minute period exceeds 20 percent then the unit is considered to be in violation. The average opacity is calculated using 15 second interval readings.

12. Comment: One commenter requested clarification of deficiency 8.c (45 FR 62163) concerning 401 KAR 61:140, Existing By-Product Coke Manufacturing Plants. The commenter requested clarification of EPA's reference to " . . . 90% of Method 9, . . .".

EPA Response: A printing error exists in the September 18, 1980 **Federal Register** at page 62169, Deficiency 8.c.; correcting the error should clarify EPA's position. The portion of Deficiency 8.c. which reads " . . . 90% of Method 9, . . .", should be " . . . 90% of Method 9's . . .". Therefore, Deficiency 8.c. should read as follows:

"c. The proposed regulation requires 85 percent capture of total particulate matter generated during pushing. If an enforceable test procedure were included with the standard so that compliance could be documented, EPA would have no objections to the proposed regulation. However, in the absence of such a test procedure, EPA would recommend an opacity standard such as, no visible emissions during pushing should equal or exceed 20 percent opacity except for 6 seconds per push (averaged over a number of pushes) as read over the collector main or 90 percent of Method 9's 15 second readings shall not equal or exceed 20 percent opacity during the pushing operation and the subsequent travel of the hot car to the quench tower."

13. Comment: One commenter took issue with EPA's reference to and reliance upon data made available as part of the rulemaking docket on the September 18, 1980, **Federal Register** notice in evaluating whether Kentucky's submittal satisfies the requirments of Part D concerning RACT for iron and steel sources. Furthermore, the commenter contends that a review of the docket revealed no evidence to support any of EPA's evaluations which are based upon the docket.

EPA Response: As explained in a notice published in the **Federal Register** on September 8, 1980 (45 FR 59198–99), which is referenced here, EPA, in its review of Part D plans for areas containing iron and steel sources, has endeavored to verify independently that the plans submitted by the states in fact include provisions which represent RACT. To that end, EPA has collected and evaluated data which reflect levels of performance achieved by various iron and steel sources applying control technology, and has made those data available for review as part of the rulemaking docket. However, EPA has *not* established categorical RACT requirements, and a State may develop its RACT requirements independently of those data; EPA will approve any submitted RACT requirement that the State shows will satisfy the requirements of the Act for RACT, based on the economic and technical circumstances of the particular sources being regulated. In addition, contrary to the general contention of the commenter, EPA believes that its discussion and analysis in the September 18, 1980 **Federal Register** notice is amply supported by the referenced data and material in the rulemaking docket.

Actions

With the exception noted below, the Administrator conditionally approves Kentucky's 1979 revisions, for total suspended particulate nonattainment areas except for Marshall County, on the condition that deficiencies noted be corrected by October 15, 1981. EPA defers action on the TSP plan revisions for Marshall County pending

clarification and supplemental material on the enforcement procedures for implementing Kentucky regulation 401 KAR 61:070. It is EPA's intent to fully approve these revisions when the

1977 Amendments. It would be a perversion of clear congressional intent to construe part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary,

"significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Appalachian Intrastate:							

(ii) A revision to Regulation 401 KAR 50:055 section 2(6) which specifies that adjustment of opacity standards be restricted to stack or control device discharges.

clarification and supplemental material on the enforcement procedures for implementing Kentucky regulation 401 KAR 61:070. It is EPA's intent to fully approve these revisions when the Commonwealth corrects the deficiencies. If the corrections are not forthcoming by October 15, 1981, EPA will act to disapprove the related plan revisions.

EPA disapproves as part of the Kentucky SIP regulation 401 KAR 61:015 Section 8, Paragraph (2)(d), because it relaxes compliance schedules for sources which are not being made subject to stricter emission limits. However, since Kentucky's 1979 revisions, without the disproved provision substantially complies with the requirements of Part D and may therefore be conditionally approved, Section 110(a)(2)(I) of the CAA will not apply.

The 1978 edition of 40 CFR Part 52 lists in the subpart for Kentucky the applicable deadlines for attaining ambient standards (attainment dates) required by Section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides for attainment by the deadlines required by Section 172(a) of the Act, the new deadlines are substituted on Kentucky's attainment date chart in 40 CFR Part 52. The earlier attainment dates under Section 110(a)(2)(A) will be referenced in a footnote to the chart. Sources subject to plan requirements and deadlines established under Section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as with the new Section 172 plan requirements.

Congress established new attainment dates under Section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. These new deadlines were not intended to give sources that failed to comply with pre-1977 plan requirements by the earlier deadlines more time to comply with those requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

> Section 110(a)(2) of the Act made clear that each source had to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under part D.

(123 Cong. Rec. H 11958, daily ed. November 1, 1979)

To implement Congress' intention that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendments. EPA cannot approve such compliance date extensions even though a Section 172 plan revision with a later attainment date has been approved. However, a compliance date extension beyond a pre-existing attainment date may be granted if it will not contribute to a violation of an ambient standard or a PSD increment. (See General Preamble for Proposed Rulemaking. 44 FR 20373–74 (April 4, 1979).

In addition, sources subject to pre-existing plan requirements may be relieved of complying with such requirements if a Section 172 plan imposes new, more stringent control requirements that are incompatible with controls required to meet the pre-existing regulations. Decisions on the incompatibility of requirements will be made on a case-by-case basis.

This action is effective immediately. EPA finds good cause to make this conditional approval immediately effective, because the Clean Air Act restricts new construction where plans are not approved after June 30, 1979. Making the conditional approval immediately effective will terminate the restriction as soon as possible.

Under Section 307(b)(1) of the Clean Air Act, judicial review of these actions is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Secs. 110, 172, and 301 of the Clean Air Act (42 U.S.C. 7410, 7502, and 7601))

Dated: December 15, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the Federal Register on July 1, 1980.

Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart S—Kentucky

1. Section 52.920 is amended by adding a subparagraph (14) to paragraph (c) as follows:

§ 52.920 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(14) 1979 revisions for Part D requirements for total suspended particulate nonattainment areas (Bell, Boyd, Jefferson, McCracken and Muhlenberg counties, that portion of Bullit County in Shepherdsville, that portion of Campbell County in Newport, that portion of Daviess County in Owensboro, those portions of Henderson County in and around Henderson, that portion of Lawrence County in Louisa, that portion of Madison County in Richmond, that portion of Perry County in Hazard, that portion of Pike County in Pikeville, and that portion of Whitley County in Corbin) submitted on June 29, 1979, by the Kentucky Department for Natural Resources and Environmental Protection.

2. Section 52.926 is revised to read as follows:

§ 52.926 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. The dates reflect the information presented in Kentucky's plan, except where noted.

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Appalachian Intrastate:							
a. Bell County	g	h	b	b	b	b	b
b. Perry County	g	h	b	b	b	b	b
c. Whitley County	g	h	b	b	b	b	b
d. Rest of AQCR	c	c	b	b	b	b	b
Bluegrass Intrastate:							
a. Fayette County	a	c	b	b	b	b	g
b. Madison County	g	h	b	b	b	b	b
c. Rest of AQCR	a	c	b	b	b	b	b
Evansville (Indiana)-Owensboro-Henderson (Kentucky) Interstate:							
a. Daviess County	g	i	g	g	b	b	b
b. Henderson County	g	i	a	e	b	b	g
c. Webster County	c	c	g	g	b	b	b
d. Rest of AQCR	c	c	a	e	b	b	b
Huntington (West Virginia)-Ashland (Kentucky)-Portsmouth-Ironton (Ohio) Interstate:							
a. Boyd County	g	i	g	b	b	b	g
b. Lawrence County	g	h	b	b	b	b	b
c. Rest of AQCR	c	c	b	b	b	b	b
Louisville Interstate	g	i	i	i	b	h	h
Metropolitan Cincinnati Interstate:							
a. Boone County	c	c	a	d	b	d	h
b. Campbell County	g	h	a	d	b	d	h
c. Kenton County	c	c	a	d	b	d	h
d. Rest of AQCR	c	c	a	d	b	d	c
North Central Kentucky Intrastate:							
a. Bullit County	g	h	b	b	b	b	b
b. Rest of AQCR	a	c	b	b	b	b	b
Paducah (Kentucky) Cairo (Illinois) Interstate:							
a. McCracken County	g	h	g	i	b	b	b
b. Marshall County	c	g	a	i	b	b	b
c. Muhlenberg County	g	h	g	g	b	b	b
d. Rest of AQCR	c	c	a	i	b	b	b
South Central Kentucky Intrastate	b	b	b	b	b	b	b

See § 81.318 of this chapter to identify the specific nonattainment area.

Note.—Dates or footnotes in italics are prescribed by the Administrator because the plan did not provide a specific date or the dates provided were not acceptable. Sources subject to plan requirements and attainment dates established under Section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.926 (1979 edition).

a. Air quality levels presently below primary standards or area is unclassifiable.

b. Air quality levels presently below secondary standards or area is unclassifiable.

c. April 1975.

d. July 1975.

e. July 1977.

f. July 1978.

g. December 31, 1982.

h. December 31, 1987.

i. 18 month extension for plan submittal granted: attainment date not yet established.

j. January 1, 1985.

3. Section 52.935 is added as follows:

§ 52.935 Control strategy: Particulate matter.

(a) Part D—Conditional approval.

(1) With the exception of Regulation 401 KAR 61:015, Section 8, paragraph (2)(d), which is disapproved, the 1979 total suspended particulate revisions for Bell, Boyd, Jefferson, McCracken and Muhlenberg counties, and that portion of Bullit County in Shepherdsville, that portion of Campbell County in Newport, that portion of Daviess county in Owensboro, those portions of Henderson County in and around Henderson, that portion of Lawrence County in Louisa, that portion of Madison County in Richmond, that portion of Perry County in Hazard, that portion of Pike County in Pikeville, and that portion of Whitley County in Corbin, nonattainment areas, are approved on condition that the following be submitted by October 15, 1981:

(i) A revision to Regulation 401 KAR 50:055 Section 2(3) specifying a method for determining opacity for sources of intermittent emissions other than Method 9 of Appendix A, 40 CFR Part 60.

(ii) A revision to Regulation 401 KAR 50:055 section 2(6) which specifies that adjustment of opacity standards be restricted to stack or control device discharges.

(iii) Revisions to Regulation 401 KAR 50:055 Section 6, Alternative Emission Reduction Options to correct deficiencies as outlined in the September 18, 1980 **Federal Register**, 45 FR 62163 at page 62168, deficiency number 3.

(iv) Revisions to Regulation 401 KAR 61:005 General Provisions, Section 2(1) and 2(2) such that the regulation clearly requires a performance test as the means for demonstrating compliance.

(v) A revision to Regulation 401 KAR 61:020 Section 3, Standard for Particulate Matter, such that the regulation has a specific requirement of reasonably available control technology (RACT) applicable to sources of process fugitive emissions.

(vi) Revisions to Regulation 401 KAR 61:075; Steel Plants and Foundries Using Existing Electric Arc Furnaces, which specifies a method for determining opacity for sources of intermittent emissions other than Method 9 of Appendix A, 40 CFR Part 60, and an opacity limitation which represents a level of control equivalent to RACT.

(vii) A Revision to Regulation 401 KAR 61:080, Steel Plants Using Existing Basic Oxygen Process Furnaces, which specifies a method for determining opacity for sources of intermittent emissions other than Method 9 of Appendix A, 40 CFR Part 60, and an opacity or mass limitation which represents a level of control equivalent to RACT.

(viii) Revisions to Regulation 401 KAR 61:140; Existing By-Product Coke Manufacturing Plants, which specify standards and emissions limitations which represent a level of control equivalent to RACT for battery topside leaks, charging, pushing, and quenching operations, as well as appropriate test methods.

(ix) Establishment of a Regulation which will represent a level of control equivalent to RACT for blast furnace casthouses.

[FR Doc. 80-40056 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 52

[A-5-FRL 17 11-1]

Approval of Michigan Sulfur Dioxide State; Implementation Plan for Consumers Power Company's J. H.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action approves a revision to the Michigan SIP a Final Order issued by the Michigan Air Pollution Control Commission (Commission). The Order extends the compliance date from January 1, 1980 until January 1, 1985 for

(b) Result in sulfur dioxide emissions greater than 414 tons on any calendar day. This emission limitation is the equivalent of burning coal which averages 3.6 percent sulfur content by weight at 12,000 Btu/pound of coal and

may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Note.—Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore,

September 5, 1980, the State submitted documentation that one of these conditions has been fulfilled. This condition involves a requirement that one of the Missouri regulations governing the emission of volatile

Section 2 of the rule requires floating roof tanks for liquids having a vapor pressure of 1.8 psia at 70 degrees Fahrenheit. The CTG recommends 1.5 psia at storage conditions. Section 3 of the Missouri rule requires controls to

40 CFR Part 52

[A-5-FRL 17 11-1]

Approval of Michigan Sulfur Dioxide State; Implementation Plan for Consumer Power Company's J. H. Campbell Plant

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 19, 1979 (44 FR 66214), USEPA proposed approval of a revision to the Michigan State Implementation Plan (SIP). The revision in the form of a Final Order, extends from January 1, 1980 until January 1, 1985 the date by which the Consumers Power Company is required to bring sulfur dioxide (SO_2) emissions from coal-fired boilers at its J. H. Campbell Plant into compliance with SO_2 regulations in the federally approved Michigan SIP. The State of Michigan submitted an amendment to the Order on February 14, 1980, and USEPA proposed approval of the revised Final Order in a supplemental notice of proposed rulemaking on April 22, 1980 (45 FR 26983). Interested persons were invited to comment on the proposed revision and on USEPA's proposed rulemaking. One public comment was received. The purpose of this notice is to discuss the comments received and to announce USEPA's final rulemaking action to approve this revision to the Michigan SIP.

EFFECTIVE DATE: This final rulemaking becomes effective January 23, 1981.

ADDRESSES: Copies of the SIP revision, public comment on the Notice of Proposed Rulemaking (44 FR 76311), and USEPA's evaluation and response to comments are available for inspection during normal business hours at the following addresses:

United States Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Judy Kertcher, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6038.

SUPPLEMENTARY INFORMATION: On June 26, 1979, the Michigan Department of Natural Resources, Air Quality Division, submitted as a proposed revision to the Michigan SIP a Final Order issued by the Michigan Air Pollution Control Commission (Commission). The Order extends the compliance date from January 1, 1980 until January 1, 1985 for the Consumers Power Company's J. H. Campbell Plant to meet the sulfur dioxide (SO_2) emission limitations in Rule 336.49 (revised Rule 336.1401 effective January 17, 1980) of the Commission's Rules and Regulations.

On November 19, 1979 (44 FR 66214), USEPA proposed approval of the Order as a revision to the Michigan SIP. On February 14, 1980, the State of Michigan submitted an amendment to the Order. USEPA proposed approval of the Order as amended in a supplemental notice of proposed rulemaking on April 22, 1979 (45 FR 26983). Interested persons were invited to comment on the porposed revision and on USEPA's proposed rulemaking. One public interest group submitted comments. This notice discusses USEPA's review of the Order and comments received and announces USEPA's final approval of the revision to the Michigan SIP.

The Consumers Power Company's J. H. Campbell plant is located in Port Sheldon Township, Ottawa County, Michigan, approximately one kilometer east of Lake Michigan. Ottawa County, is located in Air Quality Control Region 122, which was designated as an attainment area for SO_2 in the October 5, 1978 Federal Register (43 FR 45993). No exceedances of the SO_2 NAAQS occurred in 1978. The air quality modeling analysis submitted by the Consumers Power Company relied upon nonreference methodology. Consequently, USEPA performed an air quality modeling anlaysis to assure that approval of the variance for J. H. Campbell will not cause or contribute to a violation of the SO_2 NAAQS or PSD increments. USEPA used CRSTER, the reference rural, single source Gaussian dispersion model, with five years of representative meteorological data (1973-1977). Based on its detailed analysis employing reference methodology, USEPA concluded that the proposed SO_2 SIP revision for J. H. Campbell will not cause or contribute to a violation of the SO_2 NAAQS or PSD increments.

Under the Order the Company must comply with the following program for control of SO2 emissions from the J. H. Campbell plant:

(1) Beginning on January 1, 1980 and continuing to January 1, 1985 fuel burned at the Campbell Plant shall not:

(a) On an annual average exceed 3.05 percent sulfur content by weight at 12,000 Btu/pound of coal.

(b) Result in sulfur dioxide emissions greater than 414 tons on any calendar day. This emission limitation is the equivalent of burning coal which averages 3.6 percent sulfur content by weight at 12,000 Btu/pound of coal and 650 megawatts net load for 24 hours.

(c) On a daily average result in emissions of sulfur dioxide greater than a rate of 6.6 pounds per million Btu heat input.

(2) After January 1, 1985, emissions of sulfur dioxide from the Campbell plant shall not exceed the levels prescribed in Tables and 3 and 4 of Rule 336.49 (Tables 41 and 42 of revised Rule 336.1401) unless an alternate date for compliance with the levels is established by the Commission.

One public interest group submitted a comment on the proposed revision.

COMMENT: Michigan Rule 336.49(b) (revised rule 336.1401(6)) does not allow a source to emit SO2 at an average rate for any calendar month greater than was emitted by that fuel burning equipment for the corresponding calendar month of the year 1970, unless otherwise authorized by the Commission. The Order does not contain provisions that waive the requirements of Michigan Rule 336.49(6) (revised Rule 336.1401(6)).

USEPA RESPONSE: Although the Order does not expressly state that it acts as a revision to Rule 336.49(6) (revised Rule 336.1401(6)), the Order does specify interim limitations which exceed the Company's 1970 emissions. Therefore, USEPA believes that this indicates the Commission's intent to remove the source from applicability of Rule 336.49(6).

USEPA's Final Determination: USEPA approves the extension from January 1, 1980 until January 1, 1985 for the Consumers Power Company's J. H. Campbell Plant to meet the SO2 emission limitations in Rule 336.49 (revised Rule 336.1401) of the federally approved Michigan SIP. The State has indicated that it is relying on continuous emission monitoring and fuel analysis to determine the Company's compliance with the Order. This is acceptable to USEPA. If an alternate date for compliance is established with the Commission, the State must submit the new Order to USEPA as a revision to the Michigan SIP.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of date of publication. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice

may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Note.—Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized". I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 1979 by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 110 of the Clean Air Act, as amended)

Note.—Incorporation by reference of the State Implementation Plan for the State of Michigan was approved by the Director of the Federal Register on July 1, 1980.

Dated: December 18, 1980.

Douglas Costle,

Administrator.

Title 40 of the Code of Federal Regulations, Chapter 1, Part 52 is amended as follows:

1. Section 52.1170(c) is revised by adding paragraph 30 to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

* * * * *

(30) On July 26, 1979, the State of Michigan Submitted to USEPA a revision to Rule 336.49 for the Consumers Power Company's J. H. Campbell Plant. The revision is a Final Order (No. 05-1979) extending the compliance date until January 1, 1985 for the Campbell Plant to meet the sulfur dioxide emission limitations in Rule 336.49. On February 14, 1980, the State of Michigan submitted to USEPA an amendment to Order No. 05-1979.

[FR Doc. 80-401 42 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

A-7-FRL 1711-6]

Approval and Promulgation of Implementation Plans: State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In order to satisfy the requirements of Part D of the Clean Air Act, as amended, the State of Missouri revised its State Implementation Plan (SIP) in 1979. On April 9, 1980, EPA conditionally approved certain elements of Missouri's plan (45 FR 24140). On September 5, 1980, the State submitted documentation that one of these conditions has been fulfilled. This condition involves a requirement that one of the Missouri regulations governing the emission of volatile organic compounds (VOC) be changed to reflect RACT. On October 10, 1980 a Notice of Receipt of this material was published in the Federal Register. The purpose of this notice is to advise the public that EPA is taking final action to approve the state's submission and is incorporating it into the approved SIP. The applicable condition is being revoked. Until all conditions are met, conditional approval of the SIP will continue.

EFFECTIVE DATE: This promulgation is effective January 23, 1981.

ADDRESSES: Copies of the state submission and the EPA prepared plan evaluation document are available for inspection during normal business hours at the following locations: EPA, Air Support Branch, 324 East 11th Street, Kansas City, Missouri 64106; EPA Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, D.C. 20460; Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65101. A copy of the state submission is also available at the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Wayne G. Leidwanger at 816-374-3791 (FTS 758-3791).

SUPPLEMENTARY INFORMATION: On April 9, 1980, EPA conditionally approved certain elements of Missouri's SIP with regard to the requirements of Part D of the Clean Air Act, as amended. A detailed discussion of the action can be found in the Federal Register notice published on that date (45 FR 24140). Today's notice discusses one of the conditions promulgated by EPA.

Missouri Rule 10 CSR 10-2.260, Control of Petroleum Liquid Storage, Loading and Transfer, was conditionally approved as part of the Part D plan revision for the Kansas City ozone nonattainment area. EPA review of this regulation was based on the information contained in the Control Technique Guidelines (CTGs). The CTGs provide information on available air pollution control techniques and recommendations of what EPA calls the "presumptive norm" for reasonably available control technology (RACT). Further discussion of the RACT requirements can be found in the April 9 Federal Register notice.

In reviewing Rule 10 CSR 10-2.260, EPA noted two minor deficiencies. Section 2 of the rule requires floating roof tanks for liquids having a vapor pressure of 1.8 psia at 70 degrees Fahrenheit. The CTG recommends 1.5 psia at storage conditions. Section 3 of the Missouri rule requires controls to limit emissions of volatile organic compounds during gasoline loading at terminals to 0.5 gram per gallon of gasoline loaded. The CTG recommends 0.3 gram per gallon of gasoline loaded. The State agreed to revise the regulation to agree with the CTG recommendation. On April 9, 1980, EPA conditionally approved the rule provided that the state submits a revision to the regulation which contains limits that agree with the CTG recommendations or submits enforceable compliance orders which assure that the CTG recommended limits are met. This revision is required by February 1, 1981.

On September 5, 1980, the state submitted revisions to Rule 10 CSR 10-2.260 for the purpose of meeting the condition. The state revised the vapor pressure specification to 1.5 psia at 70° F and the limit on gasoline loading to 0.3 gram per gallon of gasoline loaded. EPA issued a notice of receipt of this submission on October 10, 1980 (45 FR 67344). Although the state changed the vapor pressure specification to 1.5 psia at 70° F instead of 1.5 psia at storage conditions, the state has provided a list of petroleum products stored in the Kansas City area which demonstrates that those products which would be governed by the CTG recommendation will also be covered by the Missouri regulation.

Based on its review of the submitted documents, EPA finds that the condition on its approval has been fully met. Therefore, EPA is incorporating the regulatory changes into the SIP and is revoking the applicable condition. Furthermore, this action serves to continue EPA's conditional approval until all conditions have been met.

In this submission Missouri also submitted changes to this rule for the purpose of complying with the additional RACT regulations which were due July 1, 1980 (for CTGs published between January 1978 and January 1979). EPA is not acting on these changes but only on the changes submitted to comply with EPA's conditional approval of Rule 10 CSR 10-2.260 promulgated on April 9, 1980. Proposed action on the additional RACT regulations will be published in the Federal Register at a later date.

EPA finds that further notice and comment on this issue are unnecessary. The corrective action was clearly identified in EPA's promulgation and the

state's submittal clearly addresses the specified criteria for approval.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and, therefore, subject to the

40 CFR Part 52

[A-6-FRC 1703-3]

Approval and Promulgation of Implementation Plans; New Mexico

particulate matter and the TSP control strategy for Eddy, Lea, and Grant Counties were proposed for approval by EPA in a Federal Register notice of August 9, 1979 (44 FR 46895) and were given final approval on April 10, 1980 (45

(16) Compliance schedules for several industries located in Eddy, Lea and Grant Counties were submitted to EPA by the Governor of New Mexico on July 25, 1979.

§ 52.1626 [Amended]

(b) is added to read as follows:

* * * * *

(b) The compliance schedules for the sources identified below are approved as meeting the requirements of § 51.6 and § 51.15 of this chapter. All

EPA has a responsibility under the Clean Air Act to take final action on the portion of the SIP which addresses Part D regulations by July 1, 1979 or as soon thereafter as possible.

On November 9, 1979 EPA published in the Federal Register a Notice of

state's submittal clearly addresses the specified criteria for approval.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and, therefore, subject to the procedural requirements of the Order, or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under authority of Section 110 of the Clean Air Act as amended.

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Federal Register on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart AA—Missouri

1. 40 CFR Part 52 is amended by revising § 52.1320(c)(16)(iv) and by adding a new § 52.1320(c)(23) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(16) * * * Included in the plan are the following approved regulations:

* * * * *

(iv) Rule 10 CSR 10–2.260 Control of Petroleum Liquid Storage, Loading and Transfer (Kansas City) is approved as RACT:

* * * * *

(23) Revisions to Rule 10 CSR 10–2.260 Control of Petroleum Liquid Storage, Loading and Transfer (Kansas City), submitted on September 5, 1980, amending the vapor pressure limit in Section 2(A) and amending the limit on gasoline loading in Section 3(B)(1), are approved as RACT.

§ 52.1324 [Amended]

2. Section 52.1324 is amended by revoking paragraph (c)(1)(iv). The paragraphs designated as (c)(1)(v), (c)(1)(vi), (vi)(A) and (vi)(B) are redesignated as (c)(2), (c)(3), and (3)(i) and (3)(ii) respectively.

[FR Doc. 80-40293 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-6-FRC 1703-3]

Approval and Promulgation of Implementation Plans; New Mexico Schedules of Compliance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action gives final approval to compliance schedules for sources governed by New Mexico Air Quality Particulate Control Regulations 508—POTASH, SALT OR SODIUM SULFATE PROCESSING EQUIPMENT, 509—LIME MANUFACTURING PLANTS, and 510—FUGITIVE PARTICULATE EMISSIONS FROM NON-FERROUS SMELTERS. These schedules were submitted by the Governor as revisions to the New Mexico State Implementation Plan (SIP) to fulfill one of the conditionally approved items specified in the April 10, 1980, final rulemaking on the New Mexico Plan for Nonattainment Areas (45 FR 24460). EPA is approving these compliance schedules and is continuing the conditional approval of the New Mexico Plan for Nonattainment Areas in effect.

EFFECTIVE DATE: December 24, 1980.

ADDRESSES: Copies of the above material are available for inspection during normal business hours at the following addresses:

Environmental Protection Agency, Public Information Reference Unit, Room 2922, EPA Library, 401 M Street, S.W., Washington, D.C. 20460

The Office of The Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Jerry Stubberfield, Chief, Implementation Plan Section, Air Programs Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas, (214) 767–1518.

SUPPLEMENTARY INFORMATION: The Governor of New Mexico submitted compliance schedules for particulate sources located in areas designated as not attaining the NAAQS for total suspended particulates (TSP) on July 25, 1979. The New Mexico Environmental Improvement Division developed the portion of the New Mexico SIP which addresses the attainment and maintenance of the standards for particulate matter. These compliance schedules pertain to particulate sources located in Eddy, Lea, and Grant Counties. New Mexico State Regulations 508, 509, and 510 governing control of particulate matter and the TSP control strategy for Eddy, Lea, and Grant Counties were proposed for approval by EPA in a Federal Register notice of August 9, 1979 (44 FR 46895) and were given final approval on April 10, 1980 (45 FR 24460).

New Mexico State Regulation 508 establishes final compliance dates of December 31, 1982, and December 31, 1984, for the attainment of the primary and secondary standards, respectively for potash, salt, and sodium sulfate facilities. Regulation 509 establishes a final compliance date of December 31, 1980, for lime manufacturing facilities. Regulation 510 governing fugitive particulate matter from nonferrous smelters establishes a final compliance date of December 31, 1980. Additionally, Regulation 510 establishes December 31, 1983, as the date after which no nonferrous smelting facility may (1) utilize storage piles for process materials unless they are properly controlled or enclosed or (2) utilize roadways or parking lots within the facility boundaries unless they are cleaned frequently or unless control of emissions is sufficient to prevent the accumulation of fugitive particulates in these areas.

EPA finds good cause exists for making this rule immediately effective. The submitted compliance schedules meet the necessary provisions for compliance schedules as outlined in 40 CFR 51.15.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 10244.

(Sec. 110 of the Clean Air Act, as amended)

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of New Mexico was approved by the Director of the Federal Register on July 1, 1980.

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is proposed for revision as follows:

Subpart GG—New Mexico

1. In Section 52.1620, paragraph (c), a new paragraph (16) is added to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(16) Compliance schedules for several industries located in Eddy, Lea and Grant Counties were submitted to EPA by the Governor of New Mexico on July 25, 1979.

§ 52.1626 [Amended]

2. In Section 52.1626, a new paragraph (b) is added to read as follows:

* * * * *

(b) The compliance schedules for the sources identified below are approved as meeting the requirements of § 51.6 and § 51.15 of this chapter. All regulations cited are air pollution control regulations of the State.

New Mexico

Source	Location	Regulation involved	Effective date	Final compliance date
Eddy County				
AMAX Chemical Corp	Carlsbad	508	Immediately	11/1/80
DUVAL Corp	Carlsbad	508	Immediately	12/31/82
Int'l Minerals and Chem. Corp	Carlsbad	508	Immediately	12/31/84
Kerr-McGee Chem. Corp	Carlsbad	508	Immediately	9/1/81
Mississippi Chemical	Carlsbad	508	Immediately	9/15/81
National Potash Co	Carlsbad	508	Immediately	12/31/81
Potash Co. of America	Carlsbad	508	Immediately	12/31/82
United Salt Corp	Carlsbad	508	Immediately	12/31/81
Lea County				
Climax Chem. Co	Monument	508	Immediately	12/31/82
Grant County				
Kennecott Copper Corp	Hurley	509	Immediately	12/30/80
		510	Immediately	12/31/82

[FR Doc. 80-40164 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-10-FRL-1711-5]

Approval Promulgation of Implementation Plans; Revision to the Washington State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency today approves a revision to the Washington State Implementation Plan (SIP) dealing with Part D (Plan Requirements for Nonattainment Areas) of the Clean Air Act, as amended in 1977, (hereafter referred to as Act) (42 U.S.C. 1857 et seq.). EPA is conditionally approving the transportation control plan (TCP) of the Spokane carbon monoxide (CO) attainment strategy as a follow-up to the rulemaking of June 5, 1980 (45 FR 37821) where EPA took no final action on this portion of the Washington Part D SIP. The new source review (NSR) requirements were also conditionally approved in that action. In accordance with conditional approvals, the State of Washington is required to submit to EPA additional materials to satisfy the conditions of this action no later than March 31, 1981.

EFFECTIVE DATE: December 24, 1980.

ADDRESSES: Copies of the relative material for this revision may be examined during normal business hours at the following locations:

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408

Central Docket Section (10A–79–1), West Tower Lobby, Gallery I, Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460

Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

FOR FURTHER INFORMATION CONTACT: Richard R. Thiel, P. E., Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No. (206) 442–1230, FTS 399–1230.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA finds that good cause exists for making the action taken in this notice immediately effective for the following reasons: (1) implementation plan revisions are already in effect under State law and EPA approval poses no additional regulatory burden, and (2) EPA has a responsibility under the Clean Air Act to take final action on the portion of the SIP which addresses Part D regulations by July 1, 1979 or as soon thereafter as possible.

On November 9, 1979 EPA published in the **Federal Register** a Notice of Proposed Rulemaking (44 FR 65084) describing the nature of the Washington SIP revision, discussing certain provisions which, in the opinion of EPA, did not comply with the Act and requesting public comment. On June 5, 1980 (45 FR 37821) EPA published a Notice of Final Rulemaking on most portions of the SIP. However, no action was taken on the TCP portion of the Spokane CO strategy because of on-going discussions pertaining to technical deficiencies in calculation of emission reductions. These issues have been settled and EPA is today publishing conditional approval of the Spokane TCP.

II. Background

As part of the June 5, 1980 (45 FR 37821) final rulemaking, a complete description of the Federal and State actions leading up to the submittal of this SIP revision was presented. The only addition to that information is that the lead agency, the Spokane Regional Planning Conference (SRPC), held and participated in numerous public meetings between April 1979 and August 1980 dealing with the revision to the measure for "reduction of on-street parking." In September 1980, the SRPC adopted and the State submitted a revised CO TCP for inclusion in the SIP. This revision did not measurably alter the TCP for which EPA proposed action November 9, 1979 (44 FR 65084).

III. TCP Analysis and EPA Action

A. *TCP Development:* The Spokane nonattainment area is confined to a small portion of the CBD and major traffic corridors. The designated lead agency is the Spokane Regional Planning Conference (SRPC). The SRPC worked closely with the Spokane County Air Pollution Control Authority, the Washington Department of Transportation, the Federal Highway Administration and the State of Washington Department of Ecology (DOE) in developing this plan. Citizen participation was realized through the citizen advisory committee and four public hearings prior to the official submittal of the SIP to EPA in April 1979. Additional public participation to consider modifications to that plan were

held between April 1979 and September 1980, when the final Spokane strategy was submitted to EPA. Involvement of elected officials occurred at both the city and county levels through their

ensure implementation of the transportation control plan. The position was filled during March, 1980.

It is EPA's judgment that attainment of the CO standard by December 31,

accomplished. However, the measure does not commit to a date by which the operating budget will be increased to accommodate the system expansion. EPA understands that a sales tax increase measure will be voted on by

Register notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved and funding limitations under Section 176

(c) * * *

(23) On September 10, 1980 the Governor submitted a revised transportation control plan for the Spokane carbon monoxide nonattainment area calling for

instruction that in calculating terminal value the NSO applicant must capitalize net income for 1986 *plus* the after tax interest expense on long-term debt.

Elsewhere in today's **Federal Register** the Administrator has proposed certain

held between April 1979 and September 1980, when the final Spokane strategy was submitted to EPA. Involvement of elected officials occurred at both the city and county levels through their participation in public hearings and interdepartmental and advisory committees.

B. *Emission Reduction:* The attainment analysis was conducted using an EPA approved model and predicts attainment of the 8-hour standard by 1982 through implementation of reasonably available control measures, without I/M. The total emissions reduction required to achieve the standard is 57 percent. EPA felt that the initial emission reductions projected to result from the control strategy discussed below (approximately 59–68 percent by 1983) were excessive and that the air quality analysis, upon which this prediction was based, was technically inadequate. The SRPC has revised the technical analysis to correct these deficiencies. The reanalysis indicates that a reduction of only 44 percent is required. Using the same transportation control measures, an emission reduction of 44–46 percent will be achieved.

C. *Transportation Control Plan:* Carbon monoxide, primarily a transportation-related pollutant, will be controlled by the transportation measures outlined below. In order to reduce emissions from mobile sources, two different approaches can be taken. The first approach is to reduce vehicle usage (e.g., miles traveled). The second approach is to reduce the emissions from individual vehicles (e.g., inspection and maintenance).

Measures which have been implemented or are scheduled to be implemented include the following:

Measure	Implementation date
(1) Transit-Marketing Program	(1)
(2) Bus Ridership Incentive Program	9/80
(3) Increased Transit Service During Peak Periods-Bus acquisition	2/80
(4) Reduction of On-Street Parking (6:30 a.m.–9:00 a.m. and 3:30 p.m.–7:00 p.m., except Sunday)	9/80
(5) Ordinance to Prohibit Excessive Vehicle Idling	[2] 2/80
(6) Loading Zone Permit System	[2] 3/80
(7) Off Street Parking Program (3 elements)	10/80
(8) Employer Programs to Increase Use of Multi Occupancy Vehicles	3/80
(9) Staggered Work Hours	3/80
(10) Computer Synchronization of Traffic Signals	8/80
(11) Traffic Flow Improvements	1980–81
(12) Fleet Vehicle Controls	[2] 8/80

[1] On going.
[2] Date of presentation of ordinance to City Council.

The City has also established a position for a person to assist and ensure implementation of the transportation control plan. The position was filled during March, 1980.

It is EPA's judgment that attainment of the CO standard by December 31, 1982 is contingent upon *aggressive* implementation of all measures described in the TCP. In particular, although the measure for expanding the transit program is designed to achieve 30 percent of the required reduction, the current operating budget contains no allowance for expansion in transit service, even for the existing system. It is critical that the operating funds be secured in time for implementing the expanded transit service on schedule.

(D) *Deficiencies/Comments/EPA Action:* The Spokane CO TCP addresses most of the items contained in the EPA guidance. However, there were certain deficiencies in the proposed plan that require correction. Accordingly, EPA proposed approval of the Spokane CO TCP on November 9, 1979 with the following conditions:

1. *Deficiencies:* (a) An air quality reanalysis must be completed by December 15, 1979. Major portions of the reanalysis include the inventory of emissions related to parking, emission reduction credits and a schedule for an inspection and maintenance program, if the reanalysis shows attainment beyond 1982.

(b) The plan must include evidence of adoption by public hearing including notice and summary of comments and disposition of comments. Evidence of an A–95 Clearinghouse Review is also required.

(c) The plan must include a commitment to fund projects for the purpose of expanding and improving public transit, including increased operating revenue.

(2) *State Response:* (a) The air quality reanalysis was submitted by the deadline and all technical deficiencies were corrected. The State submitted the corrected plan to EPA on September 10, 1980.

(b) Information verifying the public hearing process and Clearinghouse Review procedure was submitted.

(c) This condition as written was necessary if an extension of the attainment date was required as a result of the December 15, 1979 reanalysis. An extention was not necessary. However, the revised TCP includes a measure to "increase transit service during peak hours."

This requires expansion of the transit system and an increase in the operating budget. At present the measure commits to obtaining funding for new buses from the Urban Mass Transit Authority by February 1980. This has been accomplished. However, the measure does not commit to a date by which the operating budget will be increased to accommodate the system expansion. EPA understands that a sales tax increase measure will be voted on by the public in March 1981 to provide for increased operating revenue for the transit system. In light of this proposed action, EPA will condition the approval of the TCP based on submission by March 31, 1981 of a detailed schedule for implementation of increased transit service as expeditiously as practicable.

(iii) *Public Comment:* None.

(iv) *EPA Action:* (a) *Approval.*

(b) *Approval.*

(c) *Conditional Approval:* Submission by March 31, 1981 of a detailed schedule for implementation of increased transit service as expeditiously as practicable will correct the deficiency.

Failure to satisfy these conditions and make reasonable efforts to implement the TCM's on a timely basis could subject Spokane to funding limitations under Section 176 and 316 of the Act and growth limitations under Section 110.

IV. Additional SIP Requirements

EPA is taking final action to conditionally approve one element of Washington's plan, the Spokane CO TCP. A discussion of conditional approval and its practical effect appears in a supplement to the General Preamble, 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53716 (September 17, 1979), and 44 FR 67182 (November 23, 1979). This conditional approval requires the State to submit information by March 31, 1981.

There will be no extension of the conditional approval deadline which is being promulgated today. EPA will follow the procedures described below when determining whether the State has satisfied the conditions.

1. If the State submits the required additional documentation according to schedule, EPA will publish a notice in the **Federal Register** announcing receipt of the material. The notice of receipt will also announce that the conditional approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the State's submission to determine if the conditions are fully satisfied. After review is complete, a **Federal Register** notice will be published either approving or disapproving the State's action. If the action is disapproved, the funding limitations under Sections 176 and 316 and growth sanctions under Section 110 of the Act may be imposed.

3. If the State fails to timely submit the required materials needed to meet a condition, EPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved and funding limitations under Section 176 and 316 may be imposed. Section 110(a)(2)(I) restrictions on growth will be imposed or continue to be in effect.

If funding limitations are necessary, procedures for applying them would be consistent with those published in the **Federal Register** on April 10, 1980 (45 FR 24692). These procedures will not be discussed in detail here.

Section 316 of the Act also allows the Administrator of the EPA to withhold, condition or restrict grants for the construction of sewage treatment works in nonattainment areas where the State is not making reasonable further progress towards attainment of all national ambient air quality standards (NAAQS).

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Under Section 307(b)(1) of the Clean Air Act, judicial review of EPA's final action conditionally approving the transportation control plan portion of the Spokane CO nonattainment strategy is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(Sec. 110(a) and 172 of the Clean Air Act as amended (42 U.S.C. 7410(a) and 7502))

Dated: December 18, 1980.

Douglas M. Costle,
Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Washington was approved by the Director of the Federal Register on July 1, 1980.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is hereby amended as follows:

Subpart WW—Washington

1. In Section 52.2470 paragraph (c)(23) is added as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(23) On September 10, 1980 the Governor submitted a revised transportation control plan for the Spokane carbon monoxide nonattainment area calling for attainment by December 31, 1982.

2. In Section 52.2487 paragraph (a)(2) is added as follows:

§ 52.2487 Control strategy: Carbon Monoxide.

* * * * *

(a) * * *

(2) The Spokane transportation control plan portion of the carbon monoxide control strategy is approved provided the State submits information to satisfy the following condition by March 31, 1981.

(i) Submission of a detailed plan to implement expanded transit service as expeditiously as practicable.

[FR Doc. 80–40165 Filed 12–23–80; 8:45 am]

BILLING CODE 6560–38–M

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40 CFR Part 57

[FRL 1691–7]

Primary Nonferrous Smelter Orders; Response to Petitions for Reconsideration; Technical Corrections

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Partial grant and partial denial of petition for reconsideration; technical corrections.

SUMMARY: On June 24, 1980, EPA promulgated regulations that established the minimum required contents of initial primary nonferrous smelter orders (NSOs) issued under section 119 of the Clean Air Act (Act), and the criteria and procedures EPA will use in issuing NSOs and in evaluating NSOs issued by States.

This action is the Administrator's response to several petitions for reconsideration. The Administrator has denied certain points and, in response to other points, made final technical corrections to the instructions for, and economic forecasts to be used with Appendix A of the NSO regulations. The intended effect of these technical corrections concerning Appendix A would (1) make the deflator for production costs consistent with the deflator for copper prices; (2) adjust certain cost of capital figures to reflect recent high inflation rates; (3) adjust the instructions for calculating terminal value to reflect the change in the cost of capital figures; and (4) delete the instruction that in calculating terminal value the NSO applicant must capitalize net income for 1986 *plus* the after tax interest expense on long-term debt.

Elsewhere in today's **Federal Register** the Administrator has proposed certain amendments to the NSO regulations in response to petitions for reconsideration.

DATES: To the extent the Administrator has not granted the petitions, the action announced in this notice is effective December 24, 1980.

ADDRESSES: Docket Number DSSE–78–1 contains all supporting materials used by EPA in evaluating the petition. The docket is open for public inspection and copying between 9:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Main Lobby, Gallery I, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: David Rochlin, Division of Stationary Source Enforcement (EN–341), 401 M Street, SW., Washington, D.C. 20460, telephone 202–755–2542.

SUPPLEMENTARY INFORMATION:

I. Criteria for Review of the Petitions for Reconsideration

Arizona stated that its petition for reconsideration was filed under section 307(b)(1) of the Act, 42 U.S.C. 1857h–5(b)(1), as described in *Oljato Chopter of the Navajo Tribe* v. *Train*, 515 F.2d 654 (D.C. Cir. 1975). Congress, however, amended section 307 in 1977 and expressly set out in section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B) the procedure and criteria for the Administrator to use in evaluating a petition for reconsideration such as this one, as ASARCO/Magma recognized.[1] Accordingly, the Administrator has reviewed both petitions under section 307(d)(7)(B) which EPA believes is the exclusive basis for such review.

Section 307(d)(7)(B), which to a large degree codified *Oljato*, is narrow in time and scope. It provides that any new material must first be submitted to EPA to determine whether further proceedings are warranted before any judicial review is available. Specifically, section 307(d)(7)(B) provides that the Administrator shall convene a proceeding to reconsider the rule in question if a person raising an objection can demonstrate that (1) it was impracticable to raise such objection

[1] Congress, under section 307(d)(1)(C), explicitly made any petition for reconsideration of the Administrator's final NSO rules subject to section 307(d)(7)(B).

during the comment period, or that the grounds for such objection arose after the comment period but within the time specified for judicial review (which EPA concludes means within the 60-day time period provided for judicial review

use of constant controls absent the Administrator's recommendation that such a waiver be granted. This notice discusses these points seriatim.

1. *Specification of 24-hour running average.*

dioxide that will actually be breathed by people will also be reported. 43 FR 34892 (August 7, 1978). This was because the 24-hour NAAQS for sulfur dioxide was based on health studies that showed that continuous 24-hour exposures to

Constitution, require the use of a consent statement in a criminal prosecution. The State discussed the constitutional issues it perceived, and particularly questioned whether, in effect, use of the consent form would create an unconstitutional, irrebuttable

that its use would necessarily "interfere" with the successful implementation of stack emission curtailment procedures. It simply deals with the possibility that a given smelter may be operating an SCS that is not currently designed to deal with fugitive

EPA is today making a technical correction to § 57.816 to conform it exactly to the statutory language. This change is consistent with EPA's original intent, which was to implement the statute's obvious meaning that a waiver is to be granted by a State only if the

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during the comment period, or that the grounds for such objection arose after the comment period but within the time specified for judicial review (which EPA concludes means within the 60-day time period provided for judicial review under section 307(b)(1), 42 U.S.C. 7607(b)(1)); and (2) such objection is one of central relevance to the outcome of the rule. If the Administrator refuses to initiate such a proceeding, the moving party may seek judicial review of that decision under section 307(b) of the Act, 42 U.S.C. 7607(b).

EPA interprets the phrase "of central relevance to the outcome of the rule" to mean that the petitioner must demonstrate that its objection, if assumed to be true, would cause EPA seriously to consider changing the rule previously promulgated. This is clear from the statutory language itself that speaks specifically of objections centrally relevant to the "outcome of the rule." This is stricter than section 307(d)(4)(B) which speaks of documents of "central relevance to the rulemaking," for purposes of including documents in the administrative record. It is more akin, in both wording and purpose, to section 307(d)(8) which provides that a judicial remand on procedural grounds should be based only on an error so serious and related to matters of such "central relevance to the rule that there is substantial likelihood that the rule would have been significantly changed" if such an error had been made.

II. Discussion

The following discussion sets out the Administrator's response to the petitions and the reasons for it. EPA has also added in response to the petitions item number VI–B–1 to the public docket. This item explains certain of the reasons for the Administrator's response in greater detail.

A. Arizona Petition

In its petition, Arizona argued that the NSO regulations should (1) specify whether compliance with the 24-hour sulfur dioxide national ambient air quality standard (NAAQS) is determined by using a running or discrete average; (2) excuse excess emissions during acid plant start-up after scheduled maintenance; (3) address whether use of the required consent to liability is constitutional in a criminal proceeding; (4) reflect the reality that a supplementary control system (SCS) can reliably prevent NAAQS violations caused by a smelter's fugitive emissions, as well as by its stack emissions; and (5) delete the requirement that a state cannot issue a waiver of the interim requirement for the use of constant controls absent the Administrator's recommendation that such a waiver be granted. This notice discusses these points seriatim.

1. *Specification of 24-hour running average.*

Arizona repeated in its petition the comment it submitted on the proposed NSO regulations that EPA should specify whether the 24-hour NAAQS for sulfur dioxide was a discrete or running (non-overlapping) average. Arizona did not argue for either a discrete or running average, but contended only that specification of one or the other was necessary in order to comply with the notice and comment provisions for rulemaking under the Administrative Procedure Act, 5 U.S.C. 553.[2] EPA specifically responded to this comment when it promulgated the NSO regulations:

> This rulemaking does not affect the reporting of ambient monitoring data for purposes of determining whether National Ambient Air Quality Standards are being met. Compliance with the 3-hour and 24-hour standards for SO_2 is determined by examining running 3-hour and 24-hour averages starting at each clock-hour. If any two non-overlapping three-hour periods in any year exceed the three-hour secondary standard (1300 $\mu g/m^3$), the standard has been violated. If any two non-overlapping 24-hour periods in any year exceed the 24-hour primary standard (365 mg/m^3), that standard has been violated. Guidelines for the Interpretation of Air Quality Standards, EPA, OAQPS No. 1.2–008, February, 1977. See also 40 CFR Part 58, "Ambient Air Quality Surveillance," Appendix F. Paragraph 2.1.2., 44 FR 27558, 27597 (May 10, 1979).

Under section 307(d)(7)(B) it was not impracticable for Arizona to raise this objection during the comment period. This conclusion is obvious; it could not have been impracticable because it was done. Since in its final rule EPA responded fully to the objection, it cannot be viewed as centrally relevant to the outcome of the rule, either. Accordingly, EPA must deny the petition on this point.

For the sake of clarification, however, EPA notes that it has specified that where continuous monitors are used, the 24-hour average is running, not discrete. *Appendix F to 40 CFR Part 58 requires that compliance with the NAAQS for sulfur dioxide be computed on a non-overlapping average anywhere a continuous monitor is in operation.* EPA proposed the use of non-overlapping values in Appendix F to insure that *all* 24-hour average concentrations of sulfur dioxide that will actually be breathed by people will also be reported. 43 FR 34892 (August 7, 1978). This was because the 24-hour NAAQS for sulfur dioxide was based on health studies that showed that continuous 24-hour exposures to sulfur dioxide are harmful to human health, without regard to the time of day at which the 24-hour period begins.

2. *Excess emissions after scheduled maintenance.*

In response to comments on the proposed NSO regulations, EPA provided in § 57.304(e) of the final regulations that an NSO may excuse certain excess emissions which occur during acid plant start-up after a prolonged SCS curtailment, provided certain measures are specified to minimize such emissions. In the preamble to the final regulations, the Administrator recognized that if an acid plant has not received gas for some time, it can cool so much that a warm-up period is required before efficient gas treatment is again feasible. 45 FR 52530.

Arizona argued in its petition that EPA's failure also to excuse excess emissions during start-up of an acid plant following shutdowns due to scheduled maintenance (in addition to SCS-compelled shutdowns) is bad policy because it would discourage adequate acid plant maintenance. In addition, the State said, the reasons for applying the "exemption" to start-ups following shutdowns due to scheduled maintenance are compelling because such shutdowns may often last much longer than SCS-compelled shutdowns, and this diminishes the effectiveness of practices to prevent cooling of the acid plant.

EPA agrees with this point in Arizona's petition and is today granting Arizona's petition on this point by proposing elsewhere in today's Federal Register to treat alike excess emissions during acid plant start-up following shutdowns compelled either by SCS-curtailments or by scheduled maintenance.

3. *Use of consent to liability form in criminal proceeding.*

Section 57.403 of EPA's final NSO regulations requires that an NSO contain written consent by the applicant that, in any judicial or administrative proceeding to enforce the NSO, it would not contest liability for a NAAQS violation in its designated liability area. The applicant would not waive its right to show that the determination of violation was "clearly wrong," or that it was done "knowingly."

Without recommending one position or another, Arizona stated in its petition that EPA should discuss whether it (or Congress) could, consistent with the

[2] EPA rejects any implicit suggestion in the petition that the requirements of 40 CFR 58, Appendix F pertain only to the reporting of data and may not be used to determine compliance with the sulfur dioxide standard.

Constitution, require the use of a consent statement in a criminal prosecution. The State discussed the constitutional issues it perceived, and particularly questioned whether, in effect, use of the consent form would create an unconstitutional, irrebuttable presumption that the smelter operator caused any violation that occurred in its designated liability area.

As the Administrator stated in the preamble to the proposed and final regulations, both EPA and Congress have recognized that SCS can be a reliable and enforceable means of preventing NAAQS violations only if the smelter operator is clearly responsible for all violations of ambient standards in the areas affected by the smelter's emissions. EPA implemented this belief in its pre-1977 smelter policy, largely codified by Congress, by requiring a smelter operator to assume liability for violations in the smelter's designated liability area. Nothing in that policy or Congress' adoption of it, however, required that the consent to liability be extended to criminal, as well as civil, proceedings. After reconsideration, EPA feels that the purpose of the consent to liability would not be undermined by restricting its application to civil proceedings. Therefore, without necessarily agreeing with Arizona's characterization of the constitutional issues that would arise under § 57.403 as promulgated, EPA is today proposing elsewhere in today's Federal Register to amend that section to restrict to civil proceedings the application of the consent to liability requirement. Under this proposal, violation of the NAAQS in a smelter's designated liability area still "would justify enforcement action to penalize the violation and prevent its future occurrence." *See* H. Rep. No. 95–294, 95th Cong., 1st Sess. 62 (1977).

Since the petition asked only that EPA consider the issues raised, EPA deems the foregoing discussion and proposed amendment to constitute a grant of the petition on this point.

4. *SCS control of NAAQS violations caused by fugitive emissions.*

Arizona made essentially two points regarding SCS and fugitive emissions. The first was that § 57.503 of the final NSO regulations somehow ignores or negates the asserted reality that an SCS can prevent violations of the sulfur dioxide NAAQS caused by fugitive, as well as stack, emissions, and that no "additional" SCS is needed to control fugitive emissions that threaten the standards.

Arizona's comments read more into § 57.503 than was intended. That section does not contemplate that an additional SCS will in every case be necessary, or that its use would necessarily "interfere" with the successful implementation of stack emission curtailment procedures. It simply deals with the possibility that a given smelter may be operating an SCS that is not currently designed to deal with fugitive emissions, and with the possibility that under some circumstances the operational procedures most effective for reducing fugitive emissions might be inconsistent to some degree with the SCS operational procedures best suited to dealing with the effects of stack emissions.

Since the petition did not request any particular action, and since there seems to be no necessary inconsistency between the State's position and the regulatory language, EPA believes the foregoing clarification removes the need for EPA formally to grant or deny the petition on this point.

Arizona's second main argument on this topic is that the exemption from liability in § 57.402(c)(3)(iii) of the regulations for NAAQS violations caused by a smelter's fugitive emissions is too broad. The state contended that a well-designed SCS should prevent violations caused by fugitive emissions in every case except where it is necessary, for the purposes of the fugitive emission evaluation required by § 57.502, to disregard normal curtailment procedures.

Section 57.402(c)(3)(iii), however, explicitly states that the exemption for violations caused by a smelter's own fugitive emissions is subject to the provisions of § 57.703(a). Section 57.703(a) requires operation of any existing SCS and the assumption of liability at all monitoring sites. Thus a smelter that was already operating an SCS to prevent violations caused by its fugitive emissions would not be exempt under § 57.402(c)(3)(iii).

Since, again, there appears to be no necessary conflict between the State's position and the regulatory language, EPA believes the foregoing clarification responds sufficiently to the petition and that there is no need formally to grant or deny the petition on this point.

5. *State ability to issue an interim constant control waiver absent prior EPA approval.*

Section 57.816 of the regulations precludes a State from granting a waiver of the interim requirement for the use of constrant controls absent a positive recommendation by the Administrator. The State contended that this conflicts with section 119(d)(2) of the Act which, although it requires the State to take the Administrator's recommendation into account, in no way binds the State to accept that recommendation.

EPA is today making a technical correction to § 57.816 to conform it exactly to the statutory language. This change is consistent with EPA's original intent, which was to implement the statute's obvious meaning that a waiver is to be granted by a State only if the imposition of the interim control requirement would necessitate closure of the smelter, a finding to be made by the Administrator. While EPA does not now foresee any situation in which the State could, consistent with the statute, grant a waiver of constant controls if the Administrator did not find that such controls would necessitate closure unless the State established that the Administrator erroneously applied the requirements of the regulations, the resolution of that question must await its occurrence in a concrete factual situation.

B. ASARCO/Magma Petition

In the preamble to the final NSO regulations, EPA noted that a portion of certain forecasts of economic factors for use in analyses required by Appendix A of the regulations did not become available and consequently was not placed in the docket until shortly before the promulgation of these rules. 45 FR 42522, n. 22a. The Administrator stated that because this provided only a short opportunity for comment before the rules' promulgation, he would consider any objection to this material submitted in a petition for reconsideration by August 25, 1980, to be based on grounds "arising after the period for public comment" within the meaning of section 307(d)(7)(B). Thus the following response to ASARCO/Magma's petition for reconsideration of the forecasts focuses solely on whether the objections are "of central relevance to the outcome of the rule."[3]

1. *Copper price forecasts.*

a. Index to convert nominal copper prices to real prices. The ASARCO/Magma petition asserts that Charles River Associates' (CRA's) 1980 report used the aggregate producer price index for all commodities to convert nominal copper prices into real prices. They argue that this index used in the 1980 report is different from the one CRA used in the 1978 report. The companies state that CRA should have used in 1980 the same "reasonable" index—the producer price index for durable manufacturing—that it did in the 1978 report.

In fact, the 1980 CRA report, like the 1978 report, used the same "reasonable"

[3] EPA has placed in the docket, DSSE–78–1, a more detailed response to ASARCO/Magma's technical objections to the forecasts.

index for durable manufacturers to convert nominal copper prices into real prices. *See* 1980 report, volume II, pp. 2A–23 and 2B–6.[4] Thus this comment is not of central relevance to the rule's central merit to the outcome of the rule. CRA in its 1980 report continued to use a conservative growth scenario. The alleged similarity Citibank finds between the 1980 forecasts and the forecasts were so close to those of the 1978 moderate growth scenario and were consistent with recent economic experience, they clearly did not present the same danger as the 1978 rapid growth scenario of being overly

basis of the Data Resources, Inc., March 25, 1980 Six Year Forecast. The index EPA provided for inflating production costs, the GNP Price Deflator, was taken from the Data Resources, Inc. Spring, 1980 report entitled "U.S. Long-Term

value of an NSO applicant's future income stream. The companies' consultant, Citibank, states that to estimate the cost of capital an NSO applicant should be able to use the risk-free interest rate forecasted by Data

inflation was included in the proposed regulations.

EPA made the change to correct an oversight in its proposal. In capitalizing income, it is necessary to ensure that both net income and the discount rate

index for durable manufacturers to convert nominal copper prices into real prices. *See* 1980 report, volume II, pp. 2A–23 and 2B–6.[4] Thus this comment is not of central relevance to the rule's outcome.

In the course of EPA's review of this petition, however, it was brought to EPA's attention that CRA had used an estimate of the 1979 value for this deflator. EPA recognizes tht the actual value was available by the completion of the CRA work.

It was also brought to EPA's attention that some of the equations in CRA's model were estimated before revised 1978 data became available. However, it is the revised data that was used in the forecast simulations and printed in the CRA report. This may have confused people trying to duplicate CRA's results. CRA has re-estimated the equations to take the revised 1978 data into account, making the equations consistent with the data printed in the appendices.

The net effect of these two corrections is to lower the average price by about five cents a pound. The forecasts of the CRA model appear as follows when these corrections are made:

Copper Price Forecasts

[1980 Dollars, Cents per Pound]

	1980	1981	1982	1983	1984	1985	1986
Previous....	89.4	81.9	103.4	110.2	120.0	126.4	118.7
Corrected..	84.1	79.9	101.2	105.2	112.8	119.2	114.2

Copper Price Forecasts

[Current Dollars, Cents per Pound]

	1980	1981	1982	1983	1984	1985	1986
Previous....	89.4	93.8	134.0	157.1	186.1	211.8	214.7
Corrected..	84.1	91.6	131.1	150.0	174.0	199.7	206.6

These changes do not alter the merits of Asarco/Magma's petition or EPA's response.

b. Assumed growth scenario for calculating copper prices. The Asarco/Magma petition also asserts that the 1980 forecasts used a more optimistic ("rapid growth") assumption for predicting copper prices than the conservative "moderate growth" scenario the 1978 report used. The companies base their assertion largely on the conclusion of its consultant, Citibank, that the 1980 forecasts are "probably statistically indistinguishable" from the rapid growth scenario forecasts developed, but not used, in the 1978 CRA report. These assertions are not true, and are not of central merit to the outcome of the rule. CRA in its 1980 report continued to use a conservative growth scenario. The alleged similarity Citibank finds between the 1980 forecasts and the "rapid growth" scenario copper forecasts in 1978 results from Citibank's failure to apply consistent deflators in comparing the 1980 and 1978 forecasts. Properly compared, the 1980 scenario yields copper prices much closer to the 1978 moderate growth scenario than to the 1978 rapid growth scenario.[5]

The CRA model assumes that copper prices depend in part on the worldwide demand for copper, which in turn depends partly on the level of economic growth. In the 1978 report CRA generated two sets of forecasts out of awareness of the potential problem of generating overly optimistic forecasts. The "rapid growth" forecast was based on a consensus of macroeconomic forecasts which existed at that time. EPA and CRA viewed those forecasts as overly optimistic since they projected rates of economic growth that were significantly higher than the economy had experienced during the previous decade.

Consequently, a "moderate growth" scenario was run based on CRA projections of macroeconomic growth which were more consistent with recent economic experience. Although the "moderate growth" scenario appeared reasonable due to its consistency with the economic performance of the last decade, it would have been considered conservative relative to the consensus of macroeconomic forecasts.

In the 1980 CRA forecast only one scenario is used and it is based on a consensus of macroeconomic forecasts. However, this does not mean that CRA used a "rapid growth" or overly optimistic scenario. The consensus macroeconomic forecasts used in the 1980 CRA report assumed growth rates far more consistent with recent economic experience than those of the 1978 "rapid growth" scenario. In fact, the macroeconomic assumptions in the 1980 report are similar to the 1978 moderate growth scenario, and are far more conservative than the assumptions of the 1978 "rapid growth" scenario.[6]

Because the rates of growth in the 1980 consensus macroeconomic forecasts were so close to those of the 1978 moderate growth scenario and were consistent with recent economic experience, they clearly did not present the same danger as the 1978 rapid growth scenario of being overly optimistic. Consequently, it was reasonable to base the copper price forecasts on these macroeconomic projections and it was not necessary to develop a more pessimistic scenario.

As noted, the copper prices predicted by the 1980 report are close to those predicted under the "moderate growth," not the "rapid growth" scenario in the 1978 report. Citibank's conclusion to the contrary stems from its failure properly to reinflate the 1978 forecasts to 1980 dollars. Essentially, Citibank reinflated the 1978 forecasts to 1980 dollars using the 1978 forecast for the 1980 price index (which greatly underestimated the inflation that subsequently took place) rather than the value for the price index used in generating the 1980 forecasts with which the 1978 forecasts are being compared. Thus, Citibank's use of inconsistent deflators for comparing the forecasts yielded a comparison which reflects the failure of macroeconomists in 1978 to predict the high inflation of the last two years, rather than any similarity between the 1980 forecasts and the rapid growth scenario used in 1978.

Using the correct conversion, and the corrected price forecasts, the 1980 forecasts predict a 5.0 percent (0.7 percent per year) increase in the constant dollar price of copper over the forecast period (1979–1986) which is actually less than the increase of 18.9 percent (2.2 percent per year) predicted by the 1978 moderate scenario. Moreover, it is far below the 66.4 percent (6.6 percent per year) increase predicted by the 1978 "rapid growth" scenario.

Finally, the average price predicted by the 1980 scenario (100.4) is actually less than the average price predicted by the 1978 moderate scenario (101.2) for the years 1980–85, the interval over which the 1978 and 1980 reports overlap.

2. *Inflation assumptions.*

The Asarco/Magma petition asserts that in two instances EPA used inconsistent assumptions in the way inflation affects different items in NSO application income projections. EPA is today correcting those two inconsistencies, as discussed below.

The first instance involves inconsistent inflation indices for metals prices on the one hand, and costs of production on the other hand. The index used for inflating metals prices, the U.S. Wholesale Price Index for Durable Manufacturing, was projected on the basis of the Data Resources, Inc., March 25, 1980 Six Year Forecast. The index EPA provided for inflating production costs, the GNP Price Deflator, was taken from the Data Resources, Inc. Spring, 1980 report entitled "U.S. Long-Term Review."

EPA agrees that the two sets of indices are not entirely consistent. EPA mistakenly took the GNP price deflator and wage index from the DRI Spring, 1980 report when it should have used the GNP deflator and wage index from the March 25, Six Year Forecast. Making that adjustment, the resulting indices are:

GNP Deflators (Percent Rates of Change)

	1980	1981	1982	1983	1984	1985	1986
Previous[1]..	9.6	9.8	9.2	8.4	7.9	8.1	8.5
Corrected[2].....	10.1	10.9	9.8	8.8	8.1	8.3	7.7

[1] Source: Data Resources, Inc., Long-Term Review, Spring, 1980; Table 8–4, Prices, Wages, and Productivity in the Nonfarm Business Sector.
[2] Source: Data Resources, Inc., March 25, 1980 Six Year Forecast.

Manufacturing Wage Indices (Percent Rates of Change)

	1980	1981	1982	1983	1984	1985	1986
Previous[1]..	8.7	9.6	9.7	9.8	9.7	9.8	10.1
Corrected[2].....	8.9	10.1	10.2	10.1	9.7	10.1	10.1

[1] Source: Data Resources, Inc., U.S. Long-Term Review, Spring, 1980; Table 8–4, Prices, Wages, and Productivity.
[2] Source: Data Resources, Inc. March 25, 1980 Six-Year Forecast, Index of Hourly Earnings of Production Workers, Private Nonfarm.

These corrected indices replace those EPA provided on page 11 of "Energy Price Indices, Manufacturing Wage Indices, and Gross National Product Deflators, 1980–86," Docket No. IV–A–22.

The second instance involves Asarco/Magma's complaint that EPA failed to update the forecasts of the cost of capital provided in conjunction with its proposed regulations. Pogue, "Estimation of the Cost of Capital for Major United States Industries, 1975, Docket No. II–A–1(f) ("Pogue Report"). Although EPA's final regulations would allow an NSO applicant to use its own estimate of the cost of capital if it is in accord with accepted financial theory and fully documented,[7] the companies complain that the Pogue Report is unreasonable for the industry as a whole. In short, Asarco/Magma contend that the failure to update the 1975 Pogue Report to reflect the higher rate of inflation in recent years results in an unreasonably low cost of capital and thus an overstatement of the present value of an NSO applicant's future income stream. The companies' consultant, Citibank, states that to estimate the cost of capital an NSO applicant should be able to use the risk-free interest rate forecasted by Data Resources, Inc. as a base, and add to this rate the nonferrous industry risk premium estimated in the Pogue Report.

EPA believes that for primary copper producers, the Asarco/Magma petition documents sufficiently, according to accepted financial theory, a case for a cost of capital figure different from that in the Pogue Report. Thus EPA would accept the figures that result from the adjustment the companies urge in their petition. To summarize, those figures which are for use in discounting yearly net income are:

	Cost of Capital (Pogue Report)	Adjusted Cost of Capital
1980	14.3	18.5
1981	13.1	16.3
1982	12.4	16.7
1983	12.6	16.8
1984	13.0	16.0
1985		15.5
1986		15.5

An NSO applicant which is a primary producer[8] may use these adjusted cost of capital figures in lieu of the figures in Table 4–13 of the Pogue Report.[9]

3. *Calculation of terminal value.*

a. Methodology of capitalizing income. Asarco/Magma assert that the final regulations contain three significant changes from the proposed regulations in the methodology for capitalizing the income generated in the final forecast year. The first is that EPA has increased terminal value by assuming that inflation continues at a rate of 7 percent during the remaining life of the smelter, whereas no factor for inflation was included in the proposed regulations.

EPA made the change to correct an oversight in its proposal. In capitalizing income, it is necessary to ensure that both net income and the discount rate (cost of capital) are consistent with respect to inflation. In promulgating its final regulations, EPA sought to ensure this consistency by effectively inflating income to be received in years subsequent to 1986 by 7 percent. This is because the Pogue Report's cost of capital was a nominal cost and EPA assumed that inflation was 7 percent at the time of Pogue's Report. Alternatively, EPA could have avoided inflating net income by having applicants capitalize by means of a second, inflation-adjusted or "real" cost of capital. The net result would have been the same.

EPA has discovered, however, that it did make a mistake in calculating the terminal value factor. The factor in Appendix A of 10.6 results from assuming a cost of capital at 12 percent and a 7 percent rate of inflation. As Citibank points out, inflation at the time of the Pogue study was actually closer to 5 percent. Using a nominal cost of capital of 12 percent and an inflation assumption of 5 percent, the figure should have been 9.3. However, since EPA is allowing an adjustment in the cost of capital to reflect more recent inflation estimates, this figure too is in error. Assuming now an average cost of capital of 16.5 percent for primary copper producers, and a general rate of inflation of 9.1 percent, the new figure should be 9.2 instead of 10.6. Thus the figure "9.2" replaces "10.6" in the detailed instructions in Appendix A regarding the calculation of terminal value for copper smelters [10] (Schedule A.1 line 08),[11] and should supersede the discussion of the derivations of the terminal value factor on pages 50–53 of the Supplemental Response to Comments.

The companies' second point on the methodology of capitalizing income is that the discount rate of 12 percent assumed in capitalizing smelter income is out-of-date because it was based on the cost of capital forecasts contained in the 1975 Pogue Report. EPA has agreed to revise the cost of capital figure, as discussed above, so this is no longer an issue.

The companies' third point concerns the requirement in the final regulations that applicants calculate terminal value

[4] The companies' comment probably stems from a footnote in Table S–3 of the 1980 report that erroneously indicated that the index for all goods was used.

[5] For the first two years of the forecast, the 1980 scenario projects copper prices even *less* than the 1978 moderate growth scenario.

[6] EPA has placed in the docket in response to the Asarco/Magma petition for reconsideration a memorandum explaining part of its response in greater detail. See docket item VI–B–1. In particular, this memorandum sets out tables that properly compare the 1980 and 1978 scenarios regarding economic growth.

[7] Appendix A. § 2.4(f), 45 FR 42553.

[8] Because the elements in the Pogue Report for calculating the cost of capital figure were different for the primary lead and zinc producing segment of the nonferrous metal industry, the appropriate cost of capital figures for that segment, using Asarco/Magma's approach, would be as follows:

	Cost of Capital (Pogue Report, Table 4–13)	Adjusted Cost of Capital
1980	12.8	17.0
1981	11.6	14.8
1982	11.0	15.2
1983	11.1	15.3
1984	11.5	14.6
1985		14.1
1986		14.1

[9] Applicants should use these discount rates cumulatively, rather than applying different discount rates for each year. For example, to discount 1986 dollars to 1980, one would calculate the following: Net present value = Net income/d, where d = 1.155 x 1.155 x 1.160 x 1.168 x 1.167 x 1.183, instead of d being equal to 1.155 [6]

[10] The corresponding figure would be 10.1 for lead and zinc smelters.

[11] 45 FR 42554 (col. 2).

by capitalizing net income for the last year of the forecast period plus the after tax interest expense on long-term debt. They argue that addition of after tax interest is unwarranted because EPA's salvage value does not measure the

Consequently, the price of copper will ultimately have to rise to a level at which development of new mines is profitable. Estimates of this price level vary. However, they are generally well above the 1986 forecast value of $117.3/

As the June 24, 1980 Federal Register notice discusses in more detail, the Net Income Test was instead adopted based on EPA's interpretation of Congress' intent in enacting section 119 (1) to adopt the basic features of the Agency's

Asarco/Magma ask that EPA place the requested documents in the rulemaking docket for public inspection and comment during the requested reconsideration proceedings. As explained above, however, the

similar to the closure test used under EPA's pre-1977 smelter policy.

As noted above, the companies misstate EPA's position. EPA did not base the eligibility test promulgated on the precise methods of evaluation EPA used under its pre-1977 smelter policy.

through 1986" to be consistent with the years for which data is requested elsewhere in Appendix A. Second, in line 18 of the instructions accompanying schedule C.1. in Appendix A (45 FR 42561, col. 2) the term "forecasted investment" should read "existing

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by capitalizing net income for the last year of the forecast period plus the after tax interest expense on long-term debt. They argue that addition of after tax interest is unwarranted because EPA's salvage value does not measure the returns to capital and thus the discount rate does not reflect the amount of equity and debt financing and smelter used.

EPA believes it erred in instructing applicants to capitalize net income for 1986 plus after tax interest expense on long-term debt, but not for the reasons cited in the petition. EPA erred simply because net income already excludes interest on long-term debt, and thus no adjustment is necessary to avoid double-counting. If net income included a deduction necessary for interest on long-term debt, such an adjustment would be necessary. Since it does not, EPA is today changing the instructions in Appendix A, Schedule A.1, line 08 to read: "[terminal value] shall be computed by capitalizing the forecasted net income for operations in 1986 by the historical cost of capital as furnished by EPA." Also, the schedule and line reference in the instructions should be changed to Schedule C.1, line 25 rather than line 23, since line 23 is before tax income. These are technical changes.

b. Capitalizing "peak" income. Asarco/Magma argue that EPA used a single forecast year (1986) at the peak of a business cycle to calculate terminal value and thereby overstated the value of the smelter in the years following the forecast period, since those years would likely include business downturns. This argument has no merit and is not centrally relevant to the outcome of the rule.

The macroeconomic assumptions do not asume a business cycle that peaks in 1985 and then ebbs causing lower prices in 1986 and 1987. It is true that the forecasted price of copper peaks in 1985. However, the decline (in real terms) for 1986 and 1987 is caused by the significant new capacity that comes on stream in 1986 and 1987 in the CRA forecast scenario. Such capacity increases would cause the price to decline in the short run.

In the long run, the price level would depend greatly on the rate and cost at which additional capacity continued to come on stream. CRA's forecast indicates that copper consumption will grow at an average annual rate of 3.2 percent between 1979 and 1987. This rate of growth implies that copper consumption will nearly double over the 21-year period 1980–2001. Such an increase in consumption will necessitate the development of new mines.

Consequently, the price of copper will ultimately have to rise to a level at which development of new mines is profitable. Estimates of this price level vary. However, they are generally well above the 1986 forecast value of $117.3/lb. (1980 dollars), which is thus an extremely conservative price to use as the average expected price over the period from 1986–2000.

4. *Procedures.*

Finally, Asarco/Magma contend that EPA committed several procedural errors in promulgating the NSO rules. Specifically, the companies complain that EPA violated section 307(d) of the Act by (a) failing to place in the docket before proposal and promulgation the EPA economic tests it used under its pre-1977 smelter policy upon which the promulgated NSO eligibility test is based in whole or in part; (b) failing to reveal the origins of certain data underlying the forecasts; and (c) failing to explain alleged differences in the forecasts proposed and those promulgated. In a supplement to their petition EPA received on October 7, 1980, Asarco/Magma specify certain documents EPA should place in the docket and request the opportunity to cross-examine certain witnesses during such proceedings. These contentions are not of central relevance to the outcome of the rule, as discussed below.

a. Prior economic tests. Asarco/Magma argue that EPA's failure to place in the docket before proposal the financial analyses of two smelters performed by EPA under its prior smelter policy violated section 307(d)(6)(C) and the failure to do so before promulgation violated section 307(d)(3). These sections require docketing of the data on which the respective proposal and promulgation are based before the action is taken. Citing two footnotes in the preamble to the final NSO regulations, a sentence in EPA's Supplemental Response to Comments, and a memorandum in the docket, Asarco/Magma contended that a significant basis for the eligibility test EPA promulgated was its similarity to economic tests EPA used under its earlier smelter policy prior to Congress' adoption of the essential elements of that policy in enacting section 119.

The Asarco/Magma contentions misconstrue both EPA's statements and their intent. EPA neither based the final affordability test (the Net Income Test) on these two analyses nor relied on them in proposing or promulgating that test. Consequently, there was no reason to include them in the docket, and the failure to do so was not of central relevance to the outcome of the rulemaking.

As the June 24, 1980 Federal Register notice discusses in more detail, the Net Income Test was instead adopted based on EPA's interpretation of Congress' intent in enacting section 119 (1) to adopt the basic features of the Agency's existing smelter policy, and (2) to leave to the Administrator's discretion in promulgating the present NSO regulations the precise form of the affordability test, so long as it was consistent with the focus of the existing EPA policy before Congress in 1977.

Under that policy, a smelter was permitted for an interim period to use SCS to meet the NAAQS for SO_2 if installation of the additional control equipment (beyond an acid plant) necessary to meet its SIP emission limitation for SO_2 was not economically feasible for the smelter. As the June 24, 1980 notice discusses, the economic focus of this policy was articulated repeatedly using the phrase "smelter shutdown;" it did not focus, as Asarco/Magma argued in comments, on the very different notion of "profitability." The notice also points out (45 FR 42516, col. 3) that EPA felt by the time of proposal of the NSO regulations that it had failed to implement its existing policy successfully because in many cases it failed to perform detailed or uniform financial analyses of the feasibility of the additional controls. This probably delayed the installation of controls at some smelters which could afford to do so.

Contrary to the Asarco/Magma contentions, therefore, in formulating an affordability test for the NSO regulations the Administrator did not use as a basis the methods he had concluded were inadequate for determining economic feasibility accurately and uniformly. Instead, he exercised his discretion under section 119 as to how best to "take cost into account," consistent with avoiding smelter shutdowns, the basic focus of the policy before Congress. The statements cited by Asarco/Magma were not intended to suggest that the Net Income Test was in any way based on the two financial analyses noted there, but rather simply as illustrations of the (flawed) methods used by EPA in those instances in evaluating whether the costs of compliance were likely to prompt smelter shutdown, i.e., were economically feasible.

In the supplement to their petition, the companies noted that in a September 19, 1980 request under the Freedom of Information Act, they sought generally all notes and other information relating to the actual economic tests EPA used under its pre-1977 smelter policy.

Asarco/Magma ask that EPA place the requested documents in the rulemaking docket for public inspection and comment during the requested reconsideration proceedings. As explained above, however, the requested documents did not provide a basis for the eligibility test promulgated, and thus are not properly part of the docket.

b. Origins of certain data. Asarco/Magma contend, somewhat obliquely, that with regard to the economic forecasts EPA "failed to reveal the origin of important elements of these data, and the analysis undertaken by the agency or its contractor in selecting the data." On the contrary, however, the 1980 CRA report explains its data, methodology, and analysis adequately.

Assumptions concerning inflation, macroeconomic activity, and industry-specific variables are described on pages 4–10 of CRA's main report, and explained in detail on pages 1B–2 to 1B–14, 2B–2 to 2B–12, and 3B–1 to 3B–15. As explained in the CRA report, the source of macroeconomic activity and inflation assumptions was the consensus of forecasts available from macroeconomic forecasting services when the forecasts were being prepared. (As discussed in part B.1.b above, EPA did not reject the use of these consensus forecasts as it had in 1978 because the forecasts were consistent with recent economic experience.) Industry-specific assumptions on capacity expansions were based on information in trade journals and provided to CRA by industry members as explained on page 9 of the CRA report.

c. Differences between proposed and final forecasts. Asarco/Magma argue that EPA failed to explain why its final forecasts substituted "optimistic" copper price forecasts for the "conservative" copper price forecasts proposed. As discussed in part B.1.b above, EPA in fact did not in its final price forecasts adopt an "optimistic" projection of copper prices.

d. Request for the opportunity to cross-examine certain witnesses during proceedings for reconsideration. Asarco/Magma requested the opportunity to cross-examine during proceedings for reconsideration EPA personnel who worked on financial tests EPA used under its pre-1977 smelter policy. This opportunity is necessary, the companies argued, because EPA's support for the eligibility test promulgated was in large part based on the recollection of EPA personnel, recorded years after enactment of § 119 and without supporting documentation, that the promulgated eligibility test is similar to the closure test used under EPA's pre-1977 smelter policy.

As noted above, the companies misstate EPA's position. EPA did not base the eligibility test promulgated on the precise methods of evaluation EPA used under its pre-1977 smelter policy. *See* part II.B.4.a. Thus there is no justification for the companies' asserted need for cross-examination, and as discussed in this notice, they have failed to demonstrate that proceedings for reconsideration are appropriate.

EPA notes parenthetically that even if EPA relied on the actual economic tests under its pre-1977 smelter policy, and even if a proceeding for reconsideration were appropriate, any oral hearing would certainly not include an opportunity for cross-examination. Section 307(d)(5) states the Act's requirements for public hearings as follows, and provides no right of cross-examination:

> In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit *written* comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the *oral presentation* of data, views, or arguments, in addition to the opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an *opportunity for submission of rebuttal and supplementary information.* [Emphasis added.]

The legislative history of the 1977 Amendments, which added the section, shows that Congress believed that the adequate representation of interests of affected parties, fairness, and full discussion of the issues in section 307(d) proceedings do not require cross-examination. The Conference Committee considered the addition of the opportunity for cross-examination but deliberately rejected it, substituting instead the section 307(d)(5)(iv) requirement that the hearing record remain open for thirty days to permit the submission of rebuttal and supplementary information *See also Vermont Yankee Nuclear Power Corp. v. National Resources Defense Council,* 435 U.S. 519 (1978).

III. Miscellaneous

In reviewing these petitions the Administrator discovered two typographical errors in Appendix A that he is today correcting. Lines 03, 05, 06, 07, and 11 of the instructions accompanying schedule A.1 in Appendix A (45 FR 42554, col. 2) all request data for the years "1979 through 1985." These lines should read "1980 through 1986" to be consistent with the years for which data is requested elsewhere in Appendix A. Second, in line 18 of the instructions accompanying schedule C.1. in Appendix A (45 FR 42561, col. 2) the term "forecasted investment" should read "existing investment." The intent to allow a smelter to deduct "all remaining depreciation" was stated in the preamble to the final NSO regulations. 45 FR 42519, col. 2.

IV. Conclusion

For the reasons stated above, Arizona's petition is granted in part and denied in part. Also, EPA has today made certain technical corrections to the NSO regulations in response to certain points in the Asarco/Magma petition, and denied the petition with regard to other points. To the extent either petition is not granted, it is final agency action regarding national rules of nationwide scope and effect. Any petition for review must be filed within 60 days with the United States Court of Appeals for the District of Columbia. Section 307(b)(1), 42 U.S.C. 7607(b)(1).

(Secs. 110, 114, 119, and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7414, 7419, and 7601), and sec. 406 of Pub. L. 95–95)

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

The Administrator hereby makes technical amendments to Part 57 in Title 40 of the Code of Federal Regulations as follows:

Subpart H—Waiver of Interim Requirement for Use of Continuous Emission Reduction Technology

1. By revising § 57.816 to read as follows:

§ 57.816 Effect of Administrator's Findings.

No waiver of the interim requirement for the use of constant controls shall be granted by the Administrator or a State unless the Administrator or a State first takes into account the Administrator's report, findings, and recommendations as to whether the use of constant controls would be so costly as to necessitate permanent or prolonged temporary cessations of operation of the shelter.

Appendix A—Primary Nonferrous Smelter Order (NSO) Application [Amended]

1. By revising 40 CFR Part 57, Appendix A, schedule A.1 (published at 45 FR 42554, col. 2) to read as follows:

Constant Controls Forecast Summary—Schedule A.1

General

* * * * *

Line 03—Sustaining Capital. Enter for each

FOR FURTHER INFORMATION CONTACT:
Mr. Roger Shigehara, Emission Measurement Branch (MD–19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina

Resource Conservation and Recovery Act of 1976 (RCRA), to protect human health and the environment from the improper management of hazardous wastes. Included in these regulations, which become effective 6 months after

Phase I Interim Authorization. We indicated that the Program Description lacked sufficient information in the following areas:

(1) Coordination between the Texas Department of Water Resources (TDWR), the Texas Department of

(4) Standards for storage, treatment and disposal facilities;

(5) Public participation in the enforcement process; and

(6) Sharing of State program information with EPA without

The State's final application included amendments to the regulations of TDH and TDWR which eliminated all problems raised by EPA comments on the regulations included in the draft application. The Texas regulatory

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Constant Controls Forecast Summary—Schedule A.1

General

* * * * *

Line 03—Sustaining Capital. Enter for each year from 1980 through 1986, the amounts reported on Schedule C.2., Line 07.

* * * * *

Line 05—Adjusted Cash Flow Projections. Enter for each year from 1980 through 1986 the difference between amounts reported on Line 01 and 04.

* * * * *

Line 06—Discount Factors. Enter the discount factor for each year from 1980 through 1986 corresponding to the weighted cost of capital as furnished by EPA or estimated by the applicant pursuant to the instructions under section 2.5.

Line 07—Present Value of Future Cash Flows. Enter for each year from 1980 through 1986 the product of Line 05 times Line 06.

Line 08—Terminal Value. Enter under the total column, the estimated terminal value of the smelter. This shall be computed by capitalizing the forecasted net income (Schedule C.1. Line 25) for operations in 1986 by the historical cost of capital as furnished by EPA. Specifically, multiply net income for the last year-by-year forecast by 9.2.

* * * * *

Line 11—Present Value of Future Cash Flows. Enter the sum of amounts previously reported on Line 07 for 1980 through 1986.

Appendix A—[Amended]

2. By revising the first sentence of 40 CFR Part 57, Appendix A, Schedule C.1, line 18 (published at 45 FR 42561, col. 2) to read as follows:

Line 18—Pollution Control Facility Depreciation and Amortization. Report the estimates of depreciation and amortization charges associated with the smelter's existing investment in constant controls pollution control equipment and facilities.

* * * * *

[FR Doc. 80-40306 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-33-M

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40 CFR Part 60

[AD-FRL 1710-2]

Standards of Performance for New Stationary Sources; Revised Reference Methods 13A and 13B; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: When the final revisions to Appendix A Methods 13(a) and 13(b) were published in the June 20, 1980 Federal Register (45 FR 41852), certain inadvertent and typographical errors were made. The purpose of this action is to correct these errors.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Shigehara, Emission Measurement Branch (MD-19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION: The following corrections to Appendix A should be made in the Federal Register document 80-18658, Friday, June 20, 1980, appearing on pages 41855, 41857, and 41858:

1. *Page 41855:* a. First column, paragraph 6.1.1.2, third line: Add a comma after "paper," as * * * "(e.g., paper, organic membrane). * * *"

b. Second column, paragraph 7.1, third line: Change "text" to "test."

c. Second column, paragraph 7.2, thirteenth line: Add "s" to "backward."

2. *Page 41857:* a. Second column, in paragraph 9.1 ninth line from top: Change the word "collected" in the definition of V_d to "as diluted." The definition of V_d should read, "Volume of distillate as diluted, ml."

b. Third column, in paragraph 9.1 footnote at bottom: Add "U.S." before "Environmental Protection Agency."

3. *Page 41858:* a. First column, in paragraph 7.2.1 sixth line from bottom: Change "termperature" to "temperature."

b. Second column, in paragraph 7.2.1 sixth line from top: Add "deionized" after "with".

c. Second column, in paragraph 7.2.1 Equation 13B-1: Change "T_t" to "V_t".

d. Third column, paragraph 9.2, fourth line: Change Fluroide" to "Fluoride."

Dated: December 16, 1980.

David G. Hawkins,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 80-39770 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 123

[SW-6-FRL 1711-7]

Texas: Phase I Interim Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency

ACTION: Approval of State program.

SUMMARY: The purpose of this notice is to grant Phase I Interim Authorization to the State of Texas for its hazardous waste management program.

In the May 19, 1980, Federal Register (45 FR 33063), the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), to protect human health and the environment from the improper management of hazardous wastes. Included in these regulations, which become effective 6 months after promulgation, were provisions for a transitional stage in which states could be granted interim program authorization. The interim authorization program will be implemented in two phases corresponding to the two stages in which an underlying Federal program will take effect.

On October 6, 1980, the State of Texas applied to EPA for Phase I Interim Authorization of its hazardous waste management program. On October 16, 1980, EPA issued in the Federal Register (45 FR 63302) a notice of the public comment period on the State's application. All comments received during this comment period have been noted and considered, as discussed below.

The State of Texas is hereby granted interim authorization to operate the RCRA Subtitle C hazardous waste management program in accordance with section 3006(c) of RCRA and implementing regulations found in 40 CFR Part 123 Subpart F.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Beverly Foster, Solid Waste Branch, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270 (214) 767-2645.

SUPPLEMENTARY INFORMATION: On August 4, 1980 the State of Texas submitted to me its draft application for Phase I Interim Authorization under RCRA. This draft application reflected a hazardous waste management program which was operated by the State of Texas for over 10 years before the RCRA regulations were published in the Federal Register. During our review of the Texas draft application, we realized that the number of problems identified in the Texas program resulted from the fact that it predated the RCRA regulatory scheme for hazardous waste management and simply represented a different approach to regulating this problem. I wish to commend the State of Texas for the enormous effort expended in its final application, which resulted in the reshaping of its program into one which is substantially equivalent to the Federal program. The Texas effort should serve as an example to all of a significant State contribution to the realization of effective National hazardous waste management.

In our comments on the Texas draft application, we identified major problems within each of the required components of a State application for

Phase I Interim Authorization. We indicated that the Program Description lacked sufficient information in the following areas:

(1) Coordination between the Texas Department of Water Resources (TDWR), the Texas Department of Health (TDH), and the Attorney General (AG) in the administration of the State's permit program, enforcement program, and rulemaking process;

(2) Implementation of a program for public participation in the enforcement process;

(3) Procedures to be followed in the management of the State's manifest system and coordination of manifest program management between TDH, TDWR, the AG, the Texas Department of Public Safety (TDPS) and any other agencies participating in the program;

(4) Demonstration of the adequacy of existing and projected resources for Phase I, Phase II, and Final Authorization for each Department following the requirements established in the "Guidance Manual for State Interim Authorization"; and

(5) Declaration of the intention of the State to include or exclude control of disposal of hazardous waste in underground injection wells in the State's application for Phase I Interim Authorization.

Our comments pointed out that the Texas regulations, enacted by TDWR and TDH to detail hazardous waste managment programs did not demonstrate substantial equivalence with the Federal program in the following areas:

(1) Interim status standards for hazardous waste treatment, storage and disposal facilities were neither self-executing against all existing facilities nor sufficiently broad in scope to meet the Federal program standards;

(2) Manifest system requirements did not adequately provide for return of undelivered shipments or for the completion of the manifest tracking cycle by placing responsibility on the facility to send a signed manifest back to the generator; and

(3) The definition of the universe of hazardous waste contained exclusions and classifications which were not "nearly identical" to that of the Federal program.

The AG's Statement did not demonstrate substantial equivalence with the Federal program of the State statutory and regulatory authority in the following areas:

(1) Jurisdiction over a nearly identical universe of hazardous wastes;

(2) Operation of the manifest system;

(3) Standards for transporters of hazardous wastes;

(4) Standards for storage, treatment and disposal facilities;

(5) Public participation in the enforcement process; and

(6) Sharing of State program information with EPA without restriction.

The Memorandum of Agreement (MOA) submitted with the Texas draft application did not meet the requirements of the Region 6 model MOA. The Texas draft MOA was deficient particularly in the areas of compliance monitoring, enforcement and sharing of information with EPA.

The Authorization Plan accompanying the Texas draft application did not meet the requirements of 40 CFR 123.125. It did not sufficiently detail the statutory and regulatory changes which the State must make to qualify for Phase II and Final Authorization. Schedules for drafting, introducing and publishing proposed legislative and regulatory changes were not included. In addition, the plan failed to include a projection of resources which would be available and a plan for obtaining them to meet the requirements for Phase II and Final Authorization.

On October 6, 1980 Texas submitted its final application for Phase I Interim Authorization. The final application evidenced attention to the details of the extensive EPA comments on the draft application. Each of the five major problem areas, identified in the comments on the draft Program Description, were resolved in the final application. Extensive information added to the State's introductory section entitled "State Program Description" set forth mechanisms and procedures for interagency coordination of activities in the areas of enforcement, compliance monitoring, permitting, rulemaking, and operation of the State manifest system. A Memorandum of Understanding among TDH, TDWR, and the AG, addressed the requirements for public participation in enforcement and provided the assurances necessary to satisfy the Federal regulation.

Clarification was provided indicating that Texas would not ask to include control of disposal of hazardous waste in underground injection wells in its Phase I Interim Authorization application. Material was included which detailed existing staff and funds as well as plans and projections for future resource needs. While Texas has complied with EPA's personnel requirements for Phase I by dedicating the positions necessary to operate its program, EPA intends, in its oversight capacity to insure that the State meets its commitments to fill vacancies and maintain a full staff.

The State's final application included amendments to the regulations of TDH and TDWR which eliminated all problems raised by EPA comments on the regulations included in the draft application. The Texas regulatory scheme is now nearly identical to the Federal program for Phase I. Consequently, there is no longer any question of the substantial equivalence of Texas' regulatory control of the universe of hazardous waste, the operations of the manifest system, and the immediate enforceability of interim status standards equivalent in scope to the Federal standards for treatment, storage and disposal facilities.

The Attorney General's Statement submitted as part of the Texas final application incorporated changes in the State's regulations, certified that these regulatory changes were duly adopted and would become effective prior to authorization and included additional clarifying material. These additions resolved all major issues concerning this component of the Texas application. New regulations coupled with clarifying comments satisfied all questions related to the authority of the State to regulate the universe of hazardous waste, manifest system, and interim status standards for hazardous waste facilities in a fashion substantially equivalent to the Federal program.

New material added to the Attorney General's Statement demonstrated Texas' compliance with Federal requirements for public participation in enforcement. Reference was made to the Memorandum of Understanding among TDH, TDWR, and the AG (described above in the Program Description discussion) for the details on how compliance would be achieved. Comments on new State regulations, which deal with the sharing of State program information with EPA, satisfied any concerns that there might be unacceptable restrictions on EPA's access to State program information.

The MOA incorporated almost all of the provisions of the Region 6 model MOA. The major problems which were identified in the comments on the draft MOA were resolved. However, certain limitations on the extent of informal enforcement proceedings before formal action would be required, were not included. While EPA would prefer that this enforcement procedure be established in the MOA, we find that the enforcement procedures set forth in the Program Description generally satisfy this requirement. However, in its oversight capacity, EPA intends to review State enforcement program requirements to determine State

compliance and the need for future revision of the MOA.

The Authorization Plan, submitted in the Texas final application, underwent substantial revision. These revisions covered details and schedules for State

order of subjects which received the most comment first and those receiving fewer comments presented last. However, this format is adhered to loosely to permit related comments to be

sensitive to local needs and is better prepared to identify local problems.

Response—While EPA can and does note the past effectiveness of Texas in conducting an active solid waste management program since the passage

committed to hazardous waste management, EPA has published in its "Guidance Manual on Interim Authorization" an estimate of the staffing requirements necessary for each State program to operate a Federal

subtitle, grant interim authorization to the State to carry out such program in lieu of the Federal program. . . ." The intent of Congress as manifested in this section was twofold: First Congress wished to maximize State participation

determine if the State is meeting specific commitments which it agreed to accomplish. The RCRA grant-in-aid awarded to the State agencies will function like a contract between the State and EPA. EPA agrees to pay the

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compliance and the need for future revision of the MOA.

The Authorization Plan, submitted in the Texas final application, underwent substantial revision. These revisions covered details and schedules for State regulatory and legislative changes necessary for final authorization. Necessary information on resource projections and future budget submissions were also included. With the addition of these new materials no further questions remained on the sufficiency of the State's Authorization Plan.

Responsiveness Summary

On October 16, 1980, I had a notice published in the **Federal Register** inviting the public to offer comments on the Texas Application for Phase I Interim Authorization of its Hazardous Waste Management Program at a public hearing to be conducted by Region 6 on November 18, 1980. This notice also invited the public to submit written comments on the Texas application to Region 6 by November 25, 1980.

Region 6 held the public hearing on the Texas Application for Phase I authorization on the evening of November 18, 1980, in Austin, Texas. Twenty-eight presentations were made. In addition, Region 6 received sixteen written comments on the Texas application before the close of the public comment period on November 25, 1980. Three of the sixteen written comments were submitted as supplements to comments presented at the public hearing. All comments, if they complied with the time constraints of the Federal **Register** notice, whether presented at the hearing or in writing, were reviewed and considered in reaching a decision on the Texas application for Phase I Interim Authorization.

Of the forty-four public comments received by Region 6 (28 at the hearing and 16 in writing) on the Texas application, 38 commenters favored granting the State Phase I authorization, 2 commenters supported granting Phase I authorization with reservation and subject to specific conditions, 1 commenter opposed granting the State Phase I authorization, and 3 commenters neither supported nor opposed authorization. The subject matter of the comments ranged from very general to quite specific. To simplify summary of the comments and their responses, similar comments are grouped together for one response. Where one commenter addressed more than one issue, the summary and response to each issue can be found under the subject matter of the issue rather than by commenter. The summary is presented generally in the order of subjects which received the most comment first and those receiving fewer comments presented last. However, this format is adhered to loosely to permit related comments to be presented in sequence. All comments received by EPA are responded to in the following discussion.

Comment—Twenty-two commenters supported authorization of the Hazardous Waste Management Program in the State of Texas because the burden placed upon the regulated community of functioning under a dual regulatory system was clearly not the intent of RCRA. As a corollary they asserted that if authorization were denied to the State and two systems existed side-by-side, the cost of operating the two programs would be great and would undoubtedly be passed on to the consumer.

Response.—While EPA recognizes that the policy of RCRA Section 3006 favors the authorization of State programs in part to relieve a burden on the regulated community, EPA disagrees with the contention that Congress intended this to be a standard for the granting of interim authorization of a State program. If a State program cannot evidence substantial equivalence to the Federal program then, under RCRA, interim authorization cannot be granted, notwithstanding the burdens placed upon the regulated community. That is not to say, however, that eliminating the burden of a dual regulatory system should not or does not operate as an incentive for the States and EPA alike to help achieve the substantial equivalence of a State program. The incentive to operate a cost-effective national hazardous waste management program, which eliminates expensive dual operations through the participation of the States, should provide an equally strong impetus for States to meet the requirements of interim authorization.

Comment—Twenty-two commenters stated that EPA should grant the State Interim Authorization because Texas has had over ten years of experience in solid waste management. The commenters contended that Texas' long experience has resulted in an excellent record of performance in regulating the storage, transportation, and disposal of hazardous wastes. In addition, the State has provided adequate funds and has developed a highly qualified staff to operate an effective and efficient program. Several of these commenters emphasized their belief that State government rather than the Federal government is the more appropriate jurisdiction to run the hazardous waste management program because it is more sensitive to local needs and is better prepared to identify local problems.

Response—While EPA can and does note the past effectiveness of Texas in conducting an active solid waste management program since the passage of the State Solid Waste Disposal Act of 1969, it cannot use this as the primary basis for granting Phase I authorization. The primary basis for EPA's decision to authorize a State's hazardous waste program for Phase I is not past effectiveness but substantial equivalence with the Federal program. EPA had suggested, in its proposed regulations for evaluating State programs, that past performance or track record be used as a criterion for approval. That proposal was deleted from the final regulations governing the interim authorization approval process because EPA believes that future program effectiveness is more important than track record. While past performance can be considered in support of the decision to grant Phase I authorization, EPA has taken the position that the approval decision must be primarily concerned that the program perform in an effective and comprehensive manner in the future. EPA agrees that Texas has demonstrated the capacity to operate an excellent State program in hazardous waste management. However, EPA's decision to authorize Texas is based first on the substantial equivalence of the Texas program to the Federal program. Texas' past performance bolsters EPA's primary finding. EPA also agrees that if the State meets the standards for State program requirements under RCRA, the appropriate division of labor for effective national hazardous waste management, is for the State to operate the program and for EPA, through its oversight responsibilities, to supervise the State to assure compliance with the laws, regulations and policies of the Federal program.

Comment—Two commenters in the prior comment, while supporting the Texas application, expressed concern that the State program have adequate funding to support the program in the future.

Response—EPA has required a State applying for interim authorization to demonstrate the amount of funding and staff available for operation of the program. This information is a part of the State application and is a major factor to be evaluated by EPA in reaching a decision whether or not to authorize a State program. In order to apply a uniform national standard for evaluating the adequacy of State funds

committed to hazardous waste management, EPA has published in its "Guidance Manual on Interim Authorization" an estimate of the staffing requirements necessary for each State program to operate a Federal program in their State. These staffing projections were based on the size of the State and the amount of waste generated in the State. They were also divided into separate projections for Phase I programs and Phase II programs.

Under EPA's criteria for adequate staffing, it is estimated that Texas should have 62 positions to operate a Phase I program. The TDWR, which operates approximately 70% of the State program, has allocated 41 full time positions for hazardous waste management and all of those positions are currently filled. The TDH, which operates approximately 30% of the State program, has allocated 21 full time positions for their municipal hazardous waste program. Of these 21 positions allocated by TDH, 12 positions are filled and TDH is actively recruiting 9 additional staff members. While TDWR and TDH have allocated positions which equal EPA's staffing projections for the State program, only 85% of these positions are now filled. EPA would prefer that all of these positions be filled at this time, however, it is satisfied that the current recruitment efforts of TDH are such that they should be fully staffed within a short time after the program is authorized. Consequently, EPA believes that the State of Texas has demonstrated in its application that it provides funds sufficient to meet EPA's staffing requirements for Phase I program management. Nevertheless, it will be EPA's responsibility, in the exercise of its oversight role, to insure, after authorization, that Texas maintains adequate funding and staff to operate the program according to the commitments made in the application.

Comment—Twelve commenters endorsed State authorization because they found the Texas' Hazardous Waste Management Program set forth in the State's application for Phase I Interim Authorization to be substantially equivalent to the Federal Program under RCRA and the regulations published in 40 CFR 123, Subpart F.

Response—EPA agrees with this assessment of the Texas application and the standard it must apply under RCRA and 40 CFR 123 Subpart F in evaluating Phase I authorization. RCRA Section 3006(c) states "The Administrator shall, if the evidence submitted (in a State application) shows the existing State program to be substantially equivalent to the Federal program under this subtitle, grant interim authorization to the State to carry out such program in lieu of the Federal program. . . ." The intent of Congress as manifested in this section was twofold: First Congress wished to maximize State participation in the Federal hazardous waste program. Second, it wished to allow the States a period of time to develop a program which was equivalent and consistent with the Federal program. Consequently, Congress created a unique status of temporary authorization which permits a State to operate the Federal program while at the same time the State is furthering the development of that program for Final Authorization.

Nevertheless, to receive interim authorization, a State must demonstrate the "substantial equivalence" of its program to the Federal program. Once a State has demonstrated substantial equivalence "the Administrator shall grant interim authorization", applying this standard, as elaborated in 40 CFR Part 123 Subpart F. EPA has concluded that Texas has met the test of substantial equivalence and should receive Phase I Interim Authorization.

Comment—One commenter supported State authorization with one reservation because he believed the State enforcement record left something to be desired. This commenter stated that, although he found that the Texas Interim Authorization application appeared to be substantially equivalent to the Federal Phase I requirements, he was concerned that Texas lacked the commitment to adequately enforce its regulations.

Response—EPA's primary concern, in evaluating a State's application for Phase I authorization, must be that the State has the authority and capacity to carry out a program which is substantially equivalent to the Federal Program, including the authority and capacity of a State to enforce this program. EPA believes that the Program Description, MOA, and State regulations set forth in the Texas application for Phase I authorization outline a State enforcement program which meets Federal requirements for Phase I authorization. However, EPA believes, that, through its statutory oversight responsibility, it has the obligation to insure that Texas meets the terms set forth in the State's application to actively enforce its regulations.

The MOA and the RCRA grant-in-aid entered into by the State and EPA, establish the procedure for oversight and the terms of the State's accountability for compliance monitoring and enforcement. These agreements enable EPA to track the State's enforcement process and determine if the State is meeting specific commitments which it agreed to accomplish. The RCRA grant-in-aid awarded to the State agencies will function like a contract between the State and EPA. EPA agrees to pay the State if the State performs certain program activities. If through EPA's oversight and grant review it determines that the State is not meeting its commitments, funding and authorization can be withdrawn. Also, under RCRA Section 3008(a)(2) EPA, on its own motion, can commence enforcement actions for violations of RCRA in authorized States.

Comment—One commenter supported the State's attempt to seek authorization of the hazardous waste program, as long as EPA maintained an active oversight role.

Response—Notwithstanding the grant of Phase I Interim Authorization, EPA retains a substantial degree of control of the State program. (See discussion under the previous comment.)

Comment—Three commenters supported Phase I Interim Authorization for Texas but recommended that authorization be conditioned upon the State's providing additional assurances which would resolve problems of coordination between the many agencies which have jurisdiction over some part of hazardous waste management in Texas. One commenter was concerned in particular that the divided jurisdiction among Texas agencies would lead to program gaps and lack of coordination in the areas of (1) oil and gas wastes, (2) State manifest system management, and (3) regulating of municipal facilities which accepted industrial wastes.

Response—EPA agrees with this commenter that clarification of the jurisdiction of Texas State agencies and coordination among these agencies is essential to the effective administration of hazardous waste management in Texas. In its comments on the Texas draft application EPA asked for detailed analysis of the jurisdiction of relevant State agencies and a description of how coordination would be achieved among them. The Texas final application contains a section in the Program Description which sets forth the jurisdictions of these State agencies and the procedures through which they will coordinate management of the State manifest system, the issuance of State permits, the carrying out of State compliance monitoring and enforcement programs, the management of emergency response programs and other aspects of State program administration. The AG's Statement submitted with the State's final application, contains a

discussion of the jurisdiction of TDWR and The Texas Railroad Commission in the area of oil and gas wastes. EPA is satisfied that this discussion establishes that the jurisdiction of the Texas

of the Texas application for Phase I Interim Authorization. However, it will be subject for review and comment when Texas submits its application for Phase II authorization.

Comment—Two commenters, who

Nevertheless, EPA believes that the facility standards which have been adopted by Texas and included in its application, as well as additional permit standards which will be published in the future by EPA, will, when followed by

instrumentality or any person who is alleged to be in violation of permits, regulations, conditions, etc. Also, there is provision to award costs of litigation (including reasonable attorney fees, civil expert witness fees) to any party if the

40 CFR Part 180

[PP 9F2197/R283; PH-FRL 1712-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities;

evaluated. The toxicology data considered in support of the proposed tolerances included a rat oral lethal dose (LD_{50}) with an LD_{50} greater than 5.0 grams (g) per kilogram (kg) of body weight (bw); a rat cytogenetic test

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discussion of the jurisdiction of TDWR and The Texas Railroad Commission in the area of oil and gas wastes. EPA is satisfied that this discussion establishes that the jurisdiction of the Texas Railroad Commission covers areas which are currently excluded from its regulatory authority under 40 CFR Part 261. EPA is equally satisfied that TDWR has jurisdiction over hazardous wastes resulting from the refining of oil which is the equivalent of the jurisdiction required by 40 CFR Part 261. Consequently, EPA finds that for the purposes of Phase I Authorization, the Texas application has adequately provided for coordination between those State agencies with jurisdiction over areas currently covered by the Federal program.

Comment—One commenter recommended that EPA withhold Phase I Interim Authorization because the TDH regulations, which were included as part of the State's application, may not be valid. This commenter suggested that the TDH rules were published in the Texas Register in violation of State procedure and case law.

Response—EPA requires in 40 CFR 123.125 that the Attorney General's Statement, submitted as part of a State's application for Phase I authorization, certify that State regulations authorizing State program requirements which are substantially equivalent to the Federal program are lawfully adopted at the time the Statement is submitted and are in full force and effect at the time the program is authorized. The Attorney General of Texas has so certified the regulations in the State's application. EPA will not challenge that opinion unless it is on its face incorrect. However, if for any reason the Texas regulations are declared to be invalid, EPA can withdraw its Phase I authorization.

Comment—Four commenters expressed grave concern for the proper siting of hazardous waste management facilities in Texas.

Response—EPA agrees that the issue of proper siting for hazardous waste management facilities to prevent health hazards and environmental degradation while ensuring adequate storage, treatment, and disposal capacities is one of the key concerns in the regulatory process. EPA is devoting considerable study to this issue and is encouraging the States to begin planning to ensure proper locations for new facilities. This issue will be addressed when the hazardous waste facility permitting regulations (Phase II) become effective. Because this issue is not a part of the Federal Program requirements at this time, it was not considered in the review of the Texas application for Phase I Interim Authorization. However, it will be subject for review and comment when Texas submits its application for Phase II authorization.

Comment—Two commenters, who supported authorization, anticipated a problem because Texas did not apply for interim authorization of the Underground Injection Control (UIC) Program under RCRA. They stated that if delegation of the UIC Program under the Safe Drinking Water Act (SDWA) is delayed significantly beyond mid-1981, industry may be burdened by a dual regulatory system over underground injection wells.

Response—There will be a dual regulatory program covering hazardous waste injection wells in Texas. Existing wells are subject to EPA interim RCRA standards and also all applicable State standards. After publication of the Phase II RCRA regulations, existing and new hazardous waste injection facilities will be required to obtain RCRA permits in addition to State permits. Texas could, however, apply for EPA authorization over hazardous waste injection facilities in their RCRA Phase II interim authorization application.

Comment—Two commenters supported Phase I Interim Authorization but questioned whether the Texas program could remain consistent with the Federal program as it issues amendments and revisions to the Federal regulations.

Response—Authorized State programs are required to remain in substantial equivalence with the Federal program as it is revised by new regulations. RCRA, 40 CFR Part 123 Subpart A states that "Any approved program which requires revision because of a modification to [Part 123.13] or to 40 CFR Parts 122, 124, 260, 261, 262, 263, 264, 265, or 266 shall be so revised within one year of the date of promulgation of such regulations, unless a State must amend or enact a statute in order to make the required revision in which case such revision shall take place within two years."

Comment—Two commenters questioned authorization of Texas because of the problems which they have encountered with a chemical dump site in their area. They also were dissatisfied with the performance of TDWR and EPA in connection with resolving the problems they believe have been caused by the site.

Response—EPA recognizes the seriousness of problems which were discussed by the commenters. However, EPA cannot deny interim authorization because of past performance of the State program (See discussion above). Nevertheless, EPA believes that the facility standards which have been adopted by Texas and included in its application, as well as additional permit standards which will be published in the future by EPA, will, when followed by the facility and enforced by the State, alleviate the problems described.

Comment—Several commenters stated that the substance of the application was not available in a prepared summary and available for the public to use in preparation for the hearing. They stated that this placed them at a disadvantage and compromised their ability to comment on the State application.

Response—EPA's regulations governing procedures for approval of a State's application require notice of receipt of the application and the availability of it for inspection and copying (See 40 CFR 123.135(a)). There is no requirement to summarize the application. There are many good reasons for the absence of such a requirement. This could result in public comment, not on the State's application but to the summary. This would erode the purpose of the public comment process which is public involvement in the evaluation of the application.

The length and complexity of the Texas application would require that a summary necessarily by subjective. While many might agree that such a summary would be reasonable, undoubtedly some would not. No attempt to summarize the application would be satisfactory to all. Therefore, EPA has concluded that it is in the best interest of the public comment process not to summarize the application.

Comment—Two commenters raised questions on the adequacy of the Texas program to provide for public participation. One commenter asked how the public would be guaranteed that they would have a voice in an authorized State program. The other commenter questioned why there was no provision for public participation in the State's regulations. This commenter also recommended that notices be placed in the Texas Register of State permits issued and EPA's draft evaluation of the State program.

Response—EPA believes that RCRA, the Federal regulations and the Texas application provide for a number of important avenues for public participation in hazardous waste management. Consequently, EPA finds that the Texas program, with its new program commitments, satisfies the Federal requirements in this area.

Under RCRA, Section 7002, any person may commence a civil action on his own behalf agains. any goverment instrumentality or any person who is alleged to be in violation of permits, regulations, conditions, etc. Also, there is provision to award costs of litigation (including reasonable attorney fees, civil expert witness fees) to any party if the court deems such an award is appropriate. As a result, any person, whether in an authorized or unauthorized State, may sue to enforce compliance with statutory and regulatory standards. There are two caveats; that such an action requires notice before it is commenced, and that it cannot be commenced if EPA or a State is diligently prosecuting the same action. However, if EPA has begun an action then the citizen may intervene as a matter of right.

In addition, to meet EPA requirements for Phase I authorization the Texas application includes provisions for public participation in its enforcement process. These provisions are referred to in the Attorney General's Statement and a Memorandum of Understanding (MOU) among TDWR, TDH and the AG attached to the application. The MOU contains assurances that the parties will provide for public participation in the State enforcement proces by receiving and responding to citizen complaints, not opposing permissive intervention where it is authorized by State law, and by providing notice of a proposed settlement and a 30 day public comment period on proposed settlements of judicial actions begun to enforce State program requirements. EPA oversight should help to assure that these program requirements are met.

In the Memorandum of Agreement (MOA), included in the Texas application, EPA establishes when and how it will conduct mid and end year evaluations of the State program. EPA indicates that it will receive and consider all public comments submitted on State program performance in conjunction with the mid and end year evaluations. Region 6 is currently developing procedures for notice and public involvement in the State program evaluation process. Notwithstanding the lack of formal procedures, EPA invites the public to comment on the State's performance on this and other State program requirements to assist in the exercise of its oversight responsibilities.

Dated: December 24, 1980.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 80-40151 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-30-M

40 CFR Part 180

[PP 9F2197/R283; PH-FRL 1712-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oxyfluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the herbicide oxyfluorfen [2-chloro-13-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on the raw agricultural commodities almonds, almond hulls, stone fruits [apricots, nectarines, peaches, plums (fresh prunes)], and grapes; and in or on the meat, fat and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; eggs; and milk at 0.05 part per million (ppm). This regulation was requested by Rohm & Haas Co., Inc. This regulation establishes the maximum permissible levels for residues of oxyfluorfen in or on the above raw agricultural commodities.

EFFECTIVE DATE: Effective on December 24, 1980.

ADDRESS: Written objections may be submitted to the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-351, 401 M St. SW., Washington, D.C. 20240, (202-755-1397).

SUPPLEMENTARY INFORMATION: EPA issued notices that were published in the Federal Register of September 3, 1980 (45 FR 58497 and 58500) that Rohm & Haas Co. Inc., Independence Mall, West Philadelphia, PA 19105, had filed a petition (PP 9F2197) with the EPA. This petition proposed that tolerances be established for the residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] in or on the raw agricultural commodities almonds, almond hulls, stone fruits [apricots, nectarines, peaches, plums (fresh prunes)], grapes; and in or on the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; eggs; and milk at 0.05 ppm. No comments or request for referral to an advisory committee were received in response to this notice of proposed rulemaking.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the proposed tolerances included a rat oral lethal dose (LD_{50}) with an LD_{50} greater than 5.0 grams (g) per kilogram (kg) of body weight (bw); a rat cytogenetic test (negative); a host mediated assay (negative); the Ames test (negative); a rat teratology study with no terata at 1,000 mg/kg of bw (highest dose) and a no-observable-effect level (NOEL) of 100 mg/kg of bw; a three-generation rat reproduction study with a NOEL of 10 ppm; a 26-week progress report of a 2-year dog feeding study; a 90-day rat feeding study with a NOEL of 1,000 ppm; a 24-month rat feeding study (chronic toxicity/oncogenicity) with a NOEL of 40 ppm; and a 20-month mouse feeding study (chronic toxicity/oncogenicity) with a NOEL at 2 ppm.

Based on the mouse chronic feeding study with a NOEL of 2 ppm and a 100-fold safety factor the acceptable daily intake (ADI) for humans is 0.003 mg/kg of bw/day. The maximum permissible intake (MPI) is 0.1800 mg/day for a 60 kg person. No permanent tolerances have been previously established for the pesticide. The proposed tolerances have a theoretical maximal residue contribution (TMRC) of 0.0352 mg/day in a 1.5 kg diet, or 19.57 percent of the MPI.

To reinforce the present findings, the petitioner submitted a complete draft study on a 2-year dog feeding study prior to September 22, 1980 and has agreed to conduct a second teratology study with a nonrodent species.

The nature of the residue of the pesticide is adequately delineated, and an adequate analytical method (a gas chromatographic procedure using an electron capture detector) is available for enforcement purposes.

One of the solvents used in the production of technical oxyfluorfen, perchloroethylene <0.1 percent, has been shown to produce liver tumors in mice. The agency is presently assembling available information pertaining to perchloroethylene, which has wide usage outside of pesticide applications. This review will assess the health significance of perchloroethylene and is not complete at this time. The evidence on tumor production, however, does initiate a presumption against registration pursuant to 40 CFR 162.11(a)(3)(ii) for the proposed uses of oxyfluorfen. After intensive review, the agency has made a preliminary finding that potential benefits associated with the use of oxyfluorfen outweigh risks from perchloroethylene. The benefits of oxyfluorfen will be discussed in a document to be available at a later date.

An applicator risk analysis was performed to determine the risk associated with perchloroethylene resulting from applications of oxyfluorfen for all uses proposed. The

procedural requirements of Executive Order 12044.

Effective date: December 24, 1980.

(Sec. 408(e) 68 Stat. 514. (21 U.S.C. 346a(e)))

Dated: December 18, 1980.

transporting the waste off-site. In such cases, obtaining, filling out, and submitting Form 8700-12, and then waiting for Agency action on it would be too time-consuming. In order to avoid

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751 (43 U.S.C. 1714), it is ordered as follows:

1. Departmental Order of July 7, 1936,

Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The departmental order of April 7, 1933, withdrawing the following described land as Air Navigation Site

An applicator risk analysis was performed to determine the risk associated with perchloroethylene resulting from applications of oxyfluorfen for all uses proposed. The maximum worst-case risk of tumor development from exposure to perchloroethylene via these uses is calculated to be one incident of tumor development in 10,000,000 applicators. The actual risk may be lower than this theoretical calculation since the actual levels of perchloroethylene in air may be lower than theoretical estimates due to air movement or other climatic factors.

The petitioner produces technical oxyfluorfen containing less than 200 ppm perchloroethylene. Based on the toxicology testing (all tested oxyfluorfen involved included perchloroethylene at less than 0.1 percent), the small risk cited above, and benefit analyses discussed in the position document, the agency has made a preliminary conclusion that the proposed registration of oxyfluorfen containing less than 200 ppm of perchloroethylene will not cause an unreasonable adverse effect on the environment.

The pesticide is considered useful for the purpose for which tolerances are sought, and it is tentatively concluded that the tolerances for oxyfluorfen residues in or on the raw agricultural commodities almonds, almond hulls, grapes, stone fruits, meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; eggs; and milk at 0.05 ppm established by amending 40 CFR Part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the Federal Register, file written objections with the Hearing Clerk, EPA, Rm. M-3708 (A-110), 401 M St., SW., Washington, 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulations deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. If a hearing is granted, the objections must be legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective date: December 24, 1980.

(Sec. 408(e) 68 Stat. 514, (21 U.S.C. 346a(e)))

Dated: December 18, 1980.

Robert V. Brown,

Acting Deputy Assistant Administrator for Pesticide Programs.

Therefore, Subpart C of 40 CFR Part 180 is amended by adding a new § 180.381 to read as follows:

§ 180.381 Oxyfluorfen; tolerances for residues.

Tolerances are established for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on the following raw agricultural commodities:

Commodity:	Part per million
Almonds	0.05
Almond hulls	0.05
Grapes	0.05
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Eggs	0.05
Goat, fat	0.05
Goat, mbyp	0.05
Goat, meat	0.05
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Milk	0.05
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05
Stone fruits [apricots, nectarines, peaches, plums, (fresh prunes)]	0.05

[FR Doc. 80-40118 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Parts 262 and 263

[SW FRL 1701-2]

Availability of Provisional EPA Identification Numbers

AGENCY: Environmental Protection Agency.

ACTION: Rule-related notice.

SUMMARY: The Environmental Protection Agency (EPA) has established a procedure for rapid issuance of EPA identification numbers to hazardous waste generators and transporters during spills and other unanticipated events. Hazardous waste generators and transporters who did not obtain EPA identification numbers through standard procedures may, during emergencies and other unusual circumstances, need to obtain them quickly if it is necessary to transport hazardous waste off-site. EPA is taking this action to provide a mechanism for EPA Regional Offices to rapidly issue identification numbers in such instances. The intended effect of this action is to streamline the transport of hazardous waste to authorized hazardous waste management facilities by reducing procedural delays.

FOR FURTHER INFORMATION CONTACT: For general information on this notice contact Rolf P. Hill or Amy Mills, Office of Solid Waste, WH-563, U.S. Environmental Protection Agency, Washington, D.C. 20460 (202) 755-9150.

For information on implementation of the procedure described in this notice, contact EPA regional office listed below:

Region I—Business hrs.: (617) 223-0240 or (617) 223-0241; Non-business hrs., emergencies only: (617) 223-7265

Region II—All hrs.: (212) 264-0503

Region III—Business hrs.: Shirley Bulkin, (215) 597-4289; Non-business hrs., emergencies only: (215) 597-9898

Region IV—All hrs.: (404) 881-4062

Region V—Business hrs.: Y. J. Kim, (312) 353-2917; Non-business hrs., emergencies only: (312) 353-2318

Region VI—All hrs.: Fred Woods (214) 767-2720

Region VII—All hrs.: (816) 374-3778

Region VIII—Business hrs.: Jim Rakers, (303) 837-6258; Non-business hrs., emergencies only: (303) 837-3880

Region IX—Business hrs.: Bill Wilson, (415) 556-1407; Nonbusiness hrs., emergencies only: (415) 556-6254

Region X—Business hrs.: (206) 442-1260

SUPPLEMENTARY INFORMATION: 40 CFR 262.12 and 263.11 of the hazardous waste management regulations promulgated pursuant to the Resource Conservation and Recovery Act (RCRA), require generators and transporters of hazardous waste to have EPA identification numbers. Each shipment of hazardous waste must be accompanied by a manifest which includes, among other information, the EPA identification numbers of the generator and each transporter. A generator or transporter who did not obtain an EPA identification number during the notification period can obtain one by applying on EPA Form 8700-12. In the event of a spill or other unanticipated incident, however, a person may need to obtain a number very quickly. For instance, if a person were to *become* a hazardous waste generator or transporter as the result of a spill of hazardous waste, and the EPA identification number and manifest waiver provision of § 263.30(b) were not applied, he would need a number before transporting the waste off-site. In such cases, obtaining, filling out, and submitting Form 8700-12, and then waiting for Agency action on it would be too time-consuming. In order to avoid this unnecessary delay in issuing EPA identification numbers which could cause public or environmental problems, EPA has established a special procedure for rapid issuance of these numbers. EPA Regional Offices will issue provisional identification numbers to generators and transporters during emergencies or other unusual circumstances when necessary for rapid transportation of hazardous waste to an authorized hazardous waste management facility. A generator or transporter involved in such circumstances may telephone his Regional Office for a provisional identification number. The Regional Office will issue a provisional number orally or in writing, and may condition the use or duration of that number. Applicants who receive provisional numbers will be mailed a blank Form 8700-12 which must be completed and returned to EPA within ten calendar days. The Agency may subsequently issue a final EPA identification number to these applicants.

Dated: December 9, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-40176 Filed 12-23-80 8:45 am]

BILLING CODE 6560-36-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 5790

[CA-3648]

California; Partial Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This action will restore 70.77 acres of public lands to operation of the public land laws, including the mining laws. An additional 20.25 acres are privately owned and not subject to disposition under the public land laws. This order partially revokes a Water and Power Resources Service (formerly the Bureau of Reclamation) order which withdrew lands for the proposed Central Valley Project.

EFFECTIVE DATE: January 20, 1981.

FOR FURTHER INFORMATION CONTACT: Marie M. Getsman, California State Office, 916-484-4431.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751 (43 U.S.C. 1714), it is ordered as follows:

1. Departmental Order of July 7, 1936, withdrawing lands for the Central Valley Project is hereby revoked so far as it affects the following lands:

Mount Diablo Meridian

T. 33 N., R. 4 W.
Sec. 30, Lot 1 and SE¼NW¼
The area aggregates approximately 91.02 acres in Shasta County.

2. Of the lands described in paragraph 1, 20.25 acres, located in the SE¼NW¼, are privately owned and not subject to disposition under the public land laws.

3. At 10 a.m., on January 20, 1981, the public lands shall be open for operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws. All valid applications received at or prior to 10 a.m., on January 20, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

4. The public lands will open to location under the United States mining laws at 10 a.m., on January 20, 1981. They have been open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands shall be addressed to the Bureau of Land Management, U.S. Department of the Interior, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Guy R. Martin,

Assistant Secretary of the Interior.

December 15, 1980.

[FR Doc. 80-40294 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5792

[R-1189]

California; Revocation of Air Navigation Site Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will restore 40 acres of public lands to operation of the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: January 24, 1981.

FOR FURTHER INFORMATION CONTACT: Marie M. Getsman, California State Office 916-484-4431.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The departmental order of April 7, 1933, withdrawing the following described land as Air Navigation Site No. 84, is hereby revoked:

San Bernardino Meridian

T. 7 N., R. 6 W.,
Sec. 20, S½SE¼NE¼ and S½SW¼NE¼.
Containing 40 acres in San Bernardino County.

2. At 10 a.m. on January 24, 1981, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on January 24, 1981, shall be considered simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on January 24, 1981, the lands will be open to location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Bureau of Land Management, Room E-2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Guy R. Martin,

Assistant Secretary of the Interior.

December 18, 1980.

[FR Doc. 80-40295 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5793

[M 44591 SD]

South Dakota; Withdrawal for National Forest Electronic Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 25 acres of national forest lands from mineral location and entry and reserves them for the protection of the Terry Peak Electronic Site.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Edgar D. Stark, Montana State Office, 406-657-6291.

By virtue of the authority contained in Section 204(a) of the Federal land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from

location or entry under the mining laws (30 U.S.C. Ch. 2) for the protection of the Terry Peak Electronic Site, in aid of programs of the Department of Agriculture:

Black Hills National Forest

T. 4 N., R. 3 E.,
Sec. 4, Lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, Lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.
T. 3 N., R. 25 E.,
Sec. 28, NW¼ and S½;
Sec. 30, Lots 1 to 4, inclusive, E½, and E½W½.

The areas described withdrew 50 feet on either side of the center line for transmission line purposes containing approximately 25 acres in Cassia County. The lands are privately owned.

December 18, 1980.

insurance is no longer available in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one

of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elapsed since identification of the community as having flood prone areas, as shown on the Office of Federal Insurance and

Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is

location or entry under the mining laws (30 U.S.C. Ch. 2) for the protection of the Terry Peak Electronic Site, in aid of programs of the Department of Agriculture:

Black Hills National Forest

Black Hills Meridian

T. 4 N., R. 2 E.,
Sec. 11, A portion of the NE¼ covered by M.S. 2025, excluding Lots 1, 2, and 3,
The area described contains 25 acres in Lawrence County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands, under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Guy R. Martin,

Assistant Secretary of the Interior.

December 18, 1980.

[FR Doc. 80-40298 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5794

[OR 17820]

Oregon; Revocation of Reclamation Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes certain Secretarial orders which withdrew 3,156.56 acres of lands for reclamation purposes. The lands will not be restored to operation of the public land laws because they remain withdrawn for use as a Navy bombing range.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., 503–231–6905.

By virtue of the authority contained in Section 204(a) of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Orders of February 25, 1903 and August 22, 1904, which withdrew the following described lands for use by the Water and Power Resources Service (formerly the Bureau of Reclamation) for reclamation purposes in connection with the Columbia South Side Project are hereby revoked:

Willamette Meridian

T. 2 N., R. 25 E.,
Sec. 4, Lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, Lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.
T. 3 N., R. 25 E.,
Sec. 28, NW¼ and S½;
Sec. 30, Lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32.

The areas described aggregate 3,156.56 acres in Morrow County, Oregon.

2. The lands remain withdrawn by Executive Order No. 8651 of January 23, 1941, as part of the Boardman Bombing Range; therefore, they remain segregated from operation of the public land laws generally, including the mining laws, and the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Guy R. Martin,

Assistant Secretary of the Interior.

December 18, 1980.

[FR Doc. 80-40297 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 5795

[I-3379]

Idaho; Power Site Restoration No. 702; Revocation of Power Site Reserve No. 498

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Power Site Reserve affecting about 25 acres of land in Cassia County. That portion of lands involved are in private ownership.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Larry Livesay, Idaho State Office, 208–334–1735.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination by the Federal Energy Regulatory Commission in DA–601–Idaho, it is ordered as follows:

1. The Executive Order of July 19, 1915, creating Power Site Reserve No. 498 is hereby revoked so far as it affects the following described lands:

Boise Meridian

T. 11 S., R. 21 E.,
Sec. 21, E½SE¼
Sec. 27, N½SW¼, SE¼SW¼,
Sec. 34, W½NE¼, SE¼NE¼, N½SE¼, SE¼SE¼.

The areas described withdrew 50 feet on either side of the center line for transmission line purposes containing approximately 25 acres in Cassia County. The lands are privately owned.

December 18, 1980.

Guy R. Martin,

Assistant Secretary of the Interior.

[FR Doc. 80-40296 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5964]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood

insurance is no longer available in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elapsed since identification of the community as having flood prone areas, as shown on the Office of Federal Insurance and Hazard Mitigation's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A–95.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Alabama	Jefferson	Brighton, city of	010117B	July 11, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	May 10, 1974 Dec. 19, 1975	Jan. 2, 1981.
Do	do	Hueytown, city of	010337A	Apr. 22, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Oct. 1, 1976	Do.
Do	do	Lipscomb, city of	010126B	July 25, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 14, 1974 Dec. 26, 1975	Do.
Do	do	Roosevelt, city of	010130B	Apr. 24, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 28, 1974 Jan. 2, 1976	Do.
Do	do	Tarrant, city of	010131B	Sept. 16, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 28, 1974 May 21, 1976 Feb. 9, 1979	Do.
Do	do	Vestavia Hills, city of	010132B	Feb. 21, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	May 10, 1976 Jan. 23, 1976	Do.
Do	do	Warrior, city of	010283A	May 12, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Dec. 27, 1974	Do.
Connecticut	Tolland	Mansfield, town of	090128C	Mar. 9, 1973, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Jan. 9, 1974 Oct. 29, 1976 June 21, 1977	Do.
Delaware	Kent	Frederica, town of	100009B	Apr. 2, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	May 17, 1974 Oct. 17, 1975	Do.
Illinois	Lake	Lake Barrington, village of	170372C	June 25, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Sept. 13, 1974 Jan. 14, 1977 June 24, 1977	Do.
Oo	Cook	Oak Lawn, village of	170137C	Apr. 9, 1973, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Apr. 12, 1974 Oct. 1, 1976 July 21, 1978	Do.
Do	do	Western Springs, village of	170171C	May 9, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Mar. 15, 1974 Dec. 20, 1974 Sept. 24, 1976	Do.
Iowa	Winnebago	Forest City, city of	190283B	June 18, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	May 17, 1974 Mar. 19, 1976	Do.
Do	Black Hawk	Laporte, city of	190309A	Feb. 2, 1976, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Dec. 5, 1974	Do.
Maine	Cumberland	Westbrook, city of	230054B	May 30, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Apr. 12, 1974 Apr. 30, 1976	Do.
Michigan	Genessee	Argentine, township of	260392A	July 11, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Aug. 8, 1975	Do.
Do	do	Flint, city of	260076C	Aug. 28, 1973, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Feb. 15, 1974 Oct. 18, 1974 June 18, 1976	Do.
Do	Eaton	Grand Ledge, city of	260068B	July 18, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	May 17, 1974 July 2, 1976	Do.
Do	Kent	Plainfield, township of	260109B	Apr. 19, 1973, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Nov. 9, 1973 June 18, 1976	Do.
Do	Genessee	Vienna, township of	260665B	Mar. 29, 1976, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Feb. 24, 1978	Do.
Do	Eaton	Windsor, charter township of	260071C	May 20, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Aug. 2, 1974 Apr. 25, 1975 Jan. 2, 1976	Do.
Minnesota	Benton	Unincorporated areas	270019B	Aug. 13, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 28, 1974 Oct. 21, 1977	Do.
Do	Goodhue	Cannon Falls, city of	270141B	Apr. 5, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	May 28, 1974 June 18, 1976	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
Do	Cottonwood	Unincorporated areas	270622B	Apr. 15, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 3, 1977	Do.
Do	Jackson	Unincorporated areas	270632B	Apr. 26, 1974, emergency, Jan. 2,	Mar. 21, 1975	Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: December 9, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Do	Cottonwood	Unincorporated areas	270622B	Apr. 15, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 3, 1977	Do.
Do	Jackson	Unincorporated areas	270632B	Apr. 26, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Mar. 21, 1975 Nov. 26, 1976	Do.
Do	Hennepin	New Hope, city of	270177B	July 2, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Sept. 6, 1974 July 11, 1975	Do.
Mississippi	Rankin	Pelahatchie, town of	280146B	Sept. 3, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 7, 1974 Jan. 30, 1976	Do.
Missouri	St. Louis	Ballwin, city of	290328B	July 8, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 7, 1974 Sept. 19, 1975	Do.
Do	do	Black Jack, city of	290336B	July 2, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Aug. 16, 1974 Sept. 19, 1975	Do.
Nebraska	Dodge	Dodge, village of	310363A	Jan. 26, 1978, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Aug. 15, 1975	Do.
New Jersey	Warren	Lopatcong, township of	340574A	July 7, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Aug. 27, 1976	Do.
Ohio	Ashtabula	Unincorporated areas	390010B	Feb. 15, 1977, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Mar. 3, 1978	Do.
Do	Medina	Brunswick, city of	390380B	Apr. 5, 1973, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Nov. 2, 1973 May 28, 1976	Do.
Do	Lake	Unincorporated areas	390771C	Oct. 22, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Jan. 6, 1978 Oct. 6, 1978	Do.
Do	Lucas	Waterville, village of	390637A	Apr. 9, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Apr. 5, 1974	Do.
Do	Greene	Xenia, city of	390197B	May 12, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Dec. 23, 1977	Do.
Oklahoma	Oklahoma	Jones City, town of	400141A	June 30, 1976, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	July 11, 1975	Do.
Pennsylvania	Luzerne	Dallas, borough of	421825B	Apr. 15, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Feb. 25, 1977	Do.
Do	Susquehanna	Great Bend, township of	421212A	Feb. 13, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Oct. 1, 1976	Do.
Do	Luzerne	Kingston, township of	420613B	Dec. 22, 1972, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	July 19, 1974 May 28, 1976	Do.
Do	Montgomery	Lower Pottsgrove, township of	421908A	Aug. 1, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Nov. 8, 1974	Do.
Do	Berks	Marion, township of	421079B	Oct. 28, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Sept. 13, 1974 June 11, 1976	Do.
Do	Lebanon	North Cornwall, township of	420576B	Mar. 16, 1973, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Dec. 7, 1973 Dec. 31, 1976	Do.
Do	Bradford	Sheshequin, township of	421102B	Apr. 22, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 26, 1974 June 25, 1976	Do.
Rhode Island	Providence	Scituate, town of	440024B	July 13, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Sept. 6, 1974 Oct. 1, 1976	Do.
South Carolina	Anderson	Unincorporated areas	450013B	July 2, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Dec. 6, 1974 Sept. 9, 1977	Do.
Texas	Hidalgo	Unincorporated areas	480334B	Oct. 6, 1972, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	May 23, 1978	Do.
Vermont	Franklin	Enosburg Falls, village of	500050B	July 21, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Apr. 15, 1975 Aug. 6, 1976	Do.
Wisconsin	Lacrosse	Bangor, village of	550218B	Jan. 20, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Jan. 16, 1974 July 30, 1976	Do.
Do	Dane	Black Earth, village of	550079B	Aug. 7, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Dec. 17, 1973 Jan. 23, 1976	Do.
Do	Ozaukee	Fredonia, village of	550313B	Feb. 4, 1976, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Jan. 9, 1974 June 4, 1976	Do.
Do	Winnebago	Neenah, city of	550509B	Apr. 23, 1974, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	June 28, 1974 June 11, 1976	Do.
Do	Racine	Rochester, village of	550352B	Mar. 21, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Jan. 9, 1974 Oct. 10, 1975	Do.
Do	do	Waterford, village of	550354B	June 10, 1975, emergency, Jan. 2, 1981, regular, Jan. 2, 1981, suspended.	Dec. 17, 1973 July 23, 1976	Do.

[1] Date certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: December 9, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39642 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[Gen. Docket 79-263; FCC 80-670]

Amendment of Freedom of Information Rules To Modify Fees for Record Searches

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: The rules adopted establish hourly fees to be levied when staff members search for documents requested under the Freedom of Information Act and requires advance payment when a search is anticipated to be lengthy. The rules also clarify the process for obtaining copies of agency documents and specify the criteria for waiving search and copying fees. The action was needed because the existing rules did not reflect the actual costs incurred by the agency.

DATES: Rules become effective January 5, 1981.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Norman B. Blumenthal, Office of General Counsel, (202) 632–6690.

Order

Adopted: November 18, 1980.

Released: December 8, 1980.

By the Commission: Commissioner Fogarty absent.

1. A Notice of Proposed Rulemaking (FCC 79–625, Mimeo 14569) in this proceeding was released on October 24, 1979 (44 FR 62305, October 30, 1979). The Notice proposed a new schedule of fees for document searches pursuant to Freedom of Information Act requests. It also made provision for advance payment in appropriate circumstances. No comments were received in response to the proposed change.

2. We proposed to correlate search fee charges to the public with the hourly labor costs for the individual employee(s) conducting the search. Currently our rules provide a flat $5 per hour rate. The proposed change was inspired, in part, by the Freedom of Information Act requirement that while search fees are assessable, they may "provide for recovery of only the direct costs of such search * * *." 5 U.S.C. 552(a)(4)(A).

3. We also proposed to require advance payment of search fees if (a) the anticipated search time exceeds 16 hours, or (b) the estimated total fee exceeds $100. The law permits the imposition of an advance payment requirement. *Rizzo* v. *Tyler*, 438 F. Supp. 895, 897–98 (S.D.N.Y. 1977). This requirement is to assure that the requestor will bear the full costs before government resources are expended.[1]

4. No comments having been submitted, such rules will be adopted, with adjustments in hourly fees (a) to a mid-level for each grade, rather than the first level, to reflect more accurately the hourly costs of employee searches (See GAO report B–167266; July 12, 1974), and (b) to reflect the rates of pay for Fiscal Year 1981. In addition, we are adopting other minor clarifying changes in our information availability rules. First, §0.465(a) is being admended to clarify the fact that the search fees established in § 0.466 apply only to record searches conducted by agency personnel and not to research charges conducted by the Commission's duplicating contractor. Under the current contract, a research fee may be assessed for the time required to research agency records for copying, regardless of whether such records are routinely available for inspection or are made available pursuant to the Freedom of Information fee waiver requests. In our FOIA annual reports to Congress, we intend to outline the extent to which waivers of research and copying fees have been granted. Finally, § 0.466(i) provides that records shall be inspected within 7 days after they are made available. This subsection also needs to appear in the sections which outline the procedures for requesting inspection of agency records, §§ 0.460 and 0.461. The amendments are set out in the attached Appendix.

[1] The Department of Justice, for example, has a rule provision allowing the collection of an advance deposit where the anticipated fee exceeds $25. 28 CFR 0.169(c).

5. Authority for the amendments is set out in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and in 5 U.S.C. 552.

6. Accordingly, IT IS ORDERED, effective January 15, 1981, that Part 0 of the Rules and Regulations is amended as set out in the attached Appendix.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 397)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

1. In § 0.460, paragraph (j) is added to read as follows:

§ 0.460 Requests for inspection of records which are routinely available for public inspection.

* * * * *

(j) Records shall be inspected within 7 days after notice is given that they have been located and are available for inspection. After that period, they will be returned to storage and additional charges may be imposed for again producing them.

Act. Second, we are adding a note following § .466(c) articulating the criterion now utilized in considering requests for waiver of the search fee. We are also delegating authority to waive copying fees to the General Counsel who will apply the same criterion as used in considering search

2. In § 0.461, paragraph (n) is added to read as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

* * * * *

because furnishing the information can be considered as primarily benefiting the general public." 5 U.S.C. 552(a)(4)(A). The following factors are relevant in applying that criterion: the number of persons to be benefited, the significance of the benefit, the private interest of the requester which the

(2) If the time of search will exceed 16 hours or the fee will exceed $100 (as estimated by the custodian(s) of the records), an advance payment or deposit may be required. If the advance payment is not tendered within three business days after receipt of notice that

responsibility for implementation and execution of these procedures, on an interim basis, is assigned to the Office of the Executive Director.

2. Accordingly, it is ordered, That effective December 5, 1980 that § 0.11 of the rules is amended by adding

shipper protection to establish, by regulation, a minimum standard for released-rate publication.

DATE: This rule will become effective December 24, 1980.

FOR FURTHER INFORMATION CONTACT:

Rail carriers will no longer be required to apply for permission from the Commission to file released rates. Therefore, the rail released rate orders issued by the Commission prior to the Staggers Act are no longer necessary or appropriate [2] and will be rescinded

2. In § 0.461, paragraph (n) is added to read as follows:

§ 0.461 Requests for inspection of materials not routinely available for public inspection.

* * * * *

(n) Records shall be inspected within 7 days after notice is given that they have been located and are available for inspection. After that period, they will be returned to storage, and additional charges may be imposed for again producing them.

3. In § 0.465, paragraph (a) is revised and subparagraph (c)(3) is amended by adding a sentence and note at the end, to read as follows:

§ 0.465 Request for copies of materials which are available, or made available, for public inspection.

(a) The Commission awards a contract to a commercial duplication firm to make copies of Commission records and offer them for sale to the public. The contract is awarded on the basis of lowest overall cost and best service to the public. In addition to the cost of copying, the contractor may charge a research fee for extracting the requested documents from the Commission's files. The research fee charged by the Contractor shall be that price set forth in the latest contract. The Contractor's price may vary from the search fee imposed under Section 0.446(a) of this Part when a party requests inspection of records under the Freedom of Information Act. The contractor also provides self-service coin-operated photocopy machines in Commission reference rooms. Also, persons may make photocopies with their own equipment upon arrangements with the Procurement Branch.

Note.—Currently, the Contractor is Downtown Copy Center, 1114 21st NW., Washington, D.C. 20037 (Tel. 202–452–1422). The current duplicating contract specifies a research charge of $10.00 per hour. The copying charges under the contract vary in accordance with quantity and speed of service. The duplication fee is 9 cents per page; the coin-operated copying machines are set by the Contractor at 10 cents per page (June 1980). Copies of the FCC Telephone Directory are also available from the contractor.

* * * * *

(c)(1) * * *
(2) * * *
(3) * * *

Copying charges may be waived or reduced by the General Counsel, upon a showing that waiver or reduction is in the public interest.

Note.—The criterion considered in acting on a waiver request is whether "waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public." 5 U.S.C. 552(a)(4)(A). The following factors are relevant in applying that criterion: the number of persons to be benefited, the significance of the benefit, the private interest of the requester which the release may further, the usefulness of the materials to be released to the general public and the likelihood that a tangible public benefit will be realized. (See Attorney General's 1974 FOI Amdts. Memorandum, at 15.)

* * * * *

4. In § 0.466, paragraph (a) is revised and a note is added, a note is added at the end of paragraph (c), paragraph (e) is redesignated as (e)(1), and paragraph (e)(2) is added, to read as follows:

§ 0.466 Search fee.

(a) Subject to the provisions of this section, an hourly fee may be charged for recovery of the direct costs of searching for records requests under § 0.460(d) or 0.461. The fee is based on the grade level of the employee(s) who makes the search, as specified in the following schedule:

Grade	Hourly fee
GS-2	$5.18
GS-3	5.81
GS-4	6.45
GS-5	7.30
GS-6	8.14
GS-7	8.05
GS-8	10.02
GS-9	11.07
GS-10	12.19
GS-11	13.39
GS-12	16.05
GS-13	19.08
GS-14	22.55
GS-15	26.33

Note.—These fees will be modified periodically to correspond with modifications in the rates of pay approved by Congress.

The above fees were computed at Step 5 of each grade (based on the comparability salary increase effective October 5, 1980) and include 9.3 percent for personnel benefits.

* * * * *

(c) * * *

Note.—The criterion considered in acting on a waiver request is whether "waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public." 5 U.S.C. 552(a)(4)(A). The following factors are relevant in applying that criterion: the number of persons to be benefited, the significance of the benefit, the private interest of the requester which the release may further, the usefulness of the materials to be released to the general public and the likelihood that a tangible public benefit will be realized (see Attorney General's 1974 FOI Amdts. Memorandum, at 15).

* * * * *

(e)(1) * * *

(2) If the time of search will exceed 16 hours or the fee will exceed $100 (as estimated by the custodian(s) of the records), an advance payment or deposit may be required. If the advance payment is not tendered within three business days after receipt of notice that advance payment is required, the search will be halted and the request will be denied. As the search progresses, additional payments may be required if expenses exceed the original advance payment. If the payment(s) should exceed the expense of searching for the materials, the difference will be refunded.

* * * * *

[FR Doc. 80-40278 Filed 12-23-80; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 0

[FCC 80-740]

Commission Organization; Additional Duty and Responsibility to the Office of the Executive Director

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission order is to establish, in the International Telecommunications Settlements Section of the Financial Management Division, an interim accounting authority identification code for U.S. entities operating mobile stations in the Maritime Mobile Service, and to implement and supervise compliance with international procedures for operations, charging and accounting of public correspondence in the Maritime Mobile Service.

EFFECTIVE DATE: December 5, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Wayne B. Leshe, Financial Management Division, (202) 632–6900.

SUPPLEMENTARY INFORMATION:

Adopted: December 5, 1980.
Released: December 12, 1980.
By the Commission.

1. The purpose of this Order and the rules adopted herein is to specify the duty and responsibility for international operation charging and accounting of public correspondence in the Maritime Mobile Service. New procedures have been adopted by the International Telecommunication Union (ITU) which go into force on January 1, 1981.[1] Staff

[1] CCITT Recommendation D.90/F.111—Charging Accounting and Refunds in the Maritime Mobile

Footnotes continued on next page

responsibility for implementation and execution of these procedures, on an interim basis, is assigned to the Office of the Executive Director.

2. Accordingly, it is ordered, That effective December 5, 1980 that § 0.11 of the rules is amended by adding paragraph (h) to read as follows:

§ 0.11 Functions of the Office.

* * * * *

(h) To establish in the International Telecommunications Settlements Section of the Financial Management Division, an interim accounting authority identification code for U.S. entities operating mobile stations in the Maritime Mobile Service, and to implement, execute and supervise compliance with international procedures for operations, charging and accounting of public correspondence in the Maritime Mobile Service.

3. Authority for the foregoing amendment is contained in Section 4(i), 5(a) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(l), 155(d) and 303(r). Because these amendments relate solely to agency management, the public notice procedure and effective date provisions of 5 U.S.C. 553 do not apply.

Note.—Rules changes herein will be covered by T.S. I(80)–1.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 80-40108 Filed 12-23-80; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1300

[Ex Parte No. 390]

Rail Rates Based on Limited Liability

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rule.

SUMMARY: The Commission is issuing a new tariff publishing rule to implement Section 211 of the Staggers Rail Act of 1980, which allows rail carriers to publish, without prior Commission approval, rates which limit carrier liability to an amount established by written declaration of the shipper or by a written agreement between the shipper and the carrier. The Commission believes that it is in the interest of shipper protection to establish, by regulation, a minimum standard for released-rate publication.

DATE: This rule will become effective December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Martin E. Foley (202) 275–7348

SUPPLEMENTARY INFORMATION: Since early in this century, rail carriers have been required to obtain prior Commission approval for publishing rates that limit their liability for loss and damage to any amount less than the full value of the goods being shipped. However, Section 211 of the Staggers Rail Act of 1980 (Pub. L. 96–448) has now removed this requirement.[1] Specifically, Section 211 amended 49 U.S.C. 10730 by adding a new paragraph (c) which reads as follows:

> A rail carrier providing transportation or service subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title may establish rates for transportation of property under which the liability of the carrier for such property is limited to a value established by written declaration of the shipper or by a written agreement between the shipper and the carrier, and may provide in such written declaration or agreement for specified amounts to be deducted from any claim against the carrier for loss or damage to the property or for delay in the transportation of such property.

While it is clear from this provision that limited-liability rates (released rates) may now be published without prior Commission approval, we believe it is necessary in the interest of shipper protection to establish minimum standards for released-rate publication. Any released rate published will be required to be clearly identified as applying only when (1) a certain value of the tendered property is declared by the shipper at the time of shipment on the bill of lading, or (2) the property is tendered under the terms of a contract entered into under 49 U.S.C. 10713, and such contract contains an agreement that the carrier's liability will be limited to a certain value.

This requirement will enable tariff users to distinguish between full-value and limited-value rates, and will ensure their awareness that the use of a limited-value rate is dependent upon a contractual arrangement—executed either on the bill of lading or in a contract entered into under 49 U.S.C. 10713.

[1] Section 211 also requires the Commission and the Attorney General independently to investigate and report to Congress on whether rail carriers should continue to be subject to bill of lading liability under 49 U.S.C. 11707. The reports are due by October 1, 1981.

Rail carriers will no longer be required to apply for permission from the Commission to file released rates. Therefore, the rail released rate orders issued by the Commission prior to the Staggers Act are no longer necessary or appropriate [2] and will be rescinded effective with the publication of this notice in the Federal Register. This rescission will not make rates published under those orders invalid. These rates may be maintained by the carrier so long as either (a) the shipper has agreed to the released-value rate or (b) the carrier also makes available to the shipper a full value rate. Any change or additions to released rates published before the Staggers Act should be made in accordance with the new procedures.

By this notice we are also reminding shippers and carriers that the new authority to publish limited-value rates without prior Commission approval does not in any way remove the carrier obligation, under the Interstate Commerce Act, to maintain full-value rates when shippers do not agree to released rates or where they desire full value as well as released rates. We do not view this as a problem for carriers. Existing full value rates may be complemented by released rates. So long as shippers have a choice between full and released value rates, there is no need to receive prior shipper approval for publication of the released rates (although it would still be subject to protest on other grounds such as unreasonableness.)

The Commission does not believe that adoption of this rule requires a notice and comment rulemaking procedure under 5 U.S.C. 553, because its only effect is to implement Congressional action.

Accordingly, we are amending Chapter X, Subchapter D, of Title 49 of the Code of Regulations, by adding § 1300.4(i)(11) to read as follows:

§ 1300.4 Content of tariffs.

* * * * *

(i) * * *

(11) Rates and liability based on value. (Applies only to rail common carriers.) A tariff may contain released-value rates, established without prior Commission authority, under which the liability of the carrier is limited to a value established by written declaration of the shipper or by written agreement between carrier and shipper. Such rates

[2] While the Motor Carrier Act provides a transition period during which prior released rate orders may continue to be relied on, the Staggers Act does not. The new provisions were effective October 1. No exemption from them was provided which would allow for continued use of those orders.

Footnotes continued from last page

Service and CCITT Recommendation E.200/F.100—Operational Provision for the Maritime Mobile Service.

must be clearly identified as applying only when (i) a certain value of the tendered property is declared by the shipper at the time of shipment on the bill of lading, or (ii) when the property is tendered under the terms of a contract

122 W. 2nd Street, Winona, MN 55987. Telephone: (507) 452–4232.

SUPPLEMENTARY INFORMATION: Public entry and use on portions of the following refuges shall be in accordance with all applicable State and Federal

designated and/or posted with no mooring signs.

(2) Camping, defined as the use of tents; bedrolls; and all types of floating craft, motorized vehicles, trailers and other shelters for overnight stays or for

for use between the hours of sunrise and sunset only.

Richard E. Toltzmann
Acting Area Manager.

December 15, 1980

[FR Doc. 80-40194 Filed 12-23-80; 8:45 am]

Regulations under the Whaling Convention Act relating to the 1981. 1982, and 1983 harvest of bowhead whales by Alaskan Navtives will be published at a later date and will appear in 50 CFR Part 230.

mouth, i.e. any whale other than a toothed whale.

(b) "blue whale" *(Balaenoptera musculus)* means any whale known as blue whale, Sibbald's rorqual, or sulphur bottom, and including pygmy blue whale.

must be clearly identified as applying only when (i) a certain value of the tendered property is declared by the shipper at the time of shipment on the bill of lading, or (ii) when the property is tendered under the terms of a contract entered into under 49 U.S.C. 10713 and such contract contains an agreement that the carrier's liability will be limited to a certain value.

This Notice of Final Rule is issued under 5 U.S.C. 553, 49 U.S.C. 10730 and 49 U.S.C. 10762; and it does not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: December 10, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40115 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Public Entry and Use; Certain National Wildlife Refuge Areas, in Illinois, Iowa, Minnesota and Wisconsin

AGENCY: Fish and Wildlife Service.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening public entry and use of certain National Wildlife Refuges is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which public entry and use will be permitted on portions of certain National Wildlife Refuges in Illinois, Iowa, Minnesota and Wisconsin.

DATES: Effective on December 24, 1980 for duration of calendar year 1981.

FOR FURTHER INFORMATION CONTACT:

The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

George G. P. Bekeris, Area Manager, U.S. Fish and Wildlife Service, 530 Federal Building and U.S. Court House, 316 North Robert Street, St. Paul, MN 55101. Telephone: (612) 725-7641.

Robert L. Drieslein, Refuge Manager, Trempealeau National Wildlife Refuge, Route #1, Box 308, Trempealeau, WI 54661. Telephone: (309) 535-2290.

Robert Howard, Refuge Manager, Upper Mississippi Wildlife and Fish Refuge, 122 W. 2nd Street, Winona, MN 55987. Telephone: (507) 452-4232.

SUPPLEMENTARY INFORMATION: Public entry and use on portions of the following refuges shall be in accordance with all applicable State and Federal regulations, subject to additional special regulations and conditions as indicated. Portions of refuges which are open to public entry and use are designated by signs and/or delineated on maps. Special conditions applying to individual refuges and maps are available at refuge headquarters or from the Office of the Area Manager (addresses listed above).

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (a) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

§ 26.34 Special regulations concerning public access, use and recreation for individual national wildlife refuges.

Illinois, Iowa, Minnesota, Wisconsin

Upper Mississippi River Wildlife and Fish Refuge

Public access, use and recreation, including but not limited to, sightseeing, nature observation and photography, hiking/cross-country skiing, nature intepretation, boating, camping, picnicking and other similar activities are permitted on Upper Mississippi River Wildlife and Fish Refuge in accordance with all applicable federal, state and local laws and subject to the following special conditions:

(1) Boat mooring is prohibited within 200 feet of boat landings and access points and at other congested or sensitive areas which have been designated and/or posted with no mooring signs.

(2) Camping, defined as the use of tents; bedrolls; and all types of floating craft, motorized vehicles, trailers and other shelters for overnight stays or for the purpose of sleeping is permitted on Upper Mississippi River Wildlife and Fish Refuge subject to the following restrictions;

a. Camping is prohibited at all landings and access points except those specifically posted by sign to allow camping and at other congested or sensitive areas which have been designated and/or posted with no camping signs.

b. Camping in areas designated and/or posted with "Area Closed" signs is prohibited during the waterfowl hunting season.

c. Camping while engaged in hunting is prohibited except on sites visible from the main commercial navigation channel of the Mississippi River.

d. Camping on the refuge while trapping is prohibited.

e. Camp fires are permitted on sand beaches and other areas devoid of combustible material, using only dead and down wood or imported material such as charcoal. Burying live fires on sand beaches is prohibited.

f. The length of stay by an individual or group at any one site or within 100 yards of such a site shall not exceed fourteen (14) consecutive days.

g. Tents or other camping equipment including floating craft and vehicles shall not be left at an unoccupied campsite for more than 24 hours. Such gear is considered abandoned and subject to impoundment.

(3) Willow may be used for trap stakes, commercial fishing gear and hunting blinds.

Wisconsin

Trempealeau National Wildlife Refuge

Non-consumptive, wildlife-orientated public use, including but not limited to hiking, non-motorized canoeing by refuge permit, wildlife observation, environmental education, wildlife photography and cross-country skiing, is permitted on 3,800 acres of Trempealeau National Wildlife Refuge. Motor vehicle use and operation is permitted on designated roads only. Areas posted with "Closed Area" signs are closed to any and all activities. The refuge is open for use between the hours of sunrise and sunset only.

Richard E. Toltzmann

Acting Area Manager.

December 15, 1980

[FR Doc. 80-40194 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 351

Whaling

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: Section 916k of the Whaling Convention Act, 16 U.S.C. 916 et seq., requires that the Secretary of Commerce publish the Schedule of the International Convention for the Regulation of Whaling, 1946, in the Federal Register, in order for it to "become effective with respect to all persons and vessels subject to the jurisdiction of the United States in accordance with the terms of such regulations * * *." This final rule consists of publication of the Schedule of the International Convention for the Regulation of Whaling and incorporates the most recent amendments.

EFFECTIVE DATE: The amendments to the Schedule became effective on November 25, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, NOAA, Department of Commerce, Washington, D.C. 20235, Telephone—(202) 634-7461.

SUPPLEMENTARY INFORMATION: At its 32nd Annual Meeting held in Brighton, England, in July 1980, the International Whaling Commission agreed to amend the Schedule inter alia to establish commercial whaling catch limits for the Southern Hemisphere 1980-81 pelagic and 1981 coastal seasons and for the Northern Hemisphere 1981 season and to prohibit the taking of killer whales by factory ship whaling operations.

Official amendments to the Schedule became available on August 28, 1980. By the terms of the Convention, these amendments became effective on November 25, 1980. This publication incorporates all amendments to the Schedule which were adopted at the 32nd Annual Meeting and have become binding on Contracting Governments.

Regulations under the Whaling Convention Act relating to the 1981, 1982, and 1983 harvest of bowhead whales by Alaskan Navtives will be published at a later date and will appear in 50 CFR Part 230.

Dated: December 18, 1980.

Robert K. Crowell,

Acting Executive Director, Notional Marine Fisheries Service.

Accordingly, 50 CFR Part 351 is revised in its entirety and reads as set forth below.

PART 351—WHALING

Subpart A—Interpretation

Sec.
351.1 Definitions.

Subpart B—Seasons

351.21 Use of factory ships and whale catchers.
351.22 Use of land stations and whale catchers.
351.23 Other operations.

Subpart C—Capture

351.30 [Reserved].
351.31 Indian Ocean sanctuary.
351.32 Area limits for factory ships.
351.33 Classification of areas and divisions.
351.34 Classification of stocks.
351.35 Catch limits for baleen whales.
351.36 Limitations on the taking of humpback, gray, and bowhead whales.
351.37 Taking of calves or suckling whales prohibited.
351.38 Size limits for sei, Bryde's and fin whales.
351.39 Catch limits for sperm whales.
351.40 Size limits for sperm whales.

Subpart D—Treatment

351.51 Processing of whales.
351.52 Regulation of processing.

Subpart E—Supervision and control

351.61 Inspection.
351.62 Remuneration of employees.
351.63 Measurement of whales.

Subpart F—Information required

351.71 Reports and records.
351.72 Submission of catch data and notification of closure.
351.73 Submission of statistical data.
351.74 Collection of specimens.
351.75 Review of scientific permits.
351.76 Submission of laws and regulations.

Authority: Article 5, 62 Stat. 1718, sec. 2-14, 64 Stat. 421-425; 16 U.S.C. 916 et seq.

Subpart A—Interpretation

§ 351.1 Definitions.

The following expressions have the meanings respectively assigned to them, that is to say:

Baleen whales

(a) "baleen whale" means any whale which has baleen or whale bone in the mouth, i.e. any whale other than a toothed whale.

(b) "blue whale" *(Balaenoptera musculus)* means any whale known as blue whale, Sibbald's rorqual, or sulphur bottom, and including pygmy blue whale.

(c) "bowhead whale" *(Balaena mysticetus)* means any whale known as bowhead, Arctic right whale, great polar whale, Greenland right whale, Greenland whale.

(d) "Bryde's whale" *(Balaenoptera edeni, B. brydei)* means any whale known as Bryde's whale.

(e) "fin whale" *(Balaenoptera physalus)* means any whale known as common finback, common rorqual, fin whale, herring whale, or true fin whale.

(f) "gray whale" *(Eschrichtius robustus)* means any whale known as gray whale, California gray, devil fish, hard head, mussel digger, gray back, or rip sack.

(g) "humpback whale" *(Megoptera novaeangliae)* means any whale known as bunch, humpback, humpback whale, humpbacked whale, hump whale or hunchback whale.

(h) "minke whale" *(Balaenoptera acutorostrata, B. bonaerensis)* means any whale known as lesser rorqual, little piked whale, minke whale, pike-headed whale or sharp headed finner.

(i) "pygmy right whale" *(Caperea marginata)* means any whale known as southern pygmy right whale, pygmy right whale.

(j) "right whale" *(Eubalaena glacialis, E. australis)* means any whale known as Atlantic right whale, Arctic right whale, Biscayan right whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific right whale, or southern right whale.

(k) "sei whale" *(Balaenoptera borealis)* means any whale known as sei whale, Rudolphi's rorqual, pollack whale, or coalfish whale.

Toothed whales

(a) "toothed whale" means any whale which has teeth in the jaws.

(b) "beaked whale" means any whale belonging to the genus *Mesoplodon*, or any whale known as Cuvier's beaked whale *(Ziphius cavirostris)*, or Shepherd's beaked whale *(Tasmacetus shepherdi)*.

(c) "bottlenose whale" means any whale known as Baird's beaked whale *(Berardius bairdii)*, Arnoux's whale *(Berardius arnuxii)*, southern bottlenose whale *(Hyperoodon planifrons)*, or northern bottlenose whale *(Hyperoodon ampullatus)*.

(d) "killer whale" *(Orcinus orca)* means any whale known as killer whale or orca.

(e) "pilot whale" means any whale known as long-finned pilot whale *(Globicephala melaena)* or short-finned pilot whale. *(G. macrorhynchus.)*

(f) "sperm whale" *(Physeter macrocephalus)* means any whale or minke whales, except as permitted by the Contracting Governments in accordance with paragraphs (c) and (d) of this section, and § 351.23.

(c) Each Contracting Government shall declare for all factory ships and by the whale catchers shall be permitted. Such open season shall be for a period of not more than six consecutive months in any period of twelve months and shall apply to all land stations under the jurisdiction of

Contracting Government to exceed nine continuous months of any twelve months.

(e) The prohibitions contained in this section shall apply to all land stations as defined in Article II of the Whaling Longitude between 40° South Latitude and 35° North Latitude;

(d) in the Pacific Ocean and its dependent waters west of 150° West Longitude between 40° South Latitude and 20° North Latitude;

W, 20° N 42° W, and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

Northeastern, East of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and North of a line through: 74° N 3° E, 74° N 22° W.

V 45 D E 2 4 8 0 UMI

(e) "pilot whale" means any whale known as long-finned pilot whale *(Globicephala melaena)* or short-finned pilot whale. *(G. macrorhynchus.)*

(f) "sperm whale" *(Physeter macrocephalus)* means any whale known as sperm whale, spermacet whale, cachalot or pot whale.

General

(a) "strike" means to penetrate with a weapon used for whaling.

(b) "take" means to flag, buoy or make fast to a whale catcher.

(c) "land" means to retrieve to a factory ship, land station, or other place where a whale can be treated.

(d) "lose" means to either strike or take but not land.

(e) "dauhval" means any unclaimed dead whale found floating.

(f) "lactating whale" means (1) with respect to baleen whales—a female which has any milk present in a mammary gland, (2) with respect to sperm whales—a female which has milk present in a mammary gland the maximum thickness (depth) of which is 10 cm or more. This measurement shall be at the mid ventral point of the mammary gland perpendicular to the body axis, and shall be logged to the nearest centimetre; that is to say, any gland between 9.5 cm and 10.5 cm shall be logged as 10 cm. The measurement of any gland which falls on an exact 0.5 centimetre shall be logged at the next 0.5 centimetre, eg 10.5 cm shall be logged as 11.0 cm.

However, notwithstanding these criteria, a whale shall not be considered a lactating whale if scientific (histological or other biological) evidence is presented to the appropriate national authority establishing that the whale could not at that point in its physical cycle have had a calf dependent on it for milk.

(g) "small-type whaling" means catching operations using powered vessels with mounted harpoon guns hunting exclusively for minke, bottlenose, beaked, pilot or killer whales.

Subpart B—Seasons

§ 351.21 Use of factory ships and whale catchers.

(a) It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating baleen whales except minke whales, in any waters south of 40° South Latitude, except during the period from 12th December to 7th April following, both days inclusive.

(b) It is forbidden to use a factory ship or whale catcher attached thereto for the purpose of taking or treating sperm or minke whales, except as permitted by the Contracting Governments in accordance with paragraphs (c) and (d) of this section, and § 351.23.

(c) Each Contracting Government shall declare for all factory ships and whale catchers attached thereto under its jurisdiction, an open season or seasons not to exceed eight months out of any period of twelve months during which the taking or killing of sperm whales by whale catchers may be permitted; provided that a separate open season may be declared for each factory ship and the whale catchers attached thereto.

(d) Each Contracting Government shall declare for all factory ships and whale catchers attached thereto under its jurisdiction one continuous open season not to exceed six months out of any period of twelve months during which the taking or killing of minke whales by the whale catchers may be permitted provided that:

(1) A separate open season may be declared for each factory ship and the whale catchers attached thereto;

(2) The open season need not necessarily include the whole or any part of the period declared for other baleen whales pursuant to paragraph (a) of this section.

(e) It is forbidden to use a factory ship which has been used during a season in any waters south of 40° South Latitude for the purpose of treating baleen whales, except minke whales, in any other area except the North Pacific Ocean and its dependent waters north of the Equator for the same purpose within a period of one year from the termination of that season; provided that catch limits in the North Pacific Ocean and dependent waters are established as provided in § 351.35(b) and § 351.39(b) of this part and provided that this section shall not apply to a ship which has been used during the season solely for freezing or salting the meat and entrails of whales intended for human food or feeding animals.

§ 351.22 Use of land stations and whale catchers.

(a) It is forbidden to use a whale catcher attached to a land station for the purpose of killing or attempting to kill baleen and sperm whales except as permitted by the Contracting Government in accordance with paragraphs (b), (c) and (d) of this section.

(b) Each Contracting Government shall declare for all land stations under its jurisdiction, and whale catchers attached to such land stations, one open season during which the taking or killing of baleen whales, except minke whales, by the whale catchers shall be permitted. Such open season shall be for a period of not more than six consecutive months in any period of twelve months and shall apply to all land stations under the jurisdiction of the Contracting Government; provided that a separate open season may be declared for any land station used for the taking or treating of baleen whales, except minke whales, which is more than 1,000 miles from the nearest land station used for the taking or treating of baleen whales, except minke whales, under the jurisdiction of the same Contracting Government.

(c) Each Contracting Government shall declare for all land stations under its jurisdiction and for whale catchers attached to such land stations, one open season not to exceed eight continuous months in any one period of twelve months, during which the taking or killing of sperm whales by the whale catchers shall be permitted, provided that a separate open season may be declared for any land station used for the taking or treating of sperm whales which is more than 1,000 miles from the nearest land station used for the taking or treating of sperm whales under the jurisdiction of the same Contracting Government.

(d) Each Contracting Government shall declare for all land stations under its jurisdiction and for whale catchers attached to such land stations one open season not to exceed six continuous months in any period of twelve months during which the taking or killing of minke whales by the whale catchers shall be permitted (such period not being necessarily concurrent with the period declared for other baleen whales, as provided for in paragraph (b) of this section); provided that a separate open season may be declared for any land station used for the taking or treating of minke whales which is more than 1,000 miles from the nearest land station used for the taking or treating of minke whales under the jurisdiction of the same Contracting Government. Except that a separate open season may be declared for any land station used for the taking or treating of minke whales which is located in an area having oceanographic conditions clearly distinguishable from those of the area in which are located the other land stations used for the taking or treating of minke whales under the jurisdiction of the same Contracting Government; but the declaration of a separate open season by virtue of the provisions of this paragraph shall not cause thereby the period of time covering the open seasons declared by the same

Contracting Government to exceed nine continuous months of any twelve months.

(e) The prohibitions contained in this section shall apply to all land stations as defined in Article II of the Whaling Convention of 1946.

§ 351.23 Other operations.

Each Contracting Government shall declare for all whale catchers under its jurisdiction not operating in conjunction with a factory ship or land station one continuous open season not to exceed six months out of any period of twelve months during which the taking or killing of minke whales by such whale catchers may be permitted. Notwithstanding this section one continuous open season not to exceed nine months may be implemented so far as Greenland is concerned.

Subpart C—Capture

§ 351.30 Reserved.

§ 351.31 Indian Ocean sanctuary.

In accordance with Article V(1)(c) of the Convention, commercial whaling, whether by pelagic operations or from land stations, is prohibited in a region designated as the Indian Ocean Sanctuary. This comprises the waters of the Northern Hemisphere from the coast of Africa to 100 degrees East, including the Red and Arabian Seas and the Gulf of Oman; and the waters of the Southern Hemisphere in the sector from 20 degrees East to 130 degrees East, with the Southern boundary set at 55 degrees South. This prohibition applies irrespective of the classifications of baleen or toothed whale stocks in the Sanctuary, as may from time to time be determined by the Commission. This prohibition will apply for ten years from 24 October 1979 with the provision for a general review after five years, unless the Commission decides otherwise.

§ 351.32 Area limits for factory ships.

It is forbidden to use a factory ship or whale catcher attached thereto, for the purpose of taking or treating baleen whales, except minke whales, in any of the following areas:

(a) in the waters north of 66° North Latitude, except that from 150° East Longitude eastwards as far as 140° West Longitude, the taking or killing of baleen whales by a factory ship or whale catcher shall be permitted between 66° North Latitude and 72° North Latitude;

(b) in the Atlantic Ocean and its dependent waters north of 40° South Latitude;

(c) in the Pacific Ocean and its dependent waters east of 150° West Longitude between 40° South Latitude and 35° North Latitude;

(d) in the Pacific Ocean and its dependent waters west of 150° West Longitude between 40° South Latitude and 20° North Latitude;

(e) in the Indian Ocean and its dependent waters north of 40° South Latitude.

§ 351.33 Classification of areas and divisions.

(a) Classification of areas. Areas relating to Southern Hemisphere baleen whales except Bryde's whales are those waters between the ice-edge and the Equator and between the meridians of longitude listed in Table 1.

(b) Classification of divisions. Divisions relating to Southern Hemisphere sperm whales are those waters between the ice-edge and the Equator and between the meridians of longitude listed in Table 3.

(c) Geographical boundaries in the North Atlantic.

The geographical boundaries for the fin, minke and sei whale stocks in the North Atlantic are:

Fin whale stocks

Nova Scotia, South and West of a line through: 47° N 54° W, 46° N 54°30' W, 46° N 42° W, 20° N 42° W.

Newfoundland—Labrador, West of a line through: 75° N 73°30' W, 69° N 59° W, 61° N 59° W, 52°20' N 42° W, 46° N 42° W and North of a line through: 46° N 42° W, 46° N 54°30' w, 47° N 54° W.

West Greenland, East of a line through: 75° N 73°30' W, 69° N 59° W, 61° N 59° W, 52°20' N 42° W, and West of a line through: 52°20' N 42° W, 59° N 42° W, 59° N 44° W, Kap Farvel.

East Greenland—Iceland, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

North Norway, North and East of a line through: 74° N 22° W, 74° N 3° E, 68° N 3° E, 67° N 0°, 67° N 14° E.

West Norway and Faroe Islands, South of a line through: 67° N 14° E, 67° N 0°, 60° N 18° W, and North of a line through: 61° N 16° W, 61° N 0°, Thyboron (western entrance to Limfjorden, Denmark).

British Isles—Spain and Portugal, South of a line through: Thyboron (Denmark), 61° N 0°, 61° N 16° W, and East of a line through: 63° N 11° W, 60° N 18° W, 22° N 18° W.

Minke whale stocks

Canadian East Coast, West of a line through: 75° N 73°30' W, 69° N 59° W, 61° N 59° W, 52°20' N 42° W, 20° N 42° W.

West Greenland, East of a line through: 75° N 73°30' W, 69° N 59° W, 61° N 59° W, 52°20' N 42° W, and West of a line through: 52°20' N 42° W, 59° N 42° W, 59° N 44° W, Kap Farvel.

Central, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W, and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

Northeastern, East of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and North of a line through: 74° N 3° E, 74° N 22° W.

Sei whale stocks

Nova Scotia, South and West of a line through: 47° N 54° W, 46° N 54°30' W, 46° N 42° W, 20° N 42° W.

Iceland—Denmark Strait, East of a line through: Kap Farvel (South Greenland), 59° N 44° W, 59° N 42° W, 20° N 42° W, and West of a line through: 20° N 18° W, 60° N 18° W, 68° N 3° E, 74° N 3° E, and South of 74° N latitude.

Eastern, East of a line through: 20°N 18°W, 60°N 18°W, 68°N 3°,E 74°N 30°E and North of a line through: 74°N 3°E, 74°N 22°W.

(d) Geographical boundaries in the North Pacific.

The geographical boundaries for the sperm and Bryde's whale stocks in the North Pacific are:

Sperm whale stocks

Western Division

West of a line from the ice-edge south along the 180° meridian of longitude to 180°, 50°N, then east along the 50°N parallel of latitude to 160°W, 50°N, then south along the 160°W meridian of longitude to 160°W, 40°N, then east along the 40°N parallel of latitude to 150°W, 40°N, then south along the 150°W meridian of longitude to the Equator.

Eastern Division

East of the line described above.

Bryde's whale stocks

Western Stock

West of the 160°W meridian of longitude.

Eastern Stock

East of the 160°W meridian of longitude.

(e) Geographical boundaries for Bryde's whale stocks in the Southern Hemisphere and Northern Indian Ocean.

Indian Ocean, 20°E to the Australian coast, 40°S to the coast north of the Equator.

Solomon Islands, 150°E to 170°E, 20°S to 10°S.

Western South Pacific, Australian coast to 150°W, 40°S to the Equator (excluding the Solomon Islands stock area).

Peruvian, 110°W to the South American coast, 10°S to 10°N.

Eastern South Pacific, 150°W to the South American coast, 40°S to the Equator (excluding the Peruvian stock area).

§ 351.34 Classification of stocks.

All stocks of whales shall be classified in one of three categories according to the advice of the Scientific Committee as follows:

(a) A Sustained Management Stock (SMS) is a stock which is not more than 10 per cent of Maximum Sustainable Yield (hereinafter referred to as MSY) stock level below MSY stock level, and not more than 20 per cent above that level; MSY being determined on the basis of the number of whales.

(1) When a stock has remained at a stable level for a considerable period under a regime of approximately constant catches, it shall be classified as a Sustained Management Stock in the absence of any positive evidence that it should be otherwise classified.

§ 351.35 Catch limits for baleen whales.

(a) The number of baleen whales taken in the Southern Hemisphere in the 1980/81 pelagic season and the 1981 coastal season shall not exceed the limits shown in Tables 1 and 2. However, in no circumstances shall the

of such whales is to be used for local consumption as human or animal food.

(b) It is forbidden to take or kill any fin whales below 57 feet (17.4 metres) in length in the Southern Hemisphere, and it is forbidden to take or kill fin whales below 55 feet (16.8 metres) in the

of parts of whales intended for human food or feeding animals. A Contracting Government may in less developed regions exceptionally permit treating of whales without use of land stations, provided that such whales are fully utilized in accordance with this section.

by a factory ship shall be so regulated or restricted by the master or person in charge of the factory ship that no whale carcase (except of a whale used as a fender, which shall be processed as soon as is reasonably practicable) shall remain in the sea for a longer period

(1) When a stock has remained at a stable level for a considerable period under a regime of approximately constant catches, it shall be classified as a Sustained Management Stock in the absence of any positive evidence that it should be otherwise classified.

(2) Commercial whaling shall be permitted on Sustained Management Stocks according to the advice of the Scientific Committee. These stocks are listed in Tables 1, 2, and 3 of this part.

(3) For stocks at or above the MSY stock level, the permitted catch shall not exceed 90 per cent of the MSY. For stocks between the MSY stock level and 10 per cent below that level, the permitted catch shall not exceed the number of whales obtained by taking 90 per cent of the MSY and reducing that number by 10 per cent for every 1 per cent by which the stock falls short of the MSY stock level.

(b) An Initial Management Stock (IMS) is a stock more than 20 per cent of MSY stock level above MSY stock level. Commercial whaling shall be permitted on Initial Management Stocks according to the advice of the Scientific Committee as to measures necessary to bring the stocks to the MSY stock level and then optimum level in an efficient manner and without risk of reducing them below this level. The permitted catch for such stocks will not be more than 90 per cent of MSY as far as this is known, or, where it will be more appropriate, catching effort shall be limited to that which will take 90 per cent of MSY in a stock at MSY stock level.

(1) In the absence of any positive evidence that a continuing higher percentage will not reduce the stock below the MSY stock level no more than 5 per cent of the estimated initial exploitable stock shall be taken in any one year. Exploitation should not commence until an estimate of stock size has been obtained which is satisfactory in the view of the Scientific Committee. Stocks classified as Initial Management Stock are listed in Tables 1, 2, and 3 of this part.

(c) A Protection Stock (PS) is a stock which is below 10 per cent of MSY stock level below MSY stock level.

(1) There shall be no commercial whaling on Protection Stocks. Stocks so classified are listed in Tables 1, 2, and 3 of this part.

(d) Notwithstanding the other provisions of section 351.34, there shall be a moratorium on the taking, killing, or treating of whales, excluding minke whales, by factory ships or whale catchers attached to factory ships. This moratorium applies to sperm whales, killer whales and baleen whales, excluding minke whales.

§ 351.35 Catch limits for baleen whales.

(a) The number of baleen whales taken in the Southern Hemisphere in the 1980/81 pelagic season and the 1981 coastal season shall not exceed the limits shown in Tables 1 and 2. However, in no circumstances shall the sum of the Area catches exceed the total catch limits for each species.

(b) The number of baleen whales taken in the North Pacific Ocean and dependent waters in 1981 and in the North Atlantic Ocean in 1981 shall not exceed the limits shown in Tables 1 and 2.

§ 351.36 Limitations on the taking of humpback, gray, and bowhead whales.

(a) Notwithstanding the provisions of § 351.34:

(1) The taking of 10 humpback whales not below 35 feet (10.7 metres) in length, per year is permitted in Greenland waters provided that whale catchers of less than 50 gross register tonnage are used for this purpose.

(2) The taking of bowhead whales from the Bering Sea stock by aborigines is permitted, but only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines, and further provided that:

(i) For the years 1981 through 1983, inclusive, the total number of whales landed shall not exceed 45 and the total number of whales struck shall not exceed 65, provided, however, that in any one year the number of whales landed shall not exceed 17,

(ii) It is forbidden to strike, take or kill calves or any bowhead whale accompanied by a calf.

(b) The taking of gray whales from the Eastern stock in the North Pacific is permitted, but only by aborigines or a Contracting Government on behalf of aborigines, and then only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines. The number of gray whales taken in accordance with this paragraph in 1981 shall not exceed the limit shown in Table 1.

§ 351.37 Taking of calves or suckling whales prohibited.

It is forbidden to take or kill suckling calves or female whales accompanied by calves.

§ 351.38 Size limits for sei, Bryde's and fin whales.

(a) It is forbidden to take or kill any sei or Bryde's whales below 40 feet (12.2 metres) in length except that sei and Bryde's whales of not less than 35 feet (10.7 metres) may be taken for delivery to land stations, provided that, the meat of such whales is to be used for local consumption as human or animal food.

(b) It is forbidden to take or kill any fin whales below 57 feet (17.4 metres) in length in the Southern Hemisphere, and it is forbidden to take or kill fin whales below 55 feet (16.8 metres) in the Northern Hemisphere; except that fin whales of not less than 55 feet (16.8 metres) may be taken in the Southern Hemisphere for delivery to land stations and fin whales of not less than 50 feet (15.2 metres) may be taken in the Northern Hemisphere for delivery to land stations, provided that, in each case the meat of such whales is to be used for local consumption as human or animal food.

§ 351.39 Catch limits for sperm whales.

(a) The number of sperm whales taken in the Southern Hemisphere in the 1980/81 pelagic season and the 1981 coastal season shall not exceed the limits shown in Table 3.

(b) The number of sperm whales taken in the North Pacific Ocean and dependent waters in 1981 and in the North Atlantic Ocean in 1981 shall not exceed the limits shown in Table 3.

§ 351.40 Size limits for sperm whales.

(a) It is forbidden to take or kill any sperm whales below 30 feet (9.2 metres) in length except in the North Atlantic Ocean where it is forbidden to take or kill any sperm whales below 35 feet (10.7 metres).

(b) It is forbidden to take or kill any sperm whale over 45 feet (13.7 metres) in length in the Southern Hemisphere north of 40° South Latitude during the months of October to January inclusive.

(c) It is forbidden to take or kill any sperm whale over 45 feet (13.7 metres) in length in the North Pacific Ocean and dependent waters south of 40° North Latitude during the months of March to June inclusive.

Subpart D—Treatment

§ 351.51 Processing of whales.

(a) It is forbidden to use a factory ship or a land station for the purpose of treating any whales which are classified as Protection Stocks in § 351.34 or are taken in contravention of §§ 351.21, 351.22, 351.23, 351.30, 351.31, 351.32, 351.35, and 351.39 of this part, whether or not taken by whale catchers under the jurisdiction of a Contracting Government.

(b) All other whales taken, except minke whales, shall be delivered to the factory ship or land station and all parts of such whales shall be processed by boiling or otherwise, except the internal organs, whale bone and flippers of all whales, the meat of sperm whales and

of parts of whales intended for human food or feeding animals. A Contracting Government may in less developed regions exceptionally permit treating of whales without use of land stations, provided that such whales are fully utilized in accordance with this section.

(c) Complete treatment of the carcases of "dauhval" and of whales used as fenders will not be required in cases where the meat or bone of such whales is in bad condition.

§ 351.52 Regulation of processing.

(a) The taking of whales for treatment by a factory ship shall be so regulated or restricted by the master or person in charge of the factory ship that no whale carcase (except of a whale used as a fender, which shall be processed as soon as is reasonably practicable) shall remain in the sea for a longer period than thirty-three hours from the time of killing to the time when it is hauled up for treatment.

(b) Whales taken by all whale catchers, whether for factory ships or land stations, shall be clearly marked so as to identify the catcher and to indicate the order of catching.

Table 1.—*Bleen Whale Stock Classifications and Catch Limits (excluding Bryde's whales)*

Southern Hemisphere—1980/81 pelagic season and 1981 coastal season

Area	Longitudes	Sei		Minke		Fin		Blue	Hump-back	Right Bow-head, Pygmy	Gray	
		Classi-fication	Catch limit	Classi-fication	Catch limit	Classi-fication	Catch limit	Classi-fication	Classi-fication	Classi-fication	Classi-fication	Catch limit
I	120°W- 60°W	PS	0		910	PS	0	PS	PS	PS		
II	60°W- 0°W	PS	0		1,176	PS	0	PS	PS	PS		
III	0°- 70°E	PS	0		1,237	PS	0	PS	PS	PS		
IV	70°E-130°E	PS	0		2,386	PS	[4]0	PS	PS	PS		
V	130°E-170°W	PS	0		1,250	PS	0	PS	PS	PS		
VI	170W°-120°W	PS	0		467	PS	0	PS	PS	PS		
Total catch not to exceed:			0		7,072		0	0	0	0		
NORTHERN HEMISPHERE— 1981 season												
ARCTIC										PS		
NORTH PACIFIC												
Whole region		PS	0			PS	0	PS	PS	PS		
Okhotsk Sea-West Pacific Stock				SMS	[1]421							
Sea of Japan-Yellow Sea-East China Stock				[2]SMS	[3]940							
Remainder				IMS	[4]0							
Eastern Stock											SMS	[5]179
Western Stock											PS	0
NORTH ATLANTIC												
Whole region								PS	PS	PS		
West Greenland Stock				SMS	[6]444	[2]SMS	6					
Newfoundland-Labrador Stock						IMS	90					
Canadian East Coast Stock							[7]0					
Nova Scotia Stock		PS	0			PS	0					
Central Stock				SMS	320							
East Greenland-Iceland Stock						SMS	[8]304					
Iceland-Denmark Strait Stock		SMS	[8]100									
Spain-Portugal-British Isles Stock						SMS	[10]240					
Northeastern Stock				SMS	1,790							
West Norway-Faroe Islands Stock						PS	0					
North Norway Stock						SMS	61					
Eastern Stock			0									
NORTHERN INDIAN OCEAN								PS	PS	PS		

[1] The total catch of minke whales shall not exceed 1,678 in the five years 1980 to 1984 inclusive.
[2] Provisionally listed as SMS for 1981.
[3] The total catch of minke whales shall not exceed 3,634 in the five years 1980 to 1974 inclusive.
[4] Pending a satisfactory estimate of stock size.
[5] Available to be taken by aborigines or a Contracting Government on behalf of aborigines pursuant to paragraph 13b.
[6] The total catch of minke whales shall not exceed 1,778 in the five years 1981 to 1985 inclusive.
[7] Pending submission of data leading to an adequate assessment.
[8] The total catch of fin whales shall not exceed 1,524 in the six years 1977 to 1982 inclusive.
[9] The total catch of sei whales shall not exceed 504 in the six years 1980 to 1985 inclusive.
[10] The total catch of fin whales shall not exceed 440 in the two years 1980 and 1981.

Table 2.—BRYDE'S WHALE STOCK CLASSIFICATION AND CATCH LIMITS

[Southern Hemisphere and Northern Indian Ocean 1980-81 pelagic season and 1981 coastal season]

	Classi-fication	Catch limit
South Atlantic stock	IMS	0
Indian Ocean stock	IMS	197
Solomon Islands stock	IMS	0
Western South Pacific stock	IMS	237
Peruvian stock	SMS	264
Eastern South Pacific stock	IMS	188

[Southern Hemisphere and Northern Indian Ocean 1980-81 pelagic season and 1981 coastal season]

	Classi-fication	Catch limit
North Pacific—1981 season:		
Eastern stock	IMS	[1]0
Western stock	SMS	510
East China Sea stock	SMS[2]	19
North Atlantic—1981 season	IMS	[1]0

[1] Pending a satisfactory estimate of stock size.
[2] Provisionally listed as SMS for 1981.

TABLE 3.—TOOTHED WHALE STOCK CLASSIFICATION AND CATCH LIMITS

[Southern Hemisphere 1980–81 pelagic season and 1981 coastal season]

	Sperm		Bott-lenose
	Classification	Catch limit	Classification
Area I	PS	0	PS
Area II	PS	0	PS
Area III	PS	0	PS
Area IV	PS	0	PS
Area V	PS	0	PS
Area VI	PS	0	PS
Total catch not to exceed:		0	
NORTHERN HEMISPHERE— 1981 season			
ARCTIC			PS
NORTH PACIFIC			
Whole region	PS	0	PS
Okhotsk Sea-West Pacific Stock			
Sea of Japan-Yellow Sea-East China Stock			
Remainder			
Eastern Stock			
Western Stock			
NORTH ATLANTIC			
Whole region			PS
West Greenland Stock			
Newfoundland-Labrador Stock			
Canadian East Coast Stock			
Nova Scotia Stock	PS	0	PS
Central Stock			
East Greenland-Iceland Stock			
Iceland-Denmark Strait Stock			
Spain-Portugal-British Isles Stock			
Northeastern Stock			
West Norway-Faroe Islands Stock			
North Norway Stock			
Eastern Stock			
NORTHERN INDIAN OCEAN			PS

Commisson acting through its Secretary and paid by the Government nominating them.

§ 351.62 Remuneration of employees.

(1) The time when each whale is taken;

(2) Its species; and

(3) Its marking effected pursuant to § 351.52(b).

(b) The information specified in

species taken in any waters south of 40° South Latitude by all factory ships or whale catchers attached thereto under the jurisdiction of each Contracting Government, provided that when the

the calving grounds and migration of whales.

(b) Notification shall be given in accordance with the provisions of Article VII of the Convention with

this section shall be undertaken and reported by small-type whaling operations conducted from shore or by pelagic fleets.

(c) All specimens collected under

TABLE 3.—TOOTHED WHALE STOCK CLASSIFICATION AND CATCH LIMITS

[Southern Hemisphere 1980–81 pelagic season and 1981 coastal season]

Divisions	Longitudes	Sperm		Bottlenose
		Classification	Catch limit	classification
1	60°W– 30°W			
2	30°W– 20°E			
3	20°E– 60°E			
4	60°E– 90°E			
5	90°E–130°E			
6	130°E–160°E			
7	160°E–170°W			
8	170°W–100°W			
9	100°W– 60°W		[1]300	
[Northern Hemisphere—1981 season]				
North Pacific:				
Western				
Division:				
Males			[2] [3]890	
Females			0	
Eastern				
Division:				
Males			0	
Females			0	
North Atlantic:				
Males			130	[4]PS
Females				[4]PS
Northern Indian Ocean			0	

[1] The catch in 1982 shall be zero.
[2] Included within this figure there may be a by-catch of females not to exceed 11.5% and all whaling operations for this species are to cease when the by-catch is reached.
[3] It is forbidden to take or kill any sperm whale from this stock over 45 feet (13.7 metres) in length in the 1981 season.
[4] Provisionally listed as PS for 1981 pending the accumulation of sufficient information for classification.

Subpart E—Supervision and Control

§ 351.61 Inspection

(a) There shall be maintained on each factory ship at least two inspectors of whaling for the purpose of maintaining twenty-four-hour inspection provided that at least one such inspector shall be maintained on each catcher functioning as a factory ship. These inspectors shall be appointed and paid by the Government having jurisdiction over the factory ship; provided that inspectors need not be appointed to ships which, apart from the storage of products, are used during the season solely for freezing or salting the meat and entrails of whales intended for human food or feeding animals.

(b) Adequate inpsection shall be maintained at each land station. The inspectors serving at each land station shall be appointed and paid by the Government having jurisdiction over the land station.

(c) There shall be received such observers as the member countries may arrange to place on factory ships and land stations or groups of land stations of other member countries: The observers shall be appointed by the Commisson acting through its Secretary and paid by the Government nominating them.

§ 351.62 Remuneration of employees.

Gunners and crews of factory ships, land stations, and whale catchers, shall be engaged on such terms that their remuneration shall depend to a considerable extent upon such factors as the species, size and yield of whales taken and not merely upon the number of the whales taken. No bonus or other remuneration shall be paid to the gunners or crews of whale catchers in respect of the taking of lactating whales.

§ 351.63 Measurement of whales.

(a) Whales must be measured when at rest on deck or platform after the hauling out wire and grasping device have been released, by means of a tape-measure made of a non-stretching material. The zero end of the tape-measure shall be attached to a spike or stable device to be positioned on the deck or platform abreast of one end of the whale. Alternatively the spike may be stuck into the tail fluke abreast of the apex of the notch. The tape-measure shall be held taut in a straight line parallel to the deck and the whale's body, and other than in exceptional circumstances along the whale's back, and read abreast of the other end of the whale. The ends of the whale for measurement purposes shall be the tip of the upper jaw, or in sperm whales the most forward part of the head, and the apex of the notch between the tail flukes.

(b) Measurements shall be logged to the nearest foot or 0.1 metres. That is to say, any whale between 75 feet 6 inches and 76 feet 6 inches shall be logged as 76 feet, and any whale between 76 feet 6 inches and 77 feet 6 inches shall be logged as 77 feet. Similarly, any whale between 10.15 metres and 10.25 metres shall be logged as 10.2 metres, and any whale between 10.25 metres and 10.35 metres shall be logged as 10.3 metres. The measurement of any whale which falls on an exact half foot or 0.05 metre shall be logged at the next half foot or 0.05 metre, e.g. 76 feet 6 inches precisely shall be logged as 77 feet and 10.25 metres precisely shall be logged as 10.3 metres.

Subpart F—Information required

§ 351.71 Reports and records.

(a) All whale catchers operating in conjunction with a factory ship shall report by radio to the factory ship:

(1) The time when each whale is taken;
(2) Its species; and
(3) Its marking effected pursuant to § 351.52(b).

(b) The information specified in paragraph (a) of this section shall be entered immediately by a factory ship in a permanent record which shall be available at all times for examination by the whaling inspectors; and in addition there shall be entered in such permanent record the following information as soon as it becomes available:

(1) Time of hauling up for treatment,
(2) Length, measured pursuant to § 351.63,
(3) Sex,
(4) If female, whether lactating,
(5) Length and sex of foetus, if present, and
(6) A full explanation of each infraction.

(c) A record similar to that described in paragraph (b) of this section shall be maintained by land stations, and all of the information mentioned in the said paragraph shall be entered therein as soon as available.

(d) A record similar to that described in paragraph (b) of this section shall be maintained by "small-type whaling" operations conducted from shore or by pelagic fleets, and all of this information mentioned in the said paragraph shall be entered therein as soon as available.

(e) All Contracting Governments shall report to the Commission for all whale catchers operating in conjunction with factory ships and land stations the following information:

(1) Methods used to kill each whale, other than a harpoon, and in particular compressed air, and
(2) Number of whales struck but lost.

(f) A record similar to that described in paragraph (e) of this section shall be maintained by vessels engaged in "small-type whaling" operations and by native peoples taking species listed in § 351.1, and all the information mentioned in the said paragraph shall be entered therein as soon as available, and forwarded by Contracting Governments to the Commission.

§ 351.72 Submission of catch data and notification of closure.

(a) Notification shall be given in accordance with the provision of Article VII of the Convention, within two days after the end of each calendar week, of data on the number of baleen whales by

species taken in any waters south of 40° South Latitude by all factory ships or whale catchers attached thereto under the jurisdiction of each Contracting Government, provided that when the number of each of these species taken is deemed by the Bureau of International Whaling Statistics to have reached 85 percent of whatever total catch limit is imposed by the Commission notification shall be given as aforesaid at the end of each day of data on the number of each of these species taken.

(b) If it appears that the maximum catches of whales permitted by § 351.35(a) may be reached before 7th April of any year, the Bureau of International Whaling Statistics shall determine, on the basis of the data provided, the date on which the maximum catch of each of these species shall be deemed to have been reached and shall notify the master of each factory ship and each Contracting Government of that date not less than four days in advance thereof. The taking or attempting to take baleen whales, so notified, by factory ships or whale catchers attached thereto shall be illegal in any waters south of 40° South Latitude after midnight of the date so determined.

(c) Notification shall be given in accordance with the provisions of Article VII of the Convention of each factory ship intending to engage in whaling operations in any waters south of 40° South Latitude.

§ 351.73 Submission of statistical data.

(a) Notification shall be given in accordance with the provisions of Article VII of the Convention with regard to all factory ships and catcher ships of the following statistical information:

(1) Concerning the number of whales of each species taken, the number thereof lost, and the number treated at each factory ship or land station, and

(2) As to the aggregate amounts of oil of each grade and quantities of meal, fertiliser (guano), and other products derived from them, together with

(3) Particulars with respect to each whale treated in the factory ship, land station or "small-type whaling" operations as to the date and approximate latitude and longitude of taking, the species and sex of the whale, its length and, if it contains a foetus, the length and sex, if ascertainable, of the foetus. The data referred to in paragraph (a) (1) and (3) of this section shall be verified at the time of the tally and there shall also be notification to the Commission of any information which may be collected or obtained concerning the calving grounds and migration of whales.

(b) Notification shall be given in accordance with the provisions of Article VII of the Convention with regard to all factory ships and catcher ships of the following statistical information:

(1) The name and gross tonnage of each factory ship, and

(2) For each catcher ship attached to a factory ship or land station:

(i) The dates on which each is commissioned and ceases whaling for the season,

(ii) The number of days on which each is at sea on the whaling grounds each season, and

(iii) The gross tonnage, horsepower, length and other characteristics of each; vessels used only as tow boats should be specified.

(3) A list of the land stations which were in operation during the period concerned, and the number of miles searched per day by aircraft, if any.

(c) The information required under paragraph (b)(2)(iii) should also be recorded together with the following information, in the log book format shown in Appendix A, and forwarded to the Commission:

(1) Where possible the time spent each day on different components of the catching operation, and

(2) Any modifications of the measures in paragraphs (b)(2)(i)–(iii) or (c)(1) or data from other suitable indicators of fishing effort for "small-type whaling" operations.

§ 351.74 Collection of specimens.

(a) Where possible all factory ships and land stations shall collect from each whale taken and report on:

(1) Both ovaries or the combined weight of both testes, and

(2) At least one ear plug, or one tooth (preferably first mandibular).

(b) Where possible similar collections to those described in paragraph (a) of this section shall be undertaken and reported by small-type whaling operations conducted from shore or by pelagic fleets.

(c) All specimens collected under paragraphs (a) and (b) shall be properly labeled with the platform or other identification number of the whale and be appropriately preserved.

(d) Contracting Governments shall arrange for the analysis as soon as possible of the tissue samples and specimens collected under paragraphs (a) and (b) and report to the Commission on the results of such analyses.

§ 351.75 Review of scientific permits.

(a) A Contracting Government shall provide the Secretariat with proposed scientific permits before they are issued and in sufficient time to allow the Scientific Committee to review and comment on them. The proposed permits should specify:

(1) Objectives of the research;
(2) Number, sex, size and stock of the animals to be taken;
(3) Opportunities for participation in the research by scientists of other nations; and
(4) Possible effect on conservation of the stock.

(b) Proposed permits shall be reviewed and commented on by the Scientific Committee at Annual Meetings when possible. When permits would be granted prior to the next Annual Meeting, the Secretary shall send the proposed permits to members of the Scientific Committee by mail for their comment and review. Preliminary results of any research from the permits should be made available at the next Annual Meeting of the Scientific Committee.

§ 351.76 Submission of laws and regulations.

A Contracting Government shall transmit to the Commission copies of all its official laws and regulations relating to whales and whaling and changes in such laws and regulations.

Appendix A

Table 1.—*Daily Record Sheet*

Date ..... Catcher name ..... Sheet No .....

Searching:
- Time started (or resumed) searching .....
- Time whales seen *or reported to catcher*[1] .....
- Whale species .....
- Number seen and No. of groups .....
- Position found .....
- Name of catcher that found whales .....

Chasing:
- Time started chasing (or confirmed whales) .....
- Time whale shot or chasing discontinued .....
- Asdic used (Yes/No) .....

Handling:
- Time whale flagged or alongside for towing .....
- Serial No. of catch .....

Appendix A —Continued

Table 1.—*Daily Record Sheet* —Continued

Towing:
- Time started picking up .....
- Time finished picking up or starting towing .....
- Date and time delivered to factory .....

Resting:

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Appendix A —Continued

Table 1.—*Daily Record Sheet* —Continued

Towing:
Time started picking up
Time finished picking up or starting towing
Date and time delivered to factory
Resting:
Time stopped (for drifting or resting)
Time finished drifting/resting
Time ceased operations

Total searching time

Weather Conditions

Total chasing time:
(A) with asdic

	Time	Sea state	Wind force and direction	Visibility
(B) without asdic				

Total handling time
Total towing time
Total resting time
Other time (e.g. bunkering, in port)

Whales Seen (No. and No. of schools)

Blue	Bryde
Fin	Minke
Humpback	Sperm
Right	Others
Sei	(specify)

Signed

*Time whales reported to catcher means the time when the catcher is told of the position of a school and starts to move towards it to chase it.

TABLE 2.—*Schooling Report*

To be completed by pelagic expedition or coastal station for each sperm whale school chased. A separate form to be used each day.
Name of expedition or coastal station
Date Noon position of factory ship

Time School Found
Total Number of Whales in School
Number of Takeable Whales in School
Number of Whales Caught from School by each Catcher
Name of Catcher
Name of Catcher
Name of Catcher
Name of Catcher
Total Number caught from school

Remarks:

Explanatory Notes

A. Fill in one column for each school chased with number of whales caught by each catcher taking part in the chase; if catchers chase the school but do not catch any whales from it, enter 0; for catchers in fleet which do not chase that school enter X.

B. A school on this form means a group of whales which are sufficiently close together that a catcher having completed handling one whale can start chasing another whale almost immediately without spending time searching. A solitary whale should be entered as a school of 1 whale.

C. A takeable whale is a whale of a size or kind which the catchers would take if possible. It does not necessarily include all whales above legal size, e.g. if catchers are concentrating on large whales only these would be counted as takeable.

D. Information about catchers from other expeditions or companies operating on the same school should be recorded under Remarks.

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Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1421, 1446

1981 Peanut Program; Proposed Determinations Regarding a Loan and Purchase Program for the 1981 Crop of Peanuts

AGENCY: Commodity Credit Corporation, U.S. Department of Agriculture.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make determinations and issue regulations concerning a loan and purchase program, sales policy, and other related matters, for the 1981 crop of peanuts. The loan and purchase program is authorized by the Agricultural Act of 1949, as amended.

The program is intended to stabilize market prices and to protect producers, handlers, processors and consumers. This notice invites comments on these proposed determinations.

DATES: Written comments must be received on or before January 30, 1981.

ADDRESS: Send comments to Director, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, Room 3741 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Gypsy Banks, ASCS, (202) 447-6733. The draft impact analysis describing options considered in developing the proposed rule and the impact of implementing each option is available on request from the aboved named-individual.

SUPPLEMENTARY INFORMATION: This proposed determination has been reviewed under USDA procedures established to implement Executive Order 12044 and has been classified "significant."

In compliance with Secretary's Memorandum No. 1955 and the final report issued by the Secretary with respect to Executive Order 12044 and entitled "Improving USDA Regulations" (45 FR 50988), initiation of review of the regulations contained in 7 CFR 1146.30 through 1146.50 for need, currency, clarity and effectiveness, will be made within the next five years. The determination for the national average loan level for additional peanuts is required by statute to be made by the Secretary no later than February 15, 1981. Final Actions on these proposed determinations for 1981-crop purposes should be made as soon as possible to allow peanut producers an opportunity to make financial plans in accordance with program requirements. Therefore, I have determined that it is impractical and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044. Accordingly, all comments must be received by January 30, 1981, in order to be assured of consideration. This will allow the Secretary sufficient time to properly consider the comments received before the final program determinations are made.

The need for making the proposed determinations is to satisfy the statutory requirements as provided for in Section 108(a) of the Agricultural Act of 1949, as amended.

The title and number of the federal assistance program that this proposed rule applies to is: Title—Commodity Loans and Purchases; Number—10.051, as found in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local Government are informed of this action.

The following determinations are required to be made by the Secretary in accordance with the provisions of Section 108(a) of the 1949 Act, as added by the Food and Agriculture Act of 1977:

Proposed Determinations

1. *The national level of support for 1981-crop quota peanuts.* Section 108(a) of the Agricultural Act of 1949, as amended, (hereinafter referred to as the "Act") provides that the Secretary shall make price support available to producers through loans, purchases, or other operations on quota peanuts at such levels as the Secretary finds appropriate, but not less than $420 per ton. The Act further provides that in determining the levels of price support, the Secretary is to take into consideration the following 9 factors:

(a) *Index of prices paid for production items, interest, taxes and wage rates.* The projected increase in the Prices Paid Index (1910–1914) during 1980 was about 10.1 percent. A comparable increase in the 1980-crop price support level of $455 per ton would result in a loan rate of about $500 per ton.

(b) *Supply of the Commodity in relation to demand.* The estimated supply of 1981-crop peanuts is projected to exceed estimated requirements for domestic edible use, exports and carryover based on the following data:

1981-Crop Peanuts—Projected Supply and Demand With Most Likely U.S. Weather, 1981 Marketing Year

	1,000 tons
Projected supply:	
Carryin	75
Marketng and imports	1,926
Total Supply	2,001
Projected demand:	
Domestic edible and related	1,205
Exports	425
Loan Surplus	56
Total Demand	1,686
Carryover	315

(c) *Price Levels at which other commodities are being supported.* The 1981 peanuts quota loan options under consideration ($455, $500 and $526 per ton) range from 58 to 68 percent of November 1980 parity. Of the 1981 price support levels announced, dairy at 80 percent reflects a higher percentage of parity. The 1981 support for upland cotton at 47 percent and ELS cotton at 55 percent reflect a lower percentage of parity.

Commodity	Price support level
Dairy (cwt.)	$12.80
Upland Cotton (lb.)	00.5246
ELS Cotton (lb.)	00.99

(d) *Availability of funds.* Program costs are projected to range from $6 million to $31 million for the 1981 crop. It is estimated that Commodity Credit Corporation (CCC) funds will be available for this purpose.

(e) *The perishability of the commodity.* It is hazardous to hold peanuts in dry storage through the hot

summer months because of danger of loss due to deterioration, insect infestation, or rodent damage. Shelled peanuts can be kept in cold storage for two years or more with little loss of weight or quality; however, the costs

Adjustment Act of 1938, as amended, as any peanuts which are marketed from a farm and which are in excess of the marketings of quota peanuts from such farm for the marketing year but not in excess of the actual production from the

in foreign markets is estimated to range from 395,000 tons to 425,00 tons in the 1981 marketing year. About 75 percent of U.S. exports may be purchased from additional peanut stocks with the remainder being purchased from quota

7 CFR Part 1425

Cooperative Marketing Associations; Eligibility Requirements for Price Support

AGENCY: Commodity Credit Corporation,

commodity from members and to carry forward losses when it is determined that such authorization is appropriate under certain specified conditions. This amendment also proposes to clarify the intent of the regulations in terms of

liquidation of losses. Also it reduces the necessity to allocate losses which might then have to be carried on the books of the cooperative for an indefinite period of time.

The rationale for maintaining this

summer months because of danger of loss due to deterioration, insect infestation, or rodent damage. Shelled peanuts can be kept in cold storage for two years or more with little loss of weight or quality; however, the costs incurred would be prohibitive.

(f) *Importance of commodity to agriculture and the national economy.* Nationally, peanuts are a minor crop, representing about one percent of the total farm value of all U.S. crops. However, peanuts are an important crop in the major peanut producing States and are extremely important to the economies of areas within those States. In 1980, about 97 percent of U.S. peanuts were produced in the following States: Georgia (43%), Alabama (11%), Florida (5%), North Carolina (13%), Virginia (5%), Texas (12%), and Oklahoma (7%). The farm value of marketings from the 1981 crop is estimated at $846 to $963 million compared with estimates of $605 million for 1980 and $815 for the 1979 crop.

(g) *The obility to dispose of stocks acquired through price support operations.* There is an immediate dollar market for peanuts for crushing at competitive prices. For the 1981 crop, projections indicate that CCC could realize losses of $102 to $263 per ton on quota peanuts.

(h) *The need for offsetting temporary losses of export markets.* U.S. 1980–81 peanuts exports are projected to be down 245,000 tons from 1979–80 levels because of a decrease in U.S. supplies; however, strong world demand is forecast to continue, and U.S. exports could range from about 395,000 tons to 425,000 tons. If 1981–82 export demand is higher, or the supply of additional peanuts is lower than projected, surplus quota loan stocks will be available, at or above the quota loan rate plus costs, to make up the shortfall.

(i) *Ability and willingness of producers to keep supplies in line with demand.* A referendum will be held no later than December 15, 1980, to determine whether farmers favor or oppose marketing quotas for peanuts produced in calendar years 1981, 1982, and 1983. In a referendum held December 12 through 15, 1977, 93.6 percent of the growers voting approved marketing quotas and acreage allotments for peanuts produced in calendar years 1978, 1979, and 1980.

2. *The national level of support for 1981-crop additional peanuts.* Section 108(b) of the Act provides that the Secretary shall make price support available to producers through loans, purchases or other operations on "additional peanuts", which are defined in Section 358(p) of the Agricultural Adjustment Act of 1938, as amended, as any peanuts which are marketed from a farm and which are in excess of the marketings of quota peanuts from such farm for the marketing year but not in excess of the actual production from the farm acreage allotment. Section 108(b) of the Act further requires that the loan rate for 1981-crop additional peanuts shall be announced not later than February 15, 1981, and that in determining this rate, the Secretary shall take into consideration the following:

(a) *Demand for peanuts oil and meal.* Peanut crushings in 1980–81 are likely to fall below the 571 million pounds crushed last season. With the sharp drop in the crop, peanut supplies available for crushing will be greatly curtailed. But since peanut quality is poor, some supplies will be channeled into the crushing market. Peanut oil and meal are currently being quoted at about 50 cents per pound and $230 per ton, respectively. These prices are substantially above the 1979 levels of 28 cents per pound for oil and about $200 per ton for meal. Peanuts available for crushing in 1981–82 may increase slightly above the 1980–81 level but may remain substantially below the 1979 level. Peanut oil prices in 1981–82 are expected to range from 32 to 45 cents per pounds and meal at $255 per ton.

(b) *Expected prices of other vegetable oils and protein meals.* An 8 percent reduction in the 1980–81 world oilseed crop and expected higher feed grain prices should strengthen oilseed and oilseed product prices. However, substantially larger U.S. and world carrying stocks of oilseeds combined with a reduction in the rate of increase in the demand for soybean products, especially in the U.S., will temper price increases in 1980–81.

World aggregate 1980–81 production of oilseeds and related products is estimated at 177.5 million tons, with peanuts accounting for 10 percent of the total. Other major oilseeds include soybeans, accounting for 51 percent of aggregate production; cottonseed, 15 percent; sunflowerseed, 8 percent; and rapseed, 7 percent. Because of soybeans dominance in total supply of oilseeds and related products, they act as the leader in demand-supply price patterns for oilseeds generally. Soybean oil prices (crude, Decatur) during 1980–81 are expected to average slightly higher than the 1979–80 average of 25 cents per pound, possibly in the 25- to 30-cent range. Reduced soybean meal supplies are expected to rise sharply above the $180-per-ton average last year—possibly around $250 per ton.

(c) *Demand for peanuts in foreign markets.* The demand for U.S. peanuts in foreign markets is estimated to range from 395,000 tons to 425,00 tons in the 1981 marketing year. About 75 percent of U.S. exports may be purchased from additional peanut stocks with the remainder being purchased from quota stocks.

3. *Sales Policy.* The Department also invites comments on a sales policy for additonal peanuts received under loan or acquired under the 1981 program and sold for edible export use. Section 359(j) of the Agricultural Adjustment Act of 1938, as amended, provides that additional peanuts received under loan may be sold for domestic edible use at not less than all costs incurred with respect to the peanuts sold, plus (1) 100 percent of the quota loan value if sold and paid for during the harvest season upon delivery by the producer, or (2) 105 percent of the quota loan value if sold after delivery by the producer but not later than December 31 of the marketing year, or (3) 107 percent of the quota loan value if sold later than December 31 of the marketing year. In addition to these restrictions on sales of additional peanuts, Section 407 of the Act provides that when giving consideration to establishing sales policy, the Commodity Credit Corporation should give consideration to price, terms, and conditions which will not discourage or deter manufacturers, processors and dealers from acquiring and carrying normal inventories of the current crop. The Corporation shall not sell any basic agricultural commodity or storable nonbasic commodity at less than 5 percent above current support price for such commodity, plus reasonable carrying charges. These restrictions do not apply to the sales of peanuts and oilseeds for the extraction of oil or sales for export.

Before making any determinations, consideration will be given to any relevant data, views, recommendations, or alternative proposals which are submitted in writing to the Director of the Price Support and Loan Division, ASCS–USDA.

All written submissions made pursuant to this notice will be made available for inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 3741, South Building.

Signed at Washington, D.C. on December 18, 1980.

John E. Gibbs,

Acting Executive Vice President, Commodity Credit Corporation.

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7 CFR Part 1425

Cooperative Marketing Associations; Eligibility Requirements for Price Support

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) is considering amending the requirements governing cooperative marketing associations. The amendment would set forth procedure and criteria under which an approved cooperative could: (1) request a waiver from the member business requirement and (2) request a waiver to permit the cooperative to carry forward losses from eligible pools. This amendment also would clarify certain accounting requirements and delete the general waiver provision in 7 CFR 1425.13.

DATES: Written comments must be received on or before January 23, 1981 in order to be assured of consideration.

ADDRESS: Interested persons may send comments to Director, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Dale W. Wilson, Cooperative Section, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447–5953. The Draft Impact Analyses describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant." Jerome F. Sitter, Director of the Price Support and Loan Division, has determined that the public comment period should be shortened to thirty (30) days in order that the cooperative affected by this proposed rule will have time to adjust their financial plans to handle losses. This action proposes to amend the regulations containing the eligibility requirements with which cooperative marketing associations must comply in order to participate in CCC price support programs. The proposed amendment would give the Executive Vice President, CCC, or his designee, authority to authorize a waiver with respect to certain requirements in the regulations which would permit an approved cooperative to acquire less than 80 percent of its commodity from members and to carry forward losses when it is determined that such authorization is appropriate under certain specified conditions. This amendment also proposes to clarify the intent of the regulations in terms of pooling, allocation of costs and expenses, and assessing losses. It would also delete the general waiver provision in § 1425.13.

Member Business Requirement

The current regulations provide at 7 CFR 1425.11 that in order to be approved for participation in CCC price support programs, cooperatives must acquire or receive not less than 80 percent of their eligible commodity from members. While the Executive Vice President, CCC, or his designee, can waive this requirement for a period of up to two years for a cooperative obtaining initial approval, the present regulations do not permit a waiver of the member business requirement for an approved cooperative. This requirement precludes an approved cooperative from requesting a waiver, when necessary, to meet emergency crop production conditions of its members. The proposed rule would permit an approved cooperative to Executive Vice President, CCC, or his designee, when it is determined that such authorization is necessary for the efficient operation of the cooperative and is in the best interest of its members. This authorization, if granted, permit a cooperative time in which to make the necessary adjustments in the percentage of the commodity acquired from members.

Carry Forward Losses

Approved cooperatives are not authorized under current regulations to carry forward losses from eligible pools and assess them against future pools. The rationale for this restriction is that participants in an eligible pool should receive the benefits of price support in direct proportion to the volume of each individual's participation in the pool. Carrying forward losses tends to break down this type of relationship, since membership and participation percentage may vary from one pool to the next.

This restriction, however, may not be conducive to the effective and efficient conduct of a cooperative's business. Some cooperatives' bylaws permit carry forward losses from one pool to the next, rather than requiring the allocation of losses to individual pool participants. This type of flexibility may permit a cooperative to maintain a more stable and reasonable financial structure by allowing a more rapid and orderly liquidation of losses. Also it reduces the necessity to allocate losses which might then have to be carried on the books of the cooperative for an indefinite period of time.

The rationale for maintaining this restriction, therefore, loses much of its force when members have authorized the cooperative to carry forward losses and pool participation and membership are reasonably stable. Accordingly, it is proposed the regulations be amended to permit the Executive Vice President, CCC, or his designee, to grant a waiver from this requirement on a year-by-year, case-by-case basis. Factors that would be considered in reviewing an application for a waiver would include (but not be limited to): (1) The stability of membership and participation between the affected pools; (2) the financial condition of the cooperative; and (3) whether the loss can reasonably be expected to be recovered from future earnings within a reasonable period of time.

Other Changes

The amendment would also clarify the intent of the regulations as they pertain to:

1. *Deferment of Proceeds.* The proposed change would specify that if any eligible commodity is delivered to the cooperative's eligible pool for marketing and the proceeds are withheld, then this commodity cannot be included in the eligible pool inventory until the proceeds have been distributed.

2. *Farm Storage.* The proposed change would specify that any eligible commodity stored on the farm could not be included in the eligible pool inventory until the commodity has been delivered to the cooperative.

3. *Allocation of Costs and Expenses.* The proposed change would add the phrase "in a pool" to clarify that each pool shall include only one crop delivered to the cooperative for marketing.

4. *Exception to Eligible Commodity and Pooling Provision.* The proposed change would delete the general waiver provision found in § 1425.13(g). Due to this amendment No. 3, the general waiver provision is no longer necessary or appropriate.

In compliance with Secretary's Memorandum No. 1955 and "Improving Government Regulations" (43 FR 50988), it is determined that initiation of review of these regulations contained in 7 CFR Part 1425 for need, currency, clarity, and effectiveness will not be proposed at this time. The public is invited to submit written comments on the proposals to the Director, Price Support and Loan Division, ASCS, P.O. Box 2415,

Washington, D.C. 20013. All written comments will be made available for public inspection at the Office of the Director, Room 3741 South Building during regular business hours (7 CFR 1.27(b)).

foreign branch; (7) acquire domestic operating subsidiaries; and (8) undergo a corporate reorganization. Fees for certain applications for which there currently are no charges are also proposed. These include applications to:

filings as consolidated on October 15, 1980 (45 Fr 68586) in 12 CFR Part 5, §§ 5.20(e), 5.21(d), 5.22(c), 5.24(a)(3), 5.25(c), 5.30(d), 5.31(d), 5.32(c), 5.34(d), 5.40(d), 5.41(e), 5.42(c).

The proposed fee schedule is based

are routine and significant variations in the cost of processing individual filings of the same type do not usually exist. In rare instances this is not the case, but the Office will not charge applicants for the cost of that additional processing.

Washington, D.C. 20013. All written comments will be made available for public inspection at the Office of the Director, Room 3741 South Building during regular business hours (7 CFR 1.27(b)).

Proposed Rule

Accordingly, it is proposed that 7 CFR Part 1425.11 be amended as follows:

1. Amending § 1425.11 to delete the words "applying for initial approval" and to change the word "that" to "than" in the second sentence. The revised § 1425.11 would read as follows:

§ 1425.11 Member Business.

If price support is sought for a particular crop of a commodity, not less than 80 percent of such crop of the commodity that is acquired by or delivered to the cooperative for marketing must be produced by its members or by members of its member cooperatives. However, the Executive Vice President, CCC, or his designee, may, for a period of two years or such lesser period of time as he determines appropriate, authorize a cooperative to acquire or receive for marketing from its members a smaller quantity of such crop than 80 percent, if that quantity has a value greater than the value of the quantity acquired or received from nonmembers for marketing and if the cooperative establishes to the satisfaction of the Executive Vice President, CCC, that such authorization is necessary for the efficient operation of the cooperative and is in the best interest of the members of the cooperative. Purchase of commodities from CCC and processed products from other processors or merchandisers shall not be considered in determining the volume of member and nonmember business.

2. Section 1425.13(c) of the regulations is amended by removing paragraph (g) and by revising paragraphs (c), (e) and (f) to read as follows:

§ 1425.13 Eligible Commodity and Pooling.

* * * * *

(c) *Pools.* The cooperative may establish separate pools as needed for quantities of a commodity acquired from members. If the cooperative obtains price support from CCC on any quantity of a commodity included in a pool, all of the commodity included in the pool must be eligible for price support, except that a part of a pooled commodity may be ineligible for price support because of grade or quality, or in the case of cotton, because of bale weight or being repacked. *Provided however,* That: (1) any commodity delivered to a cooperative by producer members who have not accepted a payment of the initial advances made available to them by the cooperative for the commodity under § 1425.14(a) shall not be included in the eligible pool until the advances have been paid, and (2) farm-stored commodities cannot be included in an eligible pool until they are physically delivered to the cooperative and deposited in an approved warehouse.

* * * * *

(e) *Allocation of costs and expenses.* If price support is obtained on any quantity of a crop of a commodity in a pool, allocations of costs and expenses among separate pools for the crop of the commodity in a pool shall be made in accordance with sound accounting principles and practices.

(f) *Losses.* (1) Any losses incurred by the cooperative in marketing a crop of a commodity on which price support is not obtained from CCC shall not be assessed against the proceeds of marketing of a crop of a commodity included in a pool on which price support was obtained. (2) Except as provided herein, losses incurred by the cooperative in marketing a crop of a commodity on which price support is obtained may not be carried forward and applied against subsequent eligible pools of a crop of a commodity on which price support is obtained. However, the Executive Vice President, CCC, or his designee, may grant a waiver from this requirement, and authorize an approved cooperative to carry forward losses incurred on an eligible pool for a crop of a commodity for a period of one fiscal year when CCC determines that such action will result in the equitable treatment of all members participating in a price support pool. These losses may only be assessed against the proceeds of a comparable eligible pool for the next year's crop of the commodity to the extent that proceeds from this pool are required for offsetting such losses. When proceeds from the eligible pool in the next fiscal year are insufficient to offset the previous year's losses on a comparable eligible pool, a cooperative may be authorized to carry forward the remaining amount to be offset against the proceeds of the following year's eligible pool. Factors which will be considered in authorizing a cooperative to carry forward losses include, but are not limited to, the following: (i) Stability of membership and participation between affected pools, (ii) the financial condition of the cooperative, and (iii) whether the loss can reasonably be expected to be recovered from future earnings that proceeds of such pool are required for offsetting such losses. When proceeds from the eligible pool in the next fiscal year are insufficient to offset the previous year's losses on a comparable eligible pool, a cooperative may be authorized to carry the remaining amount forward to be offset against the proceeds of the following year's eligible pool. Factors which will be considered in authorizing a cooperative to carry forward losses will include, but are not limited to, the following: (i) Eligibility of membership and participation between affected pools, (ii) the financial condition of the cooperative, and (iii) whether the loss can reasonably be expected to be recovered from future earnings.

5. Amending § 1425.13 to remove subsection (g).

§ 1425.13 Eligible Commodity and Pooling.

* * * * *

(g) *Exception.* [Removed]

(Secs. 4 and 5, Pub. L. 80–806 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 103, 105A, 107A, 201, 301, 401, Pub. L. 81–439 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444(f), 1444c, 1445b, 1446, 1447, 1421(a)))

Signed at Washington, D.C. on December 17, 1980.

Weldon B. Denny,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-40058 Filed 12-23-80; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 5

[Docket No. 80-21]

Rules, Policies, and Procedures for Corporate Activities

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (Office) is proposing to revise its fee schedules for processing various types of corporate applications and filings to recover the associated costs. Revision is required by increasing costs which are now in excess of income from present fees, most of which were established in 1970.

Increased fees are proposed for applications to: (1) Organize a national bank; (2) organize a national bank limited to trust powers; (3) convert a state chartered bank to a national bank; (4) establish domestic branches and seasonal agencies; (5) establish CBCT branches;(6) establish additional federal branches or a federal agency of a foreign branch; (7) acquire domestic operating subsidiaries; and (8) undergo a corporate reorganization. Fees for certain applications for which there currently are no charges are also proposed. These include applications to: (1) Convert a branch or agency operated by a foreign bank or a commercial lending company controlled by a foreign bank into a federal branch or a federal agency; (2) change the location of a head office or domestic branch; (3) relocate a federal branch or federal agency of a foreign bank; (4) change a corporate title; and (5) establish a domestic operating subsidiary.

The new fees will apply to filings received by the Office after December 31, 1980. However, payment of charges above those of the current schedule will not be due until thirty days after final publication in the Federal Register of the new or revised fees.

DATES: Written comments should be received no later than February 23, 1981. It is not expected that the final schedule will be published before April 1, 1981. However, thirty days after its final publication, the schedule will be applied retroactively to all applications received by the Office after December 31, 1980.

ADDRESS: Comments should be directed to: Docket No. [80–21], Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, East, SW., Washington, D.C. 20219, Attention: Marie Giblin, (202) 447–1800.

Comments will be available for inspection and photocopying.

FOR FURTHER INFORMATION CONTACT:

Darrel W. Dochow, Deputy Director, Bank Organization and Structure Division, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447–1184.

or

Jerome Edelstein, Attorney, legal Advisory Services Division, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447–1880.

SUPPLEMENTARY INFORMATION: The principal drafters of this document were Darrel W. Dochow, Deputy Director, Bank Organization and Structure Division, Office of the Comptroller of the Currency, (202) 447–1184; and Jerome Edelstein, Attorney, Legal Advisory Services Division, Office of the Comptroller of the Currency, (202) 447–1880.

The Comptroller of the Currency is considering amending the regulations governing fees levied on national banks and District of Columbia banks for processing various applications and filings as consolidated on October 15, 1980 (45 Fr 68586) in 12 CFR Part 5, §§ 5.20(e), 5.21(d), 5.22(c), 5.24(a)(3), 5.25(c), 5.30(d), 5.31(d), 5.32(c), 5.34(d), 5.40(d), 5.41(e), 5.42(c).

The proposed fee schedule is based on two principles. First, the Office seeks to recover the total costs to the Office associated with processing these filings. Second, in the interests of equity, the Office intends to establish a fee that reflects the typical cost of processing each type of application.

The Office has three main sources of income from banks: (1) Fees levied for trust examinations which by statute, 12 U.S.C. 482, may only recover expenses related thereto; (2) fees levied for processing corporate applications and filings; and (3) semiannual assessments levied pursuant to 12 U.S.C. 482. Because fees from trust examinations may be used only to recover their costs, the expense of processing corporate applications must come from another source. The Office believes that it is more equitable to place those processing costs on the parties filing the applications. Recovering those costs through the semiannual assessment would require that banks receiving only indirect benefit from the processing of such applications subsidize parties which receive direct benefit. For instance, in 1980, about 2,800 applications are expected to be submitted. Since the fees charged are inadequate to cover the costs of processing those applications, all 4,446 national banks will subsidize a protion of those expenses through their semiannual assessment.

The second principle in revising the fee schedule is that, in the interest of equity, each applicant should pay a fee approximating the cost of processing that particular type of application. It is not reasonable, for instance, to charge a bank filing for a name change, which requires relatively small processing costs, the same fee as that charged to applicants for national bank charters, which require relatively high processing costs. Similarly, it is not reasonable to charge a charter applicant who does not obtain preliminary approval the same amount as an applicant who does. There are numerous Office activities in the chartering process that take place between the granting of preliminary approval and the opening of the bank.

To achieve equity, the Office is proposing fees based on the type of application or filing, rather than on a calculation of the cost of processing individual filings. Recordkeeping costs under the latter method would increase the fees charged significantly. Moreover, the processing of certain types of filings are routine and significant variations in the cost of processing individual filings of the same type do not usually exist. In rare instances this is not the case, but the Office will not charge applicants for the cost of that additional processing. For charter applications, more extensive Office activity beyond the processing of the initial filing is usual and further fees are proposed to recover the cost of that additional processing. The Office will continue its present policy of imposing additional processing fees for some other types of applications where more extensive investigation is also commonplace. Those filings include applications for conversion and for acquisition of a domestic operating subsidiary.

The Office has not generally revised filing fees on a comprehensive basis since 1970. Since 1970 filing fees for two new types of corporate applications have been imposed. In 1977 a filing fee was established for processing each application for a CBCT branch, and in 1979 filing fees were set for the establishment of federal branches and federal agencies.

However, since 1970 the Office has incurred increasing expenses. The largest portion of this increase is attributable to general Federal Government pay increases. Between 1970 and 1979 the expense of salaries and benefits for the Bank Organization and Structure Division (BOSD), which processes most corporate applications, increased 76 percent. Salaries and benefits account for 84 percent of the total expenses of BOSD.

A second factor contributing to the increase in expense since 1970 was the loss in 1974 of rent-free space in government office buildings. A change in interpretation of a statute administered by the General Services Administration required the Office to vacate rent-free space within the main building of the Treasury Department. Consequently, total rental costs have become a significant portion of the Office budget.

A third factor, the general pressure of inflation, has also raised the nonsalary costs of this Office. Between 1970 and 1979 prices of all goods and services produced in this country have increased 81.15 percent as measured by the implicit gross national product deflator.

As a result of those increased expenses and inflationary pressures, the cost of processing corporate applications and filings bears little relation to the fees presently charged in most instances. In 1979 the aggregate cost of processing the applications and filings for which new or revised fees are proposed was $2,761,000, resulting in a shortfall to the Office of $1,465,000. In

1980 the projected aggregate cost is $3,585,000 and the projected shortfall is $1,968,000. In 1981 the projected aggregate cost is $3,952,000 and the projected shortfall is $2,334,000.

Currently, the Office is implementing

applying the percentage of total time spent on each type of application during 1980 through June 30 to the aggregate 1981 cost base, the aggregate projected 1981 cost of processing each type of application was calculated. The average

Chart listing changes in fees—Continued

Type	Present	Proposed
Additional Federal Branch or Federal Agency of a Foreign Bank:		
Filing fee	500	3,000
Domestic Operating Subsidiaries:		

national banks fully informed of the changes in a timely and responsible manner and to ascertain the views of those affected by this proposal. Comments are particularly invited on the following questions:

investigating, processing and deciding each application. if preliminary approval is granted, an additional fee of $6,500 is assessed to process the various organizational documents and to verify that all requirements for the granting of

§ 5.34 Domestic operating subsidiaries.

* * * * *

(d) *Fees.* An initial filing fee of $150 is required at the time of application for processing an application to establish or acquire a domestic operating subsidiary.

1980 the projected aggregate cost is $3,585,000 and the projected shortfall is $1,968,000. In 1981 the projected aggregate cost is $3,952,000 and the projected shortfall is $2,334,000.

Currently, the Office is implementing revised and clarified policies and procedures as part of a commitment to simplify the regulatory process in the corporate and bank structure areas. All rules and procedures that are unnecessary in light of the current state of the industry or that lead to inefficiencies are being modified or eliminated. As the various stages of this review are completed, shorter processing times and less cumbersome procedures will result. Additionally, the Office is in the process of converting numerous manual recordkeeping functions to a computer-maintained data base. The Office anticipates that these activities will result in revision of fees for certain types of applications and filings in the future.

To take into account all of the varying factors, including inflation, increased salaries and economies undertaken, the Office intends to review corporate fees annually to keep them in line with processing costs. In the event that new corporate filings are required that will cause new expenditures, fees will be charged to recover the costs of those filings. The Office is also undertaking a review of other services it provides to identifiable parties by divisions other than BOSD to determine if fees for providing those services would be appropriate.

As stated, the projected aggregate cost in 1981 for processing the various types of filings with which this notice deals is $3,952,000. That includes a budget of $1,009,000 for BOSD which processes corporate filings in Washington; $1,300,000 in salary and benefits of regional personnel involved in processing corporate applications in the regions; $150,000 for special investigations by the regional staff in connection with applications for new charters; $325,000 for the portion of rent for the Washington office attributable to facilities used for processing corporate applications; $127,000 for the portion of supplies, furniture and equipment, etc., of the Washington office attributable to the processing of corporate applications; and $1,041,000 in expenses incurred by other Washington office divisions such as Legal Advisory Services, Multinational, Systems and Data Processing, and Customer and Community Programs, in contributing to the corporate filing process.

In calculating the proposed fees, the Office used as a starting point the projected aggregate cost for 1981. By applying the percentage of total time spent on each type of application during 1980 through June 30 to the aggregate 1981 cost base, the aggregate projected 1981 cost of processing each type of application was calculated. The average cost for each application was then calculated by dividing the projected number of applications of each type in 1980 into the total 1981 projected cost of processing each type.

The projected aggregate cost was taken from the budget, a carefully prepared document developed through a multi-stage process. Preparation of the budget begins in the spring of each year during which organizational units with the help of the budget staff draw up estimates of amounts to be requested. Those are then reviewed by the budget staff which draws up a consolidated budget. This consolidated budget is reviewed by a budget task force consisting of heads of operating divisions. The next stage of review is conducted by the Planning and Budget Review Committee consisting of division heads, some senior deputy comptrollers, and a representative of the Secretary of the Treasury.

The final review, prior to presentation to the Comptroller, is conducted by all senior deputy comptrollers, the chief counsel, and the senior advisor to the Comptroller. After approval by the Comptroller, the budget is subject to review by the Secretary of the Treasury. As an additional check on agency expenditures, the Office operates in accord with an employment ceiling established by the Office of Management and Budget. Detailed data on costs and time spent by the Office in processing corporate applications, which are the basis for the proposed fees, are on public file at the Office of the Comptroller of the Currency.

The following shows the differences between the current fee and the proposed fee for each type of application.

Chart listing changes in fees

Type	Present	Proposed
Organize National Bank:		
Filing fee	$2,500	$6,500
Processing after preliminary approval	(1)	6,500
Corporate reorganization	*5,500	6,500
Organize National Bank Limited to Trust Powers:		
Filing fee	2,500	6,500
Processing after preliminary approval	0	6,500
Conversion:		
Filing fee	0	2,500
Investigation	(2)	(2)
Establishment of Domestic Branches and Seasonal Agencies:		
Filing fee	500	900
Establishment of CBCTs:		
Filing fee	200	900

Chart listing changes in fees—Continued

Type	Present	Proposed
Additional Federal Branch or Federal Agency of a Foreign Bank:		
Filing fee	500	3,000
Domestic Operating Subsidiaries:		
Filing fee	0	150
Investigation	(3 4)	(3 4)
Change in Location of a Head Office or Domestic Branch:		
Filing fee	0	500
Relocation of a Federal Branch or Federal Agency of a Foreign Bank:		
Filing fee	0	500
Change of Corporate Title:		
Filing fee	0	500
Application for Conversion of a Branch or Agency Operated by Foreign Bank or a Commercial Lending Company Controlled by a Foreign Bank into a Federal Agency:		
Filing fee	0	2,500
Investigation	0	(3)

[1] No fee except in unusual circumstances.
[2] This includes $2,500 for processing the application to organize an interim national bank and $3,000 for processing the application of the two banks to merge.
[3] Rates set by 12 CFR § 8.6.
[4] For acquisition only.

The cost of processing each type of filing does not change whether a small or large bank is involved. As a result, there is no basis on which to justify a difference in the fee schedule depending on the size of the applicant bank. Further, it is the opinion of the Office that the fees, which are small in relation even to the assets of small banks, will not prevent such banks and organizing groups from making such corporate filings as needed.

The Office proposes that the new fee schedule apply to corporate applications received by the Office after December 31, 1980. This proposal is made because of the large deficits now incurred by the Office as a result of the cost of processing corporate applications. The Office expects that by charging the new fees throughout 1981 it will avoid a deficit in this area for the year which would necessitate passing those costs along to all banks through the semiannual assessment. Subsidization is the effect that OCC seeks to avoid through this proposal.

However, it is not anticipated that a final fee schedule will be published before April 1, 1981. Applicants whose filings are received by the Office after December 31, 1980 should pay pursuant to the current fee schedule until thirty days after final publication of the new fee schedule. At that time, they must pay the difference between the present fee schedule and the new one.

While the Office does not believe that the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553 (b), (c), and (d), apply to this change in the corporate fee schedule, the Office has determined to give notice and seek comment in an effort to keep national banks fully informed of the changes in a timely and responsible manner and to ascertain the views of those affected by this proposal. Comments are particularly invited on the following questions:

a. Instead of placing the cost of processing corporate filings on applicants, should the cost be spread to all national banks through semiannual assessment fees?

b. If applicants are to bear the cost of processing corporate applications are there alternative ways to the method proposed to allocate such costs?

c. What is the effect of the proposed fees on small national banks?

d. What is the effect of applying the new schedule to filings received by the Office after December 31, 1980, but prior to final publication of the fees?

e. Will the increased fees prevent national banks from taking action which they otherwise would?

For the reasons set out in the preamble, the Office proposes the changes in Part 5 of Chapter I of Title 12 of the Code of Federal Regulations set forth below.

1. The authority citation for Part 5 reads as follows:

Authority: 12 U.S.C. 1 *et seq.*

2. By revising § 5.20(e) to read as follows:

§ 5.20 Organization of a national bank

* * * * *

(e) *Fees.* An initial filing fee of $6,500 is required at the time of application for investigating, processing and deciding each "Application to Organize a National Bank". If preliminary approval is granted, an additional fee of $6,500 is assessed to process the various organizational documents and to verify that all requirements for the granting of a charter have been fulfilled.

* * * * *

3. By revising § 5.21(d) to read as follows:

§ 5.21 Organization of an interim national bank.

* * * * *

(d) *Fees.* A filing fee of $6,500 is required at the time of application for investigating, processing, and deciding each application. No further charge will be made for the subsequent merger or consolidation.

* * * * *

4. By revising § 5.22(c) to read as follows:

§ 5.22 Organization of a national bank limited to trust powers.

* * * * *

(c) *Fees.* A initial filing fee of $6,500 is required at the time of application for investigating, processing and deciding each application. if preliminary approval is granted, an additional fee of $6,500 is assessed to process the various organizational documents and to verify that all requirements for the granting of the charter have been fulfilled.

* * * * *

5. By revising § 5.24(a)(3) to read as follows:

§ 5.24 Conversion.

(a) * * *

(3) *Fees.* A initial filing fee of $2,500 is required at the time of application. An investigation and/or examination will normally be conducted and the applicant will be charged in accordance with 12 CFR 8.6.

* * * * *

6. By revising § 5.25(c) to read as follows:

§ 5.25 Application for conversion of a branch or agency operated by a foreign bank or a commercial lending company controlled by a foreign bank into a Federal branch or a Federal agency.

* * * * *

(c) *Fees.* A initial filing fee of $2,500 is required at the time of application. An investigation and/or examination will normally be conducted and the applicant will be charged in accordance with 12 CFR 8.6.

* * * * *

7. By revising § 5.30(d) to read as follows:

§ 5.30 Establishment of domestic branches and seasonal agencies.

* * * * *

(d) *Fee.* A filing fee of $900 is required at the time of application for processing each application.

* * * * *

8. By revising § 5.31(d) to read as follows:

§ 5.31 Establishment of customer-bank communication terminal (CBCT branches).

* * * * *

(d) *Fee.* A filing fee of $900 is required at the time of application for processing each application.

* * * * *

9. By revising § 5.32(c) to read as follows:

§ 5.32 Additional Federal branch or Federal agency of a foreign bank.

* * * * *

(c) *Fee.* A filing fee of $3,000 is required at the time of application for investigating and processing each application.

10. By revising § 5.34(d) to read as follows:

§ 5.34 Domestic operating subsidiaries.

* * * * *

(d) *Fees.* An initial filing fee of $150 is required at the time of application for processing an application to establish or acquire a domestic operating subsidiary. The cost of any examination into the condition of an operating subsidiary proposed to be acquired shall be paid by the applicant in accordance with 12 CFR 8.6.

* * * * *

11. By revising § 5.40(d) to read as follows:

§ 5.40 Change in location of a head office or domestic branch.

* * * * *

(d) *Fee.* A filing fee of $500 is required at the time of application for processing each application.

* * * * *

12. By revising § 5.41(e) to read as follows:

§ 5.41 Relocation of a Federal branch or Federal agency of a foreign bank.

* * * * *

(e) *Fee.* A filing fee of $500 is required at the time of application for processing an application.

* * * * *

13. By revising § 5.42(c) to read as follows:

§ 5.42 Change of corporate title.

* * * * *

(c) *Fee.* A filing fee of $500 is required at the time of application for processing an application.

* * * * *

Dated: December 18, 1980.

John G. Heimann,
Comptroller of the Currency.

[FR Doc. 80-40094 Filed 12-23-80; 8:45 am]
BILLING CODE 4810-33-M

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12 CFR Part 8

[Docket No. 80-20]

Assessment of Fees: National Banks; District of Columbia Banks

AGENCY: Comptroller of the Currency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (Office) is proposing to revise its trust examination fees to recover direct expenses and overhead expenses, as mandated by statute. Fees have been unchanged since 1969. Revision is necessitated by increased Office expenses for trust examinations. These expenses are most properly recovered from the banks subject to these specialized examinations. It is proposed that the new fee will apply to

trust examinations commenced after December 31, 1980, but no institution will be billed for those examinations until final publication of the revised fee. Payment will be due thirty days after

banks and other entities with active trust departments for the total direct and overhead expenses of such examinations rather than spreading overhead costs properly attributable to

the examiner's task more difficult. Additionally, trust assets subject to examinations by this Office doubled between 1969 and 1979, rising from $144.5 billion to $289.7 billion.

A second factor contributing to the

Office positions and applying that ratio to administrative expenses incurred by the operations and administrative units under the supervision of the Senior Deputy Comptroller for Operations.

(3) Expenses incurred by the

(4) Rental expenses for the Washington office. Those are determined by calculating a ratio of Washington trust personnel to total Washington personnel and applying that ratio to total Washington rent.

an examiner, and consequently the rate at which that examiner's time is billed, can vary from job to job.

An alternative is to tie the charge for each examiner to his or her salary level. However, if the relationship between

trust examinations commenced after December 31, 1980, but no institution will be billed for those examinations until final publication of the revised fee. Payment will be due thirty days after final publication.

DATES: Comments must be received no later than February 23, 1981. A final rule is not expected to be published before April 1, 1981, and will be applied retroactively to all trust examinations begun after December 31, 1980.

ADDRESS: Comments should be directed to—Docket No. 80–20, Communications Division, Office of the Comptroller of the Currency, 490 L'Enfant Plaza, SW., 3rd Floor, Washington, D.C. 20219, ATTENTION: Marie Giblin (202) 447–1800.

Comments will be available for inspection and photocopying.

FOR FURTHER INFORMATION CONTACT:

David Nebhut, Financial Economist, Banking Research and Economic Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219, (202) 447–1825, or

Jerome Edelstein, Attorney, Legal Advisory Services Division, Office of the Comptroller of the Currency, Washington, DC 20219 (202) 447–1880.

SUPPLEMENTARY INFORMATION: The principal drafters of this notice of proposed rulemaking are David Nebhut, Financial Economist, Banking Research and Economic Analysis Division, Office of the Comptroller of the Currency, (202) 447–1825, and Jerome Edelstein, Attorney, Legal Advisory Services Division, Office of the Comptroller of the Currency, (202) 447–1880.

The Office is considering amending that portion of 12 CFR Part 8 governing assessments for trust examinations of national banks, District of Columbia banks and trust companies, and Federal branches or agencies engaged solely in trust activities, and other entities for which the Office performs trust examinations. Authority for the Office to assess trust examination fees is based upon 12 U.S.C. 482 and 26 DC Code § 102.

Assessment of fees assuring coverage of all examination costs is required by statute. Title 12 U.S.C 482 provides in pertinent part:

> [A]ll national banks exercising fiduciary powers and all banks or trust companies in the District of Columbia exercising fiduciary powers shall be assessed by the Comptroller of the Currency for the examination of their fiduciary activities a fee adequate to cover the expense thereof.

To assure continued compliance with that statutory requirement, the Office is proposing to assess the 1,700 national banks and other entities with active trust departments for the total direct and overhead expenses of such examinations rather than spreading overhead costs properly attributable to trust examinations among all 4,446 national banks and District of Columbia banks including those which do not exercise trust powers. To achieve this objective, the Office, pursuant to 12 U.S.C. 482, is proposing to assess each bank an hourly fee which approximates the hourly cost of examining the bank's trust activities. As is the current practice, banks will be charged according to the number of hours an examiner spends in the bank conducting the examination. To assure that trust revenues continue to recover trust examination expenses, that hourly fee will be revised annually to reflect changes in such expenses.

The changes in the assessment are required by increases in Office expenses since the current trust examination fees were adopted in 1969. The largest portion of that increase is attributable to general Federal Government pay increases. The per person expense of salaries and benefits for the entire Office increased 116 percent between 1969 and 1979. During that same period, the total number of employees increased 43 percent. Salaries and benefits account for 71 percent of the total expenses of this Office. Employment of trust examiners increased at a faster rate than total Office employment. Although the increase in per person trust examiner's salaries and benefits has risen more slowly than the per person increase for the entire Office, total trust operation costs have risen substantially.

The pronounced increase in employment is attributable to recovery from understaffing in the late 1960s and the demands imposed by the increasing complexity of performing trust examinations. Trust examinations are more complex than in 1969 because of the enactment of the Employee Retirement Income Security Act (ERISA) in 1974, the Securities Acts Amendments of 1975, and various consumer laws in the 1970s which are enforced by trust examiners. The examiner's task has also been complicated by changes in interpretation by the Office of the prudent man rule which require examiners to make much more thorough analyses of certain types of investments that previously were regarded as per se violations of the rule. Changes in Office procedure which require examiners to evaluate management rather than deal with the minutiae of possible errors or misjudgments in the administration of each fiduciary account also have made the examiner's task more difficult. Additionally, trust assets subject to examinations by this Office doubled between 1969 and 1979, rising from $144.5 billion to $289.7 billion.

A second factor contributing to the increase in expenses since 1969 was the loss in 1974 of rent-free space in government office buildings. A change in interpretation of a statute administered by the General Services Administration required the Office to vacate rent-free space within the main building of the Treasury Department. Consequently, total rental costs have become significant.

A third factor, the general pressure of inflation, has also raised the nonsalary costs of this Office. Between 1969 and 1979, prices of all goods and services produced in this country have increased 91 percent as measured by the implicit gross national product deflator.

As a result, total expenses related to trust examinations in 1978 exceeded revenues by 92 percent, and in 1979 by 129 percent. In 1980, expenses are projected to exceed revenues by 128 percent.

The following table compares total expenses related to trust examinations in 1978 and 1979 and projected total trust examination expenses in 1980 and 1981 with revenues derived from assessments of trust examination fees in 1978 and 1979 and projected revenues in 1980 and 1981 based on currently applicable fees.

Table 1

Year	Expenses	Revenues
1978	$5,591,856	$2,907,000
1979	6,924,148	3,017,000
1980	[1] 7,139,402	[1] 3,125,000
1981	[1] 8,159,175	[1] 3,239,000

[1] Projected.

Total expenses of trust examinations include direct and overhead expenses. The direct expenses of an examination include trust examiners' salaries and benefits and travel costs. The overhead expenses of an examination include:

(1) Regional office overhead expenses related to trust examinations. They are calculated by applying the ratio of the number of field trust examiners to total field examiners to Regional office overhead expenses.

(2) Expenses of Washington operations and administrative functions which are related to trust examinations. Examples of these functions are data processing, accounting and planning, supplies, printing services, and mail and messenger services. Those expenses are calculated by determining the ratio of the number of trust positions to total Office positions and applying that ratio to administrative expenses incurred by the operations and administrative units under the supervision of the Senior Deputy Comptroller for Operations.

(3) Expenses incurred by the Washington office Trust Examination Division which supervises the field examinations and expenses incurred by the Deputy Comptroller for Specialized Examinations in performing his function as supervisor of the Washington Trust Examination Division. The latter amount is 50 percent of the Deputy Comptroller's total expenses.

(4) Rental expenses for the Washington office. Those are determined by calculating a ratio of Washington trust personnel to total Washington personnel and applying that ratio to total Washington rent.

The following table shows those direct and overhead expenses for 1978 and 1979 (the latest complete figures), projected expenses for 1980 based on the most recently available data, and projected expenses for 1981 based on the 1981 budget.

Table 2

	1978	1979	1980	1981
(1) Direct expenses (2) + (3)	3,715,702	4,457,811	4,611,814	5,247,100
(2) Salaries and benefits	2,813,541	3,489,815	3,520,198	3,991,700
(3) Travel expenses	902,161	967,996	1,091,616	1,255,400
(4) Overhead expenses (5) + (6)	1,876,154	2,466,337	2,527,588	2,912,075
(5) Regional offices	1,147,911	1,527,627	1,459,169	1,615,686
(6) Washington office (7) + (8) + (9)	728,243	938,510	1,068,419	1,296,389
(7) Operations and administration	425,630	589,082	661,696	785,292
(8) Trust examinations division	255,883	277,202	333,264	432,684
(9) Rent	46,730	72,226	73,457	78,413
(10) Total expenses related to trust examinations (1) + (4)	5,591,856	6,924,148	7,139,402	8,159,175

To assure that revenues derived from the trust examination assessment recover trust-related expenses, the Office proposes to base its fee in a given year on the projected budget for trust examinations for that year. The hourly fee for a given year will be calculated by dividing trust examination expenses projected in the budget for that year by the projected number of on-site billable trust examination hours in that year.

The budget is a carefully prepared document developed through a multi-stage process. Preparation of the budget begins in the spring of each year during which organizational units with the help of the budget staff draw up estimates of amounts to be requested. Those are then reviewed by the budget staff which then draws up a consolidated budget. This consolidated budget is reviewed by a budget task force consisting of heads of operating divisions. The next stage of review is conducted by the Planning and Budget Review Committee consisting of division heads, some senior deputy comptrollers, and a representative of the Secretary of the Treasury. The final review, prior to presentation to the Comptroller, is conducted by all senior deputy comptrollers, the chief counsel, and the senior advisor to the Comptroller. After approval by the Comptroller, the budget is subject to review by the Secretary of the Treasury. Further, the Office operates in accord with an employment ceiling established by the Office of Management and Budget.

Billable hours are projected based on historical growth in on-site examination hours. This growth has averaged 3.6 percent since 1976. The Office intends to recalculate that growth rate annually to assure that the projected number of hours takes into account current trends.

The hourly fee for 1981, under those procedures, is $32.44. Because the proposed fee is based on projections as to expenses and billable hours, there is not absolute certainty that it will equal hourly expenses. Had the proposed method of calculating the hourly fee been in effect in past years, the hourly charge would have been $26.73 in 1978, $27.81 in 1979, and $28.48 in 1980. Actual hourly costs of examination were $2.03 higher than projected cost in 1978, $1.76 lower in 1979, and are now projected to be 94 cents lower in 1980. For the three-year period, this would have resulted in an aggregate undercharge of 67 cents per hour. Further, the Office expects the observed decline in the discrepancy between projected and actual expenses per hour to continue due to improved monitoring of time utilization.

The new fee differs from the current schedule—$140 per day for the examiner in charge and $80 per day for each of the assisting personnel—because it established only one hourly rate. The Office believes the proposed schedule is an improvement since the designation of an examiner, and consequently the rate at which that examiner's time is billed, can vary from job to job.

An alternative is to tie the charge for each examiner to his or her salary level. However, if the relationship between the salary level of an examiner and the time it takes to complete an examination is not exact, the fee charged will not reflect the true cost of the examination. Consequently, the Office believes that the flat hourly fee proposed represents an equitable method of approximating the cost of each examination, and enables the Office to avoid setting charges based on arbitrary determinations about the time it takes each examiner to complete an examination.

Because a fee adequate to cover the expense of examinations is required by statute, small banks cannot be treated differently from large banks in the establishment of the hourly charge. However, since the total fee to each bank is dependent on the number of hours spent on the examination and since examinations of smaller banks generally take less time than those of large banks, it is expected that assessments for smaller banks will be less than for large banks. Further, under the proposed fee, the average hourly rate will not vary depending on the number of examiners conducting the examination. Under the current schedule, small banks are paying a higher average hourly rate than large banks because the time of the examiner in charge, billed at the higher rate, is a greater proportion of total billed hours.

The Office proposes that the new fee apply to trust examinations begun after December 31, 1980. This proposal is made because of the large deficits being incurred by the office as a result of the cost of trust examinations. The Office expects that by imposing the proposed assessment throughout 1981 it will avoid a deficit in this area for the year, and this will avoid having to pass that deficit along to all national banks through the semiannual assessment. That subsidization is the effect that the Office, pursuant to 12 U.S.C. 482, seeks to avoid through the implementation of this proposal.

However, it is not anticipated that a revised fee will be published before April 1, 1981. As a result, banks undergoing trust examinations begun after December 31, 1980, will not be billed for those examinations until the revised fee is published. Payment will be due thirty days after final publication.

While the Office does not believe that the notice and comment provisions of the Administrative Procedure Act, 5. U.S.C. 553 (b), (c), and (d), apply to this change in the trust examination fee, the Office has determined to give notice and examiners spend on site in performing the trust examination.

(d) The hourly rate set forth in paragraph (c) of this section represents the total expenses of conducting trust examinations as set forth in the budget

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 80–802]

Service Corporation Activity

public and associations and to make low and moderate-income housing available.

The Depository Institutions Deregulation and Monetary Control Act of 1980 (the "Act"), Pub. L. No. 96–221, 94 Stat. 132, expanded the authority of communities; and investments approved by the Board's Principal Supervisory Agent (i.e., the president of the Federal Home Loan Bank of which the association investing in the service corporation is a member) on a case-by-case basis. The Board believes that the

- Acquiring, developing and constructing improvements on real estate for commercial purposes, subject to the same conditions imposed on such activities for residential purposes;
- Management of owners' associations for condominium,

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While the Office does not believe that the notice and comment provisions of the Administrative Procedure Act, 5. U.S.C. 553 (b), (c), and (d), apply to this change in the trust examination fee, the Office has determined to give notice and seek comment in a manner that is consistent with those statutory provisions in an effort to keep national banks fully informed of the change in a timely and responsible manner and to ascertain the views of those affected by this proposal.

Comments are particularly invited on the following:

(1) Alternative methods to that proposed for determining the costs to the Office of conducting trust examinations;

(2) Whether the degree of accuracy shown between projected hourly expenses and actual hourly expenses is acceptable or whether the Office should compensate for error through surcharges or rebates when actual expenses are known;

(3) The effect of applying the revised fee to trust examinations begun after December 31, 1980, but prior to publication of the final rule.

For the reasons set out in the preamble, Part 8 of Chapter I of Title 12 of the Code of Federal Regulations is proposed to be revised as set forth below:

The authority citation for Part 8 is revised to read as follow:

Authority: R.S. 5240, as amended, 12 U.S.C. 482, 12 U.S.C. 3102, and in Section 3, 47 Stat. 1566, 26 D.C. Code 102.

Section 8.7 is revised to read as follows:

§ 8.7 Hourly rate for trust examinations.

(a) The assessments contained in this subpart are made pursuant to authority contained in R.S. 5240, as amended, 12 U.S.C. 482 and in section 3, 47 Stat. 1566, 26 D.C. Code 102. These statutes provide that the Comptroller assess fees adequate to cover the cost of each trust examination.

(b) To assure continued compliance with the statutory requirement, national banks and other entities with trust departments examined by this Office will be assessed a fee recovering the total direct and overhead expenses of the examination. This fee will be revised annually according to the method set forth in paragraph (d) of this section to reflect changes in such expenses.

(c) The hourly fee for trust examinations commenced after December 31, 1980, is $32.44. The total fee for a trust examination is the hourly fee multiplied by the number of hours examiners spend on site in performing the trust examination.

(d) The hourly rate set forth in paragraph (c) of this section represents the total expenses of conducting trust examinations as set forth in the budget for the year in which the hourly fee is applicable divided by the projected number of billable hours for that year.

(1) Total expenses of trust examinations include direct expenses and overhead expenses.

(i) Direct expenses of the examination include travel expenses and trust examiners' salaries and benefits.

(ii) Overhead expenses include:

(A) Regional office overhead expenses related to trust examinations. Those are calculated by determining the ratio of the number of field trust examiners to total field examiners and applying it to total budgeted Regional office overhead expenses.

(B) Expenses of Washington, D.C. operations and administrative functions which are related to trust examinations. Those are calculated by determining the ratio of the number of trust positions to total Office positions and applying it to administrative expenses budgeted for the operations and administrative units under the supervision of the Senior Deputy Comptroller for Operations.

(C) Expenses budgeted for the Washington Office Trust Examination Division, which supervises the field examination, and 50 percent of the expenses budgeted for the Deputy Comptroller for Specialized Examinations, who supervises the Washington Office Trust Examination Division, among other functions.

(D) Rental expenses for the Washington Office related to trust examinations. Those are determined by calculating the ratio of Washington Office trust personnel to total Washington Office personnel and applying the ratio to total budgeted Washington rent.

(2) Projected number of billable hours is the total number of hours projected to be spent by trust department examiners at on-site examinations during the year for which the hourly fee is being set. That is determined by adjusting the number of hours according to the average annual increase in billable hours since 1976. This growth rate will be reviewed annually to take into account current trends.

Dated: December 18, 1980.

John G. Heimann,

Comptroller of the Currency.

[FR Doc. 80-40085 Filed 12-23-80; 8:45 am]

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FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 80-802]

Service Corporation Activity

Dated: December 15, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed regulation.

SUMMARY: The Board has proposed amendments to its regulation governing the service corporation investments of Federal associations. The proposed amendment would expand the list of activities in which service corporations may engage without prior Board approval, conform the service corporation regulation to recent amendments to the Board's net worth requirements and recent internal agency organizational changes, eliminate the separate limit for unsecured indebtedness for service corporations controlled by fewer than five savings and loan associations, eliminate the notification requirement for certain land development activities, delegate extension of time limits on the construction of improvements to the Board's Principal Supervisory Agent, and simplify the regulation in certain respects. The proposed amendments are intended to provide increased flexibility in associations' service corporation activities.

DATE: Comments must be received by: February 15, 1981.

ADDRESS: Send comments to Information Services, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION, CONTACT: Peter M. Barnett, Office of General Counsel, at the above address, telephone (202) 377-6445.

SUPPLEMENTARY INFORMATION: Since first authorized by a 1964 amendment to Section 5(c) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464(c)), the investment of Federal associations in service corporations has developed gradually. While the Board initially took a narrow view of appropriate activities for service corporations, the present policy of approving activities reasonably related to the activities of Federal associations has evolved as the experience of the industry and the Board with service corporations has increased. Service corporations have become vehicles for associations to innovate and experiment in providing needed services to the public and associations and to make low and moderate-income housing available.

The Depository Institutions Deregulation and Monetary Control Act of 1980 (the "Act"), Pub. L. No. 96-221, 94 Stat. 132, expanded the authority of Federal savings and loan associations to act as full-service financial centers for their customers. The Act authorized associations to offer negotiable order of withdrawal accounts, liberalized existing authority of associations to make residential and commercial real estate loans, authorized consumer loan, commercial paper and corporate debt investments, and authorized the providing of trust services.

Since associations often implement new investment authority and make investments and provide services related to association activities through their service corporations, the expanded authority for Federal associations under the Act created a need for a corresponding expansion of service corporation authority. In particular, associations may desire to implement the new trust powers authority through their service corporations rather than through the parent. In addition, the expansion of the commercial real estate loan authority of associations created a need for corresponding commercial real estate development and management authority in service corporations.

The Act also increased the amount that a Federal association may invest in the capital stock, obligations or other securities of service corporations from one to three percent of association assets. A Federal association investing in service corporations to the full extent permitted by the Act must allocate one percent of assets to investments that serve community, inner city or community development purposes. The Board already has implemented this increase in the amount that a Federal association may invest in its service corporations (Board Resolution No. 80-488; August 15, 1980; 45 FR 56029).

In order to encourage use of the authority to invest in community development projects and to permit flexibility in selecting qualified investments, the Board adopted broad standards to determine whether an investment qualifies as having a community development purpose. These include investments in governmentally sponsored programs for housing, small farms or businesses that are local in character; investments for the preservation or revitalization of either urban or rural communities; investments designed to meet the community development needs of, and primarily benefit, low- and moderate-income communities; and investments approved by the Board's Principal Supervisory Agent (i.e., the president of the Federal Home Loan Bank of which the association investing in the service corporation is a member) on a case-by-case basis. The Board believes that the proposed expansion of the list of service corporation activities permitted without prior Board approval would facilitate use of the community development investment authority.

Lastly, changing economic conditions, increased competition with other financial service providers, and increased demand for mortgage funds have required associations to seek innovative means of securing lendable funds, providing services and utilizing secondary mortgage market resources. Because of the entrepreneurial risk associated with new ventures, possible tax consequences and other considerations, such innovations often are better performed by service corporations rather than associations.

In recognition of the expanded investment authority of associations in service corporations and the continuing need for experimentation and innovation, the Board proposes to revise its regulation governing association investment in service corporations. The proposal would expand the list of activities in which service corporations may engage without prior Board approval, conform the service corporation regulation to recent regulatory changes in net worth requirements and recent internal agency organizational changes, eliminate the separate limit for unsecured indebtedness for service corporations controlled by fewer than five savings and loan associations, eliminate the notification requirement for certain land development activities, delegate extension of time limits on the construction of improvements to the Board's Principal Supervisory Agent, and simplify the regulation in certain respects.

In revising the list of activities in which service corporations may engage without prior Board approval, currently set out at 12 CFR 545.9-1(b)(4), the Board examined activities that have been approved consistently for service corporations upon application to the Board, newly authorized activities for Federal associations, and the present needs of the residential mortgage market. On the basis of its review, the Board proposes to permit service corporations of Federal associations to engage in the following additional activities without prior Board approval:

- Dealing in loans secured by junior liens on mobile homes;
- Acquiring, developing and constructing improvements on real estate for commercial purposes, subject to the same conditions imposed on such activities for residential purposes;
- Management of owners' associations for condominium, cooperative, Planned Unit Development and commercial projects;
- Providing residential and commercial property management services for third parties;
- Providing real estate brokerage services for property owned by the parent association, the service corporation or a joint venture in which the service corporation participates, but not by third parties;
- Executing and delivering conveyances, reconveyances and transfers of title;
- Providing homeownership and financial counseling;
- Issuance of mortgage-backed securities;
- Investment in tax-exempt bonds issued by a state or local governmental authority to finance housing;
- Providing liquidity management, investment and advisory services to savings and loan associations;
- Providing clerical, accounting, data processing and internal auditing services to financial institutions;
- Providing trust services upon application to the Board pursuant to, and subject to the conditions provided in, the regulations governing trust services for Federal associations;
- Engaging in mortgage-futures transactions to the extent such transactions hedge existing or planned forward commitments.

At present, the Board does not permit service corporations of Federal associations to engage in commercial real estate development except where such activity is ineidental to a residential purpose. The proposal would authorize service corporations to acquire, develop and construct improvements on real estate for commercial purposes subject to the same conditions imposed on residential real estate activities. This includes completion of construction of improvements within three years after commencement of development and within five years after acquisition of the real estate. However, the proposal would delegate extension of the three- and five-year periods to the Board's Principal Supervisory Agent (i.e., the president of the Federal Home Loan Bank of which the Federal association investing in the service corporation is a member). Additionally, the proposal would eliminate the requirement that a service corporation notify the Board's

District Director-Examinations if the cost of land development activities

and Supervision. The proposal would conform 12 CFR 545.9-1 by cross

purchased, but capital stock outstanding on December 31, 1964, may be

(B) A service corporation directly or indirectly through one or more of its

(3) Performing the following services, primarily for savings and loan

renovating, or demolishing and rebuilding for sale or rental;

District Director-Examinations if the cost of land development activities exceeds 20 percent of the service corporation's assets.

By Resolution No. 80-738 (November 26, 1980), the Board adopted final regulations implementing the new statutory authority of Federal associations to provide trust services. These regulations (12 CFR 550.1-550.16) permit a Federal association to provide trust services either through a trust department or a service corporation upon application to the Board. This proposal would incorporate the authority to provide trust services through a service corporation upon application to the Board pursuant to, and subject to the conditions provided in, the regulations governing trust powers.

Approval of service corporation investment in tax-exempt bonds issued by a state or local governmental authority to finance housing would include obligations of state governments and political subdivisions thereof used to finance residential real property for family units and issued pursuant to section 103 of the Internal Revenue Code, and obligations of public housing agencies to finance housing projects with rental assistance subsidies issued pursuant to section 11(b) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437i).

The proposal would amend the limits for indebtedness of service corporations controlled by fewer than five savings and loan associations. The present regulation limits consolidated unsecured debt of 2 times consolidated net worth and unsecured debt to holders of at least 25 percent of the service corporation's capital stock, and limits consolidated secured and unsecured debt to 10 times that factor. The proposal would eliminate the separate limit for unsecured debt.

The proposal also would conform the references in subparagraphs (d)(2) and (4) of § 545.9-1 to recent changes in the net-worth requirements for Federal associations (12 CFR 563.13) and recent internal agency organizational changes. Recent Board action (Board Resolution No. 80-694; November 6, 1980) amended the net-worth requirements for insured institutions, in part, by replacing the current net-worth requirement of 5 percent of withdrawable accounts plus 5 percent of secured borrowings with a requirement of 4% of liabilities plus an amount equal to 20 percent of the association's scheduled items. In addition, applications for exceptions from the scheduled items limitation of subparagraph (d)(2) are now reviewed by the Board's Office of Examinations and Supervision. The proposal would conform 12 CFR 545.9-1 by cross referencing 12 CFR 563.13 and directing that copies of applications for exceptions be sent to the Director, Office of Examinations and Supervision.

Lastly, the proposal would make certain oganizational changes in the regulation to facilitiate understanding.

In addition to the amendments contained in the proposal, the Board would like to solicit comments on whether the service corporations of Federal associations should be authorized to operate and manage money market mutual funds. The Board is interested particularly in determining whether such authority would enhance the ability of associations to attract lendable funds and under what conditions the benefits to be realized from such activity would be maximized.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 545, Subchapter C, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PARTS 545—OPERATIONS

1. Revise paragraphs (b) and (c) of § 545.9-1 to read as follows:

§ 545.9-11 Service Corporations.

* * * * *

(b) *Qualified service corporations.* A Federal association may invest in the capital stock, obligations, or other securities of the following types of service corporations organized under the laws of the State (including District, Commonwealth, territory or possession) in which the association's home office is located:

(1) A statewide service corporation in which:

(i) All of the capital stock is available for purchase by, and only by, any and all savings and loan associations with a home office in such State, and the capital stock is owned by more than one association;

(ii) No savings and loan association owns, or may own, more that 10 percent of the service corporation's outstanding capital stock, except that in any State in which the home offices of fewer than 15 savings and loan associations are located, no association owns, or may own, more than one-third of such stock;

(iii) Every eligible savings and loan association may own an equal amount of capital stock or may, on such uniform basis as the service corporation may determine, own an amount of such stock equal to a stated percentage of its assets or savings capital at the time the stock is purchased, but capital stock outstanding on December 31, 1964, may be disregarded in determining compliance with this requirement; and

(iv) Substantially all of the service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist of one or more of the activities set forth in paragraph (c) of this section:

(2) A multi-owned service corporation in which:

(i) All of the capital stock is held by at least five savings and loan associations, and no one association holds more than 40 percent of such stock; and

(ii) The service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist solely of one or more of the activities set forth in paragraph (c) of this section; or

(3) A solely owned or multi-owned service corporation in which:

(i) All of the capital stock is held by fewer than five savings and loan associations or more than 40 percent of such stock is held by one savings and loan association;

(ii) The consolidated debt outstanding at any one time (to holders of its capital stock and to others) of the service corporation and any subsidiary, and the debt outstanding at any one time of each subsidiary of the service corporation, does not exceed:

(A) Ten times the total of its consolidated net worth and unsecured debt to holders of at least 25 percent of its capaital stock; or

(B) Twenty times such total if the service corporation is engaged solely in the activities set forth in subparagraph (c)(1)(i) of this section.

A debt shall be deemed unsecured for purposes of this subparagraph (b)(3) to the extent that it exceeds the value of security therefor at the time the loan is made. The term "secured debt" as used in this subparagraph (b)(3) shall include the entire amount of any obligation of the service corporation resulting from the sale of consumer loans with recourse;

(iii) Approval of the Board is obtained before any activity of the service corporation is performed through one or more joint ventures if a director, officer, or controlling person of any stockholder of the service corporation has a direct or indirect beneficial interest in the joint venture;

(iv) Approval of the Board is obtained for any investment by:

(A) A Federal association in a service corporation or in a corporation which will become a service corporation as a result of that investment, or

(B) A service corporation directly or indirectly through one or more of its wholly-owned subsidiaries or joint ventures,

if the purpose of the investment is to acquire a going business for an amount exceeding the fair market value of the tangible net assets of that business from a director or officer of a Federal association which owns any of the capital stock of the service corporation or from an entity in which a director or officer of the Federal association has a direct or indirect beneficial interest or is a director, officer, controlling person, partner, or trustee;

(v) The service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist solely of one or more of the activities set forth in paragraph (c) of this section.

(c) *Permitted activities.* A service corporation in which a Federal association may invest is permitted to engage in the following activities:

(1) Originating, purchasing, selling and servicing, any of the following:

(i) Loans, and participations in loans, on a prudent basis and secured by real estate or liens on mobile homes, including brokerage and warehousing of such loans;

(ii) Loans, with or without security, for altering, repairing, improving, equipping, or furnishing residential real estate;

(iii) Educational loans;

(iv) Consumer loans;

(2) Performing the following services primarily for savings and loan associations, their borrowers and accountholders:

(i) maintaining and managing residential or commercial real estate;

(ii) managing owners' associations for condominium, cooperative, Planned Unit Development and commercial office park projects;

(iii) executing and delivering conveyances, reconveyances, and transfers of title;

(iv) homeownership and financial counseling;

(v) preparing state and Federal tax returns, but not for an accountholder or borrower which is a corporation operated for profit;

(vi) insurance brokerage or agency for liability, casualty, automobile, life, health, accident and title insurance, but not private mortgage insurance;

(vii) providing fiduciary services upon application to the Board pursuant to § 550.2, and subject to the conditions provided in §§ 550.1-550.16, of this Subchapter;

(3) Performing the following services, primarily for savings and loan associations:

(i) Credit analysis, appraising, construction loan inspection, and abstracting;

(ii) Developing and administering personnel benefit programs, including life insurance, health insurance, and pension or retirement plans;

(iii) Research, studies, and surveys;

(iv) Purchasing office supplies, furniture, and equipment;

(v) Developing and operating storage facilities for microfilm or other duplicate records;

(vi) Advertising, brokerage and other services to procure and retain both savings accounts and loans;

(vii) Serving as escrow agent or as trustee under deeds of trust;

(viii) Providing liquidity management, investment and advisory services;

(4) Providing clerical, accounting, data processing and internal auditing services to any financial institution;

(5) Providing real estate brokerage services for property owned by a stockholder of the service corporation, the service corporation, or a joint venture in which the service corporation participates, but not by third parties;

(6) Acquiring unimproved real estate for prompt development and/or subdivision for construction of residential or commercial improvements, or for resale to others for such construction, or for use as mobile home sites;

(7) Developing, subdividing, and constructing improvements for sale or rental on real estate referred to in subparagraph (6) of this paragraph (c). However, such development, subdivision, and construction of improvements just be completed within three years after commencement of development of the real estate and within five years after acquisition of the real estate, unless such period is subsequently extended by the Principal Supervisory Agent (as defined in § 545.14(a)(3) of this Chapter) upon written application by the service corporation. The application shall be supported by information evidencing that the service corporation has proceeded in accordance with a prudent development plan and has not caused undue delay in the completion of construction. Acquisition of an option to purchase is not an acquisition for the purpose of determining the periods provided for in this subparagraph;

(8) Acquiring improved residential or commercial real estate or mobile homes to be held for rental;

(9) Acquiring improved residential or commercial real estate for remodeling, renovating, or demolishing and rebuilding for sale or rental;

(10) Acquiring, maintaining and managing real estate (improved or unimproved) to be used for offices and related facilities of a stockholder of the service corporation, or for such offices and related facilities and for rental or sale, if such acquisition, maintenance and management is performed under a prudent program of property acquisition to meet either the stockholder's present needs or reasonable future needs for office and related facilities. However, without prior approval of the Board, no service corporation shall acquire such real estate if, as a result of the acquisition, the outstanding aggregate book value of all such real estate owned by the stockholder and its service corporations would exceed their consolidated net worth;

(11) Making investments specified in §§ 545.9 and 545.9-3 of this Subchapter;

(12) Investing in savings accounts in an insured institution which is a stockholder of the service corporation, if the service corporation receives no consideration, other than interest at the current market rate, for opening or maintaining any such account;

(13) Engaging in mortgage-futures transactions, provided that such transactions are matched directly against the service corporation's firm commitments, or against anticipated reinvestment in mortgages and mortgage-related securities of its expected mortgage repayments over the forthcoming 12-month period. The terms "firm commitment," "mortgage-futures transaction," "mortgage-related security" and "mortgage repayment" shall have the meanings provided in § 545.29 of this Part. Such matching need not include matching of maturities;

(14) Investing in tax exempt bonds issued by a state or local governmental authority to finance housing;

(15) Issuing mortgage-backed securities;

(16) Issuing credit cards, extending credit in connection therewith, and otherwise engaging in or participating in credit card operations;

(17) Activities reasonably incident to those listed in paragraphs (c)(1)-(16) of this section;

(18) Such other activities reasonably related to the activities of Federal associations as the Board may approve.

2. Amend the first clause of subparagraph (d)(2) and the first and third sentences of subparagraph (d)(4) of § 545.9-1 to read as follows:

(d) *Amount of investment.*

* * * * *

(2) In addition to amounts which it may invest under subparagraph (d)(1) of

this section, an association that has a net worth at least equal to the minimum net-worth requirement for an association on the annual closing date of the twentieth anniversary of insurance of accounts as provided in

1030. (b) On a particular regulation, contact the person named in the listing for that regulation at the above address.

SUPPLEMENTARY INFORMATION: On March 23, 1978, Executive Order No. 12044 was issued, directing each

forth the need for the regulations and alternatives to be considered) for each regulation to be reviewed in the first three year cycle under NCUA's "Final Report".

This Agenda retains the format used

John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357-1030.

4.a. § 701.35(m), Premiums, Finders Fees and the Payment of Dividends in Merchandise, to limit the use of the

d. For further Information Contact: Thomas A. Straslicka, Chief-Examination Section, Office of Examination and Insurance, telephone: (202) 357-1065.

7.a. § 701.35(e), Withdrawals From

Legal Basis: 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4106.

c. Status: Proposed rule issued October 15, 1980 (45 FR 68398), comment period closes December 15, 1980.

d. For Further Information Contact:

this section, an association that has a net worth at least equal to the minimum net-worth requirement for an association on the annual closing date of the twentieth anniversary of insurance of accounts as provided in paragraph (b) of § 563.13 of this Chapter, and that has a ratio of scheduled items (other than assets acquired in a merger instituted for supervisory reasons) to specified assets of not more than 2.5 percent (except as provided in subparagraph (d)(4) of this section), may loan additional amounts as follows:

* * * * *

(4) An association that has a net worth at least equal to the minimum net worth requirement for an association on the annual closing date of the twentieth anniversary of insurance of accounts as provided in paragraph (b) of § 563.13 of this Chapter, may apply to the Board for an exception from the scheduled-items limitation in paragraph (d)(2) of this section * * * The application shall be filed with the Principal Supervisory Agent with a copy to the Director, Office of Examinations and Supervision. * * *

* * * * *

(Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

Robert D. Linder,

Acting Secretary.

[FR Doc. 80-40153 Filed 12-23-80; 8:45 am]

BILLING CODE 6720-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Improving Government Regulations; Semi-Annual Agenda of Regulations

AGENCY: National Credit Union Administration.

ACTION: Publication of Semi-Annual Agenda of Regulations.

SUMMARY: Pursuant to Executive Order No. 12044: Improving Government Regulations, NCUA is publishing a list of regulations under consideration by NCUA as of December 5, 1980.

DATE: Effective December 5, 1980.

ADDRESS: National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: (a) On the Executive Order or the Agenda, Robert Monheit, Senior Attorney/Regulatory Development Coordinator, Office of General Counsel, National Credit Union Administration at the above address. Telephone: (202) 357–1030. (b) On a particular regulation, contact the person named in the listing for that regulation at the above address.

SUPPLEMENTARY INFORMATION: On March 23, 1978, Executive Order No. 12044 was issued, directing each executive agency to publish a report on procedures to improve government regulations. The Executive Order also directed each agency to publish, twice a year, a list of significant regulations being considered, along with a description of the regulation, its need and legal basis, its status, the name and telephone number of an agency official familiar with the regulation and whether a regulatory analysis is required for that regulation. On May 31, 1978, NCUA published its draft report for public comment (43 FR 23688); NCUA's final report was published on March 23, 1979 (44 FR 17954).

The first Semi-Annual Agenda was published on December 15, 1978 (43 FR 58654). Twelve regulations were listed as being under development (from the stage of preliminary review through the issuance of a final regulation). In addition, the first Agenda listed twenty existing regulations to be reviewed in the future, set forth a brief description of the aim of the review, and gave the name of an agency official to contact for further information.

The second Semi-Annual Agenda was published on July 2, 1979 (44 FR 38560). Nineteen regulations were listed as being under development. (Those regulations listed in the first Agenda as having been issued in final form were not listed in the second Agenda.) The list of existing regulations to be reviewed was divided into two categories. The first ("Regulations Reviewed") contained a list of nine regulations where substantial progress had been made in the review process (from preliminary review through the issuance of a final, revised, regulation). The second group ("Regulations to be Reviewed") listed eleven regulations yet to e reviewed.

The third Semi-Annual Agenda was published on December 19, 1979. Seventeen regulations were listed as being under development; four regulations were listed as being under active review; and eleven regulations were listed as to be reviewed in the future.

The fourth Semi-Annual Agenda was published on July 16, 1980 (45 FR 47695). The categories ("Regulations Under Development", "Regulations Reviewed", and "Regulations to be Reviewed") were continued. In addition, target dates were established for the completion of a "preliminary review memo" (setting forth the need for the regulations and alternatives to be considered) for each regulation to be reviewed in the first three year cycle under NCUA's "Final Report".

This Agenda retains the format used in its predecessor. Those regulations listed in the fourth Agenda as having been issued in final have not been included.

Agenda: Regulations Under Development

1.a. § 701.21–6A Agency Relationship with Approved Mortgage Lender, to permit Federal credit unions to act as agents for approved mortgage lenders.

b. Need: To provide mortgage loans to members of those Federal credit unions that are unable to otherwise provide such loans.

Legal Basis: 12 U.S.C. § 1757(5)(A) and (15); 12 U.S.C. § 1766.

Status: Proposed rule issued August 30, 1979 (44 FR 50850), comment period closed November 7, 1979. Under review by staff.

d. For further Information Contact: Robert M. Fenner, Deputy General Counsel or John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

2.a. § 701.35(d)(2)(ii), Grace Periods for All Share Certificates, limiting grace periods uniformly to seven days after maturity.

b. Need: To establish uniformity and to facilitate equitable administration of rate regulations for all financial institutions.

Legal Basis: 12 U.S.C. 1757, 1766, and 1789.

c. Status: Final rule issued November 14, 1980 (45 FR 75169), effective November 10, 1980.

d. For Further Information Contact: Todd A. Okun, Assistant General Counsel, Office of General Counsel, telephone: (202) 357–1030.

3.a. § 701.21–1(d), Deregulation of Loan Interest Rate Classifications, to permit Federal credit unions to vary rates of interest on loans according to reasonable classifications established by their boards of directors.

b. Need: To permit greater flexibility in establishing loan interest rates so as to reduce costs and increase the ability of the board of directors to manage the credit union's loan portfolio.

Legal Basis: 12 U.S.C. 1757, 1766, and 1789.

c. Status: Final rule issued August 28, 1980 (45 FR 75365), effective August 21, 1980.

d. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065, or

John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

4.a. § 701.35(m), Premiums, Finders Fees and the Payment of Dividends in Merchandise, to limit the use of the premiums by Federal credit unions.

b. Need: To prohibit practices which may result in returns on savings in excess of rate limitations; to enable consumers to better compare rate of return on savings; and to determine whether NCUA should adopt a rule proposed by the Depository Institutions Deregulation Committee.

Legal Basis: 12 U.S.C. 1766 and 1789.

c. Status: Proposed rule issued November 14, 1980 (45 FR 75224), comment period closed December 10, 1980.

d. For Further Information Contact: James J. Engel, Assistant General Counsel, or Todd A. Okun, Assistant General Counsel, Office of General Counsel, telephone: (202) 357–1030.

5.a. §§701.34 and 701.35, Share, Share Draft, and Share Certificate Accounts; Part 761, Share Draft Programs for Federally Insured State Chartered Credit Unions, setting forth the requirements for the establishment and maintenance of share draft accounts.

b. Need: To relieve unnecessary requirements and to update essential requirements for the operation of share draft programs.

Legal Basis: 12 U.S.C. 1766, 1785, and 1789.

c. Status: Final rule issued November 14, 1980 (45 FR 75169), effective November 10, 1980 except that the first clause in § 701.35(1)(l)(iii) and §§ 701.35(1)(l) (viii) and (xi) are effective March 1, 1981.

d. For Further Information Contact: Todd A. Okun, Assistant General Counsel, Office of General Counsel, telephone: (202) 357–1030, or Layne Bumgardner, Director, Division of Examination and Supervision, Office of Examination and Insurance, telephone: (202) 357–1065.

6.a. Delinquent Consumer Installment Loan Classification Policy, to set forth NCUA policy for classifying delinquent loans as losses.

b. Need: To clearly define the policy to be used by NCUA in determining whether certain delinquent loans should be considered to be losses and to determine whether this policy should be uniform with the policies of the other Federal financial institution regulatory agencies.

Legal Basis: 12 U.S.C. 1766 and 1789.

c. Status: Notice of proposed rulemaking to be submitted to NCUA Board in January, 1981.

d. For further Information Contact: Thomas A. Straslicka, Chief-Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065.

7.a. § 701.35(e), Withdrawals From Share Certificate Accounts, providing a minimum required penalty for withdrawals prior to maturity.

b. Need: To simplify existing rule on early withdrawals, to promote stability in Federal credit unions by deterring early withdrawals, and to establish uniform rules for financial institutions.

Legal Basis: 12 U.S.C. 1766 and 1789.

c. Status: Proposed rule issued June 25, 1980 (45 FR 42628); comment period closed August 18, 1980; NCUA Board deferred consideration of final proposed rule, November 14, 1980 (45 FR 75169).

d. For Further Information Contact: Todd A. Okun, Assistant General Counsel, Office of General Counsel, telephone: (202) 357–1030.

8.a. §§701.22 and 701.23, Selling and Cashing Checks and Money Orders, removing regulatory restrictions.

b. Need: To simplify NCUA regulations and allow greater flexibility to the boards of directors of Federal credit unions in the establishment of policies and procedures for selling and cashing of checks and money orders.

Legal Basis: 12 U.S.C. 1757(12), 1766.

c. Status: Final rule issued December 1, 1980 (45 FR 79412) effective December 2, 1980.

d. For Further Information Contact: Joseph W. Petrosky, Staff Accountant, Office of Examination and Insurance, telephone: (202) 357–1055.

9.a. § 701.21–6(b), Real Estate Lending, removing requirement of prior NCUA approval for credit unions under $2 million in assets and removing restrictions on loan origination fees.

b. Need: To reduce the burden of regulations and enable Federal credit unions to competitively provide real estate loan services to their members.

Legal Basis: 12 U.S.C. 1757, 1766, 1789.

c. Status: Proposed rule issued November 28, 1980 (45 FR 79079), comment period closes December 31, 1980.

d. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065, or John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

10.a. Part 760 Flood Insurance, governing FCU lending secured by improved realty, or a mobile home, when either is located in a flood plain.

b. Need: To provide a plain English version of present NCUA flood insurance regulations.

Legal Basis: 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4106.

c. Status: Proposed rule issued October 15, 1980 (45 FR 68398), comment period closes December 15, 1980.

d. For Further Information Contact: John L. Culhane Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030, or Ben R. Henson, Director, Division of Enforcement, Office of Consumer Affairs, telephone: (202) 357–1080.

11.a. Part 701, Adjustable Rate Mortgages, allowing credit unions to grant real estate loans with interest rates that will change during the life of the loan.

b. Need: To minimize the effects of volatile financial conditions on both home buyers and Federal credit unions.

Legal Basis: 12 U.S.C. 1757(5)(A)(i) and (ix).

c. Status: Advance notice of proposed rulemaking issued December 1, 1980 (45 FR 79494), comment period closes January 31, 1981.

d. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065; or John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

12.a. § 742.2(a), Liquidity Reserves, amendment to permit reserves held for purposes of the Monetary Control Act of 1980 to qualify as reserves under NCUA's liquidity reserve regulation.

b. Need: To amend NCUA regulation to achieve conformance with Federal Reserve Act (§ 19(c)(2)) as amended by Monetary Control Act of 1980 (§ 104(a)). and eliminate unnecessary duplicative requirement.

Legal Basis: 12 U.S.C. 1762, 1766, 1789.

c. Status: Final rule issued November 4, 1980, (45 FR 73016), effective November 3, 1980.

d. For Further Information Contact: Thomas A. Straslicka, Chief-Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065, or Robert M. Fenner, Deputy General Counsel, Office of General Counsel, telephone: (202) 357–1030.

13.a. §§ 701.26, 701.27–1, 701.28, Joint Operations and Services, including Credit Union Service Center, Purchase and Sale of Accounting Services.

b. Need: To review to update and revise if necessary.

Legal Basis: 12 U.S.C. 1766 and 1789.

c. Status: Preliminary review memorandum submitted to NCUA Board in October, 1980; proposed regulation drafted and scheduled for Board consideration in January, 1981.

d. For Further Information Contact: Joseph W. Petrosky, Staff Accountant, Office of Examination and Insurance, telephone: (202) 357–1065.

14.a. Part 741, Requirements for Insurance, clarifying prerequisites for

and Insurance, telephone: (202) 357–1065, or Steven Bisker, Attorney-Advisor, Office of Genral Counsel, telephone: (202) 357–1030.

Review of Regulations

b. Status: Final regulation issued, see: Regulations Under Development, No. 8 (above).

c. For Further Information Contact: Joseph W. Petrosky, Staff Accountant, Office of Examination and Insurance,

b. Status: Proposed regulation drafted; see: Regulations Under Development, No. 14 (above).

c. For Further Information Contact: William Berens, Chief—Insurance Section, Office of Examination and

b. Target Date: September 30, 1981.

c. For Further Information Contact: Layne Bumgardner, Director, Division of Examination and Supervision, Office of Examination and Insurance, telephone (202) 357–1065.

c. For Further Information Contact: Thomas A. Straslicka, Chief—Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065.

9.a. §§ 701.21–1 through 701.21–6,

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d. For Further Information Contact: Joseph W. Petrosky, Staff Accountant, Office of Examination and Insurance, telephone: (202) 357–1065.

14.a. Part 741, Requirements for Insurance, clarifying prerequisites for insurance of credit union member accounts under Title II of the Federal Credit Union Act.

b. Need: Review to update and revise if necessary.

Legal Basis: 12 U.S.C. 1789.

c. Status: Proposed draft regulation under review; scheduled for consideration by NCUA Board in January, 1981.

d. For Further Information Contact: William Berens, Chief-Insurance Section, Office of Examination and Insurance, telephone: (202) 357–1060.

15.a. Part 749, Records Preservation Program, requiring credit unions to store duplicates of certain vital records off site.

b. Need: Review to update and revise if necessary.

Legal Basis: 12 U.S.C. 1766 and 1789.

c. Status: Proposed draft regulation under staff review; scheduled for presentation to the NCUA Board in February, 1981.

d. For Further Information Contact: Thomas A. Straslicka, Chief-Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065.

16.a. § 701.21, Loan Interest Rates, to permit Federal credit unions to charge interest rates on loans up to 21 percent.

b. Need: To safeguard the financial soundness of individual credit unions form rising money market interest rates.

Legal Basis: 12 U.S.C. 1757(5)(A)(iv)(I), 1757(5)(A)(iv), 1766.

c. Status: Final rule issued December 9, 1980 (45 FR 81032), effective December 3, 1980, expiring September 2, 1981 or as otherwise ordered by the NCUA Board.

d. For Further Information Contact: Robert H. Dugger, Director, Office of Policy Analysis, telephone: (202) 357–1090, or Robert M. Fenner, Deputy General Counsel, or John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

17.a. § 701.13, Reporting Policy, to require that all federally insured credit unions file a Financial and Statistical Report on a semi-annual basis.

b. Need: To provide a uniform reporting instrument that presents necessary data to NCUA in an efficient, useable format.

Legal Basis: 12 U.S.C. 1756, 1782.

c. Status: Proposed rule approved by NCUA Board December 3, 1980.

d. For Further Information Contact: Mike Fischer, Chief—Accounting and Auditing Section, Office of Examination and Insurance, telephone: (202) 357–1065, or Steven Bisker, Attorney-Advisor, Office of Genral Counsel, telephone: (202) 357–1030.

Review of Regulations

The following is a list of regulations to be reviewed in the future. The purpose of the review will be to update, clarify, and simplify existing regulations, and to eliminate redundant and unnecessary provisions. These regulations are divided into two groups. The first grouping contains those regulations in which substantial progress has been made (since the last publication of the Agenda) and includes a statement concerning the status of the review. The second grouping contains those regulations yet to be reviewed. Each regulation listed in the second grouping contains a target date for the submission of a "preliminary review memo" by the staff to the NCUA Board. This memo will set forth the need for the regulation, any needed changes, and the alternatives to be considered.

A. Regulations Reviewed

1.a. §§ 701.2 and 701.14, Incorporation by Reference, *Accounting Manual For FCUs.*

b. Status: New edition under staff review.

c. For Further Information Contact: Mike Fischer, Chief—Accounting and Auditing Section, Office of Examination and Insurance, telephone: (202) 357–1065.

2.a. § 701.21–1(d), Loan Interest Rate Classification, review to deregulate and to permit Federal credit unions to establish their own classifications.

b. Status: Final regulation issued, see: Regulations Under Development, No. 3 (above).

c. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065.

3.a. § 701.34, Share Drafts, review to relieve unnecessary requirements and update essential requirements.

b. Status: Final regulation issued, see: Regulations Under Development, No. 5 (above).

c. For Further Information Contact: Todd A. Okun, Assistant General Counsel, Office of General Counsel, telephone: (202) 357–1030, or Layne Bumgardner, Director, Division of Examination and Supervision, Office of Examination and Insurance, telephone: (202) 357–1065.

4.a. §§ 701.22 and 701.23, Selling and Cashing Checks and Money Orders, review to deregulate.

b. Status: Final regulation issued, see: Regulations Under Development, No. 8 (above).

c. For Further Information Contact: Joseph W. Petrosky, Staff Accountant, Office of Examination and Insurance, telephone: (202)357–1065.

5.a. § 701.21–6(b), Real Estate Lending, review to deregulate prior approval requirement for credit unions under $2 million and to deregulate loan origination fees.

b. Status: Proposed regulation issued, see: Regulations Under Development, No. 9 (above).

c. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202)357–1065, or John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

6.a. §§ 701.26, 701.27, 701.28, Joint Operations and Services, review to update, consolidate, and relieve unnecessary restrictions.

b. Status: Proposed regulation drafted; see: Regulations Under Development, No. 13 (above).

c. For Further Information Contact: Joseph W. Petrosky, Staff Accountant, Office of Examination and Insurance, telephone: (202) 357–1065.

7.a. Part 703, Investments and Deposits, review to update necessary requirements and to relieve unnecessary restrictions.

b. Status: Staff reviewing transfer of certain requirements to the *Accounting Manual for FCUs.*

c. For Further Information Contact: Robert Schafer, Chief—Supervision Section, Office of Examination and Insurance, telephone: (202) 357–1065.

8.a. Part 721, Incidental Powers, review of restrictions on credit union insurance and group purchasing activities.

b. Status: Advance notice of proposed rulemaking drafted, to be presented to NCUA Board December 18, 1980.

c. For Further Information Contact: Daniel Gordon, Senior Financial Economist, Office of Policy Analysis, telephone: (202) 357–1090.

9.a. Part 735, Employee Responsibility and Conduct, review to update.

b. Status: NCUA Board members currently reviewing a memorandum covering the need to revise this regulation.

11.c. For Further Information Contact: James J. Engel, Assistant General Counsel, Office of General Counsel, telephone: (202) 357–1030.

10.a. Part 741, Requirements for Insurance, review to simplify and reduce burdens.

b. Status: Proposed regulation drafted; see: Regulations Under Development, No. 14 (above).

c. For Further Information Contact: William Berens, Chief—Insurance Section, Office of Examination and Insurance, telephone: (202) 357–1060.

11.a. § 742.2, Liquidity Reserves, review to update list of investments qualifying as liquid assets.

b. Status: Final regulation issued, see: Regulations Under Development, No. 12 (above).

c. For Further Information Contact: Thomas A. Straslicka, Chief—Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065, or Robert M. Fenner, Deputy General Counsel, Office of General Counsel, telephone: (202) 357–1030.

12.a. Part 749, Records Preservation Program, review to simplify and relieve burdens.

b. Status: Proposed regulation drafted; see: Regulations Under Development, No. 15 (above).

c. For Further Information Contact: Thomas A. Straslicka, Chief—Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065.

13a. Part 760, Flood Insurance, review to simplify.

b. Status: Proposed regulation issued, see: Regulations Under Development, No. 10 (above).

c. For Further Information Contact: John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

14.a. § 701.13 Reporting Policy, review to revise reporting format.

b. Status: Proposed regulation issued, see: Regulations Under Development, No. 17 (above).

c. For Further Information Contact: Mike Fischer, Chief—Accounting and Auditing Section, Office of Examination and Insurance, telephone: (202) 357–1065, or Steven Bisker, Attorney-Advisor, Office of General Counsel, telephone: (202) 357–1030.

15.a. § 701.30, Safe Deposit Box Service, concerning the construction, location, leasing, access, and recordkeeping procedures for this service to Federal credit union members.

b. Status: Under staff review; draft of final regulation to be presented to NCUA Board December 1980.

c. For Further Information Contact: Joseph W. Petrosky, Staff Accountant, Office of Examination and Insurance, telephone: (202) 357–1065.

B. Regulations To Be Reviewed

1.a. § 700.1, Definitions, review to update and clarify.

b. Target Date: September 30, 1981.

c. For Further Information Contact: Layne Bumgardner, Director, Division of Examination and Supervision, Office of Examination and Insurance, telephone (202) 357–1065.

2.a. §§ 701.2 and 701.14, Incorporation by Reference, to complete review of these sections by reviewing the status of the *Federal Credit Union Bylaws.*

b. Target Date: August 31, 1981.

c. For Further Information Contact: Jon Lander, Chief—Chartering Section, Office of Examination and Insurance, telephone: (202) 357–1060.

3.a. §§ 701.3 and 701.4, Standard Form of Bylaws and Amendment of Bylaws, review to determine whether the regulations on this subject are necessary.

b. Target Date: September 30, 1981.

c. For Further Information Contact: Jon Lander, Chief—Chartering Section, Office of Examination and Insurance, telephone: (202) 357–1060.

4.a. § 701.5, Other Applications, and § 701.18, Petitions, review to consolidate with other administrative rules.

b. Target Date: March 31, 1981.

c. For Further Information Contact: Robert S. Monheit, Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

5.a. § 701.11, Election Report, review to determine whether the regulation is necessary to require submission of needed report.

b. Target Date: March 31, 1981.

c. For Further Information Contact: Thomas A. Straslicka, Chief—Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065.

6.a. § 701.12, Supervisory Committee Audit, review to determine whether the regulation on this subject is necessary or whether the subject might be covered in a manual.

b. Target Date: June 30, 1981.

c. For Further Information Contact: Mike Fischer, Chief—Accounting and Auditing Section, Office of Examination and Insurance, telephone: (202) 357–1065.

7.a. § 701.19, Retirement Benefits for Employees of Federal Credit Unions, review to update and revise if necessary.

b. Target Date: September 30, 1981.

c. For Further Information Contact: Layne Bumgardner, Director, Division of Examination and Supervision, Office of Examination and Insurance, telephone: (202) 357–1065.

8.a. § 701.20, Surety Bond and Insurance coverage, review to update and revise if necessary.

b. Target Date: December 31, 1980.

c. For Further Information Contact: Thomas A. Straslicka, Chief—Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065.

9.a. §§ 701.21–1 through 701.21–6, Lending Regulations, review to update, simplify, and revise if necessary.

b. Target Date: July 31, 1981.

c. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065, or John L. Culhane, Jr., Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

10.a. § 701.21–7, Loan Participations, review to update and revise if necessary.

b. Target Date: July 31, 1981.

c. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065.

11.a. § 701.32, Payment on Shares By Public Units, review to update and revise, and to determine whether subject may be covered in a manual rather than a regulation.

b. Target Date: August 31, 1981.

c. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065.

12.a. § 701.33, Compensation of Officials, review to update and revise if necessary.

b. Target Date: March 1, 1982.

c. For Further Information Contact: Todd A. Okun, Assistant General Counsel, telephone: (202) 357–1030.

13.a. § 701.36, Federal Credit Union Ownership of Fixed Assets, review to update and revise if necessary.

b. Target Date: October 30, 1981.

c. For Further Information Contact: Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance, telephone: (202) 357–1065.

14.a. Part 702, Reserves, review to update and revise if necessary.

b. Target Date: June 30, 1981.

c. For Further Information Contact: Randall J. Miller, Director, Regulatory Policy and Research Division, Office of Policy Analysis, telephone: (202) 357–1090.

15.a. Parts 706 and 707, Conversion from Federal to State Credit Union, and Conversion from State to Federal Credit Union, review to determine whether the regulations on this subject are necessary or whether the subject may be covered in a manual.

b. Target Date: March 30, 1981.

c. For Further Information Contact: Jon Lander, Chief—Chartering Section, Office of Examination and Insurance, telephone: (202) 357–1060.

16.a. Parts 708 and 709, Mergers of Credit Unions, Division of Assets, Liabilities, and Capital, review to determine whether regulations on these subjects are necessary or whether they

of General Counsel, telephone: (202) 357–1030.

Beatrix D. Fields,

Acting Secretary, National Credit Union Administration Board.

authorize depository institutions to permit penalty-free early withdrawals of time deposit funds in the event of the bankruptcy of the depositor. Under current rules, federally insured

By order of the Committee, December 18, 1980.

Normand R. V. Bernard,

Executive Secretary of the Committee.

[FR Doc. 80-40060 Filed 12-23-80; 8:45 am]

Bank Board (202/377–6446), Debra A. Chong, Attorney, Office of the Comptroller of the Currency (202/447–1632), or Anthony F. Cole, Deputy General Counsel, Depository Institutions

accounts to make routine additions to IRA/Keogh accounts. Under FHLBB rules, a fixed ceiling time deposit may be structured to provide for routine periodic additions. Each time an

16.a. Parts 708 and 709, Mergers of Credit Unions, Division of Assets, Liabilities, and Capital, review to determine whether regulations on these subjects are necessary or whether they may be covered in a manual.

b. Target Date: November 30, 1980.

c. For further Information Contact: Jon Lander, Chief—Chartering Section, Office of Examination and Insurance, telephone: (202) 357–1060.

17.a. Part 720, Description of Office, Disclosure of Official Records, Availability of Information, and Promulgation of Regulations, review to update, simplify and revise if necessary.

b. Target Date: March 30, 1981.

c. For Further Information Contact: Robert Monheit, Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

18.a. Part 740, Advertisement of Insured Status, review to update, simplify and revise if necessary.

b. Target Date: October 30, 1980.

c. For Further Information Contact: William Berens, Chief—Insurance Section, Office of Examination and Insurance, telephone: (202) 357–1060.

19.a. Part 745, Clarification and Definition of Account Insurance Coverage, review to update, simplify and revise if necessary.

b. Target Date: January 30, 1982.

c. For Further Information Contact: James J. Engel, Assistant General Counsel, Office of General Counsel, telephone: (202) 357–1030.

20.a. Part 746, Rebate Procedures for Federally Insured Credit Unions, review to update and revise if necessary.

b. Target Date: November 30, 1980.

c. For Further Information Contact: Phillip J. Daniels, Director, Division of Financial Management, Office of the Comptroller, telephone: (202) 357–1025.

21.a. Part 748, Minimum Security Devices and Procedures, review to update and simply.

b. Target Date: September 30, 1981.

c. For Further Information Contact: Thomas A. Straslicka, Chief-Examination Section, Office of Examination and Insurance, telephone: (202) 357–1065.

22.a. Part 750—Tort Claims Against the Government, review to update, simplify and revise if necessary.

b. Target Date: December 31, 1981.

c. For Further Information Contact: Jay C. Keithley, Senior Attorney, Office of General Counsel, telephone: (202) 357–1030.

Beatrix D. Fields,

Acting Secretary, National Credit Union Administration Board.

December 18, 1980.

[FR Doc. 80–40155 Filed 12–23–80; 8:45 am]

BILLING CODE 7535–01–M

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

12 CFR Part 1204

[Docket No. D–0015]

Penalty for Early Withdrawals of Time Deposit Funds in the Event of Bankruptcy

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Proposed rulemaking.

SUMMARY: The Depository Institutions Deregulation Committee ("Committee") is considering amending the penalty for early withdrawals of time deposit funds to permit penalty-free withdrawal in the event of bankruptcy of the depositor.

DATES: Comments must be received by February 16, 1981.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed rule to Normand R. V. Bernard, Executive Secretary, Depository Institutions Deregulation Committee, Federal Reserve Building, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551. All material submitted should include the Docket Number D–0015. Such material will be made available for inspection and copying upon request except as provided in § 1202.5 of the Committee's Rules Regarding Availability of Information (12 CFR 1202.5).

FOR FURTHER INFORMATION CONTACT: F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389–4261), John Harry Jorgenson, Attorney, Board of Governors of the Federal Reserve System (202/452–3778), Allan Schott, Attorney-Advisor, Treasury Department (202/566–6798), Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377–6446) Debra A. Chong, Attorney, Office of the Comptroller of the Currency (202/447–1632), or Anthony F. Cole, Deputy General Counsel, Depository Institutions Deregulation Committee (202/452–3612).

SUPPLEMENTARY INFORMATION: The Committee is considering amending the early withdrawal penalty rule to authorize depository institutions to permit penalty-free early withdrawals of time deposit funds in the event of the bankruptcy of the depositor. Under current rules, federally insured commercial banks, mutual savings banks, and savings and loan associations are required, with certain exceptions, to impose a penalty upon the withdrawal of time deposit funds prior to maturity. The minimum required penalty generally is an amount equal to three months' simple interest on the funds withdrawn where the original maturity of the time deposit is three months to one year, and an amount equal to six months' simple interest on the funds withdrawn where the original maturity of the time deposit is more than one year. With respect to time deposits with an original maturity of less than three months, the minimum required penalty for early withdrawal is a forfeiture of an amount equal to the amount of simple interest that could have been earned on the funds withdrawn if the funds had remained on deposit until maturity. (12 CFR 1204.103).

Imposition of the early withdrawal penalty when funds are withdrawn in the event of bankruptcy may reduce the assets available to pay the claims against the debtor's estate. The Committee believes that that adoption of a bankruptcy exception would not significantly increase the administrative burden of the penalty since the exception, as in the case of the current exceptions providing for penalty-free withdrawals in the event of death, incompetence and where an IRA/Keogh depositor is 59½ or disabled, would be subject to well-defined criteria.

Specific comment is requested on whether such an exception, if adopted, should:

(1) apply to corporations as well as to individuals with regular incomes and small sole proprietors;

(2) apply to liquidations (Chapter 7), municipal debt adjustments (Chapter 9), rehabilitations and reorganizations (Chapter 11) and, in the case of individuals, extended repayment plans (Chapter 13) under the bankruptcy code;*

(3) permit penalty-free withdrawals to be made upon the filing of a petition for bankruptcy or only upon an adjudication of bankruptcy or a court ordered distribution of the debtor's estate; and

(4) permit penalty-free withdrawals to be made by a debtor-in-possession as well as by a trustee in bankruptcy.

*Chapter references are to Title II of the United States Code entitled "Bankruptcy."

By order of the Committee, December 18, 1980.

Normand R. V. Bernard,

Executive Secretary of the Committee.

[FR Doc. 80–40060 Filed 12–23–80; 8:45 am]

BILLING CODE 6210–01–M

12 CFR Part 1204

[Docket No. D–0017]

Retirement Accounts

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Proposed rulemaking.

SUMMARY: The Depository Institutions Deregulation Committee ("Committee") is considering proposed rules that would: (1) enable time deposits held in Individual Retirement Accounts ("IRAs") and Keogh (H.R. 10) plans to accommodate routine additions more conveniently; (2) reduce the three-year maturity of the special IRA/Keogh deposit category to one year; (3) increase, revise, or eliminate the current 8 percent ceiling rate of interest payable on the special IRA/Keogh deposit category; and (4) create a new IRA/Keogh time deposit with a minimum required maturity of 14 days and no prescribed ceiling rate of interest. The proposed rules would facilitate the use of time deposits for retirement savings and encourage the increased use of IRA/Keogh plans consistent with the intent of Congress in the Employee Retirement Income Security Act of 1974 to encourage individuals to save for their retirement.

DATES: Comments must be received by March 20, 1981.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed rules to Normand R. V. Bernard, Federal Reserve Building, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551. All material submitted should include the Docket Number D–0017. Such material will be made available for inspection and copying upon request except as provided in § 1202.5 of the Committee's Rules Regarding Availability of Information (12 CFR 1202.5).

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Attorney, Board of Governors of the Federal Reserve System (202/452–3778), F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389–4261), Allan Schott, Attorney-Advisor, Department of Treasury (202/566–6798), Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377–6446), Debra A. Chong, Attorney, Office of the Comptroller of the Currency (202/447–1632), or Anthony F. Cole, Deputy General Counsel, Depository Institutions Deregulation Committee (202/452–3612).

SUPPLEMENTARY INFORMATION: Although the intent of the Employee Retirement Income Security Act of 1974 ("ERISA") is to encourage qualified individuals to develop their own pension plans, IRAs and Keoghs have not been fully utilized. In 1977, only 3.3 per cent of eligible taxpayers in the $11,000 to $15,000 income class held some form of retirement account in a depository or nondepository institution, while 52.4 per cent of those with incomes of $50,000 or more held some form of retirement account. (Latest available data.) In view of the Congressional intent to encourage individuals to save for their retirement, the Committee is considering regulatory actions that would increase the attractiveness of IRA/Keogh accounts at depository institutions by reducing present administrative obstacles to periodic additions to IRA/Keogh time deposits and by increasing the yield available to retirement savers.

The current regulations of the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Federal Deposit Insurance Corporation ("FDIC"), and The Federal Home Loan Bank Board ("FHLBB"), provide that IRA/Keogh funds may be invested in a regular savings account or in any time deposit category including the special three-year, 8 per cent IRA/Keogh account. The interest rate ceilings on time deposits held in IRAs or Keoghs are the same as on nonretirement accounts, except that there is no differential in the rates that banks and thrifts may pay on IRA/Keogh funds invested in the 25-week money market certificate, in the 2½ year or longer small saver certificate, or the special three-year IRA/Keogh deposit category.

The agencies' regulations governing account additions, however, are not uniform and complicate the use of time deposits, particularly variable ceiling time deposits, for periodic deposits to IRAs or Keoghs. Under Federal Reserve and FDIC rules, each addition to a time deposit is regarded either as having a separate and distinct maturity equal to the originally agreed upon maturity or as resetting the maturity of the entire account. Federal Reserve and FDIC regulations also require that the rate of interest paid on an addition to any existing time deposit not exceed the applicable ceiling rate on the date the additional deposit is made. This makes it impractical to use variable ceiling rate accounts to make routine additions to IRA/Keogh accounts. Under FHLBB rules, a fixed ceiling time deposit may be structured to provide for routine periodic additions. Each time an addition is made, however, the maturity of the entire account is reset for a period equal to the term of the original account. No additions to variable ceiling accounts are permitted.

The Committee requests comment on five options designed to reduce the administrative complexities associated with IRA/Keogh time deposits and to provide a more attractive yield to retirement savers. Option 1 reduces the minimum maturity of the existing special three-year IRA/Keogh account to one year. Options 2 and 3 provide for the creation of a new IRA/Keogh one-year notice account that would facilitate the receipt of periodic deposits. Option 4 presents three alternative ceiling rate options that could be applied to the currently authorized special three-year account, the one-year account described in Option 1, or the notice accounts presented in Options 2 and 3. Option 5 provides for the creation of a new 14-day IRA/Keogh time deposit with no prescribed ceiling rate of interest. A discussion of the five options follows.

Option 1—*Reduce IRA/Keogh Account Maturity to One Year*

When the existing special three-year IRA/Keogh account was established in 1977, the minimum maturity of the account coincided with the ERISA provisions permitting the tax penalty-free rollover of IRA funds from one trustee to another once every three years. Tax penalty-free IRA rollovers, however, are now permitted once a year. In order to keep the maturity of the special IRA/Keogh account consistent with tax law, the Committee proposes to reduce the minimum maturity of the special three-year IRA/Keogh account to one year.

Reducing the maturity to one year, if accompanied by a significant increase in or elimination of the 8 percent ceiling rate on the special IRA/Keogh account, would provide depository institutions with greater flexibility in designing and marketing retirement savings programs. However, reducing the maturity of the account may contribute to a reduction in depository institution account stability, if depositors make use of their annual reinvestment privileges to rollover their existing IRA/Keogh accounts into tax qualified retirement plans at other institutions.

Options 2 and 3—*Create IRA/Keogh Notice Account to Facilitate Periodic Deposits*

Option 1 is modest in scope, adjusting the maturity of IRA/Keogh time deposits to accommodate an earlier change in

provided by the amended ERISA; it also facilitates depositor shifting to more attractive retirement investment alternatives when they exist, as contemplated by the recent amendment to ERISA. The Committee believes that

minimum maturity requirement is satisfied) or rate (for example, fixed or floating) for the deposit.

The Committee believes that the proposals presented would enable depository institutions to tailor IRA/

Keogh depositors to immediately convert their accounts without imposition of the early withdrawal penalty; and

(9) Any other proposals that would reduce the administrative complexities of using time deposits to fund IRAs and

Treasury Department (202/566–6798), Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377–6446), Debra A. Chong, Attorney, Office of the Comptroller of the Currency (202/447–1632), or Anthony F. Cole, Deputy

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

Surety Bond Guarantee; Revision of Rules and Regulations

AGENCY: Small Business Administration

Options 2 and 3—*Create IRA/Keogh Notice Account to Facilitate Periodic Deposits*

Option 1 is modest in scope, adjusting the maturity of IRA/Keogh time deposits to accommodate an earlier change in ERISA; it does not solve the problems associated with routine periodic additions under current regulations. Consequently, to reduce administrative complexities, the Committee is considering establishing an IRA/Keogh notice account that would facilitate the receipt of periodic additions. Options 2 and 3 present alternative methods for structuring this account. A notice account is an account from which funds may not be withdrawn prior to the expiration of a period of notice which must be given by the depositor a specified number of days in advance of withdrawal. Notice could take a variety of forms including a specific written notice from the depositor or arrangements in which notice is given automatically on the anniversary of the account or each time a deposit is made.

Under Option 2: (a) A one-year notice of intent to withdraw on a specified date is required;

(b) the institution may accept regular additions to the account at any time up to 14 days before the expiration or end of the notice period, and all funds on deposit could be withdrawn upon the expiration of the notice period:

(c) Interest could be paid on all additions to the account at the specified contract rate; and

(d) An early withdrawal penalty would be imposed on withdrawals made prior to the expiration of the one-year notice period.

Under Option 3: (a) A one-year notice of intent to withdraw on a specifed date is required;

(b) The institution may accept regular additions to the account at any time, but the amount withdrawn could not exceed the amount on deposit at the time of notice;

(c) Interest could be paid on all additions to the account at the specified contract rate; and

(d) An early withdrawal penalty would be imposed on withdrawals made prior to the expiration of the one-year notice period.

A strength of these options is that they establish IRA/Keogh accounts that readily accommodate routine periodic additions and can easily be understood by both account holders and the institutions authorized to offer the accounts. Under both Options 2 and 3 the one-year notice required for withdrawal accommodates IRA depositors' annual rollover privilege as provided by the amended ERISA; it also facilitates depositor shifting to more attractive retirement investment alternatives when they exist, as contemplated by the recent amendment to ERISA. The Committee believes that structuring either account as a one-year notice account is preferable to establishing an account with a stated maturity of one year that could accept periodic deposits. A notice account would tend to lessen deposit volatility since funds would not mature automatically at the end of a year.

Option 2 would make the administration of the notice account less complex since all funds on deposit could be withdrawn at one time. Under Option 2, however, depository institutions may be concerned that even after notice is given depositors would be able to earn interest at the contract rate on funds on deposit for as little as 14 days.

Option 4—*Increase, Revise, or Eliminate IRA/Keogh Interest Rate Ceiling*

Options 2 and 3 deal primarily with the administrative problems of making routine additions to IRA/Keogh accounts, but do not address the issue of what deposit rate ceilings, if any, should be applied. The Committee is considering the following ceiling rate options that could be applied to the currently authorized special three-year account, the one-year account described in Option 1, or the notice accounts presented in Options 2 and 3.

(a) Prescribe no ceiling rate of interest;

(b) Establish a fixed ceiling at a rate greater than 8 per cent. Within the ceiling rate limitations, an institution could change the rate paid on the account with one year's notice or change the rate immediately if required by a regulatory ceiling rate change; or

(c) Establish a floating ceiling indexed to the rate on U.S. Government securities of specified maturity (e.g., 91 day, 182 day, one year, or two and a half year Treasury security yield). Changes in the ceiling rate could occur quarterly, semi-annually, or annually.

Option 5—*Create 14-Day IRA/Keogh Time Deposit*

The Committee also is considering establishment of an IRA/Keogh plan time deposit with a minimum required maturity or notice period of 14 days. No ceiling rate of interest payable on this special category would be prescribed. This option would provide maximum flexibility to depository institutions in structuring retirement accounts. Under this option, an institution could choose any maturity (so long as the 14-day minimum maturity requirement is satisfied) or rate (for example, fixed or floating) for the deposit.

The Committee believes that the proposals presented would enable depository institutions to tailor IRA/Keogh plans to specific saver needs and market circumstances and thereby attract and retain relatively stable retirement funds. In addition, these proposals would encourage savings and, by enhancing the competitive posture of depository institutions vis-a-vis nondepository institutions, would enable depository institutions to function more safely and soundly in increasingly competitive financial markets. The Committee is concerned, however, that adoption of any of the proposals making IRA/Keogh accounts significantly more attractive could encourage depositors not qualified to open IRA/Keogh accounts to open such accounts. To lessen the potential for abuse, the Committee is considering adoption of a provision requiring an appropriate official of the depository institution to obtain certification from each depositor that he or she qualifies to hold an IRA/Keogh account. Such certification for IRAs might include presentation of a W–2 form indicating eligibility.

To aid in its consideration, the Committee requests comment on the five options discussed above. Specific comments also are requested on:

(1) The minimum required early withdrawal penalty that should be imposed on withdrawals prior to the receipt and expiration of the one-year notice period under Options 2 and 3;

(2) The minimum required early withdrawal penalty that should be imposed on premature withdrawals under Option 5;

(3) The potential for misuse of IRA/Keogh accounts under any of the options and steps that might be taken to lessen the potential for misuse;

(4) The ceiling rate options (e.g., no ceiling, fixed rate ceiling, or floating ceiling) that would be most attractive to depository institutions and their customers;

(5) The Treasury bill security that should be selected as the index if a floating rate ceiling is adopted (Option 4c) and the frequency of change in the ceiling rate (e.g., quarterly, semi-annually, annually);

(6) The potential impact of the proposals on deposit stability at depository institutions;

(7) The effect of the proposals on the earnings of depository institutions;

(8) Whether, in the event any of the options is adopted, institutions should be authorized to permit existing IRA/Keogh depositors to immediately convert their accounts without imposition of the early withdrawal penalty; and

(9) Any other proposals that would reduce the administrative complexities of using time deposits to fund IRAs and Keoghs.

By order of the Committee, December 18, 1980.

Normand R. V. Bernard,

Executive Secretary of the Committee.

[FR Doc. 80-40061 Filed 12-23-80; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 1204

[Docket No. D-0016]

Effective Date of Ceiling Rates on MMC's and SSC's

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Proposed rulemaking.

SUMMARY: The Depository Institutions Deregulation Committee ("Committee") proposes to adopt rules reducing the period between the announcement and the effective date of the ceiling rates of interest payable on the 26-week money market certificate (MMC) and on the 2½ year and longer small saver certificate (SSC). Under the current rules, the ceiling rates of interest payable on MMCs and SSCs are announced on Monday and are effective the following Thursday. Under the proposed rules, the ceiling rates of interest announced on Monday would become effective on the following Tuesday or, as an alternative, Wednesday.

DATES: Comments must be received by February 16, 1981.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed rules to Normand R. V. Bernard, Executive Secretary, Depository Institutions Deregulation Committee, Federal Reserve Building, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. All material submitted should include the Docket Number D–0016. Such material will be made available for inspection and copying upon request except as provided in § 1202.5 of the Committee's Rules Regarding Availability of Information (12 CFR § 1202.5).

FOR FURTHER INFORMATION CONTACT: F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389–4261), John Harry Jorgenson, Attorney, Board of Governors of the Federal Reserve System (202/452–3778), Allan Schott, Attorney-Advisor, Treasury Department (202/566–6798), Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377–6446), Debra A. Chong, Attorney, Office of the Comptroller of the Currency (202/447–1632), or Anthony F. Cole, Deputy General Counsel, Depository Institutions Deregulation Committee (202/452–3612).

SUPPLEMENTARY INFORMATION: The ceiling rate of interest payable on MMCs is tied to the discount yield (auction average) on the most recently issued six-month United States Treasury bills. United States Treasury bills maturing in six months normally are auctioned on Monday and, under current rules, the ceiling rate of interest based on the discount yield (auction average) is effective the following Thursday, the day on which the Treasury bills are issued. This ceiling rate is effective until the next issuance of six-month United States Treasury bills. The ceiling rate of interest payable on SCCs is tied to the average 2½ year yield for United States Treasury securities as determined bi-weekly by the United States Treasury. The average 2½ year yield on United States Treasury securities is announced by Treasury on Monday afternoon (based on the average 2½ year yield for the five business days ending on Monday) and, under current rules, the ceiling rates based on that average 2½ year yield are effective for a two-week period beginning on the following Thursday.

In order to more closely link the ceiling rates of interest payable on MMCs and SSCs with current market rates, the Committee proposes to adopt rules reducing the time between the announcement and effective date of the ceiling rates. Under the proposed rules, the ceiling rates announced on Monday would be effective for new MMCs or SSCs issued on the following Tuesday or Wednesday rather than on the following Thursday. Comment is requested on whether a Tuesday or, as an alternative, a Wednesday effective date would allow sufficient time for institutions to make any changes necessary for implementation of the new ceiling rates. Comment is particularly requested on potential problems that institutions may encounter in (1) obtaining information on the new ceiling and (2) posting or advertising the new ceiling rate.

By order of the Committee, December 18, 1980.

Normand R. V. Bernard,

Executive Secretary of the Committee.

[FR Doc. 80-40063 Filed 12-23-80; 8:45 am]

BILLING CODE 6210-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

Surety Bond Guarantee; Revision of Rules and Regulations

AGENCY: Small Business Administration.

ACTION: Proposed rules.

SUMMARY: These proposed rules and regulations would replace the existing regulations governing the surety bond guarantee program. The revision is brought about primary as a result of enactment of amendments (Pub. L. 95–507, 92 Stat. 1757, October 24, 1978) to the statutory authority for this program (15 U.S.C., Sec. 694 a and b).

The proposed regulations would make changes which are mandated by the legislation and changes where the SBA has decided to adopt new discretionary authority under the legislation. The other changes are designed to clarify and simplify the existing surety bond guarantee regulations.

The changes deal essentially with underwriting standards, the SBA guarantee, and other aspects of participation by sureties in the program. The change affecting small contractor applicants has to do with fees payable to SBA and participating sureties by the contractor.

DATES: Comments must be received on or before February 23, 1981.

ADDRESSES: Comments are to be addressed to Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Howard F. Huegel, Acting Chief, Surety Bond Guarantee Section, Office of Special Guarantees, 1815 N. Lynn Street, Arlington, Virginia 22209, (703) 235–2907.

SUPPLEMENTARY INFORMATION: Covered by this proposed revision of the regulations are: (1) the primary factors SBA may use in determining whether to impose upon particular surety terms and conditions of the SBA guarantee which may vary from those used by SBA in connection with another surety; (2) the specific circumstances in which SBA may refuse to issue further guarantees to a surety, modify the conditions under which such guarantees will be issued; (3) the specific grounds upon which SBA may deny liability under the SBA guarantee; (4) the definition of a surety; (5) the scope of the audit SBA may perform on the premises of a participating surety; (6) the "ancillary" bonds to which the SBA guarantee may extend; (7) the long-standing Agency requirement that principals of the contractor possess good character and

reputation; (8) the abolition of the previous requirement for a non-refundable bid bond fee payable with each application and an increase in the guarantee fee payable to SBA by the

and conditions which vary from those used by SBA in connection with another surety.

As provided by the statutory amendments, SBA may issue regulations

business in conformity with Part 120" of the Regulations. This requirement would be deleted by this revision. In its place, § 115.4(b) would be changed to incorporate the Agency's longstanding

upon final payment, would adjust such previous "advance" disbursements. SBA has given consideration to the need for implementing this authority but has determined that it would be

contractor on one project, the aggregate amount of the contracts shall not exceed $1,000,000.

(b) *Percentage Guarantee.* SBA may guarantee up to 90 percent of the loss

and actually paid as a result of having executed the bond or bonds guaranteed by SBA, less those amounts recovered at the time of payment by the surety company. "Loss" shall not include and

reputation; (8) the abolition of the previous requirement for a non-refundable bid bond fee payable with each application and an increase in the guarantee fee payable to SBA by the contractor upon issuance of a final performance or payment bond; (9) an increase in the premium that the surety may charge to a contractor on contracts over $250,000; (10) clarification of what loss by surety is reimbursable by SBA under the guarantee; (11) deletion of oral approval authority to SBA field offices; and (12) a provision that SBA will guarantee a surety bond only in cases where work under a contract is not yet underway.

To overcome weaknesses with respect to the SBA guarantee, and to remove operational problems, Congress passed Pub. L. 95–507, amending Part B of Title IV of the Small Business Investment Act (15 U.S.C., Sec. 694 a and b) (the "Act"). These amendments to the Act provided for certain mandatory changes and for certain new discretionary authority to SBA.

Mandated Changes

Under the amendments, the nature of SBA's guarantee is clarified and circumstances under which SBA may deny liability are specified. These mandatory changes have been incorporated into the proposed regulations at § 115.11.

The Act makes changes in the definition of two key terms. First, the definition of surety is broadened to include "agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person." This definition appears in § 115.3. Second, as now provided by the Act, the SBA gurantee may extend to bonds which are "ancillary" to and "coterminous" with bid, performance, and payment bonds. Such "ancillary and coterminous bonds" (defined in § 115.2(c)) have been defined by SBA as being those bonds incidental to the contract and essential to its performance.

Changes Based Upon Discretionary Authority

The statutory amendments gave new discretionary authority to the Administration permitting it to vary from surety to surety the terms and conditions of an SBA guarantee of a surety bond. SBA submits that it is in the best interest of the program to adopt this authority. A proposed new rule, therefore, appears at 115.6(b). With the new rule are examples of possible factors which could form a basis for a determination by the Administration to impose, upon a particular surety, terms and conditions which vary from those used by SBA in connection with another surety.

As provided by the statutory amendments, SBA may issue regulations requiring sureties to meet Agency standards in their underwriting, claims practices, and loss ratios. It is SPA's policy that sureties participating in the program adhere to the principles and standards prevailing in the surety industry in regard to underwriting and claim practices. However, SBA recognizes that there must be flexibility in regard to the standards applying to small contractors because of the nature of the Surety Bond Guarantee Program. The Agency believes it is in the best interest of the program to adopt criteria whereby the Agency can refuse to continue to guarantee bonds of a surety whose operations as a participant have not been entirely satisfactory from the Administration's standpoint as a guarantor of the surety's bonds, or impose other sanctions on a surety which experiences excessive losses, subject to the right of the surety to appeal. The proposed new criteria appear in the new rule at § 115.12.

SBA has decided that it will not propose at this time a regulation regarding loss ratios other than the sanctions mentioned in the preceding paragraph. A more specific proposal will be made after criteria are developed.

Other Changes

For some time, SBA has been operating, on a trial basis, a form of blanket authorization for contractors who have demonstrated a record of satisfactorily performing contracted work. The objective has been to facilitate the issuance of bid bonds to a contractor, within pre-approved limits, where the surety's and the contractor's performance record justified pre-qualification for bonds within established limits. Otherwise, before a surety's issuance of a bid bond under the SBA guarantee, SBA must review and act upon a separate application for each individual bond. Since only a fraction of bids result in a final bond, it has been an SBA objective to reduce the SBA review process on bid bonds. The Agency's experience with this trial system has been satisfactory and useful. Savings in time to contractors, sureties, and SBA have been significant. Based upon the experience, SBA had decided to adopt the surety bonding line concept. New regulations for this selective, pre-approval guarantee system are found at § 115.10.

As presently in effect, § 115.4(b) requires that an eligible applicant "operate or propose operation of a business in conformity with Part 120" of the Regulations. This requirement would be deleted by this revision. In its place, § 115.4(b) would be changed to incorporate the Agency's longstanding requirement that an applicant's principals have good character and reputation.

Explicit authority for SBA to audit participating sureties is contained in the 1978 Act and has been incorporated in the Regulations, at § 115.13. The fees charged a contractor would be modified. The present requirement for a $10 bid bond fee payable with each application would be abolished. Under the proposed change, SBA would make no charge until a final bond has been issued. No charge would be made for bid bonds, but to offset this and to reduce SBA's losses under the program, it is proposed that the present SBA charge of $2.00 per $1,000 of the contract amount be changed to one-half percent (.5%) of the contract amount.

SBA has been concerned that relatively few bonds under the program are issued for contracts of over $250,000 as compared with the number just under $250,000. Existing SBA policy presents a disincentive for participating sureties to issue bonds where the contract price is over $250,000. At present, SBA limits a surety to a bond premium of one percent for the part of the contract price which exceeds $250,000, as compared with a premium of one and a half percent allowable on the first $250,000. To provide greater opportunities for larger size contracts for contractors participating in the program, SBA proposes now to remove the existing two-tier structure applicable to the maximum permissible premium rate. The primary objective is to increase the competition in the surety industry to issue bonds on larger-size contracts for the small contractors in the program. Small contractors attempting to bid on larger contracts will benefit from having more sureties willing to bond them.

Proposed § 115.9(c) ("Surety Bond Premiums") would establish a uniform maximum acceptable premium rate of 1.5 percent of contract price, for bonds of any size issued under the program. (All premium rates would continue to be subject to the authorization of the appropriate State Insurance Department.) SBA has not changed its maximum for acceptable bond premium rates since 1976. Approximately two years ago, "Manual" rates of the Surety Association of America were increased.

The 1978 Act empowers but does not require SBA to make periodic advance payments to sureties based upon the surety's past losses incurred in the program. Under such a procedure, SBA,

upon final payment, would adjust such previous "advance" disbursements. SBA has given consideration to the need for implementing this authority but has determined that it would be inappropriate to implement it until such time as a complete evaluation of the present claims payment system is completed.

Finally, the revision would delete the authority of SBA field offices to give temporary oral approvals to surety bond applications, and would provide that guarantees will be issued only when work under a contract is not yet underway. It has been SBA's experience that contrary practices have been deleterious to the program.

Notice is hereby given that, pursuant to the authority of 15 U.S.C. Sec. 687(c) and 15 U.S.C. Secs. 694a and 694b, it is proposed to revise as set forth below, Part 115, Chapter I, Title 13 of the Code of Federal Regulations:

PART 115—SURETY BOND GUARANTEE

Sec.

115.1 Statutory Provisions.
115.2 Policy.
115.3 Definitions.
115.4 Eligibility.
115.5 Procedures for Surety Bond Guarantee Assistance.
115.6 Guarantee Agreement.
115.7 Surety's Underwriting Standards.
115.8 SBA's Underwriting Review.
115.9 Guarantee Fees and Surety Bond Premiums.
115.10 Surety Bonding Line.
115.11 Loss Under Bond.
115.12 Refusal to Issue Further Guarantees.
115.13 Audit of Participating Sureties.

Authority: Title IV—Part B, of the Small Business Investment Act of 1958, 15 U.S.C. 694a, 694b.

§ 115.1 Statutory Provisions.

The relevant statutory provisions will be found at 15 U.S.C. 694a, *et seq.*

§ 115.2 Policy.

(a) It is the intent of Congress to strengthen the competitive free enterprise system by assisting qualified small business concerns to obtain bid, payment, or performance bonds which are otherwise unobtainable without an SBA guarantee. Consequently, Congress has authorized SBA to guarantee sureties participating in the Surety Bond Guarantee Program up to 90 percent of the losses incurred as a result of a principal's breach of the terms of a bid bond, payment bond, performance bond, or bonds which are ancillary and coterminous with such bonds, on any contract not exceeding one million dollars in face value. On multiple requests for bond guarantees by one contractor on one project, the aggregate amount of the contracts shall not exceed $1,000,000.

(b) *Percentage Guarantee.* SBA may guarantee up to 90 percent of the loss incurred and paid under a bond on a contract up to $250,000 in face value and up to 80 percent of the loss incurred and paid under a bond on a contract between $250,000 and $1,000,000 in face value.

(c) *Types of Bonds.* The Administration has determined that only bid, performance, and payment bonds issued in connection with a contract and of a type listed in the "Contract Bonds" section of the Rating Manual of the Surety Association of America will be eligible for an SBA guarantee. In addition, the SBA guarantee may be expressly extended in writing to such "ancillary" bonds as are incidental to the contract and essential for its performance. From time to time, SBA reviews the bond forms used in the surety bond industry to determine whether or not the terms and conditions of any bond form are reasonable in light of the risks involved and the extent of the guarantee by SBA of a participating surety's bond. SBA notifies its field offices of bond forms deemed by SBA to be unreasonable in light of these criteria.

(d) *Persons Eligible to Represent Surety Before SBA.* SBA shall accept surety bond guarantee applications only from those representatives of a surety who are empowered in writing by the surety to issue a final bid, payment, or performance bond on behalf of the surety.

(e) SBA's guarantee is valid only when the work under the contract is not yet begun, except where expressly authorized in writing by the Regional Administrator.

§ 115.3 Definitions.

This section incorporates those terms defined at 15 U.S.C. § 694a and defines the additional terms set forth below:

(a) "SBA" and "Administration" shall mean the Small Business Administration.

(b) "Surety" means (1) a surety company listed by the U.S. Treasury as eligible to issue bonds in connection with Federal procurement contracts or (2) a corporation determined by SBA to be a surety eligible to participate in the Surety Bond Guarantee Progam, or (3) an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.

(c) "Loss" means all damages, court costs, counsel fees, charges, and expenses which the surety has incurred and actually paid as a result of having executed the bond or bonds guaranteed by SBA, less those amounts recovered at the time of payment by the surety company. "Loss" shall not include and SBA's guarantee does not extend to attorneys' fees and court costs incurred in a suit by a surety against SBA.

§ 115.4 Eligiblity.

In order to be eligible for a surety bond guarantee, the principal must:

(a) Qualify as a small business under § 121.3–15 of this chapter.

(b) Possess good character and reputation, as determined by SBA. A principal will be deemed to meet this standard if its owners, officers, directors, or partners possess good character and reputation.

(c) Certify that a bond is required in order to bid on a contract or to serve as a prime contractor or subcontractor thereon.

(d) Certify that a bond is not obtainable on reasonable terms and conditions without SBA's bond guarantee assistance.

§ 115.5 Procedure for surety bond guarantee assistance.

(a) Application for an SBA guarantee is made by the principal to an agent or broker on the SBA Application for Surety Bond Assistance (Form 994), and the Schedule of Contractor's Uncompleted Work (Form 994F). The contractor's application must include disclosure authorization required by Section 1104(a) of the Right to Financial Privacy Act (12 U.S.C. 3404). In addition, completion of SBA's Form 912 is required (on initial application only). The completed application, together with the surety's report of underwriting review (Form 994B), and an executed surety bond guarantee agreement (Form 990), are to be submitted to SBA only by a person empowered by the surety to issue a final bond guaranteed by SBA.

(b) SBA makes no charge for reviewing an application for a surety bond guarantee. Fees are payable both by the contractor and the surety once a final bond has been issued (See § 115.9).

§ 115.6 Guarantee agreement.

(a) *Conditions of Guarantee.* Any Agreement by SBA to guarantee a bond issued by a surety company shall contain the following:

(1) Surety shall represent that the bond or bonds being issued are appropriate to the contract requiring them.

(2) Surety shall represent that the terms and conditions of the bond or bonds executed are in accordance with those generally used by the surety

industry for the type of bond or bonds involved.

(3) Surety shall affirm that without the SBA guarantee to Surety, it will not issue the bond or bonds to the principal.

(4) Surety shall take all steps

§ 115.7 Surety's underwriting standard.

In underwriting an SBA guarantee bond, the surety is expected to adhere to the surety industry's general principles and practices used in evaluating the credit, capacity, and character of a

concern shall pay SBA a guarantee fee of one-half of one percent (.5%) of the contract amount.

(b) *SBA Charge to Surety.* The surety shall pay SBA a guarentee fee equal to twenty percent (20%) of the bond

necessary by SBA. The information should be furnished by the principal to the surety.

(2) A recommendation regarding the maximum number of SBA-guaranteed contract bonds the principal may have

be made under regular Surety Bond Guarantee procedures.

(e) *Terms and Conditions.* In addition to the applicable general provisions set forth in this Part 115, the following terms and conditions shall apply to the surety

first $500 of loss paid by the surety. (Where the amount of the bond premium received by the surety from the principal, less the guarantee fee paid SBA, is below $500, the deductible may be that amount.) Before sharing pro rata

industry for the type of bond or bonds involved.

(3) Surety shall affirm that without the SBA guarantee to Surety, it will not issue the bond or bonds to the principal.

(4) Surety shall take all steps necessary to mitigate any loss resulting from Principal's default.

(5) Surety shall inform SBA of any suit or claim filed against Surety on any guaranteed bond within thirty (30) days of Surety's receipt of notice thereof in the Surety's home office. Unless SBA decides otherwise, and so notifies Surety within thirty (30) days of SBA's receipt of Surety's notice, Surety shall take charge of the suit or claim and compromise, settle or defend such suit or claim until so notified. SBA shall be bound by the Surety's actions in such matters. SBA may by written notice require the Surety to obtain written SBA approval before any settlement and in such cases the Surety will be liable to SBA for any damages SBA sustains as a result of a settlement which SBA has not approved.

(6) Surety shall not joint SBA in any lawsuit to which Surety is a party unless SBA has denied liability in writing or SBA has consented to such joinder.

(7) Surety shall pay SBA a portion of the bond premium in accordance with § 115.9 of these Regulations.

(8) The guarantee agreement is made exclusively for the benefit of SBA and the Surety, and does not confer any rights or benefits on any other party, including any right of action against SBA by any person claiming under the bond.

(b) *SBA's Right to Vary Terms and Conditions.* The terms and conditions of SBA's guarantee commitment or actual bond guarantee may vary from surety to surety, depending on the Administration's experience with a particular surety. In determining whether the Administration's experience with a surety warrants terms and conditions which may be at variance with terms and conditions applicable to another surety, SBA will consider, among other things, the adequacy of the surety's underwriting, the adequacy of the surety's substantiation and documentation of its claims practice, the surety's loss ratio and its efforts to minimize loss on SBA guaranteed bonds, significant departures from generally accepted surety industry practices, and other factors. Any surety which deems itself adversely affected by the exercise of the foregoing authority may file an appeal with SBA's Associate Administrator for Investment. That office will review the action pursuant to its procedures and will render the final Agency decision.

§ 115.7 Surety's underwriting standard.

In underwriting an SBA guarantee bond, the surety is expected to adhere to the surety industry's general principles and practices used in evaluating the credit, capacity, and character of a principal, taking the SBA guarantee into consideration.

§ 115.8 SBA's underwriting review.

(a) No application for bond guarantee assistance shall be approved unless the following conditions have been met:

(1) The principal must meet the standards of eligibility set forth in § 115.4 of these Regulations, and must satisfy the Administration that there is reasonable expectation that the principal will perform the convenants and conditions of the contract with respect to which a bond is required. The Administration's evaluation will consider the principal's experience and reputation, and its present and projected financial condition and needs.

(2) The Administration must be satisfied as to the reasonableness of cost and the feasibility of successful completion of the contract. The Administration's determination will take into account the standards and principles of the industry referred to in § 115.7.

(3) The bond is either a bid, performance, or payment bond issued in connection with a contract not exceeding $1,000,000 in face value and is the type of bond listed in the "Contract Bonds" section of the Rating Manual of the Surety Association of America. The bond may also be an "ancillary and coterminous" bond which is incidental to the contract and essential to its performance, e.g., a maintenance or union fringe benefit bond.

(b) *Delegation of Authority.* SBA field offices, according to delegated authority as published from time to time in the Federal Register, will take final action on all applications on contracts. Field offices, however, may *not* give oral approval to applications. An appeal by a surety for reconsideration of a decline shall be directed to the Regional Administrator/or District Director who made the decision. If the appeal decision is negative, and the surety wishes to pursue its appeal, such further appeal action will be referred to the SBA Central Office for final decision.

§ 115.9 Guarantee fees and surety bond premiums.

(a) *SBA Charge to Applicant.* No application fee and no bid bond guarantee fee will be charged by SBA. Upon obtaining the contract for which SBA is guaranteeing a payment and/or performance bond, the small business concern shall pay SBA a guarantee fee of one-half of one percent (.5%) of the contract amount.

(b) *SBA Charge to Surety.* The surety shall pay SBA a guarantee fee equal to twenty percent (20%) of the bond premium. If there is a subsequent increase in the contract amount and an increase in the face amount of the bond, the surety will remit to SBA a supplemental guarantee fee of 20 percent of the additional premium charged. If the contract amount and bond amount are reduced, SBA will refund 20 percent of the premium reduction. Premium adjustments in favor of SBA or surety which do not amount to more than $10.00 are to be disregarded.

(c) *Surety Bond Premiums.* SBA will deem acceptable a bond premium charged by the surety to a contractor which is based upon:

(1) Rates listed in the "Contract Bonds" section of the "Rating Manual" issued by the Surety Association of America; or

(2) Rates greater than "Rating Manual" rates if—(i) the surety's premium rate schedule does not charge more than 1.5 percent of the contract price, and (ii) these premium rates have been authorized by the appropriate State Insurance Department; or

(3) A minimum bond premium regardless of the contract price, if this minimum charge does not exceed $50 and has been authorized by the appropriate State Insurance Department.

(d) *Non-Premium Charges.* SBA will not approve an application for a bond guarantee where the surety makes any charge above the standard premium for the bond, except where other services are performed for the contractor and the additional charge or fee is permitted by the appropriate State Insurance Department. SBA shall not receive any portion of any non-premium charges.

§ 115.10 Surety bonding line.

A surety bonding line is a commitment to a surety company by the SBA that allows the surety to issue bid, payment, and performance bonds to a specified small contractor within preapproved terms, conditions, and limitations.

(a) *Eligibility.* SBA, in its discretion, may issue a bonding line for a particular principal with a specified surety if SBA's prior experience with the requesting surety has been satisfactory.

(b) *Application for Bonding Line.* When requesting SBA to establish a bonding line for a particular principal, the surety must provide SBA with all of the following:

(1) The appropriate forms required by SBA and any other information deemed necessary by SBA. The information should be furnished by the principal to the surety.

(2) A recommendation regarding the maximum number of SBA-guaranteed contract bonds the principal may have on hand at any one time.

(3) A recommendation regarding the maximum dollar amount of any one contract the principal may have on hand at any one time.

(4) The recommended total value of all outstanding bids plus uncompleted work (bonded and unbonded) the principal may have on hand at any one time.

(5) A specific type of work to which the principal may be restricted, and

(6) A specific geographic area to which the principal may be limited.

(c) *Establishment of a Bonding Line.* In each case where SBA approves a bonding line for a particular principal, SBA will establish:

(1) The time period during which the authorization is effective;

(2) The total dollar volume of contracts, both bonded and unbonded, which the principal may have on hand or in progress at any one time during the period of authorization;

(3) The total number of contracts, bonded and unbonded, which the principal may have on hand or in progress at any one time during the authorization period;

(4) The maximum dollar amount of any one contract; and

(5) Other restrictions deemed appropriate by SBA relating to geographic area or specific type of work eligible for bid.

(d) *Bonding Line Limitations.* In addition to any limitations of this Part 115 which are generally applicable to the Surety Bond Guarantee Program, the following restrictions apply:

(1) Contracts exceeding $500,000 in face value are not eligible.

(2) The bonding line will be limited to a specified period of time which is not to exceed one year. Upon expiration of the agreed upon period, SBA may, in writing, approve renewal of the time period.

(3) SBA may, in its discretion, set additional limitations and restrictions. The establishment of a surety bonding line for a particular small business concern will not prevent such concern from applying for bond guarantees on contracts exceeding established limits. These limits pertain only to SBA's prequalification for the particular principal under the streamlined procedures. Applications for contracts exceeding the agreed-upon limits may be made under regular Surety Bond Guarantee procedures.

(e) *Terms and Conditions.* In addition to the applicable general provisions set forth in this Part 115, the following terms and conditions shall apply to the surety bonding line:

(1) The surety may issue any number of bid or final bonds (negotiated or bid) within the limitations approved by SBA, and in accordance with these regulations.

(2) Within 30 calendar days of issuance of any final bonds, the surety must notify SBA that the bond or bonds have been issued by submitting the appropriate SBA forms. SBA may determine that the bond guarantee is void from its inception if surety fails to notify SBA in 30 days.

(3) Surety must promptly furnish SBA with all required fees, financial and credit data, indemnities, and other data deemed necessary by SBA.

(4) The principal must agree to indemnify surety for losses on each bond issued.

(5) SBA or the surety may unilaterally cancel a bonding line at any time upon written notice to the other party.

(6) The surety must determine that there is a reasonable expectation that the principal will perform the contract or contracts, and that the contract is reasonable.

§ 115.11 Loss under bond.

(a) *Loss Under Breech of Bond.* Where a breach occurs under an SBA guaranteed bond, SBA is liable for its percentage share of all losses sustained and actually paid by the surety, less the deductible amount in paragraph (b), of this section, except where:

(1) The total contract amount at the time of execution of the bond or bonds exceeds $1,000,000 in face value or

(2) The surety obtained the guarantee or agreement or applied for reimbursement for losses by fraud or material misrepresentation. Material misrepresentation includes both the making of untrue statements of material facts and the omission of statements of material facts which are necessary to make the statements not misleading in light of the circumstances under which they were made. To avoid having committed a fraud or having made a material misrepresentation, the surety must not have known the true facts, and must not have been able to ascertain them in the exercise of reasonable care.

(b) *Deductible Amount.* On any guarantee under a bond, SBA's obligation for loss payment to a surety shall commence after a deductible of the first $500 of loss paid by the surety. (Where the amount of the bond premium received by the surety from the principal, less the guarantee fee paid SBA, is below $500, the deductible may be that amount.) Before sharing pro rata with SBA any proceeds surety recovers from salvage, surety first may credit itself with the amount recovered, up to the deductible amount. For the purpose of such credit, contract proceeds or collateral held by the surety are not be considered as recoveries.

§ 115.12 Refusal to issue further guarantees.

SBA at its sole discretion may refuse to issue further guarantees to a participating surety where the Administration finds that the surety, in its underwriting of surety bonds which are or have been the subject of the SBA guarantee, or in its efforts to minimize loss, or in its claims practices, or in its documentation related to such bonds, has failed to adhere to prudent underwriting standards. SBA may also impose other sanctions against a surety which experiences excessive losses on SBA-guaranteed bonds resulting from unacceptable underwriting and/or claims practices. Any surety which has been so penalized may file an appeal with SBA's Associate Administrator for Investment. That office will review the adverse action pursuant to its procedures and will render the final Agency decision.

§ 115.13 Audit of participating sureties.

At all reasonable times, SBA may audit in the offices of a participating surety all documents, files, books, records, and other material relevant to the Administration's surety bond guarantee commitments to guarantee a surety bond or agreements to indemnify the surety. Failure of a surety to consent to such audit will be grounds for SBA to refuse to issue further surety guarantees until such time as the surety consents to such audit provided, however, that when SBA has so refused to issue further guarantees the surety may appeal such action to SBA's Associate Administrator for Investment.

(Catalog of Federal Domestic Assistance Program No. 59.016, Bond Guarantee Assistance for Surety Companies)

Dated: December 17, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-40305 Filed 12-23-80; 8:45 am]

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CIVIL AERONAUTICS BOARD

14 CFR Part 241

[FDR-417; Economic Regulations Docket 39077]

eliminated ten report schedules from the CAB Form 41 Report and eliminated requirements to file six Accounting Plans that were used to describe the procedures and methodologies air

and subject to less burdensome requirements by virtue of their 1979 operating revenues.

The new revenue boundaries would relieve many carriers of the fear of becoming subject to more burdensome

Schedule A–2 serves as the certification sheet for another form, Schedule B–46 that is filed by persons controlling an air carrier (as persons controlling an air carrier are defined in Part 241 for reporting purposes). We are

business community have changed, more line items have been added to both schedules to disclose the impact of extraordinary items, prior period adjustments, the effects of changes in

we are proposing to eliminate it from the CAB Form 41 Report.

While the Board is proposing to eliminate Schedule P–12, the carriers should remain mindful that the schedule

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CIVIL AERONAUTICS BOARD

14 CFR Part 241

[FDR-417; Economic Regulations Docket 39077]

Uniform System of Accounts and Reports for Certificated Air Carriers; Reductions in Reporting Requirements for Certificated Air Carriers

Dated: December 18, 1980.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB is inviting public comment on a proposal to reduce financial and statistical reporting requirements contained in the Board's largest information system, the CAB Form 41 Report. This proposal would reduce reporting for all air carriers holding a certificate of public convenience and necessity.

DATES: Comments by: February 23, 1981. Reply Comments by: March 10, 1981.

Comments and other relevant information received after this date will be considered by the Board to the extent practicable.

Requests to be put on the Service List by: January 8, 1981.

The Docket Section prepares the Service List and sends it to each person listed, who then serves comments on the others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 39077, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Clifford M. Rand or J. T. Curry, Data Requirements Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-6042.

SUPPLEMENTARY INFORMATION: In late 1979, the CAB began a comprehensive review of its existing information systems. An Information Planning Project Team was formed to conduct detailed reviews of existing systems and forward recommendations to a Policy Steering Committee which modified or approved the recommendations of the Project Team. As each review of an information system was completed, the Board was informed of the result.

The first tangible results of the review project were achieved with the adoption of ER-1188 on July 17, 1980. ER-1188 eliminated ten report schedules from the CAB Form 41 Report and eliminated requirements to file six Accounting Plans that were used to describe the procedures and methodologies air carriers employed in preparing reports filed with the CAB. In addition, ER-1188 amended monthly financial reporting and introduced a new schedule for reporting market statistics.

As a second step, this proposal follows on ER-1188 and two separate reports that were forwarded to the Board by the Information Planning Project Team on June 2, 1980. The recommendations in those reports have been embodied in this rulemaking notice and are discussed under the captions that follow.

Groupings for Certificated Carriers

Currently, accounting and reporting requirements contained in Part 241 (14 CFR Part 241) are scaled to carrier size with large carriers maintaining more detailed records and reporting more detailed data than medium-sized carriers who, in turn, maintain and report more than carriers who are still smaller. The current boundaries for dividing air carriers into three groups were established in 1977 at annual operating revenue levels of $25 million and $75 million. The calendar year ended December 31, 1975, was used as the base year and carriers do not automatically move from group to group as their revenues change. Instead, the regulation provides for periodic reviews and reclassifications as they become necessary.

Since 1975, carrier growth and inflation have increased operating revenues dramatically; but no action has been taken to reclassify carriers among existing groups. As a result, the Board's "scaled to size" approach to obtaining industry data for decision-making purposes is growing outdated. In some instances, carriers of approximately the same size are subject to different reporting requirements.

We are, therefore, proposing to revise the revenue boundaries upward to reflect industry revenue growth and the effects of inflation. We are proposing to raise the annual operating revenue boundary for small carriers from $25 million to $75 million and the boundary for medium-sized carriers from $75 million to $200 million using the year ended December 31, 1979, as a base year.

Under this realignment, no air carrier would have its reporting upgraded to a more burdensome level and Airlift International, Capitol International Airways, and Southwest Airlines would be recategorized as Group II air carriers and subject to less burdensome requirements by virtue of their 1979 operating revenues.

The new revenue boundaries would relieve many carriers of the fear of becoming subject to more burdensome reporting as a result of normal growth. Further, it will eliminate the normal questions which arise when governmentally applied standards do not keep abreast of changing developments and produce uneven results. In this case the uneven result occurs when carriers of approximately the same size are subject to substantially different requirements for no purpose.

We are also proposing to establish a separate subgroup of small unsubsidized carriers with operating revenues below $10 million. These carriers would be subject to a newly formulated minimum level of reporting which will enable the Board to provide additional financial and statistical reporting relief to the smallest air carriers. The new subgroup and the new minimum reporting level are being established for three reasons. First, the operations of these carriers do not ordinarily have a material impact in analyzing industry results. Second, it is consistent with the intent of the Regulatory Flexibility Act (Pub. L. 96-354). Third, it puts into motion a low burden reporting system that may prove to be the answer to data needs that will extend beyond sunset.

Before turning to a more detailed explanation of the newly formulated minimum level of reporting that would apply to the smallest certificated carriers, it would be appropriate to discuss the major reporting burden reductions that would move other carriers closer to the new minimum level.

Elimination of Certain Schedules

The proposed amendments would eliminate ten CAB Form 41 schedules in addition to the ten which have already been eliminated by ER-1188. The Information Planning Project Team recommended that the following schedules be eliminated.

Schedule	Title
A-2	Controlling Person's Certification.
B-7(a)	Reinvestment of Flight Equipment Capital Gains.
B-8(a)	Flight Equipment Capaital Gains Invested or Deposited for Reinvestment in Flight Equipment.
P-1.1	Statement of Operations—Group I Air Carriers.
P-2(a)	Revenue Market Report.
P-3.1	Transport Revenues.
P-5.1	Aircraft Operating Expenses.
P-12	Fuel Inventories and Consumption.
T-3.1	Statement of Traffic and Capacity Statistics.
T-7	Statistical Market Report.

Schedule A-2 serves as the certification sheet for another form, Schedule B-46 that is filed by persons controlling an air carrier (as persons controlling an air carrier are defined in Part 241 for reporting purposes). We are proposing to elimate Schedule A-2 because it contains no substantive information, only the signature of the person controlling an air carrier or a designated representative certifying to the accuracy of data contained on Schedule B-46.

We are also taking this opportunity to relieve "controlling persons" from filing Schedule B-46. Reporting by "controlling persons" was originally institute in Part 241 to standardize and improve disclosure of data on persons and firms that exert a control influence over air carriers. This reporting has not succeeded in meeting its original objective for a variety of reasons but mainly because it is a requirement directed to noncarrier respondents in a body of regulations (14 CFR Part 241) directed to air carrier respondents. This reporting by controlling persons on Schedule B-46 does not have a high priority in relation to the main thrust of the CAB Form 41 Report, is of doubtful value and would not be missed.

Schedules B-7(a) and B-8(a) have been used in conjuction with 14 CFR Part 235 to administer the provisions of Section 406(d) of the Federal Aviation Act. Section 406(d) prevents the Board from reducing air carrier subsidy by the amount of capital gains received on the sale of flight equipment when the gains are reinvested in flight equipment or used to retire debt incurred to purchase flight equipment and appropriate notice has been given to the Board.

We believe Schedules B-7(a) and B-8(a) are unnecessary because (1) it is very unlikely that a carrier would not reinvest gains on flight equipment within the two years provided in 14 CFR Part 235 and (2) there are other Form 41 schedules that provide the information needed to monitor flight equipment gains and flight equipment purchases. Among them are Schedules B-7, "Airframes and Aircraft Engines Acquired" and Schedule B-8, "Property and Equipment Retired".

The Board uses two different income statement schedules, one for smaller Group I carriers (Schedule P-1.1) and another for larger Group II and Group III carriers (Schedule P-1.2).

When the two schedule approach was originally developed, the differences between Schedule P-1.1 and its partner Schedule P-1.2 were more pronounced than they are today. Over the past decade, as accounting and disclosure standards desired by the American business community have changed, more line items have been added to both schedules to disclose the impact of extraordinary items, prior period adjustments, the effects of changes in accounting principles and the like. Today, there is little difference between the two schedules and we believe that by modifying Schedule P-1.2 to accommodate the smaller carriers, we can eliminate Schedule P-1.1 in its present form. As will be discussed in later paragraphs, we plan to use the schedule number for a new statement of operations for smallest carriers, those with annual revenues below $10 million.

Schedule P-2(a) provides details on revenues generated in specific markets. It has proven useful in analyzing markets in the past but this usefulness has diminished and there seems little reason to sustain it and its companion Schedule T-7, "Statistical Market Report" as recurrent filings. To the extent the information on this schedule is needed at various times, it can be obtained on an *ad hoc* basis.

Schedule P-3.1 is now filed by charter carriers. Its main function is to break down charter revenue between civilian and military revenues and military revenues again by aircraft type. In ER-1134, adopted July 19, 1979, the Board terminated its role in setting military rates and there is no longer a need for most of the detail contained in Schedule P-3.1.

Like Schedules P-1.1 and P-1.2, the CAB uses two schedules, for reporting aircraft operating expenses. Small carriers file Schedule P-5.1 and medium sized and larger carriers file Schedule P-5.2.

The use of two schedules is a by-product of the system of accounts the Board prescribes for air carriers which scales the level of accounting detail to carrier size. Schedule P-5.1 is filed by smaller carriers and contains slightly less detail than Schedule P-5.2.

We are proposing to modify the format of Schedule P-5.2 to condense the expense reporting on that schedule. We would then eliminate Schedule P-5.1 in its present form and use this schedule number for a new schedule to be filed by the smallest carriers, those with annual revenues below $10 million.

Schedules P-12 and P-12(a) are filed by all air carriers each month. Both schedules contain fuel cost data and, as a result, are often thought of as being interdependant. This, however, is not the case. Schedule P-12(a) receives extensive use for a wide variety of costing and analytical purposes inside and outside the Board. In contrast, Schedule P-12 has fallen into disuse and we are proposing to eliminate it from the CAB Form 41 Report.

While the Board is proposing to eliminate Schedule P-12, the carriers should remain mindful that the schedule has considerable value during shortage periods and that the Board would not hesitate to reimpose an inventory oriented report like Schedule P-12 if it becomes necessary at some future time.

Schedule T-3.1, "Statement of Traffic and Capacity Statistics" is filed by those carriers who have been traditionally categorized as charter carriers. Since the enactment of the Airline Deregulation Act of 1978, more and more of these carriers have begun scheduled service operations. Schedule T-3.1 does not adequately reflect this transition. Because of this, we are proposing to eliminate this schedule and have the carriers who have traditionally been considered charter carriers report statistical data on the same schedules that are used by other carriers.

Other Reductions

The proposed rule would limit the applicability of Schedules B-10 and P-4 to carriers receiving Section 406 subsidy. Schedule B-10, "Unamortized Developmental and Preoperating Costs" discloses the accumulated costs of developmental and preoperating projects that have been recorded as deferred assets. In addition to disclosing the dollars accumulated on each project, it discloses the dollar amounts amortized to expense during a calendar quarter.

Schedule P-4 is divided into three sections. The first section discloses gross revenues, gross expenses, and net income from operations that are incidental adjuncts of the air transportation services performed by air carriers. In-flight liquor sales, rents, and interchange sales are but a few examples. The other two sections of the schedule provide space for carriers to explain in detail certain types of accounting adjustments that have entered into the determination of net income during a calendar quarter.

There appears to be no pressing need for either of these schedules from unsubsidized carriers.

For carriers with 1979 revenues below $75 million, the proposed rule would eliminate Schedule B-3, "Statement of Changes in Stockholder Equity". In addition, it would relieve small carriers who are not receiving Section 406 subsidy from filing Schedule B-7, "Airframes and Aircraft Engines Acquired" and Schedule B-8, "Property and Equipment".

In addition to the other changes that are being made, we plan to relieve

carriers from having to complete the bottom portion of Schedule P-3(a), "Income Taxes; Memorandum Allocation of Income Taxes". In the bottom portion of this schedule, income taxes and investment tax credits are

Schedule P-1(a), "Interim Operations Report," which was recently adopted in ER-1188. All of these schedules, except Schedule P-1(a), are condensed versions of similar schedules required from larger carriers.

for less reporting on domestic cargo operations.[1]

Based on the experience we have obtained from the new Schedule T-8, "Report of Section 418 Operations," which was introduced into the CAB

international operations. This proposal reflects the fact that many charter carriers are now engaged in scheduled service. As the proportion of scheduled service operations continue to grow for carriers that have traditionally been

entity will embrace all operations within and between the 50 states of the United States and the Commonwealth of Puerto Rico, and the United States Virgin Islands. All other operations will be considered international.

reports shall be made by the different route and charter air carriers shall be promulgated semiannually by the Office of the Comptroller of the Civil Aeronautics Board.

Section 22—[Amended]

carriers from having to complete the bottom portion of Schedule P–3(a), "Income Taxes; Memorandum Allocation of Income Taxes". In the bottom portion of this schedule, income taxes and investment tax credits are allocated between (1) operating profit or loss and (2) nonoperating income and expense. Allocations are made on the basis of the proportion of operating and nonoperating income to the total of both, after adjustments for interest expense.

This portion of the schedule is no longer essential for regulatory purposes and the schedule itself and the reporting instructions will be amended accordingly.

Changes in Reporting of Traffic and Capacity Statistics

We are also making an effort to reduce the number of statistical schedules that medium-sized and larger air carriers file. Changes in statistical reporting would involve four steps. First, the proposal would combine current monthly Schedules T–1(a), T–1(b) and T–1(c) into a new monthly Schedule T–1. Second, quarterly Schedules T–2(a) and T–2(b) would combine into a new quarterly Schedule T–2. Third, quarterly Schedules T–3(a), T–3(b) and T–3(c) would be consolidated into new quarterly Schedules T–3(a) and T–3(b). Finally, as indicated earlier, Schedule T–3.1 for charter carriers would be eliminated. The changes would be accomplished mainly by combining service classes, and dropping or combining individual data elements.

These actions would result in a net reduction of five statistical schedules from the CAB Form 41 Report.

While this would result in a substantial reduction, we are aware that many carriers with established data processing routines may find it less burdensome to continue the present reporting requirements rather than switch to more condensed statistical reporting. Those carriers who would take this position should make a good case tht the costs associated with the changeover would be more burdensome.

Minimum Reporting Requirements for Smallest Certificated Carriers

As was discussed earlier, this proposal would introduce minimum reporting requirements for air carriers with annual operating revenues below $10 million, who do not receive Section 406 subsidy payments.

For these carriers, financial reporting would consist of a balance sheet, a statement of operations (income statement), a statement of aircraft operating expenses, an annual aircraft inventory report, and the monthly Schedule P–1(a), "Interim Operations Report," which was recently adopted in ER–1188. All of these schedules, except Schedule P–1(a), are condensed versions of similar schedules required from larger carriers.

The four new schedules would designate Schedule B–1.1, "Balance Sheet for Small Air Carriers," Schedule B–43.1, "Aircraft Inventory Data—Small Air Carriers," Schedule P–1.1, "Statement of Operations for Small Air Carriers," and Schedule P–5.1, "Statement of Aircraft Operating Expenses for Small Air Carriers".

The balance sheet, the statement of operations, and the statement of aircraft operating expenses will be filed semiannually rather than quarterly.

Statistics would be reported on a new Schedule T–2.1, "Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Aircraft Type" which would be filed quarterly. These carriers would also continue to file new Schedule T–9, "Nonstop Market Report" that was adopted in ER–1188, but this too would be on a quarterly basis.

For small certificated carriers, the minimum level of reporting being established in this rulemaking represents a significant decrease in reporting burdens. For example, under current regulations an unsubsidized Group I air carrier would be required to file 25 CAB Form 41 schedules with varying frequencies. All told, 117 schedules would be submitted to the Board each year. Under the proposed minimum for unsubsidized carriers with revenues below $10 million, the same carrier would be required to file seven CAB Form 41 schedules with varying frequencies. Each year 39 schedules would be submitted to the Board. This proposed rule would mean a 66 percent decrease for these carriers in the number of schedules filed annually.

We anticipate that the Board would not be hurt by any loss of data and the carriers would benefit greatly.

Changes in Reporting All-Cargo Operations

When Public Law 95–163 was enacted and domestic cargo operations were deregulated, a new schedule was introduced into the CAB Form 41 Report, and CAB Form 242, "Report of Scheduled All-Cargo Services" was eliminated. In addition, certified carriers were relieved from submitting service segment data for all-cargo operations. Since November 1978 the Board has been petitioned for more reporting and for less reporting on domestic cargo operations.[1]

Based on the experience we have obtained from the new Schedule T–8, "Report of Section 418 Operations," which was introduced into the CAB Form 41 Report in 1979, we have decided to proposed an amendment to the schedule and the applicable reporting instructions.

The change being proposed would make the Schedule T–8 a report of all-cargo aircraft operations with separate columns for (a) all-cargo aircraft operations within the geographic limitations of Section 418 certificates and (b) all remaining all-cargo aircraft operations. This new format would yield data that is more useful to the Board than what is presented in the current format and should not prove to be any more burdensome for the carriers than the current reporting.

In this rulemaking, we will not eliminate the reporting of belly-cargo data in service segment data as American has petitioned in Docket 35388. American claimed that reporting of belly-cargo data places them at a competitive disadvantage with all-cargo carriers that are not required to file service segment data.

Although American's complaint about a competitive disadvantage has some merit, we have not found American's concern to be widespread. Despite adoption in 1978 of a rule allowing carriers to discontinue reporting all-cargo service segment data, only two carriers (American and United) have stopped submitting it. The others apparently find the problem of disclosure to be less than the effort required to develop new automatic data processing programs to delete these data from their reports.

We believe, as will be more fully described in an order to follow, that belly-freight information is needed to properly analyze passenger operations. Moreover, we believe that once the Schedule T–8 has been modified, adequate periodic reporting will be achieved and that any additional data that is needed can be obtained on an *ad hoc* basis.

Other Changes

This rulemaking proposes full entity reporting for charter carriers which will distinguish between domestic and international operations. This proposal reflects the fact that many charter carriers are now engaged in scheduled service. As the proportion of scheduled service operations continue to grow for carriers that have traditionally been charter carriers, we see little continuing reason to treat them differently than other scheduled service carriers who also conduct charter operations.

Listings of air carriers appear in two places in Part 241 of the Economic Regulations. They appear in Section 04 classified by Group and again in Section 21 with an identification of the reporting entities (Atlantic, Pacific, Latin America, etc.) established for each carrier.

With today's regulated environment, the listings require more frequent modifications than are possible with amendments of Part 241. The proposed rule would delete both listings of air carriers from Part 241. In lieu thereof, the Office of the Comptroller would issue updated listings on a semiannual basis or more frequently if it becomes necessary.

Finally, in another matter that involves both financial and statistical reporting, the regulations would be amended to delete instructions to report as one aircraft type, all aircraft types with gross take-off weights of 12,500 pounds or less. Instead, the reporting requirements will direct carriers to comply with aircraft types prescribed in the Board's *Manual of ADP Instructions, Outputs, Codes and Related Materials*, as amended.

[1] The Air Freight Forwarders Association petitioned the Board to initiate rulemaking to require reports on inbound and outbound cargo by station from both air freight forwarders and direct air carriers (Docket 36544) and American Airlines petitioned the Board to eliminate reporting of belly-freight data in passenger/cargo service segment reports (Docket 35388).

Proposed Rule

The Board proposes to amend Part 241, Uniform System of Accounts and Reports for Certificated Air Carriers (14 CFR Part 241) as follows:

Section 4—[Removed]

1. The Table of Contents would be amended by revoking and reserving line 04 now entitled *Air Carrier Groupings and Standard Name Abbreviations.*

2. Section 04, entitled *Air Carrier Groupings and Standard Name Abbreviations* would be revoked and reserved.

3. Section 21, entitled *Introduction to system of reports* would be amended by:

Section 21—Introduction to System of Reports

A. Revising paragraph (h) to read:

* * * * *

(h) Two separate entities shall be established for air carriers predominantly engaged in conducting charter activities for the purpose of submitting the prescribed reports. These are (1) domestic operations and (2) international operations. The domestic entity will embrace all operations within and between the 50 states of the United States and the Commonwealth of Puerto Rico, and the United States Virgin Islands. All other operations will be considered international.

B. Deleting the list of air carriers from paragraph (i) and revising paragraph (i) to read:

* * * * *

(i) The entities for which separate reports shall be made by the different route and charter air carriers shall be promulgated semiannually by the Office of the Comptroller of the Civil Aeronautics Board.

Section 22—[Amended]

4. Section 22 General reporting instructions would be amended by:

A. Revising the list of schedules in CAB Form 41 Report to read:

List of Schedules in CAB Form 41 Report

Schedule No.	Title	Filing frequency	Applicability by carrier group I	II	III
A	Certification	O	(1)	X	X
B–1	Balance sheet	O	(1)	X	X
B–1.1	Balance sheet for small air carriers	S–A	(2)		
B–3	Statement of changes in stockholder equity.	O		X	X
B–5	Property and equipment	O	(1)	(1)	(1)
B–7	Airframes and aircraft engines acquired	O		X	X
B–7(b)	Flight equipment acquired	O	(1)	(1)	(1)
B–8	Property and equipment retired	O	(1)	X	X
B–10	Unamortized developmental and preoperating costs.	O	(1)	(1)	(1)
B–12	Statement of changes in financial position	O	(1)	X	X
B–13	Summary of projected financial commitments and related deposits	O	(1)	X	X
B–41	Receivables, payables and investments relating to affiliates and other investment data.	A	(1)	X	X
B–43	Inventory of airframes and aircraft engines	A	(1)	X	X
B–43.1	Aircraft inventory date—small air carriers	A	(2)		
B–46	Long-term and short-term nontrade debt	A	(1)	(1)	X
P–1.1	Statement of operations for small air carriers.	S–A	(2)		
P–1.2	Statement of operations	O	(1)	X	X
P–1(a)	Interim operations report	M	X	X	X
P–2	Notes to CAB form 41 report	O	(1)	X	X
P–3	Transport revenues depreciation and amortization; nonoperating income and expenses (net).	O	(1)	X	X
P–3(a)	Income taxes	O			
P–4	Transport-related revenues and expenses, explanation of extraordinary items and cumulative effect of accounting changes on prior years; explanation of prior period adjustments and dividends declared.	O	(1)	(1)	(1)
P–5.1	Statement of aircraft operating expenses for small carriers	S–A	(2)		
P–5.2	Aircraft operating expenses	O	(1)	X	X
P–5(a)	Components of flight equipment depreciation.	O	(1)	(1)	(1)
P–6	Maintenance, passenger service and general and administrative expense functions.	O	(1)	X	X
P–7	Aircraft and traffic servicing, and promotion and sales expense functions—group II and group III air carriers.	O		X	X
P–8	Aircraft and traffic servicing, and promotion and sales expense subfunctions—group III air carriers.	O			X
P–10	Employment statistics by labor category	A	(1)	X	X
P–12(a)	Fuel consumption by type of service and specific operational markets.	M	(1)	X	X
T–1	Traffic and capacity statistics by class of service.	M		X	X
T–2	Traffic, capacity, aircraft operations and miscellaneous statistics by type of aircraft.	Q		X	X
T–2.1	Traffic, capacity, aircraft operations and miscellaneous statistics by aircraft type.	Q	X		
T–3(a)	Airport activity statistics scheduled and nonscheduled revenue service.	Q		X	X

List of Schedules in CAB Form 41 Report—Continued

Schedule No.	Title	Filing frequency	Applicability by carrier group I	II	III
T–3(b)	Airport activity statistics nonscheduled service.	Q		X	X
T–3.1	Traffic and capacity statistics by service class and aircraft type.	Q	X		
T–4	Traffic and capacity statistics by aircraft type.	Q		X	X
T–5	Traffic and capacity statistics by service class.	Q		X	X
T–6	Traffic and capacity statistics by aircraft type.	Q		X	X
T–7	Traffic and capacity statistics by service class.	Q		X	X
T–8	Report of section 418 operations	Q		X	X
T–9	Nonstop market report	Q		X	X
T–10	Traffic and capacity statistics by aircraft type.	Q		X	X
T–11	Traffic and capacity statistics by aircraft type.	Q		X	X
T–12	Traffic and capacity statistics by aircraft type.	Q		X	X
T–13	Traffic and capacity statistics by aircraft type.	Q		X	X
T–14	Traffic and capacity statistics by aircraft type.	Q		X	X
T–15	Traffic and capacity statistics by aircraft type.	Q		X	X
T–16	Traffic and capacity statistics by aircraft type.	Q		X	X
T–17	Traffic and capacity statistics by aircraft type.	Q		X	X
T–18	Traffic and capacity statistics by aircraft type.	Q		X	X
T–19	Traffic and capacity statistics by aircraft type.	Q		X	X
T–20	Traffic and capacity statistics by aircraft type.	Q		X	X
T–21	Traffic and capacity statistics by aircraft type.	Q		X	X
T–22	Traffic and capacity statistics by aircraft type.	Q		X	X
T–23	Traffic and capacity statistics by aircraft type.	Q		X	X
T–24	Traffic and capacity statistics by aircraft type.	Q		X	X
T–25	Traffic and capacity statistics by aircraft type.	Q		X	X
T–26	Traffic and capacity statistics by aircraft type.	Q		X	X
T–27	Traffic and capacity statistics by aircraft type.	Q		X	X
T–28	Traffic and capacity statistics by aircraft type.	Q		X	X
T–29	Traffic and capacity statistics by aircraft type.	Q		X	X
T–30	Traffic and capacity statistics by aircraft type.	Q		X	X
T–31	Traffic and capacity statistics by aircraft type.	Q		X	X
T–32	Traffic and capacity statistics by aircraft type.	Q		X	X
T–33	Traffic and capacity statistics by aircraft type.	Q		X	X
T–34	Traffic and capacity statistics by aircraft type.	Q		X	X
T–35	Traffic and capacity statistics by aircraft type.	Q		X	X
T–36	Traffic and capacity statistics by aircraft type.	Q		X	X
T–37	Traffic and capacity statistics by aircraft type.	Q		X	X
T–38	Traffic and capacity statistics by aircraft type.	Q		X	X
T–39	Traffic and capacity statistics by aircraft type.	Q		X	X
T–40	Traffic and capacity statistics by aircraft type.	Q		X	X
T–41	Traffic and capacity statistics by aircraft type.	Q		X	X
T–42	Traffic and capacity statistics by aircraft type.	Q		X	X
T–43	Traffic and capacity statistics by aircraft type.	Q		X	X
T–44	Traffic and capacity statistics by aircraft type.	Q		X	X
T–45	Traffic and capacity statistics by aircraft type.	Q		X	X
T–46	Traffic and capacity statistics by aircraft type.	Q		X	X
T–47	Traffic and capacity statistics by aircraft type.	Q		X	X
T–48	Traffic and capacity statistics by aircraft type.	Q		X	X
T–49	Traffic and capacity statistics by aircraft type.	Q		X	X
T–50	Traffic and capacity statistics by aircraft type.	Q		X	X
T–51	Traffic and capacity statistics by aircraft type.	Q		X	X
T–52	Traffic and capacity statistics by aircraft type.	Q		X	X
T–53	Traffic and capacity statistics by aircraft type.	Q		X	X
T–54	Traffic and capacity statistics by aircraft type.	Q		X	X
T–55	Traffic and capacity statistics by aircraft type.	Q		X	X
T–56	Traffic and capacity statistics by aircraft type.	Q		X	X
T–57	Traffic and capacity statistics by aircraft type.	Q		X	X
T–58	Traffic and capacity statistics by aircraft type.	Q		X	X
T–59	Traffic and capacity statistics by aircraft type.	Q		X	X
T–60	Traffic and capacity statistics by aircraft type.	Q		X	X
T–61	Traffic and capacity statistics by aircraft type.	Q		X	X
T–62	Traffic and capacity statistics by aircraft type.	Q		X	X
T–63	Traffic and capacity statistics by aircraft type.	Q		X	X
T–64	Traffic and capacity statistics by aircraft type.	Q		X	X
T–65	Traffic and capacity statistics by aircraft type.	Q		X	X
T–66	Traffic and capacity statistics by aircraft type.	Q		X	X
T–67	Traffic and capacity statistics by aircraft type.	Q		X	X
T–68	Traffic and capacity statistics by aircraft type.	Q		X	X
T–69	Traffic and capacity statistics by aircraft type.	Q		X	X
T–70	Traffic and capacity statistics by aircraft type.	Q		X	X
T–71	Traffic and capacity statistics by aircraft type.	Q		X	X
T–72	Traffic and capacity statistics by aircraft type.	Q		X	X
T–73	Traffic and capacity statistics by aircraft type.	Q		X	X
T–74	Traffic and capacity statistics by aircraft type.	Q		X	X
T–75	Traffic and capacity statistics by aircraft type.	Q		X	X
T–76	Traffic and capacity statistics by aircraft type.	Q		X	X
T–77	Traffic and capacity statistics by aircraft type.	Q		X	X
T–78	Traffic and capacity statistics by aircraft type.	Q		X	X
T–79	Traffic and capacity statistics by aircraft type.	Q		X	X
T–80	Traffic and capacity statistics by aircraft type.	Q		X	X
T–81	Traffic and capacity statistics by aircraft type.	Q		X	X
T–82	Traffic and capacity statistics by aircraft type.	Q		X	X
T–83	Traffic and capacity statistics by aircraft type.	Q		X	X
T–84	Traffic and capacity statistics by aircraft type.	Q		X	X
T–85	Traffic and capacity statistics by aircraft type.	Q		X	X
T–86	Traffic and capacity statistics by aircraft type.	Q		X	X
T–87	Traffic and capacity statistics by aircraft type.	Q		X	X
T–88	Traffic and capacity statistics by aircraft type.	Q		X	X
T–89	Traffic and capacity statistics by aircraft type.	Q		X	X
T–90	Traffic and capacity statistics by aircraft type.	Q		X	X
T–91	Traffic and capacity statistics by aircraft type.	Q		X	X
T–92	Traffic and capacity statistics by aircraft type.	Q		X	X
T–93	Traffic and capacity statistics by aircraft type.	Q		X	X
T–94	Traffic and capacity statistics by aircraft type.	Q		X	X
T–95	Traffic and capacity statistics by aircraft type.	Q		X	X
T–96	Traffic and capacity statistics by aircraft type.	Q		X	X
T–97	Traffic and capacity statistics by aircraft type.	Q		X	X
T–98	Traffic and capacity statistics by aircraft type.	Q		X	X
T–99	Traffic and capacity statistics by aircraft type.	Q		X	X
T–100	Traffic and capacity statistics by aircraft type.	Q		X	X

Section 23—[Amended]

5. Section 23 *Certification and Balance Sheet Elements* would be amended by:

A. Revoking the title and reporting

should be reduced by an allowance for obsolescence to provide for losses in value.

(d) "Property and Equipment" shall be segregated into that which is owned and

with the par or stated value of the stock, shall be reported. In the case of no-par stock without stated value, the full consideration received shall be reported.

List of Schedules in CAB Form 41 Report—Continued

Schedule No.	Title	Filing frequency	Applicability by carrier group I	II	III
T-3(b)	Airport activity statistics revenue service	Q	.....	X	X
T-6	Report of civil aircraft charters	Q	(3)	(3)	X
T-8	Report of all-cargo operations	S-A	(6)	(6)	(6)
T-9	Nonstop market report	M	.....	(4)	.....
T-9	Nonstop market report	Q	(4)	.....	.....
G-41	Persons holding more than 5 per centum of respondent's capital stock.	A	(1)	X	X

M = Monthly.
Q = Quarterly.
S-A = Semiannually
A = Annually.
X—All carriers.

[1] Applicable to Group I air carriers receiving Section 406 subsidy and Group I air carriers with annual revenues of $10 million or more.
[2] Applicable to Group I air carriers with annual revenues below $10 million who do not receive Section 406 subsidy.
[3] Applicable only to air carriers receiving Section 406 subsidy.
[4] Applicable to air carriers who do not receive Section 406 subsidy.
[5] Applicable to charter carriers.
[6] Applicable to carriers conducting all-cargo operations.

B. Revising the list of due dates in CAB Form 41 Report to read:

Due Dates of Schedules in CAB Form 41 Report

Due dates [1]	Schedule No.
Jan. 20	P-12(a)
Jan. 30	P-1(a), T-1 T-2, T-2.1, T-3, T-6, T-9
Feb. 10 [2]	A, B-1, B-1.1, B-3, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, P-1 1, P-1 2, P-2, P-3, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, P-10
Feb. 20	P-12(a)
Mar. 1	P-1(a), T-1, T-9
Mar. 20	P-12(a)
Mar 30	B-41, B-43, B-43.1, B-46, P-1(a), G-41, T-1, T-8, T-9
Apr. 20	P-12(a)
Apr. 30	P-1(a), T-1, T-2, T-2.1, T-3, T-6, T-9
May 10	A, B-1, B-3, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, P-1 2, P-2, P-3, P-3(a), P-4, P-5.2, P-5(a), P-6, P-7, P-8
May 20	P-12(a)
May 30	P-1(a), T-1, T-9
June 20	P-12(a)
June 30	P-1(a), T-1, T-9
July 20	P-12(a)
July 30	P-P-1(a), T-1, T-2, T-2.1, T-3, T-6, T-9
Aug. 10	A, B-1, B-1.1, B-3, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, P-1 1, P-1 2, P-2, P-3, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, T-8
Aug. 20	P-12(a)
Aug. 30	P-1(a), T-1, T-9
Sep. 20	P-12(a)
Sep. 30	P-1(a), T-1, T-9
Oct. 20	P-12(a)
Oct. 30	P-1(a), T-1, T-2, T-2.1, T-3, T-6, T-9
Nov. 10	A, B-1, B-3, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, P-1 2, P-2, P-3, P-3(a), P-4, P-5 2, P-5(a), P-6, P-7, P-8
Nov. 20	P-12(a)
Nov. 30	P-1(a), T-1, T-9
Dec. 20	P-12(a)
Dec. 30	P-1(a), T-1, T-9

[1] Due dates falling on a Saturday, Sunday or national holiday will become effective the first following work day
[2] B and P reporting due dates are extended to March 30, if preliminary schedules are filed at the Board by February 10

C. Revising paragraph (e) to read:

(e) All financial data reported on B, P and G schedules shall reflect the status of the air carrier's books of account for the period for which the report is being made and shall conform to the intructions contained in this Uniform Systems of Accounts and Reports. At the option of the air carrier, Group III air carriers may round reported financial data to the nearest thousands of dollars by typing "($000)" at the top of each amount column. All Group I and Group II air carriers may, at their option, round reported financial data to the nearest whole dollars by dropping the cents. All rounded amounts must be balanced within and between schedules.

Section 23—[Amended]

5. Section 23 *Certification and Balance Sheet Elements* would be amended by:

A. Revoking the title and reporting instructions for Schedule A–2, *Controlling Person's Certification.*

B. Revising paragraph (a) of the reporting instructions for Schedule B–1 to read:

Schedule B–1—Balance Sheet

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

* * * * *

C. Adding an account title and reporting instructions for a new Schedule B–1.1 immediately following the reporting instructions for Schedule B–1 to read:

Schedule B–1.1—Balance Sheet for Small Carriers

(a) This schedule shall be filed semiannually by Group I air carriers with annual revenues below $10 million who do not receive Section 406 subsidy.

(b) This schedule shall show the account balances at the close of business on the last day of each reporting period.

(c) "Current Assets" shall include all resources that may reasonably be expected to be realized in cash or sold or consumed within one year. This group of assets is classified into three basic accounts:

(1) "Cash and Equivalents" shall include cash on hand and on deposit, U.S. Government securities and other temporary cash investments.

(2) "Notes and Accounts Receivable—Net" shall include general traffic accounts receivable, government receivables, notes and receivables from associated companies, officers, employees and others and a deduction for a reasonable allowance for bad debts.

(3) "Other Current Assets" shall contain all other current assets not provided for in the above classification. This account shall include, but is not limited to short term prepayments, spare parts, supplies and other inventories of flight equipment replacement parts that are usually replaced rather than repaired and materials and supplies held in stock such as fuel and oil, expendable tools, office supplies and food service supplies. Spare parts should be reduced by an allowance for obsolescence to provide for losses in value.

(d) "Property and Equipment" shall be segregated into that which is owned and that which is leased under capital leases. All property and equipment, with the exception of land, shall be reported net of accumulated depreciation or amortization.

(e) "Other Assets" shall include all assets not included in the above categories, sich as long-term investments, long-term prepayments, long-term receivables, land, deferred charges, intangible assets, equipment purchase deposits and construction work in progress.

(f) "Current Liabilities" shall include all obligations, the liquidation of which is reasonably expected to require the use of existing resources within one year. This group of liabilities is classified into three basic accounts:

(1) "Notes and Accounts Payable" shall include any payments on long-term debt, short-term notes and accounts payable and accrued expenses that are payable within one year.

(2) "Accrued Taxes" shall include tax liabilities such as those imposed on income, property and payroll, which are reasonably expected to be liquidated within one year.

(3) "Other Current Liabilities" shall include all current liabilities which are not provided for elsewhere, such as air traffic liabilities for unused transportation sold (includes sales of transportation on both the reporting carrier and other carriers.)

(g) "Long-Term Debt" shall include all obligations which are not reasonably expected to be liquidated within one year. Typical examples include bonds payable, long-term notes payable, lease obligations, and pension obligations.

(h) "Other Liabilities" shall include any debts or obligations which are not properly listed in the "Current Liabilities" or "Long-Term Debt" sections.

(i) "Deferred Credits" shall include all credit balances of a general clearing nature, including credits held in suspense pending receipt of further information necessary for final disposition. Included in this account are deferred income taxes and deferred investment tax credits.

(j) "Stockholder's Equity" shall be reported as follows:

(1) "Capital Stock" shall be segregated as between common and preferred. The number of shares outstanding, along with the par or stated value of the stock, shall be reported. In the case of no-par stock without stated value, the full consideration received shall be reported.

(2) "Other Paid-In Capital" shall include the difference between the price at which the capital stock is sold and the par or stated value of the stock.

(3) "Retained Earnings" shall represent the net income or loss from all operations of the corporate entity less dividends.

(4) "Treasury Stock" shall represent the cost of stock issued by the carrier and reaquired by it but not retired or cancelled.

(k) The statement of certification shall be signed by the carrier's chief accounting officer.

All substantive matters that may materially influence interpretations or conclusions in regard to the financial condition or the earnings position of the air carrier which are not clearly identified in the body of the schedule or which represent information that cannot be expressed adequately in monetary terms shall be completely and clearly stated in a note attached to this schedule and cross-referenced to the affected account or accounts. The informative disclosure on this schedule shall conform, at the end of each calendar year, with the footnotes that either have been or would have been prepared for audited financial statements.

D. Revising paragraph (a) of the reporting instructions for Schedule B–3 to read:

Schedule B–3—Statement of Changes in Stockholder Equity

(a) This schedule shall be filed by all Group II and Group III air carriers.

* * * * *

E. Revising paragraph (a) of the reporting instructions for Schedule B–7 to read:

Schedule B–7—Airframes and Aircraft Engines Acquired

(a) This schedule shall be filed by all Group II and Group III air carriers.

* * * * *

F. Revising paragraph (a) of the reporting instructions for Schedule B–7(b) to read:

Schedule B–7(b)—Flight Equipment Acquired

(a) This schedule shall be filed by all carriers receiving Section 406 subsidy. Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

* * * * *

N. Adding an account title and

and (2) Capitalized Value (column 6) less Amortization (column 7).

(h) Column 9 "Estimated Residual Value" shall reflect dollars the residual value assigned to owned and leased

(2) "Transport-Related Revenue" shall include monies received for providing air transportation facilities associated with the performance of services which flow from and are incidental to air transportation services performed by the

(1) Interest Expense.
(2) Other Nonoperating (Net).

(g) "Income Tax" shall reflect the provision for accruals of Federal, State, local, and foreign taxes based upon taxable income, and computed at the

filing option described in Section 22—General Reporting Instructions shall, for the third month of any calendar quarter during which the option is exercised, type in the bottom margin of the system statement of operations the total number

Schedule B–7(b)—Flight Equipment Acquired

(a) This schedule shall be filed by all carriers receiving Section 406 subsidy.

* * * * *

G. Revoking the title and reporting instructions for Schedule B–7(a)—*Reinvestment of Flight Equipment Capital Gains.*

H. Revoking the title and reporting instructions for Schedule B–8(a)—*Flight Equipment Capital Gains Invested or Deposited for Reinvestment in Flight Equipment.*

I. Revising paragraph (a) of the reporting instructions for Schedule B–10 to read:

Schedule B–10—Unamortized Developmental and Preoperating Costs

(a) This schedule shall be filed by air carriers receiving Section 406 subsidy.

* * * * *

J. Revising paragraph (a) of the reporting instructions for Schedule B–12 to read:

Schedule B–12—Statement of Changes in Financial Position

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

* * * * *

K. Revising paragraph (a) of the reporting instructions for Schedule B–13 to read:

Schedule B–13—Summary of Projected Financial Commitments and Related Deposits

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy.

* * * * *

L. Revising paragraph (a) of the reporting instructions for Schedule B–41 to read:

Schedule B–41—Receivables, Payables and Investments Relating to Affiliates and Other Investment Data

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

* * * * *

M. Reivising paragraph (a) of the reporting instructions for Schedule B–43 to read:

Schedule B–43—Inventory of Airframes and Aircraft Engines

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

* * * * *

N. Adding an account title and reporting instructions for a new Schedule B–43.1 immediately following the reporting instructions for Schedule B–43 to read:

Schedule B–43.1—Aircraft Inventory Data—Small Air Carriers

(a) This schedule shall be filed annually by Group I air carriers with annual revenues below $10 million who do not receive Section 406 subsidy.

(b) The indicated data shall be reported for each individual airframe, identified by type, model, and design of cabin as to use for passengers exclusively, cargo exclusively, or both passengers and cargo in combination. Data pertaining to aircraft engines shall be reported on a group basis by type of engine and by type of aircraft to which related.

(c) Data in this schedule shall be grouped and subtotaled as between data pertaining to airframes and data pertaining to aircraft engines. Data pertaining to nonoperating airframes and aircraft engines shall be reported in a group below the data for operating equipment. Data pertaining to airframes and aircraft engines obtained under capital leases shall be reported in a separately captioned grouping below nonoperating airframes and aircraft engines and subgrouped therein according to operating and nonoperating equipment.

(d) The data to be reported shall include owned and capitalized leased airframes and aircraft engines currently in operation or in conversion. Data pertaining to airframes and aircraft engines obtained under capital leases shall be captioned separately from owned equipment.

(e) Column 6 "Acquired Cost or Capitalized Value" shall include (1) the acquisition cost of owned airframes and aircraft engines and (2) the total capitalized cost of obtaining airframes and engines under capital leases.

(f) Column 7 "Allowance for Depreciation or Amortization" shall include (1) the accumulations of all provisions for losses due to use and obsolescence that are applicable to owned airframes and aircraft engines and (2) the amount of amortization recorded for amortizing the value of airframes and engines obtained under capital leases.

(g) Column 8 "Depreciated Cost or Amortized Value" shall reflect (1) Acquired Cost (column 6) less the Allowance for Depreciation (column 7) and (2) Capitalized Value (column 6) less Amortization (column 7).

(h) Column 9 "Estimated Residual Value" shall reflect dollars the residual value assigned to owned and leased airframes and aircraft engines, including any overhaul value not subject to depreciation.

(i) Column 10 "Estimated Depreciable or Amortizable Life (Months)" shall reflect the estimated depreciable or amortizable life of each airfame and each group of aircraft engines.

O. Revising paragraph (a) of the reporting instructions for Schedule B–46 to read:

Schedule B–46—Long-Term and Short-Term Nontrade Debt

(a) This schedule shall be filed by Group III air carriers and Group I air carriers and Group II air carriers that receive Section 406 subsidy.

* * * * *

Section 24—[Amended]

6. Section 24 Profit and Loss Elements would be amended by:

A. Adding separate reporting instructions for a revised Schedule P–1.1 to read:

Schedule P–1.1—Statements of Operations for Small Air Carriers

(a) This schedule shall be filed semiannually by Group I air carriers with annual revenues below $10 million who do not receive Section 406 subsidy.

(b) This schedule shall show the results of operations for six-month periods ending June 30 and December 31.

(c) "Operating Revenue" shall be categorized as follows:

(1) "Transport Revenue" shall include the revenue generated by the performance of air transportation services. This category shall be subdivided as follows:

(*a*) "Scheduled Service" shall include all transport revenue derived from operations between pairs of points which are served on a regularly schedules basis. Transport revenue received from scheduled service operations shall be categorized as follows:

(i) Passengers. Revenue generated from the transportation of passengers shall be included in this category.

(ii) Other. Revenue generated by the transportation of property and mail shall be included in this category.

(*b*) "Nonscheduled Service" shall include all transport revenue derived from operations between pairs of points which are not served on a regulatory scheduled basis.

(2) "Transport-Related Revenue" shall include monies received for providing air transportation facilities associated with the performance of services which flow from and are incidental to air transportation services performed by the air carrier. This category shall be subdivided as follows:

(*a*) Public Service Revenue. This category shall include amounts of compensation paid to the carrier under Section 419 of the Federal Aviation Act.

(*b*) Other. This category shall include other transport-related revenue such as in-flight sales, restaurant and food service (ground), rental of property or equipment, limousine service, interchange sales, and cargo pick-up and delivery charges.

(d) "Operating Expense" shall be segregated as follows:

(1) "Flying Operations" shall include expenses incurred directly in the in-flight operation of aircraft and expenses attaching to the holding of aircraft and aircraft operation personnel in readiness for assignment to an in-flight status.

(2) "Maintenance" shall include all expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation.

(3) "General and Administrative" shall include the portion of all expenses of a general corporate nature and all other expenses not provided for elsewhere which are related to air transport operations either directly or indirectly.

(4) "Depreciation and Amortization" shall include all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services. These expenses shall be segregated between those applicable to owned property and equipment and those applicable to property and equipment which is leased.

(5) "Transport Related Expense" shall include all expenses associated with the transport related revenues reported on line 5 of this schedule.

(e) "Operating Profit (Loss)" shall be computed by subtracting the total operating expenses from the total revenues.

(f) "Nonoperating Income and Expense" shall include all revenues and expenses resulting from commercial ventures which are not inherently related to the performance of air transport services. For example, the revenues and expenses related to operating a hotel or motel would be reported under this category. This category shall also include the total interest expense incurred from all sources and be subdivided as follows:

(1) Interest Expense.

(2) Other Nonoperating (Net).

(g) "Income Tax" shall reflect the provision for accruals of Federal, State, local, and foreign taxes based upon taxable income, and computed at the normal and surtax rates in effect during the current accounting year.

(h) "Discontinued Operations, Extraordinary Items or Accounting Changes" shall reflect any earnings or losses from discontinued operations, the net of the tax amount of extraordinary items, and the cumulative effect of any changes in accounting principles.

B. Establishing separate reporting instructions for Schedule P–1.2 to read:

Schedule P–1.2—Statement of Operations

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

(b) Route and charter carriers shall file separate statements of operations for each separate operating entity and for the overall, or system operations.

(c) [Reserved]

(d) Data reported on this schedule shall conform with the instructions pertaining to profit and loss classifications within this Uniform System of Accounts and Reports.

(e) Data reported in the "12 Months-to-Date" column shall represent for each individual item the sum of amounts reported in the "Quarter" column for the current and next previous three quarters. Data in the "Year-to-Date" column need not be provided when this schedule is not used for submission to the SEC. But when the schedule is used for SEC purposes, data reported in the "Year-to-Date" column shall represent, for the first three quarters of the carrier's fiscal year or calendar year, amounts from the beginning of the carrier's fiscal or calendar year to the end of the quarter for which the schedule is being submitted. For the fourth quarter of the air carrier's fiscal or calendar year, the "Year-to-Date" column should be used for the comparative presentative of data for the prior year.

(f) Earnings per share data shall be filed on a quarterly basis by those air carriers that are required to file such data with the Securities and Exchange Commission.

(g) This schedule has been designed to facilitate the presentation of comparative data for prior periods when used in submissions to the Securities and Exchange Commission.

(h) Any air carrier that does not file Schedule P–1(a) in accordance with the filing option described in Section 22—General Reporting Instructions shall, for the third month of any calendar quarter during which the option is exercised, type in the bottom margin of the system statement of operations the total number of full-time and part-time employees to be labeled as such and calculated in accordance with paragraph (d) of the reporting instructions for Schedule P–1(a).

C. Revising paragraphs (a) and (b) and revoking and reserving paragraphs (l) and (m) of the reporting instructions for Schedule P–2 to read:

Schedule P–2—Notes to CAB Form 41 Report

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity and the overall or system operations of the carrier.

(c) All substantive matters * * *

* * * * * *

(l) (Reserved)

(m) (Reserved)

* * * * * *

D. Revoking the title and reporting instructions for Schedule P–2(a)—*Revenue Market Report*

E. Revoking the title and reporting instructions for Schedule P–3.1—*Transport Revenues*

F. Revising paragraphs (a) and (c) of the reporting instructions for Schedule P–3(a) to read:

Schedule P–3(a)—Income Taxes

(a) This schedule shall be filed by all Group III air carriers.

* * * * * *

(c) Report in accounts 91.1 through 93.2, respectively, the amount for each as reflected in the books of account. Accounts 93.7, 93.8 and 93.9 shall reflect income taxes for the current period, income taxes on extraordinary items, and total income taxes, respectively.

G. Revising paragraph (a) of the reporting instructions for Schedule P–4 to read:

Schedule P–4—Transport-Related Revenues and Expenses; Explanation of Extraordinary Items and Cumulative Effect of Accounting Changes in Prior Years; Explanation of Prior Period Adjustments and Dividends Declared

(a) This schedule shall be filed by air carriers receiving Section 406 subsidy.

* * * * * *

H. Adding separate reporting instructions for a revised Schedule P–5.1 to read:

Schedule P–5.1—Traffic and Capacity Statistics—Small Air Carriers

(a) This schedule shall be filed by Group I air carriers with annual revenues below $10 million who do not receive Section 406 subsidy.

(b) This schedule shall show the results of operations for six-month periods ending June 30 and December 31.

(c) Data reported in this schedule shall be for the carrier's own operations and for operations performed for the carrier by others.

(d) Data reported in this schedule shall conform with the instructions pertaining to traffic and capacity statistics within this Uniform System of Accounts and Reports.

(e) Data reported in the "12 Months-to-Date" column shall represent for each individual item the sum of amounts reported in the "Quarter" column for the current and next previous three quarters. Data in the "Year-to-Date" column need not be provided when this schedule is not used for submission to the SEC. But when the schedule is used for SEC purposes, data reported in the "Year-to-Date" column shall represent, for the first three quarters of the carrier's fiscal year or calendar year, amounts from the beginning of the carrier's fiscal or calendar year to the end of the quarter for which the schedule is being submitted. For the fourth quarter of the air carrier's fiscal or calendar year, the "Year-to-Date" column should be used for the comparative presentative of data for the prior year.

(f) Data relating to each type of aircraft shall not be required.

(g) "Aircraft Type" refers to models of aircraft operated by the carrier. Data relating to each aircraft type shall be reported on a separate line. Data relating to aircraft types not listed shall be reported on the line labeled "Other."

(h) Data relating to aircraft leased from others shall be reported on the same basis as owned aircraft.

(i) Data relating to aircraft leased to others shall not be reported.

(j) Data relating to aircraft leased from others for periods of less than 30 days shall not be reported.

(k) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(l) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(m) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(n) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(o) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(p) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(q) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(r) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(s) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(t) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(u) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(v) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(w) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(x) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(y) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(z) Data relating to aircraft leased from others for periods of 30 days or more shall be reported on the same basis as owned aircraft.

(2) Consolidate objective accounts 42.1, 42.2 and 42.3 and report the total of these accounts on line 42.6.

N. Revoking the title and reporting

Code	Elements
X110	Revenue Passengers Enplaned.
X140	Revenue Passenger-Miles.

H. Adding separate reporting instructions for a revised Schedule P–5.1 to read:

Schedule P–5.1—Statement of Aircraft Operating Expenses for Small Air Carriers

(a) This schedule shall be filed semiannually by Group I air carriers with annual revenues below $10 million who do not receive Section 406 subsidy.

(b) This schedule shall show the direct and indirect expenses incurred in aircraft operations. Direct expense data applicable to each aircraft type operated by the carrier shall be reported in separate columns of this schedule, and each aircraft type reported shall be identified at the head of each column in the space provided below "Aircraft Type." "Aircraft Type" refers to aircraft models such as Beech–18, Piper PA–32, etc. Aircraft Type designations are prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material.* In the space provided for "Aircraft Code" carriers shall insert the four digit code for the aircraft type which are also prescribed in the *Manual of ADP Instructions, Outputs, Codes and Related Material.*

(c) Direct aircraft operating expenses shall be reported in the following categories:

(1) "Flying Operations" shall include pilots', copilots' and other flight personnel salaries, related employee benefits, pensions, payroll taxes and personnel expenses, and general (hull) insurance.

(2) "Fuel" expense-flight equipment shall include the cost of fuel used in flight operations.

(3) "Oil" expense-flight equipment shall include the cost of oil used in flight operations.

(4) "Maintenance" expense-flight equipment shall include the cost of labor and material expended by the carrier to maintain flight equipment, general services purchased for flight equipment maintenance from associated or other outside companies and provisions for flight equipment overhauls.

(5) "Depreciation and Rental" expense-flight equipment shall include depreciation of flight equipment, amortization of capitalized leases for flight equipment, rental expense and provision for obsolescence and deterioration of spare parts.

(d) Indirect aircraft operating expenses shall be reported in total for all aircraft types only and shall be segregated according to the following categories:

(1) "Traffic Related Expenses" shall include traffic solicitor salaries, traffic commissions, passenger food expense, traffic liability insurance, advertising and other promotion and publicity expenses, and the fringe benefit expenses related to all salaries in this classification.

(2) "Capacity Related (Station) Expenses" shall include aircraft and traffic handling salaries, landing fees, clearance, customs and duties, and related fringe benefit expenses.

(3) "Capacity Related (Other) Expenses" shall include all other operating expenses not included in the above categories.

I. Establishing separate reporting instructions for Schedule P–5.2 to read:

Schedule P–5.2—Aircraft Operating Expenses

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity of the air carrier.

(c) Route air carriers shall file this schedule with quarterly data only for the first three quarters of each calendar year and shall file both quarterly and 12 months-to-date data for the period ended December 31. An "x" shall be inserted in the box designated "Qr" at the head of each column of the set covering quarterly data and an "x" shall be inserted in the box designated "Yr" at the head of each column of the set covering 12 months-to-date data.

(c-1) Charter air carriers shall file this schedule for quarterly data only.

(d) Data applicable to each aircraft type operated by the air carrier shall be reported in separate columns of this schedule, and each aircraft type for which report is being made shall be identified at the head of each column in the space provided opposite "Aircraft Type." All aircraft shall be separately reported as distinct aircraft types as established in the *Manual of ADP Instructions, Outputs, Codes and Related Material.* For route air carriers, expenses of operating aircraft provided by other carriers under interchange agreements shall be separately reported in total for all such aircraft as if for a distinct aircraft type. Interchange expenses applicable to aircraft of the same type as those owned or operated by the accounting air carrier shall be distributed in summary memo form as item 98.1 and 98.2 to each aircraft type owned or operated by the accounting air carrier. Aircraft types not generally used in revenue services shall be separatel reported. If more than one type of aircraft is involved, a separation of data relating to each type of aircraft shall not be required.

(e) "Aircraft Type" refers to models such as B–707–100, B–707–300, DC–9–30, etc. "Aircraft Code" refers to a four-digit aircraft code established in the *Manual of ADP Instructions, Outputs, Codes and Related Material.* Data applicable to aircraft designed primarily for cargo services and only incidentally used for passenger services shall be reported in separate columns, and the word "cargo" shall be inserted after the aircraft type at the head of the column. The prescribed reporting by aircraft types may be reviewed from time to time upon requests by individual air carriers, or upon the initiative of the Board, and groupings of aircraft types for reporting purposes may be prescribed or amended in specific instances.

(f) Italicized codes and item titles do not constitute accounts or account numbers prescribed for air carrier accounting but shall be used for reporting purposes only.

(g) Item 79.6 Applied Maintenance Burden shall reflect a memorandum allocation by each air carrier of the total expenses included in subfunction 5300 Maintenance Burden between maintenance of flight equipment, by aircraft types, and maintenance of ground property and equipment in accordance with item (g) of the instructions for Schedule P–6. The amount reported for this item, in aggregate for all aircraft types, shall agree with the amount reported for the same item reflected on Schedule P–6.

(h) Item 73.1 Current Provisions (for obsolescence and deterioration of flight equipment expendable parts) shall reflect the gross provisions for losses in value of expendable parts during the current accounting period.

(i) Item 73.2 Inventory Decline Credits shall reflect credits applicable to the current period for any adjustments for excess inventory levels determined pursuant to section 6–1311.

(j) The total of function 5100 Flying Operations reported on this schedule shall agree with corresponding amounts reported on Schedule P–1; the total of item 5278 Total Direct Maintenance—Flight Equipment shall agree with the corresponding amount reported in Schedule P–6 and for route air carriers, the total of item 75.6 Total Depreciation—Flight Equipment shall agree with the corresponding amount in Schedule P–3.

(k) Group II and Group III air carriers shall:

(1) Consolidate objective accounts 25.1, 25.2 and 25.3 and report the total of these accounts on line 25.6.

(2) Consolidate objective accounts 42.1, 42.2 and 42.3 and report the total of these accounts on line 42.6.

(3) Consolidate objective accounts 43.1, 43.2 and 43.3 and report the total of these accounts on line 43.6.

(4) Consolidate objective accounts 46.1, 46.2 and 46.3 and report the total of these accounts on line 46.6.

J. Revising paragraphs (a), (b) and (d) of the reporting instructions for Schedule P–6 to read:

Schedule P–6—Maintenance, Passenger Service and General Services and Administration Subfunctions

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity.

* * * * *

(d) Charter air carriers shall file this schedule for quarterly data only.

* * * * *

K. Revising paragraphs (b) and (d) of the reporting instructions for Schedule P–7 to read:

Schedule P–7—Aircraft and Traffic Servicing, Promotion and Sales and General and Administrative Expense Functions

* * * * *

(b) Route and charter air carriers shall file this schedule for each separate entity.

* * * * *

(d) Charter carriers shall file this schedule for quarterly data only.

* * * * *

L. Revising paragraph (b) and (d) of the reporting instructions for Schedule P–8 to read:

Schedule P–8—Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions

* * * * *

(b) Route and charter air carriers shall file this schedule for each separate entity.

* * * * *

(d) Charter air carriers shall file this schedule for quarterly data only.

* * * * *

M. Revising paragraph (a) of the reporting instructions for Schedule P–10 to read:

Schedule P–10—Employment Statistics by Labor Category

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

N. Revoking the title and reporting instructions for Schedule P–12—*Fuel Inventories and Consumption.*

O. Revising paragraph (a) of the reporting instructions for Schedule P–12(a) to read:

Schedule P–12(a)—Fuel Consumption by Type of Service and Specific Operational Markets

(a) This schedule shall be filed by Group II and Group III air carriers and Group I air carriers that receive Section 406 subsidy or have annual revenues of $10 million or more.

* * * * *

7. Section 25 Traffic and Capacity Elements would be amended by:

A. Revoking the title and reporting instructions to Schedule T–1(a)—*Traffic and Capacity Statistics by Class of Service,* Schedule T–1(b)—*Traffic and Capacity Statistics by Class of Service—Scheduled Services* and Schedule T–1(c)—*Traffic and Capacity Statistics by Class of Service—Nonscheduled Services*

B. Adding reporting instructions for a new Schedule T–1 to read:

Schedule T–1—Traffic and Capacity Statistics by Class of Service

(a) Schedule T–1 shall be filed monthly by all Group II and Group III air carriers.

(b) Separate schedules shall be filed for each operating entity of the air carrier.

(c) The data shall be compiled as aggregates of the basic data prescribed in Section 19, Uniform Classification of Operating Statistics.

(d) A description of each item and the identifying code shall be given in the left margin, and separate columns shall be used to present data for the following classifications:

(1) Scheduled Combined Passenger-Cargo—the sum of Scheduled First Class Passenger-Cargo Service, Scheduled Coach Passenger-Cargo Service and Scheduled Mixed Passenger-Cargo Service.

(2) Scheduled Cargo Service.

(3) Combined Passenger-Cargo—the sum of Nonscheduled Civilian Passenger-Cargo Service and Nonscheduled Military Passenger-Cargo Service.

(4) Nonscheduled Cargo Service—the sum of Nonscheduled Civilian Cargo Service and Nonscheduled Military Cargo Service.

In addition, columns are provided for total scheduled and total nonscheduled services. The schedule shall include the following items:

Code	Elements
X110	Revenue Passengers Enplaned
X140	Revenue Passenger-Miles.
X141	First Class.
X142	Coach.
X240	Revenue Ton-Miles.
X241	Passenger.
X243	U.S. Mail (the sum of X243 U.S. Mail—Priority and X244 U.S. Mail—Nonpriority).
X247	Freight (the sum of X245 Foreign Mail, X246 Express and X247 Freight).
X280	Available Ton-Miles.
X320	Available Seat-Miles.
X321	First Class.
X322	Coach.
X410	Revenue Aircraft Miles Flown
X430	Revenue Aircraft Miles Scheduled
X431	Scheduled Aircraft Miles Completed.
X510	Revenue Aircraft Departures Performed
X610	Revenue Aircraft Hours (Airborne)

C. Revoking the title and reporting instructions to Schedule T–2(a)—*Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft* and Schedule T–2(b)—*Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft.*

D. Adding reporting instructions for a new Schedule T–2 following the instructions to Schedule T–1 to read:

Schedule T–2—Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft

(a) Schedule T–2 shall be filed quarterly by all Group III and Group II air carriers.

(b) Separate schedules shall be filed for each operating entity of the air carrier.

(c) The data shall be compiled as aggregates of the basic data prescribed in Section 19, Uniform Classification of Operating Statistics.

(d) A description of each item and the identifying code shall be given in the left margin, and separate columns shall be used for the data applicable to each type of aircraft as identified for reporting purposes by the Civil Aeronautics Board. Aircraft of the same basic structure, but different cabin design shall be classified accordingly as passenger or cargo aircraft types. The schedule shall include the following items:

Code	Elements
	Scheduled Services
	Revenue Passenger-Miles (000).
K141	First Class
K142	Coach
	Available Seat-Miles (000)
K321	First Class
K322	Coach
K240	Revenue Ton-Miles
K280	Available Ton-Miles
K410	Revenue Aircraft Miles Flown
	Nonscheduled Services
V140	Revenue Passenger-Miles (000).
V320	Available Seat-Miles (000).
V240	Revenue Ton-Miles

Code	Elements
V280	Available Ton-Miles.
V410	Revenue Aircraft Miles Flown
	Aircraft Hours Flown—All Services
V310	Aircraft Hours (Airborne).
V630	Aircraft Hours (Ramp-to-Ramp).
	Aircraft Departures—All Services
V510	Aircraft Departures Performed.
	Aircraft Miles—All Services
V410	Aircraft Miles Flown.
	Available Capacity—All Services
V320	Available Seat-Miles (000).
V280	Available Ton-Miles.
	Traffic—All Services
V240	Revenue Ton-Miles.
V140	Revenue Passenger-Miles (000).
V110	Revenue Passengers Enplaned.
V243	U.S. Mail Ton-Miles.
V247	Freight Ton-Miles.

Code	Elements
	Aircraft Hours Flown—All Services
V310	Aircraft Hours (Airborne).
V630	Aircraft Hours (Ramp-to-Ramp).
	Aircraft Departures—All Services
V510	Aircraft Departures Performed.
	Aircraft Miles—All Services
V410	Aircraft Miles Flown.
	Available Capacity—All Services
V320	Available Seat-Miles (000).
V240	Revenue Ton-Miles.
V280	Available Ton-Miles.
V410	Revenue Aircraft Miles Flown.
V510	Revenue Aircraft Departures Performed.
V630	Revenue Aircraft Hours (Ramp-to-Ramp).
	Traffic—All Services
V240	Revenue Ton-Miles.
V140	Revenue Passenger-Miles (000).
V110	Revenue Passengers Enplaned.
V243	U.S. Mail Ton-Miles.
V247	Freight Ton-Miles.

data, the totals for international off-line data shall be reported in columns 2 through 14, inclusively. The on-line total and off-line domestic and international data totals will then be added and the sums appropriately noted. The schedule

unsubsidized Group II carriers providing scheduled service and may be used, with the approval of the Director, Office of Economic Analysis, by new entrants and others without Automatic Data Processing capability that would

listed, who then serves comments on others on the list.

ADDRESSES: Twenty copies of coments should be sent to Docket 38470, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

In their capacity as indirect air carriers, they are required to register with the Board and to follow its regulations. Under those regulations, a cooperative shippers association is a nonprofit organization that handles freight of its

Code	Elements
V280	Available Ton-Miles.
V410	Revenue Aircraft Miles Flown.
	Aircraft Hours Flown—All Services
Z610	Revenue Aircraft Hours (Airborne).
Z650	Total Aircraft Hours (Airborne).
	Miscellaneous Operating Factors
Z810	Aircraft Days Assigned to Service—Carrier's Equipment.
Z820	Aircraft Days Assigned to Service—Carrier's Routes.
Z411	Revenue Aircraft Miles in Scheduled Service Excluding Extra Section.
Z630	Aircraft Hours (Ramp-to-Ramp).
Z921	Aircraft Fuels Issued (gallons).

E. Adding reporting instructions for a new Schedule T–2.1 following the instructions to Schedule T–2 to read:

Schedule T–2.1—Traffic, Capacity, Aircraft Operations, and Miscellaneous Statistics by Type of Aircraft

(a) Schedule T–2.1 shall be filed quarterly by all Group I air carriers.

(b) Separate schedules shall be filed for each operating entity of the air carrier.

(c) The data shall be compiled as aggregates of the basic data prescribed in Section 19, Uniform Classification of Operating Statistics.

(d) A description of each item and the identifying code shall be given in the left margin, and separate columns shall be used as indicated on the schedule for the data applicable to each type of aircraft as identified for reporting purposes by the Civil Aeronautics Board. Aircraft of the same basic structure, but different cabin design shall be classified accordingly as passenger or cargo aircraft types. The schedule shall include the following items:

Code	Elements
	Scheduled Passenger Service
K520	Aircraft Departures Scheduled.
K521	Aircraft Departures Completed.
	Scheduled All-Cargo Service
G210	Cargo Tons Enplaned.
G240	Revenue Ton-Miles.
G280	Available Ton-Miles.
G410	Revenue Aircraft Miles Flown.
G510	Revenue Aircraft Departures Performed.
G630	Revenue Aircraft Hours (Ramp-to-Ramp).
	Nonscheduled Services
V110	Passengers Enplaned.
V210	Cargo Tons Enplaned.
V140	Revenue Passenger-Miles (000).
V320	Available Seat-Miles (000).
V240	Revenue Ton-Miles.
V280	Available Ton-Miles.
V410	Revenue Aircraft Miles Flown.
V510	Revenue Aircraft Departures Performed.
V630	Revenue Aircraft Hours (Ramp-to-Ramp).
	Miscellaneous Operating Factors
Z630	Aircraft Hours (Ramp-to-Ramp).
Z810	Aircraft Days Assigned to Service—Carrier's Equipment.
Z820	Aircraft Days Assigned to Service—Carrier's Routes.
Z921	Aircraft Fuels Issued (gallons).

F. Revoking the title and reporting instructions to Schedule T–3(a)—*Airport Activity Statistics—Revenue Service,* Schedule T–3(b)—*Airport Activity Statistics—Revenue Service,* and Schedule T–3(c)—*Airport Activity Statistics—Nonscheduled Revenue Service.*

G. Adding reporting instructions for new Schedules T–3(a) and T–3(b) following the instructions to Schedule T–2.1 to read:

Schedule T–3(a)—Airport Activity Statistics—Scheduled and Nonscheduled Revenue Service

Schedule T–3(b)—Airport Activity Statistics—Revenue Service

(a) Schedules T–3(a) and T–3(b) shall be filed quarterly by all Group III and Group II air carriers.

(b) Separate schedules shall be filed for each operating entity of the air carriers.

(c) The data shall be compilled as aggregates of the basic data prescribed in Section 19, Uniform Classification of Operating Statistics.

(d) Data shall be given for each on-line and domestic off-line point and for total international off-line points. The air carrier's scheduled certificated authority with respect to each reporting entity shall determine whether a point is on-line or off-line for that entity. Where a point is served by more than one airport, on-line and domestic off-line data pertaining to each airport shall be separately identified. The data relating to on-line points shall be separately grouped and listed in column 1 in alphabetical sequence and the indicated data reported in columns 2 through 14, inclusively. The on-line data shall be totaled. Immediately following the totals for on-line data, the data relating to domestic off-line points shall also be separately grouped and listed in alphabetical sequence in column 1 with the indicated data reported in columns 2 through 14, inclusively. The domestic off-line shall be totaled. Immediately following the totals for domestic off-line data, the totals for international off-line data shall be reported in columns 2 through 14, inclusively. The on-line total and off-line domestic and international data totals will then be added and the sums appropriately noted. The schedule shall include the following items:

Item	Scheduled Service	Nonscheduled Service
Airport code		
Revenue aircraft departures scheduled	K520	
Scheduled revenue departures completed	K521	
Revenue aircraft departures performed—total by aircraft type	K510	V510
Revenue passengers enplaned	K110	V110
Revenue cargo tons enplaned		
U.S. mail	K213	V213
Freight	K217	V217

Item X213 U.S. Mail shall be comprised of the sum of items X213 U.S. Mail—Priority and X214 U.S. Mail—Nonpriority. The sum of items X215 Foreign Mail, X216 Express and X217 Freight shall be reported as items X217 Freight.

H. Revoking the title and reporting instructions to Schedule T–3.1 *Statement of Traffic and Capacity Statistics.*

I. Revising paragraphs (a), (b), (c) and (d) of the reporting instructions for Schedule T–8 to read:

Schedule T–8—Report of All-Cargo Operations

(a) This schedule shall be filed semiannually by all air carriers holding Section 401 certificates that conduct all-cargo operations.

(b) Data reported on this schedule shall include only results of operations conducted in all-cargo aircraft. Data shall be segregated between domestic all-cargo operations conducted within the geographic limitations of Section 418 certificates and all other all-cargo operations.

(c) "Total Operating Revenue" shall be segregated between transport and transort-related revenues.

(d) Transport revenues shall be subdivided between those generated by scheduled service operations and those generated by nonscheduled service operations. Scheduled service revenues shall be further subdivided between (1) property and (2) mail.

* * * * *

J. Revising paragraphs (a) and (g) of the reporting instructions for Schedule T–9 to read:

Schedule T–9—Nonstop Market Report

(a) This schedule shall be filed quarterly by all unsubsidized Group I air carriers and monthly by all unsubsidized Group II carriers providing scheduled service and may be used, with the approval of the Director, Office of Economic Analysis, by new entrants and others without Automatic Data Processing capability that would otherwise be required to comply with the requirements of section 19–3.

* * * * *

(g) In column 4, carriers shall disclose the aircraft type used in accordance with four-digit codes established in the *Manual of ADP Instructions, Outputs, Codes, and Related Material.*

* * * * *

8. CAB Form 41 Schedules would be amended as shown in Exhibits A thorugh L.*

(Secs. 204(a), 407 and 1601 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766, 92 Stat. 1744, 49 U.S.C. 1324(a), 1377 and 1551)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-40195 Filed 12-23-80; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 296 and 297

[EDR 416; Economic Regulations Docket 38470]

Air Freight Forwarders and Cooperative Shippers Associations and Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations; Permission for Cooperative Shippers Associations To Act as Agents of Direct Carriers

Dated: December 18, 1980.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB is proposing to allow cooperative shippers associations to act as agents of the direct air carriers. This change would put cooperatives on a par with air freight forwarders, and enable them to serve more effectively their shipper members. The notice is in response to a petition for rulemaking by the Air Freight Shippers Cooperative Association of California.

DATES: Comments by: February 2, 1981. Reply comments by: February 23, 1981.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be pub on the Service List by: January 5, 1981.

The Docket Section prepares the Service List and sends it to each person listed, who then serves comments on others on the list.

ADDRESSES: Twenty copies of coments should be sent to Docket 38470, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Copies may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202–673–5442.

SUPPLEMENTARY INFORMATION: On July 14, 1980, the Air Freight Shippers Cooperative Association of California (AFSAC) filed a petition for rulemaking to give cooperative shippers associations the authority to act as agents for the airlines. No answers to the petition were filed. One major effect of this proposed authority would be to allow a cooperative to receive a commission from an airline on shipments tendered to the airline if the shipper is notified of this arrangement when the shipment is accepted for transportation by the cooperative. It would also give cooperatives greater flexibility in handling shipments, especially those that are time-sensitive, for their members.

There are three capacities in which an air cargo intermediary may act, each with a different method of compensation and a different relationship to the airline and to the shipper: cargo agents, shipper agents, and common carrier. Cargo agents represent the airline and try to obtain business for it, whether by consolidation or individual shipment. These agents are responsible to and receive a commission from the airline. Shipper agents are paid by the shipper and are responsible to it. The last type of intermediary is fundamentally different from the agents. This type is a common carrier, holding itself out to the public as engaging in the indirect carriage of cargo in air transportation. As a common carrier, it is paid by its customers, shippers, for its transportation. In turn, when giving a shipment, whether consolidated or not, to the airline, it may, as any other cargo customer, be paid by the airline for its services to the airline. The same cargo intermediary may act in different capacities in different transactions under different contracts with the shipper.

Forwarders and cooperatives are two different types of cargo intermediaries: the former for profit, the latter nonprofit. In their capacity as indirect air carriers, they are required to register with the Board and to follow its regulations. Under those regulations, a cooperative shippers association is a nonprofit organization that handles freight of its member shippers and then delivers the shipment to an airline for transportation by air at a discount rate. In most cases, the shipments of member shippers would be consolidated. Airlines generally give price breaks for large shipments over small shipments. The discount given the cooperative for the consolidated shipment is then passed on to its members through its charge formula. The Board's rules (14 CFR 296.6 and 297.6) allow cooperatives and forwarders also to act as agents for shippers. Forwarders, unlike cooperatives, have the option to act as agents for the airlines, charging the airlines' rates instead of their own and receiving commissions from the airlines, instead of payment from the shipper, for their services.

AFSAC argued in its petition that granting cooperatives the authority to act as agents of airlines was overlooked in the Board's deregulation of air freight. AFSAC further argued that this authority would alleviate problems that cooperatives face in competing with air freight forwarders, especially in international markets. It would also allow them to qualify for appointment as cargo agents certified by the International Air Transport Association (IATA) and to participate in IATA activities. The Board agrees tentatively with AFSAC that cooperative shippers associations should also be able to act as agents. This proposed rulemaking applies to U.S. cooperatives, and to foreign cooperatives registered under 14 CFR Part 297.

The Board tentatively believes that AFSAC is right in stating that the marketplace should decide the issue of whom an airline picks as its agent. As AFSAC points out, this action would be in the spirit of increasing competition in cargo air transportation, as industry that is now almost free of government intervention. There thus appears no reason to grant them the authority now to have the same flexibility as forwarders.

The Board is also proposing to extend this authority to foreign cooperative shippers associations under 14 CFR Part 297. The rules for foreign cooperatives are almost identical to those for U.S. cooperatives, and there is no apparent reason to deny them the opportunity to compete on an equal footing. The International Air Transportation Competition Act (P.L. 96–192) has

* Exhibits A through L filed as part of the original document.

stressed that competition is to be a strong factor in the Board's continued

14 CFR Part 302

ACTION: Extension of time to file post record comments on Presiding Officer's

will facilitate full consideration of the issues in this proceeding and is in the public interest. Additional information

Code of 1954, as added by section 131 of the Revenue Act of 1978, Pub. L. 95–600 (92 Stat. 2763). The regulations are to be

the purchase of the annuity contract and the employer maintaining the eligible

stressed that competition is to be a strong factor in the Board's continued regulation of foreign air transportation. The action proposed here would further that goal.

AFSAC asked that the Board order a hearing in this case. The Board is not required to use evidentiary hearing procedures to adopt rules in an informal rulemaking proceeding under 5 U.S.C. 553. The Board will review the factural issues raised in this rulemaking to see if they are of the kind particularly requiring resolution through oral testimony and cross-examination. The issues raised by the AFSAC petition do not appear to be of that kind, however, and do not require a hearing to be resolved. If after public comments have been received, there are not sufficient facts and arguments in the docket, the Board will then decide what further procedures are needed.

Proposed Rule

For these reasons, the Board proposes to amend 14 CFR Parts 296 and 297 as follows:

1. Section 296.6 would be amended to read:

§ 296.6 Cooperative shippers association as agent.

A cooperative shippers association may act as agent of a shipper, or of a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A cooperative shippers association shall not act as an agent of any direct air carrier with respect to shipments accepted in its capacity as an indirect air carrier.

2. Section 297.6 would be amended and retitled to read:

§ 297.6 Foreign cooperative shippers association as agent.

A foreign cooperative shippers association may act as agent of a shipper, or of a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A cooperative shippers association shall not act as an agent of any direct air carrier with respect to shipments accepted in its capacity as an indirect air carrier.

(Secs. 101(3), 102, 204, 407, 408 and 416 of P.L. 85-726, as amended, 72 Stat. 737, 740, 743, 766, 767, 771; 92 Stat. 1731, 1732; 49 U.S.C. 1301, 1302, 1324, 1377, 1378, 1386)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-40200 Filed 12-23-80; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 302

[PDR-57A; Procedural Regulations Docket 33723]

Rules of Practice in Economic Proceedings; Termination of Rulemaking

Dated: December 18, 1980

AGENCY: Civil Aeronautics Board.

ACTION: Termination of Rulemaking Proceeding.

SUMMARY: The CAB terminates a rulemaking proceeding that has become unnecessary since it adopted expedited procedures for licensing cases in another rulemaking proceeding.

FOR FURTHER INFORMATION CONTACT: Donald H. Horn, Associated General Counsel, Pricing and Entry Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428: 202-673-5205.

SUPPLEMENTARY INFORMATION: This proceeding was instituted at the Board's initiative as PDR-57, 43 FR 50696, October 31, 1978. It sought to amend the Rules of Practice in Economic Proceedings to simplify and expedite procedures for route applications by limiting the time for motions to consolidate or amend the scope of these proceedings. Subsequent to the initiation of this proceeding, the Board adopted Subpart Q of its Rules of Practice (PR-201, 44 FR 24266, April 25, 1979), which sets out expedited procedures for licensing cases. Included in Subpart Q is a provision governing the procedure for motions to consolidate or amend the scope of a proceeding. See 14 CFR § 302.1720(c). The adoption of this procedural rule makes the proposed rule, PDR-57, unnecessary. It will therefore be dismissed.

Accordingly, we terminate the rulemaking proceeding (PDR-57) in Docket 33723.

(Sec. 204 of Pub. L. 85-726, as amended, 72 Stat. 743, 49 U.S.C. 1324)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-40202 Filed 12-23-80; 8:45 am]

BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 444

Credit Practices; Extension of Post Record Comment Period to January 16, 1981

AGENCY: Federal Trade Commission.

ACTION: Extension of time to file post record comments on Presiding Officer's report and staff report.

SUMMARY: On October 13, 1978 the notice of publication of the Presiding Officer's report on the proposed trade regulation rule was published in the **Federal Register**, 43 FR 47197. On August 22, 1980 notice of publication of the Bureau of Consumer Protection staff report on the proposed rule was published in the **Federal Register**, 45 FR 56070. The latter notice announced the opening of a 60 day comment period on the two reports, setting October 21, 1980 as the deadline for receipt of comments. Subsequently, the Commission extended by 60 days the deadline for comments and requests to participate in an oral presentation before the Commission, 45 FR 66474, October 7, 1980. The Commission has now voted to extend the comment period to January 16, 1981. The deadline for requests to participate in an oral presentation before the Commission has similarly been extended to January 16, 1981.

DATE: The new deadline for comments on the Presiding Officer's and staff reports and for requests to participate in an oral presentation is Friday, January 16, 1981. Comments and requests will be accepted if received on or before this date.

ADDRESSES: Comments and requests to participate in an oral presentation should be sent to: Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, D.C. 20580.

Requests for copies of the staff report should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: David H. Williams, (202) 724-1100, or Martin B. White, (202) 724-1157, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Under Rule 1.13(h) of the Commission's Rules of Practice, 16 CFR 1.13(h), interested persons are given sixty days to comment on the staff and Presiding Officer's reports prepared in rulemaking proceedings. In October 1980 the Commission decided to extend this period by sixty days in the Credit Practices rulemaking in response to a request by the staff of the Federal Reserve Board, Division of Consumer and Community Affairs. Now, in response to a request from the National Consumer Finance Association, the Commission has determined that a further extension to January 16, 1981, will facilitate full consideration of the issues in this proceeding and is in the public interest. Additional information concerning the post record comment period can be found in the **Federal Register** notice of August 22, 1980, 45 FR 56070.

By direction of the Commission.

Loretta Johnson,

Acting Secretary.

[FR Doc. 80-40288 Filed 12-23-80; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-176-78]

State and Local Government Deferred Compensation Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to deferred compensation plans maintained by State and local governments and rural electric cooperatives. Changes to the applicable tax law were made by the Revenue Act of 1978. The regulations would provide the public with the guidance needed to comply with that Act, and would affect State and local governments and rural electric cooperatives that maintain deferred compensation plans, and employees whose compensation is deferred under the plans.

DATES: Written comments and requests for a public hearing must be delivered or mailed by February 23, 1981.

The regulations are proposed to be effective for taxable years beginning after December 31, 1978.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T:EE-176-78, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Ray K. Kamikawa of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Attention: CC:LR:T:EE-176-78, (202) 566-3422 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 457 of the Internal Revenue Code of 1954, as added by section 131 of the Revenue Act of 1978, Pub. L. 95-600 (92 Stat. 2763). The regulations are to be issued under the authority contained in sections 457 (b) (5) and 7805 of the Code (92 Stat. 2780, 68A Stat. 917; 26 U.S.C. 457 (b) (5), 7805).

Exclusion From Income by Individuals

Under section 131 of the Revenue Act of 1978, employees and independent contractors who provide services for a State or local government or a rural electric cooperative that maintains an eligible deferred compensation plan may exclude from gross income compensation deferred under the plan until it is paid or otherwise made available.

In order to be an eligible plan, the plan must provide that compensation deferred under the plan for any year may not exceed 33⅓% of the participant's includible compensation (in general, gross salary less any amount excludable from gross income) or $7,500, whichever is less. A plan may, however, include a limited "catch-up" provision for any, or all, of the last three taxable years of a participant ending before the participant attains normal retirement age under the plan. Under the catch-up provision, a participant may defer an additional amount equal to any deferral limitations not utilized for prior taxable years in which the participant was eligible to participate under the plan and was subject to the deferral limitations. The amount that can be deferred under the catch-up provision is, however, limited to $15,000.

An individual may be a participant in more than one eligible plan. If an individual participates in two or more plans that are maintained by the same employer, any amount deferred under one plan reduces the amount that may be deferred under another, so that the total deferred under all the plans does not exceed the amount which could be deferred under a single plan. If an individual participates in two or more plans maintained by different employers, the maximum amount excludable from the gross income of the participant for a taxable year on account of amounts deferred under the plans cannot exceed $7,500, or, as applicable, the maximum permitted under the "catch-up" rules.

If a participant in an eligible plan also has amounts contributed by the same employer for the purchase of a tax-sheltered annuity under Code section 403(b), the maximum amount that may be deferred under the eligible plan is reduced by the amount contributed for the purchase of the annuity contract. If the employer contributing amounts for the purchase of the annuity contract and the employer maintaining the eligible plan are different employers, the maximum deferral permitted under the eligible plan is not reduced by the amount contributed for the purchase of the annuity contract. However, the maximum amount excludable from the participant's gross income on account of amounts deferred under the eligible plan of the one employer is reduced to take into account amounts excludable under section 403(b) on account of contributions by the other employer for the purchase of the annuity contract. In general, in any case in which an individual is both a participant in an eligible plan and is an employee for whom amounts are contributed toward the purchase of an annuity contract under section 403(b), the deferral of compensation under the eligible plan will reduce the amount excludable from gross income under section 403(b), without regard to whether it is a single employer or different employers maintaining the eligible plan and contributing amounts for the purchase of the annuity contract.

Additional Plan Requirements

In order to be an eligible plan, the plan may not provide that amounts payable under the plan will be made available to a participant before the participant separates from service or incurs an unforeseeable emergency. An eligible plan is to provide a retirement benefit for the participant. Accordingly, the proposed regulations prescribe rules relating to the period within which amounts deferred under the plan must be paid to the participant. In general, these rules require payment within a period not exceeding the life expectancy of the participant, or the joint lives of the participant and the participant's spouse.

Compensation deferred by a participant under an eligible plan, and earnings on the deferred amounts must remain solely the property of the State until paid to the participant or the participant's beneficiary. However, a participant may select, from among different modes offered under the plan.

Transitional Rules

All plans to which section 457 applies will have until January 1, 1982, to satisfy the requirements for classification as an eligible State deferred compensation plan. However, for taxable years beginning after December 31, 1978, and before January 1, 1982, transitional rules provide that any amount of compensation deferred under a plan of deferred compensation, regardless of whether the plan is an eligible plan, is

excludable from the gross income of the participant until paid or otherwise made available to the participant. However, unfunded regular retirement plans for the purposes of sections 457(e)(1) notwithstanding the limited exceptions

(iv) Under eligible State deferred compensation plans described in section 457(b), see paragraph (c) of § 1.457-1.

more eligible plans to the extent that the compensation so deferred during a

elects, within the 90 days period ending on the date the participant attains normal

plus income attributable to compensation so deferred. Income

excludable from the gross income of the participant until paid or otherwise made available to the participant. However, the maximum amount that may be excluded from gross income for any year is $7,500 or 33⅓% of the participant's includible compensation. Under the transitional rules, increased deferrals under the limited "catch-up" provision are permitted only if the plan is an eligible plan.

Section 457 does not apply to compensation deferred in taxable years beginning before January 1, 1979. Accordingly, whether compensation deferred in such a taxable year is includible in gross income for the year in which deferred, or in any subsequent taxable year, is determined without regard to section 457 and these proposed regulations.

Regular Retirement Plan of a State

If a plan fails to satisfy the requirements necessary for it to be considered an eligible State deferred compensation plan, section 457(e)(1) provides that compensation deferred under such a plan is currently includible in a participant's income for the first taxable year in which there is no substantial risk of forfeiture of the rights to such compensation. Section 457(e)(2) excludes from this treatment certain plans that are the subject of other Code provisions, *i.e.*, a qualified plan under section 401(a), an annuity plan or contract under section 403, a qualified bond purchase plan described in section 405(a), that portion of any plan which consists of a transfer of property described in section 83, and that portion of any plan which consists of a trust to which section 402(b) applies.

It has been pointed out that there are state plans which are the regular retirement plan of the state but which do not qualify as an eligible State deferred compensation plan under section 457 (b) and which do not come within any of the exceptions to section 457(e)(1) enumerated in section 457(e)(2). For example, there are plans established by states that cover significant numbers of similarly-situated state employees providing normal retirement benefits based on the employee's rate of compensation and payable in the form of an annual annuity at a specified age or ages. Benefits under these plans are payable solely by appropriation by the legislature from the state's general fund. Participants in these plans would appear to be subject to the rules set forth in section 457(e)(1) although it is not clear that this result was intended.

Comments are invited with respect to whether regulations could appropriately be promulgated that would exclude unfunded regular retirement plans for the purposes of sections 457(e)(1) notwithstanding the limited exceptions provided by section 457(e)(2), and, if so, under what circumstances.

Comments and Requests for Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The Principal author of these proposed regulations is Ray K. Kamikawa of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Paragraph (a)(2) of § 1.101–1 is amended by removing "or" at the end of subdivision (i), removing the period at the end of subdivision (ii) and adding in lieu thereof "; or", and by adding a new subdivision (iii) to read as follows:

§ 1.101–1 Exclusion from gross income of proceeds of life insurance contracts payable by reason of death.

(a) * * *

(2) *Cross reference.* * * *

(iii) Under eligible State deferred compensation plans described in section 457(b), see paragraph (c) of § 1.457–1.

* * * * *

Par. 2. Paragraph (b)(2) of § 1.101–2 is amended by removing the period at the end of subdivision (iii) and adding in lieu thereof a semicolon, and by adding a new subdivision (iv) to read as follows:

§ 1.101–2 Employees' death benefits.

* * * * *

(b) * * *

(2) *Cross references.* * * *

(iv) Under eligible State deferred compensation plans described in section 457(b), see paragraph (c) of § 1.457–1.

* * * * *

Par. 3. Paragraph (d)(1) of § 1.403(b)–1 is amended by revising all following subdivision (i) to read as follows:

§ 1.403(b)–1 Taxability of beneficiary under annuity purchased by a section 501(c)(3) organization or public school.

* * * * *

(d) *Exclusion allowance*—(1) *In general.* * * *

(i) * * *

(ii) The aggregate of (*a*) the amounts which have been contributed by the employer for annuity contracts for such employee and which were excludable from the gross income of the employee for any taxable year prior to the taxable year for which the exclusion allowance is being determined, and (*b*) the amounts of compensation excludable from the gross income of the employee under section 457(a) (relating to eligible State deferred compensation plans) for any taxable year that is taken into account as a year of service under paragraph (f) of this section.

Compensation deferred under an eligible State deferred compensation plan shall be taken into account as described in subdivision (ii) of this subparagraph even if the entity sponsoring the eligible plan is not the employer purchasing the annuity contract with respect to which the employee's exclusion allowance is to be determined. See paragraph (e) of this section for the definition of an employee's includible compensation in respect of a taxable year and paragraph (f) of this section for rules for computing an employee's total number of years of service for an employer.

* * * * *

Par. 4. The following new sections are added in the appropriate place.

§ 1.457–1 Compensation deferred under eligible State deferred compensation plans.

(a) *Year of inclusion in gross income*—(1) *In general.* In general, under section 457(a), amounts deferred in taxable years of a participant beginning after December 31, 1978, under an eligible State deferred compensation plan that satisfies the requirements of § 1.457–2 (an "eligible plan") are includible in gross income only for the taxable year in which paid or otherwise made available to the participant or other beneficiary under the plan.

(2) *Maximum deferral; in general.* Under section 457(c)(1), the exclusion from gross income described in this paragraph (a) does not apply to compensation deferred under one or more eligible plans to the extent that the compensation so deferred during a participant's taxable year exceeds the greater of—

(i) $7,500, or,

(ii) As applicable, the sum of the plan ceilings determined under § 1.457–2(f), to the extent such sum does not exceed $15,000.

(3) *Maximum deferral; exclusions under section 403 (b) taken into account.* Under section 457(c)(2), for a participant's taxable year for which an amount is contributed to an annuity contract described in section 403(b) (including a custodial account described in section 403(b)(7)) on behalf of the participant, subparagraph (2) of this paragraph (a) is applied by substituting—

(i) For $7,500, an amount equal to $7,500, less the amount excludable from the participant's gross income under section 403(b) for the taxable year,

(ii) For the sum of the plan ceilings determined under § 1.457–2(f), an amount equal to the sum of the plan ceilings determined under § 1.457–2(f), less the amount excludable from the participant's gross income under section 403(b) for the taxable year, if such amount is not taken into account under such §1.457–2(f), and

(iii) For $15,000, an amount equal to $15,000, less the amount excludable from the participant's gross income under section 403(b) for the taxable year.

(b) *Amounts made available to participant*—(1) *In general.* For purposes of section 457(a) and this section, amounts deferred under an eligible plan will not be considered made available to the recipient if under the plan the recipient may irrevocably elect, prior to the time any such amounts become payable to the recipient, to defer payment of some or all of such amounts to a fixed or determinable future time. In addition, amounts deferred under an eligible plan will not be considered made available to the participant solely because the participant is permitted to choose among various investment modes under the plan for the investment of such amounts.

(2) *Examples.* The provisions of subparagraph (1) of this paragraph (b) are illustrated, in part, by the following examples:

Example (1). (i) C, an individual, is a participant in an eligible State deferred compensation plan that provides the following:

(A) The total of the amounts deferred under the plan is payable to the participant in 120 substantially equal monthly installments commencing on the date 30 days after the participant attains normal retirement age under the plan (age 65), unless the participant elects, within the 90 days period ending on the date the participant attains normal retirement age, to receive a single sum payment of the deferred amounts. The single sum payment is payable to a participant on the date the first of the monthly payments would otherwise be payable to the participant.

(B) If a participant separates from the service of the State before attaining normal retirement age, the total of the amounts deferred under the plan is payable to the participant in a single sum payment on the date 90 days after the date of the separation, unless, before the date 30 days after the separation, the participant elects not to receive the single sum payment. The election is irrevocable. If the participant makes the election, the total of the amounts deferred under the plan is payable to the participant as described in (A), either in monthly installments or, at the election of the participant, in a single sum payment.

(ii) On June 6, 1982, C, a calendar year taxpayer aged 59, separates from the service of the State. On June 18, 1982, C elects not to receive the single sum payment payable on account of the separation. Because of C's election, no amount deferred under the plan is includible in C's gross income for 1982 by reason of C's right to receive the single sum payment.

(iii) On Feburary 6, 1988, C attains age 65. C did not, within the 90 day period elect the single sum payment that is payable in lieu of the monthly installments. Amounts deferred under the plan are includable in C's gross income as they are paid to C in the monthly installments. No amount is includable in C's gross income by reason of C's right to elect the single sum payment.

Example (2). Assume the same facts as in example (1), except that the plan provides that notwithstanding that monthly installments have commenced under the plan, as described in (i)(A), the participant may, without restriction, elect to receive all or any portion of the amount remaining payable to the participant. The total of the amounts deferred under the plan is includable in C's gross income for 1988.

(c) *Life insurance proceeds and death benefits paid under eligible plan.* No amount received or made available under an eligible plan is excludable from gross income under section 101(a) (relating to life insurance contracts) or section 101(b) (relating to employees death benefits).

(d) *Definitions.* For purposes of §§ 1.457–1 through 1.457–4—

(1) *Participant.* "Participant" means an individual who is eligible under § 1.457–2(d) to defer compensation under the plan.

(2) *Beneficiary.* "Beneficiary" means a beneficiary of a participant, a participant's estate, or any other person whose interest in the plan is derived from the participant.

(3) *Amounts deferred.* "Amount(s) deferred" under an eligible plan means compensation deferred under the plan, plus income attributable to compensation so deferred. Income attributable to compensation deferred under an eligible plan includes gain from the disposition of property.

§ 1.457–2 Eligible State deferred compensation plan defined.

(a) *In general.* For purposes of §§ 1.457–1 through 1.457–4, an "eligible State deferred compensation plan" is a plan satisfying the requirements of paragraphs (c) through (k) of this section.

(b) *Plan.* For purposes of this section and § 1.457–3, the term "plan" includes any agreement or arrangement between a State (within the meaning of paragraph (c) of this section) and a participant or participants, under which the payment of compensation is deferred, but only if such agreement or arrangement is not described in § 1.457–3(b).

(c) *State.* The plan must be established and maintained by a State. For this purpose, the term "State" includes—

(1) The 50 states of the United States and the District of Columbia,

(2) A political subdivision of a State,

(3) Any agency or instrumentality of a State or political subdivision of a State,

(4) An organization that is exempt from tax under section 501(a) and engaged primarily in providing electrical service on a mutual or cooperative basis, and

(5) An organization that is described in section 501(c) (4) or (6) and exempt from tax under section 501(a) and at least 80% of the members of which are organizations described in subparagraph (4). Where it appears in this § 1.457–2, the term "State" means the entity described in this paragraph (c) that sponsors the plan.

(d) *Participants.* The plan must provide that only individuals who perform services for the State, either as an employee of the State or as an independent contractor, may defer compensation under the plan.

(e) *Maximum deferrals*—(1) *In general.* The plan must provide that the amount of compensation that may be deferred under the plan for a taxable year of a participant shall not exceed an amount specified in the plan (the "plan ceiling"). Except as described in paragraph (f) of this section, a plan ceiling shall not exceed the lesser of—

(i) $7,500, or

(ii) 33⅓% of the participant's includible compensation for the taxable year reduced by any amount excludable from the participant's gross income for the taxable year under section 403(b) on

account of contributions made by the State.

(2) *Includible compensation.* For purposes of this section, a participant's includible compensation for a taxable

the plan during all or any portion of the taxable year, and (C) compensation deferred under the plan during the taxable year was subject to a plan ceiling established under paragraph

contractor as a possible provider of services under any such new contract. Further, a State is considered to intend to again contract for the services provided under an expired contract, if

(5) *Emergency withdrawals.* Withdrawals of amounts because of an unforeseeable emergency must only be permitted to the extent reasonably needed to satisfy the emergency need.

(i) *Distributions of deferrals*—(1)

However, no amount need be paid in any year, or a lesser amount may be paid, if, beginning with the participant's taxable year in which the participant attains age 70½ (or, if later, the participant's taxable year in which

requirements of paragraphs (c) through (k) of this section ceases to be an eligible plan on the first day of the first plan year beginning more than 180 days after the date of written notification by the Internal Revenue Service that the

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account of contributions made by the State.

(2) *Includible compensation.* For purposes of this section, a participant's includible compensation for a taxable year includes only compensation from the State that is attributable to services performed for the State and that is includible in the participant's gross income for the taxable year. Accordingly, a participant's includible compensation for a taxable year does not include an amount payable by the State that is excludable from the employee's gross income under section 457(a) and §1.457–1 or under section 403(b) (relating to annuity contracts purchased by section 501(c)(3) organizations or public schools), section 105(d) (relating to wage continuation plans) or section 911 (relating to income earned in certain camps). A participant's includible compensation for a taxable year is determined without regard to any community property laws.

(3) *Compensation token into account at its present value.* For purposes of subparagraph (1) of this paragraph, compensation deferred under a plan shall be taken into account at its value as of the end of the plan year in which deferred. However, if the compensation deferred is subject to a substantial risk of forfeiture (as defined in section 457(e)(3)), such compensation shall be taken into account at its value as of the end of the plan year in which such compensation is no longer subject to a substantial risk of forfeiture.

(f) *Limited catch-up*—(1) *In general.* The plan may provide that, for 1 or more of the participant's last 3 taxable years ending before the participant attains normal retirement age, the plan ceiling is an amount not in excess of the lesser of–

(i) $15,000, reduced by any amount excludable from the participant's gross income for the taxable year under section 403(b) on account of contributions made by the State, or

(ii) The amount determined under subparagraph (2) of this paragraph.

(2) *Underutilized limitations.* The amount determined under this subparagraph (2) is the sum of—

(i) The plan ceiling established under paragraph (e)(1) of this section for the taxable year, plus

(ii) The plan ceiling established under paragraph (e)(1) of this section for any prior taxable year, less the amount of compensation deferred under the plan for such prior taxable year.

A prior taxable year shall be taken into account under subdivision (ii) of this subparagraph (2) only if (A) it begins after December 31, 1978, (B) the participant was eligible to participate in the plan during all or any portion of the taxable year, and (C) compensation deferred under the plan during the taxable year was subject to a plan ceiling established under paragraph (e)(1) of this section.

(3) *Normal retirement age.* For purposes of this paragraph (f), if no normal retirement age is specified in the plan, then the normal retirement age under the plan is the later of the latest normal retirement age specified in any other plan maintained by the State, or age 65.

(g) *Agreement for deferral.* The plan must provide that, in general, compensation is to be deferred for any calendar month only if an agreement providing for such deferral has been entered into before the first day of the month. However, a plan may provide that, with respect to a new employee, compensation is to be deferred for the calendar month during which the participant first becomes an employee, if an agreement providing for such deferral is entered into on or before the first day on which the participant becomes an employee.

(h) *Payments under the plan*—(1) *In general.* The plan may not provide that amounts payable under the plan will be paid or made available to a participant or beneficiary before the participant separates from service with the State, or, if the plan provides for payment in the case of an unforeseeable emergency, before the participant incurs an unforeseeable emergency.

(2) *Separation from service; general rule.* An employee is separated from service with the State if there is a separation from the service within the meaning of section 402(e)(4)(A)(iii), relating to lump sum distributions.

(3) *Separation from service; independent contractor*—(i) *In general.* An independent contractor is considered separated from service with the State upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the State, if the expiration constitutes a good-faith and complete termination of the contractual relationship. An expiration will not constitute a good faith and complete termination of the contractual relationship if the State anticipates a renewal of a contractual relationship or the independent contractor becoming an employee. For this purpose, a State is considered to anticipate the renewal of the contractual relationship with an independent contractor if it intends to again contract for the services provided under the expired contract, and neither the State nor the independent contractor has eliminated the independent contractor as a possible provider of services under any such new contract. Further, a State is considered to intend to again contract for the services provided under an expired contract, if the State's doing so is conditioned only upon the State's incurring a need for the services, or the availability of funds, or both.

(ii) *Special rule.* Notwithstanding subdivision (i), if, with respect to amounts payable to a participant who is an independent contractor, a plan provides that—

(A) No amount shall be paid to the participant before a date at least 12 months after the day on which the contract expires under which services are performed for the State (or, in the case of more than one contract, all such contracts expire), and

(B) No amount payable to the participant on that date shall be paid to the participant if, after the expiration of the contract (or contracts) and before that date, the participant performs services for the State as an independent contractor or an employee,

the plan is considered to satisfy the requirement described in subparagraph (1) that no amounts payable under the plan will be paid or made available to the participant before the participant separates from service with the State.

(4) *Unforeseeable emergency.* For purposes of this paragraph (f), an unforeseeable emergency is, and if the plan provides for payment in the case of an unforeseeable emergency must be defined in the plan as, severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent (as defined in section 152(a)) of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved—

(i) Through reimbursement or compensation by insurance or otherwise,

(ii) By liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or

(iii) By cessation of deferrals under the plan.

Examples of what are not considered to be unforeseeable emergencies include the need to send a participant's child to college or the desire to purchase a home.

(5) *Emergency withdrawals.* Withdrawals of amounts because of an unforeseeable emergency must only be permitted to the extent reasonably needed to satisfy the emergency need.

(i) *Distributions of deferrals*—(1) *Commencement of distributions.* A plan is not an eligible plan unless under the plan the payment of amounts deferred will commence not later than the latest of—

(i) Unless the participant has otherwise elected 60 days after the close of the participant's taxable year in which the participant attains normal retirement age under the plan, or, if earlier, age 65,

(ii) The close of the participant's taxable year in which the participant separates from service with the State, or

(iii) The close of the participant's taxable year in which the participant attains age 70½.

(2) *Period of distributions.* A plan is not an eligible plan unless under the plan amounts deferred will be paid—

(i) Over the life of the participant,

(ii) Over the lives of the participant and the participant's spouse,

(iii) Within a period certain not extending beyond the life expectancy of the participant, or

(iv) Within a period certain not extending beyond the joint life and last survivor expectancy of the participant and the participant's spouse.

The life expectancy of the participant or the joint life and last survivor expectancy of the participant and spouse cannot exceed the period computed by use of the expected return multiplies in § 1.72–9, or, in the case of payments under a contract issued by an insurance company, the period computed by use of the mortality tables of such company.

(3) *Minimum distribution.* A plan is not an eligible plan, unless beginning with the participant's taxable year in which the participant attains age 70½ (or, if later, the participant's taxable year in which the payments commence) the amount to be paid to the participant each year under the plan is not less than the lesser of—

(i) The balance of the amounts deferred, or

(ii) An amount equal to the quotient obtained by dividing the balance of the amounts deferred at the beginning of the year by the life expectancy of the participant (or the joint life and last survivor expectancy of the participant and the participant's spouse, as applicable), determined as of the date the participant attains age 70 and reduced by one for each taxable year commencing after the participant attains age 70½.

However, no amount need be paid in any year, or a lesser amount may be paid, if, beginning with the participant's taxable year in which the participant attains age 70½ (or, if later, the participant's taxable year in which payments commence), the aggregate of the amounts paid by the end of the year are at least equal to the aggregate of the minimum amounts required by the preceding sentence to have been paid by the end of the year. An annuity or endowment contract issued by an insurance company which provides for non-increasing payments over one of the periods described in subparagraph (2) of this paragraph beginning no later than the close of the taxable year in which the individual attains age 70½ (or, if later, the participant's taxable year in which the payments commence) satisfies the requirements of this subparagraph (3).

(4) *Distributions to beneficiaries.* A plan is not an eligible plan unless under the plan, if the participant dies before the entire amount deferred is paid to the participant (or if payment has commenced to the participant's surviving spouse and such surviving spouse dies before the entire amount is paid to such spouse), the entire amount deferred (or the remaining part of such deferrals if payment thereof has commenced) will, within 5 years after the participant's death (or the death of the surviving spouse), be paid under the plan.

(j) *Administration of plan.* A plan is not an eligible plan unless all amounts deferred under the plan, all property and rights to property (including rights as a beneficiary of a contract providing life insurance protection) purchased with the amounts, and all income attributable to the amounts, property, or rights to property, remain (until paid or made available to the participant or other beneficiary under the plan) solely the property and rights of the State (without being restricted to the benefits under the plan) subject to the claims of the general creditors of the State only. However, nothing in this paragraph (j) prohibits a plan's permitting participants to direct, from among different modes under the plan, the investment of the above amounts (see § 1.457–1(b)(1)).

(k) *Plan-to-plan transfers prohibited.* The plan may not provide for the payment of amounts under the plan other than amounts deferred under the plan (within the meaning of § 1.457–1(e)(3)).

(l) *Effect on plan when not administered in accordance with paragraphs (c) through (k).* A plan that is administered in a manner which is inconsistent with one or more of the requirements of paragraphs (c) through (k) of this section ceases to be an eligible plan on the first day of the first plan year beginning more than 180 days after the date of written notification by the Internal Revenue Service that the requirements are not satisfied, unless the inconsistency is corrected before the first day of that plan year. If a plan ceases to be an eligible plan as described in this paragraph (l), amounts deferred under the plan before the first day of the first plan year for which the plan ceases to be an eligible plan will nevertheless be includible in the participant's gross income in accordance with § 1.457–1. The preceding sentence does not apply to any amount deferred under a plan or arrangement described in paragraph (b) of this section in a taxable year beginning before January 1, 1979.

(m) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. A, born on June 1, 1917, is a participant in an eligible State deferred compensation plan providing a normal retirement age of 65. The plan provides limitations on deferrals up to the maximum permitted under § 1.457–2(e) and (f).

For 1979, A, who will be 62, is scheduled to receive a salary of $20,000 from the State. A desires to defer the maximum amount possible in 1979. The maximum amount that A may defer under the plan is the lesser of $7,500, or 33⅓% of A;s includible compensation (generally the equivalent of 25 percent of gross compensation). Accordingly, the maximum that A may defer for 1979 is $5,000 [$5.000 = $20,000 x .25]. Although A's taxable year 1979 is one of A's last 3 taxable years before the year in which A attains normal retirement age under the plan, A is not able to utilize the catch-up provisions of § 1.457–2 (f) in 1979 because only taxable years beginning after December 31, 1978, may be taken into account under those provisions.

Example 2. Assume the same facts as in example 1. In A's taxable year 1980, A receives a salary of $20,000, and elects to defer only $1,000 under the plan. In A's taxable year 1981, A again receives a salary of $20,000 and elects to defer the maximum amount permissible under the plan's catch-up provisions prescribed under § 1.457–2 (f). The applicable limit on deferrals under the catch-up provision is the lesser of $15,000 or the sum of the normal plan ceiling for 1981, plus any underutilized deferrals for any taxable year before 1981. Thus, the maximum amount that A may defer in 1981 is $9,000, the normal plan ceiling for 1981, $5,000, plus the underutilized deferrals for 1980, $4,000.

Example 3. Assume the same facts as in examples 1 and 2. In A's taxable year 1982, the year in which A will attain age 65, normal retirement age under the plan, A desires to defer the maximum amount possible under the plan. For 1982 the normal limitations of § 1.457–2 (e) are applicable, and the maximum amount that A may defer is $5,000, assuming that A's salary for 1982 was again

$20,000. The plan's catch-up provisions prescribed under § 1.457–2 (f) are not applicable because 1982 is not a year ending before the year in which A attains normal retirement age.

§ 1.457–3 Tax treatment of participants

year only to the extent it does not exceed the lesser of—

(1) $7,500, or

(2) 33⅓% of the participant's includible compensation (within the meaning of § 1.457–2(e)(1)) for the

(comments received by either office will be jointly reviewed): Ms. Shirley A. Jones, Office of Special Education, Department of Education, Donohoe Building, Room 4030, 400 Maryland Avenue, S.W., Washington, D.C. 20202;

educational agency (SEA) must provide an impartial review under both EHA–B regulations (34 CFR 300.510(b)), and Section 504 regulations (34 CFR 104.36).

1. What guidance should the Department provide regarding

C. Extended School Year Program for Handicapped Children

In a legal brief submitted, as friend of the court, in recent litigation (*Georgia Association of Retarded Children* v. *McDaniel*, N.D. Ga. 1978), the

4. What further guidance should the Department provide regarding the level of expenditure provision?

E. Nondiscrimination in Evaluation Procedures

Existing EHA–B regulations require

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$20,000. The plan's catch-up provisions prescribed under § 1.457–2 (f) are not applicable because 1982 is not a year ending before the year in which A attains normal retirement age.

§ 1.457–3 Tax treatment of participants where plan is not an eligible plan.

(a) *In general.* If a State (within the meaning of § 1.457–2 (c)) provides for a deferral of compensation under any agreement or arrangement described in § 1.457–2 (b) that is not an eligible plan within the meaning of § 1.457–2—

(1) Compensation deferred under the agreement or arrangement shall be includible in the gross income of the participant or beneficiary for the first taxable year in which there is no substantial risk of forfeiture (within the meaning of section 457 (e) (3)) of such compensation, and

(2) Amounts made available under the plan to a participant or beneficiary shall be taxable to the recipient under section 72, relating to annuities.

(b) *Exceptions.* Paragraph (a) does not apply with respect to—

(1) A plan described in section 401 (a) which includes a trust exempt from tax under section 501 (a),

(2) An annuity plan or contract described in section 403.

(3) A qualified bond purchase plan described in section 405 (a),

(4) That portion of any plan which consists of a transfer of property described in section 83, and

(5) That portion of any plan which consists of a trust to which section 402 (b) applies.

(c) *Effective date.* This section is effective for amounts deferred in taxable years beginning after December 31, 1981.

§ 1.457–4 Transitional rules.

(a) *In general.* Subject to the limitations described in paragraphs (b) and (c) of this section, amounts deferred (within the meaning of § 1.457–1(d)(3)) in taxable years beginning after December 31, 1978, and before January 1, 1982 under an agreement or arrangement described in § 1.457–2(b) (including an eligible plan within the meaning of § 1.457–2), but not including a plan described in section 457(e)(2) and § 1.457–3(b) shall be includible in gross income only for the taxable year in which paid or otherwise made available to the participant or other beneficiary.

(b) *General limitation.* Except as described in paragraph (c) of this section, compensation deferred under one or more plans described in paragraph (a) of this section is excludible from a participant's gross income under this section for a taxable year only to the extent it does not exceed the lesser of—

(1) $7,500, or

(2) 33⅓% of the participant's includible compensation (within the meaning of § 1.457–2(e)(1)) for the taxable year,

reduced by any amount excludible from the participant's gross income for the taxable year under section 403(b) on account of contributions made by the State (within the meaning of § 1.457–2(c)).

(c) *Limited catch-up.* This paragraph (c) applies if all plans described in paragraph (a) of this section in which an individual is a participant are eligible plans within the meaning of § 1.457–2, and the participant's taxable year is a taxable year described in section 457(b)(3) and § 1.457–2(f). In such a case, compensation deferred under the plans for the taxable year is excluded from gross income under paragraph (a) of this section to the extent it does not exceed the amount determined under § 1.457–1(a)(2) or, as applicable, § 1.457–1(a)(3).

William E. William,

Acting Commissioner of Internal Revenue.

[FR Doc. 80–40326 Filed 12–23–80; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF EDUCATION

34 CFR Parts 104 and 300

Education of Handicapped Children—Implementation of Part B of the Education of the Handicapped Act; Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

AGENCY: Department of Education.

ACTION: Notice of intent to develop regulations, interpretative rules, or policy statements.

SUMMARY: The Secretary of Education provides notice of the possible development of policy interpretations or regulations relevant to several provisions of Part B of the Education of the Handicapped Act and Section 504 of the Rehabilitation Act of 1973. This notice is provided to encourage public comment on the need for further guidance in specified areas. The notice describes areas in which policy may be clarified or developed by the Department relating to the education of handicapped children.

DATES: All comments in response to this Notice of Intent must be received on or before February 9, 1981.

ADDRESS: Comments may be addressed to either of the following offices (comments received by either office will be jointly reviewed): Ms. Shirley A. Jones, Office of Special Education, Department of Education, Donohoe Building, Room 4030, 400 Maryland Avenue, S.W., Washington, D.C. 20202; or Mr. Edward A. Stutman, Office for Civil Rights, Department of Education, Switzer Building, Room 5430, 300 C Street S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley A. Jones, telephone (202) 472–7921 or Mr. Edward A. Stutman, telephone (202) 245–0781.

SUPPLEMENTARY INFORMATION: The Secretary may develop interpretative rules, regulations, or policy statements in a number of areas where questions have arisen under Part B of the Education of the Handicapped Act, as amended ("EHA–B"), and Section 504 of the Rehabilitation Act of 1973, as amended ("Section 504"). Seven areas where policy may be developed are identified below. In each of these areas, a summary of existing law is provided, and one or more specific questions have been posed.

Members of the public are invited to provide comments on any of the issues or questions in this notice during the 45-day comment period the Department of Education has provided. By publishing this notice the Department seeks, on an experimental basis, to help ensure a more open process of policy development.

For each of the following issues, the Secretary requests commenters to assist the Department by—

(1) Identifying specific aspects of a particular issue where clarification is needed; and

(2) Discussing their views concerning the resolution of the issue.

Note.—Throughout this Notice regulations for EHA–B and Section 504 are cited. These regulations have been recodified recently. The EHA–B regulations have been changed from 45 CFR Part 121a to 34 CFR Part 300. The Section 504 regulations have been changed from 45 CFR Part 84 to 34 CFR Part 104.

A. Due Process Protections

Under the Department's regulations implementing EHA–B, an administrative due process hearing may not be conducted by a person who is an employee of a public agency that is involved in the education or care of the handicapped child, or by any person having a personal or professional interest that could conflict with his or her objectivity in conducting a hearing (34 CFR 300.507(a)).

Similar requirements are imposed by Section 504 (34 CFR 104.36). If there is an appeal from the hearing, the State educational agency (SEA) must provide an impartial review under both EHA–B regulations (34 CFR 300.510(b)), and Section 504 regulations (34 CFR 104.36).

1. What guidance should the Department provide regarding appropriate criteria for determining and ensuring the impartiality of hearing officials and review officials?

2. Should any or all of the following individuals be prohibited from serving as a hearing officer: (a) State employees; (b) the State Superintendent; (c) local educational agency (LEA) officials serving other school districts in the State?

3. If there is an appeal of the findings and decision in the due process hearing, should the following individuals be prohibited from serving as a reviewing official: (a) State employees; (b) State Superintendents; (c) members of State Boards of Education?

4. Under current EHA–B regulations, parents have the right to "obtain a written or electronic verbatim record" of an administrative due process hearing (34 CFR 300.508(a)(4)). Should a public agency be required to make available to parents, free of charge, hearing transcripts or other records pertaining to an administrative due process hearing at the LEA or SEA level?

B. Out of State Placement of Handicapped Children

Under existing EHA–B regulations, SEAs are required to ensure that handicapped children who are placed in or referred to a private school or facility by a public agency are provided special education and related services (1) in conformance with an individualized education program, (2) at no cost to the parents, (3) in a school or facility that meets standards applied to State and local educational agencies. SEAs must also ensure that these children have all the rights of handicapped children who are served by a public agency (34 CFR 300.401). Existing regulations also specify that programs of residential placement, including non-medical care and room and board, must be provided, in appropriate cases, at no cost to parents (34 CFR 300.302). Section 504 regulations contain similar provisions (34 CFR 104.33).

1. When a State or local educational agency places a child in an out-of-State program to receive a free appropriate public education, what are the financial obligations of the sending agency?

2. What is the monitoring responsibility of the sending State?

3. What are the obligations of the receiving State, if any?

C. Extended School Year Program for Handicapped Children

In a legal brief submitted, as friend of the court, in recent litigation (*Georgia Association of Retarded Children* v. *McDaniel*, N.D. Ga. 1978), the Department took the position that under existing regulations implementing EHA–B (34 CFR 300.300) and Section 504 (34 CFR 100.33), each handicapped child must be provided special education and related services in accordance with an individualized education program, and that State rule or policy that imposes time limitations on the provision of services to handicapped children precludes an individual determination of each handicapped child's unique needs for services.

Under what circumstances must special education and related services be provided to individual handicapped children beyond the regular school year?

D. Services Provided to Children Who Are Placed in Private Schools by Their Parents

Under the EHA–B regulations, SEAs have certain responsibilities for providing special education and related services to handicapped children who are placed in private schools by their parents—even though a free appropriate public education would be available through the State or local education agency. (34 CFR 300.451–452). In addition, the Education Division General Administrative Regulations (EDGAR) require subgrantees of SEAs to provide students enrolled in private schools with a "genuine opportunity for equitable participation"; to consult with representatives of students in private schools in the development of their projects; and to spend the same average amount of program funds on students enrolled in private schools and those enrolled in public schools unless the average cost of meeting the needs of these students is different (34 CFR 76.651, 76.652, 76.655). EDGAR also specifies the kind of benefits that must be provided to students in private schools (34 CFR 76.654). (NOTE: EDGAR, currently found at 34 CFR Part 76, was formerly at 45 CFR Part 100b).

1. What further guidance should the Department provide in the application of the EDGAR provisions to handicapped children who are enrolled in private schools by their parents, rather than by the local or State educational agency?

2. What further guidance should the Department provide regarding the consultation requirement?

3. What further guidance should the Department provide regarding the "comparable benefits" provision?

4. What further guidance should the Department provide regarding the level of expenditure provision?

E. Nondiscrimination in Evaluation Procedures

Existing EHA–B regulations require that testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children be selected and administered so as not to be racially or culturally discriminatory. Additional guidance is also provided regarding procedures to assess general intelligence and the use of evaluation materials in a child's native language or other modes of communication (34 CFR 300.530(b), 300.532). Section 504 regulations also include evaluation and placement requirements (34 CFR 104.35).

1. What additional guidance should the Department provide relating to testing and evaluation materials and procedures that are not racially or culturally discriminatory?

2. What additional guidance is needed regarding the assessment of general intelligence?

3. What additional guidance is needed concerning the effect of using translators and interpreters on test validity?

F. Least Restrictive Environment

Existing EHA–B regulations require that to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are non-handicapped. Furthermore, special classes, separate schooling, or other removal of handicapped children from the regular educational environment may occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR 300.550). A similar requirement is imposed by Section 504 regulations (34 CFR 104.34).

What are the disability-related reasons that would justify the provision of educational services to handicapped children in schools or other enrollments serving only handicapped children?

G. Suspension and Expulsion

Current EHA–B and Section 504 regulations do not provide complete guidance on the extent to which school authorities are permitted to discipline handicapped children by suspending or expelling them from school. In a legal brief submitted as a friend of the court in *S–1* v. *Turlington* (5th Cir. April, 1980), the Department took the position that the expulsion of handicapped students

without a prior, individual determination of the relationship between a student's misconduct and (1) his or her handicap; or (2) any inappropriate placement violated EHA–B and Section 504.

Agency, PM–223, Washington, D.C. 20460. (202) 287–0776.

Henry E. Beal,

Director, Standards and Regulations Division.

[FR Doc. 80–40324 Filed 12–23–80; 8:45 am]

In a petition dated August 5, 1980, the State of Arizona (Arizona) requested the Administrator of EPA to reconsider several parts of the NSO rules, as did ASARCO Incorporated and Magma Copper Company in a joint petition for

(a) Liability for any violation of the National Ambient Air Quality Standards for sulfur dioxide in the smelter's designated liability area (DLA), except on the ground that a determination under 40 CFR 57.402(c)(3) was clearly wrong; or

(b) The conclusive allocation of liability

Public hearing. The public hearing will be held on January 28, 1981 beginning at 9 a.m.

Request to speak at hearing. Persons wishing to present oral testimony should contact EPA by January 21, 1981.

during the most recent performance test, limits emissions to 0.90 kg/l of applied coating solids. Formulation data from the coating manufacturer would be used to determine the VOC content of coatings applied for each affected

without a prior, individual determination of the relationship between a student's misconduct and (1) his or her handicap; or (2) any inappropriate placement violated EHA–B and Section 504.

1. Where a determination has been made that a handicapped student's behavior is not related to his or her handicap or any inappropriate placement, under what circumstances, if any, are long-term exclusions permissible?

2. Under what circumstances, if any, are short-term exclusions permissible?

3. Must an educational agency make a prior determination of the relationship between a handicapped student's behavior and his or her handicap before ordering a short-term exclusion? What further guidance could the Department provide on how this determination should be made?

4. What procedures are required for what specific periods of permissible exclusion? What further guidance should the Department provide regarding the application of the procedural safeguards of EHA–B and Section 504?

5. How can the Department minimize burdens on students, parents, and educational agencies that regulations governing the suspension and expulsion of handicapped children may impose? Commenters should focus on requirements over and above those minimal standards for all children already imposed under procedures mandated by *Goss* v. *Lopez*, 419 U.S. 565 (1975).

(Catalog of Federal Domestic Assistance No. 84.027, Education of Handicapped Children, Part B)

Dated: December 19, 1980.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 80-40113 Filed 12-23-80; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[AS-FRL No. 1713-7]

Agenda of Regulations; Postponed

AGENCY: Environmental Protection Agency.

ACTION: Agenda of regulations—notice.

SUMMARY: EPA's Agenda of Regulations, which was scheduled for publication in December 1980, will not appear until early January.

FOR FURTHER INFORMATION CONTACT: David Sahr, Environmental Protection Agency, PM–223, Washington, D.C. 20460, (202) 287–0776.

Henry E. Beal,

Director, Standards and Regulations Division.

[FR Doc. 80-40324 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-36-M

40 CFR Part 57

[EN-FRL 1691-8]

Primary Nonferrous Smelter Orders; Proposed Amendments

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Proposed amendments.

SUMMARY: This notice proposes several amendments to the regulations concerning nonferrous smelter orders (NSO) EPA published on June 24, 1980, under Section 119 of the Clean Air Act. This action is being taken in response to petitions for reconsideration the Administrator received. The intended effect is to 1) allow an NSO to provide that certain emissions that occur during startup of an acid plant after scheduled maintenance are not excess emissions and 2) make a smelter owner's consent to liability inapplicable in criminal proceedings.

DATES: Written public comments on the proposed amendments should be postmarked no later than January 23, 1981.

ADDRESSES: All written comments should be submitted (in duplicate, if possible) to Central Docket Section (A–130), Docket Number DSSE 78–1, United States Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Any request for a public hearing should be directed, in writing, to the Information Contact listed below, as well as to the docket.

Docket number DSSE 78–1 is open for public inspection and copying between 9:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Main Lobby, Gallery I, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: David Rochlin, Division of Stationary Source Enforcement (EN–341), 401 M Street, SW., Washington, D.C. 20460, telephone 202–755–2542.

SUPPLEMENTARY INFORMATION: On June 24, 1980, EPA promulgated regulations that established the minimum required contents of initial primary nonferrous smelter orders (NSOs) issued under section 119 of the Clean Air Act (Act), and the criteria and procedures EPA will use in issuing NSOs and in evaluating NSOs issued by States.

In a petition dated August 5, 1980, the State of Arizona [Arizona] requested the Administrator of EPA to reconsider several parts of the NSO rules, as did ASARCO Incorporated and Magma Copper Company in a joint petition for reconsideration dated August 25, 1980, and supplemented October 7, 1980.

In response to the Arizona petition, EPA is today proposing several amendments to the NSO regulations. These proposed amendments, and the reasons for them, are discussed at length in EPA's response to the petitions for reconsideration. This response appears elsewhere in today's **Federal Register**. These proposed amendments are being published apart from the rest of EPA's response because the rest of that response is judicially reviewable final action, unlike the following proposal.

(Secs. 110, 114, 119 and 301 of the Clean Air Act, as amended, 42 U.S.C. 7410, 7414, 7419 and 7601, and Section 406 of Pub. L. 95–95)

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

The Administrator proposes to amend Part 57 in Title 40 of the Code of Federal Regulations as follows:

Subpart C—Constant Controls and Related Requirements

1. By revising the first sentence of paragraph (e) of § 57.304 to read as follows:

§ 57.304 Bypass, excess emissions and malfunctions.

* * * * *

(e) An NSO may provide that excess emissions which occur during acid plant start-up as the result of the cooling of acid plant catalyst due to the unavailability of process gas to an acid plant during a prolonged SCS curtailment or scheduled maintenance are not excess emissions. * * *

Subpart D—Supplementary Control System Requirements

2. By revising § 57.403 to read as follows:

§ 57.403 Written consent.

(a) *The consent.* The NSO shall include a written consent, signed by a corporate official empowered to do so, in the following form:

As a condition of receiving a Primary Nonferrous Smelter Order (NSO) under section 119 of the Clean Air Act for the smelter operated by (*name of company*) at (*location*), the undersigned official, being empowered to do so, consents for the company as follows:

(1) In any civil proceeding (judicial or administrative) to enforce the NSO, the company will not contest:

(a) Liability for any violation of the National Ambient Air Quality Standards for sulfur dioxide in the smelter's designated liability area (DLA), except on the ground that a determination under 40 CFR 57.402(c)(3) was clearly wrong; or

(b) The conclusive allocation of liability under NSO provisions satisfying 40 CFR 57.402(d)(1) between the company's smelter and any other smelter(s) for any violation of the National Ambient Air Quality Standards for sulfur dioxide in an area of overlapping DLAs.

(2) The issuing agency (as defined in 40 CFR 57.103) will be allowed unrestricted access at reasonable times to inspect, verify calibration of, and obrain data from ambient air quality monitors operated by the company under the requirements of the NSO.

(b) *Rights not waived by the consent.* This consent shall not be deemed to waive any right(s) to judicial review of any provisions of an NSO that are otherwise available to the smelter owner or operator under section 307(b) of the Clean Air Act.

[FR Doc. 80-40143 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-33-M

40 CFR Part 60

[AD-FRL 1625-8]

Standards of Performance for New Stationary Sources; Industrial Surface Coating: Appliances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Notice of Public Hearing.

SUMMARY: Standards of performance are proposed to limit emissions of volatile organic compounds (VOCs) from new, modified, or reconstructed surface coating operations within appliance assembly plants. The standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that surface coating operations within appliance assembly plants cause or contribute significantly to, air pollution, which may reasonably be anticipated to endanger public health or welfare. The intent is to require new, modified, and reconstructed appliance surface coating operations to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATE: Comments. Comments must be received on or before February 23, 1981.

Public hearing. The public hearing will be held on January 28, 1981 beginning at 9 a.m.

Request to speak at hearing. Persons wishing to present oral testimony should contact EPA by January 21, 1981.

ADDRESSES: Comments. Comments should be submitted (in duplicate if possible) to: Central Docket Section (A–130), Attention: Docket number A–80–6, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

Public hearing. The public hearing will be held at OA Auditorium EPA, R.T.P., North Carolina. Persons wishing to present oral testimony should notify Mrs. Noami Durkee. Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5331.

Background Information Document. The Background Information Document (BID) for the proposed standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to *Industriol Surface Coating: Appliances—Background Information for Proposed Standards*, EPA–450/3–80–037a.

Docket. The docket, number A–80–6, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene W. Smith, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5421.

SUPPLEMENTARY INFORMATION:

Proposed Standards

The proposed standards would limit VOC emissions from each surface coating operation to 0.90 kilogram of VOCs per liter (kg/l) of coating solids applied to appliance parts or products. Compliance with the proposed standards could be achieved by the use of coatings that result in VOC emissions less than or equal to 0.90 kg/l of applied coating solids or by the use of coatings with an average organic-solvent content that, in conjunction with any capture system and control device operated at the reduction efficiency demonstrated during the most recent performance test, limits emissions to 0.90 kg/l of applied coating solids. Formulation data from the coating manufacturer would be used to determine the VOC content of coatings applied for each affected facility. Reference Method 24 published on October 3, 1980 (45 FR 65956) would be the reference method for verification. Reference Method 25 published on October 3, 1980 (45 FR 65956) would be used to determine the percentage reduction of VOC emissions achieved through the use of a capture system and control device.

The proposed standards would apply to each new, modified, or reconstructed surface coating operation within an appliance assembly plant. Existing facilities would not be subject to the regulation unless modified or reconstructed as defined in 40 CFR 60.14 or 60.15. For these standards, any of the following organic surface-coated metal products manufactured for household, commercial, or recreational use would be considered appliance products:

Range	Dryer
Range hood	Dry cleaning equipment
Microwave oven	Water heater
Oven	Trash compactor
Refrigerated display case	Water Softener
Refrigerator	Interior lighting fixture
Freezer	Vacuum cleaner
Washer	Ice maker
Dishwasher	

The following organic surface-coated metal products manufactured for household use would also be considered appliance products:

Air purifier	Fan
Baseboard heater	Furnace
Room heater	Window air conditioner
Humidifier	Unitary air conditioner
Dehumidifier	Heat pump

The majority of the data upon which the proposed standards were developed pertained to the surface coating of traditional household appliances such as cooking equipment, laundry equipment, refrigerators, and freezers. Recent EPA research indicates that many other appliances are coated with similar materials by similar methods. These other appliances are often similar in size and shape to the traditional household appliances. The coating application methods—flow coat, dip coat, electrodeposition, and air, airless, and electrostatic spray—are identical. These additional appliance coating operations use coating materials similar to those used in large appliance coating operations. Coating performance specifications are also similar, except for slight variations depending upon whether the unit is designed for indoor or outdoor use. Therefore, these

operations produce the same types, and proportionally the same quantities, of VOC emissions as large appliance surface coating operations. EPA believes that similarities also often exist in the ratio of the cost of coating the appliance

less than or equal to the maximum allowable VOC content for the lowest transfer efficiency of any application equipment used in the affected facility, the owner or operator will not be required to calculate VOC emissions for

attain compliance. The owner or operator would be required to calculate, by the equations contained in the proposed standards, the uncontrolled VOC emissions from each affected facility and the emissions reduction

to the NSPS will be somewhat greater than that calculated.

As enumerated in the supporting documentation, the environmental, energy, and economic impacts that would result from imposition of this standard on the manufacturers of

List of Categories of Stationary Sources" published August 21, 1979 (44 FR 49222), source categories are ranked according to three specific criteria established by the Clean Air Act Amendments of 1977: (1) the quantity of emissions, (2) the extent to which each pollutant may

coating operations have been selected for regulation under a new source standard of performance.

Selection of Affected Facilities

Applicances are coated in two main steps: prime coat and topcoat. In 1976,

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operations produce the same types, and proportionally the same quantities, of VOC emissions as large appliance surface coating operations. EPA believes that similarities also often exist in the ratio of the cost of coating the appliance to its total unit cost.

Because these other segments of the appliance industry are similar in key respects to the large appliance surface coating industry and because these segments would not be subject to other standards under development by the Agency, EPA believes that the source category for appliance surface coating operations should be expanded to include products other than large household appliances.

There appears elsewhere in this issue of the **Federal Register** a proposed amendment to the priority list for standards of performance for new stationary sources. The amendment proposes to change the source category "Industrial Surface Coating: Large Appliances" to "Industrial Surface Coating: Appliances," thereby including in the source category appliance products in addition to the traditional large household appliances. All references in this preamble to proposed standards for appliance surface coating operations take into account the proposed amendment source category. Comments are invited concerning the list of products to be subject to the proposed standards (see **Miscellaneous** section of this preamble).

An affected facility is defined as a surface coating operation. A surface coating operation may be a prime coat or a topcoat operation and includes the application station(s) (spray booth(s), dip tank, or flow coating unit), flashoff area, and curing oven. The proposed standards would require each owner or operator, unless otherwise specified, to calculate for each affected facility the total mass of VOC emissions per liter of coating solids applied to appliance parts or products during 1 calendar month. Following this initial performance test period, the owner or operator would calculate VOC emissions for each calendar month. Each monthly calculation would be considered a performance test. Violations would be reported within 10 days of the end of the month. Equations and transfer efficiencies for calculating the emissions for each affected facility are provided in the proposed standards.

The proposed standards contain tables specifying the maximum allowable VOC content per unit volume of coating solids for generic families of application equipment. When the VOC content per unit volume of coating solids of each coating used during the month is less than or equal to the maximum allowable VOC content for the lowest transfer efficiency of any application equipment used in the affected facility, the owner or operator will not be required to calculate VOC emissions for each month.

The owner or operator would obtain the information necessary to calculate emissions from formulation data supplied by the manufacturer of the coating or from an analysis of each coating by Reference Method 24 or by an equivalent or alternative method acceptable to the Administrator. Coating and organic-solvent usage data would be obtained from company records. In the case of a question regarding the VOC content of coatings, Reference Method 24 would serve as the means by which the VOC content of the coating, and the resultant emissions, would be determined.

The proposed standards also contain performance test provisions for an affected facility that elects to use incineration as a means of compliance. The owner or operator would be required to determine monthly the average uncontrolled VOC emissions and the emission reduction achieved by a control device. Each monthly calculation would be considered a performance test. Equations for these calculations are provided in the proposed standards.

The proposed standards would require the owner or operator to install a monitoring device to continuously record the combustion (firebox) temperature of effluent gases that are incinerated to comply with the emission limit. The owner or operator would be required to report quarterly any 3-hour period when the average combustion temperature is more than 28° C below the most recent level that demonstrated compliance. If catalytic incineration is used, the owner or operator would be required to install a device to continuously record the gas temperature both upstream and downstream of the catalyst bed. A quarterly report would be required for any 3-hour period when the average temperature upstream of the catalyst bed is more than 28° C below the most recent level that demonstrated compliance. A quarterly report would also be required for any 3-hour period when the average difference between the gas temperature upstream and downstream of the catalyst bed is less than 80 percent of the most recent temperature difference that demonstrated compliance.

The proposed standards also contained performance test provisions for an affected facility that uses an organic-solvent recovery system to attain compliance. The owner or operator would be required to calculate, by the equations contained in the proposed standards, the uncontrolled VOC emissions from each affected facility and the emissions reduction achieved by the recovery device. The owner or operator would also be required to record daily the amount of organic solvent recovered by the system.

The proposed standards would also require the owner or operator to maintain at the source all records, data, calculations, test results, or other material supporting each calculation of VOC emissions for a minimum of 2 years.

Summary of Environmental, Energy, and Economic Impacts

Environmental, energy, and economic impacts of standards of performance are normally expressed as incremental differences between a facility complying with the proposed standards and a facility complying with a typical State Implementation Plan (SIP) emission standard. Most existing large appliance surface coating operations are located in localities that are considered nonattainment areas for achieving the National Ambient Air Quality Standard (NAAQS) for ozone. New facilities are expected to locate in similar areas. States are in the process of revising their SIPs for these areas and are expected to revise emission limitations for large appliance surface coating operations. In revising their SIPs, most of the States rely on the Control Techniques Guideline (CTG) Document, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume V: Surface Coating of Large Appliances" (EPA–450/2–77–034 [CTG]). The true incremental impact of the proposed standards of performance cannot be determined because the CTG recommendations do not place minimum requirements on the efficiency of the application equipment, and it appears that most of the revised SIPs will incorporate the CTG-recommended coating limit. Therefore, the CTG-recommended limit plus an assumed 60-percent industry average transfer efficiency form the basis for estimating the impacts of the proposed standards. Based on this estimated baseline, the proposed standards of performance would have little environmental, energy, or economic impact. This baseline may be somewhat conservative, however, because plants that are located in attainment areas may be subject to regulations that are less strict than the assumed limit. The effect of this assumption is that the actual emissions reduction and other impacts attributable to the NSPS will be somewhat greater than that calculated.

As enumerated in the supporting documentation, the environmental, energy, and economic impacts that would result from imposition of this standard on the manufacturers of appliances not traditionally considered to be large household appliances are expected to be practically identical to those projected for the more traditional appliances. Additionally, because the proposed standards can be achieved with existing coatings technology and application methods, the economic impact is not expected to be greater on manufacturers located in attainment areas than on those situated in nonattainment areas.

Standards of performance have other benefits in addition to achieving reductions in emissions beyond those required by a typical SIP. They establish a degree of national uniformity, which precludes situations in which some States may attract industries by relaxing air pollution standards relative to other States. Further, standards of performance improve the efficiency of case-by-case determinations of best available control technology (BACT) for facilities located in attainment areas, and lowest achievable emission rates (LAER) for facilities located in nonattainment areas, by providing a starting point for the basis of these determinations. This starting point results from the process of developing a standard of performance, which involves a comprehensive analysis of alternative emission control technologies and an evaluation and verification of emission test methods.

Because compliance with the proposed standards would not require changes in coatings technology or application methods, the water pollution, solid waste, and energy impacts of these standards will be minimal. The proposed standards would have no impact on the capital or operating costs of new surface coating operations within appliance assembly plants because compliance can be achieved with existing coatings and application methods. Detailed cost and economic analysis of various regulatory alternatives are presented in the Background Information Document for the proposed standards of performance.

Rationale

Selection of Source and Pollutants

Studies have been conducted to investigate the effect standards of performance would have on nationwide VOC emissions from stationary sources. In the "Priority List and Additions to the List of Categories of Stationary Sources" published August 21, 1979 (44 FR 49222), source categories are ranked according to three specific criteria established by the Clean Air Act Amendments of 1977: (1) the quantity of emissions, (2) the extent to which each pollutant may reasonably be anticipated to endanger pubic health or welfare, and (3) the mobility and competitive nature of the source category. In this study, large appliance surface coating operations are ranked 28th out of 59 source categories considered for regulation.

Volatile organic compound (VOC) means any organic compund that participates in an atmospheric photochemical reaction or is measured by the applicable reference method or specified under any subpart. Photochemical oxidants result in a variety of adverse impacts on health and welfare, including impaired respiratory function, eye irritation, necrosis of plant tissue, and deterioration of selected synthetic materials, such as rubber. Further information on these effects can be found in the U.S. Environmental Protection Agency (EPA) document entitled "Air Quality Criteria for Ozone and Other Photochemical Oxidants" (EPA–600/8–78–004).

Industrial surface coating operations are a significant source of VOC emissions, accounting for over 2 million metric tons of VOC emissions each year. In 1976 the large appliance industry contributed an average of 90 metric tons of VOC emissions per plant, accounting for annual nationwide industry emissions of more than 15,000 metric tons. Most of the coatings used contain organic solvents that evaporate when the coating dries, resulting in VOC emissions. Typical coatings applied to appliance products include epoxies, epoxy-acrylics, acrylics, and polyester enamels. These coatings generally contain organic-based solvents such as ketones, esters, ethers, and aromatics. The surface coating operations is an intergral part of a large appliance assembly plant, accounting for about one-quarter to one-third of the total space occupied by a typical plant.

VOCs are the major air pollutants emitted from the appliance industry and result primarily from the use of organic-based solvents. Particulate matter emitted from the paint in this coating industry is minimal. Technology is currently available to reduce VOC emissions from appliance surface coating operations, thereby decreasing the formation of ozone in the atmosphere. Consequently, VOC emissions from appliance surface coating operations have been selected for regulation under a new source standard of performance.

Selection of Affected Facilities

Applicances are coated in two main steps: prime coat and topcoat. In 1976, prime coat operations accounted for 6,800 metric tons of VOC emissions, and topcoat operations accounted for 8,300 metric tons.

Prime coats may be waterborne or organic-solvent-borne. Waterborne coatings use water as the main carrier for the coating solids, although these coatings normally contain a small amount of organic solvent. Where a water-based prime coating is used, it is usually applied by EDP or flow coat. Organic-solvent-based prime coatings use organic solvent as the coating solids carrier and are usually applied by one of the conventional spray techniques.

The large appliance top coats presently used are almost entirely organic-solvent-based. One or more top coats may be applied to ensure sufficient coating thickness. An oven bake may follow each topcoat application, or the coating may be applied wet on wet (two or more layers with no intermediate cure).

The coating application station is the source of about 40 percent of total VOC emissions from the surface coating process. Coated parts then enter a flashoff tunnel that allows the organic solvent in the coating to evaporate slowly, preventing cracking during the baking process. Approximately 40 percent of VOC emissions originate from the flashoff area. The cases, doors, lids, panels, and other interior or exterior parts are then baked in a multipass oven, which accounts for about 20 percent of total VOC emissions from the surface coating process.

Prime coating and topcoating operations account for the majority of the VOC emissions in appliance assembly plants. The remaining VOC emissions result from final topcoat repair and equipment cleanup. Because of the very small quantity of coating used for final topcoat repair (touchup), the emissions from this source are not considered significant. Emissions from the organic solvents used in the cleanup operations are difficult to control because these operations occur intermittently and at many points along the surface coating line. Therefore, control devices such as incinerators cannot be used efficiently on these cleanup operations. Because prime coat and topcoat operations account for the bulk of VOC emissions from appliance manufacturing plants and control techniques for reducing VOC emissions

from these operations have been demonstrated, these operations have been selected for control by standards of performance.

The proposed standards would apply to each surface coating operation (prime technology that, in combination with the coating selected, can reduce emissions. The total quantity of coating needed for a given product is directy correlated with the resulting emissions, and an improvement in transfer efficiency will

waterborne coatings is not common in the large appliance industry.

The application of low-organic-solvent-content liquid coatings by conventional spray techniques has also been demonstrated for topcoat

more easily contained and delivered to control devices such as incinerators or organic-solvent recovery systems (i.e., carbon adsorption systems) than is possible in the appliance industry. A unique characteristic of this industry is

reasons, carbon adsorption has not been used in this industry, and it is not expected that it will be selected as a control technique for reducing VOC emissions. Nonetheless, the proposed standards would not preclude the use of

sources, the 60-percent transfer efficiency also approximates the efficiency of hand-held electrostatic equipment and can therefore be economically attained by all facets of the industry. Additionally, use of this

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from these operations have been demonstrated, these operations have been selected for control by standards of performance.

The proposed standards would apply to each surface coating operation (prime coat and topcoat) in an appliance assembly plant. Each surface coating operation consists of the coating application station (spray booth(s), dip tank, or flow coating unit), flashoff area, and curing oven. The use of organic solvent as a dilution agent would be subject to the proposed standards, but the VOC emissions resulting from the use of organic solvent in cleanup or touchup operations would not.

Two other definitions of affected facilities were considered but eliminated in favor of the coating operation definition selected. They were: all prime coat (or topcoat) operations in a product line, and all prime coat (or topcoat) operations within an assembly plant. Because of the possibility of adopting different standards for prime coat and topcoat operations, these operations were treated separately. The product line definition would have reduced the number of affected facilities but would have permitted tradeoffs between different coatings and application technologies. These tradeoffs could have included the use of some systems with relatively high emissions in combination with, for instance, a powder station. Likewise, defining all prime coating (or topcoating) operations within a plant as the affected facility would have reduced the affected facilities and consequently the associated recordkeeping and compliance calculations. However, such a definition would have allowed the use of some coatings and application methods that do not meet the best demonstrated system of continuous emissions reduction criterion.

Control Technologies

For prime coat operations, most new or existing plants will comply with revised SIP requirements by applying waterborne coatings through EDP or low-organic-solvent-content coatings through conventional spraying methods. For topcoat operations, most of these plants will achieve compliance by applying low-organic-solvent-content coatings through conventional spraying methods. Emission control devices such as an incinerator or a carbon adsorption system could also be used in combination with organic-solvent-based coatings, but their use is not expected for economic reasons.

Transfer efficiency is the ratio of the coating solids that adhere to a part to the total amount of solids used. Improving transfer efficiency is a control technology that, in combination with the coating selected, can reduce emissions. The total quantity of coating needed for a given product is directly correlated with the resulting emissions, and an improvement in transfer efficiency will decrease emissions proportionately. Each type of application equipment has a different transfer efficiency, but not every type of equipment can be used with every type of coating. Transfer efficiencies in this industry range from 40 percent for air-atomized spray application to well over 90 percent for some recycling systems such as EDP and powder. Electrostatic spray equipment imparts a charge to the paint particles and relies on an opposite charge on the part to be coated to attract those particles. The transfer efficiency of this equipment is greater than that of spray systems that use air or hydraulic pressure to propel the coating toward the part.

Application of a coating by EDP involves dipping the appliance part or product to be coated into a bath containing a dilute water suspension of the coating material. Coatings in the EDP tank usually consist of about 90 percent (vol.) water, 4 percent (vol.) organic solvent, and 6 percent (vol.) paint solids. When charges of opposite polarity are applied to the dip tank and the part to be coated, the coating material deposits on the part. Because of the low-organic-solvent content and the high transfer efficiency, this control technology is the most effective control method for prime coating operations per volume of solids applied. However, the overall effectiveness of EDP as a means of control is mitigated because the method may result in deposition of a greater volume of solids on the part than is actually needed.

Waterborne coatings can also be applied by dip coating, flow coating, or spray coating. These waterborne coatings are usually comprised of about 56 percent (vol.) water, 14 percent (vol.) organic solvent, and 30 percent (vol.) paint solids. These coatings contain less organic solvent per volume of solids than do conventional organic-solvent-borne coatings and, depending upon the transfer efficiency of the application equipment used, can effectively reduce VOC emissions. Because they contain only a small amount of organic cosolvent, these coatings are less flammable than conventional organic-solvent-borne coatings. Waterborne coatings can also be applied by electrostatic spray. However, because of the costly electrical isolation and safety requirements, electrostatic spraying of waterborne coatings is not common in the large appliance industry.

The application of low-organic-solvent-content liquid coatings by conventional spray techniques has also been demonstrated for topcoat operations in the large appliance surface coating industry. These coatings are commonly referred to as "high-solids" coatings. The CTG for large appliance surface coating operations defines a high-solids coating as containing 0.34 kilogram of organic solvent per liter of coating (less water) (2.8 lb/gal), which is equivalent to a coating containing 62 percent (vol.) solids. Coating formulations of 62 percent (vol.) solids that meet most performance specifications are currently available to the manufacturers of appliances. As with waterborne coatings, when high-solids coatings are applied at high transfer efficiencies, VOC emissions are reduced to levels significantly below those resulting from the use of conventional organic-solvent-borne coatings.

Powder coatings are a special class of low-solvent coating in that they contain no organic solvent and emit few or no VOCs. They are an economically attractive coating alternative in large part because of the near absence of waste. Spray booths are equipped with ventilation and fabric filtration equipment that removes the powder overspray from exhaust air and returns it to the coating feed tank. Unlike conventional liquid coatings, however, powder coatings are completely intolerant of cross color contamination. Even one particle of a contrasting colored powder entrained onto an applicance part will be visible after cure. Powder coatings are ideally suited for applying a single color on a product line. Provisions for applying multiple colors directly affect the cost of powder systems.

Unlike other low-solvent coatings, emissions from powder coatings are so low that there is no equivalent control system. Control devices such as an incinerator or carbon adsorber cannot achieve a comparable emission level. As a consequence, basing the proposed standard on powder coatings would be more restrictive than using a coating having a typical or even low-VOC content with a capture system and control device. Moreover, since powder coatings have not been adequately demonstrated for all appliances under all conditions, under such a standard, any appliance for which no satisfactory powder coating is available could no longer be produced.

Process designs in other coating industries allow VOC emissions to be more easily contained and delivered to control devices such as incinerators or organic-solvent recovery systems (i.e., carbon adsorption systems) than is possible in the appliance industry. A unique characteristic of this industry is the long flashoff time required to allow slow evaporation of the organic solvent and prevent subsequent cracking of the coating in the cure oven. As much as 40 percent of VOC emissions from the coating process may occur in the flashoff area, which may be either open or enclosed in a tunnel. To hood and vent a flashoff area that may be several hundred feet long and might otherwise be open would be impractical in most cases.

Although thermal incinerators could be applied to the spray booth, the spray booth exhaust stream is typically a high-volume stream with low VOC concentrations, and the control of VOC emissions from this exhaust stream would require a large amount of supplemental fuel. VOC emissions from the curing oven could also be captured for incineration, but curing oven emissions account for only about 20 percent of total VOC emissions from surface coating operations.

Catalytic incineration permits lower incinerator operating temperatures and requires less fuel than thermal incineration but still represents a significant increase in energy consumption over other control techniques. In addition, because oil firing tends to foul or mask the catalyst, the fuel used to preheat the exhaust gases must be a clean fuel such as natural gas or liquefied petroleum gas (LPG).

Generally, incineration techniques would be more costly than the techniques previously described. While these control methods have not been demonstrated in the large appliance sector, they have been used in other segments of the industrial finishing industry. Even though their use is not expected, an incineration control option has been analyzed with one of the regulatory alternatives discussed below.

Carbon adsorption has been used successfully to control VOC emissions in a number of industrial applications. However, its ability to control VOC emissions from curing ovens in appliance surface coating operations is uncertain because the high temperature of the exhaust stream would require that the gas stream be cooled before passage through the carbon bed. The high humidity of the exhaust stream from a water-wash spray booth would necessitate pretreatment to lower the relative humidity before a carbon adsorber could be effective. For these reasons, carbon adsorption has not been used in this industry, and it is not expected that it will be selected as a control technique for reducing VOC emissions. Nonetheless, the proposed standards would not preclude the use of carbon adsorption to comply with emission limitation.

Regulatory Alternatives

Low-organic-solvent-content or waterborne coatings, a change in application methods, capture systems and control devices, or combinations of the three can feasibly be used to control VOC emissions from appliance surface coating operations. Based on the use of these control methods, the following regulatory scenarios have been evaluated. Three regulatory alternatives were developed for prime coating operations, and four were established for topcoating operations.

Regulatory Alternative A–I for prime coating operations is to forego the development of an NSPS. In this case, prime coating operations would be subject only to regulations contained in revised SIPs. These new or revised regulations would be based mainly upon the CTG recommendations for controlling VOC emissions from large appliance surface coating operations. The CTG recommends a limit of 0.34 kilogram of organic solvent per liter of coating (minus water) (2.8 lb/gal), which is equivalent to a prime coat containing 62 percent solids by volume. However, the CTG does not stipulate a transfer efficiency, and consequently the no NSPS baseline is not known exactly. The estimated industry-average transfer efficiency is 60 percent. For this analysis, a 60-percent transfer efficiency has been assumed, and the no NSPS baseline is an emissions limit equal to that resulting from the application of a coating containing 62 percent (vol.) solids applied at a transfer efficiency of 60 percent.

Regulatory Alternative A–II for prime coating operations is the promulgation of an NSPS equivalent to the assumed CTG limit. This option would restrict VOC emissions from each prime coat operation to the level equivalent to that resulting from the application of a 62-percent (vol.) solids coating at a transfer efficiency of 60 percent. This level of emissions could be achieved through the use of a waterborne coating, or through a number of combinations of solids content and transfer efficiencies yielding an equivalent amount of emissions; e.g., 52 percent (vol.) solids applied at 90 percent transfer efficiency. Although lower than the rated efficiencies of some of the application equipment that will be used in new sources, the 60-percent transfer efficiency also approximates the efficiency of hand-held electrostatic equipment and can therefore be economically attained by all facets of the industry. Additionally, use of this transfer efficiency will allow appliance coaters some freedom in their approach to meeting the proposed standards. That is, if they have a higher transfer efficiency, they may apply a coating with a higher organic-solvent content.

Regulatory Alternative A–III for prime coat operations is a 55-percent (per volume of solids applied) reduction in VOC emissions from the assumed no NSPS baseline (Alternative A–I). This alternative is equivalent to the use of an EDP process containing 0.38 kilogram of VOCs per liter of solids in the input stream applied at a transfer efficiency of 95 percent.

Regulatory Alternative B–I for topcoat application, like Regulatory Alternative A–I, presumes that no NSPS is promulgated. The CTG makes no distinction between topcoat and prime coat operations, and the recommended limit is therefore 0.34 kilogram of organic solvent per liter of coating (minus water). Without the stipulation of a transfer efficiency, the topcoat no NSPS baseline, like the prime coat no NSPS baseline, is not known exactly. For this analysis, the no NSPS baseline is an emissions limit equal to that resulting from the application of a 62-percent (vol.) solids coating applied at an assumed 60-percent transfer efficiency.

Regulatory Alternative B–II for topcoat operations, like Regulatory Alternative A–II, is the promulgation of an NSPS equivalent to the assumed CTG limit. This alternative would restrict VOC emissions to the level equivalent to that resulting from the application of a 62-percent (vol.) solids top coat at a transfer efficiency of 60 percent. This emissions level could be achieved through the use of a number of combinations of solids content and transfer efficiency of organic-solvent-borne coatings or through the use of powder coatings.

Regulatory Alternative B–III for topcoat operations is a 30-percent reduction of VOC emissions (per volume of solids applied) from the no NSPS baseline (Alternative B–I). This alternative is equivalent to the use of a 70-percent (vol.) solids top coat applied at a transfer efficiency of 60 percent, although this emissions level could also be achieved through the use of a number of other combinations of solids content and transfer efficiency of organic-solvent-borne coatings or through the use of powder coatings. We believe

incineration of the oven exhaust is feasible in the appliance industry. Therefore, a control option consisting of a 65.5-percent (vol.) solids top coat applied at a transfer efficiency of at least 60 percent, coupled with an

baseline for topcoat operations and is equivalent to a level that would result from the application of a 62-percent (vol.) solids coating at an assumed transfer efficiency of 60 percent. Annual VOC emissions from topcoat operations

compared to current COD levels at plants using organic-solvent-based coatings and meeting existing State regulations. This increase would not require the installation of additional wastewater treatment facilities.

constructed during the 1981–1986 period in the absence of further air pollution regulations. Two line sizes correspond to small and large facilities in the household cooking equipment sector (Model plants 1 and 2) with annual

structure of this model plant. Model plant 3, which produces laundry equipment and for which a prime coat is desired on interior as well as exterior surfaces, is ideally suited for EDP, and Regulatory Alternative A–III would

these determinations. This improvement results from the process of developing standards of performance, which involves a comprehensive analysis of alternative emission control technologies and an evaluation and

incineration of the oven exhaust is feasible in the appliance industry. Therefore, a control option consisting of a 65.5-percent (vol.) solids top coat applied at a transfer efficiency of at least 60 percent, coupled with an incinerator or other control device on the topcoat oven, has also been analyzed for this alternative.

Regulatory Alternative B–IV for topcoat operations would essentially eliminate VOC emissions and could only be achieved through the use of powder coatings (100 percent [vol.] solids).

Environmental, Energy, and Economic Impacts

Regulatory Alternative A–I (no NSPS) for prime coating operations represents the status quo and would create no incremental environmental impact, either beneficial or adverse. Because most States will be promulgating or revising regulations based on this CTG-recommended limit (0.34 kilogram of organic solvent per liter of coating, minus water), this level of emissions represents the baseline from which the environmental impact of other regulatory alternatives is assessed. Because the CTG-recommended limit does not specify a transfer efficiency, a transfer efficiency had to be assumed to complete a meaningful analysis. The estimated industry-average transfer efficiency of 60 percent was used for this purpose. Annual VOC emissions from prime coat operations totaled about 6,800 metric tons in 1976. By 1981, annual VOC emissions from prime coat operations will have been reduced to 1,700 metric tons. Anticipated growth in the industry will cause emissions to increase to 1,900 metric tons by 1986.

Regulatory Alternative A–II would restrict emissions to a level equivalent to that resulting from the use of a 62-percent (vol.) solids coating applied at a transfer efficiency of 60 percent. To the extent that the assumed 60-percent transfer efficiency used to calculate the baseline is correct, this alternative will have a negligible impact upon emissions. Adoption of this alternative would, however, permit tradeoffs between the solids content of the coating and the transfer efficiency of the application equipment.

Regulatory Alternative A–III for prime coat operations would hold VOC emissions to an increase of 4 percent between 1981 and 1986. If waterborne prime coats were applied by EDP, VOC emissions would total about 1,800 metric tons per year by 1986, a reduction of 100 metric tons per year from the no NSPS baseline.

Regulatory Alternative B–I for topcoat operations (no NSPS) is an assumed baseline for topcoat operations and is equivalent to a level that would result from the application of a 62-percent (vol.) solids coating at an assumed transfer efficiency of 60 percent. Annual VOC emissions from topcoat operations totaled about 8,300 metric tons in 1976. By 1981, annual emissions from topcoat operations will have been reduced to 2,100 metric tons. Anticipated growth in the industry will cause emissions to increase to 2,400 metric tons by 1986.

Regulatory Alternative B–II for topcoat operations, like Alternative A–II for prime coating, would restrict emissions to a level equivalent to that resulting from the use of a 62-percent (vol.) solids coating applied at a transfer efficiency of 60 percent. To the extent that the assumed 60-percent transfer efficiency used to calcuate the baseline is correct, this alternative will have a negligible impact upon emissions.

Regulatory Alternative B–III for topcoat operations, equivalent to the use of 70 percent (vol.) solids top coats applied at a transfer efficiency of 60 percent, would reduce topcoat emissions 200 metric tons per year by 1986. An equivalent decrease in VOC emissions would also result from the use of a 65.5-percent solids coating with an incinerator on the topcoat oven. This alternative would hold industrywide VOC emissions to an increase of 5 percent (100 metric tons per year) between 1981 and 1986.

Regulatory Alternative B–IV for top coating, the virtual elimination of VOC emissions, could only be achieved with a powder top coat and would reduce industrywide topcoat VOC emissions by 30 percent (about 750 metric tons) by 1986. However, because powder coatings are often used direct-to-metal (i.e., without a prime coat), the impact on total emissions would be considerably greater. The combination of Regulatory Alternative A–I or A–II and powder would reduce total emissions by 1,700 metric tons per year. Used in combination with Regulatory Alternative A–III, total emissions would be reduced by 1,850 metric tons per year.

Standards based on any of the regulatory alternatives for prime coat or topcoat operations would have little impact on water quality. All of the alternatives assume the greater use of waterborne or low-organic-solvent-content coatings. The greater use of waterborne coatings would increase the COD of the wastewater discharged from appliance surface coating operations. This increase results from the water-soluble organic solvents contained in the waterborne coatings. However, the COD increase would be minimal compared to current COD levels at plants using organic-solvent-based coatings and meeting existing State regulations. This increase would not require the installation of additional wastewater treatment facilities. However, these coating operations may be subject to regulations covering the discharge of wastewater from coating operations (Metal Finishing Point Source Category) under the Federal Water Pollution Control Act that are now scheduled for proposal in early 1981.

The efficiency of paint application is a significant factor in the quantities of water pollutants discharged because most paint solids not applied to the product (overspray) are trapped in the water curtain designed for this purpose. Because the transfer efficiency of spray painting would not decrease with the spraying of higher solids content coatings, no greater amounts of solids would be entrapped in spray booth water.

The incremental solid waste impact of any of the regulatory alternatives would also be negligible because the volume of paint sludge generated is approximately equal for all alternatives. However, these wastes have been defined as hazardous (40 CFR Part 261) and therefore must be disposed of in accordance with the regulations in 40 CFR Part 262.

Total energy requirements of the large appliance surface coating industry are estimated as 6.4 million GJ/yr (6.0×10^{12} Btu/yr) in 1981. Because approximately 80 percent of this energy is consumed during pretreatment, a process not affected by any of the regulatory alternatives, the net energy impact of each of the regulatory alternatives is minor. There are three regulatory alternatives with a noticeable impact: A–III (waterborne prime coat by EDP), B–IV (powder), both of which would reduce energy consumption, and B–III (incineration option), which would increase consumption. The dryoff oven between pretreatment and prime coat application is not needed when a waterborne prime coat is used. Therefore, a 75,000-GJ annual savings is possible under Regulatory Alternative A–III. Because the application of powder often eliminates the need for a prime coat, adoption of that alternative (B–IV) would result in an annual savings of 145,000 GJ. With 60 percent heat recovery, an incinerator on the topcoat oven (B.–III) would increase energy consumption by 70,000-GJ annually.

The economic impacts for each regulatory alternative were estimated using cost data for four model line configurations developed to be representative of those that would be

constructed during the 1981–1986 period in the absence of further air pollution regulations. Two line sizes correspond to small and large facilities in the household cooking equipment sector (Model plants 1 and 2) with annual production rates of 13,000 and 107,000 units per year, respectively. The remaining two line sizes represents facilities in the laundry equipment sector (Model plant 3; 657,000 units per year) and in the refrigerator/freezer sector (Model plant 4; 392,000 units per year).

A discounted cash flow approach was used to analyze the model plant costs and to determine the price impacts of each of the regulatory alternatives. This analysis was based on data consisting of the capital, installation, operating, and maintenance costs of the equipment that could be used to achieve compliance with each of the baseline levels of control and each of the regulatory alternatives. These cost data were obtained from manufacturers and vendors of coating equipment for the large appliance industry.

Regulatory Alternatives A–I and B–I—not promulgating an NSPS—would have no economic or price impacts on plants subject to revised SIP limitations based on CTG-recommended limits. Regulatory Alternatives A–II and B–II—promulgating an NSPS equivalent to the assumed CTG limit for both prime coats and top coats—would also have no economic or price impacts. Current total installed capital costs for a new plant meeting Regulatory Alternatives A–I and B–I or A–II and B–II are $397,000 for Model plant 1, $922,000 for Model plant 2, $2,930,000 for Model plant 3, and $2,305,000 for Model plant 4. The annualized operating costs for these plants are $488,000 for Model plant 1, $738,000 for Model plant 2, $2,700,000 for Model plant 3, and $2,100,000 for Model plant 4.

The capital costs for a new plant increase with Regulatory Alternatives A–III—a water-based coating applied by EDP—or B–III—either a 70-percent solids coating or a 65.5-percent solids coating with incineration of a topcoat oven. These increases range from 3.5 to 36.2 percent, depending on the combination. The capital costs of a new plant decrease from 5 to 40 percent with Regulatory Alternative B–IV—100 percent solids coatings. Annualized operating costs for Regulatory Alternative A–III decrease in Model plants 1 and 3 and increase in Model plants 2 and 4. The decrease in Model plant 1 results from the substitution of an automated process for a process that is labor intensive because of the structure of this model plant. Model plant 3, which produces laundry equipment and for which a prime coat is desired on interior as well as exterior surfaces, is ideally suited for EDP, and Regulatory Alternative A–III would therefore reduce annualized operating costs. Costs increase in Model plants 3 and 4 because of the additional coating deposited on interior surfaces; this additional coating is not desired and is not represented in the base case.

The powder topcoat alternative appears to have the lowest capital cost, giving firms an economic incentive to adopt this relatively new technology even in the absence of regulations. However, powder coatings have not been demonstrated for all appliance products that will be covered by this standard. If powder coatings were excluded for this reason, Model plants 1 and 3 could coat their appliances for the lowest cost with an EDP prime coat and a 62-percent or 70-percent solids top coat. Model plant 2 would be most profitable with a 62-percent solids prime coat and either a 62-percent or 70-percent solids top coat. The most profitable line configuration for Model plant 4 is a 62-percent solids prime coat and a 62-percent solids top coat.

The additional capital required to meet regulatory alternatives ranges from 0 to 36 percent of the baseline investment. If producers absorb the additional costs, the return on investment will fall by 0 to 7 percentage points from the baseline rate of return of 19 percent. If consumers absorb the additional costs, a product price increase of 0 to 1 percent is expected. In all cases EDP prime coat costs or incineration costs caused these impacts. The proposed standards, Regulatory Alternatives A–II and B–II, will cause no economic impact.

Best System of Emission Reduction

Promulgation of a prime coat standard equivalent to the assumed CTG limit (Regulatory Alternative A–II) would not significantly reduce VOC emissions. The energy and economic impacts would also be minimal. Even without dramatically decreasing emissions, however, this alternative has benefits. Standards of performance establish a degree of national uniformity that prevents States from attracting industries by relaxing air pollution standards relative to other States. They also improve the efficiency of case-by-case determinations of best available control technology (BACT) for facilities located in attainment areas and lowest achievable emission rates (LAER) for facilities located in nonattainment areas, by providing a starting point for these determinations. This improvement results from the process of developing standards of performance, which involves a comprehensive analysis of alternative emission control technologies and an evaluation and verification of emission test methods. This alternative is also advantageous because a minimum transfer efficiency dependent upon the solids content of the coating would be prescribed and tradeoffs between solids content and transfer efficiency permitted. Prime coat formulations of 62 percent (vol.) solids are available to manufacturers of all the affected appliance parts and products.

Alternatively, the application of a waterborne prime coat by EDP (Alternative A–III) would reduce VOC emissions from prime coat operations by 55 percent per volume of solids applied. However, as a dip process, it automatically coats all surfaces of the part and may result in the application of more solids than desired. Manufacturers of refrigerators, for example, commonly apply a prime coat to exterior surfaces only. As a result, even though EDP is the most effective control technology per volume of solids applied, adoption of this technology industrywide would decrease emissions by less than 200 metric tons per year by 1986 and would be more costly than techniques that would be used to meet Regulatory Alternative A–II and would yield only slightly lower levels of control. Another factor in the rejection of this alternative was the economic impact on small existing facilities that might become subject to the NSPS because of the reconstruction of a prime coat operation. EDP is expected to be adopted voluntarily in the laundry sector, where interior corrosion protection, and hence an interior prime coat, is desired and where this technique is an effective control technology.

The promulgation of an NSPS for topcoating operations equivalent to the assumed CTG limits (Regulatory Alternative B–II) would have a limited effect on VOC emission reduction beyond the no NSPS baseline. The benefits of the selection of this alternative are the same as those described for Regulatory Alternative A–II. The energy, environmental, and economic impacts of this alternative would be very similar to the impacts of the no NSPS alternative. Topcoat formulations of 62 percent solids that meet most performance specifications are currently available to manufacturers of appliance parts and products.

Regulatory Alternative B–III for topcoat operations is not achievable by all segments of the industry. Coatings

containing 70 percent (vol.) solids are

coatings applied by several different methods and with control devices,

durability and detergent resistance of the unit. Selection of a single film

Method of Determining Compliance

recovered by the system. The ratio of

coating. However, the owner or operator

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containing 70 percent (vol.) solids are available, but their use is restricted to specific applications. Among liquid coatings, the more stringent corrosion- and detergent-resistance requirements for dishwashers and laundry equipment can currently be met only through lower solids content coatings. Another means to achieve this level of control would be to use a 65.5-percent (vol.) solids top coat applied at a 60-percent transfer efficiency coupled with an incinerator on the topcoat oven. However, the costs of incineration are seen as excessive in light of the very small incremental emissions reduction achieved.

A powder top coat (Alternative B–IV) appears to achieve the highest reduction with the fewest energy requirements and least economic impact. Although powder coatings are available and have been demonstrated in many installations, it is the Administrator's judgment that powder coatings have not been adequately demonstrated for all appliances under all conditions; therefore, powder coatings were not selected as the best system of continuous emission reduction. Over the longer term, powder coatings appear to be a very attractive air pollution control alternative. The proposed standard would allow powder coatings to be used, because their VOC emissions are fewer than the proposed emission limitations.

Consideration of the environmental, energy, and economic impacts of each regulatory alternative, as discussed above, indicates that the best demonstrated system of continuous emission reduction achievable for all prime coat and topcoat operations is the application of a 62-percent solids coating applied at a transfer efficiency of 60 percent (A–II and B–II) or an equivalent combination of solids content and transfer efficiency. Unlike the control techniques capable of meeting the levels of Regulatory Alternatives A–III, B–III, and B–IV, the use of combinations of coatings and application equipment that will meet Regulatory Alternatives A–II and B–II has been demonstrated for all segments of the appliance surface coating industry with reasonable economic and other impacts.

Selection of Format for the Proposed Standards

A number of different formats could be selected for the proposed standards. The format selected should be compatible with any of the control systems that may be used to comply with the proposed standards; i.e., waterborne, solvent-borne, or powder coatings applied by several different methods and with control devices.

The formats considered were emission limits expressed by the mass of VOCs per volume of coating (less water), the mass of VOCs per unit of surface area coated at a specific coating thickness, and the mass of VOCs per volume of coating solids applied to the part.

For determination of compliance with a prescribed mass of VOCs per volume of coating (less water), the following data would be required: volume of coating used during a specified interval, organic-solvent content of the coating, and density of organic solvent. These data can be obtained from company records or the coating manufacturer. By specifying only the maximum organic-solvent content of the coating, however, this format allows no transferability between organic-solvent content and transfer efficiency. That is, no allowance is made for the reductions in VOC emissions gained from improved transfer efficiency.

The format, mass per unit area at a specific film build, would require the following data to determine compliance: volume of coating used during a specified interval, organic-solvent content of the coating, density of organic solvent, and area coated during the specified interval. The volume of coating used and the number of appliances produced are available from company records. The area coated can be determined by multiplying the number of appliances produced by the area coated per appliance. Because appliances have rather simple configurations, surface area can be determined easily. The mass-per-unit-area format is advantageous primarily because knowledge of transfer efficiency is not necessary to determine compliance. In addition, this format would allow the owner or operator at least as much flexibility as any other in selecting a control method. This format may be disadvantageous primarily because it requires specification of film thickness. Appliances are coated at different thicknesses depending upon the need for durability and detergent resistance of the unit. Selection of a single film thickness may not be equitable to all segments of the industry, while selection of two or more film thicknesses would result in an unnecessarily complicated standard.

The problems associated with a format that specifies a film thickness could be overcome with a format that allows emissions proportional to the thickness of the coating. Mass of VOCs per unit of surface area coated per unit of film thickness is an example of this format. The only additional information required to determine compliance would be the film thickness. Variations in thickness, however, would necessitate the use of complex statistical methods to determine average film thickness with a reasonable degree of reliability. Recordkeeping would be burdensome, and enforcement would be difficult.

A format of mass of VOCs per unit volume of applied coating solids would require the following data to determine compliance: volume of coating used, organic-solvent content of the coating, density of the organic solvent, solids content of the coating, and the transfer efficiency of the application method. With this format, a transfer efficiency must be measured or designated for each application method. With a specified transfer efficiency, the remaining data can be determined from company records from coating analyses, or from the coating manufacturer. Because of the relative simplicity, universal applicability, and ease in determining compliance, this format was selected for the proposed standards.

Selection of Numerical Emission Limits

The selection of the numerical emission limits in the proposed standards directly follows the selection of Regulatory Alternatives A–II and B–II as the best systems of continuous emissions reduction for prime coating and topcoating operations, respectively. The proposed standards would limit VOCs emissions to 0.90 kilogram per liter of coating solids applied to an appliance part. The limit was calculated as follows:

Coating formulation: 62 percent (vol.) solids
38 percent (vol.) organic solvent

Average organic-solvent density: 0.88 kg/ℓ (7.36 lb/gal)

Transfer efficiency: 60 percent

$$\text{Mass of VOCs per unit volume solids} = \frac{0.38 \times 0.88}{0.62} = 0.54 \text{ kg/ℓ}$$

$$\text{Mass of VOCs per unit volume of solids applied} = \frac{0.54}{0.60} = 0.90 \text{ kg/ℓ of coating solids applied}$$

Method of Determining Compliance

The procedure for determining compliance with the proposed standard is complicated because of the different control techniques that may be used by the plant owner or operator. The following multistep procedure would be used.

1. Determine the VOC emissions from each prime coat and topcoat operation during 1 calendar month. The owner or operator may obtain the data necessary to determine VOC emissions from company records, from formulation data supplied by the manufacturer of the coating, or through an analysis of each coating or input stream, using Reference Method 24.

2. Select the appropriate transfer efficiency for each surface coating operation.

3. Calculate the mass of VOC emissions per unit volume of applied coating solids for each surface coating operation. If after a 1-month period, the value obtained is equal to or less than specified emission limit for that surface coating operation, the owner or operator would be in compliance. Following the initial compliance test period, the owner or operator would repeat this calculation monthly. However, if the VOC content per unit volume of coating solids of each coating, as applied, is less than the maximum allowed for the lowest transfer efficiency in the affected facility, the calculation will not be required.

4. If incineration is used to comply with the standard, calculate monthly the uncontrolled VOC emissions as in (3) above. Calculate the destruction efficiency of the incinerator(s) by sampling upstream and downstream of the control device, as described in the proposed standard. Determine the capture efficiency, as described in the proposed standard. The product of the two efficiencies gives the reduction efficiency of the control system. The value of the reduction efficiency determined during the initial compliance testing period need not be recalculated each month, as long as no pertinent conditions change. The actual controlled emissions are determined by using the uncontrolled emissions and the reduction efficiency, as shown in the equation in the proposed standard.

5. If an organic-solvent recovery system is used, calculate monthly the uncontrolled VOC emissions as in (3) above. Then calculate the mass of VOCs recovered by the system. The ratio of recovered emissions to uncontrolled emissions is the reduction efficiency for the control system. The actual controlled emissions are determined using the uncontrolled emissions and the reduction efficiency, as shown in the equation in the proposed standard.

Two types of violations may occur at a source that complies by using incineration in conjunction with low-organic-solvent coatings. The first is an increase in coating VOC content above the level the incinerator can handle, and the second is improper operation and maintenance of the incinerator. These two types of violations are discussed below.

When incineration is used as the method of compliance, the performance test consists of determining the mass of controlled VOC emissions per unit volume of applied coating solids for the preceding 30 days. If these emissions exceed 0.90 kg VOC per liter of coating solids applied, the source will be in violation of Section 60.452. The source may demonstrate, through another compliance test, that its incinerator(s) can achieve a higher destruction efficiency than has been previously demonstrated, if it wishes to apply a coating with a higher organic-solvent content.

A second type of violation may be triggered by a repeated pattern of incinerator temperature fluctuations. The initial compliance test will establish the combustion temperature needed to achieve a particular destruction efficiency. If during the coating operation continuous monitoring data or reports show repeated drops in temperature of more than 3 hours duration, the source could be in violation of 40 CFR 60.11(d), which requires proper operation and maintenance of control equipment. If a source's continuous monitor shows a drop in temperature, the Administrator may require that a performance test be conducted at the lower temperature.

Selection of Performance Test Methods

Reference Method 24, "Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coating" (45 FR 65956), leads to a determination of VOC content of coating material measured as mass of volatile organics per unit volume of coating solids. For each surface coating operation, Reference Method 24 would be used to analyze the VOC content of each coating. However, the owner or operator is provided the alternative of obtaining these data from formulation data supplied by the manufacturer of the coating. Additional data may be required from company records. Equations provided in the proposed standards would enable the owner or operator to calculate the VOC emissions. Reference Method 25, "Determination of Total Gaseous Nonmethane Organic Emissions as Carbon" (45 FR 65956), is included in the proposed standards and is used in determining the destruction efficiency achieved by an incinerator.

Modification/Reconstruction Considerations

A modification is defined as any physical or operational change to an existing facility that results in an increased emission rate of any pollutant to which the standard applies (40 CFR 60.14). Upon modification, an existing facility becomes an affected facility and, therefore, subject to the standard. Aproximately 160 affected facilities are expected to be subject to the proposed standards in the first 5 years after promulgation. It is anticipated that 50 percent of the 160 affected facilities will be coating operations that have been modified or reconstructed. Alterations characteristic of the appliance industry that could increase emissions may include an added coating station, changes in coating specifications, a change from high- to low-solids coatings, the use of a higher density organic solvent, increased film thickness, or an increase in production capacity. Any such change might cause a facility to be subject to the standard unless emissions were concurrently reduced elsewhere in the plant.

A reconstruction is defined in 40 CFR 60.15 as any replacement of components of an existing facility to the extent that: (1) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable new facility, and (2) it is technologically and economically feasible to meet the applicable standards. An existing facility designated by the Administrator as reconstructed is subject to the standard. Reconstructions characteristic of the appliance industry would probably result from changes in application equipment to accommodate a change in coating; e.g., conventional to high-solids, waterborne, or powder coatings.

The proposed standards contain no

exemptions due to the modification or reconstruction of existing coating lines, which are expected to be the focus of industry growth during the coming years. Because the proposed standards

Based on the reports impact analysis, a total of 40 industry person-years would be required to comply with the recordkeeping and reporting requirements through the first 5 years of

during promulgation of a final rule concerns the definition of an appliance part or product that would be subject to the proposed standards. The proposed standards were based upon analyses of data pertaining to the surface coating of

"* * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines

established pursuant to Section 111 (or 112) of the Act.

In all events, SIPs approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of the NAAQS designed to

60.453 Performance test and compliance provisions.
60.454 Monitoring of emissions and operations.
60.455 Reporting and recordkeeping requirements.

exemptions due to the modification or reconstruction of existing coating lines, which are expected to be the focus of industry growth during the coming years. Because the proposed standards are based on the use of coatings that are demonstrated and applicable throughout the industry and could be achieved by a wide combination of conventional methods or techniques, the impact of modification and reconstruction provisions has been significantly lessened.

Selection of Monitoring Requirements

Monitoring requirements are normally included in standards of performance to ensure that emission control requirements are met and that control devices are properly operated and maintained.

The owner or operator would be required to calculated and record the VOC emissions per unit volume of applied solids from each affected facility for each calendar month. Each monthly calculation would be considered a performance test. Where direct incineration is used to comply with the proposed standards, a monitoring device would be required to continuously record the combustion temperature of the control device. If catalytic incineration is used, the owner or operator would install a monitoring device to continuously record the gas temperature both upstream and downstream of the catalyst bed to verify the activity of the catalyst.

Impact of Reporting Requirements

A reports impact analysis for the appliance surface coating industry was prepared in response to the U.S. Environmental Protection Agency (EPA) guidelines for implementing Executive Order 12044 (44 FR 30988, May 29, 1979). The purpose of the analysis is to estimate the economic impact of the reporting and recordkeeping requirements that would be imposed by the proposed standards and by those appearing in the General Provisions of 40 CFR Part 60. Included in the analysis are the rationale for the selection of the proposed requirements, an evaluation of the major alternatives considered prior to the selection of the proposed requirements, and a description of the information required by the General Provisions and by the proposed standards. A copy of the reports impact analysis is included in Subcategory II–I of the appliance surface coating docket (EPA Docket No. OAQPS A–80–6).

Based on the reports impact analysis, a total of 40 industry person-years would be required to comply with the recordkeeping and reporting requirements through the first 5 years of applicability.

Public Hearing

A public hearing will be held to discuss the proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contract EPA at the address given above (see **ADDRESSES** section). Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow interested parties to readily identify and locate documents so they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review.

Miscellaneous

As prescribed by Section 111 of the Clean Air Act, establishment of standards of performance for large appliance surface coating operations was preceded by the Administrator's determination (44 FR 49222, August 21, 1979) that these sources contributed significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comments on all aspects of the proposed standards including technological issues, monitoring requirements, and proposed test methods.

One of the issues to be resolved during promulgation of a final rule concerns the definition of an appliance part or product that would be subject to the proposed standards. The proposed standards were based upon analyses of data pertaining to the surface coating of traditional household appliances such as cooking equipment, laundry equipment, refrigerators, freezers, dishwashers, water heaters, and trash compactors. Recent analyses of industry data indicate that other appliances may be surface coated by the same methods as these traditional large appliance products. The other products include items such as fans, air purifiers, humidifiers, dehumidifiers, water softeners, baseboard and room heaters, furnaces, air-conditioning equipment, dry cleaning equipment, vacuum cleaners, and interior lighting fixtures. Because there is no apparent technical reason to exclude these products from the proposed standards and because these products would not be subject to other standards under development by the Agency, the definition of appliance has been expanded to include these products. Comments are specifically invited on the following:

- The method(s) of coating application traditionally used to coat these appliances.
- Other product(s) to be included or excluded from the standards because of significant differences in coating application equipment or formulations, and
- The economic impact of the proposed standards and whether it would result in any plant closure.

Information regarding the number of manufacturers producing these products, differences in coating formulations or equipment, and present and forecasted production is particularly invited.

In addition, the Administrator specifically invites comments concerning the reporting requirements of the proposed standards. Any comment submitted to the Administrator should contain specific information and data pertinent to an evaluation of the magnitude and severity of any adverse impact and should suggest alternative courses of action to avoid this impact. Recommended alternative reporting requirements should contain complete instructions and should state all the reasons why the recommended requirements would be considered an improvement.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

"* * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

Although emission control technology may be available to reduce emissions below levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act requires (or has the potential for requiring) imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" (LAER) for new or modified sources located in nonattainment areas; i.e., areas where statutorily mandated health and welfare standards are being violated. In this respect, Section 173 of the Act requires that new or modified sources constructed in an area where ambient pollutant concentrations exceed the National Ambient Air Quality Standard (NAAQS) must reduce emissions to the level that reflects LAER, as defined in Section 171(3) for such category of source. The statute defines LAER as the rate of emissions based on the following, whichever is more stringent:

(A) The most stringent emission limitation contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(B) The most stringent emission limitation achieved in practice by such class or category of source.

In no event can the emission rate exceed any applicable new source preformance standard.

A similar situation may arise under the prevention of significant deterioration air quality provisions of the Act (Part C). These provisions require that certain sources (referred to in Section 169(1) employ BACT as defined in Section 169(3) for all pollutants regulated under the Act. BACT must be determined on a case-by-case basis, with energy, environmental, and economic impacts, and other costs taken into account. In no event, may the application of BACT result in emissions of pollutants that exceed the emissions allowed by any applicable standard established pursuant to Section 111 (or 112) of the Act.

In all events, SIPs approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of the NAAQS designed to protect public health and welfare. For this purpose, SIPs must, in some cases, require greater emission reduction than those required by standards of performance for new sources.

Finally, States are free under Section 116 of the Act to establish even more stringent emission limits than those established under Section 111 or those necessary to attain or maintain the NAAQS under Section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than standards of performance under Section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, emission control technology improvements, and reporting requirements. The reporting requirements in these standards will be reviewed as required under EPA's sunset policy for reporting requirements in standards.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance under Section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment were considered when the proposed standards were formulated to ensure that they would represent the best system of emission reduction, considering costs. The economic impact assessment is included in the Background Information Document.

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

It is proposed to amend 40 CFR Part 60 by adding a new subpart SS as follows:

Subpart SS—Standards of Performance for Industrial Surface Coating: Appliances

Sec.

60.450 Applicability and designation of affected facility.
60.451 Definitions.
60.452 Standards for volatile organic compounds.
60.453 Performance test and compliance provisions.
60.454 Monitoring of emissions and operations.
60.455 Reporting and recordkeeping requirements.
60.456 Test methods and procedures.

Authority: Secs. 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart SS—Standards of Performance for Industrial Surface Coating: Appliances

§ 60.450 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to each surface coating operation in an appliance surface coating line.

(b) The provisions of this subpart apply to each affected facility identified in paragraph (a) of this section that commences construction, modification, or reconstruction after December 24, 1981.

§ 60.451 Definitions.

(a) All terms used in this subpart not defined are given meaning in the Act or in Subpart A of this part.

"Applied coating solids" means the coating solids that adhere to the surface of the appliance part being coated.

"Applicance part" means any organic surface-coated metal lid, door, casing, panel, or other interior or exterior metal part or accessory that is assembled to form an appliance product.

"Appliance product" means any organic surface-coated metal range, range hood, oven, microwave oven, refrigerator, refrigerated display case, freezer, washer, dryer, dry cleaning equipment, dishwasher, water heater, trash compactor, vacuum cleaner, ice maker, water softener, or interior lighting fixture manufactured for household, commercial, or recreational use. "Appliance product" also means any air purifier, room heater, baseboard heater, dehumidifier, humidifier, fan, furnace, window air conditioner, unitary air conditioner, or heat pump manufactured for household use.

"Appliance surface coating line" means that portion of an appliance part of product manufacturing or assembly plant engaged in the application and curing or organic surface coatings on appliance parts or products.

"Coating application station" means that portion of the appliance surface coating operation where a prime coat or a top coat is applied to the appliance part or product. The coating application station consists of the dip tank, spray booth(s), or flow unit.

"Curing oven" means a device that uses heat to dry or cure the coating(s) applied to appliance parts or products.

"Electrodeposition" (EDP) means a method of coating application in which the appliance part or product is

L_r = volume of organic solvent recovered, in liters.
L_w = volume of solids consumed, in liters.
M_d = mass of VOCs in dilution solvent, in kilograms.
M_o = mass of VOCs in coating, in kilograms.
M_r = mass of VOCs recovered, in kilograms.

the weighted average from formulation data supplied by the manufacturer of the coating or by an analysis of each input stream by Reference Method 24 or an alternative or equivalent method acceptable to the Administrator. Coating and organic-solvent usage data may be

(iv) Compliance with § 60.452 is determined by the following relationships:

$$C = \frac{M_o + M_d}{L_w + L_r}$$

(iii) The weighted average transfer efficiency is calculated by the following equation:

$$\sum_{i=1}^{n} \sum_{k=1}^{m} L_c \, V_s \, T_k$$

where

i denotes a coating (or input stream) to which no organic dilution solvent is added or which is analyzed after dilution,

or

"Curing oven" means a device that uses heat to dry or cure the coating(s) applied to appliance parts or products.

"Electrodeposition" (EDP) means a method of coating application in which the appliance part or product is submerged in a tank filled with coating material suspended in water and an electrical field is used to deposit the material on the part or product.

"Flashoff area" means the portion of an appliance surface coating line between the coating application station and the curing oven.

"Spray booth" means the structure housing automatic or manual spray application equipment where a coating is applied to appliance parts or products.

"Surface coating operation" means the system on an appliance surface coating line used to apply and dry or cure an organic coating on the surface of the appliance part of product. The surface coating operation may be a prime coat or a topcoat operation and includes the coating application stations(s), flashoff area, and curing oven.

"Transfer efficienty" means the ratio of the amount of coating solids deposited onto the surface of an appliance part of product to the total amount of coating solids used.

"VOC emissions" means the mass of volatile organic compounds (VOCs), expressed as kilograms of VOCs per liter of applied coating solids, emitted from an appliance surface coating operation.

(b) All symbols used in this subpart not defined below are given meaning in the Act or Subpart A of this part.

B = uncontrolled VOC emissions per unit volume of coating solids, in kilograms per liter.
C_a = the concentration of VOCs in a vent after a control device, in parts per million by volume (as carbon).
C_b = the concentration of VOCs in a vent before a control device, in parts per million by volume (as carbon).
C_f = the concentration of VOCs in a vent not routed to a control device, in parts per million by volume (as carbon).
D_c = density of coating (or input stream), in kilograms per liter.
D_d = density of organic solvent used for dilution, in kilograms per liter.
D_r = density of recovered organic solvent, in kilograms per liter.
E = the efficiency of a control device (fraction).
F = the capture efficiency of a control device (fraction).
G = uncontrolled VOC emissions per unit volume of applied coating solids, in kilograms per liter.
L_c = volume of coating used, in liters.
L_d = volume of organic solvent used for dilution, in liters.
L_r = volume of organic solvent recovered, in liters.
L_s = volume of solids consumed, in liters.
M_d = mass of VOCs in dilution solvent, in kilograms.
M_o = mass of VOCs in coating, in kilograms.
M_r = mass of VOCs recovered, in kilograms.
N = weighted average of actual VOC emissions per unit volume of solids applied, in kilograms per liter.
Q_a = the volumetric flow rate through a vent after a control device, in dry standard cubic meters per hour.
Q_b = the volumetric flow rate through a vent before a control device, in dry standard cubic meters per hour.
Q_f = the volumetric flow rate in a vent not routed to a control device, in dry standard cubic meters per hour.
R = the efficiency of a control device.
T = transfer efficiency.
V_s = volume fraction of nonvolatile matter in coating (or input stream) in liters per liter.
W_o = weight fraction of nonaqueous volatile matter of coating, in kilograms per kilogram.

§ 60.452 Standards for volatile organic compounds.

On or after the date on which the performance test required by § 60.8 is completed, no owner or operator of an affected facility subject to the provisions of this subpart shall discharge or cause the discharge of VOC emissions that exceed 0.90 kilogram of VOCs per liter of applied coating solids from any surface coating operation on an appliance surface coating line.

§ 60.453 Performance test and compliance provisions.

(a) Sections 60.8(d) and (f) do not apply to the performance test procedures required by this subpart.

(b) Except as provided in paragraph (c) of this section, each owner or operator shall determine compliance with § 60.452 by calculating and recording the weighted average of the VOC emissions per liter of applied coating solids from each affected facility during a calendar month. Following this initial performance test period, the owner or operator shall calculate and record the VOC emissions from each affected facility for each calendar month. For this subpart, each monthly calculation is considered a performance test. Where coating is applied by spray application, the owner or operator shall obtain the information necessary to calculate the weighted average from formulation data supplied by the manufacturer of the coating or by an analysis of each coating, by Reference Method 24 or by an alternative or equivalent method acceptable to the Administrator. Where a coating is applied by dip coating, flow coating, or EDP, the owner or operator shall obtain the information necessary to calculate the weighted average from formulation data supplied by the manufacturer of the coating or by an analysis of each input stream by Reference Method 24 or an alternative or equivalent method acceptable to the Administrator. Coating and organic-solvent usage data may be obtained from company records. If formulation data supplied by the manufacturer of the coating are used to determine VOC emissions from an affected facility, the Administrator may require an analysis of each coating (or input stream) by Reference Method 24. Where more than one application method is used within a single surface coating operation, the owner or operator shall determine the composition and volume of each coating applied by each method through a means acceptable to the Administrator.

(1) Select the transfer efficiency for the applicable method of coating application from Table 1. If the owner or operator can demonstrate to the satisfaction of the Administrator that other transfer efficiencies are appropriate, the Administrator will approve their use on a case-by-case basis.

(2) For each affected facility where the coating is analyzed prior to dilution,

(i) The mass of VOCs is calculated by the following equation:

$$M_o + M_d = \sum_{i=1}^{n} L_{c_i} D_{c_i} W_{o_i} + \sum_{j=1}^{m} L_{d_j} D_{d_j}$$

(ii) The volume of solids consumed is determined by the following equation:

$$L_s = \sum_{i=1}^{n} L_{c_i} V_{s_i}$$

(iii) The weighted average transfer efficiency is calculated by the following equation:

$$T = \frac{\sum_{i=1}^{n} \sum_{k=1}^{m} L_{c_{ik}} V_{s_{ik}} T_k}{L_s}$$

(iv) Compliance with § 60.452 is determined by the following relationships:

$$G = \frac{M_o + M_d}{L_s T}$$

$$N = G$$

$$N < 0.90 \text{ kg/}\ell ,$$

where
i denotes each coating (or input stream) before dilution.
j denotes each dilution solvent.
k denotes each application station.
n or m denotes the total number of summed components.

(3) For each affected facility where the coating is analyzed after dilution,

(i) The mass of VOCs is calculated by the following equation:

$$M_o + M_d = \sum_{i=1}^{n} L_{c_i} D_{c_i} W_{o_i} .$$

(ii) The volume of solids consumed is determined by the following equation:

$$L_s = \sum_{i=1}^{n} L_{c_i} V_{s_i} .$$

(iii) The weighted average transfer efficiency is calculated by the following equation:

$$T = \frac{\sum_{i=1}^{n} \sum_{k=1}^{m} L_{c_{ik}} V_{s_{ik}} T_k}{L_s} .$$

(iv) Compliance with § 60.452 is determined by the following relationships:

$$G = \frac{M_o + M_d}{L_s T}$$

$$N = G$$

$$N < 0.90 \text{ kg/}\ell ,$$

where
i denotes each coating (or input stream) as applied.
k denotes each application solvent.
n or m denotes the total number of summed components.

(c) For each affected facility where the VOC content per unit volume of coating solids (B_i) of each coating as applied is equal to or less than the maximum allowable VOC content specified in Table 2 for the lowest transfer efficiency of any method of application in the affected facility, the owner or operator is not required to calculate VOC emissions for each calendar month. The VOC content per unit volume of solids for each coating is calculated by the following equations:

$$B_i = \frac{D_{c_i} W_{o_i}}{V_{s_i}} ,$$

where
i denotes a coating (or input stream) to which no organic dilution solvent is added or which is analyzed after dilution,
or

$$B_i = \frac{\sum_{i=1}^{n} L_{c_i} D_{c_i} W_{o_i} + \sum_{j=1}^{n} L_{d_j} D_{d_j}}{\sum_{i=1}^{n} L_{c_i} V_{s_i}} ,$$

where
i denotes each coating (or input stream) before dilution.
j denotes each dilution solvent.
n or m denotes the total number of summed components.

Table 1.—*Transfer efficiencies*

Application method	Transfer efficiency (T_a)
Air-atomized spray	0.40
Airless spray	0.45
Manual electrostatic spray	0.60
Flow coat	0.85
Dip coat	0.85
Nonrotational automatic electrostatic spray	0.85
Rotating head automatic electrostatic spray	0.90
Electrodeposition	0.95
Powder	0.95

Table 2.—*Maximum allowable VOC content*

Transfer efficiency (T)	Maximum VOC content (B_i) (kg VOC/l solids)
0.40	0.36
0.45	0.40
0.50	0.45
0.55	0.50
0.60	0.54
0.65	0.58
0.70	0.63
0.75	0.68
0.80	0.72
0.85	0.76
0.90	0.81
0.95	0.86

(d) For each affected facility where compliance is achieved through the use of an add-on emission control system that reduces emissions through the destruction of VOCs, the owner or

The values of Q_f and C_f for vents not routed to any control device shall be determined by a method acceptable to the Administrator.

(3) Determine the overall reduction

$$M_r$$

transfer efficiency of any application method in use in the affected facility:

(i) The minimum transfer efficiency of any coating application equipment used, and

(ii) The maximum VOC content per

owner or operator shall maintain, at the source, daily records of the incinerator combustion chamber temperature. If catalytic incineration is used, the owner or operator shall maintain at the source daily records of the gas temperature

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(d) For each affected facility where compliance is achieved through the use of an add-on emission control system that reduces emissions through the destruction of VOCs, the owner or operator shall calculate the uncontrolled VOC emissions (G) from each such affected facility during each calendar month by the procedures specified in paragraph (b) of this section. The owner or operator shall also determine the controlled VOC emissions (N) and compliance with § 60.452 by the following procedures:

(1) Determine the destruction efficiency of a control device (E_z) using values of the volumetric flow rate of each of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the device by the following equation:

$$E_z = \frac{\sum_{i=1}^{n} Q_{b_i} C_{b_i} - \sum_{j=1}^{m} Q_{a_j} C_{a_j}}{\sum_{i=1}^{n} Q_{b_i} C_{b_i}}$$

In subsequent months, the most recently determined VOC destruction efficiency may be used for the performance test, providing control device and capture system operating conditions have not changed. Repeat this portion of the performance test when directed by the Administrator or when it is desirable to operate the control device at conditions different from the initial performance test.

(2) Determine the fraction of total VOCs emitted by an affected facility that enters a particular control device (F_z) by using the following equation:

$$F_z = \frac{\sum_{i=1}^{n} Q_{b_i} C_{b_i}}{\sum_{i=1}^{n} Q_{b_i} C_{b_i} + \sum_{k=1}^{m} Q_{f_k} C_{f_k}}$$

The values of Q_f and C_f for vents not routed to any control device shall be determined by a method acceptable to the Administrator.

(3) Determine the overall reduction efficiency of all control devices for one affected facility by the following equation:

$$R = \sum_{z=1}^{n} E_z F_z .$$

(4) Determine compliance with § 60.452 by the following relationship:

N=G(1-R)<0.90 kg/l,

where

i denotes each vent before a control device.

j denotes each vent after a control device.

k denotes each vent not routed to a control device.

z denotes each control device.

n or m denotes the total number of components summed.

(e) For each affected facility where compliance is achieved through the use of a control device that reduces emissions through the recovery of organic solvent, the owner or operator shall calculate the uncontrolled VOC emissions (G) from each affected facility during each calendar month by the procedures specified in paragraph (b) of this section. The owner or operator shall also determine the controlled VOC emissions (N) and compliance with § 60.452 by the following procedure. For this subpart, each monthly calculation is considered a performance test. Where one organic-solvent recovery system serves more than one affected facility, the owner or operator shall apportion the organic solvent recovered among the affected facilities in direct proportion to the mass of uncontrolled VOCs emitted from each affected facility. Controlled VOC emissions are determined by the following procedures:

(1) Calculate the mass of VOCs recovered by the following equation:

$M_r = L_r D_r$.

(2) Determine the overall reduction efficiency for an affected facility:

$$R = \frac{M_r}{M_o + M_d} .$$

(3) Determine compliance with § 60.452 by the following relationship:

$N = G(1-R) < 0.90 \text{ kg/l}$.

§ 60.454 Monitoring of emissions and operations.

The owner or operator of an affected facility that uses a capture system and an incinerator to comply with the emission limits specified under § 60.452 shall install, calibrate, maintain, and operate temperature measurement devices as prescribed below:

(a) Where thermal incineration is used, a temperature measurement device shall be installed in the firebox. Where catalytic incineration is used, a temperature measurement device shall be installed in the gas stream immediately before and after the catalyst bed.

(b) Each temperature measurement device shall be installed, calibrated, and maintained according to the manufacturer's specifications. The device shall have an accuracy of the greater of 0.75 percent of the temperature being measured expressed in degrees Celsius or ±2.5° C.

(c) Each temperature measurement device shall be equipped with a recording device so that a permanent continuous record is produced.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.455 Reporting and recordkeeping requirements.

(a) Each owner or operator subject to the provisions of this subpart shall include the following data in the report of the initial performance test required under § 60.8(a) and in the reports of all subsequent performance tests where either the capture efficiency or the destruction efficiency of an incineration system is determined:

(1) For each affected facility where the VOC content per unit volume of coating solids (B_i) of each coating as applied is equal to or less than the maximum allowable VOC content specified in Table 2 for the lowest

transfer efficiency of any application method in use in the affected facility:

(i) The minimum transfer efficiency of any coating application equipment used, and

(ii) The maximum VOC content per volume of coating solids, B_i, as calculated in § 60.453(c), of any coating applied during the month.

(2) Where compliance is achieved through the use of an incineration system:

(i) The average combustion temperature (or the average temperature upstream and downstream of the catalyst bed), and

(ii) A description of the method used to establish the amount of VOCs captured and sent to the incinerator.

(b) Following the initial performance test report, each owner or operator shall report within 10 calendar days each instance in which the weighted average of the mass of VOCs per unit volume of coating solids applied, N, from any affected facility is greater than the limit specified in § 60.452.

(c) Where compliance with § 60.452 is achieved through the use of an incineration system, the owner or operator shall report quarterly the following information:

(1) For thermal incinerators, all 3-hour periods of coating operation during which the average combustion temperature was more than 28° C. (50° F) below the average combustion temperature of the device during the most recent performance test at which destruction efficiency was determined.

(2) For catalytic incinerators, all 3-hour periods of coating operation during which the average temperature of the device immediately before the catalyst bed is more than 28° C (50° F) below the average temperature of the device during the most recent performance test at which destruction efficiency was determined. The owner or operator shall also report all 3-hour periods of coating operation during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test at which destruction efficiency was determined.

(3) Negative reports are required quarterly if incinerator parameters remain within the limits outlined in paragraphs (i) and (ii), above.

(d) Each owner or operator subject to the provisions of this subpart shall maintain at the source, for at least 2 years, records of all data and calculations used to determine VOC emissions from each affected facility. Where compliance is achieved through the use of thermal incineration, each owner or operator shall maintain, at the source, daily records of the incinerator combustion chamber temperature. If catalytic incineration is used, the owner or operator shall maintain at the source daily records of the gas temperature, both upstream and downstream of the incinerator catalyst bed. Where compliance is achieved through the use of a solvent recovery system, the owner or operator shall maintain at the source daily records of the amount of solvent recovered by the system for each affected facility.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.456 Test methods and procedures.

(a) The reference methods in Appendix A to this part, except as provided under § 60.8(b), shall be used to determine compliance with § 60.452 as follows:

(1) Method 24 or formulation data supplied by the manufacturer of the coating to determine the VOC content of a coating. Procedures to determine VOC emissions are provided in § 60.453.

(2) Method 25 for the measurement of the VOC concentration in the gas stream vent.

(3) Method 1 for sample and velocity traverses,

(4) Method 2 for velocity and volumetric flow rate,

(5) Method 3 for gas analysis, and

(6) Method 4 for stack gas moisture.

(b) For Method 24, the coating sample must be a 1-liter sample taken into a 1-liter container at a point where the sample will be representative of the coating material.

(c) For Method 25, the sampling time for each of three runs is to be at least 60 minutes and the minimum sample volume is to be at least 0.003 dscm except that shorter sampling times or smaller volumes, when necessitated by process variable or other factors, may be approved by the Administrator.

(d) The Administrator will approve testing of representative stacks on a case-by-case basis if the owner or operator can demonstrate to the satisfaction of the Administrator that testing of representative stacks yields results comparable to those that would be obtained by testing all stacks.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

[FR Doc. 80-40137 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-24-M

40 CFR Part 60

[AD—FRL 1625-8a]

Standards of Performance for New Stationary Sources; Priority List; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Amendment to Priority List.

SUMMARY: The priority list of major source categories for which EPA is to promulgate NSPS includes the category "Industrial Surface Coating: Large Appliances." Studies of the appliance manufacturing industry have revealed that the operations, processes, and emissions characteristic of the coating of certain comparatively small appliances are similar, and in many cases identical, to those associated with larger appliance surface coating. Because there is therefore no reason to distinguish among the emissions from appliance surface coating operations based solely on the size of the appliance being coated, it is appropriate to treat surface coating of all types of appliances as a single source category for the purpose of establishing standards of performance. The Administrator is therefore proposing to amend the priority list to aggregate all appliance surface coating operations in one source category. The proposed amendment is based on the Administrator's judgment that emissions from one appliance surface coating operations contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed amendment.

DATES: *Comments.* Comments must be received on or before February 23, 1981.

Public hearing. The public hearing will be held on January 28, 1981 beginning at 9:00 a.m.

Request to speak at hearing. Persons wishing to present oral testimony at the hearing should contact EPA by January 21, 1981.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130). Attention: Docket No. A-80-6, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public hearing. The public hearing for the proposed standards of performance for appliance surface coating operations will be held at O.A. Auditorium, R.T.P.,

North Carolina and comments will be received at this time on the proposed amendment to the priority list. Persons wishing to present oral testimony should notify Mrs. Naomi Purkie, Emission Standards and Engineering Division

promulgated, after revisions, on August 21, 1979 (40 CFR 60.16, 44 FR 49222). Of the 59 source categories on the list, large appliance surface coating operations are listed as number 28.

Each source category should be broad

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

It is proposed to amend 40 CFR Part 60, § 60.16, by revising item 28 to read as follows:

All comments should be addressed to: Acting Chief (3AH10), Air Programs Branch, U.S. Environmental Protection Agency, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, ATTN: 107MD-3.

Submittal of Public Comments

The public is invited to comment on whether the cities of Cumberland and Hagerstown currently nonattainment areas for the Federal CO NAAQS's should be redesignated as attainment /

were handed out at the public hearing and read into the record of the hearing. Today EPA is announcing the availability for public review of this supplemental information, and giving notice of an extension of time for

North Carolina and comments will be received at this time on the proposed amendment to the priority list. Persons wishing to present oral testimony should notify Mrs. Naomi Purkie, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5331.

Background Information Document. Background information on the emissions from the appliance surface coating industry may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777. Please refer to *Industrial Surface Coating: Appliances—Background Information for Proposed Standards,* EPA–450/3–80–037a.

Docket. A docket, number A–80–6, containing information used by EPA in development of the standards of performance for the appliance surface coating industry, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:
Mr. Gene W. Smith, Emission Standards and Engineering Division (MD–13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5421.

SUPPLEMENTARY INFORMATION:

Proposal to Amend Priority List

Under Section 111 of the Clean Air Act, EPA is required to develop standards of performance for new stationary sources which the Administrator determines may contribute significantly to air pollution which may reasonably be anticipated to endanger public hearlth or welfare. Section 111(f) of the Act, as amended in 1977, requires that the Administrator promulgate a priority list of categories of major stationary sources for which standards of performance for new sources are to be promulgated.

In developing priorities, Section 111 specifies that the Administrator consider (1) the quantity of emissions from each source category, (2) the extent to which each pollutant endangers public health or welfare, and (3) the mobility and competitive nature of each stationary source category.

The priority list, which identifies major source categories in order of priority for development of regulations, was proposed on August 31, 1978, and promulgated, after revisions, on August 21, 1979 (40 CFR 60.16, 44 FR 49222). Of the 59 source categories on the list, large appliance surface coating operations are listed as number 28.

Each source category should be broad enough in scope to encompass emissions from all similar processes and operations. Studies of the appliance manufacturing industry have revealed that the operations, processes, and emissions associated with surface coating operations for appliances of all sizes are similar enough to warrant treatment as a single source category.

Many appliances not customarily considered to be large household appliances are similar in size and shape to common household appliances such as refrigerators, freezers, washers, dryers, and ranges. The coating application methods—flow coat, dip coat, electrodeposition, and air, airless, and electrostatic spray—are identical. These additional appliance coating operations use coating materials similar to those used in large appliance coating operations. Coating performance specifications are also similar except for slight variations depending upon whether the unit is designed for indoor or outdoor use. Therefore, these operations produce the same types, and proportionately the same quantities, of VOC emissions as large appliance surface coating operations.

As a result, there is no reason to distinguish among appliance surface coating operations based solely on the size of the appliance passing through the coating process. It is therefore more appropriate to treat surface coating of all appliances as a single category.

In promulgating the priority list, coating operations for large appliances were found to contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Accordingly, the category of surface coating operations for all appliances, which encompasses large appliance surface coating operations, also constitutes a major source category and will be treated as a single category of sources for the purpose of establishing standards of performance.

Proposed standards of performance for appliance surface coating operations appear elsewhere in this issue of the **Federal Register**. This proposed rulemaking is issued under the authority of Sections 111 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7411 and 7601(a)).

Dated: December 18, 1980.

Douglas M. Costle,
Administrator.

It is proposed to amend 40 CFR Part 60, § 60.16, by revising item 28 to read as follows:

§ 60.16 Priority list.

* * * * *

28. Industrial Surface Coating: Appliances.

* * * * *

(Secs. 111, 301(a), Clean Air Act as amended (42 U.S.C. 7411, 7601(a))

[FR Doc. 80–40136 Filed 12–23–80; 8:45 am]

BILLING CODE 6560–24–M

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40 CFR Part 81

[A–5–FRL 1711–2]

Proposed Section 107 Redesignation for Maryland

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: The State of Maryland has revised its list of air quality attainment designations for two cities within the State with respect to carbon monoxide (CO). The State has changed the designations for these two cities (Cumberland and Hagerstown) from nonattainment of primary standards to attainment/unclassified.

EPA proposes to approve these changes submitted by Maryland. The purpose of this notice is to solicit public comments on this proposed action. All other Section 107 designations for the State of Maryland not discussed in this notice remain intact.

DATE: Comments on these proposed designations changes should be sumitted on or before January 23, 1981.

ADDRESSES: Copies of the associated support materials are avialable for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, 10th floor, 6th & Walnut Streets, Philadelphia, PA 19106.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Maryland Department of Health and Mental Hygiene, Environmental Health Administration, Air Quality Programs, 201 W. Preston Street, Baltimore, Maryland 21201, ATTN: Mr. George Ferreri.

All comments should be addressed to: Acting Chief (3AH10), Air Programs Branch, U.S. Environmental Protection Agency, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, ATTN: 107MD–3.

FOR FURTHER INFORMATION CONTACT:
Mr. Harold A. Frankford (3AH12), U.S. Environmental Protection Agency, Region III, Curtin Building, 6th & Walnut Streets, Philadelphia, PA 19106. Phone: 215/597–8392.

SUPPLEMENTARY INFORMATION:

Background

Section 107(d)(1) of the Clean Air Act ("Act") required States to submit to the Administrator a list identifying all air quality control areas, or portions thereof, that have not attained National Ambient Air Quality Standards (NAAQS). The Act further requires that the Administrator promulgate this list, with such modifications as he deems necessary, as required by Section 107(d)(2) of the Act. On March 3, 1978, the Administrator promulgated nonattainment designations for Maryland for total suspended particulates (TSP), sulfur dioxide, (SO_2), carbon monoxide (CO), ozone (O_3), and oxides of nitrogen (NO_x), 43 FR 8962. These designations were effective immediately and public comment was solicited. On September 12, 1978, in response to the comments received, the Administrator revised and amended certain of the original designations, 43 Fed. Reg. 40502. The Act also provides that a State, from time to time, may review and revise its designations list and submit these revisions to the Administrator for promulgation (Section 107(d)(5) of the Act). The criteria and policy guidelines governing these revisions and the Administrator's review of them are the same that were used in the original designations and which are summarized in the **Federal Register** on March 3, 1978, 43 FR 8962; September 11, 1978, 43 FR 40412; and September 12, 1978, 43 FR 40502. Maryland has revised its original designation list and on September 21, 1979 submitted these revisions to EPA.

Proposed CO Redesignations

The State of Maryland has revised CO designations for the cities of Cumberland and Hagerstown from nonattainment of primary CO NAAQS's to attainment/unclassified. Pursuant to this revision, the State submitted 8 quarters of air quality data showing no violations of the standard. Therefore, EPA proposed to redesignate these areas to "does meet primary standards" in accordance with Maryland's revision.

Submittal of Public Comments

The public is invited to comment on whether the cities of Cumberland and Hagerstown currently nonattainment areas for the Federal CO NAAQS's should be redesignated as attainment/unclassified areas for these CO NAAQS's.

All comments received on or before January 23, 1981 will be considered. However, until EPA actually promulgates a final redesignation changing the area from nonattainment to attainment/unclassified, the required State Implementation Plan (SIP) revisions satisfying Part D of the 1977 Clean Air Act Amendments will continue to apply.

All comments should be addressed to: Acting Chief (3AH10), Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Street, 10th floor, Philadelphia, PA 19106, ATTN: 107MD–3.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 107(d), 171(2), 301(a) of the Clean Air Act, as amended (42 U.S.C. 7407(d), 7501(2), 7601(a))

Dated: November 13, 1980.

Jack J. Schramm,
Regional Administrator.

[FR Doc. 80–40147 Filed 12–23–80; 8:45 am]

BILLING CODE 6560–38–M

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40 CFR Part 123

[SW–4–FRL 1711–8]

Georgia's Application for Interim Authorization, Phase I

AGENCY: Environmental Protection Agency.

ACTION: Extension of time for comments on Georgia's Application for Interim Authorization.

SUMMARY: On December 15, 1980, a public hearing was held concerning Georgia's application for Interim Authorization, Phase I to administer a hazardous waste management program under the Resource Conservation and Recovery Act of 1976. On December 12, Georgia submitted to EPA some additional information clarifying some questions raised by EPA. Copies of the correspondence received from Georgia were handed out at the public hearing and read into the record of the hearing. Today EPA is announcing the availability for public review of this supplemental information, and giving notice of an extension of time for submittal of written comments to December 29, 1980.

DATE: Comments on Georgia's application for Interim Authorization must be received by December 29, 1980.

ADDRESSES: Copies of the supplemental information provided by the State of Georgia are available at the following addresses for inspection and copying by the public:

(1) Land Protection Branch, Georgia Environmental Protection Division, 270 Washington Street, S.W., Room 822, Atlanta, Georgia 30334, Telephone: 404/656–2833.

(2) Environmental Protection Agency, Regional Office Library, Room 121, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone: 404/881–4216.

(3) EPA Headquarters Library, Room 2404, 401 M Street, S.W., Washington, D.C. 20460.

Written comments should be addressed to: Heather M. Ford, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone: 404/881–3016.

FOR FURTHER INFORMATION CONTACT:
Heather M. Ford (404) 881–3016.

Dated: December 16, 1980.

Rebecca W. Hanmer,
Regional Administrator.

[FR Doc. 80–40152 Filed 12–23–80; 8:45 am]

BILLING CODE 6560–30–M

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40 CFR Part 180

[PP 4E1454/P164; PH–FRL 1713–6]

Diphenamid; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for the herbicide diphenamid including its desmethyl metabolite. This proposal was submitted by the Interregional Research Project No. 4 (IR–4). This amendment will establish a maximum permissible level for residues of the subject herbicide on raspberries at 1.0 part per million (ppm).

DATE: Comments must be received on or before January 23, 1981.

ADDRESS: Written comments to: Clinton Fletcher, Registration Division (TS–767),

Emergency Response Section, Environmental Protection Agency, Rm. E–124, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:
Clinton Fletcher (202–426–0223),

Based on the above information considered by the agency, the insignificance of raspberries in the daily diet, and the fact that no animal feed item is involved, the tolerance established by amending 40 CFR Part

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40 CFR Part 180

[PH–FRL 1712–5; PP 9F2198/P163]

Fluchloralin; Proposed Tolerances

AGENCY: Environmental Protection

reproduction study (rat) with a NOEL of 10,144 ppm; a teratology study (rabbit)—negative at 3,000 mg/kg; a dominant lethal mutagenicity study (rat)—negative at 500 mg/kg; a cytogenicity study (rat)—negative at 10,144 ppm; and an 18 month feeding study (mice) with a

of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request, within 30 days after publication of this notice in the **Federal Register**, that this

SUMMARY: This notice proposes that a tolerance be established for residues of the incesticide methidathion (*0,0*-dimethylphosphorodithioate, *S*-ester with 4-(mercaptomethyl)-2-methyloxy-Δ^{2-}1,3,4,-thiadiazolin-5-one) and its

Emergency Response Section, Environmental Protection Agency, Rm. E–124, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:
Clinton Fletcher (202–426–0223).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition number 4E1454 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Station of Maryland.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide diphenamid (*N,N*-dimethyl-2,2-diphenylacetamide) including its desmethyl metabolite (*N*-methyl-2,2-diphenylacetamide) in or on the raw agricultural commodity raspberries at 1.0 ppm.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicology data considered in support of the proposed tolerance of 1.0 ppm in or on raspberries were a 2-year rat feeding study with a no-observed-effect-level (NOEL) of 200 ppm; a 2-year dog feeding study with NOEL of 120 ppm; a three-generation rat reproduction study indicating that reproduction performance was uninfluenced with a dietary intake of 30 mg/kg; and 90-day studies in dogs and rats demonstrating that the metabolite nordiphenamid displays toxic properties similar to diphenamid but to a lesser extent.

Data currently lacking and considered desirable include studies evaluating the oncogenic and teratogenic potential of diphenamid. Based on the long-term studies used to support the proposed tolerance, the acceptable daily intake (ADI) has been calculated to be 0.03 mg/kg/day, and employing a 100-fold safety factor. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.1085 mg/day. The current action will add 0.005 mg/day to the TMRC. The increased incremental risk resulting from the proposed use has been determined to be insignificant.

The metabolism of diphenamid is adequately understood and an adequate analytical method (gas chromatography) is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the agency, the insignificance of raspberries in the daily diet, and the fact that no animal feed item is involved, the tolerance established by amending 40 CFR Part 180 will protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request on or before January 23, 1981 this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition and document control number, "[PP 4E1454/P164]." All written comments filed in response to this petition will be available for public inspection in the office of Clinton Fletcher, from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: December 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Subpart C of 40 CFR Part 180 be amended by alphabetically inserting the raw agricultural commodity "raspberries" in the table under § 180.230 to read as follows:

§ 180.230 Diphenamid; tolerance for residues.

* * * * *

Commodity and port per million
* * * * *
Raspberries, 1.0.
* * * * *

[FR Doc. 80–40130 Filed 12–23–80; 8:45 am]

BILLING CODE 6560–32–M

40 CFR Part 180

[PH–FRL 1712–5; PP 9F2198/P163]

Fluchloralin; Proposed Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This proposal requests the establishment of tolerances for residues of the herbicide fluchloralin [*N - (2-chloroethyl)-a,a,a-trifluoro-2,6-dinitro-N*-propyl - p - toluidine] in or on the raw agricultural commodities peanuts, peanut forage, and peanut hay at 0.05 part per million (ppm) and peanut hulls at 0.1 ppm. This proposal was submitted by BASF Wyandotte Corp. This proposal will establish the maximum permissible levels for residues of fluchloralin in or on peanuts, peanut forage, peanut hay, and peanut hulls.

DATE: Written comments should be received on or before January 23, 1981. 80P–1290

ADDRESS: Written comments to: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–359, 401 M St., SW., Washington, D.C. 20460, (202–755–2196).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of June 7, 1979 (44 FR 32737) that BASF Wyandotte Corp., 100 Cherry Hill Rd., PO Box 181, Parsippany, NJ 07054, had filed a pesticide petition (9F2198) with the EPA. This petition proposed the establishment of tolerances for residues of the herbicide fluchloralin [*N*-(2-chloroethyl) - a,a,a-trifluoro-2,6-dinitro-*N*-propyl - p - toluidine] in or on the raw agricultural commodities peanuts and peanut hay at 0.05 ppm and peanut hulls at 0.1 ppm.

The petitioner subsequently amended the petition by submitting a revised Section F petition; proposing an additional tolerance of 0.05 ppm of peanut forage. Because there is a potential increase in the risk to humans, this tolerance is being proposed at this time to allow for public comment.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data evaluated included an acute oral LD_{50} study (rat) with an LD_{50} of 1,550 milligrams(mg)/kilograms(kg); a 90-day feeding study (rat) with a no-observable-effect-level (NOEL) greater than 500 mg/kg/day; a 90-day oral dosing study (dog) with a NOEL of 5.25 mg/kg/day; a 2-year feeding study (rat) with a NOEL of 4,400 ppm (no oncogenicity); a 3-generation

reproduction study (rat) with a NOEL of 10,144 ppm; a teratology study (rabbit)—negative at 3,000 mg/kg; a dominant lethal mutagenicity study (rat)—negative at 500 mg/kg; a cytogenicity study (rat)—negative at 10,144 ppm; and an 18-month feeding study (mice) with a NOEL of 4,400 ppm (no oncogenicity).

Data desirable but lacking are a subchronic oral toxicity study in a non-rodent species longer than 90 days in duration, a teratology study on a second species, and additional mutagenicity testing. Although a subchronic oral toxicity study in dogs has not been submitted, establishment of these tolerances is acceptable, since exposure from peanuts will increase the allowable daily intake (ADI) by only 0.17 percent. The petitioner has been informed of these data deficiencies and has agreed (in his letter of June 13, 1980) to perform the studies and to remove the use from the label should the results of these studies exceed the risk criteria for chronic toxicity as stated in § 162.11 of the regulations.

Tolerances of 0.05 ppm have previously been established for fluchloralin on cottonseed and soybeans for a theoretical maximal residue contribution (TMRC) of 0.0008 mg/day in a 1.5 kg diet compared with a maximal permissible intake (MPI) of 0.1575 for a 60-kg human or 0.51 percent of the ADI. The current action will add 0.0003 mg/day to the diet for a total TMRC of 0.0011 mg/day/1.5 kg or 0.68 percent of the ADI. The ADI is based on the NOEL in the 90-day oral dosing study in dogs and a safety factor of 2,000.

There are no regulatory actions pending against continued registration of fluchloralin. The product contains a nitrosamine at levels of under 1 ppm. Based on the recent agency policy that was published in the **Federal Register** of June 25, 1980 (45 FR 42854) this falls below the currently acceptable risk criteria. The metabolism of fluchloralin in plants and animals has been adequately delineated for the proposed use. An adequate analytical method (gas chromatography using an electron capture detector) is available for enforcement purposes. There is no reasonable expectation of residues occurring in eggs, milk, meat, and meat byproducts of poultry and livestock, therefore § 180.6(a)(3) applies. There are no other considerations in establishment of these tolerances and it is concluded that the tolerances will protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request, within 30 days after publication of this notice in the **Federal Register**, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition and document control number "PP 9F2198/P163." All written comments filed in response to this petition will be available for public inspection in the office of Robert J. Taylor from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

Note.—Executive Order 12044 requires EPA to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 408(e), 68 Stat. 514; (21 U.S.C. 346a(e)))

Dated: December 15, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Subpart C of 40 CFR Part 180 be amended by alphabetically inserting the following raw agricultural commodities in the table under § 180.363 to read as follows:

§ 180.363 Fluchloralin; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Peanuts	0.05
Peanut forage	.05
Peanut hay	.05
Peanut hulls	.1
* * * * *	

[FR Doc. 80–40119 Filed 12–23–80; 8:45 am]

BILLING CODE 6560–32–M

40 CFR Part 180

[PP 9E2194/P156; PH–FRL 1713–1]

Methidathion; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This notice proposes that a tolerance be established for residues of the incesticide methidathion (*0,0*-dimethylphosphorodithioate, *S*-ester with 4-(mercaptomethyl)-2-methyloxy-Δ^2-1,3,4,-thiadiazolin-5-one) and its metabolites in or on the raw agricultural commodity mangos at 0.05 part per million (ppm). This proposal was submitted by the Interregional Research Project No. 4 (IR–4). This amendment will establish a maximum permissible level for residues of the subject insecticide in or on mangos at O).05 part per million (ppm).

DATE: Written comments must be received on or before January 23, 1981.

ADDRESS: Written comments to: Clinton Fletcher, Office of Pesticide Programs, Rm. E–124, Registration Division (TS–767), Environmental Protection Agency, 401 M ST., SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
Clinton Fletcher (202–426–0223)

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted Pesticide Petition No. 9E2194 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Station of Florida. This petition proposes that a tolerance be established for the insecticide methidathion (*0,0*-dimethylphosphorodithioate, *S*-ester with 4-(mercaptomethyl)-2-methyloxy-Δ^2-1,3,4,-thiadiazolin-5-one) and its metabolites in or on the raw agricultural commodity mangos at 0.05 part per million (ppm).

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicology data considered in support of 0.05 ppm in or on mangos were a 2-year dog feeding study and a 2-year rat feeding study both with no-observed-effect-levels (NOEL) or 4 ppm; a Rhesus monkey feeding study with a NOEL of 5 ppm, based on anticholinesterase effects; a multi-generation rat reproduction/terathology study with a NOEL of 32 ppm; a hen demyelination study negative at 50 milligrams (mg)/kilogram (kg) of body weight (bw) for 4 weeks; a mouse dominant lethal assay negative up to 45 mg/kg of bw. Data currently lacking but considered desirable include an acute delayed neurotoxicity study, a second oncogenicity study in the mouse, and a teratology study in a second species. The 24-month mouse oncogenicity study shows significant increase in hepatocellular neoplasms, as

well as other liver lesions of male mice treated with 100 ppm methidathion. However, the theoretical maximum residue contribution (TMRC) from the proposed use is only 2 x 10^{-5} mg/day/

be available for public inspection in the office of Clinton Fletcher from 8:00 a.m. to 4:00 p.m. Monday through Friday, except holidays.

Note.—Under Executive Order 12044, EPA

University, New Brunswick, NJ 08903, has submitted pesticide petition number 0E2371 to EPA on behalf of the IR–4 Technical Committee and the Agricultural Experiment Stations of Michigan and Washington,

analytical method (gas chromatography) is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the above information

Commodity	*Parts per million*
Asparagus	0.2
* * * * *	

[FR Doc. 80–40134 Filed 12–23–80; 8:45 am]

The Administrator has concluded that the requested change can be toxicologically supported since the existing 5.0 ppm tolerance for 2,4-D on citrus will not be exceeded by the addition of the postharvest use of the

well as other liver lesions of male mice treated with 100 ppm methidathion. However, the theoretical maximum residue contribution (TMRC) from the proposed use is only 2 x 10^{-5} mg/day/1.5 kh daily diet. This minute increase is considered negligible in comparison with the current estimated TMRC of 0.0219/mg/day/1.5 kg daily diet. In addition, the proposed use does not change the 20.13 percent acceptable daily intake (ADI) currently established by tolerance regulations.

The ADI had been calculated to be 0.01 mg/kg of bw/day based on the 4 ppm NOEL in the 2-year dog feeding study and employing a 10-fold safety factor with regard to chronic effects other than oncogenicity. Tolerances have been previously established for a variety of commodities and range from 0.05 ppm to 6 ppm. These tolerances utilize 20.31 percent of the ADI.

The metabolism of methidathion is adequately understood and an adequate analytical method (gas-liquid chromatography) is available for enforcement purposes. Since mangos are not animal feed items there is no reasonable expectation of residues in meat, milk, poultry, and eggs. There are presently no actions pending against the continued registration of this chemical. However, the agency will reevaluate all the existing tolerances for methidathion now that the final report and validation audit of the laboratory records on the carcinogenicity study are available.

Based on the above information considered by the Agency and the insignificance of mangos in the diet, it is concluded that the tolerance of 0.05 ppm in or on mangos would protect the public health. In light of the 24-month oncogenicity study, the Agency considers the cancer risk from dietary exposure of methidathion-treated mangos to be insignificant (negligible) since the ADI and TMRC are not affected by the proposed use.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request, on or before January 23, 1981, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition and document control number "PP 9E2194/P156". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of Clinton Fletcher from 8:00 a.m. to 4:00 p.m. Monday through Friday, except holidays.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and, therefore, subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels that other regulations "specialized". This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 408(e) 68 Stat. 514 (21 U.S.C. 346a(e))

Dated: December 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Subpart C of 40 CFR Part 180, be amended by alphabetically inserting "mangos" in the table under § 180.298 to read as follows:

§ 180.298 Methidathion; tolerances for residues.

* * * * *

Commodity ond part per million	
* * * * *	
Mangos,	0.05.
* * * * *	

[FR Doc. 80-40131 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 180

[PP 0E2371/P165; PH-FRL 1713-4]

Terbacil; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for the herbicide terbacil and its metabolites. This proposal was submitted by the Interregional Research Project No. 4 (IR-4). This amendment will establish a maximum permissible level for residues of the subject herbicide on asparagus at 0.2 part per million (ppm).

DATE: Comments must be received on or before January 23, 1981.

ADDRESS: Written comments to: Clinton Fletcher, Registration Division (TS-767), Emergency Response Section, Environmental Protection Agency, Rm. E-124, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION, CONTACT: Clinton Fletcher (202-426-0223).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition number 0E2371 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Michigan and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act propose the establishment of a tolerance for residues of the herbicide terbacil (3-tert-butyl-5-chloro-6-methyluracil) and its metabolites 3-tert-butyl-5-chloro-6-hydroxymethyluracil (A), 6-chloro-2,3-dihydro-7-hydroxymethyl-3,3-dimethyl-5*H*-oxazolo-(3,2-a) pyrimidin-5-one (B) and 6-chloro-2,3-dihydro-3,3,7-trimethyl-5*H*-oxazolo (3,2-a) pyrimidin-5-one (C) of 0.2 ppm in or on asparagus.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicology data considered in support of the proposed tolerance of 0.2 ppm in or on asparagus were a rat acute oral toxicity study with an LD_{50} greater than 7.5 grams (gm)/kilogram (kg); a 2-year rat feeding study with no-observable-effect-level (NOEL) of 250 ppm; a 2-year dog feeding study with a NOEL of 50 ppm; a three-generation rat reproduction study with a NOEL of 250 ppm (highest level tested); and a bacterial phage mutagenicity assay. Data currently lacking and considered desirable include an oncogenicity study in a second species; teratology studies in two test species; and additional mutagenicity testing in accordance with the proposed guidelines.

The acceptable daily intake (ADI), based on the 2-year dog feeding study (NOEL of 1.25 milligrams (mg)/kg/day) and using a 100-fold safety factor, is calculated to be 0.0125 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60 kg human is calculated to be 0.75 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.0774 mg/day. The current action will utilize 0.03 percent of the ADI. Published tolerances utilize 10.32 percent of the ADI. Thus, the increment in theoretical exposure is minimal. The risk, if any, is judged to be acceptable, even though a second oncogenicity study is not available. Also, the reproduction study provides adequate assurance that terbacil has a low potential for adverse effects, although a teratology study, per se, has not been performed.

The metabolism of terbacil is adequately understood and an adequate analytical method (gas chromatography) is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the agency, the tolerance established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition and document control number "[PP 0E2371/P165]." All written comments filed in response to this petition will be available for public inspection in the office of Clinton Fletcher from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12444.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: December 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Subpart C of 40 CFR Part 180 be amended by alphabetically inserting the raw agricultural commodity "asparagus" in the table under § 180.209(b) to read as follows:

§ 180.209

Terbacil; tolerance for residues.

* * * * *

(b)* * *

Commodity	*Parts per million*
Asparagus	0.2

* * * * * *

[FR Doc. 80-40134 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 180

[PH-FRL 1713-3; OPP-260038]

2,4-D Isopropyl Ester; Proposed Tolerance Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This notice proposes that 40 CFR 180.142(a) be revised to allow the postharvest use of the 2,4-*D* isopropyl ester in or on the raw agricultural commodity citrus fruits under the established 5 parts per million (ppm) tolerance for citrus fruits. This proposal was submitted by the Interregional Research Project No. 4 (IR-4) on behalf of the Agricultural Experiment Station of California.

DATE: Comments must be received on or before January 23, 1981.

ADDRESS: Written comments to: Clinton Fletcher, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Clinton Fletcher (202-426-0223).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted Pesticide Petition No. 6E1797 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, amend 40 CFR 180.142(a) to allow the post harvest use of the 2,4-D isopropyl ester in or on citrus fruits under the established 5 ppm tolerance for citrus. At present, § 180.142(a) permits the preharvest use of the 2,4-D isopropyl ester and the 2,4-D butoxyethyl ester to the crop group citrus and the postharvest use of the 2,4-D alkylanolamine salts to citrus fruits. The established 5 ppm tolerance covers residues of 2,4-D arising from the combined pre and postharvest usage of these compounds.

The Administrator has concluded that the requested change can be toxicologically supported since the existing 5.0 ppm tolerance for 2,4-D on citrus will not be exceeded by the addition of the postharvest use of the isopropyl ester of 2,4-D. The currently established tolerances for 2,4-D residues in citrus will be adequate to cover residues from both the pre- and postharvest uses of the 2,4-D isopropyl ester postharvest use.

The toxicity of the different salts, esters and amines of 2,4-D is very similar and thus, from a toxicological point of view, it is unimportant which form of 2,4-D is used.

The allowance of the post harvest use of 2,4-D will not increase the exposure of humans to 2,4-D residues and hence no additional hazard to humans will result from the proposed change.

There are no other applicable considerations, and it has been determined that the proposed change to 40 CFR 180.142 will protect the public health. Therefore, the Administrator proposes that 40 CFR 180.142 should be amended to allow the postharvest use of the 2,4-D isopropyl ester in or on citrus fruits under the established 5 ppm tolerance for citrus.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request by January 23, 1981 that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating the document control number "OPP 260038." All written comments filed in response to this proposed regulation will be available for public inspection in the office of Clinton Fletcher from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 408(e), 68 Stat. 514, (21 U.S.C. 346a(e))

Dated:

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Subpart C of 40 CFR Part 180 be amended by

Department of the Interior is revising its rulemaking procedures implementing Executive Order 12044, "Improving Government Regulations" (March 23, 1978), to incorporate the requirements of the Act.

Send comments to: Honorable Tom Norton, Mayor, Town of Gulf Shores, Town Hall, P.O. Box 299, Gulf Shores, Alabama 36542.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood

Issued: December 8, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39608 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood

newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the floodprone areas and the proposed base flood elevations are available for review at the Mayor's Office, City Hall,

Dated:

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that Subpart C of 40 CFR Part 180 be amended by revising paragraph (a) under § 180.142 to read as follows:

§ 180.142 2,4–D; tolerances for residues.

(a) Tolerances are established for residues of the herbicide, plant growth regulator, and fungicide 2,4-*D* (2,4-dichlorophenoxyacetic acid) in or on the raw agricultural commodities as follows:

5 parts per million in or on apples, citrus fruits, pears, and quinces. The tolerance on citrus fruits also includes residues of 2,4-*D* (2,4-dichlorophenoxyacetic acid) from the preharvest application of 2,4-*D* isopropyl ester and 2,4-*D* butoxyethyl ester and from the postharvest application and 2,4-*D* alkanolamine salts and 2, 4-*D* isopropyl ester to citrus fruits.

* * * * *

[FR Doc. 80-40133 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 14

Interim Rule Implementing the Regulatory Flexibility Act; Request for Comments

AGENCY: Department of the Interior.

ACTION: Request for comment on interim rule.

SUMMARY: The Department of the Interior is revising its rulemaking procedures to implement the Regulatory Flexibility Act (Pub. L. 96–354) by publishing an interim rule. The rule is published in today's **Federal Register** with a request for public comment.

DATE: Comments must be received on or before February 9, 1981.

ADDRESS: Written comments should be sent to: Chief, Division of Directives and Paperwork Management, Office of Information Resources Management, Room 7357, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jim Douglas, Office of Policy Analysis, 202–343–8501 or Deborah Ryan, Office of the Solicitor, 202–343–5216.

SUPPLEMENTARY INFORMATION: The provisions of the Regulatory Flexibility Act require Federal agencies to take into consideration and analyze the effects of their rules on small businesses, small organizations, and small governmental jurisdictions. To implement the Act, the Department of the Interior is revising its rulemaking procedures implementing Executive Order 12044, "Improving Government Regulations" (March 23, 1978), to incorporate the requirements of the Act.

Although the Department is publishing the revised procedures as an interim rule, members of the public have 45 days to submit comments on the rule. After consideration of public comments and an evaluation of the efficiency of the interim rule, a final rule will be published.

For information regarding the Department's current rulemaking procedures, a discussion of the Regulatory Flexibility Act, and a section-by-section review of the revised procedures, see the preamble to the interim rule.

Larry E. Meierotto,

Assistant Secretary—Policy, Budget and Administration.

December 18, 1980.

[FR Doc. 80-40085 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-10-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-5817]

Revision of Proposed Flood Elevation Determinations for Town of Gulf Shores, Alabama, Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Gulf Shores.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 45 FR 31428 on May 13, 1980 and in *The Independent*, published on or about April 9, 1980, and April 16, 1980, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at Town Hall, P.O. Box 299, Gulf Shores, Alabama.

Send comments to: Honorable Tom Norton, Mayor, Town of Gulf Shores, Town Hall, P.O. Box 299, Gulf Shores, Alabama 36542.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, in Alaska or Hawaii, call Toll Free Line (800–424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Town of Gulf Shores, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These base (100-year) flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground, *elevation in feet (NGVD)
Gulf of Mexico	Approximately 1,000 feet east of the intersection of West Gulf Shores Boulevard and the western most corporate limits.	*14
	Intersection of East 1st Avenue and East Third Street.	*13
	Intersection of West 1st Street and East Gulf Shores Boulevard.	*14
Mobile Bay	Approximately 2,000 feet west of the intersection of Rose Lane and Wedgewood Drive.	*11

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968, as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: December 8, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39608 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5817]

Revision of Proposed Flood Elevation Determinations for City of Bayou La Batre, Alabama, Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Bayou La Batre.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 45 FR 31427 on May 13, 1980 and in the *Mobile County News*, published on or about April 10, 1980, and April 17, 1980, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at City Hall, 33 South Wintzell Avenue, Bayou La Batre, Alabama.

Send comments to: Honorable M. G. Temme, Mayor, City of Bayou La Batre, 33 South Wintzell Avenue, Bayou La Batre, Alabama 36509.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872; in Alaska or Hawaii, call Toll Free Line (800–424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Bayou La Batre, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground, *elevation in feet (NGVD)
Mississippi Sound	Intersection of Little River Street and western corporate limits.	*13
	Southwestern end of Powell Avenue.	*14

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: December 8, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39609 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5958]

National Flood Insurance Program; Proposed Base Flood Elevations for the City of Huntsville, Alabama

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations described below.

The proposed base flood elevations will be the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the floodprone areas and the proposed base flood elevations are available for review at the Mayor's Office, City Hall, Huntsville, Alabama.

Send comments to: The Honorable Joe W. Davis, Mayor, City of Huntsville, P.O. Box 308, Huntsville, Alabama 35804.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755–6570 or toll free line, (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevations (100-year flood) for the City of Huntsville, Alabama in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a) (presently appearing at its former Section, 24 CFR 1917.4(a)).

The proposed base flood elevations together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

The proposed 100-year base flood elevations for selected locations are:

Source of flooding	Location	Elevation (feet) (NGVD)
Huntsville Spring Branch	Martin Road	575
Huntsville Spring Branch	Johnson Road	585
Huntsville Spring Branch	Drake Avenue	597
Huntsville Spring Branch	Confluence with Broglan Branch.	605
Huntsville Spring Branch	Confluence with Pinhook and Fagan Creeks.	610

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR

17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: November 4, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39610 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5817]

Revision of Proposed Flood Elevation Determinations for Mobile County, Alabama, Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in Mobile County.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 45 FR 31428 on May 13, 1980 and in the *Mobile County News*, published on or about April 10, 1980, and April 17, 1980, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at the Mayor's Office, City Hall, Wallins Creek, Kentucky.

Source of flooding	Location	# Depth in feet above ground, *elevation in feet (NGVD)
Mobile Bay	Approximately 2500 feet	*16

floodprone areas and the proposed corporate limits, floodways, cross-sections, zone boundaries and base flood elevations are available for review at the Mayor's Office, City Hall, Wallins Creek, Kentucky.

Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a) (presently appearing at its former Section, 24 CFR 1917.4(a)).

The proposed corporate limits, floodways, cross-sections, zone

17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: November 4, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39610 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5817]

Revision of Proposed Flood Elevation Determinations for City of Mobile, Alabama, Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Mobile.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 45 FR 31429 on May 13, 1980 and in the *Mobile Press Register*, published on or about April 8, 1980, and April 15, 1980, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at City Hall, P.O. Box 1827, Mobile, Alabama.

Send comments to: Honorable Robert Doyle, Mayor, City of Mobile, City Hall, P.O. Box 1827, Mobile, Alabama 36633.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, in Alaska or Hawaii, call Toll Free Line (800) 424–9080) Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year flood elevations are listed below for selected locations in the City of Mobile, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	# Depth in feet above ground, elevation in feet (NGVD)
Mobile Bay	Approximately 1700 feet south of the southeastern tip of Blakely Island.	*14
	Approximately 4400 feet east from the intersection of Marvin Street and Parham Street.	*16

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended: 42 U.S.C. 4001–4128) Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: December 8, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39611 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5817]

Revision of Proposed Flood Elevation Determinations for Mobile County, Unincorporated Areas, Alabama, Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed Rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in Mobile County.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 45 FR 31430 on May 13, 1980 and in *The Mobile Press Register*, published on or about April 8, 1980, and April 15, 1980, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at Mobile County Courthouse, Mobile, Alabama.

Send comments to: Honorable Bay Haas, President, Mobile County Commision, Post Ofice Box 1443, Mobile, Alabama 36601.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872. In Alaska or Hawaii, call Toll Free Line (800–424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in Mobile County, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	# Depth in feet above ground, elevation in feet (NGVD)
Mobile Bay	Approximately 2500 feet east of the intersection of Riverview Drive and Dauphin Island Parkway.	*16
	Approximately 200 feet downstream of the Dauphin Island Parkway bridge over South Fork Deer River.	*12
Mississippi Sound	Approximately 3200 feet North of Point Caddy.	*15
Mississippi Sound	Approximately 2300 feet south of the intersection of State Route 188 and Zirloff Road.	*17
Gulf of Mexico	At Oro Point	*15

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: December 8, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39612 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5960]

National Flood Insurance Program; Proposed Corporate Limits, Floodways, Cross-Sections, Zone Boundaries and Base Flood Elevations for the City of Wallins Creek, Kentucky

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed corporate limits, floodways, cross-sections, zone boundaries and base flood elevations described below.

The proposed corporate limits, floodways, cross-sections, zone boundaries and base flood elevations will be the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed corporate limits, floodways, cross-sections, zone boundaries and base flood elevations are available for review at the Mayor's Office, City Hall, Wallins Creek, Kentucky.

Send comments to: The Honorable Margaret Preston, Mayor, City Hall, P.O. Box 71, Wallins Creek, Kentucky 40873.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street S.W., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed corporate limits, floodways, cross-sections, zone boundaries and base flood elevations (100-year flood) for the City of Wallins Creek, Kentucky, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a) (presently appearing at its former Section, 24 CFR 1917.4(a)).

The proposed corporate limits, floodways, cross-sections, zone boundaries and base flood elevations together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed corporate limits, floodways, cross-sections, zone boundaries and base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevations and zones for selected locations are:

Source of flooding	Location	Elevation (feet)	Zone
Terry Fork	Approximately 150 feet upstream from Gravel Road	1,142	Zone A2.
Cumberland River	Hill Street	1,133	Zone A12.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: November 4, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39607 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5961]

National Flood Insurance Program; Proposed Base Flood Elevation Determinations for Hall County, Nebraska

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed Rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations as described below.

The proposed base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Information regarding the proposed base flood elevations is available for review at the Office of the Highway Superintendent, Hall County Highway Department, 2900 West Second Street, Grand Island, Nebraska. Sent comments to: Mr. Bernard J. Crick, Chairman, Hall County Board of Supervisors, Hall County Administration Building, Grand Island, Nebraska 68801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Steet, SW., Washington, D.C.

20410, (202) 755–6570 or toll free line (800) 424–8872, (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives

Source of Flooding	Location	Elevation, National Geodetic Vertical Datum
Middle Channel Platte River	Approximately 3,600 feet upstream of	1,926

ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT:

State	City/town/county	Source of flooding	location	#Depth in feet above ground *Elevation in feet (NGVD)

V 45 DE 24 80 UMI

20410, (202) 755–6570 or toll free line (800) 424–8872, (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevations for Hall County, Nebraska, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These base flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed change in base (100-year) flood elevations on Panels 125 and 150 of 150 of the Hall County Flood Insurance Rate Map are as follows:

Source of Flooding	Location	Elevation, National Geodetic Vertical Datum
Middle Channel Platte River.	Approximately 3,000 feet upstream of County Road.	1,925
Middle Channel Platte River	Approximately 3,600 feet upstream of County Road.	1,926
South Channel Platte River.	Approximately 1,700 feet upstream of County Road.	1,929

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19387; and delegation of authority to Federal Insurance Administrator)

Issued: November 4, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–39613 Filed 12–23–80; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA 5966]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations.

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	City of Auburn, Lee County	Sougahatchee Creek	Just upstream of Branch 1 of Sougahatchee Creek	*574
		Branch 1 of Sougahatchee Creek.	Just downstream of earthen dam	*582
		Branch 2 of Sougahatchee Creek.	Approximately 1,400 feet upstream of Highway 147	*607
		Parkerson Mill Creek	Just upstream of Route 267	*576
			Just downstream of Samford Drive	*606
		Town Creek	Just upstream of Chewacla State Park Road	*468
			Just upstream of Interstate 85	*567
			Just downstream of Wrights Mill Road	*591
			Just downstream of Moore's Mill Road	*613
		Moore's Mill	Just upstream of Ogletree Road	*503
			Just downstream of Winway Drive	*537

Maps available for inspection at City Hall, 171 North Ross Street, Auburn, Alabama 36830.

Send comments to Mayor Jan Dempsey or Mr. Tyron E. Tisdale, City Manager, City Hall, 171 North Ross Street, Auburn, Alabama 36830.

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	Creola (Town), Mobile County	Mobile Bay (Gunnison Creek)	At intersection of Guthrie Lane and Theophilus Road	*11

Maps available for inspection at Town Hall, Dead Lake Road, Creola, Alabama.

Send comments to Honorable Kenneth Moss, P.O. Box 497, Creola, Alabama 36525.

State	City/town/county	Source of flooding	location	#Depth in feet above ground *Elevation in feet (NGVD)
Alabama	Unincorporated Areas of Lee County.	Sougahatchee Creek	Just downstream of North Donahue Drive	*580
			Just upstream of North College Street	588
			Just downstream of Southern Railway	627
		Branch 2 of Sougahatchee Creek.	Just downstream of the upstream corporate limits	*610
		Pepperell Creek	Just upstream of Highway 280 Alternate	*647
		Rocky Creek	Just upstream of confluence of Pepperell Creek	*625
		Parkerson Mill Creek	Just upstream of County Road 26	*398
			Just downstream of U.S. Highway 29	*470
		Branch of Parkerson Mill Creek	Just downstream of Highway 29	*430
		Mill Creek	Just downstream of County Road 12	*335
			Just downstream of County Road	*378
		Holland Creek	Just downstream of Pierce Road	*389
			Just downstream of U.S. Highway 280	*413
		Chattahoochee River	Just downstream of Oliver Dam	*289
			Just downstream of Goat Rock Dam	*348
			Just downstream of Bartlett's Ferry Dam	*416

Maps available for inspection at Lee County Engineering Office, Lee County Courthouse, Opelika, Alabama 36801.

Send comments to Mr Hal Smith, Lee County Chairman, Lee County Courthouse, Opelika, Alabama 36801.

State	City/town/county	Source of flooding	location	#Depth in feet above ground *Elevation in feet (NGVD)
Alabama	City of Opelika, Lee County	Sougahatchee Creek	Just downstream of Sougahatchee Lake Dam	*646
		Pepperell Creek	Just upstream of Highway 280	*670
			Just downstream of Cunningham Drive	*698
		Rocky Creek	Just downstream of Southern Railway	*643
			Just downstream of White Road	*649
			Just upstream of India Road	*705

Maps available for inspection at City Hall, 204 South 7th Street, Opelika, Alabama 36801.

Send comments to Mayor D. B. Jones or Mr. J. Newell Floyd, City Clerk, City Hall, 204 South 7th Street, Opelika, Alabama 36801

State	City/town/county	Source of flooding	location	#Depth in feet above ground *Elevation in feet (NGVD)
Alabama	City of Phenix City, Rusell County.	Mill Creek	Approximately 250 feet upstream of U.S. Highway 80	*239
			Just upstream of 25th Street	*265
			Just upstream of Lakewood Drive	*282
			Just downstream of U.S. Highway 200	*303
		Holland Creek	Approximately 200 feet upstream of Lakewood Drive	*311
			Just upstream of Phenix City Dam	*365
		Cochgalechee Creek	Approximately 150 feet downstream of Seale Road	*256
			Just downstream of Knowles Road	*249
		Chattachoochee River	Just downstream of U.S. Highway 280	*230
			Just upstream of City Mills Dam	*246

Maps available for inspection at City Hall, 1111 Broad Street, Phenix City, Alabama 36867.

Send comments to Mayor Jane Gullatt, or Mr. John Franklin, City Manager, City Hall, 1111 Broad Street, Phenix City, Alabama 36867

State	City/town/county	Source of flooding	location	#Depth in feet above ground *Elevation in feet (NGVD)
Alabama	Unincorporated Areas of Russell County.	Uchee Creek	Just downstream of Highway 165	*228
			Just downstream of Southern Railway	*243
			Just upstream of County Road 39	*245
			Just downstream of U.S. Highway 431	*257
			Just downstream of State Highway 169	*292
		Little Uchee Creek	Just downstream of U.S. Highway 431	*262
			Just downstream of Sandfort Road	*277
			Just downstream of U.S. Highway 80	*299
		Chattahoochee River	Just upstream of Dixie Road	*219
			Just downstream of U.S. Highway 280	*230
		Mill Creek	Approximately 160 feet downstream of Pointer Road	*319
		Holland Creek	Just upstream of the Phenix City corporate limits	*382
		Hurtsboro Creek	Approximately 2,400 feet downstream of County Road 49 (Southern Hurtsboro corporate limits)	*326
		Cochgalechee Creek	Just downstream of Brickyard Road	*233

Maps available for inspection at Russell County Courthouse, Corner of 14th Street, Phenix City, Alabama 36867.

Send comments to Mr. John W. Belk, Jr., Chairman or Mr. Claude Parkman, Commissioner, Russell County Courthouse, Phenix City, Alabama 36867.

State	City/town/county	Source of flooding	location	#Depth in feet above ground *Elevation in feet (NGVD)
Arizona	Clarkdale (Town), Yavapai County	Verde River	At the center of the Tuzigoot National Monument Road crossing of Verde River.	*3,350
		Deception Wash	20 feet upstream from center of Atchison, Topeka, and Santa Fe Railroad crossing.	*3,375
			At the center of the State Highway 279 crossing of Deception Wash	*3,655
			At intersection of western corporate limits and center of Deception Wash.	*3,888
		Bitter Creek	40 feet upstream from center of Atchison, Topeka, and Santa Fe Railroad crossing (downstream crossing).	*3,393
			110 feet upstream from center of Atchison, Topeka, and Santa Fe Railroad crossing (upstream crossing).	*3,523
		Bitter Creek-South Fork	30 feet upstream from center of State Highway 279 crossing	*3,691

Maps available for inspection at Town Hall, Ninth Street, Clarkdale, Arizona.

Send comments to Honorable Dorothy Benatz, P.O. Box 308, Clarkdale, Arizona 86324.

State	City/town/county	Source of flooding	location	#Depth in feet above ground

State	City/town/county	Source of flooding	location	#Depth in feet above ground

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arizona	Cottonwood (Town), Yavapai County.	Verde River	Intersection of Dead Horse crossing and center of Verde River	*3,297
		Del Monte Wash	Intersection of East Pima Street and center of Del Monte Wash	*3,294
			60 feet upstream from center of U.S. Highway 89 alternate State Highway 279	*3,464
			Intersection of East Pima Street and North First Street	#2
		Silver Spring Gulch	50 feet upstream from center of South Main Street	*3,340
			100 feet north of intersection of South Third Street and Date Street	*3,500
		Oak Wash	Intersection of State Highway 279 and center of Oak Wash	*3,315
	Maps available for inspection at Town Hall, 827 N. Main, Cottonwood, Arizona			
	Send comments to Honorable Donald Hahn, 827 N. Main, Cottonwood, Arizona 86326			
Arizona	Winslow (City), Navajo County	Little Colorado River	At intersection of Maple Street and Bales Avenue	*4,848
			Intersection of Little Colorado River and State Highway 66	*4,857
	Maps available for inspection at City Hall, 21 Williamson Street, Clarkdale, Arizona.			
	Send comments to Honorable Dick Bates, P.O. Drawer L., Winslow, Arizona 86047.			
California	El Paso de Robles (City), San Luis Obispo County.	Mountain Springs Creek	100 feet upstream from cener of Vine Street	*763
			Intersection of 22nd and Oak Streets	
			Intersection of 21st and Pine Streets	#1
			Intersection of 21st and Pine Streets	#1
			Intersection of Gregory and San Luis Avenue	*697
			500 feet east of the intersection of 20th Street and Riverside Avenue	*698
			Intersection of 24th Street and U.S. Highway 101	#3
		Peachy Canyon Creek	100 feet upstream from center of Vine Street	*780
			300 feet east of the intersection of Park and 2nd Streets	*707
			600 feet east of the intersection of Park and 3rd Streets	*705
		Salinas River	200 feet upstream from center of 13th Street	*692
		South Branch Unnamed Creek No. 1.	100 feet upstream from confluence with Unnamed Creek No. 1	*770
		Unnamed Creek No. 1	100 feet upstream from center of Creston Road	*798
		Fern Canyon Creek	At intersection of U.S. Highway 101 and 13th Street	*690
	Maps available for inspection at City Hall, 1030 Spring Street, El Paso de Robles, California			
	Send comments to Honorable Barney Schwartz, P.O. Box 307, El Paso de Robles, California 93446.			
Colorado	Gypsum (Town), Eagle County	Gypsum Creek	At confluence with Eagle River	*6,274
			Coley Mesa Road over the channel	*6,366
		Eagle River	Westernmost corporate limits where stream leaves the community	*6,239
			100 feet downstream (west) of U.S. Highways 6 and 24 over the channel.	*6,274
	Maps available for inspection at Town Hall, 280-Five, Gypsum, Colorado.			
	Send comments to Honorable Jim Cummins, 280-Five, Eagle, Colorado 81637.			
Connecticut	Bozrah (Town), New London County	Yantic River	Downstream Corporate Limits	*119
			3,080' downstream of State Route 608	*128
			160' downstream of State Route 608	*143
			Upstream of dam just upstream of State Route 608	*155
			80' upstream of Haughton Road	*160
			110' upstream of Upstream crossing of State Route 608	*165
		Gardner Brook	Confluence with Yantic River	*156
			80' upstream of Gager River	*164
			600' downstream of Bear Hill Road	*175
			80' upstream of Bear Hill Road	*185
			Upstream of Dam at Bozrah Street (State Route 163)	*197
			80' downstream of Access Road, 2,300' upstream of Bozrah Street (State Route 163).	*207
			80' upstream of Access Road, 2,490' upstream of Bozrah Street (State Route 163).	*212
	Maps available for inspection at the First Selectman's Office, Bozrah Town Hall, RFG #1, Fitchville, Connecticut.			
	Send comments to the Honorable Raymond C. Barber, First Selectman of the Town of Bozrah, RFD #1, Fitchville, Connecticut 06334.			
Delaware	Camden (Town), Kent County	Isaac Branch	Downstream Corporate Limits	*15
			Upstream Corporate Limits	*21
	Maps available at the Town Hall, Camden, Delaware.			
	Send comments to Honorable James Kelly, Mayor of Camden, Town Hall, Camden, Delaware 19934			
Florida	City of Haines City, Polk County	Engineers Lake	Entire shoreline	*127
		Lake Alice	Entire shoreline	*130
		Lake Boomerang	Entire shoreline	*123
		Lake Brown	Entire shoreline	*129
		Lake Butler	Entire shoreline	*124
		Lake Elsie	Entire shoreline	*129
		Lake Eva	Entire shoreline	*125
		Lake Hammock	Entire shoreline	*134
		Lake Hester	Entire shoreline	*134
		Lake Joe	Entire shoreline	*126
		Lake Tracy	Entire shoreline	*126
		Little Lake Hamilton	Entire shoreline	*123

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Haines City Drainage Canal	At Lindwall Avenue extended (by the west of Peninsular Drive)	*124
			Just upstream of U.S. Highways 92 and 27	*124
			Just upstream of Commerce Avenue	*126
		Lake Brown Outlet Ditch	Just downstream of Kentucky Street	*129
	Maps available for inspection at City Hall, 600 East Henson Avenue, Haines City, Florida 33844.			
	Send comments to Mayor Tommy Sheek or Ms. India Walker, City Clerk, City Hall, 600 East Henson Avenue, Haines City, Florida 33844			
Florida	City of Lakeland, Polk County	Lake Bonnet Drain	Just upstream of Chestnut Road (Bridge)	*140
		Lake Hunter Drain	Just downstream of Ariana Street	*160
		Southwest Ditch Tributary	Just downstream from the confluence with Southwest Ditch	*160
		Southwest Ditch	Just downstream of Harden Boulevard	*156
		Lake Parker Tributary	Just downstream of State Road 33	*137
			Just downstream of U.S. Highway 98	*137
		Lake Hollingsworth Drain	Just downstream of New Jersey Road	*124
		Lake Bentley Drain	Just downstream of Atlanta Avenue	*115
			Just downstream of Venice Way	*116
		Lake John Drain	Just downstream of State Road 37B	*109
		Lake Bonnet	Entire shoreline	*147
		Lake Hunter	Entire shoreline	*163
		Lake Parker Tributary Swamp	Entire shoreline	*140
		Lake Bonny	Entire shoreline	*132
		Lake Parker	Entire shoreline	*132
		Lake Hollingsworth	Entire shoreline	*135
		Lake Bentley	Entire shoreline	*120
		Lake John	Entire shoreline	*113
		Lake Canyon	Entire shoreline	*113
		Southeast Lakes	Entire shoreline	*113
	Maps available for inspection at City Hall, Building Inspection Department, 228 Massachusetts Avenue, Lakeland, Florida 33802.			
	Send comments to Mayor Carrie Oldham or Mr. Larry Turnipseed, Mayor Protem, City Hall, 228 Massachusetts Avenue, Lakeland, Florida 33802.			
Florida	Putnam County (Unincorporated Areas).	St. Johns River	At center of U.S. Highway 17 crossing of St. Johns River	*6
		Dunns Creek	100 feet upstream from center of U.S. Highway 17 crossing	*7
		Acosta Creek	100 feet downstream from center of State Highway 309 crossing	*8
		Crescent Lake	250 feet northeast from the intersection of U.S. Highway 17 and Union Avenue.	*7
		Lake Stella	At shoreline in the vicinity of the City of Crescent City	*41
		Lake Broward	At shoreline in the vicinity of the Town of Pomona Part	*42
	Maps available for inspection at Putnam County Courthouse, St. Johns Avenue and Reid Street, Palatka, Florida.			
	Send comments to Honorable Jerry B. Kelley, Post Office Box 758, Palatka, Florida 32077.			
Florida	City of Winter Haven, Polk County	Winter Haven Chain of Lakes, Including: Lake Jessie, Lake Idylwild, Lake Hartridge, Lake Cannon, Lake Mirror, Spring Lake, Lake Howard, Lake May, Lake Shipp, Lake Lulu.	Entire shoreline	*133
		Lake Deer	Entire shoreline	*142
		Lake Pansy	Entire shoreline	*131
		Lake Alfred Chain of Lakes Including: Lake Conine, Lake Smart.	Entire shoreline	*131
		Lake Fannie	Entire shoreline	*128
		Lake Henry	Entire shoreline	*128
		Lake Hamilton	Entire shoreline	*123
		Lake Citrus	Entire shoreline	*146
		Lake Ida	Entire shoreline	*135
		Lake Lucerne	Entire shoreline	*134
		Lake Silver	Entire shoreline	*147
		Lake Martha	Entire shoreline	*144
		Lake Maude	Entire shoreline	*143
		Lake Idyl	Entire shoreline	*134
		Lake Buckeye	Entire shoreline	*132
		Lake Gem	Entire shoreline	*143
		Muck Pond	Entire shoreline	*137
		Lake Elbert	Entire shoreline	*137
		Lake Otis	Entire shoreline	*130
		Lake Link	Entire shoreline	*130
		Lake Mariam	Entire shoreline	*126
	Maps available for inspection at City Hall, 451 3rd Street, N.W., Winter Haven, Florida 33880			
	Send comments to Mayor Bruce Parker or Ms. Beverly Pearson, City Clerk, City Hall, 451 3rd Street, N.W., Winter Haven, Florida 33880.			
Georgia	Unincorporated Areas of Fulton County	Autry Creek	Approximately 100 feet downstream of Old Alabama Road	*900
		Ball Mill Creek	Just downstream of Spalding Drive	*883
			Just upstream of Dunwoody Club Drive	*948
		Bear Creek	Just downstream of Cochran Mill Road	*785
			Just upstream of Ono Road	*898
		Bethel Branch	Just upstream of Burdett Road	*898
		Big Creek	Just upstream of Haynes Bridge Road	*970
			Just downstream of Georgia Highway 400	*962
			At Kimball Bridge Road	*977

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Peat Rock Creek	Approximately 100 feet upstream of Highway 70	*762

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
Georgia	City of Midway, Liberty County	Cay Creek	Just downstream of U.S. Highway 82 (State Road 38)	*8

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Boat Rock Creek	Approximately 100 feet upstream of Highway 70	*762
			Just upstream of Reynolds Road	*786
		Broadnax Creek	Just upstream of Lester Road	*876
			Just upstream of Oakley Industrial Boulevard	*889
		Caldwell Creek	Just upstream of Village Drive	*821
			Just upstream of Highway 154 (Cascade Road)	*815
		Camp Creek	At Cascade Palmetto Highway	*750
			Just downstream of Stonewall Tell Road	*765
			Just downstream of Enon Road	*774
		Cater Creek	Just upstream of Pleasant Hill Road	*915
			Just downstream of Surrey Trail Road	*944
		Cedar Creek	Just downstream of Upper Wooten Road	*790
		Chattahochee River	Just upstream of Hutcheson Ferry Road	*718
			Just upstream of Capps Ferry Road	729
			Just upstream of State Highway 92	*747
			Approximately 200 feet upstream of Holcomb Bridge Road	*885
			Just downstream of Abbotts Bridge Road (State Highway 120)	*902
		Colewood Creek	Just upstream of Riverside Drive	*834
			Just upstream of River Valley Road	*910
		Deep Creek	Just upstream of Bulner Road	*753
			Just upstream of Jones Road	*777
		Demooney Creek	Just upstream of Demooney Road	*776
			Just downstream of Cherie Drive	*814
		Enon Creek	Just upstream of Enon Road	*769
			Just downstream of Bulner Road	*794
		John's Creek	Just upstream of Buice Road	*904
			Approximately 100 feet downstream of Parson's Road	*960
			Just downstream of Abbotts Bridge Road	*989
		Kimberly Branch	Just upstream of Creel Road	*876
			Just downstream of Hallie Mill Drive	*917
		Kimberly Creek	Just upstream of Flat Shoals Road	*871
			Just downstream of Old Bill Cook Road	*887
		Kings Lake Creek	Just downstream of State Highway 154 (Cascade Road)	*774
			Just downstream of Wright's Lake Dam	*807
			Approximately 175 feet downstream of Loch Lomond Trail	*825
		Line Creek	Just downstream of Jones Road	*792
			Just downstream of McClure Road	*804
		Little Bear Creek	Just upstream of Wilkerson Mill Road	*866
			Just downstream of Phillips Road	*897
		Long Indian Creek	Just upstream of Waters Road	*996
			Just upstream of Buice Road	*1,049
		Long Island Creek	At Northside Drive	*795
			Just downstream of Long Island Drive	*857
			Just downstream of Powers Ferry Road	*821
		Marsh Creek	Just upstream of Riverside Drive	*817
			Just downstream of Glenridge Drive	*919
		Morning Branch	Just upstream of Interstate 85	*884
			Just upstream of Pebble Beach Road	*900
		Morning Creek	Just upstream of Bethsaida Road	*849
			Just downstream of Buffington Road	*878
		Mountain Park Creek	Just upstream of First Private Driveway	*957
			Approximately 100 feet upstream of Oakhaven Drive	*962
		Nancy Creek	Just downstream of Peachtree Dunwoody Road	*847
			At Evergreen Drive	*856
		Red Mill Creek	Just downstream of Red Mill Road	*853
		Riverside Creek	Just upstream of Riverside Drive	*754
		Rocky Creek	Approximately 150 feet downstream of Kings Road	*1,008
			Just downstream of Oakhaven Drive which is upstream Dam	*957
		Shannon Creek	Just upstream of Interstate 85	*883
			Just upstream of Flat Shoals Road	*895
		South Fork Marsh Creek	Just upstream of Glenridge Drive	*945
			Just upstream of ???	*1,000
			Just upstream of Private Drive	*1,000
		North Utoy Creek	Just downstream of Sewell Avenue	*812
			Just downstream of Fairburn Road	*805
		South Utoy Creek	Just upstream of Interstate 85	*816
			Just downstream of Highway 154	*809
		Utoy Creek	Approximately 100 feet upstream of Great Southwest Parkway	*762
			Just upstream of Highway 70 West Bridge	*765
			Approximately 100 feet upstream of Railroad Bridge	*773
		Trickum Creek	Just downstream of Landrum Road	*929
		Valley Brook Creek	Just upstream of Ben Hill Road	*823
			Just downstream of Will Lee Road	*853
		Whitewater Creek	Approximately 300 feet upstream of Spence Road	*889
			Just upstream of Interstate-85	*915
		Windham Creek	Just Upstream of Bethsaida Road	*854
			Just downstream of Oakley Road	*896
		Wolf Creek	Just upstream of Aldredge Road	*794
			Just upstream of Old Fairburn Road	*832

Maps available for inspection at Fulton County Administration Building, 165 Central Avenue, Atlanta, Georgia 30303.

Send comments to Mr. Milton Farris, Chairman or Mr. Reginald Eaves, Vice-Chairman, Fulton County Board of Commissioners, 165 Central Avenue, Atlanta, Georgia 30303

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
Georgia	City of Midway, Liberty County	Cay Creek	Just downstream of U.S. Highway 82 (State Road 38)	*8
			Just upstream of U.S. Highway 82 (State Road 38)	*8
			Just upstream of U.S. Highway 17 (State Road 25)	*8

Maps available for inspection at City Hall, Midway, Georgia 31320.

Send comments to Mayor Wendell Williams or Mr. B. F. Freeman, Mayor-Pro-Tem, City Hall, P.O. Box 125, Midway, Georgia 31320.

Georgia	Town of Pooler, Chatham County.	Pipemakers Canal	Just downstream of Cemetery Road	*17

Maps available for inspection at City Hall, 103 South Rogers Street, Pooler, Georgia 31322.

Send comments to Mayor Travis Nichols, or Mr. Robert Morgan, Mayor Pro-Tem, City Hall, P.O. Box 767, Pooler, Georgia 31322.

Illinois	(V) Rockton, Winnebago County	Rock River	Just upstream State Route 2	*725
			About 1800 feet upstream Rockton Dam	*730

Maps available for inspection at the Village Hall, 215 West Main Street, Rockton, Illinois.

Send comments to Honorable Lawrence Richardson, Village President, Village of Rockton, Village Hall, 215 West Main Street, Rockton, Illinois 61072

Indiana	(T) Prince's Lake, Johnson County.	East Lake	Shoreline	*777
		North Lake	Shoreline	*810
		White Lake	Shoreline	*866
		Hants Lake	Shoreline	*783

Maps available for inspection at the Town Hall, Lake View Drive, Prince's Lakes, Indiana.

Send comments to Honorable Ed Burgett, President of the Town Board, Town of Prince's Lakes, Town Hall, Lake View Drive, Prince's Lakes, Indiana 46164.

Indiana	(T) Whiteland, Johnson County	Brewer Ditch	Downstream corporate limit	*780
			Just downstream of Conrail	*797
			Just upstream of Conrail	*800
			Upstream corporate limit	*800
		East Grassy Creek	About 730 feet downstream or northbound lane of U.S. Route 31	*795
			About 1000 feet downstream of Conrail	*800
			Just upstream of Conrail	*807
			Upstream corporate limit	807

Maps available for inspection at the Town Hall, 60 North Railroad Street, Whiteland, Indiana.

Send comments to Honorable Hershell Sandlin, President of the Town Board, Town of Whiteland, Town Hall, 60 North Railroad Street, Whiteland, Indiana 46184.

Maine	Naples (Town), Cumberland County.	Songo River	Confluence with Sebago Lake	*268
			Downstream side of Songo Lock Dam	*272
			Confluence of Bay of Naples	*274
		Crooked River	Confluence with Songo River	*272
			Upstream side of Songo Lock Road	*274
			Downstream side of State Route 302	*283
			Downstream side of State Route 11	*290
			Approximately 100' downstream of Edes Falls Road	*297
			Upstream side of Edes Road	*301
			Approximately 7,480' upstream of Edes Falls Dam	308
		Sebago Lake	Entire Shoreline within community	*268
		Bay of Naples	Entire Shoreline within community	*274
		Long Lake	Entire Shoreline within community	*274

Maps available at the Naples Town Hall, Naples, Maine.

Send all comments to the Honorable Dana Watson, Chairwoman of the Board of Selectmen, Naples Town Hall, Naples, Maine 04055.

Maryland	Bel Air (Town), Harford County	Plumtree Run	Confluence of Tributary 1	*306
			Downstream Corporate Limits	*318
			Upstream side of Atwood Road	*323
			Downstream of the Baltimore Pike Culvert	*331
			Upstream of the Baltimore Pike Culvert	*342
			Downstream of the West George Street/Thomas Street Culvert	*347
			Upstream of the West George Street/Thomas Street Culvert	*353
		Farnandis Branch	Downstream Corporate Limits	*229
			Approximately 1,000' upstream of the downstream Corporate Limits	*238
			Approximately 2,000' upstream of the downstream Corporate Limits	*251
			Approximately 2,900' upstream of the downstream Corporate Limits	*268
		Bynum Run	Approximately 13,600'downstream of Conowingo Road Bridge	*257
			Approximately 11,600' downstream of Conowingo Road Bridge	*263
			At the most downstream Corporate Limits	*324
			Upstream Conowingo Road (U.S. Business Route 1)	*333
			Approximately 1,500' upstream of Conwingo Road	*338

Maps available at the Public Works Building, 705 Churchville Road, Bel Air, Maryland.

Send comments to Honorable William McFaul, Town Administrator of Bel Air, 39 Hickory Avenue, Bel Air, Maryland 21014.

Massachusetts	Hardwick (Town), Worcester County.	Were River	Downstream Corporate Limits	*485
			Approximately 2,825' upstream of Corporate Limits	*495
			Approximately 2,220' downstream of Bridge Street	*505
			Approximately 530' downstream of Bridge Street	*515
			Approximately 320' upstream of Bridge Street	*525

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
			950' upstream of Gilbertville Road	*535

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Coys Brook	Confluence with Quaboag River	*605

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
			950' upstream of Gilbertville Road	*535
			Downstream of Conrail Bridge	*545
			Goddard Road	*555
			Downstream of New Silver Bridge (Mellus Road)	*565
			Downstream of Wheelwright Dam	*572
			Upstream Corporate Limits	*579

Maps available for inspection at the Board of Selectmen's Office, Hardwick Town Hall, Hardwick, Massachusetts 01037.

Send comments to the Honorable Andrew Swistak, Chairman of the Hardwick Board of Selectmen, Hardwick Town Hall, Hardwick, Massachusetts 01037.

Massachusetts	Lancaster (Town), Worcester County.	Nashua River	Downstram Corporate Limits	*225
			Upstream side of Seven Bridge Road	*232
			Upstream Corporate Limits	*241
		North Nashua River	Confluence with Nashua River	*236
			Approximately 160' upstream of Main Street	*241
			Upstream side of North Main Street	*249
			Approximately 1,800' upstream of Ponakin Road	*260
			Approximately 1.8 miles upstream of Ponakin Road	*270
			Upstream Corporate Limits	*280
		Goodridge Brook	Downstream Corporate Limits	*258
			Approximately 125' upstream of Parker Road	*266
			Approximately 1,063' upstream of Parker Road	*268

Maps available at the Town Clerk's Office, Lancaster Town Hall, Lancaster, Massachusetts.

Send comments to the Honorable Paul Constatino, Chairman of the Lancaster Board of Selectmen, Lancaster, Massachusetts 01523.

Massachusetts	Middleborough (Town), Plymouth County.	Nemasket River	Confluence with Taunton River	*25
			Upstream State Route 44	*31
			1,320' downstream Wareham Street	*41
			Downstream First Dam downstream Wareham Street	*49
			Upstream Wareham Street	*56
			400' downstream Assanompset Pond Dam	*82
		Taunton River	Downstream Corporate Limits	*19
			Upstream Corporate Limits	*27

Maps available for inspection at the Office of the Town Manager and Building Inspector, Middleborough Town Hall, Nickerson Avenue, Middleborough, Massachusetts.

Send comments to the Honorable George Mason Ryder, Chairman of the Middleborough Board of Selectmen, Middleborough Town Hall, Nickerson Avenue, Middleborough, Massachusetts 02346.

Massachusetts	Sheffield (Town), Berkshire County.	Housatonic River	Downstream Corporate Limits	*654
			Upstream of Rannapo Road	*655
			Upstream of Conrail and State Route 7A	*658
			Upstream of State Route 7	*659
			Confluence of Ironwork Brook	*660
			Upstream of Covered Bridge Lane	*663
			Upstream of Kellogg Road	*666
			Upstream Corporate Limits	*668
		Hubbard Brook	Upstream of North Main Street	*663
			Approximately 185' upstream of Cook Road	*664
		Schenob Brook	Upstream of Bow Wow Road	*663
			Upstream of Berkshire School Road	*665
			Barnum Street (Extended)	*667
			Downstream of Salisbury Road	*672

Maps available for inspection at the Sheffield Town Hall, RFD 3, Great Barrington, Mass. 01230.

Send comments to the Honorable Danal Bartholomew, Chairman of the Sheffield Board of Selectmen, RFD 3, Box 38, Great Barrington, Massachusetts 01230.

Massachusetts	Warren (Town) Worcester County	Quaboag River	Downstream Corporate Limits	*396
			Approximately 4,910' upstream of Corporate Limits	*419
			Approximately 3,860' downstream of most downstream Conrail bridge	*436
			Approximately 970' downstream of most downstream Conrail bridge	*468
			Most downstream Conrail bridge (Downstream side)	*476
			Most downstream Conrail bridge (Upstream side)	*484
			Gilbert Road (Upstream side)	*498
			South Street (Upstream side)	*522
			Upstream of Wright Fabric Company Dam	*538
			Downstream Breached Dam (Downstream side)	*544
			Downstream Breached Dam (Upstream side)	*550
			Valley Road	*563
			Bridge Street (Upstream side)	*583
			State Route 67 (Upstream side)	*592
			River Street (Upstream side)	*597
			Approximately 3,036' upstream of River Street	*601

Maps available for inspection at the Planning Board, Warren Town Hall, Warren, Massachusetts.

Send comments to the Honorable Donald Nickerson, Chairman of the Warren Board of Selectmen, Warren Town Hall, Warren, Massachusetts 01083.

Massachusetts	West Brookfield (Town), Worcester County.	Quaboag River	Downstream Corporate Limits	*603
			Upstream Corporate Limits	*605
		Mill Brook	Confluence with Quaboag River	*603
			Directly downstream of Shay Road	*607
			Directly downstream of Tyler Road	*617
			Approximately 2,100' upstream of Tyler Road	*627
			Directly upstream of Farm Bridge	*634
			Downstream of Wickaboag Valley Road (Upstream crossing)	*638
			Upstream Corporate Limits	*644

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Coys Brook	Confluence with Quaboag River	*605
			Upstream of Conrail	*609
			Upstream Corporate Limits	*617

Maps available at the West Brookfield Planning Board, West Brookfield Town Hall, West Brookfield, Massachusetts.

Send comments to the Honorable Peter Coulphard, Chairman of the West Brookfield Board of Selectmen, West Brookfield Town Hall, West Brookfield, Massachusetts 01585.

Michigan	(V) Lake Orion, Oakland County	Lake Orion	Shoreline	*988
		Paint Creek	Southern corporate limits	*966
			Just upstream Atwater Street	*973
			Just downstream Broadway	*975
			Just downstream Conrail	*977
			Just upstream Conrail	*988

Maps available for inspection at the Department of Planning and Zoning, Village Hall, 21 East Church Street, Lake Orion, Michigan.

Send comments to Honorable Beth Dumala, Village President, Village of Lake Orion, Village Hall, 21 East Church Street, Lake Orion, Michigan 48035.

Michigan	(C) Northville, Wayne County	Middle River Rouge	About 750 feet downstream of Seven Mile Road	*768
			Just downstream of Mill Pond Dam	*798
			Just upstream of Mill Pond Dam	*806
			Just downstream of Old Novi Road	*822
		Randolph Drain	Mouth at Middle River Rouge	*797
			Just upstream of High River	*835
			Just upstream of Lexington Street	*888
			About 100 feet upstream of the divergence of the Randolph Drain Diversion	*922
		Randolph Drain Diversion	Confluence with Randolph Drain	*904
			Just upstream of Summerside Lane	*914
			Divergence from Randolph Drain	*921
		Thornton Creek Overflow	Confluence with Middle River Rouge	*821
			About 245 feet upstream of confluence with Middle River Rouge	*822

Maps available for inspection at the Clerk's Office, City Hall, 215 West Main Street, Northville, Michigan.

Send comments to Honorable Paul Vernon, Mayor, City of Northville, City Hall, 215 West Main Street, Northville, Michigan 48167.

Michigan	(Twp.) Northville, Wayne County	Middle River Rouge	Downstream corporate limits	*730
			Just upstream of Chessie System (near intersection of Northville Road and Edward Hines Parkway)	734
			Just upstream of Six Mile Road	*746
			Just downstream of Waterford Dam	*750
			Just upstream of Waterford Dam	*759
			Just upstream of Chessie System (near intersection of Northville Road and Jamestown Circle)	*766
			Upstream corporate limits (at Wayne County-Oakland County boundary).	*811

Maps available for inspection at the Northville Township Hall, 16300 Sheldon Road, Northville, Michigan.

Send comments to Honorable John McDonnold, Supervisor, Township of Northville, Northville Township Hall, 16300 Sheldon Road, Northville, Michigan 48167.

Michigan	(C) Riverview, Wayne County	Detroit River (Trenton Channel)	Shoreline	*578
		Huntington Creek	Mouth at Detroit River (Trenton Channel)	*578
			About 200 feet downstream of Electric Avenue	*580
			Just upstream of Electric Avenue	*584
		Jefferson Avenue Diversion	Mouth at Detroit River (Trenton Channel)	*578
			Just downstream of West Jefferson Avenue	*579

Maps available for inspection at the Clerk's Office, City Hall, 17700 Fort Street, Riverview, Michigan.

Send comments to Honorable Jack Kesterson, Mayor, City of Riverview, City Hall, 17700 Fort Street, Riverview, Michigan 48192.

Missouri	(C) Fisk, Butler County	Ditch No. 17	At southern corporate limits	*330
			At northern corporate limits	*330

Maps available for inspection at the City Hall, Fisk, Missouri.

Send comments to Honorable Edward Call, Mayor, City of Fisk, City Hall, Fisk, Missouri 63940.

Missouri	(C) Oulin, Butler County	Menorkenut Slough	About 150 feet downstream State Highway 53	*313
			About 1,150 feet upstream State Highway 53	*313
		Ditch No. 31	About 1,130 feet downstream County Road 659	*314
			Just downstream County Road 663	*314

Maps available for inspection at the City Hall, P.O. Box 85, Oulin, Missouri.

Send comments to Honorable L. Davis, Mayor, City of Oulin, City Hall, P.O. Box 85, Oulin, Missouri 63961.

Nevada	Boulder City (City), Clark County	Hemenway Wash	120 feet upstream from center of Pacifica Way	*2,020
			100 feet upstream from center of Ville Avenue	*2,168
		Wash B	100 feet upstream from center of Joshua Street	*2,211
		Wash C	1,400 feet east of the intersection of Corral Road and San Felipe Drive	*2,376
		Wash D	50 feet upstream for center of U.S. Highway 93 westbound	*2,427
		Georgia Avenue Wash	100 feet upstream from center of Buchanan Boulevard	*2,129
			100 feet upstream from center of Highland Drive	*2,367

Maps available for inspection at City Hall, 900 Arizona Street, Boulder City, Nevada.

Send comments to Honorable Robert Ferraro, P.O. Box 367, Boulder City, Nevada 89005.

State	City/town/county	Source of flooding	location	#Depth in feet above ground *Elevation in feet (NGVD)

State	City/town/county	Source of flooding	location	#Depth in feet above ground *Elevation in feet (NGVD)

State	City/town/county	Source of flooding	location	#Depth in feet above ground *Elevation in feet (NGVD)
Nevada	Henderson (City), Clark County	Duck Creek	150 feet upstream from center of Sunset Road	*1,929
		Duck Creek Tributary	100 feet upstream from center of Stephani Street	*1,685
		Shallow Flooding	Intersection of Edgemont Drive and Fletcher Road	*2
			On Horizon Drive, 1 mile northeast of its intersection with Eastern Avenue	*1
			1.1 miles east of the intersection of Newport Drive and Magic Way	*1
	Maps available for inspection at City Hall, 243 Water Street, Henderson, Nevada.			
	Send comments to Honorable Lorin Williams, 243 Water Street, Henderson, Nevada 69015			
New Hampshire	Roxbury (Town), Cheshire County	Otter Brook	Approximately 4,890' downstream of Roxbury Road	*582
			Approximately 4,140' downstream of Roxbury Road	*590
			Approximately 3,190' downstream of Roxbury Road	*600
			Approximately 2,170' downstream of Roxbury Road	*610
			Roxbury Road	*622
			Approximately 1,090' upstream of Roxbury Road	*630
			Approximately 2,440' upstream of Roxbury Road	*640
			Approximately 3,470' upstream of Roxbury Road	*650
			Approximately 4,380' upstream of Roxbury Road	*660
			Approximately 5,070' upstream of Roxbury Road	*668
	Maps available for inspection at the Roxbury Town Office, Box 25, Keene, New Hampshire			
	Send comments to Honorable G. Pyne, Chairman of the Roxbury Board of Selectmen, Roxbury Town Office, Box 25, Keene, New Hampshire 03431.			
New Jersey	Corbin City (City), Atlantic County	Tuckahoe River	Entire shoreline	*9
	Maps available for inspection at the City Municipal Building, Route 50, Corbin City, New Jersey.			
	Send comments to Honorable Dorsey Hostler, Mayor of Corbin City, R.D. 1, Route 50, Corbin City, New Jersey			
New Jersey	Demarest (Borough), Bergen County	Tenakill Brook	Downstream Corporate Limits	*32
			Upstream Hardenburgh Avenue	*37
			Upstream Corporate Limits	*39
		Demarest Brook	Downstream Corporate Limits	*40
			Upstream Meadow Road	*42
			Downstream County Road	*45
		Cresskill Brook	Downstream Corporate Limits	*43
			530'downstream County Road	*45
			Downstream County Road	*50
	Maps available for inspection at the Borough Hall, 118 Serpentine Road, Demarest			
	Send comments to Honorable Vi Laamanen, Borough Coordinator, 118 Serpentine Road, Demarest, New Jersey 07627.			
New Jersey	High Bridge (Borough), Hunterdon County.	Raritan River	Downstream Corporate Limits	*219
			Upstream Arch Street Bridge	*233
			Upstream Conrail	*242
			Upstream Taylor-Wharton Railroad Bridge	*257
			Downstream Lake Solitude Dam	*263
			Upstream Lake Solitude Dam	*290
			Upstream Corporate Limits	*290
		Willoughby Brook	Downstream Corporate Limits	*294
			Approximately 800' upstream of Corporate Limits	*304
			Upstream Conrail	*322
			Upstream Corporate Limits	*330
	Maps available for inspection at the Office of the Borough Clerk, Municipal Building, 71 Main Street, High Bridge, New Jersey			
	Send comments to Honorable Donald A. Manning, Mayor of High Bridge, 71 Main Street, High Bridge, New Jersey 09929.			
New York	Buffalo (City) Erie County	Buffalo River	Confluence with Lake Erie	*581
			Upstream side of Seneca Street Bridge	*587
			Upstream side of South Ogden Street Bridge	*592
		Cazenovia Creek	Confluence with Buffalo River	*584
			Upstream side of Cazenovia Parkway Bridge	*595
			Corporate Limits	*599
		Scajaquada Creek	315' downstream from Interstate Route 190	*573
			580' downstream from Conrail Bridge	*581
			Upstream side of State Route 198	*586
			Upstream crossing of Private Road	*592
			4,330' from Private Road	*609
	Maps available for inspection at City Hall, Division of Planning, Room 313, Buffalo, New York.			
	Send comments to Honorable James D. Griffin, Mayor of Buffalo, City of Buffalo, City Hall, Buffalo, New York 14202.			
New York	South Nyack (Village), Rockland County.	Hudson River	Entire shoreline	*8
	Maps available at the South Nyack Village Hall, 282 South Broadway, South Nyack.			
	Send comments to Honorable Dr. Raymond P. Esposito, Mayor, 282 South Broadway, South Nyack, New York 10960.			
New York	Stony Point (Town), Rockland County.	Hudson River	Entire shoreline within community	*8
		Tributary No. 1 to Hudson River	Confluence with Hudson River	*8
			Downstream of Stony Point State Park	*12
			Upstream of Stony Point State Park	*15

State	City/town/county	Source of flooding	location	#Depth in feet above ground *Elevation in feet (NGVD)
			Approximately 200' upstream of culvert	*25
			Approximately 25' downstream of most upstream crossing of Park Road.	*40
			Approximately 200' upstream of most upstream crossing of Park Road	*60
			Approximately 450' upstream of most upstream crossing of Park Road.	*82
			Downstream of Lighthouse Court Culvert	*86
			Upstream of Lighthouse Court Culvert	*102
			Downstream of Maryann Court	*113
			Upstream of Maryann Court	*118
			Downstream of Adams Drive	*125
			Upstream of Adams Drive	*130
			Approximately 330' upstream of Adams Drive	*160
			Approximately 640' upstream of Adams Drive	*190
			Approximately 1,025' upstream of Adams Drive	*220
			Wayne Avenue	*224
		Cedar Pond Brook	Confluence with Hudson River	*8
			Upstream of Lowland Hill Road	*14
			Upstream of U.S. Routes 9W and 202	*25
			Approximately 700' upstream of U.S. Routes 9W and 202	*35
			Confluence of Tributary to Cedar Pond Brook	*51
		Tributary to Cedar Pond Brook	Confluence with Cedar Pond Brook	*51
			Approximately 350' upstream of confluence with Cedar Pond Brook	*60
			Downstream of State Route 210	*72
			Downstream of Private Drive	*85
			Upstream of Private Drive	*94
			Upstream of Washburns Lane	*101
			Downstream of Sengstacken Road Culvert	*112
			Upstream of Sengstacken Road Culvert	*118
			Upstream of Central Highway and Filors Lane	*132
			Upstream Corporate Limits	*141
	Maps available for inspection at the Town Hall, 11 New Main Street, Haverstraw, New York.			
	Send comments to Honorable Lucien H. Conklin, 74 East Main Street, Stony Point, New York 10980			
Oklahoma	City of Jenks, Tulsa County	Arkansas River	Just upstream of East Main Street	*615
		Polecate Creek	Just upstream of S. Peoria Avenue	*620
			Just upstream of S. 33rd W. Avenue	*633
		Posey Creek	Just upstream of Missouri Pacific Railroad	*606
			Just upstream of 141st Street	*620
		Coal Creek	Approximately 100 feet downstream of 121st Street	*644
	Maps available at City Planner's Office, City Hall, 123 East Main Street, Jenks, Oklahoma 74037.			
	Send comments to Mayor R. O'Donley or Mr. Richard Hall, City Planner, City Hall, 123 East Main Street, Jenks, Oklahoma 74037			
Oklahoma	Town of Maysville, Garvin County.	Beet Creek	Just upstream of Williams Street	*939
			Just downstream of Mays Street	*941
	Maps available for inspection at City Hall, 510 West Main Street, Maysville, Oklahoma 73057.			
	Send comments to Mayor Lynn Kein, or Ms. Norma Hope, Vice-Mayor, City Hall, 510 West Main Street, Maysville, Oklahoma 73057.			
Oregon	Brownsville (City), Linn County	Calapooia River	At center of Southern Pacific Railroad crossing of Calapooia River	*329
			200 feet south from intersection of Calapooia Avenue and Howe Street.	*341
	Maps available for inspection at City Hall, Brownsville, Oregon.			
	Send comments to Honorable Tony Gorsline, P.O. Box 188, Brownsville, Oregon 97327.			
Oregon	Jackson County (Unincorporated Areas).	Lazy Creek	Upstream limit of detailed study, approximately 180 feet upstream of the City of Medford corporate limits	*1,590
		Unnamed Tributary to Larson Creek.	Intersection of Creek and center of North Phoenix Road	*1,540
		Griffin Creek	30 feet upstream from center of Scenic Avenue	*1,234
			Intersection of Bellinger Lane and Minear Road	*1,459
		Pleasant Creek	Intersection of Creek and center of Queens Branch Road	*1,122
		Foots Creek	Intersection of Creek and center of Foots Creek Road	*1,103
		Little Butte Creek	75 feet upstream from center of Crater Lake Highway State Highway 62.	*1,281
			At confluence with Schoolhouse Creek	*1,438
		Lone Pine Creek	Intersection of Creek and center of Foothill Road (at upstream limit of detailed study).	*1,565
		Larson Creek	Intersection of Creek and center of Ellendale Drive	*1,406
		Crooked Creek	25 feet upstream from center of Stewart Avenue	*1,402
			Intersection of Dark Hollow Road and Skyview Drive	*1,567
		Daisy Creek	10 feet downstream from center of Third Street South	*1,742
		Evans Creek	At confluence with Maple Creek	*1,016
			10 feet upstream from center of Covered Bridge Road	*1,136
		Rogue River	Intersection of Savage Creek Road and U.S. Highway 99	*979
			500 feet upstream from center of Table Rock Road	*1,198
			Intersection of River and center of Dodge Bridge State Highway 234	*1,285
			At confluence with Big Butte Creek	*1,531
		Wagner Creek	At confluence with Bear Creek	*1,562
		Ashland Creek	400 feet upstream from center of Bridge to Treatment Plant	*1,715

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Coleman Creek	Intersection of Creek and center of U.S. Highway 99	*1,488

State	City/town/county	Source of flooding	location	#Depth in feet above ground *Elevation in feet (NGVD)
			Upstream of Private Road approximately 2,520' downstream of route 282 extended	*1,300

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State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Coleman Creek	Intersection of Creek and center of U.S. Highway 99	*1,488
		Clay Creek	Intersection of Creek and center of East Main Street	*1,905
		Bear Creek	10 feet upstream from center of Kirtland Road	*1,168
			200 feet upstream from center of Fern Valley Road	*1,472
			Intersection of Valley View Road and North Main Street U.S. Highway 99.	*1,659

Maps available for inspection at Jackson County Courthouse, Medford, Oregon.

Send comments to Honorable Jon Deason, Jackson County Courthouse, County Commissioner's Office, Medford, Oregon 97501.

Pennsylvania	Bradford (City), McKean County	West Branch Tunungwant Creek	Confluence with Tunungwant Creek	*1,435
			Kennedy Street (Upstream side)	*1,439
			Barbour Street (Downstream side)	*1,446
			Corporate Limits	*1,452
			Approximately 3,200' upstream of Corporate Limit	*1,468
		East Branch Tunungwant Creek	Confluence with Tunungwant Creek	*1,435
			Elm Street (Upstream side)	*1,442
			Corporate Limits	*1,449
		Main Stem Tunungwant Creek	Corporate Limits	*1,421
			Confluence with Kendall Creek	*1,426
			Chessie System (Upstream side)	*1,432
			Confluence with East and West Branch Tunungwant Creek	*1,435
		Kendall Creek	Confluence with Tunungwant Creek	*1,426
			East Main Street (Downstream side)	*1,429
			Corporate Limit	*1,441

Maps available at the Public Works Department, City Hall, 24 Kennedy Street, Bradford, Pennsylvania.

Send comments to Honorable Maxwell Moore, Mayor of Bradford, City Hall, 24 Kennedy Street, Bradford, Pennsylvania 16701.

Pennsylvania	Brownsville (Borough), Fayette County.	Monogahela River	Downstream corporate Limits	*771
			Bridge Street	*771
			Upstream Corporate Limits	*772
		Dunlap Creek	Confluence with Monongahela River	*771
			Upstream Corporate Limits	*771

Maps available for inspection at the Municipal Building, Brownsville, Pennsylvania.

Send comments to Honorable Paul Thomas, Jr., Mayor of Brownsville, Municipal Building, Brownsville, Pennsylvania 15417.

Pennsylvania	Foster (Township), McKean county.	Tunungwant Creek	Downstream State boundary	*1,411
			Confluence with Foster Brook	*1,417
			Approximately 420' upstream of Chessie System	*1,424
		Foster Brook	Confluence with Tunungwant Creek	*1,417
			East Main Street (Upstream side)	*1,428
			Approximately 450' downstream of Fourth Street	*1,435
			Beechwood Road (Upstream side)	*1,466
			Fairview Heights (Upstream side)	*1,477
			Harrisburg Run Road (Upstream side)	*1,496
			Derrick Road (Downstream crossing—upstream side)	*1,519
			Derrick Road (Upstream crossing—upstream side)	*1,550
			State Route 646 (Upstream side)	*1,580
		Kendall Creek	Downstream Corporate Limits	*1,441
			Approximately 2,400' upstream of Corporate Limits	*1,457
			Lafferty Road (Upstream side)	*1,474
			Approximately 3,500' upstream of Lafferty Road	*1,495
			Confluence of Totten Hollow Run	*1,519
			Approximately 3,100' upstream of Totten Hollow Road	*1,546
			Approximately 1,100' downstream of State Route 246	*1,560
			State Route 246 (Upstream side)	*1,572
			Approximately 3,400' upstream of confluence of Tributary to Kendall Creek.	*1,591
			Approximately 4,975' upstream of State Route 246	*1,614

Maps available at the Foster Township Building.

Send comments to Honorable Robert F. Riley, Chairman of the Foster Board of Supervisors, 14 North 3rd Street, Bradford, Pennsylvania 16701

Pennsylvania	Juniata (Township), Blair County	Blair Gap Run	Approximately 280' downstream of Downstream Corporate Limits	*1,137
			Downstream Corporate Limits	*1,139
			Upstream side of Private Road approximately 3,600' downstream of Legislative Route 07043.	*1,157
			Approximately 2,100' downstream of Legislative Route 07043	*1,177
			Approximately 855' downstream of Legislative Route 07043	*1,197
			Upstream Legislative Route 07043	*1,215
			Upstream side of Private Road approximately 1,235' upstream of Legislative Route 07043.	*1,235
			Upstream of Private Road approximately 1,735' upstream of Legislative Route 07043.	*1,247
			Downstream of Private Road approximately 2,595' upstream of Legislative Route 07043.	*1,261
			Approximately 4,395' upstream of Legislative Route 07043	*1,290
			Approximately 5,355' upstream of Legislative Route 07043	*1,310
			Approximately 6,205' upstream of Legislative Route 07043	*1,330
			Approximately 7,135' upstream of Legislative Route 07043	*1,350
			Approximately 8,125' upstream of Legislative Route 07043	*1,369
		Poplar Run	Downstream Corporate Limits	*1,235
			Approximately 920' upstream of Downstream Corporate Limits	*1,255

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Upstream of Private Road approximately 2,520' downstream of route 382 extended	*1,300
			Upstream of Private Road approximately 1,400' downstream of Route 382 extended	*1,327
			Confluence of Tributary to Poplar Run	*1,355
			Upstream of Private Drive approximately 1,600' upstream of Route 382 extended	*1,399
			Upstream of Private Drive approximately 2,365' downstream of downstream crossing of Legislative Route 07035	*1,423
			Approximately 1,230' downstream crossing of downstream of Legislative Route 07035.	*1,455
			Upstream of downstream crossing of Legislative Route 07035	*1,497
			Approximately 920' downstream of upstream crossing of Legislative Route 07035	*1,538
			Approximately 120' upstream of upstream crossing of Legislative Route 07035.	*1,575
			Approximately 1,615' upstream of upstream crossing of Legislative Route 07035	*1,633
			Approximately 2,605' upstream of upstream crossing of Legislative Route 07035	*1,687

Maps are available by contacting the Juniata Township Secretary, Mr. Ronald Neff, at (814) 695-5335.

Send comments to Honorable Clyde W. Miller, Chairman of the Juniata Board of Supervisors, R. D. 5, Box 115, Duncansville, Pennsylvania 16635

Pennsylvania	Plum (Borough), Allegheny County	Abers Creek	Old Frankstown Road	*936
			Approximately 950' upstream of Old Frankstown Road	*939
			Upstream of New Texas Road	*946
			Upstream of State Route 266	*953
			Confluence of Humms Run	*957
			Approximately 1,660' upstream of State Route 286	*964
			Approximately 670' downstream of Malabar Drive	*970
			Upstream of Malabar Drive	*979
			Tahoe Drive (Extended)	*983
			Approximately 340' upstream of Tahoe Drive (Extended)	*987
		Allegheny River	Downstream Corporate Limits	*744
			Approximately 5,600' upstream of Lock and Dam No. 3	*748
			Upstream Corporate Limits	*752
		Humms Run	Confluence with Abers Creek	*957
			Upstream of Pine Valley Drive	*962
			Approximately 900' upstream of Pine Valley Drive	*926
			Approximately 370' downstream of State Route 286	*974
			Approximately 80' upstream of State Route 286 (Downstream crossing)	*981
			Approximately 800' upstream of State Route 286	*984
			Cape Cod Drive	*993
			Sandune Drive	*1,001
			Downstream of North Duane Drive	*1,011
			Approximately 950' upstream of North Duane Drive	*1,022
			Upstream of State Route 286 (Upstream crossing)	*1,030
			Confluence with Tributary 1 to Humms Run	*1,036
			Approximately 50' downstream of Holiday Park Drive	*1,047
			Holiday Park Drive Culvert (Upstream side)	*1,058
			Holiday Park Drive Culvert (Downstream side)	*1,060
		Little Plum Creek	Confluence with Plum Creek	*906
			Approximately 3,000' upstream of Pennsylvania Turnpike	*911
			Approximately 1,300' downstream of Unity Railways Company	*920
			Approximately 70' downstream of Unity Railways Company	*929
			Approximately 100' upstream of Unity Railways Company	*938
			Approximately 360' downstream of New Texas Road	*939
			New Texas Road	*942
		Plum Creek	Dowstream Corporate Limits	*773
			Approximately 1,300' upstream of Corporate Limits	*780
			Approximately 6,750' downstream of Hulton Road	*790
			Approximately 5,030' downstream of Hulton Road	*800
			Approximately 2,870' downstream of Hulton Road	*810
			Approximately 1,290' downstream of Hulton Road	*820
			Upstream of Hulton road	*831
			Approximately 1,250' upstream of Hulton Road	*840
			Approximately 300' downstream of Conrail	*850
			Steurnagle Lane	*861
			Approximately 1,600' upstream of Miltown Road	*870
			Approximately 3,330' upstream of Miltown Road	*880
			Downstream of Conrail	*890
			Mary Street	*896
			Bessemer and Lake Erie Railroad Culvert (Downstream side)	*899
			Bessemer and Lake Erie Railroad Culvert (Upstream side)	*906
			Approximately 240' upstream of Leechburg Road	*910
			Upstream of Universal Road	*918
			Approximately 500' upstream of Universal Road	*925
			Upstream of Pennsylvania Turnpike	*931
			Approximately 75' downstream of Millers Lane	*943
			Approximately 825' downstream of Anderson Lane	*950
			Anderson Lane	*958
			Approximately 1,850' upstream of Anderson Lane	*970
			Approximately 1,675' downstream of State Route 380 (Downstream crossing).	*980

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)

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State	City/town/county	Source of flooding	location	#Depth in feet above ground *Elevation in feet (NGVD)
			Approximately 875' downstream of State Route 380 (Downstream crossing).	*990
			State Route 380 (Downstream crossing)	*1,003
			State Route 380 (Upstream crossing)	*1,015
		Puckets Creek	Confluence with Allegheny River	*752
			Approximately 1,470' downstream of Crystal Drive	*760
			Upstream of Crystal Drive	*767
			Approximately 750' upstream of Crystal Drive	*770
			State Road 366	*783

Maps available for inspection at the Plum Municipal Building, 4575 New Texas Road, Pittsburgh, Pennsylvania.

Send comments to Honorable Anthony B. O'Block, Mayor of Plum, 4575 New Texas Road, Pittsburgh, Pennsylvania 15239.

Pennsylvania	Summit (township), Erie County	Walnut Creek	Approximately .11 mile downstream of downstream crossing of Interstate 90.	*1,068
			Upstream Interstate 90	*1,070
			Upstream Holiday Inn Exit	*1,079
		Walnut Creek Tributary	Upstream of upstream crosing of Interstate 90	*1,082

Maps available at the Summit Township Building.

Send comments to Honorable John Colvin, Chairman of the Summit Board of Supervisors, 1040 Townhall Road, Erie, Pennsylvania 16509.

Pennsylvania	Union (Township), Erie County	South Branch French Creek	Upstream of Corporate Limits (and Union-LeBeouf Road)	*1,215
			Approximately .575 miles upstream of Corporate Limits	*1,225
			Upstream of first downstream Conrail crossing	*1,234
			Approximately 1 mile upstream of downstream Conrail crossing	*1,243
			Approximately .3 mile downstream of second downstream Conrail crossing.	*1,279
			Approximately 1.3 miles downstream of second downstream Conrail crossing.	*1,295
			Downstream of upstream Conrail crossing	*1,304

Maps available at the residence of Mr. Merle Sexton, Secretary of Union Township, R. D. 1, Union City, Pennsylvania.

Send comments to Honorable Walter Bem, Chairman of the Union Board of Supervisors, R. D. 1, Union City, Pennsylvania 16438.

Pennsylvania	Venango (Township), Erie County	West Branch French Creek	Approximately 1 mile downstream Corporate Limits	*1,286
			Upstream of State Route 8 & 89 at Corporate Limits	*1,290
			Upstream State Route 89	*1,295
			Approximately 1 mile upstream of State Route 89	*1,300
			Approximately 2 miles upstream of State Route 89	*1,306
			Upstream Page Road	*1,314
			Upstream Corporate Limits	*1,318

Maps available at the Venango Township Building

Send comments to Honorable Paul Vogel, Chairman of the Venango Board of Supervisors, R. D. 1, Wattsburg, Pennsylvania 16442.

Texas	Bellaire (City), Harris County	Brays Bayou	Southeast corner of community Corporate Limits	.*52

Maps available at the Bellaire City Hall, 7008 South Rice Avenue, Bellaire, Texas.

Send comments to Honorable Lawrence Folse, Mayor of Bellaire, Bellaire City Hall, 7008 South Rice Avenue, Bellaire, Texas 77401.

Texas	City of Big Spring, Howard County.	Beals Creek	Just upstream of FM700 (Marcy Drive)	*2,391
			Just upstream of Birdwell Lane	*2,406
			Just downstream of U.S. Highway 87 (Gregg Street)	*2,411
		Big Springs Draw	Just upstream of Baylor Boulevard	*2,412
			Just upstream of Golaid Street	*2,506
			Just upstream of U.S. Highway 87 (upstream most crossing)	*2,603
		Stream BSP 1	Just upstream of Parkway Road	*2,602
		Stream BSP 2	At the southern corporate limits	*2,643
		Big Sandy Draw	Just upstream of North Service Road to Interstate Highway 20 (U.S Highway 80).	*2,403
		Reads Draw	Just upstream of North Service Road to Interstate Highway 20 (U.S. Highway 80).	*2,456
		Stream BSP 3	Just upstream of North 8th Street	*2,443
		Stream BSP 4	Just upstream of North Service Road to Interstate Highway 20 (U.S. Highway 80).	*2,495
		Stream BSP 5	Just upstream of Missouri Pacific Railroad (Spur Track)	*2,433

Maps available for inspection at Housing and Community Development—Building Co 25, Big Spring, Texas 797220.

Send comments to Mayor Clyde Angel or Mr. Don Davis, City Manager, City Hall, 40 Nolan Street, Big Spring, Texas 79721.

Texas	City of Brady, McCullock County	Brady Creek	Just downstream of Atchison Topeka and Santa Fe Railway	$1,662
			Just upstream of Main Street	*1,663
			Just upstream of Bridge Street	*1,667
			Just upstream of U.S. Highway 283	*1,673
		Stream Brady 1	Just downstream of State Highway 2309	*1,663
			Just upstream of State Highway 2309	*1,667
		Post Oak Creek	Approximately 300 feet upstream of 11th Street	*1,680
		Live Oak Creek	Approximately 600 feet upstream of White Street	*1,676

Maps available for inspection at City Hall, Brady, Texas 76825.

Send comments to Mayor ED Davenport, Mr. Dennis Jones, City Superintendent, City Hall, P.O. Box 351, Brady, Texas 76825.

State	City/town/county	Source of flooding	location	#Depth in feet above ground *Elevation in feet (NGVD)
Texas	City of Breckenridge, Stephens County.	Gonzales Creek	Just upstream of Farm Market Road 287	*1,176
			Just upstream of Dyer Street	*1,184
			Just upstream of Hullum Street	*1,190
		Stream BK-1	Just upstream of intersection of Lindsey Street and Court Avenue	*1,185
			Just upstream of McAmis Avenue	*1,189
			Just upstream of Shelton Avenue	*1201
		Stream BK-2	Just upstream of Miller Avenue	*1,192
			Approximately 200 feet upstream of Live Oak Avenue	*1,202

Maps available for inspection at City Hall, 120 West Elem Street, Breckenridge, Texas 76024.

Send comments to Mayor Lloyd Mayberry or Mr. John Connally, Mayor-Protem, City Hall, 120 West Elm Street, Breckenridge, Texas 76024.

Texas	City of Brownfield, Terry County	Lost Draw	Just upstream of Webb Street	*3,275
			Just upstream of U.S. Highway 62 and 385	*3,281
			Just downstream of Bridges Street	*3,295
		Playa No. 4	East of intersection of Main and Sage Streets	*3,297
		Playa No. 3	Approximately 700 feet northeast of intersection of Tahoka Road and Cedar Street	*3,300
		Playa No 2	Approximately 700 feet northwest of intersection of Tahoka Road and Cedar Street.	*3,301

Maps available for inspection at City Hall, 218 West Main Street, Brownfield Texas 79316.

Send comments to Mayor T. C. Wilhams, Jr. or Mr. Jake Geron, City Manager, City Hall, 218 West Main Street, Brownfield, Texas 79316.

Texas	City of Copperas Cove, Coryell County.	Clear Creek	Just upstream of Farm Market 3,046	*1,010
		Stream CC-2	Just upstream of Farm Market 116	*1,013
			Just upstream of Lynn Lane	*1,046
			At Deorsam Drive	*1,070
			Just upstream of Georgetown Road	*1,074
			At 21st Street	*1,133
		House Creek	At Spillway Park Dam	*1,021
			Approximately 60 feet downstream of Farm Market 1113	*1,025
		Turkey Run	Just upstream of Atchison Topeka & Santa Fe Railroad	*1,049
			At Robertson Avenue	*1,077
			At Amthor Avenue	*1,085
			At Bowen Avenue	*1,103

Maps available for inspection at City Hall, 507 South Main Street, Copperas Cove, Texas 79522.

Send comments to Mayor R. D. Mitchell, or Mr. Kenneth Moseley, Mayor Pro-Tem, City Hall, 507 South Main Street, Copperas Cove, Texas 79522.

Texas	City of Graham, Young County	Farmers Branch	Pine Street extended	*1,057
			Victory Street extended	*1,055
		Stream GR-2	At the Eastern Corporate Limits	*1,077
			At the Northern Corporate Limits	*1,082
		Shawnee Branch	Brazos Street extended	*1,036
			Just upstream of South Street	*1,036
		Salt Creek	Shawnee Street extended	*1,036
			Just upstream of Farm Market 61	*1,036
			Just upstream of Tesco Village	*1,037

Maps available for inspection at City Hall, Graham, Texas 76046.

Sends comments to Mayor Norman Stovall, Jr., or Mr. Larry M. Fields, City Manager, City Hall, P.O. Box 690, Graham, Texas 76046.

Utah	Brigham City (City), Box Elder County	Box Elder Creek	100 feet upstream from center of Union Pacific Railroad Bridge	*4,283
			75 feet upstream from center of 200 West Street	*4,333
			75 feet upstream from center of 400 East Street	*4,405

Maps available for inspection at City Hall, Brigham City, Utah.

Send comments to Honorable Peter T. Knudsen, 20 North Main Street, Brigham City, Utah 84302.

Utah	Farmington (City), Davis County	Davis Creek	100 feet upstream of center of 200 East	*4,348
		Steed Creek	100 feet upstream of center of 200 East	*4,367
		Farmington Creek	100 feet upstream of center of Clark Lane	*4,255
			150 feet upstream of center of 300 North	*4,278
			100 feet upstream of center of State Highway 106	*4,315
		Rudd Creek	400 feet upstream of center of Skyline Drive	*4,484
		Shepard Creek	100 feet upstream of center of State Highway 106	*4,326
			120 feet upstream of center of abandoned Bramberger Railroad	*4,370
		Haight Creek	200 feet upstream of center of frontage road to Interstate 15	*4,282

Maps available for inspection at City Hall, Farmington, Utah.

Send comments to Honorable E. T. Johnson, 286 South 200 East, Farmington, Utah 84035

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
Utah	Fruit Heights (City), Davis County	Baer Creek	150 feet upstream from center of U.S. Highway 89	*4,534

and 15018, 450 Golden Gate Avenue, San Francisco, California 94102, Contact: Beverly Wood (415) 556–6153

January 13, American Dental Society Building, 211 E. Chicago Avenue, Chicago, Illinois 60606, Contact: Forrest Lewis (312)

regulatory policy in regard to Direct Broadcast Satellites. This action is being taken to allow parties comment on an application for a Satellite-to-Home Subscription Television Service submitted by Satellite Television

application, STC addresses the procedures that it believes would be lawful and appropriate for processing its experimental application. The discussion contained in STC's application is obviously relevant to that

State	City/town/county	Source of flooding	location	#Depth in feet above ground. *Elevation in feet (NGVD)
Utah	Fruit Heights (City), Davis County	Baer Creek	150 feet upstream from center of U.S. Highway 89	*4,534
		Haight Creek	200 feet upstream from center of U.S. Highway 89	*4,489
	Maps available for inspection at City Hall, Fruit Heights, Utah.			
	Send comments to Honorable Neil K. Noorda, 281 South Mountain Road, Fruit Heights, Utah 84037			
Vermont	Georgia (Town), Franklin County	Lake Chaplain	Entire shoreline within Corporate Limits	*102
		Lamoille River	Arrowhead Mountain Lake at downstream County Boundary	*291
			Upstream of Central Vermont Railroad	*293
			100' upstream of U.S. gaging station No. 04292500	*303
			Approximately 550' downstream of confluence with Beaver Meadow Brook.	*313
			Upstream Corporate Limits	*332
	Maps available for inspection at the Town Clerk's Office, Town Office Building, Georgia, Vermont.			
	Send comments to the Honorable Harmon Loomis, Chairman of the Georgia Board of Selectmen, Georgia Town Office Building, Georgia, Vermont.			
Washington	Lower Elwha Indian Reservation, Clallam County	Elwha River	100 feet due south of intersection of Main Street and Dirt Road heading toward the beach.	*13
		Elwha River Overflow	75 feet south along Stratton Road from its intersection with Main Street.	*12
		Strait of Juan de Fuca	Intersection of Main Street and Dirt Road heading toward the beach	*12
	Maps available for inspection at Tribal Community Offices, Lower Elwha Road, Port Angeles, Washington.			
	Send comments to Honorable Gerald Charles, P.O. Box 2034, Port Angeles, Washington 98362			
Wisconsin	(C) Onalaska, La Crosse County	Green Coulee	About 0.54 mile downstream Main Street	*710
			Just upstream Main Street	*715
		Black River	At downstream corporate limits	*647
			At upstream corporate limits	*648
	Maps available for inspection at the Office of the City Clerk, City Hall, 415 Main Street, Onalaska, Wisconsin.			
	Send comments to Honorable Earl W. Phillips, Mayor, City of Onalaska, City Hall, 415 Main Street, Onalaska, Wisconsin 54650.			
Wisconsin	(C) Rice Lake, Barron County	Red Cedar River	At downstream corporate limits	*1,105
			About 475 feet upstream Allen Street	*1,114
			Just downstream dam (near Main Street)	*1,117
			Just upstream dam (near Main Street)	*1,125
			At upstream corporate limits	*1,125
		Unnamed Tributary to Red Cedar River.	At confluence with Red Cedar River	*1,111
			Just downstream of Southwest Street at upstream corporate limits	*1,120
		Rice Lake	Shoreline	*1,125
	Maps available for inspection at the Office of the Building Inspector, City Hall, 11 East Marshall Street, Rice Lake, Wisconsin.			
	Send comments to Honorable David Berner, Mayor, City of Rice Lake, City Hall, 11 East Marshall Street, Rice Lake, Wisconsin 54868.			

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: December 9, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-39615 Filed 12-23-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1355, 1356, and 1357

Foster Care Maintenance Assistance and Adoption Assistance; Child Welfare Services; Meetings

AGENCY: Office of Human Development Services (OHDS), HHS.

ACTION: Notice of Meetings in Relation to a Proposed Regulation.

SUMMARY: This Notice sets forth the dates, times and places for the forthcoming public meetings in relation to a rulemaking procedure to Implement the Adoption Assistance and Child Welfare Act of 1980.

DATES: See Supplementary Information.

ADDRESS: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Joyce Strom, Associate Commissioner, Services for Children and Youth, Administration for Children, Youth and Families, (202) 755–7600.

SUPPLEMENTARY INFORMATION: Public meetings on this proposed rulemaking will be held on the dates and at the locations listed below. For further information, contact the Regional Program Director in the appropriate Regional Office of the Administration for Children, Youth and Families.

January 9, Federal Reserve Bank Building Auditorium, 600 Atlantic Avenue, Boston, Massachusetts 02210, Contact: Tina Janey Burell (617) 223–6450

January 9, Richard B. Russell Building, 75 Spring Street, N.W., Atlanta, Georgia 39323, Contact: James K. Vaughn (404) 221–2300

January 12, Federal Building, Rooms 13029 and 15018, 450 Golden Gate Avenue, San Francisco, California 94102, Contact: Beverly Wood (415) 556–6153

January 13, American Dental Society Building, 211 E. Chicago Avenue, Chicago, Illinois 60606, Contact: Forrest Lewis (312) 353–1784

January 14, Dallas Public Library, Room: Auditorium, 1954 Commerce Street, Dallas, Texas 75202, Contact: Patricia Newlin (214) 767–6596

January 16, Federal Building, Room 140, 601 E. 12th Street, Kansas City, Missouri 64106, Contact: Richard Schrader (816) 374–5401

January 19, The Regency Inn, Room: House of Common, 3900 Elati Street, Denver, Colorado 80216, Contact: Ms. Sue Dignum (303) 292–9010

January 23, William J. Green Federal Building, Room 3306, 600 Arch Street, Philadelphia, Pennsylvania 19101, Contact: Donald Barrow (215) 596–0390

January 28, World Trade Building, Room 4430, 2 World Trade Center, New York, New York 10047, Contact: Caroline Gionta (212) 264–2405

January 29, New Federal Building, 915 Second Avenue, Seattle, Washington 98101, Contact: Ms. Jeanne Craig (206) 442–0838

Interested parties wishing to apply for financial assistance in meeting the expenses of gathering comments on the proposed rule or appearing at one of the public meetings should refer to the Notice of Demonstration Project to Assist Those Wishing to Comment on the Proposed Regulation Implementing the Adoption Assistance and Child Welfare of 1980 published on December 17, 1980 in the **Federal Register.**

John A. Cathoun,

Commissioner, ACYF.

[FR Doc. 80-40088 Filed 12-23-80; 8:45 am]

BILLING CODE 4110-92-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[Gen. Docket No. 80-603]

Inquiry Into the Development of Regulatory Policy in Regard To Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry; Extension of comment and reply comment period.

SUMMARY: Commission is extending time in which to file comments in its Inquiry into the development of regulatory policy in regard to Direct Broadcast Satellites. This action is being taken to allow parties comment on an application for a Satellite-to-Home Subscription Television Service submitted by Satellite Television Corporation.

DATES: Comments on interim systems must be received on or before February 2, 1981 and reply comments must be received on or before February 17, 1981. Comments related to permanent regulatory issues must be received on or before March 31, 1981 and reply comments must be received on or before May 29, 1981.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bruce A. Franca, Office of Plans and Policy, (202) 653–5940.

SUPPLEMENTARY INFORMATION:

Order Extending Time; Comments and Reply Comments

In the matter of inquiry into the development of regulatory policy in regard to Direct Broadcast Satellites for the period following the 1983 Regional Administrative Radio Conference.

Adopted: December 19, 1980;

Released: December 22, 1980.

By the Deputy Chief, Office of Plans and Policy:

1. On October 29, 1980 [45 FR 72719], the Commission issued a Notice of Inquiry, in the above-captioned proceeding, dealing with the development of regulatory policies for direct broadcast satellite (DBS) systems. The Notice requested that comments be filed with regard to interim DBS system matters on November 28, 1980 and reply comments on December 15, 1980.[1] The Notice also requested that comments concerning permanent regulatory policies be filed on January 31, 1981 with reply comments due on March 31, 1981.

2. On December 17, 1980, after the close of the period in which to file comments on interim matters, Satellite Television Corporation (STC) submitted an application to the Commission for a permit to construct the first phase of an experimental direct broadcast satellite system for use in delivering satellite subscription service to the American public. The application filed by STC seeks authority to construct two high-powered PAM–D class satellites to operate in the 12.2–12.7 GHz band. In its application, STC addresses the procedures that it believes would be lawful and appropriate for processing its experimental application. The discussion contained in STC's application is obviously relevant to that part of the Notice of Inquiry which concerns interim DBS systems. Therefore, we will place a copy of STC's application for an experimental authorization into the public record of this proceeding.

3. Now that an actual application for an experimental authorization has been filed, we believe that all interested persons who wish to do so should be given an opportunity to comment on the application as it relates to the questions raised in the NOI with regard to interim systems.

Accordingly, we are re-opening the period for filing comments and extending the date for filing replies on interim matters.[2] We caution, however, that at this time we are interested only in comments and replies on the portions of STC's application that are directly relevant to possible experimental authorizations.

4. With respect to the foregoing, we note that on December 5, 1980, STC filed comments in this proceeding stating that detailed support for its position on interim matters would be supplied in its forthcoming application. On December 12, 1980, CBS, Inc. filed a letter urging that the Commission reject the procedure proposed by STC in its December 5, 1980 comments. In the alternative, CBS requests that the Commission provide an adequate time period for replying to the matters relating to interim authorizations that are raised in STC's application. On December 15, 1980, STC filed a motion requesting an extension of time to January 16, 1981 for filing reply comments on matters relating to interim operations. In view of the actions taken by us to reopen the time period for filing comments and extend the time for filing reply comments on interim systems, CBS' alternative request is in effect granted, and STC's motion will be dismissed as moot.

5. Accordingly, it is ordered that:

(1) The application filed December 17, 1980, by Satellite Television Corporation for a Satellite-to-Home Subscription Television Service is hereby placed in the record of this proceeding;

(2) The date for filing comments related specifically to the authorization of interim DBS systems is re-opened to and including February 2, 1981, and the

[1] The Commission on its own motion extended the dates for filing comments and reply comments on interim matters to and including December 5, 1980 and December 22, 1980, respectively.

[2] We are also extending the dates for filing comments and replies on permanent regulatory policies.

date for filing reply comments is extended to and including February 17, 1981; and the dates for filing comments and reply comments related to permanent regulatory issues ARE EXTENDED to and including March 31, comments are due on or before March 4, 1981.

ADDRESSES: Comments may be mailed to: The Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554; or

approaching the matter, several frequently competing considerations exist that must be balanced. First, the regulatory framework should promote efficient use of the resource. Second, since the geostationary orbit/spectrum

and the Planning of Space Services Utilizing it." The 35th Sesion of the ITU Administrative Council held in May 1980 considered this recommendation in the scheduling of future conferences and has scheduled the first session of the Space WARC for six weeks beginning

competent to consider those space services that use the geostationary-satellite orbit in all the appropriately allocated frequency bands according to Article 8 (N7/5) of the Final Acts of WARC–79. This, of course, would

The Use of the Geostationary-Satellite Orbit

7. The Administrative Radio Conference, Geneva, 1959 was the first ITU Conference to recognize space radio communications and it provided

date for filing reply comments is extended to and including February 17, 1981; and the dates for filing comments and reply comments related to permanent regulatory issues ARE EXTENDED to and including March 31, 1981 and May 29, 1981, respectively.

(3) The motion filed December 15, 1980 by Satellite Television Corporation for an extension of time in which to file reply comments is dismissed as moot.

6. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.271 of the Commission's rules.

7. The Secretary shall cause this order to be published in the **Federal Register.**

Federal Communications Commission.

Douglas W. Webbink,

Deputy Chief, Office of Plans and Policy.

[FR Doc. 80-40315 Filed 12-23-80; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Ch. I

[Gen. Docket No. 80-741; FCC No. 80-697]

Inquiry Relating to Preparation for an International Telecommunication Union World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry.

SUMMARY: This proceeding requests public comment concerning the Commission preparations for International Telecommunication Union (ITU) World Administrative Radio Conference on the use of the Geostationary-Satellite Orbit and the planning of the space services utilizing it. This ITU conference will be held in two sessions in 1984 and 1985 and the U.S. as an ITU member will participate. This proceeding will serve as the basis for Commission coordination with the National Telecommunications and Information Administration (NTIA) and the Department of State (DOS) in the formulation of the United States proposals and policy for that conference.

DATES: Comments must be submitted on or before February 4, 1981. Reply comments are due on or before March 4, 1981.

ADDRESSES: Comments may be mailed to: The Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554; or delivered to Room 222 between 8:00 a.m. and 5:30 p.m. Comments received may also be inspected in Room 222 between 8:00 a.m. and 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas S. Tycz, International Staff, Room 7002, 202-653-8102.

In the matter of an inquiry relating to preparation for an International Telecommunication Union World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It.

Notice of Inquiry

Adopted: November 25, 1980;

Released: December 16, 1980.

By the Commission:

Purpose

1. The purpose of this proceeding is to request public comment concerning Commission preparations for a World Administrative Radio Conference on the use of the geostationary-satellite orbit and the planning of the space services utilizing it (Space WARC). This Conference will be held in two sessions in 1984 and in 1985. This proceeding will serve as the basis for Commission coordination with the National Telecommunications and Information Administration (NTIA) and the Department of State (DOS) in the formulation of the United States proposals and policy for that conference.

Introduction

2. The basic question before the Space WARC is not a new one: what means shall be employed for regulating access to a limited resource? This is a fundamental question often posed to regulatory agencies, domestic and international. In this case, the resource is the geostationary-satellite orbit/spectrum used for radiocommunication, and the international organization is the International Telecommunication Union.

3. Because the resource is limited and international cooperation is required for its effective use, regulation seems essential. The kind of regulation to be employed is the question. In approaching the matter, several frequently competing considerations exist that must be balanced. First, the regulatory framework should promote efficient use of the resource. Second, since the geostationary orbit/spectrum resource is limited for a given level of technology, the regulatory framework should ensure for all users equitable access to this resource as required. Third, the regulatory framework should promote innovation. As with most natural resources, advancements in technology constantly improve the utility of the orbit/spectrum resource, as well as increase the total amount of service that can be provided. Fourth, the regulatory framework should be as administratively simple as possible. This is particularly important in an international forum where applicants may need to interact with other nations in a complex technical and regulatory environment in order to effectively meet their requirements. Recause these considerations are often competing, a balance must be struck which is agreeable to the world community.

Background

4. The International Telecommunication Union (ITU), 1979 World Administrative Radio Conference (WARC-79), concluded in early December 1979. The WARC-79 agenda included (agenda item 2.10), *inter alia*, the requirement to propose to the ITU Administrative Council, and to the next ITU Plenipotentiary Conference, a program for convening future Administrative Radio Conferences to deal with specific services.[1] As one response to that agenda item, the WARC-79 adopted Recommendation No. 12 (XM).[2] It recommended to the Administrative Council, and, as appropriate, to the ITU Plenipotentiary Conference, to include in the program of future conferences a "World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit

[1] The agenda for the WARC-79 was contained in the *Report and Order* in Docket No. 20271, 70 FCC 2d 1193, FCC 78-849 (1978), p. A-2 and p. A-3. The FCC recommendations to DOS concerning future conferences were shown on p. A-385 of that *Report and Order*.

[2] ITU Radio Regulation provisions in this *Notice* are cited by the designations recently announced by the ITU. For convenience of the reader, the WARC-79 temporary number, followed by a slant bar and previous designation, if any, are also provided within parentheses, for example, Article 8 (N7/5).

and the Planning of Space Services Utilizing it." The 35th Sesion of the ITU Administrative Council held in May 1980 considered this recommendation in the scheduling of future conferences and has scheduled the first session of the Space WARC for six weeks beginning March 12, 1984.[3] The second session of this conference was also scheduled for six weeks beginning in November of 1985. The specific agenda for each of these sessions was not established at that May meeting. However, it is expected that the agenda for this conference will be considered at the 1981 session of the Administrative Council. Comments on the agenda received in this proceeding will aid in the development of U.S. positions for the Administrative Council meeting.

5. Resolution No. 3 (BP), as adopted by WARC-79, establishes the mandate for the Space WARC and provides guidance with respect to the agenda for the Conference. This Resolution (included in Appendix 1 of this *Notice*) resolves that ". . . a World Administrative Radio Conference shall be convened not later than 1984 to guarantee in practice for all countries equitable access to the geostationary-satellite orbit and the frequency bands allocated to space services." To achieve the objective of assuring equitable access Resolution No. 3 (BP) provides for the consideration of three basic approaches. Resolution No. 3 (BP) envisions that the first session of the conference will:

A. Decide which space services and frequency bands—if any in the U.S. view—should be planned. This first session is also to establish the principles, technical parameters and criteria for planning taking into account the relevant technical aspects concerning the geographical situation of particular countries, and to provide guidelines for regulatory procedures associated with planning;

B. Establish guidelines for regulatory procedures for those services and frequency bands where planning is not appropriate; and

C. Consider other possible approaches that will accomplish the objective of guaranteeing equitable access in practice for all countries to the geostationary-satellite orbit/frequency resource.

A second session of the conference is to implement the decisions of the first session. Consideration of the three approaches outlined above are treated more fully in the following sections of this Notice.

6. It is clear from Resolution No. 3 (BP) that the Space WARC should be competent to consider those space services that use the geostationary-satellite orbit in all the appropriately allocated frequency bands according to Article 8 (N7/5) of the Final Acts of WARC-79. This, of course, would exclude those services and uses which have satellite orbits other than the geostationary-satellite orbit.[4] Although not specifically stated within Resolution No. 3 (BP), the Space WARC is not expected to consider the planning of the broadcasting-satellite service in the 11.7-12.7 GHz band nor its associated feeder link frequency bands for Region 2. Another ITU administrative radio conference will be convened to consider these matters.[5] Also, the 1982 WARC for Mobile Telecommunications is expected to address certain operational and technical aspects for the maritime mobile-satellite service and matters related to distress and safety.[6] Consequently, these specific items should be decided by this Mobile WARC and may not be considered by the Space WARC. Additionally, it is not expected that this conference will be competent to make modifications to the Table of Frequency Allocations. Finally, we would like to point out that while this conference will be primarily concerned with the treatment of space sevices, nearly every space service frequency band is shared to some extent with terrestrial radio communication services. The Space conference will necessarily have to take cognizance of these terrestrial services such that their continued viable operation is not jeopardized.

[3] ITU Circular Telegram A271, May 22, 1980.

[4] The geostationary-satellite orbit is defined in Radio Regulation No. 3133A of the Final Acts of WARC-79.

[5] Resolution No. 701 (CH/Sat-8, Sat-9) adopted at WARC-79 calls for the convening of a Region 2 Broadcasting-Satellite Conference for planning the band 12.3-12.7 GHz for the broadcasting-satellite service, and in that portion of the band 12.1-12.3 GHz that it shall allocate to the broadcasting-satellite service. It shall also plan the feeder links in a part of the 17.3-18.1 GHz allocated to the fixed-satellite service ". . . of a bandwidth equal to the total bandwidth allocated to the broadcasting satellite service, for the downlink in the 12 GHz band." The *Notice of Inquiry*, General Docket No. 80-398, FCC 80-417, released July 25, 1980 addresses the Commission's preparations for this Conference. The ITU World Administrative Radio Conference for the Planning of the Broadcasting-Satellite Service (WARC-BS) 1977 planned the bands 11.7-12.2 GHz for Region 3 and the band 11.7-12.5 GHz for Region 1. The Plan is contained in Appendix 30(28A) to the Final Acts of WARC-79. The 35th Session of the Administrative Council (May 1980) has scheduled the Region 2 Broadcasting-Satellite Conference for five weeks beginning June 13, 1983.

[6] A *Notice of Inquiry*, General Docket No. 80-184, FCC 80-232, (1980), 45 Fed. Reg. 35418 released May 15, 1980, addresses the Commission's preparations for this Conference, An *Order*, FCC 32257, extending time for comments and reply comments, was released June 6, 1980.

The Use of the Geostationary-Satellite Orbit

7. The Administrative Radio Conference, Geneva, 1959 was the first ITU Conference to recognize space radio communications and it provided allocations for this purpose. The basic philosophy of the current regulatory procedures of the Radio Regulations (Articles 11 (N11/9A) and 13 (N13/9A) of the Final Acts of WARC-79) concerning the advance publication, coordination and notification of space radio communications was initially established at the Extraordinary Administrative Radio Conference, Geneva, 1963. The procedures were subsequently elaborated by the World Administrative Radio Conference for Space Telecommunications, Geneva, 1971 and by WARC-79.

8. The basis for the forthcoming Space WARC stems from principles established at previous ITU Administrative Radio Conferences and the ITU Convention. Article 33 of the ITU Convention states: "In using frequency bands for space radio services, Members shall bear in mind that radio frequencies and the geostationary-satellite orbit are limited natural resources, and that they must be used effectively and economically so that countries or groups of countries may have equitable access to both in conformity with the provisions of the Radio Regulations according to their needs and the technical facilities at their disposal." Recommendation No. 700 (XC/Spa10) adopted by WARC-79 recognizes ". . . that all Members of the International Telecommunication Union have an interest in and a right to an equitable and rational use of frequency bands allocated to space radio communications." It recommends ". . . that the utilization and the exploitation of the frequency bands allocated to space radio communications be subject to international agreements based on principles of justice and equity permitting the use and sharing of these bands in the mutual interest of all nations." This principle is further effected by Resolution No. 2 (AY/Spa2-1) which resolves ". . . that the registration with the IFRB of frequency assignments for space radio communication services and their use should not provide any permanent priority for any individual country or groups of countries and should not create an obstacle to the establishment of space systems by other countries." This Resolution further states that those countries that have registered space radio communications systems with the

IFRB ". . . should take all practicable measures to realize the possibility of the use of new space systems by other countries or groups of countries so desiring." To date, these principles have been followed through the use of the relatively new means of telecommunications that is changing and improving very rapidly through advances in technology; so much so, that it is not beneficial to any country to inhibit this communication field with

Plans and Other Approaches [9]

12. Resolution No. 3 (BP) recognizes planning as a specific technique for guaranteeing equitable access for all countries to the geostationary-satellite orbit/frequency spectrum. It also

amenable to planning of any kind, while some other space services in other frequency bands may more suitably use one approach over another. For which space services and which frequency bands, if any, is a particular type of plan

Some space services have need for spectrum allocated to other space services. For example, the maritime mobile-satellite service requires spectrum in the fixed-satellite service in order to meet feeder link requirements.[12]

single orbital position or a number of orbital positions depending upon the traffic requirements and the types of uses being provided within a country; also international connection requirements need a number of orbital

IFRB ". . . should take all practicable measures to realize the possibility of the use of new space systems by other countries or groups of countries so desiring." To date, these principles have been followed through the use of the advance publication, coordination and notification procedures of Articles 11 (N11/9A) and 13 (N13/9A).

9. Since the adoption of these principles and the associated regulatory procedures, many countries have implemented space radiocommunications systems in the geostationary-satellite orbit. Recently, some countries desiring to obtain orbital positions in certain frequency bands, such as the 4/6 GHz fixed-satellite service bands, have found the coordination and notification requirements somewhat more difficult to complete than those countries who implemented systems earlier. In fact, during the deliberations of WARC–79, some countries argued that the current regulatory procedures might be inherently inequitable and that some other arrangements should be pursued to rectify the situation. Although the regulatory procedures relating to space services were retained by WARC–79 in essentially the same form, they were strongly criticized by developing countries, some of whom favored the adoption of formal plans to govern the implementation of space services. This issue was intensely debated during the 1979 Conference and led to the adoption of Resolution No. 3 (BP). One of the intents of this Resolution, then, is to have the Space WARC review the effectiveness, efficiency and ease of the current regulatory procedures and their ability to guarantee equitable access for all countries to the geostationary-satellite orbit in all bands allocated to space services. In response, the U.S. delegation to WARC–79 introduced a statement on this Resolution (Appendix 2 to this *Notice*) explaining the U.S. interpretation of "planning" and the scope of the Space WARC.[7]

10. To date, the U.S. posture has been that the current coordination and notification procedures within the Radio Regulations are adequate and effective (no administration has ever been denied access to the geostationary-satellite orbit), and that these regulations should be continued in their WARC–79 modified form. These Radio Regulations are consistent with U.S. policy on space radiocommunication. That policy recognizes space communications as a relatively new means of telecommunications that is changing and improving very rapidly through advances in technology; so much so, that it is not beneficial to any country to inhibit this communication field with cumbersome administrative and regulatory procedures based upon outmoded technical parameters.[8] The current regulatory framework permits the maximum flexibility in developing and utilizing space telecommunications. It has provided a means of enhancing the use of the geostationary-satellite orbit by resolving the difficulties of interference between satellite networks through the coordination mechanism. This facet of the present procedure might be lost in any rigid planning approach.

11. There is a significant difference between the U.S. posture on this subject and the desire to carry out detailed planning as expressed by some countries in developing Resolution No. 3 (BP). In order to reconcile this difference, the U.S. preparation should examine ways and means of developing procedures which satisfy the equity considerations as well as enhance the continued growth of space technology. One of the more critical issues to be faced at the Space WARC will be the policy and principles for the use of the geostationary-satellite orbit. In this regard, comments are requested as to the U.S. policy that should be pursued with respect to all internationally defined space radiocommunications services and their use of the geostationary-satellite orbit. Should the U.S. pursue its current policy on the use of this resource, recognizing that there will be considerable opposition to it at the Space WARC? If not, what alternative policy approaches should be pursued and what are the advantages and disadvantages of each? In light of this U.S. policy, comments are requested as to the U.S. objectives that should be pursued at the Conference. The need to provide for equitable use and enhanced technology should be kept in mind. The topics may be discussed in a general sense but, if possible, comments should also be framed and directed toward specific ITU defined radio services and frequency bands, as appropriate.

Plans and Other Approaches [9]

12. Resolution No. 3 (BP) recognizes planning as a specific technique for guaranteeing equitable access for all countries to the geostationary-satellite orbit/frequency spectrum. It also specified that the Space WARC shall consider other possible approaches that could meet this objective. Resolution No. 3 (BP) does not indicate the appropriateness of any specific type of plan for any space service or any frequency band. To date, the current regulatory provisions and the detailed frequency/orbit plan of the Broadcasting-Satellite WARC, 1977 are the only approaches to the use of the geostationary-satellite orbit that have been adopted. In order that the U.S. be adequately prepared for the Space WARC, it is important that all possible approaches to the use of this resource be explored and considered. In this connection the Interim Working Party 4/1 of the CCIR is examining several alternative approaches for ensuring equitable access to the geostationary satellite orbit/frequency resource. An excerpt from the May 1980 report of this IWP that addresses these approaches is attached as Appendix 3. Comments on these approaches are requested, specifically with regard to the questions posed in paragraph 13 below.

13. There are several issues related to the concepts of planning and the use of other approaches that should be examined during this preparatory effort. These issues are elaborated within the following questions.

A. Since the basic principle for any plan or other approach is to assure a guarantee of equitable access, what plans or other approaches can be developed to satisfy the objective of guaranteeing equitable access, in practice, for all countries to the geostationary-satellite orbit? [10] How does the particular plan or other approach provide this guarantee for all countries? Comments should describe the suggested plan or other approach and explain in sufficient detail how it works so as to facilitate and appropriate assessment of the suggestion.

B. Because of particular features of space operations, some space services in certain frequency bands may not be amenable to planning of any kind, while some other space services in other frequency bands may more suitably use one approach over another. For which space services and which frequency bands, if any, is a particular type of plan or other approach applicable?

C. How would the opertions of international organizations, such as Intelsat, Arabsat, Intersputnik and Inmarsat, be incorporated into any plan or other approach?

D. What criteria should be used to evaluate a particular plan or other approach? [11] One criterion is how the particular plan would accommodate the existing requirements of administrations. What others should be used?

E. Timing considerations are integral to any plan or other approach. When should any plan or other approach be implemented? Considering that some countries wish to guarantee their access to the orbit for some time in the future, over what interval of time should any plan or other approach be effective?

F. Many of the space services share, on an equal basis, frequency bands with other space or terrestrial services. Comments are requested on how these other shared services would be impacted and how they should be considered in the development of any plan or other approach.

G. Space radio communications is a relatively new telecommunications technology with unforeseen service requirements. How would technological advances and new or unforeseen service requirements be incorporated into any plan or other approach?

Service Requirements

14. In order to understand the implications of any plan or other approach on any space service that is or may be used by the U.S., it is necessary to determine the requirements of each space service as it is used by the U.S. We request specific comments in this regard. These requirements should be described within the following time context. What is needed for the existing systems? What is planned in the immediate future, that is, in the next five years? What are the long term trends for the service? The basic requirements of a space service should be expressed in the following terms.

Frequency Bands

15. Some space services operate entirely within frequency bands allocated to them in order to provide the intended communication operations. Some space services have need for spectrum allocated to other space services. For example, the maritime mobile-satellite service requires spectrum in the fixed-satellite service in order to meet feeder link requirements.[12] Comments are requested as to the amount of spectrum needed for each space service in addition to that spectrum allocated for the specific service. Comments should indicate the other space service involved, the frequency band of concern, the amount of spectrum required and the relationship to the original space service. For example, the maritime mobile-satellite service operating at 1626.5–1645.5 MHz may need, as a feeder link a comparable 19 MHz of spectrum in a fixed-satellite service allocation, such as the 4 GHz band.

Service Area

16. Each space service has different service area requirements. Some space services operate with earth stations on a global basis, as in the maritime mobile-satellite service. Other services have service area requirements that are limited to specific countries or regions. Finally, other services such as the fixed-satellite service have both service area requirements. Comments are requested on the service area requirements of each space service in each frequency band.

Orbital Locations and Bandwidth Requirements

17. In order to be able to discuss the bandwidth that a specific service requires, one must determine the types and the numbers of uses that the service will provide. Requirements for telephone differ from requirements for video or data transmission. Comments are specifically requested on the types of uses that a service provides, the number of channels/transponder and the channel or transponder bandwidths needed for each use.

18. Each service has its own requirements for orbital locations according to types of operation. An international maritime mobile-satellite operation requires a number of orbital locations on the geostationary-satellite orbit in order to provide global coverage. The broadcasting-satellite service, on the other hand, may need only one location to provide the local coverage operation for a particular country. The fixed-satellite service, however, provides both types of coverage. Domestic coverage may be provided within the service from a single orbital position or a number of orbital positions depending upon the traffic requirements and the types of uses being provided within a country; also international connection requirements need a number of orbital locations to provide satisfactory operations.

19. The key to determining the number of orbital locations that the U.S. needs is dependent upon the total bandwidth/transponder requirements. It must be determined if an operation can be provided from one orbital location or if it is possible to provide the same service from two or more locations. Does a service require more than one orbital location in order to fulfill the basic requirements of the U.S.? If it is possible to spread the total bandwidth requirement over a number of satellite positions, is there a minimum bandwidth or number of transponders which should be provided to a given service area from a given satellite position, considering both service requirements and system costs? Based upon the above considerations, comments are requested on the number and location of orbital positions needed for a particular space service in the United States. Comments are also requested on the minimum or preferred orbital spacing between systems operating in the same frequency band.

Technical Specifications and Sharing Criteria

20. The United States position on the technical issues will be strongly influenced by what the U.S. perceives as the basic service requirements for each space service in each frequency band. For example, the actual number of available transponders or channels will be dependent upon particular technical parameters selected, that is, the frequency re-use techniques, coverage areas, earth station and space station equipment characteristics, protection ratios and the like. Comments are specifically requested on the technical parameters for each service. Can frequency re-use techniques be employed within a service; if so, what are they and how should they be employed? (Some examples are polarization discrimination, scanning beam techniques, spot beams, etc.) Other technical parameters requiring consideration are the power flux densities and e.i.r.p. from the space stations; the minimum elevation angles required for the service; the modulation types; the necessary bandwidth, and the channel widths, including guard bands for each service; the required carrier to noise ratios for the desired quality of service; channel spacings; the figure of

[7] Summary Record of Part Two of the Tenth Meeting of Committee 6 (Regulatory Procedures), WARC–79, Doc. No. 846 (26 November 1979) at Annex 1, p. 6–7.

[8] As an example, the 1977 WARC–BS plan for Regions 1 and 3 adopted satellite spacings of 6°. Deviation from this spacing can occur only with severe penalties. These regulatory procedures do not permit any variations in the satellite spacings in the plan in order to increase orbit capacity due to improvements in technical characteristics during the minimum 15 year lifetime of the plan.

[9] The term "other approach" as used in this *Notice* refers to any approach that would satisfy the concept of guaranteeing equitable access to the geostationary-satellite orbit as indicated in Resolves 3.4 of Resolution No. 3 (BP).

[10] The International Radio Consultative Committee(CCIR) is also studying the technical aspects of various plans and coordination methods. These are contained in the Report of the Ninth Meeting of CCIR Study Group 4, Interim Working Party 4/1 (IWP 4/1), Paris, 5–9 May 1980, section 3, p. 5.

[11] See, e.g., *id.* at p. 6. The IWP 4/1 report formulated six evaluation criteria.

[12] The definition of feeder link is given in Radio Regulation No. 3094A of the Final Acts of WARC–79.

merit for the receiving stations for both the space and the earth stations; the size of the antennas; and the antenna radiation patterns. Comments on these and other appropriate technical parameters are requested.

21. Interference criteria is integral to regulatory procedures. Resolves 3.2 indicates that the first sesson of the Conference is to provide guidelines for regulatory procedures associated with various plans. Resolves 3.3 states that the first session should establish guidelines for regulatory procedures for provided for any specific plan or other approach?

26. Resolution No. 4 (BY) as adopted by WARC–79, addresses the period of validity of frequency assignments to space stations using the geostationary-satellite orbit. It specifically invites the

bands, if any, would be suitable? Are there any requirements for this service in the U.S.? If so, what are they? What are appropriate technical characteristics and sharing criteria for this service? With respect to this latter point, Recommendation No. 705 (T/Spa2–10)

above matters may be considered at that Conference. Therefore, we raise these matters and request comments on their applicability to the Space WARC and their possible inclusion in the agenda for that Conference.

in response to this *Notice*, the Commission's conference preparatory activities would be facilitated by the filing of an original and nineteen copies. All relevant and timely comments and reply comments filed in this proceeding will be considered. The Commission

merit for the receiving stations for both the space and the earth stations; the size of the antennas; and the antenna radiation patterns. Comments on these and other appropriate technical parameters are requested.

21. Interference criteria is integral to having compatible operations for space services in any plan or other approach. Also, many space services share, on an equal basis, frequency bands allocated with other space and terrestrial services. In order to provide compatible operations within a space service, as well as between services, interference and sharing criteria must be established. WARC–79 adopted several Resolutions and Recommendations which address the question of sharing and the calculation of interference within and between space services.[13] Some interference and sharing criteria that are needed are: interference allowances as a proportion of the total noise budget, single interference entry criterion versus total interference in a satellite radio system, protection ratios between services for the different modulations for each service, antenna radiation patterns with sidelobe performance and polarization discriminatoin characteristics, especially for satellite antennas, interference resistant modulation techniques, etc. Comments are solicited on interference and sharing criteria needed to provide compatible operations within a space service as well as between different services sharing the same frequency band.

22. Resolution No. 3 (BP) invites the International Radio Consultative Committee (CCIR) to carry out preparatory studies to provide the first session of the Conference with technical information concerning principles, criteria, and technical parameters, including those for planning space services. The CCIR has already begun this effort in Interim Working Party (IWP) 4/1 which has been established as the coordinating body within CCIR to develop the required report for the first sesson of the Space WARC.[14] In addition, the IFRB is also to carry out technical preparations for the Conference in accordance with the provisions of the Radio Regulations.

Regulatory Procedures

23. Resolution No. 3 (BP) specifies two areas where it will be necessary to have regulatory procedures. Resolves 3.2 indicates that the first sesson of the Conference is to provide guidelines for regulatory procedures associated with various plans. Resolves 3.3 states that the first session should establish guidelines for regulatory procedures for those services and frequency bands that are not to be planned.

24. Since the Space WARC may decide not to plan certain frequency bands and space services, regulatory procedures will be required in order to facilitate the use of these bands. Comments are requested on the adequacy of the current regulations under Articles 11 (N11/9A), 12 (N12/9), and 13 (N13/9A), and the associated Appendices 1 (1), 3(1A), 4(1B), 28(28) and 29 (29). Are there any modifications to these regulations that will be necessary in the future? Are there ways to improve these regulatory procedures? Can they be simplified? Are there other regulatory procedures that should be developed?

25. With respect to any plan or other approach, implementing resolutions and regulatory procedures will be necessary for its proper use. Some regulatory procedures of the current Radio Regulations may have some utility with respect to a particular plan or other approach. One area for consideration for regulatory procedures is a method to update a plan or other approach in order to take into account changing requirements of a country or future advances in technology. The extreme difficulty of such an updating method has been one of the criticisms of the plan (Article 4) developed for the broadcasting-satellite service at WARC–BS 1977. As another example for consideration, Article No. 16 (N14/9B) of the Final Acts of WARC–79 has provisions that specify that a country loses its right to its designated frequency allotment obtained through the coordination procedures of the Article, if the administration does not implement the use of frequency within a specified time interval.[15] Are procedures of this nature with respect to orbital positions and frequency channels also applicable within the context of the Space WARC? Comments on appropriate regulatory procedures that would meet these objectives are requested. Are there other areas that should be included within the regulatory procedures? If so, what are they? What implementation procedures should be provided for any specific plan or other approach?

26. Resolution No. 4 (BY) as adopted by WARC–79, addresses the period of validity of frequency assignments to space stations using the geostationary-satellite orbit. It specifically invites the Space WARC to take cognizance of the initial results of the application of this Resolution. Comments are requested on this Resolution as it is applicable to the Space WARC.

Future Technology

27. The adoption of a frequency/orbit location plan like the 1977 Broadcasting Satellite plan for a specific service may freeze technology to that point in time when the plan was established.[16] This would deny the very increases in orbit-spectrum capacity and decreases in cost required for the continued efficient and economical use of this limited resource. Each plan or other approach that is discussed should be developed in a way so that it will be able to accommodate future technology. This is essential to the acceptance of any plan. In order to be prepared for the Conference, comments are specifically requested on the possible advances in technology that will affect the space communications area in the near term and in the long term, particularly as they apply to the efficiency of use of the orbit/frequency spectrum and the future cost of communications systems.

Other Related Matters

28. WARC–79 adopted several Resolutions and Recommendations that may be considered by the Space WARC. Resolution 505 (CM) is concerned with the broadcasting-satellite service (sound) in the frequency range 0.5–2 GHz. This resolution empowers the next WARC dealing with space radiocommunication services to consider the results of various studies and to allocate a suitable frequency band for the sound broadcasting satellite service. The conference would also develop appropriate procedures for protection, and, if necessary, reaccommodation in other bands, of assignments of terrestrial services which may be affected. One specific suggested band in the Resolution for allocation to this service is 1429–1525 MHz. Is that band suitable for this service? If not, what is the justification and what other bands, if any, would be suitable? Are there any requirements for this service in the U.S.? If so, what are they? What are appropriate technical characteristics and sharing criteria for this service? With respect to this latter point, Recommendation No. 705 (T/Spa2–10) concerning frequency sharing between the broadcasting/satellite service and broadcasting services at 620–790 MHz should be considered.

29. Several other Resolutions and Recommendations address broadcasting-satellite service matters aside from those to be considered at the Region 2 1983 Broadcasting-Satellite Conference, and may also be considered at this Space WARC.[17] Two of these Resolutions are concerned with the establishment of conferences for planning. Resolution No. 101 (BQ) deals with the planning of feeder links to the broadcasting-satellite service at 12 GHz for Regions 1 and 3. Resolution No. 34 (CL) relates to the planning of the broadcasting-satellite service in the 12.5–12.75 GHz band in Region 3. Since the ITU Administrative Council has, as yet, not set aside specific dates for separate conferences on these matters, they may be considered at the Space WARC.

30. Three other Recommendations treat allocation questions with respect to space services and may be considered at the Space WARC. Recommendation No. 710 (N) is concerned with the use of airborne radars in the frequency bands shared between the inter-satellite service and the radiolocation service. Recommendation No. 709 (O) is concerned with frequency bands shared between the aeronautical mobile service and the inter-satellite service. Lastly, Recommendation No. 100 (YX) is concerned with the preferred frequency bands for systems using tropospheric scatter and the relationship with the space services.

31. One Resolution and several Recommendations, although not directly related to planning or allocation matters, do have a bearing on the space services.[18] They are concerned with technical characteristics of equipment for space services, coordination procedures for specific services, and transportable earth stations and definitions necessary for planning space services. Since the agenda for the Space WARC has not been established, the above matters may be considered at that Conference. Therefore, we raise these matters and request comments on their applicability to the Space WARC and their possible inclusion in the agenda for that Conference.

Need for an Advisory Committee

32. During the preparations for some previous ITU administrative radio conferences, joint industry/government advisory committees were established to assist in the United States preparations.[19] Some of this work for the Space WARC has already begun within the United States Study Groups of the CCIR (an Advisory Committee under the auspices of Department of State) as a result of the various Resolutions and Recommendations adopted at WARC–79. The Commission, however, requests comments on the desirability of forming an advisory committee to assist in preparations for the Space WARC. Comments are specifically requested to address the cost/benefits of such an action (e.g. advisory committee vs. contracted studies). If the formation of an Advisory Committee is deemed desirable or cost beneficial to the Commission, what should be the terms of reference and the composition of such a committee? These comments should bear in mind the provisions of the Federal Advisory Committee Act of 1972 and in particular FCC INST 1128.1 concerning Federal Advisory Committee Management.[20]

Administrative

33. Although the subject conference is not scheduled to convene its first Session until March 1984, the issues involved are important, complex and controversial. It is essential that the Commission and the U.S. begin formal preparations for this conference. Accordingly, pursuant to the authority contained in Section 4(i), 303 and 403 of the Communications Act of 1934, as amended, a *Notice of Inquiry* is adopted in the matter captioned above.

34. Interested parties may file comments on or before February 4, 1981 and reply comments on or before March 4, 1981. Although Section 1.419 of the Commission's Rules requires that an original and five copies of all statements, briefs or comments be filed in response to this *Notice*, the Commission's conference preparatory activities would be facilitated by the filing of an original and nineteen copies. All relevant and timely comments and reply comments filed in this proceeding will be considered. The Commission may also take into account other information before it, in addition to the specific comments and reply comments elicited by this *Notice of Inquiry*.

35. Point of contact on this matter is Mr. Thomas S. Tycz, International Staff, Office of Science and Technology, (202) 653–8102.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix 1

RESBP–1

Resolution BP

Relating to the Use of the Geostationary-Satellite Orbit and to the Planning of Space Services Utilizing it

The World Administrative Radio Conference, Geneva, 1979.

Considering

(*a*) that the geostationary-satellite orbit and the radio frequency spectrum are limited natural resources and are utilized by space services;

(*b*) that there is a need for equitable access to, and efficient and economical use of, these resources by all countries as provided for in Article 33 of the International Telecommunication Convention, Malaga-Torremolinos, 1973, and Resolution AY;

(*c*) that the utilization of radio frequencies and the geostationary-satellite orbit by individual countries and groups of countries can take place at various points in time, based on their requirements and the availability of the resources at their disposal;

(*d*) that there are growing requirements all over the world for orbital position and frequency assignments for the space services;

(*e*) that in the use of the geostationary-satellite orbit for space services, attention should be given to the relevant technical aspects concerning the special geographical situation of particular countries;

Resolves

1. that a World Administrative Radio Conference shall be convened not later than 1984 to guarantee in practice for all countries equitable access to the geostationary-satellite orbit and the frequency bands allocated to space services;

2. that this Conference shall be held in two sessions;

3. that the first session shall

3.1 decide which space services and frequency bands should be planned;

3.2 establish the principles, technical parameters and criteria for the planning, including those for orbit and frequency assignments of the space services and frequency bands identified as per 3.1, taking into account the relevant technical aspects concerning the special geographical situation

[13] Resolution Nos. 703 (CW) and 60 (AJ) and Recommendation Nos. 707 (YV), 706 (YW), 711 (Z), 102 (X), 64 (R), 68 (E), 61 (ZB) and 706 (ZQ) address questions of sharing between services and the calculation of interference for coordination purposes between services.

[14] Report of Ninth Meeting of CCIR Study Group 4, IWP 4/1.

[15] These provisions (Radio Regulation No. 4774/639EV) were established for the maritime mobile service at the World Maritime Administrative Radio Conference, Geneva, 1974.

[16] The WARC–BS plan for Regions 1 and 3, for example, have satellite spacings based upon conservative antenna performance characteristics. Since 1977, shaped beam technology and improved sidelobe performance characteristics have been incorporated into antenna radiation design. Both of these factors greatly affect satellite spacings and the number of available channels in the plan.

[17] Resolution Nos. 507 (Au/Spa2–2), 33 (BO/Spa2–3) 101 (BQ), 34 (CL), 102 (CS) and Recommendation Nos. 101 (ZF/Sat–5), 712 (U/Sat–7), 506 (ZC/Sat–2) and 508 (ZD/Sat–4).

[18] Resolution No. 642 (BV), and Recommendations Nos. 70 (S/6), 405 (Y/Aer–2), 67 (YH), 313 (WR/Mar2–15), and 1 (XE/Spa2–13).

[19] A joint Industry/Government Advisory Committee was established to assist in the U.S. preparations for the 1977 WARC–BS. During the U.S. preparations for WARC–79, several industry advisory committees were also established to represent the different radio services.

[20] Federal Advisory Committee Act, Pub. L. 92–463, October 6, 1972, 86 Stat. 770, as amended Pub. L. 94–409, sec. 5(c), September 13, 1976, 90 Stat. 1247 at sec. 3(c) [the Act appears at 5 U.S.C. App. I (1976)].

of particular countries; and provide guidelines for associated regulatory procedures;

RESBP–2

3.3 establish guidelines for regulatory procedures in respect of services and

those administrations whose space services require access to the geostationary satellite orbit and the radio spectrum."

"However, we also recognize that the Radio Regulations have been criticized by some administrations, and we believe that there is always room for improvement based

"Inhomogeneity"

"Individual fixed-satellite systems vary greatly in their characteristics. This inhomogeneity is intrinsic to fixed-satellite networks. Such systems must accommodate in an economic and dynamic fashion a wide

access to it when they need it and to a sufficient degree, it is necessary:

For efficient methods to be used to plan or coordinate the use of orbit and spectrum, and

For improvements in the technical means of using the orbit and the spectrum to be

advantages and disadvantages that may be expected to arise with them. As an aid in this process, the following criteria have been drawn up:

A. Does the method ensure that the forecast of traffic requirements used in

Comments were due December 29, 1980 and the effective date of these rules was to have been January 27, 1981.

Considering the importance of this proceeding and the difficulties some parties are experiencing meeting the

of particular countries; and provide guidelines for associated regulatory procedures;

RESBP–2

3.3 establish guidelines for regulatory procedures in respect of services and frequency bands not covered by 3.2;

3.4 consider other possible approaches that could meet the objective of *resolves* 1;

4. that the second session shall be held not sooner than twelve months and not later than eighteen months after the first session and implement the decisions taken at the first session;

Invites

1. *the CCIR* to carry out preparatory studies and provide the first session of the Conference with technical information concerning principles, criteria and technical parameters including those required for planning space services;

2. *the IFRB* to prepare a report on the operation of the procedures of Articles N11 and N13 including information about difficulties which may be reported to the IFRB by administrations in gaining access to suitable orbital locations and frequencies, and to circulate this report to administrations at least one year before the first session of the Conference;

3. *the IFRB* to carry out technical preparations for the Conference in accordance with the provisions of the Radio Regulations;

4. *the odministrotions* to examine all aspects of the matter with a view to submitting proposals to the Conference, and to cooperate actively in the above-mentioned work of the CCIR and IFRB;

5. *the Administrative Council* to take all necessary steps for the convening of the Conference in accordance with this Resolution.

Appendix 2

WARC—79 U.S.A. Delegation Statement

Concerning Resolution BP *

"The United States, in a spirit of compromise, can accept in general the proposed Resolution relating to the use of the geostationary satellite orbit and the space services using it. We believe that the text of the Resolution could have been further improved in several respects, but we recognize that it represents the result of lengthy discussion and reflects a sincere effort by all parties to accommodate diverse views."

"The United States accepts the idea of a future space conference—the third since 1963—as being in keeping with the dynamic development and utilization of space communication technology. As stated many times in earlier discussions, the United States is of the view that the existing Radio Regulations are responsive to the spirit of Article 33 of the Convention and Resolution No. Spa2–1 of the Radio Regulations and have provided an effective mechanism for those administrations whose space services require access to the geostationary satellite orbit and the radio spectrum."

"However, we also recognize that the Radio Regulations have been criticized by some administrations, and we believe that there is always room for improvement based on experience with the actual application of the Regulations. Indeed, improvements to the Regulations have been undertaken at this Conference and undoubtedly further improvements will be found at the next Space Conference, since that Conference will have as one of its major mandates the establishment of improved regulatory procedures."

"There has been extensive discussion over the nature of the planning to be undertaken at the next Space Conference, and various explanations have been given as to what is intended. For its part, the United States views the planning mandate of the next Space Conference as being very wide in scope, admitting of a broad range of possibilities ranging from detailed orbit/frequency assignment plans to more dynamic planning approaches that will provide access to the orbit/spectrum in an equitable manner as the real requirements of administrations arise. While we are of the view that a flexible and dynamic planning approach will be more responsive to user needs, we believe that the Conference will be free to decide for itself the best approach for ensuring equitable access to the orbit/spectrum based upon careful and comprehensive technical preparations and analysis. In this regard, the full and active support of the CCIR will be indispensable."

"In deciding on the best planning approach, we trust that the future Space Conference will recall the grave problems foreseen by the United States, and also by a number of the countries who favored planning for the broadcasting-satellite service in 1977, if 1977 WARC-type planning were to be applied to the fixed-satellite service. I shall briefly summarize these difficulties for the record."

"Accommodotion of long ronge requirements predictions with near-term technology"

"A detailed orbit-frequency assignment plan would have to try to use proven, near-term technology to accommodate the sum-total of the long-range future requirements of all countries and groups of countries that might possibly want to operate satellite systems. Although the United States is certain that technological advances can expand orbit-spectrum capacity to accommodate all foreseeable real requirements as they arise, we acknowledge that 1984 technology will not be able to accommodate the grand total of 1999 requirements that a planning conference would face."

"Freezing of technology"

"A 1977 WARC-type plan would freeze technology which, contrary to some assertions, is still in a state of rapid improvement in the 4/6 GHz as well as other bands. This would deny the very increases in orbit-spectrum capacity and decreases in cost required for continued efficient and economical use of these limited resources that Article 33 tells us are essential for equitable access."

"Inhomogeneity"

"Individual fixed-satellite systems vary greatly in their characteristics. This inhomogeneity is intrinsic to fixed-satellite networks. Such systems must accommodate in an economic and dynamic fashion a wide variety of numbers and types of channels, even within a single national system. This is why fixed-satellite planning is radically different from and much more complex than the broadcasting-satellite planning of 1977 which was based on the assumption of completely homogeneous system."

"Unused orbit/spectrum resources"

"Many assignments in a plan will come into use late in the life of the plan, if at all, either because terrestrial techniques will be more economical, or because national requirements may be met more economically by participation in an international or regional system. It is not accurate to say that assignments made to certain countries, which cannot be used for some time, will be made available to other countries. A plan necessarily ties a particular orbital position and frequency assignments to a specific coverage or service area. The interlocking nature of a plan would make it practically impossible for other countries to make use of unused assignments."

"Inflexibility"

"The inflexibility of a detailed plan also makes it difficult if not impossible to modify a plan to provide assignments for new countries, or for new regional groupings of countries wishing to establish a shared system. Revision of a plan, if it is to be meaningful, will involve massive changes; it will necessarily be a complex, expensive and time-consuming process; it will need to balance the desire of then-existing systems to keep on operating against the possibility of cancelling assignments for the sake of a new plan. We believe that such substantial revision of a plan will be impractical, technically and economically. Thus, a plan will tend to institute, de facto, a permanent or semi-permanent priority, contrary to the principles stated in Resolution No. Spa2–1."

"For all of these reasons, the United States holds that the words "planned" and "planning" in the draft Resolution must be interpreted in a broad and flexible sense. With this interpretation of planning and with the obligation to consider a variety of altenative approaches to the use of the orbit-spectrum resource by space services, the next Space Conference can lead to the full realization of the objective of equitable access to the resource that the United States has always supported."

Appendix 3

[Temp. Doc. No. 4 (Rev. 1)]

Draft Element for Report

Methods for Ensuring Equitable Access for all Countries to the Geostationary Satellite Orbit and the Frequency Bands Allocated to Space Radiocommunication Services

The potential capacity of the geostationary satellite orbit and the radio spectrum for the various space radiocommunication services is very large but if all countries are to have access to it when they need it and to a sufficient degree, it is necessary:

For efficient methods to be used to plan or coordinate the use of orbit and spectrum, and

For improvements in the technical means of using the orbit and the spectrum to be applied progressively, as the means are developed and the requirements grow.

In this section various possible planning and coordination methods are identified for evaluation, recognising that different approaches may be appropriate for different services and for different frequency bands.

The following planning and coordination methods have been identified so far for study:

1. A long-term frequency/orbit-slot allotment plan, drawn up by a planning conference in the pattern of the 1977 Satellite Broadcasting WARC; the plan might be revised after 20 years.

2. A generalized allotment plan might be devised for an orbital arc and a geographical region, permitting orbit/spectrum to be assigned when required to networks within that region without significant interaction with the networks operating elsewhere.

3. Periodic planning conferences, held every 3 to 5 years might consider existing networks and all other networks for which advance notification had been made under Appendix 1B of the Radio Regulations. These conferences would draw up optimised frequency/orbit-slot allotment plans.

4. An orbit/spectrum allotment plan might be drawn up with built in flexibility, it being understood that a broad plan might be adopted which would permit sub-allotment of orbital slots over time, based on changes in requirements and technology, subject to appropriate safeguards for other allotments.

5. Bilateral coordination procedures would be used where feasible. However if these bilateral coordination procedures proved unsuccessful in the coordination of an additional network, then all the administrations involved would be required to collaborate in a special meeting under the auspices of the IFRB and to find a way to provide access to the orbit for the new network.

6. Existing procedures under Radio Regulations Articles N11, N13, and N27, Appendices 1A, 1B and 29 and supporting CCIR texts such as Recommendations 466–2, 483–1, 523 and 524 might be developed further to increase the opportunities for changing the location of existing satellites or their frequency plans or emission parameters to ensure that new networks will be accommodated.

It should be noted that these various methods may not be mutually exclusive: one method may be best for one service, for one frequency band, for one arc of the geostationary satellite orbit or for one geographical area but another method may be preferred under other conditions.

In addition to methods such as these, it is recognised that some aspects of the administration of the use of radio frequencies for certain space radio services might be carried out by a specialised agency with international responsibilities for such a service.

In evaluating these various methods, it will be necessary to identify the technical advantages and disadvantages that may be expected to arise with them. As an aid in this process, the following criteria have been drawn up:

A. Does the method ensure that the forecast of traffic requirements used in planning or coordination will be reliable?

B. Will it be possible to accommodate changes in traffic requirements after the process of planning or coordination has been completed?

C. Do they ensure that realistic assumptions on feasible improvements in technology and reductions in the cost of the application of that technology are taken into account in planning?

D. Do they ensure that the owners of networks and the prospective owners of new networks will have an appropriate incentive to apply optimum technical standards? Optimum technical standards would be those that achieve the objectives of their network at least cost, giving proper regard to the needs of other networks which exist or whose entry into service during the service lifetime of the equipment can be foreseen with sufficient confidence?

E. Do they assure access for new and unforeseen networks?

F. Will they accommodate unforeseen applications or parameters?

G. Is their implementation likely to be costly, laborious, or to demand too much technical expertise?

[FR Doc. 80-40292 Filed 12-23-80; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039, 1090, and 1300

[Ex Parte No. 230 (Sub-No. 5)]

Improvement of Trailer on Flatcar and Container on Flatcar Service Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of extension of time and extension of effective date of proposed rule (exemption).

SUMMARY: In this proceeding, at 45 FR 79123, November 28, 1980, the Commission proposed to exempt rail and truck service provided by rail carriers in connection with trailer on flatcar (TOFC) and container on flatcar (COFC) service from Title 49, Subchapter IV of the U.S. Code. The proposed exemption is based on findings that regulations is not necessary to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power by railroads. The proposed exemption is intended to remove unnecessary regulation and to permit railroads to market TOFC and COFC services in response to demand for the services.

Comments were due December 29, 1980 and the effective date of these rules was to have been January 27, 1981.

Considering the importance of this proceeding and the difficulties some parties are experiencing meeting the deadline for comments, we will extend the period for comments to January 12, 1981. The effective date is also postponed to February 10, 1981.

DATE: Comments are now due January 12, 1981. The effective date of proposed rule is extended to February 10, 1091.

ADDRESS: An original and 15 copies of comments should be sent to: Room 5340, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 275–7693.

Decided: December 16, 1980.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40115 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register

Vol. 45, No. 249

Wednesday, December 24, 1980

Dated: December 19, 1980.

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 80-40054 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Memorandum of Understanding Between the National Bureau of Standards, Department of Commerce, and the Research and Special Programs Administration, Department

2. *Authorities.* The National Bureau of Standards has the responsibility for arranging with appropriate executive branch departments and independent agencies to assume leadership and undertake responsibilities for the development and maintenance of

Notices

Federal Register
Vol. 45, No. 249
Wednesday, December 24, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Economics and Statistics Service

Modification of January "Prospective Plantings" Report

In recognition of responses from data users to the proposal announced in the November 4 issue of the **Federal Register**, the Economics and Statistics Service will issue a modified "Prospective Plantings" report on January 21, 1981. The January report will include intentions to plant cotton, rice, corn, oats, barley, sorghum, sweet potatoes, soybeans and peanuts in Alabama, Arizona, Arkansas, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Tennessee, Texas, Oklahoma, South Carolina and Virginia. An intentions report for major crops in the remaining 32 states that plant in the late spring will be issued as of March 1. As deemed necessary, an update survey in the 16 states surveyed in January may also be conducted in March. Totals from the January and March reports will be combined to provide a national "Prospective Plantings" report. This report will be in lieu of the April "Prospective Plantings" report which is issued too late for farmers to adjust planting activities.

This action will provide data users with the needed early season indications of farmers' planting intentions and at the same time allow more time for producers to monitor markets and finalize their plans while accomplishing the required reduction in expenditures and reporting burden.

Done at Washington, D.C., this 22nd day of December 1980.

Kenneth R. Farrell,
Administrator.

[FR Doc. 80-40181 Filed 12-23-80; 8:45 am]
BILLING CODE 3410-18-M

DEPARTMENT OF COMMERCE

Bureau of the Census

SES Bonus Recipients

In accordance with the provisions of the Civil Service Reform Act, notice is hereby given that the following Bureau of the Census employees are recipients of SES bonuses which will be awarded on January 7, 1981.

Dr. Barbara A. Bailar, Associate Director for Statistical Standards and Methodology, $5,512.38
Mr. Roger H. Bugenhagen, Chief, Industry Division, $5,512.38
Mr. George E. Hall, Associate Director for Demographic Fields, $5,512.38
Mr. Howard N. Hamilton, Assistant Director for Computer Services, $5,512.38
Mr. Charles D. Jones, Chief, Statistical Methods Divsion, $5,512.38
Ms. Shirley Kallek, Associate Director for Economic Fields, $10,022.50

Vincent P. Barabba,
Director, Bureau of the Census.

December 19, 1980.

[FR Doc. 80-40166 Filed 12-23-80; 8:45 am]
BILLING CODE 3510-01-M

International Trade Administration

Current Steel Trigger Price Coverage; Request for Public Comment

AGENCY: U.S. Department of Commerce

ACTION: Announcement of a request for public comment from interested parties on clarifications in the coverage of imported basic steel mill products under the Trigger Price Mechanism (TPM).

SUMMARY: This notice is to advise the public that the Department of Commerce requests public comment on products currently covered by published trigger prices on which the coverage in unclear or appears to be in error. A schedule of products currently covered by published prices is included. Interested parties should submit written comments to this office within thirty days from the date of publication of this notice.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Stanley P. Gustafson or Joda C. Taylor, Office of Agreements Compliance, Import Administration, International Trade Administration, Room 2004, Department of Commerce, Washington, D.C. 20230. (202-377-4491)

SUPPLEMENTARY INFORMATION: Trigger Price Mechanism (TPM) price manuals are issued quarterly by the Department of Commerce ("the Department") showing product descriptions and giving current trigger prices. All steel products covered by published trigger prices are included in these manuals. The Department has received many comments on inaccurate or confusing coverage—for example, we have been informed that the sizes of commercial quality wire rod covered on page 2-1 of the manual are not the sizes commonly imported. In order to be able to clarify all issues of this type the Department wishes to receive written comment from all interested parties on inaccurate or confusing product coverage.

Products which are currently covered by published prices are found in the American Iron & Steel Institute (AISI) categories shown below:

AISA Category 2 Wire Rods
AISA Category 3 Structurals, 3" and over
AISA Category 4 Sheet Piling
AISA Category 5 Hot Rolled Plate
AISA Category 6 Rail & Track Accessories
AISA Category 8 Reinforcing Bars
AISA Category 9 Structurals, under 3"
AISA Category 10 Hot Rolled Carbon Bars
AISA Category 11 Hot Rolled Alloy Bars
AISA Category 12 Cold Finished Bars
AISA Category 14 Welded Pipe & Tubing
AISA Category 15 Other Pipe & Tubing
AISA Category 16 Round and Shaped Wire
AISA Category 19 Wire Fencing
AISA Category 20 Wire Nails
AISA Category 21 Barbed Wire
AISA Category 22 Black Plate
AISA Category 23 Electolytic Tin Plate
AISA Category 25 Hot Rolled Sheets
AISA Category 26 Cold Rolled and Electrical Sheets
AISA Category 27 Coated Sheets (including galvanized)
AISA Category 29 Hot Rolled Strip
AISA Category 32 Tin-Free Steel

The current TPM price manual is available from the Publications Sales Branch, Room 1617, U.S. Department of Commerce, Washington, D.C. 20230 for $10.00 per copy.

Dated: December 19, 1980.

John D. Greenwald,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 80-40054 Filed 12-23-80; 8:45 am]
BILLING CODE 3510-25-M

Maritime Administration

[Docket S-633]

American Heavy Lift Shipping Co.; Amendment To Show Cause

A Show Cause Notice regarding the application of American Heavy Lift Shipping Co. for operating-differential subsidy was published in the **Federal Register** on December 10, 1980 (45 FR 81241) which advised, in part as follows:

"• • • AHL has agreed to limit the scope of its operations as follows:

- No subsidized carriage of cargoes subject to the cargo preference statutes of the United States."

AHL has requested that this limitation be amended to read as follows:

- No subsidized carriage of cargoes subject to the cargo preference statutes of the United States, except heavy lift and ancillary cargoes.

Notice is hereby given that the Show Cause Notice is amended to conform with the amended limitation set forth above.

Dated: December 19, 1980.

By Order of the Maritime Subsidy Board.

Georgia Pournaras Stamas,
Assistant Secretary.

[FR Doc. 80-40126 Filed 12-23-80; 8:45 am]
BILLING CODE 3510-15-M

Bank of California; Roster of Approved Trustees; Request for Removal Without Disapproval

Notice is hereby given, pursuant to 46 CFR 221.28, that The Bank of California, with offices at 400 California Street, San Francisco, California 94104 has requested removal, without disapproval, from the Roster of Approved Trustees. In its request for removal, The Bank of California certified that it is no longer acting or proposing to act as Trustee under a Vessel or Shipyard Financing Trust pursuant to Public Law 89-346 and 46 CFR 221.21-221.30.

Dated: December 17, 1980.

Robert J. Patton, Jr.,
Secretary.

[FR Doc. 80-40057 Filed 12-23-80; 8:45 am]
BILLING CODE 3510-15-M

National Bureau of Standards

Memorandum of Understanding Between the National Bureau of Standards, Department of Commerce, and the Research and Special Programs Administration, Department of Transportation, Regarding Standardization of Data Elements and Representations Used in Automated Transportation Statistics, Data, and Information Systems

In accordance with § 6.7 of Part 6, Title 15 of the Code of Federal Regulations, the National Bureau of Standards has the responsibility for arranging with appropriate executive branch departments and independent agencies to assume leadership and undertake responsibilities for the development and maintenance of specific Federal program and Federal general data element and representation standards.

An arrangement has been made between the National Bureau of Standards and the Research and Special Programs Administration on the standardization of data elements and representations used in automated transportation statistics, data, and information systems. This notice provides the text of the memorandum of understanding between the National Bureau of Standards and the Research and Special Programs Administration in this area of standardization. Persons desiring further information about this notice may contact Mr. Roy G. Saltman, Application Systems Division, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921-3491.

Dated: December 18, 1980.

Ernest Ambler,
Director.

Memorandum of Understanding Between the National Bureau of Standards, Department of Commerce, and the Research and Special Programs Administration, Department of Transportation

1. *Objective.* To establish cooperation between the National Bureau of Standards (NBS) and the Research and Special Programs Administration (RSPA) regarding the standarization of data elements and representations (codes) used in automated transportation statistics, data, and information systems. The RSPA will assume leadership in the development and maintenance of transportation data element and representation standards for use in the Federal establishment.

2. *Authorities.* The National Bureau of Standards has the responsibility for arranging with appropriate executive branch departments and independent agencies to assume leadership and undertake responsibilities for the development and maintenance of specific Federal program and Federal general standards (15 CFR 6.7(a)(2)(i)).

The Department of Transportation (DOT) has the responsibility for promoting and undertaking development, collection, and dissemination of technological, statistical, economic, and other information relevant to domestic and international transportation (49 U.S.C. 1653(a)). The Administrator of RSPA is the principal transportation information official of DOT with the responsibility for planning and development of a coordinated program in transportation information (DOT ORDER 5300.1). Procedures for planning, proposing, developing and promulgating DOT data standards will be governed by DOT ORDERS 1370.4A and 1370.5.

3. *Applicable Policy:* Data elements and representations that are prescribed for interchange among more than one executive department or agency or with the private sector including industry, State, local, or other Governments, or with the public at large will be considered for standardization as either Federal general or Federal program standards. Federal general standards are the highest level standards followed by Federal program standards, agency standards, and unit standards in that order (15 CFR 6.8 (a), (b)).

4. *Definition.* The term "transportation data" refers to a representation of transportation facts, concepts, or instructions in a formalized manner suitable for communication, interpretation, or processing by manual or automatic means. Examples of data are automobile registration data, abstracts of transportation literature, reliability of components and transportation systems, and other data needed for development of transportation policies, calibration and use of analytical models, and conduct of transportation-related research and development activities.

5. *Responsibilities of the Notional Bureau of Standards.* The National Bureau of Standards will:

1. Prepare submissions for the approval by the Secretary of Commerce of standards recommended by RSPA as Federal program standards and Federal general standards involving transportation data.
2. Maintain and publish at least annually a registry of approved standards and those under

development concerned with data elements and representations involving transportation data in the Federal Information Processing Standards series.

6. Designate an office or official to act as a single point of contact on matters related to this agreement.
7. Maintain all standards developed and approved under this agreement. Submit to the NBS any alterations or

National Bureau of Standards, Washington, D.C. 20234, telephone (301) 921-3413.

Dated: December 18, 1980.

Ernest Ambler,

portion which provides information concerning the applicability, implementation, and maintenance of the standards and (2) a specifications portion which deals with the technical requirements of the standards. Only the

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Authority.* U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

q. FIPS PUB 25, Recorded Magnetic Tape for Information Interchange (1600 CPI, Phase Encoded) (X3.39-1973).

r. FIPS PUB 32, Optical Character Recognition Character Sets (X3.17-1977) and (X3.49-1975).

development concerned with data elements and representations involving transportation data in the Federal Information Processing Standards series.

3. Provide procedures, guidelines and criteria concerning the standardization of data elements and representations to assist RSPA in the development and maintenance of transportation data standards.
4. Arrange for and coordinate appropriate representation and participation on Federal data standards committees for the purpose of review and comment on proposed transportation data standards that are used in automated systems.
5. Arrange for the publication of this agreement in the **Federal Register.**
6. Designate an office or official to act as a single point of contact on matters related to this agreement.

6. *Responsibilities of the Research and Specal Programs Administration.* The Research and Special Programs Administration will:

1. Assume leadership and work with other agencies in the development of Federal general and Federal program data standards involving transportation.
2. Implement within DOT transportation data standards that are approved under the provisions of the Federal Information Processing Standards program, and assist NBS in the assessment of the need, impact, benefits, and problems related to the implementation of approved standards or those standards being considered for development.
3. Review all requests referred by NBS for exceptions, deferments, and revisions of standards applicable to Federal transportation information systems and forward appropriate recommendations on these requests to NBS.
4. Prepare and submit an annual status report for NBS, listing data elements and representations to be incorporated in standards planned and/or under development for use within DOT data systems. These reports will serve as source references to avoid duplication in the design of new data element codes and representations and to assist in determining possible subjects for future Federal standardization.
5. At the request of NBS, participate on committees and task groups that may be formed to develop and maintain voluntary national industry standards and Federal general and program standards which have a relationship to the DOT mission.
6. Designate an office or official to act as a single point of contact on matters related to this agreement.
7. Maintain all standards developed and approved under this agreement. Submit to the NBS any alterations or updates of transportation data standards, as required.

7. *Implementation:* This Memorandum of Understanding is subject to review and amendment at any time upon joint approval and may be terminated by either agency by a 60-day written notice to the other agency.

This Memorandum is effective when approved by authorized officials from both agencies.

DOC/NBS Contact, Program Manager, Data Element and Representation Standards, National Bureau of Standards, Telephone: Commercial (301) 921–3491; FTS 921–3491

Ernest Ambler,
Director, National Bureau of Standards, U.S. Department of Commerce.

Dated: November 20, 1980.

DOT/RSPA Contact, Director, Office of Resources Management, Research and Special Programs Administration, Telephone: Commercial (202) 426–4211; FTS 426–4211

Howard J. Dugoff,
Administrator, Research and Special Programs Administration, U.S. Department of Transportation.

Dated August 19, 1980.

[FR Doc. 80-40096 Filed 12-23-80; 8:45 am]
BILLING CODE 3510-13-M

Visiting Committee; Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Bureau of Standards' Visiting Committee will meet on Thursday, January 15, 1981, from 8:30 a.m. to 5:00 p.m., in Lecture Room B, Administration Building, National Bureau of Standards, Gaithersburg, Maryland.

The NBS Visiting Committee is composed of five members prominent in the fields of science and technology and appointed by the Secretary of Commerce.

The purpose of the meeting is to review the efficiency of the Bureau's scientific work and the condition of its equipment in order to assist the Committee in reporting to the Secretary of Commerce as required by law.

The public is invited to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Ms. Kay Byerly, Office of the Director, National Bureau of Standards, Washington, D.C. 20234, telephone (301) 921–3413.

Dated: December 18, 1980.

Ernest Ambler,
Director, NBS.

[FR Doc. 80-40097 Filed 12-23-80; 8:45 am]
BILLING CODE 3510-13-M

Approval of Federal Information Processing Standards; Code for Information Interchange; Hollerith Punched Card Code

Under the provisions of Pub. L. 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards. On July 22, 1980, notice was published in the **Federal Register** (45 FR 48934–48935) announcing that revisions to standards for Code for Information Interchange and Hollerith Punched Card Code were being proposed for Federal use. Interested parties were invited to submit written comments concerning those proposed revisions to the National Bureau of Standards (NBS).

The written comments submitted by interested parties and other material available to the Department relevant to these standards were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the revised standards as Federal Information Processing Standards (FIPS), and prepared detailed justification documents for the Secretary's review in support of those recommendations. The purpose of this notice is to announce that the Secretary approved the revised Code for Information Interchange Standard on October 21, 1980, and the revised Hollerith Punched Card Code Standard on October 14, 1980. The revised standards shall be published as FIPS Publication 1–1, Code for Information Interchange, and as FIPS Publication 14–1, Hollerith Punched Card Code. The provisions of these standards are effective December 24, 1980.

The detailed justification documents which were presented to the Secretary, and which includes an analyses of the written comments received, are part of the public record and are available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between Constitution Avenue and E Street, NW., Washington, D.C. 20230.

Each of the approved FIPS contains two portions: (1) an announcement

portion which provides information concerning the applicability, implementation, and maintenance of the standards and (2) a specifications portion which deals with the technical requirements of the standards. Only the announcement portion of the standards are provided in this notice. These FIPS adopt in whole American National Standards X3.4–1977, Standard Code for Information Interchange (ASCII), and X3.26–1980, Hollerith Punched Card Code.

By arrangement with the American National Standards Institute, interested parties may purchase copies of these standards, including the specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for these standards is set out in the Where to Obtain Copies section of the announcement portion of the standards.

Persons desiring further information about these standards may contact Mr. John L. Little, System Components Division, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921–3723.

Dated: December 19, 1980.

Ernest Ambler,
Director.

Federal Information Processing Standards Publication 1–1

Announcing the Standard for Code for Information Interchange

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Nome of Standard.* Code for Information Interchange (also commonly known as, "Ask–Ee"), ASCII (FIPS 1–1).

2. *Category of Standard.* Hardware and Software Standard, Interchange Codes, Media, and Data Files.

3. *Explanation.* This standard specifies a code and character set for use in Federal information processing systems, communications systems, and associated equipments. FIPS PUB 1 (1968) excluded the "New Line" (NL) option contained in the definition of "Line Feed" (LF) of American National Standard X3.4–1968. The revised ASCII standard, X3.4–1977 makes only minor revisions to X3.4–1968. All of X3.4–1977 is adopted as FIPS 1–1, including the "New Line" option.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Authority.* U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard X3.4–1977, Standard Code for Information Interchange (ASCII).

7. *Related Documents.*

a. ISO Standard 646–1973, 7-Bit Coded Character Set for Information Processing Interchange.

b. CCITT Recommendation V3, 1972, International Alphabet No. 5.

c. American National Standard X3.41–1974, Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code for Information Interchange (FIPS PUB 35).

d. ISO Standard 2022–1973, Code Extension Techniques for Use with the ISO 7-Bit Coded Character Set.

e. American National Standard X3.64–1979, Additional Controls for Use with the American National Standard Code for Information Interchange.

f. ISO Standard 6429, Additional Controls for Character Imaging Devices.

g. ISO Standard 1745–1975, Information Processing—Basic Mode Control Procedures for Data Communication Systems.

h. American National Standard X3.57–1977, Structure for Formulating Message Headings for Information Interchange Using ASCII for Data Communication System Control.

i. American National Standard X4.14–1971, Alphanumeric Keyboard Arrangements Accommodating the Character Sets of ASCII and American National Standard Character Set for Optical Character Recognition.

j. FIPS PUB 2, Perforated Tape Code for Information Interchange (X3.6–1965).

k. FIPS PUB 3–1, Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI) (X3.22–1973).

l. FIPS PUB 14–1, Hollerith Punched Card Code (X3.26–1980).

m. FIPS PUB 15, Subsets of the Standard Code for Information Interchange.

n. FIPS PUB 16–1, Bit Sequencing of the Code for Information Interchange in Serial-by-Bit Data Transmission (X3.15–1976).

o. FIPS PUB 17–1, Character Structure and Character Parity Sense for Serial-by-Bit Data Communication in the Code for Information Interchange (X3.16–1976).

p. FIPS PUB 18–1, Character Structure and Character Parity Sense for Parallel-by-Bit Data Communication in the Code for Information Interchange (X3.25–1976).

q. FIPS PUB 25, Recorded Magnetic Tape for Information Interchange (1600 CPI, Phase Encoded) (X3.39–1973).

r. FIPS PUB 32, Optical Character Recognition Character Sets (X3.17–1977) and (X3.49–1975).

s. FIPS PUB 33, Character Set for Handprinting (X3.45–1974).

t. FIPS PUB 35, Code Extension Techniques in 7 or 8 Bits (X3.41–1974).

u. FIPS PUB 36, Graphic Representation of the Control Characters of ASCII (X3.32–1973).

v. FIPS PUB 50, Recorded Magnetic Tape for Information Interchange, 6250 cpi (246 cpmm), Group Coded Recording (X3.54–1976).

w. FIPS PUB 51, Magnetic Tape Cassettes for Information Interchange (3.810 mm [0.150 inch] Tape at 32 bpmm [800 bpi], Phase Encoded) (X3.48–1977).

x. FIPS PUB 52, Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (1/4 inch), 63 bpmm (1600 bpi), Phase Encoded (X3.56–1977).

y. FIPS PUB 86, Additional Controls for use with ASCII (X3.64–1979).

z. ISO Standard 4873–1979, 8-Bit Coded Character Set for Information Interchange.

8. *Applicability.* Generally applicable to the representation of character coded information in information interchange and files used in data processing, communications, and related equipments, as detailed in FIPs PUB 7. Implementation of the Code for Information Interchange and Related Media Standards. Information concerning the use of this standard in communications systems that are a part of the National Communications System may be obtained from the Manager, National Communications System, Attention: NCS–O, Washington, D.C. 20305.

9. *Implementation Schedule.* All computers and related equipment configurations brought into the Federal Government inventory on or after the effective date of this FIPS PUB must have the capability to use this standard. All applicable equipment ordered after that date must be in conformance with this standard or a subset as described by FIPS PUB 15 or an extension as described by FIPS PUB 35 unless a waiver has been obtained in accordance with FIPS PUB 7.

10. *Specificotions.* This standard adopts in whole American Standard X3.4–1977, Standard Code for Information Interchange (ASCII).

11. *Quclifications.* None.

12. *Waivers.* See FIPS PUB 7.

13. *Where to Obtain Copies.* Copies of this publication are available for sale from the National Technical Information

Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information

Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard X3.26–1980, Hollerith Punched Card Code.

7. *Related Documents.*

b. Where procurement actions are into the solicitation phase (i.e., Request for Proposals or Invitation for Bids have been issued) on the effective date of this FIPS PUB.

c. Where 48 or 64 character punched card equipment is leased to replace like

(FIPS–PUB–14–1), and title. Payment may be made by check, money order, credit card or NTIS deposit account.

[FR Doc. 80-40260 Filed 12-23-80; Filed 12-23-80; 8:45 am]
BILLING CODE 3510-13-M

PFMC (open meeting)

From: Convening on January 7, 1981 (10 a.m. to 5 p.m.)

To: Convening on January 7, 1981 (1 p.m. to 5 p.m.)

PFMC (closed session)

Dated: December 19, 1980.

Robert K. Crowell,
Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-40177 Filed 12-23-80; 8:45 am]
BILLING CODE 3510-22-M

Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 1–1 (FIPS–PUB–1–1), and title. Payment may be made by check, money order, credit card or NTIS deposit account.

Federal Information Processing Standards Publication 14–1

Announcing the Standard for Hollerith Punched Card Code

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15, Code of Federal Regulations (CFR).

1. *Name of Standard.* Hollerith Punched Card Code (FIPS 14–1).

2. *Category of Standard.* Hardware Standard, Interchange Codes and Media.

3. *Explanation.* This standard specifies the representation of the Federal Standard Code for Information Interchange (FIPS 1–1), in 82.55mm (3¼ in) wide, 12-row, 80-column, rectrangular hole, "Hollerith" punched cards used in Federal information processing systems and associated equipments. The original FIPS PUB 14, dated 1971 October 1, adopted only half of the 256 available hole patterns, corresponding to the 128 characters of FIPS–1 (ASCII). This revision of FIPS PUB 14, designated as FIPS PUB 14–1 adopts all 256 hole patterns of American National Standard X3.26–1980, Hollerith Punched Card Code, in accordance with FIPS 35, Code Extension Techniques in 7 or 8 Bits. Most Federal Government applications will not require any of the 128 additional hole patterns, but when any of them are needed, they should be used in accordance with this standard.

Graphic substitions using special symbols to represent "Logical OR" and "Logical NOT" were permitted by FIPS 1 and FIPS 14 in place of "Exclamation Point" and "Circumflex" and the symbol for "Vertical Line" was shown as a broken vertical line. These graphic substitutions are not permitted in FIPS 1–1 nor in FIPS 14–1, and "Vertical Line" is shown as a solid vertical line.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard X3.26–1980, Hollerith Punched Card Code.

7. *Related Documents.*

a. FIPS PUB 1–1, Code for Information Interchange.

b. FIPS PUB 13, Rectangular Holes in Twelve-Row Punched Cards.

c. FIPS PUB 15, Subsets of the Standard Code for Information Interchange.

d. FIPS PUB 35, Code Extension Techniques in 7 or 8 Bits.

e. American National Standard X3.11–1969 (Revised), Specifications for General Purpose Paper Cards for Information Processing.

f. American National Standard X3.21–1967, Rectangular Holes in Twelve-Row Punched Cards.

g. International Standard ISO 6586–1980, Information Processing—Representation of 7-Bit and 8-Bit Coded Character Sets on Punched Cards (formerly ISO 1679–1973 for 7 bits and ISO 2021–1975 for 8 bits).

h. International Standard ISO 1681–1973, Information Processing—Unpunched Paper Cards—Specification.

i. International Standard ISO 1682–1973, Information Processing—80 Column Punched Paper Cards—Dimensions and Location of Rectangular Punched Holes.

8. *Applicability.* Generally applicable to the representation of character coded information in 82.55mm (3¼ in) wide, 12-row, 80-column, rectangular hole, "Hollerith" punched cards used with data processing, communications and related equipments. This standard coding does not apply to other types of punched cards, such as those with round holes. It is not applicable to "edge-punched" cards, whose code holes resemble those used in perforated tape. It is applicable when subsets of the standard code are used as specified in FIPS PUB 15, Subsets of the Standard Code for Information Interchange, and it is applicable when 8-bit character-coded data is used as specified in FIPS PUB 35, Code Extension Techniques in 7 or 8 Bits.

9. *Implementation Schedule.* All applicable equipment ordered on or after the effective date of this FIPS PUB must be in accordance with this standard or a subset thereof as specified by FIPS 15 unless a waiver has been obtained in accordance with the procedure described below. Exceptions to this standard are made in the following cases:

a. For equipment installed or on order prior to the effective date of this FIPS PUB.

b. Where procurement actions are into the solicitation phase (i.e., Request for Proposals or Invitation for Bids have been issued) on the effective date of this FIPS PUB.

c. Where 48 or 64 character punched card equipment is leased to replace like equipment and where such action satisfies systems requirements and results in reduced costs to the Government (e.g., punched card equipment obtained through third party leasing agreements or Government-wide procurement contracts).

10. *Specifications.* This Federal standard adopts in whole American National Standard X3.26–1980, Hollerith Punched Card Code.

11. *Qualifications.* Variations such as character substitutions or additional hole patterns will result in a code which does not conform to the standard. Such variations, if required by agencies having special requirements, must be coordinated with the National Bureau of Standards and waived by the agency head prior to final agency procurement authorization. This Federal standard includes the 128 additional hole patterns contained in Columns 8 through 15 of Code Table 2.1., of the American National Standard X3.26–1980.

12. *Special Information.* The size, location, and tolerances of rectangular holes in 12-row, 80-column, 82.55mm (3¼ in) wide punched cards are specified in FIPS 13.

13. *Waivers.* Heads of agencies may waive the provisions of the implementation schedule. Proposed waivers relating to the procurement of punched card equipment will be coordinated in advance with the National Bureau of Standards. Letters should be addressed to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234.

They should describe the nature of the waiver being sought and set forth the reasons therefor. Sixty days should be allowed for review and response by the National Bureau of Standards. The waiver is not to be made until a reply from the National Bureau of Standards is received; however, the final decision for granting the waiver is a responsibility of the agency head.

14. *Where to Obtain Copies.* Copies of this publication are available for sale from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 14–1 (FIPS–PUB–14–1), and title. Payment may be made by check, money order, credit card or NTIS deposit account.

[FR Doc. 80–40280 Filed 12–23–80; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Marine Mammals; Receipt of Application for General Permit

Notice is hereby given that the following Application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. fishery conservation zone, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the regulations thereunder.

Asociacion Nacional de Armadores de Buques Congeladores de Pesquerias Vaias, of Vigo, Spain has applied for a Category 1: "Towed or Dragged Gear" general permit to incidentally take 20 phocid seals and 20 small cetaceans within the U.S. fishery conservation zone in 1981.

The Application is available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.

Interested parties may submit written views on the Application within 30 days of the date of this Notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: December 18, 1980.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80–40179 Filed 12–23–80; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Its Salmon Subpanel and its Scientific and Statistical Committee; Meeting Amendment

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of Pacific Fishery Management Council (PFMC), Scientific and Statistical Committee (SSC) and Salmon Subpanel meeting amendments.

SUMMARY: Portions of the scheduled meetings on January 6–8, 1981, of the PFMC, its SSC and its Salmon Subpanel, published in the **Federal Register,** December 2, 1980 (45 FR 79861–79862) have been amended as follows:

PFMC (open meeting)

From: Convening on January 7, 1981 (10 a.m. to 5 p.m.)

To: Convening on January 7, 1981 (1 p.m. to 5 p.m.)

PFMC (closed session)

From: Convening on January 7, 1981 (8 a.m. to 10 a.m.)

To: Convening on January 7, 1981 (9 a.m. to 12 noon)

SSC (open meeting)

From: Convening on January 6, 1981 (1 p.m. to 5 p.m.); January 7, 1981 (8 a.m. to 5 p.m.)

To: Convening on January 6, 1981 (8 a.m. to 5 p.m.); January 7, 1981 (8 a.m. to 12 noon).

Salmon Subpanel (open meeting)

From: Convening on January 6, 1981 (11 a.m. to 5 p.m.)

To: Convening on January 6, 1981 (8 a.m. to 5 p.m.)

A joint meeting of the SSC and Salmon Subpanel will be held on January 5, 1981, from 2 p.m. to 5 p.m. All other information remains unchanged.

FOR FURTHER INFORMATION CONTACT:
Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 221–6352.

Dated: December 19, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80–40178 Filed 12–23–80; 8:45 am]

BILLING CODE 3510–22–M

Solicitation of Preliminary Proposals

AGENCY: National Marine Fisheries Services, NOAA.

ACTION: Solicitation of Preliminary Proposals.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service are soliciting preliminary research proposals for Emergency Striped Bass Studies to be funded under Section 7 of the Anadromous Fish Conservation Act (Pub. L. 89–304), as amended by Pub. L. 96–118.

DATES: Preliminary proposals must be received on or before 5 p.m. on January 12, 1981. Instructions for preparing proposals are available from the Striped Bass Project Manager, National Marine Fisheries Service, State/Federal Division (F/CM1), Office of Resource Conservation and Management, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT:
Norris B. Jeffrey, Striped Bass Project Manager, Telephone: (202) 634–7466.

Dated: December 19, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80–40177 Filed 12–23–80; 8:45 am]

BILLING CODE 3510–22–M

Office of the Secretary

Privacy Act Issuances; Annual Republication of Systems of Records

Correction

In FR Doc. 80–37773 appearing at page 82105 in the issue for Friday, December 12, 1980, the following corrections should be made at that page:

1. The paragraph designated "DATES" should have read as follows: "DATES: This document fulfills the annual notice requirements of the Privacy Act of 1974. Comments on the proposal to revise two existing systems are due January 11, 1981."

2. The sixth complete paragraph under "SUPPLEMENTARY INFORMATION" should have read as follows:

"For the items in Appendix I, the public is invited to submit written data, views, or arguments to the Assistant Secretary for Administration (Attn: Information Policy Division, Room 5319), U.S. Department of Commerce, Washington, D.C. 20230 (telephone 202–377–4217), any time on or before January 11, 1981. These changes will become effective January 11, 1981, unless the Department notices to the contrary.

BILLING CODE 1505–01–M

COMMITTEE FOR IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Restraint Levels for Certain Man-Made Fiber Textile Products from Costa Rica

December 18, 1980

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Granting an increase to 1,685,250 dozen for carryforward applied to Category 649 (brassieres), produced or manufactured in Costa Rica and exported during the agreement year which began on January 1, 1980.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506)).

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 22, 1980, between the Governments of the United States and

Costa Rica provides, among other things, for the borrowing of yardage from the succeeding year's level (carryforward) with the amount used deducted from the level in the succeeding year. At the request of the

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 22, 1980, between the Governments of the United

levels during that same period for certain categories, such as Categories 317, 320, 331, 336, 340, 342, 348, 359 and 369 pt., which are not subject to specific ceilings and which may be adjusted upon agreement between the two

Category	18-month level of restraint
313	100,817,267 square yards
315	58,871,828 square yards
317	9,768,000 square yards
320	1,500,000 square yards
331	300,000 dozen pairs
336	23,179 dozen

the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT:
Carl Ruths, International Trade Specialist, Office of Textiles and

Costa Rica provides, among other things, for the borrowing of yardage from the succeeding year's level (carryforward) with the amount used deducted from the level in the succeeding year. At the request of the Government of Costa Rica carryforward is being applied to the level of restraint established for man-made fiber textile products in Category 649 during the agreement year which began on January 1, 1980.

EFFECTIVE DATE: December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On November 28, 1980, there was published in the **Federal Register** (45 FR 79136) a letter dated November 21, 1980 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of man-made fiber textile products, produced or manufactured in Costa Rica, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, under the terms of the bilateral agreement, to increase the level of restraint established for man-made fiber textiel products in Category 649 during the twelve-month period which began on January 1, 1980.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

December 18, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On November 21, 1980, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, of man-made fiber textile products, produced or manufactured in Costa Rica, in excess of a designated level of restraint. The Chairman further advised you that the level of restraint is subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 22, 1980, between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on December 18, 1980, and for the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 649, produced or manufactured in Costa Rica, in excess of 1,685,250 dozen.

The action taken with respect to the Government of Costa Rica and with respect to imports of man-made fiber textile products from Costa Rica has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80–40079 Filed 12–23–80; 8:45 am]

BILLING CODE 3510–25–M

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 22, 1980, between the Governments of the United States and Costa Rica, which provide, in part, that: (1) the specific limit may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Announcing Import Restraint Levels for Certain Cotton Textile Products From Pakistan

December 19, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton textile products imported from Pakistan, effective on January 1, 1981.

SUMMARY: The Bilateral Cotton Textile Agreement of January 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan establishes in its final year specific levels of restraint for certain cotton textile products in Categories 313, 315, 339, 341, and 363, produced or manufactured in Pakistan and exported during the eighteen-month period beginning on January 1, 1981 and extending through June 30, 1982. The agreement also establishes consultation levels during that same period for certain categories, such as Categories 317, 320, 331, 336, 340, 342, 348, 359 and 369 pt., which are not subject to specific ceilings and which may be adjusted upon agreement between the two governments. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption of cotton textile products in the foregoing categories in excess of the designated eighteen-month levels of restraint.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).)

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–5423).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

December 19, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1981 and for the eighteen-month period extending through June 30, 1982, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the following categories, produced or manufactured in Pakistan, in excess of the indicated eighteen-month levels or restraint.

Category	18-month level of restraint
313	100,817,267 square yards
315	58,871,828 square yards
317	9,768,000 square yards
320	1,500,000 square yards
331	300,000 dozen pairs
336	23,179 dozen
339	652,911 dozen of which not more than 229,563 dozen shall be in T.S.U.S.A Nos. 382.0669 and 382.0671.
340	43,750 dozen
341	242,395 dozen
342	58,989 dozen
348	58,989 dozen
3359	400,109 pounds
363	26,411,484 numbers
3691	7,826,087

[1] In Category 369, all T.S.U.S.A. numbers in the category except 366.1855.

In carrying out this directive, entries of cotton textile products in the foregoing categories, except Category 317, produced or manufactured in Pakistan, which have been exported to the United States on and after January 1, 1980 and extending through December 31, 1980, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Cotton textile products in Category 317, which have been exported prior to January 1, 1981 shall not be subject to this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of Janaury 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan which provide, in part, that: (1) within the aggregate and group limits, specific levels of restraint may be exceeded by designated percentages; (2) specific levels may be increased for carryover and carryforward; (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was publised in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).)

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80–40083 Filed 12–23–80; 8:45 am]

BILLING CODE 3510–25–M

Announcing Import Restraint Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products From Thailand

December 19, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton, wool and man-made fiber textile products imported from Thailand, effective on January 1, 1981.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand establishes specific levels of restraint for certain cotton, wool and man-made fiber textile products in Categories 331, 334/335, 338/339, 340, 341, 347/348, 445/446, 639, 641, and 645/646, produced or manufactured in Thailand and exported to the United States during the 12-month period beginning on January 1, 1981. The agreement also provides consultation levels for certain categories, such as Categories 319, 320, 336, 435, 604, and 640, which are not subject to specific ceilings and which may be increased upon agreement between the two governments. Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that entry into the United States for consumption or withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 319, 320, 331, 334/335, 336, 338/339, 340, 341, 347/348, 435, 445/446, 604, 639, 640, 641, and 645/646 be limited to the designated 12-month levels of restraint.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506))

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–5423).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

December 19, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1981 and for the twelve-month period beginning on January 1, 1981, and extending through Decemer 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products in the following categories exported from Thailand, in excess of the indicated twelve-month levels of restraint:

Category	12-mo. level of restraint
319	5,000,000 square yards
320	6,000,000 square yards
331	385,014 dozen pairs
334/335	50,426 dozen
336	22,075 dozen
338/339	546,165 dozen
340	96,326 dozen
341	101,689 dozen
347/348	172,056 dozen
435	1,652 dozen
445/446	14,541 dozen
604	467,855 pounds
639	1,196,727 dozen
640	41,667 dozen
641	152,075 dozen
645/646	68,327 dozen

In carrying out this directive, entries of textile products in the foregoing categories, except Categories 445/446 and 640, produced or manufactured in Thailand which have been exported to the United States on and after January 1, 1980 and extending through December 31, 1980, shall to the extent of unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in Categories

445/446 and 640 that have been exported to United States before January 1, 1981 shall not be subject to this directive.

The levels of restraint set forth above are subject to adjustment according to the provisions of the bilateral agreement of October 4, 1978, as amended, between the

FOR FURTHER INFORMATION CONTACT: Claire L. McDermott, International Agreements and Monitoring Division, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 ((202) 377–4212).

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 18, 1980, the Chairman, Committee for the

navigation improvements in Tampa Harbor. The mouth of the Alafia River is located on the eastern shore of Hillsborough Bay approximately 3 miles north of the Big Bend Channel. The federally maintained project has a depth

application of the criteria of Section 404(b), Federal Water Pollution Control Act.

Scoping will be accomplished by issuance of the public notice, letters of intent to prepare the DEIS, and

445/448 and 640 that have been exported to United States before January 1, 1981 shall not be subject to this directive.

The levels of restraint set forth above are subject to adjustment according to the provisions of the bilateral agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand which provide, in part, that: (1) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A detailed description of the textile catetgories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Thailand and with respect to imports of cotton, wool and man-made fiber textile products from Thailand have been determined by the Committee for the functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foregin affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40082 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-25-M

Changes in Textile Category System

December 19, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Changes in the Textile Category System.

SUMMARY: The Correlation: Textile and Apparel Categories with the Tariff Schedules of the United States, Annotated provides for placement of Tariff Schedules of the United States, Annotated (TSUSA) numbers in the Textile Category System. Publication of the Tariff Schedules of the United States, Annotated 1981 requires amendments to the Correlation. The amendments are cited in the list which follows this notice.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT:

Claire L. McDermott, International Agreements and Monitoring Division, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 ((202) 377-4212).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

January 1, 1981 Amendments to the Correlation.

Category and changes

333—Change 380.1255 to 380.1245 and 380.1265.
334—Change 380.1290 to 380.1285 and 380.1295.
342—Change 382.3336 to 382.3335.
342—Change 382.3342 to 382.3336 and 382.3341.
342—Change 382.3344 to 382.3337 and 382.3343.
Add 353—748.4042.
Add 354—748.4044.
610—Delete: 338.3022, 338.3023, 338.3040, 338.3051, and 338.3052. Add: 338.3003, 338.3006, and 338.3007.
611—Delete: 338.3062, 338.3063, 338.3082, and 338.3083. Add: 338.3034, 338.3047, 338.3048, and 338.3064.
612—Delete: 338.3027, 338.3028, 338.3030, 338.3031, 338.3037, 338.3038, 338.3056, 338.3057, 336.3058, and 338.3060. Add: 338.3004, 338.3005, 338.3008, 338.3009, 338.3010, 338.3011, 338.3012, 338.3013, 338.3015, 336.3017, 338.3018, 338.3019, 338.3020, and 338.3021.
613—Delete: 338.3067, 338.3068, 338.3070, 338.3071, 338.3087, 338.3088, 338.3090, and 338.3091. Add: 338.3035, 338.3036, 338.3039, 338.3041, 338.3042, 338.3043, 338.3044, 338.3045, 338.3046, 338.3049, 338.3050, 338.3053, 338.3054, 338.3055, 338.3059, 338.3061, 338.3065, 338.3066, and 338.3069.
614—Change 338.3014 to 338.3001.
614—Change 338.3016 to 338.3002.
614—Delete: 338.3072, 338.3073, 338.3077, 338.3078, 338.3080, 338.3081, 338.3092, 338.3093, 338.3094, 338.3095, 338.3096, and 338.3098. Add: 338.3024, 338.3025, 338.3026, 338.3029, 338.3032, and 338.3033.
Add 653—748.4054.
Add 654—748.4062.
669—Change 355.4560 to 355.4520 and 355.4530.

[FR Doc. 80-40081 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-25-M

Increasing Import Restraint Level for Certain Wool Apparel Imported From Mexico

December 18, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing from 2,033 dozen to 2,642 dozen the consultation level established for wool dresses in Category 436, produced or manufactured in Mexico and exported during the agreement year which began on January 1, 1980.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).)

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended, between the Governments of the United States and Mexico, provides for consultations to adjust the levels of restraint established for categories not subject to specific ceilings. Accordingly, pursuant to the terms of the bilateral agreement, and at the request of the Government of Mexico, the United States Government has agreed to increase the import restraint level for Category 436 to 2,642 dozen during the agreement year which began on January 1, 1980 and extends through December 31, 1980.

EFFECTIVE DATE: December 18, 1980.

FOR FURTHER INFORMATION CONTACT:

William J. Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On December 26, 1979, a letter dated December 18, 1979 was published in the **Federal Register** (44 FR 76383) from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established the levels of restraint applicable to certain specified categories of cotton and man-made fiber textile products, produced or manufactured in Mexico and exported to the United States during the twelve-month period which began on January 1, 1980. On October 7, 1980, a further letter dated October 2, 1980 was published in the **Federal Register** (45 FR 66491) which established a level of restraint for wool textile products in Category 436, in addition to those categories previously designated. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to permit entry for consumption, or withdrawal from warehouse for consumption, of wool textile products in Category 436 at the increased level of restraint of 2,642 dozen during the agreement year which began on January 1, 1980.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

December 18, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 18, 1979, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980 of cotton, and man-made fiber textile products in certain specified categories, produced or manufactured in Mexico, in excess of designated levels of restraint. The directive of December 18, 1979 was amended by a directive dated October 2, 1980 concerning wool textile products in Category 436.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 28, 1979, as amended, between the Governments of the United States and Mexico; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on December 18, 1980, to increase the twelve-month level of restraint established for Category 436 to 2,642 dozen.[1]

The actions taken with respect to the Government of Mexico and with respect to imports of wool textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40080 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-25-M

[1] The level of restraint has not been adjusted to reflect any imports after December 31, 1979.

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army Intent to Prepare A Draft Environmental Impact Statement FOR (DEIS) Tampa Harbor-Alafia River and Big Bend Channel, Florida; Navigation Improvement

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, intends to prepare an Environmental Impact Statement on the feasibility of deepdraft navigation improvements in Tampa Harbor. The mouth of the Alafia River is located on the eastern shore of Hillsborough Bay approximately 3 miles north of the Big Bend Channel. The federally maintained project has a depth of 30 feet mean low water (mlw), with a width of 200 feet and a length of 3.6 miles. Big Bend Channel is located along the southeastern shore of Hillsborough Bay at its point of confluence with Tampa Bay. The privately constructed channel has a uniform depth of approximately 35 feet, mlw, a width of 200 feet, and is approximately 2.2 miles long. The feasibility of deepening and widening both channels and deepening currently existing turning basins at the ends of both channels, it currently under study. The following alternative actions are under consideration:

1. Alafia River Channel.
a. Enlargement of the Alafia River Channel and turning basin to 34 feet, mlw.
b. Enlargement of the Alafia River Channel and turning basin to 38 feet, mlw.
c. Enlargement of the Alafia River Channel and turning basin to 42 feet, mlw.
d. Enlargement of the Alafia River Channel and turning basin to 44 feet, mlw.
2. Big Bend Channel.
a. Federal maintenance of the Big Bend Channel and turning basin at 34 feet, mlw.
b. Federal enlargement and maintenance of Big Bend Channel and turning basin at 38 feet, mlw.
c. Federal enlargement and maintenance of Big Bend Channel and turning basin to 42 feet, mlw.
d. Federal enlargement and maintenance of Big Bend Channel turning basin and main entrance channel to 44 feet, mlw.
3. No Federal action in either one or both channels.

Methods considered for the disposal of dredged material and rock include upland disposal, ocean disposal, placement on existing disposal islands in Tampa Bay for retarding plant succession to benefit birdlife, and possible marsh-mangrove habitat creation.

In accordance with the Fish and Wildlife Coordination Act, participation in the planning process has been initiated with the U.S. Fish and Wildlife Service (FWS) and participation has been solicited from the U.S. National Marine Fisheries Service (NMFS) and the State of Florida. Consultation will be accomplished in accordance with Section 7 of the Endangered Species Act and the Archeological and Historic Preservation Act. Disposal of dredged material in ocean waters will be evaluated pursuant to Section 103 of the Marine Protection, Research, and Sanctuaries Act. If a selected plan involves discharge of material into waters of the United States, the discharge will be specified by application of the criteria of Section 404(b), Federal Water Pollution Control Act.

Scoping will be accomplished by issuance of the public notice, letters of intent to prepare the DEIS, and coordination with Federal, State, and local agencies. A scoping meeting will not be conducted unless deemed necessary. The DEIS will be made available to the public in June 1981 unless circumstances warrant additional time for preparation.

Any questions concerning the proposed action and DEIS can be answered by: Dr. Gerald Atmar, Environmental Studies Section, U.S. Army Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, Florida 32232, Telephone: (904) 791-3615.

Dated: December 15, 1980.

James W. R. Adams,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 80-40144 Filed 12-23-80; 8:45 am]

BILLING CODE 3710-AJ

DEPARTMENT OF EDUCATION

National Advisory Council on Vocational Education, Legislative Committee; Meeting

AGENCY: National Advisory Council on Vocational Education.

ACTION: Notice of Meeting of Legislative Committee.

SUMMARY: This notice sets forth the proposed agende of a forthcoming meeting of the Legislative Committee of the National Advisory Council on Vocational Education. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: January 13, 1981, 10:00 a.m. to 4:00 p.m.

ADDRESS: O'Hare Hilton Hotel, O'Hare Airport, Chicago, Illinois—Room 2091.

FOR FURTHER INFORMATION CONTACT: George Wallrodt, NACVE Staff, 425 13th Street NW., Suite 412, Washington, DC 20004 (Tel: 202/376-8873).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Vocational Education is established under Section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576. The Council is established to:

(A) Advise the President, the Congress, and the Secretary concerning the administration of, preparation of general regulations for, and operation of, vocational education programs

supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date

is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages may be obtained by writing to the Library Education and Postsecondary Resources Branch, Attn: II-B, U.S. Department of

This program awards grants to a public or private nonprofit institution, including the library resources of an institution of higher education, an independent research library, and a State or other public library which

Applications Delivered by Hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th & D Streets, S.W., Washington, D.C. The Application Control Center will

required in the original application. The new narrative will be expected to address itself to project activities for the continuing year requested.

Applicable Regulations: Regulations applicable to this program are: (1) Regulations governing the Strengthening

supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to the Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

The Legislative Committee meeting is open to the public, and the proposed agenda will be made up of discussion of issues related to the reauthorization of the Vocational Education Act.

Records are kept of the Committee's proceedings and are available for public inspection at the office of the National Advisory Council on Vocational Education, 425 13th Street NW., Suite 412, Washington, DC 20004, from 9:00 a.m. to 5:00 p.m. on regular business days.

Signed at Washington, DC., on December 19, 1980.

Raymond C. Parrott,

Executive Director, National Advisory Council on Vocational Education.

[FR Doc. 80-40126 Filed 12-23-80; 8:45 am]

BILLING CODE 4000-01-M

Library Career Training Program

AGENCY: Department of Education.

ACTION: Application Notice.

Applications are invited for projects under the Library Career Training Program for fiscal year 1981.

Authority for this program is contained in Part B of Title II of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. (20 USC 1021 *et seq.*)

This program awards grants to institutions of higher education and other library agencies and organizations.

The purpose of these grants is to assist in training persons in librarianship.

Closing Date for Transmittal of Applications: An application for a grant must be mailed or hand delivered by March 2, 1981.

Applications Delivered by Mail: An Application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.036, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: In fiscal year 1981, priorities for levels of training will be as follows: (1) Master's, (2) Doctoral, (3) Associate of Arts, (4) Post-master's, (5) Baccalaureate. Due to the limited amount of funds available for the program during fiscal year 1981, the Secretary will award grants for fellowship projects only. The Secretary will not consider application for institute or traineeship projects.

Available Funds: It is expected that approximately $667,000 will be available for the Library Career Training Program in fiscal year 1981.

It is estimated that these funds could support 24 new projects.

The anticipated award for each new project will be between $16,000 and $62,000.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless the amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages may be obtained by writing to the Library Education and Postsecondary Resources Branch, Attn: II–B, U.S. Department of Education (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary strongly urges that the narrative portion of the application not exceed 30 pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable Regulations: Regulations applicable to this program include the following: (1) Final regulations governing the Library Career Training Program (34 CFR Part 776) as published in the **Federal Register** concurrently with this application notice. Applicants should refer to these regulations in preparing these applications; and (2) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 75 and 77).

Further Information. For further information contact Frank A. Stevens, Chief, Library Education and Postsecondary Resources Branch, Division of Library Programs, Office of Libraries and Learning Technologies, U.S. Department of Education (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. Telephone: (202) 245–9530.

(Catalog of Federal Domestic Assistance Program No. 84.036, Library Career Training Program.)

Dated: December 19, 1980.

F. James Rutherford,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 80-40111 Filed 12-23-80; 8:45 am]

BILLING CODE 4000-01-M

Strengthening Research Library Resources Program

AGENCY: Department of Education.

ACTION: Application notice.

Applications are invited for noncompeting continuation projects and new projects under the Strengthening Research Library Resources Program for fiscal year 1981.

Authority for this program is contained in Part C of Title II of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. (20 U.S.C. 1021 *et seq.*)

This program awards grants to a public or private nonprofit institution, including the library resources of an institution of higher education, an independent research library, and a State or other public library which serves as a major research library.

The purpose of these grants is to promote research and education of higher quality throughout the United States by providing financial aid to institutions with major research libraries to help maintain and strengthen their collections (for use by scholars, researchers, and other qualified users) and to make their holdings available to other libraries whose users have need for research materials.

Closing Date for Transmittal of Applications. Applications for new awards must be mailed or hand delivered by March 16, 1981.

To be assured of consideration for funding, an application for a noncontinuation award should also be mailed or hand delivered by March 16, 1981.

If an application for a noncompeting continuation award is late, the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.091, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Servce postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant for a new award will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th & D Streets, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications for new awards that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: In formulating proposals for new projects, potential applicants should give special attention of § 778.5 of the regulations, that explains which institutions may receive a grant, and to § 778.7 of the regulations, which contains specific program funding criteria and the number of points attached to each criterion.

Applicants for noncompeting continuation projects should give special attention to § 75.253 of the Education Department General Administrative Regulations (EDGAR), which provides an explanation of the procedure to be used in evaluating these proposals.

Available Funds: It is expected that approximately $6 million will be available for the Strengthening Research Library Resources program in fiscal year 1981. It is estimated that these funds could support up to 36 new projects with approximately $5 million and support 4 noncompeting continuation projects with approximately $1 million.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages are expected to be ready for mailing by January 16, 1981. They may be obtained by writing to the Library Education and Postsecondary Resources Branch, Attn: II–C, U.S. Department of Education, (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package. The Secretary strongly urges that the narrative portion of the application not exceed 50 pages in length. The Secretary further urges that applicants do not submit information that is not requested.

It will not be necessary for applicants for noncompeting continuation projects to include the basic institutional data required in the original application. The new narrative will be expected to address iself to project activities for the continuing year requested.

Applicable Regulations: Regulations applicable to this program are: (1) Regulations governing the Strengthening Research Library Resources Program (34 CFR Part 778) as published in the **Federal Register** concurrently with this application notice. Applicants should refer to these regulations in preparing their applications; and, (2) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 75 and 77).

Further Information: For further information contact Mr. Frank A. Stevens, Chief, Library Education and Postsecondary Resources Branch, Division of Library Programs, Office of Libraries and Learning Technologies, U.S. Department of Education (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245–9530.

[Catalog of Federal Domestic Assistance No. 84.091, Strengthening Research Library Resources.]

Dated December 19, 1980.

F. James Rutherford,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 80-40112 Filed 12-23-80; 8:45 am]

BILLING CODE 4000-01-M

College Library Resources Program

AGENCY: Department of Education.

ACTION: Application notice.

Applications are invited for grants under the College Library Resources Program for fiscal year 1981.

Authority for this program is contained in Part A of Title II of the Higher Education Act of 1965, as amended. (20 U.S.C. 1021 *et seq.*)

This program awards grants to an institution of higher education, a branch of an institution of higher education, a combination of these institutions, and other public and private nonprofit library institutions whose primary function is to provide library and information services to institutions of higher education on a formal cooperative basis.

The purpose of these grants is to assist institutions of higher education and other public and private nonprofit library institutions to improve the quality of their library resources, including law library resources, and to encourage libraries of institutions of higher education to share their resources throught the establishment and maintenance of networks.

V 4 5 D E 2 4 8 0 UMI

supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to the Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

The Legislative Committee meeting is open to the public, and the proposed agenda will be made up of discussion of issues related to the reauthorization of the Vocational Education Act.

Records are kept of the Committee's proceedings and are available for public inspection at the office of the National Advisory Council on Vocational Education, 425 13th Street NW., Suite 412, Washington, DC 20004, from 9:00 a.m. to 5:00 p.m. on regular business days.

Signed at Washington, DC., on December 19, 1980.

Raymond C. Parrott,

Executive Director, National Advisory Council on Vocational Education.

[FR Doc. 80-40126 Filed 12-23-80; 8:45 am]

BILLING CODE 4000-01-M

Library Career Training Program

AGENCY: Department of Education.

ACTION: Application Notice.

Applications are invited for projects under the Library Career Training Program for fiscal year 1981.

Authority for this program is contained in Part B of Title II of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. (20 USC 1021 *et seq.*)

This program awards grants to institutions of higher education and other library agencies and organizations.

The purpose of these grants is to assist in training persons in librarianship.

Closing Date for Transmittal of Applications: An application for a grant must be mailed or hand delivered by March 2, 1981.

Applications Delivered by Mail: An Application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.036, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: In fiscal year 1981, priorities for levels of training will be as follows: (1) Master's, (2) Doctoral, (3) Associate of Ats, (4) Post-master's, (5) Baccalaureate. Due to the limited amount of funds available for the program during fiscal year 1981, the Secretary will award grants for fellowship projects only. The Secretary will not consider application for institute or traineeship projects.

Available Funds: It is expected that approximately $667,000 will be available for the Library Career Training Program in fiscal year 1981.

It is estimated that these funds could support 24 new projects.

The anticipated award for each new project will be between $16,000 and $62,000.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless the amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages may be obtained by writing to the Library Education and Postsecondary Resources Branch, Attn: II–B, U.S. Department of Education (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary strongly urges that the narrative portion of the application not exceed 30 pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable Regulations: Regulations applicable to this program include the following: (1) Final regulations governing the Library Career Training Program (34 CFR Part 776) as published in the **Federal Register** concurrently with this application notice. Applicants should refer to these regulations in preparing these applications; and (2) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 75 and 77).

Further Information. For further information contact Frank A. Stevens, Chief, Library Education and Postsecondary Resources Branch, Division of Library Programs, Office of Libraries and Learning Technologies, U.S. Department of Education (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. Telephone: (202) 245–9530.

(Catalog of Federal Domestic Assistance Program No. 84.036, Library Career Training Program.)

Dated: December 19, 1980.

F. James Rutherford,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 80-40111 Filed 12-23-80; 8:45 am]

BILLING CODE 4000-01-M

Strengthening Research Library Resources Program

AGENCY: Department of Education.

ACTION: Application notice.

Applications are invited for noncompeting continuation projects and new projects under the Strengthening Research Library Resources Program for fiscal year 1981.

Authority for this program is contained in Part C of Title II of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. (20 U.S.C. 1021 *et seq.*)

This program awards grants to a public or private nonprofit institution, including the library resources of an institution of higher education, an independent research library, and a State or other public library which serves as a major research library.

The purpose of these grants is to promote research and education of higher quality throughout the United States by providing financial aid to institutions with major research libraries to help maintain and strengthen their collections (for use by scholars, researchers, and other qualified users) and to make their holdings available to other libraries whose users have need for research materials.

Closing Date for Transmittal of Applications. Applications for new awards must be mailed or hand delivered by March 16, 1981.

To be assured of consideration for funding, an application for a noncontinuation award should also be mailed or hand delivered by March 16, 1981.

If an application for a noncompeting continuation award is late, the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.091, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Servce postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant for a new award will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th & D Streets, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications for new awards that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: In formulating proposals for new projects, potential applicants should give special attention of § 778.5 of the regulations, that explains which institutions may receive a grant, and to § 778.7 of the regulations, which contains specific program funding criteria and the number of points attached to each criterion.

Applicants for noncompeting continuation projects should give special attention to § 75.253 of the Education Department General Administrative Regulations (EDGAR), which provides an explanation of the procedure to be used in evaluating these proposals.

Available Funds: It is expected that approximately $6 million will be available for the Strengthening Research Library Resources program in fiscal year 1981. It is estimated that these funds could support up to 36 new projects with approximately $5 million and support 4 noncompeting continuation projects with approximately $1 million.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages are expected to be ready for mailing by January 16, 1981. They may be obtained by writing to the Library Education and Postsecondary Resources Branch, Attn: II–C, U.S. Department of Education, (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package. The Secretary strongly urges that the narrative portion of the application not exceed 50 pages in length. The Secretary further urges that applicants do not submit information that is not requested.

It will not be necessary for applicants for noncompeting continuation projects to include the basic institutional data required in the original application! The new narrative will be expected to address iself to project activities for the continuing year requested.

Applicable Regulations: Regulations applicable to this program are: (1) Regulations governing the Strengthening Research Library Resources Program (34 CFR Part 778) as published in the **Federal Register** concurrently with this application notice. Applicants should refer to these regulations in preparing their applications; and, (2) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 75 and 77).

Further Information: For further information contact Mr. Frank A. Stevens, Chief, Library Education and Postsecondary Resources Branch, Division of Library Programs, Office of Libraries and Learning Technologies, U.S. Department of Education (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245–9530.

(Catalog of Federal Domestic Assistance No. 84.091, Strengthening Research Library Resources.)

Dated December 19, 1980.

F. James Rutherford,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 80-40112 Filed 12-23-80; 8:45 am]

BILLING CODE 4000-01-M

College Library Resources Program

AGENCY: Department of Education.

ACTION: Application notice.

Applications are invited for grants under the College Library Resources Program for fiscal year 1981.

Authority for this program is contained in Part A of Title II of the Higher Education Act of 1965, as amended. (20 U.S.C. 1021 *et seq.*)

This program awards grants to an institution of higher education, a branch of an institution of higher education, a combination of these institutions, and other public and private nonprofit library institutions whose primary function is to provide library and information services to institutions of higher education on a formal cooperative basis.

The purpose of these grants is to assist institutions of higher education and other public and private nonprofit library institutions to improve the quality of their library resources, including law library resources, and to encourage libraries of institutions of higher education to share their resources throught the establishment and maintenance of networks.

Closing date for transmittal of

Available funds: It is expected that approximately $4,988,000 will be

Dated: December 19, 1980.

F. James Rutherford,

of the Southern Pacific Railroad and the Daffodil Canal. The water treatment

ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460, 202–426–8850. in accordance with section 3(c)(2) of

Closing date for transmittal of applications: An application for a grant must be mailed or hand delivered by March 23, 1981.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.005, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Applications for individual branch campuses should be sent in separate envelopes and not combined.

Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W. Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program information: Grant applications may not exceed $10,000. To be considered for a grant, applicant institutions must be certified as eligible by the Department of Education's Division of Eligibility and Agency Evaluation and must meet the maintenance-of-effort requirements for library materials, as set forth in the regulations.

Available funds: It is expected that approximately $4,988,000 will be available for the College Library Resources Program in fiscal year 1981.

It is expected that approximately 2,600 grants will be made.

The average grant will be approximately $2,000. All of these will be new awards; no funds are reserved for continuation awards.

However, these estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages will be mailed to all fiscal year 1980 applicants.

Application forms may also be obtained by writing to the Libray Education and Postsecondary Resources Branch, Attn. II–A, U.S. Department of Education (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the instructions and forms included in the program package. A narrative is required to explain a request of the waiver of the maintenance-of-effort requirement or to describe networking activities. The Secretary urges that all narratives be as brief as possible.

Applicants should be aware that any substantive changes required to the application as a result of the comments made to the proposed regulations will be published in the **Federal Register** prior to the closing date in this notice.

Applicable regulations: Regulations applicable to this program include the following: (1) Proposed regulations governing the College Library Resources Program (34 CFR Part 773) as published in the **Federal Register** December 23, 1980 (Part VII) with this application notice. Applicants should refer to these regulations when preparing their applications; and (2) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 75 and 77).

FURTHER INFORMATION: For further information contact Frank A. Stevens, Chief, Library Education and Postsecondary Resources Branch, Division of Library Programs, Office of Libraries and Learning Technologies, U.S. Department of Education (Room 3622, Regional Office Building 3), 400 Maryland Avenue, S.W. Washington, D.C. 20202. Telephone: (202) 245–9530.

(Catalog of Federal Domestic Assistance Program No. 84.005, College Library Resources Program)

Dated: December 19, 1980.

F. James Rutherford,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 80-40110 Filed 12-23-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Floodplain/Wetlands Review Requirements, Intent to Prepare a Floodplain/Wetlands Assessment; Compliance with 10 CFR 1022

AGENCY: Department of Energy.

ACTION: Notice of Intent to prepare a Floodplain/Wetlands Assessment for a Geothermal Project in Imperial County, California.

SUMMARY: The Department of Energy announces its intent to prepare a floodplain/wetlands assessment to assess the effects on the New River floodplain and the wetlands at the Salton Sea in Imperial County, California from a proposed Department of Energy action to guaranty a loan to finance a 50 MWe geothermal power generating project. The project includes the construction and operation of a water treatment facility of which part will be located on the floodplain. Water will be diverted from the New River and injected into the ground for the purpose of geothermal fluid replacement. This will decrease instream flow in the New River and also decrease the flow from the New River into the Salton Sea. The floodplain/wetlands assessment will be prepared concurrently with and will be included in an environmental assessment for the project to be prepared by the Department of Energy in compliance with the requirements of National Environmental Policy Act (NEPA). Upon completion of the floodplain/ wetlands assessment, a statement of findings will be published in the **Federal Register.**

BACKGROUND INFORMATION: The Heber geothermal field is located in Imperial County, California, approximately five miles south of El Centro and three miles north of the U.S.-Mexico border. The proposed action, which the floodplain/ wetlands assessment will address, consists of an loan guaranty application by Southern California Edison Company for construction and operation of a powerplant (52MWe gross, 41MWe net) and water treatment module. The power plant will utilize a two stage flash process fueled by geothermal fluid from the Heber field. The plant will be located on 28 acres of undeveloped land approximately 1.6 miles south-southeast of the Southern Pacific Railroad and the Daffodil Canal. The water treatment facility, which will withdraw and treat New River water so that it may be injected into the Heber geothermal reservoir will be located near New River at the Clark Road Crossing. The withdrawal pump, pipes, sludge drying ponds and sludge disposal land fill will be located on the New River floodplain. The water treatment plant and deep well injection facilities will be located above the New River floodplain on non-agricultural land.

When operating at full design rate, the 50MWe plant will use makeup water at an average rate of 2500 gallons per minute. The design rate for the treatment plant is 3000 gallons per minute, which corresponds to withdrawal of 5000 acre-feet per year of water from the New River. This withdrawal rate is about 5% of the average New River flow at the Clark Road Crossing.

Identification of Issues

The following issues will be analyzed in preparing the environmental assessment. The list is not intended to be all inclusive nor is it intended to be a predetermination of impacts.

1. Effects of placement of the water treatment facility on the floodplain of the New River, e.g., flood hazard, disturbance of the natural environmental, etc.
2. Effects of water withdrawal on the riparian communities along the New River.
3. Effects of water withdrawal on the wetlands surrounding the Salton Sea.
4. Alternatives to the proposed use of the floodplain/wetlands.

Comments

All interested parties are invited to submit comments or suggestions by January 5, 1980 to:

Ms. Kathleen Schlegel, Program Manager, Heber Loan Guaranty Application, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

For general information on the assessment process contact:

NEPA Affairs Division, Office of Environmental Compliance and Overview, Office of the Assistant Secretary for Environment, U.S. Department of Energy, ATTN: Mr. Raymond Pelletier, Rm. 4G–047, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–252–4610.

Dated: December 18, 1980.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 80-40091 Filed 12-23-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-C31021A; PH-FRC 1712-2]

E. I. du Pont de Nemours & Co.; Approval of Application to Conditionally Register Pesticide Product Entailing Changed Use Pattern

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: E. I. du Pont de Nemours & Co., has received conditional registration for the pesticide product VELPAR weed killer, which contains 90 percent of the active ingredient 3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione permitting a significant change in the use pattern from noncrop use to crop use for the control of weeds in sugarcane.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–351, 401 M St. SW., Washington, D.C. 20460, (202–755–1397).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of October 2, 1978 (43 FR 45474) that E. I. du Pont de Nemours & Co., Wilmington, DE 19898 had submitted an application to the EPA to amend the registration of the pesticide VELPAR weed killer (EPA Reg. No. 352–378), containing the active ingredient 3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*,3*H*)-dione at 90 percent. The application proposed that the use pattern of this pesticide product be changed from noncrop use to crop use for the control of weeds in sugarcane. The application also proposed that the product be classified for general use.

On November 17, 1980, E. I. du Pont de Nemours was granted conditional registration for the pesticide product for control of weeds in sugarcane.

The product has been assigned EPA Registration No. 352–378. A copy of the approved label and list of data references used to support registration are available for public inspection in the office of the product manager.

The data and other scientific information used to support registration, except for material specifically protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) will be available for public inspection in the Information Services Branch, Rm. EB–35, EPA, 401 M St. SW., Washington, D.C. 20460, 202–426–8850, in accordance with section 3(c)(2) of FIFRA, within 30 days after the registration date of November 17, 1980. Requests for data must be made in accordance with provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), EPA 401 M St. SW., Washington, D.C. 20460. Such requests should: (1) Identify the product by name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(5), 92 Stat. 842, (7 U.S.C. 136)).

Dated: December 18, 1980.

Robert V. Brown,

Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-40120 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

[SWH-FRL 1713-5]

Major Abandoned Hazardous Waste Sites and Chemical Spills; Clean Up; Meeting

AGENCY: Environmental Protection Agency.

ACTION: Public Meeting Notice.

SUMMARY: The Environmental Protection Agency will hold a public meeting on The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("Superfund Bill") to discuss plans and actions for the clean up of major abandoned hazardous waste sites and chemical spills.

DATE: Pubic Meeting: Monday, January 19, 1981, 9:00 a.m. to 12:30 p.m.

ADDRESS: Holiday Inn, Federal Center Plaza, 550 C Street, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Steve Cohen at (202) 755–9685.

Marc Tipermas,

Director of the Office of Analysis and Program Division, in OWWM.

[FR Doc. 80-40135 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-30-M

[OPTS-53019; TSH-FRL 1712-6]

Premanufacture Notices; Monthly Status Report for October 1980

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to publish a list in the **Federal Register** at the beginning of each month reporting the premanufacture notices (PMN's) pending before the Agency and the PMN's for which the review period has expired since publication of the last

monthly summary. This is the report for October 1980.

substances compiled by EPA under section 8(b) of TSCA. EPA first

period has ended during the month; and (d) chemical substances that EPA has

Premanufacture Notices Monthly Status Report for October 1980

monthly summary. This is the report for October 1980.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on a specific chemical substance.

ADDRESS: Written comments to: Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St. SW., Washington, D.C. 20460, (202–755–8050).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–210, 401 M St. SW., Washington, D.C. 20460, (202–426–3936).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA (90 Stat. 2012 (15 U.S.C. 2604)) requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** on May 15, 1979 (44 FR 28558) and the notice of availability of the Revised Inventory was published on July 29, 1980 (45 FR 50544). The requirement to submit PMN's for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979. EPA has 90 days to review a PMN once the Agency receives it (section 5(a)(1)). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register**.

The monthly status report published in the **Federal Register** as required under section 5(d)(3), will identify: (a) PMN's received during the month; (b) PMN's received previously and still under review at the end of the month; (c) PMN's for which the notice review period has ended during the month; and (d) chemical substances that EPA has added to the Inventory during the month. Therefore, EPA is publishing the October 1980 PMN Status Report.

Interested persons may submit written comments on the specific chemical substance no later than 30 days before the applicable notice review period ends to the Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St. SW., Washington, D.C. 20460. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–53019]" and the specific PMN number. Nonconfidential portions of the PMN's written comments received on individual PMN's, and other documents in public record may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Dated: December 18, 1980.

Edward A. Klein,

Director, Chemical Control Division.

Premanufacture Notices Monthly Status Report for October 1980

PMN No.	Identity/generic name	FR citation	Expiration date
	I. Premanufacture Notices Received During the Month		
80-272	*N*-Methyl-*N*-glucitylstearoylamide	45 FR 73126 (11/4/80)	Jan. 1, 1980.
80-273	Amines, C_{18+}, alkyldimethyl, phosphate salt	45 FR 73128 (11/4/80)	Jan. 1, 1980.
80-275	Polymer of: Tall oil fatty acid, isophthalic acid, trimethylol propane, trimellitic anhydride, methyl methacrylate, ethyl acrylate, methacrylic acid, hydroxy ethyl methacrylate.	45 FR 73132 (11/4/80)	Jan. 4, 1981.
80-276	Generic name: Styrene acrylic polymer	45 FR 71415 (10/28/80)	Jan. 4, 1981.
80-277	Generic name: Modified terpolymer of mixed alkyl acrylates	45 FR 71415 (10/28/80)	Jan. 4, 1981.
80-278	Generic name: Modified copolymer of mixed alkyl acrylates	45 FR 71415 (10/28/80)	Jan. 4, 1981.
80-279	Polymer of: 2,2-Dimethyl 1,3-propanediol; 2,2,4-trimethyl 1,3-pentanediol isophthalic acid, and fumaric acid.	45 FR 73128 (11/4/80)	Jan. 5, 1981.
80-280	Generic name: Hydrogen zeolites	45 FR 74562 (11/10/80)	Jan. 7, 1981.
80-281	Polymer of: Propylene glycol, neopentyl glycol, isophthalic acid, Empol 1022 dimeric fatty acid, trimellitic anhydride polymer.	45 FR 73131 (11/4/80)	Jan. 8, 1981.
80-282	Aminoalkanol salt, as a 25% aqueous solution	45 FR 75752 (11/17/80)	Jan. 12, 1981.
80-283	Generic name: Styrene methacrylate acrylate polymer	45 FR 74993 (11/13/80)	Jan. 13, 1981.
80-284	Generic name: Polymer of alkanediols and carbomonocyclic anhydrides	45 FR 75752 (11/17/80)	Jan. 14, 1981.
80-286	M(4-Diazo phenyl) morpholine hexafluorophosphate	45 FR 74993 (11/13/80)	Jan. 19, 1981.
80-287	Polymer of: Tall oil fatty acid, isophthalic acid, therephthalic acid, pentaerythritol, benzoic acid, and trimethylol propane.	In preparation	Jan. 19, 1981.
80-288	Polymer of: Soybean oil, pentaerythritol, isophthalic acid, benzoic acid, terephthalic acid.	In preparation	Jan. 19, 1981.
80-289	Amines, isopropyl, distillation residues	45 FR 75750 (11/17/80)	Jan. 21, 1981.
80-290	Amines, ethyl, distillation residues	45 FR 75750 (11/17/80)	Jan. 21, 1981.
80-291	Polymer of: Epoxy resin, bisphenol A, paraformaldehyde, dibutylamine, and diethanolamine.	In preparation	Jan. 21, 1981.
80-292	Generic name: Disubstituted carbopolycyclic derivative	In preparation	Jan. 21, 1981.
80-293	Generic name: Dimethyl alkylmethyl silicone glycol copolymer	In preparation	Jan. 25, 1981.
80-294	Generic name: Siloxane, alkoxylated aminoalkyl	In preparation	Jan. 25, 1981.
80-295	Generic name: Disubstituted nitrobenzene	In preparation	Jan. 25, 1981.
80-296	Generic name: Ethyl, substituted, (((sulfopropyl) heteropolycyclic) methyl) alkenyl heteropolycycle.	In preparation	Jan. 25, 1981.
80-297	Generic name: Ethyl, substituted, methylheteropolycycle tosylate	In preparation	Jan. 25, 1981.
80-298	Generic name: Substituted, methylheteropolycycle	In preparation	Jan. 25, 1981.
80-299	Generic name: Disubstituted benzene	In preparation	Jan. 25, 1981.
80-300	Generic name: Bis (Nitro, substituted phenyl) substituent	In preparation	Jan. 25, 1981.
80-301	Cyclohexane, 1,1'-methylene bis [4-isocyanato-, reaction products with 1,3-isobenzofurandione, polymer with 1,6-hexanediol, alpha-hydro-omega-hydroxypolyoxy [1,4-butanediyl], and (2-hydroxyethyl)-2-propenoate.	In preparation	Jan. 25, 1981.
80-302	Generic name: Modified polyester based on carbomonocyclic anhydride and alkanediols.	In preparation	Jan. 26, 1981.

Premanufacture Notices Monthly Status Report for October 1980

PMN No	Identity/generic name	FR citation	Expiration date
	I. Premanufacture Notices Received During the Month—Continued		
80-303	Generic name: Substituted alkyl peroxycarbonate	In preparation	Jan. 27, 1981
80-304	Generic name: Alkyl substituted chlorocarbonic acid	In preparation	Jan. 27, 1981
80-305	Generic name: Elastomeric urethane	In preparation	Jan. 26, 1981
80-306	Generic name: Urea/carbamate lacquer	In preparation	Jan. 27, 1981
80-307	Polymer of tall oil fatty acids, neopentyl glycol, trimethylol ethane, phthalic anhydride.	In preparation	Jan. 27, 1981
80-310	Butanenitrile, 2-methyl, 2,2'-azobis	In preparation	Jan. 28, 1981
80-311	Butanenitrile, 2-methyl, 2-amino	In preparation	Jan. 28, 1981
80-312	*N*-Isocyanatotolyl-abietamide	In preparation	Jan. 28, 1981
	II. Premanufacture Notices Received Previously and Still Under Review at the End of the Month		
80-189	Bisphenol A-epoxy resin, 1,4-butanediol, para amino benzioc acid, and phthalic anhydride polymer.	45 FR 54854 (8/18/80)	Nov 2, 1980
80-190	Copolymer from dimethyl terephthalate, alpha, omega-hydroxy terminated aliphatic hydrocarbons, and a polyalkylene glycol.	45 FR 56429 (8/25/80)	Nov 2 1980
80-191	Polymer of: Methylene bis (4-4-cyclohexyl isocyanate), poly propylene glycol, hydroxy ethyl acrylate, and polycoy propylene diamine.	45 FR 59196 (9/8/80)	Nov 3, 1980
80-192	Generic name: Very short oil nonoxidizing alkyd resin	45 FR 58201 (9/2/80)	Nov. 3, 1980
80-193	Neopentyl glycol, 1,6-hexanediol, adipic acid, phthalic anhydride, and trimellitic anhydride.	45 FR 58194 (9/2/80)	Nov. 3, 1980
80-194	2,2,4-Trimethyl-1,3-pentanediol, 1,6-hexanediol phthalic anhydride	45 FR 58194 (9/2/80)	Nov. 3, 1980
80-195	Generic name: Substituted alkyl oxamide	45 FR 58194 (9/2/80)	Nov. 3, 1980
80-196	Generic name: Trimethyl monocyclic ethyl alkenal	45 FR 59196 (9/8/80)	Nov 5, 1980
80-197	Generic name: Trimethyl monocyclic ethyl alkenol	45 FR 59196 (9/8/80)	Nov 5, 1980
80-198	Generic name: Styrene acrylic terpolymer	45 FR 58194 (9/2/80)	Nov 6, 1980
80-199	Generic name: Methyl aminoheteropolycycle	45 FR 60003 (9/11/80)	Nov 6, 1980
80-200	Generic name: 1-Substituted-1-(*p*-substituted phenyl)ethane	45 FR 60003 (9/11/80)	Nov. 6, 1980
80-201	Generic name: 1-Substituted-1-(4-(substitutedheteromonocyclic)phenyl)ethane	45 FR 60003 (9/11/80)	Nov. 6, 1980
80-202	Generic name: 1-Substituted-1-(4-(substitutedheteromonocyclic)phenyl)ethane	45 FR 60003 (9/11/80)	Nov. 6, 1980
80-203	Generic name: *p*-(Methylsubstituted)substituted benzene), triethylammonium salt.	45 FR 60003 (9/11/80)	Nov. 6, 1960
80-204	Generic name: 1-Substituted-4-(methylsubstituted)benzene	45 FR 60003 (9/11/80)	Nov 6, 1960
80-205	Generic name: 1-Methylsubstituted)-4-(substitutedheteromonocyclic)benzene	45 FR 60003 (9/11/80)	Nov. 6, 1980
80-206	2-Oxepanone, polymer with 1,4-butanediol, 1,3-disocyanatomethyl benzene, and (2-hydroxyethyl)-2-propenoate.	45 FR 59200 (9/8/80)	Nov 9, 1980
80-209	Generic name: Bis(1-polyamino-2-alkyl imidazoline)	45 FR 60006 (9/11/80)	Nov. 11, 1980
80-210	Generic name: Bis(1-polyamino-2-alkyl imidazoline)	45 FR 60006 (9/11/80)	Nov. 11 1980
80-211	Generic name: Polytetramethylene glycol, aliphatic polyglycol, and alkyl diisocyanate.	45 FR 60006 (9/11/80)	Nov. 11, 1980
80-212	Generic name: Adduct of polytetramethylene glycol, aliphatic polyglycol, aliphatic diisocyanate, and an alkyl diisocyanate.	45 FR 60006 (9/11/80)	Nov. 11, 1980
80-213	Generic name: Halogenated copolyester resin	45 FR 60008 (9/11/80)	Nov. 16, 1960
80-214	Generic name: Polyester of aliphatic polyols and aromatic diacids	45 FR 60009 (9/11/80)	Nov. 16, 1980
80-215	Generic name: Styrene-acrylate copolymer	45 FR 61023 (9/15/80)	Nov. 17, 1980
80-216	Generic name: Methyl fatty acid ester	45 FR 61021 (9/15/80)	Nov. 17, 1980
80-217	Generic name: Aromatic trisazo dye	45 FR 61021 (9/15/80)	Nov. 18, 1980
80-218	Generic name: Aromatic trisazo diester dye	45 FR 61021 (9/15/80)	Nov. 18, 1980
80-219	Generic name: An aliphatic ester	45 FR 62194 (9/18/80)	Nov. 18, 1980
80-220	Generic name: Polybasic acid ester of mixed short alkyl mono alcohol and a polyol.	45 FR 62985 (9/22/80)	Nov. 19, 1980
80-221	Cyclohexanecarbonitrile, 1,1' oxybis	45 FR 62195 (9/18/80)	Nov 24, 1980
80-222	Cyclohexanecarbonitrile, 1-amino	45 FR 62195 (9/18/80)	Nov 24, 1980
80-223	Polymer of: 1,6-Hexanediol, terephthalic acid, neopentyl glycol, trimellitic anhydride, adipic acid, and isophthalic acid.	45 FR 61019 (9/15/80)	Nov 24, 1980
80-224	Polymer of: Isophthalic acid, (tall fatty acid, trimelletic anhydride, terephthalic acid, neopentyl glycol, and trimethyl propane.	45 FR 61019 (9/15/80)	Nov. 24, 1980
80-225	Generic name: Mono di, and tri esters of polybasic acids	45 FR 62985 (9/22/80)	Nov 24, 1980
80-226	Dimethyl 1,4-cyclohexanedicarboxylate, maleic anhydride, neopentyl glycol phthalic anhydride, trimethylol ethane polymer.	45 FR 61022 (9/15/80)	Nov. 19, 1980
80-227	Benzoic acid fatty acids C_{18} unsaturated, maleic anhydride, and pentaerythritol polymer.	45 FR 61022 (9/15/80)	Nov 24, 1980
80-228	Benzene propanoic acid, 3,5-bis(1,1-dimethylethyl)-4-hydroxy-(1,2-dioxo-1,2-ethanediyl) bis (iminc-2,1-ethandiyl) ester.	45 FR 62194 (9/18/80)	Nov. 24, 1980
80-229	Generic name: Dichloro dimethoxy diethyl amino, azobenzene, sodium salt	45 FR 62987 (9/22/80)	Nov 24, 1960
80-230	Generic name: Fatty acid ester	45 FR 62898 (9/22/80)	Nov 25, 1980
80-231	Napthalene, 1,2,3,4-tetrahydro-1,2,4,4-tetramethyl	45 FR 62197 (9/18/80)	Nov. 26, 1980
80-232	2-Napthalene ethanol, 5,6,7,8-tetrahydrobeta, 5,5,8,8-penta methyl	45 FR 65664 (10/3/80)	Nov 26, 1980
80-233	Polymer of adipic acid, benzoic acid, neopentyl glycol, phthalic anhydride, propylene glycol, trimethylol ethane, tall oil fatty acids.	45 FR 65662 (10/3/80)	Nov 26, 1980
80-234	Adipic acid, dimethyl 1,4-cyclohexane dicarboxylate, maleic anhydride, neopentyl glycol, phthalic anhydride, trimellitic anhydride, trimethylol ethane polymer.	45 FR 63343 (9/24/80)	Nov. 27, 1980
80-235	2-Pyridinamine, *N*, *N*-dimethyl	45 FR 65034 (10/1/80)	Nov 27, 1960
80-236	Generic name: Aliphatic polyurethane water-borne dispersion	45 FR 63347 (9/24/80)	Nov 27, 1950
80-237	Generic name: Aliphatic polyurethane water-borne dispersion	45 FR 63347 (9/24/80)	Dec. 1, 1980
80-238	Generic name: Glycerine, 1-alkanoate, 3-substituted alkanoate	45 FR 65662 (10/3/80)	Dec. 2, 1980.
80-239	2,2,4-Trimethyl-1,3-pentanediol, trimethylolpropane, succinic anhydride, adipic acid, isophthalic acid.	45 FR 63919 (9/26/80)	Dec. 2, 1980
80-240	Generic name: Ethene-alkene-vinyl carbonyl amine polymer	45 FR 65030 (10/1/80)	Dec. 1, 1980
80-241	Generic name: Polyurethane polyacrylic polymer	45 FR 63345 (9/24/80)	Dec. 3, 1980
80-242	M(2-Hydroxypropyl)-*N*-tris(5-hydroxy-2-oxopentyl)-ammonium acetate	45 FR 64245 (9/29/80)	Dec. 4, 1980
80-243	2,2,4-Trimethyl-1,3-pentanediol, trimethylolpropane, succinic anhydride, tremellitic anhydride, adipic acid, and isophthalic acid.	45 FR 65033 (10/1/80)	Dec. 7, 1960
80-244	1-Nitronaphthalene-6-sulfonic acid, potassium salt	45 FR 65029 (10/1/80)	Dec. 7, 1980
80-245	1-Nitronaphthalene-7-sulfonic acid, potassium salt	45 FR 65029 (10/1/80)	Dec. 7, 1980
80-246	Generic name: Disubstituted heptadecane	45 FR 65032 (10/1/80)	Dec. 7, 1980.
80-247	Generic name: Aliphatic diol	45 FR 65032 (10/1/80)	Dec. 7, 1980

II. Premanufacture Notices Received Previously and Still Under Review at the End of the Month—Continued

80-248	Azelaic acid, 1,4-cyclohexanedimethanol, dimer acid, dimethylol propionic acid, methylene-bis (cyclohexyl isocyanate), neopentyl glycol, trimethylolpropane polymer.	45 FR 65033 (10/1/80)	Dec. 8, 1980.
80-249	Generic name: Aliphatic polyurethane water-borne dispersion	45 FR 65034 (10/1/80)	Dec. 9, 1980.
80-250	Propylene glycol, ethylene glycol terephthalic acid polymer, phthalic anhydride,	45 FR 65664 (10/3/80)	Dec. 11, 1980.

PMN No.	Manufacturer	Chemical identity	FR citation
	IV. New Substances Added to the Inventory During the Month		
80-33	Sherwin Williams	Vegetable oil fatty acid ester	45 FR 23509 (4/7/80)
80-68	Cook Paint and Varnish Company	Caprolactone, ethylacrylate, hydroxypropylmethyl acrylate, styrene	45 FR 27007

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II. Premanufacture Notices Received Previously and Still Under Review at the End of the Month—Continued

80-248	Azelaic acid, 1,4-cyclohexanedimethanol, dimer acid, dimethylol propionic acid, methylene-bis (cycloheryl isocyanate), neopentyl glycol, trimethylolpropane polymer.	45 FR 65033 (10/1/80)	Dec. 8, 1980.
80-249	Generic name: Aliphatic polyurethane water-borne dispersion	45 FR 65034 (10/1/80)	Dec. 9, 1980.
80-250	Propylene glycol, ethylene glycol terephthalic acid polymer, phthalic anhydride, and maleic anhydride.	45 FR 65664 (10/3/80)	Dec. 11, 1980.
80-251	Generic name: Carbomonocyclic, carbopolycyclic polyester	45 FR 69293 (10/20/80)	Dec. 11, 1980.
80-252	Generic name: Acryloxyethylheteromonocycle	45 FR 67449 (10/10/80)	Dec. 15, 1980.
80-253	Coconut fatty acids, benzoic acid, isophthalic acid, neopentyl glycol, propylene glycol.	45 FR 87450 (10/10/80)	Dec. 15, 1980.
80-254	Generic name: Dimer fatty acid polyamide	45 FR 67450 (10/10/80)	Dec. 15, 1980.
80-255	1-Octanamine, *N, N*-dimethyl-, phosphate salt	45 FR 67751 (10/14/80)	Dec. 16, 1980.
80-256	Generic name: Methylazinylcarbonylimino oloyl trimido disophorone poly(propylene glycol).	45 FR 73127 (11/4/80)	Dec. 17, 1980.
80-257	Generic name: Unsaturated branced chain hydrocarbon having 10 carbon atoms	45 FR 67761 (10/14/80)	Dec. 17, 1980.
80-258	Generic name: Unsaturated branched chain ketone having 12 carbon atoms	45 FR 67761 (10/14/80)	Dec. 17, 1980.
80-260	Generic name: Neutralized polymer of styrene, alkyl acrylates, and substituted alkyl methacrylates	45 FR 69293 (10/20/80)	Dec. 18, 1980.
80-261	Polymer of: Palm oil, coconut oil pentaerythritol, benzoic acid, phthalic anhydride, and maleic anhydride.	45 FR 71419 (10/28/80)	Dec. 21, 1980.
80-262	Generic name: Fatty acids, esters with polyols	45 FR 71416 (10/28/80)	Dec. 21, 1980.
80-263	Linseed oil, styrene, glycerine, toluene diisocyanate	45 FR 73130 (11/4/80)	Dec. 22, 1980.
80-264	Benzenamine, [*N*-(1-methylhexylidene)-*N*'-(1-methyl butylidene)-4,4-methylene bis].	45 FR 73127 (11/4/80)	Dec. 25, 1980.
80-265	Generic name: Di (substituted alkyl) carbomonocyclic dicarboxylate	45 FR 73125 (11/4/80)	Dec. 25, 1980.
80-266	Generic name: Polymer of alkanedioic acids, 2-ethyl-2-[hydroxymethyl)-1,3-propanediol 2,2-dimethyl 1-1,3-propanediol.	45 FR 73125 (11/4/80)	Dec. 25, 1980.
80-267	Generic name: Substituted phenol, reaction products with sulfur chloride	45 FR 72785 (11/3/80)	Dec. 28, 1980.
80-268	Generic name: Esterified polyamic acid	45 FR 70107 (10/22/80)	Dec. 28, 1980.
80-269	Generic name: Dinecalkyl ester of glycerine	45 FR 74558 (11/10/80)	Dec. 28, 1980.
80-270	Polymer of glycidyl methacrylate, hydroxy propyl methacrylate, 12-hydroxy stearic acid, methacrylic acid, methyl methacrylate polymer.	45 FR 74558 (11/10/80)	Dec. 28, 1980.

III. Premanufacture Notices for Which the Notice Review Period Has Ended During the Month: (Expiration of the Notice Review Period Does Not Signify That the Chemical Has Been Added to the Inventory)

80-157	Generic name: Halogenated polyimide	45 FR 51264 (8/1/80)	Oct. 4, 1980.
80-158	Polymer of: Epoxy resin, maleic anhydride, butanol, styrene, methacrylic acid	45 FR 51264 (8/1/80)	Oct. 4, 1980
80-159	Generic name: Resin from monocarboxylic acids, polyhydric alcohols, dibasic acid anhydride, polycarboxylic acid anhydride, and a silicone resin.	45 FR 56433 (8/25/80)	Oct. 5, 1980.
80-160	Generic name: Hydrolyzed starch-poly-(acrylonitrile) copolymer	45 FR 51262 (8/1/80)	Oct. 6, 1980.
80-161	Polymer of: 2,2-dimethyl; 1,3 propanediol; 2,2,4-trimethyl, 1,3-pentanediol; butendioic acid.	45 FR 51646 (8/4/80)	Oct. 6, 1980.
80-162	Generic name: Lignosulfonate reaction product with an alkenoic acid and an inorganic salt.	45 FR 51274 (8/1/80)	Oct. 6, 1980.
80-163	Generic name: Monosubstituted dialkyl aniline	45 FR 51910 (8/5/80)	Oct. 13, 1980.
80-164	Generic name: Disubstituted indole	45 FR 51910 (8/5/80)	Oct. 13, 1980.
80-165	Ethanedioic acid, di-*N*-butyl ester	45 FR 51272 (8/1/80)	Oct. 13, 1990.
80-166	Generic name: Carbocyanine dye	45 FR 51908 (8/5/80)	Oct. 13, 1990.
80-167	Generic name: Arylhydrazide	45 FR 51908 (8/5/80)	Oct. 13, 1980.
80-168	Generic name: Disubstituted pyrazoloquinazolone	45 FR 51908 (8/5/80)	Oct. 13, 1980.
80-169	Generic name: Disubstituted pyrazoloquinazolone carboxaldehyde	45 FR 51908 (8/5/80)	Oct. 13, 1980.
80-170	Zinc dibutyl dithiocarbamate dibutylamine complex	45 FR 54423 (8/15/80)	Oct. 14, 1990.
80-171	Generic name: Polyester plasticizer	45 FR 54422 (8/15/80)	Oct. 14, 1980.
80-172	Generic name: Polyisobutenyl succinic anhydride reaction products with substituted ethanol.	45 FR 52241 (8/6/80)	Oct. 14, 1990.
80-174	Generic name: Polyester reaction product with toluene diisocyanate acrylate terminated.	45 FR 52243 (8/5/80)	Oct. 15, 1990
80-175	Generic name: Alkyd resin polymer, fatty acid, and urethane modified	45 FR 54420 (8/15/80)	Oct. 16, 1990.
80-176	Generic name: Oxirane, polymer with methyl oxirane, 1,1'-methylenebis(4-isocyanatocyclohexane), and (2-hydroxyethyl)-2-propenoate.	45 FR 54422 (8/15/80)	Oct. 19, 1980.
80-177	Generic name: Oxirane, polymer with methyl oxirane, 1,3-diisocyanatomethylbenzene, and (2-hydroxyethyl)-2-propenoate.	45 FR 54422 (8/15/80)	Oct. 19, 1980.
80-178	Generic name: Isocyanate terminated urethane prepolymer	45 FR 52445 (8/7/80)	Oct. 19, 1980.
80-179	Generic name: Polymer of mixed alkyl acrylates	45 FR 53866 (8/13/80)	Oct. 19, 1980.
80-189	Generic name: Polymer of: Carbomonocyclic carboxylic acid, alkanediol, 2,5-furandiol.	45 FR 58200 (9/2/80)	Oct. 22, 1980.
80-181	Benzenemethanaminium, ar-bromoethenyl-*N,N,N*-trimethylchloride (or sulfate), polymer with diethenylbenzene, diisopropenylbenzene, and 2-methyl-1,3-butadiene	45 FR 54423 (8/15/80)	Oct. 19, 1980.
80-183	Generic name: Dimethylaminopropyl fluoroalkyl adducts	45 FR 58677 (9/4/80)	Oct. 22, 1980.
80-184	Polymer of: Castor oil fatty acid, benzoic acid, epoxy resin, fumaric acid, styrene, and *N,N*-dimethyl ethanol amine.	45 FR 56429 (8/25/80)	Oct. 28, 1980
80-185	Generic name: Polymer of hydroxyethyl acrylate, styrene, 2-ethylhexyl acrylate, alkyl methacrylate, substituted alkyl acrylate, and alkyl mercaptan.	45 FR 58189 (9/2/80)	Oct. 28, 1980
80-186	*N*-Methyl-2,4-dinitro-*N*-phenyl 6-(trifluoromethyl) benzeneamine	45 FR 54425 (8/15/80)	Oct. 28, 1980.
80-187	Generic name: 1-Amino-4-substituted-9,10-dihydro-9,10-dioxo-2-anthracenesulfonic acid.	45 FR 54854 (8/18/80)	Oct. 28, 1980.
80-188	Generic name: Primary amyl nitrates	45 FR 55268 (8/19/80)	Oct. 28, 1980.

PMN No.	Manufacturer	Chemical identity	FR citation
IV. New Substances Added to the Inventory During the Month			
80-33	Sherwin Williams	Vegetable oil fatty acid ester	45 FR 23509 (4/7/80).
80-68	Cook Paint and Varnish Company	Caprolactone, ethylacrylate, hydroxypropylmethyl acrylate, styrene acrylic acid polymer.	45 FR 27007 (4/22/80).
80-127	Claimed confidential business information (CBI)	Generic Name: Polymer product of an acrylate ester and a polyhydroxy compound.	45 FR 42012 (6/23/80).
80-129	General Printing and Ink, Inc., Co	Generic Name: Poly (amide-ester) resin X2-669	45 FR 44394 (7/1/80).
80-130	General Printing and Ink, Inc. Co	Generic Name: Poly (amide-ester) resin X2-600	45 FR 44394 (7/1/80).
80-131	Minnesota Mining and Minerals (3M)	2-[2-[4-(2-hydroxyethoxy) phenyl] ethenyl]-4, 6-bis (trichchloromethyl)-1,3,5-triazine.	45 FR 43461 (6/27/80).
80-139	CBI	Generic Name: Polymer of epon 1044, soya fatty acid, sodium carbonate, styrene, acrylic acid, di-tertiary butyl peroxide	45 FR 46199 (7/9/80).
80-157	Du Pont	Generic Name: Halogenated polyimide	45 FR 51264 (8/1/80).
80-175	McCloskey Varnish Company of the West	Generic Name: Alkyd resins polymer, fatty acid and urethane modified	45 FR 54420 (8/15/80).

[FR Doc. 80-40121 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-31-M

[OPP-180532; PH-FRL 1712-7]

Department of Agriculture; Crisis Exemption for Methyl Bromide on Kiwi Fruit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA gives notice that the Plant Health Inspection Service, U.S. Department of Agriculture (USDA), has availed itself of a crisis exemption for the use of methyl bromide to fumigate approximately 108,368 pounds of kiwi fruit to treat *Pachybrachius pacificus* (Lygaeidae) and another insect of the Lygaeidae species.

DATE: Treatment began on September 24, 1980, and has ended.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-107, 401 M St. SW., Washington, D.C. 20460 (202-426-0223).

SUPPLEMENTARY INFORMATION: USDA informed EPA on September 29, 1980, that it had begun treatment on September 24, 1980, of two lots of kiwi fruit, weighing approximately 108,368 pounds, with methyl bromide at 3 pounds active ingredient for 2 hours at normal atmospheric pressure. The fumigation was to treat *Pachybrachius pacificus* (Lygaeidae) and another insect of the Lygaeidae species found in a kiwi fruit shipment at the Port of Los Angeles, California. While USDA anticipated that residues of inorganic bromine in or on kiwi fruit from the treatment would not exceed 25 parts per million, fruit samples were collected for residue analysis.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136)).

Dated: December 17, 1980.

Robert V. Brown,

Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-40124 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

[OPTS-51181; TSH-FRL 1712-8]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN'S and provides a summary of each.

DATE: Written comments by January 2, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: George Bagley, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-210, 401 M St., SW., Washington, DC 20460 (202-426-3936).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50444-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim

confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential

Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: December 18, 1980.

of the product is also expected, except for minimal amounts of scrap material which will be either incinerated or buried in a sanitary landfill.

PMN 80-315

The following summary is taken from

which will be either incinerated or buried in a sanitary landfill.

[FR Doc. 80-40123 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-31-M

[PF-210; PH-FRL 1712-3]

Commodity	Parts per million
Barley, forage	5
Barley, grain	1.5
Barley, straw	8
Cattle, fat, meat, and mbyp (except kidney)	0.05
Cattle, kidney	0.10
Eggs	0.05

Louisiana, Missouri, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. This permit is being issued with the limitation that all treated crops are destroyed or used for research purposes only.

Persons wishing to review the

confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the PMN submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before January 2, 1981, submit to the Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St., SW., Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51181]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: December 18, 1980.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80–314

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. February 1, 1981.

Manufacturer's Identity. Ciba-Geigy Corp., Plastics and Additive Division, Ardsley, NY 10502.

Specific Chemical Identity. 2,4-Bis[(4-(*N*-cyano-*N*-phenylsulfonylamino)phenyl)methyl]-*N*-cyano-*N*-phenylsulfonylbenzenamine; 4,4'-methylenebis(*N*-cyano-*N*-phenylsulfonylbenezenamine); and 4,4'-methylenebis[2-[(4-(*N*-cyano-*N*-phenylsulfonylamino)phenyl)-methyl]-*N*-cyano-*N*-phenylsulfonylbenzenamine].

Use. The manufacturer states that these materials are precursors for the fabrication of high performance articles for the aerospace industry and military applications.

Production Estimates. Claimed confidential business information.

Physicol Properties

Melting point—80–95°C.

Solubility—Readily soluble in most ketones and alcohols; insoluble in water.

Appearance—Light yellow granules.

Toxicity Data

Acute oral toxicity, LD_{50} (rats)—>7,000 mg/kg

Acute dermal toxicity, LD_{50} (rats)—>3,000 mg/kg .

Eye irritation (rabbits)—Minimally irritating.

Skin irritation (rabbits)—Minimally irritating to intact and abraded skin.

Exposure. Manufacture. The submitter states that the manufacture for the most part takes place in a closed system and that direct worker exposure to the starting materials is not anticipated. Appropriate safety equipment is provided workers during the process.

Use. Ciba-Geigy states that consumer and commercial user exposure is non-existent.

Environmental Release/Disposal. Ciba-Geigy states that during the first three years at maximum production volume, no product release to the air, land, or water is anticipated; that in users' sites not controlled by the manufacturer, no environmental release of the product is also expected, except for minimal amounts of scrap material which will be either incinerated or buried in a sanitary landfill.

PMN 80–315

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. February 1, 1981.

Manufacturer's Identity. Ciba-Geigy Corp., Plastics and Additive Division, Ardsley, NY 10502.

Specific Chemical Identity. 4,4'-Methylenebis(*N*-cyanobenzenamine); 2,4-bis[(4-(*N*-cyanoamino)phenyl)methyl]-*N*-cyanobenzenamine; and 4,4' methylenebis[2-[(4-(*N*-cyanoamino)phenyl)methyl]-*N*-cyanobenzenamine].

Use. The manufacturer states that these materials are precursors for the fabrication of high performance articles for the aerospace industry and military applications.

Production Estimates. Claimed confidential business information.

Physicol Properties

Melting point—None, polymerizes.

Solubility—Readily soluble in most ketones and alcohols; insoluble in water.

Appearance—Pale yellow powder.

Toxicity Data

Acute oral toxicity, LD_{50} (rats)—5,000 mg/kg.

Acute dermal toxicity, LD_{50} (rats)—>3,170 mg/kg.

Eye irritation (rabbits)—Slightly irritating

Skin irritation (rabbits)—Minimally irritating to intact and abraded skin.

Skin sensitization (guinea pigs)—Sensitizing potential in albino guinea pigs.

Exposure. Manufacture. The submitter states that the manufacture for the most part takes place in a closed system and that direct worker exposure to the starting materials is not anticipated. Appropriate safety equipment is provided workers during the process.

Use. Ciba-Geigy states that consumer and commercial user exposure is non-existent.

Environmental Release/Disposal. Ciba-Geigy states that during the first three years at maximum production volume, no product release to the air, land, or water is anticipated; that in users' sites not controlled by the manufacturer, no environmental release of the product is also expected, except for minimal amounts of scrap material which will be either incinerated or buried in a sanitary landfill.

[FR Doc. 80-40123 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-31-M

[PF-210; PH-FRL 1712-3]

Dow Chemical Co.; Filing of Pesticide and Food Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that Dow Chemical Co. has filed requests with the EPA to establish a tolerance and a food additive regulation for the herbicide 3,6-dichloropicolinic acid.

ADDRESS: Written comments and inquiries should be directed to: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–351, 401 M St. SW., Washington, D.C. 20460.

Written comments may be submitted while a petition is pending before the agency. The comments are to be identified by the document control number "[PF–210]" and the specific petition number. All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort (202–755–1397).

SUPPLEMENTARY INFORMATION: EPA gives notice that the Dow Chemical Co., U.S.A., Agricultural Products Dept., P.O. Box 1706, Midland, MI 48640, has submitted a pesticide and a food additive petition to establish tolerances and a regulation for the herbicide 3,6-dichloropicolinic acid in or on certain raw material commodities and a food item, in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each specific petition.

FAP 1H5280. Dow Chemical. Proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of the herbicide 3,6-dichloropicolinic acid on the commodity milling fractions (except flour) of wheat at 5 parts per million (ppm).

PP 1F2439. Dow Chemical. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the herbicide 3,6-dichloropicolinic acid in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, forage	5
Barley, grain	1.5
Barley, straw	8
Cattle, fat, meat, and mbyp (except kidney)	0.05
Cattle, kidney	0.10
Eggs	0.05
Hogs, fat, meat, and mbyp	0.05
Horses, fat, meat and mbyp	0.05
Milk, whole	0.05
Oats, forage	5
Oats, grain	2
Oats, straw	5
Poultry, fat, meat, and mbyp	0.05
Sheep, fat, meat, and mbyp	0.05
Wheat, forage	5
Wheat, grain	1.5
Wheat, straw	8

The proposed analytical method for determining residues is by gas chromatography.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 135); 40(b)(5), 72 Stat. 1788, (21 U.S.C. 348))

Dated: December 18, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-40122 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50514; PH-FRL 1713-2]

ICI Americas; Issuance of Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued an experimental use permit to ICI Americas to use the insecticide cypermethrin [(±) a-cyano-(3-phenoxyphenyl)methyl(±)-*cis, trans*-3-(2,2-dichloro-ethenyl)-2,2-dimethylcyclopropanecarboxylate on cotton to evaluate control of various insects.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–341, 401 M St. SW., Washington, D.C. 20460, (202–755–1150).

SUPPLEMENTARY INFORMATION: EPA has issued an experimental use permit to ICI Americas, Concord Pike & New Murphy Road, Wilmington, DE 19897. This experimental use permit number 10182–EUP–19 allows the use of 900 pounds of the insecticide cypermethrin[(±) a=cyo-ro=(3 phenoxyphenyl)n methyl (±)*cis,trans*-3-(2,3-dichloroethenyl)-2,2-dimethylcyclopropane-carboxylate] on cotton to evaluate control of various insects. A total of 450 acres are involved. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Missouri, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. This permit is being issued with the limitation that all treated crops are destroyed or used for research purposes only.

Persons wishing to review the experimental use permit are referred to the Product Manager. Inquiries regarding this permit should be directed to the person given above. It is suggested that interested persons call before visiting the EPA Headquarters office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: December 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-40132 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-C31042 PH-FRL 1712-4]

National Chemsearch; Application To Conditionally Register a Pesticide Product Entailing a Changed Use Pattern

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: National Chemsearch, A Division of NCH Corp., has submitted an application to conditionally register a pesticide product, HK-7, entailing a changed use pattern.

DATE: Written comments must be received by January 23, 1981.

ADDRESS: Written comments to: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-351, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort (202–755–1397).

SUPPLEMENTARY INFORMATION: National Chemsearch, A Division of NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062, has submitted to the EPA an application to conditionally register the pesticide product HK-7 herbicide (EPA Reg. No. 1769–EOI) containing the active ingredients: Heavy Aromatic Naphtha at 92.17 percent, Tetrachloroacetic Acid at 3.50 percent, and Bromacil (5-bromo-3-sec-butyl-6-methyluracil) at 0.90 percent. The ingredient tetrachloroacetic acid has not previously been registered for the use sites proposed.

The product is proposed for general use on outdoor/noncropland, such as loading ramps, fence rows, railroad sidings, storage yards, parking lots, around buildings, and industrial plant sites.

(Sec. 3(c)(5), 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: December 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-40131 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50515; PH-FRL 1713-1]

Issuance of Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued an experimental use permit to Rohm and Haas Co. to use the insecticide permethrin [3-phenoxybenzyl (±)-*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] on cotton to evaluate control of various insects.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–341, 401 M St. SW., Washington, D.C. 20460, (202–755–1150).

SUPPLEMENTARY INFORMATION: EPA has issued an experimental use permit to Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105. This experimental use permit number 5481–EUP–20 allows the use of 1,000 pounds of the insecticide permethrin [3-phenoxybenzyl (±)-*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] on cotton to evaluate control of various insects. A total of 1,000 acres are involved. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas. This permit is being issued with the limitation that all treated crops are destroyed or used for research purposes only.

Persons wishing to review the experimental use permit are referred to the Product Manager. Inquiries regarding this permit should be directed to the person given above. It is suggested that interested persons call before visiting the EPA Headquarters office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: December 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-40130 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

use by other sources during the two-year extension period.

Since this extension will affect only Unit 1 of the Patriot Station, only the consumption of PSD increment from Unit 1 is affected by this extension

covered by the notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's

activities and related public involvement which may influence public response concerning the proposal identified in the draft EIS. These activities include: (1) National recreation area study, (2) land management planning, (3) Shawnee NF Charette, (4) RARE II and (5) clarification of the prospecting

The product is proposed for general use on outdoor/noncropland, such as loading ramps, fence rows, railroad sidings, storage yards, parking lots, around buildings, and industrial plant sites.

Notice of approval or denial of this application to conditionally register the pesticide product will be announced in the **Federal Register.** Except for such material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136), the test data and other scientific information deemed relevant to the registration decision may be made available after approval, under provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the **Federal Register** if an application is approved. Notice of receipt of this application does not indicate a decision by the agency on the application.

Interested persons are invited to submit written comments on this application. Comments may be submitted, and inquiries directed, to the Product Manager. The comments must be received on or before January 23, 1981, and should bear a notation indicating the document control number "[OPP-C31042]" and the registration number "1769-EOI." comments received within the specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. The label furnished by the applicant, as well as all written comments filed pursuant to this notice, will be available for public inspection in the Product Manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(40 CFR 162.5 and 162.6).

Dated: December 18, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-40125 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-32-M

[A-5-FRL 1699-3]

Proposed Extension of Prevention of Significant Deterioration Permit for Indianapolis Power and Light Co., Patriot Station

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed PSD Permit Extension.

SUMMARY: This notice solicits public comments on a proposal to grant a two year extension to the Indianapolis Power and Light Company (IPALCO) for the commencement of construction of Unit 1 the Patriot Station in Switzerland County, Indiana. USEPA is proposing this action based upon review of the request submitted by IPALCO. USEPA is soliciting public comment regarding this proposed action.

DATE: Comments on this proposed action must be received on or before January 23, 1981.

ADDRESSES: Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

The request filed by IPALCO for this action is on file at the above address. This information may be inspected and copies made during normal business hours.

FOR FURTHER INFORMATION CONTACT: Richard Clarizio, Regulatory Anaylsis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Phone: (312) 886-6035.

SUPPLEMENTARY INFORMATION: On December 14, 1979, USEPA granted IPALCO a Prevention of Significant Deterioration (PSD) permit to construct three, 650 megawatt, coal fired units at the Patriot Station in Switzerland County, Indiana. The notice announcing this approval appeared in the **Federal Register** on January 10, 1980 (45 FR 2095). The units are to be located near Patriot, Indiana along the Ohio River near mile post 516 in an area known as Mexico Bottom. On June 20, 1980, IPALCO requested from USEPA a two year extension of the date of commencement of construction of the first unit. The company's PSD permit now requires construction on Unit 1 to commence no later than June 14, 1981. If construction does not commence by that date, the company's PSD permit for the three units will become invalid. The company has requested that the date for commencement of construction be extended to June 14, 1983.

In its June 20, 1980, letter to USEPA, the company stated that, due to unforseen circumstances, it forecasts a reduction in demand for electrical generating capacity. The letter cites economic recession, mandatory thermostat settings, oil price hikes, increased availability of natural gas and other factors as reasons for the reduced demand. In support of its request that the date be extended and its current PSD permit remain effective, the company noted the expense of siting studies, land purchases, environmental studies, and engineering designs necessary to obtain new permits that would be required if the company's current permit became invalid. The company additionally noted the long history of the federal permitting process for its current PSD permit.

USEPA has reviewed IPALCO's request and is proposing to grant the request for an extension of the commencement date for Unit 1 to June 14, 1983. This extension is consistent with the authority found at 40 CFR 52.21(r)(2), 45 FR 52741 (Aug. 7, 1980). That section provides for an extension of the date for commencement of construction on the first unit of a phased construction project if a satisfactory showing is made that an extension is justified.

USEPA has not yet developed general policy guidance on what circumstances are adequate to justify an extension under § 52.21(r)(2). In the particular case of IPALCO, however, USEPA has concluded that the unforeseen reduction in consumer demand is sufficient justification for an extension of the commencement date for Unit 1. USEPA believes it would be unwise to require the company to proceed with construction absent the need for additional electrical capacity. At the same time, USEPA believes that as long as IPALCO remains committed to proceeding with the construction, it would be wasteful of both the company's and Agency's resources to invalidate the company's present PSD permit and require another PSD review of the project during the next two years. As noted, IPALCO has already gone through a prolonged permit process that resulted in a requirement for 91% control of sulfur dioxide emissions through flue-gas desulfurization methods. Because the company has indicated its intention to proceed with the project in two years and USEPA believes the company's projected reduction in demand is reasonable, USEPA has concluded an extension of the commencement date on Unit 1 is justifiable.

USEPA recognizes that the proposed extension will allow IPALCO to retain for an additional two years that portion of the sulfur dioxide PSD increments which are projected to be consumed by Unit 1. USEPA modeling show that unit 1 consumes 111.1 micrograms per cubic meter (three hour average) of an available 512 micrograms and 20 micrograms per cubic meter (twenty-four hour average) of an available 91 micrograms. As a result, that portion of the increment will be unavailable for use by other sources during the two-year extension period.

Since this extension will affect only Unit 1 of the Patriot Station, only the consumption of PSD increment from Unit 1 is affected by this extension proposal. IPALCO has not requested an extention for UNITS 2 and 3 and, in any event, USEPA's regulation provide only for extensions of commencement dates for the first unit of a phased construction project. 40 CFR 52.21(r)(2). It should also be noted that further extensions of the commencement date for Unit 1 are unlikely.

USEPA solicits comments from the State of Indiana as to the appropriateness of the proposed extension as it may effect the desired use of the PSD increment. USEPA solicits public comment on whether any problems will arise for other sources, or surrounding States, due to IPALCO's retention of the increment during the two-year period.

Dated: November 21, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-40149 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-38-M

[ER-FRL-1714-3]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review (A-104), U.S. Environmental Protection Agency.

PURPOSE: This notice lists the environmental impact statements (EIS's) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of December 15, 1980 to December 19, 1980.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from December 24, 1980 and will end on February 9, 1981. The 30-day review period for final EIS's as calculated from December 24, 1980 will end on January 23, 1981.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this notice you should contact the Federal agency which prepared the EIS. This notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following source:

Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209, (703) 558-8270.

SUMMARY OF NOTICE: This Notice sets forth a list of EIS's filed with EPA during the week of December 15, 1980 to December 19, 1980. The Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and county(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number, if available, is listed in this notice. Commenting entities on draft EIS's are listed for final EIS's. All additional information relating to EIS's such as time extensions or reductions of prescribed review periods, withdrawals, retractions, corrections or supplemental reports is also noticed under the appropriate agency.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 245-3006.

Dated: December 22, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104).

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412-A, Admin. Building, Washington, D.C. 20250; (202) 447-3965.

Forest Service

Draft Supplement

FLUORSPAR PROSPECTING, LUSK CREEK, SHAWNEE NF (DS-1): Pope County, Ill., December 15: This EIS supplements a draft EIS No. 770787 filed with CEQ on 6-24-77. The purpose of this supplement is to update the environmental process prior to preparation of the final EIS for the fluorspar prospecting in the Lusk Creek area of the Shawnee National Forest in Pope County, Illinois. Specifically, highlighted are the activities and related public involvement which may influence public response concerning the proposal identified in the draft EIS. These activities include: (1) National recreation area study, (2) land management planning, (3) Shawnee NF Charette, (4) RARE II and (5) clarification of the prospecting permits and mining lease process (USDA-FS-R9-DES-AMD-77-06). (EIS Order No. 800961.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of the Chief of Engineers, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314; (202) 272-0121.

Draft

AGAT SMALL BOAT HARBOR AT NIMITZ BEACH: Guam, December 16: Proposed is the improvement of commercial and recreational boating for the Agat, Guam area at Nimitz Beach. The corps has conducted studies in cooperation with the territory of Guam and has proposed four alternative plans of improvement for detailed investigation all north of Nimitz Beach Park. The Fish and Wildlife Service is a cooperating agency (Honolulu District). (EIS Order No. 800964.)

EXTENSION: The review period for the above EIS has been extended to February 13, 1981 (No. 800964).

MISSOURI RIVER BANK STAB/NAV PROJECT, MITIGATION: Several counties in Missouri, Kansas, and Nebraska, December 17: Proposed are plans to mitigate the impacts to fish and wildlife resources resulting from construction, operation and maintenance of the Missouri River Bank Stabilization and Navigation Project located in the States of Missouri, Nebraska, Kansas and Iowa. Three alternatives to the proposed mitigation plan have been presented including the no action analysis. The U.S. Fish and Wildlife Service is a cooperating agency (Kansas City District). EIS Order No. 800967.)

EXTENSION: The review period for the above EIS has been extended to March 1, 1981 (No. 800967).

Final

WALTER F. GEORGE LAKE, LOCK AND DAM, O/M: Several counties in Georgia and Alabama, December 16: Proposed is the operation and maintenance of the Walter F. George Lake, Lock and Dam located on the Chattahoochee River between Clay County, Georgia and Henry County, Alabama. The surrounding impoundment area of the dam also includes Quitman, Stewart and Chattahoochee Counties in Georgia and Barbour and Russell Counties in Alabama. The facilities will include a powerhouse, lock dam and reservoir, including associated buildings, water quality monitors, access roads, public use areas, and boat channels. The portion of the Chattahoochee River involved extends from Columbus, Georgia to 20 miles below the dam (Mobile District). Comments made by: EPA, DOI, DOC, HEW, FERC, USDA, DOT, State agencies. (EIS Order No. 800965.)

Report

O/M, SAULT STE. MARIE, SOO LOCKS CLOSURE (REPORT): Chippewa County, Mich., December 18: This report provides supplemental information to the final supplemental EIS No. 791103 filed 10-26-79. The report discusses the closure of operation

EXTENSION: The review period for the above EIS has been extended to February 10, 1981 (No. 800966).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban

FISH AND WILDLIFE COORDINATION ACT, IMPLEMENTATION: Regulatory, December 15: Proposed is the promulgation of regulations prescribing procedures for uniform compliance with the Fish and Wildlife Coordination Act (FWCA). Such regulations are required by the President's water policy directives. Four alternatives are

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of a new terminal I and west terminal, (4) additions and modifications to existing terminal 2, (5) construction of structures and support facilities, (6) construction of aircraft parking aprons, (7) addition of an upper level to World Way, (8) construction of new parking structures, (9) modifications to all ticketing buildings, (10) access improvements,

to evaluate the control of cotton insects on cotton.

ADDRESS: Written comments in response to this application may be submitted to: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division, (TS-767), Office of Pesticide

Agency, Room E-208, Washington, DC 20460, (202-426-8815).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must

Report

O/M, SAULT STE. MARIE, SOO LOCKS CLOSURE (REPORT): Chippewa County, Mich., December 18: This report provides supplemental information to the final supplemental EIS No. 791103 filed 10–26–79. The report discusses the closure of operation of the Soo Locks complex to approximately 31 December 1980. This action is for the 1980 season only and does not alter the conclusions reached in the EIS process (North Central Division). (EIS Order No. 800974.)

ENVIRONMENTAL PROTECTION AGENCY

Draft

Contact: RTP Library, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; (919) 541–2777.

SURFACE COATING OF METAL FURNITURE, STANDARDS: Regulatory, December 18: Proposed are standards of performance which would limit emissions of volatile organic compounds from new, modified and reconstructed facilities for surface coating of metal furniture. Various levels of control based on different technologies and degrees of efficiency are expressed as regulatory alternatives (EPA–450/3–80–007A). (EIS Order No. 800972.)

Draft

Contact: Daniel Sullivan, Region II, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007; (212) 264–1858.

OAKWOOD BEACH WATER POLLUTION CONTROL, STATEN ISLAND: New York, December 18: Proposed is the issuance of grant funds for the construction of water pollution control facilities in the Oakwood Beach, South Richmond area of Staten Island, New York. The proposed facilities will abate the discharge of raw sewage at various points along the Staten Island shoreline, eliminate the pollution of groundwater by existing failing subsurface disposal systems and permit the abandonment of approximately six package sewage treatment plants not meeting the effluent permit conditions. (EIS Order No. 800970.)

EXTENSION: The review period for the above EIS has been extended to March 13, 1981 (No. 800970).

Droft

Contact: Steve Torok, Region III, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106; (215) 597–8334.

WASTEWATER TREATMENT FACILITIES, GETTYSBURG: Adams County, Pa., December 17: Proposed is the issuance of grant monies to design and construct a regional sewerage system in the Gettysburg area of Adams County, Pennsylvania. The analysis presented includes defining existing and expected need for improved wastewater management, developing and analyzing alternative ways of meeting those needs, and investigating measures which would minimize the potential adverse impact to the resources of the Gettysburg National Park. Several alternatives are presented including structural and nonstructural measures. (EIS Order No. 800966.)

EXTENSION: The review period for the above EIS has been extended to February 10, 1981 (No. 800966).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410; (202) 755–6300.

Draft

LANDEN, DEERFIELD TOWNSHIP, MORTGAGE INSURANCE: Warren County, Ohio, December 18: Proposed is the issuance of mortgage insurance for a new construction residential project known as Landen located in Deerfield Township, Warren County, Ohio. The Landen Farm Company proposes to develop a 1,349-acre site which would have a land use pattern resulting in 2,089 single family residential units and 943 multifamily units. Three alternatives were considered (HUD–RO5–EIS–80–02(D)). (EIS Order No. 800971.)

ROSEWOOD SUBDIVISION, CEDAR HILL, MORTGAGE INSURANCE: Dallas County, Tex., December 17: Proposed is the issuance of mortgage insurance for the development of an approximate 1,030-acre, 2,500-unit subdivision known as Rosewood Subdivision in the city of Cedar Hill in southwest Dallas County, Texas. The alternatives considered include: (1) Those alternatives available to the developer and (2) those alternatives available to HUD such as accept as submitted, accept with conditions/modifications or reject the project from HUD participation (HUD–RO–1–EIS–80–9D). (EIS Order No. 800968.)

EXTENSION: Turtle Creek Subdivision, GA, published FR December 17, 1980—review extended from January 15, 1981 to January 18, 1981 (No. 800947).

CORRECTION: Sunrise Ridge Development, CO, published FR December 17, 1980—extension was published terminating on January 28, 1981 which was incorrect. The review period has been extended until January 26, 1981 (No. 800954).

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of the Interior, Washington, D.C. 20240; (202) 343–3891.

Fish and Wildlife Service

Draft

DISPOSITION/ADMINISTRATION OF CULEBRA AND CULEBRITA: Puerto Rico, December 19: Proposed is the consideration of the disposition and administration of lands declared excess by the U.S. Navy in the Islands of Culebra and Culebrita in Puerto Rico. The proposal considers transferring approximately 1,712 acres of excess lands on Culebra and about 262 acres of national wildlife refuge lands on Culebrita to the Commonwealth of Puerto Rico and/or the U.S. Fish and Wildlife Service. Six alternatives have been evaluated (DES–80–). (EIS Order No. 800975.)

EXTENSION: The review period for the above EIS has been extended to February 23, 1981 (No. 800975).

FISH AND WILDLIFE COORDINATION ACT, IMPLEMENTATION: Regulatory, December 15: Proposed is the promulgation of regulations prescribing procedures for uniform compliance with the Fish and Wildlife Coordination Act (FWCA). Such regulations are required by the President's water policy directives. Four alternatives are analyzed in terms of their projected procedural and operational (direct) effects and their effects on natural resources (indirect). Each alternative considers a different degree or level of regulation. The U.S. Department of Commerce, NOAA, NMFS is a cooperating agency for this EIS (DES 80–76). (EIS Order No. 800960.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Daniel R. Muller, Assistant Director for Environmental Technology, Nuclear Regulatory Commission, Room P–202, Washington, D.C. 20555; (301) 492–7017.

Draft

STEAM GENERATOR REPAIR, TURKEY POINT UNITS 3 AND 4: Dade County, Florida, December 19: Proposed is a program to repair six steam generators in units 3 and 4 of the Turkey Point Plant located in Dade County, Florida. Several alternatives have been evaluated and are presented for review. Additionally the NRC has included an updated safety evaluation for the proposal (Docket Nos. 50–250 and 50–251). (NUREG–0743, NUREG–0756.) (EIS Order No. 800976.)

EXTENSION: The review period for the above EIS has been extended to February 23, 1981 (No. 800976).

ALLENS CREEK NUCLEAR STATION UNIT NO. 1 (DS–2): Austin County, Texas, December 18: This EIS is the second supplement to a final EIS No. 741741 filed with CEQ on 11–19–79 which proposed the issuance of a construction permit to the Houston Lighting and Power Company for the construction of the Allens Creek Nuclear Generating Station Unit No. 1 located in Austin County, Texas. The purpose of this second supplement is to address site alternatives to the proposed Allens Creek site and a proposed means of transporting the reactor pressure vessel to the site (Docket No. 50–446, NUREG–0470 Supp. No. 2). (EIS Order No. 800963.)

EXTENSION: The review period for the above EIS has been extended to February 11, 1981 (No. 800963).

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environment and Safety, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590; (202) 426–4357.

Federal Aviation Administration

Final

LOS ANGELES INTERNATIONAL AIRPORT IMPROVEMENT: Los Angeles County, California, December 18: Proposed is a major improvement program for the Los Angeles International Airport (LAX) located in the city and county of Los Angeles, California. Features of the program include: (1) Rehabilitation of the south airfield complex, (2) construction of taxiways and miscellaneous improvements, (3) construction of a new terminal I and west terminal, (4) additions and modifications to existing terminal 2, (5) construction of structures and support facilities, (6) construction of aircraft parking aprons, (7) addition of an upper level to World Way, (8) construction of new parking structures, (9) modifications to all ticketing buildings, (10) access improvements, and (11) expansion of parking lots. Comments made by: HUD, DOI, DOT, EPA, State agencies, Groups. (EIS Order No. 800973.)

Federal Highway Administration

Draft

BELLEVIEW AVENUE, CO–88, UNIVERSITY BOULEVARD TO I–25: Arapahoe and Denver Counties, Colorado, December 16: Proposed is the improvement of Belleview Avenue, CO–88, to either a four-lane parkway or an improved two-lane facility located in Arapahoe and Denver Counties, Colorado. The proposed project begins at University Boulevard on the west end and terminates in approximately 3 miles at I–25 on the east. Alternatives considered include: (1) Do nothing, (2) an improved existing alternative, (3) an improved two-lane alternative, and (4) a four-lane alternative. (FHWA–COLO–EIS–80–02–D). (EIS Order No. 800962.)

Final

WA–151, CHELAN STATION TO HUGO: Chelan and Douglas Counties, Washington, December 17: Proposed are improvements to and the reconstruction of WA–151 in Chelan and Douglas Counties, Washington. Reconstruction would begin at the south pavement seat of Beebe Bridge and follow the river for 5.3 miles to a connection with existing WA–97. Improvements would include: (1) The connection at Chelan Station, (2) installation of signals, (3) auxiliary stop lanes at railroad crossings, and (4) widening of the existing roadway above Chelan Station. Alternatives considered are: (1) Location, (2) improvement of existing facility, (3) mass transit, (4) no action, (5) postponing action (FHWA–WA–EIS–78–05–F). Comments made by: EPA, COE, DOI, USDA, DOT, State and local agencies. (EIS Order No. 800969.)

[FR Doc. 80–40290 Filed 12–23–80; 8:45 am]

BILLING CODE 6560–37–M

[OPP–50515; PH–FRL 1713–8]

American Hoechst Corp.; Application for an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An experimental use permit application has been received from American Hoechst Corp., of Route 202–206 North, Sommerville, NJ 08876, to use the insecticide tralomethrin; [1R[1(S*)3(RS*)]]-2,2-dimethyl-3—(1,2,2,2,-tetrabromethyl) cyclopropanecarboxylic acid alpha-cyano-3(3-phenoxylphenyl)methyl ester to evaluate the control of cotton insects on cotton.

ADDRESS: Written comments in response to this application may be submitted to: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division, (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–341, 401 M St. SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee (202–755–1150).

SUPPLEMENTARY INFORMATION: American Hoechst Corp. has applied for an experimental use permit. This experimental use permit, file symbol number 8340–EUP–A, proposes the use of 60 pounds of the insecticide to control insects on cotton. It is proposed that the testing be conducted in the States of Alabama, Arkansas, Arizona, California, Georgia, Louisiana, Mississippi, North Carolina, Tennessee, and Texas.

(Sec. 5, 92 Stat. 819, as amended. (7 U.S.C. 136)).

Dated: December 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80–40286 Filed 12–23–80; 8:45 am]

BILLING CODE 6560–32–M

[OPTS–59033A; TSH–FRL 1714–2]

Polymer of: D-Glucose; Acetic Acid; Propanoic Acid, 2–Oxo; Arabinose; D-Mannose; L–Mannose, 6–Deoxy; D-Glucuronic Acid; Approval of Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 27, 1980, EPA received an exemption application for test marketing purposes from Kelco, Division of Merck and Co., Inc. The Test Marketing Exemption (TME) case number assigned to the substance was T80–38. EPA has determined that the manufacturer's test marketing of the chemical substance will not present any unreasonable risk of injury to health or the environment. Therefore, the Agency has granted the manufacturer an exemption from the TSCA premanufacture reporting requirements for test marketing in the manner described in the application. The exemption is effective immediately.

FOR FURTHER INFORMATION CONTACT: Robert W. Jones, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–208, Washington, DC 20460, (202–426–8815).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is one that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(D) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b), to permit them to manfacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present an unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of its disposition in the Federal Register. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On August 27, 1980, EPA received an application from Kelco, Division of Merck and Co. Inc., for an exemption from the requirements of section 5(a) and 5(b) of TSCA, to manufacture a co-polymer of D-glucose; acetic acid; propanoic acid, 2-oxo; arabinose; D-mannose; L-mannose, 6-deoxy; D-glucuronic acid for test marketing purposes.

A Federal Register notice published on September 18, 1980 (45 FR 62199) announced receipt of the exemption application and summarized information submitted by Kelco. The Federal Register notice requested comments on the appropriateness of granting the exemption. However, the agency received no public comments concerning the application. The data submitted indicates some people who come in contact with the TME substance may develop a slight allergic reaction. However, since only a small number of workers, 125, would handle the substance, and they wear protective

equipment, the possibility of this reaction occuring is expected to be minimal. Otherwise review of the TME application raised little or no concern with regard to health and environmental affects from the TME substance.

simultaneously with the processing of test marketing exemption applications, EPA is charged by TSCA with the task of examining a much larger number of premanufacture notices. The health and environmental implications associated

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service

Contract Audit of Transportation Payment Documents; Pre-Solicitation

Agenda: This special meeting is being held to orient new members and to address, in depth, areas relevant to the grant application review process. Included will be the review policies and procedures, program development and plans, committee recommendations and ratings, and guidelines, including review criteria, program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to

Dated: December 17, 1980.

Wayne C. Richey, Jr.,

Acting Executive Secretary, Office of Health Research, Statistics, and Technology

[FR Doc. 80–40052 Filed 12–23–80; 8:45 am]

BILLING CODE 4110–85–M

equipment, the possibility of this reaction occuring is expected to be minimal. Otherwise review of the TME application raised little or no concern with regard to health and environmental affects from the TME substance.

Considering both the toxicity and exposure, the Agency has determined that the manufacture, production, and use of these substances, in the manner described in the test market application, will not present any unreasonable risk to the people who come into contact with it during manufacture, processing, or use. There are no environmental concerns with the release or disposal of these substances. Thus, the Agency has decided to grant a test market exemption to the Kelco, Division of Merck Co. Inc., for the limited manufacture of the substance as described in the test marketing exemption application.

At least 90 days prior to manufacturing the substance listed in the application for commercial purposes other than test marketing or in small quantities solely for research and development activities, the manufacturer must submit a premanufacture notice (PMN) as required under section 5(a) of TSCA. This exemption is granted solely to the applicant of TME T80–38 with the following provisions:

1. That the company not exceed the production amounts specified on the test market application;

2. That worker exposure not exceed the levels specified;

3. That the company only use the TME substance for the purposes described in the Test Market application and in other contacts between EPA and the submitter;

4. That the company maintain records of customers to whom the test market substance has been given or sold and that these records may be inspected by EPA;

5. That each shipment contains a statement informing the recipient that the substance shipped may only be used for the purpose allowed in the exemption;

6. The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which indicates that the substance may present an unreasonable risk of injury to human health or the environment.

Section 5(h)(6) of TSCA requires EPA to approve or deny a test marketing exemption within 45 days of its receipt by the Agency. The 45 day period for this exemption application expired on October 11, 1980. EPA regrets the delay in approving this application. However, simultaneously with the processing of test marketing exemption applications, EPA is charged by TSCA with the task of examining a much larger number of premanufacture notices. The health and environmental implications associated with these notices are generally more significant and widespread than those associated with a test marketing exemption application, requiring EPA to preferentially allocate its very limited resources to the examination of the notices. In the near future EPA will communicate a set of informal guidelines to regulated industry that will help EPA make Test Marketing Exemption Application decisions in a more timely manner.

Dated: December 19, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-40287 Filed 12-23-80; 8:45 am]

BILLING CODE 6560-31-M

FEDERAL MARITIME COMMISSION

[Docket No. 80-84]

Eagle Distributors Inc. v. Matson Navigation Company, Inc.

Notice is given that a complaint filed by Eagle Distributors, Inc. was served December 18, 1980. The complaint alleges that respondent has subjected it to payment of unreasonable and excessive freight charges in violation of section 18(a) of the Shipping Act, 1916 by virtue of assessing charges found by the Commission to be unreasonable in Docket 76–43, *Matson Navigation Company—Proposed Rate Increase in the United States Pacific Coast/Hawaii Trade.*

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 80-10159 Filed 12-23-80; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service

Contract Audit of Transportation Payment Documents; Pre-Solicitation Conference

Notice is hereby given of a conference, prior to soliciation of bids, to address considerations relevant to a proposed procurement by contract of the identification of overcharges on Government paid transportation bills during FY 1982 (October 1, 1981 to September 30, 1982). It will be held at the Office of Transportation Audits, Transportation and Public Utilities Service, on January 15, 1981, at 10 a.m., Room 2006, Chester A. Arthur Building, 425 I Street, NW., Washington, DC. The conference will be devoted to an open discussion concerning the scope and method of the proposed procurement.

Those desiring further information may contact Mr. Lester H. Finotti, Jr., Chief, Special Projects, Transportation Audits Division, Transportation and Public Utilities Service, General Services Administration (202–275–1077).

Dated: December 15, 1960.

John L. Stanberry,

Acting Commissioner, Transportation and Public Utilities Service.

[FR Doc. 80-40145 Filed 12-23-80; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Committee Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of January 1981.

Community Alcoholism Services Review Committee

January 9, 7:00 p.m.—Open; January 10–11, 9:00 a.m.—Open; Bethesda Marriott Hotel, 2 Pooks Hill Road, Bethesda, Maryland 20014.

Contact: Mr. Phillip Dawes, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2473.

Purpose: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) relating to alcoholism service activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: This special meeting is being held to orient new members and to address, in depth, areas relevant to the grant application review process. Included will be the review policies and procedures, program development and plans, committee recommendations and ratings, and guidelines, including review criteria.

Psychiatry Education Review Committee

January 28–30, 9:30 a.m.; Conference Room I, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open—January 28, 9:30 a.m. to 11:30 a.m.

Closed—Otherwise.

Contact: Zebulon Taintor, M.D., or Susan Blumenthal, M.D., Room 9C–02, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4728.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities for physchiatric education to meet mental health services personnel needs in priority areas: services to unserved or underserved populations, geographic areas, or public mental health facilities; to develop linkages with the general health services delivery system and provide mental health training for general health services personnel; and to increase the supply of minority mental health personnel, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:30 to 11:30 a.m. on January 28, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Public Law 92–463 (5 U.S.C. Appendix I).

Mental Health Small Grant Review Committee

January 29–31, 1:30 p.m.; the Gramercy Inn, Parkview and Westview Rooms, 1616 Rhode Island Avenue, N.W., Washington, D.C. 20036.

Open—January 29, 1:30 p.m. to 2:30 p.m.

Closed—Otherwise.

Contact: LaVerl P. Klein, Room 9–104, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843.

Purpose: The Committee is charged with the initial review, based on the scientific and technical merit of applications submitted to the NIMH for Federal assistance of activities for research in all disciplines pertaining to alcohol, drug abuse, and mental health, including psychology, sociology, anthropology, psychiatry, and the biological sciences, and makes recommendations to the National Advisory Councils of the respective Institutes for final review.

Agenda: From 1:30 to 2:30 p.m. on January 29, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members for NIMH will be furnished by Mrs. Uvalda Dowdy, Office of the Associate Director for Extramural Programs, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–4333. For NIAAA: Ms. Helen Garrett, Committee Management Officer, Room 16C–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–2860.

Dated: December 18, 1980.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 80-40050 Filed 12-23-80; 8:45 am]

BILLING CODE 4110-88-M

Office of the Assistant Secretary for Health

National Council on Health Care Technology; Subcommittee on Criteria; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Subcommittee on Criteria of the National Council on Health Care Technology (Council), which was established pursuant to the Health Research, Health Statistics, and Health Care Technology Act of 1978 (Pub. L. 95–623) and which advises the Secretary and the Director of the National Center for Health Care Technology (Center) on the activities of the Center, will convene on Friday, January 9, 1981 at 10:00 a.m. in the board room of the Milbank Memorial Fund, 1 East 75th Street, New York, N.Y. This meeting will be open to the public from 10:00 a.m. to 4:00 p.m. to discuss the business of the Subcommittee. Principal consideration will be given to further discussions regarding the processes for criteria development.

Further information regarding the Council may be obtained by contacting Sharon Paino, Executive Secretary, National Council on Health Care Technology, Room 17A–29, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: December 17, 1980.

Wayne C. Richey, Jr.,

Acting Executive Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 80-40052 Filed 12-23-80; 8:45 am]

BILLING CODE 4110-85-M

National Center for Health Care Technology; Scientific Evaluation of Medical Technology

The National Center for Health Care Technology (Center) announces that it is beginning a scientific evaluation of the clinical safety and effectiveness of intravenous histamine therapy for Meniere's disease, acute and sudden hearing loss, and headache.

Based on this evaluation, a recommendation will be formulated to assist the Health Care Financing Administration in establishing a Medicare coverage policy. Any person or group wishing to provide the Center with information relevant to this evaluation should do so in writing on or before February 23, 1981. To enable the Center's staff to give appropriate consideration to any literature references or analysis of clinical data, a written summary no longer than 10 pages should be attached to any such material submitted.

Written material should be submitted to: National Center for Health Care Technology, Room 17A–29, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

For further information contact: Stephen P. Heyse, M.D., M.P.H., Health Science Analyst, National Center for Health Care Technology, Room 171A–29, Parklawn Building, Rockville, Maryland 20857, (301) 443–4990.

Dated: December 17, 1980.

Wayne C. Richey, Jr.,

Acting Executive Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 80-40051 Filed 12-23-80; 8:45 am]

BILLING CODE 4110-85-M

Health Care Financing Administration

Pharmaceutical Reimbursement Board; Proposed MACs and Announcement of Public Hearing

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: The Pharmaceutical Reimbursement Board proposes maximum allowable cost (MAC) limits on the drugs specified below and announces a public hearing with regard to these proposed MAC limits.

DATES: Hearing—February 12, 1981 (10 a.m.–5 p.m.). End of comment period: January 30, 1981. End of period for submission of requests to appear at the hearing: January 30, 1981.

Interested persons and organizations significantly different prices. The Food and Drug Administration has advised the Board that there is no regulatory action, either pending or under consideration, that would be a reason for delaying or withholding the

Small and medium size independent pharmacies have purchased from the "all other brands" at or below the proposed MAC level.

5. *Procainamide HCl, Oral Capsules, 500 mg.*—The Board proposes a MAC limit of $0.0585 per capsule for this form

(Part A of Medicare) premium for voluntary enrollment for the 12-month period beginning with the following July 1.

EFFECTIVE DATE: July 1, 1981.

FOR FURTHER INFORMATION CONTACT: Guy King, Director, Division of Medicare

Dated: December 19, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-40300 Filed 12-23-80; 8:45 am]

BILLING CODE 4110-85-M

Notice of ~~Monthly~~ Actuarial Rates

As required by section 1839(c) (1) and (4) of the Social Security Act (42 U.S.C. 1395r(c) (1) and (4)), as amended, I have determined that the monthly actuarial rates applicable for the 12-month period

DATES: Hearing—February 12, 1981 (10 a.m.–5 p.m.). End of comment period: January 30, 1981. End of period for submission of requests to appear at the hearing: January 30, 1981.

Interested persons and organizations are invited to submit in writing comments on the proposed MACs. All comments received by January 30, 1981, will be considered and will be maintained for public inspection in the office of the Pharmaceutical and Medical Services Reimbursement Branch.

A public hearing on the proposed MACs will be held on February 12, 1981. Persons or organizations wishing to make presentations must submit to the Board's Executive Secretary by January 30, 1981, at least 20 copies of the proposed oral presentation in its entirety together with all supporting studies and materials and the names and addresses of proposed participants. The Board will grant every request to appear if the presentation is relevant to the proposed MAC.

PLACE OF HEARING: Multi-Purpose Room, 1st Floor, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

FOR FURTHER INFORMATION CONTACT: Charles Spalding, Acting Executive Secretary, Pharmaceutical Reimbursement Board, 1–D–5 East Low Rise, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–5403

SUPPLEMENTARY INFORMATION: The Pharmaceutical Reimbursement Board has been established within the Health Care Financing Administration for the purpose of setting MAC limits on certain multiple source drugs for which reimbursement is provided under Medicaid, Medicare and other programs administered by the Department. In accordance with 45 CFR 19.5, the Pharmaceutical Reimbursement Board proposes the following MAC limits:

Drug and Proposed MAC Limit

Glutethimide, oral tablet, 500 mg—$0.0398 per tablet.

Phentermine HCl, oral capsule, 30 mg—$0.0395 per capsule.

Procainamide HCl, oral capsule, 250 mg—$0.0369 per capsule.

Procainamide HCl, oral capsule, 375 mg—$0.0505 per capsule.

Procainamide HCl, oral capsule, 500 mg—$0.0585 per capsule.

Propantheline Bromide, oral tablet, 15 mg—$0.0235 per tablet.

The Board originally identified these multiple source drugs as drugs for which significant amounts of Federal funds are expended and for which there are significantly different prices. The Food and Drug Administration has advised the Board that there is no regulatory action, either pending or under consideration, that would be a reason for delaying or withholding the establishment of MACs on the drugs listed above. In making the initial determination of the lowest unit price at which each of the drugs is widely and consistently available from any formulator or labeler, the Board relied on two sources: *Drug Topics Red Book* and a HCFA survey. *Drug Topics Red Book*, published annually and updated monthly, is an authoritative and recognized listing of advertised prices. The HCFA survey is a summary, updated monthly, of pharmacy invoice prices obtained by HCFA under contract with IMS America. The HCFA survey price is based on the 70th percentile of invoice prices from a panel of 1,000 pharmacies nationwide.

1. *Glutethimide, Oral Tablets, 500 mg.*—The Board proposes a MAC limit of $0.0398 per tablet for this form of glutethimide. The product is advertised in the *Drug Topics Red Book* as being available at or below this price by thirteen suppliers. The HCFA survey revealed that 70 percent of the invoices and units of the "all other brands" are sold at or below the $0.0398 level. Small and medium size independents have purchased "all other brands" at or below the $0.0398 level.

2. *Phentermine HCl, Oral Capsules, 30 mg.*—The Board proposes a MAC limit of $0.0395 per capsule for this form of phentermine. The product is advertised in the *Red Book* as being available at or below this price from ten suppliers. One approved manufacturer has given assurances that it is capable of meeting increased market demand.

3. *Procainamide HCl, Oral Capsules, 250 mg.*—The Board proposes a MAC limit of $0.0369 per capsule for this form of procainamide. The product is advertised in the *Red Book* as being available at or below this price from sixteen suppliers. According to the HCFA survey over 80 percent of the purchases of the "all other brands" were at or below the proposed MAC level. Small and medium size independent pharmacies have purchased the product at or below the $0.0369 per capsule level.

4. *Procainamide HCl, Oral Capsules, 375 mg.*—The Board proposes a MAC limit of $0.0505 per capsule for this form of procainamide. The product is advertised in the *Red Book* as being available at or below this price, from ten suppliers. According to the HCFA survey, over 80 percent of the purchases of the "all other brands" were at or below the $0.0505 per capsule level. Small and medium size independent pharmacies have purchased from the "all other brands" at or below the proposed MAC level.

5. *Procainamide HCl, Oral Copsules, 500 mg.*—The Board proposes a MAC limit of $0.0585 per capsule for this form of procainamide. The product is advertised in the *Red Book* as being available at or below this price from twenty-one suppliers. According to the HCFA survey, 80 percent of the purchases of the "all other brands" were at or below the $0.0585 level. Small and medium size independent pharmacies have purchased the "all other brands" at or below the proposed MAC level.

6. *Propantheline Bromide, Oral Tablets, 15 mg.*—The Board proposes a MAC limit of $0.0235 per tablet for this form of propantheline. According to the HCFA survey, over 90 percent of the purchases of the "all other brands" were at or below the $0.0235 per tablet level. Small and medium size independent pharmacies have purchased the "all other brands" at or below the proposed MAC limit. This product is available from Lederle, subsidiary of the 16th largest, Purepac, the 63rd largest, and McKesson, the 73rd largest ethical pharmaceutical companies in the United States. The product is advertised in the *Red Book* as being available at or below the proposed MAC level from twenty-one additional suppliers.

The FDA advice and the economic data listed above are available for inspection in the office of the Pharmaceutical and Medical Services Reimbursement Branch and a limited number of copies are available upon written request.

Dated: December 5, 1980.

Peter J. Rodler,

Acting Chairman, Pharmaceutical Reimbursement Board.

[FR Doc. 80-40299 Filed 12-23-80; 8:45 am]

BILLING CODE 4110-35-M

Office of the Secretary

Medicare Program; Premium Rate for the Uninsured Aged

AGENCY: Office of the Secretary (OS), HHS.

ACTION: Notice.

SUMMARY: This notice announces Medicare's monthly hospital insurance premium for the uninsured aged for the 12 months beginning July 1, 1981. Section 1818(d)(2) of the Social Security Act requires the Secretary of HHS to publish, during the last quarter of each calendar year, the amount of the monthly hospital insurance program (Part A of Medicare) premium for voluntary enrollment for the 12-month period beginning with the following July 1.

EFFECTIVE DATE: July 1, 1981.

FOR FURTHER INFORMATION CONTACT: Guy King, Director, Division of Medicare Cost Estimates, 3–0–3 Operations Building, Baltimore, Maryland 21235, Telephone: (301) 594–2826.

SUPPLEMENTARY INFORMATION: Under the authority in Section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2)), I have determined that the monthly Medicare hospital insurance premium for the uninsured aged for the 12 months beginning July 1, 1981, is $89.

Section 1818 of the Social Security Act provides for voluntary enrollment in the hospital insurance program (Part A of Medicare), subject to payment of a monthly premium, of certain persons age 65 and older who are uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to hospital insurance. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

Section 1818(d)(2) of the Act requires the Secretary to determine and publish, during the last quarter of each calendar year, the amount of the monthly Part A premium for voluntary enrollment for the 12-month period beginning with the following July 1. The formula specified in this section also requires that, for the period beginning July 1, 1981, the premium must be $33 multiplied by the ratio of (1) the 1981 inpatient hospital deductible to (2) the 1973 inpatient hospital deductible, rounded to the nearest multiple of $1 or, if midway between multiples of $1, to the next higher multiple of $1.

Under section 1813(b)(2) of the Act, the 1981 inpatient hospital deductible was determined to be $204. (See 45 FR 65042, October 1, 1980.) The 1973 deductible was actuarially determined to be $76, although the 1973 deductible was actually promulgated to be only $72, to comply with a ruling of the Cost of Living Council. (See 37 FR 21452, October 11, 1972.) The monthly premium for the 12-month period beginning July 1, 1981 has been calculated using the $76 deductible for 1973, since this more closely satisfies the intent of the law. Thus the monthly hospital insurance premium is $33 × (204/76) = $88.58, which is rounded to $89.

(Sec. 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2)))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medical Hospital Insurance)

Dated: December 19, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-40300 Filed 12-23-80; 8:45 am]

BILLING CODE 4110-35-M

Monthly Actuarial Rates and Monthly Premium Rates

AGENCY: Office of the Secretary (OS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the monthly actuarial rates for aged (age 65 or over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for the twelve months beginning July 1981. It also promulgates the monthly SMI premium rate to be paid by all enrollees during the twelve months beginning July 1981.

EFFECTIVE DATE: July 1, 1981.

FOR FURTHER INFORMATION CONTACT: Guy King, Director, Division of Medicare Cost Estimates, 3–0–3 Operations Building, Baltimore, Maryland 21235, Telephone: (301) 594–2826.

SUPPLEMENTARY INFORMATION: Each December, the Secretary of Health and Human Services is required by law to promulgate two notices relating to the Medicare Supplementary Medical Insurance (SMI) program.

One notice announces two amounts that, according to actuarial estimates, will equal, respectively, one-half the expected average monthly cost of SMI per aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI per disabled enrollee (under age 65) during the 12 months beginning the following July. These amounts are called "monthly actuarial rates".

The second notice promulgates the monthly SMI premium rate to be paid by aged and disabled enrollees for the 12 months beginning the following July. (Although the costs to the program per disabled enrollee are higher than for the aged, the law provides that they pay the same premium amount.) The premium rate must be the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II social security benefits (effective the preceding June). The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal Government.

The notices of these amounts for the period July 1, 1981, through June 30, 1982, are as follows:

Notice of Monthly Actuarial Rates

As required by section 1839(c) (1) and (4) of the Social Security Act (42 U.S.C. 1395r(c) (1) and (4)), as amended, I have determined that the monthly actuarial rates applicable for the 12-month period beginning July 1, 1981, are $22.60 for enrollees age 65 and over, and $36.60 for disabled enrollees under age 65. The accompanying statement gives the actuarial assumptions and bases from which these rates are derived.

Notice of Monthly Premium Rate

As required by section 1839(c)(3) of the Social Security Act (42 U.S.C. 1395r(c)(3)), as amended, I have determined that the basic premium amount will be $11.00 monthly during the period beginning July 1, 1981, and ending June 30, 1982. The accompanying statement shows how this amount was derived.

Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Standard Monthly Premium Rate for the Supplementary Medical Insurance Program Beginning July 1981

1. Actuarial Status of the Supplementary Medical Insurance Trust Fund

The law requires that the SMI program be financed on an incurred basis. That is, program income during the 12-month period for which the actuarial rates are effective must be sufficient to pay for services furnished during that period (including associated administrative costs) even though payment for some of these services will not be made until after the close of the period. The portion of income required to cover benefits not paid until after the close of the 12-month period is added to the trust fund until needed. Thus, the assets in the trust fund at any time should be no less than benefit and administrative costs incurred but not yet paid.

Because the rates are established prospectively, they are subject to projection error. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level that is adequate to cover a moderate degree of projection error in addition to the amount of incurred but unpaid expenses. Table 1 summarizes the estimated actuarial status of the trust fund as of June 30 for each of the years 1979–91.

Table 1.—*Actuarial Status of the SMI Trust Fund: Years Ending June 30 of 1979–81*

[In millions]

Year ending June 30	Assets	Liabilities	Assets less liabilities
1979	$15,410	$14,000	$1,410
1980	18,170	16,000	2,170
1981	21,760	19,000	2,760

The assets in the trust fund at any time should be sufficient to pay for benefits and administrative costs incurred but not yet paid. The liabilities shown in Table 1 are the estimated amounts of benefits and administrative costs incurred but not yet paid as of June 30 of each year. The assets shown are the estimated amounts in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of projection error and to amortize unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for the year beginning July 1981 is determined by dividing the total of benefits and administrative costs for enrollees age 65 and over for the 12-month period ending June 30, 1982, by the number of enrollees age 65 and over during the 12-month period beginning July 1981. The monthly actuarial rate for disabled enrollees is determined by dividing the total of benefits and administrative costs for disabled enrollees under age 65 for the 12-month period ending June 30, 1982, by the number of disabled enrollees under age 65 during the 12-month period beginning July 1981.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for the 12-month period ending June 30, 1982, is $21.27. The monthly actuarial rate of $22.60 provides an adjustment for

Table 4.—*Derivation of Promulgated Monthly Rate for Disabled Enrollees Years Ending June 30 of 1979–82*

	1979	1980	1981	1982
Covered services (at level recognized):				
Physicians' reasonable charges	$15.41	$18.17	$21.76	$25.86
Radiology and pathology	.72	.93	1.12	1.28
Outpatient hospital and other institutions	12.86	15.11	17.67	19.76
Independent laboratories	1.30	1.54	1.84	2.19
Ambulatory surgical centers	.03	.04	.05	.06
Home health agencies	.03	.04	.05	.06
Rural health clinics	.01	.01	.01	.01
Total	30.36	35.84	42.50	49.22
Deductibles	1.00	1.00	1.00	1.00
Coinsurance	6.07	7.17	8.50	9.84
Total	37.43	44.01	52.00	60.06
Actuarial rate	36.60	36.60	36.60	36.60
Premium rate	11.00	11.00	11.00	11.00

5. Standard Premium Rate

The law provides that the standard monthly premium rate, promulgated to apply for both aged and disabled enrollees, shall be the lesser of:

1. The actuarial rate for enrollees age

Table 1.—*Actuarial Status of the SMI Trust Fund: Years Ending June 30 of 1979–81*

(In millions)

Year ending June 30	Assets	Liabilities	Assets less liabilities
1979	$4,883	$2,810	$2,073
1980	4,657	3,385	1,272
1981	3,909	3,927	−18

2. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate is one-half the monthly projected cost of benefits and administrative expenses for each enrollee age 65 and older, adjusted to allow for interest earnings on assets in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of projection error and to amortize unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for the year ending June 30, 1982, was determined by projecting per-enrollee cost for the 12-month period ending June 30, 1979, by type of service. The projected costs for the years ending June 30 of 1979–1982 are shown in Table 2. The values for the 12-month period ending June 30, 1979, were established from program data. Subsequent years were projected using a combination of program data and data from external sources. The projection factors used are shown in Table 3.

Table 2.—*Derivation of Promulgated Monthly Rate for Enrollees Age 65 and Over Years Ending June 30 of 1979–82*

	1979	1980	1981	1982
Covered services (at level recognized):				
Physicians' reasonable charges	$12.87	$14.75	$17.36	$20.35
Radiology and pathology	.69	.78	.90	1.04
Outpatient hospital and other institutions	2.36	2.83	3.54	4.07
Home health agencies	.31	.39	.47	.54
Group practice prepayment plans	.29	.44	.52	.60
Independent lab	.19	.20	.23	.26
Total services	16.73	19.39	23.02	26.86
Cost sharing:				
Deductible	−1.79	−1.82	−1.85	−1.88
Coinsurance	−2.80	−3.29	−3.97	−4.69
Total benefits	12.14	14.28	17.20	20.29
Administrative expenses	.87	.87	.91	.98
Incurred expenditures	13.01	15.15	18.11	21.27
Value of interest on fund	−.33	−.36	−.26	−.33
Contingency margin for projection error and to amortize unfunded liabilities	.72	1.39	1.55	1.66
Promulgated monthly rate	13.40	13.40	16.30	22.60

Table 3.—*Projection Factors [1] Years Ending June 30 of 1980–82*

(In percent)

Year ending June 30	Physicians' services		Radiology and pathology	Outpatient hospital services	Home health agency services	Group practice prepayment plans	Independent lab services
	Fees [2]	Utilization [3]					
Aged:							
1980	8.6	5.5	14.1	18.8	24.0	52.2	1.8
1981	10.0	7.0	15.0	25.0	20.0	20.0	15.0
1982	10.6	6.0	15.0	15.0	15.0	15.0	15.0
Disabled:							
1980	8.6	9.0	29.8	20.4	16.6	51.4	9.5
1981	10.0	10.0	20.0	25.0	15.0	20.0	15.0
1982	10.6	9.0	15.0	15.0	15.0	15.0	15.0

[1] All values are per enrollee. Also, the values for 1980 and/or 1981 differ significantly from those contained in last year's promulgation notice due to an additional year's data which support the current values.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.

3. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons enrolled in SMI because of entitlement to disability benefits for not less than 24 months or because of entitlement to Medicare under the end-stage renal disease program. Projected monthly costs for disabled enrollees (other than those suffering from end-stage renal disease) are prepared in a fashion exactly parallel to projections for the aged, using appropriate actuarial assumptions (see Table 3). Costs for the end-stage renal disease program are projected using a computer model because of the complex demographic problems involved. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for the year ending June 30, 1982 is $39.14. The monthly rate of $36.60 provides an adjustment for interest earnings and $.10 for a contingency margin. This margin is small since there is already a more than moderate excess of assets over liabilities for the disabled.

4. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. In view of this, it seems appropriate to test the adequacy of the rates promulgated here using alternative assumptions. The most unpredictable factors that contribute significantly to future costs are outpatient hospital costs, physician utilization (measured indirectly and reflecting the use of more visits per enrollee, the use of more expensive sevices, and other factors not explained by simple price per service increases), and increases in physician fees as constrained by the program's reasonable charge screens and economic index. Two alternative sets of assumptions and the results of those assumptions are shown in Table 5. All assumptions not shown in Table 5 are the same as in Table 3.

Table 4.—*Derivation of Promulgated Monthly Rate for Disabled Enrollees Years Ending June 30 of 1979–82*

	1979	1980	1981	1982
Covered services (at level recognized):				
Physicians' reasonable charges	$15.41	$18.17	$21.76	$25.86
Radiology and pathology	.72	.93	1.12	1.28
Outpatient hospital and other institutions	12.86	15.11	17.67	19.76
Home health agencies	.24	.28	.32	.37
Group practice prepayment plans	.17	.25	.31	.35
Independent lab	.27	.31	.35	.40
Total services	29.67	35.05	41.53	48.02
Cost sharing				
Deductible	−1.66	−1.69	−1.72	−1.75
Coinsurance	−5.42	−6.43	−7.93	−8.93
Total benefits	22.59	26.93	32.13	37.34
Administrative expenses	1.63	1.63	1.69	1.80
Incurred expenditures	24.22	28.56	33.82	39.14
Value of interest on fund	−2.79	−3.12	−2.70	−2.64
Contingency margin for projection error and to amortize unfunded liabilities	3.57	−.44	−5.62	.10
Promulgated monthly rate	25.00	25.00	25.50	36.60

Table 5 indicates that, under the assumptions used in preparing this report, the promulgated monthly rates will result in an excess of assets over liabilities of $1,022 million by the end of June 1982. This amounts to 5.5 percent of the estimated total incurred expenditures for the following year. Assumptions which are somewhat more pessimistic, and therefore which indicate the degree that assets can accommodate projection errors, produce a deficit of $484 million by the end of June 1982, which amounts to a deficit of 2.3 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the promulgated monthly rates will result in an excess of $2,464 million, which amounts to 14.5 percent of the estimated total incurred expenditures for the following year.

Table 5.—*Projection Factors and the Actuarial Status of the SMI Trust Fund Under Alternative Sets of Assumptions. Years Ending June 30 of 1981–82*

	This projection		Low assumption		High assumption	
	1981	1982	1981	1982	1981	1982
Projection factors (in percent): [1]						
Physician's fees [2]						
Aged	10.0	10.6	9.5	9.6	10.5	11.6
Disabled	10.0	10.6	9.5	9.6	10.5	11.6
Utilization of physicians' services [3]						
Aged	7.0	6.0	5.0	4.0	9.0	8.0
Disabled	10.0	9.0	8.0	7.0	12.0	11.0
Outpatient hospital services per enrollee						
Aged	25.0	15.0	15.0	5.0	35.0	25.0
Disabled	25.0	15.0	15.0	5.0	35.0	25.0
Home Health Agency services per enrollee						
Aged	20.0	15.0	10.0	5.0	30.0	25.0
Disabled	15.0	15.0	5.0	5.0	25.0	25.0
Actuarial status (in millions)						
Assets[$9453,909]		$6,607	$4,222	$6,803	$3,599	$4,359
Liabilities	3,927	4,585	3,834	4,345	4,024	4,843
Assets less liabilities	−18	1,022	388	2,454	−425	−484
Ratio of assets less liabilities to expenditures (in percent)	−.1	5.5	2.6	14.5	−2.6	−2.3

[1] The values for 1981 differ significantly from those contained in last year's promulgation notice due to an additional year's data which support the current values.
[2] As recognized for payment under the program.
[3] Increased in the number of services received per enrollee and greater relative use of more expensive services.
[4] Ratio of assets less liabilities at the end of the year to total incurred expenditures during the following year, expressed as a percent.

5. Standard Premium Rate

The law provides that the standard monthly premium rate, promulgated to apply for both aged and disabled enrollees, shall be the lesser of:

1. The actuarial rate for enrollees age 65 and older; or
2. The current standard monthly premium, increased by the same percentage that the level of old-age, survivors, and disability insurance (OASDI) benefits has been increased since the May preceding the promulgation (and rounded to the nearer multiple of ten cents).

The standard monthly premium rate for the 12-month period ending with June 30, 1981 is $9.60. The OASDI benefit table increased 14.3 percent in June 1980. The $9.60 rate, increased by 14.3 percent and rounded to the nearer ten cent multiple, is $11.00. Since this is less than the aged actuarial rate, the standard premium rate is $11.00 for the 12 months ending with June 1982.

(Secs. 1839(c) (1), (3), and (4) of the Social Security Act (42 U.S.C. 1395r(c) (1), (3), and (4))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare Supplementary Medical Insurance)

Dated: December 22, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-40301 Filed 12-23-80, 8:45 am]

BILLING CODE 4110-35-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Environmental Impact Statement on WyCoalGas, Inc. Proposal; Public Scoping Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings..

SUMMARY: The Bureau of Land Management will hold meetings to gather information and seek assistance in defining the range of issues and concerns for the preparation of an Environmental Impact Statement for a proposal by WyCoalGas, Inc., a subsidiary of Panhandle Eastern Pipeline Company, to construct and operate a coal gasification plant 16 miles northeast of Douglas, Wyoming. The project would utilize coal transported some 54 miles from the Rochelle mine site in Southern Campbell

County and water from the LaPrele Reservoir North Platt River and deep wells. A 24-inch pipeline would be constructed from the plant site to a point near Cheyenne, Wyoming, where the gas would enter existing or proposed

Statement. Comments and preparation as part of the scoping process are solicited.

DATES: Scoping meetings will be held on January 13, 14 and 15, 1981. Additional written comments may be received

Policy and Management Act of 1976, as amended, and the Federal Advisory Committee Act.

Persons wishing to nominate individuals to serve on the California Desert District Advisory Council should

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;
Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802; and

the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, D.C. 20423, no later than 10 days from publication of this Notice. The offer, as filed, shall contain information required

coordination with the State Historical Society and the Department of Natural Resources. As a result, petitioner charges, conclusions contained in the environmental assessment are inadequately supported. Petitioner has

County and water from the LaPrele Reservoir North Platt River and deep wells. A 24-inch pipeline would be constructed from the plant site to a point near Cheyenne, Wyoming, where the gas would enter existing or proposed pipelines for transshipment to the company's existing distribution system. This notice is made in accordance with regulations of the Council on Environmental Quality for implementing the procedural provisions of the National Environmental Policy Act of 1969 to obtain suggestions and information from other agencies and persons on the scope of issues to be addressed in the Environmental Impact Statement. Comments and preparation as part of the scoping process are solicited.

DATES: Scoping meetings will be held on January 13, 14 and 15, 1981. Additional written comments may be received through January 30, 1981.

ADDRESSES: Comments should be addressed to: James S. Lambert, Project Manager, WyCoalGas EIS Team, Bureau of Land Management, Post Office Box 1828, Cheyenne, Wyoming 82001.

SUPPLEMENTAL INFORMATION: The public scoping meetings to assist in defining significant environmental issues and concerns for the preparation of an EIS will be held as follows:

Place	Date	Time	Address
Gillette, Wyoming	January 13, 1981	7:30 p.m.	Holiday Inn, I-90, South Douglas Highway 59, Gillette, Wyoming
Douglas, Wyoming	January 14, 1981	1:30 p.m. and 7:30 p.m.	Auditorium Douglas High School, 7th and Walnut, Douglas, Wyoming
Cheyenne, Wyoming	January 15, 1981	7:30 p.m.	Cheyenne Club Room, Hitching Post Inn, 1600 West Lincolnway, Cheyenne, Wyoming.

December 19, 1980.

Ed Hastey,

Associate Director.

[FR Doc. 80-40066 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

California Desert District Advisory Council; Call for Nominations

The Bureau of Land Management of the U.S. Department of the Interior intends to form a District Advisory Council in its California Desert District.

The purpose of this notice is to call for nominations for membership on that Council.

No advisory council was established for this district when councils were formed for other BLM districts pending completion of a study of the Bureau's organization in California. That study has been completed and a reorganization implemented.

The Council will be composed of no fewer than 10 and not more than 12 members. To provide a total membership that is balanced in terms of points of view represented and functions to be performed, at least one member shall be an elected official of general purpose government serving the area, and at least one member shall be qualified to provide advice on each of the following categories of interest: renewable resources; nonrenewable resources; recreation; environmental protection; transportation rights-of-way, or occupancy issues; wildlife; cultural resources; Native American concerns; and public-at-large. All members are expected to represent the general interest, but they should be knowledgeable in the category for which they are appointed.

Term of service will be two years. At the discretion of the Secretary of the Interior or his designee, members may be appointed to additional terms not to exceed a total of six years. All council members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for government employees.

The council normally will meet four times annually, but in no case less than once. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Establishment of this advisory council is in accordance with the Federal Land Policy and Management Act of 1976, as amended, and the Federal Advisory Committee Act.

Persons wishing to nominate individuals to serve on the California Desert District Advisory Council should send the nominee's name, address, profession and other biographic data to: District Manager, California Desert District, 1695 Spruce Street, Riverside, California, 92507, no later than January 31, 1981.

Further information may be obtained from the California Desert District Manager or from: State Director, Bureau of Land Management, 2800 Cottage Way, Room E-2841, Sacramento, California, 95825.

Dated: December 15, 1980.

Roland A. Rush,

Acting State Director.

[FR Doc. 80-40053 Filed 12-23-80; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Issuance of Permit

On May 16, 1980, Notice was published in the **Federal Register** (45 FR 32361), that an application had been filed with the National Marine Fisheries Sevrice, and Fish and Wildlife Service, by the USSR Ministry of Fisheries, All-Union Scientific Institute of Fisheries and Oceanography, Moscow, USSR, for a permit to take by killing 200 Pacific walrus (*Odobenus rosmarus*), 100 ribbon seal (*Phoca fasciata*), 100 larga seal (*Phoca largha*), 100 ringed seal (*Phoca hispida*), 100 bearded seal (*Erignathus barbatus*), and 50 Steller sea lion (*Eumetopias jubatus*), for the purpose of scientific research.

Notice is hereby given that on *December 5, 1980,* and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service and Fish and Wildlife Service jointly issued a Scientific Research Permit to the USSR Ministry of Fisheries for the above taking subject to certain conditions set forth therein.

The Permit and related documents are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802; and

Director, Fish and Wildlife Service, U.S. Department of the Interior, 1000 Glebe Road, North Arlington, Virginia.

Dated: December 5, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80-40180 Filed 12-23-80; 8:46 am]

BILLING CODE 3510-22-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 86F)]

Burlington Northern Inc.; Abandonment Between Eureka and Clyde, WA; Notice of Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided December 18, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen,* 360 I.C.C. 91 (1979), the present and future public convenience and necessity permit the abandonment by the Burlington Northern Inc. of a line of railroad known as the Eureka to Clyde line extending from railroad milepost 0.00 near Eureka, WA, to railroad milepost 11.84 near Clyde, WA, a distance of 11.84 miles, in Walla Walla County, WA. A certificate of public convenience and necessity permitting abandonment was issued to the Burlington Northern Inc. Since no investigation was instituted, the requirement of § 1121.38(b) of the Regulations that publication of notice of abandonment decisions in the **Federal Register** be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, D.C. 20423, no later than 10 days from publication of this Notice. The offer, as filed, shall contain information required pursuant to Section 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40175 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 102)]

Chicago and North Western Transportation Company—Abandonment—Near Wisconsin Rapids and Wausau, WI

Decided: December 16, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Decision denying in part and granting in part a petition for extraordinary relief.

SUMMARY: This decision disposes of a petition seeking various forms of extraordinary relief with respect to the environmental assessment prepared in the entitled proceeding. The decision describes the procedures and timetable the Commission's Energy and Environment Branch followed in this proceeding to enable the Commission to comply with the strict statutory timeframes for deciding abandonment applications. This decision is being published to provide notice to the public that similar procedures will be followed in preparing environmental assessments in all other abandonment proceedings.

FOR FURTHER INFORMATION CONTACT: Carl Bausch, (202) 275-7916.

SUPPLEMENTARY INFORMATION: By petition filed November 28, 1980, Wisconsin Department of Transportation seeks certain extraordinary relief with respect to the environmental document prepared for this proceeding. That document, an environmental assessment which concluded, on the basis of available information, that abandonment of 61 miles of track in Wood and Marathon Counties, WI would have no environmental significance, was made available to the public through a decision served on November 10, 1980. Petitioner alleges essentially that prior to preparation of the environmental document there was insufficient coordination with the State Historical Society and the Department of Natural Resources. As a result, petitioner charges, conclusions contained in the environmental assessment are inadequately supported. Petitioner has requested that the Commission (1) require applicant, Chicago and North Western Transportation Company (C&NW), to complete its abandonment questionnaire, providing support for the conclusion that no major environmental impacts will be caused by abandonment of the line, (2) make available underlying documents which formed the basis of the environmental assessment, (3) permit interested persons to present environmental evidence during oral hearing, and (4) make available for cross-examination its environmental staff.

Background

Before addressing the issues raised by petitioner, I will describe briefly the environmental procedures followed in this proceeding. Similar environmental procedures are followed for every abandonment application.

On August 18, 1980, the Commission's Energy and Environmental Branch (Branch) received a notice that applicant intended to abandon the subject 61 mile line of railroad. On August 20, 1980, copies of applicant's notice, together with invitations to comment on environmental issues, were mailed by the Branch to a number of individuals and agencies in Wisconsin, including the State Planning Office, the Department of Natural Resources and its Fish and Wildlife Division, the State Historical Society, and the State Environmental Coordinator. The invitations alluded to the stringent decisional time limitations imposed by the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act) and requested that comments be filed within 3 weeks of August 20, 1980. No comments were received at any time before the environmental assessment was made available to the public.

Internal procedures designed to comply with the provisions and the purposes of the 4-R Act require that an environmental assessment be forwarded to the decisionmaker on or before the 40th day after an abandonment application is filed.[1] C & NW's abandonment application was filed on September 17, 1980. On October 27, 1980, the environmental assessment prepared for this proceeding was forwarded to the decisionmaker.

[1] Under the recently adopted Staggers Act, environmental assessments prepared for abandonment applications must be forwarded to the decisionmaker on or before the 33rd day after abandonment applications are filed.

Findings

(1) Petitioner's request that applicant complete the abandonment questionnaire, providing support for the conclusion of no major environmental impacts is denied. While responses

(2) Petitioner's request to inspect the environmental record is granted.

(3) Petitioner has the right to appear at oral hearing in this proceeding, in accordance with Commission rules, and offer evidence with respect to

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

December 15, 1980.

are due January 16, 1981. (3) Verified replies are due January 23, 1981.

ADDRESS: An original and 10 copies of all statements should refer to Finance Docket No. 29457 (Sub-No. 1) and be sent to: Section of Finance, Room 5414,

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

December 17, 1980

This application for long-and-short-haul relief has been filed with the I.C.C.

SUMMARY: The Interstate Commerce Commission exempts the lease by Louisville and Nashville Railroad Company (L&N) of a segment of the Illinois Central Gulf Railroad Company (ICG) track in Owensboro, KY, from the

Findings

(1) Petitioner's request that applicant complete the abandonment questionnaire, providing support for the conclusion of no major environmental impacts is denied. While responses contained in applicant's questionnaire may be lacking in some particulars, I find that there has been substantial compliance with established reporting requirements. Several individuals and agencies in Wisconsin were invited to address applicant's proposal, thereby filling in any information gaps. Their failure to respond contributed, in no small measure, to the asserted inadequacy of the environmental document. Requiring applicant to compensate for this omission, assuming it could, would be excessively burdensome and serve no useful purpose.

(2) Petitioner's second point of requested relief is essentially a Freedom of Information Act request. All supporting and background information used in preparation of the environmental assessment is available for inspection at petitioner's convenience.

(3) This proceeding has been referred to oral hearing, at which any interested person may appear, in accordance with Commission rules, and offer evidence with respect to environmental matters or any other relevant areas of concern.

(4) Under the Commission's revised environmental rules (45 FR 79810 (1980)), which will apply to this proceeding, Commission staff responsible for preparing an environmental document may be cross-examined only where good cause is shown. Criticisms contained in petitioner's pleading relate almost exclusively to a lack of coordination with State agencies. The Commission, however, made every effort to include the State in the decisionmaking process. Under the circumstances, I am unable to conclude that good cause has been shown. Petitioner's request for cross-examination, therefore, is denied, but without prejudice to petitioner's seeking another determination under the revised environmental rules and in light of the expressions in this decision.

Because the issues considered and resolved here are of general applicability, I have directed that the decision be published in the **Federal Register** and be circulated through the clearinghouse procedure to every State.

It is ordered

(1) Petitioner's request that applicant complete the abandonment questionnaire is denied.

(2) Petitioner's request to inspect the environmental record is granted.

(3) Petitioner has the right to appear at oral hearing in this proceeding, in accordance with Commission rules, and offer evidence with respect to environmental matters.

(4) Petitioner's request for cross-examination of environmental staff is denied without prejudice to seeking another determination in accordance with the expressions in this decision.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40069 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: December 16, 1980.

In our decision of December 9, 1980, a 14-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 14.4-percent. Accordingly, we are authorizing that the surcharge for this traffic remain at 14-percent. All owner-operators are to receive compensation at this level.

However, we are authorizing that the surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators may be increased to 2.5-percent, that for the bus carriers to 5.4-percent, and that for United Parcel Service to 1.5-percent.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commission or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

It Is Ordered

This decision shall become effective Friday 12:01 a.m. December 19, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

December 15, 1980.

Appendix—*Fuel Surcharge*

Base date and price per gallon, in cents (including tax)

January 1, 1979 ..... 63.5

Date of current price measurement and price per gallon (including tax)

December 15, 1980 ..... 117.7

	Transportation performed by—			
	Owner-operator [1]	Other [2]	Bus Carrier	UPS
	(1)	(2)	(3)	(4)
Average percent fuel expenses (including taxes) of total revenue	16.9	2.9	6.3	3.3
Percent surcharge developed	14.4	2.5	5.4	[3] 2.3
Percent surcharge allowed	14.0	2.5	5.4	[4] 1.5

[1] Apply to all truckload related traffic.
[2] Including less-than-truckload traffic.
[3] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).
[4] The developed surcharge is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[FR Doc. 80-40067 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29457 (Sub-No. 1)]

Illinois Central Gulf Railroad Company and Waterloo Railroad Company-Purchase (Portion)-Chicago, Milwaukee, St. Paul and Pacific Railroad Company-(Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application of Illinois Central Gulf Railroad Company (ICG) and Waterloo Railroad Company to acquire and operate approximately 26 miles of railroad owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Richard B. Ogilvie, Trustee) (MILW) located near Cedar Rapids and Marion in Linn County, IA. The Commission is also setting a schedule for the proceeding.

DATES: (1) Verified statements supporting or opposing the application are due January 9, 1981. (2) Verified statements from the United States Secretary of Transportation and the Attorney General of the United States are due January 16, 1981. (3) Verified replies are due January 23, 1981.

ADDRESS: An original and 10 copies of all statements should refer to Finance Docket No. 29457 (Sub-No. 1) and be sent to: Section of Finance, Room 5414, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson (202) 275-7245.

SUPPLEMENTARY INFORMATION: The ICG and Waterloo Railroad Company filed an application on December 8, 1980 under Section 5 of the Milwaukee Railroad Restructuring Act, 49 U.S.C. 904, for authority to acquire and operate two segments of track owned by the MILW. Located near Cedar Rapids and Marion, in Linn County, IA, the segments of trackage total about 26 miles. The application will be handled under the special procedures found in *Acquisition Procedures for Lines of Railroads*, 360 I.C.C. 623 (1980) and published as Subpart B of 49 CFR 1111 in 45 FR 6107 (1980) and published as Subpart B of 49 CFR 1111 in 45 FR 6107 (1980). In a decision in Finance Docket No. 29457, *Illinois Central Gulf Railroad Company-Petition* (not printed), decided October 20, 1980, the Commission determined that this proposed acquisition is a minor transaction.

The application has been reviewed and found to comply with the information requirements of our regulations.

The MILW's Reorganization Court, in Order No. 386 issued September 8, 1980, directed the Commission to act upon this application within 90 days from its filing. To meet this deadline, we have established the expedited schedule set forth above to apply to this proceeding.

Requests for copies of the application should be addressed to applicant's representative: John H. Doeringer, Illinois Central Gulf Railroad Company, 233 North Michigan Avenue, Chicago, IL 60601.

A copy of any statements filed should be served on applicant's representative.

It is ordered:

1. The application is accepted for consideration.
2. The parties shall comply with all provisions stated above.
3. This decision shall be effective on December 23, 1980.

Dated: December 18, 1980.

By the Commission, Gary J. Edles, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 40072 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

December 17, 1980

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before January 8, 1981.

43884, Southwestern Freight Bureau, Agent No. B-105, increased rates on roofing materials and sheathing, in carloads, from stations in Southwestern Territory to stations in Western Territory, in Supplement 90 to its Tariff ICC SWFB 2006-K, effective January 10, 1981. Grounds for relief—need for additional revenue.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40066 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Long-and-Short-Haul Applications for Relief (Formerly Fourth Section Applications)

December 17, 1980.

These applications for long-and-short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. on or before January 8, 1981.

43885, Southwestern Freight Bureau, Agent No. B-101, reduced rates on asphalt and related products, in carloads, from Etter, TX to points in Southwestern and Western Territories, in Supplement 219 to its Tariff ICC SWFB 4679, effective January 8, 1981. Grounds for relief—market competition.

43886, Southwestern Freight Bureau, Agent (No. B-102), increased rates on roofing and building materials from stations in Southwestern Territory to stations in Southern Territory, in Supplement 54 to its Tariff ICC SWFB 4693, effective January 15, 1981. Grounds for relief—Need for increased revenue.

43887, Southwestern Freight Bureau, Agent No. B-103, reduced rates on plasticizers or solvents, in carloads, from Taft, LA to Oak Island, NJ, in Supplement 163 to its Tariff ICC SWFB 3038-E, effective January 13, 1981. Grounds for relief—rate relationship.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40070 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29413]

Louisville and Nashville Railroad Co.—Petition for Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 11343-11347

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the lease by Louisville and Nashville Railroad Company (L&N) of a segment of the Illinois Central Gulf Railroad Company (ICG) track in Owensboro, KY, from the requirement of prior Commission approval.

DATES: Exemption effective on December 15, 1980. Petitions for reconsideration of this decision must be filed no later than 20 days following this publication.

ADDRESSES: Send petitions for reconsideration to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, 12th St. and Constitution Ave. NW., Washington, DC 20423.

(2) Petitioners' representatives:

Lyle Key, Jr., Louisville and Nashville Railroad Company, P.O. Box 32290, Louisville, KY 40232.

John H. Doeringer, Attorney for Illinois Gulf Central Railroad Company, 233 North Michigan Ave., Chicago, IL 60601.

Pleadings should refer to Finance Docket No. 29413.

FOR FURTHER INFORMATION CONTACT: Ellen Hanson, (202) 275-7245.

SUPPLEMENTARY INFORMATION: L&N and ICG have requested that a proposed lease by L&N of a segment of ICG line be exempted from the requirement of prior Commission approval under 49 U.S.C. 11343-11347.[1]

The Proposal

The involved track is located between mileposts 40.05 and 40.63, a distance of 3,043 feet, in Owensboro, KY. The track is part of an ICG line between Fordsville and Owensboro which is under embargo due to defective track conditions and is also the subject of a pending abandonment application (Docket No. AB-43 (Sub-No. 68)). L&N has been operating over the Owensboro trackage under authority from the Commission in Service Order No. 1485, *Louisville and Nashville Railroad Company Authorized to Operate Over Tracks of Illinois Central Gulf Railroad Company*, served September 19, 1980. This Service Order became effective on September 20, 1980 and expires on December 15, 1980. ICG has informed L&N that it will not be able to resume service over the line in the foreseeable future.

[1] The lease and operation by a carrier of another carrier requires the approval and authorization of the Commission under 49 U.S.C. 11343-11347. To seek Commission approval an application must be filed in compliance with the ICC *Railroad Acquisition, Control Merger, Consolidation, Coordination Project, Trackage Rights and Lease Procedures*, 49 CFR Part 1111 (1978).

L&N had previously filed a petition to exempt its proposed acquisition of the involved trackage as well as several other segments of ICG trackage. This petition (Finance Docket No. 29413) is

to our exemption of the proposed temporary lease.

Labor Protection. In granting an exemption under section 10505, we may not relieve a carrier of its obligation to

by Louisville and Nashville Railroad Company of the Illinois Central Gulf Railroad Company track between mileposts 40.05 and 40.63, a distance of 3,043 feet, in Owensboro, KY, subject to

including all of the bridges and culverts for a period of 180 days from October 24, 1980, to permit any state or local government agency or other interested party to negotiate the acquisition for

the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 40064 Filed 12-23-80; 8:45 am]

compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before February 23, 1981, an applicant may file a verified statement in rebuttal

L&N had previously filed a petition to exempt its proposed acquisition of the involved trackage as well as several other segments of ICG trackage. This petition (Finance Docket No. 29413) is currently pending consideration on a consolidated record with the related ICG abandonment proceeding and several other proceedings, known collectively as the L&N–ICG Coordination Project.[2] To avoid any disruption in rail service to the Owensboro industries pending the outcome of the consolidated proceeding, L&N and ICG propose to enter into a lease arrangement, which would terminate upon the issuance of a final decision in the consolidated proceeding. Because of the need for expedited action, petitioners request that the Commission issue an order exempting the proposed lease effective no later than December 15, 1980.

Rail Exemption Authority

Under 49 U.S.C. § 10505, as modified by section 213 of the Staggers Rail Act of 1980 (Pub. L. 96–448, 94 Stat. 1895 October 14, 1980), the Commission is authorized to exempt a transaction when it finds that (1) continued regulation is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. 10101(a); and (2) either the transaction is of limited scope or regulation is not necessary to protect shippers from the abuse of market power.

We believe the proposed lease satisfies the criteria of section 10505. The lease would have a *de minimis* impact on interstate commerce and our detailed scrutiny of the transaction under the criteria of 49 U.S.C. 11343 *et seq.*, is not necessary to carry out the objectives of the rail transportation policy. The proposed lease is also of limited scope because it (1) involves only a small geographic area (less than 1 mile), (2) is of short duration, (3) will not result in significantly changed rail operations or level of service, and (4) will not significantly or adversely affect shippers, other carriers, or railroad employees.

Since the proposed lease is of limited scope we need not determine whether our regulation is needed to protect shippers from the abuse of market power. We note, however, that no shipper opposed L&N's initial petition to exempt its proposed acquisition of the involved trackage. It is, therefore, unlikely that any shipper would object to our exemption of the proposed temporary lease.

Labor Protection. In granting an exemption under section 10505, we may not relieve a carrier of its obligation to protect the interests of employees as required by 49 U.S.C., Subtitle IV. (See 49 U.S.C. § 10505(g)(2). A lease transaction such as that proposed here is likely to have no employee impacts whatsoever. However, in accordance with section 10505(g)(2), we will afford the same level of labor protection as is usually required in lease transactions. We have determined that the employee protective conditions developed in *Mendocino Coast Ry., Inc. Lease and Operate,* 354 I.C.C. 732 (1978), as modified in 360 I.C.C. 653 (1980), satisfy the statutory requirements for protection of employees involved in a lease transaction. Therefore, the exemption will be granted subject to those protective provisions.

To avoid any disruption in rail service to the Owensboro industries, this exemption will become effective on the date of service of this decision.

Any party may file a petition to reopen this proceeding for reconsideration in accordance with Rule 98(d) of the Commission's Rules of Practice (49 CFR 1100.98(d)). Such a petition must be filed no later than 20 days following the date of publication of this decision in the Federal Register.

We find

(1) The application of the requirements of 49 U.S.C. §§ 11343–11347 to the proposed lease by Louisville and Nashville Railroad Company of the Illinois Gulf Central Railroad Company trackage between mileposts 40.05 and 40.63, a distance of 3,043 feet, in Owensboro, KY, is not necessary to carry out the transportation policy of 49 U.S.C. 10101a.

(2) This transaction is of limited scope.

(3) This decision will not operate to relieve any rail carrier from an obligation either (a) to provide contractural terms for liability and claims which are consistent with 49 U.S.C. 11707 or (b) to protect the interests of its employees as required by 49 U.S.C. Subtitle IV, and does not authorize intermodal ownership that is otherwise prohibited.

(4) This decision is not a major Federal action significantly affecting energy consumption or the quality of the human environment.

It is ordered

(1) Pursuant to 49 U.S.C. 10505, we exempt from the requirements of 49 U.S.C. 11343–11347 the proposed lease by Louisville and Nashville Railroad Company of the Illinois Central Gulf Railroad Company track between mileposts 40.05 and 40.63, a distance of 3,043 feet, in Owensboro, KY, subject to the conditions for the protection of employees embodied in *Mendocino Coast Ry. Inc.—Lease and Operate,* 354 I.C.C. 732 (1978), as modified by 360 I.C.C. 653 (1980).

(2) L&N and ICG shall have 15 days after consummation of the lease to submit three copies of a sworn statement showing all journal entries required to record the transaction.

(3) Notice of our action shall be given to the general public by delivery of a copy of this decision to the Director, Federal Register, for publication.

(4) The parties must consummate the transaction within 30 days of the effectiveness of this exemption in order to take advantage of the exemption.

(5) This decision shall be effective on December 19, 1980 and shall remain in force and effect until service of the decision (on the merits) in No. AB–2 (Sub-No. 29) et al.

(6) Petitions to reopen this proceeding for reconsideration of this decision must be filed no later than January 13, 1981.

Decided: December 12, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–40068 Filed 12–23–80; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–3 (Sub-No. 15F)]

Missouri Pacific Railroad Company—Abandonment—in Cowley Counties, KS; Notice of Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a supplemental decision decided September 3, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the public convenience and necessity permit the abandonment by the Missouri Pacific Railroad Company of the Conway Springs and Arkansas City Subdivision from milepost 497.2 at Dexter over the Conway Springs Subdivision to milepost 513.5 near Winfield and over the Arkansas City Subdivision to milepost 521.6 near Arkansas City, a total distance of 39.8 miles, all in Cowley County, KS, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.-Abandonment Goshen,* 360 I.C.C. 91 (1979), and further that applicant shall keep intact all of the right-of-way underlying the track, including all of the bridges and culverts for a period of 180 days from October 24, 1980, to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of abandonment will be issued to the Missouri Pacific Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 15 days from the date of publication, the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, D.C. 20423, no later than 10 days from publication of this Notice; and

(2) it is likely that such proffered assistance would:

(a) cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved railline are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96–448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 40064 Filed 12–23–80; 8:45 am]

BILLING CODE 7035–01–M

[2] The lead docket in these proceedings is AB–2 (Sub-No. 29). Oral hearings were held on November 17, 18 and 19 of this year and briefs are due on January 5, 1981.

Office of Proceedings

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that appliant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before February 9, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before February 23, 1981, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP4–167

Decided: December 18, 1980.

By the Commission, Review Board, Number 1, Members Carleton, Joyce and Jones. Joyce not participating.

MC 35227 (Sub-19F), filed December 11, 1980. Applicant: EDSON EXPRESS, INC., 1270 Boston Ave., P.O. Box 925, Longmont, CO 80501. Representative: Richard P. Kissinger, Steele Park, Suite 330, 50 So. Steele St., Denver, CO 80209. Transporting *shipments weighing 100 pounds or less,* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 143377 (Sub-5F), filed December 10, 1980. Applicant: BARRY J. WEST, d.b.a. B. J.'s SERVICE, P.O. Box 154, Lititz, PA 17543. Representative: Daniel W. Krane, Box 626, 2207 Old Gettysburg Rd., Camp Hill, PA 17011. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 150647 (Sub-1F), filed December 9, 1980. Applicant: MIDWEST SECURITY TRANSFER, INC., 836 No. Main, P.O. Box 1577, Sioux Falls, SD, 57101. Representative: A. J. Swanson, P.O. Box 1103, 226, N. Phillips Ave., Sioux Falls, SD 57101. Transporting *shipments weighing 100 pounds or less,* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OP4–170

Decided: December 18, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 153056F, filed December 8, 1980. Applicant: ALLEN W. HOPKINS, Route 2, Black Creek, WI 54160. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956. Transporting *food and other edible products (including elible byproducts,*

but excluding alcoholic beverages and drugs) intended for humon consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers, by the owner of the motor vehicle in

to which petitioner's interest will be represented by other parties (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and

regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find,

this issue. Applicant: FAST MOTOR SERVICE, INC., 9100 Plainfield Rd., Brookfield, IL 60513. Representative: Albert A. Andrin, 180 No. La Salle St., Chicago, IL 60601. Transporting (1) *containers, container ends, and*

Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before February 9, 1981 (or, if the application later becomes

MC 3753 (Sub-28F), filed December 3, 1980. Applicant: AAA TRUCKING CORP., 3630 Quaker Bridge Rd., P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Suite

but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers, by the owner of the motor vehicle in such vehicles, except in emergency situations, between points in the U.S.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40076 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner (b) the effect of the decision which may be rendered upon petitioner's interest (c) the availability of other means by which the petitioner's interest might be protect, (d) the extent to which petitioner's interest will be represented by other parties (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act.]

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices within 30 days after publication, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 385

Decided: December 4, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 150772F, filed May 2, 1980. Applicant: N.C.V. TRANSPORT, INC., P.O. Box 8728, Albany, NY 12207. Representative: Neil D. Breslin, 600 Broadway, Albany, NY 12207. Transporting *frozen meat,* in vehicles equipped with mechanical refrigeration, from Cohoes, NY to Kissimmee and Tampa, FL, Stockton, CA, North Baltimore and Toledo, OH, Edison, NJ, Lemont, IL, and Ayer, MA.

Volume No. 388

Decided: December 15, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 126276(Sub-212F), filed December 14, 1979, previously noticed in the FR issue of March 27, 1980, and republished this issue. Applicant: FAST MOTOR SERVICE, INC., 9100 Plainfield Rd., Brookfield, IL 60513. Representative: Albert A. Andrin, 180 No. La Salle St., Chicago, IL 60601. Transporting (1) *containers, container ends, and closures,* (2) *commodities* manufactured or distributed by manufacturers and distributors of containers in mixed loads with containers, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of containers, container ends and closures, between points in the U.S., under continuing contract(s) with Boise Cascade Coroporation, of Boise, ID.

Note.—The purpose of this republication is to correctly state the territorial description.

To the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40071 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before February 9, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before February 23, 1981, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2-133

Decided: December 12, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

FF 442 (Sub-4F), filed November 26, 1980. Applicant: C-LINE FORWARDING, INC., 340 Jefferson Blvd., Warwick, RI 02888. Representative: Ronald N. Cobert, 1730 M St. NW., Suite 501, Washington, DC 20036. As a *freight forwarder,* in connection with the transportation of *general commodities,* (1) between New York, NY, points in Nassau, Westchester, and Rockland Counties, NY, and Passaic, Essex, Union, Hudson, Middlesex, and Bergen Counties, NJ, on the one hand, and, on the other, Baltimore, MD, Alexandria, VA, points in Philadelphia, Delaware, and Montgomery Counties, PA, Camden and Gloucester Counties, NJ, Baltimore, Anne Arundel, Prince Georges, Montgomery, and Howard Counties, MD, Arlington and Fairfax Counties, VA, and DC, and (2) between points in the areas above described, on the one hand, and, on the other, points in RI, and Bristol, Suffolk, Middlesex, Norfolk, Plymouth, Essex, and Worcester Counties, MA. Condition: Coincidental cancellation, at applicant's written request of Permit No. FF-442, issued December 23, 1974, upon issuance of a permit in this proceeding.

Note.—Applicant now holds the authority requested above, but it is restricted "against the transportation of traffic having a prior or subsequent movement in foreign commerce." The purpose of this application is to remove the foreign commerce restriction.

MC 3753 (Sub-28F), filed December 3, 1980. Applicant: AAA TRUCKING CORP., 3630 Quaker Bridge Rd., P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Suite 2373, One World Trade Center, New York, NY 10048. Over regular route, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Boston, MA and Manchester, NH, over Interstate Hwy 93, serving all intermediate points, and serving points in Belnap, Cheshire, Hillsborough, Merrimack, Rockingham, Strafford, and Sullivan Counties, NH as off-route points.

Note.—Applicant intends to tack this authority with its existing regular-route authority.

MC 6252 (Sub-4F), filed December 1, 1980. Applicant: TEALA'S EXPRESS, INC., 36 Laura St., Lyons Falls, NY 13368. Representative: Roy D. Pinsky, Suite 1020-State Tower Bldg., Syracuse, NY 13202. Transporting *general commoditiles* (except classes A and B explosives and household goods as defined by the Commission), between points in Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, and Oswego Counties, NY, on the one hand, and, on the other, points in Albany, Columbia, Fulton, Greene, Montgomery, Rennselaer, Saratoga, Schenectady and Schoharie Counties, NY.

MC 29883 (Sub-10F), filed December 4, 1980. Applicant: FISCHER MOTOR LINES, INC., 25585 Sherwood, Warren, MI 48091. Representative: William B. Elmer, 624 Third St., Traverse City, MI 49684. Transporting *such commoditlies* as are dealt in or used by food business houses, (except commodities in bulk), between points in the U.S., under continuing contract(s) with Nabisco, Inc., of East Hanover, NJ.

MC 32882 (Sub-152F), filed November 24, 1980. Applicant: MITCHELL BROS, TRUCK LINES, a corporation, 3841 North Columbia Blvd., Portland, OR 97217. Representative: David J. Lister, P.O. Box 17039, Portland, OR 97217. Transporting *Iron and steel articles,* from points in Box Elder County, UT, to points in AZ, CA, CO, ID, MT, NV, NM, OR, WA, and WY.

MC 61403 (Sub-297F), filed December 8, 1980. Applicant: THE MASON AND DIXON TANK LINES, INC., P.O. Box 969, Kingsport, TN 37662. Representative: W.C. Mitchell, Suite 1201, 370 Lexington Avenue, New York, NY 10017. Transporting *commodities in*

bulk, between points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 76993 (Sub-31F), filed December 4, 1980. Applicant: EXPRESS FREIGHT LINES, INC., 4924 South 13th St., Milwaukee, WI 53221. Representative: TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: R. H. Jinks (same address as applicant). Transporting *confectionery,* between points in McLean County, IL, on the one hand, and, on the other, points in the

MC 144693 (Sub-7F), filed December 4, 1980. Applicant: GLENN'S TRUCK SERVICE, INC., No. 1 Produce Row, St. Louis, MO 63102. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *general*

21243 Ventura Blvd., Woodland Hills, CA 91364. Representative: Herbert D. Warren (same address as applicant). Transporting *passengers and their baggage* in the same vehicle or separate vehicles, in round-trip charter operations, from points in CA, to points

MC 99746 (Sub-3F), filed December 9, 1980. Applicant: JEFFERSON TRUCK LINE, INC., 725 Girod St., New Orleans, LA 70130. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Transporting (1) *machinery, equipment, materials, and supplies* used in, or in

welding materials, between Troy, OH, on the one hand, and, on the other, points in the U.S.

MC 145067 (Sub-8F), filed December 2, 1980. Applicant: LAWRENCE SPAIDE, INC., P.O. Box 111, Avoca, PA 18640. Representative: Joseph A. Keating, Jr.

bulk, between points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 76993 (Sub-31F), filed December 4, 1980. Applicant: EXPRESS FREIGHT LINES, INC., 4924 South 13th St., Milwaukee, WI 53221. Representative: Michael J. Wyngaard, 150 East Gilman St., Madison, WI 53703. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between South Bend, IN and Toledo, OH: (a) from South Bend over U.S. Hwy 31 to junction Interstate Hwys 80/90, then over Interstate Hwys 80/90 to Toledo, and return over the same route, and (b) over U.S. Hwy 20, (2) between South Bend and Indianapolis, IN, over U.S. Hwy 31, (3) between junction Interstate Hwys 80/90 and 65, and Columbus, IN: from junction Interstate Hwys 80/90 and 65 over Interstate Hwy 65 to junction IN Hwy 46, then over IN Hwy 46 to Columbus, and return over the same route, (4) between Lafayette, IN and Toledo, OH: from Lafayette, over IN Hwy 25 to junction U.S. Hwy 24, then over U.S. Hwy 24 to Toledo, OH, and return over the same route, (5) between Huntington and Indianapolis, IN, over IN Hwy 37, (6) between junction Interstate Hwys 80/90 and 69, and Indianapolis, IN, over Interstate Hwy 69, (7) between Huntington and Anderson, IN, over IN Hwy 9, (8) between Muncie, IN and junction IN Hwy 32 and Interstate Hwy 69, over IN Hwy 32, (9) between Merrillville and Ft. Wayne, IN, over U.S. Hwy 30, and (10) serving all intermediate points in routes (1) through (9) above.

Note.—Applicant proposes to tack the requested authority with all its existing authority and to interline with other existing carriers.

MC 87103 (Sub-86F), filed December 1, 1980. Applicant: MILLER TRANSFER AND RIGGING CO., a corporation, P.O. Box 322, Cuyahoga Falls, OH 44222. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440. Transporting (1) *switchgear, circuit breakers and parts for switchgear and circuit breakers*, and those commodities which, because of size or weight, require the use of special equipment or special handling, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between points in Greenwood County, SC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 111812 (Sub-748F), filed December 2, 1980. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: R. H. Jinks (same address as applicant). Transporting *confectionery*, between points in McLean County, IL, on the one hand, and, on the other, points in the U.S.

MC 115162 (Sub-549F), filed December 2, 1980. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacture of radios, televisions and recording and phonographic equipment, between points in the U.S., restricted to traffic originating at or destined to the facilities used by the Zenith Radio Corporation.

MC 116632 (Sub-29F), filed December 8, 1980. Applicant: H. O. BOUCHARD, INC., MRC Box 141 A, Bangor, ME 04401. Representative: John R. McKernan, Jr., P.O. Box 586, Portland, ME 04112. Transporting *coal* from points in KY, PA, VA, and WV, to points in ME and NH.

MC 125433 (Sub-450F), filed December 5, 1980. Applicant: F–B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting (1) *machinery, except electrical*, and (2) *electrical machinery or equipment*, as described in Items 35 and 36 of the Standard Transportation Commodity Code Tariff, between Hutchinson, KS, on the one hand, and, on the other, points in the U.S.

MC 125433 (Sub-451F), filed December 5, 1980. Applicant: F–B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting (1) *machinery, except electrical*, and (2) *electrical machinery or equipment, and (3) transportation equipment*, as described in Items 35, 36, and 37, respectively, of the Standard Transportation Commodity Code Tariff, between City of Industry, CA, Calhorn, GA, Byran, OH, and, on the one hand, and, on the other, points in the U.S.

MC 142603 (Sub-36F), filed December 5, 1980. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. Transporting (1) *paper*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of paper, between points in the U.S., under continuing contract(s) with Jay Paper Sales, of Havertown, PA.

MC 144693 (Sub-7F), filed December 4, 1980. Applicant: GLENN'S TRUCK SERVICE, INC., No. 1 Produce Row, St. Louis, MO 63102. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods as defined by the Commission), between points in IN, on the one hand, and, on the other, points in MO, CA, OR, WA, AZ, UT, CO, and MT, restricted to traffic originating at or destined to the facilities of RCA Corporation.

MC 144922 (Sub-6F), filed December 5, 1980. Applicant: ATF TRUCKING CO., INC., Rt. 11 Box 507–B, Birmingham, AL 35210. Representative: John W. Cooper, P.O. Box 56, Mentone, AL 35984. Transporting (1) *Citrus Products* from the facilities of Nature's Best Food Products, Inc., at Shenadore, GA, and points in FL, to points in U.S. (except AK and HI) (2) *Materials, supplies, equipment, and machinery* in the reverse direction.

MC 146782 (Sub-35F), filed December 4, 1980. Applicant: ROBERTS CONTRACT CARRIER CORPORATION, 300 First Avenue, South, Nashville, TN 37201. Representative: Stephen L. Edwards, 806 Nashville Bank & Trust Building, Nashville, TN 37201. Transporting *iron and steel articles*, having a prior or subsequent movement by water, between points in TN, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MS, NC, SC, TN and VA.

MC 148833 (Sub-5F), filed December 2, 1980. Applicant: REBEL EXPRESS, INC., Box 98, Dawson, IA 50066. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting *such commodities* as are dealt in by retail drug, variety, and department stores, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Ardan, Inc.

MC 150183 (Sub-4F), filed December 5, 1980. Applicant: CASSCO REFRIGERATED TRANSPORT, DIVISION OF CASSCO CORPORATION, 125 W. Bruce St., Harrisonburg, VA 22801. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Transporting *foodstuffs, and materials and supplies used in the manufacture, and distribution of foodstuffs* (except commodities in bulk) between Timberville, VA, on the one hand, and, on the other, points in NC and SC.

MC 152902 (Sub-1F), filed December 2, 1980. Applicant: LCT CALIFORNIA CHARTER COACH COMPANY, INC., 21243 Ventura Blvd., Woodland Hills, CA 91364. Representative: Herbert D. Warren (same address as applicant). Transporting *passengers and their baggage* in the same vehicle or separate vehicles, in round-trip charter operations, from points in CA, to points in AZ, NV, and UT.

MC 153023F, filed December 4, 1980. Applicant: HARMONY TRAVEL, INC., 950 Jericho Turnpike, Westbury, NY 11590. Representative: William Sheinker (same address as applicant). As a *broker*, to arrange for the transportation of *passengers and their baggage*, between points in the U.S. (including AK and HI).

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Decided: December 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 70557 (Sub-41F), filed December 8, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 West Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 So. LaSalle St., Chicago, IL 60603. Transporting *containers and container closures*, and *materials, equipment, and supplies* used in the manufacture and distribution of containers and container closures (except in bulk), between those points in the U.S. in and east of MN, IA, MO, OK, and TX.

MC 76266 (Sub-140F), filed December 5, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Rd., St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *insulating materials, and supplies and equipment* used in the manufacture of insulating materials, between the facilities of Poly Therm Industries, Inc. at points in Douglas County, WI, on the one hand, and, on the other, points in the U.S.

MC 78947 (Sub-22F), filed December 8, 1980. Applicant: ELLIOTT BROS. TRUCK LINE, INC., P.O. Box 310, Dysart, IA 52224. Representative: Stanley C. Olsen, Jr., 7400 Metro Blvd. Suite 411, Edina, MN 55435. Transporting (1) *such commodities* as are dealt in or used by hardware business houses, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in Craighead and Randolph Counties, AR, Los Angeles County, CA, Black Hawk County, IA, Pettis County, MO, and Clackamas and Multomah Counties, OR, on the one hand, and, on the other, points in the U.S.

MC 99748 (Sub-3F), filed December 9, 1980. Applicant: JEFFERSON TRUCK LINE, INC., 725 Girod St., New Orleans, LA 70130. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Transporting (1) *machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and byproducts, and (2) *machinery, materials, equipment, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof, between points in LA. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation at applicant's written requests of its Certificate of Registration under MC–99746 (Sub 1).

MC 107006 (Sub-13F), filed December 8, 1980. Applicant: THOMAS KAPPEL, INC., P.O. Box 1408, Springfield, OH 45501. Representative: John L. Alden, 1396 W. Fifth Ave., Columbus, OH 43212. Transporting *paper and paper products*, and *materials, equipment, and supplies* used in the manufacture of paper and paper products (except commodities in bulk), between Urvana and Dayton, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 11727 (Sub-8F), filed December 8, 1980. Applicant: JAMES H. RUSSELL, INC., Three Rocky Hill Rd., Smithfield, RI 02917. Representative: Zoe Ann Pace, Suite 2373, One World Trade Center, New York, NY 10048. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between points in New London County, CT, on the one hand, and, on the other, points in CT, DE, MD, NH, NJ, NY, MA, ME, PA, VA, RI, VT, and DC.

MC 143607 (Sub-31F), filed December 9, 1980. Applicant: BAYWOOD TRANSPORT, INC., 2611 University Parks Dr., Waco, TX 76706. Representative: Arthur W. Grimes (same address as applicant). Transporting *plastic bottles and containers*, between points in the U.S., under continuing contract(s) with Cutler Plastics of Texas Corporation of Houston, TX.

MC 143956 (Sub-24F), filed December 8, 1980. Applicant: GARDNER TRUCKING CO., INC., P.O. Drawer 493, Walterboro, SC 29488. Representative: Steven W. Gardner, 3574 Piedmont Rd., Atlanta, GA 30305. Transporting *welding materials*, between Troy, OH, on the one hand, and, on the other, points in the U.S.

MC 145067 (Sub-8F), filed December 2, 1980. Applicant: LAWRENCE SPAIDE, INC., P.O. Box 111, Avoca, PA 18640. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in OH, CT, PA, NY, and NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI) restricted to traffic originating at or destined to the facilities used by Northeastern Pennsylvania Shipper's Cooperative Association, Inc. or its members.

MC 146087 (Sub-2F), filed December 8, 1980. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" St., Omaha, NE 68127. Representative: Donald L. Stern, 7171 Mercy Rd., Suite 610, Omaha, NE 68106. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Edward Hines Lumber Company, of Chicago, IL.

MC 146646 (Sub-133F), filed December 8, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting (1) *home heating and air conditioning equipment*, and *outdoor recreational equipment*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk and those requiring special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of the Coleman Company, Inc.

MC 146646 (Sub-134F), filed December 9, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: J. W. Segrest (same address as applicant). Transporting (1) *canned and bottled foodstuffs*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Bruce Foods.

MC 150166 (Sub-1F), filed December 8, 1980. Applicant: ROCKY MOUNTAIN TRUCKING CO., 4137 First Avenue South, Billings, MT 59101. Representative: James P. Murphy, 2508

Third Ave. N, Billings, MT 59101. Transporting: *meats, meat products, and meat by products and articles distributed by meat packinghouses as described in Sections A and C of*

classes A and B explosives), between points in the U.S., under continuing contract(s) with William M. Orr Company and J. Allan Steel Company, Inc., both of Pittsburgh, PA.

the Commission, classes A and B explosives, and commodities in bulk), between the facilities of National Presto Industries, Inc., at points in Madison County, MS, on the one hand, and, on

contract(s) with Mountain States Telephone & Telegraph—Mountain Bell of Denver, CO.

MC 138807 (Sub-17F), filed December 9, 1980. Applicant: ZIP TRUCKING,

MC 144606 (Sub-18F), filed December 8, 1980. Applicant: DUNCAN & SON LINES, INC., 714 East Baseline Rd., Buckeye, AZ 85326. Representative: Donald W. Powell, 4150 North 12th St.,

Association, at Los Angeles, CA to Eugene, OR.

MC 149026 (Sub-18F), filed December 5, 1980. Applicant: TRANS-STATES LINES, INC., 633 Main St., Van Buren,

Third Ave. N, Billings, MT 59101. Transporting: *meats, meat products, and meat by products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766,* between points in Yellowstone County, MT, on the one hand, and, on the other, points in the U.S.

MC 152237 (Sub-1F), filed December 8, 1980. Applicant: STEINBECKER BROS., a Corporation, P.O. Box 852, Greeley, CO 80632. Representative: John T. Wirth, 717 17th St., Suite 2800, Denver, CO 80202. Transporting (1) *meats, meat products, meat byproducts, and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carriers Certificates,* 61 M.C.C. 209 and 766, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Sterling Colorado Beef Company, of Sterling, CO, Monfort of Colorado, Inc., of Greeley, CO, Barkely Meat Company, of South Lake Tahoe, CA, and Iowa Meat Distributors, Inc., of Beaverton, OR.

MC 153017F, filed December 8, 1960. Applicant: CASINO TOURS, INC., 114 Meadow View Dr., Newtown, PA 18940. Representative: Alan R. Squires, Esq., 818 Widener Bldg., 1339 Chestnut St., Philadelphia, PA 19107. To operate as a *broker* at Newtown, PA, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* in special and charter operations, beginning and ending at points in PA, NJ, MD, DE, and DC, and extending to points in the U.S. (including AK but excluding HI).

MC 153027 (Sub-2F), filed December 5, 1980. Applicant: SOUTH CENTRAL EXPRESS, INC., 160 N. Perkins Ave., Memphis, TN 38117. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004. Transporting *such commodities* as are dealt in by hobby shops and ceramic dealers, between Memphis, TN, Alton, IL, Talladega, AL, Jacksonville, FL, and Bangor, ME, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 153066F, filed December 5, 1980. Applicant: RONALD L. REAM, d.b.a. DARE TRANSPORTATION CO., P.O. Box 244, West Mifflin, PA 15122. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with William M. Orr Company and J. Allan Steel Company, Inc., both of Pittsburgh, PA.

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Decided: Dec. 18, 1980.

By the Commission Review Board Number 1, Members Carleton, Joyce and Jones. Member Joyce not participating.

MC 13267 (Sub-5E), filed December 8, 1980. Applicant: MOUNTAINSIDE TRANSPORT, INC., 4828 Hollins Ferry Rd., Baltimore, MD 21227. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Transporting *such commodities* as are dealt in or used by (a) grocery, food, drug and liquor business houses, and (b) department stores, between points in the U.S., under continuing contract(s) with The Great Atlantic & Pacific Tea Co., Inc., Super Market Service, Inc., and Plus Discount Foods, Inc., all of Montvale, NJ.

MC 29647 (Sub-48F), filed December 11, 1980. Applicant: CHARLTON BROS. TRANSPORTATION COMPANY, INC., P.O. Box 2097, Hagerstown, MD 21740. Representative: John Fullerton, 407 No. Front St., Harrisburg, PA 17105. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in MD, VA, WV, DE, NJ, NY, PA, and DC.

MC 66886 (Sub-87F), filed December 9, 1980. Applicant: BELGER CARTAGE SERVICE, INC., 2100 Walnut St., Kansas City, MO 64108. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. Transporting machinery contractors' materials, supplies and equipment, between points in the U.S.

MC 74416 (Sub-27F), filed December 8, 1980. Applicant: LESTER M. PRANGE, INC., Box 1, Kirkwood, PA 17536. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St. NW., Washington, DC 20005. Transporting *materials, equipment and supplies* used in the manufacture of iron and steel articles (except commodities in bulk), between the facilities of Crucible, Inc., Division of Colt Industries, at Midland, PA, on the one hand, and, on the other, points in NY, NJ, DE, MD, and DC.

MC 76266 (Sub-141F), filed December 9, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Rd., St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between the facilities of National Presto Industries, Inc., at points in Madison County, MS, on the one hand, and, on the other, points in the U.S.

MC 107458 (Sub-26F), filed December 9, 1980. Applicant: HARRY L. YOUNG AND SONS, INC., 542 West Sixth So., Salt Lake City, UT 84104. Representative: Lon Rodney Kump, 333 East Fourth So., Salt Lake City, UT 84111. Transporting *steel articles,* from the facilities of the Nucor Steel Plant, at points in Box Elder County, UT, to points in AZ, CA, CO, ID, MT, NV, NM, OR, WA, and WY.

MC 111856 (Sub-15F), filed December 9, 1980. Applicant: CHOCTAW TRANSPORT, INC., 800 Bay Bridge Rd., Prichard, AL 36610. Representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209. Transporting *such commodities* as are dealt in or used by manufacturers of chemicals, textiles, wood products, and paper and paper products, between points in Mobile, Washington, Escambia, Choctaw and Chickasaw Counties, AL, on the one hand, and, on the other, points in LA.

MC 113106 (Sub-100F), filed December 11, 1980. Applicant: THE BLUE DIAMOND COMPANY, a corporation, 4401 E. Fairmont Ave., Baltimore, MD 21224. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St. NW., Washington, D.C. 20005. Transporting (1) *flour and materials and supplies* used in the distribution of flour, between Buffalo, NY, on the one hand, and, on the other, points in NJ, PA, MD, WV, VA, and DC and (2) *alcoholic beverages and materials and supplies* used in the manufacture and distribution of alcoholic beverages, between points in the U.S. in and east of MN, IA, MO, OK, and TX, restricted to traffic originating at or destined to the facilities of Joseph E. Seagram & Sons, Inc.

MC 115767 (Sub-5F), filed December 9, 1980. Applicant: TERMINAL TRANSFER, INC., 3601 N.W. Yeon Ave., Portland, OR 97210. Representative: Richard A. Ryles, 3601 N.W. Yeon Ave., Portland, OR 97210. Transporting *sand,* from Longview, WA, to Portland, OR.

MC 136087 (Sub-7F), filed November 16, 1980. Applicant: J.C. TRUCKING, INC., 5085 Harlan, Denver, CO 80212. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S. under continuing

contract(s) with Mountain States Telephone & Telegraph—Mountain Bell of Denver, CO.

MC 138807 (Sub-17F), filed December 9, 1980. Applicant: ZIP TRUCKING, INC., P.O. Box 6126, Jackson, MS 39208. Representative: K. Edward Wolcott, P.O. Box 872, Atlanta, GA 30301. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Rockwell International Corp., of Memphis, TN.

MC 139006 (Sub-23F), filed December 8, 1980. Applicant: RAPIER SMITH, R.R. 5, Loretto Rd., Bardstown, KY 40004. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX, restricted to traffic originating at or destined to the facilities used by Plough, Inc. and its subsidiaries.

MC 139206 (Sub-79F), filed December 8, 1980. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Dr., Maryland Heights, MO 63043. Representative: Laura C. Berry (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S., under continuing contract(s) with Anaconda Brass Division, Anaconda Industries (renamed Anaconda Metal Hose, Anaconda Industries), of Mattoon, IL, Mead Johnson Terminal, Inc., of Evansville, IN, and Sangamon Company, of Taylorville, IL. Condition: Issuance of a Permit in this proceeding is subject to the prior or coincidental cancellation, at applicant's written request, of MC–139206 Sub-60F), M–139206 (Sub–65F), and MC–139206 (Sub–70F).

MC 141867 (Sub-24F), filed December 5, 1980. Applicant: SPECIALIZED TRUCKING SERVICE, INC., 2301 Milwaukee Way, Tacoma, WA 98421. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. Transporting *such commodities* as dealt in or used by the manufacturers of silicon metals, ferosilicon, silica, silex, colloidal silica and amorphus silica, between points in Chelan and Douglas Counties, WA on the one hand, and, on the other, points in CA, CO, ID, MT, NV, OR, and UT.

MC 144606 (Sub-18F), filed December 8, 1980. Applicant: DUNCAN & SON LINES, INC., 714 East Baseline Rd., Buckeye, AZ 85326. Representative: Donald W. Powell, 4150 North 12th St., Phoenix, AZ 85014. Transporting *plastic and plastic articles,* from Monrovia, CA, to points in CO, LA, NV, TX, and UT.

MC 146146 (Sub-11F), filed December 8, 1980. Applicant: HADDAD TRANSPORTATION, INC., 5000 Wyoming Ave., Dearborn, MI 48126. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440. Transporting *general commodities,* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Busy Beaver Building Centers, Inc., of Pittsburgh, PA.

MC 146536 (Sub-11F), filed November 17, 1980, previously noticed in the FR issue of December 2, 1980, and republished this issue. Applicant: WALTER SHORT AGENCY, INC., 5000 Wyoming, Dearborn, MI 48126. Representative: John C. Scherbarth, 22375 Haggerty Rd. P.O. Box 400, Northville, MI 48167. Transporting *tractors, tractor parts, and tractor implements,* (1) between points in Macomb County, MI on the one hand, and, on the other, points in NC, SC, KY, TN, GA, FL, AL, MS, LA, AR, and TX, and (2) between points in Wayne County, MI, on the one hand, and, on the other, points in AL, NC, SC, MD, NY, NJ, VA, FL, and GA. Note: The purpose of this republication is to correctly state the territorial description in (2).

MC 146767 (Sub-1F), filed December 9, 1980. Applicant: GREEN'S MOVING & STORAGE, INC., 1115 E. New York St., P.O. Box 649, Rapid City, SD 57709. Representative: G. M. Green, Sr. (same address as applicant). Transporting *household goods* as defined by the Commission, between points in SD, ND, MN, IA, IL MO, KS, NE, CO, WY, MT, OK, TX, AR, NM, UT, and WI.

MC 148966 (Sub-4F), filed December 9, 1980. Applicant: DROTZMANN, INC., P.O. Box 667, Yankton, SD 57078. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) from the facilities of Terminal Freight Cooperative Association, at Columbus, OH to Los Angeles, CA, Portland, OR, and Seattle, WA, and (2) from the facilities of Terminal Freight Cooperative Association, at Los Angeles, CA to Eugene, OR.

MC 149026 (Sub-18F), filed December 5, 1980. Applicant: TRANS-STATES LINES, INC., 633 Main St., Van Buren, AR 72956. Representative: Larry C. Price, P.O. Box 1486, Van Buren, AR 72956. Transportation (1) *fabricated metal products* (except ordnance), (2) *machinery,* and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between Kerrville, Center Point, Houston, San Antonio, and Tyler, Tx, on the one hand, and, on the other, points in the U.S.

MC 150776 (Sub-2F), filed December 11, 1980. Applicant: ALFRED DANIELS, INC., Rt. 1, P.O. Box 272–I, Jackson, OH 45640. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215. Transportation *building materials,* between points in the U.S., under continuing contract(s) with Stonhard, Inc., of Maple Shade, NJ.

MC 151717 (Sub-1F), filed December 5, 1980. Applicant: MONTREAL CONTAINER TERMINALS, INC., 6360 Notre-Dame Street East, Montreal Quebec, Canada HIN 2E1. Representative: Adrien Paquette, 200 St.-Jacques Street West, S.900, Montreal, Quebec, Canada H2Y IM3. In foreign commerce only, transporting *general commodities and empty containers* (except commodities of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between ports of entry on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in NY, NJ, VT, and MA, restricted to traffic having a prior or subsequent movement by water.

MC 153096F, filed December 9, 1980. Applicant: GRC TRUCKING, INC., 1525 South-10th Street, Goshen, IN 46526. Representative: Paul D. Borghesani, Katz & Borghensani, 300 Communicana Bldg., 421 South Second Street, Elkhart, IN 46516. Transporting *general commodities* (except classes A and B explosives and household goods) between points in the U.S. under continuing contract(s) with Goshen Rubber Companies, Inc., of Goshen, IN. and its subsidiaries.

MC 153116F, filed December 8, 1980. Applicant: JAMES T. EVANS TRUCKING, P.O. Box 744, Sumner, WA 98390. Representative: James T. Evans (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods) between points in the

U.S., under continuing contract(s) with American Manufacturing Company, Inc., of Tacoma, WA.

Agatha L. Mergenovich,
Secretary.

be found at 43 FR 50908, as modified at 43 FR 60277.

Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where

235 Peachtree St., N.E., Atlanta, GA 30303. Petitioner holds a motor *common carrier* certificate in MC–144041 Sub 15F, issued August 15, 1979, authorizing transportation, over irregular routes, transporting *plastic articles and*

Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major

gateways at MA points in order to provide the through service as stated above. (3) This supplemental decision-notice is the result of applicant's petition to reopen for the purpose of receiving additional evidence and for reconsideration of the prior publication. The original publication deleted the through

Interstate Commerce Commission under the provisions of 49 U.S.C. 10501(a)(1)(C):

" " " the Interstate Commerce Commission has jurisdiction over transportation " " " by pipeline " " " when transporting a commodity other than water, gas, or oil " " "

U.S., under continuing contract(s) with American Manufacturing Company, Inc., of Tacoma, WA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40077 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Petitions for Modification, Interpretation or Reinstatement of Motor Carrier Operating Rights Authority

The following petitions seek modification or interpretation of exisiting motor carrier operating rights authority, or reinstatement of terminated motor carrier operating rights authority.

All pleadings and documents must clearly specify the suffix numbers (e.g., M1 F, M2 F) where the docket is so identified in this notice.

The following petitions, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the **Federal Register** with a copy being furnished the applicant. Protests to these applications will be *rejected.*

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that if (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(*l*). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277.

Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 95540 (Sub-1038F) (M1F) (Notice of filing of petition to modify certificate) filed August 6, 1979. Petitioner: WATKINS MOTOR LINES, INC., 144 West Griffin Rd., Lakeland, FL 33801. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Petitioner hold a motor *common carrier* certificate in MC-95540 Sub 1038F, issued June 25, 1979, authorizing transportation, over irregular routes, transporting foodstuffs (except in bulk, in tank vehicles) in vehicles equipped with mechanical refrigeration, from points in CT, MA, NJ, NY, and PA, to points in AL, FL, MS, NC, SC, TN and VA. By the instant petition, petitioner seeks to modify the above certificate by removing the language "in vehicles equipped with mechanical refrigeration."

MC 144041 (M1F) (Notice of filing of petition to modify certificate) filed May 19, 1980. Petitioner: DOWNS TRANSPORTATION CO., INC., 1555 Industrial Blvd., Conyers, GA 30207. Representative: K. Edward Wolcott, Peachtree Center, 1200 Gas Light Tower, 235 Peachtree St., N.E., Atlanta, GA 30303. Petitioner holds motor *common carrier* certificate in MC-144041 issued September 21, 1979, authorizing transportation, over irregular routes, transporting (1) *chemicals*, (except in bulk), from Decatur and Conyers, GA, to points in the U.S. (except AK and HI), restricted to traffic originating at the facilities of Bio-Lab, Inc., at the named origins, and (2) *materials, equipment, and supplies* used in the manufacture, sale and distribution of chemicals (except in bulk), from points in the U.S. (except AK and HI) to Decatur and Conyers, GA, restricted to traffic destined to facilities of Bio-Lab, Inc., at the named destinations. By the instant petition, petitioner seeks to modify the above certificate be deleting the facility restrictions in (1) and (2) above.

MC 144041 (Sub-15F) (M1F) (Notice of filing of petition to modify certificate) filed May 6, 1980. Petitioner: DOWNS TRANSPORTATION CO., INC., 1555 Industrial Blvd., Conyers, GA 30207. Representative: K. Edward Wolcott, Peachtree Center, 1200 Gas Light Tower, 235 Peachtree St., N.E., Atlanta, GA 30303. Petitioner holds a motor *common carrier* certificate in MC-144041 Sub 15F, issued August 15, 1979, authorizing transportation, over irregular routes, transporting *plastic articles and materials* (except in bulk) between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Mobile Chemical Company, Plastics Division. By the instant petition, petitioner seeks to modify the above certificate by deleting the facility restriction.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40065 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of

Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed by February 9, 1981 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Decided: December 16, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams. (Board Member Taylor votes to deny the request for gateway elimination.)

MC 93682 (Sub-21F), filed October 1, 1980. (Supplemental Publication) (Previously published in the **Federal Register** on October 23, 1980). Applicant: COLES EXPRESS (Gateway Elimination), 444 Perry Road, Bangor, ME 04401. Representative: John F. O'Donnell, 60 Adams Street, P.O. Box 238, Milton, MA 02187. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except commodities which because of size or weight require the use of special equipment, articles of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in RI within 10 miles of Providence, including Providence, on the one hand, and on the other, points in CT.

Notes.— (1) This proceeding is a matter directly related to a finance proceeding in MC-F-14477F, published in the **Federal Register** issue of October 23, 1980. (2) The purpose of this application is to eliminate gateways at MA points in order to provide the through service as stated above. (3) This supplemental decision-notice is the result of applicant's petition to reopen for the purpose of receiving additional evidence and for reconsideration of the prior publication. The original publication deleted the through service stated above because Coles sought to tack the authority being purchased in MC-F-14477F with authority pending in MC-93682 (Sub-No. 20F). That authority has now been certificated.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40078 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[No. 37427[1]]

Cortez Pipeline Company—Petition for Declaratory Order—Commission Jurisdiction Over Transportation of Carbon Dioxide by Pipeline

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Filing of Petitions.

SUMMARY: Petitioners question whether their proposed interstate pipeline transportation of carbon dioxide gas is subject to our jurisdiction under 49 U.S.C. 10501. We are instituting a proceeding to resolve the question. It is our tentative conclusion that we do not have jurisdiction.

DATE: Comments are due February 9, 1981.

ADDRESS: An original and 15 copies of comments should be sent to: Interstate Commerce Commission, Room 5340, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275-7656.

SUPPLEMENTARY INFORMATION: Cortez Pipeline Company of Houston, TX, a pipeline common carrier filed a petition on April 21, 1980 in No. 37427,[1] seeking a declaratory order to determine if its proposed transportation of carbon dioxide in interstate commerce is excepted from the jurisdiction of the Interstate Commerce Commission under the provisions of 49 U.S.C. 10501(a)(1)(C):

> * * * the Interstate Commerce Commission has jurisdiction over transportation * * * by pipeline * * * when transporting a commodity other than water, gas, or oil * * *.

Pipeline companies may construct or extend their facilities without a certificate or other evidence of franchise from us. See *Petroleum Products, Williams Bros. Pipeline Co.*, 351 I.C.C. 102, 107 (1975). Nevertheless, there is still a question here of whether the commodity involved in the proposal is excepted from our jurisdiction.

Petitioner will transport carbon dioxide for the Shell Oil Company over its proposed 480-mile pipeline from Colorado to Texas, crossing New Mexico. Approximately two-thirds of the pipeline will be constructed on Federal, State, and Indian lands, and petitioner must, accordingly, obtain right-of-way permits from the U.S. Interior Department's Bureau of Land Management or from the States involved. In addition, the U.S. Department of Transportation is exercising jurisdiction over the pipeline's compliance with safety standards. Carbon dioxide will be used to flood depleted oil fields and force to the surface an estimated 280-million barrels of otherwise unrecoverable crude oil.

Petitioner takes the position that carbon dioxide is covered by the present statutory exception from our regulation of "water, gas, or oil". It will be transported under sufficient pressure to put it in a "super-critical" state between a gas and a liquid, but at normal atmospheric pressure carbon dioxide is a gas. It contains only slight traces of methane hydrocarbon being 98 percent pure and is, therefore, noncombustible. According to petitioner, the 49 U.S.C. 10501(a)(1)(C) exclusion was broadened by the recodification of the Interstate Commerce Act to include noncombustible as well as combustible gas useable for fuel.

Petitioner has previously sought exemption from the jurisdiction of the Federal Energy Regulatory Commission (FERC),[2] which regulates the interstate transportation of natural gas pursuant to the Natural Gas Act of 1938,[3] on the ground that carbon dioxide is not a natural gas.

The FERC DECISION, IN DOCKET No. CP-130 (1979), does not rest on a construction of the term "natural gas," but rather proceeds primarily by reference to the goals and purposes of

[1] Embraced in this decision is No. 37529, Arco Oil and Gas Company—Petition for Declaratory Order—Jurisdiction Over Interstate Pipeline Transportation of Carbon Dioxide, See Footnote 1

[1] In No. 37529, Atlantic Richfield Company filed a petition on October 21, 1980 seeking a declaratory order for the same purpose. It also intends to transport carbon dioxide by pipeline from Colorado to West Texas for use as a tertiary method of recovering crude oil reserves (the primary method being oil flowing to the surface as a result of natural reservoir pressure; and the secondary method consisting of flooding the reservoir with water to force oil to the surface). This petition makes essentially the same argument, as does the first petitioner, in justification of an exception from our jurisdiction. Disposition of the lead petition will also govern disposition of the embraced petition.

[2] Successor to the Federal Power Commission.

[3] Pub. L. 75-687.

the Natural Gas Act. FERC concluded that because the goal of that Act was to protect consumers from exploitation at the hands of natural gas companies, jurisdiction over CO^2 *pipelines would*

The Congressional debates preceding the Hepburn Act involved, among other things, the question of whether artificial gas and natural gas should both be excepted from this Commission's

Erlenbaugh v. *United States*, 409 U.S. 239, 243-44 (1972). However, in this case the FERC decision is not helpful to us because it did not construe or interpret the terms natural and artificial gas. Its decision was based on other grounds.

Corporation—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between North Little Rock and Perry, AR; Finance Docket No. 29473 (Sub-No. 1), Southeast Iowa Trustee) lines in Missouri, Minnesota, and Iowa.

AGENCY: Interstate Commerce Commission.

ACTION: Modification of the decision served October 31, 1980 and published

purchase applications by noncarrier applicants had to be filed with us by September 15, 1980. In response to this deadline, noncarriers filed applications that were incomplete because they did not contain purchase agreements and

the Natural Gas Act. FERC concluded that because the goal of that Act was to protect consumers from exploitation at the hands of natural gas companies, jurisdiction over CO^2 *pipelines would advance no goal or purpose of the NGA.*

The former section 1(1)(b), originally part of the Hepburn Act of 1906,[4] provided that this Commission had jurisdiction over the interstate transportation of comodities (including oil) by pipeline, "except water and except natural or artificial gas". After the transfer of jurisdiction over oil to the Department of Energy in 1977,[5] the Interstate Commerce Act was recodified in 1978 [6] for revision and reorganization but not substantive change.[7] The recodification, as pertinent, reflected the transfer of jurisdiction over oil and, also, eliminated the "natural or artificial" description of gas because those words were considered surplus.[8]

Gas is found in the ground separately or with oil. All gas has certain common characteristics of lacking independent shape or volume and of expanding indefinitely, but a difference in the hydrocarbon content can result in gas being more or less combustible. In nature, combustible and noncombustible gas are often produced together,[9] and the carbon dioxide that petitioner proposes to transport comes from natural underground sources.[10] Even so, trade usage has generally treated combustible gas useable for fuel as natural gas.

Gas was first used as fuel for lighting purposes in the 1800's.[11] By the time of the Hepburn Act, natural gas was beginning to replace artificial gas for lighting and manufacturing. Congress was considering gas as a fuel when it excepted "natural or artificial gas", and the recovery of oil reserves by flooding with gas (including carbon dioxide) was not used extensively until a decade or so later.[12] The question is whether Congress intended to exclude from our jurisdiction all gas types regardless of origin or source. We believe it did.

The Congressional debates preceding the Hepburn Act involved, among other things, the question of whether artificial gas and natural gas should both be excepted from this Commission's jurisdiction. Pipelines were expanding and transporting natural gas greater distances in interstate commerce but it was not certain how much artificial gas moved in interstate commerce. Nevertheless, to make clear that both types of gas were excluded, a proposal was offered to strike the word "natural" from the original draft of the bill which excepted "natural gas", leaving only the word "gas". Instead, the final compromise, to accomplish the same purpose, specified that both "natural or artificial gas" were excepted from our jurisdiction.[13]

This distinction between basic gas types by origin or source was also made in the legislative discussion preceding the Natural Gas Act, to the effect that it was confined to regulation of natural gas because manufactured gas could not be transported profitably in interstate commerce.[14] Furthermore, in *Henry* v. *F.P.C.*, 513 F. 2d 395, 399 (D.C. Cir., 1975), the court held that in the Natural Gas Act Congress made a distinction between natural and artificial gas which is based on its origin and not its physical characteristics of heat value or methane content.

A statute should be given its plain meaning, as the courts have often held. See, for example, *Henry* v. *F.P.C., supra.* The current section 10501(a)(1)(C) uses the unqualified word "gas," which represents no substantive change from the former act according to the recodification law. The plain meaning of the former act, as supported by the legislative history, is that the universe of gas types classified by origin or source was excluded.[15] It is therefore our tentative conclusion that we lack jurisdiction over the transportation of CO_2 by pipeline.

The opinion of a sister agency should be given weight, if possible, so that related statutes can be coordinated. *Erlenbaugh* v. *United States*, 409 U.S. 239, 243–44 (1972). However, in this case the FERC decision is not helpful to us because it did not construe or interpret the terms natural and artificial gas. Its decision was based on other grounds.

Section 554(e) of the Administrative Procedure Act, U.S.C. 554(e), authorizes an agency in its discretion to issue a declaratory order to terminate a controversy or remove uncertainty. While we do not believe that we have jurisdiction over the considered transportation, the issue is important enough to institute a proceeding and accept comments on the petition and our view on it. This action should not significantly affect the quality of the human environment or conservation of energy resources, but comments may also address this matter.

Authority: 49 U.S.C. 10501(a)(1)(C) and 10321; and 5 U.S.C. 554(e).

Decided: December 16, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

James H. Bayne,
Acting Secretary.

[FR Doc. 80-40267 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[4] Pub. L. 59–337.
[5] Pub. L. 95–91.
[6] Pub. L. 95–473.
[7] As provided by section 3 of the recodification law.
[8] According to House Report 95–1395.
[9] FERC decision in docket No. CP 79–130, supra.
[10] It can also be manufactured from such as fertilizer, an example of which is a current intrastate pipeline movement of carbon dioxide in Texas from a fertilizer plant to an oil field. *Pipeline Digest*, October 6, 1980, page 19.
[11] *The Transportation Crisis* by Wilson (1933), Chapter VIII, pages 123, 124, and 129.
[12] *Function of Natural Gas in the Production of Oil*, by the U.S. Bureau of Mines (1929).
[13] 40 Congr. Rec. 6369, 6371, 6372, and 7006 (1906).
[14] 81 Congr. Rec. 9316 (1937).
[15] The transportation of gas by itself can be distinguished from a 1971 valuation report in *Black Lake Pipeline Company*, 342 I.C.C. 339–40, which clearly presented no jurisdictional issue and involved transportation of a mixture of ethane and oil, to facilitate movement through the pipeline.

Also, a motor-carrier application proceeding for a certificate to transport liquid methane, *Indianhead Truck Line, Inc., Ext-Methane*, 123 M.C.C. 1, 7 (1975), in which natural gas is defined as a mixture largely of ethane and methane, is not determinative of the issue here. There is no question that combustible gas usable for fuel is natural gas, but should noncombustible gas with its origin in nature also be classified as a natural gas?

[Finance Docket No. 29450 (Sub-No. 1), et al.]

Iowa Falls Western Holding Co.—Purchase (Portion)—Chicago, Rock Island and Pacific Railroad Co.; Debtor (William M. Gibbons, Trustee) Between Iowa Falls and Sibley, et al.

In the matter of Finance Docket No. 29450 (Sub-No. 1), Iowa Falls Western Holding Company—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between Iowa Falls and Sibley, IA; Finance Docket No. 29451 (Sub-No. 1), Royal-Manson Shippers' Association—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between Royal and Manson, IA; Finance Docket No. 29459 (Sub-No. 1), Gateway Railroad-purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee) Lines in Iowa; Finance Docket No. 29470 (Sub-No. 1), Mid-States Port Authority-purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between Denver, Co. and McFarland, KS; Finance Docket No. 29471 (Sub-No. 1), Little Rock and Western Railway Corporation—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between North Little Rock and Perry, AR; Finance Docket No. 29473 (Sub-No. 1), Southeast Iowa Shippers Association—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) between Fruitland and Burlington, IA; Finance Docket No. 29474, Regional Transportation Authority (Illinois)—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Chicago/Joliet Commuter Line; Finance Docket No. 29475 TECE Corporation—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) in Texas, Oklahoma, and Kansas; Finance Docket No. 29478, Shelton-Davis Transportation Co.—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) in Oklahoma; Finance Docket No. 29479, Des Moines Metropolitan Transit Authority—purchase (portion)—Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee); Finance Docket No. 29480, Arkansas Transportation Commission and Oklahoma Department of Transportation purchase—portion (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) in Oklahoma, Tennessee, Arkansas, and Louisiana; Finance Docket No. 29516, Atlantic and Pacific Railway Corporation—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) in Iowa, Nebraska, and Illinois; Finance Docket No. 29518, Chicago and North Western Transportation Company—Notice of Intent To file an application to purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Lines in Iowa; Finance Docket No. 29533, City of Sibley—purchase (portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Sibley, IA; and Finance Docket No. 29537, Northern Properties Corporation—purchase and trackage rights and the Kansas City Northern Railway Company—operation—Chicago, Rock Island and Pacific Railroad Company (William M. Gibbons, Trustee) and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee) lines in Missouri, Minnesota, and Iowa.

AGENCY: Interstate Commerce Commission.

ACTION: Modification of the decision served October 31, 1980 and published November 7, 1980 at 44 FR 74084; and vacation of the procedural timetable.

SUMMARY: These "applications" will be treated as "offers to purchase" portions of the Chicago, Rock Island and Pacific Railway Company, Debtor (William M. Gibbons, Trustee) (Rock Island) and Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (Richard B. Ogilvie, Trustee) (Milwaukee). All filings of "competing applications" will be treated as "notices of intent to file applications." The timetables set in prior decisions are vacated and these proceedings will be rescheduled for processing when purchase agreements as well as more detailed information about the proposals are submitted.

DATES: This decision will be effective on December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7026 or, Ellen D. Hanson, (202) 275–7245.

SUPPLEMENTAL INFORMATION: A procedural timetable for these proceedings and for all applications seeking to acquire any of the same lines (competing applications) was set in a decision served October 31, 1980. This timetable required all applications to be complete and all competing applications to be filed by December 2, 1980. We have received requests for extensions of time from the Metropolitan Transit Authority, Gateway Railroad Corporation, Little Rock and Western Railway Corporation, and Iowa Falls Western Holding Company (each a noncarrier applicant). We have received incomplete competing applications from Chicago and North Western Transportation Company (C&NW) (in Finance Docket No. 29518 (Sub-No. 1)); and Northern Property Corporation (NPC) and Kansas City Northern Railway (KCNR) (in Finance Docket No. 29537). We have also received notices of intent to file applications from Burlington Northern, Inc. (BN) and Kansas City Southern Railway Company (KCS). Finally, the City of Sibley, IA also filed an incomplete application to purchase 3 miles of track.

A brief history of these proceedings will be helpful to an understanding of our ruling here. Section 112 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. No. 96–254 (1980) (RITEA) required that, to be eligible for loan guarantees from Federal Railroad Administration (FRA), *purchase applications* by noncarrier applicants had to be filed with us by September 15, 1980. In response to this deadline, noncarriers filed applications that were incomplete because they did not contain purchase agreements and generally lacked specific information about the terms of the purchase and proposed operations. This information was not available to the noncarrier applicants at the time the applications were filed.

Commission procedure requires that applications be complete when filed, except for informational requirements waived in advance. However, in view of the filing deadline set by RITEA, we exercised our administrative discretion and temporarily waived certain informational requirements and accepted the incomplete applications. When the temporary waiver expired, applicants requested and were granted further extensions (until December 2, 1980) in our October 31, 1980 decision.

The second deadline, December 2, has come and applicants have filed again for extensions. The noncarriers show that negotiations with the Trustee continue to be complicated and protracted. The Trustee is said to be completing the real estate valuation appraisal and serious negotiations are beginning.

In our October 31 order we also required competing applications to be filed by December 2, C&NW, NPC, KCNR, BN and KCS have requested that we modify that procedural timetable and allow them to file a notice of intent to file an application. They argue that a notice will provide the Commission with crucial information about competing interests for specific Rock Island lines. They contend that applications should not be required at this time because they will be incomplete until agreements are reached, and because the filing of an application starts the 100-day decisional deadline under Section III of RITEA. The railroads doubt that negotiations will be completed in time for the Commission to reach a decision within the 100-day period.

The noncarrier applications are not subject to the 100-day deadlines set by RITEA; however, there is a 180-day decision time limit imposed under Sections 5(b)(2) and 17(b)(2) of the Milwaukee Railroad Restructuring Act, Pub. L. 96–101, 93 Stat. 736 (1979) (MRRA). Under MRRA a recommendation to the Court in these proceedings must be made by March 12. Since serious negotiations have only just begun, it is unlikely that agreements can be filed and hearings conducted on applications within the time limit.

A reasonable response to these circumstances is for us to postpone

these proceedings until agreements have been reached and specific relevant information is available. A recent amendment to RITEA makes this approach the proper one. Section 701 of

deadline for filing purchase offers or applications.

It is ordered: The procedural timetables which have been set in these proceedings are vacated. The

SUMMARY: The Commission is modifying its procedure for dealing with petitions for exemption under 49 U.S.C. 10505, in light of the Staggers Rail Act of 1980, Pub. L. 96–448. Except in the small number of cases where a potential for

Usually the petition contained enough information to enable the Commission to make a determination as to whether the proposed transaction met the criteria of section 10505. Comments have added very little to our determination of

comment on exemption requests. It does, however, substantially reduce the time for processing cases since the Commission's decision goes into effect automatically (a similar technique is currently employed successfully in

with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of

these proceedings until agreements have been reached and specific relevant information is available. A recent amendment to RITEA makes this approach the proper one. Section 701 of the Staggers Rail Act of 1980, Pub. L. 96–448, modified section 112 of RITEA so that "purchase offers" could be filed with the Commission prior to September 15, 1980 in lieu of the prior requirement of "purchase applications."

Clearly these incomplete filings more closely resemble purchase offers than purchase applications. They essentially consist of proposals to the Rock Island and Milwaukee Trustees which must be accepted or negotiated in order to become binding contracts. As we have defined applications, except in the instance of applications competing with one previously filed contained an agreement, an agreement is required. See 49 CFR 111.2(a)(9) and 1111.21(a)(3)(ii). Accordingly, we will treat the noncarrier applications as purchase offers rather than applications. When the pertinent information is supplied, the puchase offers will be handled as applications and will be processed expeditiously. Applications filed after September 15 will be treated as notices of intent to file applications. All information which has been filed can be incorporated by reference into the future application. The filing fee will be held until the application is filed, and all docket numbers will remain the same.

The changes we have made constitute an attempt to comply with the Congressional policy, enunciated in RITEA and MRRA, to preserve rail service. When Congress required applications to be filed by the September 15, 1980 deadline, we modified our procedural rules so that noncarriers would be able to qualify for FRA loans. We extended the deadline in October, rather than holding the proceedings in abeyance, in hopes that a strict timetable would encourage the parties to hasten negotiations and thus speed up the transfer of these lines. However, we cannot act when the relevant information is not available. Under these circumstances, our analysis would be meaningless. Accordingly, in view of the amendment contained in section 707 of the Staggers Act, it is now appropriate to treat these filings as offers to purchase.

This approach also preserves the noncarriers' applications for FRA assistance. If we were to dismiss the applications as incomplete the noncarriers would have to apply individually to the Secretary of Transportation for an extension of the deadline for filing purchase offers or applications.

It is ordered: The procedural timetables which have been set in these proceedings are vacated. The submissions previously made by noncarrier applicants will be treated as offers and will be processed expeditiously as they are completed. The information provided by the railroads and by the City of Sibley will be treated as notices of intent to file applications and can be incorporated into further applications.

Dated: December 17, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Trantum concerning with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Trantum, Concurring:

Our previous decisions appear to have been unable to expedite the negotiations. I hope that today's decision, despite the delays it imposes, wioll ultimately contribute to a speedier resolution of the Rock Island and Milwaukee Road situations.

[FR Doc. 80-40270 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

December 19, 1980.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the ICC on or before January 8, 1981.

No. 43883, Trans-Continental Freight Bureau, Agent, (No. 557), rates on freight and/or passenger motor vehicles, set up on bi-level or tri-level cars, from Wayne and Wixom, MI, and Fairlane, OH to Portland, OR and Seattle and Spokane, WA. Rates proposed to be effective in its Tariff ICC TCFB 3001–B. Grounds for relief-carrier competition.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40272 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 400]

Modification of Procedure for Handling Exemptions Filed Under 49 U.S.C. 10505

AGENCY: Interstate Commerce Commission.

ACTION: Notice of New Procedure.

SUMMARY: The Commission is modifying its procedure for dealing with petitions for exemption under 49 U.S.C. 10505, in light of the Staggers Rail Act of 1980, Pub. L. 96–448. Except in the small number of cases where a potential for significant impact exists or where the impact is not readily ascertainable from the petition, the Commission will eliminate the current notice and comment procedure and issue a final decision based solely on the petition. Any exemption granted would become effective 30 days from the date of the decision's publication in the **Federal Register**, except in unusual circumstances. Appeal procedures are discussed.

EFFECTIVE DATE: December 24, 1981.

FOR FURTHER INFORMATION CONTACT: Richard A. Kelly, (202) 275–7245.

SUPPLEMENTARY INFORMATION: The Commission is modifying the procedure currently used for handling petitions for exemption under 49 U.S.C. 10505, in light of the Staggers Rail Act of 1980 (Pub. L. 96–448, 94 Stat. 1895, October 14, 1980).

Under the former section 10505, the Commission could grant an exemption only after providing an opportunity for a proceeding. (See former 49 U.S.C. 10505(d).) This requirement has been satisfied by providing a **Federal Register** notice and allowing comments to be filed.

The Staggers Act amended section 10505 by eliminating the requirements for a proceeding in all cases. (See section 213 of the Staggers Act *supra.)* The legislative history indicates that Congress, in eliminating this requirement, intended to give the Commission greater flexibility in the rail exemption area. Congress intends for the Commission to actively pursue exemptions under this section and has given us broad discretion to effectuate this mandate. See H.R. Rep. No. 96–1430, 96th Cong., 2d Sess. 104–105 (1980) and 49 U.S.C. 10101a(2).

Under current procedure, notice of the proposed exemption is published in the **Federal Register** providing for a 30-day comment period. At the end of the 30-day period, the Commission issues a decision which becomes effective on its date of publication. This procedure has required approximately 4 months to complete and in the vast majority of cases caused unnecessary delay.

The majority of exemption petitions have involved only minor transactions which are likely to have little, if any, impact on competitors, shippers or employees. Although comments have been filed in 22 of the 37 exemption petitions filed since January 1980, not once has an exemption been denied.

Usually the petition contained enough information to enable the Commission to make a determination as to whether the proposed transaction met the criteria of section 10505. Comments have added very little to our determination of exemption petitions.

Our new procedures will eliminate the initial notice and comment procedure in most cases. When the Commission receives a petition for exemption under section 10505, an initial determination will be made as to whether the proposed exemption has the potential of a significant adverse effect on competitors, shippers, employees or the environment. If the Commission determines that no significant adverse effects are likely, the decision will be published in the **Federal Register** as a final decision to become effective, in most cases, 30 days from its date of publication. The 30-day period will provide an opportunity for any party objecting to the decision to file a petition to reopen the proceeding for reconsideration and to submit evidence supporting the petition.

When the exemption is to become effective within 30 days of the publication date, petitions to reopen will be required to be filed within 20 days of the date of publication. The filing of the petition will not automatically stay the effectiveness of the decision. However, the Commission, on its own motion or on petition, may stay the effective date while considering any petitions. Petitions to stay must be filed within 10 days of the date of publication.

Although the 30-day effective date will be used in the majority of cases, the Commission may, in extraordinary circumstances, determine that a particular exemption should be granted to be effective immediately or within less than 30 days. When an exemption would be effective sooner than 30 days after publication of the decision, the decision will specify the time periods for filing of petitions.

In cases where the impact of the proposed exemption is not readily ascertainable from information contained in the petition, or where it appears that the potential of significant adverse effects exists, the Commission may determine that the current notice and comment procedure would be more appropriate and will continue to use that procedure in these circumstances.

There is no hearing requirement for exemption requests. In fact, the Staggers Act has not eliminated even the requirement for a "proceeding" in a section 10505 action. Our procedures therefore are intended to be informal. Our new procedures do not deprive any interested person of an opportunity to comment on exemption requests. It does, however, substantially reduce the time for processing cases since the Commission's decision goes into effect automatically (a similar technique is currently employed successfully in connection with licensing and acquisition cases). It reduces the time for filing comments from 30 days to 20 days and commits the Commission to a faster review of the comments and disposition of the exemption request. We believe that our new procedure will enable us to greatly expedite decisions in the exemption area, consistent with the Congressional mandate to minimize unnecessary regulation and reduce regulatory lag. (See H.R. Rep., *supra* at 105 and 49 U.S.C. 10101a(2)). Because our action involves changes in procedure and practices, public comment is not required under 5 U.S.C. 553(b)(A), and will serve only to delay implementation of the new procedure. The procedure therefore will be implemented upon the date of publication of this notice.

This action will not affect significantly the quality of the human environment or conservation of energy resources.

This notice is issued under the authority of 49 U.S.C. 10505 and 5 U.S.C. 553(b)(A).

Decided: December 18, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40268 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, **Federal Register** at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers* under 49 U.S.C. §§ 11344 and 11349. Those rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.240(A)(h).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as confering more than a single operating right.

Applicant(s) must comply with all conditions set forth in grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice or the application of

a non-complying applicant shall stand denied.

Decided: December 19, 1980.

By the Commission, Review Board No. 5 member Krock, Taylor and Williams. (In MC-

of TAT's issued and outstanding stock. John Cramer, the sole stockholder of Bond, also seeks authority to acquire control through the transaction. Cramer Management Corp. (CMC) has also

MC-F-14518F, filed November 26, 1980. AMNACO, INC. (AMNACO) (2661 S. Broadway Street, Green Bay, WI 54304)—CONTINUANCE IN CONTROL—NATIONAL TRANSPORTATION SYSTEMS, INC.

Jr., 700 World Center Bldg., 918–16th Street, NW, Washington, DC 20006. Preston, a publicly held corporation, seeks authority to continue in control of Pioneer upon the institution by Pioneer of operations, in interstate or foreign

lading, between Baltimore, MD, and Alexandria, VA, serving all intermediate points and the off-route points of Jessup, Savage, and Garrett Park, MD, and points in Maryland within 5 miles of Washington, D.C., and Baltimore, MD,

(except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Baltimore, MD, on the one hand, and, on the other,

a non-complying applicant shall stand denied.

Decided: December 19, 1980.

By the Commission, Review Board No. 5 member Krock, Taylor and Williams. (In MC-F-14512, Board member Taylor voted to publish with impediment raising the issue of duplicating rights. (In MC-F-14516, 14518 and MC-F-14522 member Krock not participating).

MC-F-14512F, filed November 21, 1980. STANDARD MOTOR FREIGHT, INC. (Standard) (2710 Railroad Street, Pittsburgh, PA 15222)—MERGER—LIGHTING EXPRESS, INC. (Lighting) (same address). Representative: John A. Vuono, 2310 Grant Building, Pittsburgh, PA 15219. Standard seeks authority to merge the interstate operating rights and property of Lighting into Standard for ownership, management, and operation. Peerless Transport Corp., which controls Standard through ownership of all of its outstanding capital stock, and in turn, Peter J. Sardano and Martin W. Snow who jointly control Peerless Transport Corp., seek authority to continue to control through this transaction. Joinder by Peter J. Sardano will be required as a condition to this approval. Standard controls Lighting pursuant to authorization granted in MC-F-12766. Lighting is a motor common carrier pursuant to certificates issued in MC-87786 and sub-numbers thereunder, which authorize the transportation of *general commodities* (usual exceptions), over irregular and regular routes, between points in western PA, and between western PA and points in OH and WV. Standard holds authority pursuant to certificates issued in MC-16340 and sub-numbers thereunder. Peerless Transport Corp., which controls Standard holds authority to operate pursuant to certificates issued in MC-119689 and sub-numbers thereunder.Condition: Authorization and approval of this transaction is conditioned upon the prior receipt by the Commission of an affidavit from Martin W. Snow and Peter J. Sardano, who control Peerless, stating that they do jointly control Peerless and that they join in this application. (Hearing site: Pittsburgh, PA. or Washington, DC.)

MC-F-14521F, filed December 5, 1980. BOND TRANSPORTATION, INC. (BOND)—CONTROL—TAR ASPHALT TRUCKING CO., INC. (TAT) (both of 155 Smith Street, Keasbey, NJ 08832). Representative: A. David Millner, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. Bond, a motor common carrier pursuant to authority issued in MC-141843 and sub-numbers thereunder, seeks authority to acquire control of TAT through the purchase by Bond of all of TAT's issued and outstanding stock. John Cramer, the sole stockholder of Bond, also seeks authority to acquire control through the transaction. Cramer Management Corp. (CMC) has also joined in the application. CMC has been granted authority under MC-F-14113F to control through management Bond and A-C Berwick Transporters, Inc. (AC), a motor common carrier pursuant to authority issued in MC-113041 and sub-numbers thereunder. The control granted in MC-F-14113F has not been consummated yet, but CMC seeks to be a party in this application in the event that the transaction authority in MC-F-14113F is consummated prior to consummation herein.

The operating rights to be controlled are contained in TAT's certificate in MC-123801 which authorizes the transportation, as a motor common carrier, of *(1) coal tar, coal tar distillates and residue, asphalt and asphalt admixtures,* in bulk, from Philadelphia, PA, and points within 10 miles of Philadelphia, and those in Hudson, Union, Somerset, Middlesex, and Bergen Counties, NJ, to points in NJ, NY, those in CT east of the Connecticut River, and those in PA on and east of U.S. Hwy 15; and (2) *coal tar, coal tar distillates and residue, asphalt and asphalt admixtures,* in bulk, in tank vehicles, (a) from Philadelphia, PA, and points within 15 miles of Philadelphia, to points in NJ, NY, those in CT west of the Connecticut River, and those in MD and DE within 100 miles of Philadelphia, (b) from points in NY, those in CT west of the Connecticut River, and those in PA on and west of U.S. Hwy 15, to points in Hudson, Union, Somerset, Middlesex, Bergen and Passaic Counties, NJ, (c) from Bethlehem, PA, to points in NJ, and (d) from points in CT west of the Connecticut River, to points in NY, restricted against tacking and joining of the separate grants of authority. Impediment: The operating rights of Bond duplicate to a certain extent the operations authorized in TAT's certificate. Applicants have indicated they will request cancellation of any duplicating authority that may result from this transaction in order to comply with the Commission's regulations at 49 CFR 1134.51. Approval and authorization of this transaction is, therefore, conditioned upon applicants setting forth all duplications and a plan for the elimination of such duplications. TAT's authority also duplicates to a certain extent that authority held by AC. If the authority granted in MC-F-14113F is consummated, applicants must also cancel any duplications which exist between AC and TAT.

MC-F-14518F, filed November 26, 1980. AMNACO, INC. (AMNACO) (2661 S. Broadway Street, Green Bay, WI 54304)—CONTINUANCE IN CONTROL—NATIONAL TRANSPORTATION SYSTEMS, INC. (National) (1315 Directors Row, Fort Wayne, IN 46808). Representative: Charles W. Singer, 2661 S. Broadway, Green Bay, WI 54304. AMNACO, a non-carrier holding company seeks authority to continue in control upon the institution by National of operations, in interstate or foreign commerce, as a motor contract carrier. By the same application, Al J. Schneider, the majority shareholder, Chairman of the Board, and a Director of AMNACO, and Donald J. Schneider, the largest minority shareholder, President, and a Director of AMNACO, seek authority to acquire control of said rights and property through the transaction. AMNACO owns all of the capital stock of the following motor carriers: Schneider Transport, Inc. (MC-51146), Schneider Tank Lines, Inc. (MC-110988), Distribution Service Systems, Inc. (MC-118159), Trans-National Truck, Inc. (MC-133655), WNI, Inc. (MC-191871), Contract Distribution Systems, Inc. (MC-144232), and National Bulk Transport, Inc. (MC-143594). By application published July 10, 1980, National seeks authority to operate as a contract carrier, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities requiring special equipment), between points in the United States (except AK and HI), under continuing contract(s) with ITOFCA, Inc., of Clarendon Hills, IL. (Hearing site: Chicago, IL, or Washington, DC.)

Note.—AMNACO, Inc. is a non-carrier holding company, IN No. MC-F-13346, as modified by a decision served October 10 1979, AMNACO was subjected to the applicable provisions of 49 U.S.C. subchapter III of Chapter 111, relating to reporting and accounting, and specifically was subjected to 49 U.S.C. § 11302 to the extent that any issuance of securities or assumption of obligations or liabilities by AMNACO is related to or will have a substantial effect upon the activities of any carrier subject to the jurisdiction of this Commission under AMNACO's control. So far as can be certained from the evidence of record in this proceeding, we find the same conclusions.

MC-F-14516F, filed December 1, 1980. PRESTON TRUCKING COMPANY, INC. (Preston) (151 Easton Blvd., Preston, MD 21655)—CONTINUANCE IN CONTROL—PIONEER TRANSPORTATION SYSTEMS, INC. (Pioneer) (same address). Representative: Thomas M. Auchincloss, Jr., 700 World Center Bldg., 918-16th Street, NW, Washington, DC 20006. Preston, a publicly held corporation, seeks authority to continue in control of Pioneer upon the institution by Pioneer of operations, in interstate or foreign commerce, as a motor contract carrier, upon the issuance of Permits in MC-150339 (Sub-Nos. 1, 2, and 3). The operating rights to be controlled are (1) *such merchandise* as is dealt in by wholesale and retail and chain hardware stores and by the manufacturers of power tools and (2) *materials, equipment and supplies* used in the manufacture of the commodities in (1) above, between points in the United States (except AK and HI), under continuing contract(s) with Black & Decker (U.S.) Inc., of Towson, MD, under parts (1) and (2) above: *general commodities* (except used household goods, hazardous materials or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the United States; and *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the United States, under continuing contract(s) with Maryland Cup Corporation, of Owings Mills, MD. Preston is authorized to operate as a motor common carrier pursuant to authority issued in MC-1824 and sub-numbers thereunder.

Note.—Application for TA has been filed.

MC-F-14522F, filed December 9, 1980. MICHAEL P. CHRISMER (Chrismer) and JOHN P. BLUMER (Blumer) (both of P.O. Box 7463, Baltimore, MD 21227)—continuance in control—GENERAL PARTS EXPRESS, INC. (GPX) (P.O. Box 243, Hanover, MD 21076). Representative: Frank B. Hand, Jr., 521 South Cameron Street, Winchester, VA 22601. Chrismer and Blumer seek authority to continue in control of GPX, upon the institution by GPX of operations, in interstate or foreign commerce, as a motor contract carrier. Chrismer and Blumer do not hold operating authority from this Commission. However, they control Dignan Trucking, Inc., a motor common carrier, through stock ownership. Dignan's operating rights are contained in certificates issued in No. MC-31237 and sub numbers thereunder which authorize the transportation of (1) *General commodities,* except those of unusual value, classes A and B explosives, household goods as defined by the Commission, automobiles, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other

lading, between Baltimore, MD, and Alexandria, VA, serving all intermediate points and the off-route points of Jessup, Savage, and Garrett Park, MD, and points in Maryland within 5 miles of Washington, D.C., and Baltimore, MD, and those in Virginia within 10 miles of Washington, from Baltimore over U.S. Highway 1 to Alexandria, and return over the same route, serving the store facilities of Top Value Enterprises, Inc., at West Springfield, VA, as an off-route point in connection with carrier's authorized regular-route operations between Baltimore, MD, and Alexandria, VA, serving the store facilities of Top Value Enterprises, Inc., at Centreville, VA, as an off-route point in connection with carrier's authorized regular-route operations between Baltimore, MD, and Alexandria, VA: *catalogues,* from Baltimore, MD, to Cascade and Pen Mar, MD, with no transportation for compensation on return except as otherwise authorized: *general commodities,* except those of unusual value, classes A and B explosives, household goods as defined by the Commission, automobiles, commodities in bulk, commodities requiring special equipment, and those injurious or contaminated to other lading, between points within 6 miles of Baltimore, MD, including Baltimore: *souvenirs and novelties,* between Washington, D.C., Richmond, VA, Annapolis, MD, and Baltimore, MD; (2) *newsprint and groundwood paper,* having an immediately prior movement by rail, from Alexandria, VA, to Aberdeen, Annapolis, Bel Air, Elkton, Frederick, Hagerstown, Havre de Grace, La Plata, Leonardtown, Upper Marlboro, and Westminster, MD, with no transportation for compensation on return except as otherwise authorized; (3) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, automobiles, commodities in bulk, and those requiring special equipment), serving the facilities of London Fog Division of Londontown Corporation, located at or near Eldersburg (Carroll County), MD, as an off-route point in connection with carrier's otherwise authorized regular-route operations; (4) *malt beverages,* from Alexandria, VA, to Frederick, Salisbury, Waldorf, Havre de Grace, Frostburg, Hagerstown, and Centreville, MD, with no transportation for compensation on return except as otherwise authorized (RESTRICTION: The authority granted herein is restricted to the transportation of traffic having an immediate prior movement by rail) and; (5) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Baltimore, MD, on the one hand, and, on the other, points in Maryland and those in Delaware on and south of the Chesapeake and Delaware Canal, restricted to the transportation of traffic having a prior or subsequent movement by water. GPX presently only holds TA temporary authority. However, GPX has been granted authority in MC-148433 (Sub-Nos. 2F and 3F), which will authorize the transportation, as a motor contract carrier, of (1) *Automotive parts and automotive accessories and such commodities as are dealt in by distributors of automotive parts* (except commodities in bulk), between the facilities of General Motors Corporation (General Motors Parts Division), Parkway Industrial Center, Hanover, MD, on the one hand, and, on the other, points in Kent, New Castle, and Sussex Counties, DE, York, Adams, Franklin, Fulton, Cumberland, Huntingdon, Mifflin, Juniata, Perry, Dauphin, Northumberland, Snyder, Union, Montour, Lycoming, Clinton, and Centre Counties, PA, Frederick, Shenandoah, Clarke, Warren, Page, Madison, Rappahannock, Fauquier, Loudoun, Culpeper, Prince William, Arlington, Fairfax, Accomac, and Northampton Counties, VA, Berkeley, Morgan, Hampshire, Jefferson, Mineral, Hardy, Grant, Tucker, Randolph, and Pendleton Counties, WV, and the District of Columbia, under continuing contract(s) with General Motors Corporation of Flint, MI, and (2) *Automotive accessories and such commodities as are dealt in or used by distributors of automotive parts* (except commodities in bulk), between points in the U.S., under continuing contract(s) with General Motors Corporation (General Motors Parts Division), of Flint, MI.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-40276 Filed 12-23-80; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 11343 (formerly Section 5(2)) or 11349 (formerly Section 210a(b)) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested

authority must be filed with the Commission on or before January 23, 1981. Such protest shall comply with

TN. Between points in NC, and TN, on the one hand, and, on the other, points in KY and DE.

extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and

In those proceedings containing a statement or note that dual operations are or may be involved we find,

Motor Carriers Permanent Authority Decisions; Decision-Notice

The following applications, filed on or

Volume No. OP4-169

Decided: December 17, 1980.

By the Commission, Review Board Number

V 45 D E 2 4 8 0 UMI

authority must be filed with the Commission on or before January 23, 1981. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC-F-13901F, filed February 12, 1979, authority sought for purchase by FOUR WINDS VAN LINES, INC., 7035 Convoy Court, San Diego, California 92138 of a portion of the operating rights of PLYMOUTH VAN LINES, INC., 4433-41 Howley Street, Pittsburgh, Pennsylvania 15224. Applicants' representative: Robert J. Gallagher, Esq., 1000 Connecticut Avenue, NW., Suite 1112, Washington, D.C. 20036. Operating rights sought to be purchased: Household Goods, as defined by the Commission, over irregular routes, (15) between points in MD, on the one hand, and, on the other, points in AL, AZ, CA, CO, that part of FL on and west of U.S. Highway 41, that part of GA on and west of U.S. Highway 441, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NV, that part of OH on and west of Interstate Highway 75, that part of TN on and west of Interstate Highway 65, UT, and WI. (15a) Between points in VA, on the one hand, and, on the other, points in AZ, CA, CO, MI, NE, NV, and UT. (15c). Between points in that part of VA on and east of U.S. Highway 15, on the one hand, and, on the other, points in that part of IL on and north of Interstate Highway 70, that part of IN on and north of U.S. Highway 40, IA, KS, and that part of OH on and north of U.S. Highway 224. Application has been filed for temporary authority under Section 210a(b). Hearing site: San Diego, CA.

Note.—Vendee is authorized to operate as a common carrier pursuant to Certificate No. MC-15643 and subs thereto between points in CT, PA, NJ, NY, OH, MI, IL, IN, NC, MD, MO, VA, WV, WI, RI, and the DC. Between Boston, MA and points within 25 miles thereof, on the one hand, and, on the other, points in CT, ME, NH, VT, MA, RI, NJ, and NY. Between points in OK on the one hand, and, on the other, points in CO, KS, LA, MO, and TX. Between points in Cleveland and McClain, OH, on the one hand, and, on the other, points in AR, KS, and TX. Between points in Beckham County, OH, and points within 50 miles thereof, on the one hand, and, on the other, points in OK, TX, and NM. Between points in AL, FL, GA, NC, SC, and TN. Between points in NC, and TN, on the one hand, and, on the other, points in KY and DE.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40277 Filed 12-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 383]

Motor Carriers Permanent Authority Decisions; Decision-Notice

Decided: December 19, 1980.

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(1) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dimissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transporation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed on or before January 23, 1981 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate and applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices within 30 days after publication or the application shall stand denied.

By the Commission, Review Board Number 3 Members Parker, Fortier Hill

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a common carrier by motor vehicle, in interstate of foreign commerce, over irregular routes, except as otherwise noted.

MC 145577 (Sub-26F), filed June 9, 1980, noticed in the Federal Register issue of December 1, 1980, and republished this issue. Applicant: GULLETT-GOULD, LTD., P.O. Box 406, Union City, IN 47390. Representative: Jerry B. Sellman, 50 W. Broad St., Columbus, OH 43215. Transporting (1) *photographic equipment* and (2) *materials, supplies and products* used in the manufacture and processing of photographs (except in bulk), between the facilities of Eastman Kodak Company at Rochester, NY, Windsor, CO, and points in CA.

Note.—The purpose of this republication is to correct the territorial description.

[FR Doc. 80-10291 Filed 1223-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register of July 3, 1980, at 45 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g.'s, unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action uder the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before February 9, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign, commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP4-169

Decided: December 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones. Member Joyce not participating.

MC 89617 (Sub-28F), filed November 25, 1980 and noticed in the Federal Register issue of December 11, 1980, and republished this issue. Applicant: LEWIS TRUCK LINES, INC., P.O. Box 1494, Conway, SC 29526. Representative: Herbert Alan Dubin, 818 Connecticut Ave., NW., Washington, DC 2006. Transporting (1) *building materials and construction materials*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in AL, FL, GA, NC, SC, TN, and VA.

Note.—The purpose of this republication is to correct the commodity description in this proceeding.

Volume No. OP4-171

Decided: December 19, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones. Member Jones not participating.

MC 76266 (Sub-137F), filed November 28, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, Inc., 2625 Territorial Rd., St. Paul, MN 55114. Representative: Jack R. Turney, Jr., 2001 Massachusetts Ave., NW., Washington, DC 20036. Over regular routes, transporting *generol commodities* (except household goods as defined by the Commission, and classes A and B explosives), (1) between Cleveland, OH and Boston, MA, over Interstate Hwy 90, (2) between Cleveland, OH and Philadelphia, PA, from Cleveland over Interstate Hwy 77 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 76, then over Interstate Hwy 76 to Philadelphia, and return over the same route, (3) between Cleveland, OH and New York, NY, from Cleveland over Interstate Hwy 77 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 280, then over Interstate Hwy 280 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 495 to New York, and return over the same route, (4) between Denver, CO and San Francisco, CA, from Denver over US Hwy 40 to junction Interstate Hwy 80 near Salt Lake City, UT, then over Interstate Hwy 80 to San Francisco, and return over the same route, (5) between Denver, CO and Los Angeles, CA, as follows: (a) from Denver over Interstate Hwy 70 and US Hwy 6 to junction Interstate Hwy 15, then over Interstate Hwy 15 to junction Interstate Hwy 10, then over Interstate Hwy 10 to

Los Angeles, and return over the same route, and (b) from Denver over Interstate Hwy 25 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction Interstate Hwy 15, then over Interstate Hwy 15, to junction Interstate

the other, points in IL, IA, MI, ND, SD, and WI.

MC 76266 (Sub-144F), filed December 5, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Rd., St. Paul, MN 55114.

the other, points in the U.S. (except AK and HI).

MC 146646 (Sub-135F), filed December 10, 980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355-A, Birmingham, AL 35217. Representative:

MC 29537 (Sub-11F), filed December 8, 1980. Applicant: R. H. CRAWFORD, INC. 425 Poplar St. Hanover, PA 17331. Representative: John E. Fullerton, 407 N. Front St., Harrisburg, PA 17101. Transporting (1) *synthetic fibers and*

MC 42487 (Sub-1008F), filed December 12, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR

P.O. Box 1146, Harrisburg, PA 17108. Transporting *coal*, between points in Luzerne County, PA, on the one hand, and, on the other, those points in NY on and west of a line beginning at Sodus Point, NY, on the shore of Lake Ontario,

Los Angeles, and return over the same route, and (b) from Denver over Interstate Hwy 25 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction Interstate Hwy 15, then over Interstate Hwy 15, to junction Interstate Hwy 10, then over Interstate Hwy 10 to Los Angeles, and return over the same route, (6) between Denver, CO and Seattle, WA, from Denver over US Hwy 40 to junction Interstate Hwy 80N near Salt Lake City, UT, then over Interstate Hwy 80N to Portland, OR, then over Interstate Hwy 5 to Seattle, and return over the same route, (7) between Minneapolis, MN and Seattle, WA, from Minneapolis over Interstate Hwy 94 to junction Interstate Hwy 90, then over Interstate Hwy 90 to Seattle, and return over the same route, (8) between Minneapolis, MN and Portland, OR, from Minneapolis over Interstate Hwy 94 to junction Interstate Hwy 90, then over Interstate Hwy 90 to junction US Hwy 395 at or near Ritzville, WA, then over US Hwy 395 to junction WA Hwy 14 at or near Pasco, WA, then over WA Hwy 14 to junction US Hwy 730 at or near the WA–OR state line, then over US Hwy 730 to junction Interstate Hwy 80N at or near Boardman, OR, then over Interstate Hwy 80N to Portland, and return over the same route, (9) between Kansas City, MO and Houston, TX, from Kansas City over Interstate Hwy 35 to Dallas, TX, then over Interstate Hwy 75 to Houston, and return over the same route, (10) between Kansas City, MO and San Antonio, TX, over Interstate Hwy 35, and (11) serving all intermediate points in routes (1) through (8) above, serving intermediate points in Wichita, KS, Oklahoma City, OK, and Dallas and Ft. Worth, TX in route (9) above, and serving the intermediate point of Austin, TX in route (10) above.

Note.—Applicant intends to tack with existing authority.

MC 76266 (Sub-142F), filed December 10, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Rd., St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *foodstuffs*, between the facilities of The Creamette Company, at points in Hennepin County, MN, on the one hand, and, on the other, points in the U.S.

MC 76266 (Sub-143F), filed December 11, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Rd., St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *salt* in blocks and packages between points in St. Louis County, MN on the one hand, and, on the other, points in IL, IA, MI, ND, SD, and WI.

MC 76266 (Sub-144F), filed December 5, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Rd., St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *furnaces* and *materials, equipment, and supplies* used in the manufacture of furnaces, between the facilities of Mammoth Division-Lear Siegler, Inc., at points in Hennepin County, MN, on the one hand, and, on the other, points in the U.S.

MC 128746 (Sub-67F), filed December 10, 1980. Applicant: D'AGATA NATIONAL TRUCKING CO, a corporation, 3240 South 61st St. Philadelphia, PA 19153. Representative: Edward J. Kiley, 1730 M St, N.W., Washington, D.C. 20036. Transporting (1) *malt beverage* and (2) *materials, equipment and supplies* used in the manufacture and distribution named in (1) above, between Williamsburg, VA, on the one, hand, and, on the other, points in PA.

MC 128746 (Sub-68F), filed December 11, 980. Applicant: D'AGATA NATIONAL TRUCKING CO, a corporation, 3240 So 61st St. Philadelphia, PA 19153. Representative: Edward J. Kiley, 1730 M St, N.W., Washington, D.C. 20036. Transporting *containers* and *materials, equipment, and supplies* used in the manufacture of containers, between points in the U.S., restricted to traffic originating at or destined to the facilities of Hoover Universal, Inc.

MC 133276 (Sub-14F), filed December 12, 980. Applicant: BERRY TRANSPORT, INC., 5315 N.W., St. Helens Rd., Portland, OR 97210. Representative: Nick I. Goyak, 1 S.W. Columbia, No. 555, Portland, OR 97258. Transporting (1) *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), in containers, (2) *empty containers and container chassis*, and (3) *iron and steel articles and machinery*, between points in OR, WA, ID, CA, MT, and UT.

MC 145966 (Sub-5F), filed December 8, 980. Applicant: NELSEN BROS., INC., P.O. Box 613, Nebraska City, NE 68410. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting (1) *building materials* (except commodities in bulk), and (2) *materials, equipment and supplies* used in the manufacture and distribution of building materials (except commodities in bulk), between points in Lancaster County, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148646 (Sub-135F), filed December 10, 980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355–A, Birmingham, AL 35217. Representative: James W. Segrest (Same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from Chicago, IL, to points in AZ, CA, CO, DE, FL, GA, AL, MA, MN, MO, NJ, NY, PA, RI, TX, and WA, restricted to traffic originating at the facilities of East-West Shippers Association and its members.

MC 151986 (Sub-1), filed December 12, 980. Applicant: GROVER F. BOYD, b.d.a. GROVER F. BOYD TRUCKING COMPANY, P.O. Box 67, Emelle, AL 35459. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Transporting *hazardous and non-hazardous waste*, between points in Sumter County, AL, on the one hand, and on the other, points in the U.S. (except AK and HI), restricted against traffic having an immediately prior or subsequent movement by rail or water.

Condition: To the extent the certificate to be issued in this proceeding authorizes the transportation of classes A and B explosives or other dangerous commodities, limited to a period expiring 5 years from its date of issue.

MC 153146F, filed December 11, 1980. Applicant: DONALD CITRON, d.b.a. D & B TRUCKING, 1804 Rose Ave., Ceres, CA 95307. Representative: Donald Citron (same address as applicant). Transporting *foodstuffs*, between points in CA, OR, WA, NV, and AZ.

Volume No. OP4–172

Decided: Dec. 19, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 217 (Sub-26F), filed October 21, 1980, notice in the **Federal Register** issue of November 25, 1980, and republished this issue. Applicant: POINT TRANSFER, INC., 5075 Navarre Rd., SW, Canton, OH 44708. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *primary metal products*, including galvanized (except coating or other allied processing), *fabricated metal products* (except ordnance), and *machinery and supplies* as described in items 33, 34, and 35 of the Standard Transportation Commodity Code, respectively, between points in IL, IN, KY, MI, OH, PA, and WV.

Note.—The purpose of this republication is to correct the commodity description.

MC 29537 (Sub-11F), filed December 8, 1980. Applicant: R. H. CRAWFORD, INC. 425 Poplar St. Hanover, PA 17331. Representative: John E. Fullerton, 407 N. Front St., Harrisburg, PA 17101. Transporting (1) *synthetic fibers and synthetic yarns* and (2) *equipment, materials and supplies* used in the manufacture and distribution named in (1) above, between points in York and Adams Counties, PA, on the one hand, and, on the other, points in GA, MD, NC, NJ, PA, SC, TN and VA.

MC 29957 (Sub-94F), filed December 10, 1980. Applicant: TRAILWAYS SOUTHERN LINES, INC., 327 Gayoso, Memphis, TN 38103. Representative: George W. Hanthorn, 1500 Jackson St., Dallas, TX 75201. Over regular routes, transporting *passengers and their baggage, and express and newspapers*, in the same vehicle with passengers, between Louisville, MS and Philadelphia, MS: from Louisville over MS Hwy 15 to the junction of MS Hwy 19 to Philadelphia, and return over the same route, serving no intermediate points.

MC 42487 (Sub-1006F), filed December 8, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), serving points in Nottoway County, VA, as off-route points in connection with carrier's otherwise authorized regular route operations.

Note.—Applicant intends to tack to its existing authority and any authority it may acquire in the future.

MC 42487 (Sub-1007F), filed December 9, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, A CORPORATION, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between Evansville, IN and Owensboro, KY, serving all intermediate points: (1) From Evansville over IN Hwy 66 to junction U.S. Hwy 231, then over U.S. Hwy 231 to Owensboro, and return over the same route; (2) from Evansville, over U.S. Hwy 41 to junction U.S. Hwy 60, then over U.S. Hwy 60 to Owensboro, and return over the same route.

Note.—Applicant intends to tack its existing authority and any authority it may acquire in the future.

MC 42487 (Sub-1008F), filed December 12, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), serving points in Fayette County, CA, as an off-route point in connection with carrier's otherwise authorized regular route operations.

Note.—Applicant intends to tack its existing authority and any authority it may acquire in the future.

MC 49567 (Sub-15F), filed November 21, 1980. Applicant: GOLDEN BROS., INC., 234 E. McClure St., Kewanee, IL 61443. Representative: Donald S. Mullins, 1033 Graceland Ave., DesPlaines, IL 60016. Transporting (1) *earth moving machines and off-highway* mobile machinery and (2) *materials, equipment and supplies* used in the manufacture and distribution of commodities named in (1) above, between points in the U.S. (except AK and HI), under continuing contract(s) with Kress Corp. of Brimfield, IL.

MC 70557 (Sub-39F), filed November 10, 1980, previously noticed in the **Federal Register** issue of December 2, 1980, and republished this issue. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 West Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. Transporting (1) *paper and paper products*, and (2) *materials and supplies* used in the manufacture and distribution of paper and paper products, between Cantonment and Jacksonville, FL, Ferguson, MS, and Sheldon and Herty, TX, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MO, MS, OK, NC, SC, TN, TX, VA, and WV.

Note.—The purpose of this republication is to correctly reflect Ferguson, MS in lieu of Ferguson, MD.

MC 123407 (Sub-655F), filed December 9, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Rt. 1, Chesterton, IN 46304. Representative: Sterling W. Hygema (same address as applicant). Transporting (1) *plastic pipe and fittings*, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities named in (1) above, between Macon, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 124017 (Sub-10F), filed November 24, 1980. Applicant: R. JEFFREY & SONS, INC., R.D. #1, Elysburg, PA 17824. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108. Transporting *coal*, between points in Luzerne County, PA, on the one hand, and, on the other, those points in NY on and west of a line beginning at Sodus Point, NY, on the shore of Lake Ontario, and extending along NY Hwy 14 to Horseheads, NY, then along NY Hwy 17 to Waverly, NY, and then along U.S. Hwy 220 to the NY–PA State line.

MC 136987 (Sub-31F), filed December 9, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Rd., P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Rd., Suite 320, Phoenix, AZ 85008. Transporting (1) *iron and steel articles*, (2) scrap batteries and scrap metals, (3) *steel springs and custom metal parts*, and (4) *materials* used in the manufacture of the commodities named in (3) above, between points in the U.S., under continuing contract(s) with Church and Clark, Dallas Scrap Baling, and Associated Spring Barnes Group, Inc., all of Dallas, TX.

MC 140037 (Sub-10F), filed December 8, 1980. Applicant: SUNFLOWER CARRIERS, INC., P.O. Box 561, York, NE 68467. Representative: David R. Parker, P.O. Box 31228, Lincoln, NE 68501. Transporting (1) *meats, meat byproducts, meat products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Sunflower Beef Packers, Inc., of York, NE.

MC 143956 (Sub-22F), filed November 17, 1980. Applicant: GARDNER TRUCKING CO., INC., P.O. Drawer 493, Walterboro, SC 29488. Representative: Steven W. Gardner, 3574 Piedmont Rd., Atlanta, GA 30305. Transporting *such commodities* as are dealt in or used by automotive supply dealers, between points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the International boundary line between the U.S. and Canada, and points in TX, on the one hand, and, on the other, points in SC.

MC 148487 (Sub-2F), filed December 12, 1980. Applicant: DAN L. HUFFMAN, d.b.a. HUFFMAN TRUCKING CO., 3731 Avenida Simi, P.O. Box 973, Chatsworth, CA 91311. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. Transporting *plastic articles*, and *materials, equipment, supplies* used in the

manufacture or distribution of plastic articles (except commodities in bulk), between points in the U.S., under continuing contract(s) with Scepter Manufacturing Co., Limited, of Simi Valley, CA.

MC 153117F, filed December 12, 1980. Applicant: DAVID L. MOORE, 1000 Main St., Floyd County, IN, to points in KY, and those points in IL on and south of U.S. Hwy 36.

Note.—The purpose of this republication is to delete the restriction.

MC 153117F, filed December 12, 1980. Applicant: DAVID L. MOORE, 1000 Main St., Floyd County, IN, to points in KY, and those points in IL on and south of U.S. Hwy 36.

Note.—The purpose of this republication is to delete the restriction.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the request and payment to applicant of $10.00.

vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 119777 (Sub-512F), filed December 12, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Hwy. 85 available for public inspection during official working hours (8-45 a.m. to 5:15 p.m.) in the Office of the Secretary, United States International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone will be made available for inspection by interested persons. To be assured of consideration by the Commission in this study, written statements should be submitted at the earliest practicable date, but no later than April 17, 1981. All

manufacture or distribution of plastic articles (except commodities in bulk), between points in the U.S., under continuing contract(s) with Scepter Manufacturing Co., Limited, of Simi Valley, CA.

MC 148577 (Sub-2F), filed November 10, 1980, previously noticed in the Federal Register of December 2, 1980. Applicant: ORVILLE HOWARD, INC., 2724 Umbrella Tree Dr, Edgewater, FL 32032. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Transporting (1) *metals and metal products*, and (2) *equipment and supplies* used in the manufacture and distribution of the foregoing commodities, between points in the U.S., under continuing contract(s) with Nelson Steel Products, Inc., of Harleysville, PA, and Techalloy Company, Inc., and its subsidiaries, Techalloy Maryland, Inc., Reid-Avery Division, Techalloy Illinois, Inc., Techalloy Texas, Inc., Techalloy, Inc., California, and Techalloy Western, Inc., of Rahns, PA.

Note.—The purpose of this republication is to correct the names of the contract shippers.

MC 150427 (Sub-1F), filed December 10, 1980. Applicant: ARIETA M. LIVINGSTON, d.b.a. GOLDEN EMPIRE GRAIN CO., 6425 Brushwood Lane, Las Vegas, NV 89107. Representative: Arieta M. Livingston (same address as applicant). Transporting *soda ash and borax*, in bulk, between points in the U.S., under continuing contract(s) with Johns-Manville Canada, Inc., of Edmonton, Alberta, Canada.

MC 150447 (Sub-4F), filed December 12, 1980. Applicant: GSC TRANSPORT INC., 166 National Rd., Edison, NJ 08817. Representative: John L. Alfano, Esq., 550 Mamaroneck Ave., Harrison, NY 10528. Transporting (1) (a) *containers and containers closures*, (b) *glassware*, (c) *packaging products, and* (d) *scrap materials*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of commodities named in (1) above (except commodities in bulk, in tank vehicles, and those which because of size and weight require the use of special equipment), between points in the U.S., under continuing contract(s) with Owens-Illinois, Inc., of Toledo, OH.

MC 152256 (Sub-1F), filed October 21, 1980, previously noticed in the Federal Register issue of November 17, 1980, and republished this issue. Applicant: GRAMMER INDUSTRIES, INC., P.O. Box 51, Grammer, IN 47236. Representative: Warren C. Moberly, 777 Chamber of Commerce Bldg., 320 North Meridian St., Indianapolis, IN 46204. Transporting *fertilizer*, from points in Floyd County, IN, to points in KY, and those points in IL on and south of U.S. Hwy 36.

Note.—The purpose of this republication is to delete the restriction.

MC 153117F, filed December 12, 1980. Applicant: DAVE DAVENPORT AND SONS, INC., P.O. Box 41, Angleton, TX 77515. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. Transporting *(1) commodities which, because of size or weight, require the use of special equipment, and (2) related machinery parts and related materials and supplies, when their transportation is incidental to those commodities in (1) above*, between points in TX, on the one hand, and, on the other, points in NM, OK, AR, LA, MS, TX, and CO.

MC 153127, filed December 5, 1980. Applicant: THOMAS DISTRIBUTING, INC., 2701 So. Carolyn Ave., Sioux Falls, SD 57106. Representative: A. J. Swanson, P.O. Box 1103, 226 No. Phillips Ave., Sioux Falls, SD 57101. Transporting, *malt beverages*, between points in the U.S., under continuing contract(s) with Fair City Distributing, Inc., of Huron, SD, and John A. Conkling Distributing, Inc. of Yankton, SD.

MC 153157F, filed December 12, 1980. Applicant: CASCADE COLUMBIA BEVERAGE, INC. d.b.a. COCA-COLA BOTTLING YAKIMA-TRI CITIES, P.O. Box 2905, Yakima, WA 98907. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. Transporting *fruit juices* from points in Yakima County, WA to points in CA.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-40274 Filed 12-23-80; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. OP-173]

Motor Carriers Permanent Authority Decisions; Decision-Notice

Decided: December 19, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before February 9, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication on applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 1, Members Carleton, Jones Joyce.

Agatha L. Mergenovich,
Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 119777 (Sub-511F), filed December 8, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Hwy 85-East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. Transporting *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 119777 (Sub-512F), filed December 12, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Hwy 85-East, Madisonville, KY 42431.Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. Transporting *general commodities*, between Redlands, Shilling and Camden, CA, Mt. Plymouth, FL, Swan Creek, IL, Cayce, KY, Florence and Ft. Calhoun, NE, N. Miami, OK, and Meadowbrook and Glen Falls, WV, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service. To the extent a certificate issued herein authorizes the transportation of classes A and B explosives, it will expire 5 years from the date of issuance.

[FR Doc. 80-40275 Filed 12-23-80; 8:45 am]
BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-82

Certain Headboxes and Papermaking Machine Forming Sections For the Continuous Production of Paper, and Components Thereof; Commission Order Approving Withdrawal of Motion to Amend the Complaint and Notice of Investigation and, Denying Motion to Designate the Investigation "More Complicated"

AGENCY: U.S. International Trade Commission.

ACTION: Commission approval of the complainant's withdrawal of its motion to amend the complaint and notice of investigation and denial of respondents' motion to designate the investigation "more complicated."

SUMMARY: The complainant filed a memorandum withrewing its motion (Docket No. 82-14) to amend the complaint and notice of investigation, following the presiding officer's recommendation that the investigation be designated "more complicated" if the motion to amend were granted. The Commission approved the complainant's withdrawal of its motion. On the basis of the aforesaid withdrawal, the Commission also denied respondents motion (Docket No. 82-18) to designate the investigation "more complicated."

ADDITIONAL INFORMATION: The Commission's Action and Order, as well as all other public documents on the record of this investigation, are available for public inspection during official working hours (8-45 a.m. to 5:15 p.m.) in the Office of the Secretary, United States International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Phyllis N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Room 224, Washington, D.C. 20436, telephone 202-523-0321.

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: December 17, 1980.

[FR Doc. 80-40167 Filed 12-23-80; 8:45 am]
BILLING CODE 7020-02-M

[332-120]

U.S. Dye Industry: Its Competitiveness in the World Market; Investigation

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), the Commission has instituted investigation No. 332-120 for the purpose of gathering and presenting information on the U.S. dye industry and its competitiveness in the world market. This study will assess the overall competitiveness of the U.S. dye industry relative to foreign producers through the analysis of such factors as trade trends, research and development expenditures, new products, and management achievement. Possible future trends will also be discussed and analyzed.

EFFECTIVE DATE: December 10, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Edmund Cappuccilli or Mr. William Baker, Energy and Chemical Division, U.S. International Trade Commission, Washington, D.C. 20436 (Phone 202-523-0490 or 202-523-0492).

WRITTEN SUBMISSIONS: There is no public hearing scheduled for this study, however, written submissions from interested parties are invited. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission in this study, written statements should be submitted at the earliest practicable date, but no later than April 17, 1981. All submissions should be addressed to the Secretary of the Commission's office in Washington, D.C.

By order of the Commission.

Issued: December 19, 1980.

Kenneth R. Mason,
Secretary.

[FR Doc. 80-40168 Filed 12-23-80; 8:45 am]
BILLING CODE 7020-02-M

[731-TA-7 (Final)]

Certain AC Polyphase Electric Motors From Japan

Determination

On the basis of the record [1] developed in investigation No. 731-TA-7 (Final), the Commission determines, pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured [2 3] by reason of the importation of AC, polyphase electric motors of not less than 150 horsepower and not greater than 500 horsepower (except submersible well-pump motors), from Japan, provided for in items 682.45 through 682.50 of the Tariff Schedules of the United States (TSUS), which the Department of Commerce has determined are being, or are likely to be, sold in the United States at less than fair value (LTFV).

Background

On June 17, 1980, the Commission received notification that the Department of Commerce had made a preliminary affirmative determination, but no final determination, with regard to certain electric motors from Japan but had excluded submersible well-pump motors from its investigation.[4]

Consequently, effective June 17, 1980, the Commission instituted investigation No. 731-TA-7 (Final) pursuant to section

[1] The record is defined in sec. 207.2(j) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(j)).

[2] Commissioners Bedell and Moore also determined in addition to material injury that the industry is threatened with injury by reason of the imports at LTFV.

[3] Commissioner Stern determined that the industry was not being injured nor threatened with injury by reason of the imports at less than fair value.

[4] The Department of Commerce reported that the petitioners do not produce submersible well-pump motors to any significant degree and did not submit specific information to Commerce suggesting that they are being, or are likely to be sold at less than fair value.

735 of the Tariff Act of 1930, as added by title I of the Trade Agreements Act of 1979, to determine whether, with respect

The Industry

Our first task in analyzing the impact of imports sold at less than fair value on

imported into the United States during the period of this investigation. Commerce specifically considered 23 of

Volume of imports: The majority of the motors imported into the United States from Japan during the period of this investigation were manufactured by

However, in the majority of cases, domestic prices were below those of the imported product.[20] Toshiba's higher prices to OEMs may reflect its policy of

1977 to the first half of 1980.[31] The ratios of profit to net sales, cost of goods sold to net sales, and selling and administrative expenses to net sales

735 of the Tariff Act of 1930, as added by title I of the Trade Agreements Act of 1979, to determine whether, with respect to polyphase electric motors (except submersible well-pump motors) rated over 5 but not over 500 horsepower from Japan, an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports sold or likely to be sold at less than fair value.

Originally the Department of Commerce was scheduled to make a final determination with respect to LTFV sales by no later than September 2, 1980, but at the request of the parties, extended the date for a final determination until October 29, 1980. Also on that date, Commerce, Tokyo Shibaura Electric Co., and Toshiba International Corp. agreed to monitoring terms for motors of less than 150 horsepower, and Commerce suspended the investigation with respect to those products. On November 19, 1980, the Commission changed the scope of its investigation to exclude motors of less than 150 horsepower.

Copies of the notice of institution of investigation No. 731–TA–7 (Final) and of the hearing to be held in connection therewith were posted at the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and published in the **Federal Register** of July 9, 1980 (45 FR 46261). The public hearing was held in Washington, D.C., on November 20 and 21, 1980, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of Chairman Bill Alberger, Vice Chairman Michael J. Calhoun, and Commissioners George M. Moore and Catherine Bedell

On the basis of the record developed in this investigation, we determine, pursuant to section 735(b)(1) of the Tariff Act of 1930, that an industry in the United States is materially injured [5] by reason of imports of polyphase electric motors of not less than 150 horsepower and not greater than 500 horsepower[6] from Japan sold at less than fair value (LTFV).[7]

The Industry

Our first task in analyzing the impact of imports sold at less than fair value on a domestic industry is to define the industry. Section 771(4) of the Tariff Act of 1930 defines the term "industry" as,

> the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.

The term "like product" is defined in section 771(10) of the act as,

> a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.

In analyzing the impact of the less than fair value imports on the domestic industry producing the like product, section 771(4)(D) further directs that,

> [t]he effect of subsidized or dumped imports shall be assessed in relation to the United States production of a like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. If the domestic production of the like product has no separate identity in terms of such criteria, then the effect of the subsidized or dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes a like product, for which the necessary information can be provided.

Thus, to properly define the industry, we must first describe the less than fair value imports. The imports which are covered by the Commerce determination of less-than-fair-value sales are ac, ployphase[8] electric motors rated not less than 150 horsepower, and not over 500 horsepower. These motors are used for industrial purposes such as prime movers for pumps, compressors, and machine tools as well as for agricultural, and oil drilling purposes. The imported motors are manufactured in accordance with domestic industry standards as set by the National Electrical Manufacturers Association (NEMA). Under these standards, motors are generally classified by horsepower rating, frame size, type of enclosure and the number of poles ranging from 2 to 8.[9] According to Commerce statistics on standard Toshiba motors, there were numerous different model types imported into the United States during the period of this investigation. Commerce specifically considered 23 of these models.

There are approximately 15 domestic firms[10] which account for the total domestic production of electric motors in the range of 150 to 500 horsepower. The largest producers are General Electric Co., Westinghouse Electric Corp., Emerson Electric Co., Reliance Electric, Siemens-Allis, Inc., and Louis Allis Division of Litton Industries.[11] These 15 domestic producers manufacture the polyphase electric motors which are comparable to the 23 imported models investigated by commerce.

We find that at least 23 different standard motor models manufactured in the United States are virtually identical in characteristics and uses with the imported standard models and, therefore, are to be considered as like products. There may be slight differences between the enclosure sizes and the parts used in the production of domestic motors, but these differences are not significant in terms of manufacturing process, use, or consumer perception. The data obtained in the investigation, however, do not permit separate identification of each of the 23 like products as a distinct product line.[12] The narrowest group or range of products which includes the like products for which the Commission was able to obtain profit and loss information is motors of not less than 150 horsepower and not greater than 500 horsepower. Thus, we define the domestic industry as those domestic producers who manufacture ac, polyphase electric motors in accordance with NEMA standards of not less than 150 horsepower and not greater than 500 horsepower.

Material injury by reason of LTFV imports

In making our injury determination we considered, among other factors, the following statutory criteria contained in subsection 771(7)(B): (1) the volume of imports of the merchandise subject to the investigation, (2) the effect of imports of such products on prices of like products produced in the United States, and (3) the impact of the imports on the affected domestic industry.[13] We have based our decision on the findings of fact and conclusions of law discussed below.

[5] Commissioners Moore and Bedell also determined that the domestic industry is threatened with material injury.

[6] The product is provided for in items 682.45 through 682.50 of the Tariff Schedules of the United States (TSUS).

[7] The U.S. Department of Commerce (Commerce) investigation covered imports of polyphase electric motors from Japan during the 6-month period extending from April 1, 1979, through September 30, 1979. The LTFV determination was based on an examination of polyphase electric motors manufactured by Tokyo Shibaura Electric Co. (Toshiba) since approximately 90 percent of the motors exported to the United Sates from Japan during the period of investigation were manufactured by that firm. The weighted average margin for all models compared was 6.7 percent.

[8] The term "ac" refers to alternating current and the term "polyphase" means other than a single phase power source.

[9] Staff Report at A–3.

[10] Staff Report at A–7.

[11] Staff Report at A–7.

[12] Staff Report at A–23.

[13] Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, section 771 (19 U.S.C. 1677(7)).

Volume of imports: The majority of the motors imported into the United States from Japan during the period of this investigation were manufactured by Toshiba Corporation.[14] Despite the decline in U.S. consumption between 1977 and 1979, the market penetration of motors imported by Toshiba increased by nearly 30 percent.[15] Toshiba imports continued to increase during the first six months of 1980 to 25 percent above the level during the comparable period in 1979.[16] The share of consumption supplied by other importers also increased from 1977 to the first half of 1980 but their share of total imports remained small. The rise in the level of import penetration from 1977 to the first half of 1980 was accompanied by a substantial increase in all importers' inventories.[17] The growth in inventories is most noticable with respect to Tashiba whose inventories more than doubled from June 1979 to June 1980.[18]

Effect of imports on prices. Price data were supplied to the Commission by Toshiba and one other Japanese firm and by nine domestic manufacturers which account for 90 percent of U.S. production. The data were broken down by type of motor as defined by industry standards (i.e. horsepower range, number of poles and type of enclosure) and by type of customer. The prices collected were for standard, unmodified motors. There are three types of customers in the domestic electric motors market: original equipment manufacturers (OEMs) who incorporate the motors into machinery before it is sold, end users, and distributors who sell to both of the other 2 types of customers. Price comparisons were made on sales by domestic producers' and importers' to OEMs and to distributors. Most U.S. producers' sales are to OEMs and Toshiba's are to distributors, thus, comparisons were also made between these prices. These comparisons reveal underselling in the majority of instances. For most of the types of motors sold to distributors the imported product was priced below the weighted average domestic price and in some instances even below the lowest domestic price of the comparable model.[19]

In sales to the OEM market, Toshiba motors undersold in a few instances. However, in the majority of cases, domestic prices were below those of the imported product.[20] Toshiba's higher prices to OEMs may reflect its policy of not competing with distributors selling Toshiba motors in the OEM market.[21]

In response to the allegations made at the hearing that the Commission price comparisons for distributors and OEMs were invalid because the majority of imports and the domestic products were being sold to different types of customers, the Commission compared Toshiba's distributor prices to the domestic producers' prices for each of 7 standard model types. Even this comparison revealed Toshiba sales below the weighted average domestic prices in 68 of the 86 price comparisons.[22] In the majority of the comparisons, the margins of underselling were more than accounted for by the LTFV margins.[23] Also, in numerous cases, Toshiba prices were even below the *lowest* domestic price to OEM's.[24]

Impact of imports on the affected domestic industry: U.S. production declined by 8 percent during 1977–79 and increased only slightly in the first half of 1980 from the level of production in 1979.[25] Although production capacity increased from 1977 to January–June 1980, capacity utilization decreased from 1977 to 1978 and then returned to its 1977 level in the first half of 1980.[26] U.S. shipments also declined in the number of units sold from 1977 to 1979 and increased slightly in the first half of 1980.[27] Producers' inventories have continued to increase from 1977 to the first six months of 1980.[28]

Peak performance should have occurred in the business cycle of the electrical industry during the period 1977–79.[29] In the electric motor industry, it did not, and more market share has been lost to imports. Toshiba's growing inventories suggest continuing difficulties for domestic producers trying to sell their own sizable inventories at reasonable prices. Profit and loss information was obtained for motors ranging from 150 to 500 horsepower from 5 firms accounting for more than 60 percent of the 1979 U.S. production of such motors.[30] Profits declined from 1977 to the first half of 1980.[31] The ratios of profit to net sales, cost of goods sold to net sales, and selling and administrative expenses to net sales also declined from 1977 to January–June 1980.[32] Employment during the period covered by the investigation remained stable, and wages increased slightly.[33]

The margins of underselling revealed in the questionnaire responses lend support to the allegations made by domestic industry representatives at the hearing that U.S. prices have decreased in an effort to meet competition from LTFV imports.[34] Due to the nature of the market it was impossible to confirm the allegations of lost sales. This difficulty stems from the fact that a significant share of Toshiba's sales is accounted for by distributors whose sales are largely unknow to U.S. producers and can only be obtained through competitive bidding and market intelligence. However, in light of the margins of underselling, rise in inventories and decline in profits we would infer that lost sales exist.

No other causes of injury were alleged during the investigation. We find that the material injury present and threatened must be by reason of the unfairly priced imports.

Conclusion

For the foregoing resons we find that the domestic industry producing ac, polyphase electric motors of not less that 150 horsepower and no greater than 500 horepower is materially injured by reason of the LTFV sales of ac, polyphase electric motors from Japan.

Views of Commissioner Paula Stern

Background

On January 1, 1980, the Commission instituted a preliminary investigation under section 733(a) of the Tariff Act of 1930, as amended, with respect to alternating current (AC), polyphase electric motors of over 5 horsepower but not over 500 horsepower from Japan. This investigation was initiated on the basis of a Treasury Department investigation in which there has not yet been a preliminary determination as to less than fair value sales. As a result of that investigation, the Commission reported to the Secretary of Commerce its determination of a reasonable indication that an industry in the United States is materially injured by reason of

[14] Staff Report at P. A–4.

[15] Staff Report at p. A–35, Table 25.

[16] Staff Report at p. A–35, Table 25.

[17] Staff Report at p. A–13.

[18] Commissioners Moore and Bedell note that the information contained in the record on the historical pattern of increasing import penetration levels and importers' inventory levels supports their determination as to the threat of material injury.

[19] Staff Report at p. A–37.

[20] Staff Report at p. A–38–39.

[21] Staff Report at p. A–38–39.

[22] Staff Report at p. A–38.

[23] Staff Report at p. A–40–53, Tables 27–40.

[24] Staff Report at p. A–38.

[25] Staff Report at p. A–23.

[26] Staff Report at p. A–15.

[27] Staff Report at p. A–17.

[28] Staff Report at p. A–19, Table 12.

[29] Staff Report at p. A–17, Table 10.

[30] Staff Report at p. A–23. Three additional firms submitted profit and loss information. However, this data was not usable since two of the producers did not provide data relative to motor size and the other firm did not provide data for the reduced scope of the investigation.

[31] Staff Report at p. A–23.

[32] Staff Report at p. A–25.

[33] Staff Report at p. A–19.

[34] Staff Report at p. A–36–39 and Transcript of Commission hearing of Nov. 20, 1980, at p. 11–12.

the importation of AC, polyphase electric motors provided for in items 682.41 through 682.50 of the Tariff Schedules of the United States allegedly sold at less than fair value (LTFV).[1]

producers in the United States of such electic motors.[7]

Causation

The essentially strong showing of the domestic industry could in itself lead to

on which data are considered—the high or low end of the largest sale price range or the weighted average. In fact, looking at 80 price comparisons, the low end of the largest sale price range shows the imports were priced above the domestic

29.2 percent, while the dumping margins on the samples examined for underselling ranged from 0 to 29.2 percent. Looking at specific comparisons made by the ITC for purposes of examining underselling, we find, for

complete 1980 data, U.S. production, shipments, exports apparent consumption, capacity, capacity utilization, and research and development have gone up relative to 1977, which was a good year for the

imports, profits dropped substantially.[23] This tends to confirm the lack of a causal nexus between the economic situation of the industry and the LTFV imports.

Additionally, it appears that most of

the importation of AC, polyphase electric motors provided for in items 682.41 through 682.50 of the Tariff Schedules of the United States allegedly sold at less than fair value (LTFV).[1]

In June 1980, the Commission received notification that the Department of Commerce (Commerce) had made a preliminary affirmative determination with regard to certain electric motors from Japan but had excluded submersible well pump motors from its investigation.[2] This was the first change in the scope of this investigation. The Commission then instituted this final antidumping investigation on the basis of the scope as defined at that time.

Subsequently, Commerce limited its LTFV determination [3] to an examination of electric motors manufactured by Tokyo Shibaura Electric Co. (Toshiba) which represented approximately 90 percent of the motors exported to the United States from Japan during the period of investigation. This resulted in a further narrowing of the scope of the investigation.

Finally, on October 29, 1980,[4] Commerce and Toshiba agreed to monitoring terms for motors of less than 150 horsepower and Commerce suspended the investigation with respect to those products. Thus, the scope of the Commission's investigation was ultimately reduced by 94 percent.[5]

Determination

The record developed in this investigation compels a conclusion that pursuant to section 735(b)(1) of the Tariff Act of 1930, an industry in the United States is not materially injured and is not threatened with material injury[6] by reason of imports of AC, polyphase electric motors of not less than 150 horsepower and not greater than 500 horsepower (electric motors) from Japan sold at LTFV. The relevant domestic industry consists of the producers in the United States of such electic motors.[7]

Causation

The essentially strong showing of the domestic industry could in itself lead to a negative determination. However, this case fails because there is no demonstrable connection linking the impact of LTFV imports to the performance of the domestic industry.

The level of imports is modest—2.5 percent in 1977 to 4.4 percent by value in January-June 1980.[8] Moreover, the rate of increase of imports is not significant. Imports grew only .5 percent per year between 1977 and 1980. The plans of Toshiba to locate within a year facilities in Houston, Texas, to manufacture all of the motors subject to this investigation will likely reduce the current low level of imports and dampen any possible future growth in the rate of imports.

There were no verified lost sales. Nor were there even allegations of lost sales based on price which can be related to the electric motors under investigation. Indeed, the results of a Commission survey revealed that quality, availability, and delivery all ranked before price as the basis for purchasing Japanese imports.[9]

Furthermore, the notion of imports as a possible cause of underselling leading to price suppression does not hold up. To begin with, the available data on prices are suspect. It is highly questionable whether the pricing data are respresentative; they account for only two percent of total U.S. shipments. This small sample relates only to standard electric motors while the major portion of domestic shipments are non-standard electric motors. The sample also does not include prices to users of electric motors, such as process industries and chemical plants, which account for 15 to 16 percent of U.S. producers' shipments and a very small portion of importers' shipments.[10]

The usefulness of the available price data is further limited by the difficulty of making comparisons between domestic and imported prices. Looking at sales to distributors means looking at only 29 percent of total domestic shipments, but most of the imports from Japan. When we compare distributor prices we find instances of underselling during some time periods. The ratio varies depending on which data are considered—the high or low end of the largest sale price range or the weighted average. In fact, looking at 80 price comparisons, the low end of the largest sale price range shows the imports were priced above the domestic product in 23 comparisons and priced the same in 19. However, these comparisons are not necessarily appropriate in that they reflect the lowest prices of imports but not the lowest prices of domestic motors. This is true because importers give their lowest prices to distributors, while the domestic producers' market strategy is to give their lowest prices to original equipment manufacturers (OEM) in the market.

Logic dictates that is it equally inappropriate to compare prices of imports to prices of domestic products in the OEM portion of the market. If such a comparison is made, however, it is interesting to note that at the low end of the largest sale range, there is *no* underselling. It is also probable that there is no underselling in the user portion of the market.

The best possible comparison to draw is between the price of imports to distributors and domestic prices to the OEMs, since this reflects the actual marketing strategies as to price for both Toshiba and the domestic producers. Comparing the imports' distributor price against the domestic OEM price in the low end of the largest sale range reveals that imports were priced higher than the domestic product in 17 of 35 comparisons during the dumping period examined by Commerce.[11] The ratio drops if you look at the average or high end of the largest sale range, but the results remain mixed.

These mixed results on underselling indicate that what we have here is normal competition. Furthermore, using a price analysis for purposes of demonstrating injury by reason of imports is incomplete without examining the impact of the dumping margin. The question is causation, not merely the existence of underselling. When we compare the instances of underselling shown in import prices to distributors [12] versus domestic prices to OEMs at the low end of the largest sale range against the margins of dumping Commerce found for the sample products, we see that the "by reason of" requirement of the statute is not met.[13] Commerce examined 23 models and found dumping margins on 14 which ranged from 1.6 to 29.2 percent, while the dumping margins on the samples examined for underselling ranged from 0 to 29.2 percent. Looking at specific comparisons made by the ITC for purposes of examining underselling, we find, for example, that for open-frame, 4-pole, 150 horsepower motors,[14] there was underselling in two of fourteen comparisons and an average dumping margin of a significant nature. Meanwhile for open frame, 4-pole, 200 horsepower motors,[15] there was underselling in seven of fourteen comparisons and the smallest possible dumping margins. An analysis of the remaining five samples is less dramatic, but they all continue to show no relation between the occurrences or levels of underselling and the occurrence or level of dumping. I am, therefore, led to the conclusion that the occasional underselling is not by reason of the sale of imports at less than fair value but is instead a reflection of a normal market.

Causation between LTFV imports and the conditions in this industry has not been established. Significantly, no causes of injury other than imports were raised by the parties to this investigation. Unlike other cases, the recession is not a causal factor here. This industry is cyclical but its current cycle is out of synchronization with general business conditions. The industry went through a downturn in 1978 and has maintained a steady recovery over 1979 and 1980—even in the face of the continued slight increase in imports.

Material Injury

The fact that the generally negative performance of the electrical equipment industry in the current economic downturn has resulted in very few negative trends in the polyphase electric motor industry is indicative not only of the lack of causation by LTFV imports, but also the lack of material injury to the polyphase electric motor industry.[16] Although domestic production, shipments, and employment in the polyphase electric motor industry were off in 1978, these indicators were generally up in January–June 1980 in comparison with the same period of 1979—production, 10 percent; capacity, 2 percent; capacity utilization, 8 percent; quantity of shipments, 12 percent; average number of employees, 1 percent; total hours, 7 percent; and net profits on overall operations, 14 percent.[17] In fact, extrapolating from 1979 data to reach complete 1980 data, U.S. production, shipments, exports apparent consumption, capacity, capacity utilization, and research and development have gone up relative to 1977, which was a good year for the industry. Exports and research and development have increased dramatically.

Employment has remained steady. During the same period from 1977–1980. U.S. producers' inventories have increased slightly to meet market demand. While inventories of imports have increased, they began with a very small base.[18]

Although capacity utilization declined between 1977 and 1978, utilization of capacity was higher in 1979, which included the dumping period examined by Commerce, than in 1978. Utilization of productive capacity by U.S. producers was even higher in the first half of 1980 than during the first half of 1979.[19] In fact, by extrapolating first-half 1980 data, we find capacity utilization up from the industry's good year of 1977.

Like the pricing data, there are some caveats which must be kept in mind when using the profit-and-loss data. Nine firms representing 90 percent of U.S. production of the subject electric motors in 1979 provided profit-and-loss data relative to the establishment or division within which such motors are manufactured. However, only five of the nine firms were able to provide separate profit-and-loss data for their polyphase motor operations as requested by the Commission's questionnaire. These five firms represent approximately two-thirds of total domestic production of these motors.[20]

The net operating profit for the overall operations of the reporting establishments increased by 4 percent from 1977 to 1979.[21] During the same period there was a decline in net operating profit for their electric motor operations. However, this indicator follows the others in the sense that a recovery and an upward trend were apparent in the first half of 1980.

When you break down the available profit data between 150–200 horsepower and 201–500 horsepower, however, there is an interesting dichotomy. In the 150–200 horsepower category,[22] which included approximately two-thirds of the imports by quantity, profits have dropped only slightly. Meanwhile, in the 201–500 horsepower category, where there are commensurately fewer imports, profits dropped substantially.[23] This tends to confirm the lack of a causal nexus between the economic situation of the industry and the LTFV imports.

Additionally, it appears that most of the decline in the ratio of net operating profit-to-net sales for the overall operations of the nine firms is explained by increases in selling and administrative expenses. This is equally true for the five firms that provided the most relevant data keyed only to the motors subject to this investigation.[24] The firms allocated this figure from the figure for their overally operations. This indicates that the five firms attributed no special impact from imports of polyphase motors to their increase in selling and administrative expenses. Thus, for the single indicator pointing toward material injury, the LTFV imports are not implicated.

Discussion of Past Commission Cases

In explaining the basis of my determination, I believe that it is important to distinguish this investigation from the other antidumping cases decided under the Trade Agreements Act of 1979 in which my determination made the affirmative finding unanimous. An analysis of these cases will reveal that the level of import penetration and LTFV margins were much higher and that the causal link between LTFV imports and conditions in the industry was much greater in the three previous affirmative determinations than in the instant investigation.

The first final affirmative injury determination under the 1979 Act was issued in *Spun Acrylic Yarn from Japan and Italy*, Inv. No. 731–TA–2.[25] In *Spun Acrylic Yarn* the level of import penetration was 16 percent as compared to 8.5 percent in the present investigation,[26] the LTFV margin was 23.19 percent [27] as compared with 6.7 percent, and lost sales due to lower price were confirmed. My determination of injury in the *Spun Acrylic Yarn* investigation was based on the fact that although the volume of imports was relatively low, the impact of such imports was great as manifested by the incidence of lost sales and price suppression.[28] I, therefore, found a sufficient causal link between increased imports and the injury suffered by the

[1] USITC Publication 1037, February 1980.

[2] Commerce reported that the petitioners do not produce submersible well pump motors to any significant degree and had not submitted specific information to Commerce suggesting that they are being sold, or are likely to be sold at less than fair value.

[3] The administering authority's investigation covered imports of polyphase electric motors from Japan entering during the six-month period extending from April 1, 1979 through September 30, 1979. The Department of Commerce examined 23 models and found margins, which ranged form 1.6 to 29.2 percent, or 14 of the 23 models. The weighted average margin for all models compared was 6.7 percent.

[4] Commerce had extended the deadline for a final LTFV determination from September 2, 1980 until Otober 29, 1980.

[5] Based on quantity of shipments in 1979.

[6] With respect to threat, I am in concurrence with my colleagues Chairman Alberger and Vice Chairman Calhoun.

[7] Section 771(4)(a) of the Tariff Act of 1930.

[8] Import penetration by quantity increased from 6.3 percent in 1977 to 8.4 percent in 1979. It was 8.1 percent in January-June 1980.

[9] Staff Report, p. A–54.

[10] At the public hearing, the petitioner and the respondents agreed that additional price data need not be gathered by the Commission. Several days after the vote was originally scheduled, attorneys for Toshiba did raise other price data objections.

[11] Staff Report, tables 34–40.

[12] These prices do not include the distributor mark-up which would be added when head-to-head competition occurs.

[13] Section 735(b)(1) of the Tariff Act of 1930. The analysis holds true, though the ratios change, for the other domestic OEM prices.

[14] Staff Report, table 34.

[15] Staff Report, table 35.

[16] Section 771(7) of the Tariff Act of 1930.

[17] Staff Report, p. A–58.

[18] Staff Report, pp. A–13, 19–32.

[19] Staff Report, table 9.

[20] Staff Report, pp. A–25–27.

[21] Staff Report, p. A–23.

[22] Staff Report, table 18.

[23] Staff Report, table 20.

[24] Staff Report, table 18 and 20.

[25] *Spun Acrylic Yarn from Japan and Italy*, Inv. No. 731–TA–2, USITC Pub. No. 1046 (March 1980)

[26] *Id.* at A–22.

[27] Id. at A–6.

[28] Id., at Views of Commissioners Paula Stern and Michael J. Calhoun, at 9.

domestic industry. In the *Electric Motors* investigation I have not found evidence which supports a causal link between imports and the conditions in the industry, for unlike *Spun Acrylic Yarn*, there was not confirmed lost sales factors, wide margins of underselling, and substantial loss of sales verified by the staff, I joined the other members of the Commission in concluding that there was a causal link between the imports and the injury experienced by the

[Investigation No. TA–201–44]

Certain Motor Vehicles and Certain Chassis and Bodies Therefor; Report to the President

December 3, 1980.

Commission procedures, accelerating the investigation, was published in the Federal Register of July 22, 1980 (45 FR 48996). On August 4, 1980, the Commission received a petition for similar import relief from the Ford Motor

particular article have increased within the meaning of the statute, whether the corresponding industry is being seriously injured and whether such increased imports constitute a substantial cause of such harm.

explanatory of each other,[5] the escape clause may be invoked where either type of producers satisfies the statutory requirements of injury under section 201. Thus, our initial task is to draw distinctions where possible between the

domestic industry. In the *Electric Motors* investigation I have not found evidence which supports a causal link between imports and the conditions in the industry, for unlike *Spun Acrylic Yarn*, there was not confirmed lost sales and little evidence to support price suppression due to LTFV imports. And of course, the health of this industry is much stronger than that which existed in *Spun Acrylic Yarn*.

The second unanimous affirmative injury determination under the 1979 Act was *Sugars and Sirups from Canada*, Inv. No. 731–TA–3.[29] In that case the Commission found that two regional industries extisted. The level of import penetration was only 4.5 percent. However, the LTFV margin was 20.33 percent [30] which is significantly higher than the 8.7 percent average margin in this investigation. There was also substantial underselling even below the lowest domestic prices in *Sugars and Sirups from Canada*,[31] as compared to the underselling in this case which is mixed in the sense that in most instances the import price is not below the lowest domestic price. I, therefore, found a sufficient causal link between imports and injury in *Sugars and Sirups from Canada* based on price suppression and depression and confirmed instances of sales lost due to lower-priced imports.[32] Additionally, on a regional basis the sugar industry was exhibiting a general decline.[33]

The third case in which an affirmative determination was issued is *Portable Electric Typewriters from Japan*, Inv. No. 731–TA–12. In that investigation there was a rapid and substantial increase in imports during the period covered by the investigation [34] in contrast to the smaller and more gradual increase in imports in the *Electric Motors* investigation. The LTFV margins for the three producers accounting for all imports were 4.38 percent, 48.7 percent and 36.5 percent;[35] thus for a majority of the imports the LTFV margins were substantially higher than in the instant case. Also, in marked contrast to the instant investigation, the *Portable Typewriters* investigation revealed sharp declines in domestic shipments, capacity utilization, hours worked and wages. In light of these factors, wide margins of underselling, and substantial loss of sales verified by the staff, I joined the other members of the Commission in concluding that there was a causal link between the imports and the injury experienced by the domestic industry.[36]

In addition to distinguishing these prior affirmative determinations, it is useful to point to the similarities between the instant case and the negative injury determination issued in *Steel Wire Nails from the Republic of Korea*, Inv. No. 731–TA–26.[37] The LTFV margins in *Steel Wire Nails* ranged from 1.3 to 11.5 percent [38] and thus the LTFV margin in this case would fall within the middle of that range.[39] Also, the 7.1 percent level of penetration in *Steel Wire Nails* in roughly comparable to the 8.4 percent penetration level in the instant case. The majority determination of no injury in *Steel Wire Nails* was based on the fact that domestic prices and production levels increased, capacity expanded, inventories remained stable and that the decline in profits experienced by the industry could not be linked to LTFV imports.[40] An important element leading to the conclusion that lost sales data did not provide a causal link between imports and injury was the fact that like the *Electric Motors* case, the nature of the steel wire nail market made verification of lost sales based on price virtually impossible.

Conclusion

Thus, I agree with two members of the four-member majority that there is no threat of material injury to a U.S. industry by reason of LTFV imports from Japan. Moreover, for all the reasons presented above, I also find no present material injury from the imports found to be sold at less than fair value.

Issued: December 12, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

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[29] *Sugars and Sirups from Canada*, Inv. No. 731–TA–3, USITC Pub. No. 1047 (March 1980).

[30] *Id.* at A–13.

[31] *Id.* at A–63.

[32] *Id.*, Views of Commissioners George M. Moore and Paula Stern, at 17.

[33] *Id.* Views of Commissioners George M. Moore and Paula Stern, at 15.

[34] *Portable Electric Typewriters from Japan*, Inv. No. 731–TA–12, USITC Pub. No. 1062 (May 1980).

[35] *Id.* at A–4.

[36] *Id.*, Statement of Reasons for Chairman Catherine Bedell, Commissioners George Moore, Paula Stern, and Michael Calhoun, at 7, 8.

[37] *Certain Steel Wire Nails from the Republic of Korea*, Inv. No. 731–TA–26, USITC Pub. No. 1088 (August 1980). The Commission found a regional domestic industry and issued a negative injury determination in that case based on a 3–2 vote, Commissioners Moore and Bedell dissenting.

[38] *Id.* at A–10.

[39] *Id.*, Views of Chairman Bill Alberger, Vice Chairman Michael J. Calhoun, and Commissioner Paula Stern, at 14.

[40] *Id.* at 16.

[Investigation No. TA-201-44]

Certain Motor Vehicles and Certain Chassis and Bodies Therefor; Report to the President

December 3, 1980.

Determination

On the basis of the information developed in the course of the investigation, the Commission has determined (Commissioners Moore and Bedell dissenting in part)[1] that automobile trucks, on-the-highway passenger automobiles, and bodies (including cabs) and chassis for automobile trucks, provided for in items 692.02, 692.03, 692.10, 692.11, 692.20, and 692.21 of the Tariff Schedules of the United States (TSUS), are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industries producing articles like or directly competitive with the imported articles.

Background

The Commission instituted the present investigation, No. TA–201–44, on June 30, 1980, following the receipt, on June 12, 1980, of a petition for import relief filed by the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW). The investigation was instituted pursuant to section 201(b)(1) of the Trade Act of 1974 (19 U.S.C. 2251(b)(1)) in order to determine whether—

automobile trucks (except automobile truck tractors and truck trailers imported together); on-the-highway passenger automobiles; and bodies (including cabs) and chassis for automobile trucks (except truck tractors); provided for in items 692.02 and 692.03; 692.10 and 692.11; and 692.20 and 692.21 of the TSUS;

are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Notice of the Commission's investigation was published in the **Federal Register** of July 7, 1980 (45 FR 45731), and a notice of changed

[1] Commissioners Moore and Bedell determined that on-the-highway passenger automobiles, provided for in items 692.10 and 692.11 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

Commission procedures, accelerating the investigation, was published in the **Federal Register** of July 22, 1980 (45 FR 48996). On August 4, 1980, the Commission received a petition for similar import relief from the Ford Motor Company. Notice of the receipt of the Ford petition and the Commission's consideration of Ford to be a copetitioner in the investigation already under way was published in the **Federal Register** of August 21, 1980 (45 FR 55873).

A public hearing in this investigation was held in the Great Hall of the U.S. Department of Justice Building in Washington, D.C., and extended from Wednesday, October 8, 1980, through Saturday, October 11, 1980. All interested parties were afforded an opportunity to be present, to present evidence, and to be heard.

This report is being furnished to the President in accordance with section 201(d)(1) of the Trade Act. The information in the report was obtained from fieldwork and interviews by members of the Commission's staff, and from other Federal agencies, responses to Commission questionnaires, information presented at the public hearing, briefs submitted by interested parties, the Commission's files, and other sources.

Views of Chairman Bill Alberger

Section 201(b) of the Trade Act of 1974 requires that each of the following conditions be met before an affirmative determination can be made:

(1) There are increased imports (either actual or relative to domestic production) of an article into the United States;

(2) The domestic industry producing an article like or directly competitive with the imported article is being seriously injured, or threatened with serious injury; and

(3) Such increased imports of an article are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

While I find the first two conditions met for both passenger automobiles and light trucks, I do not find the third to be satisfied, and therefore my determination with respect to these items is in the negative. Medium and heavy trucks do not satisfy the first criterion, and therefore also mandate a negative determination.

In analyzing the above criteria, it is first necessary to define the scope of the domestic industries against which each imported article should be assessed. The issue raised by petitioners of how to treat Canadian imports must then be resolved. Finally, it is possible to analyze whether imports of each particular article have increased within the meaning of the statute, whether the corresponding industry is being seriously injured and whether such increased imports constitute a substantial cause of such harm.

The Domestic Industry

This case raises a number of issues with respect to the scope of the industry or industries to be analyzed. The judgment of how to define an industry depends largely upon the nature of the imported products, the competitive conditions in the domestic market, and the nature of U.S. production. It is therefore difficult to rely exclusively on general legal prescriptions for ascertaining the appropriate industry definition; rather, each determination will necessarily depend heavily on our perceptions of the particular facts of each case. The definition of industry can have a major impact on the question of serious injury, however, and must be made with a clear understanding of both the statutory scheme and Commission precedent relating to the particular fact situation.

The language of section 201 is straightforward. It requires an examination of serious injury to "the domestic industry producing an article like or directly competitive with the imported article;"[2] but as the Commission majority observed in our most recent ruling under section 201,[3] the problems attending the application of this language are substantial. Reasonable persons are bound to differ on the ultimate issue of how to apply this seemingly simple phrase to a particular set of facts. This is especially true in the case of products as multifarious as automobiles and trucks. But the important thing to emphasize is that the definition of an industry under section 201 is based on precise legal standards, and may not necessarily coincide with the generic description everyone uses when they refer to "the auto industry."

The methodology which I believe to be appropriate for delimiting the relevant industries was fully described in TA–201–43 (Mushrooms).[4] Briefly stated, it is as follows:

Since the phrase "like or directly competitive" is clearly expressed in the disjunctive, and since the adjectives "like" and "directly competitive" were not intended to be synonymous or explanatory of each other,[5] the escape clause may be invoked where either type of producers satisfies the statutory requirements of injury under section 201. Thus, our initial task is to draw distinctions where possible between the "like product" to the imported article (i.e., that which is "the same or nearly the same in inherent or intrinsic characteristics")[6] and those which are "directly competitive" with it (i.e., "substantially equivalent for commercial purposes, that is, * * * adapted to the same uses and * * * essentially interchangeable therefor").[7] If these groups of producers can clearly be treated as separate and distinct industries in terms of production, sales, employment, etc., and if such action is consistent with the realities of the marketplace, then a showing of serious injury to either group (assuming increased imports were a substantial cause of such injury) will satisfy the criteria for relief and mandate an affirmative result.

Applying these principles to the facts at hand, I believe we are faced with three separate and distinct industries—in essence any combination of groupings with respect to products either "like" or "directly competitive" with the imported articles yields only three possibilities. These industries could be defined as firms and facilities devoted to the production of (1) all passenger automobiles of the type classified under items 692.10 and 692.11 of the TSUS, (2) light trucks of under 10,000 lbs. gvw (of the type classified as automobile trucks under items 692.02 and 692.03 of the TSUS) and (3) medium and heavy trucks (also of the type classified under 692.02 and 692.03) but not truck tractors and trailers imported together, which we specifically excluded from the scope of our investigation. Since our report covers bodies (including chassis) for automobile trucks, it is also important to point out that we would consider domestic producers of these articles to fall within the same general industry definition (either light trucks or medium/heavy trucks) as the assembled product. I reach this industry segmentation on the basis of the following rationale:

1. There is no persuasive basis on which to segment passenger automobiles into more than one industry, as requested by several importers. While there may be an endless variety of sizes and characteristics, there is no clear dividing

[2] Trade Act of 1974, Section 201(b)(1), 19 U.S.C. 2251(b)(1).

[3] Mushrooms, Inv. TA–201–43, USITC Pub. 1069, Views of Chairman Alberger, Vice Chairman Calhoun and Commissioner Stern, 6–14 (1980).

[4] *Id.*

[5] S. Rep. 93–1298, 93d Cong., 2d Sess., 121–22 (1974).

[6] *Id.*

[7] *Id.*

line between "large autos" and "small autos" for example. Furthermore, all passenger automobiles have substantially similar uses, and there is certainly ample evidence that all are—to a greater or lesser extent) directly

industries is flawed in many respects. First, the very uncertainty about where to draw the dividing line illustrates vividly that what really exists is a full continuum of products. There is an endless choice of sizes and features. The

A final argument in favor of treating passenger autos as one industry is the notion, referred to in our last decision,[11] that it is difficult to analyze profit and loss data, employment, costs and other factors on a model-by-model basis.

scope of this investigation. They maintain that U.S. and Canadian manufacturing operations are part of a single industry, and that the Automotive Products Trade Act of 1965 (APTA).[13] implementing the U.S.-Canadian

discriminatory actions which do not comply with the Most Favored Nation requirements of the Trade Act, but he is first required to consider the effect of such action on our foreign relations, both economic and political. Obviously,

are "increased imports," and not to count them as domestic production in considering injury. This approach is consistent with the scheme of Section 201, which is based upon GATT concepts and is intended to be

line between "large autos" and "small autos" for example. Furthermore, all passenger automobiles have substantially similar uses, and there is certainly ample evidence that all are—to a greater or lesser extent) directly competitive. While various government bodies, industry groups and trade publications do subdivide cars into different groups, these classifications are somewhat arbitrary and vary considerably.

2. Light trucks are inherently distinct from passenger vehicles in terms of their characteristics and principal uses. All types are, to some extent, able to carry substantial quantities of freight, materials or supplies. While many are also adapted to passenger transport, they are purchased by a wide variety of consumers for utilitarian purposes. I believe this is enough of a qualitative difference to make them unlike passenger vehicles. Moreover, there is insufficient evidence to conclude that they compete "directly" with passenger vehicles, although they are produced by the major auto manufacturers and sold through automobile dealerships.

3. Medium and heavy trucks, which are not the main focus of this investigation, are essentially distinct from either passenger vehicles or light trucks. The vast majority are commercial vehicles designed for specific commercial purposes. They are produced by a different group of firms and marketed separately (although the major auto companies do have heavy truck divisions).

The testimony and written submissions extensively discussed the question of whether large cars, small cars and various types of light trucks should be classified in separate industries. Some European importers even contend that their products are unique and do not compete with domestic products of any sort. The importers point to the great number of differences between "large" and "small" passenger vehicles. Most propose a classification based upon weight, size, engine specifications, wheelbase and other factors. They contend that it is logical to draw a line somewhere between "large" and "small" cars on this basis—that the auto industry itself draws several classifications based upon these criteria. Furthermore, they purport to demonstrate through consumer surveys and other cross-elasticity studies how demand for these two basic vehicle types differs, thus suggesting that they are not "directly competitive."

I believe that the reasoning which would lead to a subdivision of passenger autos into two or more industries is flawed in many respects. First, the very uncertainty about where to draw the dividing line illustrates vividly that what really exists is a full continuum of products. There is an endless choice of sizes and features. The same basic car body can be given a larger engine and a few optional features, thereby transforming it into a substantially larger car than the stripped-down model. Most domestic producers offer a "full line" of products, from subcompact to large and luxury cars, and all have a range of options that might change their classification. In reviewing the classification of "small" versus "large" autos suggested by one importer,[8] it becomes obvious that one can find more similarity between the largest small car and the smallest large car than between products at either end of the small car spectrum.[9]

Another factor which militates against the segmentation of large and small cars is that all are designed as private vehicles for the principal purpose of transporting passengers. The fact that some might be faster, hold more passengers, or consume less fuel is not something which alters their basic similarity of uses.

Importers also seek to create meaningful distinctions between small and large cars in terms of competitiveness, arguing essentially that consumer surveys show a marked lack of direct competitiveness between these classes. There appears to be an inherent contradiction here, because the same parties cite the shift in demand from large to small cars as an important cause of injury. This shift merely demonstrates why these goods are "directly competitive." In essence, an increase in the cost of owning one size car—brought on by rising fuel costs—has led to increased demand for the other. This suggests a high degree of cross-elasticity. It is true that importers have focused primarily on the "small" end of the market while domestic producers previously seemed content with concentrating primarily on large autos, but this does not alter the fact that these products are "substantially equivalent for commercial purposes" and are "essentially interchangeable."[10] Both importers and domestic producers serve a single—admittedly heterogeneous but nevertheless unitary—domestic market.

A final argument in favor of treating passenger autos as one industry is the notion, referred to in our last decision,[11] that it is difficult to analyze profit and loss data, employment, costs and other factors on a model-by-model basis. While few production lines turn out more than one type of vehicle, some produce a particular type with different options that may lead to different classifications. As already noted, the major domestic firms produce a full line, and this leads to nightmarish problems in attempting to allocate profits, production costs and employment data (many of the executive and product development personnel work on both groups of products). Given that no other factors argue in favor of further segmentation, this practical difficulty merely emphasizes the inappropriateness of such a recommendation.

With respect to trucks, I am not persuaded by the petitioners' arguments regarding the likeness of small trucks, vans and light utility vehicles to passenger automobiles. Not only do they differ from passenger autos in design shape and engineering, but most of these vehicles have as a primary use the transportation of materials. While they may also be used quite frequently for the sole purpose of carrying passengers, the capacity for use in carrying supplies or equipment is the obvious feature which prompts ordinary consumers to purchase a truck-like vehicle. A dealer with experience in truck sales acknowledged in our hearings that light trucks and passenger vehicles had little if any interchangeability.[12] Moreover, the record before us is insufficient to conclude that there is high cross-elasticity of demand between cars and light trucks or that the products are "commercially equivalent." Therefore, I cannot find them to be "like or directly competitive" with passenger autos.

Medium and heavy trucks are overwhelmingly used as commercial vehicles, sold through separate outlets and purchased by an entirely different class of consumers than light trucks. I find them to constitute a separate industry, although the precise scope and definition are not essential in this case because they are not alleged to be the recipient of any injury.

The Question of Conadian Imports

Petitioners argued that imports from Canada, which are produced almost entirely by subsidiaries of the major U.S. firms, should be excluded from the scope of this investigation. They maintain that U.S. and Canadian manufacturing operations are part of a single industry, and that the Automotive Products Trade Act of 1965 (APTA),[13] implementing the U.S.-Canadian automotive agreement,[14] recognizes this fact.

While the United Auto Workers witnesses acknowledged that exclusion of Canadian imports from the investigation itself was not necessarily required,[15] their position throughout the investigation was that Canadian imports should be excluded from any remedy recommendation either in explicit terms or by virtue of the nature of the goods subject to relief, because such imports are noninjurious and because of the APTA, the U.S.-Canadian agreement, and the specific GATT waiver pertaining to such agreement. Ford Motor Co., on the other hand, maintains that "In determining the degree to which imports have increased and the extent to which imports are a cause of the U.S. industry's serious injury, vehicles produced in Canada and shipped to the United States should not be considered 'imports.'"[16]

Had the Commission made an affirmative determination, it could have fashioned a remedy recommendation that, in effect, did not reduce the volume of imports from Canada or increase tariff levels on such goods. Since Canadian imports have declined in recent years, this could have been accomplished by recommending tariff-rate quotas or quantitative restrictions allocated on a country-by-country basis and based upon imports during the most recent representative period. Such a recommendation would be permissible and consistent with Commission precedent.[17] Moreover, the purpose of our recommendation is to provide guidance for the President and either of these recommendations would be consistent with his powers to proclaim effective relief under section 203(a).

Despite the Commission's implied power to adopt a remedy recommendation that disproportionately affects goods of a particular foreign origin because they are perceived to be more injurious, I do not believe we have authority to propose a remedy which expressly discriminates. Section 203(k)(1) empowers the President to take discriminatory actions which do not comply with the Most Favored Nation requirements of the Trade Act, but he is first required to consider the effect of such action on our foreign relations, both economic and political. Obviously, such considerations by the Commission are wholly inappropriate.

With respect to the more important question of whether Canadian imports should be considered imports for the purposes of assessing the merits of this case, I believe the answer must be affirmative. Nothing in the APTA or the automotive agreement itself specifically exempts Canadian products from the scope of Section 201. The APTA authorized the President to remove all customs duties on specified Canadian motor vehicles and original equipment and parts. Since this applied discriminatorily to Canadian imports alone, a waiver of MFN obligations under Article I of GATT was necessary.[18] This waiver did not address the question of exemptions from escape clause actions. Therefore, the contention that any of these provisions eliminate distinctions between Canadian and domestic automotive products for all purposes of U.S. trade law is simply not justified. While the automotive agreement and the APTA were clearly designed to eliminate unnecessary restraints on the creation of what is essentially a common market, section 301 of the Act made it plain that the elimination of duties was to be considered a tariff concession that would not preclude imposition of import relief.[19] The Report of the Senate Committee on Finance on the APTA seems to endorse this position. It states that:

> The agreement permits either Government to take action consistent with its obligations under Part II of the General Agreement on Tariffs and Trade (GATT) (art. III). Part II of the GATT includes provisions permitting contracting parties to take antidumping measures and escape clause actions. In this connection it should be made clear that nothing in this agreement nor in the enabling legislation acts to dull the operation of our remedial statutes.[20]

Commission precedent under Section 201 generally supports the conclusion that all imports should be treated alike for purposes of our investigation. Although imports by domestic producers have been considered differently in some cases with respect to the issue of causation, it has always been the practice of this Commission to consider all imports in determining whether there are "increased imports," and not to count them as domestic production in considering injury. This approach is consistent with the scheme of Section 201, which is based upon GATT concepts and is intended to be nondiscriminatory in nature. Moreover, the overall purpose of Sections 201–203 is to protect domestic productive resources—i.e., employees, physical facilities and capital.[21] Much of the legislative history of these sections is replete with expressions of concern for American workers and the utilization of domestic productive resources. In fact, the legislative history states that the Commission must "necessarily take into account imports from all countries."[22] Of course, if the products were only exported for final assembly and were actually manufactured domestically, they could be counted as domestic production rather than imports. That is not the case here.

Increased Imports

Total U.S. imports of the types of motor vehicles included in the scope of this investigation increased substantially from 1975 through January–June 1980. From just over 2.4 million units in 1975, imports of those vehicles peaked in 1978 at just under 3.8 million units, but then declined to 3.6 million units in 1979. During January–June 1980 imports of all such vehicles were about 9.5 percent higher than the levels recorded in the corresponding period of 1979.

Trends in imports of both passenger automobiles and light trucks reveal an overall increase during 1975–79. Imports of passenger automobiles rose from just over 2 million units in 1975 to over 2.9 million units in 1978, an increase of 43 percent. In 1979 imports of passenger automobiles fell by about 4 percent from 1978 levels to about 2.8 million units. Imports of light trucks and cab/chassis increased from 374,609 in 1975 to a peak of 859,500 units in 1978, before falling by about 6.5 percent in 1979 to 803,700 units.

Comparison of U.S. imports of automobiles and light trucks and cab/chassis during January–September 1979 with the corresponding period of 1980 reveal similar trends for the two motor vehicles segments. Imports of passenger automobiles increased from 2.2 million units in January–September 1979 to 2.5 million units in the corresponding period of 1980 or by 13.6 percent. Imports of trucks and cab/chassis increased from 472,320 units during January–September of 1979 to 531,012 units in the

[8] Prehearing brief of Toyota Motor Sales, U.S.A., Inc., Exhibit 1.

[9] An example would be the Ford Granada, which is classified as a small car, but which is closer to the Dodge Diplomat—a large car—than it is to the subcompact Chevette in terms of size and gas mileage.

[10] S. Rep. 93–1298, 93d Cong. 2d sess. 122 (1974).

[11] Mushrooms, Inv. TA–201–43, USITC Pub. 1089 at 11 (1980).

[12] Hearing Transcript at 505–07.

[13] 19 U.S.C. 2001.

[14] Agreement Concerning Automotive Products Between the Government of the United States and the Government of Canada, 17 U.S.T. 1372, T.I.A.S. No. 6093 (1965).

[15] Hearing Transcript at 112.

[16] Prehearing brief of Ford Motor Co., at 24.

[17] See, e.g., Nonelectric Cooking Ware, Inv. TA–201–39, USITC Pub. 1008 (1979).

[18] GATT, Basic Instruments and Selected Documents (14th Supp.) 38 (1966).

[19] 19 U.S.C. 2011.

[20] S. Rep. 782, 89th Cong., 1st Sess., 7 (1965).

[21] H. Rep. 93–571, 93rd Cong., 1st Sess., 46 (1973).

[22] Id.

corresponding period of 1980, or by 12.4 percent.

Clearly, imports of automobiles and light trucks (including cab chassis) are each increasing in terms of the statute. Imports of medium and heavy trucks, on of light trucks declined from 3.3 million units in 1978 to 2.7 million units in 1979, or by 17 percent, and further declined by 60 percent in January–June 1980. Domestic sales, as reflected in data on total shipments, followed the trends in been increasing since 1978. This is particularly true of large cars, the vehicles which cost the most to carry on inventory because of their higher sales prices.

employment in these industries would still not return to previous levels.

There is no doubt that both the passenger automobile and light truck industries are seriously injured.

Substantial Cause

Given the relatively slight import growth in that period, and considering how healthy the monthly sales figures were before 1979, one obviously begins to look for other explanations of the current injury.

Table 1.—*Passenger Automobiles: U.S. Apparent Consumption, U.S. Producers' Domestic Shipments, Imports for Consumption, Imports' Share of Consumption, 1978 and 1979, and Relative Increases or Declines in Imports and Producers' Shipments in 1979,*

corresponding period of 1980, or by 12.4 percent.

Clearly, imports of automobiles and light trucks (including cab chassis) are each increasing in terms of the statute. Imports of medium and heavy trucks, on the other hand, have declined significantly throughout the period of investigation, both absolutely and relative to domestic production. The market share of imports has steadily declined from about 18 percent in 1976 to below 8 percent in 1979. Thus, with respect to this industry, the first criterion is not met.

Serious Injury

To determine serious injury, Section 201(b)(2) of the Trade Act requires that "the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry.

We have also considered the decline in domestic sales and the increases in inventories.

There can be little argument that the two domestic industries under primary investigation (passenger autos and light trucks) manifest serious injury when all of these factors are analyzed. While most importers argued that only the "large car" segment is being injured, the facts and testimony before us overwhelmingly demonstrate that the passenger automobile industry in the aggregate is in serious difficulty. Data for light truck production yields a similar analysis. The injury which I find to exist commenced in early 1979, but has become most pronounced in the first six months of 1980. When this latter period is examined, the declines in production, employment, profitability and sales are devastating. While sales have rebounded slightly in the most recent quarter, third quarter losses are reported to be of record proportions. Thus, I find both industries to be suffering "serious injury" within the meaning of the statute. The following facts lend support to this finding:

In the aggregate most of the indices of the U.S. automobile producers' performance during the period of investigation reveal a healthy picture from 1976 through 1978 and rapidly declining trends thereafter. Domestic production of passenger automobiles reached a peak of slightly over 9.1 million units in 1978, but by 1979 production had declined to 8.4 million units and continued to decline during January–June 1980. Domestic production of light trucks declined from 3.3 million units in 1978 to 2.7 million units in 1979, or by 17 percent, and further declined by 60 percent in January–June 1980. Domestic sales, as reflected in data on total shipments, followed the trends in production—increasing substantially until 1978 and then declining. The decline in shipments for passenger autos was almost entirely due to the drop in sales of large cars. Subcompact and compact car shipments actually increased throughout 1979–80.

Trends in domestic capacity to produce passenger automobiles as compared to those for light trucks differed somewhat during the period of investigation. Domestic capacity to produce passenger automobiles of all sizes fluctuated very little from 1975 through January–June 1980. Capacity to produce automobiles increased slightly from 10.7 million units in 1975 to a peak of 10.8 million units in 1977, but then declined slightly in every period through the first half of 1980. During the period of investigation there were notable shifts in capacity to produce different sizes of automobiles. The capacity of domestic producers to build larger-size cars declined, while their ability to produce smaller-size cars, especially subcompacts, increased in response to the shift in demand toward smaller, more fuel-efficient cars. Domestic capacity to produce light trucks increased steadily from 2.7 million units in 1975 to 3.2 million units in 1979. However, during January–June 1980, capacity to produce such vehicles declined by about 9.3 percent from the corresponding period of 1979.

Capacity utilization figures indicate significant idling of productive facilities during the period of investigation. Utilization of domestic capacity to produce passenger automobiles reached a high of 86.2 percent in 1978, declined to 79.5 percent in 1979, and continued to fall to 66.5 percent during January–June 1980. Utilization of domestic capacity to produce light trucks followed a trend similar to that for automobiles, but the downturn in utilization of light truck facilities after 1977 is even more pronounced than for automobiles. Capacity utilization of domestic light truck facilities was over 100 percent as recently as 1977, but by January–June 1980 had dropped markedly to 41.5 percent.

Since most U.S. producers do not maintain inventories, it is necessary to look at dealers' inventories of new vehicles if this factor is to be assessed. While the absolute figures do not reveal any particular trend, the ratio of inventories to annual shipments has been increasing since 1978. This is particularly true of large cars, the vehicles which cost the most to carry on inventory because of their higher sales prices.

Financial data provided by domestic firms clearly reveal the inability of a significant number of firms to operate at a reasonable level of profit. From 1978 to 1979, the net operating profit for U.S. producers on their U.S. automotive operations fell by 76 percent from $5.6 billion to $1.3 billion, and continued to fall to a net loss of $2.9 billion in January–June 1980. The major losses recorded in these recent periods are indicative of the financial status of most of the producers of passenger automobiles and light trucks. During January–June 1980 the only U.S. producer to report a profit was Volkswagen of America. The declining financial position of the U.S. motor vehicle manufacturers is also revealed in the substantial drop in cash flow. U.S. producers' cash flow from operations declined from $8.9 billion in 1978 to $5.1 billion in 1979, and then to a negative $356 million in January–June 1980.

Similarly, employment patterns declined during 1979 and the first half of 1980. The average number of all employees in U.S. establishments producing passenger automobiles and light trucks declined from 1,003,430 in 1978 to 971,929 in 1979 and then in January–June 1980 declined again by about 22 percent below the level recorded for the corresponding period of 1979. Other employment indices, including the average number of production workers, man-hours worked, and output per 1,000 man-hours, mirror trends for all employees.

In April 1980, the U.S. Department of Transportation issued projections of employment changes in the auto industry based on several assumptions, including peak consumption levels of 11 million units per year, employment levels reached in 1978/79, and a return to a 15 percent import penetration level. Based on these assumptions, the report indicates that a decline in employment of auto manufacturers due to productivity gains could be as great as 150,000 by 1985. Employment gains of about 48,000 jobs due to changes in the market by 1985 offset somewhat the 150,000 loss related to increased productivity, indicating a total projected decline in employment resulting from both productivity gains and changes in the market of about 100,000 from 1978/79 levels. Thus, with increased demand for automobiles and light trucks and substantially reduced imports,

employment in these industries would still not return to previous levels.

There is no doubt that both the passenger automobile and light truck industries are seriously injured.

Substantial Cause

While I find the domestic industries producing passenger automobiles and light trucks to be suffering serious injury within the meaning of Section 201(b)(1), I do not find that increased imports are a substantial cause of such injury. The statute defines the term "substantial cause" as "a cause which is important and not less than any other cause." [23] Applying this test, I have found the decline in demand for new automobiles and light trucks owing to the general recessionary conditions in the United States economy to be a far greater cause of the domestic industries' plight than the increase in imports. While I also believe that the rapid change in product mix necessitated by the shift of consumer preference away from large, less fuel-efficient vehicles is an important cause of the present injury, I do not view this factor to be a more important cause than increased imports.

The Decline in Overall Demand

One noticeable factor in this case is the apparent lack of correlation between the growth in import volume and the state of health of domestic producers. Our investigation reveals that the period 1976–78 was characterized by strong domestic sales and record profits.[24] Yet it was during this period that the largest increase in total imports occurred. (Passenger automobile imports increased from 2 million units in 1975 to 2.9 million in 1978, while light truck imports grew from 375,000 in 1975 to 859 in 1978.) Imports actually declined in 1979, when the recession began in earnest. Even Japanese imports grew most dramatically in the prior period, and remained about steady in 1979. While Japanese imports have increased by a more alarming rate in the first 6 months of 1980 (by about 200,000 units over the comparable period of 1979), imports from other sources have declined. This juxtaposition of events becomes even more curious when we consider the testimony of petitioners that the injury began in early 1979 and has deepened over the past 18 months.[25]

[23] Trade Act of 1975, Section 201(b)(4), 19 U.S.C. 2251(b)(4).

[24] This fact was essentially acknowledged by domestic industry representatives during the hearing.

[25] Hearing transcript at 124–125, 177–78.

Given the relatively slight import growth in that period, and considering how healthy the monthly sales figures were before 1979, one obviously begins to look for other explanations of the current injury.

One figure that stands out in stark contrast to the rather marginal import increases for 1979–80 is the very large decline in overall consumption of both passenger autos and light trucks. Consumption of passenger autos fell by almost 1 million units in 1979, a decline of 7.8 percent. Moreover, consumption in January–June 1980 was 1.1 million units or 18.5 percent below the figure for January–June 1979. For light trucks the decline in 1980 was over 700,000 units or 19.3 percent, and the January–June 1980 figure was 47 percent below the comparable figure in 1979. It is therefore clear that domestic producers faced seriously declining demand in the period January 1979–June 1980. While imports did improve their market share substantially during this period by maintaining constant or slightly increasing volume in the face of falling demand, the downturn in demand itself is obviously a variable factor which must be independently assessed for its impact on U.S. producers.

At the most fundamental level, then, it is useful to allocate the decline in domestic producers' shipments in 1979 and 1980 into two basic components: that portion accounted for by the reduced overall consumption of autos and light trucks because of general economic conditions, and that portion attributable to the increasing market share of import vehicles. The relative magnitude of these two causes can be assessed by comparing the actual decline in domestic shipments to the decline that might have occurred if imports had not increased their market share in 1979–80, i.e., if imports and domestic vehicles had shared equally in the overall decline in sales. The difference between these two figures represents the maximum potential loss in sales due to increased imports. This amount can then be compared to the volume of loss attributable solely to reduced demand. The following tables, based upon data available in the Commission's report, reveal the results of this exercise for 1979 and for January–June 1980:

Table 1.—*Passenger Automobiles: U.S. Apparent Consumption, U.S. Producers' Domestic Shipments, Imports for Consumption, Imports' Share of Consumption, 1978 and 1979, and Relative Increases or Declines in Imports and Producers' Shipments in 1979, if the Share of Imports Is Held Constant at the 1978 Level*

Item	1978	1979
Actual 1978 and 1979 data:		
Apparent consumption—1,000 units	11,185.0	10,315.3
U.S. producers' domestic shipments—1,000 units	8,256.9	7,518.2
Imports for consumption—1,000 units	2,928.1	2,797.1
Ratio of imports to consumption—percent	26.2	27.1
Estimated data for 1979, holding import share of consumption constant at 1978 level and using actual 1979 consumption data:		
Imports, if held at 1978 share of consumption—1,000 units	(1)	2,702.6
U.S. producers' domestic shipments, if held at 1978 share of consumption—1,000 units	(1)	7,612.7
Net change from 1978 to 1979:		
Total actual decline in U.S. producer's shipments—1,000 units	(1)	738.7
Net decline due to increasing import share—1,000 units	(1)	94.5
Net decline due to declining demand—1,000 units	(1)	644.2
Share of declining shipments due to declining demand—percent	(1)	87.2

[1] Not applicable

Source: Compiled from data presented in table 19 of the staff report.

Table 2.—*Passenger Automobiles: U.S. Apparent Consumption, U.S. Producers' Domestic Shipments, Imports for Consumption, Imports' Share of Consumption, January-June 1979 and January-June 1980, and relative increases or declines in Imports and Producers' Shipments in January-June 1980, if the Share of Imports Is Held Constant at the January-June 1979 Level*

Item	January-June 1979	January-June 1980
Actual January–June 1979 and January–June 1980 data		
Apparent consumption—1,000 units	5,80.7	4,731.7
U.S. producers' domestic shipments—1,000 units	4,369.8	3,099.9
Imports for consumption—1,000 units	1,437.9	1,631.8
Ratio of imports to consumption—percent	24.7	34.5
Estmated data for January–June 1980, holding import share of consumption constant at January–June 1979 level and using actual January–June 1980 consumption data:		
Imports, if held at January–June 1979 share of consumption—1,000 units	(1)	1,168.7
U.S. producers' domestic shipments, if held at January–June 1979 share of consumption—1,000 units	(1)	3,563.0

Table 2.—*Passenger Automobiles:*—Cont.

Item	January-June 1979	January-June 1980
Net change from January–June 1979 to January–June 1980:		
Total actual decline in U.S. producers' shipments—1,000 units	(1)	1,269.9
Net decline due to increasing import share—1,000 units	(1)	193.9
Net decline due to declining demand—1,000 units	(1)	1,076.0
Share of declining shipments due to declining demand—percent	(1)	84.7

[1] Not applicable

Source: Compiled from data presented in table 19 of the staff report.

Table 4.—*Light Trucks and Cab/Chassis Therefor: U.S. Apparent Consumption, U.S. Producers Domestic Shipments, Imports for Consumption, Imports' Share of Consumption, January–June 1979, and January–June 1980, and Relative Increases or Declines in Imports and Producers' Shipments in January–June 1980, if the Share of Imports Is Held Constant at the January–June 1979 Level*

Item	January-June 1979	January-June 1980
Actual January–June 1979 and January–June 1980 data:		
Apparent consumption—1,000 units	1,380.9	1,113.6
U.S. producers' domestic shipments—1,000 units	1,110.2	1,000.2
Imports for consumption—1,000 units	270.7	113.4
Ratio of imports to consumption—percent	19.6	10.2
Estimated data for January–June 1980, holding import share of consumption constant at January–June 1979 level and using actual January–June 1980 consumption data:		
Imports, if held at January–June 1979 share of consumption—1,000 units	(1)	218.3
U.S. producers' domestic shipments, if held at January–June 1979 share of consumption—1,000 units	(1)	895.3
Net change from January–June 1979 to January–June 1980:		
Total actual decline in U.S. producers' shipments—1,000 units	(1)	109.9
Net decline due to increasing import share—1,000 units	(1)	104.9
Net decline due to declining demand—1,000 units	(1)	214.8
Share of declining shipments due to declining demand—percent	(1)	195.4

[1] Not applicable

Source: Compiled from data presented in table 19 of the staff report.

Petitioners would perhaps dispute the conclusions I draw from the above tables because the tables fail to allow assess the relative impact of these factors, and I think these percentages reveal why one is so overwhelmingly greater than the other.

"tighter," and the refusal rate on auto credit applications has grown. Unemployment and general inflation have acted to reduce the real disposable income of the average consumer, and a normal reaction has been to delay many

motor vehicles.[27] Such data shows a substantial change in buying habits from the days when trade-ins were encouraged every 2 or 3 years. At the same time, the rising cost of fuel creates a shift in demand, so that consumers would abandon their large cars. Due largely to unforeseen events such as the Iranian revolution and subsequent oil shortage, and because of the lead-time problem associated with auto production, U.S. producers' plans for

Table 2.—*Passenger Automobiles:*—Cont.

Item	January-June 1979	January-June 1980
Net change from January-June 1979 to January-June 1980:		
Total actual decline in U.S. producers' shipments—1,000 units	(1)	1,269.9
Net decline due to increasing import share of consumption—1,000 units	(1)	463.1
Net decline due to declining demand—1,000 units	(1)	806.8
Share of declining shipments due to declining demand—percent	(1)	63.5

[1] Not applicable.

Source: Compiled from data presented in table 19 of the staff report.

Table 3.—*Light Trucks and Cab/Chassis Therefor: U.S. Apparent Consumption, U.S. Producers Domestic Shipments, Imports for Consumption, Imports' Share Consumption, 1978 and 1979, and Relative Increases or Declines in Imports and Producers' Shipments in 1979, if the Share of Imports is held Constant at the 1978 Level*

Item	1978	1979
Actual 1978 and 1979 data:		
Apparent consumption—1,000 units	3,909.3	3,155.1
U.S. producers' domestic shipments—1,000 units	3,049.8	2,351.4
Imports for consumption—1,000 units	859.5	803.7
Ratio of imports to consumption—percent	21.9	25.5
Estimated data for 1979, holding import share of consumption constant at 1978 level and using actual 1979 consumption data:		
Imports, if held at 1978 share of consumption—1,000 units	(1)	691.0
U.S. producers, domestic shipments, if held at 1978 share of consumption—1,000 units	(1)	2,464.1
Net change from 1978 to 1979:		
Total actual decline in U.S. producers' shipments—1,000 units	(1)	698.4
Net decline due to increasing import share—1,000 units	(1)	112.7
Net decline due to declining demand—1,000 units	(1)	585.7
Share of declining shipments due to declining demand—percent	(1)	83.9

[1] Not applicable

Source: Compiled from data presented in table 20 of the staff report.

Table 4.—*Light Trucks and Cab/Chassis Therefor: U.S. Apparent Consumption, U.S. Producers Domestic Shipments, Imports for Consumption, Imports' Share of Consumption, January-June 1979, and January-June 1980, and Relative Increases or Declines in Imports and Producers' Shipments in January-June 1980, if the Share of Imports is held Constant at the January-June 1979 Level*—Continued

Item	January-June 1979	January-June 1980
U.S. producers' domestic shipments—1,000 units	1,181.1	58.9
Imports for consumption—1,000 units	442.3	426.8
Ratio of imports to consumption—percent	22.7	42.1
Estimated data for January-June 1980, holding import share of consumption constant at January-June 1979 level and using actual January-June 1980 consumption data:		
Imports, if held at January-June 1979 share of consumption—1,000 units	(1)	230.3
U.S. producers' domestic shipments, if held at January-June 1979 share of consumption—1,000 units	(1)	784.4
Net change from January-June 1979 to January-June 1980		
Total actual decline in U.S. producers' shipments—1,000 units	(1)	593.2
Net decline due to increasing import share of consumption—1,000 units	(1)	196.5
Net decline due to declining demand—1,000 units	(1)	396.7
Share of declining shipments due to declining demand—percent	(1)	66.9

[1] Not applicable.

Source: Compiled from data presented in table 20 of the staff report.

I believe that these tables demonstrate graphically why imports are not a "substantial cause" of either industry's present malaise. They suggest that declining demand accounted for over 80 percent of the net decline in U.S. producers' domestic shipments of both automobiles and trucks from 1978 to 1979, as compared with less than 20 percent of the decline in U.S. producers' domestic shipments being attributable to imports' increasing share of U.S. consumption. Between January–June 1979 and January–June 1980, about two-thirds of the decline in U.S. producers' domestic shipments was attributable to declining demand and only a third was due to the increased share of the U.S. market accounted for by imports. Thus, even if the import share had been held constant during these critical 18 months, and even if all of those sales which went into the increased import share had instead gone to U.S. producers, domestic firms' sales still would have fallen by over 80 percent of their actual decline in 1979 and by over 60 percent of their actual decline in January–June 1980. While the legislative history cautions against the application of a pure mathematical test, it is necessary to assess the relative impact of these factors, and I think these percentages reveal why one is so overwhelmingly greater than the other.

Petitioners would perhaps dispute the conclusions I draw from the above tables because the tables fail to allow for the theory that an import increase in the earlier period of 1976–78 could be accountable for injury which did not become manifest until 1979. However, even if average imports, consumption and domestic shipments for 1976–78 are compared to the 1979 figures, the decline in demand is still greater than the import factor. Moreover, the above tables really account for the overall import increase since 1975, because they postulate the overall effect of the increased *market share* of imports caused by a drop in domestic sales after three years of steady import growth. Thus, the above analysis gives an accurate picture of the demand *and* import factors since 1975.

It has been argued in this case that the downturn in demand is itself a result of several factors, and that each should be assessed individually to determine whether any single factor is greater than increasing imports. To consider demand in the aggregate, the argument goes, is to cumulate artificially what are clearly separate causal elements in a manner inconsistent with the purposes of legislative history of Section 201. Among the separate and identifiable causes mentioned in this case are inflation, unemployment, rising interest rates, and higher energy costs. Undoubtedly, all of these factors played a part in bringing about the present recession in new vehicle sales. Supporters of the petition contend that none of these factors *alone* played as great a role in bringing about the injury as increasing imports. In fact, the UAW brief contends that increasing imports brought on much of the recession, and so the recession should be viewed as an effect rather than a cause.

All of these contentions seek to isolate and weigh separately the various components of a general economic downturn. In reality, most of the factors mentioned above have worked in unison to bring about what is commonly termed a "recession." Inflation in new vehicle prices coupled with higher credit rates have acted together to drive up the total costs of new motor vehicles. Interest rates have played a particularly important part in the volume of auto sales, because these are long-term consumer durable purchases where credit financing is the norm. Not only have transaction prices for new vehicles and monthly payments for loans increased, but credit has become "tighter," and the refusal rate on auto credit applications has grown. Unemployment and general inflation have acted to reduce the real disposable income of the average consumer, and a normal reaction has been to delay many long-term capital outlays.

All of these phenomena are part and parcel of a generalized recession, which is normally defined as a period of reduced economic activity, and which can be brought on by a multitude of factors. Recessions are often characterized by rising prices, high interest rates and unemployment. But to say they are comprised of a multitude of causes is not to say that reduced demand in a recession cannot be cited as a single cause for purposes of section 201. In fact, I have cited this very factor in several past cases,[26] particularly where we were considering highly cyclical industries which fluctuate with the general economy. The reason for such a policy is readily apparent; if decline in demand for the product is a consequence of a general economic downturn, then the inevitable recovery from the recession will restore health to the industry. This is precisely what happened to the automobile industry after the downturn in 1974–75. Cyclical downturns in the economy are to be expected, and must not force a reliance on unnecessary import remedies. The problem which auto producers confront is one which confronts many sectors of the economy (the building industry, for example), and it cannot be solved by import relief.

Of course, it is possible for imports to be a "substantial cause" of serious injury or threat thereof during a recession, but only where the absolute or relative increase is of sufficient magnitude to outweigh or equal the effects of the recession itself. As the previously cited tables demonstrate, that is not the case in the present investigation.

The Shift in Demand

A general understanding of how purchasers are reacting to changes in the marketplace is helpful in assessing the significance of the shift in demand and Detroit's reaction to it. With the high cost of new cars and high interest rates seriously affecting consumer confidence, it appears that a number of would-be purchasers are keeping their vehicles longer. This is verified by our information regarding the average age of motor vehicles.[27] Such data shows a substantial change in buying habits from the days when trade-ins were encouraged every 2 or 3 years. At the same time, the rising cost of fuel creates a shift in demand, so that consumers who do have the economic means to make purchases want a more fuel-efficient model. Some consumers perhaps see the rapid improvements in fuel economy and decide to delay purchases another year or two until their favorite models have substantially better mileage ratings. In short, the rapid changes in product mix may be creating some of the buying uncertainty. The shift to smaller cars also affects the trade-in value of used cars, which in turn increases the cost of purchasing a new model. All of these problems result in a general reluctance to enter the market until prices and credit rates stabilize, general economic conditions improve, and buyers become convinced that the new generation of products are sufficiently fuel-efficient and well made.

This theory of consumer behavior explains much of the current recessionary difficulty, but it also raises the inevitable question of whether shift in demand to smaller cars is itself a more important cause of serious injury than increased imports. The facts speak for themselves about the size of this change in consumer preference.[28] One of the difficulties in assessing such a factor quantitatively is that it is inextricably bound together with the increase in imports. While a shift from big to small is conceptually different than a change from domestic to imported, the fact is that two-thirds of the recent increase in small car sales has accrued to the benefit of importers. Ultimately, one becomes involved in a tautological debate about whether increased imports of small cars are an effect of the shift in demand or the explanation for it. Thus, it is only possible to make certain qualitative judgments about the shifting product mix within the domestic industry itself.

Ordinarily, the shift to another product within the same industry should not necessarily be injurious to that industry. However, the lead times associated with introducing new models and the magnitude of capital investments required make the auto industry unique. In order to be able to accommodate a shift, they must anticipate it by 3 to 5 years. Industry estimates of the need to alter production between 1975 and 1980 did not accurately predict how fast Americans would abandon their large cars. Due largely to unforeseen events such as the Iranian revolution and subsequent oil shortage, and because of the lead-time problem associated with auto production, U.S. producers' plans for expanding small car output lagged far behind the market and its needs. In fact, Ford Motor Co. had made a conscious decision not to downsize its entire fleet as far back as 1976, and instead concentrated on creating the entirely new Escort/Lynx model. Thus, Ford found itself with little flexibility to expand small car production when market forces changed, and in addition found itself needing to accelerate capital expenditures and squeeze them into a shorter time-frame in order to react to sweeping changes in consumer preference. Chrysler found itself in much the same situation, but it received substantial Federal support which helped to offset some of its capital expenditures. Moreover, its small car plans were further along than Ford's, although Chrysler still had excess large car capacity. Only General Motors, with superior capital resources, was in a position to face the trend toward smaller cars. Its downsizing was well along, and it had substantial numbers of small car models in production.

Clearly then, the rapid transition to smaller autos and trucks disturbed U.S. producers' plans for a slow, orderly transition. They had hoped to finance their plans for new, fuel-efficient models through the profits on large autos. Without these profits being generated, they found themselves incurring huge capital costs when they could least afford them. Our investigation also reveals that the profit margin on small cars has traditionally been much less, so the industry found itself shifting into a product line which resulted in a lower ratio of net profits to sales. Yet they were not producing such models on sufficient economies of scale to yield the type of profits that sales of large cars—loaded with expensive "extras"—could produce.

All of these factors unquestionably affected the profit picture of U.S. firms. Moreover, the carrying costs to dealers incurred from having high inventories of large cars has also been injurious, especially with the higher interest rates. A record number of dealers have gone out of business since 1979. Thus, the shift in demand must be viewed as an "important cause" of injury separate and apart from the shift to imports. Many of the industries' costs would have been incurred even if import competition had not existed, because simple economics dictated the change in

[26] See, e.g., Machine Needles, Inv. TA-201-38, USITC Pub. 936 at 22 (1974), Unalloyed Unwrought Zinc, Inv. TA-201-31, USITC Pub. 894 at 17, 19 (1978), Citizens Band (CB) Radio Transceivers, Inv. TA-201-29, USITC Pub. 852 29 (1978).

[27] Prehearing Report to the Commission and Parties, issued September 10, 1980, at A-134.

[28] *Infra* A-70 through A-71.

consumer preference. However, I do not believe that the problems associated with this shift in demand should be considered more important than the relative increase in imported products, policy after decades of price regulation are what disturbed the pattern. The auto producers now see the inevitability of the future and are adjusting to meet it, but I cannot find their own management demand. But by far the greatest explanation of the damage suffered in the past 18 months has been the recession itself. Without it, there would be no serious injury today.

firms to changing consumer demand should act to reduce the import share. Thus, imports should not become a greater causal factor in the next year or two. It is also worth noting that monthly import sales have actually declined

such a way as to be cognizable under section 201.

Subsequently, on August 4, the Ford Motor Company, Inc., "Ford", filed a petition which stated,

(t)he imported articles which have caused

(except automobile truck tractors and truck trailers imported together), bodies (including cabs), and chassis for such automobile trucks.

On-the-highway passenger automobiles are described in TSUS item

consumer preference. However, I do not believe that the problems associated with this shift in demand should be considered more important than the relative increase in imported products. First, there is the previously mentioned fact that two-thirds of the growth in small cars has accrued to the benefit of imports. Some have suggested that this merely means imports, particularly Japanese vehicles, were better situated to capitalize on the shift in demand. While this is certainly true, it does not alter the fact that the transition of dometic producers to smaller vehicles was much less profitable in the short run because a disproportionate number of small car sales were going to importers. Were it not for the growing volume of imported small cars, Detroit could have undergone its present transformation more profitably and perhaps more dramatically. But the awareness that expanding small car output might not have expanded new car sales certainly impacted upon corporate decision-making regarding small vehicles. Also, U.S. firms have found themselves unable to charge sufficient markups on their small models because of import competition. Thus, I believe imports were an equal or greater problem for the industry to confront than the mere transition to small cars.

I recognize that in numerical terms the shift to smaller models has been greater than the increase in imports. Our own staff has concluded that this is so.[29] However, I think this is a statistic which is highly unreliable and misleading. It depends upon what one classifies as "small cars," an issue on which there are a number of viewpoints. Some U.S. compacts are not really comparable in terms of size or fuel mileage with imported models, so the comparison is not altogether justified. This is why I have relied on a qualitative rather than a quantitative assessment of the relative importance of these two causal factors.

Finally, there may be some implication from the record in this investigation that we should give greater weight to the shift in demand as a cause because the industry brought injury upon itself by refusing to recognize in a timely manner the long-term change in consumer preference away from "gas guzzlers." This "self inflicted injury" theory has superficial appeal. It appears to be popular among a large segment of the public. However, it ignores the fact that large car sales were exceedingly healthy in the period 1976–78. Events such as the revolution in Iran and the sudden changes in our Nation's energy policy after decades of price regulation are what disturbed the pattern. The auto producers now see the inevitability of the future and are adjusting to meet it, but I cannot find their own management misjudgments or lack of planning to be superseding causes of injury. The long-standing obsession in the United States with large automobiles has many explanations. It resulted in large part from Federal price controls that held the price of gasoline at a fraction of the world price, a federally funded highway system that encouraged use of large, comfortable vehicles, and a national affluence that led us to lose sight of our true resource limitations. After the initial scare of gasoline lines and shortages in 1974, the American consumer flirted with a shift to small cars. The Government considered higher gasoline taxes, tough fuel economy standards and an overall national energy policy. Most logical steps were deferred, and the average American consumer went back to demanding large, fuel-inefficient vehicles. The auto companies had shifted some production to smaller cars, but were forced to use large rebates to sell many of those models in the face of a quick shift in consumer tastes back to larger cars. Thus, the auto industry has had considerable difficulty in judging fickle consumers wishes. While it is possible to criticize the auto industry for a lack of total commitment in advertising and merchandising of smaller cars or a failure to recognize the inevitable long term consequences of energy scarcity, the fact remains that the American consumer was not ready for the change until 1979. When gas prices abruptly doubled to beyond the magic $1.00 per gallon barrier and long lines returned, the average consumer reacted. Sales of big cars plummeted. Sales of small cars increased, but not in sufficient quantities to approach the decline in large car sales. This time everyone seems to agree that fuel efficiency has become one of the most important criteria for potential car buyers, and will probably remain so.

Summary

I find the overall decline in consumption brought about by the current recession to be a greater cause of serious injury than increased imports. I also find that the shift in consumer demand is an important cause of the present injury, but it is not in and of itself a greater cause than the relative import increase. Increased imports made it difficult for U.S. firms to conduct the transition to smaller vehicles, thus impairing their competitiveness and inhibiting a faster shift to meet changing demand. But by far the greatest explanation of the damage suffered in the past 18 months has been the recession itself. Without it, there would be no serious injury today.

Undoubtedly, there will be debate about the appropriateness of the majority's causation determination. This is an area of legal policy that is by its very nature controversial and subjective. There are those who might disagree with the policy of treating demand as a separate cause, but I believe this policy makes good sense. It is our task under the statute to find "substantial cause," and despite the fact that I realize imports are an "important" cause of the problem, they do not satisfy the strict criteria of Section 201. Perhaps the dilemma which this determination posed for me was best summed up by the court in the famous case of *Palsgraf v. Long Island Railway.*[30]

> The proximate cause, involved as it may be with many other causes, must be, at the least, something without which the event would not happen. The court must ask itself whether there was a natural and continuous sequence between cause and effect. Was the one a substantial factor in producing the other? Was there a direct connection between them, without too many intervening causes? Is the effect of cause on result not too attenuated? Is the cause likely, in the usual judgment of mankind, to produce the result? Or, by the exercise of prudent foresight, could the result be foreseen? Is the result too remote from the cause, and here we consider remoteness in time and space? * * * *We draw an uncertain line, but draw it we must as best we can.*

In addition to concluding that increased imports are not a substantial cause of the serious injury which presently exists, I also believe they could not be a substantial cause of any threat thereof. U.S. small car production is steadily increasing. The three major manufacturers have begun introducing their new generation of front wheel drive, fuel efficient vehicles. We received extensive testimony that such products were fully competitive and would revolutionize the automobile industry.[31] As such products come on stream the import share of the small car market should decline, particularly if demand picks up. Of course, if we remain in a deep recession with high interest rates it is probable that the present critical state of the industry will continue for some time. However, the adjustment already made by domestic

[29] Prehearing Report to the Commission and Parties, issued September 10, 1980, at A–66.

[30] 248 N.Y. 339, 162 N.E. 99 (1928) (Andrews, J., dissenting) (emphasis supplied).

[31] The prehearing brief of the UAW quotes a report that the domestic industry will increase its production of the smaller, more fuel-efficient cars from 1,750,000 vehicles in 1980 to 7,210,000 vehicles in 1983. Prehearing Brief of United Auto Workers at 70.

firms to changing consumer demand should act to reduce the import share. Thus, imports should not become a greater causal factor in the next year or two. It is also worth noting that monthly import sales have actually declined since August, 1980.[32] This seems to suggest that import volume has peaked, and that there would only be a noticeably higher import market share if demand for automobiles continued to decline. Such a decline in demand would only dramatize the causal link to recessionary factors which I have already cited as the major problem.

Views of Vice Chairman Michael J. Calhoun

In this investigation under section 201 of the Trade Act of 1974, we are called upon to determine

> whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.[33]

After reviewing the record and considering the statute and the legislative history, I have determined that the requirements of section 201 have not been met and, thus, cannot recommend relief for the industry. I reach this conclusion because I do not find that imports are a substantial cause of serious injury as substantial cause is defined in section 201(b)(4). The reasons for this determination are discussed below.

Imported Article

The June 12, 1980 petition filed in this investigation by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") requested "relief from import competition from passenger cars, light trucks, vans and general utility vehicles from Japan, West Germany, and countries other than Canada." [34] Subsequently, the Commission initiated this investigation

> to determine whether automobile trucks, except automobile truck tractors and truck trailers imported together; on-the-highway, passenger automobiles; and bodies (including cabs) and chassis for automobile trucks except truck tractors [35] are being imported in such a way as to be cognizable under section 201.

Subsequently, on August 4, the Ford Motor Company, Inc., "Ford", filed a petition which stated,

> [t]he imported articles which have caused serious injury and are threatening more serious injury, to the U.S. automotive industry are passenger cars, including station wagons, * * * and light trucks, vans, and general utility vehicles * * *.[36]

The Commission's Notice of Receipt of the Ford petition [37] did not change the scope of the investigation instituted pursuant to the UAW petition. Thus, to determine the framework for an analysis of whether the criteria under section 201 have been met, it is necessary first to determine the relevant article or articles being imported.

No legislative history guides us in defining the article being imported. Giving the word its plain meaning, using Webster's Third New International Dictionary, an article is "a thing of a particular class or kind as distinct from a thing of another class or kind." Since the definition of the imported article focuses the investigation and since relief under section 201 is a derogation from our international commitments, it would seem apparent that the Congress intended the scope of the investigation to be narrowed to permit an assessment of the impact of as specifically described a "thing" as practicable.[38] Article, then should be defined as narrowly and precisely as possible, more so than simply a TSUS category if necessary so as to allow the greatest precision in assessing impact.

For the reasons discussed in this section, I conclude that the items subject to this investigation form three broad classes or kinds, and, thus, can be divided into three articles: (1) on-the-highway passenger automobiles; (2) light automobile trucks 10,000 pounds gross vehicle weight ("gvw") or less (except automobile truck tractors and truck trailers imported together), bodies (including cabs), and chassis for such automobile trucks; (3) medium and heavy trucks of over 1000 pounds gvw (except automobile truck tractors and truck trailers imported together), bodies (including cabs), and chassis for such automobile trucks.

On-the-highway passenger automobiles are described in TSUS item 692.10 with a special item 692.11 for these articles when imported from Canada under the Automotive Products Trade Act of 1965 ("APTA") (19 U.S.C. 2001). The column 1 rate of duty is being reduced from 3 percent ad valorem to 2.5 percent ad valorem in 5 annual stages beginning January 1, 1980.[39] The Canadian vehicles are imported free of duty. A very important characteristic of these on-the-highway passenger automobiles being imported into the United States is that, conservatively, 80 percent tend to be smaller, more fuel-efficient automobiles largely from Japan while the remaining 20 percent tend to be larger, less fuel-efficient automobiles largely from United States subsidiaries in Canada.[40]

Automobile trucks are described in TSUS item 692.02, with a special item 692.03 for vehicles imported from Canada under the APTA. The column 1 rate of duty on TSUS item 692.02, when valued at $1,000 or more, is 8.5 percent ad valorem. However, as a result of a trade dispute between the United States and the European Economic Community, these trucks are temporarily subject to duties at a rate of 25 percent ad valorem.[41] The Canadian vehicles are imported free of duty.

Although the scope of this investigation included medium and large trucks (except automobile truck tractors and truck trailers imported together) which are heavy duty commercial vehicles, the petitioners were particularly concerned with finished or unfinished automobile trucks with a gross vehicle weight of 10,000 pounds or less, popularly termed "light trucks." Light trucks include pickups, vans, general utility vehicles and certain wagons. In contrast to on-the-highway passenger automobiles, which are designed for the transportation of passengers, these light trucks traditionally have been designed primarily for the transportation of cargo and a driver.

Because of the concern with unfinished trucks, our investigation also encompassed bodies (including cabs) and chassis for trucks. A cab/chassis is a pickup cab on a chassis to which a

[32] Data compiled by USITC staff from public sources.

[33] Section 201(b)(1), 19 U.S.C. 2251(b)(1).

[34] Petition for Relief under Section 201 of the Trade Act of 1974 from Import Competition from Imported Passenger Cars, Light Trucks, Vans, and Utility Vehicles (hereinafter "UAW Petition"), p. 2.

[35] 45 FR 45731, July 7, 1980. The **Federal Register** notice delineates the broad category of imported articles which are subject to an investigation, but the notice does not define the domestic industry. The determination of which companies are producers of articles like or directly competitive with the imported article is made by the Commission at a much later stage in the investigation.

[36] Petition for Relief from Increased Imports of Passenger Cars, Light Trucks, Vans, and Utility Vehicles under Section 201 of the Trade Act of 1974 [Ford Petition] p. 10.

[37] 45 FR 55873, August 21, 1980.

[38] When Congress uses the term "articles" it sometimes intends it to have a broad meaning, including almost every separate substance or material, and at other times to have a narrower or more restricted meaning. Its significance in each case must be determined from the context. Marshall Co., Inc., *et al.* vs. U.S., 320 F. Supp. 1093, 65 Cust. Ct. 629, C.D. 4148 (1970).

[39] Pres. Proc. 4707, 44 FR 72348, December 11, 1979. Thus the rate is currently 2.9 percent ad valorem.

[40] For a discussion of these categorizations see the treatment of Industry, *infra*.

[41] Pres. Proc. 3564, 28 FR 13247, December 6, 1963, shown at item 945.69 of the TSUS.

number of different types of cargo or passenger containers may be attached. The cab/chassis are imported under TSUS item 692.20, with a special item 692.21 for these items imported under the APTA. The column 1 rate of duty on

which operate assembly plants in Canada. The vehicles produced in those plants before 1980 were mostly those large vehicles which have difficultly competing with other imports.

Clearly there is a significant cross-

under Article XIX of the General Agreement, the international escape clause upon which section 201 is based.

The Autopact is a brief bilateral agreement of unlimited duration. The preamble begins with a statement that

Trade Act of 1965 (19 U.S.C. 2001). The implementing provisions refer to proclamations and modifications of *tariff* treatment:

> The President is authorized to proclaim the modification of the Tariff Schedules of the

production, provided the rights of other Contracting Parties are protected.[56]

As further support for its position, Ford cited the Commission's determination in Bolts, Nuts, and Large Screws of Iron or Steel, Investigation

the Autopact and the implementing legislation.

In sum, this treatment of Ford's argument leads to the simple conclusion that those articles entering the United States from Canada, the Autopact and

number of different types of cargo or passenger containers may be attached. The cab/chassis are imported under TSUS item 692.20, with a special item 692.21 for these items imported under the APTA. The column 1 rate of duty on these items is 4 percent ad valorem. However, to implement a decision of the United States Court of Customs and Patent Appeals,[42] the United States Customs Service reclassified imported lightweight cab/chassis under item 692.02, making them dutiable at the temporary rate of 25 percent ad valorem.[43] The Canadian items are imported free of duty under item 692.03 of the TSUS.

Being Imported into the United States

Under the statute, the article whose impact is being assessed must be "imported into the United States." In this context, Ford has made a novel argument concerning articles entering the country under the APTA. It is Ford's position that these items are not being imported into the United States because there is a single, unified North American common market for the manufacture and distribution of new cars and trucks. The level of shipments of automobiles from Canada is, to some extent, coordinated by the domestic parent companies who are the purchasers of most of the Canadian items. The average Ford vehicle entering the United States from Canada has an aggregate United States content, as a percentage of dealer wholesale price, in excess of 75 percent. Further, Ford argues that the special status of these items is recognized under APTA and the relevant waiver obtained by the United States under Article XXV of the General Agreement on Tariffs and Trade (the "General Agreement").[44] In short, Ford contends that these captive imports, as distinct from others, ought not to be considered as imports for purposes of this investigation.[45]

I find no basis for supporting this argument. Because of the importance of the automotive trade between the United States and Canada, I shall address Ford's position in some detail. I should note, however, that even if Canadian imports were not included as imports, my determination would be no different.

General Motors Corporation ("GM"), Ford, Chrysler Corporation ("Chrysler"), and the American Motors Corporation ("AMC") have Canadian subsidiaries which operate assembly plants in Canada. The vehicles produced in those plants before 1980 were mostly those large vehicles which have difficultly competing with other imports.

Clearly there is a significant cross-border trade between the United States and Canada, with domestic producers responsible for that trade and its impact. Each U.S. manufacturer has a significant role in the operations of its Canadian subsidiary and, consequently, may direct those operations in a manner which is not harmful to the parent. Nevertheless, those very operations might have an adverse impact on another U.S. manufacturer or on the workers formerly involved in production operations transferred from the U.S. parent to the Canadian subsidiary. Because of the significance in volume and value of these captive imports, any investigation which excluded them from the definition of imports would be severely distorted.

Furthermore, there is no support for Ford's contention that there is a legal basis for determining that these articles are not being imported into the United States.[46]

Ford cites the Agreement Concerning Automotive Products Between the Government of the United States of America and the Government of Canada [47] (the "Autopact") as legal support for excluding the captive imports from Canada from our definition of imports. Basic to Ford's argument is the notion that the Autopact is more than a bilateral agreement concerning tariffs and that it creates a common market for trade in certain automotive vehicles and parts.

The fact that the Autopact has been iplemented as a *tariff agreement* although it is a logical extension of the integration of the U.S. and Canadian automotive industries. Moreoever, it expressly permits the application of section 201 to duty-free automotive imports from Canada by providing that each country may enforce its rights [48] under Article XIX of the General Agreement, the international escape clause upon which section 201 is based.

The Autopact is a brief bilateral agreement of unlimited duration. The preamble begins with a statement that describes the two governments as "determined to strengthen the economic relations between their two countries" and

> Recognizing that an expansion of trade can best be achieved through the reduction or elimination of tariff and all other barriers to trade operating to impede or distort the full and efficient development of *each country's* trade and industrial potential; * * * (emphasis added).

The substantive provisions of the Autopact are contained in its Articles I–V and its annexes. Article I is most germane. It stops short, however, of mentioning a common market.

The Report of the Committee on Finance on the Automotive Products Trade Act of 1965 is supportive of this interpretation: "The agreement permits either government to take action consistent with its obligations under Part II of the General Agreement on Tariffs and Trade (GATT) Art. II. Part of the GATT includes provisions permitting contracting parties to take antidumping measures and escape clause actions. In this connection it should be made clear that nothing in this agreement nor in this enabling legislation acts to dull the operation of our remedial statutes." Sen. Rep. 782, 89th Cong., 1st Sess., 7 (1965), USCAN 3670, 3676.

The Governments of the United States and Canada, pursuant to the above principles [in the Preamble], shall seek the early achievement of the following objectives:

(a) the creation of a *broader* market for automotive products within which the full benefits of specialization and large-scale production can be achieved;

(b) The liberalization of United States and Canadian automotive trade in respect of *tariff* barriers and other *factors* tending to impede it, with a view to enabling the *industries of both countries* to participate on a fair and equitable basis in the expanding *total* market of the two countries; * * * (emphasis added)

Although Article I speaks of broad objectives, Article II limits the immediate impact of the Autopact to the granting of duty-free treatment to the imports specified in the annexes.

The United States implemented the Autopact in the Automotive Products

[42] *Daisy-Heddon, Div. Victor Comptometer Corp. v. U.S.*, 600 F. 2d 799 (CCPA 1979).

[43] T.D. 80–137, 45 FR 35057, May 23, 1980

[44] Ford Petition, pp. 16–21.

[45] Ford received no support for its position. Even Ford did not make a similar argument concerning captive imports from other countries.

[46] Contrast section 201(b)(3)(A), which seems to assume that captive imports will be included in the domestic industry.

[47] 606 U.N.T.S. 31, 17 U.S.T. 1372, T.I.A.S No. 6093 (1965).

[48] Under Article III of the Autopact "The commitments made by the two Governments in this Agreement shall not preclude action by either Government consistent with its obligation under Part II of the General Agreement on Tariffs and Trade." Part II of the General Agreement contains the provisions which relate to nontariff barriers to international trade, including Article XIX. Concerning Article III of the Autopact, the GATT Working Party which examined the Autopact was told that the parties:

"had wished to reseve their right to take certain action *vis-a-vis* each other in accordance with the articles of the GATT referred to and that the formulation in Article III had appeared the simplest way of doing this. This article was not intended to affect the rights and obligations of third countries under the General Agreement. (BISD, Thirteenth Supplement, 112, 115.)"

Trade Act of 1965 (19 U.S.C. 2001). The implementing provisions refer to proclamations and modifications of *tariff* treatment:

> The President is authorized to proclaim the modification of the Tariff Schedules of the United States provided for in Title IV of this Act.[49]

The only general reference to the broader objectives of Article I of the Autopact is contained in section 205 [50] of the legislation concerning special reports by the President to the Congress. The President was required to advise the Congress of the progress made toward the achievement of the objectives of Article I of the Autopact and recommend those further steps, including legislation, necessary for the achievement of the purposes of the Autopact and the implementing legislation.

Pursuant to the authority granted by Congress, the President has issued two proclamations concerning tariff treatment,[51] which is shown in Subpart B, Part 6, Schedule 6 of the TSUS and headnote 2 thereof.

The legislative history [52] of the Automotive Products Trade Act of 1965 provides no more helpful explanation of the Autopact and Congressional intent. It is noteworthy, though, that strong minority views were submitted by Senators Ribicoff, Hartke and Gore.[53] Their primary concern was that—

> This legislation is special interest legislation of the most restrictive sort, the opposite of free trade, detrimental to our balance-of-payment situation and harmful to American industry and jobs.[54]

The waiver [55] granted by the contracting parties to the United States for its discriminatory implementation of the Autopact was clearly a waiver of the obligations concerning customs treatment imposed upon the United States under Article I:1 of the General Agreement. The contracting parties seemed to consider the Autopact to be limited to tariff treatment. No mention was made of Article XXIV (relating to customs unions and free-trade areas). The preamble to the waiver and the waiver itself repeatedly refer to "duty-free treatment" and "customs duties." Further reading leads to the conclusion that the waiver was granted to further the international rationalization of production, provided the rights of other Contracting Parties are protected.[56]

As further support for its position, Ford cited the Commission's determination in Bolts, Nuts, and Large Screws of Iron or Steel, Investigation No. TA–201–37, USITC Pub. No. 924 (1978). Certain of the imported articles in that investigation were imported from Canada under the Autopact. In that investigation, in which only three Commissioners participated, Commissioners Moore and Bedell found in the affirmative (threat and serious injury, respectively). In the Determination of the Commission it was stated:

> The Commission makes no determination with respect to imports of the subject articles from Canada admitted free of duty as original equipment for motor vehicles under item 646.79 of the TSUS.[57]

Commissioner Bedell, in separate views explained,

> [t]here is insufficient information at this time, in my opinion, for me to make a determination with respect to these Canadian articles.[58]

Moreover, Commissioner Alberger, voting in the negative, made his determination

> with respect to all the imported articles under investigation, including these Canadian articles.[59]

Thsu, it is not correct to state that the Commission excluded the Canadian items from its consideration because of the Autopact and the implementing legislation.

In sum, this treatment of Ford's argument leads to the simple conclusion that those articles entering the United States from Canada, the Autopact and APTA notwithstanding, are, under the statute, being imported into the United States.

Increased Quantities

The statute further requires the Commission to determine whether an article is being imported into the United States "in such increased quantities" as to be a substantial cause of serious injury or the threat thereof to the domestic industry. The increase in quantity may be either actual or relative to domestic production. It is my view that imports of automobiles and light trucks satisfy this requirement and imports of heavy trucks do not.

It is undisputed that the quantity of imports of automobiles and light trucks has increased since 1975 both in actual numbers and relative to domestic production. The contrary is true with regard to medium and heavy trucks. When the data are reviewed, two facts are striking: The increase in imports from Japan and the extent of captive imports by United States producers.

Regarding automobiles, total imports for consumption of passenger automobiles increased in actual numbers from 2,047,702 in 1975 to a peak of 2,928,055 in 1978, before dropping to 2,797,063 in 1979. During the first 6 months of 1980, 1,631,767 automobiles were imported, an increase of about 200,000 cars or about 13 percent over the same period in 1979. Of the 4 percent decrease in 1979 compared with 1978, Canada's decrease was the largest (19 percent) even surpassing that of the Federal Republic of Germany (12 percent).[60] In contrast, imports from Japan increased 4 percent from 1978 to 1979, but increased 31 percent in the 6 month period January–June 1980 compared with the same period in 1979, probably because of the large inventories held in 1979 had been depleted.

As a percentage of total imports for consumption of passenger automobiles, Japan's share has steadily increased from 33.6 percent in 1975 to 52.2 percent in 1978, 56.9 percent in 1979 and 61.9 percent in the first 6 months of 1980.

[49] 19 U.S.C. 2011(a).

[50] Id. at 2015.

[51] Proc. No. 3682, 30 F.R. 13683, October 21, 1965 and Proc. No. 3743, 31 F.R. 12003, September 8, 1966.

[52] 1965 U.S.C.C.A.N. 3670.

[53] Id. at p. 3705.

[54] Ibid.

[55] BISD, Fourteenth Supplement, 37.

[56] "Having been notified that the governments of the United States of America and Canada concluded, * * * an agreement *providing for duty-free treatment* for trade in automotive products between their two countries; * * * Considering that the automotive *industries* of the United States and Canada are characterized by an exceptionally high degree of integration, and Considering that by reason of the close *similarity of market conditions in the two countries* and the close relationship which exists and could be further developed *in their production facilities* of automotive products, there are special factors which offer exceptional opportunities further both to *rationalize the production* of automotive products in the two countries and *integrate production facilities* and *to increase the efficiency* of United States/Canadian production; Considering, moreover, that the Government of the United States accepts that the facilities granted in paragraph 1 below [relating to the discriminatory duty-free treatment] should not be used in a way to prejudice the interests of other contracting parties and that it is not its intention to cause imports into the *United States market* of automotive products *imported from Canada* to replace imports of like products from other sources; * * *." (emphasis added) Substantively, the waiver contains the waiver itself (Article I) and several consultation/dispute resolution provisions designed to protect the trade interests of third party Contracting Parties, particularly if problems of trade diversion develop. An annex lists, in terms of TSUS item numbers, the automotive products which may receive the duty-free treatment.

[57] TA–201–37, p. 4.

[58] Id. p. 9.

[59] Id. p. 4.

[60] Certain Motor Vehicles and Certain Chassis and Bodies Therefor, Report to the President on Investigation No. TA-201-44, Dec. 21, 1980 (the "Report"), p. A-23. (The figures in the table are slightly distorted by the inclusion of Taiwan and Hong Kong.) The decline in imports from the Federal Republic of Germany can be accounted for, at least in part, by the opening of the Volkswagen of America, Inc., plant at New Stanton, Pa.

In 1979, of the 3,101,990 automobiles exported from Japan, 1,546,740 or 50 percent were exported to the United States.[61] In contrast 630,216 or 20 percent were exported to the nine

percent in 1978 and 55 percent in 1979. The ratio of 46 percent in the first 6 months of 1979 contrasts with a high of 67 percent in the same period of 1980.

United States producers' captive imports of light trucks and cab/chassis

and the "directly competitive" product.[70] Then, as we discussed *Mushrooms*,[71] *if the producers of the article like and the producers of the article directly competitive with the imports can be clearly treated as separate and distinct*

Judicial guidance on the distinction between the two terms can be found in the leading case of *United Shoe Workers of America, AFL–CIO* v. *Bedell*,[73] in which the court gave its view of the phrase, relying almost

all essentially interchangeable for that purpose * * *.

Similarly, although a station wagon, a van, and a light pickup truck have different characteristis, a person who wanted a vehicle for both basic transportation and light hauling would be likely to consider all three

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In 1979, of the 3,101,990 automobiles exported from Japan, 1,546,740 or 50 percent were exported to the United States.[61] In contrast 630,216 or 20 percent were exported to the nine member states of the European Economic Community and 342,690 or only 11 percent were exported to all of nearby Asia. During the same period, Japanese domestic consumption was about 3.1 million automobiles or about 100 percent of that country's automobile exports. In contrast to the marked increase in imports from Japan, there was a slight decrease in the volume of imports entering this country from the Federal Republic of Germany and the United Kingdom. There was a slight increase in the amount entering from Italy, Sweden and France.[62]

U.S. producers' imports for consumption of passenger automobiles increased from 830,000 in 1975 to 1,045,000 in 1977 and decreased to 779,000 in 1979. Thus, captive imports accounted for a declining but constantly significant share of total imports: 41 percent in 1975, 39 percent in 1976, 38 percent in 1977, 35 percent in 1978, 28 percent in 1979, and 26 percent in the first six months of 1980.

Imports of passenger automobiles as a percentage of domestic production increased steadily from 30.9 percent in 1975 to 33 percent in 1979. A sharp contrast is evident in comparing these ratios for the first 6 months of 1979 with the same period in 1980: 29.7 percent for 1979 versus an all-time high of 47.5 percent for 1980. The ratio of imports from Japan to domestic production ranged from 10 percent in 1975 to 19 percent in 1979 and 29 percent for the first 6 months of 1980.

A similar increase in imports occurred with regard to imports of light trucks and cab/chassis. Total imports for consumption of light trucks and cab/chassis increased in actual numbers from 374,620 in 1975 to 803,690 in 1979, or by 47 percent. For the first 6 months of 1980, there was a decrease of over 15,000 or 4 percent from the first half of 1979. This decrease of over 15,000 or 4 percent from the first half of 1979. This decrease was accounted for by the 42 percent decline in imports from Canada. However, 84 percent of that decline was taken up by imports from Japan, which increased by 40 percent.

As a percentage of total imports of light trucks and cab/chassis for consumption, the share of imports from Japan ranged from 54 percent in 1975 to 51 percent in 1976, 47 percent in 1977, 50 percent in 1978 and 55 percent in 1979. The ratio of 46 percent in the first 6 months of 1979 contrasts with a high of 67 percent in the same period of 1980.

United States producers' captive imports of light trucks and cab/chassis are significant. All of the imports from Canada during the period 1975 through the first 6 months of 1980 were captive imports. There was a slight overall decrease in the percentage of the imports from Japan that were captive: 50 percent in 1975, 43 percent in 1976, 40 percent in 1977 and 1978, and 48 percent in 1979 and the first 6 months of 1980. In sum, of the total imports of these articles, a significant percentage was caused each year by domestic producers, from 67.5 percent in 1975 to a high of 74.8 percent in the first 6 months of 1979. That ratio decreased to 63.7 percent in the first half of 1980.[63]

Imports of light trucks and cab/chassis as a percentage of domestic production increased steadily from 18.5 percent in 1975 to 26 percent in 1978 and 29 percent in 1979. The ratio jumped to 62.5 percent in the first 6 months of 1980 in contrast to 25.9 percent for the same period in 1979.

Total imports for consumption of medium and heavy trucks and cab/chassis declined erratically from 1975 to 1979. The decline continued into the first 6 months of 1980.[64] Imports of this article as a percentage of domestic production also declined, as did the ratio of these imports to domestic consumption.[65]

Three criteria must be fulfilled before the Commission may make an affirmative determination under section 201. There must be an increase in imports, serious injury or the threat thereof, and a substantial casual link between the imports and the injury. A failure to make a positive showing concerning any single criterion defeats a petition. At this point, I am able to find that medium and heavy trucks are not being imported into the United States in the increased quantities contemplated by the statute. Consequently, my analysis of their impact ends here. Automobiles and light trucks are being imported in quantities sufficient to satisfy the increased imports requirement.

Domestic Industry

The definition of the domestic industry is the first step in the analysis of serious injury or the threat thereof. The group of domestic producers of the article like or directly competitive with the imported article comprises the domestic industry. In its analysis of injury, the Commission takes into account the financial and economic impact of the imported article under investigation on these producers. Thus, the proper identification of the domestic industry is a critical finding since, in any investigation, by varying the compostion of the domestic industry we could likely reach varying results with regard to the question of injury.

At the outset orf each investigation, the Commission considers all of the producers of an article which is possibly like or directly competitive with the imported article. Following the statutory guidelines, and considering economic and marketing data, we then determine the relevant domestic industry or industries.[66] Finally, the Commission may exclude from the scope of the domestic industry certain parts of producers when the inclusion of their full activities would tend to distort the analysis of injury.[67] I have concluded that there are two industries at issue here: Those producers and facilities producing automobiles and those producers and facilities producing light tructs and cab/chassis.

Section 201(b)(1) requires that we consider the question of serious injury or threat thereof to the domestic industry producing an article "like or directly competitive with the imported article." There is no statutory definition of the term "domestic industry," but there is legislative guidance concerning the term "likely or directly competitive with the imported article."

The phrase "like or directly competitive" dervices from language in Article XIX of the General Agreement,[68] the so-called "escape clause." It has been used in U.S. escape clause legislation since 1951.[69] In light of the legislative history and judicial guidance, the appropriate task in cases arising under section 201 is to draw a distinction between the "like" product and the "directly competitive" product.[70] Then, as we discussed *Mushrooms*,[71] *if the producers of the article like and the producers of the article directly competitive with the imports con be clearly treated as separate and distinct industries, we must look to whichever industry presents the most compelling cos for relief. The inudstry, in all cases, must be a rationally defined distinct entity in accordance with current business and marketing practices.*

Where the producers of the "like" product may easily constitute an apparent industry for the purposes of section 201, such a classification must be capable of analysis under the pertinent statutory criteria. In this connection, there may be instances in which it is impossible or inappropriate to segregate an industry. For example, when the same group of firms uses the same production facilities to produce both "like" and "directly competitive" articles or, otherwise, when it is impossible to break out statistics on production, consumption, sales, profits, or employment on the basis of the "like" product, then we might be compelled to aggregate.

With regard to the differences between products that are "like" and products that are "directly competitive," the legislative history of section 201, judicial precedent, and the majority view in *Mushrooms* offer guidance. The House and Senate Reports relating to the Trade Act of 1974 address this question directly with virtually identical language:

> [T]he words "like" and "directly competitive," as used previously and in this bill, are not to be regarded as synonymous or explanatory of each other, but rather to distinguish between "like" articles and articles which, although not "like", are nevertheless "directly competitive." In such context, "like" articles are those which are substantially identical in inherent or intrinsic characteristics (i.e., materials from which made, appearance, quality, texture, etc.), and "directly competitive" articles are those which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefor.[72]

It is plain, therefore, that the intent of the drafting committees was that "like" has to do with the physical identity of the articles themselves, while "directly competitive" relates more to the notice of commerical interchangeability.

Judicial guidance on the distinction between the two terms can be found in the leading case of *United Shoe Workers of America, AFL–CIO* v. *Bedell*,[73] in which the court gave its view of the phrase, relying almost entirely on legislative history and case law regarding escape clause legislation. The court noted that,

> [A]n imported product that is "like" a domestic product will ordinarily be directly competitive with that product. Unless Congress, by using "directly competitive" alternatively, intended to embrace articles not within the scope of "like," the "directly competitive" language is superfluous. From daily experiences, however, we know that many products can be directly competitive without having identical or nearly identical physical characteristics. Normally, the term "directly competitive" invites, in the first instance, a comparison of the commercial uses of the products and not their characteristics; the word "like," in common parlance, does the reverse.[74]

The court added that "one must approach the question whether an imported article is 'like' a domestic article with the knowledge that 'like' is the more restrictive of the two terms."[75]

The UAW contends that there is a single domestic industry because,

> [a]ll U.S. produced passenger cars, light trucks, vans, and general utility vehicles [and wagons] are like or directly competitive with all imported passengers cars, imported light trucks, imported vans, and imported general utility vehicles [and wagons] respectively within the meaning of Section 201(b)(1) of the Trade Act of 1974. For example, compacts, subcompacts, intermediates and standard passenger cars compete against each other, with price [and price differential] often being an important factor in the final choice * * *.

Moreover, the UAW submits that each separately identified category (passenger cars; light trucks; vans; general utility vehicles) is like or directly competitive with every other identified category.[76]

Further, the UAW cites section 601(5) of the Trade Act of 1974[77] as support for the assertion that cab/chassis and their cargo boxes or flatbeds are directly competitive with U.S. manufactured automotive products (e.g., U.S. manufactured light pickup trucks).[78]

Ford also contends that there is a single domestic industry.[79] According to Ford,

> [e]ach of these articles is adapted to the same basic use of providing transportation over both long and short distances, and they are all essentially interchangeable for that purpose * * *.

Similarly, although a station wagon, a van, and a light pickup truck have different characteristis, a person who wanted a vehicle for both basic transportation and light hauling would be likely to consider all three. During the period 1976–1979, many trucks were sold to families as a substitute for the traditional second car.[80]

Additionally, Ford argues that automobiles and light trucks are generally produced by the same companies, in many of the same facilities, with the same workforce, utilizing many of the same components. They are marketed through the same distribution channels and displayed on many of the same dealer floors. They are often produced in the same assembly plants and use many common components. They also have hourly workers who, to a large extent, are members of the same union, the UAW.[81]

Generally, the importers argued that there are several domestic industries.[82] Many also argued that some or all imports are not like or directly competitive with any U.S. produced article.[83]

In view of all of this, and in view of my reading of the statute and the legislative history, I am convinced, first that Congress did not intend for this agency to undertake analysis and decisionmaking in a vacumm, ignoring the plan behavior in the marketplace. Application of the statutory criteria must be made against circumstances that exist in fact rather than on the basis of neat, conceptual constructs. Otherwise, our work here becomes useless and cloistered.

Furthermore, my understanding of the operation of section 201 is that, in general, the more broadly an industry is defined the greater is the likelihood of

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[61] *Motor Vehicle Statistics of Japan, 1980*, Japan Automobile Manufacturers Association

[62] Report, p. A–23.

[63] Report, p. A–26.

[64] Id. pp. A–103 and A–105

[65] Id. p. 105

[66] With respect to the problem of whether the language "like or directly competitive" implies the existence and characteristics of one industry as opposed to two distinct industries, the legislative history of section 201 and the court's ruling in *United Shoe Workers* v. *Bedell* 506 F.2d 174 (D.C. Cir. 1974) provide useful guidance. In observing that "like" and "directly" competitive are concepts which are neither synonymous with nor explanatory of each other, both the House and the Senate strongly imply that these terms *could*, indeed, refer to separate groups of producers. See also the majority views in *Mushrooms*, Investigation No. TA–201.43, USITC Pub. No. 1089 (1980) at pp. 6–14.

[67] Sec. 201(b)(3)(A) and (B), 19 U.S.C. 2251(b)(3)(A) and (B).

[68] See General Agreement on Tariffs and Trade, 61 Stat. (5), (6), 55 U.N.T.S. 194 (1948), Vol. IV, BISD.

[69] Trade Agreements Extension Act of 1951, sec. 7, 65 Stat. 72 (1951).

[70] See my opinion in *Mushrooms*, *supra*.

[71] *Mushrooms*, *supra*, at pp. 6–14.

[72] Trade Reform Act of 1974: Report of the Committee on Finance, S. Rept. No. 93–1298 (93rd Cong., 2d Sess. 1974), ("Sen. Rept."), pp. 121–122.

[73] 506 F. 2d 174 (D.C. Cir. 1974) concerning a petition for adjustment assistance under the Trade Expansion Act of 1962 (76 Stat. 883).

[74] 506 F. 2d 174, 185–186.

[75] Id. at p. 186.

[76] UAW Petition, pp. 34–35.

[77] 19 U.S.C. 2481 (5).

[78] UAW Petition, pp. 36–37.

[79] Ford Petition, pp. 11–14.

[80] ID. pp. 12–13.

[81] Id. at pp. 13–14.

[82] See, e.g., Prehearing Brief of Toyota Motor Sales, U.S.A., Inc. (5 industries: small passenger cars, large passenger cars, light trucks, general utility vehicles and vans), pp. 8–18; Brief of the American International Automobile Dealers Association (domestic industry producing small cars is the only relevant industry), pp. 21–37.

[83] See, e.g., Statement on Behalf of Alfa Romeo, Inc. and Alfa Romeo S.p.A. (Alfa Romero's are a specialty product different in terms of inherent and intrinsic characteristics from any U.S. product and compete with only one U.S. automobile, the Chevrolet Corvette), pp 18–19; Statement on Behalf of Mercedes-Benz of North America, Inc. (because of its high quality, Mercedes Benz are not like any U.S., produced automobile and because of its substantially higher price, they are not directly competitive), pp. 5–8; Prehearing Brief of Fiat Motors of North America, Inc. (each imported automobile is distinguishable from any other imported or domestic automobile by size, weight, appearance, parts, component materials, engine size, appointments, and engineering details), pp. 6–10.

diluting the indicia of injury. I do not think it can be seriously challenged that Congress intended section 201 to be a relaxation of the criteria for an industry to win relief.[84] Thus, if our analysis of industry is to be consistent with the preferring automobiles that are smaller and more fuel-efficient than previous models. Were this not the case, each of the domestic producers of automobiles would not be engaged in the substantial retooling they are undertaking. Nor producers and facilities engaged in the production of automobiles.[85]

With regard to imported light trucks.[86] I am not able to find that light trucks are, as a matter of law, substantially identical in intrinsic characteristics or

First, the UAW has argued that under section 601(5), imported cab/chasis are directly competitive with light trucks. Upon import, with only minimal application of labor and other resources, these items are converted to products

are to consider in determining whether increased imports are a substantial cause of serious injury or the threat of serious injury. Under section 201(b)(4), substantial cause is "a cause which is important and not less than any other

important to note that *the Commission is directed to take into account all economic factors it considers relevant.* The committee did not intend that an industry automatically would satisfy the eligibility criteria for import relief by showing that all, or some of the enumerated factors, were present at the time

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diluting the indicia of injury. I do not think it can be seriously challenged that Congress intended section 201 to be a relaxation of the criteria for an industry to win relief.[84] Thus, if our analysis of industry is to be consistent with the intent of Congress, in each case we must attempt to define industry as narrowly as is reasonable to provide a petitioner with the best basis for a showing of serious injury or threat. Recognizing that there might be some cases where this practice might result is a reduction of the likelihood of a finding of injury, we must apply a uniform standard that is designed over the long term to further this legislative intent. Consequently, the task before us in section 201 cases is to gleen from the record what, in reality, is taking place in the market so that in applying the statutory criteria we can make the most realistic and precise finding as to what domestic articles are truly like or are truly directly competitive with the import article.

In this case, there can be little doubt that all automobiles, in a rather broad sense, are substantially identical for the reasons posited by petitioners. However, based on the record in this case, it is very difficult for me to accept that, as a matter of law, a Toyota Corolla, for example, is substantially identical in such particular intrinsic characteristics as appearance or quality to a Cadillac Seville, for example. Neither the marketing strategy of the domestic industry nor the discernable behavior of the consumer in the marketplace can be used to support such a proposition. As well, while each of these automobiles may well be substitutable for the other in nearly all the uses to which automobiles as a class are put, I am hard pressed to find any convincing data that this kind of substitution takes place, in fact.

Based on the evidence before us, what appears to be happening in the marketplace, with increasing frequency, is that the consumer is differentiating among automobiles based upon subjective and highly individualized compromises between size and fuel economy. Thus, to the consumer, the greater distance there is between particular models of automobiles based on this assessment of size versus fuel economy the less like they are and the less competitive they are.

Despite the high level of subjectivity involved in this decisionmaking, it is observable that a consensus is emerging and that the consumer is increasingly preferring automobiles that are smaller and more fuel-efficient than previous models. Were this not the case, each of the domestic producers of automobiles would not be engaged in the substantial retooling they are undertaking. Nor would they be involved in the significant changes in product line mix that they are pursuing.[85] Consequently, in terms of the statute, what is developing with respect to automobiles is the addition of new intrinsic characteristics which are available for determining whether one type of automobile is like another or is competitive with another.

Based upon this assessment, it only follows that the definition of industry in this case should be made using these additional characteristics as well. And, to be sure, the Department of Transportation, the Environmental Protection Agency, industry related to publications, and the industry itself use various categorizations based, in large part, on this phenomenon.[86] The problem for me, however, is that this plainly observable trend in the marketplace is not yet complete and has not yet stabilized. Therefore, any attempt to synthesize it or, otherwise, to develop analytical tools based on its lack sufficient objective basis for me to rely on in making an industry finding. Moreover, the kinds of data we use to measure serious injury are not available on the basis of an industry finding that would differentiate small fuel-efficient cars from those that tend to be larger less fuel-efficient.[87]

While I think the assessment of smaller, more fuel-efficient imported automobiles ought to be made against a domestic industry producing the same, for the reasons stated, I find that the domestic article like or directly competitive with the imported automobiles is the domestic automobile. Thus, the relevant industry, taking into account section 201(b)(3)(B), is those producers and facilities engaged in the production of automobiles.[88]

With regard to imported light trucks.[89] I am not able to find that light trucks are, as a matter of law, substantially identical in intrinsic characteristics or interchangeable for commercial purposes with domestic automobiles. In addition to the reasons discussed above, petitioners' arguments in this connection simply do not, in my mind, outweigh those of the respondents. In terms of substantial identity, while trucks and automobiles share the features stated by petitioners as a practical matter they simply are not identical. Truck designs make plain that they are structured less for passenger transport and more for bulk haulage. This is not to say that both objectives are not intended or that passenger transport is not accommodated. But the plain fact is that from appearance, trucks are primarily structured for haulage. They have a flatbed where automobiles allocate comparable space between haulage and passenger seating. Trucks allocate space so as to limit passenger space, whereas automobiles allocate space so as the maximize passenger space.

In terms of commercial interchangeability, evidence was presented that there is the practice in the marketplace for automobile purchasers to purchase light trucks instead, but the evidence, at best, establishes a limited practice largely localized in certain geographic regions. There is no basis on the record to find that this substitution is substantial. In short, with regard either to like or directly competitive with, petitioners have failed to provide us with sufficiently compelling arguments in theory or in fact that overcome evidence of the record to the contrary and to overcome long-standing perceptions in the marketplace that trucks are simply not the same as automobiles.

I, therefore, find that the domestic article which is like or directly competitive with imports of light trucks is the domestically produced light truck. As a result, the relevant industry, taking into account section 201(b)(3)(B), is those producers and facilities engaged in the production of light trucks.

Having found these two industries, there are two matters related to the discussion of industry that have been raised and that deserve to be addressed.

[84] See, Senate Report, *supra*, at p. 120. See also, Trade Reform Act of 1973: Report of the Committee on Ways and Means, House Report No. 93-571 (93rd Cong., 1st Session, 1973). ("House Report") p. 44.

[85] As a further matter in this connection, it cannot be ignored that, at the least, 80 percent of the imports and all of those imports that are increasing are of the smaller, more fuel-efficient type. As well, it is this rough category of domestic automobiles that is and has been experiencing an increase in sales.

[86] See Report, at pp. A-7.

[87] It is worth noting, under section 201(b)(3)(B), particularly in light of the legislative reports (See House Report, *supra*, at pp. 45–46. See also Senate Report, *supra*, at p. 122) that I am not entirely sure what practical effect such an industry definition would have had on a serious injury analysis or substantial cause analysis. In the House Report, if the domestic article in question were produced by an independent operating division, those divisions not producing that article would be excluded from the industry finding. However, if the domestic article were produced in a "multiproduct plant" or a "subdivision" where there is production of several different product lines, the industry would include the operating unit as a whole.

[88] My reasons for not including domestic trucks as like or directly competitive with imported automobiles are the same as those discussed in the following treatment of domestic articles like or directly competitive with imported trucks.

[89] I found, *infra*, that imported heavy trucks were not properly before us because there are no increasing imports of these articles.

First, the UAW has argued that under section 601(5), imported cab/chasis are directly competitive with light trucks. Upon import, with only minimal application of labor and other resources, these items are converted to products that are, as a practical matter, substantially identical to the domestically produced article. Therefore, these items must be regarded under section 601(5) as directly competitive. I have accounted for this fact in defining the imported article, whose impact on the domestic industry is the suject of this investigation, as light trucks and cab/chassis.

The second matter is the question of whether dealers and independent suppliers are part of an industry under review here.[90] Under section 201 we are to consider serious injury with regard to the "domestic industry producing an article like or directly competitive with the imported article." Insofar as dealers are concerned, then, since they produce no article at all, I can see no basis for including them in either domestic industry. Regarding parts suppliers, my reading of *United Shoe Workers* v. *Bedell* is that the court found that a producer of component parts had no standing to petition for relief becaue their components were not "like or directly competitive with" the finished article. If under that case there can be no standing to petition, then I cannot understand how such individuals can be part of the industry for purposes of assessing serious injury. This is especially so since the standard for standing is much lower than that for industry. Moreover, our discussion in *Mushrooms* of the relationship between producers of fresh mushrooms and producers of canned mushrooms further supports my finding that independent suppliers to the automotive industry are not part of the industry for purposes of section 201.

Substantial Cause [91]

The Trade Act of 1974 defines substantial cause and lists factors we are to consider in determining whether increased imports are a substantial cause of serious injury or the threat of serious injury. Under section 201(b)(4), substantial cause is "a cause which is important and not less than any other cause." Under section 201(b)(2)(C), we are to take into account *all* economic factors we consider relevant including, in the case of substantial cause,

> an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers.

The reports of the Committee on Finance and the Committee on Ways and Means, are largely repetitive of the language in the statute.[92] But two policies are clear from the treatment of this issue by both Committees. First, the change made by the Trade Act of 1974 in the causality standard from one requiring imports to be a "major cause" to one requiring them to be a "substantial cause" was intended to make the nexus between imports and serious injury easier to establish. It was felt that the former standard "proved in many cases to be unreasonably difficult.[93] The second policy, which is more relevant here, is that the Commission has broad discretion in analyzing causality because cases differ. The economic factors pertinent in one investigation may not be relevant in others. The Commission has amassed a substantive expertise upon which to draw in making the difficult judgments about what factors are relevant and what factors are more important than others in each investigation. Thus the authority, indeed the requirement, for us to reflect upon *all factors we consider relevant* is plain in both reports. The House report succinctly states this intent and underlying policy.

A new section has been added concerning the factors to be taken into account by the Tariff Commission [now the United States International Trade Commission] in determining serious injury, threat of serious injury, and substantial cause. These factors are not intended to be exclusive. It is important to note that *the Commission is directed to take into account all economic factors it considers relevant.* The committee did not intend that an industry automatically would satisfy the eligibility criteria for import relief by showing that all, or some of the enumerated factors, were present at the time of its petition to the Tariff Commission. *That is a judgment to be made by the Toriff Commission on the basis of all factors it considers relevant.*[94] (Emphasis added.)

Taking into account all economic factors I consider relevant and for the reasons discussed below, I have concluded that under the law, imports are not a substantial cause of serious injury. That imports are an important cause of serious injury is a fact that cannot be seriously challenged, indeed, it has not been. Thus I have not separately addressed it. The heart of the analysis of the requisite nexus between imports and serious injury is, however, whether there are factors which are more important than imports. I have found two factors which seem to be more important causes of the industry's problems than are increased imports.

First, the demand for the type of automobile desired by a significant portion of the buying public is shifting from a product line roughly described as larger, less fuel-efficient automobiles to smaller, more fuel-efficient automobiles.[95] As has been discussed, I have great difficulty as a practical matter in defining with precision the line of demarcation between these two product lines. While such a distinction is difficult to formulate and thus precludes my basing an industry definition on it, the fact of the difference is plain, the consequence is palpable, and the phenomonon of this shift, as distinct from a shift to imports, is demonstrable.

Second there has been an overall decline in demand for automobiles that is largely associated with the general decline in the economy. When the impact of this decline in demand is weighed against the increase in imports, the conclusion, to me, is clear that its impact on the industry of the decline in demand has been noticeably greater than has been the impact of imports.

A. *Shift in demand.*—With regard to the shift in consumer preference from one type of automobile to another, petitioners argued that if such a shift exists it is nothing more than a shift from the purchase of domestic cars to the purchase of imported cars with a resulting increase in imported automobiles. The reason for the increase in imports, they argued, is unimportant to our determination under section 201. Moreover, their view continued, section

[90] See Posthearing Brief Submitted on Behalf of Robert P. Malton and Other Interested Domestic Automotive Dealers (auto dealers are "interested parties"), pp. 3–5; Posthearing Brief Submitted by the Automotive Materials Industry Council of the United States (the role of supplier companies is relevant in evaluating the ability of the automobile industry to adjust to new conditions of competition), pp. 5–6; and Posthearing Brief Submitted by Coalition of Automotive Compunent and Supply workers (the suppliers are "a proper participant"), pp. 2–6.

[91] Ordinarily my treatment of serious injury and the threat of serious injury would come before a discussion of substantial cause. In this regard, I associate myself completely with the views of Chairman Alberger on the matters of serious injury and the threat thereof to both industries. I also associate myself with the views of the Chairman regarding substantial cause as it relates to the light truck industry.

[92] See Senate Report, *supra*, at pp. 120–121. See also House Report, *supra*, at pp. 46–47.

[93] See Senate Report, *supra*, at p. 120. See also House Report, *supra*, at p. 44. It should be noted, however, that this relaxation was not intended to be open-ended. The Senate Report, at p. 121, observes that "[i]t is not intended that the escape clause criteria go from one extreme of excessive rigidity to complete laxity." Both Committees emphasize that the standard has two criteria that must be met in all cases: (a) imports must be an important cause of serious injury *and* (b) imports must be no less important than any other single cause. See House Report, *supra*, at p. 46 and the Senate Report, *supra*, at p. 120.

[94] House Report, *supra*, at p. 47.

[95] See discussion under Industry, *infra*.

201 is specifically designed to provide a remedy in precisely those circumstances in which domestic sales are displaced by sales of imports. While I do not refute this view of the policy underlying

be below the price of the domestic articles, but certain high-grade imports were priced considerably higher than the domestic product.[97] Third, while some of the imports were considered to

contributed more so than imports to the industry's problems, section 201 cannot be used to remedy the situation. A shift in demand is a phenomenon distinguishable in concept from a shift to

a particularly important factor in the industry's profitability.

Second, as a practical matter a change in the product mix requries not only a considerable lead time, but also an exceptionally high capital investment.

striking when measuring car sales as a percent of apparent consumption. In 1975 small domestic car sales were 26.6 percent of total apparent consumption, large domestic cars were 47.6 percent, and imports were 26 percent.[102] In the

Chart 1.—*Apparent consumption*—Continued

[In thousands of units]

Year	Large domestic cars	Small cars	Total
Expected change in			

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201 is specifically designed to provide a remedy in precisely those circumstances in which domestic sales are displaced by sales of imports. While I do not refute this view of the policy underlying section 201 I must take exception, both in concept and in fact, with the view that in this case the shift in consumer preference merely explains why imports might have increased and is not cognizable as an independent source of injury to the domestic industry.

In concept, the Commission has specifically relied upon a shift in consumer preference from one type of product to another as a phenomenon distinct from a shift to imports *qua* imports. The most attenuated support for this proposition is *Unalloyed, Unwrought Zinc,* Investigation No. TA–201–31, USITC Pub. No. 894 (1978). In that investigation the Commission found that imports were not a substantial cause of serious injury because a decline in demand was a more important cause of the injury to the industry. An important element in the decline in demand for the domestic article was, despite increasing imports, the replacement of the domestic article by a substitute article. Another investigation in which the Commission recognized and relied upon the concept of demand shift as distinct from a shift to imports in assessing causality was *Low-Carbon Ferrochromium,* Investigation No. TA–201–20, USITC Pub. No. 825 (1977). In that case, the Commission found that a technological innovation had caused a fundamental change in the production process employed by the industry, and, hence, a drastic shift from the use of low-carbon ferrochromium to the use of high-carbon ferrochromium. As a result the majority concluded that, despite increasing imports, the injury the low-carbon ferrochromium industry might have been suffering was due more to the decline in demand for its product.

For me the decisive precedent for the integrity of demand shift as a concept distinct from a shift to imports in a circumstance of increasing and competitive imports is *Wrapper Tobacco,* Investigation No. TA–201–3, USITC, Pub. No. 746 (1975). *Wrapper Tobacco* has a particular precedential appeal because the behavior of imports in the marketplace was especially strong. First, imports had more than tripled their market penetration over a four-year period while domestic production and total consumption were in decline.[96] Second, the prices of the bulk of the imported articles tended to be below the price of the domestic articles, but certain high-grade imports were priced considerably higher than the domestic product.[97] Third, while some of the imports were considered to be of higher quality than the domestic article, most of the imports were used to produce product lines that competed with those using the domestic product.

In the face of this extremely competitive position of imports, the Commission in *Wropper Tobacco* made a unanimous negative determination. Four Commissioners relied upon the change in consumer tastes from larger cigars to smaller cigars and other tobacco products as the primary reason for the decline in demand they viewed as a cause of injury more important than increasing imports.[98] Thus, the majority of the Commission had no difficulty in concept or in fact in differentiating between a shift from the domestic article and a shift to imports.

But there are, however, important areas in which these cases are deficient as support for the proposition that a shift in demand is a distinct factor to be weighed by itself against increasing imports in deciding substantial cause. First, in no case was there a shift in demand to another item produced within what was found to be the relevant industry. The shifts that occurred were all to items outside the industry that was found, thus, implying that there was a decline of an entire industry because of changes in the marketplace rather than because of increasing imports. Second, in each of these cases the specific Commission finding was that the decline in demand/consumption was the cause greater than imports for the injury sustained. Thus while the cases do differentiate between shift in demand and shift to imports, neither of them has specifically relied upon a shift in demand as a separate factor to be weighed against imports.

To the extent the use of a shift in demand as a separate factor in assessing substantial cause is a matter of first impression, I do not think it too great a departure from well-established Commission practice. Nor do I see it as doing violence to the underlying policy of section 201. Without belaboring the point, the essence of section 201 is to provide relief in those cases in which increasing imports are an important contributing cause of serious injury and there are no contributing causes more important. It follows then that if causes can be found that, in our judgment, have contributed more so than imports to the industry's problems, section 201 cannot be used to remedy the situation. A shift in demand is a phenomenon distinguishable in concept from a shift to imports, as this Commission has treated it thus far. If there is no conceptual basis for denying the shift theory status as a separate factor ultimately explaining the decline of an industry, surely it is cognizable as a factor directly explaining a structural change taking place within an industry.

Moreover, where in both concept and in fact a shift in demand is distinguishable from a shift to imports, not to make it a factor in the consideration of causality transforms section 201 from an import relief provision to an industrial relief provision. Under such a view, whenever an industry is in decline because of internal structural changes or exogenous occurrences in the society independent of imports, an industry need only show that imports are increasing concommitant with its difficulty and it could receive relief. While one could make very good arguments supporting the need for an industrial policy which would provide assistance to worthy industries suffering generalized difficulty unassociated with imports, section 201 cannot be so construed. It is plainly and simply an import relief provision and, therefore, our fundamental task on the face of it and from the legislative history is to determine that *imports* are an important cause of the injury and to determine that no other cause is more important than imports. Thus, any other factors that may have contributed to injury must be measured against the contribution made by imports.

Having established the validity of the concept of a product line shift as a factor to be assessed in this case, establishing the fact of the shift and assessing what weight it ought to be given is not difficult. Several preliminary factors make this exercise particularly valuable in finding the substantial cause in this case.

First, there is a significant difference between the level of profit earned by the industry on sales of larger automobiles compared with profits on smaller ones.[99] Indeed, a fundamental strategy for the industry, for years, has been that the great majority of profits on sales of automobiles would be earned on larger automobiles. Smaller cars would be marketed to fill out the product line and, ultimately, to win over larger car purchasers. Thus, the product mix of larger and smaller automobiles has been

[96] See *Wrapper Tobacco, supra,* at pp. A–37 and A–46.

[97] See *Wrapper Tobacco, supra,* at pp. A–28–29.

[98] See views of Chairman Will E. Leonard and Vice Chairman Daniel Minchew at pp. 8–9. See also views of Commissioners Catherine Bedell and Joseph O. Parker at pp. 12–14.

[99] See Report, at pp. A–43.

a particularly important factor in the industry's profitability.

Second, as a practical matter a change in the product mix requries not only a considerable lead time, but also an exceptionally high capital investment.

Together, these two special features of the industry render it especially vulnerable to a relatively quick and sustained shift in consumer preference. Further, they explain why such a shift is an important factor in assessing the substantial cause.

That such a shift has taken place in consumer taste is readily demonstrable.[100] Between 1975 and 1979, large domestic car sales grew at an annual rate of 2.4 percent while sales of imports grew at an annual rate of 6.4 percent. Eclipsing both of these were sales of small domestic cares which grew 9.6 percent during this period. Comparing the first half of 1980 to the first half of 1979, in 1980 sales of large domestic cars declined 48.5 percent. The failure of small domestic cars to keep pace with their earlier rate of sales growth and with the growth rate of imports for the first half of 1980 might be viewed as proof that consumption has, in fact, shifted to imports *qua* imports. But precisely the opposite is the case.

The significant growth in demand for domestic small cars caught up with production during the first half of 1980, exceeding the ability of the domestic producer to supply the market. During the first six months of 1980, several producers were at or above their full capacity for small cars. Others were either experiencing serious recall problems on their major small car models or were suffering from major adverse publicity on their products' quality and safety.[101] Both of these factors had a considerable impact on sales.

The change in consumer purchasing patterns from buying large cars to buying smaller cars is even more striking when measuring car sales as a percent of apparent consumption. In 1975 small domestic car sales were 26.6 percent of total apparent consumption, large domestic cars were 47.6 percent, and imports were 26 percent.[102] In the same year, small domestic cars were 36.1 percent of domestic producers' sales while larger cars accounted for the balance.[103] By 1979, small domestic crs had grown to 31.5 percent of apparent consumption, large domestic cars fell to 41.4 percent and imports were 27 percent. Small domestic cars were 44.1 percent of domestic producer sales. For the first half of 1980, despite the problems of domestic supply shortfalls and quality problems with small domestic cars, this category grew to 36.3 percent of apparent consumption, large domestic cars abruptly fell to 29.2 percent and imports, taking up the slack caused by domestic supply problems, grew to 34 percent of appar ent consumption. Small domestic cars, for this period, represented 55.4 percent of domestic producer sales.

These figures convince me that a fundamental demand side structural change is occurring in the automobile industry. They further convince me that this change is not one characterized simply as a shift to imports, even though for the first half of 1980 imports have benefited from the change more than have domestic small cars. This aberration for early 1980 is a result of domestic supply and quality problems. By all measures, consumption has been shifting to smaller cars and domestic smaller cars have benefited from the shift more than have imports. This fact can be futher demonstrated by marhsalling the data in a slightly different way.

Charts 1 and 2 below show the actual shift in demand that took place between 1978, the first year it became apparent and 1979. Chart 1 shows the shift in demand from large cars to small cars for that period. Chart 2 reflects, rather plainly, that domestic small car producers were the major benefactors by far of the shift to small car purchases.[104]

Chart 1.—*Apparent consumption*

[In thousands of units]

Year	Large domestic cars	Small cars	Total
1978	5,259 6	5,925 4	11,185 0
1979	4,202.7	6,112 6	10,315.3
Change in consumption	(1,056 9)	187 2	(869.7)

[100] As I discussed *infra,* the differentiation between automobiles that are larger and less fuel-efficient and those that are smaller and more fuel-efficient is too imprecise a construction on which to base an industry analysis. Nevertheless, for purposes of differentiating among product lines, the various categorizations currently in use provide reasonable distinctions for the purpose of demonstrating that changes are occurring in the type of automobile being purchased. For my discussion I shall use the categories employed by Ward's Automotive Reports, Automotive News, the industry itself, and in the staff report to the Commission. (See Report, pp. A–7 and A–31.) In may analysis I have combined the large and intermediate category into one category called large cars. I have combined the compact and sub-compact categories into a small car category. I have used the word imports to include all imports and assued that approximately 20 percent or so of them that are, in fact, not small cars are small cars.

[101] See Report, at pp. A–63–66.

[102] See Report, at p. A–72.

[103] See Report, at p. A–34.

[104] In charts 1 and 2 small cars are a combination of domestic small cars plus all imports.

Chart 1.—*Apparent consumption*—Continued

[In thousands of units]

Year	Large domestic cars	Small cars	Total
Expected change in consumption due to change in economic activity	(409.0)	(460 7)	(869 7)
Actual change due to shift in demand	(647.9)	647.9	0 0

Source: Compiled from data presented in Tables 17 and 19 of the Report. Figures in parentheses represent decline.

In Chart 1, total apparent consumption between 1978 and 1979 declined by 869,700 units, or 7.8 percent. All of this decline was due to the 1,056,900 unit fall in consumption of large domestic cars. However, if consumers had no preference as to which type of automobile they purchased and if there would have been a 7.8 percent decline in sales anyway, each type of car would have suffered a 7.8 percent decline. This would have resulted in an expected domestic large car decline of 411,400 units.

In contrast, consumption of small cars between 1978 and 1979 increased 187,200 units, but there would have been an expected decline of 460,300 units. Thus, consumption of small cars was 647,900 units more than would have been indicated by the annual change in demand and is also the amount by which demand for large cars declined in excess of that accounted for by the overall decline in demand. This amount represents the quantum of the shift in demand from large cars to small cars between 1978 and 1979.

Chart 2.—*Small car apparent consumption*

[In thousands of units]

Year	Domestic cars	Imports	Total
1978	2,997 3	2,928 1	5,925 4
1979	3,315 5	2,797.1	6,112 6
Change in consumption	318 2	(131 0)	187 2
Expected change in consumption due to change in economic activity	94 7	92 5	187 2
Actual change due to shift in demand	223 5	(223 5)	

Source: Compiled from data presented in Tables 17 and 19 of the Report. Figures in parentheses represent decline.

Chart 2 shows that between 1978 and 1979, small car consumption increased 187,200 units, or 3.2 percent. Of that total increase in apparent consumption of small cars, domestic small cars increased 318,200 units while imports actually declined 131,000 units, which accounts for the net increase in small car consumption of 187,200 units. Applying the same logic as used in chart 1, if the consumer was indifferent as to whether domestic small cars or imports were purchased, each would have

shared equally in the effects of the net growth in the consumption of small cars.

Thus, domestic small cars would have increased 94,700 units and imports 91,600 units. In stark contrast, however, consumption of small domestic cars

Chart 4.—*Domestic small car apparent consumption*

[In thousands of units]

Year	Domestic small cars	Imports	Total

In my view, Chrysler compact production has also suffered from adverse publicity due to the unprecedented volume of product recalls of the Volarie and Aspen models. These models were discontinued in the 1980

in the first half of 1980, retail sales fell more than 9.5 percent in real terms.[105]

Consistent with this general decline in retail sales, sales of automobiles, in particular, also declined. In 1979 total consumption of automobiles fell 7.8

the decline of 642,000 units for domestic cars associated with the overall decline in demand for automobiles is much greater than the 96,700 units lost that are attributable to a combination of increased imports.

looks at an industry as a closed system and assumes that any economic growth or shrinkage of an industry is related to or can be explained by the change(s) in the economy as a whole. Applying this to the domestic automotive industry

shared equally in the effects of the net growth in the consumption of small cars.

Thus, domestic small cars would have increased 94,700 units and imports 91,600 units. In stark contrast, however, consumption of small domestic cars increased 223,500 units more than can be accounted for by the overall growth in small car consumption. These 223,500 additional units of domestic small cars represent the quantum of shift to domestic small cars over imported small cars. Taken together, these charts show that in the period 1978 to 1979 there was, in fact, a shift from consumption of large cars to small cars and that shift was distinct from a shift to imports. Indeed, chart 2 shows that the shift benefited domestic small cars more so than imports.[105]

Charts 3 and 4 repeat the analyses in charts 1 and 2, respectively, for the first half of 1980 compared with the first half of 1979.

Chart 3.—*Apparent consumption*

[In thousands of units]

Year	Large cars	Small cars	Total
Jan.-June 1979	2,683.1	3,124.6	5,807.7
Jan.-June 1980	1,382.6	3,349.1	4,731.7
Change in consumption	(1,300.5)	224.5	(1,076.0)
Expected change in consumption due to change in economic activity	(497.1)	(578.9)	(1,076.0)
Actual change due to shift in demand	(803.4)	803.4	....

Source: Compiled from data presented in Tables 7 and 19 of the Report. Figures in parentheses represent decline

Chart 3 well reflects that the trend to small cars which began in earnest in 1978 is continuing into 1980. In the second half of 1980 the total 18.5 percent decline in apparent consumption was more than accounted for by the fall in consumption of large cars. The decline in demand for large cars was 1.3 million units against an expected decline of 497,100 units. Small cars, on the other hand, increased 224,500 units in contrast to the expected decline of 578,900 units. Therefore, the actual growth in consumption of small cars was 803,300 units, which is the amount by which larger cars declined in excess of the decline accounted for by the overall decline in demand. This is the quantum of the continuation of the shift in demand from large cars to small cars in the first half of 1980 compared with the same period in 1979.

[105] It should be recalled that imports as used here include all imports, even those 20 percent or so that might not be included in the small car category used here. Therefore, the extent of the benefit to domestic small cars is understated to some extent.

Chart 4.—*Domestic small car apparent consumption*

[In thousands of units]

Year	Domestic small cars	Imports	Total
Jan.-June 1979	1,686.7	1,437.9	3,124.6
Jan.-June 1980	1,717.3	1,631.8	3,349.1
Change in consumption	30.6	193.9	224.5
Expected change in consumption due to change in economic activity	121.8	102.7	224.5
Actual change due to shift in demand	(91.2)	91.2	.....

Source: Compiled from data presented in Tables 17 and 19 of the Report. Figures in parentheses represent decline.

Chart 4 shows how the continued shift in demand was apportioned between small domestic cars and imports. As shown in Chart 3, the consumption of small cars increased 224,500 units or by 7.2 percent. However, unlike the shift from 1978 to 1979, the domestic small car producers were not the major recipients of the shift. Consumption of domestic small cars increased by 30,600 units. But, as a reflection of the growth in total consumption, domestic small cars should have increased 121,800 units. This represents a shortfall of 91,200 units. Imports, on the other hand, had an actual increase of 193,600 units which was 91,200 units more than expected. This amount represents the extent to which imports have won more of the shift in demand for the first half of 1980 compared with the same period in 1979.

In the first half of 1980 there appears to be a shift in demand to imports rather than a shift in demand to small domestic cars. My analysis of data submitted to us in confidence leads me to conclude that during this period the failure of small domestic cars to continue the trend firmly established in 1979 is due in large part to two factors.

The first factor is the inability of some domestic producers to produce enough small cars for demand because of capacity constraints. Some domestic producers were operating at and, in some cases, above maximum capacity. The other factor is the inability of some domestic producers to sell their product due to adverse perceptions by the consumer about the product resulting from product recalls and safety problems associated with them.

Ford's low production and capacity utilization rate, to me, is due to the adverse publicity that Ford received due to the product recall and safety problem associated with the Pinto. However, for the 1980 model year Ford ceased production of the Pinto and introduced the new Lynx/Escort Series which will be subject to a maximum production limit of only 485,000 cars in the first year.

In my view, Chrysler compact production has also suffered from adverse publicity due to the unprecedented volume of product recalls of the Volarie and Aspen models. These models were discontinued in the 1980 model year and replaced by the K-car series which has a maximum production capacity of 550,000 cars this model year.

B. *Decline in Demand.*—With regard to decline in demand, there can be no serious question as to the Commission's authority to consider it a separate factor to be weighed against imports.[106] If there is any legal issue here, it is as to whether the constituent elements of the decline in demand are to be weighed separately against imports in assessing substantial cause or whether they are to be "cumulated" into one factor, decline in demand.

In this connection, I associate myself with the views of Chairman Alberger. In short, decline in demand, in this investigation is the result of the recessionary pressures on the economy over the past year to year-and-a-half. Even under the most imprecise usage, a recession, or economic downturn, is regarded as the result of the complex interaction of several elements: Unemployment, high interest rates, restrictive credit policies, and slowdown in the growth of GNP to name the major ones. To separate out any one of these elements as a factor for comparison against imports, even it if could be done with acceptable precision, is without meaning and provides no serious economic assessment to what is actually taking place in the market. Because I believe Congress expects an analysis from this agency based on matters as they are in reality, I find it appropriate here to view a decline in demand as a discrete factor for comparison with imports in assessing substantial cause.

During the latter part of 1979 and the first half of 1980, interest rates rose to a record 20 percent, industrial production fell 7.5 percent, the unemployment rate jumped 1.5 percentage points, real GNP declined a near record 9.1 percent, and crude oil prices nearly doubled.[107] Also,

[106] There are at least six cases in the six year history of section 201 in which the Commission has found a decline in demand to have been a greater cause of serious injury than had been imports: *Birch Plywood Door Skins*, Inv. No. TA-201-1, USITC Pub. No. 743 (1975); *Wrapper Tobacco*, Inv. No. TA-201-3, USITC Pub. No. 746 (1975); *Plant Hangers*, Inv. No. TA-201-15, USITC Pub. No. 797 (1978); *Low-Carbon Ferrochromium*, Inv. No. TA-201.20, USITC Pub. No. 825 (1977); *Unalloyed, Unwrought Zinc*, Inv. No. TA201-31, USITC Pub. No. 894 (1978); and *Certain Machine Needles*, Inv. No. TA-201-38, USITC Pub. No. 936 (1979).

[107] Federal Reserve Bulletin, July 1980, pp. 536-540.

in the first half of 1980, retail sales fell more than 9.5 percent in real terms.[108]

Consistent with this general decline in retail sales, sales of automobiles, in particular, also declined. In 1979 total consumption of automobiles fell 7.8 percent from 1978 and, for the first six months of 1980, overall demand was down 18.5 percent from the same period in 1979.[109] That this decline in demand for automobiles is associated with the downturn in the economy is further apparent from the fact that total consumption grew by 9.1 percent from 1975 until 1978 after the first decline became apparent. The point of this decline coincides with the period in which the economic downturn began.

Taking this analysis a step further demonstrates the greater significance of this decline in demand relative to imports. Charts 5 and 6 below analyze this decline for the period 1978 to 1979 and for the first half of 1980 compared with the same period in 1979.

Chart 5.—*Apparent Consumption*

[1,000 units]

Year	Domestic cars	Imports	Total
1978	8256.9	2928.1	11,185.0
1979	7518.2	2797.2	10,315.3
Change in consumption	(738.7)	(131.0)	(869.7)
Expected change in consumption due to change in economic activity	(642.0)	(227.7)	(869.7)
Decline in demand due to increasing imports	96.7	.....	.....

Source: Compiled from data presented in tables 17 and 9 of the report. Figures in parentheses represent decline.

Chart 5 shows that apparent consumption declined 869,700 units, 7.8 percent, between 1978 and 1979. Of this amount, 738,700 units are accounted for by a fall in the consumption of domestic cars, a decline of 8.9 percent. The remaining 131,000 units is a decline in consumption of imports, a decline of 4.5 percent. If consumers did not differentiate between domestic and foreign cars in their purchasing, and the decline in demand remained at 7.8 percent, the expected change in consumption of domestic cars overall would have been 642,000 units rather than the 738,700 units which were lost. By the same theory, the decline of imports would have been 227,700 units rather than the 131,000 units which were lost. The shift from domestic cars to imports, then, was 96,700 units because the decline in domestic cars was 96,700 units more than expected and the decline of imports was 96,700 units less than expected. In comparison, however, the decline of 642,000 units for domestic cars associated with the overall decline in demand for automobiles is much greater than the 96,700 units lost that are attributable to a combination of increased imports.

Chart 6.—*Apparent Consumption*

[1,000 units]

Year	Domestic cars	Imports	Total
January-June 1979	4369.8	1437.9	5807.7
January-June 1980	3099.9	1631.9	4731.7
Change in consumption	(1269.9)	193.9	(1076.0)
Expected change due to decline in economic activity	(809.6)	(266.4)	(1076.0)
Change due to imports	(460.3)	.....	.....

Source: Compiled from data presented in tables 17 and 19 of the report. Figures in parentheses represent decline.

Chart 6 undertakes the same analysis as that in Chart 5 except the period compared is the first half of 1980 with the first half of 1979. For the first half of 1980, the recession was still evident as is reflected in the further decline in consumption of automobiles. Apparent consumption in the first half of 1980 declined 1,076,000 units, or 18.5 percent, from the comparable period in 1979. The consumption of domestic cars declined 1,269,900 units, or 29.1 percent, but the expected decline was 809,600 units. Imports increased 193,900 units against an expected decline of 266,400 units. Of the 1,269,900 unit decline in domestic car consumption, 809,600 units, or 63.8 percent, occurred as a result of the decline in economic activity and 460,300 units, or 36.2 percent occurred as a result of a combination of increased imports and some of the noneconomic factors that are affecting some producers. I cannot imagine a clearer demonstration that the decline in demand was and is a more important cause of serious injury than increased imports.

C. *General.*—Both petitioners and respondents, in this case, relied heavily on quantitative analytical techniques in support of their arguments. In my review of the record, I spent some time examining these submissions. As a result, I feel that some brief comment is in order regarding the major submissions.

The "Shift Share" analysis submitted in this investigation by a group of importers [110] seeks to explain economic changes in a particular segment of an economy by looking at changes in the general level of economic activity. In simple terms, the shift share analysis looks at an industry as a closed system and assumes that any economic growth or shrinkage of an industry is related to or can be explained by the change(s) in the economy as a whole. Applying this to the domestic automotive industry, these importers contend that the decline in domestic car and light truck sales is a result of the overall decline in demand for passenger vehicles and light trucks from the downturn in economic activity, and the structural shift in the automotive market that increased the proportion of small fuel-efficient vehicles demanded in relation to total vehicles demanded. The importers argue that this structural shift was a direct result of gasoline price increases and consumer concern about fuel availability.

Their analysis segmented the total industry into large and small vehicles. It was conducted on the basis of unit sales of domestic passenger vehicles versus all passenger vehicles, small cars versus all passenger cars and domestic small cars versus all small cars. The analysis of sales of domestic passenger vehicles and all passenger vehicles measures the change in domestic demand due to the change in overall passenger demand. The analysis of sales of small cars and all passenger cars measures the structural shift in small car demand relative to total car demand. The analysis of domestic small car demand and total small car demand measures the changes in domestic sales as a result of imports.

My basic criticism of the shift share analysis is that it assumes that consumer preferences, spending habits, and similar factors are homogeneous and that the general level of economic activity affects each consumer's demand for cars in the same way. Furthermore, the shift share analysis is a residual approach in that once the basic change on the industry in question has been calculated, the residual decline in sales is assigned to increased imports. However, in spite of these shortcomings, I feel that this model along with the Wharton model, does help to explain the change that took place in the automotive industry from 1979 through the first half of 1980. Indeed, both petitioners, Ford [111] and AIA, used this basic methodology and theory in support of their respective arguments.

The Wharton Econometric Vehicle Demand Model is a stock adjustment model based on the theory that demand for automobiles is a function of the need

[108] Ibid.

[109] Ibid.

[110] Prehearing statement of John G. Reilly of ICF Inc. on behalf of the Automobile Importers of America, Inc.

[111] In its submission, Ford employed an analysis which heavily relied upon principles and assumptions which are very similar to the shift analysis discussed here.

for transportation or vehicle miles. To

The analysis is based on projected

avoid achieving their success at too high a cost to the host society. I have found a

Standards and framework for threat. The near term future and threat

I have defined the passenger auto industry in its entirety because there is

suppliers, their production and shipments are tied directly to the

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for transportation or vehicle miles. To obtain these vehicle miles or satisfy the need for transportation, a stock or level of vehicles is required. This desired level of automobiles is a long-run adjustment concept and depends on demographic factors, age, vehicle miles traveled, income, and costs of buying and operating a vehicle.

First, the model determines a value for the number of cars to be sold, in aggregate and by category, for the 1979–80 period. It then looks at three scenarios and their effect on the domestic sale of automobiles. They are the effect of the gasoline crisis, economic activity, and imports. In each of these three cases, the Wharton model takes as a base case the solution values [112] and key inputs (gasoline prices, economic activity, imports) for car sales in the 1979–80 period and makes adjustments to determine what effects these three factors have on unit sales.

The Wharton model is the most comprehensive model submitted in this investigation. Its choice of demographic variables (personal income, car ownership costs, and new car prices) adds much to the model in helping to predict and explain the movement of domestic sales and the factors that affect those sales. Of the three models reviewed, the Wharton model, in my opinion, was the most reliable.

In Ford's analysis, the decline in domestic sales and production is a result of three factors: the downturn in economic activity, rising gasoline prices, and imports. They go on to state that the increase in imports is the greatest single cause of injury to the domestic industry. Injury to the domestic industry is defined as the difference between actual domestic sales and expected trend sales.

The trend line for expected industry sales was derived by using the least squares regression technique. In the model, Ford used the Federal Reserve Board Index of Industrial production as a proxy for economic activity, and gasoline prices as the variable to explain the sale of both domestically produced and imported cars.

My criticism of Ford's model concentrates just on the regression model. In the regression equation, Ford omits the use of variables that have been shown, in the Wharton and Chase Econometric models, to be important determinants of automobile demand. Factors such as the unemployment rate and credit availability are not reflected in Ford's results.

[112] Solution values are values for total new car sales and each of its components: large and small domestic cars and imports

The analysis is based on projected 1980 sales volume rather than on an actual observed value. To test the explanatory and predictive ability of the model, Ford should have demonstrated how well the model works against actual results in 1978 and 1979. In one case, I found that the model predicted sales volume to be 13.8 million units when the actual volume was 11.3 million units, a 20 percent error.

Ford's use of the FRB Index of Industrial Production as a variable to explain the changes in new car sales raises further doubts about the validity of the results. Automobile production accounts for 4.5 percent of the industrial production that is measured by the Index, but other industries such as steel, glass, and rubber which provide a substantial amount of their output to the auto industry are also included in the Index. This gives rise to the question of bias in using the FRB Index which Ford has not addressed.

In conclusion, I feel that the Ford regression not only suffers from a flawed choice of variables for determining new car sales, but the regression itself, which Ford contends is statistically significant, is nothing more than a curve-fitting exercise with little or no economic meaning. It does little of significance in explaining or predicting new car sales or changes in new car demand in the 1979–80 period.

Thus, on the basis of the record developed in investigation TA–201–44, for the reasons outlined above, I find that increased imports are not a substantial cause of this serious injury.

Postscript

Having reached these conclusions, however, I am compelled to add that imports have, nevertheless, been a significant thorn in the industry's side. Indeed, the condition caused by these factors has been grossly exacerbated by the increase in imports. Moreover, my analysis of this case and my concern for the integrity of the international trading system require me to make one final observation about imports. At a time when so important an industry to the United States economy, as is the automobile industry, was experiencing clear and significant trouble, certain foreign automobile manufacturers appreciably expanded their sales in this market.

While, as a general proposition, I heartily embrace the notion of a competitive and so-called "free" international trading system, I also feel that participants in the international trading system, both public and private alike, owe to soverign nations a measure of regard, a certain sensitivity so as to avoid achieving their success at too high a cost to the host society. I have found a disturbing absence of such regard and sensitivity on the part of particular foreign automobile manufacturers.

I do not think it hyperbole to suggest that the United States' market is the most pursued market in the world. As a result, we often fall victim to the excesses of this pursuit. It is a disappointment to me that in my reading section 201 it fails, in this case, to protect our automobile industry from just such an excess at the hands of these manufacturers.

Views of Commissioner Paula Stern

I. Introduction

The automotive industry import relief case comes before the United States International Trade Commission (the Commission) under section 201(b) of the Trade Act of 1974. This law establishes three conditions which must be fulfilled before the Commission can make an affirmative finding and recommend a remedy to the President. They are:

(1) There must be increased imports—either actual or relative to domestic production—of an article into the United States.

(2) The domestic industry producing an article like or directly competitive with the imported one must be seriously injured or threatened with serious injury.

(3) The increased imports must be a substantial cause of the serious injury, or the threat thereof, to the domestic industry making the article in question.

As befits the largest industry to ever appear before the Commission virtually every possible question of legal and economic analysis was at issue.

The following outlines the organization of my views on the issues of this case:

Section II. The Domestic Automotive Industries:
Three Industries. Components producers. Captive imports. Canadian products.
Section III. Imports in the U.S. Market:
Heavy trucks. Light trucks. Passenger automobiles. Determination on heavy trucks.
Section IV. The U.S. Light Truck Industry:
Economic indicators. The tariff change.
Other special considerations.
Determination on light trucks.
Section V. Serious Injury to the Passenger Auto Industry:
Economic indicators. Serious injury finding.
Section VI. Many Causes of Injury: Imports Not a Substantial One:
Standards and framework for substantial cause. Causes of injury.
Section VII. Serious Injury Will Continue: Imports Not a Substantial Cause:
Standards and framework for threat. The near term future and threat determination. The medium term future.

Conclusion

I have determined that the U.S. heavy truck industry does not satisfy the first criterion for an affirmative decision and that although the passenger automobile and light truck industries are seriously injured, increased imports have not been a substantial cause. Therefore my determinations are negative for all three domestic industries.

II. The Domestic Automotive Industries

Analyzing the scope of the industry or industries can have a major impact on the questions of injury and causation. My findings in this case, however, have *not* been critically dependent on the technicalities of defining the industries involved. In general, the judgment on scope depends on the nature of the imported products, the competitive conditions in the domestic market, and the character of U.S. production.

Section 201 requires an examination of "the domestic industry producing an article like or directly competitive with the imported article * * *." In our most recent ruling under section 201, some of the problems in applying this language were aired.[113] In the majority views, we fully described the appropriate methodology and discussed a major tension between legal and economic analysis which bears on all section 201 cases: industry definition is based on precise legal standards which do not necessarily coincide with the popular understanding of a particular industry, *e.g.*, the auto industry. One cannot rely exclusively on general legal prescriptions; the particular facts of each case cannot be ignored

Three Industries

I have concluded that this investigation requires findings with respect to three separate and distinct industries—the firms and facilities devoted to the production of:

(1) all passenger automobiles;

(2) light trucks of under 10,000 pounds gross vehicle weight (GVW);

(3) heavy trucks.

Since our report covers bodies (including cabs and chassis) for automobile trucks, it is also important to point out that I consider domestic producers of these articles to fall within the same general industry definition (either light trucks or heavy trucks) as the final assembled product.

[113] *Mushrooms*, Inv. No. TA–201–43, USITC Pub. No. 1089 (1980). *See* "Views of Chairman Bill Alberger, Vice Chairman Michael Calhoun and Commissioner Paula Stern" at 6–14

I have defined the passenger auto industry in its entirety because there is no justifiable basis on which to segment its scope at this time. Costs of converting production lines from one type of auto to another can be huge. Despite this fact, I have found one passenger auto industry because of the significant shifting and confusion in the market during the present period. Were it not for this shifting, it might have been reasonable to identify a number of constituent industries. As for light trucks, they are inherently distinct from passenger vehicles in their characteristics and principal uses. Finally, heavy trucks are produced separately and aimed for strictly commercial uses.

Components Producers

It is my view that producers of automobile and truck parts are part of the respective domestic automobile and truck industries. The "industry" in a section 201 investigation can be like a pyramid. In this case, at the very top of the pyramid are the domestic producers of the finished product, but also included in the pyramid are all the productive resources (both capital and labor) employed in the production of the article.[114] The primary purpose of section 201 is the protection of domestic resources engaged in the production of goods. This protection extends beyond the corporate structures (and resources employed therein) performing the final work on a product. Thus, for example, I believe that a person employed by an independent firm producing engine parts for new cars is as much a part of the domestic industry as a worker performing the same task in a Ford engine plant or, for that matter, a worker on a Ford final assembly line.

One should not confuse the issue of who is part of the domestic industry with the issue of who may petition for import relief. Clearly, as the U.S. Court of Appeals held in the case of *United Shoe Workers* v. *Bedell* [115], component parts producers would not be proper petitioners in this case because they would not be producers of a like or directly competitive article; automobile parts are not like or directly competitive with finished automobiles.

While the Commission does not have complete data regarding components parts producers, the data we do have show parts producers experiencing difficulties similar to those of the big automobile and truck manufacturers. As suppliers, their production and shipments are tied directly to the demand for parts by the big auto and truck makers. Supplier shipments, profits, and employment have all fallen along with assembled automobile and truck production. In analyzing the domestic industry, I have discussed aggregate data including only components production within firms producing assembled motor vehicles covered by the investigation.[116] Since the imported products are in general not components parts, any injury to domestic components parts producers occur via vehicle imports. Therefore, the findings regarding serious injury and causation based on the data the Commission has assembled apply to components parts producers as well. Absent a petition and investigation on increased imports of motor vehicles parts there is no possibility of relief for components producers separate from relief accorded the final industry.

Captive Imports

Section 201(b)(3) of the Trade Act, which is concerned with what constitutes "the domestic industry," is the only provision in section 201 to address expressly the question of Commission treatment of articles imported by domestic producers. It provides that:

> * * * in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—
>
> (A) may, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production * * *.

The reports of the House Ways and Means Committee and the Senate Finance Committee on the provisions of the bill which became the Trade Act offer no additional guidance.[117]

Section 201(h)(3), in effect, codified prior Commission practice on the subject of "domestic industry." In essence, it suggests that the Commission should, when appropriate, narrow the scope of the domestic industry against which the impact of increased imports is to be measured to those establishments

[114] U.S. auto producers include General Motors Corp. (GM), Ford Motor Co. (Ford), Chrysler Corp. (Chrysler), American Motors Corp. (AMC), and Volkswagen of America, Inc. (VW of America)

[115] 506 F. 2d 174 (D.C. Cir. 1974)

[116] This was done for the following reasons: (1) the Commission lacks complete data on components producers; (2) if such data were available, aggregating much of it with data collected for final producers would be questionable; (3) most crucially, such data are not of critical value to an import relief finding in this case.

[117] See the report of the U.S. House of Representatives, Committee on Ways and Means, Trade Reform Act of 1973, H. Rept. No. 93–571, 93d Cong., 1st Sess. (1973) at 45 (Ways and Means Committee Report); and U.S. Senate Committee on Finance, Trade Reform Act of 1974, S. Rept. No. 93–1298, 93d Cong., 2d Sess. (1974) at 122 (Finance Committee Report)

or parts of an establishment which are actually producing the like or directly competitive article. I believe that Congress used the word "may" rather than "shall" in section 201(b)(A) to

contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products * * *.[121]

to 49 percent in 1977, Canada's share of imports fell to 43 percent in 1979 and further declined to 31 percent in January–June 1980. Imports from West Germany, the only other source of imports of light trucks, steadily declined

passenger automobiles from countries other than Japan, West Germany, and Canada consistently amounted to less than ten percent of total imports in recent years.

U.S. producers' captive imports of

larger light trucks gained a greater share of the total. During 1979 and the first half of 1980 production of such larger trucks fell much more rapidly than production of small light trucks.

Total domestic capacity to produce

Effective August 21, 1980, the U.S. Customs Service corrected a classification error and reclassified them as trucks. Light trucks, which had been classified as truck chassis with an assessed duty of four percent, are now

or parts of an establishment which are actually producing the like or directly competitive article. I believe that Congress used the word "may" rather than "shall" in section 201(b)(A) to provide the Commission with some latitude in considering data relating to the question of injury. Section 201(b)(3) thus permits the Commission, for example, to exclude from aggregate industry profit data, profits in the industry deriving from its import business. Where such data are incapable of being segregated, profits from an import business or from the sale of other products may be included.

I have concluded that the only time at which the Commission should consider adjusting the import statistics would be when the imports are imports in technical terms only, *e.g.*, when the domestic products have been exported for certain minor finishing work and then reimported. Motor vehicles assembled in Canada largely from U.S.-made parts do not appear to fall into this category. Such vehicles are at least 40 percent Canadian in value.

Canadian Products

In their hearing testimony of briefs, the International Union, United Automobile Workers (UAW) and Ford Motor Co. (Ford) argued that imports from Canada by U.S. motor vehicle manufacturers should not be treated as imports in view of the Automotive Products Trade Act of 1965 (APTA), the U.S.-Canadian Automotive Agreement [118], and the the integrated U.S.-Canadian market. It is my view that the automobiles and trucks imported by U.S. producers from Canada and other countries are also "imports" for the purpose of this investigation. Nothing in section 201, the APTA, the Agreement, or the General Agreement on Tariffs and Trade (GATT) suggest otherwise.

The APTA—APTA section 301 clearly permits either party to invoke escape clause import relief.[119]

The GATT—The concept of "increased imports" is taken from Article XIX, the GATT's so-called "escape clause." [120] The principal clause of Article XIX provides that certain protection action can be taken—

(i)f, as a result of unforseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products * * *. [121]

Because the APTA authorized the President to remove all customs duties on specified automotive products from Canada alone, a waiver of most-favored-nation (MFN) obligations under GATT Article I was necessary. This waiver does not reach the question of exceptions from escape clause actions under Article XIX. If the United States were to conclude that Canadian or other captive imports were not imports and were to excluse them from a remedy on that basis, such action might be judged as discriminatory within the meaning of GATT. The GATT requires that any remedy apply to all imports from al MFN countries on a nondiscriminatory basis. The exclusion from "imports" of most of the imports from a given country, such as Canada, and the imposition of import restrictions on all other imports would appear to constitute an action discriminating in favor of one MFN country and against other MFN countries.

III. Imports in the U.S. Market

Heavy Trucks

Imports of trucks over 10,000 pounds GVW declined very irregularly from 36,000 units in 1975 to 14,600 in 1979. First-half year statistics for 1980 are more than ten percent below those of the similar period a year earlier. The ratio of imports to U.S. production likewise fell irregularly from 17 percent (1975) to 8 percent (1979), although it was up by four percentage points during the first half of 1980.

Light Trucks

U.S. imports of light trucks and cab/chassis more than doubled between 1975 and 1978, rising from nearly 375,000 units to nearly 860,000 units. In 1979 imports of light trucks declined to about 804,000 units and continued to decline in the first six months of 1980 by more than 3.5 percent from the corresponding period in 1979.

Japan and Canada have been the dominant suppliers of light truck and cab/chassis imports, accounting for more than 95 percent of the total in recent years. Imports from Japan rose rapidly between 1975 and 1979; its share of total imports ranged from a low of 47 percent in 1977 to a high of 55 percent in 1979. In the first six months of 1980, however, Japan's share of light trucks and cab/chassis rose to 67 percent. After increasing from 41 percent in 1975 to 49 percent in 1977, Canada's share of imports fell to 43 percent in 1979 and further declined to 31 percent in January–June 1980. Imports from West Germany, the only other source of imports of light trucks, steadily declined relative to total imports during 1975–1979.[122]

U.S. producers' captive imports consistently accounted for nearly 70 percent of imports of light trucks and cab/chassis during 1975–1979. All light trucks imported from Canada were captive imports of U.S. producers, and from 40 to 50 percent of light truck imports from Japan were captive as well.

Imports of light trucks also increased relative to production. Imports of light trucks and cab/chassis increased from 19 percent of U.S. production in 1975 to 29 percent in 1979 and then grew markedly to 62.5 percent in January–June 1980.

Passenger Automobiles

Imports of passenger automobiles grew steadily by 43 percent, from slightly more than two million units in 1975 to more than 2.9 million units in 1978. In 1979, car imports fell by about four percent to 2.8 million units, primarily as a result of sharp reduction in imports from Canada. In January–June 1980, auto imports increased thirteen percent from the corresponding period of 1979; imports from Canada, however, which had declined from 850,000 units in 1977 to 678,000 in 1979, continued to decline.

Japan, the leading source of U.S. imports in recent years, has seen its share of imports grow from 34 percent in 1975 to 57 percent in 1979 and to 62 percent in January–June 1980. Much of Japan's growth has been at the expense of other countries' shares of U.S. imports. Canadian import penetration declined steadily from 36 percent in 1975 to 24 percent in 1979 and West Germany's share declined irregularly from 17 percent to 11 percent in the same period.[123] The combined imports of

[118] Agreement Concerning Automotive Products Between the Government of the United States and the Government of Canada, 17 UST 1372 (1965) (the Agreement). It was implemented by the APTA.

[119] 19 U.S.C. 2021.

[120] *Done* October 30, 1947, 61 Stat. Pt. 5, T.I.A.S. No. 1700, 55 U.N.T.S. 187.

[121] GATT Art. XIX, para. 1(a).

[122] Including as imports Volkswagen light trucks that are assembled in a free-trade zone in Pennsylvania results in nearly a doubling of the share of imports accounted for by West Germany in January–June 1980 in comparison to the like period of 1979. While they are only 30 percent, by value, of foreign origin, the U.S. Customs Service classifies them as imports from West Germany.

[123] VW of America's imports into U.S. customs territory from the free-trade zone at New Stanton, Pa., are not included in the Commission's data as imports since 70 percent of the value of the vehicle is added in the United States (However, the Customs Service treats such vehicles as imports from West Germany.) Inclusion of VW's New Stanton production in the Commission's import data gives West Germany an increasing share of U.S. imports from 1978 through January–June 1980, when West Germany accounted for 17 percent of the total.

passenger automobiles from countries other than Japan, West Germany, and Canada consistently amounted to less than ten percent of total imports in recent years.

U.S. producers' captive imports of automobiles accounted for a significant share of total imports of automobiles, although the share has steadily declined since 1975. As a share of total automobile imports the combined imports of GM, Ford, Chrysler and AMC declined from 41 percent in 1975 to 28 percent in 1979 and further declined to 27 percent in January–June 1980.

Determination on Heavy Trucks

Heavy truck imports cannot possibly be causing injury to the domestic industry within the meaning of the Act. No party to this investigation claimed import-related injury to the domestic heavy truck industry. Indeed, the section 201 requisite that imports be increasing has not been satisfied in a meaningful manner.[124] Therefore, I have made a negative determination with respect to imports of heavy trucks. By contrast, U.S. imports of light trucks and automobiles have been increasing in both absolute and relative terms.

IV. The U.S. Light Truck Industry

During the last two years the light truck industry has sustained serious injury but imports have not been a substantial cause of this injury. In any event, a recent tariff reclassification has mooted much of this discussion because it is so significant as to remove any possibility that light trucks might be imported into the United States in such increased quantities as to be or threaten to become a substantial cause of serious injury to the domestic light truck industry.

Economic Indicators [125]

Domestic production of light trucks increased from two million units in 1975 to 3.3 million units in 1978, but declined to 2.7 million units in 1979. The declining trend in light truck production continued in the first half to 1980, when production fell of 683,000 units, a decrease of 60 percent from the corresponding period in 1979. Domestic production of light trucks weighing over 6,000 pounds remained higher than production of trucks weighing less than 6,000 pounds for this period. However, as total domestic production of light trucks increased during 1975–1978, production of the larger light trucks gained a greater share of the total. During 1979 and the first half of 1980 production of such larger trucks fell much more rapidly than production of small light trucks.

Total domestic capacity to produce light trucks increased steadily from 2.7 million units in 1975 to 3.2 million units in 1979. From January–June 1979 to January–June 1980, however, domestic capacity to produce light trucks declined from 1.8 million units to 1.6 million units. Relative to total U.S. light truck capacity, the capacities for producing light trucks over and under 6,000 pounds did not change appreciably.

Domestic capacity utilization for light trucks increased from 74 percent in 1975 to over 100 percent in 1977 and 1978 and fell to 87 percent in 1979. In the first half of 1980 it dropped precipitously from 94 percent (January–June 1979) to 42 percent.

Inventories of domestic light trucks increased steadily from 372,000 units at the end of 1975 to 638,000 units at year-end 1979, but fell to 465,000 units as of June 30, 1980. As a percentage of annual shipments, inventories of U.S.-produced lighty trucks increased markedly in 1979 and again in 1980. In 1979 the ratio of inventories of light trucks to annual shipments increased to 25 percent from an average of about 18 percent for the previous four years. It increased again in the first half of 1980 to 35 percent.[126]

Making price comparisons for automotive vehicles is complicated by the myriad of differences in their physical and subjective attributes and thousands of different product configurations. However, careful examination of the adjusted Japanese export price index and the U.S. producer price index for light trucks suggests that the average price of imported trucks fell substantially relative to the average domestic price during 1979.

In the last two years, the rapid decline in sales in this multibillion dollar industry, which requires high production runs to cover large fixed costs, indicates that the light truck industry suffered from serious injury in 1979 and the first half of 1980.

The Tariff Change

Prior to August 21, 1980, most light trucks entered the United States unfinished as chassis under TSUS item 692.20 rather than as trucks under TSUS item 692.02. Such trucks lacked only their load beds and could be quickly assembled into completed light trucks. Effective August 21, 1980, the U.S. Customs Service corrected a classification error and reclassified them as trucks. Light trucks, which had been classified as truck chassis with an assessed duty of four percent, are now dutiable at 25 percent.

Other Special Considerations

One difference between the automobile and light truck markets is that almost 50 percent of the imports of light trucks from Japan (1979) are captive imports sold by domestic producers under their own brand name. (By comparison, only about ten percent of non-Canadian imports of automobiles are captive imports.) Until November 1979, there was no domestic production of small pickup trucks. However, U.S. production of small pickups now imported by GM, Ford, and Nissan is scheduled to commence within the next few years.

The import relief statute is not designed to protect U.S. industries from self-inflicted injury nor is it intended to interfere with efforts of the industry to adjust to import competition.[127] The strategy for development of U.S. production followed by Honda and Volkswagen [128] suggests that as GM and Ford switch to domestic production of small pickups, continued captive imports will be vital if they are to maintain a full selection and develop the market in an orderly fashion. Import relief could interfere with this process. Furthermore, since U.S. producers bring in half the imports of small pickups and enjoy a more extensive dealer network than do non-captive imports, U.S. producers can already control the transition to domestic production of small pickup trucks.

Determination on Light Trucks

The decline in overall demand, exacerbated by a more rapid fall in larger light truck sales, reflected phenomena similar to those we shall observe and discuss in Sections VI and VII. These considerations have led me to conclude that even if there had not been a tariff reclassification, imports would neither be a substantial cause of serious injury to the light truck industry, nor a threat of such.

[124] I shall, therefore, not give further consideration to the heavy truck industry in these views.

[125] A full discussion of the standards and framework for my determinations in the investigation is included in my examination of the passenger auto industry which follows.

[126] Data for employment and profits cannot be segregated from those for the automotive industry. These important aggregate indicators will be discussed in Section VI.

[127] S. Rept. No. 93–1298, 93d Cong., 2d Sess. (1974) at 122. The Senate Finance Committee Report states:

The escape clause is not intended to protect industries which fail to help themselves become more competitive through reasonable research and investment efforts, steps to improve productivity and other measures that competitive industries must continually undertake.

[128] *See* briefs of Honda Motor Co., Ltd. and VW of America.

V. Serious Injury to the Passenger Automobile Industry

Section 201(b)(2)(A) of the Trade Act provides guidelines for determining whether a domestic industry is being

unavailability of parts. Nor is there any indication of resource reallocation to foreign subsidiaries or production of other products.

Total Capacity—Total capacity [129] to

Employment of production workers shows a similar trend. Relative to the end of 1978, there were 300,000 unemployed in June 1980. While 29 percent unemployment is large, previous downturns have been equally disastrous

misleading. Such problems are minimized when many indicators are used to depict the state of the industry. There was little change in output per worker per hour from 1975 to 1978, but a

imports. As made clear in section 201(b)(4), the requisite causal linkage is strong.

"Substantial cause" is defined to mean "a cause which is important and

affected by recession, there is a correlation between ruling out recession as a more important cause and imports rising absolutely or relatively in the declining market.[144] In my view, the

V. Serious Injury to the Passenger Automobile Industry

Section 201(b)(2)(A) of the Trade Act provides guidelines for determining whether a domestic industry is being seriously injured. The Commission must consider, among other economic factors, whether there is a significant idling of productive facilities in the industry, whether a significant number of firms operate at a reasonable level of profit, and whether there is significant unemployment or underemployment within the industry. Because the Act specifically avoids limiting the Commission to just these criteria, I have also considered all other relevant economic indicators on which the Commission has been able to compile data. As a consequence of the huge scale of the industry and the varying but extensive degree of integration of operations, it has not been possible to compile all data on a strictly comparable basis. I have chosen the best available sources and have endeavored to note any significant limitations.

Economic Indicators

In the aggregate, most of the indices of domestic automobile producers' performance show improvement from 1975 through 1978 and then rapid declines which, based on unofficial data, lasted through the third quarter of 1980. When the aggregate data are broken down by vehicle size, striking differences emerge. Economic performance of compacts and subcompacts improved after 1978, albeit at slower rates. However, this strengthened performance was more than offset by the sharp drop in all measures of economic health of the intermediate and full-size sectors.

U.S. Production—U.S. production of automobiles grew from 6.6 million vehicles in 1975 to 9.1 million in 1978 before falling off to 8.4 million in 1979. Figures for the first half of 1980 compared to the same period one year earlier show a further decline of 29 percent. After growing irregularly from 2.4 million units (1975) to 2.6 million (1977), production of small cars (subcompacts and compacts) jumped to 3.7 million (1979). Large (intermediate and full-size) car production peaked at 6.5 million in 1977 and fell sharply to 4.7 million in 1979. For the first half of 1980, these trends continued as small car production grew slightly and that of large cars fell a staggering 48 percent from the same period of 1979.

These dismal trends do not appear to be significantly biased by unusual circumstances such as strikes or unavailability of parts. Nor is there any indication of resource reallocation to foreign subsidiaries or production of other products.

Total Capacity—Total capacity [129] to produce cars fluctuated slightly from January 1975 to June 1980. A small increase of one percent from 1975 to 1977 was offset by a slightly larger decline from 1977 to 1979. The latter was attributable to time lost in plant conversions. However, a further small decline in the first half of 1980 reflects closings of large car plants by Ford and Chrysler. Domestic small car capacity grew 28 percent from 1975 to 1979 before levelling off in the first half of 1980. On a unit-for-unit basis, the growth of capacity to produce small cars has substituted for declines in capacity for large car production.[130]

Capacity Utilization—Utilization of total domestic capacity for production of autos increased from 62 percent in 1975 to 86 percent in 1978 before declining to 80 percent in 1979. From a January–June 1979 figure of 91 percent, it fell to 67 percent from January–June 1980. For small cars, however, utilization grew from 72 percent (1977) to 80 percent (1979) and was 84 percent for January–June 1980 compared to a slightly smaller figure one year earlier. Capacity utilization for large cars dropped from 91 percent (1977) to 79 percent (1979). First-half year figures dramatize the sudden collapse of large car production—down in one year from 79 percent (1979) to 53 percent (1980).

Inventories—Inventories as a percentage of annual shipments generally vary inversely with economic health.[131] After falling from 21 percent in 1975 to 17 percent in 1976, the ratio grew to 20 percent in 1979 and 23 percent for the first half of 1979. Opposing this trend, the ratio of small car inventories to shipments declined; after one year of stability, it steadily fell from 23 percent in 1976 to 17 percent in 1979.

Employment—Total employment grew from 793,000 workers in 1975 to more than one million in 1978, and then declined by three percent to 972,000 in 1979. The first half of 1980 saw a further decline by 22 percent from the same period of 1979 to about 804,000.[132]

Employment of production workers shows a similar trend. Relative to the end of 1978, there were 300,000 unemployed in June 1980. While 29 percent unemployment is large, previous downturns have been equally disastrous for workers. Similar sharp declines form previous peaks were recorded in 1969–1970 (27 percent) and 1973–1975 (25 percent).

The grim unemployment situation is exacerbated by underemployment shown in the average weekly hours per worker which dropped below 40 hours for the first time in five years in the first half of 1980. Average weekly overtime and average weekly hours per worker grew from 1975 to 1977 before declining through 1979. Weekly overtime still averages 2.05 hours per worker. This may reflect use of overtime in production areas with bottlenecks and restraint by the firms in immediate rehiring of laid-off workers when prospects for keeping them are not good.

Wages—Average hourly compensation of auto workers grew at an annual rate of more than nine percent from 1975 to January–June 1980, slightly faster than that for all manufacturing workers. The average gross earnings of $9.47 (compared to $7.07 for all manufacturing workers) reflect the rapid growth of wages in years prior to 1977; over the last two decades, the UAW successfully negotiated large wage increases augmented by cost-of-living allowances (COLA) provisions which have tended to gurantee the real income of auto workers.[133] Fringe benefits and significant supplemental funds for laid-off workers supported by the producers have further boosted average total compensation to auto workers to $16.55 per hour.[134]

Productivity—Because of varying labor input requirements, changing product mix of the producers, and wide differences in vertical integration among the firms in the industry, a single aggregate productivity measure may be

[129] Capacity figures are subject to a number of reservations. *See* accompanying Report at A-32.

[130] Most of this growth has been concentrated in the previously neglected [by relative standards] subcompact sector.

[131] In general, inventories are held by dealers, grow with brisk sales, and run down when sales shrink or credit costs rise.

[132] Corporate statistics are not broken out on the large number of employees of the auto manufacturers engaged in the production of auto parts, components, and trucks. The data given for this indicator are, therefore, industry aggregates for establishments producting assembled motor vehicles.

[133] Since 1977, the growth of auto wages has been slower than average growth of all manufacturing worker's wages.

[134] Average total compensation is the sum of average hourly compensation paid to auto-workers plus average non-salary fringe benefits such as employer social security contributions, etc., plus average supplement benefit contributions. Each of these is quite distinct.

Under the supplemental benefit program, manufacturers contribute at specified rates to the supplemental fund until the target level based on current employment is reached. When no benefits are paid out and the fund is full, the employers' contributions drop to zero. Significant and continued unemployment over the last two years has steadily tapped the funds and increased the employers' contributions—at a time when companies could least afford it.

misleading. Such problems are minimized when many indicators are used to depict the state of the industry. There was little change in output per worker per hour from 1975 to 1978, but a substantial drop in the first half of 1980. That decline is indicative of the large inefficiencies incurred in operating auto plants below optimum level.

Profits—The financial performance of U.S. producers show drastic changes in recent years.[135] Aggregate net operating profit of U.S. producers on domestic operations rose by over 350 percent from $1.3 billion in recession-year 1975 to $6.1 billion in 1977, declined moderately to $5.6 billion in 1978, and then fell precipitously by 76 percent to $1.3 billion in 1979. The first half of 1980 saw industry losses of $2.9 billion compared with a profit of $2.7 billion in the first half of 1979. The current year will be the first in recent history in which the industry shows aggregate losses. Volkswagen of American is the exception to the rule; its performance improved from 1978 when it incurred large startup costs through the first half of 1980 when it was the lone U.S. producer reporting profits.

Conclusion

There is no question that the domestic auto industry is seriously injured. The significant idling and underutilization of plant facilities, the inability of all firms except one to make any profits, and significant unemployment and underemployment paint a grim picture. By historical standards, the economic indicators during the present downturn are unique in two respects: improving performance for the small car sector and staggering losses for the industry as a whole.[136]

VI. Many Causes of Injury: Imports not a Substantial One

Although there is serious injury present in the passenger car industry, I have determined that increased imports do not constisute a substantial cause of the existing serious injury.

Standards and Framework

For an affirmative determination, section 201(b)(1) of the Trade Act of 1974 [137] requires that serious injury or threat of serious injury found in an import relief investigation be substantially caused by increasing imports. As made clear in section 201(b)(4), the requisite causal linkage is strong.

"Substantial cause" is defined to mean "a cause which is important and not less than any other cause." [138] This dual test has been consistently applied in Commission determinations since 1975. If any cause other than imports is found to be more important than imports, an affirmative determination is unwarranted. Furthermore, were there to be a host of causes of equal significance, each of which was not important standing alone, the law also directs a negative finding.

Alternate Causes—There is scant legislative direction on which alternative causes should be weighed against increased imports.

The senate Finance Committee Report does direct the Commission to examine the injury attributable to increased imports or of other causes, "such as change in technology or in consumer tastes, domestic competition from substitute products, plant obsolescence, or poor management." [139] By not shackling the Commission to an approach so finely detailed as to be unworkable in all potential cases, the statute gives the Commission maximum flexibility and discretion. Within these broad boundaries lies the responsibility for the Commission's determination to be "clear, well documented, and * * * decisive." [140]

An analysis of commission precedent is enlightening only to the extent that it confirms the case-by-case latitude of the ITC. Each party to the present investigation offered its own selection and interpretation of past cases. Some decisions have found causes of injury independent of and greater than increased imports. These have included changes in consumer taste,[141] introduction of a new technology causing demand to shift to a different product,[142] and oversupply of the domestic product accompanied by declining prices.[143]

In affirmative cases, other causes have often been considered and eliminated as less important than imports for various reasons. In affirmative determinations in industries affected by recession, there is a correlation between ruling out recession as a more important cause and imports rising absolutely or relatively in the declining market.[144] In my view, the ability of imports to perform relatively better than the domestic products in a downturn demands explanation; it cannot *ipso facto* establish that the imports are an important cause of serious injury as great as any other cause.[145]

Ford argued in its submissions that once the Commission finds imports to be among the causes of serious injury, it should stop its inquiry there and not consider the reasons for the increased imports as separate causes. Ford stated that there will always be reasons for an increase in imports. However, in some investigations, as noted above, the Commission has considered as causes of serious injury factors that could arguably have been treated as explanations of the increase in imports—such as shifts in consumer tastes or rising fuel prices. In other cases the Commission has declined to consider what could have been-termed competing causes by considering them instead to be conditions of competition irrelevant to cause.

Never before in the history of section 201 has the issue of how and when to break down causes been so sharply joined. This case gives the Commission the opportunity to be as explicit as possible in its analytic framework and standards. My own reasoning follows.

Shift in Demand—The statute provides no guidance in dealing with shifts in consumer tastes as a cause of injury. The legislative history touches directly on the issue only once in the Senate Finance Committee's discussion of the factors that the Commission should consider with respect to threat of serious injury. It states that each indication of serious injury should be analyzed to determine whether it is a result of increased imports or one of a variety of other causes, including "changes in * * * consumers' tastes (or) domestic competition from substitute products." [146] This is a clear signal that a shift in demand may be deemed a cause alternative to imports. But it offers no

[135] The operations of U.S. producers are so highly integrated with their Canadian operations that only estimates compiled on the basis of differing arbitrary allocation methods are available.

[136] The big three (GM, Ford, Chrysler) have never before all reported losses at the same time as they did for the first nine months of 1980.

[137] 19 U.S.C. 2251(b)(1).

[138] S. Rept. No. 93-1298, 93d Cong., 2d Sess. (1974) at 119.

[139] S. Rept. No. 93-1298, 93d Cong., 2d Sess. (1974) at 121.

[140] *Id.*, at 121-22.

[141] *Slide Fasteners*, Inv. No. TA-201-6, USITC Pub. No. 757 (1975) at 51 and *Wrapper Tobacco*, Inv. No. TA-201-3, USITC Pub. No. 746 (1975) at 8-9.

[142] *Low Carbon Ferrochromium*, Inv. No. TA-201-20, USITC Pub. No. 746 (1975) at 8-9.

[143] *Certain Fish*, Inv. No. TA-201-41 (1980); *Live Cattle*, Inv. No. TA-201-25, USITC Pub. No. 834 (1977) at 6.

[144] Ford Post-Hearing Brief at 27.

[145] Findings on such other questions as the scope of the industry can also have an impact on the causal analysis. In *Mushrooms*, Inv. No. TA-201-42, USITC Pub. No. 1089 (1980), the imported product was canned while a substantial portion of the domestic industry was devoted to marketing fresh mushrooms. Had the two been deemed separate industries, the determination might well have been different.

[146] This consideration accounts in part for the hotly contested issue of how many industries were the subject of this investigation.

help on the question of whether the shift can occur within the industry and still be a separate cause.

In past import relief investigations, shift in demand has tended to be discussed by the Commission where it precedent for considering a shift in consumer taste or demand to a product within the scope of an industry to be an alternative, greater cause of injury than increased imports. However, the Commission has sufficient discretion to

Review of Commission precedent, the arguments of the parties to this investigation, and legislative history revealed that this important conceptual question has never been directly reached in prior Commission decisions

productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant underemployment within the industry" are among the factors that the Commission must consider. These

product means that any influence on the industry's performance has a significant feedback on national income which, in turn, further affects auto sales. Because the industry tends to lead most recessions, independent modeling of

have made the criteria more specific on the issues of causation that we might have applied in this case and still have an import relief framework applicable to the full range of industries present in the world's largest economy.[159] Each

help on the question of whether the shift can occur within the industry and still be a separate cause.

In past import relief investigations, shift in demand has tended to be discussed by the Commission where it found an independent "greater cause" than imports (in negative determinations) [147] or where it used the process of elimination to establish that imports were a greater cause of injury than a list of alternate factors, including change in tastes (in affirmative cases). [148] In other investigations, the Commission avoided treating the shift in demand as an alternative cause. [149]

On the one hand, Honda argued that the Commission has explicitly considered intra-industry shifts in negative determinations. [150] Neither of the cases cited, however, is particularly helpful in analyzing the automobile investigation. [151] There is no clear precedent for considering a shift in consumer taste or demand to a product within the scope of an industry to be an alternative, greater cause of injury than increased imports. However, the Commission has sufficient discretion to do so if supported by the facts.

On the other hand, Ford argued that change in consumer tastes must be a shift to a product outside the scope of the domestic industry before it can be considered as an alternative to increased imports as a cause of serious injury. [152] If true, this means that the definition of industry could be crucial, depending on the relative importance of the shift. [153]

In the present case the Commission defined the scope of the passenger auto industry in the broadest sense. Despite significant differences in plant facilities for different products and high costs of converting between product lines, any further breakdown would have been arbitrary and obscured fundamental developments of the last decade. Similarly, it would be equally arbitrary to exclude a shift in consumer tastes as a cause worthy of separate consideration simply on the technicality of how the industry has been defined. I can see only one valid reservation to the principle of treating shift in demand within an industry as a separate cause: a shift in consumer tastes that is *per se* a shift in demand toward imports should not be treated as a cause of injury separate from those imports.

Cyclical Industries—The historical cyclicality of the auto industry also raised a serious conceptual problem related to both injury and cause. Should a "normal" business cycle decline in overall demand be factored out of the total injury picture? Should only injury beyond that expected be assessed in determining serious injury and causation? The questions cut both ways. By factoring out normal declines, it becomes more difficult for a cyclical industry to demonstrate serious injury; yet, it is less difficult to show substantial causation because an important non-import source of injury has been removed from the picture. The opposite effects occur if you factor in normal declines.

Review of Commission precedent, the arguments of the parties to this investigation, and legislative history revealed that this important conceptual question has never been directly reached in prior Commission decisions on recession-beset industries. Advice elicited from interested parties in questioning at the hearing seemed to be that "cyclical industries should receive no special treatment." But that dictum begs the question as to which treatment is "special"—factoring in or factoring out normal cyclical behavior.

Commission practice, although not precisely on point and certainly not binding, supports the discretion of the Commission to analyze in any way it deems best the basis of industry performance against which to measure injury. [154]

Section 201(b)(2) directs the Commission to "take into account all economic factors which it considers relevant * * *." This would tend to support the argument that the Commission may analyze the impact of business cycles in any way it deems appropriate, including isolating their effects. However, section 201(b)(2)(A) states that, "with respect to serious injury, the significant idling of

[147] S. Rept. No. 93-1298, 93d Cong., 2d Sess. (1974) at 121.

[148] Thus, in *Slide Fasteners* and *Wrapper Tobacco*, changes in consumer tastes were found to be greater causes of injury than increased imports. In both cases, the shift was to a product outside the scope of the industry being investigated. *See* Inv. No. TA-201-6, USITC Pub. No. 757 (1975) at 51, and Inv. No. TA-201-3, USITC Pub. No. 746 (1975) at 8-9, respectively. In *Footwear*, for example, the inability to accept and respond to style changes was cited as a possible cause of injury. *See* Inv. No. TA-201-18, USITC Pub. No. 799 (1977) at 13. In *Mushrooms* (1976), diversion of tastes from canned to fresh mushrooms was considered to be a lesser cause than increased imports. *See* Inv. No. TA-201-10, USITC Pub. No. 761 (1976) at 13-14. In both of these investigations, the shift was to a different product.

[149] For example, in *Sugar*, the shift in demand from natural sugars to corn sweeteners might have seemed a more important cause of injury than increased imports. However, the Commission considered corn sweeteners as part of the domestic industry and found affirmatively. *See* Inv. No. TA-201-16, USITC Pub. No. 807 (1977) at 161-62. Similarly, in *Iron Blue Pigments* the Commission determined in its definition of the industry that there was no commercial substitute to the like or directly competitive domestic product. *See Ferricyanide and Ferrocyanide Pigments (Iron Blue Pigments)*, Inv. No. TA-201-11, USITC Pub. No. 767 (1976). In *Mushrooms* (1976) the shift from canned to fresh mushrooms was not treated as a definitional problem, but once serious injury or threat thereof was found, the shift was absorbed as an industry condition irrelevant to substantial cause. The implication of this class of cases may be that shift in demand within the industry should not be considered a competing cause of serious injury. *Sugar*, in particular, seems analogous to the automobile case. However, the views of individual Commissioners tended to conclude that the shift to corn sweeteners, particularly in industrial applications, was less important than imports as a cause.

[150] Honda Post-Hearing Brief at 14-16.

[151] In *Live Cattle*, it is true that there was an increase in demand for the kind of beef and veal suitable for making ground beef and that this demand favored imported beef disproportionately. However, imports had declined relative to the increase in consumption, even though they had increased in absolute terms. The determination rested on a finding that imports were of "minor impact in comparison with the significant increase in supplies resulting from increased production." Honda's argument with respect to *Fishing Tackle* rests on analysis of one of the four separate industries identified by the Commission. The negative determination cited turned on a finding that the industry was not seriously injured. *See* Inv. No. TA-201-25, USITC Pub. No. 834 (1977) and Inv. No. TA-201-34, USITC Pub. No. 917 (1978), respectively.

[152] *e.g.*, Ford Pre-Hearing Brief at 29.

[153] This consideration accounts in part for the hotly contested issue of how many industries were the subject of this investigation.

[154] For example, in *Birch Plywood Doorskins*, Inv. No. TA-201-1, USITC Pub. No. 743 (1975), Commissioner Minchew considered the cyclical downturn in the industry as part of the norm against which injury was to be measured. The rest of the Commission, however, looked at the cyclical drop in demand as part of the injury and then weighed the relative importance of causes. IN *Bolts, Nuts, and Screws of Iron and Steel*, Inv. No. TA-201-2, USITC Pub. No. 747 (1975) at 11, Chairman Leonard stated "'present' injury must be found by examining a time span which discounts brief and transitory episodes in the performance of the domestic industry and established a realistic performance for the industry in the present." Chairman Leonard made a similar statement in *Stainless Steel and Alloy Tool Steel*, Inv. No. TA-201-5, USITC Pub. No. 756 (1976) at 72. In contrast, also in the *Stainless Steel and Alloy Tool Steel* investigation, Vice Chairman Minchew noted at 47, "The two principal causes of injury to the domestic industry are increased imports and the cyclical nature of the industry." Although he concluded imports to be the most important cause of serious injury, Vice Chairman Minchew clearly analyzed cyclical downturn as part of the serious injury. The variety of approaches used by Commissioners is further emphasized by the separate views of Commissioner Ablondi in the *Stainless Steel and Alloy Tool Steel* investigation when, in selecting an appropriate period within which to measure injury, he states that, "it has been the established practice of the Commission under section 301 of the Trade Expansion Act as well as under section 201 of the 1974 Trade Act to analyze imports over a period of time of sufficient length to establish trends and thereby put aberrant or temporary conditions into proper perspective." USITC Pub. No. 756 at 53 (citing *Ceramic Table and Kitchen Articles, Including Dinnerware*, TEA-I-22, TC Pub. 406 (1971); *Bagatelle, Billiard, and Pool Balls*, TEA-I-19, TC Pub. 347 (1971); *Nonrubber Footwear*, TEA-I-18, TC Pub. 359 (1971) at 10-11 (Commissioners Clubb and Moore) and 37 (Commissioner Leonard).

productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant underemployment within the industry" are among the factors that the Commission must consider. These appear to be the types of negative indices apparent in business cycle downturns. Thus, it could be argued that section 201(b)(2)(A) envisions no elimination of injury of one sort (*i.e.*, that caused by normal business cycle downturn) from an analysis of whether the industry in question is seriously injured. It is unlikely that Congress intended to make relief more difficult to obtain for industries beset by repetitive cyclical downturns.

Because each recession is individual in its timing, severity and expected recovery, choosing a standard can be hazardous. [155] I have, therefore, decided to consider injury from all sources including normal recessions in order to avoid tampering with the objective economic indicators which the Commission, as well as private industry, relies on for measuring economic health. [156]

Mathematical Tests—No previous case before the Commission has been the subject of so much sophisticated econometric modeling and market analysis. Despite the conflicting testimony, replies and counter-replies, I have found that most parties on all sides made impressive attempts to provide the Commission with scientific analysis. The results of the various presentations were critically dependent on their assumptions and could not be used to resolve which assumptions in fact were correct, *e.g.*, which factors should be treated as separate causes and which merely as explanations of how imports caused injury? Which base period or year should constitute a proper reference in a cyclical industry? Furthermore, the fact that the domestic automotive industry and its components parts suppliers constitute over five percent of the U.S. gross national product means that any influence on the industry's performance has a significant feedback on national income which, in turn, further affects auto sales. Because the industry tends to lead most recessions, independent modeling of recessionary influences on the industry is theoretically impossible. In a mathematical sense, there are very few truly independent variables here. And because many of the factors important to an understanding of the industry operate simultaneously, any econometric separation of their independent effects becomes a dubious effort. The Senate Finance Committee explicitly recognized this situation:

> The Committee recognized that "weighing causes in a dynamic economy is not always possible. It is not intended that a mathematical test be applied by the Commission. The Commissioners will have to assure themselves that imports represent a substantial cause or threat of injury, and not just one of a multitude of equal causes or threats of injury. It is not intended that the escape clause criteria go from one extreme of excessive rigidity to complete laxity. An industry must be seriously injured or threatened by an absolute increase in imports, and the imports must be deemed to be a substantial cause of the injury before an affirmative determintion should be made. [157]

While these analytical tools are helpful in clarifying the issues and dimensions of the case, their shortcomings prevented me from relying on them for pivotal decisions.

Section 201 and the Case-by-Case Approach—All relevant economic factors must be considered, but the question remains—how? Commission precedent suggests that the answer is to be found in the economic rather than the legal sphere.

The fact that when viewed narrowly, precedents may be cited for viewing particular factors either as causes separate from or as explanations of increasing imports should not be disturbing. [158] The import relief statute is the broadest jurisdiction assigned to the Commission. The impact of all imports on entire domestic industries is examined. Unlike countervailing duty and dumping cases, there is no well-defined measurable unfair price margin to examine. Section 201 is necessarily broad. It is doubtful that it is theoretically possible for Congress to have made the criteria more specific on the issues of causation that we might have applied in this case and still have an import relief framework applicable to the full range of industries present in the world's largest economy. [159] Each industry has its own structure and logic. Each case requires the qualitative judgment and intelligence of the Commissioners who must reach a determination. Were these statements not true, the Commissioner's deliberations might better be replaced by computer simulations. Though I am not without self-interest in this matter, I feel there is no mechanical alternative that could give better results than case-by-case analysis.

Causes of Injury

I have attempted to concentrate on those phenomena that are relatively independent. To the extent that an increase in imports seemed to be merely incidental to a far more fundamental phenomenon, I have decided to analyze that fundamental phenomenon as a separate cause. Under the rubric "imports as an independent cause," I shall treat those sales which imports have captured in head-on competition with domestic autos due to attributes such as price, design, and quality that attract customers.

A full understanding of the industry's problems necessitates an examination of a complex web of events. The injury sustained by the automobile industry can best be explained by analyzing four fundamental phenomena:

(1) A general decline in demand due to rapidly increasing costs of car ownership and operation (added to normal—if not precisely predictable—recessionary effects on consumer income and confidence);

(2) A seemingly permanent shift in consumer tastes to relatively smaller, more fuel-efficient autos;

(3) A substantially negative accounting impact on profits resulting from huge investments to transform the industry; and

(4) Success of imports in head-to-head competition.

The decline in demand and shift in demand are more important causes of injury to the auto industry than increasing imports, *per se*. I have not been able to evaluate fully the relative significance of the massive capital costs

[155] Indeed, the National Bureau of Economic Research has been at the task for many decades without any definitive conclusions.

[156] Congress has recognized that the relative weighing of alternate causes of injury is unquestionably subjective. *See* S. Rept. No. 93-1298, 93d Cong., 2d Sess. (1974) at 120. Professor J. Jackson in *World Trade and the Law of the GATT* (Section 23.3, p. 561, 1969) stated that "serious" investigation of the term serious injury "has occurred only once in practice"—the *Hatters' Fur* Case (1950). The GATT Working Party appointed to investigate the dispute found that even serious injury, no less its causation, "is essentially a matter of economic and social judgment involving a considerable subjective element." (Report on Withdrawal by the United States of a Tariff Concession under Article XIX of the GATT. Geneva, 1951, at 22.)

[157] S. Rept. No. 93-1298, 93rd Cong., 2d Sess. (1974) at 120-21.

[158] The legal doctrine of precedents, *stare decisis*, does not strictly apply to administrative agencies. An agency is free to change its policy, or even its interpretation of a statute, so long as it explains the reasons. A section 201 decision may be set aside by the courts only if it is shown to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *See* Administrative Procedure Act, 5 U.S.C. 706(2)(A).

[159] Over the last three decades, Congress has passed three different import relief statutes. Although the thresholds of injury and standards for causation (major, principal, substantial) have been debated and changed, Congress has neither sought to delimit narrowly the factors which the Commission should consider nor direct precisely how the causes should be broken down.

of transforming the industry; however, I believe that their impact on domestic industry performance is at least of the same magnitude as that of imports. It is doubtful that in the absence of the first two factors, imports would have been a substantial cause of injury. Both of these factors have nothing whatever to do with imports; the three main culprits have been the explosion of gasoline prices, the rapid rise in new car prices, and the credit crunch. Gasoline price inflation

The rise in retail costs during the last two years has been accomplished by an erosion of per capita real disposal income, which decline from $4,536 (1972 dollars) in first-quarter 1979, to $4,425 in

which have been the historic mainstay of profits for the industry. Instead of a smooth transition dictated at the margin by changing costs, consumers suddenly lost their appetite for gas guzzlers when

State gasoline taxes, and government deregulation of gas prices, many consumers deeply doubt the future stability of gasoline prices. All observers and industry members regard

effects on profits of the decline in demand, the collapse of the large car market, and the shift in product mix.

Imports—Imports, particularly those from Japan, have dramatically increased

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of transforming the industry; however, I believe that their impact on domestic industry performance is at least of the same magnitude as that of imports. It is doubtful that in the absence of the first three causes the remaining injury attributable to imports would be serious.

General Decline in Demand—Recessions are always the subject of much debate. Any discussion of them benefits greatly from hindsight * * * a luxury not yet afforded the Commission in this case. It is clear at this time that two highly cyclical leading sectors—housing and autos—have performed far more poorly than the economy as a whole due to a set of factors already quite apparent. The general decline in automobile consumption by 25 percent from the first half of 1979 to the first half of 1980 is in greatest part due to factors peculiar in their severity to the present recession and quite unrelated to the presence of imports in the American market place.

Consumer demand for automobiles is determined by the need for private transportation, disposable income (essentially take-home pay net of taxes and retirement deductions), the value of trade-in cars, and true price of auto ownership and operation. The costs of auto ownership consist of depreciation,[160] finance charges, gasoline, maintenance, insurance, parking, tolls, and taxes such as registration fees. None of the important components have advanced more slowly than general price trends. Studies have been performed for the American Automobile Association which attempt to include most of these components (except financing) over the last five years.[161] For each class of cars examined, costs between 1975 and 1980 rose rapidly in nominal terms. Surprisingly, the trends were less marked when converted to consant dollars—a slow *decline* from 1975 to 1978 and then a more rapid *rise* from 1978 through 1980.[162]

The underlying reasons for the growth of ownership/operation costs of autos have nothing whatever to do with imports; the three main culprits have been the explosion of gasoline prices, the rapid rise in new car prices, and the credit crunch. Gasoline price inflation has been due to several factors: price increases by member of the Organization of Petroleum Exporting Countries (OPEC) in late-1978, which added significantly to the cost of crude oil; the political revolution in Iran in late-1978, which curtailed petroleum production; and the U.S. Government's decontrol of gasoline prices at about the same time, which permits retail prices to rise further—about two cents per gallon each month over current prices until final decontrol in September 1981. The combined effect of all these events has been immediate and substantial. Between January 1979 and June 1980 the overall price of gasoline increased from $0.65 a gallon to about $1.30 a gallon, a greater increase than had occurred in the entire twenty-year period prior to 1979. The increase, outpacing prices in general, added significantly to the consumer's cost of operating an automobile.

Particularly in 1980, new car prices have advanced significantly. Productivity has been stagnant in the industry due to serious absenteeism and social problems among the workers and delayed introduction of new state-of-the-art production techniques. Technological changes, which bring higher productivity, will likely occur most rapidly once the completely new product lines are in place. Thus, the price savings from productivity increased during the transformation now underway in the industry are yet to be felt.

The unprecedented high cost of consumer credit during 1979 and 1980 has been perhaps the single most serious factor in the decline in demand. With the prime rate in the double digits and consumer credit often available only after states have revoked or revised their usury laws, finance costs both to dealers and ultimate purchasers have skyrocketed. With three-quarters of domestic sales financed,[163] potential customers saw monthly payments balloon. (The phenomenon is quite similar to what has occurred in the housing markets. Houses are not readily imported, however, so the staggering effects of the rise in finance charges has not been obscured by other factors.)

The rise in retail costs during the last two years has been accomplished by an erosion of per capita real disposal income, which decline from $4,536 (1972 dollars) in first-quarter 1979, to $4,425 in the second quarter of 1980. While the numbers themselves are not huge, one must remember that Americans are accustomed to an increasing living standard; any decline has a shocking effect. It is not purely psychological; people are poorer than they were two years ago.

Underneath the market phenomena lie changes in the perceived need for private transport. The domestic market in the last decade became principally a replacement market; expanded ownership became primarily a response to slow population growth rather than to growth of two- and three-car families. The development of mass transit systems in certain metropolitan areas and rental car fleets has relieved some of the exigency for every adult to have access to a private automobile. Furthermore, between 1972 and 1979, the average age of passenger cars on the road grew from 5.7 years to 6.4 years, probably reflecting changed buying habits more than improved quality. The penchant for additional per capita auto consumption seems to have been quenched as the domestic market reached maturity.

Caught in the scissors of increasing real prices and declining real income, numerous U.S. customers were cut out of the auto market over the last two years. Although the discussion of price effects has been in real terms (constant dollars), most consumers are not in constant touch with the auto market. New autos are usually kept four or five years before their first resale. Thus, consumers have not been as gradually hardened to recent inflation of the price of cars compared to prices of items bought more frequently. One may reasonably assume that most consumers entering the market during the last two years have not shopped for a car since 1975 when nominal prices were approximately 30 percent lower than they are now.[164] The unprecedented inflation in new car prices probably shocked customers as a result of some lingering "money illusion." Adjustment to the new situation has been delayed by the belief that credit costs will come down in the future.

Beyond any general decline in auto sales lies the phenomenal collapse of the market for the traditional large cars which have been the historic mainstay of profits for the industry. Instead of a smooth transition dictated at the margin by changing costs, consumers suddenly lost their appetite for gas guzzlers when the Iranian revolution brought gas lines. Neither larger gas tanks to improve large car cruising range nor even major fuel economy improvements from downsizing large cars could stem the tide.

Reinforcing decline in demand has been a fall in the "blue book" value of large cars. With the increasing disparity between trade-in value and new car prices, most potential buyers seem to have left the market place entirely to wait out a credit squeeze, which saw record interest rates accompanied by a quintupling of the refusal rate on credit applications to almost 50 percent. The prospect of the new generation of fuel-efficient five- or six-passenger cars on the way in 1981 and 1982 gave this segment of the public added reason to wait.[165]

Shift in Demand—The general decline in demand has been related to growth in the real costs of auto ownership/operation during the last two years. Such an effect might be viewed as an "income effect"; as the price of a good rises, consumers, feeling relatively poorer, tend to purchase less. But there are also "substitution" effects.

As demand declined in 1979 and 1980, it also shifted: sales of large cars—the mainstay of the U.S. auto industry—fell faster than overall consumption from 1975 to 1978. Large cars declined to 29.2 percent of apparent consumption by January-June 1980. The shift in demand to smaller, more fuel-efficient autos has followed the relative increase in total cost of operation of large *versus* small cars,[166] as a consequence of the continuing political volatility of the Middle East, the threat of future OPEC price increases, possible increases in State gasoline taxes, and government deregulation of gas prices, many consumers deeply doubt the future stability of gasoline prices. All observers and industry members regard the shift to smaller, more fuel-efficient vehicles as irreversible.

The changes in the product mix of U.S. producers that accompainied the shift in demand had a special effect on industry profits. Since the late-1920s when General Motors overtook Ford as the number one producer, the domestic industry has been oriented toward production of high-performance, larger cars with many options,[167] models with significantly higher profit margins. Until recently, the theme has been that mini cars mean mini profits.[168] By 1979 the domestic mix had shifted toward models that indeed yielded the lowest profits.

A more general phenomenon, of which the shift in mix is but one part, can be observed in the long-term trend of net profits to net sales in the auto industry.[169] The data for the last twenty years show cyclical behavior for the aggregate profit margins, but there is also an alarming secular trend: from 1960 to 1980 each successive peak (or trough) is lower than the previous peak (or trough). Each year the industry has had to sell more cars to make the same absolute level of profits. Clearly this trend could not go on forever. The years of reckoning were 1979–1980. A readjustment was inevitable, and imports have had little to do with this ominous trend.

Increased Capitol Outlays—Capital expenditures by U.S. producers on their domestic operations increased from 35 percent in 1976 to almost 130 percent in 1979. Much of the decline in the industry's return to its investment after 1974 has been caused by the depreciation and amortization of these rapidly increasing capital expenditures which will not realize their full income potential until future periods. A substantial portion of the forty billion dollar transformation of the domestic industry has already been committed. This effect on one of the few indicators significantly worse in this recession than in previous ones is distinct from the effects on profits of the decline in demand, the collapse of the large car market, and the shift in product mix.

Imports—Imports, particularly those from Japan, have dramatically increased their market share. The extent to which an imported product has been able to capture sales in direct competition with domestic product to the detriment of the domestic industry is the extent to which they can be considered a cause of injury.

All the pricing information suggests that the success of imported automobiles has not been based on any competitive price advantage. For example, the export price index for Japanese autos grew 38 percent from the beginning of 1976 to the end of 1979 while the producer price index for domestic sales grew only 29 percent during the same period. The price data are quite complex, but there are no indications that Japanes cars or any other imports enjoy any *direct* price advantage.

Quality is an attribute that can function as a surrogate for price in attracting customers because of the implicit repair cost advantage it represents. And imports, particularly Japanese autos, have enjoyed a definite advantage in the perception of quality they have been able to generate among U.S. customers. Surveys by *Wards Auto World, Consumer Reports*, J.D. Power and Associates, and Rogers National Research clearly show that domestic cars are viewed as having lower quality than foreign ones.[170]

A secondary question is whether these perceptions are justified. Useful data to establish objectively the relative quality of automibiles were unavailable.[171]

Although their value in assessing product safety and quality performance is therefore limited, the data are supportive of the consumer surveys. Although the recall records in the United States of European producers were generally similar to those of General Motors, Ford, Chrysler and American Motors, none of the four largest selling Japanese makers had a recall rate higher

[160] Depreciation is the appropriate way of moving from the purchase price of a consumer durable to a yearly cost.

[161] *See* Runzheimer and Company, "Domestic Automobile Cost Data" (November 1980). The data prepared for the USITC cover 1975–1980 and are based on a study commissioned by the American Automobile Association.

[162] There is an index number problem here because of the important role of cost of transportation in the consumer price index (C.P.I.) which is used as a deflator. When real auto costs fall relative to the C.P.I., they are falling even more rapidly with respect to other prices which go into calculating the C.P.I. More important, because in the crucial 1978–1980 period real auto costs rose faster than the C.P.I., they have been advancing even faster than other prices.

[163] *Automotive News*, "Annual Data Issue" (1980). The proportion varies over the business cycle but seems to have been slowly rising during the last decade. The source data reflect only traceable credit and not personal loans from friends and relatives.

[164] Report at A–57. This figure is a lower bound since small car share has increased rapidly and the producer price index is for all cars, not one particular model. *Also see* Report at A–60.

[165] If this thesis is correct, the average age of cars on the road in 1980 should be measurably higher than the figure for 1979. The figure is not yet available.

[166] The AAA cost-of-ownership data broken down by size of autos show that between 1975 and 1977, the difference between the annual costs of "full-size" cars and subcompacts narrowed, particularly from 1975 to 1976 when domestic dealers had trouble clearing their smaller cars. However, by 1980 full size cars had opened up a greater differential than they had shown in 1975

Year	Ratio of annual costs of full-size/sub-compact
1975	1.40
1977	1.23
1980	1.43

[167] Report at A–71.

[168] *See*, for instance, statements of Ford executive director for business strategy Robert R. Reilly, quoted by Robert J. Samuelson, "The U.S. Auto Industry—Under Foreign Siege," *National Journal*, March 15, 1980 at 427

[169] The only data available for more than two business cycles are based on the ratio of consolidated worldwide net profits to net sales of Chrysler, Ford, and General Motors. For the purposes of my point here, I do not believe the inadequacies of these data are critical

[170] Report at A–65 and 89.

[171] Such data might include the cost by car-make of privately-offered extended warranties. Analysis of private extended warranty price data shows little or no difference between costs of such warranties on the basis of whether the car is imported or domestic. Post-Hearing Brief of the American International Automobile Dealers Association, Appendix III. However, two compainies have informed the Commission that they are in the process of converting from a price system based on car value to one based on actual repair records. They expect that the results will yield lower premiums for Japanese autos. Such expectations are, no more objective than the surveys of consumer perceptions

than one-third the *lowest* rate shown by a U.S. producer.[172] The documented efforts of the UAW and the producers to improve domestic quality control support a conclusion that the consumer's perceptions have in fact

Causes Not Found Relevant—Many observers and even insiders [177] have blamed poor management for the industry's failure to lead or even successfully follow the shift in demand. Following the Arab oil boycott of 1973, a slow, gradual changeover to smaller cars prior to 1979 seems unfair.

GM and Ford claimed in submissions and testimony that government safety, environmental and fuel-economy regulations were also causes of injury.

consumer credit and unavoidable time lags in the introduction of new fuel-efficient models may retard the industry's recovery. The continued incidence of high capital expenditures will restrain improvements in profits

upon "evidence showing that the likelihood is real and imminent and not on mere supposition, speculation, or conjecture." [147]

I found indications of real and imminent threat based on the latest data

Latest Domestic Developments—October 1980 sales, though down eight percent from those of the same month the previous year, seemed to indicate a gradual recovery from the depths reported at mid-year. Sales of the

than one-third the *lowest* rate shown by a U.S. producer.[172] The documented efforts of the UAW and the producers to improve domestic quality control support a conclusion that the consumer's perceptions have in fact been justified.[173]

I have treated quality considerations as an explanation of how imports may have contributed to the injury of the domestic industry because they function in the same manner as a price advantage. I have not treated fuel-economy, a definite factor in the choice of imports, in the same fashion because imports have only been incidental beneficiaries of a more fundamental shift in demand to smaller cars. This shift has also definitely benefitted domestic small cars such as the Chevrolet Chevette, whose production lines have been operating at full capacity during the last two years.

The independent contribution of imports to injury must be assessed in relation to other factors such as the decline and shift in demand. The shift/share analysis prepared by ITC staff aided such an evaluation.[174] In the period January 1979 to June 1980 (when domestic industry performance was poor) the maximum potential loss to U.S. producers resulting from decline in consumption was almost three times that resulting from increased import penetration.[175] Furthermore, a good portion of import penetration results from shift in demand. Adjustments for this consideration would further increase the importance of declining demand relative to imports as a cause of injury.

Demographic considerations explain part of the dramatic rise in import penetration during this recession. Because imports' appeal has been historically greater to white-collar workers on both the East and West Coasts and because larger domestic cars have had their better markets among blue collar workers, the consumers of domestic cars are more vulnerable to cyclical swings in the economy since their employment tends to concentrate in sectors harder hit by recessions.[176] Sales of imports are not as prone to cyclical variation, and consequently their market share is counter-cyclical.

[172] Submission of Automobile Importers of America, November 7, 1980, letter in response to request of Commissioner Stern (Hearing Transcript at 891).

[173] *See* Hearing Transcript at 7–8, 142–44, and 612.

[174] The simulation calculations allow consumption and import penetration to change alternately while the other is held constant. Report at A–69, 96.

[175] Report, Table 70.

[176] Nissan Pre-Hearing Brief at 21–26.

Causes Not Found Relevant—Many observers and even insiders [177] have blamed poor management for the industry's failure to lead or even successfully follow the shift in demand. Following the Arab oil boycott of 1973, consumers' demand for small cars outstripped supply in 1974. However, domestic small car sales weakened almost immediately in 1975 as consumers switched back to larger cars. As late of 1978, larger V–8 engines were on back-order.

The explanation for this fickle behavior is surprising for its simplicity. Real gas prices and the relative costs of operating large cars declined. The auto companies followed their customers back to large cars. In 1975, Lee Iacocca thanked Henry Ford II for overruling him on the idea to inaugurate Ford Fiesta production in this country. In the meantime, Ford and General Motors had committed themselves to the development of the Escort and Chevette, respectively. Because the planning and production of a new car required four to six years, it is extremely fortunate that those plans were not dropped. By late-1978 the fickle customer was back scrambling for small cars. This kind of consumer behavior demonstrates the power of prices and the limits of corporate power in dictating consumer preference.

Since 1974 the only party to the ITC proceedings that opposed gasoline price increases was the initial petitioner, the UAW.[178] By 1975 all domestic auto companies are on record for deregulation of gasoline prices.[179] Leading members of Congress announced to the public that gasoline would rise no more than ten cents a gallon during the remainder of the decade.[180] Given the response of the consuming public to small cars and that of the UAW and the Congress to proposals for decontrol in 1975, the attacks on management who planned for a slow, gradual changeover to smaller cars prior to 1979 seems unfair.

GM and Ford claimed in submissions and testimony that government safety, environmental and fuel-economy regulations were also causes of injury. The corporate average fuel economy (CAFE) standards enacted in 1975 relate to the discussion of demand shift as they were the only impetus for a period of time for domestic companies to produce more fuel-efficient models. Thanks to these regulations, the domestic companies were not caught even less prepared for the shift of the last two years. But as a substitute for decontrol, hindsight allows us to see that they were deficient in two respects. First, if decontrol had gone through earlier, the shift would have been gradual with less sudden battering of the domestic firms. Secondly, fulfilling CAFE standards was *not* the same as producing the car mix needed by 1978. It was easier to meet the production signals from CAFE regulations by first downsizing the largest cars than by developing all new small cars. Increased overall fleet fuel economy was achieved more rapidly and with smaller investments by raising the largest portion of the market (full-size and intermediate cars) from 15 mpg to 25 mpg. But when the consumer shift finally came, the moderately fuel-efficient, downsized cars were shunned though they were no longer "guzzlers" in the traditional sense.[181]

Because expenditures made to satisfy regulations have been overwhelmingly dominated by those related to fuel economy,[182] the case is extremely weak that government regulation made an important contribution to generating serious injury in the industry.

VII. Serious Injury Will Continue: Imports Not a Substantial Cause

The unusual problems suffered by this industry in terms of sales, profits and employment will likely continue. However, imports are not threatening to become a substantial cause of any future injury. The plans underway for restructuring the industry address many of the industry's problems and do not depend in any demonstrable fashion on import relief. If anything, purely domestic factors including continuing difficulties in the cost and availability of

[177] See John DeLorean, *On A Clear Day You Can See General Motors*, Grosse Pointe, Mich.: Wright Enterprises, 1979.

[178] UAW President Lenorad Woodcock in *Proposals for Constructive Reform*, February 15, 1974, in Hearing before the Committee on Interstate and Foreign Commerce, April 1974, at 283 states: "But we are also completely opposed to seeing gas consumption reduced by massive price increases without any compensation for the low- and middle-income people who are unjustly overburdened * * *. We also need to reduce the claim of the private automobile on our energy supplies by raising the fuel efficiency of the typical model on the road * * *. What we need are mandatory fuel efficiency requirements just as we have mandatory pollution-control requirements."

[179] Information was not available on Chrysler's position on the decontrol issue.

[180] *See* W. Tucker, "The Wreck Of The Auto Industry," *Harper's*, Nov. 1978 at 54–55.

[181] Since 1979 the industry has been pushed toward greater fuel economy by consumer demand rather than CAFE standards. In fact the 1983 standards, once termed unrealistic or unachievable, have now been surpassed.

Regarding environmental and safety regulations, no evidence was offered that the standards demanded of U.S. producers are any more onerous than those already in force in many of the imports' home markets.

[182] Report at A–46.

consumer credit and unavoidable time lags in the introduction of new fuel-efficient models may retard the industry's recovery. The continued incidence of high capital expenditures will restrain improvements in profits while rapid productivity improvements will prevent employment from ever recovering to former levels. However, in any event, the long-term prospects for the domestic industry as a whole are good as it increasingly focuses on a world rather than national market with competitive, fuel-efficient, downsized automobiles with state-of-the-art technology.

Standards and Framework

The report of the House Committee on Ways and Means states that "threat" of serious injury exists "when serious injury, although not yet existing, is imminent." [183] The report of the Senate Committee on Finance supports this interpretation and adds:

> The existence of any of these factors such as the growth in inventory would not in itself be relevant to the threat of injury from imports if it resulted from conditions unrelated to imports. Such conditions could arise from a variety of other causes, such as changes in technology or in consumer tastes, domestic competition from substitute products, plant obsolescence, or poor management. It is the intention of the Committee that the threat of serious injury exists when serious injury, although not yet existing, is clearly imminent if import trends continued unabated. [184]

Commission precedents have not fully and directly explained the meaning of "imminent" with respect to the time frame to be considered under section 201 of the Trade Act. [185] The dictionary is not much help because it shows "imminent" to mean, among other things, "threatening". [186] There is no other legislative direction beyond what has been cited above.

Since there is apparently little difference between the concepts of "threat" and "likelihood" of injury, it is useful to consider how the time frame for threat or likelihood have been dealt with in other import relief statutes. The Senate Finance Committee Report on the Trade Act of 1974 concludes without criticism that the Commission in antidumping cases based determinations of likelihood of injury upon "evidence showing that the likelihood is real and imminent and not on mere supposition, speculation, or conjecture." [187]

I found indications of real and imminent threat based on the latest data (first-half 1980 compared to the same period a year earlier), reliable information on the immediate present, and forecasts over the next year. Beyond this period, I have considered the best tentative information available on expected trends through 1985. Despite the fact that a look into the future becomes more speculative the further from the present one goes, and that 1985 is beyond the "real and imminent" standard Congress intended, I believe that considering the medium term future may be enlightening because there is little prospect for the industry to return to health in the next year.

Factors in Substantial Cause of Threat—With respect to cause of threat, the statute does not distinguish in section 201(b)(2)(c) between causal examination of present and threatened serious injury. I have considered all factors enumerated in that section plus other relevant information. For example, I have considered whether the alleged cause of injury—imports—is sufficiently damaging to produce the predicted effect. Though not transparent in previous Commission determinations, this approach—a reflection of the potential effectiveness of a remedy—has been helpful because of the cyclical character of this industry. The principle can be stated: if import relief would significantly ameliorate the problems, then imports must be an important cause. If, on the other hand, the domestic industry's injury would not be remedied by import relief, some other factor must be more important than imports.

The Near Term Future and Threat Determination

The recent negative trends noted in Section IV and V for all indicators in 1979 and the first half of 1980 seem to have moderated recently. The Commission is not in a position to evaluate "trends" based on daily progress reports which abound in the press. But noting developments of the last two months does further reinforce my understanding that imports are not among the most important causes of injury.

Latest Domestic Developments—October 1980 sales, though down eight percent from those of the same month the previous year, seemed to indicate a gradual recovery from the depths reported at mid-year. Sales of the newly-introduced cars are proceeding as fast as they can be supplied. [188] No plant shutdowns have been reported for the newer, more fuel-efficient models, although minor suspensions of production for inventory adjustment continue for other models. Despite general disappointment that the introduction of the new generation of cars was not sufficient to pull the auto firms out of the slump, overtime continues to be reported for plants producing these cars.

Tight credit is the most pervasive problem preventing recovery in demand. [189] The fall of the prime rate to 11.6 percent in the third quarter of 1980 proved to be a short-term respite. In recent weeks it has once again shot above 17 percent. Given the facts that three-quarters of cars are bought on credit and that the length of repayment periods and rejection rates on loan applications are at historically high levels, consumers continue to be frightened out of the market. This credit crisis shows signs of continuing well into next year. However, while replacement purchases may be delayed, most of these consumers will reenter the market place in the next two years.

Imports—Import sales followed their expected October pattern by falling to 22 percent. Furthermore, the Japanese share of imports was down from earlier levels for the 1979–1980 period. The counter-cyclical behavior of import penetration seems to have begin asserting itself. There are no indications that imported automobiles will be able to increase their market share from present levels.

In their confidential submissions, Japanese producers claimed that their investment plans provide for modest expansion of capacity, generally in line with growth of the Japanese home market and expanded sales in developing countries. Japanese

[183] H. Rept. No. 93–571, 93d Cong., 1st Sess. at 47.

[184] S. Rept. No. 93–1298, 93d Cong., 2d Sess. (1974) at 121.

[185] Commissioners Alberger, Calhoun and Stern made reference to a "real and imminent" standard in the most recent import relief investigation. *See Mushrooms*, Inv. No. TA–201–43, USITC Pub. No 1089 (1980) at 17.

[186] *See Webster's Seventh New Collegiate Dictionary*, 1963, p. 417.

[187] S. Rept. No. 93–2198, *op cit.* at 180. Commissioners Stern and Alberger noted that the concept of threat appeared uniform in meaning in all Commission import relief jurisdictions in *Anhydrous Ammonia from the U.S.S.R.*, Inv. No. TA–406–5, USITC Pub. No. 1006 (1979) at 32.

[188] There have been some problems in the introduction of Chrysler's new K-cars, but these seem to have been based on a miscalculation of what consumers wanted. The first K-cars were loaded with expensive options that potential purchasers suffering reduced real per capita disposable incomes were not willing to buy. Start-up problems are quite common when new models are first introduced. Furthermore, Chrysler must contend with an image problem created by the uncertainty among consumers about the company's future. Chrysler's problems extend back to 1978 when the industry as a whole was healthy.

[189] Recent data show leading indicators turning around yet both the auto and housing industries remain hampered by high and rising interest rates.

producers profess to expect a strong recovery during the next two years in the United States and to hope for increased sales with declining market share. [190] Potential problems lie in the

process, the meaning of terms such as full-size and intermediate will be completely rewritten. The largest cars will accommodate five to six passengers, the smallest only two;

U.S. consumers begins to rise and new entrants to the market become more accustomed to the effects of the last five years of relatively high inflation in the U.S.

(4) Profits—The price structure of the

The transformation of the industry will take place in the absence of any import relief and would not be speeded by relief. [198] As for employment, the maximum number of jobs generated by

to the interests of most other U.S. producers, because they have already become so highly integrated on an international scale. [202] General Motors, presently accounting for 63 percent of

serious program of worldwide expansion which could very well be threatened by rising trade barriers. GM appears to be in a position to make substantial gains over the next few

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producers profess to expect a strong recovery during the next two years in the United States and to hope for increased sales with declining market share.[190] Potential problems lie in the growing sensitivity of the European Community (EC) to the improving performance of Japanese exports of automobiles to Europe. Judgments about what export restrictions the EC might apply and whether Japanese producers might divert shipments to the United States are too speculative to give weight in coming to a determination. Part of the speculative character of such a consideration is that any European response would undoubtedly be affected by development in the United States, including the determination of this Commission.

The Medium Term Future

The key questions about the prospects for recovery are:

(1) When will the slump in the industry end?

(2) Will domestic producers supply the kinds of cars U.S. consumers are and will be demanding?

(3) Will U.S. consumers buy them?

(4) Will the domestic industry make adequate profits?

(5) Will unemployment in the industry be reduced?

(6) Will import relief make a difference?

(1) Growing Demond—Injury due to decline in demand for autos should diminish. All forecasts show the economy as a whole recovering from the 1980 recession by 1982, with auto sales showing a more sluggish recovery.[191] Similar predictions show 1978 peak levels of total sales not returning until 1983. Auto import levels are predicted to remain almost constant, peaking at 2.4 million units in 1983, compared to 1979–1980 levels of about 2.3 million units. Thus, the import share of the U.S. market is expected to decrease steadily from about 25–26 percent in 1980 to 20–22 percent in 1985.

(2) Restructuring of the Industry—Plans already well underway will by 1985 have resulted in a completely transformed domestic industry. The shift in demand will no longer be a potential cause of injury because domestic production will have fully shifted to meet it. By 1985 virtually every operating plant in the nation will have been converted or built from scratch to produce new-generation autos at every level of size and/or luxury. In this process, the meaning of terms such as full-size and intermediate will be completely rewritten. The largest cars will accommodate five to six passengers, the smallest only two; however, the largest cars will be significantly lighter and shorter than present full-size cars. With a domestic price tag of $40 billion, this will constitute the largest peacetime industrial transformation ever attempted. Thus, with the possible exception of minicars, which may become a factor in the end of the period, the cars in demand will be available from U.S. producers.

(3) Consumer Loyalty—The rapid shift in demand and the chaotic character of the market place in the present period affords little support for the view that consumers, having chosen imports in growing numbers, will not return to domestic cars for their next purchase.

Ford Vice President Bidwell recently stated:

> If you have an equal car at a reasonably equal price, people will buy from you rather than from foreigners.[192]

Considerable attention has been focused on Detroit's new offerings. Those purchasing autos in the next two years are unlikely to have bought cars during the most recent two years. When recent purchasers of imports return to the market in four to five years, U.S. producers will be well prepared to woo them if the present strenuous adjustment efforts are continued.

Problems do remain in the price and quality areas. U.S. producers and the UAW have devoted considerable attention to improving the quality of domestic autos, particularly, the "fit and finish" for which the Japanese competition is so highly rated.

As for prices, it is completely speculative to predict whether any nation's products will have a price advantage. Costs, excepting for capital,[193] do not appear to be growing more rapidly for U.S. producers than for their foreign competitors. The UAW is cooperating in the implementation of productivity changes which will close the gap between domestic and Japanese productivity rates.[194] The increased prices of new cars will present a problem until real disposable income of U.S. consumers begins to rise and new entrants to the market become more accustomed to the effects of the last five years of relatively high inflation in the U.S.

(4) Profits—The price structure of the U.S. automotive industry has long been geared toward higher margins on larger, more expensive cars, with profitable extras like power steering and brakes. In a sense, purchasers of smaller cars and stripped versions have benefitted from the industry's ability to extract disproportionate premiums from purchasers of larger, more luxurious models. As the trend to smaller cars has progressed, greater and greater sales volumes have been required to generate any given level of profit. The collapse of the large car market made the inevitable structural change an immediate order of business. All U.S. auto makers are moving toward a price structure which will allow them to make a reasonable level of profit on all classes of cars. Temporarily, the old pattern has been reversed. Downsized models of larger cars with traditional power trains will sustain lower price increases. The profits will be made on the more fuel-efficient, newer models. Preliminary signs show prices of imported autos also increasing.

(5) Employment—All forecasts for the future predict a permanently reduced labor force in this industry. Employment will never return to 1978 levels. A study by the Department of Transportation Economic Planning Group suggests that employment growth due to market recovery will be diminished every year through 1975 by losses due to rapid productivity improvements as new production changeovers proceed. For Ford and GM alone, cumulative productivity-induced job losses will grow from 65,000 in 1980 to 137,000 in 1985.[195] One may conclude that by 1985 the number of positions lost due to productivity improvements will equal over two-thirds of the number presently laid off in the industry.[196]

(6) Remedy Considerations—Analysis of confidential submissions by Ford and GM demonstrate that the ambitious transformation program they began in 1974 will continue. No tangible link between these plans and any requested import relief has been established.[197]

[190] Nissan confidential submission, October 20, 1980. Also Toyota confidential submission, Nobember 3, 1980.

[191] Wharton Econometrics, Chase Econometrics, and Data Resources, Inc. have been consulted.

[192] Quoted in the *Wall Street Journal*, August 25, 1980.

[193] This is another area where continued high interest rates threaten domestic producers with injury.

[194] A study commissioned by the Science Council of Canada found some difference in the productivity of the North American (13 cars per man-year) and Japanese (16 per man-year) industries. *See* N. B. MacDonald, *The Future of the Canadian Automotive Industry in the Context of the North American Industry* (November 1980) at 43–51.

[195] The study measures losses from 1978/1979 peak employment levels and assumes that no new plant closings occur. Other assumptions tend to understate or overstate employment gains, and so may off-set each other, I use the study simply as a rough indication of the future.

[196] USITC staff study on remedy considerations.

[197] The Ford confidential submission of November 21, 1980, established no persuasive connection between relief and its ability to raise capital during

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The transformation of the industry will take place in the absence of any import relief and would not be speeded by relief.[198] As for employment, the maximum number of jobs generated by such a quota would be less than 33,000—less than 17 percent of the number of auto workers now unemployed. Extending a strict relief program over the next five years, using a quota of 1.7 million units,[199] could generate $4.0 billion (1979 dollars)—or less than eight percent of the projected new investment of $40 billion.[200]

Ignoring the huge cost of any remedy to the public of the relatively small potential employment and profit gains, there are further problems which indicate that import relief is not the answer to the domestic industry's problems. The UAW and Ford have professed an interest in encouraging foreign auto producers to locate facilities in the United States. Two firms—Volkswagen and Honda—are well down this path. It appears that there is no simple method of designing a remedy that would avoid having just the opposite effect. Both Volkswagen and Honda have shown in confidential submissions that the UAW proposal, however well-meaning, would set up difficult-to-administer local content rules which would make establishing a domestic plant an enormous gamble. Honda has indicated that such a remedy might cause it to cancel its U.S. production plans.[201]

Furthermore, there are good reasons to believe that relief would be inimical to the interests of most other U.S. producers, because they have already become so highly integrated on an international scale.[202] General Motors, presently accounting for 63 percent of domestic production, has begun a serious program of worldwide expansion which could very well be threatened by rising trade barriers. GM appears to be in a position to make substantial gains over the next few years. American Motors, in financial crisis, is dependent on completion of major financing plans with the French producer, Renault. These plans could be seriously jeopardized by import relief. Chrysler has been rather silent with respect to relief. Its introduction of new-generation autos was further along than Ford's at the start of 1979. Its financial state seems to have been helped by its captive imports from Japan and its most pressing capital problems have been ameliorated by large federal loan guarantees.

Finally, it is not unequivocally clear that even Ford stands to benefit a great deal from the relief it requested of the Commission. Ford is already a diversified world producer. In the short run, it stands to lose less than GM from any growth of barriers to auto trade around the world, but in the longer run the success of the world car will depend on a world market. It is presently the only domestic producer besides GM attempting to maintain a full competitive line of automobiles. Ford has had to engage in this struggle from a far more limited financial base than GM. As a result it has not had the possibility of making the across-the-board redesign commitments GM made for the last half of the previous decade. Its apparent strategy for the late 1970s was to capture large car share from GM by downsizing more slowly at the upper end of its offerings. The decision made sense if Ford discounted the possiblility of a second oil crisis like the one experienced in 1978. But when the market place changed abruptly in 1979, Ford lacked the flexibility to react quickly to the shift in consumer tastes. Now its adaptation will take time, and the prospects of Ford continuing as a full line domestic auto producer depend on a rapid end to the credit crunch.

Conclusion

The industry is suffering from problems that will continue as long as the credit situation remains tight and recovery is delayed. But this threat of continued injury is not related in any substantial fashion to imports. Import relief may generate a perverse influence on the ability of the United States to attract foreign producers to establish new domestic facilities. It will hurt most if not all U.S. producers' ability to carry out their present expansion plans. And it will not provide jobs of a permanent nature in the industry. Relief directed at one of the symptoms rather than at the

Footnotes continued from last page

the coming period. The record shows that all investment plans for domestic production are independent of import relief. Furthermore, Ford's present debt/equity ratios as well as those of other producers on whom the Commission obtained information are well within historical ranges.

[198] One of the bottlenecks which prevents any further acceleration of the transformation program is the already overwhelming backlog in the worldwide machine tool industry. *American Machinist* (Feb. 1980) reported a backlog of 16 months in the United States and shorter but growing backlogs for many U.S. trading partners. Orders in the U.S. are at record levels. In a recent Unfair Import Practices case under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), a patent infringement remedy that would have excluded imports of crankpin grinders made by a supplier to Ford was precluded for the first time ever because of the public interest in hastening U.S. production of fuel-efficient autos. One of the Commission's reasons for allowing the imports was that in May 1979 the complainant and its domestic licensee had backlogs of two years. *See* "Opinion of Vice Chairman Alberger and Commissioners Bedell and Stern" in *Certain Automatic Crankpin Grinders, Inv. No. 337-TA-60, USITC Pub. No. 1022 (December 1979) at 18.*

[199] Ford proposed a quota of this level based on 1976 imports.

[200] Our staff study assumes no domestic price increases; any price increases would trade off potential jobs and production for increased profits.

[201] Honda Post-Hearing Brief at 19.

[202] A proper analysis of the state of the domestic industry cannot be made without an understanding of the increasingly complex financial relations between U.S. producers and their foreign counterparts.

Part of the problem facing U.S. auto and truck workers is that U.S. producers have elected to source certain of their models from foreign manufacturers rather than to produce all their models domestically. Unfortunately, it has been these types of models which the U.S. public has increasingly sought during the last two years. The reasons for production decisions include efforts to respond to import competition, gaining on other domestic competitors, efforts to avoid paying higher U.S. wage rates, and efforts to reduce the risks inherent in the introduction and possibly short-lived acceptance of a new model.

All five U.S. manufacturers import automobiles and/or small pickup trucks. Some of the firms import vehicles from their wholly-owned subsidiaries. Some domestic firms import vehicles from a foreign country in which it has partial ownership. And one company imports vehicles from a foreign company in which it holds no financial interest.

General Motors Corp. (GM) currently imports only a small pickup truck, the LUV, from Isuzu Motor Co. (Isuzu) of Japan. GM also imported a small automobile, called the Opel, from Isuzu until mid-1979. Prior to importing the Opel from Isuzu, GM imported a small car (also called Opel) from its West German subsidiary during the 1960s and early 1970s. GM currently owns 34 percent of Isuzu.

Ford imports both an automobile and a small pickup truck. The Ford Fiesta auto is produced by a wholly-owned Ford subsidiary in West Germany, the Courier truck is manufactured by Toyo Kyogo Company, Ltd. (Toyo Kyogo) of Japan. Ford owns 25 percent of Toyo Kyogo. During the last fifteen years, Ford has imported other automobiles from its European subsidiaries, including the Cortina from the United Kingdom and the Capri from West Germany.

Chrysler is currently importing two pickup trucks and two automobiles from Mitsubishi Corporation (Mitsubishi) of Japan. The two pickup trucks (D–50 and Arrow) and the two automobiles (Colt and Arrow/Champ) are distributed by two Chrysler dealership networks (Dodge and Plymouth). Chrysler owns 15 percent of Mitsubishi.

AMC imports and distributes two types of automobiles from Regie Nationale des Usines Renault (Renault) of France. AMC does not own part of Renault; rather, Renault purchased 1.5 million shares of AMC stock in 1979, with an option to purchase up to 52 percent of AMC's stock at any time in the future. As a result of the arrangement with Renault, U.S. producers are now responsible for nearly 75 percent of U.S. car imports from France.

VW of America is considered a domestic producer in this investigation to the extent it produces cars in the United States. However, it is a wholly-owned subsidiary of Volkswagen A. G. (VW) of West Germany. VW of America imports Audis, Dashers, Rabbit convertibles, Vans and Sciroccos from its West German parent, and it also imports Porsche automobiles from Dr. Ing. h.c. F. Porsche A. G. (Porsche) of West Germany, a firm which VW of West Germany is affiliated with, but does not own.

Furthermore, GM, Ford, Chrysler and AMC each operate wholly-owned subsidiaries in Canada whose status with respect to the domestic industry has already been discussed in Section III.

cause of the problems may eliminate the exciting possibility the U.S. industry now has to again become the world's auto leader.[203]

Views of Commissioners George M. Moore and Paula Stern

Based on the information obtained in this investigation, we determine that automobiles are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing articles like or directly competitive with the imported articles: a domestic industry producing on-the-highway passenger automobiles and another domestic industry producing automobile trucks. In reaching this determination, we have considered all economic factors which are relevant to the situation, including those listed in section 201(b)(2) of the Trade Act of 1974.

Increased imports. We find that automobiles are being imported in "increased quantities."

Serious injury. We agree with the Commission majority that the domestic automobile industry is seriously injured. Section 201, while not expressly

1980. Man-hours worked by production and related workers in these establishments similarly declined, from 1.7 million hours in 1978 to 1.6 million hours in 1979, and from 869,000 hours in the first 6 months of 1979 to 605,000

factors in determining whether increased imports are a substantial cause of serious injury. We are to take into account "all" relevant economic factors. We believe that there are a number of other individual causes of

number of economic factors which in combination are to be weighed against increased imports to find the substantial cause of serious injury. Further, we believe that economic downturns represent the concurrence of a number

cause of the problems may eliminate the exciting possibility the U.S. industry now has to again become the world's auto leader.[203]

Views of Commissioners George M. Moore and Catherine Bedell

In order to make an affirmative determination in an investigation under section 201 of the Trade Act of 1974 (19 U.S.C. 2251), we must determine that some or all of the articles described in the notice of investigation are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Thus, in order to make such an affirmative determination, the statute requires that we find—

(1) that the subject articles are imported in "increased quantities";

(2) that the appropriate domestic industry is seriously injured or is threatened with serious injury; and

(3) that the increased imports are a "substantial cause" of the serious injury or threat thereof.

If we find that any one of the above three conditions or criteria is not satisfied, we must make a negative determination.

Determination

In the present investigation we have determined—

(1) that on-the-highway passenger automobiles, provided for in items 692.10 and 692.11 of the Tariff Schedules of the United States (TSUS), *are* being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing articles like or directly competitive with the imported articles; and

(2) that automobile trucks, and bodies (including cabs) and chassis for automobile trucks, provided for in items 692.02, 692.03, 692.20, and 692.21 of the TSUS, are *not* being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

Domestic industries. In this investigation, we find that there are two domestic industries producing articles like or directly competitive with the imported articles: a domestic industry producing on-the-highway passenger automobiles and another domestic industry producing automobile trucks. In this and prior cases under section 201 we have generally followed a product-line approach in determining what constitutes the appropriate domestic industry. When the scope of an investigation covered two or more different products and there was domestic production of products "like" the imported articles, we found that there are two or more domestic industries.[204] We believe that passenger automobiles and automobile trucks are basically different products, and, in view of the fact that there is domestic production of what we consider articles "like" both of these products, we conclude that there are two domestic industries.

Our views with respect to each of these two industries are set forth immediately below.

Passenger automobile industry

As stated above, we have determined that on-the-highway passenger automobiles are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing on-the-highway passenger automobiles. We will discuss each of the three elements of this determination immediately below.

Increased imports. Section 201 provides that an article is being imported in "increased quantities" when the increase is "either actual or relative to domestic production" (sec. 201(b)(2)(C)). Imports of passenger automobiles have increased in both actual and relative terms. During 1975–79, imports increased by almost 37 percent, from 2,047,702 units in 1975 to 2,797,063 units in 1979. Imports in the first 6 months of 1980 increased to a level about 13 percent higher than that in the first 6 months of 1979—1,631,767 units compared with 1,437,910 units. The ratio of imports to domestic production increased from 31 percent in 1975 to 33 percent in 1979, and from 30 percent in the first 6 months of 1979 to 47 percent in the corresponding period of 1980. Thus, passenger automobiles are clearly being imported in "increased quantities."

Serious injury. We agree with the Commission majority that the domestic automobile industry is seriously injured. Section 201, while not expressly defining the term "serious injury," requires that the Commission consider all relevant economic factors, including certain enumerated factors, in determining whether there is serious injury (sec. 201(b)(2)). The Commission is expressly directed to consider whether there is significant idling of productive facilities in the industry, whether a significant number of firms in the industry are unable to operate at a reasonable level of profit, and whether there is significant unemployment or underemployment within the industry.

We have concluded that the information before the Commission clearly shows that the domestic automobile industry is seriously injured. There is significant idling of domestic productive facilities in this industry. Capacity utilization for U.S. automobile producers declined sharply from 86 percent in 1978 to 79 percent in 1979 and to 66 percent in the first 6 months of 1980. Overall domestic production capacity declined at the same time. Ford and Chrysler each permanently closed two plants during the period January 1979–June 1980. General Motors has temporarily closed five plants. But for plant closings by Ford and Chrysler, which reduced capacity accordingly, the capacity utilization ratio would be considerably lower.

Four of the five U.S. automobile producers—all except VW of America—are presently operating at a loss. The aggregate performance of the five producers for the first 6 months of 1980 was a loss of $2.9 billion, compared with a profit of $2.7 billion in the corresponding period of 1979. The industry's net operating margin, which had been 7.5 percent in 1977, fell to 6.2 percent in 1978 and to 1.5 percent in 1979 before falling sharply to a negative 8.4 percent in the first 6 months of 1980, when the full impact of the passenger car imports occurred. Clearly, a significant number of firms in the industry are presently unable to operate at a reasonable level of profit.

Employment in the industry has fallen sharply. U.S. establishments producing automobiles and light trucks employed slightly more than 1 million persons in 1978. Such employment declined to an average of 972,000 persons in 1979, and then fell sharply in the first 6 months of 1980 to 804,000 persons. The number of workers employed by domestic producers declined 20 percent—by 200,000 persons—between 1978 and 1980. Man-hours worked by production and related workers in these establishments similarly declined, from 1.7 million hours in 1978 to 1.6 million hours in 1979, and from 869,000 hours in the first 6 months of 1979 to 605,000 hours in the first 6 months of 1980. During the latter period, approximately 246,000 workers were certified by the Department of Labor as eligible to receive trade adjustment assistance benefits because imports were found to have contributed importantly to their separation or partial separation, or threat thereof, from their places of employment. Clearly, a significant number of persons in the industry are unemployed or underemployed.

There are other important indications of serious injury to this industry. Shipments of passenger automobiles declined from 8.9 million units in 1977 and 1978 to 8.3 million units in 1979, and from 4.8 million units in the first 6 months of 1979 to a sharply lower 3.4 million units in the first 6 months of 1980. Wages paid to employees are down, from $12.1 billion in the first 6 months of 1979 to $10.0 billion in the first 6 months of 1980, despite higher hourly wage rates.

Substantial cause of serious injury. Section 201(b)(4) of the Trade Act defines the term "substantial cause" to mean "a cause which is important and not less than any other cause." Thus, increased imports, to be a substantial cause of serious injury, must be both an "important" cause of injury and not less important than any other cause. If another single cause is more important, increased imports cannot be a "substantial cause." In addition, section 201(b)(2) directs the Commission, in determining whether increased imports are a substantial cause of injury, to take into account all economic factors which it considers relevant, including (but not limited to) "an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers" (sec. 201(b)(2)(C)).

As discussed above, imports have increased significantly, in both actual and relative terms. More important, however, imports have captured an ever larger share of the domestic passenger automobile market during the last 3 years. The ratio of automobile imports to domestic automobile consumption increased from 25 percent in 1976 and 1977 to 26 percent in 1978 and 27 percent in 1979, and from 25 percent in the first 6 months of 1979 to 34 percent in the first 6 months of 1980.

Section 201(b)(2) does not limit us to consideration of only certain economic factors in determining whether increased imports are a substantial cause of serious injury. We are to take into account "all" relevant economic factors. We believe that there are a number of other individual causes of injury, such as increased costs of passenger automobiles, the shift in consumer preferences from large to small cars, high interest rates, a shortage of consumer credit, increased gasoline prices, shortages of gasoline (in 1979), the failure of domestic corporate management to anticipate current conditions, and costly Government regulations. We find that none of these other causes, even if considered an important cause of injury, are a more important cause of serious injury to the domestic industry than increased imports.

It is clear that our determination differs from the majority in the interpretation given to the provisions in section 201 of the Trade Act relating to the weighing and comparison of the relevant economic factors contributing to the serious injury experienced by the domestic industry. We believe that the law clearly and unequivocally provides that the Commission shall, to the extent practicable, isolate each of the economic factors relevant to the matter of serious injury for the purpose of comparing each of them with the factor of increased imports. If we were to do otherwise—that is, to aggregate the negative economic factors in comparing them with increased imports—there would be few, if any, Commission decisions favorable to a domestic industry in section 201 cases in times of recession or economic downturn.

In this regard, we refer specifically to the prepared statements read by two of our colleagues at the open Commission meeting of November 10, 1980, at the time of the vote on this matter. Commissioner Stern, in voting in the negative, stated "I find the downturn in economic demand due to general economic conditions, recession, credit crunch, rising costs of car ownership and a major unprecedented shift in demand from large to small cars, brought the domestic industry to its present weakened state." Supporting this point of view was Commissioner Calhoun, who, in voting in the negative, said "My analysis reveals that the general decline in purchases of automobiles and light trucks owing to the downturn of the economy has contributed more so than imports to the serious injury suffered by the automobile industry."

We reject the notion that the statute permits the Commission to aggregate a number of economic factors which in combination are to be weighed against increased imports to find the substantial cause of serious injury. Further, we believe that economic downturns represent the concurrence of a number of adverse factors. We do not believe that Congress envisioned that the Commission would consider an economic downturn per se to be a single economic factor in determining injury in section 201 investigations. Instead, we believe that Congress intended the Commission to examine imports and their impact on the domestic industry over the course of the business cycle—during both good and bad years—in order to ascertain whether import penetration is increasing and, if so, whether the increasing penetration is seriously injuring the domestic industry. This is the approach we have followed in past section 201 cases.[205]

In the present case, as the facts show, imports have been increasing their market share, most significantly during the first 6 months of 1980. We believe that the domestic industry today would be in much better condition—losses would not be so massive and plant closings and layoffs not so severe—had imports not increased their share of the market to the extent that they have. Furthermore, the surge in imports and the share of the market held by imports make it likely that the industry will remain in its present state of serious injury for years to come and increase the likelihood that one or more of the major domestic producers and several of the domestic suppliers will not survive. More than 1 million jobs in passenger-automobile-manufacturing plants, in supplier plants, and at car dealerships, are at stake. Further, the health of the domestic passenger automobile industry affects almost every other basic domestic industry, including the industries producing steel, glass, rubber, machine tools, zinc, and a number of other products.

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[203] If assistance is deemed appropriate, it should be directed directly at improving the financial condition of U.S. producers during the next two critical years. For instance, this might be accomplished by means of changing amortization and depreciation rules. Section 201 does not provide for the Commission to recommend such a remedy. I make this observation only because imports are not the root problem and assistance in the recovery of the domestic industry should therefore be in a form other than import relief.

[204] See, for example, our views or views in which one or both of us have joined in *Bolts, Nuts, and Screws of Iron or Steel: Report to the President on Investigation No. TA–201–2 . . .*, USITC Publication 747, November 1975, p. 28; *Footwear: Report to the President on Investigation No. TA–201–7 . . .*, USITC Publication 758, February 1976, p. 46; and *Certain Fishing Tackle: Report to the President on Investigation No. TA–201–34 . . .*, USITC Publication 917, September 1978, pp. 4–5, 14.

[205] See, for example, our views or views in which one or both of us joined in *Stainless Steel and Alloy Tool Steel: Report to the President on Investigation No. TA–201–5 . . .*, USITC Publication 756, January 1976, p. 13; *Footwear: Report to the President on Investigation No. TA–201–7 . . .*, USITC Publication 758, February 1976, p. 56; *Television Receivers . . . Report to the President on Investigation No. TA–201–19 . . .*, USITC Publication 808, March 1977, pp. 16–19; *Low Carbon Ferrochromium: Report to the President on Investigation No. TA–201–20 . . .*, USITC Publication 825, July 1977, p. 10; *Cast-Iron Stoves: Report to the President on Investigation No. TA–201–24 . . .*, USITC Publication 826, July 1977, p. 13; and *High Carbon Ferrochromium: Report to the President on Investigation No. TA–201–28 . . .*, USITC Publication 845, December 1977, p. 10.

Truck industry

As stated above, we have determined

Conclusion

This is a classic case for an

competitive conditions in the marketplace which are the result of economic factors beyond its control,

[Investigation No. 337-TA-85]

Certain Slide Fastener Stringers and

[Investigation No. 337-TA-93]

Certain Universal Joint Kits,

such seals of claims 1, 3, 4, 5, or 7 of U.S. Letters Patent 3,479,840 and the alleged misappropriation of Dana Corporation's

V 45 DE 24 80 UMI

V 4 5 D E 2 4 8 0 UMI

Truck industry

As stated above, we have determined that automobile trucks, and bodies (including cabs) and chassis for automobile trucks are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing trucks.

Automobile trucks are provided for in TSUS item 692.02, where they are dutiable at the permanent rate of 8.5 percent ad valorem; however, since 1963 they have been dutiable at the rate of 25 percent ad valorem by virtue of a temporary action taken in settlement of the so-called chicken war (TSUS item 945.69). The 25-percent duty does not apply to trucks from Canada, which enter free of duty under TSUS item 692.03. Truck bodies and chassis are provided for in TSUS item 692.20, where they are dutiable at a rate of 4 percent ad valorem (except truck bodies and chassis from Canada, which enter free of duty under TSUS item 692.21). Prior to August 21, 1980, imports of certain trucks without their loadbeds were wrongly classified at U.S. ports of entry. Instead of being classified as they should have been as "trucks, unfinished," dutiable at the rate of 25 percent under TSUS item 945.69, they were wrongly classified as "truck chassis" at the rate of 4 percent ad valorem under TSUS item 692.20. Significant quantities of such unfinished trucks were wrongly admitted as if they were chassis dutiable at 4 percent ad valorem. However, on May 23, 1980, the U.S. Customs Service announced that effective August 21, 1980, and henceforth, such unfinished trucks would be classified as "trucks" under TSUS item 692.02 (item 945.69) and dutiable at 25 percent ad valorem.[206]

Inasmuch as such trucks, including the aforementioned unfinished trucks, are presently dutiable at 25 percent by reason of Customs' having corrected its classification error concerning unfinished trucks, it seems likely that imports of trucks will decline. Therefore, we have concluded that automobile trucks, and bodies (including cabs) and chassis for automobile trucks are not presently being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic truck industry.

[206] The Customs Service published a notice to such effect in the **Federal Register** of May 23, 1980 [45 FR 35057].

Conclusion

This is a classic case for an affirmative determination under section 201 of the Trade Act. All the elements are present. There are increasing imports resulting in dramatic increases in the penetration of the domestic market by imports of on-the-highway passenger automobiles. The domestic industry is suffering almost catastrophic injury to such an extent that, for the first time in history, our Federal Government has found it necessary to guarantee loans for up to $1.5 billion for a major automobile corporation. No other single adverse economic factor has plagued our domestic economy during the past several years which even approaches the disastrous effect caused by imports of passenger automobiles on this domestic industry. Had it not been for increasing imports of passenger automobiles during the past 3 years, the domestic industry would now be well into the process of adjusting to the other, less important adverse economic conditions.

As the legislative history of section 201 suggests, it is not feasible to assign a number on a scale of 1 to 10 to each of the causes of serious injury and thereby discover which is the most important cause. On the other hand, it is consistent with the legislative intent to examine each individual cause to determine which one, if absent, would have had the greatest effect of alleviating the serious injury experienced by the domestic industry. On that basis the most important cause of serious injury to the domestic automobile industry is increasing imports of on-the-highway passenger automobiles.

By reason of the foregoing, we have concluded that on-the-highway passenger automobiles are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic automobile industry, but that automobile trucks and bodies (including cabs) and chassis for automobile trucks are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic truck industry.

We believe that import restriction in the form of reasonable quotas on imports of passenger automobiles would not have caused disruptions in international trade, but would have provided the domestic passenger car industry with a much-needed opportunity to adjust to the new competitive conditions in the marketplace which are the result of economic factors beyond its control.

By order of the Commission.

Issued: December 10, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-40173 Filed 12-23-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-89]

Certain Apparatus for the Continuous Production of Copper Rod; Addition of Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Addition of Phelps Dodge Industries, Inc. as a respondent.

SUMMARY: On December 17, 1980, the Commission voted to add Phelps Dodge Industries, Inc. as a respondent in the above-referenced investigation. The Commission also voted to deny motion 89-21 insofar as it requested that Phelps Dodge Corporation be dismissed as a respondent.

SUPPLEMENTARY INFORMATION: This investigation, under Section 337 of the Tariff Act of 1930, was instituted by notice published in the **Federal Register** on August 13, 1980 (45 FR 53923). Southwire Company, of Carrolton, Georgia, is a complainant in this investigation. Krupp GmbH of the Federal Republic of Germany, and Krupp International, Inc. of Harrison, New York, were named respondents. On October 23, 1980, the Commission voted to issue a temporary exclusion order, having found that there is reason to believe that section 337 is being violated, and voted to add Phelps Dodge Corporation as a respondent. On November 7, 1980, the Commission issued an action and order adding Phelps Dodge Corporation as a respondent.

FOR FURTHER INFORMATION CONTACT: Jeffrey Neeley, Esquire, Office of the General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202-523-0359.

Issued: December 18, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-40169 Filed 12-23-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-85]

Certain Slide Fastener Stringers and Machines and Components Thereof for Producing Such Slide Fastener Stringers; Denial of Request for Temporary Relief

AGENCY: U.S. International Trade Commission.

ACTION: Disposition of complainant's request for temporary relief.

SUMMARY: On August 29, 1980, the Commission determined not to issue a temporary exclusion order in the above-captioned investigation. The Commission found that there is no reason to believe that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), and that the complainant would not suffer immediate and substantial harm in the absence of temporary relief. On November 10, 1980, the complainant petitioned the Commission to reconsider its denial of temporary relief in light of the Commission opinion issued in connection with the temporary relief phase of investigation No. 337-TA-89, *Certain Apparatus for the Continuous Production of Copper Rod.* The Commission reaffirmed its vote on November 26, 1980.

SUPPLEMENTARY INFORMATION: This investigation, under section 337 of the Tariff Act of 1930, was instituted by notice published in the **Federal Register** on June 4, 1980 (45 FR 40242). Textron, Inc. is the complainant in this investigation. Y.K.K. (U.S.A.) Inc. and Yoshida Kogyo K.K. were named party respondents.

The Commission's Action and Order, and the Commissioners' opinions issued in connection therewith are available for inspection in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Scott Daniels, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0480.

Issued: December 16, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-40171 Filed 12-23-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-93]

Certain Universal Joint Kits, Components Thereof, and Trunnion Seals Used Therewith; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is herby given that a complaint was filed with the U.S. International Trade Commission on November 3, 1980, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Dana Corporation, P.O. Box 1000, Toledo, Ohio 43697. The complaint was amended on November 18, 1980. The complaint, as amended (hereinafter referred to as "the complaint"), alleges unfair methods of competition and unfair acts in the importation into the United States of certain universal joint kits with trunnion seals, or in their sale, because of the alleged infringement by such trunnion seals of at least claims 1, 3, 4, 5, and 7 of U.S. Letters Patent 3,479,840 and the alleged misappropriation of Dana Corporation's trade nomenclature. The complaint further alleges that the effect or tendency of such unfair methods of competition and unfair acts is to substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation; during the investigation, to issue a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond; and, after a full investigation, to issue an order permanently excluding the articles in question from entry into the United States.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.12 of the Commission's rules of practice and procedure (19 CFR 210.12).

SCOPE OF THE INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on November 26, 1980, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(b)), an investigation be instituted to determine whether there is reason to believe there is a violation and whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain universal joint kits, components thereof, and trunnion seals used therewith into the United States, or in their sale, because of the alleged infringement by such seals of claims 1, 3, 4, 5, or 7 of U.S. Letters Patent 3,479,840 and the alleged misappropriation of Dana Corporation's trade nomenclature, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Dana Corporation, P.O. Box 1000, Toledo, Ohio 43697.

(b) The respondents are the following companies alleged to be engaged in the unlawful importation of such articles into the United States, or in their sale, and are parties upon which the complaint is to be served:

Naniwa Seimitsu Industry Co., Ltd., No. 2-Chome, Kusune-Cho, Yao, Osaka, Japan
GMB Universal Joints, Inc., 22 D. Craigwood Road, Avenel, N.J. 07001
GMB West, 121 Sierra Street, El Segundo, Calif. 90245
Kanematsu-Gosho (U.S.A.) Inc., 543 West Algonquin Road, Arlington Heights, Ill. 60005

(c) Wilhelm A. Zeitler, Chief, Nonpatent Branch, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall name the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

SUPPLEMENTARY INFORMATION: The phrase "components thereof" has been added to paragraph (1) above on the basis of informal investigatory activities by the Commission which revealed that the universal joint kit can be imported as component parts as well as in an assembled kit form.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's rules of practice and procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(b) of the rules, such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the

right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find

the Office of Personnel Management under the title "OPM/GOVT-2, Grievance Records". (44 FR 30884 on May 29, 1979 as amended by subsequent publication at 44 FR 61708 on October

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by agency employees under Part 771 of the OPM's regulations. These case files contain all documents

conducted under authority of 44 U.S.C. 2904 and 2906.

(7) Information is used by NCUA in the production of summary descriptive statistics and analytical studies in

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the

records and verification of identity (12 CFR 720.26 and 12 CFR Part 720 Subpart B).

RECORD SOURCE CATEGORIES:

Information in this system of records

right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is avilable for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0493.

Issued: December 17, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-40172 Filed 12-23-80; 8:45am]

BILLING CODE 7020-02-M

NATIONAL CREDIT UNION ADMINISTRATION

Privacy Act of 1974; Employee Grievance Records

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of Maintenance of System of Records: Employee Grievance Records.

SUMMARY: In accordance with 5 U.S.C. 552 (e)(4), NCUA publishes the description of a system of records previously maintained by the Office of Personnel Management but now maintained by NCUA.

EFFECTIVE DATES: The System of Records, Employee Grievance Records, is effective on January 1, 1981.

ADDRESS: National Credit Union Administration, 1776 G Street N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Dorothy Stassun, Attorney-Advisor, Office of General Counsel, at the above address or telephone (202) 357–1030, or Judy Wilfong, Division of Personnel, Office of Administration, at the above address or telephone (202) 357–1158.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 552a(e)(4), the National Credit Union Administration hereby publishes a System of Records entitled "Employee Grievance Records". This system was previously maintained by the Office of Personnel Management under the title "OPM/GOVT–2, Grievance Records". (44 FR 30884 on May 29, 1979 as amended by subsequent publication at 44 FR 61708 on October 26, 1979).

The OPM System of Records is being deleted from OPM's annual republication of records. The system will continue into existence until December 31, 1980; on that date it will become obsolete. NCUA is adopting the System of Records entitled "Employee Grievance Records" with two minor changes. First, those federal employees who have submitted grievances in accordance with "negotiated procedure" are removed from those "categories of individuals" previously covered by the OPM system. Secondly, "files and records of internal grievances and arbitration systems that agencies may establish through negotiations with recognized labor organizations" are deleted from the "categories of records" in the system. Neither of these deletions mandates submittal by this agency of a report on a new system of records. OMB Circular No. A–108, Transmittal Memorandum No. 1, September 30, 1975, requires submittal of such a report when the systems publication changes the number or types of individuals on whom the records are maintained or expands the types or categories of information maintained. NCUA has never provided and does not currently provide for the settlement of personnel matters through these negotiation procedures; therefore, elimination of this non-existent category of employees would not meet the OMB standard for records on individuals. Furthermore, NCUA employees are not represented by any labor organization; the deletion of this category of records would in no way change the categories of records maintained.

Dated: December 18, 1980.

Beatrix Fields,

Acting Secretary, National Credit Union Administration Board.

NCUA–25

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

Division of Personnel, National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances with NCUA in accordance with Part 771 of the Office of Personnel Management's regulations. (5 CFR Part 771).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by agency employees under Part 771 of the OPM's regulations. These case files contain all documents related to the grievance including statements of witnesses, reports of interviews and hearings, examiners findings and recommendations, a copy of the original and final decision and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, E. O. 10577, 3 CFR 1954–1958 Comp., p. 218, E. O. 10987, 3 CFR 1959–1983 Comp., p. 519, agency employees for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used by the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(2) Information is used by any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

(3) Information is used by a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) Information is used by a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

(5) Information is used by another Federal agency or by a court when the Government is party to a judicial proceeding before the court.

(6) Information is used by the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(7) Information is used by NCUA in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

(8) Information is used by officials of the Office of Personnel Management, the Merit Systems Protection Board including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

(9) Information (that is relevant to the subject matter involved in a pending judicial or administrative proceeding) is used to respond to a request for discovery or for appearance of a witness.

(10) Information is used by officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

(11) Standard routine uses as set forth in Appendix A of the National Credit Union Administration Annual Publication of Systems of Records at 45 FR 2778, January 14, 1980.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrievable by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records are disposed of 3 years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Personnel, NCUA, 1776 "G" Street, N.W. Washington, D.C. 20456.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel office regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Approximate date of closing of the case and kind of action taken.
d. Organizational component involved.

RECORD ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed an individual may request access to the official copy of the grievance file by contacting the agency personnel office.

Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Approximate date of closing of the case and kind of action taken.
d. Organizational component involved.

Individual requesting access must also follow the Privacy Act regulations regarding access to records and verification of identity (12 CFR 720.23 and 12 CFR Part 720 Subpart B).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determine if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the agency personnel office. Individuals must furnish the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Approximate date of closing of the case and kind of action taken.
d. Organizational component involved.

Individuals requesting amendment must also follow the Privacy Act regulations regarding amendment to records and verification of identity (12 CFR 720.26 and 12 CFR Part 720 Subpart B).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.
b. By testimony of witnesses.
c. By agency officials.
d. From related correspondence from organizations or persons.

[FR Doc. 80-40044 Filed 12-23-80; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, FP 026–5 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Nuclear Criticality Control and Safety of Homogeneous Plutonium-Uranium Fuel Mixtures Outside Reactors" and is intended for Division 3, "Fuels and Materials Facilities." It is being developed to describe procedures acceptable to the NRC staff for complying with the Commission's regulations with regard to the prevention of criticality accidents in operations involving homogeneous plutonium-uranium fuel mixtures outside reactors. The guide endorses ANSI/ANS 8.12–1978, "Nuclear Criticality Control and Safety of Homogeneous Plutonium-Uranium Fuel Mixtures Outside Reactors."

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data.

The draft guide, temporarily identified by its task number, FP 029–4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Standard Format and Content for the Safety Analysis Report

Dated at Rockville, Maryland this 16th day of December 1980.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Standards, Office of Standards Development.

Spring Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

purchased, at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 26th day of November 1980.

notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by February 19, 1981.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 15th day of December 1980.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Standards, Office of Standards Development.

[FR Doc. 80-40102 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, FP 029-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Standard Format and Content for the Safety Analysis Report for an Independent Spent Fuel Storage Installation (Dry Storage)" and is intended for Division 3, "Fuels and Materials Facilities." It is being developed to identify the type of information needed by the NRC staff for its review of the safety analysis report included in an application for a license to store spent fuel in a dry-mode independent spent fuel storage installation and suggest a format for presenting the information. The safety analysis report is required by 10 CFR Part 72, which was published November 12, 1980 (45 FR 74693).

This draft guide and the associated value-impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value-impact statement. Comments on the draft value-impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by February 27, 1981.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 16th day of December 1980.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Standards, Office of Standards Development.

[FR Doc. 80-40101 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 89, 89 and 86 to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, issued to Duke Power Company, which revised the Technical Specifications for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3, located in Oconee County, South Carolina. The amendments are effective as of the date of issuance.

These amendments revise the Station's Common Technical Specifications by providing a redefinition of the term operable and the addition of general Limiting Conditions for Operation.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated June 24, 1980, as supplemented October 14, 1980, (2) Amendments Nos. 89, 89, and 86 to Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. and at the Oconee County Library, 201 South

Spring Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 10th day of December 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 80-40104 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

Metropolitan Edison Co., et al., Availability of Supplement No. 1 to the Evaluation for TMI-1 Restart

In the matter of Metropolitan Edison Company, Jersey Central Power and Light Company, Pennsylvania Electric Company, notice is hereby given that the Office of Nuclear Reactor Regulation has published Supplement No. 1 to the Evaluation of the Licensee's Compliance with the Short and Long Term Items of Section II of the NRC Order dated August 9, 1979, related to the restart of the Three Mile Island Nuclear Station, Unit No. 1, located in Dauphin County, Pennsylvania.

This supplement 1) updates Section C, Order Item 6 of NUREG-0680, 2) addresses specific order items included in the Commission's Order of March 6, 1980 and 3) describes the licensee's compliance with the management-related requirements in NUREG-0694.

Based on our review, we conclude that the licensee has made substantial improvements in the area of management capability and resources and is continuing its efforts in this direction. A few items remain unresolved and until those items are acceptably resolved, we cannot yet conclude that the licensee is in complete compliance with Order Item 6.

Any recommendation by the Staff to authorize restart of TMI-1 will be made only after resolution of presently open items, definition of any additional required items, and compliance by the licensee with those additional requirements.

The report is being made available at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555, and at the Government Publications section, State Library of Pennsylvania, Box 1601 (Education Building), Harrisburg, Pennsylvania, for public inspection and copying. The report (Document No. NUREG-0680 Supplement No. 1) can also be purchased, at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 28th day of November 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating, Reactors Branch No. 4, Division of Licensing.

[FR Doc. 80-40100 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-184]

National Bureau of Standards; Consideration of Application for License Renewal at Increased Power Level

The United States Nuclear Regulatory Commission (the Commission) is considering amendment and renewal of Facility License No. TR-5, issued to the National Bureau of Standards (the licensee), for operation of the tank-type test reactor located near Gaithersburg on the National Bureau of Standards site in Montgomery County, Maryland.

The amendment and renewal would authorize an increase in the reactor's maximum power level from 10 megawatts (thermal) to 20 megawatts (thermal), in accordance with the licensee's application dated December 2, 1980 and letter dated December 11, 1980. The license would be valid for a period of 20 years from the date of issuance.

Prior to a decision to amend and renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission regulations.

By January 23, 1981, the licensee may file a request for a hearing with respect to amendment and renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identity the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity.

Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner

promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri) (800) 324-6700. The Western Union operator should be given Datagram

Edward Luton, who is no longer a member of the Atomic Safety and Licensing Board Panel.

As reconstituted, the Board is comprised of the following

stay of the Statement of Policy filed by the Union of Concerned Scientists and the Shoreham Opponents Coalition.

On October 28, 1980, by a vote of 4-0, the Commission approved NUREG-0737, "Clarification of TMI Action Plan

that power reactor licensing should not continue until the assessment of the TMI accident had been substantially completed and comprehensive improvements in both the operation and regulation of nuclear power plants had

to correct or improve the regulation and operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. In

fuel-loading and low-power testing license, (2) those required to be completed by a license applicant to operate at appreciable power levels up to full power, (3) those the NRC will take prior to issuing a fuel-loading and low-

promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri) (800) 324-6700. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to James R. Miller: (petitioner's name and telephone number); (date petition was mailed); (National Bureau of Standards) and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Wshington, D.C. 20555, and to Mr. Robert S. Carter, Reactor Radiation Division, National Bureau of Standards, Washington, D.C. 20234.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment and renewal dated December 2, 1980 and letter dated December 11, 1980, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555.

Dated at Bethesda, Maryland this 18th day of December 1980.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 80-40099 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-500-CP and 50-501-CP]

The Toledo Edison Company; Davis-Besse Nuclear Power Station, Units 2 and 3, Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 (1980), the Atomic Safety and Licensing Board for *The Toledo Edison Company, et al.* (Davis-Besse Nuclear Power Station Units 2 and 3), Docket Nos. 50-500-CP and 50-501-CP, is hereby reconstituted by appointing Administrative Judge B. Paul Cotter, Jr., Chairman of the Board. This reconstitution is necessitated by the unavailability of the prior Chairman, Edward Luton, who is no longer a member of the Atomic Safety and Licensing Board Panel.

As reconstituted, the Board is comprised of the following Administrative Judges:

B. Paul Cotter, Jr., Chairman, Dr. Cadet H. Hand, Jr., Dr. David L. Hetrick.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Chairman of the Board is United States Nuclear Regulatory Commission, Atomic Safety and Licensing Board Panel, Washington, D.C. 20555.

Issued at Bethesda, Maryland, on December 18, 1980.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 80-40103 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

[CLI-80-42]

Statement of Policy; Further Commission Guidance for Power Reactor Operating Licenses

Memorandum and Order

Recently the Commission, by a vote of 3-2, issued a Statement of Policy entitled "Further Commission Guidance for Power Reactor Operating Licenses." 45 FR 41738 (June 20, 1980). In essence, the Statement of Policy announced the intent of the Commission that in future actions on nuclear power reactor operating license applications, it would look to the list of "Requirements for New Operating Licenses" found in NUREG-0694 (June 1980) as setting forth requirements for new operating licenses which should be "necessary and sufficient for responding" to the accident at Three Mile Island ("TMI"). Consequently, current operating license applications were to be judged against present NRC regulations, as supplemented by these TMI-related requirements. Insofar as certain of the provisions of NUREG-0694 sought to impose operating license requirements beyond those necessary to show compliance with the regulations:

> Although the [licensing and appeal] boards may entertain contentions asserting that the supplementation is unnecessary (in full or in part) and they may entertain contentions that one or more of the supplementary requirements are not being complied with; they may not entertain contentions asserting that additional supplementation is required. *Id.*

On November 3, 1980, by a vote of 2-2, the Commission denied a request for a stay of the Statement of Policy filed by the Union of Concerned Scientists and the Shoreham Opponents Coalition.

On October 28, 1980, by a vote of 4-0, the Commission approved NUREG-0737, "Clarification of TMI Action Plan Requirements," which is a letter from D. G. Eisenhut, Director of the Division of Licensing, NRR, to licenses of operating power reactors and applicants for operating licenses forwarding post-TMI requirements. NUREG-0737 now supersedes NUREG-0694, the latter being the document which forms the core of the substantive requirements in the aforementioned Statement of Policy. NUREG-0737 makes numerous significant changes in NUREG-0694. In some instances, the requirements in NUREG-0694 are made more flexible, especially as to implementation schedules. In some instances, the requirements in NUREG-0694 are made more strict. In addition, NUREG-0737 adds new requirements, taken from previously issued Bulletins and Orders, which were not part of NUREG-0694.

The Commission's approval of NUREG-0737 requires that some changes be made in the previously adopted Statement of Policy. Moreover, the Commission has now had more time to reflect upon the distinction between interpretive and supplementary requirements, as originally set forth in NUREG-0694 and as modified in NUREG-0737, and believes that the number of supplementary requirements may be quite small. For these reasons, the Commission has decided that the Statement of Policy should be amended as set forth in the Appendix to this Memorandum and Order.[1]

It is so ordered.

Dated at Washington, D.C., this 18th day of December 1980.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

U.S. Nuclear Regulatory Commission—Further Commission Guidance For Power Reactor Operating Licenses—Revised Statement of Policy*

I. Background

After the March 1979 accident at Three Mile Island, Unit 2, the Commission directed its technical review resources to assuring the safety of operating power reactors rather than to the issuance of new licenses. Futhermore, the Commission decided

[1] Chairman Ahearne concurs in amending the policy statement, but disagrees in how it should be amended. His dissenting views are attached to the Appendix.

*All footnotes for this Statement of policy appear at end of text.

that power reactor licensing should not continue until the assessment of the TMI accident had been substantially completed and comprehensive improvements in both the operation and regulation of nuclear power plants had been set in motion.

At a meeting on May 30, 1979, the Nuclear Regulatory Commission decided to issue policy guidance addressing general principles for reaching licensing decisions and to provide specific guidance for near-term operating license cases.[1] In November 1979, the Nuclear Regulatory Commission issued the policy guidance in the form of and amendment to 10 CFR Part 2 of its regulations,[2] describing the approach to be taken by the Commision regarding licensing of power reactor. In particular, the Commission noted that it would "be providing case-by-case guidance on changes in regulatory policies." The Commission has now acted on four operating licenses, has given extensive consideration to issues arising as a result of the Three Mile Island accident, and is able to provide general guidance.

Following the accident at Three Mile Island 2, the President established a Commission to make recommendations regarding changes necessary to improve nuclear safety. In May 1979, the Nuclear Regulatory Commission established a Lessons Learned Task Force,[3] to determine what actions were required for new operating licenses and chartered a Special Inquiry Group to examine all facets of the accident and its causes. These groups have published their reports.[4]

The Lessons Learned Task Force led to NUREG-0578, "TMI-2 Lessons Learned Task Force Status Report and Short-Term Recommendations" and NUREG-0585, "TMI-2 Lessons Learned Task Force Final Report." The Commission addressed these reports in meetings on September 6, September 14, October 14, and October 16, 1979. Following release of the report of the Presidential Commission the Commission provided a preliminary set of responses to the recommendations in that report.[5] This response provided broad policy directions for development of an NRC Action Plan, work on which was begun in November 1979. During the development of the Action Plan, the Special Inquiry Group Report was received, which had the benefit of review by panels of outside consultants representing a cross section of technical and public views. This report provided additional recommendations.

The Action Plan [6] was developed to provide a comprehensive and integrated plan for the actions judged appropriate by the Nuclear Regulatory Commission to correct or improve the regulation and operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. In developing the Action Plan, the various recommendations and possible actions of all the principal investigations were assessed and either rejected, adopted or modified. A detailed summary of the development and review process for the Action Plan was initially provided in NUREG-0694,[7] "TMI-Related Requirements For New Operating Licenses," and can now be found, as changed, in NUREG-0737, "Clarification of TMI Action Plan Requirements."[8]

Actions to improve the safety of nuclear power plants now operating were judged to be necessary immediately after the accident and could not be delayed until the Action Plan was developed, although they were subsequently included in the Action Plan. Such actions came from the Bulletins and Orders issued immediately after the accident, the first report of the Lessons-Learned Task Force issued in July 1979, the recommendations of the Emergency Preparedness Task Force, and the NRC staff and Commission. Before these immediate actions were applied to operating plants, they were approved by the Commission. Many of the required immediate actions have already been taken by licensees and most are scheduled to be completed in the near future.

On February 7, 1980, based on its review of initial drafts of the Action Plan, the Commission approved a listing of near-term operating license (NTOL) requirements, as being necessary but not necessarily sufficient TMI-related requirements, for granting new operating licenses. Since then, the fuel load requirements on the NTOL list have been used by the Commission in granting operating licenses, with limited authorizations for fuel loading and low power testing, for Sequoyah, North Anna, Salem, and Farley. Full operating licenses were granted, based on the NTOL list, for Sequoyah and North Anna.

On May 15, 1980, after review of the last version of the Action Plan, the Commission approved a list of "Requirements For New Operating Licenses," contained in NUREG-0694, which the staff recommended for imposition on current operating license applicants. That list was recast from the previous NTOL list and sets forth four types of TMI-related requirements and actions for new operating licenses: (1) Those required to be completed by a license applicant prior to receiving a fuel-loading and low-power testing license, (2) those required to be completed by a license applicant to operate at appreciable power levels up to full power, (3) those the NRC will take prior to issuing a fuel-loading and low-power testing or full-power operating license, and (4) those required to be completed by a license prior to a specified date. The Commission also approved the staff's recommendation that the remaining items from the TMI reviews should be implemented or considered over time to further enhance safety.

On October 28, 1980, the Commission approved a "Clarification of TMI Action Plan Requirements," not contained in NUREG-0737, which supersedes NUREG-0694. More explicit requirements, revisions in previous requirements, different time schedules for implementation, and new requirements in NUREG-0694, but taken from previously issued Commission bulletins and orders, form the core of NUREG-0737.

In approving the schedules for developing and implementing changes in requirements, the Commission's primary considerations were the safety significance of the issues and the immediacy of the need for corrective actions. As discussed above, many actions were taken to improve safety immediately or soon after the accident. These actions were generally considered to be interim improvements. In scheduling the remaining improvements, the availability of both NRC and industry resources was considered, as well as the safety significance of the actions. Thus, the Action Plan approved by the Commission presents a sequence of actions that will result in a gradually increasing improvement in safety as individual actions are completed and the initial immediate actions are replaced or supplemented by longer term improvements.

II. Commission Decision

Based upon its extensive review and consideration of the issues arising as a result of the Three Mile Island accident—a review that is still continuing—the Commission has concluded that the list of TMI-related requirements for new operating licenses found in NUREG-0737 can provide a basis for responding to the TMI-2 accident. The Commission has decided that current operating license applications should be measured by the NRC staff against the regulations, as augmented by these requirements.[9] In general, the remaining items of the Action Plan should be addressed through the normal process for

development and adoption of new requirements rather than through immediate imposition on pending applications.

III. Litigation of TMI-2 Issued in

insufficient on the other within the limits of the regulations.

Insofar as the second category—supplementation of existing regulations—is concerned, the parties may challenge either the necessity for or

[2] "Suspension of 10 CFR 2.764 and Statement of Policy on Conduct of Adjudicatory Proceedings," 44 FR 65050 (November 9, 1979).

[3] "Lessons Learned from TMI-2 Accident," Roger Mattson to NRR staff, May 31, 1979.

[4] Report of the President's Commission on The Accident at Three Mile Island, "The Need for Change: The Legacy of TMI," October 1979;

adopted in response to the accident.[2] It then provided guidance for litigation of TMI-2 issues in operating license proceedings.

Subsequently substantial controversy developed over the statement—

significance of the issue (i.e., what is the consequence of not addressing the issue), (c) to the extent possible, the differences in rationale underlying the certification from the rationale underlying the Commission

on the date of signature of this Notice, that:

1. With respect to the Agreements on Technical Barriers to Trade, the following additional countries have accepted the Agreement with respect to

V 4 5 D E 2 4 8 0 UMI

development and adoption of new requirements rather than through immediate imposition on pending applications.

III. Litigation of TMI–2 Issued in Operating License Proceedings

In the November 1979 policy statement, the Commission provided the following guidance for the conduct of adjudicatory proceedings:

> In reaching their decision, the Boards should interpret existing regulations and regulatory policies with due consideration to the implications for those regulations and policies of the Three Mile Island Accident. In this regard, it should be understood that as a result of analyes still underway, the Commission may change its present regulations and regulatory policies in important aspects and thus compliance with existing regulations may turn out to no longer warrant approval of a license application.

The Commission is now able to give the Boards more guidance.

The Commission believes the TMI-related operating license requirements list as derived from the process described above should be the principal basis for consideration of TMI-related issues in the adjudicatory process. There are good reasons for this. First, this represents a major effort by the staff and Commissioners to address more than one hundred issues and recommendations in a coherent and coordinated fashion. This entire process cannot be reproduced in individual proceedings. Second, the NRC does not have the resources to litigate the entire Action Plan in each proceeding. Third, many of the decisions involve policy more than factual or legal decisions. Most of these are more appropriately addressed by the Commission itself on a generic basis than by an individual licensing board in a particular case. Consequently, the Commission has chosen to adopt the following policy regarding litigation of TMI-related issues in operating license proceedings.

The "Clarification of Action Plan Requirements" in NURGE–0737, like the TMI-related "Requirements For New Operating Licenses" in NURGE–0694, can, in terms of their relationship to existing Commission regulations, be put in two categories: (1) Those that interpret, refine or quantify the general language of existing regulations, and (2) those that supplement the existing regulations by imposing requirements in addition to specific ones already contained therein. Insofar as the first category—refinement of existing regulations—is concerned, the parties may challenge the new requirements as unnecessary on the one hand or insufficient on the other within the limits of the regulations.

Insofar as the second category—supplementation of existing regulations—is concerned, the parties may challenge either the necessity for or sufficiency of such requirements. It would be useful if the parties in taking a position on such requirements stated (a) the nexus of the issue to the TMI–2 accident, (b) the significance of the issue, and, (c) any differences between their positions and the rationale underlying the Commission consideration of additional TMI-related requirements. It would be helpful if any certifications of questions regarding such positions to the Commission included the same information and such certifications are encouraged where Boards are in doubt as to the Commission's intentions in approving NUREG–0737. The Atomic Safety and Licensing and Appeal Boards' present authority to raise issues *sua sponte* under 10 CFR 2.760a extends to both categories.

In order to focus litigation of TMI-related issues, the staff and the Boards should use the Commission's existing summary disposition procedures, where applicable, in responding to TMI-related contentions.

The Commission believes that where the time for filing contentions has expired in a given case, no new TMI-related contentions should be accepted absent a showing of good cause and balancing of the factors in 10 CFR 2.714(A)(1). The Commission expects adherence to its regulations in this regard.

Also, present standards governing the reopening of hearing records to consider new evidence on TMI-related issues should be adhered to. Thus, for example, where initial decisions have been issued, the record should not be reopened to take evidence on some TMI-related issue unless the party seeking reopening shows that there is significant new evidence, not included in the record, that materially affects the decision.

Finally, the Commission will continue to monitor developments with regard to the litigation of our Action Plan requirements and will continue to offer guidance where appropriate.

Dated at Washington, D.C., the 18th day of December 1980.

Samuel J. Chilk,

Secretary of the Commission.

Footnotes

[1] "Staff Requirements—Discussion of Options Regarding Deferral of Licenses," memorandum from Samuel J. Chilk, Secretary to Lee V. Gossick, Executive Director for Operations, May 31, 1979.

[2] "Suspension of 10 CFR 2.764 and Statement of Policy on Conduct of Adjudicatory Proceedings," 44 FR 65050 (November 9, 1979).

[3] "Lessons Learned from TMI–2 Accident," Roger Mattson to NRR staff, May 31, 1979.

[4] Report of the President's Commission on The Accident at Three Mile Island, "The Need for Change: The Legacy of TMI," October 1979;

U.S. Nuclear Regulatory Commission, "TMI–2 Lessons Learned Task Force Status Report and Short-Term Recommendations," NUREG–0578, July 1979;

U.S. Nuclear Regulatory Commission, "TMI–2 Lessons Learned Task Force Status Report," NUREG–0585, August 1979;

U.S. Nuclear Regulatory Commission Special Inquiry Group, "Three Mile Island: A Report to the Commissioners and to the Public," January 1980.

[5] U.S. Nuclear Regulatory Commission, "NRC Views and Analysis of the Recommendations of the President's Commission on the Accident at Three Mile Island," NUREG–0632, November 1979.

[6] U.S. Nuclear Regulatory Commission, "NRC Action Plans Developed as a Result of the TMI–2 Accident," NUREG–0660.

[7] U.S. Nuclear Regulatory Commission, "TMI-Related Requirements for New Operating Licenses," NUREG–0694, June 1980.

[8] U.S. Nuclear Regulatory Commission, "Clarification of TMI Action Plan Requirements," NUREG–0737, November 1980.

[9] Consideration of applications for an operating license should include the entire list of requirements unless an applicant specifically requests an operating license with limited authorization (e.g., fuel loading and low-power testing).

Chairman Ahearne's Dissenting Views

I now support amending the guidance for litigating TMI–2 issues for the reasons mentioned in the Commission order and below. However, I do not support the Commission's revised statement of policy. Little guidance is provided to either the Board or the parties—they are simply told they can litigate whatever they wish and it would be "useful" or "helpful" to address certain questions.

Throughout the development of the TMI Action Plan and the various policy statements, I have believed the Commissioners should play a central role in determining the appropriate response to the TMI–2 accident. Unfortunately the "Revised Statement of Policy" relinquishes Commission control and attention from a major portion of this process. Therefore I would have preferred the following approach:

Revised Statement of Policy

I. Background

In June 1980 the Commission issued a Statement of Policy dealing with TMI-related requirements for new operating licenses.[1] This statement outlined the process by which the Commission evaluated the TMI–2 accident and then agreed to a list of requirements to be adopted in response to the accident.[2] It then provided guidance for litigation of TMI–2 issues in operating license proceedings.

[1] "Further Commission Guidance for Power Reactor Operating Licenses; Statement of Policy," 45 FR 41738 (June 20, 1980).

Subsequently substantial controversy developed over the statement—particularly over treatment of requirements and issues which go beyond existing regulations. Due in part to this controversy, in part to a change in the composition of the Commission, in part to the uncertain results of ongoing litigation, and in part to confusion created by subsequent Commission statements, the Commission has decided to modify this aspect of the policy statement. In the long run the Commission believes it will save time by modifying its guidance at this juncture.

II. Modified Commission Guidance of Litigation on TMI–2 Issues in Operating License Proceedings

In the June Statement of Policy the Commission described the TMI-related requirements as falling into two categories: "(1) Those that interpret, refine or quantify the general language of existing regulations, and (2) those that supplement the existing regulations by imposing requirements in addition to specific ones already contained therein." The Commission is modifying its guidance with respect to the second category. Rather than entirely precluding litigation of requirements that go beyond the regulations (other than those found in the Commission's list of requirements), the Commission will now provide parties an opportunity to certify such questions to the Commission. To the extent that an issue addresses items within the current regulations, certification is unnecessary since litigation was permissible under the original policy statement. However issues which raise matters going beyond the existing regulations may now be certified directly to the Commission.[3]

A request for certification should clearly present (a) the nexus of the issue to the TMI–2 accident (i.e., in what way does the TMI accident provide a basis for the concerns presented), (b) the significance of the issue (i.e., what is the consequence of not addressing the issue), (c) to the extent possible, the differences in rationale underlying the certification from the rationale underlying the Commission consideration of additional TMI-related requirements (e.g., different reasoning, incorrect assumptions, incomplete information).

To the extent that a contention raises the need for a requirement already included in the Commission's list of requirements for new operating licenses, certification is necessary. As under the old policy statement, litigation of the need for those requirements is permitted without further action by the Commission. The Commission itself has already found sufficient basis for allowing consideration of those items.

It should be emphasized that this policy statement (as well as the previous policy statement) is intended to address issues arising from the TMI–2 accident. Other issues are to be treated according to normal Commission procedures.[4]

[FR Doc. 80-40105 Filed 12-23-80; 8:45 am]

BILLING CODE 7590-01-M

[2] "TMI-Related Requirements for New Operating Licenses," NUREG–0694 (June 1980) as modified by "Clarification of TMI Action Plan Requirements," NUREG–0737 (Nov. 1980).

[3] The Licensing Board should certify any such questions directly to the Commission. In the event that a party wishes to request directed certification, the Board should be given a reasonable opportunity to address the certification question prior to Commission action since (a) the Board might rule that the issue is within the existing regulations rendering certification unnecessary and (b) otherwise it would be helpful to have the benefit of the Board's reasoning. *See Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Unit 1), ALAB-297, 7 NRC 727 (1975).

[4] *See e.g.*, 10 CFR 2.758.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding the Application of Certain International Agreements

This notice modifies the determination published in the Federal Register of January 4, 1980 (45 FR 1181), as amended, to reflect additional signatories to the international agreements negotiated in the Tokyo Round of Multilateral Trade Negotiations, and to make determinations necessary for acceptance of the customs valuation agreement.

The determinations herein are made pursuant to the functions of the President under section 2(b) of the Trade Agreements Act of 1979 ("the Act") and section 701(b) of the Tariff Act of 1930, as amended by section 101 of the Act, delegated to the United States Trade Representative by section 1–103 of Executve Order No. 12188 of January 2, 1980.

Now, therefore, I, Reubin O'D. Askew, United States Trade Representative, in conformity with the provisions of section 2 of the Act (93 Stat. 147), section 701 of the Tariff Act of 1930, as amended effective January 1, 1980 (93 Stat. 151), and section 1–103 Executive Order No. 12188, do determine, effective on the date of signature of this Notice, that:

1. With respect to the Agreements on Technical Barriers to Trade, the following additional countries have accepted the Agreement with respect to the United States and should not otherwise be denied the benefits of the Agreement:

Korea, Republic of; Romania

2. With respect to the International Dairy Arrangement, Romania has accepted the Agreement and should not otherwise be denied the benefits of the Agreement.

3. With respect to the Arrangement Regarding Bovine Meat, Tunisia has accepted the Agreement and should not otherwise be denied the benefits of the Agreement.

4. With respect to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade and to Protocol to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade,

(a) in accordance with section 2(b) (1) and (3) of the Trade Agreements Act of 1979, 19 U.S.C. 2503, and the Act to approve and implement the protocol to the trade agreement relating to customs valuation and for other purposes, Pub. L. 96–490, each major industrialized country (as defined in section 126(d) of the Trade Act of 1974, 19 U.S.C. 2136(d)) is also accepting the agreement, without reservation, with the exception of Canada;

(b) in accordance with section 2(b)(3) of the Act, the acceptance of these agreements without reservation by Canada is not essential to the effective operation of the Agreements for that period of time subject to the reservation by Canada; and

(c) in accordance with section 2(b)(3)(C) of the Act, a significant portion of United States trade will benefit from these agreements, notwithstanding the delay in full application of the agreements by Canada, and it is in the national interest of the United States to accept these agreements.

Reubin O'D. Askew,

United States Trade Representative.

[FR Doc. 80-40106 Filed 12-23-80; 8:45 am]

BILLING CODE 3190-01-M

SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

Meeting

The Select Commission on Immigration and Refugee Policy will hold its seventh meeting on:

Date: January 6, (Tuesday)
Place: Rayburn House Office Building, Room 2141
Time: 3:00 p.m.—6:30 p.m.

Included on the agend will be

business at 53 Park Place, Suite 206, New York, New York 10007, will begin operations with $500,000 of paid-in capital and paid-in surplus derived from the sale of 5,000 shares of common stock to Albert D. F. Chang.

Merrill Lynch SBL, Inc. (Applicant), One Liberty Plaza, 165 Broadway, New York, New York 10080, with the Small Business Administration pursuant to § 120.4(b) of SBA Regulations (13 CFR 120.4(b)(1980)), promulgated under the

Foren, Director, Office of Lender Relations & Certification, Small Business Administration, 1441 L Street, NW. Washington, DC 20416.

A copy of this notice shall be published in the *New York Times*, as

currently manages another SBIC, Oceanic Capital Corporation (OCC). CAL and OCC are located at the same address as the Applicant, TMG and the General Partner.

The officers, directors and ten or more

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 17, 1980.

Michael K. Casey,

Associate Administrator for Investment.

Date: January 6, (Tuesday)
Place: Rayburn House Office Building, Room 2141
Time: 3:00 p.m.—6:30 p.m.

Included on the agend will be discussion of major policy issues before the Commission. Written statements may be filed with the Commission before or after the meeting.

The Select Commission on Immigration and Refugee Policy was created by Pub. L. 95–412, signed October 5, 1978. The Commission is charged with a comprehensive review of U.S. immigration laws, policies, and procedures. Membership on the Commission includes four Cabinet members, for members of the House Committee on the Judiciary, four members of the Senate Judiciary Committee, and four members appointed by the President, including Reverend Theodore M. Hesburgh, President of Notre Dame University, and Chairman of the Select Commission.

Address inquiries to: Select Commission on Immigration and Refugee Policy, New Executive Office Building, Room 2020, 726 Jackson Place NW., Washington, D.C. 20506, Telephone: (202) 395–5615.

Lawrence H. Fuchs,
Executive Director.

[FR Doc. 80–40138 Filed 12–23–80; 8:45 am]
BILLING CODE 6820–AR–M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 02/02–5424]

Far East Capital Corp., Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Far East Capital Corporation (Applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1980).

The officers, directors and stockholders of the Applicant are as follows:

Albert D. F. Chang, 3 Oakwood Drive, New Providence, New Jersey, 07974. Director, President, and Sole Stockholder.

Jiann J. Houng, 40–65 62nd Street, Woodside, New York, 11377. Director, Treasurer, and Secretary.

Robert T. Chang, 36 Riceman Road, Berkely Heights, New Jersey, 07922. Director.

The Applicant, a New York corporation, with its principal place of business at 53 Park Place, Suite 206, New York, New York 10007, will begin operations with $500,000 of paid-in capital and paid-in surplus derived from the sale of 5,000 shares of common stock to Albert D. F. Chang.

The Applicant will conduct its activities principally in the State of New York. Applicant intends to provide assistance to qualified socially or economically disadvantaged small business concerns.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: December 17, 1980.

Michael K. Casey,
Associate Administrator for Investment.

[FR Doc. 80–40168 Filed 12–23–80; 8:45 am]
BILLING CODE 8025–01–M

Merrill Lynch SBL, Inc.; Filing of Application for Eligibility Determination as a Small Business Lending Company.

An application for Eligibility Determination as a Small Business Lending Company has been filed by Merrill Lynch SBL, Inc. (Applicant), One Liberty Plaza, 165 Broadway, New York, New York 10080, with the Small Business Administration pursuant to § 120.4(b) of SBA Regulations (13 CFR 120.4(b)(1980)), promulgated under the Small Business Act.

As a Small Business Lending Company (SBLC), under Subsection (b) mentioned above, the Applicant will be engaged solely in the making of loans to small business concerns, in participation with SBA, and in accordance with applicable SBA Regulations; and, it will be subject to supervison and examination by the SBA.

The Applicant is incorporated under the laws of the State of Delaware and will commence operations with an initial capitalization of $500.000. It intends to conduct its operations on a nationwide basis and to sell, in the Secondary Market, the SBA's guaranteed portions of loans made to small business concerns.

The Officers and Directors of the Applicants are:

Name and Title

Gordon R. Watson, 350 Heights Road, Ridgewood, New Jersey 07450. President and Director.

Joseph M. Leone, 2715 Kennedy Boulevard, Jersey City, New Jersey 07306, Executive Vice President.

Frank M. Macioce, 2 Edgewood Road, Chatham, New Jersey 07928, Secretary.

Edmond N. Moriarty, Jr., 31 Forest Drive, Short Hills, New Jersey 07078, Director.

Wallace O. Sellers, 401 Heights Road, Ridgewood, New Jersey 07450, Director.

Other executives have not yet been named.

Merrill Lynch Capital Resources, Inc., One Liberty Plaza, 165 Broadway, New York, New York 10080, is the parent of the applicant. Merrill Lynch Capital Resources, Inc., is a subsidiary of Merrill Lynch and Company, Inc.

Matters involved in SBA's consideration of the application include the general business reputation and character of management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Act and the Regulations promulgated thereunder.

Notice is hereby given that all interested parties may, not later than 15 days from the date of publication of this Notice, submit to SBA written comments on the proposed Applicant and/or its management. Any such communication should be addressed to: Wayne S. Foren, Director, Office of Lender Relations & Certification, Small Business Administration, 1441 L Street, NW. Washington, DC 20416.

A copy of this notice shall be published in the *New York Times*, as well as in the four (4) regional editions of the *Wall Street Journal*.

(Catalogue of Federal Domestic Assistance Program No. 59.012 Small Business Loans)

Dated: December 18, 1980.

A. Vernon Weaver,
Administrator.

[FR Doc. 80–40186 Filed 12–23–80; 8:45 am]
BILLING CODE 8025–01–M

[Proposed License No. 09/09–0274]

Pan American Investment Co. License to Operate

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102(1980)), by Pan American Investment Company, a limited Partnership, 350 California Street, Suite 2090, San Francisco, California 94104 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et. seq.).

The proposed Corporate General Partner, Limited Partner and Investment Manager.

General Partner

Pan American Capital Corporation
350 California Street, Suite 2090
San Francisco, California 94104.

Limited Partner

CIN Industrial Investments Limited
10 Bouverie Street
London EC4y 8BA.

Investment Manager

The Merchants Group Limited
350 California Street, Suite 2090
San Francisco, California 94104.

Pan American Investment Corporation owns 1 percent of Pan American Investment Company outright and an additional 19 percent on a contingent basis. That is to say, after a return of 133 percent of the limited partners capital investment, Pan American Investment Corporation will then participate in the additional 19 percent of the proceeds.

Pan American Capital Corporation is a wholly owned subsidiary of Churchill Associates Limited (CAL), an investment company, and a California corporation. CAL also owns 100 percent of The Merchants Group Limited (TMG), a California corporation, which currently manages another SBIC. Oceanic Capital Corporation (OCC). CAL and OCC are located at the same address as the Applicant. TMG and the General Partner.

The officers, directors and ten or more percent stockholders of CAL are:

Name and address, title, and percent of ownership

Louis L. Davis, 145 Laurel Street, San Francisco, California 94118, Chairman & Chief Executive Officer, 17.85.

Spencer W. Hoopes, 3701 Clay Street, San Francisco, California 94118, Vice President, 17.85.

Robert Cyril Weeks, 4075 Scripps Avenue, Palo Alto, California 94306, Vice President, 17.85

Messers. Davis, Hoopes and Weeks are also the officers and directors of the General Partner and TMG.

The Applicant was established pursuant to a privately negotiated transaction between CAL, Pan American Captial Corporation and The National Coal Board Staff Superannuation Pension Scheme (the Staff Plan) and (the Mineworkers' Plan) (collectively the "Pension Schemes") of the United Kingdom. Pursuant to the terms of the negotiations, the Pension Schemes are utilizing a nominee corporation, CIN Industrial Investments limited, a United Kingdom corporation, as limited partner of the Applicant.

Applicant intends to follow a diversified investment policy with emphasis on "venture capital" investments in "small business concerns" as those terms are defined in Sectioin 107.3 of the Regulations. The initial partnership capital will be $4,824,484.

Matters involved in SBA's consideration of the application includes (1) the general business reputation and character of the proposed owners and management, (2) the reasonable prospects for successful operation of the new SBIC under such management (including adequate profitability and financial soundness, in accordance with the Act and Regulations), and (3) whether the proposed licensing would be in the furtherance of the purpose of the Act.

Notice is hereby given that any person may not later than January 8, 1981 submit written comments to the Associate Administrator for Investment, 1441 L Street, NW, Washington, D.C. 20416.

A copy of this notice will be published in a newspaper of general circulation in San Francisco, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 17, 1980.

Michael K. Casey,
Associate Administrator for Investment.

[FR Doc. 80–40197 Filed 12–23–80; 8:45 am]
BILLING CODE 8025–01–M

[License No. 02/02–5396]

Pierre Funding Corp.; Applicatioh for a License to Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)), under the name of Pierre Funding Corporation (Applicant), for a license to operate as a Small Business Investment Company (SBIC) under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended, and the Rules and Regulations promulgated thereunder.

The Applicant was incorporated under the laws of the State of New York, and it will commence operations with a capitalization of $604,500.

The Applicant will have its place of business at 270 Madison Avenue, Suite 1608, New York, New York 10017, and it intends to conduct operations primarily in the State of New York.

The officers, directors and stockholders of the Applicant will be:

(1) Elias Henry Debbas, 300 East 40th Street, New York, New York 10017. President, Director, 58.334% Stockholder.

Albert David Sutton, 18 Jerome Avenue, Deal, New Jersey 07723, Vice President, Director, 33.333% Stockholder.

(2) Phillip Gordon Kass, 12 Parkfield Road, Scarsdale, New York 10583. Secretary, Director, 8.333% Stockholder.

Two (2) corporations are contemplated as the shareholders of the Applicant. They are as follows:

(1) All State Credit Corp., (will own 58.334% of applicant); Mr. Debbas is the 100% beneficial owner of All State Credit Corp.

(2) EOI Services, Inc. (will own 8.333% of applicant); Mr. Kass is a 37% beneficial owner of EOI Services, inc.

The Applicant will conduct its activities primarily in the County and City of New York and will primarily finance concerns considered mini-fleet taxicab corporations licensed by the New York Taxi and Limousine Commission.

As a small business investment company under Section 301(d) of the

10th Floor, Boston, Massachusetts 02114, or other locally announced locations.

Dated: December 19, 1980.

A. Vernon Weaver,
Administrator.

members, the staff of the U.S. Small Business Administration, and others attending.

Dated: December 17, 1980.

A. Piazza,
Director, Entry Procedures and Penalties

on February 4, 1981, at 8:30 a.m. The purpose of the meeting will be to assemble and analyze information

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 17, 1980.

Michael K. Casey,

Associate Administrotor for Investment.

[FR Doc. 80-40184 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1961]

New York; Declaration of Disaster Loan Area

The area of 1229, 1231, 1233, 1235 and 1237 Yonkers Avenue and 437, 439 and 441 Bronx River Road, in the City of Yonkers, Westchester County, New York, constitutes a disaster area because of damage resulting from a fire which occurred on October 28, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on Feb. 19, 1981, and for economic injury until the close of businesss on Sept. 21, 1981, at: Small Business Administration, District Office, 26 Federal Plaza—Room 3100, New York, New York 10007, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 19, 1980.

A. Vernon Weaver,

Administrotor.

[FR Doc. 80-40192 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1962]

New York; Declaration of Disaster Loan Area

The areas of 89-02 and 89-30 on 37 Avenue, between 37-01 and 37-09 on 89th Street and between 37-02 and 37-10 on 90th Street, in Jackson Heights, in the City of New York, Queens County, New York, constitutes a disaster area because of damage resulting from a fire which occurred on November 11, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on February 19, 1981, and for economic injury until the close of business on Sept. 19, 1981, at: Small Business Administration, District Office, 26 Federal Plaza—Room 3100, New York, New York 10007, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 19, 1980.

A. Vernon Weaver,

Administrotor.

[FR Doc. 80-40187 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1900; Amendment No. 3]

Texas; Declaration of Disaster Loan Area

The above numbered Declaration and subsequent amendments (See 45 FR 56489, 62599, 79216) is amended further by including the following language as reason for the disaster declaration: "77 counties and adjacent counties in the State of Texas constitute a disaster area because of drought and extreme heat causing damage to agriculture, livestock and products. * * * " All other information remains the same, i.e., the termination date for filing applications for physical damage is close of business on February 12, 1981, and for filing applications for economic injury is close of business on May 12, 1981.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 7, 1980.

A. Vernon Weaver,

Administrotor.

[FR Doc. 80-40185 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1904; Amendment No. 3]

West Virginia; Declaration of Disaster Loan Area

The above numbered Declaration (See 45 FR 58458), amendment No. 1 (See 45 FR 62600), and amendment No. 2 (See 45 FR 72916) are amended by extending the filing dates for physical damage until the close of business on November 16, 1980, and for economic injury until the close of business on June 14, 1981.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 10, 1980.

Harold A. Theiste,

Acting Administrotor.

[FR Doc. 80-40190 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Washington, D.C., will hold a public meeting at 12:00 noon, on Wednesday, January 14, 1981, at the Flagship Restaurant, 900 Water Street, SW, Washington, D.C., to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Freddie Collins, District Director, U.S. Small Business Administration, 1030 15th Street, NW—Suite 250, Washington, D.C. 20417, (202) 653-6965. There will be a set luncheon price of $7.50, per person.

Dated: December 18, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-40193 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, California, will hold a public meeting at 10 a.m., Wednesday, January 14, 1981, at the World Trade Center, 350 South Figueroa, Suite 600, Los Angeles, California, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Rudolph I. Estrada, District Director, U.S. Small Business Administration, 350 S. Figueroa, Suite 600, Los Angeles, California 90071, phone (213) 688-2977.

Dated: December 17, 1980.

Michael B. Kraft,

Director, Office of Advisory Councils.

[FR Doc. 80-40183 Filed 12-23-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 80-305]

Approval of Public Gauger Performing Gauging Under Standards and Procedures Required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Mr. C. J. Thibodeaux, 2105 North Palm Court, Pasadena, Texas 77502, to gauge imported petroleum and petroleum products in the Customs districts of Houston and Galveston, Texas in accordance with the provisions of § 151.43 of the Customs Regulations is approved.

Dated: December 17, 1980.

A. Piazza,

Director, Entry Procedures and Penalties Division.

[FR Doc. 80-40156 Filed 12-23-80; 8:45 am]

BILLING CODE 4810-22-M

[T.D. 80-304]

Approval of Public Gauger Performing Gauging Under Standards and Procedures Required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Johnnie Wilson Inspections, P.O. Box 924, Freeport, Texas 77541, to guage imported petroleum and petroleum products in all Customs districts in accordance with the provisions of section 151.43 of the Customs Regulations is approved.

Dated: December 17, 1980.

A. Piazza,

Director, Entry Procedures and Penalties Division.

[FR Doc. 80-40157 Filed 12-23-80; 8:45 am]

BILLING CODE 4810-22-M

[T.D. 80-306]

Approval of Public Gauger Performing Gauging Under Standards and Procedures Required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Bulk Liquid Surveys, Inc., 4646 Parkside Drive, Baltimore, Maryland 21206, to gauge imported petroleum and petroleum products in the Customs districts of Delaware and Maryland in accordance with the provisions of section 151.43 of the Customs Regulations is approved.

Dated: December 17, 1980.

A. Piazza,

Director, Entry Procedures and Penalties Division.

[FR Doc. 80-40158 Filed 12-23-80; 8:45 am]

BILLING CODE 4810-22-M

VETERANS ADMINISTRATION

Advisory Committee on Health-Related Effects of Herbicides; Meeting

The Veterans Administration gives notice under the provisions of Public Law 92-463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC, on February 4, 1981, at 8:30 a.m. The purpose of the meeting will be to assemble and analyze information concerning toxicological issues which the Veterans Administration needs to formulate appropriate medical policy and procedures in the interest of veterans who may have encountered herbicidal chemicals used during the Vietnam War.

The meeting will be open to the public up to the seating capacity of the room. Members of the public may only direct questions in writing to the Chairman, Barclay M. Shepard, M.D., and submit prepared statements for review by the Committee. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Transcripts of the proceedings and rosters of the Committee members may be obtained from Mr. Donald Rosenblum, Office of the Special Assistant to the Chief Medical Director on Environment Medicine (102), Room 848, Department of Medicine and Surgery, Veterans Administration Central Office, Washington, DC 20420 (telephone: (202) 389-5411).

Dated: December 17, 1980.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 80-40127 Filed 12-23-80; 8:45 am]

BILLING CODE 6320-01-M

Sunshine Act Meetings

Federal Register

Vol. 45, No. 249

Wednesday, December 24, 1980

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.

current rate case pending before the Postal Rate Commission (Commission Docket No. R80-1).

Agenda

Thursdoy Afternoon Session (Closed)

6. Capital Investment Projects:
a. Capital Investment for E-COM System

(Mr. Jaquish, Senior Assistant Postmaster General for Research and Technology, will present the proposal to approve necessary capital investments to implement the proposed Electronic

Sunshine Act Meetings

Federal Register

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This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, January 2, 1980.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-2348-80 Filed 12-22-80; 10:28 am]

BILLING CODE 6351-01-M

2

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will consider an additional item on the subject listed below on Friday, December 19, 1980, following the Special Open Meeting, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

In addition the Personnel items scheduled for consideration in closed session December 18, 1980, have been rescheduled for December 19, 1980.

Agenda, Item Number, and Subject

General—1—Final Allocations for the fiscal year 1982 Congressional Budget.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given consideration of this additional item.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: December 19, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-2351-80 Filed 12-22-80; 1:38 pm]

BILLING CODE 6712-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 83384, December 18, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., December 22, 1980.

CHANGE IN THE MEETING: The following items have been added:

Item Number, Docket Number, and Company

M-2. RM80-21, Regulations Under Section 110, 105 and 106(b) of the Natural Gas Policy Act of 1978

CP-2. CP80-502 and CP80-520, Natural Gas Pipeline Company of America; CP81-43, Energy Gathering, Inc.

CAP-4. ER80-520 and EL80-8, Montaup Electric Company.

Kenneth F. Plumb,

Secretary.

[S-2347-80 Filed 12-22-80; 9:27 am]

BILLING CODE 6450-85-M

4

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 10 a.m., Wednesday, December 31, 1980.

PLACE: 1700 G Street NW., board room, six floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

MATTERS TO BE CONSIDERED:

Permission to Organize a New Federal Association—James E. Tallier, *et al.*, Gretna, Louisiana

Service Corporation Activity—Baltimore Federal Savings and Loan Association, Baltimore, Maryland

Preliminary Application For Conversion To a Federal Mutual Charter Statewide Savings and Loan Association, Kingston, New York

Request For Extension of "Grace Period" re: Merger Application Guranty Federal Savings and Loan Association, Gainesville, Florida *into* Fortune Federal Savings and Loan Association, Clearwater, Florida

Extension of Time—Joliet Federal Savings and Loan Association, Joilet, Illinois

Preliminary Application for Conversion on Basis of Merger; Maintenance of Branch Office; Cancellation of Membership and Insurance; and Transfer of Stock McDowell Savings and Loan Association, Marion, North Carolina *into* Asheville Federal Savings and Loan Association, Asheville, North Carolina

Service Corporation Activity—First Federal Savings and Loan Association of Watertown, Watertown, South Dakota

Management Interlocks Prohibited by Section 584.9(b)—Southern Union Company ("Southern"), Dallas, Texas

Designation of Steven Opsal as Supervisory Agent as provided by Section 501.10 and 501.11 of the General Regulations of the Federal Home Loan Bank Board

Proposed Merger—Chester County Federal Savings and Loan Association West Chester, Pennsylvania *into* Commonwealth Federal Savings and Loan Association, Norristown, Pennsylvania

Application for Bank Membership—Independance Savings Bank, Brooklyn, New York

Application for Bank Membership—Niagara County Savings Bank, Niagara Falls, New York

No. 435, December 22, 1980.

S-2349-80 Filed 12-22-80; 10:47 am]

BILLING CODE 6720-01-M

5

FEDERAL HOME LOAN MORTGAGE CORPORATION.

TIME AND DATE: 1 p.m., Wednesday, December 31, 1980.

PLACE: 1700 G Street NW., board room, sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Henry Judy, (202-789-4734).

MATTERS TO BE CONSIDERED: Privacy Act of 1974—Republication of Federal Home Loan Mortgage Corporation Systems of Records.

[S-2354-80 Filed 12-22-80; 3:59 pm]

BILLING CODE 6720-01-M

6

[USITC SE-80-60]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, January 6, 1981.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary:
   a. Window shades (Docket No. 699).
5. Peanuts (Inv. 22-42)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-2353-80 Filed 12-22-80; 3:51 pm]

BILLING CODE 7020-02-M

7

POSTAL SERVICE BOARD OF GOVERNORS.

The Board of Governors of the United States Postal Service, pursuant to its bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 3 p.m. on Thursday, January 8, in the East Conference Room, and at 8 a.m. on Friday, January 9, 1981, in the West Conference Room of the Lyndon Baines Johnson Library, 2313 Red River, Austin, Texas 78705. Except as indicated in the following paragraphs, the meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

On december 1, 1980, the Board of Governors unanimously (except for Mr. Babcock, who was not present at the time) voted to close to public observation portions of its next meeting, which is currently scheduled for January 8, 1981. Each of the members of the Board voted in favor of closing this meeting which is expected to be attended by the following persons: Governors Babcock, Camp, Ching, Hardesty, Hughes, Jenkins, and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Counsel to the Governors Califano; Secretary to the Board Cox; and Senior Assistant Postmaster General Finch.

A portion of the meeting to be closed is to involve a discussion of the election of a Chairman and Vice-Chairman of the Board. A second portion of the meeting to be closed is to involve a discussion of plans for administrative and adjudicative litigation of various E-COM issues. The third portion of the meeting to be closed involves a discussion of developments in the current rate case pending before the Postal Rate Commission (Commission Docket No. R80-1).

Agenda

Thursday Afternoon Session (Closed)

1. Postal Ratemaking Developments.
   (The Board will discuss the status of the general rate case currently pending before the Postal Rate Commission (Commission Docket No. R80-1).)
2. Discussion of E-COM Issues.
   (The Board will discuss plans for administrative and adjudicative litigation of various E-COM issues, including an anticipated proceeding before the Postal Rate Commission to which the Commission has assigned Docket No. MC80-1 and the pending action before the U.S. Court of Appeals for the D.C. Circuit captioned *Governors* v. *Postal Rote Commission.*)
3. Election of Chairman and Vice-Chairman of the Board.
   (Under the Board's Bylaws, the first regular meeting of each calendar year is designated as the Annual Meeting. The terms of the Chairman and Vice-Chairman of the Board expire at the end of the first Annual Meeting following the meeting at which they were elected. Accordingly, the Board will consider the election of a Chairman and Vice-Chairman.)

Friday Session (Open)

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General.
   (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)
3. Report of Regional Postmaster General.
   (Mr. Cooper, Regional Postmaster General, will report on postal conditions in the Southern Region.)
4. Annual Report on Open Meetings Compliance.
   (Mr. Cox, General Counsel, will present for approval of the Board the Annual Report to Congress that is required by the Government in the Sunshine Act regarding the Board's compliance with the Act.)
5. Annual Report of the Postmaster General.
   (Mr. Duka, Assistant Postmaster General, Public and Employee Communications Department, will present for approval of the Board the Annual Report of the Postmaster General to the Board concerning the operations of the Postal Service, as required by 39 U.S.C. § 2404. Upon approval thereof, or after making such changes as it considers appropriate, the Board is to transmit this report to the President and the Congress.)
6. Capital Investment Projects:
   a. Capital Investment for E-COM System
   (Mr. Jaquish, Senior Assistant Postmaster General for Research and Technology, will present the proposal to approve necessary capital investments to implement the proposed Electronic Computer Orignated Mail (E-COM) service.
   b. General Mail Facility and Vehicle Maintenance Facility for New Castle, Pennsylvania
   (Mr. Biglin, Senior Assistant Postmaster General for Administration, will present a proposal for a new General Mail Facility and Vehicle Maintenance Fatility at New Castle, Pennsylvania.)
   c. General Mail Facility and Vehicle Maintenance Facility for Phoenix, Arizona
   (Mr. Biglin will present a proposal for a new GMF and VMF for Phoenix, Arizona.)
   d. General Mail Facility and Vehicle Maintenance Facility at Norfolk, Virginia
   (Mr. Biglin will present a proposal for a new GMF and VMF at Norfolk, Virginia. At its meeting of April 3, 1979, the Board approved the general concept of new General Mail Facility at Norfolk, Virginia, and authorized an investment of up to $2 million for necessary) site acquisition and building design, requesting that management present the project for further consideration by the Board at a subsequent date. The Board will consider giving final approval to the necessary capital investment for his project.)
7. Representation of Postal Service Officials in Litigation Arising from Performance of Official Duties.
   (Under existing postal regulations, postal employees who are named as defendants in suits resulting from incidents occurring within the scope of the performance of their official duties may request reimbursement of legal fees and adverse judgments in appropriate cases. Requests are considered by the appropriate Regional Counsel. Reimbursement in a reasonable amount may be made if it is equitable and fair to do so and if the employee acted reasonably in the circumstances within the scope of his authority. It is proposed that any requests for reimbursement by senior postal officials, including members of the Board, would be considered by the General Counsel rather than by Regional Counsel, and the Board will consider a Resolution which would so provide and would affirm that the pertinent provisions of the Postal Service's Employee and Labor Relations Manual regarding legal assistance in suits brought against postal employees arising out of official acts would apply to senior postal officials as well as other postal employees.)

Louis A. Cox,

Secretary.

[S-2352-80 Filed 12-22-80; 2:54 pm]

BILLING CODE 7710-12-M

8

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9 a.m., January 8, 1981.

PLACE: 955 L'Enfant Plaza North, SW.,

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UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9 a.m., January 8, 1981.

PLACE: 955 L'Enfant Plaza North, SW., board room, room 2-500, fifth floor, Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS: Portions closed to the public:

9 a.m.

1. Consideration of internal personnel matters.
2. Litigation Report.
3. Status Report on Conrail Study.
4. Review of Conrail proprietary and financial information for monitoring and investment purposes.
5. Review of Delaware and Hudson Railway Company proprietary and financial information for monitoring and investment purposes.
6. D&H action plan and critique of FRA Section 401 Study
7. State presentations regarding future plans for D&H.

Portions open to the public:

10:30 a.m.

8. Approval of minutes of the December 3 and 4, 1980 Board of Directors meeting.
9. Consideration of Conrail drawdown request for January.
10. Report on Conrail monitoring.
11. Contract Actions (extensions and approvals).

CONTACT PERSON FOR MORE INFORMATION: Alex Bilanow (202) 426-4250.

[S-2350-80 Filed 12-22-80; 12:28 p.m.]

BILLING CODE 8240-01-M

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

Note: There were no items eligible for inclusion in the list of Rules Going Into Effect Today.

Rules Going Into Effect Friday, December 26, 1980

ENVIRONMENTAL PROTECTION AGENCY

78948 11-25-80 / Clean Air Act emission warranties; voluntary aftermarket part self-certification regulations

78685 11-26-80 / Ohio; approval and promulgation of implementation plan

78121 11-25-80 / Revised deadline for submission of Volatile Organic Compound (VOC) RACT regulations for Set II CTG sources

FEDERAL COMMUNICATIONS COMMISSION

78135 11-25-80 / FM broadcast station in Bettendorf, Iowa; changes in table of assignments

78696 11-26-80 / FM broadcast stations in Central City, Nebr. and Yankton, S. Dak.; changes in table of assignments

78697 11-26-80 / FM broadcast station in Manchester, Vt.; changes in table of assignments

78137 11-25-80 / Provisions to facilitate operation of automatic digital communications systems in the aeronautical enroute service

INTERIOR DEPRATMENT

National Park Service—

78119 11-25-80 / Mt. McKinley National Park mining, climbing and vehicle regulations

Rules Going Into Effect Sunday, December 28, 1980

AGRICULTURE DEPARTMENT

Food Safety and Quality Service—

76965 11-21-80 / Voluntary Federal Meat grading and certification services; increase in fees

SECURITIES AND EXCHANGE COMMISSION

58831 9-5-80 / Registration of municipal securities dealers

Deadlines for Comments on Proposed Rules for the Week of December 28 through January 3, 1981

THE PRESIDENT

79407 12-1-80 / Intent to suspend meat import limitations for calendar year 1981; comments by 12-31-80

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

60447 9-12-80 / Almonds grown in Calif.; formula for computing "adjusted kernel weight"; comments by 12-30-80

75956 11-17-80 / Milk marketing orders all areas; reconstituted milk; preliminary impact statement; comments by 1-2-81

Commodity Credit Corporation—

79492 12-1-80 / 1981 Crop Gum Naval Stores Support program; comments by 12-31-80

Federal Grain Inspection Service—

71486 10-28-80 / Proposed revision to U.S. Standards for beans; comments by 12-29-80

Food Safety and Quality Service—

72197 10-31-80 / Delegation of certain labeling approval authority to Inspectors-in-Charge in the field; comments by 12-31-80

CIVIL AERONAUTICS BOARD

73085 11-4-80 / Imposition of two-year limit for starting service or continuing service after a fitness determination; reply comments by 12-30-80

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

79846 12-2-80 / Amendment to preliminary fishery management plan for seamount groundfish fishery resources; comments by 1-2-81

78738 11-26-80 / Atlantic bluefin tuna fishery; comments by 12-29-80

79844 12-2-80 / Atlantic bluefin tuna provisions; comments by 12-29-80

73077 11-4-80 / Commercial tanner crab fishery off Alaska; final regulations; comments by 1-1-81

72883 11-3-80 / General pretreatment regulations for existing and new sources, grace period for NPDES States; comments by 1-2-81

72035 10-30-80 / Hazardous waste; identification and listing; chromium; comments by 12-30-80

72029 10-30-80 / Hazardous waste; identification and listing;

Food and Drug Administration—

72200 10-31-80 / Bioequivalence requirements for quinidine; comments by 12-30-80

65609 10-3-80 / Wart remover drug products (OTC), monograph establishment; comments by 1-2-81

[Corrected at 45 FR 80551, 12-5-80]

NATIONAL CREDIT UNION ADMINISTRATION

79079 11-28-80 / Real estate lending—deregulation; comments by 12-31-80

NUCLEAR REGULATORY COMMISSION

65474 10-2-80 / Domestic licensing of production and utilization facilities; comments by 12-31-80

78738 11–26–80 / Atlantic bluefin tuna fishery; comments by 12–29–80

79844 12–2–80 / Atlantic bluefin tuna provisions; comments by 12–29–80

73077 11–4–80 / Commercial tanner crab fishery off Alaska; final regulations; comments by 1–1–81

79089 11–28–80 / Deep seabed mining; availability of discussion paper; comments by 12–31–80

81833 12–11–80 / Foreign fishing for Billfish, Oceanic Sharks, Wahoo, and Mahi Mahi in the Pacific Ocean; comments by 12–28–80

80845 12–8–80 / Foreign trawl fisheries of the Northwest Atlantic approval of preliminary fishery management plan amendment; comments by 12–29–80

74525 11–10–80 / Groundfish fishery in Bering Sea—Aleutian Island area fishery management plan; comments by 1–1–81

82297 12–15–80 / Hake fisheries of the Northwestern Atlantic; approval of amendment to preliminary fishery management plan; comments by 12–30–80

74178 11–7–80 / Plan approval and proposed regulations for shrimp fishery of the Gulf of Mexico; comments by 1–1–81

81633 12–11–80 / Snail fishery of the Eastern Bering Sea Preliminary Fishery Management Plan Amendment and proposed regulations; comments by 12–29–80

79126 11–28–80 / Trawl Fisheries and Herring Gillnet Fishery of the Eastern Bering Sea and Northeast Pacific; Preliminary Fishery Management Plan Amendment; comments by 12–28–80

CONSUMER PRODUCT SAFETY COMMISSION

76018 11–17–80 / Coal and wood burning appliances; performance provisions and technical data supplied to consumer; comments by 1–2–81

DEFENSE DEPARTMENT

Engineer Corps—

79836 12–2–80 / Permit regulations for controlling certain activities in waters of the United States; comment period extended to 12–31–80

[*See also* 45 FR 62732, 9–19–80]

ENERGY DEPARTMENT

Office of the Secretary—

71498 10–28–80 / Consolidated State Grant Programs; comments by 12–29–80

ENVIRONMENTAL PROTECTION AGENCY

71538 10–28–80 / Air pollution; standards of performance for new stationary sources; publication rotogravure printing; comments by 12–29–80

82280 12–15–80 / Approval and promulgation of implementation plans; proposed revision to the New York State implementation plan; comments extended to 12–30–80

[Originally published at 45 FR 43794]

79514 12–1–80 / Approval and promulgation of implementation plans; proposed approval of Oklahoma State Variance; comments by 12–31–80

79514 12–1–80 / Approval and promulgation of implementation plans; Texas emission offsets; comments by 12–31–80

72217 10–31–80 / Consideration of Guam Implementation Plan Revision; comments by 12–30–80

76147 11–18–80 / Criteria for classification of solid waste disposal facilities and practices; accumulation of cadmium by food-chain crops grown on land amended with solid waste containing cadmium; interim final regulations; comments by 1–2–81

72883 11–3–80 / General pretreatment regulations for existing and new sources, grace period for NPDES States; comments by 1–2–81

72035 10–30–80 / Hazardous waste; identification and listing; chromium; comments by 12–30–80

72029 10–30–80 / Hazardous waste; identification and listing; hexavalent chromium, extraction procedure (EP) toxicity; comments by 12–30–80

72027 10–30–80 / Hazardous waste management system; general and identification and listing of hazardous waste; comments by 12–29–80

79119 11–28–80 / *O,O*-dimethyl *S*-[(4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl]phosphorodithiote; proposed tolerances; comments by 12–29–80

79836 12–2–80 / Proposed approval, with exception, of reasonably available control technology regulations; comments by 1–2–81

79838 12–2–80 / Proposed delayed S.I.P. compliance order for Virginia Electric and Power Co's. Possum Point generating station; comments by 1–2–81

76147 11–18–80 / Solid waste disposal facilities and practices; criteria for classification; interim regulations; comments by 1–2–81

FEDERAL COMMUNICATIONS COMMISSION

81079 12–9–80 / FM broadcast stations in Aguada, Arecibo, Cidra, Lajas, Manati, Muyaquez, Quebradillas, and Utuado, P.R.; reply comments period extended to 1–3–81

[*See also* 45 FR 58624, 9–4–80]

73719 11–6–80 / FM broadcast station in Andrews and Pawley's Island, S.C., proposed changes in table of assignment; comments by 12–29–80

81080 12–9–80 / FM broadcast stations in Farmville and Appomattox, Va.; reply comments period extended to 12–28–80

[*See also* 45 FR 63532, 9–17–80]

78735 11–26–80 / FM broadcast station in Los Lunas, N. Mex.; changes in table of assignments; comments by 12–30–80

73720 11–6–80 / FM broadcast station in North Las Vegas, Nevada; proposed changes in table of assignments; comments by 12–29–80

73980 11–7–80 / FM broadcast station in St. Johnsburg, VT.; changes in table of assignments; comments by 12–29–80

71384 10–28–80 / Policies governing ownership and operation of domestic satellite earth stations in Alaskan bush communities; comments by 12–29–80

FEDERAL HOME LOAN BANK BOARD

72681 11–3–80 / Mergers of savings and loan associations; treatment of goodwill in calculating net worth and discounts, on assets; comments by 12–31–80

72675 11–3–80 / Renegotiable rate mortgage; maximum annual interest-rate changes and grouping of loans; conforming alternative mortgage instrument amendments; comments by 12–30–80

82270 12–15–80 / Shared appreciation mortgage; graduated payment adjustable mortgage; comments extended to 12–30–80

[*See also* 45 FR 66798, 66801, 10–9–80]

GENERAL SERVICES ADMINISTRATION

72714 11–3–80 / Public availability of Agency records and informational materials; comments by 1–2–81

Public Buildings; Service—

72713 11–3–80 / Display of the Code of Ethics for Government Service; comments by 1–2–81

HEALTH AND HUMAN SERVICES DEPARTMENT

72110 10–31–80 / Coverage of employees of State and local governments; interim regulations; comments by 12–30–80

Food and Drug Administration—

72200 10–31–80 / Bioequivalence requirements for quinidine; comments by 12–30–80

65609 10–3–80 / Wart remover drug products (OTC), monograph establishment; comments by 1–2–81

[Corrected at 45 FR 80551, 12–5–80]

Social Security Administration—

71791 10–30–80 / Federal old-age, survivors, and disability insurance benefits; payment for medical evidence of record; comments by 12–29–80

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community Planning and Development, Office of the Assistant Secretary—

72691 11–3–80 / Community Development Block Grants; Small Cities Program; comments by 1–2–81

[Corrected at 45 FR 73512, 11–5–80]

72691 11–3–80 / Community Development Block Grants; Small cities program; Puerto Rico; comments by 1–2–81

Federal Housing Commissioner—Office of the Assistant Secretary for Housing—

72697 11–3–80 / Low-income housing; Section 8 existing housing assistance payments program; eviction procedures; comments by 1–2–81

72688 11–3–80 / Minimum property standards; particleboard interior stair treads and certification program; comments by 1–2–81

72668 11–3–80 / Proposed Use of Materials Bulletin No. 70a Particleboard Interior Stair Treads and Certification Program; comments by 1–2–81

[Corrected at 45 FR 73512, Nov. 5, 1980]

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79094 11–28–80 / Heritage preservation; comments period extended to 12–30–80

[*See also* 45 FR 60923, 9–15–80]

82667 12–16–80 / Provision of funds to tribes for payment of a private attorney's legal services; comments by 1–1–81

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71371 10–28–80 / Abandoned Mine Lands Reclamation Program; comments by 1–3–81

74943 11–3–80 / Commonwealth of Pennsylvania's abandoned mine land reclamation plan; comments by 1–3–81

82276 12–15–80 / Resubmitted Iowa permanent regulatory program; comments by 12–31–80

73512 11–5–80 / West Virginia; abandoned mine lands reclamation program; comments by 1–3–81

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79095 11–28–80 / Standards for inmate grievance procedures; comments by 12–29–80

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75238 11–14–80 / Occupational safety and health for conveyors; reopening of record to introduce new information; comments by 12–29–80

75232 11–14–80 / Walkaround compensation; comments by 12–29–80

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79079 11–28–80 / Real estate lending—deregulation; comments by 12–31–80

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65474 10–2–80 / Domestic licensing of production and utilization facilities; comments by 12–31–80

71807 10–30–80 / NRC's jurisdiction over persons using byproduct, source and special nuclear material in offshore waters beyond agreement States' territorial waters; comments by 12–29–80

[Corrected at 45 FR 78700, 11–26–80]

66754 10–7–80 / Proposed general statement of policy and procedure for enforcement actions; comments by 12–31–80

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71363 10–28–80 / Reduction in force rules; identification of positions with a transferring function; comments by 12–29–80

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73509 11–5–80 / Allocation of consolidated Federal income tax liability by registered holding companies and their subsidiaries; comments by 12–31–80

75182 11–14–80 / Interim notice-of-sales form for transactions; comments by 12–31–80

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73716 11–6–80 / Radar observer endorsement; demonstration of skills; comments by 12–31–80

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75098 11–13–80 / General Operating and Flight Rules; issuance of Notices to Airmen, for communicating emergency flight rules; comments by 12–29–80

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71990 10–30–80 / Urban transportation planning; comments by 12–30–80

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70261 10–23–80 / Yacht documentation fees; comments by 12–29–80

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71990 10–30–80 / Urban transportation planning; comments by 12–30–80

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79493 12–1–80 / Adjustable-rate mortgages; comments extended to 12–30–80

[Originally published at 45 FR 64196, 9–29–80]

71571 10–29–80 / Fiduciary powers of national banks and collective investment funds; comments by 12–31–80

75669 11–17–80 / Securities Exchange Act Disclosure Rules applicable to corporations other than banks; comments by 1–2–81

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71367 10–28–80 / Investment credit for qualified rehabilitated buildings; comments by 12–29–80

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73079 11–4–80 / Revision of tetanus toxoid potency test; comments by 1–5–81

Food Safety and Quality Service—

80319 12–4–80 / Maine application for interim authorization, phase I, hazardous waste management program; comments by 1–10–81

80559 12–5–80 / Oregon Implementation Plan, proposed revision; comments by 1–5–81

66726 10–7–80 / Zone-depleting Chlorofluorocarbons; proposed

73095 11–4–80 / Frozen lobsters, rock lobsters, spiny lobsters and slipper lobsters; establishment of standards; comments by 1–5–81

74374 11–7–80 / Intent to amend performance standards for laser products; comments by 1–6–81

74158 11–7–80 / Restrictions on sale, use and distribution of alpha-fetoprotein test kits; comments by 1–6–81

67103 10–9–80 / Joint petition for rulemaking by Transamerica Airlines, Inc. and World Airways, Inc. to allow certificate holders' operations to be conducted under a flight operations control system; comments by 1–7–81

73688 11–6–80 / Petitions for rulemaking, summary of petitions received and dispositions of petitions denied; comments by 1–6–81

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Animal and Plant Health Inspection Service—

73079 11–4–80 / Revision of tetanus toxoid potency test; comments by 1–5–81

Food Safety and Quality Service—

73947 11–7–80 / Accredited laboratory program for meat and poultry products inspection; comments by 1–6–81

71365 10–28–80 / Net weight labeling; meat and poultry; comments by 1–5–81

[Originally published at 45 FR 53002, 8–8–80]

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81210 12–10–80 / Great Plains Conservation Program, evaluation; comments by 1–5–81

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73087 11–4–80 / Classification and exemption of air taxi operators; dual authority; comments by 1–5–81

73092 11–4–80 / Rules of conduct in Board proceedings; comments by 1–5–81

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81213 12–10–80 / Education assistance eligibility, character of discharge; comments by 1–7–81

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73963 11–7–80 / Provisions for election to local advisory committees of oveseas dependents' schools; comments by 1–6–81

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73684 11–6–80 / Electric and hybrid vehicle research, development, and demonstration program; equivalent petroleum-based fuel economy calculation; comments by 1–5–81

71746 10–29–80 / Price support loans for municipal waste energy projects; comments by 1–5–81

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80125 12–3–80 / Natural Gas Policy Act of 1978; alternative fuel price ceilings for incremental pricing; comment period extended to 1–9–81

[Originally published at 45 FR 74505, 11–10–80]

81211 12–10–80 / Natural Gas Policy Act of 1978; alternative fuel price ceilings for incremental pricing; comments by 1–9–81

[*See also* 45 FR 74505, 11–10–80]

81063 12–9–80 / Procedures for jurisdictional agencies to submit recommendations of areas for designation as tight formations; comments by 1–5–81

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73696 11–6–80 / California State implementation plan revision: Amador, El Dorado, Nevada, Placer, and Tuolumne Counties; comments by 1–5–81

73971 11–7–80 / Consideration of approval of revision to New Jersey State Implementation Plan; comments by 1–6–81

81069 12–9–80 / Consideration of deadlines for revision of Illinois State Implementation plan; comments by 1–8–81

73967 11–7–80 / Consideration of revisions to California State Implementation Plan; comments by 1–6–81

73702 11–6–80 / Designation of areas for air quality planning purposes; State of Iowa; comments by 1–5–81

80558 12–5–80 / Idaho Implementation Plan; proposed revision; comments by 1–5–81

80314 12–4–80 / Implementation plans; North Carolina; air quality surveillance plan; comments by 1–5–81

80315 12–4–80 / Implementation plans; North Carolina; approval of plan revisions; comments by 1–5–81

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80559 12–5–80 / Oregon Implementation Plan, proposed revision; comments by 1–5–81

66726 10–7–80 / Zone-depleting Chlorofluorocarbons; proposed production restriction; comments by 1–5–81

79117 11–28–80 / South Carolina's application for interim authorization, phase I, hazardous waste management program; comments by 1–6–81

73696 11–6–80 / State Implementation Plans; approval of 1982 ozone and carbon monoxide plan revisions for areas needing an attainment date extension; comments by 1–5–81

79118 11–28–80 / Tennessee's application for interim authorization, phase I, hazardous waste management program; comments by 1–5–81

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81797 12–12–80 / AM stereo broadcasting proceeding; comments by 1–9–81

[Originally published at 45 FR 59350, 9–9–80]

59350 9–9–80 / AM stereophonic broadcasting; reply comments by 1–8–81

63011 9–23–80 / Cable television systems and divestiture requirement; comments by 1–8–81

[Comment period extended at 45 FR 81217, 12–10–80]

71628 10–20–80 / Changes in the corporate structure and operations of COMSAT; reply comments by 1–9–81

79842 12–2–80 / FM broadcast station in Santa Barbara, Calif.; reply comments period extended to 1–5–81

[*See also* 45 FR 28770, 4–11–80]

71393 10–28–80 / FM broadcast station in South Lake Tahoe, Calif., table of assignments; reply comments by 1–9–81

55491 8–20–80 / FM quadraphonic broadcasting; reply comments by 1–9–81

70023 10–22–80 / Improvements to UHF television reception; comments by 1–5–81

79518 12–1–80 / Inquiry relating to the Commission's radio operator licensing program; reply comments extended to 1–5–81

[Originally published at 45 FR 54778, 8–18–80]

65639 10–3–80 / Maritime radio services; public coast stations operating on frequencies below 27,500 kHz, establishment limitation removed; reply comments by 1–9–81

79516 12–1–80 / Radio broadcast services TV channels 5 and 6 and FM channels 251–300 in the State of Hawaii; reply comments by 1–9–81

74946 11–13–80 / TV broadcast station in East St. Louis, Ill., changes in table of assignments; reply comments by 1–4–81

70921 10–27–80 / TV broadcast station in Victoria, Tex., changes in table of assignments; reply comments by 1–4–81

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73092 11–4–80 / Canned sardines and sardine-type products; establishment of standards; comments by 1–5–81

59540 9–9–80 / Establishment of conditions under which over-the-counter (OTC) anthelmintic drugs products, which destroy pinworms, are generally recognized as safe and effective and not misbranded; reply comments by 1–7–81

[Corrected at 45 FR 65609, 10–3–80]

71366 10–28–80 / Food labeling; net weight labeling requirements; comments by 1–5–81

[Originally published at 45 FR 53023, 8–8–80]

73095 11–4–80 / Frozen lobsters, rock lobsters, spiny lobsters and slipper lobsters; establishment of standards; comments by 1–5–81

74374 11–7–80 / Intent to amend performance standards for laser products; comments by 1–6–81

74158 11–7–80 / Restrictions on sale, use and distribution of alpha-fetoprotein test kits; comments by 1–6–81

Public Health Service—

76497 11–19–80 / Indian health; revision of regulations; comments by 1–5–81

Health Care Financing Administration—

74174 11–7–80 / Clinical laboratories; quality control standards for alpha-fetoprotein test kits; comments by 1–6–81

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Secretary—

73454 11–4–80 / Nondiscrimination rules on basis of age in programs or activities receiving Federal financial assistance from HUD; comments by 1–5–81

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Fish and Wildlife Service—

81081 12–9–80 / Proposed addition of national wildlife refuges to the list of open areas for migratory bird hunting, upland game hunting and big game hunting; comments by 1–8–81

66410 10–6–80 / Proposed threatened status for the Madison Cave Isopod; comments by 1–5–81

Land Management Bureau—

83580 12–19–80 / Grazing regulations amendments; comments by 1–9–81

Surface Mining and Reclamation Enforcement Office—

81526 12–10–80 / Coal processing waste banks performance standards; comments by 1–10–81

83544 12–19–80 / West Virginia Permanent Regulatory Program (resubmitted); comments by 1–6–81

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76718 11–20–80 / Railroad cost accounting system compliance with uniform system of accounts; comments by 1–5–81

81217 12–10–80 / Railroad cost recovery index, general rate increases; comments by 1–9–81

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

74499 11–10–80 / Space transportation system, insurance and indemnification of NASA space vehicle users; comments by 1–9–81

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73080 11–4–80 / Electric Utilities; petition for rulemaking published; comments by 1–5–81

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80313 12–4–80 / Order of passage of vessels through the Panama Canal; comments by 1–5–81

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79104 11–28–80 / Proposed expansion of ZIP Code system by adding a hyphen and four new numbers; comments by 1–5–81

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74510 11–10–80 / Statutory lien where sickness benefits paid; comments by 1–9–81

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69479 10–21–80 / Individualized investment management services; comments by 1–9–81

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Federal Aviation Administration—

80460 12–4–80 / Commuter pilot-in-command operating experience requirements and extension of compliance date for instrument rating requirement; comments by 1–5–81

67283 10–9–80 / Flight crewmember flight and duty time limitations and rest requirements; reply comments period extended to 1–10–81

[*See also* 44 FR 53316, 8–11–80]

67103 10–9–80 / Joint petition for rulemaking by Transamerica Airlines, Inc. and World Airways, Inc. to allow certificate holders' operations to be conducted under a flight operations control system; comments by 1–7–81

73688 11–6–80 / Petitions for rulemaking, summary of petitions received and dispositions of petitions denied; comments by 1–6–81

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Alcohol, Tobacco and Firearms Bureau—

73692 11–6–80 / Finger Lakes Viticultural Area, establishment; comments by 1–5–81

73692 11–6–80 / "Tied-house" regulations, credit to retailers in arrears; comments by 1–5–81

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73512 11–5–80 / Crude oil windfall tax; tax deposits and refunds based on the net income limitation; comments by 1–5–81

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81213 12–10–80 / Educational assistance eligiblity, character of discharge; comments by 1–7–81

81068 12–9–80 / Payment of educational assistance allowance to participants in the Veterans' Educational Assistance Program on active duty; comments by 1–7–81

81787 12–12–80 / Government-furnished headstones or markers; increase in payment; comments by 1–9–81

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Land Management Bureau—

81890 12–12–80 / Baker District Advisory Council, Baker, Oreg. (open), 1–2–81

NUCLEAR REGULATORY COMMISSION

80214 12–3–80 / Decontamination of Three Mile Island, Unit 2, Advisory Panel, Harrisburg, Pa. (open), 12–30–80

RAILROAD RETIREMENT BOARD

80220 12–3–80 / Actuarial Advisory Committee, railroad retirement acounts, Chicago, Ill. (open), 12–30–80

Next Week's Public Hearings

ENVIRONMENTAL PROTECTION AGENCY

79117 11–28–80 / South Carolina application for interim authorization, phase I, hazardous waste management program, Columbia, S.C., 12–30–80

79118 11–28–80 / Tennessee's application for interim authorization, phase I, hazardous waste management program, Nashville, Tenn., 12–29–80

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Surface Mining Reclamation and Enforcement Office—

81526 12–10–80 / Coal processing waste banks performance standards, Washington, D.C., 12–29–80

82276 12–15–80 / Iowa regulatory program, Des Moines, Iowa, 12–30–80

List of Public Laws

Last Listing, December 23, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

H.R. 2170 / Pub. L. 96–559 To provide for the reimbursement of legal expenses incurred by the city of Fairfax with respect to a 1971 entry and search by employees of the Federal Government. (Dec. 22, 1980; 94 Stat. 3264) Price $1.

H.R. 5487 / Pub. L. 96–560 To designate certain National Forest System lands in the States of Colorado, South Dakota, Missouri, South Carolina, and Louisiana for inclusion in the National Wilderness Preservation System, and for other purposes. (Dec. 22, 1980; 94 Stat. 3265) Price $1.25.

S. 2163 / Pub. L. 96–561 To provide for the conservation and enhancement of the salmon and steelhead resources of the United States, assistance to treaty and nontreaty harvesters of those resources, and for other purposes. (Dec. 22, 1980; 94 Stat. 3275) Price $1.75.

S. 1824 / Pub. L. 96–562 To designate the "John D. Larkins, Jr.,

83674 12–19–80 / HHS/NIH—Allergy and Infectious Diseases National Advisory Council, Subcommittees on Allergy and Immunology and Microbiology and Infectious Diseases, Bethesda, Md. (partially open), 1–29 and 1–30–81

82359 12–15–80 / HHS/NIH—Arthritis, Metabolism, and Digestive Diseases National Advisory Council, Bethesda,

OTHER ITEMS OF INTEREST

82354 12–15–80 / EPA—Municipal wastewater treatment works; construction grants, consolidated guidance for facility planning; comments by 1–29–81

83172 12–17–80 / HHS—Adoption assistance and child welfare; demonstration project assisting those wishing to comment on proposed regulations

S. 2163 / Pub. L. 96-561 To provide for the conservation and enhancement of the salmon and steelhead resources of the United States, assistance to treaty and nontreaty harvesters of those resources, and for other purposes. (Dec. 22, 1980; 94 Stat. 3275) Price $1.75.

S. 1824 / Pub. L. 96-562 To designate the "John D. Larkins, Jr., Federal Building" (Dec. 22, 1980; 94 Stat. 3303) Price $1.

Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published in the **Federal Register** during the previous week.

RULES GOING INTO EFFECT

83497 12–19–80 / EPA—Grants for construction of treatment works; final rule; effective 12–19–80

82828 12–16–80 / Labor—Federal standards for federally funded grants and agreements relating to public contracts and property management; effective 12–16–80

[Comments by 2–17–81]

DEADLINES FOR COMMENTS ON PROPOSED RULES

82272 12–15–80 / HUD/CPD—Community development block grants, entitlement grants; comments by 2–13–81

82273 12–15–80 / HUD/FHC—Review of applications for housing assistance and allocation of housing assistance funds; comments by 2–13–81

83554 12–19–80 / HHS/PHS—Project grants for Community Health Centers; comments by 2–17–81

83566 12–19–80 / HHS/PHS—Project grants for Migrant Health Centers; comments by 2–17–81

83998 12–19–80 / Labor—Implementation of Federal Management Circular governing allowability of costs incurred by State and local governments in administering Federal financial assistance programs; comments by 1–19–81

83914 12–19–80 / Labor/WH—Labor standards on projects or productions assisted by grants from the National Foundation for the Arts and the Humanities; comments by 2–17–81

APPLICATIONS DEADLINES

82299 12–15–80 / Commerce/MBDA—Financial assistance application to operate four New York region projects; apply by 1–15–81

83307 12–18–80 / Commerce/MBDA—Northern and Central Florida; operation of General Business Service Center; apply by 1–13–81

83307 12–18–80 / Commerce/MBDA—Pittsburgh, Pa. SMSA; operation of General Business Services Program; apply by 1–16–81

83156 12–17–80 / Commerce/NOAA—Fisheries development, strengthening of industry, and increasing supply available to consumers, availability of Saltonstall-Kennedy funds, apply by 2–13–81

83025 12–17–80 / HHS/HSA—General family planning training, availability of project grants; correction; apply by 4–1–81

[*See also* 45 FR 71432, 10–28–80]

82361 12–15–80 / HUD/CPD—Small multifamily rental property rehabilitation demonstration program; apply by 3–6–81

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83307 12–18–80 / Commerce/MBDA—Pittsburgh, Pa., SMSA; operation of General Business Services Program; Pittsburgh, Pa., 12–29–80

82358 12–15–80 / HHS/NIH—Aging National Advisory Council, Bethesda, Md. (partially open), 1–29 and 1–30–81

83674 12–19–80 / HHS/NIH—Allergy and Infectious Diseases National Advisory Council, Subcommittees on Allergy and Immunology and Microbiology and Infectious Diseases, Bethesda, Md. (partially open), 1–29 and 1–30–81

82359 12–15–80 / HHS/NIH—Arthritis, Metabolism, and Digestive Diseases National Advisory Council, Bethesda, Md. (partially open), 1–14 through 1–16–81

83673 12–19–80 / HHS/NIH—Biometry and Epidemiology Contract Review Committee, Bethesda, Md. (partially open), 1–29–81

83673 12–19–80 / HHS/NIH—Cancer Biology and Diagnosis Division of the Board of Scientific Counselors, Frederick, Md. (partially closed), 1–29 through 1–31–81

83674 12–19–80 / HHS/NIH—Cancer Special Program Advisory Committee, Bethesda, Md. (partially open), 3–12 and 3–13–81

83674 12–19–80 / HHS/NIH—Clinical Cancer Education Committee, Bethesda, Md. (partially open), 2–25 and 2–26–81

83673 12–19–80 / HHS/NIH—Environmental Health Sciences, National Council (Board of Scientific Counselors), Research Triangle Park, N.C. (partially closed), 1–28 and 1–29–81

83675 12–19–80 / HHS/NIH—Environmental Health Sciences National Advisory Council, Research Triangle Park, N.C. (partially open), 1–19–81

83675 12–19–80 / HHS/NIH—Eye National Advisory Council, Bethesda, Md. (partially open), 1–18 through 1–21–81

83676 12–19–80 / HHS/NIH—General Medical Sciences National Advisory Council, Bethesda, Md. (partially open), 1–29 and 1–30–81

83674 12–19–80 / HHS/NIH—Resources, Centers, and Community Activities Division of the Board of Scientific Counselors, Silver Spring, Md. (open), 1–29 and 1–30–81

83676 12–19–80 / HHS/NIH—Toxicology, National Programs, Board of Scientific Counselors, Research Triangle Park, N.C. (partially open), 1–15 and 1–16–81

83677 12–19–80 / Intergovernmental Relations Advisory Commission—Meeting to discuss policymaking by Office of Management and Budget, Chicago, Ill. (open), 1–8 and 1–9–81

83068 12–17–80 / NFAH—National Council on the Arts Media Arts Panel (Film/Video Production), Washington, D.C. (closed), 1–5 through 1–7–81

83068 12–17–80 / NFAH—National Council on the Arts, Special Projects Panel (Inter-Arts Program), Washington, D.C. (partially open), 1–5 and 1–6–81

83068 12–17–80 / NSF—Behavioral and Neural Sciences Advisory Committee, Anthropology-Systematic (Museum) Collections, Washington, D.C. (closed), 1–29 and 1–30–81

83068 12–17–80 / NSF—Environmental Biology Advisory Committee, Ecological Sciences Subcommittee, Washington, D.C. (closed), 1–21 through 1–23–81

83069 12–17–80 / NSF—Environmental Biology Advisory Committee, Population Biology and Physiological Ecology Subcommittee, Washington, D.C. (closed), 1–29 and 1–30–81

83069 12–17–80 / NSF—Environmental Biology Advisory Committee, Systematic Biology Subcommittee, Washington, D.C. (partially open), 1–15 and 1–16–81

83069 12–17–80 / NSF—Physiology, Cellular, and Molecular Biology Advisory Committee, Cell Biology Subcommittee, Washington, D.C., 1–21 through 1–23–81

83069 12–17–80 / NSF—Social and Economic Science Advisory Committee, Executive Committee, Washington, D.C. (closed), 1–9 and 1–10–81

OTHER ITEMS OF INTEREST

82354 12–15–80 / EPA—Municipal wastewater treatment works; construction grants, consolidated guidance for facility planning; comments by 1–29–81

83172 12–17–80 / HHS—Adoption assistance and child welfare; demonstration project assisting those wishing to comment on proposed regulations

83816 12–19–80 / HHS—Semiannual agenda of regulations

83670 12–19–80 / HHS/ADAMHA—Filing of annual reports of advisory committees

83676 12–19–80 / HHS/NIH—Renewal of National Cancer Institute Committees

82273 12–15–80 / HUD/Sec'y—Small cities housing assistance plan; congressional waiver request

83699 12–19–80 / OMB—Federal Domestic Assistance Program; comments by 2–6–81

83701 12–19–80 / OMB—Memorandum on Federal support for hospital construction in overbedded areas

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Part II

Panama Canal Commission

Privacy Act of 1974; Annual Publication of Systems of Records

PANAMA CANAL COMMISSION

Privacy Act of 1974; Systems of Records: Annual Publication, Deletions, Revisions

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access procedures. The categories of individuals and categories of records covered in the systems have also been revised, where applicable, to reflect reductions in scope.

In addition, editorial modifications

Dated: December 10, 1980.

Fernando Manfredo, Jr.,

Acting Administrator, Panama Canal Commission.

SYSTEMS DELETED:

PCC–CZG/CACP–2
PCC–CZG/CACU–6
PCC–CZG/CACU–8
PCC–CZG/CALM–1
PCC–CZG/CALS–1
PCC–CZG/CALS–5
PCC–CZG/CALS–6
PCC/GSCP–2
PCC/AMSE–2
PCC/AMSE–1
PCC/GSLM–1
PCC/AMSA–1
PCC/AMSA–3
PCC/AMSA–4

Alphabetical Title Listing of Panama Canal Commission

Notices of Systems of Records

Accounts Payable Disbursement Records, PCC/FMAC–8

PANAMA CANAL COMMISSION

Privacy Act of 1974; Systems of Records: Annual Publication, Deletions, Revisions

AGENCY: Panama Canal Commission.

ACTION: Deletions and revisions to Panama Canal Commission systems of records; and annual publication.

SUMMARY: The Panama Canal Commission is required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), to give annual notice in the **Federal Register** of the existence and character of records it maintains. An interim notice appeared at 44 FR 55679 (September 27, 1979) informing the public that the systems of records of the Panama Canal Company and the Canal Zone Government (the predecessors of the Panama Canal Commission) would remain in effect until publication of the revised systems of records of the Panama Canal Commission could be accomplished.

The most recent full-text publication in the **Federal Register** of the Canal agencies' systems of records appeared at 42 FR 48182 (September 22, 1977). A notice of incorporation by reference appeared at 42 FR 43641 (September 26, 1978). The purpose of this notice is to identify the administrative changes to these systems required as a result of entry into force on October 1, 1979, of the Panama Canal Treaty of 1977 and related agreements. This notice also serves to meet the Privacy Act requirements for annual publication of notices of systems of records, and has the effect of establishing systems of records for use by the Panama Canal Commission.

DATES: This document fulfills the Privacy Act annual notice requirements for 1980.

ADDRESS: K. E. Goldsberry, Agency Records Officer (Chief, Administrative Services Division), Panama Canal Commission, APO Miami 34011.

FOR FURTHER INFORMATION CONTACT: Hazel M. Murdock, Assistant to the Secretary, Panamal Canal Commission, Suite 312 Pennsylvania Building, 425 13th St. N.W., Washington, D.C. 2004. (Telephone: 202–724–0104.)

SUPPLEMENTARY INFORMATION: The Panama Canal Treaty of 1977 between the United States of America and the Republic of Panama took effect on October 1, 1979. On that date, the United States relinquished and Panama assumed plenary jurisdiction over the area known as the Canal Zone. Pursuant to the Panama Canal Act of 1979, Pub. L. 96–70, 93 Stat. 452, the statute implementing the new treaty, the Canal Zone Government ceased operation and the Panama Canal Company was replaced by a new United States agency, the Panama Canal Commission. By the terms of the treaty, certain functions formerly performed by the Panama Canal Company/Canal Zone Government were curtailed, discontinued, or transferred to other U.S. Government agencies or to Panamanian administration. For example, the schools and medical services formerly provided by the Canal Zone Government are now being provided by the Department of Defense. This notice incorporates the administrative changes brought about by the Panama Canal Treaty of 1977 and the Panama Canal Act of 1979, and has the effect of establishing systems of records for use by the Panama Canal Commission.

As a result of changes brought about by implementation of the Panama Canal Treaty of 1977, 26 systems of records previously noticed by the Panama Canal Company/Canal Zone Government have become inactive systems, i.e., they have been retired to the Agency Records Center for storage and eventual disposition in accordance with Federal records retention schedules. Although the Panama Canal Commission will not add new records to these systems, the systems will continue to be described in the Commission's notice of Privacy Act systems of records. The original titles and alphanumerical designations, descriptions, and authorities cited for these systems have generally been retained. Changes have been made to update the system location, authority for maintenance of the system, system manager and address, and notification procedure. An alphabetical listing and full-text descriptions of the 26 inactive systems appear in the latter part of this notice.

Further, 16 systems of records have been deleted as a result of discontinuance of authority to carry out certain functions. The records formerly contained in these systems have been destroyed or transferred to other U.S. Government agencies. Two other systems are being deleted for administrative reasons.

The changes to the remaining systems of records are administrative in nature. They include modifications and revisions to reflect changes in the alphanumerical designations, authority, and address of the Panama Canal Commission and, where applicable, changes in location, system manager, system name, and notification and access procedures. The categories of individuals and categories of records covered in the systems have also been revised, where applicable, to reflect reductions in scope.

In addition, editorial modifications have been made for the purpose of completeness, clarity, and correctness. For example, the retention periods for all systems have been reviewed and updated where necessary; and general routine use No. 7, which permits disclosures to officials of the Government of Panama where necessary for implementation of the treaty, has been incorporated into the specific routine uses for some systems, where applicable, as a convenience to users.

One Commission system was formed by redesignating the system, Employee/Dependent Photo-Identification Cards, PCC–CZG/CALS–1, as General Identification, Photo-Identification and Purchase Authority Records, PCC/AMSA–1 and incorporating certain active residual elements of the inactive system, Purchase Authority Cards, PCC–CZG/ADGS–1.

Similarly, the majority of the records contained in the Company/Government system Health, Medical, Dental, and Veterinary Records Systems, PCC–CZG/HL–1, became inactive and were retired to the Agency Records Center. The remaining active records have been redesignated Industrial Health Records, PCC/HL–1.

These revisions and editorial corrections to the Panama Canal Commission's systems of records do not affect the general character or purpose of any systems described, nor do they expand the population of individuals to whom the systems apply or change any individual rights. Since the modifications merely provide a more accurate description of this agency's systems of records, the revisions are not deemed to be within the purview of the provisions of 5 U.S.C. 552a(o) of the Privacy Act and Office of Management and Budget (OMB) Circular A–108 (Transmittal Memoranda Nos. 1 and 3), which require submission of a report on a new system.

The descriptions of the systems of records maintained by the Panama Canal Commission appear below, preceded by a list of the systems deleted, a list of the changes in the alphanumerical designations, an alphabetical listing of the active systems of records, and a statement of the general routine uses applicable to all systems.

Dated: December 10, 1980.

Fernando Manfredo, Jr.,

Acting Administrator, Panama Canal Commission.

SYSTEMS DELETED:

The following systems, identified by their alphanumerical designation and system name, have been discontinued, and the records have been destroyed by shredding or burning.

PCC–CZG/CACP–1, Vital Installations Access File
PCC–CZG/CACU–1, State Department Visa Lookout Book
PCC–CZG/CACU–2 Immigration and Naturalization Service Lookout Book
PCC–CZG/CACU–3, Customs Fugitive Records
PCC–CZG/CACU–7, Seamen's Locator List
PCC–CZG/CAPL–11, Youth Unit Drug Abuse File
PCC–CZG/CAPS–1, Mail Covers
PCC–CZG/CAPS–3, Prohibitory Orders Against Sending Pandering Advertisements in the Mails
PCC–CZG/ISO–2, Confidential Sources and Contacts
PCC–CZG/ISO–3, Card Index System
PCC–CZG/ISO–4, Index of Contractor Employees
PCC–CZG/ISO–5, Biographical Data Cards
PCC–CZG/ISO–6, Biographical Data Files
PCC–CZG/SC–5, Ethyl Alcohol Certificates of Purchase

The following systems were transferred in their entirety to the U.S. Customs Service, Department of the Treasury; and the Drug Enforcement Agency, Department of Justice:

PCC–CZG/CACU–4, Cardex File—Smuggling; Narcotics; Violators or Suspects and Fugitives
PCC–CZG/CACU–5, Cardex File—Vehicle Exporters

The following two systems are withdrawn for other administrative reasons:

PCC–CZG/10–2, News Media Representatives (system does not contain personal information about individuals and thus is not a system of records as contemplated by the Privacy Act)
PCC–CZG/WO–2, Office of the Secretary Operating Unit Personnel Files (this system is already covered by the system PCC–OPR–1, Operating Unit Personnel Records)

List of Alphanumerical Changes

The following is a listing of the changes in the alphanumerical designations. The column on the left represents the former designation and the one on the right represents the new designation.

Former	*Present*
PCC–CZG/ADGS–2	PCC/AMSA–2
PCC–CZG/ADRM–1	PCC/AMRM–1
PCC–CZG/ADRM–3	PCC/AMRM–3
PCC–CZG/ADRM–4	PCC/AMRM–4
PCC–CZG/ADTR–1	PCC/AMTR–1
PCC–CZG/CACP–2	PCC/GSCP–2
PCC–CZG/CACU–6	PCC/AMSE–2
PCC–CZG/CACU–8	PCC/AMSE–1
PCC–CZG/CALM–1	PCC/GSLM–1
PCC–CZG/CALS–1	PCC/AMSA–1
PCC–CZG/CALS–5	PCC/AMSA–3
PCC–CZG/CALS–6	PCC/AMSA–4
PCC–CZG/CAPL–1	PCC/GSPL–1
PCC–CZG/CAPL–2	PCC/GSPL–2
PCC–CZG/CAPL–3	PCC/GSPL–3
PCC–CZG/CAPL–4	PCC/GSPL–4
PCC–CZG/CAPL–5	PCC/GSPL–5
PCC–CZG/CAPL–6	PCC/GSPL–6
PCC–CZG/CAPL–7	PCC/GSPL–7
PCC–CZG/CAPL–8	PCC/GSPL–8
PCC–CZG/CAPL–9	PCC/GSPL–9
PCC–CZG/CAPL–10	PCC/GSPL–10
PCC–CZG/CAPL–12	PCC/GSPL–12
PCC–CZG/CAPL–13	PCC/GSPL–13
PCC–CZG/CAPL–15	PCC/GSPL–15
PCC–CZG/CAPL–16	PCC/GSPL–16
PCC–CZG/CAPL–18	PCC/GSPL–18
PCC–CZG/CAPL–19	PCC/GSPL–19
PCC–CZG/CAPR–1	PCC/AEPR–1
PCC–CZG/CAPR–2	PCC/AEPR–2
PCC–CZG/CAPR–3	PCC/AEPR–3
PCC–CZG/CAPR–4	PCC/AMRM–5
PCC–CZG/CAPS–6	PCC/AMRM–6
PCC–CZG/CZPB–1	PCC/PB–1
PCC–CZG/CZPB–2	PCC/PB–2
PCC–CZG/CZPB–3	PCC/PB–3
PCC–CZG/ECCN–1	PCC/ECCN–1
PCC–CZG/ECCN–2	PCC/ECCN–2
PCC–CZG/ECLE–1	PCC/ECLE–1
PCC–CZG/EPCD–1	PCC/GSEP–1
PCC–CZG/EPS–1	PCC/EP–1
PCC–CZG/FVAC–1	PCC/FMAC–1
PCC–CZG/FVAC–2	PCC/FMAC–2
PCC–CZG/FVAC–3	PCC/FMAC–3
PCC–CZG/FVAC–4	PCC/FMAC–4
PCC–CZG/FVAC–5	PCC/FMAC–5
PCC–CZG/FVAC–6	PCC/FMAC–6
PCC–CZG/FVAC–7	PCC/FMAC–7
PCC–CZG/FVAC–8	PCC/FMAC–8
PCC–CZG/FVAC–9	PCC/FMAC–9
PCC–CZG/FVAK–1	PCC/FMAK–1
PCC–CZG/FVAP–1	PCC/FMAP–1
PCC–CZG/FVAP–2	PCC/FMAP–2
PCC–CZG/FVAP–3	PCC/FMAP–3
PCC–CZG/FVAP–4	PCC/FMAP–4
PCC–CZG/FVFI–1	PCC/PR–9
PCC–CZG/FVGA–1	PCC/FMGA–1
PCC–CZG/FVTR–1	PCC/FMTR–1
PCC–CZG/FVTR–2	PCC/FMTR–2
PCC–CZG/FVTR–3	PCC/FMTR–3
PCC–CZG/GE–2	PCC/AE–1
PCC–CZG/GVEO–1	PCC/EO–1
PCC–CZG/GVEO–2	PCC/EO–2
PCC–CZG/GVLR–1	PCC/IR–1
PCC–CZG/GVPR–1	PCC/ADPA–1
PCC–CZG/GVPR–2	PCC/ADPA–2
PCC–CZG/HL–1	PCC/HLHI–2
PCC–CZG/IO–1	PCC/IO–1
PCC–CZG/ISO–1	PCC/GSIS–1
PCC–CZG/MIL–1	PCC/MIL–1
PCC–CZG/MRBLI–1	PCC/MRBL–1
PCC–CZG/MRPA–1	PCC/MRPA–1
PCC–CZG/MRTO–1	PCC/MRTO–1
PCC–CZG/MRTO–2	PCC/MRTO–2
PCC–CZG/OPR–1	PCC/OPR–1
PCC–CZG/OPR–2	PCC/OPR–2
PCC–CZG/PR–1	PCC/PR–1
PCC–CZG/PR–2	PCC/PR–2
PCC–CZG/PR–3	PCC/PR–3
PCC–CZG/PR–4	PCC/IR–4
PCC–CZG/PR–5	PCC/PR–5
PCC–CZG/PR–6	PCC/PR–6
PCC–CZG/PR–7	PCC/PR–7
PCC–CZG/PR–8	PCC/PR–8
PCC–CZG/PR–11	PCC/PR–11
PCC–CZG/SC–1	PCC/GSCS–1
PCC–CZG/SC–2	PCC/GSCS–2
PCC–CZG/SC–3	PCC/GSSP–1
PCC–CZG/SF–1	PCC/HLSF–1
PCC–CZG/SF–2	PCC/HLSF–2
PCC–CZG/TTWT–1	PCC/GSWT–1
PCC–CZG/WO–1	PCC/WO–1

Alphabetical Title Listing of Panama Canal Commission

Notices of Systems of Records

Accounts Payable Disbursement Records, PCC/FMAC–8
Accounts Receivable Records, PCC/FMAC–2
Admeasurer Examination File, PCC/MRPA–1
Appeals, Grevances, Complaints, and Assistance Records, PCC/PB–2
Applications for Exoneration, PCC/AMSE–1
Arrest Record File, PCC/GSPL–13
Biographical Data, PCC/ADPA–1
Canal Protection Division Activity Report Files, PCC/GSCP–2
Canal Commission Awards and Service Contracts Control Records, PCC/FMAC–7
Cardex File-Contraband Violations, PCC/AMSE–2
Cash Audit Files, PCC/FMGA–1
Cash Collection Agents and Subagents, PCC/FMAC–6
Claims Files, PCC/FMAK–1
Complaints Against Policemen File, PCC/GSPL–15
Contractor Employee Payroll Records, PCC/ECCN–2
Convict Files, PCC/GSPL–4
Delegation of Authority for Procurement, PCC/FMAC–5
Detective Confidential Files, PCC/GSPL–3
Disability Relief, Retirement and Group Supplementary Life Insurance Records, PCC/PR–1
Embezzlements, Burglaries, and Cash Shortages, PCC/FMAC–1
Emergency Preparedness Records (Civil Defense/Emergency Management), PCC/ESEP–1
Employee Application for Outside Employment, PCC/AMSA–2
Employee Benefits Records, PCC/PR–2
Employees' and Dependents' Travel Orders, PCC/AMTR–1
Equal Employment Opportunity Complaint File, PCC/EO–2
Expert and Consultant Records, PCC/GSSP–1
Fingerprint File, PCC/GSPL–7
Freedom of Information Act Requests for Records, PCC/AMRM–4
General Files of the Panama Canal Commission, AMRM–1
General Identification, Photo-Identification, and Purchase Authority Records, PCC/AMSA–1
Grievances, Appeals, and Adverse Actions Records, PCC/IR–2
Housing Complaints File, PCC/GSCS–2
Housing Files, PCC/GSCS–1
Incentive Awards Program Files, PCC/PR–9
Industrial Accident Prevention Supervisor/Unit Awards File, PCC/HLSF–1
Industrial Health Records, PCC/HL–1
Informant Name File, PCC/GSPL–9
Injury Compensation Payroll Records, PCC/FMAP–3
Internal Revenue Service Notice of Levy Files, PCC/FMTR–2
Land Utilization Records, PCC/AMSA–3
Law Enforcement Case Report Files, PCC/GSPL–1
Marine Accident Reference CArds, PCC/MRTO–1
Marine License Files, PCC/MRBL–1
Master Name File, PCC/GSPL–10

Merit System Recruiting, Examining, and Placement Records, PCC/PB–1
Minority Group Designator (MGD) Records, PCC/PR–11
Minority Group Designator Statistical Data, PCC/EO–1
News Morgue Records, PCC/IO–1
Retirement, Life Insurance, and Health Benefits Records Systems (See PCC/PR–8)
U.S. Government Vehicle Operator's Identification and Material Handling Card Application Files, PCC/AMSA–4
Vessel Employee Records, PCC/GSWT–1
Youth Unit Name Index File, PCC/GSPL–12

the Office of Management and Budget in connection with the review of private relief legislation.

6. Information which has a bearing on the qualifications of professional personnel (such as architects, attorneys,

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General biographical data may be provided to interested members of Congress, diplomatic corps, public media, etc., consistent with official

employees and officials; local officials; officers of local organizations; official visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Telephone numbers; addresses; photographs; stenographic transcriptions

PCC/AE–1

SYSTEM NAME:

Statements of Employment and Financial Interest, PCC/AE–1.

SYSTEM LOCATION:

Merit System Recruiting, Examining, and Placement Records, PCC/PB–1
Minority Group Designator (MGD) Records, PCC/PR–11
Minority Group Designator Statistical Data, PCC/EO–1
News Morgue Records, PCC/IO–1
Operating Unit Employment Inquiry Files, PCC/OPR–2
Operating Unit Personnel Records, PCC/OPR–1
Panama Canal Commission Board of Directors, PCC/WO–1
Panama Canal Commission Board of Directors Biographical and Correspondence Files, PCC/EP–1
Panama Canal Commission Library Registration Record, PCC/GSLM–1
Payroll Deductions, PCC/FMAP/AC–4
Payroll Master File for Panama Canal Commission Employees, PCC/FMAP–1
Payroll System for Vessel Employees, PCC/FMAP–2
Pending Detective Investigation Records, PCC/GSPL–8
Personal Data Records, PCC/PR–3
Personnel Information System, PCC/PR–7
Personnel Investigation Records, PCC/PB–3
Personnel Security Files, PCC/GSIS–1
Pilot Workload Statistics, PCC/MRTO–2
Plumbing and Welding License Files, PCC/ECCN–1
Police Headquarters Confidential File, PCC/GSPL–2
Police Photo Files, PCC/GSPL–6
Poor Risk/Delinquent Citation/Warrant File, PCC/GSPL–19
Post Office Boxholder Records, PCC/AMRM–5
Postal Claims and Inquiries, PCC/AMRM–6
Presentence and Pre-Parole Investigation Reports, PCC/AEPR–2
Prisoner Property Record, PCC/GSPL–18
Prisoner Record Cards, PCC/GSPL–5
Privacy Act Requests Records, PCC/AMRM–3
Probation and Parole Unit Child Custody Reports, PCC/AEPR–1
Probation and Parole Unit Statistical File, PCC/AEPR–3
Protocol Unit Operational Files, PCC/ADPA–2
Quarterly Report of Employee Union Dues Deductions, PCC/IR–1
Recruiting and Placement Records, PCC/PR–5
20/30/40-Year Safety Key Awards Files, PCC/HLSF–2
Statements of Employment and Financial Interest, PCC/AE–1
Supension of Check Cashing Privileges Files, PCC/FMTR–3
Telephone Exchange Directory, PCC/ECLE–1
Termination of Employment Actions Records, PCC/FMTR–1
Traffic Accident Reports, PCC/GSPL–16
Training and Employee Development Records, PCC/PR–6
Trust Fund Records, PCC/FMAC–3
Unnegotiated Checks Over One Year Old, PCC/FMAC–9
U.S. Army Element, Panama Canal Commission Military Administration System, PCC/MIL–1
U.S. Civil Service Commission systems applicable to the Panama Canal Commission General Personnel Records: Retirement, Life Insurance, and Health Benefits Records Systems (See PCC/PR–8)
U.S. Government Vehicle Operator's Identification and Material Handling Card Application Files, PCC/AMSA–4
Vessel Employee Records, PCC/GSWT–1
Youth Unit Name Index File, PCC/GSPL–12

Prefatory Statement of General Routine Uses

(35 CFR Part 10, Appendix A)

Information about an individual which is maintained in any system of records under the control of the Panama Canal Commission is subject to disclosure, as a routine use of such information, to any of the following persons or agencies under the circumstances described:

1. Information indicating a violation or potential violation of law (whether civil, criminal, or regulatory in nature, and whether involving a statute or regulation or a rule or order issued pursuant thereto) may be referred to the federal, state, local, foreign, or international agency charged with investigating or prosecuting such violations or charged with implementing or enforcing the particular statute, or regulations, rule, or order, which is pertinent thereto.

2. Information which has a bearing on matters which may be in dispute may be disclosed in the course of presenting evidence or argument to a court or administrative tribunal, a judicial official, or counsel for a party in connection with litigation or administrative proceedings in which the agency, or its officers or employees, are or may become involved.

3. Information may be provided to persons or agencies from whom information is solicited, to the extent necessary to elicit facts which may be relevant to a financial audit or an agency decision to hire or retain an employee, issue a security clearance, award a contract, grant a license, or otherwise provide a benefit or incur an obligation.

4. Information may be disclosed to a federal agency, in response to its request in a particular case or in a category of cases, in connection with that agency's (a) decision in a personnel matter; (b) financial audits and accounting; (c) issuance of a security clearance; (d) investigation of an individual employed or formerly employed by the Panama Canal Commission (or its predecessors); or (e) decision to award a contract, grant a license, or otherwise provide a benefit or incur an obligation.

5. Information may be supplied in response to an inquiry from a Member of Congress on behalf of an individual or, at any stage of the legislative coordination and clearance process, to the Office of Management and Budget in connection with the review of private relief legislation.

6. Information which has a bearing on the qualifications of professional personnel (such as architects, attorneys, engineers, medical practitioners, pilots, and teachers) who have been employed by the agency or have had professional dealings with the agency may be provided to the appropriate authorities such as professional licensing and certifying boards and grievance committees.

7. To the extent necessary for implementation of the Panama Canal Treaty of 1977 and related agreements, information may, upon approval by the Agency Records Officer (Chief, Administrative Services Division) or that official's designee, be disclosed to officials of the Government of the Republic of Panama and to U.S. Government agencies which, under the Treaty, assumed functions formerly performed by the Panama Canal Company or the Canal Zone Government.

PCC/ADPA–1

SYSTEM NAME:

Biographical Data, PCC/ADPA–1

SYSTEM LOCATION:

Protocol Office, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Administrator, Deputy Administrator, Administrator's staff, and members of their families; Board of Directors; local military and Diplomatic Corps officials; visiting officials including Congressional and high ranking military personnel; Secretary of the Army and members of his staff; local Panama Canal Commission employees; local businessmen and officials; Residents' Advisory Committee officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on individuals including names, identification numbers, dates of birth, number of children and their names, education, honors bestowed, telephone numbers, addresses, job titles, marital status, citizenship, employing unit, photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 22 U.S.C. 3611 and 3614 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General biographical data may be provided to interested members of Congress, diplomatic corps, public media, etc., consistent with official protocol functions. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Standard 8 by 10½ inch paper.

RETRIEVABILITY:

Filed and indexed by name.

SAFEGUARDS:

Records maintained in lockable file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained indefinitely. Forwarded to Agency Records Center for disposition according to established procedures and where applicable to libraries or the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Aide to the Administrator, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

PCC/ADPA–2

SYSTEM NAME:

Protocol Unit Operational Files, PCC/ADPA–2.

SYSTEM LOCATION:

Protocol Office, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Residents' Advisory Committee officers; Panama Canal Commission employees and officials; local officials; officers of local organizations; official visitors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Telephone numbers; addresses; photographs; stenographic transcriptions of Residents' Advisory Committee meetings, recordings, speeches, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To establish appointment schedules, contact protocol counterparts in other agencies. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Standard 8 by 10½ inch paper, index cards.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records maintained in lockable file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained indefinitely. Forwarded to Agency Records Center for disposition according to established procedures, and where applicable to libraries and the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Aide to the Administrator, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

PCC/AE–1

SYSTEM NAME:

Statements of Employment and Financial Interest, PCC/AE–1.

SYSTEM LOCATION:

Office of Executive Administration, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees designated in 35 CFR 255.735–72 of the Panama Canal Commission, and special Government employees as provided in 35 CFR 255.735–80.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports by designated employees of their outside employment and financial interests, as required by law, and regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 201, E.O. 11222, E.O. 11590 (35 CFR 255.735–71/80); 22 U.S.C. 3611, 3622, 3652–3654 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To determine whether the designated employees have unacceptable conflicts of interest with relation to their U.S. Government employment. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Papers in sealed envelopes.

RETRIEVABILITY:

Manually by name of individual.

SAFEGUARDS:

File cabinet with combination lock. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

3 years and disposed of by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Executive Administration, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration

Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in

RETRIEVABILITY:

Alphabetized.

SAFEGUARDS:

Records maintained in metal file cabinets with access by Probation

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Typed reports and printed forms 8 by 10½ inches.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed form 5 by 8 inches.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; 44 U.S.C. 3101 and 3102.

SYSTEM LOCATION:

Records Management Branch, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE

Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From employee on whom record is maintained, and from investigations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is kept in systems PCC/GSPL–1, 2 or 3 and is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/AEPR–1

SYSTEM NAME:

Probation and Parole Unit Child Custody Reports, PCC/AEPR–1.

SYSTEM LOCATION:

Probation and Parole Unit, U.S. District Court, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parent or custodian of minor child when custody of the child is contested.

CATEGORIES OF RECORDS IN THE SYSTEM:

All background information available to the Probation and Parole Officer that would be helpful in determining appropriate custody of the child.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Judicial request under 7 Panama Canal Code 2807 or 8 Panama Canal Code 338, 76A Stat. 647, 689; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to officials of U.S. District Court for the District of the Canal Zone. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Reports 8 by 10½ inches.

RETRIEVABILITY:

Alphabetized.

SAFEGUARDS:

Records maintained in metal file cabinets with access by Probation Office personnel only.

RETENTION AND DISPOSAL:

Maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Probation and Parole Officer, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21.

PCC/AEPR–2

SYSTEM NAME:

Presentence and Pre-Parole Investigation Reports, PCC/AEPR–2

SYSTEM LOCATION:

Probation and Parole Unit, U.S. District Court, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons convicted of crimes and referred to the Probation and Parole Unit for investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

All background information available to the Probation Officer, including full identity of the person and his family, police history, employment history, financial status, military history, and details of the offense in which the person was involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 3651–53, 3655; 6 Panama Canal Code 4491–92, 6621–25 (76A Stat. 533, 558); 22 U.S.C. 3831 and 3852 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to officials of U.S. District Court for the District of the Canal Zone and Administrative Office of the U.S. Courts. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Typed reports and printed forms 8 by 10½ inches.

RETRIEVABILITY:

Indexed by name and kept in alphabetized individual jackets.

SAFEGUARDS:

Records maintained in metal file cabinets with access by Probation Office personnel only.

RETENTION AND DISPOSAL:

Maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Probation and Parole Officer, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21.

PCC/AEPR–3

SYSTEM NAME:

Probation and Parole Unit Statistical File, PCC/AEPR–3

SYSTEM LOCATION:

Probation and Parole Unit, U.S. District Court, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons convicted of crimes and referred to the Probation and Parole Unit for investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, age, residence, category of crime and Court disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3831 and 3852 (Supp. III 1979): Article XI of the Panama Canal Treaty of 1977; and Federal Probation Manual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to officials of the U.S. District Court for the District of the Canal Zone and Administrative Office of the U.S. Courts. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed form 5 by 8 inches.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records maintained in metal file cabinets with access by Probation Office personnel only.

RETENTION AND DISPOSAL:

Maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Probation and Parole Officer, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the Procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21.

PCC/AMRM–1

SYSTEM NAME:

General Files of the Panama Canal Commission, PCC/AMRM–1

SYSTEM LOCATION:

Records Management Branch, Panama Canal Commission, Administration Building, Balboa Heights, Republic of Panama

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual who are the subject of correspondence or who correspond with the Office of the Administrator and staff offices on a variety of subjects related to the operation, maintenance, and protection of the Panama Canal.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files retrievable by reference to individuals include records on subjects such as eligibility to engage in private business, purchase goods and services, and use Canal facilities; licenses and permits in connection with utilization of land, water, resources and facilities; Congressional inquiries about or on behalf of individuals; biographical data on former Governors of the Canal Zone; certificates of good conduct; contracts with individuals, reports of Court dispositions of cases; Coroner reports; and inquiries and answers on Canal operations, laws and regulations pertaining to the Panama Canal Commission and policies related thereto, generally.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; 44 U.S.C. 3101 and 3102.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders or on backers and card indexes.

RETRIEVABILITY:

Filed by subject subdivided alphabetically by name, or filed alphabetically by name only.

SAFEGUARDS:

Stored in metal file cabinets in file room locked when not in use in a building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Certificates of good conduct, 6 months; eligibility files, 3 years after last entry; general inquiries and answers, 3 years. Other transferred to Agency Records Center after 8 years and retained permanently. General files prior to 1935 are stored in National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part. 10.

RECORD SOURCE CATEGORIES:

Subject individuals, Canal officials, and information from records.

PCC/AMRM–3

SYSTEM NAME:

Privacy Act Requests Records, PCC/AMRM–3.

SYSTEM LOCATION:

Records Management Branch, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested personal information from records systems of the Panama Canal Commission under provisions of the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to process requests made under the Privacy Act of 1974, and to provide information for compiling an annual report for The Office of Management and Budget as required by the act. Files contain correspondence, documents, and file material references related to the receipt, processing and final disposition of requests received under the Privacy Act of 1974. File material under request is normally retained by the system manager of the system from which the information is requested.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders; logs; index cards.

RETRIEVABILITY:

Documentation on requests processed by Privacy Act Staff filed by log number and retrievable by name. Documentation on requests processed by system managers field chronologically.

SAFEGUARDS:

Records maintained in file cabinets in building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained 6 years after final disposition of case, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Records Management Branch, Administrative Services Division,

Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager. Rules published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, Canal officials, and information from records.

PCC/AMRM–4

SYSTEM NAME:

Panama Canal Commission Visitor Identification Card Records, PCC/AMRM–4.

SYSTEM LOCATION:

Records Management Branch, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested Panama Canal Commission visitor identification cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to process requests made for Panama Canal Commission visitor identification cards. Files contain correspondence, documents, and file material references related to the receipt, processing and final disposition of requests received for visitor identification cards. File material under request is normally retained by the system manager of the system from which the information is requested.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders; logs; index cards.

RETRIEVABILITY:

Filed by log number; indexed by name.

SAFEGUARDS:

Records maintained in metal file

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3741 (Supp. III 1979); and Article III and Annex of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN

presenting claims for loss or damage of registered mail or insured parcel post.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record contains the information necessary to properly examine, prepare, process and adjudicate claims for loss

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The sender, addressee, and, as applicable, the Postal Service or Administration officials of the country

issued official U.S. passports. For persons who have been issued visitor identification cards, photocopies of their passport, tourist card, and their sponsor's Commission identification card are maintained.

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Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager. Rules published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Systems Manager designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained and from officials making determinations under the act.

PCC/AMRM-4

SYSTEM NAME:

Freedom of Information Act Requests Records, PCC/AMRM-4.

SYSTEM LOCATION:

Records Management Branch, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested copies of Panama Canal Commission records under provisions of the Freedom of Information Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to process requests for information from records under the Freedom of Information Act, and to provide annual reports to Congress as required by the act. Files will normally contain correspondence, documents, and file material references related to the receipt, processing and final disposition of requests received under the Freedom of Information Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders; logs; index cards.

RETRIEVABILITY:

Filed by log number; indexed by name.

SAFEGUARDS:

Records maintained in metal file cabinet in building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained 6 years after final disposition of case, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Records Management Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building Balboa Heights, R. P. Rules published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individual requesting information; and from officials making determinations under the act.

PCC/AMRM-5

SYSTEM NAME:

Post Office Boxholder Records, PCC/AMRM-5.

SYSTEM LOCATION:

Postal Assistance Unit at Bldg. 446, Albrook and Bldg. 8040, Margarita, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who obtained boxholder service at former Canal Zone Post Offices. Persons who gave notice of change of address.

CATEGORIES OF RECORDS IN THE SYSTEM:

The boxholder or recipient's name, employee identification number, residence, Post Office box number, and the names of persons other than the boxholder who were authorized to receive mail at the assigned box or station; APO Box number, forwarding address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3741 (Supp. III 1979); and Article III and Annex of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Individual cards.

RETRIEVABILITY:

Originals filed numerically by Box number, and cross-referenced by name, duplicates filed alphabetically in the unit master directory.

SAFEGUARDS:

Maintained in metal file drawers. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed two years after box is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building Balboa Heights, R. P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual boxholder.

PCC/AMRM-6

SYSTEM NAME:

Postal Claims and Inquiries, PCC/AMRM-6

SYSTEM LOCATION:

Postal Assistance Unit, Albrook AFS (Bldg. 446) and Margarita (Bldg. 8040), Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons requesting tracing of undelivered mail or parcels, or

presenting claims for loss or damage of registered mail or insured parcel post.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record contains the information necessary to properly examine, prepare, process and adjudicate claims for loss or damage of registered mail or insured parcel post or tracing of ordinary articles, including: names and addresses of senders and addresses, date of mailing, description of articles value, the registration, insured, or certified number or description of an unnumbered ordinary article, purpose of claim, post office disposition and/or any other pertinent information relating to the claim or inquiry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3741 (Supp. III 1979), and Article III and Annex of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referred to Foreign Postal Administrations or law enforcement agencies when applicable. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Individual file folders.

RETRIEVABILITY:

Filed alphabetically by name of addressee.

SAFEGUARDS:

Maintained in metal lockable cabinets or desk drawers. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed two years after disposition of claims.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Records Management Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The sender, addressee, and, as applicable, the Postal Service or Administration officials of the country of origin or destination.

PCC/AMSA-1

SYSTEM NAME:

General Identification, Photo-Identification and Purchase Authority Records, PCC/AMSA-1

SYSTEM LOCATION:

Employee Documentation Unit, Building 5140, Diablo, Republic of Panama and Building 8040, Margarita, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have applied for Panama Canal Commission general identification, photo-identification and/or purchase authority cards, i.e., employees and annuitants of the Panama Canal Commission (including its predecessor agencies) dependents and other individuals who reside in Commission housing; employees of the United States District Court of the Canal Zone and the U.S. Attorney's Office; employees of private companies (contractors) or other organizations; visitors of U.S. Commission employees and certain other Federal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicants name, identifying number, home address, postal address, birthdate, citizenship, employment status and/or employing unit, position title, marital status, purchase authority status, medical privilege status, work and home telephone number. Name, date of birth, relationship, physical impairments and citizenship of dependents of applicant, and history of identification cards issued. Subsystem containing photomat cards reflecting card holder's name, sponsor's name, date of birth of card holder, identification number, citizenship, employing agency or agency retired from, separation date, card expiration date, residence address and card control number. Computer listings reflecting name, identification number, tenure, duty station, social security number, leave balance, gross pay and social security payments to the Government of Panama, of active Panama Canal Commission employees eligible for medical benefits. Name, identification number, passport number, date of birth, birthplace, nationality of Panama Canal Commission employees and their dependents who have been issued official U.S. passports. For persons who have been issued visitor identification cards, photocopies of their passport, tourist card, and their sponsor's Commission identification card are maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Articles III and VIII of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to officials of the U.S. Embassy, U.S. Armed Forces and the Government of Panama, with a need to know. See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms, standard photomat cards and paper records.

RETRIEVABILITY:

Indexed by name and identification number.

SAFEGUARDS:

Records maintained in locked metal filing cabinets when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed six years after inactive, cancelled or termination of employee.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Staff and Administrative Support Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in notification procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individual, U.S. Embassy and Data Processing.

PCC/AMSA-2

NOTIFICATION PROCEDURE:

military officials when such licenses are

CATEGORIES OF RECORDS IN THE SYSTEM:

CONTESTING RECORD PROCEDURES:

RECORD ACCESS PROCEDURES:

PCC/AMSA-2

SYSTEM NAME:

Employee Application for Outside Employmnent, PCC/AMSA-2.

SYSTEM LOCATION:

Administrative Services Division, Administration Building, Balboa Hights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees who have applied for permission to engage in outside employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of employee, name of outside employer, location of outside employment, number of hours employed weekly, nature of work performed, beginning and ending dates of outside employment, and conditions placed on employee concerning outside employment permission. Also may include letters from the Government of Panama stating there is no objection to the proposed employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 and 3622 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; E.O. 11222 of May 8, 1965.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Released to Internal Revenue Service and government of Panama officials upon request to inform them which employees engage in outside employment. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed form 8 by 10½ inches.

RETRIEVABILITY:

Filed by expiration date. Separate index maintained by name.

SAFEGUARDS:

Lockable file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Minimum of 5 years after expiration of permit. Disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Staff and Administrative Support Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURE:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individual to whom application pertains.

PCC/AMSA-3

SYSTEM NAME:

Land Utilization Records, PCC/AMSA-3.

SYSTEM LOCATION:

Administrative Services Division, Panama Canal Commission, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have been issued revocable licenses to occupy or use tracts of land in the Canal area for residential, commercial, agricultural, recreational or boat repair purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records showing the status of land licenses issued containing information such as the following:

Name of licensee, street and postal address, date of birth, citizenship, identification number, type of employment, photographs, signature, dependent information, police records, and letters of complaint (if any). Also contains signed copies of licenses, boundary information, area maps, rental rates, census reports, and types of structures on the site and conditions of licensing and date of revocation, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; and Article IV of the Agreement in Implementation of Article III of the Panama Canal Treaty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released to such agencies as the Bureau of Census, Office of Personnel Management and the Internal Revenue Service. Information may also be disclosed to local U.S. military officials when such licenses are located adjacent to or within areas used by the military. Information may also be disclosed to Government of Panama officials. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

10 by 12 inch file folders, and cardex files.

RETRIEVABILITY:

Filed by name, recovered manually.

SAFEGUARDS:

Records maintained in lockable file. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained as a permanent record.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Staff and Administrative Support Branch, Administrative Services Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURE:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

PCC/AMSA-4

SYSTEM NAME:

U.S. Government Vehicle Operator's Identification and Material Handling Card Application Files, PCC/AMSA-4.

SYSTEM LOCATION:

Employee Documentation Unit, Bldg. 5140, Diablo, Republic of Panama; and Data Processing Division, Administration Building, Balboa Heights, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who apply to the Panama Canal Commission for Government Vehicle Operator's Licenses or for Material Handling Cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms containing name, identification number, position, date of birth, place of birth, citizenship, color of hair, color of eyes, height, weight, employment information, qualification statements, Letters of revocation, suspension, or cancellation, and/or medical evaluation material. Computer-produced list of current license-holders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR Part 930, Subpart A; Panama Canal Personnel Manual, Chapter 930; 22 U.S.C. 3611 (Supp. III 1979); 40 U.S.C. 491; Article III of the Panama Canal Treaty of 1977; and Article XIV of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders; computer printouts; magnetic disks.

RETRIEVABILITY:

Retrievable by name.

SAFEGUARDS:

Paper records maintained in lockable file cabinet. Magnetic disks stored in locked room when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Application forms and related records destroyed 3 years after expiration of license or termination of employee or other recision of authority. Computer printouts held up to three months after printing and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Employee and Cargo Documentation Section, Panama Canal Commission, APO Miama 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURE:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained; supervisors.

PCC/AMSE-1

SYSTEM NAME:

Application for Exoneration, PCC/AMSE-1

SYSTEM LOCATION:

Cargo Documentation Unit in Building 5140, Diablo, R.P. and Building 1105, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who apply for exoneration of customs duty to import goods into the Republic of Panama.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identity number, citizenship, residence, place of employment, signature, and commodity description.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; and Article XVI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed form—8¼" by 13"

RETRIEVABILITY:

By name and number.

SAFEGUARDS:

Standard file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed after 3 years.

SYSTEM MANAGER(S):

Chief, Employee and Cargo Documentation Section, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual applicant.

PCC/AMSE-2

SYSTEM NAME:

Cardex File—Contraband Violations, PCC/AMSE-2

SYSTEM LOCATION:

Cargo Documentation Unit in Bldg. 5140, Diablo, R.P. and Bldg. 1105, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons reported to be, or suspected of involvement in activities which are violations of treaty provisions governing the importation, purchase, use, transfer of goods or services obtained by Commission employees, dependents, and other authorized persons; including but not limited to transfer of duty free goods and services into the Republic of Panama without proper Panama Customs clearances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, number, address, place of employment, case numbers, charge or violation, administrative or court action taken, and name of investigator. Other information as may be uncovered by investigating officers, including the name, dates and places of violations, names of accessories etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; and Article XVI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure as required to U.S. military component investigators, U.S. District Court officials, and Panamanian Customs officials having an interest in such information in connection with law enforcement or regulatory procedures. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards, logbooks (chronological), case reports and supporting documentation

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–42 and 5924, and such other authorities as are cited in 572.1–1 and 1–2, PCPM; 22 U.S.C. 3611, 3647 and 3671 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977.

SYSTEM LOCATION:

Construction Management Branch (Plumbing License Files), Building 29–X, Balboa, Republic of Panama; Industrial Division (Welding License Files), Building 5082, Mt. Hope, R.P.

Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

RETRIEVABILITY:

Individual pay data and hours of work retrieved chronologically by date.

SAFEGUARDS:

Records maintained in file cabinets. Access and use are restricted to

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system is used to compile listings used to produce the Panama Canal Commission Telephone

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards, logbooks (chronological), case reports and supporting documentation maintained by the Cargo Documentation Unit which are accessible by the cardex system.

RETRIEVABILITY:

Accessible by name and case number on cardex forms. Backup data, including case reports accessed by cardex designators, otherwise filed by investigator's name.

SAFEGUARDS:

Card file drawers. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Employee and Cargo Documentation Section, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/AMTR-1

SYSTEM NAME:

Employees' and Dependents' Travel Orders, PCC/AMTR-1

SYSTEM LOCATION:

Transportation Branch, Building 5140, Diablo Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and designated dependents of Panama Canal Commission and other agencies whose travel arrangements are performed by the Transportation Branch of the Panama Canal Commission.

CATEGORIES OF RECOROS IN THE SYSTEM:

Records contain traveler's names, relationship to employee, identification number, occupation, dates and places of birth, origin and destination of travel as well as other pertinent travel information required to complete United States Transportation request and United States Government Bills of Lading.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–42 and 5924, and such other authorities as are cited in 572.1–1 and 1–2, PCPM; 22 U.S.C. 3611, 3647 and 3671 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

U.S. Government agencies, commercial carriers, U.S. and foreign customs, Immigration and diplomatic personnel, and others with a need to know; and for use in adjudicating claims relating to employee travel. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders and index cards.

RETRIEVABILITY:

Indexed by employee's name and travel order numbers.

SAFEGUARDS:

Records maintained in file cabinets. Office is locked and protected by security alarms after office hours—access and use of records restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Transportation Branch, Panama Canal, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or he Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, employing unit, and by the Personnel Bureau, Panama Canal Commission as necessary.

PCC/ECCN-1

SYSTEM NAME:

Plumbing and Welding License Files, PCC/ECCN-1

SYSTEM LOCATION:

Construction Management Branch (Plumbing License Files), Building 29–X, Balboa, Republic of Panama; Industrial Division (Welding License Files), Building 5082, Mt. Hope, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have plumbing licenses on file with the Construction Management Branch; and welding licenses on file with the Industrial Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

License numbers, name of licensee, date license issued, test results, category of license, name of certification board or examiner.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; 35 CFR Parts 251 and 253.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

License information routinely released to contractors, employers, and license examining and review boards. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Filed by type and number of license.

SAFEGUARDS:

Records maintained in file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

No retention and disposal schedule established. Actively maintained as long as licensee is known to be actively engaged in employment. Retained permanently for record purposes.

SYSTEM MANAGER(S) AND ADDRESS:

For plumbing license file, Chief, Construction Management Branch, Panama Canal Commission, APO Miami 34011. For welding license file, Chief, Industrial Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration

Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Examining officials and licensee.

PCC/ECCN-2

SYSTEM NAME:

Contractor Employee Payroll Records, PCC/ECCN-2

SYSTEM LOCATION:

Construction Management Branch, Bldg. 29–X, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of contractors working on Panama Canal Commission contracts when such employees are working in the Canal area and being paid hourly wages.

CATEGORIES OF RECORDS IN THE SYSTEM:

The contract number, contractor, employee's name, cedula number, hourly rate of pay, hours worked, total hours worked, total amount paid and other information as required to assure contractor's compliance with the Hours and Safety Standards Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); 40 U.S.C. 327 et seq.; Article III of the Panama Canal Treaty of 1977, and Articles IX and XI of the Agreements in Implementation of Article III of the Panama Canal Treaty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

US Department of Labor, US Court of Claims, US Army Corps of Engineers Board of Contract Appeals, insurance companies (sureties), GOP Department of Labor, US Embassy and others as required to assure contractor's compliance with above Acts regarding minimum wage, and maximum daily and weekly hours of work. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders.

RETRIEVABILITY:

Individual pay data and hours of work retrieved chronologically by date.

SAFEGUARDS:

Records maintained in file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained by contracting officer for one year after final payment of contract, then transferred to Agency Records Center. Destroyed three years later unless claim pending.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Construction Management Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Provided by the contractor.

PCC/ECLE-1

SYSTEM NAME:

Telephone Exchange Directory, PCC/ECLE-1

SYSTEM LOCATION:

Electrical Division, Building 69, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal Commission telephone service subscribers, including persons or ogranizations requesting residential, office, and/or pay phone installations, directory listings, repair services, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, employee identification and/or customer number, of all persons and organizations having listed and unlisted telephone numbers. Dates of installation, work order numbers, types of equipment and numbers of installation, location, etc. are also included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977 and Annex thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system is used to compile listings used to produce the Panama Canal Commission Telephone Directory (available to the public), answer requests for telephone directory assistance etc. Telephone numbers which are requested to be kept unlisted, while a part of the system, are maintained under lock and key. Such numbers are only divulged to the party to whom they pertain, and only upon positive face-to-face identification. Information from this system may also be used to provide assistance to INTEL for the collection of outstanding charges for long distance services. For other routine uses see general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Information maintained on printed cards.

RETRIEVABILITY:

Filed by name and telephone district.

SAFEGUARDS:

Cards maintained in lockable revolving files.

RETENTION AND DISPOSAL:

Maintained for five years after individual cancels or terminates service, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Electrical Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From employee on whom record is maintained.

PCC/EO-1

SYSTEM NAME:

Minority Group Designator Statistical Data, PCC/EO-1

SYSTEM LOCATION:

Office of Equal Opportunity and Data Processing Division, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Minority group designator, sex, date of birth, service computation date, occupation, grade, salary, and duty station.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977 and Annex thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system is used to produce statistical reports for the Panama Canal Commission and the Congress. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Information maintained on printed cards.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Cards maintained in lockable revolving files.

RETENTION AND DISPOSAL:

Maintained for five years after individual cancels or terminates service, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Electrical Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager. See Chapter 713 of Panama Canal Personnel Manual (PCPM 713).

RECORD ACCESS PROCEDURES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Employee on whom record is maintained.

PCC/EO-2

SYSTEM NAME:

Equal Employment Opportunity Complaint Records, PCC/EO-2

SYSTEM LOCATION:

Office of Equal Opportunity, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of Panama Canal Commission who have filed complaints of discrimination.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Pre-complaint record, consisting of informal complaint, final report from the Equal Employment Opportunity Counselor, and related documents.

B. Investigative file, consisting of

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager. See Chapter 713 of Panama Canal Personnel Manual (PCPM 713).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

RECORD ACCESS PROCEDURES:

Printouts will be produced only upon written request from the Director of the Office of Equal Opportunity.

RETENTION AND DISPOSAL:

Printouts retained up to five years and

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Pre-complaint record, consisting of informal complaint, final report from the Equal Employment Opportunity Counselor, and related documents.

B. Investigative file, consisting of

reports, statements by individuals involved and their employers, decisions made about liability and responsibility, statements of actions taken to recover, and court decisions.

AUTHORITY FOR MAINTENANCE OF THE

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SYSTEM LOCATION:

Office of Equal Opportunity and Data Processing Division, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active employees of the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

A minority group designator, together with information in the payroll system of the Panama Canal Commission, including such information as name, employee identification number, date hired, roll and gang, position number, occupation, pay level, base rate, work week, social security code and number, residence, citizenship, sex, marital status, birth date, Federal service date, PCC service date and employee status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 55; 22 U.S.C. 3611 (Supp. III 1979); 42 U.S.C. 2000 e–16; E. O. 11478 of August 8, 1969; Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10. Appendix A. The System Manager is prohibited, by the provisions of 29 CFR 1613.302, from disclosing minority group data in the system except in the form of gross statistics (except insofar as an individual is entitled, under the Privacy Act, to access to information pertaining to him which is contained in the system.)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Magnetic tapes or discs, computer printouts and Panama Canal forms No. 2823, used for computer input.

RETRIEVABILITY:

By any or all of the categories of records in the system.

SAFEGUARDS:

Printouts containing names or other personal identifies together with the minority group designator code maintained in locked file cabinet and accessible only to the Director of the Office of Equal Opportunity or that official's designated representative. Magnetic tapes stored in locked rooms when not in use; access and use restricted to authorized personnel. Printouts will be produced only upon written request from the Director of the Office of Equal Opportunity.

RETENTION AND DISPOSAL:

Printouts retained up to five years and then destroyed. Records on magnetic tape retained until six weeks after the end of the calendar year in which the employee terminates. Tapes and discs erased and reused. Panama Canal forms No. 2823 destroyed after minority group information entered in computer and checked for accuracy.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Equal Opportunity, Office of Equal Opportunity, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Administration Building, Balboa Heights, R. P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of the officials designated in Notification Procedure, preceding.

CONTESTING RECORD PROCEDURES:

Rules governing how an individual may rquest the amendment of any information about him in this system are published in 35 CFR 10.12.

RECORD SOURCE CATEGORIES:

Minority group designator code: A visual identification of the employee's race and ethnic category made by the employee's supervisor for those employed as of June 30, 1977 and, for those entering service after June 10, 1977, by staff of the Employee Processing Unit of the Personnel Bureau. All other data: Subject employee, personnel actions forms (SF 50), employing unit, time reports, computer-generated and manual calculations from varied input data.

PCC/EO–2

SYSTEM NAME:

Equal Employment Opportunity Complaint File, PCC/EO–2

SYSTEM LOCATION

Office of Equal Opportunity, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment who complain of discrimination based on race, color, sex, age, religion, national origin, or physical and mental handicap.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Pre-complaint record, consisting of informal complaint, final report from the Equal Employment Opportunity Counselor, and related documents.

B. Investigative file, consisting of formal complaint; acceptance of formal complaint; sworn statements from complainant, witnesses, and alleged discriminatory official(s), environmental survey for comparison purposes (depersonalized); and summary made by Investigator, and related documents.

C. Complaint file, consisting of proposed disposition of complaint, transcript of EEO hearing, hearing examiner's recommended decision, final decision by agency head, documents forwarded to the Office of Review and Appeals of the Equal Employment Opportunity Commission and the Commissioners, and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2000e–16; 5 U.S.C. 554; E.O. 11478 of August 8, 1969; E.O. 11590 of April 23, 1971; 22 U.S.C. 3611 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosed to employees of the Panama Canal Commission, the Equal Employment Opportunity Commission and U.S. Courts in connection with their oversight responsibilities under the law. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name of complainant.

SAFEGUARDS:

Stored in locked file cabinets; office locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained in office for 2 years after final disposition of case and transferred to Agency Records Center for destruction 4 years after final disposition of case. Tapes of EEO hearings are erased and reused.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Equal Opportunity, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager. See Chapter 713 of Panama Canal Personnel Manual (PCPM 713).

RECORD ACCESS PROCEDURES:

Requests should be addressed to the System Manager. Investigatory records are not released until investigation has been completed. Hearing records are not released until final decision has been made.

CONTESTING RECORD PROCEDURES:

See Panama Canal Personnel Manual 713.

RECORD SOURCE CATEGORIES:

Complainant; individuals involved in complaint; other witnesses; investigator; examiner; and officials making determinations in the case.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/EP–1

SYSTEM NAME:

Panama Canal Commission Board of Directors Biographical and Correspondence Files, PCC/EP–1

SYSTEM LOCATION:

Office of Executive Planning, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present members of the Panama Canal Commission Board of Directors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses, newspaper clippings, personal resumes, biographies and official correspondence between Commission officials and board members. May also include other information as may be provided by Office of Executive Planning in the process of routine responses to inquiries by Board of Directors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 and 3612 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE: 7

Memorandums, letters, newspaper clippings etc. Maintained in standard folders.

RETRIEVABILITY:

Filed by name of board member.

SAFEGUARDS:

Lockable file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Executive Planning, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R. P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, public media and protocol sources.

PCC/FMAC–1

SYSTEM NAME:

Embezzlements, Burglaries, and Cash Shortages, PCC/FMAC–1.

SYSTEM LOCATION:

Agents Accounts Branch, Building 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal Commission employees and former employees under investigation for embezzlements, burglaries, and cash shortages.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records collected and maintained in connection with investigations of embezzlements, burglaries, and cash shortages, such as, police reports, audit reports, statements by individuals involved and their employers, decisions made about liability and responsibility, statements of actions taken to recover, and court decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 502–6, 1341–58, 1381–93, 76 A Stat. 428–29, 458–63; 5 U.S.C. 5511–12; 22 U.S.C. 3611 and 3721 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to the General Accounting Office for decision on responsibility for losses sustained and method of recovery or forgiveness and to the Office of Personnel Management for recovery from retirement annuities or contributions. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Stored in locked desk in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Employers, agents, investigators, witnesses, and the courts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information is this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is

U.S.C. 3101; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); 31 U.S.C. 65 et seq.; Article III of the Panama Canal Treaty of 1977.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees responsible for handling cash.

CATEGORIES OF RECORDS IN THE SYSTEM:

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information is this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/FMAC-2.

SYSTEM NAME:

Accounts Receivable Records, PCC/FMAC-2

SYSTEM LOCATION:

Agents Accounts Branch, Bldg. 38, Balboa, Republic of Panama; Panama Canal Commission, 4400 Dauphine St., New Orleans, Louisiana; and Data Processing Division, Administration Building, Balboa Heights, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals billed by the former Canal agencies for services and purchases, and individuals billed by the Panama Canal Commission for services, housing, etc. Included are: all former employees of the Canal agencies, and all present and former employees of the Commission, employees and active duty personnel of U.S. military commands; employees of other U.S. Government agencies, including U.S. Embassy and State Department personnel located in the Republic of Panama, Civil Service annuitants and all other persons having charges or unpaid balances payable to the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to support and effect customer billings, collections, and credit standing, including customer listings and data files (name, address, account number and balance, roll and gang, history of debit and credit transactions, etc), charge account applications, transaction detail and analysis and statistical accumulations, active and inactive credit accounts, schedules of advance payments and security deposits, and account written off. Information relates to such charges as former retail store and storehouse sales, hospital services, other services provided by the former Canal agencies, and housing, electricity, etc., currently provided by the Commission to DoD personnel and other individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 5511–14; 22 U.S.C. 3721 (Supp. III 1979); 31 U.S.C. 65 et seq. and 951–3; 42 U.S.C. 2651–3; 44 U.S.C. 3101; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to General Accounting Office for audit and collection assistance; Department of Justice for collection assistance; Internal Revenue Service for determination of tax liabilities; Veterans Administration for its administration of laws pertaining to veterans; and other U.S. Government organizations, private employers, labor unions, lending and credit institutions, foreign consulates and embassies, foreign governments, insurance carriers, attorneys, courts, and executors of estates for collection assistance, credit information, offset of accounts receivable against amounts due customers, and possible litigation. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in folders; index cards; magnetic tapes/disks and punched cards; computer printouts.

RETRIEVABILITY:

Paper records filed or retrievable alphabetically by name; information retrieved from computer by customer/account number.

SAFEGUARDS:

Paper records filed in locked and unlocked metal file cabinets, shelf files, tub files, desks, and table tops in building locked when not in use. Magnetic tapes/disks and punched cards filed in locked rooms when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Paper records destroyed five years after account closed, except those pertaining to accounts written off (destroyed after fifteen years) and customer listings (destroyed when superseded by new listings). Information retained on computer for one year after closing of account. Retention period pending further discussion with GSA/NARS.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Units providing chargeable services, billing offices, collection agents, subject individuals, officials authorized to forgive debts and to authorize adjustments of existing charges, and offices making inquiries or to which inquiries are directed.

PCC/FMAC-3

SYSTEM NAME:

Trust Fund Records, PCC/FMAC-3.

SYSTEM LOCATION:

Agents Accounts Branch, Building 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prisoners in Commission penal facilities; and estates escheated to the former Canal Zone Government by court order.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained on funds held, including earnings for persons held in detention or institutionalized and incapable of handling their own affairs. The records show the beneficiary's name, amounts received and earned, dates received and earned, account and receipt.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611, 3721 (Supp. III 1979); 31 U.S.C. 65 et seq.; Articles III and XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information is authorized to administrators of the subject funds, including the Public Administrator, for use in the performance of their duties. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed or retrievable alphabetically by name.

SAFEGUARDS:

Stored in locked desk in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Fund administrators and agent cashiers.

PCC/FMAC-4 (See PCC/FMAP/AC-4) PCC/FMAC-5

SYSTEM NAME:

Delegation of Authority for Procurement, PCC/FMAC-5.

SYSTEM LOCATION:

Agents Accounts Branch, Building 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal Commission personnel authorized to procure and/or approve payments, and personnel of the District Court and other government agencies that approve payments and are made by the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to show individuals and positions authorized to procure goods or services and approve disbursements. Records contain such information as name; organization; title; type of authority; dollar limitations; payment authorization and limitations; letters of additions, deletions and revisions; and sample signatures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); 31 U.S.C. 65 et seq.; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to officials of the District Court and other government agencies for which the Panama Canal Commission makes disbursements. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards and papers in file folders.

RETRIEVABILITY:

Filed or retrievable alphabetically by name.

SAFEGUARDS:

Stored in locked desk in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed 10 years after authorization cancelled or obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Officials of the Canal agencies and subject individuals.

PCC/FMAC-6

SYSTEM NAME:

Cash Collection Agents and Subagents, PCC/FMAC-6

SYSTEM LOCATION:

Agents Accounts Branch, Building 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees responsible for handling cash.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to identify personnel responsible for cash, their location, the authorized amount of their cash banks, and limitations as to the use of the banks.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3721 (Supp. III 1979); 31 U.S.C. 65 et seq.; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to insurance companies for bonding purposes. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records.

RETRIEVABILITY:

Filed by agent cashier number and retrievable by name.

SAFEGUARDS:

Stored in locked desks in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed one year after superseded.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Administrative Officers of operating divisions, Personnel Bureau records, and the Treasurer.

PCC/FMAC-7

SYSTEM NAME:

Canal Commission Awards and Service Contracts Control Records, PCC/FMAC-7

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents, Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

which the Panama Canal Commission disburses funds. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING,

investigate claims for funds, detemine if funds are available which can be offset against accounts receivable, and investigate alleged liabilities. Records contain information such as payee name, identification number, check

PCC/FMAK-1

SYSTEM NAME:

Claims Files, PCC/FMAK-1

SYSTEM LOCATION:

against the former Canal agencies, and the Commission, such as the following:

1. Physicians and medical facilities for the purpose of medical treatment, examination, opinions and evaluations of claimants.

PCC/FMAC-7

SYSTEM NAME:

Canal Commission Awards and Service Contracts Control Records, PCC/FMAC-7

SYSTEM LOCATION:

Agents Accounts Branch, Building 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and organizations that have personal service contracts and sale agreements with the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Control records on Canal Commission Awards and service contracts showing transaction history, payment history, history of orders placed against awards, modifications to initial agreement, amount contracted for, and undelivered orders placed against awards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; Article XI of the Agreement in Implementation of Article III of the Panama Canal Treaty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to contractors in reviewing the status of their accounts, the General Accounting Office and the Office of Management and Budget in the performance of their functions, and the District Court and other Government agencies for which the Panama Canal Commission makes disbursements. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards.

RETRIEVABILITY:

Filed alphabetically by name and cross-referenced to contract and award numbers.

SAFEGUARDS:

Stored in locked desk in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed 6 years and 3 months after final payment.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents, Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Contracting officers, budget officers, disbursement records, and contractors.

PCC/FMAC-8

SYSTEM NAME:

Accounts Payable Disbursement Records, PCC/FMAC-8

SYSTEM LOCATION:

Agents Accounts Branch, Building 365, Ancon, Republic of Panama. New Orleans Office, Panama Canal Company, 4400 Dauphine Street, New Orleans, Louisiana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons to whom payments have been made by the former Canal agencies and the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to show payments from accounts of the former Canal agencies and the Commission including such documentation as purchase orders, vendors invoices, payment authorizations and approvals, check follow copies, and accounting classifications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611, 3721 (Supp. III 1979); 31 U.S.C. 65 et seq.; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to freight carriers and rate making insitutions in connection with the determination of rates, other Federal agencies gathering statistical information, contracting officers, banks with which the Commission maintains checking accounts, and the District Court and other Government organizations for which the Panama Canal Commission disburses funds. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in folders and individual forms.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Stored in metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroy 6 years and 3 months after the period of the account.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Procurement Officer, contracting officer, officials authorized to incur liabilities and approve payments disbursed by the Panama Canal Commission, and subject individuals.

PCC/FMAC-9

SYSTEM NAME:

Unnegotiated Checks Over One Year Old, PCC/FMAC-9

SYSTEM LOCATION:

Agents Accounts Branch, Building 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons issued Panama Canal Company and Commission checks for which there is no record of their having been cashed for over one year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained on unnegotiated checks over one year old used to investigate claims for funds, detemine if funds are available which can be offset against accounts receivable, and investigate alleged liabilities. Records contain information such as payee name, identification number, check number, check date, name of bank drawn on, amount of check, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611, 3721 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to individuals and organizations affected by the non-negotiation of the check. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards and papers in file folders.

RETRIEVABILBITY:

Filed alphabetically by name of payee.

SAFEGUARDS:

Filed in metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed 10 years after date of issue, except retain summary lists of unpaid checks.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Disbursements system, payees, and other persons concerned.

PCC/FMAK-1

SYSTEM NAME:

Claims Files, PCC/FMAK-1

SYSTEM LOCATION:

Claims Branch, Building 38, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons making or filing claims against the former Canal agencies, and the Commission; and/or persons and companies who are subjects of claims by the former Canal agencies, and the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents needed to audit and settle claims for pay and allowances, uncollectible debts, amounts due estates of deceased employees, travel expense reimbursement, personal injury or death (including injury occurring in the performance of duty), and personal property loss and/or damage. The records consist of documentation of the circumstances giving rise to the claim and basis of the claim; claimant's or individual's name, names and relationship of immediate family, address, identification number, occupation, date of birth; when, where and how the loss of or damage to property occurred; when and how individual was injured, nature and extent of injury, medical treatment, diagnosis and prognosis; payroll information; travel orders and other travel information, investigative, police, fire, autopsy, accident and medical reports, and various other materials placed into the record to perfect the claim and relating to the actions, decisions, or determinations made by the Agency or claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 5581 et seq.; 5 U.S.C. 5701 et seq.; 5 U.S.C. 8101 et seq.; 22 U.S.C. 3611 and 3721 (Supp. III); 31 U.S.C. 240–243; 31 U.S.C. 951–953; 46 U.S.C. 1300 et seq.—Bill of Lading Contract of Carriage; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information or a record from this system may be furnished to and information acquired from federal, state, local or foreign agencies, the claimant and other parties of interest in connection with the audit and settlement of claims and demands by or against the former Canal agencies, and the Commission, such as the following:

1. Physicians and medical facilities for the purpose of medical treatment, examination, opinions and evaluations of claimants.

2. Insurance companies in connection with claims for or against their insured under subrogation rights or in connection with the bonding of employees of the former Canal agencies, and the Commission.

3. Lawyers representing claimants or the agency.

4. Labor unions representing claimants.

5. Steamship agencies and/or their legal representatives for furnishing services or adjusting cargo and other claims from the former Canal agencies, and the Commission or other claimants.

6. Contractors who furnish services to the Panama Canal Commission such as the packing, crating, and transportation of household goods and personal effects of employees under recruitment and repatriation.

7. Consultants who furnish services to the Panama Canal Commission, i.e., doctors, engineers, management firms, etc.

8. Transportation companies such as airlines, steamship companies, railroads, buses, and car rental agencies who furnish services to the Panama Canal Commission.

9. National Safety Council for safety purposes.

10. Department of Labor for advice on a particular case and appeals to the Employees' Compensation Appeals Board.

11. Social Security Administration for verification of earnings record of beneficiaries under the Federal Employees' Compensation Act.

12. Office of Personnel Management for furnishing record of compensation 8payments to beneficiaries under the Federal Employees' Compensation Act.

13. Department of Justice for the defense or prosecution of cases on behalf of the agency.

See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed alphabetically by name of claimant, etc.

SAFEGUARDS:

Records maintained in lockable file cabinets in office locked other than during office hours. Access and use of records limited to authorized personnel

balances, overtime, etc., and to account for payments. Includes such information as name, employee identification number, rate number, rate of pay, deductions, date hired, where hired, roll and song, position number, occupation

Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Paper records or microfilm destroyed sixty years after individual's first day of

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In connection with their authorized functions, disclosure is authorized to the Office of Personnel Management;

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Beneficiaries under the Federal Employees Compensation Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

RECORD SOURCE CATEGORIES:

Panama Canal Commission Personnel Bureau and Claims Branch.

PCC/FMAP/AC-4

SAFEGUARDS:

Records maintained in lockable file cabinets in office locked other than during office hours. Access and use of records limited to authorized personnel only.

RETENTION AND DISPOSAL:

Disposal not authorized. Retention period pending further discussion with GSA/NARS.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Claims Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Claimants, officials of Panama Canal Commission, other government officials, physicians, medical facilities, private individuals and companies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the Agency's regulations. See 35 CFR 10.22.

PCC/FMAP-1.

SYSTEM NAME:

Payroll Master File for Panama Canal Commission Employees. PCC/FMAP-1

SYSTEM LOCATION:

Payroll Branch, Panama Canal Commission, Ancon, Republic of Panama; and Data Processing Division, Administration Building, Balboa Heights, R.P.

CATEGORIES OF RECORDS IN THE SYSTEM:

Present and former employees of the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Master payroll system consisting of payroll-related or employment-related information necessary to compute gross and net pay, retirement credit, leave balances, overtime, etc., and to account for payments. Includes such information as name, employee identification number, rate number, rate of pay, deductions, date hired, where hired, roll and gang, position number, occupation, pay level, base rate, frozen or saved rate, tropical differential code, annual premium compensation, security classification, step due date, labor distribution accounts, work week, retirement code, tenure, rehired annuitant, part-time hours, social security code and number, FEHBA plan, FEGLI income tax data, Fair Labor Standards Act code, medical identification card, residence, citizenship, sex, marital status, veterans preference, physical examination, suspended leave, employee address, birth date, Federal service date, Canal service date, travel leave, check distribution code, employee status, and Combined Federal Campaign pledges.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., Chapter 55; 22 U.S.C. 3611 and 3721 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING

CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the following agencies and organizations, in connection with their authorized functions: Office of Personnel Management; Internal Revenue Service; Social Security Agency; General Accounting Office; U.S. military agencies; state unemployment compensation offices; city, county, and state tax offices; employee credit unions; banks; labor unions; insurance carriers; and Combined Federal Campaign. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Magnetic tape/disks, punched cards, computer printouts, and microfilm of printout.

RETRIEVABILITY:

Retrievable by employee's name, identification number, and pay rate code.

SAFEGUARDS:

Paper records and microfilm stored in building locked when not in use. Magnetic tape/disks and punched cards filed in locked rooms when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Paper records or microfilm destroyed sixty years after individual's first day of employment, provided individual has been separated from service for five years. Terminated employees are carried on the computer until six weeks after the end of the calendar year in which they terminate.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Payroll Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURE:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject employee, personnel action form (SF-50), employing unit, time reports, and computer-generated and manual calculations from varied input data.

PCC/FMAP-2

SYSTEM NAME:

Payroll System for Vessel Employees. PCC/FMAP-2

SYSTEM LOCATION:

Payroll Branch, Panama Canal Commission, Bldg. 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and present vessel employees on Panama Canal Commission steamships.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to accumulate pay-related data, calculate pay, and account for payments to crew members of Commission steamships, including such information as name, Social Security number, article number, rate, and position title.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 22 U.S.C. 3611 and 3721 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In connection with their authorized functions, disclosure is authorized to the Office of Personnel Management; Internal Revenue Service, Federal Social Security Administration; municipal county and state tax offices in the United States, employee credit unions, financial institutions, labor unions, insurance carriers, state unemployment compensation offices. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Journals and cards.

RETRIEVABILITY:

Filed by Social Security number and retrievable by name.

SAFEGUARDS:

Stored in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed sixty years after first day of employment of vessel employee by Panama Canal Commission.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Payroll Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individual and ship's purser.

PCC/FMAP-3

SYSTEM NAME:

Injury Compensation Payroll Records. PCC/FMAP-3

SYSTEM LOCATION:

Payroll Branch, Panama Canal Commission, Bldg. 365, Ancon; Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Beneficiaries under the Federal Employees Compensation Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to account for payments of awards and as the basis for a variety of reports on payments of injury compensation, containing information on beneficiaries, such as name, identification number, address, amount of payment, amount of insurance premiums, and miscellaneous hospital bills.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 8101 et seq.; 22 U.S.C. 3611 and 3658 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Submission of reports to Office of Personnel Management and insurance carriers for use in their functions related to the Federal Employees Compensation Act. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Journals and cards.

RETRIEVABILITY:

Filed by identification number and retrievable by name.

SAFEGUARDS:

Stored in shelf or tub files in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Payroll Branch, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Branch, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Panama Canal Commission Personnel Bureau and Claims Branch.

PCC/FMAP/AC-4

SYSTEM NAME:

Payroll Deductions, PCC/FMAP/AC-4

SYSTEM LOCATION:

Payroll Branch, Building 365, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and retired employees of the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained by the Payroll Branch as part of the Payroll Master File for Panama Canal Commission employees and used also by Agents Accounts Branch as part of the Accounts Receivable Records System for accounts collectible by payroll deduction. Records contain individual's gross pay, net pay, and payroll deduction detail and support data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5511–27; 22 U.S.C. 3611 and 3645 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure is authorized to insurance carriers in connection with payments of health insurance benefits. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards, ledgers, and papers in file folders.

RETRIEVABILITY:

Filed or retrievable alphabetically by name.

SAFEGUARDS:

Stored in metal file cabinets and ledger buckets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed 4 years after fiscal year involved.

SYSTEM MANAGER(S) AND ADDRESS:

For Payroll Master File use: Chief, Payroll Branch, Accounting Division, Panama Canal Commission, APO Miami

34011. For accounts receivable use: Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Payee records in file folders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, identification number, position and grade, post office address, house number and town, office and home telephone number, date of termination, future mailing address,

PCC/FMTR-2

SYSTEM NAME:

Internal Revenue Service Notice of Levy Files, PCC/FMTR-2.

SYSTEM LOCATION:

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Stored in locked file in building locked when not in use. Access and use are

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34011. For accounts receivable use: Chief, Agents Accounts Branch, Accounting Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURE:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Billing units and subject individuals.

PCC/FMAGA-1

SYSTEM NAME:

Cash Audit Files, PCC/FMGA-1.

SYSTEM LOCATION:

General Audit Division, Building 6530, Corozal, Republic of Panama.

CATEGORIES OF INDIVDUALS COVERED BY THE SYSTEM:

Panama Canal Commission collecting agents whose accounts are audited by the General Audit Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of cash audits to evaluate internal controls over cash and determine whether the custodian is carrying out his responsibilities with respect to Government property and to identify weaknesses in cash controls and to make necessary changes in those controls. In case of cash shortages, records are used to determine amount recoverable from agent. Records contain information such as the identifying agent number, employee's name, employing unit, and employee's accountability at the time the audit was performed. In instances where cash shortages are found, the records will also contain information on the recovery of these amounts from the agents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 and 3721 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Payee records in file folders.

RETRIEVABILITY:

Filed by fiscal year and agent number audited. Retrievable by name.

SAFEGUARDS:

Stored in locked file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed by burning after ten years.

SYSTEM MANAGER(S) AND ADDRESS:

General Auditor, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, auditors, and employees of Agents Accounts Branch.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures of access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/FMTR-1

SYSTEM NAME:

Termination of Employment Actions Records, PCC/FMTR-1.

SYSTEM LOCATION:

Treasury Branch, Building 287, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Panama Canal Commission terminating their employment with this agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, identification number, position and grade, post office address, house number and town, office and home telephone number, date of termination, future mailing address, nature of termination, reason for termination, disposition of final pay, date of travel, transportation request, members of family with whom traveling, final destination, destination of household effects, signature of employee, employee's position number, roll and gang, whether recruited from states and whether replacement is required.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 22 U.S.C. 3611, 3652 and 3654 (Supp. III 1979); 44 U.S.C. 3101; article III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

8 by 10½ printed form 194–T.

RETRIEVABILITY:

Indexed by name and identification number.

SAFEGUARDS:

Records maintained in locked file. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed after 4 years.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees deignated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From employee and employing Unit, Division, or Bureau.

PCC/FMTR-2

SYSTEM NAME:

Internal Revenue Service Notice of Levy Files, PCC/FMTR-2.

SYSTEM LOCATION:

Treasury Branch, Building 287, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Panama Canal Commission whose salaries are being levied by the U.S. Internal Revenue Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, address and social security number, amount of Federal income tax owed to Internal Revenue Service, tax period ended, date and amount of assessment, unpaid balance of assessment and statutory additions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 64, Internal Revenue Code of 1954; 22 U.S.C. 3611 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To disclose to the Internal Revenue Service that the employee has been notified of his or her indebtedness, and to collect amounts owed and forward same to Internal Revenue Service to satisfy levy. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed form, 8 by 10½ inches.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records maintained in locked file. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Internal Revenue Service, Panama Canal Commission payroll records and the individual on whom record in maintained.

PCC/FMTR-3

SYSTEM NAME:

Suspension of Check Cashing Privileges Files, PCC/FMTR-3

SYSTEM LOCATION:

Treasury Branch, Building 287, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have cashed unnegotiable checks, and persons who request cancellation or suspension of their own check-cashing privilege.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to assist in attempts to recover losses from bad checks and to aid in the determination of whether a person's checks are acceptable or whether credit may be extended to a person. Records may show the individual's name, social security number (optional) and identification number (if any), employer, telephone number, dates the checks were returned, dates of checks, number of checks returned, and monetary value of each check.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 and 3721 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Listings disclosed to U.S. Government check-cashing facilities in the Canal area, including Army, Navy, and Air Force Exchanges. Information may be disclosed to commercial banks, credit agencies, labor unions, and employers consistent with collection practices. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards and listings.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Stored in locked file in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Lists are destroyed when superseded by new lists. Cards are destroyed when no longer required for control purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Treasurer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Banks or clearing houses to which checks are sent for negotiation and the subject individual.

PCC/GSCP-2

SYSTEM NAME:

Canal Protection Division Activity Report Files, PCC/GSCP-2

SYSTEM LOCATION:

Canal Protection Division Pacific and Atlantic Area Commanders' Offices, at Building 0610, Ancon, Republic of Panama and Building 140, Gatun, R.P. respectively.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or have been subjects of investigation by Canal Protection Division personnel, including those detained and those who have committed, or are alleged to have committed, violations of laws or regulations in areas protected by the Canal Protection Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

Activity reports, index cards and logbooks containing information such as subject's name, identification number, occupation and employing unit and, when a subject has been barred from vital areas, a notation to that effect; date and time of incident and report; name of person making the report; information concerning the incident or detention;

and witnesses or victims' names, identification numbers and employing units.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

PCC/GSCS-1

SYSTEM NAME:

Housing Files, PCC/GSCS-1

SYSTEM LOCATION:

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager of the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

SAFEGUARDS:

Stored in locked metal file cabinets in buildings locked when not in use or with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

CATEGORIES OF RECORDS IN THE SYSTEM:

As may be required, the names, addresses, ages, employment, citizenship, next of kin and other information needed to identify persons who may provide, or require, temporary

SYSTEM LOCATION:

Panama Canal Commission Library, Bldg. 0610, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Panama Canal

and witnesses or victims' names, identification numbers and employing units.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; and, Article III, paragraph 8, of the Agreement in the Implementation of Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

See general routine use paragraphs in 35 CFR Part 10, Appendix A. Information in connection with actual or potential violations of the security of areas guarded by the Canal Protection Division may also be disclosed to intelligence units or agencies of the United States Government including the State Department and the Department of Defense, and officials of the Government of Panama.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms 8½ by 11 inches and index cards.

RETRIEVABILITY:

Alphabetical card file of names of subjects gives cross-reference to activity reports filed in numerical order.

SAFEGUARDS:

Active files maintained in file cabinets in Area Commanders' offices. File cabinets and offices locked when not in use. Inactive files maintained at Agency Records Center, a building locked when not in use. Access to files and filing areas restricted to authorized personnel.

RETENTION AND DISPOSAL:

Activity reports retained at Area Commanders' offices for two years, subsequently held at Agency Records Center for three more years, then destroyed Index cards retained for up to ten years after date of last entry.

SYTEM MANAGER(S) AND ADDRESS:

Chief, Canal Protection Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of the Privacy Act of 1974, 5 U.S.C. 552a, and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSCS-1

SYSTEM NAME:

Housing Files, PCC/GSCS-1

SYSTEM LOCATION:

Housing Offices, Community Services Division, Balboa Heights and Cristobal, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons residing in Panama Canal Commission quarters and in housing maintained by religious, commercial and charitable organizations in the Canal area.

CATEGORIES OF RECORDS IN THE SYSTEM:

Assignment and occupancy of Panama Canal Commission quarters, including information on assignee's name, eligibility, service date, identification number, address, family, size, and citizenship; name of spouse and dependents; dates of occupancy; rental and other related information; persons allowed to reside or visit with assignees; investigations of misconduct in quarters; and reports of violations of quarters regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977 and Articles III and VI of the Agreement in Implementation of Article III of the Panama Canal Treaty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed or retrievable alphabetically by name.

SAFEGUARDS:

Stored in locked metal file cabinets in buildings locked when not in use or with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed three years after occupants' termination of service.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Community Services Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager of the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, official personnel files, entry permits, dependency determinations, housing personnel, maintenance personnel, neighbors, and officials of other organizations maintaining housing in the Canal Area.

PCC/GSCS-2

SYSTEM NAME:

Housing Complaints File, PCC/GSCS-2

SYSTEM LOCATION:

General Services Bureau, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Occupants of Panama Canal Commission quarters whose cases have been referred to the Quarters Retention Committee.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints, investigations, testimonies, hearings, and decisions bearing on an occupant's eligibility to retain Panama Canal Commission quarters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; and Articles III and VI of the Agreement in Implementation of Article III of the Panama Canal Treaty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed or retrievable alphabetically by name.

SAFEGUARDS:

Stored in locked metal file cabinets in buildings locked when not in use or with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed by burning or shredding five years after occupant is no longer eligible for residence in the Commission housing.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, General Services Bureau, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals; complainants; investigatory personnel, including police and customs officials; officials of the Canal agencies; witnesses; Quarters Retention Committee; and court officials and records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/GSEP-1

SYSTEM NAME:

Emergency Preparedness Records (Civil Defense/Emergency Management), PCC/GSEP-1

SYSTEM LOCATION:

Various locations in the Commission as may be designated by the Agency Records Officer, Personnel Director, or other appropriate officials.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those persons to whom, and by whom, emergency services would be rendered in times of emergency or natural disaster.

CATEGORIES OF RECORDS IN THE SYSTEM:

As may be required, the names, addresses, ages, employment, citizenship, next of kin and other information needed to identify persons who may provide, or require, temporary housing assistance, medical care, etc., in times of emergency or natural disaster.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977; E.O. 11490 of October 28, 1969.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Forms in file folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Stored in lockable file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained until revised or no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Emergency Preparedness, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The individual, employer and, Housing and Personnel Bureau records as required.

PCC/GSLM-1

SYSTEM NAME:

Panama Canal Commission Library Registration Record, PCC/GSLM-1

SYSTEM LOCATION:

Panama Canal Commission Library, Bldg. 0610, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Panama Canal Commission Library check-out privileges.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant's name, identification number or Serial number, mailing address, citizenship, dependents, agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 22 U.S.C. 3611 (Supp. III 1979); and Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms, 3 by 5 inch cards.

RETRIEVABILITY:

Indexed by name and Library reader's number.

SAFEGUARDS:

Records are maintained in locked file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed one year after library privilege has been cancelled. Destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Budget-Clerk, Panama Canal Commission Library-Museum, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individual on whom record is maintained.

PCC/GSPL-1

SYSTEM NAME:

Law Enforcement Case Report Files, PCC/GSPL-1.

RETRIEVABILITY:

Logbooks and index cards permit retrieval of case report by name of arrestee, complainant, or person about whom complaint has been made. Information on computer not retrievable and time of incident, date and time of investigation, facts of investigation, informants notations, the nature and disposition of the incident, and witnesses statements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or have been subjects of police investigations; persons who have made official complaints to the police, who have been

PCC/GSPL-4

SYSTEM NAME:

Convict Files, PCC/GSPL-4.

SYSTEM LOCATION:

maintained at the Balboa and Cristobal Police Stations. The original record and duplicates are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal

PCC/GSPL-1

SYSTEM NAME:

Law Enforcement Case Report Files, PCC/GSPL-1.

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama; Agency Records Center, Building 42-D, Diablo, Republic of Panama; Cristobal Police Station, Administration Building, Cristobal, R.P.; and Police Headquarters, Building 0610, Ancon, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or have been subjects of police investigations, including persons who have committed crimes or are alleged to have committed crimes; persons witnessing or reporting criminal activities; missing persons; and persons filing official complaints about the conduct of other persons when such conduct is not a violation of law.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's and/or suspect's name, witness' or witnesses' names, complainant's name, identification or cedula number, residence, birth date, age, sex, citizenship, occupation, employer, date and time of incident, name of the investigating/arresting officer, investigative facts concerning the case. Subsystem contains subject's name, identification number, residence, birth date, age, sex, citizenship, photograph number, fingerprint classification, date and time of incident, location of case report, and notations of arrests and outstanding warrants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Released to law enforcement agencies, court officials, and local military commands as necessary to assist in the apprehension and identification of criminals, and to conduct investigations related thereto. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms 8½ by 11 inches; computer printouts; magnetic tape; punch cards; logbooks; and index cards.

RETRIEVABILITY:

Logbooks and index cards permit retrieval of case report by name of arrestee, complainant, or person about whom complaint has been made. Information on computer not retrievable by personal identifier.

SAFEGUARDS:

Active files maintained in locked file cabinets in police station while not in use. Inactive files maintained in Agency Records Center, a building locked when not in use. Case Report Files in Agency Records Center normally released only to designated Commission Police officials. Magnetic tapes stored in locked rooms when not in use. Access to and use of all records restricted to authorized personnel.

RETENTION AND DISPOSAL:

Case reports retained by police for four years, subsequently held for seven years at Agency Records Center, and then destroyed. Case information and arrest records on magnetic tape automatically expunged five years after date of report unless longer retention specifically requested. Computer-produced reports retained at Police Records Branch up to ten years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL-2

SYSTEM NAME:

Police Headquarters Confidential File, PCC/GSPL-2.

SYSTEM LOCATION:

Police Headquarters, Building 0610, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or have been subjects of police investigations, including persons who have or are alleged to have been involved in incidents of police interest, and persons witnessing or reporting activities of interest to the police.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's name, identifying number, residence, birth date, age, sex, citizenship, occupation, employer, date and time of incident, date and time of investigation, facts of investigation, informants notations, the nature and disposition of the incident, and witnesses statements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to law enforcement units of the local military commands, U.S. Courts etc., consistent with identifying and apprehending criminal offenders. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms 8 by 10½ inches.

RETRIEVABILITY:

By persons name or name of organization.

SAFEGUARDS:

Maintained in locked file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained indefinitely for reference purposes. Destroyed pursuant to Agency procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempted from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL-3

SYSTEM NAME:

Detective Confidential Files, PCC/GSPL-3.

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama and Cristobal Police Station, Administration Building, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or have been subjects of police investigations; persons who have made official complaints to the police, who have been reported to the police on official complaints, persons involved in pending criminal investigations, and persons involved in incidents of police interest.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's name, identifying number, residence, birth date, age, sex, citizenship, occupation, employer, date and time of incident, date and time of investigation, facts of investigation, confidential source information, the nature and disposition of the incident, and witnesses statements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to law enforcement units of the local military commands, U.S. Courts, etc., consistent with identifying and apprehending criminal offenders. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed and typed forms.

RETRIEVABILITY:

Filed by name of subject.

SAFEGUARDS:

Maintained in lockable file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained indefinitely for reference purposes. Destroyed pursuant to Agency procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 33 CFR 10.21 and 10.22.

PCC/GSPL-4

SYSTEM NAME:

Convict Files, PCC/GSPL-4.

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama, Cristobal Police Station, Administration Building, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have been sentenced and have served any length of time in the Panama Canal Commission Penitentiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Convict's number, name, fingerprint classification, entrance and discharge dates, charge against convict, residence, citzenship, names of family, and related personal information. Also has history record of stay in penitentiary, disciplinary comments, brief case history of arrest and conviction, other pertinent information concerning case involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 6501–7, 76A Stat. 555–6; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used to provide historical data and reference information, regarding release, parole, probation, pardon, and other pertinent data on former and present inmates of the Panama Canal Commission penal facilities; to police, courts, and investigatory agencies, with a legitimate interest in such information. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms and typed pages.

RETRIEVABILITY:

Filed by convict number.

SAFEGUARDS:

Maintained in file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

The original of the record is forwarded to the Current Records Section, Records Managment Branch upon sentencing. Duplicates are maintained at the Balboa and Cristobal Police Stations. The original record and duplicates are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miama 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL-5

SYSTEM NAME:

Prisoner Record Cards, PCC/GSPL-5.

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama, Cristobal Police Station, Cristobal, R.P. and the Security Vault at Bldg. 0610, Ancon, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have been arrested by the Panama Canal Commission Police.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's name, identifying number, residence, birth date, age, citizenship, occupation, employer, date and time of arrest, arresting officer, sex, convict number, alias, arrest charge, name of complainant, final disposition received, and brief account of activities while individual was incarcerated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code; 22 U.S.C. 3831 and 3852 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Released to law enforcement agencies, courts, and investigatory agencies. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.8

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms, 8 by 10 inches and micro-film cassettes.

RETRIEVABILITY:

Filed by name of prisoner, and date of arrest.

SAFEGUARDS:

Records maintained at main desk until discharge, then stored in locked file cabinets, and in locked micro-film cabinets. Copies of micro-film are stored in security vault. Access and use are

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

3 by 5 inch photographs.

apprehension of criminal offenders. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF

time of the arrest/incident, investigating/arresting officer, notations about the arrest/incident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A

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SAFEGUARDS:

Records maintained at main desk until discharge, then stored in locked file cabinets, and in locked micro-film cabinets. Copies of micro-film are stored in security vault. Access and use are restriced to authorized personnel.

RETENTION AND DISPOSAL:

Retained indefinitely, no disposition schedule in effect.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miama 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL-6

SYSTEM NAME:

Police Photo Files, PCC/GSPL-6

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama, and Cristobal Police Station, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have been arrested, booked, and photographed by the Panama Canal Commission Police.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's photo number, height, date of arrest, and the district in which the arrest occurred.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosed to civilian and military investigative and law enforcement departments of the U.S. Government, and Government of Panama courts, and other parties, including eye-witnesses to crimes as required to assist in identification of known or alleged criminal offenders. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

3 by 5 inch photographs.

RETRIEVABILITY:

By photo number, and by police blotter showing name etc.

SAFEGUARDS:

Maintained in ID Office. Access and use are restricted to authorized personnel, including witnesses to criminal activities.

RETENTION AND DISPOSAL:

Indefinitely. No disposition schedule established.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL-7

SYSTEM NAME:

Fingerprint File, PCC/GSPL-7

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama, and Cristobal Police Station, Administration Building, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons having been fingerprinted by, or whose prints have been provided to the Panama Canal Commission Police in the process of authorized law enforcement activities in the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's name, occupation, age, fingerprint classification, offense or reason for printing, actual prints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosed upon request to other law enforcement agencies and to courts consistent with the identification and/or apprehension of criminal offenders. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms 4 by 6 inches.

RETRIEVABILITY:

Be fingerprint classification.

SAFEGUARDS:

Maintained in file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained indefinitely for police and law enforcement purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL-8

SYSTEM NAME:

Pending Detective Investigation Records, PCC/GSPL-8

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama, Cristobal Police Station, Administration Building, Cristobal, R.P., and Police Headquarters, Bldg. 0610, Ancon, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Offenders, alleged offenders, witnesses, victims, investigatiang officers, and informants who are subjects of or involved in cases pending investigation by the Detective Unit, Panama Canal Commission Police.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of offenders, alleged offenders, witnesses, victims, investigating officers, facts of investigations, statements of witnesses, type of crime or offense being committed, date and time of case actions, locations of offense, warrants, individual data; such as age, sex, residence, telephone number, citizenship, occupation, employer, etc. and informant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosed in the process of investigations to interested law enforcement agencies, investigatory agencies, courts, and federal and state justice agencies. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms, memorandums, and typed pages.

RETRIEVABILITY:

By case name or by name of person under investigation.

SAFEGUARDS:

Maintained in locked file cabinets and safe. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained for the duration of the investigation. No fixed disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL-9

SYSTEM NAME:

Informant Name File, PCC/GSPL-9

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons acting as informants for the Panama Canal Commission Police.

CATEGORIES OF RECORDS IN THE SYSTEM:

The name of police officer the informant reports to, the informant's name and number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

3 by 5 inch cards.

RETRIEVABILITY:

By informant's number.

SAFEGUARDS:

Maintained in a locked safe. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed by fire once informant is no longer used.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL-10

SYSTEM NAME:

Master Name File, PCC/GSPL-10.

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama and Cristobal Police Station, Administration Building, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been arrested; reported offenses to the police; been involved in an incident coming to the attention of the Panama Canal Commission Police; been reported missing; and, persons who have outstanding warrants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identifying number, residence, birth date, citizenship, occupation, employer, photograph number, fingerprint classification, convict number, alias, sex, type of warrant, violations of law committed, date and time of the arrest/incident, investigating/arresting officer, notations about the arrest/incident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Released to investigatory agencies and law enforcement agencies as required to assist in the apprehension and/or identification of known or alleged criminals, to prevent crime, locate witnesses etc. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

3 by 5 inch cards.

RETRIEVABILITY:

Filed by name of person.

SAFEGUARDS:

Maintained in file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained indefinitely on persons who have been arrested and prosecuted for a felony. All others destroyed by burning ten years after reported incident.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL-12

SYSTEM NAME:

Youth Uni Name Index File, PCC/GSPL-12.

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama and Cristobal Police Station, Administration Building, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Juveniles who have been the subjects of Panama Canal Commission Police Division juvenile reports, arrest reports

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUAL COVERED BY THE

Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to

RETENTION AND DISPOSAL:

Maintained indefinitely. No disposition schedule established.

SYSTEM MANAGER(S) AND ADDRESS:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routinely released to court officials, owners of vehicles, insurance

RECORD SOURCE CATEGORIES:

Compiled from information provided by the vehicle operator, witnesses, and the investigating officer.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Juveniles who have been the subjects of Panama Canal Commission Police Division juvenile reports, arrest reports, missing person reports, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, birth date, residence, sex, telephone number, facts of the case or investigation, date and time of the report, date and time of the incident, date and time of the interview, parent's name, parent's identifying numbers, parent's residence, investigating officer and youth officer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 3701–44, 76A Stat. 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To reference reports pertaining to a juvenile, to investigatory agencies, law enforcement agencies, courts, and others with a need to know. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

4 by 6 inches.

RETRIEVABILITY:

Filed by juvenile's name.

SAFEGUARDS:

Maintained in locked file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed by burning after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.21 and 10.22.

PCC/GSPL–13

SYSTEM NAME:

Arrest Record File, PCC/GSPL–13

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

All individuals who have been arrested, fingerprinted, phototgraphed for violations of law. Also includes those persons required to appear in Magistrates Court for traffic violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, alias, age, birth date, marital status, color, sex, felony or misdemeanor, charge, type of arrest, convict number, photogrpah number, nationality, residence, occupation, employer, drivers license number, identifying numbers, complainant, location of arrest, court dates and disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 1691–1716, 3701–44, 76A Stat. 474–6, 503–5; 22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide statistical data, to identify criminal offenders, and to index such information for use by law enforcement agencies, courts, consular and diplomatic officials and others with a valid need to know. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed cards 4 by 6 inches and micro-film cassettes.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in locked Kard-Veyer (rotary file) and locked micro-film file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained indefinitely, no disposition schedule established.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be otained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Compiled from individual arrest reports, from person arrested, and from identifying case report serial numbers.

PCC/GSPL–15

SYSTEM NAME:

Complaints Against Policemen File, PCC/GSPL–15

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama Cristobal Police Station, Administration Building, Cristobal, R.P. and Police Headquarters, Bldg. 0610, Ancon, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All police personnel about whom written complaints have been submitted from citizens.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's name, badge number, date and time of the complaint, facts of the complaint as stated by the complainant, officer's statements as to his actions, decision on complaint, actions taken by person investigating the complaint, results of the complaint.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Original letter of complaint.

RETRIEVABILITY:

By name of subject-police officer.

SAFEGUARDS:

Maintained in lockable file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained indefinitely. No disposition schedule established.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Request should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From person making complaint; from employee; witnesses; investigating officer(s).

PCC/GSPL–16

SYSTEM NAME:

Traffic Accident Reports, PCC/GSPL–16

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama and Cristobal Police Station, Administration Building, Cristobal, R.P.; and the Data Processing Division, Administration Building, Balboa Heights, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons involved in traffic accidents occurring in the Canal area.

CATEGORIES OF RECORDS IN THE SYSTEM:

Driver's name, identifying number, license number, residence, birth date, age, sex, citizenship, occupation, employer, address of employer, description of vehicle or vehicles involved, name, address and telephone number of owner of vehicle, violations committed, notations of court proceedings and dispositions, investigating officer's name, and facts and observations of the investigation. Subsystem contains driver's name, identifying number or date of birth, and traffic accident number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977; 6 Panama Canal Code 1691.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routinely released to court officials, owners of vehicles, insurance companies, and law enforcement agencies with a need to know. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed froms 8½ by 11 inches; index cards; punch cards; magnetic tape; and computer-produced reports.

RETRIEVABILITY:

Accident reports filed by accident number and date, cross-indexed by name of driver. Information on magnetic tape not retrievable by personal identifier.

SAFEGUARDS:

Active files maintained in file cabinets in offices locked when not in use. Magnetic tapes stored in locked rooms when not in use. Inactive files maintained in Agency Records Center, a building locked when not in use. Accident report files in Agency Records Center normally released only to designated Panama Canal Commission Police officials. Access to and use of all records restricted to authorized personnel

RETENTION AND DISPOSAL:

Manual files destroyed five years after final disposition of case. Information on magnetic tape automatically expunged three years after date of report unless longer retention is specifically requested. Computer-produced reports retained at Police Records Branch up to ten years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, of Police Division, Panama Canal Commission. APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be otained from the System Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Compiled from information provided by the vehicle operator, witnesses, and the investigating officer.

PCC/GSPL–18

SYSTEM NAME:

Prisoner Property Record, PCC/GSPL–18

SYSTEM LOCATION:

Balboa Police Station, Balboa Republic of Panama and Cristobal Police Station, Administration Building, Cristobal R.P. Zone.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons whose personal property is held or seized by the police at the time of arrest or incarceration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consists of the receipt number, prisoner's name, money, and other property seized or held; the name of the receiving officer, and the receipt for return of the property.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 Panama Canal Code 4901–7, 76A Stat. 544–5; 22 U.S.C. 3831 and 3852 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms

RETRIEVABILITY:

Filed and retrieved by receipt number.

SAFEGUARDS:

Kept at main police desk, and then later in locked storeroom. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Held 3 years after property is returned. Destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the

SAFEGUARDS:

Filed in locked metal file cabinets in building with around-the-clock guard. Access and use are restricted to authorized personnel.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards and paper records in file folders.

treatment received by an individual on an outpatient basis from hospitals, clinics, occupational health centers, and other health facilities. Also may contain abstracts of inpatient hospitalizations, information on communicable diseases,

Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Systems Manager. Procedure for disclosure of information from the

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RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From prisoner, and officer completing the form.

PCC/GSPL–19

SYSTEM NAME:

Poor Risk/Delinquent Citation/ Warrant File, PCC/GSPL–19

SYSTEM LOCATION:

Balboa Police Station, Balboa, Republic of Panama and Cristobal Police Station, Administration Building, Cristobal, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have failed to honor their written promises to appear and pay in court for traffic citations received; and/or being sought on outstanding warrants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subject's name, date of birth, identifying number, driver's license number; the name of the officer who issued original citation; and the type of warrant and citation number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3831 (Supp. III 1979); Article XI of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Released to investigatory agencies, courts, and law enforcement agencies as required. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed cards 4 by 6 inches.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Maintained in rotary file in dispatcher's office.

RETENTION AND DISPOSAL:

Destroyed when c te or cancelled.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Police Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Compiled from traffic citations, arrest records, and warrants.

PCC/GSSP–1

SYSTEM NAME:

Expert and Consultant Records, PCC/ GSSP–1

SYSTEM LOCATION:

Chief, Purchasing and Contracts Branch, Storehouse Division, Panama Canal Commission, APO Miami 34011.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM.

Experts and consultants procured by contract to furnish services to the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Curriculum vitae of individuals, copies of contracts and charges, and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3109; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977 and Article XI of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed or retrievable alphabetically by name.

SAFEGUARDS:

Filed in locked metal file cabinets in building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed by shredding or burning six years after final payment.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Storehouse Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individual, references provided by indivldual and peers; and the component of the Canal Commission requesting expert or consultant services.

PCC/GSWT–1

SYSTEM NAME:

Vessel Employee Records, PCC/ GSWT–1

SYSTEM LOCATION:

Water Transportation Division, Building 1–5–A, 4400 Dauphine Street, New Orleans, Louisiana 70146.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Crew members of the S.S. *Cristobal.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal data on crew members of S.S. *Cristobal,* including information on qualifications, positions occupied, "Z" number, next of kin, and adverse and disciplinary action record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 22 U.S.C. 3611 (Supp. III 1979); 46 U.S.C. Chapter 18; Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Cards and paper records in file folders.

RETRIEVABILITY:

Filed or retrievable alphabetically by name.

SAFEGUARDS:

Stored in locked metal file cabinets in building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

General Agent, Water Transportation Division, Panama Canal Commission, 4400 Dauphine Street, New Orleans, Louisiana 70146.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individual, supervisors, union officials, and U.S. Coast Guard.

PCC/HL–1

SYSTEM NAME:

Industrial Health Records, PCC/HL–1

SYSTEM LOCATION:

Industrial Health Division, Bldg. 721, Balboa, Republic of Panama; and at Occupational Health Centers in Balboa (Bldg. 10), Miraflores (Bldg. 11), Pedro Miguel (Bldg. 6), Gamboa (Bldg. 63), Mt. Hope (Bldg. 5106), Gatun (Bldg. 122), Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pre-employment and periodic physical examinations; medical examinations to determine continuing fitness for duty consistent with job qualifications and requirements. Documentation of medical treatment received by an individual on an outpatient basis from hospitals, clinics, occupational health centers, and other health facilities. Also may contain abstracts of inpatient hospitalizations, information on communicable diseases, or information on participation in alcohol rehabilitation program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

21 U.S.C. 1175 and 1180 (1976 and Supp. III 1979); 22 U.S.C. 3611 (Supp. III 1979); 42 U.S.C. 4561; Article III of the Panama Canal Treaty of 1977 and Annex thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information that does not relate to alcohol or drug abuse may be released from these records to the extent needed as follows: To the Communicable Disease Center, Atlanta, Georgia, other Federal agencies, or Government of Panama health officials. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders, individual forms, and cards.

RETRIEVABILITY:

Records of cross-reference index cards providing access to records are filed alphabetically by name.

SAFEGUARDS:

Stored in metal file cabinets in buildings locked when not in use, or buildings with around-the-clock guards. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained until employee terminates employment with the agency. Thereafter retired to the Agency Records Center for disposition in accordance with Federal retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Health and Safety, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained as appropriate from the following officials:

1. Assistant Director/Administration, Office of Health and Safety, Panama Canal Commission, APO Miami 34011.
2. Chief, Industrial Health Division, Panama Canal Commission, APO Miami 34011.

Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Systems Manager. Procedure for disclosure of information from the medical records of the individual requesting access are set forth in 35 CFR 10.9.

RECORD SOURCE CATEGORIES:

The individual to whom the occupational health record pertains, attending physicians and allied health personnel involved in the individual's treatment.

PCC/HLSF–1

SYSTEM NAME:

Industrial Accident Prevention Supervisor/Unit Awards File, PCC/ HLSF–1.

SYSTEM LOCATION:

Safety Division, Building 721, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Commission supervisors classified in high hazard positions who have completed a year of supervision without a disabling injury incurred to himself or his unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Supervisor's name, Division, Bureau, identification number and Unit Supervised, year supervised.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902; 22 U.S.C. 3611 (Supp. III 1979); 29 U.S.C. 668; 33 U.S.C. 941(b)(1) and (b)(4); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

5 by 8 inch cards.

RETRIEVABILITY:

Filed by Bureau-Division, indexed by name.

SAFEGUARDS:

Records maintained in filing drawers. Access and use are restricted to authorized personnal.

RETENTION AND DISPOSAL:

Maintained while employee is in a hazardous-supervisory capacity.

SYSTEM MANAGER(S) AND ADDRESS:

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Computer strip size 12½ by 3½

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 301; 22 U.S.C. 3611; 44 U.S.C. 1108 and 3101; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Panama Canal Commission employees who pay union dues through payroll deductions.

CATEGORIES OF RECORDS IN THE SYSTEM:

PCC/IR–2

SYSTEM NAME:

Grievances, Appeals, and Adverse Actions Records, PCC/IR–2.

SYSTEM LOCATION:

Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Grievance records disposed of 3 years after closing of the case. Adverse actions records disposed of 4 years after

RETENTION AND DISPOSAL:

Maintained while employee is in a hazardous-supervisory capacity.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Safety Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Supervisor/Unit records.

PCC/HLSF-2

SYSTEM NAME:

20/30/40 Year Safety Key Awards Files. PCC/HLSF-2.

SYSTEM LOCATION:

Safety Division, Building 721, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Commission employees classified in a high hazard position who have completed their 20–30–40 years of service with no disabling injury. Records are also maintained of employees in low hazard positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, identification number, roll and gang, functional code, occupational service code, service date and number of years of employment. Subsystem stamp containing date of last disabling injury (if any) and employees position hazard code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902, 8101 et seq.; 22 U.S.C. 3611 (Supp. III 1979); 29 U.S.C. 668; PCPM Chapter 452; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Computer strip size 12½ by 3½ inches.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records maintained in lockable file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Held until termination, destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Safety Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Employees on whom record is maintained.

PCC/IO-1

SYSTEM NAME:

News Morgue Records, PCC/IO-1.

SYSTEM LOCATION:

Office of Public Information, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Newsworthy and potentially newsworthy individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained as a ready reference from which to obtain background information for news stories and articles about individuals for publication in house organs and news media. Records include biographical sketches, press releases, media clippings, interview notes, and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 301; 22 U.S.C. 3611; 44 U.S.C. 1108 and 3101; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to news media and other publishers for publication is authorized. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Index cards, individual forms, and paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name of individual.

SAFEGUARDS:

Stored in file cabinets in building with around-the-clock guards. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Office of Public Information, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, individuals interviewed about subject individuals, and information published about subject individuals.

PCC/IR-1

SYSTEM NAME:

Quarterly Report of Employee Union Dues Deductions, PCC/IR-1.

SYSTEM LOCATION:

Office of Industrial Relations, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Panama Canal Commission employees who pay union dues through payroll deductions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of employee, identification number and dues deduction amounts. Payroll information cross-referenced with payroll dues deduction requests received from unions and individual employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5525 and 7115; 22 U.S.C. 3611 and 3701; Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Computer printout provided upon request by the Data Processing Division, Panama Canal Commission.

RETRIEVABILITY:

Reported by employee identification number and name.

SAFEGUARDS:

Maintained in locked cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed every three months upon receipt of updated quarterly listings.

SYSTEM MANAGER(S) AND ADDRESS:

Industrial Relations Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The employee's payroll dues deduction request.

PCC/IR-2

SYSTEM NAME:

Grievances, Appeals, and Adverse Actions Records, PCC/IR-2.

SYSTEM LOCATION:

Office of Industrial Relations, Adverse Actions Section, Bldg. 0610, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Panama Canal Commission who have filed a grievance, appealed a disciplinary action to the agency or an adverse action to the agency or the Office of Personnel Management, or submitted to the agency or the Panama Canal Board of Appeals a position classification appeal, insofar as personal information has been incorporated into the position classification file.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files and indexes on employee grievances and adverse or disciplinary action appeals containing the formal grievance or appeal; background, supporting, and investigatory information; record of hearing, when conducted; decision or determination; and related documents. Information of a personal nature which may have been submitted in conjunction with a position classification review or appeal procedure.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, 5 CFR 752, 754, 771; and Chapters 71 and 75; 22 U.S.C. 3611, 3671 (Supp. III 1979); Articles III and X of Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in the file folders, index cards.

RETRIEVABILITY:

Filed alphabetically by name of employee or by an identification number.

SAFEGUARDS:

Stored in metal file cabinets and desks in rooms locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Grievance records disposed of 3 years after closing of the case. Adverse actions records disposed of 4 years after closing of the case. Disposal is by shredding or burning. Index cards showing status of action on current cases are destroyed when cases are completed. Exception: Some case files of a precedential nature are retained beyond retention period for study and reference.

SYSTEM MANAGER(S) AND ADDRESS:

Industrial Relations Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Individuals who have filed appeals or grievances are aware of that fact and have been provided a copy of the record. They may, however, contact the Systems Manager regarding the existence of such records pertaining to them. Individuals should provide to the Systems Manager their name, date of birth, identification number, and the approximate date and kind of action taken by the agency when making inquiries about records.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Systems Manager.

CONTESTING RECORD PROCEDURES:

The contest, amendment, or correction of an appeal or grievance record is permitted during the prosecution of the appeal or grievance by the individual to whom the record pertains. For contest after case has been closed, see rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains; officials of the Canal agencies, Office of Personnel Management, and Board of Appeals; witnesses; official documents related to the appeal or grievance; hearing examiners; and others involved in the grievance or appeal procedure.

PCC/MIL-1

SYSTEM NAME:

U.S. Army Element, Panama Canal Commission Military Administration System, PCC/MIL-1.

SYSTEM LOCATION:

Assistant to the Director/Executive Officer, Engineering and Construction Bureau, U.S. Army Element, Panama Canal Commission, Administration Building, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Army military personnel assigned to the U.S. Army Element, Panama Canal Commission, which includes the Army Medical Department officers

Military Awards: Narrative justification of job accomplishments during assignment and concurrence/recommendation of supervisors in chain of command.

prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

promotions, salaries, license serial number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 and 3778 (Supp. III 1979); Article III of the Panama Canal

exempt from certain subsections of 5 U.S.C. 552a and from the procedure for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/MRPA-1

PCC/MRTO-1

SYSTEM NAME:

Marine Accident Reference Cards, PCC/MRTO-1

SYSTEM LOCATION:

Pilot Administrative Unit, Transit

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Army military personnel assigned to the U.S. Army Element, Panama Canal Commission, which includes the Army Medical Department officers (Office of Health and Safety) and Corps of Engineer officers (E&C Bureau).

CATEGORIES OF RECORDS IN THE SYSTEM:

Standard Installation/Division Personnel System (SIDPERS): Includes a variety of SIDPERS records, personnel action files, and subsystems which provide comprehensive and detailed personnel accounting, name, age, social security number, date of birth, previous assignments, awards, schooling, leave data, specialty designator codes; also includes the requirement for a unit personnel file on each member.

Table of Distribution and Allowances (TDA): Listing of authorized positions in the U.S. Army Element by title, MOS, and grade and assigned incumbents by name, MOS, and grade.

COMCENTER Messages: Daily TWX traffic of a medical nature received by the SOUTHCOM Communications Center which may identify individuals or consist of personalized information about individuals.

Graduate Level Training Requirements—Army Educational Requirements Board (AERB): Educational data on all Engineer Corps officers assigned to the U.S. Army Element to include name, rank, specialty, training level, and position.

Military Physicians Variable Incentive Pay (VIP): Information on payment of incentive pay to military physicians to include physicians name, years of service, rank, monthly pay and authorized VIP payment.

Training files: Information regarding mandatory training and continuing educational training.

Orders, permanent orders, and letters of authorization: Information includes identifying data of the military member, civilian, or dependent named in the order.

Hazardous duty pay file: Authorization by competent order for designated military members to receive hazardous duty pay.

Officer Efficiency Report (OER) and Enlisted Efficiency Report (EER) Working files: Information relative to job performance of individuals.

Attached Military Personnel: Information on all USAR and NG personnel attached to U.S. Army Element for temporary training purposes to include identifying information and correspondence regarding individual's military experience.

Military Awards: Narrative justification of job accomplishments during assignment and concurrence/recommendation of supervisors in chain of command.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5. U.S.C. 301; 10 U.S.C. 3201–4021; 22 U.S.C. 3611 and 3644 (Supp. III 1979); 44 U.S.C. 3101; Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released for the following purposes to the organizations and individuals indicated:

1. To provide input to Department of the Army (DA) and local military support units, including suspense and feeder information relative to status, change of position, pay, etc. of individuals.

2. To provide current listing of personnel by TDA position for reporting to personnel action officer at Department of the Army and local levels; copies provided each officer assigned.

3. To enable actions to be initiated regarding medical treatment requests for individuals; used to obtain update on current medical policies and requirements issued by DA, the Office of the Surgeon General, Washington, D.C., and the Health Services Command, Fort Sam Houston, Texas; routed to key staff personnel and appropriate action officers.

4. To provide verifications/justifications to DA of graduate level training requirements for engineer positions assigned to U.S. Army Element for consideration and validation by the AERB.

5. To monitor and report VIP program participation to DA and to suspend requirements for contract renewal with physicians for VIP and service obligation.

6. To process OER/EER's as required by Army regulation; includes establishing a rating scheme and monitoring system suspense and distribution to individual military members and appropriate DA agencies.

7. To compile evaluation and performance reports and submit same to the individual's reserve headquarters in accordance with Army regulations.

8. To justify military awards and provide backups, to the approving authority (DA or Commander); used to provide supervisors in chain of command information on which to base concurrence and recommendations. See also general routine use paragraphs on prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders, cards, individual forms, and lists.

RETRIEVABILITY:

Filed or cross-referenced for retrieval alphabetically be name.

SAFEGUARDS:

Stored in locked, metal file cabinets in building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

See AR 340–18–current series.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant to Director/Executive Officer, Engineering and Construction Bureau, U.S. Army Element, Panama Canal Commisson, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Systems Manager.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10 and 32 CFR Part 505.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains and military sources.

PCC/MRBL–1

SYSTEM NAME:

Marine License Files, PCC/MRBL–1

SYSTEM LOCATION:

Board of Local Inspectors, Bldg. 5140, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All permanent employees of the Panama Canal Commission in positions for which a Panama Canal marine license is required. Subsystem includes individual applications and examination papers filed in license file, Records Section, Records Management Branch, Administration Building.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, identification number, employing unit, work area, size and type of license, competence of applicant, exmination grades,

promotions, salaries, license serial number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 and 3778 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Apendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Book shelf for license stubs, file cabinet for file folders with correspondence and card file for license cards.

RETRIEVABILITY:

Indexed by name; by license serial number.

SAFEGUARDS:

File folders in lockable file cabinet. Cards and license stubs available for unit personnel screening. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retain 5 years after termination of employee and then transfer to FRC-Atlanta. Destroy 55 years after first entry in records.

SYSTEM MANAGER(S) AND ADDRESS:

Chairman, Board of Local Inspectors, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURE:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individual; Proctors for examinations; Port Captains, examination graders; Board of Local Inspectors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is testing or examination material is exempt from certain subsections of 5 U.S.C. 552a and from the procedure for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/MRPA–1

SYSTEM NAME:

Admeasurer Examination File, PCC/MRPA–1

SYSTEM LOCATION:

Admeasurement Office, Bldg. 28, Balboa, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Boarding Inspectors, Admeasurer assistants, and Admeasurers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Examinations, answer sheets, scoring sheets, evaluation sheets.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Presidential Proclamation 2248, August 28, 1937, continued in force by virtue of Sec. 19 of Act, October 18, 1962, 76A Stat. 1, 700; 22 U.S.C. 3811 (Supp. III 1979); 35 CFR 133.32 and 135.441; Article III of the Panama Canal Treaty of 1977.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine uses paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Manila folders.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Maintained in lockable file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed upon employee termination.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Admeasurement, Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is testing or examination material is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/MRTO–1

SYSTEM NAME:

Marine Accident Reference Cards, PCC/MRTO–1

SYSTEM LOCATION:

Pilot Administrative Unit, Transit Operations Division, Marine Traffic Control Building, La Boca, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal Commission. Pilots employed by the Transit Operations Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, identification number, date of bith, dates of promotion, and ship accident data; including the ship's name, description, date of occurrence and fault or no fault of employee involved. When a ship incident does not require a Board of Local Inspector's investigation, an administrative report noting the date, ship's name and description is included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3777–3778 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; 35 CFR Part 117.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper cards and sheets.

RETRIEVABILITY:

Filed alphabetically by last name.

SAFEGUARDS:

Kept in lockable file cabinet or desk. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

No retention schedule established. Retained indefinitely

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Transit Operations Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10 and 32 CFR Part 505.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains and military sources.

PCC/MRBL–1

SYSTEM NAME:

Marine License Files, PCC/MRBL–1

SYSTEM LOCATION:

Board of Local Inspectors, Bldg. 5140, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All permanent employees of the Panama Canal Commission in positions for which a Panama Canal marine license is required. Subsystem includes individual applications and examination papers filed in license file, Records Section, Records Management Branch, Administration Building.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, identification number, employing unit, work area, size and type of license, competence of applicant, exmination grades,

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Magnetic tape and punched cards; computer printouts; computer input

time permanent, full-time temporary, part-time temporary, and intermittent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained by operating officials and used in administering

associations, prospective employers, employment agencies, etc., concerning personal characteristics and qualifications, employment background, job performance and advancement potential, etc. See also general routine

PCC/OPR–2

SYSTEM NAME:

Operating Unit Employment Inquiry Files, PCC/OPR–2

SYSTEM LOCATION:

RETENTION AND DISPOSAL:

Records may be sent to Panama Area Personnel Board for determination of applicant's eligibility and consideration for employment under the Canal Zone Merit System (and the Panama Canal

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10

RECORD SOURCE CATEGORIES:

Chairman, Board of Local Inspectors, Port Captains (Balboa and Cristobal).

PCC/MRTO-2

SYSTEM NAME:

Pilot Workload Statitics, PCC/MRTO-2

SYSTEM LOCATION:

Transit Operations Division, Marine Traffic Control Center, La Boca, Republic of Panama; and Data Processing Division, Administration Building, Balboa Heights, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Panama Canal pilots.

CATOGEGORIES OF RECORDS IN THE SYSTEM:

A pilot master file and information for producing reports on the workload of the pilot force. The master file contains information such as pilot's name, identification number, mailing address, home telephone number, residence, education level, professional licensing data, and officer and maritime experience. Also included is such Panama Canal Commission employment information as employee status, pilot's home district, qualification and group numbers, seniority number and date, current and permanent nonwork days, pilot-in-training data including dates licenses issued, Federal service date, and termination dates and reasons. Reports produced include, for each pilot, such information as daily details of transits, hours worked, travel hours, available time, and leave scheduled.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3811 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977; 35 CFR Part 105.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Magnetic tape and punched cards; computer printouts; computer input forms.

RETRIEVABLILITY:

By name of pilot.

SAFEGUARDS:

Computer printouts and input forms kept in lockable cabinets in rooms locked when not in use. Magnetic tapes kept in locked rooms when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Input forms kept at Marine Traffic Control Center up to three motnths, then sent to Agency Records Center, where retained for three years and then destroyed. Pilot master file purged and updated weekly; workload data retained on magnetic tape indefinitely. Computer printouts retained up to one year at Transit Operations Center, then sent to Agency Records Center, where retained for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Transit Operations Division, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the system Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Pilots.

PCC/OPR-1

SYSTEM NAME:

Operating Unit Personnel Records, PCC/OPR-1

SYSTEM LOCATION:

May be maintained in Section, Branch, Division, Independent Unit, Staff Office, Bureau or other employing unit to which employee is assigned.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and present employees with category of full-time permanent, part-time permanent, full-time temporary, part-time temporary, and intermittent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained by operating officials and used in administering employees and organizational segments under their technical and administrative control. They include office copies of documents kept in the official personnel folder and documents pertaining to the administration of individual employees which are not appropriate for inclusion in the official personnel folder. The records may contain information such as: Employee's name, Panama Canal Commission identification number; mail address; home address and telephone number; social security number (optional); birth date; marital status; position number and title; position descriptions; employment history; educational qualifications; professional qualifications; performance review and evaluation, including date and rating; training and management development records, including types of courses taken and completion dates; special assignments; counseling interview record; award data; commendations; oral admonishments; disciplinary, adverse, and other personnel actions; grievances; leave and travel records, including official business travel vouchers; accident or injury records; attendance and absenteeism records; relief assignment records; job equipment checkout listings; U.S. Government vehicle and equipment operators license records; work, overtime and shift schedules; timekeeping records; tuition refund agreements; key and equipment inventory control listings; potential retirement date listings; native and foreign languages; blood donor information; copies of W-4, employee withholding statements; names, addresses and telephone numbers of next of kin for notification in emergency situations; participation in civic, welfare, recreational and union activities; eligibility for tropical differential.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 22 U.S.C. 3611 (Supp. III 1979); 44 U.S.C. 3101; Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To have as ready reference for use in compiling training reports required by the Office of Personnel Management; referrals to promotion boards; in responding to inquiries from professional and medical societies, bar

associations, prospective employers, employment agencies, etc., concerning personal characteristics and qualifications, employment background, job performance and advancement potential, etc. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper files maintained in file folders stored in desk drawers or filing cabinets, records also entered and stored in work processing equipment and on magnetic disks utilized with word processing equipment.

RETRIEVABILITY:

Employee name, identification number, or position number.

SAFEGUARDS:

Paper records maintained in lockable file cabinets or supervisor's desk. Magnetic disks and word processing equipment kept in locked rooms when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Records reviewed at end of calendar year and documents which have been superseded or are no longer applicable are to be destroyed by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Head of Section, Branch, Division, Independent Unit, Staff Office, Bureau of other employing unit where employee works.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual to whom information applies; personnel actions; performance review or personnel evaluation reports; letters of commendation or reprimand; travel orders; college transcripts; training records; and other related papers.

PCC/OPR-2

SYSTEM NAME:

Operating Unit Employment Inquiry Files, PCC/OPR-2

SYSTEM LOCATION:

May be maintained in Section, Branch, Division, Independent Unit, Staff Office, Bureau or other unit receiving informal inquiries or requests for employment.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the public and employees of other units or agencies who anticipate, or are in the process of applying for jobs with the Panama Canal Commission unit maintaining the record.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained by operating officials to whom applicants have applied directly for employment. The records may contain copies of SF-171, application for Federal employment, showing applicant's name, address, telephone number, social security number, employment experience, school transcripts, educational, professional or skilled craft history and background, native or foreign languages, other skills, awards or special commendations, references, statements from previous employers, resumes, etc. May also contain record of interviews, if any, name of interviewer, and evaluation of applicant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3611 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1979.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders stored in desk drawers or file cabinets.

RETRIEVABILITY:

Filed alphabetically by name of applicant.

SAFEGUARDS:

Maintained in lockable file cabinet or operating unit official's desk. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Records may be sent to Panama Area Personnel Board for determination of applicant's eligibility and consideration for employment under the Canal Zone Merit System (and the Panama Canal Employment System when it replaces the Canal Zone Merit System, pursuant to the Panama Canal Act of 1979); directly for consideration if vacancy is excluded from Canal Zone Merit System (and the Panama Canal Employment System) returned to applicant; or destroyed twelve months after initial inquiry.

SYSTEM MANAGER(S) AND ADDRESS:

Official in Section, Branch, Division, Independent Unit, Staff Office or Bureau maintaining such records.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORDS ACCESS PROCEDURES:

Requests should be addressed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individual to whom information applies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations as part of systems PCC/PB-1 or, if position is exempt from Canal Zone Merit System, (and the Panama Canal Employment System), PCC/PR-5.

PCC/PB-1

SYSTEM NAME:

Merit System Recruiting, Examining, and Placement Records, PCC/PB-1.

SYSTEM LOCATION:

Panama Area Personnel Board, Bldg. 6531, Corozal, Republic of Panama, and Central Examining Office, Building 363, Ancon, R.P., and personnel and other offices of Federal agencies in Republic of Panama authorized to make appointments to positions and to act for the Board by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals seeking eligibility for positions with Federal agencies in the Republic of Panama and current and

in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Applications and supporting

managers, medical officers and records, government agencies, and others.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

PCC/PB-3

SYSTEM NAME:

Personnel Investigation Records, PCC/PB-3.

RETRIEVABILITY:

Filed or retrievable alphabetically by name of individual and by date of birth.

SAFEGUARDS:

Stored in locked file equipment in

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals seeking eligibility for positions with Federal agencies in the Republic of Panama and current and former employees of Federal agencies in the Republic of Panama.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records compiled for determining an individual's suitability, qualifications, and ratings to establish status for eligibility for employment; for referring and placing individuals for employment, transfer, promotion, reassignment, and reappointment; and for providing statistical information for conducting personnel research and management studies. They contain information concerning education and training; employment history and earnings; appraisal of past performance by current and previous employers, educators, and personal references; convictions for offenses against the law; responses to test items and questionnaires; results of tests; rating sheets; appraisals of potential; honors, awards, or fellowships; military service and veterans preference; birthdate and birthplace; citizenship; identification numbers; legal residence; home addresses and telephone numbers; general suitability and medical fitness for Federal employment; applicant's conditions and preferences for employment; special qualifications; registers and certificates of eligibles; actions taken; and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3652, 3654, 3661–3664 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSEM.

STORAGE:

Paper records in file folders, individual forms and cards, and computer printouts.

RETRIEVABILITY:

Filed or retrievable alphabetically by name of individual and by date of birth.

SAFEGUARDS:

Sensitive information is stored in locked metal file equipment and other records are stored in metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Applications and supporting documents:

a. Transferred to employing agency when applicant is selected for permanent appointment.

b. Transferred to designated U.S. Civil Service Commission area office on transfer of eligibility.

c. Eligible applicants: Destroyed 10 years after termination of register.

d. Canceled or ineligible applicants: Destroyed two years after date register is established or upon termination of the register, whichever is earlier.

e. Vouchers and correspondence are filed with applications. Index Cards:

a. Permanent Examination Records Cards: Destroyed 10 years after termination of register.

b. Pending Record Cards are destroyed upon completion of processing and rating of applications.

Certificates of eligibles: Destroyed 2 years after date of certificate. Register of eligibles destroyed 10 years after termination of register. Routine Examining Program Test Answer Sheets.

a. Eligibles answer sheets are destroyed after three years.

b. Ineligibles answer sheets are destroyed after six months.

Other records, permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Panama Area Personnel Board, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager, his delegate, the Manager, Central Examining Office, Balboa Heights, R.P., or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Individual should provide name, date of birth, approximate date of reocrd, and title of examination or announcement with which concerned. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to one of the addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, employers, schools, references, neighbors, associates, credit bureaus, law enforcement agencies, probation officials, prison officials, personnel managers, medical officers and records, government agencies, and others.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which would reveal the identity of confidential sources or is testing or examination material is exempt from certain subsections of 5 U.S.C. 552a and from the procedures set forth in the agency's regulations. See 35 CFR 10.22.

PCC/PB-2

SYSTEM NAME:

Appeals Grievances, Complaints, and Assistance Records, PCC/PB–2.

SYSTEM LOCATION:

Panama Area Personnel Board, Bldg. 6531, Corozal, Republic of Panama and Central Examining Office, Building 363, Ancon, R.P., and personnel and other offices of Federal agencies in the Republic of Panama authorized to make appointments to positions and act for the Board by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Federal employment and current and former Federal employees in the Republic of Panama who have appealed a qualification or rating or who have registered complaints or made requests for assistance on any phase of the operations of the Board and the Central Examining Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to a decision, process, determination or reply made by the Board on an appeal, grievance, complaint, or request for assistance affecting an individual's consideration for employment through the Merit System, and used also to provide statistical information for conducting personnel research and management studies. The records consist of the initial appeal or complaint; letters or notices from and to the individual; records of hearings when conducted; documentation supporting a decision or determination; affidavits or statements; testimonies of witnesses; investigative reports; instructions to an agency about action to be taken to comply with decisions; related correspondence, opinions, and recommendations; and results of rating panels.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3652, 3654, 3661–3664 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders and binders, and index cards.

RETRIEVABILITY:

Filed or retrievable alphabetically by name of individual and by date of birth.

SAFEGUARDS:

Stored in locked metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Panama Area Personnel Board, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Individual should provide name, date of birth, and approximate date and kind of action taken. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals; agency and Board officials; affidavits of employees; testimonies of witnesses; documents in file related to the appeal, grievance, complaint, or request for assistance; and correspondence from organizations or persons with pertinent knowledge.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures set forth in the agency's regulations. See 35 CFR 10.22.

PCC/PB-3

SYSTEM NAME:

Personnel Investigation Records, PCC/PB–3.

SYSTEM LOCATION:

Panama Area Personnel Board, Bldg. 6531, Corozal, Republic of Panama, and Central Examining Office, Building 363, Ancon, R.P., and personnel and other offices of Federal agencies in the Republic of Panama authorized to make appointments to positions and to act for the Board by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for employment in the Federal service and current and former Federal employees in the Republic of Panama.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative records compiled to evaluate applications for employment and to provide statistical information for conducting personnel research and management studies. They contain information regarding an individual's physical and mental health, character, conduct, and behavior in the community where the individual has lived; arrests and convictions for any violations against the law; reports of interviews with former supervisors, co-workers, associates, educators, etc.; reports about the overall qualifications of an individual for a specific position; reports from law enforcement or corrective/parole agencies, former employers, educational institutions, and medical officers and institutions; veterans' preference claims for veterans' wives, widows, widowers, and mothers; lists of persons barred from military installations and pier areas; lists of police checks; police records; and penitentiary predischarge reports, parole officers' postdischarge statements, and wardens' postdischarge statements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3652, 3654, 3661–3664 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders and individual forms and cards.

RETRIEVABILITY:

Filed or retrievable alphabetically by name of individual and by date of birth.

SAFEGUARDS:

Stored in locked file equipment in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Lists of persons barred from military installations and piers are destroyed when the bar or restriction is lifted. Penitentiary predischarge reports, parole officer and warden statements are transferred to:

1. The application file when a decision is made to permit the individual to compete for Federal employment.

2. To the Suitability Investigations Index Card (Personal Data Card) when a decision is made to suspend the individual from competition for Federal employment.

Panama Canal Commission or United States police records and check lists are destroyed when the data is transferred to the Suitability Investigations Index Card (Personal Data Card) subsequent to receipt. Police records received from the Republic of Panama which are owned by the individual are returned to the owner after transfer of the data to the Suitability Investigations Index Card (Personal Data Card). Statements from the individual and from other sources are transferred to the application file when the individual is cleared for Federal employment. Suitability Investigations Index Cards (Personal Data Cards) and other records are destroyed upon death, retirement or at age 70 of the individual.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Panama Area Personnel Board, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager, his delegate, the Manager, Central Examining Office, Balboa Heights, or the Agency Records Officer, Administration Building, Balboa Heights, Individual should provide name, date of birth, and the approximate date and kind of action taken. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to one of the addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, employers, schools, references, neighbors, assoicates, credit bureaus, law enforcement agencies, probatcn

III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees and their dependents or other members of their household.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject employees and officials of the Canal agencies.

to recruitment folder if applicant is selected for employment from overseas. When applicant is employed, documentation is transferred to Official Personnel Folder. Applications are destroyed if applicants fail to update in

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Canal and other Federal agencies on the Isthmus who have participated in training or development programs

RECORD SOURCE CATEGORIES:

Subject individuals, employers, schools, references, neighbors, associates, credit bureaus, law enforcement agencies, probation officials, prison officials, personnel managers, medical officers and records, government agencies, and others.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/PR-1

SYSTEM LOCATION:

Personnel Operations Division, Bld. 5553. Diablo, Republic of Panama.

SYSTEM NAME:

Disability Relief, Retirement and Group Supplementary Life Insurance Records, PCC/PR-1.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Disability Relief annuitants and surviving widows; Civil Service Retirement annuitants; employees who died while in service; survivors of deceased employees and annuitants; and employees and annuitants enrolled in the Supplementary Life Insurance Program sponsored by the Group Insurance Board (Panama Canal Area).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information used in the administration of the Cash Relief Act of July 8, 1937, as amended, and in the application of related policies on medical treatment and care, annuitants' group life insurance, and the eligibility of widows of deceased annuitants for annuities.

Reference files from which information or statistical data may be furnished quickly on employees who retired under the Civil Service Retirement Act, employees who died while in service, and survivors who submitted applications or claims for death benefits and unpaid compensation.

Identification of employees and annuitants enrolled in the Group Supplementary Life Insurance Program and their beneficiaries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapters 83 and 87; 22 U.S.C. 3658, 3681–3683 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders, cards, and individual forms.

RETRIEVABILITY:

Filed alphabetically by name or filed by identification number.

SAFEGUARDS:

Stored in metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Index cards on persons designated to act as the agents of Disability Relief annuitants are destroyed when annuitant dies. Other records: Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addresed to either of addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, official personnel files, and medical and welfare personnel.

PCC/PR-2

SYSTEM NAME:

Employee Benefits Records, PCC/PR-2

SYSTEM LOCATION:

Personnel Operations Division, Bldg. 366, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees and their dependents or other members of their household.

CATEGORIES OF RECORDS IN THE SYSTEM:

Determinations of employees' eligibility for, or entitlement to, the tropical differential, home leave and repatriation travel, Commission housing, and other employee benefits.

Determination of an individual's status as dependent or member of household of employee to establish his or her eligibility for residence in Commission housing, medical treatment, education, purchase authority, and transportation benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–42 and 5924; 22 U.S.C. 3641–3658 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name of employee.

SAFEGUARDS:

Stored in metal file cabinets in buildings locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retained for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of the addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject employees and officials of the Canal agencies.

PCC/PR-5

SYSTEM NAME:

Recruiting and Placement Records, PCC/PR-5.

SYSTEM LOCATION:

Personnel Operations Division, Bldg. 366, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for employment or are employed with the Panama Canal Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for employment and records related thereto; overseas recruitment processing records; special placement and program records, such as records on the excluded appointments of mentally retarded applicants, the appointment of handicapped persons, the student assistant program, the upward mobility program, and the worker-trainee program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3641–3654, 3671, 3672 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1977; E.O. 11478, August 8, 1969; 42 U.S.C. 2000e–16; E.O. 11171, August 18, 1964; 29 U.S.C. 791.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folder, index cards, lists, and individual forms.

RETRIEVABILITY:

Filed alphabetically by name of subject individual or by an identification number.

SAFEGUARDS:

Stored in metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Applications for employment and records related thereto are transferred to recruitment folder if applicant is selected for employment from overseas. When applicant is employed, documentation is transferred to Official Personnel Folder. Applications are destroyed if applicants fail to update in one year from date of acknowledgment of application. U.S. recruitment data cards are retained indefinitely for statistical purposes. Miscellaneous correspondence and listings pertaining to employees under recruitment are destroyed after two years. Vouchers from references listed by applicant are destroyed after one year. Individual special placement and program records are destroyed when employee terminates or individual's participation in program ends.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of the addressees designated in Notification Procedures, proceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals, medical personnel, police officials, officials of the Canal agencies, schools attended by applicant, and individuals listed as references by applicant.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/PR-6

SYSTEM NAME:

Training and Employee Development Records, PCC/PR-6.

SYSTEM LOCATION:

Human Resources Development Staff, Office of Personnel Administration, Bldg. 0602, Balboa Heights, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Canal and other Federal agencies on the Isthmus who have participated in training or development programs sponsored or conducted by the Canal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on training and development of employees under a variety of programs such as apprentice program; the tuition refund program; and various executive, managerial, supervisory, administrative, Spanish and English language, technical, and professional training and development programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4101–18; E.O. 11348 of April 20, 1967; E.O. 11171, August 18, 1964; 22 U.S.C. 3611 (Supp. III 1979); Articles III and X of the Panama Canal Treaty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See General Routine Use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file holders, cards, and individual forms.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Stored in metal file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Apprentice enrollment and grade records are retained permanently. Other records are retained for three years after termination of the session of the program in which the trainee was enrolled, except summary records for management development program are maintained until employee terminates or is dropped from the program.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Request should be addressed to either of the addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

needed for proper administration of personnel programs and policies in accordance with the Panama Canal Treaty of 1977 and related agreements, such as coded information identifying employees who are: entitled to grade

the Government of Panama, and the public on characteristics of the Federal work force.

g. Used in the production of summary descriptive statistics and analytical studies; may also be used to respond to

prior to the RIF is retained on tape/disk for up to two years; and printouts of information about terminated employees participating in the reemployment priority program and demoted employees participating in the priority

the records under provisions of the Privacy Act. Questions from such individuals regarding notification procedures, access, and contest in connection with these records should be addressed to the Director, Office of

RETRIEVABILITY:

Filed or indexed by name.

SAFEGUARDS:

Records maintained in metal card files and lockable metal filing cabinets.

RECORD ACCESS PROCEDURES:

Request should be addressed to either of the addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individual, official personnel records, instructors, agency officials, program officials, and Veterans Administration.

PCC/PR-7

SYSTEM NAME:

Personnel Information System, PCC/PR-7

SYSTEM LOCATION:

Management Information Systems, Panama Canal Commission, Administration Building, Balboa Heights, Republic of Panama; and Personnel Operations Division, Ancon, R.P.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current employees of the Panama Canal Commission in permanent and temporary positions. After September 30, 1979, all employees terminated through reduction-in-force procedures who participate in a priority reemployment program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, employee identification number and employment-related and retention register data in an automated personnel file, in combination with the information in the automated system of records, the "Payroll Master File for Panama Canal Commission, PCC/FMAP-1."

Records in FMAP-1 include: birthdate; Social Security number; veteran preference; tenure; present position occupational code; position number; security classification; wage category; grade; salary; tenure conversion date; step increase due date; work week; roll and gang; Federal service date; Panama Canal service date; FEHBA plan; FEGLI income tax data; travel leave; residence; citizenship; sex; marital status; physical exam; position rate number; timing unit; pay basis; and annual premium compensation.

Records in the automated personnel file include; outstanding performance rating; status of position; target grade of position; temporary promotion indicator; competitive level; eligibility for repatriation and vacation leave travel; APRTE (actual place of residence at time of employment). The automated personnel file also includes information needed for proper administration of personnel programs and policies in accordance with the Panama Canal Treaty of 1977 and related agreements, such as coded information identifying employees who are: entitled to grade and pay retention; eligible for early optional retirement; covered by the Panama Social Security System; subject to a 5-year rotation plan; reemployed within six months of effective date of the treaty; Panamanian employees who have been promoted/trained; U.S. and non-U.S. citizen employees who are married to Panamanians or who have resided in the Republic of Panama at least ten years. The Reemployment Priority List (former employees terminated through RIF) will contain information as to qualifications for reemployment in or promotion to specific occupational series and grade levels.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. Chapters 35, 45, 55; 22 U.S.C. 3611 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be:

a. Disclosed to the following agencies and organizations, in connection with their authorized functions: Office of Personnel Management; Merit Systems Protection Board; Internal Revenue Service; Social Security Administration; General Accounting Office; U.S. military agencies; state unemployment compensation offices; city, county, and state tax offices; employee credit unions; banks; insurance carriers; employee and professional organizations; and Combined Federal Campaign.

b. Disclosed to officials of labor organizations when relevant and necessary to their duties concerning personnel policies, practices, and matters affecting working conditions.

c. Used to promote the incentive awards program through the local news media.

d. Disclosed to prospective employers or other organizations, at the request of the individual.

e. Used in the selection process by the agency in connection with appointments, transfers, promotions, or qualifications determinations. To the extent relevant and necessary, it will be furnished upon request to other agencies for the same purpose.

f. Used to provide statistical reports to Congress, U.S. Government agencies, the Government of Panama, and the public on characteristics of the Federal work force.

g. Used in the production of summary descriptive statistics and analytical studies; may also be used to respond to general requests for statistical information (without personal identifier) under FOIA; or to locate individuals for personnel research or other personnel research functions.

h. Diclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

i. Disclosed in accordance with the general routine use paragraphs in prefatory statement and in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Magnetic tapes and disks; computer printouts; and paper records.

RETRIEVABILITY:

By employee identification number, by name, and by any or all of the categories of information in the system.

SAFEGUARDS:

A combination of standard physical security measures, appropriate management information practices, and computer system/network security controls are used to prtoect these records. Safeguards include: batch controls; computer processing controls; access to both hard copy documents and computer files restricted to authorized personnel; restricted on-line access, with authorization limited in accordance with user-entered confidential identifying code and access code. A special coordinator has been designated by the system manager to maintain control of all input documents and issuance of report information. Printouts are produced only upon written request from the system manager. Reports, tapes, and disks are kept in a locked cabinet or secure area when not in use.

RETENTION AND DISPOSAL:

Input paper records are retained for two years and then destroyed. Printouts are retained up to six months and then destroyed. Records are deleted from magnetic tapes or disks after termination of employee. Tapes and disks are erased and reused. An exception to the normal retention period is made for records relevant to a reduction in force: information about all employees on the rolls immediately

prior to the RIF is retained on tape/disk for up to two years; and printouts of information about terminated employees participating in the reemployment priority program and demoted employees participating in the priority promotion program are retained for up to two years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of the officials deisgnated in Notification Procedure, preceding.

CONTESTING RECORD PROCEDURES:

Rules governing how an individual may request the amendment of any information about him in this system, are published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject employee; personnel action forms (SF 50); Official Personnel Folders, Incentive Award Files; documents prepared for treaty planning purposes; the agency payroll master file; and computer-generated and manual calculations from varied input data.

PCC/PR-8

SYSTEM NAME:

Systems of records noticed by the Office of Personnel Management and applicable to the Panama Canal Commission, as follows:

(1) General Personnel Records (Official Personnel Folder and records related thereto).*

(2) Retirement, Life Insurance, and Health Benefits Records Systems.

(3) Ethics in Government Financial Disclosure Records, OPM/GOVT-4.

(4) Confidential Statements of Employment and Financial Interest, OPM/GOVT-8.

*As an exception to standard practice on retention of out-of-service Official Personnel Folders, the Canal agencies are authorized to retain the Official Personnel Folders of their former non-U.S. citizen employees for two years, thereafter they are sent to the National Personnel Records Center in St. Louis, Missouri (35 CFR 253-292). Some of these former employees now may be U.S. citizens or resident aliens of the United States who are granted access to the records under provisions of the Privacy Act. Questions from such individuals regarding notification procedures, access, and contest in connection with these records should be addressed to the Director, Office of Personnel Administration, Panama Canal Commission, APO Miami 34011, who is the Systems Manager, or to the Agency Records Officer, Administration Building, Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

PCC/PR-9

SYSTEM NAME:

Incentive Awards Program Files, PCC/PR-9.

SYSTEM LOCATION:

Incentive Awards Office, Bldg. 0610, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of Panama Canal Commission who have filed suggestions or received honorary awards under the Incentive Awards Program since 1954. Supervisors of suggesters since 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, idenifying number, grade, occupation, employing unit, suggestion number, rejection or approval date, amount awarded, card control number. Supervisor's name, employing unit, number of suggestions submitted by his employees, amount awarded, and savings to the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4501 et seq.; 22 U.S.C. 3611 (Supp. III 1979) and Article III of the Panama Canal Treaty of 1977).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be used to: (a) prepare reports for the Office of Personnel Management; (b) promote the awards program through the local news media; and (c) respond to inquiries from labor unions, award recipients, employee and professional organizations.

See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

3 by 5 inch cards; suggestion forms; related documents.

RETRIEVABILITY:

Filed or indexed by name.

SAFEGUARDS:

Records maintained in metal card files and lockable metal filing cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Held three years after employee's termination and then destroyed by fire.

SYSTEM MANAGER(S) AND ADDRESS:

Incentive Awards Secretary, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, R.P. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From suggestion forms prepared by employees to whom the record pertains and from honorary award recommendations submitted by authorized management officials.

PCC/PR-11

SYSTEM NAME:

Minority Group Designator (MGD) Records, PCC/PR-11

SYSTEM LOCATION:

Personnel Operations Division, Panama Canal Commission, Ancon, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizen employees of the Canal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lists of accessions of U.S. citizen employees containing a minority group designator code submitted to Office of Personnel Management (OPM), error lists from OPM, and transcript form and/or SF 50 (or equivalent) submitted to OPM to correct errors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7204, E.O. 11478 of August 8, 1969; 22 U.S.C. 3611 (Supp. III 1979); Articles III and X of the Panama Canal Treaty of 1977; 29 CFR 1613.301 and 1613.302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

CATEGORIES OF RECORDS IN THE SYSTEM:

General biographical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3612 (Supp. III 1979); Article

Civil and Amateur Radio Operator and Station License Files, PCC-CZG/CALS-4

Driver's License Investigatory File, PCC-CZG/CALS-7

Driver's License Revocation Lists, PCC-

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article III, 1936 General Treaty of Friendship and Cooperation, 53 Stat. 1807; Articles XI and XII, 1955 Treaty of Mutual Understanding and Cooperation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals issued advance authorization to enter the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:

PCC-CZG/BRAE-1

SYSTEM NAME:

Canal Zone Board of Registration for Architects and Professional Engineers Reference Files, PCC-CZG/BRAE-1

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Forms, sheets of paper, and computer runs.

RETRIEVABILITY:

Lists of accessions filed by employee identification number; computer runs and SF 50, filed alphabetically by name; and monthly report to Office of Personnel Management and update transcript form filed by Social Security Number.

SAFEGUARDS:

Stored in a locked a steel desk in a building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Monthly report to Office of Personnel Management and error listing for that month are destroyed six months after error listing is received. Correction to monthly error listing destroyed after error list for following month is received and corrected.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel Administration Panama Canal Commission, APO Miami 34011.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system is maintained and used solely for statistical reports and is not used in making any nonstatistical determinations about identifiable individuals. It is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC/WO-1

SYSTEM NAME:

Panama Canal Commission Board of Directors, PCC/WO-1.

SYSTEM LOCATION:

312 Pennsylvania Building, 425 13th Street, N.W., Washington, D.C.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members and former members of the Commission's Board of Directors.

CATEGORIES OF RECORDS IN THE SYSTEM:

General biographical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 3612 (Supp. III 1979); Article III paragraph 3(a) of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Stored in locked metal file cabinets in office locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant to the Secretary, Panama Canal Commission, 312 Pennsylvania Building, 425 13th Street, N.W., Washington, D.C. 20004.

NOTIFICATION PROCEDURE:

Information may be obtained from the Systems Manager or the Agency Records Officer, Administration Building, Balboa Heights, Republic of Panama.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom maintained.

Title Listing of Inactive Panama Canal Commission Systems of Records

Advance Authorizations to Enter the Canal Zone, PCC-CZG/ADRM-2
Canal Zone Board of Registration for Architects and Professional Engineers Directory, PCC-CZG/BRAE-2
Canal Zone Board of Registration for Architects and Professional Engineers Reference Files, PCC-CZG/BRAE-1
Case Investigations, PCC-CZG/CAPS-2
Cash Register Receipt Shortages, PCC-CZG/FVGA-2
Civil and Amateur Radio Operator and Station License Files, PCC-CZG/CALS-4
Driver's License Investigatory File, PCC-CZG/CALS-7
Driver's License Revocation Lists, PCC-CZG/CAPL-20
Fishing Pass Application File, PCC-CZG/CALS-3
Health, Medical, Dental, and Veterinary Records Systems, PCC-CZG/HL-1
Hunting Permit Application File, PCC-CZG/CALS-2
Immigration Detention Orders, PCC-CZG/CACU-12
Inmate Trust Fund File, PCC-CZG/CAPL-14
Marriage License Records, PCC-CZG/CALS-9
Medical Administration System-Exempt, PCC-CZG/HL-2
Medical Administration System-Nonexempt, PCC-CZG/HL-3
Motor Vehicle and Motorboat Registration and Operator's License Files, PCC-CZG/CALS-8
Official Permits to Have or Carry Firearms, PCC-CZG/CALS-11
Philatelic Program, PCC-CZG/CAPS-5
Purchase Authority Cards, PCC-CZG/ADGS-1
Refugee Records, PCC-CZG/SC-4
Runners, Peddlers, and Solicitors Application and License Files, PCC-CZG/CALS-10
Student Record System, PCC-CZG/CASC-1
U.S. Immigration and Naturalization Service, U.S. Citzenship Certificate Appliation and Appointment Records, PCC-CZG/CACU-10
Vehicle Registration for RP-Series License Plates, PCC-CZG/CACU-9
Visa Records, PCC-CZG/GE-1 (STATE-39)

PCC-CZG/ADGS-1

SYSTEM NAME:

Purchase Authority Cards, PCC-CZG/ADGS-1

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of private companies, organizations, and certain other government agencies, and other individuals that qualify for purchase authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, employment status, residence, mailing address, purchase-authority status, marital status, citizenship, age, names and ages of dependents, and history of identification cards issued.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article III, 1936 General Treaty of Friendship and Cooperation, 53 Stat. 1807; Articles XI and XII, 1955 Treaty of Mutual Understanding and Cooperation, 6 U.S.T. 2273; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to court officials for the purpose of compiling jury duty rosters. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms, 8 by 10½ inches.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Lockable file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Minimum of 5 years after individual ceases to qualify for purchase authority. Shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notifications Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

From individuals.

PCC-CZG/ADRM-2

SYSTEM NAME:

Advance Authorizations to Enter the Canal Zone, PCC-CZG/ADRM-2

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals issued advance authorization to enter the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:

Advance authorizations to enter the Canal Zone and related papers, such as extensions of stay and changes in Canal Zone immigration status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 841, 76A Stat. 32: E.O. 11305; 35 CFR 59.22-3; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records on backers.

RETRIEVABILITY:

Filed alphabetically by name of entrant.

SAFEGUARDS:

Stored in metal file cabinets in file room locked when not in use in a building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

After 2 years, transferred to Agency Records Center; then destroyed after 2 more years.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Sponsors of entrant.

PCC-CZG/BRAE-1

SYSTEM NAME:

Canal Zone Board of Registration for Architects and Professional Engineers Reference Files, PCC-CZG/BRAE-1

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and inactive individuals certified as Engineers-In-Training (EIT) or registered as Professional Engineer (PE) or Architect (RA) in the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complete applications detaining personal history, educational record and references and record of professional practice; reference letters from individuals, verification letters from schools, State Boards, National Council of Engineering Examiners (NCEE)/ National Council of Architectural Registration Boards (NCARB), etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 CFR 69(A) and 2 C.Z.C. 1171-75; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure to National Council of Engineering Examiners (NCEE), National Council of Architectural Registration Boards (NCARB) and all State Board jurisdications in connection with Publication of Roster, 35 CFR 69.141. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folder 8½ by 11 inches.

RETRIEVABILITY:

Alphabetically by status of certification and registration.

SAFEGUARDS:

Active records maintained in locked file cabinet; inactive records maintained in office file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Active files maintained indefinitely. Inactive files maintained indefinitely or three years after death. Files disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the

Board members, Executive Secretary to the Board, and each architect and professional engineer and architect-in-training and engineer-in-training and other persons upon request as set forth in 35 CFR 69.144. See also general

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 CFR Part 57; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

referred to in the authority portion of this notice.

CATEGORIES OF RECORDS IN THE SYSTEM:

The application forms with supporting documentation such as birth, death, and

RECORD SOURCE CATEGORIES:

Individual to whom record pertains.

PCC-CZG/CACU-12

SYSTEM NAME:

Immigration Detention Orders, PCC-

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

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SYSTEM MANAGER(S) AND ADDRESS:
Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:
Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURE:
Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:
See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:
Individual applicant, personal references, NCEE, NCARB, State Boards.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:
All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identify of confidential sources, or is testing or examination material is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC-CZG/BRAE-2

SYSTEM NAME:
Canal Zone Board of Registration for Architects and Professional Engineers Directory, PCC-CZG/BRAE-2.

SYSTEM LOCATION:
Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
All certified Engineers-in-Training (EIT) and registered Professional Engineers (PE) and Architects (RA).

CATEGORIES OF RECORDS IN THE SYSTEM:
Numerical listing of Engineers-in-Training, Professional Engineers and Architects by number, name and methods of registration.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
35 CFR 69 and 2 C.Z.C. 1171-75 76-A Stat. 40-41; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
For routine use by the Board and for preparation of the annual report (35 CFR 69.232); and the Roster (35 CFR 69.141); Board members, Executive Secretary to the Board, and each architect and professional engineer and architect-in-training and engineer-in-training and other persons upon request as set forth in 35 CFR 69.144. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:
8½ by 11 inch papers in file folders.

RETRIEVABILITY:
Numerically by certification/registration number; cross referenced by name.

SAFEGUARDS:
File cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:
Indefinite. Retained by Board for reference purposes.

SYSTEM MANAGER(S) AND ADDRESS:
Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:
Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:
Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:
See rules published in 35 CFR, Part 10.

RECORD SOURCE CATEGORIES:
From applicant and other sources.

PCC-CZG/CACU-9

SYSTEM NAME:
Vehicle Registration for RP-Series License Plates, PCC-CZG/CACU-9.

SYSTEM LOCATION:
Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
U.S. Government employees, military personnel and dependents resident in Panama but entitled to Canal Zone duty free entry of vehicles.

CATEGORIES OF RECORDS IN THE SYSTEM:
Name, number, citizenship, personal description, address, and vehicle description.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
35 CFR Part 57; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:
CArds—3 by 5 inches.

RETRIEVABILITY:
Name and number.

SAFEGUARDS:
File cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:
Retained for 1 year after close of calendar year in which records are created; then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:
Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:
Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:
Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:
See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:
From individual applicant.

PCC-CZG/CACU-10

SYSTEM NAME:
U.S. Immigration and Naturalization Service, U.S. Citizenship Certificate Application and Appointment Records, PCC-CZG/CACU-10.

SYSTEM LOCATION:
Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Persons born outside the United States who are requesting United States citizenship certificates issued by the Immigration and Naturalization Service pursuant to one or more of the statutes

referred to in the authority portion of this notice.

CATEGORIES OF RECORDS IN THE SYSTEM:
The application forms with supporting documentation such as birth, death, and marriage certificates, affidavits and other related papers are forwarded directly to the U.S. Immigration and Naturalization Service for processing. An index card containing the applicant's name, address, the date the application was received locally, and the certificate number is retained locally for appointment scheduling purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
8 U.S.C. 1101 note, 1443-4, 1451-4; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
Routine use includes the transmittal of the application and accompanying documents to the U.S. Immigration and Naturalization Service for processing. See also general routine use paragraphs in prefatory statement or in 35 CFR part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:
8 by 10½ inch application form and paper certificates and documents; 3 by 5 inch file cards.

RETRIEVABILITY:
Name and address.

SAFEGUARDS:
Stored in unlocked file drawers in office locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:
Destroyed by paper shredder at end of useful life.

SYSTEM MANAGER(S) AND ADDRESS:
Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:
Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:
Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:
See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:
Individual to whom record pertains.

PCC-CZG/CACU-12

SYSTEM NAME:
Immigration Detention Orders, PCC-CZG/CACU-12

SYSTEM LOCATION:
Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Stowaways, deserters, crewmembers and passengers in violation of Canal Zone Immigration Regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:
Name, number, date and place of birth, nationality, and facts relating to issuance or enforcement of the detention order.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
2 C.Z.C. 841-3, 76A Stat. 32; 22 U.S.C. 3611 (Supp. III 1979); article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
Routinely sent to local law enforcement officials as necessary to direct the apprehension, detention and repatriation of such persons. Information may also be disclosd to commercial carriers when such persons were passengers or crewmen/employees of a shipping company, airline etc. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10. Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:
File cabinet folder.

RETRIEVABILITY:
Filed by name.

SAFEGUARDS:
File cabinet (lockable). Access and use are restricted to autorized personnel.

RETENTION AND DISPOSAL:
Maintained for two years then burned.

SYSTEM MANAGER(S) AND ADDRESS:
Agnecy Records Officer. Panama Canal Commission. APO Miami 34011.

NOTIFICATION PROCEDURE:
Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:
Requests should be addressed to addressees designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:
See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:
From ship's documents and/or individual.

PCC-CZG/CALS-2

SYSTEM NAME:
Hunting Permit Application File, PCC-CZG/CALS-2

SYSTEM LOCATION:
Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
All applicants and holders of permits to engage in hunting in the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:
Name, date of birth, place or employment, rank, photograph, signature.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
2 C.Z.C. 1471, 76A Stat. 49; 6 C.Z.C. 2573, 76A Stat. 495; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
8½ by 10 inch printed form and 3 by 7 inch card.

RETRIEVABILITY:
Recovered manually.

SAFEGUARDS:
Records maintained in lockable file. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:
Retained three years after expiriation and thereafter forwarded to the Panama Canal Company Agency Records Center for disposition.

SYSTEM MANAGER(S) AND ADDRESS:
Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:
Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

SYSTEM MANAGER(S) AND ADDRESS:
Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:
Information may be obtained from the

See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND

employment, grade or rank, qualification statements, photographs, and legal documents pertaining to arrests, court actions, hearings and/or related investigations.

law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See

4. Hospitals and dispensaries treating traffic accident victims;
5. The U.S. Department of Transportation, state licensing agencies, and other agencies to the extent of their need.

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NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

PCC-CZG/CALS-3

SYSTEM NAME:

Fishing Pass Application File, PCC-CZG/CALS-3

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons applying for, or holding valid Canal Zone fishing passes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, street and postal address, date of birth, citizenship, occupation, identification number, place of employment and signature.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1491, 76A Stat. 50; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

6½ by 10 inch printed form and 3 by 7 inch card.

RETRIEVABILITY:

Filed by pass number and name, recovered manually.

SAFEGUARDS:

Records maintained in lockable file. Access and use are restricted to authorized personnel

RETENTION AND DISPOSAL:

Forwarded to Panama Canal Company Agency Records Center three years after expiration of license.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin., Bldg., Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

PCC-CZG/CALS-4

SYSTEM NAME:

Civil and Amateur Radio Operator and Station License Files, PCC-CZG/CALS-4

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons applying for, or issued Canal Zone Amateur, Citizen's Band and Maritime Mobile Radio Operator and/or Station Licenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of licensee or applicant, street and postal address, date of birth, citizenship, operator's qualification test scores and statements, phone number, station location, call sign, organization or affiliation. Also includes similar information on other persons who may be regularly operating radios licensed to other individuals, such as student or guest operators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 31-33, 76A Stat. 7; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosed upon request to the Federal Communications Commission, local U.S. military frequency control coordinators, Government, State and local radio licensing authorities. Information may also be disclosed to licensing agencies of foreign governments where the applicant is claiming reciprocal licensing privileges in order to obtain a Canal Zone or foreign radio operator's license. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms, questionnaires and cards.

RETRIEVABILITY:

Filed by name, call sign or license number.

SAFEGUARDS:

Records maintained in lockable file cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Call sign logbook retained as a permanent record. Other materials retained for five years after expiration of the license.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addresses designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and the Federal Communications Commission.

PCC-CZG/CALS-7

SYSTEM NAME:

Driver's License Investigatory File, PCC-CZG/CALS-7

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have had their Canal Zone license or privilege to operate motor vehicles in the Canal Zone revoked, suspended, cancelled, or have a medical problem related to driving.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, street and postal address, date of birth, citizenship, identification number, color of hair, color of eyes, height, weight, type and place of

employment, grade or rank, qualification statements, photographs, and legal documents pertaining to arrests, court actions, hearings and/or related investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1001, 76A Stat. 37; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released to the U.S. Department of Transportation, State licensing agencies, courts and others having a need to know. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10. Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

8½ by 10 inch file folders.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records maintained in lockable file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retain record until operator dies or license is restored. Restored license material retained for the life of the license record. Non-renewed license records transferred to Agency Records Center, retained for ten years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC-CZG/CALS-8

SYSTEM NAME:

Motor Vehicle and Motorboat Registration and Operator's License Files, PCC-CZG/CALS-8

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons registering motor vehicles, motorcycles, trailers, motorboats, etc., with the License Section, Ancon, Canal Zone. Persons who have been issued, or applied for, licenses or permits to operate motor vehicles, boats, etc. in the Canal Zone, or in Canal Zone waters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Owner/operator information normally includes the following: Name, identification number, home address, post office box, date of birth, citizenship, height, weight, hair color. Certificate of Eligibility for active-duty members of U.S. Armed Forces who take advantage of special registration rates provided by law for such classes of persons. Information on the vehicle or craft includes engine number, manufacturer, model and color, license plate or registration number, and date of inspection.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1001, 76A Stat. 37; 2 C.Z.C. 1331 and 1358-9, 76A Stat. 46-48; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

As necessary, vehicle and boat operator and registration information may be provided to:

1. Law enforcement agencies, court officials, and local military commands in connection with the investigation of violations of highway and vehicle regulations and the identification and apprehension of criminals;
2. Local air and sea rescue coordinators and local yacht clubs when a boat is overdue;
3. Officials of the Republic of Panama in connection with law enforcement and regulatory procedures;
4. Hospitals and dispensaries treating traffic accident victims;
5. The U.S. Department of Transportation, state licensing agencies, and other agencies to the extent of their need.

See also the general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Application for—forms, and related documentation; photomat cards; magnetic tapes/disks and punched cards; and computer printouts.

RETRIEVABILITY:

Retrievable by registration number; license plate number; operator/owner's name and identifying number.

SAFEGUARDS:

Paper records maintained in lockable file cabinets. Magnetic tapes/disks and punched cards maintained in rooms locked when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Paper records other than computer printouts retained for three years after expiration of current license, then transferred to Agency Records Center; disposed of at end of ten-year retention period. Computer-produced reports destroyed when updated reports are issued.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained, and/or military command if the applicant is an active member of U.S. Armed Forces.

PCC-CZG/CALS-9

SYSTEM NAME:

Marriage License Records, PCC-CZG/CALS-9

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons applying for marriage

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

RETENTION AND DISPOSAL:

Disposed of three years after expiration of license, excluding records retained for police or security reasons.

SYSTEM MANAGER(S) AND ADDRESS:

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Forms, correspondence, 3 by 7 inch cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 C.Z.C. 6501-7, 76A Stat. 555-6; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identifying number, residence, date of revocation, photograph and police number, and copy of order revoking driving privileges issued by the License Section.

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons applying for marriage licenses, or celebrating or witnessing marriages in the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:

Marriage licenses/certificates containing such information as the name, address, date of birth, and citzenship of each party to the marriage; the date and location of the marriage ceremony; the names of the marrying official and witnesses. Includes information concerning termination or annulment of previous marriages of persons requesting licenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 C.Z.C. 4, 76A Stat. 762; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

May be released to courts, diplomatic or consular officials, military and civilian personnel officials on a need to know basis. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms and binders.

RETRIEVABILITY:

Filed by date and recovered manually.

SAFEGUARDS:

Records maintained in file cabinets in office locked when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained as a permenent record.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are Published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

PCC/CZG/CALS–10

SYSTEM NAME:

Runners, Peddlers, and Solicitors-Application and License Files. PCC–CZG/CALS–10.

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons applying for, or issued licenses to act as runners, peddlers, and solicitors (Definitions of these terms set forth in 35 CFR 63.1).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, street and postal address, date of birth, parents' names, citzenship, Sanitation certificate (if required), and facts of employment or affiliation with commercial concerns being represented. Also contains information as to color of hair, color of eyes, weight, height, cedula number, etc., needed for identification purposes when applying for licenses authorizing access to certain vital installations in the Canal Zone.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1441, 76A Stat. 49; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Local U.S. military authorities, courts, and others responsible for the prevention of crime or the apprehension of criminals. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms 8 by 11 inches.

RETRIEVABILITY:

Filed by license number, retreived manually.

SAFEGUARDS:

Records maintained in lockable file. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Disposed of three years after expiration of license, excluding records retained for police or security reasons.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg., Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained, police, employer.

PCC-CZG/CALS–11

SYSTEM NAME:

Official Permits to Have or Carry Firearms, PCC–CZG/CALS–11.

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who apply for, or are issued official permits to have or carry firearms in the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, citizenship, identification number, place of employment, weapon serial number and description, and other information as may be required by the licensing officials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1471, 76A Stat. 49; 6 C.Z.C. 2572–3, 76A Stat. 495; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed or referred routinely to Law enforcement agencies; courts, military agencies of the U.S. Government. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Forms, correspondence, 3 by 7 inch cards.

RETRIEVABILITY:

Filed by name of permit holder.

SAFEGUARDS:

Records maintained in lockable file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Records routinely disposed of three years after expiration of permit. Certain records may be retained longer for police purposes, or to record the circumstances leading to a revocation or cancellation of a permit.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg., Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained, police officials, and at times the applicant's employer if certification is required that the permit may be essential for personal safety, etc.

PCC-CZG/CAPL–14

SYSTEM NAME:

Inmate Trust Fund File, PCC–CZG/CAPL–14

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons actively serving sentences in the Canal Zone Penitentiary who are enrolled in the Inmate Trust Fund program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inmate's name, convict number, date of debit or credit to his account and the account balance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 C.Z.C. 6501–7, 76A Stat. 555–6; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosed as required to courts, probation, parole and pardon board officials, federal penal institutions. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed forms 8 by 10½ inches.

RETRIEVABILITY:

By convict number.

SAFEGUARDS:

Maintained in file cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained until discharge of inmate, filed with convict record and transferred with record to Agency Records Center for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records, Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR, Part 10.

RECORD SOURCE CATEGORIES

From inmate and Trust Fund Officer.

PCC-CZG/CAPL–20

SYSTEM NAME:

Driver's License Revocation Lists, PCC–CZG/CAPL–20

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have had their driving privileges revoked in the Canal Zone.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identifying number, residence, date of revocation, photograph and police number, and copy of order revoking driving privileges issued by the License Section.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 31, 1001–3, 76A Stat. 7, 37; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Printed form 8 by 10 inches.

RETRIEVABILITY:

Filed by date received, cross-referenced by name of driver.

SAFEGUARDS:

Maintained at Police Dispatcher's desk. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed once revocation is suspended.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to either addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES

Police reports, license files.

PCC-CZG/CAPS–2

SYSTEM NAME:

Case Investigations, PCC–CZG/CAPS–2

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons involved in, witnesses to, or suspected of activities related to offenses involving narcotics, obscene

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

educational institutions, and similar or related documents.

e. Guidance Records: Documents pertaining to individual school students. Included are: test scores, personality

physical fitness of students and to evaluate students and schools for achievements.

5. Community athletic leagues, youth programs, and other organizations

date of birth, names of schools attended and dates of attendance.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons involved in, witnesses to, or suspected of activities related to offenses involving narcotics, obscene literature, fraud, prohibited mail matter, rifling of mails, tampering of mail boxes, theft of mail, threatening letters, theft of money orders, theft of postal keys, vandalism of mail boxes, wrong payment of money orders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, dates and facts of case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1131–32, 76A Stat. 38–39; 6 C.Z.C. 2001, 76A Stat. 481; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Maintained in folders.

RETRIEVABILITY:

Filed by Case number, name of individual and/or offense or irregularity.

SAFEGUARDS:

Maintained in lockable metal cabinets. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES: SEE RULES PUBLISHED IN 35 CFR PART 10.

RECORD SOURCE CATEGORIES:

Individuals, employees, witnesses, law enforcement agencies, courts, postal patrons, U.S. and Foreign Postal Administrations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identify of confidential source is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22.

PCC–CZG/CAPS–5

SYSTEM NAME:

Philatelic Program, PCC–CZG/CAPS–5

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Stamp collectors and others making inquiries of a philatelic nature.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record normally contains correspondence showing the names and addresses of persons ordering stamps, first day covers, etc. through the philatelic program Records of, the date and amount of payment, items shipped, and related information is also contained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 1131–1143, 76A Stat. 38.40; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Individual file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Maintained in metal lockable cabinet. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed two years after file becomes inactive.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORDS ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

PCC–CZG/CASC–1

SYSTEM NAME:

Student Record System, PCC–CZG/CASC–1.

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students in the Canal Zone school system.

a. Enrollment Records: Documents relating to the admission, registration and departure of all students attending Canal Zone schools. Included are: registration/sponsorship cards, registration and class lists, kindergarten information cards, authorization for tuition student enrollment, tuition payment records and loan file, withdrawal records, and similar or related documents.

b. Daily Attendance Register Records: Documents reflecting the daily attendance of pupils at schools. Included are absent and tardy reports, student pass slips, detention lists, suspension lists, and correspondence dealing with attendance.

c. Student Evaluation Records: Documents reflecting grades, personality traits, and promotion or failure. Included are: report cards, unsatisfactory work reports, weekly progress reports, academic suspension lists, and similar or related documents.

d. Cumulative Records: Documents pertaining to individual school students. Included in each folder are: standardized test scores, health records, accident reports, special test results, student grades and credits earned, attendance records, individual reading records, activity record card, rank in class, honors, correspondence, anecdotal records related to pupil progress and characteristics, educational evaluation reports, transcripts of academic work at other

educational institutions, and similar or related documents.

e. Guidance Records: Documents pertaining to individual school students. Included are: test scores, personality rating, grades, conference reports, teacher comments and observations, anecdotal records, parental interviews, educational evaluations, psychological reports, and similar or related documents.

f. Rosters: Documents listing students who participate in or are members of curricular or extracurricular activities. Included, for example, are participants in athletic, scholarships, Junior ROTC, driver and motorcycle training, and Safe Haven programs; dormitory residents; student assistants; members of student associations; and applicants to the U.S. Service academies.

g. Student Scholastic Records Program: Information pertaining to scholastic records of students registered in Canal Zone schools. Includes student's name and address; parent/sponsor's name and address; employee or sponsor status; class rosters; grade and class schedules; billing information (sponsored, non-sponsored, or reimbursable rates for sponsoring agency); transportation and residence codes; contract information; scheduling information; student grades and attendance; student testing, analysis, and evaluations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 31 and 33; Congressional appropriations acts providing for operation of Canal Zone schools: 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the following individuals or organizations outside the Canal agencies for the specific purposes indicated:

1. A school to which transcript of individual's record is sent and with which correspondence is exchanged in connection with individual's possible or actual transfer or entry into that school.

2. Prospective employers, when record of individual's academic history is requested in connection with individual's application for employment.

3. Organizations offering scholarships to students, and committees appointed by the Governor to screen and make recommendations to him for appointments to the U.S. Service and Merchant Marine academies.

4. President's Council for Physical Fitness to compile comparative data on physical fitness of students and to evaluate students and schools for achievements.

5. Community athletic leagues, youth programs, and other organizations sponsoring activities and events for students, to the extent that the information is public information or is required by the organization, under an agreement with the Schools Division, to assure that the student meets school standards for participation.

See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders; individual forms; cards; microfilm; magnetic tape/disks, punched cards, and computer printouts.

RETRIEVABILITY:

Student records are filed alphabetically by school and by name of student, and chronologically by school year. The teacher class register file is filed alphabetically by school and by name of teacher, and chronologically by school year. Information in the Student Scholastic Records Program is retrieved from the computer by student number.

SAFEGUARDS:

Paper records and microfilm stored in metal file equipment in buildings or offices locked when not in use. Magnetic tapes/disks and punched cards stored in locked rooms when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

When student graduate or withdraw from school, their cumulative files are transferred to the Agency Records Center for permanent retention. All other student files are maintained at individual schools for 1 to 5 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Agency Records Officer, Admin. Bldg., Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the official designated in Notification Procedures, preceding. Written requests should contain the following information: current name and, if different, the name used while a student, date of birth, names of schools attended and dates of attendance.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Students, parents or guardians or responsible persons, counselors, teachers, other school staff, medical personnel, and other schools attended by students.

PCC–CZG/FVGA–2

SYSTEM NAME:

Cash Register Receipt Shortages, PCC–CZG/FVGA–2.

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who experience cash register shortages.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained to determine potential weakness in cash controls and may be referred to in routine cash audits or as the basis for a cash audit. Records contain information such as employee's name, cash register number, retail unit, date and amount of cash shortage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 65, 66, 76A Stat. 11.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Forms in file folders.

RETRIEVABILITY:

Filed by retail area in chronological sequence. Retrievable by employee name.

SAFEGUARDS:

Stored in locked file cabinets in building locked when not in use. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed by shredding after two years.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

service records: Information regarding mortuary services furnished.

4. To provide basis for administrative and professional decisions regarding the

NOTIFICATION PROCEDURE:

Information may be obtained from

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Retail unit managers.

PCC-CZG/GE-1 (STATE-39)

SYSTEM NAME:

Visa records. PCC-CZG/GE-1 (STATE-39).

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for visas aliens who may be eligible to receive visas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visa applications accompanied by documents such as birth certificates, marriage certificates, spouses' birth certificates, affidavits of support, police records, and medical examinations; letters from interested parties; and communications between the Visa Office and the Visa Office, Department of State, consulates, other U.S. Government agencies, international organizations, and foreign missions regarding the eligibility, issuance, revalidation, and extension of visas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1101–1503; see in particular 8 U.S.C. 1101 (a)(9); 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from these records may be released to the Visa Office, Department of State, other U.S. consular offices, and the Immigration and Naturalization Service to coordinate the issuance of visas; to other government agencies that have statutory or other lawful authority to maintain such information; and to interested parties inquiring as to the statut of a particular case. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders, cards, and individual forms.

RETRIEVABILITY:

Filed alphabetically by name of applicant.

SAFEGUARDS:

Filed in a locked file cabinet in a building with around-the-clock guard. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Retention of these records varies from one year to an indefinite period of time, depending upon the specific type of record involved. They are retired or destroyed in accordance with published schedules of the Department of State.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the addressee in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The individuals; members of Congress; the public interested in the visa applicant's case; Department of State and other U.S. Government agencies; U.S. Consular offices; foreign missions; international organizations; and local sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records contained within this system of records are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) by the Department of State. See 22 CFR 6a.6(i), and (j)(1)–(3).

PCC-CZG/HL-1

SYSTEM NAME:

Health, Medical, Dental, and Veterinary Records Systems. PCC-CZG/HL-1.

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Canal agencies; individuals in the service of and sponsored by a U.S. Government agency (U.S. Armed Forces, State Department, Veterans Administration, U.S. Public Health Service, Federal Aviation Administration; Federal Highway Administration; Smithsonian Institute); retired U.S. Government employees; district dentists and their employees; conessionaires of the Canal organization; Canal Zone land licensees; Canal Zone religious, social, charitable, and educational workers; U.S. Government contractors and their employees; Canal Zone commercial company employers; and the dependents of individuals in the preceding categories who reside with the individuals. Persons other than dependents who are U.S. Government authorized Canal Zone visitors or residents; merchant seamen in transit and unsponsored individuals from ocean-going vessels; prisoners at the Canal Zone Penitentiary; charity cases sponsored by the Canal Zone United Way and teaching cases; non-resident private pay patients; and noneligible, nonsponsored individuals receiving emergency treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Qualification physical examinations: Pre-employment, and periodic medical examinations to determine fitness for duty consistent with job qualifications and requirments. Inpatient hospital medical charts: All medical information and records relating to an individual's hospitalization. Outpatient medical charts: Documentation of medical treatment received by an individual on an outpatient basis from hospital, clinics, first aid stations, and other health facilities. Also may contain abstracts of inpatient hospitalizations. Public health records: Information on individuals in community health programs for control of communicable diseases, industrial health, school health, quarantine, sanitation, and environmental quality control. Mental health records: All medical information and records which pertain to an individual's outpatient and/or inpatient treatment for psychiatric services, drug and alcohol rehabilitation, and other social service or psychological support. Dental care records: Information relating to an individual's history of dental care as documented in separate and distinct dental care records. Animal care and hospitalization records: Information which pertains to the quarantine, care and treatment of animals. Mortuary service records: Information regarding mortuary services furnished.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 911 and 912, 76A Stat. 36; 5 C.Z.C. 1631–56, 76A Stat. 353–360; 6 C.Z.C. 1101, 2, and 9, 76A Stat. 448 and 450; 8 C.Z.C. 4784, 76A Stat. 540; 21 U.S.C. 1171–5 and 1180; 42 U.S.C. 257 and 4561; P.L. 93–282; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information that does not relate to alcohol of drug abuse may be released from these records to the extent needed, as follows:

1. To other Federal agencies and offices that are responsible by statute or other competent authority for Federal programs to which the records are pertinent, such as the components of the U.S. Armed Forces, the Social Security Administration, the Veterans Administration, the Civil Service Commission, retired military pay centers.

2. To the Communicable Disease Center, Atlanta, Georgia, and private contractors providing benefits under the auspices of the Canal or other Federal agencies.

3. To the police or other competent authority when the director of the hospital or other Health Bureau unit determines that prompt release of such information is essential for the apprehension of a criminal, protection of the patient, or protection of the public. Examples would be cases involving suspected child abuse, death from unnatural causes, or communicable disease.

Information may be released from these records to the extent needed, as follows:

1. To officials of other Federal agencies when requested in writing for purposes of determination of cause of death, compilation of vital statistics, management or financial audits or program evaluation, and approved scientific research in which patient identity will not be disclosed.

2. To respond to general requests for statistical information, under the Freedom of Information Act while maintaining individual anonymity.

3. To provide documentation to sponsoring agencies or other foreign governments as regards their patients consistent with the need-to-know rules of confidentiality, and procedural security in the release of information.

4. To provide basis for administrative and professional decisions regarding the coordination with U.S. foreign, and international health agencies in disease prevention and control, including information related to zoonotic and agricultural disease; inspection, surveillance, and control of food products; and international quarantine measures.

5. To medical personnel to the extent necessary to meet a bona fide emergency.

6. To a court of competent jurisdiction if authorized by an appropriate order granted after application showing good cause therefor.

See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders, individual forms, and cards.

RETRIEVABILITY:

Records or cross-reference index cards providing access to records are filed alphabetically by name.

SAFEGUARDS:

Stored in metal file cabinets or shelf files in either file rooms locked when not in use, buildings locked when not in use, or buildings with around-the-clock guards. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Physical examination records except for those held for transfer into official personnel folder destroyed after 6 years; hospital inpatient medical charts destroyed 25 years after patient's discharge from hospital; outpatient medical charts destroyed 6 years after year of last entry in file; medical x-rays and radiographic reports filed separately from medical charts destroyed after 8 years except for selected items held indefinitely for teaching or claims purposes; veterans; case files destroyed 6 years after date of last papers in folders; venereal disease charts filed separately from medical charts destroyed 6 years after last entry; mental health patient records destroyed 6 years after last entry; patient index cards are permanent; program files are permanent; and duplicate records are destroyed after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from Agency Records Officer, Admin. Bldg., Balboa Heights, Republic of Panama.

Individuals requesting information should provide full name, date of birth, social security number (optional), agency affiliation at time of medical treatment, inclusive dates, when medical treatment was rendered, or other specific information applicable to the inquiry that might assist in identification. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Agency Records Officer, Panama Canal Commission, APO Miami 34011. Procedures for disclosure of information from the medical records of the individual requesting access are set forth in 35 CFR 10.9.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The individual to whom the medical record pertains; attending physicians and allied health personnel involved in the patient's treatment; medical records and information received from outside sources; and information from sponsoring agencies.

PCC-CZG/HL-2

SYSTEM NAME:

Medical Administration System Exempt, PCC-CZG/HL-2

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Canal agencies; individuals in the service of and sponsored by a U.S. Government agency (U.S. Armed Forces, State Department, Veterans Administration, U.S. Public Health Service, Federal Aviation Administration; Federal Highway Administration; Smithsonian Institute, etc.); retired U.S. Government employees; district dentists and their employees; concessionaires of the Canal organization; Canal Zone land licensees; Canal Zone religious, social, charitable, and educational workers; U.S. Government contractors and their employees; Canal Zone commercial company employees; and the dependents of individuals in the preceding categories who reside with the individuals. Persons other than dependents who are U.S. Government authorized Canal Zone visitors or

residents; merchant seamen in transit and unsponsored individuals from ocean-going vessels; prisoners at the Canal Zone Penitentiary; charity cases sponsored by the Canal Zone United Way and teaching cases; nonresident

Zone to coordinate the medical treatment of victims of child abuse and the provision of professional assistance for those involved in such cases.

3. To members of the community and other Government organizations who

sources; administrative, professional, and investigatory personnel and records; testimonies and statements of individuals concerned with case; court, police, and personnel records; and information from sponsoring agencies.

Information maintained in connection with the monitoring of medical specialty training programs and certification of accreditation, including information on state and Canal Zone medical licenses held by individuals. Curriculum vitaes:

a. Hospital Census Program: Persons who are inpatients at Canal Zone medical facilities at the time the report is compiled. Includes the patient's name and/or name of sponsoring employee or agency; the patient's sex, marital status,

organizations in the Canal Zone in connection with treatment and professional assistance in child abuse cases and in connection with adoption, foster home, and other social service programs; and

residents; merchant seamen in transit and unsponsored individuals from ocean-going vessels; prisoners at the Canal Zone Penitentiary; charity cases sponsored by the Canal Zone United Way and teaching cases; nonresident private pay patients; noneligible, nonsponsored individuals receiving emergency treatment; and children placed for adoption or in foster homes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medico-legal: Documentation and correspondence which relates to medical records and is obtained in the processing of blood alcohol and urine drug screening procedures, rape cases, injury and claim cases, deaths and other unusual incidences. Investigation records: Detailed audits, special and routine investigations and inquiries regarding Health Bureau activities. Child abuse program: Files relating to the administrative and professional management of suspected and actual cases of child abuse. Social Services files: Files containing personal information resulting from case studies and social work counseling. Adoption program: Background information on social services management of pre-adoption home studies, child placement, counseling and follow-up actions. Foster home program: Personal data and background studies on persons interested in participation in the Foster Home Program. Complaints: Background information and investigative correspondence promulgated by complaints regarding medical care rendered. Utilization and peer review files: Sensitive information regarding the quality of care provided to patients, reasons for length of stay of patients, and other monitoring requirements as specified by accrediting agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 31–33, 911 and 912, 76A Stat. 7, 76A Stat. 36; 5 C.Z.C. 1631–56, 76A Stat. 353–360; 6 C.Z.C. 541 and 4784, 76A Stat. 429 and 540; 8 C.Z.C. 381–7, 76A Stat. 690–1; 21 U.S.C. 1171–5 and 1180; 42 U.S.C. 257 and 4561; and P.L. 91–513, and 93–282; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released from these records to the extent needed, as follows:

1. To the Joint Commission for Accreditation of Hospitals for hospital accreditation.

2. To officials of other Governments and private organizations in the Canal Zone to coordinate the medical treatment of victims of child abuse and the provision of professional assistance for those involved in such cases.

3. To members of the community and other Government organizations who are serving on committees or are assigned to adoption, foster home, and other social service programs.

See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed or cross-referenced alphabetically by name.

SAFEGUARDS:

Stored in locked file cabinets in buildings locked when not in use or buildings with around-the-clock guards. Access and use are restricted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained from Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

Individuals requesting information should provide full name, date of birth, social security number (optional), agency affiliation at time of medical treatment, inclusive dates when medical treatment was rendered, or other specific information applicable to the inquiry that might assist in identification. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Systems Manager. Procedures for disclosure of information from the Medical records of the individual requesting access are set forth in 35 CFR 10.9.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

The individual to whom the medical record pertains; attending physicians and allied health personnel involved in the patient's treatment; medical records and information received from outside sources; administrative, professional, and investigatory personnel and records; testimonies and statements of individuals concerned with case; court, police, and personnel records; and information from sponsoring agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All information in this system which is investigatory material compiled for law enforcement purposes or would reveal the identity of confidential sources is exempt from certain subsections of 5 U.S.C. 552a and from the procedures for access and contest set forth in the agency's regulations. See 35 CFR 10.22

PCC-CZG/HL-3

SYSTEM NAME:

Medical Administration System—Nonexempt, PCC-CZG/HL-3.

SYSTEM LOCATION:

Agency Records Center, Building 42–D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Panama Canal Company and Canal Zone Government; individuals in the service of and sponsored by other U.S. Government agencies (U.S. Armed Forces, State Department, Veterans Administration, U.S. Public Health Service, Federal Aviation Administration; Federal Highway Administration; Smithsonian Tropical Research Institute, etc.); retired U.S. Government employees; district dentists and their employees; concessionaires of the Canal Zone organization; Canal Zone land licensees; Canal Zone religious, social, charitable, and educational workers; U.S. Government contractors and their employees; Canal Zone commercial company employees; and the dependents of individuals in the preceding categories who reside with the individuals. Persons other than dependents who are U.S. Government-authorized Canal Zone visitors or residents; merchant seamen in transit and unsponsored individuals from ocean-going vessels; prisoners at the Canal Zone Penitentiary; charity cases sponsored by the Canal Zone United Way and teaching cases; nonresident private pay patients; and noneligible, nonsponsored individuals receiving emergency treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Vital statistics records: Birth and death records, and correspondence related thereto. Individual registration, licensure, and certification records: Information maintained in connection with the monitoring of medical specialty training programs and certification of accreditation, including information on state and Canal Zone medical licenses held by individuals. Curriculum vitaes: Comprehensive information on qualifications and background of key Health Bureau employees and visting consultants. Drug and controlled substances records: Administrative files maintained in accordance with regulations relating to the control of narcotics. Program accreditation and certification records: Correspondence and reports relating to the management and control of activities by the professional and administrative staff, including identification of deficiences. Medical treatment indices: Records maintained by patient, disease code, physician, patient age, patient length of stay, discharge, diagnoses, and operative procedures to meet requirements of the Joint Commission for Accreditation of Hospital. Hospitals billing and bill reduction and cancellation records: Billings to insurance companies and through Agents Accounts and Payroll Branches and information obtained to make determinations regarding the ability of individuals to pay for medical treatment. Housing exceptions records: Medical backup information used in evaluating formal written requests from employees for assignment for medical reasons to government housing for which they are otherwise ineligible. Fiscal accounting records: Information regarding medical treatment rendered and tariff charges, including patient invoices. Blood bank and donor records: Information specifying donors' blood types, addresses, telephone numbers, and blood donations. Locator records: Information on location, status, and assignments of patients and employees. Hospital population records: Listings of patient. Veterans Administration data: Information pertinent to the hospitalization and treatment of Veteran Administration beneficiaries. Medical evaluation boards: Information on the composition and administration of medical evaluation boards. Aeromedical evacuation records: Information obtained for making determinations on the necessity of evacuating patients by air. Incident reports on such evacuations. Radiation exposure records: Data on individuals exposed to radiation. Community health and environmental reports. Medical Correspondence records.

The following portions of the system are on computer.

a. Hospital Census Program: Persons who are inpatients at Canal Zone medical facilities at the time the report is compiled. Includes the patient's name and/or name of sponsoring employee or agency; the patient's sex, marital status, religion, citizenship, residence, dates of admission, treatments and discharge.

b. Hospital Inpatient Billing and Statistical Program: Information, including name of patient, name of employee/sponsor or sponsoring agency, employing unit, address, telephone number, citizenship, insurance carrier, etc. of persons who are obtaining inpatient service at Canal Zone Government medical facilities.

c. Hospital Outpatient Billing Program: Information, including name of person receiving treatment during the period for which the report is compiled, the name of employee/sponsor or his sponsoring agency, employing unit, address, citizenship, telephone number, insurance carrier, etc. of persons obtaining outpatient services at Canal Zone Government medical facilities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 31–33, 911 and 912, 76A Stat. 7, 76A Stat. 36; 5 C.Z.C. 1631–56, 76A Stat. 353–360; 6 C.Z.C. 1101, 2, and 9, 76A Stat. 448 and 450; 6 C.Z.C. 4784, 76A Stat. 540; 21 U.S.C. 1171–5 and 1180; 42 U.S.C. 257 and 4561; and P.L. 91–513, and 93–282; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information that does not relate to alcohol or drug abuse may be released from these records to the extent needed, as follows:

1. To Federal agencies and other organizations responsible by statute or other competent authoriy for programs to which the information is pertinent, such as components of the U.S. Armed Forces, the Social Security Administration, the Veterans Administration, the Civil Service Commission, retired military pay centers, and the Joint Commission for Accreditation of Hospitals;

2. To law enforcement officials when Health Bureau officials determine that such disclosure is essential for the apprehension of a criminal, protection of the patient, or protection of the public;

3. To insurance companies and sponsoring agencies, organizations, or foreign governments for the purpose of documenting treatment or billings;

4. To officials of other agencies, foreign governments, and private organizations in the Canal Zone in connection with treatment and professional assistance in child abuse cases and in connection with adoption, foster home, and other social service programs; and

5. To United States, foreign and internationsl health officals and agencies, including the Communicable Disease Center, in connection with the reporting of human and animal communicable diseases.

See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders; cards; individuals forms; magnetic tape/disks and punched cards; and computer printouts.

RETRIEVABILITY:

Paper records or cross-reference index cards providing access to records are filed alphabetically by name. Information retrievable from computer by patient's or employee's number.

SAFEGUARDS:

Paper records stored in file equipment in rooms or buildings locked when not in use or in buildings with around-the-clock guards. Magnetic tape/disks and punched cards filed in locked rooms when not in use. Access and use restricted to authorized personnel.

RETENTION AND DISPOSAL:

Accounting and billing records destroyed after four years; blood donor cards, when donor no longer available or able to give blood; location records, when superseded; Veterans Administration beneficiaries, six years after date of last paper in folder; aeromedical evacuation records, after three years. Curriculum vitaes and individual registration, licensure, and certification records: for civilians, destroyed 1 year after separation; for military, retained 7 years after departure, transferred to Agency Records Center for 3 additional years, then destroyed. Drug and controlled substances records destroyed after 2 years. Program accreditation and certification records retained at least 3 years. Medical correspondence records retained 10 years before transfer to Agency Records Center. Computer-produced reports: Hospital Census Report destroyed when updated report issued; Hospital Inpatient and Statistical Report destroyed when updated report issued; Hospital Outpatient Billing

Report retained for 2 months after processing by billing personnel. Other records permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama

information on entry and departure, and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 841, 76A Stat. 32; E.O. 11305;

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Report retained for 2 months after processing by billing personnel. Other records permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURE:

Information may be obtained as appropriate from the Agency Records Officer, Admin. Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

Individuals requesting information should provide full name, date of birth, social security number (optional), agency affiliation at time of medical treatment, inclusive dates when medical treatment was rendered, or other specific information applicable to the inquiry that might assist in identification. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Systems Manager. Procedures for disclosure of information from the medical records of the individual requesting access are set forth in 35 CFR 10.9.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, medical and other administrative records, physicians and allied health personnel, other offices of the Canal agencies, schools and colleges, certifying and accrediting officials, the United States Armed Forces and the Veterans Administration, and other hospitals, physicians, boards, and committees

PCC-CZG/SC-4

SYSTEM NAME:

Refugee Records, PCC-CZG/SC-4

SYSTEM LOCATION:

Agency Records Center, Building 42-D, Diablo, Republic of Panama.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons granted temporary refuge in the Canal Zone because of civil disturbance or natural disaster or because they are seeking political asylum.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information about refugees and their families; documentation establishing refugee status, conduct agreements, housing arrangements, information on entry and departure, and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

2 C.Z.C. 841, 76A Stat. 32; E.O. 11305; 22 U.S.C. 2601-5; E.O. 11077; 22 U.S.C. 3611 (Supp. III 1979); Article III of the Panama Canal Treaty of 1977.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released from these records on a need-to-know basis to officials of the U.S. and foreign governments in connection with the rehabilitation or relocation of refugees. See also general routine use paragraphs in prefatory statement or in 35 CFR Part 10, Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name of refugee.

SAFEGUARDS:

Stored in locked metal file cabinets in building locked when not in use. Access and use are resticted to authorized personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Records Officer, Panama Canal Commission, APO Miami 34011.

NOTIFICATION PROCEDURES:

Information may be obtained from the Agency Records Officer, Admin, Bldg. Balboa Heights, Republic of Panama. Rules are published in 35 CFR Part 10.

RECORD ACCESS PROCEDURES:

Requests should be addressed to addressee designated in Notification Procedures, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10.

RECORD SOURCE CATEGORIES:

Subject individuals and members of their families; personnel of the Community Services Division, and officials of the canal agencies, other U.S. Government agencies and foreign governments concerned with the rehabilitation or relocation of refugees.

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Part III

Federal Labor Relations Authority

Privacy Act of 1974; Proposed New Systems of Records

FEDERAL LABOR RELATIONS AUTHORITY

Privacy Act of 1974; Proposed New Systems of Records

AGENCY: Federal Labor Relations Authority.

ACTION: Proposed new systems of records.

SUMMARY: The Federal Labor Relations Authority proposes to add two systems of records to its inventory of records systems subject to the Privacy Act of 1974, 5 U.S.C. 552a. The proposed systems are: (1) Occupational Health Program, and (2) Personnel Security Program.

EFFECTIVE DATE: The proposed systems will become effective as proposed without further notice on February 2, 1981, unless comments are received on or before that date which result in a contrary determination.

ADDRESS: Comments should be addressed to Harold Kaplan, Chief, Personnel Division, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

FOR FURTHER INFORMATION CONTACT: Harold Kaplan, Chief, Personnel Division, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424, (202) 653-8300.

SUPPLEMENTARY INFORMATION: The Federal Labor Relations Authority proposes to add two systems of records to its inventory of records systems subject to the Privacy Act of 1974, 5 U.S.C. 552a. The proposed systems are: (1) Occupational Health Program, and (2) Personnel Security Program.

The Authority has previously published notices of its systems of records at 44 FR 1635, January 8, 1979, as corrected at 44 FR 3446, January 16, 1979, and 44 FR 66565, November 20, 1979.

Accordingly, the Authority proposes to add the following systems of records to its inventory of records systems subject to the Privacy Act of 1974:

FLRA/PERSONNEL-1

SYSTEM NAME:

Occupational Health Program.

SYSTEM LOCATION:

Personnel Division, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Federal Labor Relations Authority who participate in the Occupational Health Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of employee utilization of services provided under the Federal Labor Relations Authority's Occupational Health Program. These records may include: Name, date of birth, social security number, sex, home address and phone number, name and address of next of kin, name and address of personal physician, and any other information developed relative to an employee's participation in the program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Records are maintained in locked file cabinets under the control of authorized personnel during working hours. The office is locked during nonworking hours.

RETENTION AND DISPOSAL:

Records are destroyed 3 years after employee separation or when 3 years old, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Division, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by employees participating in the Occupational Health Program.

FLRA/PERSONNEL-2

SYSTEM NAME:

Personnel Security Program.

SYSTEM LOCATION:

Personnel Division, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Federal Labor Relations Authority who require a security clearance.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of the personnel security program. These records may include: Name, date of birth, social security number, home address, type of security clearance required, and any other information developed relative to the granting of a security clearance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Records are maintained in locked file cabinets under the control of authorized personnel during working hours. The office is locked during nonworking hours.

RETENTION AND DISPOSAL:

Records are destroyed 3 years after employee separation or when 3 years old, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Division, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by employees participating in the Personnel Security Program.

Dated: December 19, 1980.

Harold Kaplan,

Chief, Personnel Division.

[FR Doc. 80-39307 Filed 12-23-80; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL LABOR RELATIONS AUTHORITY

Privacy Act of 1974; Proposed New Systems of Records

AGENCY: Federal Labor Relations Authority.

ACTION: Proposed New Systems of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Labor Relations Authority, including the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel, hereby publishes its systems of records in the Federal Register.

COMMENTS: All persons who desire to submit written comments, views, or arguments for consideration by the Authority in connection with the proposed new systems should submit same on or before (30 days from date of publication).

ADDRESS: Comments should be submitted to Robert J. Freehling, Solicitor, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424. Copies of such communications will be available for inspection by interested persons during normal business hours (8:15 a.m. to 4:45 p.m., Monday through Friday, excluding holidays) at the above address.

FOR FURTHER INFORMATION CONTACT: Robert J. Freehling, Solicitor, (202) 254–9592.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Federal Labor Relations Authority, including the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel, in accordance with the provisions of subsections (e)(4) and (e)(11) of section 552a of Title 5, United States Code, as added by section 3 of the Privacy Act of 1974 (Pub. L. 93–579), proposes to adopt the notice set forth herein of the existence and character of the systems or records it maintains which contain information retrievable by an individual identifier.

In addition to the Federal Labor Relations Authority's internal system of records, reference is herein made to systems of records which are government-wide and have been previously published in the Federal Register by the Office of Personnel Management. These systems may contain information on applicants to, and present or former employees of, the Federal Labor Relations Authority:

OPM/GOVT–1, General Personnel Records published on October 26, 1979 (44 FR 61705),

OPM/GOVT–3, Adverse Action Records published on October 26, 1979 (44 FR 61709),

OPM/GOVT–4 Ethics in Government Financial Disclosure Records published on December 29, 1978 (43 FR 60983),

OPM/GOVT–5 Recruiting, Examining and Placement Records published on October 26, 1979 (44 FR 61710),

OPM/GOVT–7 Applicant Race, Sex, Ethnicity and Disability Status Records published on October 12, 1979 (44 FR 59026), and

OPM/GOVT–9 Position, Classification Review and Retained Rate of Pay Appeal Files published on October 26, 1979 (44 FR 61713).

Prior to publication of these proposed new systems of records a "Report on New Systems" was filed with Congress and the Office of Management and Budget on September 29, 1980. These systems will become effective as proposed (30 days after date of the publication) unless comments received necessitate changes. The complete text of all Federal Labor Relations Authority systems notices appear below.

Dated: December 16, 1980.

Federal Labor Relations Authority.

Ronald W. Haughton,
Chairman.

Henry B. Frazier III,
Member.

Leon B. Applewhaite,
Member.

H. Stephan Gordon,
General Counsel, Federal Labor Relations Authority.

Howard G. Gamser,
Chairman, Federal Service Impasses Panel.

Narrative Statement

The Federal Labor Relations Authority, including the General Counsel of the Authority and the Federal Service Impasses Panel, were established under sections 301–303 of Reorganization Plan No. 2 of 1978 (3 CFR, 1978 Comp., p. 327) and continued under sections 7104 and 7119 of the Federal Service Labor-Management Relations Statute (5 U.S.C. 7104 and 7119). The Authority replaced the Federal Labor Relations Council and the Federal Service Impasses Panel established under Executive Order 11491 (3 CFR, 1966–1970 Comp., p. 864).

The proposed new systems of records supplement those previously maintained by the Council and the Panel, and constitute all systems of records maintained by the Authority, which contain information retrievable by an individual identifier.

The purpose of each system of records and the authority under which the system is maintained are set forth in the respective systems of records here attached.

The new systems are not expected adversely to affect the "privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals." Safeguards incorporated in each system should minimize the risk of improper use or disclosure of information. Additionally, the establishment of these system is not expected to have any discernible effect on the "preservation of the constitutional principle of federalism and separation of power."

The descriptions under the heading "Safeguards" in the respective new systems set forth the measures instituted to minimize the risk of unauthorized access to the records involved. Since such measures have proven adequate in similar systems, others alternatives were given only limited consideration.

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FLRA/Internal–1

SYSTEM NAME:

Employee Occupational Health Program Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains information relating to the Federal Labor Relations Authority's employees who have received health services under the Federal Employees Group Health Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of employee utilization of services provided under the Federal Labor Relations Authority's Occupational Health Program. These records contain the following information:

a. Medical history and other biographical data on those individuals requesting employee health maintenance physical examinations.

b. Test reports and medical diagnosis based on employee health maintenance physical examinations or health screening program tests (tests for single medical conditions or diseases).

c. History of complaint, diagnosis, and treatment of injuries and illnesses cared for at the Health Unit.

d. Vaccination Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901, as further defined in OMB Circular No. A–72.

PURPOSE(S):

These records document employee utilization of health services provided under the Federal Labor Relations Authority's Occupational Health Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To refer information required by applicable law to a Federal, State, or local public health service agency concerning individuals who have contracted certain communicable diseases or conditions. Such information is used to prevent further outbreak of the disease or condition.

b. To disclose information to the appropriate Federal, State, or local agency responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority.

c. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

d. To disclose information to the Office of Workers Compensation Programs in connection with a claim for benefits filed by an employee.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained on cards and in folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in a secured room, with access limited to personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained up to six years from the date of the last entry. Employees are given records at request upon separation; otherwise records are burned approximately three months after separation.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

c. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

c. Date of birth.

Individuals requesting access must follow the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Any former name.

c. Date of birth.

An individual requesting amendment must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the information pertains.

b. Laboratory reports and tests results.

c. The individual's co-workers or supervisors.

d. The individual's personal physician.

e. Other Federal employee health units.

FLRA/Internal–2

SYSTEM NAME:

Appeal and Administrative Review Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal Labor Relations Authority employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to various appeal or administrative review procedures available to Federal Labor Relations authority employees. The system also contains records and documentation of the action upon which the appeal or review procedure was based (e.g., 90-day notices of warning of unsatisfactory performance rating).

Note.—This system does *not* include: Appeal or complaint records covered by the Merit Systems Protection Board's system of Appeals Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, 4305, 5115, 5335, 7501, 7512, and Executive Order 10577.

PURPOSE(S):

These records are used to process the various appeals or administrative reviews available to Federal Labor Relations Authority employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local

pending judicial or administrative proceeding.

i. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or the Equal Employment Opportunity Commission when

official copy of an appeal or administrative review procedure record by contacting the System Manager. Individuals must provide the following information for their records to be located and identified:

a. Name.

complaints or inquiries have been received.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information or correspondence concerning an individual's employment status or conduct while employed by the Federal

e. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. To disclose in response to a request for discovery or for appearance of a

following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals requesting access must also comply with Federal Labor Relations Authority's Privacy Act regulations regarding access to records

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing an appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work-force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Adverse action appeals processed under the Federal Labor Relations Authority's internal appeals systems are retained for seven years after the closing of the case. Other records in the system are maintained for a maximum of four years after the closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURES:

Individuals involved in appeals and administrative review procedures are aware of that fact and have been provided access to the record. They may, however, contact the System Manager indicated above. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals involved in appeals and administrative review procedures are aware of that fact and have been provided access to the record. However, after the action has been closed, an individual may request access to the official copy of an appeal or administrative review procedure record by contacting the System Manager. Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of case and kind of action taken.

Individuals requesting access must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have previously been or could have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these cases will be restricted to determining if the record accurately documents the action of the agency or administrative body ruling on the case and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment of their records to correct factual errors should contact the System Manager. Individuals must furnish the following information for their records to be located and identified;

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

Individuals requesting amendment must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the records pertain.

b. Federal Labor Relations Authority officials involved in the appeal or administrative procedure.

c. Other official personnel records of the Federal Labor Relations Authority.

FLRA/Internal-3

SYSTEM NAME:

Complaints and Inquiries Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal Labor Relations Authority employees about whom complaints or inquiries have been received.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information or correspondence concerning an individual's employment status or conduct while employed by the Federal Labor Relations Authority. Examples of these records include: correspondence from Federal employees, Members of Congress, or members of the public alleging misconduct of a Federal Labor Relations Authority employee; miscellaneous debt correspondence received from creditors; and miscellaneous complaints not covered by the Federal Labor Relations Authority's formal or informal grievance procedures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222.

PURPOSE(S):

These records are used to take an action on or respond to a complaint or inquiry concerning an FLRA employee or to counsel the employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to a Federal Labor Relations Authority decision concerning the hiring or retention of an employee, the issuance of a security clearance, conduct of a security or suitability investigation of an individual or classification of jobs.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

2. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), the Equal Employment Opportunity Commission when requested in performances of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders which are separate from the employee's Official Personnel Folder.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets with access limited to personnel whose official duties require access.

RETENTION AND DISPOSAL:

These records are disposed of upon the transfer or separation of the employee or after 1 year, whichever is earlier. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Federal Labor Relations Authority's employees wishing to inquire whether this system contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Federal Labor Relations Authority's employees wishing to request access to their records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals requesting access must also comply with Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Federal Labor Relations Authority's employees wishing to request amendment of their records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals must also comply with the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the information pertains.

b. Federal employees, Members of Congress, creditors, or members of the public who submitted the complaint or inquiry.

c. Federal Labor Relations Authority's officials.

d. Other sources from whom information was requested regarding the complaint or inquiry.

FLRA/Internal-4

SYSTEM NAME:

Applicants for Employment Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424 and Federal Labor Relations Authority's regional offices (see list of regional offices in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for employment with the Federal Labor Relations Authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to applicants to the Federal Labor Relations Authority. The records include information such as: the individual's education and training; employment history and earnings; Social Security Number; home address; legal residence; birth date; birthplace, honors, awards or fellowships; military service; veterans preference; convictions of offenses

against the law; names of relatives employed in the Federal service; test records; date of application; qualification determinations; priority grouping; and other information or correspondence relating to the

of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in secured rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

Applications from individuals who are

from Certain Provisions of the Act," which appears below, indicates the kinds of materials exempted and the reasons for exempting them from amendment. An individual may contact an FLRA office where his or her

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a variety of records relating to an applicant's qualifications for employment in terms of character, reputation, and fitness; including letters of reference, responses to preemployment inquiries,

the requesting agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request if that individual.

against the law; names of relatives employed in the Federal service; test records; date of application; qualification determinations; employment consideration; priority grouping; and other information or correspondence relating to the consideration of the individual for employment. This system includes any Federal Labor Relations Authority applicant supply files established for making appointments outside a register; appointments to the excepted service; or reassignments, promotions, reinstatements, or transfers of Federal employees into positions at the Federal Labor Relations Authority.

Note.—This system does not include recruiting and examining records on applicants for general Federal employment. Such records are covered by the OPM/GOVT–5 system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, and 3302; and Executive Order 10577.

PURPOSE(S):

These records are used to consider applicants for employment with the Federal Labor Relations Authority. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to an Federal Labor Relations Authority decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant or other benefit.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. In contacting persons named as references, and present or former supervisors, for purposes of commenting upon, rating or verifying information about past performance submitted as part of job application.

j. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in secured rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

Applications from individuals who are selected for positions with the Federal Labor Relations Authority are placed on the permanent side of the employee's Official Personnel Folder. Applicant supply records maintained in accordance with Federal Personnel Manual Chapter 833 are disposed of after two years or after inspection of the Federal Labor Relations Authority's personnel program, whichever is earlier.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to records. The section of the notice titled "Systems Exempted From Certain Provisions of the Act," which appears below, indicates the kinds of materials exempted and the reasons for exempting them from access. Individuals wishing to request access to their nonexempt records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must also comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of the notice titled "Systems Exempted

from Certain Provisions of the Act," which appears below, indicates the kinds of materials exempted and the reasons for exempting them from amendment. An individual may contact an FLRA office where his or her application or other record in this system is filed at any time to update qualifications, experience, or education. Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of their nonexempt records under provisions of the Privacy Act should contact the System Manager.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals must also comply with the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

(a) the individual to whom the information pertains;

(b) Federal Labor Relations Authority officials;

(c) Other sources contacted to provide additional information about the individual under appropriate routine uses listed above in the notice.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process.

FLRA/Internal–5

SYSTEM NAME:

Preemployment Inquiry Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424 and Federal Labor Relations Authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for employment with the Federal Labor Relations Authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a variety of records relating to an applicant's qualifications for employment in terms of character, reputation, and fitness; including letters of reference, responses to preemployment inquiries, qualifications and character information, and other information which may relate to the specific selection factors associated with the position sought.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 3302, and 7301; and Executive Orders 10577, 11222, and 9397.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

PURPOSE(S):

These records are used by Federal Labor Relations Authority appointing and selecting officials to examine individuals seeking employment by consideration of factors present in such records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to a Federal Labor Relations Authority decision concerning the hiring or retention of an employee, the issuance of a security clearance, the classifying of jobs, or the letting of a contract.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request if that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. By the Office of Personnel Management in the production of summary analytical studies in support of the function for which the records are collected and maintained or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way to make the data individually identifiable by inference.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.ISSSTORAGE:

These records are maintained on cards or in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are located in locked metal file cabinets or in a secured room with access limited to personnel whose official duties require access.

RETEBTUIB AND DISPOSAL:

Records for individuals who are selected for position at the Federal Labor Relations Authority may be disposed of after the individual is appointed, or they may be retained for one year or until the employee separates, whichever is earlier. Records for other applicants are retained while the individual is under consideration for

employment and are disposed of when the individual's application is disposed

requesting the agency's decision on the matter.

following information for their records to be located and identified:

a. The individual on whom the record is maintained.

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employment and are disposed of when the individual's application is disposed of. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social Security Number.

Individuals making inquires must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information in the system should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social Security Number.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Certain materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled "Systems Exempted From Certain Provisions of the Act," which appears below, indicates the kinds of material exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment of other, nonexempt information in the system, should contact the System Manager, furnishing the following information:

a. Name.
b. Date of birth.
c. Social Security Number.

Individuals requesting amemdment must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the information pertains.

b. Federal Labor Relations Authority officials.

c. Sources from whom information was requested, such as former employers, references, or schools.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigatory material compiled during the preemployment inquiry stage of the selection process and designed solely for the purpose of determining eligibility or qualifications for Federal civilian employment. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about would:

a. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

b. Reveal the identity of the source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

For material in this system meeting these criteria, Federal Labor Relations Authority has claimed the (k)(5) exemption from the following provisions of the Act:

a. 5 U.S.C. 552a(c)(3)—This provision concerns providing an accounting of disclosure to the individual whom the records are about; and

b. 5 U.S.C. 552a(d)—This provision regards access to and amendment of records.

FLRA/INTERNAL-6

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances with the Federal Labor Relations Authority pursuant to Office of Personnel Management regulations regarding Agency Administrative Grievance Systems (5 CFR 771).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by agency employees under 5 CFR 771 of the Authority's regulations. These case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original decision, and related correspondence and exhibits. This system includes files and records of internal grievances, and of arbitration systems that may be established through negotiations with the union representing agency employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p218, E.O. 10987, 3 CFR 1959–1963 Comp., p519, agency employees, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

PURPOSE(S):

These records are used to store and document grievances based on employee dissatisfaction relative to actions taken within the discretion of the Federal Labor Relations Authority.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to

requesting the agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are disposed of 3 years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the System Manager. They must furnish the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Approximate date of closing of the case and kind of action taken.
d. Organizational component involved.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the System Manager.

Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Approximate date of closing of the case and kind of action taken.
d. Organizational component involved.

Individuals requesting access must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited to scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records of correct factual errors should contact the System Manager.

a. Name.
b. Date of birth.
c. Approximate date of closing of the case and kind of action taken.
d. Organizational component involved.

Individuals requesting amendment must follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment to records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.

b. Testimony of witnesses.

c. Agency officials.

d. Organizations or persons providing related correspondence.

FLRA/Internal-7

SYSTEM NAME:

Employee Incentive Award and Recognition Files.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal Labor Relations Authority employees who have filed suggestions or who were nominated for cash awards for performance, honorary awards under the Incentive Awards Program, and quality step increases.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes copies of employees suggestions, and information relating to the Federal Labor Relations Authority's disposition of the suggestions, including amounts of awards for adopted suggestions, evaluations, and amounts of benefits to the Government.

The system also contains information related to the nomination of an employee for a cash award for performance, an award under the Incentive Awards Program, or for a quality step increase, including justifications submitted with the nominations and the Federal Labor Relations Authority's disposition of the nominations and identifying information regarding the employee, including name, grade, occupation, and employing unit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4501 *et seq.* 5 U.S.C. 5336.

PURPOSE(S):

These records are collected and maintained to provide a basis for granting recognition to Federal Labor Relations Authority's employees in accordance with the provisions of the Federal Labor Relations Authority's Incentive Awards plan or for quality step increases; to document employees' contributions to the Suggestion Program; and to determine and verify employees' eligibility for subsequent awards. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To consider and select employees for Incentive awards and other honors

workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data

a. Full name.

b. Date of birth.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to record (5 CFR

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301 and 7901, 21 U.S.C. 1108, 42 U.S.C. 4561, 44 U.S.C. 3101, and Public Laws 91–616 and 92–255.

PURPOSE(S):

NOTIFICATION PROCEDURE:

Federal Labor Relations Authority employees wishing to inquire whether this system of records contains information about them should contact the System Manager. Individuals must furnish the following information for

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal Labor Relations Authority employees at the GS–15 or equivalent level who applied for the Federal Executive Development Program.

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ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To consider and select employees for Incentive awards and other honors and to publicize those granted. This may include disclosure to other public (Federal, State, or local) or private organizations, including news media, which grant or publicize employee awards or honors.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the sources of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to a Federal Labor Relations Authority decision concerning the adoption of a suggestion or the approval of the employee's nomination for an incentive award or quality step increase.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are stored in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in a secured area with access limited to those whose duties require access.

RETENTION AND DISPOSAL:

These records are maintained for 4 fiscal years. Expired records are shredded or burned.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to record (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment to records about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting amendment must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The employee who filed the suggestion.

b. Individuals who nominated the employee for an incentive award, or quality step increase.

c. Personnel documents of the Federal Labor Relations Authority.

FLRA/Internal-8

SYSTEM NAME:

Employee Assistance Program Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal Labor Relations Authority employees who have been counselled for abuse of alcohol or drugs, or personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to employees' visits to the Personnel Office for the purpose of receiving counselling for drug abuse, alcoholism, or behavioral or emotional problems. Such records would include data such as: employee name; nature of problem; summation of counselling given; date of session; and information relating to referral of employee to a professional person (professional counselor, physician, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301 and 7901, 21 U.S.C. 1108, 42 U.S.C. 4561, 44 U.S.C. 3101, and Public Laws 91–616 and 92–255.

PURPOSE(S):

These records are used to document the nature of the individual's problem and progress and, when necessary, to refer individuals to appropriate community or private resources for treatment or rehabilitation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

To disclose information to the Department of Justice or other appropriate Federal agencies in defending claims against the United States, when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Federal Labor Relations Authority in connection with such an individual.

Such disclosures will be restrictively made; in particular, disclosures of information pertaining to an individual with a history of alcohol or drug abuse will be limited in compliance with the restrictions of the confidentiality of Alcohol and Drug Abuse Patient Records regulations, 45 CFR Part 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked file cabinets with access limited to those persons whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained for 1 year after the employee's last contact with the counsellor, or until the employee's separation or transfer, whichever comes first. Records are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Federal Labor Relations Authority employees wishing to inquire whether this system of records contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Federal Labor Relations Authority employees wishing to request access to records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals requesting amendment must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.5).

CONTESTING RECORDS PROCEDURES:

Federal Labor Relations Authority employees wishing to request amendment to records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom it applies.

b. The Employee Assistance Counsellor who records the counselling session.

FLRA/INTERNAL-9

SYSTEM NAME:

Federal Executive Development Program Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal Labor Relations Authority employees at the GS–15 or equivalent level who applied for the Federal Executive Development Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain demographic information and background data on the experience, education, awards and career interests of applicants, their agency recommendations for the program, and supervisory evaluations. Note—this system does not include records of the evaluation process used by the selection panel in choosing the finalists, and data on assignments and progress under the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 11815, 12027, and 9397.

PURPOSE(S):

These records are maintained and used by the Federal Labor Relations Authority to nominate employees for the Federal Executive Development Program. When an employees is accepted for the Program, the records may be used to arrange work assignments and to monitor progress on assignments under the program. The Federal Labor Relations Authority may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to agencies in which the selected employee is or will be performing work assignments under the Federal Executive Development Program.

c. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually indentifiable by inference.

d. To disclose information to the appropriate Federal, State, or local

agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

h. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are stored in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in a secured area with access limited to those whose duties require access.

RETENTION AND DISPOSAL:

These records are maintained for 4 fiscal years. Expired records are shredded or burned.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to record (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment to records about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting amendment must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The employee who filed the suggestion.

b. Individuals who nominated the employee for an incentive award, or quality step increase.

c. Personnel documents of the Federal Labor Relations Authority.

FLRA/Internal-8

SYSTEM NAME:

Employee Assistance Program Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal Labor Relations Authority employees who have been counselled for abuse of alcohol or drugs, or personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to employees' visits to the Personnel Office for the purpose of receiving counselling for drug abuse, alcoholism, or behavioral or emotional problems. Such records would include data such as: employee name; nature of problem; summation of counselling given; date of session; and information relating to referral of employee to a professional person (professional counselor, physician, etc.). Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to record (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment to records about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting amendment must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The employee who filed the suggestion.

b. Individuals who nominated the employee for an incentive award, or quality step increase.

c. Personnel documents of the Federal Labor Relations Authority.

FLRA/Internal-8

SYSTEM NAME:

Employee Assistance Program Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal Labor Relations Authority employees who have been counselled for abuse of alcohol or drugs, or personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to employees' visits to the Personnel Office for the purpose of receiving counselling for drug abuse, alcoholism, or behavioral or emotional problems. Such records would include data such as: employee name; nature of problem; summation of counselling given; date of session; and information relating to referral of employee to a professional person (professional counselor, physician, etc.).

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Federal Labor Relations Authority employees wishing to inquire whether this system of records contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Federal Labor Relations Authority employees wishing to request access to records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals requesting amendment must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.5).

CONTESTING RECORDS PROCEDURES:

Federal Labor Relations Authority employees wishing to request amendment to records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom it applies.

b. The Employee Assistance Counsellor who records the counselling session.

FLRA/INTERNAL-9

SYSTEM NAME:

Federal Executive Development Program Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal Labor Relations Authority employees at the GS–15 or equivalent level who applied for the Federal Executive Development Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain demographic information and background data on the experience, education, awards and career interests of applicants, their agency recommendations for the program, and supervisory evaluations. Note—this system does not include records of the evaluation process used by the selection panel in choosing the finalists, and data on assignments and progress under the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 11815, 12027, and 9397.

PURPOSE(S):

These records are maintained and used by the Federal Labor Relations Authority to nominate employees for the Federal Executive Development Program. When an employees is accepted for the Program, the records may be used to arrange work assignments and to monitor progress on assignments under the program. The Federal Labor Relations Authority may use these records to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to agencies in which the selected employee is or will be performing work assignments under the Federal Executive Development Program.

c. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually indentifiable by inference.

d. To disclose information to the appropriate Federal, State, or local

g. To disclose information to officials of the Merit Systems Protection Board (including the Office of the Sepcial Counsel), or the Equal Employment Opportunity Commisison when requested in performance of their authorized duties.

agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are kept in locked cabinets and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are filed alphabetically by year. They are retained for five years, and are disposed of by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should address their inquiries to the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social Security Number.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social Security Number.

Individuals requesting access must follow the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the System Manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social Security Number.

Individuals requesting amendment must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the record pertains.

b. The individual's supervisor and other management officials.

c. Agency records.

FLRA/INTERNAL-10

SYSTEM NAME:

Employee Locator Card Files.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424 or Federal Labor Relations Authority's regional offices (See list of regional offices in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Federal Labor Relations Authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information regarding the organizational location and telephone extension of individual Federal Labor Relations Authority employees. The system also contains the home address and telephone number of the employee, and the name, address, and telephone number of an individual to contact in the event of a medical or other emergency involving the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Information is collected for this system for use in preparing telephone directories oif the extensions of Federal Labor Relations Authority employees. The records also serve to identify an individual for Federal Labor Relations Authority officials to contact, should an emergency of a medical or other nature involving the employee occur while the employee is on the job. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to another Federal agency or to a court when the Government is party to a suit before the court.

c. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained on cards.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in secured areas and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are maintained as long as the individual is an employee of the Federal Labor Relations Authority. Expired records are destroyed by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Federal Labor Relations Authority employees wishing to inquire whether this system contains information about them should contact the System Manager. Individuals must supply their full name for their records to be located and identified.

Individuals making inquiries must comply with the Federal labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Federal Labor Relations Authority employees wishing to request access to records about them should contact the System Manager. Individuals must supply their full name for their records to be located and identified.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Federal Labor Relations Authority employees may amend information in these records at any time by resubmitting the cards. Individuals wishing to request amendment of their records under the provisions of the Privacy Act should contact the System Manger. Individuals must supply their full name for their records to be located and identified.

Individuals requesting amendment must follow the FLRA's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual who is the subject of the record.

FLRA/INTERNAL-11

SYSTEM NAME:

Training Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424 or Federal Labor Relations Authority regional offices (See list of regional offices in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of FLRA who have completed Government-sponsored training.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an official personnel file copy and a subject-m[matter file copy of an authorization for training. Information on this copy contains the following: name; date of birth; years of civilian service; social security number; home address and telephone number; office address and telephone number; as well as applicable information relating to the course (title, cost, location, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 41 of Title 5, U.S.C. and Executive Order 11348.

PURPOSE(S):

These records are used to nominate and/or approve Federal Labor Relations Authority employees for training courses sponsored by the agency or non-government sources and for recording completion of scheduled training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

c. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contian individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

e. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To provide information to officials of labor organizations recognized under the Civil Service Reform Act, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

g. To disclose information to officials of the Merit Systems Protection Board (including the Office of the Sepcial Counsel), or the Equal Employment Opportunity Commisison when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in three-ring binders.

RETRIEVABILITY:

These records are retrieved by the name of the trainee on whom the records are maintained.

SAFEGUARDS:

These records are stored in locked metal cabinets and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are retained for three fiscal years and disposed of by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Social Security Number.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the System Manager. Individuals must furnish the following for their records to be located and identified:

a. Full name.
b. Social Security Number.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendent of their records should contact the System Manager.

Individuals must furnish the following for their records to be located and identified:

a. Full name.
b. Social Security Number.

by contacting the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Current or former Office organization.

c. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to a

SYSTEM MANAGER(S) ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals must furnish the following for their records to be located and identified:

a. Full name.

b. Social Security Number.

Individuals must also comply with the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the information pertains.

b. Federal Labor Relations officials.

FLRA/INTERNAL-12

SYSTEM NAME:

Performance Evaluation/Rating Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424 or Federal Labor Relations Authority regional offices (See list of regional offices in the Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FLRA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to periodic supervisory assessments of the work performance of each Federal Labor Relations Authority employee. the various elements of the system relate to: probationers, trainess, employees, supervisors, executive performance, and performance rating. These records are official copies of performance appraisals which have been conducted on a regularly scheduled basis.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 43 of Title 5, U.S.C.

PURPOSE(S):

The primary purpose of this system is to provide a means for evaluating the performance of employees in order to strengthen supervisor-employee understanding and relationships; recognize the merits of employees who have contributed to efficiency and economy in government operations; determine methods to increase the effectiveness with which employees do their work; and identify unsatisfactory employees who should be reassigned or separated.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING THE CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to another Federal agency or to a court when the Government is party to a suit before the court.

c. By the National Archives and Records Service (General Services Administration), in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

d. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual indentifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

e. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

f. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

g. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

h. To disclose information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrievable by name of the employee on whom the information is maintained.

SAFEGUARDS:

These records are stored in lockable metal file cabinets or insecured rooms with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Performance ratings may be disposed of after two years and performance evaluations related to merit promotion after five years. Records to be destroyed are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire as to whether this system contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Current or former Office organization.

c. If former employee, date of separation.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Current or former Office organization.

c. If former employee, dae of separation.

Individuals requesting access must also comply with Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals may request amendment of their records to correct factual errors by contacting the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Current or former Office organization.

c. If former employee, date of separation.

Individuals requesting amendment must follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system records is provided by the individual to whom the information pertains, by supervisors, and by higher level Federal Labor Relations Authority officials in the individual's organization.

FLRA/INTERNAL-13

SYSTEM NAME:

Intern Program and Upward Mobility Program Records.

SYSTEM LOCATION:

Office of Director of Personnel, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal Labor Relations Authority employees who participated in the Upward Mobility Program, the Cooperative Education Program, and/or the Legal Intern Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

SF 171 (Personal Qualifications Statement) containing employment history data and Individual Development Plans.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 41 of Title 5, U.S.C.

PURPOSE(S):

The purpose of the file is to document internships and upward mobility assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information to another Federal agency or to a court when the Government is party to a suit before the court.

c. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

f. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in pending judicial or administrative proceedings.

h. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), or Equal Employment Opportunity Commission when requested in performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

These records are retained for five years and disposed of by building or shredding.

SYSTEM MANAGER(S) ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals making inquiries must also comply with the Federal Labor Relations Authority's Privacy Act regulations regarding existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting amendments must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the information pertains.

b. Federal Labor Relations Authority officials.

FLRA/INTERNAL-14

SYSTEM NAME:

Motor Vehicle Operators Records and Motor Vehicle Accident Report Cards.

SYSTEM LOCATION:

Director of Administration, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Federal Labor Relations Authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains documents

from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. By the National Archives and

and are destroyed by shredding or burning.

Motor vehicle accident reports are maintained for six years after the date of the report, except in cases involving litigation. In cases involving litigation, records are to be maintained for a

c. Witnesses to the accident.

d. Police reports and reports of investigations conducted by Federal Labor Relations Authority investigators.

e. Officials of the Federal Labor Relations Authority and the General Services Administration.

filed by former Federal Labor Relations Authority employees for unemployment compensation.

d. By Federal Employees Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims for records reconciliations.

function for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Federal Labor Relations Authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains documents related to the authorization and issuance to an individual of a U.S. Government motor vehicle operator's identification card. Also included are reports, correspondence and fiscal documents concerning motor vehicle accidents occurring in Government owned or leased motor vehicles or privately owned motor vehicles while on official business.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 171 of Title 28, United States Code.

PURPOSE(S):

These records serve to document issuance of U.S. Government motor vehicle operator's identification cards, motor vehicle accident reports and related documents which may be used in claims settlement litigation regarding an accident involving a Government motor vehicle or a leased or privately owned motor vehicle while being used on official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of a civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and identify the type of information requested), where necessary to obtain information relevant to a Federal Labor Relations Authority decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a grant or other benefit.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

e. By the National Archives and Records Service (General Services Administration) in Records Management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

g. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation, the classifying of jobs, or the awarding of a contract, license, grant, or other benefit.

h. To disclose information to the General Services Administration about motor vehicle accidents involving Government-owned or leased motor vehicles.

i. To disclose information to insurance carriers about accidents involving privately owned motor vehicles.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintainted in file folders and on indexed application cards.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in a secured area with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Motor vehicle operator records are maintained for three years after the separation of the employee (operator) and are destroyed by shredding or burning.

Motor vehicle accident reports are maintained for six years after the date of the report, except in cases involving litigation. In cases involving litigation, records are to be maintained for a period of seven years. Records to be destroyed are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Administration, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact System Manager.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request an amendment to their records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting amendment also follow must Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the record pertains.

b. Federal Labor Relations Authority employees and other parties involved in the motor vehicle accident.

c. Witnesses to the accident.

d. Police reports and reports of investigations conducted by Federal Labor Relations Authority investigators.

e. Officials of the Federal Labor Relations Authority and the General Services Administration.

FLRA/INTERNAL-15

SYSTEM NAME:

Pay, Leave and Travel Records.

SYSTEM LOCATION:

Office of Administration, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Federal Labor Relations Authority.

CATEGORIES OF RECORDS MAINTAINED IN THE SYSTEM:

This system contains various records relating to pay, leave, and travel. This includes information such as: name, date of birth, Social Security Number, home address, grade, employing organization, timekeeper number, salary, pay plan, number of hours worked, leave accrual rate, usage, and balance; Civil Service Retirement contributions; FICA withholdings; Federal, State and local tax withholdings; Federal Employees' Group Life Insurance withholdings; Federal Employee's Health Benefits withholdings; charitable deductions; allotments to financial organizations; garnishment documents; savings bond allotments; and travel expenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 66a; 5 U.S.C. 5501, 5535 *et seq.*, 5701, and 6301 *et seq.*; Executive Order 9397.

PURPOSE(S):

These records are used to administer the pay, leave and travel requirements of the Federal Labor Relations Authority. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. By the Department of the Treasury to issue checks and U.S. Savings Bonds.

b. By the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness.

c. By state offices of unemployment compensation in connection with claims filed by former Federal Labor Relations Authority employees for unemployment compensation.

d. By Federal Employees Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims for records reconciliations.

e. To disclose information to the Internal Revenue Service and state and local tax authorities.

f. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Federal Labor Relations Authority becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

g. To disclose information to any source from which additional information is requested relevant to a Federal Labor Relations Authority determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

h. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

i. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

j. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

k. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

l. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

m. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

n. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

o. To disclose information to officials of: the Merit Systems Protection Board (including the Office of the Special Counsel), the Office of Personnel Management and its General Counsel and the Equal Employment Opportunity Commission in performance of their authorized duties. Information may also be disclosed to the General Accounting Office and the General Services for auditing purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained in file folders and loose leaf binders and on cards and magnetic tapes.

RETRIEVABILITY:

These records are retrieved by the names or Social Security Numbers of the individuals on whom they are maintained.

SAFEGUARDS:

These records are located in lockable metal filing cabinets or in a secured facility and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are maintained for varying periods of time, in accordance with GSA General Records Schedule 2. Disposal of manual records is by shredding or burning; magnetic tapes are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Administration, Federal Labor Relations Authority, 1900 E Street, NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them should contact the System Manager. Individuals must furnish the following for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing to request an amendment to their records should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

Individuals requesting amendment also follow must Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the record pertains.

b. Federal Labor Relations Authority employees and other parties involved in the motor vehicle accident.

c. Witnesses to the accident.

d. Police reports and reports of investigations conducted by Federal Labor Relations Authority investigators.

e. Officials of the Federal Labor Relations Authority and the General Services Administration.

f. Individuals who need the information in connection with the processing of an appeal, grievance or complaint.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social Security Number.

1240 E. Ninth Street, Cleveland, OH 44199.

Federal Labor Relations Authority, Federal Building & U.S. Customs House, Room 170, 721—19th Street, Denver, Colorado 80202.

c. Social Security Number.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding the existence of records (5 CFR 2412.4).

RECORD ACCESS PROCEDURES:

Individuals wishing access to records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social Security Number.

Individuals requesting access must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records (5 CFR 2412.5).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social Security Number.

Individuals requesting amendment must follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendment of records (5 CFR 2412.10).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual to whom the record pertains.
b. Federal Labor Relations Authority officials responsible for pay, leave, and travel requirements.
c. Other official personnel documents of the Federal Labor Relations Authority.

FLRA/Internal-16

SYSTEM NAME:

Occupational Injury and Illness Records.

SYSTEM LOCATION:

Office of Director of Personnel
1900 E Street NW.
Washington, D.C. 20424

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal Labor Relations Authority employees who have reported a work-related injury or illness.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include information pertaining to the complete history of the employee's occupational injury or illness, including any doctors' or investigative reports submitted, and the disposition of claims for compensation filed under the Federal Employees Compensation Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901, as further defined in OMB Circular A-72.

PURPOSE(S):

The purpose of these records is to document injuries as well as resultant claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to Federal Labor Relations Authority officials and employees in processing reports of occupational injury or illness and claims for compensation under the Federal Employees Compensation Act.

b. By the Office of Personnel Management in the production of summary analytical studies in support of the function for which the records are collected and maintained or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually indentifiable by inference.

c. To the U.S. Department of Labor for purposes of adjudicating claims for compensation under the Federal Employees Compensation Act.

d. To the U.S. Department of Human and Health Services in the administration of public health service programs.

e. To a court of competent jurisdiction for adjudicating claims arising under the Federal Employees Compensation Act.

f. To an investigator utilized by Federal Labor Relations Authority to obtain information relevant to a claim arising under the Federal Employees Compensation Act.

g. To the appropriate agency, whether Federal, State, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

h. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

i. To individuals who need the information in connection with the processing of an appeal, grievance or complaint.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are maintained on forms and related correspondence.

RETRIEVABILITY:

These records are retrieved alphabetically by the name of the individual on whom the records are maintained.

SAFEGUARDS:

These records are maintained in lockable file safes. Access is limited to personnel who have a need for access to perform their official functions.

RETENTION AND DISPOSAL:

These records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Federal Labor Relations Authority, 1900 E Street NW., Washington, D.C. 20424.

NOTIFICATION PROCEDURE:

Individuals inquiring whether this system contains information about them should contact the System Manager.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social Security Number.

Individuals making inquiries must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding existence of records. (5 CFR 2412.4)

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the System Manager.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social Security Number.

Individuals wishing to request access to records must comply with the Federal Labor Relations Authority's Privacy Act regulations regarding access to records. (5 CFR 2412.5)

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment to their records should contact the System Manager.

Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social Security Number.

Individuals requesting amendment must also follow the Federal Labor Relations Authority's Privacy Act regulations regarding amendments to records. (5 CFR 2412.10)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. Forms completed by the employee.
b. Witnesses.
c. Investigators.
d. Employee's supervisor.
e. Claims examiners of the U.S. Department of Labor.
f. Doctors' statements.

Appendix

Regional Offices:

Region I: Federal Labor Relations Authority, 441 Stuart Street, 8th Floor, Boston, MA 02116.

Region II: Federal Labor Relations Authority, Room 241, 26 Federal Plaza, New York, NY 10007.

Region III: Federal Labor Relations Authority, 1133 15th Street, NW., Suite 300, Washington, D.C. 20005.

Region IV: Federal Labor Relations Authority, Room 501, North Wing, 1776 Peachtree, NW., Atlanta, GA 30309.

Region V: Federal Labor Relations Authority, Room 1638, Dirksen Federal Building, 219 South Dearborn Street, Chicago, IL 60604.

Region VI: Federal Labor Relations Authority, Room 450, Old Post Office Building, Bryan and Ervay Street, Dallas, TX 75221.

Region VII: Federal Labor Relations Authority, Suite 680, City Center Square Building, 1100 Main Street, Kansas City, MO 64105.

Region VIII: Federal Labor Relations Authority, 350 S. Figueroa Street, 10th Floor, Los Angeles, CA 90071.

Region IX: Federal Labor Relations Authority, 450 Golden Gate Avenue, Room 11408, P.O. Box 36016, San Francisco, CA 94102.

Area Offices:

Federal Labor Relations Authority, William J. Green Federal Building, 600 Arch Street, Room 1424, Philadelphia, PA 19106.

Federal Labor Relations Authority, Room 821, Federal Office Building, 1240 E. Ninth Street, Cleveland, OH 44199.

Federal Labor Relations Authority, Federal Building & U.S. Customs House, Room 170, 721—19th Street, Denver, Colorado 80202.

[FR Doc. 80-40408 Filed 12-23-80; 8:45 am]

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Part IV

Environmental Protection Agency

Guidelines for Specification of Disposal Sites for Dredged or Fill Material

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 230

[W/H-FRL 1647-7]

Guidelines for Specification of Disposal Sites for Dredged or Fill Material

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is publishing guidelines for the specification of disposal sites for dredged or fill material. These guidelines are required by section 404(b)(1) of the Clean Water Act. They will be used by the Army acting through the Chief of Engineers to issue permits specifying disposal sites in accordance with the section 404(b)(1) Guidelines. Section 404(b)(2) allowed the Secretary to issue permits otherwise prohibited by the Guidelines if he concluded that compliance with the Guidelines would result in unacceptable economic impact on shipping, agriculture, water supply, or other uses. Experience with the Corps in working with the interim final Guidelines, have prompted a revision of the Guidelines. The proposed revision attempted to reorganize the Guidelines, to make it clearer what had to be considered in evaluating a

Guidelines related to other section 404 regulations.

The Clean Water Act prohibits the discharge of dredged or fill material except in compliance with section 404. Section 404 sets up a procedure for issuing permits specifying discharge site, or restrict its use, by following the procedures set out in section 404(c), if he determines that discharge would have an unacceptable adverse effect on fish and shellfish areas (including spawning and breeding areas), municipal water supplies, wildlife or recreation areas. He of either kind of violation, although they may represent the basis for particular permit conditions which are violated. Under the Corps' procedural regulations, the Corps may accept an application for an after-the-fact permit, in lieu of immediately commencing an

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 230

[WH-FRL 1647-7]

Guidelines for Specification of Disposal Sites for Dredged or Fill Material

AGENCY: Environmental Protection Agency.

ACTION: Rule.

SUMMARY: The 404(b)(1) Guidelines are the substantive criteria used in evaluating discharges of dredged or fill material under section 404 of the Clean Water Act. These Guidelines revise and clarify the September 5, 1975 Interim final Guidelines regarding discharge of dredged or fill material into waters of the United States in order to:

(1) Reflect the 1977 Amendments of Section 404 of the Clean Water Act (CWA);

(2) Correct inadequacies in the interim final Guidelines by filling gaps in explanations of unacceptable adverse impacts on aquatic ecosystems and by requiring documentation of compliance with the Guidelines; and

(3) Produce a final rulemaking document.

EFFECTIVE DATE: These Guidelines will apply to all 404 permit decisions made after March 23, 1981. In the case of civil works projects of the United States Army Corps of Engineers involving the discharge of dredged or fill material for which there is no permit application or permit as such, these Guidelines will apply to all projects on which construction or dredging contracts are issued, or on which dredging is initiated for Corps operations not performed under contract, after October 1, 1981. In the case of Federal construction projects meeting the criteria in section 404(r), these Guidelines will apply to all projects for which a final environmental impact statement is filed with EPA after April 1, 1981.

FOR FURTHER INFORMATION CONTACT: Joseph Krivak, Director, Criteria and Standards Division (WH-585), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone (202) 755-0100.

SUPPLEMENTARY INFORMATION:

Background

The section 404 program for the evaluation of permits for the discharge of dredged or fill material was originally enacted as part of the Federal Water Pollution Control Amendments of 1972. The section authorized the Secretary of the Army acting through the Chief of Engineers to issue permits specifying disposal sites in accordance with the section 404(b)(1) Guidelines. Section 404(b)(2) allowed the Secretary to issue permits otherwise prohibited by the Guidelines, based on consideration of the economics of anchorage and navigation. Section 404(c) authorized the Administrator of the Environmental Protection Agency to prohibit or withdraw the specification of a site, upon a determination that use of the site would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

Under section 404(b)(1), the Guidelines are to be based on criteria comparable to those in section 403(c) of the Act, for the territorial seas, contiguous zone, and oceans. Unlike 403(c), 404 applies to all waters of the United States. Characteristics of waters of the United States vary greatly, both from region to region and within a region. There is a wide range of size, flow, substrate, water quality, and use. In addition, the materials to be discharged, the methods of discharge, and the activities associated with the discharge also vary widely. These and other variations make it unrealistic at this time to arrive at numerical criteria or standards for toxic or hazardous substances to be applied on a nationwide basis. The susceptibility of the aquatic ecosystem to degradation by purely physical placement of dredged or fill material further complicates the problem of arriving at nationwide standards. As a result, the Guidelines concentrate on specifying the tools to be used in evaluating and testing the impact of dredged or fill material discharges on waters of the United States rather than on simply listing numerical pass-fail points.

The first section 404(b)(1) Guidelines were promulgated by the Administrator in interim final form on September 5, 1975, after consultation with the Corps of Engineers. Since promulgation of the interim final Guidelines, the Act has been substantially amended. The Clean Water Act of 1977 established a procedure for transferring certain permitting authorities to the states, exempted certain discharges from any section 404 permit requirements, and gave the Corps enforcement authority. These amendements also increased the importance of the section 404(b)(1) Guidelines, since some of the exemptions are based on alternative ways of applying the Guidelines. These changes, plus the experience of EPA and the Corps in working with the interim final Guidelines, have prompted a revision of the Guidelines. The proposed revision attempted to reorganize the Guidelines, to make it clearer what had to be considered in evaluating a discharge and what weight should be given to such considerations. The proposed revision also tightened up the requirements for the permitting authority's documentation of the application of the Guidelines.

After extensive consultation with the Corps, the proposed revisions were put out for public comment (44 FR 54222, September 18, 1979). EPA has reviewed, and, after additional consultation with the Corps, revised the proposal in light of these comments. This preamble addresses the significant comments received, explains the changes made in the regulation, and attempts to clear up some misunderstandings which were revealed by the comments. Response to Significant Comments

Regulation Versus Guideline

A number of commenters objected to the proposed Guidelines on the grounds that they were too "regulatory." These commenters argued that the term "guidelines" which appears in section 404(b)(1) requires a document with less binding effect than a regulation. EPA disagrees. The Clean Water Act does not use the word "guideline" to distinguish advisory information from regulatory requirements. Section 404(b)(2) clearly demonstrates that Congress contemplated that discharges could be "prohibited" by the Guidelines. Section 403 (which is a model for the 404 (b)(1) Guidelines) also provides for "guidelines" which are clearly regulatory in nature. Consequently, we have not changed the regulation to make it simply advisory. Of course, as the regulation itself makes clear, a certain amount of flexibility is still intended. For example, while the ultimate conditions of compliance are "regulatory", the Guidelines allow some room for judgment in determining what must be done to arrive at a conclusion that those conditions have or have not been met. See, for example, § 230.6 and § 230.60, and introductory sentence in § 230.10.

Statutory Scheme and How the Guidelines Fit Into It

A number of commenters with objections appeared confused about EPA's role in the section 404 program. Some wondered why EPA was issuing Guidelines since EPA could stop an unacceptable discharge under section 404(c). Others were uncertain how the

Guidelines related to other section 404 regulations.

The Clean Water Act prohibits the discharge of dredged or fill material except in compliance with section 404. Section 404 sets up a procedure for issuing permits specifying discharge sites. Certain discharges (e.g. emergency repairs, certain farm and forest roads, and other discharges identified in sections 404(f) and (r)) are exempted from the permit requirements. The permitting authority (either the Corps of Engineers or an approved State program) approves discharges at particular sites through application of the section 404(b)(1) Guidelines, which are the substantive criteria for dredged and fill material discharges under the Clean Water Act. The Corps also conducts a Public Interest Review, which ensures that the discharge will comply with the applicable requirements of other statutes and be in the public interest. The Corps or the State, as the case may be, must provide an opportunity for a public hearing before making its decision whether to approve or deny. If the Corps concludes that the discharge does not comply with the Guidelines, it may still issue the permit under 404(b)(2) if it concludes that the economics of navigation and anchorage warrant. Section 404(b)(2) gives the Secretary a limited authority to issue permits prohibited by the Guidelines; it does not, as some commenters suggested, require the Guidelines to consider the economics of navigation and anchorage. Conversely, because of 404(b)(2), the fact that a discharge of dredged material does not comply with the Guidelines does *not* mean that it can never be permitted. The Act recognizes the concerns of ports in section 404(b)(2), not 404(b)(1). Many readers apparently misunderstood this point.

EPA's role under section 404 is several-fold. First, EPA has the responsibility for developing the 404(b)(1) Guidelines in conjunction with the Corps. Second, EPA reviews permit applications and gives its comments (if any) to the permitting authority. The Corps may issue a permit even if EPA comments adversely, after consultation takes place. In the case of state programs, the State director may not issue a permit over EPA's unresolved objection. Third, EPA has the responsibility for approving and overseeing State 404 programs. In addition, EPA has enforcement responsibilities under section 309. Finally, under either the Federal or State program, the Administrator may also prohibit the specification of a discharge site, or restrict its use, by following the procedures set out in section 404(c), if he determines that discharge would have an unacceptable adverse effect on fish and shellfish areas (including spawning and breeding areas), municipal water supplies, wildlife or recreation areas. He may do so in advance of a planned discharge or while a permit application is being evaluated or even, in unusual circumstances, after issuance of a permit. (See preamble to 40 CFR Part 231, 44 FR 58076, October 9, 1979.) If the Administrator uses 404(c), he may block the issuance of a permit by the Corps or a State 404 program. Where the Administrator has exercised his section 404(c) authority to prohibit, withhold, or restrict the specification of a site for disposal, his action may not be overridden under section 404(b)(2). The fact that EPA has 404(c) authority does not lessen EPA's responsibility for developing the 404(b)(1) Guidelines for use by the permitting authority. Indeed, if the Guidelines are properly applied, EPA will rarely have to use its 404(c) veto.

The Clean Water Act provides for several uses of the Guidelines in addition to the individual permit application review process described above. For example, the Corps or an approved state may issue General permits for a category of similar activities where it determines, on the basis of the 404(b)(1) Guidelines, that the activities will cause only minimal adverse environmental effects both individually and cumulatively (Section 404(e) and (g)(1)). In addition, some of the exemptions from the permit requirements involve application of the Guidelines. Section 404(r) exempts discharges associated with Federal construction projects where, among other things, there is an Environmental Impact Statement which considers the 404(b)(1) Guidelines. Section 404(f)(1)(F) exempts discharges covered by best management practices (BMP's) approved under section 208(b)(4)(B) and (c), the approval of which is based in part on consistency with the 404(b)(1) Guidelines.

Several commenters asked for a statement on the applicability of the Guidelines to enforcement procedures. Under sections 309, 404(h)(1)(C), and 404(s), EPA, approved States, and the Corps all play a role in enforcing the section 404 permit requirements. Enforcement actions are appropriate when someone is discharging dredged or fill material without a required permit, or violates the terms and conditions of a permit. The Guidelines as such are generally irrelevant to a determination of either kind of violation, although they may represent the basis for particular permit conditions which are violated. Under the Corps' procedural regulations, the Corps may accept an application for an after-the-fact permit, in lieu of immediately commencing an enforcement action. Such after-the-fact permits may be issued only if they comply with the 404(b)(1) Guidelines as well as other requirements set out in the Corps' regulations. Criteria and procedures for exercising the various enforcement options are outside the scope of the section 404(b)(1) Guidelines.

Some commenters suggested that we either include specific permit processing procedures or that we cross-reference regulations containing them. Such procedures are described in 33 CFR Part 320–327 (Corps' procedures) and in 40 CFR Part 122–124 (minimum State procedures). When specific State 404 programs are approved, their regulations should also be consulted.

How Future Changes in the Testing Provision Relate to Promulgation of This Final Rule

The September 18, 1979, proposal contained testing provisions which were essentially the same as those in the Interim Final regulations. The Preamble to that proposal explained that it was our intention to propose changes in the testing provisions, but that a proposal was not yet ready. Consequently, while we have been revising the rest of the Guidelines, we have also been working on a proposal for reorganizing and updating the testing provisions. Now that we have finalized the rest of the Guidelines, two options are available to us. First, we could delay issuing any final revisions to our 1979 proposal until we could propose a revised testing package, consider comments on it, and finalize the testing provisions. We could then put together the Guidelines and the revised testing section in one final regulation. The 1975 interim final Guidelines would apply in their entirety until then. Second, we could publish the final Guidelines (with the 1975 testing provisions) and simultaneously propose changes to the testing provision. It is our present belief that proposed changes to the testing provision would not affect the rest of the Guidelines, but the public would be allowed to comment on any inconsistencies it saw between the rest of the Guidelines and the testing proposal. Then, when the comments to the testing proposal had been considered, we would issue a new final regulation incorporating both the previously promulgated final Guidelines and the final revised testing provision.

We have selected the second option because this approach ensures that needed improvements to the Guidelines are made effective at the earliest possible date, it gives the public ample opportunity to comment on the revised testing section, and it maintains the 1975

permits where environmental concerns make it appropriate. For example, cumulative impacts may turn out to be more serious than predicted. This regulation is not intended to establish the *procedures* for issuance of General permits. That is the responsibility of the

Guidelines that toxic pollutants on the section 307(a)(1) list are present in the aquatic environment unless demonstrated not to be, and that such pollutants are biologically available unless demonstrated otherwise. These commenters argued that rebutting these

practicable alternatives were available in non-aquatic areas to achieve the basic purposes of the proposal. We still support this goal, but we have changed the water-dependency test to better achieve it.

In addition, the 1975 provision effectively created a special, irrebuttable presumption that alternatives to wetlands were always less damaging to the aquatic ecosystem. Because our experience and the

misunderstanding of what the proposed alternatives analysis required. Therefore, we have decided to clarify the regulation, but have not changed its basic thrust.

Section 403(c) clearly requires that

We have selected the second option because this approach ensures that needed improvements to the Guidelines are made effective at the earliest possible date, it gives the public ample opportunity to comment on the revised testing section, and it maintains the 1975 testing requirements in effect during the interim which would be the case in any event.

Guideline Organization

Many readers objected to the length and complexity of the Guidelines. We have substantially reorganized the regulation to eliminate duplicative material and to provide a more logical sequence. These changes should make it easier for applicants to understand the criteria and for State and Corps permit evaluators and the Administrator to apply the criteria. Throughout the document, we have also made numerous minor language changes to improve the clarity of the regulations, often at the suggestion of commenters.

Following general introductory material and the actual compliance requirements, the regulations are now organized to more closely follow the steps the permitting authority will take in arriving at his ultimate decision on compliance with the Guidelines.

By reorganizing the Guidelines in this fashion, we were also able to identify and eliminate duplicative material. For example, the proposed Guidelines listed ways to minimize impacts in many separate sections. Since there was substantial overlap in the specific methods suggested in those sections, we consolidated them into new Subpart H. Other individual sections have been made more concise. In addition, we have decreased the number of *comments*, moving them to the Preamble or making them part of the Regulation, as appropriate.

General Permits

When issued after proper consideration of the Guidelines, General permits are a useful tool in protecting the environment with a minimum of red tape and delay. We expect that their use will expand in the future.

Some commenters were confused about how General permits work. A General permit will be issued only after the permitting authority has applied the Guidelines to the class of discharges to be covered by the permit. Therefore, there is no need to repeat the process at the time a particular discharge covered by the permit takes place. Of course, under both the Corps' regulations and EPA's regulations for State programs, the permitting authority may suspend General permits or require individual permits where environmental concerns make it appropriate. For example, cumulative impacts may turn out to be more serious than predicted. This regulation is not intended to establish the *procedures* for issuance of General permits. That is the responsibility of the permitting authority in accordance with the requirements of section 404.

Burden of Proof

A number of commenters objected to the presumption in the regulations in general, and in proposed § 230.1(c) in particular, that dredged or fill material should not be discharged unless it is demonstrated that the planned discharge meets the Guidelines. These commenters thought that it was unfair and inconsistent with section 404(c) of the Act.

We disagree with these objections, and have retained the presumption against discharge and the existing burden of proof. However, the section has been rewritten for clarity.

The Clean Water Act itself declares a national goal to be the elimination of the discharge of pollutants into the navigable waters (section 101(a)(1)). This goal is implemented by section 301, which states that such discharges are unlawful except in compliance with, *inter alia*, section 404. Section 404 in turn authorizes the permitting authority to allow discharges of dredged or fill material if they comply with the 404(b)(1) Guidelines. The statutory scheme makes it clear that discharges shall not take place until they have been found acceptable. Of course, this finding may be made through the General permit process and the statutory exemptions as well as through individual permits.

The commenters who argued that section 404(c) shifts the usual burden to the EPA Administrator misunderstood the relationship between section 404(c) and the permitting process. The Administrator's authority to prohibit or restrict a site under section 404(c) operates independently of the Secretary of the Army's permitting authority in 404(a). The Administrator may use 404(c) whether or not a permit application is pending. Conversely, the Secretary may deny a permit on the basis of the Guidelines, whether or not EPA initiates a 404(c) proceeding. If the Administrator uses his 404(c) "veto," then he does have the burden to justify his action, but that burden does not come into play until he begins a 404(c) proceeding (See 40 CFR Part 231).

Toxic Pollutants

Many commenters objected strenuously to the presumptions in the Guidelines that toxic pollutants on the section 307(a)(1) list are present in the aquatic environment unless demonstrated not to be, and that such pollutants are biologically available unless demonstrated otherwise. These commenters argued that rebutting these presumptions could involve individual testing for dozens of substances every time a discharge is proposed, imposing an onerous task.

The proposed regulation attempted to avoid unnecessary testing by providing that when the § 230.22(b) "reason to believe" process indicated that toxics were not present in the discharge material, no testing was required. On the other hand, contaminants other than toxics required testing if that same "reason to believe" process indicated they might be present in the discharge material. This is in fact a distinction without a difference. In practical application, toxic and non-toxic contaminants are treated the same; if either may be there, tests are performed to get the information for the determinations; if it is believed they are not present, no testing is done. Because the additional presumption for toxics did not actually serve a purpose, and because it was a possible source of confusion, we have eliminated it, and now treat "toxics" and other contaminants alike, under the "reason to believe test" (§ 230.60). We have provided in § 230.3 a definition of "contaminants" which encompasses the 307(a)(1) toxics.

Water Dependency

One of the provisions in the proposed Guidelines which received the most objections was the so-called "water dependency test" in the proposed § 230.10(e). This provision imposed an additional requirement on fills in wetlands associated with non-water dependent activities, namely a showing that the activity was "necessary." Many environmentalists objected to what they saw as a substantial weakening of the 1975 version of the water dependency test. Industry and development-oriented groups, on the other hand, objected to the "necessary" requirement because it was too subjective, and to the provision as a whole to the extent that it seemed designed to block discharges in wetlands automatically.

We have reviewed the water dependency test, its original purpose, and its relationship to the rest of the Guidelines in light of these comments. The original purpose, which many commenters commended, was to recognize the special values of wetlands and to avoid their unnecessary destruction, particularly when

practicable alternatives were available in non-aquatic areas to achieve the basic purposes of the proposal. We still support this goal, but we have changed the water-dependency test to better achieve it.

First, we agree with the comments from both sides that the "necessary" test imposed by the 1979 proposal is not likely to be workable in practice, and may spawn more disputes than it settles. However, if the "necessary" test is simply deleted, section 230.10(e) does not provide any special recognition of or protection for wetlands, and thus defeats its purpose. Furthermore, even if the "necessary" test were retained, the provision applies only to discharges of fill material, not discharges of dredged material, a distinction which lessens the effectiveness of the provision. Thus, we have decided, in accordance with the comments, that the proposal is unsatisfactory.

We have therefore decided to focus on, round out, and strengthen the approach of the so-called "water dependency" provision of the 1975 regulation. We have rejected the suggestion that we simply go back to the 1975 language, in part because it would not mesh easily with the revised general provisions of the Guidelines. Instead, our revised "water dependency" provision creates a presumption that there are practicable alternatives to "non-water dependent" discharges proposed for special aquatic sites. "Non-water dependent" discharges are those associated with activities which do not require access or proximity to or siting within the special aquatic site to fulfill their basic purpose. An example is a fill to create a restaurant site, since restaurants do not need to be in wetlands to fulfill their basic purpose of feeding people. In the case of such activities, it is reasonable to assume there will generally be a practicable site available upland or in a less vulnerable part of the aquatic ecosystem. The mere fact that an alternative may cost somewhat more does not necessarily mean it is not practicable (see § 230.10(a)(2) and discussion below). Because the applicant may rebut the presumption through a clear showing in a given case, no unreasonable hardship should be worked. At the same time, this presumption should have the effect of forcing a hard look at the feasibility of using environmentally preferable sites. This presumption responds to the overwhelming number of commenters who urged us to retain a water dependency test to discourage avoidable discharges in wetlands.

In addition, the 1975 provision effectively created a special, irrebuttable presumption that alternatives to wetlands were always less damaging to the aquatic ecosystem. Because our experience and the comments indicate that this is not always the case, and because there could be substantial impacts on other elements of the environment and only minor impacts on wetlands, we have chosen instead to impose an explicit, but rebuttable, presumption that alternatives to discharges in special aquatic sites are less damaging to the aquatic ecosystem and are environmentally preferable. Of course, the general requirement that impacts on the aquatic ecosystem not be unacceptable also applies. The legislative history of the Clean Water Act, Executive Order 11990, and a large body of scientific information support this presumption.

Apart from the fact that it may be rebutted, this second presumption reincorporates the key elements of the 1975 provision. Moreover, it strengthens it because the recognition of the special environmental role of wetlands now applies to all discharges in special aquatic sites, whether of dredged or fill material, and whether or not water dependent. At the same time, this presumption, like the first one described above, retains sufficient flexibility to reflect the circumstances of unusual cases.

Consistent with the general burden of proof under these Guidelines, where an applicant proposes to discharge in a special aquatic site it is his responsibility to persuade the permitting authority that both of these presumptions have clearly been rebutted in order to pass the alternatives portion of these Guidelines.

Therefore, we believe that the new § 230.10(a)(3), which replaces proposed 230.10(e), will give special protection to wetlands and other special aquatic sites regardless of material discharged, allay industry's concerns about the "necessary" test, recognize the possibility of impacts on air and upland systems, and acknowledge the variability among aquatic sites and discharge activities.

Alternatives

Some commenters objected at length to the scope of alternatives which the Guidelines require to be considered, and to the requirement that a permit be denied unless the least harmful such alternative were selected. Others wrote to urge us to retain these requirements. In our judgment, a number of the objections were based on a misunderstanding of what the proposed alternatives analysis required. Therefore, we have decided to clarify the regulation, but have not changed its basic thrust.

Section 403(c) clearly requires that alternatives be considered, and provides the basic legal basis for our requirement. While the statutory provision leaves the Agency some discretion to decide *how* alternatives are to be considered, we believe that the policies and goals of the Act, as well as the other authorities cited in the Preamble to the proposed Guidelines, would be best served by the approach we have taken.

First, we emphasize that the only alternatives which must be considered are *practicable* alternatives. What is practicable depends on cost, technical, and logistic factors. We have changed the word "economic" to "cost". Our intent is to consider those alternatives which are reasonable in terms of the overall scope/cost of the proposed project. The term economic might be construed to include consideration of the applicant's financial standing, or investment, or market share, a cumbersome inquiry which is not necessarily material to the objectives of the Guidelines. We consider it implicit that, to be practicable, an alternative must be capable of achieving the basic purpose of the proposed activity. Nonetheless, we have made this explicit to allay widespread concern. Both "internal" and "external" alternatives, as described in the September 18, 1979 Preamble, must satisfy the practicable test. In order for an "external" alternative to be practicable, it must be reasonably available or obtainable. However, the mere fact of ownership or lack thereof, does not necessarily determine reasonable availability. Some readers were apparently confused by the Preamble to the Proposed Regulation, which referred to the fact the National Environmental Policy Act (NEPA) may require consideration of courses of action beyond the authority of the agency involved. We did not mean to suggest that the Guidelines were necessarily imposing such a requirement on private individuals but, rather, to suggest that what we were requiring was well within the alternatives analyses required by NEPA.

Second, once these practicable alternatives have been identified in this fashion, the permitting authority should consider whether any of them, including land disposal options, are less environmentally harmful than the proposed discharge project. Of course, where there is no significant or easily identifiable difference in impact, the

alternative need not be considered to have "less adverse" impact.

Several commenters questioned the legal basis for requiring the permitting authority to select the least damaging

clear that where alternatives have been reviewed under another process, the permitting authority shall consider such analysis. However, if the prior analysis is not as complete as the alternatives analysis required under the Guidelines,

definition of "waters of the United States" because it was allegedly outside the scope of the Clean Water Act or of the Constitution or because it was not identical to the Corps' definition. We have retained the proposed definition

discharge which will create fast lands, the permitting authority should consider, in addition to the direct effects of the fill inself, the effects on the aquatic environment of any reasonably

in jurisdictional determinations. As we develop such materials, we will make them available to the public.

Other commenters suggested that we expand the list of examples in the second sentence of the wetland

imposed deadline, EPA issued final Consolidated Permit Regulations while the 404(b)(1) Guidelines rulemaking was still pending. These Consolidated Permit Regulations contained a new definition of fill material which eliminated the

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alternative need not be considered to have "less adverse" impact.

Several commenters questioned the legal basis for requiring the permitting authority to select the least damaging alternative. (The use of the term "select" may have been misleading. Strictly speaking, the permitting authority does not select anything; he denies the permit if the guidelines requirements have not been complied with.) As mentioned above, the statute leaves to EPA's discretion the exact implementation of the alternative requirement in section 403 of the Act. In large part, the approach taken by these regulations is very similar to that taken by the recent section 403(c) regulations (45 FR 65942, October 3, 1980). There is one difference; the Guidelines always prohibit discharges where there is a practicable, less damaging alternative, while the section 403(c) regulations only apply this prohibition in some cases. This difference reflects the wide range of water systems subject to 404 and the extreme sensitivity of many of them to physical destruction. These waters form a priceless mosaic. Thus, if destruction of an area of waters of the United States may reasonably be avoided, it should be avoided. Of course, where a category of 404 discharges is so minimal in its effects that it has been placed under a general permit, there is no need to perform a case-by-case alternatives analysis. This feature corresponds, in a sense, to the category of discharges under section 403 for which no alternatives analysis is required.

Third, some commenters were concerned that the alternative consideration was unduly focused on water quality, and that a better alternative from a water quality standpoint might be less desirable from, say, an air quality point of view. This concern overlooks the explicit provision that the existence of an alternative which is less damaging to the aquatic ecosystem does not disqualify a discharge if that alternative has other significant adverse environmental consequences. This last provision gives the permitting authority an opportunity to take into account evidence of damage to other ecosystems in deciding whether there is a "better" alternative.

Fourth, a number of commenters were concerned that the Guidelines ensure coordination with planning processes under the Coastal Zone Management Act, § 208 of the CWA, and other programs. We agree that where an adequate alternatives analysis has already been developed, it would be wasteful not to incorporate it into the 404 process. New § 230.10(a)(5) makes it clear that where alternatives have been reviewed under another process, the permitting authority shall consider such analysis. However, if the prior analysis is not as complete as the alternatives analysis required under the Guidelines, he must supplement it as needed to determine whether the proposed discharge complies with the Guidelines. Section 230.10(a)(4) recognizes that the range of alternatives considered in NEPA documents will be sufficient for section 404 purposes, where the Corps is the permitting authority. (However, a greater level of detail may be needed in particular cases to be adequate for the 404(b)(1) Guidelines analysis.) This distinction between the Corps and State permitting authorities is based on the fact that it is the Corps' policy, in carrying out its own NEPA responsibilities, to supplement (or require a supplement to) a lead agency's environmental assessment or impact statement where such document does not contain sufficient information. State permitting agencies, on the other hand, are not subject to NEPA in this manner.

We have moved proposed § 230.10(a)(1) (iii), concerning "other particular volumes and concentrations of pollutants at other specific rates", from the list of alternatives in § 230.10 to Subpart H, Minimizing Adverse Effects, because it more properly belongs there.

Definitions (§ 230.3)

A number of the terms defined in § 230.3 are also defined in the Corps' regulations at 33 CFR 323.2, applicable to the Corps' regulatory program. The Corps has recently proposed some revisions to those regulations and expects to receive comments on the definitions. To ensure coordination of these two sets of regulations, we have decided to reserve the definitions of "discharge of dredged material," "discharge of fill material," "dredged material," and "fill material," which otherwise would have appeared at § 230.3 (f), (g), (j), and (l).

Although the term "waters of the United States" also appears in the Corps' regulations, we have retained a definition here, in view of the importance of this key jurisdictional term and the numerous comments received. The definition and the comments are explained below.

Until new definitions are published, directly or by reference to the Corps' revised regulations, users of these Guidelines should refer to the definitions in 33 CFR 323.2 (except in the case of state 404 programs, to which the definitions in 40 CFR § 122.3 apply.)

Waters of the United States: A number of commenters objected to the definition of "waters of the United States" because it was allegedly outside the scope of the Clean Water Act or of the Constitution or because it was not identical to the Corps' definition. We have retained the proposed definition with a few minor changes for clarity for several reasons. First, a number of courts have held that this basic definition of waters of the United States reasonably implements section 502(7) of the Clean Water Act, and that it is constitutional (e.g., *United States* v. *Byrd, 609 F.2d 1204, 7th Cir. 1979; Leslie Salt Company* v. *Froehlke*, 578 F.2d 742, 9th Cir. 1978). Second, we agree that it is preferable to have a uniform definition for waters of the United States, and for all regulations and programs under the CWA. We have decided to use the wording in the recent Consolidated Permit Regulations, 45 Fed. Reg. 33290, May 19, 1980, as the standard.*

Some commenters suggested that the reference in the definition to waters from which fish are taken to be sold in interstate commerce be expanded to include areas where such fish spawn. While we have not made this change because we wish to maintain consistency with the wording of the Consolidated Permit regulations, we do not intend to suggest that a spawning area may not have significance for commerce. The portion of the definition at issue lists major examples, not *all* the ways which commerce may be involved.

Some reviewers questioned the statement in proposed § 230.72(c) (now § 230.11(h)) that activities on fast land created by a discharge of dredged or fill material are considered to be in waters of the United States for purposes of these Guidelines. The proposed language was misleading and we have changed it to more accurately reflect our intent. When a portion of the Waters of the United States has been legally converted to fast land by a discharge of dredged or fill material, it does not remain waters of the United States subject to section 301(a). The discharge may be legal because it was authorized by a permit or because it was made before there was a permit requirement. In the case of an illegal discharge, the fast land may remain subject to the jurisdiction of the Act until the government determines not to seek restoration. However, in authorizing a discharge which will create fast lands, the permitting authority should consider, in addition to the direct effects of the fill inself, the effects on the aquatic environment of any reasonably foreseeable activities to be conducted on that fast land.

Section 230.54 (proposed 230.41) deals with impacts on parks, national and historical monuments, national sea shores, wilderness areas, research sites, and similar preserves. Some readers were concerned that we intended the Guidelines to apply to activities in such preserves whether or not the activities took place in waters of the United States. We intended, and we think the context makes it clear, that the Guidelines apply only to the specification of discharge sites in the waters of the United States, as defined in § 230.3. We have included this section because the fact that a water of the United States may be located in one of these preserves is significant in evaluating the impacts of a discharge into that water.

Wetlands: Many wetlands are waters of the United States under the Clean Water Act. Wetlands are also the subject of Federal Executive Order No. 11990, and various Federal and State laws and regulations. A number of these other programs and laws have developed slightly different wetlands definitions, in part to accommodate or emphasize specialized needs. Some of these definitions include, not only wetlands as these Guidelines define them, but also mud flats and vegetated and unvegetated shallows. Under the Guidelines some of these other areas are grouped with wetlands as "Special Aquatic Sites" (Subpart E) and as such their values are given special recognition. (See discussion of Water Dependency above.) We agree with the comment that the National Inventory of Wetlands prepared by the U.S. Fish and Wildlife Service, while not necessarily exactly coinciding with the scope of waters of the United States under the Clean Water Act or wetlands under these regulations, may help avoid construction in wetlands, and be a useful long-term planning tool.

Various commenters objected to the definition of wetlands in the Guidelines as too broad or too vague. This proposed definition has been upheld by the courts as reasonable and consistent with the Clean Water Act, and is being retained in the final regulation. However, we do agree that vegetative guides and other background material may be helpful in applying the definition in the field. EPA and the Corps are pledged to work on joint research to aid in jurisdictional determinations. As we develop such materials, we will make them available to the public.

Other commenters suggested that we expand the list of examples in the second sentence of the wetland definition. While their suggested additions could legally be added, we have not done so. The list is one of examples only, and does not serve as a limitation on the basic definition. We are reluctant to start expanding the list, since there are many kinds of wetlands which could be included, and the list could become very unwieldy.

In addition, we wish to avoid the confusion which could result from listing as examples, not only areas which generally fit the wetland definitions, but also areas which may or not meet the definition depending on the particular circumstances of a given site. In sum, if an area meets the definition, it is a wetland for purposes of the Clean Water Act, whether or not it falls into one of the listed examples. Of course, more often than not, it will be one of the listed examples.

A few commenters cited alleged inconsistencies between the definition of wetlands in § 230.3 and § 230.42. While we see no inconsistency, we have shortened the latter section as part of our effort to eliminate unnecessary comments.

Unvegetated Shallows: One of the special aquatic areas listed in the proposal was "unvegetated shallows" (§ 230.44). Since special aquatic areas are subject to the presumptions in § 230.10(a)(3), it is important that they be clearly defined so that the permitting authority may readily know when to apply the presumptions. We were unable to develop, at this time, a definition for unvegetated shallows which was both easy to apply and not too inclusive or exclusive. Therefore, we have decided the wiser course is to delete unvegetated shallows from the special aquatic area classification. Of course, as waters of the United States, they are still subject to the rest of the Guidelines.

"Fill Material": We are temporarily reserving § 230.3(1). Both the proposed Guidelines and the proposed Consolidated Permit Regulations defined fill material as material discharged for the primary purpose of replacing an aquatic area with dryland or of changing the bottom elevation of a water body, reserving to the NPDES program discharges with the same effect which are primarily for the purpose of disposing of waste. Both proposals solicited comments on this distinction, referred to as the primary purpose test. On May 19, 1980, acting under a court-imposed deadline, EPA issued final Consolidated Permit Regulations while the 404(b)(1) Guidelines rulemaking was still pending. These Consolidated Permit Regulations contained a new definition of fill material which eliminated the primary purpose test and included as fill material all pollutants which have the effect of fill, that is, which replace part of the waters of the United States with dryland or which change the bottom elevation of a water body for any purpose. This new definition is similar to the one used before 1977.

During the section 404(b)(1) rulemaking, the Corps has raised certain questions about the implementation of such a definition. Because of the importance of making the Final Guidelines available without further delay, and because of our desire to cooperate with the Corps in resolving their concerns about fill material, we have decided to temporarily reserve § 230.3(1) pending further discussion. This action does not affect the effectiveness of the Consolidated Permit Regulations. Consequently, there is a discrepency between those regulations and the Corps' regulations, which still contain the old definition.

Therefore, to avoid any uncertainty from this situation, EPA wishes to make clear its enforcement policy for unpermitted discharges of solid waste. EPA has authority under section 309 of the CWA to issue administrative orders against violations of section 301. Unpermitted discharges of solid waste into waters of the United States violate section 301.

Under the present circumstances, EPA plans to issue solid waste administrative orders with two basic elements. First, the orders will require the violator to apply to the Corps of Engineers for a section 404 permit within a specified period of time. (The Corps has agreed to accept these applications and to hold them until it resolves its position on the definition of fill material.)

Second, the order will constrain further discharges by the violator. In extreme cases, an order may require that discharges cease immediately. However, because we recognize that there will be a lapse of time before decisions are made on this kind of permit application, these orders may expressly allow unpermitted discharges to continue subject to specific conditions set forth by EPA in the order. These conditions will be designed to avoid further environmental damage.

Of course, these orders will not influence the ultimate issuance or non-issuance of a permit or determine the conditions that may be specified in such a permit. Nor will such orders limit the

* The Consolidated Permit Regulations exclude certain waste treatment systems from waters of the United States. The exact terms of this exclusion are undergoing technical revisions and are expected to change shortly. For this reason, these Guidelines as published do not contain the exclusion as originally worded in the Consolidated Permit Regulations. When published, the corrected exclusion will apply to the Guidelines as well as the Consolidated Permit Regulations.

Administrator's authority under section 309(b) or the right of a citizen to bring suit against a violator under section 505 including the Coastal Zone Management Act. However, since some planning processes do not deal with specific

Executive Order 12044

A number of commenters took the position that Executive Order 12044

We also believe that it is appropriate to recognize the regulatory benefits from these more carefully drafted final

§ 230.10, without requiring highway departments to specify in advance the specific borrow sites to be used.

changed (e) to reflect our elimination of the artificial distinction between the section 307(a)(1) toxics and other

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Administrator's authority under section 309(b) or the right of a citizen to bring suit against a violator under section 505 of the CWA.

Permitting Authority: We have used the new term "permitting authority," instead of "District Engineer," throughout these regulations, in recognition of the fact that under the 1977 amendments approved States may also issue permits.

Coastal Zone Management Plans

Several commenters were concerned about the relationship between section 404 and approved Coastal Zone Management (CZM) plans. Some expressed concern that the Guidelines might authorize a discharge prohibited by a CZM plan; others objected to the fact that the Guidelines might prohibit a discharge which was consistent with a CZM plan.

Under section 307(b) of the CZM Act, no Federal permits may be issued until the applicant furnishes a certification that the discharge is consistent with an approved CZM plan, if there is one, and the State concurs in the certification or waives review. Section 325.2(b)(2) of the Corps' regulation, which applies to all Federal 404 permits, implements this requirement for section 404. Because the Corps' regulations adequately address the CZM consistency requirement, we have not duplicated § 325.2(b)(2) in the Guidelines. Where a State issues State 404 permits, it may of course require consistency with its CZM plan under State law.

The second concern, that the 404 Guidelines might be stricter than a CZM plan, points out a possible problem with CZM plans, not with the Guidelines. Under 307(f) of CZMA, all CZM plans must provide for compliance with applicable requirements of the Clean Water Act. The Guidelines are one such requirement. Of course, to the extent that a CZM plan is general and area-wide, it may be impossible to include in its development the same project-specific consideration of impacts and alternatives required under the Guidelines. Nonetheless, it cannot authorize or mandate a discharge of dredged or fill material which fails to comply with the requirements of these Guidelines. Often CZM plans contain a requirement that all activities conducted under it meet the permit requirements of the Clean Water Act. In such a case, there could of course be no conflict between the CZM plan and the requirements of the Guidelines.

We agree with commenters who urge that delay and duplication of effort be avoided by consolidating alternatives studies required under different statutes, including the Coastal Zone Management Act. However, since some planning processes do not deal with specific projects, their consideration of alternatives may not be sufficient for the Guidelines. Where another alternative analysis is less complete than that contemplated under section 404, it may not be used to weaken the requirements of the Guidelines.

Advanced Identification of Dredged or Fill Material Disposal Sites

A large number of commenters objected to the way proposed § 230.70, new Subpart I, had been changed from the 1975 regulations. A few objected to the section itself. Most of the comments also revealed a misunderstanding about the significance of identifying an area. First, the fact that an area has been identified as unsuitable for a potential discharge site does not mean that someone cannot apply for and obtain a permit to discharge there as long as the Guidelines and other applicable requirements are satisified.* Conversely, the fact that an area has been identified as a potential site does not mean that a permit is unnecessary or that one will automatically be forthcoming. The intent of this section was to aid applicants by giving advance notice that they would have a relatively easy or difficult time qualifying for a permit to use particular areas. Such advance notice should facilitate applicant planning and shorten permit processing time.

Most of the objectors focused on EPA's "abandonment" of its "authority" to identify sites. While that "authority" is perhaps less "authoritative" than the commenters suggested (see above), we agree that there is no reason to decrease EPA's role in the process. Therefore, we have changed new § 230.80(a) to read:

"Consistent with these Guidelines, EPA and the permitting authority on their own initiative or at the request of any other party, and after consultation with any affected State that is not the permitting authority, may identify sites which will be considered as:"

We have also deleted proposed § 230.70(a)(3), because it did not seem to accomplish much. Consideration of the point at which cumulative and secondary impacts become unacceptable and warrant emergency action will generally be more appropriate in a permit-by-permit context. Once that point has been so determined, of course, the area can be identified as "unsuitable" under the new § 230.80(a)(2).

* EPA may foreclose the use of a site by exercising its authority under section 404(c). The advance identification referred to in this section is not a section 404(c) prohibition.

Executive Order 12044

A number of commenters took the position that Executive Order 12044 requires EPA to prepare a "regulatory analysis" in connection with these regulations. EPA disagrees. These regulations are not, strictly speaking, new regulations. They do not impose new standards or requirements, but rather substantially clarify and reorganize the existing interim final regulations

Under EPA's criteria implementing Executive Order 12044, EPA will prepare a Regulatory Analysis for any regulation which imposes *additional* annual costs totalling $100 million or which will result in a total *additional* cost of production of any major product or service which exceeds 5% of its selling price. While many commenters, particularly members of the American Association of Port Authorities (AAPA), requested a regulatory analysis and claimed that the regulations were too burdensome, none of them explained how that burden was an *additional* one attributable to this revision. A close comparison of the new regulation and the explicit and implicit requirements in the interim final Guidelines reveals that there has been very little real change in the criteria by which discharges are to be judged or in the tests that must be conducted; therefore, we stand by our original determination that a regulatory analysis is not required.

Perhaps the most significant area in which the regulations are more explicit and arguably stricter is in the consideration of alternatives. However, even the 1975 regulations required the permitting authority to consider "the availability of alternate sites and methods of disposal that are less damaging to the environment," and to avoid activities which would have significant adverse effects. We do not think that the revised Guidelines' more explicit direction to avoid adverse effects that could be prevented through selection of a clearly less damaging site or method is a change imposing a substantial new burden on the regulated public.

Because the revised regulations are more explicit than the interim final regulations in some respects, it is possible that permit reviewers will do a more thorough job evaluating proposed discharges. This may result in somewhat more carefully drawn permit conditions. However, even if, for purposes of argument, the possible cost of complying with these conditions is considered an *additional* cost, there is no reason to believe that it alone will be anywhere near $100 million annually.

We also believe that it is appropriate to recognize the regulatory benefits from these more carefully drafted final regulations. Because they are much clearer about what should be considered and documented, we expect there will be fewer delays in reviewing permits, and that initial decisions to issue permits are less likely to be appealed to higher authority. These benefits are expected to offset any potential cost increase.

Some commenters suggested that documentation requirements would generate an additional cost of operations. The Corps' procedural regulations at 33 CFR 325.8 and 325.11 already require extensive documentation for individual permits being denied or being referred to higher authority for resolution of a conflict between agencies.

Economic Factors

A number of commenters asked EPA to include consideration of economic factors in the Guidelines. We believe that the regulation already recognizes economic factors to the extent contemplated by the statute. First, the Guidelines explicitly include the concept of "practicability" in connection with both alternatives and steps to minimize impacts. If an alleged alternative is unreasonably expensive to the applicant, the alternative is not "practicable." In addition, the Guidelines also consider economics indirectly in that they are structured to avoid the expense of unnecessary testing through the "reason-to-believe-test." Second, the statute expressly provides that the economics of anchorage and navigation may be considered, but only after application of the section 404(b)(1) Guidelines. (See section 404(b)(2).)

Borrow Sites

A number of highway departments objected because they felt the Guidelines would require them to identify specific borrow sites at the time of application, which would disrupt their normal contracting process and increase cost. These objections were based on a misunderstanding of the Guideline's requirements. Under those Guidelines, the actual borrow sites need not be identified, if the application and the permit specify that the discharge material must come from clean upland sites which are removed from sources of contamination and otherwise satisfy the reason-to-believe test. A condition that the material come from such a site would enable the permitting authority to make his determinations and find compliance with the conditions of § 230.10, without requiring highway departments to specify in advance the specific borrow sites to be used.

Consultation With Fish and Wildlife Agencies

One commenter wanted us to put in a statement that the Fish and Wildlife Coordination Act requires consultation with fish and wildlife agencies. We have not added new language because (1) the Fish and Wildlife Act only applies to Federal permitting agencies and not to State permitting agencies, and (2) the Corps' regulations already provide for such consultation by the only Federal 404 permitting agency. However, we agree with the commenter that Federal and State fish and wildlife agencies may often provide valuable assistance in evaluating the impacts of discharges of dredged or fill material.

The Importance of Appropriate Documentation

Specific documentation is important to ensure an understanding of the basis for each decision to allow, condition, or prohibit a discharge through application of the Guidelines. Documentation of information is required for: (1) facts and data gathered in the evaluation and testing of the extraction site, the material to be discharged, and the disposal site; (2) factual determinations regarding changes that can be expected at the disposal site if the discharge is made as proposed; and (3) findings regarding compliance with § 230.10 conditions. This documentation provides a record of actions taken that can be evaluated for adequacy and accuracy and ensures consideration of all important impacts in the evaluation of a proposed discharge of dredged or fill material.

The specific information documented under (1) and (2) above in any given case depends on the level of investigation necessary to provide for a reasonable understanding of the impact on the aquatic ecosystems. We anticipate that a number of individual and most General permit applications will be for routine, minor activities with little potential for significant adverse environmental impacts. In such cases, the permitting authority will not have to require extensive testing or analysis to make his findings of compliance. The level of documentation should reflect the significance and complexity of the proposed discharge activity.

Factual Determinations

Proposed section 230.20, "Factual Determinations" (now § 230.11) has been significantly reorganized in response to comments. First, we have changed (e) to reflect our elimination of the artificial distinction between the section 307(a)(1) toxics and other contaminants. Second, we have eliminated proposed (f) (Biological Availability), since the necessary information will be provided by (d) and new (e). Proposed (f) was intended to reflect the presumption that toxics were present and biologically available. We have modified proposed (g), now (f), to focus on the size of the disposal site and the size and shape of the mixing zone. The specific requirement to document the site has been deleted; where such information is relevant, it will automatically be considered in making the other determinations. We have also deleted proposed (h) (Special Determinations) since it did not provide any useful information which would not already be considered in making the other factual determinations.

Finally, in response to many comments, we have moved the provisions on cumulative and secondary impact to the Factual Determination section to give them further emphasis. We agree that such impacts are an important consideration in evaluating the acceptability of a discharge site.

Water Quality Standards

One commenter was concerned that the reference § 230.10(b) to water quality standards and criteria "approved or promulgated under section 303" might encourage permit authorities to ignore other water quality requirements. Under section 303, all State water quality standards are to be submitted to EPA for approval. If the submitted standards are incomplete or insufficiently stringent, EPA may promulgate standards to replace or supplant the State standards. Disapproved standards remain in effect until replaced. Therefore, to refer to "EPA approved or promulgated standards" is to ignore those State standards which have been neither approved nor replaced. We have therefore changed the wording of this requirement as follows: "* * * any applicable State water quality standard." We have also dropped the reference to "criteria", to be consistent with the Agency's general position that water quality criteria are not regulatory.

Other Requirements for Discharge

Section 230.10(c) provides that discharges are not permitted if they will have "significantly" adverse effects on various aquatic resources. In this context, "significant" and "significantly" mean more than "trivial", that is, significant in a conceptual rather than a statistical sense. Not all effects which

are statistically significant in the laboratory are significantly adverse in the field.

achievement of which is attempted by manipulating design and implementation of the activity. This model or standard should be based on characteristics of a

applicable water quality standards in order to maintain the desired improved water quality.

(5) When a significant ecological

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230.54 Parks, national and historic monuments, national seashores, wilderness areas, research sites and

§ 230.2 Applicability.

(a) These Guidelines have been developed by the Administrator of the

Pub. L. 92–500, as amended by Pub. L. 95–217, 33 U.S.C. 1251, *et seq.*

(b) The term "adjacent" means

are statistically significant in the laboratory are significantly adverse in the field.

Section 320.10(d) uses the term "minimize" to indicate that all reasonable reduction in impacts be obtained. As indicated by the "appropriate and practicable" provision, steps which would be unreasonably costly or would be infeasible or which would accomplish only inconsequential reductions in impact need not be taken.

Habitat Development and Restoration of Water Bodies

Habitat development and restoration involve changes in open water and wetlands that minimize adverse effects of proposed changes or that neutralize or reverse the effects of past changes on the ecosystem. Development may produce a new or modified ecological state by displacement of some or all of the existing environmental characteristics. Restoration has the potential to return degraded environments to their former ecological state.

Habitat development and restoration can contribute to the maintenance and enhancement of a viable aquatic ecosystem at the discharge site. From an environmental point of view, a project involving the discharge of dredged and fill material should be designed and managed to emulate a natural ecosystem. Research, demonstration projects, and full scale implementation have been done in many categories of development and restoration. The U.S. Fish and Wildlife Service has programs to develop and restore habitat. The U.S. Army Engineer Waterways Experiment Station has published guidelines for using dredged material to develop wetland habitat, for establishing marsh vegetation, and for building islands that attract colonies of nesting birds. The EPA has a Clean Lakes program which supplies funds to States and localities to enhance or restore degraded lakes. This may involve dredging nutrient-laden sediments from a lake and ensuring that nutrient inflows to the lake are controlled. Restoration and habitat development techniques can be used to minimize adverse impacts and compensate for destroyed habitat. Restoration and habitat development may also provide secondary benefits such as improved opportunities for outdoor recreation and positive use for dredged materials.

The development and restoration of viable habitats in water bodies requires planning and construction practices that integrate the new or improved habitat into the existing environment. Planning requires a model or standard, the achievement of which is attempted by manipulating design and implementation of the activity. This model or standard should be based on characteristics of a natural ecosystem in the vicinity of a proposed activity. Such use of a natural ecosystem ensures that the developed or restored area, once established, will be nourished and maintained physically, chemically and biologically by natural processes. Some examples of natural ecosystems include, but are not limited to, the following: salt marsh, cattail marsh, turtle grass bed, small island, etc.

Habitat development and restoration, by definition, should have environmental enhancement and maintenance as their initial purpose. Human uses may benefit but they are not the primary purpose. Where such projects are not founded on the objectives of maintaining ecosystem function and integrity, some values may be favored at the expense of others. The ecosystem affected must be considered in order to achieve the desired result of development and restoration. In the final analysis, selection of the ecosystem to be emulated is of critical importance and a loss of value can occur if the wrong model or an incomplete model is selected. Of equal importance is the planning and management of habitat development and restoration on a case-by-case basis.

Specific measures to minimize impacts on the aquatic ecosystem by enhancement and restoration projects include but are not limited to:

(1) Selecting the nearest similar natural ecosystem as the model in the implementation of the activity.

Obviously degraded or significantly less productive habitats may be considered prime candidates for habitat restoration. One viable habitat, however, should not be sacrificed in an attempt to create another, i.e., a productive vegetated shallow water area should not be destroyed in an attempt to create a wetland in its place.

(2) Using development and restoration techniques that have been demonstrated to be effective in circumstances similar to those under consideration wherever possible.

(3) Where development and restoration techniques proposed for use have not yet advanced to the pilot demonstration or implementation stage, initiate their use on a small scale to allow corrective action if unanticipated adverse impacts occur.

(4) Where Federal funds are spent to clean up waters of the U.S. through dredging, scientifically defensible levels of pollutant concentration in the return discharge should be agreed upon with the funding authority in addition to any applicable water quality standards in order to maintain the desired improved water quality.

(5) When a significant ecological change in the aquatic environment is proposed by the discharge of dredged or fill material, the permitting authority should consider the ecosystem that will be lost as well as the environmental benefits of the new system.

Dated: December 12, 1980.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

Part 230 is revised to read as follows:

PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OR DISPOSAL SITES FOR DREDGED OF FILL MATERIAL

Subpart A—General

Sec.

230.1 Purpose and policy.
230.2 Applicability.
230.3 Definitions.
230.4 Organization.
230.5 General procedures to be followed.
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230.7 General permits.

Subpart B—Compliance With the Guidelines

230.10 Restrictions on discharge.
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Subpart C—Potential Impacts on Physical and Chemical Characteristics of the Aquatic Ecosystem

230.20 Substrate.
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Subpart D—Potential Impacts on Biological Characteristics of the Aquatic Ecosystem

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230.31 Fish, crustaceans, mollusks, and other aquatic organisms in the food web.
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Subpart E—Potential Impacts on Special Aquatic Sites

230.40 Sanctuaries and refuges.
230.41 Wetlands.
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230.43 Vegetated shallows.
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Subpart F—Potential Effects on Human Use Characteristics

230.50 Municipal and private water supplies.
230.51 Recreational and commercial fisheries.
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230.54 Parks, national and historic monuments, national seashores, wilderness areas, research sites and similar preserves.

Subpart G—Evaluation and Testing

230.60 General evaluation of dredged or fill material.
230.61 Chemical, biological, and physical evaluation and testing.

Subpart H—Actions to Minimize Adverse Effects

230.70 Actions concerning the location of the discharge.
230.71 Actions concerning the material to be discharged.
230.72 Actions controlling the material after discharge.
230.73 Actions affecting the method of dispersion.
230.74 Actions related to technology.
230.75 Actions affecting plant and animal populations.
230.76 Actions affecting human use.
230.77 Other actions.

Subpart I—Planning To Shorten Permit Processing Time

230.80 Advanced identification of disposal areas.

Authority: This regulation is issued under authority of Sections 404(b) and 501(a) of the Clean Water Act of 1977, 33 U.S.C. § 1344(b) and § 1361(a).

Subpart A—General

§ 23.1 Purpose and policy.

(a) The purpose of these Guidelines is to restore and maintain the chemical, physical, and biological integrity of waters of the United States through the control of discharges of dredged or fill material.

(b) Congress has expressed a number of policies in the Clean Water Act. These Guidelines are intended to be consistent with and to implement those policies.

(c) Fundamental to these Guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.

(d) From a national perspective, the degradation or destruction of special aquatic sites, such as filling operations in wetlands, is considered to be among the most severe environmental impacts covered by these Guidelines. The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources.

§ 230.2 Applicability.

(a) These Guidelines have been developed by the Administrator of the Environmental Protection Agency in conjunction with the Secretary of the Army acting through the Chief of Engineers under section 404(b)(1) of the Clean Water Act (33 U.S.C. 1344). The Guidelines are applicable to the specification of disposal sites for discharges of dredged or fill material into waters of the United States. Sites may be specified through:

(1) The regulatory program of the U.S. Army Corps of Engineers under sections 404(a) and (e) of the Act (see 33 CFR 320, 323 and 325);

(2) The civil works program of the U.S. Army Corps of Engineers (see 33 CFR 209.145 and section 150 of Pub. L. 94–587, Water Resources Development Act of 1976);

(3) Permit programs of States approved by the Administrator of the Environmental Protection Agency in accordance with sections 404(g) and (h) of the Act (see 40 CFR 122, 123 and 124);

(4) Statewide dredged or fill material regulatory programs with best management practices approved under section 208(b)(4)(B) and (C) of the Act (see 40 CFR 35.1560);

(5) Federal construction projects which meet criteria specified in section 404(r) of the Act.

(b) These Guidelines will be applied in the review of proposed discharges of dredged or fill material into navigable waters which lie inside the baseline from which the territorial sea is measured, and the discharge of fill material into the territorial sea, pursuant to the procedures referred to in paragraphs (a)(1) and (a)(2) above. The discharge of dredged material into the territorial sea is governed by the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92–532, and regulations and criteria issued pursuant thereto (40 CFR Part 220–228).

(c) Guidance on interpreting and implementing these Guidelines may be prepared jointly by EPA and the Corps at the national or regional level from time to time. No modifications to the basic application, meaning, or intent of these Guidelines will be made without rulemaking by the Administrator under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

§ 230.3 Definitions.

For purposes of this Part, the following terms shall have the meanings indicated:

(a) The term "Act" means the Clean Water Act (also known as the Federal Water Pollution Control Act or FWPCA) Pub. L. 92–500, as amended by Pub. L. 95–217, 33 U.S.C. 1251, *et seq.*

(b) The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes, and the like are "adjacent wetlands."

(c) The terms "aquatic environment" and "aquatic ecosystem" mean waters of the United States, including wetlands, that serve as habitat for interrelated and interacting communities and populations of plants and animals.

(d) The term "carrier of contaminant" means dredged or fill material that contains contaminants.

(e) The term "contaminant" means a chemical or biological substance in a form that can be incorporated into, onto or be ingested by and that harms aquatic organisms, consumers of aquatic organisms, or users of the aquatic environment, and includes but is not limited to the substances on the 307(a)(1) list of toxic pollutants promulgated on January 31, 1978 (43 FR 4109).

(f) [Reserved]

(g) [Reserved]

(h) The term "discharge point" means the point within the disposal site at which the dredged or fill material is released.

(i) The term "disposal site" means that portion of the "waters of the United States" where specific disposal activities are permitted and consist of a bottom surface area and any overlying volume of water. In the case of wetlands on which surface water is not present, the disposal site consists of the wetland surface area.

(j) [Reserved]

(k) The term "extraction site" means the place from which the dredged or fill material proposed for discharge is to be removed.

(l) [Reserved]

(m) The term "mixing zone" means a limited volume of water serving as a zone of initial dilution in the immediate vicinity of a discharge point where receiving water quality may not meet quality standards or other requirements otherwise applicable to the receiving water. The mixing zone should be considered as a place where wastes and water mix and not as a place where effluents are treated.

(n) The term "permitting authority" means the District Engineer of the U.S. Army Corps of Engineers or such other individual as may be designated by the Secretary of the Army to issue or deny permits under section 404 of the Act; or the State Director of a permit program

approved by EPA under § 404(g) and § 404(h) or his delegated representative.

(o) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or

values due to discharges of dredged or fill material. Subpart G prescribes a number of physical, chemical, and biological evaluations and testing procedures to be used in reaching the

(i) If there is a reasonable probability of chemical contamination, conduct the appropriate tests according to the section on Evaluation and Testing (§ 230.61).

(j) Identify appropriate and

implementing the Guidelines, must recognize the different levels of effort that should be associated with varying degrees of impact and require or prepare commensurate documentation. The level of documentation should reflect the

shall set forth in writing an evaluation of the potential individual and cumulative impacts of the category of activities to be regulated under the General permit. While some of the information necessary for this evaluation can be

approved by EPA under § 404(g) and § 404(h) or his delegated representative.

(o) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials not covered by the Atomic Energy Act, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. The legislative history of the Act reflects that "radioactive materials" as included within the definition of "pollutant" in section 502 of the Act means only radioactive materials which are not encompassed in the definition of source, byproduct, or special nuclear materials as defined by the Atomic Energy Act of 1954, as amended, and regulated under the Atomic Energy Act. Examples of radioactive materials not covered by the Atomic Energy Act and, therefore, included within the term "pollutant", are radium and accelerator produced isotopes. See *Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976).

(p) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of an aquatic ecosystem.

(q) The term "practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

(q-1) "Special aquatic sites" means those sites identified in Subpart E. They are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region. (See 230.10(a)(3))

(r) The term "territorial sea" means the belt of the sea measured from the baseline as determined in accordance with the Conventon on the Territorial Sea and the Contiguous Zone and extending seaward a distance of three miles.

(s) The term "waters of the united States" means:

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under this definition.

(5) Tributaries of waters identified in paragraphs (1)–(4) of this section;

(6) The territorial sea;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1)–(6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR § 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

(t) The term "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

§ 230.4 Organization.

The Guidelines are divided into eight subparts. Subpart A presents those provisions of general applicability, such as purpose and definitions. Subpart B establishes the four conditions which must be satisfied in order to make a finding that a proposed discharge of dredged or fill material complies with the Guidelines. Section 230.11 of Subpart B, sets forth factual determinations which are to be considered in determining whether or not a proposed discharge satisfies the Subpart B conditions of compliance. Subpart C describes the physical and chemical components of a site and provides guidance as to how proposed discharges of dredged or fill material may affect these components. Subparts D–F detail the special characteristics of particular aquatic ecosystems in terms of their values, and the possible loss of these values due to discharges of dredged or fill material. Subpart G prescribes a number of physical, chemical, and biological evaluations and testing procedures to be used in reaching the required factual determinations. Subpart H details the means to prevent or mimimize adverse effects. Subpart I concerns advanced identification of disposal areas.

§ 230.5 General procedures to be followed.

In evaluating whether a particular discharge site may be specified, the permitting authority should use these Guidelines in the following sequence:

(a) In order to obtain an overview of the principal regulatory provisions of the Guidelines, review the restrictions on discharge in § 230.10(a)–(d), the measures to mimimize adverse impact of Subpart H, and the required factual determinations of § 230.11.

(b) Determine if a General permit (§ 230.7) is applicable; if so, the applicant needs merely to comply with its terms, and no further action by the permitting authority is necessary. Special conditions for evaluation of proposed General permits are contained in § 230.7. If the discharge is not covered by a General permit:

(c) Examine practicable alternatives to the proposed discharge, that is, not discharging into the waters of the U.S. or discharging into an alternative aquatic site with potentially less damaging consequences (§ 230.10(a)).

(d) Delineate the candidate disposal site consistent with the criteria and evaluations of § 230.11(f).

(e) Evaluate the various physical and chemical components which characterize the non-living environment of the candidate site, the substrate and the water including its dynamic characteristics (Subpart C).

(f) Identify and evaluate any special or critical characteristics of the candidate disposal site, and surrounding areas which might be affected by use of such site, related to their living communities or human uses (Subparts D, E, and F).

(g) Review Factual Determinations in § 230.11 to determine whether the information in the project file is sufficient to provide the documentation required by § 230.11 or to perform the pre-testing evaluation described in § 230.60, or other information is necessary.

(h) Evaluate the material to be discharged to determine the possibility of chemical contamination or physical incompatibility of the material to be discharged (§ 230.60).

(i) If there is a reasonable probability of chemical contamination, conduct the appropriate tests according to the section on Evaluation and Testing (§ 230.61).

(j) Identify appropriate and practicable changes to the project plan to minimize the environmental impact of the discharge, based upon the specialized methods of minimization of impacts in Subpart H.

(k) Make and document Factual Determinations in § 230.11.

(l) Make and document Findings of Compliance (§ 230.12) by comparing Factual Determinations with the requirements for discharge of § 230.10.

This outline of the steps to follow in using the Guidelines is simplified for purposes of illustration. The actual process followed may be iterative, with the results of one step leading to a reexamination of previous steps. The permitting authority must address all of the relevant provisions of the Guidelines in reaching a Finding of Compliance in an individual case.

§ 230.6 Adaptability.

(a) The manner in which these Guidelines are used depends on the physical, biological, and chemical nature of the proposed extraction site, the material to be discharged, and the candidate disposal site, including any other important components of the ecosystem being evaluated. Documentation to demonstrate knowledge about the extraction site, materials to be extracted, and the candidate disposal site is an essential component of guideline application. These Guidelines allow evaluation and documentation for a variety of activities, ranging from those with large, complex impacts on the aquatic environment to those for which the impact is likely to be innocuous. It is unlikely that the Guidelines will apply in their entirety to any one activity, no matter how complex. It is anticipated that substantial numbers of permit applications will be for minor, routine activities that have little, if any, potential for significant degradation of the aquatic environment. It generally is not intended or expected that extensive testing, evaluation or analysis will be needed to make findings of compliance in such routine cases. Where the conditions for General permits are met, and where numerous applications for similar activities are likely, the use of General permits will eliminate repetitive evaluation and documentation for individual discharges.

(b) The Guidelines user, including the agency or agencies responsible for implementing the Guidelines, must recognize the different levels of effort that should be associated with varying degrees of impact and require or prepare commensurate documentation. The level of documentation should reflect the significance and complexity of the discharge activity.

(c) An essential part of the evaluation process involves making determinations as to the relevance of any portion(s) of the Guidelines and conducting further evaluation only as needed. However, where portions of the Guidelines review procedure are "short form" evaluations, there still must be sufficient information (including consideration of both individual and cumulative impacts) to support the decision of whether to specify the site for disposal of dredged or fill material and to support the decision to curtail or abbreviate the evaluation process. The presumption against the discharge in § 230.1 applies to this decision-making.

(d) In the case of activities covered by General permits or 208(b)(4)(B) and (C) Best Management Practices, the analysis and documentation required by the Guidelines will be performed at the time of General permit issuance or 208(b)(4)(B) and (C) Best Management Practices promulgation and will not be repeated when activities are conducted under a General permit or 208(b)(4)(B) and (C) Best Management Practices control. These Guidelines do not require reporting or formal written communication at the time individual activities are initiated under a General permit or 208(b)(4)(B) and (C) Best Management Practices. However, a particular General permit may require appropriate reporting.

§ 230.7 General permits.

(a) *Conditions for the issuance of General permits.* A General permit for a category of activities involving the discharge of dredged or fill material complies with the Guidelines if it meets the applicable restrictions on the discharge in § 230.10 and if the permitting authority determines that:

(1) The activities in such category are similar in nature and similar in their impact upon water quality and the aquatic environment;

(2) The activities in such category will have only minimal adverse effects when performed separately; and

(3) The activities in such category will have only minimal cumulative adverse effects on water quality and the aquatic environment.

(b) *Evaluation process.* To reach the determinations required in paragraph (a) of this section, the permitting authority shall set forth in writing an evaluation of the potential individual and cumulative impacts of the category of activities to be regulated under the General permit. While some of the information necessary for this evaluation can be obtained from potential permittees and others through the proposal of General permits for public review, the evaluation must be completed before any General permit is issued, and the results must be published with the final permit.

(1) This evaluation shall be based upon consideration of the prohibitions listed in § 230.10(b) and the factors listed in § 230.10(c), and shall include documented information supporting each factual determination in § 230.11 of the Guidelines (consideration of alternatives in § 230.10(a) are not directly applicable to General permits);

(2) The evaluation shall include a precise description of the activities to be permitted under the General permit, explaining why they are sufficiently similar in nature and in environmental impact to warrant regulation under a single General permit based on Subparts C–F of the Guidelines. Allowable differences between activities which will be regulated under the same General permit shall be specified. Activities otherwise similar in nature may differ in environmental impact due to their location in or near ecologically sensitive areas, areas with unique chemical or physical characteristics, areas containing concentrations of toxic substances, or areas regulated for specific human uses or by specific land or water management plans (e.g., areas regulated under an approved Coastal Zone Management Plan). If there are specific geographic areas within the purview of a proposed General permit (called a draft General permit under a State 404 program), which are more appropriately regulated by individual permit due to the considerations cited in this paragraph, they shall be clearly delineated in the evaluation and excluded from the permit. In addition, the permitting authority may require an individual permit for any proposed activity under a General permit where the nature or location of the activity makes an individual permit more appropriate.

(3) To predict cumulative effects, the evaluation shall include the number of individual discharge activities likely to be regulated under a General permit until its expiration, including repetitions of individual discharge activities at a single location.

Subpart B—Compliance With the Guidelines

§ 230.10 Restrictions on discharge.

Note.—Because other laws may apply to particular discharges and because the Corps

(4) For actions subject to NEPA, where the Corps of Engineers is the permitting agency, the analysis of alternatives required for NEPA environmental documents, including supplemental Corps NEPA documents,

Subparts B and G, after consideration of Subparts C–F, with special emphasis on the persistence and permanence of the effects outlined in those subparts. Under these Guidelines, effects contributing to significant degradation considered

proposed for discharge and the material constituting the substrate at the disposal site, and any potential changes in substrate elevation and bottom contours, including changes outside of the disposal site which may occur as a

Consideration should also be given to the possible loss of environmental values (§ 230.21) and to actions for minimizing impacts (Subpart H). Consideration shall include the proposed method, volume, location, and

(ii) Current velocity, direction, and variability at the disposal site;

(iii) Degree of turbulence;

(iv) Stratification attributable to causes such as obstructions, salinity or density profiles at the disposal site;

Subpart B—Compliance With the Guidelines

§ 230.10 Restrictions on discharge.

Note.—Because other laws may apply to particular discharges and because the Corps of Engineers or State 404 agency may have additional procedural and substantive requirements, a discharge complying with the requirement of these Guidelines will not automatically receive a permit.

Although all requirements in § 230.10 must be met, the compliance evaluation procedures will vary to reflect the seriousness of the potential for adverse impacts on the aquatic ecosystems posed by specific dredged or fill material discharge activities.

(a) Except as provided under § 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

(1) For the purpose of this requirement, practicable alternatives include, but are not limited to:

(i) Activities which do not involve a discharge of dredged or fill material into the waters of the United States or ocean waters;

(ii) Discharges of dredged or fill material at other locations in waters of the United States or ocean waters;

(2) An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered.

(3) Where the activity associated with a discharge which is proposed for a special aquatic site (as defined in Subpart E) does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e., is not "water dependent"), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demostrated otherwise.

(4) For actions subject to NEPA, where the Corps of Engineers is the permitting agency, the analysis of alternatives required for NEPA environmental documents, including supplemental Corps NEPA documents, will in most cases provide the information for the evaluation of alternatives under these Guidelines. On occasion, these NEPA documents may address a broader range of alternatives than required to be considered under this paragraph or may not have considered the alternatives in sufficient detail to respond to the requirements of these Guidelines. In the latter case, it may be necessary to supplement these NEPA documents with this additional information.

(5) To the extent that practicable alternatives have been identified and evaluated under a Coastal Zone Management program, a § 208 program, or other planning process, such evaluation shall be considered by the permitting authority as part of the consideration of alternatives under the Guidelines. Where such evaluation is less complete than that contemplated under this subsection, it must be supplemented accordingly.

(b) No discharge of dredged or fill material shall be permitted if it:

(1) Causes or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable State water quality standard;

(2) Violates any applicable toxic effluent standard or prohibition under section 307 of the Act;

(3) Jeopardizes the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or results in likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended. If an exemption has been granted by the Endangered Species Committee, the terms of such exemption shall apply in lieu of this subparagraph;

(4) Violates any requirement imposed by the Secretary of Commerce to protect any marine sanctuary designated under Title III of the Marine Protection, Research, and Sanctuaries Act of 1972.

(c) Except as provided under § 404(b)(2), no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States. Findings of significant degradation related to the proposed discharge shall be based upon appropriate factual determinations, evaluations, and tests required by Subparts B and G, after consideration of Subparts C–F, with special emphasis on the persistence and permanence of the effects outlined in those subparts. Under these Guidelines, effects contributing to significant degradation considered individually or collectively, include:

(1) Significantly adverse effects of the discharge of pollutants on human health or welfare, including but not limited to effects on municipal water supplies, plankton, fish, shellfish, wildlife, and special aquatic sites.

(2) Significantly adverse effects of the discharge of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, and spread of pollutants or their byproducts outside of the disposal site through biological, physical, and chemical processes;

(3) Significantly adverse effects of the discharge of pollutants on aquatic ecosystem diversity, productivity, and stability. Such effects may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy; or

(4) Significantly adverse effects of discharge of pollutants on recreational, aesthetic, and economic values.

(d) Except as provided under § 404(b)(2), no discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem. Subpart H identifies such possible steps.

§ 230.11 Factual determinations.

The permitting authority shall determine in writing the potential short-term or long-term effects of a proposed discharge of dredged or fill material on the physical, chemical, and biological components of the aquatic environment in light of Subparts C–F. Such factual determinations shall be used in § 230.12 in making findings of compliance or non-compliance with the restrictions on discharge in § 230.10. The evaluation and testing procedures described in § 230.60 and § 230.61 of Subpart G shall be used as necessary to make, and shall be described in, such determination. The determinations of effects of each proposed discharge shall include the following:

(a) *Physical substrate determinations.* Determine the nature and degree of effect that the proposed discharge will have, individually and cumulatively, on the characteristics of the substrate at the proposed disposal site. Consideration shall be given to the similarity in particle size, shape, and degree of compaction of the material proposed for discharge and the material constituting the substrate at the disposal site, and any potential changes in substrate elevation and bottom contours, including changes outside of the disposal site which may occur as a result of erosion, slumpage, or other movement of the discharged material. The duration and physical extent of substrate changes shall also be considered. The possible loss of environmental values (§ 230.20) and actions to minimize impact (Subpart H) shall also be considered in making these determinations. Potential changes in substrate elevation and bottom contours shall be predicted on the basis of the proposed method, volume, location, and rate of discharge, as well as on the individual and combined effects of current patterns, water circulation, wind and wave action, and other physical factors that may affect the movement of the discharged material.

(b) *Water circulation, fluctuation, and salinity determinations.* Determine the nature and degree of effect that the proposed discharge will have individually and cumulatively on water, current patterns, circulation including downstream flows, and normal water fluctuation. Consideration shall be given to water chemistry, salinity, clarity, color, odor, taste, dissolved gas levels, temperature, nutrients, and eutrophication plus other appropriate characteristics. Consideration shall also be given to the potential diversion or obstruction of flow, alterations of bottom contours, or other significant changes in the hydrologic regime. Additional consideration of the possible loss of environmental values (§ 230.23–.25) and actions to minimize impacts (Subpart H), shall be used in making these determinations. Potential significant effects on the current patterns, water circulation, normal water fluctuation and salinity shall be evaluated on the basis of the proposed method, volume, location, and rate of discharge.

(c) *Suspended particulate/turbidity determinations.* Determine the nature and degree of effect that the proposed discharge will have, individually and cumulatively, in terms of potential changes in the kinds and concentretions of suspended particulate/turbidity in the vicinity of the disposal site. Consideration shall be given to the grain size of the material proposed for discharge, the shape and size of the plume of suspended particulates, the duration of the discharge and resulting plume and whether or not the potential changes will cause violations of applicable water quality standards. Consideration should also be given to the possible loss of environmental values (§ 230.21) and to actions for minimizing impacts (Subpart H). Consideration shall include the proposed method, volume, location, and rate of discharge, as well as the individual and combined effects of current patterns, water circulation and fluctuations, wind and wave action, and other physical factors on the movement of suspended particulates.

(d) *Contaminant determinations.* Determine the degree to which the material proposed for discharge will introduce, relocate, or increase contaminants. This determination shall consider the material to be discharged, the aquatic environment at the proposed disposal site, and the availability of contaminants.

(e) *Aquatic ecosystem and organism determinations.* Determine the nature and degree of effect that the proposed discharge will have, both individually and cumulatively, on the structure and function of the aquatic ecosystem and organisms. Consideration shall be given to the effect at the proposed disposal site of potential changes in substrate characteristics and elevation, water or substrate chemistry, nutrients, currents, circulation, fluctuation, and salinity, on the recolonization and existence of indigenous aquatic organisms or communities. Possible loss of environmental values (§ 230.31), and actions to minimize impacts (Subpart H) shall be examined. Tests as described in § 230.61 (Evaluation and Testing), may be required to provide information on the effect of the discharge material on communities or populations of organisms expected to be exposed to it.

(f) *Proposed disposal site determinations.* (1) Each disposal site shall be specified through the application of these Guidelines. The mixing zone shall be confined to the smallest practicable zone within each specified disposal site that is consistent with the type of dispersion determined to be appropriate by the application of these Guidelines. In a few special cases under unique environmental conditions, where there is adequate justification to show that widespread dispersion by natural means will result in no significantly adverse environmental effects, the discharged material may be intended to be spread naturally in a very thin layer over a large area of the substrate rather than be contained within the disposal site.

(2) The permitting authority and the Regional Administrator shall consider the following factors in determining the acceptability of a proposed mixing zone:

(i) Depth of water at the disposal site;

(ii) Current velocity, direction, and variability at the disposal site;

(iii) Degree of turbulence;

(iv) Stratification attributable to causes such as obstructions, salinity or density profiles at the disposal site;

(v) Discharge vessel speed and direction, if appropriate;

(vi) Rate of discharge;

(vii) Ambient concentration of constituents of interest;

(viii) Dredged material characteristics, particularly concentrations of constituents, amount of material, type of material (sand, silt, clay, etc.) and settling velocities;

(ix) Number of discharge actions per unit of time;

(x) Other factors of the disposal site that affect the rates and patterns of mixing.

(g) *Determination of cumulative effects on the aquatic ecosystem.* (1) Cumulative impacts are the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material. Although the impact of a particular discharge may constitute a minor change in itself, the cumulative effect of numerous such piecemeal changes can result in a major impairment of the water resources and interfere with the productivity and water quality of existing aquatic ecosystems.

(2) Cumulative effects attributable to the discharge of dredged or fill material in waters of the United States should be predicted to the extent reasonable and practical. The permitting authority shall collect information and solicit information from other sources about the cumulative impacts on the aquatic ecosystem. This information shall be documented and considered during the decision-making process concerning the evaluation of individual permit applications, the issuance of a General permit, and monitoring and enforcement of existing permits.

(h) *Determination of secondary effects on the aquatic ecosystem.* (1) Secondary effects are effects on an aquatic ecosystem that are associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material. Information about secondary effects on aquatic ecosystems shall be considered prior to the time final section 404 action is taken by permitting authorities.

(2) Some examples of secondary effects on an aquatic ecosystem are fluctuating water levels in an impoundment and downstream associated with the operation of a dam, septic tank leaching and surface runoff

from residential or commercial developments on fill, and leachate and runoff from a sanitary landfill located in waters of the U.S. Activities to be conducted on fast land created by the discharge of dredged or fill material in waters of the U.S. Activities to be conducted on fast land created by the discharge of dredged or fill material in waters of the U.S. are not exempt from the requirements of Section 404 of the Act.

(3) Any discharge of dredged or fill material into waters of the United States incidental to any activity having as its purpose bringing an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced, is not exempt from the requirements of Section 404 of the Act. Such activities include, but are not limited to, the placement of fill material for roads or dikes to channel development activity, even though the roads or dikes are not themselves directly in the waters of the United States. Any discharge of dredged or fill material into waters of the United States incidental to any activity having as its purpose bringing an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced, is not exempt from the requirements of Section 404 of the Act. Such activities include, but are not limited to, the placement of fill material for roads or dikes to channel development activity, even though the roads or dikes are not themselves directly in the waters of the United States.

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from residential or commercial developments on fill, and leachate and runoff from a sanitary landfill located in waters of the U.S. Activities to be conducted on fast land created by the discharge of dredged or fill material in waters of the United States may have secondary impacts within those waters which should be considered in evaluating the impact of creating those fast lands.

§ 230.12 Findings of compliance or non-compliance with the restrictions on discharge.

(a) On the basis of these Guidelines (Subparts C through G) the proposed disposal sites for the discharge of dredged or fill material must be:

(1) Specified as complying with the requirements of these Guidelines; or

(2) Specified as complying with the requirements of these Guidelines with the inclusion of appropriate and practicable discharge conditions (see Subpart H) to minimize pollution or adverse effects to the affected aquatic ecosystems; or

(3) Specified as failing to comply with the requirements of these Guidelines where:

(i) There is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem, so long as such alternative does not have other significant adverse environmental consequences; or

(ii) The proposed discharge will result in significant degradation of the aquatic ecosystem under § 230.10(b) or (c); or

(iii) The proposed discharge does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem; or

(iv) There does not exist sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with these Guidelines.

(b) Findings under this section shall be set forth in writing by the permitting authority for each proposed discharge and made available to the permit applicant. These findings shall include the factual determinations required by § 230.11, and a brief explanation of any adaptation of these Guidelines to the activity under consideration. In the case of a General permit, such findings shall be prepared at the time of issuance of that permit rather than for each subsequent discharge under the authority of that permit.

Subpart C—Potential Impacts on Physical and Chemical Characteristics of the Aquatic Ecosystem

Note.—The effects described in this subpart should be considered in making the factual determinations and the findings of compliance or non-compliance in Subpart B.

§ 230.20 Substrate.

(a) The substrate of the aquatic ecosystem underlies open waters of the United States and constitutes the surface of wetlands. It consists of organic and inorganic solid materials and includes water and other liquids or gases that fill the spaces between solid particles.

(b) Possible loss of environmental characteristics and values: The discharge of dredged or fill material can result in varying degrees of change in the complex physical, chemical, and biological characteristics of the substrate. Discharges which alter substrate elevation or contours can result in changes in water circulation, depth, current pattern, water fluctuation and water temperature. Discharges may adversely affect bottom-dwelling organisms at the site by smothering immobile forms or forcing mobile forms to migrate. Benthic forms present prior to a discharge are unlikely to recolonize on the discharged material if it is very dissimilar from that of the discharge site. Erosion, slumping, or lateral displacement of surrounding bottom of such deposits can adversely affect areas of the substrate outside the perimeters of the disposal site by changing or destroying habitat. The bulk and composition of the discharged material and the location, method, and timing of discharges may all influence the degree of impact on the substrate.

§ 230.21 Suspended particulates/turbidity.

(a) Suspended particulates in the aquatic ecosystem consist of fine-grained mineral particles, usually smaller than silt, and organic particles. Suspended particulates may enter water bodies as a result of land runoff, flooding, vegetative and planktonic breakdown, resuspension of bottom sediments, and man's activities including dredging and filling. Particulates may remain suspended in the water column for variable periods of time as a result of such factors as agitation of the water mass, particulate specific gravity, particle shape, and physical and chemical properties of particle surfaces.

(b) Possible loss of environmental characteristics and values: The discharge of dredged or fill material can result in greatly elevated levels of suspended particulates in the water column for varying lengths of time. These new levels may reduce light penetration and lower the rate of photosynthesis and the primary productivity of an aquatic area if they last long enough. Sight-dependent species may suffer reduced feeding ability leading to limited growth and lowered resistance to disease if high levels of suspended particulates persist. The biological and the chemical content of the suspended material may react with the dissolved oxygen in the water, which can result in oxygen depletion. Toxic metals and organics, pathogens, and viruses absorbed or adsorbed to fine-grained particulates in the material may become biologically available to organisms either in the water column or on the substrate. Significant increases in suspended particulate levels create turbid plumes which are highly visible and aesthetically displeasing. The extent and persistence of these adverse impacts caused by discharges depend upon the relative increase in suspended particulates above the amount occurring naturally, the duration of the higher levels, the current patterns, water level, and fluctuations present when such discharges occur, the volume, rate, and duration of the discharge, particulate deposition, and the seasonal timing of the discharge.

§ 230.22 Water.

(a) Water is the part of the aquatic ecosystem in which organic and inorganic constituents are dissolved and suspended. It constitutes part of the liquid phase and is contained by the substrate. Water forms part of a dynamic aquatic life-supporting system. Water clarity, nutrients and chemical content, physical and biological content, dissolved gas levels, pH, and temperature contribute to its life-sustaining capabilities.

(b) Possible loss of environmental characteristics and values: The discharge of dredged or fill material can change the chemistry and the physical characteristics of the receiving water at a disposal site through the introduction of chemical constituents in suspended or dissolved form. Changes in the clarity, color, odor, and taste of water and the addition of contaminants can reduce or eliminate the suitability of water bodies for populations of aquatic organisms, and for human consumption, recreation, and aesthetics. The introduction of nutrients or organic material to the water column as a result of the discharge can lead to a high biochemical oxygen demand (BOD), which in turn can lead to reduced dissolved oxygen, thereby potentially affecting the survival of many aquatic organisms. Increases in nutrients can favor one group of organisms such as algae to the detriment of other more desirable types such as submerged aquatic vegetation, potentially causing adverse health effects, objectionable tastes and odors, and other problems.

§ 230.23 Current patterns and water circulation.

(a) Current patterns and water circulation are the physical movements of water in the aquatic ecosystem. Currents and circulation respond to natural forces as modified by basin shape and cover, physical and chemical characteristics of water strata and masses, and energy dissipating factors.

(b) Possible loss of environmental characteristics and values: The discharge of dredged or fill material can modify current patterns and water circulation by obstructing flow, changing the direction or velocity of water flow, changing the direction or velocity of water flow and circulation, or otherwise changing the dimensions of a water body. As a result, adverse changes can occur in: location, structure, and dynamics of aquatic communities; shoreline and substrate erosion and depositon rates; the deposition of suspended particulates; the rate and extent of mixing of dissolved and suspended components of the water body; and water stratification.

§ 230.24 Normal water fluctuations.

(a) Normal water fluctuations in a natural aquatic system consist of daily, seasonal, and annual tidal and flood fluctuations in water level. Biological and physical components of such a system are either attuned to or characterized by these periodic water fluctuations.

(b) Possible loss of environmental characteristics and values: The discharge of dredged or fill material can alter the normal water-level fluctuation pattern of an area, resulting in prolonged periods of inundation, exaggerated extremes of high and low water, or a static, nonfluctuating water level. Such water level modifications may change salinity patterns, alter erosion or sedimentation rates, aggravate water temperature extremes, and upset the nutrient and dissolved oxygen balance of the aquatic ecosystem. In addition, these modifications can alter or destroy communities and populations of aquatic animals and vegetation, induce populations of nuisance organisms, modify habitat, reduce food supplies, restrict movement of aquatic fauna, destroy spawning areas, and change adjacent, upstream, and downstream areas.

§ 230.25 Salinity gradients.

(a) Salinity gradients form where salt water from the ocean meets and mixes with fresh water from land.

(b) Possible loss of environmental characteristics and values: Obstructions which divert or restrict flow of either fresh or salt water may change existing salinity gradients. For example, partial blocking of the entrance to an estuary or river mouth that significantly restricts the movement of the salt water into and out of that area can effectively lower the volume of salt water available for mixing within that estuary. The downstream migration of the salinity gradient can occur, displacing the maximum sedimentation zone and requiring salinity-dependent aquatic biota to adjust to the new conditions, move to new locations if possible, or perish. In the freshwater zone, discharge operations in the upstream regions can have equally adverse impacts. A significant reduction in the volume of fresh water moving into an estuary below that which is considered normal can affect the location and type of mixing thereby changing the characteristic salinity patterns. The resulting changed circulation pattern can cause the upstream migration of the salinity gradient displacing the maximim sedimentation zone. This migration may affect those organisms that are adapted to freshwater environments. It may also affect municipal water supplies.

Note.—Possible actions to minimize adverse impacts regarding site characteristics can be found in Subpart H.

Subpart D—Potential Impacts on Biological Characteristics of the Aquatic Ecosystem

Note.—The impacts described in this subpart should be considered in making the factual determinations and the findings of compliance or non-compliance in Subpart B.

§ 230.30 Threatened and endangered species.

(a) An endangered species is a plant or animal in danger of extinction throughout all or a significant portion of its range. A threatened species is one in danger of becoming an endangered species in the foreseeable future throughout all or a significant portion of its range. Listings of threatened and endangered species as well as critical habitats are maintained by some individual States and by the U.S. Fish and Wildlife Service of the Department of the Interior (codified annually at 50 CFR § 17.11). The Department of Commerce has authority over some threatened and endangered marine mammals, fish and reptiles.

(b) Possible loss of values: The major potential impacts on threatened or endangered species from the discharge of dredged or fill material include:

(1) Covering or otherwise directly killing species;

(2) The impairment or destruction of habitat to which these species are limited. Elements of the aquatic habitat which are particularly crucial to the continued survival of some threatened or endangered species include adequate good quality water, spawning and maturation areas, nesting areas, protective cover, adequate and reliable food supply, and resting areas for migratory species. Each of these elements can be adversely affected by changes in either the normal water conditions for clarity, chemical content, nutrient balance, dissolved oxygen, pH, temperature, salinity, current patterns, circulation and fluctuation, or the physical removal of habitat; and

(3) Facilitating incompatible activities.

(c) Where consultation with the Secretary of the Interior occurs under Section 7 of the Endangered Species Act, the conclusions of the Secretary concerning the impact(s) of the discharge on threatened and endangered species and their habitat shall be considered final.

§ 230.31 Fish, crustaceans, mollusks and other aquatic organisms in the food web.

(a) Aquatic organisms in the food web include, but are not limited to, finfish, crustaceans, mollusks, insects, annelids, planktonic organisms, and the plants and animals on which they feed and depend upon for their needs. All forms and life stages of an organism, throughout its geographic range, are included in this category.

(b) Possible loss of values: The discharge of dredged or fill material can variously affect populations of fish, crustaceans, mollusks and other food web organisms through the release of contaminants which adversely affect adults, juveniles, larvae, or eggs, or result in the establishment or proliferation of an undesirable competitive species of plant or animal at the expense of the desired resident species. Suspended particulates settling on attached or buried eggs can smother the eggs by limiting or sealing off their exposure to oxygenated water. Discharge of dredged and fill material may result in the debilitation or death of sedentary organisms by smothering, exposure to chemical contaminants in dissolved or suspended form, exposure to high levels of suspended particulates, reduction in food supply, or alteration of the substrate upon which they are dependent. Mollusks are particularly

sensitive to the discharge of material during periods of reproduction and growth and development due primarily

Subpart E—Potential Impacts on Special Aquatic Sites

Note.—The impacts described in this

(3) Wetland vegetation consists of plants that require saturated soils to survive (obligate wetland plants) as well

smaller in size than sand. They are either unvegetated or vegetated only by algal mats.

increasing the level of suspended particulates. Coral organisms are extremely sensitive to even slight

Subpart F—Potential Effects on Human Use Characteristics

sensitive to the discharge of material during periods of reproduction and growth and development due primarily to their limited mobility. They can be rendered unfit for human consumption by tainting, by production and accumulation of toxins, or by ingestion and retention of pathogenic organisms, viruses, heavy metals or persistent synthetic organic chemicals. The discharge of dredged or fill material can redirect, delay, or stop the reproductive and feeding movements of some species of fish and crustacea, thus preventing their aggregation in accustomed places such as spawning or nursery grounds and potentially leading to reduced populations. Reduction of detrital feeding species or other representatives of lower trophic levels can impair the flow of energy from primary consumers to higher trophic levels. The reduction or potential elimination of food chain organism populations decreases the overall productivity and nutrient export capability of the ecosystem.

§ 230.32 Other wildlife.

(a) Wildlife associated with aquatic ecosystems are resident and transient mammals, birds, reptiles, and amphibians.

(b) Possible loss of values: The discharge of dredged or fill material can result in the loss or change of breeding and nesting areas, escape cover, travel corridors, and preferred food sources for resident and transient wildlife species associated with the aquatic ecosystem. These adverse impacts upon wildlife habitat may result from changes in water levels, water flow and circulation, salinity, chemical content, and substrate characteristics and elevation. Increased water turbidity can adversely affect wildlife species which rely upon sight to feed, and disrupt the respiration and feeding of certain aquatic wildlife and food chain organisms. The availability of contaminants from the discharge of dredged or fill material may lead to the bioaccumulation of such contaminants in wildlife. Changes in such physical and chemical factors of the environment may favor the introduction of undesirable plant and animal species at the expense of resident species and communities. In some aquatic environments lowering plant and animal species diversity may disrupt the normal functions of the ecosystem and lead to reductions in overall biological productivity.

Note.—Possible actions to minimize adverse impacts regarding characteristics of biological components of the aquatic ecosystem can be found in Subpart H.

Subpart E—Potential Impacts on Special Aquatic Sites

Note.—The impacts described in this subpart should be considered in making the factual determinations and the findings of compliance or non-compliance in Subpart B. The definition of special aquatic sites is found in § 230.3(q–1).

§ 230.40 Sanctuaries and refuges.

(a) Sanctuaries and refuges consist of areas designated under State and Federal laws or local ordinances to be managed principally for the preservation and use of fish and wildlife resources.

(b) Possible loss of values: Sanctuaries and refuges may be affected by discharges of dredged or fill material which will:

(1) Disrupt the breeding, spawning, migratory movements or other critical life requirements of resident or transient fish and wildlife resources;

(2) Create unplanned, easy and incompatible human access to remote aquatic areas;

(3) Create the need for frequent maintenance activity;

(4) Result in the establishment of undesirable competitive species of plants and animals;

(5) Change the balance of water and land areas needed to provide cover, food, and other fish and wildlife habitat requirements in a way that modifies sanctuary or refuge management practices;

(6) Result in any of the other adverse impacts discussed in Subparts C and D as they relate to a particular sanctuary or refuge.

§ 230.41 Wetlands.

(a)(1) Wetlands consist of areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(2) Where wetlands are adjacent to open water, they generally constitute the transition to upland. The margin between wetland and open water can best be established by specialists familiar with the local environment, particularly where emergent vegetation merges with submerged vegetation over a broad area in such places as the lateral margins of open water, headwaters, rainwater catch basins, and groundwater seeps. The landward margin of wetlands also can best be identified by specialists familiar with the local environment when vegetation from the two regions merges over a broad area.

(3) Wetland vegetation consists of plants that require saturated soils to survive (obligate wetland plants) as well as plants, including certain trees, that gain a competitive advantage over others because they can tolerate prolonged wet soil conditions and their competitors cannot. In addition to plant populations and communities, wetlands are delimited by hydrological and physical characteristics of the environment. These characteristics should be considered when information about them is needed to supplement information available about vegetation, or where wetland vegetation has been removed or is dormant.

(b) Possible loss of values: The discharge of dredged or fill material in wetlands is likely to damage or destroy habitat and adversely affect the biological productivity of wetlands ecosystems by smothering, by dewatering, by permanently flooding, or by altering substrate elevation or periodicity of water movement. The addition of dredged or fill material may destroy wetland vegetation or result in advancement of succession to dry land species. It may reduce or eliminate nutrient exchange by a reduction of the system's productivity, or by altering current patterns and velocities. Disruption or elimination of the wetland system can degrade water quality by obstructing circulation patterns that flush large expanses of wetland systems, by interfering with the filtration function of wetlands, or by changing the aquifer recharge capability of a wetland. Discharges can also change the wetland habitat value for fish and wildlife as discussed in Subpart D. When disruptions in flow and circulation patterns occur, apparently minor loss of wetland acreage may result in major losses through secondary impacts. Discharging fill material in wetlands as part of municipal, industrial or recreational development may modify the capacity of wetlands to retain and store floodwaters and to serve as a buffer zone shielding upland areas from wave actions, storm damage and erosion.

§ 230.42 Mud flats

(a) Mud flats are broad flat areas along the sea coast and in coastal rivers to the head of tidal influence and in inland lakes, ponds, and riverine systems. When mud flats are inundated, wind and wave action may resuspend bottom sediments. Coastal mud flats are exposed at extremely low tides and inundated at high tides with the water table at or near the surface of the substrate. The substrate of mud flats contains organic material and particles

smaller in size than sand. They are either unvegetated or vegetated only by algal mats.

(b) Possible loss of values: The discharge of dredged or fill material can cause changes in water circulation patterns which may permanently flood or dewater the mud flat or disrupt periodic inundation, resulting in an increase in the rate of erosion or accretion. Such changes can deplete or eliminate mud flat biota, foraging areas, and nursery areas. Changes in inundation patterns can affect the chemical and biological exchange and decomposition process occurring on the mud flat and change the deposition of suspended material affecting the productivity of the area. Changes may reduce the mud flat's capacity to dissipate storm surge runoff.

§ 230.43 Vegetated shallows.

(a) Vegetated shallows are permanently inundated areas that under normal circumstances support communities of rooted aquatic vegetation, such as turtle grass and eelgrass in estuarine or marine systems as well as a number of freshwater species in rivers and lakes.

(b) Possible loss of values: The discharge of dredged or fill material can smother vegetation and benthic organisms. It may also create unsuitable conditions for their continued vigor by: (1) changing water circulation patterns; (2) releasing nutrients that increase undesirable algal populations; (3) releasing chemicals that adversely affect plants and animals; (4) increasing turbidity levels, thereby reducing light penetration and hence photosynthesis; and (5) changing the capacity of a vegetated shallow to stabilize bottom materials and decrease channel shoaling. The discharge of dredged or fill material may reduce the value of vegetated shallows as nesting, spawning, nursery, cover, and forage areas, as well as their value in protecting shorelines from erosion and wave actions. It may also encourage the growth of nuisance vegetation.

§ 230.44 Coral reefs.

(a) Coral reefs consist of the skeletal deposit, usually of calcareous or silicaceous materials, produced by the vital activities of anthozoan polyps or other invertebrate organisms present in growing portions of the reef.

(b) Possible loss of values: The discharge of dredged or fill material can adversely affect colonies of reef building organisms by burying them, by releasing contaminants such as hydrocarbons into the water column, by reducing light penetration through the water, and by increasing the level of suspended particulates. Coral organisms are extremely sensitive to even slight reductions in light penetration or increases in suspended particulates. These adverse effects will cause a loss of productive colonies which in turn provide habitat for many species of highly specialized aquatic organisms.

§ 230.45 Riffle and pool complexes.

(a) Steep gradient sections of streams are sometimes characterized by riffle and pool complexes. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. Pools are characterized by a slower stream velocity, a steaming flow, a smooth surface, and a finer substrate. Riffle and pool complexes are particularly valuable habitat for fish and wildlife.

(b) Possible loss of values: Discharge of dredged or fill material can eliminate riffle and pool areas by displacement, hydrologic modification, or sedimentation. Activities which affect riffle and pool areas and especially riffle/pool ratios, may reduce the aeration and filtration capabilities at the discharge site and downstream, may reduce stream habitat diversity, and may retard repopulation of the disposal site and downstream waters through sedimentation and the creation of unsuitable habitat. The discharge of dredged or fill material which alters stream hydrology may cause scouring or sedimentation of riffles and pools. Sedimentation induced through hydrological modification or as a direct result of the deposition of unconsolidated dredged or fill material may clog riffle and pool areas, destroy habitats, and create anaerobic conditions. Eliminating pools and meanders by the discharge of dredged or fill material can reduce water holding capacity of streams and cause rapid runoff from a watershed. Rapid runoff can deliver large quantities of flood water in a short time to downstream areas resulting in the destruction of natural habitat, high property loss, and the need for further hydraulic modification.

Note.—Possible actions to minimize adverse impacts on site or material characteristics can be found in Subpart H.

Subpart F—Potential Effects on Human Use Characteristics

Note.—The effects described in this subpart should be considered in making the factual determinations and the findings of compliance or non-compliance in Subpart B.

§ 230.50 Municipal and private water supplies.

(a) Municipal and private water supplies consist of surface water or ground water which is directed to the intake of a municipal or private water supply system.

(b) Possible loss of values: Discharges can affect the quality of water supplies with respect to color, taste, odor, chemical content and suspended particulate concentration, in such a way as to reduce the fitness of the water for consumption. Water can be rendered unpalatable or unhealthy by the addition of suspended particulates, viruses and pathogenic organisms, and dissolved materials. The expense of removing such substances before the water is delivered for consumption can be high. Discharges may also affect the quantity of water available for municipal and private water supplies. In addition, certain commonly used water treatment chemicals have the potential for combining with some suspended or dissolved substances from dredged or fill material to form other products that can have a toxic effect on consumers.

§ 230.51 Recreational and commercial fisheries.

(a) Recreational and commercial fisheries consist of harvestable fish, crustaceans, shellfish, and other aquatic organisms used by man.

(b) Possible loss of values: The discharge of dredged or fill materials can affect the suitability of recreational and commercial fishing grounds as habitat for populations of consumable aquatic organisms. Discharges can result in the chemical contamination of recreational or commercial fisheries. They may also interfere with the reproductive success of recreational and commercially important aquatic species through disruption of migration and spawning areas. The introduction of pollutants at critical times in their life cycle may directly reduce populations of commercially important aquatic organisms or indirectly reduce them by reducing organisms upon which they depend for food. Any of these impacts can be of short duration or prolonged, depending upon the physical and chemical impacts of the discharge and the biological availability of contaminants to aquatic organisms.

§ 230.52 Water-related recreation.

educational, historical, recreational

(2) Pertinent results from tests

reduce contamination to acceptable levels within the disposal site and to prevent contaminants from being

obtained from bioassays in lieu of chemical tests.

(2) *Water column effects.* (i)

representing community components colonizing various substrate types within the sites should be identified as

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§ 230.52 Water-related recreation.

(a) Water-related recreation encompasses activities undertaken for amusement and relaxation. Activities encompass two broad categories of use: consumptive, e.g., harvesting resources by hunting and fishing; and non-comsumptive, e.g. canoeing and sight-seeing.

(b) Possible loss of values: One of the more important direct impacts of dredged or fill disposal is to impair or destroy the resources which support recreation activities. The disposal of dredged or fill material may adversely modify or destroy water use for recreation by changing turbidity, suspended particulates, temperature, dissolved oxygen, dissolved materials, toxic materials, pathogenic organisms, quality of habitat, and the aesthetic qualities of sight, taste, odor, and color.

§ 230.53 Aesthetics.

(a) Aesthetics associated with the aquatic ecosystem consist of the perception of beauty by one or a combination of the senses of sight, hearing, touch, and smell. Aesthetics of aquatic ecosystems apply to the quality of life enjoyed by the general public and property owners.

(b) Possible loss of values: The discharge of dredged or fill material can mar the beauty of natural aquatic ecosystems by degrading water quality, creating distracting disposal sites, inducing inappropriate development, encouraging unplanned and incompatible human access, and by destroying vital elements that contribute to the compositional harmony or unity, visual distinctiveness, or diversity of an area. The discharge of dredged or fill material can adversely affect the particular features, traits, or characteristics of an aquatic area which make it valuable to property owners. Activities which degrade water quality, disrupt natural substrate and vegetational characteristics, deny access to or visibility of the resource, or result in changes in odor, air quality, or noise levels may reduce the value of an aquatic area to private property owners.

§ 230.54 Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar preserves.

(a) These preserves consist of areas designated under Federal and State laws or local ordinances to be managed for their aesthetic, educational, historical, recreational, or scientific value.

(b) Possible loss of values: The discharge of dredged or fill material into such areas may modify the aesthetic, educational, historical, recreational and/or scientific qualities thereby reducing or eliminating the uses for which such sites are set aside and managed.

Note.—Possible actions to minimize adverse impacts regarding site or material characteristics can be found in Subpart H.

Subpart G—Evaluation and Testing

§ 230.60 General evaluation of dredged or fill material.

The purpose of these evaluation procedures and the chemical and biological testing sequence outlined in § 230.61 is to provide information to reach the determinations required by § 230.11. Where the results of prior evaluations, chemical and biological tests, scientific research, and experience can provide information helpful in making a determination, these should be used. Such prior results may make new testing unnecessary. The information used shall be documented. Where the same information applies to more than one determination, it may be documented once and referenced in later determinations.

(a) If the evaluation under paragraph (b) indicates the dredged or fill material is not a carrier of contaminants, then the required determinations pertaining to the presence and effects of contaminants can be made without testing. Dredged or fill material is most likely to be free from chemical, biological, or other pollutants where it is composed primarily of sand, gravel, or other naturally occurring inert material. Dredged material so composed is generally found in areas of high current or wave energy such as streams with large bed loads or coastal areas with shifting bars and channels. However, when such material is discolored or contains other indications that contaminants may be present, further inquiry should be made.

(b) The extraction site shall be examined in order to assess whether it is sufficiently removed from sources of pollution to provide reasonable assurance that the proposed discharge material is not a carrier of contaminants. Factors to be considered include but are not limited to:

(1) Potential routes of contaminants or contaminated sediments to the extraction site, based on hydrographic or other maps, aerial photography, or other materials that show watercourses, surface relief, proximity to tidal movement, private and public roads, location of buildings, municipal and industrial areas, and agricultural or forest lands.

(2) Pertinent results from tests previously carried out on the material at the extraction site, or carried out on similar material for other permitted projects in the vicinity. Materials shall be considered similar if the sources of contamination, the physical configuration of the sites and the sediment composition of the materials are comparable, in light of water circulation and stratification, sediment accumulation and general sediment characteristics. Tests from other sites may be relied on only if no changes have occurred at the extraction sites to render the results irrelevant.

(3) Any potential for significant introduction of persistent pesticides from land runoff or percolation;

(4) Any records of spills or disposal of petroleum products or substances designated as hazardous under section 311 of the Clean Water Act (See 40 CFR 116);

(5) Information in Federal, State and local records indicating significant introduction of pollutants from industries, municipalities, or other sources, including types and amounts of waste materials discharged along the potential routes of contaminants to the extraction site; and

(6) Any possibility of the presence of substantial natural deposits of minerals or other substances which could be released to the aquatic environment in harmful quantities by man-induced discharge activities.

(c) To reach the determinations in § 230.11 involving potential effects of the discharge on the characteristics of the disposal site, the narrative guidance in Subparts C–F shall be used along with the general evaluation procedure in § 230.60 and, if necessary, the chemical and biological testing sequence in § 230.61. Where the discharge site is adjacent to the extraction site and subject to the same sources of contaminants, and materials at the two sites are substantially similar, the fact that the material to be discharged may be a carrier of contaminants is not likely to result in degradation of the disposal site. In such circumstances, when dissolved material and suspended particulates can be controlled to prevent carrying pollutants to less contaminated areas, testing will not be required.

(d) Even if the § 230.60(b) evaluation (previous tests, the presence of polluting industries and information about their discharge or runoff into waters of the U.S., bioinventories, etc.) leads to the conclusion that there is a high probability that the material proposed for discharge is a carrier of contaminants, testing may not be necessary if constraints are available to

reduce contamination to acceptable levels within the disposal site and to prevent contaminants from being transported beyond the boundaries of the disposal site, if such constraints are acceptable to the permitting authority and the Regional Administrator, and if the potential discharger is willing and able to implement such constraints. However, even if tests are not performed, the permitting authority must still determine the probable impact of the operation on the receiving aquatic ecosystem. Any decision not to test must be explained in the determinations made under § 230.11.

§ 230.61 Chemical, biological, and physical evaluation and testing.

Note.—The Agency is today proposing revised testing guidelines. The evaluation and testing procedures in this section are based on the 1975 § 404(b)(1) interim final Guidelines and shall remain in effect until the revised testing guidelines are published as final regulations.

(a) No single test or approach can be applied in all cases to evaluate the effects of proposed discharges of dredged or fill materials. This section provides some guidance in determining which test and/or evaluation procedures are appropriate in a given case. Interim guidance to applicants concerning the applicability of specific approaches or procedures will be furnished by the permitting authority.

(b) *Chemical-biological interactive effects.* The principal concerns of discharge of dredged or fill material that contain contaminants are the potential effects on the water column and on communities of aquatic organisms.

(1) *Evaluation of chemical-biological interactive effects.* Dredged or fill material may be excluded from the evaluation procedures specified in paragraphs (b)(2) and (3) of this section if it is determined, on the basis of the evaluation in § 230.60, that the likelihood of contamination by contaminants is acceptably low, unless the permitting authority, after evaluating and considering any comments received from the Regional Administrator, determines that these procedures are necessary. The Regional Administrator may require, on a case-by-case basis, testing approaches and procedures by stating what additional information is needed through further analyses and how the results of the analyses will be of value in evaluating potential environmental effects.

If the General Evaluation indicates the presence of a sufficiently large number of chemicals to render impractical the identification of all contaminants by chemical testing, information may be obtained from bioassays in lieu of chemical tests.

(2) *Water column effects.* (i) Sediments normally contain constituents that exist in various chemical forms and in various concentrations in several locations within the sediment. An elutriate test may be used to predict the effect on water quality due to release of contaminants from the sediment to the water column. However, in the case of fill material originating on land which may be a carrier of contaminants, a water leachate test is appropriate.

(ii) Major constituents to be analyzed in the elutriate are those deemed critical by the permitting authority, after evaluating and considering any comments received from the Regional Administrator, and considering results of the evaluation in § 230.60. Elutriate concentrations should be compared to concentrations of the same constituents in water from the disposal site. Results should be evaluated in light of the volume and rate of the intended discharge, the type of discharge, the hydrodynamic regime at the disposal site, and other information relevant to the impact on water quality. The permitting authority should consider the mixing zone in evaluating water column effects. The permitting authority may specify bioassays when such procedures will be of value.

(3) *Effects on benthos.* The permitting authority may use an appropriate benthic bioassay (including bioaccumulation tests) when such procedures will be of value in assessing ecological effects and in establishing discharge conditions.

(c) Procedure for comparison of sites.

(1) When an inventory of the total concentration of contaminants would be of value in comparing sediment at the dredging site with sediment at the disposal site, the permitting authority may require a sediment chemical analysis. Markedly different concentrations of contaminants between the excavation and disposal sites may aid in making an environmental assessment of the proposed disposal operation. Such differences should be interpreted in terms of the potential for harm as supported by any pertinent scientific literature.

(2) When an analysis of biological community structure will be of value to assess the potential for adverse environmental impact at the proposed disposal site, a comparison of the biological characteristics between the excavation and disposal sites may be required by the permitting authority. Biological indicator species may be useful in evaluating the existing degree of stress at both sites. Sensitive species representing community components colonizing various substrate types within the sites should be identified as possible bioassay organisms if tests for toxicity are required. Community structure studies should be performed only when they will be of value in determining discharge conditions. This is particularly applicable to large quantities of dredged material known to contain adverse quantities of toxic materials. Community studies should include benthic organisms such as microbiota and harvestable shellfish and finfish. Abundance, diversity, and distribution should be documented and correlated with substrate type and other appropriate physical and chemical environmental characteristics.

(d) Physical tests and evaluation. The effect of a discharge of dredged or fill material on physical substrate characteristics at the disposal site, as well as on the water circulation, fluctuation, salinity, and suspended particulates content there, is important in making factual determinations in § 230.11. Where information on such effects is not otherwise available to make these factual determinations, the permitting authority shall require appropriate physical tests and evaluations as are justified and deemed necessary. Such tests may include sieve tests, settleability tests, compaction tests, mixing zone and suspended particulate plume determinations, and site assessments of water flow, circulation, and salinity characteristics.

Subpart H—Actions To Minimize Adverse Effects

Note.—There are many actions which can be undertaken in response to § 203.10(d) to minimize the adverse effects of discharges of dredged or fill material. Some of these, grouped by type of activity, are listed in this subpart.

§ 230.70 Actions concerning the location of the discharge.

The effects of the discharge can be minimized by the choice of the disposal site. Some of the ways to accomplish this are by:

(a) Locating and confining the discharge to minimize smothering of organisms;

(b) Designing the discharge to avoid a disruption of periodic water inundation patterns;

(c) Selecting a disposal site that has been used previously for dredged material discharge;

(d) Selecting a disposal site at which the substrate is composed of material similar to that being discharged, such as discharging sand on sand or mud on mud;

(e) Selecting the disposal site, the discharge point, and the method of discharge to minimize the extent of any plume;

(f) Designing the discharge of dredged

(a) Where environmentally desirable, distributing the dredged material widely in a thin layer at the disposal site to maintain natural substrate contours and elevation;

(e) Employing appropriate machinery and methods of transport of the material for discharge.

§ 230.75 Actions affecting plant and animal populations.

(e) Selecting sites that will not be detrimental or increase incompatible human activity, or require the need for frequent dredge or fill maintenance activity in remote fish and wildlife

(d) To provide the basis for advanced identification of disposal areas, and areas unsuitable for disposal, EPA and the permitting authority shall consider the likelihood that use of the area in

(e) Selecting the disposal site, the discharge point, and the method of discharge to minimize the extent of any plume;

(f) Designing the discharge of dredged or fill material to minimize or prevent the creation of standing bodies of water in areas of normally fluctuating water levels, and minimize or prevent the drainage of areas subject to such fluctuations.

§ 230.71 Actions concerning the material to be discharged.

The effects of a discharge can be minimized by treatment of, or limitations on the material itself, such as:

(a) Disposal of dredged material in such a manner that physiochemical conditions are maintained and the potency and availability of pollutants are reduced.

(b) Limiting the solid, liquid, and gaseous components of material to be discharged at a particular site;

(c) Adding treatment substances to the discharge material;

(d) Utilizing chemical flocculants to enhance the deposition of suspended particulates in diked disposal areas.

§ 230.72 Actions controlling the material after discharge.

The effects of the dredged or fill material after discharge may be controlled by:

(a) Selecting discharge methods and disposal sites where the potential for erosion, slumping or leaching of materials into the surrounding aquatic ecosystem will be reduced. These sites or methods include, but are not limited to:

(1) Using containment levees, sediment basins, and cover crops to reduce erosion;

(2) Using lined containment areas to reduce leaching where leaching of chemical constituents from the discharged material is expected to be a problem;

(b) Capping in-place contaminated material with clean material or selectively discharging the most contaminated material first to be capped with the remaining material;

(c) Maintaining and containing discharged material properly to prevent point and nonpoint sources of pollution;

(d) Timing the discharge to minimize impact, for instance during periods of unusual high water flows, wind, wave, and tidal actions.

§ 230.73 Actions affecting the method of dispersion.

The effects of a discharge can be minimized by the manner in which it is dispersed, such as:

(a) Where environmentally desirable, distributing the dredged material widely in a thin layer at the disposal site to maintain natural substrate contours and elevation;

(b) Orienting a dredged or fill material mound to minimize undesirable obstruction to the water current or circulation pattern, and utilizing natural bottom contours to minimize the size of the mound;

(c) Using silt screens or other appropriate methods to confine suspended particulate/turbidity to a small area where settling or removal can occur;

(d) Making use of currents and circulation patterns to mix, disperse and dilute the discharge;

(e) Minimizing water column turbidity by using a submerged diffuser system. A similar effect can be accomplished by submerging pipeline discharges or otherwise releasing materials near the bottom;

(f) Selecting sites or managing discharges to confine and minimize the release of suspended particulates to give decreased turbidity levels and to maintain light penetration for organisms;

(g) Setting limitations on the amount of material to be discharged per unit of time or volume of receiving water.

§ 230.74 Actions related to technology.

Discharge technology should be adapted to the needs of each site. In determining whether the discharge operation sufficiently minimizes adverse environmental impacts, the applicant should consider:

(a) Using appropriate equipment or machinery, including protective devices, and the use of such equipment or machinery in activities related to the discharge of dredged or fill material;

(b) Employing appropriate maintenance and operation on equipment or machinery, including adequate training, staffing, and working procedures;

(c) Using machinery and techniques that are especially designed to reduce damage to wetlands. This may include machines equipped with devices that scatter rather than mound excavated materials, machines with specially designed wheels or tracks, and the use of mats under heavy machines to reduce wetland surface compaction and rutting;

(d) Designing access roads and channel spanning structures using culverts, open channels, and diversions that will pass both low and high water flows, accommodate fluctuating water levels, and maintain circulation and faunal movement;

(e) Employing appropriate machinery and methods of transport of the material for discharge.

§ 230.75 Actions affecting plant and animal populations.

Minimization of adverse effects on populations of plants and animals can be achieved by:

(a) Avoiding changes in water current and circulation patterns which would interfere with the movement of animals;

(b) Selecting sites or managing discharges to prevent or avoid creating habitat conducive to the development of undesirable predators or species which have a competitive edge ecologically over indigenous plants or animals;

(c) Avoiding sites having unique habitat or other value, including habitat of threatened or endangered species;

(d) Using planning and construction practices to institute habitat development and restoration to produce a new or modified environmental state of higher ecological value by displacement of some or all of the existing environmental characteristics. Habitat development and restoration techniques can be used to minimize adverse impacts and to compensate for destroyed habitat. Use techniques that have been demonstrated to be effective in circumstances similar to those under consideration wherever possible. Where proposed development and restoration techniques have not yet advanced to the pilot demonstration stage, initiate their use on a small scale to allow corrective action if unanticipated adverse impacts occur.

(e) Timing discharge to avoid spawning or migration seasons and other biologically critical time periods;

(f) Avoiding the destruction of remnant natural sites within areas already affected by development.

§ 230.76 Actions affecting human use.

Minimization of adverse effects on human use potential may be achieved by:

(a) Selecting discharge sites and following discharge procedures to prevent or minimize any potential damage to the aesthetically pleasing features of the aquatic site (e.g. viewscapes), particularly with respect to water quality;

(b) Selecting disposal sites which are not valuable as natural aquatic areas;

(c) Timing the discharge to avoid the seasons or periods when human recreational activity associated with the aquatic site is most important;

(d) Following discharge procedures which avoid or minimize the disturbance of aesthetic features of an aquatic site or ecosystem.

(e) Selecting sites that will not be detrimental or increase incompatible human activity, or require the need for frequent dredge or fill maintenance activity in remote fish and wildlife areas;

(f) Locating the disposal site outside of the vicinity of a public water supply intake.

§ 230.77 Other actions.

(a) In the case of fills, controlling runoff and other discharges from activities to be conducted on the fill;

(b) In the case of dams, designing water releases to accommodate the needs of fish and wildlife.

(c) In dredging projects funded by Federal agencies other than the Corps of Engineers, maintain desired water quality of the return discharge through agreement with the Federal funding authority on scientifically defensible pollutant concentration levels in addition to any applicable water quality standards.

(d) When a significant ecological change in the aquatic environment is proposed by the discharge of dredged or fill material, the permitting authority should consider the ecosystem that will be lost as well as the environmental benefits of the new system.

Subpart I—Planning To Shorten Permit Processing Time

§ 230.80 Advanced identification of disposal areas.

(a) Consistent with these Guidelines, EPA and the permitting authority, on their own initiative or at the request of any other party and after consultation with any affected State that is not the permitting authority, may identify sites which will be considered as:

(1) Possible future disposal sites, including existing disposal sites and non-sensitive areas; or

(2) Areas generally unsuitable for disposal site specification;

(b) The identification of any area as a possible future disposal site should not be deemed to constitute a permit for the discharge of dredged or fill material within such area or a specification of a disposal site. The identification of areas that generally will not be available for disposal site specification should not be deemed as prohibiting applications for permits to discharge dredged or fill material in such areas. Either type of identification constitutes information to facilitate individual or General permit application and processing.

(c) An appropriate public notice of the proposed identification of such areas shall be issued;

(d) To provide the basis for advanced identification of disposal areas, and areas unsuitable for disposal, EPA and the permitting authority shall consider the likelihood that use of the area in question for dredged or fill material disposal will comply with these Guidelines. To facilitate this analysis, EPA and the permitting authority should review available water resources management data including data available from the public, other Federal and State agencies, and information from approved Coastal Zone Management programs and River Basin Plans.

(e) The permitting authority should maintain a public record of the identified areas and a written statement of the basis for identification.

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Part V

Environmental Protection Agency

Testing Requirements for the Specification of Disposal Sites for Dredged or Fill Material

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 230

discharge of dredged or fill material. Sites are to be specified through the application of guidelines developed by EPA in conjunction with the Secretary (the 404(b)(1) Guidelines).

must consider the factors set out in the Guidelines. In light of the particular facts involved. The testing procedures are designed to provide some of the information to be used in making

Tests are specified to verify that the material is not more contaminated, and, if it is, to provide information to be used in assessing its potential for harm. Comments are solicited on the

acceptability. Where the calculated mixing zone violates a water quality standard (either because the standard prohibits mixing zones or because the calculated mixing zone is outside that

not constitute a major regulation requiring preparation of an economic impact statement under Executive Order 12044.

The Waterways Experiment Station of the Corps of Engineers has prepared a

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 230

[WH-FRL 1647-6]

Testing Requirements for the Specification of Disposal Sites for Dredged or Fill Material

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the testing requirements in the section 404(b)(1) Guidelines for the Specification of Disposal Sites for Dredged and Fill Material under section 404 of the Clean Water Act.

The testing requirements in the Guidelines are being revised because on September 18, 1979, when the Guidelines were proposed, EPA and the Corps of Engineers had not completed revisions on the testing portion and sought comments on the remainder of the Guidelines only at that time.

The revised testing section is intended to reconcile the need for simplicity and ease of application of the testing procedures on the one hand with the need for sufficient information to identify potential adverse effects on the environment on the other hand.

DATE: All comments received on or before February 6, 1981, will be considered.

ADDRESSES: Send written comments to: Joseph Krivak, Criteria and Standards Division, Office of Water and Waste Management, (WH-585), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Each person submitting a comment should include his or her name and address and give reasons for any recommendations. A copy of all public comments will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Joseph Krivak, 202-755-0100.

SUPPLEMENTARY INFORMATION:

Background

The section 404 program was established by the Federal Water Pollution Control Act of 1972 (FWPCA) to regulate the discharge of dredged or fill material into waters of the United States. The Secretary of the Army, acting through the Chief of Engineers, and States with programs which have been approved by EPA are authorized to issue permits specifying sites for the discharge of dredged or fill material. Sites are to be specified through the application of guidelines developed by EPA in conjunction with the Secretary (the 404(b)(1) Guidelines).

EPA published Interim Final 404(b)(1) Guidelines on September 5, 1975, which, *inter alia*, provided for certain testing procedures to provide information to be used in the permit decision. Since then, both the passage of the 1977 Amendments to the FWPCA and the experience of EPA and the Corps of Engineers in applying the Guidelines prompted EPA to develop proposed revisions to the Guidelines, which were published in the **Federal Register** on September 18, 1979. Because EPA and the Corps had not at that time completed revisions to the testing portions of the Guidelines, but did not want to delay revisions to the rest of the Guidelines, the September 18, 1979 proposal retained the 1975 testing provisions (with certain non-substantive editing changes) and sought comments on the remainder of the Guidelines only. A final rule reflecting public comments but retaining the old testing provisions (now appearing in §§ 230.60 and 230.61) is being published elsewhere in today's **Federal Register.**

EPA and the Corps have now completed a proposed testing package. After the comment period, we will consider the comments and make appropriate changes in the testing provisions. Then final testing provisions will replace §§ 230.60 and 230.61 as they appear in today's final section 404(b)(1) Guidelines. We are not planning any other changes in the Guidelines apart from those necessary to accommodate the new testing package. While we believe that it will not be necessary to change the regulations substantively to accommodate the new testing procedures, we solicit comments on this point.

The Corps of Engineers has played a major role in developing today's proposed rule. This draft was revised to reflect the comments of Corps and EPA employees with experience sith the permitting process and with the technical and scientific issues involved.

Purpose and Content of the Revised Testing Section

Under the 404(b)(1) Guidelines, a discharge may not take place if the permitting authority finds, among other things, that the discharge will have unacceptable adverse effects or that practical steps have not been taken to minimize adverse impacts (§ 230.10). In order to determine whether these requirements have been met in a particular case, the permitting authority must consider the factors set out in the Guidelines, in light of the particular facts involved. The testing procedures are designed to provide some of the information to be used in making determinations concerning the potential impacts of a particular proposed discharge. Where the circumstances indicate that testing is not likely to provide useful information, the regulation allows the permit decision to be made without testing. We have attempted in this way to reconcile our desire for simplicity and ease of application of the testing procedures on the one hand with the need for sufficient information to identify potential adverse effects on the other hand.

Section-by-Section Summary*

Proposed § 230.60 explains the purpose of testing and sets out general information pertaining to testing. It is our intent to minimize the testing burden, consistent with the need for the permitting authority to make an informed judgment about the potential impacts of a discharge. Thus, this section provides that results of previous tests may be used in appropriate circumstances.

In addition, under § 230.61, tests to evaluate the impacts of contaminants are required only when there is reason to believe that contaminants are present. We have proposed that the trigger be the presence of such contaminants "above background levels." Section 230.61(a) identifies factors which should be considered in this "reason to believe" test (or "initial evaluation," as it is sometimes called). Comments are sought on the adequacy of this list of factors.

Section 230.62 sets out specific testing requirements. These requirements are organized by "category" of discharge. In order to determine which requirements apply to particular discharges, we have constructed categories of discharges, based on the initial evaluation, to reflect different potentials for adverse impacts on the aquatic ecosystem. Comments are sought on the appropriateness of the proposed categories for this purpose. The specific tests required for particular categories are based on the severity of potential impacts.

When there is no reason to believe that dredged material is contaminated, it falls into Category 1, and no contaminant-related testing is required. Category 2 includes dredged material which, while possibly contaminated, probably is not significantly more contaminated than the discharge site.

*The definitions in § 230.3 of the final Guidelines apply to these testing revisions.

Tests are specified to verify that the material is not more contaminated, and, if it is, to provide information to be used in assessing its potential for harm. Comments are solicited on the appropriateness of the proposed tests for this purpose.

Category 3 includes discharges of apparently contaminated dredged material which is to be discharged into contained or confined disposal areas. In this situation, testing is concerned only with the return flow. Where the contained site is itself located in waters of the United States, discharges within it will automatically destroy or dislocate the life there, whether or not the discharged material is contaminated. Thus, there is no need to test the contamination of the material which will remain in the site. The tests for Category 3 are designed to compare the runoff with the receiving water, and, if significant differences are discovered, to assess the potential for harm. Again, comments are sought on the appropriateness of the proposed tests.

Category 4 includes dredged material which, on the basis of the precategorization evaluation, appears to be more contaminated than the discharge site (e.g., not to fall into Category 2) and which will not be confined or contained (e.g., is not in Category 3), and hence presents a potential for environmental harm. Biological tests are prescribed to provide information on the likelihood and extent of harm. Comments are solicited on the appropriateness of the prescribed tests to provide the information needed to evaluate the potential adverse impacts of such discharges.

Under § 230.63, Categories 5 and 6 apply to fill material. If the material is not believed to be contaminated (or the contaminants will not leach out), no testing is required. If there is potential for environmental contamination, the prescribed tests are conducted. When dredged material is used for fill, it should be placed in Categories 1 through 4, not 5 or 6. Comments are solicited on the appropriateness of the categories for fill and the adequacy of the tests for Category 6 for all contaminated, non-dredged fill material, particularly in light of the definition of fill material in the Guidelines published today (40 CFR 230 [FRL 1647-7]) and in the Consolidated Permit Regulations (40 CFR 122.3, 45 FR 33421, May 19, 1980).

Section 230.64 provides a procedure for calculating a mixing zone from the information obtained from testing in § 230.62. Section 230.64 is concerned with the calculation of the mixing zone, not on the evaluation of its acceptability. Where the calculated mixing zone violates a water quality standard (either because the standard prohibits mixing zones or because the calculated mixing zone is outside that allowed under the standard), the discharge will fail to satisfy the requirements of § 230.10(b)(1). Even where the mixing zone meets water quality standards, it may nonetheless contribute to the impact on the environment, and should be weighed with all the other available information in making the determination of significant degradation under § 230.10(c).

Where there are numerical water quality standards for the contaminant involved, the edge of the mixing zone is based on the place where the discharged material is sufficiently diluted to meet ambient water quality standards. Where no numerical water quality exists, the mixing zone perimeter will be calculated based on the results of the water column bioassay. Comments are solicited on the propriety of these two methods for calculating the mixing zone perimeter.

The proposal also calls for bioassay tests where the contaminant levels in the elutriate exceed those of the receiving waters and contaminant levels in the receiving water already exceed applicable standards or criteria, making dilution to those standards impossible. Comments are solicited on whether such tests are necessary or whether such circumstances alone clearly establish the likelihood of significant degradation.

Other points

It is our present intention to have these revised testing provisions go into effect 90 days after their publication as a final rule (probably by the summer of 1981). While the required tests are quite similar to those required under the 1975 regulation, and while we have endeavored to keep to a minimum the occasions when tests will be conducted, we are interested in any comments on the appropriateness of this date.

Under the revised section 404(b)(1) Guidelines, the permitting authority may choose to conduct the tests itself, instead of requiring the applicant to do so. We anticipate this happening when several similar discharges are proposed for a single area, for example. Commenters should bear this in mind in commenting on the potential burden of testing.

Comments objecting to the particular tests specified or suggesting new tests will be more helpful to us if they include reference to (or copies of) pertinent literature.

The Environmental Protection Agency has determined that this document does not constitute a major regulation requiring preparation of an economic impact statement under Executive Order 12044.

The Waterways Experiment Station of the Corps of Engineers has prepared a background document in support of this proposed rule, based on input from both our agencies. Copies are availabe for review in EPA Headquarters Library (Public Information Reference Unit), Room 2404, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

Dated: December 12, 1980.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

40 CFR Part 230 is proposed to be amended by revising Subpart G to read as follows:

(1) The authority citation for Part 230 reads as follows:

Authority: Secs. 404, 501 of the Clean Water Act of 1977, 33 U.S.C. 1344(b), 1361(a)].

(2) Subpart G is revised to read as follows:

Subpart G—Evaluation and Testing

Sec.

230.60 Purpose of testing and general approach.
230.61 Initial evaluation of dredged or fill material.
230.62 Detailed evaluation, including possible testing of dredged material.
230.63 Detailed evaluation, including possible testing of fill material.
230.64 Mixing zone determinations.

Authority: Secs. 404, 501 of the Clean Water Act of 1977 (33 U.S.C. 1344(b), 1361(a).

Subpart G—Evaluation and Testing

§ 230.60 Purpose of testing and general approach.

(a) *Purpose.* The purpose of the testing procedures in this Subpart is to provide the permitting authority with technical information required to assess the potential chemical and biological effects of the discharge of dredged or fill material into waters of the United States. The permitting authority must interpret this technical information in light of the specific characteristics of the proposed discharge under evaluation. The technical information and interpretation should be used in making the factual determinations in § 230.11.

(1) Because the testing procedures in this Subpart are done primarily in the laboratory, rather than in the field, and because the tests are only generally predictive of what may actually take place at the discharge site, test results shall not be considered as a sole determinant in making the required Findings of Compliance in § 230.12. Therefore, all test results, including

those that describe sediments with a high potential for significant degradation on aquatic organisms, must be related to other pertinent factors in factual determinations (§ 230.11) before Findings of Compliance are made.

be fully explained and documented in the Section 404(b)(1) evaluation.

(2) The persistence, stability, and solubility in water and/or other solvents of contaminants as well as the duration and rates of introduction of

occurred to render the comparisons inappropriate.

(3) The probability of past substantial introduction of contaminants from land runoff (e.g., pesticides).

(4) Spills of toxic substances or

to factual determinations required under § 230.11. The following paragraphs describe the categories, the testing (if any) required under each, and how this evaluation leads to the factual determinations.

(b) *Category 1: Discharge Without*

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those that describe sediments with a high potential for significant degradation on aquatic organisms, must be related to other pertinent factors in factual determinations (§ 230.11) before Findings of Compliance are made.

(2) Subpart G addresses only those tests designed to determine the chemical and biological degradation caused by contaminants (specific pollutants designated by the authority of Sections 307(a) and 311 of the Clean Water Act (CWA) and other potentially toxic or hazardous pollutants, referred to in § 230.3(g)), which are believed to be in dredged or fill material. To assess the potential effects of the discharge in the factual determinations, it may be necessary to conduct other analyses (e.g., coliform, BOD, COD, etc.) or to consider physical effects such as burial, turbidity, etc., as discussed in Subpart B.

(3) Where the results of prior evaluations, chemical and biological tests, and scientific research can provide information helpful in reaching a determination, those should be used. Such prior results may make new testing unnecessary. The information used to reach each determination shall be documented, except that where the same information is applicable to more than one determination, it may be documented in one instance and referenced in later determinations.

(b) *General approach.* Chemical and biological testing requirements of this section are designed to provide information for the factual determinations and ecological evaluations and to assist in determining the compatibility of the proposed discharge of dredged or fill material with applicable water quality standards. Except for " other analyses" as stated in § 230.60(a)(2), the permitting authority will require tests only in those cases where there is reason to believe that contaminants are present in forms and amounts that are likely to degrade the aquatic environment, including potential availability to organisms in toxic amounts. This "reason to believe" determination will be made by the permitting authority in the initial evaluation process of § 230.61. Categories have been established to provide the permitting authority with guidance on when testing is needed and what tests can be considered sufficient for the application of the Guidelines.

(1) Permitting authorities and/or U.S. EPA Regional administrators may approve modifications of these procedures or require additional tests to obtain needed information for the determination for a specific situation. The reasons for such modifications shall be fully explained and documented in the Section 404(b)(1) evaluation.

(2) The persistence, stability, and solubility in water and/or other solvents of contaminants as well as the duration and rates of introduction of contaminants and rates of dilution and dispersion after introduction are important considerations in selecting appropriate chemical and biological tests and interpreting the test results.

(3) Tests in this section may be performed on several alternative discharge sites concurrently, if this will aid in obtaining necessary information for making the factual determinations for contaminants.

(4) A technical implementation manual containing acceptable and recommended procedures for implementing the testing requirements of this subpart will be developed and approved jointly by the Administrator, EPA, and the Chief of Engineers. The manual will be reviewed periodically and revised as necessary.

§ 230.61 Initial evaluation of dredged or fill material.

(a) An initial evaluation shall be conducted and documented to determine if there is reason to believe that any dredged or fill material to be discharged into waters of the United States contains any contaminant above background level. This initial evaluation will be used in assigning the proposed discharge to a category for testing. This evaluation should be accomplished with existing data on file with or readily available to the permitting authority; Regional Administrator, EPA; and other public and private sources, as appropriate. Factors which may be considered for the extraction site and, if appropriate, the disposal site, include, but are not limited to, the following:

(1) Potential routes of introduction of specific contaminants. These may be identified by examining maps, aerial photographs, and other graphic materials that show watercourses, surface relief, proximity to tidal movement, private and public roads, location of buildings, agricultural land, municipal and industrial sewage and storm outfalls, etc., or by making field inspections.

(2) Previous tests on the material at the extraction site or on samples from other similar projects in the vicinity, when there are similarities of sources and types of contaminants, water circulation and stratification, accumulation of sediments, general sediment characteristics, and potential impact on the aquatic environment, as long as no known changes have occurred to render the comparisons inappropriate.

(3) The probability of past substantial introduction of contaminants from land runoff (e.g., pesticides).

(4) Spills of toxic substances or substances designated as hazardous under Section 311 of the Clean Water Act (see 40 CFR Part 116).

(5) Substantial introduction of pollutants from industries.

(6) Source and previous use of materials proposed for discharge as fill.

(7) Substantial natural deposits of minerals and other natural substances.

(b) Before the permitting authority concludes that there is no reason to believe that contaminants are present in the discharge material above background levels, he should consider all relevant, reasonably available information which might indicate its presence. However, if there is no information indicating the likelihood of such contamination, the permitting authority may conclude that contaminants are not present above background levels. Examples of documents and records in which data on contaminants may be obtained are:

(1) Report of Pollution Caused Fish Kills (U.S. EPA)

(2) Selected Chemical Spill Listing (U.S. EPA)

(3) Pollution Incident Reporting System (U.S. CG)

(4) Surface Impoundment Assessment (U.S. EPA)

(5) Identification of In-Place Pollutants and Priorities for Removal (U.S. EPA)

(6) Revised Status Report-Hazardous Waste Sites (U.S. EPA)

(7) Hazardous Waste Management Facilities in the United States—1977 (U.S. EPA)

(8) Corps of Engineers Studies of Sediment Pollution

(9) Sediment Tests for Previously Permitted Activities (U.S. CE/District Engineers)

(10) Pesticide Spill Reporting System (U.S. EPA)

(11) STORET (U.S. EPA)

(12) Past 404(b)(1) Evaluations

(13) USGS Water and Sediment Data on Major Tributaries

(14) Pertinent and Applicable Research Reports

(15) NPDES Permit Records

§ 230.62 Detailed evaluation, including possible testing of dredged material.

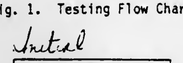
(a) Based on the outcome of the initial evaluation made pursuant to § 230.61, dredged material proposed for discharge will be assigned to one of four categories for its detailed technical evaluation. Figure 1 illustrates how evaluation under these categories leads

to factual determinations required under § 230.11. The following paragraphs describe the categories, the testing (if any) required under each, and how this evaluation leads to the factual determinations.

(b) *Category 1: Discharge Without Potential for Environmental Contamination.* (1) Dredged material falls into Category 1 when the initial evaluation does not indicate the presence of contaminants in the dredged material above background levels. Consequently, the only concern is the direct physical effects of the material to be discharged, and there is no need to compare this material chemically to sediments at the proposed disposal site. Dredged material which is composed predominantly of sand, gravel, shell or other naturally occurring sedimentary material with particle sizes predominantly larger than silt is likely to, but does not always, qualify for inclusion under Category 1. Generally, these materials are characteristic of areas of high current or wave energy, such as streams with large bedloads or coastal areas with shifting bars and channels. However, noncontaminated fine-grained materials may also be shown by the precategorization elevation to meet the conditions of Category 1. No chemical or biological testing is required to make the factual determinations.

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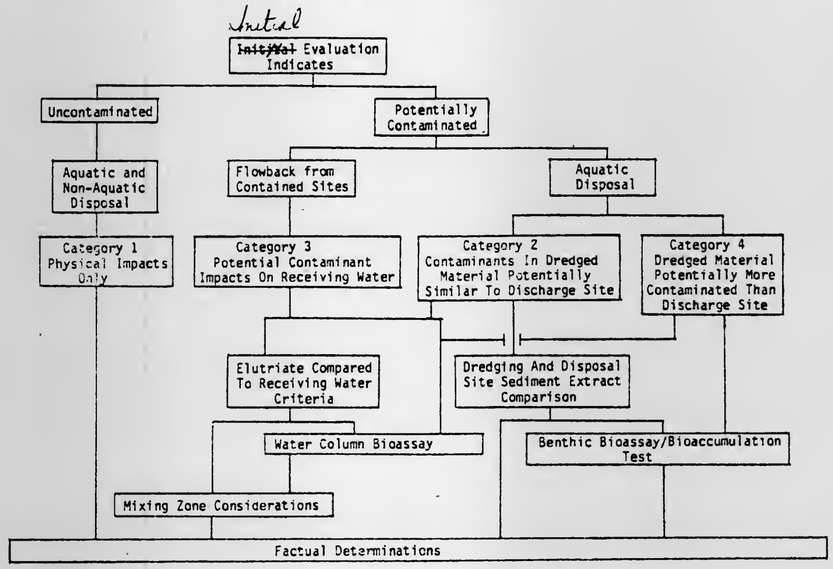
Fig. 1. Testing Flow Chart



(c) *Category 2: Open Water Discharge with Level of Contamination Similar to the Discharge Site.* Discharges should be assigned to Category 2 when the initial evaluation indicates that contaminants may be present in the dredged material but at levels similar to those at the disposal site. Testing is required to determine if contaminants identified during the § 230.61 evaluation are substantively greater in the dredged material than in the disposal site sediment.

(ii) *Need for additional testing.* Further testing of the impact of contaminants on the benthic component of the ecosystem is required if the concentrations in the composite sample of the sediment to be discharged are substantively greater than concentrations in the composite sample of the receiving water and either the calculation of a mixing zone using the appropriate water quality standards or criteria does not provide sufficient

Fig. 1. Testing Flow Chart



N.B. Follow every line out of a box, and if a line branches, follow one or the other branch.

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(c) *Category 2: Open Water Discharge with Level of Contamination Similar to the Discharge Site.* Discharges should be assigned to Category 2 when the initial evaluation indicates that contaminants may be present in the dredged material above background levels, but will not be more available than the same contaminants at the disposal site. If this initial evaluation is confirmed by the evaluation described below, the permitting authority may conclude that the discharge will not cause substantive harmful effects to the resident aquatic community other than the physical effects caused by placement of the material. The Category 2 evaluation must consider possible effects on both the benthic component of the aquatic environment under § 230.62(c)(1) and the water-column component under § 230.62(c)(2).

(1) *Sediment assessment.* Chemical extraction tests are used in Category 2 to assess similarities in the potential for long-term leaching and bioavailability of contaminants from the dredged material and discharge site sediments. Research generally indicates that only the fractions of inorganic contaminants which are dissolved in the interstitial water and loosely associated with sediment particles are available to organisms. Since these fractions are measured in a water extract, the appropriate extractant for inorganic contaminants in Category 2 sediment assessments is water. For some organic contaminants, however, extraction with a solvent other than water may be appropriate. Analysis of organic chemicals in sediments is a rapidly advancing field. Analytical methods are being developed for compounds for which none now exist and methods which do exist are subject to rapid obsolescence. Therefore, sediment extraction techniques must be selected for the specific contaminants of concern at the time the need arises. The appropriate extractant for comparing the availability of organic contaminants to organisms from the dredged material and discharge site sediment is a polar or non-polar solvent that effectively extracts the contaminant of concern from the sediment in a reproducible manner.

(i) *Testing protocol.* Chemical analyses shall be conducted on the extracts of the sediment at the dredging and disposal sites. The location and number of sampling stations and replicates shall be designed specifically for the sites being evaluated. Test results shall be used to determine whether the concentrations of those contaminants identified during the § 230.61 evaluation are substantively greater in the dredged material than in the disposal site sediment.

(ii) *Need for additional testing.* Further testing of the impact of contaminants on the benthic component of the environment is required for the factual determinations only when the above comparative analysis indicates substantively greater concentrations of contaminants in the sediments to be discharged than in the disposal site sediments. In such cases, the proposed dredged material will be evaluated further using the benthic assessment protocol for Category 4 under § 230.62(e)(1). For all other situations no further testing for contaminants is required to make the factual determinations of § 230.11 relating to chemical contamination of sediments.

(2) *Water-column assessment.* The potential for short-term water-column impacts is assessed in Category 2 by the standard elutriate test or, under the special circumstance described below, by a water-column bioassay. Generally, the appropriate test is a chemical comparison of the concentration of contaminants in the elutriate of the proposed dredged material with the concentration in the receiving water (See paragraph (c)(1)(i) of this section). These concentration values are then used with the appropriate water quality standard or criterion to calculate a mixing zone.

(i) *Chemical comparison protocol.* Chemical analyses shall be conducted on the receiving water and on the elutriate of the dredged material. The location and number of sampling stations and replicates shall be designed specifically for the dredging and disposal sites being evaluated. Test results shall be used to determine whether, after consideration of mixing, the discharge will substantively increase concentrations of those contaminants identified during the § 320.61 evaluation in solution at the disposal site.

(ii) *Mixing zone determination.* The size of the mixing zone will be calculated pursuant to § 230.64 for the contaminant requiring the greatest dilution volume, as determined from the elutriate analyses, to meet applicable water quality standards, or, if none, Federal water quality criteria established by EPA. The selected standard or criteria shall define the perimeter of the mixing zone.

(iii) *Need for additional testing.* Further testing for contaminants in relation to the water-column component of the environment may be required to make the factual determinations when concentrations in the elutriate of the sediment to be discharged are substantively greater than concentrations in the composite sample of the receiving water and either the calculation of a mixing zone using the appropriate water quality standards or criteria does not provide sufficient information to make an assessment of water-column impacts or the receiving water concentration exceeds the standard or criterion, making dilution to this standard or criterion impossible. Such further testing for water-column effects will consist of a water-column bioassay conducted according to § 230.62(f). No further testing for contaminants is required to make the factual determinations for all other situations, except as provided in § 230.60(b)(1).

(d) *Category 3: Contained, Confined, or Other Disposal Operations of Material with Potential for Contamination of the Water Column Only.* Discharge of dredged material should be assigned to Category 3 when all but the return water, including suspended particles, is confined or contained sufficiently to prevent the long-term availability of contaminants to the aquatic community, and there is reason to believe the concentration of contaminants in the return water are above ambient levels in the receiving water. The Category 3 evaluation consists of consideration of possible impacts to the receiving water column.

(1) *Water-column assessment.* The potential for short-term water-column impacts is assessed in Category 3 by an elutriate test, or under the special circumstance described below, by a water-column bioassay. Generally, the appropriate test is a chemical comparison of the concentration of contaminants in the elutriate of the proposed dredged material with the concentration in the receiving water. These concentration values are then used with the appropriate water quality standards or criteria to calculate a mixing zone. Where retention time within the containment area will be of short duration, the standard elutriate test can be used to estimate the concentration of those contaminants that will be released in the effluent. Where the containment area is managed for maximum solids retention and, consequently, the liquid is retained for long periods, a modified elutriate test should be used, considering biological, chemical and physical changes that may occur in the containment area. Settleability tests should be conducted to simulate the actual retention time.

(2) *Chemical comparison protocol.* Chemical analyses shall be conducted

on the receiving water and on the elutriate of the dredged material. The location and number of sampling stations and replicates shall be designed specifically for the dredging and disposal sites being evaluated. Test results shall be used to determine

authority may find that such tests or scientific literature for interpretation of results have not been defined in the Corps/EPA implementation manual for specific contaminants. In such cases, the permitting authority may waive the requirement for bioaccumulation tests

discharge in making the factual determinations.

(A) A comparative field assessment will be used when dredged material from the dredging site in question has been discharged at the proposed disposal site during previous activities

lowest 96-hour LC 50 observed in the bioassay.

(3) *Need for additional testing.* No further testing for contaminants in relation to the water-column component of the environment is required to make

the mixing zone, limitations must be placed on its size, shape, and location. Also, factors that will contribute to water degradation other than unacceptable levels of contaminants must be limited. The permitting

obstructions, salinity, or density profiles at the disposal site;

(v) Discharge vessel speed and direction if appropriate;

(vi) Time to empty vessel or length of discharge;

on the receiving water and on the elutriate of the dredged material. The location and number of sampling stations and replicates shall be designed specifically for the dredging and disposal sites being evaluated. Test results shall be used to determine whether, after consideration of mixing, the discharge will substantively increase concentrations of those contaminants identified during the § 230.61 evaluation in solution at the disposal site.

(3) *Mixing zone determination.* The size of the mixing zone will be calculated pursuant to § 230.64 for the contaminant requiring the greatest dilution volume as determined from the elutriate analyses, to meet applicable water quality standards or, if none, Federal water quality criteria established by EPA. The selected standard or criteria shall define the perimeter of the mixing zone.

(4) *Need for additional testing.* Further testing for contaminants in relation to the water-column component of the environment may be required to make the factual determinations when concentrations in the elutriate of the sediment to be discharged are substantively greater than concentrations in the composite sample of the receiving water and either the calculation of a mixing zone using the appropriate water quality standards or criteria does not provide sufficient information to make an assessment of water-column impacts or the receiving water concentration exceeds the standard or criterion, making dilution to this standard or criterion impossible. Such further testing for water-column effects will consist of a water-column bioassay conducted according to § 230.62(f). No further testing for contaminants is required to make the factual determinations for all other situations, except as provided in § 230.60(b)(1).

(e) *Category 4: Open Water Discharge With Potential for Harm.* Uncontained or unconfined dredged material will be assigned to Category 4 when the initial evaluation indicates the dredged material contains biologically available contaminants in amounts which have the potential for substantive environmental harm. The Category 4 evaluation considers possible effects on both the benthic and water-column components of the aquatic environment.

(1) *Benthic assessment.* The required tests are a benthic bioassay and an investigation of bioaccumulation potential. Due to the infant state-of-the-art in bioaccumulation procedures and the technical uncertainty in the ecological interpretation of bioaccumulation data, the permitting authority may find that such tests or scientific literature for interpretation of results have not been defined in the Corps/EPA implementation manual for specific contaminants. In such cases, the permitting authority may waive the requirement for bioaccumulation tests for these specific contaminants, provided he notifies the Regional Administrator prior to making the factual determinations.

(i) *Selection of appropriately sensitive organisms.* The sensitivity of these procedures is dependent primarily on the selection of appropriate species. The species should be selected from appropriately sensitive aquatic organisms as determined by the permitting authority. A minimum of one benthic and one epibenthic species shall be used for bioassays. At least one benthic or epibenthic species of sufficient size with limited mobility, and with a propensity for accumulating the identified contaminants, shall be used in bioaccumulation tests if any are conducted. The species designated for bioaccumulation tests may be one or more of those used in the bioassay.

(ii) *Benthic bioassay protocol.* Results of a benthic bioassay will be used to compare survival in sediment from the dredging site with survival in a sedimentologically similar reference substrate from within or near the disposal site. If survival of the test organisms is similar, then no increased toxic effects to the benthic community should result from the discharge. Should statistically significant decreases in survival in the dredged material be observed, then the permitting authority will assess the substantive effects of the contaminated discharge in making the factual determinations.

(iii) *Bioaccumulation protocol.* The bioaccumulation potential of those contaminants identified in the initial evaluation procedures of § 230.61 or in previous tests shall be assessed by comparing the concentrations in the tissues of the designated organism exposed to the sediments to be dredged with the concentrations in the tissues in the same species exposed to a sedimentologically similar reference substrate from within or near the disposal site. Bioaccumulation potential is indicated when the concentrations of the contaminants in the tissue of the organisms exposed to the sediments to be discharged are significantly greater statistically than those concentrations in the tissues of the organisms exposed to the reference substrate. Where there is bioaccumulation potential, the permitting authority must assess the substantive effects of the contaminated discharge in making the factual determinations.

(A) A comparative field assessment will be used when dredged material from the dredging site in question has been discharged at the proposed disposal site during previous activities and the § 230.61 evaluation indicates that the dredged material has not become more contaminated since the last disposal operation; or

(B) When such a field assessment is not practicable, assessment will be performed using animals exposed in the laboratory bioassay protocol of § 230.62(e)(1)(ii).

(iv) *Need for additional testing.* No further benthic bioassay or bioaccumulation potential testing is required to make the factual determinations.

(2) *Water-column assessment.* The required test is a water-column bioassay under § 230.62(f). The mixing zone must be considered in interpreting the test results and making the factual determinations.

(f) *Water-column bioassay protocol.* An acute bioassay will be used to compare survival in the unfiltered elutriate from the material to be dredged with survival in an unfiltered composite sample representing the entire water-column at the disposal site. The location and number of sampling stations and replicates shall be designed specifically for the dredging and disposal sites being evaluated. Test results shall be used to determine whether, after consideration of mixing, the discharge will cause a substantive increase in toxic effects in the water-column at the disposal site. If the survival of test organisms is similar in the elutriate and receiving water, then increased toxic effects in the water-column should not result from the discharge. Should statistically significant decreases in survival in the elutriate be observed, then the mixing zone will be calculated based on the 96-hour LC 50 of the elutriate from the bioassay results.

(1) *Selection of appropriately sensitive organisms.* The sensitivity of the water-column bioassay is dependent primarily on the selection of appropriate species. Test species should be representative of animals in the aquatic community at the site of the proposed discharge. Test organisms should be selected from appropriately sensitive aquatic species. A minimum of one vertebrate and one invertebrate aquatic species shall be used.

(2) *Mixing zone determination.* The size of the mixing zone will be calculated pursuant to §230.64 such that the perimeter is defined by 0.01 of the lowest 96-hour LC 50 observed in the bioassay.

(3) *Need for additional testing.* No further testing for contaminants in relation to the water-column component of the environment is required to make the factual determinations, except as provided in § 230.60(b)(1).

§ 230.63 Detailed evaluation, including possible testing, of fill material.

Based on the outcome of the initial evaluation made pursuant to § 230.61, natural or man-made material from upland sources proposed for discharge as fill will be assigned to one of two categories for technical evaluation. Dredged material used as fill will be evaluated under § 230.62.

(a) *Category 5: Discharge without Potential for Environmental Contamination.* Discharge of fill material falls into Category 5 when the initial evaluation does not indicate the presence of contaminants in the fill material above background levels or when such contaminants will be adequately contained to prevent leaching and/or erosion. No chemical or biological testing is required to make the factual determinations.

(b) *Category 6: Discharge of Fill Material with Potential for Environmental Contamination.* Discharge of fill material falls into Category 6 when the § 230.61 initial evaluation indicates contaminants may be present in the fill material above background levels and the permitting authority determines that there is a potential for leaching. The water leachate test is appropriate.

(1) *Testing protocol.* Samples of the fill material will be subjected to a water leachate test. From this testing the permitting authority shall determine whether the concentration of each contaminant identified during the § 230.61 evaluation is substantially greater than the appropriate existing Federal or State water quality standard. No dilution factor or mixing zone determination shall be considered.

(2) *Need for additional testing.* No further testing for contaminants of concern is required to make the factual determinations, except as provided in § 230.60(b)(1).

§ 230.64 Mixing zone determinations.

A limited mixing zone, serving as a zone of initial dilution and dispersion in the immediate vicinity of the discharge point for dredged material, is allowed unless specifically prohibited by applicable water quality standards. Because water quality standards regarding concentrations of contaminants may be exceeded within the mixing zone, limitations must be placed on its size, shape, and location. Also, factors that will contribute to water degradation other than unacceptable levels of contaminants must be limited. The permitting authority shall consider each contaminant identified as present within the dredged material in light of its potential effect upon any element of water quality prescribed in applicable water quality standards or criteria. Such standards or criteria may establish specific numerical limitations upon the permissible concentration of the contaminant itself and/or upon the extent to which the discharge may alter a specified parameter of water quality after interaction of the contaminant with ambient water (for example, BOD or DO).

(a) *Mixing zone calculations.* The perimeter of the mixing zone shall be defined by the applicable water quality standard of the contaminant requiring the greatest dilution volume, or by 0.01 of the lowest 96-hour LC 50 when a water-column bioassay has been conducted.

(1) One of the following methods (provided in order of preference) shall be used to determine the volume and conformation of the zone required to achieve dilution and dispersal of contaminants to numerical limitations specified in Federal or State water quality standards or to 0.01 of the lowest 96-hour LC 50, as indicated above.

(i) When field data on the proposed discharge are adequate to predict the initial dispersion and diffusion of the discharge plume, such data shall be used; or

(ii) When field data on the dispersion and diffusion of a discharge with similar characteristics are available, these data shall be used in conjunction with an appropriate mathematical model (acceptable to the permitting authority) to make the required determination; or

(iii) When the above methods are impractical, due to inadequate field data or the unavailability of an appropriate mathematical model, the zone of dilution and dispersion may be estimated by assuming particular geometrical shapes for the disposal plume.

(2) Factors important in determining the shape and trajectory of the discharge plume and the volume of the zone of dilution and dispersal include the following:

(i) Surface area and water depth at the disposal site;

(ii) Current velocity, direction and variability at the disposal site;

(iii) Degree of turbulence;

(iv) Stratification attributable to causes including but not limited to obstructions, salinity, or density profiles at the disposal site;

(v) Discharge vessel speed and direction if appropriate;

(vi) Time to empty vessel or length of discharge;

(vii) Ambient concentration of contaminants;

(viii) Dredged material characteristics, particularly concentrations of constituents, amount of material, types of material (sand, silt, clay, etc.), and settling velocities;

(ix) Rate of discharge;

(x) Number of discharge actions per unit of time; and

(xi) Other characteristics of the disposal site that affect the rates and patterns of mixing.

[FR Doc. 80-40002 Filed 12-23-80; 8:45 am]
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Part VI

Department of the Interior

Bureau of Land Management

Qualified Joint Bidders; Outer Continental Shelf (OCS)

4310-84

DEPARTMENT OF THE INTERIOR

Atlantic Richfield Company
Broken Hill Proprietary Holdings (USA) Inc.
Brooklyn Union Gas Company
Bunker Exploration Company
C & K Marine Production Company
Finadel, Incorporated
Fin-Oil, Inc.
Florida Exploration Company
Fluor Oil and Gas Corporation
Forest Oil Corporation

4310-84

DEPARTMENT OF THE INTERIOR
Bureau of Land Management

Qualified Joint Bidderr
Outer Continental Shelf (OCS)

As a convenience to the public, and pursuant to his authority under 43 CFR 3316, the Director of the Bureau of Land Management hereby publishes a list of all persons who have timely filed a sworn statement of production in accordance with 43 CFR 3316.3-2(a). These statements have qualified the filers to bid jointly at OCS oil and gas lease sales during the bidding period of November 1, 1980, through April 30, 1981. This publication is not required by law or regulations. It includes the names of all possible bidders whose statements have been received in this office by the date this notice was prepared.

The following persons or companies have filed sworn statements of production as required by 43 CFR 3316.3-2(a) attesting to average daily production not in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products during the production period of January 1, 1980, through June 30, 1980.

A.G. Hill
AGT Exploration Corp.
Al-Aquitaine Exploration, Ltd.
Alaskco U.S.A., LTD.
Allied Chemical Corporation
ALMINEX U.S.A., Inc.
Amax Petroleum Corporation
Amerada Hess Corporation
American Petrofina Company of Texas
American Petrofina Exploration Company
Aminoil Development, Inc.
Aminoil U.S.A., Inc.
American Natural Gas Production Company
Amoco Production Company
ANR Production Company
Anadarko Production Company
Apache Corporation

Atlantic Richfield Company
Broken Hill Proprietary Holdings (USA) Inc.
Brooklyn Union Gas Company
Bunker Exploration Company
C & K Marine Production Company
C & K Offshore Company
C & K Petroleum, Inc.
Cabot Corporation
Cambridge Royalty Company
Canadian Occidental of California, Inc.
CANADIAN SUPERIOR OIL (U.S.) LTD.
CanDel Oil Corporation
CanDel Oil (U.S.) Inc.
CanDel Oil (Texas Offshore) Inc.
Caroline Hunt Schoellkopf
Caroline Hunt Trust Estate
Central Hudson Gas & Electric Corporation
Challenger Minerals, Inc.
Champlin Petroleum Company
Cities Service Company
CL&E Corporation
CNG Producing Company
Conex, Inc.
Conoco, Inc.
Consolidated Edison Company of New York, Inc.
Coquina Oil Corporation
Corning Natural Gas Corporation
Corpus Christi Exploration Company
Corpus Christi Oil and Gas Company
Cotton Petroleum Corporation
Crescent Investment Company
Crown Central Petroleum Corporation
D. H. Hunt
DEPCO, Inc.
Diamond Shamrock Corporation
Dow Chemical Company
Eason Oil Company
Ecee, Inc.
Elf Aquitaine, Inc.
Elizabethtown Gas Company
El Paso Exploration Company
El Paso Natural Gas Company
Emmet C. Wilson
Energy Ventures, Inc.
Enserch Exploration, Inc
Entex Petroleum, Inc.
Exchange Oil and Gas Corporation
FB Energy Corporation
F. Rivers Lelong
Finadel, Incorporated
Fin-Oil, Inc.
Florida Exploration Company
Fluor Oil and Gas Corporation
Forest Oil Corporation
Four M Properties, Ltd.
Freeport Oil Company
Freeport Petroleum Company
Fuel Resources Inc.
Furth Oil Co.
General American Oil Company of Texas
Getty Oil Company
Greenbrier Operating Co.
Hamilton Brothers Oil Company
Haroldson L. Hunt Jr. Trust Estate
Hassie Hunt Exploration Company
Hassie Hunt, Incorporated
Hassie Hunt Trust
Highland Resources, Inc.
Houston Oil & Minerals Corporation
Howard A. Day
Hudbay Exploration, Inc.
Hunt Energy Corporation
Hunt Industries
Hunt Investment Corporation
Hunt Oil Company
Hunt Petroleum Corporation
Husky Oil Company
H.W. Bass & Sons, Inc.
Idemitsu Alaska Oil Development Corp.
Idemitsu Oil Denver Corp.
Inexco Oil Company
Impkemix Inc.
Internorth, Inc.
Jenny Oil Company
Kerr-McGee Corporation
Knob Hill Oil & Gas Company, Inc.
Koch Industries, Inc.
Ladd Petroleum Corporation
Lamar Hunt
Lamar Hunt Trust Estate
Laurence A. McNeil
Louisiana Land and Exploration Company (The)
Louisiana Land Offshore Exploration Company, Inc.
MAPCO Inc.
Marathon Oil Company
Margaret Hunt Trust Estate
McMoran Offshore Exploration

Mesa Petroleum Company
Mitchell Energy Offshore Corporation
Mono Power Company
Monsanto Company
Murphy Oil Corporation
N.B. Hunt
Reading & Bates Petroleum Co.
Robert A. Day, Jr.
Robert L. Duncan
Rochester Gas and Electric Corporation
Rosewood Corporation, (The)
Rowan Petroleum, Inc.

Unidel Oil Corporation
Union Oil Company of California
Vsea, Inc.
W.H. Hunt
Wainoco Oil and Gas Company
Weeks Exploration Company
Weeks Petroleum Corporation

Mesa Petroleum Company
Mitchell Energy Offshore Corporation
Mono Power Company
Monsanto Company
Murphy Oil Corporation
N.B. Hunt
N. T. Corporation
National Exploration Company
Natomas Offshore Exploration, INc.
NATRESCO INCORPORATED
Natural Gas Corporation of California
Nelson Bunker Hunt Trust Estate
New England Energy Incorporated
Newmont Oil Company
New York State Electric & Gas Corporation
Niagara Mohawk Poser Corporation
NICOR Exploration Company
Norse Petroleum (U.S.) Inc.
Nortex Gas & Oil Company
North Oil Inc.
Northern Michigan Exploration Company
Northwestern Mutual Life Insurance Company (The)
Numac Oil and Gas Inc.
Ocean Oil & Gas Company
Ocean Production Company
Ogle Petroleum Inc.
ONG Exploration, Inc.
Orange and Rockland Utilities, Inc.
OXY Petroleum, Inc.
P. R. Rutherford as Independent Executor of the Estate of Betty T. Rutherford, Deceased
PanCanadian Petroleum Company
Pan Eastern Exploration, Company
PAN ENERGY Resources, Inc.
Paragon Petroleum Inc.
Paul R. Haas
Pel-Tex Exploration Company, Inc.
Pelto Oil Company
Pennzoil Oil & Gas, Inc.
Pennzoil Producing Company
Pentad Resources, Inc.
Phillips Petroleum Company
Pinto, Inc.
Pioneer Production Corporation
Placid Oil Company
Pogo Producing Company
Propel Energy Company
Prosper Energy Corporation
Pursue Energy Corporation
Quintana Offshore, Inc.
Quintana Oil and Gas Corporation
Reading & Bates Petroleum Co.
Robert A. Day, Jr.
Robert L. Duncan
Rochester Gas and Electric Corporation
Rosewood Corporation, (The)
Rowan Petroleum, Inc.
Rutherford Oil Corporation
Rutherford Offshore Corporation
Rutherford Partnership (The)
SHV Energy Corporation
Sabine Production Company
Salomon Brothers HOlding Company
Salomon Brothers International, Inc.
Samedan Oil Corporation
Santa Fe Energy Company
Santa Fe Minerals, Inc.
Seneca Resources Corporation
Shore Oil Corporation
SONAT Exploration Company
Southern Natural Gas Company
Southland Royalty Company
Strata Energy Inc.
St. Joe Petroleum (U.S.) Corporation
St. Lawrence Gas Company, Inc.
Sun Oil Company (Delaware)
SUPERIOR OIL COMPANY (The)
Syracuse Suburban Gas Company, Inc.
Tammis Day Trust II
Tenneco Exploration, Ltd.
Tenneco Exploration, II, Ltd.
Tenneco OCS Company, Inc.
Tenneco OCS Limited Partnership
Tenneco Offshore Company, Inc.
Tenneco Oil Company
Terra Resources, Inc.
Tesoro Petroleum Corporation
Texas Eastern Exploration Co.
Texas Gas Exploration Corporation
Texasgulf, Inc.
Texas Pacific Oil Company, Inc.
Texas Production Company
Texoma Production Company
Theodore J. Day
Three Cities Exploration, Inc.
Total Petroleum, Inc.
Transco Exploration Company
TransOcean Oil, Inc.

Unidel Oil Corporation
Union Oil Company of California
Vsea, Inc.
W.H. Hunt
Wainoco Oil and Gas Company
Weeks Exploration Company
Weeks Petroleum Corporation
Westover Oil Company
William Herbert Hunt Trust Estate
Willametta K. Day Trust
Williams Exploration Company
Zapata Exploration Company

In addition, Statements of Production have been received from twelve companies which provided a daily average of 1.6 million barrels or more of crude oil, natural gas and liquified petroleum products during the previous-mentioned production period and therefore are restricted from bidding jointly with each other during the bidding period of November 1, 1980, through April 30, 1981.

This list appeared in the Federal Register on Thursday, October 2, 1980, at 45 FR 65324. Also see amendments to 43 CFR 3316 published in the Federal Register, on Friday, October 17, 1980, at 45 FR 69174. The change will require only those companies which have a daily average of 1.6 million barrels or more of crude oil, natural gas and liquified petroleum products to file Statements of Production with the Bureau of Land Management in following bidding periods.

Ed Hastey
Associate Director, Bureau of Land Management

[FR Doc. 80-39655 Filed 12-23-80; 8:45 am]
BILLING CODE 4310-84-C

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Wednesday
December 24, 1980

Part VII

Department of the Interior

Office of the Secretary

Regulatory Flexibility Act; Interim Rule Implementing; Request for Comments

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 14

Interim Rule Implementing the

do not require special development procedures.

Periodic review of existing rules to assure their continuing relevance, adequacy, and consistency with other related rules and policies constitutes the

rules determined to have a significant economic effect on a substantial number of small entitites must be tailored to accommodate and encourage participation by small entities.

Since the central elements of the

Flexibility Act uses the term "regulatory flexibility analyses," the term "small entity flexibility analyses" is used in this rule to avoid confusion with "regulatory analyses" required under E.O. 12044.

In addition to the preparation of such

promulgated under the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*) because that Act specifies a definition of "small operator." Paragraph (b) of § 14.5 sets out guidance for interpreting the terms "significant economic effect" and "substantial

Executive Order and the statute. The publication dates have been changed from January and July of each year to April and October, and additional information requirements have been added to paragraph (b)(3).

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 14

Interim Rule Implementing the Regulatory Flexibility Act; Request for Comments

AGENCY: Department of the Interior.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of the Interior's rulemaking procedures are being revised to implement the Regulatory Flexibility Act (Pub. L. 96–354).

The Act requires Federal agencies to take into consideration and analyze the effects of their rules on small businesses, small organizations, and small governmental jurisdictions.

Those portions of the Department's procedures which are new or revised are highlighted by arrows in the text of the rule.

DATES: This rule is effective January 1, 1981. Comments must be received on or before February 9, 1981.

ADDRESSES: Written comments should be sent to: Chief, Division of Directives and Paperwork Management, Office of Information Resources Management, Room 7357, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jim Douglas, Office of Policy Analysis, 202–343–8501, Deborah Ryan, Office of the Solicitor, 202–343–5216.

SUPPLEMENTARY INFORMATION: On December 13, 1978 (43 FR 58295), a final rule was issued by the Secretary of the Interior to implement Executive Order 12044 (E.O. 12044), "Improving Government Regulations", in the Department of the Interior. The rule established a four part process for developing new rules or revising existing rules. Initially, all rules under development must be examined to determine whether the rules will, if promulgated, be "significant" under specific criteria. Rules found to be significant are subject to additional scrutiny to determine whether a regulatory analysis of the rule is necessary. Performing a regulatory analysis on the effects of major rules constitutes the second part of the process.

Significant rules must be developed in a specific manner which allows for public participation and review of alternatives. Significant rules must be approved by the Secretary, or by a Secretarial Officer authorized by the Secretary. Rules that are not significant do not require special development procedures.

Periodic review of existing rules to assure their continuing relevance, adequacy, and consistency with other related rules and policies constitutes the third part of the process. Finally, a semi-annual agenda of rules under development and review is published to provide public notice and information about rulemaking activity and review.

Regulatory Flexibility Act

On September 19, 1980, the President signed into law the Regulatory Flexibility Act (Pub. L. 96–354) which amends the Administrative Procedure Act (5 U.S.C. 101 *et seq.*) by adding a new Chapter 6, "The Analysis of Regulatory Functions." The purpose of the Regulatory Flexibility Act is to establish as a principle of rulemaking that, whenever possible, agencies will fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to the rule.

Because the provisions of the Act become effective on January 1, 1981 an interim rule is being published at this time. Good cause exists for waiver of the usual 30-day waiting period for effectiveness so that the procedures will be in effect on January 1.

Because these rules relate to agency practice and procedure, the Administrative Procedure Act does not require that they be subject to public notice and comment. Consistent with the Department's public participation policy and the spirit of the Regulatory Flexibility Act, however, public comments on the rule are invited. After consideration of public comments, and an evaluation of the efficiency of the interim rule, a final rule will be published.

Under the Regulatory Flexibility Act special attention is to be given to the effects of rules on small entities through the publication of agendas of rules, analysis of the anticipated effects of rules, public participation in the development of rules, and review of existing rules. At the onset of the rulemaking process a determination must be made as to whether the rule, if promulgated, will have a "significant economic effect on a substantial number of small entities." If it will have such an effect, an initial, and later a final, small entity flexibility analysis is required to assess the effects of the rule on small entities and to consider alternatives that are consistent with the objectives of the rule and applicable statutes, which fit the scale of affected small entities. In addition, the rulemaking process for rules determined to have a significant economic effect on a substantial number of small entitites must be tailored to accommodate and encourage participation by small entities.

Since the central elements of the Regulatory Flexibility Act are generally consistent with those of E.O. 12044, the Department of the Interior is revising its rules implementing the Executive Order to establish concurrent compliance with both authorities. The changes and revisions discussed below are largely additions to the existing rules to include the requirements of the Regulatory Flexibility Act. Part 14 has, however, been reorganized to incorporate in a clear and logical manner the requirements of the Act and the Executive Order.

Under the revised procedures the Department will continue to publish a semiannual agenda of rules under development and review, although the dates of publication are changed from January and July of each year to April and October. In addition, the content of agenda entries is expanded to incorporate the requirements of the Regulatory Flexibility Act. Periodic reviews of existing rules ("sunset reviews") will continue to be performed without change. The Department's five-year cycle is more stringent than required under the statute and is retained. However, the statutory requirement that reviews be completed within one year is adopted.

At the onset of each rulemaking procedure, the Secretary or Secretarial Officer will be required to make two distinct findings. First, the determination of significance under E.O. 12044; second, a determination of the effects on small entities. Since both determinations are based on similiar criteria and must be made at the initiation of the rulemaking process, it is expected that one document will be used in making both determinations. However, § 14.3(b)(2) clearly specifies that the determination of effect on small entities is a determination separate from and in addition to the determination of significance and that a "significant" rule does not necessarily have a significant economic effect on a substantial number of small entities, or *vice versa*.

The development process for "significant" or "other" rules is not changed by the revisions to Part 14. However, requirements are added for the development of rules determined to have a significant economic effect on a substantial number of small entities, regardless of their "significance."

Primarily, preparation of "small entity flexibility analyses" for such rules is required. Although the Regulatory Flexibility Act uses the term "regulatory flexibility analyses," the term "small entity flexibility analyses" is used in this rule to avoid confusion with "regulatory analyses" required under E.O. 12044.

In addition to the preparation of such analyses, rules determined to have a significant economic effect on a substantial number of small entities must be developed in a manner that encourages and accommodates participation by small entities. Both the preparation of flexibility analyses and the participation of affected small entities are designed to maximize consideration of regulatory alternatives which lessen the burden on small businesses, small organizations and small governmental jurisdictions subject to regulation.

Section-by-Section Review

To assist the reader in understanding the revisions and additions to this Part, the following is a section-by-section review:

§ *14.1 Purpose and Scope:* This section has been revised to include the Regulatory Flexibility Act.

§ *14.2 Definition:* The definition of Secretarial Officer has been revised to include the Inspector General.

§ *14.3 Required determinations:* This section formerly discussed determinations of significance under E.O. 12044. It has been revised to discuss the two different determinations now required, approval authority, exceptions, and required statements in the Federal Register. Criteria for determinations of significance and needed regulatory analyses have been moved to § 14.4.

§ *14.4 Determination of significance and need for regulatory analysis:* This section contains the criteria for determination of significance under E.O. 12044 formerly found at § 14.3 (c) and (d). The criterion relating to reporting and recordkeeping has been revised to make it consistent with the Office of Management and Budget's proposed rules on controlling paperwork burdens on the public (45 FR 2586, January 11, 1980) and the Department's criteria for significant information collection.

§ *14.5 Determination of effect on small entities:* This is a new section implementing new 5 U.S.C. 605(b). Paragraph (a) defines "small business," "small organization," and "small governmental jurisdiction." The definitions of "small organization" and "small governmental jurisdiction" are those used in the Act. The definition of "small business" is drawn from the Small Business Act (15 U.S.C. 632), but an alternative is provided for rules promulgated under the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*) because that Act specifies a definition of "small operator." Paragraph (b) of § 14.5 sets out guidance for interpreting the terms "significant economic effect" and "substantial number." This guidance is general in nature to permit it to be adapted to the diverse programs which the Department administers. It is expected that Secretarial Officers will resolve doubts about the applicability of the criteria in favor of conducting small entity flexibility analyses. Paragraph (c) permits agency heads to certify that a proposed or final rule will not have a significant economic effect on a substantial number of small entities, thus not requiring the preparation of small entity flexibility analyses.

§ *14.6 Development of significant rules:* This section, previously § 14.4, has been revised to specify additional procedural requirements necessary to assure consideration of the effects of rules on small entities and to assure participation in the rulemaking process by small entities. Paragraph § 14.4(d)(2), which described the content of regulatory analyses, has been moved to a new § 14.8.

§ *14.7 Development of other rules:* This section, previously § 14.5, has been revised to assure that rules determined not to be significant under E.O. 12044 are developed in a manner that considers effects on small entities and assures participation in the process by small entities.

§ *14.8 Content of regulatory analyses:* This section was previously found at § 14.4(d)(2). No substantive revisions have been made.

§ *14.9 Content of small entity flexibility analyses:* This is a new section implementing new 5 U.S.C. 603 and 604. It sets out minimum specifications for the type of information and analyses to be contained in initial and final small entity flexibility analyses.

§ *14.10 Petitions for Rulemaking:* This section is renumbered from § 14.6 without change.

§ *14.11 Review of rules:* This section, previously § 14.7, contains minor revisions to the review criteria in paragraph (c). A new paragraph (d)(2) has been added to require the completion of all reviews within one year. Reviews of rules that may affect small entities may be extended by a Secretarial Officer, as provided in new 5 U.S.C. 610(a).

§ *14.12 Semiannual Agenda:* This section, previously found at § 14.8, has been revised so that separate agendas will not be published under the Executive Order and the statute. The publication dates have been changed from January and July of each year to April and October, and additional information requirements have been added to paragraph (b)(3).

Request For Comments

As discussed above, this rule does not substantively alter the Department's procedures for complying with E.O. 12044. Consequently, public comments are requested on those portions of the rule which implement the Regulatory Flexibility Act. New and revised portions of the procedures are highlighted with arrows. In particular, comments are requested on the following issues:

1. Definitions of small business, small organization, and small governmental jurisdiction. (§ 14.5(a))
2. Criteria for determining "significant economic effect" and "substantial number," including any criteria indicative of significant economic effects on small organizations and small governmental jurisdictions. (§ 14.5(b))

Drafting Information

The primary authors of this document are: Jim Douglas, Office of Policy Analysis (343–8501); Lois W. Paull, Office of Information Resources Management (343–6191); Deborah Ryan, Office of the Solicitor (343–5216); and John D. Trezise, Office of the Solicitor (343–5216). Assistance was provided by the Department's Office of Small and Disadvantaged Business Utilization.

Statement of Significance

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Larry E. Meierotto,

Assistant Secretary—Policy, Budget and Administration.

December 18, 1980.

(In the following text ►◄ indicates new or revised material)

43 CFR Part 14 is revised as follows:

PART 14—RULEMAKING

Sec.

►14.1 Purpose and scope.
14.2 Definitions.
14.3 Required determinations.
14.4 Determination of significance and need for regulatory analysis.
14.5 Determination of effects on small entities.
14.6 Development of significant rules.
14.7 Development of other rules.
14.8 Content of regulatory analyses.
14.9 Content of small entity flexibility analyses.

Sec.

14.10 Petitions for rulemaking.
14.11 Review of rules.

§ 14.2 Definitions.

(a) *Secretary.* "Secretary" means the Secretary of the Interior.

(e) *Exceptions.* (1) In certain circumstances the procedures for development of significant rules and governments; (iv) personnel practices of state and local governments; (v) planning and fiscal activities of state average income for the region as a result of the rules; (B) the present cost of doing business of an industry and the potential

Sec.
14.10 Petitions for rulemaking.
14.11 Review of rules.
14.12 Semiannual agenda.

Authority: E.O. 12044, 43 FR 12661, March 24, 1978; Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 601) September 19, 1980.

§ 14.1 Purpose and scope.

(a) *Purpose.* This part contains the policies and procedures of the Department of the Interior for adoption of rules. These policies and procedures incorporate the requirements of the Administrative Procedure Act, Executive Order 12044, "Improving Government Regulations" (March 23, 1978) and the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980).

(b) *Scope.* The principal sections of this part deal with procedures for determining the significance of rules (§ 14.4); procedures for determining the effect of rules on small entities (§ 14.5); procedures for development of "significant" rules and preparation of regulatory analyses (§ 14.6); procedures for development of other rules (§ 14.7); the method by which members of the public may petition for rulemaking (§ 14.10); and procedures for periodic review of existing rules (§ 14.11).

(c) *Applicability of part.* The procedures contained in this part are applicable to all rules for which a notice of proposed rulemaking is issued, or which are published as final rules without a notice of proposed rulemaking, on or after January 1, 1981. For the procedures applicable to rules for which a notice of proposed rulemaking was issued before January 1, 1981, see 43 CFR Part 14 (1979) (source: 43 FR 58292, December 13, 1978; 44 FR 23086, April 18, 1979).

(d) *Exceptions.* (1) The policies and procedures of this part do not apply to: (i) Rules which are required by statute to be made on the record after an opportunity for a formal hearing under the procedures for such hearings contained in 5 U.S.C. 556 and 557;

(ii) Rules involving a foreign or military affairs function of the United States; and

(iii) Rules related to agency management or personnel.

(2) Further, for the purposes of § 14.5 (*Determination of effect on small entities*) and § 14.9 (*Content of small entity flexibility analyses*) only, the term "rule" does not include a rule of particular applicability relating to: (i) Rates, wages, corporate or financial structures or reorganizations; (ii) Prices, facilities, appliances, services, or allowances therefor; or (iii) Valuations, costs or accounting, or practices bearing on any of the foregoing. (Pub. L. 96-354, 601(2)) ◄

§ 14.2 Definitions.

(a) *Secretary.* "Secretary" means the Secretary of the Interior.

(b) *Secretarial Officer.* "Secretarial Officers" are the Under Secretary, the Solicitor, the Inspector General, and the Assistant Secretaries.

(c) *Bureau.* "Bureau" refers to all bureaus and offices of the Department of the Interior, including the Office of the Secretary and the Other Departmental Offices.

(d) *Lead Official.* "Lead official" means the official assigned responsibility for developing a rule. The designation of a lead official is the initial responsibility of the bureau developing the rule, but may be reviewed by the Secretarial Officer having jurisdiction over the bureau.

(e) *Rule.* "Rule" means a statement of general or particular applicability and future effect which implements, interprets or prescribes law or policy or describes the organization, procedure or practice requirements of the Department. (5 U.S.C. 551(4))

► **§ 14.3 Required determinations.**

(a) *Significance.* (1) Before developing a new rule or amending an existing rule, the lead official must determine whether the rule or amendment will be a significant rule. (See § 14.4 *Determination of significance and need for regulatory analysis* for criteria) This determination must be in writing, state whether or not the rule is significant, and briefly describe the basis of the determination.

(2) If a rule is determined to be significant, the bureau developing or amending the rule will follow the procedures described in § 14.6 *(Development of significant rules).* If a rule is determined not to be significant, the bureau will follow the procedures described in §14.7 *(Development of other rules).* ◄

(3) If a rule is determined to be significant, the lead official must also determine whether a regulatory analysis of the economic consequences of a rule is required. This decision should ordinarily be made at the same time as the determination of significance. (See § 14.4 *Determination of significance and need for regulatory analysis* and § 14.6 *Development of significant rules.*) In some cases, the need to collect additional economic information may necessitate postponement of the decision. In these cases, a decision on preparation of a regulatory analysis should be made no later than the beginning of the drafting of the proposed rule.

►(b) *Effect on small entities.* (1) Before developing a new rule or amending an existing rule, the lead official also must determine whether the rule will have a significant economic effect on a substantial number of small entities. (See § 14.5 *Determination of effect on small entities* for criteria.) This determination must be in writing, state whether or not the rule will have a significant economic effect on a substantial number of small entities, and briefly decribe the basis of the determination.

(2) The determination of effect on small entities is a determination separate from and in addition to the determination of significance. That is, a rule may or may not be determined to be "significant" and still have a significant economic effect on a substantial number of small entities. If a rule is determined to have such an effect, the bureau developing or amending the rule will prepare small entity flexibility analyses for the rule (see § 14.9 *Content of small entity flexibility analyses*) in addition to and in conjunction with meeting the requirements for the developing of significant rules (§ 14.6) or for the development of other rules (§ 14.7).

(3) The determination of effect on small entities should ordinarily be made at the same time as the determination of significance. (See §§ 14.4 and 14.7) In some cases, the need to collect additional information may necessitate postponement of the decision. In these cases, the determination of effect on small entities should be made no later than the beginning of the drafting of the proposed rule.

(c) *Approval.* The determination of whether or not a rule is significant, the decision on whether preparation of a regulatory analysis is required, and the determination of effect on small entities must be approved by the Secretarial Officer having jurisdiction over the program to which the rule relates. Secretarial Officers may delegate approval responsibility for particular types or classes of rules to bureau heads. Bureau heads may not redelegate this approval authority.

(d) *Discretionary use of procedures.* The Secretary or the Secretarial Officer having jurisdiction over the program to which a rule relates may require that:

(1) The rule be developed as a significant rule or a regulatory analysis be prepared, or both, even though the rule does not meet the criteria for significance or preparation of a regulatory analysis, or

(2) A small entity flexibility analysis be prepared for the rule even though the rule does not have a significant economic effect on a substantial number of small entities.

(e) *Exceptions.* (1) In certain circumstances the procedures for development of significant rules and preparation of regulatory analyses may be waived. (See paragraph (c) under §14.4 *Determination of significance and need for regulatory analysis*)

(2) In certain limited circumstances, the preparation of small entity flexibility analyses may be waived or delayed. (See paragraph (d) under §14.5 *(Determination of effects on small entities)*

(f) *Statements in* Federal Register. (1) All final and proposed rulemaking documents and notices of intent to proposed rules published in the **Federal Register** will state in the Supplementary Information Section: (i) Whether or not the rule is a significant rule. If the rule is significant, the document will state (A) why the rule is significant and (B) whether or not a regulatory analysis is required; and

(ii) Whether or not the rule will have a significant economic effect on a substantial number of small entities.

(A) If the rule will not have a significant economic effect on a substantial number of small entities the Supplementary Information section will contain a certification that this is the case and will include a statement explaining the basis for the certification.

(B) If a small entity flexibility analysis is required, the initial analysis or a summary will be published with the proposed rule in the **Federal Register.** In those instances where a summary only is published, a statement describing where copies may be obtained will also be included. A statement describing where copies of a final small entity flexibility analysis may be obtained will be published with the final rule.

(2) If the decision on the need for a regulatory analysis or on whether the rule will have a significant economic effect on a substantial number of small entities has not been made at the time of a notice of intent to propose the rule, the notice of intent will invite comments on the need for a regulatory analysis and on effects of the rule on small entities.◄

§ 14.4 Determination of significance and need for regulatory analysis.

(a) *Criteria for significance.* A rule is "significant" if it falls within one or more of the following categories:

(1) Rules which have a significant and nation or regionwide impact on state or local governments. Factors to be considered in determining whether the impact of a rule will be significant include its effect on: (i) Interstate relations; (ii) relations between state and local governments; (iii) internal organization of state and local governments; (iv) personnel practices of state and local governments; (v) planning and fiscal activities of state and local governments; (vi) the role and functions of heads of state and local governments; and (vii) eligibility criteria for Federal financial assistance.

►(2) Rules which will result in significant new information collection or recordkeeping requirements that will affect individuals, businesses, organizations, or state or local governments. Factors that determine whether information collection or recordkeeping requirements are significant are those which: (i) will have a national or regionwide economic impact, or substantial effect on state or local governments or small entities; (ii) will result in the commitment of resources and/or federal funds exceeding $250,000; (iii) require a respondent to spend more than one-hour to respond to each information requirement; (iv) impose a total annual reporting burden on the public exceeding 100,000 hours; or (v) require more than 200,000 persons to respond or maintain specific records.◄

(3) Rules which both involve a potential conflict between environmental and other considerations and constitute a major Federal action for which an environmental impact statement is required by section 102(2)(c) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332(2)(c))

(4) Rules which have a major impact on other programs of the Department, other Federal agencies or the allocation of Federal funds.

(5) Rules which are likely to have a substantial economic effect on the entire economy or on an individual region, industry or level of government.

(b) *Criteria for regulatory analysis.* (1) A regulatory analysis of the economic consequences of a rule will be prepared if the rule is within category (5) of the criteria for significance and (i) the rule will have an annual economic effect of $100 million or more or (ii) even though the economic effect of the rule will be less than $100 million, the potential economic effect of the rule on the economy or an individual region, industry or level of government is sufficiently major as to require formal analysis to assure that the objectives of the rule are achieved with minimum burden.

(2)(i) In determining whether a regulatory analysis should be prepared for rules which will have an economic effect of less than $100 million, close attention should be given to such factors as: (A) The present average level of real income of the region which may be affected and the potential change in average income for the region as a result of the rules; (B) the present cost of doing business of an industry and the potential effect of the rules on the cost; (C) the present cost of operating a level of government or a particular governmental program and the potential effect of the rules on that cost; and (D) the estimated likelihood that the acceptable alternative which would impose the minimum economic burden would not be clearly chosen without formal regulatory analysis.

(ii) No specific quantitative levels or percentages are established for examining rules which will have an economic effect of less than $100 million, because the relative effect of such rules may be minor for some regions, industries, or levels of government, but major or critical for others. Thus each case needs to be examined individually. For example, a particular method of regulation might cause a very small increase in the cost of doing business for an industry. If, however, there are a number of firms in that industry which are marginal, a small increase in costs could drive these firms out of business. In such a case, a regulatory analysis should be prepared if the least burdensome method of regulation is not obvious without formal analysis.

(3)(i) "Economic effects" means changes in the use of resources which, in principle, would affect national income and which can be valued in dollar terms. For purposes of determining the necessity for regulatory analysis, economic effects do not include measures of consumers' willingness to pay in cases when monetary values would have to be imputed. If a regulatory analysis is determined to be necessary, however, measurement of consumers' willingness to pay which would have to be imputed, would be measured or estimated when such datum was of significance to the regulatory decision at hand, and such measurement was practical.

(ii) A "region" is a geographic area ordinarily covering more than one state, although for some rules a narrower interpretation may be appropriate. For example, a particular proposed rule might affect only one state, but the area affected could be as large or the impact as great, as other rules significantly affecting a region comprising more than one state. Under such a circumstance, the same consideration for determining the need for regulatory analysis should be given as if the region comprised more than one state.

(iii) An "industry" is defined to correspond to a 4-digit industry within the Standard Industrial Classification

System established by the Office of Management and Budget (OMB, *Standard Industrial Classification Manual* (1972)).

(c) *Exceptions.* The Secretary or the Secretarial Officer having jurisdiction

(2) "Substantial number" means a substantial number of entities within one, or a combination, of the three sub-groups, small businesses, small organizations, or small governmental jurisdictions. Whether a substantial

written finding that the rule is being promulgated in final form in response to an emergency that makes compliance or timely compliance with the requirements of an initial small entity flexibility analysis impracticable. The finding will

approve the decision on whether a regulatory analysis is necessary during the review of the work plan.

(4) After review of the plan, the Secretary will approve or disapprove the plan. The Secretary's approval may

entities, special care will be taken to involve and accommodate interested small entities. For example, procedures for soliciting public comment on a rule may be adopted or modified to reduce the cost or complexity of participation in

submission for approval, notices of proposed rulemaking will be reviewed by the Assistant Secretary—Policy, Budget and Administration and the Solicitor.

(g) *Publication of proposed significant*

System established by the Office of Management and Budget (OMB, *Standard Industrial Classification Manual* (1972)).

(c) *Exceptions.* The Secretary or the Secretarial Officer having jurisdiction over the program to which a rule relates may except from the procedures for development of significant rules and preparation of regulatory analyses rules (1) issued in response to an emergency or which are governed by short-term statutory or judicial deadlines, or (2) which related to Federal Government procurement. The Supplementary Information section of **Federal Register** documents for rules for which such exceptions are made will contain an explanation of why it is impractical or contrary to the public interest for the Department to follow the procedures for development of significant rules.

►§14.5 Determination of effects on small entities.

(a) *Definitions.* (1) "Small business" means any business which is independently owned and operated and which is not dominant in its field of operation. In making specific determinations about the effects of rules on small businesses, bureaus should consider the standards and criteria contained in the Small Business Administration rules appearing in 13 CFR Part 121. For rules promulgated under the authority of the Surface Mining Control and Reclamamtion Act of 1977 (30 U.S.C. 1201 *et seq.)* a coal operator is a small business if its total annual producition of coal from surface and underground mining operations does not exceed one hundred thousand tons (30 U.S.C. 1252(c)).

(2) "Small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

(3) "Small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.

(4)"Small entity" means "small business", "small organiztion" and "small governmental jurisdiction."

(b) *Criteria for determining effects on small entities.* (1) "Significant economic effect" includes a wide variety of quantifiable as well as non-quantifiable aspects. For example, every small entity does not have to be affected significantly for the total effect to be significant, costs which are not easily quantifiable must be considered, and both the marginal and cumulative effects should be estimated whenever possible.

(2) "Substantial number" means a substantial number of entities within one, or a combination, of the three subgroups, small businesses, small organizations, or small governmental jurisdictions. Whether a substantial number are affected must be determined under the circumstances of each rule, but it is not necessary for an overwhelming precentage of potential entities in a subgroup, or combination of subgroups, to be affected for the rule under development to meet the "substantial number" test. In addition, though a rule may not affect a substantial number of small entities overall, it may affect a substantial number within an industry or sector. Such a rule will, therefore, affect a substantial number of small entities.

(3) In determining whether a rule will have a significant economic effect on a substantial number of small entities, the Secretary or Secretarial Officer having jurisdiction over the program to which the rule relates may consider the following:

(i) Demographic effects (firms affected per industry, industries affected, anticipated closings, geographic distribution);

(ii) Direct costs by size of affected entities, both total and per unit of output (operating costs, capital costs, administrative costs);

(iii) Indirect costs;

(iv) Non-quantifiable effects;

(v) Enforcement costs (Federal, state, local);

(vi) Competitive effects (concentration, mergers, entry, exports-imports);

(vii) Aggregate effects (employment, output, price levels, growth rates).

(c) *Certification of no significont economic effect.* (1) The Secretary or Secretarial Officer having jurisdiction over the program to which the rule relates may certify that the rule will not, if promulgated, have a significant economic effect on a substantial number of small entities. (2) If the rule will not have a significant economic effect on a substantial number of small entities, the Supplementary Information section of all final and proposed rulemaking documents and notices of intent to propose rules in the **Federal Register** will contain a certification that this is the case and will include a statement explaining the basis for the certification.

(d) *Woiver or delay.* (1) The Secretary or Secretarial Officer having jurisdiction over the program to which the rule relates may waive or delay the completion of some or all of the requirements for the preparation of an initial small entity flexibility analysis by publishing in the **Federal Register** a written finding that the rule is being promulgated in final form in response to an emergency that makes compliance or timely compliance with the requirements of an initial small entity flexibility analysis impracticable. The finding will be published no later than the date of publication of the final rule, and will contain the reasons for the finding.

(2) The Secretary or Secretarial Officer having jurisdiction over the program to which the rule relates may delay the completion of a final small entity flexibility analysis by publishing in the **Federal Register** a written finding that the rule is being promulgated in final form in response to an emergency that makes timely compliance with the requirements of a final small entity flexibility analysis impracticable. The finding will be published no later than the date of publication of the final rule, and will contain the reasons for the finding.

(3) If the bureau has not prepared a required final small entity flexibility analysis within 180 days of publication of the final rules, the rule will lapse and have no effect. The rule will not be repromulgated until a final small entity flexibility analysis has been completed by the bureau.◄

§ 14.6 Development of significant rules.

(a) *Scope.* This section outlines the procedures for developing significant rules, including procedures to involve the public in the development process.

(b) *Work Plan.* (1) When a rule has been determined to be significant, the lead official will promptly prepare a work plan for review and approval by the Secretary.

(2) The work plan will state the need for development of the rule, the principal issues and alternative approaches to be considered, a tentative plan for public involvement, and target dates for completion of steps in its development. The plan will also state whether or not a regulatory analysis will be prepared or, if this determination has not been made, the process by which the determination will be made. ►If appropriate, the plan will include tentative dates for completion of initial and final small entity flexibility analyses and specific actions planned to include and accommodate interested small entities in the development of the rule.◄

(3) The plan will be submitted to the Secretary through the Secretarial Officer having jurisdiction over the program to which the rule relates and the Assistant Secretary—Policy, Budget and Administration. The Assistant Secretar—Policy, Budget and Administration must review and approve the decision on whether a regulatory analysis is necessary during the review of the work plan.

(4) After review of the plan, the Secretary will approve or disapprove the plan. The Secretary's approval may be conditioned on modifications in the plan.

(5) When the Secretary approves a work plan, he will indicate whether he wishes to approve the rule before it is published in the **Federal Register** as a proposed and final rule or whether the approval authority may be exercised by the Secretarial Officer having jurisdiction over the program to which the rule relates.

(c) *Early public involvement.* (1) Before a proposed significant rule is drafted, a notice of intent to propose rulemaking will be published in the **Federal Register.** The notice of intent may be omitted, however, if time constraints require immediate preparation of a proposed rule or if there has been a recent previous opportunity for comment by the general public on the issues to be addressed in the proposed rule.

(2) A notice of intent will state the need for, the subject matter of and key issues presented by the anticipated rulemaking, and will advise the public where additional information may be obtained and where comments should be sent. If a regulatory analysis ►or a small entity flexibility analysis is to be prepared,◄ the notice should invite comment of the economic consequences of alternative regulatory approaches ►and suggestions for minimizing the economic effects on small entities.◄ If no decision on a regulatory analysis ►or a small entity flexibility analysis has◄ been made, the notice of intent should invite comment on whether the potential economic consequences of the rule require preparation of a regulatory analysis ►or a small entity flexibility analysis.◄

(3) When a notice of intent to propose rulemaking is to be published, consideration will be given to taking additional actions to assure meaningful public participation in the rulemaking process. These additional actions may include, but are not limited to: (i) Holding open conferences or public hearings; (ii) sending press releases to newspapers of general circulation and other publications likely to be read by those affected; (iii) directly notifying interested parties, including state and local governments ►and small entities;◄ and (iv) taking out paid advertisements in publications likely to be read by those affected. If the rule may have a significant economic effect on a substantial number of small entities, special care will be taken to involve and accommodate interested small entities. For example, procedures for soliciting public comment on a rule may be adopted or modified to reduce the cost or complexity of participation in the rulemaking by small entities.

(d) *Regulatory analysis.* (1) If a regulatory analysis is required, the draft regulatory analysis will ordinarily be prepared after the receipt of public comments in response to the notice of intent to propose rulemaking (if one is published), but before or during the process of drafting the proposed rule. The final regulatory analysis will be prepared after the comment period of the proposed rules and draft regulatory analysis. The lead official will be responsible for assuring that the preparation of the draft and final regulatory analyses is integrated with the preparation of the proposed and final rules.

►(2) If appropriate and desirable, the draft and final regulatory analyses may also include information and analysis necessary to fulfill requirements to conduct initial and final small entity flexibility analyses. If the regulatory analysis and small entity flexibility analyses are combined, the document will clearly state that such a procedure is being followed.◄

(e) *Preparation of proposed and final significant rules.* (1) In supervising the preparation of proposed and final rules, the lead official is responsible for assuring at a minimum that: (i) The direct and indirect effects of the rule are adequately considered; (ii) alternative approaches are considered and the least burdensome of acceptable alternatives is chosen; (iii) public comments are considered and the final rulemaking document states the reason for accepting or rejecting these comments or groups of comments; (iv) the rule is written in clear English and will be understandable to those who must comply with it; and (v) new ►information collection◄ or recordkeeping requirements which may result from the rule are considered and conform to the requirements of the Federal Reports Act.

(2) When the final rule is prepared, the lead official is also responsible for developing a plan for evaluating the rule after its issuance. The plan should take into account the review cycle for review of rules in § 14.11.

(f) *Approval of proposed significant rules.* Notices of proposed significant rulemaking will be approved by the Secretary, or if the Secretary has so authorized, by the Secretarial Officer having jurisdiction over the program to which the rule relates. Prior to submission for approval, notices of proposed rulemaking will be reviewed by the Assistant Secretary—Policy, Budget and Administration and the Solicitor.

(g) *Publication of proposed significant rules.* (1) The public will be given a minimum of 60 calendar days after the date of publication in the **Federal Register** to comment on proposed significant rules. A shorter period may be used only in special cases requiring more timely action. In such cases, the notice of proposed rulemaking will contain a statement of the reason for the shorter period.

(2) A notice of proposed rulemaking will contain a statement of the alternative approaches considered in drafting the proposed rule and explanation of the basis for selection of the alternative incorporated in the proposal. (i) If a draft regulatory analysis has been prepared, the notice of proposed rulemaking will state how copies may be obtained and will ask for comments on the analysis. ►(ii) If an initial small entity flexibility analysis was prepared, the initial analysis or summary will be published in the **Federal Register** and will ask for comments on the analysis. If a summary only is published, a statement describing where copies may be obtained will also be included.◄

(3) To assure meaningful public comment on a proposed rule, consideration will be given to supplementing the **Federal Register** notice by taking additional actions. These additional actions may include, but are not limited to: (1) Open conferences and public hearings; (ii) sending press releases to newspapers of general circulation and other publications likely to be read by those affected; (iii) directly notifying interested parties, including state and local governments ►and small entities◄ and (iv) taking out paid advertisements in publications likely to be read by those affected. ►If the rule may have a significant economic effect on a substantial number of small entities, special care will be taken to involve and accommodate interested small entities. For example, procedures for soliciting public comment on a rule may be adopted or modified to reduce the cost or complexity of participation in the rulemaking by small entities.◄

(h) *Approval of final significant rules.* (1) Final significant rules will be approved by the Secretary or, if the Secretary has so authorized, by the Secretarial Officer having jurisdiction over the program to which the rule relates. Prior to submission for this approval, final rules will be reviewed by

the Assistant Secretary—Policy, Budget, and Administration and the Solicitor.

(2) Before approving a final significant rule, the Secretary or Secretarial Officer should determine that: (i) The rule is needed; (ii) the direct and indirect effects of the rule have been adequately

(3) If a final regulatory analysis ►or a final small entity flexibility analysis◄ was prepared, the document will state where copies may be obtained.

§ 14.7 Development of other rules.

(a) *Scope.* Although a rule does not

opportunity for comment will be given unless notice and comment are determined to be impracticable, unnecessary or contrary to the public interest.

(B) Dispensing with the publication of a notice of proposed legislative

relevant and significant comments on the proposed rule.

(ii) The rulemaking document must include a clear statement of the date on which the rule is to take effect. This date will be a minimum of 30 calendar days after the date of publication in the

(5) *Codification.* Interpretative rules and general statements of policy should

§ 14.8 Content of regulatory analyses.

A regulatory analysis prepared in accordance with § 14.4(b) (*Criteria for regulatory analysis*) will contain: (a) a succinct statement of the problem being addressed and objectives of the rule; (b) a description of the major alternative

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the Assistant Secretary—Policy, Budget, and Administration and the Solicitor.

(2) Before approving a final significant rule, the Secretary or Secretarial Officer should determine that: (i) The rule is needed; (ii) the direct and indirect effects of the rule have been adequately considered; (iii) alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen; (iv) public comments have been considered and an adequate discussion of the comments is contained in the rulemaking document; (v) the rule is written in clear English and can be understood by those who must comply with it; (vi) an estimate has been made of the new ►information collection◄ or recordkeeping requirements necessary for compliance with the rule; (vii) the name, address and telephone number of a knowledgeable agency official is included in the document; (viii) the name of the principal author of the rule is included in the document; (ix) a plan has been developed for evaluating the rule after its issuance; and (x) the final regulatory analysis, ►or final small entity flexibility analysis,◄ if one has been prepared, adequately considers the economic consequences of the final rule.

(3) To assist the Secretary or Secretarial Officer in reviewing final significant rules, each rule must be accompanied by a memorandum: (i) Addressing each of the items listed above; (ii) analyzing the views of public, citizens groups, user groups and elected officials; and (iii) summarizing the anticipated impact of the rule. A copy of the regulatory analysis ►or final small entity flexibility analysis◄ will be attached to this memorandum.

(i) *Publication of final significant rules.* (1) The Supplementary Information section of a rulemaking document must contain a concise statement of the basis and purpose of the rule and must also discuss the reasons for accepting or rejecting all relevant and significant comments or groups of comments on the proposed rule.

(2) The rulemaking document must include a clear statement of the date on which the rule will take effect. This date will be a minimum of 30 calendar days after the date of publication in the **Federal Register** unless (i) the rule grants or recognizes an exemption or relieves a restriction or (ii) other good cause for a shorter delay of the effective date exists. If a rule is to become effective less than 30 days from the date of publication, the reason for the earlier date will be explained in the Supplementary Information Section.

(3) If a final regulatory analysis ►or a final small entity flexibility analysis◄ was prepared, the document will state where copies may be obtained.

§ 14.7 Development of other rules.

(a) *Scope.* Although a rule does not meet the criteria for significance, public participation in its development will often be helpful, ►especially when the rule may have a significant economic effect on a substantial number of small entities.◄ This section contains supplementary Department of the Interior policies for public participation in the development of rules not meeting the criteria for significance.

(b) *Legislative Rules.* (1) *Definition.* "Legislative Rules" are rules, other than rules of agency organization, procedure or practice, which are issued under statutory authority and which implement the statute.

(2) *Notice of intent to propose rules.* (i) If proposed legislative rules are likely to be complex or controversial or to reflect major changes in existing rules, an opportunity for public comment before the publication of a notice of proposed rulemaking may be helpful in drafting the proposed rules. Before drafting such proposed legislative rules, the lead official should consider whether publication in the **Federal Register** of a notice of intent to propose rulemaking will be beneficial in the drafting process.

(ii) A notice of intent will state the need for the rule, the subject matter of and the key issues presented by the anticipated rulemaking, and will advise the public where additional information may be obtained and where comments may be sent.

(3) *Proposed rulemaking.* (i) *Administrative Procedure Act Requirement.* Section 4 of the Administrative Procedure Act, requires that the public be allowed an opportunity to comment on proposed legislative rules before final adoption. (5 U.S.C. 553) This requirement for comment does not apply to rules which deal with public property, loans, grants, benefits or contracts. (5 U.S.C. 553(a)) Further, the requirement for comment, if otherwise applicable, may be waived if it is found, for good cause, that notice of and public comment on a proposed legislative rule are impracticable, unnecessary or contrary to the public interest. (5 U.S.C. 553(b)(B))

(ii) *Department policy.* (A) It is the policy of the Department not to invoke the exception to notice and comment procedures for legislative rules relating to public property, loans, grants, benefits or contracts. When legislative rules fall in these categories, an opportunity for comment will be given unless notice and comment are determined to be impracticable, unnecessary or contrary to the public interest.

(B) Dispensing with the publication of a notice of proposed legislative rulemaking on the ground that notice and an opportunity for comment are impracticable, unnecessary or contrary to the public interest is not favored and should occur only in special cases, such as emergencies or instances where a proposed amendment makes only minor technical changes in a rule.

(iii) *Statement of basis for omitting notice and comment.* When it is determined that a final legislative rule is to be adopted without prior publication of a notice of proposed rulemaking, a specific statement of the basis for the determination will be published with the rule.

(iv) *Period for comment.* No specific time period for comment is prescribed by the Administrative Procedure Act. Except where another statute requires a longer notice period, the public will be given a minimum of 30 calendar days to comment on legislative rules. A shorter period may be used only in special cases requiring more timely action. In such cases, the notice of proposed rulemaking will contain a statement of the reasons for the shorter period.

(4) *Assuring public participation.* When a notice of intent to propose a rule or a notice of proposed rulemaking is to be published, the lead official will consider taking additional actions to assure meaningful public participation in the rulemaking process. These additional actions may include, but are not limited to: (i) Holding open conferences or public hearings; (ii) sending press releases to newspapers of general circulation and other publications likely to be read by those affected; (iii) directly notifying interested parties, including state and local governments, ►and small entities;◄ and (iv) taking paid advertisements in publications likely to be read by those affected. ►If the rule may have a significant economic effect on a substantial number of small entities, special care will be taken to involve and accommodate interested small entities. For example, procedures for soliciting public comment on a rule may be adopted or modified to reduce the cost or complexity of participation in the rulemaking by small entities.◄

(5) *Final rulemaking documents.* (i) The Supplementary Information section of the rulemaking document for all final legislative rules must contain a concise statement of the basis and purpose for the rule and must also discuss all

relevant and significant comments on the proposed rule.

(ii) The rulemaking document must include a clear statement of the date on which the rule is to take effect. This date will be a minimum of 30 calendar days after the date of publication in the **Federal Register** unless: (A) The rule grants or recognizes an exemption or relieves a restriction or (B) other good cause for a shorter delay of the effective date exists. If a rule is to become effective less than 30 days from the date of publication, the reason for the earlier date will be explained in the Supplementary Information section.

(c) *Interpretative rules and general statements of policy.* (1) *Definitions.* (i) "Interpretative rules" are rules issued by the Department to advise the public of the Departments interpretation of the statutes and rules which it administers.

(ii) "General Statements of Policy" are statements issued by the Department to advise the public prospectively of the manner in which the Department proposes to administer a discretionary power.

(2) *Public participation.* The Administrative Procedure Act does not require public participation in the development of interpretative rules and general statements of policy. The lead official should, however, consider whether public participation in the development process will be beneficial. Factors which should be considered in making this decision include the impact of the rule or policy on the public or on state and local governments; the complexity and pervasiveness of the rule or policy; the degree to which the rule or policy will modify existing interpretations or policies; the confusion or controversy likely to be caused by practical difficulties of compliance with a new rule or policy; ►and the likely effect on small entities.◄

(3) *Procedures for public participation.* When it is determined that there should be an opportunity for public participation in the development of an interpretative rule or general statement of policy, the notice and comment rulemaking procedures of 5 U.S.C. 553 (b) and (c) and the procedures for development of legislative rules in § 14.7(b)(3)(iv) and § 14.7(b)(4) will be used.

(4) *Effective Date.* Final interpretative rules and general statements of policy may be made effective on the date of publication in the **Federal Register.** Except in emergency situations, consideration should, however, be given to delaying the effective date for 30 calendar days from the date of publication if (i) the adoption of the rule or statement was not preceded by an opportunity for comment or (ii) the rule or statement substantially modifies an earlier interpretation or policy on which members of the public or state or local governments have relied.

(5) *Codification.* Interpretative rules and general statements of policy should be codified in the Code of Federal Regulations if they have a substantial impact on, or are of continuing interest to, the public, state or local governments ►or small entities.◄

(d) *Rules of Agency organization, procedure and practice.* (1) *Definition.* "Rules of organization, procedure and practice" are: (i) descriptions of the Department's central and field organization and the method by which the public may obtain information, make submittals or requests, or obtain decisions; (ii) statements of the general course and method by which the Department's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available; and (iii) rules of procedures, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports or examinations.

(2) *Public participation.* The Administrative Procedure Act does not require public participation in the development of rules of agency organization, procedure and practice. The lead official should, however, consider whether initial publication of a proposed rule in the **Federal Register** will contribute to the process of developing the rule, ►and in determining what effect the rule will have on small entities.◄

(3) *Procedures for Public Participation.* When it is determined that there should be an opportunity for public comment on a proposed rule of organization, procedure or practice, the notice and comment rulemaking procedures of 5 U.S.C. 553 (b) and (c) and the procedures for development of legislative rules in § 14.7(b)(3)(iv) and § 14.7(b)(4) will be used.

(4) *Effective Date.* Final rules of organization, procedure and practice may be made effective on the date of publication in the **Federal Register.** Except in emergency situations, consideration should, however, be given to delaying the effective date for 30 calendar days from the date of publication (i) if the adoption of the rule or statement was not preceded by an opportunity for comment or (ii) if the rule substantially modifies an earlier procedure or practice.

§ 14.8 Content of regulatory analyses.

A regulatory analysis prepared in accordance with § 14.4(b) (*Criteria for regulatory analysis*) will contain: (a) a succinct statement of the problem being addressed and objectives of the rule; (b) a description of the major alternative ways of achieving the objectives that were considered by the bureau; (c) an analysis of the economic consequences of each of the alternatives, and (d) a detailed explanation of the reasons for choosing one alternative over the others.

►§ 14.9 Content of small entity flexibility analyses.

(a) *Scope.* (1) This section outlines the content of small entity flexibility analyses for rules that have been determined to have a significant economic effect on a substantial number of small entities (§ 14.5).

(2) For the purpose of preparing an initial or final small entity flexibility analysis the bureau may also consider a series of closely related rules as one rule.

(b) *Initial small entity flexibility analysis.* (1) Each initial small entity flexibility analysis will contain:

(i) A description of the reasons why action by the bureau is being considered;

(ii) A succinct statement of the objectives of and legal basis for the rule;

(iii) A description of and where feasible, an estimate of the number of small entities affected by the rule;

(iv) A description of the projected information collection, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for preparation of the information and records; and

(v) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule.

(2) Each small entity flexibility analysis will also describe any significant alternatives to the rule which would accomplish the stated objectives of applicable statutes and minimize any significant economic effect of the rule on small entities. Alternatives available include but are not limited to:

(i) The establishment of differing compliance or information collection requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation or simplification of compliance or information collection requirements for small entities; (iii) the use of performance rather than design based standards; and (iv) an exemption

from coverage of the rule or any part of the rule for small entities.

(c) *Final small entity flexibility analysis.* Each final small entity flexibility analysis shall contain—

(1) A succinct statement of the need

(d) *Publication of petitions.* A petition for rulemaking may be published in the **Federal Register** if the official responsible for acting on the petition determines that public comment may aid in consideration of the petition.

§ 14.12 Semiannual agenda.

(a) *Scope.* This section contains procedures for the publication of a semiannual agenda of those rules selected for review and development during the subsequent six month period.

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from coverage of the rule or any part of the rule for small entities.

(c) *Final small entity flexibility analysis.* Each final small entity flexibility analysis shall contain—

(1) A succinct statement of the need for and objectives of the rule;

(2) A summary of the issues raised by the public comments in response to the initial small entity flexibility analysis, a summary of the Department's assessment of such issues, and a statement of any changes made in the rule as a result of the public comments; and

(3) A description of each of the significant alternatives to the rules considered by the bureau which were consistent with the stated objectives of applicable statutes and designed to minimize the significant impact of the rule on small entities, and a statement of the reasons why each alternative was rejected.

(d) *Preparation of analysis.* In preparing an initial or final small entity flexibility analysis, the bureau may provide either a quantifiable or numerical description of the effects of the rule or alternatives to the rule or, if quantification is not practicable or reliable, more general descriptive statements.

(e) *Combination with regulatory analysis.* Initial or final small entity flexibility analyses may be prepared in conjunction with regulatory analyses for certain significant rules (see § 14.6 *Development of significant rules).* The document must clearly state that the two types of analyses are combined and it must satisfy all the content requirements for a regulatory analysis (see § 14.8) as well as the content requirements for a small entity flexibility analysis.◄

14.10 Petitions for rulemaking.

(a) *Scope.* This section prescribes procedures for the filing and consideration of petitions for rulemaking.

(b) *Filing of petitions.* Under the Administrative Procedure Act, any person may petition for the issuance, amendment, or repeal or a rule. (5 U.S.C. 553(e)) The petition will be addressed to the Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240. It will identify the rule requested to be repealed or provide the text of a proposed rule or amendment and include reasons in support of the petition.

(c) *Consideration of petitions.* The petition will be given prompt consideration and the petitioner will be notified promptly of action taken.

(d) *Publication of petitions.* A petition for rulemaking may be published in the **Federal Register** if the official responsible for acting on the petition determines that public comment may aid in consideration of the petition.

§ 14.11 Review of rules.

(a) *Scope.* This section establishes procedures for periodic review of existing rules to assure that they are needed, up-to-date and clear.

(b) *Responsibility.* Each bureau is responsible for reviewing existing rules which relate to programs which it administers. Secretarial Officers are responsible for assuring that bureau reviews are conducted and must approve the results of the reviews.

(c) *Review criteria.* In reviewing an existing rule, bureaus must consider: (1) The continued need for the rule; (2) the ►nature,◄ type and number of complaints or suggestions received concerning the rule; (3) whether the rule can be simplified or clarified; (4) the need to eliminate ►rules that overlap, duplicate or conflict with other Federal and, to the extent feasible, with state and local governmental rules;◄ (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the rule; (6) the recordkeeping and ►information collection requirements◄ which the rule imposes on the public; and (7) the need to eliminate sex-based criteria and gender-specific terminology.

(d) *Review cycle.* (1) Rules will be reviewed at no less than five year intervals. More frequent reviews or special reviews of selected rules may be established by a bureau, the Secretary, or a Secretarial Officer. ►(2) Rules scheduled for review will be listed in the semiannual agenda (§ 14.12), and reviews will be completed within one year of originally being scheduled. (3) If it is determined that more than one year is needed to complete the review of a rule that has a significant economic effect on a substantial number of small entities, then such a determination will be published in the **Federal Register.** The determination will be approved by the Secretarial Officer having jurisdiction over the program to which the rule relates and may extend the completion date by one year at a time for a total of not more than five years.◄

(e) *Revision of rules.* If review of a rule indicates a need for repeal or revision, the procedures for development of significant rules (§ 14.6) or for development of other rules (§ 14.7) will be used as appropriate.

§ 14.12 Semiannual agenda.

(a) *Scope.* This section contains procedures for the publication of a semiannual agenda of those rules selected for review and development during the subsequent six month period.

(b) *Publication and Content of Agendas.* (1) The Department will publish a semiannual agenda in ►April and October◄ of each year.

(2) The agendas: (i) Will list all new or existing significant rules planned for development or revision; and (ii) will list all rules scheduled for review under the five-year cycle.

►(3) The agenda will include: (i) A summary which states the nature of and need for each action; (ii) the legal basis for each action; (iii) a brief description of the subject area which is likely to effect small entities, if applicable; (iv) the name, telephone number and address of the knowledgeable official for each action; (v) whether or not a regulatory analysis is required; (vi) information regarding a small entity flexibility analysis, if applicable; (vii) the schedule for completing actions, if known; and (viii) the status of those rules previously listed.◄

(c) *Approval.* (1) Each bureau will submit its semiannual agenda to the Assistant Secretary—Policy, Budget and Administration through the Secretarial Officer having jurisdiction over the bureau.

(2) The Department's semiannual agenda must be approved by the Secretary prior to publication in the **Federal Register.**

►(d) To the extent possible, notice of the semiannual agenda with a request for comments will be provided to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities.◄

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Wednesday
December 24, 1980

Part VIII

Department of Energy

Economic Regulatory Administration

Electric and Gas Utilities Covered in 1981 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Titles II and VII of the National Energy Conservation Policy Act

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-R-79-43A]

Electric and Gas Utilities Covered in 1981 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Titles II and VII of the National Energy Conservation Policy Act

seq. (42 U.S.C. 8211 *et seq.*), the Department of Energy (DOE) is required to publish a list of utilities to which Titles I and III of PURPA and Titles II and VII of NECPA apply in 1981. State regulatory authorities are required by the above cited sections of PURPA and was that both companies were comprised of divisions or systems which were not interconnected, nor operated on a coordinated basis, nor joined together for the purpose of rate filings. Thus, it was decided that each division or system was to be treated as an

its retail sales for 1978 were not in excess of the 750 million kWh NECPA threshold. This argument is moot because 1979, not 1978, is the relevant year for determining whether any company meets the subject threshold for coverage in 1981. Consequently, DOE

whether or not each is a "ratemaking authority" for purposes of having responsibilities under PURPA, DOE has determined that such an effort is neither necessary nor practicable. For one thing, such a notification procedure exceeds DOE's statutory obligations. Secondly,

effect, only "limited" ratemaking authority because they cannot set ratemaking standards and are, in any event, subject to being overruled by a PUC which hears appeals *de novo.*

DOE does not find these arguments persuasive. Even conceding that the

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-R-79-43A]

Electric and Gas Utilities Covered in 1981 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Titles II and VII of the National Energy Conservation Policy Act

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice.

SUMMARY: Sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) and section 211(b) of the National Energy Conservation Policy Act of 1978 (NECPA) require the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility and gas utility to which Titles I and III of PURPA and Titles II and VII of NECPA apply during such calendar year. The Notice containing the proposed list for 1981 was published in the **Federal Register** on October 10, 1980. The statutorily required final list is published here as two separate tabulations, Appendices A and B. Appendix A lists the covered utilities by State, and Appendix B lists them in alphabetical order. These two tabulations are referred to hereinafter as "the lists."

Written comments were requested on the accuracy of the lists. The Notice issued today sets forth the Department of Energy's response to each of the five comments received. The final lists have been modified to reflect these responses.

FOR FURTHER INFORMATION CONTACT:

Nancy E. Tate, Office of Utility Systems, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., (Room 4306), Washington, D.C. 20461, (202) 653-3920

William L. Webb, Office of Public Information, Economic Regulatory Administration, 2000 M Street, N.W., (Room B-110), Washington, D.C. 20461, (202) 653-4055

Arthur Perry Bruder, Office of General Counsel, Conservation and Solar Energy, Department of Energy, 1000 Independence Avenue, S.W., (Room 6B-144), Washington, D.C. 20585, (202) 252-9516

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*) and section 211(b) of the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3206 *et seq.* (42 U.S.C. 8211 *et seq.*), the Department of Energy (DOE) is required to publish a list of utilities to which Titles I and III of PURPA and Titles II and VII of NECPA apply in 1981. State regulatory authorities are required by the above cited sections of PURPA and NECPA to notify the Secretary of Energy as to their ratemaking authority over the listed utilities.

On October 10, 1980, DOE issued a Notice containing two proposed lists (Appendix A and B) of utilities to which PURPA and NECPA apply in 1981 and requesting each State regulatory authority to notify DOE in writing of each utility on the lists for which it has ratemaking authority (45 FR 67553, October 10, 1980). Appendix A separately identifies each State regulatory authority, the covered utilities it regulates, and other covered utilities in the State not regulated by the State regulatory authority. Appendix B lists the utilities alphabetically, subdivided into electric and gas utilities and by type of ownership. Public comments were requested on the accuracy of these two appendices.

In response, United Cities Gas (United) and the City of Lafayette, Louisiana Department of Utilities (Lafayette) each submitted a comment requesting deletion from the lists. Equitable Gas (Equitable) submitted a comment requesting deletion from the lists for a portion of its operations which is carried out in Kentucky. The City of El Paso (El Paso), and a group of three subsidiaries of Central and South West Corporation (Central and South West), filed comments pertaining to Appendix A's description of Texas' regulatory structure and responsibilities.

Following is a discussion of the comments, and of DOE's response to them.

II. Discussion of Comments and DOE Response

On September 24, 1979, DOE issued a Notice containing two lists of electric and as utilities to which PURPA and NECPA would apply in 1980. In response to that issuance, CP National (CP) submitted a comment requesting deletion from the lists. In support of the request, it pointed out that it operated geographically separate distribution systems, none of which alone exceeded the coverage thresholds for PURPA and NECPA. CP also cited DOE's earlier deletion of Citizens Utilities Company (Citizens) from the 1979 lists. After consideration of CP's request, and reconsideration of Citizen's situation, DOE determined, on June 11, 1980, that both Citizens and CP should be deleted from the lists. The basis for this decision was that both companies were comprised of divisions or systems which were not interconnected, nor operated on a coordinated basis, nor joined together for the purpose of rate filings. Thus, it was decided that each division or system was to be treated as an individual entity. Since none of these individual entities exceeded the PURPA and NECPA thresholds, it was decided that neither CP nor Citizens nor any division or system of either would be included on the lists.

These criteria were applied to the requests of United and Equitable for deletion from the lists for 1981. The following is a discussion of those requests, and DOE's decision on them.

A. *United Cities Gas Company.* United asserts that it is "a diversified natural gas distribution company" which serves thirteen "separate" gas distribution systems in six States (Georgia, Illinois, North Carolina, South Carolina, Tennessee and Virginia). United further asserts that it is not vertically integrated with regard to production, transmission, or distribution, does not operate a single interconnected system in any one geographical area, and purchases its natural gas from numerous suppliers. Finally, it contends that none of the individual systems alone exceeds the PURPA and NECPA 10 Bcf threshold.

In light of this information, DOE has determined that United meets the criteria which, as discussed above, have been established for deletion from the lists. The lists published here have been amended to reflect this determination.

B. *Equitable Gas Company.* Equitable indicates that it engages in the purchase, production, transmission, storage, distribution and sale of natural gas in the States of Pennsylvania, West Virginia and Kentucky. It further indicates that its Pennsylvania and West Virginia operations exceed the 10 Bcf threshold and are, therefore, properly included on the lists. However, it asserts that its Kentucky operation is "completely separate" from and not physically connected to its Pennsylvania and West Virginia operating divisions, and further asserts that the Kentucky operation has annual sales which are substantially below the 10 Bcf threshold. Given this situation, Equitable requests that its operation in Kentucky be deleted from the lists.

Applying the above discussed criteria, DOE has determined that Equitable's Kentucky operation should be deleted. The lists published here have been amended to reflect this determination.

C. *City of Lafayette Department of Utilities.* Lafayette's comment protested its inclusion on the lists, asserting that

its retail sales for 1978 were not in excess of the 750 million kWh NECPA threshold. This argument is moot because 1979, not 1978, is the relevant year for determining whether any company meets the subject threshold for coverage in 1981. Consequently, DOE has determined that Lafayette shall remain subject to both NECPA and PURPA, at least until such time as DOE receives evidence which indicates that Lafayette's 1979 sales were not in excess of 750 kWh.

D. *City of El Paso.* El Paso's comment includes two related suggestions:

(1) It would be appropriate to "refine" Appendix A's description of the Texas utility regulatory responsibilities;

(2) DOE should make "some special effort" to communicate with certain Texas governmental entities, to inform each of whether it is a "ratemaking authority" for purposes of determining whether it is required to carry out certain statutory responsibilities under PURPA.

Both of these questions stem from the fact that Texas has a unique utility regulatory structure. Under this structure, each individual municipality has original jurisdiction to fix electric and gas rates within its boundaries. The Texas Public Utility Commission (TPUC) is granted the right to conduct a *de novo* review of any municipality's decision concerning electric rates, upon any party's request. A municipality may, under the statute, surrender its authority over electric rates to the TPUC. The Texas Railroad Commission has appellate jurisdiction over the gas rate decisions of any municipality.

El Paso points out, first, that Appendix A fails, in its description of the Texas regulatory structure for electric rates (published at 45 FR 67559), to include a reference to the statutory surrender provision for electric rates. It further points out that the notes to Appendix A are incorrect when they state that municipalities' powers to regulate electric utilities are limited only to investor-owned utilities. DOE has determined that these contentions are correct. Therefore, the subject language has been revised to read as follows:

> The governing body of each Texas municipality exercises exclusive original jurisdiction over electric utility rates, operations and services provided by an electric utility (whether privately owned or publicly owned) within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears, *de novo*, appeals from the decisions of such municipalities.

As to El Paso's second request, that DOE inform Texas municipalities as to whether or not each is a "ratemaking authority" for purposes of having responsibilities under PURPA, DOE has determined that such an effort is neither necessary nor practicable. For one thing, such a notification procedure exceeds DOE's statutory obligations. Secondly, the Texas Municipal League is carrying out this effort, and the League is more familiar than DOE with the subject entities. Therefore, DOE is denying El Paso's second request.

E. *Central and South West Corporation.* As noted above, the State of Texas has a unique utility regulatory structure under which each individual municipality is empowered to fix electric rates within its boundaries. If a rate determination of any such municipality is appealed, the appeal is heard *de novo* by the TPUC.

PURPA mandates that decisions as to whether or not to adopt each of the various PURPA ratemaking standards are to be made by the "State regulatory authority". Since that term is defined as "* * * any State agency that has ratemaking authority," it would appear that, in Texas, these decisions must be made by each of the individual municipalities, since each has the power to make rates.

Central and South West asserts, however, that under Texas law, the TPUC is the "State regulatory authority" and that the TPUC, rather than the individual municipalities, should therefore make the decisions concerning adoption or rejection of each PURPA standard.

In support of this assertion, Central and South West points to three particular sections of Texas law on utility regulation:

(1) A section which requires that municipalities regulate utilities via "standards and rules" that are "the same as", or "not inconsistent with", standards which the TPUC sets for ratemaking (The Public Utility Regulatory Act, TEX. REV. CIV. STAT. ANN., art. 1446c, section 22);

(2) A section which mandates that "* * * all rules and regulations promulgated by (municipalities in regard to their regulation of utilities) * * * shall remain in effect (only) until * * * (t)he (TPUC) * * * promulgates provisions applicable to the exercise of the (TPUC's) * * * jurisdiction over public utilities"—(*Ibid*, section 90);

(3) A provision which mandates, as mentioned above, that any appeal from any municipality's ratemaking order shall be heard *de novo* by the TPUC (id. section 526).

Thus, Central and South West argues, the Texas municipalities have no power to make any "standards," and have, in effect, only "limited" ratemaking authority because they cannot set ratemaking standards and are, in any event, subject to being overruled by a PUC which hears appeals *de novo*.

DOE does not find these arguments persuasive. Even conceding that the TPUC has significant power to set the "standards" under which the municipalities determine rates, and although the PUC may have sweeping power to review those determinations, the fact remains that the municipalities, not the PUC, have original ratemaking power. For this reason, DOE has determined that the individual municipalities, and not the TPUC, are the "State regulatory authorities." Thus, each individual municipality must make a set of individual determinations as to adoption or rejection of each of the PURPA standards (unless it has surrendered its ratemaking authority to the TPUC).

III. List of Electric Utilities and Gas Utilities

The lists of utilities to which Titles I and III of PURPA and Titles II and VII of NECPA apply in 1981 are the lists which were published with the October 10, 1980 Notice, except that United, and Equitable's Kentucky operation are deleted and the description of the regulation structure of the State of Texas is to some degree revised. These lists are for 1981 only. The determinations set forth in this Notice may be modified with respect to later lists.

It should be noted that the inclusion or exclusion of any utility on or from the lists does not affect the legal obligations of such utility or the responsible State regulatory authority under PURPA and NECPA.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 *et seq.* (42 U.S.C. 8211 *et seq.*))

Issued in Washington, D.C. on December 19, 1980.

Howard Perry,

Acting Assistant Administrator for Utility Systems.

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1976, 1977, 1978 or 1979 and are covered by PURPA Title III and NECPA Titles II and VII. Utilities marked (*) do not have residential or commercial sales, and therefore, are not covered by NECPA Titles II and VII.

All electric utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in 1976, 1977, 1978 or

1979. All, except those marked (*), are covered by PURPA Title I and NECPA Titles II and VII. Utilities marked (*) either do not exceed the NECPA threshold of 750 million kilowatt-hours in 1979, for purposes other than resale,

Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Arkansas Western Gas Company
Associated Natural Gas Company

Electric Utilities

Investor-Owned:

Colorado Springs Department of Public Utilities (jurisdiction only outside city limits)

Electric Utilities

Investor-Owned:
Central Telephone and Utilities

Florida Power Corporation
Florida Power and Light Company
Gulf Power Company
Tampa Electric Company

Publicly-Owned: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—

State: Illinois

Regulatory Authority: Illinois Commerce Commission.

Gas Utilities

Investor-Owned:
Central Illinois Light Company

Electric Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company

1979. All, except those marked (*), are covered by PURPA Title I and NECPA Titles II and VII. Utilities marked (*) either do not exceed the NECPA threshold of 750 million kilowatt-hours in 1979, for purposes other than resale, or do not have residential or commercial sales, and therefore, are not covered by NECPA Titles II and VII.

State: Alabama

Regulatory Authority: Alabama Public Service Commission.

Gas Utilities

Investor-Owned:
Alabama Gas Corporation
Mobile Gas Service Corporation

Electric Utilities

Investor-Owned:
Alabama Power Company:

The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:

Electric Utilities

Publicly-Owned:
Decatur Electric Department
*Dothan Electric Department
*Florence Electricity Department
Huntsville Electric System

State: Alaska

Regulatory Authority: Alaska Public Utilities Commission.

Gas Utilities

Investor-Owned:
Alaska Gas and Service Company

Electric Utilities

Rural Electric Cooperatives:
Chugach Electric Association
Publicly-Owned:
*Anchorage Municipal Light & Power Department

State: Arizona

Regulatory Authority: Arizona Corporation Commission.

Gas Utilities

Investor-Owned:
Arizona Public Service Company
Southern Union Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Arizona Public Service Company
Tuscon Electric Power Company

The following covered utility within the State of Arizona is not regulated by the Arizona Corporation Commission:

Electric Utilities

Publicly-Owned:
Salt River Project Agricultural Improvement and Power District

State: Arkansas

Regulatory Authority: Arkansas Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Arkansas Western Gas Company
Associated Natural Gas Company

Electric Utilities

Investor-Owned:
Arkansas-Missouri Power Company
Arkansas Power and Light Company
Empire District Electric Company
Oklahoma Gas and Electric company
Southwestern Electric and Power Company
Rural Electric Cooperatives:
*First Electric Cooperative Corporation

The following covered utility within the State of Arkansas in not regulated by the Arkansas Public Service Commission:
Publicly-Owned:
*North Little Rock Electric Department

State: California

Regulatory Authority: California Public Utilities Commission.

Gas Utilities

Investor-Owned:
Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Pacific Gas and Electric Company
Pacific Power and Light Company
San Diego Gas and Electric Company
Sierra Pacific Power Company
Southern California Edison Company

The following covered utilities within the State of California are not regulated by the California Public Utilities Commission:

Electric Utilities

Publicly-Owned:
Anaheim Electric Division
Burbank Public Service Department
*Glendale Public Service Department
Imperial Irrigation District
Los Angeles Department of Water and Power
Modesto Irrigation District
Palo Alto Electric Utility
Pasadena Water and Power Department
Riverside Public Utilities
Sacramento Municipal Utility District
Santa Clara Electric Department
*Turlock Irrigation District
Vernon Municipal Light Department

Gas Utilities

Publicly-Owned:
Long Beach Gas Department

State: Colorado

Regulatory Authority: Colorado Public Utilities Commission.

Gas Utilities

Investor-Owned:
Greeley Gas Company
Iowa Electric Light and Power Company
Kansas-Nebraska Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Public Service Company of Colorado
Publicly-Owned:
Colorado Springs Department of Public Utilities (jurisdiction only outside city limits)

Electric Utilities

Investor-Owned:
Central Telephone and Utilities Corporation
Public Service Company of Colorado
Publicly-Owned:
Colorado Springs Department of Public Utilities (jurisdiction only outside city limits)

The following covered utilities within the State of Colorado are not regulated by the Colorado Public Utilities Commission:

Gas Utilities

Publicly-Owned:
Colorado Springs Department of Public Utilities (within city limits)

Electric Utilities

Publicly-Owned:
Colorado Springs Department of Public Utilities (within city limits)

State: Connecticut

Regulatory Authority: Connecticut Division of Public Utility Control.

Gas Utilities

Investor-Owned:
Connecticut Light and Power Company
Connecticut Natural Gas Corporation
Southern Connecticut Gas Company

Electric Utilities

Investor-Owned:
Connecticut Light and Power Company
Hartford Electric Light Company
United Illuminating Company

State: Delaware

Regulatory Authority: Delaware Public Service Commission.

Gas Utilities

Investor-Owned:
Delmarva Power and Light Company

Electric Utilities

Investor-Owned:
Delmarva Power and Light Company

State: District of Columbia

Regulatory Authority: Public Service Commission of the District of Columbia.

Gas Utilities

Investor-Owned:
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Potomac Electric Power Company

State: Florida

Regulatory Authority: Florida Public Service Commission.

Gas Utilities

Investor-Owned:
City Gas Company of Florida
Peoples Gas System

Electric Utilities

Investor-Owned:

Florida Power Corporation
Florida Power and Light Company
Gulf Power Company
Tampa Electric Company
Publicly-Owned: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
*Gainesville Regional Utilities
Jacksonville Electric Authority
Lakeland Department of Electricity and Water
Orlando Utilities Commission
Tallahassee, City of
Rural Electric Cooperatives: The Florida Public Service Commission has rate structure jurisdiction over the following utilitles—
Clay Electric Cooperative
Lee County Electric Cooperative
*Withlachoochee River Electric Cooperative

State: Georgia

Regulatory Authority: Georgia Public Service Commission.

Gas Utilities

Investor-Owned:
Atlanta Gas Light Company
Chattanooga Gas Company
Gas Light Company of Columbus

Electric Utilities

Investor-Owned:
Georgia Power Company
Savannah Electric and Power Company

The following utilities within the State of Georgia are not regulated by the Georgia Public Service Commission:

Electric Utilities

Publicly-Owned:
*Albany Water, Gas & Light Commission
Rural Electric Cooperatives:
*Flint Electrical Membership Corporation
*Jackson Electric Membership Corporation
North Georgia Electric Membership Corporation

State: Hawaii

Regulatory Authority: Hawaii Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Hawaiian Electric Company, Inc.

State: Idaho

Regulatory Authority: Idaho Public Utilities Commission.

Gas Utilities

Investor-Owned:
Intermountain Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Utah Power and Light Company
Washington Water Power Company

State: Illinois

Regulatory Authority: Illinois Commerce Commission.

Gas Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Illinois Power Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
North Shore Gas Company
Northern Illinois Gas Company
Panhandle Eastern Pipeline Company
Peoples Gas, Light and Coke Company

Electric Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Commonwealth Edison Company
Illinois Power Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Union Electric Company

The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission:

Electric Utilities

Publicly-Owned:
Springfield Water, Light and Power Department

State: Indiana

Regulatory Authority: Indiana Public Service Commission.

Gas Utilities

Investor-Owned:
Indiana Gas Company
Kokomo Gas and Fuel Company
Northern Indiana Public Service Company
Southern Indiana Gas and Electric Company
Terre Haute Gas Corporation
Public-Owned:
Citizens Gas and Coke Utility

Electric Utilities

Investor-Owned:
Indiana and Michigan Electric Company
Indianapolis Power and Light Company
Northern Indiana Public Service Company
Public Service Company of Indiana
Southern Indiana Gas and Electric Company
Publicly-Owned:
*Richmond Power and Light

State: Iowa

Regulatory Authority: Iowa Commerce Commission.

Gas Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Minnesota Gas Company
North Central Public Service Company
Peoples Natural Gas Company, Division of Internorth, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Union Electric Company
Publicly-Owned: The Iowa Commerce Commission has service and safety regulation over the following utilities—
*Muscatine Power and Water
Omaha Public Power District

State: Kansas

Regulatory Authority: Kansas State Corporation Commission.

Gas Utilities

Investor-Owned:
Anadarko Production Company
Arkansas-Louisiana Gas Company
Gas Service Company
Greeley Gas Company
Kansas-Nebraska Natural Gas Company
Kansas Power and Light Company
Northern Natural Gas Company
Panhandle Eastern Pipeline Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Union Gas System Inc.

Electric Utilities

Investor-Owned:
*Central Kansas Power Company
Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
Kansas Power and Light Company
Southwestern Public Service Company
Western Power Division Central Telephone and Utilities Corporation

The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:

Electric Utilities

Public-Owned:
Kansas City Board of Public Utilities

State: Kentucky

Regulatory Authority: Kentucky Energy Regulatory Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Kentucky, Inc.
Inland Gas Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Western Kentucky Gas Company

Electric Utilities

Investor-Owned:
Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Rural Electric Cooperatives:
Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation

The following covered utilities within the State of Kentucky are not regulated by the Kentucky Energy Regulatory Commission:

*Owensboro Municipal Utilities
*Pennyrile Rural Electric Cooperative Corporation
*Warren Rural Electric Cooperative Corporation
*West Kentucky Rural Electric Cooperative

Rural Electric Cooperatives:
Southern Maryland Electric Cooperative, Inc.

State: Massachusetts

Regulatory Authority: Massachusetts Department of Public Utilities.

Interstate Power Company
Minnesota Power and Light Company
Northern States Power Company
Otter Tail Power Company

The following covered utility within the State of Minnesota is not regulated by the

State: Montana

Regulatory Authority: Montana Public Service Commission.

Gas Utilities

Investor-Owned:

Electric Utilities

Investor-Owned:
Public Service Company of New Hampshire

State: New Jersey

State: North Carolina

Regulatory Authority: North Carolina Utilities Commission.

Gas Utilities

Investor-Owned:

*Owensboro Municipal Utilities
*Pennyrile Rural Electric Cooperative Corporation
*Warren Rural Electric Cooperative Corporation
*West Kentucky Rural Electric Cooperative Corporation

State: Louisiana

Regulatory Authority: Louisiana Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Gulf States Utilities Company
Louisiana Gas Service Company

Electric Utilities

Investor-Owned:
Arkansas Power and Light
Central Louisiana Electric Company
Gulf States Utilities Company
Louisiana Power and Light Company (jurisdiction only outside of the Parish of Orleans)
Southwestern Electric Power Company

The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:

Gas Utilities

Investor-Owned:
New Orleans Public Service, Inc.

Electric Utilities

Investor-Owned:
New Orleans Public Service, Inc.
Louisiana Power and Light Company (within the Parish of Orleans)
Publicly-Owned:
Lafayette Utilities System
Rural Electric Cooperatives:
Southwest Louisiana Electric Membership Corporation

State: Maine

Regulatory Authority: Maine Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Bangor Hydro-Electric Company
Central Maine Power Company
Public Service Company of New Hampshire

State: Maryland

Regulatory Authority: Maryland Public Service Commission.

Gas Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Delmarva Power and Light Company of Maryland
Potomac Edison Company
Potomac Electric Power Company
Rural Electric Cooperatives:
Southern Maryland Electric Cooperative, Inc.

State: Massachusetts

Regulatory Authority: Massachusetts Department of Public Utilities.

Gas Utilities

Investor-Owned:
Bay State Gas Company
Boston Gas Company
Commonwealth Gas Company
Lowell Gas Company
New Bedford Gas and Edison Light Company

Electric Utilities

Investor-Owned:
Boston Edison Company
Cambridge Electric Light Company
Eastern Edison Company
Massachusetts Electric Company
New Bedford Gas and Edison Light Company
Western Massachusetts Electric Company

State: Michigan

Regulatory Authority: Michigan Public Service Commission.

Gas Utilities

Investor-Owned:
Consumers Power Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Southeastern Michigan Gas Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Consumers Power Company
Detroit Edison Company
Indiana and Michigan Electric Company
*Lake Superior District Power Company
*Michigan Power Company
Upper Peninsula Power Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

The following covered utilites within the State of Michigan are not regulated by the Michigan Public Service Commission:

Electric Utilites

Publicly-Owned:
Lansing Board of Water and Light

State: Minnesota

Regulatory Authority: Minnesota Public Utility Commission.

Gas Utilities

Investor-Owned:
Greeley Gas Company
Inter City Gas Limited
Interstate Power Company
Iowa Electric Light and Power Company
Minnesota Gas Company
Montana-Dakota Utilities Company
North Central Public Service Company
Northern States Power Company
Peoples Natural Gas Company, Division of Internorth, inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Minnesota Power and Light Company
Northern States Power Company
Otter Tail Power Company

The following covered utility within the State of Minnesota is not regulated by the Minnesota Public Service Commission:

Electric Utilities

Rural Electric Cooperatives:
*Anoka Electric Cooperative

State: Mississippi

Regulatory Authority: Mississippi Public Service Commission.

Gas Utilities

Investor-Owned:
Entex, Inc.
Mississippi Valley Gas Company

Electric Utilities

Investor-Owned:
Mississippi Power and Light Company
Mississippi Power Company

The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission:

Electric Utilities

Rural Electric Cooperatives:
*4-County Electric Power Association
*Singing River Electric Power Association
*Southern Pine Electric Power Association

State: Missouri

Regulatory Authority: Missouri Public Service Commission.

Gas Utilities

Investor-Owned:
Associated Natural Gas Comapny
Gas Service Company
Laclede Gas Company Consolidated
Missouri Public Service Company
Peoples Natural Gas Company, Division of Internorth, Inc.

Electric Utilities

Investor-Owned:
Arkansas-Missouri Power Company
Empire District Electric Company
Kansas City Power and Light Company
Missouri Edison Company
Missouri Power and Light Company
Missouri Public Service Company
Missouri Utilities Company
St. Joseph Light and Power Company
Union Electric Company

The following covered utilities within the State of Missouri are not regulated by the Missouri Public Service Commission:

Gas Utilities

Investor-Owned:
Cities Service Gas Company
Publicly-Owned:
Springfield City Utilities

Electric Utilities

Publicly-Owned:
*Independence Power and Light Department
Springfield City Utilities

State: Montana

Regulatory Authority: Montana Public Service Commission.

Gas Utilities

Investor-Owned:
Montana-Dakota Utilities Company
Montana Power Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Montana Power Company
Pacific Power and Light Company
Washington Water Power Company

State: Nebraska

Regulatory Authority: Nebraska Public Service Commission.

The Commission does not regulate the rates and services of the gas and electric utilities of the State of Nebraska.

The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission:

Electric Utilities

Publicly-Owned
Lincoln Electric System
Nebraska Public Power District
Omaha Public Power District

Gas Utilities

Investor-Owned:
Gas Service Company
Iowa Electric Light and Power Company
Iowa Public Service Company
Kansas-Nebraska Natural Gas Company
Minnesota Gas Company
Northern Natural Gas Company
Northwestern Public Service Company
Peoples Natural Gas Company, Division of Internorth, Inc.

The governing body of each Nebraska municipality exercises ratemaking jurisdiction over gas utility rates, operations and services provided by a gas utility within its city or town limits. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of the State regulatory authority.

Publicly-Owned:
Metropolitan Utilities District of Omaha

State: Nevada

Regulatory Authority: Nevada Public Service Commission.

Gas Utilities

Investor-Owned:
Southwest Gas Corporation

Electric Utilities

Investor-Owned
Idaho Power Company
Nevada Power Company
Sierra Pacific Power Company

State: New Hampshire

Regulatory Authority: New Hampshire Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Public Service Company of New Hampshire

State: New Jersey

Regulatory Authority: New Jersey Department of Energy, Board of Public Utilities.

Gas Utilities

Investor-Owned:
Elizabethtown Gas Company
New Jersey Natural Gas Company
Public Service Electric and Gas Company
South Jersey Gas Company

Electric Utilities

Investor-Owned:
Atlantic City Electric Company
Jersey Central Power and Light Company
Public Service Electric and Gas Company
Rockland Electric Company

State: New Mexico

Regulatory Authority: New Mexico Public Service Commission.

Gas Utilities

Gas Company of New Mexico

Electric Utilities

Investor-Owned:
Community Public Service Company
El Paso Electric Company
*New Mexico Electric Service Company
Public Service Company of New Mexico
Southwestern Public Service Company

State: New York

Regulatory Authority: New York Public Service Commission.

Gas Utilities

Investor-Owned:
Brooklyn Union Gas Company
Columbia Gas of New York, Inc.
Consolidated Edison Company of New York, Inc.
Long Island Lighting Company
National Fuel Gas Distribution Corporation
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

Electric Utilities

Investor-Owned:
Central Hudson Gas and Electric Corporation
Consolidated Edison Company of New York
Long Island Lighting Company
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

The following covered utility within the State of New York is not regulated by the New York Public Service Commission:

Electric Utilities

Publicly-Owned:
*Power Authority of New York

State: North Carolina

Regulatory Authority: North Carolina Utilities Commission.

Gas Utilities

Investor-Owned:
North Carolina Natural Gas Corporation
Piedmont Natural Gas Company
Public Service Company, Inc. of North Carolina

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
Virginia Electric and Power Company

The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:

Electric Utilities

Publicly-Owned:
Fayetteville Public Works Commission
*Greenville Utilities Commission
*Rocky Mount Public Utilities
*Wilson Utilities Department

State: North Dakota

Regulatory Authority: North Dakota Public Service Commission.

Gas Utilities

Investor-Owned:
Montana-Dakota Utilities Company
Northern States Power Company

Electric Utilities

Investor-Owned:
Montana-Dakota Utilities Company
Northern States Power Company
Otter Tail Power Company

State: Ohio

Regulatory Authority: Ohio Public Utilities Commission.

Gas Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Columbia Gas of Ohio, Inc.
Dayton Power and Light Company
East Ohio Gas Company
National Gas and Oil Company
West Ohio Gas Company

Electric Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Dayton Power and Light Company
Monongahela Power Company
Ohio Edison Company
Ohio Power Company
Toledo Edison Company

The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:

Electric Utilities

Publicly-Owned:
*Cleveland Division of Light and Power
Rural Electric Cooperatives:
*South Central Power Company

State: Oklahoma

Regulatory Authority: Oklahoma Corporation Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company

Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
*UGI—Luzerne Electric Division
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Iowa Public Service Company
Montana-Dakota Utilities Company
Northern States Power Company
*Northwestern Public Service Company
Otter Tail Power Company

Electric Utilities

Publicly-Owned:
*Bristol Tennessee Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
Decatur Electric Department

publicly owned) within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears *de novo* appeals from the decisions of such municipalities. These municipal authorities would be State agencies as defined by

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Central Vermont Public Service Corporation

V 45 D 2 4 8 0 UMI

State: Oklahoma

Regulatory Authority: Oklahoma Corporation Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Gas Service Company
Lone Star Gas Company
Oklahoma Natural Gas Company
Southern Union Gas Company
Union Gas System Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Oklahoma Gas and Electric Company
Public Service Company of Oklahoma
Southwestern Public Service Company

The following covered utility within the State of Oklahoma is not regulated by the Oklahoma Corporation Commission.

Gas Utilities

Investor-Owned:
Cities Service Gas Company

State: Oregon

Regulatory Authority: Public Utility Commissioner of Oregon.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Public Utility Commissioner of Oregon:

Electric Utilities

Publicly-Owned.
Central Lincoln People's Utility District
*Clatskanie People's Utility District
Eugene Water and Electric Board
*Springfield Utilities Board
Rural Electric Cooperatives:
*Umatilla Electric Cooperative Association

State: Pennsylvania

Regulatory Authority: Pennsylvania Public Utility Commission.

Gas Utilities

Investor-Owned:
Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company
National Fuel Gas Distribution Corporation
North Penn Gas Company
Pennsylvania Gas and Water Company
Peoples Natural Gas Company
Philadelphia Electric Company
T. W. Phillips Gas and Oil Company
UGI Corporation

Electric Utilities

Investor-Owned:
Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
*UGI—Luzerne Electric Division
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:

Gas Utilities

Publicly-Owned:
Philadelphia Gas Works

State: Puerto Rico

Regulatory Authority: Puerto Rico Public Service Commission.

Gas Utilities

None.

Electric Utilities

None.

The following covered utility within Puerto Rico is not regulated by the Puerto Rico Public Service Commission:

Electric Utilities

Publicly-Owned:
Puerto Rico Electric Power Authority

State: Rhode Island

Regulatory Authority: Rhode Island Public Utilities Commission.

Gas Utilities

Investor-Owned:
Providence Gas Company

Electric Utilities

Investor-Owned:
Blackstone Valley Electric Company
Narragansett Electric Company

State: South Carolina

Regulatory Authority: South Carolina Public Service Commission.

Gas Utilities

Investor-Owned:
*Carolina Pipeline Company
Piedmont Natural Gas Company
South Carolina Electric and Gas Company

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
South Caroina Electric and Gas Company

The following covered utility within the State of South Carolina is not regulated by the South Carolina Public Service Commission:

Electric Utilities

Publicly-Owned:
South Carolina Public Service Authority

State: South Dakota

Regulatory Authority: South Dakota Public Utilities Commission.

Gas Utilities

Investor-Owned:
Iowa Public Service Company
Minnesota Gas Company
Montana-Dakota Utilities Company
Northwestern Public Service Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Iowa Public Service Company
Montana-Dakota Utilities Company
Northern States Power Company
*Northwestern Public Service Company
Otter Tail Power Company

The following covered utility within the State of South Dakota is not regulated by the South Dakota Public Service Commission:

Electric Utilities

Publicly-Owned:
Nebraska Public Power District

State: Tennessee

Regulatory Authority: Tennessee Public Service Commission.

Gas Utilities

Investor-Owned:
Chattanooga Gas Company
Nashville Gas Company

Electric Utilities

Investor-Owned:
Arkansas Power and Light Company
Kentucky Utilities Company
Kingsport Power Company

The following covered utilities within the State of Tennessee are not regulated by the Tennessee Public Service Commission:

Electric Utilties

Publicly-Owned:
*Bristol Tennessee Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
*Greeneville Light and Power System
*Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
*Lenoir City Utilities Board
Memphis Light, Gas and Water Division
*Nashville Electric Service
Rural Electric Cooperatives:
*Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
*Duck River Electric Membership Corporation
*Gibson County Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennnessee Electric Membership Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative

Gas Utilities

Publicly-Owned:
Memphis Light, Gas and Water Division

State: Tennessee

Regulatory Authority: Tennessee Valley Authority.

Gas Utilities

None.

Electric Utilities

Publicly-Owned:
*Bristol Tennessee Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
Decatur Electric Department
*Florence Electricity Department
*Greeneville Light and Power System
Huntsville Electric System
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
*Lenoir City Utilities Board
Memphis, Light, Gas and Water Division
Nashville Electic Service
Rural Electric Cooperatives:
*Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
*Duck River Electric Membership Corporation
*Four-County Electric Power Association
*Gibson County Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
North Georgia Electric Membership Corporation
*Pennyrile Rural Electric Cooperative Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
*Warren Rural Electric Cooperative Corporation
*West Kentucky Rural Electric Cooperative Corporation

State: Texas

Regulatory Authority: Texas Public Utility Commission.

Gas Utilities

Investor-Owned:
None.

Electric Utilities

Investor-Owned:
Central Power and Light Company
Community Public Service Company
Dallas Power and Light Company
El Paso Electric Company
Gulf States Utilities
Houston Lighting and Power Company
Southwestern Electric Power Company
*Southwestern Electric Service Company
Southwestern Public Service Company
Texas Electric Service Company
Texas Power and Light Company
West Texas Utilities Company
Publicly-Owned:
*Lower Colorado River Authority
Rural Electric Cooperatives:
*Pedernales Electric Cooperative

The governing body of each Texas municipality exercises exclusive original jurisdiction over electric utility rates, operations, and services provided by an electric utility (whether privately owned or publicly owned) within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears *de novo* appeals from the decisions of such municipalities. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The municipally-owned electric utilities listed below are not under the commission's original ratemaking jurisdiction.

Electric Utilities

Publicly-Owned:
Austin Electric Department
Garland Electric Department
*Lubbock Power and Light
San Antonio City Public Service Board

State: Texas

Regulatory Authority: Railroad Commission of Texas

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Lone Star Gas Company
Peoples Natural Gas Division of Northern Natural Gas Company
Pioneer Natural Gas Company
Southern Union Gas Company

The Railroad Commission of Texas has special appellate jurisdiction over ratemaking decisions of the governing body of any municipality which affect the rates of a municipally-owned gas utility as provided by State statute. The governing body of each Texas municipality exercises exclusive original ratemaking jurisdiction over gas utility rates, operations, and services provided by a gas utility within its city or town limits. These municipal authorities would be state agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The following covered utilities within the State of Texas are not regulated by the Railroad Commission of Texas:

Gas Utilities

Investor-Owned:
Cities Service Gas Company
Publicly-Owned:
City Public Service Board (San Antonio)

State: Utah

Regulatory Authority: Utah Public Service Commission.

Gas Utilities

Investor-Owned:
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Utah Power and Light Company
Rural Electric Cooperatives:
*Moon Lake Electric Association

State: Vermont

Regulatory Authority: Vermont Public Service Board.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Central Vermont Public Service Corporation
Green Mountain Power Corporation
Public Service Company of New Hampshire

State: Virginia

Regulatory Authority: Virginia State Corporation Commission

Gas Utilities

Investor-Owned.
Columbia Gas of Virginia, Inc.
Virginia Electric and Power Company
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Appalachian Power Company
Delmarva Power and Light Company of Virginia
*Old Dominion Power Company
Potomac Edison Company
Potomac Electric and Power Company

Rural Electric Cooperatives:

*Prince William Electric Cooperative

The following covered utility within the State of Virginia is not regulated by the Virginia State Corporation Commission:

Gas Utilities

Publicly-Owned.
City of Richmond, Virginia, Department of Public Utilities

State: Washington

Regulatory Authority: Washington Utilities and Transportation Commission

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Pacific Power and Light Company
Puget Sound Power and Light Company
Washington Water Power Company

The following covered utilities within the State of Washington are not regulated by the Washington Utilities and Transportation Commission.

Electric Utilities

Publicly-Owned
*Port Angeles Light and Water Department
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
*Public Utility District No. 1 of Douglas County
*Public Utility District No. 1 of Franklin County
Public Utility District of Grant County

Public Utility District No. 1 of Grays Harbor County
*Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Snohomish County

hours in 1976, 1977, 1978 or 1979. All, except those marked (*), are covered by PURPA Title I and NECPA Titles II and VII. Utilities marked (*) either did not exceed the NECPA threshold of 750

Florida Power & Light Company
Georgia Power Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company (LA)
Gulf States Utilities Company (TX)

Oklahoma Gas & Electric Company (OK)
*Old Dominion Power Company
Orange & Rockland Utilities
Otter Tail Power Company (MN)
Otter Tail Power Company (ND)
Otter Tail Power Company (SD)
Pacific Power Light Company (CA)

Virginia Electric & Power Company (WV)
Washington Water Power Company (ID)
Washington Water Power Company (MT)
Washington Water Power Company (WA)
West Penn Power Company
West Texas Utilities Company
Western Massachusetts Electric Company

Orlando Utilities Commission (FL)
*Owensboro Municipal Utilities (KY)
Palo Alto Electric Utility (CA)
Pasadena Water & Power Department (CA)
*Power Authority of New York (NY)
*Port Angeles Light & Water Department (WA)

Public Utility District No. 1 of Grays Harbor County
* Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Snohomish County
* Richland Energy Services Department
Seattle City Light Department
Tacoma Public Utilities—Light Division

State: West Virginia

Regulatory Authority: West Viriginia Public Service Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of West Virginia, Inc.
Consolidated Gas Supply Corporation
Equitable Gas Company

Electric Utilities

Investor-Owned:
Appalachian Power Company
Monongahela Power Company
Potomac Edison Company
Virginia Electric and Power Company
Wheeling Electric Company

State: Wisconsin

Regulatory Authority: Wisconsin Public Service Commission.

Gas Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Fuel and Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
* Lake Superior District Power Company
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Electric Power Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

State: Wyoming

Regulatory Authority: Wyoming Public Service Commission.

Gas Utilities

Investor-Owned:
Cheyenne Light, Fuel and Power Company
Kansas-Nebraska Natural Gas Company
Montana-Dakota Utilities Company
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Pacific Power and Light Company
Utah Power and Light Company
Rural Electric Cooperative:
* Tri-County Electric Association, Inc.

Appendix B

Electric Utilities

All utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in 1976, 1977, 1978 or 1979. All, except those marked (*), are covered by PURPA Title I and NECPA Titles II and VII. Utilities marked (*) either did not exceed the NECPA threshold of 750 million kilowatt-hours in 1979, for purposes other than resale, or do not have residential or commercial sales and, therefore, are not covered by NECPA Titles II and VII. The utilities listed more than once have sales in more than one State, and those States are indicated by abbreviations in parentheses.

Investor-Owned
Alabama Power Company
Appalachian Power Company (VA)
Appalachian Power Company (WV)
Arizona Public Service Company
Arkansas-Missouri Power Company (AR)
Arkansas-Missouri Power Company (MO)
Arkansas Power & Light Company (AR)
Arkansas Power & Light Company (LA)
Arkansas Power & Light Company (TN)
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Black Hills Power & Light Company (MT)
Black Hills Power & Light Company (SD)
Black Hills Power & Light Company (WY)
Blackstone Valley Electric Company
Boston Edison Company
Cambridge Electric Light Company
Carolina Power & Light Company (NC)
Carolina Power & Light Company (SC)
Central Hudson Gas & Electric Corporation
Central Illinois Light Company
Central Illinois Public Service Company
*Central Kansas Power Company
Central Louisiana Electric Company
Central Maine Power Company
Central Power & Light Company
Central Vermont Public Service Corporation
Cincinnati Gas & Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Commonwealth Edison Company
Community Public Service Company (NM)
Community-Public Service Company (TX)
Connecticut Light & Power Company
Consolidated Edison Company of New York
Consumers Power Company
Dallas Power & Light Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
Delmarva Power & Light Company of Maryland
Delmarva Power & Light Company of Virginia
Detroit Edison Company
Duke Power Company (NC)
Duke Power Company (SC)
Duquesne Light Company
Eastern Edison Company
El Paso Electric Company (NM)
El Paso Electric Company (TX)
Empire District Electric Company (AR)
Empire District Electric Company (KS)
Empire District Electric Company (MO)
Empire District Electric Company (OK)
Florida Power Corporation
Florida Power & Light Company
Georgia Power Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company (LA)
Gulf States Utilities Company (TX)
Hartford Electric Light Company
Hawaiian Electric Company, Inc.
Houston Lighting & Power Company
Idaho Power Company (ID)
Idaho Power Company (NV)
Idaho Power Company (OR)
Illinois Power Company
Indiana & Michigan Electric Company (IN)
Indiana & Michigan Electric Company (MI)
Indianapolis Power & Light Company
Interstate Power Company (IA)
Interstate Power Company (IL)
Interstate Power Company (MN)
Iowa Electric Light & Power Company
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Public Service Company (IA)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Jersey Central Power & Light Company
Kansas City Power & Light Company (KS)
Kansas City Power & Light Company (MO)
Kansas Gas & Electric Company
Kansas Power & Light Company
Kentucky Power Company
Kentucky Utilities Company (KY)
Kentucky Utilities Company (TN)
Kingsport Power Company
*Lake Superior District Power Company (MI)
*Lake Superior District Power Company (WI)
Long Island Lighting Company
Louisiana Power & Light Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Massachusetts Electric Company
Metropolitan Edison Company
*Michigan Power Company
Minnesota Power & Light Company
Mississippi Power Company
Mississippi Power & Light Company
Missouri Edison Company
Missouri Power & Light Company
Missouri Public Service Company
Missouri Utilities Company
Monongahela Power Company (OH)
Monongahela Power Company (WV)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Narragansett Electric Company
Nevada Power Company
New Bedford Gas & Edison Light Company
*New Mexico Electric Service Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Corporation
Northern Indiana Public Service Company
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (SD)
Northern States Power Company (WI)
*Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company
Oklahoma Gas & Electric Company (AR)

Oklahoma Gas & Electric Company (OK)
*Old Dominion Power Company
Orange & Rockland Utilities
Otter Tail Power Company (MN)
Otter Tail Power Company (ND)
Otter Tail Power Company (SD)
Pacific Power Light Company (CA)
Pacific Power Light Company (ID)
Pacific Power Light Company (MT)
Pacific Power Light Company (OR)
Pacific Power Light Company (WA)
Pacific Power Light Company (WY)
Pennsylvania Electric Company (PA)
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Potomac Edison Company (WV)
Potomac Electric Power Company (DC)
Potomac Electric Power Company (MD)
Potomac Electric Power Company (VA)
Public Service Company of Colorado
Public Service Company of Indiana
Public Service Company of New Hampshire (ME)
Public Service Company of New Hampshire (NH)
Public Service Company of New Hampshire (VT)
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sierra Pacific Power Company (CA)
Sierra Pacific Power Company (NV)
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company (AR).
Southwestern Electric Power Company (LA)
Southwestern Electric Power Company (TX)
*Southwestern Electric Service Company
Southwestern Public Service Company (KS)
Southwestern Public Service Company (NM)
Southwestern Public Service Company (OK)
Southwestern Public Service Company (TX)
Tampa Electric Company
Texas Electric Service Company
Texas Power & Light Company
Toledo Edison Company
Tucson Electric Power Company
*UGI-Luzerne Electric Division
Union Electric Company (IA)
Union Electric Company (IL)
Union Electric Company (MO)
Union Light, Heat & Power Company
United Illuminating Company
*Upper Peninsula Power Company
Utah Power & Light Company (ID)
Utah Power & Light Company (UT)
Utah Power & Light Company (WY)
Virginia Electric & Power Company (NC)
Virginia Electric & Power Company (VA)
Virginia Electric & Power Company (WV)
Washington Water Power Company (ID)
Washington Water Power Company (MT)
Washington Water Power Company (WA)
West Penn Power Company
West Texas Utilities Company
Western Massachusetts Electric Company
Western Power Division of Central Telephone & Utilities Corporation (CO)
Western Power Division of Central Telephone & Utilities Corporation (KS)
Wheeling Electric Company
Wisconsin Electric Power Company (MI)
Wisconsin Electric Power Company (WI)
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Publicly-Owned
*Albany Water, Gas & Light Commission (GA)
Anaheim—Electric Division (CA)
*Anchorage Municipal Light & Power Department (AK)
Austin Electric Department (TX)
*Bristol Tennessee Electric System (TN)
*Burbank Public Service Department (CA)
Central Lincoln People's Utility District (OR)
Chattanooga Electric Power Board (TN)
*Clarksville Department of Electricity (TN)
*Clatskanie People's Utility District (OR)
*Cleveland Division of Light & Power (OH)
*Cleveland Utilities (TN)
Colorado Springs Department of Public Utilities (CO)
Decatur Electric Department (AL)
*Dothan Electric Department (AL)
Eugene Water & Electric Board (OR)
Fayetteville Public Works Commission (NC)
*Florence Electricty Department (AL)
*Gainesville Regional Utilities (FL)
Garland Electric Department (TX)
*Glendale Public Service Department (CA)
*Greenevitle Light & Power System (TN)
*Greenville Utilities Commission (NC)
Huntsville Electric System (AL)
Imperial Irrigation District (CA)
*Independence Power & Light Department (MO)
Jackson Utility Division—Electric Department (TN)
Jacksonville Electric Authority (FL)
Johnson City Power Board (TN)
Kansas City Board of Public Utilities (KS)
Knoxville Utilities Board (TN)
Lafayette Utilities System (LA)
Lakeland Department of Electricity and Water (FL)
Lansing Board of Water & Light (MI)
*Lenoir City Utilities Board (TN)
Lincoln Electric System (NE)
Los Angeles Department of Water and Power (CA)
*Lower Colorado River Authority (TX)
*Lubbock Power & Light (TX)
Memphis Light, Gas & Water Division (TN)
Modesto Irrigation District (CA)
*Muscatine Power & Water (IA)
Nashville Electric Service (TN)
Nebraska Public Power District (NE)
Nebraska Public Power District (SD)
*North Little Rock Electric Department (AR)
Omaha Public Power District (IA)
Omaha Public Power District (NE)
Orlando Utilities Commission (FL)
*Owensboro Municipal Utilities (KY)
Palo Alto Electric Utility (CA)
Pasadena Water & Power Department (CA)
*Power Authority of New York (NY)
*Port Angeles Light & Water Department (WA)
Public Utility District No. 1 of Benton County (WA)
Public Utility District No. 1 of Chelan County (WA)
Public Utility District No. 1 of Clark County (WA)
Public Utility District No. 1 of Cowlitz County (WA)
*Public Utility District No. 1 of Douglas County (WA)
*Public Utility District No. 1 of Franklin County (WA)
Public Utility District of Grant County (WA)
Public Utility District No. 1 of Grays Harbor County (WA)
*Public Utility District No. 1 of Lewis County (WA)
Public Utility District No. 1 of Snohomish County (WA)
Puerto Rico Electric Power Authority
*Richland Energy Services Department (WA)
Richmond Power & Light (IN)
Riverside Public Utilities (CA)
*Rocky Mount Public Utilities (NC)
Sacramento Municipal Utility District (CA)
Salt River Project Agricultural Improvement and Power District (AZ)
San Antonio City Public Service Board (TX)
Santa Clara Electric Department (CA)
Seattle City Light Department (WA)
South Carolina Public Service Authority
Springfield City Utilities (MO)
*Springfield Utilities Board (OR)
Springfield Water, Light & Power Department (IL)
Tacoma Public Utilities—Light Division (WA)
Tallahassee, City of (FL)
*Turlock Irrigation District (CA)
Vernon Municipal Light Department (CA)
*Wilson Utilities Department (NC)

Rural Electric Cooperatives
*Anoka Electric Cooperative (MN)
*Appalachian Electric Cooperative (TN)
Chugah Electric Association (AK)
Clay Electric Cooperative (FL)
Cumberland Electric Membership Corporation (TN)
*Duck River Electric Membership Corporation (TN)
*First Electric Cooperative Corporation (AR)
*Flint Electrical Membership Corporation (GA)
*Four County Electric Power Association (MS)
*Gibson County Electric Membership Corporation (TN)
Green River Electric Corporation (KY)
Henderson-Union Rural Electric Cooperative Corporation (KY)
*Jackson Electric Membership Corporation (GA)
Lee County Electric Cooperative (FL)
*Meriwether Lewis Electric Cooperative (TN)

Middle Tennessee Electric Membership Corporation (TN)
*Moon Lake Electric Association (UT)
North Georgia Electric Membership Corporation (GA)
*Pedernales Electric Cooperative (TX)

*Carolina Pipeline Company
Cascade Natural Gas Corporation (OR)
Cascade Natural Gas Corporation (WA)
Central Illinois Light Company
Central Illinois Public Service Company
Chattanooga Gas Company (GA)

Lone Star Gas Company (TX)
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Lowell Gas Company
Madison Gas & Electric Company
Michigan Consolidated Gas Company

Peoples Natural Gas Company, Division of Internorth, Inc. (NE)
Peoples Natural Gas Company, Division of Internorth, Inc. (TX)
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)

Washington Natural Gas Company
Washington Water Power Company (ID)
Washington Water Power Company (WA)
West Ohio Gas Company
Western Kentucky Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company

Middle Tennessee Electric Membership Corporation (TN)
*Moon Lake Electric Association (UT)
North Georgia Electric Membership Corporation (GA)
*Pedernales Electric Cooperative (TX)
*Pennyrile Rural Electric Cooperative Corporation (KY)
*Prince William Electric Cooperative (VA)
*Singing River Electric Power Association (MS)
*South Central Power Company (OH)
Southern Maryland Electric Cooperative, Inc. (MD)
*Southern Pine Electric Power Association (MS)
Southwest Louisiana Electric Membership Corporation (LA)
*Southwest Tennessee Electric Membership Corporation (TN)
*Tri-County Electric Membership Corporation (TN)
*Tri-County Electric Association , Inc. (WY)
*Umatilla Electric Cooperative Association (OR)
*Upper Cumberland Electric Membership Corporation (TN)
Volunteer Electric Cooperative (TN)
*Warren Rural Electric Cooperative Corporation (KY)
*West Kentucky Rural Electric Cooperative Corporation (KY)
*Withlacoochee River Electric Cooperative (FL)

Federal Agencies
*Bonneville Power Administration (OR)
*Tennessee Valley Authority (TN)
*Western Area Power Administration (CO)

Gas Utilities

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1976, 1977, 1978 or 1979 and are covered by PURPA Title III and NECPA Titles II and VII. Utilities marked (*) do not have residential or commercial sales, and therefore, are not covered by NECPA Title II or VII. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parenthses.

Investor-Owned
Alabama Gas Corporation
Alaska Gas & Service Company
Anadarko Production Company
Arizona Public Service Company
Arkansas-Louisiana Gas Company (AR)
Arkansas-Louisiana Gas Company (KS)
Arkansas-Louisiana Gas Company (LA)
Arkansas-Louisiana Gas Company (OK)
Arkansas-Louisiana Gas Company (TX)
Arkansas-Oklahoma Gas Corporation (AR)
Arkansas-Oklahoma Gas Corporation (OK)
Arkansas Western Gas Company
Associated Natural Gas Company (AR)
Associated Natural Gas Company (MO)
Atlanta Gas Light Company
Baltimore Gas & Electric Company
Bay State Gas Company
Boston Gas Company
Brooklyn Union Gas Company
Carnegie Natural Gas Company
*Carolina Pipeline Company
Cascade Natural Gas Corporation (OR)
Cascade Natural Gas Corporation (WA)
Central Illinois Light Company
Central Illinois Public Service Company
Chattanooga Gas Company (GA)
Chattanooga Gas Company (TN)
Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
Cities Service Gas Company (covered by NECPA only)
City Gas Company of Florida
Columbia Gas of Kentucky, Inc.
Columbia Gas of New York, Inc.
Columbia Gas of Ohio, Inc.
Columbia Gas of Pennsylvania, Inc.
Columbia Gas of Virginia, Inc.
Columbia Gas of West Virginia, Inc.
Commonwealth Gas Company
Connecticut Light & Power Company
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York, Inc.
Consolidated Gas Supply Corporation
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
East Ohio Gas Company
Elizabethtown Gas Company
Entex Inc. (LA)
Entex Inc. (MS)
Entex Inc. (TX)
Equitable Gas Company (PA)
Equitable Gas Company (WV)
Gas Company of New Mexico
Gas Light Company of Columbus
Gas Service Company (KS)
Gas Service Company (MO)
Gas Service Company (NE)
Gas Service Company (OK)
Greeley Gas Company (CO)
Greeley Gas Company (KS)
Greeley Gas Company (MN)
Gulf States Utilities Company
Illinois Power Company
Indiana Gas Company
Inland Gas Company
Inter City Gas Limited
Intermountain Gas Company
Interstate Power Company (IA)
Interstate Power Company (IL)
Interstate Power Company (MN)
Iowa Electric Light & Power Company (CO)
Iowa Electric Light & Power Company (IA)
Iowa Electric Light & Power Company (MN)
Iowa Electric Light & Power Company (NE)
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Public Service Company (IA)
Iowa Public Service Company (NE)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Kansas-Nebraska Natural Gas Company (CO)
Kansas-Nebraska Natural Gas Company (KS)
Kansas-Nebraska Natural Gas Company (NE)
Kansas-Nebraska Natural Gas Company (WY)
Kansas Power & Light Company
Kokomo Gas & Fuel Company
Laclede Gas Company Consolidated
Lone Star Gas Company (OK)
Lone Star Gas Company (TX)
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Lowell Gas Company
Madison Gas & Electric Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Minnesota Gas Company (IA)
Minnesota Gas Company (MN)
Minnesota Gas Company (NE)
Minnesota Gas Company (SD)
Mississippi Valley Gas Company
Missouri Public Service Company
Mobile Gas Service Corporation
Montana-Dakota Utilities Company (MN)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Mountain Fuel Supply Company (UT)
Mountain Fuel Supply Company (WY)
Nashville Gas Company
National Fuel Gas Distribution Corporation (NY)
National Fuel Gas Distribution Corporation (PA)
National Gas and Oil Company
New Bedford Gas and Edison Light Company
New Jersey Natural Gas Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Corporation
North Carolina Natural Gas Corporation
North Central Public Service Company (IA)
North Central Public Service Company (MN)
North Shore Gas Company
Northern Illinois Gas Company
Northern Indiana Public Service Company
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (WI)
North Penn Gas Company
Northwest Natural Gas Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc. (CO)
Peoples Natural Gas Company, Division of Internorth, Inc. (IA)
Peoples Natural Gas Company, Division of Internorth, Inc. (KS)
Peoples Natural Gas Company, Division of Internorth, Inc. (MI)
Peoples Natural Gas Company, Division of Internorth, Inc. (MN)
Peoples Natural Gas Company, Division of Internorth, Inc. (MO)

Peoples Natural Gas Company, Division of Internorth, Inc. (NE)
Peoples Natural Gas Company, Division of Internorth, Inc. (TX)
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Providence Gas Company
Public Service Company of Colorado
Public Service Company, Inc. of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
Northern Indiana Public Service Company
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (WI)
North Penn Gas Company
Northwest Natural Gas Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Pioneer Natural Gas Company
Providence Gas Company
Public Service Company of Colorado
Public Service Company, Inc. of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
San Diego Gas & Electric Company
South Carolina Electric & Gas Company
South Jersey Gas Company
Southeastern Michigan Gas Company
Southern California Gas Company
Southern Conneticut Gas Company
Southern Indiana Gas & Electric Company
Southern Union Gas Company (AZ)
Southern Union Gas Company (OK)
Southern Union Gas Company (TX)
Southwest Gas Corporation (AZ)
Southwest Gas Corporation (CA)
Southwest Gas Corporation (NV)
Terre Haute Gas Corporation
T. W. Phillips Gas and Oil Company
UGI Corporation
Union Gas System, Inc. (KS)
Union Gas System, Inc. (OK)
Union Light, Heat & Power Company (KY)
Virginia Electric & Power Company
Washington Gas Light Company (DC)
Washington Gas Light Company (MD)
Washington Gas Light Company (VA)
Washington Natural Gas Company
Washington Water Power Company (ID)
Washington Water Power Company (WA)
West Ohio Gas Company
Western Kentucky Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Publicly-Owned
Citizens Gas & Coke Utility (IN)
City of Richmond, Virginia, Department of Public Utilities (VA)
City Public Service Board (San Antonio) (TX)
Colorado Springs Department of Public Utilities (CO).
Long Beach Gas Department (CA)
Memphis Light, Gas & Water Division (TN)
Metropolitan Utilities District of Omaha (NE)
Philadelphia Gas Works (PA)
Springfield City Utilities (MO)

[FR Doc. 80-40090 Filed 12-23-80; 8:45 am]
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federal register

Wednesday
December 24, 1980

Part IX

Environmental Protection Agency

Regional Consistency

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 56

[AD-FRL 1589-3]

adherence to the requirements of this Act in implementing and enforcing the Act, particularly in the review of new sources and in enforcement of the Act; and

(C) To provide a mechanism for identifying and standardizing inconsistent or varying criteria, procedures, and policies being

the proposal was too elaborate and inflexible. Most commenters agreed that the major role of the regulations should be to identify inconsistencies and resolve them as quickly as possible. Major consistency problems identified involved modeling practices, new source

mechanisms for regulations issued after August 6, 1977. Any inconsistencies fostered by regulations issued prior to the effective date of these regulations can be resolved through existing mechanisms. Also, retroactive action

should be effective in assuring consistency.

3. Section 56.6 of the proposed regulations "Dissemination of policy and guidance," required a comprehensive information system to be implemented

performance evaluation requirements together with other program reviews are substituted for the separate State agency audit originally proposed in §56.8. The 105 grant requirements (40 CFR 35, Subpart B, Program Grants)

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 56

[AD-FRL 1589-3]

Regional Consistency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This final rulemaking sets forth Regional Consistency regulations which were proposed on March 9, 1979 (44 FR 27558). EPA is required to promulgate regulations for this purpose under Section 301(a)(2) of the Clean Air Act (Act). The intended effect of this action is to assure fair and consistent application of rules, regulations and policy throughout the country by assuring that the actions of each individual EPA Regional Office is consistent with one another and national policy.

DATES: These regulations take effect February 23, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Creekmore, Standards Implementation Branch, Control Programs Development Division (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711 (919-541-5437).

Availability of Related Information: A docket (No. OAQPS 79-11) containing all supporting information used by EPA in developing the regulations is available for public inspection and copying between 8:00 a.m. and 4:30 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1979 (44 FR 13043), EPA proposed regulations for Regional Consistency. These regulations were required under Section 301(a)(2) of the Act as amended on August 7, 1977. Section 301(a)(2) reads in part as follows:

> (2) Not later than one year after the date of enactment of this paragraph, the Administrator shall promulgate regulations establishing general applicable procedures and policies for Regional Offices and employees (including the Regional Administrator) to follow. * * * Such regulations shall be designed—
>
> (A) To assure fairness and uniformity in the criteria, procedures, and policies applied by the various Regions in implementing and enforcing the Act;
>
> (B) To assure at least an adequate quality audit of each State's performance and adherence to the requirements of this Act in implementing and enforcing the Act, particularly in the review of new sources and in enforcement of the Act; and
>
> (C) To provide a mechanism for identifying and standardizing inconsistent or varying criteria, procedures, and policies being employed by such officers and employees in implementing and enforcing the Act.

The proposed regulations consisted of the following major provisions:

1. A provision requiring EPA to include in rules, regulations and program directives a mechanism for assuring consistency of application among the Regional Offices. This provision applied to rules, regulations, and program directives that EPA issued after August 6, 1977.
2. A provision requiring the Regional Offices to follow those mechanisms.
3. A provision requiring the Regional Offices to obtain Headquarters concurrence on significant interpretations of the Act or rules, regulations, or program directives.
4. Revised procedures for timely and more comprehensive distribution of policy and guidance.
5. Provisions for annual audits of the performance of EPA Regional Offices and State and local agencies in implementing and enforcing the Act.

Since the proposal, EPA has reevaluated its approach to the Regional Consistency requirements. The major aim in this reevaluation was to reduce resources necessary to implement the requirements by making use of existing consistency mechanisms whenever possible. As a result, the regulations promulgated below are altered to reduce the resources needed to implement consistency programs. The alterations do not affect the thrust of the Regional Consistency regulations as proposed; that is, the regulations being promulgated today still focus attention on identifying, preventing, and resolving regional inconsistencies.

The regulations being promulgated result in an expansion of existing mechanisms to accomplish the same purposes as the regulations originally proposed. The mechanisms utilized to promote regional consistency will include Headquarters overview of specific regional program activities, periodic EPA interregional meetings, and special reviews of controversial State Implementation Plan (SIP) revisions. The State grant performance evaluations will assure an adequate review of the States adherence to the requirements of the Act.

Support for these types of revisions came from the public comments on the proposed regulations. Of the eighteen public comments received, four felt that the proposal was too elaborate and inflexible. Most commenters agreed that the major role of the regulations should be to identify inconsistencies and resolve them as quickly as possible. Major consistency problems identified involved modeling practices, new source reviews, and control strategy approvals for SIPs. These problems can be identified and resolved without resorting to the involved administrative procedures contained in the proposal.

Differences Between the Final Rule and Proposal

1. Section 56.4 of the proposal, "Mechanisms for fairness and uniformity—Responsibilities of Headquarters employees," proposed to require EPA to include in rules, regulations, and program directives a mechanism for assuring consistency of application among the Regional Offices. In addition, this section applied to all rules, regulations and program directives that EPA issued after August 6, 1977. The promulgated regulations below limit the applicability of § 56.4 to rules and regulations under Parts 51 and 58* proposed or promulgated after the effective date of these regulations. Emphasis will be placed on SIP issues. Mechanisms are not required for New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAPS). Regulations for NSPS and NESHAPS are very detailed and involve extensive support documentation. They apply to specific source categories. In addition, initial implementation of these standards is coordinated closely with Headquarters. Headquarters periodically compiles a summary of problems associated with the initial implemenation and makes the summaries available to the Regional Offices for their guidance. Conversely, SIP related requirements are general and cover a wide range of actions. For example, SIP control strategy development encompasses several pollutants and hundreds of distinct sources.

Mechanisms are not required for program directives because they are themselves mechanisms EPA uses to foster consistent policy applications. Thus, EPA considers it redundant to require program directives to contain consistency mechanisms and that provision of the proposed regulation has been eliminated. The Administrator also eliminated the proposal requirement that EPA retroactively develop

* Part 51: Requirements for Preparation, Adoption, and Submittal of Implementation Plans.
Part 58: Ambient Air Quality Surveillance.

mechanisms for regulations issued after August 6, 1977. Any inconsistencies fostered by regulations issued prior to the effective date of these regulations can be resolved through existing mechanisms. Also, retroactive action would require a major effort at a time when EPA resources are already heavily committed.

EPA has eliminated the requirement proposed in Section 56.4 that negative declarations be included with relevant rulemaking. The regulation now provides that negative declarations be included in the supporting documentation or in the docket. Entering negative declarations in the docket will better preserve the record explaining why EPA found it unnecesssary to provide mechanisms to ensure consistent application of some regulations.

2. Section 56.5 of the proposed regulation, "Mechanisms for fairness and uniformity—Responsibilities of Regional Office employees," required the Regional Offices to obtain written Headquarters concurrence on significant interpretations of the Act or rules, regulations or program directives. The regulations promulgated below require only that the Regional Offices "seek concurrence from the appropriate EPA Headquarters office on significant interpretations of the Act." For example, the Regional Offices would typically seek concurrence on issues involving the following topics from the Headquarters office indicated:

a. Legal Issues—Office of General Counsel, Associate General Counsel, Air, Noise, and Radiation Division, Washington, D.C.

b. Enforcement Issues.

i. Stationary Sources—Director, Division of Stationary Source Enforcement, Washington, D.C.

ii. Mobile Sources—Director, Field Operations and Support Division, Washington, D.C.

c. State Implementation Plans.

i. General Guidance—Director, Control Progams Development Division, Research Triangle Park, N.C.

ii. Transportation Plans—Director, Office of Transportation and Land Use Planning, Washington, D.C.

iii. Inspection/Maintenance—Director, Emission Control Technology Division, Ann Arbor, Michigan.

This is not meant to affect those specific situations where EPA presently requires concurrence, or may find it necessary to require concurrence in the future. The revised requirement is not as burdensome as the original proposal and is not as likely to unnecessarily delay Regional Offices in taking action, yet should be effective in assuring consistency.

3. Section 56.6 of the proposed regulations "Dissemination of policy and guidance," required a comprehensive information system to be implemented by the Assistant Administrator for Air, Noise, and Radiation. The regulations below decentralize the dissemination of policy and guidance to several program offices and reduce the number of summaries, etc., needed. Program offices must compile documents containing relevant EPA program directives and guidance and make them available to the public. The program offices must also update the compilations. The revised § 56.6 significantly reduces the resources required to implement the proposed regulations while providing essentially similar guidance dissemination programs. While these regulations require a less complex dissemination system than originally proposed, EPA policy and guidance will be much more available to the State and local agencies and to the public than it is at present.

4. Section 56.7 of the proposed regulation, Regional Office audits, has been deleted. EPA feels that there are a number of alternative ways to promote regional consistency including Headquarter's review of specific regional programs, special review of controversial SIP actions, regular interregional meetings, and guidance dissemination from Headquarters. No audit manuals or annual audits will be necessary to carry out these regulations. EPA's existing normal/special action classification system provides special review of controversial SIPs. Where consistency issues are involved, the SIP revision will be classified as special action. This means that the revision undergoes a more detailed evaluation by the various EPA program and staff offices than do normal actions. In addition, EPA schedules regular interregional meetings which serve as a forum to resolve major inconsistencies. Finally, the Headquarters guidance dissemination program will make policy and guidance material more widely and immediately available to the States and local agencies that are to implement many of the policies EPA originates. Thus, formalized, existing mechanisms, together with an expanded policy guidance system and Headquarters overview, can be used to achieve the same goals as the Regional Office audit with much less resource expenditure.

5. Section 56.8 of the proposed regulations, State and local agency performance audits, has been rewritten. The existing Section 105 grant performance evaluation requirements together with other program reviews are substituted for the separate State agency audit originally proposed in §56.8. The 105 grant requirements (40 CFR 35, Subpart B, Program Grants) provide for air program assistance grants for prevention and control of air pollution at the State, interstate, or local level. For this program, EPA develops major program elements and outputs through the Zero Based Budget (ZBB) process. The ZBB process is also used to develop performance guidance which determines the programs EPA will emphasize in grant assistance. The grant procedures require EPA Regional Administrators to prepare an annual Agency evaluation report which describes program performance of the grantees for the previous year. Where appropriate, the report contains recommendations for upgrading current agency operations and provides guidance for development of upcoming grant applications. The regulations promulgated today require EPA Regional Administrators to notify the public of the availability of the evaluation report through a **Federal Register** notice. Heretofore, EPA, while informally carrying out the grant regulations, has not always prepared a formal report of its evaluations, or if so, has not deliberately made the report available to the public. Under the regulations promulgated today, EPA will formalize the reports prepared under the grant procedures to satisfy the intent of Congress for an audit of State agency performance.

The regulation promulgated below appears as a new Part 56 of Title 40, Chapter I, Subchapter C. In summary, the regulation's main features are as follows:

1. A provision requiring EPA to include in rules and regulations related to Parts 51 and 58, a mechanism for assuring consistency of application among the Regional Offices.
2. A provision requiring the Regional Offices to follow those mechanisms.
3. A provision requiring the Regional Offices to consult with appropriate EPA Headquarters offices on significant interpretations of the Act or rules, regulations, or program directives.
4. Revised procedures for timely and more comprehensive distribution of policy and guidance.
5. Provisions for annual evaluations of the performance of State and local agencies through the existing 105 grant evaluation mechanism.

Public Comments

During the period March 9, 1979 to June 20, 1979, EPA received 16 letters

addressing the proposed regulations. EPA held a public hearing in Washington, D.C., on May 21, 1979, but no comments were presented. The sources of the written comments were as follows:

replace the new mechanisms required in the proposal with existing mechanisms such as State 105 grant evaluations, guidance dissemination, review of controversial SIPs, and special program evaluations as deemed necessary by

Response: The reviews required by the program grant requirements referenced in § 56.7 will be repeated annually, and they should assure consistency over the long term. In addition, EPA schedules regular interregional meetings to discuss

opinions to the regulatory agency concerning such determinations.

For the States where EPA implements their new source review programs, § 52.21(r), "Prevention of Significant Deterioration of Air Quality," provides for public access to permit applications.

The report from that workshop will be available from the Regional Offices in the summer of 1980. More workshops are being planned so that eventually all the problem areas identified can be resolved.

EPA published notice of an action,

numbers and locations for NAMS in the major population areas of the country and requires a more frequent data reporting interval. The concept of NAMS is designed to provide data for national policy analysis/trends and for reporting to the public on major metropolitan

addressing the proposed regulations. EPA held a public hearing in Washington, D.C., on May 21, 1979, but no comments were presented. The sources of the written comments were as follows:

Source	Number
State air pollution control agencies	7
Regional air pollution control agencies	2
Counties	1
Public utilities	2
Industries	4
Trade association (organic chemicals)	1
Consultant	1
Total	18

Some commenters felt the regulation would restrict Regional flexibility and adversely affect EPA's responsiveness to Regional concerns and local problems. Other commenters felt that the regulations should include specific measures to assure consistency and not depend on the audit manuals for these requirements. The industrial commenters (utilities, trade association, consultant) were concerned more with the flexibility issue, while the State and Regional air pollution control agencies were divided in their opinion.

The discussion of the public comments has been broken into seven categories. The first category discusses comments on and changes in the overall concept of the regulations. The next six categories discuss comments on and changes in individual sections of the regulations.

1. Comments on the Overall Concept of the Regulations

1.1 *Comment:* Several commenters expressed fear that the regulations were too elaborate, and would restrict Regional flexibility. They felt that Regional Administrators should have the latitude to use their experience and judgment under broad guidelines and performance criteria. One commenter was particularly concerned about the provisions in Section 56.5 which requires a responsible Regional official to seek concurrence on interpretations of the Act when such interpretations may result in inconsistent application. The commenter felt that current Regional Office responsiveness, accessibility, and independence to react quickly to local problems would be sacrificed if Regional Office employees must obtain written concurrence from Headquarters on frequent occasions.

Response: As discussed previously, EPA is sensitive to these issues and the regulations below simplify the proposed consistency requirements to reduce cost and increase Regional flexibility. They replace the new mechanisms required in the proposal with existing mechanisms such as State 105 grant evaluations, guidance dissemination, review of controversial SIPs, and special program evaluations as deemed necessary by Headquarters. In addition, § 56.5 has been revised to require that the responsible Regional official no longer needs such written concurrence but shall "seek concurrence from the appropriate EPA Headquarters office" on interpretations of the Act potentially involving consistency problems.

1.2 *Comment:* One commenter felt that the proposed regulation included limited reference to workshops in Denver, Atlanta, Dallas, and Boston, even though the preamble states that they were developed largely from suggestions developed at the public workshop.

Response: EPA held the workshops to obtain a broad spectrum of public comment on the direction the Regional Consistency regulations should take. Issues 1–15 of the preamble to the proposal discuss the major issues raised in workshops and not incorporated into the proposed regulations.

1.3 *Comment:* Another commenter felt that EPA brushes aside timely consideration of organizational differences as a source of inconsistency from one Region to another. The inability of one Region to deal with another because of differing organizational structure is a major barrier.

Response: EPA has regular interregional meetings of policy level managers. A major purpose of these meetings is to identify and resolve Regional inconsistencies. As a result of the regulations promulgated today, more emphasis will be placed on consistency problems. The Agency has also established staff offices which specialize in Headquarters—Regional Office relations. The Office of Regional Programs under the Office of Air Quality Planning and Standards in Durham, North Carolina, is an example. It identifies potential consistency problems with emphasis on Regional Office implementation of Headquarters' guidance. Another example is the Office of Regional Liaison in Washington, D.C., which deals with Regional/Headquarters issues and is in the Office of the Administrator.

1.4 *Comment:* One commenter felt that such consideration of fairness and uniformity or flexibility/consistency at the time of rulemaking as required by § 56.4, is appropriate, but was concerned about provisions for such consideration as may be needed at later dates as the programs are being implemented.

Response: The reviews required by the program grant requirements referenced in § 56.7 will be repeated annually, and they should assure consistency over the long term. In addition, EPA schedules regular interregional meetings to discuss current issues. Where problems arise that cannot be resolved through these meetings, Headquarters develops guidance as necessary.

1.5 *Comment:* The preamble of the proposal put forth an example mechanism for assuring consistency of regulatory application. The example referred to EPA's regulations for prevention of significant deterioration. In the PSD regulation (43 FR 26380), EPA has established a national clearinghouse to assist the Regions and States in determining what constitutes Best Available Control Technology (BACT) or Lowest Achievable Emission Rates (LAER). One commenter felt that the clearinghouse idea would lead to EPA collecting control information from various sources and imposing the most stringent measure that one particular source might meet across the board. Another commenter felt that the clearinghouse idea circumvented the Clean Air Act by determining BACT and LAER with no provision for public comment.

Response: EPA intends that BACT and LAER determinations be made on a case-by-case basis. Thus, the various reviewing agencies will always consider individual situations in applying BACT and LAER. In addition, EPA is distributing a guidance document to assist reviewing agencies in implementing these requirements.

EPA feels that adequate opportunities for public comment have been provided in establishing BACT and LAER. The regulations in each State making reviews for BACT and LAER have been subject to public comment. EPA requires under § 51.18(h), "Review of New Sources and Modifications," that States obtain public comment on permit applications for major new sources or modifications. The public can then comment on any LAER determinations therein. In addition, under §51.24(r), "Prevention of Significant Deterioration of Air Quality," those States granting prevention of significant deterioration permits are required to make available to the public information on permit applications from major sources. Such information would allow the public to comment on any BACT determinations therein. Finally, the party most affected and interested in BACT and LAER determinations, the source itself, has ample opportunity to express its

opinions to the regulatory agency concerning such determinations.

For the States where EPA implements their new source review programs, § 52.21(r), "Prevention of Significant Deterioration of Air Quality," provides for public access to permit applications.

1.6 *Comment:* One commenter felt that a basic reason for inconsistencies was that the Act allowed States to establish standards more stringent than the national ambient air quality standards.

Response: This comment was discussed in issue number 11 of the preamble to the proposal. EPA's reply remains the same: the Act allows State discretion. These regulations will help insure that departures by the States represent conscious decisions and will help eliminate unintended inconsistencies.

1.7 *Comment:* One commenter focused on possible inconsistencies in EPA's implementation of the air quality standards and PSD requirements. His comments were as follows:

1.7.1 EPA modeling guidance does not provide for regional consistency. Certain models, such as RAM and CRSTER have been applied in similar situations with different results in different Regions. This application has resulted in more stringent regulations in one Region than another.

1.7.2 A uniform averaging period for enforcement of emission limitations should be established.

1.7.3 The ambient air quality standards should be enforced uniformly in all Regions of the country. The PSD increment should not be applied to existing sources in place of the ambient standards.

1.7.4 All changes in EPA procedures which result from the consistency rulemaking should be applied to new analysis and applications only. A cutoff date consistent with the regulation implementation should be specified well in advance in order that diffusion analysis currently in progess would not be invalidated.

Response: With regard to the problem discussed in 1.7.1, EPA is addressing interpretation and application of models through workshops with the Regional Offices. EPA invited modeling experts from State and local agencies, universities, and other organizations to attend these workshops. The first such workshops were held in late 1978. The Summary Report entitled, "Regional Workshops on Air Quality Modeling: A Summary Report," is available through the EPA Regional Offices. Topics involving application of models were addressed and means to improve consistency were considered. EPA held a second workshop in February 1980. The report from that workshop will be available from the Regional Offices in the summer of 1980. More workshops are being planned so that eventually all the problem areas identified can be resolved.

EPA published notice of an action, entitled "Regulation of Large Coal-Fired Boilers for SO_2 Emissions," (45 FR 9994) on February 14, 1980. The issue of appropriate averaging times may be examined in this rulemaking.

As for issue 1.7.3, these regulations will promote uniform enforcement of emission limitations developed to attain ambient air quality standards. The PSD increment is only applied to existing sources when required by the Act and EPA regulations.

With regard to the issue in 1.7.4, if new diffusion analyses/or applications are developed in the future which are more accurate than existing techniques, there is little choice than to apply these techniques. However, the development of new techniques does not itself require that EPA reevaluate all previous actions.

1.8 *Comment:* One commenter reiterated a comment made in the preproposal meetings that EPA's monitoring requirements do not provide for a consistent data base. The commenter did not feel that monitoring regulations promulgated on May 10, 1979 (44 Fr 27558), resolved this problem. The commenter felt that regional consistency will be difficult to attain because the existing regulations allow States to use their own mechanisms to determine attainment, and allow many areas to go unclassified because of lack of monitoring data.

Response: The ambient air monitoring, data reporting, and surveillance regulations referred to above do allow States a certain amount of flexibility with regard to monitoring requirements. However, they contain requirements which provide for uniform data quality and consistency in area coverage throughout the country. The subject regulations require the States to meet certain criteria which consist of approved monitoring devices, quality assurance, instrument siting specifications, and sampling intervals. Adherence to these criteria will assure comparable data from all monitoring stations of certain minimum, acceptable quality. The stations in the network will be termed State and Local Air Monitoring Stations (SLAMS). The number and location of the SLAMS will be jointly determined by the State and Regional Office as data needs dictate.

The subject regulations require the States to designate certain of the SLAMS as National Air Monitoring Stations (NAMS). EPA specifies the numbers and locations for NAMS in the major population areas of the country and requires a more frequent data reporting interval. The concept of NAMS is designed to provide data for national policy analysis/trends and for reporting to the public on major metropolitan areas. Existing plans are to establish the following approximate number of NAMS throughout the United States: particulate matter, 636; sulfur dioxide, 224; carbon monoxide, 121; ozone, 208; nitrogen dioxide, 65; and lead, 100.

Both the monitoring criteria and the NAMS provisions of the regulations will result in much more consistent air quality monitoring and data availability than has occurred in the past. The future outlook for monitoring is for continued collection of high quality data and assessment of networks to maintain their responsiveness to data needs.

2. Comments on Section 56.1, Definitions

2.1 *Comment:* Section 56.1, "Program Directive," is defined to exclude "an interpretation or clarification of existing rules, regulations, or program directives." One commenter was concerned that under this definition, the offset interpretative ruling would not be covered by Regional Consistency.

Response: Inclusion of the word "interpretation" was confusing to some persons. The intent was to exclude short memos "clarifying" policy or regulations not major policy documents like the offset policy rulings. To resolve this problem, the entire exclusion has been deleted from the definition.

3. Comments on Section 56.3, Policy

3.1 *Comment:* One commenter was concerned that the regulation does not contain a scheme to correct inconsistencies once they have been identified.

Response: Under § 56.4 each appropriate SIP related rule must include a mechanism to assure that the regulation is implemented fairly and consistently. EPA defines "mechanism" in § 56.1 as "an administrative procedure, guideline, manual, or written statement." The mechanism is intended to help identify and correct inconsistencies. Once EPA identifies the problem, several methods are available to correct the inconsistency. An administrative procedure such as EPA's special action review of SIP rulemaking can be an effective tool to correct inconsistencies. The appropriate Headquarters review office can nonconcur on the regulatory package and ask the author to revise it. Where the issue is related to inconsistent use of guidelines, revision to the appropriate guideline should correct inconsistencies.

For example, consistency problems with the use of the RAM and CRSTER diffusion models (see Section 1.7.1) have been resolved by revising the appropriate EPA guideline.

with the actions of other Regional Offices and review national policy. Also, Headquarters coordinates closely with the Regional Offices when implementing major regulations and

require the States to adopt such a format. Thus, permit consolidation is optional on the part of the States with regard to new source review programs.

7. Comments on 56.7, Regional Office

report and procedures, and the dissemination of EPA policy guidance. A separate copy of the notice will be sent to all State agencies and major local agencies. These comments will be summarized and published in the

particular program or function as described in Part 1 of this Title.

§ 56.2 Scope.

This part covers actions taken by—
(a) Employees in EPA Regional

(2) Are as consistent as reasonably possible with the activities of other Regional Offices, and

(3) Comply with the mechanisms developed under § 56.4 of this part.

For example, consistency problems with the use of the RAM and CRSTER diffusion models (see Section 1.7.1) have been resolved by revising the appropriate EPA guideline.

4. Comments on Section 56.4, Mechanisms for Fairness and Uniformity—Responsibilities of Headquarters

4.1 *Comment:* One commenter felt that the regulations should specifically not exclude actions covered under 5 U.S.C. 553 such as: "interpretative rules, general statements of policy, or rules of agency organization, procedures or practice," or rules that require no prior notice because this would be "impractical, unnecessary, or contrary to the public interest."

Response: EPA feels that interpretative rules and general statements of policy normally serve as consistency mechanisms in themselves. That is, such actions provide guidance in dealing with a variety of issues, including consistency issues. Thus, requiring mechanisms for these actions is unnecessary.

4.2 *Comment:* One commenter felt that a negative determination under Section 56.4(d) of the proposed regulations should be reviewable as a final Agency action under Section 307 of the Act.

Response: EPA believes that negative determinations are not reviewable as final Agency actions.

4.3 *Comment:* One commenter felt that an appeals board or appeals mechanism should be established to allow a non-judicial review of Regional Office decisions.

Response: This comment was discussed under issue number 8 of the preamble to the March 9, 1979, proposal. EPA feels that establishment of an appeals board would create another level of review and would be less efficient than the proposed scheme in minimizing inconsistencies among the Regional Offices.

5. Comments on Section 56.5, Mechanisms for Fairness and Uniformity—Responsibilities of Regional Office Employees

5.1 *Comment:* One commenter felt that § 56.5 should be expanded to provide that a copy of correspondence covering a judgment decision should be forwarded to the next higher Headquarters level for review regardless of the decision.

Response: EPA does not have the resources to review all regional correspondence and determinations made by the Regional Offices. EPA does hold periodic interregional staff meetings to familiarize regional people with the actions of other Regional Offices and review national policy. Also, Headquarters coordinates closely with the Regional Offices when implementing major regulations and requirements.

5.2 *Comment:* To ensure that the consistency that is to be achieved among Regions is also consistent with the law and with Agency policy, one commenter felt that § 56.5(a) should be expanded to add, between "consistent with" and "the activities * * * " the words: "the Act and Agency policy as set forth in Agency rules and program guidance documents, and with * * *"

Response: EPA feels the comment has merit and the suggested revision has been made in principle.

6. Comments on 56.6, Dissemination of Policy and Guidance

6.1 *Comment:* One commenter felt that provisions should be made to insure that affected industries and the public are provided with timely notice of and access to any changes or revisions made in EPA policy.

Response: § 56.6(a) requires appropriate EPA program offices to develop air programs policy and guidelines systems and a procedure to update them. Also, they must distribute these materials to the Regional Offices and State and local agencies, and make them available to the public. This should provide a timely notice of any changes in EPA policy. In addition, many documents, principally guidelines, may be purchased through the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

6.2 *Comment:* One commenter felt that EPA should (1) include new source review decisions as part of the air program policy and guidance material to provide for ready comparisons from State to State, and (2) establish a common permit format for all States.

Response: EPA has set up a clearinghouse for BACT/LAER determinations and has circulated a compilation of BACT/LAER determinations in a guidance book. This will provide for ready comparisons of BACT/LAER determinations from State to State. Also, on May 19, 1980 (45 FR 33290), EPA promulgated regulations to speed up and simplify the process of obtaining environmental permits through "permit consolidation." A key aspect of this effort is the use of a simplified form to apply for permits under a number of different EPA programs. However, many States operate new source review programs within the framework of approved SIPs. While EPA supports a common permit format, the Clean Air Act does not require the States to adopt such a format. Thus, permit consolidation is optional on the part of the States with regard to new source review programs.

7. Comments on 56.7, Regional Office Audits and 56.8, State and Local Agency Performance Audits

Most of the comments on §§ 56.7 and 56.8 centered around issues such as: (1) the administrative requirements are too elaborate and detailed, (2) the yearly audits were too frequent, (3) public comment should be allowed on the draft audit reports, and (4) non-EPA employees should be allowed on the EPA audit teams and advisory committees. As discussed under the Background section, EPA agrees that the proposed §§ 56.7 and 56.8 requirements are too elaborate and detailed.

The regulations promulgated today delete § 56.7 and substitute the Section 105 grant evaluation mechanisms for the system of State audits originally proposed under § 58.8 The development of audit manuals and audit reports as envisioned in the proposal are too resource intensive. As explained in the Background section of the preamble, regional inconsistencies can be adequately identified by formalizing existing mechanisms without a major new administrative effort.

Environmental, Economic, and Energy Impact Assessments

EPA has classified this regulation as a "significant-routine" action in accordance with guidance contained in the May 29, 1979, Federal Register, "Improving Environmental Regulations; Final Report Implementing E.O. 12944," (44 FR 30988). Thus, EPA has prepared no environmental, economic, or energy impact assessments. The regulations should result in more consistent application throughout the country of air pollution control requirements. They will tend to preclude economic inequities because of varying interpretations of the Act's requirements. There will be no discernible energy impact.

Plan to Evaluate the Effectiveness of Regional Consistency Regulations

Section 2(d)(8) of Executive Order 12044 requires that each new significant regulation have a plan to evaluate its effectiveness. Approximately two years from the date of promulgation, EPA will place a notice in the Federal Register soliciting public comment on implementation of the regional consistency regulations. The States and local agencies and the public will be asked to comment on the fairness and uniformity mechanisms, grant audit

report and procedures, and the dissemination of EPA policy guidance. A separate copy of the notice will be sent to all State agencies and major local agencies. These comments will be summarized and published in the **Federal Register.** A copy of the evaluation plan is available in the docket (OAQPS 79–11).

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

EPA amends Title 40, Chapter I, Subchapter C, of the *Code of Federal Regulations* by adding a new Part 56 as follows:

PART 56—REGIONAL CONSISTENCY

Sec.

56.1 Definitions.
56.2 Scope.
56.3 Policy.
56.4 Mechanisms for fairness and uniformity—Responsibilities of Headquarters employees.
56.5 Mechanisms for fairness and uniformity—Responsibilities of Regional Office employees.
56.6 Dissemination of policy and guidance.
56.7 State agency performance audits.

Authority: Section 301(a)(2) of the Clean Air Act as amended (42 USC 7601).

§ 56.1 Definitions.

As used in this part, all terms not defined herein have the meaning given them in the Clean Air Act.

"Act" means the Clean Air Act as amended (42 USC 7401 et seq.).

"Administrator," "Deputy Administrator," "Assistant Administrator," "General Counsel," Associate General Counsel," "Deputy Assistant Administrator," "Regional Administrator," "Headquarters," "Staff Office," "Operational Office," and "Regional Office" are described in Part 1 of this Title.

"Mechanism" means an administrative procedure, guideline, manual, or written statement.

"Program directive" means any formal written statement by the Administrator, the Deputy Administrator, the Assistant Administrator, a Staff Office Director, the General Counsel, a Deputy Assistant Administrator, an Associate General Counsel, or a division Director of an Operational Office that is intended to guide or direct Regional Offices in the implementation or enforcement of the provisions of the Act.

"Responsible official" means the EPA Administrator or any EPA employee who is accountable to the Administrator for carrying out a power or duty delegated under Section 301(a)(1) of the Act, or is accountable in accordance with EPA's formal organization for a particular program or function as described in Part 1 of this Title.

§ 56.2 Scope.

This part covers actions taken by—

(a) Employees in EPA Regional Offices, including Regional Administrators, in carrying out powers and duties delegated by the Administrator under Section 301(a)(1) of the Act; and

(b) EPA employees in Headquarters to the extent that they are responsible for developing the procedures to be employed or policies to be followed by Regional Offices in implementing and enforcing the Act.

§ 56.3 Policy.

It is EPA's policy to—

(a) Assure fair and uniform application by all Regional Offices of the criteria, procedures, and policies employed in implementing and enforcing the Act;

(b) Provide mechanisms for identifying and correcting inconsistencies by standardizing criteria, procedures, and policies being employed by Regional Office employees in implementing and enforcing the Act; and

(c) Insure an adequate quality audit for each State's performance in implementing and enforcing the Act.

§ 56.4 Mechanisms for fairness and uniformity—Responsibilities of Headquarters employees.

(a) The Administrator shall include, as necessary, with any rule or regulation proposed or promulgated under Parts 51 and 58 of this chapter[1] mechanisms to assure that the rule or regulation is implemented and enforced fairly and uniformly by the Regional Offices.

(b) The determination that a mechanism requried under paragraph (a) of this section is unnecessary for a rule or regulation shall be explained in writing by the responsible EPA official and included in the supporting documentation or the relevant docket.

§ 56.5 Mechanisms for fairness and uniformity—Responsibilities of Regional Office employees.

(a) Each responsible official in a Regional Office, including the Regional Administrator, shall assure that actions taken under the Act:

(1) Are carried out fairly and in a manner that is consistent with the Act and Agency policy as set forth in the Agency rules and program directives,

(2) Are as consistent as reasonably possible with the activities of other Regional Offices, and

(3) Comply with the mechanisms developed under § 56.4 of this part.

(b) A responsible official in a Regional Office shall seek concurrence from the appropriate EPA Headquarters office on any interpretation of the Act, or rule, regulation, or program directive when such interpretation may result in inconsistent application among the Regional Offices of the Act or rule, regulation, or program directive.

(c) In reviewing State Implementation Plans, the Regional Office shall follow the provisions of the guideline, revisions to State Implementation Plans—Procedures for Approval/Disapproval Actions, OAQPS No. 1.2–005A, or revision thereof. Where regulatory actions may involve inconsistent application of the requirements of the Act, the Regional Offices shall classify such actions as special actions.

§ 56.6 Dissemination of policy and guidance.

The Assistant Administrators of the Offices of Air, Noise and Radiation, and of Enforcement, and the General Counsel shall establish as expeditiously as practicable, but no later than one year after promulgation of this part, systems to disseminate policy and guidance. They shall distribute material under foregoing systems to the Regional Offices and State and local agencies, and shall make the material available to the public. Air programs policy and guideline systems shall contain the following:

(a) Compilations of relevant EPA program directives and guidance, except for rules and regulations, concerning the requirements under the Act.

(b) Procedures whereby each Headquarters program office and staff office will enter new and revised guidance into the compilations and cause superseded guidance to be removed.

(c) Additional guidance aids such as videotape presentations, workshops, manuals, or combinations of these where the responsible Headquarters official determines they are necessary to inform Regional Offices, State and local agencies, or the public about EPA actions.

§ 56.7 State agency performance audits.

(a) EPA will utilize the provisions of Subpart B, Program Grants, of Part 35 of this chapter, which require yearly evaluations of the manner in which grantees use Federal monies, to assure that an adequate evaluation of each

[1] Part 51 is entitled, "Requirements for Preparation, Adoption, and Submittal of Implementation Plans." Part 58 is entitled, "Ambient Air Quality Surveillance."

State's performance in implementing and enforcing the Act is performed.

(b) Within 60 days after comment is due from each State grantee on the evaluation report required by § 35.538 of this chapter, the Regional Administrator

4. Task: Maintain Policy and Guidance Dissemination System

This task would require one group to coordinate the implementation of the system. Other groups would have to update the system by providing new

effectiveness of the program in order to comply with Section 2(d)(8) of Executive Order 12044. This order requires that each new significant regulation have a plan for evaluation of its effectiveness.

Procedure for Evaluation of Regional

various grant audit reports and guidance documents. With this and related information the **Federal Register** notice requesting public comment will be prepared. It is anticipated that the first grant audits will be completed approximately 1 year from promulgation

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State's performance in implementing and enforcing the Act is performed.

(b) Within 60 days after comment is due from each State grantee on the evaluation report required by § 35.538 of this chapter, the Regional Administrator shall incorporate or include any comments, as appropriate, and publish notice of availability of the evaluation report in the **Federal Register.**

Tab B—Estimated Resource Demand

Regional Consistency Regulations—Estimated Resource Demand

A summary of the Estimated Resource Demand appears in Table 1.

A. One Time Expenses

Task: Revise Policy and Guidance Dissemination System

OANR would accomplish this task through in-house work. EPA work effort in revising the system is estimated to be about 0.4 work-years over the first year for OANR. In addition, OE and OGC are expected to require about 0.4 work-years each. Thus, the total estimate is 1.2 work-years.

B. Annual Expenses

1. Task: Develop Mechanisms for Ensuring Fairness and Uniformity in New Regulations, Policy, Etc.

Mechanisms will be developed only for Parts 51 and 58. Although the amount of new effort spent in incorporating mechanisms for these subparts may be small, more coordination with Regional Offices and State agencies will be needed in developing new regulations. This greater coordination is estimated to cost about 0.25 work-years of effort annually.

2. Task: Regional Office Compliance With Mechanisms

Regional Offices already generally follow Headquarters' guidance, so this task would not add any new burden.

3. Task: Annual State Agency Performance Evaluations

Each Regional Office currently performs an annual State Agency Performance Evaluation. This regulation adds two additional requirements to the performance evaluation. First, the comments from the grantee on the evaluation report must be incorporated into the evaluation report. Second, the public must be notified of the availability of the report through a notice in the **Federal Register.** It is estimated that each Region will require about 0.15 work-years to perform these tasks or a total of 1.5 work-years.

4. Task: Maintain Policy and Guidance Dissemination System

This task would require one group to coordinate the implementation of the system. Other groups would have to update the system by providing new material. This task is estimated to cost about 0.25 work-years annually for OANR. In addition, OE is expected to require about 0.25 work-years and OGC 0.15 work-years for a combined effort of 0.65 work-years.

Table 1.—*Regional Consistency Regulations*

[Estimated resource demand on EPA]

Task	Years after promulgation 1	2
A. One Time Expense (Work-Years)		
1. Revise guidance dissemination system	1.20	
Rounded total (all EPA)	1.20	
B. Annual Expenses (Work-Years)		
1. Develop mechanisms for ensuring fairness and uniformity in new regulations policy, etc	0.25	0.25
2. Regional Office compliance with mechanisms		0
3. Annual State Agency Performance Evaluations		1.5
4. Maintain policy and guidance system		0.65
Rounded total (all EPA)	0.25	2.40

Tab C—Evaluation Plan

Plan to Evaluate the Effectiveness of Regional Consistency Regulations

Introduction.

The Regional Consistency regulations are intended to promote fair and uniform application of EPA rules and regulations by EPA Regional Offices and assure that States adhere to the requirements of the Clean Air Act. The regulations require the following:

1. Incorporation of mechanisms for fairness and uniformity into significant SIP related rules or regulations that implement the requirements of the Clean Air Act.

2. Regions must follow these mechanisms and consult with the appropriate EPA Headquarters' office on significant interpretations of the Act, regulations, or program directives.

3. Dissemination of policy and guidance through a compilation of all relevant EPA program policy issuances.

4. Audits of States and local air agencies through the existing 105 grant audit mechanism.

The 105 grant audits should help EPA determine how well the provisions are followed and also help determine the adequacy of the basic mechanisms themselves. However, it is still necessary to evaluate the overall effectiveness of the program in order to comply with Section 2(d)(8) of Executive Order 12044. This order requires that each new significant regulation have a plan for evaluation of its effectiveness.

Procedure for Evaluation of Regional Consistency Regulations

1. It is anticipated that the first 105 grant audit report under 40 CFR 35 will be completed approximately 1 year from promulgation of the Regional Consistency regulations. The guidance dissemination systems should also be completed about a year after promulgation of these regulations. Thus, approximately one year after notice of availability of 105 grant audit reports, EPA will place a notice in the **Federal Register** soliciting public comment on implementation of the Regional Consistency regulation. The public and States will be asked to comment on and to suggest how the regulations could be improved by addressing such questions as the following:

a. Are there areas not covered by the 105 grant audit that should be?

b. Are the mechanisms for assuring fairness and uniformity in application of rules and regulations effective?

c. Are the State regulations and EPA policy guidance implemented in a timely manner?

d. Are States adhering to the requirements of the Clean Air Act in implementing and enforcing its provisions?

e. Is EPA guidance disseminated in a timely manner to all appropriate users?

2. The **Federal Register** notice will inform the public where copies of the grant audit reports, guidance documents, and other actions are available for public review. It will also summarize EPA action on the Regional Consistency regulations.

4. The public comment period will last 60 days.

5. Within 120 days of the end of the public comment period, EPA will prepare a report which summarizes the public comments and discusses possible changes to the Regional Consistency regulations as a result of such comments.

6. Subsequent notices will be published in the **Federal Register** at five year intervals.

Estimated Resource Demand

A summary of the estimated resource demand appears in Table 1. These are one-time expenses.

1. *Task: Prepare Federal Register notice requesting public comment.* This action involves coordination within Headquarters and Regional Offices to identify for the public the location of various grant audit reports and guidance documents. With this and related information the **Federal Register** notice requesting public comment will be prepared. It is anticipated that the first grant audits will be completed approximately 1 year from promulgation of the Regional Consistency regulations. Allowing the public another year to evaluate the impact of the regulations on regional consistency means that the notice requesting public comments would appear about 2 years after the regulations are promulgated. The task would be repeated at 5 year intervals thereafter. The initial notice should require approximately 2 work-months. Subsequent notices would require about 3 work-months each to prepare because of the increased number of regulations covered by the consistency regulations.

2. *Task: Evaluate comments on Regional Consistency regulations and publish findings.* This task would require from 2–3 work-months depending on the number of regulations covered under Regional Consistency provisions and the number of public comments received. The evaluation 5 years hence would require from 3–4 work-months because of the increased number of regulations covered by the consistency regulations.

Table 1.—Development of Evaluation Plan—Regional Consistency Regulations

One-Time Expenses (Work-Years)

Task	Years After Promulgation 2	7
1. Prepare FEDERAL REGISTER notice requesting public comment	0.2	0.3
2. Evaluate comments on Regional Consistency regulations and publish findings in the FEDERAL REGISTER	0.2–0.3	0.3–0.4

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Part X

Environmental Protection Agency

Standards of Performance for New Stationary Sources; Automobile and Light-Duty Truck Surface Coating Operations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 1627-8]

Docket. The Docket, number A-79-05, containing supporting information used in developing the promulgated standards is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through

performance test. While Method 24 is the reference method for use in this performance test to determine data used in the calculation of the volatile content of coatings, provisions have been made to allow the use of coatings

estimated based on emission limits contained in existing SIPs at the end of 1978 when development of background information for the standards began.

In addition to achieving further reductions in emissions beyond those required by a typical SIP, standards of

The solid waste impact of the promulgated standards will be negligible compared to the amount of solid waste generated by existing assembly plants. The solid waste generated by waterborne coatings, however, is very

recommended for proposal. These meetings occurred on September 27 and 28, 1977. The meetings were open to the public and each attendee was given ample opportunity to comment on the standards recommended for proposal.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 1627-8]

Standards of Performance for New Stationary Sources; Automobile and Light-Duty Truck Surface Coating Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes standards of performance to limit emissions of volatile organic compounds (VOC) from new, modified, and reconstructed automobile and light-duty truck surface coating operations within assembly plants. The standards were proposed and published in the Federal Register on October 5, 1979.

The standards implement the Clean Air Act and are based on the Administrator's determination that automobile and light-duty truck surface coating operations within assembly plants contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intent is to require new, modified, and reconstructed automobile and light-duty truck surface coating operations to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental and energy impacts.

EFFECTIVE DATE: December 24, 1980.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The Background Information Document (BID) for the final standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Automobile and Light-Duty Truck Surface Coating Operations—Background Information for Promulgated Standards" (EPA-450/3-79-030b).

Docket. The Docket, number A-79-05, containing supporting information used in developing the promulgated standards is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday at the EPA's Central Docket Section, West Tower, Lobby Gallery 1, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Smith, Chief, Standards Preparation Section (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5421.

SUPPLEMENTARY INFORMATION:

The Standards

The promulgated standards apply to new, modified, or reconstructed automobile and light-duty truck surface coating operations for which construction is commenced after October 5, 1979. The standards apply to each prime coat operation, each guide coat operation, and each topcoat operation within an assembly plant where components of an automobile or light-duty truck body are coated. Operations used to coat plastic body parts and all-plastic bodies on separate coating lines are not covered. However, operations which coat all-metal bodies or metal bodies with plastic body parts attached before coating are covered by the standards. Emissions of VOC from affected facilities are limited as follows: 0.16 kilograms of VOC per liter of applied coating solids from prime coat operations, 1.40 kilograms of VOC per liter of applied coating solids from guide coat operations, 1.47 kilograms of VOC per liter of applied coating solids from topcoat operations.

Although the emission limits are based on the use of waterborne coating materials in each coating operation, they can also be met with solvent-borne coating materials through the use of other control techniques such as incineration.

Annual model changeovers or switches to larger cars and changes in the application of coatings to increase film thickness are not covered as modifications under § 60.14.

The owner or operator is required to conduct a performance test each calendar month and report the results to EPA within ten days of the end of any month in which the affected facility is not in compliance with the standards. The calculation of the volume weighted average mass of VOC per volume of applied coating solids during each calendar month constitutes a performance test. While Method 24 is the reference method for use in this performance test to determine data used in the calculation of the volatile content of coatings, provisions have been made to allow the use of coatings manufacturers' formulation data to determine the volume fraction of solids.

In addition to the non-compliance report, the owner or operator of an affected facility who utilizes incineration to comply with the standards must submit reports quarterly on incinerator performance.

Environmental, Energy, and Economic Impacts

Environmental, energy, and economic impacts of standards of performance are normally expressed as incremental differences between the impacts from a facility complying with the standards and those for one complying with the emission standards in a typical State Implementation Plan (SIP). In the case of automobile and light-duty truck surface coating operations, the incremental differences will depend on the control levels that will be required by revised SIPs. Revisions to most SIPs are currently in progress.

Most existing automobile and light-duty truck surface coating operations are located in areas which are considered nonattainment areas for purposes of achieving the National Ambient Air Quality Standard (NAAQS) for ozone. New facilities are expected to locate in similar areas. States are in the process of revising their SIPs for these areas and are expected to include revised emission limitations for automobile and light-duty truck surface coating operations in their new SIPs. In revising their SIPs, the States are relying on the control techniques guideline document, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coil, Paper, Fabrics, Automobiles and Light-Duty Trucks" (EPA-450/2-77-008 [CTG]).

Since control technique guidelines are not binding, States may establish emission limits which differ from the guidelines. To the extent States adopt the emission limits recommended in the control techniques guideline document as the basis for their revised SIPs, the promulgated standards will have little environmental, energy, or economic impacts. The actual incremental impacts of the promulgated standards will be determined by the final emission limitations adopted by the States in their revised SIPs. For the purpose of this rulemaking, however, the environmental, energy, and economic impacts of the standards have been

estimated based on emission limits contained in existing SIPs at the end of 1978 when development of background information for the standards began.

In addition to achieving further reductions in emissions beyond those required by a typical SIP, standards of performance have other benefits. They establish a degree of national uniformity to avoid situations in which some States may attract industries by relaxing air pollution standards relative to other States. Further, standards of performance improve the efficiency of a case-by-case determination of best available control technology (BACT) for operations located in attainment areas and lowest achievable emission rates (LAER) for operations located in nonattainment areas by providing a reference document for use in these determinations. The reason is that the process for developing standards of performance involves a comprehensive analysis of alternative emission control technologies and an evaluation and verification of emission test methods. Detailed cost and economic analyses of various regulatory alternatives are presented in the supporting documents for the standards of performance.

The regulatory alternatives and the environmental, energy, and economic impacts of the standards of performance were originally presented in "Automobile and Light-Duty Truck Surface Coating Operations—Background Information for Proposed Standards" (EPA-450/3-79-030) and remain unchanged since proposal.

The standards of performance will reduce emissions of VOC from new, modified, or reconstructed automobile and light-duty truck surface coating operations by about 80 percent, compared to operations controlled to levels contained in SIPs existing at the end of 1978. National emissions of VOC will be reduced by about 4,800 megagrams per year by 1983 based on the projection that four new assembly plants are planned by that year.

Water pollution impacts of the standards will be relatively small compared to the volume and quality of the wastewater discharged from plants meeting 1978 SIP levels. The standards are based on the use of waterborne coating materials. These materials will lead to a slight increase in the chemical oxygen demand (COD) of the wastewater discharged from the surface coating operations within assembly plants. This increase in COD, however, is not great enough to require additional wastewater treatment capacity beyond that required in existing assembly plants using solvent-borne surface coating materials.

The solid waste impact of the promulgated standards will be negligible compared to the amount of solid waste generated by existing assembly plants. The solid waste generated by waterborne coatings, however, is very sticky and equipment cleanup is more time-consuming than for solvent-borne coatings. Solid wastes from waterborne coatings will not present any special disposal problems since they can be disposed of by conventional landfill procedures.

National energy consumption will be increased by the use of waterborne coatings to comply with the standards. The equivalent of an additional 18,000 barrels of fuel oil will be consumed per year at a typical assembly plant. This is an increase of about 25 percent in the energy consumption of a typical automobile surface coating operation. National energy consumption will be increased by the equivalent of about 72,000 barrels of fuel oil per year in 1983. This increase is based on the projection that four new assembly plants will be built by 1983. The impacts presented here are based on the use of waterborne coatings which will require extensive air conditioning in the affected facilities to meet temperature and humidity requirements. High solids coatings, while promising, are not yet adequately demonstrated to be used as the basis of the standards. However, to the extent new facilities comply with the standards through the use of higher solids content coatings, improved transfer efficiencies, and the use of incineration, with heat recovery, the energy impacts will be less than presented here.

The standards will increase the capital and annualized costs of new automobile and light-duty truck surface coating operations within assembly plants. Capital costs for the four new assembly plants planned by 1983 will be increased by approximately $19 million as a result of the standards. These incremental costs represent about 0.2 percent of the $10 billion planned for all capital expenditures. The corresponding annualized costs will be increased by approximately $9 million in 1983. The price of an automobile or light-duty truck will be increased by less than 0.1 percent when spread over the manufacturer's entire production. The Administrator considers this increase a reasonable control cost.

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the Federal Register of meetings of the National Air Pollution Control Techniques Advisory Committee to discuss the standards recommended for proposal. These meetings occurred on September 27 and 28, 1977. The meetings were open to the public and each attendee was given ample opportunity to comment on the standards recommended for proposal. The standards were proposed in the Federal Register on October 5, 1979. Public comments were solicited at that time and copies of the Background Information Document (BID) were distributed to interested parties. The public comment period extended from October 5, 1979, to December 14, 1979, with a public hearing on November 9, 1979.

In addition to five presentations at the public hearing, seventeen comment letters were received on the proposed standards of performance and on the two proposed reference methods, Methods 24 and 25, which were promulgated on October 3, 1980 (45 FR 65956). These comments have been carefully considered and, where determined to be appropriate, changes have been made.

Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from automobile and light-duty truck manufacturers, coatings manufacturers, trade and professional associations, State air pollution control agencies, and Federal agencies. While a number of changes were made in the standards since proposal, the affected facilities, control techniques on which the standards are based, and the impacts remain as presented in the BID for the proposed standards. Detailed discussions of these comments can be found in the BID for the promulgated standards. The major comments have been combined into the following areas: General, Emission Control Technology, Economic Impacts, Legal Considerations, and Reference Methods and Monitoring.

General

The proposed standards exempted certain specific changes which may occur in an existing facility from being considered a modification. One commenter requested that "Engineering Design Changes" be added to the list of exemptions to provide for those minor changes made during the model year to improve quality or performance of the finished product.

No changes were made in the standards as a result of this comment. While requested, data were not received defining the term "Engineering Design Changes." EPA, therefore, re-examined the available data. Under § 60.397, changes in the application of coatings to

increase coating film thickness are already exempted. In addition, minor operational changes which could include design changes are allowed as long as emissions are not increased. Therefore, EPA has concluded that

VOC per liter of applied coating solids from topcoat operations.

In addition to the changes in the emission limitations, changes were made to the table of transfer efficiencies in § 60.393. Separate transfer efficiencies

with the increased temperatures required to cure waterborne coatings. Similarly, the increased temperatures associated with waterborne coatings may cause defects in the materials used to join plastic body components.

As indicated above, data from one automobile manufacturer indicates that prime coat material including flow control additives is available and operating experience demonstrates that the emission limit established for prime

reconstruction. During development of the standards, EPA found that the capital cost of a new coating facility is approximately $30,000,000 (average of solvent-borne enamel and lacquer systems) and that the capital cost of

light-duty truck surface coating operations. Subsequently, these methods have been promulgated separately from these standards on Oct. 3, 1980 (45 FR 65956).

A revised version of the proposed

increase coating film thickness are already exempted. In addition, minor operational changes which could include design changes are allowed as long as emissions are not increased. Therefore, EPA has concluded that sufficient relief is already provided in the standards and "engineering design changes" will not specifically be exempted.

Similarly, changes made to comply with SIP requirements were requested by one commenter to be added to the list of exemptions.

Changes to an existing facility made to comply with a SIP should reduce emissions rather than increase them. Therefore, it also would not be considered a modification. If a SIP-required change is significant enough to be considered as a reconstruction in accordance with provisions of § 60.15, the standards would apply only if it is determined to be technically and economically feasible.

One commenter stated that the transfer efficiency for waterborne air atomized spray was measured to be 36 percent instead of 40 percent at a new plant and that this value should be used as the basis for the standards.

At the time the standards were proposed, the volume of coating material required for line purging during color changes in a topcoat operation was not considered to have a significant impact on transfer efficiency. Recent tests conducted by the commenter and submitted in support of his position have indicated that line purging does have an impact. However, the same tests also indicated the technology is available to control this source of VOC emission by collecting the purge material or by incorporating design and operational changes to the spray system, thereby increasing transfer efficiency. After evaluating and discussing these data with the commenter, EPA agrees that changes to the proposed standards should be made. The baseline transfer efficiency for air atomized spray systems for waterborne coatings without purge after each vehicle on which the emission limits for guide coat operations were established has been changed from 40 percent to 39 percent. The corresponding baseline transfer efficiency for air atomized spray systems for waterborne coatings with partial purge and partial purge capture on which the emission limits for topcoat operations were established has been changed from 40 to 37 percent. As a result, the emission limits have been changed to 1.40 kilograms of VOC per liter of applied coating solids from guide coat operations, and 1.47 kilograms of VOC per liter of applied coating solids from topcoat operations.

In addition to the changes in the emission limitations, changes were made to the table of transfer efficiencies in § 60.393. Separate transfer efficiencies have been established for waterborne and solvent-borne air atomized spray systems since data indicate that higher transfer efficiencies can be realized with solvent-borne coatings. Also, because of the significance of line purging, separate tables of transfer efficiencies are now established for systems which collect 100 percent of the purge material and for systems which purge after each vehicle and do not collect any of the purge material. Provisions have also been made to allow the use of appropriate transfer efficiencies for systems which employ partial purge capture.

A number of commenters requested that the standards allow an exemption for special paints and colors which may be used in relatively small volumes because an arithmetic average of all coatings as required in the proposed standards could result in values greatly different than a volume weighted average.

The proposed standards required that an arithmetic average VOC content of all topcoat materials be used in determining emissions. This form of averaging was originally believed to provide a simple and reasonably accurate approximation of the volume weighted average VOC content of the coating materials actually used. However, for many of the new paint systems, a small percentage of the colors accounts for a large percentage of the paint used. Therefore, the arithmetic average can be significantly different from the weighted average. The promulgated standards require that compliance be demonstrated by a performance test which involves the calculation of the volume weighted average mass of VOC per volume of applied coating solids for each calendar month. While this does not exempt special paints and colors, it does allow their use in small volumes with an equitable impact on the overall average, and therefore the concerns of the commenters have been addressed.

Comments were received which requested that the coating of plastic car bodies and plastic components used on metal car bodies be excluded from the standards. Data provided by the commenter indicated significant problems associated with the use of surface coatings designed for sheet metal on plastic bodies or plastic body components. These include the increased incidence of ruptures and delaminations in the plastic substrate with the increased temperatures required to cure waterborne coatings. Similarly, the increased temperatures associated with waterborne coatings may cause defects in the materials used to join plastic body components.

The objections raised by the commenter were judged reasonable. Since current industry practice is to coat temperature sensitive plastic bodies and body components on separate lines, the standards have been changed to exclude those operations. However, plastic body components that are attached to the metal body before it is coated do not cause the coating operation of that body to be excluded.

Emission Control Technology

Two commenters objected to the weighted average method of determining the VOC content of prime coat material because of problems they anticipate with "flow control" additives. Flow control additives are added to an electrodeposition (EDP) tank to maintain or improve the application process and are added on a periodic basis. The commenters claim that flow control additives should not be included when determining the mass of VOC per volume of applied coating solids because flow control additives are not added on a continuous basis. The commenters contended that determinations of VOC when flow control additives are added will differ greatly from periods when flow control additives are not added.

The prime coat emission limit is based on a volume of solids weighted average VOC content of all makeup material including flow control additives added to an EDP tank during one calendar month. Flow control additives are high in VOC content but are added only periodically as stated by the commenter. If a short time period (such as daily) were used to calculate VOC emissions, the effect of flow control additions could be significant, causing wide daily fluctuations. A longer averaging period dampens these fluctuations. Information supplied to EPA during the development of these standards indicates that makeup material including flow control additives is available to meet an emission limit of 0.16 kilograms of VOC per liter of applied coating solids when averaged over a calendar month. Therefore, a monthly averaging period and the proposed value, including flow control additives, are appropriate.

Several commenters objected to the prime coat emission limit, which is equivalent to 1.2 pounds of VOC per gallon of coating minus water, claiming that such prime coat material is not available.

As indicated above, data from one automobile manufacturer indicates that prime coat material including flow control additives is available and operating experience demonstrates that the emission limit established for prime coat operations is achievable. Therefore, the emission limit will not be changed.

Economic Impacts

Two commenters recommended that separate standards be established for modified or reconstructed plants due to the differences in economic impacts.

If a physical or operational change were made to an existing facility at an automobile or light-duty truck plant which would potentially increase VOC emissions, the owner or operator could implement changes necessary to hold VOC emissions at or below the previous level so as not to be subject to the promulgated standards. This course of action would be less costly to the plant than implementing control strategies to meet the promulgated new source performance standards. This reduction in emissions could be accomplished by switching to a lower VOC content coating or by incineration of a portion of the VOC emission stream. Both of these options are available to all plants and are reasonable.

Although it is unlikely to happen, if an existing facility is modified and is required to meet the limits of the NSPS, the cost of implementing control strategies to meet the standards would be more costly but would still be affordable. Some existing plants may not be able to use the full range of control options because of physical constraints. For example, an existing enamel plant may not have enough room in its existing spray booths to use waterborne coatings. The enamel booths are shorter than the ones required for waterborne coatings. Nevertheless, the enamel plant has other options such as use of higher solids enamels and incineration which would be available to all such plants.

Control options that are affordable are available to all existing plants to reduce emissions to pre-modification levels or to meet the levels of the promulgated standards; therefore, the development of separate standards for modifications is not justified.

Under § 60.15 if physical or operational changes were made to an existing plant and the fixed capital cost of the new components exceeded 50 percent of the fixed capital cost that would be required to construct a comparable new facility, and it is technologically and economically feasible to meet the standards, the changes would qualify as a reconstruction. During development of the standards, EPA found that the capital cost of a new coating facility is approximately $30,000,000 (average of solvent-borne enamel and lacquer systems) and that the capital cost of implementing the standards is approximately $750,000 for that facility. In the extreme situation under reconstruction where the cost of a reconstructed facility would be $15,000,000, or 50 percent of the cost of a new facility, the cost of implementing the standards would still be $750,000 or 0.5 percent of the capital cost of the facility. The Administrator believes that this cost is not unreasonable and that relief is provided for a source in unusual financial stiuations through § 60.15 which requires that it be economically feasible for a reconstructed source to meet the applicable standards. Therefore, separate standards for reconstructed plants are not justified. The promulgated standards will apply to modified and reconstructed facilities as well as new facilities.

Legal Considerations

One commenter suggested that EPA should develop criteria to identify innovative control technologies for which "innovative waivers" may be granted.

On October 31, 1979, the White House issued a fact sheet on the President's Industrial Innovation Initiatives. Included in this fact sheet is a directive for the EPA Administrator to develop and publicize a clear implementation policy and set of criteria for the award of "innovative waivers" and to "assess the need for further regulatory authority." EPA is committed to carrying out this directive, and therefore the Administrator has requested that the Office of Enforcement initiate an implementation policy regarding the award of innovative technology waivers.

EPA will consider, but is not committed to, the commenter's request for specific innovative control technology criteria or procedures for issuing waivers for automobile and light-duty truck surface coating operations; EPA's decision will, in part, depend upon the outcome of the development of general criteria for innovative technology waivers.

Until the innovative control technology criterial are issued, EPA will continue to handle Section 111(j) waiver requests on a case-by-case basis.

Reference Methods and Monitoring

The two reference methods, Methods 24 and 25, were proposed along with the proposed standards for automobile and light-duty truck surface coating operations. Subsequently, these methods have been promulgated separately from these standards on Oct. 3, 1980 (45 FR 65956).

A revised version of the proposed Method 24 (Candidate 2) has been promulgated as the method to determine data used in the calculation of the VOC content of coatings. Procedures have been added to Method 24 to ensure that analytical data fall within established precision limits. In addition, the laboratory procedure for determining volume fraction of solids has been eliminated. Method 24 now requires volume fraction of solids be calculated from the coatings manufacturers' formulation data.

Changes to Method 25 include the new requirement of a performance test prior to use of analytical equipment. In addition, routine daily calibrations have been modified to be less time-consuming. Finally, minimum performance specifications for components of analytical equipment have been specified.

The detailed comments and responses regarding Methods 24 and 25 are presented in "Reference Methods 24 and 25—Background Information for Promulgated Test Methods" (EPA–450/3–79–030c).

In addition, one commenter recommended that Method 2 should not be specifically required and that a manifold system should be permitted for mixing and collecting a combined sample for multiple stacks in lieu of sampling each stack separately.

Method 2 requires that the volumetric flow rate be measured at the traverse points specified by Method 1. For new sources, provisions can be made during the design stage to allow for the proper location of the sampling ports which would be required. For reconstructed or modified sources where the standards may be applicable, the owner or operator can install stack extensions or use an increased number of traverse points as specified in Method 1. Therefore, the requirement to use Method 2 to measure the volumetric flow rate is reasonable and will not be changed.

In principle, a manifold system is acceptable. However, since many details are involved in designing an acceptable manifold system, approval of such a sampling technique will be made if the owner or operator can show to the Administrator's satisfaction that the use of a manifold system yields results comparable to those obtained by testing all stacks.

Several commenters stated opposition to the requirement dealing with the

monitoring of incinerators which are used to control VOC emissions. These commenters stated that the required accuracy of the temperature monitoring device (±2°C or ±3.5°F) was too

would incur a manpower demand of about six man-years.

A copy of the Reports Impact Analysis is included in subcategory IV–J of the automobile and light-duty truck

Act, may require the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in

aware of this possibility in planning for such facilities.

This regulation will be reviewed four years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of

7601(a)), and additional authority as noted below.

Subpart MM—Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations

"Guide coat operation" means the guide coat spray booth, flash-off area and bake oven(s) which are used to apply and dry or cure a surface coating between the prime coat and topcoat operation on the components of

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monitoring of incinerators which are used to control VOC emissions. These commenters stated that the required accuracy of the temperature monitoring device (±2°C or ±3.5°F) was too restrictive.

Data solicited by EPA from incinerator and temperature monitor vendors confirm that at the high temperatures 760–820°C (1400–1500°F) at which these incinerators operate, the required accuracy was too restrictive. As a result, it has been changed to the greater of ±0.75 percent of the temperature being measured expressed in degrees Celsius or ±2.5°C (±4°F).

Reports Impact Analysis

A reports impact analysis for the automobile and light-duty truck surface coating operations standards was prepared in implementation of Executive Order 12044 (44 FR 30988, May 29, 1979). The purpose of the analysis is to estimate the economic impact of the reporting and recordkeeping requirements that would be imposed by the promulgated standards and by those appearing in the General Provisions of 430 CFR Part 60. The standards would require the preparation of three types of reports. First, the General Provisions (Subpart A of 40 CFR 60) would require notification reports which inform the Agency of facilities subject to new source performance standards (NSPS). These reports include notification of construction, anticipated start-up, actual start-up, and physical or operational changes. Second, reports of the results of the performance test performed each calendar month would be required for those months when the affected facility is not in compliance with the standards. Third, quarterly reports from the owner or operator of a facility using incineration devices to comply with the standard would be required for periods when incinerator temperature falls below that measured during the incinerator's most recent performance test. These reports will show whether these devices are being properly operated and maintained.

The respondent group to the reporting requirements of the standards would be the automobile and light-duty truck manufacturing industry. It is estimated that through the fifth year of standards applicability, approximately four new, modified, or reconstructed assembly plants will have been established which would have to comply with the reporting requirements of the standards. To implement the reporting requirements of the standards through the first five years of applicability the automobile and light-duty truck manufacturing industry would incur a manpower demand of about six man-years.

A copy of the Reports Impact Analysis is included in subcategory IV–J of the automobile and light-duty truck surface coating operations docket A–79–05.

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the promulgated rule and EPA responses to comments, the contents of the docket will serve as the record in case of judicial review. [Section 307 (d)(a)].

Miscellaneous

As prescribed by Section 111, establishment of standards of performance for automobile and light-duty truck surface coating operations was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. Comments were requested specifically on Method 24 (Candidate 1 and Candidate 2) and on the coating material used as the basis for the prime coat emission limit.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> ". . . application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

Although emission control technology may be available that can reduce emission below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance because of costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act. may require the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" (LAER) for new or modified sources locating in nonattainment areas (i.e., those areas where statutorily mandated health and welfare standards are being violated). In this respect, Section 173 of the Act requires that new or modified sources constructed in an area which exceeds the NAAQS must reduce emissions to the level which reflects the LAER, as defined in Section 171(3). The statute defines LAER as the rate of emissions based on the following, whichever is more stringent:

> (A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
>
> (B) the most stringent emission limitation which is achieved in practice by such class or category of source.

In no event can the emission rate exceed any applicable new source performance standard.

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act. These provisions require that certain sources employ BACT as defined in Section 169(3) for all pollutants regulated under the Act. BACT must be determined on a case-by-case basis, taking energy, environmental, and economic impacts and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to Section 111 (or 112) of the Act.

In all cases, SIPs approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of NAAQS designed to protect public health and welfare. For this purpose, SIPs must, in some cases, require greater emission reduction than those required by standards of performance for new sources.

Finally, States are free under Section 116 of the Act to establish even more stringent emission limits than those established under Section 111 or those necessary to attain or maintain the NAAQS under Section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than standards of performance under Section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

This regulation will be reviewed four years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance under Section 111(b) of the Act. An economic impact assessment was prepared for the proposed standards and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that the promulgated standards would represent the best system of emission reduction considering costs. The economic impact assessment is included in the BID for the proposed standards.

Dated: December 17, 1980.

Douglas M. Costle,

Administrator

40 CFR Part 60 is amended as follows:

1. By adding a definition of the term "volatile organic compound" to § 60.2 of Subpart A—General Provisions as follows:

§ 60.2 Definitions

"Volatile Organic Compound" means any organic compound which participates in atmospheric photochemical reactions; or which is measured by a reference method, an equivalent method, an alternative method, or which is determined by procedures specified under any subpart.

2. By adding Subpart MM as follows:

Subpart MM—Standards of Performance for Automobile and Light-Duty Truck Surface Coating Operations

Sec.

60.390 Applicability and designation of affected facility.
60.391 Definitions.
60.392 Standards for volatile organic compounds.
60.393 Performance test and compliance provisions.
60.394 Monitoring of emissions and operations.
60.395 Reporting and recordkeeping requirements.
60.396 Reference methods and procedures.
60.397 Modifications.

Authority.—Sections 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart MM—Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations

§ 60.390 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to the following affected facilities in an automobile or light-duty truck assembly plant: each prime coat operation, each guide coat operation, and each topcoat operation.

(b) Exempted from the provisions of this subpart are operations used to coat plastic body components or all-plastic automobile or light-duty truck bodies on separate coating lines. The attachment of plastic body parts to a metal body before the body is coated does not cause the metal body coating operation to be exempted.

(c) The provisions of this subpart apply to any affected facility identified in paragraph (a) of this section that begins construction, reconstruction, or modification after October 5, 1979.

§ 60.391 Definitions.

(a) All terms used in this subpart that are not defined below have the meaning given to them in the Act and in Subpart A of this part.

"Applied coating solids" means the volume of dried or cured coating solids which is deposited and remains on the surface of the automobile or light-duty truck body.

"Automobile" means a motor vehicle capable of carrying no more than 12 passengers.

"Automobile and light-duty truck body" means the exterior surface of an automobile or light-duty truck including hoods, fenders, cargo boxes, doors, and grill opening panels.

"Bake oven" means a device that uses heat to dry or cure coatings.

"Electrodeposition (EDP)" means a method of applying a prime coat by which the automobile or light-duty truck body is submerged in a tank filled with coating material and an electrical field is used to effect the deposition of the coating material on the body.

"Electrostatic spray application" means a spray application method that uses an electrical potential to increase the transfer efficiency of the coating solids. Electrostatic spray application can be used for prime coat, guide coat, or topcoat operations.

"Flash-off area" means the structure on automobile and light-duty truck assembly lines between the coating application system (dip tank or spray booth) and the bake oven.

"Guide coat operation" means the guide coat spray booth, flash-off area and bake oven(s) which are used to apply and dry or cure a surface coating between the prime coat and topcoat operation on the components of automobile and light-duty truck bodies.

"Light-duty truck" means any motor vehicle rated at 3,850 kilograms gross vehicle weight or less, designed mainly to transport property.

"Plastic body" means an automobile or light-duty truck body constructed of synthetic organic material.

"Plastic body component" means any component of an automobile or light-duty truck exterior surface constructed of synthetic organic material.

"Prime coat operation" means the prime coat spray booth or dip tank, flash-off area, and bake oven(s) which are used to apply and dry or cure the initial coating on components of automobile or light-duty truck bodies.

"Purge" or "line purge" means the coating material expelled from the spray system when clearing it.

"Solvent-borne" means a coating which contains five percent or less water by weight in its volatile fraction.

"Spray application" means a method of applying coatings by atomizing the coating material and directing the atomized material toward the part to be coated. Spray applications can be used for prime coat, guide coat, and topcoat operations.

"Spray booth" means a structure housing automatic or manual spray application equipment where prime coat, guide coat, or topcoat is applied to components of automobile or light-duty truck bodies.

"Surface coating operation" means any prime coat, guide coat, or topcoat operation on an automobile or light-duty truck surface coating line.

"Topcoat operation" means the topcoat spray booth, flash-off area, and bake oven(s) which are used to apply and dry or cure the final coating(s) on components of automobile and light-duty truck bodies.

"Transfer efficiency" means the ratio of the amount of coating solids transferred onto the surface of a part or product to the total amount of coating solids used.

"VOC content" means all volatile organic compounds that are in a coating expressed as kilograms of VOC per liter of coating solids.

"Waterborne" or "water reducible" means a coating which contains more than five weight percent water in its volatile fraction.

(b) The nomenclature used in this subpart has the following meanings:

C_{aj} = concentration of VOC (as carbon) in the effluent gas flowing through stack (j) leaving the control device (parts per million by volume).

C_{bi} = concentration of VOC (as carbon) in the effluent gas flowing through stack (i)

V_{si} = proportion of solids by volume in each coating (i) as received

capture system and a control device to comply with the applicable emission limit specified under § 60.392.

(i) Calculate the volume weighted average mass of VOC per volume of applied coating solids for each calendar

(c) Select the appropriate transfer efficiency (T) from the following tables for each surface coating operation:

Application Method	Transfer efficiency
Air Atomized Spray (waterborne coating)	0.39

(ii) If the volume weighted average mass of VOC per volume of applied coating solids (G), calculated on a calendar month basis, is less than or equal to the applicable emission limit specified in § 60.392, the affected facility

values of the volumetric flow rate of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the device by the following equation where "n" is the total number of stacks entering the control device and "m" is the total number of stacks leaving

C_{aj} = concentration of VOC (as carbon) in the effluent gas flowing through stack (j) leaving the control device (parts per million by volume).
C_{bi} = concentration of VOC (as carbon) in the effluent gas flowing through stack (i) entering the control device (parts per million by volume).
C_{fk} = concentration of VOC (as carbon) in the effluent gas flowing through exhaust stack (k) not entering the control device (parts per million by volume).
D_{ci} = density of each coating (i) as received (kilograms per liter).
D_{dj} = density of each type VOC dilution solvent (j) added to the coatings, as received (kilograms per liter).
D_r = density of VOC recovered from an affected facility (kilograms per liter).
E = VOC destruction efficiency of the control device.
F = fraction of total VOC which is emitted by an affected facility that enters the control device.
G = volume weighted average mass of VOC per volume of applied solids (kilograms per liter).
L_{ci} = volume of each coating (i) consumed, as received (liters).
L_{ci}' = volume of each coating (i) consumed by each application method (l), as received liters).
L_{dj} = volume of each type VOC dilution solvent (j) added to the coatings, as received (liters).
L_r = volume of VOC recovered from an affected facility (liters).
L_s = volume of solids in coatings consumed (liters).
M_d = total mass of VOC in dilution solvent (kilograms).
M_o = total mass of VOC in coatings as received (kilograms).
M_r = total mass of VOC recovered from an affected facility (kilograms).
N = volume weighted average mass of VOC per volume of applied coating solids after the control device

$$\left(\frac{\text{kilograms of VOC}}{\text{liter of applied solids}}\right),$$

Q_{aj} = volumetric flow rate of the effluent gas flowing through stack (j) leaving the control device (dry standard cubic meters per hour).
Q_{bi} = volumetric flow rate of the effluent gas flowing through stack (i) entering the control device (dry standard cubic meters per hour).
Q_{fk} = volumetric flow rate of the effluent gas flowing through exhaust stack (k) not entering the control device (dry standard cubic meters per hour).
T = overall transfer efficiency.
T_l = transfer efficiency for application method (l).
V_{si} = proportion of solids by volume in each coating (i) as received

$$\left(\frac{\text{liter solids}}{\text{liter coating}}\right), \text{ and}$$

W_{oi} = proportion of VOC by weight in each coating (i), as received

$$\left(\frac{\text{kilograms VOC}}{\text{kilograms coating}}\right).$$

§ 60.392 Standards for volatile organic compounds

On and after the date on which the initial performance test required by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any affected facility VOC emissions in excess of:

(a) 0.16 kilograms of VOC per liter of applied coating solids from each prime coat operation.

(b) 1.40 kilograms of VOC per liter of applied coating solids from each guide coat operation.

(c) 1.47 kilograms of VOC per liter of applied coating solids from each topcoat operation.

§ 60.393 Performance test and compliance provisions.

(a) Sections 60.8 (d) and (f) do not apply to the performance test procedures required by this section.

(b) The owner or operator of an affected facility shall conduct an initial performance test in accordance with § 60.8(a) and thereafter for each calendar month for each affected facility according to the procedures in this section.

(c) The owner or operator shall use the following procedures for determining the monthly volume weighted average mass of VOC emitted per volume of applied coating solids.

(1) The owner or operator shall use the following procedures for each affected facility which does not use a capture system and a control device to comply with the applicable emission limit specified under § 60.392.

(i) Calculate the volume weighted average mass of VOC per volume of applied coating solids for each calendar month for each affected facility. The owner or operator shall determine the composition of the coatings by formulation data supplied by the manufacturer of the coating or from data determined by an analysis of each coating, as received, by Reference Method 24. The Administrator may require the owner or operator who uses formulation data supplied by the manufacturer of the coating to determine data used in the calculation of the VOC content of coatings by Reference Method 24 or an equivalent or alternative method. The owner or operator shall determine from company records on a monthly basis the volume of coating consumed, as received, and the mass of solvent used for thinning purposes. The volume weighted average of the total mass of VOC per volume of coating solids used each calendar month will be determined by the following procedures.

(A) Calculate the mass of VOC used in each calendar month for each affected facility by the following equation where "n" is the total number of coatings used and "m" is the total number of VOC solvents used:

$$M_o + M_d = \sum_{i=1}^{n} L_{ci} \; D_{ci} \; W_{oi} + \sum_{j=1}^{m} L_{dj} \; D_{dj}$$

[$\Sigma L_{dj} D_{dj}$ will be zero if no VOC solvent is added to the coatings, as received].

(B) Calculate the total volume of coating solids used in each calendar month for each affected facility by the following equation where "n" is the total number of coatings used:

$$L_s = \sum_{i=1}^{n} L_{ci} \; V_{si}$$

(c) Select the appropriate transfer efficiency (T) from the following tables for each surface coating operation:

Application Method	Transfer efficiency
Air Atomized Spray (waterborne coating)	0.39
Air Atomized Spray (solvent-borne coating)	0.50
Manual Electrostatic Spray	0.75
Automatic Electrostatic Spray	0.95
Electrodeposition	1.00

The values in the table above represent an overall system efficiency which includes a total capture of purge. If a spray system uses line purging after each vehicle and does not collect any of the purge material, the following table shall be used:

Application Method	Transfer efficiency
Air Atomized Spray (waterborne coating)	0.30
Air Atomized Spray (solvent-borne coating)	0.40
Manual Electrostatic Spray	0.62
Automatic Electrostatic Spray	0.75

If the owner or operator can justify to the Administrator's satisfaction that other values for transfer efficiencies are appropriate, the Administrator will approve their use on a case-by-case basis.

(1) When more than one application method (l) is used on an individual surface coating operation, the owner or operator shall perform an analysis to determine an average transfer efficiency by the following equation where "n" is the total number of coatings used and "p" is the total number of application methods:

$$T = \frac{\sum_{i=1}^{n} \sum_{l=1}^{p} T_l \; V_{si} \; L_{cil}}{L_s}$$

(D) Calculate the volume weighted average mass of VOC per volume of applied coating solids (G) during each calendar month for each affected facility by the following equation:

$$G = \frac{M_o + M_d}{L_s \; T}$$

(ii) If the volume weighted average mass of VOC per volume of applied coating solids (G), calculated on a calendar month basis, is less than or equal to the applicable emission limit specified in § 60.392, the affected facility is in compliance. Each monthly calculation is a performance test for the purpose of this subpart.

(2) The owner or operator shall use the following procedures for each affected facility which uses a capture system and a control device that destroys VOC (e.g., incinerator) to comply with the applicable emission limit specified under § 60.392.

(i) Calculate the volume weighted average mass of VOC per volume of applied coating solids (G) during each calendar month for each affected facility as described under § 60.393(c)(1)(i).

(ii) Calculate the volume weighted average mass of VOC per volume of applied solids emitted after the control device, by the following equation:
N = G[1-FE]

(A) Determine the fraction of total VOC which is emitted by an affected facility that enters the control device by using the following equation where "n" is the total number of stacks entering the control device and "p" is the total number of stacks not connected to the control device:

$$F = \frac{\sum_{i=1}^{n} Q_{bi} \; C_{bi}}{\sum_{l=1}^{n} Q_{bi} \; C_{bi} + \sum_{k=1}^{p} Q_{fk} \; C_{fk}}$$

If the owner can justify to the Administrator's satisfaction that another method will give comparable results, the Administrator will approve its use on a case-by-case basis.

(1) In subsequent months, the owner or operator shall use the most recently determined capture fraction for the performance test.

(B) Determines the destruction efficiency of the control device using values of the volumetric flow rate of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the device by the following equation where "n" is the total number of stacks entering the control device and "m" is the total number of stacks leaving the control device:

$$E = \frac{\sum_{i=1}^{n} Q_{bi} \; C_{bi} - \sum_{j=1}^{m} Q_{aj} \; C_{aj}}{\sum_{i=1}^{n} Q_{bi} \; C_{bi}}$$

(1) In subsequent months, the owner or operator shall use the most recently determined VOC destruction efficiency for the performance test.

(C) If an emission control device controls the emissions from more than one affected facility, the owner or operator shall measure the VOC concentration (C_{bi}) in the effluent gas entering the control device (in parts per million by volume) and the volumetric flow rate (Q_{bi}) of the effluent gas (in dry standard cubic meters per hour) entering the device through each stack. The destruction or removal efficiency determined using these data shall be applied to each affected facility served by the control device.

(iii) If the volume weighted average mass of VOC per volume of applied solids emitted after the control device (N) calculated on a calendar month basis is less than or equal to the applicable emission limit specified in § 60.392, the affected facility is in compliance. Each monthly calculation is a performance test for the purposes of this subpart.

(3) The owner or operator shall use the following procedures for each affected facility which uses a capture system and a control device that recovers the VOC (e.g., carbon adsorber) to comply with the applicable emission limit specified under § 60.392.

(i) Calculate the mass of VOC ($M_o + M_d$) used during each calendar month for each affected facility as described under § 60.393(c)(1)(i).

(ii) Calculate the total volume of coating solids (L_s) used in each calendar month for each affected facility as described under § 60.393(c)(1)(i).

(iii) Calculate the mass of VOC recovered (M_r) each calendar month for

§ 60.395 Reporting and recordkeeping requirements.

(a) Each owner or operator of an affected facility shall include the data outlined in subparagraphs (1) and (2) in the initial compliance report required by

immediately before the catalyst bed, when the coating system is operational, is more than 28° C less than the average temperature immediately before the catalyst bed during the most recent control device performance test at

(c) For Reference Method 25, the sampling time for each of three runs must be at least one hour. The minimum sample volume must be 0.003 dscm except that shorter sampling times or smaller volumes, when necessitated by

(ii) Calculate the total volume of coating solids (L_s) used in each calendar month for each affected facility as described under § 60.393(c)(1)(i).

(iii) Calculate the mass of VOC recovered (M_r) each calendar month for each affected facility by the following equation: $M_r = L_r D_r$

(iv) Calculate the volume weighted average mass of VOC per volume of applied coating solids emitted after the control device during a calendar month by the following equation:

$$N = \frac{M_o + M_d - M_r}{L_s T}$$

(v) If the volume weighted average mass of VOC per volume of applied solids emitted after the control device (N) calculated on a calendar month basis is less than or equal to the applicable emission limit specified in § 60.392, the affected facility is in compliance. Each monthly calculation is a performance test for the purposes of this subpart.

§ 60.394 Monitoring of emissions and operations.

The owner or operator of an affected facility which uses an incinerator to comply with the emission limits specified under § 60.392 shall install, calibrate, maintain, and operate temperature measurement devices as prescribed below:

(a) Where thermal incineration is used, a temperature measurement device shall be installed in the firebox. Where catalytic incineration is used, a temperature measurement device shall be installed in the gas stream immediately before and after the catalyst bed.

(b) Each temperature measurement device shall be installed, calibrated, and maintained according to accepted practice and the manufacturer's specifications. The device shall have an accuracy of the greater of ±0.75 percent of the temperature being measured expressed in degrees Celsius or ±2.5° C.

(c) Each temperature measurement device shall be equipped with a recording device so that a permanent record is produced.

(Section 114 of the Clean Air Act as amended (42 U.S.C. 74140))

§ 60.395 Reporting and recordkeeping requirements.

(a) Each owner or operator of an affected facility shall include the data outlined in subparagraphs (1) and (2) in the initial compliance report required by § 60.8.

(1) The owner or operator shall report the volume weighted average mass of VOC per volume of applied coating solids for each affected facility.

(2) Where compliance is achieved through the use of incineration, the owner or operator shall include the following additional data in the control device initial performance test requried by § 60.8(a) or subsequent performance tests at which destruction efficiency is determined: the combustion temperature (or the gas temperature upstream and downstream of the catalyst bed), the total mass of VOC per volume of applied coating solids before and after the incinerator, capture efficiency, the destruction efficiency of the incinerator used to attain compliance with the applicable emission limit specified in § 60.392 and a description of the method used to establish the fraction of VOC captured and sent to the control device.

(b) Following the initial report, each owner or operator shall report the volume weighted average mass of VOC per volume of applied coating solids for each affected facility during each calendar month in which the affected facility is not in compliance with the applicable emission limit specified in § 60.392. This report shall be postmarked not later than ten days after the end of the calendar month that the affected facility is not in compliance. Where compliance is achieved through the use of a capture system and control device, the volume weighted average after the control device should be reported.

(c) Where compliance with § 60.392 is achieved through the use of incineration, the owner or operator shall continuously record the incinerator combustion temperature during coating operations for thermal incineration or the gas temperature upstream and downstream of the incinerator catalyst bed during coating operations for catalytic incineration. The owner or operator shall report quarterly as defined below.

(1) For thermal incinerators, every three-hour period shall be reported during which the average temperature measured is more than 28°C less than the average temperature during the most recent control device performance test at which the destruction efficiency was determined as specified under § 60.393.

(2) For catalytic incinerators, every three-hour period shall be reported during which the average temperature immediately before the catalyst bed, when the coating system is operational, is more than 28° C less than the average temperature immediately before the catalyst bed during the most recent control device performance test at which destruction efficiency was determined as specified under § 60.393. In addition, every three-hour period shall be reported each quarter during which the average temperature difference across the catalyst bed when the coating system is operational is less than 80 percent of the average temperature difference of the device during the most recent control device performance test at which destruction efficiency was determined as specified under § 60.393.

(3) For thermal and catalytic incinerators, if no such periods occur, the owner or operator shall submit a negative report.

(d) The owner or operator shall notify the Administrator 30 days in advance of any test by Reference Method 25.

(Section 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.396 Reference methods and procedures.

(a) The reference methods in Appendix A to this part, except as provided in § 60.8 shall be used to conduct performance tests.

(1) Reference Method 24 or an equivalent or alternative method approved by the Administrator shall be used for the determination of the data used in the calculation of the VOC content of the coatings used for each affected facility. Manufacturers' formulation data is approved by the Administrator as an alternative method to Method 24. In the event of dispute, Reference Method 24 shall be the referee method.

(2) Reference Method 25 or an equivalent or alternative method approved by the Administrator shall be used for the determination of the VOC concentration in the effluent gas entering and leaving the emission control device for each stack equipped with an emission control device and in the effluent gas leaving each stack not equipped with a control device.

(3) The following methods shall be used to determine the volumetric flow rate in the effluent gas in a stack:

(i) Method 1 for sample and velocity traverses,

(ii) Method 2 for velocity and volumetric flow rate,

(iii) Method 3 for gas analysis, and

(iv) Method 4 for stack gas moisture.

(b) For Reference Method 24, the coating sample must be a 1-liter sample taken in a 1-liter container.

(c) For Reference Method 25, the sampling time for each of three runs must be at least one hour. The minimum sample volume must be 0.003 dscm except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Administrator. The Administrator will approve the sampling of representative stacks on a case-by-case basis if the owner or operator can demonstrate to the satisfaction of the Administrator that the testing of representative stacks would yield results comparable to those that would be obtained by testing all stacks.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.397 Modifications.

The following physical or operational changes are not, by themselves, considered modifications of existing facilities:

(1) Changes as a result of model year changeovers or switches to larger cars.

(2) Changes in the application of the coatings to increase coating film thickness.

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Part XI

Department of Education

Library Career Training Program (Title II-B HEA)

DEPARTMENT OF EDUCATION

34 CFR Part 776

Library Career Training Program (Title II-B HEA)

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Library Career Training Program (Title II-B HEA) to implement changes made by the Education Amendments of 1980. The regulations are intended to provide assistance to institutions of higher education in training persons to enter the field of librarianship.

EFFECTIVE DATE: These regulations take effect 45 days after publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Klassen, Division of Library Programs, Office of Libraries and Learning Technologies, 400 Maryland Avenue, SW., Washington, D.C. 20202, Telephone: (202) 245-2870.

SUPPLEMENTARY INFORMATION: On November 14, 1980, the Secretary published a notice of proposed rulemaking for the Library Career Training Program (45 FR 75284). The Secretary proposed to amend the regulations to implement changes made by the Education Amendments of 1980.

Interested persons were invited to submit comments and recommendations regarding the proposed regulations. Comments received in response to the notice of proposed rulemaking are discussed in the following paragraphs.

Comment: Several commenters suggested that the Secretary should not require information that is already being gathered by or is available from other Federal agencies.

Response: The Secretary has not required any information that is not listed in the November 14 notice. Based on any comments received and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is

PART 776—LIBRARY CAREER TRAINING PROGRAM

Subpart A—General

Sec.
776.1 Description of the Library Career Training Program.

Subpart A—General

§ 776.1 Description of the Library Career Training Program.

The Secretary awards grants and contracts for the purpose of—

(a) Training persons in librarianship

"Dependent" means any of the following, provided that any person to be claimed in (1), (2) or (3) has received more than half of his/her support from the participant for the calendar year in which the school year begins:

(1) any relative by blood or marriage

recognized occupation and which meets the provisions of clauses (1), (2), (4), and (5). For purposes of this subsection, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the

DEPARTMENT OF EDUCATION

34 CFR Part 776

Library Career Training Program (Title II-B HEA)

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is issuing regulations for the Library Career Training Program authorized by Title II of the Higher Education Act of 1965, as amended. The regulations are being amended to reflect the statutory changes contained in the Education Amendments of 1980, incorporate the general selection criteria in the Education Division General Administrative Regulations (EDGAR), and reflect administrative policy decisions.

EFFECTIVE DATE: These final regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register.** The effective date is changed by statute if the Congress takes certain adjournments. If you want to know the effective date of these final regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Frank A. Stevens, U.S. Department of Education (Room 3622, ROB-3), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245-9530.

SUPPLEMENTARY INFORMATION: The Library Career Training Program is authorized by Part B of Title II of the Higher Education Act, as amended by the Education Amendments of 1980, Pub. L. 96-374. Under the Library Career Training Program the Secretary makes grants or contracts to institutions of higher education and library organizations or agencies. The purpose of the program is to train persons in librarianship through institutes, fellowships and traineeships, and establish, expand, or develop programs of library and information sciences.

On November 14, 1980, the Secretary published a notice in the **Federal Register** of the Department's intent to publish regulations necessary to implement the Education Amendments of 1980. In that notice, the Department listed the existing regulations affected by the new law and requested comments whether those regulations required information that is already being gathered by or is available from any other agency or authority of the United States. The regulations in this document are based on regulations listed in the November 14 notice. Based on any comments received and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

These regulations have been rewritten for brevity and clarity. In substance, however, these regulations are largely the same as their predecessor. Most of the changes are mandated by the Education Amendments of 1980.

Because of the need to make awards based on these regulations early in 1981, it is not possible to obtain public comment upon them. However, it is intended that these regulations will undergo a more thorough and exhaustive revision at a later date for implementation in FY 1982, at which time these regulations will be made available for public comment.

The most significant revisions to the regulations include:

(a) The incorporation of the standard selection criteria contained in the Education Division General Administrative Regulations (EDGAR);

(b) The addition of the Secretary's authority to enter into contracts as well as grants;

(c) An increase in the amount of stipends and institutional support;

(d) A clarification of the Secretary's authority to establish funding priorities for each fiscal year;

(e) The expansion of the program purposes to include the development of new techniques of information transfer and communication technology; and

(f) The limitation of dependency allowances to trainees on a hardship basis only.

These regulations are being codified in Title 34 of the Code of Federal Regulations along with other Department of Education programs.

CITATION OF LEGAL AUTHORITY: A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(20 U.S.C. 1021, 1032)

Dated: December 19, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.036, Library Career Training. Part I of OMB Circular A-95 does not apply.)

The Secretary revises Part 776 of 34 CFR to read as follows:

PART 776—LIBRARY CAREER TRAINING PROGRAM

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Authority: Part B of Title II of the Higher Education Act of 1965, as amended by Education Amendments of 1980, 94 Stat. 1383 (20 U.S.C. 1021).

Subpart A—General

§ 776.1 Description of the Library Career Training Program.

The Secretary awards grants and contracts for the purpose of—

(a) Training persons in librarianship through institutes, fellowships, or traineeships; and

(b) Establishing, developing, and expanding programs of library and information science, including new techniques of information transfer and communication technology.

(Sections 201 and 222 of the Act; 20 U.S.C. 1021, 1032)

§ 776.2 Eligible parties.

Eligible applicants include—

(a) An institution of higher education that has or is planning to have a graduate or undergraduate library education program; and

(b) A library organization or agency that can conduct a training project consistent with the purposes of the Act.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.3 Regulations that apply to grants.

The following regulations apply to grants under the Library Career Training Program:

(a) The Education Division General Administrative Regulations (EDGAR) 34 CFR Parts 75 and 77.

(b) The regulations in this Part 776.

(20 U.S.C. 3474)

§ 776.4 Regulations that apply to contracts.

The regulations in this part do not govern procurement contracts under the Library Career Training Program. These contracts are subject to—

(a) Federal and Department procurement regulations in 41 CFR Chapters 1 and 34; and

(b) Requirements and criteria in particular requests for proposals (RFP's) published in the Commerce Business Daily.

(20 U.S.C. 3474)

§ 776.5 Definitions that apply to the Library Career Training Program.

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR Part 77: Applicant, Application, Award, Contract, Department, Grant, Grantee, Local Educational Agency, Nonprofit, Private, Project, Project period, Public, Secretary, State Educational Agency.

(b) Definitions that apply to this part. The following definitions apply to this part:

"Act" means the Higher Education Act, as amended.

"Dependent" means any of the following, provided that any person to be claimed in (1), (2) or (3) has received more than half of his/her support from the participant for the calendar year in which the school year begins:

(1) any relative by blood or marriage and any in-law of the participant;

(2) any individual living in the participant's household, so long as this relationship is not in violation of local law; and

(3) any legally adopted child or a child placed in the participant's home for adoption by a licensed child-placing agency.

"Fellowship" means an award to a participant engaged in a regular, full-time academic program in an institution of higher education that enables the participant to earn an academic degree.

"Institute" means an intensive short-term or regular-session project of specialized training designed to train individuals in particular principles and practices of librarianship.

"Institution of higher education" means an educational institution in any State which—

(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond secondary education;

(3) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association or, if not so accredited—

(i) is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet the accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or

(ii) is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. Such term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (1), (2), (4), and (5). For purposes of this subsection, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of training offered. Such term also includes a public or nonprofit private educational institution in any State which, in lieu of the requirement in clause (1), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

"Librarianship" means the study of the principles and practices of the library and information sciences, including the acquisition, organization, storage, retrieval, and dissemination of information and reference and research use of the library and other information resources.

"Library organization or agency" means a State library agency, a State educational agency, a public library, a local educational agency, a national, State, regional or local library association, or any other public or private agency providing library service programs.

"Non-self-contained institute" is one in which not all participants are receiving Federal support under this program.

"Paraprofessional" means a person with special skills or capacities for professional work who can support or complement a professional. The term includes positions identified as library assistant, technical assistant, library technician, media technician, library aide, but excludes positions characterized as clerical, service, and custodial. The minimum educational objective for these positions is participation in a course (or courses) leading to graduation from a junior or community college (or its equivalent) in a paraprofessional library curriculum.

"Participant" means an individual enrolled in a training project assisted with Federal funds under this part.

"Self-contained institute" is one in which all participants are receiving Federal support under this program.

"State agency" means the state agency designated under section 1203 of the Act.

"Traineeship" means an award to a participant enrolled in a discrete training program that is not a regular academic program.

(Sections 201 and 222 of the Act; 20 U.S.C. 1021, 1032)

Subpart B—Kinds of Projects for Which Grants Are Made

Subpart C—How To Apply for a Grant

(e) Developing new methods for

(5) *Adequacy of resources.*

(ii) The

Subpart B—Kinds of Projects for Which Grants Are Made

§ 776.10 Types of projects.

A grantee may support—

(a) An institute project which provides persons with the necessary skills to enter the library field and provides professional librarians—including library educators—an opportunity to update their competencies.

(b) A fellowship project which provides full-time study in a graduate or undergraduate level program in libary and information science. The project may result in the award of a specific degree or may provide specialized training in some aspect of librarianship.

(c) A traineeship project which provides paraprofessional and professional librarians the opportunity to work and study in a discrete training project designed to fulfill individual professional goals.

(Sections 201 and 222 of the Act; 20 U.S.C. 1021, 1032)

§ 776.11 Program objectives.

Applicants are encouraged to design projects that further the following objectives—

(a) Increasing the opportunities of minorities or the economically disadvantaged, or both, for training in librarianship;

(b) Increasing the opportunities for upward mobility of women and minorities through the advanced degree level programs;

(c) Training librarians to work more responsively with the disadvantaged; or

(d) Developing viable alternatives to traditional library service patterns including improved use of new techniques of information transfer and communication technology.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.12 Project duration.

(a) A fellowship project must provide at least one academic year but not more than 12 months of training.

(b) A short-term institute project must provide less than one academic year of training. The usual short-term training session is 1 to 12 weeks in length.

(c) A long-term institute project must provide at least one academic year but not more than 12 months of training.

(d) A traineeship project must provide at least three months but not more than 12 months of training.

(Section 222 of the Act; 20 U.S.C. 1032)

Subpart C—How To Apply for a Grant

§ 776.20 Limitation on number of applications.

(a) The Secretary publishes a notice of closing date each fiscal year in the **Federal Register.**

(b) In response to the notice of closing date, an applicant may submit—

(1) Only one application for a fellowship project;

(2) Any number of applications for institute and traineeship projects.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.21 Application requirements.

An applicant must demonstrate, on the application form furnished by the Secretary, that the proposed project meets the requirements of the Act and applicable regulations. The applicant must address each funding criterion.

(Section 222 of the Act; 20 U.S.C. 1032)

Subpart D—How a Grant Is Made

§ 776.30 How the Secretary judges applications.

(a) The Secretary evaluates an application for an institute project on the basis of the criteria in § 776.34 and § 776.35, and awards up to 207 possible points for these criteria.

(b) The Secretary evaluates an application for a fellowship project on the basis of the criteria in § 776.34 and § 776.36, and awards up to 108 possible points for these criteria.

(c) The Secretary evaluates an application for a traineeship project on the basis of the criteria in § 776.34 and § 776.37, and awards up to 111 possible points for these criteria.

(d) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.31 Funding priorities—institute projects.

The Secretary may, in any fiscal year, select from the following activities and announce in the **Federal Register** those to be given priority:

(a) Recruiting minority or economically deprived persons, or both, into the library field as professionals or paraprofessionals.

(b) Training or retraining professional librarians to serve the disadvantaged, including the aged and handicapped.

(c) Training professional librarians in the use of new techniques of information transfer and communication technology.

(d) Retraining professional librarians to achieve competence in other areas of special need, selected by the Secretary.

(e) Developing new methods for recruitment, training and the use of library personnel.

(f) Training or retraining individuals to obtain or improve skills in library administration, management or supervision.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.32 Funding priorities—fellowship projects.

The Secretary may, in any fiscal year, select from the following activities and announce in the **Federal Register** those to be given priority:

(a) Two-year associate degree level projects.

(b) Bachelor's degree level projects.

(c) Master's degree level projects.

(d) Post-master's degree or certificate level projects.

(e) Doctoral degree level projects.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.33 Funding priorities—traineeship projects.

The Secretary may, in any fiscal year, select from the following activities and announce in the **Federal Register** a priority for traineeships for individuals possessing a—

(a) Master's degree.

(b) Baccalaureate degree.

(c) Associate degree.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.34 General selection criteria for evaluating applications.

(a) The Secretary uses the following general selection criteria to evaluate applications for all new grants. Special selection criteria for institute, fellowship and traineeship projects are included in §§ 776.35–37.

(b) The general selection criteria are assigned different values for institute, fellowship and traineeship projects. The maximum values for the general selection criteria for each type of project are included in §§ 776.35–37.

(1) *Plan of operation.*

(i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.*

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(9)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.*

(i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.*

(i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.*

(i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.35 Special selection criteria for evaluating institute applications.

(a) The Secretary uses the special selection criteria in this section and the general criteria in § 776.34 to evaluate institute applications.

(b) The Secretary looks for information that shows—

(1) *The extent to which the proposed project is justified. (10 points)*

(i) The project will contribute to the preparation of librarians with specialized skills.

(ii) The proposed project addresses itself to an appropriate training need.

(iii) The subject is important and timely.

(iv) The proposed project addresses itself to the chosen annual priority(ies).

(2) *The extent to which participant selection is appropriate. (10 points)*

(i) The participant selection criteria are appropriate for the type of training being offered and realistic to meet project objectives.

(ii) The proposed training project is related accurately to the experience and duties of the participant.

(iii) The proposed number of participants can be accommodated by the proposed project method.

(3) *The extent to which the proposed project will be effective. (30 points)*

(i) The subject of the proposed project is appropriate for intensive or long-range training.

(ii) There is adequate project potential for the solution of the training problem or need.

(iii) The proposed professional education is in accorance with accepted standards.

(iv) There is a satisfactory blend of the theoretical and the practical.

(v) The training approaches are new and imaginative.

(vi) Participants will be involved in innovative and creative activities.

(vii) The proposed project will maintain focus on the subject.

(4) *The extent to which the institute format is appropriate. (5 points)*

(i) The type of institute (self-contained or non-self-contained) is properly chosen.

(ii) The proposed timing is well chosen.

(iii) The length of the institute is appropriate.

(5) *The extent to which program purposes will be achieved. (30 points)*

(i) The proposed project will contribute to librarianship training.

(ii) Prospects for employment or advancement will be provided.

(iii) Training opportunities will be provided for minority groups, or economically disadvantaged persons.

(6) *The extent to which there is potential for replication. (2 points)*

There is potential for reproducing the results of the project in other projects or programs for similar educational purposes.

(7) *The extent to which there is potential for dissemination. (5 points)*

There is potential for disseminating the results of the project and for making project material available to interested parties.

(8) *Plan of operation. (40 points)*

(9) *Quality of key personnel. (25 points)*

(10) *Budget and cost effectiveness. (15 points)*

(11) *Evaluation plan. (25 points)*

(12) *Adequacy of resources. (10 points)*

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.36 Special selection criteria for evaluating fellowship applications.

(a) The Secretary uses the special selection criteria in this section and the general criteria in § 776.34 to evaluate fellowship applications.

(b) the Secretary looks for information that shows—

(1) *Adequacy of project content. (9 points)*

(i) The character and scope of the proposed project are timely, realistic, up-to-date, and well-constructed.

(ii) Contemplated changes to regular academic curriculum are well conceived.

(iii) The catalog provides sufficient information about the program.

(iv) Common course requirements meet acceptable standards.

(v) The student field experience component is sufficient.

(2) *Adequacy of project content as related to objectives. (5 points)*

The objectives can be achieved by project content.

(3) *Adequacy of qualifications for admission. (10 points)*

(i) Selection criteria for fellows are suitable and sufficient.

(ii) Applied tests are well recommended.

(iii) Scholarship requirements are adequate.

(4) *Level of institutional expenditures. (10 points)*

(i) The ratio of institutional expenditures for education in librarianship to enrollment is satisfactory.

(1) *Opportunities for minority groups, or disadvantaged persons. (17 points)*

The extent to which the proposed project will substantially further the objectives of increasing the opportunities of minority group persons, or economically disadvantaged persons,

(c) For traineeship projects, the Secretary may pay either the costs described in (a) or (b) of this section.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.41 Limitation on costs.

(a) The grantee may not charge a

(d) If the fellow does not attend the summer session, the grantee is not entitled to the support for the summer.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.44 Stipends for participants in

case of short-term projects, $20 for each dependent for a week may be provided.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.48 Coordination with other groups.

Each institution of higher education

§ 776.53 Selection of participants.

A grantee has the responsibility for the selection of project participants.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.54 Substitutions

(4) *Level of institutional expenditures. (10 points)*

(i) The ratio of institutional expenditures for education in librarianship to enrollment is satisfactory.

(ii) Expenditures are comparable to other library education programs with similar curricula and student enrollment.

(5) *Quantity of enrollment and degrees awarded. (5 points)*

(i) Enrollment and the number of degrees awarded by the institution are increasing.

(ii) The ratio of the number of degrees awarded to enrollment is satisfactory.

(6) *Quantity of institutional fellowships and scholarships. (5 points)*

(i) Institutional fellowships and scholarships are increasing.

(ii) The ratio of the requested number of Title II–B fellowships to the institutionally supported number is satisfactory.

(7) *Adequacy of prospects for increasing training opportunities. (15 points)*

(i) There is evidence that the proposed project will be adequately promoted and that there will be effective recruitment.

(ii) The level of training selected is appropriate to the applicant's capabilities or experience in this field.

(8) *Prospect for achieving program objectives. (10 points)*

(i) The extent to which the proposed project will substantially further the objective of increasing the opportunities of minority group persons, or economically disadvantaged persons, or both, for training in librarianship.

(ii) The extent to which the proposed project will substantially further the objective of training librarians to work more responsively with the disadvantaged.

(iii) The extent to which the proposed project will substantially further the objective of developing viable alternatives to traditional library service patterns.

(9) *Plan of operation. (14 points)*

(10) *Quality of key personnel. (10 points)*

(11) *Budget and cost effectiveness. (5 points)*

(12) *Evaluation plan. (5 points)*

(13) *Adequacy of resources. (5 points)*

(Section 222; 20 U.S.C. 1032)

§ 776.37 Special selection criteria for evaluating traineeship applications.

(a) The Secretary uses the special selection criteria in this section and the general criteria in § 776.34 to evaluate traineeship applications.

(b) The Secretary looks for information that shows—

(1) *Opportunities for minority groups, or disadvantaged persons. (17 points)*

The extent to which the proposed project will substantially further the objectives of increasing the opportunities of minority group persons, or economically disadvantaged persons, or both, for advanced training in librarianship.

(2) *Alternatives to traditional library service. (16 points)*

The extent to which the proposed project will substantially further the objectives of training librarians to work more responsively with the disadvantaged and developing viable alternatives to traditional library service patterns.

(3) *Internship opportunities. (16 points)*

The extent to which internship opportunities are available to participants through cooperating library agencies, and the appropriateness of those internship opportunities to the project objectives.

(4) *Behavioral objectives. (16 points)*

The extent to which behavioral objectives are appropriate as related to the project objectives and the participant selection criteria.

(5) *Individualized activities. (16 points)*

The extent to which project activities and objectives are individualized.

(6) *Plan of operation. (10 points)*

(7) *Quality of key personnel. (7 points)*

(8) *Budget and cost effectiveness. (5 points)*

(9) *Evaluation plan. (5 points)*

(10) *Adequacy of resources. (3 points)*

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.38 Apportionment.

At least 50 percent of the grants awarded by the Secretary under this part are for fellowships or traineeships.

(Section 222 of the Act; 20 U.S.C. 1032)

Subpart E—Conditions That Must Be Met by a Grantee

§ 776.40 Fiscal requirements.

(a) For fellowship projects, the Secretary may pay the costs described in § 776.43 (Institutional support), § 776.44 (Stipends for participants in fellowship projects), § 776.46 (Travel allowances for project participants), and § 776.47 (Allowances for dependents of project participants).

(b) For institute projects, the Secretary may pay the cost described in § 776.45 (Stipends for participants in institute projects), § 776.46 (Travel allowances for project participants), § 776.47 (Allowances for dependents of project participants), and 34 CFR 75.530. (EDGAR—General Cost Principles)

(c) For traineeship projects, the Secretary may pay either the costs described in (a) or (b) of this section.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.41 Limitation on costs.

(a) The grantee may not charge a participant that receives Federal support under this part tuition and fees, but may charge for room and board.

(b) In the case of a non-self-contained institute, regularly enrolled students of the grantee who are admitted to the institute may not receive stipends or travel allowances from the proceeds of the grant. The grantee shall pay a proportional share of the cost of the institute based on the number of regularly enrolled students who attend the institute.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.42 Evaluation of institute and traineeship projects.

An application for an institute or traineeship project must include an evaluation plan to be carried out by a third party. The evaluation plan must describe how the applicant will—

(a) Determine the extent to which objectives of the project are being met;

(b) Determine the factors responsible for the achievement—or lack of achievement—of the objectives of the project; and

(c) Encourage the inclusion of successful aspects of the project in other educational programs.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.43 Institutional support.

(a) The Secretary pays institutional support to a grantee in conjunction with a fellowship awarded to a participant to assist in covering the cost of courses of training in librarianship.

(b) The Secretary pays institutional support based on the training level of the project:

(1) For each fellowship awarded at the undergraduate level—$1500 for an academic year and $250 for a summer session.

(2) For each fellowship awarded at the master's level—$3500 for an academic year and $500 for a summer session.

(3) For each fellowship awarded at the post-master's and doctoral level—$5200 for an academic year and $800 for a summer session.

(c) The grantee is entitled to one-half the amount of institutional support for an academic year as soon as the fellow begins his training. The grantee is entitled to the second half when the fellow, or a substitute fellow, enrolls for the following academic term.

(d) If the fellow does not attend the summer session, the grantee is not entitled to the support for the summer.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.44 Stipends for participants in fellowship projects.

The Secretary pays stipends for participants in fellowship projects based on the training level of the project:

(a) Undergraduate level—$1500 for an academic year and $250 for a summer session.

(b) Master's level—$3500 for an academic year and $500 for a summer session.

(c) Post-master's and doctoral level—$5200 for an academic year and $800 for a summer session.

§ 776.45 Stipends for participants in institute projects.

The Secretary may pay stipends for participants in institute projects depending upon the nature and objectives of the training project. Stipends are based on the length and training level of the project:

(a) Long-term, full-time, post-baccalaureate level—$3500 for an academic year and $500 for a summer session.

(b) Long-term, full-time, pre-baccalaureate level—$1,500 for an academic year and $250 for a summer session.

(b) Long-term, full-time, pre-baccalaureate level—$1,500 for an academic year and $250 for a summer session.

(c) Short-term, full-time—$100 a week. A week is defined as any consecutive seven day period.

(d) Part-time—$20 a day. A day is defined as eight hours of training.

(Section 222 of the Act; 20 U.S.C.)

§ 776.46 Travel allowances for project participants.

The Secretary may authorize upon request of the project director travel allowances for participants only—

(a) in cases of extreme hardship; and

(b) if travel is necessary for successful participation in the project. The mileage rate shall be consistent with current Federal travel regulations.

(Section 222 of the Act; U.S.C. 1032)

§ 776.47 Allowances for dependents of project participants.

The Secretary may authorize upon request of the project director allowances for the dependents of project participants in cases of extreme hardship. The amount that may be provided is $450 for each dependent for an academic year, $50 for each dependent for a summer session. In the case of short-term projects, $20 for each dependent for a week may be provided.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.48 Coordination with other groups.

Each institution of higher education that receives a grant under this part shall annually inform the State agency designated under section 1203 of the Act of its project activities.

(Section 202 of the Act; 20 U.S.C. 1022)

Subpart F—The Administrative Responsibilities of a Grantee

§ 776.50 Eligible participants.

To be enrolled as a participant in a training project and receive Federal support an individual must be a national of the United States, or be in the United States for other than a temporary purpose, and intend to become a permanent resident of the United States; and—

(a) Be engaged in, or preparing to engage in, a profession or other occupation involving librarianship—this includes library paraprofessionals;

(b) Be concerned with the study or teaching of library media or information science;

(c) Have majored in library science at the undergraduate level; or

(d) Have a graduate degree in library science.

(Sections 201 and 222 of the Act; 20 U.S.C. 1021 and 1032)

§ 776.51 Eligibility for fellowships

In addition to the requirements of § 776.50, to receive Federal support a participant in a fellowship project must—

(a) Have at least a high school diploma or its equivalent; and

(b) Have been accepted for enrollment on a full-time basis in a program of library and information science. A full-time basis means carrying a program load sufficient to allow the student to complete the course of study in the normal time period.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.52 Eligibility for traineeships.

In addition to the requirements of § 776.50, to receive Federal support a participant in a traineeship project must—

(a) Have at least a high school diploma or its equivalent, and

(b) Have been accepted for enrollment in a discrete program of study that is not a regular part of the academic program being conducted by an institution of higher education, library organizaton or agency.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.53 Selection of participants.

A grantee has the responsibility for the selection of project participants.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.54 Substitutions.

When a participant withdraws from a training project, another participant may be substituted by the grantee provided that the new participant can successfully complete the training project at no additional cost to the Government. The grantee shall notify the Department of Education in writing within 30 days of withdrawal or substitution of the participant.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.55 Payments to participants.

(a) An applicant must describe in the application the amount to be paid to participants for stipends, dependency and travel allowances. The grant includes the amount of stipends, dependency and travel allowances to be paid to the appropriate project participants.

(b) The grantee disburses the stipends, dependency and travel allowances to the appropriate project participants.

(c) If a participant fails to complete a period of training for which a stipend payment has been made, the grantee must recover the excess payment.

(d) If a substitution is not made when a participant withdraws from a training project, the grantee must refund to the Federal Government the remaining proportional share of stipends, dependency and travel allowances.

(e) A grantee may make no deductions from payments to participants except as provided in § 776.56.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.56 Payment adjustments.

(a) When a participant withdraws from a training project, the stipend and any dependency allowances the participant received must be prorated according to the number of weeks in the training period. Attendance in any part of a week is counted as a full week for the purposes of prorating a stipend.

(b) The date of withdrawal is the participant's last day of class attendance or the date the grantee determines that the participant has ceased to maintain academic proficiency.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.57 Assistance under other Federal programs.

(a) Any amount paid a participant from any other Federal grant program for educational purposes (except

veterans' and war orphans' and widows' educational assistance under Title 38, United States Code) must be set off against the amount the participant otherwise would receive under this part.

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veterans' and war orphans' and widows' educational assistance under Title 38, United States Code) must be set off against the amount the participant otherwise would receive under this part.

(b) A participant may not be prevented from receiving a loan that is made, insured or reinsured under any Federal educational loan program. The amount of the loan and payment of any Federal interest may not be deducted from the amount received by the participant under this part.

(Section 222 of the Act; 20 U.S.C. 1032 and 38 U.S.C. 1700, et seq.)

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December 24, 1980

Part XII

Department of Education

Strengthening Research Library Resources Program (Title II-C HEA)

DEPARTMENT OF EDUCATION

34 CFR Part 778

Strengthening Research Library Resources Program (Title II-C HEA)

public comment upon them at this time. However, it is intended that these regulations will undergo a more thorough and exhaustive revision at a later date for implementation in FY 1982, at which time these regulations will be

778.3 Purpose.
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campus, and which has college level programs for which library facilities, services, and materials are necessary.

"Institution of higher education" means an educational institution in any State which (1) admits as regular students only persons having a

(Secs. 231 and 1201 of the Act; 20 U.S.C. 1041, 3474 and 3507)

§ 778.5 Eligibility for assistance.

(a) The Secretary awards grants under this part only to institutions with major research libraries. An institution with a

receive a grant under this part in the same fiscal year.

(2) For purposes of this paragraph, each branch campus of an institution of higher education is deemed to be a separate institution.

(3) An institution of higher education

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DEPARTMENT OF EDUCATION

34 CFR Part 778

Strengthening Research Library Resources Program (Title II-C HEA)

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is issuing revised regulations for the Strengthening Research Library Resources Program. The regulations are being amended to reflect the changes mandated by the Education Amendments of 1980, the provisions of the Education Division General Administrative Regulations (EDGAR), and the proposed selection criteria published in the Federal Register on April 3, 1980.

The revised regulations are substantively the same as the previous regulations.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register.

The effective date is changed by statute if the Congress takes certain adjournments. If you want to know the effective date of these final regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Frank A. Stevens, U.S. Department of Education, (Room 3622, ROB-3), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245-9530.

SUPPLEMENTARY INFORMATION: The Strengthening Research Library Resources Program makes financial assistance available to institutions with major research libraries. The purpose of the program is to promote research and education of higher quality throughout the United States by assisting those institutions to (1) maintain and strengthen their library collections, and (2) make their holdings available to other libraries whose users have need for research materials.

The Education Amendments of 1980 reauthorizes the Strengthening Research Library Resources Program without substantial change except the former limitation that no more than 150 institutions could receive a grant under this program in any fiscal year has been deleted from the statute. For the sake of consistency, minor changes in statutory language have been followed in the regulations.

These regulations are published in final form in order to make awards under the program early in 1981. Therefore, it is not possible to obtain public comment upon them at this time. However, it is intended that these regulations will undergo a more thorough and exhaustive revision at a later date for implementation in FY 1982, at which time these regulations will be made available for public comment.

These regulations also reflect, and are consistent with, the provisions of EDGAR. In conjunction with EDGAR, certain conforming amendments to the program regulations (45 FR 22534), as well as proposed selection criteria (45 FR 22820) were published in the Federal Register on April 3, 1980. No comments were received in response to the proposed selection criteria.

On November 14, 1980, the Secretary published a notice in the Federal Register of the Department's intent to publish regulations necessary to implement the Education Amendments of 1980. In that notice, the Department listed the existing regulations affected by the new law and requested comments whether those regulations required information that is already being gathered by or is available from any other agency or authority of the United States. The regulations in this document are based on regulations listed in the November 14 notice. Based on any comments received and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

These regulations are being codified in Title 34 of the Code of Federal Regulations, along with other Department of Education Regulations.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(20 U.S.C. 1021, 1041)

(Catalog of Federal Domestic Assistance No. 84.091, Strengthening Research Library Resources. Part I of OMB Circular A-95 does not apply to this program.)

Dated: December 19, 1980.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary revises Part 778 of 34 CFR to read as follows:

PART 778—STRENGTHENING RESEARCH LIBRARY RESOURCES PROGRAM

Sec.

778.1 Scope.
778.2 Regulations that apply to the Strengthening Research Library Resources Program.
778.3 Purpose.
778.4 Definitions.
778.5 Eligibility for assistance.
778.6 Applications.
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778.10 Consultation with State agency.

Authority: Part C of Title II of the Higher Education Act of 1965, as amended by the Education Amendments of 1980, 94 Stat. 1383 (20 U.S.C. 1021).

§ 778.1 Scope.

This part applies to the award of grants under Part C of Title II of the Higher Education Act of 1965, as amended by section 201 of the Education Amendments of 1980.

(Sec. 231 of the Act; 20 U.S.C. 1041)

§ 778.2 Regulations that apply to the Strengthening Research Library Resources Program.

(a) *Regulations.* The following regulations apply to the Strengthening Research Library Resources Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (Definitions).

(2) The regulations in this Part 778.

(20 U.S.C. 3474)

§ 778.3 Purpose.

The purpose of the program under this part is to promote research and education of higher quality throughout the United States by providing financial assistance to help the Nation's major research libraries—

(a) Maintain and strengthen their collections; and

(b) Make their holdings available to other libraries whose users have need for research materials.

(Sec. 201 of the Act; 20 U.S.C. 1021)

§ 778.4 Definitions.

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR Part 77:

Acquisition, Applicant, Application, Department, Fiscal Year, Grant, Nonprofit, Private, Project, Public, Secretary, and State.

(b) Definitions that apply to this part. The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended by section 201 of the Education Amendments of 1980.

"Branch campus" means a campus of an institution of higher education located in a community of the United States different from that of the parent institution, not within a reasonable commuting distance from the main campus, and which has college level programs for which library facilities, services, and materials are necessary.

"Institution of higher education" means an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) is legally authorized within such State to provide a program of education beyond secondary education, (3) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, (4) is a public or other nonprofit institution, and (5) is accredited by a nationally recognized accrediting agency or association or, if not so accredited, (A) is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purposes for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or (B) is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. Such term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (1), (2), (4), and (5). For purposes of this definition, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of training offered. The term also includes a public or nonprofit private educational institution in any State which, in lieu of the requirement in clause (1), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

"Primary clientele," with reference to a research library, means students, faculty, or other registered users of the applicant or grantee.

"State agency" means the State agency designated under section 1203 of the Act.

(Secs. 231 and 1201 of the Act; 20 U.S.C. 1041, 3474 and 3507)

§ 778.5 Eligibility for assistance.

(a) The Secretary awards grants under this part only to institutions with major research libraries. An institution with a major research library—

(1) Is a public or private nonprofit institution, including the library resources of an institution of higher education, an independent research library, or a State or other public library; and

(2) Has a library collection which is available to qualified users that—

(i) Makes a significant contribution to higher education and research, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(1);

(ii) Is broadly based, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(2);

(iii) Is recognized as having national or international significance for scholarly research, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(3);

(iv) Is of a unique nature, and contains material not widely available, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(4); and

(v) Is in substantial demand by researchers and scholars not connected with the applicant institution, as determined by the strength of the library collection in meeting one or more of the factors described in the subdivisions under § 778.7(a)(5).

(3) The requirements in paragraph (a)(2) of this section must be met by the library collection of the institution with a major research library applying for a grant. In the case of a consortium which applies as a public or private nonprofit institution, these requirements must be met by the library collection of the consortium institution and not by the separate collections of the members which make up the consortium.

(Sec. 231 of the Act; 20 U.S.C. 1041)

(b) *Ineligibility of section 211 or section 224 grantees.*

(1) An institution receiving a grant under section 211 of the Act (Resource Development Grants of the College Library Resources Program) or 224 of the Act (Special Purpose Grants under the Library Training and Research Development Program) is ineligible to receive a grant under this part in the same fiscal year.

(2) For purposes of this paragraph, each branch campus of an institution of higher education is deemed to be a separate institution.

(3) An institution of higher education must respond to the eligibility and application requirements and evaluation criteria in this part, as applicable, without regard to any of its library collections located at a campus which receives a grant in the same fiscal year under section 211 or section 224 of the Act, as amended.

(Sec. 231 of the Act; 20 U.S.C. 1041)

§ 778.6 Applications.

Each applicant for a grant under this part shall submit an application to the Secretary.

The application must include the following:

(a) Information sufficient to enable the Secretary to determine the eligibility of the applicant under § 778.5.

(b) A description of the methods and manner of administration of the proposed project, including any plan of acquisition.

(Sec. 231 of the Act; 20 U.S.C. 1041)

§ 778.7 Selection criteria.

The Secretary uses the criteria in this section to evaluate applications for new grants. The maximum score for all of the criteria is 110 points.

(a) *Significance as a major research library.* The strength of the applicant in meeting each of the following elements of a major research library:

(1) The extent to which the applicant's library collection makes a significant contribution to higher education and research. (16 points) Consideration will be given to such factors as—

(i) Major research projects for which the library has made resources available in the past fiscal year (only a general and brief summary of information is expected in the application);

(ii) For institutions of higher education, the amount the institution expended in Federal and/or other research funds, and the number of projects conducted by the institution with these funds in the past fiscal year;

(iii) Other evidence of substantial service to researchers and scholars; and

(iv) For institutions of higher education, the number of doctoral programs offered and the number of doctoral degrees awarded in the past fiscal year.

(2) The extent to which the applicant's library collection is broadly based. (12 points) Consideration will be given to such factors as—

(i) The breadth of the library collection with respect to the number of subject areas covered or the comprehensiveness of special collections in particular subject areas;

(1) The extent to which the specific objectives and activities of the project are designed to contribute to the purposes of this part (20 points) by—

(i) Helping the applicant to maintain

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(B) The equipment and supplies that the applicant plans to use are adequate.

(c) *Projects eligible under other Federal programs.*

Notwithstanding the criteria in

Nevada, North Dakota, South Dakota, Utah, and Wyoming).

9. The Pacific Northwest States (Alaska, Idaho, Oregon, and Washington).

§ 778.10 Consultation with State agency.

Each institution of higher education which receives a grant under this part shall annually inform the State agency designated under section 1203 of the

(i) The breadth of the library collection with respect to the number of subject areas covered or the comprehensiveness of special collections in particular subject areas;

(ii) The size of the collection with respect to volumes and titles, manuscripts, microforms, and other types of materials; and

(iii) The number of current periodical subscriptions.

(3) The extent to which the applicant's library collection is recognized as having national or international significance for scholarly research. (8 points) Consideration will be given to such factors as—

(i) The number of interlibrary loans (including copies in lieu of originals) made by the applicant during the past fiscal year to libraries located outside the State in which the applicant is located;

(ii) The number of such loans to libraries located outside the regional geographic area in which the applicant is located;

(iii) The number of such loans to libraries located outside the United States;

(iv) The extent to which loans of the applicant's materials described in paragraphs (a)(3)(i)–(iii) of this section are made under cooperative arrangements by the applicant with libraries in other States, regions, and countries; and

(v) Other evidence of national or international significance for scholarly research.

(4) The extent to which the applicant's library collection is of a unique nature, and contain material not widely available. (8 points) Consideration will be given to such factors as—

(i) The number and nature of special collections containing research materials not widely available; and

(ii) The availability of printed (or otherwise published) catalogs or other guides to the special collections.

(5) The extent to which the library collection is in substantial demand by researchers and scholars not connected with the applicant institution. (4 points) Consideration will be given to such factors as—

(i) The number and type of institutions with which the applicant has formal, cooperative agreements for library and information services;

(ii) The extent to which the library lends more on interlibrary loans than it borrows; and

(iii) The extent of loan requests from users outside the library's primary clientele.

(b) *Nature of project.*

(1) The extent to which the specific objectives and activities of the project are designed to contribute to the purposes of this part (20 points) by—

(i) Helping the applicant to maintain and strengthen its library collection, with particular regard to whether the project builds upon one or more existing special collections of the applicant which have national or international significance for scholarly research; and/or

(ii) Making the applicant's research holdings available to other libraries for wider use by researchers and scholars. In applying this factor, the Secretary considers—

(A) The extent to which the project is designed to increase the availability of existing collections of the applicant which have national or international significance for scholarly research; and

(B) The extent to which the project will strengthen the applicant's capacity for participating in library networks and other cooperative library arrangements for sharing of library resources.

(2) The applicant's institutional commitment and capability to continue and build upon the Federal project upon its expiration (4 points).

(3) The extent to which the specific proposed activities and expenditures under the project are new and innovative activities or are designed to expand upon and supplement the applicant's activities and expenditures. (4 points)

(4) *Plan of operation.* (11 points)

(i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(5) *Quality of key personnel.* (8 points)

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b) (5)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its non-discriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(6) *Budget and cost effectiveness.* (6 points)

(i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(7) *Evaluation plan.* (6 points)

(i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross reference—34 CFR 75.590 Evaluation by the grantee.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(8) *Adequacy of resources.* (3 points)

(i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(c) *Projects eligible under other Federal programs.*

Notwithstanding the criteria in paragraphs (b)(8)(ii) (A) and (B) of this section, the Secretary will not fund a project eligible for assistance under other Federal programs authorizing grants to support research libraries, such as the Medical Library Assistance Act of 1965 (as amended by Pub. L. 93–353), unless the application—

(1) Documents that payments under this part will not duplicate payments under other Federal programs; and

(2) Demonstrates a special need for funding under this part.

(Section 231 of the Act; 20 U.S.C. 1041)

§ 778.8 Regional balance.

The Secretary endeavors to achieve a broad and equitable geographical distribution in the allocation of funds under this part by assigning a maximum of 15 additional points to applications which, if funded, would contribute to a regional balance. These points are assigned according to the following steps:

(a) Applications will first be evaluated on the basis of evaluation criteria in § 778.6 and a tentative slate will be prepared of the highest rated applications which would have been funded if regional balance were not considered. (These applications are referred to as the "highest rated applications".)

(b) The Secretary will pilot these highest rated applications to see their locations in terms of the following designated regional areas:

Area:

1. The New England States (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont).
2. New York State, Puerto Rico, and the Virgin Islands.
3. The Middle Atlantic States (Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, and West Virginia).
4. The Southeastern States (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia).
5. The Great Lakes States (Indiana, Michigan, and Ohio).
6. The Midwest States (Illinois, Iowa, Minnesota, Missouri, and Wisconsin).
7. The Southwestern States (Arizona, Arkansas, Louisiana, New Mexico, Oklahoma, and Texas).
8. The Mountain Plains States (Colorado, Kansas, Montana, Nebraska, Nevada, North Dakota, South Dakota, Utah, and Wyoming).
9. The Pacific Northwest States (Alaska, Idaho, Oregon, and Washington).
10. California, Hawaii, American Samoa, and Guam.

(c) The Secretary will then assign 15 extra points to each of the three applications with the most points in each regional area which has two or fewer of the highest rated applications. For example, if the highest rated applications were all those with scores of 75 points and above, and a regional area had applications with scores of 82, 70, 62, and 55, 15 extra points would be awarded to each of the applications with 82, 70, and 62 points. The application with 55 points would not receive extra points.

(d) The Secretary may award 15 additional points, in accordance with the standards in paragraph (c), to applications to avoid causing regional areas which did not receive points under paragraph (c) to be left with two or fewer fundable applications.

(Section 232 of the Act; 20 U.S.C. 1041)

§ 778.9 Authorized activities.

(a) General.

Funds provided under this part may be used for activities or expenditures which achieve one or both of the purposes described in § 778.3, exclusive of construction costs. These authorized activities or expenditures may include, but are not limited to—

(1) Acquiring books and other additional materials to be used for library purposes;

(2) Binding, rebinding, and repairing books and other materials to be used for library purposes, and preserving such materials by making photocopies, by means of treatment to lengthen the life of paper or bindings, or by other means;

(3) Cataloging, abstracting, and making available lists and guides of library collections;

(4) Distributing library materials and bibliographic information to users beyond the primary clientele through the mail or through electronic, photographic, magnetic, optical, or other reprographic techniques;

(5) Acquiring additional equipment and supplies that will assist in making library materials available to users beyond the primary clientele;

(6) Hiring necessary additional staff to carry out activities funded under this part; and

(7) Communications with other institutions incidental to other activities under this part.

(Sections 201 and 231 of the Act; 20 U.S.C. 1021, 1041)

§ 778.10 Consultation with State agency.

Each institution of higher education which receives a grant under this part shall annually inform the State agency designated under section 1203 of the Higher Education Act, as amended, of its activities under this part.

(Section 202 of the Act; 20 U.S.C. 1022)

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Federal Register

Monday
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Highlights

Seminar on Principles of Regulations Writing—For details on seminar in **Washington, D.C.**, see announcement in the **Reader Aids** section at the end of this issue.

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85610 **Grant Programs** DOE/SOLAR proposes rules concerning administration of programs providing financial assistance for schools, hospitals, buildings owned by units of local government and public care institutions, comments by 1–28–81 (Part V of this issue)

85496 **Grant Programs** Commerce/NOAA announces programs of assistance for marine pollution research

85632 **Equal Employment Opportunity** EEOC revises Guidelines on Discrimination Because of National Origin; effective 12–29–80 (Part VI of this issue)

85604 **Air Traffic Control** DOT/FAA issues interim rule concerning persons operating aircraft under Visual Flight Rules to or from Flushing Airport, N.Y.; effective 1–8–81 (Part IV of this issue)

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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85441 **Nuclear Non-Proliferation** Commerce/ITA revises rules to provide clarification; effective 12–29–80

85502 **Oil** DOE/ERA issues entitlements notice for October 1980 Domestic Crude Oil Allocation Program

85600 **Airplanes** DOT/FAA announces termination of the Light Transport Airplane Airworthiness Review Program (Part III of this issue)

85548 **Environmental Impact Statements** DOT/Office of Secretary proposes to revise its guidance on the format and content of environmental documents, comments by 2–27–81

85485 **Environmental Protection** CSA issues proposed rule establishing a new part covering environmental protection and implementing the procedural provisions of the National Environmental Policy Act, comments by 1–28–81

85437 **Food Relief Program** USDA/FNS amends Summer Food Service Program in regard to claims submissions; effective 12–29–80

85540 **Bridges** DOT/FHWA publishes notice concerning access ramps to public launching areas in connection with Federally funded bridge projects

85449 **Boats and Boating Safety** DOT/CG amends rules on electrical and fuel systems standards for recreational boats; effective 1–28–81

85480 **Humpback Whales-Protection** Interior/NPS proposes rules to limit the adverse impact of commercial fishing on the whale within Glacier Bay National Monument, comments by 3–30–81

85640 **Railroads** ICC issues notice of stay of interim rules concerning railroad transportation contracts, and extends comment period to 1–8–81; effective 12–29–80 (Part VII of this issue)

85537 **Consumer Programs** Selective Service System issues statement of support for Executive Order No. 12160 which provides for the enhancement and cooperation of federal consumer programs

85569 **Sunshine Act Meetings**

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Title 3—

The President

Proclamation 4810 of December 23, 1980

National Patriotism Week

By the President of the United States of America

A Proclamation

We are a Nation with many blessings. We have liberties enjoyed by no other Nation on Earth. We have a government admired by many. We have fought hard to preserve our independence and the independence of others, and to gain equal rights and responsibilities for all our citizens. We have much to be thankful for and much to be proud of.

Together we have built a great Nation, a Nation founded on freedom, a Nation forged by patriots. We have made America strong with our strength. We have made America a Nation at peace with our love of peace.

We live in a Nation we all care about deeply. It is important that we continue to care, that we continue to respect ourselves and each other, and that we honor our past and present by reaffirming our commitment to the greatness that is ours.

To recognize our freedoms and honor this great Nation, the Congress, by joint resolution of October 10, 1980 (P.L. 96–421), designated the week commencing with the third Monday in February of 1981 as "National Patriotism Week" and requested the President to issue a proclamation calling upon the people of the United States to commemorate that week with appropriate celebrations and observances.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby call upon the people of the United States to observe the week beginning with the third Monday in February 1981 as National Patriotism Week.

I call upon all primary and secondary schools to adopt an appropriate curriculum for that week which should include such elements as the study of the Pledge of Allegiance and the national anthem, national symbols, seals and mottos, and national monuments, heroes, and accomplishments.

I request each Federal agency recognize that week by taking such action as it may deem appropriate.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of December, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fifth.

Jimmy Carter

[FR Doc. 80–40490
Filed 12–23–80; 3:27 pm]
Billing code 3195–01–M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program; Claims Submissions; Fiscal Year 1980

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency final rule.

SUMMARY: This emergency final rule amends Summer Food Service Program (SFSP) regulations to require that fiscal year 1980 claims for reimbursement be initially submitted prior to January 1, 1981 to be eligible for reimbursement. An amended claim submitted on or after January 1 as a result of an audit, investigation, or other relevant information available to the State agency may be reimbursed, provided that the original claim was submitted before this date. This rule also requires that the State agency submit its final Program Operations and Financial Status Report for fiscal year 1980 by March 1, 1981. It further provides for adjustments in payments to sponsors which are made after March 1. The rule implements a mandate of the 1980 Supplemental Appropriations Act which will result in timely completion of the fiscal year 1980 payment process and better fiscal management of the Program.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Jordan Benderly or Beverly Walstrom, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6509.

A Final Impact Statement has been prepared and is available on request from the persons named above.

SUPPLEMENTARY INFORMATION: This emergency final rule has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant."

This rule implements for fiscal year 1980 the same provisions made effective for fiscal year 1979 by an amendment to SFSP regulations published on February 1, 1980 (45 CFR 7227). The preamble to that rule indicated that comments would be considered in rulemaking to implement the mandate of Pub. L. 96–108 which requires that fiscal year 1980 claims for reimbursement be submitted by January 1, 1981 in order to be eligible for reimbursement. Since comments supported the regulations of February 1, the Department does not solicit comments on the same provisions contained in this emergency final rule.

This rule must be finalized promptly in order that State agencies may provide for the expeditious payment of fiscal year 1980 claims for reimbursement and comply with year-end fiscal and reporting requirements. Therefore, pursuant to administrative procedure provisions of 5 USC 553, good cause is found for making this rule effective less than 30 days after publication in the **Federal Register.**

The provisions of this rule for fiscal year 1980 are applied to all following fiscal years in the proposed Summer Program regulations published on November 7, 1980 (45 FR 74384).

Background

On June 25, 1979, Congress enacted Pub. L. 96–38 (1979 Supplemental Agricultural Appropriations Act), which required that "* * * only claims for reimbursement for meals served during fiscal year 1979 submitted to State agencies prior to January 1, 1980, shall be eligible for reimbursement." A final rule was published on October 30, 1979 (44 FR 62279) to implement this mandate. The emergency final rule of February 1, 1980 clarified and expanded upon this rulemaking. On November 9, 1979, Congress enacted Pub. L. 96–108 (1980 Supplemental Appropriations Act), which required the 90-day claims submission provision for fiscal year 1980. As required by Pub. L. 96–108, final regulations regarding the submission of Fiscal Year 1980 claims for reimbursement are included in this rule.

Regulatory Analysis

This rule is based on the need to complete the fiscal year 1980 claims payment process and to establish Federal obligations for the year as expeditiously as possible. It addresses this need by requiring, first, that claims be initially submitted to the State agency before January 1, 1981 in order to be reimbursable and, second, that the State agency submit its final Program Operations and Financial Status Report for fiscal year 1980 by March 1, 1981. These requirements will result in tighter fiscal control over the Program and enable the Department to accurately assess its budget needs on a timely basis.

Within this framework of tighter control, the rule provides flexibility to State agencies in adjusting payments to sponsors. Providing that the original claim is submitted by the deadline, an amended claim submitted after this date as a result of audits, investigations, administrative reviews, or other information available to the State agency may be eligible for reimbursement. Thus the State agency has full opportunity to review and process all information relevant to Program reimbursement for the fiscal year.

All reimbursement adjustments to be paid from funds made available for fiscal year 1980 through the Letter of Credit process must be completed prior to submission of the final Program Operations and Financial Status Report for the year. However, the rule provides further flexibility in the payment adjustment process by permitting the State agency to request from the Food and Nutrition Service (FNS) additional funds needed as a result of corrective actions taken after submission of the final Report. If FNS approves such a request, it will make payment subject to the availability of funds.

Accordingly, 7 CFR Part 225, Summer Food Service Program for Children, is amended as follows: § 225.13 paragraph (a) is amended by deleting the last eight sentences and adding the following:

§ 225.13 Program payment procedures.

(a) * * * Claims for Reimbursement for meals served during fiscal year 1980 shall be filed with the State agency, or FNSRO where applicable, prior to January 1, 1981 in order to be eligible for reimbursement. The State agency, or FNSRO where applicable, shall, as determined necessary through its administrative review processes or otherwise, promptly take corrective

action with respect to any such claim.

Done in Washington, D.C., on December 18,

Done at Washington, D.C. this 22nd day of December 1980.

Des Moines was in a nonradar environment. They were used for the

required, and provides more efficient service to the users.

action with respect to any such claim. Such corrective action shall be completed in sufficient time to be reflected in the final Program Operations and Financial Status Reports for fiscal year 1980 if reimbursement for such claims is to be made from funds made available for fiscal year 1980 through the Letter of Credit process described under § 225.8(b) of this Part. The final Program Operations and Financial Status Reports for fiscal year 1980 shall be submitted by March 1, 1981. Any requested increase in reimbursement level for fiscal 1980, resulting from corrective action taken after submission of the final fiscal year 1980 Program Operations and Financial Status Reports, shall be submitted to FNS for approval. The request shall be accompanied by a written explanation of the basis for the adjustment and the actions taken to minimize the need for such adjustments in the future. If FNS approves of such increase, it shall make payments subject to the availability of funds. Any reduction in reimbursement level for fiscal year 1980 resulting from corrective action taken after submission of the final fiscal year 1980 Program Operations and Financial Status Reports shall be handled in accordance with the provisions of § 225.14 of this Part, except that amounts recovered may not be used to make Program payments.

* * * * *

(Catalog of Federal Domestic Assistance Programs Number 10.559, Summer Food Service Program for Children)

[Pub. L. 96-108, 93 Stat. 837 (42 U.S.C. 1752)]

Dated: December 19, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-40203 Filed 12-24-80; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 419

Barley Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This final rule corrects Amendment No. 2 to the Barley Crop Insurance Regulations as appearing in the **Federal Register** on Thursday, November 13, 1980 (45 FR 74898), by inserting a county which was inadvertently omitted and where barley crop insurance is available.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone 202-447-3325.

SUPPLEMENTARY INFORMATION:

Correction to Appendix B of 7 CFR Part 419

Amendment No. 2 to the Barley Crop Insurance Regulations (7 CFR Part 419, Appendix B), appearing in the right column of page 74898, is corrected by inserting between the subheadings "Maryland" and "Minnesota", the following subheading and county:

Michigan

Tuscola

Done in Washington, D.C., on December 18, 1980.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Everett S. Sharp,

Acting Manager.

Dated: December 18, 1980.

[FR Doc. 80-40305 Filed 12-24-80; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 430

Sugar Beet Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This final rule corrects Amendment No. 2 to the Sugar Beet Crop Insurance Regulations as appearing in the **Federal Register** on Thursday, November 13, 1980 (45 FR 74899-74900).

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone 202-447-3325.

SUPPLEMENTARY INFORMATION:

Correction to Appendix B of 7 CFR Part 430

Amendment No. 2 to the Sugar Beet Crop Insurance Regulations (7 CFR Part 430, Appendix B), appearing at 45 FR 74900, in the left column, is corrected in Appendix "B" listing those counties where sugar beet crop insurance is available under the subheading "Michigan", by inserting the word "Sanilac" beneath the word "Saginaw" and above the word "Tuscola".

Done in Washington, D.C., on December 18, 1980.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Everett S. Sharp,

Acting Manager.

Dated: December 18, 1980.

[FR Doc. 80-40310 Filed 12-24-80; 8:45 am]

BILLING CODE 3410-08-M

Animal and Plant Health Inspection Service

9 CFR Part 92

Importation of Horses from Mexico; Corrections

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule, correction.

SUMMARY: This document corrects §§ 92.34(c) and 92.39(a) of Title 9 of the Code of Federal Regulations pertaining to the importation of horses from Mexico.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT:

Dr. D. E. Herrick, USDA, APHIS, VS, Federal Building, Room 819, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION: On Friday, April 18, 1980, a notice of correction and receipt of petition was published in the **Federal Register** (45 FR 26317-26318) pertaining to the importation of horses from Mexico. Due to revisions made in the regulations and a proofreading oversight an inaccurate section reference appears in § 92.39(a). § 92.34 has no heading and the only paragraph in § 92.34 is inappropriately designated as paragraph "(c)." In order to correct these errors, §§ 92.34(c) and 92.39(a) are amended as follows:

§ 92.34 [Corrected]

1. In § 92.34, a new heading is added to read: Detention at port of entry and period of quarantine.

§ 92.34 [Corrected]

2. In § 92.34, the designation of the only paragraph as "(c)" is removed.

§ 92.39 [Amended]

3. In § 92.39(a), the phrase following the second semicolon in the first sentence is amended to read: "and shall be quarantined and tested as provided in § 92.34."

Done at Washington, D.C. this 22nd day of December 1980.

Norvan L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-40305 Filed 12-24-80; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-AWA-19]

Revocation of Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes Federal Airways V-13W between Des Moines, Iowa, and Lamoni, Iowa, and V-6S between Des Moines, Iowa, and Omaha, Nebr. Use of these airways has steadily declined since the commissioning of Des Moines radar in 1961. This action will simplify charting and lessen storage requirements for the ATC automation data base.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION, CONTACT:

L. Jack Overman, Airspace Regulations and Obstructions Branch, (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On November 6, 1980, the FAA proposed to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke V-13W between Des Moines, Iowa, and Lamoni, Iowa, and V-6S between Des Moines, Iowa, and Omaha, Nebr., (45 FR 73691). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objections. This amendment is the same as that proposed in the notice. Section 71.123 of Part 71 was republished in the **Federal Register** on January 2, 1980, (45 FR 307).

The Rule

This amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) revokes Federal Airways, V-13W between Des Moines, Iowa, and Lamoni, Iowa, and V-6S between Des Moines, Iowa, and Omaha, Nebr. These alternate airways had application when Des Moines was in a nonradar environment. They were used for the purpose of separating inbound and outbound aircraft. These airways have not been substantially utilized since commissioning the Des Moines radar in 1961. This action simplifies charting and lessens storage requirements for the air traffic automation data base.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 GMT, February 19, 1981, as follows:

1. Under V-13, after the words "Lamoni, Iowa, Des Moines, Iowa," delete the words ", including a W alternate"

2. Under V-6, after the words "Omaha, Nebr.; Des Moines, Iowa," delete the words ", including a S alternate"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 19, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40304 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ARM-10]

Establishment of V-383

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendment establishes low altitude Federal Airway V-383 between Akron, Colo., and Denver, Colo., via Byers intersection. This action provides a designated airway for pilot navigation to the Denver terminal arrival area, reduces radar vectoring required, and provides more efficient service to the users.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT:

L. Jack Overman, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On October 30, 1980, the FAA proposed to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish V-383 between Akron, Colo., and Denver, Colo. (45 FR 71810). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objections. This amendment is the same as that proposed in the notice. Section 71.123 of Part 71 was republished in the **Federal Register** on January 2, 1980 (45 FR 307).

The Rule

This amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) adds an additional airway between Akron, Colo., and Denver, Colo. This Airway is designated via the Akron VORTAC 242° and the Denver 094°. The action provides more efficient service to the users by designating a route from Akron into the Denver terminal arrival area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 GMT, February 19, 1981, by adding a new Federal Airway V-383 as follows:

V-383 From Akron, Colo.; INT Akron 242° and Denver 094° radials; Denver, Colo.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and

promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December

reduces delays and provides more efficient use of airspace in this area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

FOR FURTHER INFORMATION CONTACT:

Charles A. Sears, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106,

Harper, Kansas

That airspace extending upwards from 700 feet above the surface within a 5 mile radius of the Harper, Kansas Municipal Airport (Latitude 37°16'45"N, Longitude 98°02'37"W) and within 2 miles each side of the Anthony,

SUPPLEMENTARY INFORMATION: The purpose of these amendments to Sections 71.123, 71.203, 71.207, 75.100 and 75.400 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) is to amend the

In J-36 "Minneapolis, Minn.;" is deleted and "Gopher, Minn.;" is substituted therefor.

In J-70 "Minneapolis, Minn.; INT of the Minneapolis 109°" is deleted and "Gopher, Minn.; INT Gopher 109°" is

promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 19, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40281 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-AAL-16]

Establishment of V-431

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a new airway, Victor 431, between Sisters Island, Alaska, and Biorka Island, Alaska. The action designates another route to handle the increased traffic flow. This airway provides more efficient use of airspace and reduces delays in this area.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT:
L. Jack Overman Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division; Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On October 19, 1980, the FAA proposed to amend § 71.125 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish V-431 between Sisters Island, Alaska, and Biorka Island, Alaska (45 FR 67101). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objections. This amendment is the same as that proposed in the notice. Section 71.125 of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 342).

The Rule

This amendment to § 71.125 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes an additional airway between Sisters Island, Alaska, and Biorka Island, Alaska. This airway, V-431, is designated via the Sisters Island 204° radial and the Biorka Island 355° radial. Designation of this airway reduces delays and provides more efficient use of airspace in this area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.125 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 342) is amended, effective 0901 GMT, February 19, 1981, by designating a new airway, V-431, as follows:

"V-431 From Sisters Island, Alaska, INT Sisters Island 204° and Biorka Island 355° radials; Biorka Island, Alaska."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Secs. 6 (c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so mininal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 19, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40263 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 80-CE-10]

Designation of Transition Area—Harper, Kans.

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Harper, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Harper, Kansas, Municipal Airport, utilizing the Anthony, Kansas, OMNI directional range as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT:
Charles A. Sears, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: An instrument approach procedure to the Harper, Kansas, Municipal Airport is being established utilizing the Anthony OMNI directional range as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails the designation of a transition area at Harper, Kansas, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On page 70281 of the Federal Register dated October 23, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Harper, Kansas. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. One comment was received. The commentator stated the transition area would overlie three private airports, one of which (Bob Park) has balloon and glider operations. He requested that the transition area be established during the hours of darkness or in the alternative that Bob Park be excluded from the transition area. The FAA determined that a part-time transition area would not be feasible. However, the FAA has also determined that Bob Park Airport and Kaypod Airport can be excluded from the transition area without compromising safety to aircraft arriving or departing the Harper, Kansas, Municipal Airport. Accordingly, the Harper, Kansas, transition area description has been reworded to exclude airspace east of longitude 98°00".

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980, (45 FR 445) by adding the following new transition area:

Harper, Kansas

That airspace extending upwards from 700 feet above the surface within a 5 mile radius of the Harper, Kansas Municipal Airport (Latitude 37°16'45"N, Longitude 98°02'37"W) and within 2 miles each side of the Anthony, Kansas VORTAC (Latitude 37°09'32"N, Longitude 98°10'13"W) 040° radial extending from the 5 mile radius area to 11 miles southwest of the airport, excluding that airspace east of Longitude 98°00", and the airspace overlying the Anthony, Kansas transition area.

(Section 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Section 8(c), Department of Transportation Act (49 U.S.C. 1655(c)); § 11.65 of the Federal Aviation Regulations (14 CFR 11.65))

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on December 15, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-40258 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 80-AGL-23]

Facility Name Change; Minneapolis, Minn.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The name of the Minneapolis, Minn., VORTAC has been changed to "GOPHER." These amendments substitute the name "GOPHER" in the description of all airways, jet routes, and compulsory reporting points currently named Minneapolis.

EFFECTIVE DATE: February 19, 1980.

FOR FURTHER INFORMATION, CONTACT:
Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: The purpose of these amendments to Sections 71.123, 71.203, 71.207, 75.100 and 75.400 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) is to amend the description of several VOR Federal Airways, Jet Routes and Compulsory Reporting Points that have Minneapolis, Minn., in their text. Minneapolis VORTAC has been renamed GOPHER; therefore it is necessary to alter the text of all descriptions where the Minneapolis VORTAC name appears. Since these amendments are editorial in nature, they are minor matters on which the public would have no particular desire to comment. Therefore, notice and public procedure thereon is unnecessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, §§ 71.123 71.203, 71.207, 75.100 and 75.400 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as republished (45 FR 307, 645, 653, 730, and 746) are amended, effective 0901 GMT, February 19, 1981, as follows:

Under § 71.123
- In V-2 "Alexandria, Minn., including a N alternate, Minneapolis, Minn.;" is deleted and "Alexandria, Minn., including a N alternate, Gopher, Minn., is substituted therefor.
- V-13 "via INT Mason City 349° and Minneapolis, Minn., 188° radials is Minneapolis," is deleted and "via INT Mason City 349° and Gopher, Minn., 188° radials; Gopher," is substituted therefor.
- In V-78 "Minneapolis, Minn.;" is deleted and "Gopher, Minn.;" is substituted therefor.
- In V-82 "Minneapolis, Minn.;" is deleted and "Gopher, Minn.;" is substituted therefor.
- In V-97 "Minneapolis, Minn.;" is deleted and "Gopher, Minn.;" is substituted therefor.
- In V-148 "including a S alternate, Minneapolis, Minn.;" is deleted and including a S alternate, Gopher, Minn.;" is substituted therefor.
- In V-161 "INT Rochester 356° and Minneapolis, Minn., 116° radials; Minneapolis;" is deleted and "INT Rochester 356° and Gopher, Minn., 116° radials; Gopher;" is substituted therefor.
- In V-218 "via Minneapolis, Minn.;" is deleted and "via Gopher, Minn.;" is substituted therefor.

Under § 75.100
- In J-21 "Minneapolis, Minn.;" is deleted and "Gopher, Minn.;" is substituted therefor.
- In J-25 "to Minneapolis, Minn.;" is deleted and "to Gopher, Minn.;" is substituted therefor.
- In J-30 "From Minneapolis, Minn.;" is deleted and "From Gopher, Minn.;" is substituted therefor.
- In J-36 "Minneapolis, Minn.;" is deleted and "Gopher, Minn.;" is substituted therefor.
- In J-70 "Minneapolis, Minn.; INT of the Minneapolis 109°" is deleted and "Gopher, Minn.; INT Gopher 109°" is substituted therefor.
- In J-106 "From Minneapolis, Minn.," is deleted and "From Gopher, Minn.," is substituted therefor.
- In J-113 "to Minneapolis, Minn." is deleted and "to Gopher, Minn." is substituted therefor.
- In J-114 "to Minneapolis, Minn." is deleted and "to Gopher, Minn." is substituted therefor.

Under § 75.400 Waypoint name
- In J-883R "Minneapolis, Minn., to New York, N.Y." is deleted and "Gopher, Minn., to New York, N.Y." is substituted therefor.

Waypoint name
"Minneapolis, MN." is deleted and "Gopher, Minn." is substituted therefor.
Reference facility
"Minneapolis, MN." is deleted and "Gopher, Minn." is substituted therefor.
- In J-884R "New York, N.Y., to Minneapolis, Minn." is deleted and "New York, N.Y., to Gopher, Minn." is substituted therefor.

Waypoint name
"Minneapolis, Minn." is deleted and "Gopher, Minn." is substituted therefor.
Reference facility
"Minneapolis, MN." is deleted and "Gopher, Minn." is substituted therefor.
- In J-976R "Seattle, Wash., to Minneapolis, Minn." is deleted and "Seattle, Wash., to Gopher, Minn." is substituted therefor.

Waypoint name
"Minneapolis, MN." is deleted and "Gopher, Minn." is substituted therefor.
Reference facility
"Minneapolis, MN." is deleted and "Gopher, Minn." is substituted therefor.

Under § 71.203
"Minneapolis, Minn." is deleted and "Gopher, Minn." is substituted therefor.

Under § 71.207
"Minneapolis, Minn." is deleted and "Gopher, Minn." is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 19, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40262 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 80-ASO-39]

Establishment of Restricted Areas, Fort Stewart, Ga.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes two restricted areas at Fort Stewart, Georgia. The areas are needed to contain the Townsend Bombing/Gunnery Range limited to practice bombs, 2.75 Zuni rockets and 20MM/50MM cannon fire, and the maneuvers of high performance military aircraft conducting the associated flight operations.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT:
Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On October 19, 1980, the FAA proposed to amend § 73.30 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to establish two restricted areas at Fort Stewart, Georgia (45 FR 69501). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objections. This amendment is the same as that proposed in the notice. Section 73.30 of Part 73 was republished in the Federal Register on January 2, 1980 (45 FR 695).

The Rule

This amendment to § 73.30 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) establishes two restricted areas at Fort Stewart, Georgia. The areas are needed to contain the Townsend Bombing/Gunnery Range limited to practice bombs, 2.75 Zuni rockets and 20MM/50MM cannon fire, and the maneuvers of high performance military aircraft conducting the associated flight operations.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 73.71 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (45 FR 729) is amended, effective 0901 G.m.t., February 19, 1981, as follows: In § 73.30, after "R-3005B Fort Stewart, Ga.," by adding the following new restricted areas:

Long. 81°27'30"W.; to Lat. 31°26'15"N., Long. 81°31'30"W.; to Lat. 31°25'30"N., Long. 81°36'00"W.; to Lat. 31°27'25"N., Long. 81°33'40"W.; to Lat. 31°31'15"N., Long. 81°32'00"W.; thence along a 1 NM radius arc clockwise of a point centered at Lat. 31°32'25"N., Long. 81°31'50"W.; to Lat.

Issued in Washington, D.C., on December 19, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40262 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 80-ASO-49]

Special Use Airspace; Alteration of Restricted Area; Salinas, Puerto Rico

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the time of designation for the Salinas, Puerto Rico, Restricted Areas R-7103 A, B and C, from June 1 through August 31, to a period extending from May 1 through July 31. This change is necessary in order to coincide with the Army National Guard's new annual summer training schedule.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: On October 9, 1980, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter the time of designation for Restricted Areas R-7103 A, B and C, from June 1 through August 31 to a period extending from May 1 through July 31, to coincide with the Army National Guard's new annual summer training schedule (45 FR 67102). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 73.71 of Part 73 was republished in the Federal Register on January 2, 1980, (45 FR 729).

The Rule

This amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) alters the time of designation for the Salinas, Puerto Rico, Restricted Areas R-7103 A, B and C, from June 1 through August 31, to a new time of designation extending from May 1 through July 31. This action is necessary in order to coincide with the Army National Guard's annual summer training operations.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 73.71 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (45 FR 729) is amended, effective 0901 GMT, February 19, 1981, as follows:

Under R-7103 A, B and C Salinas, P.R. Time of designation. "June 1 through August 31," is deleted and "May 1 through July 31," is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 19, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40256 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 80-ASO-11]

Special Use Airspace; Restricted Area, Townsend, Ga.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates a restricted area with five subdivisions in the vicinity of Townsend, Ga., for the purpose of containing the maneuvers of high performance military aircraft conducting flight operations associated with inert ordnance delivery upon the Townsend Bombing/Gunnery Range. Unauthorized flight by nonparticipating aircraft is prohibited within the restricted areas during its designated time of use.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION, CONTACT: George O. Hussey, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue. SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On August 4, 1980, and subsequently corrected on September 2, 1980, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to designate a restricted area with five subdivisions identified as R-3007B, R-3007C, R-3007D, R-3007E, Townsend, Ga. (45 FR 51591 and 58142). The purpose of the area is to contain the maneuvers of high performance military aircraft conducting flight operations associated with inert ordnance delivery upon the Townsend Bombing/Gunnery Range. This hazardous activity necessitates the establishment of restricted area airspace wherein unauthorized flight by nonparticipating aircraft during the area's designated time of use will be prohibited. The use of existing restricted areas within a reasonable distance of military aircraft based in Georgia and South Carolina was thoroughly evaluated and found to be inadequate to satisfy existing and future military training requirements. The area will be designated as joint use to permit utilization of the airspace by the controllling agency for authorized nonparticipating aircraft when the area is not in use for its designated purpose. The United States Marine Corps has certified that the requirements of the National Environmental Policy Act (NEPA) have been met. Section 73.30 of Part 73 was republished in the Federal Register on January 2, 1980 (45 FR 695).

The Rule

This amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) establishes a restricted area with five subdivisions in the vicinity of Townsend, Ga., identified as R-3007A, R-3007B, R-3007C, R-3007D, R-3007E. Unauthorized flights by nonparticipating aircraft are prohibited within the restricted area airspace during its designated time of use. Townsend Airport is provided relief by excluding the airspace 1,200 feet AGL and below within 1 nautical mile (NM) radius of the airport west of the Seaboard Coastline Railroad tracks and all of the restricted area 1,200 feet AGL and below east of the tracks. The airspace 3,000 feet AGL and below within 1½ nautical mile radius of the town of Ludowici, Ga., is excluded. The using agency will provide aerial access to private and/or public use land that underlies the restricted area.

The activities to be conducted will consist of inert ordnance delivery upon the Townsend Bombing/Gunnery Range limited to practice bombs, 2.75 Zuni rockets and 20MM/50MM cannon fire, and the maneuvers of high performance military aircraft conducting the associated flight operations.

Discussion of Comments

Of the comments received in response to the notice of proposed rulemaking, six commenters objected to the proposed restricted area. One commenter objected on the basis that the restricted area would limit access to the Liberty County Airport only to approaches from over the Atlantic Ocean. The northeastern boundary of the restricted area has been changed to allow access to the airport traffic pattern from the north, east, west and southeast. One commenter expressed concern for restrictions upon aerial fire detection and suppression activities within the restricted area. The using agency has pledged full cooperation with fire protection officials that will ensure unencumbered fire detection and suppression activities. One commenter objected on the basis that the proposed restricted area would limit the planned NDB instrument approach procedure to the Liberty County Airport. The changes to the northeastern boundary of the restricted area will allow the instrument approach procedure to be established without restriction because of the restricted area. In addition to his concern for limitations upon access to the Liberty County Airport discussed above, one commenter objected on the basis of adverse effect upon the timber industry in Liberty County. The using agency has assured timber industry representatives that the military will fully cooperate with them as required to support timber interests. A stipulation for this rule is that the using agency will provide aerial access to private and/or public use land that underlies the restricted area. One commenter objected on the basis of the area prohibiting development of a county airport and/or private airports in Long County. As stated above, aerial access to private and/or public use land is assured. One commenter responded with concerns over environmental aspects of the restricted area activities. This comment was referred to the United States Marine Corps as the lead agency for compliance with the National Environmental Policy Act (NEPA). The Marine Corps has certified and the FAA concludes that the requirements of NEPA have been met.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (45 FR 695) is amended, effective 0901 G.m.t., February 19, 1981, as follows: In § 73.30, after "R-3005B Fort Stewart, Ga.," by adding the following new restricted areas:

"R-3007A Townsend, Ga.

Boundaries. Beginning at Lat. 31°43'00"N., Long. 81°54'00"W.; to Lat. 31°47'15"N., Long. 81°50'00"W.; to Lat. 31°46'15"N., Long. 81°43'00"W.; to Lat. 31°46'00"N., Long. 81°41'50"W.; to Lat. 31°45'30"N., Long. 81°41'00"W.; to Lat. 31°44'40"N., Long. 81°40'00"W.; to Lat. 31°38'00"N., Long. 81°47'00"W.; thence west along the Altamaha River to point of beginning.
Designated altitudes. 1,500 feet AGL to 5,000 feet MSL, excluding that airspace below 3,000 feet AGL within 1½ NM radius circle centered on Lat. 31°42'30"N., Long. 81°45'00"W.
Time of designation. Mon-Fri, 0800-1700 local time. Other times by NOTAM at least 24 hours in advance.
Controlling agency. Federal Aviation Administration, Jacksonville ARTCC.
Using agency. Savannah Air National Guard Training Site, Garden City, Ga.

R-3007B Townsend, Ga.

Boundaries. Beginning at Lat. 31°38'00"N., Long. 81°47'00"W.; to Lat. 31°44'40"N., Long. 81°40'00"W.; to Lat. 31°44'20"N., Long. 81°36'20"W.; to Lat. 31°42'30"N., Long. 81°34'00"W.; to Lat. 31°33'15"N., Long. 81°42'00"W.; thence west along the Altamaha River to point of beginning.
Designated altitudes. 500 feet AGL to 5,000 feet MSL.
Time of designation. Mon-Fri, 0800-1700, local time. Other times by NOTAM at least 24 hours in advance.
Controlling agency. Federal Aviation Administration, Jacksonville ARTCC.
Using agency. Savannah Air National Guard Training Site, Garden City, Ga.

R-3007C Townsend, Ga.

Boundaries. Beginning at Lat. 31°33'15"N., Long. 81°42'00"W.; to Lat. 31°42'30"N., Long. 81°34'00"W.; to Lat. 31°38'00"N., Long. 81°29'00"W.; to Lat. 31°33'15"N., Long. 81°31'15"W.; thence along a 1 NM radius arc counterclockwise of a point centered at Lat. 31°32'25"N., Long. 81°31 50"W.; to Lat. 31°31'15"N., Long. 81°32'00"W.; to Lat. 31°27'25"N., Long. 81°33'40"W.; to Lat. 31°25'30"N., Long. 81°36'00"W.; thence west along the Altamaha River to point of beginning excluding R-3007E.
Designated altitudes. 100 feet AGL to 13,000 feet MSL.
Time of designation. Mon-Fri, 0800-1700 local time. Other times by NOTAM at least 24 hours in advance.
Controlling agency. Federal Aviation Administration, Jacksonville ARTCC.
Using agency. Savannah Air National Guard Training Site, Garden City, Ga.

R-3007D Townsend, Ga.

Boundaries. Beginning at Lat. 31°38'00"N., Long. 81°29'00"W.; to Lat. 31°37'30"N., Long. 81°28'15"W.; to Lat. 31°32'30"N., Long. 81°27'30"W.; to Lat. 31°26'15"N., Long. 81°31'30"W.; to Lat. 31°25'30"N., Long. 81°36'00"W.; to Lat. 31°27'25"N., Long. 81°33'40"W.; to Lat. 31°31'15"N., Long. 81°32'00"W.; thence along a 1 NM radius arc clockwise of a point centered at Lat. 31°32'25"N., Long. 81°31'50"W.; to Lat. 31°33'15"N., Long. 81°31'15"W.; to point of beginning.
Designated altitudes. 1,200 feet AGL to 13,000 feet MSL.
Time of designation. Mon-Fri, 0800-1700 local time. Other times by NOTAM at least 24 hours in advance.
Controlling agency. Federal Aviation Administration, Jacksonville ARTCC.
Using agency. Savannah Air National Guard Training Site, Garden City, Ga.

R-3007E Townsend, Ga.

Boundaries. A circular area with a 1½ statute mile radius centered at Lat. 31°33'15"N., Long. 81°34'45"W.
Designated altitudes. Surface to 13,000 feet MSL.
Time of designation. Mon-Fri, 0800-1700 local time. Other times by NOTAM at least 24 hours in advance.
Controlling agency. Federal Aviation Administration, Jacksonville ARTCC.
Using agency. Savannah Air National Guard Training Site, Garden City, Ga.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Copies of the regulatory evaluation are in the Washington, D.C., and Southern Region dockets, and may be obtained by application in writing to the person identified above under the caption "For Further Information Contact . . ."

Issued in Washington, D.C., on December 22, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40394 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 80-ASW-30]

Establishment of Jet Routes and Area High Routes; Establishment of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes new Jet Route J-141 from El Paso, Tex., to Delicias, Mexico. This route coincides with a departure procedure for operations from El Paso International Airport that remains clear of the Cuidad Juarez, Mexico, terminal area. Jet Route J-141 from El Paso, Tex., to Delicias, Mexico, improves air operations between the United States and Mexico and enhances traffic flow in the El Paso and Cuidad Juarez, Mexico, teminal areas. Realignment of Jet Route J-13,

radials; to Delicias, Mexico. The airspace within Mexico is excluded." is added.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

The FAA has determined that this

SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance

Greenville, MS—Greenville Muni, VOR Rwy 17R, Amdt. 3
Ocean Springs, MS—Gulfpark, VOR-B, Original
Akron, NY—Akron, VOR/DME Rwy 24, Amdt. 1
Akron, NY—Akron VOR Rwy 6, Original

. . . *Effective January 22, 1981*

Rochester, MN—Rochester Muni, NDB Rwy 31, Amdt. 17

Note.—The FAA published an amendment in docket No. 21021, amdt. No. 1177 to part 97 of the Federal Aviation regulations (vol. 45 FR No. 226 page 76660; dated November 20,

J-141 from El Paso, Tex., to Delicias, Mexico, improves air operations between the United States and Mexico and enhances traffic flow in the El Paso and Cuidad Juarez, Mexico, teminal areas. Realignment of Jet Route J-13, also proposed, did not flight check satisfactorily and is not being implemented at this time.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: On August 7, 1980, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish new Jet Route J-141 from El Paso, Tex., to Delicias, Mexico, and realign Jet Route J-13 between Truth or Consequences, N. Mex., and Delicias, Mexico, (45 FR 52396). J-141 improves air operations between the United States and Mexico and enhances traffic flow in the El Paso and Cuidad Juarez, Mexico, terminal areas. The proposed realignment of J-13 is not included in this action because it failed to flight check. Also, the intersection described in J-141 as the Fort Stockton, Tex., VORTAC 273° has been changed to the Hudspeth, Tex., 187° radial, because Fort Stockton is too far away. The Hudspeth VORTAC has been flight checked and approved for the jet route structure. Subpart B of Part 75 was republished in the Federal Register on January 2, 1980 (45 FR 732).

Discussion of Comments

The Air Transport Association (ATA) stated that J-141 would impose substantial mileage penalty for southbound flights and create delays for aircraft en route to La Paz or San Jose Del Cabo, Mexico. However, J-141 will not be used for flights to those locations. They will be routed direct to Choix, Mexico, or by current airways in Mexico.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (45 FR 732) is amended, effective 0901 GMT, February 19, 1981, as follows:

Under Section 75.100

"**Jet Route No. 141 From El Paso, Tex., via INT El Paso 127° and Hudspeth, Tex., 187° radials; to Delicias, Mexico. The airspace within Mexico is excluded.**" is added.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 22, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-40393 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 21213; Amdt. No. 1180]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations of certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (AAPA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAP, mailed once every 2 weeks, may be ordered from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription prices is $135.00.

FOR FURTHER INFORMATION, CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administation, 800 Independence Avenue, SW., Washington, D.C. 20591 telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in offical FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

. . . Effective February 19, 1981

Anchorage, AK—Anchorage Intl, VOR Rwy 6R, Amdt. 11
Albany, GA—Albany-Dougherty County, VOR Rwy 16 (TAC), Amdt. 23
Lyons, KS—Lyons-Rice County Muni, VOR/DME-A, Original
Anoka, MN—Gateway North Industrial, VOR Rwy 34, Amdt. 2
Buffalo, MN—Buffalo Muni, VOR-B, Amdt. 1
Minneapolis, MN—Anoka County-Blaine Airport (Janes Field), VOR Rwy 8, Amdt. 8
Minneapolis, MN—Anoka County-Blaine Airport (Janes Field), VOR/DME Rwy 26, Original
Minneapolis, MN—Crystal, VOR-A, Amdt. 7
Greenville, MS—Greenville Muni, VOR Rwy 17L, Amdt. 10
Greenville, MS—Greenville Muni, VOR Rwy 17R, Amdt. 3
Ocean Springs, MS—Gulfpark, VOR-B, Original
Akron, NY—Akron, VOR/DME Rwy 24, Amdt. 1
Akron, NY—Akron VOR Rwy 6, Original
Albany, NY—Albany County, VOR Rwy 19, Amdt. 17
Galeton, PA—Cherry Springs, VOR-A, Amdt. 5
Sevierville, TN—Sevier-Gatlinburg, VOR/DME Rwy 10, Amdt. 2

. . . Effective February 5, 1981

Marion, IN—Marion Muni, VOR Rwy 4, Amdt. 7
Marion, IN—Marion Muni, VOR Rwy 15, Amdt. 4
Marion, IN—Marion Muni, VOR Rwy 22, Amdt. 10
Nappanee, IN—Nappanee, Muni, VOR-B, Amdt. 1
Nappanee, IN—Nappanee, Muni, VOR/DME-A, Amdt. 2
Urbana, IL—Illini, VOR-A, Amdt. 9
Urbana, IL—Illini, VOR/DME-B, Amdt. 3
Clearfield, PA—Clearfield-Lawrence, VOR Rwy 30, Amdt. 2
Erie, PA—Erie Intl, VOR Rwy 6, Amdt. 12
Erie, PA—Erie Intl, VOR/DME Rwy 24, Amdt. 6
Johnstown, PA—Johnstown-Cambria County, VOR Rwy 15, Amdt. 7
Johnstown, PA—Johnstown-Cambria County, VOR Rwy 23, Amdt. 5
Johnstown, PA—Johnstown-Cambria County, VOR/DME Rwy 15, Amdt. 3
Lancaster, PA—Lancaster, VOR Rwy 8, Amdt. 14
Lancaster, PA—Lancaster, VOR Rwy 31, Amdt. 11
Lancaster, PA—Lancaster, VOR/DME Rwy 26, Amdt. 3

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

. . . Effective February 19, 1981

Albany, GA—Albany-Dougherty County, LOC BC Rwy 22, Amdt. 4

. . . Effective February 5, 1981

Racine, WI—Horlick-Racine, LOC Rwy 4, Original, cancelled

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

. . . Effective February 19, 1981

Albany, GA—Albany-Dougherty County, NDB Rwy 4, Amdt. 8
Lyons, KS—Lyons-Rice County Muni, NDB Rwy 17R, Amdt. 3
Winston Salem, NC—Smith Reynolds, NDB Rwy 33, Amdt. 19
Athens, TN—McMinn County, NDB Rwy 2, Amdt. 3
Athens, TN—McMinn County, NDB Rwy 20, Amdt. 2

. . . Effective February 5, 1981

Monticello, KY—Wayne County, NDB Rwy 21, Original
Erie, PA—Erie Intl, NDB Rwy 24, Amdt. 13
Lake Jackson, TX—Brazoria County, NDB Rwy 17, Amdt. 1

. . . Effective January 22, 1981

Rochester, MN—Rochester Muni, NDB Rwy 31, Amdt. 17

Note.—The FAA published an amendment in docket No. 21021, amdt. No. 1177 to part 97 of the Federal Aviation regulations (vol. 45 FR No. 226 page 76660; dated November 20, 1980) under section 97.27 effective December 25, 1980, which is hereby amended as follows: Junction City, KS—Junction City Muni., NDB-B, original is rescinded.

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

. . . Effective February 19, 1981

Albany, GA—Albany-Dougherty County, ILS Rwy 4, Amdt. 7
Greenville, MS—Greenville Muni, ILS Rwy 17L, Amdt. 7
Kansas City, MO— Kansas City Intl. ILS Rwy 19, Amdt. 5
Albany, NY—Albany County, ILS Rwy 19, Amdt. 16
Winston Salem, NC—Smith Reynolds, ILS Rwy 33, Amdt. 18
Crossville, TN—Crossville Memorial, ILS Rwy 25, Amdt. 5

. . . Effective February 5, 1981

Marion, IN—Marion Muni, ILS Rwy 4, Amdt. 1
Erie, PA—Erie Intl, ILS Rwy 6, Amdt. 11
Erie, PA—Erie Intl, ILS Rwy 24, Amdt. 2
Lancaster, PA—Lancaster, ILS Rwy 8, Amdt. 6
Lake Jackson, TX—Brazoria County, ILS Rwy 17, Amdt. 1
Racine, WI—Horlick-Racine, ILS Rwy 4, Original

. . . Effective February 22, 1981

Rochester, MN—Rochester Muni, ILS Rwy 31, Amdt. 15

5. By amending § 97.31 RADAR SIAPs identified as follows:

. . . Effective February 19, 1981

Tampa, FL—Tampa Intl, RADAR-1, Amdt. 8
Albany, NY—Albany County, RADAR-1, Amdt. 12

. . . Effective February 5, 1981

Erie, PA—Erie Intl, RADAR-1, Amdt. 4
Green Bay, WI—Austin-Straubel Field, RADAR-1, Amdt. 4

6. By amending § 97.33 RNAV SIAPs identified as follows:

. . . Effective February 19, 1981

Albany, GA—Albany-Dougherty County, RNAV Rwy 34, Amdt. 1
Bradford, PA—Bradford Regional, RNAV Rwy 23, Original
Bradford, PA—Bradford Regional, RNAV Rwy 5, Original

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a

commodities will be subject to review under both nuclear non-proliferation and national security procedures. To avoid ambiguity, the regulations are being revised to provide specifically that applications for any commodities

section 309(c) of the Nuclear Non-Proliferation Act of 1978. These commodities are referred to as "The Nuclear Referral List." The procedures established pursuant to section 309(c), which originally appeared at 43 FR

In some cases, more than one reason for control is given for one entry. If an entry is controlled for more than one reason, but not to an identical list of countries, the lesser degree of control is

29, 1980; comments must be received on or before February 27, 1981.

ADDRESS: Written comments (six copies when possible) should be sent to: Richard J. Isadore, Acting Director,

administrative action. Existing regulations do not delineate the scope of review on appeal.

As revised, Part 389 provides procedures for appeals from an administrative action only. However,

Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 19, 1980.

John S. Kern,

Chief, Aircraft Programs Division.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 80-40259 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 378 and 399

Clarification of Nuclear Non-Proliferation Controls

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations are revised to clarify that any commodity controlled for national security reasons that is proposed for export for a nuclear related end-use or end-user is also subject to review for nuclear non-proliferation reasons.

DATE: Final rule effective December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, Telephone (202) 377-5247 or 377-4811.

SUPPLEMENTARY INFORMATION: This rule revises the Export Administration Regulations to clarify the scope of export controls for nuclear non-proliferation reasons. Parts 378 and 399 state that those Commodity Control List entries identified by a "4" in the "Reason for Control" column and exports described in § 378.3 are subject to nuclear non-proliferation review procedures. The interagency review procedures established June 9, 1978 (43 FR 25330), and reprinted as Supplement No. 1 to Part 378 provide for nuclear non-proliferation review of "any other applications which may involve possible nuclear uses * * *."

Some commodities controlled for national security reasons may also be intended for nuclear end-uses or end-users. However, Parts 378 and 399 do not explicitly state that these commodities will be subject to review under both nuclear non-proliferation and national security procedures. To avoid ambiguity, the regulations are being revised to provide specifically that applications for any commodities subject to national security export controls may also be subjected to review under nuclear non-proliferation procedures if destined for nuclear related end-users or end-uses.

In addition to the interagency review procedures, this is authorized by section 17(d) of the Export Administration Act of 1979 (Pub. L. 96-72, 50 U.S.C. App. 2401, *et seq.*) (the "Act") which provides that nothing in the national security controls or foreign policy controls sections of the Act shall be construed to supercede the procedures established by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978.

Section 13(a) of the Act exempts regulations promulgated under it from the public participation in rulemaking procedures of the Administrative Procedure Act. Because they relate to a foreign affairs function of the United States, it has been determined that these regulations are not subject to Department of Commerce Administrative Order 218-7 (44 FR 2082, January 9, 1979) and the International Trade Administration Administrative Instruction 1-6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978, 3 CFR 132 (1979)), "Improving Government Regulations."

For the reasons set forth above, the Export Administration Regulations (15 CFR Parts 378 and 399) are amended as follows:

1. Paragraphs (a) and (b) of § 378.2 are revised to read as follows:

§ 378.2 Nuclear-related commodities and technical data (The Nuclear Referral List).

(a) *Commodities controlled for nuclear reasons.* Section 309(c) of the Nuclear Non-Proliferation Act of 1978 required the President to publish procedures regarding the control by the Department of Commerce over export items under its jurisdiction that could be, if used for purposes other than for which the export is intended, of significance for nuclear explosive purposes. The commodities listed on the Commodity Control List (§ 399.1) that have the number 4 in the column titled "Reason for Control" have been identified as those that could be of significance for nuclear explosive purposes, and hence are subject to validated licensing and the procedures established under this part and under section 309(c) of the Nuclear Non-Proliferation Act of 1978. These commodities are referred to as "The Nuclear Referral List." The procedures established pursuant to section 309(c), which originally appeared at 43 FR 25330 (June 9, 1978), are reprinted as Supplement No. 1 to this Part 378. In addition, any item not on the Nuclear Referral List that requires a validated export license for national security reasons and is intended for a nuclear related end-use or end-user is subject to these procedures. Also, described in § 379.4(c), are certain related technical data that are subject to nuclear non-proliferation controls. The Commodity Control List indicates the countries to which validated licenses are required. Some commodities are controlled for nuclear reasons to all Country Groups, and in certain instances to Canada. For other commodities, the nuclear controls apply to a country only when it is excluded from the list of countries contained in Supplements 2 and 3 of Part 373 of this chapter.

(b) *Processing of applications.* Applications for the export of commodities and technical data described in paragraph (a) of this section will be processed in accordance with the interagency review procedures established pursuant to section 309(c) of the Nuclear Non-Proliferation Act reprinted as Supplement No. 1 to this Part, and the applicable provisions of these Regulations.

2. In § 399.1, paragraph (g)(3) is revised to read as follows:

§ 399.1 The Commodity Control List and how to use it.

* * * * *

(g) * * *

(3) *Reason for control.* The reason for control for each entry is specified in the last column,[1] using the following number code—

Code number	Reason for control
1	National security.[2]
2	Short supply.[3]
3	Foreign policy.[4]
4	Nuclear non-proliferation.[5]
5	Crime control (foreign policy).[6]

[1] In accordance with sections 5(c)(1) and 6(j) of the Export Administration Act of 1979.

[2] Export Administration Act of 1979, section 5, Pub. L. 96-72, 93 Stat. 507, 50 U.S.C. app. § 2404.

[3] Export Administration Act of 1979, section 7, Pub. L. 96-72, 93 Stat. 515, 50 U.S.C. app. § 2406. Other statutes controlling petroleum and other commodities include: Energy Policy and Conservation Act, section 103, Pub. L. 94-163, 89 Stat. 877, 42 U.S.C. 6212; Trans-Alaska Pipeline Authorization Act, section 101, Pub. L. 93-153, 87 Stat. 576, amending 30 U.S.C. 185; Naval Petroleum Reserves Production Act of 1976, section 201(b), Pub. L. 94-258, 90 Stat. 309, amending 10 U.S.C. § 7430.

[4] Export Administration Act of 1979, section 6, Pub. L. 96-72, 93 Stat. 513, 50 U.S.C. app. § 2405.

[5] Export Administration Act of 1979, section 5, 6, and 17(d), Pub. L. 96-72, 93 Stat. 507, 50 U.S.C. app. § 2416(d), Nuclear Non-Proliferation Act of 1978, section 309(c), Pub. L. 95-242, 92 Stat. 141, 42 U.S.C. 2139a.

[6] Export Administration Act of 1979, section 6(j), Pub. L. 96-72, 93 Stat. 515, 50 U.S.C. app. 2405(j).

In some cases, more than one reason for control is given for one entry. If an entry is controlled for more than one reason, but not to an identical list of countries, the lesser degree of control is explained in a footnote. Also, all entries (except those showing "none" in the "Validated License "Required" column) are controlled for foreign policy reasons to Country Groups S and Z due to certain embargo programs, and all entries having both a "V" in the "Validated License Required" column and a "1" in the Reason for Control" column are controlled for foreign policy reasons to Syria, Iraq, Libya, and the People's Democratic Republic of Yemen. Applications involving entries having a "1" but not having a "4" in the "Reason for Control" column are subject to nuclear non-proliferation controls if the end-use or end-user is nuclear related. (See § 378.2) In some cases, sub-entries of a CCL entry are controlled for different reasons. In these cases, a dash (—) will be shown in the first line of the entry, and the code number is shown in the "Reason for Control" column exactly opposite each sub-entry (a), (b), etc. (For example, see CCL entry No. 1110.)

* * * * *

(Secs. 13, 15, 17, and 21, Pub. L. 96-72, 50 U.S.C. App. 2401, *et seq.*; E.O. 12214 (45 FR 29783, May 6, 1980); sec. 309(c), Pub. L. 95-242, 42 U.S.C. 2139(a); Department Organization Order 10-3 (45 FR 6141, January 25, 1980), and International Trade Admininstration Organization and Function Orders 41-1 (45 FR 11862, February 22, 1980) and 41-4, effective August 26, 1980)

Dated: December 16, 1980.

Kent N. Knowles,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 80-40331 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-25-M

15 CFR Part 389

Revision of Appeals Provisions of the Export Administration Regulations

AGENCY: International Trade Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The agency is revising the Appeals provisions of the Export Administration Regulations to include new sections on the procedures to follow when an informal hearing is requested or conducted as part of the appeal process and to conform the language of Part 389 with the current organizational structure.

DATES: Interim rule effective December 29, 1980; comments must be received on or before February 27, 1981.

ADDRESS: Written comments (six copies when possible) should be sent to: Richard J. Isadore, Acting Director, Operations Division; Office of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 1617M, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 1617M, Washington, D.C. 20230; (202) 377-4738.

SUPPLEMENTARY INFORMATION:

Substance of the Regulations: This rule revises the Export Administration Regulations to clarify and improve appeals procedures and to reflect organizational changes within the International Trade Administration.

As revised, Part 389 formalizes the present practice of holding informal meetings on an *ad hoc* basis during an appeal. The new regulations provide uniform procedures available to all appellants. Any increased burden on the appellate process would be limited by the flexible procedures established. For example, the request for an informal hearing can be denied, and the conduct of the hearing and length of time allotted to it can be easily controlled by the official conducting the informal meeting.

The revisions permit "any person directly and adversely affected" by an administrative action to appeal. Under former § 389.1(c), a person could appeal from an administrative action only where such action "works an exceptional and unreasonable hardship upon him, or improperly discriminates against him."

The revisions require the filing of an appeal within 45 days after the date appearing on a written notice of administrative action. The regulations were formerly unclear whether mailing or receipt of notice triggers the beginning of the time period for filing.

Although the Assistant Secretary for Trade Administration may designate another Department official to conduct an informal hearing, the Assistant Secretary shall decide the appeal.

The scope of review will be a "reconsideration" of the administrative action. This standard will give the Assistant Secretary for Trade Administration discretion in deciding an appeal yet focus the determination upon materials submitted by the appellant and the Department in connection with the appeal, or made available to the Department in connection with the administrative action. Existing regulations do not delineate the scope of review on appeal.

As revised, Part 389 provides procedures for appeals from an administrative action only. However, requests to issue, amend or revoke a regulation may be submitted to the Department at any time.

Rulemaking procedure and invitation to comment: Section 13(a) of the Export Administration Act of 1979 ("the Act") exempts regulations promulgated under the Act from the public participation in rulemaking procedures of the Administrative Procedure Act. Section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form, is not applicable because these regulations do not impose controls on exports. It has been determined that these regulations are not "significant" within the meaning of Department of Commerce Administrative Order 218-7 (44 FR 2082, January 9, 1979) and International Trade Administration Administrative Instruction 1-6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978, 3 CFR 132 (1979)), "Improving Government Regulations."

However, consistent with the intent of Congress set forth in Section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing final regulations.

The period for submission will close February 27, 1981. All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of final regulations.

All public comments on these regulations, whenever submitted, will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, a written summary will be prepared by the person receiving the oral comments. That written summary

will also be a matter of public record and will be available for public review

Administrative action. Any action taken by the U.S. Department of Commerce

hearing. In addition to the written statement submitted in support of an

a reasonable time after receipt of the appeal. If the Assistant Secretary cannot

the citation reading "40 CFR 1506.11."; and

Regulations (DOT order 2100.5 of 5-22-80). An economic evaluation of the rule

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will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 3102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Drafting Information: The principal authors of these rules are Cecil Hunt, Assistant General Counsel for International Trade; Kent Knowles, Director, Office of Export Administration; and Donald Zarin, Attorney Advisor.

Accordingly, Part 389 of the Export Administration Regulations is revised as follows:

Issued in Washington, D.C., on December 19, 1980.

Eric L. Hirschhorn,

Deputy Assistant Secretary for Export Administration.

PART 389—APPEALS

Sec.
389.1 General provisions.
389.2 Appeal from an administrative action.
389.3 Request to issue, amend or revoke a regulation.

Authority: Secs. 4, 5, 6, 7, 8, 10, 11, 13, 15, 16 and 21, Pub. L. 96–72, 50 U.S.C. app. 2401, *et seq.*; Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Orders 41–1 (45 FR 11882, February 22, 1980) and 41–4 (effective August 26, 1980).

§ 389.1 General provisions.

(a) *Purpose.* This Part 389 sets forth the procedures applicable to appeals from administrative actions taken under the Export Administration Act of 1979 ("the Act") or the Export Administration Regulations (the "Regulations").

(b) *Definitions.* The following are definitions of terms used in this Part 389:

Administrative action. Any action taken by the U.S. Department of Commerce under the Act or the Regulations with respect to a particular person including denial of an export license application, return without action of a license application for other than procedural deficiencies or additional information, or classification of an applicant's commodity. Administrative actions do not include enforcement activities under Parts 387 and 388.

Appeal. A request for relief from an administrative action taken by the U.S. Department of Commerce.

Appellant. A person requesting relief from an administrative action taken by the U.S. Department of Commerce.

Assistant Secretary. The Assistant Secretary of Commerce for Trade Administration.

Person. Any individual, partnership, corporation, or other form of association.

Presiding official. The Assistant Secretary or any Department official who may be designated by the Assistant Secretary to conduct informal hearings.

§ 389.2 Appeal from an administrative action.

(a) *Grounds for appeal and scope of review.* Any person directly and adversely affected by an administrative action (excluding denial or probation orders, civil penalties, sanctions, or other actions under Parts 387 and 388) taken by the U.S. Department of Commerce may appeal to the Assistant Secretary for reconsideration of that administrative action. Regulations may not be appealed under this part. (*See* § 389.3.)

(b) *Appeal procedure*—(1) *Filing.* An appeal under this part must be received by the Office of the Assistant Secretary for Trade Administration, International Trade Administration, 14th Street and Constitution Ave., N.W., Room 3826, U.S. Department of Commerce, Washington, D.C 20230, not later than 45 days after the date appearing on the written notice of administrative action. (2) *Content of appeal.* A full written statement in support of the appeal, including a precise statement of why the appellant believes the administrative action has a direct and adverse effect and should be reversed or modified, must be filed with the appeal. The presiding official may request any further submissions deemed helpful in resolving the appeal. At his discretion, the presiding official may accept additional submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the appeal or of any requested submission. (3) *Request for informal hearing.* In addition to the written statement submitted in support of an appeal, an appellant may request, in writing, at the time of filing an appeal, an opportunity for an informal hearing. However, the Assistant Secretary may grant or deny a request for an informal hearing. All hearings, if granted, will be held in Washington unless the presiding official determines, based upon good cause shown, that another location would better serve the interests of justice. (4) *Informal hearing procedures.* (i) *Presentation.* The presiding official shall provide an opportunity for the appellant and/or representative to make an oral presentation based on the materials previously submitted by the appellant or made available by the Department in connection with the administrative action and may require that any facts in controversy be covered by affidavit or testimony given under oath or affirmation. (ii) *Evidence.* The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material deemed by the presiding official to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight.

(iii) *Procedural questions.* The presiding official shall have the authority to limit the number of people attending the hearing, to impose any time or other limitations deemed reasonable, and to determine all procedural questions. (iv) *Transcript.* A transcript of an informal hearing shall not be made, unless the presiding official determines that the national interest or other good cause warrants it, or the appellant requests a transcript. If the appellant requests a transcript, the appellant shall pay all expenses. (v) *Report.* When the presiding official is other than the Assistant Secretary, that official shall submit a written report containing a summary of the hearing and recommended action to the Assistant Secretary.

(c) *Decisions*—(1) *Determination of appeal.* In addition to the documents specifically submitted in connection with the appeal, the Assistant Secretary shall consider any recommendations, reports, or relevant documents available to the Department of Commerce in determining the appeal, but shall not be bound by any such recommendation, nor prevented from considering any other information, or consulting with any other person or groups, in making a determination. The Assistant Secretary may adopt any other procedures deemed necessary and reasonable for considering an appeal. The Assistant Secretary shall decide an appeal within a reasonable time after receipt of the appeal. If the Assistant Secretary cannot act on the appeal for any reason, the Under Secretary for International Trade may designate another Department of Commerce official to receive and act on the appeal. The decision shall be issued to the appellant in writing and shall contain a statement of the reasons for the action. (2) *Effect of the determination.* The decision of the Assistant Secretary shall be final.

(d) *Effect of appeal.* The taking of an appeal shall not stay the operation of any administrative action unless the Assistant Secretary, upon application by the appellant and with opportunity for response, shall grant a stay.

§ 389.3 Request to issue, amend or revoke a regulation.

Requests to issue, amend or revoke a regulation are not subject to the appeals process, but may be submitted to the Department at any time.

[FR Doc 80–40332 Filed 12–24–80; 8:45 am]

BILLING CODE 3510–25–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 771

Environmental Impact and Related Procedures; Technical Corrections

AGENCY: Federal Highway Administration, (FHWA), DOT.

ACTION: Technical corrections to final rule.

SUMMARY: This document makes minor technical corrections to a previously published final rule on the preparation of environmental statements and other related documents and procedures. An erroneous cross-reference and two typographical errors are corrected.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas P. Holian, Office of the Chief Counsel, 202–426–0781, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

In FR Document 80–33714, in the issue of Thursday, October 30, 1980, please make the following corrections:

§ 771.117 [Corrected]

1. On page 71981 (second column), in § 771.117(b), the reference now reading "§ 771.115(a)" should read "§ 771.115(b)";

§ 771.131 [Corrected]

2. On page 71984 (second column), in § 771.131, remove the last four words of the paragraph and place a period after the citation reading "40 CFR 1506.11."; and

§ 771.133 [Corrected]

3. On page 71984 (second column), in § 771.133(a), the third sentence should read "Approval of the environmental document by the Administration constitutes approval of any required findings and determinations that are contained therein."

(23 U.S.C. 315; 49 CFR 1.48(b))

Issued on: December 16, 1980.

Cheryl S. McMurry,

Chief Counsel, Federal Highway Administration.

[FR Doc. 80–40048 Filed 12–24–80; 8:45 am]

BILLING CODE 4910–22–M

Coast Guard

33 CFR Part 165

[CGD11–80–12]

Safety Zone—San Pedro Bay, Los Angeles, California

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment to the Coast Guard's safety zone regulations establishes a safety zone in San Pedro Bay. This safety zone is established to protect recreational boaters and commercial shipping during construction of the landfill site for the Los Angeles Harbor Main Channel dredging project.

EFFECTIVE DATE: This amendment becomes effective on December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Lt. N. S. Porter, Assistant Port Operations Officer, Coast Guard Marine Safety Office LA–LB, 165 N. Pico Ave. Long Beach, CA 90802 at telephone No. (213) 590–2315.

SUPPLEMENTARY INFORMATION: On October 2, 1980, the Coast Guard published an Interim Rule in the Federal Register for these regulations (45 FR 65208). Interested persons were requested to submit comments. No comments were received.

Drafting Information:

The principal persons involved in drafting this rule are Lt. N. S. Porter, Project Officer, Marine Safety Office LA–LB and CDR. R. N. Roussel, Project Attorney, Eleventh Coast Guard District (dl).

Summary of Final Evaluation

These regulations are considered to be of an emergency nature in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT order 2100.5 of 5–22–80). An economic evaluation of the rule has not been conducted since its impact is expected to be minimal.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new § 165.1108 to read as follows:

§ 165.1108 San Pedro Bay, Los Angeles, California.

(a) The area enclosed by the following boundary is a safety zone—the waters of San Pedro Bay enclosed by a line beginning at Fish Harbor Channel Light 4 (latitude 33–43–51.0N; longitude 118–15–50.0W); thence southeasterly to latitude 33–43–43.5N, longitude 118–15–45.8W; thence northeasterly to latitude 33–44–03.6N, longitude 118–14–36.4W; thence northwesterly to latitude 33–44–43.8N, longitude 118–14–56.0W; thence southeasterly along the Terminal Island shoreline to the beginning point.

(b) No vessel may enter or remain in the safety zone except: (1) Vessels engaged in the construction of the landfill site for the Los Angeles Harbor dredging project; (2) vessels operated by or under contract to the U.S. Army Corps of Engineers or the City of Los Angeles; and (3) any other vessels specifically authorized to be in the zone by the Captain of the Port Los Angeles-Long Beach.

Note.—The southerly and easterly sides of the safety zone will be clearly marked by white buoys displaying the orange diamond cross daymark.

(92 Stat. 1475, 33 U.S.C. 1225; 46 CFR 1.46(n)(4); 33 CFR 165.10)

Dated: November 20, 1980.

J. H. Guest,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 80–40100 Filed 12–24–80; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 183

[CGD 80–047 and CGD 80–046]

Electrical and Fuel Systems Standards for Recreational Boats

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the Coast Guard regulations on electrical and fuel systems standards for recreational boats by adopting more recent versions of industry standards incorporated by reference in the regulations. IEEE Standard 45 lists insulated electrical cables which meet certain water absorption and flame retardancy

requirements. Adoption of the more recent version of the standard allows changes made in cable types and designations to be reflected in the Coast Guard's requirements for electrical systems on recreational boats. UL Standard 1114 is a new standard for electric water pumps. Adoption of this standard will allow the use of these pumps on recreational boats. The rule also amends the Coast Guard regulations on fuel systems standards for recreational boats by adopting more recent versions of industry standards incorporated by reference in the regulations. SAE Standard J1127 lists requirements for low tension primary ignition cable. Adoption of the more recent version of the standard allows changes made in cable types and designations to be reflected in the Coast Guard's requirements for fuel systems on recreational boats. IEEE Standard 45–1977, dated June 30, 1977 and UL Standard 1114, dated October 22, 1979. The IEEE standard may be purchased from the Institute of Electrical and Electronic Engineers, Inc., 345 East 47th Street, New York, New

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–21; Notice 5]

NHTSA research, data and views submitted in the comments and data obtained from other pertinent documents and reports. The most significant comments are discussed below.

Because of the disproportionate association of stolen vehicles with accidents, injuries and fatalities, the agency concludes the number of light truck and MPV thefts should be reduced by requiring those vehicles to have forward motion and take a separate physical action in order to turn the key to the "lock" position and engage the steering wheel lock. For example, in vehicles that have a column-mounted transmission shifter and a steering

requirements. Adoption of the more recent version of the standard allows changes made in cable types and designations to be reflected in the Coast Guard's requirements for electrical systems on recreational boats. UL Standard 1114 prescribes performance requirements for USCG Type A fuel hose. Adoption of the more recent version of the standard allows changes made in performance testing of this hose to be reflected in the Coast Guard's requirements for fuel systems on recreational boats.

EFFECTIVE DATE: This regulation is effective on: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Lysle B. Gray, Office of Boating, Public and Consumer Affairs (G-BBT/42), U.S. Coast Guard Headquarters, Washington, D.C. 20593, (202/426-4027).

SUPPLEMENTARY INFORMATION: Notices of Proposed Rulemaking concerning these amendments were published as separate documents in the **Federal Register** on June 9, 1980. (45 FR 38417 and 38418). Interested persons were invited to submit relevant comments on these proposals by July 24, 1980. Only one comment was received. The commenter felt that because the preamble of the document on fuel systems [CGD 80-046] did not mention alternative standards, the public might be misled into believing that only UL listed hose tested in accordance with UL Standard 1114 is acceptable as USCG Type A hose. As stated in 33 CFR 183.505, SAE Standard J30C, when used in conjunction with the fire test described in 33 CFR 183.590, provides alternative performance requirements for USCG Type A hose. This alternative was not mentioned in the proposal to avoid confusion, since only the UL standard required updating.

After the proposal was issued for this rulemaking the Coast Guard published notice in the **Federal Register** (45 FR 43704, June 30, 1980) of editorial changes that were being made to all sections in Chapter I of Title 33 of the Code of Federal Regulations that contain incorporations by reference. As a result of this action, the volume numbers and publication dates of all materials incorporated by reference have been removed from the text of the regulations and inserted in a table that appears at the end of Title 33, Chapter I. A copy of this table was published in the **Federal Register** on June 30, 1980 (45 FR 44101). The reader should revise this table to reflect the changes that are being made throught this rulemaking.

The materials incorporated by reference under this rulemaking are IEEE Standard 45-1977, dated June 30, 1977 and UL Standard 1114, dated October 22, 1979. The IEEE standard may be purchased from the Institute of Electrical and Electronic Engineers, Inc., 345 East 47th Street, New York, New York 10017. The UL standard may be purchased from Underwriters' Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062. Both of these standards are available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 "L" Street NW, Washington, D.C. 20408. Notice will be published in the Federal Register of any future changes in these standards incorporated by reference. Approval to incorporate this material by reference was obtained from the Director of the Federal Register on October 24, 1980.

Drafting Information: The principal persons involved in drafting this rule are: Mr. Alston Colihan, Project Manager, Office of Boating, Public and Consumer Affairs and Mr. Coleman Sachs, Project Attorney, Office of the Chief Counsel.

§ 183.435 [Amended]

In consideration of the foregoing, the Coast Guard is amending Part 183 of Title 33, Code of Federal Regulations by incorporating by reference into § 183.435(a)(3) Institute of Electrical and Electronic Engineers, Inc. (IEEE) Standard 45-1977, dated June 30, 1977, and by incorporating by reference into § 183.505 definition for "USGC Type A Hose" paragraph (2) Underwriters' Laboratories, Inc. (UL) Standard 1114, dated October 22, 1979. As a reader's aid, the Office of the Federal Register publishes a table of approved incorporations by reference. The reader may want to make appropriate changes to this table as follows:

1. By removing from the Institute of Electrical and Electronic Engineers, Inc. (IEEE) Standard 45 the publication number 45-1971 and the publication date 1970 and inserting 45-1977 and 1977 respectively in their places.

2. By removing from Underwriters' Laboratories, Inc. (UL) Standard 1114 the publication date 1976 and inserting 1979 in its place.

(46 U.S.C. 1454 and 1488; 49 CFR 1.46(n)(1))

Dated: December 15, 1980.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 80-39734 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1-21; Notice 5]

Federal Motor Vehicle Safety Standards; Theft Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice extends the performance requirements of Standard No. 114 *Theft Protection,* to light trucks and vans. At present, the standard only applies to passenger cars. The effect of the extension will be to reduce the incidence of light truck and van thefts and subsequent disproportionate involvement of those stolen vehicles in injury-producing accidents. The notice also upgrades the performance requirements of the standard to prevent the driver from inadvertently locking up the steering wheel of a moving vehicle by removing the ignition key or shutting off the engine.

DATES: The effective date for passenger cars is September 1, 1982. The final rule is effective for multipurpose passenger vehicles and trucks having a gross vehicle weight rating of 10,000 pounds or less on September 1, 1983.

ADDRESS: Petitions for reconsideration should refer to the docket number and be submitted to: Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (Docket hours: 8:00 a.m. to 4:00 p.m.).

FOR FURTHER INFORMATION CONTACT: Nelson Erickson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: On May 1, 1978, the NHTSA published a notice of proposed rulemaking to extend the applicability of Standard No. 114, *Theft Protection* (49 CFR 571.114), to trucks with a gross vehicle weight rating (GVWR) of 10,000 pounds or less and all multipurpose passenger vehicles (43 FR 18577). The standard currently only applies to passenger cars. The proposal would have also upgraded some of the performance requirements of the standard and clarified others.

Consumers, safety organizations, insurance companies, police departments, locksmiths, vehicle manufacturers, and others submitted comments on the proposed standard. The final rule is based on a thorough evaluation of the data obtained in

NHTSA research, data and views submitted in the comments and data obtained from other pertinent documents and reports. The most significant comments are discussed below.

Extending the Applicability

In recent years, the sale and use of light trucks and multipurpose passenger vehicles (MPV's), such as passenger vans and on-off road vehicles, has substantially increased. The rise in sales and use has been accompanied by an increase in the number of thefts of those vehicles. To reduce the incidence of light truck and MPV thefts and subsequent disproportionate involvement of those stolen vehicles in injury-producing accidents, the May 1978 notice proposed extending the requirements of Standard No. 114 to light trucks and MPV's. The extension was supported by such organizations as Allstate Insurance Company, American Automobile Association (AAA), Center for Auto Safety (CAS) and Chrysler Corporation. Several other motor vehicle manufacturers and the Motor Vehicle Manufacturers Association did not oppose the extension of the standard, but did object to some of the newly-proposed performance requirements. GM said that while more data were needed to justify the extension, it had voluntarily applied some anti-theft features to some of its light trucks and was considering using theft protection equipment on all its light trucks and vans. American Motors Corporation (AMC) also argued that a safety need had not been established. AMC and others also requested that if the extension were adopted, then open-body vehicles, such as some on-off road vehicles, should be exempt from the standard.

The agency is adopting the extension as proposed. The data cited by the agency in the May 1978 notice clearly establish that there is a safety need for reducing the number of motor vehicle thefts. That data showed that stolen cars are from 47 to 200 times more likely than non-stolen cars to be involved in accidents. Stolen cars are involved in one out of every 350 accidents and account for approximately 5,600 disabling injuries and 150 fatalities annually. Data available from the States and the Federal Bureau of Investigation indicate that the theft rate for light trucks and MPV's, especially vans, is increasing and is similar to the rate for passenger cars. At present, many light trucks and MPV's use the type of anti-theft devices that were unsuccessfully used on pre-1970 passenger cars, i.e., before adoption of Standard No. 114. Because of the disproportionate association of stolen vehicles with accidents, injuries and fatalities, the agency concludes the number of light truck and MPV thefts should be reduced by requiring those vehicles to have certain minimum anti-theft features currently found on passenger cars.

The agency is not adopting the exemption for open body-type vehicles sought by some manufacturers. This action by the agency will not pose any problems for those manufacturers.

The concerns that they expressed about those vehicles' ability to comply with the proposed standard dealt with performance requirements that, as explained below, the agency has decided not to adopt. However, because of the accessibility of these vehicles' interiors, it is important to reduce their vulnerability to theft by requiring them to comply with the rest of the proposed requirements.

The notice proposed to extend the applicability of Standard No. 114 to all MPV's. The agency has decided, however, that the rule should apply only to MPV's whose GVWR is 10,000 pounds or less. NHTSA has decided not to extend the standard to MPV's with a GVWR greater than 10,000 pounds because these vehicles are generally not subject to joyrider theft.

Inadvertent Locking

To prevent the accidental locking of the steering system while the vehicle is in motion, the May 1978 notice proposed that the steering and the forward mobility of the vehicle not be impeded when the key is removed from the ignition or when the key is moved from one position to another in the steering wheel lock, such as from on "on" to "off." The proposed requirements would have allowed the driver to shut off the engine in an emergency situation, such as when the vehicle suddenly accelerated due to a stuck throttle cable, without activating the vehicle's steering lock and losing control of the vehicle's steering or forward mobility. The proposal would have also prevented the steering lock from activating if the driver removed the ignition key from the steering lock while the vehicle was in motion. NHTSA proposed the requirements in response to a petition from R. L. Bean.

Almost all manufacturers supported the intent of the proposal to prevent inadvertent actuation of the steering lock. The manufacturers argued, however, that they currently have steering lock systems that would prevent inadvertent actuation. Many manufacturers have a system which requires the driver to stop the vehicle's forward motion and take a separate physical action in order to turn the key to the "lock" position and engage the steering wheel lock. For example, in vehicles that have a column-mounted transmission shifter and a steering column lock, the shifter must be moved into "park" or "reverse" before the key can be turned to "lock" and the steering lock engaged. The agency agrees that such systems effectively prevent a driver from activating the steering wheel lock while the vehicle is in forward motion.

The agency is concerned about other current systems which allow the driver to activate the steering lock while the vehicle is still in forward motion. For example, some manufacturers use a system which allows a driver to push a key release button or lever and move the key to the "lock" position, which engages the steering lock, while the vehicle is moving forward. The purpose of the key release system is to require the driver to perform a sequence of acts before locking the steering to reduce the possibility of activating the lock while the vehicle is in motion. However, some of those systems are designed in such a way that the driver can push the key release lever or button, hold it in place and then simultaneously turn the key to the "lock" position with the same hand. Thus, rather than requiring the driver to perform a sequence of separate and distinct acts before the steering wheel lock can be engaged, those systems allow the driver to simultaneously perform the two actions (pushing the key release device and turning the key to the "lock" position) necessary to engage the steering wheel lock.

To prevent the danger of activating the steering lock while the vehicle is in motion, the agency is prohibiting the use of systems which allow drivers to activate the key release device and simultaneously turn the key to the "lock" position with one hand. Manufacturers will still be permitted to use key release devices which are positioned in such a way that two hands must be used to activate the key release and then turn the key (e.g., a system where the key release device is on one side of the steering column and the ignition lock is on the other side) since those systems minimize the possibility of locking the steering while the vehicle is in motion by requiring a distinct sequence of separate acts that must be performed by two hands.

Several commenters, such as Mercedes-Benz and the Japan Automobile Manufacturers Association (JAMA), requested the agency to pattern its requirement on inadvertent

activation of locking systems on the Economic Commission for Europe (ECE) regulation. The ECE regulation specifies that anti-theft devices which impede the steering or forward mobility of the vehicle cannot activate until the engine

The agency's proposal to require an audible warning and to require the warning device to sound for so long as the key is not removed after the door had been opened met with substantial opposition from consumers and vehicle

proposal, i.e., the one that would prevent a key which operates any exterior vehicle lock from operating the ignition lock. (GM currently uses a two key system.) The commenters argued that using two keys to enter and start

Clarification of Requirements

In several of the proposed changes to the text of the standard, the May 1978 notice used the term "ignition system lock" instead of "key locking system" to refer to the system used to activate the

cost to the public from stolen vehicles is enormous, ranging from $1.8 billion to $2.8 billion annually. The agency estimates that the final rule may result in as many as 25 lives saved and 1,120 less injuries annually.

or after September 1, 1983, shall meet the requirements of S4.3, S4.5, S4.6, and S4.7.

S4.2. Each vehicle shall have a key-locking system that, whenever the key is removed will prevent—

(a) Normal activation of the vehicle's

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activation of locking systems on the Economic Commission for Europe (ECE) regulation. The ECE regulation specifies that anti-theft devices which impede the steering or forward mobility of the vehicle cannot activate until the engine is off and the driver has performed another separate action other than turning the engine off, such as withdrawing the key. The agency has decided not to adopt the ECE regulation. The NHTSA believes that this rule does not effectively minimize the possibility of accidental lock-up, because it does not require the driver to perform a sequence of separate and distinct acts in order to activate the steering wheel lock.

Stronger Ignition Locking System

Manufacturers, such as GM, Ford, Mercedes and VW, supported a requirement that the ignition lock be designed to resist removal. However, they criticized the agency's proposal that the ignition system become inoperative if any part of the lock were removed. For example, Ford argued that the proposal would require the ignition to be inoperative even if only a small portion of the lock were removed and the remaining portion of the lock still performed satisfactorily. The manufacturers argued that the agency needs to more specifically define the proposed performance requirements and establish an objective test procedure before issuing a final rule.

Requiring stronger ignition and steering locking systems is potentially one of the most promising ways to effectively reduce vehicle thefts. Even if a thief gains entry to a vehicle, the ignition and steering lock must be circumvented in order to drive the vehicle. Although some manufacturers voluntarily have taken steps to strengthen their ignition locks, it is too easy to remove the ignition lock and start the engine in many vehicles.

To develop an improved ignition lock requirement, NHTSA contracted with the National Bureau of Standards to do tensile, torque and extraction testing on current ignition lock systems (NHTSA Contract HS–9–02150). The report was completed this fall and is presently being evaluated by the agency. Upon completion of this evaluation, NHTSA will consider new rulemaking to propose specific performance requirements for ignition lock retention and ignition system operation.

Audible Warning

Passenger cars are currently equipped with a warning device to remind the driver to remove the key. The device activates when the key is left in the ignition lock and the car door is opened. The agency's proposal to require an audible warning and to require the warning device to sound for so long as the key is not removed after the door had been opened met with substantial opposition from consumers and vehicle manufacturers. They argued that the proposed sound level required for the warning device would be too loud and therefore irritating to vehicle occupants. MVMA and others also argued that the proposals would require a continual warning in many situations, such as parking lots, service areas and car washes, where keys are legitimately left in the ignition after the driver has left the vehicle. In addition, they argued that the power necessary to continually operate the warning device could cause battery failure.

Based on its evaluation of the comments, the agency has decided to retain the current warning requirement and not adopt the proposed requirement for a continuous, louder audible warning. The current requirement, which has reduced the incidence of theft due to keys left in the vehicle, will continue to have the beneficial effect of altering the driver that he or she has left the key in the ignition lock.

Door Locking Systems

To make it more difficult for a thief to break into a vehicle, the May 1978 notice proposed that the door lock be shielded so that it cannot be released by external manipulative devices. The notice also proposed that the door lock buttons be tapered or of uniform thickness to prevent them from being easily opened by manipulative devices and that keys which operate an exterior lock not be able to operate the ignition lock. Vehicle manufacturers, AAA, locksmiths and others criticized these proposals because of the inconvenience and expense they would pose to drivers who inadvertently locked their keys in their vehicles and needed a locksmith to get into their vehicles. AAA noted that 340,000 out of the 17.2 million emergency road calls it responded to in 1977 involved drivers inadvertently locking their keys in their vehicles. AAA argued that the proposed requirements would prevent legitimate service personnel from entering locked vehicles without breaking the windows or otherwise damaging the vehicle.

The Arthritic Society and some consumers were particularly critical of the proposal to require tapered or uniform size door lock buttons. They argued that such buttons would present problems to drivers and passengers with impaired movement of their fingers.

Some consumers and manufacturers also critized the agency's two key proposal, i.e., the one that would prevent a key which operates any exterior vehicle lock from operating the ignition lock. (GM currently uses a two key system.) The commenters argued that using two keys to enter and start the vehicle would be inconvenient. In addition, manufacturers argued that the requirement was design restrictive and might impede the development of other innovative means of locking the door and ignition.

The agency has decided not to adopt these rulemaking proposals. As mentioned previously, using improved ignition/steering locks rather than increasing the amount of time needed to gain entry to the vehicle appears to be the best potential way to reduce vehicle thefts without inconveniencing vehicle users. Further, even in the absence of rulemaking, improvements are anticipated. Manufacturers are currently developing and using new door locking systems to improve vehicle security. The agency will contine to monitor the different door locking systems used by manufacturers to determine if rulemaking is needed.

Interior Hood Release and Shielded Wires

To delay the theft of a vehicle, the May 1978 notice proposed that the hood release be located inside the vehicle. Delaying access to the engine compartment would potentially make it more difficult to "hot wire" the ignition and start the vehicle. The notice also proposed that the ignition wires within the vehicle's interior be shielded so that it would be difficult to "hot wire" the ignition once the thief got inside the vehicle.

Manufacturers, such as GM and Volkswagen, opposed the interior hood release requirement, arguing that since a thief has to gain access to the interior of the vehicle to steal the car, the thief would then have access to the hood release. JAMA, AMC, Chrysler and other manufacturers objected to the shielding requirement, arguing it would make it more difficult to perform legitimate repair work on the ignition wires.

After re-evaluating these proposals, the agency has decided not to adopt them. As explained previously, the agency plans to concentrate its future rulemaking on the more effective route of improving ignition steering column locks. So long as the steering column lock has not been circumvented, a thief cannot steal a vehicle even if he or she has gained access to the engine compartment or the interior ignition wires to "hot wire" the ignition.

Clarification of Requirements

In several of the proposed changes to the text of the standard, the May 1978 notice used the term "ignition system lock" instead of "key locking system" to refer to the system used to activate the engine. Lucas Industries and others pointed out that diesel, turbine and electrical engines do not have electric ignition systems. The agency will continue using the term "key locking system."

Ford recommended that the agency reword the performance requirement that the steering or forward mobility of the vehicle be impaired when the key is removed to make clear that it only applies when the vehicle is not in motion. The agency has adopted Ford's recommendation and has made the necessary clarifying changes to the standard.

Costs and Benefits

The agency has considered the economic and other impacts of this final rule and determined that this rule is not significant within the meaning of Executive Order 12221 and the Department of Transportation's policies and procedures implementing that order. The agency's assessment of the benefits and economic consequences of this final rule are contained in a final regulatory evaluation, which has been placed in the docket. Copies of that final regulatory evaluation can be obtained by writing NHTSA's docket section at the address given in the beginning of this notice.

As discussed in the evaluation, the agency estimates that the final rule will add $1.51 to the cost of a passenger car and $2.06 to the cost of a truck or multipurpose passenger vehicle. The aggregate consumer cost of the final rule is $3.26 million annually for passenger cars and approximately $6.57 million annually for trucks and multipurpose passenger vehicles.

NHTSA has received complaints from consumers and businesses about vehicles in which the steering system inadvertently locked while the vehicle was in motion. Accidents occurred in several of these cases. The agency expects that the final rule will prevent such inadvertent lock-up, and thus will prevent the deaths and injuries that can result.

The provisions of the final rule should also deter the joyrider thief who accounts for the majority of accidents involving stolen vehicles. Stolen vehicles are involved in approximately one out of every 350 accidents and account for an estimated 5,600 disabling injuries and 150 fatalities annually. The cost to the public from stolen vehicles is enormous, ranging from $1.8 billion to $2.8 billion annually. The agency estimates that the final rule may result in as many as 25 lives saved and 1,120 less injuries annually.

Leadtime Requirements

The final rule is effective on September 1, 1982, for passenger cars, and on September 1, 1983 for light trucks and vans. The agency believes that a two-year lead time is adequate for passenger car manufacturers because many automobiles already comply with the final rule. Other manufacturers have systems that permit activation of the steering wheel lock by simultaneously performing two actions, and thus these manufacturers need only make minor modifications to bring these systems into compliance. Manufacturers of light trucks and vans are being given three years to comply with the standard because moderate design changes are involved and such manufacturers have generally not voluntarily complied with the rule in the past.

The principal authors of this notice are Nelson Erickson, Office of Vehicle Safety Standards and Stephen Oesch, Office of Chief Counsel.

In consideration of the foregoing, § 571.114 is revised to read as follows:

§ 571.114 Standard No. 114; Theft protection

S1. *Purpose and Scope.* This standard specifies requirements for theft protection to reduce the incidence of accidents resulting from unauthorized use.

S2. *Application.* This standard applies to passenger cars and to multipurpose passenger vehicles, and to trucks having a GVWR of 10,000 pounds or less.

S3. *Definitions.*

"Combination" means one of the specifically planned and constructed variations of a locking system which, when properly actuated, permits operation of the locking system.

"Key" includes any other device designed and constructed to provide a method for operating a locking system which is designed and constructed to be operated by that device.

S4. *Requirements.*

S4.1.1. Passenger cars manufactured before September 1, 1982, shall meet the requirements of S4.2, S4.4, S4.6, and S4.7 or the requirements listed in S4.1.2.

S4.1.2. Passenger cars manufactured on or after September 1, 1982, shall meet the requirements of S4.3, S4.5, S4.6, and S4.7.

S4.1.3. Trucks and multipurpose passenger vehicles having a GVWR of 10,000 pounds or less manufactured on or after September 1, 1983, shall meet the requirements of S4.3, S4.5, S4.6, and S4.7.

S4.2. Each vehicle shall have a key-locking system that, whenever the key is removed will prevent—

(a) Normal activation of the vehicle's engine or other main source of motive power; and

(b) Either steering or forward self-mobility of the vehicle, or both.

S4.3. Each vehicle shall have a key-locking system that whenever the key is removed while the vehicle is not in motion, will prevent—

(a) Normal activation of the vehicle's engine or other main source of motive power; and

(b) Either steering of forward self-mobility.

S4.4. The prime means for deactivating the vehicle's engine or other main source of motive power shall not activate the deterrent required by S4.2(b).

S4.5. Each vehicle shall have a key-locking system that, whenever the vehicle is in forward motion, will impede neither the steering nor the self-mobility of the vehicle, unless—

(a) The engine is deactivated; and

(b) The driver has performed an additional mechanical action that (1) is not a necessary step in deactivating the engine, and (2) cannot be performed simultaneously with the deactivation of the engine by a single hand.

S4.6. The number of different combinations of the key-locking systems required of each manufacturer for a type of vehicle shall be at least 1,000, or a number equal to the number of vehicles of that type manufactured by such manufacturer, whichever is less.

S4.7. A warning to the driver shall be activated whenever the key required by S4.2 or S4.3 has been left in the locking system and the driver's door is opened. The warning to the driver need not operate—

(a) After the key has been manually withdrawn to a position from which it may not turned;

(b) When the key-locking system is in the "on" or "start" position; or

(c) After the key has been inserted in the locking system and before it has been turned.

(Sec. 103, 113, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407); delegation of authority at 49 CFR 1.50)

Issued on December 22, 1980.

Joan Claybrook,

Administrator.

[FR Doc. 80–40438 Filed 12–23–80; 11:30 am]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

Tucumcari Line between Santa Rosa, New Mexico and St. Louis, Missouri

Caruso, Kansas (milepost 387.8 to 429.3),

naming rates and routes specifically

Fe Railway Company (ATSF) in the

O. from Newton (milepost 320.5) to Earlham, Iowa (milepost 388.6)

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

Service Orders; Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Rock Island and Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Fourteenth revised service order No. 1473.

SUMMARY: Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Pub. L. 96–254, this order authorizes various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 11:59 p.m., December 21, 1980, and continuing in effect until 11:59 p.m., March 31, 1981, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840.

Decided: December 19, 1980.

Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Pub. L. 96–254, the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for that operation.

In view of the urgent need for continued service over RI's lines pending the implementation of long-range solutions, this order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

Fourteenth Revised Service Order No. 1473 modifies Appendix A of the previous order as follows:

1. In Item 7.0., authority as an interim operator is restored to the Chicago and North Western Transportation Company between Purina and Short Line Junction, Iowa. Directed service authority in this territory under Directed Service Order No. 1482 expires 11:59 p.m., December 21, 1980.

2. In Item 11, the authority of the St. Louis Southwestern Railway Company (SSW) is deleted for the operation of the Tucumcari Line between Santa Rosa, New Mexico and St. Louis, Missouri. The SSW has consummated its purchase of this line.

3. In Item 14. I., the authority of the Missouri-Kansas-Texas Railroad Company/Oklahoma, Kansas and Texas Railroad Company is deleted for operations on the Ponca City Branch between Billings and North Enid, Oklahoma, as requested.

4. By adding Item 25, authority is granted to the Fordyce and Princeton Railroad Company between Fordyce and Crossett, Arkansas, including the assumption of RI's trackage rights over the Ashley, Drew and Northern Railway Company between Whitlow Junction and Crossett, Oklahoma.

Appendix B of Thirteenth Revised Service Order No. 1473 is unchanged, and becomes Appendix B of this order.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the attached appendices be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1473 Fourteenth Revised Service Order No. 1473.

(a) Various Railroads authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, debtor, (William M. Gibbons, trustee). Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI; and as listed in Appendix B to this order, to provide for continuation of joint or common use facility agreements essential to the operations of these carriers as previously authorized in Service Order No. 1435.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service as authorized in paragraph (a).

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Public Law 96–254.

1. The authority contained in Item 5(E) of Appendix A of this order, previously operated by the Union Pacific Railroad Company (UP) between Colby and Caruso, Kansas (milepost 387.8 to 429.3), is conditioned upon the assumption by Burlington Northern, Inc. (BN) of the negotiated agreement between UP and the Rock Island Trustee with regard to the compensation to be paid the Trustee for that line segment unitl a new agreement is reached between the Trustee and the BN.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of the operations over the RI lines authorized in paragraph (a), operators shall be responsible for preserving the value of the lines, associated with each operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

1. In those instances where more than one railroad is involved in the joint use or RI tracks and/or facilities described in Appendix B, one of the affected carriers will perform the maintenance and have supervision over the operations in behalf of all the carriers, as may be agreed to among themselves, or in the absence of such agreement, as may be decided by the Commission.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as the operations described in Appendix A by interim operators over tracks previously operated by the RI are deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective.

1. The operator under this temporary authority will not be required to protect transit rate obligations incurred by the RI or the directed carrier, Kansas City Terminal Railway Company, on transit balances currently held in storage.

(k) In transporting traffic over these lines, all interim operators described in Appendix A shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) To the maximum extent practicable, carriers providing service under this order shall use the employees who normally would have performed the work in connection with traffic moving over the lines subject to this Order.

(m) *Effective date.* This order shall become effective at 11:59 p.m., December 21, 1980.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., March 31, 1981, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304, 10305, and Section 122, Pub. L. 96–254.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S Turkington and John H. O'Brien

Agatha L. Mergenovich,
Secretary.

Appendix A—RI Lines Authorized to be Operated by Interim Operators

1. *Louisiana and Arkansas Railway Company (LRA):*
A. Tracks one through six of the Chicago, Rock Island and Pacific Railroad Company's (RI) Cadiz yard in Dallas, Texas, commencing at the point of connection of RI track six with the tracks of The Atchison, Topeka and Santa Fe Railway Company (ATSF) in the southwest quadrant of the crossing of the ATSF and the Missouri-Kansas-Texas Railroad Company (MKT) at interlocking station No. 19.

2. *Peoria and Pekin Union Railway Company (P&PU):* All Peoria Terminal Railroad property on the east side of the Illinois River, located within the city limits of Pekin, Illinois

3. *Union Pacific Railroad Company (UP):*
A. Beatrice, Nebraska
B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska
C. Limon, Colorado

4. *Toledo, Peoria and Western Railroad Company (TP&W):*
A. Keokuk, Iowa
B. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois

5. *Burlington Northern, Inc. (BN):*
A. Burlington, Iowa (milepost 0 to milepost 2.06)
B. Fairfield, Iowa (milepost 275.2 to milepost 274.7)
C. Henry, Illinois (milepost 126) to Peoria, Illinois (milepost 164.35) including the Keller Branch (milepost 1.55 to 8.62).
D. Phillipsburg, Kansas (milepost 282) to CBQ Junction, Kansas (milepost 325.9)
E. CBQ Junction, Kansas (milepost 325.9) to Seibert, Colorado (milepost 487).

6. *Fort Worth and Denver Railway Company (FW&D):*
A. from Amarillo to Bushland, Texas, including terminal trackage at Amarillo, and approximately (3) three miles northerly along the old Liberal Line.
B. North Fort Worth, Texas (milepost 603.0 to milepost 611.4).

7. *Chicago and North Western Transportation Company (C&NW):*
A. from Minneapolis-St. Paul, Minnesota, to Kansas City, Missouri
B. from Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0)
C. from Inver Grove (milepost 344.7) to Northwood, Minnesota
*D. from Clear Lake Junction (milepost 191.1) to Short Line Junction, Iowa (milepost 73.6)
E. from Short Line Junction Yard (milepost 354) to West Des Moines, Iowa (milepost 364)
F. from Short Line Junction (milepost 73.6) to Carlisle, Iowa (milepost 64.7)
G. from Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0)
H. from Allerton, Iowa (milepost 363) to Trenton, Missouri (milepost 415.9).
I. from Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2).
J. From Iowa Falls (milepost 97.4) to Esterville, Iowa (milepost 206.9)
K. from Bricelyn, Minnesota (milepost 57.7) to Ocheyedan, Iowa (milepost 246.7)
L. from Palmer (milepost 454.5) to Royal, Iowa (milepost 502)
M. from Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2)
N. from Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and to serve all industry formerly served by the RI at Cedar Rapids
O. from Newton (milepost 320.5) to Earlham, Iowa (milepost 388.6)
P. Sibley, Iowa
Q. Worthington, Minnesota
R. Altoona to Pella, Iowa
S. Carlisle, Indianola, Iowa
T. Omaha, Nebraska (between milepost 502 to milepost 504).
U. Earlham (milepost 388.6) to Dexter, Iowa (milepost 393.5).

8. *Chicago, Milwaukee, St. Poul and Pacific Railroad Company (Milwaukee):*
A. from West Davenport, through and including Muscatine, to Fruitland, Iowa, including the Iowa-Illinois Gas and Electric Company near Fruitland
B. Washington, Iowa
C. from Newport, to a point near the east bank of the Mississippi River, sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota.

9. *Davenport, Rock Island and North Western Railway Company (DRI):*
A. Davenport, Iowa
B. Moline, Illinois
C. Rock Island, Illinois, including 26th Street yard
D. from Rock Island through Milan, Illinois, to a point west of Milan sufficient to include service to the Rock Island Industrial complex
E. from East Moline to Silvis, Illinois
F. from Davenport to Iowa City, Iowa
G. from Rock Island, Illinois, to Davenport, Iowa, sufficient to include service to Rock Island arsenal

10. *Illinois Central Gulf Railroad Company (ICG):* Ruston, Louisiana

*11. *St. Louis Southwestern Railway Company (SSW):*
A. from Brinkley to Briark, Arkansas, and at Stuttgart, Arkansas.
B. at North Topeka, Kansas.

12. *Little Rock & Western Railway Company:* from Little Rock, Arkansas (milepost 135.2) to Perry, Arkansas (milepost 164.2); and from Little Rock (milepost 136.4) to the Missouri Pacific/RI Interchange (milepost 130.6).

13. *Missouri Pacific Railroad Company:* from Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5); Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 141.0); Hot Springs Junction (milepost 0.0) to and including Rock Island milepost 4.7.

14. *Missouri-Kansas-Texas Railroad Company/Oklahoma, Kansas and Texas Railroad Company:*
A. Herington-Ft. Worth Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 439.5 miles to milepost 613.5 within the City of Ft. Worth, Texas, and use of Fort Worth and Denver trackage between Purina Junction and Tower 55 in Ft. Worth
B. Ft. Worth-Dallas Line of Rock Island: beginning at milepost 611.9 within the City of Ft. Worth, Texas, and extending for a distance of 34 miles to milepost 646, within the City of Dallas, Texas
C. El Reno-Oklahoma City Line of Rock Island: beginning at milepost 513.3 within the City of El Reno, Oklahoma, and extending for a distance of 16.9 miles to milepost 496.4 within the City of Oklahoma City, Oklahoma
D. Salina Branch Line of Rock Island: beginning at milepost 171.4 within the City of Herington, Kansas, and extending for a distance of 27.4 miles to milepost 18.8 in the City of Abilene, Kansas, including RI trackage rights over the line of the Union Pacific Railroad Company to Salina (including yard tracks) Kansas
A. At Memphis, Tennessee.

19. *Cadillac and Lake City Railroad:*
A. From Sandown Junction (milepost 0.1) to and including junction with DRGW Belt Line (milepost 3.9) all in the vicinity of Denver, Colorado.

*Changed

SUMMARY: The Director has determined that the opening to sport fishing of certain national wildlife refuges in North Carolina, South Carolina, and Tennessee is compatible with the objectives for which the areas were

Portions of refuges which are open to sport fishing are designated by signs and/or delineated on maps. Special conditions applying to individual refuges and maps are available at refuge headquarters or from the Office of the

hour before sunrise to 10 p.m. (2) Boats and outboard motors will be permitted from March 1, through November 1, except in areas posted closed to motorboat use. Airboats are prohibited.

Pee Dee National Wildlife Refuge

and H; and from March 9, 1981, through September 6, 1981, on Lakes 16 and 17, and Pools J and L and Lynches River.

Fishing is permitted from sunrise until ½ hour after sunset. Unpowered boats and boats with electric motors are

Herington, Kansas, and extending for a distance of 27.4 miles to milepost 18.8 in the City of Abilene, Kansas, including RI trackage rights over the line of the Union Pacific Railroad Company to Salina (including yard tracks) Kansas

E. Right to use joint with other authorized carriers the Herington-Topeka Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 81.8 miles to milepost 89.9 within the City of Topeka, Kansas, as bridge rights only

F. Rock Island rights of use on the Wichita Union Terminal Railway Company and the Wichita Terminal Association, all located in Wichita, Kansas.

G. Rock Island right to use interchange tracks to interchange with the Great Southwest Railroad Company located in Grand Prairie, Texas.

H. The Atchison Branch from Topeka, at milepost 90.5, to Atchison, Kansas, at milepost 519.4 via St. Joseph, Missouri, at mileposts 0.0 and 498.3, including the use of interchange and yard facilities at Topeka, St. Joseph and Atchison, and the trackage rights used by the Rock Island to form a continuous service route, a distance of 111.8 miles.

*I. That part of the Mangum Branch Line from Chickasha, milepost 0.0 to Anadarko at milepost 18, thence south on the Anadarko Line at milepost 460.5 to milepost 485.3 at Richards Spur, a distance of 42.8 miles.

*J. Oklahoma City-McAlester Line of Rock Island: Beginning at milepost 496.4 within the City of Oklahoma City, Oklahoma, and extending for a distance of 131.4 miles to milepost 365.0 within the City of McAlester, Oklahoma.

15. *The Denver and Rio Grande Western Railroad Company:*

A. from Colorado Springs (milepost 609.1) to and including all rail facilities at Colorado Springs and Roswell, Colorado, (milepost 602.8), all in the vicinity of Colorado Springs, Colorado.

16. *Norfolk and Western Railway Company:* is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track; and running easterly from Pullman Junction approximately 1,000 feet into the lead to Clear-View Plastics, Inc., for the purpose of serving industries located adjacent to such tracks and connecting to the Chicago Regional Port District. Any trackage rights arrangements which exited between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.

17. *St. Louis-San Francisco Railway Co.:*

A. At Okeene, Oklahoma.

B. At Lawton, Oklahoma.

18. *Southern Railway Company:*

A. At Memphis, Tennessee.

19. *Cadillac and Lake City Railroad:*

A. From Sandown Junction (milepost 0.1) to and including junction with DRGW Belt Line (milepost 3.9) all in the vicinity of Denver, Colorado.

20. *Baltimore and Ohio Railroad Company:*

A. From Blue Island, Illinois (milepost 15.7) to Bureau, Illinois (milepost 114.2), a distance of 98.5 miles.

21. *Louisiana Midland Railway Company:*

A. From Hodge, Louisiana (Milepost 173.3) to Alexandria, Louisiana (milepost 247.8), which includes assumption of RI's trackage rights over the Louisiana and Arkansas Railway Company between Winnfield, Louisiana, and Alexandria, Louisiana, and the RI's track and yard in Alexandria, Louisiana.

22. *Cedar Rapids and Iowa City Railway Company (CIC):*

A. From the west intersection of Lafayette Street and South Capitol Street, Iowa City, Iowa, southward for approximately 2.2 miles, terminating at the intersection of the RI tracks and the southern line of Section 21, Township 79 North, Range 6 West, Johnson County, Iowa, including spurs of the main trackage to serve various industry; and to effect interchange with the Davenport, Rock Island and North Western Railway Company.

23. *Keota Washington Transportation Company:*

A. from Keota to Washington, Iowa; to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Washington, Iowa, and to serve any industries on the former RI which are not being served presently.

24. *The La Salle and Bureau County Railroad Company:*

A. from Chicago (milepost 4.26) and Blue Island, Illinois (milepost 16.61), and yard tracks 6, 9 and 10; and crossover 115 to effect interchange at Blue Island, Illinois.

B. from Western Avenue (Subdivision 1A, milepost 16.6) to 119th Street (Subdivision 1A, milepost 14.8), at Blue Island Illinois.

** *Fordyce and Princeton Railroad Company (FP)*

A. from Fordyce to Crossett, Arkansas, which includes assumption of RI's trackage rights over the Ashley, Drew and Northern Railway Company between Whitlow Junction and Crossett, Arkansas.

[FR Doc. 80-40273 Filed 12-24-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 33

Sport Fishing; Opening of Certain National Wildlife Refuges in North Carolina, South Carolina, and Tennessee, to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to sport fishing of certain national wildlife refuges in North Carolina, South Carolina, and Tennessee is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. The name and address of each affected refuge and the special regulations for each refuge are set forth below.

EFFECTIVE DATES: See the dates listed for each refuge under Supplementary Information below.

FOR FURTHER INFORMATION CONTACT:

The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

William C. Hickling, Area Manager, U.S. Fish and Wildlife Service, Plateau Building, Room A-5, 50 South French Broad Ave., Asheville, NC. 28801. Telephone: 704-258-2850, Ext. 321.

Steven W. Frick, Refuge Manager, Mattamuskeet National Wildlife Refuge, Rt. 1, Box N-2, Swanquarter, N.C. 27885. Telephone: 919-926-4021.

Jerry L. Holloman, Refuge Manager, Pee Dee National Wildlife Refuge, P.O. Box 780, Wadesboro, N.C. 28710. Telephone: 704-694-4424.

Marvin T. Hurdle, Refuge Manager, Carolina Sandhills National Wildlife Refuge, Route 2, Box 130, McBee, South Carolina 29101. Telephone: 803-335-8401.

George R. Garris, Refuge Manager, Cape Romain National Wildlife Refuge, Rt. 1, Box 191, Awendaw, S.C. 29429. Telephone: 803-928-3368.

Paul Ferguson, Refuge Manager, Santee National Wildlife Refuge, Route 2, Box 66, Summerton, S.C. 29148. Telephone: 803-478-2217.

Samuel W. Barton, Refuge Manager, Cross Creeks National Wildlife Refuge, Route 1, Box 229, Dover, Tennessee 37058. Telephone: 615-232-7477.

J. C. Bryant, Refuge Manager, Hatchie National Wildlife Refuge, Box 187, Brownsville, Tennessee 38012. Telephone: 901-772-0501.

Wendell C. Crews, Refuge Manager, Reelfoot (and Lake Isom) National Wildlife Refuge, P.O. Box 98, Samburg, Tennessee 38254. Telephone: 901-538-2481.

SUPPLEMENTARY INFORMATION:

General

Sport fishing on portions of the following refuges shall be in accordance with applicable State and Federal regulations, subject to additional special regulations and conditions as indicated.

**Added.

Portions of refuges which are open to sport fishing are designated by signs and/or delineated on maps. Special conditions applying to individual refuges and maps are available at refuge headquarters or from the Office of the Area Manager (addresses listed above).

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. In addition, the Refuge Recreation Act requires that before any area of the refuge system is used for forms of recreation not directly related to the primary purposes and functions of the area, the Secretary must find that: (1) Such recreational use will not interfere with the primary purposes for which the area was established; and (2) funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Impact Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

North Carolina

Mattamuskeet National Wildlife Refuge

Sport fishing on the Mattamuskeet National Wildlife Refuge, North Carolina, is permitted on approximately 40,000 acres. Sport fishing and bow fishing seasons extend from March 1, 1981, through November 1, 1981, except that the following areas are open to bank fishing during the entire year: (a) State Highway 94 Causeway; (b) in the immediate vicinity of the Lake Landing Water Control Structure; and (c) in the immediate vicinity of the Outfall Canal Water Control Structure and the Central Canal bridge. In the Mattamuskeet Lodge area, (1) Herring (alewife) dipping will be permitted from March 1, through May 15, from the canal banks and water control structures in the immediate vicinity of the following locations: (a) Waupoppin Canal control structure—from ½ hour before sunrise to ½ hour after sunset. (b) Outfall Canal and Lake Landing control structures—from ½ hour before sunrise to 10 p.m. (2) Boats and outboard motors will be permitted from March 1, through November 1, except in areas posted closed to motorboat use. Airboats are prohibited.

Pee Dee National Wildlife Refuge

Sport fishing on the Pee Dee National Wildlife Refuge, North Carolina is permitted on approximately 40 acres. The sport fishing season is year-round on Brown Creek within 100 yards of Brown Creek Bridge on U.S. Highway 52; from April 1, 1981, through September 30, 1981, on Brown Creek within 100 yards of both Bennett Bridge on SR-1627 and lower Brown Creek Bridge on SR-1634, on Sullivan and Little Ponds (Anson County) and on the Pee Dee River (Anson and Richmond Counties); and from April 1, 1981, through August 15, 1981, on Arrowhead Lake (Anson County) and Andrews Pond (Richmond County).

Fishing is permitted from sunrise to sunset. Only bank fishing is permitted, except in Andrews Pond and Arrowhead Lake. Jon boats, up to 14 feet, and canoes will be permitted in Andrews Pond and Arrowhead Lake. All motors are prohibited.

Only cane poles and rods and reels are permitted. Trotlines, set hooks, and nets are prohibited in Refuge waters. No special refuge fishing permit is required. Parking is permitted only in designated areas.

South Carolina

Cape Romain National Wildlife Refuge

Sport fishing on the Cape Romain National Wildlife Refuge, South Carolina, is permitted on approximately 610 acres. The sport fishing season on the refuge extends from March 15, 1981, through September 30, 1981.

Fishing is permitted during daylight hours only. Boats with electric motors are permitted. Other motors are prohibited. Boats must be removed from the refuge at the close of each day. Moore's Landing will be open daily from 5:00 a.m. until 8:00 p.m. EST, for launching and loading boats. Dogs are prohibited.

Carolina Sandhills National Wildlife Refuge

Sport fishing on the Carolina Sandhills National Wildlife Refuge, South Carolina, is permitted on approximately 150 acres. The fishing season is year-round on Lake Bee and on the Black Creek Bridge areas on State Road 33, State Road 145, and U.S. Highway 1 and Wire Road; from March 9, 1981, through October 4, 1981, on Martins Lake, and Pools A, B, C, D, G, and H; and from March 9, 1981, through September 6, 1981, on Lakes 16 and 17, and Pools J and L and Lynches River.

Fishing is permitted from sunrise until ½ hour after sunset. Unpowered boats and boats with electric motors are permitted only in Martins Lake, Lakes 16 and 17, and Lake Bee. Other types of motors are prohibited. All other areas are open only for bank fishing within posted areas. Fish baskets, nets, set hooks, and trotlines are prohibited.

Santee National Wildlife Refuge

Sport fishing on the Santee National Wildlife Refuge, South Carolina, is permitted on approximately 16,000 acres. Sport fishing is permitted 24 hours per day except for waters within land units which are limited to daylight use, bank fishing only. Sport fishing is permitted year-round except that Cantey Bay, Black Bottom, Savannah Branch, and waters within all land units are closed from November 1, 1981, to February 28, 1982. The overnight mooring of boats on the refuge is prohibited.

Tennessee

Cross Creeks National Wildlife Refuge

Sport fishing on the Cross Creeks National Wildlife Refuge, Tennessee, is permitted on approximately 3,260 acres. The open season for Elk and South Cross Creek Reservoirs and the 15 refuge impoundments extends from April 1, 1981, through September 15, 1981. Sport fishing on Barkley Lake is open year-round.

Fishing is permitted in designated areas from 30 minutes before sunrise to 30 minutes after sunset, except on Barkley Lake, which is open 24 hours per day. Outboard motor size is limited to 6 horsepower or less in Elk and South Cross Creek Reservoirs and the 15 refuge impoundments. Motor size is not restricted on Barkley Lake. Methods of fishing on the two reservoirs and the 15 refuge impoundments are limited to rod and reel and/or pole and line.

Overnight mooring of boats is prohibited on the refuge. Fishermen must park in designated areas. No special refuge fishing permit is required.

Hatchie National Wildlife Refuge

Sport fishing on the Hatchie National Wildlife Refuge, Tennessee, is permitted on approximately 150 acres which includes all lakes and streams. The sport fishing season extends from April 1, 1981, through November 14, 1981. Fishing is permitted during daylight hours only.

Boats powered with electric outboard motors are permitted. Gasoline motors are prohibited.

Methods of fishing are limited to pole and line, or rod and reel, using natural or artificial baits. Footpaths may be

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Boats powered with electric outboard motors are permitted. Gasoline motors are prohibited.

Methods of fishing are limited to pole and line, or rod and reel, using natural or artificial baits. Footpaths may be used to reach all lakes from Hatchie River.

Lake Isom National Wildlife Refuge

Sport fishing on the Lake Isom National Wildlife Refuge, Tennessee, is permitted on approximately 750 acres. The sport fishing season on the refuge extends from March 16, 1981, through September 30, 1981.

Fishing with bows and arrows is prohibited at all times. Boats having motors above 10 horsepower may not be operated on the refuge, unless being powered by auxiliary gas motors of 10 horsepower or less, electric trolling motors, or paddles. Fishing is permitted during daylight hours only.

Reelfoot National Wildlife Refuge

Sport fishing on the Reelfoot National Wildlife Refuge, Tennesssee, is permitted on approximately 9,092 acres. The fishing season on that portion of the refuge located north of Upper Blue Basin extends from February 15, 1981, through October 15, 1981. The fishing season on the portion of the refuge located south of Upper Blue Basin extends from January 21, 1981, until the day preceding opening of the 1981 waterfowl season. Fishing with bows and arrows is prohibited. Boats having motors above 10 horsepower may not be operated on the refuge, unless being powered by auxiliary gas motors of 10 horsepower or less, electric trolling motors, or paddles. Fishing is permitted during daylight hours only.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

Dated: December 16, 1980.

Carrell L. Ryan,

Acting Area Manager.

[FR Doc. 80-40314 Filed 12-24-80; 8:45 am]

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 50, 70, and 73

Protection of Unclassified Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The NRC proposes to amend its regulations to prohibit the unauthorized disclosure of safeguards information by NRC licensees and other persons. The Commission is issuing the proposed regulations to identify specific types of safeguards information to be protected, establish minimum protection requirements to be applied by licensees and other persons, and set forth the conditions under which access to safeguards information would be granted.

DATE: Comments must be received on or before March 9, 1981. Comments received after this date will be considered if it is practical to do so.

ADDRESSES: Written comments in connection with the proposed amendments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Kasum, Physical Security Licensing Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Phone—301–427–4010.

SUPPLEMENTARY INFORMATION: In November 1978, the Commission approved a plan to classify, under Executive Order 12065, sensitive safeguards information for activities involving formula quantities of strategic nuclear material. Implementing regulations for the classification program, 10 CFR Parts 25 and 95, were published in the Federal Register on March 5, 1980 (45 FR 14476) with an effective date of October 1, 1980. In regard to the protection of other sensitive safeguards information not classifiable under the Executive Order (i.e., information worthy of protection in the interest of public health and safety but with no direct connection to the national security), the Commission has consistently supported legislation to amend the Atomic Energy Act of 1954, as amended, to provide for explicit authority in this area. Such legislation was recently enacted as a provision of the NRC Authorization of Appropriations Act for 1980 (PL 96–295). A new Section 147, SAFEGUARDS INFORMATION, was added to the Atomic Energy Act which directs the Commission to prescribe regulations or issue orders, after notice and opportunity for public comment, as necessary, to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed—

(1) Control and accounting procedures or security measures for the physical protection of special nuclear material;

(2) Security measures for the physical protection of source material or byproduct material; or

(3) Security measures for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities.

Accordingly, the Nuclear Regulatory Commission proposes to amend its regulations in 10 CFR Parts, 2, 50, 70, and 73, and invites public comment on the proposed amendments.

The requirements set forth in these proposed rules are the minimum restrictions that the Commission believes will be responsive to the new legislation, in that (i) the information to be protected is limited to specific safeguards measures employed by licensees or proposed by applicants; (ii) the only conditions for access are a "need-to-know" and certain specified employment statuses; and (iii) facilities and materials covered by the rule are limited to those the Commission has already determined need to be protected against theft or sabotage. The essential characteristics of the information protection system are as follows:

Types of safeguards information to be protected—In general, the proposed rule covers information previously withheld under 10 CFR 2.790(d)(1). A new proposed Appendix E to 10 CFR Part 73 defines explicitly types of information required to be protected.

In summary the list includes information regarding (unless otherwise classified as National Security Information (NSI) or Restricted Data (RD)):

i. Physical Protection at Fixed Sites

—Composite security and contingency plans

—Drawings showing location of site safeguards features and alarm system details

—Written guard orders and procedures

—Details of off-site response force capabilities (local police)

—Plant specific composite listings and locations of vital safety related equipment at reactor facilities as contained in physical security and safeguards contingency plans and plant specific analyses.

ii. Physical Protection In Transit

—Composite security and contingency plans

—Schedules and itineraries for specific shipments

—Description of vehicle safeguards features

—Detail of local police response force capabilities

iii. Calculated limits of error associated with inventory differences (LEID) [1]

iv. Inspections, audits and evaluations

—Portions of inspection reports, audits or investigations that contain details of a physical security system or that disclose uncorrected defects in the system.

—Portions of inspection reports, audits or investigations that contain limit of error data (LEID) or that disclose defects in a licensee's accounting system that could directly affect an LEID.

v. Correspondence

[1] Note that a licensee's or applicant's control and accounting procedures or inventory differences would *not* be included as Safeguards Information, and therefore not protected under the provisions of this proposed rule. Such information would continue to be withheld from public disclosure under 10 CFR 2.790(d), and in addition inventory differences for facilities that possess formula quantities of strategic special nuclear material would be classified under 10 CFR Part 95.

—Portions of correspondence to and from the NRC which contain details of any of the above.

A summary of the arguments surrounding the selection of each type of information is set forth below.

This is the type of information the Commission intends to protect under this rule. Obviously, such information would be valuable to an adversary planning an attack for without it the probability of successful sabotage significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of nuclear material or a facility.

under emergency or extraordinary conditions.

There would be no requirements for facility clearance or submittal of an information protection plan as are contained in 10 CFR Parts 25 and 95.

safeguards equipment specifications, catalogues and equipment buying data.

Freedom of Information Act Considerations (FOIA)—Section 147, in the introductory paragraph, provides that the Commission's exercise of the

impairment of the procedural rights which would be available if Restricted Data, defense information or safeguards information were not involved. As regards to safeguards information, basic regulations, as set forth in 10 CFR 2.744,

—Portions of correspondence to and from the NRC which contain details of any of the above.

A summary of the arguments surrounding the selection of each type of information is set forth below.

Group I—Information regarding physical protection at fixed sites. Included in this group are physical security plans, safeguards contingency plans, drawings that show safeguards features and details of the intrusion alarm system, composite listings of vital equipment and locations, written guard orders, and capabilities and arrangements made with local response forces.

There is general agreement that the release of this type of information in significant detail would significantly increase the likelihood of theft or sabotage by:

—Reducing deterrence value. A good example is the passenger search system at airports which worked extremely well for years because the performance characteristics of the system were not known. (The FAA has protected their security information under specific legislative authority since the early 1970's.) Once it was found that the systems could not detect certain items, some of the deterrence was lost.

—Allowing for possible compromise of the intrusion detection system and successful covert intrusion. Most alarm systems used to protect nuclear facilities are tamper resistant and tamper indicating, making compromise all but impossible for even sophisticated adversaries. However, with knowledge of the electrical details and performance characteristics of alarm equipment, elimination of alarm system protection becomes possible.

—Providing an opportunity for advance planning. In this regard the Generic Adversary Characteristics Report (NUREG–0549) states: "Professional criminals, many terrorists groups, some extremist protest groups, and certain disoriented persons plan carefully and thoughtfully before initiating a given criminal mission. Many of these adversaries will abort planned encounters when security or other interruptions occur." Our thought here is that opportunity to plan is a key element in target selection, and an essential element in a successful operation.

—Pinpointing target areas for power reactors—As part of a security plan review, Los Alamos National Laboratory provides to the Commission a detailed list of vital areas for a specific power reactor, a rank ordering of the importance of each vital area and sets or combinations that is sabotaged as a group would cause an offsite release. This is the type of information the Commission intends to protect under this rule. Obviously, such information would be valuable to an adversary planning an attack for without it the probability of successful sabotage would be quite small.

Group II—Information regarding physical protection in transit. Included in this group are the same types of information as for fixed site plus schedules and itineraries for shipments.

Release of information in this group would have the same potential adverse effects as for fixed information, plus this additional concern.

—Knowledge of shipment schedules and itinerary would allow an adversary to plan for and pick the time and place for a road ambush, thereby placing the defense forces at a significant disadvantage. (For multiple shipments over the same route, the itinerary, but not the schedule, tends to be self-disclosing. Therefore, routes for spent fuel shipments, which normally consist of several shipments in a series, are not withheld from disclosure).

Group III—Information regarding calculated limit of error associated with inventory differences (LEID). Included in this group are LEID's for any facility that possesses one effective kilogram or more of special nuclear material. (Note that nuclear material control plans, implementing procedures and records, and inventory differences are not included as protected safeguards information. This information in whole or in part does not appear to meet the Section 147 test for withholding.)

Disclosure of LEID information would aid an insider adversary in determining how much material could be diverted without exceeding the alarm threshold.

Group IV—Inspection reports, audits and investigations. This group includes reports produced by the licensee or the NRC that contain information from Groups I, II, and III, or those portions of such reports that contain details of an uncorrected defect or weakness in a licensee's safeguards program.

Disclosure of the details of an uncorrected vulnerability could provide a blueprint for defeat of the safeguards system and could be more harmful than the release of the security program itself. (For example, disclosing that a facility's motion alarm system could not detect a person crawling on hand and knees would provide significant benefit to a would be adversary.)

Therefore, based upon the above considerations, the Commission has determined that the unauthorized disclosure of the kinds of Safeguards Information listed in proposed Appendix E could reasonably be expected to have significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of nuclear material or a facility.

Access requirements—Access to the safeguards information would be limited to persons who have a need-to-know and who fall within certain employment or occupation categories. These categories include:

—Employees of a licensee, applicant, the Commission, the United States Government or agents of these bodies.

—Duly authorized Congressional Committees.

—Governors of States or their representatives.

—Representatives of the IAEA associated with the US/IAEA Agreement.

—Members of state and local police units.

—Parties in NRC adjudicatory hearings or federal court litigation involving the NRC when authorized by the presiding officer or court, as appropriate.

There would be no personnel security clearances required for these individuals. Section 147 contains no provisions regarding trustworthiness determinations (as are set forth in Section 145 for access to Restricted Data) and, consistent with the directive of Section 147 that only the minimum restrictions be applied to Safeguards Information, the Commission believes such clearances are not necessary.

Level of protection—The protection afforded the safeguards information would be substantially greater than that currently afforded to information under 10 CFR 2.790(d) and in some respects approaches that provided Confidential National Security Information (CNSI) under 10 CFR Part 95, except that there would be no requirement for personnel security clearances. Protection provisions include:

—Storage in steel filing cabinet equipped with a locking bar within a protected or controlled access area; or in a GSA approved security container within a locked building not in a protected or controlled access area.

—Control by an authorized individual while in use.

—Marking of documents top and bottom—Safeguards Information—and indicating on the first page the name and organization of the authorizing individual (portion marking would not be required except on reports and correspondence).

—Prohibition against transmittal by unprotected telecommunications except under emergency or extraordinary conditions.

There would be no requirements for facility clearance or submittal of an information protection plan as are contained in 10 CFR Parts 25 and 95.

Persons, facilities and materials that are subject to the proposed rule—The proposed rule would apply to any person that possesses safeguards information, any applicant required by NRC regulations to submit a physical security, safeguards contingency or nuclear material control plan, and each licensee subject to the physical protection provisions of Part 73. Included in the latter would be:

—Power reactors

—Non-power reactors

—Fuel cycle facilities and transportation activities involving special nuclear material of moderate and low strategic significance

—Fuel cycle and transportation activities involving formula quantities of strategic special nuclear material for safeguards information not otherwise Classified NSI or RD

—Spent fuel shipments except for routes and quantities

Since there are no present NRC requirements for the physical protection of source or byproduct material, facilities that possess or use these materials exclusively would not be subject to the proposed rule.

Information Types Not Included—Certain types of information, even though possibly regarded as safeguards information, would not fall within the scope of the proposed rule. Most notably are studies, reports and analyses conducted by or on behalf of the Commission, licensees or applicants which concern the safeguarding of nuclear materials or facilities. Information not covered by the rule includes:

1. Documents, drawings or reports submitted by applicants or licensees, or produced by the staff, in response to the environmental and safety requirements contained in 10 CFR Parts 50, 51, 70, and 71.

2. Generic safeguards studies, reports or analysis whether or not produced by or for the Commission or a licensee.

3. Routes and quantities for spend fuel shipments.

4. Guard training and qualification plans.

5. Information concerning licensee control and accounting procedure, or inventory differences (not otherwise classified as NSI or RD) for special nuclear material, or source material and byproduct material.

6. Any information already in the public domain including commercial safeguards equipment specifications, catalogues and equipment buying data.

Freedom of Information Act Considerations (FOIA)—Section 147, in the introductory paragraph, provides that the Commission's exercise of the new authority contained in the section be made "subject to subsection (b)(3) of section 552 of title 5 of the United States Code" (FOIA). The Joint Explanatory Statement of the Committee on Conference in regard to this provision, contains the following:

"This express reference to the Freedom of Information Act is intended to make it clear that the compromise provision is a specific statutory exemption from the FOIA, as provided for in Section 5 U.S.C. 552(b)(3), and meets all the requirements for a statutory exemption under that section".

Implementing procedures in response to FOIA requirements are contained in 10 CFR Part 9, Subpart A. No change to Part 9 is considered to be necessary and none are proposed.

While material control and accounting records and information (other than LEID) would not be identified as Safeguards Information and accordingly would not be entitled to the special protections provided for that information under Section 147, the Commission staff proposes that the Commission continue to designate such information as commercial or financial information under 2.790(d)(1). The effect of revising 2.790(d)(1) as proposed will be to continue a basis for withholding this material control and accounting information from public release pursuant to 10 CFR 9.5(a)(4), (Exemption 4 of the FOIA), and to avoid requiring individual determinations of whether the information qualifies for withholding bases on the standard for proprietary information. Because the staff believes material control and accounting information consistently contains matters entitled to some measure of protection, it recommends use of 2.790(d)(1). Public comment is particularly requested on the proposed action regarding 2.790(d)(1).

Agency Proceedings

The Authorization Act also amended Section 181 of the Atomic Energy Act of 1954 by extending the requirements of this Section to safeguards information protected under the authority of Section 147. As amended, Section 181 requires that the Commission, in the case of agency proceedings, provide by regulation procedures that will effectively safeguard and prevent disclosure of Restricted Data, defense information or safeguards information to authorized persons with minimum impairment of the procedural rights which would be available if Restricted Data, defense information or safeguards information were not involved. As regards to safeguards information, basic regulations, as set forth in 10 CFR 2.744, "Production of NRC records and documents" and 10 CFR 2.790 "Public inspections, exemption, requests for withholding" are already in effect. (Restricted Data and National Security Information are covered in Subpart I of Part 2—Special Procedures Applicable to Adjudiciary Proceedings Involving Restricted Data or National Security Information.)

In addition to the regulations already in place, the staff proposes to amend 10 CFR 2.744 to add a provision giving presiding officers the authority to issue appropriate protective orders whenever protected Safeguards Information is required in an adjudicatory hearing. Because no clearances are required for access to Safeguards Information under Section 147, the staff believes it to be unnecessary to include such information in Subpart I of Part 2.

The promulgation of these amendments would not result in any activity that affects the environment. Accordingly, The Commission has deterimined under the National Environmental Quality guidelines and the criteria of 10 CFR 51.5(d) that neither an environmental impact statement nor environmental impact appraisal to support a negative declaration for the proposed amendments to Title 10 is required.

The NRC estimated the cost of these amendments to the licensed industry and the various states that would be required to protect the spent fuel shipping notices against unauthorized disclosure. Accordingly to these estimates the initial costs of storage container procurement and document marking would be about $100,000 and $250,000 respectively. Annual recurring costs for document processing and control would be about $300,000.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to Title 10, Chapter I, Code of Federal Regulations, Parts, 2, 50, 70, and 73, is contemplated.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. Section 2.744 is amended by adding a new paragraph (e) to read as follows:

§ 2.744 Production of NRC records and documents.

* * * * *

(e) In the case of requested documents and records (including Safeguards Information referred to in sections 147

§ 50.34 Contents of applications; technical information.

* * * * *

(e) Each applicant who prepares a physical security plan or safeguards contingency plan pursuant to this

whether or not a licensee of the Commission, who produces, receives, or acquires Safeguards Information.

8. Section 73.2 is amended by adding new paragraphs (jj), (kk), (ll) & (mm) to read as follows:

drawer of door; (3) A bank safe-deposit box; and (4) Other repositories which in the judgment of the NRC, would provide comparable physical protection.

9. A new § 73.21 is added to read as follows:

who do not have a need-to-know or are otherwise not authorized access in accordance with this section.

(2) While unattended or not in actual use, Safeguards Information shall be stored in a locked security storage

(g) *External Transmission of Documents and Material*—(1) Documents containing Safeguards Information, when transmitted outside an authorized place of use or storage, shall be enclosed in two sealed

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§ 2.744 Production of NRC records and documents.

* * * * *

(e) In the case of requested documents and records (including Safeguards Information referred to in sections 147 and 181 of the Atomic Energy Act, as amended) exempt from disclosure under § 2.790 of this Part, but whose disclosure is found by the presiding officer to be necessary to a proper decision in the proceeding, any order to the Executive Director for Operations to produce the document or records (or any other order issued ordering production of the document or record) may contain such protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to parties in the proceeding, to interested States and other governmental entities participating pursuant to § 2.715(c) of this Part, and to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, is received and possessed by a party other than the Commission staff, it shall also be protected according to the requirements of § 73.21 of Part 73 of this Chapter. The presiding officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the presiding officer for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed pursuant to § 2.205 of this Part.

2. Section 2.790 is amended by revising paragraph (d)(1) as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

* * * * *

(d)(1) Correspondence and reports to or from the NRC which contain information or records concerning a licensee's or applicant's material control and accounting program for special material.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

3. Section 50.34 is amended by adding a new paragraph (e) to read as follows:

§ 50.34 Contents of applications; technical information.

* * * * *

(e) Each applicant who prepares a physical security plan or safeguards contingency plan pursuant to this section, shall protect the plan and other related Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 and Appendix E to Part 73 of this chapter.

4. Section 50.54 is amended by adding a new paragraph (v) to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(v) Each licensee subject to the requirements of this section shall ensure that physical security and safeguards contingency plans and other related Safeguards Information are protected against unauthorized diclosure in accordance with the requirements of § 73.21 and Appendix E to Part 73 of this chapter.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

5. Section 70.22 is amended by adding a new paragraph (l) after paragraph (k) to read as follows:

§ 70.22 Contents of applications.

* * * * *

(l) Each applicant who prepares a physical security or safeguards contingency plan shall protect such plans and other related Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 and Appendix E to Part 73 of this chapter.

6. Section 70.32 is amended by adding a new paragraph (j) to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(j) Each licensee subject to the requirements of this section shall ensure that physical security and safeguards contingency plans and other related Safeguards Information are protected against unauthorized disclosure in accordance with the requirements of § 73.21 and Appendix E to Part 73 of this chapter.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

7. Section 73.1(b) is amended by adding a new paragraph (7) to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(7) This part prescribes requirements for the protection of Safeguards Information in the hands of any person, whether or not a licensee of the Commission, who produces, receives, or acquires Safeguards Information.

8. Section 73.2 is amended by adding new paragraphs (jj), (kk), (ll) & (mm) to read as follows:

§ 73.2 Definitions

* * * * *

(jj) "Safeguards Information" means information not otherwise classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed, (1) security measures for the physical protection of special nuclear material, (2) security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities, or (3) limits of error associated with inventory differences (LEID) for special nuclear material.

(kk) "Need-To-Know" means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipients's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment.

(ll) "Person" means (1) any individual, corporation, partnership, firm, association, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy (DOE), (except that the DOE shall be considered a person to the extent that its facilities are subject to the licensing and related regulatory authority of the Commission pursuant to Section 202 of the Energy Reorganization Act of 1974 and Sections 104, 105, and 202 of the Energy Reorganization Act of 1974 and Sections 104, 105, and 202 of the Uranium Mill Tailings Radiation Control Act of 1978), any state or political subdivision of state, or any political subdivision of any government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

(mm) "Security Storage Container" includes any of the following repositories: (1) A steel filing cabinet equipped with a steel locking bar and a 3 position, changeable combination, GSA approved padlock, for storage in a building located within a protected or controlled access area; (2) A security filing cabinet that bears a Test Certification Label on the side of the locking drawer, inside wall adjacent to the locking drawer, or interior door plate, and is marked, "General Services Administration Approved Security Container" on the exterior of the top drawer of door; (3) A bank safe-deposit box; and (4) Other repositories which in the judgment of the NRC, would provide comparable physical protection.

9. A new § 73.21 is added to read as follows:

§ 73.21 Requirements for the protection of safeguards information.

(a) *General Performance Requirement*—Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, 73.60, or 73.67, and each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure. To meet this general performance requirement, licensees and persons subject to this section shall establish and maintain an information protection system that includes the measures specified in paragraphs (b) through (i) of this section.

(b) *Information to be Protected*—The specific types of information, documents, and reports that shall be protected are set forth in Appendix E of this Part.

(c) *Access to Safeguards Information*—(1) Except as the Commission may otherwise authorize, no person may have access to Safeguards Information unless the person has an established "need-to-know" for the information and is:

(i) An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government,

(ii) A member of a duly authorized committee of the Congress,

(iii) The Governor of a State or designated representative,

(iv) A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC,

(v) A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies, or

(vi) A person to whom disclosure is ordered pursuant to § 2.744 of Part 2 of this chapter.

(2) Except as the Commission may otherwise authorize, no person may disclose Safeguards Information to any other person except as set forth in paragraph (c)(1) of this section.

(d) *Protection While in Use or Storage*—(1) While in use, matter containing Safeguards Information shall be under the control of an authorized individual to preclude access by persons who do not have a need-to-know or are otherwise not authorized access in accordance with this section.

(2) While unattended or not in actual use, Safeguards Information shall be stored in a locked security storage container within a locked room or building. Knowledge of lock combinations protecting Safeguards Information shall be limited to a minimum number of personnel for operating purposes who have a "need-to-know" and are otherwise authorized access to Safeguards Information in accordance with the provisions of this section.

(e) *Preparation and Marketing of Documents*—(1) Each document that contains Safeguards Information as defined in Appendix E of this part shall contain on the face of the document (i) the name, title, and organization of the individual authorized to make a Safeguards Information determination, and who has determined that the document contains Safeguards Information, (ii) the date the document was originated or the determination made, and (iii) an indication that the document contains Safeguards Information. Each page shall be marked in a conspicuous fashion at the top and bottom with the legend SAFEGUARDS INFORMATION.

(2) If the document contains any form of Restricted Data or National Security Information, it shall also be marked in accordance with the provisions of 10 CFR Part 95.

(3) Transmittal letters or memoranda which do not in themselves contain Safeguards Information shall be marked to indicate that attachments or enclosures contain Safeguards Information.

(4) In addition to the information required on the face of the document, each item of correspondence to and from the NRC that contains Safeguards Information shall, by marking or other means, clearly indicate which portions (e.g., paragraphs or pages) contain Safeguards Information and which do not. (Portion marking is not required for the specific items of information set forth in Appendix E other than correspondence to and from the NRC.

(f) *Reproduction and Destruction of Matter Containing Safeguards Information*—(1) Safeguards Information may be reproduced to the minimum extent necessary consistent with need without permission of the originator.

(2) Documents containing Safeguards Information may be destroyed by burning, pulping or other methods that assure complete destruction of the information they contain.

(g) *External Transmission of Documents and Material*—(1) Documents containing Safeguards Information, when transmitted outside an authorized place of use or storage, shall be enclosed in two sealed envelopes or wrappers. The inner envelope or wrapper shall contain the name and address of the intended recipient, be marked both sides, top and bottom with the words SAFEGUARDS INFORMATION. The outer envelope or wrapper shall contain the intended recipient's name and address with no indication that the document inside contains Safeguards Information.

(2) Safeguards Information may be transported by messenger-courier, or United States first class, registered, express, or certified mail.

(3) Safeguards Information shall not be transmitted by unprotected telecommunications circuits (including facsimile) except under emergency or extraordinary conditions.

(h) *Use of Automatic Data Processing (ADP) Systems*—Safeguards Information may be processed or produced on an ADP system provided that the system is self-contained within the licensee's facility and requires the use of an access code, or has been approved for security by the NRC.

(i) *Removal from Safeguards Information Category*—Documents originally containing Safeguards Information shall be removed from the Safeguards Information category whenever the information no longer meets the criteria contained in this section and Appendix E of this part.

10. Section 73.80 is amended by adding a reference to Section 147 of the Atomic Energy Act of 1954 as amended, as follows:

§ 73.80 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Atomic Energy Act of 1954, as amended, or Title II of the Energy Reorganization Act of 1974, or any regulation or order issued thereunder. A court order may be obtained for the payment of a civil penalty imposed pursuant to section 234 of the Act for violation of section 53, 57, 62, 81, 82, 101, 103, 104, 107, 109, or 181 of the Act, or section 206 of the Energy Reorganization Act of 1974, or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license issued thereunder, or for any violation for which a license may be revoked under section 186 of the Act. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be

punished by fine or imprisonment or both, as provided by law.

11. A new Appendix E to Part 73 is added to read as follows:

Appendix E to Part 73—Protection of Safeguards Information

(2) Schedules and itineraries for specific shipments.[1 2]

(3) Details of vehicle immobilization features, intrusion alarm devices, and communications systems.

(4) Arrangements with and capabilities of local police response forces, and locations of

10 CFR Part 50

Codes and Standards; Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting

regarding the meeting should also contact Mr. Taboada.

(5 U.S.C. 552(a))

Dated at Bethesda, Md., this 18th day of December 1980.

For the Nuclear Regulatory Commission.

radioactive half-life of one year or more in quantities in excess of 100,000 Curies, shall be required to design the facility in such a manner that the nuclear products cannot be released to the atmosphere by the use of a nuclear weapon with an

regulatory process, as the staff points out, we have implemented the statutory requirements regarding the "common defense and security" and the "health and safety of the public" in Commission regulations applicable to nuclear reactors, particularly Parts 20, 50, 70 and 100, and have furnished additional guidance in

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punished by fine or imprisonment or both, as provided by law.

11. A new Appendix E to Part 73 is added to read as follows:

Appendix E to Part 73—Protection of Safeguards Information

Introduction: This appendix defines the specific type of information and documents that are subject to the information protection requirements of § 73.21.

Appendix E

I. The following items shall be considered Safeguards Information.

A. Physical Protection at Fixed Sites

Information not otherwise Classified as Restricted Data or National Security Information relating to the protection of (i) power and non-power reactors, (ii) facilities that possess special nuclear material of moderate and low strategic sigificance, and (iii) facilities that possess formula quantities of strategic special nuclear material. Specifically:

(1) The composite physical security plan for the nuclear facility or site.

(2) Site specific "as built" drawings, diagrams, sketches, or maps showing the identity, barrier construction, internal layout, and location of facility safeguards features including alarm stations, guard posts, defensive positions, and patrol routes.

(3) As installed details of alarm system layouts showing location of instrusion detection devices, alarm assessment equipment, system wiring, normal and emergency power sources, and duress alarms.

(4) Written orders and procedures for guards and other security personnel, duress codes, and patrol schedules.

(5) Details of the on-site and off-site communications systems.

(6) Lock combination and mechanical key design.

(7) Plant specific composite listings and locations of vital safety-related equipment at production or utilization facilities as contained in physical security plans, safeguards contingency plans and plant specific safeguards analyses.

(8) The composite safeguards contingency plan for the facility or site.

(9) Response plans to specific threats detailing size, disposition, response times, and armament of responding forces.

(10) Size, armament, and disposition of on-site reserve forces.

(11) Size, identity, armament, and response times of off-site response forces.

B. Physical Protection In Transit

Information not otherwise classified as Restricted Data or National Security Information relative to the protection of shipments of (i) spent fuel, (ii) special nuclear material of moderate and low strategic significance, and (iii) formula quantities of strategic special nuclear material. Specifically:

(1) The composite transportation physical security plan.

(2) Schedules and itineraries for specific shipments.[1,2]

(3) Details of vehicle immobilization features, intrusion alarm devices, and communications systems.

(4) Arrangements with and capabilities of local police response forces, and locations of safe havens.

(5) Details regarding limitations of radio-telephone communications.

(6) Procedures for response to safeguards emergencies.

C. Limits of Error of Inventory Differences

Information not otherwise classified as Restricted Data or National Security Information relating to calculated limits of error associated with inventory differences (LEID) at facilities that possess one effective kilogram or more of special nuclear material.

D. Inspections, Audits & Evaluations

Information not otherwise classified as National Security Information or Restricted Data relating to safeguards inspections and reports. Specifically:

(1) Portions of safeguards inspection reports, evaluations, audits, or investigations that contain details of a licensee's or applicant's physical security system or that disclose uncorrected defects, weaknesses, or vulnerabilities in the system.[1]

(2) Portions of safeguards inspection reports, evaluations, audits, or investigations that contain limits of error associated with inventory differences (LEID), or that disclose uncorrected defects or weaknesses in a licensee's accounting system that could directly affect the LEID.[1]

E. Correspondence To and From the NRC

Portions of correspondence to and from the NRC insofar as they contain Safeguards Information specifically defined in paragraph A through D of this Appendix.

(Secs. 53, 147, 161b, 161i, 161o, 181, Pub. L. 83–703 as amended, 68 Stat. 930, 948, 949, 953; Sec. 201, Pub. L. 93–438, 88 Stat. 1242–1243, Sec. 207 Pub. L. 96–295, 94 Stat. 780 (42 U.S.C. 2073, 2201, 2231, 5841)).

Dated at Washington, D.C. this 19th day of December 1980.

For the U.S. Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-40412 filed 12-24-80; 8:45am]

BILLING CODE 7590-01-M

[1]Routes and quantities for shipments of spent fuel are not withheld from public disclosure. Schedules for spent fuel shipments may be released 10 days after the last shipment of a current series. (Reference § 73.37(e)(3)).

[2]Schedules and itineraries for shipments other than those involving spent fuel or formula quantities of strategic special nuclear material may be released if it becomes necessary to disclose such information to common carriers or other persons not subject to the general license provisions of 10 CFR 70.20(a).

10 CFR Part 50

Codes and Standards; Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Nuclear Regulatory Commission will conduct a public meeting to discuss its regulation "Codes and Standards," which was last amended in the Federal Register (44 FR 57911) on October 9, 1979.

DATE: The meeting will be held on Friday, January 30, 1981, from 9:00 to 4:00 p.m.

ADDRESS: The meeting will be held at the Commission's Offices at 7920 Norfolk Avenue, Bethesda, Maryland, Conference Room P 114/118.

FOR FURTHER INFORMATION CONTACT: A. Taboada, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301–443–5997.

SUPPLEMENTARY INFORMATION: The meeting is intended to provide an opportunity for NRC staff and other interested parties to discuss comments, questions, and suggestions on Section 50.55a, Codes and Standards, of the Commissions regulations and problems developed during its implementation. Potential subjects for discussion include:

1. Expanding references to Section III of the ASME Boiler and Pressure Vessel Code to include Subsection NC "Class 2 Components," Subsection ND, "Class 3 Components," and Subsection NE, "Class MC Components";

2. Reorganizing paragraphs for easier location of specific provisions and rewording the regulation to make it easier to understand;

3. Changes to mitigate implementation problems which have been experienced during application of the regulation.

Written comments may be submitted to the Commission staff at the meeting or at any time to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Interested persons are invited to attend and ask questions or present oral or written statements on the regulation and the specific areas being considered for modification. Any person who intends to make an oral statement should notify Mr. A. Taboada, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone 301–443–5997 by January 15, 1981. It is expected that oral statements will be limited to 10 minutes. Persons desiring additional information regarding the meeting should also contact Mr. Taboada.

(5 U.S.C. 552(a))

Dated at Bethesda, Md., this 18th day of December 1980.

For the Nuclear Regulatory Commission.

Ray G. Smith,

Acting Director, Office of Standards Development.

[FR Doc. 80-40410 Filed 12-24-80; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 50

Domestic Licensing of Production and Utilization Facilities

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Denial of a petition for rulemaking.

SUMMARY: Notice is hereby given that a petition for rulemaking filed by Mr. William K. Watson by letter dated January 6, 1980, with the Nuclear Regulatory Commission is denied. This petition, which was assigned Docket Number PRM–50–26, requested that the Commission amend 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities." The proposed amendment would have provided that an applicant for a license for a facility that stored certain quantities of nuclear products be required to design the facility to protect against release to the atmosphere of these products in the event the facility were attacked by use of nuclear weapons detonated at ground level with a yield of up to 5 megatons.

FOR FURTHER INFORMATION CONTACT: James A. Prell, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (301–443–5904).

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) has denied a petition for rulemaking submitted by letter dated January 6, 1980, from William K. Watson, 5409 Denver Avenue South, Seattle, Washington 98108. A notice of filing of petition, Docket No. PRM–50–26, was published in the **Federal Register** on February 15, 1980 [45 FR 10360]. Interested persons were invited to submit written comments or suggestions on the petition.

Mr. Watson petitioned the Commission to revise the language of 10 CFR Part 50.13 to read as follows:

"An applicant for a license to construct a production or utilization facility, or for an amendment to such license, wherein it is contemplated there will be stored anywhere within the facility nuclear products with a radioactive half-life of one year or more in quantities in excess of 100,000 Curies, shall be required to design the facility in such a manner that the nuclear products cannot be released to the atmosphere by the use of a nuclear weapon with an equivalent yield of less than five (5) megatons which is detonated at ground level at the geographical location of any structures at the facility which contain the aforesaid quantities of radioactive material."

The petitioner alleges that nuclear-armed cruise missiles are now able, with reasonable probability, to directly impact a building, pond, or storage tank and disseminate their contents over a wide region. In support of his contentions, the petitioner references two articles written by C. V. Chester and R. O. Chester of Oak Ridge National Laboratory. Both articles appeared in a magazine entitled "Nuclear Application and Technology." The first, "Civil Defense Implications of A Pressurized Water Reactor In A Thermonuclear Target Area," was published in the December 9, 1970, issue while the second, "Civil Defense Implications Of An LMFBR In A Thermonuclear Target Area," was published in the March 1974 issue. These articles indicate that a direct hit by nuclear weapons in the 20- to 100-kiloton range could smash the reactor containment vessel and disperse its contents over a large area.

The basic question inherent in the petition is: "Should the Nuclear Regulatory Commission, in licensing the construction of nuclear facilities for peaceful civilian use, take into account and require effective protection against the possibility of attack by enemies of the United States?" This question has been previously addressed in a decision by the Atomic Energy Commission in *Florida Power and Light Company* (Turkey Point Nuclear Generating Units No. 3 and No. 4) 4 AEC 9 (1967). That decision was later upheld by the United States Court of Appeals for the District of Columbia Circuit in *Siegel* vs. *Atomis Energy Commission*, 400 F.2d 778 (1968).

In its opinion the Atomic Energy Commission discussed the meaning of the statutory terms "common defense and security" and "health and safety of the public" in the following manner:

We think it plain from the structure of the Atomic Energy Act and the construction placed thereon by the United States *Supreme Court (Power Reactor Development Co.* v. *International Union*, 367 U.S. 396, 1961), that responsibility for interpreting and implementing the Act's general standards has been vested by the Congress in the Atomic Energy Commission which is charged with determining what measures are required to give application to those standards. In our regulatory process, as the staff points out, we have implemented the statutory requirements regarding the "common defense and security" and the "health and safety of the public" in Commission regulations applicable to nuclear reactors, particularly Parts 20, 50, 70 and 100, and have furnished additional guidance in our decisions.

For a fuller understanding of the premises unerlying that implementation, one must recall the circumstances at the time of enactment of the Atomic Energy Act of 1954 and the issuance thereafter of Commission regulations bearing on reactor licensing. Reactor technology, although then in the process of declassification, was essentially still classified. Further, concern existed that there be sufficient special nuclear material for our military needs and that the material used for fueling reactors, all of which was Government-owned, be subject to appropriate safeguards against loss or diversion. While the passage of time has lent more immediacy to some of these concerns as contrasted to others, we have, in the above context, considered the common defense and security standard to refer principally to: the safeguarding of special nuclear material; the absence of foreign control over the applicant; the protection of Restricted Data; and the availability of special nuclear material for defense needs.

We have considered the public health and safety standard to refer to the overall qualifications of the applicant and the design of the facility to protect plant employees and the public against accidents and their consequences. At the operating license stage we would also consider such matters as the execution of the design of the facility and proposed operating procedures.

This implementation of the subject standards has been based upon our understanding of the intent of Congress as expressed in the various provisions of the Atomic Energy Act which pertain to the licensing of reactors and of the legislative concerns which gave rise to those provisions. It bears emphasis that—as is the case with the Act and its legislative history—neither our regulations nor our decisions indicate any requirement that an applicant provide for special design features or other measures for the specific purpose of protection against the effects of enemy attacks and destructive acts.

We believe that our practice of excluding the foregoing from licensing consideration is founded on compelling factors. It would appear manifest, as an initial proposition, that the protection of the United States against hostile enemy acts is a responsibility of the nation's defense establishment and of the various agencies of our Government having internal security functions. The power reactors which the Commission licenses are, or course, equipped with numerous features intended to assure the safety of plant employees and the public, as indicated by our earlier summary description of the proposed Turkey Point facility. These safeguards, while designed to protect against accidents and their consequences, do not have as their specific purpose protection against effects of enemy attacks and destructive acts—although the massive containment and the procedures and systems for rapid shutdown

of the facility could also serve a useful purpose in the latter regard. One factor common defense and security" and "the public health and safety." The Commission United States. The basic argument presented by the petitioner is that the

For the Nuclear Regulatory Commission.

East 12th Street, Kansas City, Missouri 64106. All communications received on

Longitude 94° 26' 39"W) extending from five miles to 8.5 miles southeast of the NDB.

of the facility could also serve a useful purpose in the latter regard. One factor underlying our practice in this connection has been a recognition that reactor design features to protect against the full range of the modern arsenal of weapons are simply not practicable and that the defense and internal security capabilities of this country constitute, of necessity, the basic "safeguards" as respects possible hostile acts by an enemy of the United States.

The circumstances which compel our recognition are not, of course, unique as regards a nuclear facility; they apply also to other structures which play vital roles within our complex industrial economy. The risk of enemy attack or sabotage against such structures, like the risk of all other hostile acts which might be directed against this country, is a risk that is shared by the nation as a whole. This principle, we believe, is rooted in our political history and we find no Congressional indication that nuclear facilities are to be treated differently in the subject regard.

Certain other considerations are equally militating in our view. Assessment of whether, at some time during the life of a facility, another nation actually would use force against that particular facility, the nature of such force and whether that enemy nation would be capable of employing the postulated force against our defense and internal security capabilities are matters which are speculative in the extreme. Moreover, examination into the above matters, apart from their extremely speculative nature, would involve information singularly sensitive from the standpoint of both our national defense and our diplomatic relations. These matters are clearly not amenable to board consideration and determination in the licensing process and we would not propose to make them cognizable issues in the absence of a clear Congressional direction to that end. (4 AEC at pp. 12–14).

Shortly after denying Mr. Siegel's contention, the Commission published in effective form 10 CFR 50.13, "Attacks and destructive acts by enemies of the United States; and defense activities" (32 FR 13445). In the statement of consideration, the Commission reiterated what the common defense and security standard and the public health and safety standard meant. The meanings were the same as presented in the Commission's response to the Siegel contention.

Mr. Siegel appealed the AEC decision to the United States Court of Appeals for the District of Columbia Circuit. It rendered a decision in August 1968 which upheld the Atomic Energy Commission decision. In upholding the Commission's decision, the Court of Appeals stated:

> We are unable to find any specific indication, within or without the corners of the statute, that the Commission was commanded to intrude the possibility of enemy action into the concepts of "the common defense and security" and "the public health and safety." The Commission has, we think persuasively, demonstrated that the legislative concerns reflected in these phrases are of another order. In the case of the former, the internal evidence of the Act is that Congress was thinking of such things as not allowing the new industrial needs for nuclear materials to preempt the requirements of the military; of keeping such materials in private hands secure against loss or diversion; and of denying such materials and classified information to persons whose loyalties were not to the United States. In the case of the latter standard of "the public health and safety," the Congressional preoccupation was with industrial accidents and the dangers they presented to employees and the neighboring public.
>
> In short, Congress certainly can be taken to have expected that an applicant for a license should bear the burden of proving the security of his proposed facility as against his own treachery, negligence, or incapacity. It did not expect him to demonstrate how his plant would be invulnerable to whatever destructive forces a foreign enemy might be able to direct against it in 1984. We hold that the Commission was well within the limits of the powers delegated to it by Congress when it decided to limit petitioner's cross-examination in the licensing proceeding, and to embody the policy of limitation in its regulations (400 F2d at 784) (footnote omitted).

At the time that the Atomic Energy Act was being written and considered by Congress, potential adversaries of the United States had in their possession nuclear weapons capable of destroying nuclear power plants and dispersing their contents over wide areas. Although these potential adversaries did not possess the technology needed to remotely deliver these weapons to nuclear power plants, (i.e., rockets and missiles), they did possess long range bombers capable of accurately dropping their weapons on predesignated sites. The 1954 Congress had to be aware of this situation as well as this country's research efforts in rocket and missile development. They also had to know that Russia and other countries were developing rockets which could be used for transporting nuclear warheads over long distances. In addition, the 1954 Congress had to be aware of the missile's potential for widespread destruction after having witnessed its effective use by Germany against England during World War II.

Thus, the 1954 Congress was able to relate the potential dangers posed by nuclear weapons and missiles to nuclear power plants. However, nowhere did they indicate, either legislatively or otherwise, that the AEC should be responsible for requiring that licensed facilities be designed to protect the public's health and safety from possible destructive acts by enemies of the United States. The basic argument presented by the petitioner is that the level of sophistication for nuclear missiles has improved so substantially since 1954, that licensed nuclear facilities now should be designed to protect against a release to the atmosphere of their radioactive inventory in the event the facility is targeted by such a weapon.

Granting this petition would establish a precedent affecting not only the nuclear industry, but each industry that possessed material that might be detrimental to the public health and safety. Regulations could be developed requiring that each industry that possessed hazardous material be responsible for defending themselves from attack by enemies of the United States, who may use nuclear weapons. It appears as valid today as in 1954, that protecting the public health and safety from possible destructive acts by enemies of the United States of facilities containing potentially hazardous materials, is and should be the responsibility of the Department of Defense.

Five comments were received from the public in response to the petition published in the **Federal Register.** One of the commenters was C. V. Chester, from Oak Ridge National Laboratory, co-author of the two articles referenced in the petition for rulemaking. All commenters, including Mr. Chester, recommended that the NRC deny the petition. The reasons given by the commenters were that the petition was unreasonable, would be very expensive to implement, and would be illegal if implemented.

It is the belief of the NRC that the technological changes in weaponry referred to in the petition do not alter the logical and legal basis for in the precedents established in this area by the Atomic Energy Commission in its opinion in *Florida Power and Light* (supra), the Court of Appeals decision, and in the rulemaking that resulted in 10 CFR 50.13.

In view of the foregoing, the Executive Director for Operations, acting under authority delegated by the Commission (10 CFR 1.40(o)) has in accord with established precedent denied the petition for rulemaking filed by William K. Watson (PRM 50–26). Copies of the petition for rule making, the comments thereon, and the Commission's letter of denial are available for public inspection in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 18th day of November 1980.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 80-40411 Filed 12-24-80; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-CE-14]

Transition Area—Greenfield, Iowa; Proposed Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making (NPRM).

SUMMARY: This notice proposes to designate a 700-foot transition area at Greenfield, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Greenfield, Iowa, Airport based on the Greenfield Non-Directional Radio Beacon (NDB), a navigational aid.

DATES: Comments must be received on or before February 2, 1981.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (8181) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region. 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before February 2, 1981 will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374–3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11–2 which described the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181, of the Federal Aviation Regulations (14 CFR § 71.181) by designating a 700–foot transition area at Greenfield, Iowa. To enhance airport usage, the city of Greenfield, Iowa, has requested the development of an instrument approach procedure to the Greenfield Airport utilizing the Greenfield NDB as a navigational aid. This radio facility will provide new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Greenfield, Iowa, at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980, (45 FR 445) by adding the following new transition area:

Greenfield, Iowa

That airspace extending upward from 700 feet above the surface withihn a five mile radius of the Greenfield Airport (Latitude 41° 20' 00"N, Longitude 94° 26' 38"w) and three miles either side of the 141° bearing of the Greenfield NDB (Latitude 41° 19' 32"N, Longitude 94° 26' 39"W) extending from five miles to 8.5 miles southeast of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65))

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on December 15, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80-40260 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 80-AWA-14]

Alteration of Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Restricted Area R–4305, by changing the time of designation from 5 days per week to continuous. The Minnesota Air National Guard conducts an increasing amount of training on weekends and this action would extend the time of designation for R–4305 to include weekends.

DATES: Comments must be received on or before January 28, 1981.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Great Lakes Region, Attention: Chief, Air Traffic Division, Docket No. 80–AWA–14, Federal Aviation Administration, 2300 East Devon, Des Plaines, Ill. 60018.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC–204), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the Office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Lewis Still, Airspace Regulations Branch (AAT–230), Airspace and Air Traffic

Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8525.

SUPPLEMENTARY INFORMATION:

§ 73.43 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (45 FR 706) as follows:

Under R–4305 Lake Superior, Minn.: Time of designation. "0001 local time Monday to 2400 local time Friday." is deleted and

restrictive. These changes would substantially reduce the economic impact of the rules.

DATES: Comments must be received on or before February 27, 1981.

Background

A notice of proposed rulemaking (NPRM) for this proposal was published in the **Federal Register** of September 7, 1978, beginning at page 39946, (43 FR 39946). The NPRM proposed

remaining on the market. Several other commenters also objected to these requirements, as well as other NPRM provisions, on more general grounds. The principal complaint was that lights which could meet the requirements of

as observed during daylight hours, can vary by as much as 10 degrees from the vessel's actual heading.

d. In addition to making proposed § 89.5(a)(2) applicable to all navigation lights, the wording of this provision has

Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, Ill. 60018. All communications received on or before January 28, 1981 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C., 20591, or by calling (202) 426–8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart B of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) that would extend the time of designation for the utilization of Restricted Area R–4305 from Monday through Friday, to "Continuous" (7 days per week). The 148th Tactical Reconnaissance Group (MN ANG), conducts an increasing amount of training missions on weekends and has requested the operating hours of R–4305 be extended to include this time period. Also, there is a minor change to the using agency's title. Section 73.43 of Part 73 was republished in the Federal Register on January 2, 1980, (45 FR 706).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 73.43 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (45 FR 706) as follows:

Under R–4305 Lake Superior, Minn.:
Time of designation. "0001 local time Monday to 2400 local time Friday." is deleted and "Continuous." is substituted therefor.
Using agency. "Commander, Eight Air Force, Barksdale AFB, La." is deleted and "Commander, Eight Air Force, Barksdale AFB, LA/DOOBS. (Autovon 781–3917/3857)" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on December 19, 1980.

B. Keith Potts,

Acting chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80–40265 Filed 12–24–80; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Parts 88 and 89

[OGD 77–233]

Navigation Lights for Small Vessels

AGENCY: U.S. Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: In the Federal Register of September 7, 1978, the Coast Guard proposed rules for approval, installation, and performance of navigation lights on vessels of less than 20 meters in length that must comply with the International Regulations for Preventing Collisions at Sea, 1972. Numerous comments were received and this supplemental notice of proposed rulemaking incorporates the recommendations of commenters. The principal changes are to allow manufacturer certification of lights in lieu of Coast Guard testing and approval and to make the practical cut-off and horizontal sector requirements less restrictive. These changes would substantially reduce the economic impact of the rules.

DATES: Comments must be received on or before February 27, 1981.

ADDRESSES: (a) Comments should be mailed to Commandant (G–CMC/24), (OGD 77–233), U.S. Coast Guard, Washington, D.C. 20593. The comments, draft evaluation, and other materials referenced in this notice will be available for examination and copying between 7 a.m. and 5 p.m., Monday through Thursday except holidays, at the Marine Safety Council (G–CMC/24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593. Comments may also be hand-delivered to this address.

(b) The ABYC standard (A–16) referenced in this notice may be obtained at a cost of $3.00 from the American Boat and yacht Council, Inc., P.O. Box 806, Amityville, N.Y. 11701.

(c) The UL standard (1104) referenced in this notice may be obtained at a cost of $6.00 from Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062.

FOR FURTHER INFORMATION CONTACT:
Mr. Lysle B. Gray, Office of Boating Safety (G–BBT–2/42), Room 4220, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C., 20593, (202) 426–4027.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (OGD 77–233) and the specific sections of the proposal to which the comments apply, and give reasons for the comments. Persons desiring acknowledgement of their comments should enclose a stamped self-addressed postcard or envelope.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on these proposed rules. Copies of all written comments received will be available for examination by interested persons at the marine Safety Council address noted above.

Drafting Information

The principal persons involved in drafting this proposal are: Lysle Gray, and LTUG E. B. McLean, Office of Boating Safety, and William R. Register, Office of the Chief Counsel.

Background

A notice of proposed rulemaking (NPRM) for this proposal was published in the **Federal Register** of September 7, 1978, beginning at page 39946, (43 FR 39946). The NPRM proposed requirements for approval, installation, and performance of navigation lights on vessels of less than 20 meters in length that must comply with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS). Two public hearings were held and 67 written comments were received. Revisions have been made to the proposal in accordance with the comments and this supplemental NPRM contains the proposed revisions.

Discussion of Comments and Revisions Made to the NPRM

The following paragraphs contain an analysis of comments received on the NPRM and an explanation of the proposed revisions in this supplemental NPRM.

1. *Practical cut-off and horizontal sectors.* Proposed § 89.5(a)(2) in the NPRM allowed up to 10° tolerance in the horizontal sector requirements in Rule 21 of the 72 COLREGS. This provision applied only to navigation lights installed on vessels before August 1, 1981. The proposed requirements for lights installed on and after this date, however, were much more restrictive. Proposed § 89.47 allowed only a 2° installation tolerance in light alignment. Proposed § 89.14(a) interpreted the term "practical cut-off" in Annex I of the 72 COLREGS to mean "50% of minimum required intensity," and proposed § 89.15 allowed only a 2° production tolerance in the horizontal sector intensities required by Annex I.

a. Numerous comments were received concerning these proposed requirements. Comments on proposed § 89.15 recommended an 8° production tolerance for horizontal sector intensity on the basis that more rigid production tolerances could not be achieved without excessive increases in production costs. Commenters on proposed § 89.47 objected to the proposed 2° installation tolerance as being virtually impossible to achieve when installing lights on a production basis. Commenters on proposed § 89.14 recommended that the proposed interpretation of "practical cut-off" be changed to "67% of minimum required intensity." These commenters stated that the 50% value would result in removal of several widely accepted models of navigation lights from the market and would substantially increase the cost to produce models still remaining on the market. Several other commenters also objected to these requirements, as well as other NPRM provisions, on more general grounds. The principal complaint was that lights which could meet the requirements of the NPRM would be exceedingly expensive for many recreational boat owners.

b. On the basis of these comments it is apparent that the 50% practical cut-off value and the 2° tolerances proposed in the NPRM for lights installed on and after August 1, 1981, are unreasonable from a cost standpoint and that production of lights in accordance with these requirements would in many cases be impracticable. Two principal revisions have been made in this supplemental NPRM to alleviate commenters' objections. The 2° tolerances have been replaced with the 10° tolerance proposed for existing lights and the 50% value in the interpretation of practical cut-off has been replaced with a 67% value. The specific changes are as follows:

i. The 10° tolerance provision in proposed § 89.5 (a)(2) has been made applicable to all navigation lights.

ii. Proposed § 89.14 of the NPRM has been transferred to § 88.5 of Part 88 and the 50% value for practical cut-off in that rule has been replaced with a 67% value.

iii. The 2 degree tolerance provisions in §§ 89.15 and 89.47 of the NPRM have been deleted.

These changes and other changes discussed below should substantially reduce the costs of this proposal and allow a larger number of existing models of navigation lights to continue in production without excessive tooling and design changes.

c. Although these revisions would allow greater production and installation tolerances for navigation lights installed on and after August 1, 1981, little change, if any, would result in the performance characteristics of these lights as observed during vessel operation. Most small vessels cannot maintain a constant heading when steering on a given course. As a result, the directional information that their navigation lights provide to oberservers on other vessels is sometimes inaccurate depending upon the relative positions of the other vessels. These inaccuracies will occur regardless of whether the lights are designed with a 10 degree tolerance in horizontal sectors, as proposed in § 89.5(a)(2), or with the more restrictive tolerances in the NPRM. These inaccuracies also correspond to visual discrepancies in course and heading observed on small vessels during daylight hours. As a general rule, the apparent heading of a small vessel, as observed during daylight hours, can vary by as much as 10 degrees from the vessel's actual heading.

d. In addition to making proposed § 89.5(a)(2) applicable to all navigation lights, the wording of this provision has been revised to parallel the corresponding enforcement provision in Commandant Instruction 16672.1. (As discussed in more detail in paragraph 9 of this preamble, the instruction outlines the Coast Guard's enforcement policy for navigation lights on small vessels). Section 89.5(a)(2) in the NPRM provided that compliance with the 72 COLREGS would be presumed unless visual inspection showed that a light's "horizontal arc of visibility deviates 10° or more from the requirements of rule 21 of the 72 COLREGS * * *." This supplemental NPRM provides that compliance will be presumed unless it can be determined that "a masthead light, sidelight, towing light, or sternlight, shows light more than 10° beyond the horizontal sector prescribed for the light in Rule 21 of the 72 COLREGS * * *." The purpose of the revision is to make clear that a 10° tolerance is only allowed outside required horizontal sectors. The allowable tolerances inside required horizontal sectors are the 2° and 6° obscuration allowances prescribed by proposed §§ 89.5(a)(5) and 89.5(a)(6).

2. *Adequacy of existing lights.* Several commenters objected to the NPRM on the basis that lights currently in use on small vessels are adequate and that no safety justification exists for imposing additional requirements. In support of their objections, the commenters stated that none of the Coast Guard casualty reports on small boat accidents list inadequacies in navigation lights as the principal cause of the casualty. These comments have not been adopted. The 72 COLREGS have the force and effect of U.S. law and do not provide for continued use of navigation lights that violate those requirements or the requirements of implementing regulations. Accordingly, continued use of noncomplying lights cannot be allowed. Their continued use also could pose a safety hazard. Nonconforming lights would exhibit lighting characteristics that are different from characteristics displayed by lights that do comply with the 72 COLREGS. The resulting confusion to mariners in trying to determine the intentions of approaching or nearby vessels at night and in periods of restricted visibility could result in dangerous passing situations or other hazardous situations.

3. *Certification.* Several manufacturers recommended that the approval procedures in the NPRM be

replaced with requirements that would allow manufacturers to certify that their lights meet 72 COLREGS requirements. The recommendations have been adopted in proposed §§ 89.7, 89.11(a)(2), address listed above under "ADDRESSES".

6. *Obscuration.* Proposed § 89.49(a) allows a 6° obscuration for an all-round light but limits masthead lights to a 2° and that would permit the nonconforming configurations listed in the instruction. In all probability, the 72 COLREGS amendments will be adopted before the regulations in this

improve the overall quality of navigation lights displayed on small vessels that operate in waters subject to the 72 COLREGS, and thereby decrease the risk of collision between vessels at night and in periods of restricted visibility

meaning provided for these terms in Rule 21 of the 72 COLREGS.

§ 89.5 Enforcement policy.

(a) Installed Navigation lights are presumed to meet the requirements of

marked with the words "red" and "green", or "red" and "grn", adjacent to the mounting for the corresponding color lens.

§ 89.11 Labeling.

replaced with requirements that would allow manufacturers to certify that their lights meet 72 COLREGS requirements. The recommendations have been adopted in proposed §§ 89.7, 89.11(a)(2), and 89.11(b)(1). As explained in the draft evaluation, the certification process can provide an effective incentive for manufacturers to design and produce lights that conform to the 72 COLREGS and Coast Guard enforcement activity can be limited to the visual inspection process described in proposed § 89.5. The certification process can also eliminate administrative costs involved in the approval process and provide a corresponding reduction in governmental involvement in boating activities.

4. *Approval.* Proposed § 89.7 also allows carriage of Coast Guard approved lights in lieu of lights that have a manufacturer certification. The Coast Guard currently approves navigation light designs for use on merchant vessels that are required to comply with the electrical engineering regulations in Subchapter J of Title 46, CFR. The specific requirements for navigation lights are in Subpart 111.75 of Subchapter J. The electrical engineering regulations are being revised in a separate rulemaking docket (CGD 75–124) and the planned changes to Subpart 111.75 include a requirement that approved navigation lights must, as a condition of approval, meet the technical requirements of the 72 COLREGS or other applicable rules of the road.

5. *Testing.* The supplement NPRM also deletes the testing provisions in Subpart D of the NPRM. On the basis of subsequent Coast Guard analysis of those tests, it became apparent that they were not sufficiently complete to permit a laboratory to perform them without first obtaining additional information concerning specific test procedures to be used. Replacement tests have not been provided, however, in order to allow manufacturers leeway in determining what tests should be done to check for compliance with 72 COLREGS requirements. Two testing procedures currently exist that contain reliable test methods and criteria. The American Boat and Yacht Council has recently developed ABYC Standard A–16 entitled "Recommended Practices and Standards Covering the Design, Construction, Performance and Installation of Electric Navigation Lights". Underwriters Laboratories standard 1104 entitled "Standard for Navigation Lights" is also available. Copies of these standards may be obtained by writing to the appropriate address listed above under "ADDRESSES".

6. *Obscuration.* Proposed § 89.49(a) allows a 6° obscuration for an all-round light but limits masthead lights to a 2° obscuration and prohibits any obscuration for sidelights and sternlights. Several manufacturers recommended that, as a cost saving measure, this requirement be revised to allow a 6° obscuration allowance for all navigation lights on small vessels. This recommendation has not been adopted. A 6° obscuration allowance can cause noticeable changes in lighting configuration depending upon the relative position of an observer on an oncoming vessel. In any event, most lights on existing vessels already comply with this requirement and, on new vessels, proper selection and placement of lights can prevent obscuration. The cost to relocate lights on existing vessels in order to comply with this requirement should not be burdensome.

7. *Chromaticity.* Manufacturers of lights objected to the chromaticity requirements in the 72 COLREGS as being too restrictive. Compliance with these requirements should not pose a problem. They are referenced in both standards ABYC A–16 and UL 1104, and both standards provide realistic tests for measuring chromaticity.

8. *Combination sidelights.* Proposed § 89.17(c) in the NPRM prohibited red and green lenses in combination sidelights, if removable, from being interchangeable. This prohibition has been relaxed in the supplemental NPRM to allow interchangeable lens if the fixture is permanently marked with the words "red", "green", or "grn" to denote lens color. This revision has been made to further reduce retooling costs required for existing light designs to comply with these regulations. The revision will also allow a manufacturer to supply a lens from a certified light to a vessel operator who needs a replacement lens for an older light.

9. *Enforcement policy.* The current Coast Guard enforcement policy for navigation lights on small vessels is outlined in Commandant Instruction 16672.1 of 21 July 1980. This Instruction includes the enforcement procedures described in § 89.5 of this supplemental NPRM. However, the Instruction also provides that citations are not to be issued for failure to carry screens or for having certain lighting configurations that do not comply with the 72 COLREGS. The International Maritime Consultative Organization is currently considering amendments to the 72 COLREGS that would provide for optional use of screens on small vessels and that would permit the nonconforming configurations listed in the instruction. In all probability, the 72 COLREGS amendments will be adopted before the regulations in this supplemental NPRM become effective.

a. A violation of proposed § 89.7 would subject the vessel operator to penalties under the International Navigational Rules Act of 1977 (33 U.S.C. 1601–1608) or the Federal Boat Safety Act of 1971 (46 U.S.C. 1451–1489). Violations determined in accordance with the enforcement policy set out in proposed § 89.5 would also subject a vessel operator to these penalties.

b. Proposed §§ 89.9 and 89.11 are directed to manufacturers of certified lights. A manufacturer who violated one of these provisions would be subject to penalties under the Federal Boat Safety Act of 1971. The International Navigational Rules Act of 1977 does not include penalties for manufacturers.

10. *Effective date.* The planned effective date for these regulations is August 1, 1982. This date has been selected in consultation with Canadian officials who plan to adopt the same date in order to avoid conflicts in adjoining waters. The proposed compliance date in proposed § 89.7 for certified or approved lights coincides with this effective date.

Summary of Draft Evaluation

11. The proposed regulations are considered to be nonsignificant and, accordingly, a draft evaluation has been prepared and placed in the public docket as required by the DOT Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order 2100.5 of May 22, 1980). The DOT Order requires that each draft evalution include an economic analysis which quantifies, to the extent practicable, the estimated cost of the regulations to the private sector, consumers, and Federal, State and local governments, as well as the anticipated benefits and impacts of the regulations. Comments on the content and accuracy of the evaluation may be submitted and will be considered in conjunction with comments submitted on the proposed regulations.

12. As explained in the draft evaluation, the total annual cost of these proposed regulations to the boating public would be approximately $4,410,000. This cost is $9,840,000 less than the total annual cost of $14,250,000 that would have been incurred if the NPRM requirements had been adopted. Increased costs to the Coast Guard and State and local governments resulting from this proposal are not expected. Adoption of these regulations would improve the overall quality of navigation lights displayed on small vessels that operate in waters subject to the 72 COLREGS, and thereby decrease the risk of collision between vessels at night and in periods of restricted visibility.

Proposed Regulations (as Revised)

13. In consideration of the foregoing, the Coast Guard proposes to amend Title 33, Code of Federal Regulations, as follows:

PART 88—72 COLREGS; INTERPRETATIVE RULES

a. Part 88 would be amended by adding a new § 88.5 to read as follows:

§ 88.5 Practical cut-off.

For vessels less than 20 meters in length, the term "practical cut-off" used in Section 9 of Annex I to the 72 COLREGS means 67 percent of minimum required intensity. In addition, for practical cut-off to be reached, the intensity must decrease to 10 percent of minimum required intensity by 20° outside the prescribed horizontal sector required in Rule 21 of the 72 COLREGS.

b. A new Part 89 would be added to read as follows:

PART 89—NAVIGATION LIGHTS FOR SMALL VESSELS

Sec.
89.1 Scope and application.
89.3 Definitions.
89.5 Enforcement policy.
89.7 Certification or approval.
89.9 Construction.
89.11 Labeling.

Authority: 33 U.S.C. 1607; 46 U.S.C. 1454; 49 CFR 1.46.

§ 89.1 Scope and application.

(a) This part prescribes rules for navigation lights on vessels of less than 20 meters in length that must comply with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS).

(b) The 72 COLREGS are published as Appendix A of Part 87 of this subchapter. The 72 COLREGS contain requirements for navigation lights that supplement the requirements in this part. Vessels must comply with the 72 COLREGS when operating outside the lines of demarcation prescribed in Part 82 of this subchapter.

§ 89.3 Definitions.

As used in this part:

(a) The terms "vessel", "power driven vessel", and "sailing vessel" have the same meaning provided for these terms in Rule 3 of the 72 COLREGS.

(b) The terms "masthead light", "sidelight", "sternlight", "all-round light", and "towing light" have the same meaning provided for these terms in Rule 21 of the 72 COLREGS.

§ 89.5 Enforcement policy.

(a) Installed Navigation lights are presumed to meet the requirements of the 72 COLREGS unless it can be determined by visual inspection that—

(1) Their configuration does not confirm to part C and Annex I of the 72 COLREGS:

(2) A masthead light, sidelight, towing light, or sternlight shows light more than 10 degrees beyond the horizontal sector prescribed for the light in Rule 21 of the 72 COLREGS;

(3) One or more lights is inoperative, or has a faulty lamp, switch, wiring, or battery or is not bright enough to be visible for the distance required by Rule 22 of the 72 COLREGS;

(4) The lens of any light is broken, scorched or faded, or otherwise does not meet the color requirements in Annex I of the 72 COLREGS;

(5) The horizontal sector of an all-round light is obscured for more than 6 degrees by an opaque object or by misalignment.

(6) The horizontal sector of a masthead light is obscured for more than two degrees by an opaque object or by misalignment.

(7) The horizontal sector of a sidelight, sternlight, or towing light is obscured for any angle by an opaque object or by misalignment.

(8) The light is not in compliance with either § 89.7(a) or 89.7(b).

§ 89.7 Certification or approval.

(a) Each navigation light installed on a U.S. vessel on or after August 1, 1982, must have the certification marking prescribed by § 89.11(b)(1) or be approved by the Coast Guard in accordance with 46 CFR Subpart 11.75.

(b) Each navigation light installed on a foreign vessel on or after August 1, 1982, must meet paragraph (a) of this section or be certified by a foreign administration to meet the 72 COLREGS.

§ 89.9 Construction.

(a) Each certified navigation light housing must be constructed so that it may be accurately aligned during installation.

(b) Compliance with paragraph (a) of this section may be accomplished by using—

(1) flat vertical mounting surfaces, either transverse or longitudinal;

(2) index marking; or

(3) a template.

(c) The red and green lenses in certified combination side lights, if removable, may not be interchangeable unless the light fixture is permanently marked with the words "red" and "green", or "red" and "grn", adjacent to the mounting for the corresponding color lens.

§ 89.11 Labeling.

(a) Each manufacturer of a certified navigation light must mark each light, or the smallest package in which it is sold, with the following information:

(1) Manufacturer identification (name and address).

(2) Certification statement: "This navigation light is certified to be of a type that meets the 72 COLREGS if installed in accordance with manufacturer instructions."

(3) Name of light (e.g. masthead, sidelight, etc.).

(4) Application (e.g. sailing vessel, power driven vessel; size of vessel, i.e. vessels less than 12 meters in length or vessels less than 20 meters in length).

(5) Lamp type by the lamp manufacturer's identification.

(6) Lamp wattage and rated voltage.

(b) Each light must also be permanently marked with the following:

(1) The phrase "cert. 72 COLREGS" where it can be seen without disassembling the light and without removing it from its mounting.

(2) The lamp type where it can be seen by a person changing the lamp.

(3) The manufacturer's name or identifying mark where it can be seen without disassembling the light and without removing it from its mounting.

(c) Each navigation light must be packaged with instructions on how to install the light in a manner that ensures compliance with 72 COLREGS.

(33 U.S.C. 1607; 46 U.S.C. 1454; 49 CFR 1.46)

Dated: December 22, 1980.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 80-40403 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

33 CFR Part 161

[CGD 80-010]

Prince William Sound Vessel Traffic Service; Amendment to

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is proposing to amend the regulations which govern the Prince William Sound Vessel Traffic Service. The amendment will consist of minor alterations of a procedural nature and editorial changes. The intended effects of the proposal are to improve

and update the present statutes and regulations, and to codify some practices which have been developed by standards. The proposed editorial changes are intended to:

The proposed amendments to §§ 161.334 and 161.336 will change the

event of a marine casualty since the inception of the Prince William Sound VTS. The tugs escort the laden tank

Valdez Arm which has a navigable width of greater than three miles. The Coast Guard believes that as there is

Rules in §§ 161.372 and 161.374 apply only to the operation of: * * *

(3) Each commercial vessel of 8

and update the present statutes and regulations, and to codify some practices which have been developed by Captain of the Port (COTP) Order.

DATES: Comments must be received on or before February 12, 1981.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/24), (CGD 80-010), U.S. Coast Guard, Washington, D.C. 20593. Comments will be available for examination at the Marine Safety Council, Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT:
Mr. Edward J. LaRue, Jr., Project Manager, Office of Marine Environment and Systems, Room 1608, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202) 426-4956. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Thursday, except holidays.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Written comments should include the docket number (CGD 80-010), the specific section of the proposal to which each comment applies, and the reasons for the comments. Commenters should include their name and address. Those desiring acknowledgement that their comments have been received should enclose a self-addressed postcard or envelope.

The proposal may be changed in view of the comments received. All comments received before expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process.

Drafting information

The principal persons involved in drafting this proposal are Mr. Edward J. LaRue, Jr., Project Manager, Office of Marine Environment and Systems, and Lieutenant Michael Tagg, Project Attorney, Office of the Chief Counsel.

Discussion of The Proposed Regulations

After more than two years of successful operation, the Coast Guard is proposing certain minor alterations and editorial changes to the Prince William Sound Vessel Traffic Service (VTS) regulations. The alterations are mainly of a procedural nature and are intended to increase the efficiency of the VTS while maintaining the high safety standards. The proposed editorial changes are intended to:

(1) Better organize the regulations;
(2) Improve format and language;
(3) Correct small inconsistencies in references; and
(4) Update the regulations to be consistent with existing statutes and regulations.

For example, throughout the regulations, measurements have been changed from feet to meters in order to agree with the national policy set forth by the Metric Conversion Act of 1975. Minor editorial changes will not be discussed unless confusion might result without some explanation.

Proposed § 161.303 would include two additional definitions. Definitions of "tank vessel" and "Laden tank vessel" would be included since tug assistance requirements and one-way traffic restrictions would depend upon whether or not the tank vessel is carrying cargo. The particular sections affected will be discussed separately.

The International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) demarcation lines, previously used to establish the jurisdictional boundaries between the international rules and the Navigation Rules for Harbors, Rivers and Inland Waters (33 U.S.C. 151 *et seq.*) and the Pilot Rules for Inland Waters (33 CFR Part 80), no longer apply and the COLREGS navigation rules (33 CFR Part 87) now control throughout the VTS area. § 161.305 would be amended to reflect this change by dropping the references to the Navigation Rules for Harbors, Rivers and Inland Waters and the Pilot Rules for Inland Waters.

The requirement found in § 161.306(b) that the master and pilot of certain vessels maintain a copy of the current Prince William Sound VTS Operating Manual on the vessel when in the VTS area will be amended to require that the master only maintain a copy, thus relieving the pilot of the requirement. Since the pilot must demonstrate familiarity with the VTS area to obtain his or her license the regulation is directed primarily at a vessel's master and deck officers who may or may not be familiar with the area. Further, a vessel enters the VTS area prior to picking up a pilot, and since the Operating Manual is required to be aboard "when in the VTS area" the master effectively has the sole responsibility for complying with the regulation. An explanatory note correcting an out-of-date address for obtaining a copy of the VTS Operating Manual will be included in the amended § 161.306.

The proposed amendments to §§ 161.334 and 161.336 will change the order in which arrival information is reported. Presently, a short preliminary report is given three hours before entering the VTS area and a detailed report made one hour prior to entering Hinchinbrook Entrance. The Coast Guard feels that in the interest of safety it would be more appropriate for a vessel to transmit the detailed arrival information at the earlier time.

Proposed § 161.340(a) will reword the description of the reporting point at Hinchinbrook Entrance. The present regulations require a report when abeam of Schooner Rock, but as the position of a vessel when abeam of Schooner Rock would vary depending on the course steered, the Coast Guard proposes to change the description to read "when entering or departing the VTS Area through Hinchinbrook Entrance". This will require the report to be given as the vessel crossed the boundary of the VTS Area regardless of the course steered, thus giving a more accurate picture of the reporting vessel's position to the VTC and other vessels.

Proposed § 161.356 would include two additional provisions affecting the conduct of certain vessels in the Traffic Separation Scheme (TSS). Because the U.S. chose not to submit the TSS to the Inter-Governmental Maritime Consultative Organization (IMCO) for approval, 72 COLREGS rules regarding TSS's do not apply. The proposed amendments would parallel the 72 COLREGS requirements for vessels engaged in fishing, vessels under 20 meters in length, and sailing vessels operating in the TSS. The proposed amendments would reestablish the requirements that existed by virtue of the Navigation Rules for Harbors, Rivers and Inland Waters prior to the revocation of the COLREGS demarcation lines.

The amendments proposed in §§ 161.370 and 161.372 are editorial reorganiations of the existing materials. No substantive changes have been made.

Section 161.376 would be amended to include mandatory speed limits in the Valdez Narrows Area. Speeds of laden tank vessels of 20,000 DWT or more would be limited to six knots between Middle Rock and Potato Point in Valdez Narrows. Within the Valdez Narrows One-Way Traffic Area vessels of the same type and size will be limited to a speed of twelve knots. Both speed limits are presently enforced by a Captain of the Port directive.

The Captain of the Port has required tugs to stand by the northern entrance to Valdez Narrows to assist vessels in the event of a marine casualty since the inception of the Prince William Sound VTS. The tugs escort the laden tank vessels through the Narrows and assist in the docking process. Due to the possibility of a major oil spill resulting from a grounding side-on due to the lack of readily available tug assistance, the Coast Guard proposes to amend § 161.378 to make the tug requirement permanent rather than through a COTP order for laden tank vessels of 20,000 DWT or more.

Section 161.378 also requires tank vessels of 20,000 DWT or more to use tug assistance in docking and undocking. As the Alyeska Terminal Operations Manual already requires such tug assistance, the Coast Guard regulation is redundant. It is therefore proposed to delete § 161.378(c).

Since the publication of the Prince William Sound VTS regulations on July 25, 1977, an anchorage has been designated in Prince William Sound. This anchorage is located outside of an arbitrarily established portion of the VTS boundary. For administrative purposes the Coast Guard proposes to shift the eastern boundary of the VTS so that the anchorage would be included in the VTS area.

Proposed §§ 161.383 and 161.385 would change the southern end of the Prince William Sound Traffic Separation Scheme (TSS) in order to align it with the boundary of the VTS Area at Hinchinbrook Entrance. At present, the southern end of the TSS coincides with the territorial sea baseline from headland to headland in Hinchinbrook Entrance. Although the baseline and VTS boundary are very close in this area, it is felt that it would be of benefit to the mariner to make the southern end of the TSS coincide with the VTS Area boundary. Therefore, proposed §§ 161.383 and 161.385 include some new geographic coordinates for the termination of the TSS at Hinchinbrook Entrance.

The proposed amendment will reduce the size of the Valdez Narrows One-Way Traffic Zone. At the northern end of the Narrows, the Coast Guard proposes to change the boundary of the zone from "a line bearing 000° True" from a point on Entrance Island to "a line bearing 307° True from Entrance Island Light." This change would eliminate a triangular portion of the existing One-Way Area north of the Narrows in Port Valdez.

In the southern portion of the One-Way Area, proposed § 161.387 will establish the boundary of the zone as a line bearing 307° True from Tongue Point. This change would eliminate from the One-Way Area a straight portion of Valdez Arm which has a navigable width of greater than three miles. The Coast Guard believes that as there is ample sea room in this portion of Valdez Arm, the geography of the area, by itself, does not justify a one-way traffic restriction. With this change, the one-way and speed restrictions would commence at Tongue Point, where Valdez Arm abruptly narrows to about one and one-half miles. The portion to be excluded from the One-Way Area would, however, continue to be a part of the Valdez Narrows Control Area.

The net result of the proposed changes to § 161.387 would be that the one-way and speed restrictions would become permanent requirements in the most constricted and therefore most hazardous part of the waterway. Portions of the existing One-Way Zone which have proven to be less difficult to navigate will still be designated VTS Control Areas and, will be subject to close scrutiny by the VTC. The VTC will continue to selectively impose operating restrictions on vessels transiting the areas as the situation requires. The Coast Guard believes that this procedure will maintain the high level of safety in the system while facilitating traffic flow.

Evaluation

These proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplication, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). A full Evaluation of the proposal has not been conducted since its impact is expected to be minimal due to the procedural, editorial and administrative nature of the amendments and since no additional costs are being imposed on the consumers.

In consideration of the foregoing, it is proposed that Part 161 of Title 33 of the Code of Federal Regulations, be amended to read as follows:

§ 161.301 [Amended]

1. Revise § 161.301(b) and (c)(3) to read as follows:

* * * * *

(b) The General Rules in §§ 161.301 through 161.311 excepting § 161.306 and the Traffic Separation Scheme (TSS) Rules in §§ 161.350 through 161.354 and 161.356 (b) and (c) apply to the operation of all vessels.

(c) General Rule § 161.306, the Communications Rules in §§ 161.320 through 161.332, the Vessel Movement Reporting Rules in §§ 161.334 through 161.342, the TSS Rules in §§ 161.348 and 161.356(a), and the Valdez Narrows Rules in §§ 161.372 and 161.374 apply only to the operation of: * * *

(3) Each commercial vessel of 8 meters or over in length engaged in towing another vessel astern, alongside, or by pushing; and

* * * * *

§ 161.303 [Amended]

2. Amend § 161.303 by adding definitions to read as follows:

* * * * *

"Tank Vessel" means any vessel especially constructed or converted to carry oil or other hazardous substances in bulk in the cargo spaces.

"Laden Tank Vessel" means a tank vessel having cargo on board in excess of normal clingage or residual.

§ 161.305 [Amended]

3. Revise § 161.305 (a), (b), (c), and (d) to read as follows:

* * * * *

(a) International Regulations for Preventing Collisions at Sea, 1972;
(b) Vessel Bridge-to-Bridge Radiotelephone Regulations (Part 26 of this chapter);
(c) The Federal Boating Safety Act of 1971 (46 U.S.C. 1451 et seq.); and
(d) Any other law or regulation.

4. Revise § 161.306 to read as follows:

§ 161.306 VTS Operating Manual.

The master of a vessel listed in § 161.301(c) shall insure that a copy of the current edition of the Prince William Sound Vessel Traffic Service Operating Manual is available on board the vessel when it is in the VTS area.

Note.—The Prince William Sound VTS Operating Manual includes VTS regulations, navigation information, and guidelines for the efficient operation of the VTS System. The Manual may be obtained in person or by writing: Prince William Sound Vessel Traffic Service, c/o USCG Marine Safety Office, P.O. Box 486, Valdez, Alaska 99686; or Commander, Seventeenth Coast Guard District, Federal Building, P.O. Box 3-5000, Juneau, Alaska 99802. Temporary changes to the operating manual are promulgated by the Commander, Seventeenth Coast Guard District, in local notice to mariners.

§ 161.307 [Amended]

5. Revise § 161.307(b) to read as follows:

* * * * *

(b) The master of a vessel in the VTS Area shall comply with each direction issued to the vessel under this section.

6. Revise § 161.334 to read as follows:

§ 161.334 Initial report.

Three hours before a vessel enters or begins to navigate in the VTS Area through Hinchinbrook Entrance or at least 30 minutes before a vessel enters

or begins to navigate in the VTS Area from other points, the master of the vessel shall report to the VTC:

(a) Name, type, and draft of the vessel.

impede the safe passage of a power driven vessel following a traffic lane.

11. Revise § 161.370(b) to read as follows:

(c) The master of any tank vessel required to use tug assistance shall ensure that there are sufficient persons positioned on the vessel to handle lines to tugs as needed.

61°02'06" N., 146°40'00" W., and southwest of a line bearing 307° true from Entrance Island Light at 61°05'06" N., 146°36'42" W.

(60 Stat. 238 [5 U.S.C. 552]; 63 Stat. 545 [14

the proceedings of the meeting of the National Boating Safety Advisory Council at which this amendment was discussed is available for examination in Room 4224, U.S. Coast Guard

Code of Federal Regulations was issued to implement this provision.

On October 17, 1976, Pub. L. 94-531 amended Section 15(g) of the FBSA by authorizing promulgation of regulations

or begins to navigate in the VTS Area from other points, the master of the vessel shall report to the VTC:

(a) Name, type, and draft of the vessel.

(b) Position of the vessel.

(c) Estimated time and place of entering or beginning to navigate in the VTS Area.

(d) Estimated vessel speed to transit the VTS Area.

(e) ETA to the destination in the VTS Area and name of the destination.

(f) If the vessel is a towing vessel, the overall length of the tow, including the towing vessel.

(g) Whether or not any dangerous cargo listed in § 161.13 of this chapter is on board the vessel or its tow.

(h) Any impairment to the operation of the vessel as described in § 161.332.

(i) Alternate communications, if any.

(j) Any other information requested by the VTC.

7. Revise § 161.336 to read as follows:

§ 161.336 Follow-up report.

At least 60 minutes before a vessel enters or begins to navigate in the VTS Area through Hinchinbrook Entrance the master of the vessel shall report the following information to the VTC:

(a) Name of the vessel.

(b) Position of the vessel.

(c) Course and speed of the vessel.

(d) ETA at Hinchinbrook Entrance.

(e) ETA of the vessel at its destination if changed from the preliminary report.

§ 161.340 [Amended]

8. Revise § 161.340(a) to read as follows:

* * * * *

(a) When entering or departing the VTS Area at Hinchinbrook Entrance; and

* * * * *

9. Revise § 161.350 to read as follows:

§ 161.350 Vessel operation in the TSS.

(a) The master of a vessel shall operate the vessel in accordance with the TSS rules prescribed in §§ 161.352, 161.354 and 161.356 (b) and (c).

(b) The master of a vessel described in § 161.301(c) shall, in addition to paragraph (a), operate the vessel in accordance with § 161.356(a).

§ 161.356 [Amended]

10. Revise § 161.356 (d) and (3) to read as follows:

* * * * *

(d) A vessel engaged in fishing shall not impede the passage of any vessel following a traffic lane.

(e) A vessel of less than 20 meters in length or a sailing vessel shall not impede the safe passage of a power driven vessel following a traffic lane.

11. Revise § 161.370(b) to read as follows:

§ 161.370 One-way traffic in Valdez Narrows.

* * * * *

(b) A tank vessel of 20,000 DWT or more may not enter Valdez Narrows One-Way Traffic Area unless:

(1) It complies with § 161.372; and

(2) It complies with § 161.376(a) (1), (3), and (4)

12. Revise § 161.372 to read as follows:

§ 161.372 Entering Valdez Narrows.

A vessel described in § 161.301(c) may not enter the Valdez Narrows One-Way Traffic Area unless:

(a) Permission to enter is obtained from the VTS;

(b) Any directions from the VTS to remain separated from another vessel are complied with;

(c) The radio equipment on the vessel that is used to transmit the reports required by the Prince William Sound VTS rules is in operation;

(d) The radar on a vessel equipped with radar is in operation and manned; and

(e) The vessel is free of any condition that may impair its navigation, such as fire, defective steering equipment, or defective propulsion machinery.

13. Revise § 161.376 (b), (c), and (d) to read as follows:

§ 161.376 Tank vessels in the VTS.

* * * * *

(b) No laden tank vessels of 20,000 DWT or more may transit that portion of Valdez Narrows between Middle Rock and Potato Point at a speed in excess of 6 knots.

(c) No tank vessel of 20,000 DWT or more may transit the Valdez Narrows One-Way Traffic Area in excess of 12 knots.

(d) While in the VTS Area, if a tank vessel of 20,000 DWT or more is unable to comply with paragraph (a) the master shall immediately notify the VTC.

§ 161.378 [Amended]

14. Revise § 161.378 (b) and (c) to read as follows:

* * * * *

(b) No laden tank vessel of 20,000 DWT or more may transit the Valdez Narrows One-Way Traffic Area unless—

(1) A sufficient number of tugs, as determined by the VTS, is standing by the northern entrance to Valdez Narrows; and

(2) Tug assistance is utilized when directed by the VTS.

(c) The master of any tank vessel required to use tug assistance shall ensure that there are sufficient persons positioned on the vessel to handle lines to tugs as needed.

15. Revise § 161.380 to read as follows:

§ 161.380 VTS area.

The VTS Area consists of the navigable waters of the United States north of a line drawn from Cape Hinchinbrook Light to Schooner Rock Light, comprising that portion of Prince William Sound between longitudes 146°30'W. and 147°20'W.; and includes Valdez Arm, Valdez Narrows, and Port Valdez.

16. Revise § 161.383 (d) and (e) to read as follows:

§ 161.383 Separation zone.

The separation zone is 1,830 meters wide from Hinchinbrook Entrance to Valdez Arm west to Bligh Reef and decreases in width from 1,830 meters to 915 meters from the entrance to Valdez Arm to where it terminates at the entrance to the Valdez Narrows One-Way Traffic Area and is bounded by lines connecting the following latitudes and longitudes:

* * * * *

(d) 60°17'05" N.,	146°49'18" W.
(e) 60°16'20" N.,	146°46'28" W.

* * * * *

17. Revise § 161.385 (a)(4) and (b)(4) to read as follows:

§ 161.385 Traffic lanes.

The traffic lanes are 1,375 meters wide from Hinchinbrook Entrance to Valdez Arm west of Bligh Reef, and decrease in width from 1,375 meters to 915 meters from the entrance to Valdez Arm to where they terminate at the entrance to the Valdez Narrows One-Way Traffic Area. The traffic lanes are as follows:

(a) The inward bound traffic lane is between the separation zone and a line connecting the following latitudes and longitudes:

* * * * *

(4) 60°15'45" N.,	146°44'20" W.

(b) The outward bound traffic lane is between the separation zone and a line connecting the following latitude and longitudes:

* * * * *

(4) 60°17'38" N.,	146°51'20" W.

18. Revise § 161.387 to read as follows:

§ 161.387 Valdez Narrows One-Way Traffic Area.

Valdez Narrows One-Way Traffic Area consists of the navigable waters of the United States in Valdez Arm, Valdez Narrows, and Port Valdez north of a line bearing 307° true from Tongue Point at 61°02'06" N., 146°40'00" W., and southwest of a line bearing 307° true from Entrance Island Light at 61°05'06" N., 146°36'42" W.

(60 Stat. 238 (5 U.S.C. 552); 63 Stat. 545 (14 U.S.C. 633); 80 Stat. 937 [49 U.S.C. 1655(b); 92 Stat. 1477 (33 U.S.C. 1231); 49 CFR 1.46(n)(4))

Dated: December 22, 1980.

W. E. Caldwell,

Rear Admiral, U.S. Coost Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 80-40405 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 179

[OGD 77-115]

Manufacturer and Dealer First-Purchaser List Requirements

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is proposing to amend its defect notification regulations to require boat and associated equipment dealers, distributors, private label merchandisers, subsequent manufacturers, or other persons in the distribution-manufacturing chain, as well as the initial manufacturers, to obtain first-purchaser information. In many instances, there has been a low notification/correction level in recall campaigns because of inadequate first-purchaser information. This proposal attempts to remedy the situation by requiring the manufacturer to ask for first-purchaser information and requiring those persons in the distribution chain to provide it.

DATES: Comments must be received on or before February 27, 1981.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/24), (CGD 77-115), U.S. Coast Guard, Washington, D.C. 20593. Between 7 a.m. and 5 p.m., Monday through Thursday, comments may be delivered to and will be available for examination at the Marine Safety Council (G-CMC/24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: CDR W. R. Wilkins, Chief, Product Assurance Branch (G-BBT-3/42), Office of Boating, Public, and Consumer Affairs, U.S. Coast Guard Headquarters, Washington, D.C. 20593, (202/426-1065).

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council has been consulted and its opinions and advice have been considered in the formulation of this proposed amendment. The transcript of the proceedings of the meeting of the National Boating Safety Advisory Council at which this amendment was discussed is available for examination in Room 4224, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The minutes of the meeting are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G-BA/42), U.S. Coast Guard, Washington, D.C. 20593.

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each comment submitted should include the name and address of the person submitting it, identify this notice (CGD 77-115) and the specific section of the proposal to which the comment applies, and give the reasons for the comment. Persons desiring acknowledgement that their comment has been received should enclose a stamped self-addressed postcard or envelope. All comments received will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

After the close of the comment period, the National Boating Safety Advisory Council may be consulted in the formulation of the final rule at a meeting open to the public. A notice will be published in the **Federal Register** announcing the time and place this meeting will be held.

This proposal has been reviewed and is not considered significant under the Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). A draft evaluation has been prepared and has been included in the public docket.

Drafting Information

The principal persons involved in drafting this proposal are: Cdr. W. R. Wilkins, Project Manager, Office of Boating, Public, and Consumer Affairs, and Ms. M. A. McCabe, Project Attorney, Office of the Chief Counsel.

Discussion of the Proposed Regulations

Section 15 of the Federal Boat Safety Act of 1971 (FBSA) (46 U.S.C. 1464) requires manufacturers of boats and associated equipment to notify purchasers of any significant safety defect or noncompliance with Federal Standards discovered after the boat or equipment leaves the place of manufacture. Part 179 of Title 33 of the Code of Federal Regulations was issued to implement this provision.

On October 17, 1976, Pub. L. 94-531 amended Section 15(g) of the FBSA by authorizing promulgation of regulations defining and establishing procedures to be followed by dealers and distributors to assist manufacturers in obtaining first-purchaser information, provided that the regulation does not relieve manufacturers of their obligations in this regard. In many cases, once the boat or associated equipment has passed into the distribution chain, the manufacturer has no knowledge of its disposition or location unless this information is provided by the dealer, distributor, private label merchandiser, subsequent manufacturer or other persons in the chain.

This proposal would add a new § 179.04 to Part 179 requiring manufacturers and dealers or distributors of boats or associated equipment to gather and maintain first-purchaser information. Comments are specifically solicited on the paperwork and recordkeeping burden this proposal would impose on these parties. A detailed discussion of the proposed new section follows.

Paragraph (a) of the proposed regulation would apply to any person who must make notification under Section 15 of the Federal Boat Safety Act of 1971 or 33 CFR Part 179. These are defined, for the purposes of Section 15, as being: any person engaged in the manufacture, construction or assembly of boats, inboard engines, outboard engines or stern drive units; any person engaged in the manufacture or construction of components for these items to be sold for subsequent assembly; and any person importing these items into the United States for purposes of sale.

Since these people must make notification, they must obtain and keep first-purchaser records. Basically, the intent of this paragraph would be to require two things of those persons who must keep first-purchaser records. First, they must provide some means whereby the person who sells to the consumer can physically record the name and address of the seller and purchaser and an identification of the item sold. It is intended that this information be physically recorded in some manner so that it may be preserved, rather than verbally taken or transmitted. The means of recording which must be used was intentionally not specified to allow flexibility to use any existing or future systems. These could include, but are not limited to, warranty cards, computer listings, or copies of sales invoices.

The second requirement of paragraph (a) is that the manufacturer must make

paragraph (a) to supply both of these

(1) Record, at the time of sale, the

alternative identification for each boat if the hull identification number is

persons. No public hearing is planned. but one may be held if written requests

manufacturer identification code in the HIN designates this responsibility. For

The second requirement of paragraph (a) is that the manufacturer must make an effort to inform all persons in the distribution chain of their responsibilities to assist in the collection of first-purchaser information by providing an excerpt, copy, or summary of this regulation. Again, the exact method by which this is accomplished is left to the manufacturer's discretion, but the notice must be in writing. For example, it may be printed on some form such as the warranty card or provided on a separate sheet.

Paragraph (b) applies to all persons who are in the business of selling or distributing boats or associated equipment and who sell to the consumer. This paragraph also has two requirements which are the next step in gathering first-purchaser information.

First, it requires the seller to record in writing or some other physical way the first-purchaser information specified in paragraph (a), and submit it to the manufacturer or whomever the manufacturer designates within 90 days of the date of sale. It is not intended that the responsibility for recording and submitting this information be passed on to the consumer. It is felt that some time limit on the submission of this information is necessary simply to ensure that the job does not lie idle and therefore forgotten. Ninety days is the upper limit. It does not preclude earlier submissions, and since it is one calendar quarter, should be compatible with most normal business cycles. The proposal also permits submission to some other person designated by the manufacturer to allow for the use of commercial services for first-purchaser list maintenance. The second requirement of paragraph (b) is that the seller retain a copy of the information until receipt is acknowledged by the manufacturer, or the manufacturer's designee, as required in paragraph (d). The reason for this is to protect the seller and to ensure that the information is still available should it become lost while being forwarded to the manufacturer.

Paragraph (c) would specify the responsibilities of intermediate parties in the distribution chain between the responsible manufacturer and the consumer. Basically, this section would require that any person who sells a boat or item of designated associated equipment for further resale or for further manufacture must pass on to each intermediate purchaser in the chain the means for recording first-purchaser information and an excerpt, copy or summary of these regulations. The manufacturer would be required under paragraph (a) to supply both of these items.

Paragraph (d) would require that the manufacturer acknowledge receipt of the first-purchaser information, in writing, within 90 days of receiving it from the seller. This would allow for the detection of items that may get lost in transit between the seller and the manufacturer and provide evidence that the seller's responsibilities have been fulfilled.

Although there will be some additional costs for this recordkeeping, the impact of this regulation on those persons affected should be minimal. Manufacturers are now required to collect this information and persons in the distribution chain who do not now keep such records, will obtain records which many sales organizations keep as a matter of good business practice.

In addition, this proposal would revise § 179.19 to reflect the new address for Coast Guard Headquarters.

In consideration of the foregoing, it is proposed to amend 33 CFR Part 179 as set forth below.

1. By adding a new § 179.04 to read as follows:

§ 179.04 Manufacturer and dealer first-purchaser list requirements.

(a) Each manufacturer responsible for defect notification under Section 15 of the Act shall provide to dealers, distributors, private label merchandisers, subsequent manufacturers, or other persons who are in the business of selling or distributing boats or associated equipment, to whom the manufacturer delivers a product for subsequent resale, the following:

(1) A means of recording the following information:

(i) The name and address of the first purchaser for purposes other than resale.

(ii) An identification of the particular item sold (for boats the Hull Identification Number (HIN) and for engines the engine serial number).

(iii) The name and address of the seller or other means by which the manufacturer may identify that person.

(2) An excerpt, copy, or summary of this regulation, stating the responsibilities of persons in the distribution chain in assisting the manufacturer in compiling first purchaser-lists.

(b) Each dealer, distributor, private label merchandiser, subsequent manufacturer, or other person who is engaged in the business of selling or distributing boats or associated equipment, for purposes other than resale, shall—

(1) Record, at the time of sale, the information specified in paragraph (a)(1) of this section and submit it to the manufacturer, or the manufacturer's designee, within 90 days of the date of sale; and

(2) Retain a copy of this information until the manufacturer, or the manufacturer's designee, acknowledges receipt of it as required by paragraph (d) of this section.

(c) Each dealer, distributor, private label merchandiser, subsequent manufacturer, or other person engaged in the business of selling or distributing boats or associated equipment, who sells these products for the purpose of further manufacture or resale, shall deliver with the product, the material provided by the manufacturer as required in paragraph (a) of this section.

(d) Each manufacturer shall send written acknowledgement to the person who submitted the information under paragraph (b) of this section within 90 days of the date of receipt of the information.

(e) Each manufacturer shall retain the information required in paragraph (a)(1) of this section for at least five years from the date of certification or from the date of manufacture if certification is not required.

2. By revising § 179.19 to read as follows:

§ 179.19 Address of commandant.

Each report and communication sent to the Coast Guard required by this part must be submitted to: U.S. Coast Guard (G-BBT-3/42), 2100 Second Street SW., Washington, D.C. 20593.

(46 U.S.C. 1464; 49 CFR 1.46(n)(1)).

Dated: December 22, 1980.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 80-40402 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 181

[CGD 79-013]

Identification of Boats

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is proposing to amend the regulations concerning boat hull identification numbers. The regulations are being changed to provide a more accurate identification of the manufacturer responsible for notifying an owner of a defect in a boat. Changes are also proposed to make alteration or removal of a hull identification number more difficult and to require an alternative identification for each boat if the hull identification number is removed or destroyed. Other changes are proposed to clarify certain ambiguities in the present regulation. These changes should ensure that the manufacturer responsible for repairing a defective or noncomplying boat can be identified and that each boat remains uniquely identified with the number assigned by its manufacturer.

DATE Comments must be received before February 27, 1981.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/TP24) (CGD 79-013), U.S. Coast Guard, Washington, D.C. 20593. Between the hours of 7:00 a.m. and 5:00 p.m., Monday through Thursday, comments may be delivered to, and are available for inspection and copying at the Marine Safety Council (G-CMC/TP24), Room 2418, Department of Transportation, Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Calvin F. Perkins, Jr., Office of Boating, Public, and Consumer Affairs (G-BBT-3/42), U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202/426-1065).

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council has been consulted and its opinions and advice have been considered in the formulation of this amendment. The transcript of the proceedings of the National Boating Safety Advisory Council at which this amendment was discussed is available for examination in Room 4224, U.S. Coast Guard Headquarters Building, 2100 Second Street, S.W., Washington, D.C. The minutes of the meeting are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G-BA), U.S. Coast Guard, Washington, D.C. 20593.

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each comment submitted should include the name and address of the person submitting it, identify this notice (CGD 79-013) and the specific section of the proposal to which the comment applies, and give the reasons for the comment. Those desiring acknowledgment that their comment has been received should enclose a stamped self-addressed post card or envelope. The proposal may be changed in light of comments received. All comments received will be considered before final action is taken on the proposal. Copies of all written comments received will be available for examination by interested persons. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are: LCDR Anthony J. Pettit, Project Manager, Office of Boating, Public, and Consumer Affairs, and Coleman Sachs, Project Attorney, Office of Chief Counsel.

Discussion of the Proposed Amendment

Since the Hull Identification Number (HIN) regulation became effective in 1972, the Coast Guard has monitored its suitability to meet the desired purpose as well as its usefulness in other areas.

The HIN is used for titling, registration, accident investigation, and insurance. It also provides a positive identification of lost and stolen boats. However, certain problems have been identified. This amendment seeks to solve them by: (1) Identifying persons who have defect notification accountability and restricting assigment and use of manufacturer identifications to those persons, (2) establishing measures to make alteration or removal of an HIN difficult and prescribing an alternative means of identification and, (3) resolving miscellaneous ambiguities in the regulation which have led to confusion and unintended noncompliance.

Defect Notification Responsibilities

Language in the heading of Subpart C and the body of § 181.21 and § 181.23 would be revised to indicate that only boats need be identified with an HIN, not bare hulls which could not be marketed as boats. This would eliminate the need to define "hull" and resolve the confusion that occurs in multistage manufacturing as to who is responsible for affixing the HIN. Under the proposed revision the builder of a bare hull ordinarily would not be responsible. The responsibility would lie with the first party who completed additional manufacturing on the hull to the extent that it could be marketed as a boat to an ordinary customer. At present, the combination of the HIN and certification regulations (33 CFR Part 181, Subparts B and C) does not necessarily ensure that the boat as marketed is labeled with the name of the company responsible for correcting noncompliances and safety defects. One cannot say unequivocally that the name on the certification plate (assuming one is required) designates the party with defect notification responsibility or that the three-character manufacturer identification code in the HIN designates this responsibility. For example, a boat which is marketed by a private label merchandiser and manufactured by a company which buys bare hulls from a separate source might not bear any indication of the party responsible for defect notification. The HIN could show the code of the bare hull builder with the certification plate showing the name of the private label merchandiser, yet the "manufacturer" for purposes of defect notification and correction would be the intermediate manufacturer. Sometimes, it becomes difficult to determine who did build a boat, particularly after one or more of the companies involved goes out of business. The Coast Guard intends that the manufacturer identification in the HIN always represent either a domestic manufacturer or an importer who is legally responsible for defect notification under Section 15 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1464).

Paragraphs 181.23(a), 181.25(a), and 181.31(a) would be revised to require importers to use their own manufacturer identification, not those of foreign manufacturers. The responsibility is the importer's, although the importer may have the foreign builder actually affix the HIN. Thus, every imported boat would be identified with the party who has defect notification responsibilities under Section 15 of the Federal Boat Safety Act of 1971. An exception is provided for importers of Canadian built boats because the Canadian Coast Guard and the U.S. Coast Guard have working agreements that make it possible to identify the responsible parties in the event of recall. A similar exception would be made for other countries with which the U.S. Coast Guard establishes similar agreements.

Paragraph 181.31(a) would be expanded to include more specific criteria for assigning manufacturer identifications. Only manufacturers who must identify boats and who have defect notification responsibility may apply for a code. The application must be in writing and must indicate the manufacturer's name and address, as well as the general types and lengths of boats to be manufactured or imported. The Coast Guard considers these the minimum conditions which will enable it to avoid assigning a manufacturer identification code to a person not entitled to one. Since the original HIN regulation had virtually no restrictions on the issuance and use of manufacturer identification codes, the codes have been assigned to anyone who informs the Coast Guard of an intention to

manufacture boats. Codes have been issued to foreign manufacturers who have no legal responsibility under the Act. Codes have also been issued to persons who merely wanted to be identified as boat manufacturers or regulation does not ensure the integrity of the HIN. In addition, the National Association of State Boating Law Administrators (NASBLA) has requested the Coast Guard to take affirmative action to ensure that the marking that is observed can be relayed back to the manufacturer, who can then furnish the correct HIN.

Section 181.25 would be clarified to indicate that all twelve characters of the HIN should be run together, rather than

determined and skilled boat thief to conceal alterations. For the most part, however, ordinary and reasonable methods of affixing the HIN can discourage efforts at alteration by the inexperienced thief or other persons

information following the HIN as being part of the HIN.

The National Boating Safety Advisory Council reviewed these proposed amendments at their meeting in May 1979 and voted unanimously in favor of

boat if its hull identification number is lost, unreadable, or altered. This requirement is satisfied by any additional or unique marking which the manufacturer can match with the hull identification number that was

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manufacture boats. Codes have been issued to foreign manufacturers who have no legal responsibility under the Act. Codes have also been issued to persons who merely wanted to be identified as boat manufacturers or wanted to build a boat for personal use. This resulted in inefficient use of Coast Guard resources. The Coast Guard believes that specific conditions for issuance and use of these codes should be established, and that the conditions should be clearly stated as part of the regulation.

Section 181.33 would limit the use of manufacturer identification codes and require manufacturers to report changes in business name or address. These provisions are necessary so that the Coast Guard may maintain a current source of contact with each manufacturer to meet the requirements of defect notification. Codes have been issued to companies which have moved, changed their name, been sold, or gone bankrupt and been reestablished as new businesses, without any change of code or requirement to notify the Coast Guard of the change in status. As a result, companies producing boats with a given code may not be legally responsible for some boats previously produced with the same code because they were produced by a different business entity.

Paragraph 181.33(a) would prohibit use of a manufacturer identification code by anyone other than the manufacturer to whom it was assigned. Thus, as long as the original business entity is preserved, a manufacturer would be expected to keep the same code throughout transactions such as acquisitions, mergers, consolidations, etc. But when a boat manufacturing business is dissolved, the code could not be used by another business which acquired its assets. When a manufacturer simply has a change in business name or address with no change in business entity or defect notification responsibility, the same identification code should be used. However, paragraph 181.33(b) would require that the Coast Guard be advised of the new name or address so that the manufacturer could be contacted if necessary.

Preserving a Unique Boat Identification

Several measures are proposed to reduce the number of incidents of tampering with HINs, to make tampering more obvious, and to provide an alternative means of identification if the HIN is tampered with or lost. Consumer complaints, reports from state and local law enforcement personnel and the Coast Guard's own experience indicate that the present wording of the HIN regulation does not ensure the integrity of the HIN. In addition, the National Association of State Boating Law Administrators (NASBLA) has requested the Coast Guard to take affirmative action to ensure that removal, alteration, or replacement of HINs would be truly obvious and evident. Most cases the Coast Guard is aware of involve alteration of the last four digits to obtain lower taxes or insurance rates or to represent a boat for sale as being newer than it actually is. In some cases, the HINs on stolen boats are altered so that the boats can be sold and registered without detection. The proposed revision of the HIN regulations may eliminate many of these abuses.

Boating safety interests would also be furthered if HINs were made more resistant to tampering. In several cases where it was suspected that boats were not in compliance with safety standards, the Coast Guard has not been able to determine which safety standards applied because the date of certification, contained in the last four digits of the HIN, had been altered after the boats left the factory.

In addition to these deliberate abuses, the Coast Guard knows of many situations where the HIN could easily be lost accidentally because it was placed, albeit "permanently", on removable components such as rubrails. Even when correctly applied, there is a certaind risk of accidental damage to the HIN because it must be placed on the outside of the hull, rather than in a more protected location inside the boat.

Section 181.24 would be a new requirement intended to provide a means whereby a boat can still be uniquely identified even if the HIN is damaged or lost. The Coast Guard also expects that this may deter those who would deliberately alter a HIN. The principal cost involved in implementing such a requirement would be the initial cost for manufacturers to make a change in their production methods; the cost of the actual marking will be less than a dollar per boat. Many builders already have additional numbers on their boats which will meet this requirement. Writing the HIN with an indelible marker on some unexposed portion of the boat would meet the intent, as would laminating into the boat a torn-off piece of a production control document. A manufacturer is free to change the location of the marking randomly or periodically. The intent is that a manufacturer who is asked about a missing or questionable HIN can direct the person to a place on the boat where the correct HIN can either be found or the marking that is observed can be relayed back to the manufacturer, who can then furnish the correct HIN.

Section 181.25 would be clarified to indicate that all twelve characters of the HIN should be run together, rather than separated into three functional groupings. Separating the groupings can cause doubt about missing characters and provide added opportunities for tampering.

Paragraph 181.29(b) would be added to address specifically the HIN which is affixed by means of a separate plate and to prohibit placing HINs on removable components. Law enforcement personnel have brought to our attention examples where they felt it was just too easy to tamper with the HINs. The most common case was punched aluminum strip attached with blind (hollow or "pop") rivets. Any person who had access to a similar punching machine could drill out the rivets and replace the aluminum strip with a new one, with virtually no evidence of the change.

Under the proposed criteria, the Coast Guard would not consider acceptable a plate which is simply blind riveted. A plate which is both blind riveted and bonded would be acceptable if the strength of the bond were such that the surrounding hull area would normally be damaged in attempting to pry it loose. A welded plate would be acceptable, as would one which is attached with solid rivets if the drilling, grinding, or prying involved in removal would normally involve some damage to the surrounding area. In all of the latter methods considerably more skill and determination would be required to remove the plate than with the plate which is only blind riveted.

One member of the National Boating Safety Advisory Council subcommittee that assisted in developing these amendments suggested that the word "permanently" be removed from paragraph 181.29 (b) as it appears in the phrase "* * * otherwise permanently affixed * * *". The word was considered vague and open to a variety of interpretations, making the requirement difficult to enforce effectively. The Coast Guard solicits comments on removal of this word or suggestions for other language that would better describe the dual requirements of permanency and visibility of tampering. The Coast Guard's major concern is for every boat to be uniquely numbered throughout its useful life under most circumstances, not for the HIN to be so rugged and impervious that it cannot be removed from the hull. The Coast Guard does not expect that every HIN will be affixed so as to defeat the efforts of a determined and skilled boat thief to conceal alterations. For the most part, however, ordinary and reasonable methods of affixing the HIN can discourage efforts at alteration by the inexperienced thief or other persons who might want to alter or remove a HIN.

Section 181.35 is being proposed to provide a clear prohibition against tampering with HINs. Civil penalty proceedings could be initiated under 33 CFR 1.07 against anyone found to have violated this provision. A penalty of up to $500 could be assessed under 46 U.S.C. 1484(b).

Miscellaneous Clarifications

Among the miscellaneous clarifications which are being proposed, paragraphs 181.23(b) and 181.31(b) set forth the procedure for issuing an HIN to the amateur builder or persons who import a boat for their own personal use. This procedure has been in use for eight years.

Paragraph 181.23(c) would be revised to prohibit the manufacturer from assigning the same 12-character HIN to more than one boat. Under existing regulations, the same first eight characters of the HIN may not be assigned to more than one boat. This would be permitted under the proposed regulations in recognition of the fact that variations will occur in the last four characters of the HIN for boats that are built in different months or years. As the fourth through eighth characters need only cover a month's, and not a year's production, manufacturers would be afforded greater flexibility to indicate model data and other information. A similar practice is followed in the automobile industry. The Coast Guard seeks to foster recognition of the HIN as a 12-character unit. This would reduce the use of partial HINs which now occurs in some computer systems, thereby promoting greater computer system compatibility. The FBI's National Crime Information Center (NCIC) computer is programmed to receive only 12-character HINs.

Paragraph 181.25(c) would be clarified to indicate that for boats which do not have to be certified, i.e., boats that are not required to meet any Coast Guard safety standard, the date which appears in the HIN represents the date of manufacture rather than the date of certification.

Section 181.27 would be modified to prevent placing additional characters which could be taken as part of the HIN in the vicinity of the HIN. State boat registration authorities and NCIC personnel have reported that the boat owner frequently reads additional information following the HIN as being part of the HIN.

The National Boating Safety Advisory Council reviewed these proposed amendments at their meeting in May 1979 and voted unanimously in favor of their adoption.

This proposal has been reviewed and is not considered a significant rulemaking under the Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). A draft evaluation has been prepared and is available for inspection at the Marine Safety Council. (See Addresses).

In consideration of the foregoing, the Coast Guard proposes to revise Subpart C of Part 181 of Title 33, Code of Federal Regulations to read as follows:

PART 181—MANUFACTURER REQUIREMENTS

* * * * *

Subpart C—Identification of Boats

Sec.

181.21 Purpose and applicability.
181.23 Hull identification numbers required.
181.24 Additional marking required.
181.25 Hull identification number format.
181.27 Information displayed near hull identification number.
181.29 Hull identification number display.
181.31 Manufacturer identification code assignment.
181.33 Conditions for use of manufacturer identification codes.
181.35 Removal of numbers.

Authority: 46 U.S.C. 1454, 1456, 1464, 1488; 49 CFR 1.46 (n)(1).

* * * * *

Subpart C—Identification of Boats

§ 181.21 Purpose and applicability.

This subpart prescribes the requirements for identification of boats to which section 4 of the Federal Boat Safety Act of 1971 applies.

§ 181.23 Hull identification numbers required.

(a) A manufacturer, as defined in § 181.3 of this part, must identify each boat produced or imported with a hull identification number that meets the requirements of this subpart.

(b) A person who builds or imports a boat not for sale, but for personal use, must identify that boat with a hull identification number that meets the requirements of this subpart.

(c) No person may assign the same hull identification number to more than one boat.

§ 181.24 Additional marking required.

Manufacturers who are required to identify boats under § 181.23(a), must provide a means of identifying each boat if its hull identification number is lost, unreadable, or altered. This requirement is satisfied by any additional or unique marking which the manufacturer can match with the hull identification number that was originally assigned to the boat.

§ 181.25 Hull identification number format.

Each hull identification number required by § 181.23 must consist of twelve characters, uninterrupted by slashes, hyphens, or spaces, as follows:

(a) The first three characters must be a manufacturer identification assigned under § 181.31, unless the boat is built in Canada, in which case the Canadian manufacturer's identification code may be used.

(b) Characters four through eight must be assigned by the manufacturer and must be letters of the English alphabet, or Arabic numerals, or both, except the letters I, O, and Q.

(c) Characters nine through twelve must indicate the date of certification when certification is required by Subpart B of this part and when no date of certification appears on the required certification label. In all other cases, characters nine through twelve must indicate the date of manufacture, which can be no earlier than the date construction or assembly began and no later than the date the boat leaves the place of manufacture, assembly, or import. The characters must be either—

(1) Arabic numerals with characters nine and ten indicating the month and characters eleven and twelve indicating the last two numerals of the year; or

(2) A combination of Arabic numerals and letters of the English alphabet with character nine indicated as "M", characters ten and eleven the last two numerals of the model year, and character twelve the month of the model year. The first month of the model year, August, must be designated by the letter "A", the second month, September, by the letter "B", and so on until the last month of the model year, July.

§ 181.27 Information displayed near hull identification number.

If additional information is displayed on the boat within two inches of the hull identification number, that information must be separated from the hull identification number by means of borders or labeling so that it will not be interpreted as part of the hull identification number.

§ 181.29 Hull identification number display.

(a) The hull identification number must be affixed—

(1) On boats with transoms, to the starboard outboard side of the transom within two inches below the top of the transom, gunwale, or hull/deck joint, whichever is lowest;

office that covers the area of intended use.

§ 181.33 Conditions for use of manufacturer identification codes.

(a) No manufacturer may sell or

Authority: Sec. 1801, Pub. L. 96-70, 93 Stat. 492 (22 U.S.C. 3811); E.O. 12173, 45 FR 69271; E.O. 12215, 45 FR 36043.

In the final sentence of § 103.8 (b), the words "numerous or" should be inserted

numerical limitations on entries by large vessels (vessels at or in excess of 100 tons gross) into the Bay. At the same time interim regulations were published which addressed numerical limitations

Drafting Information

The following persons participated in the writing of these regulations: John Chapman, Superintendent; Donald D. Chase, Chief of Operations, Glacier Bay

ENVIRONMENTAL PROTECTION AGENCY

[A-7-FRL 1714-4]

40 CFR Part 52

(1) On boats with transoms, to the starboard outboard side of the transom within two inches below the top of the transom, gunwale, or hull/deck joint, whichever is lowest;

(2) On boats without transoms, to the starboard side of the hull, aft, within two inches of the top edge and within one foot of the aftermost portion of the hull;

(3) On catamarans and pontoon boats which have readily replaceable hulls, to the aft crossbeam within one foot of the starboard hull attachment.

(b) The hull identification number must be carved, burned, stamped, embossed, or otherwise permanently affixed to the boat so that alteration, removal, or replacement would be obvious. If the number is on a separate plate, the plate must be fastened in such a manner that its removal would normally cause some scarring of or damage to the surrounding hull area. The hull identification number must not be attached to parts to the boat that are removable.

(c) The characters of the hull identification number must be no less than one-fourth of an inch high.

(d) If the hull identification number would not be visible from a position astern of the vessel, because of rails, fittings, or other accessories, the number must be located as near as possible to the location specified in paragraph (a) of this section, provided that it is visible from astern.

§ 181.31 Manufacturer identification code assignment.

(a) Each manufacturer who needs an identification code to meet the requirements of § 181.23(a) and § 181.25, must request a manufacturer identification code in writing from Commandant (G–BP), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593. The request must indicate the name and U.S. address of the manufacturer that will be using the identification code and the general types and lengths of boats it intends to produce or import. Manufacturer identification codes will be assigned only to manufacturers as defined in § 181.3 of this part who are responsible for meeting the defect notification requirements of part 179 of this subchapter. There is no charge for the assignment.

(b) Persons who are required to identify boats under § 181.23(b) must obtain the required hull identification number from the State Boating Law Administrator of the intended state principal use, or, if the Boating Law Administrator does not assign these numbers, from the Coast Guard District office that covers the area of intended use.

§ 181.33 Conditions for use of manufacturer identification codes.

(a) No manufacturer may sell or transfer a manufacturer identification code or use a manufacturer identification that has been assigned to another.

(b) A manufacturer who moves or has a change in business name must advise the Commandant (G–BP) of the new address or name.

§ 181.35 Removal of numbers.

No persons may remove, alter, or conceal a number required by this subpart unless authorized by the Commandant.

(46 U.S.C. 1454, 1456, 1464, 1488; 49 CFR 1.46(n) (1))

Dated: December 22, 1980.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 80-40404 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-14-M

PANAMA CANAL COMMISSION

35 CFR Part 103

Order of Passage of Vessels Through the Panama Canal

AGENCY: Panama Canal Commission.

ACTION: Correction of notice of proposed rulemaking.

SUMMARY: This document makes correction of typographical errors in FR Doc 80–37858 published in the **Federal Register** on December 4, 1980 (45 FR 80313) announcing a proposal to amend the Panama Canal Commission's Regulations relating to the general provisions governing vessels by establishing a plan for scheduling vessels transiting the Panama Canal.

FOR FURTHER INFORMATION CONTACT:

Michael Rholde, Jr., Secretary, Panama Canal Commission, 425 13th Street NW., Washington, D.C. 20004, Phone: (202) 724–0104.

or

Captain John D. Thurber, Marine Director, Panama Canal Commission, Phone (Repubic of Panama) 52–7917.

SUPPLEMENTARY INFORMATION:

Corrections to document: In the Supplementary Information paragraph, the word "terminals" at the end of line 12, column 1, page 80314, should be changed to "terminus"; the word "Docks" in line 17, column 1, page 80314, should be changed to read "locks." The Authority of Part 103 should be changed to read as follows:

Authority: Sec. 1801, Pub. L. 96–70, 93 Stat. 492 (22 U.S.C. 3811); E.O. 12173, 45 FR 69271; E.O. 12215, 45 FR 36043.

In the final sentence of § 103.8 (b), the words "numerous or" should be inserted so that the sentence in its entirety reads as follows: "Requests for booking or prescheduling may be denied in the case of vessel operators or agents who establish a record of numerous or repeated cancellations."

Michael Rhode, Jr.,

Secretary.

December 15, 1980.

[FR Doc. 80-40312 Filed 12-24-80; 8:45 am]

BILLING CODE 3640-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Glacier Bay National Monument; Protection of Humpback Whales

AGENCY: National Park Service.

ACTION: Proposed rule.

SUMMARY: The regulations set forth below are intended to limit the adverse impact of commercial fishing on the humpback whale *(Megaptera Novaenglige)* within Glacier Bay National Monument. These proposed rules are designed to supplement the regulations relating to the protection of humpback whales published May 15, 1980 (45 FR 32228) as well as the Final Rulemaking found elsewhere in today's **Federal Register.** These rules propose the addition of Pacific herring *(Clupea spp.)* to the list of fish which may not be actively fished for nor retained if incidentally caught. In addition, these rules propose the prohibition of bottom trawling within Glacier Bay.

DATES: Written comments should be submitted on or before March 30, 1981.

ADDRESS: Comments should be directed to: Superintendent, Glacier Bay National Monument, P.O. Box 1089, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT:

John Chapman, Superintendent, Glacier Bay National Monument, P.O. Box 1089, Juneau, Alaska 99802. Telephone: (907) 586–7137.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1980, the National Park Service published Final Rules Regarding the Protection of Humpback Whales in Glacier Bay National Monument (45 FR 32228). Two major areas were addressed: (1) Operating restrictions on all vessels within Glacier Bay; and (2) numerical limitations on entries by large vessels (vessels at or in excess of 100 tons gross) into the Bay. At the same time interim regulations were published which addressed numerical limitations on entries by small vessels (vessels below 100 tons gross) and prohibited commercial and charter fishing for the principal food sources for humpback whales in Glacier Bay. These rules are published in final form today.

Much of the relevant background information regarding the humpback whale, Glacier Bay National Monument, recent research investigations and findings and the legal authorities for this action, are set out in the final rulemaking relating to the protection of the humpback whales found elsewhere in today's **Federal Register.** This information will not be reproduced in this rulemaking, but is hereby incorporated.

Experience with these regulations at Glacier Bay during the 1980 whale season indicated two shortcomings in the area of commercial fishing activities.

Pacific herring (*Clupea spp.*) are not known to frequent Glacier Bay in large numbers. However, they are now known to occur in the Bay. The fact that Pacific herring comprise a primary food source for humpback whales elsewhere in Southeast Alaska is well established. However, the importance of these fish as a food source for humpbacks in Glacier Bay is not yet known since the research record into the relationship among natural food cycles, food availability, and whale behavior is incomplete. Until this relationship is more fully explored prudence dictates a conservative approach towards human activities which may adversely effect an endangered species such as the humpback whale.

Bottom trawling is practiced by only two known commercial fishing vessels within Glacier Bay at this time. It is a fishing method which disrupts feed beds. Significant numbers of shrimp (*Pandalidae*), a prohibited commercial fishery within the Bay, are incidentally taken and lost as a whale food source using this method. Again, prudence dictates a conservative approach towards a human activity potentially harmful to this endangered species until food relationships are better understood.

As with all other regulations relating to the protection of humpback whales within Glacier Bay National Monument, these proposed rules will be subject to ongoing review and modification where warranted. After two and one-half years, the Service shall formally review these regulations.

Drafting Information

The following persons participated in the writing of these regulations: John Chapman, Superintendent; Donald D. Chase, Chief of Operations, Glacier Bay National Monument; William F. Paleck, Alaska Regional Office; Deborah L. Williams, Solicitor's Office, Anchorage.

Impact Analysis

The National Park Service has made a determination that the regulations contained in this rulemaking are not significant, as that term is defined under Executive Order No. 12044, as amended, and 43 CFR Part 14, nor do they require the preparation of a regulatory analysis pursuant to the provisions of these authorities. In addition, the Service has determined that these regulations do not represent a major Federal action significantly affecting the quality of the human environment which would require an Environmental Impact Statement. An Environmental Assessment and Finding of No Significant Impact which address protection of humpback whales within Glacier Bay have been prepared and are available at the address listed at the beginning of this rulemaking.

Authority

(Presidential Proclamations Nos. 1733 (43 Stat. 1988), 2330 (53 Stat. 2534), and 4618 (43 FR 57053); Act of August 25, 1916 (39 Stat. 535, as amended, 16 U.S.C. 1 *et seq.*); 245 DM 1 (44 FR 23384); National Park Service Order 77 (38 FR 7478), as amended.)

John F. Chapman,

Superintendent.

In consideration of the foregoing, it is proposed that § 7.23(f) of Title 36 of the Code of Federal Regulations be amended to read as follows:

* * * * *

§ 7.23 Glacier Bay National Monument, Alaska.

(f) *Commercial Fishing.* (1) No commercial or charter fishing operator will actively fish for, or retain if incidentally caught, capeline (*Mallotus*), sandlance (*Ammadytes*), euphausids (*Thalassia*), shrimp (*Pandalidae*) or Pacific herring (*Clupea spp.*) within Glacier Bay. (2) Bottom trawling is prohibited within Glacier Bay. (3) These restrictions on fishing shall apply throughout the year but shall only apply to the waters inside the mouth of Glacier Bay.

[FR Doc. 80-40389 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

[A-7-FRL 1714-4]

40 CFR Part 52

Approval and Promulgation of Missouri State Implementation Plan for Lead

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: As required by Section 110 of the Clean Air Act and the October 5, 1978 promulgation of a National Ambient Air Quality Standard for lead (43 FR 46246), the state of Missouri has submitted for approval to EPA a State Implementation Plan (SIP) for lead. The lead SIP provides for the attainment of the National Ambient Air Quality Standard (NAAQS) for lead in all areas of the state. EPA is proposing to approve the SIP with the exceptions discussed below. Copies of the SIP are available to the public as noted below. The EPA invites public comments on EPA's proposed actions, the identified deficiencies, and the consistency of the Missouri lead SIP with respect to the requirements of the Clean Air Act.

DATES: Comments must be received on or before February 27, 1981.

ADDRESSES: Copies of the Missouri submission and the minutes of the public hearings where the state regulations were reviewed are available for review during normal business hours at the following locations:

Environmental Protection Agency, Region VII, Air, Noise and Radiation Branch, 324 East 11th Street, Kansas City, Missouri 64106.

Public Information Reference Unit, Room 2922, EPA, 401 M Street SW., Washington, D.C. 20460.

Kansas City, Missouri Health Department, Air Pollution Control 21st Floor, City Hall, Kansas City, Missouri 64106.

Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65102.

City of St. Louis Division of Air Pollution Control, 419 City Hall, St. Louis, Missouri 64103.

St. Louis County, Dept. of Community Health and Medical Care, 801 S. Brentwood Blvd., Clayton, Missouri 63105.

Written comments should be mailed to Ken Greer, Air and Hazardous Materials Division, Air, Noise and Radiation Branch, EPA Region VII, 324 East 11th Street, Kansas City, Mo. 64106.

FOR FURTHER INFORMATION: Contact Ken Greer at 816 374–3791 [FTS 758–3791].

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, National Ambient

since 1974. The standards have been exceeded in St. Louis, at St. Joe Lead Co. in Herculaneum, and at Amax Lead Co., which is near Boss, Missouri. Boss is a small rural town which has a low traffic density. Herculaneum is also a small

concentrations of lead in the air around the smelters due to the lack of modeling data and the absence of any long-term monitoring data for these areas. EPA proposes to approve the State's commitment to continue to monitor for

although two of the scheduled emission control projects are not required to be fully operational until after October 31, 1984. EPA can propose approval of this schedule because it finds that the emission reductions attributable to the

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FOR FURTHER INFORMATION: Contact Ken Greer at 816 374–3791 [FTS 758–3791].

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, National Ambient Air Quality Standards (NAAQS) for lead were promulgated by the Environmental Protection Agency (EPA) (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms lead per cubic meter of air (μg lead/m^3), averaged over a calendar quarter. As required by section 110(a)(1) of the Clean Air Act (the Act), within nine months after promulgation of a NAAQS each state is required to submit a state implementation plan (SIP) which provides for implementation, maintenance, and enforcement of the primary and secondary NAAQS within the state. The state of Missouri has developed and submitted a SIP for the attainment of the lead NAAQS. The plan includes a strategy for attainment of the lead NAQS in all parts of the state and shows attainment of the NAAQS by four years after EPA approval of the SIP. This time frame differs from the required attainment date of October 31, 1982, or with a two-year extension, October 31, 1984. The plan also commits to development of a long-term lead monitoring network to be installed around the lead smelters in the state, and in Kansas City and St. Louis. Monitoring data will be available before the attainment date. (October 31, 1984).

II. Discussion of Lead SIP Elements

A. Basic Requirements

The basic requirements for a SIP in general are outlined in Section 110(a)(2) of the Clean Air Act and EPA regulations at 40 CFR Part 51, Subpart B. These provisions require the submission of air quality data, emission inventory data, air quality modeling, a control strategy, a demonstration that the NAAQS will be attained within the time frame specified in the Clean Air Act, and provisions for ensuring maintenance of the NAAQS. Specific requirements for developing a SIP for lead concerning lead air quality data, emission inventory for lead, control strategies for lead, etc., are outlined in 40 CFR Part 51, Subpart E.

B. Description of SIP

On September 5, 1980 the Missouri Air Conservation Commission, acting on behalf of the Governor of Missouri, submitted the Missouri lead SIP to EPA for approval. The major elements of the SIP include: a summary of measured air quality data from 1974 to present, a base-year emission inventory for stationary and mobile sources, control strategies showing reductions in lead emissions from stationary and mobile sources, consent orders which provide schedules for installation of control equipment on certain stationary sources, calculations of projected ambient air lead concentrations in areas that have shown exceedances of the standard, and provisions for the review of new and modified sources of lead emissions. The SIP also outlines plans for long-term ambient air monitoring for lead in Kansas City and St. Louis, and around three primary lead smelters in Missouri.

The plan indicates that the lead standards have been exceeded in St. Louis, and around the Amax and St. Joe Lead Co. primary lead smelters in Missouri. The plan provides for attainment of the standards by 1982 in St. Louis, due to the phase-down of the lead content in gasoline, and by October 31, 1984, in the vicinity of the lead smelters, due to implementation of both stack and fugitive emission controls. A two-year extension for attainment is requested by the state only for the areas around the Amax and St. Joe primary lead smelters in Missouri.

To comply with 40 CFR 51.80(a), the SIP also includes attainment demonstrations for the Asarco primary lead smelter and the St. Joe Lead Co. lead mine at Viburnum. Although no violations of the lead standards have been recorded in the vicinity of the Asarco smelter, the SIP contains a consent order requiring the reduction of lead emissions through the installation of fugitive emission controls. Although no violations have been recorded in the vicinity of the lead mine, dispersion modeling predicts a standards violation. The SIP shows that the standards will be attained in this area by terminating the operation of an ore dryer used at the mine.

C. Results of EPA Review

After evaluating the Missouri plan to determine whether it meets all requirements for an approvable lead SIP, EPA proposes to approve the plan with the exceptions discussed below. These deficiencies of the plan will have to be corrected before EPA can fully approve the SIP. EPA will work with the Missouri Department of Natural Resources to correct the deficiencies discussed below.

1. Attainment Date: One major deficiency of the plan is the stated attainment date for the ambient air lead standards. Section 110(a)(2)(A) of the Clean Air Act requires all states to attain the lead-standards within three years of EPA's approval of their lead SIPs. The State has erroneously interpreted the statute to mean that the attainment date is three years from the actual EPA approval date of the lead SIP. EPA has stated in a previous FR notice that the attainment date for all States is October 31, 1982, three years from the mandated EPA approval date of October 31, 1979 (43 FR 46246). Therefore, EPA is proposing to disapprove (under § 110(a)(2) of the Act) the attainment date as stated in the Missouri lead SIP. Athough EPA is proposing to disapprove this attainment date, it can propose approval of the State's control strategies because it finds that these strategies will produce attainment by October 31, 1982 (or, with a two year extension, by October 31, 1984). EPA will request in the final rulemaking that the state revise the attainment date to be October 31, 1982 or, with a two-year extension, October 31, 1984. If, in accordance with § 110(c)(1) (B) and (C) of the Act, the State fails to revise the attainment date, EPA will promulgate for the Missouri lead SIP the correct attainment date.

2. Request for Attainment Date Extension: Concerning the State's request for the two-year extension of the attainment date for areas around the Amax and St. Joe primary lead smelters, EPA proposes to approve the request. EPA may approve an extension of up to two years (as outlined in § 110(e) of the Act and 40 CFR 51.30), if, among other factors, the ". . . necessary technology or alternatives [for control] will not be available soon enough to permit full implementation of such control strategy . . ." by the attainment date. The SIP, if the extension is granted, is to provide for attainment of the primary standard as "expeditiously as practicable," but no later than October 31, 1984.

EPA proposes to approve the extension request because the State has demonstrated that certain necessary fugitive emission controls will not be available by October 31, 1982.

3. Emission Inventory: EPA is proposing to approve the part of the SIP which describes the lead emission inventory for stationary sources and the St. Louis mobile source inventory. The State has correctly included in the stationary source inventory all significant point sources of lead in Missouri. The SIP incorrectly states that mobile source emission inventories are required only in metropolitan areas with populations greater than 500,000. Mobile source emission inventories are required as part of area source inventories (according to 40 CFR 51.81) which are required for any areas which have shown an exceedance of the standards since 1974. The standards have been exceeded in St. Louis, at St. Joe Lead Co. in Herculaneum, and at Amax Lead Co., which is near Boss, Missouri. Boss is a small rural town which has a low traffic density. Herculaneum is also a small rural town with a low traffic density except for an interstate highway that passes near the smelter and town. EPA requests that traffic flow information be provided by the State before final rulemaking to confirm that the mobile source emissions are insignificant compared to the emissions from the lead smelters in both the Boss and Herculaneum areas.

4. Air Quality Modeling: Section 51.84 of 40 CFR requires each lead SIP to include air quality dispersion modeling of emissions from certain categories of lead sources, including primary and secondary lead smelters, lead acid battery plants, and other lead sources emitting more than 25 tons of lead per year. EPA proposes to approve the modeling done for the Schuykill Metals plant (a secondary lead smelter), Globe Union, Inc., (a lead acid battery plant) and the St. Joe Lead Co. lead mine (a source emitting more than 25 tons per year of lead). EPA proposes to disapprove the portion of the lead SIP which deals with modeling for the three primary lead smelters. The SIP states that the State attempted modeling for the primary smelters, but due to inadequacies in modeling techniques for complex terrain situations and fugitive emissions, found no correlation between modeling and monitoring data. However, the State did not submit this modeling to EPA. EPA will require that additional modeling be done for all three primary lead smelters, including a presentation of predicated ambient levels of lead in the vicinity of each smelter. EPA will require the State to submit this modeling within twelve months of EPA's final rulemaking on the Missouri lead SIP. EPA will provide assistance to the State to help satisfy the State's obligation under 40 CFR 51.84.

5. Monitoring: EPA has reviewed the short-term monitoring strategy that the State developed around each primary lead smelter. EPA finds that the system is consistent with EPA's "Guidelines for Short Term Lead Monitoring in the Vicinity of Point Source" (March 26, 1979). Additionally, a full year of data collected at the short-term monitoring sites will be available in early 1981. EPA has requested that the data be submitted to EPA before final rulemaking and made available for public review. This will allow EPA and the public to be aware of the concentrations of lead in the air around the smelters due to the lack of modeling data and the absence of any long-term monitoring data for these areas. EPA proposes to approve the State's commitment to continue to monitor for lead in Kansas City and St. Louis and to develop and implement a long-term monitoring strategy around each primary lead smelter to meet the requirements of 40 CFR 51.17(b). EPA agrees with the State that preparation of the long-term monitoring plan should be keyed to the date that EPA's final lead monitoring point source guidelines are published. EPA also agrees that one year of site specific meteorological data should be collected at each smelter before long-term air monitoring sites are selected. The period for meteorological data collection should commence at each smelter when the meteorological equipment becomes operational. The State plans to reevaluate the primary smelter's control strategies if one full year of long-term monitoring data shows that the standards will not be attained by October 31, 1984. EPA expects the State to fulfill this commitment.

6. Control Strategies: Concerning the control strategy for the attainment of the lead standards throughout Missouri, EPA proposes to approve the control strategy for the St. Joe lead mine and the Asarco primary lead smelter. EPA also proposes to approve the control strategies for the Amax and St. Joe primary lead smelters. The state used the highest 90-day average lead concentration recorded by the short term monitoring network for each of the smelters. Using a simple proportional model, the state then calculated the emission reductions needed from each smelter to attain the lead standards. EPA has concerns regarding the limited data base used to calculate the needed reductions in emissions from each smelter to attain the standard, but EPA believes that at this time, the State has used the best information available. EPA believes that with additional monitoring and modeling, coupled with the State's commitment to revise the SIP in the future if new information shows that additional controls are needed on any or all primary lead smelters, the necessary level of control will be achieved within the required time frames specified by the Clean Air Act.

Concerning the Missouri Air Conservation Commission (MACC) consent orders which establish schedules requiring controls to be added at each primary lead smelter, EPA proposes to approve the Asarco and St. Joe consent orders. EPA also proposes to approve the Amax consent order although two of the scheduled emission control projects are not required to be fully operational until after October 31, 1984. EPA can propose approval of this schedule because it finds that the emission reductions attributable to the portions of these controls which will not be operational prior to the October 31, 1984 attainment date represent a *de minimis* fraction of the total lead reductions needed from the Amax smelter in order to demonstrate attainment.

The schedule states that completion of the two emission control projects will be within 48 months of EPA approval of the Missouri lead SIP. One project concerns the completion of plant area paving and the other concerns completion of ductwork, piping, etc., leading to an emission control unit.

EPA projects final action on the Missouri Lead SIP by March 31, 1980. Assuming final action approving the SIP by that date, the two projects would be required by the consent order to be completed no later than five months after the mandated attainment date (with extension) of October 31, 1984.

Also, assuming final action approving the lead SIP by March 31, 1981, the AMAX consent order would require that, by the mandated attainment date of October 31, 1984, control equipment be installed and operating which would reduce emissions by 444.4 tons/year out of the 446.2 tons/year reduction needed to show full attainment. The remaining 1.8 tons/year reduction would be obtained when the remaining emission control projects are completed by not later than March 31, 1985. Thus, the plan projects attainment of the lead standards in the vicinity of the Amax plant with a 64.4% reduction in lead emissions. The plan demonstrates a 64.2% reduction by the required attainment date, assuming plan approval by March 31, 1981.

EPA finds that the remaining 0.2% reduction necessary for attainment of the lead standards at the Amax smelter represents a *de minimis* portion of the total emission reductions needed. Furthermore, partial completion of the two emission control projects prior to the proposed October 31, 1984 attainment date could provide the needed additional 0.2% reduction. Consequently, EPA is proposing to approve the control strategy for the Amax smelter.

Concerning the consent orders in general, EPA requests clarification from the State on two items. The first concerns the language in the consent orders that explains that due to strikes or natural disasters, the project completion dates will be automatically

extended a corresponding amount of

potential to emit five tons/year of lead

portion of the SIP. The additional

EPA labels these other regulations "specialized." I have reviewed this

procedural requirements directed toward the attainment of such goals. I

Subpart C—Procedures for Implementing the National Historic Preservation Act

extended a corresponding amount of time. EPA believes that the State should require the source to request in writing an extension, stating the reasons necessitating an extension. EPA requests that the State submit a written clarification to EPA before final rulemaking that the State does intend to require the sources to submit a written request for extension of the schedule, documenting the reasons for the extension, if strikes or natural disasters force delays in the schedule. The second item that EPA requests clarification from the State concerns the reporting requirements of the increments of progress in the consent orders. The State intends to monitor the sources' progress on the consent order schedules by having State enforcement personnel inspect the sources on the date of each milestone listed in the consent orders. EPA believes that the State should monitor the sources on a quarterly basis as to the sources' progress toward completion of the control measures. EPA requests that the State provide to EPA before final rulemaking a commitment to provide quarterly reports to EPA which describe the progress made by each source toward installation of the control measures described in the consent orders.

Concerning the operation of a rotary dryer at the St. Joe lead mine in Herculaneum which was scheduled to terminate operation during the summer of 1980, EPA requests that the State submit before EPA's final action a written agreement validating the termination of operation. Since the termination of operation of the rotary dryer is the State's control plan for attainment at the St. Joe lead mine, the written agreement should also validate that the rotary dryer operation will continue to be inoperative. The written agreement to be submitted by the State must be in a form such as a legally enforceable compliance order.

7. Other SIP Requirements: The plan makes a commitment to provide the necessary state resources to implement the plan. A detailed description of these resources is presently contained in the State's approved SIP for other criteria pollutants. Thus, EPA proposes to approve the Resources Section of the Missouri Lead SIP.

EPA also proposes to approve the Authority section (§ X) of the SIP if the State submits the information on new lead source permits requested from the State before final EPA rulemaking. The information requested concerns public review of permits for new sources of lead in Missouri. EPA requires permits for new sources which have the potential to emit five tons/year of lead or more, and requires a minimum of 30 days of public comment on all permits for new major sources. The State regulation calls for State review of all new sources with lead emissions greater than 1 ton/year. However, the regulation does not expressly state that a public review period is provided for in the review of new sources of lead in the size range of 1 ton/year to 100 tons/year. It is clear to EPA that the state regulations provide for public review of state actions on new sources of lead over 100 tons/year. A written clarification has been requested from the State of the procedures, required by 40 CFR 51.18 (h)(2)(ii), that Missouri will follow to allow for a public comment period of at least 30 days on all new source review actions for sources with lead emissions greater than 1 ton/year.

EPA also finds that the State's approved SIP for the other criteria pollutants contain regulations satisfying other general SIP requirements which have not received specific mention in this notice. EPA finds that these regulations can be incorporated into the State's lead SIP. Therefore, EPA proposes to approve the lead plan as satisfying all of the requirements in Section 110(a)(2) of the Act and 40 CFR Part 51, Subpart B.

III. EPA's Proposed Actions

EPA is proposing to approve the Missouri lead SIP except for two sections. The sections proposed for disapproval concern the State's attainment date for the lead standard, and the modeling done for the three primary lead smelters. EPA is proposing to disapprove Missouri's attainment date section and allow the State 60 days from EPA's final approval/disapproval action to correct the attainment date to agree with the required date of October 31, 1982 (or, with extension, October 31, 1984). If the State does not revise accordingly, EPA will promulgate the correct attainment date for the Missouri SIP in accordance with § 110(c)(1)(B) and (C) of the Act. EPA is also proposing to disapprove the modeling that the State attempted for the three primary lead smelters. EPA requests that the State submit within twelve months of EPA final rulemaking, complete modeling for each primary lead smelter as required by 40 CFR 51.84.

EPA also requests additional information be submitted by the State in a letter before EPA final action which is anticipated by March 31, 1981. If the State does not submit the needed items prior to EPA's final action on the lead SIP, EPA will disapprove the affected portion of the SIP. The additional information is needed to clarify certain section of the SIP and consists of: (1) A compliance order or other legally enforceable agreement stating that the rotary dryer operation has been closed down at the St. Joe lead mine, and will remain inactive; (2) Mobile source emission information for the area near the St. Joe primary lead smelter (including the town of Herculaneum), and the area near the Amax primary lead smelter (including the town of Boss); (3) A clarification of the procedures that Missouri will follow to allow for a public comment period of at least 30 days on all new source review actions for sources with lead emissions greater than 1 ton/year; (4) Information concerning the consent orders which clarify that the State will require the sources to submit in writing to the State any requests for extensions in the consent order schedules; and (5) A committment that the State will provide to EPA quarterly reports which outline the sources' progress toward installation of the control measures described in the consent orders. EPA also requests the State to submit the monitoring data from January through September 1980 from the short-term monitoring network around the three primary lead smelters.

IV. Public comments

The Regional Administrator hereby issues this notice setting forth EPA's approval/disapproval of the Missouri lead SIP as a proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region VII office. Comments received on or before the date listed in the DATES section will be considered. Comments received will be available for public inspection at the EPA Region VII Office and at the locations listed in the Addresses Section of this notice.

The Administrator's decision to approve or disapprove that proposed revision to the Missouri general SIP will be based on the comments received and on a determination whether the revision meets the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

The Missouri Department of Natural Resources has certified that the public hearing requirements of 40 CFR 51.4 have been met.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and, therefore, subject to the procedural requirements of the order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sections 110 and 301(a) of the Clean Air Act as amended [42 U.S.C. §§ 7410 and 7610(a)])

Dated: November 21, 1980.

William Rice,

Acting Regional Administrator.

[FR Doc 80-40384 Filed 12-24-80; 8:45 am]

BILLING CODE 6560-38-M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1020

Environmental Protection

AGENCY: Community Services Administration.

ACTION: Proposed rule.

SUMMARY: CSA is publishing a proposed rule establishing a new PART covering environmental protection and implementing the procedural provisions of the National Environmental Policy Act. This proposed rule is in compliance with the requirements of 45 CFR Part 1507 that each agency shall adopt as necessary procedures to supplement the regulations published by the Council on Environmental Quality.

DATES: CSA welcomes comments on this proposed rule. Comments received by January 28, 1981 will be considered in drafting the final rule.

ADDRESS: Comments may be mailed to: Ms. Jacqueline G. Lemire, Policy Development and Review Division, Community Services Administration, 1200 19th Street, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline G. Lemire, Community Services Administration, 1200 19th Street NW., Washington, D.C. 20506, Telephone: (202) 254-5047, Teletypewriter: (202) 254-6418.

SUPPLEMENTARY INFORMATION: Since policy implementing the National Environmental Policy Act previously was published by the Council on Environmental Protection and CSA only is adding procedural requirements, CSA has determined that this is not a significant rule as defined in its published rule implementing Executive Order 12044.

The National Environmental Policy Act (NEPA) of 1969 (42 USC 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decision-making and to prepare detailed environmental statements on recommendations or reports significantly affecting the quality of the human environment.

Executive Order 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR Part 1500–1508) on November 29, 1978, which are binding on all Federal agencies as of July 30, 1979. These regulations provide that each Federal agency shall as necessary adopt implementing procedures to supplement the regulations. Section 1507.3(b) of the NEPA regulations identifies those sections of the regulations which must be addressed in agency procedures.

This proposed rule establishes and explains CSA's procedures for compliance with the NEPA regulations. Subsequent to the finalization of this rule CSA will publish rules implementing other environmentally-related Acts and Executive Orders. This proposed rule also establishes a separate Part (1020) in Chapter X under which CSA will publish all environmentally-related rules.

William W. Allison,

Acting Director.

45 CFR Chapter X is proposed to be amended by adding a new Part 1020 to read as follows:

PART 1020—ENVIRONMENTAL PROTECTION

Subpart A—General

Sec.

1020.1–1 Applicability.
1020.1–2 Purpose.

Subpart B—Procedures for Implementing the National Environmental Policy Act of 1969 (NEPA), as Amended

Sec.

1020.10–1 Background.
1020.10–2 Definition.
1020.10–3 Purpose.
1020.10–4 Applicability of NEPA to CSA activities.
1020.10–5 Responsibilities for implementing NEPA.
1020.10–6 Implementing procedures.
1020.10–7 How to determine if actions require an environmental assessment and/or an environmental impact statement.
1020.10–8 Environmental information.

Subpart C—Procedures for Implementing the National Historic Preservation Act [Reserved]

Subpart D—Procedures for Implementing Executive Order 11988 Re Floodplains Management [Reserved]

Subpart E—Procedures for Implementing Executive Order 11990 Re Protection of Wetlands [Reserved]

Authority. Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

Subpart A—General

§ 1020.1–1 Applicability.

This part applies to all organizational units of the Community Services Administration and all actions funded or authorized under Titles I, II, IV, VI, VII and IX of the Economic Opportunity Act of 1964, as amended, when the assistance is administered and actions are authorized by the Community Services Administration.

§ 1020.1–2 Purpose.

This part establishes CSA's policies and procedures with respect to protection of the environment and the protection of historic properties and other valuable national resources. This Part implements a number of laws relating to environmental protection each of which has varying requirements.

Subpart B—Procedures for Implementing the National Environmental Policy Act of 1969 (NEPA), as Amended

§ 1020.10–1 Background.

(a) The National Environmental Policy Act (NEPA) of 1969 (42 USC 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decision-making and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) Executive Order 11991 of May 24, 1977, directed the Council on Environmental Quality (CEQ) to issued regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR Parts 1500–1508) on November 29, 1978, which are binding on all Federal agencies as of July 30, 1979. These regulations provide that each Federal agency shall as necessary adopt

implementing procedures to supplement the regulations. Section 1507.3(b) of the NEPA regulations identifies those sections of the regulations which must be addressed in agency procedures.

understanding; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals.

§ 1020.10–5 Responsibilities for implementing NEPA.

require some form of Federal approval. Actions planned elsewhere but requiring CSA approval include grants, contracts, and cooperative agreements.

(2) To implement the requirements of 40 CFR 1501.2, CSA requires that the

fully each environmental impact expected. In addition the explanation should be fully supported with cost documentation. Any alternatives which might lessen any negative environmental impact should also be

shall respond by one or more of the means listed in 40 CFR 1503.4. All substantive comments received on the draft statement should be attached to the final statement.

(2) An environmental assessment

(b) *Actions which normally will not require environmental assessments or environmental impact statements (categorical exclusions).* (1) Amendments to actions for which either an environmental assessment or an

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implementing procedures to supplement the regulations. Section 1507.3(b) of the NEPA regulations identifies those sections of the regulations which must be addressed in agency procedures.

§ 1020.10–2 Definition.

"Human Environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

§ 1020.10–3 Purpose.

The purpose of this subpart is to establish and explain CSA procedures for compliance with the NEPA regulations and to explain to those applying for CSA funds what information must be supplied to CSA prior to funding (whether by grant, contract or cooperative agreement) to enable the responsible CSA officials to consider and evaluate the environmental impact of a proposed agency action in compliance with the NEPA regulations before making any final agency decision.

§ 1020.10–4 Applicability of NEPA to CSA activities.

(a) All actions and organizational units within the Community Services Administration initially are covered by these procedures. However, some actions are exempt from the requirements to develop an environmental assessment or an environmental impact statement since, by their very nature, they do not individually or cumulatively have a significant effect on the human environment. These actions are published at § 1020.10–7(b) ("Categorical Exclusions"). Actions which require at least an environmental assessment are found at § 1020.10–7(c), are those normally requiring an environmental impact statement are found at § 1020.10–7(d).

(b) For purposes of this subpart "agency actions" include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by CSA including those supported by grants, contracts, cooperative agreements, interagency agreements, or memoranda of understanding; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals.

§ 1020.10–5 Responsibilities for implementing NEPA.

(a) *Environmental Affairs Officer.* The Director shall appoint a Headquarters Environmental Affairs Officer and each Regional Director shall appoint a Regional Environmental Affairs Officer. These Officers will be responsible for the following in their respective Regions or at Headquarters:

(1) Advising responsible agency personnel regarding the need for an environmental assessment or environmental impact statement.

(2) Reviewing all agency actions (except categorical exclusions) to determine (i) if an environmental assessment is required and recommending such action to the responsible CSA officials; and (ii) if consultation with other Federal agencies responsible for the environmental act is required.

(3) Recommending alternative methods of agency action which may have a lower probability of negative environmental impact.

(4) Advising all applicants of studies or other information forseeably required for later Federal action.

(5) Providing guidance on a project-by-project basis to applicants seeking assistance.

(6) Serving as the point of contact for persons interested in information or status reports on environmental impact statements and other elements of the NEPA process.

(7) Directing all environmental impact statements received by CSA from other Federal Agencies to the appropriate Headquarters or Regional Office for comment and assuring that comments or a statement of "no comment" are submitted within the time period specified.

(b) *Headquarters Environmental Affairs Officer.* This Officer will be responsible for overall review of agency NEPA compliance.

(c) *Other agency personnel.* Other Agency personnel have responsibilities within the NEPA process. These responsibilities are outlined in § 1020.10–6 of this subpart.

§ 1020.10–6 Implementing procedures.

(a) *Early involvement by CSA.* (1) § 1501.2 of the NEPA regulations requires Federal Agencies to provide for early involvement in order to insure appropriate consideration of NEPA's policies and to eliminate delays in actions which, while planned by private applicants or other non-Federal entities, require some form of Federal approval. Actions planned elsewhere but requiring CSA approval include grants, contracts, and cooperative agreements.

(2) To implement the requirements of 40 CFR 1501.2, CSA requires that the following actions be taken:

(i) Upon receipt of a proposal or an application for assistance, the CSA staff person responsible for the initial substantive review of the document, i.e. the field representative, or project manager, will make an initial determination of whether the action falls under the categorical exclusion category, whether it requires an environmental assessment, or whether it requires an environmental impact statement. (See § 1020.10–7.) In unusual or questionable cases the staff person should consult with the Environmental Affairs Officer prior to making a determination.

(ii) Upon determination of the need to develop a rule or regulation, the head of the office with primary responsibility for development of the document will make an initial determination of whether the actions resulting from such a rule would fall under either of the non-excluded categories and, therefore, whether there is a need to develop an environmental assessment or environmental impact statement relating to the requirements of the rule.

(b) *Early involvement by applicants.* To facilitate compliance with the requirements of § 1501.2(d) of the NEPA regulations, applicants for assistance under the Economic Opportunity Act are expected to:

(1) Contact the appropriate CSA Regional or Headquarters funding office as early as possible in the planning process for guidance on the scope and level of environmental information required to be submitted in support of their application.

(2) Conduct any studies which are deemed necessary and appropriate by CSA to determine the impact of the proposed action on the human environment.

(i) If the action normally requires an environmental assessment, the applicant should summarize the environmental impact including any brief documentation or opinion from local environmental organizations or branchs of local or state governments explaining such organization's view of the impact. Alternative methods of performance of the project should be discussed with a cost breakdown of any budget increases resulting from environmental considerations.

(ii) If the action is one which normally requires an environmental impact statement, the applicant should explain fully each environmental impact expected. In addition the explanation should be fully supported with cost documentation. Any alternatives which might lessen any negative environmental impact should also be submitted with the cost breakdown of increases.

(3) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified.

(4) Submit applications for all Federal, regional, State and local approvals as early as possible in the planning process.

(5) Notify CSA as early as possible of all other Federal, regional, State, local and Indian tribe actions required for project completion so that CSA may coordinate all Federal environmental reviews.

(6) Notify CSA of all known parties potentially affected by or interested in the proposed action.

(c) *Development of environmental documents.* Pursuant to 40 CFR 1501.4(b), for all agency actions which are not categorically excluded (see § 1020.10–7(b)), CSA shall prepare either an environmental assessment or an environmental impact statement.

(1) An environmental impact statement shall be prepared by CSA for all agency actions which may have a significant impact on the environment. (See § 1020.10–7(d).)

(i) When preparing a draft environmental impact statement procedures and policies outlined in 40 CFR Parts 1500–1508 shall be followed. In addition CSA shall obtain comments from:

(A) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(B) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(C) Indian tribes, when the effects may be on a reservation;

(D) Any agency which has requested that it receive statements on actions of the kind proposed;

(E) The applicant; and

(F) The public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(ii) When preparing a final environmental impact statement, CSA shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed in 40 CFR 1503.4. All substantive comments received on the draft statement should be attached to the final statement.

(2) An environmental assessment must be prepared by CSA for all other non-excluded actions. (See § 1020.10–7(c).)

(i) If the responsible CSA official determines based upon an environmental assessment, that a proposed agency action will not significantly affect the quality of the human environment, a finding of no significant impact shall be prepared pursuant to 40 CFR 1508.13 briefly stating the reasons for this finding. The document shall be attached to the environmental assessment and upon demand be made available to the public pursuant to 40 CFR 1501.4(c)(1) and (2) and shall accompany the document in all stages of the decision-making process.

(ii) In the case of proposed agency regulations published in the **Federal Register**, such statement along with the environmental assessment must accompany each publication.

(d) *Consideration of environmental documents in CSA's decision-making process.*

(1) If an environmental assessment or an environmental impact statement is prepared, it and other relevant documents, comments, and responses must accompany the proposed agency action through all phases of the decision-making process.

(2) The decision-making process for any non-excluded agency action must include review by the Environmental Affairs Officer.

(3) In making a final decision the responsible official will consider the range of altenatives discussed in the relevant environmental documents and the alternatives described in the environmental impact statement.

§ 1020.10–7 How to determine if actions require an environmental assessment and/or an environmental impact statement.

(a) *Classes of action.* An agency action will fall into one of three classes for purposes of determining its treatment under NEPA, that is:

(1) Actions normally not requiring either an environmental assessment or an environmental impact statement.

(Note: For the NEPA process, these actions are known as "Categorical Exclusions").

(2) Actions normally requiring environmental assessments but not necessarily environmental impact statements.

(3) Actions normally requiring environmental impact statements.

(b) *Actions which normally will not require environmental assessments or environmental impact statements (categorical exclusions).* (1) Amendments to actions for which either an environmental assessment or an environmental impact statement has been prepared which do not alter the impact previously described in either intensity or context.

(2) Extensions of time without any environmental consequences when there have been no new significant developments or information (such as no cost grant extensions).

(3) Programmatic functions with no potential for significant environmental impacts including but not limited to: minor adjustments to program plans and budgets; technical assistance programs; evaluation studies, sociological or economic research and information gathering and dissemination projects; advocacy activities; designation or dedesignation of community action agencies; routine administrative and management support including legal counsel, public affairs, program evaluation, monitoring, and individual personnel actions; grants for administrative overhead support; grants for social services (e.g. senior citizens programs, accidental hypothermia) except projects involving construction, renovation and/or changes in land use; maintenance (e.g. undertaking repairs necessary to insure the functioning of an existing facility), except for properties on the National Register of Historic Places; education and training grants (e.g. grants to create and support fellowships for grantee personnel); except projects involving construction, renovation, and/or changes in land use.

(4) Actions taken in response to emergency situations such as natural disasters and weather-related crises.

(5) Adoption of rules and regulations pertaining to the above mentioned activities.

(c) *Actions which normally require an environmental assessment but not necessarily an environmental impact statement.* The following actions will normally require preparation of at least an environmental assessment:

(1) Major amendments to actions for which an environmental impact statement has already been published such as construction modification to a large physical economic development project where the amendment will not result in significantly different environmental impacts from those indicated in the original environmental impact statement.

(2) Awards of grants, loans or loan guarantees for land acquisition or physical construction such as those

awarded pursuant to Title VII of the Economic Opportunity Act of 1964, where such actions may result in environmental impacts.

(3) Adoption of regulations or

ACTION: Notice of Proposed Rulemaking.

SUMMARY: These proposed regulations would replace the current Coast Guard requirements for plan approval and shop inspection of certain pressure vessels

addressed postcard or envelope should be enclosed. The proposal may be changed in light of comments received. All comments received will be considered before final action is taken on this proposal. No public hearing is

writes boiler and pressure vessel insurance. The inspector cannot be employed by the manufacturer of the pressure vessel. In lieu of Coast Guard plan approval and shop inspection, the proposal would also require (1)

meters (5 cubic feet). Section 54.01–15(a)(4) in the existing regulations allows this practice but does not specify whether the limiting internal volume is a net volume or a gross volume. The proposal adopts a recent ASME

paragraph 10 for nonstandard fluid conditioner fittings.

12. *Miscellaneous changes.* Several of the proposed changes are necessary to avoid redundancy and to provide a clearer presentation of existing

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awarded pursuant to Title VII of the Economic Opportunity Act of 1964, where such actions may result in environmental impacts.

(3) Adoption of regulations or guidelines under the EOA for the control of any development program receiving CSA assistance.

(4) Acquisition, construction or significant modification of existing CSA facilities or major relocations of CSA personnel requiring acquisition of new facilities or housing, either by purchase or construction.

(5) Proposals for legislation to aid the poor which agency personnel reasonably expect will have an impact on the environment.

(d) *Actions which normally will require an environmental impact statement.* The following actions normally will require preparation of an environmental impact statement:

(1) Those which may have a significant impact on the human environment, e.g. large construction projects.

(2) Major changes in land use.

(3) Major or substantial affect on navigable rivers, wetlands, or other ecosystems.

§ 1020.10–8 Environmental information.

Interested persons may contact the appropriate CSA Headquarters or Regional Environmental Affairs Officer regarding CSA's compliance with NEPA.

Subpart C—Procedures for Implementing the National Historic Preservation Act [Reserved]

Subpart D—Procedures for Implementating Executive Order 11988 Re Floodplains Management [Reserved]

Subpart E—Procedures for Implementing Executive Order 11990 Re Protection of Wetlands [Reserved]

[FR Doc. 80–40073 Filed 12–24–80; 8:45 am]
BILLING CODE 6315–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 50, 54, 56, 58, and 61

[CGD 77–147]

Marine Engineering Regulations for Merchant Vessels; Acceptance of ASME U or UM Symbol Stamp for Pressure Vessels, Fittings, and Accumulators

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: These proposed regulations would replace the current Coast Guard requirements for plan approval and shop inspection of certain pressure vessels with requirements that they be inspected and stamped in accordance with the American Society of Mechanical Engineer's Boiler and Pressure Vessel Code. These regulations would apply to Class I, II, and III pressure vessels that do not contain dangerous substances. The proposal would also require (1) certification of pressure vessel design drawings and analyses by a registered professional engineer, (2) Coast Guard inspection of completed pressure vessels prior to installation and (3) compliance with certain Coast Guard design requirements that are optional under the ASME Code. Several pressure vessel manufacturers have requested a changeover to ASME inspection and stamping because of frequent delays involved in having plan approval and shop inspections performed by the Coast Guard. ASME inspectors are more readily available to perform shop inspections in a timely manner, and the use of registered professional engineers to certify plans would minimize the time needed for Coast Guard pre-installation inspections.

DATES: Comments on these proposed rules must be received on or before February 12, 1981.

ADDRESSES: Comments should be mailed to Commandant (G–CMC/TP24), (CGD 77–147), U.S. Coast Guard, Washington, D.C. 20593. The comments, draft evaluation, and materials referenced in this notice will be available for examination and copying between 7 a.m. and 5 p.m., Monday through Thursday, except holidays, at the Marine Safety Council (G–CMC/TP24), Room 2418, Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Hime, c/o Commandant (G–MMT–TP12), U.S. Coast Guard, Washington, D.C. 20593 (202) 426–2160.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice as CGD 77–147 and the specific sections of the proposal to which the comments apply, and give reasons for the comments. If acknowledgment of receipt of a comment is desired, a stamped, self-addressed postcard or envelope should be enclosed. The proposal may be changed in light of comments received. All comments received will be considered before final action is taken on this proposal. No public hearing is planned, but one will be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this document are Mr. Howard Hime, Office of Merchant Marine Safety, and Mr. William R. Register, Office of the Chief Counsel.

Discussion of Proposed Rules

General

1. Part 54 of Title 46, Code of Federal Regulations, contains design, construction, and inspection requirements for pressure vessels installed on merchant vessels. Part 54 adopts the requirements of Section VIII, Division 1, of the ASME (American Society of Mechanical Engineers) Code with certain modifications that provide for specific marine application. Further, Part 54 requires that detailed plans be submitted for Coast Guard review and approval and that each pressure vessel be inspected during fabrication by a Coast Guard inspector.

2. In recent years a large number of pressure vessels inspected by the Coast Guard have also been inspected and stamped in accordance with ASME Code requirements. As a result, the Coast Guard has received several requests to accept ASME inspection and stamping in lieu of Coast Guard shop inspection and plan approval. The two principal reasons for these requests are: (1) The time spent by the Coast Guard in plan review and approval is too long; and (2) some manufacturing shops are located several hundred miles from the nearest Coast Guard inspector, whereas, an inspector authorized to perform ASME inspections is usually within an hour's drive and visits the shops frequently.

3. The proposed regulations would require Class I, II, and III pressure vessels not containing dangerous substances to be inspected and stamped in accordance with ASME Code requirements and would eliminate the existing requirements for these pressure vessels to be shop inspected and have their plans approved by the Coast Guard. The ASME Code requires the inspector to be an independent "third party" inspector employed by a state, municipality, or insurance company that writes boiler and pressure vessel insurance. The inspector cannot be employed by the manufacturer of the pressure vessel. In lieu of Coast Guard plan approval and shop inspection, the proposal would also require (1) certification of pressure vessel plans by a registered professional engineer, (2) Coast Guard inspection of completed pressure vessels prior to installation, and (3) continued compliance with design requirements in Part 54 that are optional under the ASME Code. These additional design requirements are discussed in paragraph 6 below.

4. The proposed regulations do not apply to Class I–L and II–L pressure vessels and pressure vessels containing dangerous substances. Part 54 contains safety requirements for these pressure vessels that modify ASME Code requirements. Continued Coast Guard plan review and shop inspection is needed for these pressure vessels since ASME inspection and stamping would not verify compliance with the modified requirements.

Discussion of Specific Sections in the Proposal

5. *Sections 54.01–5(c)(3), –5(d), and –5(e), 54.01–15(a)(4), 54.10–3(c), 54.10–25(c), and 58.60–3.* These provisions contain the basic proposal to convert from Coast Guard plan approval and shop inspection to ASME inspection and stamping. The proposed amendment to S/58.60–3 would make the proposal equally applicable to mobile offshore drilling units (MODU's). Pressure vessels on MODU's are already required by existing regulations to meet ASME requirements and the requirements in proposed §§ 54.01–5(d)(3) and –5(d)(5). The additional requirements proposed for MODU pressure vessels are principally those in §§ 54.01–5(d)(2), –5(d)(6), and –5(d)(7). These additional requirements represent general safety measures that in large part are already being followed voluntarily; and, accordingly, additional costs to comply with them are expected to be minimal.

6. *Sections 54.01–5(d)(2), –5(d)(3), –5(d)(5), –5(d)(6), and –5(d)(7).* These provisions reference design requirements in Part 54 that are not also included in the ASME Code. Compliance with these requirements is necessary to provide for safe operation of pressure vessels in a marine environment. These requirements are listed as owner-option alternatives in the ASME Code.

7. *Section 54.01–5(c)(4).* This paragraph provides for ASME stamping of Class II and III pressure vessels not containing dangerous substances with a "U" or "UM" symbol if they have a net internal volume of less than 0.14 cubic meters (5 cubic feet). Section 54.01–15(a)(4) in the existing regulations allows this practice but does not specify whether the limiting internal volume is a net volume or a gross volume. The proposal adopts a recent ASME interpretation, VIII–78–83, which states that the internal volume should be calculated as a net volume.

8. *Table 54.01–5(b) and Section 54.01–5(b).* These provisions divide all pressure vessels, both welded and non-welded, into one of several classes. Under current regulations only welded pressure vessels are classed and reference is made to classed pressure vessels only in regulations in Part 54 that impose welding requirements. However, industry practice has been to refer to both welded and non-welded pressure vessels as being classed and this practice is adopted in proposed § 54.01–5 and the proposed revisions to Table 54.01–5(b). These provisions, as revised, include both welding and non-welding requirements for classed pressure vessels.

9. *Sections 54.10–3(c) and 54.10–25(c).* Section 54.10–3(c) proposes Coast Guard inspection procedures for pressure vessels described in § 54.01–5(c)(3), except pressure vessels on MODU's. The procedures for inspecting pressure vessels on mobile offshore drilling units are in § 58.60–13 of Part 58. As provided in proposed § 54.10–3(c), the inspection includes a visual examination of each completed pressure vessel prior to installation, and a review of the associated plans and manufacturer's data reports.

10. *Section 56.15–1(e).* Existing § 56.15–1(e)(1) requires certain nonstandard fluid conditioner fittings to meet Part 54, except the shop inspection requirements in Subpart 54.10. Proposed § 56.15–1(e)(1) would require these fittings to meet either the applicable requirements in proposed § 54.01–5 or the requirements in Part 54 (except shop inspection). This change would allow optional use of either ASME inspection and stamping or Coast Guard plan approval. Coast Guard plan approval is being retained as an option since many nonstandard fluid conditioner fittings are mass produced by manufacturers who do not hold an ASME Stamp and for whom the cost to obtain it would be prohibitive because of small sales volumes in the marine industry.

11. *Section 58.30–25(a).* Proposed § 58.30–25(a) would allow accumulators that do not contain dangerous substances to meet either the applicable requirements in Proposed § 54.01–5 or the remaining requirements in Part 54. The rationale for this proposal is the same as the rationale provided in paragraph 10 for nonstandard fluid conditioner fittings.

12. *Miscellaneous changes.* Several of the proposed changes are necessary to avoid redundancy and to provide a clearer presentation of existing requirements. For example, existing S/S/54.10–17 and 54.01–16 would be deleted since they are included in proposed S/54.01–5, and existing S/54.20–10 would be deleted since it is non-regulatory and has little useful meaning. The remaining provisions affected are: § 50.05–1(e); § 50.15–5(c); § 54.01–1; § 54.01–5(a) through (c)(2), –5(c)(4), –5(f) and –5(g); footnotes 6 and 7 to Table 54.01–5(b); § 54.10–3(b); § 54.10–20(a) and –20(c)(1); § 54.20–3(c); 54.20–10; § 56.15–1(f); § 61.10–5(b); § 61.10–5(e)(6); and § 61.10–5(h)(1).

Draft Evaluation

13. These proposed regulations are considered to be nonsignificant and, accordingly, a draft evaluation has been prepared and placed in the public docket as required by the Department of Transportation's Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). The DOT order requires that each draft evaluation include an economic analysis which quantifies, to the extent practicable, the estimated cost of the regulations to the private sector, consumers, and Federal, State and local governments as well as the anticipated benefits and impacts of the regulations.

14. As stated in the draft evaluation, this proposal would result in an approximate annual dollar savings of $0.5 million for manufacturers and $0.34 million for the Coast Guard. The expected benefit of this proposal, in addition to the $.84 million annual saving, would be the substantial amount of time saved by manufacturers in obtaining required inspections of pressure vessels. Also, Coast Guard inspectors would acquire more time in which to perform required inspections of other types of marine equipment that cannot effectively be inspected by independent parties.

In accordance with the foregoing, the Coast Guard proposes to amend the Marine Engineering Regulations in Subchapter F of Title 46, Code of Federal Regulations, as follows:

PART 50—GENERAL PROVISIONS

1. The authority citation for Part 50 is revised to read as follows:

Authority: S/5, 49 Stat. 1384 (46 U.S.C. 369); R.S. 4405, as amended (46 U.S.C. 375); S/3, 70 Stat. 152, as amended (46 U.S.C. 390b); S/5, Pub. L. 95–474, 92 Stat. 1480 (46 U.S.C. 391a); S/1, Pub. L. 85–739, 72 Stat. 833, as amended

(46 U.S.C. 404); Pub. L. 93–370, 88 Stat. 423 (46

of this section. Compliance with other

Table 54.01–5(b)—Pressure Vessel

inspection, the pressure vessel complies

except that Coast Guard shop inspection

(6) Pressure vessels not stamped with

(46 U.S.C. 404); Pub. L. 93-370, 88 Stat. 423 (46 U.S.C. 4110; R.S. 4462, as amended (46 U.S.C. 416); S/1 Pub. L. 86-244, 73 Stat. 475 (46 U.S.C. 481); S/17, 54 Stat. 166 (46 U.S.C. 526p); S/4, 67 Stat. 462 (43 U.S.C. 1333(d)); S/3, 68 Stat. 675 (50 U.S.C. 198); S/6, 80 Stat. 938 (49 U.S.C. 1655(b)); E.O. 12234, 45 FR 58801; 46 CFR 1.46.

§ 50.05-1 [Amended]

2. In § 50.05-1(e) remove the words "§ 54.01-16 and".

3. Revise § 50.15-5(c) to read as follows:

§ 50.15-5 ASME Boiler and Pressure Vessel Code.

* * * * *

(c) Except as required in S/54.01-5 of this chapter, manufacturers constructing boilers, pressure vessels, and safety valves for installation on vessels subject to the regulations in this subchapter need not hold the applicable ASME Code symbol stamps.

* * * * *

PART 54—PRESSURE VESSELS

4. The authority citation for Part 54 is revised to be the same as the authority stated above for Part 50.

§ 54.01-1 [Amended]

5. In § 54.01-1, remove the last sentence of paragraph (a) and delete paragraph (a)(1).

6. Revise § 54.01-5 to read as follows:

§ 54.01-5 Scope (modifies U-1 and U-2).

(a) This part contains requirements for pressure vessels. Table 54.01-5(a) gives a breakdown by parts in this subchapter of the regulations governing various types of pressure vessels, boilers, and thermal units.

(b) Pressure vessels are divided into Classes I, I-L (low temperature), II, II-L (low temperature), and III. Table 54.01-5(b) describes these classes and sets out additional requirements for welded pressure vessels.

(c) The requirements for pressure vessels by class are as follows:

(1) Class I-L and II-L pressure vessels must meet the applicable requirements in this part.

(2) Pressure vessels containing dangerous substances must meet either the applicable requirements in this part or in Part 146 of this chapter.

(3) Except as provided in paragraph (c)(4) of this section, Class I, II, and III pressure vessels not containing dangerous substances must be designed and constructed in accordance with the requirements in Section VIII, division 1, of the ASME Code and must be stamped with the ASME "U" symbol. These pressure vessels must also comply with the requirements that are listed or prescribed in paragraphs (d) through (g) of this section. Compliance with other provisions in this part is not required.

(4) Class II and III pressure vessels that have a net internal volume of less than 0.14 cubic meters (5 cubic feet) and do not contain dangerous substances must be stamped with either the ASME "U" or "UM" symbol. Compliance with other provisions in this part is not required.

(d) Pressure vessels described in paragraph (c)(3) of this section must—

(1) Have detailed plans that include the information required by § 54.01-18;

(2) Meet § 54.01-35 and § 54.25-3;

(3) Have pressure relief devices required by subpart 54.15;

(4) Meet the applicable requirements in §§ 54.10-3, 54.10-20, and 54.10-25 for inspection, reports, and stamping;

(5) If welded, meet the post weld heat treatment and minimum joint and radiography requirements in Table 54.01-5(b);

(6) If a heat exchanger, meet § 54.01-2; and

(7) If a steam generating pressure vessel, meet § 54.01-10.

(e) The plans required by paragraph (d)(1) of this section must be certified by a registered professional engineer to meet the design requirements in paragraph (d) of this section and in section VIII, division 1, of the ASME Code. The certification must appear on all drawings and analyses. The plans must be made available to the Coast Guard prior to the inspection required by § 54.10-3(c).

(f) If a pressure vessel has more than one independent chamber and the chambers have different classifications, each chamber must, as a minimum, meet the requirements for its classification. If a single classification for the entire pressure vessel is preferred, the classification selected must be one that is required to meet all of the regulations applicable to the classification that is not selected. For example, if one chamber is Class I and one chamber is Class II-L, the only single classification that can be selected is Class I-L.

(g) The design pressure for each interface between two chambers in a multichambered pressure vessel must be—

(1) The maximum allowable working pressure (gage) in the chamber with the higher pressure; or

(2) If one chamber is a vacuum chamber, the maximum allowable working pressure (absolute) in the other chamber minus the least operating pressure (absolute) in the vacuum chamber.

7. Revise the heading of Table 54.01-5(b) to read as follows:

Table 54.01-5(b)—Pressure Vessel Classification

(Special heat exchanger requirements excluded, see S/54.01-2)

8. In Table 54.01-5(b) add a reference to footnotes 6 and 7 after the phrase "Minimum joint requirements[1]". As revised, the phrase would read "Minimum joint requirements [1,6,7]".

9. In Table 54.01-5(b) add a reference to footnote 7 after the phrases "Minimum radiography requirements, section VIII, ASME Code" and "Post Weld heat treatment required[5]". As revised, the phrases would read "Minimum radiography requirements, Section VIII, ASME Code [7]" and "Post weld heat treatment required [5,7]".

10. In Table 54.01-5(b) add a reference to footnote 4 after the word "yes" the first time it appears under the column entitled "Shop Inspection Required", and the first time it appears under the column entitled "Plan approval Required", to denote that certain Class I pressure vessels are exempt from plan approval and shop inspection.

11. Add new footnotes 6 and 7 to Table 54.01-5(b) to read as follows:

A butt-welded joint with one plate edge offset (see Figure UW-13.1(k) and table UW-12 of the ASME Code) may only be used in the fabrication of Class II and III pressure vessels.

These requirements apply only to welded pressure vessels.

12. Revise the heading and paragraph (a)(4) in § 54.01-15 to read as follows:

§ 54.01-15 Exemptions from shop inspection and plan approval (replaces U-1(c)(6) through (9)).

(a) * * *

(4) Class I, II, and III pressure vessels that meet the requirements of § 54.01-5(c)(3), and -5(c)(4).

* * * * *

§ 54.01-16 [Removed]

13. Remove § 54.01-16.

§ 54.10-3 [Amended]

14. Remove the second sentence in § 54.10-3(b).

15. Add a new § 54.10-3(c) to read as follows:

§ 54.10-3 Marine inspectors (replaces UG-90 and UG-91, and modifies UG-92 through UG-103).

* * * * *

(c) Pressure vessels described in § 54.01-5(c)(3), except pressure vessels in systems regulated under § 58.60 of this chapter, must be visually examined by a marine inspector prior to installation. The marine inspector also reviews the associated plans and manufacturers' data reports. If, upon inspection, the pressure vessel complies with the applicable requirements in § 54.01-5, the marine inspector stamps the pressure vessel with the Coast Guard Symbol.

§ 54.10-17 [Removed]

16. Remove § 54.10-17.

17. Revise § 54.10-20(a) to read as follows:

§ 54.10-20 Marking and stamping.

(a) *Pressure vessels (replaces UG-116, except paragraph (k), and UG-118).* Pressure vessels that are required by § 54.10-3 to be stamped with the Coast Guard Symbol must also be stamped with the following information:

* * * * *

(4) Maximum allowable working pressure ———kPa (———psig) at ———C (———F).

(7) Water capacity in liters (U.S. gallons), if a cargo carrying pressure vessel.

* * * * *

§ 54.10-20 [Amended]

18. In § 54.10-20(c)(1), insert the words "Coast Guard shop" after the word "requiring".

19. Add a new § 54.10-25(c) to read as follows:

§ 54.10-25 Manufacturers' data report forms (modifies UG-120).

* * * * *

(c) If a pressure vessel is required to be inspected in accordance with § 54.10-3(c), the manufacturer's data reports required by UG-120 must be made available to the Coast Guard inspector for review to inspection of the pressure vessel.

§ 54.20-3 [Amended]

20. Remove and reserve § 54.20-3(c).

§ 54.20-10 [Removed]

21. Remove § 54.20-10.

PART 56—PIPING SYSTEMS AND APPURTENANCES

22. The authority for Part 56 is revised to be the same as the authority stated above for Part 50.

23. In § 56.15-1, revise paragraphs (e) and (f) as follows:

§ 56.15-1 Fittings.

* * * * *

(e) The following requirements apply to nonstandard fluid conditioner fittings which do not contain dangerous substances:

(1) The nonstandard fluid conditioner fittings listed below must meet the applicable requirements in § 54.01-5(c)(3), -5(c)(4), and -5(d) of this chapter or the remaining provisions in Part 54, except that Coast Guard shop inspection is not required:

(i) Nonstandard fluid conditioner fittings that have a net internal volume greater than 0.04 cubic meters (1.5 cubic feet) and that are rated for temperatures or pressures exceeding those specified as minimums for Class I piping systems.

(ii) Nonstandard fluid conditioner fittings that have an internal diameter exceeding 15 centimeters (6 inches) and that are rated for temperatures or pressures exceeding those specified as minimums for Class I piping systems.

* * * * *

(f) Nonstandard fluid conditioner fittings rated above 103 kPa (15 psig), that contain dangerous substances regulated under Part 146 of this chapter must meet the applicable requirements of Part 54 of this chapter, except Subpart 54.10.

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

24. The authority for Part 58 is revised to be the same as the authority stated above for Part 50.

25. Revise the second sentence in § 58.30-25(a) to read as follows:

§ 58.30-25 Accumulator

(a) * * * Accumulators must meet the applicable requirements in § 54.01-5(c)(3), -5(c)(4), and -5(d) of this chapter or the remaining requirements in Part 54.

* * * * *

§ 58.60-3 [Amended]

26. In § 58.60-3, remove the citation "§ 54.01-16" and insert in its place the words "the applicable requirements in § 54.01-5 of this chapter".

PART 61—PERIODIC TESTS AND INSPECTIONS

27. The authority for Part 61 is revised to be the same as the authority stated above for Part 50.

§ 61.10-5 [Amended]

28. In the first sentence of § 61.10-5(b), remove the words "Pressure vessels that required initial shop inspection and pressure vessels that are accepted under § 54.01-16" and insert in their place the words "Pressure vessels that are stamped with the Coast Guard symbol and pressure vessels in systems regulated under Subpart 58.60 of this subchapter".

29. Revise § 61.10-5(e)(6) to read as follows:

§ 61.10-5 Periodic inspection

* * * * *

(e) * * *

(6) Pressure vessels not stamped with the Coast Guard Symbol.

* * * * *

§ 61.10-5 [Amended]

30. In the first sentence of § 61.10-5(h)(1), remove the words "have been pneumatically tested during shop inspection" and insert in their place the words "that were pneumatically tested before being stamped with the Coast Guard Symbol".

Dated: December 22, 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 80-40401 filed 12-24-80; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 80-632]

Overseas Communications Services; Correction

AGENCY: Federal Communication Commission.

ACTION: Correction in Notice of Proposed Rulemaking.

SUMMARY: This document corrects a proposed rule on Overseas Communications Services published on November 19, 1980 (45 FR 76498). Possibly misleading and nonessential language in paragraph 13 is deleted. Footnote 11 is modified.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Stuart Chiron, Common Carrier Bureau, 202-632-7265.

In the matter of Overseas Communications Services, CC Docket No. 80-632.

Released: December 9, 1980.

1. It has come to the staff's attention that language in paragraph thirteen in the subject Notice of Proposed Rulemaking may be misleading. We will therefore delete this nonessential language and change footnote 11. Footnotes 12 and 13 are unchanged.

Federal Communications Commission.

Philip L. Verveer,

Chief, Common Carrier Bureau.

The following corrections are made in FR Doc. 80-36092 appearing on page 76498 in the issue of November 19, 1980:

1. On page 76501, column one, paragraph 13 is corrected to read:

1964 to 1980

"13. Since 1964, the Commission has consistently protected the IRCs from competition by AT&T in the international record market. Moreover, the Commission has authorized the IRCs

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1964 to 1980

"13. Since 1964, the Commission has consistently protected the IRCs from competition by AT&T in the international record market. Moreover, the Commission has authorized the IRCs to provide enhanced Datel service in direct competition with AT&T's existing Dataphone service in the U.S. Mainland-Hawaii record market.[11] The Commission's *TAT–4* bar has not been absolute. Waivers have been issued under special circumstances such as NASA programs.[12] The major case between 1964 and 1980 concerning international record carriage is our 1980 *Dotaphone* decision.[13] While this recent decision expressly did not modify the *TAT–4* decision, it indicated that the present international voice/record dichotomy is based on policy, not law. In authorizing AT&T to employ its overseas MTS network for the transmission of facsimile, data and other record communications on a secondary basis, the Commission emphasized that such use was an efficient utilization of facilities, satisfied an unmet need, and gave added flexibility to AT&T's customers. We stated that additional competition in the international record market would stimulate the IRCs to innovate and provide services more efficiently at cost-based rates in order to compete effectively. We also found that the introduction of overseas dataphone service would not undermine the IRCs."

2. On page 76501, footnote 11 is corrected to read:

[11] ITT World Communications Inc., 2 F.C.C. 2d 573 (1966).

[FR Doc. 80-39794 Filed 12-24-80; 8:45 am]
BILLING CODE 6712-01-M

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Subcommittee of the Pacific Crest National Scenic Trail Advisory Council; Meeting

The Oregon Subcommittee of the Pacific Crest National Scenic Trail Advisory Council will meet at 10:00 a.m. Wednesday, February 18, 1981. The meeting location will be room 690, Multnomah Building, 319 S.W. Pine Street, Portland, Oregon.

The purpose of the meeting is to review alternatives, issues and concerns from which to develop the Pacific Crest National Scenic Trail Comprehensive Plan for acquisition, management, development, and use of the trail.

The meeting will be open to the public. Persons who wish additional information should contact Roger Long, in care of Regional Forester, Pacific Northwest Region, Forest Service, P.O. Box 3623, Portland, Oregon 97208. Phone (503) 221–3611.

Dated: December 16, 1980.

Zane G. Smith, Jr.,
Regional Forester, Pacific Southwest Region.

[FR Doc. 80-40327 Filed 12-24-80; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Bullskin Township Parks Critical Area Treatment RC&D Measure, Pennsylvania

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT:
Mr. Graham T. Munkittrick, State Conservationist, Soil Conservation Service, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108, telephone 717–782–2202.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bullskin Township Parks Critical Area Treatment RC&D Measure, Fayette County, Pennsylvania.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Graham T. Munkittrick, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. The planned works of improvement include conservation practices such as waterways, rock riprap, subsurface drains, a catch basin, a surface inlet, and seeding. Estimated construction cost is $31,300.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Graham T. Munkittrick. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A–95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: December 8, 1980.

Joseph W. Haas,
Deputy Chief for Natural Resource Projects.

[FR Doc. 80-40221 Filed 12-24-80; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Purdue University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M., and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number 80–00314. Applicant: Purdue University, FREH Hall, W. Lafayette, IN 47907. Article: Superconducting 4.6T Wide Bore Solenoid. Manufacture: Oxford Instruments, Ltd., United Kingdom. Intended use of article: The article is intended to be used to carry out a wide scope of health related projects, e.g., isolation and structure elucidation of novel antineoplastic agents from higher plants, structure and mobility of plastoquinone in membranes, structure elucidation of microbial natural products, the role of chlorophyll in photosynthesis, etc. Specific problems under investigation include:

(1) The active sites of serine proteinases;

(2) The mechanism of interactions between proteinase inhibitors and proteinases;

(3) The structures of glycoproteins;

(4) The mechanism of folding staphylococoal and nuclease; and

(5) The mechanism of electron transport in photosynthesis.

The article will also be used for educational purposes in the course Chemistry #696B which is designed as an introduction to the theory of NMR spectroscopy and its applications to biochemical problems.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended

to be used, is being manufactured in the United States.

Reasons: The application relates to a compatible accessory for an instrument that had been previously imported for the use of the applicant institution. The

Treasury Decision 74–77 (39 FR 54388). The Department has now completed its administrative review of that antidumping finding.

Scope of the Review

publication of these final results. This latter requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1)

in its memorandum dated August 21, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or

fiber from Finland was published in the **Federal Register** as Treasury Decision 79–87 (44 Federal Register 17156). On January 1, 1980, the provisions of Title I of the Trade Agreements Act of 1979

Act and section 205 of the Antidumping Act, since Kemira Oy Sateri sold such or similar merchandise in Finland in sufficient quantities to provide an adequate basis for comparison.

to be used, is being manufactured in the United States.

Reasons: The application relates to a compatible accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-40242 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-25-M

Racing Plates (Aluminum Horseshoes) From Canada; Final Results of Administrative Review of Antidumping Finding

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On August 15, 1980, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on racing plates (aluminum horseshoes) from Canada. The scope of the review was limited to the only known exporter—the Canadian Racing Plate Co. Limited—and to three separate time periods.

Interested parties were given an opportunity to submit written comments on this preliminary determination. Based on comments received from the exporter, the Department made adjustments which resulted in new weighted-average margins.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-4106).

SUPPLEMENTARY INFORMATION:

Background

On February 27, 1974, a dumping finding with respect to racing plates (aluminum horseshoes) from Canada was published in the **Federal Register** as Treasury Decision 74-77 (39 FR 54388). The Department has now completed its administrative review of that antidumping finding.

Scope of the Review

The imports covered by this review are described in the notice of preliminary results.

The Department knows of only one Canadian exporter of racing plates to the United States. That firm is the Canadian Racing Plate Co. Limited.

The review covered all time periods for which information is available, that is, all periods up to January 31, 1980, during which shipments by the Canadian Racing Plate Co. Limited may have been and for which appraisement instructions ("master lists") have not been issued.

The Department received written comments and supporting documentation only from the exporter, made adjustments to the United States price in light of those comments, and recalculated the margins. The adjustments to the United States price consisted of the addition of a duty drawback paid by the Canadian Government to the Canadian Racing Plate Co. Limited for the aluminum imported from the United States and the recalculation of the United States price to reflect that sales were transacted in U.S. dollars rather than Canadian dollars.

Results of the Review

As a result of our comparison of the adjusted United States price to foreign market value, we determine that the following weighted-average margins exist:

	Percent margin
October 1, 1976—September 30, 1977	11.65
December 1, 1978—November 30, 1979	31.94
December 1, 1979—January 31, 1980	*31.94

*No shipments during current period.

The Department shall determine, and the U.S. Customs Service shall assess duties on all entries made during the time periods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions separately on each exporter directly to the Customs Service.

Further, as required by section 353.48(b) of the Commerce Regulations, a cash deposit based upon the most recent of the margins calculated above, that is, 31.94 percent of the entered value, shall be required on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results. This latter requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.53 of the Commerce Regulations (19 CFR 353.53, 45 FR 8205).

John D. Greenwald,

Deputy Assistant Secretary, Import Administration.

December 16, 1980.

[FR Doc. 80-40240 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-25-M

Smithsonian Institution; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5 p.m. in Room 3109 of the Department of Commerce Building, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

Docket Number 80-00257. Applicant: Smithsonian Institution, 1000 Jefferson Drive SW., Washington, D.C. 20560. Article: Model M5A Dissecting Microscope with Camera Lucida Drawing Attachment. Manufacturer: Wild Heerbrugg Instrument Co., Switzerland. Intended use of article: The article is intended to be used in a teaching laboratory for use by those of the public with an avocation in the sciences (individuals and classes) who would otherwise have no outlet for their interests. Most classes would be non-credit and would cover plant and animal identification and more technical studies related to ecology and the natural sciences. It is also anticipated that special advanced courses for credit would be offered to gifted high school students.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a camera lucida which is an integral part of the apparatus. The Department of Health and Human Services advises

in its memorandum dated August 21, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-40243 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-25-M

Viscose Rayon Staple Fiber From Finland; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: This notice is to advise the public that the Department of Commerce has conducted an administrative review of the antidumping finding on viscose rayon staple fiber from Finland. The review covers the only known exporter to the United States, Kemira Oy Sateri, and covers two separate time periods, November 16, 1978, through December 31, 1978, and January 1, 1979, through February 29, 1980. The review indicates the existence of dumping margins on shipments during both time periods. As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between foreign market value and United States price on shipments entered during these periods. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: J. Linnea Bucher, or Michael Galbraith, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-2704).

SUPPLEMENTARY INFORMATION:

Procedural Background

On March 21, 1979, a dumping finding with respect to viscose rayon staple fiber from Finland was published in the **Federal Register** as Treasury Decision 79-87 (44 Federal Register 17156). On January 1, 1980, the provisions of Title I of the Trade Agreements Act of 1979 became effective. On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Treasury Department to the Department of Commerce ("the Department"). The Department published in the **Federal Register** of March 28, 1980 (45 Fed Reg 20511-12) a notice of intent to conduct administrative reviews of all outstanding dumping findings. As required by section 751 of the Tariff Act of 1930 ("the Act"), the Department has conducted an administrative review of the finding on viscose rayon staple fiber from Finland.

Scope of the Review

This review covers imports of viscose rayon staple fiber (except solution dyed) in noncontinuous form, not carded, not combed, and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments). These are currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated (TSUSA). The only known Finnish exporter to the United States is Kemira Oy Sateri.

The review covers the two time periods since suspension of liquidation for which information is available, that is, up to February 29, 1980, during which shipments by Kemira Oy Sateri were made and for which appraisement instructions ("master lists") have not been issued. These two time periods are: November 16, 1978, through December 31, 1978; January 1, 1979, through February 29, 1980.

United States Price

In calculating United States price, the Department has used purchase price as defined in section 772(b) of the Act and section 203 of the Antidumping Act of 1921, as amended (Antidumping Act) for periods prior to January 1, 1980, since all sales by Kemira Oy Sateri were made to unrelated purchasers. Purchase prices here are ex-factory and are derived from the C.I.F. duty paid price with deductions for U.S. and Finnish inland freight, ocean freight, insurance, U.S. duty and sales commissions, where applicable. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department has used home market price as defined in section 773(a) of the Act and section 205 of the Antidumping Act, since Kemira Oy Sateri sold such or similar merchandise in Finland in sufficient quantities to provide an adequate basis for comparison.

The firm sold 11% of its total production in Finland during the periods reviewed. The home market prices here are based on the F.O.B. net price less deductions for cash discounts and for selling expenses in the home market limited by the amount of the actual commissions paid on sales to the United States in accordance with § 353.15(c) of the Commerce Regulations.

An adjustment has also been made to reflect differences in moisture content. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of the United States price to foreign market value for all shipments reported by the exporter, we preliminarily determine that the following margins exist:

	Present margins
November 16, 1978, through December 31, 1978	8.7
January 1, 1979, through February 29, 1980	4.0

The Department shall determine, and the U.S. Customs Service shall assess, duties on all entries made during the time periods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as required by § 353.48(b) of the Commerce Regulations, a cash deposit based on the most recent weighted average margin calculated, that is, 4.0 percent of the entered value, shall be required for all shipments from Kemira Oy Sateri entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. This cash deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 15 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1)

of the Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: December 18, 1980.

John D. Greenwald,

Deputy Assistant Secretary for Import

Eligible applicants: individuals, corporations, educational institutions and others, including local, State and Federal agencies are eligible to submit proposals.

Dated: December 18, 1980.

Section 3. Delegation of Authority

.01 Pursuant to the authority vested in the Secretary of Commerce by law, including Reorganization Plan No. 5 of 1950 and 15 U.S.C. 1516, and subject to such policies and directives as the

payments, international investment, and regional accounts;

b. Maintain and improve economic measures of environmental change and national well-being within the framework of the economic accounts;

"mm. The functions contained in Title II of Public Law 96-199, March 5, 1980, 94 Stat. 74."

David Farber,

Deputy Assistant Secretary for Operations.

[FR Doc. 80-40247 Filed 12-24-80; 8:45 am]

numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27483), and August 12, 1980 (45 FR 53506)).

This letter and the actions taken

of the Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: December 18, 1980.

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 80-40241 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Opportunity for Financial Assistance for Marine Pollution Research

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) through its Office of Marine Pollution Assessment, announces programs of financial grants assistance for: (1) research related to effects of pollution and human-induced changes of marine ecosystems (including ecosystems of the Great Lakes) under Sections 201 and 202 of Public Law 95-532 (Marine Protection Research and Sanctuaries Act 1972), and (2) research and development and monitoring projects needed to meet priorities set forth by Section 6 of Public Law 95-273 (National Ocean Pollution Research and Development Monitoring Planning Act of 1978).

ADDRESSES: Interested persons may request information on proposal preparation and evaluation and FY-81 priorities and funding levels from: Long-Range Effects Research Program, Office of Marine Pollution Assessment (RD/MP2), National Oceanic and Atmospheric Administration, 325 Broadway, Boulder, CO 80303.

FOR FURTHER INFORMATION CONTACT: R. C. Farentinos, 303-497-6486.

SUPPLEMENTARY INFORMATION: Some of the general areas of research for which grants proposals may be requested include the following: processes by which contaminants such as synthetic organics, petroleum products, inorganic or organic wastes interact with marine systems and affect living resources; role of resuspended particulates in marine ecosystems; coastal land-use practices; municipal sewage disposal; development of risk analysis methods; ecosystem processes and living marine resources. Although efforts supported will have an applied orientation and may include work related to specific waste disposal operations, research of a more basic nature may also be addressed, especially in regard to ecosystem function and stability.

Eligible applicants: individuals, corporations, educational institutions and others, including local, State and Federal agencies are eligible to submit proposals.

Dated: December 18, 1980.

Francis J. Balint,

Acting Director, Office of Management and Computer Systems.

[FR Doc. 80-40335 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-12-M

[Department Organization Order 35-1A; Transmittal 533]

Department Organization Order; Bureau of Economic Analysis

Office of the Secretary

Effective Date: November 18, 1980.

This order effective November 18, 1980 supersedes the material appearing at 40 FR 42766 of September 16, 1975, 41 FR 8520 of February 27, 1976, 42 FR 23676 of May 10, 1977, 43 FR 43534 of September 26, 1978, and 45 FR 69534 of October 21, 1980.

Section 1. Purpose

.01 This Order delegates authority to the Director of the Bureau of Economic Analysis and prescribes the functions of the Bureau of Economic Analysis.

.02 This revision incorporates outstanding amendments to the Order, deletes the authority for functions under the Foreign Investment Study Act of 1974, which has expired, and makes the following additional changes:

a. Functions under the International Investment Survey Act of 1976 are incorporated (paragraph 4.a.).

b. Functions concerning the maintenance and improvement of measures relating to environmental change and to welfare are incorporated (paragraph 4.b.).

c. Functions related to foreign demographic and economic studies are deleted. These functions are now handled by the Bureau of the Census.

Section 2. Status and Line of Authority

01 The Bureau of Economic Analysis is hereby continued as a primary operating unit of the Department of Commerce.

.02 The Bureau of Economic Analysis shall be headed by a Director who shall report and be responsible to the Chief Economist of the Department. The Director shall be assisted by a Deputy Director who shall perform the functions of the Director during the former's absence.

Section 3. Delegation of Authority

.01 Pursuant to the authority vested in the Secretary of Commerce by law, including Reorganization Plan No. 5 of 1950 and 15 U.S.C. 1516, and subject to such policies and directives as the Secretary may prescribe, the Director is hereby delegated authority to perform the following functions vested in the Secretary of Commerce under:

a. Section 1516 of Title 15, United States Code, which relates to gathering and distributing statistical information, as applicable to the functions assigned herein;

b. Chapter 5 of Title 15, United States Code, which relates to the authorities and functions of the former Bureau of Foreign and Domestic Commerce, as applicable to the functions assigned herein;

c. Executive Order 10033 of February 8, 1949, which relates to the provision of statistical information to inter-governmental organizations, as applicable to the functions assigned herein; and

d. Section 3 of Executive Order 11961 of January 19, 1977, as amended by E.O. 12013 of October 7, 1977, which delegates to the Secretary of Commerce the authority of the President under Section 4(a)(1), (2), (4), and 4(b), of the International Investment Survey Act of 1976 (Public Law 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108). The functions thereunder shall be carried out in coordination with the Under Secretary for International Trade (Department Organization Order 10-3), including, to the extent feasible, the division or assignment of responsibilities. All regulations established by the Bureau of Economic Analysis to carry out functions under the Act shall be issued by the Director of the Bureau in consultation with the Under Secretary for International Trade. All reports required to be undertaken pursuant to the Act shall be issued by the Secretary.

.02 The Director may exercise other authorities of the Secretary as applicable to performing the functions assigned in this Order.

.03 The Director may delegate the authority conferred by this Order to any employee of the Bureau subject to the conditions in the exercise of such authority that the Director may prescribe.

Section 4. Function

The Bureau of Economic Analysis shall perform the following functions:

a. Maintain and improve the economic accounts of the United States including the national income and product, wealth, input-output, balance of payments, international investment, and regional accounts;

b. Maintain and improve economic measures of environmental change and national well-being within the framework of the economic accounts;

c. Maintain and improve econometric and other research techniques for analyzing the economic situation and short- and long-term outlook;

d. Conduct selected surveys to obtain information necessary to maintain and improve the accounts and to analyze the economic situation and outlook;

e. Develop and maintain a system of leading, lagging, and coincident business cycle indicators;

f. Analyze the economic situation and outlook, publish reports thereon, and brief Federal officials and public and private groups on the present and projected state of the economy;

g. Provide special analyses to officials of the Government, as may be requested, on the economic impact of alternative economic policies; and

h. Serve as the central economic research organization of the Department on the functioning of the economy, and collaborate with other elements of the Department and private and public research which require or can contribute to this research.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-40246 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-17-M

Department Organization Order; National Oceanic and Atmospheric Administration

[Department Organization Order 25-5A; Amendment 1; Transmittal 531]

Effective Date: November 6, 1980.

This order effective November 6, 1980 amends the material appearing at 44 FR 49005 of August 21, 1979.

Department Organization Order 25-5A, dated July 12, 1979 is hereby amended as shown below. The purpose of this amendment is to delegate the authority of the Secretary to the Administrator, NOAA, under Title II of Public Law 96-199, Channel Islands National Park.

Section 3. Delegation of Authority

A new subparagraph .01mm. is added to read as follows:

"mm. The functions contained in Title II of Public Law 96-199, March 5, 1980, 94 Stat. 74."

David Farber,

Deputy Assistant Secretary for Operations.

[FR Doc. 80-40247 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-17-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Levels For Certain Cotton, Wool and Man-Made Fiber Textile Products from Taiwan, Effective on January 1, 1981

December 19, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import levels for certain cotton, wool and man-made fiber textile products from Taiwan, effective on January 1, 1981.

SUMMARY: The Bilateral Textile Agreement of June 8, 1978, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan establishes specific ceilings for cotton, wool and man-made fiber textile products in Categories 331, 333/334/335, 338/339, 340, 341, 347/348, 445/446, 633/634/635, 638, 639, 640, 641, 645/646, 648, and 659 pt., produced or manufactured in Taiwan and exported during the agreement year which begins on January 1, 1981 and extends through December 31, 1981. The United States Government will also control down and feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062 during the year which begins on January 1, 1981. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories and T.S.U.S.A. numbers, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1981 and extends through December 31, 1981, in excess of the designated levels. In accordance with consultations held during the week of December 1, 1980, it has been agreed to establish five-month interim levels for man-made fiber textile products in Category 645/646 and down and feather-filled apparel during the period beginning on January 1, 1981 and extending through May 31, 1981. (A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506)).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Ronald Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

United States Department of Commerce, International Trade Administration, Washington, D.C. 20230

December 19, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Textile Agreement of June 8, 1978, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan; and in accordance with the provisions of Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1981 and for the twelve month period extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Taiwan, in excess of the indicated levels of restraint:

Category	12-mo. level of restraint
331	468,311 doz. pairs
333/334/335	106,651 doz. of which not more than 55,855 doz. shall be in Cat. 333/334 and not more than 66,795 doz. shall be in Cat. 335.
338/339	519,948 doz.
340	638,150 doz.
341	369,662 doz.
347/348	882,414 doz. of which not more than 433,382 doz. shall be in Cat. 347 and not more than 669,636 doz. shall be in Cat. 348.
445/446	125,033 doz.
633/634/635	1,432,988 doz. of which not more than 945,079 doz. shall be in Cat. 633/634 and not more than 702,857 doz. shall be in Cat. 635.
638	1,610,499 doz.
639	5,033,179 doz.
640	3,190,085 doz.
641	696,741 doz.
648	3,058,984 doz.

Category	12-mo. level of restraint
659 pt.[1]	3,061,810 lb.

[1] In Category 659, only T.S.U.S.A. numbers 703.0500 and 703.1000.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40244 Filed 12-23-80; 8:45 am]

FOR FURTHER INFORMATION CONTACT:

Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

In carrying out this directive entries of textile products in the foregoing categories, except Categories 333/334 and 338/339 which have been exported to the United States on and after January 1, 1980 and extending through December 31, 1980 shall, to the

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

Time: 2000-2200, 14 January 1981; 0900-1630, 15 January 1981; 0900-1400, 16 January 1981.

Proposed Agenda: 2000-2200, 14 January 1981: Review of CGSC educational program. 0900-1630, 15 January 1981: Continuation of

Category	12-mo. level of restraint
659 pt.[1]	3,061,810 lb.

[1] In Category 659, only T.S.U.S.A. numbers 703.0500 and 703.1000.

You are further directed, effective on January 1, 1981 and for the five-month period extending through May 31, 1981, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of feather-filled jackets, coats and vests in T.S.U.S.A. numbers 748.4042, 748.4044, 748.4054 and 748.4062, in excess of a five-month interim level of restraint of 100,457 dozen. The five-month interim level for Category 645/646 will be 1,973,511 dozen.

In carrying out this directive entries of textile products in the foregoing categories, which have been exported to the United States on and after January 1, 1980 and extending through December 31, 1980, shall to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980. In the event that the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement of June 8, 1978, as amended, which provide in part, that: (1) within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) adminstrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 F.R. 13172), as amended on April 23, 1980 (45 F.R. 27463), and August 12, 1980 (45 F.R. 53506).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the aut. orities in Taiwan and with respect to imports of cotton, wool, and man-made fiber textile products from Taiwan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40244 Filed 12-23-80; 8:45 am]

BILLING CODE 3510-25-M

Announcing Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products From the Republic of the Philippines, Effective on January 1, 1981

December 19, 1980.

AGENCY: Committee for the Implementation of Textile Agreement.

ACTION: Establishing import levels for certain cotton, wool and man-made fiber textile products imported from the Philippines, effective on January 1, 1981.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, as amended, between the Governments of the United States and the Republic of the Philippines establishes specific ceilings for cotton, wool, and man-made fiber textile products in Categories 331, 333/334, 335, 338/339, 340, 341 pt., 442, 445/446, 604, 631, 635 pt., 636 pt., 640, 641, 645/646 pt., and 649, among categories, during the agreement year which begins on January 1, 1981, and extends through December 31, 1981. In the letter published below, the Chairman, Committee for the Implementation of Textile Agreements, directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories, produced or manufactured in the Philippines and exported during the twelve-month period which begins on January 1, 1981, in excess of the designated levels. As agreed between the two governments, the level for Category 645/646 has been reduced by 5,000 dozen to account for overshipments in the category in previous years. (A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506)).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT:

Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

United States Department of Commerce

International Trade Administration

December 19, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, as amended, between the Governments of the United States and the Republic of the Phillippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1981 and for the twelve-month period extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 331, 333/334, 335, 338/339, 340, 341pt., 442, 445/446, 604, 631, 635pt., 636pt., 640, 641, 645/646pt. and 649, produced or manufactured in the Philippines, in excess of the following levels of restraint:

Category	12-mo. level of restraint (dozen)
331	[9] 602,603
333/334	[10] 75,741
335 pt.[1]	33,539
335 pt.[2]	32,480
338/339	738,766
340	227,107
341 pt.[3]	83,110
442	6,517
445/446	17,595
604	[11] 2,094,110
631	[12] 1,557,306
635 pt.[4]	202,312
636 pt.[5]	41,457
640	95,845
641 pt.[6]	64,759
641 pt.[7]	168,244
645/646 pt.[8]	86,942
649	3,715,713

[1] In Category 335, only T.S.U.S.A. numbers 382.1202, 382.1204, 382.1206, 382.1217, and 382.1223.
[2] In Category 335, all T.S.U.S.A. numbers except those listed in footnote 1.
[3] In Category 341, all T.S.U.S.A. numbers except 382.0045, 382.3304, 382.3307 and 382.3311.
[4] In Category 635, all T.S.U.S.A. numbers in the Category except 382.7828.
[5] In Category 636, all T.S.U.S.A. numbers except 382.0414, 382.0467, 382.7833 and 382.8175.
[6] In Category 641, only T.S.U.S.A. numbers 382.0460 and 382.8139.
[7] In Category 641, all T.S.U.S.A. numbers except those listed in footnote 6.
[8] In Category 645/646, all T.S.U.S.A. numbers in the category except 382.0427 and 382.7670.
[9] Dozen pairs.
[10] Dozen of which not more than 29,504 dozen shall be in Cat. 333.
[11] Pounds.
[12] Dozen pairs.

In carrying out this directive entries of textile products in the foregoing categories, except Categories 333/334 and 338/339 which have been exported to the United States on and after January 1, 1980 and extending through December 31, 1980, shall, to the extent of any unfilled balances, be charged against the levels of retraint established for such goods during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980. In the event that the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in Categories 333/334 and 338/339 exported prior to January 1, 1981, shall not be subject to this directive.

The levels of restraint set forth above are subject to adjustment according to the provisions of the bilateral agreement of August 22 and 24, 1978, as amended, between the Governments of the United States and the Republic of the Philippines which provide, in part, that: (1) three percent growth shall be applied to certain specified ceilings during the second and each successive agreement year; and (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of the Philippines and with respect to imports of cotton, wool and man-made fiber textile products from the Philippines have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40245 Filed 12-24-80; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 19, 1980.

The USAF Scientific Advisory Board Chief's Technical Advisory Group (CTAG) will convene on 13–14 January 1981 from 9:00 a.m. to 4:30 p.m. at the Pentagon, Washington, DC.

The Advisory Group will receive classified briefings and participate in classified discussions relating to Air Force Research and Development Programs. The meetings concern matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly the meetings will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Carol M. Rose,

Air Force Federal Register, Liaison Officer.

[FR Doc. 80-40346 Filed 12-24-80; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

December 15, 1980.

The USAF Scientific Advisory Board Ad Hoc Committee on Project HEART will meet on January 16, 1981 at Pease AFB, New Hampshire. The purpose of the meeting will be to receive an update of the Air Force's Project HEART program. The meeting will convene at 8:30 a.m. and adjourn at 5:30 p.m.

The meeting will be open to the public. For further information contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 80-40209 Filed 12-24-80; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Command and General Staff College Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463) announcement is made of the following committee meeting:

Name: Command and General Staff College (CGSC) Advisory Committee
Date: 14–16 January 1981
Place: College Conference Room, Bell Hall, Ft. Leavenworth, KS 66027
Time: 2000–2200, 14 January 1981; 0900–1630, 15 January 1981; 0900–1400, 16 January 1981.
Proposed Agenda: 2000–2200, 14 January 1981: Review of CGSC educational program. 0900–1630, 15 January 1981: Continuation of review. 0900–1000, 16 January 1981: Continuation of review. 1000–1130, 16 January 1981: Executive session. 1300–1430, 16 January 1981: Report to Commandant.

The purpose of the meeting is for the Advisory Committee to examine the entire range of College operations and, where appropriate, to provide advice and recommendations to the College Commandant and Faculty.

The meeting will be open to the public to the extent that space limitations of the meeting space permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary.

Philip J. Brookes,

Executive Secretary, CGSC Advisory Committee.

[FR Doc. 80-40328 Filed 12-24-80; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Defense Science Board Task Force on Anti-Tactical Missiles; Advisory Committee Meeting

The Defense Science Board Task Force on Anti-Tactical Missiles (ATM) will meet in closed session on 27–28 January 1981 in Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At its meeting on 27–28 January 1981 the Defense Science Board Task Force on ATM will review the potential enemy development of new ballistic and cruise missiles and propose and evaluate options for countering such threats.

In accordance with 5 U.S.C. App. 1 § 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1)(1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 22, 1980.

[FR Doc. 80-40250 Filed 12-24-80; 8:45 am]

BILLING CODE 3810-70-M

Defense Science Board Task Force on

and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade

The National Advisory Council on Bilingual Education is established under

Signed at Washington, DC on December 19, 1980.

the prohibitions against petroleum or natural gas use contained in the Act.

offeror and subcontractor actively seek work with private industry to provide

V 45 D E 29 80 UMI

Defense Science Board Task Force on ECM; Advisory Committee Meeting

The Defense Science Board Task Force on ECM will meet in closed session 15–16 January 1981 at the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

The Task Force will review and finalize the draft report and make preparations for publication of the final report in April 1981.

In accordance with 5 U.S.C. APPI § 10(d) (1976), it has been determined that this Defense Sciencе Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1976); and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquorters Services, Department of Defense.

December 22, 1980.

[FR Doc. 80-40251 Filed 12-24-80; 8:45 am]

BILLING CODE 3810-70-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, effective January 5, 1973, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, February 10, 1981; and Tuesday, February 24, 1981 at 10 a.m. in Room 3D–325, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, the Federal Advisory Committee Act, meetings may be closed to the public when they are "concerned with matters listed in section 552b of Title 5, United States Code." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the Chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D–281, The Pentagon, Washington, D.C.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquorters Services, Department of Defense.

December 22, 1980.

[FR Doc. 80-40252 Filed 12-24-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF EDUCATION

National Advisory Council on Bilingual Education; Meeting

AGENCY: National Advisory Council on Bilingual Education.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Advisory Council on Bilingual Education. Notice of these meetings is required under the Federal Advisory Committee Act (U.S.C. Appendix 1, 10(a)(2)). This document is intended to notify the general public of their opportunity to attend.

DATES: January 10, 11, 12, 1981, 10:00 a.m. to 5:00 p.m.

ADDRESS: Council meetings will be held at the Reporters Building, Room 402, 300 7th Street, S.W., Washington, DC. For further information contact: Joan Cassidy, Office of Bilingual Education and Minority Languages Affairs, 400 Maryland Avenue, S.W., Reporters Building, Room 421, Washington, DC (202–245–2595).

The National Advisory Council on Bilingual Education is established under Section 732(a) of the Bilingual Education Act (20 U.S.C. 880b–11) to advise the Secretary of Education and the Director of the Office of Bilingual Education and Minority Languages Affairs concerning matters arising in the administration of the Bilingual Education Act.

The meetings of January 10, 11, and 12 will be open to the public beginning at 10:00 a.m.

January 10, 1981: A meeting of the Council on the following subjects is scheduled from 10:00 a.m. until 5:00 p.m. The proposed agenda includes the following:

Business Meeting

a. Call to Order
b. Swearing-in of New Member
c. Approval of Minutes
d. Chairperson's Report

10:30–11:00—Report on Coordination Policy OBEMLA Staff
11:00–11:30—Bilingual Vocational Education, Richard Nabor
11:30–12:00—Refugee Program, Jim Lockhart
12:00–1:15—Lunch
1:30–2:00—National Advisory Council on the Educationally Disadvantaged, Alice Baum
2:00–2:30—Migrant Education, Vic Rivera
2:30–3:00—Bureau of Indian Affairs, Oren Dabney
3:00–3:30—Office of Indian Education, Gay Lawrence
3:30–4:00—National Institute of Education, TBA
4:00–4:30—General Discussion
4:30–5:00—Public Participation

January 11, 1981: The proposed agenda includes the following:

9:00–11:00—Committee Reports, OBEMLA Report
11:00–12:00—Colloquium Orientation, Jack Levy
12:00–1:00—Lunch
1:00–4:30—Old Business, New Business
4:30–5:00—Public Participation

Jonuory 12, 1981:

9:00–5:00—OBEMLA Colloquium Participation

Records will be kept of all Council proceedings and shall be available for public inspection after approval, by the Full Council, of said records, has been obtained. These records will be available in Room 421, Reporters Building, 300 7th Street, S.W., Washington, DC. Written requests for such records should be sent to 400 Maryland Avenue, S.W., Reporters Building, Room 421, Washington, DC 20202.

In the event that the proposed agenda is completed prior to the projected date or time, the Council will adjourn the meeting.

Signed at Washington, DC on December 19, 1980.

Josué M. González,

Director, Office of Bilingual Educotion and Minority Languoges Affairs.

FR Doc. 80-40304 Filed 12-24-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Contract Award

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Proposed Contract Award.

SUMMARY: In accordance with Department of Energy Procurement Regulations, the Economic Regulatory Administration gives public notice that a contract is being awarded, after taking into account the existence of potential organizational conflicts of interest, because this procurement is determined to be in the best interest of the United States.

FOR FURTHER INFORMATION CONTACT: Ms. Linda K. Mansfield, Office of Fuels Conversion, Economic Regulatory Administration, Room 3112–I, 2000 M Street, N.W., Washington, D.C. 20461.

SUPPLEMENTARY INFORMATION: Upon the basis of the following findings, mitigation and determination, the proposed contract described below is being awarded, after taking into account the existence of potential organizational conflicts of interest, because this procurement is determined to be in the best interest of the United States pursuant to the authority of Department of Energy Procurement Regulation 41 CFR 9–1.5409(a)(3).

Findings

(1) The Department of Energy (DOE), Economic Regulatory Administration (ERA), Office of Fuels Conversion implements the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (the "Act") (Pub. L. 95–988). A primary purpose of the Act is to reduce the importation of petroleum and increase the Nation's capability to use indigenous energy resources of the United States by encouraging the greater use of coal and other alternate fuels, in lieu of natural gas and petroleum, as a primary energy source by utilities and major fuel burning installations. In implementing the Act, ERA, on an individual facility basis: (1) issues prohibition orders against the further use of petroleum or natural gas, and (2) processes petitions for exemption from the prohibitions against petroleum or natural gas use contained in the Act.

(2) To implement the Act it is necessary for ERA to obtain, by contract, technical support services regarding aspects of the economic and financial issues associated with acting on individual prohibition orders and exemption petitions. An important part of these analyses will involve collection and validation of cost data. The contractor will also perform other similar financial and economic analyses, provide computer program support, and conduct special studies as appropriate. Without such financial and economic analyses Federal decisions cannot be made and the authorities of the Act would remain unimplemented.

A notice of the issuance of the Request for Proposal (RFP) was published in the Commerce Business Daily and the RFP was sent to approximately 200 prospective offerors. Proposals were received from nine (9) firms. As a result of the evaluation process, it was determined that three (3) firms were in the competitive range. After receipt of revised proposals, only one (1) firm among the three (3) was found to have presented a technically acceptable proposal and was selected for award. The selected firm was Energy and Environmental Analysis, Inc., and its proposed subcontractor, Hagler, Bailly & Company.

(3) In accordance with 41 CFR 9–1.5405, all three (3) offerors in the competitive range provided disclosure of information concerning their interests related to the contract work to be performed. To aid in the information-gathering process, questions concerning the nature of their businesses were provided to each contractor. As a result of this process, DOE was furnished with information concerning whether possible organizational conflicts of interest exist with respect to (1) a contractor's ability to render impartial, technically sound and objective assistance or advice, and (2) whether an unfair competitive advantage may be conferred on a contractor as a result of performing specific tasks.

(4) As Energy and Environmental Analysis, Inc., was selected for award, DOE thoroughly reviewed the information submitted by Energy and Environmental Analysis, Inc., and its proposed subcontractor, Hagler, Bailly & Company. After this review, DOE was unable to find that there is little or no likelihood that a possible organizational conflict of interest exists for the selected offeror or its proposed subcontractor. This result is due to the nature of the business in which the offeror and its subcontractor are engaged. Both the offeror and subcontractor actively seek work with private industry to provide financial and economic services similar to that required by this procurement. Any such firm could stand to benefit economically in that the firm's financial and economic support services could become more attractive to those companies for which the firm has performed company-specific financial and economic analyses under this procurement.

(5) By this award to the selected offeror, the possibility exists that the firm would be simultaneously performing similar financial and economic services both for the Government and for private clients in support of different actions occurring under the Act.

Mitigation

(1) The following mitigation procedure will be implemented under this procurement to avoid an organizational conflict of interest to the maximum feasible extent. Prior to performing a task, the contractor will submit a statement as to whether performing that task for the Government would create a conflict because of work performed for the company in question under a past, present, or currently planned relationship. The contractor will also be required to state whether performing that task would require the firm to review any work the firm had previously performed for the Government. Similar information will be required from the subcontractor. DOE will independently review that statement and, if a conflict is found, the contractor will be disqualified and the task will be assigned to another contractor or will be completed with other resources at DOE's disposal. In the case of a prohibition by rule for a class of powerplants or major fuel buring installations, DOE will prior to the contractor's performing any task establish that no conflict exists for any facility included in the class.

(2) As stated in the RFP, all work performed by the contractor under this procurement will be independently reviewed by DOE. All policy decisions and judgments will be made by the Government and the contractor will play an advisory role only. In addition, all contactor analyses pertinent to the financial and economic findings will become a part of the public record of the particular action in question and thus will be subject to close third-party scrutiny for the validity of the financial and economic analyses presented.

(3) Similarly, any work which the contractor might perform for a private client and which is submitted by that

company as part of an action under the Act will also become part of the public

Domestic Crude Oil Allocation Program; Entitlements Notice for

deemed old oil included in a refiner's adjusted crude oil receipts for the month

delivery into the SPR in the month of November 1980. An entry in the

	Volumes in thou-	Weight- ed	Percent of total

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company as part of an action under the Act will also become part of the public record subject to a confidentiality determination, and will be subject to review and comment. Furthermore, any information so developed for and submitted by a company would be independently evaluated and verified by DOE (either by other support contractors or by another resource at DOE's disposal) before it is used in support of a Government decision.

(4) The contract awarded under this procurement will include the Organizational Conflicts of Interest Special Clause (41 CFR 9–1. 5408–2(b)) which will apply to both the contractor and subcontractor. The primary purpose of this clause is to aid in ensuring that the contractor is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(5) The contractor and subcontractor will be specifically prohibited from securing business from or contracting with any company for which company-specific financial or economic analyses have been performed by the contractor for ERA under this contract for (a) the period of performance of this contract (including the option year if exercised by DOE), or (b) one year after the completion of such analysis, whichever provides the longer prohibition interval.

(6) The contractor and subcontractor will be specifically prohibited from securing business from or contracting with any company for which company-specific financial or economic analyses have been performed by the contractor for ERA under this contract, for financial and economic analyses of issues under the Act for a period of three (3) years after completion of the analyses for ERA.

Determination

In light of the above findings and mitigation, I hereby determine in accordance with 41 CFR 9–1.5409(a)(3) that award of this contract would be in the best interests of the United States.

Dated: December 16, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

[FR Doc. 80-40232 Filed 12-24-80; 8:45 am]

BILLING CODE 6450-01-M

Domestic Crude Oil Allocation Program; Entitlements Notice for October 1980

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: October 1980 entitlements notice.

SUMMARY: Under the Department of Energy's (DOE) Domestic Crude Oil Allocation (Entitlements) Program, this is the monthly Entitlements Notice which sets forth the entitlements purchase or sale requirements of domestic refiners and eligible firms for October 1980.

DATES: Payments for entitlements required to be purchased under this notice must be made by December 31, 1980. The monthly transaction report specified in § 211.66(i) shall be filed with the DOE by January 10, 1981.

FOR FURTHER INFORMATION CONTACT:

David A. Welsh (Entitlements Program Office), Economic Regulatory Administration, 2000 M Street NW., Room 6212C, Washington, D.C. 20461, (202) 653–3873

Jeffrey Stoermer (Office of General Counsel), Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Room 6A–127, Washington, D.C. 20585, (202) 252–6754.

SUPPLEMENTAL INFORMATION: In accordance with the provisions of 10 CFR 211.67 relating to the Domestic Crude Oil Allocation Program of the Department of Energy (DOE), administered by the Economic Regulatory Administration (ERA), the monthly notice specified in § 211.67(i) is hereby published.

Based on reports for October 1980 submitted to the DOE by refiners and other firms as to crude oil receipts, crude oil runs to stills, eligible product imports, eligible petroleum substitutes, and imported naphtha utilized as a petrochemical feedstock in Puerto Rico; application of the entitlements adjustment for residual fuel oil production shipped in foreign flag tankers for sale in the East Coast market and Michigan provided in § 211.67(d)(4); application of the entitlement adjustments for California lower tier and upper tier crude oil provided in § 211.67(a)(4), November 1980 deliveries of crude oil to the Strategic Petroleum Reserve; and application of the entitlement adjustment for small refiners provided in § 211.67(e), the national domestic crude oil supply ratio for October is calculated to be .119815.

In accordance with § 211.67(b)(2), to calculate the number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for the month of October 1980 each barrel of old oil is equal to one barrel of deemed old oil, each barrel of upper tier crude oil (excluding ANS upper tier crude oil) is equal to .692778 of a barrel of deemed old oil and each barrel of ANS upper tier crude oil is equal to .354811 of a barrel of deemed old oil.

The issuance of entitlements for the month of October 1980 to refiners and other firms is set forth in the Appendix to this notice. The Appendix lists the name of each refiner or other firm to which entitlements have been issued, the number of barrels of deemed old oil included in each such refiner's adjusted crude oil receipts, the number of entitlements issued to each such refiner or other firm, and the number of entitlements required to be purchased or sold by each such refiner or other firm.

Pursuant to 10 CFR § 211.67(i)(4), the price at which entitlements shall be sold and purchased for the month of October 1980 is hereby fixed at $26.08, which is the exact differential as reported for the month of October 1980 between the weighted average per barrel costs to refiners of old oil and of imported and exempt domestic crude oil.

In accordance with 10 CFR § 211.67(b), each refiner that has been issued fewer entitlements for the month of October 1980 than the number of barrels of deemed old oil included in its adjusted crude oil receipts is required to purchase a number of entitlements for the month of October 1980 equal to the difference between the number of barrels of deemed old oil included in those receipts and the number of entitlements issued to and retained by that refiner. Refiners which have been issued a number of entitlements for the month of October 1980 in excess of the number of barrels of deemed old oil included in their adjusted crude oil receipts for the month and other firms issued entitlements shall sell such entitlements to refiners required to purchase entitlements.

The listing of refiner's old oil receipts contained in the Appendix reflects any adjustments made by ERA pursuant to § 211.67(h).

Included in the Appendix are entitlements issued pursuant to the provisions of 10 CFR 211.67(a)(5) under which ERA may approve a firm's application for designation as a producer of a petroleum substitute.

In accordance with 10 CFR 211.67(a)(7), adopted effective August 29, 1980 (45 FR 56788, August 25, 1980), the Strategic Petroleum Reserve (SPR) has been issued entitlements for crude oil purchased, delivered and accepted for delivery into the SPR in the month of November 1980. An entry in the Appendix for the SPR has been included.

The listing contained in the Appendix identifies, in a separate column labeled "Exceptions and Corrections", additional entitlements issued to refiners pursuant to relief granted by the Office of Hearings and Appeals (prior to March 30, 1978, the Office of Administrative Review of the Economic Regulatory Administration). Also set forth in this column are adjustments for relief granted by the Office of Hearings and Appeals for 1975 and 1976, which adjustments are reflicted in monthly installments. The number of installments is dependent on the magnitude of the adjustment to be made. For a full discussion of the issues involved, see *Beacon Oil Company, et al.*, 4 FEA par. 87,024 (November 5, 1976).

The listing contained in the Appendix continues the "Consolidated Sales" entry initiated in the October 1977 entitlements notice. The "Consolidated Sales" entry is equal to the October 1980 entitlements purchase requirement of Arizona Fuels. The purpose of providing for the "Consolidated Sales" entry is to ensure that Arizona Fuels is not relieved of its October 1980 entitlements purchase requirement and that no one firm will be unable to sell its entitlements by reason of a default by Arizona Fuels. For a full discussion of the issues involved, see *Entitlements Notice for October 1977* (42 FR 64401, December 23, 1977).

For the month of October 1980, imports of residual fuel oil eligible for entitlement issuances totaled 21,209,882 barrels.

In accordance with § 211.67(a)(4), the number of barrels of California lower tier and upper tier curde oil, as reported by refiners to the DOE, and the weighted average gravity thereof are as follows:

	Volumes	Weighted average gravity (degrees)
California lower tier crude oil	997,187	25
California upper tier crude oil	2,212,893	26

The total number of entitlements required to be purchased and sold under this notice is 19,369,320.

Based on reports submitted to the DOE by refiners as top their adjusted crude oil receipts for October 1980 the pricing composition and weighted average costs thereof are as follows:

	Volumes in thousands of B/D	Weighted average cost	Percent of total volumes[1]
Lower tier	893	$7.40	6.4
Upper tier (excluding ANS)	1,331	14.21	9.6
ANS upper tier	790	24.23	5.7
Exempt domestic:			
Other ANS	834	30.41	5.9
Heavy and market tier	1,876	32.59	13.5
Naval petroleum reserve	95	32.93	0.7
Newly discovered	473	36.15	3.4
Stripper	2,047	31.90	14.7
Tertiary	51	31.93	0.4
Total domestic	8,390	26.21	60.3
Imported	5,528	34.63	39.7
Total uncontrolled (exempt domestic and imported)	10,904	33.48	78.3
Total reported crude oil receipts	13,918	29.56	
Total reported crude oil runs to stills	13,288		

[1] Volumes may not total 100 percent due to rounding.

Payment for entitlements required to be purchased under 10 CFR 211.67(b) for October 1980 must be made by December 31, 1980.

On or prior to January 10, 1981, each firm which is required to purchase or sell entitlements for the month of October 1980 shall file with the DOE the monthly transaction report specified in 10 CFR 211.66(i) certifying its purchases and sales of entitlements for the month of October 1980.

The monthly transaction report forms (ERA–116) for the month of October 1980 have been mailed to all reporting firms. Firms that have been unable to locate other firms for the required entitlements transactions by December 31, 1980, are requested to contact the ERA at (202) 653–3873 to expedite consummation of these transactions. For firms that have failed to consummate required entitlement transactions on or prior to December 31, 1980, the ERA may direct sales and purchases of entitlements pursuant to the provisions of 10 CFR 211.67(k).

This notice is issued pursuant to Subpart G, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with the Office of Hearings and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before January 28, 1981.

Issued in Washington, D.C. on December 18, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

BILLING CODE 6450-01-M

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL — PAGE: 11
OCTOBER 1980

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	TOTAL ISSUED	EXCEPTIONS AND CORRECT.	ENTITLEMENT POSITION ENTITLEMENTS PRODUCT	ENTITLEMENT POSITION ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	REQUIRED TO SELL
-CONSOLID-SALES	0	0	0	0	0	0	0 1/
A-JOHNSON	0	54,599	0	6,225	0	0	54,599
ADM	0	6,807	0	0	0	0	6,807
AKRON-OHIO	0	1,568	0	0	0	0	1,568
ALEXANDRIA-VA	0	37	0	0	0	0	37
ALLIED	3,664	35,235	0	0	0	0	31,571
AMER-AGRI-FUELS	0	139	0	0	0	0	139
AMER-PETROFINA	246,005	506,998	0	0	0	0	220,003
AMERADA-HESS	1,365,781	1,872,078	0	67,769	0	0	506,297
AMERICAN-CAN-CO	0	10,081	10,081 5/	0	0	0	10,081
AMES-IOWA	0	442	0	0	0	0	442
AMOCO	6,199,131	3,377,964	0	0	0	2,821,167	0
ANCHOR	0	29,336	0	0	0	0	29,336
APEX	0	52,128	12,479 5/	39,649	0	0	52,128
ARCO	1,711,052	1,868,516	0	0	4,946	0	157,464
ARIZONA	36,014	36,014	22,009 4/	0	229	0 1/	0
ARIZONA-CHEM	0	8,731	7,175 4/5/	0	0	0	8,731
ASAMERA	53,516	87,862	0	0	0	0	34,346
ASHLAND	675,497	1,291,296	0	3,595	0	0	615,799
AZUSA-LAND	0	3,284	0	0	0	0	3,284
BALTIMORE-MD	0	19,171	0	0	0	0	19,171
BAYOU	0	9,756	0	0	0	0	9,756
BEACON	9,746	76,575	0	0	246	0	66,829
BELCHER	0	32,943	0	32,943	0	0	32,943
BELOIT-WI	0	5	0	0	0	0	5
BERGEN-COUNTY	0	993	844 5/	0	0	0	993
BI-PETRO	0	2,164	0	0	0	0	2,164
BOISE-IDAHO	0	620	0	0	0	0	620
BOSTON-QUINCY	0	278	0	0	0	0	278
BRAINTREE	0	5,742	0	0	0	0	5,742
BRONCO	0	5,544	0	0	0	0	5,544
BRUIN	20,291	48,669	0	0	0	0	28,378
CADENCE-CHEM	0	3,160	1,723 5/	0	0	0	3,160
CALCASIEU	-3,500	43,431	0	0	0	0	46,931
CALUMET	-7,642	6,059	0	0	0	0	13,701
CANAL	1,064	29,590	0	0	0	0	28,526
CANBONIT	8,554	31,434	0	0	0	0	22,880
CARIBOU	-22,085	56,890	41,743 5/	0	0	0	78,975
CASTLE	0	31,386	0	31,386	0	0	31,386
CEA	0	530	0	0	0	0	530
CHAMPLIN	-220,998	580,726	0	0	-21,746	0	801,624
CHARTER	0	305,547	0	0	0	0	305,547
CHEVRON	4,828,586	4,069,046	0	14,786	44,231	759,300	0

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL — PAGE: 12
OCTOBER 1980

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	TOTAL ISSUED	EXCEPTIONS AND CORRECT.	ENTITLEMENT POSITION ENTITLEMENTS PRODUCT	ENTITLEMENT POSITION ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	REQUIRED TO SELL
CIBRO	0	101,158	0	30,783	0	0	101,158
CITGO	732,196	741,161	0	0	0	0	8,965
CITY-OF-SEWARD	0	6	6 5/	0	0	0	6
CITY-OF-WICHITA	0	450	300 5/	0	0	0	450
CLAIBORNE	27,228	17,853	0	0	0	9,375	0
CLARK	355,680	398,496	0	0	0	0	42,816
COASTAL	134,891	576,216	0	19,473	0	0	441,325
COASTAL-PETRO	0	34,262	951 5/	0	0	0	34,262
COLOWATER	0	98	0	0	0	0	98
COLONIAL	0	14,150	0	14,150	0	0	14,150
COLONIAL-OIL	0	8,029	8,029 5/	0	0	0	8,029
COLUMBUS-OHIO	0	198	0	0	0	0	198
CONOCO	1,145,184	1,008,514	0	15,401	11,920	136,670	0
CONSUMERS-POWER	0	184,251	154,189 4/	30,062	0	0	184,251
COPANO	0	26,991	0	0	0	0	26,991
CORAL	0	212,902	4,511 5/	0	0	0	212,902
CORCO	0	540,140	-31,782 5/	287,437	0	0	540,140
CRA-FARMLAND	189,161	231,936	0	0	0	0	42,775
CROSS	10,643	37,723	0	0	0	0	27,080
CROWN	167,829	345,680	0	0	0	0	177,851
CRYSTAL-OIL	54,163	77,473	0	0	0	0	23,310
CRYSTAL-REF	0	10,099	0	0	0	0	10,099
CUMBERLAND	0	5	0	0	0	0	5
DELTA	69,384	203,199	0	0	0	0	133,815
DEMENNO	0	42,722	0	0	0	0	42,722
DETROIT-ED	0	24,510	0	24,510	0	0	24,510
DIAMOND	268,182	234,851	0	0	0	33,331	0
DILLMAN	0	141	0	0	0	0	141
DORCHESTER	7,698	72,587	14,747 5/	0	0	0	64,889
DOW	-21,850	719,926	400,098 5/	0	0	0	741,776
E-SEABOARD	0	31,473	0	31,473	0	0	31,473
EAGLE-REFINING	0	5,117	0	0	0	0	5,117
EAST-BAY-MUD	0	107	0	0	0	0	107
EASTERN-MUD	0	15	0	0	0	0	15
ECO	59	49,553	0	0	3	0	49,494
EDDY	21,634	15,586	0	0	0	6,048	0
EL-PASO-TX	0	1,899	0	0	0	0	1,899
ELGIN-IL	0	13	10 5/	0	0	0	13
ENERGY-COOP	0	242,986	0	0	0	0	242,986
ENTERPRISE	0	7,535	0	7,535	0	0	7,535
ERGON	-1,290	55,708	0	0	0	0	56,998
ERICKSON	1,166	141,197	0	0	0	0	140,031
ESSEX-UNION	0	75	0	0	0	0	75

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL
OCTOBER 1980

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND CORRECT.	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	REQUIRED TO SELL
EVANGELINE	0	11,930	0	0	0	0	11,930
EWING-LAWRENCE	0	21	0	0	0	0	21
EXXON	7,295,946	4,301,824	0	305,395	0	2,994,122	0
EZ-SERVE	19,419	77,251	0	0	0	0	57,832
FARMERS-UN	184,721	96,687	0	0	0	88,034	0
FLETCHER	13,151	110,178	0	0	531	0	97,027
FLINT	3,708	3,370	0	0	0	338	0
FORT-WORTH-TX	0	1,442	0	0	0	0	1,442
FRIENDSWOOD	19,283	39,672	0	0	0	0	20,389
FUNDING	61,515	20,133	0	0	0	41,382	0
GARY	29,758	38,325	0	0	0	0	8,567
GETTY	746,978	855,272	0	0	5,573	0	108,294
GETTY-SYN	0	441	0	0	0	0	441
GIANT	8,167	37,512	4,511 5/	0	0	0	29,345
GIBSON	0	19,859	0	0	0	0	19,859
GLACIER-PARK	-11,171	0	0	0	0	0	11,171
GLADIEUX	1,802	44,464	0	0	0	0	42,662
GLENCOE-MN	0	19	0	0	0	0	19
GLENROCK	0	8,126	0	0	0	0	8,126
GOLDEN-EAGLE	0	54,301	0	0	0	0	54,301
GOLDKING	11,452	66,381	0	0	0	0	54,929
GOOD-HOPE	5,377	261,356	0	0	0	0	255,979
GUAM	0	146,297	0	0	0	0	146,297
GULF	4,142,261	2,266,833	0	22,872	11,523	1,375,428	0
GULF-STS	24,712	87,436	0	0	0	0	62,724
HARRISBURG-PA	0	2,802	0	0	0	0	2,802
HEALTH-CARE	0	59	0	0	0	0	59
HEMPSTEAD-TOWN	0	3,382	1,215 5/	0	0	0	3,382
HIRI	0	271,425	25,872 4/	0	0	0	271,425
HOWELL	494,484	141,436	0	0	0	283,048	0
HRR	0	16,925	16,925 5/	0	0	0	16,925
HUDSON-OIL	-50,328	70,277	0	0	0	0	120,605
HUNT	182,890	123,134	0	0	0	59,756	0
HUNTWAY	0	21,442	0	0	0	0	21,442
HUSKY	418,225	418,225	288,042 2/	0	0	0	0
INDEPENDENT-REF	0	62,399	0	0	0	0	62,399
INDIANA-FARM	16,148	62,064	0	0	0	0	45,916
INDUST-FUEL	0	5,891	0	0	0	0	5,891
INTER-PETRO	0	7,227	0	7,227	0	0	7,227
INTER-PROCESS	0	66,526	0	0	0	0	66,526
IRVING	0	22,742	10,036 5/	12,706	0	0	22,742
KENCO	33,460	11,815	0	0	0	21,645	0
KENTUCKY	13,625	15,283	8,443 5/	0	0	0	1,658

NOTICE OF ENTITLEMENTS FOR DOMESTIC CRUDE OIL
OCTOBER 1980

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND CORRECT.	ENTITLEMENTS PRODUCT	ENTITLEMENTS CALIFORNIA	REQUIRED TO BUY	REQUIRED TO SELL
KERN	-94,754	81,605	-10,0945/	0	-765	0	176,359
KERR-MCGEE	840,339	760,741	0	0	0	119,598	0
KOCH -	52,919	204,259	0	26,226	0	0	171,340
LA-COUNTY	0	2,525	0	0	0	0	2,525
LA-CROSSE	0	13	0	0	0	0	13
LAGLORIA	204,865	188,720	0	0	0	16,145	0
LAKE-CHARLES	0	53,147	0	0	0	0	53,147
LAKESIDE	288	13,498	0	0	0	0	13,210
LAKETON	100,939	112,784	83,7565/	0	0	0	11,845
LAKEWOOD-OH	0	410	0	0	0	0	410
LIQUID-ENERGY	19,167	33,594	0	0	0	0	14,427
LITTLE-AMER	43,808	274,256	0	0	0	0	230,448
LOS-ANGELES-CA	0	9,629	6,7155/	0	0	0	9,629
LOUISIANA-LAND	1,337,719	167,575	0	0	0	1,140,144	0
MACMILLAN	8,005	88,473	0	0	424	0	80,468
MADISON-CHATHAM	0	6	0	0	0	0	6
MADISON-CITY-WI	0	648	0	0	0	0	648
MADISON-MI	0	95	0	0	0	0	95
MALLARD	497	19,045	0	0	0	0	18,548
MANATEE	70,859	81,259	40,2617/	0	0	0	10,400
MARATHON	2,944,681	1,262,327	0	0	0	1,582,354	0
MARION	10,526	101,169	0	0	0	0	90,643
MARLEX	1,188	50,354	0	0	89	0	49,166
METRO-DENVER	0	155	0	0	0	0	155
METRO-SEATTLE	0	201	0	0	0	0	201
METROPOLITAN	0	46,810	0	46,810	0	0	46,810
MIAMI-OAD	0	2,909	0	0	0	0	2,909
MID-AMER	2,887	23,716	9,3805/	0	0	0	20,829
MIDWEST-SILV	0	1,591	1,1455/	0	0	0	1,591
MILWAUKEE-WI	0	1,593	1,1715/	0	0	0	1,593
MOBIL	4,349,463	2,469,008	0	0	9,036	1,580,455	0
MOBILE-BAY	1,750	18,411	0	0	0	0	16,661
MONOCO	0	3,953	0	3,953	0	0	3,953
MONSANTO	216,995	85,920	0	0	0	131,075	0
MOORHEAD-MN	0	116	0	0	0	0	116
MORRISON	-608	12,541	0	0	0	0	13,149
MOUNTAINEER	2,635	2,490	0	0	0	115	0
MSDGC	0	882	0	0	0	0	882
MT-AIRY	1,546	35,548	0	0	0	0	34,002
MURPHY	363,223	343,828	0	0	0	19,395	0
N-AMER-PETRO	0	36,345	0	0	0	0	36,345
N-LITTLE-ROCK	0	396	0	0	0	0	396
N-SAN-MATEO	0	4	0	0	0	0	4

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NASHVILLE-TENN	0	8,637	6,9915/	0	0	0	8,637
NASSAU-COUNTY	0	206	0	0	0	0	206
NATCHEZ	0	19,380	0	0	0	0	19,380
NATL-COOP	117,689	158,373	0	0	0	0	40,684
NAVAJO	251,185	190,940	70,1775/	0	0	60,245	0
NEPTUNE	0	7	0	0	0	0	7
NEVADA	1,331	7,427	0	0	0	0	6,036
NEW-ENGLAND	24	98,049	0	0	3	0	98,025
NEW-ENGL-PETRO	0	102,393	0	102,393	0	0	102,393
NEW-ENGL-POWER	0	44,351	0	44,351	0	0	44,351
NEW-YORK-EP	0	1,933	0	0	0	0	1,933
NEWHALL	316	69,753	0	0	15	0	69,437
NORTHEAST-PETRO	0	33,917	11,2055/	22,712	0	0	33,917
NY-SANITATION	0	990	0	0	0	0	990
OCEAN-TOWNSHIP	0	4	0	0	0	0	4
OCEAN-UTILITIES	0	35	0	0	0	0	35
OCONOMOWOC-WI	0	5	0	0	0	0	5
OKC	11,590	72,871	0	0	0	0	61,281
OKLA-REF	-4,231	60,077	0	0	0	0	64,308
OMAHA	0	7,067	0	0	0	0	7,067
ORANGE-COUNTY	0	3,410	2,6505/	0	0	0	3,410
OSCEOLA-AR	0	145	0	0	0	0	145
OXNARD	0	14,359	0	0	0	0	14,359
PEARLESS	0	4,249	4,2495/	0	0	0	4,249
PENNZOIL	150,918	141,449	0	0	0	9,469	0
PEORIA-IL	0	338	3385/	0	0	0	338
PESTER	3,465	106,433	0	0	0	0	102,968
PETRACO-VALLEY	0	28,867	13,1104/	0	0	0	28,867
PHILADELPHIA-PA	0	3,773	3,5495/	0	0	0	3,773
PHILLIPS	837,626	982,619	0	0	0	0	144,993
PHILLIPS-PR	0	118,518	0	118,518	0	0	118,518
PIONEER	43,498	26,588	0	0	0	16,300	0
PLACID	285,935	150,022	0	0	0	135,333	0
PLATEAU	135,296	67,947	18,4755/	0	0	37,349	0
PORT	0	23,483	0	0	1,710	0	23,483
POWERINE	30,000	144,706	8,3975/	0	0	0	114,106
PRIDE	0	114,747	0	0	0	0	114,747
QUAKER-ST	12,711	98,824	0	0	0	0	86,113
QUITMAN	0	22,216	0	0	0	0	22,216
RAHWAY	0	69	0	0	0	0	69
RESCO	0	5,989	0	0	0	0	5,989
RICHARDS.	0	249	0	0	0	0	249
ROAD-OIL	0	1,070	0	0	0	0	1,070

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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	ENTITLEMENT POSITION TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND CORRECT.	ENTITLEMENT POSITION ENTITLEMENTS PRODUCT	ENTITLEMENT POSITION ENTITLEMENTS CALIFORNIA	ENTITLEMENT POSITION REQUIRED TO BUY	REQUIRED TO SELL
ROCK-ISLAND	30,582	102,225	0	0	0	0	71,643
SABER-TEX	12,774	54,642	0	0	0	0	41,868
SABRE-CAL	0	36,136	-3,1445/	0	0	0	36,136
SAGE-CREEK	1,357	295	4085/	0	0	1,355	0
SALEM-VA	0	41,251	-14,6465/	0	0	0	41,251
SAN-JOAQUIN	0	677	0	0	0	0	677
SAN-JOSE-CA	0	50	0	0	0	0	50
SANTA-CRUZ-CA	0	102,498	0	102,498	0	0	102,498
SCALLOP	0	46,169	0	46,169	0	0	46,169
SCANOIL	0	3,782	0	0	0	0	3,782
SCHULZE	0	78,970	0	0	0	0	78,970
SEAVIEW	0	53,097	0	0	0	0	35,880
SEMINOLE	17,217	74,654	9,5/	0	0	0	74,654
SENTRY	0	2,812,700	0	0	4,329	1,667,277	0
SHELL	4,479,977	6,532	0	0	0	0	4,259
SHEPHERD	2,333	99,893	0	0	0	0	79,485
SIGNAL	10,438	4,577	0	0	0	0	4,577
SILVER-EAGLE	0	129	0	0	0	0	129
SIOUX-FALLS	-910	47,683	0	0	0	0	48,593
SLAPCO	0	26	9,5/	0	0	0	26
SMRSA	8,281	55,713	0	0	0	0	47,432
SO-HAMPTON	2,305,230	1,596,051	0	0	989,179	0	0
SOHIO	13,039	17,431	0	0	0	0	3,792
SOMERSET	0	22,534	0	0	0	0	22,534
SOONER	-763	31,112	0	0	0	0	31,875
SOUND	90,010	128,853	0	0	0	0	38,843
SOUTHERN-UNION	1,11,445	255,227	158,393 5/	0	0	0	93,782
SOUTHLAND	0	13,910	0 12,5/	0	0	0	13,910
SOUTHWEST-PETRO	4,573	1,167	12,5/	0	0	3,406	0
SOUTHWESTERN	0	5,685,661	5,685,0515/	0	0	0	5,685,061
SPR	0	47,482	0	47,482	0	0	47,482
SPRAGUE	0	12,447	4,9145/	0	0	0	12,447
STEAN-CHICAGO	0	163	1445/	0	0	0	163
ST-CLOUD-WINN	0	266	0	0	0	0	266
ST-JOSEPH-MO	0	11	0	0	0	0	11
STEVENS-PT-WI	0	319	0	0	0	0	319
STOCKTON-CA	0	45,635	0	0	44	0	43,742
SUNLAND	1,893	1,625,454	0	32,996	0	1,217,334	0
SUNOCO	2,842,788	15,950	0	15,950	0	0	15,950
SWANN	0	980	0	0	0	0	980
TBS	0	391	0	0	0	0	391
TACOMA-WA	0	10,549	0	0	0	9,234 3/	0
TARCO	19,783						

Federal Energy Regulatory Commission

base. Second, the President's *Decision and Report to Congress on the Alaska* statutory authority, as "including but not limited to the specific sections of the

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REPORTING FIRM SHORT NAME	DOMESTIC OLD OIL ADJUSTED RECEIPTS	ENTITLEMENTS TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND CORRECT.	ENTITLEMENT POSITION ENTITLEMENTS PRODUCT CALIFORNIA	ENTITLEMENT POSITION REQUIRED TO BUY	ENTITLEMENT POSITION REQUIRED TO SELL
TARRICONE	0	15,934	9,957 5/	5,977	0	15,934
TENNECO	124,758	310,362	0	2,763	0	185,604
TESORO	50,137	237,955	0	0	0	187,818
TEXACO	4,933,231	3,079,702	0	52,107	169	1,873,529
TEXAS-AMERICAN	74,952	29,445	0	0	0	21,493
TEXAS-CITY	251,136	291,535	0	0	0	40,399
TEXAS-STANDARD	0	2,937	0	0	0	2,937
THAGARD	6,341	45,708	0	0	430	39,367
THORN-CREEK	0	36	195/	0	0	36
THRIFTWAY	11,859	10,030	5,505 5/	0	1,829	0
THUNDERBIRD	25,804	38,037	0	0	0	12,233
TIPPERARY	351	17,308	0	0	0	16,957
TONKAWA	0	54,883	0	0	0	54,845
TOSCO	637,252	635,515	0	0	12,928	1,737
TOTAL-PETROLEUM	-119,608	389,065	0	0	0	508,673
UCC-CARIBE	0	57,057	0	57,057	0	57,057
UNI-REF	0	73,869	0	0	0	73,869
UNION-OIL	1,222,372	1,333,290	0	0	881	110,918
UNTD-REF	84,234	177,176	0	0	0	92,922
URBANA-IL	0	574	0	0	0	574
US-OIL	-1,297	70,646	0	0	0	71,943
USA-PETROCHEM	11,528	51,020	0	0	318	39,492
VAL-VERDE	0	47,794	3,145/	0	0	43,794
VICKSBURG	0	17,592	0	0	0	17,592
WALLER	0	43,714	1,515/	3,063	0	43,714
WARRIOR	51,300	50,381	-9,875/	0	25,619	0
WATSON	0	399	0	0	0	399
WEST-COAST	0	89,441	0	0	0	89,441
WEST-MONMOUTH	0	12	0	0	0	12
WESTCHESTER-NY	0	160	0	0	0	160
WESTERN	50,074	58,381	3,138 5/	0	0	44,594
WINSTON	0	21,133	0	0	0	8,307
WINSTON-SALEM	0	250	0	0	0	21,133
WIRENACK	1,078	79,496	0	0	2	250
WITCO	0	20	0	0	0	78,418
WOOSTER	18,628	33,351	0	0	0	20
WYOMING	0	223	223 5/	0	0	14,723
YETTER	21,026	81,088	61,953 5/	0	0	223
YOUNG	0	0	0	0	0	60,862
TOTAL	63,849,030	60,889,030	7,182,388	1,733,639	89,070	19,369,320

1/ See discussion in Notice.

2/ This is consistent with the Court's order prohibiting the purchaser from making entitlement purchases by this firm pursuant to the mandatory petroleum allocation regulations. Husky Oil Co. v. DOE, et. al., (D. Wyo., filed March 4, 1978), remanded 582 F.2D 644 (TECA, August 10, 1978).

3/ This does not include the purchase obligation stayed by court order in Texas Asphalt & Refining Co. v. FEA, (S.D. Tex., filed October 31, 1975).

4/ Correction of prior month.

5/ Exception from Office of Hearings and Appeals.

6/ Value accrued from SPR deliveries. See discussion in Notice.

7/ These entitlements are issued pursuant to a Stipulation and Dismissal and Order of Dismissal entered in Monsanto Energy Co., v. DOE, Civ. Action No. TCA 80-0716 (N.D. Fla., April 7, 1980).

[FR Doc. 80-40231 Filed 12-24-80; 8:45 am]
BILLING CODE 6450-01-C

Federal Energy Regulatory Commission

Delegation of Authority by the Federal Energy Regulatory Commission to the Office of the Federal Inspector

AGENCY: Federal Energy Regulatory Commission.

ACTION: Delegation.

SUMMARY: Notice is hereby given of a delegation, by the Federal Energy Regulatory Commission to the Office of the Federal Inspector (OFI), of the Commission's authority under Sections 4, 5, 7, and 8 of the Natural Gas Act (15 U.S.C. Sections 717c, d, f, and g) and related regulations to review and approve costs and related accounts of the Alaska Natural Gas Transportation System (the ANGTS) for inclusion in the ANGTS sponsors' rate base.

DATE: The Delegation Order is effective December 29, 1980.

FOR FURTHER INFORMATION CONTACT:
Barry Smoler, Office of the General Counsel, Room 8600B, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357–8433 or Ned Hengerer, General Counsel, Office of the Federal Inspector, Room 2413, Post Office Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20044, (202) 275–1144.

SUPPLEMENTARY INFORMATION:

I. Background

Control of capital costs during construction is perhaps the most complex regulatory issue facing the ANGTS. Two Federal agencies, the Commission and the Office of the Federal Inspector (OFI), have cost control authority, sometimes mutual and sometimes discrete. Cost control has two primary purposes: protection of the U.S. gas consumer from excessive transportation rates; and assistance to private financing of the ANGTS.

The Commission's cost control responsibilities come from two sources. First, under Section 7 of the Natural Gas Act (15 U.S.C. Section 717f), the Commission must, pursuant to certification, assure that credible capital cost estimates (and a financing plan) for a proposed pipeline project are "in the public convenience and necessity." Once the pipeline is in operation, the Commission must act pursuant to Sections 4 and/or 5 of the Natural Gas Act (15 U.S.C. Sections 717c and 717d) to assure that rates to be charged are "just and reasonable", which indirectly entails approval of capital costs for rate base. Second, the President's *Decision and Report to Congress on the Alaska Natural Gas Transportation System (Decision)* imposes similar requirements, which are specifically tailored to the ANGTS. The Commission must develop the Incentive Rate of Return (IROR); it must approve rate base inclusions on a timely basis; and it must assure that the certification cost estimate does not "materially and unreasonably exceed" the March 1977 cost estimate, upon which the *Decision* was based.

The OFI's cost control responsibilities come from three sources. (1) Under Section 7(a)(5)(C) of the Alaska Natural Gas Transportation Act (ANGTA), 15 U.S.C. Section 719e, the OFI must monitor, among other things, actions taken to assure cost control. (2) Under Section 5 of the President's *Decision* the OFI must enforce a number of construction cost and schedule conditions, as well as, under Section 7 of the *Decision*, review procurement for general competitiveness. (3) Reorganization Plan No. 1 of 1979 transferred to the OFI responsibility to enforce the requirements imposed on the ANGTS by the Commission pursuant to the Natural Gas Act.

The cost control responsibilities of the Commission and the OFI are more or less split between the certification and construction phases, respectively. This is in keeping with the Reorganization Plan. The only aspect of cost control oversight which requires further delineation concerns rate base audit and approval. Both agencies agree that, due to the OFI's ongoing cost control responsibilities, the continued process of project rate base audit and approval during pre-construction and construction should rest there. In this manner, once the ANGTS has been completed and commences operations, the Commission will include the initial, OFI-approved project rate base in the project cost-of-service tariff for each ANGTS leg, and then commence its ongoing rate regulation of ANGTS, in accordance with Sections 4 and 5 of the Natural Gas Act. Whether or not an explicit delegation is now required to achieve this result, caution dictates such an interagency action at this time.

The OFI finds adequate authority for its rate base audit and approval actions in the Reorganization Plan. While subsection 102(d) of the Reorganization Plan explicitly transferred enforcement of the ANGTS certificates of public convenience and necessity (issued under Section 7 of the Natural Gas Act), Section 102 begins by expanding the transfer of the specifically cited statutory authority, as "including but not limited to the specific sections of the statute cited." Moreover, Section 102(h)(3) transfers enforcement of the terms and conditions established in Section 5 of the President's *Decision* (at page 37); the second finance term and condition found therein mandates that the "applicant shall, however, submit to the FPC for approval on a timely basis all components of construction work in progress." In light of the expansive scope of the Reorganization Plan—transferring to the OFI "exclusive responsibility for enforcement of all Federal statutes relevant in any manner to pre-construction, contruction, and initial operation" of ANGTS—the OFI regards such a transfer as encompassing the rate base process.

The Commission believes that this particular function is extremely important, that it should be performed by a single agency, and that all uncertainty as to responsibility for its performance should be eliminated. Because Section 202(b) affords both agencies the ability to aassure that this function will be centralized in the OFI until construction is completed, it will be utilized to authorize the present delegation. Section 202(b) specifically provides that:

> Upon agreement between the Federal Inspector and the head of any agency, that agency may delegate to the Federal Inspector any statutory function vested in such agency related to the functions of the Federal Inspector.

This delegation provision has already been employed by the Commission to delegate to the OFI certain certificate conditioning authority. 45 FR 24224 (April 9, 1980).

II. Delegation Order

Paragraph (a) of the attached Delegation Order delegates to the Federal Inspector the Commission's authority to review and approve ANGTS construction work in progress (for inclusion in rate base) pursuant to Sections 4, 5, and 7 of the Natural Gas Act.

Paragraph (b) of the Delegation Order delegates to the Federal Inspector the Commission's authority to review and approve the ANGTS sponsors' accounts, records, and other papers, pursuant to Section 8 of the Natural Gas Act and to the Commission's Uniform System of Accounts, 18 CFR Part 201, and to monitor compliance with procurement policy and practices, 18 CFR Part 160.

The determinations of the Federal Inspector with respect to the prudence of costs incurred, and approval of their inclusion in rate base, shall be final and

shall not be subject to review or revision by the Commission.

applicable provisions of law, including, but not limited to, the U.S. Constitution,

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include John H. Gayer (the other Gayer's father) and his wife Dorothy; and the

members of the Gayer family, and father John, mother Dorothy, and son John

terms of this loan appear favorable, allowing for no principal or interest

shall not be subject to review or revision by the Commission.

III. Effective Date

Pursuant to Paragraph (e) of the Delegation Order, the delegation becomes effective upon publication in the **Federal Register**, and shall include all project costs incurred on or after January 1, 1980.

(Department of Energy Organization Act, 42 U.S.C. Section 7101, *et seq.*; Natural Gas Act, 15 U.S.C. Section 717, *et seq.*; Reorganization Plan No. 1 of 1979, 44 FR 33663)

By the Commission.

Kenneth F. Plumb,

Secretary.

Delegation Order No. ANGTS–2 to the Office of the Federal Inspector

Pursunt to the authority vested in the Federal Energy Regulatory Commission ("the Commission") and in the Office of the Federal Inspector ("the Federal Inspector") by Section 202(b) of Reorganization Plan No. 1 of 1979—

(a) The Commission hereby delegates to the Federal Inspector the Commission's authority under Sections 4, 5 and 7 of the Natural Gas Act (15 U.S.C. Section 717 *et. seq.*) to the extent necessary to enable the Federal Inspector to review and approve the construction costs for the Alaskan Natural Gas Transportation System ("the ANGTS"), for inclusion in the respective rate bases of Alaska Northwest Natural Gas Transportation Company, Northern Boarder Pipeline Company, and Pacific Gas Transmission Company. The Federal Inspector shall perform this function consistent with the Commission's Uniform System of Accounts, 18 CFR Part 201, and Order Nos. 31 and 31–B issued in Docket No. RM79–12 on June 8 and September 6, 1979, including any amendments adopted by the Commission subsequent to the date of issuance of this order.

(b) The Commission here delegates to the Federal Inspector the Commission subsequent authority under Section 8 of the Natural Gas Act and the Commission's Uniform System of Accounts, 18 CFR Part 201, to the extent necessary to enable the Federal Inspector to review and approve the ANGTS project sponsors' accounts, records and papers pertinent to the construction of the ANGTS, including the monitoring of compliance with procurement policy of practices pursuant to 18 CFR Part 160.

(c) The Federal Inspector shall perform the above delegated functions pursuant to whatever procedures he shall determine to be consistent with applicable provisions of law, including, but not limited to, the U.S. Constitution, the U.S. Code, and the President's *Decision and Report to Congress on the Alaska Natural Gas Natural Gas Transportation System* (September 1977)("the President's *Decision*").

(d) Nothing in this order shall be construed to delegate any of the Commission's authority to issue or condition certificates of public convenience and necessity pursuant to Section 7 of the Natural Gas Act, to determine the respective certification cost estimates for the Alaska and Northern Border segments of the ANGTS, to approve or modify any tariffs, or to perform any functions allocated to the Commission by the President's *Decision* (except for the functions allocated in the last sentence in Finance Condition No. 2 on page 37 of the *Decision*).

(e) The Federal Inspector hereby accepts the authority delegated by this order, and agrees to perform all of the function delegated herein.

(f) This order shall become effective upon publication in the **Federal Register**, and shall include all project costs (as defined above) incurred on or after January 1, 1980.

Issued in Washington, D.C., on December 19, 1980.

Georgiana Sheldon,

Acting Chairman, Federal Energy Regulatory Commission. (By agreement of the Commission).

John T. Rhett,

Federal Inspector.

[FR Doc. 80–40390 Filed 12–24–8:45 am]

BILLING CODE 6450–85–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–51140; FRL 1625–4]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 80–30810 appearing on page 65662, in the issue of Friday, October 3, 1980, make the following correction:

On page 65663, third column, in the third line from the bottom of the page, the symbol "<" should have read ">".

BILLING CODE 1505–01–M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 80–657; BC Docket Nos. 80–712 Through 80–718; File Nos. BP–20,581 et al.]

Alan K. Levin et al., Designating Application for Hearing on Stated Issues; Memorandum Opinion and Order

In re applications of Alan K. Levin, Dillon, Colorado, Req: 1130 kHz, 5 kW, Day (BC Docket No. 80–712; File No. BP–20,581); Summit Radio, Inc., Dillon-Frisco-Silverthorne, Colorado, Req: 1130 kHz, 10 kW, 5 kW, (CH), DA, Day (BC Docket No. 80–713; File No. BP–780728AN); Dillon Broadcasting Company, Dillon, Colorado, Req: 1130 kHz, 5 kW, Day (BC Docket No. 80–714; File No. BP–780728AO); Eagle Radio, Inc., Vail, Colorado, Req: 1360 kHz, 5 kW, Day (BC Docket No. 80–715; File No. BP–20,626); Mountain Wireless Limited, Vail, Colorado, Req: 1360 kHz, 5 kW, Day (BC Docket No. 80–716; File No. BP–20,882); Grand Radio, Inc., Fraser, Colorado, Req: 1250 kHz, 500 W, 5 kW–LS, DA–2, U (BC Docket No. 80–717; File No. BP–21,129); Jefferson Wireless Company, Golden, Colorado, Req: 1250 kHz, 500 W, 5kW–LS, DA–2, U (BC Docket No. 80–718; File No. BP–781205AH) for construction permit.

Adopted: November 6, 1980.

Released: December 1, 1980.

By the Commission:

1. The Commission has before it for consideration (a) the above-captioned applications for new AM broadcast stations in various Colorado communities; (b) a petition to dismiss the Dillon-Frisco-Silverthorne application of Summit Radio, Inc., filed by Dillon applicant Alan K. Levin; and (c) related pleadings. The two Dillon applications and the one for Dillon-Frisco-Silverthorne are mutually exclusive; the Vail applications are mutually exclusive; and the Fraser and Golden aplications are mutually exclusive. All seven are considered herein because of common questions relating to the Commission's ownership rule for AM stations.

The Gayer Applications

2. *Petition to dismiss.* Various members of the Gayer family hold significant interests in the Summit (Dillon-Frisco-Silverthorne), Eagle (Vail), and Grand (Fraser) applications, and there is substantial primary service contour overlap among the three proposals and with the Gayers' KBCR, Steamboat Springs, Colorado. The Summit principals include John G. Gayer and his wife Carol; the Eagle principals include John H. Gayer (the other Gayer's father) and his wife Dorothy; and the Grand principals include Dwight H. and Diane E. Gayer (brother and sister of John G. Gayer).[1] These relationships and other factors led applicant Levin to file a petition to dismiss the Summit application, in which he argues that the Gayer proposals violate Section 73.35 of the Commission's Rules, which limits the ownership of multiple broadcast stations by single parties. Levin supports his argument by describing the joint family ownership and operation of other broadcast stations in Colorado, father John's role in merger discussions with Levin, father John's role in a site search for the Summit proposal, and financial support father John and mother Dorothy are entending son Dwight and daughter Diane in their Grand application. In response, Summit concedes that father John provided limited assistance to son John and his co-principal (not a Gayer), but maintains that it was provided at the request of and for the convenience of the latter two. Summit also states that father John has not and will not exercise any control over Summit, and that the proposed station will be operated independently of the other Gayer stations.

3. Generally, family relationships standing alone do not create a presumption of common control. *KTRB Broadcasting Co., Inc.*, 46 FCC 2d 605 (1974). Hoever, the circumstances in a particular case may raise questions which can only be answered through the hearing process. *Stuart W. Epperson*, 44 FCC 2370 (1961). Therefore, the facts of each case that comes before us must be carefully considered. Here, an appropriate starting point is a review of the various Gayer broadcast interests.

4. *Background.* (a) Father John Gayer began with a 32⅓% interest in AM station KFNF, Shenandoah, Iowa, and later increased it to 85%. Mother Dorothy served as secretary-treasurer and director. The station began operation in 1971, and Gayer sold his interest in 1977. (b) The second Gayer station was KAAT(AM), Denver. Father John originally owned half the stock, but later took 100% ownership. Mother Dorothy served as secretary and director. Son Dwight, then a high school student, assisted in constructing the station. KAAT went on the air in 1972, and Gayer sold it in 1978. (c) In 1972 the Gayers formed Big Country Radio, Inc. to apply for AM and FM stations at Steamboat Springs, Colorado. The firm was owned in equal shares by all five members of the Gayer family, and father John, mother Dorothy, and son John were officers and (except son John) directors. To finance the stations, father John and mother Dorothy agreed to lend Big Country up to $145,000, and father John personally guaranteed bank loans of $145,000. The FM application was granted first, in 1973; the AM application was mutually exclusive with one other, but an agreement was reached by which the competing applicant dropped out and its principal shareholder acquired a 25% interest in Big Country. Son John, who had no prior broadcasting experience, became general manager of both stations when they commenced operation. The Gayers still control these stations, though the family members' interests have changed. In 1977 son Dwight and daughter Diane sold their 6.25% interests to son John for $500 each, and in 1978 father John sold his 12.5% interest to mother Dorothy for $1,000. Son John is now president and director, with 43.75% of the stock, and mother Dorothy is secretary and director, with 31.25% of the stock. (d) Also in 1972, a group including father John, mother Dorothy, and son John formed Radio Vail, Inc. and applied for a new FM station at Vail, Colorado. The three Gayers guaranteed a loan for up to $70,000 for this station, and father John agreed to loan the applicant $25,000. Agreement with a competing applicant led to grant of Radio Vail's application, and KVMT began operation in 1975. Son John relinquished his 15% interest when he assumed his duties at KBCR–AM–FM. Radio Vail applied for a new AM station at Vail in 1976 (it has since changed its corporate name to Eagle Radio, Inc.), and sold KVMT in 1979.

5. *Current proposals.* (e) Son John owns 50% of the stock and is president and director of Summit, applicant for Dillon-Frisco-Silverthorne. His wife, Carol, is secretary and director. Son John has subscribed for $10,000 of additional stock and proposes to loan the applicant $10,000. These proposed contributions and equal ones by his co-principal are backed by a $40,000 bank loan offered by the Gering National Bank & Trust Company in Gering, Nebraska. Father John is the chairman of the board and president of the bank's holding company, and along with mother Dorothy has a substantial ownership and management interest in it. In addition, Summit relies on a loan commitment for $90,000 from the Summit County Bank of Frisco, Colorado, which was obtained after son John and his co-principal were introduced to bank officials by father John, who was "previously acquainted" with them. The terms of this loan appear favorable, allowing for no principal or interest payments in the first year and semi-annual payments thereafter.

6. (f) Father John owns 48% of the stock and is president and director of Eagle, applicant for Vail. Mother Dorothy holds 27% of the stock and is secretary-treasurer and director. The two propose to loan the applicant about $63,000 and $36,000, respectively. However, if any of the contributors is unable to meet his or her commitment, Eagle relies on letters of credit for $100,000 from the First Bank of Vail and for $75,000 from the Gering National Bank & Trust Company. (g) Son Dwight owns 50% of the stock and is president, treasurer, and director of Grand, applicant for Fraser. Daughter Diane owns the other 50% of the stock and is vice-president, secretary, and director. Each has subscribed for an additional $5,000 of stock and proposes to loan the applicant $12,500. In partial support of these commitments, the Gering National Bank & Trust Company has agreed to lend each of them $12,500. The applicant also relies on a $75,000 loan commitment from the Middle Park Bank of Granby, Colorado. Earlier, the applicant relied on a $25,000 loan commitment by father John and mother Dorothy, and father John and mother Dorothy agreed to guarantee the Middle Park Bank Loan.

7. (h) There is also pending an application by Colorado Television, Inc. for a new television station in Denver, Colorado. Father John owns all the stock and is president, treasurer, and director; mother Dorothy is secretary and director; and son Dwight is assistant treasurer and director. Father John has agreed to loan the applicant $100,000, and he and mother Dorothy have agreed to secure a $200,000 bank loan with their stock in the Gering National Bank & Trust Company. (i) In addition, there is pending an application by Family Television, Inc. for a new television station in Omaha, Nebraska. Father John owns 24% of the stock and is president and treasurer; son Dwight is vice-president. Father John has subscribed for $16,500 in additional stock, has apparently agreed to loan the applicant $168,000, and has agreed to guarantee a $700,000 bank loan (with the other stockholders). (j) Finally, there is pending an application by Family Television, Inc. (but a different corporation) for a new television station in Boulder, Colorado. As originally filed, father John was 80% stockholder, president, and director of this corporation; he subscribed for $36,000 in additional stock; and he had some unspecified role in securing $300,000 in

[1] For the sake of clarity, the principal Gayers will be referred to as father John, mother Dorothy, son John, son Dwight, and daughter Diane.

stockholder and bank loans. Gayer

verbatim identical, and very similar to

can only be resolved through hearing on

notice of the filing of their applications.

applicant may request a waiver of that

three of its principals. In the event these

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stockholder and bank loans. Gayer disposed of his interests in this corporation in 1979.

8. In addition to the matters noted above, analysis of the materials filed with the various Gayer applications reveals the following:

—The articles of incorporation for Summit, Eagle, Grand, Big Country, and Colorado Television are verbatim identical.
—The corporate bylaws for Summit, Eagle, Grand, Big Country, and Colorado Television are verbatim identical, excepting only the number of directors for each.
—Summit, Eagle, Grand, Big Country, and Colorado Television are all authorized 50,000 shares of $1-par-value stock.
—The annual stockholder meeting dates for Summit, Eagle, Grand, and Colorado Television are the same, the third Tuesday in February.
—The initial registered agent for Grand was mother Dorothy, though she ostensibly held no official ownership or management position with the applicant. The initial and present registered office of the corporation is the home of father John and mother Dorothy.[2]
—Minnie Tomicich, the former business manager of KAAT, who is also assistant secretary and proposed business manager of Colorado Television, notarized the articles of incorporation of Summit, Grand, and Family (Boulder), and notarized the February 9, 1979 amendment to Colorado Television's articles.
—All Gayer family broadcast interests are represented by the same Washington communications counsel.
—All Gayer family radio applications were prepared by the same engineering counsel.
—Daughter Diane furnished the calculations, drawings, and photographs for Colorado Television's application, though she has no record interest in the applicant.
—Eagle and Grand respond identically to Question 16 in Section IV–A of their applications regarding proposed station policies relating to the Fairness Doctrine.
—Statements made by Eagle and Grand in response to Question 18 regarding program diversity are verbatim identical.
—The responses of Eagle and Grand to Question 29 regarding compliance with the Communications Act and the Rules of the Commission are nearly verbatim identical, and very similar to Summit's response.

[2] Information concerning the present registered office and agent of Grand was requested from the Colorado Department of State.

9. *Discussion.* The reason that the Commission has consistently held that family relationships standing alone are insufficient to give rise to a presumption of control is that most of them are typified by an independence of one member from another. However, where there has been shown to be a sufficiently close relationship among the parties to a family unit, the Commission has found a degree of control to be present. *Lady Sarah McKinney-Smith and J. Shelby McCallum,* 59 FCC 2d 398 (1976).

10. Of course, a family relationship combined with other indicia of control may result in a finding of de facto common control. Thus, we have specified an ownership issue where an applicant depended upon a loan from his mother to finance the proposed station. *Stuart W. Epperson, supra.* And we did the same in *East Arkansas Broadcasters,* 25 FED. Reg. 10746, 20 RR 934 (1960), where the applicants were the daughter and son-in-law of a couple owning several broadcast stations. In the latter case the family members had been applicants for broadcast stations in the past, the various family stations had almost identical statements of policy, and certain family members had undertaken to act on behalf of other family members regarding Commission matters in which they had no record interest. In addition, the son-in-law was general manager of a station owned by his wife's parents.

11. Our analysis of present and past Gayer family interests gives rise to sufficient questions of common control to warrant further exploration. The principal factors cited in *East Arkansas* are also present here. The history of the Gayer interests and the striking parallels among supposedly independent stations and proposals suggest at least an informal family business operation revolving around the senior Gayers. We do not agree with Summit's opposition to the petition to dismiss that this case presents a situation similar to *Alabama Radio Corporation,* 69 FCC 2d 1256 (1978). There we were considering a possible violation of our duopoly rule, not a regional concentration of control problem. Further, the cross-interest involved was relatively small; and there was no indication of concerted family action, financial support for multiple applications, cross control, or other interests proscribed by our cross-interest policy. The questions presented by the Gayher interests and activities can only be resolved through hearing on an evidentiary issue.

The Dillion Applications

12. *Alan K. Levin.* Analysis of the financial data applicant Levin submitted reveals that $65,536 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment down payment	$8,157
Equipment payments	5,230
Other equipment	2,999
Building	5,000
Other construction costs	29,000
Operating costs	15,150
Total	65,536

Levin plans to finance the station with $30,000 in existing capital and a $75,000 bank loan, but none of these funds have been shown to be available. The most recent balance sheet Levin submitted is undated and does not show that his current assets exceed current liabilities. Further, the bank's loan commitment letter does not specify the collateral required. A limited financial issue will therefore be specified.

13. Levin has failed to comply with the requirements of the *Primer an Ascertainment of Community Problems by Broadcast Applicants,* 27 FCC 2d 650 (1971). His compositional study describes Summit County in some detail, but is not appropriately informative as to the composition of Dillon, particularly with regard to the racial make-up of the town, its governmental activities, and its public service organizations. Dillon's small size (less than 500 permanent residents) and the likely lack of formal studies of the town do not excuse the applicant from determining and describing its composition. In addition, from the information before us, it appears that the applicant has failed to survey leaders of several significant Dillon population groups. Specifically, no leaders of the following groups were interviewed: charities, elderly, minorities, professsions, women, and youth. Further, Levin's survey of the general public is not sufficiently described for us to determine whether a reasonable number of resideints of Dillon—as opposed to Summit County generally—were interviewed. Finally, the time segments of the programs Levin proposes to meet ascertained problems are not indicated, and the programs themselves are not sufficiently described to allow us to determine whether they are in fact related to the problems. A limited ascertainment issue will be specified.

14. Applicants for new broadcast stations are required by Section 73.3580 of the Commission's Rules to give local

notice of the filing of their applications. They must then file with the Commission the statement described in Section 73.3580(h). We have no evidence that Levin published the required notice. To remedy this deficiency, Levin will be required to demonstrate his compliance with the rule.

15. *Summit Radio, Inc.* Analysis of the financial data Summit submitted reveals that $90,839 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment lease payments	$11,564
Land and building	57,000
Other construction costs	11,000
Operating costs	11,275
Total	90,839

Summit plans to finance the station with $5,000 in existing capital, a $90,000 bank loan, stockholder loans and subscriptions amounting to $40,000, and advertising pledges of $21,325. The availability of the existing capital has been established, as has stockholder Crass' commitment for $20,000 capital and loans. However, stockholder Gayer's balance sheet does not show sufficient net liquid assets to meet his commitments, and a bank letter offering to loan him the funds he needs has expired. The direct bank loan has also not been shown to be available, since that bank's commitment letter has also expired. Finally, since the advertising pledges submitted are merely non-binding statements of intent, we cannot consider them as assets of the applicant. A limited financial issue will be specified.

16. Summit has not fully met the requirements of the ascertainment *Primer.* Its compositional study contains extensive information about Summit County, but practically nothing about the three communities to be served. In addition, leaders of the following groups were not interviewed: business, charities, consumers, elderly, minorities, professions, and women. A limited ascertainment issue will be specified.

17. Summit has applied for authorization to serve three communities: Dillon, Frisco, and Silverthorne. Section 73.1120(b) of the Commission's Rules (formerly Section 73,30(b)) requires that applicants seeking to serve more than one community make a special three-part showing as to the public interest aspects of their proposals.[3] In lieu thereof, an applicant may request a waiver of that showing and instead show that the communities it desires to serve clearly enjoy an "identity of interests for programming and other purposes." *Hymen Lake,* 46 FCC 2d 560 (Rev. Bd. 1974). See also *Saul M. Miller,* 4 FCC 2d 150 (1966). However, Summit has neither made the showing required by the rule nor asked for a waiver. An appropriate issue will therefore be specified.

[3] Section 73.1120(b) requires AM applicants proposing to serve multiple communities to show (a) that a satisfactory main studio is provided for each community, (b) that the station can and will provide a substantial number of local live programs from each community, and (c) that the program origination requirements of Section 73.1130 would place an unreasonable burden on the station if it were licensed to serve only one community.

18. *Dillon Broadcasting Company.* DBC has also failed to comply with the ascertainment *Primer's* requirements. Its compositional study does not include a breakdown of the racial and ethnic make-up of Dillon, nor does it describe Dillon's economic activities. DBC also failed to include certain groups in its survey of community leaders, specifically business, consumers, culture, and minorities. Next, DBC's statement of the methodology employed in its general public survey is insufficient to allow us to determine whether the required random sample was achieved. In addition, the time segments of the applicant's proposed responsive programs are not stated. A limited ascertainment issue will be specified.

19. *Other matters.* Because two of the applicants propose Dillon as their principal community, while Summit proposes Dillon-Frisco-Silverthorne, a Section 307(b) issue will be specified in the event it is determined that Summit has met its Section 73.1120(b) burden or has shown that a waiver of that rule is warranted. Further, since all the applicants serve substantial areas in common, a contingent comparative issue will also be specified.

The Vail Applications

20. *Eagle Radio, Inc.* Analysis of the financial data Eagle submitted indicates that $108,000 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment down payment	$7,314
Equipment payments	6,686
Building and emergency generator	35,000
Other construction costs	41,000
Operating costs	18,000
Total	108,000

However, Eagle's equipment costs are based on a proposal for a guyed tower, whereas it now proposes a self-supporting tower, which we would expect to cost more. Eagle plans to finance its station with $1,370 existing capital and loans totaling $125,000 from three of its principals. In the event these three cannot meet their commitments, Eagle would rely on bank loans of $100,000 and $75,000. Except for the existing capital, though, none of these funds have been shown to be available. The three principals' balance sheets do not show sufficient net liquid assets to meet their obligations. Further, the letter concerning the $100,000 loan only solicits a loan application; and the commitment for the $75,000 loan fails to state the security required and, in any event, has expired. A limited financial issue will be specified.

21. Eagle has also failed to comply with the requirements of the ascertainment *Primer.* First, its compositional study does not include sufficient data to indicate the population characteristics, governmental activities, and public service organizations of Vail. Furthermore, this applicant has failed to survey leaders of significant Vail groups, namely charities, Hispanics, labor, professions, and women. In addition, its description of its general public survey does not provide enough information for us to determine whether a random sample of the Vail population was achieved. A limited ascertainment issue will be specified.

22. In response to Question 26, Section IV–A of FCC Form 301, the applicasnt has indicated that on some occasions it might exceed its normal commercial ceiling of 18 minutes per hour, but has not stated the limits that would apply in those circumstances, as the question requires. An amendment is needed to supply the missing information.

23. Section 73.3580 of the Commission's Rules requires applicants for new stations who file major amendments to their applications (*e.g.,* a change in frequency of a power increase) to publish local notice of the amendment and to file with the Commission the statement described in Section 73.3580(h). Although Eagle amended its application to change frequency and increase power, we have no evidence it published the required notice. To remedy this deficiency, the applicant will be required to demonstrate its compliance with the rule.

24. *Mountain Wireless Limited.* On February 6, 1980 Mountain tendered an amendment to change its antenna site and system. The applicant maintains the amendment was necessary because the availability of the original site on public land was placed in considerable doubt after the cut-off date for amendments as a matter of right (August 27, 1979) by its confirmation that a site on private land was available. Eagle argues that good cause has not been shown for the late

amendment, since Mountain first knew in mid-August 1979 that the private site might be available, and since it is not certain that the availability of the private site precludes the availability of the one on public land.

27. Mountain's amended technical proposal calls for a self-supporting tower, but this applicant has also not amended its financial showing to reflect the greater cost of this tower (which is, in addition, much taller than the tower Dwight and Diane Gayer, $17,500 each, and they rely in part on bank loans of $12,500 each to raise these funds. However, the bank's letters require unspecified security for the loans, and so are not sufficient to establish that

loan. (Exhibit 5 to the application indicates that Listeners' Network, 50-percent stockholder, will loan the applicant up to $80,000, but the terms of the loan and Network's capacity to make it are not shown.) A limited

2. To determine with respect to Alan K. Levin:

a. The source and availability of sufficient funds to meet anticipated costs; and

b. Whether, in light of the evidence

d. Whether the programming the applicant proposes in response to its ascertained problems and needs is scheduled at times when it could reasonably be expected to be effective.

8. To determine the areas and

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amendment, since Mountain first knew in mid-August 1979 that the private site might be available, and since it is not certain that the availability of the private site precludes the availability of the one on public land.

25. The pleadings filed indicate that Mountain waited until the availability of the private site was confirmed (in October 1979) before making inquiries to the Bureau of Land Management (in November 1979) about the continued availability of public land, and was apparently advised that the BLM "could . . . insist that the applicant fully explore the availability of appropriate sites on private land as a prerequisite to further consideration of their request for a right-of-way on public lands." Concluding that this placed the availability of public land in doubt, Mountain proceeded to prepare and file the subject amendment. Applicant's characterization of events does not raise any question of misrepresentation, and its course of action and conclusion about the availability of the originally proposed site do not appear unreasonable. We therefore believe good cause has been shown for the late specification of a new site. Consequently, the amended site will be considered for both basic qualification and comparative purposes.

26. However, when Mountain specified the new site, it also specified a taller, more efficient antenna tower, thereby improving its coverage and overcoming an earlier apparent disadvantage in comparison with Eagle's coverage. Since the applicant has not shown good cause for voluntarily amending this aspect of its proposal after the deadline for amendments as a matter of right, the increased radiation efficiency will not be taken into account for comparative purposes.[4] (However, should any question of Mountain's basic technical qualifications arise, the entire amended proposal will be considered for the purpose of such question.) Since it appears that for comparative purposes there would be a significant difference in the areas and populations which would receive primary service, those areas and populations and the availability of other primary aural services in such areas will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

[4] In response to Eagle's motion to strike its amendment, Mountain agreed to waive any comparative advantage attributable to the site change.

27. Mountain's amended technical proposal calls for a self-supporting tower, but this applicant has also not amended its financial showing to reflect the greater cost of this tower (which is, in addition, much taller than the tower formerly proposed). However, Mountain's financial data shows a substantial cushion, which should easily absorb the increase. Consequently, while an appropriate amendment is required, a financial issue is not indicated.

28. As does Eagle's, Mountain's composition study fails to describe the population characteristics, governmental activities, or public service organizations of Vail. Further, it does not appear the applicant interviewed leaders of the following groups in Vail: charities, civic, elderly, Hispanic, labor, professions, and women. Mountain also has not specified the anticipated time segments for the presentation of its programming in response to ascertained problems. A limited ascertainment issue will be specified.

The Fraser and Golden Applications

29. *Grand Radio, Inc.* As amended on April 21, 1980, Grand's daytime proposal apparently involves a small amount of mutual 0.5 mV/m contour overlap with first-adjacent-channel station KFBC, Cheyenne, Wyoming, in violation of Sections 73.24(b) and 73.37(a) of the Commission's Rules. Rather than wait for a corrective pre-designation amendment, as we would normally do, we will give Grand an opportunity to correct this minor deficiency by a post-designation amendment, in order not to delay commencement of the hearing.

30. Analysis of the financial portion of Grand's application indicates that $88,172 will be required to construct the proposed facility and operate for three months, itemized as follows:

Equipment down payment	$9,295
Equipment payments	7,877
Building	29,500
Other construction costs	23,200
Operating costs	18,300
Total	88,172

The applicant proposes to finance this with $10,000 existing capital, $10,000 new capital, a $75,000 bank loan, and $25,000 in stockholder loans. However, none of these sources has been shown to be available in the amount indicated. Applicant's balance sheet shows current assets of $10,000, but they include $8,697 in application expenses apparently not listed as projected costs, leaving only $1,303 of existing capital available. The new capital and stockholder loans are to be contributed equally by principals Dwight and Diane Gayer, $17,500 each, and they rely in part on bank loans of $12,500 each to raise these funds. However, the bank's letters require unspecified security for the loans, and so are not sufficient to establish that these loans are available. Further, Dwight's balance sheet shows only $8,300 net liquid assets, and Diane's shows none. Therefore, they have not shown the capacity to invest the $35,000 claimed. Finally, with respect to the $75,000 bank loan directly to the applicant, the bank's commitment letter requires its loan to be secured by marketable stocks, but the Gayers' ability to satisfy this condition has not been shown. A limited financial issue will be specified.

31. Grand's ascertainment does not comply fully with the requirements of the *Primer*. Despite a lengthy compositional study, there is little information about Fraser, the proposed community of license. For example, there is no indication of the community's racial, ethnic, or minority composition, its governmental activities, or its public service organizations. We are therefore unable to assess the significance of applicant's failure to ascertain minority leaders. A limited ascertainment issue will be specified.

32. Grand also failed to answer Question 26 of Section IV-A of its application, regarding its proposed commercial limits. A correcting amendment must be filed.

33. *Jefferson Wireless Company.* Jefferson's nighttime interference-free contour (19.3 mV/m) would not serve a small (0.3-square km) area of Golden. However, the unserved area is only about 1.5 percent of the total area of the city, and is described by the applicant as unpopulated. The proposal therefore substantially complies with the principal-city coverage requirements of Section 73.24(j) of our Rules. See, *e.g., San Francisco Wireless Talking Machine Co., Inc.*, FCC 80-260, Mimeo No. 27330, 47 RR 2d 889 (1980).

34. Jefferson's application projects that $96,500 will be required to construct its proposed station and operate for three months, itemized as follows:

Equipment	$55,000
Land lease	1,000
Other construction costs	13,500
Operation costs	27,000
Total	96,500

The applicant relies on $300 existing capital and a $140,000 bank loan for funds, but none of it has been shown to be available. Jefferson's balance sheet is undated, and its banks loan commitment letter does not set out the terms of the loan. (Exhibit 5 to the application indicates that Listeners' Network, 50-percent stockholder, will loan the applicant up to $80,000, but the terms of the loan and Network's capacity to make it are not shown.) A limited financial issue will be specified.

35. Jefferson has also failed to comply with the requirement of the ascertainment *Primer*. Its compositional study does not describe the economic activities of Golden. And while the study indicates there is a small minority population in Golden, there is no discussion of whether minorities are a significant population group, and Jefferson apparently interviewed no leaders of local minorities. In addition, we cannot determine whether the applicant interviewed leaders of outlying communities its proposed station would serve. Further, Jefferson failed to list all the problems reported in its leader interviews, and did not describe its responsive programming as fully as required by the *Primer*. A limited ascertainment issue will be specified.

36. *Other matters.* These two proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service, a contingent comparative issue will also be specified.

Conclusion and Orders

37. Except as indicated by the issues specified below, all seven applicants are qualified to construct and operate as proposed. However, since each of the proposals is mutually exclusive with one or two of the others, and since questions relating to the Gayers are common to all three mutuallty exclusive combinations, they all must be designated for hearing in a consolidated proceeding.

38. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether grant of the application of Summit Radio, Inc., Eagle Radio, Inc., or Grand Radio, Inc., or any combination thereof, would violate Section 73.35(a) of the Commission's Rules with respect to multiple ownership or control of broadcast stations or Section 73.35(b) of the Commission's Rules with respect to regional concentration of control.

2. To determine with respect to Alan K. Levin:

a. The source and availability of sufficient funds to meet anticipated costs; and

b. Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

3. To determine with respect to the efforts of Alan K. Levin to ascertain the needs of this proposed service area:

a. Whether the applicant adequately determined the racial, ethnic, or minority composition; governmental activities; and public service organizations of Dillion;

b. Whether the applicant interviewed leaders of charities, elderly, minorities, professions, women, and youth in Dillon;

c. Whether the applicant interviewed a sufficient number of members of the Dillon general public to assure a generally random sample; and

d. Whether the applicant's programming proposal reflects an evaluation of his ascertained problems and needs.

4. To determine with respect to Summit Radio, Inc.:

a. The source and availability of sufficient funds to meet anticipated costs; and

b. Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

5. To determine with respect to the efforts of Summit Radio, Inc. to ascertain the needs of its proposed service area:

A. Whether the applicant adequately determined the composition of Dillon, Frisco, and Silverthorne; and

b. Whether the applicant interviewed leaders of business, charities, consumers, elderly, monorities, professions, and women in the communities it proposes to serve.

6. To determine whether the proposal of Summit Radio, Inc. to serve three communities is in compliance with Section 73.1120 of the Commission's Rules, and if not whether circumstances exist which warrant a waiver of that Section.

7. To determine with respect to the efforts of Dillon Broadcasting Company to ascertain the needs of its proposed service area:

a. Whether the applicant adequately determined the racial, ethnic, or minority composition, and the economic activities of Dillon;

b. Whether the applicant interviewed leaders of business, consumers, culture, and minorities in Dillon;

c. Whether the applicant's interviews with members of the Dillon general public assured a generally random sample; and

d. Whether the programming the applicant proposes in response to its ascertained problems and needs is scheduled at times when it could reasonably be expected to be effective.

8. To determine the areas and populations which would receive primary aural service from the proposals of Alan K. Levin, Summit Radio, Inc., and Dillon Broadcasting Company, and the availability of other primary service to such areas and populations.

9. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, whether the Dillon-Frisco-Silverthorne proposal or one of the Dillon proposals would better provide a fair, efficient, and equitable distribution of radio service.

10. To determine, in the event it be concluded that a choice among the Dillon and Dillon-Frisco Silverthorne applications should not be based solely on considerations relating to Section 307(b), which of the proposals would on a comparative basis best serve the public interest.

11. To determine with respect to Eagle Radio, Inc.:

a. Wether the amount it proposes for its antenna tower is sufficient to meet that purpose;

b. The source and availability of sufficient funds to meet anticipated costs; and

c. Whether, in light of the evidence adduced pursuant to (a) and (b) above, the applicant is financially qualified.

12. To determine with respect to the efforts of Eagle Radio, Inc. to ascertain the needs of its proposed service area:

a. Whether the applicant adequately determined the population characteristics, governmental activities, and public service organizations of Vail;

b. Whether the applicant interviewed leaders of charities, Hispanics, labor, professions, and women in Vail; and

c. Whether the applicant's interviews with members of the Vail general public assured a generally random sample.

13. To determine with respect to the efforts of Mountain Wireless Limited to ascertain the needs of its proposed service area:

a. Whether the applicant adequately determined the population characteristics, governmental activities, and public service organizations of Vail;

b. Whether the applicant interviewed leaders of charities, civic groups, elderly, Hispanics, labor, professions, and women in Vail; and

c. Whether the programming the applicant proposes in response to its ascertained problems and needs is scheduled at times when it could reasonably be expected to be effective.

14. To determine which of the Vail proposals would, on a comparative basis, better serve the public interest.

15. To determine with respect to Grand Radio, Inc.:

foregoing issues, which of the applications, if any, should be granted.

39. It is further ordered, That Eagle Radio, Inc., Mountain Wireless Limited, and Grand Radio, Inc. shall file the

[FCC 80-583; Transmittal Nos. 7566 and 892; I-T-C-3005; CC Docket No. 80-639]

Western Union Telegraph Co. and TRT Telecommunications Corp.; Memorandum Opinion and Order

WUITS service. Specifically, this order implements the Court's decision with respect to the suspended WUITS service,[4] development of a distribution formula for international telex traffic, and TRT's international telex service

IRCs is according to a formula approved by the FCC. Until now the Commission has never expressly approved a telex distribution formula, because it was felt that the statutory purpose of Section 222(e) was served by the longstanding

a formula and that the FCC has treated routed and unrouted traffic differently under Section 222(e). (Slip Opinion at 5187). In fact, the Commission always has respected specific customer routing in accepting or prescribing formulas.[7]

V 45 D E 2 9 8 0 UMI

14. To determine which of the Vail proposals would, on a comparative basis, better serve the public interest.

15. To determine with respect to Grand Radio, Inc.:

a. The source and availability of sufficient funds to meet anticipated costs; and

b. Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

16. To determine with respect to the efforts of Grand Radio, Inc. to ascertain the needs of its proposed service area:

a. Whether the applicant adequately determined the composition of Fraser; and

b. Whether the applicant interviewed minority leaders in Fraser.

17. To determine with respect to Jefferson Wireless Limited:

a. The source and availability of sufficient funds to meet anticipated costs; and

b. Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

18. To determine with respect to the efforts of Jefferson Wireless Limited to ascertain the needs of its proposed service area:

a. Whether the applicant adequately determined the racial, ethnic, or minority composition, and the economic activities of Golden;

b. Whether the applicant interviewed minority leaders in Golden;

c. Whether the applicant adequately ascertained community problems outside of Golden;

d. Whether the applicant listed all ascertained community problems; and

e. Whether the applicant's programming proposal reflects an evaluation of its ascertained problems and needs.

19. To determine the areas and populations which would receive primary aural service from the proposals of Grand Radio, Inc. and Jefferson Wireless Limited, and the availability of other primary service to such areas and populations.

20. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, whether the Fraser or the Golder proposal would better provide a fair, efficient, and equitable distribution of radio service.

21. To determine, in the event it be concluded that a choice between the Fraser and Golden applications should not be based solely on considerations relating to Section 307(b), which of the proposals would on a comparative basis better serve the public interest.

22. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

39. It is further ordered, That Eagle Radio, Inc., Mountain Wireless Limited, and Grand Radio, Inc. shall file the amendments specified in paragraphs 22, 27, 29, and 32 above, within 30 days after this Order is published in the **Federal Register.**

40. It is further ordered, That Alan K. Levin and Eagle Radio, Inc. shall publish local notice of their application and amendment, respectively (if they have not already done so), and shall file statements of publication with the presiding Administrative Law Judge within 40 days after this Order is published in the **Federal Register.**

41. It is further ordered, That the petition to dismiss Alan K. Levin filed against the application of Summit Radio, Inc. IS GRANTED to the extent indicated herein, and IS DENIED in all other respect.

42. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

43. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, where consistent with the Rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Inasmuch as this proceeding involves three mutually exclusive combinations, for each of which most of the issues relating to the other two are irrelevant, applicants Levin, Summit, and DBC need not publish issues 11 through 21, applicants Eagle and Mountain need not publish issues 2 through 10 and 15 through 21, and applicants Grand and Jefferson need not publish issues 2 through 14.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-40230 Filed 12-24-80; 8:45 am]

BILLING CODE 6712-01-M

[FCC 80-583; Transmittal Nos. 7566 and 892; I-T-C-3005; CC Docket No. 80-639]

Western Union Telegraph Co. and TRT Telecommunications Corp.; Memorandum Opinion and Order

Adopted: October 9, 1980.

Released: October 29, 1980.

In the matter of the Western Union Telegraph Company (Transmittal No. 7566), Tariff F.C.C. No. 272, Overseas Telex Routing Service (OTRS); and Application for authority to operate facilities to provide telex service to overseas points (I-T-C-3005), and TRT Telecommunications Corporation (Transmittal No. 892), Tariff F.C.C. No. 72, Express International Telex Service (EITS), and Development of formula for distribution of international telex traffic (CC Dkt. No. 80-639).

By the Commission:

1. On August 25, 1980 the U.S. Court of Appeals for the Second Circuit vacated and set aside this Commission's Order [1] allowing Western Union Telegraph Company to continue providing overseas worldwide telex service in conjunction with Canadian and Mexican carriers (CNCP and Telecomex, respectively) and TRT Telecommunications Corporation (TRT).[2] The Court determined that the service, variously known as Western Union International Telex Service (WUITS), Low Cost Routing (LCR), or Overseas Telex Routing Service (OTRS), violates Section 222 of the Communications Act, 47 U.S.C. § 222. The Court directed the Commission on remand to order Western Union to terminate overseas service via CNCP or Telecomex and to cease any other international telegraph operations as well. In its subsequent order, released September 12, 1980, the Court further prescribed that "any effort by Western Union to continue its WUITS or LCR service by via TRT alone [rather than including other International Record Carriers (IRCs) pursuant to a Commission-approved traffic distribution formula] is clearly prohibited by Section 222." [3]

2. Consistent with those judicial pronouncements, this order solicits comment on development of a Commission-approved Telex distribution formula, and effectuates the Court's mandate to terminate the

[1] *Western Union Telegraph Co., New Telex Service Arrangements via Mexico and Canada*, 75 FCC 2d 461 (1980).

[2] *ITT World Communications, Inc. et al v FCC*, Nos. 79-4220, 80-4003, and 80-4016, decided August 25, 1980; on motion for an order adjudging Western Union to be in contempt, decided September 12, 1980.

[3] September 12 slip decision, at 5547.

WUITS service. Specifically, this order implements the Court's decision with respect to the suspended WUITS service,[4] development of a distribution formula for international telex traffic, and TRT's international telex service currently offered in close cooperation with Western Union (Express International Telex Service or EITS). The latter service was not directly addressed by the court but its decision clearly affects an international telex offering pursuant to contract between TRT and Western Union.

WUITS Tariff Matters

3. In accordance with the Court's holding that Western Union's WUITS service, Tariff FCC No. 272, violates Section 222 of the Communications Act, 47 U.S.C. § 222, we order Western Union to file revisions terminating that service immediately. Applications for review of the Bureau Chief's order denying petitions to reject that tariff *(Western Union Transmittal No. 7566: Overseas Telex Routing Service (OTRS)*, FCC Mimeo 32458, released June 9, 1980), will be dismissed as moot.[5]

4. On September 11, 1980, Western Union applied for authority under § 214 of the Act. 47 U.S.C. § 214, to discontinue use of Canadian and Mexican overseas telex routings. As the Court held Western Union's provision of OTRS service is illegal under Section 222 of the Act, no purpose would be served by a separate evaluation of its discontinuance pursuant to Section 214. The application filed September 11 by Western Union will be returned under separate cover.

5. In addition, because the Court's interpretation of § 222 proscribes any offering of direct international service by Western Union, that carrier's application for authority to extend direct telex service to overseas points, File No. I-T-C-3005, is beyond the Commission's jurisdiction. That application, too, will be dismissed.

Formula for Telex Traffic Distribution

6. The Court's September 12 decision also prohibits Western Union from providing the domestic portion of overseas service in connection with a single international carrier, and requires that the distribution of traffic among the IRCs is according to a formula approved by the FCC. Until now the Commission has never expressly approved a telex distribution formula, because it was felt that the statutory purpose of Section 222(e) was served by the longstanding practice of allowing individual consumers to make routine decisions free of pressures to favor any one IRC. We undertake in this order to develop a formula for the distribution of international telex traffic by Western Union, consonant with the Court's instructions.[6]

7. It is our understanding that most international telex traffic is transmitted by an IRC of the customer's explicit selection. In such circumstances Western Union neither directly offers the international telex service nor exercises any influence over the customer's routing of such traffic to particular IRCs. In effect, the distribution to IRCs of substantially all overseas telex traffic has for some time been accomplished by individual subscribers' routing decisions. The domestic carrier's distribution leverage, which Congress originally constrained by the formula requirement of Section 222(e), has effectively been supplanted in the telex area by technology and use patterns which require individual customers to specify an IRC at their terminals.

8. Only a very small residuum (much less than one per cent) of all international telex traffic is unrouted—i.e., submitted to Western Union for that carrier's selection of an IRC to complete the transmission. When Western Union receives such traffic for routing, our understanding is that it forwards each message on a strictly rotational basis pursuant to agreements with the several IRCs. An example of such unrouted traffic is the occasional distribution of an identical message to many different addresses, where the customer has not provided routing instruction for the few addresses involving international telex service. In such circumstances individual messages would be sent by different IRCs on a rotational basis.

9. In approaching the determination of a distributional formula pursuant to § 222(e), the Commission has taken into account the Court's statement in its August 25 decision (slip opinion, *supra* n.2, at 5187) that "nothing in the Act exempts routed traffic from the requirements of Section 222(e)(1)." The Court went on to point out that routing may be taken into account in "shaping" a formula and that the FCC has treated routed and unrouted traffic differently under Section 222(e). (Slip Opinion at 5187). In fact, the Commission always has respected specific customer routing in accepting or prescribing formulas.[7] While we have taken routed traffic volues into account in "shaping" our formulas, we have never used a formula to override the customer's choice of a route. In the case of Telex service, virtually all traffic is routed by the customer and not by Western Union. Thus, we have had no occasion to require a formula for the distribution of unrouted traffic. And, now that we have required Western Union to terminate its WUITS offering, there is no pressing need to impose an interim formula pending the further proceedings that we initiate in this order looking toward a Telex formula.

10. Pending final determination of a Telex formula pursuant to Section 222(e) of the Communications Act, 47 U.S.C. § 222(e), we intend to permit Western Union to continue distributing Telex traffic as it has in the past. Neither carriers nor customers have complained of this operation. Affected carriers are therefore authorized to continue present practices for distribution of routed and unrouted international Telex traffic on an interim basis, while we solicit comments to determine whether public interest factors warrant any variation in the present *de facto* allocational mechanism.[8] We will approve or prescribe a Telex formula pursuant to Section 222(e) on the basis of our evaluation of the comments we receive. The interested carrier parties may present for our consideration a negotiated arrangement,[9] including an arrangement that is similar to the *de facto* one that has governed Telex distribution.

[4] Western Union suspended its WUITS offering on September 12 in compliance with the Court's order released that date.

[5] On September 11 Western Union applied for special permission to revise the OTRS tariff on less than one day's notice. The proposed revision would have continued OTRS service on a restricted basis, using only TRT for the international transmission segment. In light of the Court's instructions and our actions herein, that application is dismissed as moot.

[6] We do not interpret the court's mandate to require the interim cessation of all international telex transmission in which Western Union performs the domestic landline haul function.

[7] See *Merger of Western Union and Postal Telegraph* (Separate Report on Formulas), 10 FCC 184. 191 (1943); *IRCs Scope of Operations*, 67 FCC 2d 877, 879, *aff'd sub nom. RCA Global Comm., Inc. v. FCC*, 574 F.2d 724, 729 (2d Cir. 1978). See also *Western Union Tel. Co. v. FCC*, 217 F. 2d 579, 581 (2d Cir. 1954).

[8] In initially adopting an international telegraph formula after the 1943 merger of Western Union and Postal Telegraph, the Commission referred to varied public interest factors, including but not limited to: (i) equities between the various carriers, (ii) the public's interest in maintaining the strength and service of all carriers in a position to render efficient service, (iii) development of new technology, (iv) revenue shares accruing to the United States under various types of operation, (v) problems of duplication of facilities, and (vi) the ability of carriers to obtain in-bound and out-bound traffic.

Merger of Western Union and Postal Telegraph, supra, 10 FC 184.

[9] See 47 U.S.C. § 222(e)(1).

TRT's Express International Telex Service (EITS)

11. Also pending before the Commission are applications for review of the Common Carrier Bureau Chief's order in *TRT Tariff FCC No. 72: Express*

Communications Act, 47 U.S.C. § 214, to partially terminate its OTRS service is returned.

14. It is further ordered that Western Union's application for authorization of direct overseas telex service, File No. I-T-C-3005, is dismissed.

System, Washington, D.C. 20551 to be received no later than January 16, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of

Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities

as required; making or acquiring loans and other extensions of credit, secured or unsecured, for consumer and other purposes; and the extension of loans to dealers for the financing of inventory (floor planning) and working capital

Lexington, Lexington, Virginia; Shenandoah Valley National Bank, Winchester, Virginia, and Valley Fidelity Bank and Trust Company, Knoxville, Tennessee. The factors that are considered in acting on the

TRT's Express International Telex Service (EITS)

11. Also pending before the Commission are applications for review of the Common Carrier Bureau Chief's order in *TRT Tariff FCC No. 72: Express International Telex Service (EITS)*, released May 8, 1980. The Bureau Chief's order denied petitions to reject the TRT tariff and allowed it to become effective. This service arises from a contract between Western Union and TRT under which TRT offers through international service, using dometic private line facilities belonging to Western Union for the landline haul. Though offered by TRT, EITS nevertheless may run afoul of the Court's decision in the *Telecomex* case because of the special relationship between the dominant domestic telex carrier and a single IRC. In particular, EITS may have the same difficulties with respect to the formula that required the termination of WUITS as offered through TRT. We are requesting comments from Western Union and the IRCs with respect to EITS, to be filed within 10 days and replies 10 days later. These comments will be considered in the context of petitions for agency review of the Bureau Chief's order allowing EITS to become effective. After receipt of comments, we intend to act as soon as possible on the applications for review of the EITS decision, fully considering the Court's decision in the *Telecomex* case.

Ordering Clauses

12. Accordingly, it is ordered:

(i) that Western Union Telegraph Company shall immediately cease and desist from providing its LCR, WUITS or similar service via CNCP, Telecomex, or any carriers other than IRS;

(ii) that Western Union shall immediately cease the conduct of any international telegraphic operations; and

(iii) that Western Union shall not offer telex or TWX traffic via TRT or other IRCs to points outside the continental United States, except as approved by the Commission and according to a Commission-approved formula for the distribution of such traffic.

13. It is further ordered:

(i) that, Western Union's Telegraph Company shall withdraw its Tariff FCC No. 272, Overseas Telex Routing Service,

(ii) that Western Union's September 11, 1980 application No. 1787 for special permission to revise provisions of the OTRS service IS DENIED; and

(iii) that Western Union's application filed September 11, 1980 for authority under Section 214 of the Communications Act, 47 U.S.C. § 214, to partially terminate its OTRS service is returned.

14. It is further ordered that Western Union's application for authorization of direct overseas telex service, File No. I–T–C–3005, is dismissed.

15. It is further ordered that Western Union and the International Record Carriers currently receiving traffic from Western Union landhaul facilities shall jointly submit a proposed formula for distribution of all international telex traffic within 30 days of the release of this order, together with any comments necessary to explain and justify the proposed formula in terms of the standards set forth in Section 222(e). If the interested carriers cannot agree upon a proposed formula, they shall submit their individual proposals along with commens explaining and justifying those proposals within the same time limits. Any responses must be filed within 15 days after the opening proposals and comments.

16. It is further ordered that parties wishing to address the effects of the Court's decision in this matter on TRT's EITS service, Tariff FCC No. 72, shall file comments within 10 days, and any replies within 10 days after the filing of opening comments.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-40229 Filed 12-24-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Bank of Boston International; Establishment of U.S. Branch of a Corporation Organized Under Section 25(a) of the Federal Reserve Act

Bank of Boston International, New York, New York, a corporation organized under section 25(a) of the Federal Reserve Act, has applied for the Board's approval under section 211.4(c)(1) of the Board's Regulation K (12 CFR 211.4(c)(1)), to establish a branch in Chicago, Illinois. Bank of Boston International operates as a subsidiary of The First National Bank of Boston.

The factors that are to be considered in acting on this application are set forth in section 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 16, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40235 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Bank of Boston International of Miami; Establishment of U.S. Branch of a Corporation Organized Under Section 25(a) of the Federal Reserve Act

Bank of Boston International of Miami, Miami, Florida, a corporation organized under section 25(a) of the Federal Reserve Act, has applied for the Board's approval under section 211.4(c)(1) of the Board's Regulation K (12 CFR 211.4(c)(1)), to establish a branch in Dallas, Texas. Bank of Boston International of Miami operates as a subsidiary of The First National Bank of Boston, Boston, Massachusetts.

The factors that are to be considered in acting on this application are set forth in section 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 16, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40234 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Notice of Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than January 19, 1981.

A. *Federal Reserve Bank of New York* (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. Citicorp, New York, New York (commercial lending and leasing activities; Colorado, Utah, Wyoming): to engage, through its subsidiary, Citicorp (USA), Inc., in commercial lending activities; and leasing personal or real property or acting as agent, broker, or advisor in leasing such property. These activities would be conducted from an office in Denver, Colorado, serving the states listed in the caption to this notice.

2. Citicorp, New York, New York (consumer and commercial finance and insurance activities; Virginia): to engage through its indirect subsidiary, Citicorp Person-to-Person Financial Center, Inc., in conducting the following activities: purchasing for its own account and servicing sales finance contracts; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; making or acquiring loans and other extensions of credit, secured or unsecured, for consumer and other purposes; and the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center, Inc. These activities would be conducted from a *de novo* office in Vienna, Virginia serving the entire State of Virginia.

B. *Federal Reserve Bank of Chicago* (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

Continental Illinois Corporation, Chicago, Illinois (finance activities; Illinois): to engage through its subsidiary, Continental Illinois Commercial corporation, in commercial finance activities. These activities would be conducted from an office in Chicago, Illinois, serving the State of Illinois. Comments on this application must be received by January 12, 1981.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40239 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Credit and Commerce American Holdings, N.V., Credit and Commerce American Investment, N.A.; Formation of Bank Holding Companies

Credit and Commerce American Holdings, N.V., Willemstad, Netherlands Antilles, and Credit and Commerce American Investment, B.V., Amsterdam, Netherlands, have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring up to 100 per cent of the voting shares of Financial General Bankshares, Inc., Washington, D.C., a multi-bank holding company controlling the following banks: Community State Bank, Albany, New York; Bank of Commerce, New York, New York; Eastern Shore National Bank, Pocomoke City, Maryland; First American Bank of Maryland; Silver Springs, Maryland; First American Bank, Washington, D.C., First American Bank of Virginia, Fairfax County, Virginia; Peoples National Bank of Leesburg, Leesburg, Virginia; The Round Hill National Bank, Round Hill, Virginia; Valley National Bank, Harrisonburg, Virginia; First National Bank of Lexington, Lexington, Virginia; Shenandoah Valley National Bank, Winchester, Virginia, and Valley Fidelity Bank and Trust Company, Knoxville, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Credit and Commerce American Holdings, N.V., Willemstad, Netherlands Antilles, and Credit and Commerce American Investment, B.V., Amsterdam, Netherlands, have also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of National Mortgage Corporation, Washington, D.C.

Applications state that the proposed subsidiary would engage in the activity of mortgage banking. This activity would be performed from offices of Applicant's subsidiary in Washington, D.C., and the geographic areas to be served are the Washington, D.C.-Maryland-Virginia SMSA. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond.

Any views or requests for hearing should be submitting in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 16, 1981.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40233 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Iowa Bancorp, Inc.; Formation of Bank Holding Company

Iowa Bancorp, Inc., Rock Rapids, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank of Lone Grove, Lone Grove, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Inwood Bancorp, Inc., Rock Rapids, Iowa, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than January 19, 1981.

A. *Federal Reserve Bank of Minneapolis* (Bruce J. Gibney, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

Inwood Bancorp, Inc., Rock Rapids, Iowa: to engage, through its subsidiary, Inwood Agency, Inc., Rock Rapids, Iowa, in the Lary Insurance Agency, Griswold, Iowa.

Applicant states that the proposed agency would engage in providing general insurance services in a

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40250 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Board of Governors of the Federal Reserve System, December 19, 1980.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 80-40233 Filed 12-24-80; 8:45 am]
BILLING CODE 6210-01-M

First Union International Banking Corporation of North Carolina; Corporation to Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"); to be known as First Union International Banking Corporation of North Carolina, to be located in Charlotte, North Carolina, with a branch in New York City. First Union International Banking Corporation of North Carolina would operate as a subsidiary of First Union National Bank of North Carolina, Charlotte, North Carolina. The factors that are considered in acting on the application are set forth in section 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 17, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 80-40236 Filed 12-24-80 8:45 am]
BILLING CODE 6210-01-M

Griswold State Bancshares, Inc.; Proposed Retention of Lary Insurance Agency

Griswold State Bancshares, Inc., Griswold, Iowa, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain its indirect interest, through Prokop Insurance Agency, Griswold, Iowa, in the Lary Insurance Agency, Griswold, Iowa.

Applicant states that the proposed agency would engage in providing general insurance services in a community with a population not exceeding 5,000. These activities would be performed from offices of Applicant's subsidiary in Griswold, Iowa, and the geographic areas to be served are the southwest corner of Cass County and the southeast corner of Pottawattamie County. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 17, 1981.

Board of Governors of the Federal Reserve System, December 19, 1980.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 80-40237 Filed 12-24-80; 8:45 am]
BILLING CODE 6210-01-M

Inwood Bancorp, Inc.; Formation of Bank Holding Company

Inwood Bancorp, Inc., Rock Rapids, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Inwood State Ban, Inwood, Iowa ("Bank"). The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Inwood Bancorp, Inc., Rock Rapids, Iowa, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), to engage in general insurance activities in a community of less than 5,000. These activities would be performed from offices of Bank in Inwood, Iowa, and the geographic areas to be served are Inwood, Iowa. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 16, 1981.

Board of Governors of the Federal Reserve System, December 19, 1980.
06Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 80-40238 Filed 12-24-80; 8:45 am]
68BILLING CODE 6210-01-M

American City Bancorp, Inc.; Formation of Bank Holding Company

American City Bancorp, Inc., Tullahoma, Tennessee, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring at least 80 percent of the voting shares of American City Bank of Tullahoma, Tullahoma, Tennessee. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 16, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 80-40357 Filed 12-24-80; 8:45 am]
BILLING CODE 6210-01-M

Choctaw Bancorp; Formation of Bank Holding Company

Choctaw Bancorp, Choctaw, Oklahoma, has applied at least for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring at least 80 percent of the voting shares of Choctaw State Bank, Choctaw, Oklahoma. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The Application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 19, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 80-40354 Filed 12-24-80; 8:45 am]
BILLING CODE 6210-01-M

First Community Bancshares, Inc.; Formation of Bank Holding Company

First Community Bancshares, Inc., Lone Grove, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank of Lone Grove, Lone Grove, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 19, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 80-40352 Filed 12-24-80; 8:45 am]
BILLING CODE 6210-01-M

First Community Bancorporation; Acquisition of Bank

First Community Bancorporation, Joplin, Missouri, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Merchants and Miners Bank of Webb City, Webb City, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received not later than January 19, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 80-40352 Filed 12-24-80; 8:45 am]
BILLING CODE 6210-01-M

First Jefferson Corp.; Formation of Bank Holding Company

First Jefferson Corporation, Biloxi, Mississippi, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Jefferson Bank, Biloxi, Mississippi. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 16, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 80-40349 Filed 12-24-80; 8:45 am]
BILLING CODE 6210-01-M

First of Searcy, Inc.; Formation of Bank Holding Company

First of Searcy, Inc., Searcy, Arkansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of First Security Bank, Searcy, Arkansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 19, 1981.

Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of

Trust and Banking Company, Jasper, Tennessee. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

Southwest Bancshares, Inc.; Acquisition of Bank

Southwest Bancshares, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(3) of the

Board of Governors of the Federal Reserve System, December 19, 1980.
Jefferson A. Walker,
Assistant Secretary of the Board.
[FR Doc. 80-40356 Filed 12-24-80; 8:45 am]

land from settlement, sale or entry under the public land laws, but not the mining nor mineral leasing laws for the purpose of including the land in the Humboldt National Forest was published as F.R. Doc. 79-4059 on page 9805 of the issue of

Sec. 32, NW¼NW¼NW¼.

The area described contains 1,098.59 acres in Clackamas and Hood River Counties, Oregon.

2. By virtue of the authority contained

Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40348 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

First New Mexico Bankshare Corp., Acquisition of Bank

First New Mexico Bankshare Corporation, Albuquerque, New Mexico, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Southwest National Bank, Hobbs, New Mexico. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 19, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40351 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Marion Bancshares, Inc.; Formation of Bank Holding Company; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 80-37371) published at page 79909 of the issue for Tuesday, December 2, 1980. The comment period is extended to January 3, 1981.

Marion Bancshares, Inc., Jasper, Tennessee, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Marion Trust and Banking Company, Jasper, Tennessee. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 3, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40358 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Sidney National Corp.; Formation of Bank Holding Company

Sidney National Corporation, Sidney, Nebraska, has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Sidney National Bank, Sidney, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 19, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40355 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Southwest Bancshares, Inc.; Acquisition of Bank

Southwest Bancshares, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of Texas Bank of Beaumont, Beaumont, Texas. The factors that are considered in acting on the application are set forth in secton 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than January 19, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40353 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

Sweet Springs Bancshares, Inc.; Formation of Bank Holding Company

Sweet Springs Bancshares, Inc., Sweet Springs, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Chemical Bank, Sweet Springs, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 19, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 19, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-40350 Filed 12-24-80; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Florida; Resource Management Planning; Pine Island Sound-Sanibel Resource Management Plan

Pursuant to the responsibilities outlined in 43 CFR 1601.3(e)(2) and 1601.5-2(a), the Eastern States Office of the Bureau of Land Management, U.S. Department of the Interior, announces that draft issues and planning criteria have been developed for the Pine Island Sound-Sanibel Resource Management Plan (RMP) now in preparation. The RMP will cover public lands, islands, and Federal mineral ownership under Bureau of Land Management jurisdiction in Lee, Charlotte, and Collier Counties, Florida. Preparation of the RMP, along with a list of anticipated issues and planning steps, was announced in the October 22, 1980 **Federal Register.**

Copies of the draft issues and planning criteria are being mailed to an extensive list of Federal, State, and local agencies and planning councils; congressional offices; interest groups; and concerned individuals. Single copies of the draft issues and planning criteria are available from the Tuscaloosa Office, Bureau of Land Management, 1315 McFarland Blvd. East, Tuscaloosa, Alabama 35405. Copies are available for inspection at the Tuscaloosa Office and at the Eastern States Office, Bureau of Land Management, 350 S. Pickett St., Alexandria, Virginia 22304.

The public has thirty days in which to comment upon the draft issues and planning criteria. Comments received at the Tuscaloosa Office, at the above address, by January 30, 1981, will be considered in the development of the final issues and planning criteria, which will be published in February 1981.

Roger L. Hildebeidel,

Eastern States Director.

[FR Doc. 80-40249 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

[N-4700]

Nevada; Amendment and Republication of Proposed Withdrawal

Notice of the Forest Service, United States Department of Agriculture, application N-4700 for withdrawal of land from settlement, sale or entry under the public land laws, but not the mining nor mineral leasing laws for the purpose of including the land in the Humboldt National Forest was published as F.R. Doc. 79-4959 on page 9805 of the issue of February 15, 1979 and an amendment thereto was published as F.R. Doc. 80-5622 on pages 11922-11923 of the issue of February 22, 1980.

The applicant agency has amended its application to delete the following described land:

Mount Diablo Meridian

T. 34 N., R. 60 E.,
- Sec. 4, Lots 3, 4;
- Sec. 8, S½SE¼;
- Sec. 16, SW¼NW¼, NW¼SW¼;
- Sec. 22, N½, N½SW¼, SE¼;
- Sec. 24, W½SW¼.

T. 35 N., R. 62 E.,
- Sec. 32, E½.

Comprising 1201.05 acres.

The above described lands have been determined to have higher and better use for exchange purposes. The serial number assigned for the exchange application on these lands is N-30987.

This amendment decreases the proposed withdrawal by 1201.05 acres. The total acres now proposed for withdrawal is 14,022.68.

All correspondence in connection with this withdrawal or the exchange application should be directed to the Bureau of Land Management, Department of the Interior, Chief, Division of Technical Services, P.O. Box 12000, Reno, Nevada 89520.

Wm. J. Malencik,

Chief, Division of Technical Services.

[FR Doc. 80-40322 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

[OR 18844]

Oregon; Order Providing for Opening of Land

1. By order dated December 3, 1980, the Federal Energy Regulatory Commission vacated the land withdrawal in part for Power Project No. 529 as to the following described land:

Willamette Meridian

Mt. Hood National Forest

T. 3 S., R. 9 E.,
- Sec. 19, W½ lot 4, SE¼ lot 4, SE¼SE¼SW¼, S½N½SE¼, and S½SE¼;
- Sec. 20, S½N½SW¼, SW¼NE¼SE¼, S½NW¼SE¼, and S½S½;
- Sec. 29, N½, N½SW¼, SW¼SW¼, N½SE¼SW¼, N½N½SE¼, and SW¼NW¼SE¼;
- Sec. 30, E½ lot 1 NE¼NE¼, and SE¼SE¼;
- Sec. 31, NE¼NE¼, E½NW¼NE¼, and SE¼NE¼;
- Sec. 32, NW¼NW¼NW¼.

The area described contains 1,098.59 acres in Clackamas and Hood River Counties, Oregon.

2. By virtue of the authority contained in Section 204 of the Federal Power Act of June 10, 1920 (41 Stat. 1075, as amended, 16 U.S.C. 818) and in accordance with the authority delegated by Bureau of Land Management Order No. 701 dated July 23, 1964 (29 FR 10526) as amended, it is ordered that at 10:00 a.m. on February 2, 1980 the land described above will be relieved of the restrictions imposed by the provisions of Section 24 of the Federal Power Act, supra, and the Act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621).

3. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the land described above is already open to such forms of disposition as may by law be made of national forest lands; location and entry under the United States mining laws; and to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Dated: December 17, 1980.

Champ C. Vaughan, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-40323 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

[Group 647]

California; Filing of Plat of Survey

December 16, 1980.

1. A plat of survey of the following described land, accepted November 25, 1980, will be officially filed in the California State Office, Sacramento, California, effective at 10:00 a.m. on January 30, 1981:

San Bernardino Meridian, California

Tps. 11 & 12 S., Rs. 2 & 3 E.

2. The plats, in four sheets, represent the dependent resurvey of portions of the east boundary, subdivisional lines and subdivisions of sections 21 and 28, T. 11 S., R. 2 E.; portions of the east and north boundaries, subdivisional lines and subdivision of section 3, T. 12 S., R. 2 E., and a portion of the boundary of the Rancho Santa Ysobel; portion of the boundary of the Rancho Valle de San José, a portion of the boundary of the Rancho Santa Ysabel, resurvey of the boundary of the Ysabel Indian Reservation No. 3, and a portion of the

subdivisional lines, T. 11 S., R. 3 E.; and a dependent resurvey and survey of the boundary of the Santa Ysabel Indian Reservation No. 3 T. 12 S., R. 3 E. The surveys were executed to restore the corners in their true original locations

Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, P.O. Box 1869, Highway 187 North, Rock Springs, Wyoming 82901.

the content of each protest and the State Director's response.

Maxwell T. Lieurance,

State Director.

[FR Doc. 80-40347 Filed 12-24-80; 8:45 am]

Persons wishing to nominate individuals to serve on the Bakersfield District Advisory Council should send the nominee's name, address, profession and other biographic data to: Federal Building, Bureau of Land Management,

Dated: December 15, 1980.

George Francis,

District Manager.

[FR Doc. 80-40210 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Tenneco Oil and Production Plan

AGENCY: U.S. Geological Survey,

subdivisional lines, T. 11 S., R. 3 E.; and a dependent resurvey and survey of the boundary of the Santa Ysabel Indian Reservation No. 3 T. 12 S., R. 3 E. The surveys were executed to restore the corners in their true original locations according to the best available evidence.

3. The described lands are withdrawn in the Santa Ysabel Indian Reservations Nos. 1, 2, and 3 and the boundaries are a part of Rancho Valle de San Jose and Rancho Santa Ysabel. The lands are not subject to disposition under the public land laws by reason of the official filing of the plat of survey.

Herman J. Lyttge,

Chief, Branch of Records and Data Management.

[FR Doc. 80-40321 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

[W-73164]

Wyoming; Application

December 18, 1980.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado, filed an application for a right-of-way to construct a 6⅝ inch, five (5) 4½ inch pipelines and related facilities for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 23 N., R. 101 W.,
Sec. 6.
T. 24 N., R. 101 W.,
Secs. 31, 32, and 33.
T. 20 N., R. 102 W.,
Secs. 18, and 20.
T. 21 N., R. 102 W.,
Secs. 6, 18, 30, and 32.
T. 22 N., R. 102 W.,
Secs. 4, 8, 18, and 30.
T. 23 N., R. 102 W.,
Secs. 1, 2, 3, 11, 14, 22, and 34.
T. 20 N., R. 103 W.,
Sec. 12.
T. 22, N., R. 103 W.,
Sec. 36.

The proposed pipelines and related facilities will serve to transport natural gas from several wells as additions to Colorado Interstate Gas Company's gathering system within Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, P.O. Box 1869, Highway 187 North, Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals.

[FR Doc. 80-40338 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

Wyoming; Result of Protest Period on Wilderness Inventory Final Decisions

On November 14, 1980, the Wyoming State Director published the final decisions on the recently completed wilderness inventory of public lands in Wyoming. In that notice, 43 units, totaling 525,405 acres, were identified as Wilderness Study Areas and 536,849 acres were dropped from the wilderness review process. The November 14 notice initiated a 30-day period wherein anyone wishing to protest any of those decisions could do so by writing to the Wyoming State Director. That protest period ended on December 15, 1980.

A total of 18 protests were received concerning 14 wilderness inventory units. Only one of those protests concerned an inventory unit that was dropped from further consideration in the November 14 decisions. The other 13 units under protest are all Wilderness Study Areas. The one unit that was dropped was the Lysite Badlands, WY-030-115, in the Rawlins District. The protest to this decision will retain the unit under the constraints of the interim management policy pending the outcome of the protest. Three of the units were protested on boundary locations and the other 10 were protested on wilderness characteristic determinations. For those 3 units with disputed boundary locations, the dropped parcels of public lands will be retained under interim management until the protest is resolved. These three units are:

WY-030-123a Sweetwater Rocks
WY-040-325 Whitehorse Creek
WY-040-406 Red Creek Badlands

The November 14 decisions on all other units which received no protest are now in effect. Those units that were dropped in the November 14 decisions and on which no protests were received were released from the constraints of the Bureau's interim management policy as of 4:30 p.m., December 15, 1980. A future Federal Register notice will detail the content of each protest and the State Director's response.

Maxwell T. Lieurance,

State Director.

[FR Doc. 80-40347 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

Bakersfield District Advisory Council; Call for Nominations

The Bureau of Land Management of the U.S. Department of the Interior intends to establish a District Advisory Council in its Bakersfield, California District. The purpose of this notice is to call for nominations for membership on that council.

An advisory council was not established for this district when councils were formed for other BLM districts pending completion of a study of the Bureau's organization in California. That study had been completed and reorganization implemented.

The council will be composed of 10 members. To provide a total membership that is balanced in terms of points of view represented and functions to be performed. The members will normally be selected from within the Bakersfield District.

At least on member shall be an elected official of general purpose goernment serving the area, and at least one member shall be qualified to provide advice on each of the following categories of interest: renewable resources; non-renewable resources; recreation; environmental protection; transportation rights-of-way, or occupany issues; wildlife; and public-at-large. All members are expected to represent the general public interest, but they should be knowledgeable in the category for which they are appointed.

Term of service will be two years. At the discretion of the Secretary of the Interior or his designee, members may be appointed to additional terms not to exceed a total of six years. All council members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for government employees.

The Bakersfield District council normally will meet four times annually, but in no case less than once. Additional meetings may be called at the discretion of the District Manager or his designee in connection with special needs for advice.

Establishment of advisory councils is in accordance with the Federal Land Policy and Management Act of 1976, as amended, and the Federal Advisory Committee Act.

Persons wishing to nominate individuals to serve on the Bakersfield District Advisory Council should send the nominee's name, address, profession and other biographic data to: Federal Building, Bureau of Land Management, Bakersfield District Manager, 800 Truxtun Avenue—Room 302, Bakersfield, California 93301. Nominations must be made no later than January 31, 1981.

Further information may be obtained from the Bakersfield District Manager or from: State Director, Bureau of Land Management, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Dated: December 17, 1980.

Roland A. Rush,

Acting State Director.

[FR Doc. 80-40216 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

Medford District Advisory Council; Notice of Meeting

Notice is hereby given in accordance with 43 CFR 1780 that a meeting of the Medford District Advisory Council will be held on January 23, 1981.

The meeting will begin at 8:00 a.m. and end at 12:00 noon in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon.

The agenda for this meeting will include: 1. Announcements of current BLM activities.

2. A presentation by BLM personnel on the vegetative management environmental assessment record for the 1981 season.

3. A presentation on the use of herbicides for vegetative management.

4. A presentation by a group opposed to the use of herbicides for vegetative management.

5. Arrangements for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the Council between 11:00 and 11:45 A.M. or file written statements for the Council's consideration. Anyone wishing to make oral statements must notify Mary Gillean, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97501, telephone 503 776-4198, by close of business January 20, 1981. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained at the District Office and be available for public inspection and reproduction at the cost of duplication.

Dated: December 15, 1980.

George Francis,

District Manager.

[FR Doc. 80-40210 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

Regional Oil Shale Team; Agenda of Meeting

On December 10, 1980, a meeting of the Regional Oil Shale Team, composed of the Green River-Hams Fork and Uinta-Southwestern Utah Regional Coal Teams of the Federal-State Coal Advisory Board to be held at 10 a.m. on January 6, 1981, in Room 503, Federal Court House, 1921 Stout Street, Denver, Colorado 80202 was announced (45 FR 81273). The purpose of this notice is to provide additional information concerning the agenda for this meeting.

The Agenda is as follows: 1. Welcome and introductory remarks concerning the formation of the Team and work completed to date by the Department of the Interior Oil Shale Task Force.

2. Discussion of how the Regional Oil Shele Team can make use of the experience of Regional Coal Teams to facilitate its operations.

3. Discussion of a Memorandum of Understanding concerning *ex officio* membership on the Team and other organizational matters.

4. Status report concerning action plans to implement decisions concerning additional Prototype Oil Shale leasing and development of a permanent program.

5. Discussion on timing of Call for nomination for prototype leases.

6. Public Comment Period.

7. Team decisionmaking on Memorandum of Understanding and timing of Call for Nominations.

8. Discussion of Future Work.

9. Adjournment.

The public comment period will begin at 2 p.m. Persons who wish to speak and/or submit written statements should contact Cecil Roberts, Colorado State Office, 1600 Broadway, Denver, Colorado 80202; telephone (303) 837-4888.

For further information: Jack White, Bureau of Land Management, Room 5640, 18th and C Streets, N.W., Washington, D.C. 20240, telephone: (202) 343-4437.

Dated: December 15, 1980.

Guy R. Martin,

Assistant Secretary.

[FR Doc. 80-40211 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-84-M

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Tenneco Oil and Production Plan

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 4191, Block 11, Sabine Pass Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 17, 1980.

E. A. Marsh,

Staff Assistant for Operations, Acting Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 80-40212 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; General American Oil Co. of Texas

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that General American Oil Company of

Texas has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0301, Block 56, West Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 17, 1980.

E. A. Marsh,

Staff Assistant for Operations, Acting Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 80-40213 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Texaco Inc.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Texaco Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 4191, Block 11, Sabine Pass Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 19, 1980.

James H. Rathlesberger,

Secretary of the Interior.

Bureau of Mines

6.1 NEPA Responsibility

Edgerton, Telephone (202) 634-1311, FTS 634-1311.

SUPPLEMENTARY INFORMATION: This appendix to the Departmental Manual (516 DM 6, Appendix 6) provides more

A. Data collection activities and field surveys. Included are reconnaissance-type investigations, research studies to develop new information, stream gaging, well logging, and aquifer response testing.

9th and Pennsylvania Avenue, N.W., Washington, D.C. 20530.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of 30 days from the date of this notice. [illegible] favorable to or critical of the agency shall be accorded equal treatment, and embarrassment to the agency by the disclosure shall be treated as irrelevant. Nothing in this paragraph precludes consideration, however, of evidence of a

Texas has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0301, Block 56, West Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 17, 1980.

E. A. Marsh,

Staff Asst. for Operations.

[FR Doc. 80-40213 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-31-M

Office of the Secretary

[516 DM 6, Appendix 6]

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Department of the Interior.

AGENCY: Notice of final revised instructions for the Bureau of Mines.

SUMMARY: This notice announces a final appendix to the Department's NEPA procedures for the Bureau of Mines. The final Departmental procedures were published in the **Federal Register** on April 23, 1980 (45 FR 27541).

DATE: The appendix was adopted December 19, 1980.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director, Office of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, D.C. 20240; Telephone (202) 343-3891, FTS 343-3891. For Bureau of Mines, contact Richard Edgerton, Telephone (202) 634-1311, FTS 634-1311.

SUPPLEMENTARY INFORMATION: This appendix to the Departmental Manual (516 DM 6, Appendix 6) provides more specific NEPA compliance guidance to the Bureau of Mines. In particular it provides information about Bureau organizational responsibilities for NEPA compliance, advice to applicants, actions normally requiring the preparation of an EIS, and categorical exclusions. The appendix must be taken in conjunction with the Departmental procedures (516 DM 1-6) and the CEQ regulation (40 CFR 1500-1508). In addition, the bureau will prepare a handbook(s) or other technical guidance on how to apply these procedures to its principal programs.

The proposed appendix was published in the **Federal Register** on February 14, 1980 (45 FR 10043) and no comments were received. As a result of internal review, several minor technical changes have been made to improve the intstructions.

Format

Chapter 6 (516 DM 6) Managing the NEPA Process

Appendix 6 Bureau of Mines

6.1 NEPA Responsibility
6.2 Guidance to Applicants
6.3 Major Actions Normally Requiring an EIS
6.4 Categorical Exclusions

Other Bureaus

Final appendix for others bureaus have been published in the **Federal Register** as follows:

Appendix 1 Fish and Wildlife Service (45 FR 47941)
Appendix 3 Heritage Conservation and Recreation Service (45 FR 76801)
Appendix 9 Water and Power Resources Service (45 FR 47944)

Proposed appendices have been published for the following bureaus:

Geological Survey, November 14, 1980 (45 FR 75336)
Bureau of Indian Affairs, July 24, 1980 (45 FR 49368)
National Park Service, May 15, 1980 (45 FR 32126)
Office of Surface Mining, February 14, 1980 (45 FR 10043)
Bureau of Land Management, December 15, 1980 (45 FR 82367)

Dated: December 19, 1980.

James H. Rathlesberger,

Secretary of the Interior.

Bureau of Mines

6.1 NEPA Responsibility

A. The *Director* is responsible for NEPA compliance for Bureau of Mines activities.

B. *Assistant Director, Program Development and Evaluation* is operationally responsible to the Director for insuring, on a continuing basis, Bureau-wide compliance with NEPA.

C. *Deputy Director for Minerals Research* will insure that environmental concerns are identified early in the planning stages for all proposed research and development projects.

D. *Special Assistant—Environmental Assessment* is responsible for overall coordination of the Bureau's NEPA activities: providing information, guidance, training, advice, and coordination on NEPA matters as they relate to the Bureau's research and development programs; and reviewing Bureau-proposed legislation and programs for NEPA-related implications. Information about Bureau of Mines NEPA documents or the NEPA process can be obtained by contacting the Special Assistant.

E. *Directors, Minerals Technology Programs* are responsible to the Deputy Director for Minerals Research for integrating the NEPA process into all R&D programs.

F. *Director, Division of Research Center Operations* is responsible to the Deputy Director for Minerals Research for integrating the NEPA process into all activities involving the research centers.

6.2 Guidance to Applicants

The Bureau of Mines has no applicable programs.

6.3 Major Actions Normally Requiring an EIS

A. Approval of construction of a major new research center or test facility will normally require the preparation of an EIS.

B. If it is initially decided not to prepare an EIS, an EA will be prepared and handled in accordance with Section 1501.4(e)(2).

6.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the Bureau also performs, the following Bureau of Mines actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2.3A(3):

A. Data collection activities and field surveys. Included are reconnaissance-type investigations, research studies to develop new information, stream gaging, well logging, and aquifer response testing.

B. Individual research projects concerning the development or evaluation of mining, metallurgical, or environmental technologies; and the demonstration of associated equipment.

C. Research activities concerning minerals health and safety technology.

D. Research activities that take place in a laboratory where methods for proper disposal of laboratory wastes to prevent environmental pollution have been implemented.

E. Field demonstrations and pilot plants when operated in conjunction with existing facilities of a cooperator or contractor when such facilities provide for effluent and/or emission controls and waste disposal practices that are and will be in compliance with all existing Federal, State, and local standards or regulations.

[FR Doc. 80-40208 Filed 12-24-80; 8:45 am]

BILLING CODE 4310-53-M

DEPARTMENT OF JUSTICE

Attorney General

Proposed Consent Decree and Action To Obtain Damages for Discharge of Pollutants by the City of Punta Gorda, Fla.

In accordance with Department policy, 28 CFR 50.7, 38 F.R. 19029, notice is hereby given that on March 17, 1980, a proposed consent decree in *United States of America* v. *City of Punta Gorda and the State of Florida*, Civil Action No. 77-35-CIV, was lodged with the United States District Court for the Middle District of Florida, Fort Myers Division.

The consent decree requires the City of Punta Gorda to pay to the United States Treasury a penalty of $10,000 within thirty (30) days of entry of judgment and to meet certain deadlines for the construction of a new regional wastewater treatment system.

The proposed consent decree may be examined at the Office of the United States Attorney for the Middle District of Florida, Tampa, Florida; at the Region IV office of the Environmental Protection Agency, Enforcement Division, 345 Courtland Street, N.E., Atlanta, Georgia 30308; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1254, 9th and Pennsylvania Avenue, N.W., Washington, D.C. 20530.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of 30 days from the date of this notice. Comments should be addressed to the Deputy Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States of America* v. *The City of Punta Gorda and the State of Florida*, (M.D. Fla., Civil Action No. 77-35-CIV; D.J. NO. 90-5-1-1-801).

Angus MacBeth,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 80-40214 Filed 12-24-80; 8:45 am]

BILLING CODE 4410-01-M

Guidelines for Litigation To Enforce Obligations To Submit Materials for Predissemination Review

I. Scope

These guidelines govern the Department's activities in connection with the enforcement of predissemination review obligations, created by contract or agency regulation, that have been taken on by present or former employees, agents, and contractors of the United States government in consideration of their being granted access to classified information or of being assigned or retained in a position of special confidence and trust requiring such access.

II. Criteria for Recommendations That Suits Be Filed

A. Only the Attorney General may authorize the filing of suits subject to these guidelines. Requests received by Department attorneys from other agencies for the filing of suits which are determined to lack litigative merit should also be brought to the Attorney General's attention if they involve novel issues or are of particular importance to the requester.

B. Department attorneys will be guided by the following criteria in determining whether to recommend that the Attorney General file suit against individuals who have breached or threaten to breach their obligation to submit material relating to intelligence activities for predissemination review:

1. General Principles

a. In deciding whether to recommend that the Attorney General file suit, the political content of a disclosure and the political viewpoint of the individual shall not be considered. Disclosures favorable to or critical of the agency shall be accorded equal treatment, and embarrassment to the agency by the disclosure shall be treated as irrelevant. Nothing in this paragraph precludes consideration, however, of evidence of a person's intention to disclose to disclose classified information or to disregard an obligation to submit material for predissemination review, or a person's history of such actions.

b. In deciding whether to recommend that the Attorney General file suit, Department attorneys shall observe the principle that present or former government officials should be held to identical standards of trust as a result of their access to classified information, regardless of their present or former rank or influence.

2. Specific Considerations

a. Department attorneys may recommend filing suit in an appropriate case when an individual discloses or causes to be disclosed information or material that is required by an express agreement or agency regulation to be submitted to an agency of the United States prior to disclosure, if the individual fails to submit such material or information for predissemination review. In making such recommendations, Department attorneys shall take into account the following factors:

i. Whether the individual willfully or intentionally failed to submit the material or information for predissemination review, when the individual knew or reasonably should have known that the disclosure was subject to an agreement or regulation requiring the submission of the material or information for predissemination review;

ii. whether the information disclosed was learned in the course of the individual's official association with the agency, and is not widely available to members of the public who have not been employees of the agency;

iii. whether the disclosure contains material or information that is properly classifiable (although it shall not be necessary for the United States to allege that the disclosure contains classified information in filing any suit under these guidelines);

iv. whether the information is disclosed in such a manner as to make it likely that the substance of the disclosure will be widely known or is likely to come to the attention of individuals, organizations or foreign nations under circumstances which may cause harm to the national security or foreign policy of the United States;

v. whether the disclosure contains specific information about operations, structures, personnel, and activities of the agency, as opposed to political criticisms of or commentary about the agency and its activities generally

requirement that the agency act within a specified brief period of time.

iv. whether it reasonably appears that the injunction obtained will effectively prevent the harm that would otherwise occur; and

seek the remedy of a constructive trust if suit is authorized in response to recommendations made under these guidelines.

2. Department attorneys recommending the filing of suits for

2. The Attorney General may authorize filing suit to seek punitive damages for a disclosure in violation of an agreement in appropriate cases.

IV. Other Sanctions; Private Rights

A. Nothing in these guidelines shall

Fellowships and Seminars, for projects beginning after January 1, 1981.

(3)

Date: January 10, 1981
Time: 9:15 a.m. to 5:30 p.m.
Room: 314

proposed meetings will consider information that is likely to disclose.

(1) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) information of a personal nature

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v. whether the disclosure contains specific information about operations, structures, personnel, and activities of the agency, as opposed to political criticisms of or commentary about the agency and its activities generally without identifying specific activities of the agency;

vi. whether it appears that the disclosure is likely to result in substantial harm to particular operations of the agency or endanger individual lives;

vii. whether it appears that the disclosure is likely to inhibit the flow of intelligence information to the intelligence community from its lawful sources;

viii. In the case of predissemination review obligations imposed by agency regulations rather than by contract, whether the agency concerned has taken appropriate steps to apprise the individual of the existence and meaning of the regulation.

b. Any decision to seek an injunction against publication of information is viewed by the Department as an extraordinarily serious matter that should be undertaken only after the most searching scrutiny of the strength of the government's case. Therefore, Department attorneys should take into account the following factors before recommending that the attorney General authorize filing suit prior to any disclosure to enjoin such disclosure:

i. The considerations listed in the preceding subsection for filing suit subsequent to disclosures, except that particular stress shall be placed on the question of whether it appears that the disclosure is likely to contain material that is properly classifiable (although it shall not be necessary for the United States to allege that the disclosure contains classified information in filing any suit under these guidelines);

ii. whether it reasonably appears that the disclosed information or material required to be submitted to an agency of the United States without submitting such material or information for predissemination review;

iii. whether the system of predissemination review adopted by the agency concerned provides adequate procedural safeguards to assure that the review will not impermissibly interfere with the dissemination of information other than that which is properly classifiable, including the articulation of standards for the imposition of any final restraints that are sufficiently precise to preclude arbitrary and inconsistent administrative action;* and the requirement that the agency act within a specified brief period of time.

iv. whether it reasonably appears that the injunction obtained will effectively prevent the harm that would otherwise occur; and

v. whether adequate steps have been taken by the agency concerned or by the Department to inform the individual that the United States will consider filing suit and seeking an injunction and/or a constructive trust if the individual should disseminate the information without submitting it for predissemination review.

Litigation in Absence of Express Agreement

The Attorney General will not authorize suit for failure to submit material for predissemination review in the absence of any express clearance obligation imposed by contract or regulation, except as provided in section III. A. 2. of these guidelines.

III

In situations where the filing of suit is recommended under part II of these Guidelines, Department attorneys will be guided by the following criteria in determining what remedy or remedies to recommend that the Attorney General seek:

A. Predisclosure injuctions:

1. Recommendations to seek predisclosure injunctions shall be guided by the criteria set forth in section II B.2.b., *supra*.

2. The Attorney General will not ask the court to enter an injunction pursuant to Rule 65, F.R.Civ.P., nor seek to enforce the language of Rule 65, against any individual or organization other than an individual who is under an express obligation to submit materials or information for predissemination review pursuant to an agreement or regulation, in consideration of having been given access to classified information, unless it appears to the satisfaction of the Attorney General either that disclosure of the material or information by such other individuals or organizations will pose a serious and imminent threat to the national security or foreign policy of the United States. The Attorney General reserves the right, however, to bring such proceedings against individuals or organizations that actively solicit persons subject to such obligations to violate those obligations.

B. *Constructive Trusts*

1. Department attorneys may recommed that the Attorney General seek the remedy of a constructive trust if suit is authorized in response to recommendations made under these guidelines.

2. Department attorneys recommending the filing of suits for constructive trusts shall give careful consideration to the nature and amount of the assets that the Department seeks to have included in such trusts, in accordance with the following principles:

a. The minimum exercise of judicial power that will do justice yet protect the interests of national security shall be sought;

b. Remedies requested by the Government in suits under these guidelines should be designed solely to promote compliance with lawful obligations to submit material for predissemination review. The Government does not seek to reduce defendants to penury. The appropriateness of a proposed remedy shall be judged on the basis of all the facts in each individual case;

c. Gross receipts, net receipts and other measures of gain from unauthorized disclosures shall all be considered in choosing an appropriate proposal for relief. In making this choice, Department attorneys shall take into account the individual circumstances of the case, including but not limited to:

i. The economic impact on the individual and any dependents of the proposed remedy;

ii. The likelihood that a particular remedy will serve to deter other persons who may be considering similar unauthorized disclosures;

iii. The extent to which the individual was unjustly enriched by the disclosure;

iv. The degree of care that the individual exercised to protect some interests of national security in making his or her disclosure or the degree of recklessness shown by the individual in deciding to proceed with disclosure;

v. Whether the disclosure is the first known unauthorized disclosure by the individual, or is part of a series of such disclosures;

ve. The willingness of the individual to submit future disclosures for predissemination review;

vii. The significance of the harm done to the national security by the disclosure.

C. *Liquidated and Punitive Damages*

1. The Attorney General may authorize filing suit to seek liquidated damages for any disclosure in violation of an agreement, where such agreement appropriately contains a provision granting the United States liquidated damages for the disclosure.

2. The Attorney General may authorize filing suit to seek punitive damages for a disclosure in violation of an agreement in appropriate cases.

IV. Other Sanctions; Private Rights

A. Nothing in these guidelines shall govern the discretion of Department attorneys to institute other types of proceedings for the violation of the laws of the United States by any individual, including civil suits arising out of unauthorized disclosures of classified information.

B. Nothing in these guidelines creates or confers any private right enforceale at law or in equity against the United States or any agency or employees thereof. The Attorney General retains discretion to file or decline to file suits predicated on violations of an obligation to submit material for predissemination review, based on his review of the facts and the interests of justice in each case.

V. Definition

As used in these guidelines, the term "Attorney General" means the Attorney General of the United States of a designee.

Dated: December 9, 1980.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 80-40215 Filed 12-24-80; 8:45 am]

BILLING CODE 4410-01-M

*An agency policy statement providing that the agency shall seek to prevent only the publication of information properly classifiable under the terms of a lawful Executive Order shall constitute compliance with this requirement.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, DC 20506:

(1)

Date: January 7-8, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 1023
Program: This meeting will review applications submitted by state humanities committees, Division of State Programs, for activity beginning after March 1, 1981.

(2)

Date: January 9, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 1134
Program: Residential Fellowships: This meeting will review applications English Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

(3)

Date: January 10, 1981
Time: 9:15 a.m. to 5:30 p.m.
Room: 314
Program: Summer Stipends: This meeting will review applications for Summer Stipends in Music, Theater and Dance, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

(4)

Date: January 12, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 911
Program: This meeting will review applications for Summer Stipends in Spanish and French Literatures and Languages, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

(5)

Date: January 12-13, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 1134
Program: This meeting will review applications submitted for Research Materials Program: Publications projects Division of Research Programs, for projects beginning after March 1, 1981.

(6)

Date: January 13, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 911
Program: This meeting will review applications for Summer Stipends in English Literature: Restoration to the Present, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

(7)

Date: January 15, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 1023
Program: This meeting will review applications for Summer Stipends in German, Slavic, Oriental and Classical Languages submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

(8)

Date: January 16, 1981
Time: 9:00 a.m. to 5:30 p.m.
Room: 1023
Program: The meeting will review applications for Summer Stipends in Ancients, Medieval and Early Modern European History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose,

(1) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) information of a personal nature the disclosure of which would constitute a cleary unwarranted invasion of personal privacy; and

(3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724-0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 80-40220 Filed 12-24-80; 8:45 am]

BILLING CODE 7536-01-M

Visual Arts Panel (Conceptual/ Performance/New Genre); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Panel (Conceptual/ Performance/New Genre) to the National Council on the Arts will be held January 15-16, 1980, from 9:00 a.m.-5:30 p.m. in the 12th Floor Screening Room of the Columbia Plaza Office Complex, 2401 E Street NW., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5 United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Advisory Committee Management Officer.

[FR Doc. 80-40221 Filed 12-24-80; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Fluid Dynamics; Meeting

The ACRS Subcommittee on Fluid Dynamics will hold a meeting on January 15, 1981, in Room 1046, 1717 H Street, N.W., Washington, D.C. The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, January 15, 1981—8:30 a.m. until the conclusion of business

The Subcommittee will review the Zion Unit 1 Cavitation Test Program and the Zion Unit 1 Flow Induced Vibration Test Program.

In connection with the above agenda item, the Subcommittee will hold discussions with representatives of the Nuclear Regulatory Commission Staff, Commonwealth Edison Company, and their consultants.

Written statements may be submitted to the Subcommittee, and it is requested that 25 copies be provided at the time of the meeting. Oral statements may be presented to the Subcommittee during the meeting with the approval of the Subcommittee Chairman.

The Chairman of the Subcommittee is authorized to conduct the meeting in a manner that will facilitate the orderly conduct of business. The Chairman may order recesses from time to time as he determines to be appropriate.

It is not necessary to obtain Committee permission to attend a meeting of the Subcommittee, but persons planning to attend are requested to notify the Executive Secretary of the Committee prior to the meeting. In view of the possibility that the schedule for Subcommittee meetings may be adjusted by the Chairman as necessary to facilitate the conduct of business, it is suggested that persons planning to attend or desiring to present oral statements should notify the Executive Secretary between 8:15 a.m. and 5:00 p.m., E.S.T., as far in advance as practicable so that appropriate arrangements can be made.

Information regarding the time to be set aside for the taking of oral statements and the time allotted to each speaker can be obtained by a prepaid telephone call to the Executive Secretary of the Committee, Mr. Raymond F. Fraley (telephone 202/634-1374) between 8:15 a.m. and 5:00 p.m., E.S.T.

Dated: December 22, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-40222 Filed 12-24-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Clearance of Reports; List of Requests

AGENCY: Office of Management and Budget.

ACTION: List of requests.

SUMMARY: The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on December 22, 1980. The purpose of publishing this list in the **Federal Register** is to inform the public.

For each proposed report, the list contains the name of the agency sponsoring the proposed collection of information, the name of the report, the agency form number, if applicable, the frequency with which the information is proposed to be collected, the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Copies of the proposed forms and supporting documents may be obtained from the agency submitting the proposal. Comments and questions about the items on this list should be directed to the OMB reviewer or reviewing division within OMB, Room 5235, New Executive Office Building, Washington, D.C. 20503.

If you anticipate commenting on a report but find that time to prepare comments will prevent you from submitting them promptly, you should advise the reviewer of your intent as early as possible.

John Haugh,

Assistant Director for Administration.

New Forms

Department of Agriculture

Food and Nutrition Service

Food Stamp Program Retailer Survey

FNS-

Annually

Caywood, Office of Information and Regulatory Affairs, 395-3443

Small businesses or organizations

Department of Commerce

Bureau of the Census

Survey of Minority-Owned Business Enterprises

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Survey of Minority-Owned Business Enterprises

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Annually

Caywood, Office of Information and Regulatory Affairs, 395-3443

Small businesses or organizations

Department of Commerce

Bureau of the Census

Survey of Minority-Owned Business Enterprises

MB-117

Annually

Caywood, Office of Information and Regulatory Affairs, 395-3443

Small businesses or organizations

Department of Commerce

Bureau of the Census

Survey of Minority-Owned Business Enterprises

MB-118

Annually

Caywood, Office of Information and Regulatory Affairs, 395-3443

Small businesses or organizations

Department of Commerce

Bureau of the Census

Survey of Minority-Owned Business Enterprises

MB-119

Annually

Caywood, Office of Information and Regulatory Affairs, 395-3443

Small businesses or organizations

Department of Commerce

Bureau of the Census

Survey of Minority-Owned Business Enterprises

MB-120

Annually

Caywood, Office of Information and Regulatory

Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

Dated: December 16, 1980.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 80-40333 Filed 12-24-80; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Panel (Video); Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Panel (Video) to the National Council on the Arts will be held January 9–11, 1981, from 9:00 a.m. to 5:30 p.m. in the 12th Floor Screening Room of the Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on application for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9 (b) of section 552b of Title 5 United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

Dated: December 16, 1980.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 80-40334 Filed 12-24-80; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 80-52]

Reports, Recommendation Responses; Availability

Aircraft Accident Reports in Brief Format

U.S. Civil Aviation, Issue No. 12 of 1979 Accidents (NTSB–80–9).—The National Transportation Safety Board has released its 12th volume of abbreviated reports on U.S. civil aviation accidents which occurred last year. The 300 accidents reported in Issue No. 12, released December 15, represent a random selection.

In issuing Press Release No. SB 80–100 in conjunction with the publication of this volume, the Safety Board warned pilots not to become complacent about the threat from airframe and engine icing because of the speed and sophistication of modern aircraft. While the advances in the design of engines and deicing and anti-icing equipment have markedly reduced the hazards of ice in general aviation flying, the Board noted that they have by no means been eliminated. Cited as an example of the threat from icing conditions is the crash of a Cessna Turbo Centurion near Dunsmuir, Calif., which killed six persons. The pilot, who had a total of 650 hours flying time, was advised prior to takeoff of thunderstorms, icing, and turbulence along portions of her planned route to Redding, Calif. Despite the marginal weather, she elected to make the flight over mountainous terrain. An attempt was made to climb after reporting icing conditions, but apparently ice degraded the aircraft's climb capability.

Note.—The brief format reports in this publication present the facts, conditions, circumstances, and probable cause(s) for each accident. Additional statistical information is tabulated by injury index, injuries and causal factors. While these brief reports contain essential information, more detailed data may be obtained from the original factual reports on file in the Safety Board's Washington office. Upon request, factual reports will be reproduced commerically at an average cost of 20 cents per page for printed matter, 65 cents per page for black-and-white photographs, and $4.37 per page for color photographs, plus postage. Requests concerning aircraft accident report briefs should include (1) date and place of occurrence, (2) type of aircraft and registration number, and (3) name of pilot. Requests should be addressed to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Copies of the publication may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22161.

Reponses to Safety Recommendations

Aviation

A–78–27 through –29, A–79–80 and –81, A–80–64 through –75, from the Federal Aviation Administration, November 6, 1980.—Response is to five reiterated recommendations and 12 new recommendations issued by the Safety Board on August 8 (45 FR 55877, August 21, 1980) in connection with the Board's special investigation of the commuter industry and the elements which affect commuter airline safety. Release of the Board's special study, "Commuter Airline Safety, 1970–1979" (NTSB–AAS–80–1), was reported at 45 FR 58734, September 4, 1980.

As to the reiterated recommendations, FAA notes that the Board had been earlier advised of actions underway, many of which were developed as the result of implementation and issuance of amendments to 14 CFR Part 135 published at various times during the past year, or as the resolution of issues discussed during FAA's First Commuter Air Carrier Safety Symposium held last January. The adequacy of these actions, and other regional programs directed to commuter safety, will again be addressed at the second symposium to be held January 16 and 17, 1981.

As to recommendation A–79–80, requiring that pilots in Part 135 operations be thoroughly trained on the performance capabilities and handling qualities of aircraft when loaded to maximum certificated gross weight or to the limits of their c.g. envelope, or both, FAA reports issuance of new § 135.244, Operating Experience, effective last March 1. FAA believes the addition of this requirement will further ensure that pilots involved in commuter operations are adequately trained in all pertinent operational areas, one of which includes aircraft handling characteristics at maximum takeoff gross weights.

With respect to recommendation A–79–81, which asked FAA to expedite rulemaking which make flight time and duty time limitations and rest requirements for commuter air carriers the same as those specified for domestic air crewmembers under 14 CFR Part 121, FAA reports that a supplemental notice of proposed rulemaking was issued on August 11, 1980 (Notice No. 78–3B). That proposal would revise the time limitations and rest requirements for flight crewmembers utilized by domestic, flag, and supplemental air carriers, commerical operators, and air taxi operators, based upon two notices of proposed rulemaking issued in 1977 and 1978 as part of FAA's Regulatory Review Program. FAA notes that comments received on the earlier notices (and specifically Notice 78–3) indicated need for intensive review and additional conceptual development. Consequently, in view of the conceptual similarity between the flight and duty time limitations proposed in Part 135 and the proposal in Notice 78–3, when FAA issued the Part 135 amendments, changing the flight and duty time limitations in Part 135 was deferred for futher consideration. Accordingly, this supplemental notice proposes changes to both Part 121 and Part 135 and

includes a discussion of comments received on Notices 78–3 and 77–17 pertaining to flight and duty time limitations.

Recommendation A–78–27 asked FAA to develop, in cooperation with industry, flight recorder standards (FDR/CVR) for complex aircraft which are predicated upon intended aircraft usage. FAA reiterates comments made in its July 29, 1980, response, indicating that during August 1979 FAA received a proposed standard for a composite CVR/FDR from one of the major manufacturers of both CVR's and FDR's. FAA has now developed a proposed draft standard for a composite CVR/FDR. A new public procedure to expedite issuance of standards for specified materials, parts, processes, and appliances used on civil aircraft was issued by FAA on June 2, 1980, with September 9 as its effective date. FAA will publish its proposed standard for a composite CVR/FDR under this new procedure. (A copy of the latest draft of the CVR/FDR, a copy of the draft of the CVR/FDR Standard, and a copy of the new TSO procedures were provided with FAA's November 6 response.) FAA, as a result of a recent Safety Board recommendation, is requesting SAE to develop the standard from this draft material.

Recommendation A–78–28 asked FAA to draft specifications and fund research and development for a low cost FDR, CVR, and composite recorder which can be used on complex general aviation aircraft, and establish guidelines for these recorders. FAA notes that although initially FAA had planned to establish a regulatory project to develop an advance notice of proposed rulemaking for identification of appropriate standards, further review indicated that this procedure was not necessary. Research and development previously accomplished by the U.S. Army and by NASA were already being incorporated by several equipment manufacturers in their own development plans.

Recommendation A–78–29 called on FAA to, in the interim, amend 14 CFR to require that no operation (except for maintenance ferry flights) may be conducted with turbine-powered aircraft certificated to carry six passengers or more, which require two pilots by their certificate, without an operable CVR capable of retaining at least 10 minutes of intracockpit conversation when power is interrupted; such requirements can be met with available equipment to facilitate rapid implementation of this requirement. As noted in FAA's July 29 response, 14 CFR Part 135 was amended, as published October 10, 1978, at 43 FR 46742, to require under § 135.151 that no person may operate a turbojet airplane having a passenger seating configuration, excluding any pilot seat, of 10 seats or more, unless it is equipped with an approved cockpit voice recorder. In further fulfillment of this recommendation, FAA is drafting an NPRM which would require under Part 91, General Operating and Flight Rules, several additional equipment items, including a CVR on all multiengine turboject airplanes. This would expand the coverage under § 135.151 since there would be no minimum seating requirement specified.

In response to recommendation A–80–64, calling for establishment of a separate classification of commuter airline inspectors to conduct commuter airline surveillance, FAA notes that a separate classification was established within the FAA GS–1825 classification guide well in advance of issuance of this recommendation. FAA says this classification for Principal Aviation Safety Inspectors emphasizes experience requirements for the certification and surveillance of commuter airlines. This guide is currently being used in the job classification of these inspectors. (A copy of the guide was provided.)

FAA agrees with recommendation A–80–65, which called for a specialized training for inspectors assigned to commuter airlines to insure that inspectors are qualified in the equipment operated and are knowledgeable regarding commuter airline operations, and FAA has initiated additional training courses for this purpose. Specialized training is being provided for inspectors assigned to commuter airlines at the Mike Monroney Aeronautical Center at Oklahoma City. Course 21618, Air Carrier Airworthiness Indoctrination (ACAI), is for general aviation inspectors and is made up of selected subjects from the air carrier inspectors' indoctrination course. It was initiated in fiscal year 1979 in response to revised Part 135; 80 inspectors completed this course in fiscal year 1979–80 and 16 inspectors are scheduled for fiscal year 1981. The second, Course 21828, Air Taxi Certification and Surveillance, covers certification requirements, operating rules, aircraft, equipment, policies, and procedures—developed for airworthiness inspectors assigned to commuter airlines. In fiscal year 1979–80, FAA trained 48 inspectors in Course 21828 and 36 inspectors are scheduled for fiscal year 1981. There are two courses for operational inspectors: Course 22100, Air Taxi Operations Certification and Inspection; and Course 21617, Air Carrier Mini Indoctrination; 170 inspectors completed Course 22100 in fiscal year 1979–80 and 40 inspectors completed Course 21617 in fiscal year 1980 (the first year that this course was offered). For fiscal year 1981, Course 22100 has 70 inspectors scheduled for attendance and Course 21617 has 36 inspectors scheduled. With regard to flight training and qualifications, FAA is making an effort to qualify all commuter inspectors in at least one turboprop aircraft, and, where applicable, specific turbojet aircraft under their surveillance. This should be viewed as a continuing program due to such factors as manpower and fiscal restraints and personnel turnover.

In answer to recommendation A–80–66, which asked FAA to allocate GADO resources to insure that all commuter surveillance and general aviation requirements can be accomplished, FAA reports that 127 Flight Standards Aviation Safety Inspector positions were allocated for fiscal year 1981 budget appropriation, all dedicated to commuter/air taxi certification and surveillance activities. FAA notes that due to a pressing need, 50 of these positions were advanced to the fiscal year 1980 budget; all positions have been filled. The additional 77 positions will be filled during fiscal year 1981.

FAA agrees with recommendation A–80–67, which calls for a procedure for distributing surveillance of commuter airline maintenance evenly during all periods when maintenance is performed. FAA notes that work assignments for inspectors is a function of district office supervision, which provides the greatest flexibility for effective utilization of those personnel. The headquarters and regional offices periodically emphasize the need for specific surveillance by notices, such as N 8000.198, Increased Surveillance for Operator Under New Part 135 (copy provided). FAA reports that inspector personnel assigned to commuters have borne a time-consuming workload in the recertification of those operators under the new Part 135. With this workload behind FAA and the hiring of new inspectors for commuter assignments now in progress, coupled with the commuter-oriented inspector programs, sufficient inspector manpower should be provided to accommodate scheduling off-hour surveillance of commuter maintenance activities, according to FAA.

FAA reports that the recommendation A–80–68 requirement (that only actual passenger weights be used in weight and balance computations for

reciprocative engine aircraft used in Part 135 flights which are certificated for nine or less passengers) was accomplished on an interim basis by internal notices culminating April 1, 1980. FAA notes that final

relative size and scope of Part 135 commuter operations, FAA does not, at this time, believe there is a need for a flight dispatcher as indicated in Part 121 operations. FAA will continue to monitor the situation. Regarding flight

weight control procedures as well as aircraft reweight periods. The superseded advisory circular for air taxis did not include a periodic reweigh period. FAA does not believe further steps in this area are appropriate at this

development of commuter-served airports, and that future programs, though subject to legislative approval, have also been designed to support commuter airports, and, accordingly, no further action is presently intended.

evaluation of existing Dram Shop programs in the States of California and New Jersey. In the latter State, for example, NHTSA funded and is working with the State Attorney General and the New Jersey Office of Highway Safety in

1980.—Response concerns recommendations issued September 24 following investigation of the leak of crude oil from a fractured 22-inch pipeline at a levee crossing at Berwick, La., January 2, 1980. The crude oil

reciprocative engine aircraft used in Part 135 flights which are certificated for nine or less passengers) was accomplished on an interim basis by internal notices culminating April 1, 1980. FAA notes that final implementation of this recommendation is by Advisory Circular, AC 120–27A, Weight and Balance Control, issued May 14, 1980, and by internal instructions to FAA airworthiness inspectors, now under development. FAA would cause the certificate holders to develop suitable weight and balance control systems that can be easily managed by pilots or other personnel responsible for loading, in accordance with methods and procedures provided by the respective certificate holder.

In response to recommendation A–80–69, which asked FAA to amend 14 CFR 135.243 to require a minimum number of multiengine flight hours for a pilot-in-command of a multiengine commuter airline flight, FAA reports that last February new § 135.244, commuter pilot-in-command operating experience requirements, was issued, containing standards for pilots prior to designation as pilot-in-command on commuter passenger-carrying operations. These requirements established increased operating experience levels by make and model for both single and multiengine aircraft. This experience, which varies depending on whether the aircraft is piston or turbine powered, must be acquired under the supervision of a check airman employed by the certificate holder in passenger-carrying operations. FAA says the intent of this rule is to upgrade pilot experience to adhere to a higher level of safety. Also, the section (copy provided) specifies requirements in addition to those in § 135.243 which require all pilots serving in commuter operations to hold an airline transport pilot certificate. This requirement contributes appreciably to pilot-in-command experience, especially when complemented by the provisions of new § 135.244. Finally, FAA believes the increased training program requirements of Subpart H of Part 135 are also a positive factor. The operating experience under § 135.244 must be acquired only after satisfactory completion of the appropriate ground and flight training for the aircraft and crewmember position. Approval provisions for the operating experience must be scheduled in the operator's training program.

Recommendation A–80–70 asked FAA to amend 14 CFR Subpart B to require that dispatch and flight operations duties are supervised by personnel trained in those functions. Due to the relative size and scope of Part 135 commuter operations, FAA does not, at this time, believe there is a need for a flight dispatcher as indicated in Part 121 operations. FAA will continue to monitor the situation. Regarding flight operating personnel qualifications and training, FAA believes the current regulations are adequate. The qualification requirements for supervisory personnel are adequate to achieve the intended level of safety: § 135.37, Management Personnel Required, required a qualified director of operations, chief pilot, and director of maintenance; § 135.39 specifies the qualifications that persons occupying these positions must possess; and § 1325.77, Responsibility for Operational Control, requires each certificate holder to list in his operating manual the name and title of each person authorized to exercise operational control. FAA intends to take no further steps in this area at this time.

With respect to recommendation A–80–71, which asked FAA to amend § 135.185 to require that aircraft empty weight and that center of gravity be determined more frequently, FAA says it agrees with the intent of the proposal as it regards the importance of aircraft empty weight, operating weight, and corresponding centers of gravity (c.g.). However, FAA believes a well developed cumulative weight control system is the primary means of controlling operating weight and c.g. This system continuously updates operating weights and c.g.'s (or other aircraft weight references) to account for changes to the aircraft, its equipment, or standard passenger provisions such as stewardess supplies. FAA notes that periodic reweighing of aircraft under approved programs serves to confirm the cumulative weight control system; § 135.185 provides for the use of approved weight and balance control systems for multiengine aircraft which includes cumulative weight control. These programs include periodic reweighing requirements for aircraft controlled on a fleet basis, as well as aircraft handled individually. In the case of aircraft fleets, aircraft within each fleet are weighed on a sampling basis to confirm the fleet weight and c.g. Therefore, reweighing periodically is imposed on the fleet rather than on individual aircraft.

Further with respect to recommendation A–80–71, FAA notes that Advisory Circular 120–27A, Weight and Balance Control, was issued May 18. This circular consolidates previous advisory circulars for air taxis and large air carriers, and includes cumulative weight control procedures as well as aircraft reweight periods. The superseded advisory circular for air taxis did not include a periodic reweigh period. FAA does not believe further steps in this area are appropriate at this time.

FAA concurs with recommendation A–80–72, which called for evaluation and revision as appropriate of criteria for authorizing single-pilot IFR operations for commuter airlines. FAA reports that § 135.105 was amended, effective March 1, 1980, to require that, prior to authorizing single pilot IFR operations, the pilot-in-command must have previously logged 100 pilot-in-command hours in the make and model aircraft to be flown. This increased pilot experience requirement would ensure that the pilot has aircraft familiarity and proficiency sufficient to adequately cope with IFR operational problems and to handle inflight emergencies.

In connection with recommendation A–80–73, which asked FAA to expand the ADAP program to support the development of commuter-served airports, FAA notes that in 1976, Amendments to the Airport and Airway Development Act of 1970 defined commuter airports for the first time and provided specific funding for their development. FAA reports that in administering the Airport Development Aid Program (ADAP), FAA, through use of an authorized discretionary fund, has consistently granted more for commuter airport development annually than the $15 million identified in the Act for use at commuter locations. FAA notes that the Administration's legislative proposal to continue an airport grant program beyond the September 30, 1980, expiration of the ADAP was developed to provide a single fund for development of all commercial service (including commuter) airports. FAA says this will allow greater emphasis to be placed on improvement of commuter airports in the post-1990 program. FAA states that the latest House and Senate legislative proposals require administration of the facilities and equipment and airport development programs in a manner to maximize the use of safety facilities with highest priority for commercial service airports. This includes, but is not limited to, installation, operation, and maintenance of precision approach systems for each primary runway; grooving or friction treatment of all primary and secondary runways; nonprecision approaches for secondary runways; and electronic or visual vertical guidance on all runways. FAA believes its ADAP program has been administered to support the development of commuter-served airports, and that future programs, though subject to legislative approval, have also been designed to support commuter airports, and, accordingly, no further action is presently intended.

With respect to recommendation A–80–74, which asked FAA to revise the qualifying criteria to insure that a larger percentage of commuter-served airports are equipped with instrument landing systems, FAA reports initiation of an extensive evaluation of the instrument landing system (ILS) qualifying criteria. This evaluation includes a reassessment of the benefits derived from an ILS by all categories of aviation, including trunk carriers, commuter carriers, air taxi carriers, general aviation, and military. Completion of this evaluation is anticipated in the near future, and FAA will advise the Board of results.

Recommendation A–80–75 asked FAA to insure, to the extent possible, that airports which are served by commuter airlines are equipped with an instrument approach facility. FAA reports initiating in February 1980 an in-depth analysis of all airports served by commuter airlines in the continental U.S. and Hawaii which found that 64 percent have a commissioned or programmed instrument landing system. Commuter needs at the remaining commuter-served airports are being investigated. FAA notes that recommendations regarding the installation of ILS's at specific airports are anticipated in the near future and will be made available to the Board.

Highway

H–80–47, from the National Highway Traffic Safety Administration, December 9, 1980.—Response is to a recommendation issued September 18 following investigation of the head-on collision of a sedan and a pickup truck on U.S. Route 64, near Perry, Okla., February 23, 1980. The recommendation asked NHTSA to evaluate the effectiveness of current Dram Shop type laws in reducing the number of highway accidents involving drivers under the influence of alcohol in States having such laws, and, if these evaluations prove to be positive, then incorporate the concepts of the laws into the existing Highway Safety Program Standard No. 8, Alcohol in Relation to Highway Safety. (See 45 FR 67174, October 9, 1980.)

The response indicates that NHTSA believes that a widespread national "impact" evaluation of Dram Shop laws would be very costly and ill-advised at this time. A more constructive approach, which NHTSA is now undertaking, is the more limited, administrative evaluation of existing Dram Shop programs in the States of California and New Jersey. In the latter State, for example, NHTSA funded and is working with the State Attorney General and the New Jersey Office of Highway Safety in a special program to enforce their Dram Shop law. NHTSA says it intends to monitor this program closely, to assess the degree to which their law was implemented and to convey to all States the activities and accomplishments of this program when completed. Further, NHTSA will continue to encourage State and local communities to evaluate their laws and associated programs whenever possible. (Attached to NHTSA's response is a section of a 1973 NHTSA-contracted study on the drinking driver, covering Dram Shop laws.)

Intermodal

I–80–3, from the Association of American Railroads (AAR), December 8, 1980.—Response is to a recommendation issued October 21 as a result of investigation of the derailment November 8, 1979, of cars 25 through 49 of Conrail freight train IHEN–8 one mile east of Inwood, Ind. Tank car GATX 26024, containing vinyl chloride, came to rest completely overturned with the man-way dome and associated valves buried so that they could not be examined. The recommendation asked AAR to examine ruptured tank cars to determine what effect current design and welding practices for welded tank attachments may have on the structural integrity of tank cars loaded with pressurized liquefied gases in the derailment environment and report the resultant findings. (See 45 FR 71870, October 30, 1980.)

AAR's response indicates that the Research and Test Department has been gathering data since mid-summer on failures such as that which occurred on GATX 26024, at the General American Transportation Company's facility in Hearne, Texas. Also, AAR has been gathering data on other types of failure where the tank car lost product through a crack which developed while the car was not moving in rail transportation mode.

AAR states that its investigation will include the design and welding practices currently used on tank cars which transport pressurized gases. AAR intends to seek advice and comments from recognized experts on welding practices within, as well as outside, the railroad industry. The Safety Board will be kept informed.

Pipeline

P–80–66 through –68, from the Texas Pipe Line Company, December 3, 1980.—Response concerns recommendations issued September 24 following investigation of the leak of crude oil from a fractured 22-inch pipeline at a levee crossing at Berwick, La., January 2, 1980. The crude oil subsequently ignited. (See 45 FR 67175, October 9, 1980.)

Recommendation P–80–66 asked Texas Pipe Line to review the practice of using fillet-welded reinforcement sleeves for tie-in welds to determine if these sleeves have been the cause of any pipeline failures in its system, and based on the results of this review, revise company practices and procedures for the use of these sleeves. The company states in its response that it has never had a general practice of using fillet-welded reinforcement sleeves for tie-in welds. As far as can be determined, the company says it has had only one other pipe failure resulting from the use of a fillet-welded reinforcement sleeve. This failure occurred about 25 years ago in the bank of a river crossing in close proximity to an underbend where the pipe was believed to be heavily stressed.

Texas Pipe Line notes that *Liquid Petroleum Transportation Piping Systems*, ANSI B 31.4, the industry voluntary standard code for pressure piping, allows the use of fillet-welded full encirclement sleeves, under certain conditions, for repairing pipe in high-pressure service. Texas Pipe Line says it adheres strictly to this code in the repair of its pipelines when such lines are not otherwise covered by procedures contained in 49 CFR Part 195. Since the use of fillet-welded full encirclement sleeves, under certain conditions, to repair high-pressure pipe is acceptable industry practice and company experience supports the use of such sleeves, except in locations of unusual stress such as in locations of unusual stress, Texas Pipe Line has issued the following instructions to its line managers:

> Effective immediately fillet-welded full encirclement sleeves shall not be permanently installed in locations of unusual stress such as in the tops of levees or within 3-feet of overbends, underbends or sidebends.

Recommendation P–80–67 asked the company to notify the pipeline patrol of the location of existing fillet-welded sleeves and instruct it to examine, during periodic patrols, the areas around the sleeve installations for signs of leakage. Texas Pipe Line reports that it has reviewed all of its main lines and has not found any location were a reinforcement sleeve is subjected to any unusual stress. Air patrol pilots have been instructed to closely observe all pipeline rights-of-way for signs of leakage.

In response to recommendation P–80–68, which called for evaluating existing

and related correspondence, are provided free of charge. All requests for copies must be in writing, identified by recommendation number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

comments submitted with respect to the Draft Supplement No. 2, the Commission's staff will prepare a Final Supplement No. 2, the availability of which will be published in the Federal

those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, request for reevaluation may be submitted for a period of 60 days after

the following proposed transactions. All interested persons are preferred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Alabama intends to submit to the

as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any

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been instructed to closely observe all pipeline rights-of-way for signs of leakage.

In response to recommendation P–80–68, which called for evaluating existing procedures for leak detection and taking steps to make these procedures more effective, Texas Pipe Line reports that it has evaluated its existing procedures for leak detection of its main lines and has found such procedures to be generally effective. Among the procedures used are: (1) Volume over/short checking between origin and destination by station personnel; (2) line pressure recording charts with alarms; (3) line differential pressure mercoid shutdown devices with alarms; and (4) weekly air patrol of main lines.

Texas Pipe Line states that it is planning to install additional meters and associated equipment on the Houma-Pt. Arthur 22-inch line to provide a continuous volume-in, volume-out comparison, which is expected to improve leak detection capabilities. Other pipelines will be evaluated for possible installation of a similar system.

Railroad

R–80–47, from the Bay Area Rapid Transit District (BART), December 9, 1980.—Response is to a recommendation issued October 24 following investigation of the derailment of a Western Pacific Railroad Company freight train at Hayward, Calif., April 9, 1980. The recommendation asked BART to establish procedures to prevent trains from being operated into an area where an emergency exists until it is known that it is safe to do so, and to develop and maintain on a current basis with the Western Pacific Railroad Company a plan for immediate notification of any emergency occurring on the common right-of-way between Oakland and Fremont. (See 45 FR 79206, November 28, 1980.)

The response indicates that BART and Western Pacific have established procedures and exchanged appropriate telephone numbers to expedite notification of each other in the event of an actual or potential emergency involving the right-of-way of the other between Oakland and Fremont. The telephone numbers terminate in the Sacramento Dispatcher's office of the Western Pacific, and the Operations Control Center at BART. BART checks *all* emergency numbers at least once a month, and logs the results. The operating rules of both properties recognize "Stop" signals given by others on or adjacent to their respective rights-of-way.

Note.—Copies of the Safety Board's recommendation letters, as well as responses and related correspondence, are provided free of charge. All requests for copies must be in writing, identified by recommendation number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

December 19, 1980.

[FR Doc. 80-40307 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-58-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-466]

Allens Creek Nuclear Generating Station, Unit No. 1; Availability of Draft Supplement No. 2 to Final Environmental Statement

Notice is hereby given that Draft Supplement No. 2 to the Final Environmental Statement (NUREG–0470) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed construction of the Allens Creek Nuclear Generating Station (ACNGS), Unit No. 1, by the Houston Lighting & Power Company. The proposed station is to be located in Austin County, Texas.

This second supplement addresses site alternatives to the proposed ACNGS and a proposed means of transporting the reactor pressure vessel to the site.

This draft supplement is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C., and in the Sealy Public Library, 201 Atchinson Street, Sealy, Texas. Draft Supplement No. 2 to the Final Environmental Statement is also being made available at the Houston-Galveston Area Council, 3701 West Alabama Avenue, Sealy, Texas 77027. Requests for copies of the Draft Supplement No. 2 should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555. Attention: Director, Technical Information and Document Control.

Interested persons may submit comments on this draft supplement to the FES for the Commission's consideration. Federal, State, and specified local agencies are being provided with copies of the Draft Supplement No. 2 (local agencies may obtain these documents upon request).

Comments by Federal, State and local officials, or other members of the public received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. and the Sealy Public Library, 201 Atchinson Street, Sealy, Texas. Upon completion of comments submitted with respect to the Draft Supplement No. 2, the Commission's staff will prepare a Final Supplement No. 2, the availability of which will be published in the **Federal Register.** Comments are due by February 11, 1981.

Comments on the Draft Supplement No. 2 from interested members of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 12th day of December 1980.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 80-40098 Filed 12-24-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322A]

Long Island Lighting Co.; Receipt of Updated Information for Antitrust Review of Operating License Application

Note.—This document originally appeared in the **Federal Register** for Friday December 12, 1980. It is reprinted in this issue at the request of the agency.

The Long Island Lighting Company filed updated information for Antitrust Review of an Operating License Application, dated September 30, 1980. The original submission of information for the antitrust review of the operating license application was filed by letter, dated January 12, 1976. This information was filed pursuant to 2.101 of the Commission's Rules and Regulations and is in connection with the plans of Long Island Lighting Company to operate a boiling water reactor located on the north shore of Long Island, the State of New York, County of Suffolk, in the town of Brookhaven. The reactor has been designated as the Shoreham Nuclear Power Station, Unit 1.

The portion of the application filed contains updated antitrust information for review pursuant to NRC Regulatory Guide 9.3 to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage.

On completion of staff antitrust review of the above-named application, the Director, Office of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Act. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, D.C., and local public document room and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, request for reevaluation may be submitted for a period of 60 days after the date of the **Federal Register** notice. The results of any reevaluation that are requested will also be published in the **Federal Register** and copies sent to the Washington, D.C., and local public document room.

A copy of the updated information for Antitrust Review for an Operating License Application is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the local public document room in the Shoreham—Wading River Public Library, Route 25A, Shoreham, New York 11786.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the licensee's activities since the construction permit antitrust review for the above-named plant should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Chief, Utility Finance Branch, Office of Nuclear Reactor Regulation, on or before February 10, 1981.

Dated at Bethesda, Maryland this 3rd day of December 1980.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Chief Licensing Branch No. 1, Division of Licensing.

[FR Doc. 80-38401 Filed 12-11-80; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21845 (70-6533)]

Alabama Power Co.; Proposed Change in Unsecured Debt Limitation and Solicitation of Proxies in Connection Therewith

December 18, 1980.

Notice is hereby given that Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291 a public-utility subsidiary of The Southern Company, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the following proposed transactions. All interested persons are preferred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Alabama intends to submit to the holders of its outstanding preferred stock for consideration and action at a special meeting of such holders to be held on or about April 29, 1981, a proposal that Alabama be authorized, by vote of its preferred stockholders, to issue or assume, until July 1, 1986, securities representing unsecured debt having maturities of less than ten years in excess of 10% of capital, surplus and secured debt, provided that (a) the amount of securities representing unsecured debt having maturities of less than 10 years outstanding on January 1, 1987, shall not exceed said 10% limitation and (b) Alabama's total unsecured indebtedness represented by securities shall at no time exceed 20% of capital, surplus and secured debt. Alabama also propcses to solicit proxies from the holders of its preferred stock in connection therewith. The proposed authorization would supersede similar authorization approved by preferred stockholders on February 11, 1975 (HCAR No. 18714 (December 16, 1974)).

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $93,000 including a legal fee of $38,000 and a fee for soliciting proxies of $35,000. It is stated that no state or federal commission, other than this Commission, has jurisdication over the proposed transactions.

Notice is further given that any interested person may, not later than January 19, 1981, request in writing that a hearing be held on such matter, stating the nature of bis interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be adressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40303 Filed 12-24-80; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Support for the President's Executive Order No. 12160 (Consumer Affairs Program)

AGENCY: Selective Service System.

ACTION: Statement of support for executive order.

SUMMARY: In September, 1979, President Carter issued an executive order to provide for the enhancement and cooperation of federal consumer programs. The Selective Service does not provide "consumer services" per se, but fully supports the spirit of the order.

FOR FURTHER INFORMATION CONTACT:

Brayton Harris, Assistant Director (Public Affairs), Selective Service System, 600 E Street, NW., Washington, D.C. 20435, telephone (202) 724–0790.

Bernard D. Rostker,

Director of Selective Service.

December 19, 1980.

The text of statement follows:

Introduction

The Selective Service System is an agency of the federal government whose principal mission is to provide the Department of Defense with the manpower it would require to augment the All Volunteer Force in a national emergency. The agency is currently in a standby posture to maintain an active register of males subject to a draft and to develop the plans necessary to support a mobilization. Selective Service does not provide "consumer services" per se; unless an active draft should be resumed, the only contact a registrant would have with this agency at this time and in the foreseeable future, would be to file, as needed, a report of change of address. For this reason, Selective Service has been exempted from the formal requirements of Executive Order 12160.

Consumer Affairs Perspective

Although Selective Service is exempt from Executive Order 12160, the Director of Selective Service wholeheartedly supports the spirit of that Order.

civilian volunteers. To overcome some of the problems which have developed with draft boards in the past, Selective Service will be working with each state governor to open up the nomination

usually within one week of receipt. Additionally, mailgrams were sent to reply to urgent requests.

Selective Service has a bank of ten Codaphones which give a recorded message outlining the basic facts about

Communications Policy (ICCP) to be held in Paris on January 20 and 21, and to review measures under consideration to publicize the OECD privacy guidelines.

Requests for further information on

Members of the public wishing to attend the meeting must contact Mr. Lincoln's office in order to arrange entrance to the State Department building.

The Chairman of the Working Group,

Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.

The purpose of the meeting is to review the outcome of the Fifth Consultative Meeting of the London Dumping Convention and to discuss the

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Consumer Affairs Perspective

Although Selective Service is exempt from Executive Order 12160, the Director of Selective Service wholeheartedly supports the spirit of that Order. Accordingly, he has created an active public affairs program within the agency which meets each of the criteria established in sections 1–4 of the directive. He has created the position of Assistant Director for Public Affairs, reporting directly to the Director on a day-to-day basis, with a trained and experienced staff to handle media and public inquiries whether written or oral.

Consumer Participation

During the past year, senior members of the staff have met with, and solicited advice and comment from the governing bodies of such diverse organizations as the Coalition Against Registration and the Draft, the National Interreligious Service Board of Conscientious Objectors, various veterans groups, service organizations and educational groups such as the American Student Association and the United States Student Association. In furtherance of this activity, and in accordance with the provisions of the Advisory Committee Act, a panel of citizens representing a wide range of interest and viewpoint will be established to assist Selective Service in the development of future policies and procedures.

On December 4, 1980, Selective Service published proposed regulations in the **Federal Register** for public comment. These regulations define a new organizational structure and operational procedure for use should the draft ever be required. These differ from the old in many ways, and we believe that they will result in more consistent results, thereby ensuring that individuals will be treated with more equity, uniformity, and justice than in the past. We are soliciting public comment on these regulations; those comments will be considered and changes made, as appropriate.

Beginning December 8, 1980, Selective Service distributed for public comment copies of a concept paper for an Alternative Service program for conscientious objectors, and began a series of meetings with interested groups to discuss the details of this proposal.

Regarding future activities, there is little that this agency could do—or should do—which is not fully under public scrutiny. Should a draft ever be needed, the rights and interests of each potential draftee would be protected by a nationwide network of draft boards and appeal boards, comprised of local civilian volunteers. To overcome some of the problems which have developed with draft boards in the past, Selective Service will be working with each state governor to open up the nomination process and to ensure that boards would be representative of local communities. For the first time in Selective Service history, we will develop nationally—consistent comprehensive training for each prospective draft board member so that each could be well versed in Selective Service regulations, programs and policy. This will help ensure uniform and equitable adjudication of claims. Additionally, a state-based inspection system is being devised to be responsive to the needs, concerns and complaints of claimants.

Informational Materials

The Public Affairs staff have developed and distributed a range of information materials to the Congress, the news media and registrants. An information pamphlet has been given to each registrant, which clearly outlines his rights and responsibilities under the law. Posters have been placed in each post office and at each U.S. Customs entry point. A brochure detailing the history, procedures and policies of Selective Service is being developed. Comprehensive fact sheets on various aspects of Selective Service have been sent to all print media.

In the past nine months, senior members of the staff have accepted every possible invitation for public appearances, panel discussions and debates, and radio, television, and print media interviews—with as many as eight such events scheduled in a single day by officials while in a travel status.

Education and Training

Senior members of the Public Affairs Staff are trained professionals, who keep up-to-date on consumer concerns through attendance at seminars, conferences and lectures. Public Affairs matters are discussed at each Selective Service Quarterly Regional Manager's Conference. Public Affairs aspects of Selective Service operations are covered in training materials prepared for use by assigned members of the Selective Service Reserve Forces.

Inquiries and Complaint Handling

The Public Inquiries Branch of the Public Affairs Office responds directly to the public, by personal letter or telephone call. From the time registration was announced by the President in his State of the Union address on January 23, 1980 through the present, the public inquiries staff has responded to more than 10,000 letters, usually within one week of receipt. Additionally, mailgrams were sent to reply to urgent requests.

Selective Service has a bank of ten Codaphones which give a recorded message outlining the basic facts about registration. These messages are continually updated to reflect particular concerns of the public at any given time. During active registration periods, Selective Service also maintains a Phone Information Center which is manned by four to six people. During the last registration, this unit handled at least 400 phone calls per day during a two-month period. To respond to calls from the Hispanic population, a person fluent in Spanish was hired and trained. Federal Information Centers throughout the U.S. were also given packets of information so personnel could directly answer questions from the general public.

Approximately 100 media inquiries a day were answered by the Public Affairs Office from January 23rd through September. These largely were handled by telephone; many were taped or live inputs into news and public affairs radio programs, nation-wide.

The Public Affairs Office also maintains an updated audio feed for direct access by radio and television stations.

Appropriate Telephone Numbers

Brayton Harris, Assistant Director (Public Affairs)—724–0790
Joan Lamb, Public Affairs Officer—724–0790
Betty Alexander, Public Inquiries Officer—724–0427.

[FR Doc. 80-40253 Filed 12-23-80; 8:45 am]
BILLING CODE 8015-01-M

DEPARTMENT OF STATE

[CM-8/355]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting on January 8, 1981 of the Working Group on International Data Flows of the Advisory Committee on International Investment, Technology, and Development. The Working Group will meet from 10:00 am to 12:00. The meeting will be held in the Loy Henderson Conference Room of the State Department, 2201 C Street, N.W., Washington, D.C. 20520. The meeting will be open to the public.

The purpose of the meeting will be to discuss preparation for the meeting of the Experts Group of the OECD Working Group on Information, Computers and Communications Policy (ICCP) to be held in Paris on January 20 and 21, and to review measures under consideration to publicize the OECD privacy guidelines.

Requests for further information on the meeting should be directed to Philip T. Lincoln, Jr., Department of State, Office of Investment Affairs, Bureau of Economic and Business Affairs, Washington, D.C. 20520. He may be reached by telephone on (area code 202) 632–2728.

Members of the public wishing to attend the meeting must contact Mr. Lincolns's office in order to arrange entrance to the State Department building.

The Chairman of the Working Group, will as time permits, entertain oral comments from members of the public attending the meeting.

Dated: December 10, 1980.

Philip T. Lincoln, Jr.,

Executive Secretary.

[FR Doc. 80-40224 Filed 12-24-80; 8:45 am]
BILLING CODE 4710-07-M

[CM-8/354]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting on Wednesday, January 14, 1981 of the Working Group on Preparations for the U.N. Conference on New and Renewable Sources of Energy (UNCNRSE) of the Advisory Committee on International Investment, Technology, and Development. The Working Group will meet from 9:30 am to 1:00 pm. The meeting will be held in Room 1107 of the State Department, 2201 C Street, N.W., Washington, D.C. 20520. The meeting will be open to the public.

The purpose of the meeting will be to discuss the status of U.S. and international preparations for the Conference; reports by the U.S. members on the *ad hoc* expert group meetings on financing and information flows; reports by the chairmen of U.S. policy working groups on research and development, transfer of technology, rural energy issues, and industrial issues; and, preparations for the third meeting of the Preparatory Committee, March 30-April 10.

Requests for further information on the meeting should be directed to Philip T. Lincoln, Jr., Department of State, Office of Investment Affairs, Bureau of Economic and Business Affairs, Washington, D.C. 20520. He may be reached by telephone on (area code 202) 632–2728.

Members of the public wishing to attend the meeting must contact Mr. Lincoln's office in order to arrange entrance to the State Department building.

The Chairman of the Working Group, will as time permits, entertain oral comments from members of the public attending the meeting.

Dated: December 9, 1980.

Philip T. Lincoln, Jr.,

Executive Secretary.

[FR Doc. 80-40235 Filed 12-24-80; 8:45 am]
BILLING CODE 4710-07-M

[CM-8/356]

Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Notice of Meeting

The Department of State announces that Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 15, 1981, in Room A110, Federal Communications commission Annex, 1229 20th Street, N.W., Washington, D.C. at 10:00 a.m.

Study Group 9 deals with questions relating to line-of-sight and trans-horizon radio-relay systems operating via terrestrial stations at frequencies above about 30 MHz. The purpose of the meeting is to review the results of the recent international meeting of Study Group 9 and establish a program of work in preparation for the international meeting in October 1981.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Gordon Huffcutt, State Department, Washington, D.C. 20520, telephone (202) 632–2592.

Dated: December 10, 1980.

Gordon L. Huffcutt,

Chairman, U.S. CCIR National Committee.

[FR Doc. 80-40223 Filed 12-24-80; 8:45 am]
BILLING CODE 4710-07-M

Office of the Secretary

[Public Notice CM-8/353]

Shipping/Coordinating Committee, Committee on Ocean Dumping; Meeting

The U.S. Advisory Committee on Ocean Dumping, a Subcommittee of the Shipping Coordinating Committee, will hold an open meeting at 9:30 a.m. on Wednesday, January 14, 1981, in Room 1101, West Tower, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.

The purpose of the meeting is to review the outcome of the Fifth Consultative Meeting of the London Dumping Convention and to discuss the agenda of the next meeting of the Ad Hoc Scientific Group.

Requests for further information should be addressed to Ms. Norma A. Hughes, Executive Secretary, Committee on Ocean Dumping (WH–548), U.S. Environmental Protection Agency, Washington, D.C. 20460. Ms. Hughes may be reached by telephone (202) 472–2836. The Chair will entertain comments from the public as time permits.

John T. Stewart,

Chairman, Shipping Coordinating Committee.

Dated: December 15, 1980.

[FR Doc. 80-40206 Filed 12-24-80; 8:45 am]
BILLING CODE 4710-09-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-20]

American Home Assurance Co., Termination of Investigation

The United States Trade Representative, in accordance with the provisions of 15 CFR 2006.6 is terminating the investigation under section 301 of the Trade Act of 1974 (19 U.S.C. 2411) concerning the discriminatory practice of the Government of Korea in the insurance sector. On November 5, 1979, the American Home Assurance Company (AHA) filed a petition under section 301 alleging that the Government of Korea discriminated against AHA by: (1) Failing to issue a license permitting AHA to write marine insurance in Korea; (2) failing to permit AHA to join the Fire Pool or to write most forms of joint venture fire insurance; and (3) failing to grant retrocessions from the Korean Reinsurance Corporation to AHA on the same basis as that applied to Korean insurance companies. A **Federal Register** notice announcing the initiation of the investigation and including the text of the petition was published on December 19, 1979 (44 FR 75246). A **Federal Register** notice inviting poublic comment on all aspects of this case, including proposals for retaliation, was published on November 26, 1980 (45 FR 78850).

Beginning in June, 1980, U.S. Government officials held several rounds of consultations with officials of the Government of Korea on the issues by AHA. During these consultations, the U.S. Government learned that the

Government of Korea is planning to implement the policy objective of fostering an open economic system through the promotion of open competition in certain sectors of the insurance market in the near future.

written statement to the committee at any time.

Issued in Washington, D.C., on December 16, 1980.

Eugene S. Rehrig,

purpose of the FHWA Notice is to distribute guidelines to FHWA field offices for implementing Section 147, Access Ramps to Public Boat Launching Areas, of the Federal-Aid Highway Act of 1976. Published also as an attachment

the boat launching facility, including the cost of any adjacent land required for the facility. The use of Federal-aid highway funds is limited to the cost of obtaining additional highway right-of-way needed for construction of the

Federal-aid highway to the boat launching area.

4. *Public Boat Launching Area.* For purpose of this memorandum, a public boat launching area is defined as the area at which boats are actually placed

provisions of 23 U.S.C. 120 applicable to 23 U.S.C. 104(b)(1), (b)(2), or (b)(6).

7. It is not the intention of section 147 of the Federal-Aid Highway Act of 1976 to provide for an extended roadway system within publicy owned

Government of Korea is planning to implement the policy objective of fostering an open economic system through the promotion of open competition in certain sectors of the insurance market in the near future.

Furthermore, in a letter dated December 19, 1980, AHA notified the United States Trade Representative of its desire to withdraw its petition.

In view of the above, the investigation of the complaint filed by the American Home Assurance Company is terminated.

Jeanne S. Archibald,

Chairman, Section 301 Committee.

[FR Doc. 80-40248 Filed 12-24-80; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on January 23, 1981 in RTCA Conference Room 261, 1717 H Street, N.W., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Approval of Minutes of Meeting Held on November 19, 1980; (2) Special Committee Activities Report for November and December 1980; (3) Chairman's Report on RTCA Administration and Management; (4) Approval of Resolution to Change RTCA Constitution and Bylaws to Admit the General Aviation Manufacturers Association (GAMA) as an Executive Committee Member; (5) Consideration of Establishing New Special Committees; (6) Approval of Special Committee 143 Report on Minimum Operational Performance Standards for Ground Based Automated Weather Observation Equipment; (7) Report of Fiscal and Management Committee; (8) Mid-year Review of RTCA FY-1981 Budget; and (9) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1717 H Street, N.W., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on December 16, 1980.

Eugene S. Rehrig,

Acting Designated Officer.

[FR Doc. 80-40317 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 136; Installation of Emergency Locator Transmitters (ELT) in Aircraft; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of Special Committee 136 on Installation of Emergency Locator Transmitters (ELT) in Aircraft to be held on January 29-30, 1981 in RTCA Conference Room 261, 1717 H Street, N.W., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Eighth Meeting Held on August 5-6, 1980; (3) Briefing on Automatic Deployable ELT; (4) Review Second Draft of Report on ELT Installation and Activation; and (5) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1717 H Street, N.W., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on December 16, 1980.

Eugene S. Rehrig,

Acting Designated Officer.

[FR Doc. 80-40316 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Access Ramps to Public Boat Launching Areas in Connection With Federally Funded Bridge Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA today publishes for public information the text of FHWA Notice N 5020.17, October 15, 1980 entitled, "Access Ramps to Public Boat Launching Areas in Connection with Federally Funded Bridge Projects." The purpose of the FHWA Notice is to distribute guidelines to FHWA field offices for implementing Section 147, Access Ramps to Public Boat Launching Areas, of the Federal-Aid Highway Act of 1976. Published also as an attachment to the FHWA Notice is the text of a Memorandum of Understanding (MOU) agreed upon by the FHWA and the Heritage Conservation and Recreation Service (HCRS) of the Department of the Interior. The texts of these documents are self-explanatory and are set forth below.

DATES: The MOU was signed on August 12, 1980 and the subject FHWA Notice was issued on October 15, 1980.

FOR FURTHER INFORMATION CONTACT: Sidney Louick, Office of Engineering, 202-426-0450, or Barbara Dalmut, Office of the Chief Counsel, 202-426-0800, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on December 17, 1980.

John S. Hassell, Jr.,

Federal Highway Administrator.

Access Ramps to Public Boat Launching Areas in Connection With Federally Funded Bridge Projects

1. *Purpose.* To distribute guidelines for implementing the Federal-Aid Highway Act of 1976, Section 147, Access Ramps to Public Boat Launching Areas.

2. *Background.*

a. Under Section 147, primary, secondary, and urban systems funds may be used to construct access ramps to public boat launching areas in connection with bridge projects on these Federal-aid systems. A formal Memorandum of Understanding (MOU) (Copy attached) was executed on August 12, 1980, between the Federal Highway Administration (FHWA) and the Heritage Conservation and Recreation Service of the Department of the Interior, which provides general guidelines for coordinating highway and recreational development in accordance with the provisions of Section 147.

b. The provisions of the MOU will be incorporated in appropriate regulations and the Federal-Aid Highway Program Manual as soon as possible.

3. *Discussion.* The MOU states a boat launching area is adjacent to a bridge project if the property which includes the launching facility ". . . is situated so as to be a part of the bridge project." This refers only to the physical relationship between the bridge project and the boat launching area. Federal-aid primary, secondary, or urban system funds utilized for the bridge project are not eligible for any portion of the cost of the boat launching facility, including the cost of any adjacent land required for the facility. The use of Federal-aid highway funds is limited to the cost of obtaining additional highway right-of-way needed for construction of the access ramp and to the physical construction of the ramp itself.

4. *Action.*

a. Division Administrators should discuss with the State highway agencies the guidelines incorporated in the MOU. Bridge projects which could incorporate provisions for access ramps to public boat launching areas are to be considered and developd in accordance with these guidelines.

b. The FHWA field offices will ensure the MOU is part of each State's documentation developed and approved pursuant to 23 U.S.C. 109(h). The MOU may be added at the next revision of or amendment to the State Action Plan and may be incorporated as an appendix or by reference.

John S. Hassell Jr.,

Federal Highway Administrator.

Attachment—Memorandum of Understanding on Providing for Access Ramps to Public Boat Launching Areas in Connection With Federally Funded Bridge Projects

A. Purpose

The purpose of this Memorandum of Understanding is to provide guidance for the approval of access ramp projects to public boat launching areas, as required by section 147 of the Federal-Aid Highway Act of 1976, Pub. L. 94-280, May 5, 1976. Section 147 provides that funds apportioned to the States under 23 U.S.C. 104(b)(1), (b)(2), and (b)(6), may be used on application by the States for the construction of access ramps to public boat launching areas adjacent to bridges under construction, reconstruction, replacement, repair, or alteration on the Federal-aid primary, secondary, and urban system highways.

B. Definitions

1. *Bridge.* For purpose of this memorandum, a bridge is defined as a structure overcrossing a waterway of a sufficient size to accommodate boating.

2. *Adjacent.* For purpose of this memorandum, a public boat launching area is adjacent to a bridge located on a Federal-aid primary, secondary, or urban system of the property upon which the boat launching area is located, or will be located, is situated so as to be part of the bridge project.

3. *Access Ramp.* For purpose of this memorandum, an access ramp is defined as a suitable roadway leading from the Federal-aid highway to the boat launching area.

4. *Public Boat Launching Area.* For purpose of this memorandum, a public boat launching area is defined as the area at which boats are actually placed in the water.

C. Agreement

1. In accordance with section 147 of the Federal-Aid Highway Act of 1976, the Secretary of Transportation will, upon application of a State and subject to the availability of funds, approve the construction of access ramps to public boat launching areas which are adjacent to bridges that are being constructed, reconstructed, replaced, repaired, or otherwise altered on the Federal-aid primary, secondary, or urban systems.

2. The authority to include an access ramp to a boat launching area in a request for Federal funding remains with the State Highway Agency (SHA), in accordance with 23 U.S.C. 145. Timely notification of the acceptance or rejection of access ramp proposals should be given by the SHA to the agency applying for funding, the State Liaison Officer, and the Federal Highway Administration (FHWA). The FHWA will notify the appropriate Regional Director, Heritage Conservation and Recreation Service (HCRS) upon notice from the SHA.

3. The development and acquisition of the boat launching area and the access ramp may be accomplished concurrently by mutual agreement between the SHA and the agency responsible for the launching area. However, the property adjacent to the highway right-of-way on which the boat launching area is to be located must be in public ownership at the time Federal funds for the access ramps are obligated.

4. Where the highway right-of-way is sufficient for joint development, a public boat launching area may be located within the right-of-way so long as it does not interfere with the safety and utility of the highway function, subject to the Federal-Aid Highway Program Manual, Volume 7, Chapter 4, Section 3.

5. While the public boat launching area must be adjacent to the highway right-of-way, additional highway rights-of-way may be necessary for the construction of a suitable access ramp. Federal funding under section 147, and in accordance with section 104, will be available for the acquistion of such additional rights-of-way.

6. Access ramp construction eligible for consideration under section 147 will be accomplished in conjuction with federally funded bridge projects. The Federal share of the costs such access ramps will be in accordance with the provisions of 23 U.S.C. 120 applicable to 23 U.S.C. 104(b)(1), (b)(2), or (b)(6).

7. It is not the intention of section 147 of the Federal-Aid Highway Act of 1976 to provide for an extended roadway system within publicy owned recreational areas, but rather to provide direct access from the highway right-of-way to the water traversed by such highway.

8. The successful implementation of section 147 depends upon early coordination among the involved agencies. It is therefore the intention of this memorandum to assure the early notification by the FHWA/SHA of the possibilities of access ramp construction under section 147 to appropriate parties.

Early coordination shall be effected through distribution of appropriate information by the FHWA/SHA to the Regional Director, HCRS, and State Liaison Officers for information. This information may include, where appropriate, publications and reports such as the National Bridge Inventory, State and metropolitan area five year highway plans for certification, annual updates of State's long-term capital budget plans as well as preliminary project plans.

9. Where a federally funded bridge project will result in the replacement of an existing bridge, opportunities for access ramp development in conjuction with the replaced bridge and associated highway rights-of-way, should be examined as part of project planning efforts. The parties agree that Federal funding under section 147 may be used to provide for an access ramp to a public boat launch area at the replaced bridge or its associated highway rights-of-way.

D. Responsibilities of the Federal Highway Administration

1. The FHWA/SHA will notify the appropriate State Liaison Officers of proposed bridge work and the opportunity for funding of the construction of access ramps to public boat launching areas under section 147. This notification will occur early enough to permit the timely inclusion of access ramp proposals in the bridge project. Notification will also be provided to the appropriate Regional Director, HCRS.

2. The FHWA will permit the approval of access ramp additions which are submitted at any time during the life of the bridge project.

3. The FHWA will insure that this Memorandum of Understanding is part of the documentation developed by each State and approved pursuant to 23 U.S.C. 109(h). Addition of this Memorandum of Understanding may occur at the next revision of or amendment to such documentation.

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proposal. The Administrator will not

proposed Expedited STPs from potential

E. Responsibilities of the Heritage Conservation and Recreation Service

1. The HCRS will notify the State Liaison Officers of each State of the Provisions of section 147 of the Federal-Aid Highway Act of 1976.

This notification will alert State agencies of the potential for Federal-aid funding for access ramps. The HCRS will stress the importance of early coordination and consultation process with the FHWA and SHA for evaluating opportunities to implement section 147 in connection with proposed bridge projects.

2. The HCRS will provide technical assistance, as appropriate, to other Federal, State and local agencies in assessment of opportunities for implementing section 147.

F. Interpretation of Section 4(f)

It is our mutual understanding and intent that the requirements of Section 4(f) of the Department of Transportation Act, 49 U.S.C. 1653(f) (23 U.S.C. 138), are not to be applicable to bridge construction, reconstruction, replacement, repair or alteration project solely because of the inclusion of an access ramp. In such cases, only the access ramp will be subject to the requirements of Section 4(f). Where Section 4(f) applies to the bridge project, a single Section 4(f) statement may be prepared for the bridge and the access ramp.

G. Review of Memorandum of Understanding

Within 3 years from the effective date of this Memorandum of Understanding, the Administrator and the Director shall review the effectiveness of this Understanding in achieving the stated purpose. If based upon that review, or at anytime during the course of operation within this Understanding, either the Administrator or the Director find its terms in need of modification, he or she may notify the other of the nature of the desired change.

Dated: August 12, 1980.

Concur:

John S. Hassell, Jr.,

Administrotor, Federal Highway Administration.

Dated: August 12, 1980.

Concur:

Chris Therral Delaporte,

Director,Heritage Conservotion and Recreotion Service.

[FR Doc. 80-40130 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[Docket No. RFA-305-80-1; Notice No. 1]

Consolidated Rail Corp.; Expedited Supplemental Transaction Proposals

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice concerning the development of expedited supplemental transaction proposals (Expedited STPs) pursuant to section 305(f) of the Regional Rail Reorganization Act of 1973 (Act), 45 U.S.C. 745(f).

SUMMARY: The Federal Railroad Administrator (Administrator), as delegate of the Secretary of DOT, seeks the submission of Expedited STP information by railroads interested in acquiring all of the rail properties of the Consolidated Rail Corporation (Conrail) in the States of Connecticut and Rhode Island for the purpose of providing freight service. Conrail's rail properties in the two States are identified in Appendix A to this Notice and are hereafter referred to as the Appendix A Rail Properties. This Notice also solicits comments from the public on the desirability of and problems posed by Expedited STPs. The Administrator has previously sought information from Conrail regarding Appendix A Rail Properties. Appendix B is a list of the information FRA has requested. Nonprivileged information received pursuant to that request will be made available for review by potential transferees and the public as provided and at the locations specified in this Notice.

DATES: The following deadlines are necessary to enable the Administrator to determine by May 29, 1981, whether to advance an Expedited STP.

The deadlines do not preclude submission to the Administrator of a recommendation for the development of a standard STP under section 305(a) of the Act with respect to any Conrail rail properties.

1. Statements of interest in acquiring all of the Appendix A Rail Properties and historical financial and operating information with respect to potential transferees must be received by FRA on or before February 2, 1981.

2. Parties interested in receiving further information on the development of Expedited STPs should submit their names, addresses and a statement regarding the nature of their interest to FRA on or before February 2, 1981.

3. Initial statements of position from members of the public regarding the desirability of and problems posed by transferring all of the Appendix A Rail Properties to another party must be received by FRA on or before February 2, 1981.

4. Financial projections, operating and employment plans and proposed offering prices must be received by FRA from potential transferees on or before February 27, 1981.

ADDRESS: Four copies of written submissions must be submitted to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Room 8211, 400 Seventh Street S.W., Washington, D.C. 20590. Submissions should identify the docket number and notice number. Written submissions will be available for examination, consistent with the Freedom of Information Act, at the above address between 8:30 a.m. and 5:00 p.m., EST, Monday through Friday. Those desiring notification of receipt of submissions must include a self-addressed stamped postcard.

For the convenience of the public and potential transferees, copies of nonprivileged information which are received from Conrail and potential transferees regarding the Appendix A Rail Properties will also be available for public inspection at the following locations:

Rhode Island Department of Transportation, Planning Division, Room 369, State Office Building, Providence, Rhode Island, between 8:30 a.m. and 4:30 p.m., EST, Monday through Friday

Connecticut Department of Transportation, Department of Transportation, Administration Building, 24 Wolcott Hill Road, Wethersfield, Connecticut, between 8:30 a.m. and 4:00 p.m., EST, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steve Black, Office of Federal Assistance, (202) 472-7180. Office hours are 8:30 a.m. to 5:00 p.m., EST, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 305(f) of the Act, as added by section 601 of the Staggers Rail Act of 1980 (Pub. L. No. 96-448), requires the Administrator to determine by May 29, 1981, whether to propose an Expedited STP for the transfer of all the Appendix A Rail Properties to another railroad in the region. The Administrator is seeking information to enable him to determine whether to advance an Expedited STP.

The Act defines "rail properties" to mean "assets or rights owned, leased, or otherwise controlled by a railroad (or a person owned, leased, or otherwise controlled by a railroad) which are used or useful in rail transportation service * * *" The Act defines "railroad" to mean "a common carrier by railroad as defined in section 1(3) [now codified at 49 U.S.C. 10102] of the Interstate Commerce Act," and includes the National Railroad Passenger Corporation (Amtrak). The Act defines "region" to mean "the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Michigan and Illinois; the District of Columbia; and those portions of contiguous States in which are located rail properties owned or operated by railroads doing business primarily in the aforementioned jurisdictions (as determined by the Commission by order)."

Description of Expedited STPs

The principal elements of Expedited STPs are as follows: 1. Conrail Properties Eligible for Transfer: An Expedited STP is restricted to the transfer of *all* of the Appendix A Rail properties.

2. Potential Transferees: Only a *single railroad in the region* which will assume the freight service obligations of Conrail with respect to the Appendix A Rail Properties is eligible to be a transferee in an Expedited STP.

3. Administrator's Findings: The Administrator is directed to develop an Expedited STP if, after providing an opportunity for comments from interested parties, he determines that: "(A) the proposed transferee railroad is financially and operationally capable of assuming the freight operations and freight service obligations of the Corporation on a financially self-sustaining basis; (B) the proposed transfer would promote the establishment and retention of a financially self-sustaining rail system in the States of Connecticut and Rhode Island adequate to meet the needs of such States; and (C) the transfer is consistent with the goals set forth in section 206(a)(8) of this Act." The goal cited in section 206(a)(8) reads as follows: "the minimization of job losses and associated increases in unemployment and community benefit costs in areas in the areas in the region presently served by rail service."

4. Expedited STP Review Process: If the Administrator develops an Expedited STP he is to provide USRA, the ICC and the States of Connecticut and Rhode Island an opportunity to concurrently review and comment on the Expedited STP. Subsequent to receiving these comments the Administrator may petition the Special Court for an order to carry out such a proposal. The Administrator will not petition the Special Court unless the transferee railroad is willing to accept the fair and equitable purchase price established by the Administrator. The Special Court is to issue implementing orders if it determines that the proposal is fair and equitable, it is in the public interest, and that it meets the requirements of section 305 of the Act.

STP Development Process

This Notice establishes deadlines for the submission of: (1) expressions of interest from potential transferees in acquiring Appendix A Rail Properties; (2) the names, addresses, and statements regarding the nature of their interest from parties interested in receiving further information on the development of Expedited STPs; (3) initial statements of position from members of the public regarding the desirability of and problems posed by transferring all of the Appendix A Rail Properties to another railroad; and (4) financial projections, operating and employment plans and proposed offering prices from potential transferees. Following receipt of these submissions, FRA will publish in the **Federal Register**, in early March 1981, a summary of each Expedited STP submitted to FRA and request public comments thereon. Public hearings may also be held on these proposals. The Administrator will consider all information received by means of this process, as well as the results of discussions FRA will hold with potential transferees and Conrail, in reaching a determination regarding whether to advance an Expedited STP.

Written Submissions by Interested Parties

Inclusion on Mailing List—February 2, 1981

Parties interested in receiving further information on the development of STPs should submit their names, addresses and a statement regarding the nature of their interest to FRA by February 2, 1981, to ensure their inclusion on the FRA mailing list.

Initial Statements of Position—February 2, 1981

FRA is interested in receiving initial statements of position by members of the public regarding the desirability of and problems posed by transferring all of the Appendix A Rail Properties to another party. Such statements should be submitted to FRA by February 2, 1981. FRA will offer the public an additional opportunity to comment on this subject following the receipt of proposed Expedited STPs from potential transferees.

Written Submissions by Potential Transferees

Potential transferees wishing to acquire all of the Appendix A Rail Properties pursuant to an Expedited STP must comply with the submission requirements set forth in this Notice. Additional information may be requested by FRA to make the statutory Expedited STP determinations. If a potential transferee desires that any information so submitted not be released by the Administrator upon request from a member of the public, it must so state and must set forth any reasons why such information should not be released, including particulars as to any competitive harm which would probably result from release of such information. The Administrator will keep such information confidential to the extent permitted by law.

Statements of Interest—February 2, 1981

Each potential transferee must notify FRA in writing of its interest in acquiring all of the Appendix A Rail Properties on or before February 2, 1981. Statements of interest shall include the following information (information already on file with FRA and other Federal Government agencies can be incorporated by reference):

1. Full and correct name and principal business address of the potential transferee;

2. Date of the potential transferee's incorporation, or organization if not a corporation, and name of the government, state or territory under the laws of which it was incorporated or organized. If the potential transferee is a trustee then, in addition, the name and address of the reorganization court under the direction of which the potential transferee is acting, and the docket number of the proceeding. If the potential transferee is a partnership, association or other form of organization other than a corporation, a full description of the organization must be furnished;

3. Name, title, address and telephone number of the person who can answer questions regarding the statement of interest;

4. A statement of whether the potential transferee is willing to assume Conrail's freight service obligations with respect to the Appendix A Rail Properties and identifcation of any additional rail properites related to the Expedited STP that the potential transferee intends to otherwise acquire or obtain operating rights over;

5. A map of the potential transferee's rail system indicating the relationship of the Appendix A Rail Properties to its current system;

6. Financial Statements and Operating Reports—These items should be

(e) A copy of the five most recent annual reports to shareholders, and any statistical supplements prepared for shareholders or the financial community;

(f) A copy of the quarterly reports to

For each of the years, a projection of revenue equipment requirements by type of car indicating the relationship of equipment requirements to traffic projections on a two-digit STCC basis reflecting:

transferee and the Federal Government of such a plan.

6. Valuation—The potential transferee's line-by-line estimate of the value of the Appendix A Rail Properties, including a specific description of the

environmental regulations at 45 FR 40854 (June 16, 1980)).

Public Review of STP Information

Information that Conrail and potential transferees submit with respect to the

Issued in Washington, D.C., December 19, 1980.

John M. Sullivan,

Federal Railroad Administrator.

Appendix A—Rail Freight Properties of the Consolidated Rail Corporation

5. A map of the potential transferee's rail system indicating the relationship of the Appendix A Rail Properties to its current system;

6. Financial Statements and Operating Reports—These items should be submitted by potential transferees in a form and detail similar to that prescribed by the ICC Uniform System of Accounts (49 C.F.R. Part 1201) and in the Annual Report R–1 or based upon another accounting system at a similar level of detail;

(a) A copy of audited annual financial statements as follows: (1) Comparative statements of financial position (balance sheets), (2) results of operations (income statements), and (3) statements of changes in financial position (sources and uses or application of funds statements) for each of the last five years in one consistent accounting format to enable year-to-year, line-to-line comparison;

(b) For the most recent year end, to the extent not included in item (a) above, the following: (1) Particulars of loans and notes receivable;

(2) Particulars of investments in affiliated companies and other investments;

(3) Particulars of balances in Account 741, Other Assets, and 743, Other Deferred Debits, or equivalent accounts;

(4) Particulars of loans and notes payable, as well as information on bank loans, including the name of the bank, date and amount of the original loan, current balance, maturities, rate of interest, and security pledged, if any;

(5) Particulars of long-term debt, including a brief statement concerning each mortgage, pledge, and other lien indicating the property or securities encumbered, the mortgage limit per mile, if any, and particulars as to priority;

(6) Particulars of the balances in Account 784, Other Deferred Debits in form and detail as required in schedule 379 of Annual Report R–1, or an equivalent description of such items;

(7) Particulars of the capital stock in form and detail as required in schedule 310 of Annual Report R–1; and

(8) Particulars of any other outside sources of funding such as state or local government subsidies received by potential transferee;

(c) A copy of the quarterly Freight Commodity Statistics reports (Forms QCS) filed with the ICC for the fourth quarter for each of the last five years and for each quarter since the last fourth quarter report, or information in similar form and detail;

(d) A copy of the most recent annual report of employee service, forms A and B, to the ICC or information in similar form and detail;

(e) A copy of the five most recent annual reports to shareholders, and any statistical supplements prepared for shareholders or the financial community;

(f) A copy of the quarterly reports to shareholders since the last annual report; and

(g) A copy of the most recent annual or special reports filed with other regulatory agencies such as the Annual Report 10K filed with the Securities and Exchange Commission.

Financial Projections, Operating and Employment Plans and Other Information—February 27, 1981

On or before February 27, 1981, potential transferees shall submit financial and traffic projections, operating information, projections of equipment needs and sources, track maintenance and improvement plans, employment plans and other information to FRA in the form and detail described below. In addition, each potential transferee must supply a concise description of its Expedited STP submission suitable for publication in the **Federal Register**. Potential transferees' submissions must contain sufficient information to enable the Administrator to make the statutory Expedited STP determinations. In preparing this information it should be assumed that the proposed transfer will occur on January 1, 1982. Projections for potential transferees should be provided for the year 1980 (to the extent actual data is not yet available) and the years 1981 through 1985.

1. Financial and Traffic Projections: (a) Projected Annual Financial Statements—Projections should be in a form and detail similar to that prescribed by the ICC Uniform System of Accounts, or based upon another accounting system at a similar level of detail, and stated in such a way as to be comparable, line by line, to the financial statements provided in Item (6)(a) for the February 2, 1981 submission. The general assumptions upon which the projections are based should be explained. The projections should indicate the incremental impact of the proposed acquisition of Appendix A Rail Properties upon the projected results of the potential transferee, by each projected category of revenue and expense; and

(b) Projections of annual revenues and traffic in terms of tonnage, carloadings, and account 101 revenues by two digit Standard Transportation Commodity Code (STCC).

2. Revenue Equipment and Locomotive Fleet Requirement Projections: (a) Revenue equipment—For each of the years, a projection of revenue equipment requirements by type of car indicating the relationship of equipment requirements to traffic projections on a two-digit STCC basis reflecting:

(i) Current fleet—identifying the number of serviceable and bad ordered cars;

(ii) Retirements;

(iii) Acquisitions—method of financing;

(iv) Repairs and rehabilitation;

(v) Use of foreign cars, and

(vi) Projected fleet—identifying the numbers of serviceable and bad ordered cars; and

(b) For each of the years, a projection of locomotive needs reflecting: (i) Current fleet—identifying the number of serviceable and bad ordered locomotives;

(ii) Retirements;

(iii) Acquisitions—method of financing;

(iv) Repairs and rehabilitation; and

(v) Projected fleet—identifying the number of serviceable and bad ordered locomotives.

3. Projected track maintenance and property additions and improvement programs for each of the years:

(a) An annual maintenance and improvement plan for track properties to be acquired including a comparison of current and projected track class as defined by FRA Track Safety Standards and comparisons of current to projected maximum allowable speed of operation for each line; and

(b) A description of the annual maintenance and additions and improvement plans for the properties to be acquired.

4. Operating Plans: (a) A general description of potential transferee's current and 1981 operating plans compared with the yearly operating plans projected after the acquisition; and

(b) Specifics on frequency and adequacy of service anticipated over each line to be acquired as compared to Conrail's current service levels.

5. Employment Plans: (a) Annual plans indicating the number and general ICC job category of Conrail employees currently employed on the Appendix A Rail Properties that would be offered employment by the potential transferees;

(b) Any anticipated changes in total compensation and the reasons for such changes; and

(c) A description of the employee protection agreement the potential transferee anticipates could be agreed to with current Conrail employees and the projected annual cost to the potential transferee and the Federal Government of such a plan.

6. Valuation—The potential transferee's line-by-line estimate of the value of the Appendix A Rail Properties, including a specific description of the methodology used to calculate this value.

7. Financing: (a) A description of the method of financing anticipated for the proposed acquisition, maintenance and proposed improvement to the property and the equipment needed to provide the anticipated levels of service;

(b) If outside financing is assumed, a description of the potential transferee's ability to obtain such financing and a projection of the annual or semi-annual payment streams indicating principal and interest separately; and

(c) A description of the security to be offered, if any.

8. Employment and Economic Impacts: (a) A yearly estimate of the impact of the acquisition on the economy and employment levels in the States of Connecticut and Rhode Island; and

(b) A yearly estimate of any other impacts of the transfer on the two States.

9. Detailed assessment of the transfer on the environment (see FRA environmental regulations at 45 FR 40854 (June 16, 1980)).

Public Review of STP Information

Information that Conrail and potential transferees submit with respect to the expedited STP docket which is deemed by FRA to be nonprivileged will be available for public inspection at the following locations:

Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Room 8211, 400 Seventh Street S.W., Washington, D.C., Monday through Friday, 8:30 a.m. to 5:00 p.m., EST

Connecticut Department of Transportation, Rail Planning Division, Room 214, Department of Transportation Administration Building, 24 Wolcott Road, Wethersfield, Connecticut, Monday through Friday, 8:30 a.m. to 4:00 p.m., EST

Rhode Island Department of Transportation, Planning Division, Room 369, State Office Building, Providence, Rhode Island, Monday through Friday, 8:30 a.m. to 4:30 p.m., EST

Issued in Washington, D.C., December 19, 1980.

John M. Sullivan,

Federal Railroad Administrator.

Appendix A—Rail Freight Properties of the Consolidated Rail Corporation (Conrail) in the States of Connecticut and Rhode Island

The following is a list of the rail freight properties owned, leased, or otherwise controlled by Conrail within the States of Rhode Island and Connecticut (Appendix A Rail Properties). These properties are eligible for consideration for transfer to another railroad under an Expedited STP. The lines in the States of Rhode Island and Connecticut over which Conrail is a designated cooperator pursuant to section 5 of the Department of Transporation Act (Local Rail Service Assistance Program) are not included as Appendix A Rail Properties since Conrail neither owns, leases, nor otherwise controls such lines. The Appendix A Rail Properties appear on a map of Conrail's New England Division of its Northeastern region which is at the end of this appendix. The map also indicates Conrail properties outside Rhode Island and Connecticut which are not subject to the Expedited STP provisions.

State	Line name	Between	M.P. to M.P.[1]	CR code	Owner
Conrail New England Division—Northeastern Region					
Connecticut	Main Line (Shore Line)	New Haven and New London	73.0 to 122.8	41–4209	Amtrak
Connecticut	Main Line (Shore Line)	New London and State Line (PI)	122.8 to 141.1	41–4215	Amtrak.
Rhode Island	Main Line (Shore Line)	State Line (CT) and Cranston	141.1 to 178.9	41–4215	Amtrak.
Rhode Island	Main Line (Shore Line)	Cranston and State Line (MA)	178.9 to 193.8	41–4116	Amtrack
Connecticut	Avon Secondary	Plainville and Avon	0.0 to 9.7	41–4248	Conrail.
Connecticut	Belle Dock Industrial Track	Belle Dock and Cedar Hill	0.0 to 1.6	41–4275	Conrail.
Connecticut	Berlin Secondary	Berlin and New Britain	0.0 to 2.6	41–4261	Conrail
Rhode Island	Bristol Secondary	Providence and Red Bridge	0.0 to 1.9	41–4165	Conrail
Connecticut	Canaan Secondary	Canaan and State Line (MA)	47.2 to 50.0	41–4220	Conrail.
Connecticut	Canal Secondary	New Haven (Fair St.) and Plainville	0.0 to 27.8	41–4247	Conrail
Rhode Island	East Junction Secondary	State Line (MA) and Red Bridge	3.7 to 6.9	41–4164	Conrail
Connecticut	East Longmeadow Secondary	State Line (MA) Hazardville	8.8 to 12.5	41–1255	Conrail.
Connecticut	East Windsor Secondary	East Windsor and East Hartford	18.0 to 29.1	41–4265	Conrail.
Connecticut	Griffins Industrial Track	Hartford	0.0 to 2.0	41–4259	Conrail
Rhode Island	Harbor Junction Industrial Track	Cranston and South Providence	0.0 to 3.4	41–4198	Conrail
Connecticut	Hartford Line	New Haven and State Line (MA)	0.0 to 55.8	41–4217	Amtrak.
Connecticut	Laurel Secondary	Middletown and Laurel	0.0 to 5.5	41–4253	Conrail
Connecticut	Manchester Industrial Track	Manchester and South Manchester	0.0 to 1.9	41–4256	Conrail.
Connecticut	Maybrook Branch	State Line (NY) and Derby Junction	71.2 to 104.8	41–4203	Conrail.
Connecticut	Middletown Industrial Track	Cromwell and Middletown	13.7 to 16.2	41–4263	Conrail
Connecticut	Middletown Secondary	Airline Junction and Middletown	0.0 to 22.3	41–4251	Conrail.
Connecticut	New Britain Secondary	Plainville and Hartford	0.0 to 12.9	41–4244	Conrail
Connecticut	New Milford Secondary	Berkshire Junction and New Milford	0.0 to 13.6	41–4020	Conrail.
Rhode Island	Newport Secondary	State Line (MA) and Portsmouth	14.2 to 21.5	41–4192	Conrail.

State	Line name	Between	M.P. to M.P.[1]	CR code	Owner
Conrail New England Division—Northeastern Region—Continued					
Connecticut	Portland Industrial Track	Middletown and Portland	0.0 to 1.0	41–4254	Conrail.
Rhode Island	Slatersville Secondary	Woonsocket and Slatersville	0.0 to 3.4	41–4170	Conrail.
Connecticut	Southington Secondary	Cedar Hill and Southington	0.0 to 6.0	41–4262	Conrail.
Connecticut	Stamford Secondary	State Line (NY) and Stamford	0.0 to 3.0	41–4202	Conrail.
Connecticut	Terminal Secondary	Hartford and Cedar Hill	0.0 to 3.0	41–4258	Conrail.
Connecticut	Thomaston Secondary	Thomaston and Terryville	0.0 to 3.0	41–4260	Conrail.
Connecticut	Torrington Secondary	Torrington and Terryville	0.0 to 3.0	41–4260	Conrail.
Connecticut	Waterbury Secondary	Cedar Hill and Waterbury	0.0 to 3.0	41–4257	Conrail.
Connecticut	Willimantic Secondary	Willimantic and Windham	0.0 to 3.0	41–4264	Conrail.
Connecticut	Willimantic Secondary	Willimantic and Windham	0.0 to 3.0	41–4264	Conrail.

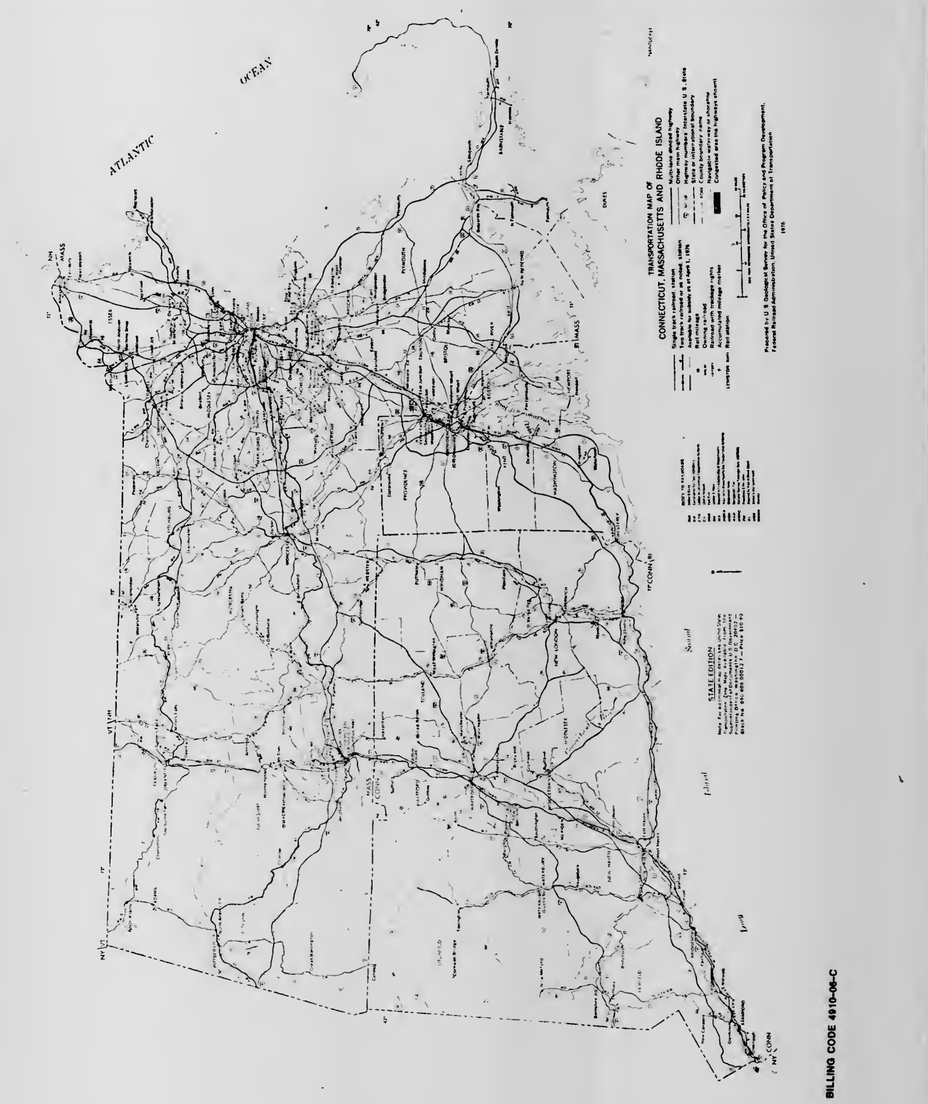
[1] Mileposts are approximate.



State	Line name	Between	M.P. to M.P.[1]	CR code	Owner
Conrail New England Division—Northeastern Region—Continued					
Connecticut	Portland Industrial Track	Middletown and Portland	0.0 to 1.0	41-4254	Conrail.
Rhode Island	Slatersville Secondary	Woonsocket and Slatersville	0.0 to 3.4	41-4170	Conrail.
Connecticut	Suffield Industrial Track	Windsor Locks and Suffield	0.0 to 4.2	41-4280	Conrail.
Connecticut	Terryville Secondary	Waterbury and Plainville	0.0 to 17.2	41-4222	Conrail.
Connecticut	Torrington Secondary	Highland Junction and Torrington	0.0 to 20.7	41-4243	Conrail
Rhode Island	Valley Falls Industrial Track	Valley Falls and Cumberland Mills	0.0 to 0.8	41-4128	Conrail.
Rhode Island	Washington Secondary	Providence and Washington	0.0 to 16.9	41-4166	Conrail.
Connecticut	Watertown Secondary	Highland Junction and Watertown	0.0 to 1.6	41-4258	Conrail.
Connecticut	Wethersfield	Hartford ("Hart") and Spring Brook	0.0 to 7.0	41-4263	Conrail.
Connecticut	Willimantic Secondary	Hartford ("Hart") and Manchester	0.0 to 9.6	41-4262	Conrail.
Conrail Metropolitan Region					
Connecticut	New Haven Line	State Line (NY) and New Haven	26.1 to 73.0	91-9108	Penn Central.[2]
Connecticut	Danbury Branch	South Norwalk and Danbury	41.3 to 64.9	91-9119	Penn Central.[2]
Connecticut	New Canaan Branch	Stamford and New Canaan	0.0 to 7.9	91-9118	Penn Central.[2]
Connecticut	Waterbury Branch	Devon and Waterbury	0.0 to 26.9	91-9121	Penn Central.[2]

[1] Mile Post to Mile Post.
[2] Connecticut DOT leases these lines from the Penn Central Company. Conrail provides freight service over them through trackage rights agreements.

BILLING CODE 4910-06-M



BILLING CODE 4910-06-C

Appendix B—Information Requested from Conrail for Use in the Expedited STP Process

The following information dealing with the Appendix A Rail Properties has been requested from Conrail for use by

public inspection during normal working hours in Room 9422, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:
Camille Cleveland, Office of

- The Endangered Species Act, as amended.

The revised guidance would also address the discussion to be provided in environmental impact statements and related documents concerning planning

Issued in Washington, D.C. on December 9, 1980.

William B. Johnston,
Assistant Secretary for Policy and International Affairs.

Attachment 2—Guidance on Format and Content of Environmental Documents

policies. This Attachment provides guidance for content of environmental documents and compliance with the various environmental requirements.

2. Format and Content of Environmental Assessments and Findings of no

d. have significant displacement impact or be controversial with respect to the availability of adequate relocation housing;

e. cause substantial disruption of an established community, disrupt orderly, planned development, be inconsistent

Appendix B—Information Requested from Conrail for Use in the Expedited STP Process

The following information dealing with the Appendix A Rail Properties has been requested from Conrail for use by FRA, potential transferees and other interested parties in preparing and evaluating submissions made in the Expedited STP process. Nonprivileged information will be made available to the public as provided (some information has been received from Conrail and other information will be received over the period between now and May 29, 1981) and at the locations specified in this Notice.

1. Detailed maps of the Appendix A Rail Properties;
2. Indications of Conrail's ownership interest;
3. Conrail freight schedules on these lines;
4. Traffic information;
5. Employee information;
6. Revenue and cost information;
7. Maintenance plans;
8. Proposed surcharge, abandonment and transfer plans;
9. Proposed changes in freight service;
10. Projected traffic levels, revenues and cost; and
11. Proposed sale.

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Office of the Secretary

[Notice No. 80-23]

Procedures for Considering Environmental Impacts

AGENCY: Department of Transportation (DOT).

ACTION: Request for public comment.

SUMMARY: The Department of Transportation is proposing to revise its guidance on the format and content of environmental documents. These revisions would replace the existing Attachment 2 to DOT Order 5610.1C, Procedures for Considering Environmental Impacts. Public comments on the proposed revisions are invited. The Operating Administrations of the Department have been encouraged to utilize this draft attachment as interim guidance.

COMMENT CLOSING DATE: February 27, 1981.

ADDRESS: Written comments should reference this Notice and be addressed to: Director, Office of Environment and Safety, P-20, U.S. Department of Transportation, Washington, D.C. 20590. Comments received will be available for public inspection during normal working hours in Room 9422, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Camille Cleveland, Office of Environment and Safety, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-2672.

SUPPLEMENTARY INFORMATION: The purpose of the revisions would be to provide current guidance on content of environmental assessments, findings of no significiant impact (FONSI), environmental impact statements (EISs), and documentation for compliance with section 4(f) of the DOT Act. DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, October 1, 1979) specifies procedures for compliance with the National Environmental Policy Act. The Order provides that to the maximum extent possible, all environmental studies, reviews and consultations will be coordinated into a single process, and compliance with applicable environmental requirements will be reflected in the EIS or environmental assessment for a proposed action. Attachment 2 would provide guidance on the format and content of environmental documents, including information on compliance with the various environmental laws, orders, and policies. Although DOT 5610.1C was issued in September 1979, in order to comply with Council on Environmental Quality's NEPA regulations (40 CFR 1500-1508), major revisions to Attachment 2 were not made at that time. These proposed revisions reflect a number of environmental requirements which have been established in recent years. Among new or revised laws and policies reflected in the revised attachment are:

- Transportation and Urban Noise initiatives in the President's Environmental Message of August 2, 1979;
- Community Conservation Guidance, issued by the White House on November 26, 1979;
- The Secretary's Policy on Design, Art, and Architecture in Transportation;
- Executive Order 12185 concerning Conservation of Petroleum and Natural Gas, and other energy conservation mandates;
- Section 176 of the Clean Air Act;
- Section 404 of the Clean Water Act;
- The Safe Drinking Water Act;
- The Coastal Zone Management Act;
- Executive orders on Protection of Wetlands and Floodplain Management; and
- The Endangered Species Act, as amended.

The revised guidance would also address the discussion to be provided in environmental impact statements and related documents concerning planning for bicycle and pedestrian use, family and business relocation impacts, and implementation of section 4(f) of the DOT Act and section 106 of the National Historic Preservation Act.

The guidance would be divided into four chapter—(I) General; (II) Urban and Community Impacts; (III) Physical Impacts; and (IV) Impacts on Section 4(f) Properties and Historic and Cultural Resources. Applicable laws, executive orders, and policy statements are referenced for each impact category. The proposed revisions would provide guidance on format and content of environmental assessments and findings of no significant impact, as well as EISs. (By contrast, the current guidance addresses only EISs.)

References in the earlier Attachment 2 to section 14 of the Urban Mass Transportation Act and section 16 of the Airport and Airways Development Act have been deleted, since the Urban Mass Transportation Administration and the Federal Aviation Administration, respectively, have issued guidance for compliance with these statutes.

DOT Order 5610.1C, including its attachments, is an internal directive which applies to all elements of the Department. Most of the operating administrations of the Department have issued or will issue their own procedures or regulations for implementing NEPA and other environmental requirements. The administrations will revise guidance on content of environmental documents as appropriate to be consistent with Attachment 2 to DOT 5610.1C following its final issuance. Pending final issuance of Attachment 2, DOT administrations have been encouraged to use this draft as interim guidance.

It is Department of Transportation's policy to afford the public an opportunity to comment on proposed regulations and policies. While the proposed attachment is not a regulation, it is of interest to the public. The Department will consider all written comments submitted during the comment period. DOT will make every reasonable effort to consider any comments received after the closing date.

Issued in Washington, D.C. on December 9, 1980.

William B. Johnston,
Assistant Secretary for Policy and International Affairs.

Attachment 2—Guidance on Format and Content of Environmental Documents

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Chapter I—General

1. Introduction

DOT 5610.1C provides a process for consideration of environmental impacts in decision making on proposed DOT actions. The Order provides that, to the maximum extent possible, all environmental studies, reviews, and consultations shall be consolidated into a single process. The environmental impact statement (EIS) and finding of no significant impacts (FONSI) with supporting environmental assessment serve as the vehicle for coordination with other agencies and the public, and must reflect compliance to the extent possible with applicable laws, regulations, executive orders, and policies. This Attachment provides guidance for content of environmental documents and compliance with the various environmental requirements.

2. Format and Content of Environmental Assessments and Findings of no Significant Impact

An environmental assessment (EA) should describe the proposed action, the need for the proposed action, alternatives, the environmental, social and economic impacts of a proposed action and its alternatives, and a list of agencies and persons consulted during early coordination. The EA should provide sufficient evidence to support a FONSI, or, if the EA will be the basis for preparation of an EIS, sufficient information to address important issues in the EIS.

A FONSI should be attached to or incorporate the EA, and should include a specific finding that the proposed action will have no significant impacts. A FONSI should reflect compliance with applicable environmental laws and regulations. (See Table I-I.) Guidance on compliance with these laws is provided in Chapters II-IV of this Attachment. Where a permit will be required (e.g. section 404 permits under the Clean Water Act) or coordination is specifically required by law (e.g. under section 4(f) of the DOT Act, the Fish and Wildlife Coordination Act, or the Endangered Species Act), the EA may serve as the vehicle for such coordination, and the EA/FONSI should reflect this coordination. If a Community Impact Analysis is prepared, the results should be discussed in the FONSI.

3. Criteria for Preparation of an EIS

Any proposed DOT action which will have significant environmental, social and economic impacts will normally require preparation of an EIS. This includes actions which are likely to:

a. have an effect that is not minimal on properties protected under section 4(f) of the DOT Act or any action having an adverse effect (as defined in 36 CFR 800.3) on properties protected under section 106 of the Historic Preservation Act;

b. be highly controversial on environmental grounds, i.e. opposed on environmental grounds by a Federal, State or local agency, or by a substantial number of persons affected by such proposed action;

c. have a significant impact on natural, ecological, cultural or scenic resources of national, State or local significance, including endangered species, wetlands, floodplain, prime or unique farmland, ground water, natural resources, or fish and wildlife resources;

d. have significant displacement impact or be controversial with respect to the availability of adequate relocation housing;

e. cause substantial disruption of an established community, disrupt orderly, planned development, be inconsistent with plans or goals that have been adopted by affected communities, or adversely affect the economic vitality of an urban area (except that economic or social effects are not intended by themselves to require an EIS, pursuant to 40 CFR 1508.14);

f. have a significant impact on noise levels of noise sensitive areas, for example, schools, hospitals, residential areas;

g. have a significant impact on air quality or be inconsistent with the approved State Implementation Plan for Air Quality;

h. have a significant impact on water quality or a public water supply system;

i. result in significant increased consumption of energy; or

j. be inconsistent with any Federal, State or local law or regulation relating to the environment.

4. Format of Environmental Impact Statements

a. The format recommended in the CEQ Regulations for Implementation of NEPA, 40 CFR 1502.10, should be used for DOT EISs:

(a) Cover Sheet
(b) Summary
(c) Table of Contents
(d) Purpose and Need for the Action
(e) Alternatives Including the Proposed Action
(f) Affected Environment
(g) Environmental Consequences
(h) List of Preparers
(i) List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent
(j) Index
(k) Appendices (if any)
(l) Comments Received on the Draft EIS (final EIS only)

b. Pursuant to 40 CFR 1502.7, the text of final EISs should normally be less than 150 pages, or less than 300 pages for complex proposals.

c. EISs should be written clearly and concisely, and should focus on the most significant issues and impacts. Impacts which are not significant should be discussed only briefly, summarizing why the proposed action will not have a significant impact. Detailed technical information should be summarized and included in an appendix and referenced in the EIS, with a summary of important findings of the analysis; other relevant studies should be referenced. Detailed discussions of impact assessment

methodologies should not be included in EISs; if necessary, these discussions can be included in an appendix. Lengthy descriptions of the affected environment should be avoided. Maps, charts, tables aerial photographs and other

is provided in Table I-I and Chapters II-IV.

a. *Summary.* The EIS should include a summary which describes the proposed action and discusses the major conclusions, areas of controversy

TMS includes low capital intensive improvements, that is, low cost safety and/or capacity improvements to existing facilities in lieu of major expansion or construction of a new facility. Examples of such low capital

(3) The statement should describe other related Federal activities in the area, their interrelationships, and cumulative environmental impact.

(4) The statement should discuss the relationship of the proposed action to

procedures for noise abatement; ramp metering to reduce highway congestion; maintaining right-of-way to enhance its usefulness as wildlife habitat.

(3) Replacement, restoration and compensation. These measures include

on the draft (or summaries of responses from the public which have been exceptionally voluminous) should be included in or attached to the final statement. The final EIS should respond to comments made on the draft, either

methodologies should not be included in EISs; if necessary, these discussions can be included in an appendix. Lengthy descriptions of the affected environment should be avoided. Maps, charts, tables aerial photographs and other presentation techniques should be used as appropriate. Readable, high quality graphics are recommended. Maps should include legends and scales. Graphics are particularly helpful for comparisons of alternatives.

d. DOT Operating Administrations should head the cover sheet for each environmental impact statement as follows:

Department of Transportation

(operating administration)

(joint lead and cooperating agencies)

(Draft/Final Supplemental)
Environmental Impact

Statement Pursuant to Section 102(2)(C) of NEPA

If appropriate, the heading should indicate that the EIS also covers the requirements of section 4(f) of the DOT Act, section 14 of the Urban Mass Transportation Act, and/or sections 16 and 18(a)(4) of the Airport Act.

The cover sheet must also include:

(1) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(2) The name, address, and telephone number of the person at the agency who can supply further information.

(3) A one paragraph abstract of the statement.

(4) The date by which comments must be received (see 40 CFR 1506.10).

5. Summary of Content of Environmental Impact Statements

The information required by 40 CFR 1502.11–1502.18, as supplemented in this Attachment, should be included in EISs. However, this information should be included only where it is relevant to the proposed action being discussed in the EIS. The EIS is not intended to be encyclopedic. Rather, it is discussed in the EIS. The EIS is not intended to be encyclopedic. Rather, it is intended to be an aid in decision making, and should therefore focus on the key issues and most significant impacts identified during the scoping process, as discussed in 40 CFR 1501.7. The EIS should reflect consideration of and compliance, to the extent possible, with applicable laws, orders and policies; guidance on compliance with these laws and policies is provided in Table I–I and Chapters II–IV.

a. *Summary.* The EIS should include a summary which describes the proposed action and discusses the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

b. *Purpose and Need.* The EIS should include a statement of the purpose of the proposed action. The need for the proposed action should be supported with data from appropriate studies.

c. *Alternatives Including the Proposed Action.* In the alternatives section, the lead agency should:

(1) "Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." (40 CFR 1502.14)

(2) "Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits." (40 CFR 1502.14)

(a) "Substantial treatment" of alternatives means discussion sufficient to show the relative environmental benefits, environmental impacts, costs and risks of the alternatives under consideration. Charts showing comparisons between impact of the alternatives (e.g. costs, residential displacement, noise impacts, ambient air quality predictions) are useful as a presentation technique.

(b) Where a previously circulated impact statement already contains an analysis of alternatives, a second tier or supplemental EIS may incorporate or summarize treatment of alternatives from the previous EIS, provided such treatment is current and relevant to the purpose of the proposed action, and need not reconsider alternatives previously rejected.

(c) EISs on transportation projects in urban areas should explicitly reflect consultation with the Metropolitan Planning Organization (MPO) and summarize alternatives considered during the MPO planning process.

(3) Reflect consideration of location alternatives, a no action alternative, and the following alternatives to proposed construction actions:

(a) Improved transportation system management (TSM) of existing facilities, e.g. provision of high occupancy vehicle lanes on existing streets; quota systems, peak spreading or changes in pricing structures at congested airports.

TMS includes low capital intensive improvements, that is, low cost safety and/or capacity improvements to existing facilities in lieu of major expansion or construction of a new facility. Examples of such low capital intensive improvements are: widening of existing streets, intersection improvements, or improvement of shoulders; changes to an airport taxiway system; improved airport navigation aids; purchase of buses and designation of high occupancy vehicle (HOV) lanes in lieu of heavy rail transit construction.

(b) As appropriate, other modal alternatives, e.g. mass transit alternatives to highway improvements; bus, rail, or truck/auto alternatives to airport improvements.

(c) As appropriate, design variations which would minimize the adverse impacts of the proposed action, for example, constructing fewer lanes of a proposed highway; different runway configurations.

(d) Reasonable alternatives which are not within the jurisdiction of the lead agency, grantee or permit applicant.

EISs on proposed regulatory or program actions should reflect consideration of a no action alternative and alternative means of achieving the stated objective of the proposal or alternative levels of providing a proposed service.

(4) Identify the agency's or applicant's preferred alternative or alternatives, if one or more exists, in the draft statement. The final statement shall identify the agency's preferred alternative.

d. *Affected Environment.* The environmental impact statement should succinctly describe the environment of the area(s) to be affected by the alternatives under consideration.

(1) The amount of detail provided in descriptions of the affected environment should be commensurate with the amount of information required at the particular level of decision making.

(2) The statement should identify, as appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the project or program or to determine secondary population and growth impacts resulting from the proposed action and its alternatives. Growth projections should be consistent with projections used for EPA section 208 planning. The Projections of Regional Economic Activity (OBERS Projections), published by the Department of Commerce Bureau of Economic Anaylsis in the *Survey of Current Business*, October 1980, are a source of statewide and areawide projections.

(3) The statement should describe other related Federal activities in the area, their interrelationships, and cumulative environmental impact.

(4) The statement should discuss the relationship of the proposed action to adopted or proposed land use plans, policies, controls, and goals and objectives of affected communities, including communities outside the jurisdiction in which the proposed project is located. Any anticipated consultations, permits or authorizations required by Federal law or regulation should be identified.

e. *Environmental Consequences.* This section should discuss the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any significant irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. Environmental analyses conducted for NEPA compliance should reflect any environmental studies done at the regional level and should be integrated with studies required by other environmental review laws, executive orders, and policies, and the EIS should reflect these studies. Detailed guidance on factors to be addressed in EISs is provided in Chapters II–IV of this attachment. (See also 40 CFP 1502.16.)

f. *Mitigation Measures.* Draft EISs should describe measures under consideration or planned to minimize harm from the proposed action. Measures which will increase the benefits of the proposed action should also be discussed. The following types of measures should be considered:

(1) Design and construction actions. These include alternative locations which avoid or reduce impacts; design measures which reduce impacts, for example, reduced scale facilities, depressed highway designs, alternative airport runway configurations, transit vehicle and guideway technology which reduces noise, and construction of noise barriers; and construction techniques, for example, erosion control measures.

(2) Management actions which reduce impacts during operation of the facility. These include aircraft operating procedures for noise abatement; ramp metering to reduce highway congestion; maintaining right-of-way to enhance its usefulness as wildlife habitat.

(3) Replacement, restoration and compensation. These measures include functional replacement of public facilities, residential or business relocation assistance, and restoration of natural areas disturbed by construction.

g. The draft and final statements should document issues raised through consultations with federal, State, and local agencies with jurisdiction or special expertise and with citizens, on actions taken in response to comments, public hearings, and other citizen involvement proceedings.

h. *List of Preparers.* 40 CFR 1502.7 states that: "The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§ 1502.6 and 1502.8). Where possible, the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally, the list will not exceed two pages."

6. Final Environmental Impacts Statements

The final EIS shall identify the preferred alternative and identify specific commitments to measures to mitigate adverse impacts. The final EIS shall reflect compliance, to the fullest extent practicable, with the requirements of all applicable environmental laws and orders, or, at a minimum, provide assurance that the requirements can be met.

a. Any unresolved environmental issues and efforts to resolve them, through further consultations or otherwise, should be identified in the final statement. For instance, where an agency comments that the statement has inadequate analysis or that the agency has reservations concerning the impacts, or believes that the impacts are too adverse for approval, either the issue should be resolved or the final statement should reflect efforts to resolve the issue, and set forth any action that will be taken to mitigate identified problems.

b. All substantive comments received on the draft (or summaries of responses from the public which have been exceptionally voluminous) should be included in or attached to the final statement. The final EIS should respond to comments made on the draft, either by revising the EIS text or as separate responses.

7. Coordination

The NEPA process should be used as the vehicle for consultation with other agencies which is required by the various environmental laws, executive orders, and other directives. Agencies which administer permit programs or otherwise have jurisdiction over the proposed action should be requested to be cooperating agencies. The final EIS should reflect consultation with the appropriate agencies. Table I–I summarizes coordination and consultation requirements.

8. additional Guidance

Additional information contained in research reports, guidance on methodology, and other materials relating to consideration of environmental factors should be employed as appropriate in the preparation of EISs and environmental assessments. Examples of such materials include—

U.S. Department of Transportation, *Environmental Assessment Notebook Series: Highways*, 1975, Report No. DOT P 5600.4, available from the U.S. Government Printing Office, Washington, D.C. 20402, Stock Number 050–000–00109–1;

U.S. DOT, *Environmental Assessment Notebook Series: Airports*, 1978, Report Number DOT P 5600.5, available from the U.S. Government Printing Office, Washington, D.C. 20402, Stock Number 050–000–00138–5;

U.S. DOT, FAA, *Environmental Assessment of Airport Development Actions*, 1977, available from the National Technical Information Service, 5284 Port Royal Road, Springfield, Virginia 22161, NTIS Catalog Number ADA-039274;

U.S. DOT, *Guidelines for Assessing the Environmental Impact of Public Mass Transportation Projects*, 1979, NTIS Accession Number PB 299697/AS, available from the National Technical Information Service, Springfield, Virginia 22161; and

Lane, J. S. et al., *The No-Action Alternative Research Report* and *Assessment Guidelines*, National Cooperative Highway Research Program Reports 216 and 217, December 1979, available from the Transportation Research Board, National Academy of Sciences, 2101 Constitution Avenue, N.W., Washington, D.C. 20418.

Table I–1.—*Coordination Requirements*

Legislative reference	Regulatory reference	Applicability	General provisions	Agency for coordination and consultation
AIR QUALITY				
Clean Air Act, 42 U.S.C. 7400 et seq., Section 176.		All transportation activities	1. Federal actions must conform with the SIP. 2. Priority must be given to actions implementing the SIP.	Coordinate with EPA and State and local air pollution control agencies in making conformity/priority determination.

Table I–1.—*Coordination Requirements*

Legislative reference	Regulatory reference	Applicability	General provisions	Agency for coordination and consultation
Section 309		All EIS actions	EPA is required to review and comment in writing on	Submit DEIS to EPA.

Chapter II—Urban and Community Impacts

I. Economic, Fiscal, and Community Impacts

a. *EIS Content.* (1) Where economic

the request from the local official.

b. *References.* (1) The *President's Environmental Message* of 8–2–79, directs the Secretary to assure that, among other things—

(a) Careful review is given to any

49 USC 1701, provides that a project may not be approved unless the Secretary is satisfied that the project is reasonably consistent with plans of planning agencies for the area in which the airport is located.

Table I-1.—*Coordination Requirements*

Legislative reference	Regulatory reference	Applicability	General provisions	Agency for coordination and consultation
Section 309		All EIS actions	EPA is required to review and comment in writing on the environmental impact of any proposed major Federal action significantly affecting the environment.	Submit DEIS to EPA.
LAND USE AND WATER QUALITY				
Clean Water Act, 33 U.S.C. 1251-1376, et seq., Section 404.	33 CFR 320-325, 33 CFR 230	Any activity involving disposal or placement of dredged or fill material in navigable waters.	1. The 404 permit program is administered by COE. EPA has authority to veto permit. 2. The DOT-Army Agreement (3-24-80) provides for early coordination with COE where a permit is required.	Coordinate with COE: 1. Before decision on appropriate environmental document. 2. During preparation of EIS (COE should serve as cooperating agency). 3. Before approval of FEIS. Coordinate with EPA and with DOI/FWS or DOC/NMFS.
Safe Drinking Water Act, 42 U.S.C. 300.		Federally assisted projects which may contaminate an aquifer designated by EPA as the sole source of drinking water for a community.	Prohibits financial assistance of projects which EPA determines may contaminate a designated sole source aquifer.	Request from EPA a determination whether project may contaminate the aquifer.
Coastal Zone Management Act, 16 U.S.C. 1451-1464.	15 CFR 930	Any proposed activity affecting areas covered by an approved coastal zone program.	Ensure that projects are consistent with coastal zone management program.	Coordinate with State Coastal Zone Management Agency. If federally funded action is inconsistent with approved plan, coordinate with DOC Office of Coastal Zone Management. See paragraph III-6 for detailed guidance.
E O 11990, Protection of Wetlands.	DOT 5660.1A	Any proposed direct construction or assistance. DOT policy also applies to permit actions.	Minimize the destruction, loss or degradation of wetlands; preserve and enhance natural values of wetlands.	Coordinate with EPA, DOI, NMFS, and COE and State permitting agencies, as appropriate.
Marine Protection and Sanctuaries Act, 33 U.S.C. 1401-1444.	40 CFR 225	Any proposed dumping of material into U.S. ocean waters.	Apply for permit to dump materials	Coordinate with EPA. Coordinate with COE, if dredged material.
Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287.		Rivers designated under the Act...	Preserve wild and scenic rivers	Coordinate with HCRS and USDA Forest Service, as appropriate.
	President's Environmental Message, 8-2-79, CEQ Memorandum, 8-10-80, Interagency Consultation on Rivers in the Nationwide Inventory.	Proposed activity affecting rivers on the Nationwide Inventory of potential wild, scenic and recreational rivers.	Assure that Federal actions do not foreclose designation under the Wild and Scenic Rivers Act.	Coordinate with HCRS.
WILDLIFE				
Fish and Wildlife Coordination Act, 16 U.S.C. 662.		Any construction project which involves impoundment (greater than 10 acres), diversion, channel deepening, or other body of water.	Requires coordination with FWS and State wildlife agencies on any stream modification.	Coordinate with FWS and State wildlife agencies. 1. Initial contact during scoping process. 2. Use EIS process to coordinate on impacts and mitigation measures.
WILDLIFE				
Endangered Species Act, 16 U.S.C. 1531, Section 7.	50 CFR 402	Any action which might jeopardize continued existence of endangered or threatened species or result in destruction or modification of critical habitat.	Federal agencies shall insure that their actions conserve listed species and insure, in consultation with FWS/NMFS, that their actions do not jeopardize listed species or modify critical habitat.	Coordinate with FWS concerning terrestrial and freshwater species, NMFS concerning marine species. See paragraph III-8.a. for further guidance.
RECREATION, REFUGE, AND HISTORIC PROPERTIES				
National Historic Preservation Act, 16 U.S.C. 470(f), Section 106.	36 CFR 1204, 36 CFR 800	Properties on or eligible for National Register of Historic Places.	Protect sites, buildings, and objects with national, State, or local historic or cultural significance. Identify effects of project on properties and coordinate with ACHP.	Coordinate with SHPO, ACHP, DOI (Keeper of the Register). See paragraph IV-2.a. for detailed guidance.
DOT Act, 49 U.S.C. 1653, 23 U.S.C. 138, Section 4(f).	DOT 5610.1C (23 CFR 771)	Projects using land from a publicly owned park, recreation area, wildlife or waterfowl refuge, or any historic site.	Findings of no feasible and prudent alternative and all possible planning to minimize harm required.	1. Consult with DOI on all 4(f) matters. If lands acquired with section 6(f) Land and Water Conservation Act funds are involved, DOI concurrence required. 2. Consult with USDA if National Forest Lands are involved. 3. Consult with HUD if lands acquired with Open Space funds are involved.
TRANSPORTATION PLANNING				
Highway Act, 23 U.S.C. 134	23 CFR 450	Urban areas over 50,000	Projects must be based upon continuing, comprehensive, planning process carried on cooperatively by states and local communities.	Coordinate with Metropolitan Planning Organization.
Urban Mass Transportation Act, 49 U.S.C. 1607.	49 CFR 613			
Title IV of Intergovernmental Cooperation Act, NEPA.	OMB Circular A-95	Federal development projects and federally assisted programs and projects.	The A-95 clearinghouse process provides for State and local review of proposed Federal and federally assisted programs and projects in terms of potential impact on or conflict with statewide, areawide, or local plans and programs.	Coordinate with appropriate State and areawide clearinghouses

Abbreviations: COE—Army Corps of Engineers. DEIS—Draft Environmental Impact Statement. DOC—Department of Commerce. DOI—Department of the Interior. EPA—Environmental Protection Agency. FEIS—Final Environmental Impact Statement. FWS—Fish and Wildlife Service (DOI). NMFS—National Marine Fisheries Service (DOC). HCRS—Heritage Conservation and Recreation Service (DOI). USDA—Department of Agriculture.

Chapter II—Urban and Community Impacts

I. Economic, Fiscal, and Community Impacts

a. *EIS Content.* (1) Where economic and fiscal impacts are significant, the EIS should reflect the effect of the proposed action on the economic health of the existing business districts, municipalities and the region, including:

- The type and number of permanent jobs created, lost, or retained in the central city and in the project area;
- Changes in employment opportunities for minorities;
- Changes in the cost and availability of retail goods and services;
- Changes in types of economic activity in the area;
- Changes in the tax base—property, sales and income tax revenues;
- Changes in population distribution and increases in expenditures for public services or facilities, either in the central city or in developing areas; and
- Impacts of transportation proposals in outlying areas on revitalization programs in the central city and other existing business districts.

(2) The general social groups specially benefited or harmed by the proposed action should be identified in the statement. Particular effects of a proposal on the elderly, handicapped, non-drivers, transit dependent, or minorities should be described to the extent reasonably predictable.

(3) The EIS should note any action which will significantly divide or disrupt an existing community. The EIS should discuss how the proposal will facilitate or inhibit access to jobs, educational facilities, religious institutions, health and welfare services, recreational facilities, social and cultural facilities, pedestrian facilities, and public transit services.

(4) If a Community Impact Analysis has been requested by an affected local government, it may be incorporated into the final EIS. At a minimum, the EIS should discuss the effect of the proposed action on the community as listed above, and any proposed modifications or mitigating actions. The views of community officials, community groups, business leaders, and where relevant, developers of large commercial projects on the consequences of the pending DOT action, should be included. The agency should be able to establish that due consideration has been given to concerns set forth in the analysis and/or the request from the local official.

b. *References.* (1) The *President's Environmental Message* of 8-2-79, directs the Secretary to assure that, among other things—

(a) Careful review is given to any transportation proposals which would encourage urban sprawl or which would tend to attract jobs out of urban centers;

(b) Major transportation projects are utilized as a positive factor for improving the urban economy and attracting jobs to the Nation's urban cores;

(c) Firm actions are taken to mitigate adverse impacts of transportation projects on the natural and urban environment.

(2) *Section 5.j. of OMB Circular A-95* (44 FR 45502) directs that clearinghouse review include: "The extent to which the project creates a significant impact on central cities, older suburban cities and other communities within the jurisdiction of the clearinghouse, including the relative impacts the project may have on one type of place as compared to others."

(3) *Community Conservation Guidance,* issued by the White House on 11-26-79, provides that a local government may request a Community Impact Analysis of proposed Federal projects which might lead to a large commercial development. DOT Order 5620. (to be issued), *Community Conservation Guidance,* sets forth procedures for conducting a Community Impact Analysis, and provides that final EISs may be the vehicle for a Community Impact Analysis.

(4) *The FHWA-UMTA Transportation Planning Regulations* (23 CFR 450 and 49 CFR 613) specify procedures for transportation planning pursuant to section 134 of the Highway Act (23 USC 134) and section 8 of the Urban Mass Transportation Act (49 USC 1607). Transportation planning in urban areas is to be performed by metropolitan planning organizations.

(5) DOT 1130.4, *Intermodal Planning Groups and Unified Planning Work Programs,* lists the following elements to be emphasized in the planning process: alternatives analysis; opportunities for joint development; public participation; air quality; equal opportunity; elderly and handicapped services; more efficient use of existing transportation resources; coastal zone impacts; noise abatement; energy conservation; compatible land use and impacts; social and economic impacts; and environmental impacts.

(6) *Section 16(c)(1) of the Airport Act,* 49 USC 1701, provides that a project may not be approved unless the Secretary is satisfied that the project is reasonably consistent with plans of planning agencies for the area in which the airport is located.

2. Land Use and Development Impacts

a. *EIS Content.* (1) The EIS should include an assessment of the significant effects of the proposed action on land use, development patterns and urban growth. If the action is likely to stimulate a significant amount of development, the discussion should indicate the nature, timing and location of induced development. Environmental, social, energy and economic impacts of induced development should be included. The EIS should particularly note proposed actions which will stimulate low density, energy intensive development in outlying areas and will have a significant adverse impact on existing communities.

(2) The EIS should discuss and document the consistency of the proposed with State and local plans, including land use, economic development, public services, and housing. For projects in urban areas, the EIS should reflect continuing consultation with the MPO.

(3) Any actions (e.g., zoning, restricting utility service, etc.) which will be used by local governments to influence development patterns or to minimize conflicts between land uses and the proposed action should be discussed.

(4) Where relevant, the EIS should discuss use of the proposed transportation action to preserve or enhance existing neighborhoods or strenthen development and revitalization of existing business districts. Any agreements for using the transportation investment to support other public and private development activities in the central city should be discussed.

b. *References.* See paragraph 11-1.b. above.

3. Displacement Impacts

a. *EIS Content.* The EIS shall include a discussion of residential and business displacements, related community impacts, and relocation assistance. Where applicable, the data on residential relocation should provide the preliminary basis for assurance of the availability of relocation housing as required by DOT 5620.1, Replacement Housing Policy, dated 6-24-70, and 49

CFR 25.57. The following specific points should be covered:

(1) An estimate of the households to be displaced including the family characteristics (e.g. minorities, and income levels, tenure, the elderly, large

Federal and Federally Assisted Programs, specifies DOT procedures for implemening the Act. It is the policy of the Department to deal consistently and fairly with all persons whose property is taken for public projects and all persons

or national origin; that the location of existing or proposed facilities and services involved will not deny access to any person on the basis of discrimination; and that persons in the affected community are not

means the process of arranging physical spaces, materials, and objects to perform specific functions. It includes architecture, landscape architecture, graphics, interior design, industrial design, and engineering design. As distinguished from art, design proceeds

induced trips; and energy use for street lighting and tunnel operation (if significant).

(b) For airport actions, energy use in terminal facilities; energy use by aircraft; passenger load factors; and energy use in transportation to and from

meet eenergy conservation performance standards established pursuant to section 304 of the Act.

(4) *Executive Order 12185, Conservation of Petroleum ond Natural Gas,* of 12-17-79, directs each Federal agency to effectuate conservation of

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CFR 25.57. The following specific points should be covered:

(1) An estimate of the households to be displaced including the family characteristics (e.g. minorities, and income levels, tenure, the elderly, large families).

(2) Significant impacts on the neighborhood and housing to which relocation is likely to take place (e.g. lack of sufficient housing, overloaded schools).

(3) A discussion of relocation housing in the area and the ability to provide adequate relocation housing for the types of families to be displaced, including other displacement actions in the area which will require access to relocation resources. If the resources are insufficient to meet the estimated displacement needs, the EIS should describe the actions proposed to remedy this situation including, if necessary, use of housing of last resort. A commitment on relocation housing and other relocation services should be included in the final EIS.

(4) An estimate of businesses displaced by each alternative, by size and type of business, number of employees, and the effect of business displacement on the community.

(5) Plans to mitigate potential adverse impacts on displaced businesses. Mitigation measures include relocation advisory services, assistance in finding relocation facilities in the community, and for business depending heavily on local patronage of displaced residents, timing relocation of businesses to coincide with residential relocations.

(6) Plans to retain businesses in the community. If there will be extensive residential and/or business displacement, the affected community should be encouraged to explore sources of funding from local and State entities, as well as HUD, the Economic Development Administration, the Small Business Administration, and other Federal agencies, to assist in relocation and in revitalization of the community.

(7) The EIS should reflect the results of consultation with local officials, community groups, including minority groups and businesses regarding the relocation impacts to the community affected.

b. *References.* (1) *The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970* provides for the uniform and equitable treatment of persons displaced from their homes, businesses or farms by Federal and federally assisted programs. The Act does not apply to federally permitted or licensed actions.

(2) 49 CFR Part 25, *Relocation Assistance and Land Acquisition for Federal and Federally Assisted Programs*, specifies DOT procedures for implemening the Act. It is the policy of the Department to deal consistently and fairly with all persons whose property is taken for public projects and all persons who are displaced from their homes, businesses or farms.

(3) DOT 5620.1, *Replacement Housing Policy*, of 8–24–70, states the DOT policy that a DOT-assisted project which displaces individuals and families from their homes cannot proceed to construction unless comparable replacement dwellings are available to them in advance of their displacement.

(4) The *President's Environmental Message*, of 8–2–79, directs the Secretary of Transportation to assure that actions are taken to mitigate adverse effects of transportation projects—including effects on neighborhoods and housing stock.

(5) The DOT *Business Relocation Policy*, of 2–15–80, and DOT Notice 1270.2 specify actions to be carried out by DOT agencies to minimize economic harm to businesses displaced by DOT projects and to increase the likelihood that the business remains in the community from which it is displaced.

4. Minority and Civil Rights Impacts

a. *EIS Content.* Where minority impacts may be significant, EISs should contain the following information, broken down by race, color, and national origin: population in the study area; projected users; displaced residents, businesses, and property owners; employment (of affected businesses). (This information may be drawn from or be used as input for the Title VI assessment in a grant or permit application.) The relationship of the proposed action to other Federal or federally assisted actions which may serve or affect minority populations in the project area should be discussed. The EIS should address proposed mitigation measures to reduce or avoid impacts on minority populations.

b. *References.* (1) *Title VI of the Civil Rights Act of 1964* (42 USC 2000(d) et seq.) provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(2) DOT 1000.12, *Implementation of the Department of Transportation Title VI Program*, of 1–19–77, states DOT policy to assure in all DOT actions that benefits and services are made available to and are distributed among recipients without regard to race, color, or national origin; that the location of existing or proposed facilities and services involved will not deny access to any person on the basis of discrimination; and that persons in the affected community are not differentially or adversely impacted on the basis of race, color, or national origin.

5. Considerations relating to Pedestrians and Bicyclists

a. *EIS Content.* Wherever appropriate, the EIS should reflect consideration of provision for pedestrian and bicycle safety and use on an integral feature of the project. Proposed actions which might incorporate such provisions include highway projects, bridge permits, air terminal facilities, and transit terminals or malls. The EIS should include:

(1) Information on currenty and potential bicycle and pedestrian activity, including any significant safety problems.

(2) An assessment of the impacts resulting from construction and operation of the proposed action on bicycling and walking, as well as measures to mitigate these impacts and provide for these users.

(3) For highway actions, evidence that the project is consistent with section 109(n) of the Highway Act.

(4) An indication that the proposed action is consistent with local plans for bicyclists and pedestrians and that local officials and community groups have been consulted.

b. *References.* (1) The Secretary's Report, *"Bicycle Transportation for Energy Conservation,"* of 4–22–80, states that it is DOT's policy to promote the safe, increased use of bicycles for transportation, to integrate bicycle transportation into all appropriate Departmental programs and activities, and to require the consideration of bicycle use in all appropriate DOT-funded transportation projects.

(2) *Section 109(n) of Title 23* provides that "The Secretary shall not approve any project under this title that will result in the severance or destruction of an existing major route for nonmotorized transportation traffic and light motorcycles, unless such project provides a reasonably alternate route or such a route exists."

6. Environmental Design Considerations

a. *EIS Content.* EISs shall document appropriate consideration given (or to be given) to design, art, and architecture in project planning and development.

(1) For the purpose of the Department's initiatives with respect to design, art, and architecture, design means the process of arranging physical spaces, materials, and objects to perform specific functions. It includes architecture, landscape architecture, graphics, interior design, industrial design, and engineering design. As distinguished from art, design proceeds from the stipulation of useful functions that the design product must perform. Consequently, design quality is judged by broader criteria than aesthetics alone.

(2) Design quality considerations are relevant and are to be documented in EISs where such facilities as airport terminals, transit stations, or major urban highways are in sensitive locations (such as parks or historic districts), or where public use areas are involved. These examples are not all-inclusive. Special attention to design, art, or architecture can also often yield significant benefits in projects of a lesser scale (and in some projects that would not require an EIS).

(3) Where a proposed action is likely to be of interest to State and local arts councils and other organizations concerned with design, art, and architecture, the draft EIS should be sent to these organizations.

b. *Reference. The Secretary's Statement on Design Quality*, of 9–1–77, declares a Departmental goal of encouraging the highest design achievements in all DOT programs. The Secretary approved the recommendation of the DOT Task Force on Design, Art, and Architecture in Transportation that where relevant, consideration of design quality be reflected in EISs.

Chapter III—Physical Impacts

1. Energy Impacts

a. *EIS Content.* The range of alternatives studied should include alternatives which promote energy conservation. Analyses of energy impacts should differentiate between petroleum and non-petroleum energy sources. As appropriate, the energy analysis in the EIS should discuss the following for the various alternatives:

(1) Energy consumption in facility operation and maintenance. As appropriate, the EIS should address regional (system) energy impacts of the proposed action and the regional transportation plan. The analysis should be presented in terms of total BTU's or quantities of fuel consumed. Operating considerations may include:

(a) For highway actions, the total energy consumed by vehicles predicted to use the facility; vehicle miles travelled; average vehicle occupancies; changes in energy consumption through changes in traffic flow; generated or induced trips; and energy use for street lighting and tunnel operation (if significant).

(b) For airport actions, energy use in terminal facilities; energy use by aircraft; passenger load factors; and energy use in transportation to and from the airport.

(c) For transit and rail actions, energy use by transit vehicles or trains; energy use at terminals; passenger load factors; changes in modal split; energy use in access to transit.

(2) Significant indirect impacts of proposed actions, for example, changes in land use patterns contributing to longer or more energy-consuming commuting trips and which would be stimulated or supported by the proposal; trips diverted from other more or less energy efficient modes; increased automobile use generated by terminal construction or expansion of parking facilities.

(3) Measures to conserve energy which are included in the proposed action, including selection of energy-efficient alternatives, high occupany vehicle lanes and interface with transit services in urban highway proposals, measures to improve traffic flow, bicycle and pedestrian facilities, and other incentives for energy conservation.

(4) Construction energy consumption (see paragraph III–II.e), as well as trade-offs between operating and maintenance energy savings and construction energy consumption.

(5) The consistency of the proposed action with any State, regional or local energy conservation plan. Reflection of energy elements of transportation/air quality planning is also appropriate.

(6) An indication of whether the proposed action is part of an energy contingency plan or will be relied upon during an energy emergency.

(7) Proposed measures to conserve energy in any new Federal building.

b. *References.* (1) *Section 102(2)(C) of NEPA* provides that EISs address "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

(2) *The President's Environmental Message of 8–2–79*, directs the Secretary of Transportation to assure that Federal transportation funds are used to promote energy conservation.

(3) *The Energy Conservation and Production Act of 1976* (42 USC 6831 et seq.) provides that no Federal aid shall be made available or approved for construction of buildings which fail to meet eenergy conservation performance standards established pursuant to section 304 of the Act.

(4) *Executive Order 12185, Conservation of Petroleum and Natural Gas*, of 12–17–79, directs each Federal agency to effectuate conservation of petroleum and natural gas through its financial assistance programs. In compliance with Executive Order 12185, *Energy Conservation by Recipients of Federal Assistance*, of 8–29–80, (45 FR 58022) amends DOT regulations for financial assistance programs to require conservation of petroleum and natural gas in DOT-funded programs.

(5) *The Energy Policy and Conservation Act of 1975* (42 USC 6201 et seq.; note sections 6322 and 6361) provides for preparation of State energy conservation plans which address, among other things, transportation controls and programs to promote the availability and use of carpools, vanpools, and public transportation. In addition, the Act calls for development of a plan for energy conservation in buildings owned or leased by a Federal agency.

(6) *Executive Order 12003, Energy Policy and Conservation*, of 7–20–77, directs each Federal agency to prepare an overall plan for conserving fuel and energy in all operations of the agency; and to prepare a 10-year plan to meet specified energy conservation goals for all existing or new federally-owned buildings.

(7) The following reports contain useful methodologies for energy impact analysis:

(a) *Shirley, E. C., Apostolos, J. A. and Shoemaker, W. R., Energy and Transporation Systems.* National Cooperative Highway Research Program Project 20–7, 1978.

(b) System Design Concepts, *Urban Public Transporation and Energy*, October 1979. Prepared for Urban Mass Transportation Administration.

2. Air Quality Impacts

a. *EIS Content.* The EIS should reflect an analysis of the air quality impacts of the proposal, including any predicted violations of ambient air quality standards. Localized "hot spots" should be identified in addition to macroscale impacts. There shall be a statement whether or not the proposed action *conforms* with and gives *priority* to the approved or promulgated State implementation plan for attainment and maintenance of ambient air quality standards. This statement shall be supported with appropriate information. Particular emphasis should be placed on conformity with the transportation control plan element (TCP) of the State

implementation plan (SIP), where there is a TCP. For this purpose, the words *conform* (Clean Air Act Section 176(c)) and *consistent* (23 USC 109(j)) are synonymous. The final EIS should reflect coordination with EPA and with

including, if necessary, commitments to include noise abatement measures (subject to further planning and public involvement). Land use controls or other actions to prevent future incompatible land uses should be discussed where

(2) If a proposed project is located within the area designated by EPA for protection under section 1424(e) of the Safe Drinking Water Act, the draft EIS should indicate that the proposed project is located within the designated

area, and if its contamination would create a significant hazard to public health. No commitment for Federal financial assistance may be made for any project that EPA determines may

practicable and establish procedures for the implementation of the policy."

6. Floodplain Impacts

a. *EIS Content.* The EIS should discuss significant effects of the proposed action

24678), of 4–23–79, prescribes policies and procedures for ensuring that proper consideration is given to the avoidance and mitigation of adverse floodplain impacts in DOT actions. The order

implementation plan (SIP), where there is a TCP. For this purpose, the words *conform* (Clean Air Act Section 176(c)) and *consistent* (23 USC 109(j)) are synonymous. The final EIS should reflect coordination with EPA and with State or local officials charged with administration of the SIP.

b. *References.* (1) *Section 176(c) of the Clean Air Act* (42 USC 7506) provides that no Federal agency shall engage in, provide financial assistance for, license or permt, or approve any activity which does not conform to a State implementation plan for air quality after it has been approved or promulgated. Section 176(d) provides that each Federal agency having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of that authority to the implementation of the plan. The EPA/DOT guidelines of 6–12–80, provide guidance on implementation of sections 176(c) and (d).

(2) *The EPA/DOT Transportation-Air Quality Planning Guidelines* of 6–14–78 describe a planning process intended to satisfy requirements of the Clean Air Act for the transporation portions of an SIP.

(3) *Section 109(j) of the Highway Act* (23 USC 109) requires the Secretary, in consultation with EPA, to develop and promulgate guidelines to assure that highways constructed under the Act "are consistent with any approved plan for the implementation of any ambient air quality standard for any air quality control region designated pursuant to the Clean Air Act, as amended."

(4) *Section 16(e)(l) of the Airport Act* requires that applications for projects involving airport location, runway location, or a major runway extension shall not be approved unless the Governor of the State in which the project is located certifies that there is reasonable assurance that the project will be located, designed, constructed and operated in compliance with applicable air and water quality standards.

3. Noise Impacts

a. *EIS Content.* The EIS should discuss significant noise and vibration impacts of the proposed action and alternatives, including the "no build" alternative. Noise sensitive activities affected by the proposed action should be identified. Noise contours of the proposed action and alternatives should generally be included when there are a significant number of receptors or where contours would assist in understanding impacts. The EIS should demonstrate conformity to any adopted noise standards, including, if necessary, commitments to include noise abatement measures (subject to further planning and public involvement). Land use controls or other actions to prevent future incompatible land uses should be discussed where appropriate.

b. *References.* (1) *The Noise Control Act of 1972* (49 USC 4903) provides that all Federal agencies shall carry out programs within their control in such a manner as to further the Act's basic noise reduction policy.

(2) *The President's Environmental Message,* of 8–2–79, established urban noise initiatives for Federal departments, including (a) initiating programs to achieve soundproofing of noise sensitive buildings; (b) promoting use of quiet design features in planning, design and operation of proposed urban transportation projects; and (c) encouraging noise developments to be located away from major noise sources.

(3) *Section 109(i) of the Highway Act* (23 USC requires that Secretary to develop and promulgate standards for highway, noise levels compatible with different land uses and prohibits the approval of plans and specifications for certain projects unless he determines that the plans and specifications include adequate measures to implement the standards FHPM 7.7.3, *Noise Standards and Procedures,* implements this requirement.

(4) *Section 18(a)4) of the Airport Act* (49 USC 1718) requires that assurances be obtained that "appropriate action, including the adaption of zoning laws, has been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft."

(5) *Guidelines for Considering Noise in Land Use Planning and Control* of the Federal Interagency Committee on Urban Noise. May 1980, consolidates Federal guidance on noise considerations in local planning.

4. Water Quality Impacts

a. *EIS Content.* The EIS should reflect an analysis of significant surface and ground water quality impacts, including a determination as to whether the proposal will be consistent with applicable. State water quality standards. The analysis should include turbidity, sedimentation, chemical pollutants, and impacts on biota.

(1) EISs for projects which may have an impact on water supplies should identify any anticipants adverse impacts and efforts to mitigate those impacts.

(2) If a proposed project is located within the area designated by EPA for protection under section 1424(e) of the Safe Drinking Water Act, the draft EIS should indicate that the proposed project is located within the designated area. EPA will review the proposed project as part of its review of the draft EIS and will make a determination whether the action may contaminate the aquifer or recharge zone so as to create a significant hazard to public health. If EPA makes a finding that there will be no such contamination, the final EIS should reflect this determination. If EPA makes a finding that the project will create a significant hazard to public health, no Federal assistance may be committed. If the proposal is modified to avoid the impact, EPA can be petitioned to withdraw its finding. The final EIS should reflect EPA's action.

(3) Draft EISs should identify any anticipated section 404 permits, and should discuss in general terms the location and extent of anticipated fill placement. If a section 404 permit will be required for a preferred alternative, the final EIS should indicate the location of the fill activity, approximate quantities of fill material, general construction grades, major design features, and proposed mitigation measures, and should include evidence of coordination with the Corps of Engineers.

(4) The final EIS should indicate that the State water quality certification has been issued or that there is likely to be no objection to obtaining the certification.

b. *References.* (1) The *Federal Water Pollution Control Act* (Clean Water Act), 33 USC 1251–1376 et seq., establishes a national water quality policy. Section 401 of the Act, 33 USC 1341, requires any applicant for a Federal license or permit to provide a certification from the State that the action will comply with the requirements of the Act.

(2) *Section 404 of the Clean Water Act* establishes a permit program for the discharge of dredged or fill material in navigable waters. This permit program is administered by the Corps of Engineers based on guidelines developed by EPA in conjunction with the Corps. The *DOT-Department of the Army Memorandum of Agreement on Permit Processing,* of 3–24–80, provides for close cooperation between DOT agencies and the Corps during environmental processing.

(3) *Section 1424(e) of the Safe Drinking Water Act* (42 USC 300(j)(6)) authorized EPA to designate an aquifer for special protection if it is the sole or principal drinking water source for an area, and if its contamination would create a significant hazard to public health. No commitment for Federal financial assistance may be made for any project that EPA determines may contaminate a designated aquifer or recharge zone.

5. Wetlands Impacts

a. *EIS Content.* (1) If applicable, the statement should identify specific impacts of the project alternatives on wetlands, and show how the proposed action will protect, preserve, and enhance wetlands to the fullest extent practicable. Topics which should be discussed, as appropriate, include—

(a) Water supply, water quality, recharge and discharge, and pollution;

(b) Flood and storm hazards;

(c) Sedimentation and erosion;

(d) Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish and wildlife, timber, and food and fiber resources;

(e) Other uses of wetlands in the public interest, including recreational, scientific, and cultural uses, as well as transportation uses and objectives;

(f) Alternatives which would avoid new construction in wetlands; and

(g) Measures which would minimize impacts to the wetlands.

(2) If the preferred alternative entails new construction in wetlands, the final EIS should identify wetlands impacts, and include specific mitigation measures. The wetlands finding required by DOT 5660.1A should be incorporated into or attached to the final EIS or the proposed record of decision, or to a FONSI. The finding should include statements that there is no practicable alternative to construction in the wetland, and that all practicable measures to minimize harm have been included in the proposal.

b. *References.* (1) *Executive Order 11990, Protection of Wetlands* (42 FR 26961), requires Federal agencies, "* * * * to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative * * *"

(2) *DOT 5660.1A, Preservation of the Nation's Wetlands* (43 FR 45285), states that it is "* * * DOT policy that transportation facilities and projects should be planned, constructed, and operated to assure the protection, preservation, and enhancement of the Nation's wetlands to the fullest extent practicable and establish procedures for the implementation of the policy."

6. Floodplain Impacts

a. *EIS Content.* The EIS should discuss significant effects of the proposed action on areas subject to flooding. Alternatives which involve construction in, or support public or private construction in, the base (100-year) floodplain should generally be avoided where practicable.

(1) When alternatives under consideration would encroach on a base floodplain, the draft EIS should include:

(1) identification of such encroachments;

(b) any risk to, or resulting from, the transportation action;

(c) the impacts on natural and beneficial floodplain values;

(d) the degree to which the alternatives provide direct or indirect support for development in the base floodplain; and

(e) sufficient discussion to permit an initial review of the adequacy of proposed methods to minimize harm, and, where practicable, to restore and preserve the natural and beneficial floodplain values affected by the project.

(2) Should the preferred alternative involve an encroachment, the final EIS should clearly identify the floodplain concerns and impacts of the alternative, and proposed measures to minimize adverse effects and restore affected floodplain values.

(3) If the preferred alternative involves a significant encroachment, the responsible official must determine in writing that the proposed encroachment is the ony practicable alternative. The floodplain finding should be incorporated into or attached to the final statement or to a FONSI. It must contain the following elements:

(a) A description of why the proposed action must be located in the floodplain, including the alternatives considered and why they were not practicable.

(b) A statement indicating that the action conforms to applicable State and/or local floodplain protection standards.

b. *References.* (1) *Executive Order 11988, Floodplain Management* (42 FR 26951), of 5–24–77, requires Federal agencies ". . . to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. . . ."

(2) *DOT 5650.2, Floodplain Management and Protection* (44 FR 24678), of 4–23–79, prescribes policies and procedures for ensuring that proper consideration is given to the avoidance and mitigation of adverse floodplain impacts in DOT actions. The order specifies information that EISs and FONSIs shall provide on floodplain impact and enhancement.

7. Actions Affecting Coastal Zones

a. *EIS Content.* (1) The EIS should discuss the status of planning for the coastal zone. Any significant direct or indirect impacts on barrier islands should be addressed.

(2) If the proposed action will directly affect the coastal zone of any State with a State coastal zone management program approved by the U.S. Department of Commerce, the EIS shall include the following:

(a) For federally-assisted activities, the views of the appropriate State or local agency as to the relationship of such activities with the approved State coastal zone management program, and the determination of the State as to whether the proposal is consistent or inconsistent with the approved State coastal zone management program.

(b) For issuance of a Federal license or permit, the applicant's certification that the proposed action complies with the State's approved program and that such activity will be conducted in a manner consistent with the program, and the State's concurrence with the applicant's certification. The State's concurrence may be presumed if the State does not act within six months after receipt of the applicant's certification.

(c) For other DOT activities, including development projects, a determination that the activity will be undertaken in a manner which is, to the maximum extent practicable, consistent with the approve State management program.

(d) For proposed actions determined to be inconsistent with the State's approved program, if the project cannot be modified so that it is consistent with the plan, the final EIS shall include a finding by the Secretary of Commerce that the proposed action is consistent with the purposes or objectives of the Coastal Zone Management Act or is necessary in the interest of national security.

b. *Reference. The Coastal Zone Management Act of 1972* (43 USC 1241) states that "it is the national policy to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone . . ." (section 303); and requires all Federal or federally-supported activities affecting the coastal zone to be carried out in a manner consistent with

approved State coastal zone management programs (section 307). 15 CFR Part 930, *Federal Consistency with Approved Coastal Management Programs,* establishes procedures for determining consistency.

consultation pursuant to section 7(a) of the Endangered Species Act.

(d) In selecting a preferred alternative, jeopardy to an endangered or threatened species or modification of critical habitat must be avoided. The

adverse effect on a river which is part of the national Wild and Scenic River System, and should reflect consultation with the administering agency or agencies.

(2) If the proposed action could have

10. Construction Impacts

EISs should discuss significant construction impacts of a proposed action, including the following—

a. Noise impacts from construction and any specifications setting maximum

cost or community disruptions resulting from alternative routes reach extraordinary magnitudes. There must be a strong justification for rejection of alternatives, including the "no build" alternative. This portion of the

section 4(f) determination, as appropriate, shall include a specific statement that there is no feasible and prudent alternative and that the proposal includes all possible planning to minimize harm to the section 4(f) area

approved State coastal zone management programs (section 307). 15 CFR Part 930, *Federal Consistency with Approved Coastal Management Programs*, establishes procedures for determining consistency.

8. Fish and Wildlife Impacts

a. *EIS Content.* The EIS should discuss any potentially significant impacts of the proposed action and alternatives on fish and wildlife resources, including direct injury to fish and wildlife, loss or modification of habitat, and degradation of water quality. Impact to endangered and threatened species should be discussed. Measures to minimize harm should be discussed, including measures to enhance or improve fish or wildlife habitat.

(1) If the proposed action involves impoundment, diversion, channel deepening or other modification of a stream or other body of water, the scoping process should involve the Fish and Wildlife Service (FWS) and the appropriate State agency. The final EIS should provide evidence of consultation with these agencies, pursuant to the Fish and Wildlife Coordination Act.

(2) If the proposed action may affect a species which is listed or proposed to be listed as endangered or threatened, the EIS shall be the vehicle for consultation pursuant to section 7 of the Endangered Species Act:

(a) During the scoping process, the lead agency shall contact the regional office of the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), as appropriate, for information whether a listed or proposed species may be present. FWS is responsible for protection of terrestrial and freshwater species; NMFS is responsible for protection of marine species.

(b) If a listed or proposed species may be present, the lead agency must conduct a biological assessment to identify probable locations of the species and determine the probable impacts of the proposed action upon the species and its habitat. The draft EIS shall include the results of the biological assessment. Submission of the draft EIS to FWS or NMFS will constitute submission of the biological assessment to that agency.

(c) If the proposed action will potentially jeopardize the continued existence of a listed species or destroy or modify critical habitat, consultation with FWS or NMFS, as appropriate, is required. Initiation of consultation shall be accomplished by submitting the draft EIS to the Regional Director of FWS or NMFS. The transmittal shall request consultation pursuant to section 7(a) of the Endangered Species Act.

(d) In selecting a preferred alternative, jeopardy to an endangered or threatened species or modification of critical habitat must be avoided. The results of the consultation, including the biological opinion, shall be reflected in the final EIS. Any measures which will be taken to conserve listed species, to avoid impacts, or to mitigate impacts to the endangered or threatened species or its habitat should be discussed.

b. *References.* (1) *The Fish and Wildlife Coordination Act*, 16 USC 662, requires that agencies consult with the State wildlife agencies and the Department of the Interior concerning the conservation of wildlife resources where the waters of any stream or other water body are proposed to be controlled or modified by a Federal agency or any public or private agency operating under a Federal permit.

(2) *Section 7(a) of the Endangered Species Act of 1973*, 16 USC 1533, as amended, requires that all Federal departments and agencies shall, in consultation with the Secretaries of the Interior and Commerce, carry out programs for the conservation of endangered species and threatened species listed by the Secretary of the Interior or Commerce, and insure that any action authorized, funded, or carried out by them "is not likely to jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary (of Interior or Commerce) . . . to be critical. . . ."

Section 7(c) of the Act provides that each Federal agency request from the Departments of the Interior and/or Commerce information whether any species which is listed or proposed as endangered or threatened may be present in the area of a proposed construction action. If those agencies advise that such a species may be present, the action agency shall conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by the proposed action and the impacts on the species.

(3) *Interagency Cooperation Regulations–Endangered Species Act of 1973*, 50 CFR Part 402, specifies procedures for implementing section 7. (These regulations will be revised to reflect the 1978 and 1979 amendments to the Act.)

9. Wild and Scenic Rivers

a. *EIS Content.* (1) The EIS should identify any potential significant adverse effect on a river which is part of the national Wild and Scenic River System, and should reflect consultation with the administering agency or agencies.

(2) If the proposed action could have an adverse effect on a river listed in the Nationwide Inventory of rivers with potential for inclusion in the National Wild and Scenic Rivers Systems, there should be early coordination with the Heritage Conservation and Recreation Service, including participation of HCRS as a cooperating agency, if appropriate. The EIS should identify any potential significant adverse effect on the natural, cultural, and recreational values of the Inventory river. Adverse effects include alteration of the free flowing nature of the river, alteration of the setting, or deterioration of water quality. If it is determined that the proposed action could foreclose options to designate the river under the act, the EIS should reflect consultation with HCRS on avoiding or mitigating the impacts. The final EIS should indicate measures which will be included in the action to avoid or mitigate impacts.

b. *References.* (1) The *Wild and Scenic Rivers Act*, 16 USC 1271 et seq., provides for protection, under State or Federal management, of free flowing rivers or streams which are designated as wild, scenic or recreational waters. Wild river areas are free of impoundments and are generally inaccessible except by trail with essentially primitive watershed or shorelines and unpolluted waters; scenic river areas are free of impoundment, with largely undeveloped shorelines, but are accessible in places by roads; recreational river areas are readily accessible by road or railroad, have some development along the shorelines, and may have undergone some impoundment or diversion.

(2) The *President's Environmental Message of 8–2–79*, directed all Federal agencies to avoid or mitigate adverse effects on rivers identified in the HCRS Nationwide Inventory of rivers having potential to be designated under the Wild and Scenic Rivers Act. The message also directed agencies to consult with the HCRS, as part of their normal environmental review process, prior to taking actions which could effectively foreclose wild, scenic, or recreational river status on rivers in the Inventory.

(3) Memorandum for Heads of Agencies on *Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory*, from CEQ, dated 8–10–80, provides guidance for consultation with HCRS as part of the NEPA process.

10. Construction Impacts

EISs should discuss significant construction impacts of a proposed action, including the following—

a. Noise impacts from construction and any specifications setting maximum noise levels, restricting work hours, utilizing quiet construction equipment, or otherwise reducing or limiting noise impacts;

b. Disposal of waste materials and effect on borrow areas and disposal sites. Environmentally sensitive and residential areas should be avoided as borrow or disposal sites. Where special problems are involved, specific mitigation measures should be discussed;

c. Measures to minimize erosion, sedimentation and turbidity in water bodies and dust in inhabited areas;

d. Impacts and measures to minimize effects on traffic and pedestrians;

e. Energy impacts of construction, including energy used by construction equipment, and significant impact on or use of natural resources such as minerals, coal, etc.; and

f. Impacts of air pollution from fugitive dust, and any measures proposed to control dust.

Chapter IV—Impacts on Section 4(F) Properties and Historic and Cultural Resources

1. Properties Protected by Section 4(F) of the DOT Act: Historic Sites and Publicly Owned Parklands, Recreation Areas, Wildlife and Waterfowl Refuges

a. *Content of EISs or Section 4(f) Statements.* The following information shall be included for cases involving section 4(f) properties:

(1) Description of "any publicly owned land from a public park, recreational area or wildlife and waterfowl refuge" or "any land from an historic site" used by the project. This includes the size of the section 4(f) lands, available activities, use, patronage, unique or irreplaceable qualities, relationship to other similarly used lands in the vicinity of the project. The proposal's impact on park, recreation, wildlife, or historic areas, and changes in vehicular or pedestrian access should be presented. Maps, plans, photographs, and drawings showing the project in sufficient scale should be included.

(2) As appropriate, the impacts of alternative designs and locations, including detailed cost estimates (with figures showing percentage differences in total project costs) and technical feasibility, and appropriate analysis of the alternatives, including any unique problems present and evidence that the cost or community disruptions resulting from alternative routes reach extraordinary magnitudes. There must be a strong justification for rejection of alternatives, including the "no build" alternative. This portion of the statement should demonstrate compliance with the Supreme Court's statement in the *Overton Park* case, as follows:

> The very existence of the statute indicates that the protection of parklands was to be given paramount importance. The few green havens that are public parks were not to be lost unless there were truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes reached extraordinary magnitudes. If the statutes are to have any meaning, the Secretary cannot approve the destruction of parkland unless he finds that the alternative routes present unique problems. [401 US 413]

(3) The views of the official having jurisdiction over the lands concerning the significance of the property and the measures to minimize harm.

(4) If there is no feasible and prudent alternative, description of all planning undertaken to minimize harm to the protected area and statement of actions taken or to be taken to implement this planning, including measures to maintain or enhance the natural beauty of the lands traversed.

(a) Specific measures which will be implemented should be listed. It is not sufficient to simply indicate that everything requested by the official with jurisdiction over the land will be accomplished.

(b) Measures to minimize harm should ordinarily include replacement of land and facilities or provision for functional replacement of the facility (see 40 CFR 25.267).

(c) Design measures to minimize harm, to include reducing the amount of land to be used, tunneling, cut and cover, treatment of embankments, planting, screening, maintenance of pedestrian or bicycle paths and noise mitigation measures, all reflecting utilization of appropriate interdisciplinary design personnel.

(d) Alternative locations within the park or other section 4(f) area which would minimize the use of section 4(f) lands should be considered as a measure to minimize harm.

(e) For historic sites, the Memorandum of Agreement with the Advisory Council will be considered in determining, pursuant to section 4(f), whether there has been all possible planning to minimize harm.

(5) If use of protected property is proposed, the proposed record of decision, the FONSI or a separate section 4(f) determination, as appropriate, shall include a specific statement that there is no feasible and prudent alternative and that the proposal includes all possible planning to minimize harm to the section 4(f) area involved.

b. *References.* (1) *Section 4(f) of the DOT Act* and *section 138 of the Highway Act* state, "It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public parks and recreational lands, wildlife and waterfowl refuges, and historic sites. The Secretay * * * shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use."

(2) Procedural instructions for section 4(f) matters are discussed in paragraph 12 of DOT 5610.1C.

(c.) *Application of Section 4(f).* (1) Significance of the affected park, recreation area, or refuge, shall be determined by the Federal, State or local officials having jurisdiction over the lands. In the absence of such a statement, lands will be considered significant. The significance determination applies to the entire property, except as provided in paragraph c.(4) below. Any statement of "insignificance" by the official having jurisdiction is subject to review by the Department as to whether such statement is capricious. If the land is determined to be insignificant, section 4(f) does not apply to the proposed action.

(2) The National Register of Historic Places lists historic properties of national, State, and local significance. For purpose of section 4(f), a historic site is considered significant only if it is included on or is eligible for inclusion on the National Register. In determining the application of section 4(f) to historic sites, the administration will consult with the SHPO and local officials, and will identify properties eligible for the National Register of Historic Places. For the purposes of section 4(f), a historic site is significant only if it is on or eligible for inclusion on the National Register unless the administration

determines that the application of section 4(f) is appropriate.

(3) If a finding of "no effect" on a historic site on or eligible for the National Register of Historic Places has

recreation area or is used for recreation purposes, section 4(f) is considered to apply to that area.

(9) Roadside rest areas and other facilities located on right-of-way owned

determine whether the proposal will affect any Register or Eligible property in the area of potential environmental impact. Effect is measured against the characteristics that qualify the property

(a) *Preliminary Case Report.* A preliminary case report is required to initiate consultation with the Council. A draft environmental impact statement can serve as a preliminary case report, if the EIS indicates this and it contains the

(MOA) containing stipulations that specify how the undertaking will be carried out. This MOA is signed by the Council's Executive Director, the representative of the lead agency, and the SHPO. Other involved parties sign in

Preservation (36 CFR Part 800), provide procedures for implementation of section 106 of the National Historic Preservation Act.

(4) *Archeological and Historic Data Preservation Act*, (16 USC 469a) directs

determines that the application of section 4(f) is appropriate.

(3) If a finding of "no effect" on a historic site on or eligible for the National Register of Historic Places has been concurred in by the Advisory Council on Historic Preservation, it may be concluded that there is no "use" of the property for purposes of section 4(f). If archeological sites are processed under the Advisory Council's Guidelines for Making "Adverse Effect" and "No Adverse Effect" Determinations for Archeological Resources in Accordance with 36 CFR Part 800, section 4(f) is not normally considered applicable (see paragraph IV-2.a.(4)(b) below).

(4) Where Federal lands or other large public land holdings (e.g. State forests) are managed for multiple uses under a statute authorizing such management, section 4(f) applies only to portions of the land which are in fact being used for or are designated in the plans of the administering agency as being for park, recreation, wildlife or waterfowl refuge, or historic purposes. The determination of significance shall be made by the official having jurisdiction over the lands.

(5) Section 4(f) applies to school properties used and significant for recreational purposes and available for recreational use by the general public.

(6) Where land that has been acquired by a State or local transportation agency in advance of the need for its use for transportation purposes in temporarily used for recreation purposes, that land shall normally not be subject to the provisions of section 4(f). In order to establish that such temporary parklands are not subject to the provisions of section 4(f), the following documentation shall be provided: a statement that the land was not used for park, recreation, wildlife refuge or historic purposes prior to acquisition by the transportation agency; and evidence that the lease or agreement permitting use of the land for recreation purposes clearly provides that the land shall ultimately be used for tranportation purposes, and that the recreation use is allowed for a specific period or subject to the discretion of the transportation agency owning the land.

(7) The term "publicly owned land" means any land owned in fee simple or land subject to a public easement or other interest in the land by a Federal, State or local agency or entity. Generally, section 4(f) is considered to apply to State game reserves, State hunting areas, and lands subject to wetlands easements negotiated with U.S. Fish and Wildlife Service.

(8) If a body of water is publicly owned and is formally designated as a recreation area or is used for recreation purposes, section 4(f) is considered to apply to that area.

(9) Roadside rest areas and other facilities located on right-of-way owned by a transportation agency and provided solely for use by users of the transportation facility will normally not be considered subject to section 4(f).

(10) "Use of land" under section 4(f) generally means the acquistion of title to or on easement in land for a transportation program or project. In unusual circumstances, serious adverse impacts such as severe increases in noise or air pollution, or access disruption may constitute a "constructive use" even where no acquistion is involved, and section 4(f) would apply.

2. Properties and Sites of Historic and Cultural Significance

a. *EIS Content.* Final EISs should reflect compliance with section 106 and 36 CFR Part 800, the Advisory Council on Historic Preservation's procedures for compliance with section 106 of the National Historic Preservation Act. These procedures are summarized below.

(1) *Identifying Resources on or Eligible for the National Register.* The lead agency is responsible for identifying properties on or eligible for the National Register within the area of a proposed action's potential environmental impact. The lead agency should consult the State Historic Preservation Office (SHPO) for information about properties which may be eligible for the National Register, and the likelihood of previously unidentified properties within the impact area. If necessary, a survey should be conducted to identify properties that may be eligible for the National Register, particularly if archeological remains are anticipated. For properties not on the National Register that are potentially qualified, the lead agency shall, is consultation with the SHPO, apply the National Register criteria set forth in 36 CFR Part 1202.6 and shall seek a formal determination of eligibility from the Keeper of the National Register, DOI, or seek a consensus determination with the SHPO. If a consensus determination is made, the lead agency shall notify DOI and provide supporting documentation. If the lead agency and SHPO cannot agree on potential eligibility, the lead agency must seek a determination of eligibility, the lead agency must seek a determination of eligibility from DOI.

(2) *Determining Effect.* In consultation with the SHPO, the lead agency shall apply the Council's criteria of affect to determine whether the proposal will affect any Register or Eligible property in the area of potential environmental impact. Effect is measured against the characteristics that qualify the property for the Register. Any direct changes in these characteristics, as well as visual, audible, or atmospheric changes in the environment are effects.

(3) *Determination of "No Effect".* If the lead agency and the SHPO agree that the action will not affect Register properties, the determination of "no effect" may simply be documented and the section 106 process is completed. If the SHPO objects to an agency determination of "no effect" and gives timely notice, the Exective Director of the Council may review the determination.

(4) *Determination of "No Adverse Effect".* (a) *Applying Criteria.* If the lead agency determines that a proposed action will affect a Register property, the next step, again in consultation with the SHPO, is to apply the criteria of adverse effect. If the agency determines that the effect will not be adverse, a determination of "no adverse effect" is made and forwarded to the Council with evidence of the SHPO's concurrence. If the Council concurs, the action may proceed; if the Council concurs with conditions, the action may proceed if the agency accepts the condition. If the Council objects, the case goes into the consultation process.

(b) *Archeological Resources.* The Council's Guidelines for Making "Adverse Effect" and "No Adverse Effect" Determinations for Archeological Resources in Accordance with 36 CFR Part 800 provide a procedure for expediting proposed actions involving archeological sites that are important chiefly for the information they contain and that have minimal value for long term preservation. The lead agency may, with the concurrence of the SHPO, submit a determination of "no adverse effect," conditioned on completion of data recovery programs meeting accepted standards.

(5) *Determination of Adverse Effect and Consultation.* If a determination is made that the proposal will have an adverse effect on a property on or eligible for the National Register, the lead agency must provide the Council an opportunity to comment. In most cases, the consultation process will comply with section 106 without the necessity for a full Council review. A representative of the lead agency, the SHPO, the Council staff and other parties consult to consider ways to avoid or mitigate the adverse effect.

(a) *Preliminary Case Report.* A preliminary case report is required to initiate consultation with the Council. A draft environmental impact statement can serve as a preliminary case report, if the EIS indicates this and it contains the necessary information (see 36 CFR Part 800.13). The transmittal memorandum to the Council must specifically request consultation.

(b) *Alternatives.* Consultation focuses on alternative ways of accomplishing the purposes of a proposal without unacceptably damaging Register properties, including alternative sites, alternative actions, and alternative designs.

(c) *Mitigation.* Consultation also addresses measures to minimize the damage to Register properties. Mitigation measures include: limiting the magnitude of the proposal; modifying the proposal through redesign, reorientation of project site, or other similar changes; repairing, rehabilitating, or restoring the affected property; preservation and maintenance operations throughout the life of the proposal data recovery—pertinent chiefly where archeological resources principally valuable for scientific study are to be destroyed and recovery of the information they contain is accomplished before the undertaking proceeds; and recordation (drawings, photographs) of buildings or structures that must be destroyed or substantially altered.

(6) *Memorandum of Agreement (MOA).* If the consulting parties are able to agree on measures to avoid or mitigate adversity, they subscribe to a formal memorandum of agreement (MOA) containing stipulations that specify how the undertaking will be carried out. This MOA is signed by the Council's Executive Director, the representative of the lead agency, and the SHPO. Other involved parties sign in concurrence. Ratification by the Chairman completes the process. The MOA constitutes the comments of the Council for purposes of section 106. The final EIS should normally reflect the MOA.

If agreement cannot be reached, the action is reviewed by the Council. The advice given by the Council and the measures the agency will take to implement the advice should be identified in the final EIS.

b. *References.* (1) *Section 106 of the National Historic Preservation Act (16 USC 470(f))* requires the head of any Federal agency having jurisdiction over a Federal or federally-assisted undertaking to take into account, prior to approving the undertaking, its effect on any district, site, building, structure, or object that is included in the National Register of Historic Places, and to give the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to the undertaking.

(2) *Executive Order 11593, Protection and Enhancement of the Cultural Environment,* requires that Federal plans and programs contribute to the preservation and enhancement of sites, structures, and objects of historical, architectural, or archeological significance.

(3) Regulations for *Protection of Historic and Cultural Properties* of the Advisory Council on Historic Preservation (36 CFR Part 800), provide procedures for implementation of section 106 of the National Historic Preservation Act.

(4) *Archeological and Historic Data Preservation Act,* (16 USC 469a) directs agencies to preserve historic and archeological data that would otherwise be lost as a result of Federal action, and authorizes the agency to undertake recovery, protection and preservation of such data.

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Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in October 1980. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		Renewal and Party to Exemptions		
868-X	DOT-E 868	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 173.3(a), 173.7(a), 174.10, 174.104(f), 174.8, 177.801, 177.806(a).	To authorize exceptions to requirements for carrier inspection of manufacture, vehicle, loading, etc. for class A and B explosives loaded by Department of Defense shippers in non-DOT containers. (Modes 1, 2.)
970-X	DOT-E 970	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 173.21(b), 173.300, 173.301	To authorize shipment of a flammable poisonous gas in DOT Specification 3AA cylinders. (Modes 1, 2.)
2136-X	DOT-E 2136	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 173.1, 173.3(a), 173.7(a), 174.10, 174.104, 174.3, 174.90(a), 177.801, 177.802.	To authorize shipment of radioactive materials with explosives in Department of Defense containers packaged and loaded by the Department of Defense without carrier inspection. (Modes 1, 2.)
2462-X	DOT-E 2462	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.73(b)	To authorize shipment of a class A explosive in glass bottles overpacked in wooden boxes. (Mode 1.)
2587-X	DOT-E 2587	Denison, Inc., Fredonia, KS	49 CFR 173.315(a)(1)	To authorize shipment of liquid oxygen in non-DOT specification cargo tanks. (Mode 1.)
3095-X	DOT-E 3095	Dow Chemical Company, Tulsa, OK	49 CFR 173.119(b), 173.245, 173.263.	To authorize use of a non-DOT specification cargo tank for certain corrosive and flammable liquids. (Modes 1, 3.)
3142-X	DOT-E 3142	U.S. Dept. of Energy, Washington, DC	49 CFR 173.24(a)(1)	To authorize shipment of cylinders containing nonflammable compressed gases from which a controlled flow of gas is released to a leak calibration apparatus. (Modes 1, 2.)
3667-X	DOT-E 3667	Groendyke Transport, Inc., Enid, OK	49 CFR 173.315(a)	To authorize use of DOT Specification MC 330 cargo tank for shipment of a flammable, liquefied compressed gas. (Mode 1.)
3667-X	DOT-E 3667	Phillips Petroleum Company, Bartlesville, OK	49 CFR 173.315(a)	To authorize use of DOT Specification MC 330 cargo tank for shipment of a flammable, liquefied compressed gas. (Mode 1.)
3768-X	DOT-E 3768	PPG Industries, Inc., Pittsburgh, PA	49 CFR 173.119, 173.245, 173.288	To authorize the shipment of various chloroformates in cargo tanks. (Mode 1.)

		Renewal and Party to Exemptions—Continued		
4108-P	DOT-E 4108	Burdett Gas Products, St. Louis, MO	49 CFR 173.315(a)	To become a party to Exemption 4108. (Mode 1.)
4460-X	DOT-E 4460	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.206(a), 173.29(f)(2), 173.32(a)(1), 176.74(c), 176.76(g)(3).	To authorize metallic sodium to be packaged in a DOT Specification 51 portable tank. (Mode 3.)
4490-X	DOT-E 4490	Air Products and Chemicals, Inc., Allentown, PA	49 CFR 173.316(a)	To authorize the use of a non-DOT specification cargo

		Renewal and Party to Exemptions—Continued		
6724-X	DOT-E 6724	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 172.101, 173.89, 175.3	To authorize shipment of caseless ammunition (Class C explosives) in a fiberboard box. (Modes 1, 4.)
6754-X	DOT-E 6754	Eaton Corporation, Southfield, MI	49 CFR 173.302(a)(4), 175.3, 178.65	To authorize use of a non-DOT specification container for a nonflammable compressed gas. (Modes 1, 2, 3, 4.)

Renewal and Party to Exemptions—Continued

4108-P	DOT-E 4108	Burdett Gas Products, St. Louis, MO	49 CFR 173.315(a)	To become a party to Exemption 4108. (Mode 1.)
4460-X	DOT-E 4460	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.206(a), 173.29(f)(2), 173.32(a)(1), 176.74(c), 176.76(g)(3).	To authorize metallic sodium to be packaged in a DOT Specification 51 portable tank. (Mode 3.)
4490-X	DOT-E 4490	Air Products and Chemicals, Inc., Allentown, PA	49 CFR 173.316(a)	To authorize the use of a non-DOT specification cargo tank for the transportation of a flammable gas. (Mode 1.)
4588-X	DOT-E 4588	U.S. Department of Energy, Washington, DC	49 CFR 173.65(a)	To authorize the use of packaging not presently prescribed for certain high explosives. (Mode 1.)
4803-X	DOT-E 4803	Dow Chemical Company, Tulsa, OK	49 CFR 173.249, 173.272, 173.289	To authorize the use of a non-DOT specification cargo tank for the shipment of corrosive liquids. (Mode 1.)
5038-X	DOT-E 5038	Western Electric Company, Lee's Summit, MO	49 CFR 173.135(a)(6), 173.136(a)(5), 173.247(a)(1).	To authorize the shipment of dimethylchlorosilane, trichlorosilane, and silicon tetrachloride in non-DOT specification cylinders. (Modes 1, 2.)
5232-X	DOT-E 5232	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	49 CFR 173.314(c) table	To authorize shipment of certain flammable and nonflammable liquefied compressed gases in tank cars. (Mode 2.)
5315-X	DOT-E 5315	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 173.87	To authorize transport of a rocket engine containing a Class A explosive contained in a specially designed device. (Mode 1.)
5557-X	DOT-E 5557	U.S. Department of Energy, Washington, DC	49 CFR 173 subpart C	To authorize use of non-DOT specification containers for shipment of certain explosives, which exceed prescribed weight limits. (Mode 1.)
5792-X	DOT-E 5792	Publicker Industries, Inc., Greenwich, CT	49 CFR 172.101, 172.101, 173.314(c), 173.314(c).	To authorize the shipment of liquefied flammable gas in non-DOT specification tank cars. (Mode 2.)
5792-X	DOT-E 5792	Northern Petrochemical Company, Des Plaines, IL.	49 CFR 172.101, 172.101, 173.314(c), 173.314(c).	To authorize the shipment of liquefied flammable gas in non-DOT specification tank cars. (Mode 2.)
5793-X	DOT-E 5792	Stauffer Chemical Company, Westport, CT	49 CFR 172.101, 172.101, 173.314(c), 173.314(c)	To authorize the shipment of liquefied flammable gas in non-DOT specification tank cars. (Mode 2.)
5792-X	DOT-E 5792	Publicker Chemical Corporation, Greenwich, CT	49 CFR 172.101, 172.101, 173.314(c), 173.314(c).	To authorize the shipment of liquefied flammable gas in non-DOT specification tank cars. (Mode 2.)
5852-X	DOT-E 5852	South Jersey Gas Company, Folsom, NJ	49 CFR 172.101, 173.315(a)	To authorize use of a non-DOT specification cargo tank for a certain flammable, liquefied gas. (Mode 1.)
6016-P	DOT-E 6016	Kanweld Welding Equipment & Supplies, Kankakee, IL.	49 CFR 173.315(a)	To become a party to Exemption 6016. (Mode 1.)
6066-X	DOT-E 6066	Union Carbide Corp., New York, NY	49 CFR 173.119, 173.125, 46 CFR 98.35.	To authorize use of non-DOT specification portable tanks for certain flammable and combustible liquids. (Modes 1, 3.)
6071-X	DOT-E 6071	Walter Kidde & Company, Incorporated, Belleville, NJ.	49 CFR 173.304, 173.305, 175.3	To authorize use of non-DOT specification pressure vessels for a nonflammable compressed gas. (Modes 1, 2, 4, 5.)
6071-X	DOT-E 6071	The Boeing Company, Seattle, WA	49 CFR 173.304, 173.305, 175.3	To authorize use of non-DOT specification pressure vessels for a nonflammable compressed gas. (Modes 1, 2, 4, 5.)
6080-X	DOT-E 6080	U.S. Department of Energy, Washington, DC	49 CFR 173.301(d), 173.327(a), 173.337(a)(1).	To authorize the use of manifolded cylinders for a class A poison. (Mode 1.)
6121-X	DOT-E 6121	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 179.220-19(c)	To authorize use of DOT Specification 115A60W1 and 115A60W6 tank cars for a certain flammable liquid. (Mode 2.)
6231-X	DOT-E 6231	Lox Equipment Company, Livermere, CA	49 CFR 172.101, 173.314(c)	To authorize shipment of liquefied flammable gas in insulated non-DOT specification tank cars. (Mode 2.)
6334-X	DOT-E 6334	Allied Chemical Corporation, Morristown, NJ	49 CFR 172.101, 172.504	To authorize use of DOT Specification MC-312, MC-330, or MC-331 cargo tanks for an oxidizer. (Mode 1.)
6334-X	DOT-E 6334	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 172.101, 172.504	To authorize use of DOT Specification MC-312, MC-330, or MC-331 cargo tanks for an oxidizer. (Mode 1.)
6392-X	DOT-E 6392	Stauffer Chemical, Westport, CT	49 CFR 172.101, 173.314(c)	To authorize use of non-DOT specification vacuum insulated tank car tanks for a liquefied flammmable compressed gas. (Mode 2.)
6418-X	DOT-E 6418	Great Lakes Chemical Corporation, El Dorado, AK.	49 CFR 173.357(b)	To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310, or MC-312 steel cargo tanks for Class B poisonous liquids. (Mode 1.)
6442-X	DOT-E 6442	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 173.53(k), 173.87	To authorize the transport of a 155 mm high explosive projectile containing either a corrosive or flammable liquid in a metal cannister with an inner polyethylene container. (Modes 1, 2.)
6498-X	DOT-E 6498	Luxfer USA, Limited, Riverside, CA	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(d)(3), 173.336(a)(2), 175.3.	To authorize the use of non-DOT specification aluminum cylinders for the transportation of certain liquefied and nonliquefied compressed gases and certain other hazardous materials. (Modes 1, 2, 3, 4, 5.)
6556-X	DOT-E 6556	Castle and Cooke, Inc., San Francisco, CA	49 CFR 173.132	To authorize use of a non-DOT specification single compartment portable tank for a flammable liquid. (Modes 1, 3.)
6598-X	DOT-E 6598	Dow Chemical Company, Midland, MI	49 CFR 173.245(a)(16)	To authorize use of a DOT 6D cylindrical steel overpack with a non-DOT inner container for a certain corrosive liquid. (Modes 1, 2.)
6602-P	DOT-E 6602	Ferro Corporation, Hammond, IN	49 CFR 173.245(a), 173.314(c), 173.315(a)(1).	To become a party to Exemption 6602. (Modes 1, 2.)
6602-X	DOT-E 6602	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.245(a), 173.314(c), 173.315(a)(1).	To authorize use of DOT MC-331 cargo tanks and DOT 105A500W or 106A500X tank car tanks for certain corrosive liquids and nonflammable compressed gases. (Modes 1, 2)
6611-P	DOT-E 6611	Teikoku Sanso Kabushiki Kaisha, Kobe, Japan	49 CFR 172.101, 173.315(a)	To become a party to Exemption 6611. (Modes 1, 3.)
6653-X	DOT-E 6653	Shell Oil Company, Houston, TX	49 CFR 173.245, 173.358	Top authorize shipment of an insecticide or a corrosive material in highly specialized inner and outer containers. (Modes 1, 2, 3.)
6694-X	DOT-E 6694	Ugine Kuhlmann, Paris, France	49 CFR 179.315	To authorize use of non-DOT specification portable tanks for a nonflammable compressed gas (Modes 1, 2, 3.)
6695-X	DOT-E 6695	Ugine Kuhlmann, Paris, France	49 CFR 173.315	To authorize the use of a non-DOT specification portable tank for a certain nonflammable compressed gas. (Modes 1, 3.)

Renewal and Party to Exemptions—Continued

6724-X	DOT-E 6724	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 172.101, 173.89, 175.3	To authorize shipment of caseless ammunition (Class C explosives) in a fiberboarrt box. (Modes 1, 4.)
6754-X	DOT-E 6754	Eaton Corporation, Southfield, MI	49 CFR 173.302(a)(4), 175.3, 178.65	To authorize use of a non-DOT specification container for a nonflammable compressed gas. (Modes 1, 2, 3, 4.)
6811-X	DOT-E 6811	Eaton Corporation, Southfield, MI	49 CFR 173.302(a)(4), 175.3, 178.65	To authorize use of a non-DOT specification cylinder for a nonflammable compressed gas. (Modes 1, 2, 3, 4.)
6824-X	DOT-E 6824	Georgia-Pacific Corporation, Los Angeles, CA	49 CFR 173.217(a)	To authorize packagings not provided for in the Hazardous Materials Regulations for certain oxidizing materials. (Modes 1, 2, 3.)
6844-X	DOT-E 6844	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	49 CFR 173.249a	To authorize the use of a non-DOT specification 275-gallon "Dypak" single-trip polyethylene container overpacked in a plywood box for the transportation of a certain corrosive liquid (Modes 1, 2, 3.)
6898-P	DOT-E 6898	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 178.150-4(a)(1)	To become a party to Exemption 6898. (Modes 1, 2, 3.)
6898-P	DOT-E 6898	MCB Manufacturing Chemists, Inc., Cincinnati, OH.	49 CFR 178.150-4(a)(1)	To become a party to Exemption 6898. (Modes 1, 2, 3.)
6927-X	DOT-E 6927	Dow Chemical Company, Midland, MI	49 CFR 173.353	To authorize use of a non-DOT specification portable tank for certain Class B poisonous liquids. (Modes 1, 3.)
6927-X	DOT-E 6927	Great Lakes Chemical Corporation, W. Lafayette, IN	49 CFR 173.353	To authorize use of a non-DOT specification portable tank for certain Class B poisonous liquids. (Modes 1, 3.)
6929-X	DOT-E 6929	U.S. Department of Energy, Washington, DC	49 CFR 173.88(e)(2)(ii), 173.92(b)	To authorize shipment of rocket motors in a propulsive state. (Modes 1, 3.)
6932-X	DOT-E 6932	Ugine Kuhlmann, Paris, France	49 CFR 173.264(b)(4)	To authorize use of non-DOT specification portable tanks for anhydrous hydrofluoric acid. (Modes 1, 3.)
6944-X	DOT-E 6944	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 173.62(a), 177.834(L)(1)	To authorize the transport of a liquid high explosive in a specially designed stainless steel desiccator. (Mode 1.)
6960-X	DOT-E 6960	Pepsi-Cola Company, Purchase, NY	49 CFR parts 100-199	To authorize the use of steal drums not presently authorized in the Hazardous Materials Regulations for shipment of certain corrosive liquids. (Modes 1, 2.)
6962-X	DOT-E 6962	U.S. Department of Energy, Washington, DC	49 CFR 173.301(d)	To authorize shipment of nonflammable compressed gases in DOT-3AA1800 or 3AA2000 cylinders. (Modes 1, 2.)
6971-X	DOT-E 6971	Chem Service, Inc., West Chester, PA	49 CFR 173.286(b), 175.3	To authorize the transportation of small quantities of reagent chemicals in metal cases or metal boxes having inside glass bottles. (Modes 1, 2, 3, 4.)
6984-X	DOT-E 6984	Ireco Chemicals, Salt Lake City, UT	49 CFR 173.103(a), 173.66(g), 177.835(g)(2)(i).	To authorize the packaging of 100 or less electric blasting caps in IME 22 containers (Class C explosives) (Mode 1.)
6964-X	DOT-E 6984	Hercules, Incorporated, Wilmington, DE	49 CFR 173.103(a), 173.66(g). 177.835(g)(2)(i).	To authorize the packaging of 1000 or less electric blasting caps in IME 22 containers (Class C explosives). (Mode 1.)
6984-X	DOT-E 6984	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	49 CFR 173.103(a), 173.66(g). 177.835(g)(2)(i).	To authorize the packaging of 1000 or less electric blasting caps in IME 22 containers (Class C explosives) (Mode 1.)
6984-X	DOT-E 6984	International Minerals and Chemical Corporation, Allentown, PA.	49 CFR 173.103(a), 173.66(g). 177.835(g)(2)(i).	To authorize the packaging of 1000 or less electric blasting caps in IME 22 containers (Class C explosives). (Mode 1.)
7035-X	DOT-E 7035	Owner-Illinois (Plastic Products Division), Toledo, OH	49 CFR 173.128(a), 173.19, 173.245(a)(26), 173.249(a)(1), 173.250a(a)(1), 173.254b(a)(6), 173.257(a)(1), 173.263(a)(26), 173.265(d)(6). 173.266(b)(8), 173.272(i)(9), 173.276(a)(10), 173.277(a)(6). 173.287(c)(1). 173.289(a)(1), 173.292(a)(1).	To authorize use of non-DOT specification drums for the shipment of corrosive liquids and solids, oxidizer, and flammable liquids. (Models 1, 2, 3.)
7097-X	DOT-E 7097	Fuller System, Inc., Woburn, MA	49 CFR 173.377(f)	To except dry mixtures of parathion and tetraethyl dithio pyrophosphate from specification packaging requirements. (Mode 1.)
7285-X	DOT-E 7285	Ugine Kuhlmann, Paris, France	49 CFR 173.315(a)	To authorize the use of non-DOT specification portable tanks for transportation of certain nonflammable, liquefied gases. (Modes 1, 2, 3.)
7538-X	DOT-E 7538	Southern Chemical Products Company, Macon, GA.	49 CFR 178.19, Part 173, Sub F	To authorize the manufacture, marking, and sale of non-DOT specification polyethylene containers for use in packaging of certain corrosive liquids. (Modes 1, 2, 3.)
7600-X	DOT-E 7500	Lubbock Manufacturing Company, Lubbock, TX	49 CFR 1732.101, 173.315(a)(1)	To authorize the manufacture, marking and sale of non-DOT specification cargo tanks to be used in the transportation of certain flammable gases. (Mode 1.)
7835-P	DOT-E 7835	Scott Environmental Technology Inc.848		To become a party to Exemption 7835. (Mode 1.)
7938-P	DOT-E 7938	Compagnie Generale Maritime, Paris, France	49 CFR Part 173, Subpart D, F, H	To become a party to Exemption 7939. (Modes 1, 2, 3.)
8008-X	DOT-E 8008	Wheaton Aerosols Co., Mays Landing, NJ	49 CFR 173.305, 173.306(a)	To authorize the use of a non-DOT specification container for the transportation of a flammable propellant gas. (Modes 1, 2, 3, 4.)
8060-X	DOT-E 8060	SLEMI, S A., Paris, France	49 CFR 173.315(a)	To authorize the use of non-DOT specification portable tanks for the transportation of certain non-flammable liquefied gases. (Modes 1, 2, 3.)
8060-X	DOT-E 8060	Ugine Kuhlmann, Paris, France	49 CFR 173.315(a)	To authorize the use of non-DOT specification portable tanks for the transportation of certain non-flammable liquefied gases. (Modes 1, 2, 3.)
8157-X	DOT-E 8157	Born Free Plastics, Inc., Houston, TX	49 CFR 173.346	To authorize the shipment of dinitro-phenol solutions in DOT 34, 30-gallon capacity drums. (Modes 1, 2, 3.)
8186-X	DOT-E 8186	King-Seeley Thermos Company, Kendallville, IN	49 CFR 173.202, 174.3, 175.3	To authorize sodium potassium liquid sealed in a stainless steel temperature sensing bulb of a thermostat to be shipped in a non-DOT corrugated fiberboard box. (Modes 1, 2, 4.)

Renewal and Party to Exemptions—Continued

8206-P	DOT-E 8206	Copps Industries, Inc., Menomonee Falls, WI	49 CFR 173.245(a)(17), 175.3, 178.131.	To become a party to Exemption 8206. (Modes 1, 2, 3, 4.)
8207-P	DOT-E 8207	Copps Industries, Inc., Menomonee Falls, WI	49 CFR 173.245(a)(17), 175.3, 178.131.	To become a party to Exemption 8207. (Modes 1, 2, 3, 4.)
8225-X	DOT-E 8225	Hoover Universal, Inc., Beatrice, NE	49 CFR 173.245, 173.249, 173.249a, 173.257, 173.263, 173.266.	To authorize the use of a non-DOT specification rotationally molded, cross-linked polyethylene portable

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, D.O.T.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in November 1980. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for

Renewal and Party to Exemptions—Continued

8206-P	DOT-E 8206	Copps Industries, Inc., Menomonee Falls, WI	49 CFR 173.245(a)(17), 175.3, 178.131.	To become a party to Exemption 8206. (Modes 1, 2, 3, 4.)
8207-P	DOT-E 8207	Copps Industries, Inc., Menomonee Falls, WI	49 CFR 173.245(a)(17), 175.3, 178.131.	To become a party to Exemption 8207. (Modes 1, 2, 3, 4.)
8225-X	DOT-E 8225	Hoover Universal, Inc., Beatrice, NE	49 CFR 173.245, 173.249, 173.249a, 173.257, 173.263, 173.266, 173.272, 173.277, 173.292, 178.19, 178.253.	To authorize the use of a non-DOT specification rotationally molded, cross-linked polyethylene portable tank for the shipment of corrosive liquids and an oxidizer. (Modes 1, 2.)
8244-X	DOT-E 8244	Halliburton Services, Inc., Duncan, OK	49 CFR 173.119, 173.125, 173.245, 173.263, 173.264, 173.289, 46 CFR 64.9.	To authorize shipment of various flammable, combustible, and corrosive materials in lined marine portable tank. (Modes 1, 3.)
8324-P	DOT-E 8324	Copps Industries, Inc., Menomonee Falls, WI	49 CFR 173.245(a)(17), 175.3, 178.131.	To become a party to Exemption 8324. (Modes 1, 2, 3, 4.)
8375-P	DOT-E 8375	Sea Containers, Inc., New York, NY	49 CFR 173.119, 173.125, 173.245, 173.247, 173.346, 173.347, 46 CFR 90.05-35, 46 CFR 98.35-3.	To become a party to Exemption 8375. (Modes 1, 2, 3.)
8370-N	DOT-E 8370	Henred Fruehauf, Ltd., Johannesburg, S. Africa	49 CFR 173.119, 173.125, 173.245	To authorize the use of a non-DOT specification intermodal portable tank for shipment of various flammable and combustible liquids and corrosive materials. (Modes 1, 2, 3.)
8391-N	DOT-E 8391	Acurex Corporation, Aerotherm Group, Mountain-view, CA.	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To authorize the use of a non-DOT specification cylinder for shipment of various nonflammable gases. (Modes 1, 2, 3, 4, 5.)
8436-N	DOT-E 8436	Pennwalt Corporation, Buffalo, NY	49 CFR 173.119(m)(10), 173.119(m)(11), 173.119(m)(12).	To authorize shipment of an organic peroxide, classed as a flammable liquid, in a DOT Specification MC-331 cargo tank equipped with temperature and pressure sensing devices. (Mode 1.)
8450-N	DOT-E 8450	Vought Corporation, Dallas, TX	49 CFR 173.92	To authorize shipment of rocket motors, Class B explosives, in non-DOT specification 3/8 inch polyethylene containers with steel bases. (Mode 1.)
8454-N	DOT-E 8454	Thiokol Corporation, Brigham City, UT	49 CFR 173.93	To authorize shipment of propellant explosives (solid) Class B in a specially designed hopper tank similar to DOT Specification 56. (Mode 1.)
8457-N	DOT-E 8457	Texas Instruments, Incorporated, Johnson City, TN	49 CFR 172.101, 175.3	To authorize shipment of lithium batteries, classed as a flammable solid, contained in specially designed electronic equipment. (Modes 1, 2, 3, 4, 5.)
8463-N	DOT-E 8463	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.262(b)(1), 173.262(b)(2), 173.262(b)(3).	To authorize shipment of not over 62% hydrobromic acid in glass bottles contained in metal cans overpacked in a DOT Specification 12A fiberboard box. (Mode 1.)
8465-N	DOT-E 8465	Chase Bag Co., Oak Brook, IL	49 CFR 173.182	To authorize the manufacture, marking, and sale of a 4 mil bag of low density polyethylene film, 50 pound capacity, for shipment of ammonium nitrate fertilizer. (Modes 1, 2.)
8474-N	DOT-E 8474	Physics International, San Leandro, CA	49 CFR 173.114a(j)	To authorize shipment of a limited number of packages of nitrocarbonitrate after December 31, 1980 bearing the oxidizer label. (Mode 1.)
8475-N	DOT-E 8475	Chemical & Metal Industries, Inc., Denver, CO	49 CFR 173.245(a)	To authorize shipment of a corrosive liquid, n.o.s. in DOT Specification 106A500-X and 110A500-W multi-unit tank car tanks. (Mode 1.)
8476-N	DOT-E 8476	Warren Petroleum Company, Tulsa, OK	49 CFR 173.315(a)(1), 173.315(c)(1)	To authorize shipment of ethane-propane mixtures and other petroleum gases in DOT Specification MC-331 cargo tanks in accordance with Notice No. 79-3, Docket HM-115. (Mode 1.)
8477-N	DOT-E 8477	Mobay Chemical Corporation, Pittsburgh, PA	49 CFR 173.247(a)(13)	To authorize shipment of thionyl chloride, classed as a corrosive material in DOT Specification 111A100-W-6 tank cars constructed of 316L stainless steel. (Mode 2.)
8478-N	DOT-E 8478	West-Mark, Ceres, CA	49 CFR 173.119(a)(17), 173.245(a)(30)(31), 177.824(c)(4), 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT Specification cargo tanks complying generally with DOT Specification MC-307 or MC-312 except for bottom outlet valve variations for the transportation of flammable or corrosive waste, liquids or semi solids. (Mode 1.)
8482-N	DOT-E 8482	University of California, Santa Barbara, CA	49 CFR 173.206	To authorize a one-time shipment of a stainless steel research container of lithium metal overpacked in a plywood crate. (Modes 1, 3.)

Emergency Exemptions

EE 8513-N	DOT-E 8513	Alaska International Airline, Anchorage, AK	49 CFR 172.101, 173.315(a)(1), 175.3	To authorize limited shipments of liquefied nitrogen pressurized in non-DOT specification portable tanks. (Mode 4.)

Denials

7218-X—Request by Structural Composites Industries, Inc., Azusa, CA to amend the hydroburst failure mode requirement denied October 9, 1980 as being unnecessary.
7277-X—Request by Structural Composites Industries, Inc., Azusa, CA to amend the hydroburst failure mode requirement denied October 9, 1980 as being unnecessary.
8297-N—Request by Equip Rail Company, Washington, DC to authorize shipment of liquid hazardous materials of various classifications in non-DOT specification IMCO type II portable tanks denied October 29, 1980.
8411-N—Request by The Goodyear Tire & Rubber Co, Akron, OH to authorize shipment of various hazardous waste materials in DOT Specification 17C, 17E & 17H drums complying with the reconditioning requirements except for the cleaning process denied October 9, 1980.

Issued in Washington, D.C., on December 16, 1980.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 80-39774 Filed 12-24-80; 8:45 am]

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Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, D.O.T.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in November 1980. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
Renewal and Party to Exemptions				
970-X	DOT-E 970	Callery Chemical Co., Callery, PA	49 CFR 173.21(b), 173.300, 173.301	To authorize shipment of a flammable poisonous gas in DOT Specification 3AA cylinders. (Modes 1, 2.)
3121-P	DOT-E 3121	Air Products and Chemicals, Inc., Allentown, PA	49 CFR 173.336(a), 177.841(b)	To become a party to Exemption 3121. (Mode 1.)
3193-X	DOT-E 3193	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.314(c), 173.315(a)(1)	To authorize use of DOT Specification packaging not presently prescribed for shipment of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, 3.)
4039-X	DOT-E 4039	Airco Industrial Gases, Murray Hill, NJ	49 CFR 173.316(a)	To authorize shipment of liquefied hydrogen in a non-DOT specification portable tank. (Mode 1.)
4282-X	DOT-E 4282	Hercules, Incorporated, Wilmington, DE	49 CFR 172.101, 173.114a, 173.93(a)	To authorize use of privately owned and specially designed cargo tanks for a class B explosive and oxidizer. (Mode 1.)
4354-X	DOT-E 4354	PPG Industries, Inc., Pittsburgh, PA	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(e)	To authorize the shipment of chloroformates in a polyethylene drum as additional packaging. (Modes 1, 2, 3.)
4490-X	DOT-E 4490	National Aeronautics and Space Administration, Washington, DC	49 CFR 173.316(a)	To authorize the use of a non-DOT specification cargo tank for the transportation of a flammable gas. (Mode 1.)
4631-X	DOT-E 4631	Energy Sciences & Consultants, Inc., Biwabik, MN.	49 CFR 173.114a, 173.182(c), 173.304(a).	To authorize use of non-DOT hopper-type tank trucks and cargo tank trailers for shipment of an oxidizing material and a nonflammable compressed gas. (Mode 1.)
4717-X	DOT-E 4717	Stauffer Chemical Company, Westport, CT	49 CFR 172.101, 173.314(c)	To authorize shipment of ethylene in non-DOT specification tank cars. (Mode 2.)
5186-X	DOT-E 5186	Liquid Carbonic Corporation, Chicago, IL	49 CFR 172.101, 173.315(a)	To authorize shipment of a flammable liquefied compressed gas in a non-DOT specification cargo tank. (Mode 1.)
5403-X	DOT-E 5403	Halliburton Services, Inc., Duncan, OK	49 CFR 173.245(a)(31), 173.248(a)(6), 173.249a)(6), 173.263(a)(10), 173.264(a)(14), 173.268(b)(3), 173.272(i)(21), 173.289(a)(4), 178.343-2(b), 178.343-5(b)(1)(i), 178.343-5(b)(2)(i).	To authorize the use of cargo tanks, meeting the requirements of DOT Specification MC-312 with certain exceptions, in support of oil well acidizing and industrial cleaning operations. (Modes 1,3.)
5959-X	DOT-E 5959	Ethyl Corp., Baton Rouge, LA	49 CFR 172.101, 173.315(a)	To authorize shipment of liquefied ethylene in non-DOT specification cargo tanks. (Mode 1.)
6113-X	DOE-E 6113	Boston Gas Company, Boston, MA	49 CFR 172.101, 173.315(a)	To authorize the use of a non-DOT specification cargo tank for the transportation of certain flammable gases. (Mode 1.)
6197-P	DOE-E 6197	Boston Gas Company, Boston, MA	49 CFR 172.101, 173.315(a)(1)	To become a party to Exemption 6197. (Mode 1.)
6325-X	DOE-E 6453	Atlas Powder Company, Dallas, TX	49 CFR 173.114a	To authorize the transportation of oxidizers in containers not presently prescribed in the Hazardous Materials Regulations. (Mode 1.)
6349-X	DOT-E 6349	Union Carbide Corporation, Linde Division, Tarrytown, NY.	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification portable tanks for certain flammable and nonflammable gases. (Modes 1, 2, 3.)
6418-X	DOT-E 6418	Shell Oil Company, Houston, TX	49 CFR 173.357(b)	To authorize use of DOT Specification MC-303, MC-304, MC-306, MC-307, MC-310, or MC-312 steel cargo tanks for Class B poisonous liquids. (Mode 1.)
6518-X	DOT-E 6518	Stauffer Chemical Company, Westport, CT	49 CFR 172.101, 172.302, 173.119, 173.134, 173.154.	To authorize the shipment of specified pyrophoric liquids and solids, water reactive solids and certain other flammable liquids in steel portable tanks. (Modes 1, 3.)
6518-X	DOT-E 6518	Union Carbide Corporation, New York, NY	49 CFR 172.101, 172.302, 173.119, 173.134, 173.154.	To authorize the shipment of specified pyrophoric liquids and solids, water reactive solids and certain other flammable liquids in steel portable tanks. (Modes 1, 3.)
6651-X	DOT-E 6651	Heatbath Corporation, Chicago, IL	49 CFR 173.28(h), 173.28(m)	To authorize one time reuse of the involved single-trip containers of certain class B poisonous solids. (Mode 1.)
6668-X	DOT-E 6668	Union Carbide Corporation, Linde Division, Tarrytown, NY.	49 CFR 173.304(a)(2), 178.57	To authorize shipment of liquid oxygen in non-DOT specification cylinders. (Modes 1, 2.)
5672-X	DOT-E 6672	Chandler Evans, Inc., West Hartford, CT	49 CFR 173.302(a)(4), 175.3	To authorize use of non-DOT cylinders for shipment of certain non-liquefied compressed gases. (Modes 1, 2, 4.)
3824-P	DOT-E 6824	GPS Industries, City of Industry, CA	49 CFR 173.217(a)	To become a party to Exemption 6824. (Modes 1, 2, 3.)
3890-X	DOT-E 6890	U.S. Department of Defense/MTMC, Washington, DC.	49 CFR 173.100(cc), 175.3	To authorize transport of an explosive severance system consisting of linear segments which may contain up to 79 grams of hexanitrostilbene (class C explosive). (Modes 1, 2, 3, 4.)
7013-X	DOT-E 7013	ASM Enterprises, Incorporated, Pine Bluff, AR	49 CFR 173.315(a)(1)	To authorize the use of a non-DOT specification cargo tank for a flammable compressed gas. (Mode 1.)

Renewal and Party to Exemptions—Continued

7041-X	DOT-E 7041	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.134(a)(6)	To authorize shipment of pyrophoric waste materials in non-DOT specification cargo tank of the MC-331 type. (Mode 1.)
7046-X	DOT-E 7046	J. T. Baker Chemical Company, Phillipsburg, NJ	49 CFR 173.269, 178.340-5(c)	To authorize the use of glass lined cargo tanks complying with DOT Specification MC-312 except for Section 178.340-5. (Modes 1, 3.)

New Exemptions—Continued

EE8512-N	DOT-E 8512	ICD Group, Incorporated, New York, NY	49 CFR 173.163	To authorize the shipment of potassim chlorate in polyethylene lined bags. (Mode 1.)
EE8527-N	DOT-E 8527	United Parcel Service, Greenwich, CT	49 CFR 172.504(c)	To authorize placarding of rail transport vehicles in the same manner as prescribed for highway transport vehicles for shipment of various hazardous materials. (Mode 2.)
EE8530-N	DOT-E 8530	Southern Air Transport, Inc., Miami, FL	49 CFR 172.101, 172.504(e)(1)	To authorize the transportation of certain hazardous materials in DOT Specification 2P containers. (Mode 4.)

Renewal and Party to Exemptions—Continued

7041-X	DOT-E 7041	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.134(a)(6)	To authorize shipment of pyrophoric waste materials in non-DOT specification cargo tank of the MC-331 type. (Mode 1.)
7046-X	DOT-E 7046	J. T. Baker Chemical Company, Phillipsburg, NJ	49 CFR 173.269, 178.340-5(c)	To authorize the use of glass lined cargo tanks complying with DOT Specification MC-312 except for Section 178.340-5. (Modes 1, 3.)
7052-P	DOT-E 7052	Allen-Bradley, Twinsburg, OH	49 CFR 172.101, 175.3	To become a party to Exemption 7052. (Mode 1, 2, 3, 4.)
7085-X	DOT-E 7085	California Seal Control Corporation, San Pedro, CA.	49 CFR 172.101, 173.100, 173.51(a)(7), 173.86.	To authorize packaging not presently authorized by the Hazardous Materials Regulations for class C explosives. (Modes 1, 2, 3.)
7096-X	DOT-E 7096	Fike Metal Products Corporation, Blue Springs, MO.	49 CFR 173.304(a)(1), 178.55	To authorize shipment of a nonflammable liquefied compressed gas (bromotrifluoromethane) in non-DOT specification cylinders. (Modes 1, 2, 3.)
7517-X	DOT-E 7517	Trinity Industries, Inc., Dallas, TX	49 CFR 173.314(c)	To authorize the manufacture, marking, and sale of non-DOT specification tank car tanks for use in the transportation of a nonflammable compressed gas. (Modes 1, 2, 3.)
7574-X	DOT-E 7574	Remmers-Tomkins Flight Service, Inc., Burlington, IA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize the transportation of certain explosives that are not permitted for air shipment or are in quantities greater than prescribed. (Mode 4.)
7753-P	DOT-E 7753	Hooker Chemical Company, Houston, TX	49 CFR 173.190(b)(2)	To become a party to Exemption 7753. (Modes 1, 2, 3.)
7798-X	DOT-E 7798	Ro-Go Chemical Co., Fresno, CA	49 CFR 173.248	To authorize the use of fiberboard box/polyethylene container packagings for the transportation of spent sulfuric acid. (Mode 1.)
7808-X	DOT-E 7808	Whitmire Research Laboratories, Inc., St. Louis, MO.	49 CFR 172.101, 173.34(d), 175.3	To authorize the shipment of insecticides in DOT 39 Specification cylinders without Bureau of Explosives approved safety device. (Modes 1, 2, 3, 4.)
7823-X	DOT-E 7823	Allied Chemical Corporation, Morristown, NJ	49 CFR 173.246	To authorize the transportation of iodine pentafluoride in cylinders conforming to DOT Specification 4BW with certain exceptions. (Modes 1, 2, 3.)
8012-P	DOT-E 8012	Catu Containers, S.A., Geneva, Switzerland	49 CFR 173.266	To become a party to Exemption 8012. (Modes 1, 2, 3.)
8012-P	DOT-E 8012	Lowaco, S.A., Geneva, Switzerland	49 CFR 173.266	To become a party to Exemption 8012. (Modes 1, 2, 3.)
8053-X	DOT-E 8053	Eastman Kodak Company, Rochester, NY	49 CFR 173.148(a), 175.3	To authorize shipment of monethylamine in inside glass bottles/metal can packagings overpacked in DOT Specification 12B fiberboard boxes. (Modes 1, 2, 4.)
8055-X	DOT-E 8055	Associated Lead, Inc., Philadelphia, PA	49 CFR 173.154	To authorize the shipment of a flammable solid in 50-pound capacity DOT Specification 44C multi-wall paper bags. (Modes 1, 2, 3.)
8063-X	DOT-E 8063	Union Carbide Corporation, Linde Division, Tarrytown, NY.	49 CFR 173.304(a)	To authorize the use of a DOT Specification 4L cylinder for the transportation of certain nonflammable gases. (Mode 1.)
8111-X	DOT-E 8111	U.S. Department of Energy, Washington, DC	49 CFR 173.304(a)	To authorize the use of non-DOT specification welded, stainless steel cylinder for the transportation of a nonflammable gas mixture. (Modes 1, 2, 3, 4, 5.)
8153-P	DOT-E 8153	Chemical Waste Management, Inc., Emelle, AL	49 CFR 173.119(a)(17), 173.245(a)(30), 173.245(a)(31), 178.342-5, 178-343-5.	To become a party to Exemption 8153. (Mode 1.)
8215-X	DOT-E 8215	Olin Corporation, Winchester-Western Division, East Alton, IL.	49 CFR 173.101, 173.107, 173.60, 173.74, 173.78, 173.93.	To authorize the shipment of certain identified Class A, B, and C explosives in non-DOT specification containers. (Mode 1.)
8380-P	DOT-E 8380	Fomo Products, Inc., Akron, OH	49 CFR 173.1200(a)(8)(ii)(A), 173.1200(a)(8)(ii)(E).	To become a party to Exemption 8380. (Mode 1.)
8390-N	DOT-E 8390	Allied Chemical Company, Morristown, NJ	49 CFR 173.272, 178.210, 178.24a	To become a party to Exemption 8390. (Mode 1.)

New Exemptions

8431-N	DOT-E 8431	Dow Chemical Company, Midland, MI	49 CFR 173.294(a)(2), 179.202-16	To authorize shipment of monochloroacetic acid solution, classed as a corrosive material in DOT Specification 111A100W6 tank cars made of 316L stainless steel with bottom outlets and washout prohibited. (Mode 2.)
8439-N	DOT-E 8439	Hydraulic Research Textron, Pacoima, CA	49 CFR 173.302, 173.304, 175.3, 178.47.	To manufacture, mark, and sell non-DOT specification cylinder complying with DOT Specification 4DS, with certain exemptions, for shipment of various nonflammable compressed gases. (Modes 1, 2, 3, 4, 5.)
8458-N	DOT-E 8458	E. I. du Pont de Nemours & Co. Inc., Wilmington, DE.	49 CFR 173.31(c) Table 1	To authorize DOT Specification 111A100W2 tank cars (converted from 105A500W or 112A400W tank cars) for shipment of various corrosive and oxidizing materials to be retested every 10 years. (Mode 2.)
8468-N	DOT-E 8468	Hedwin Corporation, Baltimore, MD	49 CFR 173.119, 173.125, 173.272, 173.288, 173.346.	To authorize the manufacture, marking, and sale of DOT Specification 34, 5 and 6 gallon polyethylene containers for shipment of certain flammable, poison B, and corrosive liquids. (Modes 1, 2, 3.)
8490-N	DOT-E 8490	Houghton Chemical Corporation, Allston, MA	49 CFR 173.245(a)(31)	To authorize shipment of acetic acid (glacial) monoethanolamine and monethanolamine solutions classed as corrosive materials in a 4 compartmented bottom unloading MC-306 cargo tank constructed of type 304 stainless steel. (Mode 1.)
8492-N	DOT-E 8492	Bacharach Instruments Company, Santa Clara, CA.	49 CFR 173.304(a)(2), 175.3	To manufacture, mark and sell a non-DOT specification cylinder (calibration device) for shipment of liquefied hydrogen sulfide. (Modes 1, 2, 3, 4.)
8496-N	DOT-E 8496	American Cyanamid Company, Wayne, NJ	49 CFR 173.351	To authorize shipment of solutions containing less than 5% hydrocyanic acid, classed as poison B liquid, in packages prescribed in Section 173.332. (Modes 1, 2.)

New Exemptions—Continued

EE8512-N	DOT-E 8512	ICD Group, Incorporated, New York, NY	49 CFR 173.163	To authorize the shipment of potassim chlorate in polyethylene lined bags. (Mode 1.)
EE8527-N	DOT-E 8527	United Parcel Service, Greenwich, CT	49 CFR 172.504(c)	To authorize placarding of rail transport vehicles in the same manner as prescribed for highway transport vehicles for shipment of various hazardous materials. (Mode 2.)
EE8529-N	DOT-E 8529	Southern Air Transport, Inc., Miami, FL	49 CFR 172.101, 173.56(c)(e)(1), 175.30.	To authorize the transportation of bombs and grenades for shipment by cargo-only aircraft. (Mode 4.)
EE8530-N	DOT-E 8530	Global International Airways, Kansas City, MO	49 CFR 107.102 column 6b, 175.30	To authorize the transport of rocket ammunition with explosive projectile and/or smoke projectile for shipment by cargo-only aircraft. (Mode 4.)

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6530-X	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in certain cylinders filled to 110% of its marked service pressure. (Modes 1, 2.)

Denials

8398-N—Request by W. R. Grace and Company, Lexington, MA to authorize the use of a valve, incorporated in the closure of a DOT Specification 17E drum, to relieve a vacuum generated within the drum denied November 13, 1980.

Issued in Washington, D.C., on December 16, 1980.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 80-39775 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-60-M

[Docket No. 79-7W; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Grant of Waiver

The Champlin Petroleum Company petitioned the Materials Transportation Bureau (MTB) for a waiver from compliance with the cathodic protection requirements of Subpart I of 49 CFR Part 192. The requested waiver would apply to Champlin Petroleum Company's Wilmington Oil Field gas gathering lines within the city limits of Los Angeles and Long Beach, California.

The petition stated that the gas gathering lines for which the waiver was requested operate at a vacuum to remove the gas from the crude oil at the wellhead. Also, the gas gathering lines are continuously monitored for air content to permit early detection of any leak in the gas gathering pipelines, and all detected leaks are promptly repaired.

In response to this petition, MTB issued a notice of a petition for waiver inviting interested persons to comment (45 FR, 54930, August 18, 1980). In this notice, MTB stated that it was considering granting the requested waiver on the basis that the cathodic protection requirements of Subpart I of 49 CFR Part 192 are not necessary for public safety with regard to a gas gathering system operating under negative pressure.

One comment was received in response to the Notice. This comment supported the granting of the waiver because gas gathering lines operating at a negative pressure and continuously monitored for air would be quickly shut down in the event of a leak and would pose no hazard to the public. Furthermore, a gas pipeline operating at a negative pressure would, in case of a leak, ingest air into the system rather than allow gas to escape, and that a pipeline operating at a negative pressure cannot rupture from overpressure, posing a minimum hazard to the public.

In consideration of the foregoing, MTB, by this order, finds that compliance with Subpart I, 49 CFR Part 192, is unnecessary under the circumstances set forth in the petition and that the requested waiver would not be inconsistent with pipeline safety. Accordingly, effective immediately, Champlin Petroleum Company is granted a waiver from compliance with Subpart I, 49 CFR Part 192, for its gas gathering lines which are operated at a negative pressure in the Wilmington Oil Field within the city limits of Los Angeles and Long Beach, California, provided the methods of monitoring and maintenance, as further described in the petition, are followed.

(49 U.S.C. 1671; 49 CFR Part 1.53; Appendix A of Part 1 and Appendix A of Part 106)

Issued in Washington, D.C., on December 18, 1980.

Melvin A. Judah,

Acting Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 80-40140 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-60-M

[Docket No. 80-6W; Notice 2]

Transportation of Natural Gas and Other Gas by Pipeline; Grant of Waiver

The Columbia Gas Transmission Corporation petitioned the Materials Transportation Bureau (MTB) for a waiver from compliance with the applicable requirements of § 192.327(e) of the Federal gas pipeline safety standards (49 CFR Part 192) for their transmission line, MA, at its crossing of the Susquehanna River, two miles above the Conowingo Dam in Harford and Cecil counties, Maryland.

The petitioner is replacing five 10-inch pipelines crossing the Susquehanna

River with one 20-inch pipeline. The existing pipelines were laid on the river bottom without cover. The petitioner requested that a waiver be granted to permit the replacement line to be laid in the same manner as the existing line.

In response to this petition, MTB

Group is to advise the Administrator and the Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery.

The sessions will convene at 8:30 a.m.

Sunshine Act Meetings

Federal Register
Vol. 45, No. 250
Monday, December 29, 1980

This section of the FEDERAL REGISTER

River with one 20-inch pipeline. The existing pipelines were laid on the river bottom without cover. The petitioner requested that a waiver be granted to permit the replacement line to be laid in the same manner as the existing line.

In response to this petition, MTB issued a notice of a petition for waiver, inviting interested persons to comment (45 FR 54930, August 18, 1980). In this notice, MTB stated that it was considering granting the requested waiver on the basis that the cover reuired by § 192.327(e) is in this instance not necessary for public safety.

Four comments were received in response to the invitation to comment. All four of the comments supported the granting of the waiver. The commenters stated that, under the conditions proposed by the petitioner, there would not be any reduction in public safety; also, a waiver would result in less impact on the environment, would have a significant impact in reducing the cost, and would be in keeping with the Presidential guidelines to reduce unnecessary costs to the public.

In consideration of the foregoing, MTB, by this order, finds that compliance with § 192.327(e) is unnecessary for the reasons set forth in Notice 1, and that the requested waiver would not be inconsistent with pipeline safety. Accordingly, effective immediately, Columbia Gas Transmission Corporation is granted a waiver from compliance with § 192.327(e) regarding the crossing of their transmission line, MA, of the Susquehanna River; provided the methods of installation and inspection, as further described in the petition, are followed.

(49 USC 1672; 49 CFR Parts 1.53, Appendix A of Part 1, and Appendix A of Part 106)

Issued in Washington, D.C., on December 19, 1980.

Melvin A. Judah,

Acting Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 80-40141 Filed 12-24-80; 8:45 am]

BILLING CODE 4910-60-M

VETERANS ADMINISTRATION

Special Medical Advisory Group; Meeting

The Veterans Administration gives notice under 38 U.S.C. 4112, that a meeting of the Special Medical Advisory Group will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC, on January 14 and 15, 1981. The purpose of the Special Medical Advisory Group is to advise the Administrator and the Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery.

The sessions will convene at 8:30 a.m. both ways. These sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Pryor, Executive Secretary, Special Medical Advisory Group, Veterans Administration Central Office (phone (202) 389-2298) prior to January 2, 1981.

Dated: December 18, 1980.

By direction of the Administrator,

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 80-40308 Filed 12-24-80; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
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This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

Contents

Item
Securities and Exchange Commission. 1

1

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 81922, December 12, 1980.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, December 9, 1980.

CHANGES IN THE MEETING: Additional item. The following item was considered at a closed meeting on Friday, December 19, 1980 at 10:30 a.m.:

Institution and settlement of an injunctive action.

Chairman Williams and Commissioners Evans and Friedman determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Wojtas at (202) 272-2178.

December 23, 1980.

[S-2355-80 Filed 12-23-80; 3:41 pm]

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Part II

Department of Transportation

Federal Aviation Administration

Airworthiness Review Program; Amdt. No. 8A: Aircraft, Engine, and Propeller Airworthiness and Procedural Amendments; Correction

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21 and 45

[Docket Nos. 14779 and 14324; Amdt. Nos.

3. *Section 45.11.* In § 45.11(a) the reference to § 43.13 was a typographical error. The reference to § 43.13 should be § 45.13.

Since these amendments are clarifying and editorial in nature and implement changes required to carry out the intent

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21 and 45

[Docket Nos. 14779 and 14324; Amdt. Nos. 11-20A; 21-51A; and 45-12A]

Airworthiness Review Program; Amdt. No. 8A: Aircraft, Engine, and Propeller Airworthiness, and Procedural Amendments; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: These amendments correct certain minor omissions and typographical errors noted in Airworthiness Review Program No. 8A, Amendment Nos. 11-20, 21-51, and 45-12. These amendments are necessary to express correctly the FAA's intended statement of the rules, and to publish the correct effective date for new § 21.50(b).

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Marvin J. Walker, Regulatory Review Branch, AVS-22, Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION: On September 11, 1980, Amendment Nos. 11-20 (45 FR 60170), 21-51 (45 FR 60170), and 45-12 (45 FR 60183) were published in the Federal Register. A review of those amendments shows that there were minor typographical errors and omissions, and that immediate amendments are needed to correct the amendments. The reasons for each of the amendments are explained below:

1. *Section 11.49.* There were two omissions and one typographical error in this section. Section "11.49(b)(4)" should be "11.49(b)(3)", and the words "is delegated" should be inserted after the word "chapter" in § 11.49(b)(3) to be internally consistent with § 11.49(b). The period at the end of § 11.49(b)(2) is replaced by a semicolon and the word "and".

2. *Section 21.50.* In § 21.50(b) the date "October 14, 1981" was a typographical error. Consistent with Notice 75-31 (40 FR 29412) the date should have been October 14, 1980 (the effective date of amendment 21-51). In order to give the notice required by the Administrative Procedure Act, the date has been amended to "January 28, 1981." (30 days after effective date of this amendment.)

3. *Section 45.11.* In § 45.11(a) the reference to § 43.13 was a typographical error. The reference to § 43.13 should be § 45.13.

Since these amendments are clarifying and editorial in nature and implement changes required to carry out the intent of amendments to Parts 11, 21, and 45, and impose no additional burden on any person, I find that notice and public procedure are unnecessary and that good cause exists for making them effective in less than 30 days.

The Amendments

Accordingly, Parts 11, 21, and 45 of the Federal Aviation Regulations are amended, effective December 29, 1980, as follows:

PART 11—GENERAL RULE-MAKING PROCEDURES

§ 11.49 [Amended]

1. By deleting the period at the end of § 11.49(b)(2) and inserting "; and" in place thereof. By redesignating § 11.49(b)(4) as § 11.49(b)(3) and inserting the words "is delegated" after the word "chapter" in § 11.49(b)(3).

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

§ 21.50 [Amended]

2. By deleting the date "October 14, 1981" in § 21.50(b) and inserting the date "January 28, 1981" in place thereof.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

§ 45.11 [Amended]

3. By deleting the reference "§ 43.13" in § 45.11(a) and inserting "§ 45.13." in place thereof.

(Sec. 313(a), 601, 603, and 604, Federal Aviation Act of 1958 (49 U.S.C. 1354(a)), 1421, 1423, and 1424; sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves amendments that are corrective and editorial in nature, and does not modify the substance of the regulation contemplated under the final rule, the anticipated impact is so minimal that it does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on December 19, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-40101 Filed 12-24-80; 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

Light Transport Airplane Airworthiness Review Program

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, and 135

[Docket No. 18600; Notice 78-17E]

the issuance of SFAR 41, "Airworthiness Standards: Reciprocating and Turbopropeller Powered Multiengine Airplanes," on September 7, 1979 (44 FR 53723; September 17, 1979). SFAR 41 prescribes requirements for an increase

alternative. Equally significant, the FAA was cognizant that unless specifically tailored regulations resulted in an economically feasible aircraft, the entire effort would be for naught. Thus, Notice 78-17B requested that each FAA

the public by making some related changes to Part 25.

To illustrate the efficiency of amending Part 25 rather than to establish a new Part 24, let us focus on the fact that a baseline airplane

and methods of compliance would not degrade the level of safety envisaged by Part 25, but would recognize other avenues of compliance for less complex, smaller transport category airplanes. A less complex small turbopropeller

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, and 135

[Docket No. 18600; Notice 78-17E]

Light Transport Airplane Airworthiness Review Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice announcing termination of review.

SUMMARY: This notice announces termination of the Light Transport Airplane Airworthiness Review Program which was initiated to develop new airworthiness standards for multiengine airplanes having a maximum seating configuration, excluding any pilot seat, of 60 seats and a maximum takeoff weight of 50,000 pounds. Based on the information currently available to the FAA, the benefits expected to result from a new light transport airplane airworthiness regulation would not be realized. The technical information developed thus far during this effort can best be considered as a basis for improving Parts 23 and 25.

FOR FURTHER INFORMATION CONTACT: Everett W. Pittman, Regulatory Review Branch (AVS-22), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Admistration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION:

Background

Current airworthiness standards exist for two basic designations of airplanes: Part 23 for airplanes 12,500 pounds or under having nine or less passenger seats, and Part 25 for transport category airplanes. Commuter airline and air taxi operations in the United States have grown substantially in recent years, establishing a need for new airplanes in the 10- to 60-seat transport category.

Three Phase Program

Recognizing the need for improved standards for airplanes intended for these operations, the Administrator initiated a three-phase program. The first phase was the issuance of revised Part 135, "Air Taxi Operators and Commercial Operators," on September 26, 1978 (43 FR 46742; October 10, 1978). This action aligned the rules for these operations more closely with those of Part 121, "Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft." The second phase was the issuance of SFAR 41, "Airworthiness Standards: Reciprocating and Turbopropeller Powered Multiengine Airplanes," on September 7, 1979 (44 FR 53723; September 17, 1979). SFAR 41 prescribes requirements for an increase in approved takeoff weights for small airplanes. The third phase was the Light Transport Airplane Airworthiness Review. This Review contemplated the development of a new Part 24 of the Federal Aviation Regulations. The proposed part would provide a separate set of airworthiness standards for multiengine airplanes that would have a suggested maximum passenger seating configuration, excluding any pilot seat, of about 30 seats and a maximum gross weight of about 35,000 pounds. (These figures were later revised to 60 seats and 50,000 pounds.)

Generally, Part 24 was designed to tailor a set of regulations to this emerging class of airplane. Thus, it was the FAA's intent to craft a less complex set of design standards to provide a level of safety essentially equivalent to current design standards at a lower design and production cost. Everyone involved anticipated that the Part 24 regulations would help stimulate production of airplanes specifically aimed at providing the public the most suitable commuter airplane.

Notice of Review Program

On December 21, 1978, the FAA issued Notice 78-17 (43 FR 60846; December 28, 1978) announcing the Light Transport Airplane Airworthiness Review Program. The proposed Part 24 airworthiness standards were not necessarily meant to be made up of existing Part 23 or Part 25 rules. However, those rules plus appropriate portions of Appendix A to Part 135 were to serve as the foundation for the proposed Part 24 requirements, with appropriate modifications as suggested by interested persons. On January 30, 1979, the FAA issued Notice 78-17A (44 FR 7057; February 5, 1979) announcing the date for a Discussion Forum on the FAA proposals and presenting a Forum schedule. On March 12, 1979, the FAA issued Notice 78-17B (44 FR 16856; March 19, 1979) inviting interested persons to submit comments and proposals for consideration at a Review Conference to be held in September 1979.

Economic Analysis

The President's policy on improving government regulations, as provided in Executive Order 12044, requires agencies to consider alternative ways to deal with a problem and an analysis of the economic consequences of each alternative. Equally significant, the FAA was cognizant that unless specifically tailored regulations resulted in an economically feasible aircraft, the entire effort would be for naught. Thus, Notice 78-17B requested that each FAA proposal and each proposal submitted by interested persons be assessed by the public for its economic impact. This assessment was to include a comparison of the costs associated with Part 23 as modified by Appendix A to Part 135, and Part 25. The FAA requested that these costs be identified by such categories as design, testing, production, operating, etc. Where appropriate, the costs were to be further identified as initial (one-time), recurring, and revenue gain or loss.

Very little useful economic data was presented in response to this request and what was presented was of limited value because it only compared selected sections of Part 23 with Part 24 or Part 24 with Part 25. To assist the FAA in preparing a meaningful economic analysis on the data submitted, an analysis was conducted involving a knowledgeable panel from outside the agency. Major domestic and Canadian manufacturers of aircraft were contacted to obtain information on the cost impacts of proposed Part 24.

Again, the information available from industry was not sufficient to prepare cost estimates. Therefore, a panel knowledgeable in aircraft design and manufacture was assembled to provide engineering estimates of the likely cost impacts of proposed Part 24. The panel developed a general specification for a 30-seat airplane which could be certified to either Part 24 or Part 25. An estimate of the cost to certify the same base airplane to Part 23 as modified by Appendix A to Part 135 was also prepared to establish a cost for such an airplane if it could be so certificated.

Results to Date of the Part 24 Analysis

The Light Transport Airplane Airworthiness Review has benefitted from the participation of the most highly qualified technical expertise from the aviation industry, from foreign civil aviation authorities and from within the FAA. The resulting data represents the most indepth and productive review of the United States fixed-wing airworthiness standards ever accomplished.

The FAA has given considerable thought to all of the arguments advanced thus far regarding Part 24. Overall, the FAA has concluded that many of the same basic results that would have been achieved through a Part 24 can be realized at a lower cost to the public by making some related changes to Part 25.

To illustrate the efficiency of amending Part 25 rather than to establish a new Part 24, let us focus on the fact that a baseline airplane specification was developed for comparison purposes which could be certificated to Part 23 plus Appendix A to Part 135, to Part 24, and to Part 25. It was a twin-engine turbopropeller airplane with 30 seats, a design cruise speed of 300 MPH, and a gross takeoff weight of 27,000 pounds. The baseline airplane certificated to Part 23 plus Appendix A to Part 135 was estimated to cost $2,500,000 for a production run of 200 airplanes. The same airplane certificated to Part 24 was estimated to cost $2,673,357, and to Part 25 was $2,810,740. Thus the cost differential in airplane unit cost for a production run of 200 airplanes for Part 23 versus Part 25 is only a little over 12 percent. Likewise, the cost saving for a Part 24 airplane compared to Part 25 is only 5 percent. In short, the economic benefits expected to result from a new light transport airplane airworthiness regulation apparently would not be realized. Consequently, the technical information developed during the course of the Part 24 study effort can best be considered as a basis for improving Parts 23 and 25.

A copy of the complete economic analysis and the latest technical draft of Part 24 used to estimate the cost of certificating an airplane under this proposed part are contained in Docket No. 18600 and can be reviewed in Room 916, 800 Independence Avenue, S.W., Washington, D.C. between 8:30 a.m. and 5:00 p.m.

Alternative Action

The content of the technical draft of Part 24 which existed at the time of this decision will be published and will be made available to interested persons upon request. Additionally, the FAA will propose separate rulemaking action which would revise Part 25, taking advantage of the technical knowledge gained in the Light Transport Airplane Airworthiness Review Program. For example, several of the landing gear design and test requirements in Part 25 could be relaxed for airplanes of less than 35,000 pounds with less complex gear designs. Likewise, the aisle width requirements in Part 25 which are appropriate to wide-body airplanes could be relaxed for the smaller airplanes of less than 30 passengers. Thus, proposed changes would provide varying requirements and methods of compliance based on size, complexity, and sophistication of the proposed airplane. These varying requirements and methods of compliance would not degrade the level of safety envisaged by Part 25, but would recognize other avenues of compliance for less complex, smaller transport category airplanes. A less complex small turbopropeller powered transport with dual wheel landing gear, for instance, could achieve the desired level of safety with different specific requirements than is necessary for a typical wide-body transport. Such an amendment to Part 25 could also more appropriately cover the more complex multiengine general aviation airplanes currently certificated under Part 23. This would permit the FAA to also consider revising the applicability requirements of Part 23, seeking more rational criteria for certification of less complex, smaller general aviation airplanes.

Termination

In accordance with the reasons discussed in this notice, the Light Transport Airplane Airworthiness Review Program is hereby terminated.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Issued in Washington, D.C., on December 19, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-40162 Filed 12-24-80; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

Special Air Traffic Rules and Airport Traffic Patterns; Flushing, N.Y.

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration
14 CFR Part 93
[Docket No. 21215; Amdt No. 93-40]

SUPPLEMENTARY INFORMATION:

Request for Comments on the Amendment

Although this action is in the form of an amendment which involves flight as close to mid-town Manhattan as is LaGuardia Airport. Additionally, since Flushing Airport is not included within the New York TCA airspace, general aviation pilots are able to operate to or from Flushing without entering the TCA.

determine whether to finalize this interim amendment or to expand the TCA to include Flushing Airport.

(3) Allow the present situation to continue until a final decision is made on whether or not to include Flushing

certain level of pilot experience and skill. To satisfy these conditions, the rule, under § 93.183, requires that pilots flying to and from Flushing Airport, within the designated area, must have at

aircraft inbound to Flushing to obtain authorization from LaGuardia Tower before entering the affected airspaces; Flushing departures must obtain authorization prior to takeoff.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 21215; Amdt No. 93-40]

Special Air Traffic Rules and Airport Traffic Patterns; Flushing (N.Y.) Interim, Special Airport Traffic Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim rule; request for comments.

SUMMARY: This amendment prescribes interim, special air traffic rules for persons operating aircraft under Visual Flight Rules (VFR) to or from Flushing Airport, N.Y., in a designated airspace area immediately east of LaGuardia Airport and beneath the floor of the New York Terminal Control Area (TCA). The rule establishes requirements for communication and navigational equipment, prohibits student-pilot and training operations in the affected area, and provides improved separation between LaGuardia and Flushing Airport operations. This amendment is issued without prior notice and public procedure to immediately rectify an air traffic situation which presents an unacceptable risk of a mid-air collision between uncontrolled and controlled aircraft operating at LaGuardia and Flushing Airports. The objective of this amendment is to increase the level of control over VFR traffic in the Flushing area while accommodating the legitimate concerns of the airspace users, and to provide the highest degree of safety for passengers in public transportation.

EFFECTIVE DATE: January 8, 1981.

ADDRESSES: Send comments on the amendment in duplicate to: Rules Docket (AGC-204), Room 916, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

The official docket may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION, CONTACT: Harold W. Becker, Acting Chief, Air Traffic Rules Branch, AAT-220 Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3656; or Alfred J. Reale, Airspace Section Chief, Airspace and Procedures Branch, AEA-530, Federal Aviation Administration, Federal Building, John F. Kennedy Airport, Jamaica, N.Y. 11430; telephone (212) 995-3390.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Amendment

Although this action is in the form of an amendment which involves flight procedures and requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the amendment. Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address indicated above. All communications received on or before March 8, 1981, will be considered. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the amendment. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the amendment that suggest a need to modify the amendment. Commenters wishing the FAA to acknowledge receipt of their comments in response to this amendment shall submit with these comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 21215." The postcard will be date/time stamped and returned to the commenter.

Additional rulemaking action is being prepared which would include the Flushing Airport within the boundary of the New York TCA. The proposed change to the New York TCA will be published in the Federal Register as a notice of proposed rulemaking (NPRM). The final determination to include Flushing Airport within the TCA will be made after a thorough analysis of the comments to this amendment, comments to the NPRM, and the effectiveness of this special air traffic rule during the interim.

Background

Flushing Airport is a general aviation airport with one active runway. An FAA survey of operations at Flushing indicated an annual activity level of approximately 20,000 operations. All landings at Flushing are conducted under VFR, although there are a limited number of Instrument Flight Rules (IFR) departures coordinated through LaGuardia Departure Control.

Flushing Airport is currently the only general aviation airport in the five boroughs of New York City. The primary advantage to users of the airport is the ability to operate general aviation aircraft into a location which is nearly as close to mid-town Manhattan as is LaGuardia Airport. Additionally, since Flushing Airport is not included within the New York TCA airspace, general aviation pilots are able to operate to or from Flushing without entering the TCA.

The proximity of Flushing and LaGuardia Airports, and the various types of aircraft using the airspace combine to create an increased collision potential between controlled and uncontrolled aircraft. It has become apparent that there are increasing numbers of incursions of Flushing traffic into the TCA airspace near LaGuardia, necessitating the immediate implementation of this amendment.

Between January 1979 and December 1980, there have been 43 reported incursions into TCA airspace by aircraft operating to and from Flushing Airport. It should be noted that only the more serious penetrations are reported, and the FAA estimates that for every reported incursion, at least two others occur.

When LaGuardia-bound aircraft are landing on Runway 31, Flushing Airport usually is using Runway 36. In that configuration, when Flushing traffic is on its base leg, the aircraft are on converging courses with LaGuardia traffic at about the same altitude. The greatest number of incursions occurs when those runways are in use. In that situation, only 3500 feet separate aircraft on the base leg to Flushing and the extended centerline of LaGuardia Runway 31. A similar set of circumstances exists when Flushing departures are using Runway 18.

Alternate Approaches

The FAA considered four different options to alleviate the identified safety problem:

(1) Recommend to the City of New York the closing of Flushing Airport, or FAA prohibition of operations to and from the airport through rulemaking action. This option would have negated the benefits of the airport to the metropolitan area as well as Flushing Airport's potential for relieving LaGuardia of some general aviation traffic.

(2) Include Flushing Airport in the New York TCA airspace through direct rule action without a prior comment period. That action would have some immediate adverse impact on traffic at both LaGuardia and Flushing Airports. The amendment adopted here will not adversely affect LaGuardia traffic and the effect on Flushing traffic will be minimal. As discussed above, the FAA will publish an NPRM proposing such a rule to include Flushing in the TCA. After the close of the comment period on that notice and this action, the FAA will

determine whether to finalize this interim amendment or to expand the TCA to include Flushing Airport.

(3) Allow the present situation to continue until a final decision is made on whether or not to include Flushing Airport in the New York TCA.

The FAA determined that the present margin of safety in the airspace between controlled and uncontrolled aircraft operating at LaGuardia and Flushing Airports is unacceptable and warrants the immediate implementation of this amendment.

(4) Establish a control tower at Flushing Airport to provide takeoff and landing clearances, establish an orderly flow of traffic for arrivals and departures and provide a certain measure of traffic discipline in the airspace. The primary FAA concern with Flushing Airport, however, is its proximity to LaGuardia and the unauthorized penetrations of the New York TCA by uncontrolled aircraft executing arrivals and departures at Flushing Airport. In order to prevent incursions, tower controllers at Flushing would need a radar display to monitor aircraft positions relative to the TCA. The FAA has determined that the level of traffic at Flushing does not justify the expense of a radar-equipped tower when similar monitoring services can be provided by LaGuardia Tower under the amendment implemented by this action.

Explanation of the Amendment

The purpose of this amendment is to establish a new Subpart P in Part 93 to prescribe a special air traffic rule for Flushing Airport. Subpart P contains the designation of the affected airspace and prescribes the air traffic rules that apply in that airspace. The FAA's primary concern is the inadvertent penetrations of the New York TCA by traffic arriving and departing Flushing Airport and the collision potential between Flushing and LaGuardia air traffic. This situation can be alleviated by placing requirements on pilot qualifications and aircraft equipment, prohibiting certain operations, establishing mandatory communications requirements, and prescribing aircraft operations and traffic patterns. Those requirements are discussed as follows:

Pilot Qualification and Equipment Requirements

To provide the required level of safety between operations at Flushing and LaGuardia Airports, LaGuardia Tower must be able to communicate with, and identify on radar, all aircraft flying to and from Flushing. In addition, the aircraft must adhere to prescribed traffic patterns and altitudes which requires a certain level of pilot experience and skill. To satisfy these conditions, the rule, under § 93.183, requires that pilots flying to and from Flushing Airport, within the designated area, must have at least a private pilot certificate, and the aircraft must be equipped with two-way radio, an operable VOR receiver, and a Mode C transponder (with altitude reporting capability).

Prohibited Operations

The converging flight paths of certain arrival and departure configurations at Flushing and LaGuardia Airports requires that some restrictions be placed on the direction of traffic at Flushing. Also, uncontrolled training or proficiency flights in the affected airspace present the possibility of additional penetrations of the TCA because of the increased airspace and traffic pattern congestion. Thus, § 93.185 prohibits certain operations, including landing on Runway 36 or taking off on Runway 18 at Flushing when Runway 31 approaches or Runway 13 departures are being conducted at LaGuardia. It eliminates the most critical situation between the two airports where traffic converges with approximately 3500 feet between flight paths. The amendment further prohibits training and proficiency flights in the designated area, thereby eliminating the added potential for TCA penetrations resulting from such activity.

Communications and ATC Authorization

It is essential that Flushing Airport traffic establish communication with LaGuardia Tower prior to operating in the airspace designated in the amendment. Without this requirement, air traffic control (ATC) would not be able to provide an adequate margin of safety between operations at Flushing and LaGuardia. Furthermore, there is no control over the number of flights operating in the limited airspace excluded from the TCA for Flushing Airport. The arrival of several aircraft in the traffic pattern at the same time usually results in an expansion of the pattern as pilots maneuver to maintain an adequate landing interval. Such expansion makes TCA penetration almost inevitable because of the proximity of the TCA boundaries to the Flushing pattern. The rule (§ 93.187) requires that all Flushing traffic establish and maintain communications with LaGuardia Tower so that ATC can monitor and regulate the flow of Flushing traffic and provide advisory service or separation from LaGuardia traffic, if necessary. To reduce airspace congestion, the section also requires aircraft inbound to Flushing to obtain authorization from LaGuardia Tower before entering the affected airspaces; Flushing departures must obtain authorization prior to takeoff.

Aircraft Operations

Transient pilots, in general, are not familiar with the landmarks that can be used to avoid the TCA; most of the reported TCA incursions were transient aircraft. The rule designates traffic flow for Flushing arrivals and departures, thereby providing all pilots with information necessary to avoid TCA airspace.

ATC Authorized Deviations

The FAA recognizes that certain deviations from the provisions of the rules should be authorized to prevent undue hardship on pilots and aircraft owners, and to avoid imposing unnecessary restrictions on Flushing operations. The rule, therefore, allows ATC, in accordance with § 91.191, to authorize deviations from the aircraft equipment requirements in the case of equipment failure while an aircraft is in flight or on the ground at Flushing. Also, ATC may authorize deviations from the prohibition on operations on Runways 36 and 18 prescribed under § 93.185. Those deviations, however, may be authorized only for individual flights when traffic conditions permit.

Effective Date

This amendment is effective on January 8, 1981. The FAA has determined that the immediate necessity for alleviating the potential hazard of a mid-air collision in the affected area makes a notice and public procedure impracticable in this instance. As discussed above, there have been 43 reported incursions into TCA airspace by aircraft operating to and from Flushing Airport from January 1979 to December 1980. FAA data indicates that 17 of those incursions occurred in the 8-month period between April 1980 and December 1980. Those incursions are continuing despite a vigorous enforcement policy which the FAA had hoped would alleviate the problem. Since January 1979, FAA enforcement elements have issued 16 warning notices, 7 $100 civil penalties, and suspended 13 pilots' licenses as a result of incursions into TCA airspace near LaGuardia. Enforcement actions are pending for each of the remaining reported incursions, unless the aircraft operator was not identified. FAA does not feel that more stringent enforcement action would alleviate the frequency of violations, since nearly all incursions are made by transient aircraft, whose

operators would probably not be aware

Subpart P—Flushing (New York) Airport Traffic Rule

§ 93.187 Communications and ATC authorization.

Note.—The FAA has determined that this document involves an emergency regulation

operators would probably not be aware of any intensive enforcement effort.

To illustrate the seriousness of the incursions, three of the reported incidents are summarized below:

(1) On September 26, 1980, LaGuardia Tower observed an aircraft, both visually and on radar, proceeding southeast from Flushing Airport into the TCA. The aircraft crossed the final approach course of Runway 31 at LaGuardia, reversed course, and recrossed the final approach course; finally landing on Runway 36 at Flushing. LaGuardia traffic was landing and departing on Runway 31, and at no time did the Flushing pilot establish communications with LaGuardia Tower.

(2) On October 27, 1980, LaGuardia Tower observed an aircraft crossing the Runway 22 final approach course to LaGuardia. The aircraft passed beneath a Boeing 727 that was on a two-mile final approach to LaGuardia. Separation between the two aircraft was estimated to be 500 feet vertical and one-half mile horizontal. The aircraft then turned onto the final approach course to Runway 18 at Flushing Airport and landed. The pilot never contacted LaGuardia Tower.

(3) On October 30, 1980, an aircraft was sighted visually from the LaGuardia Tower penetrating the TCA, two miles southeast of LaGuardia Airport. The aircraft crossed the LaGuardia Runway 31 final approach course and appeared to make a low approach to Flushing Airport. The aircraft then entered a right-hand traffic pattern for Runway 36 at Flushing, crossing the LaGuardia Runway 31 final approach course a second time. At no time did the Flushing pilot establish communication with LaGuardia.

Incidents similar to those described above are continuing, and create the necessity for the immediate implementation of this rule. This was highlighted by a report completed by the Eastern Region on November 26, 1980. Public comments will be considered in determining whether this interim rule, the expansion of the TCA, or some other measure will serve as the permanent solution. Thus, I find that prior notice and public procedure is impracticable. I further find that good cause exists for making this interim rule effective in less than 30 days after publication.

Adoption of the Amendment

Accordingly, Part 93 of the Federal Aviation Regulations (14 CFR Part 93) is amended, effective January 8, 1981, by adding a new Subpart P to read as follows:

Subpart P—Flushing (New York) Airport Traffic Rule

Sec.
93.181 Applicability; designated airspace.
93.183 Pilot qualifications and aircraft equipment requirements.
93.185 Prohibited operations.
93.187 Communications and ATC authorization.
93.189 Aircraft operations.
93.191 ATC authorized deviations.

Authority: Secs. 307 (a) and (c), 313(a), and 601(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348 (a) and (c), 1354(a), and 1421(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).

Subpart P—Flushing (New York) Airport Traffic Rule

§ 93.181 Applicability; designated airspace.

This subpart prescribes special air traffic rules for persons operating under VFR to or from Flushing Airport and in that airspace from the surface up to, but not including, the floor of the New York TCA, within an area beginning at the north stanchion of the Throgs Neck Bridge; thence westerly to the Kennedy VORTAC 341°T radial 10-mile DME fix; thence southerly to the Kennedy VORTAC 340°T radial 9-mile DME fix; thence direct to the southern edge of Leavitts Park; thence direct to the south edge of Bowne Park; thence easterly to the intersection of the Clearview Expressway and the LaGuardia VOR 101°T radial; thence northerly along the Clearview Expressway to the point of origin.

§ 93.183 Pilot qualifications and aircraft equipment requirements.

Except as authorized under § 93.191, no person may operate an aircraft within the airspace designated under § 93.181 unless—

(a) The pilot holds at least a private pilot certificate; and

(b) The aircraft is equipped with—

(1) An operating two-way radio capable of communicating with ATC on the appropriate frequency;

(2) An operating VOR receiver; and

(3) The transponder equipment specified in § 91.24.

§ 93.185 Prohibited operations.

Except as provided under § 93.191, no person may—

(a) Conduct any flight training;

(b) Conduct touch and go landings, low approaches, or closed traffic pattern operations at Flushing Airport; or

(c) When Runway 31 approaches or Runway 13 departures are being conducted at LaGuardia Airport, land on Runway 36 or depart Runway 18 at Flushing Airport.

§ 93.187 Communications and ATC authorization.

No person may operate an aircraft within the airspace designated in § 93.181 unless—

(a) Two-way radio communication is established and maintained on the appropriate LaGuardia Tower frequency;

(b) *For departures*—Before taking off, ATC authorization has been received from LaGuardia Clearance Delivery by two-way radio communications, or from LaGuardia Tower by other means; and

(c) *For arrivals*—Before entering the designated area, ATC authorization has been received from LaGuardia Tower on the appropriate frequency.

§ 93.189 Aircraft operations.

Unless otherwise authorized by ATC, aircraft operators shall adhere to the following traffic flow—

(a) *For arrivals:* (1) *For Runway 18*—From over Fort Totten fly direct toward the Western Electric Building; cross Clearview Expressway below 1,200 feet mean sea level (MSL); turn downwind abeam the Whitestone Bridge at or below 800 feet MSL; turn left base leg south of the south tower of the bridge; and proceed over the Powell's Cove shoreline so as to avoid TCA airspace.

(2) *For Runway 36*—From over Fort Totten, fly direct toward the Western Electric Building; cross Clearview Expressway below 1,200 feet MSL; turn downwind abeam the Whitestone Bridge at or below 800 feet MSL; and execute right base leg turn to final approach, so as to avoid TCA airspace by not overshooting the Runway 36 extended centerline.

(b) *For Departures:* (1) *For Runway 18*—Execute a 90 degree left turn so as to avoid TCA airspace; proceed direct to Little Neck Bay south of Fort Totten; and cross Clearview Expressway below 1,200 feet MSL.

(2) *For Runway 36*—Execute a 90 degree right turn over the Powell's Cove shoreline; proceed direct to Little Neck Bay north of Fort Totten; and cross Clearview Expressway below 1,200 feet MSL, avoiding TCA airspace.

§ 93.191 ATC authorized deviations.

Notwithstanding the deviation authority under § 93.1(b), of this part, deviations from this subpart may not be authorized except from §§ 93.183(b) and 93.185(c), for individual flights when traffic conditions permit.

(Secs. 307 (a) and (c), 313(a), and 601(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348 (a) and (c), 1354(a); and 1421(a)); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))

Note.—The FAA has determined that this document involves an emergency regulation under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket; otherwise, an evaluation is not required. A copy of it, when filed, may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

This rule is a final rule of the Administrator as defined by section 1005 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1485). As such, it is subject to review only by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia.

Issued in Washington, D.C. on December 19, 1980.

Langhorne Bond,

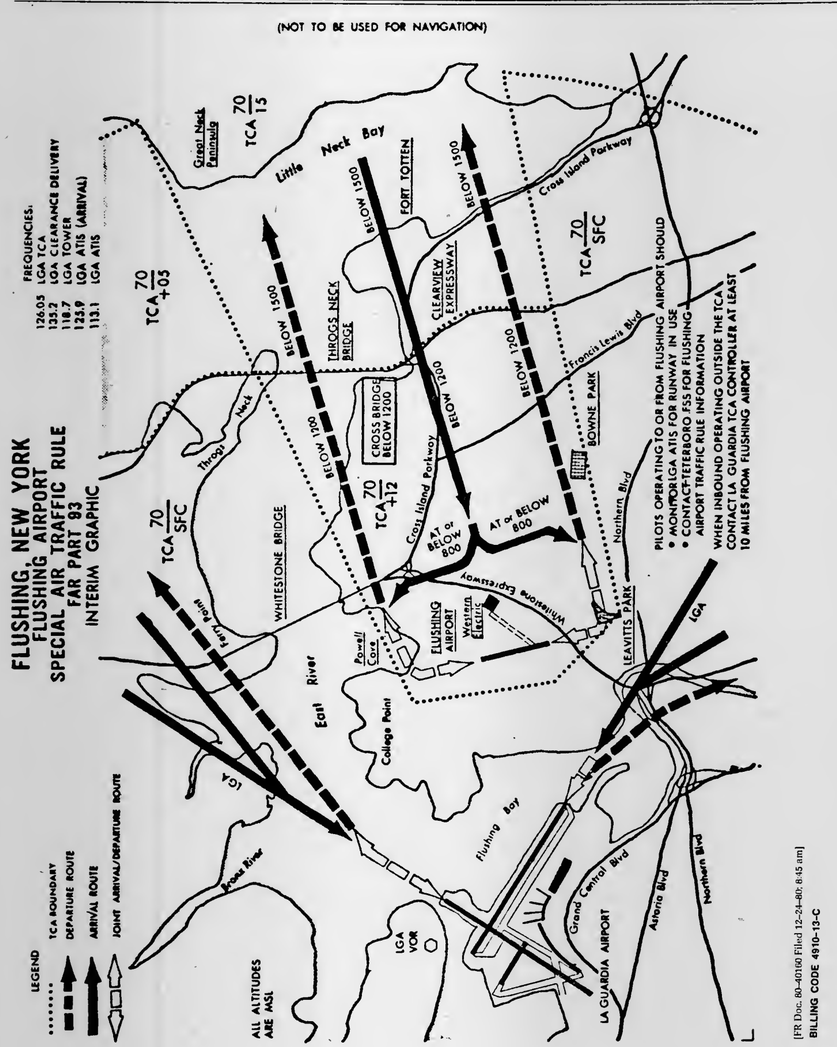
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federal register

Monday
December 29, 1980

Part V

Department of Energy

Office of Conservation and Solar Energy

Grant Programs for Schools and Hospitals, and for Buildings Owned by Units of Local Government and Public Care Institutions

DEPARTMENT OF ENERGY

NW, Washington, D.C.; the regional

The proposed rulemaking presents

Subpart A—General Provisions

determined by DOE" for added flexibility in the definition of

given for those proposed measures which convert to solar and other

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DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 455

[CAS-RM-78-503]

Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy proposes to issue revised regulations for administration of the grant programs providing financial assistance for schools, hospitals, buildings owned by units of local government, and public care institutions for the purpose of reducing energy consumption through technical assistance and energy conservation measure projects. In so doing, the Department proposes to amend 10 CFR 455 by making revisions to regulations published in the Federal Register on April 2, 1979 (44 FR 19340) and April 17, 1979 (44 FR 22940). Written comments are requested with respect to these proposed regulations, and public hearings will be held on the dates and in the locations specified below.

DATES: Written comments must be received no later than January 28, 1981. A national hearing will be held on January 16, 1981 in Washington, D.C. Regional hearings will be held on January 15, 1981 in Chicago, IL and on January 20, 1981 in San Francisco, CA. Requests to speak at the national hearing must be received no later than 4:30 p.m., e.s.t., January 6, 1981; requests to speak at the regional hearings must be received no later than January 7, 1981 at 4:30 p.m., local time. Grant program Cycle III dates will be announced in a separate notice in the Federal Register. A discussion of Cycle III dates is found in part II of this preamble.

ADDRESSES: Send all written comments and requests to speak at the national hearing to Ms. Carol Snipes, Attn: Docket CAS-RM-78-503, Hearings and Dockets, Conservation and Solar Energy, Department of Energy, Mail Stop 6B-025, Washington, D.C. 20585, (202) 252-9319. Requests to speak at the regional hearings should be submitted to Kenneth Johnson, Department of Energy, 175 West Jackson Blvd., Room A-333, Chicago, IL 60604, (312) 886-1587, or Terry Osborne, Department of Energy, 333 Market St., San Francisco, CA 94105, (415) 764-7027. The national hearing will be held at Room 2105, 2000 M Street NW, Washington, D.C.; the regional hearings will be held at the Georges Room, Ambassador West Hotel, 1300 North State Parkway, Chicago, IL, and at the Oregon/Nevada Room, Golden Gateway Holiday Inn, 1500, Van Ness Avenue, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT:

Frank M. Stewart, or Richard W. Minning, Office of Institutional Conservation Programs, Office of Conservation and Solar Energy, Department of Energy, Mail Stop 2H027, 1000 Independence Ave. S.W., Washington, D.C. 20585, (202) 252-2198

Edward H. Pulliam, Office of General Counsel, Department of Energy, Mail Stop 6A-152, 1000 Independence Ave. S.W., Washington, D.C. 20585, (202) 252-9510

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Discussion of Comments and Proposed Revisions
III. Comment Procedures

I. Introduction

Parts 1 and 2 of Title III of the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 42 U.S.C. 6371 *et seq.*) established cost sharing energy conservation grant programs to fund technical assistance programs for public and private nonprofit schools, hospitals, buildings owned by units of local government and public care institutions, and energy conservation measure programs for schools and hospitals.

On April 2, 1979 and April 17, 1979, the Department of Energy (DOE) issued final regulations governing the conduct of preliminary energy audits and energy audits (PEA/EA) (44 FR 19340) and technical assistance and energy conservation measure programs (TA/ECM) (44 FR 22940). These regulations amended Chapter II of Title 10, Code of Federal Regulations, by adding Part 455, Subparts A through I. The first grant program cycle for TA/ECM grants ended on March 15, 1980. In order to improve the effectiveness of the TA/ECM program by building on experience gained in the first grant program cycle, DOE issued a Notice of Inquiry, published in the Federal Register on April 21, 1980 (45 FR 26717). This notice solicited public comment concerning possible revisions to the present TA/ECM regulations for use in future grant program cycles. A total of 42 responses were received and considered by DOE. DOE also sought and received input from major governmental, institutional and professional associations and from State energy office representatives.

The proposed rulemaking presents amendments to most subparts of 10 CFR 455. In its regulatory revisions, however, DOE focused on those subparts governing the TA/ECM grant program. Subpart B, which relates to the PEA/EA program, was not addressed, since funding for this phase of the program is not expected to be reauthorized in subsequent years. For those charged with administering the program or desiring to participate, § 455.10, Purpose and Scope, of Subpart B is presented in this proposed rule for purposes of reference only: § 450.43, Contents of an Energy Audit, from Subpart E of 10 CFR 450, is presented unchanged as a new section, § 455.18, for ease of reference and continuity.

Although a number of the amendments proposed here will provide opportunities to make the program more effective, it is possible that the implementation of these amendments for the third grant program cycle, ending September 30, 1981, might not provide sufficient time for States and eligible institutions to make the necessary program changes to take advantages of these new provisions or might delay the cycle three grant awards. Although it is presently DOE's intent to make these amendments effective for the third program cycle, the Department is particularly interested in receiving comments and suggestions on the timing of the implementation of these modifications to the present regulations, including the possibility that these modifications not become effective until the fourth grant program cycle.

The Catalog of Federal Domestic Assistance (CFDA) program number and title are 81.052, Energy Conservation Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions. OMB Circular No. A-95, Part III procedures are applicable to the review of the State Plan. When the State energy office prepares its list of recommended TA and ECM applications, a copy of that list must be forwarded to the State clearinghouse. The State clearinghouse, as appropriate, should send this list to areawide clearinghouses, which may contact the ranked institutions for additional information on projects with a perceived local significance.

II. Discussion of Comments and Proposed Revisions

The following comments and revisions are by subpart of the regulations. Where no change in the regulations is proposed, it is so noted.

Subpart A—General Provisions

§ 455.1 Purposes and scope.

No change.

§ 455.2 Definitions.

Pertaining to energy conservation measures, one comment was received requesting energy consuming systems, such as parking lot lighting, be eligible for grants. While DOE recognizes the importance of conserving energy in these systems, NECPA specifically defines "building" as a "structure . . . which includes a heating or cooling system, or both." Such systems, since they are not structures, as defined in NECPA, are not eligible for grants under this program.

One comment was received concerning the inclusion of metering devices, which in and of themselves do not conserve energy but which do measure the amount of energy used, as an eligible energy conservation measure. Several other comments suggested this modification also. DOE interprets the definition of "energy conservation measure" to provide for such control and measurement devices provided they are an intergral part of an energy conservation measure being applied for, and has amended the regulation to make the interpretation specific. Two clarifying additions are proposed to the definition of "Energy conservation measures"; first, subsection (3) is amended to add the phrase "which would reduce energy consumption" after "Automatic energy control systems"; and second subsection (8) is amended to add the phrase "Addition of" before "Caulking and weather-stripping." Finally, it should be noted that the list of energy conservation measures is not intended to include all possible eligible measures that a technical assistance analyst should consider, but represents an outline of some major system areas.

One comment concerned whether or not school and hospital building ownership definitions precluded funding for projects in such institutions when there is a leasehold interest. In those instances where there exists a legally enforceable agreement that the title to a leased building transfers to the leasee at the end of the lease period, such a building may be eligible to participate. Ownership is, of course, limited to public or private non-profit institutions, as defined in § 455.2.

As a result of a number of comments; DOE had reviewed the definitions of "construction completion," "cooling degree days," "grant program cycle," and "heating degree days." DOE has added the phase "or the date the building is ready for occupancy, as determined by DOE" for added flexibility in the definition of "construction completion". The definitions for both cooling and heating degree days have been retained from the earlier rulemaking. However, DOE seeks comment as to whether the current definition reflects actual experience of institutions and States. DOEs definition of "grant program cycle" has been amended to underline that the cycle does not refer to the grantee's performance period.

As a result of comments, DOE has included proposed definitions of "coordinating agency," and "primarily occupied." Coordinating agencies (such as the State, a State school or hospital facilities agency, or regional or district organizations representing schools or hospitals) introduce economies of scale for applicants, and expedite the processing of applications. Such an arrangement must be with the mutual consent of the institution and coordinating agent. The definition of "primarily occupied" is based on consideration of either of two occupancy factors: percent of time, or percent of space used by the units of local government. Consideration of whether the building produces revenue for the unit of local government cannot be a criteria for determining eligibility of that building to participate in these grant programs. A comment was received concerning whether the definition of "energy conservation maintenance and operating procedure" encouraged the funding of projects that were the result of deferred maintenance. While no change to the definition has been made, DOE does not intend for grant funds to be used for meeting problems arising solely from deferred maintenance of systems facilities. Discretion in handling such projects will be at the State and DOE Regional level on a case-by-case basis.

Comment was received regarding a window or through-the-wall air conditioner as being a "heating or cooling system" as defined in § 455.2. DOE is not proposing to include such devices, as these devices are not a "mechanical system for distributing air throughout the building."

Definitions of "gross square feet" and "fuel" have been moved from 10 CFR 450.41 to accompany the move of 10 CFR 450.43 to a new § 455.18.

One comment requested a clearer statement from DOE on the funding of active solar projects. DOE encourages the consideration of such projects, particularly as they replace fuel systems using oil or gas, and is retaining the application ranking criteria which provides for additional weight to be given for those proposed measures which convert to solar and other renewable resource measures. Active solar measures are among those types of eligible measures listed under the definition of "energy conservation measures".

Finally, one comment asked that off-site computerized maintenance service administration systems be allowed as an eligible energy conservation measure. Facility operations and maintenance is a key part of an institution's energy management program, but such off-site administrative services are not properly "an installation or modification of an installation in a building . . ." that defines an energy conservation measure under NECPA, Section 391(2), and cannot be judged eligible.

§ 455.3 Administration of grants.

DOE has updated paragraph (a)(8), now paragraph (a)(4), concerning civil rights compliance to conform with DOE regulation, 10 CFR 1040, Nondiscrimination in Federally Assisted Programs, dated June 13, 1980 (45 FR 40514). The attention of institutions is directed to policies and procedures prescribed in 10 CFR 1040 including the requirement for a signed civil rights assurance. This is available at State energy offices. Institutions' attention is also directed to requirements and assurances governing Federal grants which are incorporated in the application form for these and other Federal grant programs. These forms are available from State energy offices.

Finally, the proposed rule has dropped some guidelines from the listing found in § 455.3 and added several that pertain to this program.

§ 455.4 Recordkeeping.

This section has been updated to include a reference to DOE Assistance Regulations.

§ 455.5 Suspension and termination.

No change is proposed.

Subpart B—Preliminary Energy Audit and Energy Audit Grant Procedures

DOE has made no revisions to the language of this subpart. § 455.10 is presented here to establish a context and for reference. Other sections of Subpart B are not reprinted here. However, the present § 450.43, Contents of an energy audit, has been proposed as an addition to this Subpart as a new § 455.18, and has been reprinted in its proposed new location. No changes have been made to its content.

Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government and Public Core Institutions

§ 455.40 Purpose and scope.

No change is proposed.

section and incorporated with the list provided under the definition of "energy conservation measures" in § 455.2. Since the list in § 455.52 was essentially an elaboration on the definition, several examples previously listed have been deleted or modified in this procedure.

eligibility certification under § 455.60(b)(2) and (c)(2) has been deleted as this condition is satisfied under § 455.61(a). The results of the preliminary energy audit have been deleted from the technical assistance application (§ 455.60(b)(3), now

applicant might want to include in his application.

§ 455.61 Applicant certifications.

The eligibility certification requirement previously addressed in § 455.60 has been incorporated under

Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government and Public Care Institutions

§ 455.40 Purpose and scope.

No change is proposed.

§ 455.41 Eligibility.

To consolidate eligibility requirements in this section, paragraphs (d) and (e), § 455.60, concerning ineligibility of certain local government, public care and school buildings, have been incorporated into paragraph (a) of this section.

§ 455.42 Contents of program.

Several comments recommended that DOE prescribe the point of use conversion factor for electricity, 3,413 Btu per kilowatt hour, rather than point of generation, or 11,600 Btu per kilowatt hour.

DOE has only required the point of generation conversion factor for the preliminary energy audit and energy audits (for a discussion, see the April 2, 1979 **Federal Register**, p. 19342).

For determining Btu equivalents for fuels, States should designate uniform conversion factors for use of TA analysts. A new paragraph covering cost consideration factors has been added to provide guidance in determining some fuel costs.

Two comments addressed the issue of coal conversion energy conservation measures. Under the previous rulemaking, calculations to determine the payback of conversions to coal-using systems were limited to showing cost savings resulting only from reductions in energy consumption. This inadvertently discouraged such conversions by producing a higher payback than if total cost savings associated with the change in fuel were taken into account. The comments suggested that DOE provide for calculating the overall annual cost savings resulting from such conversions, rather than cost savings resulting from energy savings alone. DOE is proposing to amend paragraph (c)(5)(vii) to permit such calculations in determining payback for coal conversions. Program participants should note that this proposed change could result in the funding of more coal conversion projects, which tend to be of a larger scale and more costly than other measures, thus potentially reducing the number of funded projects within a State. Also an Environmental Impact Statement may have to be prepared for such conversions, adding somewhat to the project's timing. In addition, DOE is proposing exceptions to calculations of cost savings from energy savings for solar and other renewable resource measures, as well as leased equipment. This does not alter the ranking formula addressed in § 455.71. DOE requests comments on these proposed changes in payback calculations procedures.

One comment expressed concern regarding a State mandatory technical assistance reporting form. The commenter indicated that a set format throughout the State was too restrictive. DOE recognizes the need for analysts to have the flexibility to assess needs in unique facilities and to exercise their own analytical approach. States must also have some uniformity in order to facilitate their summarizing activities. To balance these concerns, DOE urges analysts to make known to their State energy office any aspects of the form that impedes effective analysis.

Another comment expressed concern that the technical assistance procedures were too flexible and asked that regulations require minimum survey, testing, and calculations procedures. Current and proposed regulations for technical assistance programs already provide the minimum content of a technical assistance analysis. It is left to the professional judgement of the technical analyst to select the procedures or methods best suited to the building which is being analyzed.

DOE is proposing several minor changes, which include striking the word "possible" from the first sentence of paragraph (a) and substituting the word "feasible"; striking the words "preliminary energy audit and" from paragraph (b)(1)(i), now paragraph (c)(i) as a preliminary energy audit is subsumed in an energy audit; a revision of (b)(6), now paragraph (c)(6), to call for actual or estimated energy use and cost data by month and fuel type for the preceding 12-month period as this more accurately reflects the manner in which such fuels are billed and records are kept, rather than the existing requirement for annual data; and adding a reference to technical analyst qualifications to paragraph (a).

One comment was received requesting that a 12-month inflation factor be allowed in technical assistance projections. The existing regulations do not exclude inflation costs from the technical assistance projections, and DOE proposes no change. DOE has also received inquiries regarding the treatment of demand charges in the analyst's calculations of costs and payback. The rule generally requires use of savings from energy savings only. To the extent that cost savings result merely from reductions in demand charges, they must be excluded from the payback for purposes of ranking the measure for this program. Several comments were received requesting that each State be required to specify in their State Plan an exception for large medical facilities beyond the cost per square foot guidelines for technical assistance. States presently have the latitude to make these exceptions and DOE believes each case should be judged on its own merit.

Subpart D—Energy Conservation Measures for Schools and Hospitals

§ 455.50 Purpose and scope.

No change is proposed.

§ 455.51 Eligibility.

This section is unchanged in substance from the regulatory language now in effect. A clarifying reference to § 455.90(j) has been added and the phrase "an energy audit and" was deleted, since these results are subsumed in the technical assistance analysis, § 455.51(4). However, DOE requires implementation of the operations and maintenance recommendations in the energy audit prior to participation in TA/ECM programs. Paragraph (e), § 455.60 concerning ineligibility of school buildings used principally for administration has been incorporated into paragraph (a)(i) of this section. In regard to eligible energy conservation measures, one comment requested that the current 1–15 year payback limitations be loosened to permit high cost energy conservation measures with a payback of less than one year. DOE does not propose a change to § 455.51(b) for the reason that such a project under one year payback could be completed by the institution within one budget cycle, and would pay for itself in energy savings within the equivalent of a grant program cycle. Such projects are clearly in the interest of the institution, and should not require Federal assistance.

One comment was received requesting that DOE establish limitations on the volume and dollar size of ECM projects. The intent of this program is to conserve energy, and any project which meets State ranking criteria and shows an energy savings should be funded. The States already have discretion in setting limits as addressed in their approved State Plan as to the equitable apportionment of funds among eligible applicants, and DOE does not intend to propose any further limitations.

§ 455.52 Contents of program.

The energy conservation measures previously listed in § 455.52, Contents of Program, have been deleted from this

section and incorporated with the list provided under the definition of "energy conservation measures" in § 455.2. Since the list in § 455.52 was essentially an elaboration on the definition, several examples previously listed have been deleted or modified in this procedure. Experience with the program to date suggests certain structural modifications are essential to specific installations. Such structural changes are not energy conserving measures and are therefore not treated in the proposed regulatory language; however, DOE does recognize that some structural work is a necessary part of installing a measure and should be an allowable cost to the extent the work must be done to accommodate the measure. For example, conversion to a coal-fired boiler may necessitate a structural modification to accommodate fuel storage and conveyor equipment. Any structural work not essential to a measure is not an allowable cost.

DOE is aware that unforeseen circumstances may require the reduction or elimination of one or more funded energy conservation measures in a building project. However, as pointed out in connection with § 455.80, it is DOE policy that no supplemental funds will be provided after the initial grant award, and changes of this nature will not be made to circumvent the requirement that cost overruns be borne by the institution. Institutions must obtain prior approval by DOE and provide revised budgets and resulting changes in costs, energy savings and cost savings in their request for a change in the scope of work.

Many comments were received requesting funds for energy conserving measures for units of local government. The National Energy Conservation Policy Act (NFCPA), Pub. L. 95–619, 42 U.S.C. § 6371 *et seq.*, does not authorize the Secretary to make such grants.

Subpart E—Applicant Responsibilities

§ 455.60 Grant application submittals.

Four comments expressly noted that the application forms were too complicated, confusing, and asked for too much detail. Others more generally noted that the process needed simplifying and there was an excessive amount of paperwork. DOE appreciates these concerns and will be reviewing the applications forms to simplify their content and information requirements where possible. The demographics necessary to identify the applicant and the information to evaluate the merits of the application have been retained. Wherever possible items have been deleted. The written statement of eligibility certification under § 455.60(b)(2) and (c)(2) has been deleted as this condition is satisfied under § 455.61(a). The results of the preliminary energy audit have been deleted from the technical assistance application (§ 455.60(b)(3), now § 455.60(b)(2)) as this information is subsumed in the energy audit results being submitted. Section 455.61(b), certifying that funds will be expended for purposes stated in the application, was deleted as it was redundant with the signed application. DOE would welcome any specific comments regarding other ways these requirements could be reduced without loss of information necessary to the program's effectiveness. When the changes to the rule are final, DOE will review and revise the forms associated with the program.

The application forms are disseminated from the State level and encompass the minimum requirements set forth in this part. DOE encourages program participants to work with their State energy offices to assure that forms requires only information germane to the effective operation of the program. One commenter asked that a single application be used for the energy audit, technical assistance, and energy conservation measures grants. Since the State is the grantee for energy audits and is not eligible (except as a coordinating agency) for energy conservation measures grants, this is not feasible.

Paragraphs (d) and (e) have been moved to § 455.41 and § 455.51.

References to "measure" in § 455.60 (c)(3) and (5) for budget, schedule, cost and payback purposes have been included to bring this section into line with the proposed State option to rank either measure by measure or building by building as addressed in § 455.71. References to OMB Circular A–110 have been added to the references to OMB Circular A–102 in § 455.60(b)(3) and (c)(3). A–102 refers to Uniform Administrative procedures for State and local government while A–110 refers to those for institutions of higher education, hospitals, and other non-profit institutions. This change does not impose any new conditions. In § 455.61, the deletion of (b)(2), expended funds certifications, causes a redesignation wherein (b)(3), (4), (5), (6) become (b)(2), (3), (4), and (5); and the deletion of § 455.60(c)(2) redesignates (c)(3), (4), (5), (6), (7), (8) and (9) as (c), (2), (3), (4), (5), (6), (7), and (8). In addition, paragraph (c)(8) has been modified to expand the examples of additional information an applicant might want to include in his application.

§ 455.61 Applicant certifications.

The eligibility certification requirement previously addressed in § 455.60 has been incorporated under § 455.61, Applicant Certifications, for continuity and brevity. This inclusion as § 455.61(a) causes the previous paragraph (a) to become (b). As the previous § 455.61(b) was deleted, the (c) designation is the same.

One comment suggested that allowing a technical assistance analyst to perform design work on an energy conservation measure recommended in the technical assistance report prepared by the analyst constitutes a conflict of interest. DOE believes that in many instances institutions may not have a sufficient local pool of qualified technical assistance analysts to draw from to avoid such a situation. While DOE does not propose to incorporate this concern into the proposed rulemaking, institutions should note that the requirements still stand for them to obtain a signed statement that the technical analyst is free from conflicting financial interest prior to beginning technical assistance or energy conservation measure work and that they need to comply with the appropriate OMB Circulars in using competitive procedures in obtaining the services of a technical analyst.

Paragraph (3) has been changed to clarify the situations when the Davis-Bacon Act applies.

§ 455.62 Grant applications for state administrative expenses.

No change is proposed. Current regulations provide that the State may apply for up to 2 percent of its total allocation and after forwarding its applications to DOE may apply for further administrative expenses not to exceed 5 percent of all grant awards, so that State administrative funds are related to the level of institutional participation in this program. DOE proposes to retain the current procedures, until such time as a coordinated State grant system is instituted by DOE. A proposed rule was published October 28 governing this system (45 FR 71498), to be effective in fiscal 1982.

Some comments requested that DOE provide for waivers of the 50 percent cost sharing requirement for State administrative grants. While NECPA allows DOE to determine the amount of funds allocated to a State for administrative purposes, it requires 50 percent cost sharing on all grants.

Waivers of the cost sharing requirement for State administrative grants are not authorized by NECPA, and therefore requests for such cannot be acted upon by DOE.

Subpart F—State Responsibilities

§ 455.70 State evaluation of grant applications.

As a result of comments requesting constrained health and education

discourages institutions having already completed measures at their own initiative. Finally, one comment expressed the view that payback should receive a lower weight in the ranking scale. DOE has considered adopting a

electricity. A few comments suggested that climate be deleted as an energy conservation measure ranking factor. Since payback calculations would encompass climate considerations, DOE proposes the deletion of climate as a

which they pertain prior to submission to DOE.

Further, in order to minimize the number of applications for review, buildings should be presented under a single grant application for each

(c) with the added phrase "and will be considered to the extent funds are available." One comment called attention to the fact that under existing regulations a resubmitted grant could force a reordering of previously

Waivers of the cost sharing requirement for State administrative grants are not authorized by NECPA, and therefore requests for such cannot be acted upon by DOE.

§ 455.63 Grantee records and reports.

Institutional grantee reporting requirements have been reduced in response to comments regarding the need to reduce paperwork. The proposed rule no longer asks for a semi-annual report on technical assistance grants. Since most of these grants are of such short duration, they are not apt to extend beyond one reporting period. The deletion of any reference to a semi-annual technical assistance report does not preclude the State or the Secretary asking for such a report if it is deemed that individual cases so warrant. The proposed language also provides that a final report for an energy conservation measures grant will satisfy the need to submit a semi-annual report should the reporting time frames coincide.

Section 455.63(b) has been amended to reduce the information requested in the final report. The proposed rule requires that the grantee final report contain the technical analysts report in its entirety and the grantee's plans to implement the analyst's recommendations. Language asking for milestones accomplished, status of in-progress activities, problems encountered and any remedial action for the technical assistance report has been deleted as the report will no longer be interim in nature.

Final reports for energy conservation measures grants addressed in § 455.63(c)(5) in the existing regulations are presented under (b)(2) in the proposed rule. A request for any plans the institution may have to install additional energy conservation measures has been added to (b)(2)(ii). The requirement for follow-up annual reports for three years following energy conservation measures installation, § 455.63(e), has been redesignated (b)(2)(iii). The content of these reports remains unchanged.

Section 455.63(b)(3) addresses the State reporting requirement treated in the existing regulations under § 455.73(b). Paragraph (3)(i) speaks to the element of State administrative milestones. Paragraph (b)(3)(ii) provides for the summary action of the institutional grantee semi-annual reports and most recent final reports. Paragraph (b)(3)(iii) describes the annual report regarding estimated energy use reductions attributable to the program.

Subpart F—State Responsibilities

§ 455.70 State evaluation of grant applications.

As a result of comments requesting constrained health and education facilities review, DOE is proposing that the health and education facilities agencies perform an abbreviated review of applications limited to those selected areas of importance, and has inserted the word "abbreviated" in the first sentence of § 455.70(b).

Several informal comments prompted DOE to determine if a technical assistance application required review by the State educational facilities agency. NECPA requires under section 395(c)(1) (42 U.S.C. § 6371d(c)(1)) that such applications are subject to this review. Several comments were related to waiving the requirement for hospitals to obtain a certificate of need as required by the Public Health Service Act as a condition for participating in this program. DOE requests comments as to whether this requirement for hospitals presents an unnecessary burden unrelated to the purposes of this program.

§ 455.71 State ranking of grant applications.

Several comments were received requesting that the ranking of grant applications be on a measure by measure basis. DOE recognizes that adoption of this request may provide a broader distribution of projects among potential applicants, and that dollars expended could produce more energy savings. Conversely, longer payback projects such as solar and renewable resource measures would not be likely to receive funding under a measure by measure approach. DOE hopes that States will work with Regional Solar Energy Centers to assure full consideration of solar and renewable resource measures by technical analysts. DOE proposes to allow States the flexibility of ranking applications on either a measure by measure or a building by building basis as reflected in the change to paragraph (b). Such ranking must be consistent within the State, as set forth in an approved State Plan. DOE solicits comments on this approach to ranking.

Several comments were received requesting State option in the energy conservation measure ranking criteria for setting priorities among fuels in type and quantity of energy saved. As DOE recognizes varying fuel priorities among States, DOE proposes to modify the ranking criteria set forth in § 455.71(b)(3) to allow State discretion in determining fuel priorities among oil, natural gas and electricity. A few comments suggested that climate be deleted as an energy conservation measure ranking factor. Since payback calculations would encompass climate considerations, DOE proposes the deletion of climate as a mandatory ranking factor.

Several comments were received suggesting that hardship applications be funded in their entirety from the 10 percent hardship allocation. Several comments suggested using hardship funds only for that portion requested in excess of 50 percent, with the remaining Federal funds being drawn from the 50 percent matching fund allocation. DOE recognizes that the States already have discretion in determining hardship under their ranking criteria for hardship applications as set forth in their approved State Plan. DOE proposes that States be given the option under new § 455.71(e)(1) of whether hardship applications will be funded wholly or partially out of the hardship allocation.

Several comments were received requesting that the 30 percent minimum allocation to either schools or hospitals be removed. NECPA requires States to allocate not less than 30 percent of the funds for schools and hospitals, so that both would be assured of a minimum availability of funds. However, In the event that either schools or hospitals within a State fail to apply for all their reserved funds, the excess funds could be utilized to fund additional, eligible energy conservation projects, thus utilizing those funds within the same grant program cycle for the purpose intended by NECPA, energy conservation. Similarly, excess hardship funds not applied for could also be utilized within the same grant program cycle for additional eligible energy conservation projects even through they might not qualify as hardship applicants. To permit the fullest utilization of funds, DOE proposes to add paragraph (f) to provide that, if after the State's deadline for submitting applications there are insufficient eligible applications in the reserved categories to enable DOE to expend funds allocated to a given State, the State may recommend the remaining matching or hardship funds for other eligible applicants who have properly submitted applications. This provision, however, does not permit the shifting of funds between the allocation for schools and hospitals and the allocation for local government and public care institutions.

Several comments recommended that DOE continue to use simple payback as the economic analysis ranking factor. One comment suggested that using simple payback as a ranking factor

discourages institutions having already completed measures at their own initiative. Finally, one comment expressed the view that payback should receive a lower weight in the ranking scale. DOE has considered adopting a life-cycle costing methodology to detemine the payback of energy conservation measures for ranking purposes. A life-cycle costing methodology considers the time value of money, fuel price escalations and future operating and other costs over the life of the building or measure. DOE requests comment as to whether it should retain simple payback as the ranking factor, or to adopt a life-cycle costing methodology.

Finally, engineering analyses for renewable resource installations tend to be substantially more expensive than those for conservation measures due to a need for more senior engineers, more substantial research, and more extensive analysis. In recognition of the difficulty in performing these analyses, DOE through the Regional Solar Energy Centers and the Solar Energy Research Institute, will provide technical expertise upon request from applicants and potential applicants, architects and engineers, States, and DOE Regional offices. In the event that DOE technical resources become constrained, DOE is proposing to provide assistance according to the following priority: (1) States for review of applications; (2) DOE regional offices for grant selection; (3) ECM applicants previously funded under the TA portion of the program; and (4) all others.

§ 455.72 Forwarding of applications.

DOE is proposing to amend § 455.72(a) in order to specify that the States must forward all recommended applications along with a listing of buildings or measures covered by eligible applications for schools, and hospitals or for units of local government and public care institutions. For further clarification, DOE has added a statement that the list forwarded to DOE must contain the standings of buildings or measures if ranking has been employed.

This program is designed such that applicant data is assembled on a building by building basis. However, this proposed revision allows the States to rank measure by measure. Further, the program structure has always allowed institutions to apply for funding for more than one building under one grant application. This additional language simply requires the State to insure that projects are consolidated (i.e., if the State uses measure by measure ranking) into the buildings to which they pertain prior to submission to DOE.

Further, in order to minimize the number of applications for review, buildings should be presented under a single grant application for each institution or coordinating agency to the extent possible.

§ 455.73 State liaison, monitoring and reporting.

This section was formerly entitled "State Duties." Two comments were received expressing concern over the lack of effective publicity and program information. DOE recognizes that the success of this program relies heavily on institutions being aware of policy and procedures governing this program. DOE encourages the States to utilize all means possible in their outreach activities to disseminate timely program information, and will work with the States in improving DOE Regional State communications. A requirement of a State Plan is for States to consult with, and disseminate information to, eligible institutions on program activities and requirements. DOE has amended § 455.73(a)(3), now § 455.73(c), by inserting the word "specific" before "reasons" to highlight the importance of the States informing those applicants whose applications were not recommended exactly why the application was not funded.

DOE proposes to amend § 455.73 by addressing State reporting requirements in conjunction with other reporting requirements in § 455.63(b)(3). Since reporting is a State duty, it is cited as such in the new § 455.73(f) and crossreferenced to the reporting section.

Two comments spoke to the levels of responsibility assigned to the States. One comment urged less control and one urged more control at the State level. The Conference Report accompanying NECPA envisions the States as a partner with DOE in program oversight and implementation, and this proposed rulemaking attempts to balance the roles of States and DOE to provide flexibility where its useful.

Subpart G—Grant Awards

§ 455.80 Approval of grant applications.

No comments were received relevant to the actual awarding of grants. DOE's experiences with the program prompts some proposed modifications in this part for purposes of clarification. One substantive addition is a new part which allows pregnant costs from application submission date.

Section 455.80(a) remains unchanged. The last sentence of § 455.80(b) becomes (c) with the added phrase "and will be considered to the extent funds are available." One comment called attention to the fact that under existing regulations a resubmitted grant could force a reordering of previously recommended and approved applications. This procedure would not only place an undue burden on the States, but it would give the applicant resubmitting the opportunity to benefit from knowing where lines had been drawn on earlier rankings. The added phrase is to clarify DOE's intent that an application resubmitted after State deadlines need not be considered in competition with applications already recommended, but only to the extent funds are available within that cycle. In order to further clarify the procedure, two other sentences were added, stating, "However, nothing in this provision shall obligate either the State or Secretary to take final action regarding a resubmitted application within a grant program cycle. An application not acted upon may be resubmitted in a subsequent program cycle."

Program history suggests the need to clarify existing regulatory intent regarding subsequent awards to the same building. The existing language, "Financial assistance under this part for any single technical assistance program or energy conservation measure shall not exceed the amount of the initial grant award," has been, in part, misconstrued so as to prevent additional awards to the same building or to new and exclusively different work to the same aspect of the facility. This was not DOE's intent. To clarify this issue, the former (c) is expanded and becomes (d) and (e). The new paragraph (d) clarifies that DOE shall not provide supplemental funds for a grant and that only one technical assistance grant per building will be funded. Paragraph (e) similarly provides that DOE shall not provide supplemental funds for a grant for energy conservation measures nor shall it permit more than one grant per building per cycle.

DOE is concerned that the elapsed time from submission of an application to actual awarding of grant may be a waiting time that works as a disincentive. In addition, the potential grantees' construction costs might change during this period. To help allay these difficulties, paragraph (f) has been added which provides that DOE may fund pregnant costs incurred after application submission. DOE stresses that this provision does not assure that the applicant will receive a grant and the applicant bears the responsibility for

the entire project cost unless the application is approved by DOE.

§ 455.81 Grant awards for units of local government and public care institutions.

Subpart H—State Plan Development and Approval

§ 455.90 Contents of state plan.

DOE's intent is that States adhere to the same procedures set forth in § 455.90 (a) and (b) for involving eligible

from 120 days to 90 days. DOE proposes a new paragraph (d) to provide for submission and approval procedures for State Plan amendments, and for resubmission of State Plans and amendments without such a formal

eligible institutions of the options it has selected, even if the State chooses not to vary its present procedures.

Other proposed revisions are matters of clarification, some of which have been previously discussed with States and presented in program directives.

One comment each was received on the following areas: the program should receive greater funding; the funds should be made available until expended;

govern indirect costs, and allowability of indirect costs is not addressed in the proposed rulemaking.

One comment was received from the Government of American Samoa noting

the application and subsequent assurance of compliance on a case specific basis. DOE believes this is an administrative matter and should not be prescribed by rule.

One comment was received from the

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the entire project cost unless the application is approved by DOE.

§ 455.81 Grant awards for units of local government and public care institutions.

Section 455.81, paragraph (c) has been inserted to clarify that, pursuant to NECPA, local government and public care institutions are not eligible for financial assistance for severe hardship. The former (c) has been redesignated (d).

§ 455.82 Grant awards for schools and hospitals.

The set percentages for technical assistance funds within State allocations which were set in the law have been deleted from § 455.82(a) since the referenced period has nearly elapsed. DOE has instead substituted a provision that notification of the technical assistance portion of the State allocations will accompany the Federal Register Notice of these allocations. In § 455.82(c) the words "up to" have been inserted before the phrase "The Secretary may award * * *" in order to allow available funds within a State to be used for other eligible applications should insufficient eligible applications be submitted to utilize the 10 percent set aside.

Paragraph (d) has been deleted to bring this section into line with the proposed revisions in § 455.71. Paragraphs (e) and (f) have been redesignated (d) and (e). The new (e) has been modified to clarify the conditions under which former work may serve as non-Federal share credit. It stipulates that only work in the grant building which otherwise be an eligible measure and satisfy the required element of the programs can be used for non-Federal share credit. Further clarification is provided by stating credit shall not exceed and amount to the non-Federal share of the proposed energy conservation measure.

One comment was received requesting energy conservation measure credit up to 12–18 months before application. Congressional intent was that any form of credit should date back to the time the President signed NECPA (November 8, 1978). Therefore, the requested time frame would be met in any future cycles.

§ 455.83 Grant awards for state administrative expenses.

The content remains unchanged from the current rule.

Subpart H—State Plan Development and Approval

§ 455.90 Contents of state plan.

DOE's intent is that States adhere to the same procedures set forth in § 455.90 (a) and (b) for involving eligible institutions in the development of State Plan amendments and for notifying institutions of any major changes to their State Plan. Section 455.90(e) was amended to conform to § 455.71(b)(3) giving States the option for determining the order of priority given to oil, natural gas and electricity.

Several comments were received inquiring as to what constitutes a written justification for not implementing maintenance and operating procedures. DOE proposes to amend § 455.90(j) to establish criteria for determining satisfactory justification for not implementing maintenance and operating procedures. DOE proposes to delete § 455.90(m) in its entirety because it was dealt with in a substantive fashion in other sections.

Several comments were received requesting that, under § 455.90(o), now § 455.90(n), the words "financial auditing" be deleted. Under OMB Circulars A–102 and A–110, grantee financial management systems are supposed to provide for "examinations in the form of audits or internal audits" not less than once every two years. These audits are meant to ascertain the effectiveness of the financial management systems and internal procedures established to meet the terms and conditions of the grant and should be conducted on an organization-wide, rather than grant-specific, basis. While DOE proposes the deletion of financial auditing of institutional grantees as a State task, States should, as part of their program monitoring responsibility, see that institutional grantees have met or will meet the audit requirements prescribed by OMB. States are expected to review reports submitted by grantees, which include financial status reports, and refer any significant inadequacies found to DOE. Several comments were received questioning whether the cost of a financial audit was an allowable cost. The cost of a financial audit is an allowable cost for all grantees.

DOE is proposing to add § 455.90(p) which addresses data gathering requirements under the law which were not explicitly addressed in the previous rulemaking.

§ 455.91 Submission and approval of state plans.

DOE is proposing to change the submittal time frame for State Plans from 120 days to 90 days. DOE proposes a new paragraph (d) to provide for submission and approval procedures for State Plan amendments, and for resubmission of State Plans and amendments without such a formal consent procedure on the part of the Secretary.

§ 455.92 State plans developed by the Secretary.

No change is proposed.

Subpart I—Allocation of Appropriations Among the States

§ 455.100 Allocation of funds.

Paragraph (b) has been amended to address amounts allocated for grants within a State for technical assistance and energy conservation measure grants for schools and hospitals under the new (i) and for technical assistance grants for units of local government and public care institutions under the new (ii).

Paragraph (d) has been amended to reflect the proposed § 455.71(f) providing flexibility in the use of hardship funds for schools and hospitals when there are insufficient applications for hardship assistance. Specifically, the words "shall apportion" in the first sentence have been replaced with "make available up to," and the phrase "in excess of the 50 percent Federal share but" has been deleted so as not to confuse the proposed State option for the treatment of hardship funds as referenced in proposed § 455.71(e)(1). The words "Federal share" have been added after "90 percent" in the same sentence for clarity. In the second sentence of paragraph (d), the cross-reference to § 455.71(d) has been updated to § 455.71(e).

§ 455.101 Allocation formulas.

No change is proposed.

§ 455.102 Reallocation of funds.

DOE proposes to combine paragraphs (c) and (d) of the existing rulemaking under a new paragraph (c) that speaks to DOE's reallocation all of funds remaining at the end of any grant program cycle among all States in the next grant program cycle.

Miscellaneous

Most of DOE's proposed revisions are designed to allow more State discretion in the preparation and amendment of their State Plans so that they might be more responsive to the concerns and interests of their respective participants. The option of prioritizing fuels to be saved, or the alternative ranking measure by measure or building by building are two examples. It remains the State's responsibility to inform eligible institutions of the options it has selected, even if the State chooses not to vary its present procedures.

Other proposed revisions are matters of clarification, some of which have been previously discussed with States and presented in program directives. Such items as the definition of a coordinating agency or what constitutes a satisfactory written justification for not implementing operations and maintenance procedures will probably not involve any changes in State Plans as they reaffirm earlier understandings. Other items, while deemed a clarification by DOE, such as factors to determine costs, are apt to interject new conditions in most States' plans. To the extent that matters of clarification constitute a change in the State's interpretation, these proposed revisions mandate changes.

There are several proposed modifications to the regulations that will clearly require a change in State Plans and/or will impact on program operation. The reduction in the number of grantee reports as well as fewer pieces of information requested in the technical assistance and energy conservation measures final reports will effect change in the operations but should not require attention prior to opening the next program cycle.

Changes that would require immediate modifications to Plans and/or to operations are:

1. Option to rank by measure
2. Coal conversion projects' payback determination
3. Removal of financial auditing as a State duty
4. Deletion of preliminary energy audit information from technical assistance application as well as a separate certification that funds will be expended for purposes stated in the application. Changes in the manner in which eligibility is certified could constitute a modification in some States
5. The time frame for submitting State Plans or amendments has been reduced from 120 to 90 days

It is DOE's intention to work with the respective States to be sure the implications of any changes in the final rule are thoroughly understood and implemented as expeditiously as possible.

A number of comments recommended that DOE seek to disallow indirect costs as eligible grant costs for these programs. Indirect costs are those costs incurred for a common or joint purpose that benefit more than one cost objective, and are not readily assignable to the cost objective specifically benefited. The applicable cost principles govern indirect costs, and allowability of indirect costs is not addressed in the proposed rulemaking.

One comment each was received on the following areas: the program should receive greater funding; the funds should be made available until expended; energy audits should be eliminated; institutional sector categories should be eliminated for purposes of this program, and the program should be extended over the next few fiscal years. All of the above areas are outside of DOE's authority, and properly fall under the purview of Congress (insofar as program funding and expiration are concerned) or are specifically required by NECA (insofar as the elimination of energy audits and institutional sector categories eligible for funding are concerned).

One comment requested that DOE consider retroactive funding, or reimbursement of projects already completed. The intent of Congress, as expressed in the conference report on NECPA, clearly prohibits funding for projects commenced prior to November 8, 1978. The applicant under current regulations may claim projects initiated since that date with non-federal funds as credit in determining their non-Federal share for additional technical assistance or energy conservation measure projects within the same building.

Seven comments addressed the timing of grant program cycles. Three of the comments wanted longer cycles, two comments asked for advance notice of potential funding times and dates, one comment asked for two cycles per year so that TA and ECM grants for a given project could be funded within one year, and one comment requested the cycles be timed to match the school year. A number of comments favored a 12-month cycle.

DOE proposes a 12-month grant program cycle, and requests comment on whether the annual cycle should be a fiscal, calendar, or construction year cycle. Finally, while the beginning and ending dates of the grant program cycle will be set uniformly by DOE, it is proposed that individual States, in conjunction with their DOE Regional Offices, have the latitude for negotiating and determining intermediate submittal dates of reviewed and ranked applications from the States to their DOE Regional Offices.

One comment was received requesting a simple change order process be addressed in the proposed rulemaking. The degree of change affected by such an order requires a judgmental decision as to whether it significantly affects the original intent of the application and subsequent assurance of compliance on a case specific basis. DOE believes this is an administrative matter and should not be prescribed by rule.

One comment was received from the Government of American Samoa noting the relevance of Public Law 96–205 Title VI Section 601 (48 USC 1469a) to the match requirements. Since this is a concern of limited purview, it will be dealt with outside the regulations.

III. Comment Procedures

Interested persons are invited to submit written comments with respect to the proposed regulation to Docket Number CAS–RM–78–503, Office of Hearings and Dockets, Conservation and Solar Energy, Department of Energy, Mail Stop 6B–025, Washington, D.C. 20585. All comments received will be available for public inspection in the DOE Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. All comments and related information must be received on or before January 28, 1981, to ensure consideration.

All information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, or it will not be treated as confidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Public hearings will be held in two DOE Regions, in addition to the national hearing in Washington, D.C., to receive oral presentations from interested persons.

A. *Public Hearings.* The national hearing will be held at 9:00 a.m. e.s.t., on January 16, 1981, Room 2105, 2000 M Street NW., Washington, D.C. Regional hearing dates and locations are found below. Any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest in it may make a written request for an opportunity to make an oral presentation. The person making the request should describe his or her interest in the proceeding and provide a concise summary of the proposed oral presentation and a phone number where he or she may be reached. Each person who, in DOE's judgment, proposes to present relevant material and information shall be selected to be heard and shall be notified by DOE of their participation before 4:30 p.m., local time, January 8, 1981, for the national hearing, and January 9, 1981 for the regional hearings, and shall bring 15 copies of their proposed statement to the hearing. Requests to make an oral presentation must be submitted to the parties listed below:

Hearing dates	Submit requests to testify to—	Hearing location
Jan. 16	Carol Snipes, Dept. of Energy, Mail Stop 6B–, Rm. 2105, 2000 M St. N.W., Washington,	

Subpart B—Preliminary Energy Audits and Energy Audit Grant Procedures

455.10 Purpose and scope.

* * * * *

455.18 Contents of an energy audit.

Subpart C—Technical Assistance Programs

and 2 Title III of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 306 *et seq.*; which adds Parts G and H, respectively, to Title III of the Energy Policy and Conservation Act, Pub. L. 94–163, 42 U.S.C. 6321 *et seq.*

(b) This [illegible] which acts, and is authorized by eligible institutions to so act, as the agent for such institutions with respect to their participation in the program.

"DOE" means the Department of Energy.

"[illegible] audit" means [illegible]

(i) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless such increase in illumination is necessary to conform to

hearing, and January 9, 1981 for the regional hearings, and shall bring 15 copies of their proposed statement to the hearing. Requests to make an oral presentation must be submitted to the parties listed below:

Hearing dates	Submit requests to testify to—	Hearing location
Jan. 16	Carol Snipes, Dept. of Energy, Mail Stop 8B-025, Washington, D.C. 20585.	Rm. 2105, 2000 M St. N.W., Washington, D.C.
Jan. 15	Ken Johnson, Dept. of Energy, 175 W. Jackson Blvd., Chicago, Illinois 60604.	Ambassador West Hotel, George's Room, 1300 N. State Pky., Chicago, Illinois.
Jan. 20	Terry Osborn, Dept. of Energy, 333 Market Street, San Francisco, CA 94105.	Golden Gateway Holiday Inn, Oregon/Nevada Room, 1500 Van Ness Ave., San Francisco, CA.

B. *Conduct of Hearings.* DOE reserves the right to arrange the schedule of presentations to be heard, and to establish the procedures governing the conduct of the hearing. The length of presentations may be limited, based on the number of persons requesting to be heard. A DOE official will be designated as presiding officer of the hearing, and questions may be asked only by those conducting the hearing. There will be no cross-examination of persons presenting statements. Any participant who wishes to ask a question at the hearing may submit the question in writing to the presiding officer, who will determine whether the questions are relevant and material, and whether time limitations permit a response.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of each hearing will be made, be retained by DOE, and be made available for inspection at the DOE Freedom of Information Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 between 8:00 a.m. and 4:30 p.m., Monday through Friday, and at DOE's Region 5 (Chicago) and Region 9 (San Francisco) Reading Rooms. A copy of the transcript may be purchased from the reporter.

Environmental and Regulatory Assessments. Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, DOE published a Notice of Availability of an environmental assessment (EA) of the entire Title III on March 12, 1979, in the **Federal Register** (44 FR 13554). Based on this EA, DOE determined that the NECPA Title III program did not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and that an environmental impact statement (EIS) was not needed to support the action.

DOE has reviewed the environmental impacts of the amendments proposed herein. It is DOE's judgment that the effect of these amendments will be to improve the administrative aspects of the program, and provide greater flexibility in the program at the State level. No new or additional environmental impacts are associated with the new amendments, nor do these new amendments require the addition of any mitigating measures beyond those already contained in the program.

It is thus DOE's determination that the environmental impacts of the amendments have been adequately analyzed in the March 1979 EA, and that these impacts are not significant. Hence, no additional EA or EIS is required.

This proposed rulemaking has been reviewed in accordance with Executive Order 12044, 43 FR 12661, and has determined that the proposed rulemaking is "significant" but not major and therefore does not require regulatory analysis. This proposed rulemaking has also been reviewed in accordance with OMB Circular A–116 to assess the impacts on urban centers and communities, and DOE has determined that the proposed rule does not constitute a major proposal requiring formal analysis.

In consideration of the foregoing, DOE proposes to amend Chapter II, Title 10, in Part 455 of the Code of Federal Regulations by revising Subpart A; revising § 455.10 and adding new § 455.18 in subpart B; and revising subparts C–I to read as follows:

Issued in Washington, D.C., December 17, 1980.

T. E. Stelson,

Assistant Secretary, Conservation and Solar Energy.

PART 455—GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSITITUTIONS

Subpart A—General Provisions

Sec.
455.1 Purpose and scope.
455.2 Definitions.
455.3 Administration of grants.
455.4 Recordkeeping.
455.5 Suspension and termination of grants.

Subpart B—Preliminary Energy Audits and Energy Audit Grant Procedures

455.10 Purpose and scope.
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455.18 Contents of an energy audit.

Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government and Public Care Institutions

455.40 Purpose and scope.
455.41 Eligibility.
455.42 Contents of program.

Subpart D—Energy Conservation Measures for Schools and Hospitals

455.50 Purpose and scope.
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Subpart E—Applicant Responsibilities

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455.71 State ranking of grant applications.
455.72 Forwarding of applications.
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Subpart G—Grant Awards

455.80 Approval of grant applications.
455.81 Grant awards for units of local government and public care institutions.
455.82 Grant awards for schools and hospitals.
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Subpart H—State Plan Development and Approval

455.90 Contents of state plan.
455.91 Submission and approval of state plans.
455.92 State plans developed by the Secretary.

Subpart I—Allocation of Appropriations Among the States

455.100 Allocation of funds.
455.101 Allocation formulas.
455.102 Reallocation of funds.

Authority: Title III of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 et seq., which establishes Parts G and H of Title III of the Energy Policy and Conservation Act, 42 U.S.C. 6371 *et seq.*; Section 365(e)(2), 42 U.S.C. 6325(e)(2), of the Energy Conservation and Production Act, Pub. L. 94–385, 42 U.S.C. 3801 *et seq.*; and Department of Energy Organization Act, Pub. L. 95–91, 42 U.S.C 7101 *et seq.*

Subpart A—General Provisions

§ 455.1 Purpose and scope.

(a) This part establishes programs of financial assistance pursuant to Parts 1 and 2 Title III of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 306 *et seq.*; which adds Parts G and H, respectively, to Title III of the Energy Policy and Conservation Act, Pub. L. 94–163, 42 U.S.C. 6321 *et seq.*

(b) This subpart authorizes grants to States or to public or non-profit schools and hospitals to assist them in conducting preliminary energy audits and energy audits, in identifying and implementing energy conservation maintenance and operating procedures and in evaluating, acquiring and installing energy conservation measures, including solar energy or other renewable resource measures, to reduce the energy use and anticipated energy costs of buildings owned by schools and hospitals.

(c) This subpart also authorizes grants to States or units of local government and public care institutions to assist them in conducting preliminary energy audits and energy audits, in identifying and implementing energy conservation maintenance and operating procedures and evaluating energy conservation measures, including solar energy and other renewable resource measures, to reduce the energy use and anticipated energy costs of buildings owned by units of local government and public care institutions.

§ 455.2 Definitions.

"Act", as used in this part, means the Energy Policy and Conservation Act, Pub. L. 94–163, 42 U.S.C. 6321 *et seq., as amended* by the National Energy Conservation Policy Act, Pub. L. 95–619, Stat. 3206.

"Auditor" means any person who is qualified in accordance with 10 CFR 450.44 to conduct an energy audit.

"Building" means any structure, the construction of which was completed on or before April 20, 1977, which includes a heating or cooling system, or both.

"Complex" means a closely situated group of buildings on a contiguous site, or a closely situated group of buildings served by a central utility plant, such as a college campus or a multibuilding hospital.

"Construction completion" means the date of issuance of an occupancy permit for a building or the date the building is ready for occupancy, as determined by DOE.

"Cooling degree days" means the annual sum of the number of Fahrenheit degrees of each day's mean temperature above 65° for a given locality.

"Coordinating agency" means any public or non-profit organization legally constituted within a State for either administrative control or services for a group of institutions within a State and which acts, and is authorized by eligible institutions to so act, as the agent for such institutions with respect to their participation in the program.

"DOE" means the Department of Energy.

"Energy audit" means any survey of a building or complex conducted in accordance with the requirements of Subpart E of 10 CFR Part 450.

"Energy conservation maintenance and operating procedures" means modifications in the maintenance and operations of a building, and any installation therein, which are designed to reduce the energy use in such building and which require no significant expenditure of funds.

"Energy conservation measure" means installation or modification of an installation in a building which is primarily intended to reduce energy consumption or allow the use of an alternative energy source, which may contain an internal control and measurement devices, including, but not limited to—

(a) Insulation of the building structure and systems within the building;

(b) Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated windows and door systems, additional glazing, reductions in glass area, and other window and door systems modifications;

(c) Automatic energy control systems which would reduce energy consumption;

(d) Equipment required to operate variable steam, hydraulic, and ventilating systems adjusted by automatic energy control systems;

(e) Active or passive solar space heating or cooling systems, solar electric generating systems, or any combination thereof;

(f) Active or passive solar water heating systems;

(g) Furnace or utility plant and distribution system modifications including—

(1) Replacement burners, furnaces, boilers, or any combination thereof, which substantially increase the energy efficiency of the heating system;

(2) Devices for modifying flue openings which will increase the energy efficiency of the heating system;

(3) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights; and

(4) Utility plant system conversion measures including conversion of existing oil and gas-fired boiler installations to alternative energy sources, including coal;

(h) Addition of caulking and weatherstripping;

(i) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless such increase in illumination is necessary to conform to any applicable State or local building code or, if no such code applies, the increase is considered appropriate by the Secretary;

(j) Energy recovery systems;

(k) Cogeneration systems which produce steam or forms of energy such as heat, as well as electricity for use primarily within a building or a complex of buildings owned by an eligible institution and which meet such fuel efficiency requirements as the Secretary may by rule prescribe;

(l) Costs of installation and connection of such leased equipment as would otherwise be an eligible energy conservation measure;

(m) Such other measures as the Secretary identifies by rule for purposes of this part, as set forth in Subpart D of 10 CFR 455; and

(n) Such other measures as a grant application show will save a substantial amount of energy and are identified in an energy audit in accordance with Subpart E of 10 CFR 450.

"Fuel" means any commercial source of energy used within the building or complex being surveyed such as natural gas, fuel oil, electricity, or coal.

"Governor" means the chief executive officer of a State, including the Mayor of the District of Columbia, or a person duly designated in writing by the Governor to act on her or his behalf.

"Grantee" means the entity or organization named in the Notice of Grant Award as the recipient of the grant.

"Grant program cycle" means the period of time specified by DOE which relates to the fiscal year or years for which monies are appropriated for grants under this part, during which one complete cycle of DOE grant activity occurs, including fund allocations to the States, receipt, applications review, approval or disapproval, and DOE grant awards, but which does not include the grantee's performance period.

"Gross square feet" means the sum of all heated or cooled floor areas enclosed in a building, calculated from the outside dimensions, or from the centerline of common walls.

"Heating or cooling system" means any mechanical systems for heating or cooling conditioned areas of a building. For purposes of this part, any mechanical system for distributing air throughout the building is considered a cooling system.

"Heating degree days" means the annual sum of the number of Fahrenheit degrees of each day's mean temperature below 65° for a given locality

"Hospital" means a public or non-profit institution which is a general

occupied by a public care institution or or an office or agency of a unit of local government.

"Public care institution" means a public or non-profit institution which owns—

for gainful employment in a recognized occupation and which meets the provisions cited in paragraph (b)(1)–(3) of this section; or

(d) Is a local educational agency.

"School facilities" means buildings

replacement or insulation projects related to the installation of energy conservation, solar energy or renewable resource measures in a building.

"Unit of local government" means the government of a county, municipality,

(9) DOE Assistance Regulation 10 CFR Part 600, Subparts A and B.

(b) Grantees shall comply with such additional requirements applicable to this part as DOE may from time to time prescribe for the administration of

using systems of such buildings within the State;

(2) Establishing a data base from which reasonably accurate estimates can be made of the number of eligible institutions, the number of qualifying

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"Heating degree days" means the annual sum of the number of Fahrenheit degrees of each day's mean temperature below 65° for a given locality

"Hospital" means a public or non-profit institution which is a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and which is duly authorized to provide hospital services under the laws of the State in which it is situated.

"Hospital facilities" means buildings housing a hospital and related facilities, including laboratories, laundries, outpatient departments, nurses' home and training facilities and central service facilities operated in connection with a hospital, and also includes buildings housing education or training facilities for health profession personnel operated as an integral part of a hospital.

"Indian tribe" means any tribe, band nation, or other organized group or community of Indians, including any Alaska native village, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92–203; 85 Stat. 688, which (a) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (b) is located on, or in proximity to, a Federal or State reservation or rancheria.

"Local educational agency" means a public board of education or other public authority or a non-profit institution legally constituted within, or otherwise recognized by, a State for either administrative control or direction of, or to perform administrative services for, a group of schools within a State.

"Maintenance" means activities undertaken in a building to assure that equipment and energy-using systems operate effectively and efficiently.

"Native American" means a person who is a member of an Indian tribe.

"Operating" means the operation of equipment and energy-using system in a building to achieve or maintain specified levels of envrionmental conditions or service.

"Owned" or "Owns" means a property interest, including without limitation a leasehold interest, which is, or shall become, a fee simple title in a building or complex.

"Preliminary energy audit" means any survey of a building or complex conducted in accordance with the requirements of Subpart E of 10 CFR Part 450.

"Primarily occupied" means that in excess of 50 percent of a building's square footage or time of occupancy is occupied by a public care institution or or an office or agency of a unit of local government.

"Public care institution" means a public or non-profit institution which owns—

(a) A facility for long-term care, rehabilitation facility, or public health center, as described in Section 1633 of the Public Health Service Act (42 U.S.C. 300s–3; 88 Stat. 2270); or

(b) A residential child care center, which is an institution, other than a foster home, operated by a public full-time residential care with an average length of stay of at least 30 days for at least 10 minor persons who are in the care of such institution as a result of a finding of abandonment or neglect or of being persons in need of treatement or supervision.

"Public or non-profit institution" means an institution owned and operated by—(a) A State, a political subdivision of a State or an agency or instrumentality of either; or

(b) A school or hospital which is, or would be in the case of such entities situated in American Samoa, Guam, Puerto Rico, and the Virgin Islands, exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1954; or

(c) A unit of local government or public care institution which is, or would be in the case of such entities situated in American Samoa, Guam, Puerto Rico, and the Virgin Islands, exempt from income tax under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1954.

"School" means a public or non-profit institution which—(a) Provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis;

(b)(1) Provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis;

(2) Admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(3) Is accredited by a nationally recognized accrediting agency or association; and

(4) Provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program;

(c) Provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions cited in paragraph (b)(1)–(3) of this section; or

(d) Is a local educational agency.

"School facilities" means buildings housing classrooms, laboratories, dormitories, athletic facilities, or related facilities operated in connection with a school.

"Secretary" means the Secretary of the Department of Energy.

"State" means, in addition to the several States of the Union, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

"State energy agency" means the State agency responsible for developing State energy conservation plans pursuant to Section 362 of the Energy Policy and Conservation Act, or, if no such agency exists, a State agency designated by the Governor of such State to prepare and submit the State Plan required under Section 394 of the Energy Policy and Conservation Act, as amended by the Energy Conservation and Production Act.

"State hospital facilities agency" means an existing agency which is broadly representative of the public hospitals and the non-profit hospitals, or, if no such agency exists, an agency designated by the Governor of such State which conforms to the requirements of this definition.

"State school facilities agency" means an existing agency which is broadly representative of public institutions of higher education, non-profit institutions of higher education, public elementary and secondary schools, non-profit elementary and secondary schools, public vocational education institutions, non-profit vocational education institutions, and the interests of handicapped persons in a State or, if no such agency exists, an agency which is designated by the Governor of such State which conforms to the requirements of this definition.

"Technical assistance" means a program of activity for (a) the conduct of specialized studies to identify and specify energy savings and related cost savings that are likely to be realized as a result of either modifying maintenance and operating procedures in a building, and the acquisition and installation of one or more energy conservation measures, (b) the planning or administration of such specialized studies. For States, schools and hospitals, which are eligible to receive grants to carry out energy conservation measures, the term also means the planning or administration of specific remodeling, renovation, repair,

replacement or insulation projects related to the installation of energy conservation, solar energy or renewable resource measures in a building.

"Unit of local government" means the government of a county, municipality, parish, borough, or township, which is a unit of general purpose government below the State, determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes; the District of Columbia, American Samoa, Guam, and the Virgin Islands; the recognized governing body of an Indian tribe which governing body performs substantial governmental functions; libraries owned by any of the foregoing; and public libraries which serve all residents of a political subdivision below the State level, such as a community, district or region, free of charge and which derive at least 40 percent of their operating funds from tax revenues of a taxing authority below the State level.

§ 455.3 Administration of grants.

(a) Grants provided under this part shall comply with applicable law, regulation or procedure including, but without limitation, the requirement of—

(1) Federal Management Circular 74–4, 34 CFR Part 255, entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments";

(2) Office of Management and Budget Circular A–102, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments";

(3) Office of Management and Budget Circular A–110, entitled "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations";

(4) DOE regulation, 10 CFR 1040, entitled "Non-discrimination In Federally Assisted Programs", which implements the following public laws: title VI of the Civil Rights Act of 1964; Section 16 of the Federal Energy Administration Act of 1974; Section 401 of the Energy Reorganization Act of 1974; Title IX of the Education Amendments of 1972; and Section 504 of the Rehabilitation Act of 1973;

(5) OMB Circular A–122, "Cost Principles for Non-profit Organziations";

(6) OMB Circular A–21, "Cost Principles for Institutions of Higher Education";

(7) 45 CFR 74, Appendix E, "Cost Principles for Hospitals";

(8) OMB Circular A–95 Part III, "Review, Evaluation, and Coordination of Federal and Federally-Assisted Programs and Projects";

(9) DOE Assistance Regulation 10 CFR Part 600, Subparts A and B.

(b) Grantees shall comply with such additional requirements applicable to this part as DOE may from time to time prescribe for the administration of grants.

§ 455.4 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required by DOE, including records which fully disclose the amount and disposition of the financial assistance received; the total cost of the administration and the activities for which assistance is given or used; the source and amount of any funds not supplied by DOE and any data and information which DOE determines are necessary to protect the interest of the United States and to facilitate an effective financial audit and performance evaluation. The Secretary, or any of her or his duly authorized representatives, shall have access, as prescribed by DOE Assistance Regulations, to any books, documents, receipts or other records which the Secretary determines are related or pertinent, either directly or indirectly, to any financial assistance provided under this part.

§ 455.5 Suspension and termination of grants.

The Secretary may suspend or terminate financial assistance under a previously approved application if the Secretary determines the applicant has failed to comply substantially with the trms and conditions set forth in the application and this part. Suspension and termination procedures shall be as set forth in OMB circulars A–102 and A–110 as applicable. A decision to terminate pursuant to this section may be appealed to the DOE Financial Assistance Appeals Board, pursuant to 10 CFR 1024.

Subpart B—Preliminary Energy Audit and Energy Audit Grant Procedures.

§ 455.10 Purpose and scope.

(a) This subpart contains the regulations whereby the Federal Government shall provide financial assistance for preliminary energy audits and energy audits.

(b) Preliminary energy audits are to be performed by States for the purpose of—(1) Determining the energy use characteristics of eligible school and hospital facilities, and buildings owned by units of local government and public care institutions, including the size, type, rate of energy use and major energy using systems of such buildings within the State;

(2) Establishing a data base from which reasonably accurate estimates can be made of the number of eligible institutions, the number of qualifying buildings, and patterns of energy conservation needs including an indication of the opportunities for use of solar or other renewable energy sources; and

(3) Assisting States in development of a sound and complete State Plan which is a prerequisite to receipt of financial assistance for technical assistance or energy conservation measures, including solar energy or other renewable resource measures.

(c) Energy audits are to be performed by States or eligible schools, hospitals, units of local government and public care institutions for the purpose of—(1) Determining the energy use characteristics of eligible school and hospital facilities, and buildings owned by units of local government and public care institutions, including the size, type, rate of energy use and major energy using systems of such buildings within the State;

(2) Identifying and encouraging adoption of energy conservation maintenance and operating procedures;

(3) Indicating potential, if any, for acquiring and installing energy conservation measures, including possible use of solar energy or other renewable resources; and

(4) Providing, to the greatest extent practical, consistent information necessary to identify those buildings to receive priority for additional financial assistance.

§ 455.18 Contents of an energy audit.

(a) An energy audit shall contain the information required for a preliminary energy audit, in accordance with § 450.42, and shall also include a description of—(1) Major changes in functional use or mode of operation planned in the next fifteen years, such as demolition, disposal, rehabilitation, or conversion from office to warehouse;

(2) For a building in excess of 200,000 gross square feet, if available—(i) Peak electric demand for both daily and annual cycles; and

(ii) Annual energy use by fuel type of the major mechanical or electrical systems if the information is available or can be reasonably estimated;

(3) Terminal heating or cooling, or both, such as radiators, unit ventilators, fancoil units, or double-duct reheat systems;

(4) Building site and structural characteristics related to solar energy or

other renewable resource potential, including but not limited to—

(A) Repairing leaks;

(B) Reducing the quantity of water

care institutions to receive grants for technical assistance to be peformed in

the energy and cost savings likely to be realized from, implementing each

costs that would result from each conservation measure if any;

(using current energy prices) as the annual cost savings.

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other renewable resource potential, including but not limited to—

(i) Climatic factors, specifically—

(A) Average annual heating degree days and cooling degree days;

(B) Average solar insolation by month;

(C) Average monthly wind speed; and

(ii) Roof characteristics, including—

(A) An identification of primary structural component such as steel, wood, concrete; and

(B) Type of roofing material such as shingles, slate, or built-up materials; and

(5) A description of general building conditions.

(b) An energy audit shall—

(1) Indicate that appropriate energy conservation maintenance and operating procedures have been implemented for the building, supported by a demonstration based on actual records, that energy use has been reduced in a given year through changes in maintenance and operating procedures, by not less than 20 percent from a corresponding based period having a degree day variance of less than 10 percent; or

(2) Recommended appropriate energy conservation maintenance and operating procedures, on the basis of an on-site inspection and review of any scheduled preventive maintenance plan, together with a general estimate or range of energy and cost savings if practical, which may result from—

(i) Effective operation of ventilation systems and control of infiltration conditions, including—

(A) Repair of caulking or weatherstripping around windows and doors;

(B) Reduction of outside air intake, shutting down ventilation systems in unoccupied areas, and shutting down ventilation systems when the building is not occupied; and

(C) Assuring central or unitary ventilation controls, or both, are operating properly;

(ii) Changes in the operation of heating or cooling systems through—

(A) Lowering or raising indoor temperatures;

(B) Locking thermostats;

(C) Adjusting supply or heat transfer medium temperatures; and

(D) Reducing or eliminating heating or cooling at night or at times when a building or complex is unoccupied;

(iii) Changes in the operation of lighting systems through—

(A) Reducing illumination levels;

(B) Maximizing use of daylight;

(C) Using higher efficiency lamps; and

(D) Reducing or eliminating evening cleaning of buildings;

(iv) Changes in the operation of water systems through—

(A) Repairing leaks;

(B) Reducing the quantity of water used, e.g., flow restrictors;

(C) Lowering settings for hot water temperatures;

(D) Raising settings for chilled water temperatures; and

(v) Changes in the maintenance and operating procedures of the utility plant and distribution system through—

(A) Cleaning equipment;

(B) Adjusting air/fuel ratio;

(C) Monitoring combustion;

(D) Adjusting fan, motor, or belt drive systems;

(E) Maintaining steam traps; and

(F) Repairing distribution pipe insulation; and

(vi) Such other actions as the State may determine useful or necessary, consistent with the purposes of the energy audit and acceptable cost constraints of § 450.46.

(c) Based on information gathered under paragraphs (a) and (b) of § 450.42, and paragraphs (a) (1) and (2) of this section, an energy audit shall indicate the need, if any, for the acquisition and installation of energy conservation measures and shall include an evaluation of the need and potential for retrofit based on consideration of one or more of the following—

(1) An energy use index or indices, for example, Btu's per gross square foot per year;

(2) An energy cost index or indices, for example, annual energy costs per gross square foot; or

(3) The physical characteristics of the building envelope and major energy-using systems.

(d) Based on information gathered under paragraph (c) of § 450.42 and paragraph (a)(4) of this section, an energy audit shall include an indication of whether building conditions or characteristics present an opportunity for use of solar heating and cooling systems or solar hot water systems.

(e) An energy audit may include an assessment of the estimated costs and energy and cost savings likely to result from the purchase and installation of one or more energy conservation measures.

Subpart C—Technical Assistance Programs for Schools, Hospitals, Units of Local Government and Public Care Institutions

§ 455.40 Purpose and scope.

This subpart specifies what constitutes a technical assistance program eligible for financial assistance under this part, and sets forth the eligibility criteria for schools, hospitals, units of local government and public care institutions to receive grants for technical assistance to be peformed in buildings owned by such institutions.

§ 455.41 Eligibility.

To be eligible to receive financial assistance for technical assistance program, an applicant mut—

(a) Be a school, hospital, unit of local government, public care intitution or coordinating agency, all as defined in § 455.2, except that—

(1) Financial assistance for units of local government and public care institutions will be provided only for buildings which are owned and primarily occupied by offices or agencies of a unit of local government or public care institution and which are not intended for seasonal use and not utilized primarily as a school or hospital eligible for assistance under this program;

(2) Financial assistance provided to a school which is a local education agency as defined in § 455.2 must not be used for technical assistance program or acquisition or installation of any energy conservation measure in any building of such agency which is used principally for administration.

(b) Be located in a State which has an approved State Plan as described in Subpart H of this part;

(c) Have conducted an energy audit or its equivalent, as determined by the State in accordance with the State Plan, for the building for which financial assistance is to be requested, subsequent to the most recent contruction, reconfiguration or utilization change which significantly modified energy use within the building;

(d) Give assurance that it has implemented all energy conservation maintenance and operating procedures identified as a result of the energy audit, or provide a satisfactory written jutification satisfactory to the Secretary, pursuant to § 455.90(j);

(e) Submit an application in accordance with the provisions of this part and the approved State Plan.

§ 455.42 Contents of program.

(a) A technical assistance program shall be conducted by a technical assistance analyst, who has the qualifications established in the State Plan in accordance with § 455.90(d) and who shall consider all feasible energy conservation operating and maintenance procedure changes and energy conservation measures for a building, including solar or other renewable resource measures. A technical assistance program shall include a detailed engineering analysis to identify the estimated costs of, and

the energy and cost savings likely to be realized from, implementing each identified energy conservation maintenance and operating procedure. A technical assistance program shall also identify the estimated cost of, and the energy and cost savings likely to be realized from, acquiring and installing each energy conservation measure, including solar and other renewable resource measures, that indicate a significant potential for saving energy based upon the technical assistance analyst's initial consideration.

(b) The technical assistance analyst shall use the following cost consideration factors in developing their calculations—

(1) Current prices, excluding demand charges

(2) Marginal prices where incremental prices apply

(c) At the conclusion of a technical assistance program, the technical assistance analyst shall prepare a report which shall include—

(1) A description of building characteristics and energy data including—

(i) The results of the energy audit (or its equivalent) of the building;

(ii) The operating characteristics of energy using systems; and

(iii) The estimated remaining useful life of the building;

(2) An analysis of the estimated energy consumption of the building, by fuel type (in total Btu's and Btu/sq. ft./yr), at optimum efficiency (assuming implementation of all energy conservation maintenance and operating procedures);

(3) An evaluation of the building's potential for solar conversion, including water heating systems;

(4) A listing of any known local zoning ordinances and building codes which may restrict the intallation of solar systems;

(5) A description and analysis of all recommendations, if any, for operating and maintenance procedure changes and acquisition and installation of energy conservation measures, including solar and other renewable resource measures, setting forth—

(i) A description of each recommended operating and maintenance procedure change and an estimate of the cost of design, acquisition and installation of each energy conervation measure;

(ii) An estimate of the cost of design, acquisition and installation of each energy conservation measure;

(iii) Estimated useful life of each energy conservation measure;

(iv) An estimate of increases or decreases in maintenance and operating costs that would result from each conservation measure if any;

(v) An estimate of the salvage value or disposal cost of each energy conservation measure at the end of its useful life, if any;

(vi) An estimate showing calculations, of the annual energy and energy cost savings (using current energy prices excluding demand charges) expected from the acquisition and installation of each operating and maintenance procedure change and energy conservation measure. In calculating the potential energy cost savings or energy savings of each recommended energy conservation measure, including solar or other renewable resource measure, technical assistance analysts shall—

(A) Assume that all energy savings obtained from energy conservation maintenance and operating procedures have been realized;

(B) Calculate the total energy and energy cost savings, by fuel type, expected to result from the acquisition and installation of all recommended energy conservation measures, taking into account the interaction among the various measures;

(C) Calculate that portion of the total energy and energy costs savings, as determine in paragraph (c)(5)(vi) (B) of this section, attibutable to each individual energy conservation measure; and

(D) Consider climate and other variables.

(vii) The simple payback period of each recommended energy conservation measure, taking into account the interactions among the various measures. The simple payback period is calculated by dividing the estimated total cost of the measure, as detemined pursuant to § 455.42(c)(5)(ii), by the estimated annual cost saving accruing from the measure, as determined pursuant to § 455.42(c)(5)(vi). For the purposes of ranking applications, the simple payback period shall be calculated using the cost savings resulting from energy savings only, determined on the basis of current energy prices except:

(A) For energy conservation measures which result in conversion from oil, natural gas, other petroleum products or electricity to coal, the simple payback period shall be calculated based on the annual cost savings (using current energy prices) associated with the change in fuels; or

(B) For energy conservation measures which displace fossil fuels with solar or other renewable resources, the simple payback period shall be calculated using the cost of the fossil fuels displaced (using current energy prices) as the annual cost savings.

(C) For energy conservation measures installing leased equipment, only the cost of installation and connection of the leased equipment are eligible for financial assistance under this program. The payback period shall be determined by dividing the total installation and connection costs by the result of subtracting the average annual recurring leased costs from the projected average annual energy cost saving;

(viii) The estimated cost of the measure shall be the total cost for design and other professional service (excluding cost of a technical assistance program), if any, and acquisition and installation costs. Other economic analyses, such as life-cycle costing, which consider all costs and cost savings, such as maintenance costs and/or savings, resulting from an energy conservation measure, are recommended, but not required, for use by the institution in its decision-making process;

(6) Monthly energy use and cost data, actual or estimated, for each fuel type used for the prior 12-month period.

(7) A signed and dated certification that the technical assistance program has been conducted in accordance with the requirements of this section and that the data presented is accurate to the best of the technical assistance analyst's knowledge.

Subpart D—Energy Conservation Measures for Schools and Hospitals

§ 455.50 Purpose and scope.

This subpart indicates what constitutes an energy conservation measure that may receive financial assistance under this part and sets forth the eligibility criteria for schools and hospitals to receive grants for energy conservation measures, including solar and other renewable resource measures.

§ 455.51 Eligibility.

(a) To be eligible to receive financial assistance for an energy conservation measure, including solar or other renewable resource measures, an applicant must—

(1) Be a school, hospital or coordinating agency as defined in § 455.2, provided that financial assistance provided to a school which is a local education agency as defined in § 455.2 must not be used for a technical assistance program or acquisition or installation of any energy conservation measure in any building of such agency which is used principally for administration;

(2) Be located in a State which has an approved State Plan as described in Subpart H of this part;

(3) Have completed a technical assistance program or its equivalent, as determined by the State in accordance

(b) Applications from schools, hospitals, units of local government, public care institutions and coordinating agencies for financial assistance for technical assistance programs shall include the certifications contained in

appropriate), to be used to meet the cost sharing requirements described in Subpart G;

(4) A schedule, including appropriate milestone dates, for the completion of the design, acquisition and installation

implementing that procedure as prescribed pursuant to § 455.90(j);

(d) Will obtain from the technical assistance analyst, before the analyst performs any work in connection with a technical assistance program or energy

Circular A-102, "Uniform Requirements for Grants-in-Aid to State and Local Governments") to be used to meet the cost-sharing requirements described in Subpart G of this part; and

(3) Any other information required by

three-year period following installation of an energy conservation measure, or for the life of the program, whichever is shorter. These reports shall identify each building and provide data on energy use for that building for the

(2) Be located in a State which has an approved State Plan as described in Subpart H of this part;

(3) Have completed a technical assistance program or its equivalent, as determined by the State in accordance with the State Plan, for the building for which financial assistance is to be requested, subsequent to the most recent construction, reconfiguration or utilization change to the building which significantly modified energy use within the building;

(4) Have implemented all energy conservation maintenance and operating procedures which are identified as the result of a technical assistance program, or have provided a satisfactory written justification for not implementing any specific maintenance and operating procedures so identified, as described in § 455.90(j).

(5) Have no plan or intention at the time of application to close or otherwise dispose of the building for which financial assistance is to be requested within the simple payback period of any energy conservation measure recommended for that building; and

(6) Submit an application in accordance with the provisions of this part and the approved State Plan.

(b) To be eligible for financial assistance, the simple payback period of each energy conservation measure for which financial assistance is requested shall not be less than 1 year nor greater than 15 years, and the estimated useful life of the measure shall be greater than its simple payback period.

§ 455.52 Contents of program.

The programs to be funded under this part will be for the design, acquisition, and installation of energy conservation measures to reduce energy consumption or measures to allow the use of solar or other alternative energy resources for schools and hospitals. Such measures include, but are not necessarily limited to those included in the definition of "energy conservation measures" in § 455.2.

Subpart E—Applicant Responsibilities

§ 455.60 Grant application submittals.

(a) Each eligible applicant desiring to receive financial assistance shall file an application in accordance with the provisions of this subpart and the approved State Plan of the State in which such building is located. The application, which may be amended in accordance with applicable State procedures at any time prior to the State's final determination thereon, shall be filed with the State energy agency designated in the State Plan.

(b) Applications from schools, hospitals, units of local government, public care institutions and coordinating agencies for financial assistance for technical assistance programs shall include the certifications contained in § 455.61 and—

(1) The applicant's name and mailing address;

(2) The energy audit (or its equivalent) for each building for which financial assistance is requested;

(3) A project budget, by building, which stipulates the intended use of all Federal and non-Federal funds; including in-kind contributions (valued in accordance with the guidelines in OMB Circular A-102 or OMB Circular A-110, as appropriate), to be used to meet the cost-sharing requirements described in Subpart G;

(4) A brief description, by building, of the proposed technical assistance program, including a schedule, with appropriate milestone dates, for completing the technical assistance program; and

(5) Additional information required by the applicable State Plan, and any other information which the applicant desires to have considered, such as information to support an application from a school or hosptial for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship or an application which proposes the use of Federal funds, paid under and authorized by another Federal agreement, to met cost sharing requirements.

(c) Applications from schools and hospitals and coordinating agencies for financial assistance for energy conservation measures, including solar and other renewable resource measures, shall include the certifications contained in § 455.61 and—

(1) The applicant's name and mailing address;

(2) Identification of each building pursuant to 10 CFR 450.42(a) (1) through (5) for which financial assistance is requested, including—

(i) Name or other identification of each building and its address;

(ii) Building category;

(iii) Description of functional use;

(iv) Ownership; and

(v) Size of building expressed in gross square feet.

(3) A project budget, by measure or by building, as provided in the State Plan which stipulates the intended use of all Federal and non-Federal funds, and indentifies the sources and amounts of non-Federal funds, including in-kind contributions (valued in accordance with the guidelines in OMB Circular A-102 or OMB Circular A-110, as appropriate), to be used to meet the cost sharing requirements described in Subpart G;

(4) A schedule, including appropriate milestone dates, for the completion of the design, acquisition and installation of the proposed energy conservation measures for each building;

(5) For each energy conservation measure proposed for funding, the projected cost, and the projected simple payback period as contained in § 455.42(c)(5)(vii). Applications with more than one energy conservation measure per building shall include projected costs and paybacks for each measure, and the average simple payback period for all measures proposed for the building;

(6) The report of the technical assistance analyst. This report must have been completed since the most recent construction, reconfiguration or utilization change to the building, which significantly modified energy use, for each building.

(7) If the applicant is aware of any adverse environmental impact which may arise from adoption of any energy conservation measure, an analysis of that impact and the applicant's plan to minimize or avoid such impact; and

(8) Additional information required by the applicable State Plan, and any additional information which the applicant desires to have considered, such as information to support an application for financial assistance in excess of the 50 percent Federal share on the basis of severe hardship, or an application which proposes the use of Federal funds, paid under and authorized by another Federal agreement, to meet cost sharing requirements.

§ 455.61 Applicant certifications.

Applications for financial assistance for technical asistance programs and eneregy conservation measures, including solar and other renewable resource measures, shall include certification that the applicant—

(a) Is eligible under §§ 455.41 for technical assistance or §455.51 for energy conservation measures;

(b) Has satisfied the requirements set forth in § 455.60;

(c) Has implemented all energy conservation maintenance and operating procedures recommended as a result of the energy audit and for applications for energy conservation measures, those recommended in the report obtained under a technical assistance program. If any such procedure has not been implemented, the application shall contain a satisfactory written justification for not implementing that procedure as prescribed pursuant to § 455.90(j);

(d) Will obtain from the technical assistance analyst, before the analyst performs any work in connection with a technical assistance program or energy conservation measure, a signed statement certifying that the technical assistance analyst has no conflicting financial interests and is otherwise qualified to perform the duties of technical assistance analyst in accordance with the standards and criteria established in the approved State Plan;

(e) If the grant is for more than $5,000 and is not for technical assistance, any construction contract in excess of $2,000 let by the grantee must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. Section 276a to 276a-5) pertaining to minimum wages for construction in the applicant's locality; and

(f) Will comply with all reporting requirements contained in § 455.63.

§ 455.62 Grant applications for State administrative expenses.

(a) Each State desiring to receive grants to help defray State administrative expenses shall file applications therefor in accordance with the provisions of this section. Each State may apply for an amount not exceeding 2 percent of its total allocation for technical assistance and energy conservation measures during the initial grant program cycle to the Secretary for approval; or, for subsequent grant program cycles, any time after notice by DOE of the amounts allocated to each State for that grant program cycle. In addition, each State after it makes the submittal to DOE required under § 455.72 may apply for a further grant not exceeding 5 percent of the total of all grant awards for technical assistance and energy conservation measures within that State in that grant program cycle, less any amounts previously awarded the State for administrative expenses in the same grant program cycle.

(b) Applications for financial assistance to defray State administrative expenses shall include—

(1) The name and address of the person designated by the State to be responsible for the State's functions under this part;

(2) An identification of the intended use of all Federal and non-Federal funds, for the State administrative expenses listed in § 455.83(b) and a list of the sources and amounts of the required matching non-Federal funds, including in-kind contributions valued in accordance with the guidelines in OMB Circular A-102, "Uniform Requirements for Grants-in-Aid to State and Local Governments") to be used to meet the cost-sharing requirements described in Subpart G of this part; and

(3) Any other information required by DOE.

§ 455.63 Grantee records and reports.

(a) Each State, school, hospital, unit of local government, public care institution and coordinating agency which receives a grant for a technical assistance program, energy conservation measure, including solar and other renewable resource measures or State administrative expenses shall keep all the records required by § 455.4 in accordance with DOE Assistance Regulations.

(b) Each grantee shall submit reports as follows—

(1) For technical assistance projects, two copies of a final report of the analysis completed on each building for which financial assistance was provided shall be submitted to the State energy agency no later than 90 days following completion of the analysis. These reports shall contain—

(i) The report submitted to the institution by the technical assistance analyst, and

(ii) The institution's plan to implement energy conservation maintenance and operating procedures, and plans to acquire and install energy conservation measures, including solar and other renewable resources.

(2) For energy conservation measure projects—

(i) Semi-annual progress reports shall be submitted by grantees. Two copies shall be submitted to the States energy agency no later than the end of July and January and shall detail and discuss milestones accomplished, those not accomplished, status of in-progress activities and remedial actions if needed to achieve project objectives. A final report may be submitted in lieu thereof provided it satisfied the semi-annual progress report and final report designated time frame;

(ii) Two copies of a final report which list and describe the energy conservation measures acquired and installed, a final estimated simple payback period for each measure and the project as a whole, a statement that the completed energy conservation measures conform to the approved grant application and plans, if any, to install additional energy conservation measures, will be submitted to the State within 90 days of installation.

(iii) Within 60 days of the close of each 12-month period, grantees shall submit annual reports to the State for a three-year period following installation of an energy conservation measure, or for the life of the program, whichever is shorter. These reports shall identify each building and provide data on energy use for that building for the preceding 12-month period. A financial status report shall not be required for such annual reports.

(3) For State administrative grants, each State shall submit reports to the Secretary, by the close of each February and August following State Plan approval, which provide—

(i) A discussion of administrative activities pursuant to § 455.83(b), and a discussion of milestones accomplished, those not accomplished, status of in-progress activities, problems encountered, and remedial actions, if any, planned pursuant to § 455.73(e);

(ii) A summary of grantee reports received by the States since the previous semi-annual grantee report submission pursuant to subparagraphs (b)(l) and (b)(2) of this section; and

(iii) For the August report, an estimate of annual energy use reductions in the State, by energy source, attributable to implementation of energy conservation maintenance and operating procedures and installation of energy conservation measures under this program. Such estimates shall be based upon a sampling of institutions participating in the technical assistance phase of this program and upon the reports submitted to the State pursuant to § 455.63(b)(2)(iii).

(4) Such other information as the Secretary may, from time to time request.

(5) Each copy of any technical assistance, energy conservation measures, or State administrative report shall be accompanied by a financial status report completed in accordance with the documents listed in § 455.3. Unless the State administrative grant funding period coincides with its semi-annual report requirements under paragraph (b)(3) of this section, the State shall also submit a financial status report covering its administrative activities at the conclusion of its State administrative grant funding period.

(6) Grantee technical assistance, energy conservation measures, and financial status reports submitted to the State shall be submitted by the State to DOE as required by the DOE Regional Representative.

Subpart F—State Responsibilities

§ 455.70 State evaluation of grant applications.

(a) If an application received by a State is reviewed and evaluated by that

State and determined to be in compliance with Subparts C, D and E of this part, § 455.70(b), any additional requirements of the approved State Plan, State environmental laws, and other applicable laws and regulations, then such application will be eligible for

amount recommended for funding. If the amount recommended is less than the amount requested by the applicant, this list shall also indicate the reason for that recommendation.

(b) All eligible applications for energy conservation measures received will be

and hospitals to the State in any grant program cycle; and

(2) Hospitals receive at least 30 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle.

(e) To the extent provided in

(f) Institutions shall be recommended for funding within the allocations specified in paragraphs (d) and (e) of this section unless, after the State deadline for submitting applications has passed, there are insufficient

that institution in the State ranking pursuant to § 455.71; and

(e) Direct program oversight and monitoring of the activities for which grants are awarded as defined in the State Plan. States shall immediately

previously received grants for other energy conservation measures.

(f) Within a given grant program cycle, the Secretary may fund grant costs incurred by an institution for technical assistance and energy conservation

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State and determined to be in compliance with Subparts C, D and E of this part, § 455.70(b), any additional requirements of the approved State Plan, State environmental laws, and other applicable laws and regulations, then such application will be eligible for financial assistance.

(b) Concurrently with its evaluation and ranking of grant applications pursuant to § 455.71, the State will forward applications for technical assistance or for energy conservation measures for a school or hospital to the State school facilities agency or the State hospital facilities agency, as the case may be, for review and certification that each school application is consistent with related State programs for educational facilities, and each hospital application is consistent with State health plans under sections 1524(c)(2) and 1603 of the Public Health Service Act (42 U.S.C. 300m–3 and 300o–2, respectively), and that each has been coordinated through abbrievated review mechanisms under section 1523 of the Public Health Service Act (42 U.S.C. 300m–2) and section 1122 of the Social Security Act. No application from a school or hospital shall be eligible for funding until such certification has been issued.

§ 455.71 State ranking of grant applications.

All eligible applications received by the State will be ranked by the State in accordance with its approved State Plan.

(a) For technical assistance programs, buildings shall be ranked in descending priority based upon the energy conservation potential of the building as determined from an energy audit (or its equivalent) in accordance with the procedures established in the State Plan and one or more of the methods indicated in 10 CFR 450.43(c). In the case of buildings having equivalent energy conservation potential, preference shall be given to those buildings which have completed an energy audit without the use of Federal funds.

(1) Each State shall develop separate rankings for all buildings covered by eligible applications for—

(i) Technical assistance programs, for units of local government and public care institutions, and

(ii) Technical assistance programs for schools and hospitals.

(2) Within each ranking for technical assistance, a State shall indicate the amount of financial assistance requested by the applicant for each eligible building and, for those buildings with the highest ranking within the limits of the State's allocation, the amount recommended for funding. If the amount recommended is less than the amount requested by the applicant, this list shall also indicate the reason for that recommendation.

(b) All eligible applications for energy conservation measures received will be ranked by the State on an individual building-by-building or a measure-by-measure basis. Several buildings may be ranked as a single building if the application proposes a single energy conservation measure which directly involves all of the buildings. Buildings or measures shall be ranked in accordance with the procedures established by the State Plan, on the basis of the information developed during a technical assistance program (or its equivalent) for the building and the criteria for ranking applications, which are listed below in the descending order in which weights for each criterion are to be applied by the State—

(1) Payback, calculated in accordance with § 455.42(c)(5)(vii);

(2) The types of energy sources to which conversion is proposed, including in descending priority—

(i) Renewable; and

(ii) Coal;

(3) The types and quantities of energy to be saved, including oil, natural gas, or electricity, in a priority as established in the approved State Plan;

(4) Other factors as determined by the State.

(c) A State is exempt from the ranking requirements of this section when—

(1) The total amount requested by all applications for schools and hospitals for technical assistance and energy conservation measures in a given grant program cycle for grants up to 50 percent is less than or equal to the funds available to the State for such grants and the total amount recommended for hardship funding is less than or equal to the amounts available to the State for such grants.

(2) The total amount requested by all applications for buildings owned by units of local government and public care institutions in a given grant program cycle is less than or equal to the total amount allocated to the State for technical assistance program grants in the State.

(d) Within the rankings of school and hospital buildings for technical assistance and energy conservation measures, including solar or other renewable resource measures, to the extent that approvable applications are submitted, a State shall initially assure that—

(1) Schools receive at least 30 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle; and

(2) Hospitals receive at least 30 percent of the total funds allocated for schools and hospitals to the State in any grant program cycle.

(e) To the extent provided in § 455.82(c), financial assistance will be initially available for schools and hospitals experiencing severe hardship based upon an applicant's long-term need or inability to provide the 50 percent non-Federal share. This additional financial assistance will be available only to the extent necessary to enable such insitutions to participate in the program.

(1) The State shall recommend funds for severe hardship applications wholly or partially from the funds reserved in accordance with § 455.100(d) and as stated in an approved State Plan.

(2) Applications for Federal funding in excess of 50 percent based on claims of severe hardship shall be given an additional evaluation by the State to assess on a quantifiable basis, to the maximum extent practicable, the relative need among eligible institutions. The minimum amount of additional Federal funding necessary for the applicant to participate in the program will be determined by the State in accordance with the procedures established in the State Plan and will be based upon one or more of the following—

(i) The ratio of the cost of the proposed technical assistance programs or energy conservation measures to the institution's total annual budget;

(ii) The borrowing capacity of the institution;

(iii) The average unemployment rate for the institution's locality at the time the application is submitted;

(iv) The ratio of the amount expended annually by the institution for energy to the institution's total annual operating budget;

(v) The median annual family income of the institution's locality; and

(vi) Other special conditions of the institution or its locality as determined by the State.

(3) A State shall indicate, for those schools and hospitals with the highest rankings, determined pursuant to subparagraphs (a) and (b) of this section—

(i) The amount of additional hardship funding requested by each eligible applicant for each building determined to be in a class of severe hardship; and

(ii) The amount of hardship funding recommended by the State based upon relative need as determined in accordance with the State Plan, to the limit of the hardship funds available.

(f) Institutions shall be recommended for funding within the allocations specified in paragraphs (d) and (e) of this section unless, after the State deadline for submitting applications has passed, there are insufficient applications meeting the requirements of §§ 455.41 or 455.51 of this part to expend funds thus allocated, in which case the State may recommend use of remaining funds for other eligible applications.

§ 455.72 Forwarding of applications.

(a) Each State shall forward all recommended applications to the Secretary once each grant program cycle along with a listing of buildings or measures covered by eligible applications for schools, hospitals, units of local government and public care institutions, and ranked by the State pursuant to the provisions of § 455.71. If ranking has been employed, the list shall include the standings of buildings or measures.

(1) Measure by measure rankings will be recombined for the respective building with more than one recommended measure.

(2) Buildings will be consolidated under one grantee application.

(b) State shall indicate the amount of financial assistance requested by the applicant for each eligible building and, for those buildings recommended for funding within the limits of the State's allocation, the amount recommended for funding. If the amount recommended is less than the amount requested by the applicant, the list shall also indicate the reason for that recommendation.

(c) States shall certify applications submitted are eligible pursuant to § 455.70(a).

§ 455.73 State liaison, monitoring and reporting.

Each State shall be responsible for—

(a) Consulting with eligible institutions and coordinating agencies representing such institutions in the development of its State Plan;

(b) Notifying eligible institutions and coordinating agencies of the content of the approved State Plan;

(c) Notifying each applicant, prior to submittal of applications to the Secretary, how the applicant's building or measure ranked among other similar applications, and whether and to what extent its application will be recommended for funding or, if not to be recommended for funding, the specific reason(s) therefor;

(d) Certifying that each institution has given its assurance that it is willing and able to participate on the basis of any changes in amounts recommended for that institution in the State ranking pursuant to § 455.71; and

(e) Direct program oversight and monitoring of the activities for which grants are awarded as defined in the State Plan. States shall immediately notify the Secretary of any non-compliance or indication thereof.

(f) Reporting requirements pursuant to § 455.63(b)(3).

Suppart G—Grant Awards

§ 455.80 Approval of grant applications.

(a) The Secretary shall review and approve applications submitted by a State in accordance with § 455.72 if the Secretary determines that the applications meet the objectives of the Act, and comply with the applicable State Plan and the requirements of this part. The Secretary may disapprove all or any portion of an application to the extent funds are not available to carry out a program or measure (or portion thereof) contained in the application, or for such other reason as the Secretary may deem appropriate.

(b) The Secretary shall notify a State and the applicant of the final approval or disapproval of an application at the earliest practicable date after the Secretary's receipt of the application, and, in the event of disapproval, shall include a statement of the reasons therefor.

(c) An application which has been disapproved for reasons other than lack of funds may be amended to correct the cause of its disapproval and resubmitted in the same manner as the original application at any time within the same grant program cycle and will be considered to the extent funds are available. However, nothing in this provision shall obligate either the State or the Secretary to take final action regarding a resubmitted application within the grant program cycle. An application not acted upon may be resubmitted in a subsequent grant program cycle.

(d) The Secretary shall award only one grant per building for a technical assistance program and shall not provide supplemental funds beyond those awarded.

(e) The Secretary shall award only one grant per building per grant program cycle for energy conservation measures, and shall not provide supplemental funds beyond those awarded for a given grant. An institution may apply, and the Secretary may make grant awards in another grant building for which financial assistance was not previously and specifically provided, even though the measures relate to a building which previously received grants for other energy conservation measures.

(f) Within a given grant program cycle, the Secretary may fund grant costs incurred by an institution for technical assistance and energy conservation measure projects from the date of submission of the grant application to the State energy agency. Such costs shall be accepted when, in the judgement of the Secretary, the institution has complied with program requirements and the costs incurred are allowable under applicable cost principles and the approved project budget. The applicant bears the responsibility for the entire project cost unless the application is approved by the Secretary in accordance with this Part.

§ 455.81 Grant awards for units of local government and public care institutions.

(a) The Secretary may make grants to units of local governments, public care institutions and coordinating agencies for up to 50 percent of the costs of performing technical assistance programs for buildings covered by an application approved in accordance with § 455.80.

(b) Total grant awards within any State to units of local government and public care institutions are limited to funds allocated to each State in accordance with Subpart I of this part.

(c) Units of local government and public care institutions are not eligible for financial assistance for severe hardship.

(d) No grant awarded under this section for a technical assistance program shall include funding for the purchase of any single item of equipment or tangible personal property having an acquisition cost in excess of $500.

§ 455.82 Grant awards for schools and hospitals.

(a) The Secretary may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the cost of performing technical assistance programs for buildings covered by an application approved in accordance with § 455.80. Grant awards for technical assistance programs in any State within any grant program cycle shall be limited to a portion of the total allocation as specified in the Subpart I.

(b) The Secretary may make grants to schools, hospitals and coordinating agencies for up to 50 percent of the costs of acquiring and installing energy conservation measures, including solar and other renewable resource measures, for buildings covered by an application approved in accordance with § 455.80.

(c) The Secretary may award up to 10 percent of the total amount allocated to a State for schools and hospitals in a class of severe hardship, ascertained by the State in accordance with the State

(2) Concurrently with grant awards for approved applications for technical assistance or energy conservation measures for institutions in that State, and upon approval of an application for

(c) The procedures for submittal of grant applications to the State;

(d) A description and evaluation of the results of preliminary energy audits (described in Subpart B of this part)

(j) The procedures to insure implementation of energy conservation maintenance and operating procedures in those buildings for which financial assistance is requested under this part. At a minimum, the plan shall provide

the appropriate training and experience in building energy systems. Such policies shall also require that technical assistance analysts be free from financial interests which may conflict with the proper performance of their

implement a State Plan on behalf of the schools and hospitals in the State.

(b) Subsequent to the development of a State Plan by the Secretary, the State may submit its own State Plan and the Secretary shall approve or disapprove

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(c) The Secretary may award up to 10 percent of the total amount allocated to a State for schools and hospitals in a class of severe hardship, ascertained by the State in accordance with the State Plan, for buildings recommended by the State pursuant to § 455.71(e)(3), and in amounts determined pursuant to § 455.71(e)(2).

(d) No grant awarded under this section for a technical assistance program shall include funding for the purchase of any single item of equipment or other tangible personal property having an acquisition cost in excess of $500.

(e) Applicant expenditures for a technical assistance program or one or more energy conservation measures commenced after November 8, 1978 for a building may be wholly and partially classified in the discretion of the Secretary as matching non-Federal funds for the purposes of matching grants awarded for additional energy conservation measures in the same building. Credit will be considered only when the projects for which credit is sought meet program requirements and credit for energy conservation measures will be considered only when supported by a technical assistance analysis performed prior to the installation of the energy conservation measure. Applications for credit will be considered in conjunction with applications for additional energy conservation measures. The application shall reflect both the work done and the work to be done and will be reviewed and ranked on that basis. In no case shall the credit exceed an amount equal to the non-Federal share of the proposed energy conservation measures.

§ 455.83 Grant awards for state administrative expenses.

(a) For the purpose of defraying State expenses in the administration of technical assistance programs in accordance with Subpart C and energy conservation measures in accordance with Subpart D, the Secretary may make grant awards to a State—

(1) Immediately following approval of the State Plan, or for subsequent grant program cycles, immediately following public notice of the amounts allocated to a State for the grant program cycle, and upon approval of the grant application for administrative costs, in an amount not exceeding 2 percent of that State's total allocation for a given grant program cycle for technical assistance and energy conservation measures. Grants for such purposes may be made for up 50 percent of a State's projected administrative expenses, as approved by the Secretary; and

(2) Concurrently with grant awards for approved applications for technical assistance or energy conservation measures for institutions in that State, and upon approval of an application for administrative costs, in an amount not exceeding the difference between the amount granted pursuant to subparagraph (1) of this paragraph and 5 percent of the total amount of grants awarded within the State for technical assistance programs and energy conservation measures in the applicable grant program cycle. Grants for such purposes may be made for up to 50 percent of a State's projected administrative expenses, as approved by the Secretary. The total of all grants for State administrative costs, technical assistance programs and energy conservation measures in that State shall not exceed the total amount allocated for that State for any grant program cycle.

(b) A State's administrative expenses shall be limited to those directly related to administration of technical assistance programs and energy conservation measures including costs associated with—

(1) Personnel, whose time is expended directly in support of such administration;

(2) Supplies, and services, expended directly in support of such administration;

(3) Equipment purchased or acquired solely for, and utilized directly in support of such administration, provided that no single item of equipment or other tangible personal property costing more than $300 shall be acquired without the express consent of DOE;

(4) Printing, directly in support of such administration; and

(5) Travel, directly related to such administration.

Subpart H—State Plan Development and Approval

§ 455.90 Contents of state plan.

Each State shall develop a State Plan for technical assistance programs and energy conservation measures, including solar and other renewable resource measures. The State Plan shall include—

(a) A statement setting forth the procedures by which the views of eligible institutions or coordinating agencies representing such institutions, or both, were solicited and considered during development of the State Plan, and any amendment to a State Plan;

(b) The procedures the State will follow to notify eligible institutions and coordinating agencies of the content of the approved State Plan, or any approved amendment to a State Plan;

(c) The procedures for submittal of grant applications to the State;

(d) A description and evaluation of the results of preliminary energy audits (described in Subpart B of this part) which have been conducted in the State including, but not limited to—

(1) In the case of a State which has completed preliminary energy audits of all potentially eligible buildings, a summary of the data gathered pursuant to § 450.42 for all such buildings;

(2) In the case of a State which has completed preliminary energy audits of a sample of all potentially eligible buildings within the State—

(i) Reasonably accurate estimates of the preliminary energy audit data required by 10 CFR 450.42 for all potentially eligible buildings within the State; and

(ii) A plan which describes further actions to be taken to complete preliminary energy audits of all potentially eligible buildings;

(e) The procedures to be used by the State for evaluating and ranking technical assistance and energy conservation measure grant applications pursuant to § 455.71, including the weights assigned to each criterion set forth in § 455.71(b). In addition, for the criteria set forth in § 455.71(b)(3), the State shall determine the order of priority given to fuel types that include oil, natural gas, and electricity.

(f) The procedures that the State will follow to insure that funds will be allocated equitably among eligible applicants within the State, including procedures to insure that funds will not be allocated on the basis of size or type of institution but rather on the basis of relative need taking into account such factors as cost, energy consumption and energy savings, in accordance with § 455.71;

(g) The procedures that the States will follow for identifying schools and hospitals experiencing severe hardship and for apportioning the funds that are available for schools and hospitals in a class of severe hardship. Such policies and procedures shall be in accordance with § 455.71(e).

(h) A statement setting forth the extent to which, and by which methods, the State will encourage utilization of solar space heating, cooling and electric systems and solar water heating systems;

(i) The procedures to assure that all financial assistance under this part will be expended in compliance with the requirements of the State Plan, in compliance with the requirements of this part, and in coordination with other State and Federal energy conservation programs;

(j) The procedures to insure implementation of energy conservation maintenance and operating procedures in those buildings for which financial assistance is requested under this part. At a minimum, the plan shall provide that all operating and maintenance procedure changes recommended in an energy audit report or a technical assistance report have been implemented prior to initial or additional financial assistance under this part being provided, unless it is shown that—

(1) The recommendation is infeasible because of factors not considered by the auditor or analyst;

(2) There is a cost involved which exceeds the institution's limit on operating expenditures;

(3) The implementation of the change requires some item of supply or material which is not available; or

(4) Other factors as approved by the Secretary;

(k) The procedures designed to insure that financial assistance under this part will be used to supplement, and not to supplant, State, local or other funds;

(l) The procedures for determining that energy audits performed without the use of Federal funds have been performed in substantial compliance with the requirements of 10 CFR Part 450 for the purposes of satisfying the eligibility requirements contained in § 455.41(c);

(m) The procedures for determining that technical assistance programs performed without the use of Federal funds have been performed in compliance with the requirements of § 455.42, for the purposes of satisfying the eligibility requirements contained in § 455.51(a)(3);

(n) The procedures for State management, monitoring and evaluation of technical assistance programs and energy conservation measures receiving financial assistance under this part;

(o) A description of the State's program for establishing and insuring compliance with qualifications for technical assistance analysts. Such policies shall require that technical assistance analysts—

(1) Have experience in energy conservation and be a registered professional engineer licensed under the regulatory authority of the State;

(2) Be an architect-engineer team, the principal members of which are licensed under the regulatory authority of the State; or

(3) Be otherwise qualified in accordance with such criteria as the State may prescribe in its State Plan to insure that individuals conducting technical assistance programs possess the appropriate training and experience in building energy systems. Such policies shall also require that technical assistance analysts be free from financial interests which may conflict with the proper performance of their duties;

(p) A procedure for gathering data and reporting:

(1) An estimate of energy savings which may result from the modification of maintenance and operating procedures and installation of energy conservation measures;

(2) A recommendation as to the types of energy conservation measures considered appropriate within the State; and

(3) An estimate of the costs of carrying out technical assistance and energy conservation measures programs.

§ 455.91 Submission and approval of state plans.

(a) Proposed State Plans or amendments necessitated by a change in regulations shall be submitted to the Secretary within 90 days of the effective date of this subpart or any amended regulations. The Secretary, upon request and for good cause shown, may grant an extension of time.

(b) The Secretary shall, within 60 days of receipt of a proposed State Plan, review each Plan and, if it is found to conform to the requirements of this part, approve the State Plan. If the Secretary does not disapprove a State Plan within the 60-day period, the Secretary will be deemed to have approved the State Plan.

(c) If the Secretary determines that a proposed State Plan fails to comply with the requirements of this part the Secretary shall return the Plan to the State with a statement setting forth the reasons for disapproval.

(d) The Secretary shall review each amendment submitted by the State and, if it is found to conform to the requirements of this part, approve the amendment(s). If the Secretary determines that a proposed State Plan amendment fails to comply with the requirements of this part, the Secretary shall return the amendment to the State with a statement setting forth reasons for disapproval. With the consent of the Secretary, the State may submit a new or amended Plan at any time.

§ 455.92 State plans developed by the Secretary.

(a) If a State Plan has not been approved by February 7, 1981, or within 90 days after completion of the preliminary energy audits, whichever is later, the Secretary may develop and implement a State Plan on behalf of the schools and hospitals in the State.

(b) Subsequent to the development of a State Plan by the Secretary, the State may submit its own State Plan and the Secretary shall approve or disapprove such plan within 60 days after receipt by the Secretary. If the proposed plan meets the requirements of this part, and is not inconsistent with any plan developed and implemented by the Secretary, the Secretary shall approve the State Plan which shall automatically replace the plan developed by the Secretary.

Subpart I—Allocation of Appropriations Among the States

§ 455.100 Allocation of funds.

(a) The Secretary will allocate available funds among the States for the purpose of awarding grants to schools, hospitals, units of local government, and public care institutions and coordinating agencies to implement technical assistance and energy conservation measures grant programs in accordance with this part.

(b) By notice published in the **Federal Register**, the Secretary shall notify each State of the total amount allocated for grants within the State for any grant program cycle—

(1) For schools and hospitals, the allocation amount shall be for technical assistance programs, together with any limitation placed on technical assistance, and energy conservation measures; and

(2) For units of local government and public care institutions, the allocation amount shall be solely for technical assistance programs.

(c) By notice published in the **Federal Register**, the Secretary shall notify each State of the period for which funds allocated for a grant program cycle will be made available for grants within the State.

(d) Each State make available up to ten percent of its allocation for schools and hospitals in each grant program cycle to provide financial assistance not to exceed a 90 percent Federal share, for technical assistance programs and energy conservation measures for schools and hospitals determined to be in a class of severe hardship. Such determinations shall be made in accordance with § 455.71(e).

§ 455.101 Allocation formulas.

(a) Financial assistance for conducting technical assistance programs for units of local government and public care institutions shall be allocated among the State by multiplying the sum available

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(c) The Secretary may award up to 10 percent of the total amount allocated to a State for schools and hospitals in a class of severe hardship, ascertained by the State in accordance with the State

(2) Concurrently with grant awards for approved applications for technical assistance or energy conservation measures for institutions in that State, and upon approval of an application for

(c) The procedures for submittal of grant applications to the State;

(d) A description and evaluation of the results of preliminary energy audits (described in Subpart B of this part)

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(j) The procedures to insure implementation of energy conservation maintenance and operating procedures in those buildings for which financial assistance is requested under this part. At a minimum, the plan shall provide

the appropriate training and experience in building energy systems. Such

implement a State Plan on behalf of the schools and hospitals in the State.

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(c) The Secretary may award up to 10 percent of the total amount allocated to a State for schools and hospitals in a class of severe hardship, ascertained by the State in accordance with the State Plan, for buildings recommended by the State pursuant to § 455.71(e)(3), and in amounts determined pursuant to § 455.71(e)(2).

(d) No grant awarded under this section for a technical assistance program shall include funding for the purchase of any single item of equipment or other tangible personal property having an acquisition cost in excess of $500.

(e) Applicant expenditures for a technical assistance program or one or more energy conservation measures commenced after November 8, 1978 for a building may be wholly and partially classified in the discretion of the Secretary as matching non-Federal funds for the purposes of matching grants awarded for additional energy conservation measures in the same building. Credit will be considered only when the projects for which credit is sought meet program requirements and credit for energy conservation measures will be considered only when supported by a technical assistance analysis performed prior to the installation of the energy conservation measure. Applications for credit will be considered in conjunction with applications for additional energy conservation measures. The application shall reflect both the work done and the work to be done and will be reviewed and ranked on that basis. In no case shall the credit exceed an amount equal to the non-Federal share of the proposed energy conservation measures.

§ 455.83 Grant awards for state administrative expenses.

(a) For the purpose of defraying State expenses in the administration of technical assistance programs in accordance with Subpart C and energy conservation measures in accordance with Subpart D, the Secretary may make grant awards to a State—

(1) Immediately following approval of the State Plan, or for subsequent grant program cycles, immediately following public notice of the amounts allocated to a State for the grant program cycle, and upon approval of the grant application for administrative costs, in an amount not exceeding 2 percent of that State's total allocation for a given grant program cycle for technical assistance and energy conservation measures. Grants for such purposes may be made for up 50 percent of a State's projected administrative expenses, as approved by the Secretary; and

(2) Concurrently with grant awards for approved applications for technical assistance or energy conservation measures for institutions in that State, and upon approval of an application for administrative costs, in an amount not exceeding the difference between the amount granted pursuant to subparagraph (1) of this paragraph and 5 percent of the total amount of grants awarded within the State for technical assistance programs and energy conservation measures in the applicable grant program cycle. Grants for such purposes may be made for up to 50 percent of a State's projected administrative expenses, as approved by the Secretary. The total of all grants for State administrative costs, technical assistance programs and energy conservation measures in that State shall not exceed the total amount allocated for that State for any grant program cycle.

(b) A State's administrative expenses shall be limited to those directly related to administration of technical assistance programs and energy conservation measures including costs associated with—

(1) Personnel, whose time is expended directly in support of such administration;

(2) Supplies, and services, expended directly in support of such administration;

(3) Equipment purchased or acquired solely for, and utilized directly in support of such administration, provided that no single item of equipment or other tangible personal property costing more than $300 shall be acquired without the express consent of DOE;

(4) Printing, directly in support of such administration; and

(5) Travel, directly related to such administration.

Subpart H—State Plan Development and Approval

§ 455.90 Contents of state plan.

Each State shall develop a State Plan for technical assistance programs and energy conservation measures, including solar and other renewable resource measures. The State Plan shall include—

(a) A statement setting forth the procedures by which the views of eligible institutions or coordinating agencies representing such institutions, or both, were solicited and considered during development of the State Plan, and any amendment to a State Plan;

(b) The procedures the State will follow to notify eligible institutions and coordinating agencies of the content of the approved State Plan, or any approved amendment to a State Plan;

(c) The procedures for submittal of grant applications to the State;

(d) A description and evaluation of the results of preliminary energy audits (described in Subpart B of this part) which have been conducted in the State including, but not limited to—

(1) In the case of a State which has completed preliminary energy audits of all potentially eligible buildings, a summary of the data gathered pursuant to § 450.42 for all such buildings;

(2) In the case of a State which has completed preliminary energy audits of a sample of all potentially eligible buildings within the State—

(i) Reasonably accurate estimates of the preliminary energy audit data required by 10 CFR 450.42 for all potentially eligible buildings within the State; and

(ii) A plan which describes further actions to be taken to complete preliminary energy audits of all potentially eligible buildings;

(e) The procedures to be used by the State for evaluating and ranking technical assistance and energy conservation measure grant applications pursuant to § 455.71, including the weights assigned to each criterion set forth in § 455.71(b). In addition, for the criteria set forth in § 455.71(b)(3), the State shall determine the order of priority given to fuel types that include oil, natural gas, and electricity.

(f) The procedures that the State will follow to insure that funds will be allocated equitably among eligible applicants within the State, including procedures to insure that funds will not be allocated on the basis of size or type of institution but rather on the basis of relative need taking into account such factors as cost, energy consumption and energy savings, in accordance with § 455.71;

(g) The procedures that the States will follow for identifying schools and hospitals experiencing severe hardship and for apportioning the funds that are available for schools and hospitals in a class of severe hardship. Such policies and procedures shall be in accordance with § 455.71(e).

(h) A statement setting forth the extent to which, and by which methods, the State will encourage utilization of solar space heating, cooling and electric systems and solar water heating systems;

(i) The procedures to assure that all financial assistance under this part will be expended in compliance with the requirements of the State Plan, in compliance with the requirements of this part, and in coordination with other State and Federal energy conservation programs;

(j) The procedures to insure implementation of energy conservation maintenance and operating procedures in those buildings for which financial assistance is requested under this part. At a minimum, the plan shall provide that all operating and maintenance procedure changes recommended in an energy audit report or a technical assistance report have been implemented prior to initial or additional financial assistance under this part being provided, unless it is shown that—

(1) The recommendation is infeasible because of factors not considered by the auditor or analyst;

(2) There is a cost involved which exceeds the institution's limit on operating expenditures;

(3) The implementation of the change requires some item of supply or material which is not available; or

(4) Other factors as approved by the Secretary;

(k) The procedures designed to insure that financial assistance under this part will be used to supplement, and not to supplant, State, local or other funds;

(l) The procedures for determining that energy audits performed without the use of Federal funds have been performed in substantial compliance with the requirements of 10 CFR Part 450 for the purposes of satisfying the eligibility requirements contained in § 455.41(c);

(m) The procedures for determining that technical assistance programs performed without the use of Federal funds have been performed in complance with the requirements of § 455.42, for the purposes of satisfying the eligibility requirements contained in § 455.51(a)(3);

(n) The procedures for State management, monitoring and evaluation of technical assistance programs and energy conservation measures receiving financial assistance under this part;

(o) A description of the State's program for establishing and insuring compliance with qualifications for technical assistance analysts. Such policies shall require that technical assistance analysts—

(1) Have experience in energy conservation and be a registered professional engineer licensed under the regulatory authority of the State;

(2) Be an architect-engineer team, the principal members of which are licensed under the regulatory authority of the State; or

(3) Be otherwise qualified in accordance with such criteria as the State may prescribe in its State Plan to insure that individuals conducting technical assistance programs possess the appropriate training and experience in building energy systems. Such policies shall also require that technical assistance analysts be free from financial interests which may conflict with the proper performance of their duties;

(p) A procedure for gathering data and reporting:

(1) An estimate of energy savings which may result from the modification of maintenance and operating procedures and installation of energy conservation measures;

(2) A recommendation as to the types of energy conservation measures considered appropriate within the State; and

(3) An estimate of the costs of carrying out technical assistance and energy conservation measures programs.

§ 455.91 Submission and approval of state plans.

(a) Proposed State Plans or amendments necessitated by a change in regulations shall be submitted to the Secretary within 90 days of the effective date of this subpart or any amended regulations. The Secretary, upon request and for good cause shown, may grant an extension of time.

(b) The Secretary shall, within 60 days of receipt of a proposed State Plan, review each Plan and, if it is found to conform to the requirements of this part, approve the State Plan. If the Secretary does not disapprove a State Plan within the 60-day period, the Secretary will be deemed to have approved the State Plan.

(c) If the Secretary determines that a proposed State Plan fails to comply with the requirements of this part the Secretary shall return the Plan to the State with a statement setting forth the reasons for disapproval.

(d) The Secretary shall review each amendment submitted by the State and, if it is found to conform to the requirements of this part, approve the amendment(s). If the Secretary determines that a proposed State Plan amendment fails to comply with the requirements of this part, the Secretary shall return the amendment to the State with a statement setting forth reasons for disapproval. With the consent of the Secretary, the State may submit a new or amended Plan at any time.

§ 455.92 State plans developed by the Secretary.

(a) If a State Plan has not been approved by February 7, 1981, or within 90 days after completion of the preliminary energy audits, whichever is later, the Secretary may develop and implement a State Plan on behalf of the schools and hospitals in the State.

(b) Subsequent to the development of a State Plan by the Secretary, the State may submit its own State Plan and the Secretary shall approve or disapprove such plan within 60 days after receipt by the Secretary. If the proposed plan meets the requirements of this part, and is not inconsistent with any plan developed and implemented by the Secretary, the Secretary shall approve the State Plan which shall automatically replace the plan developed by the Secretary.

Subpart I—Allocation of Appropriations Among the States

§ 455.100 Allocation of funds.

(a) The Secretary will allocate available funds among the States for the purpose of awarding grants to schools, hospitals, units of local government, and public care institutions and coordinating agencies to implement technical assistance and energy conservation measures grant programs in accordance with this part.

(b) By notice published in the **Federal Register**, the Secretary shall notify each State of the total amount allocated for grants within the State for any grant program cycle—

(1) For schools and hospitals, the allocation amount shall be for technical assistance programs, together with any limitation placed on technical assistance, and energy conservation measures; and

(2) For units of local government and public care institutions, the allocation amount shall be solely for technical assistance programs.

(c) By notice published in the **Federal Register**, the Secretary shall notify each State of the period for which funds allocated for a grant program cycle will be made available for grants within the State.

(d) Each State make available up to ten percent of its allocation for schools and hospitals in each grant program cycle to provide financial assistance not to exceed a 90 percent Federal share, for technical assistance programs and energy conservation measures for schools and hospitals determined to be in a class of severe hardship. Such determinations shall be made in accordance with § 455.71(e).

§ 455.101 Allocation formulas.

(a) Financial assistance for conducting technical assistance programs for units of local government and public care institutions shall be allocated among the State by multiplying the sum available

by the allocation factor set for in paragraph (c) of this section.

(b) Financial assistance for conducting technical assistance programs and acquiring and installing energy conservation measures, including

later, the Secretary may develop and implement a State Plan on behalf of the schools and hospitals within the State. If the Secretary does not develop a State Plan for a State, the funds reserved for

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by the allocation factor set for in paragraph (c) of this section.

(b) Financial assistance for conducting technical assistance programs and acquiring and installing energy conservation measures, including solar and other renewable resource measures, for schools and hospitals shall be allocated among the States by multiplying the sum available by the allocation factor set forth in paragraph (c) of this section.

(c) The allocation factor (K) shall be determined by the formula—

$$K = \frac{0.07}{N} + 0.1\,\frac{(sfc)}{(Nfc)} + 0.83\,\frac{(SP)(SC)}{(NPC)}$$

where, as determined by DOE—

(1) Sfc is the average retail cost per million Btu's of energy consumed within the region in which the State is located, as reflected in the 1985, Series C projections prepared for DOE's Energy Information Administration Administrator's Annual Report, 1977;

(2) Nfc is $271.95, the summation of the Sfc numerators for all States;

(3) n is the total number of eligible States;

(4) SP is the population of the State, as determined from 1976 census estimates, "Current Population Reports", Series P–25, number 603;

(5) SC is the sum of State's heating and cooling degree days, as determined from National Oceanic and Atmospheric Administration data for the thirty year period, 1941 through 1970;

(6) NPC is 1,277,259,000, the summation of the (SP) (SC) numerators for all States.

(d) Except for the District of Columbia, Puerto Rico, Guam, American Samoa and the Virgin Islands, no allocation available to any State may be less than 0.5 percent of all amounts allocated in any grant program cycle. No State will be allocated more than 10 percent of the funds allocated in any grant program cycle.

§ 455.102 Reallocation of funds.

(a) If a State Plan has not been approved and implemented by a State by the close of the period for which allocated funds are available as set forth in the notice issued by the Secretary pursuant to § 455.100(c), funds allocated to that State for technical assistance and energy conservation measures will be reallocated among all States for the next grant program cycle, if available.

(b) If a State Plan has not been approved by February 7, 1981, or within ninety days after completion of the preliminary energy audits, whichever is later, the Secretary may develop and implement a State Plan on behalf of the schools and hospitals within the State. If the Secretary does not develop a State Plan for a State, the funds reserved for that grant program cycle for schools and hospitals in that State will be reallocated for the next grant program cycle among all States for schools and hospitals.

(c) The Secretary reallocate the funds which remain unobligated by DOE at the end of any grant program cycle among all States in the next grant program cycle.

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Part VI

Equal Employment Opportunity Commission

Guidelines on Discrimination Because of National Origin

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1606

Guidelines on Discrimination Because of National Origin

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§ 1606.2—Scope of Title VII Protection

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1606

Guidelines on Discrimination Because of National Origin

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final guidelines.

SUMMARY: The Equal Employment Opportunity Commission is revising its *Guidelines on Discrimination Because of National Origin* to clarify them and to specifically inform the public of unlawful employment practices which discriminate on the basis of national origin. These Guidelines reaffirm the Commission's position on national origin discrimination as expressed in Commission decisions and other legal interpretations.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION:
Karen Danart, Acting Director, or Raj K. Gupta, Supervisory Attorney, Office of Policy Implementation, 2401 E Street NW., Room 4002, Washington, D.C. 20506, (202) 634–7060.

SUPPLEMENTARY INFORMATION:

I. Background

On January 13, 1970, (35 FR 421) the Commission adopted its *Guidelines on Discrimination Because of National Origin.* These Guidelines were issued as a result of charges filed by individuals alleging denial of equal employment opportunity because their last names suggested association with certain national origin groups, or because of their association with persons, schools, churches and other lawful organizations identified with certain national origin groups. The Guidelines were last amended on March 18, 1974, to conform to the Supreme Court decision in *Espinoza* v. *Farah Manufacturing Co., Inc.,* 414 U.S. 88, 92 (1973).

In order to allow interested persons an opportunity to participate in all stages of its guideline process and in compliance with Executive Order 12044 (43 FR 12661, March 24, 1978, as amended by E.O. 12221, 45 FR 44249, July 1, 1980), the Commission noticed its intent to review these Guidelines (45 FR 51229 at 51231, August 1, 1980). On September 19, 1980, 45 FR 62728, the Commission published a proposed revision of its current Guidelines which appear at 29 CFR 1606. The proposed Guidelines were published for public comment for 60 days. In compliance with Executive Order 12160 (44 FR 44787, September 28, 1979) and with the Commission's Final Consumer Program, (45 FR 38930, June 9, 1980), the Commission notified members of the public of their opportunity to comment on the proposed Guidelines by directly mailing them to various interested groups and individuals.

These Guidelines are a significant regulation under Executive Order 12044, (43 FR 12661, Mar. 24, 1978, as amended by E.O. 12221, 45 FR 44249, July 1, 1980). The Commission has determined that they will not have a major impact on the economy and that a regulatory analysis is not necessary.

In compliance with Executive Order 12067, (43 FR 28967, July 5, 1978), the Commission has consulted with representatives from the necessary federal departments and agencies on the revision of these Guidelines.

II. An Overview of the Guidelines and Public Comments

The Commission's main purpose in revising its Guidelines is to restructure and clarify the preceding Guidelines, and to incorporate into the Guidelines the Commission's major interpretations of Title VII discrimination on the basis of national origin. Therefore, each section of the Guidelines is based on existing policy which the Commission has stated in its Decisions, in the preceding *Guidelines on Discrimination Because of National Origin* or in other interpretations of Title VII.

During the 60 day comment period, the Commission received approximately 250 comments from individuals, civil rights organizations, business associations, educational institutions, and public and private employers. About two-thirds of these comments were general statements, either in support of, or against the Guidelines, and did not contain specific substantive comments on the Guidelines. Many of these commentators, focussing only on the section relating to the speak-English-only rules, incorrectly equated the Guidelines with the bilingual education programs and other bilingual programs. The Commission wants to emphasize that the Guidelines have no relationship to the bilingual education programs or other bilingual programs. The Commission also wants to emphasize that the Guidelines do not promote or require bilingualism in the workplace. The goal of the Guidelines is to protect employees from discriminatory employment practices and to remove unnecessary barriers, such as the broad speak-English-only rules, which result in the denial of employment opportunities to individuals on the basis of their national origin.

Many commentators strongly supported this revision of the Guidelines and indicated that these Guidelines would be beneficial in achieving equal job opportunities for all individuals regardless of their national origin, or their cultural or linguistic characteristics.

The following is an analysis of each section, the major comments received and the changes made to the proposed Guidelines.

§ 1606.1—Definition of National Origin Discrimination

This section is based on § 1606.1(b) of the preceding *Guidelines on Discrimination Because of National Origin.* It defines national origin discrimination broadly as including, but not limited to, employment discrimination because of an individual's, or his or her ancestor's place of origin, or because of an individual's physical, cultural or linguistic characteristics. As a result of the comments, the Commission has added physical characteristics to this definition. As several commentators noted, physical characteristics, such as facial features, are often the most obvious bases for national origin discrimination.

The Commission will carefully examine charges involving the denial of equal employment opportunity because of an individual's name, marriage to a person of a national origin group, or association with persons, organizations, schools or religious institutions identified with any national origin group. Some commentators suggested that the definition was too broad in extending protection to an individual merely because he or she is married to someone of a certain national origin or associates with institutions identified with a certain national origin. These comments are based on a misreading of the section. The section only states that such charges will be examined with particular concern to determine if, indeed, the alleged discrimination was based on national origin. To clarify this misunderstanding, the Commission has added a sentence stating that it will determine whether there has been unlawful national origin discrimination by applying general Title VII principles, such as disparate treatment and adverse impact. For example, it would be unlawful national origin discrimination for an employer to disparately treat an employee who it thought belonged to a certain national origin group because the employee's spouse had a pronounced foreign appearance or a foreign name.

A few commentators stated that the definition of national origin discrimination was too broad because it not only included minorities but also all white persons. National origin discrimination may often overlap with discrimination because of race or color. The Commission's definition of national origin discrimination is necessarily broad because Title VII protects all individuals from national origin discrimination regardless of their race or color.

Some commentators believed that the definition does not recognize national origin discrimination grounded in a person's manner of dressing, such as, the wearing of turbans or saris. If the facts of a case show that, under general Title VII principles, there has been discrimination on the basis of national origin, such discrimination would be covered under the definitional phrase "cultural characteristics of a national origin group."

Several commentators correctly noted that for an individual to be protected against national origin or his ancestors have their origins in a sovereign nation. See, for example, *Rooch* v. *Dresser Industries,* 23 FEP Cases 1073 (W.D. La. 1980), where the court held that a person of Acadian descent ("Cajun") could sue under Title VII for national origin discrimination. Because the phrase "country of origin" may imply a reference to a sovereign nation, it has been substituted by the phrase "place of origin".

Also, the phrase "particular national origin" in the proposed Guidelines has been changed to "national origin group" throughout this section. In order to have a claim of national origin discrimination under Title VII, it is not necessary to show that the alleged discriminator knew the *particular* national origin group to which the complainant belonged. To prove a national origin claim, it is enough to show that the complainant was treated differently than others because of his or her foreign accent, appearance or physical characteristics. See, for example, *Berke* v. *Ohio Department of Public Welfare,* 24 EPD ¶31,217 (6th Cir. 1980), which held that defendants had discriminated against Berke because of her accent which flowed from her national origin. The Court of Appeals, in a per curiam opinion, affirmed the unpublished district court opinion. The district court had held that it was immaterial that the employer could not have discriminated against the employee because she was of Polish origin; the employer did not know that the employee was Polish. It was sufficient that the employer treated her differently because she had a "foreign" accent.

§ 1606.2—Scope of Title VII Protection

The first sentence of this section is based on § 1606.1(c) of the preceding Guidelines, and has been revised to conform with the coverage of Title VII. Section 1606.2 also recognizes that Title VII principles of disparate treatment and adverse impact equally apply to national origin discrimination.

One commentator suggested that the Commission clarify the responsibility of labor organizations regarding national origin discrimination. The last sentence has been restated to clarify that the Guidelines use the term "employer" to refer to all entities covered by Title VII. Therefore, the Guidelines apply to all entities covered by Title VII, including labor organizations, joint labor management committees controlling apprenticeship or other training or retraining, and public or private employment agencies.

§ 1606.3—The National Security Exception

Section 1606.3 is based on the exception in § 1606.1(d) of the preceding Guidelines. This Section recognizes the national security exception as it appears in Section 703(g) of Title VII.

The Commission did not receive any comments from the public on this section. However, as a result of interagency coordination under Executive Order 12067, a footnote has been added to refer to the national security provision for federal employment under 5 U.S.C. 7532.

§ 1606.4—The Bona Fide Occupational Qualification Exception

This section reiterates the last sentence in § 1606.1(a) of the preceding Guidelines and is based on the Commission's long held position that the bona fide occupational qualification exception under Section 703(e) of Title VII shall be strictly construed. Several commentators supported the Commission's strict construction of the BFOQ exception. There were no substantive comments on this section and no changes have been made.

§ 1606.5—Citizenship Requirements

This section is based on § 1606.1 (d) and (e) of the preceding Guidelines. In those circumstances where citizenship requirements have the purpose or effect of discriminating against an individual on the basis of national origin, they are prohibited by Title VII. See *Espinoza* v. *Farah Mfg. Co. Inc.,* 414 U.S. 86, 92 (1973).

Some commentators noted that the Guidelines do not indicate whether an employer would be liable under Title VII, if a State law prohibits the employment of illegal aliens and if the employer refuses to hire an "illegal alien" because of that State Law. The commentators mentioned twelve states which have laws prohibiting the employment of "illegal aliens". They also cited to the Supreme Court decision in *De Canas* v. *Bica,* 424 U.S. 351 (1976), which held that the State of California was not totally barred, by virtue of the Immigration and Nationality Act (INA), from regulating the employment of "illegal aliens" within its boundaries. However, the Court left the question open for the lower court to determine whether the California statute is too broad and therefore in conflict with the purposes and objectives of Congress in enacting the Immigration and Nationality Act. For example, the Court noted that the California statute prohibits the employment of aliens who are "not entitled to lawful residence in the United States"; and, that therefore, on its face, it appears to conflict with the INA which permits certain aliens, not entitled to lawful residence, to work in the United States. In *De Canas,* the Court was not presented with the issue of whether the California law was consistent with the purposes and objectives of Title VII. Similar analysis, however, would have to be made in determining whether a particular State law conflicts with Title VII. In Title VII, Congress only specifically excluded from coverage the employment of aliens outside the United States. See Section 702 of Title VII, 42 U.S.C. 2000e–1. Moreover, even if such a State law is found not to have been superseded under Section 708 of Title VII, 42 U.S.C. 2000e–7, as one of these commentators recognized, an employer may be liable under Title VII if it is shown that the employer treats applicants who look or speak like aliens differently than other applicants. Since the Commission has not been presented with charges involving respondent defenses based on such State laws, it has not developed policy in this area. If the Commission should receive such a charge, it will base its decision on the provisions of the State law involved and on the employer's application of the State law to its employment practices.

As a result of interagency coordination under Executive Order 12067, the Commission has added to footnote 2, a reference to Executive Order 11935, 5 CFR Part 7.4, and to 31 U.S.C. 699(b), which set forth citizenship

requirements for certain types of Federal employment.

§ 1606.6—Selection Procedures

This section is derived from several of the concepts stated in § 1606.1(b) of the preceding Guidelines. As a result of the

person's foreign accent or ability to communicate in English as one of its criteria in selecting applicants for a job or other employment opportunities, should examine these practices for evidence of disparate treatment on the

to employment discrimination on the basis of national origin. Therefore, charges alleging discrimination on this basis will be carefully examined by the Commission for national origin discrimination. The Commission's

Under § 1606.7(a), the Commission presumes that totally prohibiting employees from speaking their primary language, violates Title VII because it is a burdensome term and condition of employment which discriminates on the

languages other than English. The purpose of § 1606.7 is to provide this guidance. The Commission's concern is to prevent employers from imposing speak-English-only rules, as arbitrary and oppressive terms and conditions of

principles to the issue of harassment and states that an employer is responsible for the acts of its supervisory employees or agents, regardless of whether the acts were authorized or forbidden by the employer

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requirements for certain types of Federal employment.

§ 1606.6—Selection Procedures

This section is derived from several of the concepts stated in § 1606.1(b) of the preceding Guidelines. As a result of the comments, this section has been revised. It affirms that in investigating selection procedures for adverse impact on the basis of national origin, the Commission will apply the principles of the *Uniform Guidelines on Employee Selection Procedures* (UGESP), 29 CFR Part 1607. As some commentators correctly noted, height and weight requirements are exceptions to the "bottom line" concept under Section 4C(2) of the UGESP. Section 1606.6(a)(2) now clearly states this. Some commentators also stated that the effect of § 1606.6(b) of the proposed Guidelines was to include fluency-in-English requirements and foreign training or education requirements as exceptions to the "bottom line" concept. Section 1606.6(b) now clarifies that the Commission does not consider these selection procedures to be exceptions to the "bottom line" concept. However, this section emphasizes that fluency-in-English and foreign training or education requirements are often the basis of national origin discrimination. Therefore, the Commission will carefully examine charges involving these requirements for evidence of discrimination under both the disparate treatment and adverse impact theories.

Some commentators were concerned with the lack of guidance on how to determine adverse impact and job relatedness for selection criteria identified in § 1606.6. They also wanted to know the recordkeeping requirements for national origin groups. The Commission has given detailed guidance in the UGESP on how to determine adverse impact and on validation. Proposed § 1606.6(a)(1) has been revised to clarify that these are the standards which employers should apply in evaluating selection procedures for unlawful national origin discrimination. The UGESP, sections 4 and 15, specify the national origin groups for which employers are required to keep records in evaluating selection procedures for unlawful national origin discrimination. Those recordkeeping requirements apply to all the selection procedures mentioned in § 1606.6.

Most of the comments on this section concerned the selection procedures mentioned in §1606.6(b)(2), *i.e.*, the denial of employment opportunities because of an individual's foreign accent or inability to communicate well in English. An employer who considers a person's foreign accent or ability to communicate in English as one of its criteria in selecting applicants for a job or other employment opportunities, should examine these practices for evidence of disparate treatment on the bases of national origin, as well as for evidence of adverse impact under the UGESP. If there is adverse impact based on national origin, the employer must justify the use of the selection procedure by showing that it is job related or otherwise justified under Federal law. For example, knowing how to speak English could be job related for the job of selling shoes to English-speaking customers. However, if the employer required its sales people to speak without an accent or to have a certain degree of fluency in English, and if these requirements had an adverse impact based on national origin, the employer would have to show the job relatedness of the no-foreign-accent requirement, or of the degree of fluency in English which it required.

Several commentators were concerned about the liability under Title VII of employers who require their employees to be bilingual for certain jobs. A job requirement of bilingualism is a selection procedure under the UGESP, and employers should follow the principles of the UGESP in analyzing these jobs for adverse impact on the basis of national origin.

Some commentators were concerned that the Guidelines would discourage employees from improving their ability to speak English. A few employers mentioned that they had programs for their employees from non-English speaking backgrounds to study and improve their English language skills. The Commission strongly supports such programs, and nothing in these Guidelines precludes employers from encouraging their employees to improve their ability to speak English. Simply stated, the Commission's concern is that individuals are not deprived of employment opportunities on the basis of non-job-related language proficiency requirements which under the UGESP have an adverse impact on the basis of national origin, or which are used to disparately treat individuals because of their national origin.

Some commentators stated that it would be difficult and impractical to evaluate foreign training and education, especially in the professional fields, and that in some instances, a state licensing requirement for the job may treat foreign education or training differently. It is noted that an individual's foreign training or education is particularly susceptible to subjecting the individual to employment discrimination on the basis of national origin. Therefore, charges alleging discrimination on this basis will be carefully examined by the Commission for national origin discrimination. The Commission's investigation will focus on such questions as: does the employer treat all foreign training or education on the same basis, or does it discriminate between foreign training or education on the basis of an individual's national origin; although a job may ordinarily require a state license, does the employer uniformly and always require such license for the job. (For licensing or certification requirements that have an adverse impact, *inter alia*, on the basis of national origin, see also Sections 2B and 16W of the UGESP, 29 CFR 1607.2B and 1607.16W; and UGESP Questions and Answers #7, 44 FR 11996, 11997 (March 2, 1979).

§ 1606.7—Speak-English-Only Rules

This section recognizes that an individual's primary language is often an essential national origin characteristic. According to estimates from the Survey of Income and Education conducted by the U.S. Bureau of Census in Spring 1976, approximately 28 million persons in the United States (about 13% of the total U.S. population) have non-English language backgrounds and may be affected by an employer's speak-English-only rule. The survey identifies persons with non-English language backgrounds as persons whose mother tongue is not English, who normally use languages other than English, or who live in households where languages other than English are spoken. About 21 million, or seventy five percent, of this group are above the age of 18. The study shows the following approximate numbers for each of these language backgrounds: Spanish, 10.6 million; Italian, 2.9 million; German, 2.7 million; French, 1.9 million; Chinese, Japanese, Korean and Vietnamese, 1.8 million; Polish, 1.5 million. Approximately 2.4 million persons in the United States do not speak any English at all.*

An employer's rule which requires employees to speak English at all times, including during their work breaks and lunch time, is one example of an employment practice which discriminates against persons whose primary language is not English.

* See U.S. Department of Health, Education and Welfare, National Center for Education Statistics, Bulletin 78 B-5, August 22, 1978, "Geographic Distribution, Nativity, and Age Distribution of Language Minorities in the United States: Spring 1976"; Waggoner, Dorothy, "Non-English Language Background Persons: Three U.S. Surveys", TESOL Quarterly, vol. 12, No. 3 at 247-262, September, 1978.

Under § 1606.7(a), the Commission presumes that totally prohibiting employees from speaking their primary language, violates Title VII because it is a burdensome term and condition of employment which discriminates on the basis of national origin by disadvantaging an individual's employment opportunities and by creating a discriminatory working environment. Therefore, where such a rule exists, the Commission will closely scrutinize it. However, § 1606.7(b) also recognizes that an employer may require its employees to speak only in English at certain times and that this would not be discriminatory if the employer shows that the rule is justified by business necessity; for example, where safety requires that all communications be in English so that everyone can closely follow a particular task, such as, surgery or drilling of oil wells;** or where a salesperson is attending to English-speaking customers. When the employer believes that the rule is justified by business necessity, the employer should clearly inform its employees of the general circumstances under which they are required to speak only in English and the consequences of violating the rule. Notice of the rule is necessary because it is common for individuals whose primary language is not English to inadvertently change from speaking English to speaking their primary language. Any adverse employment decision against an individual based on a violation of the rule will be considered as evidence of discrimination when an employer has not given effective notice of the rule.

Most of the general, non-substantive comments were directed toward this section of the Guidelines. These comments reflected a misunderstanding of the Guidelines either by equating them with bilingual education and other bilingual programs or by concluding that their purpose is to promote bilingualism in the workplace. As we stated at the beginning of this analysis, the Guidelines are not concerned with bilingual education or other bilingual programs, and they do not promote bilingualism in the workplace. the purpose of the guidelines is to explain to employers, and other entities covered by Title VII, the Commission's interpretation of what constitutes national origin discrimination.

As the Court noted in *Garcia* v. *Gloor*, 618 F. 2d 264, 268 n.1 (5th Cir. 1980), the Commission's previous Guidelines did not give any standards for testing employer rules which prohibit the use of languages other than English. The purpose of § 1606.7 is to provide this guidance. The Commission's concern is to prevent employers from imposing speak-English-only rules, as arbitrary and oppressive terms and conditions of employment, on people who come from non-English-speaking backgrounds in order to deprive them of an equal employment opportunity for jobs they are otherwise fully qualified to perform. Section 1606.7 does not conflict with the *Gloor* decision. *Gloor* did not involve a speak-English-only rule which was applied at all times. Neither did the facts in *Gloor* involve a bilingual employee whose primary language was not English. In the Court's view, Mr. Garcia, who spoke both English and Spanish failed to prove that Spanish was his primary language

Several commentators objected to the presumption in § 1606.7(a) that a speak-English-only rule which is applied at all times, including break and lunch time, violates Title VII. The Commission believes that this would create such a burdensome term and condition of employment, for employees whose primary language is not English, that the mere application of such a rule would shift the burden to the employer. Therefore, the Commission believes it is necessary to closely scrutinize such an absolute prohibition. However, employers may require that English be spoken when it is justified by business necessity.

Section 1606.7(a) has been restructured, and the phrase "in the workplace has been added. The words "narrowly drawn" have been eliminated in § 1606.7(b) because they are redundant.

Some commentators stated that to notify employees of the "exact circumstances and times" of speak-English-only rules would be impractical for employers to implement. Therefore, the Commission has changed the phrase, "exact circumstances and times" in § 1606.7(c), to the more flexible concept of "general circumstances." The manner in which an employer notifies its employees does not matter. However, the notice must be effective, *i.e.*, the employee should know under what circumstances he or she is required to speak only in English and what will happen if he or she violates the rule.

Section 1606.8—Harassment

This section states that harassment on the basis of national origin is a violation of Title VII and that an employer has an affirmative duty to maintain a working environment free from harassment on the basis of national origin. Section 1606.8(c) applies general Title VII principles to the issue of harassment and states that an employer is responsible for the acts of its supervisory employees or agents, regardless of whether the acts were authorized or forbidden by the employer and regardless of whether the employer knew or should have known of the acts. Section 1606.8(d) distinguishes the employer's responsibility for the acts of its agents or supervisors from the responsibility it has for conduct between fellow employees. This subsection states that liability for acts of national origin harassment in the workplace between fellow employees exists only when the employer, its agents or supervisory employees, knows or should have known of the conduct, and the employer cannot demonstrate that it took immediate and appropriate corrective action. Section 1606.8(e) recognizes that in certain circumstances, an employer may also be responsible for the acts of non-employees with respect to harassment of employees on the basis of national origin.

Some commentators objected to the strict liability of an employer under § 1606.8(c) for the acts of harassment of its supervisory employees or agents. Other commentators objected to an employer's responsibility for the conduct of non-employees as set forth in § 1606.8(e).

This Commission has not made any change in this section. The principles of this section are the same as stated in the recently published Commission's *Guidelines on Sexual Harassment*, 45 FR 74676 (November 10, 1980). These principles have been carefully developed by the Commission and fully commented upon in the supplementary information to the Commission's final *Guidelines on Sexual Harassment*, 45 FR 74676, 74677.

Date: December 22, 1980.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

Accordingly, 29 CFR Chapter XIV is amended by revising Part 1606 to read as follows:

PART 1606—GUIDELINES ON DISCRIMINATION BECAUSE OF NATIONAL ORIGIN

Sec.

1606.1 Definition of national origin discrimination.
1606.2 Scope of Title VII protection.
1606.3 The national security exception.
1606.4 The bona fide occupational qualification exception.
1606.5 Citizenship requirements.
1606.6 Selection procedures.
1606.7 Speak-English-only rules.

** See for example, *Saucedo* v. *Brothers Well Service, Inc.*, 464 F. Supp. 919 (S.D. Texas 1979).

1606.8 Harassment.
§ 1606.5 Citizenship requirements.

foreign accent,* or inability to

maintain a working environment free of

1606.8 Harassment.

Authority: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq.

§ 1606.1 Definition of national origin discrimination.

The Commission defines national origin discrimination broadly as including, but not limited to, the denial of equal employment opportunity because of an individual's, or his or her ancestor's, place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group. The Commission will examine with particular concern charges alleging that individuals within the jurisdiction of the Commission have been denied equal employment opportunity for reasons which are grounded in national origin considerations, such as (a) marriage to or association with persons of a national origin group; (b) membership in, or association with an organization identified with or seeking to promote the interests of national origin groups; (c) attendance or participation in schools, churches, temples or mosques, generally used by persons of a national origin group; and (d) because an individual's name or spouse's name is associated with a national origin group. In examining these charges for unlawful national origin discrimination, the Commission will apply general Title VII principles, such as disparate treatment and adverse impact.

§ 1606.2 Scope of Title VII protection.

Title VII of the Civil Rights Act of 1964, as amended, protects individuals against employment discrimination on the basis of race, color, religion, sex or national origin. The Title VII principles of disparate treatment and adverse impact equally apply to national origin discrimination. These Guidelines apply to all entities covered by Title VII (collectively referred to as "employer").

§ 1606.3 The national security exception.

It is not an unlawful employment practice to deny employment opportunities to any individual who does not fulfill the national security requirements stated in Section 703(g) of Title VII.[1]

§ 1606.4 The bona fide occupational qualification exception.

The exception stated in Section 703(e) of Title VII, that national origin may be a bona fide occupational qualification, shall be strictly construed.

[1] See also, 5 U.S.C. 7532, for the authority of the head of a federal agency or department to suspend or remove an employee on grounds of national security.

§ 1606.5 Citizenship requirements.

(a) In those circumstances, where citizenship requirements have the purpose or effect of discriminating against an individual on the basis of national origin, they are prohibited by Title VII.[2]

(b) Some State laws prohibit the employment of non-citizens. Where these laws are in conflict with Title VII, they are superseded under Section 708 of the Title.

§ 1601.6 Selection procedures.

(a)(1) In investigating an employer's selection procedures (including those identified below) for adverse impact on the basis of national origin, the Commission will apply the *Uniform Guidelines on Employee Selection Procedures* (UGESP), 29 CFR part 1607. Employers and other users of selection procedures should refer to the UGESP for guidance on matters, such as adverse impact, validation and recordkeeping requirements for national origin groups.

(2) Because height or weight requirements tend to exclude individuals on the basis of national origin,[3] the user is expected to evaluate these selection procedures for adverse impact, regardless of whether the total selection process has an adverse impact based on national origin. Therefore, height or weight requirements are identified here, as they are in the UGESP,[4] as exceptions to the "bottom line" concept.

(b) The Commission has found that the use of the following selection procedures may be discriminatory on the basis of national origin. Therefore, it will carefully investigate charges involving these selection procedures for both disparate treatment and adverse impact on the basis of national origin. However, the Commission does not consider these to be exceptions to the "bottom line" concept:

(1) Fluency-in-English requirements, such as denying employment opportunities because of an individual's foreign accent,[5] or inability to communicate well in English.[6]

(2) Training or education requirements which deny employment opportunities to an individual because of his or her foreign training or education, or which require an individual to be foreign trained or educated.

§ 1606.7 Speak-English-only rules.

(a) *When Applied at all Times.* A rule requiring employees to speak only English at all times in the workplace is a burdensome term and condition of employment. The primary language of an individual is often an essential national origin characteristic. Prohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment.[7] Therefore, the Commission will presume that such a rule violates Title VII and will closely scrutinize it.

(b) *When Applied Only at Certain Times.* An employer may have a rule requiring that employees speak only in English at certain times where the employer can show that the rule is justified by business necessity.

(c) *Notice of the Rule.* It is common for individuals whose primary language is not English to inadvertently change from speaking English to speaking their primary language. Therefore, if an employer believes it has a business necessity for a speak-English-only rule at certain times, the employer should inform its employees of the general circumstances when speaking only in English is required and of the consequences of violating the rule. If an employer fails to effectively notify its employees of the rule and makes an adverse employment decision against an individual based on a violation of the rule, the Commission will consider the employer's application of the rule as evidence of discrimination on the basis of national origin.

§ 1606.8 Harassment.

(a) The Commission has consistently held that harassment on the basis of national origin is a violation of Title VII. An employer has an affirmative duty to maintain a working environment free of harassment on the basis of national origin.[8]

(b) Ethnic slurs and other verbal or physical conduct relating to an individual's national origin constitute harassment when this conduct: (1) Has the purpose or effect of creating an intimidating, hostile or offensive working environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunities.

(c) An employer is responsible for its acts and those of its agents and supervisory employees with respect to harassment on the basis of national origin regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of harassment in the workplace on the basis of national origin, where the employer, its agents or supervisory employees, knows or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees with respect to harassment of employees in the workplace on the basis of national origin, where the employer, its agents or supervisory employees, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

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[2] See *Espinoza* v. *Farah Mfg. Co., Inc.*, 414 U.S. 86, 92 (1973). See also, E.O. 11935, 5 CFR Part 7.4; and 31 U.S.C. 699(b), for citizenship requirements in certain Federal employment.

[3] See CD 71-1529 (1971), CCH EEOC Decisions ¶6231, 3 FEP Cases 952; CD 71-1418 (1971), CCH EEOC Decisions ¶6223, 3 FEP Cases 580; CD 74-25 (1973), CCH EEOC Decisions ¶6400, 10 FEP Cases 260. *Davis* v. *County of Los Angeles*, 566 F. 2d 1334, 1341-42 (9th Cir., 1977) vacated and remanded as moot on other grounds, 440 U.S. 625 (1979). See also, *Dothard* v. *Rawlinson*, 433 U.S. 321 (1977).

[4] See Section 4C(2) of the *Uniform Guidelines on Employee Selection Procedures*, 29 CFR 1607.4C(2).

[5] See CD AL68-1-155E (1969), CCH EEOC Decisions ¶6008, 1 FEP Cases 921.

[6] See CD YAU9-048 (1969), CCH EEOC Decisions ¶6054, 2 FEP Cases 78.

[7] See CD 71-448 (1970), CCH EEOC Decisions ¶6173, 2 FEP Cases, 1127; CD 72-0281 (1971), CCH EEOC Decisions ¶6293.

[8] See CD CL68-12-431 EU (1969), CCH EEOC Decisions ¶6085, 2 FEP Cases 295; CD 72-0621 (1971), CCH EEOC Decisions ¶6311, 4 FEP Cases 312; CD 72-1561 (1972), CCH EEOC Decisions ¶6354, 4 FEP Cases 852; CD 74-05 (1973), CCH EEOC Decisions ¶6387, 6 FEP Cases 834; CD 76-41 (1975), CCH EEOC Decisions ¶6632. See also, Amendment to *Guidelines on Discrimination Because of Sex*, § 1604.11(a) n. 1, 45 FR 7478 sy 74677 (November 10, 1980).

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Part VII

Interstate Commerce Commission

Railroad Transportation Contracts

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1300

[Ex Parte No. 387]

directives in Section 208, to assist the Commission in evaluating contracts and complaints before the effective date of final regulations.

Section 208 specifies the parties that can file, and the grounds for, complaints.

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1300

[Ex Parte No. 387]

Railroad Transportation Contracts

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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1300

[Ex Parte No. 387]

Railroad Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Notice of stay of interim rules.

SUMMARY: On November 5, 1980, at 45 FR 73481, the Commission issued interim rules in this proceeding. These rules were issued pursuant to Section 208 of the Staggers Rail Act of 1980 (Pub. L. No. 96–448, 94 Stat. 1895) to govern the process of contract filing, complaints, and approval and disapproval of contracts between rail carriers and purchasers of rail service. Notice is given of the stay of the interim rules. Elsewhere in the **Federal Register** today, the interim rules are being treated solely as proposed rules. We will evaluate all contracts on a case-by-case basis until final regulations are adopted.

EFFECTIVE DATE: December 16, 1980. The Comment period on the proposed rule ends January 8, 1981.

ADDRESS: An original and twenty copies of any comments should be mailed to: Interstate Commerce Commission, Room 5340, Washington, D.C. 20423, ATTENTION: Ex Parte No. 387.

FOR FURTHER INFORMATION CONTACT: Richard Felder, (202) 275–7693 or Richard Schiefelbein, (202) 275–0826.

SUPPLEMENTARY INFORMATION: By decision of the Commission, Darius W. Gaskins, Jr., Chairman, served December 16, 1980, interim rules issued in this proceeding were stayed. Formal standards will not be imposed until the Commission has evaluated the comments submitted and has established final regulations. Comments in this matter are still being accepted under the notice of proposed rulemaking being published elsewhere in this issue. The comment period ends January 8, 1981, and the address to which comments are to be sent appears above.

Effective October 1, 1980, parties have been able to file contracts under Section 208, and the Commission must examine these contracts to ensure that they comply with the provisions of the new Act. Accordingly, we will evaluate all contracts on a case-by-case basis until final regulations are adopted. We will not in the interim adopt any formal requirements as to contract format, standing to complain, or how a complainant must make its case, parties should, however, closely follow the directives in Section 208, to assist the Commission in evaluating contracts and complaints before the effective date of final regulations.

Section 208 specifies the parties that can file, and the grounds for, complaints. Other individuals who believe that Section 707 or any other part of the Act confers upon them standing or additional grounds should submit their arguments with the complaint. This entire process of contract filing, complaints, and approval or disapproval of the contracts shall proceed on a case-by-case basis consistent with the statute until final rules become effective.

Dated: December 16, 1980.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–40319 Filed 12–24–80; 8:45 am]

BILLING CODE 7035–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1300

[Ex Parte No. 387]

Railroad Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On November 5, 1980 at 45 FR 73481, the Commission issued interim rules in this proceeding. These rules were issued pursuant to Section 208 of the Staggers Rail Act of 1980 (Pub. L. No. 96–488, 94 Stat. 1895) to govern the process of contract filing, complaints, and approval and disapproval of contracts between railroads and purchasers of rail service. Elsewhere in the **Federal Register** today notice is given of the rules being stayed. The interim rules should now be considered solely as proposed rules. While our orginal notice clearly requested comments on the rules, it may not have been clear to all interested persons that we were proposing that they be adopted as final rules. For this reason, we are extending the deadline for comments.

DATES: Comments on the proposed rules are due on or before January 8, 1981.

ADDRESS: An original and twenty copies of any comments should be mailed to: Interstate Commerce Commission, Room 5340, Washington, D.C. 20423, Attention: Ex Parte No. 387

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275–7656 or Richard Schiefelbein, (202) 275–0826.

Decided: December 16, 1980.

(49 U.S.C. 10321 and 10713 and 5 U.S.C. 553.)

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–40318 Filed 12–24–80; 8:45 am]

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Part VIII

Department of Transportation

Coast Guard

Deepwater Port Safety Zone; Final rule

DEPARTMENT OF TRANSPORTATION

final rules contain a provision specifically requiring coordination with

wherever terms defined in the Act are used in the deepwater port regulations

enforcement of regulations pertaining to deepwater ports.

deepwater port safety zone, 36" over other offshore areas under less than 12

the PPC. For these reasons, the final rule has not been changed because of the

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 148 and 150

[CGD 76-096]

Deepwater Port Safety Zone

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: This document amends the Cost Guard's deepwater port navigation regulations by adding new requirements governing vessel activities at U.S. deepwater ports and publishing the boundaries of deepwater port safety zone and shipping safety fairways designated and developed as a function of the deepwater port license application review process. Included are modifications to existing rules and a number of editorial changes which clarify the requirements governing vessel navigation at deepwater ports. This action is required by the Deepwater Port Act of 1974. The purpose of this amendment is to promote marine environmental protection and navigational safety at deepwater ports.

EFFECTIVE DATE: January 28, 1981.

FOR FURTHER INFORMATION CONTACT: Frank A. Martin, Jr., Project Manager, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C. 20593 (202) 472-5052.

SUPPLEMENTARY INFORMATION: On February 7, 1980, the Coast Guard proposed to make this amendment by issuing a notice of proposed rulemaking (45 FR 10172-82, February 14, 1980). That notice provided interested persons with the details of and reasons for this amendment and established a March 31, 1980 date by which written comments on the proposals could be submitted.

Comments were recieved from LOOP, Inc., the licensee of the only U.S. deepwater port presently under construction, the U.S. Department of the Interior (DOI), the American Petroleum Institute (API), the National Oceanic and Atmospheric Administration (NOAA), and various headquarters and field organizational components of the Coast Guard.

General Comments

The DOI commented that while the proposed navigation rules pertaining to deepwater port safety zones would have no effect on its operations, it did have an interest in safety zone boundaries, noting that 33 CFR 147.03 provides for the establishment of safety zones generally. The DOI would like to see the final rules contain a provision specifically requiring coordination with DOI when a safety zone boundary is proposed to be initiated or changed.

As explained in the preamble to the proposed rules, the formulation and designation of deepwater port safety zones is a function of the license application review process for each specific port proposal. Deepwater port safety zones are established under authority contained in section 10(d) of the Deepwater Port Act of 1974 (Act) (33 U.S.C. 1509(d)). Deepwater port safety zones should not be confused with other types of safety zones under the jurisdiction of the Coast Guard, such as those addressed at 33 CFR Parts 147 and 165.

Under section 10(d) of the Act, the DOI is specifically required to be consulted before the designation of deepwater port safety zone boundaries occurs. This consultation takes place during the license application review process. Further, because of the fair market rental value provision of section 5(h)(3) of the Act (33 U.S.C. 1504(h)(3)), any future proposed modification to deepwater port safety zone boundaries would have to be coordinated with the DOI for the reassessment or determination of the rent to be charged the deepwater port licensee. For these reasons the final rules do not contain the coordination provision requested by the DOI.

One comment correctly pointed out that the use of the term "safety zone" in the proposed rules, in specific contexts, was inconsistent with other contexts of the proposals. For example, where the term "safety zone" is used in the definition of "Marine site", proposed § 148.3, it appears that the term excludes anchorage areas. In the context of proposed § 150.301, however, it is clear that anchorages are included in a deepwater port safety zone.

In other places in the proposals, particularly in the preamble explaining the proposals, a wide range of terms were used to describe the general geographical areas around a deepwater port. These terms included marine site, safety zone, precautionary area, port safety precautionary area, deepwater port safety zone precautionary area, port approach area, port area, shipping approach fairway, and shipping safety fairway. To avoid possible confusion, the comment suggested defining the term "safety zone" and eliminating or consolidating use of the many other terms used to describe the various geographical areas associated with deepwater ports.

The first paragraph under existing § 148.3 definitions, states, in effect, that wherever terms defined in the Act are used in the deepwater port regulations at 33 CFR, Parts 148, 149, and 150, those terms have the same meaning as given in the Act unless otherwise provided for in the regulations. Section 3(16) of the Act defines "safety zone" to mean the safety zone established around a deepwater port as determined under section 10(d) of the Act. The determination under section 10(d) is that there be designated, during the deepwater port license application review process guided by the Act, a zone of appropriate size around and including any deepwater port, for the purpose of navigational safety.

Accordingly, it is inappropriate to specifically include a definition of "safety zone" in the final rule. As explained in the preamble to the proposed rules, the designation of the final deepwater port safety zone configuration for a particular port evolves from the license application review process. With the deepwater port license application review process experience gained thus far, the Coast Guard is of the view that the zone, under section 10(d) of the Act, of appropriate size around and including any deepwater port, should include the delineation therein of specific areas to be avoided anchorages, and such other ships' routing measures as vessel traffic lanes, and traffic separation schemes, as may be appropriate for a particular port. Editorial corrections have been made throughout the final rule to reflect the above view and eliminate potentially confusing modifiers such as "precautionary area".

Appendix A to the final rules, with its detailed description of specific deepwater port safety zone boundaries, and the subsequent charting of those boundaries before ports become operational will eliminate much of the apparent confusion generated over safety zone terminology.

The deepwater port regulations, as well as the proposed amendments, contain a number of references that imply jurisdiction of the Captain of the Port (COTP) over various deepwater port enforcement and operational matters. One comment correctly notes that existing Coast Guard regulations in 33 CFR Part 3, where geographical areas of responsibility for COTP Offices are defined, are not clear as regards jurisdiction over high seas areas where deepwater ports would be constructed. Future amendments to Part 3 will clarify this.

In the interim, 33 CFR 1.01-30, which defines COTP functions, was amended in 1977 to specifically include the

enforcement of regulations pertaining to deepwater ports.

To ensure that vessels calling at deepwater ports use the best available nautical chart, the NOAA requested that the final rule be specifically cross-referenced to 33 CFR Part 164 which requires vessels 1,600 or more gross tons to use National Ocean Survey charts, or foreign equivalent, while navigating in the vicinity of deepwater ports. This suggestion is not adopted because the masters of vessels that will be using a deepwater port will have detailed knowledge, through port Operation Manuals and advance scheduling arrangements, of the port's location and the shipping safety fairways leading to the port. Additionally, port provided Mooring Masters are required to be on vessels whenever those vessels are manuevering within the safety zone of the deepwater port.

The API requested that Annex A to the proposed rules, the description of the LOOP deepwater port safety zone and shipping safety fairway boundaries, be expanded to provide for a protective area prohibiting anchoring over the pipeline extending from the pumping platform complex to shore. The Coast Guard rejects this request for the reasons stated below.

The requirements governing offshore pipelines are a matter under the cognizance of the Materials Transportation Bureau (MTB) of the Department of Transportation Research and Special Programs Administration. Specifically, the Secretary of Transportation Bureau (MTB) of the Department of Transportation Research and Special Programs Administration. Specifically, the Secretary of Transportation delegated the authority to MTB to exercise the powers and perform the duties under section 21 of the Act (33 U.S.C. 1520) relating to the establishment, enforcement, and review of regulations concerning the safety, construction, operation, and maintenance of pipelines on federal lands and the Outer Continental Shelf.

In 1976, MTB amended its regulations in 49 CFR, Part 195, concerning transportation of liquids by pipeline, to more clearly delineate the applicability of that part to offshore liquid pipelines and to ensure the safe design, construction, operation and maintenance of those pipelines. That amendment (41 FR 34035-41, August 12, 1976) included the pipeline facilities that are a part of a deepwater port.

The pipelines associated with a deepwater port are subject to the MTB burial and cover requirements at 49 CFR 195.246 and 195.248. Those sections call for a cover of 48" over pipelines in a deepwater port safety zone, 36" over other offshore areas under less than 12 feet deep, as measured from mean low tide, and 30" over any other offshore area. Exceptions to these requirements are specified for burial and cover in bottom rock excavations.

For all segments of the pipeline associated with the LOOP, Inc. deepwater port, the MTB burial and cover requirements are exceeded. The safety zone pipelines have a five foot cover, the segment from the 12 foot depth contour to and across the shoreline has a cover of ten feet, and the remaining offshore segment from the 12 foot depth contour to the safety zone has a cover of three feet. The cover is measured from the top of the buried pipe to the natural sea bottom.

The pipeline coverage at LOOP will provide a sufficient level of protection from the general risk of accidental damage by anchors. In addition to the burial requirements, the LOOP pipelines are generally protected with a heavy concrete coating. Further, the Coast Guard is arranging with domestic and international charting agencies to mark the location of the LOOP pipelines on appropriate nautical charts, and on the domestic charts, include a precautionary note regarding anchoring over those pipelines. This seems to be a better course of action than extending the safety zone to cover the entire length of the pipeline.

Specific Comments

Two comments were directed at the radar surveillance requirements proposed in § 150.307. The API suggested the wording of this section be expanded to require surveillance of the safety zone and approaches. The other comment pointed out that radar surveillance of the safety zone by the port Vessel Traffic Supervisor (VTS) is triggered by the notification of arrival to that person as required by other sections of the proposed rules. If the notification is not given, radar surveillance of the safety zone may not be maintained.

The API suggestion to extend mandatory radar coverage by regulation beyond the safety zone has not been adopted because the rule as drafted provides an appropriate level of protection as explained in the preamble to the proposed rules. As a practical consideration, it is expected that deepwater ports will have radar equipment of sufficient range capability to provide coverage beyond safety zone boundaries. Planned operation of radar equipment at the LOOP port includes voluntary radar coverage to a range of approximately 27 nautical miles from the PPC. For these reasons, the final rule has not been changed because of the latter comment regarding radar surveillance in cases where there is a failure on the part of a vessel operator to notify the port of intentions with respect to entering the safety zone.

The API also commented on the proposed requirement in § 150.309 regarding advisories to tankers. That rule currently requires that the VTS at a port keep the master of each tanker underway in a safety zone apprised of the tanker's position and track at intervals not to exceed 10 minutes. The API considers this requirement too specific and suggests a more relaxed substitute that essentially allows the VTS to receive and disseminate vessel traffic information as appropriate under prevailing circumstances. The API's suggestion is not adopted in the final rule, § 150.309. The rule as drafted ensures continuity of communications between vessels in the safety zone and the port VTS, and the continuous presence of the VTS at that person's post of duty. These are important safety considerations that should not be relaxed. However, for clarification, the term "track" has been changed in paragraph (a) of the final rule by substituting language that refers to a tanker's position by range and bearing from the PPC. In paragraph (b) of the final rule, the term "track" has been clarified by substituting "course" therefor.

Several comments were received concerning the requirements in proposed § 150.313 regarding clearances for tankers. The API stated that, as drafted, the 5 mile separation requirement between tankers (paragraph (a)(1)) and the two mile visibility requirement (paragraphs (b)(2) and (c)) are unnecessarily restrictive. The API suggested that these requirements be revised to allow knowledgeable individuals on location to use their own experience and judgment. Another comment suggested that the 2 mile visibility requirement be clarified as to whether visibility must be in the entirety of the safety zone or measured from specific references, such as from a SPM, or the bridge of a tanker. Related to this visibility comment was a question of safety, that is, if the visibility closes to less than 2 miles in a portion of the safety zone a tanker has already transited, must that tanker continue on to a SPM berth or anchor?

Although the 5 mile tanker separation and the 2 mile visibility requirements may be conservative, they are not unreasonable, due to the stopping distances, even at slow speeds, needed

for the very large crude carrier tankers that will be using the port, and the poor maneuvering characteristics of those tankers. Further, estimates of volume of tanker traffic at the LOOP port are presently in the range of only one tanker

to impose such a requirement. The matter is left to the judgment of the masters of the tankers. The fairways are established to provide an obstruction free route of ingress and egress to the ports. It is expected that as the

flag vessels referred to are not foreign flag vessels using the port for purposes of loading or unloading oil. The API recommended that for operational safety considerations, vessels other than tankers or port support vessels should

charge that no installations, structures, or uses will be permitted that are incompatable with the operation of the deepwater port.

The regulations are structured to require a port VTS, in the interest of

entry of vessels into specific areas of the safety zone that are to be avoided.

Environmental Consequences

The Coast Guard has reviewed and analyzed the probable environmental

equipment of the deepwater port are located.

* * * * *

§ 148.109 [Amended].

3. In § 148.109, by revising paragraphs

for the very large crude carrier tankers that will be using the port, and the poor maneuvering characteristics of those tankers. Further, estimates of volume of tanker traffic at the LOOP port are presently in the range of only one tanker a day. Thus, the 5 mile and 2 mile requirements are reasonable and effective means for minimizing the potential for collisions at a deepwater port.

In addition, the visibility referred to in the comments on proposed § 150.313 is a general visibility requirement for anywhere in the safety zone. The final rule at § 150.313(c) has been clarified in this regard.

For those situations of reduced visibility that may arise after a tanker is committed in the safety zone, the Coast Guard has concluded that it cannot attempt to regulate for every contingency or exigency that may arise at deepwater ports. We recognize that circumstances may arise in which there will be conflicts of compliance with these rules. In those situations, where safety is concerned, emergency deviations from any requirements of the deepwater port regulations are permitted under § 150.115.

One comment pointed out that the advance notice of arrival requirements proposed in § 150.333 failed to include the estimated time of arrival of tankers at a deepwater port safety zone. This was a drafting oversight and has been added to the final rule at § 150.333(a)(5).

API and a Coast Guard comment, in responding to the proposed requirement in § 150.337(c), questioned the 5 mile separation of tankers in the safety zone. For the reasons previously stated, the 5 mile requirement remains unchanged in the final rule.

Other comments that were directed at the tanker navigation requirements proposed in § 150.337 questioned whether there should be a prohibition against meeting situations and whether speed limits should be placed on tankers. The NOAA also requested clarification on where a tanker must enter the designated port safety fairway leading to the safety zone and whether a tanker is precluded from entering the safety zone at some point ahead of another tanker already in the safety zone.

With regard to the issues of tankers meeting situations and speed limits, these matters are expected to be addressed in port Operation Manuals that will be reviewed by the Coast Guard under § 150.105.

There is no requirement in these final rules on where a tanker must enter a safety fairway leading to a deepwater port nor did the Coast Guard ever intend to impose such a requirement. The matter is left to the judgment of the masters of the tankers. The fairways are established to provide an obstruction free route of ingress and egress to the ports. It is expected that as the proliferation of offshore structures on the Outer Continental Shelf continues, tankers will progressively enter the fairways at points further away from the ports. The final rule at § 150.337(a) effectively precludes a tanker from entering the safety zone at some point ahead of another tanker already in the safety zone.

NOAA and a Coast Guard comment recommended that the term "call at", used in proposed § 150.339 regarding the navigation of vessels other than tankers in the safety zone, be defined. In the context of that rule, the term was intended to mean entry into the safety zone of a deepwater port. The final rule has been clarified in this regard.

One comment asked whether the Mooring Master's duties included conning or piloting of a tanker underway in the safety zone as this was not clear in the context of proposed §§ 150.341 and 150.342. The comment further suggested that the final rules should include a section detailing the Mooring Master's duties. The Coast Guard rejected this suggestion.

The Mooring Master acts in an advisory capacity to the master of the tanker. The Mooring Master's role is clearly indicated in the note to the final rule at § 150.341. The Mooring Master advises the tanker master on operational and ship control matters that are peculiar to the specific port, such as navigational aids, depth and current characteristics of the maneuvering area, mooring equipment and procedures, and the vessel traffic control procedures of the port. The final rule, § 150.341, does not relieve the tanker master or person in charge of the deck watch from that person's ultimate responsibilities, duties, and obligations for the safety of the vessel.

Several comments were received concerning the requirements proposed in § 150.345 and the table therein relative to regulated vessel activities at deepwater ports. Most of the comments primarily indicated a need for clarification of terminology in this section. Substantively, NOAA recommended that fishing in saftey zones should be prohibited. NOAA also commented upon the apparent differing applicability of the section to all vessels as opposed to foreign vessels. Further, LOOP, Inc. requested that the note to the table of activities under the key code "P", regarding foreign flag vessels, be changed to clearly show that the foreign flag vessels referred to are not foreign flag vessels using the port for purposes of loading or unloading oil. The API recommended that for operational safety considerations, vessels other than tankers or port support vessels should be prohibited from anchoring in safety zone anchorage areas except under force majeure conditions. Finally, a Coast Guard comment recommended that proposed § 150.345 specifically prohibit the VTS from authorizing entry of a vessel into a specifc area of the safety zone that is to be avoided as indicated in the table of regulated activities.

As suggested, a number of clarifying changes have been made to terminology used in the table at § 150.345. Also, paragraph (b) has been revised, as suggested, to make it clear that it is the deepwater port licensee who must obtain the COTP's permission before allowing any vessel activity at the port which is not listed in the Table 150.345(a), or otherwise provided for in the requirements for vessel navigation at deepwater ports.

The Coast Guard rejected NOAA's recommendation to prohibit fishing in deepwater port safety zones. During the deepwater port license application review experiences to date, it was determined that deepwater ports could be sited in areas where there are valuable commercial fish resources. Thus this activity is being permitted within specified portions of safety zones, when the VTS of the port determines it can be done without interfering with the operations of the port.

NOAA's and LOOP's comments on proposed § 150.345 regarding applicability to foreign flag vessels are somewhat related. The underlying question these comments raise is why the apparent differing treatment regarding clearance requirements for domestic versus foreign flag vessels other than tankers calling at a deepwater port for the purpose of unloading oil. NOAA strongly recommended, in the interest of safety, that the requirement to obtain clearance from a port VTS to enter a safety zone, by communicating with that person before entry via radiotelephone, apply to all vessels, regardless of country of registration.

The purpose of proposed § 150.345, as explained in the preamble to the proposed rule, is to comply with the requirements in section 10(d)(1) of the Act (33 U.S.C. 1509 (d)(1)) to define, by regulation, activities permitted or prohibited in deepwater port safety zones, for the purpose of navigational safety. This includes the statutory

charge that no installations, structures, or uses will be permitted that are incompatable with the operation of the deepwater port.

The regulations are structured to require a port VTS, in the interest of safety, to monitor and supervise vessel movements in the vicinity of a deepwater port on a 24-hour basis. There is a need to also provide a means to ascertain when any vessel desires to enter the safety zone to determine whether the entry would interfere with port operations or be in conflict with the rules concerning regulated vessel activities. A mandatory clearence requirement for all vessels would accomplish this and is desirable; however, exercise of regulatory authority under section 10 (d)(1) of the Act is subject to recognized principles of international law. Imposing mandatory clearance and communication requirements on foreign flag vessels on the high seas, not calling at or dealing with the port, is not in accord with accepted principles of international law.

Before foreign flag vessels call at the port, section 19(c) of the Act (33 U.S.C. 1518(c)) requires that their government has recognized the jurisdiction of the United States in regard to safety measures for deepwater ports, thus these vessels are subject to the mandatory reporting and clearance requirements. In the case of foreign vessels other than tankers calling at the port, that wish to enter the safety zone for purposes other than loading or unloading oil (transiting, etc.), the clearance requirement is voluntary because of the high seas location of deepwater ports. Accordingly, in the final rule, Table 150.345(a) has been modified to reflect the foregoing distinction being made regarding clearance to enter a safety zone by domestic versus foreign flag vessels.

API's recommendation that vessels other than tankers or port support vessels be prohibited, except under force majeure circumstances, from anchoring in safety zone anchorage areas was rejected. Prudent control over this activity by the port VTS can ensure port operational safety.

Finally, Table 150.345(a) applies to both vessels desiring to enter deepwater port safety zones and to the VTS of deepwater ports who is the person who must exercise the level of control over the regulated activities at deepwater ports denoted by the key contained in the table. Therefore, the Coast Guard has rejected as unnecessary the recommendation to include in the final rule at § 150.345 additional languaga prohibiting the VTS from authorizing entry of vessels into specific areas of the safety zone that are to be avoided.

Environmental Consequences

The Coast Guard has reviewed and analyzed the probable environmental impacts of promulgating the U.S. deepwater port safety zone regulations proposed in this notice. A discussion of the impacts and various regulatory alternatives as regards LOOP, was included in the Final Environmental Impact Statement (FEIS) prepared by the Coast Guard during the license application review process for that specific project. For the federal action now under consideration, issuance of these proposed regulations, the environmental consequences remain essentially as addressed in the FEIS for the LOOP license application.

Regulatory Evaluation

This rulemaking proposal has also been revised for economic effects and a final regulatory evaluation has been prepared in accordance with Department of Transportation Regulatory Policies and Procedures (44 FR 11034–45) of February 26, 1979. The evaluation includes identification of resource availability loss to commercial and recreational fishing activities over the life of the LOOP project. The economic consequences prinicipally revolve around commercial fishing activities at the port. The Coast Guard has determined that there will not be a significant adverse economic effect on fishing activities caused by this regulatory action. A copy of the Final Regulatory Evaluation may be obtained from the Commandant (G–CMC/24), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

In consideration of the foregoing, Title 33, Code of Federal Regulations, Subchapter NN, Deepwater Ports, is amended as follows:

PART 148—GENERAL

§ 148.3 [Amended].

1. In § 148.3, by removing the definition of the term "Traffic separation scheme (TSS)".

2. In § 148.3, by revising the definition of "Marine site" to read as follows:

§ 148.3 Definitions.

* * * * *

"Marine site" means the area in which the deepwater is located, and includes the safety zone, attendant ships' routing measures, anchorages and all areas seaward of the high water mark in which associated components and equipment of the deepwater port are located.

* * * * *

§ 148.109 [Amended].

3. In § 148.109, by revising paragraphs (j)(1)(iv) and (l)(4) to read as follows:

§ 148.109 Contents for application for issuance of a license.

* * * * *

(j) * * *

(l) * * *

(iv) Recommended ships' routing measures and proposed vessel traffic patterns in the port area;

* * * * *

(l) * * *

(4) The speed limits proposed for tankers in the safety zone.

* * * * *

PART 150—OPERATIONS

4. By revising Part 150, Subpart C—Vessel Navigation, to read as follows:

Subpart C—Vessel Navigation

Sec.

150.301 Applicability.
150.303 Definitions.
150.305 Ship's routing measures.
150.307 Radar surveillance.
150.309 Advisories to tankers.
150.311 Radio listening watch.
150.313 Clearances for tankers.
150.315 Clearances for support vessels.
150.317 Clearances for other vessels.
150.333 Advance notice of arrival.
150.335 Report before entering safety zone.
150.337 Navigation of tankers in the safety zone.
150.336 Navigation of support vessels in the safety zone.
150.339 Navigation of other vessels in the safety zone.
150.341 Mooring Master.
150.342 Assistant Mooring Master.
150.345 Regulated vessel activities.
Appendix A.

Authority: Sec. 10(a)(b)(d), 88 Stat. 2137–38 (33 U.S.C. 1509(a)(b)(d); Sec. 4, 92 Stat. 1473–74 (33 U.S.C 1223); 49 CFR 1.46.

Subpart C—Vessel Navigation

§ 150.301 Applicability.

This subpart prescribes rules that—

(a) Apply to the navigation of all vessels at or near a deepwater port; and

(b) Describe vessel activities permitted and prohibited in a deepwater port safety zone.

Note.—Appendix A to this part describes the designated boundaries of U.S. deepwater port safety zones and shipping safety fairways leading to those ports. Included within the safety zones are specific areas to be avoided, anchorages, and other ships' routing measures associated with particular safety zones.

§ 150.303 Definitions.

"Support vessel" means a tug, linehandling boat, crewboat, workboat, supply vessel, bunkering vessel, barger, or other similar vessel working for a licensee in connection with the

§ 150.313 Clearances for tankers.

(a) The Vessel Traffic Supervisor may not clear a tanker to enter the safety zone unless—

(1) Each other tanker underway in the safety zone is at least 5 miles from the

(c) Except in situations involving force majeure, the Vessel Traffic Supervisor shall not clear a vessel other than a tanker or support vessel to enter the safety zone of a deepwater port for any purpose that would interfere with the

zone in which the net underkeel clearance would be less than 5 feet.

§ 150.338 Navigation of support vessels in the safety zone.

(a) A support vessel must not enter or move within the safety zone unless the

Note.—The Mooring Master advises the master of the tanker on operational and ship control matters that are peculiar to the specific deepwater port, such as navigational aids, depth and current characteristics of the manuevering area, mooring equipment and procedures, and the port's vessel traffic

and Waterways Safety Act, as amended, (33 U.S.C. 1223(c)); 49 CFR 1.46.

III. *General.* Deepwater port safety zones are established to promote safety of life and property, marine environmental protection and navigational safety at any deepwater port and adjacent waters. In a deepwater

§ 150.303 Definitions.

"Support vessel" means a tug, linehandling boat, crewboat, workboat, supply vessel, bunkering vessel, barger, or other similar vessel working for a licensee in connection with the operation of a deepwater port or cleared by a licensee to service a tanker calling at a deepwater port.

"Tanker" means a vessel that calls at a deepwater port to load or unload oil at a SPM.

§ 150.305 Ships' routing measures.

No licensee may operate a deepwater port unless the port has such ships' routing measures as prescribed or approved by the Coast Guard to provide for safe navigation at or near the deepwater port.

§ 150.307 Radar surveillance.

The Vessel Traffic Supervisor shall maintain radar surveillance of the safety zone whenever—

(a) A tanker is proceeding to the safety zone after submitting the report required in § 150.335; or

(b) A tanker or support vessel is underway in the safety zone; or

(C) A vessel other than a tanker or support vessel is about to enter or is underway in the safety zone.

§ 150.309 Advisories to tankers.

(a) The Vessel Traffic Supervisor shall advise the master of each tanker underway in the safety zone of the tanker's position by range and bearing from the PPC at intervals not to exceed 10 minutes.

(b) Whenever the Vessel Traffic Supervisor determines that a vessel may potentially interfere with the movement of a tanker in the safety zone, the Vessel Traffic Supervisor shall keep the master of the tanker informed of the position and estimated course and speed of the vessel as necessary to assist the tanker in navigation within the safety zone.

(c) Whenever a tanker enters the safety zone, the Vessel Traffic Supervisor shall advise the tanker of the position of each other vessel moored, anchored, or underway in the safety zone.

§ 150.311 Radio listening watch.

Whenever a tanker is in the safety zone, the Vessel Traffic Supervisor and the master of the tanker shall each continuously monitor the radio frequency designated in the Operation Manuals for use by tankers and support vessels underway at the port, except when transmitting on that frequency.

§ 150.313 Clearances for tankers.

(a) The Vessel Traffic Supervisor may not clear a tanker to enter the safety zone unless—

(1) Each other tanker underway in the safety zone is at least 5 miles from the tanker requesting clearance to enter the safety zone; and

(2) A Mooring Master is on board or ready to board at a position in the designated safety fairway that will permit completion of boarding before the tanker enters the safety zone.

(b) The Vessel Traffic Supervisor may not clear a tanker to moor at a SPM unless—

(1) There is a SPM berth available and the Vessel Traffic Supervisor has assigned that berth to the tanker;

(2) The visibility in the safety zone is at least two miles;

(3) All operating conditions prescribed in the Operation Manuals for mooring to a SPM have been met; and

(4) A Mooring Master and an Assistant Mooring Master are on board.

(c) The Vessel Traffic Supervisor may not clear a tanker to depart from a SPM unless the visibility in the safety zone is at least two miles and a Mooring Master is on board.

(d) No tanker may enter the safety zone or moor at or depart from a SPM, unless the master of the tanker has obtained clearance from the Vessel Traffic Supervisor, except as permitted by paragraph (e) of this section.

(e) A tanker may, in an emergency, for the protection of life or property, depart from a SPM without clearance from the Vessel Traffic Supervisor if the master advises the Vessel Traffic Supervisor of the circumstances, by radio, at the earliest possible moment.

§ 150.315 Clearances for support vessels.

(a) The Vessel Traffic Supervisor shall direct support vessel movements within the safety zone.

(b) The Vessel Traffic Supervisor may clear support vessels to enter or depart the safety zone at any point.

§ 150.317 Clearances for other vessels.

(a) When requested by the master of a vessel other than a tanker or support vessel, the Vessel Traffic Supervisor shall furnish information concerning other vessels underway or moored in the safety zone.

(b) If the Vessel Traffic Supervisor determines that a vessel other than a tanker or support vessel may be standing into danger with respect to any vessel or part of the deepwater port installation in the safety zone, the Vessel Traffic Supervisor shall attempt to inform the master of that vessel by radio or other means.

(c) Except in situations involving force majeure, the Vessel Traffic Supervisor shall not clear a vessel other than a tanker or support vessel to enter the safety zone of a deepwater port for any purpose that would interfere with the purpose of the deepwater port; endanger the safety of life, property, or the environment; or otherwise be prohibited by regulation.

§ 150.333 Advance notice of arrival.

(a) The master of a tanker bound for a deepwater port shall report the following information to the Captain of the Port and the Vessel Traffic Supervisor of the port at least 24 hours before entering the safety zone at the port:

(1) The name, gross tonnage, and draft of the tanker.

(2) The type and amount of cargo on board.

(3) Any conditions on the vessel that may impair the navigation of the vessel, such as fire, malfunctioning propulsion machinery or steering equipment, or limitations on navigational or radiotelephone capabilities because of equipment or material malfunctions.

(4) Any leaks, structural damage, or machinery malfunctions that may impair cargo transfer operations or cause a discharge of oil.

(5) The estimated time of arrival at the deepwater port safety zone.

(b) If the information reported in paragraph (a)(3), (a)(4), or (a)(5) of this section changes at any time before entering the safety zone, or while the tanker is in the safety zone, the master of the tanker shall report the changes to the Captain of the Port and Vessel Traffic Supervisor as soon as possible.

§ 150.335 Report before entering safety zone.

The master of a tanker bound for a deepwater port shall notify the Vessel Traffic Supervisor of the port when the tanker is 20 miles from the entrance to the safety zone.

§ 150.337 Navigation of tankers in the safety zone.

(a) A tanker must not enter or depart a safety zone except via a designated safety fairway, unless under force majeure.

(b) A tanker must not anchor in the safety zone except in a designated anchorage area unless under force majeure.

(c) A tanker underway in a safety zone must keep at least 5 miles behind any other tanker underway ahead of it in the safety zone.

(d) A tanker must not operate, anchor, or be moored in any area of the safety zone in which the net underkeel clearance would be less than 5 feet.

§ 150.338 Navigation of support vessels in the safety zone.

(a) A support vessel must not enter or move within the safety zone unless the movement is cleared by the Vessel Traffic Supervisor.

(b) A support vessel must not anchor in the safety zone, except in an anchorage area or for support vessel maintenance operations cleared by the Vessel Traffic Supervisor.

§ 150.339 Navigation of other vessels in the safety zone.

Vessels other than tankers or support vessels should not entr the safety zone of a deepwater port unless clearance has been obtained from the Vessel Traffic Supervisor.

§ 150.341 Mooring Master.

A tanker must not be underway in the safety zone unless a Mooring Master is on board.

Note.—The Mooring Master advises the master of the tanker on operational and ship control matters that are peculiar to the specific deepwater port, such as navigational aids, depth and current characteristics of the manuevering area, mooring equipment and procedures, and the port's vessel traffic control procedures.

§ 150.342 Assistant Mooring Master.

A tanker must not moor at an SPM unless an Assistant Mooring Master is on board.

Note.—The Assistant Mooring Master is stationed on the forecastle of the tanker during mooring operations to assist the Mooring Master by reporting position approach data relative to the SPM and to advise the tanker personnel in handling of mooring equipment peculiar to the deepwater port.

§ 150.345 Regulated vessel activities.

(a) Vessel activities permitted and prohibited at deepwater ports, controls on those activities, and the specific safety zone areas in which the controls apply are listed in Table 150.345(a).

Table 150.345(a).—*Regulated Vessel Activities at Deepwater Ports*

Regulated vessel activities	Safety zone		
	Areas to be avoided around each PPC and SPM [1]	Anchorage area	Remaining portion of safety zone
Tankers calling at port	C	C	C
Support vessel movements	C	C	C
Transit by vessels other than tankers or support vessels	N	P	P
Mooring to SPM by vessels other than tankers or support vessels	F		
Anchoring by vessels other than tankers or support vessels	N	F or P	N
Fishing, including bottom trawl (shrimping)	N	P	P
Mobile drilling operations of erection of structures [3]	N	N	N
Lightering/transshipment [3]	N	N	N

[1] The radius of areas to be avoided around each PPC is 800 meters and around each SPM is 500 meters.
[2] Not part of Port Installation. [3] Exception, 33 CFR 150.423(e).

NOTE.—The person in charge of any vessel planning to enter a safety zone should contact the port Vessel Traffic Supervisor on Ch. 10 VHF-FM before entry and comply with that person's instructions.

Key to regulated activies: F—Force majeure. N—Not permitted. C—Tankers calling at port and support vessel movements: Permitted when cleared by vessel traffic supervisor. P—Vessels other than tankers or support vessels: Permitted when not in immediate area in tanker, clearance by vessel traffic supervisor required. Communications with vessel traffic supervisor required. For transiting foreign flag vessels, the requirement for clearance to enter the safety zone is advisory in nature.

(b) A deepwater port licensee shall obtain the permission of the Captain of the Port having jurisdiction over that licensee's port before allowing any vessel activity at the port which is not listed in Table 150.345(a) or otherwise provided for in this subpart.

5. By adding a new Appendix at the end of Part 150, to read as follows:

Appendix A—Deepwater Port Safety Zone and Shipping Safety Fairway Boundaries

I. *Purpose.* This appendix contains a general description of the deepwater port safety zone and shipping safety fairways designated and developed during the license application review process for each deepwater port that has been authorized for construction and operation off the United States' coastline. Annexes show, to the nearest second of latitude and longitude, the geographical boundaries of each resultant safety zone and shipping fairway.

The regulations in Subpart C of this part concerning vessel navigation and activities permitted and prohibited at U.S. deepwater ports apply only in the safety zone areas and adjacent waters, and supplement the International Regulations for Preventing Collisions at Sea.

II. *Authority.* Section 10(d) of the Deepwater Port Act of 1974 (88 Stat. 2138 (33 U.S.C. 1509(d))) and Section 4(c) of the Ports and Waterways Safety Act, as amended, (33 U.S.C. 1223(c)); 49 CFR 1.46.

III. *General.* Deepwater port safety zones are established to promote safety of life and property, marine environmental protection and navigational safety at any deepwater port and adjacent waters. In a deepwater port safety zone no installations, structures, or uses that are incompatible with port operations are permitted. The configuration of each designated safety zone is depicted on current editions of the navigational charts that cover the deepwater port area.

IV. *Modifications.* Safety zone and shipping safety fairway boundaries are subject to modification as experience is gained in U.S. deepwater port operations. Modifications will be made only after due notification and consideration of the views of interested persons.

Annex A—LOOP, Inc. Deepwater Port, Gulf of Mexico

(a) *Deepwater Port Safety Zone:*

(1) Starting at:
Latitude N. *Longitude W.*
28°55'23" 90°00'37"
(2) A rhumb line to
28°53'50" 90°04'07"
(3) Then an arc with a 4.465 meter radius centered at the port pumping platform complex (PPC),
28°53'06" 90°01'30"
(4) To a point
28°51'08" 89°59'55"
(5) Then a rhumb line to
28°48'36" 89°55'00"
(6) Then a rhumb line to
28°52'04" 89°52'42"
(7) Then a rhumb line to
28°54'05" 89°56'38"
(8) Then a rhumb line to
28°52'21" 89°57'47"
(9) Then a rhumb line to
28°52'51" 89°58'46"
(10) Then an arc with a 4,465 meter radius centered again at the port. PPC,
28°53'06" 90°01'30"
(11) To the point of starting,
28°55'23" 90°00'37"

(b) *Areas to be Avoided.* The seven areas within the safety zone to be avoided are as follows:

(1) The area encompassed within a circle having a 600 meter radius around the port PPC and centered at:
Latitude N. *Longitude W.*
28°53'06" 90°01'30"

(2) The six areas encompassed within a circle having a 500 meter radius around each single point mooring (SPM) at the port and centered at:
Latitude N. *Longitude W.*
28°54'12" 90°00'37"
28°53'16" 89°59'59"
28°52'15" 90°00'19"
28°51'45" 90°01'25"
28°52'08" 90°02'33"
28°53'07" 90°03'02"

(c) *Anchorage Area.* The area within the safety zone enclosed by rhumb lines joining points at:
Latitude N. *Longitude W.*
28°52'21" 89°57'47"
28°54'05" 89°56'38"

28°52'04" 89°52'42"

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28°52'04"	89°52'42"
28°50'20"	89°53'51"
28°52'21"	89°57'47"

(d) *Shipping Safety Fairway to Safety Zone.* The two mile wide areas enclosed by rhumb lines joining points at:

(1) North of Gulf Safety Fairway.

Latitude N.	*Longitude W.*
28°48'36"	89°55'00"
28°48'14"	89°54'17"
28°45'47"	89°54'19"
28°36'06"	89°55'44"
28°18'30"	89°55'15"
28°20'58"	89°53'03"
28°36'09"	89°53'28"
28°49'07"	89°51'30"
28°50'20"	89°53'51"

(2) South of Gulf Safety Fairway.

Latitude N.	*Longitude W.*
28°15'20"	89°55'10"
27°46'29"	89°54'23"
27°46'32"	89°52'08"
28°17'48"	89°52'58"

(Sec. 10(a)(b)(d), 88 Stat. 2137–38 (33 U.S.C. 1509(a)(b)(d)); Sec. 4, 92 Stat. 1473–74 (33 U.S.C. 1223); 49 CFR 1.46)

Dated: December 18, 1980.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
AGRICULTURE DEPARTMENT				
Agricultural Marketing Service	Agricultural Marketing Service		Agricultural Marketing Service	Agricultural Marketing Service
Animal and Plant Health Inspection Service	Animal and Plant Health Inspection Service		Animal and Plant Health Inspection Service	Animal and Plant Health Inspection Service
Commodity Credit Corporation	Commodity Credit Corporation		Commodity Credit Corporation	Commodity Credit Corporation
Federal Crop Insurance Corporation	Federal Crop Insurance Corporation		Federal Crop Insurance Corporation	Federal Crop Insurance Corporation
Food and Nutrition Service	Food and Nutrition Service		Food and Nutrition Service	Food and Nutrition Service
Food Safety and Quality Service	Food Safety and Quality Service		Food Safety and Quality Service	Food Safety and Quality Service
Foreign Agricultural Service	Foreign Agricultural Service		Foreign Agricultural Service	Foreign Agricultural Service
Forest Service	Forest Service		Forest Service	Forest Service
Rural Electrification Administration	Rural Electrification Administration		Rural Electrification Administration	Rural Electrification Administration
COMMERCE DEPARTMENT				
National Oceanic and Atmospheric Administration	National Oceanic and Atmospheric Administration		National Oceanic and Atmospheric Administration	National Oceanic and Atmospheric Administration
National Weather Service	National Weather Service		National Weather Service	National Weather Service
DEFENSE DEPARTMENT				
Civil Aeronautics Board	Civil Aeronautics Board		Civil Aeronautics Board	Civil Aeronautics Board
Federal Aviation Administration	Federal Aviation Administration		Federal Aviation Administration	Federal Aviation Administration
Federal Highway Administration	Federal Highway Administration		Federal Highway Administration	Federal Highway Administration
Federal Railroad Administration	Federal Railroad Administration		Federal Railroad Administration	Federal Railroad Administration
National Highway Traffic Safety Administration	National Highway Traffic Safety Administration		National Highway Traffic Safety Administration	National Highway Traffic Safety Administration
Urban Mass Transportation Administration	Urban Mass Transportation Administration		Urban Mass Transportation Administration	Urban Mass Transportation Administration
DEFENSE DEPARTMENT				
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ENERGY DEPARTMENT				
Federal Energy Regulatory Commission	Federal Energy Regulatory Commission		Federal Energy Regulatory Commission	Federal Energy Regulatory Commission
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HEALTH AND HUMAN SERVICES DEPARTMENT				
Food and Drug Administration	Food and Drug Administration		Food and Drug Administration	Food and Drug Administration
Health Care Financing Administration	Health Care Financing Administration		Health Care Financing Administration	Health Care Financing Administration
Human Development Services	Human Development Services		Human Development Services	Human Development Services
Public Health Service	Public Health Service		Public Health Service	Public Health Service
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HOUSING AND URBAN DEVELOPMENT DEPARTMENT				
Federal Insurance Administration	Federal Insurance Administration		Federal Insurance Administration	Federal Insurance Administration
Housing—Federal Housing Commissioner	Housing—Federal Housing Commissioner		Housing—Federal Housing Commissioner	Housing—Federal Housing Commissioner
Interior Department	Interior Department		Interior Department	Interior Department
Land Management Bureau	Land Management Bureau		Land Management Bureau	Land Management Bureau
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National Park Service	National Park Service		National Park Service	National Park Service
Reclamation Bureau	Reclamation Bureau		Reclamation Bureau	Reclamation Bureau
Surface Mining Reclamation and Enforcement Office	Surface Mining Reclamation and Enforcement Office		Surface Mining Reclamation and Enforcement Office	Surface Mining Reclamation and Enforcement Office
JUSTICE DEPARTMENT				
Drug Enforcement Administration	Drug Enforcement Administration		Drug Enforcement Administration	Drug Enforcement Administration
Immigration and Naturalization Service	Immigration and Naturalization Service		Immigration and Naturalization Service	Immigration and Naturalization Service
LABOR DEPARTMENT				
Occupational Safety and Health Administration	Occupational Safety and Health Administration		Occupational Safety and Health Administration	Occupational Safety and Health Administration
Wage and Hour Division	Wage and Hour Division		Wage and Hour Division	Wage and Hour Division
POSTAL SERVICE				
Postal Service	Postal Service		Postal Service	Postal Service
SECURITIES AND EXCHANGE COMMISSION				
Securities and Exchange Commission	Securities and Exchange Commission		Securities and Exchange Commission	Securities and Exchange Commission
TREASURY DEPARTMENT				
Alcohol, Tobacco and Firearms Bureau	Alcohol, Tobacco and Firearms Bureau		Alcohol, Tobacco and Firearms Bureau	Alcohol, Tobacco and Firearms Bureau
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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
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DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

ENVIRONMENTAL PROTECTION AGENCY

79052 11–28–80 / Approval and promulgation of Ohio implementation plan

79053 11–28–80 / Water quality standards; navigable waters of Ohio

FEDERAL COMMUNICATIONS COMMISSION

81204 12–10–80 / Radio services, special; Land mobile services; assignments of frequencies for slow growth systems of utilities and public safety agencies

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration—

44287 7–1–80 / Medicare program; criteria and procedures for payment for new and used durable medical equipment for beneficiaries

JUSTICE DEPARTMENT

Drug Enforcement Administration—

64570 9–30–80 / Pipradrol and SPA in Schedule. IV; schedules of controlled substances

64571 9–30–80 / Placement of sufentanil and Tilidine in Schedule I; schedules of controlled substances

LIBRARY OF CONGRESS

Copyright Office—

79038 11–28–80 / Compulsory license for making and distributing phonorecords

PERSONNEL MANAGEMENT OFFICE

78999 11–28–80 / Availability of official information

TRANSPORTATION DEPARTMENT

Coast Guard—

79031 11–2880 / Establishment of special anchorage area, Apollo Beach, Florida

Federal Highway Administration—

71968 10–30–80 / Environmental impact and related procedures

Urban Mass Transportation Administration—

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List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing December 24, 1980

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WHEN: January 21, 1981; February 25, 1981; May 13, 1981

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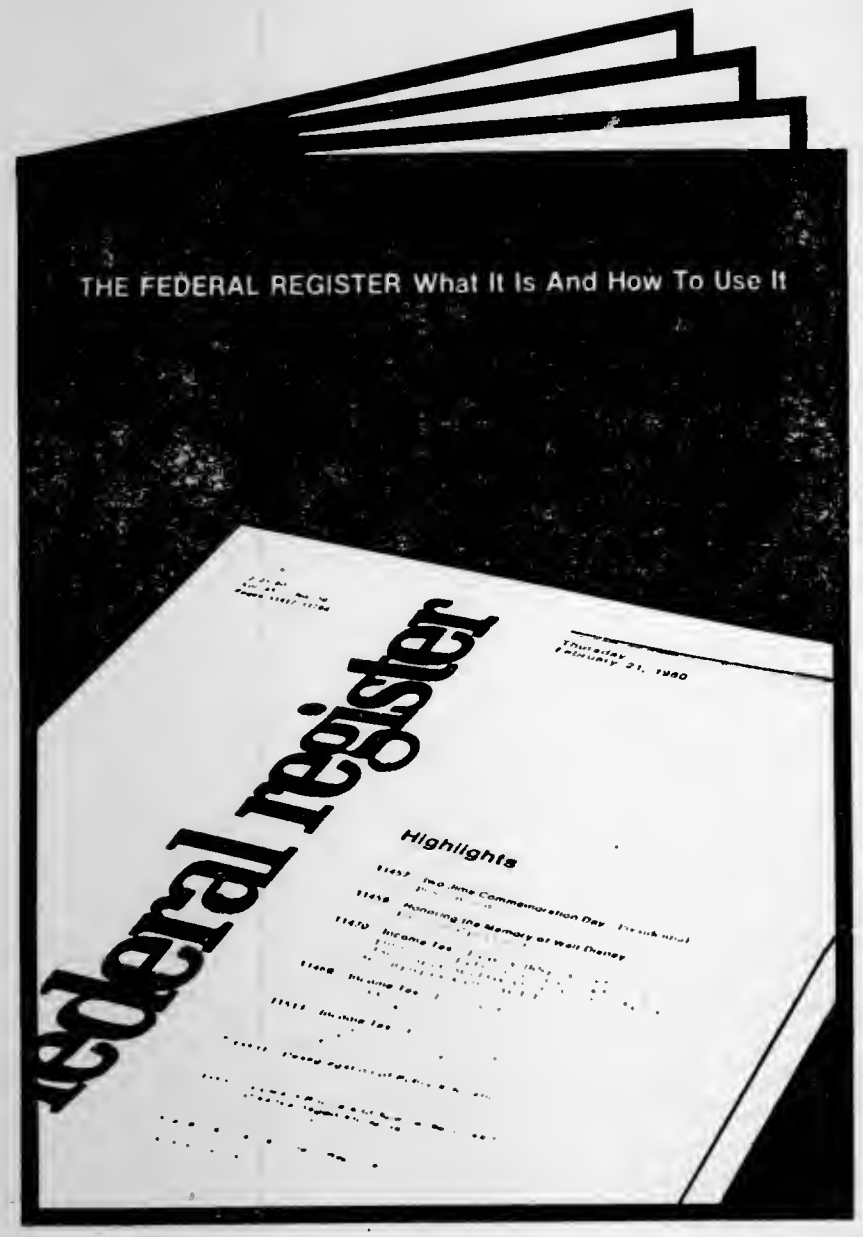
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85730 **Income Tax** Treasury/IRS provides final regulations relating to the taxation of political organizations

85787 **Income Tax** Treasury/IRS proposes regulations relating to the charitable contributions of property elected under the Asset Depreciation Range system; comments by 3-2-81

85788 **Taxes** Treasury/IRS proposes regulations relating to inspection of applications for tax exemption and similar materials; comments by 3-2-81

85805 **Grant Programs—Business** Commerce/MBDA seeks applicants to operate one project for a twelve month period beginning 4-1-81 under the General Business Services Program; apply by 1-21-81

85736 **Cotton Dust Exposure** Labor/OSHA enunciates respirator use enforcement policy for the provisions of the cotton dust standard with respect to the period of use; effective 1-19-81

86362 **Infants** HHS/FDA proposes requirements for quality control procedures for the manufacture of infant formula products

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Highlights

85962 **Medical Devices** HHS/FDA proposes regulations applicable to the classification of all dental devices; comments by 3–2–81 (186 documents) (Part III of this issue)

86296, 86304, 86372, 86378, 86390, 86394 **Grant Programs—Education** ED rules and proposes to rule on various program regulations; varying comment and effective dates (Parts IX, X and XII–XV of this issue)

85815 **Grant Programs—Education** ED revokes 1–6–81 closing date for submittal of preapplications for major grants under the Grants for Research on Knowledge Use and School Improvement program

86278 **Environmental Protection** EPA proposes standards of performance to limit emissions of volatile organic compounds (VOC) from new, modified, or reconstructed pressure sensitive tape and label manufacturing facilities; comments by 3–2–81; hearing on 1–30–81 (Part VIII of this issue)

85815 **Grant Programs—Handicapped** ED invites applicants for the noncompetiting continuation projects under the National Institute of Handicapped Research

86216 **Government Contractors** Labor/FCCPO releases rules regarding affirmative action requirements; effective 1–29–81 with certain exceptions (Part VI of this issue)

86206 **Government Contractors** Labor/FCCPO proposes rules addressing affirmative action obligations as it pertains to Veterans of the Vietnam Era and handicapped workers; comments by 3–2–81 (Part V of this issue)

85864 **Sunshine Act Meetings**

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 330 and 351

Recruitment, Selection, and Placement (General); Reduction in Force

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: These regulations clarify OPM's policies concerning the establishment and maintenance of reemployment priority lists. Also, these regulations clarify how agencies make appointments from reemployment priority lists. These changes were developed in response to requests by agencies that OPM clarify its material covering the operation of agency reemployment priority lists.

EFFECTIVE DATE: January 29, 1981.

FOR FURTHER INFORMATION CONTACT: Ted Dow or Tom Glennon, (202) 632–4422.

SUPPLEMENTARY INFORMATION:

Background

On July 22, 1980, OPM published proposed regulations in the **Federal Register** (45 FR 48904) that would amend Parts 330 and 351 of this title to clarify how agencies establish, maintain, and make appointments from reemployment priority lists. The proposed regulations were derived from Section 15 of the Veterans Preference Act of 1944, as presently codified in 5 U.S.C. 3315. Subpart J of Part 351 of this title covers the establishment and maintenance of reemployment priority lists, while Subpart B of Part 330 of this title covers appointment from reemployment priority lists. Additional material that implements the reemployment priority list is contained in Federal Personnel Manual (FPM) Chapters 330 and 351.

The 60-day period for interested parties to submit written comments ended on September 22, 1980.

Discussion of Comments

Fourteen comments were received concerning the proposed regulations: twelve from agencies and two from unions. Five agencies had no objection to the proposed regulations while the other seven agencies and both of the unions suggested specific revisions to the material.

One agency suggested that we clarify in Part 330 of this title that appointments from the reemployment priority list are made in subgroup order. We agree that this revision would be helpful in explaining how agencies make appointments from the reemployment priority list. Accordingly, we have revised § 330.201(c) to explain that, in selecting persons from a reemployment priority list, an appointing officer follows subgroup order without regard to the order of retention standing within the subgroup.

Three agencies and one of the unions were concerned that proposed § 330.201(f) might unnecessarily limit agency efforts to reemploy persons who were separated because of reduction in force. For reference, proposed § 330.201(f) provided that agencies, in making appointments from reemployment priority lists, would consider full-time employees for full-time positions, and other-than-full-time employees for other-than-full-time positions. Specifically, these respondents believed that agencies should be able to have increased flexibility in making appointments from reemployment priority lists and to thus minimize any hardship to separated employees.

Our purpose in drafting § 330.201(f) was to ensure that other-than-full-time employees who have received reduction in force separation notices must receive first consideration for appointment from the reemployment priority list to other-than-full-time positions. After consideration of these comments, we have revised § 330.201(f) to include provisions which permit an agency, at its discretion, to consider full-time employees for appointment from the reemployment priority list to other-than-full-time positions if there are no other-than-full-time employees on the list who are qualified and available for the positions. Similarly, we have revised § 330.201(f) to also provide that an agency, again at its discretion, may consider other-than-full-time employees for appointment from the reemployment priority list to full-time positions if there are no full-time employees on the list who are qualified and available for the positions. We believe that the revised § 330.201(f) will achieve our original goal while allowing agencies additional flexibility in making appointments from the reemployment priority list and improving reemployment opportunities for separated employees.

In a further effort to clarify how the reemployment priority list operates, we have included new § 330.201(g) in the final regulations. Specifically, § 330.201(g) states, for reference, that Subpart J of Part 351 of this title covers the establishment and maintenance of the reemployment priority list. New § 330.201(g) is intended to serve the same purpose as proposed § 351.1002(c) which states, for reference, that Subpart B of Part 330 of this title covers appointment from the reemployment priority list.

Although we did not receive any specific written comments on the subject, we did receive several telephone inquiries asking about the relationship of the reemployment priority list to mandatory material presently contained in Section B–2a of Appendix B of FPM Chapter 351. Specifically, Section B–2a of Appendix B, in part, contains longstanding provisions that require agencies to advise employees who have received specific reduction in force notices of their right to priority consideration under the reemployment priority list and the Displaced Employee Program. (For reference, the Displaced Employee Program is covered in Subpart C of Part 330 of this title.)

After consideration of the material in Section B–2a of Appendix B, we found that there was a need to properly implement these mandatory provisions through Part 351 of this title. Accordingly, we have added a new § 351.808 which provides that each employee who receives a specific notice of separation under Part 351 of this title must be given information concerning his or her right to priority consideration for reemployment under the provisions of Subparts B and C of Part 330 of this title.

Two agencies suggested that we further clarify the conditions under which employees become eligible to be entered on the reemployment priority list. We agree that further clarification

"regularly scheduled administrative workweek" that were set forth in §§ 351.1003(b) and 351.1004(b)(2).

One agency suggested that we revise

Explanation of Final Regulations

The following changes in Title 5, Code of Federal Regulations, are now made final:

reorganize and clarify material formerly contained in § 351.1001(a). In addition, § 351.1002(a) now clearly provides that the name of each group I and group II employee who receives a specific

proposed and final changes to the regulations in Part 351 of this title that were published in the **Federal Register** in 1979 and to that date in 1980. As noted in the FPM Bulletin, OPM plans to

(5 U.S.C. 3315)

2) Section 351.808 is added to read as follows:

§ 351.808 Notice concerning

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Two agencies suggested that we further clarify the conditions under which employees become eligible to be entered on the reemployment priority list. We agree that further clarification would be useful since we generally receive a significant number of inquiries asking for this information. Accordingly, we have revised proposed § 351.1002(a) to state that each group I or group II employee who receives a specific notice of separation from a competitive position under Part 351 of this title is entered on the reemployment priority list. We also clarify that the reemployment priority list only includes employees separated from competitive, as distinguished from excepted, positions. To further clarify the conditions under which the names of employees are entered on the reemployment priority list, we subdivided certain material set forth in proposed § 351.1003 (a) and (b) into new paragraphs § 351.1003(a)(1)–(4) and § 351.1003(b)(1)–(5).

One agency suggested that we revise proposed § 351.1003(b) to provide that an other-than-full-time employee would be entered on the reemployment priority list if the employee declined assignment under Subpart G of Part 351 of this title to a position with the same type of work schedule (e.g., part-time, intermittent, or seasonal). The same agency recommended that we revise proposed §§ 351.1003(b) and 351.1004(d)(2) to provide that the eligibility of an other-than-full-time employee to be entered or maintained on the reemployment priority list would not be based upon the employee's regularly scheduled administrative workweek. For reference, our proposed §§ 351.1003(b) and 351.1004(b)(2) both made reference to the regularly scheduled administrative workweek, but not the type of work schedule, of an other-than-full-time employee.

After consideration of the agency's suggestions, we have revised § 351.1003(b) to provide, in § 351.1003(b)(1), that a group I or group II other-than-full-time employee is entered on the reemployment priority list unless he or she has declined assignment to a position that is of the same type work schedule as the position from which the employee was separated. However, we also believe that the reemployment priority list should include an other-than-full-time employee who has declined assignment to a position with a regularly scheduled administrative workweek that is lower than that of the position from which the employee was separated. Therefore, we did not delete the references to "regularly scheduled administrative workweek" that were set forth in §§ 351.1003(b) and 351.1004(b)(2).

One agency suggested that we revise proposed § 351.1005(a) to clarify that the name of a group I or group II employee who receives a notice of separation under Part 351 of this title from a competitive position located in Alaska or overseas, except in certain circumstances, is entered on the reemployment priority list for the area in which the position from which the employee was separated is located. We agree that a further revision of this material would be useful and have accordingly clarified the material.

One union suggested that we revise proposed § 351.1004(a) to provide that a group II employee remains on the reemployment priority list for two years from the date he or she is separated under Part 351 of this title. For reference, OPM's present provisions in § 351.1001(a) covering the establishment and maintenance of the reemployment priority list provide that the name of a group I employee remains on the reemployment priority list for two years, and the name of a group II employee remains on the list for one year.

After consideration of this union's suggestion, we have decided not to revise § 351.1004(a) to change the duration of eligibility for an employee in group II. The provisions in proposed § 351.1004(a) reflect longstanding OPM policy, and are based upon the principle that an employee in group I has permanent status and is thus entitled to additional consideration for reemployment over that given to an employee in group II.

The same union and one agency also noted that the reemployment priority list only covers positions in any agency within a particularly commuting area. The union suggested that OPM develop regulations providing for an agency-wide reemployment priority list while the agency suggested that OPM permit agencies to place employees on the reemployment priority list in any locations for which the employee is available.

At present we see no need to require agencies to extend the coverage of the reemployment priority list beyond the commuting area of a particular agency. However, certain agencies, such as the Department of Defense, have developed extensive placement programs and systems. OPM is available to assist any agencies who wish to extend the scope of their placement programs beyond that required under Subparts B and C of Part 330 of this title, and Subpart J of Part 351 of this title.

Explanation of Final Regulations

The following changes in Title 5, Code of Federal Regulations, are now made final:

(1) Section 330.201(c) is revised to clarify that, in making appointments from the reemployment priority list, the appointing officer may select persons in a subgroup without regard to the order of retention standing within the subgroup.

(2) Section 330.201(f) is added. Section 330.201(f)(1) provides that, in making appointments from the reemployment priority list, an agency considers full-time employees only for full-time positions, and other-than-full-time employees only for other-than-full-time positions, except as provided in § 330.201(f)(2).

Section 330.201(f)(2) provides that an agency, at its discretion, may adopt administrative assignment provisions to consider employees for selection from the reemployment priority list under the following conditions:

(a) Full-time employees may be considered for other-than-full-time positions if there are no other-than-full-time employees on the reemployment priority list who are qualified and available; and

(b) Other-than-full-time employees may be considered for full-time positions if there are no full-time employees on the reemployment priority list who are qualified and available.

(3) Section 330.201(g) is added for reference. Specifically, § 330.201(g) explains that Subpart J of Part 351 of this title covers the establishment and maintenance of the reemployment priority list.

(4) Section 351.808 is added. Section 351.808 provides that an employee who receives a specific notice of separation under Part 351 of this title must be given information concerning his or her right to consideration for reemployment under the provisions of Subparts B and C of Part 330 of this title. The information concerning consideration for reemployment should be included in or with the specific reduction in force notice; otherwise, a separate supplemental notice containing this information is given to the employee.

(5) Subpart J of Part 351 is revised. Subpart J formerly consisted of § 351.1001 (a) and (b). The new § 351.1001 reorganizes material formerly contained in § 351.1001(a) to clarify agency responsibility for the establishment and maintenance of the reemployment priority list.

(6) Section 351.1002 (a), (b), and (c) are added. Section 351.1002 (a) and (b) reorganize and clarify material formerly contained in § 351.1001(a). In addition, § 351.1002(a) now clearly provides that the name of each group I and group II employee who receives a specific reduction in force notice of separation from a competitive service position is entered on the reemployment priority list.

Section 351.1002(c) explains that Subpart B of Part 330 of this title covers appointment from the reemployment priority list. This change is being proposed in response to requests by agencies that OPM provide a reference to Subpart B of Part 330 of this title in Subpart I of Part 351.

(7) Section 351.1003 (a) and (b) are added. Section 351.1003(a) reorganizes and clarifies material formerly contained in § 351.1001(a). In addition, § 351.1003(a) contains new material clarifying that an employee's eligibility to be placed on the reemployment priority list is, in part, based upon an offer of assignment under Subpart G of this part. This proposed change reflects present policy, and clarifies the purpose and applicability of the reemployment priority list.

Section 351.1003(b) contains new material clarifying that an other-than-full-time employee's eligibility to be placed on the reemployment priority list is also, in part, based upon an offer of assignment under Subpart G of this part. Again, this proposed change reflects current policy, and clarifies the purpose and applicability of the reemployment priority list.

Final § 351.1003(b) also provides that the name of an other-than-full-time employee is entered on the reemployment priority list unless the employee, in part, declined assignment to an other-than-full-time position that is of the same type work schedule (i.e., part-time, intermittent, or seasonal) as the position from which the employee was separated. This provision was developed from comments received concerning the proposed regulations published on July 22, 1980, and is another effort to ensure that other-than-full-time employees have the same rights under Part 351 as full-time employees.

(8) Section 351.1004 (a), (b), (c), and (d) are added. Section 351.1004 reorganizes and clarifies material formerly contained in § 351.1001(a).

(9) Section 351.1005 (a), (b), and (c) are added. Section 351.1005 reorganizes and clarifies material formerly contained in § 351.1001(b).

Information Concerning Other Recent Changes to Part 351 of This Title

On August 27, 1980, OPM issued FPM Bulletin 351–18, which listed all of the proposed and final changes to the regulations in Part 351 of this title that were published in the **Federal Register** in 1979 and to that date in 1980. As noted in the FPM Bulletin, OPM plans to publish the revised Part 351 of this title in the **Federal Register** after these regulations covering the reemployment priority list become final. Agencies will then have access to all of the substantive changes in Part 351 of this title with a minimum of delay.

OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, Title 5, Code of Federal Regulations, is amended as follows:

PART 330 RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1) In § 330.201 paragraph (c) is revised and paragraphs (f) and (g) added to read as follows:

§ 330.201 Priority in filling vacancies.

* * * * *

(c) In selection from a reemployment priority list, an agency shall give preference to tenure group I employees over tenure group II employees, and to qualified preference eligibles over nonpreference eligibles within each tenure group. An appointing officer may select persons in a subgroup without regard to order of retention standing within the subgroup.

* * * * *

(f)(1) In selection from a reemployment priority list, an agency considers full-time employees only for full-time positions, and other-than-full-time employees only for other-than-full-time positions, except as provided in subparagraph (2) of this section.

(2) An agency, at its discretion, may adopt administrative provisions to consider employees for selection from a reemployment priority list under the following conditions:

(i) Full-time employees may be considered for other-than-full-time positions if there are no other-than-full-time employees on the reemployment priority list who are qualified and available; and

(ii) Other-than-full-time employees may be considered for full-time positions if there are no full-time employees on the reemployment priority list who are qualified and available.

(g) Subpart J of Part 351 of this title covers the establishment and maintenance of the reemployment priority list.

(5 U.S.C. 3315)

2) Section 351.808 is added to read as follows:

§ 351.808 Notice concerning consideration for reemployment.

An employee who recieves a specific notice of separation under this part must be given information concerning his or her right to consideration for reemployment under the provisions of Subparts B and C of Part 330 of this title. This information is in addition to that specified in § 351.802. The information concerning consideration for reemployment should be included in or with the specific reduction in force notice; otherwise, a separate supplemental notice covering this information must be given to the employee.

PART 351—REDUCTION IN FORCE

3) Subpart J of Part 351 is revised to read as follows:

Subpart J—Reemployment Priority List

Sec.

351.1001 Establishment and maintenance of the reemployment priority list.
351.1002 Persons covered.
351.1003 Employee eligibility.
351.1004 Duration of eligibility.
351.1005 Operation of the list in Alaska or overseas.

Authority: 5 U.S.C. 1302, 3315.

Subpart J—Reemployment Priority List

§ 351.1001 Establishment and maintenance of the reemployment priority list.

Each agency shall establish and maintain a reemployment priority list for each commuting area in which it separates group I or group II employees from competitive positions under this part.

§ 351.1002 Persons covered.

(a) The name of each group I or group II employee who receives a specific notice of separation from a competitive position (as distinguished from an excepted position) under this part is entered on the reemployment priority list.

(b) This priority extends to all competitive positions in the commuting area for which the employee is qualified and available, except as provided in § 351.1005.

(c) Subpart B of Part 330 of this title covers appointment from the reemployment priority list.

§ 351.1003 Employee eligibility.

(a) A full-time group I or group II employee is entered on the

reemployment priority list unless he or she has declined assignment under Subpart G of this part to a position that:

(1) Is full-time;

(2) Is competitive;

(3) Is nontemporary; and

separation under this part from a competitive position in Alsaka or overseas is entered on the reemployment priority list for the area in which the position from which separated is located, except when:

Register for a 60-day comment period on June 17, 1980 (45 FR 40990). Based on comments received from Federal agencies, several labor organization representatives and individuals, OPM has made several revisions to the

Similarly an individual commented that OPM should not extend pay retention to prevailing rate employees who move from a high to lower wage area. This extension, like the others, is generally for an action which is caused

change the intent of the law. We have also not included a restatement of the law or of sections 5337 and 5345 of title 5, which were repealed, because we feel the soon to be released Federal Personnel Manual guidance on grade

also demonstrates that this rule only applied to employees on pay retention and only affects increases in the scheduled rates of a position.

Section 536.204(c) of the proposed regulations has been changed as the

reemployment priority list unless he or she has declined assignment under Subpart G of this part to a position that:

(1) Is full-time;

(2) Is competitive;

(3) Is nontemporary; and

(4) Has a representative rate no lower than that of the position from which the employee was separated.

(b) An other-than-full-time group I or group II employee is entered on the reemployment priority list unless he or she has declined assignment under Subpart G of this part to an other-than-full-time position that:

(1) Is of the same type work schedule (i.e., part-time, intermittent, or seasonal) as the position from which the employee was separated;

(2) Is competitive;

(3) Is nontemporary;

(4) Has a representative rate no lower than that of the position from which the employee was separated; and

(5) Has a regularly scheduled administrative workweek no lower than that or the position from which the employee was separated.

§ 351.1004 Duration of eligibility.

(a) The name of a group I employee remains on the reemployment priority list for 2 years, and a group II employee's name for 1 year, from the date he or she was separated.

(b) An employee's name is deleted from the reemployment priority list when the employee submits a written request to the agency asking that his or her name be deleted.

(c) A full-time employee's name is also deleted from the reemployment priority list when the employee:

(1) Accepts a non-temporary, full-time, competitive position; or

(2) Declines under this subpart a full-time, nontemporary, competitive position with a representative rate the same as, or higher than, that of the position from which he or she was separated under this part.

(d) An other-than-full-time employee's name is also deleted from the reemployment priority list when the employee:

(1) Accepts a nontemporary competitive position; or

(2) Declines under this subpart a nontemporary, competitive position with a representative rate, and regularly scheduled administrative workweek, the same as or higher than that of the position from which the employee was separated under this part.

§ 351.1005 Operation of the list in Alaska and overseas.

(a) The name of each group I or group II employee who receives a notice of separation under this part from a competitive position in Alsaka or overseas is entered on the reemployment priority list for the area in which the position from which separated is located, except when:

(1) The employee leaves that area; or

(2) The agency has a general program for rotating employees between overseas areas and the United States and the employee's immediately preceding overseas services or residence, combined with prospective overseas service under available appointments, exceeds the maximum duration of an overseas duty tour in the agency's rotation program.

(b) Upon his or her written request, the name of an employee who leaves the area is entered on the agency's reemployment priority list for:

(1) The commuting area from which he or she was employed for Alaskan or overseas service; or

(2) Another area, except in Alaska or overseas, that is mutually acceptable to the employee and the agency.

(c) In addition to any of the reasons, as appropriate, in § 351.1004(b), (c), or (d), for deleting an employee's name from the reemployment priority list, the name of an employee is deleted from an Alaskan or overseas reemployment priority list when the employee:

(1) Leaves the area covered by that list; or

(2) Becomes disqualified for overseas appointment because of his or her previous service or residence.

(5 U.S.C. 1902, 3315)

[FR Doc. 80-40492 Filed 12-29-80; 8:45 am]
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5 CFR Part 536

Grade and Pay Retention

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement the grade and pay retention provisions of the Civil Service Reform Act of 1978.

EFFECTIVE DATE: January 29, 1981.

FOR FURTHER INFORMATION CONTACT: Larry Holman, 202-632-6127, or Jan Karicher, 202-632-4634.

SUPPLEMENTARY INFORMATION: Interim regulations, effective on the first day of the first applicable pay period beginning on or after January 11, 1979, were published in the **Federal Register** on March 2, 1979 (44 FR 117741). OPM proposed final regulations in this area which were published in the **Federal Register** for a 60-day comment period on June 17, 1980 (45 FR 40990). Based on comments received from Federal agencies, several labor organization representatives and individuals, OPM has made several revisions to the proposed regulations.

Subpart A

With only two exceptions, the intent of the proposed regulations to redelegate authority to agency heads to determine circumstances under which grade or pay retention should be extended was acceptable to the respondents. Those opposed felt the redelegation was too vague and open to inconsistent application. We have clarified the language pertinent to the redelegation. The term, "management-initiated action," has been dropped from § 536.102, 536.103, and 536.206. With regard to grade retention, the language was simplified to show that management's authority is limited to downgrades during reorganizations and reclassifications. The term, "reorganization," has been defined to further identify the bounds of the redelegation. More important, the redelegation still better recognizes the necessity for agency heads to decide what circumstances, outside those prescribed by the law, warrant grade or pay retention in order to promote the efficiency of their operations.

In response to several separate comments, § 536.104 has been extended to include several specific circumstances warranting pay retention. The first calls for pay retention when an employee is downgraded in a reduction in force or reclassification but does not meet the eligibility requirements for grade retention. This extension was included in the interim rgulations. The second extends pay retention to an employee whose basic pay is a special rate moved by management to a lesser special rate position or to a non-special rate position. This circumstance was covered in the interim regulations under § 536.212(a)(2), "* * * reassignment to a position in a different pay schedule."

Some concern was expressed with the term "placement" in the extension of pay retention. The concern was that any movement by an employee in the specified circumstances would warrant coverage. In fact, in any potential entitlement to grade or pay retention, the limitations of the exclusions in § 536.105, especially, "is reduced in grade or pay . . . at the employee's request," means that the placement must be caused or influenced by management. This implies that the movement is beyond the employee's control and/or to further the mission of the agency.

Similarly an individual commented that OPM should not extend pay retention to prevailing rate employees who move from a high to lower wage area. This extension, like the others, is generally for an action which is caused or influenced by management and is not strictly "at the employee's request." Furthermore, it recognizes the needs of management to sometimes move employees to promote an efficient organziation without adversely affecting employees. The extension is, therefore, still included.

Several changes or additions have been made to § 536.102 other than the addition of "reorganization." "Rate of basic pay" has been amended to show that the night and environmental differentials for prevailing rate employees are not included in basic pay protected by grade or pay retention. "Representative rate" now includes the representative rate for a Senior Executive Service employee. "Rate schedule" has been added here and where appropriate throughout Part 536 for use in situations where the movement is not between pay schedules but between rates within a schedule, e.g., special rate movement.

"Temporary reassignment" in both § 536.102 and 536.105 was questioned by a commenter as unnecessary because reassignment implies no promotion or demotion. While this is generally correct, these reassignments can result in pay adjustments, e.g., reassignment to a special rate position or to a higher or lower wage area. The result could be a pay discrepancy which might raise questions of entitlement and, therefore, create the necessity for its use. A suggestion to define "covered pay system" was not adopted because the term was not used in these regulations.

In § 536.105, the most significant change was the altering of the exclusion of non-appropriated fund employees. The only non-appropriated fund employees now excluded are those covered under § 2105(c) of title 5, United States Code, i.e., those in Department of Defense and Coast Guard nonprevailing rate positions. Non-appropriated fund employees, other than those in DOD and the Coast Guard, are covered for most benefit purposes. It is, therefore, consistent to cover them for grade and pay retention.

Several comments suggested we increase the scope of coverage beyond reorganizations and reclassifications for grade retention and to change eligibility requirements from the position being classified for 1 year to the employee being in the position for 1 year. OPM has not adopted these because our ability to regulate this benefit does not allow us to change the intent of the law. We have also not included a restatement of the law or of sections 5337 and 5345 of title 5, which were repealed, because we feel the soon to be released Federal Personnel Manual guidance on grade and pay retention will provide the necessary background. This guidance should also provide information on movements between agencies creating grade retention entitlements and further explain the 52-week/1 year eligibility requirements, both of which raised questions.

A significant question was raised regarding potential entitlement to pay retention when an employee waives grade retention or when an employee requests a demotion for ill health or similar circumstances. In the former case, OPM's position is that once an employee waives grade retention, the employee removes management's influence over the particular action against the employee. Any ensuing loss of pay would be as a result of an employee request and no pay retention could be granted even under the agency's authority. In the latter case these demotions are also at the employee's request unless the agency has already informed the employee that action to downgrade will be taken for non-disciplinary reasons of ill health and the agency offers another position. The agency could then grant pay retention under its authority.

Subpart B

Section 536.202(a) of the proposed regulations has been made a separate section, § 536.201. This reflects the fact that this method of comparing grades and rates is necessary not only for determining grade retention entitlement but also whether the 52-week/1 year at a higher grade requirement has been met, whether a demotion has occurred, or whether an employee has declined an offer at, or been placed in, a grade equal to or greater than the retained grade. This change required renumbering the sections of the entire subpart.

Several changes were made to the section on determining the rate of basic pay. The language of the section was clarified to show what rate of basic pay, including a special rate under 5 U.S.C. 5303, is used to determine pay retention entitlement. The language change also reflects the fact that we will issue regulations shortly as Part 532 for setting pay in the Federal Wage System, when grade and pay retention entitlement terminates.

A paragraph has been added to show that any employee on pay retention receives only 50 percent of the annual comparability increase. This paragraph also demonstrates that this rule only applied to employees on pay retention and only affects increases in the scheduled rates of a position.

Section 536.204(c) of the proposed regulations has been changed as the result of several comments to place an employee who is on pay retention at the maximum rate of the range of the new position when, after receiving only 50 percent of increases in scheduled rates, the employee's pay can be found within the rate range of the new position. This was the rule of the interim regulations. This 50 percent rule is designed only to move the employee into the rate range of the new position and not to adversely affect the employee any more than is necessary.

Several changes have been made to the section describing the criteria for a reasonable offer. The employee must now be informed of his or her right to appeal to OPM the reasonableness of the offer. This provision is similar to other regulations which require an agency to inform employees of their appeal rights. The language has also been changed to show that the offered position must be at least equal in tenure to the position the grade or pay of which is being protected. This change protects the employee who moves during a period of grade or pay retention but is not offered a position whose tenure is equal to or higher than the position which created the entitlement.

OPM has removed the necessity that the employee meets the qualification requirements of the offered position. This is in keeping with regulations regarding reductions in force which allow agencies to waive qualifications in order to place employees. Staffing guidance in the Federal Personnel Manual will reflect the fact that qualifications may be waived when grade or pay retention is involved.

"Commuting area" was not defined because we believe that the current language allows the affected employee the maximum possible protection in an appeal. Designating a specific radius does not fully take into account other transportation circumstances which may affect the reasonableness of an offer.

Several issues were raised concerning the factors for terminating eligibility and/or entitlement to grade and pay retention. Specifically at issue was the extent of the priority placement program provision in grade retention situations. The provision has been extended to include an employee who does not fully comply with written agency requirements of a priority placement program. These requirements can range from formally placing one's name in the program to actively participating in the

program, e.g., filing SF-171's. This ensures maximum effort by the employee to return as quickly as possible to a proper grade or pay level position. This balances management's requirement under § 536.201 to establish

Federal Personnel Manual will take these comments into account and clarify issues in this area.

OPM has determined that these are significant regulations for the purposes of E.O. 12044.

indefinite pay retention. In addition to specifying criteria and conditions for the application of the grade and pay retention provisions, the law authorizes the Office of Personnel Management to extend the application of these

Schedule in the case of a position under the merit pay system established by chapter 54 of title 5, United States Code, the single rate of GS-18; or the individual's rate under the Senior Executive Service;

position as a result of reduction-in-force procedures, is in a position under a covered pay schedule, is eligible for grade retention only if the employee has served for 52 consecutive weeks or more in position(s) under a covered pay

§ 536.105 Exclusions

(a) Grade and pay retention shall not apply to an employee who:

(1) Moves from a position which is not in an agency as defined in 5 U.S.C. 5102;

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program, e.g., filing SF–171's. This ensures maximum effort by the employee to return as quickly as possible to a proper grade or pay level position. This balances management's requirement under § 536.301 to establish placement and classification plans. This prompt return to the proper level recognizes the intent of the law. A similar provision was not added to pay retention situations because of OPM's lack of authority in this area, e.g., restrictions imposed by the statutory construction of section 5363 of title 5, U.S. Code. These restrictions also prevent significant changes in the cessation factors imposed by the law.

These cessation factors for grade retention have also been amended to show that an employee is not declining a reasonable offer when the employee requests a lower graded position than the reduction-in-force position rather than displace another employee. This change avoids harmful and widespread displacement and is in keeping with the intent of the delegation of this authority to agency heads.

Subpart C

The section reserved for grade and pay retention under the merit pay system was determined unnecessary because merit pay employees will be treated the same as General Schedule employees for grade and pay retention purposes. In its place is a section establishing a legal basis for OPM requiring agencies with affected employees to have classification and placement plans. Again, these plans promote the intent of the law, i.e., to return the employee to the proper grade or pay level as quickly as possible.

OPM has adjusted the time period for filing an appeal of the termination of benefits because of the employee's declination of a reasonable offer. It will now be 20 calendar days to conform to the appeal period used by the Merit Systems Protection Board. We decided not to include under this appeal right the termination of benefits due to an employee's failure to fully participate in a priority placement program. These disputes will be based on detailed agency policy and can be better settled within the affected agency through the internal agency grievance procedures or procedures negotiated in labor contracts.

Throughout the regulations several small nonsubstantive changes were made in language to clarify issues and alleviate confusion raised in the comments. Several comments were not accepted for changes in the regulations themselves because we feel the guidance soon to be issued in the Federal Personnel Manual will take these comments into account and clarify issues in this area.

OPM has determined that these are significant regulations for the purposes of E.O. 12044.

Office of Personnel Management.

JoAnn B. Platter,

Assistant Issuance System Manager.

Accordingly, the Office of Personnel Management is revising Part 536 of Title 5, Code of Federal Regulations, to read as follows:

PART 536—GRADE AND PAY RETENTION

Subpart A—Definitions, Coverage and Applicability

Sec.

536.101 General.
536.102 Definitions.
536.103 Coverage and applicability of grade retention.
536.104 Coverage and applicability of pay retention.
536.105 Exclusions.

Subpart B—Determination of Retained Grade and Rate of Basic Pay; Loss of, or Termination of Eligibility

536.201 Comparison of grades in different pay schedules or pay systems.
536.202 Period of grade retention.
536.203 Determination of retained grade.
536.204 Determination of applicable rate schedule.
536.205 Determination of rate of basic pay.
536.206 Criteria for a "reasonable offer."
536.207 Loss of eligibility for grade retention.
536.208 Termination of grade retention.
536.209 Loss of eligibility for, or termination of, pay retention.

Subpart C—Miscellaneous Provisions

536.301 Placement and classification plans.
536.302 Appeal of termination of benefits because of reasonable offer.
536.303 Documentation.
536.304 Issuance of employee letters.
536.305 Effect of grade retention on quota spaces.
536.306 Retroactive entitlement.

Authority: 5 U.S.C. 5361–5366, Pub. L. 95–454.

Subpart A—Definitions; Coverage and Applicability

§ 536.101 General.

(a) Title VIII of Pub. L. 95–454 (The Civil Service Reform Act of 1978) provides that an employee who is placed in a lower grade as a result of reduction-in-force procedures, or whose position is reduced in grade as a result of reclassification of the position, is entitled to retain for a period of 2 years the grade held immediately before that placement or reduction. It also provides the authority for granting an employee indefinite pay retention. In addition to specifying criteria and conditions for the application of the grade and pay retention provisions, the law authorizes the Office of Personnel Management to extend the application of these provisions to other individuals and situations to which they would not otherwise apply.

(b) This part contains the regulations—including extensions, conditions, criteria, and procedures—which the Office of Personnel Management has prescribed for the administration of grade and pay retention. This part supplements and implements the provisions of 5 U.S.C. 5361–5366, and section 801(b) of Pub. L. 95–454, and must be read together with those sections of law.

§ 536.102 Definitions.

For the purposes of this part:

"Demotion at an employee's request" means a reduction in grade:

(1) Which is initiated by the employee for his or her benefit, convenience or personal advantage, including consent to a demotion in lieu of one for personal cause, and

(2) Which is not caused or influenced by a management action.

"Demotion for personal cause" means a reduction in grade based on the conduct, character, or unacceptable performance of an employee.

"Employee" means an employee as defined in 5 U.S.C. 5361 and also an individual who is moved from a position which is not under a covered pay schedule to a position which is under a covered pay schedule provided that the individual's employment immediately prior to the move was on other than a temporary or term basis.

"Employment on a temporary or term basis" means employment under an appointment having a definite time limitation or designated as temporary or term.

"Rate of basic pay" means, for any pay system, the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay or any kind such as night or environmental differentials in the case of a prevailing rate employee.

"Rate schedule" means a specific set of rates within a pay schedule.

"Reorganization" means the planned elimination, addition or redistribution of functions or duties either wholly within an agency or between agencies.

"Representative rate" means:

(1) The fourth rate of the grade in the case of a position under the General Schedule including the fourth rate of the corresponding grade of the General Schedule in the case of a position under the merit pay system established by chapter 54 of title 5, United States Code, the single rate of GS–18; or the individual's rate under the Senior Executive Service;

(2) The second rate of the grade of a position under a regular prevailing rate schedule established under subchapter IV of chapter 53 of title 5, United States Code, or in the case of a position with a single rate, the single rate of that position; or

(3) The rate designated as representative of the position by the agency responsible for establishing and adjusting the schedule in the case of a position under a schedule different from those covered in paragraph (1) or (2) of this section.

"Temporary promotion" means a promotion with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require that the individual return to his or her permanent position at the expiration of that promotion.

"Temporary reassignment" means a reassignment with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require that the individual return to his or her permanent position at the expiration of that reassignment.

§ 536.103 Coverage and applicability of grade retention.

(a) Grade retention shall apply to an employee who moves to a position in a covered pay schedule which is lower graded than the position held immediately prior to the demotion in the following circumstances:

(1) As a result of reduction-in-force procedures; or

(2) As a result of a reclassification process.

(b) Except as otherwise covered in paragraph (a) of this section, the head of the agency may offer grade retention to eligible employees who are or might be reduced in grade as the result of a reorganization or reclassification decision announced by management in writing. When an employee is offered a position with grade retention in anticipation of a reduction in grade, the agency shall inform the employee in writing that acceptance of the position is not required and that declination of the offer has no effect on the employee's entitlement to grade retention under paragraph (a) of this section if he or she is actually moved to a lower graded position.

(c)(1) An employee who, immediately prior to being placed in a lower graded position as a result of reduction-in-force procedures, is in a position under a covered pay schedule, is eligible for grade retention only if the employee has served for 52 consecutive weeks or more in position(s) under a covered pay schedule at a grade(s) higher than the position in which the employee is placed.

(2) An employee is eligible for grade retention when his or her position has been reclassified at a lower grade only if the position which is being reduced had been classified at a higher grade(s) for a continuous period of at least 1 year immediately before the reduction.

(3) In situations other than those covered in paragraphs (c)(1) and (c)(2) of this section, an employee is eligible for grade retention if he or she, immediately prior to being placed in the lower grade, has served in a position in any pay schedule for 52 consecutive weeks or more provided that the service was in an agency as defined in 5 U.S.C. 5102 at a grade(s) higher than the position in which the employee is placed.

§ 536.104 Coverage and applicability of pay retention.

(a) Pay retention shall apply to any employee whose rate of basic pay would otherwise be reduced:

(1) As the result of the expiration of the 2-year period of grade retention; or

(2) As a result of reduction-in-force or reclassification when the employee does not meet the eligibility requirement for grade retention; or

(3) As a result of the reduction or elimination of scheduled rates, except those reflecting a decrease in the level of prevailing rates as determined by a wage survey, or as a result of the reduction or elimination of special schedules or special rates; or

(4) As a result of the placement of an employee into a non-special rate position or into a lower special rate position from a special rate position; or

(5) As a result of the placement of an employee in a position in a lower wage area or in a position in a different pay schedule; or

(6) As a result of the placement of the employee in a formal employee development program generally utilized Governmentwide: Upward Mobility, Apprenticeship, and Career Intern Programs.

(b) Except as otherwise covered in paragraph (a) of this section, the head of the agency may provide pay retention to eligible employees whose rates of basic pay would otherwise be reduced as the result of a management action.

§ 536.105 Exclusions

(a) Grade and pay retention shall not apply to an employee who:

(1) Moves from a position which is not in an agency as defined in 5 U.S.C. 5102; or

(2) Is identified under 5 U.S.C. 2105(c) except prevailing rate employees included under 5 U.S.C. 5361; or

(3) Is reduced in grade or pay for personal cause or at the employee's request; or

(4) Does not satisfactorily complete the probationary period prescribed by 5 U.S.C. 3321(a)(2), and, as a result, is removed from a supervisory or managerial position.

(b) An employee's entitlement to grade or pay retention is not affected by a temporary promotion or temporary reassignment. However, an employee serving under a temporary promotion or temporary reassignment may not retain a grade or rate of basic pay held during the temporary promotion or temporary reassignment.

Subpart B—Determination of Retained Grade and Rate of Basic Pay; Loss of, or Termination of Eligibility

§ 536.201 Comparison of grades in different pay schedules or pay systems.

For the purpose of determining whether the grade of a position is equal to, higher than, or lower than the grade of another position in movements between pay schedules or pay systems, the representative rates of the positions will be compared.

§ 536.202 Period of grade retention.

(a) An employee entitled to grade retention is entitled to retain that grade for 2 years beginning on the date the employee is placed in the lower graded position.

(b) If, during a 2-year period of grade retention, an employee is further reduced in grade under circumstances also entitling the employee to grade retention, the employee shall continue to retain the previous retained grade for the remainder of the previous 2-year retention period. At the end of that period, the employee shall be entitled to retain the grade of the position from which the further reduction in grade was made, until 2 years have passed from the date of the further reduction in grade.

§ 536.203 Determination of retained graded.

(a) An employee who is in a position under a covered pay schedule immediately prior to the action which gives entitlement to grade retention shall retain the grade held immediately prior to the action.

(b) An employee who is in a position not under a covered pay schedule immediatley prior to the action which gives entitlement to grade retention shall retain:

or her rate of basic pay immediately prior to the eligibility or movement. If the rate of basic pay can be accommodated in the rate range of the latter position, pay retention does not

(3) The offered position must be of tenure equal to or greater than that of the position creating the grade or pay retention entitlement; and

(4) The offered position must be in an agency, as defined in 5 U.S.C. 5102,

consideration under, a program providing priority consideration for placement.

§ 536.208 Termination of grade retention.

(b) The placement and classification plans must commit the agency to:

(1) Identify and correct classification errors; and

(2) Correct position management

which establishes a reasonable doubt as to the appropriateness of the original decision. The request must show that the information was not readily available when the decision was issued.

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(b) An employee who is in a position not under a covered pay schedule immediatley prior to the action which gives entitlement to grade retention shall retain:

(1) The lowest grade of the covered pay schedule in which placed which has a representative rate equal to or higher than the representative rate of the grade held immediately prior to that placement; or

(2) The highest grade of the covered pay schedule in which placed, if there is no grade in the covered pay schedule with a representative rate equal to or higher than the representative rate held immediately prior to that placement.

§ 536.204 Determination of applicable rate schedule.

(a) When an employee entitled to grade retention is placed in a position in a different geographical area, the rate schedule which applies to the employee is the rate schedule in the new geographical area.

(b) When an employee entitled to grade retention is placed in a position in, or his or her position is changed to, a different occupational series, the rate schedule which applies to the individual is the rate schedule for the new occupational series.

§ 536.205 Determination of rate of basic pay.

(a) When an employee becomes entitled to grade retention, or moves to another position during a period of grade retention under conditions which permit continuation of the grade retention entitlement, the employee is entitled to the greatest of:

(1) His or her rate of basic pay before the movement, or

(2) The rate of basic pay from the applicable rate schedule for the grade and step (or relative position within a range of rates under the merit pay system) held by the employee before the movement, or

(3) The lowest rate of basic pay from the applicable rate schedule for the retained grade which equals or exceeds the employee's rate of basic pay before the movement.

(b)(1) When an employee becomes entitled to pay retention, or moves to another position while receiving pay retention, the employee's rate of basic pay immediately prior to eligibility or movement shall be compared with the range of rates of basic pay for the position to be occupied by the employee upon this eligibility or movement.

(2) The employee is entitled to the lowest rate of basic pay in the position to be occupied upon the eligibility or movement which equals or exceeds his or her rate of basic pay immediately prior to the eligibility or movement. If the rate of basic pay can be accommodated in the rate range of the latter position, pay retention does not apply.

(3) If the employee's rate of basic pay immediately prior to the pay retention exceeds the maximum rate of the position to be occupied when he or she becomes entitled to pay retention, the employee is entitled to the lower of:

(i) The rate of basic pay payable to the employee immediately before the reduction in pay; or

(ii) 150 percent of the maximum rate of basic pay payable for the new grade.

(c) When an increase in the scheduled rates of the grade of the employee's position occurs while the employee is under pay retention, the employee is entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the grade of the employee's current position.

(d) When, as a result of an increase in the scheduled rate(s) of the grade of the employee's position, an employee's retained rate of basic pay becomes equal to or lower than the maximum rate of that grade, the employee is entitled to the maximum rate of that grade and pay retention ceases.

(e) An employee who is serving on a temporary promotion at the time he or she becomes eligible for pay retention is entitled to retain the rate of basic pay which he or she would have been receiving at that time had the temporary promotion not occurred.

(f) When an employee's entitlement to grade or pay retention terminates, the employee's rate of basic pay shall be set in accordance with the provisions of Parts 531 and 532 of this title unless:

(1) Grade retention is being terminated as a result of the expiration of the 2-year retention period; or

(2) The employee is moved to a grade equal to or greater than the retained grade; or

(3) The employee is entitled to a higher rate of basic pay under paragraphs (b) or (d) of this section.

§ 536.206 Criteria for a "reasonable offer".

For the purposes of this part, an offer of a position, in order to be considered a reasonable one, must fulfill the following conditions:

(1) The offer must be in writing, and must include an official position description of the offered position; and

(2) The offer must inform the employee that an entitlement to grade or pay retention will be terminated if the offer is declined and that the employee may appeal the reasonableness of the offer as provided in § 536.302; and

(3) The offered position must be of tenure equal to or greater than that of the position creating the grade or pay retention entitlement; and

(4) The offered position must be in an agency, as defined in 5 U.S.C. 5102, although not necessarily in the same agency in which the employee is serving at the time of the offer; and

(5) The offered position must be full-time, unless the employee's position immediately before the change creating entitlement to grade or pay retention was less than full-time, in which case the offered position must have a work schedule of no less time than that of the position held before the change; and

(6) The offered position must be in the same commuting area as the employee's position immediately before the offer, unless the employee is subject to a mobility agreement or a published agency policy which requires employee mobility.

§ 536.207 Loss of eligibility for grade retention.

(a) Eligibility for grade retention as a result of entitlement under § 536.103(a) of this part ceases if any of the following conditions occurs at any time after the employee receives written notice of the reduction in grade action, but before the commencement of the 2-year period of grade retention:

(1) The employee has a break in service of 1 workday or more; or

(2) The employee is demoted for personal cause or at the employee's request; or

(3) The employee is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

(4) The employee elects in writing to terminate the benefits of grade retention.

(b) Eligibility for grade retention as a result of entitlement under § 536.103(b) of this part ceases if any of the following conditions occurs at any time after the employee is informed by management of an impending reorganization or reclassification which will or could result in reduction in grade, but before the commencement of the 2-year period of grade retention:

(1) Any of the conditions listed in paragraph (a) of this section except that an employee's request for placement in a lower graded position, in lieu of displacing an employee at his or her grade under reduction-in-force procedures, is not a declination of a reasonable offer for grade retention purposes; or

(2) The employee fails to enroll in, or to comply with reasonable written requirements established to assure full consideration under, a program providing priority consideration for placement.

§ 536.208 Termination of grade retention.

(a) Grade retention terminates if any of the conditions listed in § 536.207(a) occurs after commencement of the 2-year period of grade retention.

(b) Grade retention as provided by § 536.103(b) also terminates if any of the conditions listed in § 536.207(b) occur after the commencement of the 2-year period of grade retention.

(c) The effective date of termination of grade retention benefits is:

(1) The day before placement if the termination is the result of the employee's placement in another position; or

(2) At the end of the last day of the pay period which the employee:

(i) Declines a reasonable offer; or

(ii) Elects to waive grade retention benefits; or

(iii) Fails to enroll in, or comply with reasonable written requirements established to assure full consideration under, a program providing priority consideration for placement.

§ 536.209 Loss of eligibility for, or termination of, pay retention.

(a) Eligibility for pay retention, or actual retention of pay, ceases if any of the following conditions occurs at any time after the employee had received written notification that his or her pay is to be reduced:

(1) The employee has a break in service of 1 workday or more; or

(2) The employee is entitled to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under pay retention; or

(3) The employee is demoted for personal cause or at the employee's request.

(b) The effective date of termination of pay retention benefits is:

(1) The day before placement if the termination is the result of the employee's placement in another position; or

(2) The end of the last day of the pay period in which the employee declines a reasonable offer.

Subpart C—Miscellaneous Provisions

§ 536.301 Placement and classification plans.

(a) Agencies which employ individuals subject to this part are required to establish in writing placement and classification plans.

(b) The placement and classification plans must commit the agency to:

(1) Identify and correct classification errors; and

(2) Correct position management problems; and

(3) Carry out specific planned efforts to place employees subject to this part; and

(4) Pursue placement efforts that do not adversely affect affirmative action goals.

§ 536.302 Appeal of termination of benefits because of reasonable offer.

(a) Except as provided for in paragraph (e) of this section, an employee whose grade or pay retention benefits are terminated on the grounds the employee declined a reasonable offer of a position the grade or pay of which is equal to or greater than his or her retained grade or pay may appeal the termination to the Office of Personnel Management.

(b) An employee who appeals under this section shall file the appeal in writing with the Office of Personnel Management not later than 20 calendar days after being notified that his or her grade of pay retention benefits have been terminated, and shall state in the appeal the reasons why the employee believes the offer of a position was not a reasonable offer.

(c) The Office of Personnel Management may conduct any investigation or hearing it determines necessary to ascertain the facts of the case.

(d) If a decision by the Office of Personnel Management on an appeal under this section requires corrective action by an agency, including the retroactive or prospective restoration of grade or pay retention benefits, the agency shall take that corrective action.

(e) Termination of benefits based on a declination of a reasonable offer by an employee in an exclusively recognized bargaining unit may be reviewed under negotiated grievance and arbitration procedures in accordance with chapter 71 of title 5, United States Code, and the terms of any applicable collective bargaining agreement. An employee in an exclusively recognized bargaining unit may not appeal a termination of benefits to the Office of Personnel Management if the grievance procedure of the agreement by which he or she is covered provides for this review.

(f) Decisions issued by the Office of Personnel Management shall be considered final decisions. OPM may, at its discretion, reconsider an original appellate decision when new and material information is presented, in writing, by the employee or the agency, which establishes a reasonable doubt as to the appropriateness of the original decision. The request must show that the information was not readily available when the decision was issued. A request for reconsideration of an original appeal decision must be submitted to OPM within 30 calendar days of the date of the original decision.

§ 536.303 Documentation.

The application of the provisions of this part shall be documented in writing as a permanent part of the employee's Official Personnel Folder. As a minimum this documentation will include a copy of the letter described in § 536.304.

§ 536.304 Issuance of employee letters.

When an employee is entitled to grade and/or pay retention, the employing agency shall give to the employee, with a copy of the Notification of Personnel Action (SF–50) documenting entitlement to grade and/or pay retention, a letter describing the circumstances warranting grade and/or pay retention, and the nature of that entitlement.

§ 536.305 Effect of grade retention on quota spaces.

To determine the number of positions at GS–16, –17 and –18, or the equivalent, including positions in the Senior Executive Service, authorized by an Act of Congress, the grades (or SES levels) of the positions occupied, rather than the retained grades, are to be used.

§ 536.306 Retroactive entitlement.

Employees who are eligible for grade retention as provided by § 536.103(a) except that the reduction in grade took place on or after January 1, 1977, and before the first day of the first pay period beginning on or after January 11, 1979, shall be entitled to pay and benefits as provided in section 801(b) of the Civil Service Reform Act of 1978 under procedures and instructions issued by the Office of Personnel Management.

[FR Doc. 80–40504 Filed 12–29–80; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 551

Federal Pay Administration Under the Fair Labor Standards Act

AGENCY: Office of Personnel Management.

ACTION: Final rule

SUMMARY: The Fair Labor Standards Act was amended by the Fair Labor Standards Amendments of 1974 to include Federal employees under its coverage effective May 1, 1974. The

legislation authorized the Office of Personnel Management to administer the provisions of the Act for Federal employees. This document contains regulations that supplement and

contained in FPM letters in the 551 series and asked what effect the regulations had on this material.

The regulations in this part create rights in or impose obligations upon

government under a CETA or WIN Program, persons employed by a college or university under a College Work Study Program, student-employees assigned or attached to a government

consequential economic benefit for the hospital or institution.

Records Keeping

Time Spent in Training

Numerous comments recommended that we retain the prohibition currently contained in FPM Letter 551–3 on the

engaged in an internship program or other career related work study programs, and employees appointed under the Veterans Readjustment Act (5 CFR Part 307). The FPM letter contains

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legislation authorized the Office of Personnel Management to administer the provisions of the Act for Federal employees. This document contains regulations that supplement and implement the Act.

EFFECTIVE DATE: January 29, 1981.

FOR FURTHER INFORMATION CONTACT: Dwight W. Brown, [202] 632-4634.

SUPPLEMENTARY INFORMATION: The Fair Labor Standards Act of 1938, as amended, provides for minimum standards for both wages and overtime entitlements, and delineates administrative procedures by which covered worktime must be compensated. Section 4(f) of the Act authorizes the Office of Personnel Management to administer the provisions of the Act for all employees of the United States, except for those who are employed by the Library of Congress, United States Postal Service, Postal Rate Commission, or the Tennessee Valley Authority; such employees are specifically covered by the Department of Labor's administration of the Act. In addition to this authority, the legislative history of Pub. L. 93-259 further authorizes the Office of Personnel Management to resolve conflicts between the Act and other statutory provisions entitling employees to overtime pay (120 Cong. Rec. 7335).

These regulations establish the rules and guidelines by which Federal administration of the Act is to be effected. In addition to specifying OPM's authority and agencies' responsibilities, they provide definitions, rules, and guidelines by which determinations are to be made as to what time constitutes "hours or work," and, therefore, as to what time is compensable. Futhermore, they provide the methodology by which precise overtime pay entitlements under the Act shall be computed. Finally, they provide special overtime provisions for employees engaged in fire protection activities or law enforcement activities.

On July 25, 1980, OPM published proposed regulations [45 FR 49580] for its administration of the Act in the Federal sector and invited written comments from the public. Comments were received from 24 Federal agencies and four labor organizations representing Federal employees. These comments, and OPM's action on these comments, are summarized as follows:

General

Numerous comments cited the need for supplemental guidance or examples to further clarify the regulations in this part. Numerous other comments referred to the more complete instructions contained in FPM letters in the 551 series and asked what effect the regulations had on this material.

The regulations in this part create rights in or impose obligations upon employees or agencies for compliance with the Act. The more comprehensive instructions and examples contained in FPM letters in the 551 series provide supplemental instructions and continue in effect, with the exception of FPM Letter 551-3. OPM is issuing an FMP leiter which rescinds FPM Letter 551-3 and provides instructions for the treatment of time spent in training as modified in § 551.423 of ths part. The instructions in this new letter are effective on the effective date of these regulations.

In addition, OPM is completing a new book 551 to FPM Supplement 990-2. It will incorporate the instructions and examples contained in existing FPM letters. When completed, Book 551 will supplement and augment the requirements of the Act and this part. Until that time, the instructions and guidelines contained in FPM letters in the 551 series (with the exception of FPM Letter 551-3) are still appropriate.

Suffered or Permitted Work

Two agencies recommended transferring the definition of suffered or permitted work from subpart D, Hours of Work, to the definitions section in subpart A. This recommendation was adopted.

In addition, at the recommendation of several agencies, this definition has been modified to emphasize that the employee's supervisor (1) must have knowledge of such work and (2) must have an opportunity to prevent such work from being performed. It follows that if the supervisor did not know the work was being performed, he or she had no opportunity to prevent the work, and, therefore, the supervisor did not suffer or permit the work. Of course, once the supervisor knows work is being performed and does nothing to prevent it, he or she has suffered or permitted the work.

Trainees

With the change in OPM position concerning time spent in training under the Act, it was necessary to define the term "trainee" in § 551.102 and to exclude those persons meeting this definition from coverage under OPM's administration of the Act in § 551.103. Trainees who are assigned or attached to a Federal activity primarily for training are not employees of the Government of the United States for purposes of the Act. These include persons employed by a state or local government under a CETA or WIN Program, persons employed by a college or university under a College Work Study Program, student-employees assigned or attached to a government hospital primarily for training (5 CFR Part 534), and any other person who attends a training program that meets the six conditions outlined in § 551.102.

Volunteers

Numerous comments were received recommending that persons who perform volunteer services for a Federal activity be excluded specifically from coverage under the Act. We have included a new definition of "volunteer" in § 551.102.

In addition, in § 551.103 we have excluded persons whose appointment authority specifically states that they are to be employed without compensation, and persons who meet the definition of volunteer in § 551.102. These include student volunteers (5 CFR Part 308), VISTA and Peace Corps volunteers, and persons who perform personal services primarily for their own benefit or for the benefit of other persons—e.g., volunteers in a Federal hospital who write letters for patients or perform other personal amenities for patients. The one group that does not meet the definition of volunteer in § 551.102 and, therefore, is not excluded from coverage by § 551.103, is that made up of individuals who perform services of economic benefit for a Federal agency. Persons in this group meet the "economic realities" test for employment. For example, they may perform services for a Federal activity to free Federal employees for other duties. If they did not perform such services, Federal employees would have to. Therefore, their services are of economic benefit to the Federal activity. However, acceptance of such services is subject to the restriction in section 665(b) of title 31, United States Code (the Anti-Deficiency Act), against accepting voluntary services.

Subminimum Wage

One labor organization recommended that the criteria for compliance with the subminimum wage authority be spelled out. OPM is issuing a separate FPM letter on this subject at this time. While the subminimum wage authority of the Act permits the employment of students, learners, apprentices, and handicapped workers, OPM has determined that use of this authority by Federal agencies will be limited to handicapped patients who are receiving treatment or care in a Federal hospital or institution and who are permitted to perform work of a consequential economic benefit for the hospital or institution.

Records Keeping

Numerous comments addressed the proposed OPM requirement to keep records for a period of six years. The Office of Financial Management, GAO, advised that the present records retention schedule of three years at the agency level and 56 years at the National Personnel Records Center is sufficient for its use to settle pay claims. Therefore, we have removed the reference to six years. Agencies will continue to follow the GAO schedule.

Rest Periods and Meal Periods.

In numerous comments it was requested that OPM specify how many rest periods are allowed in a workday. Agencies are responsible for scheduling the work of their employees. This includes scheduling authorized rest periods during the workday. We have modified the language in § 551.411 to clarify that any authorized rest period is worktime.

One agency had a problem with the term "bona fide meal periods." We do not specify a specific scheduled meal period, nor do we authorize a deduction from hours worked when an employee works and does not take an authorized meal period. This term simply means that, when an employee has an authorized meal period and does, in fact, take the meal period off, the employee is off duty during this period and is not paid for it.

Time Spent Traveling

Numerous comments questioned the specific rules for compensable travel time under the Act. These rules are presently contained in FPM Letters 551-10 and 11. The letters also include in depth instructions, with examples, on how the rules are to be applied under the Act. The rules are consistent with the rulings, interpretations, and opinions of the Department of Labor and the courts in the private sector. We recognize that the rules for compensable travel time under title 5, United States Code, differ considerably from those under FLSA. This area is one of the most difficult in premium pay administration because of the dual administrations of title 5 and the FLSA. The rules for compensable travel time must be applied separately under each law, title 5 and FLSA, and nonexempt employees are to be paid under whichever law provides them the greater overtime pay benefit.

Time Spent in Training

Numerous comments recommended that we retain the prohibition currently contained in FPM Letter 551-3 on the payment of overtime pay for a period of training under the Act. The change in OPM determination concerning time spent in training was brought about by (1) a better understanding of the differences between title 5, United States Code, and the FLSA, and (2) other relevant decisions by OPM in its experience in resolving conflicts between the two laws. It has been OPM's position, endorsed by GAO, that the two laws are to be administered separately and independently, with nonexempt employees being paid under whichever law provides them the greater overtime pay benefit. Consistent with this position, we have modified our original determination to provide that time spent in training outside regular working hours is compensable as hours of work under the FLSA if certain specific criteria are met. This change will bring OPM's administration of the FLSA into line with that of the Department of Labor in the private sector and will produce consistency in OPM's administration of the Act.

We have modified the language in § 551.423, and have prepared an FPM letter to provide supplemental instructions in response to the myriad of comments received on this section. The new FPM letter rescinds FPM Letter 551-3 and is to be effective on the effective date of the regulations. Together the regulations in § 551.423 and the supplemental instructions in the FPM letter clearly outline those situations when time spent in training is hours of work and those situations when time spent in training is not hours of work. A summary of the changes in language in § 551.423 and the instructions contained in the FPM letter follows:

A paragraph was added in this section to clarify further the phrases, "directed to participate," and "to improve the employee's performance • • • of his or her current position." The FPM letter provides specific instructions on what training meets these criteria.

A paragraph was added in this section to address preparatory time for attendance at training. The FPM letter provides additional instructions on how an agency may determine the appropriate allowance for preparatory time and when such preparatory time is hours of work.

A special provision was added in this section to address employees engaged in an apprenticeship program or other entry level training programs, employees engaged in an internship program or other career related work study programs, and employees appointed under the Veterans Readjustment Act (5 CFR Part 307). The FPM letter contains special instructions for the treatment of training time for employees in these programs. Furthermore, OPM will issue Federal Personnel Manual guidance reflecting this change in its chapter 410 on training.

Time Spent Adjusting Grievances or Performing Representational Functions

Numerous comments expressed a need to distinguish clearly between time spent by a grievant adjusting his or her grievance and "official time" spent by an employee representative performing representational functions. The language in § 551.424 has been revised to clarify (1) that any time spent by a grievant in the settlement of his or her grievance while the grievant is required to be on the agency's premises is worktime, and (2) that any "offficial time" granted by an agency and used by an employee representative in the performance of representational functions is worktime.

One agency expressed concern over the meaning of the phrase, "while otherwise in a duty status." The key to whether time spent performing representational functions outside regular working hours is overtime work is that the employee representative must already have been in an overtime duty status at the direction of the agency at the time an event arises which calls for the performance of representational functions. The employee representative cannot extend his or her duty hours (including overtime hours) solely for the purpose of extending representational functions into overtime hours.

Time Spent Receiving Medical Attention

Three agencies recommended that the time spent receiving medical attention should be limited to job-related illnesses or injuries, and another agency recommended that such time be limited to one hour. It must be emphasized that § 551.425 addresses only a situation where an employee has already reported to work and subsequently becomes ill or injured, and, further, it only applies to that specific workday. This provision cannot be limited to a job-related illness or injury, and it cannot be limited to a specific period of time. However, it is limited to situations when an employee is receiving medical attention at the direction and under the control of the agency. When these criteria are met, the employee is on duty during the time he or she receives medical attention.

Fractional Hours of Work

We acknowledge the position

Two agencies recommended that this section be expanded to include time spent by an employee taking a physical examination that is required for continued employment with the agency. This recommendation was adopted.

Time Spent in Charitable Activities

The comments of a few agencies expressed some confusion concerning the treatment of time spent by volunteers in charitable activities. It must be emphasized that the rules for the treatment of such time contained in § 551.426 apply only to employees of an agency. Volunteers, as defined in § 551.102, are not employees under the Act, and, therefore, this section is not applicable to such individuals.

Time Spent on Standby Duty or in an On-Call Status

Two agencies recommended that § 551.431 be revised to distinguish clearly between (1) standby duty and (2) time spent in an on-call status. This recommendation was adopted.

In addition, one labor organization recommended that time spent in on-call status be compensable. Under the Act, an employee is either on duty or off duty. There is no provision for a semi-duty status such as standby duty or on-call status. Therefore, OPM was faced with the task of determining whether standby duty and time spent in an on-call status are properly worktime under the Act. OPM determined that the severe restrictions placed on an employee's whereabouts and time to qualify for standby duty pay under title 5, United States Code, make such duty worktime under the Act. However, the Department of Labor and the courts have not seen fit to consider time spent in an on-call status a severe enough limitation on an employee's off duty time to require compensation for such status. Therefore, we determined that time spent in an on-call status is not worktime. This policy determination was promulgated in FPM Letter 551–14, dated May 15, 1978. The feasibility of a premium or a differential to ensure an employee's availability during a period of on-call status is currently being reviewed by the Compensation Program Development Division, OPM.

Maximum Earnings Limitation

One agency recommended the inclusion of a statement that the maximum limitation on an employee's aggregate pay (basic pay and premium pay) under title 5, United States Code, does not apply to overtime pay under the Act. This recommendation was adopted.

Fractional Hours of Work

Numerous agencies questioned the requirements to pay for irregular, unscheduled overtime work in fractions of a quarter of an hour or less, and to pay for every minute of regularly scheduled overtime work. They indicated that it would be administratively burdensome to comply with these requirements. The requirements contained in § 551.521 are not a change in policy, but merely express in regulatory language the procedures currently prescribed in FPM Letter 551–6, dated June 12, 1975.

Recently, the Comptroller General concurred in an OPM proposal to provide for rounding of odd minutes of irregular, unscheduled overtime work under title 5, United States Code. For example, if an agency is paying for such overtime work in increments of 15 minutes, seven minutes or less may be rounded down to zero and eight minutes or more may be rounded up to 15 minutes. OPM is currently amending 5 CFR Part 550 to provide for the rounding of odd minutes under title 5. This section has been revised to provide for the rounding of odd minutes of irregular, unscheduled overtime work on the same basis. The revision will provide agencies four possible administrative procedures for the treatment of irregular, unscheduled overtime work: (1) Restrict the performance of overtime work to the full fraction used to account for overtime work, (2) pay for every minute of irregular, unscheduled overtime work, (3) round odd minutes of irregular, unscheduled overtime work on a daily basis, or (4) accumulate odd minutes of irregular, unscheduled overtime work and round on a workweek basis. Agencies are encouraged to adopt the same administrative procedure under both title 5 and the FLSA.

Compensatory Time Off

Two agencies and one labor organization commented on the seemingly limited use of compensatory time off under this part—i.e., that compensatory time off may be taken only in the same workweek. The rules contained in § 551.531, which are consistent with instructions contained in FPM Letter 551–6, dated June 12, 1975, allow for the use of compensatory time off in subsequent workweeks, provided the employee's overtime pay entitlement under title 5, United States Code, is equal to or greater than his or her overtime pay entitlement under the FLSA, and the employee makes a written requests for such compensatory time off.

We acknowledge the position expressed by the Wage and Hour Division, Department of Labor, that an employee is entitled to overtime pay for overtime work and that overtime payments must be made within the regular pay periods. This is the basis for the Wage and Hour Division's position that an employer may not credit an employee with compensatory time off for overtime work to be used in subsequent pay periods. The Wage and Hour Divisions, at the same time, expressed its awareness of the statutory conflict between the FLSA and title 5. OPM has addressed this conflict by administering both laws concurrently and requiring compensation under whichever law provides the greater overtime pay benefit. When an employee's entitlement to overtime pay under title 5 is equal to or greater than his or her entitlement to overtime pay under the FLSA, the employee may excercise his or her statutory entitlement to request compensatory time off in lieu of overtime pay under title 5.

OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.

JoAnn B. Platter,

Assistant Issuance System Manager.

Accordingly, OPM is adding Subparts A, C, D, and E to 5 CFR Part 551, to read as follows:

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

Subpart A—General Provisions

Sec.
551.101 General.
551.102 Definitions.
551.103 Coverage.
551.104 Administrative authority.
* * * * *

Subpart C—Minimum Wage Provisions

Basic Provision
551.301 Minimum wage.

Subminimum Wage
551.311 Subminimum wage.

Subpart D—Hours of Work

General Provisions
551.401 Basic principles.
551.402 Agency responsibility.

Application of Principles in Relation to Normal Workday
551.411 Workday.
551.412 Preparatory or concluding activities.

Application of Principles in Relation to Other Activities
551.421 Regular working hours.
551.422 Time spent traveling.
551.423 Time spent in training or attending a lecture, meeting, or conference.
551.424 Time spent adjusting grievances or performing representational functions.
551.425 Time spent receiving medical attention.
551.426 Time spent in charitable activities.

Special Situations
551.431 Time spent on standby duty or in an on-call status.
551.432 Sleep time.

Subpart E—Overtime Pay Provisions

Basic Provisions
551.501 Overtime pay.

Overtime Pay Computations
551.511 Hourly regular rate of pay.
551.512 Overtime pay entitlement.
551.513 Payment of greater overtime pay entitlement.

Fractional Hours of Work
551.521 Fractional hours of work.

Compensatory Time Off
551.531 Compensatory time off.

Special Overtime Pay Provisions
551.541 Employees engaged in fire protection activities or law enforcement activities.

Authority: Pub. L. 93–259; 29 U.S.C. 204f.

Subpart A—General Provisions

§ 551.101 General.

(a) Section 3(e)(2) of the Fair Labor Standards Act of 1938, as amended, authorizes the application of the provisions of the Act to any person employed by the Government of the United States, as specified in that section. Section 4(f) of the Act authorizes the Office of Personnel Management to administer the provisions of the Act for all such employees, except for those who are employed by the Library of Congress, United States Postal Service, Postal Rate Commission, or the Tennessee Valley Authority; the named groups of employees are specifically excluded from the Office of Personnel Management's administration.

(b) The Act provides for minimum standards for both wages and overtime entitlements, and delineates administrative procedures by which covered worktime must be compensated. Included in the Act are provisions related to child labor, equal pay, and portal-to-portal activities. In addition, the Act exempts specified employees or groups of employees from the application of certain of its provisions. It prescribes penalties for the commission of specifically prohibited acts.

(c) This part contains the regulations, criteria, and conditions that the Office of Personnel Management has prescribed for the administration of the Act. This part supplements and implements the Act, and must be read in conjunction with it.

§ 551.102 Definitions.

In this part:

(a) "Act" means the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.);

(b) "Agency", for purposes of the Office of Personnel Management's administration of the Act, means any instrumentality of the United States Government, or any constituent element thereof acting directly or indirectly as an employer, as this term is defined in section 3(d) of the Act; but does not include:

(1) The Library of Congress;

(2) The United States Postal Service;

(3) The Postal Rate Commission; or

(4) The Tennessee Valley Authority;

all of which are subject to the administration of the Act by the Department of Labor, under Title 29, Code of Federal Regulations.

(c) "Employ" means to engage a person in an activity that is for the benefit of an agency, as defined for this part, and includes any hours of work that are suffered or permitted.

(d) "Employee" means a person who is employed:

(1) In an executive agency;

(2) As a civilian in a military department;

(3) In a nonappropriated fund instrumentality of an executive agency or a military department; or

(4) In a unit of the legislative or judicial branch of the Government that has positions in the competitive service.

(e) "Suffered or permitted" work means any work performed by an employee for the benefit of an agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.

(f) "Trainee" means a person who does not meet the definition of "employee" in (d), above, and who is assigned or attached to a Federal activity primarily for training. A person who attends a training program under the following conditions is considered a "trainee" and, therefore, is not an "employee" of the Government of the United States for purposes of the Act:

(1) The training, even though it includes actual operation of the facilities of the Federal activity, is similar to that given in a vocational school or other institution of learning;

(2) The training is for the benefit of the individual;

(3) The trainee does not displace regular employees, but, rather, is supervised by them;

(4) The Federal activity which provides the training derives no immediate advantage from the activities of the trainee; on occasion its operations may actually be impeded;

(5) The trainee is not necessarily entitled to a job with the Federal activity at the completion of the training period; and

(6) The agency and the trainee understand that the trainee is not entitled to the payment of wages from the agency for the time spent in training.

(g) "Volunteer" means a person who does not meet the definition of "employee" in (d), above, and who volunteers or donates his or her service the primary benefit of which accrues to the performer of the service or to someone other than the agency. Under such circumstances there is neither an expressed nor an implied compensation agreement. Services performed by such a volunteer include personal services that, if left unperformed, would not necessitate the assignment of an employee to perform them.

§ 551.103 Coverage.

(a) Any employee of an agency who is not specifically excluded by another statute is covered by the Act. This includes any person who is:

(1) Defined as an employee under section 2105 of title 5, United States Code;

(2) Appointed under other appropriate authority; or

(3) Suffered or permitted to work by an agency whether or not formally appointed.

(b) The following persons are not covered under the Act:

(1) A person appointed under appropriate authority without compensation;

(2) A trainee as defined in § 551.102(f); or

(3) A volunteer as defined in § 551.102(g).

§ 551.104 Administrative authority.

The Office of Personnel Management is the administrator of the provisions of the Act with respect to any person employed by an agency, except for the equal pay provisions contained in section 6(d) of the Act, which are administered by the Equal Employment Opportunity Commission.

* * * * *

Subpart C—Minimum Wage Provisions

Basic Provision

§ 551.301 Minimum wage.

Application of Principles in Relation to Normal Workday

§ 551.411 Workday.

(a) For the purposes of this part,

(3) An employee is required to travel as a passenger on a one-day assignment away from the official duty station; or

(4) An employee is required to travel as a passenger on an overnight

(4) Time spent by an employee performing work for the agency during a period of training shall be considered hours of work.

(b) The following phrases contained in (a), above, are further clarified:

§ 551.425 Time spent receiving medical attention.

(a) Time spent waiting for and receiving medical attention for illness or injury shall be considered hours of work if:

§ 551.432 Sleep time.

(a) Except as provided in paragraph (b) of this section, *bona fide* sleep time that fulfills the following conditions shall not be considered hours of work if:

(1) The tour of duty is *24 hours or*

Subpart C—Minimum Wage Provisions

Basic Provision

§ 551.301 Minimum wage.

(a) Except as provided in § 551.311, an agency shall pay each of its employees wages at rates not less than the minimum wage specified in section 6(a)(1) of the Act for all hours of work as defined in subpart D of this part.

(b) An employee has been paid in compliance with the minimum wage provisions of this subpart if the employee's hourly regular rate of pay, as defined in § 551.511(a) of this part, for the workweek is equal to or in excess of the rate specified in section 6(a)(1) of the Act.

Subminimum Wage

§ 551.311 Subminimum wage.

An agency may, if it meets certain criteria published by the Office of Personnel Management, employ certain groups of less than fully productive employees (e.g., handicapped patient workers) at rates less than the minimum wage specified in section 6(a)(1) of the Act.

Subpart D—Hours of Work

General Provisions

§551.401 Basic principles.

(a) All time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency is "hours of work." Such time includes:

(1) Time during which an employee is required to be on duty;

(2) Time during which an employee is suffered or permitted to work; and

(3) Waiting time or idle time which is under the control of an agency and which is for the benefit of an agency.

(b) Paid periods of nonwork (e.g., leave, holidays, or excused absences) are not hours of work for the proposes of this part.

(c) Time that is considered hours of work under this part shall be used only to determine an employee's entitlement to minimum wages or overtime pay under the Act, and shall not be used to determine hours of work for pay administration under title 5, United States Code, or any other authority.

551.402 Agency responsibility.

(a) An agency is responsible for exercising appropriate controls to assure that only that work for which it intends to make payment is performed.

(b) An agency shall keep complete and accurate records of all hours worked by its employees.

Application of Principles in Relation to Normal Workday

§ 551.411 Workday.

(a) For the purposes of this part, "workday" means the period between the commencement of the principal activity(s) that an employee is engaged to perform on a given day, and the cessation of the principal activity(s) for that day. All time spent by an employee in the performance of such activity(s) is hours of work. The workday is not limited to a calendar day or any other 24-hour period.

(b) Any rest period authorized by an agency that does not exeed 20 minutes and that is within the workday shall be considered hours of work.

(c) *Bona fide* meal periods shall not be considered hours of work.

§ 551.412 Preparatory or concluding activities.

(a) A preparatory or concluding activity that is closely related to the principal activity, and is indispensable to its performance, is an integral part of the principal activity and is, therefore, a part of the workday and shall be considered hours of work.

(b) A preparatory or concluding activity that is not an integral part of the performance of the principal activity is not a part of the workday. Such an activity is a preliminary or postliminary activity and is not considered hours of work.

Application of Principles in Relation to Other Activities

§ 551.421 Regular working hours.

(a) Under the Act there is no requirement that a Federal employee have a regularly scheduled administrative workweek. However, under title 5 United States Code, and Part 610 of this chapter, the head of an agency is required to establish work schedules for his or her employees. In determining what activities constitute hours of work under the Act, there is generally a distinction based on whether the activity is performed by an employee during regular working hours or outside regular working hours. For purposes of this part, "regular working hours" means the hours and days during which an employee is normally scheduled to be on duty.

§ 551.422 Time spent traveling.

(a) Time spent traveling shall be considered hours of work if:

(1) An employee is required to travel during regular working hours;

(2) An employee is required to drive a vehicle or perform other work while traveling;

(3) An employee is required to travel as a passenger on a one-day assignment away from the official duty station; or

(4) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on nonworkdays that correspond to the employee's regular working hours.

(b) An employee who travels from home before the regular workday begins and returns home at the end of the workday is engaged in normal "home to work" travel; such travel is not hours of work. When an employee travels directly from home to a temporary duty location outside the limits of his or her official duty station, the time the employee would have spent in normal home to work travel shall be deducted from hours of work as specified in paragraphs (a)(2) and (a)(3) of this section.

(c) An employee who is offered one mode of transportation, and who is permitted to use an alternative mode of transportation, or an employee who travels at a time other than that selected by the agency, shall be credited with the lesser of:

(1) The actual travel time which is hours of work under this section; or

(2) The estimated travel time which would have been considered hours of work under this section had the employee used the mode of transportation offered by the agency, or traveled at the time selected by the agency.

§ 551.423 Time spent on training or attending a lecture, meeting, or conference.

(a) Time spent in training, whether or not it is under the purview of Part 410 of this chapter, shall be administered as follows:

(1) Time spent in training during regular working hours shall be considered hours of work.

(2) Time spent in training outside regular working hours shall be considered hours of work if:

(i) The employee is directed to participate in the training by his or her employing agency; and

(ii) The purpose of the training is to improve the employee's performance of the duties and responsibilities of his or her current position.

(3) Time spent in apprenticeship or other entry level training, or internship or other career related work study training, or training under the Veterans Readjustment Act (5 CFR Part 307) outside regular working hours shall not be considered hours of work, provided no productive work is performed during such periods.

(4) Time spent by an employee performing work for the agency during a period of training shall be considered hours of work.

(b) The following phrases contained in (a), above, are further clarified:

(1) "Directed to participate" means that the training is required by the agency and the employee's performance or continued retention in his or her current position will be adversely affected by nonenrollment in such training.

(2) Training "to improve the employee's performance . . . of his or her current position" is distinguished from upward mobility training or developmental training to provide an employee the knowledge or skills needed for a subsequent position in the same career field.

(c) Time spent by an employee within an agency's allowance of preparatory time for attendance at training shall be considered hours of work if such preparatory time is:

(1) During an employee's regular working hours; or

(2) Outside the employee's regular working hours, and the purpose of the training meets the requirements of (a)(2), above.

(d) Time spent attending a lecture, meeting, or conference shall be considered hours of work if attendance is:

(1) During an employee's regular working hours; or

(2) Outside an employee's regular working hours, and

(i) The employee is directed by an agency to attend such an event; or

(ii) The employee performs work for the benefit of the agency during such attendance.

§ 551.424 Time spent adjusting grievances or performing representational functions.

(a) Time spent by an employee adjusting his or her grievance (or any appealable action) with an agency during the time the employee is required to be on the agency's premises shall be considered hours of work.

(b) "Official time" granted an employee by an agency to perform representational functions during those hours when the employee is otherwise in a duty status shall be considered hours of work. This includes time spent by an employee performing such functions during regular working hours (including regularly scheduled overtime hours), or during a period of irregular, unscheduled overtime work, provided an event arises incident to representational functions that must be dealt with during the irregular, unscheduled overtime period.

§ 551.425 Time spent receiving medical attention.

(a) Time spent waiting for and receiving medical attention for illness or injury shall be considered hours of work if:

(1) The medical attention is required on a workday an employee reported for duty and subsequently became ill or was injured;

(2) The time spent receiving medical attention occurs during the employee's regular working hours; and

(3) The employee receives the medical attention on the agency's premises, or at the direction of the agency at a medical facility away from the agency's premises.

(b) Time spent taking a physical examination that is required for the employee's continued employment with the agency shall be considered hours of work.

§ 551.426 Time spent in charitable activities.

Time spent working for public or charitable purposes at an agency's request, or under an agency's direction or control, shall be considered hours of work. However, time spent voluntarily in such activities outside an employee's regular working hours is not hours of work.

Special Situations

§ 551.431 Time spent on standby duty or in an on-call status.

(a) An employee will be considered on duty and time spent on standby duty shall be considered hours of work if:

(1) The employee is restricted to an agency's premises, or so close thereto that the employee cannot use the time effectively for his or her own purposes; or

(2) The employee, although not restricted to the agency's premises:

(i) Is restricted to his or her living quarters or designated post of duty;

(ii) Has his or her activities substantially limited; and

(iii) Is required to remain in a state of readiness to perform work.

(b) An employee will be considered off duty and time spent in an on-call status shall not be considered hours of work if:

(1) The employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or

(2) The employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

§ 551.432 Sleep time.

(a) Except as provided in paragraph (b) of this section, *bona fide* sleep time that fulfills the following conditions shall not be considered hours of work if:

(1) The tour of duty is *24 hours or more;*

(2) During such time there are adequate facilities such that an employee may usually enjoy an uninterrupted period of sleep; and

(3) There are at least 5 hours available for such time during the sleep period.

(b) For employees engaged in fire protection activities or law enforcement activities, the exclusion of sleep time is appropriate for tours of duty *of more than 24 hours* only. However, paragraphs (a)(2) and (a)(3) of this section still apply to employees in these activities.

(c) Not more than 8 hours in a 24-hour period shall be considered sleep time.

(d) If sleep time is interrupted by a call to duty, the time spent on duty is considered hours of work.

Subpart E—Overtime Pay Provisions

Basic Provisions

§ 551.501 Overtime pay.

(a) Except as otherwise provided in this subpart, an agency shall compensate an employee who is not exempt under subpart B of this part for all hours of work in excess of 40 in a workweek at a rate equal to one and one-half times the employee's hourly regular rate of pay.

(b) An employee's "workweek" is a fixed and recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of a day. For employees subject to Part 610 of this chapter, the workweek shall be the same as the administrative workweek defined in § 610.102 of this chapter.

(c) The maximum limitation on an employee's aggregate rate of pay under § 550.105 of this chapter does not apply to overtime pay due the employee under this subpart.

Overtime Pay Computations

§ 551.511 Hourly regular rate of pay.

(a) An employee's "hourly regular rate" is computed by dividing the total remuneration paid to an employee in the workweek by the total number of hours of work in the workweek for which such compensation was paid.

(b) "Total remuneration" includes all remuneration for employment paid to, or on behalf of, an employee except:

(1) Payments as rewards for service the amount of which is not measured by

or dependent on hours of work, production, or efficiency (e.g., a cash award for a suggestion made by an employee and adopted by an agency);

least equal to the employee's straight time rate of pay for all nonovertime hours of work in the workweek.

§ 551.513 Payment of greater overtime

(b) The "tour of duty" of an employee engaged in these activities shall include all time the employee is on duty. Meal periods and sleep periods are included in the tour of duty except as otherwise

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

Subpart A—Purpose and Definitions

the territories and possessions of the United States, the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the

(1) Is issued by: (i) A court of competent jurisdiction, including Indian tribal courts, within any State, territory, or possession of the United States, or the District of Columbia;

or dependent on hours of work, production, or efficiency (e.g., a cash award for a suggestion made by an employee and adopted by an agency);

(2) Payments for periods during which no work is performed (e.g., leave, holidays, or excused absences), or reimbursements for travel expenses, or other similar expenses, incurred by an employee in furtherance of an agency's interest, which are not related to hours of work;

(3) Payments made in recognition of services performed during a given period, if both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the agency (e.g., incentive awards for outstandingly high-quality work);

(4) Contributions by an agency to a fund for retirement, insurance, or similar benefits;

(5) Extra compensation provided by a premium rate paid for hours of work performed by an employee in excess of eight in a day, or in excess of the normal workweek applicable to the employee;

(6) Extra compensation provided by a premium rate paid for hours of work performed by an employee on a Sunday or a holiday where such premium rate is at least one and one-half times the employee's rate of pay for work performed in nonovertime hours on other days; or

(7) Extra compensation provided by a premium rate paid for hours of work performed by an employee outside his or her regular working hours, where such premium rate is at least one and one-half times the employee's rate of pay for work performed in nonovertime hours.

§ 551.512 Overtime pay entitlement.

(a) An employee's overtime entitlement under this subpart includes:

(1) The straight time rate of pay times all overtime hours worked; plus

(2) One-half times the employee's hourly regular rate of pay times all overtime hours worked.

(b) An employee's "straight time rate of pay" is equal to the employee's rate of pay for his or her position (exclusive of any premiums or differentials) except for an employee who is authorized annual premium pay under §§ 550.141 or 550.151 of this chapter. For an employee who is authorized annual premium pay, straight time rate of pay is equal to basic pay plus annual premium pay divided by the hours for which the basic pay plus annual premium pay are intended.

(c) An employee has been paid in compliance with the overtime pay provisions of this subpart only if the employee has received pay at a rate at least equal to the employee's straight time rate of pay for all nonovertime hours of work in the workweek.

§ 551.513 Payment of greater overtime pay entitlement.

An employee entitled to overtime pay under this subpart and overtime pay under § 550.113 of this chapter, or under any other authority, shall be paid under whichever authority provides the greater overtime entitlement in the workweek. This overtime pay shall be paid in addition to all pay, other than overtime pay, to which the employee is entitled under title 5, United States Code, or any other authority.

Fractional Hours of Work

§551.521 Fractional hours of work.

(a) A quarter of an hour shall be the largest fraction of an hour used for crediting irregular, unscheduled overtime work under this subpart. Odd minutes or irregular, unscheduled overtime work shall be rounded up or rounded down to the nearest full fraction of an hour being used to account for overtime work.

(b) An employee shall be compensated for every minute of regularly scheduled overtime work.

Compensatory Time Off

§ 551.531 Compensatory time off.

(a) An agency may grant an employee compensatory time off in lieu of overtime pay under appropriate statutory authority, to be taken during the same workweek in which the overtime work was performed.

(b) An employee who earns an overtime pay entitlement under this subpart may be granted compensatory time off in a subsequent workweek provided:

(1) The employee earns overtime entitlement under § 550.113 of this chapter that is equal to or greater than the employee's overtime entitlement under this subpart; and

(2) The employee makes a written request to substitute compensatory time off for overtime payment.

Special Overtime Pay Provisions

§ 551.541 Employees engaged in fire protection activities or law enforcement activities.

(a) An employee engaged in fire protection activities or law enforcement activities shall be paid at a rate equal to one and one-half times the employee's hourly regular rate of pay for those hours in a tour of duty which exceed the overtime standard for a work period specified in section 7(k) of the Act.

(b) The "tour of duty" of an employee engaged in these activities shall include all time the employee is on duty. Meal periods and sleep periods are included in the tour of duty except as otherwise provided in § 551.432 of this part.

(c) Each agency shall establish the "work period" to be used for application of section 7(k) of the Act. The work period shall be at least seven days and not more than 28 days.

[FR Doc. 80-40493 Filed 12-29-80; 8:45 am]

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5 CFR Part 581

Processing Garnishment Orders for Child Support and/or Alimony

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This document revises and updates the entire appendix to the garnishment regulations which lists agents who are designated to accept legal process for garnishment for child support and/or alimony.

EFFECTIVE DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT: Murray Meeker, Office of the General Counsel, (202) 632-5524.

SUPPLEMENTARY INFORMATION: Appendix A was originally published in the Federal Register on July 22, 1980 (45 FR 48853-48864). On July 22, 1980, OPM published final garnishment regulations for the executive branch. The regulations were in compliance with Executive Order 12105 which expressly directed OPM to promulgate such regulations. Included with the regulations was an appendix which listed designated agents to accept service of process in garnishment actions.

On September 3, 1980, OPM issued FPM Bulletin 581-3 which requested additional agents from agencies which had not responded previously. FPM Bulletin 581-3 was directly responsible for the majority of the new designations published herein. The entire Appendix is reprinted below as a service to the reader.

OPM has determined that this is a nonsignificant regulation for the purposes of E.O. 12044.

Office of Personnel Management.

JoAnn B. Platter,

Assistant Issuance System Manager.

Accordingly, OPM is revising Part 581 to read as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

Subpart A—Purpose and Definitions

Sec.

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581.401 Aggregate disposable earnings.
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Subpart E—Implementation by Governmental Entities

581.501 Rules, regulations, and directives by governmental entities.
Appendix A—List of Agents Designated to Accept Legal Process.

Authority: 42 U.S.C. 659, 661-662; 15 U.S.C. 1673; E.O. 12105.

Subpart A—Purpose and Definitions

§ 581.101 Purpose.

Section 659 of title 42 of the United States Code, as amended, provides that moneys, the entitlement to which is based upon remuneration for employment, due from, or payable by, the United States or the District of Columbia to any individual, shall be subject, as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement of such individual's legal obligations to provide child support and/or make alimony payments. The purpose of this part is to implement the objectives of section 659 as it pertains to the executive branch of the Government of the United States.

§ 581.102 Definitions.

In this part: (a) "The executive branch of the Government of the United States" means all "governmental entities" as defined in this section, including therein the territories and possessions of the United States, the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the government of the District of Columbia.

(b) "Governmental entity" means each department, both civilian and military, agency, independent establishment, or instrumentality of the executive branch, including the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, any office, commission, bureau, or other administrative subdivision or creature of the executive branch, and the governments of the District of Columbia and of the territories and possessions of the United States.

(c) "Private person" means a person who does not have sovereign or other special immunity or privilege which causes that person not be be subject to legal process.

(d) "Child support" means periodic payments of funds for the support and maintenance of a child or children, and, subject to and in accordance with State or local law, includes, but is not limited to, payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children; the term also includes attorney's fees, interest, and court costs, if they are expressly made recoverable under a decree, order, or judgment issued in accordance with applicable State or local law by a court of competent jurisdiction.

(e) "Alimony" means periodic payments of funds for the support and maintenance of a spouse or former spouse, and, subject to and in accordance with State or local law, includes, but is not limited to, separate maintenance, alimony pendente lite, maintenance, and spousal support. Alimony also includes attorney's fees, interest, and court costs, if they are expressly made recoverable under a decree, order, or judgment issued in accordance with applicable State or local law by a court of competent jurisdiction. This term does not include any payment or transfer of property or its value by an individual to his/her spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses. (See instead 5 U.S.C. 8345(j).)

(f) "Legal process" means any writ, order, summons, or other similar process in the nature of garnishment, which may include an attachment, writ of execution, or court ordered wage assignment, which—

(1) Is issued by: (i) A court of competent jurisdiction, including Indian tribal courts, within any State, territory, or possession of the United States, or the District of Columbia;

(ii) A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor the process; or

(iii) An authorized official pursuant to an order of a court of competent jurisdiction or pursuant to State or local law; and

(2) Is directed to, and the purpose of which is to compel, a governmental entity, to make a payment from moneys otherwise payable to an individual, to another party to satisfy a legal obligation of the individual to provide child support and/or make alimony payments.

(g) "Legal obligation" means an obligation to pay alimony and/or child support which is enforceable under appropriate State or local law.

(h) "Obligor" means an individual having a legal obligation to pay alimony and/or child support.

(i) "Remuneration for employment" means compensation paid or payable for personal services, whether such compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes, but is not limited to, those items set forth in § 581.103.

(j) "Party" means the person or persons to whom alimony and/or child support payments should be made, or, in the case of an agency established by State or local law, the agency which has been assigned, by law or by agreement, the right to receive such payment or payments.

§ 581.103 Moneys which are subject to garnishment.

(a) For the personal service of a civilian employee obligor:

(1) Saved pay;
(2) Retained pay;
(3) Night differentials;
(4) Sunday and holiday premium pay;
(5) Overtime pay;
(6) Standby pay;
(7) Environmental differentials;
(8) Hazardous duty pay;
(9) Tropical differentials;
(10) Recruitment incentives;
(11) Equalization allowance;
(12) Any payment in consideration of accrued leave;
(13) Severance pay;
(14) Sick pay;
(15) Physicians comparability allowances;
(16) Special pay for physicians and dentists;

(17) Amounts paid pursuant to a personal services contract where the contractor recipient performed the services and received the payments in the capacity as a Federal employee;

(2) Amounts received under any Federal program for compensation for work injuries; and

(3) Benefits received under the Longshoremen's and Harbor Workers' Compensation Act

(ii) Travel and transportation expenses (including mileage allowances);

(iii) Relocation expenses;

(iv) Storage expenses;

(v) Post differentials;

(2) Federal employment taxes;

(3) Amounts mandatorily withheld for the U.S. Soldiers' and Airmen's Home; and

(4) Fines and forfeitures ordered by a court-martial or by a commanding

Subpart B—Service of Process

§ 581.201 Agent to receive process.

(a) Appendix A to this part lists agents designated to accept service of process

obligation(s) defined in § 581.102(d) and/or (e) must be submitted.

(e) In order for the party who caused the legal process to be served to receive the additional five (5) percent provided for in either § 581.402(a) or (b), it must

(17) Amounts paid pursuant to a personal services contract where the contractor recipient performed the services and received the payments in the capacity as a Federal employee;
(18) Merit pay;
(19) Incentive pay;
(20) Cash awards;
(21) Agency and Presidential incentive awards (except where such award is for making a suggestion); and
(22) Senior Executive Service rank and performance awards.

(b) For the personal service of an obligor in the uniformed services of the United States: (1) Basic pay (including service academy cadet and midshipmen pay);
(2) Special pay (including enlistment and re-enlistment bonuses);
(3) Lump sum reserve bonus;
(4) Continuation pay for physicians and dentists;
(5) Special pay for physicians, dentists, optometrists, and veterinarians;
(6) Incentive pay;
(7) Variable incentive pay;
(8) Inactive duty training pay;
(9) Administrative duty pay;
(10) Academy official pay (other than personal money allowances);
(11) Any payments made in consideration of accrued leave (basic pay portion only);
(12) Readjustment pay;
(13) Disability retired pay;
(14) Severance pay (including disability severance pay); and
(15) Cash awards (NOAA Corps).

(c) For obligors generally: (1) Periodic benefits, including a periodic benefit as defined in section 428(h)(3) of title 42 of the United States Code, title II of the Social Security Act, to include a benefit payable in a lump sum if it is commutation of, or a substitute for, periodic payments; or other payments to these individuals under the programs established by subchapter II of chapter 7 of title 42 of the United States Code (Social Security Act) and by chapter 9 of title 45 of the United States Code (Railroad Retirement Act) or any other system or fund established by the United States (as defined in section 662(a) of title 42 of the United States Code) which provides for the payment of:
(i) Pensions;
(ii) Retirement;
(iii) Retired/retainer pay;
(iv) Annuities;
(v) Refunds of retirement contributions where an application has been filed; and
(vi) Dependents' or survivors' benefits when payable to the obligor.
(2) Amounts received under any Federal program for compensation for work injuries; and
(3) Benefits received under the Longshoremen's and Harbor Workers' Compensation Act.
(4) Exceptions. Remuneration would not include: (i) Any payment as compensation for death, including any lump sum death benefit under any Federal program;
(ii) Any payment under any Federal program established to provide "black lung" benefits;
(iii) Any payment by the Veterans Administration as pension; or
(iv) Any payments by the Veterans Administration as compensation for a service-connected disability or death, except any compensation paid by the Veterans Administration to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former member has waived a portion of his/her retired pay in order to receive such compensation. In this case, only that part of the Veterans Administration payment which is in lieu of the waived retired/retainer pay, is subject to garnishment.

§ 581.104 Moneys which are not subject to garnishment.

(a) Payments made pursuant to the provisions of the Federal Tort Claims Act, as amended, sections 1346(b) and 2671 *et seq.*, of title 28 of the United States Code;
(b) Payments or portions of payments made by the Veterans Administration pursuant to sections 501–562 of title 38 of the United States Code, in which the entitlement of the payee is based on non-service-connected disability or death, age and need;
(c) Refunds and other payments made in connection with overpayments or erroneous payments of income tax and other taxes levied under Title 26 of the United States Code;
(d) Grants;
(e) Fellowships;
(f) Veterans' educational assistance payments under sections 1651 *et seq.*, of Title 38 of the United States Code;
(g) Contracts, except where the contractor recipient performed personal services and received payments in his/her capacity as an employee of a governmental entity; and
(h) Reimbursement for expenses incurred by an indivudal in connection with his/her employment, or allowances in lieu thereof, and other payments and allowances, including, but not limited to:
(1) In the case of civilian employees:
(i) Uniform allowances;
(ii) Travel and transportation expenses (including mileage allowances);
(iii) Relocation expenses;
(iv) Storage expenses;
(v) Post differentials;
(vi) Foreign areas allowances;
(vii) Education allowances for dependents;
(viii) Separate maintenance allowances;
(ix) Post allowances and supplementary post allowances;
(x) Home service transfer allowances;
(xi) Quarters allowances;
(xii) Cost-of-living allowances (COLA), when applicable to an employee in a foreign area or an employee stationed outside of the continental United States or in Alaska;
(xiii) Remote worksite allowance; and
(xiv) Per diem allowances.
(2) In the case of members of the uniformed services: (i) Position pay (Navy only);
(ii) Basic allowance for quarters;
(iii) Basic allowance for subsistence;
(iv) Station allowances;
(v) Armed Forces health professions scholarship stipends;
(vi) Public Health Service scholarship stipends;
(vii) Travel and transportation allowances;
(viii) Dislocation allowances;
(ix) Family separation allowances;
(x) ROTC subsistence allowance;
(xi) Allowance for recruiting expenses;
(xii) Education allowances for dependents;
(xiii) Clothing allowances for enlisted personnel; and
(xiv) Uniform allowances for General and Flag officers, and for the Surgeon General and other employees of the Public Health Service.
(3) In the case of volunteers serving under either the Domestic Volunteer Service Act or the Peace Corps Act, all allowances, including, but not limited to, readjustment allowances, stipends, and reimbursements for out-of-pocket expenses.

§ 581.105 Exclusions.

In determining the amount of any "moneys due from or payable by, the United States" to any individual, there shall be excluded amounts which:
(a) Are owed by the individual to the United States;
(b) Are required by law to be deducted from the remuneration or other payment involved, including, but not limited to:
(1) Amounts withheld from benefits payable under title II of the Social Security Act where the withholding is required by law;

(2) Federal employment taxes;
(3) Amounts mandatorily withheld for the U.S. Soldiers' and Airmen's Home; and
(4) Fines and forfeitures ordered by a court-martial or by a commanding officer;
(c) Are properly withheld for Federal, State, or local income tax purposes, if the withholding of the amounts is authorized or required by law and if amounts withheld are not greater than would be the case if the individual claimed all dependents to which he/she were entitled. The withholding of additional amounts pursuant to section 3402(i) of title 26 of the United States Code may be permitted only when the individual presents evidence of a tax obligation which supports the additional withholding;
(d) Are deducted as health insurance premiums, including, but not limited to, amounts deducted from civil service annuities for Medicare where such deductions are requested by the Health Care Financing Administration;
(e) Are deducted as normal retirement contributions, not including amounts deducted for supplementary coverage. Amounts withheld as Survivor Benefit Plan or Retired Serviceman's Family Protection Plan payments are considered to be normal retirement contributions. Amounts voluntarily contributed toward additional civil service annuity benefits are considered to be supplementary; or
(f) Are deducted as normal life insurance premiums from salary or other remuneration for employment, not including amounts deducted for supplementary coverage. Both Servicemen's Group Life Insurance and "regular" Federal Employees' Group Life Insurance premiums are considered to be normal life insurance premiums; "optional" Federal Employees' Group Life Insurance premiums and life insurance premiums paid for by allotment, such as National Service Insurance, are considered to be supplementary.

§ 581.106 Future payments.

Moneys paid by a governmental entity which may be due and payable to an individual at some future date, shall not be considered due the individual unless and until all of the conditions necessary for payment of the moneys to the individual have been met, including, but not limited to, the following conditions which might apply:
(a) Retirement;
(b) Resignation from a position in the Federal service; or
(c) Application for payment of moneys by the individual.

Subpart B—Service of Process

§ 581.201 Agent to receive process.

(a) Appendix A to this part lists agents designated to accept service of process.
(b) The head of each governmental entity shall submit to the Office of the General Counsel, Room 5H30, Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415, for publication in Appendix A to this part, the following information concerning the agent(s) designated to accept service of process:
(1) Title;
(2) Mailing address;
(3) Telephone number; and
(4) Geographical area or region, if applicable.
(c) United States Attorneys are not considered appropriate agents to accept service of process.

§ 581.202 Service of process.

(a) A party using this part shall serve on the designated agent of the governmental entity which has moneys due and payable to the obligor, legal process which names the governmental entity as the garnishee.
(b) Service of legal process brought for the enforcement of an obligation to provide child support and/or alimony shall be accomplished by certified or registered mail, return receipt requested, or by personal service, upon the appropriate agent designated in Appendix A to this part, or if no agent has been designated for the governmental entity having payment responsibility for the moneys involved, then upon the head of that governmental entity. The designated agent shall note the date and time of receipt on the legal process. The governmental entity shall make every reasonable effort to facilitate proper service of process on its designated agent(s). If legal process is not directed to any particular official within the entity, or if it is addressed to the wrong individual, the recipient shall, nonetheless, forward the legal process to the designated agent. However, valid service is not accomplished until the legal process is received in the office of the designated agent.
(c) Where it does not appear from the face of the process that it has been brought to enforce the legal obligation(s) defined in § 581.102(d) and/or (e), the process must be accompanied by a certified copy of the court order establishing such legal obligation(s).
(d) Where the State or local law provides for the issuance of legal process without a support order, such other documentation establishing that it was brought to enforce legal obligation(s) defined in § 581.102(d) and/or (e) must be submitted.
(e) In order for the party who caused the legal process to be served to receive the additional five (5) percent provided for in either § 581.402(a) or (b), it must appear on the face of the legal process that the process was brought for the enforcement of a support order for a period which is twelve (12) weeks in arrears, or a certified copy of the support order, or other evidence acceptable to the head of the governmental entity, establishing this fact, must be submitted.

§ 581.203 Information minimally required to accompany legal process.

(a) Sufficient identifying information must accompany the legal process in order to enable processing by the governmental entity named. Therefore, the following identifying information about the obligor, if known, is requested:
(1) Full name;
(2) Date of birth;
(3) Employment number, social security number, Veterans Administration claim number, or civil service retirement claim number;
(4) Component of the governmental entity for which the obligor works, and the official duty station or worksite; and
(5) Status of the obligor, e.g., employee, former employee, or annuitant.
(b) If the information submitted is not sufficient to identify the obligor, the legal process shall be returned directly to the court, or other authority, with an explanation of the deficiency. However, prior to returning the legal process, if there is sufficient time, and attempt should be made to inform the party who caused the legal process to be served, or the party's representative, that it will not be honored unless adequate identifying information is supplied.

Subpart C—Compliance With Process

§ 581.301 Suspension of payment.

Upon proper service of legal process, together with all supplementary documents and information as required by §§ 581.202 and 581.203, the head of the governmental entity, or his/her designee, shall identify the obligor to whom that governmental entity holds moneys due and payable as remuneration for employment and shall suspend, i.e., withhold payment of such moneys for the amount necessary to permit compliance with the legal process.

§ 581.302 Notification of obligor.

(a) As soon as possible, but not later than fifteen (15) calendar days after the date of valid service of legal process, the

agent designated to accept legal process shall send to the obligor, at his or her duty station or last known home address, written notice:

§ 581.304 Nonliability for disclosure.

(a) No Federal employee whose duties include responding to interrogatories pursuant to § 581.303(b), shall be subject

issued. To ensure uniformity in the executive branch, governmental entities which have statutory authority to represent themselves in court shall coordinate their representation with the

other authority from which it was issued, and advise the court, or other authority, that no moneys, the entitlement to which is based upon

except that an additional five (5) percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with

Department of Commerce

1. For employee obligors in the Office of the Secretary, Economic Development Administration, Domestic and International Business Administration, Bureau of Economic

V 45 DE 30 80 UMI

agent designated to accept legal process shall send to the obligor, at his or her duty station or last known home address, written notice:

(1) That such process has been served, including a copy of the legal process, and, if submitted, such other documents as may be required by § 581.202;

(2) Of the maximum garnishment limitations set forth in § 581.402, with a request that the obligor submit supporting affidavits or other documentation necessary for determining the applicable percentage limitation;

(3) That by submitting supporting affidavits or other necessary documentation, the obligor consents to the disclosure of such information to the garnishor; and

(4) Of the percentage that will be deducted if he/she fails to submit the documentation necessary to enable the governmental entity to respond to the legal process within the time limits set forth in § 581.303.

(b) The governmental entity may provide the obligor with the following additional information:

(1) Copies of any other documents submitted in support of the legal process;

(2) That the United States does not represent the interests of the obligor in the pending legal proceedings;

(3) That the obligor may wish to consult legal counsel regarding defenses to the legal process that he or she may wish to assert; and

(4) That obligors in the uniformed services may avail themselves of the protections provided in sections 520, 521, and 523 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S. Code App. 501 *et seq.*).

§ 581.303 Response to legal process or interrogatories.

(a) Whenever the designated agent is validly served with legal process, the agent shall respond within thirty (30) calendar days, or within such longer period as may be prescribed by applicable State or local law, after the date valid service is made. The agent shall also respond within this time period to interrogatories which accompany legal process.

(b) If State or local law authorizes the issuance of interrogatories prior to or after the issuance of legal process, the agent shall respond to the interrogatories within thirty (30) calendar days after receipt: *Provided*, That the document(s) required by § 581.202(c) have been presented.

§ 581.304 Nonliability for disclosure.

(a) No Federal employee whose duties include responding to interrogatories pursuant to § 581.303(b), shall be subject to any disciplinary action or civil or criminal liability or penalty for any disclosure of information made by him/her in connection with the carrying out of any duties pertaining directly or indirectly to answering the interrogatories.

(b) However, a governmental entity would not be precluded from taking disciplinary action against an employee who consistently or purposely failed to provide correct information requested by interrogatories.

§ 581.305 Honoring legal process.

(a) The governmental entity shall comply with legal process, except where the process cannot be complied with because:

(1) It does not, on its face, conform to the laws of the jurisdiction from which it was issued;

(2) The legal process would require the withholding of funds not deemed moneys due from, or payable by, the United States as remuneration for employment;

(3) The legal process is not brought to enforce legal obligation(s) for alimony and/or child support;

(4) It does not comply with the mandatory provisions of this part;

(5) An order of a court of competent jurisdiction enjoining or suspending the operation of the legal process has been served on the governmental entity; or

(6) Where notice is received that the obligor has appealed the underlying alimony and/or child support order, payment of moneys subject to the legal process shall be suspended until the governmental entity is ordered by a court, or other authority, to resume payments. However, no suspension action shall be taken where the applicable law of the jurisdiction wherein the appeal is filed requires compliance with the legal process while an appeal is pending.

(b) Under the circumstances set forth in § 581.305(a), or where the governmental entity is directed by the Justice Department not to comply with the legal process, the entity shall respond directly to the court, or other authority, setting forth its objections to compliance with the legal process. In addition, the governmental entity shall inform the garnishor, or the garnishor's representative, that the legal process will not be honored. Thereafter, if litigation is initiated or threatened, the entity shall immediately refer the matter to the United States Attorney for the district from which the legal process issued. To ensure uniformity in the executive branch, governmental entities which have statutory authority to represent themselves in court shall coordinate their representation with the United States Attorney.

(c) In the event that a governmental entity is served with more than one legal process for the same moneys due or payable to an individual, then the moneys shall be available to satisfy such processes on a first-come, first-served basis: *Provided*, That in no event will the total amount garnished for any pay or disbursement cycle exceed the applicable limitation set forth in § 581.402.

(d) Neither the United States, any disbursing officer, nor governmental entity shall be liable for any payment made from moneys due from, or payable by, the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this part. However, where a governmental entity negligently fails to comply with legal process, the United States shall be liable for the amount that the governmental entity would have paid, if the legal process had been properly honored.

(e) Governmental entities affected by legal process served under this part shall not be required to vary their normal pay or disbursement cycles to comply with the legal process. However, legal process, valid at the time of service, which is received too late to be honored during the disbursement cycle in which it is received, shall be honored to the extent that the legal process may be satisfied during the next disbursement cycle within the limits set forth in § 581.402. The fact that the legal process may have expired during this period would not relieve the governmental entity of its obligation to honor legal process which was valid at the time of service. If, in the next disbursement cycle, no further payment will be due from the entity to the obligor, the entity shall follow the procedures set forth in § 581.306.

§ 581.306 Lack of moneys due from, or payable by, a governmental entity served with legal process.

(a) When legal process is served on a governmental entity, and the individual identified in the legal process as the obligor is found not to be entitled to moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the governmental entity the entity shall follow the procedures set forth in the legal process for that contingency or, if no procedures are set forth therein, shall return the legal process to the court, or

other authority from which it was issued, and advise the court, or other authority, that no moneys, the entitlement to which is based upon remuneration for employment are due from, or payable by, the governmental entity to the named individual.

(b) Where it appears that remuneration for employment is only temporarily exhausted or otherwise unavailable, the court, or other authority, shall be fully advised as to why, and for how long, the remuneration will be unavailable, if that information is known by the governmental entity.

(c) In instances where an obligor employee separates from his/her employment with a governmental entity which is presently honoring a continuing legal process, the entity shall inform the party who caused the legal process to be served, or the party's representative, and the court, or other authority, that the payments are being discontinued. In cases where the obligor has retired, or separated and requested a refund of retirement contributions, or transferred, or is receiving benefits under the Federal Employee's Compensation Act, and where this information is known by the entity, the entity shall provide the party with the designated agent for the new disbursing governmental entity.

Subpart D—Consumer Credit Protection Act Restrictions

§ 581.401 Aggregate disposable earnings.

The "aggregate disposable earnings", when used in reference to the amounts due from, or payable by, the United States or the District of Columbia which are garnishable under the Consumer Credit Protection Act for child support and/or alimony, are the obligor's remuneration for employment less those amounts deducted in accordance with § 581.105.

§ 581.402 Maximum garnishment limitations.

Pursuant to section 1673(b)(2) (A) and (B) of title 15 of the United States Code (the Consumer Credit Protection Act, as amended), unless a lower maximum garnishment limitation is provided by applicable State or local law, the maximum part of the aggregate disposable earnings subject to garnishment to enforce any support order(s) shall not exceed:

(a) Fifty (50) percent of the obligor's aggregate disposable earnings for any workweek, where he/she asserts by affidavit, or by other acceptable evidence, that he/she is supporting a spouse and/or dependent child, other than the former spouse and/or child for whose support such order is issued, except that an additional five (5) percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with § 581.202(d), that such earnings are to enforce a support order for a period which is twelve (12) weeks prior to that workweek. An obligor shall be considered to be supporting a spouse and/or dependent child only if the obligor provides over half of the spouse's and/or dependent child's support.

(b) Sixty (60) percent of the obligor's aggregate disposable earnings for any workweek, where he/she fails to assert by affidavit or establishes by other acceptable evidence, that he/she is supporting a spouse and/or dependent child, other than a former spouse and/or child with respect to whose support such order is issued, except that an additional five (5) percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with § 581.202(d), that such earnings are to enforce a support order for a period which is twelve (12) weeks prior to that workweek.

(c) Where, under § 581.302(a)(2), an obligor submits evidence that he/she is supporting a second spouse and/or child, copies of the evidence shall be sent by the governmental entity to the garnishor, or the garnishor's representative, as well as to the court, or other authority, together with notification that the obligor's support claim will be honored. If the garnishor disagrees with the obligor's support claim, the garnishor should immediately refer the matter to the court, or other authority, for resolution.

Subpart E—Implementation by Governmental Entities

§ 581.501 Rules, regulations, and directives by governmental entities.

Appropriate officials of all governmental entities shall, to the extent necessary, issue implementing rules, regulations, and/or directives that are consistent with this part.

Appendix A—List of Agents Designated to Accept Legal Process

(This appendix lists the agents designated to accept legal process for the executive branch of the United States, including the United States Postal Service, the Postal Rate Commission, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Smithsonian Institution.)

I. Departments

Department of Agriculture

General Counsel, Department of Agriculture, 14th & Independence Ave., SW., Washington, D.C. 20250, (202) 447-3351.

Department of Commerce

1. For employee obligors in the Office of the Secretary, Economic Development Administration, Domestic and International Business Administration, Bureau of Economic Analysis, Office of Minority Business Enterprise, National Fire Prevention and Control Administration, United States Travel Service, Office of Regional Economic Coordination, Appalachian Regional Commission, and Regional Action Planning Commissions: Director, Finance Operations Division, Department of Commerce, Room 6830-A, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, (202) 377-2227.

2. Census Bureau: Chief, Finance Division, Bureau of the Census, Suite 111, Iverson Mall, Washington, D.C. 20233, (301) 763-5654.

3. National Oceanic and Atmospheric Administration: Chief, Finance Division, National Oceanic and Atmospheric Administration, Building AD-5, Room 300, 6010 Executive Boulevard, Rockville, MD 20852, (301) 443-8795.

4. Patent and Trademark Office: Director, Office of Finance, Patent and Trademark Office, Room 2-6D-07, Crystal Plaza, Washington, D.C. 20231, (703) 557-3761.

5. National Bureau of Standards, National Technical Information Service, and Office of Telecommunications: Chief, Financial Management Division, National Bureau of Standards, Room A-931, Administration Building, Washington, D.C. 20234, (301) 921-2507.

6. Maritime Administration: Chief, Division of Accounts, Office of Financial Management, Maritime Administration, Room 3090, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, (202) 377-4764.

7. In cases where the name of the operating unit in the Department of Commerce cannot be ascertained: Chief, Accounting Standards Division, Office of the Secretary, Room 6800, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, (202) 377-4407.

Department of Defense

Army

Commander, Army Finance and Accounting Center, Attention: FINCL-G, Indianapolis, IN 46249, (317) 542-4284.

Navy and Marine Corps

1. Navy Active-duty, Reserve, Fleet Reserve or retired Navy: Director Navy Family Allowance Activity, A. J. Celebrezze Federal Building, Room 967, Cleveland, Ohio 44199.

2. Marine Corps Active-duty, Reserve, Fleet Marine Corps Reserve, or retired, and civilian personnel, except non-appropriated fund employees: Commanding Officer, Marine Corps Finance Center (AA) Kansas City, Missouri 64197.

3. Civilian personnel of the Navy or Marine Corps, Director of Civilian Personnel Law, Office of the General Counsel, Navy Department, Washington, D.C. 23090.

4. Non-civil service civilian personnel of Navy Exchange or related non-appropriated fund instrumentalities administered by the Navy Resale System Office: Commanding Officer, Navy Resale System Office, Attention: Industrial Relations Officer, 29th Street & Third Avenue, Brooklyn, New York 11232.

5. Non-civil service civilian personnel of Navy clubs, messes, or recreation facilities (non-appropriated funds): Chief of Naval Personnel Director, Recreation Services Division (Pers/NMPC-72) Washington, D.C.

Street, Marietta, GA 30060 (404) 424-9304.

Accounting & Finance Officer (DCRB-FA), Defense Contract Administration Services Region, Boston, 666 Summer

3. Southeastern Power Administration: Director, Washington Financial Services Division (CR-46), Mail Station C-212, Department of Energy, Washington, D.C. 20545, (301) 353-5316.

4. Southwestern Power Administration:

Seventh Street, S.W., Room 2132, Washington, D.C. 20410, (202) 755-8906.

Department of the Interior

Secretarial Offices: Office of Territorial Affairs; Office of Water Research and

Department of Labor

1. Payments to employees of the Department of Labor: Director, Office of Accounting, Room N1309, Department of Labor, 200 Constitution Avenue, NW., Washington,

Illinois, Minnesota, and Wisconsin

District No. 11

Deputy Commissioner, Office of Workers' Compensation Programs, 1910 Federal Office Building, 911 Walnut Street

5. Non-civil service civilian personnel of Navy clubs, messes, or recreation facilities (non-appropriated funds): Chief of Naval Personnel Director, Recreation Services Division (Pers/NMPC-72) Washington, D.C. 20370.

Air Force

1. Active duty, reserve, Air National Guard (ANG), retired military members and civilian employees of appropriated fund activities: Commander, Air Force Accounting and Finance Center, Attention: JA, Denver, CO 80279, (303) 370-7524.

2. Non-appropriated fund civilian employees of base exchanges: Army and Air Force Exchange Service, Attention: GC-C, Dallas, TX 75222, (214) 330-2174.

3. Civilian employees of all other Air Force nonappropriated fund activities: AFMPC/JA, Attention: NAF Law Division, Randolph AFB, TX 78548, (512) 652-6691.

With respect to other civilian employees of Department of Defense agencies, or other employing activities within the Department of Defense or the Military Departments, the Director of the agency or activity shall assist by receiving and forwarding process to the designated agent in the appropriate disbursing office.

Defense Communications Agency

General Counsel and Deputy General Counsel, Office of the General Counsel (Code 105), Defense Communications Agency, Washington, D.C. 20305 (202) 692-2009.

Defense Contract Audit Agency

Director of Personnel, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22314 (202) 274-7325.

Defense Logistics Agency

Accounting & Finance Officer (DCSC-CA), Defense Construction Supply Center, Columbus, OH 43215, (614) 236-3161.

Accounting & Finance Officer (DESC-CA), Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444 (513) 296-6415.

Command Security Officer, Defense General Supply Center, Richmond, VA 23297 (804) 275-4751.

Accounting & Finance Officer (DPSC-ZA), Defense Personnel Support Center, 2800 South 20th Street, Philadelphia, PA 19101 (215) 952-2741.

Accounting & Finance Officer (DDMP-BD), Defense Depot Mechanicsburg, Mechanicsburg, PA 17055, (717) 790-2992.

Accounting & Finance Officer (DDMT-FD), Defense Depot Memphis, 2163 Airways Boulevard, Memphis, TN 38114 (901) 744-5541.

Accounting & Finance Officer (DDOU-RF), Defense Depot Ogden, Ogden, UT 84407, (801) 399-7358.

Accounting & Finance Officer (DDT-GD), Defense Depot Tracy, S. Chrisman Road, Tracy, CA 95378 (209) 835-9316.

Accounting & Finance Officer (DASC-F), Cameron Station, Alexandria, VA 22314 (202) 274-6108.

Accounting & Finance Officer (DCRA-FA), Defense Contract Administration Services Region, Atlanta, 805 Walker Street, Marietta, GA 30060 (404) 424-9304.

Accounting & Finance Officer (DCRB-FA), Defense Contract Administration Services Region, Boston, 666 Summer Street, Boston, MA 02210 (617) 542-8893.

Accounting & Finance Officer (DCRI-FA), Defense Contract Administration Services Region, Chicago, O'Hare International Airport, 6400 North Mannheim Road, P.O. Box 66475, Chicago, IL 60666 (312) 694-2245.

Accounting & Finance Officer (DCRO-FA), Defense Contract Administration Services Region, Cleveland, Anthony J. Celebrezze Federal Building, 1240 East Ninth Street, Cleveland, OH 44199 (216) 522-5490.

Accounting & Finance Center Officer (DCRT-FA), Defense Contract Administration Services Region, Dallas, 500 South Ervay Street, Dallas, TX 75201 (214) 670-1350.

Accounting & Finance Officer (DCRL-FA), Defense Contract Administration Services Region, Los Angeles, 11099 South La Cienega Boulevard, Los Angeles, CA 90045 (213) 643-2210.

Accounting & Finance Center (DCRN-FA), Defense Contract Administration Services Region, New York, 60 Hudson Street, New York, NY 10013 (212) 374-9468.

Accounting & Finance Officer (DCRS-FA), Defense Contract Administration Services Region, St. Louis, 1136 Washington Avenue, St. Louis, MO 63101 (314) 263-6510.

Defense Mapping Agency

1. For employee obligors in the Headquarters and Components listed below:
Headquarters, Defense Mapping Agency, Building 56, U.S. Naval Observatory, Washington, D.C. 20315.
Defense Mapping School, Fort Belvoir, Virginia 22060.
DMA Inter American Geodetic Survey, Fort Sam Houston, Texas 78234.
General Counsel, Defense Mapping Agency, Building 56, U.S. Naval Observatory, Washington, D.C. 20305 (202) 254-4431.

2. For employee obligors in the DMA Aerospace Center: Counsel, DMA Aerospace Center, St. Louis Air Force Station, St. Louis, Missouri 63118 (314) 263-4501.

3. For employee obligors in the DMA Hydrographic/Topographic Center: Counsel, DMA Hydrographic/Topographic Center, Washington, D.C. 20315 (202) 227-2268.

Defense Nuclear Agency

General Counsel, Defense Nuclear Agency, Washington, D.C. 20305 (703) 325-7681.

Department of Energy

Power Administrations

1. Alaska Power Administration: Administrator, Alaska Power Administration, Department of Energy, P.O. Box 50, Juneau, AK 99802, (907) 586-7405.

2. Bonneville Power Administration: Head, Disbursement Audit Section (SNJ), Bonneville Power Administration, Department of Energy, 1002 N.E. Holladay, Portland, OR, (503) 234-3361.

3. Southeastern Power Administration: Director, Washington Financial Services Division (CR-46), Mail Station C-212, Department of Energy, Washington, D.C. 20545, (301) 353-5316.

4. Southwestern Power Administration: Chief Counsel, Southwestern Power Administration, Department of Energy, P.O. Drawer 1619, Tulsa, OK 74101, (918) 581-7426.

5. Western Area Power Administration: General Counsel, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401, (303) 231-1529.

Field Offices

1. Albuquerque Operations Office and Richland Operations Office (includes Fast Flux Test Facility Project Office): Chief Counsel, Albuquerque Operations Office, Department of Energy, P.O Box 5400, Albuquerque, NM 87115, (505) 264-7265.

2. Chicago Operations Office and Oak Ridge Operations Office (includes Clinch River Breeder Reactor Project Office, and the Technical Information Center): Chief Counsel, Oak Ridge Operations Office, Department of Energy, P.O. Box E, Oak Ridge, TN 37830, (615) 693-7153.

3. Grand Junction Office, Nevada Operations Office, San Francisco Operations Office: Chief, Collection, Disbursement and Funds Branch, Nevada Operations Office, Department of Energy, P.O. Box 14100, Las Vegas, NV 89114, (702) 734-3166.

4. Idaho Operations Office: Chief, General and Fund Accounting Branch, Idaho Operations Office, Department of Energy, 550 Second Street, Idaho Falls, ID 43201, (208) 526-1598.

5. Savannah River Operations Office: Director, Finance Division, Savannah River Operations Office, Department of Energy, P.O. Box A, Aiken, SC 29801, (803) 725-2681.

6. Pittsburgh Naval Reactors Office, Schenectady Naval Reactors Office, Washington Headquarters, and all other organizations: Director, Washington Financial Services Division (CR-46), Mail Station C-212, Department of Energy, Washington, D.C. 20545, (301) 353-5316.

Department of Health and Human Services

1. For the garnishment of the remuneration of employees of the Department of Health and Human Services: Garnishment Agent, Office of General Counsel, Room 5362—North Building, 330 Independence Ave., S.W., Washington, D.C. 20201, (202) 472-3109.

2. For the garnishment of benefits under Title II of the Social Security Act, legal process may be served on the office manager at any Social Security District or Branch Office. The addresses and telephone numers of the Social Security District or Branch Offices may be found in the local telephone directory.

Department of Housing and Urban Development

Chief, Operations Branch, Personnel Systems and Payroll Division, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 2132, Washington, D.C. 20410, (202) 755-8906.

Department of the Interior

Secretarial Offices: Office of Territorial Affairs; Office of Water Research and Technology; Commission of Fine Arts; Delaware River Basin Commission; and Susquehanna River Basin Commission: Chief, Division of Fiscal Services, Department of the Interior, 18th & C Streets, NW., Room 5261, Washington, D.C. 20240, (202) 343-5207.

Bureau of Mines: Chief, Branch of Finance, Bureau of Mines, Department of the Interior, Denver Federal Center, Bldg. 20, Rm. D-2038, Denver, CO 80225, (303) 234-2354.

Fish and Wildlife Service: Chief, Division of Financial and Management Systems, Fish and Wildlife Service, Department of the Interior, 18th & C Streets, NW, Washington, D.C. 20240, (202) 343-8991.

Geological Survey: Chief, Branch of Financial Management, MS 270, Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, VA 22092, (804) 860-6181.

Heritage Conservation and Recreation Service: Chief, Division of Personnel and Management, Heritage Conservation and Recreation Service, Department of the Interior, Pension Building, 440 G Street, NW, Washington, D.C. 20243, (202) 343-4275.

National Park Service: Chief, Division of Finance, National Park Service, Department of the Interior, 1100 L Street, NW, Washington, D.C. 20005, (202) 523-5150.

Water and Power Resources Service (formerly Bureau of Reclamation): Chief, Division of Personnel and Management, Water and Power Resources Service, Department of the Interior, 18th & C Streets, NW, Washington, D.C. 20240, (202) 343-4628.

Bureau of Indian Affairs: Chief, Branch of Employee Data and Compensation, Bureau of Indian Affairs, Department of the Interior, 500 Gold Avenue, SW., Albuquerque, NM 87103, (505) 766-2936.

Office of Surface Mining Reclamation and Enforcement: Chief, Budget and Financial Management Division, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, 1951 Constitution Avenue, NW, Washington, D.C. 20245, (202) 343-4926.

Bureau of Land Management: Chief, Division of Finance, Bureau of Land Management, Department of the Interior, 18th & C Streets, NW, Room 3559, Washington, D.C. 20240, (202) 343-3607.

Department of Justice

1. For all employees, except employees of the Federal Bureau of Investigation: Assistant Director, Employee Data Service, Systems Operations Staff, Justice Management Division, Department of Justice, P.O. Box 2922, Washington, D.C. 20013, (202) 633-4442.

2. For employees of the Federal Bureau of Investigation: Personnel Officer, FBI Headquarters, Department of Justice, J. Edgar Hoover Building, Room 6052, Washington, D.C. 20535, (202) 324-4981.

Department of Labor

1. Payments to employees of the Department of Labor: Director, Office of Accounting Room N1309, Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523-8314.

2. Process relating to moneys due and payable by the United States under the Longshoremen's Act should be directed to the: Associate Director for Longshore and Harbor Workers' Compensation, Room C-3520, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523-8721.

3. Process relating to benefits payable under the Federal Employees' Compensation Act should be directed to the appropriate district office of the Office of Workers' Compensation Programs.

District No. 1

Deputy Commissioner, Office of Workers' Compensation Programs, Room 1600, John F. Kennedy Building, Government Center, Boston, MA 12203, (617) 223-6755.

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

District No. 2

Deputy Commissioner, Office of Workers' Compensation Programs, 1515 Broadway (at West 44th), New York, NY 10036, (212) 399-5501.

New Jersey, New York, Puerto Rico, and the Virgin Islands

District No. 3

Deputy Commissioner, Office of Workers' Compensation Programs, Gateway Building, Room 2150, 3535 Market Street, Philadelphia, PA 19104, (215) 596-1180.

Delaware, Pennsylvania, and West Virginia

District No. 6

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 400 West Bay Street, Box 35049, Jacksonville, FL 32202, (904) 791-3426.

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

District No. 7

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, (504) 589-6135.

Arkansas and Louisiana

District No. 9

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 1240 East 9th Street, Room 867, Cleveland, OH 44199, (216) 522-3803.

Indiana, Michigan, and Ohio

District No. 10

Deputy Commissioner, Office of Workers' Compensation Programs, 230 S. Dearborn Street, 8th Floor, Chicago, IL 60604, (312) 353-5650.

Illinois, Minnesota, and Wisconsin

District No. 11

Deputy Commissioner, Office of Workers' Compensation Programs, 1910 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106, (816) 374-2723.

District No. 12

Deputy Commissioner, Office of Workers' Compensation Programs, Drawer 3558, Federal Building, 1961 Stout Street, Denver, CO 80202, (303) 837-5402.

Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

District No. 13

Deputy Commissioner, Office of Workers' Compensation Programs, 450 Golden Gate Avenue, Box 36022, San Francisco, CA 94102, (415) 556-6183.

Arizona, California, and Nevada

District No. 14

Deputy Commissioner, Office of Workers' Compensation Programs, 4010 Federal Office Building, 909 First Avenue, Seattle, WA 98174, (206) 442-5521.

Alaska, Idaho, Oregon, and Washington

District No. 15

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 300 Ala Moana Boulevard, Room 5108, Box 50209, Honolulu, HI 96850, (808) 546-836.

All land and water areas west of the continents of North and South America to 60 degrees east longitude (excluding Iran)

District No. 16

Deputy Commissioner, Office of Workers' Compensation Programs, 555 Griffin Square Building, Room 100, Griffin and Young Streets, Dallas, TX 75201, (214) 767-4712.

Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

District No. 17

Deputy Commissioner, Office of Workers' Compensation Programs, 1371 Peachtree Street, NE. Room 331, Atlanta, GA 30309, (404) 881-7566.

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

District No. 25

Assistant Deputy Commissioner, Office of Workers' Compensation Programs, 666 11th Street, NW., Room 405, Washington, D.C. 20211, (202) 724-0713.

District of Columbia, Maryland, and Virginia

4. Process relating to claims arising out of the places set forth below and process seeking to attach Federal Employees' Compensation Act benefits payable to employees of the Department of Labor should be directed to the: Associate Director for Federal Employees' Compensation, Room S3229, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523-7552.

Canada, Mexico, Central and South America, and all land and water areas east of the continents of North and South America to 60 degrees east longitude (including Iran but excluding Puerto Rico and the Virgin Islands)

11. Southwest Region: Arkansas, Louisiana, Oklahoma, Texas, New Mexico, Regional Counsel, ASO-7, P.O. Box 1689, Forth Worth, Texas 76101 (213) 536-6270.

12. Mike Monroney Aeronautical Center: Center Counsel, AAC-7, P.O. Box 25082

9. Secret Service—Legal Counsel, Room 842, 1800 G Street, N.W., Washington, D.C. 20223, (202) 535-5771.

10. Bureau of Engraving & Printing—Legal Counsel, Room 109M, 14th & C Streets, N.W., Washington, D.C. 20228, (202) 447-

Civil Aeronautics Board

General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5233, or Director, Office of Human Resources, Civil Aeronautics Board, 1825

Counsel, 230 South Dearborn Street, Chicago, IL 60604, (312) 353-5392.

6. Region 6: Nebraska, Iowa, Kansas, Missouri: Regional Counsel: 1500 E. Bannister Road, Kansas City, MO 64131, (816) 926-7212.

Chief Counsel, National Space Technology Laboratories, NSTL Station, MS 39529, (601) 688-2164.

National Capital Planning Commission

Administrative Officer, National Capital

Canada, Mexico, Central and South America, and all land and water areas east of the continents of North and South America to 60 degrees east longitude (including Iran but excluding Puerto Rico and the Virgin Islands)

Department of State

Secretary, Attention: Executive Director, Office of the Legal Adviser (L–EX), 2201 C Street, NW., Washington, D.C. 20502, (202) 632–0460.

Agency for International Development

Chief, Employee Relations & Services Division, Office of Personnel Management, Agency for International Development, Washington, D.C. 20523 (202) 632–2954.

Department of Transportation

Office of the Secretary, General Counsel, 400 7th Street, SW., Washington, D.C. 20590, (202) 426–4702.

United States Coast Guard, Chief Counsel, 2100 2nd Street, SW., Washington, D.C. 20593, (202) 426–1616.

Federal Aviation Administration

1. Headquarters (Washington, D.C.) and overseas employees: Chief Counsel, 800 Independence Ave., S.W., Washington, D.C. 20591 (202) 426–3773.
2. Central Region: Nebraska, Kansas, Iowa, and Missouri. Regional Counsel, ACE–7, 601 E. 12th Street, Kansas City, Missouri 64106 (816) 374–5446.
3. Alaskan Region: Regional Counsel, AAL–7, 701 C Street, Box 14, Anchorage, Alaska 99513 (907) 271–5269.
4. Pacific-Asia Region: Regional Counsel, APC–7, P.O. Box 50109, Honolulu, Hawaii 46850 (808) 546–5821.
5. Eastern Region: New York, Pennsylvania, New Jersey, West Virginia, Maryland, Delaware and Virginia. Regional Counsel, AEA–7, Federal Building, JFK International Airport, Jamaica, New York 11430 (212) 995–2814.
6. Great Lakes Region: Minnesota, Wisconsin, Michigan, Illinois, Indiana and Ohio. Regional Counsel, AGL–7, 2300 East Devon, Des Plaines, Illinois 60018 (312) 694–4500, ext. 311.
7. Northeast Region: Maine, New Hampshire, Vermont, Massachusetts, Connecticut and Rhode Island. Regional Counsel, ANE–7, 12 New England Executive Park, Burlington, Massachusetts 01803 (617) 273–7384.
8. Northwest Region: Washington, Oregon and Idaho. Regional Counsel, ANW–7, FAA Building, 9010 E. Marginal Way South, King County International Airport (Boeing Field), Seattle, Washington 98108 (206) 767–2670.
9. Rocky Mountain Region: Montana, North Dakota, South Dakota, Wyoming, Utah, Colorado. Regional Counsel, ARM–7, 10455 East 25th Avenue, Aurora, Colorado 80010 (303) 837–4846.
10. Southern Region: Kentucky, North Carolina, Tennessee, Mississippi, Alabama, Georgia, South Carolina, Florida, Puerto Rico, Republic of Panama and Virgin Islands, Regional Counsel, ASO–7, P.O. Box 20636, Atlanta, Georgia 30320 (404) 763–7204.
11. Southwest Region: Arkansas, Louisiana, Oklahoma, Texas, New Mexico. Regional Counsel, ASO–7, P.O. Box 1689, Forth Worth, Texas 76101 (213) 536–6270.
12. Mike Monroney Aeronautical Center: Center Counsel, AAC–7, P.O. Box 25082, Oklahoma City, Oklahoma 73103 (405) 686–2296.
13. FAA Technical Center: Central Region, ACT–7, Atlantic City, New Jersey 08405 (604) 641–8200, ext. 3605.

Federal Highway Administration, Chief Counsel, 400 7th Street, SW., Washington, D.C. 20590, (202) 426–0740.

Federal Railroad Administration

1. For all employees, except those of the Alaska Railroad; Chief Counsel, 400 7th Street, S.W., Washington, D.C. 20590 (202) 426–0767.
2. For employees of the Alaska Railroad; Personnel Officer, Chief, Employment Section, The Alaska Railroad, RAR–14, Pouch 7–2111, Anchorage, Alaska 99510 (907) 265–2436.

National Highway Traffic Safety Administration, Chief Counsel, 400 7th Street, SW., Washington, D.C. 20590, (202) 426–9511.

Urban Mass Transportation Administration, Chief Counsel, 400 7th Street, SW., Washington, D.C. 20590, (202) 426–4063.

St. Lawrence Seaway Development Corporation, General Counsel, P.O. Box 520, Massena, New York, 13662, (315) 764–0271.

Research and Special Programs Administration, Chief Counsel, 400 7th Street, SW., Washington, D.C. 20590, (202) 755–4972.

Department of the Treasury

1. Office of the Secretary—General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220, (202) 566–2093.
2. Office of Revenue Sharing—Chief Counsel, Fifteenth Floor, 2401 E Street, NW., Washington, D.C. 20226, (202) 634–5182.
3. Office of Foreign Assets Control—Chief Counsel, Room 401, 1331 G Street, NW., Washington, D.C. 20220, (202) 376–0236.
4. U.S. Savings Bond Division—Assistant General Counsel (ALFO), Room 1410, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220, (202) 566–8464.
5. Bureau of Government Financial Operations—Assistant General Counsel (ALFO), Room 1410, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220, (202) 566–8464.
6. Internal Revenue Service—Director, General Legal Services Division, Office of Chief Counsel, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, (202) 566–3488.
7. Bureau of Alcohol, Tobacco & Firearms—Chief Counsel, Room 5526, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20226, (202) 566–7772.
8. Bureau of Public Debt—Chief Counsel, Room 309, Washington Building, Washington, D.C. 20226, (202) 376–0244.
9. Secret Service—Legal Counsel, Room 842, 1800 G Street, N.W., Washington, D.C. 20223, (202) 535–5771.
10. Bureau of Engraving & Printing—Legal Counsel, Room 109M, 14th & C Streets, N.W., Washington, D.C. 20228, (202) 447–1425.
11. Office of the Comptroller of the Currency—Director, Litigation, Office of Chief Counsel, Fifth Floor, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219, (202) 447–1893.
12. Bureau of the Mint—Legal Counsel, Room 1033, 501 13th Street, N.W., Washington, D.C. 20220, (202) 376–0565.
13. Federal Law Enforcement Training Center—Legal Counsel, Building 94, Glynco, GA 31520, (912) 267–2441.
14. Customs Service

(a) Headquarters (Washington, D.C.) and Overseas employees: Assistant Chief Counsel of Customs (Hearings and Claims), 1301 Constitution Ave., N.W., Washington, D.C. 20229, (202) 566–2482.

(b) Employees not located at headquarters or overseas, service of process may be made upon the Regional Counsel of Customs in whose region the obligor is employed, as listed below:

Region I—Regional Counsel of Customs, Suite 1739, 100 Summer Street, Boston, MA 02110, (617) 223–0075.
Region II—Regional Counsel of Customs, Room 732, 6 World Trade Center, New York, NY 10048, (212) 466–4562.
Region III—Regional Counsel of Customs, 40 S. Gay Street, Baltimore, MD 21202, (301) 962–4119.
Region IV—Regional Counsel of Customs, 99 S.E. 5th Street, Miami, FL 33131, (305) 350–4321.
Region V—Regional Counsel of Customs, Suite 2422, 1440 Canal Street, New Orleans, LA 70112, (504) 589–6981.
Region VI—Regional Counsel of Customs, Suite 1220, 500 Dallas Avenue, Houston, TX 77002, (713) 226–4887.
Region VII—Regional Counsel of Customs, 300 N. Los Angeles Street, Los Angeles, CA 90053, (213) 688–5936.
Region VIII—Regional Counsel of Customs, Suite 1000, 211 Main Street, San Francisco, CA 94105, (415) 556–3873.
Region IX—Regional Counsel of Customs, Suite 1417, 55 E. Monroe Street, Chicago, IL 60603, (312) 353–7860.

II. Agencies

(Unless otherwise indicated below, all agencies of the executive branch shall be subject to service of legal process brought for the enforcement of an individual's obligation to provide child support and/or make alimony payments where such service is sent by certified or registered mail, return receipt requested, or by personal service, upon the head of the agency.)

Central Intelligence Agency

Director of Personnel Policy, Planning, and Management, Central Intelligence Agency, Washington, D.C. 20505, or
Chief, Special Activities Staff, Office of Personnel Policy, Planning, and Management, Central Intelligence Agency, Washington, D.C. 20505, (703) 351–3452.

Civil Aeronautics Board

General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5233, or Director, Office of Human Resources, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–6140.

Commodity Futures Trading Commission

Director of Personnel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254–3275.

Consumer Product Safety Commission

Office of the General Counsel, Room 509, 1111 18th Street, NW., Washington, D.C. 20207, (202) 634–7770.

Farm Credit Administration

Director or Assistant Director, Administrative Division, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20578, (202) 755–4394.

Federal Election Commission

Assistant Staff Director, Administrative Division, Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463, (202) 523–4112.

Federal Home Loan Bank Board

Director, Administration Division, Office of the General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., 3rd Floor, Washington, D.C. 20552, (202) 377–6462.

Federal Labor Relations Authority

Director of Personnel Federal Labor Relations Authority, 1900 E Street, NW., Room 7469, Washington, D.C. 20424, (202) 632–6880.

Federal Maritime Commission

Director of Personnel/Deputy Director of Personnel, Federal Maritime Commission, 1100 L Street, NW., Room 11213, Washington, D.C. 20573, (202) 523–5773.

Federal Mediation and Conciliation Service

General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, D.C. 20427, (202) 653–5209.

General Services Administration

1. Region 1: Maine, Vermont, New Hampshire, Massachusetts, Connecticut: Regional Counsel, John W. McCormack Post Office & Courthouse, Boston, MA 02109, (617) 223–2621.
2. Region 2: New York, New Jersey, Puerto Rico, Virgin Islands: Regional Counsel, 26 Federal Plaza, New York, NY 10007, (212) 264–8306.
3. Regional 3: Pennsylvania, West Virginia, Maryland, Virginia less the greater metropolitan area of Washington, D.C.: Regional Counsel, Ninth and Market Streets, Philadelphia, PA 19107, (215) 597–1319.
4. Region 4: Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, Florida: Regional Counsel, R.B. Russell Federal Building and U.S. Courthouse, 75 Spring Street, S.W., Atlanta, GA 30303, (404) 881–3006.
5. Region 5: Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio: Regional Counsel, 230 South Dearborn Street, Chicago, IL 60604, (312) 353–5392.
6. Region 6: Nebraska, Iowa, Kansas, Missouri: Regional Counsel: 1500 E. Bannister Road, Kansas City, MO 64131, (816) 926–7212.
7. Region 7: New Mexico, Texas, Oklahoma, Arkansas, Louisiana: Regional Counsel, 819 Taylor Street, Fort Worth, TX 76102, (817) 334–2325.
8. Region 8: Montana, North Dakota, South Dakota, Wyoming, Utah, Colorado: Regional Counsel, Building 41—Denver Federal Center, Denver, CO 60225, (303) 234–3813.
9. Region 9: California, Nevada, Arizona, Hawaii, Guam: Regional Counsel, 525 Market Street, San Francisco, CA 94105, (415) 556–3963.
10. Region 10. Washington, Oregon, Idaho, Alaska: Regional Counsel, GSA Center, Auburn, Washington 98002, (206) 883–6500, ext. 225.
11. Greater metropolitan area of Washington, D.C. (parts of Maryland and Virginia): Regional Counsel, 7th & D Streets, NW., Washington, D.C. 20407, (202) 472–1809.

Government Printing Office

General Counsel (Stop GC), Government Printing Office, Washington, D.C. 20401, (202) 275–2758.

International Communication Agency

General Counsel, International Communication Agency, 1750 Pennsylvania Avenue, NW., Washington, D.C. 20547, (202) 724–9563.

Interstate Commerce Commission

Chief, Budget and Fiscal Office, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, D.C. 20423.

Merit Systems Protection Board

Director, Office of Administration, Merit Systems Protection Board, 1717 H Street, NW., Room 362, Washington, D.C. 20419, (202) 632–4956.

National Aeronautics and Space Administration

NASA Headquarters—Assistant General Counsel for Litigation, 400 Maryland Avenue, SW, Washington, D.C. 20546, (202) 755–3920.

NASA Field Installations—

Chief Counsel, Ames Research Center, Moffett Field, CA 94035, (415) 965–5103.
Chief Counsel, Dryden Flight Research Center, Edwards, CA 93520, (805) 258–8787.
Chief Counsel, Goddard Space Flight Center, Greenbelt, MD 20771, (301) 344–8887.
Chief Counsel, Johnson Space Center, Houston, TX 77058, (713) 483–3021.
Chief Counsel, Kennedy Space Center, Kennedy Space Center, FL 32899, (305) 867–2550.
Chief Counsel, Langley Research Center and Wallops Flight Center, Hampton, VA 23665, (804) 827–3397.
Chief Counsel, Lewis Research Center, Cleveland, OH 44135, (216) 433–6411.
Chief Counsel, Marshall Space Flight Center, AL 35812, (205) 453–2440.
Chief Counsel, National Space Technology Laboratories, NSTL Station, MS 39529, (601) 688–2164.

National Capital Planning Commission

Administrative Officer, National Capital Planning Commission, 1325 G Street, NW., Washington, D.C. 20576, (202) 724–0170.

National Credit Union Administration

Director, Division of Personnel, National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456, (202) 357–1156.

National Endowment for the Humanities

General Counsel, National Endowment for the Humanities, Washington, D.C. 20506, (202) 724–0367.

National Mediation Board

Administrative Officer, National Mediation Board, Washington, D.C. 20572, (202) 523–5950.

National Railroad Adjustment Board

Staff Director/Grievances, National Railroad Adjustment Board, 202 S. State Street, Chicago, IL 60604.

National Science Foundation

General Counsel, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550, (202) 634–4286.

Nuclear Regulatory Commission

Controller, Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 492–7521.

National Transportation Safety Board

Chief, Personnel and Training Division, National Transportation Safety Board, 800 Independence Ave., SW., Washington, D.C. 20594. ATTN: AD–30, (202) 472–6166.

Office of Personnel Management

1. Payments to OPM employees: General Counsel, Office of the General Counsel, Room 5H30, Office of Personnel Managment, Washington, D.C. 20415, (202) 632–5524.
2. Payments of retirement benefits under the Civil Service Retirement System: Associate Director for Compensation, Office of Personnel Management, Allotment Section, P.O. Box 17, Washington, D.C. 20044, (202) 632–5437.

Panama Canal Commission

Director, Office of Executive Administration, Panama Canal Commission, APO Miami, Florida 34011 (52–3519).

Pension Benefit Guaranty Corporation

General Counsel or Deputy General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, (202) 254–4864).

Railroad Retirement Board

General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4569.

Selective Service System

General Counsel, Selective Service System, 600 E Street, NW., Washington, D.C. 20435, (202) 724–0433.

Small Business Administration

(District Directors are designated to accept legal process for their respective districts as set forth in 13 CFR 101.3–1.)

District Director, Nashville District Office, 404 James Robertson Parkway, Nashville, TN 37219 (615) 251–5881.
District Director, Chicago District Office, 219 South Dearborn Street, Chicago, IL 60604
District Director, Helena District Office, 301 South Park Avenue, Helena, MT 59601, (406) 449–5381.
District Director, Salt Lake City District Office, 125 South State Street, Salt Lake

National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501 (601) 863–1972 ext. 225.
Fiscal Officer, Montgomery Regional Office,
Fiscal Officer, Loma Linda Medical Center, 11201 Benton Street, Loma Linda, CA 92357, (714) 825–7084 ext. 2550/2551.
Fiscal Officer, Long Beach Medical Center, 5901 East Seventh Street, Long Beach,
Fiscal Officer, San Francisco Medical Center, 4150 Clement Street, San Francisco, CA 94121 (415) 221–4810 ext. 315/316.
Fiscal Officer, Sepulveda Medical Center, 16111 Plummer Street, Sepulveda, CA

Small Business Administration

(District Directors are designated to accept legal process for their respective districts as set forth in 13 CFR 101.3–1.)

District Director, Boston District Office, 150 Causeway Street, Boston, MA 02114, (617) 223–2100.
District Director, Augusta District Office, 40 Western Avenue, Augusta, ME 04330, (207) 622–6171.
District Director, Concord District Office, 55 Pleasant Street, Concord, NH 03301, (603) 224–4041.
District Director, Hartford District Office, One Financial Plaza, Hartford CT (203) 244–3600.
District Director, Montpelier District Office, 87 State Street, Montpelier, VT 05602 (802) 229–0538.
District Director, Providence District Office, 57 Eddy Street, Providence, RI 02903 (401) 528–4580.
District Director, New York District Office, 26 Federal Plaza, New York, NY 10007 (212) 264–4355.
District Director, Hato Rey District Office, Chardon & Bolivia Streets, Hato Rey, PR 00918 (809) 753–4572.
District Director, Newark District Office, 970 Broad Street, Newark, NJ 07102 (201) 645–2434.
District Director, Syracuse District Office, 100 South Clinton Street, Syracuse, NY 13260 (315) 423–5383.
District Director, Philadelphia District Office, 231 St. Asaphs Road, Bala Cynwyd, PA 19004 (215) 597–3311.
District Director, Baltimore District Office, 8600 LaSalle Road, Towson, MD 21204 (301) 962–4392.
District Director, Clarksburg District Office, 109 North 3rd Street, Clarksburg, WV 26301 (304) 623–5631.
District Director, Pittsburgh District Office, 1000 Liberty Avenue, Pittsburgh, PA 15222 (412) 644–2780.
District Director, Richmond District Office, 400 North 8th Street, Richmond, VA 23240 (804) 782–2617.
District Director, Washington District Office, 1030 15th Street, NW., Washington, D.C. 20417 (202) 655–4000.
District Director, Atlanta District Office, 1720 Peachtree Street, NW., Atlanta, GA 30309 (404) 881–4325.
District Director, Birmingham District Office, 908 South 20th Street, Birmingham, AL 35205 (205) 254–1344.
District Director, Charlotte District Office, 230 S. Tryon Street, Charlotte, NC 28202 (704) 371–6111.
District Director, Columbia District Office, 1835 Assembly Street, Columbia, SC 29201 (803) 765–5376.
District Director, Jackson District Office, 100 West Capitol Street, Jackson, MS 39201 (601) 969–4371.
District Director, Jacksonville District Office, 400 West Bay Street, Jacksonville, FL 32202 (904) 791–3782.
District Director, Louisville District Office, 600 Federal Place, Louisville, KY 40201 (502) 582–5971.
District Director, Miami District Office, 2222 Ponce De Leon Blvd., Coral Gables, FL 33134 (305) 350–5521.
District Director, Nashville District Office, 404 James Robertson Parkway, Nashville, TN 37219 (615) 251–5881.
District Director, Chicago District Office, 219 South Dearborn Street, Chicago, IL 60604 (312) 353–4528.
District Director, Cleveland District Office, 1240 East 9th Street, Cleveland, OH 44199 (216) 522–4180.
District Director, Columbus District Office, 85 Marconi Boulevard, Columbus, OH 43215 (614) 469–6860.
District Director, Detroit District, 477 Michigan Avenue, Detroit, MI 46226 (313) 226–6075.
District Director, Indianapolis District Office, 575 N. Pennsylvania Street, Indianapolis, IN 46204 (317) 269–7272.
District Director, Madison District Office, 212 E. Washington Avenue, Madison, WI 53703 (608) 264–5261.
District Director, Minneapolis District Office, 12 South 6th Street, Minneapolis, MN 55402 (612) 725–2362.
District Director, Dallas District Office, 1100 Commerce Street, Dallas, TX 75242 (214) 767–0605.
District Director, Albuquerque District Office, 5000 Marble Avenue, NE, Albuquerque, NM 87110 (505) 766–3430.
District Director, Houston District Office, 500 Dallas Street, Houston, TX 77002 (713) 226–4341.
District Director, Little Rock District Office, 611 Gaines Street, Little Rock, AR 72201 (501) 378–5871.
District Director, Lubbock District Office, 1205 Texas Avenue, Lubbock, TX 79401 (806) 762–7466.
District Director, Lower Rio Grande Valley District Office, 222 East Van Buren Street, Harlingen, TX 78550 (512) 423–4534.
District Director, New Orleans District Office, 1001 Howard Avenue, New Orleans, LA 70113 (504) 589–6685.
District Director, Oklahoma City District Office, 200 N.W. 5th Street, Oklahoma City, OK 73102 (405) 231–4301.
District Director, San Antonio District Office, 727 East Durango Street, San Antonio, TX 78206 (512) 229–6250.
District Director, Kansas City District Office, 1150 Grande Avenue, Kansas City, MO 64106 (816) 374–3416.
District Director, Des Moines District Office, 210 Walnut Street, Des Moines, IA 50309 (515) 284–4422.
District Director, Omaha District Office, 19th & Farnum Street, Omaha, NE 68102 (404) 221–4691.
District Director, St. Louis District Office, One Mercantile Center, St. Louis, MO 63101, (314) 425–4191.
District Director, Wichita District Office, 110 East Waterman Street, Wichita, KS 67202, (316) 267–6571.
District Director, Denver District Office, 721 19th Street, Denver, CO 80202, (303) 837–2607.
District Director, Casper District Office, 100 East B Street, Casper, WY 82602, (307) 265–5266.
District Director, Fargo District Office, 657 2nd Avenue, North, Fargo, ND 58108, (701) 237–5771.
District Director, Helena District Office, 301 South Park Avenue, Helena, MT 59601, (406) 449–5381.
District Director, Salt Lake City District Office, 125 South State Street, Salt Lake City, UT 84138, (314) 425–5800.
District Director, Sioux Falls District Office, 101 South Main Avenue, Sioux Falls, ND 57102, (605) 336–2980.
District Director, San Francisco District Office, 211 Main Street, San Francisco, CA 94105, (415) 556–7490.
District Director, Honolulu District Office, 300 Ala Moana, Honolulu, HI 96850, (808) 546–8950.
District Director, Los Angeles District Office, 350 S. Figueroa Street, Los Angeles, CA 90071, (213) 688–2956.
District Director, Phoenix District Office, 3030 North Central Avenue, Phoenix, AZ 85012, (602) 261–3611.
District Director, San Diego District Office, 880 Front Street, San Diego, CA 92188, (714) 293–5440.
District Director, Seattle District Office, 915 Second Avenue, Seattle, WA 98174, (206) 442–5534.
District Director, Las Vegas District Office, 301 E. Stewart, Las Vegas, NV 89101, (702) 385–6611.
District Director, Anchorage District Office, 1016 West 6th Avenue, Anchorage, AK 99501, (907) 271–4022.
District Director, Boise District Office, 1005 Main Street, Boise, ID 83701, (208) 384–1096.
District Director, Portland District Office, 1220 S.W. Third Avenue, Portland, OR 97204, (503) 221–2682.
District Director, Spokane District Office, West 920 Riverside Avenue, Spokane, WA 99210, (509) 456–5310.

Tennessee Valley Authority

1. Payments to TVA employees: Chairman, Board of Directors, Tennessee Valley Authority, 400 Commerce Avenue, Knoxville, TN 37902, (615) 632–2101.
2. Payments of retirement benefits under the TVA Retirement System: Chairman, Board of Directors, TVA Retirement System, 400 Commerce Avenue, Knoxville, TN 37702, (615) 632–2904.

Veterans Administration

The fiscal officer at each VA facility shall be the designated agent for VA employee obligors at that facility. When a facility at which an individual is employed does not have a fiscal officer, the address and telephone number listed is for the fiscal officer servicing such a facility.

In those limited cases where a portion of VA service-connected benefits may be subject to garnishment, service of process, unless otherwise indicated below, should be made at the regional office nearest the veteran obligor's permanent residence.

Alabama

Fiscal Officer, Birmingham Medical Center, 700 South 19th Street, Birmingham, AL 35233, (205) 933–8101.
Mobile Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, 215 Perry Hill Road, Montgomery, AL 36109 (205) 272–4670 ext. 204.

National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501 (601) 863–1972 ext. 225.
Fiscal Officer, Montgomery Regional Office, 474 South Court Street, Montgomery, AL 36104 (205) 832–7172.
Fiscal Officer, Montgomery Medical Center, 215 Perry Hill Road, Montgomery, AL 36109 (205) 272–4670 ext. 204.
Fiscal Officer, Tuscaloosa Medical Center, Tuscaloosa, AL 35401 (205) 553–3760.
Fiscal Officer, Tuskegee Medical Center, Tuskegee, AL 36083 (205) 727–0550 ext. 0622.

Alaska

Fiscal Officer, Anchorage Regional Office—Outpatient Clinic, Old Federal Bldg. & Post Office, 605 West 4th Avenue, Anchorage, AK 99501 (907) 271–4562.
Juneau VA Office—Send to: Fiscal Officer, VA Regional Office, Old Federal Bldg. & Post Office, 605 West 4th Avenue, Anchorage, AK 99501 (907) 271–4562.
Sitka National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 4435 Beacon Avenue, South, Seattle, WA 98108 (206) 762–1016 ext. 286.

Arizona

Fiscal Officer, Phoenix Regional Office, 3225 North Central Avenue, Phoenix, AZ 85102 (602) 241–2735.
Fiscal Officer, Phoenix Medical Center, Seventh St. & Indian School Rd., Phoenix, AZ 85012 (602) 277–5551.
Fiscal Officer, Prescott Medical Center, Prescott, AZ 86313 (602) 445–4830 ext. 264.
Prescott National Cemetery Area Office—Send to: Fiscal Officer, VA Center, Prescott, AZ 86313 (602) 445–4860 ext. 264.
Fiscal Officer, Tucson Medical Center, Tucson, AZ 85723 (602) 792–1450 ext. 710.

Arkansas

Fayetteville National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701 (501) 443–4301.
Fiscal Officer, Fayetteville Medical Center, Fayetteville, AR 72701 (501) 443–4301.
Fort Smith National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701 (501) 443–4301.
Fiscal Officer, Little Rock Regional Office, 1200 W. 3d Street, Little Rock, AR 72201 (501) 378–5142.
Fiscal Officer, Little Rock Medical Center, 300 Roosevelt Road, Little Rock, AR 72206 (501) 372–8361 ext. 781.

California

Bell Supply Depot—Send to: Fiscal Officer, VA Supply Depot, P.O. Box 27, Hines, IL 60141, (312) 681–6800.
Fiscal Officer, Fresno Medical Center, 2615 East Clinton Avenue, Fresno, CA 94703, (209) 225–6100.
Fiscal Officer, Livermore Medical Center, Livermore, CA 94550, (415) 447–2560 ext. 217.
Fiscal Officer, Loma Linda Medical Center, 11201 Benton Street, Loma Linda, CA 92357, (714) 825–7084 ext. 2550/2551.
Fiscal Officer, Long Beach Medical Center, 5901 East Seventh Street, Long Beach, CA 90822, (213) 498–1313 ext. 2101.
Fiscal Officer, Los Angeles Regional Office, Federal Bldg., 11000 Wilshire Blvd., Los Angeles, CA 90024, (213) 824–7565; Jurisdiction over the following counties in California: Inyo, Kern, Los Angeles, Orange, San Bernardino, San Luis Obispo, Santa Barbara and Ventura.
Los Angeles Data Processing Center—Send to: Fiscal Officer, VA Regional Office, Federal Bldg., 11000 Wilshire Blvd., Los Angeles, CA 90024, (213) 824–7565.
Fiscal Officer, Los Angeles Medical Center, Los Angeles (Brentwood), CA 90073, (213) 478–3478.
Fiscal Officer, Los Angeles Medical Center, Los Angeles (Wadsworth), CA 90073, (213) 478–3478.
Fiscal Officer, Los Angeles Outpatient Clinic, 425 South Hill Street, Los Angeles, CA 90013, (213) 688–3870.
Los Angeles Field Office of Audit—Send to: Fiscal Officer, VA Medical Center, Los Angeles (Wadsworth), CA 90073, (213) 478–3478.
Los Angeles National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Los Angeles (Brentwood), CA 90073, (213) 478–3478.
Fiscal Officer, Martinez Medical Center, 150 Muir Rd., Martinez, CA 94553, (415) 228–6800 ext. 235.
Fiscal Officer, Palo Alto Medical Center, 3801 Miranda Avenue, Palo Alto, CA 94304, (415) 493–5000 ext. 5643.
Riverside National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Los Angeles (Wadsworth), CA 90073, (213) 478–3478.
San Bruno National Cemetery Area Officer—Send to: Fiscal Officer, VA Medical Center, 4150 Clement Street, San Bruno, CA 94121, (415) 221–4810 ext. 315/316.
Fiscal Officer, San Diego Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161 (714) 453–7500 ext. 3351.
San Diego National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161, (714) 453–7500 Ext. 3351.
San Diego Outpatient Clinic—Send to: VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161, (714) 453–7500 ext. 3351.
Fiscal Officer, San Diego Regional Office, 2022 Camino Del Rio North, San Diego, CA 92108, (714) 293–5703; Jurisdiction over the following counties in California: Imperial, Riverside and San Diego.
San Francisco National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 4150 Clement Street, San Francisco, CA 94121 (415) 221–4810 ext. 315/316.
Fiscal Officer, San Francisco Regional Office, 211 Main Street, San Francisco, CA 94105 (415) 556–0483; Jurisdiction over all counties in California except Inyo, Kern, Los Angeles, Orange, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Imperial, Riverside, San Diego, Alpine, Lassen, Modoc and Mono.
Fiscal Officer, San Francisco Medical Center, 4150 Clement Street, San Francisco, CA 94121 (415) 221–4810 ext. 315/316.
Fiscal Officer, Sepulveda Medical Center, 16111 Plummer Street, Sepulveda, CA 91343 (213) 891–2377.

Colorado

Fiscal Officer, Denver Regional Office, Denver Federal Center, Bldg. 20, Denver CO 80225 (303) 234–3920.
Fiscal Officer, Denver Medical Center, 1055 Clermont Street, Denver, CO 80220 (303) 399–8020.
Denver National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220 (303) 399–8020.
Fort Logan National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1055 Clermont Street, Denver, CO 80220 (303) 399–8020.
Fort Lyon National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Fort Lyon, CO 81038 (303) 456–1260.
Fiscal Officer, Fort Lyon Medical Center, Fort Lyon, CO 81038 (303) 456–1260.
Fiscal Officer, Grand Junction Medical Center, Grand Junction, CO 81501 (303) 242–0731.

Connecticut

Fiscal Officer, Hartford Regional Office, 450 Main Street, Hartford, CT 06103 (203) 244–3217.
Fiscal Officer, Newington Medical Center, 555 Willard Avenue, Newington, CT 06111 (203) 666–6951 ext 370.
Fiscal Officer, West Haven Medical Center, West Spring Street West Haven, CT 06516 (203) 932–5711 ext. 271.

Delaware

Fiscal Officer, Wilmington Medical and Regional Office Center, 1601 Kirkwood Highway, Wilmington, DE 19805 (302) 994–2511.

District of Columbia

Finance Division Chief (047B2), Washington Central Office, Room C–50, 810 Vermont Avenue, NW, Washington, D.C. 20420 (202) 389–3901.
Washington Data Processing Center—Send to: Finance Division Chief (047B2), VA Central Office, Room C–50, 810 Vermont Avenue, NW, Washington, D.C. 20420 (202) 389–3901.
Washington Veterans Canteen Service Field Office—Send to: Finance Division Chief (047B2), VA Central Office, Room C–50, 810 Vermont Avenue, NW, Washington, D.C. 20420 (202) 389–3901.
Fiscal Office, Washington Regional Officer, 941 North Capitol Street, NE, Washington, D.C. 20421 (202) 275–1349; Jurisdiction over all foreign countries or overseas areas except Mexico, American Samoa, Guam, Midway, Wake, Trust Territory of the Pacific Islands, Virgin Islands and Philippines. Also, jurisdiction over Prince Georges and Montgomery Counties in Maryland; Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church in Virginia.

Fiscal Officer, Washington Medical Center, 50 Irving Street, NW, Washington, D.C. 20422 (202) 389–7593.

Florida

Fiscal Officer, Bay Pines Medical Center,
Marietta National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033 (404) 321–6111.

Hawaii

Indiana

Evansville Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, Marion, IL 62959 (618) 997–5311.
Fiscal Officer, Fort Wayne Medical Center, 1600 Randalia Drive, Fort Wayne, IN

Kentucky

Danville National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507 (606) 233–4511.
Lebanon National Cemetery Area Office—
Fiscal Officer, Togus Medical & Regional Office Center, Togus, ME 04330 (207) 623–8411.
Togus National Cemetery Area Office—Send to: Fiscal Officer, VA Center, Togus, ME 04330 (207) 623–8411.

150 South Huntington Avenue, Boston, MA 02130 (617) 232–9500 ext. 427/420.
New Bedford Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, Providence, RI 02908 (401) 273–7100.

Fiscal Officer, Washington Medical Center, 50 Irving Street, NW, Washington, D.C. 20422 (202) 389–7593.

Florida

Fiscal Officer, Bay Pines Medical Center, National Cemetery Area Office, Bay Pines, FL 33504 (813) 391–9644 ext. 584.

Fiscal Officer, Gainesville Medical Center, Archer Road, Gainesville, FL 32602 (904) 378–1611 ext. 6685.

Jacksonville Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, Archer Road, Gainesville, FL 32602 (904) 376–1611 ext. 6685.

Jacksonville VA Office—Send to: Fiscal Officer, VA Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731 (813) 893–3227.

Fiscal Officer, Lake City Medical Center, Lake City, FL 32055 (904) 752–1400.

Miami VA Office—Send to: Fiscal Officer, VA Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731 (813) 893–3227.

Fiscal Officer, Miami Medical Center, 1201 Northwest 16th St., Miami, FL 33125 (305) 324–4455.

Orlando Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, 1300 North 30th Street, Tampa, FL 33612 (813) 971–4500.

Riviera Beach Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, 1201 Northwest 16th St., Miami, FL 33125 (305) 324–4455.

Pensacola National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Gulfport, MS 39501 (601) 863–1972 ext. 225.

St. Augustine National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Archer Road, Gainesville, FL 32602 (904) 376–1611 ext. 6685.

Fiscal Officer, St. Petersburg Regional Office, 144 First Avenue, South, St. Petersburg, FL 33731 (813) 893–3227.

Fiscal Officer, Tampa Medical Center, 13000 North 30th Street, Tampa, FL 33612 (813) 971–4500.

Georgia

Fiscal Officer, Atlanta Regional Office, 730 Peachtree Street, NE, Atlanta, GA 30308 (404) 881–3381.

Atlanta Veterans Canteen Service Field Office—Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033 (404) 321–6111.

Atlanta National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033 (404) 321–6111.

Atlanta Field Office of Audit—Send to: Fiscal Officer, VA Regional Office, 730 Peachtree Street, NE, Atlanta, GA 30308 (404) 881–3381.

Fiscal Officer, Augusta Medical Center, Augusta, GA 30904 (404) 733–4471 ext. 675–676.

Fiscal Officer, Decatur Medical Center, 1670 Clairmont Road, Decatur, GA 30033 (404) 321–6111.

Fiscal Officer, Dublin Medical Center, Dublin, GA 31021 (912) 272–1210 ext. 373.

Marietta National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1670 Clairmont Road, Decatur, GA 30033 (404) 321–6111.

Hawaii

Fiscal Officer, Honolulu Regional Office, P.O. Box 50188, Honolulu, HI 96850 (808) 546–2109; Jurisdiction over Islands of American Samoa, Guam, Wake, Midway and Trust Territory of the Pacific Islands.

Honolulu National Cemetery Area Office—Send to: Fiscal Officer, VA Regional Office, P.O. Box 50188, Honolulu, HI 96850 (808) 546–2109.

Idaho

Fiscal Officer, Boise Medical Center, Fifth and Fort Street, Boise, ID 83702 (208) 336–5100 ext. 315.

Fiscal Officer, Boise Regional Office, Federal Bldg. & U.S. Courthouse, 550 West Fort St., Box 044, Boise ID 83724 (208) 334–1009.

Illinois

Alton National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125 (314) 894–4631.

AMF O'Hare Field Office of Audit—Send to: Fiscal Officer, VA Medical Center, Hines, IL 60141 (312) 343–7200 ext. 2481.

Fiscal Officer, Chicago Regional Office, 536 South Clark Street, Chicago, IL 60680 (312) 353–4025.

Fiscal Officer, Chicago Medical Center, 333 East Huron St. (Lakeside), Chicago, IL 60611 (312) 943–6600.

Fiscal Officer, Chicago Medical Center, 820 South Damen Avenue (West Side), Chicago, IL 60680 (312) 666–6500 ext. 281.

Fiscal Officer, Danville Medical Center, Danville, IL 61832 (217) 442–8000.

Danville National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Danville, IL 61832 (217) 442–8000.

Fiscal Officer, Hines Medical Center, Hines, IL 60141 (312) 343–7200 ext. 2481.

Hines Marketing Center—Send to: Fiscal Officer, VA Supply Depot, P.O. Box 27, Hines, IL 60141 (312) 681–6800.

Fiscal Officer, Hines Supply Depot, P.O. Box 27, Hines, IL 60141 (312) 681–6800.

Fiscal Officer, Hines Data Processing Center, P.O. Box 66303, AMF O'Hare, Hines, IL 60666 (312) 681–6650.

Fiscal Officer, Marion Medical Center, Marion, IL 62959 (618) 997–5311.

Mound City National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Marion, IL 62959 (618) 997–5311.

Fiscal Officer, North Chicago Medical Center, North Chicago, IL 60064 (312) 689–1900.

Quincy National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240 (319) 338–0581 ext. 304.

Rock Island National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240 (319) 338–0581 ext. 304.

Springfield National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Danville, IL 61832 (217) 442–8000.

Indiana

Evansville Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, Marion, IL 62959 (618) 997–5311.

Fiscal Officer, Fort Wayne Medical Center, 1600 Randalia Drive, Fort Wayne, IN 46805 (219) 743–5431.

Fiscal Officer, Indianapolis Regional Office, 575 North Pennsylvania St., Indianapolis, IN 46204 (317) 269–7840.

Fiscal Officer, Indianapolis Medical Center, 1481 West 10th Street, Indianapolis, IN 46202 (317) 635–7401 ext. 2293.

Indianapolis National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1481 West 10th Street, Indianapolis, IN 46202 (317) 635–7401 ext. 2293.

Fiscal Officer, Marion Medical Center, Marion, IN 46952 (317) 674–3321 ext. 211.

Marion National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Marion, IN 46952 (317) 674–3321 ext. 211.

New Albany National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 800 Zorn Avenue, Louisville, KY 40202 (502) 895–3401.

Iowa

Fiscal Officer, Des Moines Regional Office, 210 Walnut Street, Des Moines, IA 50309 (515) 284–4220.

Fiscal Officer, Des Moines Medical Center, 30th & Euclid Avenue, Des Moines, IA 50310 (515) 255–2173.

Fiscal Officer, Iowa City Medical Center, Iowa City, IA 52240 (319) 338–0581 ext. 304.

Keokuk National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Iowa City, IA 52240 (319) 338–0581 ext. 304.

Fiscal Officer, Knoxville Medical Center, Knoxville, KY 50138 (515) 842–3101 ext. 241.

Kansas

Ft. Leavenworth National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048 (913) 682–2000 ext. 214.

Ft. Scott National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048 (913) 682–2000 ext. 214.

Leavenworth National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Leavenworth, KS 66048 (913) 682–2000 ext. 214.

Fiscal Officer, Leavenworth Medical Center, Leavenworth, KS 66048 (913) 682–2000 ext. 214.

Fiscal Officer, Topeka Medical Center, 2200 Gage Blvd., Topeka, KS 66622 (913) 272–3111 ext. 521.

Fiscal Officer, Wichita Medical Center, 5500 East Kellogg, Wichita, KS 67218 (316) 685–2221 ext. 256.

Wichita Regional Office—Send to: VA Medical Center, 5500 East Kellogg, Wichita, KS 67211 (316) 685–2221 ext. 256; Process for VA service-connected benefits should also be sent to the Wichita Medical Center, rather than to the Wichita Regional Office.

Kentucky

Danville National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507 (606) 233–4511.

Lebanon National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507 (606) 233–4511.

Lexington National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507 (606) 233–4511.

Fiscal Officer, Lexington Medical Center, Lexington, KY 40507 (606) 233–4511.

Fiscal Officer, Louisville Regional Office, 600 Federal Place, Louisville, KY 40202 (502) 582–6482.

Fiscal Officer, Louisville Medical Center, 800 Zorn Avenue, Louisville, KY 40202 (502) 895–3401.

Louisville National Cemetery Area Office (Zachary Taylor)—Send to: Fiscal Officer, VA Medical Center, 600 Zorn Avenue, Louisville, KY 40202 (502) 895–3401.

Louisville National Cemetery Area Office (Cave Hill)—Send to: Fiscal Officer, VA Medial Center, 800 Zorn Avenue, Louisville, KY 40202 (502) 895–3401.

Nancy National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507 (606) 233–4511.

Nicholasville National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507 (606) 233–4511.

Perryville National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Lexington, KY 40507 (606) 233–4511.

Louisiana

Fiscal Officer, Alexandria Medical Center, Alexandria, LA 71301 (318) 442–0251.

Baton Rouge National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1601 Perdido Street, New Orleans, LA 70146 (504) 568–0811.

Fiscal Officer, New Orleans Regional Office, 701 Loyola Avenue, New Orleans, LA 70113 (504) 589–6604.

Fiscal Officer, New Orleans Medical Center, 1601 Perdido St., New Orleans, LA 70146 (504) 568–0811.

Pineville National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Alexandria, LA 71301 (318) 442–0251.

Fiscal Officer, Shreveport Medical Center, 510 East Stoner Avenue, Shreveport, LA 71130 (318) 221–8411 ext. 722.

Shreveport VA Office—Send to: Fiscal Officer, VA Regional Office, 701 Loyola Avenue, New Orleans, LA 70113 (504) 589–6604.

Zachary National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1601 Perdido St., New Orleans, LA 70146 (504) 568–0811.

Maine

Portland VA Office—Send to: Fiscal Officer, VA Center, Togus, ME 04330 (207) 623–8411.

Fiscal Officer, Togus Medical & Regional Office Center, Togus, ME 04330 (207) 623–8411.

Togus National Cemetery Area Office—Send to: Fiscal Officer, VA Center, Togus, ME 04330 (207) 623–8411.

Maryland

Annapolis National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218 (301) 467–9932 ext. 5281/5282.

Fiscal Officer, Baltimore Regional Office, Federal Bldg., 31 Hopkins Plaza, Baltimore, MD 21201 (301) 962–4410; Jurisdiction does not include Prince Georges and Montgomery Counties which are included under the Washington, D.C. Regional Office.

Baltimore Outpatient Clinic—Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218 (301) 467–9932 ext. 5281/5282.

Fiscal Officer, Baltimore Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218 (301) 467–9932 ext. 5281/5282.

Baltimore National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218 (301) 467–9932 ext. 5281/5282.

Baltimore National Cemetery Area Office (Loudon Park)—Send to: Fiscal Officer, VA Medical Center, 3900 Loch Raven Blvd., Baltimore, MD 21218 (301) 467–9932 ext. 5281/5282.

Fiscal Officer, Fort Howard Medical Center, Fort Howard, MD 21052 (301) 447–1800 ext. 328.

Hyattsville Field Office of Audit—Send to: Finance Division Chief (047B2), VA Central Office, Room C–50, 810 Vermont Avenue, NW, Washington, D.C. 20420 (202) 389–3901.

Fiscal Officer, Perry Point Medical Center, Perry Point, MD 21902 (301) 642–2411 ext. 313.

Massachusetts

Fiscal Officer, Bedford Medical Center, 200 Springs Road, Bedford, MA 01730 (617) 275–7500.

Fiscal Officer, Boston Regional Office, John Kennedy Bldg., Government Center, Boston, MA 02203 (617) 223–3034; Jurisdiction over certain towns in Bristol and Plymouth Counties and the counties of Barnstable, Dukes and Nantucket is allocated to the Providence, Rhode Island Regional Office.

Boston Outpatient Clinic—Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130 (617) 232–9500 ext. 427/420.

Fiscal Officer, Boston Medical Center, 150 South Huntington Avenue, Boston, MA 02130 (617) 232–9500 ext. 427/420.

Bourne National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Brockton, MA 02401 (617) 583–4500 ext. 266.

Fiscal Officer, Brockton Medical Center, Brockton, MA 02401 (617) 583–4500 ext. 266.

Lowell Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, 150 South Huntington Avenue, Boston, MA 02130 (617) 232–9500 ext. 427/420.

New Bedford Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, Providence, RI 02908 (401) 273–7100.

Fiscal Officer, Northampton Medical Center, Northampton, MA 01060 (413) 584–4040.

Springfield Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, Northampton, MA 01060 (413) 584–4040.

Springfield VA Office—Send to: Fiscal Officer, VA Regional Office, John Kennedy Bldg., Government Center, Boston, MA 02203 (617) 223–3034.

Fiscal Officer, West Roxbury Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, MA 02132 (617) 323–7700 ext. 5650.

Worcester Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, 1400 Veterans of Foreign Wars Parkway, West Roxbury, MA 02132 (617) 323–7700 ext. 5650.

Michigan

Fiscal Officer, Allen Park Medical Center, Allen Park, MI 48101 (313) 562–6000 ext. 535.

Fiscal Officer, Ann Arbor Medical Center, 2215 Fuller Road, Ann Arbor, MI 48105 (313) 769–7100 ext. 288/289.

Fiscal Officer, Battle Creek Medical Center, Battle Creek, MI 49016 (616) 965–3281 ext. 566.

Grand Rapids Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, 2215 Fuller Road, Ann Arbor, MI 48105 (313) 769–7100 ext. 288/289.

Fiscal Officer, Detroit Regional Office, 477 Michigan Avenue, Detroit, MI 48226 (313) 226–4190.

Fiscal Officer, Iron Mountain Medical Center, Iron Mountain, MI 49801, (906) 774–3300 ext. 301.

Fiscal Officer, Saginaw Medical Center, 1500 Weiss Street, Saginaw, MI 48602, (517) 793–2340 ext. 270.

Minnesota

Fiscal Officer, Minneapolis Medical Center, 54th & 48th Avenue, South, Minneapolis, MN 55417, (612) 725–6767 ext. 6311.

Fiscal Officer, St. Cloud Medical Center, St. Cloud, MN 56301, (612) 252–1600 ext. 411.

Fiscal Officer, St. Paul Center (Regional Office), Federal Bldg., Ft. Snelling, St. Paul, MN 55111, (612) 725–4075; Jurisdiction over the counties of Becker, Beltrami, Clay, Clearwater, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Trail, Pennington, Polk, Red Lake, Roseau and Wilkin is allocated to the Fargo, North Dakota Center.

St. Paul National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 54th & 48th Avenue, South, Minneapolis, MN 55417, (612) 725–6767 ext. 6311.

St. Paul Data Processing Center—Send to: Fiscal Officer, VA Center, Federal Bldg., Ft. Snelling, St. Paul, MN 55111, (612) 725–4075.

St. Paul Outpatient Clinic—Send to: Fiscal Officer, VA Medical Center, 54th & 48th

Avenue, South, Minneapolis, MN 55417, (612) 725–6767 ext. 6311.

Mississippi

Biloxi National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center,

Nebraska

Fiscal Officer, Grand Island Medical Center, Grand Island, NE 68801 (308) 382–3660 ext 244.

Fiscal Officer, Lincoln Regional Office, 100 Centennial Mall North, Lincoln, NE 68508

Ft. Bayard National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 2100 Ridgecrest Drive, SE, Albuquerque, NM 87108 (505) 265–1711.

Santa Fe National Cemetery Area Office—Send to: Fiscal Officer, VA Medical

New York Prosthetics Center—Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue, New York, NY 10001 (212) 620–6293.

New York Veterans Canteen Service Field Office—Send to: Fiscal Officer, VA

Ohio

Fiscal Officer, Chillicothe Medical Center, 17273 State Route 104, Chillicothe, OH 45601, (614) 773–1141 ext. 203.

Fiscal Officer, Cincinnati Medical Center,

Fiscal Officer, White City Domiciliary, White City, OR 97501 (503) 826–2111 ext. 241.

White City National Cemetery Area Office—Send to: Fiscal Officer, VA Domiciliary, White City, OR 97501 (503) 826–2111 ext. 241.

Avenue, South, Minneapolis, MN 55417, (612) 725–6767 ext. 6311.

Mississippi

Biloxi National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Biloxi, MS 39531, (601) 863–1972 ext. 225.
Fiscal Officer, Biloxi Medical Center, Biloxi, MS 39531, (601) 863–1972 ext. 225.
Corinth National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104, (901) 523–8990.
Fiscal Officer, Gulfport Medical Center, Gulfport, MS 39601, (601) 863–1972 ext. 225.
Fiscal Officer, Jackson Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS 39216, (601) 362–4471 ext. 1471.
Jackson Regional Office—Send to: VA Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS 39216, (601) 362–4471 ext. 1471.

Process for VA service-connected benefits should also be sent to the Jackson Medical Center, rather than to the Jackson Regional Office.

Natchez National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1500 East Woodrow Wilson Drive, Jackson, MS 39216, (601) 362–4471 ext. 1471.

Missouri

Fiscal Officer, Columbia Medical Center, 800 Stadium Road, Columbia, MO 65201, (314) 443–2511.
Jefferson City National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 800 Stadium Road, Columbia, MO 65201, (314) 443–2511.
Fiscal Officer, Kansas City Medical Center, 4801 Linwood Blvd., Kansas City, MO 64128, (816) 861–4700.
Fiscal Officer, Poplar Bluff Medical Center, Poplar Bluff, MO 63901, (314) 686–4151.
St. Louis National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125 (314) 894–4631.
Fiscal Officer, St. Louis Regional Office, 1520 Market Street, St. Louis, MO 63103 (314) 435–5112.
St. Louis Veterans Canteen Service Field Office—Send to: Fiscal Officer, VA Medical Center, St. Louis, MO 63125 (314) 894–4631.
Fiscal Officer, St. Louis Medical Center, St. Louis, MO 63125 (314) 894–4631.
St. Louis Records Processing Center—Send to: Fiscal Officer, VA Regional Office, 1520 Market Street, St. Louis, MO 63103 (314) 425–5112.
Springfield National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Fayetteville, AR 72701 (501) 443–4301.

Montana

Fiscal Officer, Fort Harrison Medical & Regional Office Center, Fort Harrison, MT 59636 (406) 442–6410 ext. 329/326.
Fiscal Officer, Miles City Medical Center, Miles City, MT 59301 (406) 232–3060.

Nebraska

Fiscal Officer, Grand Island Medical Center, Grand Island, NE 68801 (308) 382–3660 ext 244.
Fiscal Officer, Lincoln Regional Office, 100 Centennial Mall North, Lincoln, NE 68508 (402) 471–5041.
Fiscal Officer, Lincoln Medical Center, 600 South 70th Street, Lincoln, NE 68510 (402) 489–3802 ext. 332.
Maxwell National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Grand Island, NE 68801 (308) 382–3660 ext. 244.
Fiscal Officer, Omaha Medical Center, 4101 Woolworth Avenue, Omaha, NE 68105 (402) 346–8800.

Nevada

Las Vegas Outpatient Clinic—Send to: Fiscal Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89520 (702) 786–7200 ext. 244.
Fiscal Officer, Reno Regional Office, 1201 Terminal Way, Reno, NV 89520 (702) 784–5637; Jurisdiction over the following counties in California: Alpine, Lassen, Modoc and Mono.
Fiscal Officer, Reno Medical Center, 1000 Locust Street, Reno, Nevada 89520 (702) 786–7200 ext. 244.
Henderson Outpatient Clinic—Send to: Fiscal Officer, VA Medical Center, 1000 Locust Street, Reno, NV 89520 (702) 786–7200 ext. 244.

New Hampshire

Fiscal Officer, Manchester Regional Office, 275 Chestnut Street, Manchester, NH 03103 (603) 666–7638.
Fiscal Officer, Manchester Medical Center, 718 Smyth Road, Manchester, NH 03104 (603) 624–4366.

New Jersey

Beverly National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104 (215) 382–2400 ext. 291/292.
Fiscal Officer, East Orange Medical Center, Tremont Avenue & So. Center St., East Orange, NJ 07019 (201) 676–1000 ext. 525.
Fiscal Officer, Lyons Medical Center, Lyons, NJ 07939 (201) 647–0180 ext. 372.
Newark Outpatient Clinic—Send to: Fiscal Officer, VA Medical Center, Tremont Avenue & So. Center St., East Orange, NJ 07019 (201) 676–1000 ext. 525.
Fiscal Officer, Newark Regional Office, 20 Washington Place, Newark, NJ 07102 (201) 645–3508.
Salem National Cemetery Area Office—Send to: Fiscal Officer, VA Center, 1601 Kirkwood Highway, Wilmington, DE 19805 (302) 994–2511.
Fiscal Officer, Somerville Supply Depot, Somerville, NJ 08876 (201) 725–2540.

New Mexico

Fiscal Officer, Albuquerque Regional Office, 500 Gold Avenue, SW, Albuquerque, NM 87102 (505) 766–2204.
Fiscal Officer, Albuquerque Medical Center, 2100 Ridgecrest Drive, SE, Albuquerque, NM 87108 (505) 265–1711.
Ft. Bayard National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 2100 Ridgecrest Drive, SE, Albuquerque, NM 87108 (505) 265–1711.
Santa Fe National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 2100 Ridgecrest Drive, SE, Albuquerque, NM 87108 (505) 265–1711.

New York

Fiscal Officer, Albany Medical Center, Albany, NY 12208 (518) 462–3311 ext. 355.
Albany VA Office—Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue, New York, NY 10001 (212) 620–6293.
Fiscal Officer, Batavia Medical Center, Batavia, NY 14020 (716) 343–7500 ext. 215.
Fiscal Officer, Bath Medical Center, Bath, NY 14810 (607) 776–2111.
Bath National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Bath, NY 14810 (607) 776–2111.
Fiscal Officer, Bronx Medical Center, 130 West Kingsbridge Road, Bronx, NY 10468 (212) 584–9000.
Fiscal Officer, Brooklyn Medical Center, 800 Poly Place, Brooklyn, NY 11209 (212) 836–6600.
Brooklyn National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209 (212) 836–6600.
Brooklyn Outpatient Clinic—Send to: Fiscal Officer, VA Medical Center, 800 Poly Place, Brooklyn, NY 11209 (212) 836–6600.
Fiscal Officer, Buffalo Regional Office, 111 West Huron Street, Buffalo, NY 14202 (716) 846–5251; Jurisdiction over all counties in New York not listed under the New York Regional Office.
Fiscal Officer, Buffalo Medical Center, 3495 Bailey Avenue, Buffalo, NY 14215 (716) 834–9200.
Calverton National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Northport, NY 11768 (516) 261–4400 ext. 2462/2463.
Fiscal Officer, Canandaigua Medical Center, Canandaigua, NY 14424 (716) 394–2000 ext. 336.
Fiscal Officer, Castle Point Medical Center, Castle Point, NY 12511 (914) 831–2000 ext. 322.
Elmira National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Bath, NY 14810 (607) 776–2111.
Farmingdale National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Northport, NY 11768 (516) 261–4400 ext. 2462/2463.
Fiscal Officer, Montrose Medical Center, Montrose, NY 10548 (914) 737–4400 ext. 463.
Fiscal Officer, New York Regional Office, 252 Seventh Avenue at 24th Street, New York, NY 10001 (212) 620–6293; Jurisdiction over the following counties in New York: Albany, Bronx, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Kings, Montgomery, Nassau, New York, Orange, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Schoharie, Suffolk, Sullivan, Ulster, Warren, Washington and Westchester.

New York Prosthetics Center—Send to: Fiscal Officer, VA Regional Office, 252 Seventh Avenue, New York, NY 10001 (212) 620–6293.
New York Veterans Canteen Service Field Office—Send to: Fiscal Officer, VA Medical Center, First Avenue at East 24th Street, New York, NY 10010 (212) 686–7500.
Fiscal Officer, New York Medical Center, First Avenue at East 24th Street, New York, NY 10010 (212) 686–7500.
New York Outpatient Clinic—Send to: Fiscal Officer, VA Medical Center, First Avenue at East 24th Street, New York, NY 10010 (212) 686–7500.
Fiscal Officer, Northport Medical Center, Northport, NY 11768 (516) 261–4400 ext. 2462/2463.
Rochester VA Office—Send to: Fiscal Officer, VA Regional Office, 111 West Huron Street, Buffalo, NY 14202 (716) 846–5251.
Rochester Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, Batavia, NY 14020 (716) 343–7500 ext. 215.
Fiscal Officer, Syracuse Medical Center, Irving Avenue & University Place, Syracuse, NY 13210 (315) 476–7461.
Syracuse VA Office—Send to: Fiscal Officer, VA Regional Office, 111 West Huron Street, Buffalo, NY 14202 (716) 846–5251.

North Carolina

Fiscal Officer, Asheville Medical Center, Asheville, NC 28805, (704) 298–7911 ext. 374.
Fiscal Officer, Durham Medical Center, 508 Fulton Street, Durham, NC 27705, (919) 286–0411 ext. 6469.
Fiscal Officer, Fayetteville Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 488–2120.
New Bern National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Fayetteville, NC 28301, (919) 488–2120.
Raleigh National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 508 Fulton Street, Durham, NC 27705, (919) 286–0411 ext. 6469.
Fiscal Officer, Salisbury Medical Center, Salisbury, NC 28144, (704) 636–2351.
Salisbury National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144, (704) 636–2351.
Wilmington National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 2300 Ramsey Street, Wilmington, NC 28301, (919) 488–2120.
Fiscal Officer, Winston-Salem Regional Office, 251 North Main Street, Winston-Salem, NC 27102, (919) 761–3513.
Winston-Salem Outpatient Clinic—Send to: Fiscal Officer, VA Medical Center, Salisbury, NC 28144, (704) 638–2351.

North Dakota

Fiscal Officer, Fargo Medical and Regional Office Center, 21st & Elm, Fargo, ND 58102, (701) 232–3241 ext. 249; See the listing under the St. Paul, Minnesota Center for the names of the counties in Minnesota which come under the jurisdiction of the Fargo, North Dakota Center.

Ohio

Fiscal Officer, Chillicothe Medical Center, 17273 State Route 104, Chillicothe, OH 45601, (614) 773–1141 ext. 203.
Fiscal Officer, Cincinnati Medical Center, 3200 Vine Street, Cincinnati, OH 45220, (513) 559–5040 ext. 4113.
Cincinnati VA Office—Send to: Fiscal Officer, VA Regional Office, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522–3540.
Fiscal Officer, Cleveland Regional Office, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522–3540.
Fiscal Officer, Cleveland Medical Center, 10701 East Boulevard, Cleveland, OH 44106, (216) 526–3030 ext. 531.
Fiscal Officer, Columbus Outpatient Clinic, 456 Clinic Drive, Columbus, OH 43210, (614) 469–6712.
Columbus VA Office—Send to: Fiscal Officer, VA Regional Office, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522–3540.
Fiscal Officer, Dayton Medical Center, Dayton, OH 45428, (513) 268–6511 ext. 356.
Dayton National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Dayton, OH 45428, (513) 268–6511 ext. 356.

Oklahoma

Fort Gibson National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Memorial Station, Honor Heights Drive, Muskogee, OK 74401 (918) 683–3261 ext. 392.
Fiscal Officer, Muskogee Regional Office, 125 South Main Street, Muskogee, OK 74401 (918) 687–2520.
Fiscal Officer, Muskogee Medical Center, Memorial Station, Honor Heights Drive, Muskogee, OK 74401 (918) 683–3281 ext. 392.
Fiscal Officer, Oklahoma City Medical Center, 921 Northeast 13th Street, Oklahoma City, OK 73104 (405) 272–9876 ext. 500.
Oklahoma City VA Office—Send to: Fiscal Officer, VA Regional Office, 125 South Main Street, Muskogee, OK 74401 (918) 687–2520.

Oregon

Portland National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201 (503) 222–9221 ext. 377.
Fiscal Officer, Portland Regional Office, 1220 SW 3rd Avenue, Portland, OR 97204 (503) 221–3040.
Fiscal Officer, Portland Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201 (503) 222–9221 ext. 377.
Portland Outpatient Clinic—Send to: Fiscal Officer, VA Medical Center, 3710 SW U.S. Veterans Hospital Road, Portland, OR 97201 (503) 222–9221 ext. 377.
Fiscal Officer, Roseburg Medical Center, Roseburg, OR 97470 (503) 672–4411.
Roseburg National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Roseburg, OR 97470 (503) 672–4411.
Fiscal Officer, White City Domiciliary, White City, OR 97501 (503) 826–2111 ext. 241.
White City National Cemetery Area Office—Send to: Fiscal Officer, VA Domiciliary, White City, OR 97501 (503) 826–2111 ext. 241.

Pennsylvania

Fiscal Officer, Altoona Medical Center, Altoona, PA 16603 (814) 943–8164.
Annville National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Lebanon, PA 17042 (717) 272–6621 ext. 229.
Fiscal Officer, Butler Medical Center, Butler, PA 16001 (412) 287–4781.
Fiscal Officer, Coatesville Medical Center, Coatesville, PA 19320 (215) 384–7711 ext. 342.
Fiscal Officer, Erie Medical Center, 135 East 38th Street, Erie, PA 16501 (814) 868–8661.
Harrisburg Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, Lebanon, PA 17042 (717) 272–6621 ext. 229.
Fiscal Officer, Lebanon Medical Center, Lebanon, PA 17042 (717) 272–6621 ext. 229.
Fiscal Officer, Philadelphia Center (Regional Office), P.O. Box 8079, Philadelphia, PA 19101 (215) 951–5321; Jurisdiction over the following counties in Pennsylvania: Adams, Berks, Bradford, Bucks, Cameron, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Franklin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Sullivan, Susqehanna, Tioga, Union, Wayne, Wyoming, and York.
Philadelphia Data Processing Center—Send to: Fiscal Officer, VA Center, P.O. Box 8079, Philadelphia, PA 19101 (215) 951–5321.
Philadelphia National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104 (215) 382–2400 ext. 291/292.
Philadelphia Outpatient Clinic—Send to: Fiscal Officer, VA Medical Center, University & Woodland Avenues, Philadelphia, PA 19104 (215) 382–2400 ext. 291/292.
Fiscal Officer, Philadelphia Medical Center, University & Woodland Avenues, Philadelphia, PA 19104 (215) 382–2400 ext. 291/292.
Fiscal Officer, Pittsburgh Regional Office, 1000 Liberty Avenue, Pittsburgh, PA 15222 (412) 644–6640; Jurisdiction over all of the countries in Pennsylvania that are not listed under the Philadelphia Center (Regional Office) and jurisdiction over the following counties in West Virginia: Brooke, Hancock, Marshall and Ohio.
Fiscal Officer, Pittsburgh Medical Center, Highland Drive, Pittsburgh, PA 15206 (412) 363–4900 ext. 235.
Fiscal Officer, Pittsburgh Medical Center, University Drive C, Pittsburgh, PA 15240 (412) 683–3000 ext. 652/675.
Pittsburgh Outpatient Clinic—Send to: Fiscal Officer, VA Medical Center, University

Drive C, Pittsburgh, PA 15240 (412) 683–3000 ext. 652/675.
Fiscal Officer, Wilkes-Barre Medical Center, 1111 East End Blvd., Wilkes-Barre, PA 18711 (717) 824–3521 ext. 247.

Center, Fort Meade, SD 57741 (605) 347–2511 ext. 272.
Fort Meade Medical Center—Send to: Fiscal Officer, VA Medical Center, Fort Meade, SD 57741 (605) 347–2511 ext. 272.
Hot Springs National Cemetery Area Office—

Texas

Fiscal Officer, Amarillo Medical Center, 6010 Amarillo Blvd., W., Amarillo, TX 79106 (806) 355–9703 ext. 216.
Fiscal Officer, Austin Data Processing Center, 1615 East Woodward Street, Austin, TX

Mills Drive, Waco, TX 76710 (817) 756–6511 ext. 635.
Fiscal Officer, Lubbock Outpatient Clinic, 1205 Texas Avenue, Lubbock, Tx 79401 (806) 762–7209.
Fiscal Officer, Marlin Medical Center, Marlin, TX 76661 (817) 883–3511 ext. 224.
Mechanicsville National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 231–9011 ext. 205.
Fiscal Officer, Hampton Medical Center, Hampton, VA 23667, (804) 722–9961.
Grafton National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Clarksburg, WV 26301 (304) 623–3461 ext. 335.
Fiscal Officer, Huntington Regional Office, 502 Eighth Street, Huntington, WV 25701 (304) 529–5477; Jurisdiction over the

Drive C, Pittsburgh, PA 15240 (412) 683-3000 ext. 652/675.
Fiscal Officer, Wilkes-Barre Medical Center, 1111 East End Blvd., Wilkes-Barre, PA 18711 (717) 824-3521 ext. 247.

Philippines

1 Manila Regional Office—Outpatient Clinic.
2 Manila Medical and Regional Office Center.
For either of the above, send to: Director, U.S. Veterans Administration, APO, San Francisco 96528, 59-80-11 Local 2574.

Puerto Rico

Bayamon National Cemetery Area Office—Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936 (809) 763-0275.
Hato Rey Medical and Regional Office Center—Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936 (809) 763-0275.
Mayaguez Outpatient Clinic Substation—Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936 (809) 763-0275.
Ponce Outpatient Clinic Substation—Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936 (809) 763-0275.
Rio Piedras Medical and Regional Office Center—Send to: Fiscal Officer, VA Center, GPO, Box 4867, San Juan, PR 00936 (809) 763-0275.

Rhode Island

Fiscal Officer, Providence Regional Office, 321 South Main Street, Providence, RI 02903 (401) 528-4480; Jurisdiction over the following towns and counties in Massachusetts: All towns in Bristol County except Mansfield and Easton, the towns of Lakeville, Middleboro, Carver, Rochester, Mattapoisett, Marion, and Wareham in Plymouth County; and the counties of Dukes, Nantucket and Barnstable.
Fiscal Officer, Providence Medical Center, Davis Park, Providence, RI 02908 (401) 273-7100.

South Carolina

Beaufort National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 109 Bee Street, Charleston, SC 29403 (803) 577-5011 ext. 222.
Fiscal Officer, Charleston Medical Center, 109 Bee Street, Charleston, SC 29403 (803) 577-5011 ext. 222.
Fiscal Officer, Columbia Regional Office, 1801 Assembly Street, Columbia, SC 29201 (803) 765-5210.
Fiscal Officer, Columbia Medical Center, Columbia, SC 29201 (803) 776-4000 ext. 149.
Florence National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Columbia, SC 29201 (803) 776-4000 ext. 149.
Greenville Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center Columbia SC 29201 (803) 776-4000 ext. 149.

South Dakota

Fort Meade National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Fort Meade, SD 57741 (605) 347-2511 ext. 272.
Fort Meade Medical Center—Send to: Fiscal Officer, VA Medical Center, Fort Meade, SD 57741 (605) 347-2511 ext. 272.
Hot Springs National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Hot Springs, SD 57747 (605) 745-4101 ext. 246.
Fiscal Officer, Hot Springs Medical Center, Hot Springs, SD 57747 (605) 745-4101 ext. 246.
Fiscal Officer, Sioux Falls Medical Center, 2501 West 22nd St., Sioux Falls, SD 57101 (605) 336-3230 ext. 201.
Sioux Falls Regional Office—Send to: VA Medical Center, 2501 West 22nd St., Sioux Falls, SD 57101 (605) 336-3230 ext. 201; Process for VA service-connected benefits should also be sent to the Sioux Falls Medical Center, rather than to the Sioux Falls Regional Office.
Sturgis National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Fort Meade, SD 57741 (605) 347-2511 ext. 272.

Tennessee

Chattanooga Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, 1310 24th Avenue, South, Nashville, TN 37203 (615) 327-4651 ext. 553.
Chattanooga National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Murfreesboro, TN 37130 (615) 893-1360 ext. 346.
Knoxville National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Mountain Home, TN 37684 (615) 926-1171.
Knoxville Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, 1310 24th Avenue, South, Knoxville, TN 37203 (615) 327-4651 ext. 553.
Madison National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1320 24th Avenue, South, Nashville, TN 37203 (615) 327-4751 ext. 553.
Fiscal Officer, Memphis Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104 (901) 523-8990.
Memphis National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1030 Jefferson Avenue, Memphis, TN 38104 (901) 523-8990.
Fiscal Officer, Mountain Home Medical Center, Mountain Home, TN 37684 (615) 926-1171.
Mountain Home National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Mountain Home, TN 37684 (615) 926-1171.
Fiscal Officer, Murfreesboro Medical Center, Murfreesboro, TN 37130 (615) 893-1360 ext. 346.
Fiscal Officer, Nashville Regional Office, 110 Ninth Avenue, South, Nashville, TN 37203 (615) 251-5352.
Fiscal Officer, Medical Center, 1310 24th Avenue, South, Nashville, TN 37203 (615) 327-4751 ext. 553.

Texas

Fiscal Officer, Amarillo Medical Center, 6010 Amarillo Blvd., W., Amarillo, TX 79106 (806) 355-9703 ext. 216.
Fiscal Officer, Austin Data Processing Center, 1615 East Woodward Street, Austin, TX 78772 (512) 397-7366.
Beaumont Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211 (713) 795-4411.
Fiscal Officer, Big Spring Medical Center, Big Spring, TX 79720 (915) 263-7361 ext. 327.
Fiscal Officer, Bonham Medical Center, Bonham, TX 75418 (214) 583-2111.
Corpus Christi Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284 (512) 696-9660 ext. 6301.
Fiscal Officer, Dallas Medical Center, 4500 South Lancaster Rd., Dallas, TX 75216 (214) 376-5451.
Dallas VA Office—Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76710 (817) 756-6511 ext. 635.
Fiscal Officer, El Paso Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925 (915) 543-7960/7961.
Fort Bliss National Cemetery Area Office—Send to: Fiscal Officer, VA Outpatient Clinic, 5919 Brook Hollow Drive, El Paso, TX 79925 (915) 543-7960/7961.
Fiscal Officer, Houston Regional Office, 2515 Murworth Drive, Houston, TX 77054 (713) 226-4185; Jurisdiction over the country of Mexico and the following counties in Texas: Angelina, Aransas, Atascosa, Austin, Bandera, Bee, Bexar, Blanco, Brazoria, Brewster, Brooks, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, Crockett, DeWitt, Dimmitt, Duval, Edwards, Fort Bend, Frio, Galveston, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Hays, Hidalgo, Houston, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Lavaca, Liberty, Live Oak, McCulloch, McMullen, Mason, Matagorda, Marverick, Medina, Menard, Montgomery, Necogdoches, Newton, Nueces, Orange, Pecos, Polk, Real, Refugio, Sabine, San Augustine, San Jacinto, San Patricio, Schleicher, Shelby, Starr, Sutton, Terrell, Trinity, Tyler, Ulvalde, Val Verde, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Zapata and Zavala.
Fiscal Officer, Houston Medical Center, 2002 Holcombe Blvd., Houston, TX 77211 (713) 795-4411.
Houston National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 2002 Holcombe Blvd., Houston, TX 77211 (713) 795-4411.
Fiscal Officer, Kerrville Medical Center, Kerrville, TX 78028 (512) 896-2020 ext. 215.
Kerrville National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Kerrville, TX 78028 (512) 896-2020 ext. 215.
Lubbock VA Office—Send to: Fiscal Officer, VA Regional Office, 1400 North Valley Mills Drive, Waco, TX 76710 (817) 756-6511 ext. 635.
Fiscal Officer, Lubbock Outpatient Clinic, 1205 Texas Avenue, Lubbock, Tx 79401 (806) 762-7209.
Fiscal Officer, Marlin Medical Center, Marlin, TX 76661 (817) 883-3511 ext. 224.
McAllen Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284 (512) 696-9660 ext. 6301.
Fiscal Officer, San Antonio Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284 (512) 696-9660 ext. 6301.
San Antonio VA Office—Send to: Fiscal Officer, VA Regional Office, 2515 Murworth Drive, Houston, TX 77054 (713) 226-4185.
San Antonio National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284 (512) 696-9660 ext. 6301.
San Antonio National Cemetery Area Office (Fort Sam Houston)—Send to: Fiscal Officer, VA Medical Center, 7400 Merton Minter Blvd., San Antonio, TX 78284 (512) 696-9660 ext. 6301.
Fiscal Officer, Temple Medical Center, Temple, TX 76501 (817) 778-4811.
Fiscal Officer, Waco Regional Office, 1400 North Valley Mills Drive, Waco, TX 76710 (817) 756-6511 ext. 635; Jurisdiction over all counties in Texas not listed under the Houston Regional Office.
Fiscal Officer, Waco Medical Center, Memorial Drive, Waco, TX 76703, (817) 752-6581.
Waco Outpatient Clinic—Send to: Fiscal Officer, VA Medical Center, Memorial Drive, Waco, TX 76703, (817) 752-6581.

Utah

Fiscal Officer, Salt Lake City Regional Office, 125 South State Street, Salt Lake City, Utah 84138, (801) 525-5945.
Fiscal Officer, Salt Lake City Medical Center, 500 Foothill Blvd., Salt Lake City, Utah 84148, (801) 582-1565/1520.

Vermont

Fiscal Officer, White River Junction Medical and Regional Office Center, White River Junction, Vermont 05001, (802) 295-9363.

Virginia

Alexandria National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW, Washington, D.C. 20422, (202) 389-7593.
Culpepper National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Martinsburg, WV 25401, (304) 263-0811 ext. 280.
Danville National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Salem, VA 24153, (703) 982-2463.
Hopewell National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 231-9011 ext. 205.
Leesburg National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW, Washington, D.C. 20422, (202) 389-7593.
Mechanicsville National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 231-9011 ext. 205.
Fiscal Officer, Hampton Medical Center, Hampton, VA 23667, (804) 722-9961.
Hampton National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Hampton, VA 23667, (804) 722-9961.
Quantico National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 50 Irving Street, NW, Washington, D.C. 20422, (202) 389-7593.
Fiscal Officer, Richmond Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 231-9011 ext. 205.
Richmond National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249, (804) 231-9011 ext. 205.
Fiscal Officer, Roanoke Regional Office, 210 Franklin Rd. SW, Roanoke, VA 24011, (703) 982-6116; Jurisdiction over Fairfax and Arlington Counties and the cities of Alexandria, Fairfax, and Falls Church is allocated to the Washington, D.C. Regional Office.
Fiscal Officer, Salem Medical Center, Salem, VA 24153 (703) 982-2463.
Sandston National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 1201 Broad Rock Road, Richmond, VA 23249 (804) 231-9011 ext. 205.
Staunton National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Salem, VA 24135 (703) 982-2463.
Winchester National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Martinsburg, WV 25401 (304) 263-0811 ext. 280.

Washington

Fiscal Officer, American Lake Medical Center, Tacoma, WA 98493 (206) 582-8440 ext. 303.
Fiscal Officer, Seattle Regional Office, 915 Second Avenue, Seattle, WA 98174 (206) 442-5025.
Fiscal Officer, Seattle Medical Center, 4435 Beacon Avenue, South, Seattle, WA 98108 (206) 762-1016 ext. 286.
Seattle Outpatient Clinic—Send to: Fiscal Officer, VA Medical Center, 4435 Beacon Avenue, South, Seattle, WA 98108 (206) 762-1016 ext. 286.
Fiscal Officer, Spokane Medical Center, North 4815 Assembly Street, Spokane, WA 99208 (509) 328-4521.
Fiscal Officer, Vancouver Medical Center, Vancouver, WA 98661 (206) 696-4061 ext. 331.
Fiscal Officer, Walla Walla Medical Center, 77 Wainwright Drive, Walla Walla, WA 99362 (509) 525-5200.

West Virginia

Fiscal Officer, Beckley Medical Center, 200 Veterans Avenue, Beckley, WV 25801 (304) 255-2121.
Fiscal Officer, Clarksburg Medical Center, Clarksburg, WV 26301 (304) 623-3461 ext. 335.
Grafton National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, Clarksburg, WV 26301 (304) 623-3461 ext. 335.
Fiscal Officer, Huntington Regional Office, 502 Eighth Street, Huntington, WV 25701 (304) 529-5477; Jurisdiction over the counties of Brooke, Hancock, Marshall and Ohio is allocated to the Pittsburgh, Pennsylvania Regional Office.
Fiscal Officer, Huntington Medical Center, 1540 Spring Valley Drive, Huntington, WV 25704 (304) 429-6741 ext. 327.
Fiscal Officer, Martinsburg Medical Center, Martinsburg, WV 25401 (304) 263-0811 ext. 280.
Wheeling Outpatient Clinic Substation—Send to: Fiscal Officer, VA Medical Center, University Drive C, Pittsburgh, PA 15240 (412) 363-4900 ext. 235.

Wisconsin

Fiscal Officer, Madison Medical Center, 2500 Overlook Terrace, Madison, WI 53705 (608) 256-1901 ext. 381.
Fiscal Officer, Milwaukee Regional Office, 342 North Water Street, Milwaukee, WI 53202 (414) 291-1201.
Fiscal Officer, Tomah Medical Center, Tomah, WI 54660 (608) 372-3971 ext. 204.
Fiscal Officer, Wood Medical Center, 5000 West National Avenue, Wood, WI 53193 (414) 384-2000 ext. 2591.
Wood National Cemetery Area Office—Send to: Fiscal Officer, VA Medical Center, 5000 West National Avenue, Wood, WI 53193 (414) 384-2000 ext. 2591.

Wyoming

Fiscal Officer, Cheyenne Medical & Regional Office Center, 2360 East Pershing Blvd., Cheyenne, WY 82001 (307) 778-7550 ext. 351.
Fiscal Officer, Sheridan Medical Center, Sheridan, WY 82801 (307) 672-3473.

III. The United States Postal Service and the Postal Rate Commission

United States Postal Service

Service of process may be made on the postmaster or head of the installation where the employee works. However, if the installation where the employee works cannot be determined, service of process may be made on the appropriate Regional Counsel. The geographic areas served by the Regional Counsels and their addresses are as follows:

Regional Counsel, Northeast Region, U.S. Postal Service, 1633 Broadway, New York, NY 10098 (212) 974-8531; Serving: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, northern New Jersey (ZIP codes beginning with 070-079 and 088-089), New York (ZIP codes beginning with 090-098 and 100-129), and the Caribbean Islands.
Regional Counsel, Eastern Region, U.S. Postal Service, 1845 Walnut Street, P.O. Box 8601, Philadelphia, PA 19101 (215) 597-9715; Serving: The District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, West Virginia, southern New Jersey (ZIP codes beginning with 080-087) and New York (ZIP codes beginning with 130-149).

Regional Counsel, Southern Region, U.S. Postal Service, 1407 Union Avenue, Memphis, TN 38166 (901) 534-4411; Serving: Alabama, Arkansas, Florida,

730 Third Avenue, New York, NY 10017 (212) 490-9000.

[FR Doc. 80-40501 Filed 12-29-80; 8:45 am]

BILLING CODE 6325-01-M

(c) The employee or Member shall communicate his/her choice of option over his/her signature on Standard Form 2801, Application for Retirement, for use in filing claim for annuity. Receipt of the

1980 (FEGLI), approved October 10, 1980, which has changed the FEGLI program from a two-part to a four-part package consisting of basic insurance and three optional plans.

increased post-age 65 basic life insurance at the earliest date permitted under the law, December 9, 1980 (see 45 FR 80472, December 5, 1980). The present interim regulations govern the

acknowledging his/her understanding of the employee's or Member's election and return to OPM. If the letter is not signed by the spouse or returned to

Regional Counsel, Southern Region, U.S. Postal Service, 1407 Union Avenue, Memphis, TN 38166 (901) 534–4411; Serving: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee and Texas.

Regional Counsel, Central Region, U.S. Postal Service, 433 Van Buren Street, Chicago, IL 60699 (212) 886–3175; Serving: Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

Regional Counsel, Western Region, U.S. Postal Service, 850 Cherry Avenue, San Bruno, CA 94099 (415) 876–9225; Serving: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and the Pacific Islands including the Trust Territory.

Processing of garnishments will be substantially expedited by serving the postmaster or installation head rather than the Regional Counsel.

Postal Rate Commission

Chief Administrative Officer, Postal Rate Commission, 2000 L Street, NW., Washington, D.C 20268 (202) 254–3880.

IV. The District of Columbia, American Samoa, Guam, and the Virgin Islands

The District of Columbia

Assistant City Administrator for Financial Management, The District Building, Room 412, 14th and Pennsylvania Avenue, NW., Washington, D.C. 20004 (202) 727–6979.

American Samoa

Director of Administrative Service, American Samoa Government, Pago Pago, American Samoa 96799 (684) 633–4155.

Guam

Attorney General, P.O. Box DA, Agana, Guam 96910, 472–6841 (Country Code 671).

The Virgin Islands

Attorney General, P.O. Box 280, St. Thomas, VI 00801 (809) 774–1163.

V. Instrumentality

SMITHSONIAN INSTITUTION

For service of process in garnishment proceedings for child support and/or alimony of present Smithsonian Institution employees:

General Counsel, The Smithsonian Institution, Room 408, 1000 Jefferson Drive, SW, Washington, D.C. 20560 (202) 381–5866.

For service of process in garnishment proceedings for child support and/or alimony involving retirement annuities of former trust fund employees of the Smithsonian Institution:

General Counsel, Teachers Insurance and Annuity Association of America, College Retirement Equity Fund (TIAA/CREF), 730 Third Avenue, New York, NY 10017 (212) 490–9000.

[FR Doc. 80-40501 Filed 12-29-80; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 831

Retirement; Survivor Benefit Provisions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations to reflect current survivor benefit provisions of the Civil Service Retirement law and to establish spouse notification requirements pursuant to recent amendment.

EFFECTIVE DATE: January 5, 1981.

FOR FURTHER INFORMATION CONTACT: Doris Reeves, 202–632–4634.

SUPPLEMENTARY INFORMATION: On November 14, 1980, OPM published (45 FR 75217) proposed rules to incorporate statutory provisions that permit elimination of the survivorship reduction in a retiree's annuity under certain circumstances, permit retirees who were married at retirement to elect a reduced annuity with survivor benefits to a spouse acquired after retirement, provide for substituting a spouse acquired after retirement for the survivor benefit elected at retirement, and afford the retiree an opportunity of electing not to provide survivor protection for the spouse acquired after retirement even though such survivor benefit was elected at retirement.

The rules also established OPM's requirements under Pub. L. 96–391 which must be followed in order for a married employee's or Member's election of other than maximum survivorship protection to be valid in annuities commencing on and after January 5, 1981. In the latter case, OPM will accept a signed and witnessed declaration from the spouse to be submitted with the retirement application, in which the spouse acknowledges his/her understanding of the employee's or Member's election of other than a fully reduced annuity for survivor annuity purposes. Where an employee/Member elects other than a fully reduced annuity but cannot obtain the spouse's signature acknowledging the loss of or reduction in benefits, the proposed regulations will require the employee/Member to submit the spouse's last known mailing address to OPM. OPM will then send the spouse an explanatory letter by certified mail with return receipt requested. The spouse will be asked to sign the letter acknowledging his/her understanding of the employee's or Member's election and return to OPM. If the letter is not signed by the spouse or returned to OPM, notification will be considered properly made upon return of the certified mail receipt to OPM; and the employee's or Member's election to exclude the spouse from benefits, either fully or partially, will become effective by final adjudication of the retirement application. On the other hand, where the employee/Member fails to cooperate in furnishing either (1) the spouse's witnessed acknowledgment of less than maximum survivor annuity protection or (2) the spouse's last known mailing address, OPM is required to complete final adjudication of the retirement application with the full reduction for survivor annuity benefits provided by statute (5 U.S.C. 8339(j)).

Comments: During the 30 day comment period which ended December 15, 1980, one agency submitted a suggestion that we require the spouse's acknowledgment to be notarized rather than merely witnessed. They rationalized that this would provide maximum protection against the possibility of fraud. We believe that requiring notarization would impose a hardship on the employee, and on the spouse, which was not intended by Congress. Further, the unavailability of notaries in many suburban and rural locations, as well as the fees involved, would probably result in some spouses refusing to acknowledge the employee's election. Since we are not convinced that requiring notarization would be effective when the employee is determined to violate the regulations, we are issuing the final regulations without change from those which were proposed.

The Director of OPM finds that good cause exists for making this amendment effective in less than 30 days, in order to give timely effect to the provisions of Pub. L. 96–391 which requires that spouses of married employees whose annuities commence on and after January 5, 1981 be notified when such employees elect less than maximum survivor annuity protection.

Office of Personnel Management.

JoAnn B. Platter,

Assistant Issuance System Manager.

Accordingly, the Office of Personnel Management amends 5 CFR Part 831 as follows:

(1) Section 831.601 (c) and (e) are revised to read as follows:

§ 831.601 Survivor benefits.

* * * * *

(c) The employee or Member shall communicate his/her choice of option over his/her signature on Standard Form 2801, Application for Retirement, for use in filing claim for annuity. Receipt of the communication in OPM constitutes prima facie evidence of the existence of all the elements of an election, except that an election by a married employee or Member of a life annuity, or an election to base the benefit payable to the surviving spouse on less than the full amount of annuity, is not valid unless:

(1) The employee of Member provides OPM with the spouse's signed and witnessed declaration (the employee or Member may not witness the declaration) acknowledging the loss of or reduction in survivor benefits; or

(2) The employee or Member provides OPM with the spouse's mailing address (or last known mailing address) in order for OPM to attempt to notify the spouse about the loss of or reduction in survivor benefits. The election is considered made when the prima facie evidence becomes conclusive by final adjudication of the claim by OPM.

* * * * *

(e) When an election has been conclusively made under this section, the employee or Member may not revoke or change the election or name another survivor, except as provided under 5 U.S.C. 8339 (j) and (k).

§ 831.601 [Amended]

(2) Paragraph (f) of §831.601 is deleted and paragraphs (g) and (h) are redesignated as (f) and (g), respectively.

(5 U.S.C. 8347(g))

[FR Doc. 80-40494 Filed 12-29-80; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Parts 870, 871, 872, and 873

Basic Life Insurance, Standard Optional Life Insurance, Additional Optional Life Insurance, and Family Optional Life Insurance

Note.—This document originally appeared in the **Federal Register** for Wednesday, December 24, 1980. It is reprinted in this issue to meet requirements for publication on the Tuesday–Friday schedule assigned to the Office of Personnel Management.

AGENCY: Office of Personnel Management.

ACTION: Interim regulations, with comments invited for consideration in final rulemaking.

SUMMARY: The Office of Personnel Management is issuing interim regulations governing the second phase of implementation of the Federal Employees' Group Life Insurance Act of 1980 (FEGLI), approved October 10, 1980, which has changed the FEGLI program from a two-part to a four-part package consisting of basic insurance and three optional plans.

DATES:

Effective date: The interim regulations are effective on December 24, 1980, unless otherwise specified.

Comment date: Comments must be received by February 23, 1981.

ADDRESS: Send written comments to Mr. Craig B. Pettibone, Director, Office of Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: John Landers (202) 632–4634.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(d)(3) of title 5, United States Code, the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to give immediate and timely effect to provisions of Pub. L. 96–427 which require timely implementation of new group life insurance plans. The immediate effective date makes possible OPM's preparation and distribution of forms and materials necessary to make the new insurance available within the statutory time limit.

Introduction

The FEGLI program has been amended by Pub. L. 96–427, the Federal Employees' Group Life Insurance Act of 1980, approved October 10, 1980. The Act makes four major changes in the FEGLI program by (1) increasing basic FEGLI protection (beginning in October 1981) for employees under age 45 with no corresponding increase in withholdings, (2) requiring employees who retire or become entitled to receive workers' compensation after 1969 to continue paying premiums for unreduced basic insurance coverage to age 65, (3) permitting retiring employees to choose either the current post-retirement basic life insurance protection, which ultimately declines to 25 percent of the face value, or post-retirement coverage that, for an additional contribution, reduces at a lesser rate or not at all, and (4) adding to the existing $10,000 optional insurance two new optional insurance plans affording additional life insurance on employees in multiples of one to five times annual pay, as well as life insurance on family members.

The Act allows OPM from 60 to 180 days in which to implement the increased post-retirement basic insurance coverage and to make available the two new optional plans. OPM implemented the offering of increased post-age 65 basic life insurance at the earliest date permitted under the law, December 9, 1980 (see 45 FR 80472, December 5, 1980). The present interim regulations govern the two new optional plans, establish premium rates for coverage under them, and reduce the rates under the existing basic insurance and standard optional insurance effective on the first day of the first pay period beginning on or after April 1, 1981.

All employees will be given the opportunity to enroll for basic and optional coverages during an open enrollment period from March 1 through 31, 1981. Elections will be effective on or after April 1, 1981.

New Rates for Basic Insurance and Standard Optional Insurance

The Office of Personnel Management has re-evaluated the premium rates for basic insurance and standard optional insurance on the basis of experience. The new rates will be effective on the first day of the first pay period beginning on or after April 1, 1981. The biweekly rate for basic insurance for employees is reduced from 25.5 cents to 24 cents per $1,000 of the employee's basic insurance amount. The biweekly rates for the $10,000 of standard optional insurance will be:

Age	Current rate	New rate
Under 35	$0.60	$0.60
35–39	1.00	0.80
40–44	1.70	1.40
45–49	2.40	2.20
50–54	3.50	3.20
55–59	7.50	7.50
60 or over	9.00	9.00

Additional Optional Insurance

Pub. L. 96–427 authorizes OPM to purchase a group life insurance policy, without competitive bidding, which will make available to each employee who is insured for basic insurance additional optional life insurance. This coverage is referred to in the regulations as "additional optional insurance." Employees pay the full cost of coverage. There is no Government contribution.

The biweekly cost per $1,000 of the additional optional insurance is:

Age	Rate
Under 35	$.05
35–39	.07
40–44	.12
45–49	.20
50–54	.30
55–59	.60
60 or over	.95

Employees must affirmatively elect the additional optional insurance in order to obtain the coverage. All employees who are serving in positions which are not excluded from FEGLI

upon the employee's marriage or acquisition of a child. The employee must elect the increase in timely fashion (usually within 60 days after the event permitting the increase). The regulations

law "child" means an unmarried dependent child who is under the age of 22, or who is 22 years of age or older and incapable of self-support because of a mental or physical disability which

New hires during the month of March 1981 who are eligible for life insurance will be immediately covered for basic insurance from the time they actually enter on duty in pay status, unless they file a waiver of coverage before the end

month. The maximum reduction for the standard optional insurance is 75 percent of the face value. For additional optional insurance and family optional insurance this reduction continues until the insurance stops completely after 50

withhold the proper FEGLI deductions from an individual's salary, annuity or compensation to waive the collection of the corresponding overpayments of salary, annuity or compensation if, in the judgment of the agency, the

Employees must affirmatively elect the additional optional insurance in order to obtain the coverage. All employees who are serving in positions which are not excluded from FEGLI coverage must either elect or decline the additional optional insurance during an open enrollment period to be held Government-wide from March 1 through 31, 1981. Only those employees who enroll for basic insurance are allowed to elect additional optional insurance. An employee who fails to elect this coverage during that period will not be allowed to enroll at a later date unless he/she meets the requirements discussed below, or the employing agency determines within 6 months that the employee was not able to elect the coverage due to reasons beyond his/her control.

The additional optional insurance is offered in multiples of 1, 2, 3, 4, or 5 times the annual rate of basic pay payable to the employee. Before multiplying, the pay is rounded to the next higher multiple of $1,000. (When the annual pay is an exact multiple of $1,000, the exact rate is used.) Additional optional insurance coverage may not exceed 5 times the annual rate of basic pay payable for positions at level II of the Executive Schedule under 5 U.S.C. 5313, rounded to the next higher $1,000. Covered persons may elect to reduce or stop additional optional insurance coverage at any time, though the opportunity to re-elect or increase multiples is strictly limited by the regulations.

After March 31, 1981, an employee who does not have additional optional insurance will be allowed to elect it if he/she is enrolled (or enrolls) for basic insurance and (1) he/she is under age 50, (2) at least 1 year has elapsed since the date of the declination, and (3) he/she submits satisfactory medical evidence of insurability. An employee who satisfies all three requirements will be allowed to elect the additional optional insurance or to increase the number of multiples of this coverage. Also, an employee under age 36 may elect additional optional insurance without showing medical insurability if he/she has basic insurance and elects the coverage in timely fashion (usually within 60 days after the event permitting the election) following the birth, adoption or other acquisition of a child, as defined by the regulations. These interim regulations will also permit an employee under age 50 who has in force at least 1 multiple of pay under the additional optional insurance plan to increase the number of multiples without showing medical insurability upon the employee's marriage or acquisition of a child. The employee must elect the increase in timely fashion (usually within 60 days after the event permitting the increase). The regulations limit the number of multiples acquired on the basis of the occurrence of an event to the number of family members (spouse and/or children) acquired with the event, e.g., 1 new multiple for a single birth, 2 new multiples upon birth of twins.

Family Optional Insurance

Pub. L. 96-427 authorizes OPM to purchase a group life insurance policy, without competitive bidding, which shall make available to each employee covered for basic insurance an amount of optional insurance on his/her family members. This coverage is referred to in the regulations as "family optional insurance." Employees pay the full cost of coverage. There is no Government contribution. The amount of family optional insurance is $5,000 upon the death of a spouse and $2,500 upon the death of a child. The benefit is paid to the employee, unless the employee dies before the payment can be made, in which case the benefit is paid to the employee's beneficiary for basic insurance.

The biweekly cost of the family insurance is:

Age	Rate
Under 35	$0.50
35-39	0.60
40-44	0.70
45-49	0.90
50-54	1.30
55-59	2.00
60 or over	3.00

Employees must affirmatively elect the family optional insurance in order to obtain coverage. All employees who are serving in positions which are not excluded from FEGLI coverage must either elect or decline the family optional insurance during the March 1981 open enrollment period. Only those employees who enroll for basic insurance are allowed to elect the family optional insurance. An employee who fails to elect this coverage during March 1981 will be allowed to enroll at a later date only in the event that he/she marries, or upon the birth or adoption of a child, or other acquisition of a child, as defined in the regulations, or if the employing agency determines within 6 months that the employee was not able to elect the coverage due to reasons beyond his/her control.

Under the definition of a family member for the purposes of the FEGLI law "child" means an unmarried dependent child who is under the age of 22, or who is 22 years of age or older and incapable of self-support because of a mental or physical disability which existed before the child became 22 years of age. These interim regulations provide the criteria to be used in determining the question of dependency, and in determining whether a child is to be considered incapable of self-support within the meaning of the FEGLI law. These regulations are similar to those in effect under Civil Service Retirement and Federal Employees Health Benefits regulations (see 45 FR 76087, November 18, 1980).

Open Enrollment Period

Because of the significant changes in the FEGLI program brought about by Pub. L. 96-427, OPM will hold an open enrollment period during the month of March 1981. Employees will be allowed to elect insurance irrespective of age, health or past participation in the program. The regulations provide that all waivers and declinations of existing basic and optional insurance filed before March 1981 are automatically canceled.

All non-excluded employees will be required to complete a Life Insurance Election form during March 1981, whether or not they are already participating in the FEGLI program. Employees who are already covered for basic insurance will continue that coverage unless they waive it. Employees who are already covered for standard optional insurance ($10,000) will lose that portion of their coverage unless they affirmatively re-elect it during March 1981. In the event that an employee does not complete the Life Insurance Election form during March 1981, employing agencies will file an election of basic insurance and a declination of all optional coverages on his/her behalf on March 31, 1981. However, if within 6 months an agency determines that an employee was unable to complete the form during March for reasons beyond his/her control, the employee will be allowed 31 days from the date of the agency's determination in which to complete the form.

Effective Dates

Open enrollment period elections will generally become effective on the first day on or after April 1, 1981, on which an employee actually enters on duty in a pay status. An employee who is on leave and an employee who does not actually return to duty at his/her workplace on or after April 1, 1981, does not satisfy this requirement.

New hires during the month of March 1981 who are eligible for life insurance will be immediately covered for basic insurance from the time they actually enter on duty in pay status, unless they file a waiver of coverage before the end of the first pay period. These new hires will have the standard optional insurance on the first day they actually enter on duty in a pay status on or after the date on which they file an election of that coverage. However, additional optional insurance and family optional insurance coverage, if elected during March, become effective on the first day on or after April 1, on which the employee actually enters on duty in a pay status.

An employee who is already covered for standard optional insurance during March 1981 and who declines that coverage while retaining basic insurance will continue to be insured for both basic insurance and the standard optional insurance through the end of the pay period which includes March 31, 1981. A waiver of all coverage is effective at the end of the pay period in which it is received in the employing office.

Continuation of Insurance During Retirement or Receipt Workers' Compensation

An employee who retires on an immediate annuity, or who becomes entitled to receive workers' compensation under the Federal Employees Compensation Act because of disease or injury to himself/herself is entitled to continue as many multiples of additional optional insurance as have been in force for not less than: (1) the 5 years of service immediately preceding the date of retirement or entitlement to compensation or (2) the full period(s) of service during which the insurance was available to him/her. The same participation requirement for continuation of insurance exists under the law for standard optional insurance and family optional insurance. The optional coverages may continue for as long as the individual continues to be enrolled for basic insurance while the individual continues to receive annuity or workers' compensation and is held by the Department of Labor to be unable to return to duty. Withholdings for the full cost of the optional insurance continue to be taken from the annuity or compensation payments until the month following the month in which the individual becomes 65 years of age and is retired or receiving compensation.

Beginning with the second calendar month after a retiree or compensationer become 65 years of age the optional coverages begin to reduce by 2 percent a month. The maximum reduction for the standard optional insurance is 75 percent of the face value. For additional optional insurance and family optional insurance this reduction continues until the insurance stops completely after 50 months. Once the reductions have begun, there are no withholdings from annuity or compensation for the optional coverages.

Reemployed Annuitants

There shall be no change in the current treatment of reemployed annuitants with respect to standard optional insurance coverage during reemployment. Retirees who are continuing standard optional insurance during retirement and who are reemployed in non-excluded positions will have the standard optional insurance coverage as employees unless the coverage is declined or waived, and the standard optional insurance as a retiree is suspended during reemployment. Withholdings for the full cost of the coverage are taken from salary. Following reemployment which is qualifying for a supplemental annuity, the individual may continue the reemployment-acquired insurance. If the reemployment period does not continue long enough for a supplemental annuity benefit to attach, the suspended insurance may be reinstated following separation from the reemployment.

These interim regulations provide for the same treatment with regard to family optional insurance of reemployed annuitants. However, the additional optional insurance of reemployed annuitants who have this coverage as retirees will not be automatically suspended upon reemployment. A reemployed annuitant in a non-excluded position will have the opportunity to elect either to continue additional optional insurance as a retiree or to have that coverage suspended and have additional optional insurance as an employee during reemployment. Following reemployment which is qualifying for a supplemental annuity, the individual may then continue the additional optional insurance acquired as a reemployed annuitant or the suspended additional optional insurance may be reinstated (if any remains after the post-age 65 reductions). If reemployment does not qualify the person for a supplemental annuity, any suspended additional optional insurance which remains in effect may be reinstated following separation from reemployment.

Waiver of Collection of Overpayment

Pub. L. 96-427 amends the FEGLI law to allow an agency which has failed to withhold the proper FEGLI deductions from an individual's salary, annuity or compensation to waive the collection of the corresponding overpayments of salary, annuity or compensation if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency waives the collection of any unpaid amount, it must still submit to OPM the uncollected FEGLI withholdings and contributions for deposit to the Employees' Life Insurance Fund.

Current Civil Service Retirement regulations, 5 CFR Part 831, provide standards for waiver of overpayments from the Civil Service Retirement Fund. These interim regulations provide that waivers of collections of life insurance deductions will be governed by the same standards, in cases where OPM fails to withhold proper FEGLI deductions from annuity. Agency standards for waivers of overpayments from salary will be those which the agency must follow under 4 CFR Subchapter G, Chapter I, which implements the provisions of 5 U.S.C. 5584 allowing agencies to waive collections of over-paid salary or allowances.

These interim regulations also make a technical amendment to 5 CFR 870.601(b) (see 45 FR 80472, December 5, 1980) needed to correct a reference in that paragraph to a non-existent paragraph (h). The reference is changed to paragraph (g) of the same section.

At the time OPM publishes final regulations, uniform nomenclature changes and editorial revisions will be added throughout Parts 870 and 871.

OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is amending Parts 870 and 871 of Title 5, Code of Federal Regulations, and adding new Parts 872 and 873, as follows:

PART 870—BASIC LIFE INSURANCE

(1) In Part 870, paragraphs (a), (b), and (f)(1) of § 870.401 are revised, effective on the first day of the first pay period beginning on or after April 1, 1981, to read as follows:

Subpart D—Withholdings and Contributions

§ 870.401 Withholdings and contributions.

(a) During any period in any part of which an insured employee is in pay

status, $0.24 for each $1,000 of the employee's BIA shall be withheld from the biweekly pay of the employee. The amount withheld from the pay of an employee who is paid on other than a

Subpart A—Administration and General Provisions

§ 871.101 Actions on the policy.

Optional life and accidental death and

employing office, except that a declination of standard optional insurance (which is not also a waiver of basic insurance) which is filed during the period from March 1, 1981 through

Subpart D—Withholdings

§ 871.401 Withholdings.

* * * * *

(c) The biweekly full cost of the $10,000 of standard optional insurance

(b) If, because of a declination or waiver, an insured employee has not had the standard optional insurance during the full period(s) of service during which it was available to him/her, or for the 5 years of service immediately

optional life insurance stops with no 31-day extension of coverage or right of conversion.

(9) Part 872 is added to read as follows:

status, $0.24 for each $1,000 of the employee's BIA shall be withheld from the biweekly pay of the employee. The amount withheld from the pay of an employee who is paid on other than a biweekly basis is determined at a proportionate rate, adjusted to the nearest cent.

(b) The amount withheld from the pay of an insured employee whose annual pay is paid during a period shorter than 52 workweeks is the sum obtained by converting the biweekly rate of $0.24 for each $1,000 of the employee's BIA to an annual rate and prorating the annual rate over the number of installments of pay regularly paid during the year.

* * * * *

(f)(1) Except as provided under paragraph (g) of this section, an insured person who elects continued basic life insurance coverage during receipt of annuity or compensation payments as provided under §§ 870.601(c)(2) or 870.701(c)(2) (maximum reduction of 75 percent after age 65) shall have withheld from his/her payments basic life insurance withholdings at the monthly rate (for annuitants) of $0.52 for each $1,000 of the BIA or at the weekly rate (for compensationers) of $0.120 for each $1,000 of the BIA.

* * * * *

(2) In Part 870, § 870.601(b) is revised to read as follows:

Subpart F—Retired Employees

§ 870.601 Eligibility for life insurance.

* * * * *

(b) An employee who meets the requirements under paragraphs (a) or (g) of this section for continuation or reinstatement of life insurance shall execute a written election on a form furnished by OPM at the time entitlement to continuation or reinstatement of the insurance arises. To be considered valid, the election form must be received in OPM before final adjudication of the employee's application for annuity or supplemental annuity. In the absence of a valid election, the insured shall be deemed to have filed a valid election under paragraph (c)(2) of this section.

* * * * *

(3) The heading of Part 871 is revised, effective April 1, 1981, to read as follows:

PART 871—STANDARD OPTIONAL LIFE INSURANCE

(4) In Part 871, § 871.101 is revised, effective April 1, 1981, to read as follows:

Subpart A—Administration and General Provisions

§ 871.101 Actions on the policy.

Optional life and accidental death and dismemberment benefits (referred to in this part as "standard optional insurance") shall be payable in accordance with an amendment to the policy purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, NY 10010, under section 8709 of title 5, United States Code, to provide group insurance coverage (referred to in this part as "basic insurance"). Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligations undertaken by the United States should be brought against the insurance company.

(5) In Part 871, § 871.202 and § 871.204(b) are revised, and §§ 871.204(d) and 871.205(e) are added, effective March 1, 1981, to read as follows:

Subpart B—Coverage

§ 871.202 Election or declination.

(a) Except as otherwise provided in paragraph (b) of this section, each employee shall, on the form entitled Life Insurance Election, elect or decline standard optional insurance within 31 days after becoming eligible, unless during earlier employment he/she filed an election or declination which remains in effect.

(b) On a determination by an employing office, within 6 months after a person becomes eligible, that he/she was unable, for cause beyond his/her control to elect or decline the standard optional insurance within the prescribed time limit, the employee shall elect or decline the standard optional insurance within 31 days after he/she is advised of that determination. Standard optional insurance in that case is retroactive to the first day of the first pay period beginning after the date the person became eligible, or after April 1, 1981, whichever is later, and the person shall pay the full cost of the insurance from that date for the time that he/she is in a pay status or retired and under age 65.

(c) A person who does not file a Life Insurance Election form with his/her employing office does not have standard optional insurance.

§ 871.204 Declination.

* * * * *

(b) A cancellation of standard optional insurance becomes effective and standard optional insurance stops at the end of the pay period in which the declination or waiver is received in the employing office, except that a declination of standard optional insurance (which is not also a waiver of basic insurance) which is filed during the period from March 1, 1981 through March 31, 1981, becomes effective and standard optional insurance stops at the end of the pay period which includes March 31, 1981.

* * * * *

(d) For the purpose of having standard optional insurance as an employee, an election of insurance under this part filed on or before February 28, 1981, is deemed to have been canceled effective at the end of the pay period which includes March 31, 1981, unless the employee does not actually enter on duty in pay status during the first pay period which begins on or after April 1, 1981, in which case the election is deemed to have been canceled on the first day after the end of such pay period that the employee actually enters on duty in pay status. In order to retain or obtain standard optional insurance as an employee after the date of such declination an employee must affirmatively elect the coverage by filing the Life Insurance Election form with his/her employing office, subject to the provisions of § 871.205.

§ 871.205 Cancellation of declination.

* * * * *

(e) Declinations of standard optional insurance filed on or before February 28, 1981, are automatically canceled effective on the first day an employee whose declination is so canceled actually enters on duty in pay status on or after April 1, 1981, and the standard optional insurance is effective on the date of cancellation of the declination, provided that the employee has filed an affirmative election of standard optional insurance on the form entitled Life Insurance Election during the period from March 1, 1981 through March 31, 1981. An employee whose pre-March 1981 declination is so canceled and who does not file the form with his/her employing office during the period from March 1, 1981 through March 31, 1981, shall be deemed to have declined standard optional insurance on March 31, 1981, except that an employee who fails to file the form during that period due to cause beyond his/her control shall be allowed to enroll belatedly under the conditions prescribed under § 871.202(b).

(6) In Part 871, § 871.401(c) is revised, and § 871.401(g) is added, effective on the first day of the first pay period beginning on or after April 1, 1981, to read as follows:

Subpart D—Withholdings

§ 871.401 Withholdings.

* * * * *

(c) The biweekly full cost of the $10,000 of standard optional insurance (and for a person in receipt of annuity or compensation for work injury, of standard optional life insurance), until determined by OPM on the basis of experience to be otherwise, is:

For persons under age 35	$0.60
For persons ages 35 through 39	$0.80
For persons ages 40 through 44	$1.40
For persons ages 45 through 49	$2.20
For persons ages 50 through 54	$3.20
For persons ages 55 through 59	$7.50
For persons age 60 or over	$9.00

The amount withheld from the pay of a person paid on other than a biweekly period or insured for more than $10,000 shall be determined at a proportionate rate, adjusted to the nearest cent.

* * * * *

(g)(1) If OPM fails to withhold proper amounts of standard optional life insurance deductions from the annuity of a retired employee, OPM may waive the collection of the unpaid insurance deductions in accordance with section 8707(d) of title 5, United States Code. OPM shall use the standards for waiver of overpayments found under Subpart N of Part 831 of this chapter when determining whether a waiver of collection of the unpaid deductions may be granted, and shall follow the procedures under Subpart M of Part 831 of this chapter when applying the standards.

(2) If, under section 8707(d) of title 5, United States Code, an agency waives the collection of unpaid insurance deductions from an individual's pay, annuity or compensation, the agency shall submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8708 of title 5, United States Code, to OPM for deposit to the Employees' Life Insurance Fund. An agency will make its determination on the waiver of collection of an overpayment of pay in accorcdance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G.

(7) In Part 871, paragraph (b) of § 871.501 is revised, paragraphs (c) and (d) are redesignated (d) and (e), and paragraph (c) is added, to read as follows:

Subpart E—Termination and Conversion

§ 871.501 Termination and conversion of insurance.

* * * * *

(b) If, because of a declination or waiver, an insured employee has not had the standard optional insurance during the full period(s) of service during which it was available to him/her, or for the 5 years of service immediately preceding the date on which that coverage stops, whichever is less, the optional insurance stops, subject to a 31-day extension standard optional life insurance coverage, on the date that his/her basic life insurance is continued or reinstated under the provisions of § 870.601 (during retirement) or § 870.701 (during receipt of compensation) of this chapter.

(c) If, at the time of an individual's election under §§ 870.601(b) or 870.701(b) of this chapter, he/she elects no basic life insurance during receipt of annuity or compensation (as provided under §§ 870.601(c)(1) and 870.701(c)(1) of this chapter), the standard optional insurance stops at the end of the month in which the election is received in OPM, subject to a 31-day extension of coverage.

* * * * *

(8) In Part 871, § 871.601 and § 871.604(b) are revised to read as follows:

Subpart F—Retired Employees and Employees Compensation

§ 871.601 Amount of insurance.

The amount of standard optional life insurance which is continued during receipt of annuity or compensation reduces by 2 percent a month effective at the beginning of the second calendar month after (a) the date the insurance would otherwise have stopped, or (b) the retiree's or compensationer's 65th birthday, whichever is later, with a maximum reduction of 75 percent.

§ 871.604 Reemployed retired employees.

* * * * *

(b) Standard optional insurance acquired during reemployment may be continued after termination of the reemployment of the retired employee:

(1) Qualifies for a supplemental annuity or acquires a new retirement right,

(2) Continues his/her basic insurance under paragraphs (c)(2), (c)(3) or (c)(4) of § 870.601 of this chapter, and

(3) Has had standard optional insurance in force for the 5 years of service immediately preceding separation from reemployment or for the full period(s) of service during which it was available to him/her, whichever is less.

If the standard optional life insurance acquired during reemployment is so continued, any suspended standard optional life insurance stops with no 31-day extension of coverage or right of conversion.

(9) Part 872 is added to read as follows:

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

Subpart A—Administration and General Provisions

Sec.
872.101 Actions on the policy.
872.102 Payment of benefits; designations of beneficiary.
872.103 Correction of an error, mistake, or omission.

Subpart B—Coverage

872.201 Eligibility.
872.202 Election or declination.
872.203 Effective date of insurance.
872.204 Declination.
872.205 Cancellation of declination.
872.206 Reconsideration.

Subpart C—Amount of Insurance

Sec.
872.301 Amount of employee's insurance.

Subpart D—Withholdings

872.401 Withholdings.

Subpart E—Termination and Conversion

872.501 Termination and conversion of insurance.

Subpart F—Retired Employees and Employees Compensation

872.601 Amount of insurance.
872.602 Termination of annuity compensation.
872.603 Waiver or supension of annuity or compensation.
872.604 Reemployed retired employees.

Authority: 5 U.S.C. 8716. Interprets and applies 5 U.S.C. 8714b.

Subpart A—Administration and General Provisions

§ 872.101 Actions on the policy.

Optional life insurance (referred to in this part as "additional optional insurance") shall be payable in accordance with an amendment to the policy purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, N.Y. 10010, pursuant to section 8709 of title 5, United States Code, to provide group insurance coverage (referred to in this part as "basic insurance"). Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligations undertaken by the United States, should be brought against the insurance company.

§ 872.102 Payment of benefits; designations of beneficiary.

Additional optional insurance in force on a person at the date of his/her death

shall be paid, on receipt of a valid claim, in the same order of precedence and under the same conditions as are applicable to basic insurance. A designation of beneficiary for basic

§ 872.203 Effective date of insurance.

(a) The effective date of an election of additional optional insurance is the first day on or after April 1, 1981, that an employee actually enters on duty in a

chapter, except that the election must be received in the employing office before the employee's 36th birthday. In order to be valid, the election must be filed with the employing office on the Life

employee who has complied with paragraphs (a)(1) or (a)(3) of this section is the first day he/she actually enters on duty in a pay status, on or after the day his/her election is received in his/her

(f) *Final decision.* After consideration, OPM shall issue a final decision which shall be in writing and shall fully set forth the findings and conclusions of OPM.

(e) The amount withheld from the pay of an insured person whose annual pay is paid during a period shorter than 52 workweeks is the sum obtained by converting the biweekly rate for his/her

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shall be paid, on receipt of a valid claim, in the same order of precedence and under the same conditions as are applicable to basic insurance. A designation of beneficiary for basic insurance is also a designation of beneficiary for additional optional insurance unless the insured person specifies otherwise in his/her designation.

§ 871.103 Correction of an error, mistake, or omission.

The Associate Director for Compensation may order correction of an error, mistake, or omission upon a showing satisfactory to the Associate Director that it would be against equity and good conscience not to do so.

Subpart B—Coverage

§ 872.201 Eligibility.

Each employee, as defined in section 8701 of title 5, United States Code, who is insured for basic insurance and for whom an uncanceled declination of additional optional insurance is not in effect is eligible to elect the additional optional insurance, if his/her periodic pay, after all other deductions, is sufficient to cover its full cost

§ 872.202 Election or declination.

(a) Except as otherwise provided in paragraph (b) of this section, each employee shall, on the form entitled Life Insurance Election, elect or decline the additional optional insurance within 31 days after becoming eligible, unless during earlier employment he/she filed an election or declination which remains in effect. The 31-day time limit begins to run on the first day after February 28, 1981, on which an individual meets the definition of an employee under 5 U.S.C. 8701.

(b) On a determination by an employing office, within 6 months after a person becomes eligible, that he/she was unable, for cause beyond his/her control to elect the additional optional insurance within the prescribed time limit regulation, the employee shall elect or decline the optional insurance within 31 days after he/she is advised of that determination. Additional optional insurance in that case is retroactive to the first day of the first pay period beginning after the date the person became eligible, or after April 1, 1981, whichever is later, and the person shall pay the full cost of the insurance from that date for the time that he/she is in a pay status or retired and under age 65.

(c) A person who does not file a Life Insurance Election form with his/her employing office does not have the additional optional insurance.

§ 872.203 Effective date of insurance.

(a) The effective date of an election of additional optional insurance is the first day on or after April 1, 1981, that an employee actually enters on duty in a pay status on or after the day the election is received in his/her employing office.

(b) An election of additional optional insurance remains in effect until canceled as provided in § 872.204. For an employee whose additional optional insurance has stopped for a reason other than a declination or waiver, additional optional insurance is reinstated on the first day he/she actually enters on duty in a pay status in a position in which he/she again becomes eligible.

§ 872.204 Declination.

(a) An insured person may at any time cancel his/her additional optional insurance by filing with his/her employing office (which for a retired employee is the office that administers his/her retirement sytem, and, for an employee or former employee in receipt of compensation for work injury under subchapter I of chapter 81 of title 5, United States Code, is the Department of Labor) a declination of additional optional insurance or a waiver of basic insurance coverage. An insured person may at any time reduce the number of his/her multiples of additional optional insurance by filing a Life Insurance Election form with his/her employing office.

(b) A cancellation of additional optional insurance becomes effective and additional optional insurance stops at the end of the pay period in which the declination or waiver is received in the employing office. A reduction in the number of additional optional insurance multiples is effective at the end of the pay period in which the Life Insurance Election form is received in the employing office.

(c) A declination or reduction in multiples of additional optional insurance remains in effect until it is canceled as provided in § 872.205.

§ 872.205 Cancellation of declination.

(a)(1) An employee who has declined the additional optional insurance may elect it if (A) he/she is under age 50, (B) at least 1 year has elapsed since the effective date of his/her last declination or waiver, and (C) he/she furnishes satisfactory evidence of insurability.

(2) An employee who has declined additional optional insurance may elect it upon his/her marriage or the acquisition of an unmarried dependent child within the meaning of section 8701(d) of title 5, United States Code, and Subpart G of Part 873 of this chapter, except that the election must be received in the employing office before the employee's 36th birthday. In order to be valid, the election must be filed with the employing office on the Life Insurance Election form during the 60-day period following the date of the event which permits the election. This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event, or if the individual separates from covered service prior to completion of the 60-day time limit. This extension of the time limit is limited to coincide with the 31-day time limit for electing insurance following employment in a covered position. The number of multiples which an employee may obtain upon acquisition of a spouse or child is limited to the number of family members (spouse and/or children) acquired with the event which permits the employee to elect additional optional insurance under this paragraph.

(3) An employee who has in force additional optional insurance of at least 1 multiple of annual pay but less than 5 multiples of annual pay may increase the number of multiples if he/she meets the requirements of paragraph (a)(1) of this section.

(4) An employee who has in force additional optional insurance of at least 1 multiple of annual pay but less than 5 multiples of annual pay may elect to increase the number of multiples upon his/her marriage or the aquisition of an unmarried dependent child within the meaning of section 8701(d) of title 5, United States Code, and Subpart G of Part 873 of this chapter, except that the election must be received in the employing office before the employee's 50th birthday. In order to be valid, the election to increase multiples must be filed with the employing office on the Life Insurance Election form during the 60-day period following the date of the event which permits the increase. This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event, or if the individual separates from covered service prior to completion of the 60-day time limit. This extension of the time limit is limited to coincide with the 31-day limit for electing insurance following employment in a covered position. The number of multiples which an employee may add upon acquisition of a spouse or child is limited to the number of family members (spouse and/or children) acquired with the event which permits the employee to increase multiples.

(b)(1) The effective date of the additional optional insurance for an employee who has complied with paragraphs (a)(1) or (a)(3) of this section is the first day he/she actually enters on duty in a pay status, on or after the day his/her election is received in his/her employing office following the approval of his/her Request for Insurance by the Office of Federal Employees' Group Life Insurance.

This approval is revoked automatically and the additional optional insurance does not become effective if the employee fails to submit his/her election or meet the pay and duty status requirement within 31 days following the date of the approval.

(2) The effective date of an election under paragraphs (a)(2) or (a)(4) of this section is the first day the employee actually enters on duty in a pay status, on or after the day his/her election is received in the employing office.

(c) A former employee and an employee who is continuing basic life insurance during receipt of compensation is not eligible to cancel a declination under this section, nor to increase multiples of additional optional insurance.

§ 872.206 Reconsideration.

(a) *Who may file.* An individual or annuitant may request the OPM to reconsider an agency decision or an initial decision of OPM denying additional optional insurance coverage.

(b) *Agency decision.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the written decision stating the right to reconsideration by OPM. The time limit may be extended as provided in paragraph (e) of this section.

(c) *Initial OPM decision.* An OPM decision shall be considered an initial decision when rendered by OPM in writing and stating the right to reconsideration. However, a decision initially rendered at the highest level of review available within OPM will not be subject to reconsideration.

(d) *Reconsideration.* A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, claim number, if applicable, and reasons for the request.

(e) *Time limit.* A request for reconsideration of an initial decision must be filed within 30 calendar days from the date of the initial decision. OPM may extend the time limit for filing when the individual shows that he/she was not notified of the time limit and was not otherwise aware of it, or that he/she was prevented by circumstances beyond his/her control from making the request within the time limit.

(f) *Final decision.* After consideration, OPM shall issue a final decision which shall be in writing and shall fully set forth the findings and conclusions of OPM.

Subpart C—Amount of Insurance

§ 872.301 Amount of employee's insurance.

An eligible employee may elect additional optional insurance of 1, 2, 3, 4, or 5 multiples of his/her annual pay. For this purpose, each multiple is equal to the lowest multiple of $1,000 which is not less than the current rate of the employee's annual pay as determined under § 870.302 of this chapter. A multiple shall not exceed the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of title 5, United States Code, rounded to the next higher multiple at $1,000.

Subpart D—Withholdings

§ 872.401 Withholdings.

(a) During any period in any part of which an insured employee is in a pay status there shall be withheld from his/her pay the full cost of his/her additional optional insurance as specified in paragraph (c) of this section.

(b) Subject to the provisions of § 872.604, for any period before the first of the month following his/her 65th birthday during which an insured retired employee (or employee or former employee in receipt of compensation for work injury) receives annuity (or compensation), there shall be withheld from his annuity (or compensation) the full cost of his/her additional optional insurance as specified in paragraph (c) of this section.

(c) The biweekly full cost per $1,000 of additional optional insurance in force, until determined by OPM on the basis of experience to be otherwise, is:

For persons under age 35—$0.05
For persons ages 35 through 39—$0.07
For persons ages 40 through 44—$0.12
For persons ages 45 through 49—$0.20
For persons ages 50 through 54—$0.30
For persons ages 55 through 59—$0.60
For persons age 60 or over—$0.95

The amount withheld from the pay of a person paid on other than a biweekly period shall be determined at a proportionate rate, adjusted to the nearest one-tenth of one cent.

(d) For the purposes of this section, a person is deemed to attain 35, 40, 45, 50, 55, or 60 years of age on the first day of his/her pay period beginning on or after January 1 of the year following the one in which his/her corresponding birthday occurs.

(e) The amount withheld from the pay of an insured person whose annual pay is paid during a period shorter than 52 workweeks is the sum obtained by converting the biweekly rate for his/her age group to an annual rate and prorating the annual rate over the number of installments of pay regularly paid during the year.

(f) The amount withheld from the pay of an insured employee whose amount of insurance changes during a pay period is based on the last amount of insurance in force during the pay period.

(g)(1) If OPM fails to withhold proper amounts of insurance deductions from the annuity of a retired employee, OPM may waive the collection of the unpaid insurance deductions in accordance with section 8707(d) of title 5, United States Code. OPM shall use the standards for waiver of overpayments found under Subpart N of Part 831 of this chapter when determining whether a waiver of collection of the unpaid deductions may be granted, and shall follow the procedures under Subpart M of Part 831 of this chapter when applying the standards.

(2) If, under section 8707(d) of title 5, United States Code, an agency waives the collection of unpaid insurance deductions from an individual's pay, annuity or compensation, the agency shall submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8708 of title 5, United States Code, to OPM for deposit to the Employees' Life Insurance Fund. An agency will make its determination on the waiver of collection of an overpayment of pay in accordance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G.

Subpart E—Termination and Conversion

§ 872.501 Termination and conversion of insurance.

(a) The additional optional insurance of an insured employee stops when his/her basic insurance stops as provided in § 870.501 of this chapter subject to a 31-day extension of additional optional insurance coverage.

(b) If, because of a declination or waiver, an insured employee has not had the additional optional insurance during the full period(s) of service during which it was available to him/her, or for the 5 years of service immediately preceding the date on which the insurance stops, whichever is less, the additional optional insurance stops, subject to a 31-day extension of additional optional insurance coverage, on the date that his/her basic life

insurance is continued or reinstated under the provisions of § 870.601 (for retirement) or § 870.701 (during receipt of compensation) of this chapter.

(c) If, at the time of an individual's

§ 872.602 Termination of annuity or compensation.

If the annuity or compensation for work injury paid to an insured person is terminated, or if the Department of Labor finds that an insured person

corresponding annuity withholdings, if any) is reinstated on the day following termination of the reemployment.

(b) Additional optional insurance acquired during reemployment may be

Subpart A—Administration and General Provisions

§ 873.101 Actions on the policy.

Optional life insurance on family

definition of an employee under 5 U.S.C. 8701.

(b) On a determination by an employing office, within 6 months after a person becomes eligible, that he/she

§ 873.205 Cancellation of declination.

(a) An employee who has declined the family optional insurance may elect it upon his/her marriage or the acquisition of a child. In order to be valid, the

insurance is continued or reinstated under the provisions of § 870.601 (for retirement) or § 870.701 (during receipt of compensation) of this chapter.

(c) If, at the time of an individual's election under §§ 870.601(b) or 870.701(b) of this chapter (for basic life insurance during receipt of annuity or compensation), he/she elects no basic life insurance (as provided under §§ 870.601(c)(1) or 870.701(c)(1) of this chapter), the additional optional insurance stops at the end of the month in which the election is received in OPM, subject to a 31-day extension of coverage.

(d) The additional optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation for work injury, or annuity, after all other deductions, is insufficient to cover the full cost of the additional optional insurance.

(e) During the 31-day extension of additional optional insurance coverage under this section, a person may, upon application and without medical examination convert all or any part of his/her additional optional insurance to an individual policy of life insurance at rates applicable to his/her attained age and class of risk unless, within 3 calendar days after the date his/her additional optional insurance stopped, he/she returns to a position in which he/she is not excluded from coverage.

Subpart F—Retired Employees and Employees Compensation

§ 872.601 Amount of insurance.

(a) Each multiple of additional optional insurance continued during receipt of annuity or compensation reduces by 2 percent a month effective at the beginning of the second calendar month after (1) the date the insurance would otherwise have stopped, or (2) the insured's 65th birthday, whichever is later. At 12:00 PM on the day preceding the 50th reduction the insurance stops, with no extension of coverage or right of conversion.

(b) The number of multiples of additional optional insurance which may be continued during receipt of annuity or compensation is the smallest number of multiples in force during (1) the 5 years of service immediately preceding separation from employment or entitlement to compensation, or (2) the full period(s) of service during which the additional optional insurance was available to the employee.

§ 872.602 Termination of annuity or compensation.

If the annuity or compensation for work injury paid to an insured person is terminated, or if the Department of Labor finds that an insured person receiving compensation for work injury is able to return to duty, additional optional insurance held as a retired employee or person receiving compensation stops, with no 31-day extension of coverage or right of conversion, on the date of that termination or finding.

§ 872.603 Waiver of suspension of annuity or compensation.

(a) Except as provided in paragraph (b) of this section, when annuity or compensation for work injury is waived or suspended, additional optional insurance continues. When payment of the annuity or compensation is resumed, the employing office shall withhold the full cost of the insurance for the period of waiver or suspension during which the person is under age 65.

(b) If suspension of annuity or compensation is because of reemployment, the reemployment office shall withhold the full cost of the insurance during each pay period of reemployment.

§ 872.604 Reemployed retired employees.

(a)(1) A retired employee appointed to a position in which he/she is not excluded from basic insurance by law or regulation is eligible for additional optional insurance as an employee, unless he/she has on file an uncanceled waiver of basic insurance or declination of additional optional insurance. If he/she has additional optional insurance as a retired employee, that insurance (and any applicable annuity withholdings) continues as if the individual were not reemployed, unless (i) the person files with his/her employing office within 31 days following the date of reemployment an election of additional optional insurance on the Life Insurance Election form, in which case the additional optional insurance (and corresponding annuity withholdings) as a retiree is suspended effective on the date that the additional optional insurance as an employee becomes effective, or (ii) the person files a waiver of basic insurance.

(2) Except as provided in paragraph (b) of this section, the additional optional insurance acquired as an employee stops, with no 31-day extension or right of conversion, on the date reemployment terminates and any suspended additional optional insurance which remains in force after applicable monthly reductions after age 65 (and corresponding annuity withholdings, if any) is reinstated on the day following termination of the reemployment.

(b) Additional optional insurance acquired during reemployment may be continued after termination of the reemployment if the retired employee:

(1) Qualifies for a supplemental annuity or acquires a new retirement right,

(2) Continues his/her basic insurance under paragraphs (c)(2), (c)(3), or (c)(4) of § 870.601 of this chapter, and

(3) Has had additional optional insurance in force for the 5 years of service immediately preceding separation from reemployment or for the full period(s) of service during which it was available to him/her, whichever is less. If the additional optional insurance acquired during reemployment is so continued, any suspended addit onal optional insurance stops with n 31-day extension of coverage or right of conversion.

(10) Part 873 is added to read as follows:

PART 873—FAMILY OPTIONAL LIFE INSURANCE

Subpart A—Administration and General Provisions

Sec.
873.101 Actions on the policy.
873.102 Payment of benefits.
873.103 Correction of an error, mistake, or omission.

Subpart B—Coverage
873.201 Eligibility.
873.202 Election or declination.
873.203 Effective date of insurance.
873.204 Declination.
873.205 Cancellation of declination.
873.206 Reconsideration.

Subpart C—Amount of Insurance
873.301 Amount of employee's insurance.

Subpart D—Withholdings
873.401 Withholdings.

Subpart E—Termination and Conversion
873.501 Termination and conversion of insurance.

Subpart F—Retired Employees and Employees Compensation
873.601 Amount of insurance.
873.602 Termination of annuity or compensation
873.603 Waiver or suspension of annuity or compensation.
873.604 Reemployed retired employees.

Subpart G—Definition of Family Member
873.701 Definition of family member.
873.702 Proof of dependency.
873.703 Child incapable of self-support.

Authority: 5 U.S.C. 8716. Interprets and applies 5 U.S.C. 8714c.

Subpart A—Administration and General Provisions

§ 873.101 Actions on the policy.

Optional life insurance on family members (referred to in this part as "family optional insurance") shall be payable in accordance with an amendment to the policy purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, N.Y. 10010, pursuant to section 8709 of title 5, United States Code, to provide group insurance coverage (referred to in this part as "basic insurance"). Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligations undertaken by the United States, should be brought against the insurance company.

§ 873.102 Payment of benefits.

Family optional insurance in force on a spouse or child at the date of his/her death shall be paid to the employee or former employee whose pay, annuity or compensation is subject to withholding under § 873.401, except that in the event that payment is not made prior to the death of the employee, the insurance shall be paid to the person(s) eligible for the basic insurance on the employee or former employee.

§ 873.103 Correction of an error, mistake, or omission.

The Associate Director for Compensation may order correction of an error, mistake, or omission upon a showing satisfactory to the Associate Director that it would be against equity and good conscience not to do so.

Subpart B—Coverage

§ 873.201 Eligibility.

Each employee, as defined by section 8701 of title 5, United States Code, who is insured for basic insurance and for whom an uncanceled declination of family optional insurance is not in effect is eligible to elect the family optional insurance, if his/her periodic pay, after all other deductions, is sufficient to cover its full cost.

§ 873.202 Election or declination.

(a) Except as otherwise provided in paragraph (b) of this section, each employee shall, on the form entitled Life Insurance Election, elect or decline the family optional insurance within 31 days after becoming eligible, unless during earlier employment he/she filed an election or declination which remains in effect. The 31-day time limit begins to run on the first day after February 28, 1981, on which an individual meets the definition of an employee under 5 U.S.C. 8701.

(b) On a determination by an employing office, within 6 months after a person becomes eligible, that he/she was unable, for cause beyond his/her control to elect or decline the family optional insurance within the prescribed time limit, the employee shall elect or decline the family optional insurance within 31 days after he/she is advised of that determination. Family optional insurance in that case is retroactive to the first day of the first pay period beginning after the date the person became eligible, or after April 1, 1981, whichever is later, and the person shall pay the full cost of the insurance from that date for the time that he/she is in a pay status or retired and under age 65.

(c) A person who does not file a Life Insurance Election form with his/her employing office does not have the family optional insurance.

§ 873.203 Effective date of insurance.

(a) The effective date of an election of family optional insurance is the first day on or after April 1, 1981, that an employee actually enters on duty in a pay status on or after the day the election is received in his/her employing office.

(b) An election of family optional insurance remains in effect until canceled as provided in § 873.204. For an employee whose family optional insurance has stopped for a reason other than a declination or waiver, family optional insurance is reinstated on the first day he/she actually enters on duty in a pay status in a position in which he/she again becomes eligible.

§ 873.204 Declination.

(a) An employee may at any time cancel his/her family optional insurance by filing with his/her employing office (which for a retired employee is the office that administers his/her retirement system, and, for an employee or former employee in receipt of compensation for work injury under subchapter I of chapter 81 of title 5, United States Code, is the Department of Labor) a declination of family optional insurance or a waiver of basic insurance coverage.

(b) A cancellation of family optional insurance becomes effective and family optional insurance stops at the end of the pay period in which the declination or waiver is received in the employing office.

(c) A declination of family optional insurance remains in effect until it is canceled as provided in § 873.205.

§ 873.205 Cancellation of declination.

(a) An employee who has declined the family optional insurance may elect it upon his/her marriage or the acquisition of a child. In order to be valid, the election must be filed with the employing office on the Life Insurance Election form during the 60-day period following the date of the event which permits the election. This 60-day time limit may be extended if the individual is not serving in a covered position on the date of the event, if the individual separates from covered service prior to completion of the 60-day time limit, or if the event occurs during the period following a waiver of basic insurance when he/she is not eligible to cancel the waiver. This extension of the time limit is limited to coincide with the 31-day time limit for electing insurance following employment in a covered position, or with the 31-day period following the first day on which the individual becomes eligible to cancel a waiver of basic insurance.

(b) The effective date of the family optional insurance for an employee who has complied with paragraph (a) of this section is the first day he/she actually enters on duty in a pay status, on or after the day his/her election is received in his/her employing office and basic insurance is in force.

(c) A former employee and an employee who is continuing basic insurance as a compensationer is not eligible to make the election provided in paragraph (a) of this section.

§ 873.206 Reconsideration.

(a) *Who may file.* An individual or annuitant may request the OPM to reconsider an agency decision or an initial decision of OPM denying family optional insurance coverage.

(b) *Agency decision.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the written decision stating the right to reconsideration by OPM. The time limit may be extended as provided in paragraph (e) of this section.

(c) *Initial OPM decision.* An OPM decision shall be considered an initial decision when rendered by OPM in writing and stating the right to reconsideration. However, a decision initially rendered at the highest level of review available within OPM will not be subject to reconsideration.

(d) *Reconsideration.* A request for reconsideration must be made in writing, must include the claimant's name, address, date of birth, claim number, if applicable, and reasons for the request.

(e) *Time limit.* A request for reconsideration of an initial decision

must be filed within 30 calendar days from the date of the initial decision. OPM may extend the time limit for filing when the individual shows that he/she was not notified of the time limit and was not otherwise aware of it, or that

(e)(1) If OPM fails to withhold proper amounts of insurance deductions from the annuity of a retired employee, OPM may waive the collection of the unpaid insurance deductions in accordance with section 8707(d) of title 5, United

the election is received in OPM, subject to a 31-day extension of coverage.

(d) The family optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the

insurance stops, with no extension of coverage or right of conversion.

§ 873.602 Termination of annuity or compensation.

(a) Except as provided in paragraph (b) of this section, when annuity or compensation for work injury is waived or suspended, additional optional insurance continues. When payment of the annuity or compensation is resumed, the employing office shall withhold the full cost of the insurance for the period of waiver or suspension during which the person is under age 65.

(b) If suspension of annuity or compensation is because of reemployment, the reemployment office shall withhold the full cost of the insurance during each pay period of reemployment.

(b) Additional optional insurance acquired during reemployment may be continued after termination of the reemployment if the retired employee:

(1) Qualifies for a supplemental annuity or acquires a new retirement right,

(2) Continues his/her basic insurance under paragraphs (c)(2), (c)(3), or (c)(4)

(c) The Office of Federal Employees' Group Life Insurance may deny an individual coverage as a dependent child if:

(1) Evidence shows that the employee

must be filed within 30 calendar days from the date of the initial decision. OPM may extend the time limit for filing when the individual shows that he/she was not notified of the time limit and was not otherwise aware of it, or that he/she was prevented by circumstances beyond his/her control from making the request within the time limit.

(f) *Final decision.* After reconsideration, OPM shall issue a final decision which shall be in writing and shall fully set forth the findings and conclusions of OPM.

Subpart C—Amount of Insurance

§ 873.301 Amount of employee's insurance.

The amount of family optional insurance is $5,000 payable upon the death of a spouse and $2,500 payable upon the death of a child.

Subpart D—Withholdings

§ 873.401 Withholdings.

(a) During any period in any part of which an insured employee is in a pay status there shall be withheld from his/her pay the full cost of his/her family optional insurance as specified in paragraph (c) of this section.

(b) Subject to the provisions of § 873.604, for any period before the first of the month following his/her 65th birthday during which an insured retired employee (or employee or former employee in receipt of compensation for work injury) receives annuity (or compensation), there shall be withheld from his annuity (or compensation) the full cost of his/her family optional insurance as specified in paragraph (c) of this section.

(c) The biweekly full cost of family optional insurance in force, until determined by OPM on the basis of experience to be otherwise, is:

For persons under age 35—$0.50
For persons ages 35 through 39—$0.60
For persons ages 40 through 44—$0.70
For persons ages 45 through 49—$0.90
For persons ages 50 through 54—$1.30
For persons ages 55 through 59—$2.00
For persons age 60 or over—$3.00

The amount withheld from the pay of a person paid on other than a biweekly period shall be determined at a proportionate rate, adjusted to the nearest cent.

(d) For the purposes of this section, a person is deemed to attain 35, 40, 45, 50, 55, or 60 years of age on the first day of his/her pay period beginning on or after January 1 of the year following the one in which his/her corresponding birthday occurs.

(e)(1) If OPM fails to withhold proper amounts of insurance deductions from the annuity of a retired employee, OPM may waive the collection of the unpaid insurance deductions in accordance with section 8707(d) of title 5, United States Code. OPM shall use the standards for waiver of overpayments found under Subpart N of Part 831 of this chapter when determining whether a waiver of collection of the unpaid deductions may be granted, and shall follow the procedures under Subpart M of Part 831 of this chapter when applying the standards.

(2) If, under section 8707(d) of title 5, United States Code, an agency waives the collection of unpaid insurance deductions from an individual's pay, annuity or compensation, the agency shall submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8708 of title 5, United States Code, to OPM for deposit to the Employees' Life Insurance Fund. An agency will make its determination on the waiver of collection of an overpayment of pay in accordance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G.

Subpart E—Termination and Conversion

§ 873.501 Termination and conversion of insurance.

(a) The family optional insurance of an insured employee stops when his/her basic insurance stops as provided in § 870.501 of this chapter subject to a 31-day extension of family optional insurance coverage.

(b) If, because of a declination or waiver, an insured employee has not had the family optional insurance during the full period(s) of service during which he/she was serving in a position subject to this part, or for the 5 years of service immediately preceding the date on which the insurance stops, whichever is less, the family optional insurance stops, subject to a 31-day extension of family optional insurance coverage, on the date that his/her basic life insurance is continued or reinstated under the provisions of § 870.601 (for retirement) or under the provisions of § 870.701 (during receipt of compensation) of this chapter.

(c) If, at the time of an individual's election under §§ 870.601(b) or 870.701(b) of this chapter (for basic life insurance during receipt of annuity or compensation), he/she elects no basic life insurance (as provided under §§ 870.601(c)(1) or 870.701(c)(1) of this chapter), the family optional insurance stops at the end of the month in which the election is received in OPM, subject to a 31-day extension of coverage.

(d) The family optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation for work injury, or annuity, after all other deductions, is insufficient to cover the cost of the family optional insurance.

(e) During the 31-day extension of family optional insurance coverage under this section, a person may, upon application and without medical examination, convert his/her family optional insurance to an individual policy of life insurance at rates applicable to his/her attained age and class of risk unless, within 3 calendar days after the date his/her family optional insurance stopped, he/she returns to a position in which he/she is not excluded from coverage.

(f) During the 31-day period following the death of an insured employee, or during the 31-day extension of family optional insurance under this section, each one of the employee's or former employee's family members as defined by 5 U.S.C. 8701(d) may, upon application and without medical examination, convert the amount of family optional insurance coverage in force (maximums of $5,000 for a spouse and $2,500 for a child) to an individual policy of life insurance at rates applicable to his/her attained age and class of risk unless, within 31 days after the date the employee's or former employee's family optional insurance stopped, he/she returns to a position in which he/she is not excluded from coverage. The family member's right of conversion does not attach if the employee or former employee exercises his/her right of conversion under paragraph (e) of this section.

(g) The amount of an individual policy as provided under paragraphs (e) or (f) of this section shall not be less than $1,000.

Subpart F—Retired Employees and Employees Compensation

§ 873.601 Amount of insurance.

The amount of family optional insurance (on each family member) continued during receipt of annuity or compensation reduces by 2 percent a month effective at the beginning of the second calendar month after (1) the date the insurance would otherwise have stopped, or (2) the retiree's or compensationer's 65th birthday, whichever is later. At 12:00 PM on the day preceding the 50th reduction the

insurance stops, with no extension of coverage or right of conversion.

§ 873.602 Termination of annuity or compensation.

If the annuity or compensation for work injury paid to an insured person is terminated, or if the Department of Labor finds that an insured person receiving compensation for work injury is able to return to duty, family optional insurance held as a retired employee or person receiving compensation stops, with no 31-day extension of coverage or right of conversion, on the date of that termination or finding.

§ 873.603 Waiver or suspension of annuity or compensation.

(a) Except as provided in paragraph (b) of this section, when annuity or compensation for work injury is waived or suspended, family optional insurance continues. When payment of annuity or compensation is resumed, the employing office shall withhold the full cost of the insurance for the period of waiver or suspension during which the person is under age 65.

(b) If suspension of annuity or compensation is because of reemployment, the reemploying office shall withhold the full cost of the insurance during each pay period of reemployment.

§ 873.604 Reemployed retired employees.

(a)(1) A retired employee appointed to a position in which he/she is not excluded from basic insurance coverage by law or regulation is eligible for family optional insurance as an employee. If he/she has family optional insurance as a retired employee, that insurance (and any corresponding withholdings) is suspended on the day preceding his/her first day in a pay status under the appointment and, unless he/she files with his/her employing office a declination of family optional insurance (or a waiver of basic insurance), he/she acquires family optional insurance as an employee.

(2) Except as provided in paragraph (b) of this section, the family optional insurance acquired as an employee stops, with no 31-day extension or right of conversion, on the date reemployment terminates and any suspended family optional insurance which may remain in force following reductions is reinstated on the day following termination of the reemployment.

(b) Family optional insurance acquired during reemployment may be continued after termination of the reemployment if the retired employee:

(1) Qualifies for a supplemental annuity or acquires a new retirement right,

(2) Continues his/her basic insurance under paragraphs (c)(2), (c)(3), or (c)(4) of § 870.601 of this chapter, and

(3) Has had family optional insurance in force for the 5 years of service immediately preceding separation from reemployment or for the full period(s) of service during which it was available to him/her, whichever is less.

If the family optional insurance acquired during reemployment is so continued, any suspended family optional insurance stops with no 31-day extension of coverage or right of conversion.

Subpart G—Definition of Family Member

§ 873.701 Definition of family member.

For the purposes of this part, the terms "spouse" and "child" shall mean a spouse and unmarried dependent child within the meaning of these terms under the definition of "family member" under 5 U.S.C. 8701(d).

§ 873.702 Proof of dependency.

(a) A child is considered to have been dependent on an employee or former employee if he/she is:

(1) A legitimate child,

(2) An adopted child,

(3) A stepchild or recognized natural child who lived with the employee or former employee in a regular parent-child relationship,

(4) A recognized natural child for whom a judicial determination of support had been obtained, or

(5) A recognized natural child to whose support the employee or former employee made regular and substantial contribution.

(b) The following are examples of proof of regular and substantial support. More than one of the following proofs may be required to show support.

(1) Evidence of eligibility as a dependent child for benefits under State or Federal programs,

(2) Proof of inclusion of the child as a dependent on the employee's or former employee's income tax returns,

(3) Canceled checks, money orders, or receipts, for periodic payments from the employee or former employee for or on behalf of the child,

(4) Evidence of goods or services which show regular and substantial contributions,

(5) Any other evidence which the Office of Federal Employees' Group Life Insurance shall find to be sufficient proof of support or of paternity or maternity.

(c) The Office of Federal Employees' Group Life Insurance may deny an individual coverage as a dependent child if:

(1) Evidence shows that the employee or former employee did not recognize the child as his/her own despite a willingness to support the child, or

(2) Evidence calls the child's paternity or maternity into doubt, despite the employee's or former employee's recognition and support of the child.

(d) For the purposes of an employee's election of family optional insurance upon the acquisition of a child, as provided in § 873.205 the employing agency shall base any requisite determination of dependency on the criteria expressed in paragraphs (a), (b), and (c) of this section.

§ 873.703 Child incapable of self-support.

(a) Upon receipt of a claim for family optional insurance in the event of death of a child over the age of 21 years, the Office of Federal Employees' Group Life Insurance shall determine, on the basis of such evidence as it deems necessary, whether the deceased child was incapable of self-support because of a mental or physical disability which existed before becoming 22 years of age.

(b) In the event of an employee's election of family optional insurance under § 873.205, where the opportunity to elect is based solely on the acquisition of a child over age 21, the employee shall submit to the employing office at the time of filing the election, a certificate of the physician that the child is incapable of self-support because of a physical or mental disability which existed before the child became 22 years of age, and can be expected to continue for more than 1 year. The certificate shall include a statement of the name of the child, the nature of his/her disability, the period of time it has existed, and its probable future course and duration. The certificate shall be signed by the physician and show his/her office address.

(5 U.S.C. 8716)

[FR Doc. 80-40201 Filed 12-23-80; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Part 890

Federal Employees Health Benefits Program; Enrollee Deductibles

AGENCY: Office of Personnel Management.

ACTION: Interim Regulations with comments invited for consideration in final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is amending its

Federal Employees Health Benefits (FEHB) regulations to add a new paragraph pertaining to enrollee deductibles. This action is necessary to correct an inequity which can occur

certain high options and $200 for certain low options.

If an individual is enrolled in a plan which has a deductible on January 1 (the beginning of a contract year), he/she

contract year. Reimbursement of covered expenses shall apply only to covered expenses incurred from January 1 to the effective date of the enrolled employee's or annuitant's open season

the provisions of E.O. 12044, Improving Government Regulations, and, thus, does not require the preparation of a regulatory impact analysis. Accordingly, 7 CFR Part 2 is amended as follows:

SUMMARY: This final rulemaking sets forth State agency procedures for handling complaints about the operation of the Food Stamp Program. These procedures were developed to assure that mechanisms to accept and resolve

project areas, increase in staff, and increases in administrative funding. Those opposed include 1 regional office, 11 State agencies and 5 local agencies. Four State agencies suggested that the entire section on the complaint

Federal Employees Health Benefits (FEHB) regulations to add a new paragraph pertaining to enrollee deductibles. This action is necessary to correct an inequity which can occur after an employee changes health benefits plans during the FEHB open season.

DATES: Effective date: January 1, 1981, and until final regulations are issued. Comment Date: March 2, 1981.

ADDRESS: Send or deliver written comments to Craig B. Pettibone, Director, Office of Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Lauretta Hall, Issuances and Instructions Staff, (202) 632-4684.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(d)(3) of title 5, U.S.C., the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to give immediate and timely effect to a provision which corrects an inequity which can occur after an employee changes health benefits plans during an open season.

Under certain circumstances, an employee may be required to meet two deductibles during a calendar year before covered expenses may be reimbursed by the health benefits plan in which he/she is enrolled. This occurs mainly when an employee changes plans during the open season and incurs covered expenses subject to a deductible during the first few days of January, before his/her open season enrollment change becomes effective. Less than one percent of enrollees who change plans during the open season encounter this problem. However, it does give rise to complaints from those affected by it, who claim that the requirement to meet two deductibles in a calendar year is unfair.

Section 8902 of title 5, U.S.C., provides that each contract under the FEHB Program shall be for a uniform term of at least one year. Currently, health benefits contracts are negotiated to cover the period from January 1 through December 31 of a given year and the benefits are made available to cover an enrollee and eligible family members, if any, from January 1. For calendar year 1981, there will be 121 plans under the FEHB Program offering various benefit packages. The two Government-wide plans, a number of the employee organization plans, and a few of the comprehensive plans currently offer benefit packages with certain annual deductibles which are directly related to the contract year. The maximum deductible for these plans is $150 for certain high options and $200 for certain low options.

If an individual is enrolled in a plan which has a deductible on January 1 (the beginning of a contract year), he/she must meet that plan's deductible, before receiving member benefits. If an individual's enrollment is transferred during the contract year from one plan to another plan with a deductible, he/she must also meet the new plan's deductible before receiving member benefits. To correct this inequity, OPM is amending its regulations to require that when an enrollee changes plans during an open season and his/her open season change becomes effective after January 1, any covered expenses incurred from January 1 to the effective date of the open season change shall count toward the deductible of the losing carrier for the prior year, or, if the covered expenses are in excess of the carrier's deductible or family limit for deductibles, the enrollee (or eligible family member) shall be eligible for reimbursement at the losing carrier's prescribed rate. The change made by this amendment shall apply only in *timely* filed open season changes. It shall *not* apply in cases of belated open season changes or any other permissible changes made during a contract year.

OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.

JoAnn B. Platter,

Assistant Issuance System Manager.

Accordingly, OPM is adding a new § 890.201(a)(10), Title 5, Code of Federal Regulations, as set out below:

Subpart B—Health Benefits Plans

§ 890.201 Minimum standards for health benefits plans.

(a) * * *

(10) Provide that when an employee or annuitant changes enrollment from one health benefits plan which has an annual deductible to another plan with a deductible during an open season and his/her open season change becomes effective after January 1, any covered expenses incurred from January 1 to the effective date of the open season change shall count toward the deductible of the losing carrier for the prior year. If covered expenses for the prior year exceeded the losing carrier's deductible or family limit on deductibles, the enrolled employee or annuitant (and his/her eligible family members) shall be eligible for reimbursement of covered expenses, incurred during the current year, by the losing carrier based on contractual obligations for the current contract year. Reimbursement of covered expenses shall apply only to covered expenses incurred from January 1 to the effective date of the enrolled employee's or annuitant's open season change. This amendment shall apply only in *timely* filed open season changes. It shall *not* apply in belated open season changes or any other permissible changes made during a contract year.

* * * * *

(5 U.S.C. 8913)

[FR Doc. 80-40491 Filed 12-29-80; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary and General Officers of the Department to assign functional responsibilities under the Swine Health Protection Act.

EFFECTIVE DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT: John C. Frey, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202-447-5335 or 301-436-6466).

SUPPLEMENTARY INFORMATION: The delegations of authority by the Secretary and General Officers are being amended to provide that the Assistant Secretary for Marketing and Transportation Services and the Administrator, Animal and Plant Health Inspection Service, are responsible for administering the provisions of the Swine Health Protection Act. The Act, which will regulate the feeding of garbage to swine, is considered necessary to prevent outbreaks of Hog Cholera and African Swine Fever. The Department believes this delegation conforms to the mission of APHIS, and that this specific delegation will enable the Agency to serve the public more efficiently. This rule relates to internal agency management and, therefore, pursuant to 5 U.S.C. 553 it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after its publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from

the provisions of E.O. 12044, Improving Government Regulations, and, thus, does not require the preparation of a regulatory impact analysis. Accordingly, 7 CFR Part 2 is amended as follows:

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, Assistant Secretaries, and the Director of Economics, Policy Analysis and Budget

1. Section 2.17 is amended by adding a new paragraph (b)(34) to read as follows:

§ 2.17 Delegation of authority to the assistant secretary for marketing and transportation services.

* * * * *

(b) * * *

(34) The Swine Health Protection Act (Pub. L. 96-468, 94 Stat. 2229 (7 U.S.C. 3801-3812)).

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Transportation Services

2. Section 2.51 is amended by adding a new paragraph (a)(35) to read as follows:

§ 2.51 Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(35) The Swine Health Protection Act (Pub. L. 96-468, 94 Stat. 2229 (7 U.S.C. 3801-3812)).

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953)

For Subpart C:

Dated: December 22, 1980.

Bob Bergland,

Secretary of Agriculture.

For Subpart F:

Dated: December 22, 1980.

Jerry C. Hill,

Deputy Assistant Secretary for Marketing and Transportation Services.

[FR Doc. 80-40462 Filed 12-29-80; 8:45 am]

BILLING CODE 3410-01-M

Food and Nutrition Service

7 CFR Parts 271 and 272

[Amendment Number 187]

Food Stamp Act of 1977: Complaint Procedures

AGENCY: Food and Nutrition Service, USDA.

ACTION: final rule.

SUMMARY: This final rulemaking sets forth State agency procedures for handling complaints about the operation of the Food Stamp Program. These procedures were developed to assure that mechanisms to accept and resolve complaints exist, while not imposing burdensome Federal regulatory requirements on State agencies.

EFFECTIVE DATE: These rules are effective December 30, 1980, and must be implemented by State agencies no later than June 29, 1981.

FOR FURTHER INFORMATION CONTACT: Larry R. Carnes, Policy and Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C., 20250. (202) 447-9075.

The final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

On April 10, 1979, the Department published a comprehensive proposal concerning the implementation of a State Complaint Procedure. The Department invited public scrutiny of that proposal and encouraged detailed written criticism and comment.

This preamble discusses both the basis and reasons for the significant changes made from the April 10 proposal. A total of 94 comment letters were received concerning the proposed complaint procedure. The Department gave careful consideration to all the comments made.

General Scope

Regulations currently provide for specific procedures to handle discrimination complaints and fair hearings to handle complaints concerning eligibility and level of benefits for specific households.

The proposed regulations were designed to assure that some system also existed to handle other complaints, such as complaints on delays in processing or on general service to participants.

Sixty-four commenters, including 3 regional offices and 5 State agencies, favored the concept of a formalized complaint system. Eighteen commenters opposed the concept of a formalized complaint system for reasons of increased burden on State agencies and project areas, increase in staff, and increases in administrative funding. Those opposed include 1 regional office, 11 State agencies and 5 local agencies. Four State agencies suggested that the entire section on the complaint regulations be deleted.

After analyzing the comments, the Department concurs with those commenters who believed that many of the specific requirements of the proposed rules represented an unnecessary degree of Federal regulation and unnecessarily limited State flexibility. The type of Federal requirements that are necessary in connection with fair hearings, in order to assure basic due process rights in determinations affecting a household's eligibility or benefit levels, are not really appropriate in this area. As a result, the final rules remove nearly all such requirements. The final rules require that States have a system for accepting complaints, resolving them in an appropriate manner, and responding to complainants on the outcome. How States choose to do this, and how States inform recipients and potential recipients of the complaint system, will be up to them.

The only other requirement in the final rules is that States analyze records of complaints at least annually and provide information on any patterns of deficiencies, as indicated by what the State found in looking into the complaints, to the Performance Reporting System coordinator.

Virtually all other requirements in the proposed rules have been deleted. The following discussion addresses some of these matters in more detail.

Staffing

The proposed rules required that the State agency designate a person to act as the coordinator of activities relating to complaints. Several of the State agencies opposed or questioned why the Department felt it necessary to designate a person to coordinate activities related to program complaints. These State agencies feel that additional staff is not necessary and that States should be allowed flexibility to coordinate program complaint activities with existing staff especially since funds are not always available to hire additional staff.

Twelve interest groups, one government organization and one participant recommended that a full-time State complaint coordinator be required for all States. The requirement could be waived after the situation is evaluated and it is determined by the State that a full-time coordinator is not warranted.

The Department agrees that States should have flexibility in managing complaints, and that a Federal requirement for a complaint coordinator is not necessary. Therefore, this [illegible] is not contained in the final

60-day time standard. Here again the Department believes that specific federally prescribed time standards are not necessary, and that States should be afforded flexibility to handle individual

termination through the complaint system and that the complainants should be advised of their rights to a fair hearing. One government organization stated that only complaints which

Minimum State Agency Requirements for Handling Program Complaints

One regional office, one State and 18 interest groups felt that the proposed 60-day time standard for notifying the

complaints shall be handled in accordance with § 272.7. This procedure also need not include complaints that can be pursued through a fair hearing. Complaints regarding such areas as

(Catalog of Federal Domestic Assistance Programs No. 10551, Food Stamps)

Dated: December 19, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer

V 4 5 D E 3 0 8 0 UMI

The Department agrees that States should have flexibility in managing complaints, and that a Federal requirement for a complaint coordinator is not necessary. Therefore, this requirement is not contained in the final rules.

Complaint System

The proposed regulations provided States with two options for administering the complaint system: (1) have all complaints handled at State level; or (2) use a two-tiered system to allow complainants to file a complaint at either the State or the local project area.

As a result of comments received on this section, the section has been deleted and the final regulations provide States with flexibility on this matter. Thirty-two comments were received on the complaint system section. One regional office and 22 interest groups indicated that they prefer the State-agency-level-only system. Two State agencies and one local agency favor the two-tiered system. Three State agencies, two local agencies, three government organizations and 10 interest groups, stated that if the two-tiered system is optional, it should be made clear that the complainant has the option to file at either the State or local level. The majority of the interest groups feel that the two-tiered system would be confusing to complainants and that many complainants would be reluctant to file complaints at the project area level. There was also concern among interest groups that local project areas may not provide satisfactory resolution of complaints.

The Department believes this is an area where Federal requirements may prove cumbersome, and where the proposed rules contained too much regulatory detail. The Department has decided to allow State agencies to determine how to structure their own complaint systems.

Filing Complaints

Thirty-five comments were received on this section. The most significant comments on this section concern the proposed time standards for filing complaints. Twenty-seven commenters recommended that the time standard be lengthened to 90 days—consistent with the time allowed for filing for fair hearings, or 180 days—consistent with the time allowed for discrimination complaints or for incidents occurring within a certification period. One regional office, two State agencies and one local agency recommended that the time standard be shortened to 30 days or less. One regional office supports the 60-day time standard. Here again the Department believes that specific federally prescribed time standards are not necessary, and that States should be afforded flexibility to handle individual complaints in an appropriate and timely manner.

Some of the public interest groups indicated that it should be made clear that complaints can be filed by groups and organizations acting on behalf of a complainant or on their own behalf, as one interest group suggested. This was the intent of the Department, and is clarified in the final rule.

Publicizing the complaint procedures

Twenty-eight comments were received on proposed requirements for publicizing addresses and phone numbers for filing complaints. Most comments were from public interest groups, a number of whom recommended that States be required to include the address and phone number of the complaint system on all applications and program notices.

The Department believes that such a requirement is not necessary, and could increase Federal and State printing costs. Moreover, the Department believes that the complaint procedures are not appropriate for Federal requirements of this sort.

As noted, some commenters questioned the need for the detailed Federal requirements contained in the proposed rules. While the final rules do require that State agencies have some method for making information on the complaint system available, the rules do not contain specific Federal requirements regarding how this must be done. The Department believes that State agencies should be provided flexibility to determine how best to publicize the particular complaint systems which they choose to establish.

Receipt of Complaints

The section on Receipt of Complaints received 34 comments, with the majority of commenters indicating a desire for the complainant to have the option of having the complaint processed by the fair hearing and/or the complaint procedures. Several of the interest groups indicated that complainants may be reluctant to use the fair hearing procedures for fear of retaliation. Also, it is believed that some complaints, considering the nature of the complaint, could be more adequately resolved if they were handled by both systems concurrently.

One State agency indicated that State agencies should have the authority to resolve complaints concerning level of benefits, eligibility, a denial or termination through the complaint system and that the complainants should be advised of their rights to a fair hearing. One government organization stated that only complaints which cannot be resolved to the complainant's satisfaction by a phone call to the local office should be processed through the fair hearing system.

One regional office and three interest groups recommended that the complaint officer accept hearing requests and that the day the complaint is filed be considered day one for the purpose of the fair hearing timeliness standard.

It is not the Department's intent that complaint procedures replace or be consolidated with fair hearing procedures, which are mandated by law. The final rules make clear that States need not handle under their complaint system any matter that can be addressed through a fair hearing. Beyond this, the final rules contain no further requirements in this area. Existing program regulations already require that households be notified of their right to a fair hearing in the event of disagreements over eligibility or benefit determinations.

Documentation of Complaints

The section on Documentation of Complaints prompted 15 comments, the majority of which were from interest groups. It was recommended by 3 interest groups and 2 government organizations that all complaints received be acknowledged by the complaint official sending a copy of the complaint record to the complainant. This acknowledgement should let the complainant know that the complaint was actually filed, that the complaint was described correctly in the record and when to expect corrective action. It was also recommended by 9 interest groups that reference to the State's manual which corresponds with a particular complaint be part of the complaint documentation. These recommendations were not adopted. The final rules require the State agency to respond to the complainant on the resolution of the complaint. The Department believes that additional Federal requirements are not appropriate. Those provisions of the proposed regulations regarding specific information States must take down regarding each complaint are removed as unnecessary. This is in keeping with the Department's decision to allow States flexibility to determine how to set up their complaint systems.

Minimum State Agency Requirements for Handling Program Complaints

One regional office, one State and 18 interest groups felt that the proposed 60-day time standard for notifying the complainant of actions taken or planned was too long. One regional office supported the 60-day time standard and two interest groups felt that the response time and implementation of corrective action on complaints from farmworkers/migrants should be shortened. The Department has removed this standard from the final rules, in accordance with its general determination that State Complaint Systems is not an area where so many specific Federal standards should be imposed. The Department encourages States to act expeditiously in resolving complaints.

Analysis of Complaints

There were 10 comments on the proposed requirement for a semi-annual analysis of complaint findings and records. Nine of the commenters, all interest groups supported this concept and one State agency opposed it. The Department does believe that States should use all available sources of information to identify deficiencies in State operations and has retained a requirement for an analysis of complaint records. However, the final rules require that the analysis only be done annually, and remove some of the detail in the proposed rules regarding the analysis.

Implementation

These final rules are effective upon publication. State agencies must implement these rules no later than 180 days after publication. This will assure State agencies adequate time to implement the new procedures during a period when other changes in the food stamp program are also being made.

Accordingly, Parts 271 and 272 of 7 CFR are amended as set forth below.

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. Section 271.6 is amended by adding paragraph (a), (previously reserved), to include the following provisions:

§ 271.6 Complaint procedure.

(a) *State Agency Responsibility.* (1) *General Scope.* The State agency shall maintain a system of its choosing for handling program complaints filed by participants, potential participants, or other concerned individuals or groups. This shall not include complaints alleging discrimination on the basis of race, sex, age, religious creed, national origin, political beliefs or handicap; such complaints shall be handled in accordance with § 272.7. This procedure also need not include complaints that can be pursued through a fair hearing. Complaints regarding such areas as processing standards and service to participants and potential participants would generally be handled under this complaint procedure.

(2) *Minimum requirements.* The State agency shall follow up on complaints, resolve complaints and take corrective action where warranted, and respond to the complainant on the State agency's disposition of the complaint. The State agency shall make information on the complaint system and how to file a complaint available to participants, potential participants and other interested persons. The State agency may make the information available through written materials or posters at certification offices or other appropriate means.

(3) *Complaint analysis.* The State agency shall maintain records of complaints received and their disposition, and shall review records at least annually to assess whether patterns of problems may be present in local offices, project areas, or throughout the State. The results of this review shall be provided to the Performance Reporting System coordinator for appropriate action, and for inclusion, if appropriate, in the State Corrective Action Plan in accordance with § 275.16 of this Chapter. The information provided to the Performance Reporting System Coordinator shall include the identification, if any, of potential or actual patterns of deficiencies in local offices, project areas, or throughout the State, and any identification of causes of these problems.

(4) *Monitoring.* FNS shall monitor State compliance with these requirements through the Performance Reporting System.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In subsection 272.1, a new subparagraph (25) is added to paragraph (g) of that subsection to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

* * * * * *

(25) Amendment 187. State agencies shall implement the complaint procedures required by § 271.6(a) no later than 180 days following publication of final regulations.

(91 Stat. 958 (7 U.S.C. 2011–2027))

(Catalog of Federal Domestic Assistance Programs No. 10551, Food Stamps)

Dated: December 19, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-40257 Filed 12-29-80; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Part 277

[Amdt. No. 188]

Payment of Certain Administrative Costs of State Agencies

AGENCY: Food and Nutrition Service.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking sets forth requirements for payment of certain administrative costs of State agencies which operate the Food Stamp Program, and the Food Distribution Program and the Food Stamp Program on Indian Reservations, under the authority of the Food Stamp Act of 1977, as amended.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Raymond A. Pugh, Sr., Deputy Administrator for Financial Management, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–3545.

The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing the rule is available from William E. Mothorpe, Director, State Financial Control Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–8275.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under U.S. Department of Agriculture (USDA) procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as not significant.

Introduction:

In order to decrease fraud and abuse in the Food Stamp Program and to encourage participation in the Program by Indians residing on reservations, Congress made a number of changes in the administrative funding formulas formerly used to reimburse State agencies for operation of the program under the Food Stamp Act of 1964. The Food Stamp Act of 1977, Sections 16(a) and 16(c), provides for increasing the Federal reimbursement rate for State administrative costs associated with investigations, prosecutions, and fraud hearings; increasing the reimbursement rate for State agency administrative costs from

50 percent to 60 percent when the States' cumulative allotment error rates with respect to eligibility, overissuance, and underissuance, as calculated in the Quality Control Program, are less than

The majority of the language in Part 277 was formerly in place as Part 275 and, in turn, was derived from two major Federal Management Circulars (FMCs), FMC 74–4, issued originally by

accordance with § 275.23. The proposed rules issued on November 9, 1979, included a provision to implement this Section of the Act. However, the 1980 Amendments to the Food Stamp Act,

information needed for investigations and prosecutions, the reviews themselves cannot be said to be directly related to the investigation and prosecutive activities discussed in the

error rates is also clearly not applicable to such costs.

Discussions are currently underway between the Department and the Department of Health and Human

similar to other allowable charges: that is, as direct and indirect charges for activities relating specifically to the function. The requirements in Appendix A of this Part 277 are now specifically

50 percent to 60 percent when the States' cumulative allotment error rates with respect to eligibility, overissuance, and underissuance, as calculated in the Quality Control Program, are less than five percent; and allowing for an increase in the Federal share of administrative costs for Program operations on Indian reservations to a level determined by the Secretary to be necessary for effective operation of the program.

The Food Stamp Act Amendments of 1980 (Pub. L. 96–249: May 26, 1980) subsequently increased the number of enhanced funding levels available for low error rates. These changes will allow 65, 60, or 55 percent funding levels based on error rates for participating households, negative error rates for improperly denied households, and the reduction of the State's error rate. Since negative error rates must be included prior to any consideration of payment of enhanced funding, data on this aspect of program operations must be developed and analysis performed to establish the basis for such funding. Because of anticipated public interest, provisions implementing these portions of the Food Stamp Act Amendments of 1980 were published as proposed rules on October 3, 1980 (45 FR 65932) to allow for public comments.

The Food Stamp Act Amendments of 1980 also provided for a higher rate of Federal Financial Participation (FFP) for the acquisition and development of automatic data processing and information retrieval systems. The Amendments provide for 75 percent FFP for these costs, effective October 1, 1980. The Department will issue proposed regulations on this provision to encourage public comment and participation in the development of standards to be used by FNS in determining which costs or systems projects will be covered by the higher federal funding.

On November 9, 1979 (44 FR 65318), the Department published proposed State Plan of Operation rules which included provisions concerning the necessary revisions to the Regulations which define the area and content of administrative funding, formerly 7 CFR Part 275, subsequently changed to Part 277. In addition, in emergency final rulemaking the Department issued Regulations on August 10, 1979 (44 FR 47037) which implemented the provisions for increasing the share of Federal reimbursement for investigation and prosecution of fraud cases from 50 percent to 75 percent. Comments were solicited on this rulemaking as well as on the remainder of Part 277.

The majority of the language in Part 277 was formerly in place as Part 275 and, in turn, was derived from two major Federal Management Circulars (FMCs), FMC 74–4, issued originally by the General Services Administration, but now under the Office of Management and Budget (OMB), and OMB Circular A–102. During the comment period, the Department received 65 letters in response to both the emergency final rulemaking on § 277.15, published August 10, 1979, and the proposed rulemaking for Part 277, published November 9, 1979. Some of the respondents submitted separate comments on each of the two proposals, which resulted in receipt of 65 comment letters from 55 organizations. Twenty-two State welfare agencies, 14 local welfare agencies, 1 public interest group, 5 other government agencies, and 13 letters from our Regional Offices were received. In light of the comments received, the Department made various changes, primarily clarifying details of funding procedures. However, no comments were received on a majority of the proposal. Therefore, significant portions are unchanged from the proposed rulemaking.

In addition, § 277.14, Procurement Standards, has been rewritten since the November 9, 1979 proposal to conform to the requirements of the revised Attachment O to OMB Circular A–102. Also, a new § 277.17 has been added since the November 9 publication, incorporating Attachment P of OMB Circular A–102, Audit Requirements. Since Attachments O and P were both the subject of notice and comment rulemaking and both were adopted without substantial change by FNS, it was not deemed necessary for these parts to be proposed again prior to final publication.

Funding (Part 277.4)

The Food Stamp Act of 1977 required major changes from regulations which previously provided for Federal reimbursement for 50 percent payment of all allowable administrative cost incurred by State agencies. Section 16 of the Act provided for reimbursing specific areas of administrative costs incurred by State agencies at a rate higher than 50 percent. Under this section of the Act, the Department was directed to increase the Federally funded share of a State agency's administrative costs to 60 percent if the State agency's cumulative allotment error rate was less than five percent with respect to basic Program eligibility, overissuance and underissuance as determined by quality control and FNS validation reviews conducted in accordance with § 275.23. The proposed rules issued on November 9, 1979, included a provision to implement this Section of the Act. However, the 1980 Amendments to the Food Stamp Act, Pub. L. 96–249, changed the enhanced funding provisions. This law, signed on May 26, 1980, raised the possible reimbursement rate to 65 percent but also directed that the reimbursement at this higher level be based on cumulative allotment error rates *and* error rates in negative case actions.

As pointed out above, the Department proposed rules regarding these issues in the October 3, 1980 **Federal Register.** The comment period on these proposed rules has just recently closed. Because the comments have not been fully analyzed yet, it is unclear what the final rule on these issues will be. Therefore, the paragraph in § 277.4 of this final rulemaking pertaining to enhanced funding has been reserved. It will be added when final rules on the Quality Control Sanction and Incentive Systems are issued in the near future.

Section 16(a) of the Food Stamp Act of 1977, as amended, authorized the Secretary to pay 75 percent of the costs of State Food Stamp Program investigations and prosecutions. Section 277.4 allows for this increased funding level. The increased funding for this function is discussed in greater detail in § 277.15 of the final Regulations. Section 277.4 also makes changes in the reimbursement of administrative costs of State agencies administering the Program on Indian reservations. The details of this increased rate are discussed in Parts 281 and 282.

A total of sixteen comments were received which specifically addressed this Section. These comments were directed at the revised reimbursement rate. Additional comments were received which dealt with the specifics of the 75 percent funding for investigations and prosecutions. These comments are discussed further under § 277.15. Comments on § 277.4 included four which expressed the view that since State quality control reviews and recipient claim sections both contributed to the successful completion of fraud cases, both of these functions should be made eligible for the higher rate of Federal reimbursement.

The Department believes that quality control reviews are normal, ongoing program activities required of the State agency. The primary purpose or objective of such reviews is not the detection of fraud, although that may be disclosed, but rather to determine the quality of the certification activity conducted by the State. While the reviews may consequently provide

information needed for investigations and prosecutions, the reviews themselves cannot be said to be directly related to the investigation and prosecutive activities discussed in the legislative history. In regard to the comments relating to the eligibility of personnel engaged in recipient claims activities, we felt that a distinction must be made between claims which are established and maintained by eligibility workers (EWs) in the normal completion of their job duties and those which are handled by a unit expressly established for that function. Again returning to Congressional intent, we believe that establishing and maintaining claims is part of the normal duties of the EW and should not be eligible at the higher rate. A separate claims section which is an adjunct to an investigative and/or prosecutive unit would qualify at the higher rate.

However, we have added a provision that allows for an exception in the case of certain EWs whose principal function during some portion of their workweek is as an investigator. Section 277.15 has been revised to specifically require that only employees whose State or local job title is "investigator" are to be claimed at the higher rate. The exception to this requirement was added to allow for the higher payment in those counties or local jurisdictions whose caseload is not large enough to warrant a separate full-time investigator, but, nevertheless must routinely employ some member of their staff in an investigative capacity. Exceptions shall be granted by the FNS Regional Financial Management Officer based on an application for the exception by the county or local jurisdiction. Time sheets or time records must be used to substantiate any such exception.

Administrative Costs Principles (Section 277.9)

Five comments were received specifically addressing the present situation in which the Department cannot be charged for costs associated with the certification for Food Stamps for those households participating in the Aid to Families with Dependent Children (AFDC) Program. Two States were under the mistaken impression that this was a change and that such costs are currently being charged to the Department. This is not the case. Such charges have been allocated to the AFDC Program since the inception of the Food Stamp Program. This ongoing practice of allocating such charges to DHEW (now the Department of Health and Human Services) is contained in § 277.9. Since the cost of determining the eligibility of AFDC cases is not a charge to FNS, the enhanced funding for low error rates is also clearly not applicable to such costs.

Discussions are currently underway between the Department and the Department of Health and Human Services to more clearly define this area. These discussions may result in a need for some modification of this aspect of these regulations at a subsequent date. Pending any such modifications, the existing practice (as reflected in § 277.9) shall remain in effect.

Food Stamp Investigations and Prosecutions (Section 277.15)

Fifty-four comments were received on this section, 46 of which were received in response to the interim final publication of this section on August 10, 1979. The comments were most positive and supportive of the concept of enhanced funding for Food Stamp fraud investigations, prosecutions, and fraud hearings. However, most of the comments received indicated a desire for further clarification of the funding process. Commenters from both State and Federal agencies requested that additional information be provided to identify what constitutes allowable activities for enhanced funding. A primary concern was handling anti-fraud activities which cross program lines and which are part-time functions of eligibility workers. Various comments also indicated that further clarification was needed on procedures to provide enhanced funding to agencies other than State welfare agencies that are involved in fraud investigations. Two State agencies and two Regional Offices recommended that there be a requirement for the establishment of a contractual relationship between all providers of services and State agencies.

The reference in the preamble, as published August 10, 1979, regarding establishing minimum professional standards, produced varied comments. Three local agencies and one Regional Office recommended that the regulations establish qualification standards for investigative employees. Two State agencies recommended that the establishment of qualification standards be left to the State agencies. One State agency questioned the authority of the Secretary to impose qualification standards. Another State agency recommended that the regulations define minimum functions to be performed by investigators rather than minimum standards. In light of the many questions and comments relating to the areas of coverage of the enhanced funding, we have revised the langauge of that part of the section which relates to allowable costs. This revision now deals with those cost item in a manner similar to other allowable charges: that is, as direct and indirect charges for activities relating specifically to the function. The requirements in Appendix A of this Part 277 are now specifically referenced to this section, rather than making references in the section to certain indirect and support costs which are eligible for the enhanced funding.

In addition, we have specified that only those investigative activities related to workers whose State or local job title is "investigator" or similar, would be eligible for the enhanced funding. Accepting the fact that certain jurisdictions would not have a full-time investigator, allowances are made for part-time activity. In addition, an exception to the use of the State and local job title/description is included so that if the majority of the duties include investigations, the cost of this activity may be allowable at the 75 percent rate when approved by FNS. This action places the decision of allowable activities on the State or local civil service requirements for the investigation/prosecution function, rather than attempting to define the duties or mandatory qualifications on a national level for the enhanced funding. We believe that the State agency is in a better position to define its own needs in this area and we believe that current wording will allow for this.

Four comments were received which suggested that there be a requirement for a formal purchase of service agreement or contract between all providers of prosection services and the State or local agency. We have agreed that such a requirement would be beneifical in spelling out the requirement on each party's part and specifically detailing the method to be used for this function. Therefore, the final regulations require that a formal agreement be signed between the State agency and the third party provider of prosecution or investigation services before funding is approved by FNS. Further, the regulations make clear that FNS does not fund such third party providers directly. All funding at the 75 percent level will go from FNS to the State agency and from the State agency to the service provider under the conditions specified in their formal agreement or contract.

For the reasons set out in the preamble, Part 227 of 7 CFR is amended as set forth below.

Part 277—Payments of Certain Administrative Costs of State Agencies

Part 277 was reserved for administrative cost regulations, formerly designed as Part 275. Sections 277.1—277.9, 277.11—277.15, and 277.17,

formerly reserved, are now added. Sections 277.10 and 277.16, previously issued, are now revised. The new Part 275 supersedes and deletes material formerly designated as § 271.1(h), during a given period for liabilities incurred, benefits received or for goods and services used during this period.

"Accrued Income" means the net value of earnings during a given period personal property provided that such definition would at least include all tangible personal property as defined herein.

"Obligations" are the amounts of

§ 277.3 Budgets and budget revision procedures.

The preparation, content, submittal, and revision requirements for the State Food Stamp Program Budget shall be as

(3) Are necessary and reasonable for accomplishment of project objectives;

(4) Are charges that would be allowable under this Part;

(5) Are not paid by the Federal

accountable to the Federal government to liquidate the indebtedness.

§ 277.6 Standards for financial management systems.

formerly reserved, are now added. Sections 277.10 and 277.16, previously issued, are now revised. The new Part 275 supersedes and deletes material formerly designated as § 271.1(h), § 271.2 and Part 275 (including Appendix A). The new Part 277 as added and amended, read as follows:

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

Sec.
277.1 General purpose and scope.
277.2 Definitions.
277.3 Budget and budget revision procedures.
277.4 Funding.
277.5 Methods of payment.
277.6 Standards for financial management systems.
277.7 Cash depositories.
277.8 Bonding and insurance.
277.9 Administrative costs principles.
277.10 Program income.
277.11 Financial reporting requirements.
277.12 Retention and custody of records.
277.13 Property.
277.14 Procurement standards.
277.15 Food Stamp investigations and prosecutions.
277.16 Suspension, disallowance and program closeout.
277.17 Audit Requirements.
Appendix A—Principles for Determining Costs Applicable to Administration of the Food Stamp Program by State agencies.

Authority: 91 Stat. 958, as amended (7 U.S.C. 2011–2027)

277.1 General purpose and scope.

(a) *Purpose.* This Part establishes uniform requirements for the management of administrative funds provided to State agencies and sets forth principles for claiming costs of activities paid with administrative funds under the Food Stamp Program, and the Food Distribution Program and Food Stamp Program on Indian Reservations.

(b) *Scope and Applicability.* Upon compliance with the provisions of this Part, payments to State agencies will be made for cost(s) incurred for administration of the Food Stamp Program and for administration of the Food Distribution Program on Indian Reservations. To ensure maximum practical uniformity, deviation(s) by a State agency from this Part may be authorized only when necessary to meet program objectives, to conserve program funds, or when essential to the public interest. However, any deviations from this Part must be authorized by the Administrator of FNS.

§ 277.2 Definitions.

For the purpose of this Part the term:

"Accrued Expenditures" means the charges incurred by the State agency during a given period for liabilities incurred, benefits received or for goods and services used during this period.

"Accrued Income" means the net value of earnings during a given period resulting from services and goods provided whether or not payment has been realized.

"Acquisition Cost" refers to nonexpendable personal property acquired by purchase and means the net invoice price of the property including any attachments, accessories or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Ancillary charges such as taxes, duty, protection in-transit insurance, freight or installation shall be included in or excluded from acquisition cost in accordance with the State agency's regular accounting practices.

"Approval or Authorization by FNS" means documentation evidencing consent prior to incurring specific costs.

"Applicable Credits" refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to programs as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

"Disbursements" refers to the transfer of funds by the state agency to pay for Program costs resulting from purchased or expired goods and services.

"Expendable Personal Property" means all tangible personal property other than nonexpendable property.

"Program Funds" means money, or property provided in lieu of money, paid for or furnished by FNS to a State agency.

"Funds Available to the State Agency" may include contributions from third parties including other Federal agencies.

"In-kind Contributions" refers to the value of noncash contributions. Only when authorized by Federal legislation may property purchased with Federal funds be considered as a State agency's in-kind contribution. In-kind contributions may be for the value of real and/or nonexpendable personal property or the value of goods and services provided specifically to the project or program.

"Nonexpendable Personal Property" means tangible personal property having a useful life of more than one year and an acquisition cost of more than $300 per unit. A State agency may use its own definiton of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined herein.

"Obligations" are the amounts of orders placed, contracts awarded, services received, and similar transactions during a given period which require payment.

"Offset" means a method to recover funds due FNS through use of the Letter of Credit system. Recovery is accomplished by accounting adjustments to increase Federal funds on hand or disbursed.

"OMB" means the Office of Management and Budget.

"Personal Property" means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence) such as patents, inventions and copyrights.

"Program" means both the Food Stamp Program and the Food Distribution Program on Indian Reservations.

"Program Closeout" means the process by which FNS determines that all applicable administrative and financial processes have been completed by the State agency and FNS terminates the program in the affected project area or areas.

"Project Costs" are allowable costs as set forth in this Part.

"Real Property" means land, land improvements, structure and appurtenances thereto, excluding movable machinery and equipment.

"State Agency" means the organization as defined in 7 CFR Part 271.1.

"State Agency Costs" means the State agency outlays from its funds available for program administration. Unless authorized by Federal legislation, costs charged to other Federal grants or to other Federal contracts may not be considered as State agency costs reimbursable under this authority.

"Subagency" means the organization or person to which a State agency makes any payment for acquisition of goods, materials or services for use in administering the program and which is accountable to the State agency for the use of funds provided.

"Terms and Conditions" means legal requirements imposed by the Federal Government under statute, regulations, contracts, agreements or otherwise.

"Unliquidated Obligation" represents the amount of obligations not yet paid.

"Unobligated Balance" means the portion of the Federal funds authorized less all allowable costs and unpaid obligations of the State agency.

§ 277.3 Budgets and budget revision procedures.

The preparation, content, submittal, and revision requirements for the State Food Stamp Program Budget shall be as specified in § 272.2. The application for funds and budget requirements for the Food Distribution Program on Indian Reservations shall be as specified in § 283.9. State agencies must submit a budget to FNS as part of the State Plan each fiscal year. Upon approval of the budget by FNS, administrative funds will be provided.

§ 277.4 Funding.

(a) *General.* This section sets allowable cost standards for activities of State agencies in administering the Food Stamp Program and Food Distribution Program on Indian Reservations.

(b) *Federal Reimbursement Rate.* The base percentage for Federal payment shall be 50 percent of State agencies' allowable Food Stamp Program administrative costs.

(1) A 75 percent Federal reimbursement of Food Stamp Program allowable costs incurred for State fraud investigations, prosections, and fraud hearings upon presentation and approval of a State Plan Addendum as outlined in § 277.15.

(2) [Reserved.]

(3) Funding of demonstration projects approved by FNS will be at a rate agreed to by FNS in accordance with the requirements outlined in Part 282.

(4) The reimbursement of administrative costs to State agencies administering the program on Indian reservations shall be in accordance with the requirements of Parts 281 and 283.

(5) [Reserved.]

(c) *Matching Costs.* State agency costs for Federal matching funds may consist of:

(1) Charges reported on a cash or accrual basis by the State agency as project costs.

(2) Project costs financed with cash contributed or donated to the State agency by other non-Federal public agencies and institutions.

(3) Project costs represented by services and real or personal property donated by other non-Federal public agencies and institutions.

(d) All cash or in-kind contributions except as provided in paragraph (e) of this section shall be allowable as part of the State agency's share of program costs when such contributions:

(1) Are verifiable;

(2) Are not contributed for another federally-assisted program, unless authorized by Federal legislation;

(3) Are necessary and reasonable for accomplishment of project objectives;

(4) Are charges that would be allowable under this Part;

(5) Are not paid by the Federal Government under another assistance agreement unless authorized under the other agreement and its subject laws and regulations; and

(6) Are in the approved budget.

(e) The value of services rendered by volunteers or the value of goods contributed by third parties, exclusive of the State and Federal agencies, are unallowable for reimbursement purposes under the Food Stamp Program. The value of services rendered by volunteers shall be allowable only to meet any matching administrative costs requirements for the Food Distribution Program on Indian Reservations.

§ 277.5 Methods of payment.

(a) This section sets forth FNS methods for authorizing funds for State agencies.

(b) The "Letter of Credit" (LOC) (SF–1193A) is the document by which an official of FNS authorizes a State agency to draw funds from the United States Treasury. This shall be the preferred method of payment for State agencies which receive at least $120,000 per year and meet the requirements prescribed in OMB Circular A–102, Attachment J.

(c) State agencies shall request payment(s) by submitting Request for Payment on Letter of Credit and Status of Funds Report (Treasury Form SF–183) to the appropriate United States Treasury Regional Disbursing Office with a copy to FNS.

(d) State agencies not meeting the requirements for the LOC method of payment or failing to meet LOC reporting requirements, including those requiring adjustments to cash balances to liquidate amounts owed to FNS, shall be provided funds by Treasury check in accordance with the provisions of Department of the Treasury Circular 1075.

(e) Payments for proper charges incurred by State agencies will not be withheld unless such payments are suspended or disallowed pursuant to § 277.16. When a payment is withheld, payment adjustments will be made in accordance with § 277.16. When FNS collects an indebtedness, whether due to a disallowance or an offset for amounts which the State agency has been billed but which it has failed to pay without cause acceptable to FNS, FNS shall provide reasonable notice to the State agency, and shall require appropriate accounting adjustment to cash balances for which the State agency is accountable to the Federal government to liquidate the indebtedness.

§ 277.6 Standards for financial management systems.

(a) *General.* This section prescribes standards for financial management systems in administering program funds by the State agency and its subagencies or contractors.

(b) *Responsibilities.* Financial management systems for program funds in the State agency shall provide for:

(1) Accurate, current, and complete disclosure of the financial results of program activities in accordance with Federal reporting requirements.

(2) Records which identify the source and application of funds for FNS or State agency activities supporting the administration of the Program. These records shall show authorizations, obligations, unobligated balances, assets, liabilities, outlays and income of the State agency, its subagencies and agents.

(3) Records which identify unallowable costs and offsets resulting from FNS or other determinations as specified in § 277.16 and the disposition of these amounts. Accounting procedures must be in effect to prevent a State agency from claiming these costs under ongoing program administrative cost reports.

(4) Effective control and accountability by the State agency for all program funds, property, and other assets acquired with program funds. State agencies shall adequately safeguard all such assets and shall assure that they are used solely for program authorized purposes unless disposition has been made in accordance with § 277.13.

(5) Controls which minimize the time between the receipt of Federal funds from the United States Treasury and their disbursement for program costs. In the Letter of Credit system, the State agency shall make drawdowns from the U.S. Treasury through a U.S. Treasury Regional Disbursing Office as nearly as possible to the time of making the disbursements.

(6) Procedures to determine the reasonableness, allowability, and allocability of costs in accordance with the applicable provisions prescribed in Appendix A to this Part.

(7) Support and source documents for costs.

(8) An audit trail including identification of time periods, initial and summary accounts, cost determination and allocation procedures, cost centers or other accounting procedures to support any costs claimed for program administration.

§ 277.11 Financial reporting requirements.

(a) Periodic audits by qualified

(2) *Indirect Cost.* Allowable indirect

and records of the subagency or

property may be used for the State

(i) The right to require transfer of title

(9) Periodic audits by qualified individuals who are independent of those who maintain Federal program funds as prescribed in § 277.17.

(10) Methods to resolve audit findings and recommendations and to follow up on corrective or preventive actions.

(11) [Reserved]

(c) The standards in § 277.6(b) apply to subagencies or contractors involved with program funding.

§ 277.7 Cash depositories.

(a) The term "cash depositories" refers to banks or other institutions which maintain accounts where Food Stamp Program funds are deposited and from which withdrawals are made to meet administrative costs of the State agency.

(b) State agencies are encouraged to use minority owned banks to expand opportunities for minority enterprises.

(c) FNS shall not:

(1) Require physical segregation in a cash depository of program funds from other State agency funds.

(2) Establish any eligibility requirements for cash depositories in which program funds are deposited by the State agency.

§ 277.8 Bonding and insurance.

(a) *General.* In administering FNS program funds, State agencies shall observe their regular requirements and practices with respect to bonding and insurance. FNS will not impose additional bonding and insurance requirements, including fidelity bonding, above those normally required by the State agency.

(b) *Loan Guarantees.* FNS makes no guarantee of any loan or payment of money borrowed by a State agency for administering the program. State agencies shall not make any assurances to any lender or contractor that FNS will furnish funds for loan payments.

§ 277.9 Administrative costs principles.

(a) This section prescribes specific policies and procedures governing State agencies for funding under this Part.

(b) Any cost related to determining the Food Stamp eligibility of AFDC cases shall be included as part of the AFDC determination costs and claims. They are not allowable costs for FNS reimbursement.

(c) When costs for administering the program are claimed for reimbursement, the audit trail must identify the specific activities, locations, or time periods as defined in this section.

(1) *Direct Cost.* Allowable direct costs may be charged to the Food Stamp Program at the 50 percent or higher funding level as specified in this part.

(2) *Indirect Cost.* Allowable indirect costs may also be claimed at the 50 percent or higher reimbursement funding level as specified in this Part and Appendix A.

(3) Direct and indirect costs claimed for program cost reimbursement must be incurred for the time periods, the activities or for the locations for which the rates are approved by FNS.

(d) All State agency Cost Allocation Plans for determining the costs of administering the program must be approved by the cognizant Federal agency. All Cost Allocation Plans involving program funds shall be submitted to FNS for review.

§ 277.10 Program income.

(a) Program income is gross income resulting from activities financed with program funds. Such earnings exclude interest income but include income from service fees, usage or rental fees, sale of assets purchased with program funds, and royalties on patents and copyrights.

(b) Interest earned on advances of program administrative funds shall be remitted to FNS except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90–577) and advances to tribal organizations under the Indian Self-Determination Act (Sections 102–104).

(c) Income resulting from the sale of real and personal property whose acquisition cost was borne in whole or in part with Program funds shall be remitted to FNS or applied to the Federal share of current program costs in accordance with §277.13. All other sales proceeds will be handled in accordance with § 277.13.

(d) Unless there is a prior agreement between FNS and the State agency, the State agency shall have no obligation to FNS with respect to royalties received from copyrights or patents produced as a result of activities financed with program administrative funds.

(e) Any other income earned under activities supported by program administrative funds may be retained by the State agency if they are deducted from the gross program administrative costs for the purposes of determining net costs and FNS's share of net cost.

(f) State agencies shall record the receipt and expenditure of revenues such as taxes, special assessments, levies, fines, etc., as a part of program fund transactions when such revenues are specifically earmarked for program fund projects.

§ 277.11 Financial reporting requirements.

(a) *General.* This section prescribes requirements for the State agencies to report financial information to FNS.

(b) *Authorized Forms and Instructions.* (1) Only forms specified by this Part, or other forms authorized by FNS, may be used for obtaining financial information from State agencies for the program.

(2) All instructions for use in connection with the form specified in § 277.11(c) shall be followed. FNS may prescribe supplementary instructions.

(3) State agencies shall submit the original and two copies of forms required by this section unless FNS approves a waiver of this requirement.

(4) The forms and instructions in this Part shall be available to the State agency and to the public upon request to FNS Regional Offices as set out in § 271.6(b).

(c) *Financial Status Report.* (1) *Form.* State agencies shall use the standard Financial Status Report (Form SF–269) to report program costs.

(2) *Freqency.* The report (Form SF–269) shall be required quarterly.

(3) *Exceptions.* Those State agencies that receive payments under the U.S. Treasury check system shall submit to FNS a Quarterly Report of Federal Cash Transactions (Form SF–272).

(4) *Due Dates.* Quarterly reports shall be due April 30 (for the period January–March), July 30 (April–June), October 30 (July–September), January 30 (October–December). Final reports are due December 30 for all completed Federal fiscal years (October 1–September 30) or 90 days after termination of Federal financial support. Requests from State agencies for extension of reporting due dates may be approved, if necessary.

§ 277.12 Retention and custody of records.

(a) *Retention Period.* All financial records, supporting documents, statistical records, negotiated contracts, and all other records pertinent to program funds shall be maintained for three years from the date of submission of the annual financial status report of the relevant fiscal year to which they apply except that:

(1) If any litigation, claim, or audit is started before the expiration of the three-year period, the applicable records shall be retained until these have been resolved.

(2) In the case of a payment by a State agency to a subagency or contractor using program funds, the State agency, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any book, documents, papers

and records of the subagency or contractor which the State agency, USDA, or the Comptroller General of the United States or any of their duly authorized representatives, determine are pertinent to administration of the specific FNS program funds, for the purpose of making audit, examination, excerpts, and transcripts.

(b) *Restrictions on Public Access.* Unless required by laws, FNS will not place restrictions on State agencies which limit public access to their records or the records of their subagencies or contractors that are pertinent to the administrative funding provided by FNS except when the State agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to FNS.

§ 277.13 Property.

(a) *General.* This section prescribes policies and procedures governing title, use, disposition of real and personal property for which acquisition costs were borne, in whole or in part, as a direct charge to FNS funds, and ownership rights or intangible personal property developed, in whole or in part, with FNS funds. State agencies may follow their own property management policies and procedures provided they observe the requirements of this section. With respect to property covered by this section, FNS may not impose on State agencies any requirement (including property reporting requirements) not authorized by this section unless specifically required by Federal laws.

(b) *Nonexpendable Personal Property.* (1) *Title.* Title to nonexpendable personal property whose acquisition cost is borne, in whole or in part, by FNS shall vest in the State agency upon acquisition, and shall be subject to the restrictions on use and dispositions set forth in this section.

(2) *Use.* (i) The State agency shall use the property in the program as long as there is a need for such property to accomplish the purpose of the program.

(ii) When there is no longer a need for the property to accomplish the purpose of the program, the State agency shall use the property where needed in administration of other programs in the following order of priority:

(A) Other federally-funded programs of FNS.

(B) Other federally-funded programs of USDA.

(C) Other federally-funded programs.

(iii) When the State agency no longer has need for such property in any of its federally financed activities, the property may be used for the State agency's own official activities in accordance with the following standards:

(A) If the property had a total acquisition cost of less than $1,000, the State agency may use the property without reimbursement to FNS.

(B) For all such property not covered under paragraph (b)(2)(iii)(A) of this section, the State agency may retain the property for its own use, provided a fair compensation is made to FNS for the FNS share of the property. The amount of compensation shall be computed by applying the percentage of FNS participation in the cost of the property to the current fair market value of the property.

(3) *Disposition.* If the State agency has no need for the property, disposition of the property shall be made as follows:

(i) If the property had a total acquisition cost of less than $1,000 per unit, the State agency may sell the property and retain the proceeds.

(ii) If the property had an acquisition cost of $1,000 or more per unit, the State agency shall:

(A) If instructed to ship the property elsewhere, the State agency shall be reimbursed with an amount which is computed by applying the percentage of the State agency's participation in the cost of the property to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(B) If instructed to otherwise dispose of the property, the State agency shall be reimbursed by FNS for the cost incurred in such disposition.

(C) If disposition or other instructions are not issued by FNS within 120 days of a request from the State agency, the State agency shall sell the property and reimburse FNS an amount which is computed by applying the percentage of FNS participation in the cost of the property to the sales proceeds. The State agency may, however, deduct and retain from FNS's share $100 or 10 percent of the proceeds, whichever is greater, for the State agency selling and handling expenses.

(c) *Transfer of Title to Certain Property.* (1) Where FNS determines that an item of nonexpendable personal property with an acquisition cost of $1,000 or more which is to be wholly borne by FNS is unique, difficult, or costly to replace, FNS may reserve the right to require the State agency to transfer title of the property to the Federal Government or to a third party named by FNS.

(2) Such reservation shall be subject to the following:

(i) The right to require transfer of title may be reserved only by means of an expressed special condition under which funds were authorized for acquisition of the property, or, if approval for the acquisition of the property is given after the funds are awarded, by means of a written stipulation at the time such approval is given.

(ii) The property must be sufficiently described to enable the State agency to determine exactly what property is involved.

(3) FNS may not exercise the right to reserve until the State agency no longer needs the property in the activity for which it was acquired. Such need shall be assumed to end with termination of the activity in which the property was used unless the State agency continues to use the property in other program-related activities after the termination date and demonstrates to FNS a continued need for such use in the program.

(4) To exercise the right, FNS must issue disposition instructions to the State agency not later than 120 days after the State agency no longer needs the property in the activity for which it was acquired. If instructions are not issued within that time, FNS's right shall lapse, and the State agency shall act in accordance with the applicable standards in paragraph (b)(2) and (b)(3) of this section.

(5) The State agency shall be entitled to reimbursement with an amount which is computed by applying the percentages of the State agency's participation in the acquisition cost of the property to the current fair market value of the property, and for any reasonable shipping and interim storage costs it incurs pursuant to FNS's disposition instructions.

(d) *Property Management Standards.* State agencies' property management standards for nonexpendable personal property covered by this section shall include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for:

(i) A description of the property.

(ii) Manufacturer's serial number or other identification number.

(iii) Acquisition date and cost.

(iv) Source of the property.

(v) Percentage of FNS funds used in the acquisition of the property, or sufficient information to be able to compute the percentage, if and when the property is disposed of.

(vi) Location, use and condition of the property.

(vii) Ultimate disposition data including sales price or the method used

to determine current fair market value if the State agency reimburses FNS for its share.

(viii) Trade-in value of any property purchased with Federal funds where

Excecutive Departments and Agencies, August 23, 1971), and State of Government Patent Policy as printed in Title 37 CFR, Chapters I and II.

(g) *Copyrights.* When a program

(2) The procurement expected to exceed $10,000 specifies a "brand name" product; or

(3) FNS has determined that the State agency's procurement procedures or operation fails to comply with one or

Firms. (1) It is FNS policy to award a fair share of contracts to small and minority business firms. State agencies must take affirmative steps to assure that small and minority businesses are utilized when possible as sources of

if it is to satisfy its intended use. When it is impractical or uneconomical to describe clearly and accurately the technical requirements, a "brand name or equal" description may be used to define the performance or requirements

(A) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(B) The invitation for bids, including

to determine current fair market value if the State agency reimburses FNS for its share.

(viii) Trade-in value of any property purchased with Federal funds where their trade-in value reduces the acquisition cost of new property.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(3) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable personal property shall be investigated and properly documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be implemented to keep the property in good condition.

(e) *Expendable personal property.* (1) *Title.* Title to expendable personal property, whose acquisition cost was borne in whole or in part by FNS, shall vest in the State agency.

(2) *Use.* The State agency shall use the property in the program as long as there is a need for such property to accomplish the purpose of the program.

(3) *Disposition.* When there is no longer a need for the property in the program and there is a residual inventory exceeding $1,000 the State agency shall:

(i) Use the property in other federally sponsored projects or programs;

(ii) Retain the property for use on nonfederally sponsored activities; or,

(iii) Sell it.

(4) *Compensation.* FNS must be compensated for its share if the alternative in paragraph (e) (3) (i) of this section is not followed. The amount of compensation shall be computed in the same manner as for nonexpendable personal property.

(f) *Potents ond Inventions.* If any program activity produced patents, patent rights, processes or inventions in the course of work aided by FNS, such fact shall be promptly and fully reported to FNS. Unless there is prior agreement between the State agency and FNS on disposition of such items, FNS shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued thereon—shall be disposed of and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Excecutive Departments and Agencies, August 23, 1971), and State of Government Patent Policy as printed in Title 37 CFR, Chapters I and II.

(g) *Copyrights.* When a program activity results in a book or other copyrightable materials, the author or State agency is free to copyright the work, but FNS reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use and to authorize others to use the work for government purposes. This includes copyrights on ADP software as specified in Appendix A.

§ 277.14 Procurement standards.

(a) *General.* This section establishes standards and guidelines for the procurement of supplies, equipment, construction and other services whose cost is borne in whole or in part by FNS program funds. These standards ensure that such materials are obtained in an effective and economical manner and in compliance with the provisions of applicable Federal law and Executive Orders. No additional procurement standards will be imposed by FNS upon State agencies unless specifically required by Federal law, or Executive Orders, or authorized by the Administrator for Federal Procurement Policy, Office of Management and Budget.

(1) These standards do not relieve the State agency of any contractual responsiblities under its contracts. The State agency is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractural and administrative issues arising out of procurements entered into in support of the program. These include but are not limited to sources evaluations, protests, disputes and claims. FNS shall not substitute its judgment for that of the State agency unless the matter is primarily a Federal concern. Violations of laws shall be referred to the local, State or Federal authority having jurisdiction.

(2) State agencies shall use their own procurement procedures provided that procurements paid in whole or in part with FNS program funds meet the standards set forth in this Part.

(b) *Review of Proposed Contracts.* State agencies shall submit proposed contracts and related procurement documents to FNS for preaward review and approval when:

(1) The procurement is expected to exceed $10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation;

(2) The procurement expected to exceed $10,000 specifies a "brand name" product; or

(3) FNS has determined that the State agency's procurement procedures or operation fails to comply with one or more significant aspects of this section.

(c) *Code of Conduct.* The State agency shall maintain a written code or standards of conduct which shall govern the performance of its officers, employees, or agents engaged in the award and administration of contracts borne in whole or in part with FNS program funds. No employee, officer, or agent of the State agency shall participate in the selection, or in the award or administration of a contract supported in whole or in part by FNS program funds if a conflict of interest, real or apparent, would be involved. Such conflict would arise when:

(1) The employee, officer, or agent;

(2) Any member of his/her immediate family;

(3) His or her partner; or

(4) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The State agency's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. State agencies may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the State agency's officers, employees, or agents, or by contractors or their agents.

(d) *Procurement Procedures.* The State agency shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by State agency officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation or dividing the purchase into smaller units, to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analyses, to determine which approach would be the most economical. To foster greater economy and efficiency, State agencies are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(e) *Contracting with Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms.* (1) It is FNS policy to award a fair share of contracts to small and minority business firms. State agencies must take affirmative steps to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. State agency affirmative steps shall include the following:

(i) Including qualified small and minority businesses on solicitation lists.

(ii) Assuring that small and minority businesses are solicited whenever they are potential sources.

(iii) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(iv) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(v) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration, as appropriate.

(vi) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in paragraphs (e)(1)(i) through (v) of this section.

(2) State agencies shall take similar appropriate affirmative action in support of women's business enterprises.

(3) State agencies are encouraged to procure goods and services from labor surplus areas, as defined by the Department of Labor.

(4) FNS shall impose no additional regulations or requirements in the foregoing areas unless specifically mandated by law or Executive order.

(f) *Selection Procedures.* All State agency procurement transactions shall be conducted in a manner that provides maximum open and free competition with this section. Procurement procedures shall not contain features which restrict or eliminate competition. The State agency shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitation of offers, whether by competitive sealed bid or competitive negotiation, shall contain a clear and accurate description of the technical requirements for the material, product, or service desired. Descriptions shall not, in competitive procurements, contain features which unduly restrict competition. Descriptions may include a statement of the qualitative nature of the material, product or service desired and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to describe clearly and accurately the technical requirements, a "brand name or equal" description may be used to define the performance or requirements of the material, product or service desired. The specific features of the named brand which must be met by offerors shall be clearly stated. State agencies shall clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) State agencies shall make awards only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(g) *Procurement Methods.* State agency procurements made in whole or in part with program funds shall be by one of the following methods:

(1) *Small Purchase Procedures* are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies, or other property, costing in the aggregate not more than $10,000. State agencies shall comply with State or local small purchase dollar limits under $10,000. If small purchase procedures are used for a procurement under the program, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) In *competitive sealed bids* (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(i) In order for the State agency to use this method of procurement the following conditions, as a minimum, must prevail:

(A) A complete, adequate, and realistic specification or purchase description is available.

(B) Two or more responsible suppliers are willing and able to compete effectively for the State agency's business.

(C) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(ii) If formal advertising is used for a procurement under a grant, the following requirements shall apply:

(A) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(B) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(C) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(D) A firm-fixed-price contract award shall be made by written notice by the State agency to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the State agency indicates that such discounts are generally taken.

(E) Any or all bids may be rejected by the State agency when there are sound documented business reasons in the best interest of the program.

(3) In *competitive negotiation,* proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are appropriate for the use of formal advertising. If competitive negotiation is used for procurement under a grant, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(iii) The State agency shall provide procedures for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the State agency, price and other factors

considered. Unsuccessful offerors should be notified promptly.

(v) State agencies may utilize competitive negotiation procedures for procurement of architectural/

conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties

conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulated by the Secretary

the terms, conditions, and specifications of their contracts or purchase orders.

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food stamp fraud investigation and prosecution functions. Such employees need not be assigned full time, but in the event they are employed less than full time, time sheets or time records must

for the purpose of making an eligibility determination, and

(5) Audits.

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considered. Unsuccessful offerors should be notified promptly.

(v) State agencies may utilize competitive negotiation procedures for procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation.

(4) *Noncompetitive negotiation* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Awards of contracts by noncompetitive negotiation are limited to the following:

(i) The item is available only from a single source;

(ii) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive procurement;

(iii) FNS authorizes noncompetitive procurement; or

(iv) After solicitation of a number of sources, competition is determined inadequate.

(h) *Contract Pricing.* The cost plus a percentage of cost and percentage of construction cost method(s) of contracting may not be used by a State agency. State agencies shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts, paid in whole or in part by FNS program funds, shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

(i) *State Agency Procurement Records.* State agencies shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not neccessarily limited to, information pertinent to the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the cost or price.

(j) *Contract provisions.* In addition to provisions defining a sound and complete procurement contract, State agencies shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by this provision, Federal law, or FNS:

(1) Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the State agency including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded in excess of $10,000 by State agencies and their contractors or subagencies shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (29 CFR Part 60).

(4) All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subagency shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The State agency shall report all suspected or reported violations to FNS.

(5) Where applicable, all contracts awarded by State agencies and subagencies in excess of $2,000 for construction contracts in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible provided that the work is compensated at a rate of not less than 1½ times the basic rate for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(6) The contract shall include notice of FNS requirements and regulations pertaining to reporting and print rights under any contract involving research, developmental, experimental, or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of FNS requirements and regulations pertaining to copyrights and rights to data so derived.

(7) All negotiated contracts (except those awarded by small purchases procedures) awarded by State agencies shall include a provision to the effect that the State agency, FNS, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. State agencies shall require contracts to maintain all required records for three years after the State agency makes final payments or all other pending matters are closed, whichever is last.

(8) Contracts, subcontracts, and subgrants of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency (EPA) regulations, which prohibit the use under nonexempt Federal contract, grants, or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the FNS and to the USEPA Assistant Administrator for Enforcement.

(9) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–165).

(k) *Contract Administration.* State agencies shall maintain a contract administration system insuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

§ 277.15 Food stamp investigations and prosecutions.

(a) *General.* This section establishes the standards and procedures for Federal funding of State and local costs of Food Stamp Program Fraud investigations, prosecutions and fraud hearings.

(b) *Funding.* Upon submission to and approval by FNS of a budget revision and the information required by paragraph (c) of this section, State agencies will be funded at 75 percent of all allowable direct and indirect costs in accordance with the requirements contained in this section. This higher rate may apply retroactively beginning October 1, 1978 and carry forward to the current period. In no case will 75 percent funding apply prior to October 1, 1978. In cases where an agency other than the State welfare agency is or will be involved, an information statement shall be submitted by each State agency to include this operation.

(c) *State Agency Descriptions.* Concurrent with the budget revision required in paragraph (d) of this section, the State agency shall submit the following information:

(1) Identification of the organizational units, with a brief description of the fraud hearing, investigation or prosecution function assigned, that is claimed at the 75 percent rate;

(2) A copy of the statutes or court decisions under which food stamp fraud cases are prosecuted;

(3) A detailed description of the coordination between the investigative units and the prosecuting units, and the process by which prosecuting officials present indictments regarding food stamp fraud cases;

(4) Agreement that investigative reports, prepared by the investigation or prosecution units, and other related records will be made available to USDA upon request; and

(5) Assurance that the fraud hearing activity claimed under this part is conducted in accordance with § 273.17.

(d) *Budget Revision.* The State agency shall prepare and submit a budget revision in compliance with §§ 272.2 and 277.3 to FNS for approval.

(e) *Eligible Activity.* The following activities performed at the State or local level shall be eligible for funding at 75 percent of the costs if they are an integral element of food stamp investigations, prosecutions, and fraud hearings.

(1) *Direct charges.* Direct charges are costs which may be directly attributable to employees assigned specifically to the food stamp fraud investigation and prosecution functions. Such employees need not be assigned full time, but in the event they are employed less than full time, time sheets or time records must be used to document the amount of time spent on these functions.

(i) For investigation function, only employees whose State or local job title is "Investigator" or a similar descriptive title shall be eligible for the increased funding. Exceptions shall be granted based on adequate justification that the majority of the job duties are specifically related to the investigative function.

(ii) Costs related to the investigative or prosecutive function which are performed by agencies other than the State agency shall be based on a formal agreement between the State or local agency and provider agency. These interagency agreements shall meet the requirements of this Part in regard to allowable charges. Funding under these interagency agreements shall be provided by the State agency from their funds and funds made available by FNS.

(iii) Costs relating to the establishment and collection of claims, when performed by investigators or prosecutors or by any separate unit having claims establishment or collection as its primary function, shall be eligible for the increased funding.

(2) *Indirect charges.* Indirect charges are, in general, those costs which are attributable through allocation to the food stamp fraud investigation and prosecution functions.

(3) *Documentation.* The requirements of appendix A, Part 277, Section (2)(E), and (2)(F) will be followed for the classification and documentation of costs by the State or local agency.

(f) *Ineligible Activity.* The following activities, whether performed at the State or local level, shall be allowable only at the 50 percent funding level, and shall be ineligible for funding at the 75 percent level.

(1) Administrative reviews, such as fair hearings as required per 7 CFR 273 or Performance Reporting System reviews required per 7 CFR 275.

(2) Investigations of authorized retail or wholesale food concerns except when performed in coordination with USDA Office of Inspector General and FNS.

(3) Investigations or establishing claims against households by workers whose regular duties include the determination of a household's eligibility for participation in the Food Stamp Program, except as may be granted under the provisions of (e)(1)(i).

(4) Verification of eligibility information provided by the household for the purpose of making an eligibility determination, and

(5) Audits.

§ 277.16 Suspension, disallowance and program closeout.

(a) *Suspension.* When a State agency has materially failed to comply with any of the provisions contained in the Act, regulations, or FNS-approved State Plan of Operation, FNS may, after written notification to the State agency, temporarily withhold some or all Federal reimbursements for costs of administration of the Food Stamp Program in accordance with § 276.4. Adjustments will be made either by adjusting the Letter of Credit authorization or by not allowing the State agency to withdraw funds.

(b) *Disallowance.* (1) FNS may disallow costs in accordance with Section 276 and effect nonpayment for some or all costs incurred by a State agency which are normally allowable but are determined by FNS to be nonreimbursable because the State agency has failed to comply with any of the provisions contained in the Act, regulations, or FNS-approved State Plan of Operation.

(2) FNS may also disallow costs and institute recovery of Federal funds when a State agency fails to adhere to the cost principles of this Part and Appendix "A".

(c) *Offsets to the Letter of Credit.* (1) FNS may recover funds when owed by the State agency to FNS through offsets to the Letter of Credit. Offsets shall include:

(i) Costs determined by FNS to be disallowed under the provisions of this Part;

(ii) Unallowable costs resulting from audit or investigation findings; or

(iii) Amounts owed which have been billed to the State agency and which the State agency has failed to pay without cause acceptable to FNS.

(2) The amounts recovered through the offset procedure should be in one lump sum. If recovery of funds through the offset procedure is not possible in one lump sum, FNS shall make appropriate adjustments to recover the funds in not more than three fiscal years.

(d) *Program Transfer or Termination.* (1) When termination or transfer of a State program has been agreed upon by FNS, the following closeout procedure shall be observed:

(i) Upon request, FNS shall make or arrange for prompt payment to the State agency for allowable costs not covered by previous payments.

(ii) The State agency shall immediately refund to FNS any

unobligated balance of cash withdrawn by the State agency for the administration of the program in the affected State or Indian reservation.

(iii) The State agency shall submit to FNS within 90 days after the date of

Where contracts are awarded for audit services, the contracts shall include a reference to OMB Circular A–102, Attachment P.

(2) Audits shall be made in accordance with the General

(v) Did not include costs property chargeable to other Federally assisted programs;

(vi) Were properly recorded (i.e., correct amount, date) and supported by source documentation;

with requirements for tested items, and negative assurance for untested items.

(4) Comments on the accuracy and completeness of financial reports and claims for advances or reimbursements

shall also be informed of irregularities within their jurisdiction.

(8) Recipients shall require subrecipients that are local governments of Indian tribal governments to adopt

Cognizant Federal Agency means the Federal agency recognized by OMB as having the predominate interest in terms of program dollars.

Cost allocation plan means the documentation identifying, accumulating, and

unobligated balance of cash withdrawn by the State agency for the administration of the program in the affected State or Indian reservation.

(iii) The State agency shall submit to FNS within 90 days after the date of termination of the program, all required financial, performance, and other reports. FNS may grant extensions when requested by the State agency.

(iv) FNS shall adjust the amount authorized by the Letter of Credit in order to effect payment of any amounts due the State agency, and if appropriate, shall bill the State agency for any amounts due to FNS. The amounts of such billings shall be promptly remitted to FNS.

(v) In the event a final audit has not been performed prior to the closeout of the program, FNS shall retain the right to disallow costs or recover funds resulting from the final audit findings.

(2) Provisions of § 277.13 apply for any property acquired with program funds or received from the Federal Government in connection with the program and which was in use in the affected project area or areas.

§ 277.17 Audit requirements.

(a) *General.* This section sets forth the audit requirements for State agencies that receive FNS program funds. Audits shall be conducted on an organization-wide basis. Such audits are to determine whether:

(1) Financial operations are conducted properly;

(2) The financial statements are presented fairly;

(3) The organization has complied with laws and regulations affecting the expenditure of Federal funds;

(4) Internal procedures have been established to meet the objectives of Federally assisted programs; and

(5) Financial reports to the Federal Government contain accurate and reliable information.

Except where required by law, no additional requirements for audit will be imposed by FNS unless approved by the Office of Management and Budget (OMB). The provisions of this section do not limit the authority of FNS to make audits of State agencies, their subdivisions, and subcontracts. However, if independent audits arranged for by State agencies meet the requirements prescribed herein, FNS shall rely on them, and any additional audit work already done.

(b) *Audit Standards.* (1) State agencies shall use their own procedures to arrange for independent audits, and to prescribe the scope of audits, provided that the audits comply with the requirements set forth in this section. Where contracts are awarded for audit services, the contracts shall include a reference to OMB Circular A–102, Attachment P.

(2) Audits shall be made in accordance with the General Accounting Office "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Program," and any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(c) *Purpose of Audit.* Audits will include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of State agencies. These examinations are to determine whether:

(1) There is effective control over and proper accounting for revenues expenditures, assets, and liabilities.

(2) The financial statements are presented fairly in accordance with generally accepted accounting principles.

(3) The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data; and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of OMB Circular A–102.

(4) Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

(d) *Audit Coverage.* A representative number of charges to Federal funds shall be tested. The test shall be representative of:

(1) The universe of Federal funds received, and

(2) All cost categories that materially affect the award. The test is to determine whether the charges:

(i) Are necessary and reasonable for the proper administration of the program;

(ii) Conform to any limitations or exclusions in the award;

(iii) Were given consistent accounting treatments and applied uniformly to both Federally assisted and other activities of the State agency;

(iv) Were net of applicable credits;

(v) Did not include costs property chargeable to other Federally assisted programs;

(vi) Were properly recorded (i.e., correct amount, date) and supported by source documentation;

(vii) Were approved in advance, if subject to prior approval in accordance with Financial Management Circular 74–4;

(viii) Were incurred in accordance with competitive purchasing procedures, if covered by OMB Circular A–102, Attachment O; and

(ix) Were allocated equitably to benefiting activities, including non-Federal activities.

(3) Audits usually will be made annually, but not less frequently than every two years.

(4) If the auditors become aware of irregularities in the State agency, subagency or subcontractor, the auditor shall promply notify the cognizant agency and State agency management officials above the level of involvement. Irregularities include such matters as conflict of interest, falsification of records or reports, and misappropriation of funds and other assets.

(e) *Audit Report.* The audit report shall include:

(1) Financial statements, including footnotes, of the State agency, subagency, or subcontractor organization.

(2) The auditor's comments on the financial statements which should:

(i) Identify the statements examined and the period covered.

(ii) Identify the various programs under which the organization received Federal funds, and the amounts received for each program.

(iii) State that the audit was done in accordance with paragraph (d) above.

(iv) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

(3) The auditor's comments on compliance and internal control which should:

(i) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses.

(ii) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulation that could have a material effect on the financial statements and reports.

(iii) Contain an expression of positive assurance with respect to compliance

with requirements for tested items, and negative assurance for untested items.

(4) Comments on the accuracy and completeness of financial reports and claims for advances or reimbursements to Federal agencies.

(5) Comments on corrective action taken or planned by the State agency.

(f) *Record Retention.* Work paper and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit workpapers shall be made available upon request to the cognizant agency or its designees and the General Accounting Office or its designees.

(g) *Cognizant Agency Responsibilities.* The cognizant agency shall have the following responsibilities:

(1) Obtain or make quality assessment reviews of the work of non-Federal audit organizations, and provide the results to other interested audit agencies. If a non-Federal audit organization is responsible for audits of State agencies that have different cognizant audit agencies, a single quality assessment review will be arranged.

(2) Assure that all audit reports of State agencies that affect Federally assisted programs are received, reviewed, and distributed to appropriate Federal audit officials. These officials will be responsible for distributing audit reports to their program officials.

(3) Whenever significant inadequacies in an audit are disclosed, the State agency will be advised and the auditor will be called upon to take corrective action. If corrective action is not taken, the cognizant agency shall notify the State agency and Federal awarding agencies of the facts and its recommendation. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies.

(4) Assure that satisfactory audit coverage is provided in a timely manner and in accordance with the provisions of this section.

(5) Provide technical advice and act as a liaison between Federal agencies, independent auditors and State agencies.

(6) Maintain a followup system on audit findings and investigative matters to assure that audit findings are resolved.

(7) Inform other affected audit agencies of irregularities uncovered. The audit agencies, in turn, shall inform all appropriate officials in their agencies. State or local government law enforcement and prosecuting authorities shall also be informed of irregularities within their jurisdiction.

(8) Recipients shall require subrecipients that are local governments of Indian tribal governments to adopt the requirements in paragraph (d) through (f). The recipient shall ensure that the subrecipient audit reports are received as required, and shall submit the reports to the cognizant agency. The cognizant agency will have the responsibility for those reports described in paragraph (g).

Appendix A—Principles for Determining Costs Applicable to Administration of the Food Stamp Program by State Agencies

This appendix sets forth the procedures implementing uniform requirements for the negotiations and approval of cost allocation plans with State agencies, in accordance with the provisions of Federal Management Circular (FMC) 74–4 and OASC–10, "Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government," U.S. Department of Health, Education, and Welfare. This material is adapted substantially from the circular; changes have been made only when necessary in order to conform with legislative constraints.

A. Purpose and scope.

(1) Objectives. This Appendix sets forth principles for determining the allowable costs of administering the Food Stamp Program by State agency under FNS approved State Plans of Operation. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of the Program. They are designed to provide that all federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

(2) Policy guides. The application of these principles is based on the fundamental premises that:

(a) State agencies are responsible for the efficient and effective administration of the Food Stamp Program through the application of sound management practice.

(b) The State agency assumes the responsibility for seeing that Food Stamp Program funds have been expended and accounted for consistent with underlying agreements and program objectives.

(c) Each State agency, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques as may be necessary to assure proper and efficient administration.

(3) Application. These principles will be applied by FNS in determining costs incurred by State agencies receiving FNS payments for administering the Food Stamp Program.

(B) Definitions. Approval or authorization by FNS means documentation evidencing consent prior to incurring specific costs.

Cognizant Federal Agency means the Federal agency recognized by OMB as having the predominate interest in terms of program dollars.

Cost allocation plan means the documentation identifying, accumulating, and distributing allowable costs of program administration together with the allocation methods used.

Cost, as used herein, means cost as determined on a cash, accrual, or other basis acceptable to FNS as a discharge of the State agency's accountability for FNS funds.

Cost center means a pool, summary account, objective or area established for the accumulation of costs. Such areas include objective organizational units, functions, objects or items of expense, as well as ultimate cost objective(s) including specific costs, products, projects, contracts, programs and other operations.

Federal agency means FNS and also any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to or contracts with State or local governments.

Payments for administrative costs means reimbursement or advances for costs to State agencies pursuant to any agreement whereby FNS provides funds to carry out programs, services, or activities in connection with administration of the Food Stamp Program. The principles and policies stated in this Appendix as applicable to program payments in general also apply to any State agency obligations under a cost reimbursement type of agreement performed by a subagency, including contracts and subcontracts.

Food Stamp Program administration means those activities and operations of the State agency which are necessary to carry out the purposes of the Food Stamp Act, including any portion of the Program financed by the State agency.

Local unit means any political subdivision of government below the State level.

Other agencies of the State means departments or agencies of the State or local unit which provide goods, facilities, and services to a State agency.

Subagencies means the organization or person to which a State agency makes any payment for acquisition of goods, materials or services for use in administering the Food Stamp Program and which is accountable to the State agency for the use of the funds provided.

Service, as used herein, means goods and facilities, as well as services.

Supporting services means auxiliary functions necessary to sustain the direct effort of administering the Program. These services may be centralized in the State agency or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

(C) Basic guidelines.

(1) Factors affecting allowability of costs. To be allowable under the Program, costs must meet the following general criteria:

(a) Be necessary and reasonable for proper and efficient administration of the Program, be allocable thereto under these principles, and, except as specifically provided herein,

not be a general expense required to carry

(E) Direct costs.

When this method is used, a determination

which will substantiate the propriety of

(9) Resolution of problems. The Office of

shall be limited to the anticipated maximum

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not be a general expense required to carry out the overall responsibilities of State or local governments.

(b) Be authorized or not prohibited under State or local laws or regulations.

(c) Conform to any limitations or exclusions set forth in these principles, Federal Laws, or other governing limitations as to types or amounts of cost items.

(d) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the State agency is a part.

(e) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(f) Not be allocable to or included as a cost to any other federally financed program in either the current or a prior period.

(g) Be the net of all applicable credits.

(2) Allocable costs.

(a) A cost allocable to a particular cost objective to the extent of benefits received by such objective.

(b) Any cost allocable to a particular program or cost objective under these principles may not be shifted to other Federal programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreement, or for other reasons.

(c) Where an allocation of joint cost will ultimately result in charges to the Program, an allocation plan will be required as prescribed in Section 1 of these principles.

(3) Applicable credits.

(a) Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to programs as direct or indirect costs. Examples of such transactions are: Purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

(b) Applicable credits may also arise when Federal funds are received or are available from sources other than FNS to finance operations or capital items donated or financed by the Federal Government to fulfill matching requirements under another program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given program.

(D) Composition of cost.

(1) Total cost. The total cost of a program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credit.

(2) Classification costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to a program or other ultimate cost objective. However, it is essential that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under the Program are provided in the section which follows.

(E) Direct costs.

(1) General. Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to the Program, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in the course to programs and other ultimate costs objectives.

(2) Application. Typical direct costs chargeable to the Program are:

(a) Compensation of employees for the time and effort devoted specifically to the administration of the Program.

(b) Cost of materials acquired, consumed, or expended specifically for the purpose of the Program.

(c) Equipment and other approved capital expenditures.

(d) Other items of expense incurred specifically for efficiently and effectively administering the Program.

(e) Service furnished specifically for the Program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

(F) Indirect costs.

(1) General. Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the result achieved. The term indirect cost as used herein applies to costs of this type originating in the State agency, as well as those incurred by other departments in supplying goods, services, and facilities, to the State agency. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a State agency or in other agencies providing services to a State agency. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

(2) State agency indirect costs. All State agency indirect costs, including the various levels of supervision, are eligible for allocation to the program provided they meet the conditions set forth in their principles. In lieu of determining the actual amount of State agency indirect cost allocable to the program the following methods may be used:

(a) Predetermined fixed rates for indirect costs. A predetermined fixed rate for computing indirect costs applicable to program administration may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties to reach an informed judgment (1) as to the probable level of indirect costs in the State agency during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect costs.

(b) Negotiated lump sum for overhead. A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a State agency's indirect services cannot be readily determined as in the case of a small self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the State agency before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

(3) Limitation on indirect costs.

(a) Some Federal programs may be subject to laws that limit the amount of indirect cost that may be allowed. Agencies that sponsor programs of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such program does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under these principles, whichever is the smaller.

(b) When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under a program may not be shifted to another federally sponsored program or contract.

(G) Cost incurred by other agencies of the State.

(1) General. The cost of service provided by other agencies may only include allowable direct costs of the service plus a pro rata share of allowable supporting costs and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

(2) Alternative methods of determining indirect cost. In lieu of determining actual indirect cost related to a particular service furnished by other agencies of the State, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

(a) Standard indirect rate. An amount equal to ten percent of direct labor cost in providing the service performed by other agencies of the State (excluding overtime, shift, or holiday premiums, and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

(b) Predetermined fixed rate. A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F(2)(a) of these principles.

(H) Cost incurred by State agency for others. The principles provided in section G will also be used in determining the cost of services provided by the State agency to another agency.

(I) Cost Allocation Plan

(1) A cost allocation will be required to support the distribution of any indirect costs. All costs allocable to the Food Stamp Program under cost allocation plans will be supported by formal accounting records

which will substantiate the propriety of eventual charges.

(2) There are two types of cost allocation plans:

(a) Statewide or central service cost allocation plan identifies and distributes the cost of services provided by support organizations to those departments or units participating in Federal programs.

(b) Indirect cost proposals distribute the administrative or joint costs incurred by the State agency and the cost of service allocable to it under the Statewide or central service cost allocation plan in a ratio to all work performed by the State agency. The process involves applying a percentage relationship of indirect cost to direct cost.

(3) Requirements. The cost allocation plan of the State agency shall cover all allocated costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the State agency, to the extent feasible, should be presented in a single document.

(4) Instructions for preparation of cost allocation plans. The Department of Health and Human Services, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State agencies in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level and indirect cost proposals of individual State agencies.

(5) Submitting Plans for Approval

(a) Responsibility for approving cost allocation plans for individual State agencies has been assigned by the Office of Management and Budget to the cognizant Federal agency.

(b) State cost allocation plans must be submitted to the cognizant Federal agency within six months after the last day of the State's fiscal year. Upon request by the State agency, an extension of time for submittal of the cost allocation plan may be granted by the cognizant Federal agency. It is essential that cost allocation plans be submitted in a timely manner. Failure to submit the plans when required will cause the State agency to become delinquent. In the event a State becomes delinquent, FNS will not provide for the recovery of central service and indirect costs, and such costs already made and claimed against Food Stamp Program funds will be subject to disallowance.

(6) Negotiation and Approval of Cost Allocation Plans for States. The cognizant Federal agency, in collaboration with Federal agencies concerned, will be responsible for negotiation, approval, and audit of cost allocation plans.

(7) Negotiation and Approval of Cost Allocation Plans for Local Governments. Cost allocation plans will be retained at the local government level for audit by the cognizant Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

(8) A current list of cognizant Federal agencies is maintained by the Office of Management and Budget.

(9) Resolution of problems. The Office of Management and Budget will lend assistance in resolving problems encountered by Federal agencies on cost allocation plans.

(10) Approval by FNS. FNS reserves the right to disapprove costs not meeting the general criteria outlined in Section C of these principles. FNS shall promptly notify the State agency in writing of the disapproval, the reason for the disapproval and the effective date. Costs incurred by State agencies after disapproval may not be charged to FNS unless if FNS subsequently approves the cost.

Standards for Selected Items of Cost

A. *Allowable Cost.* Standards for allowability of costs are established by Federal Management Circular 74-4. These standards will apply regardless of whether a particular item of cost is treated as direct or indirect. Failure to mention a particular item of cost in these standards is not intended to imply that it is either allowable or unallowable. Rather, determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles as stated in Attachment A to Federal Management Circular 74-4.

(1) *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of the Food Stamp Program is allowable. This includes costs incurred by central service agencies of the State government for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

(2) *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

(a) Recruitment of personnel required for the Program;

(b) Solicitation of bids for the procurement of goods and services required;

(c) Disposal of scrap or surplus materials acquired in the performance of the agreement; and

(d) Other purposes specifically provided for by FNS regulations or approved by FNS in the administration of the Food Stamp Program.

(3) *Advisory Councils.* Costs incurred by State advisory councils or committees established to carry out Food Stamp Program goals are allowable. The cost of like organizations is allowable when used to improve the efficiency and effectiveness of the Program.

(4) *Audit Service.* The cost of audits necessary for the administration and management of functions related to the Program is allowable.

(5) *Bonding.* Costs of premiums on bonds covering employees who handle Food Stamp Program funds or food coupons are allowable. The amount of allowable coverage shall be limited to the anticipated maximum amount of food stamp funds or food coupons handled at one time by that employee.

(6) *Budgeting.* Costs incurred for the development, preparation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the State agency's budget process, the cost of services identifiable to the Food Stamp Program are allowable.

(7) *Building Lease Management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

(8) *Central Stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for the Food Stamp Program is allowable.

(9) *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

(10) *Compensation For Personal Services.*

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance in the administration of the program including but not necessarily limited to wages, salaries, and supplementary compensation and benefits as defined in Section A (13) of these principles. The costs of such compensation are allowable to the extent that total compensation for individual employees: is reasonable for the services rendered; follows an appointment made in accordance with State or local government laws and rules and which meets Federal Merit System or other requirements, where applicable; and is determined and supported as provided in Section A of these principles. Compensation for employees engaged in federally-assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the Food Stamp Program activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

(b) *Payroll and distribution of time.* Amounts charged to the program for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with the generally accepted practice of the State or local agency. Payrolls must be supported by time and attendence or equivalent records for individual employees. Distribution of salaries and wages of employees chargeable to more than one

program or other cost objective will be supported by appropriate time reports or approved time study methodologies. The method used should be included in the cost allocation plan and should be approved by

total compensation for employees is reasonable as defined in paragraph (10)(a) of these principles.

(a) Employee benefits in the form of regular compensation paid to employees during

substantial part of its activities to influencing legislation.

(b) *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the program.

(1) *General-Acquisition requirement.* A State shall obtain prior written approval from FNS when it plans to acquire ADP equipment or services that it anticipates will have total acquisition costs of $100,000 or more in Federal and State funds over a 12-month

(i) Services to operate ADP equipment, either by private sources, or by employees of the State agency, or by State or local organizations other than the State agency; and/or

(ii) Services provided by private sources or

management decision-making and to develop new or improved ADP systems to service, control and coordinate the activities of the organization to improve operational efficiency. The study essentially consists of three basic phases: data gathering or

program or other cost objective will be supported by appropriate time reports or approved time study methodologies. The method used should be included in the cost allocation plan and should be approved by FNS.

(11) *Depreciation and Use Allowance.*

(a) State agencies may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

(b) The computation of depreciation or use allowances will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost of any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of acquisition of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by FNS.

(c) Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

(d) In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment.

(e) No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(12) *Disbursing Service.* The cost of disbursing program funds by the State Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

(13) *Employee Fringe Benefits.* Costs identified are allowable to the extent that total compensation for employees is reasonable as defined in paragraph (10)(a) of these principles.

(a) Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are provided pursuant to an approved leave system, and the cost thereof is equitably allocated to all related activities, including federally-assisted programs.

(b) Employee benefits in the form of employers' contributions or expense for social security, employees' life and health insurance plans, unemployment insurance coverage, workers' compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to programs and to other activities.

(14) *Employee Morale, Health And Welfare Costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy, are allowable. Income generated from any of these activities will be offset against expenses.

(15) *Exhibits.* Costs of exhibits relating specifically to the Food Stamp Program are allowable.

(16) *Legal Expenses.* The cost of legal expenses required in the administration of the program is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government is unallowable.

(17) *Maintenance and Repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

(18) *Materials and Supplies.* The cost of materials and supplies necessary to carry out the program is allowable. Purchases made specifically for the program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the State agency. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

(19) *Memberships, Subscriptions and Professional Activities.*

(a) The *cost of membership* in civic, business, technical, and professional organizations is allowable, provided:

(i) The benefit from the membership is related to the program,

(ii) The expenditure is for agency membership,

(iii) The cost of the membership is reasonably related to the value of the services or benefits received, and

(iv) The expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

(b) *Reference materiol.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the program.

(c) *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the program and they are consistent with regular practices followed for other activities of the State agency.

(20) *Motor pools.* The costs of a service organization which provides automobiles to user State agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

(21) *Payroll preparation.* The cost of preparing payrolls and maintaining necessary wage records is allowable.

(22) *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for the program are allowable.

(23) *Printing and reproduction.* Cost for printing and reproduction services necessary for program administration including but not limited to forms, reports, manuals, and information literature, is allowable. Publication costs of reports or other media relating to program accomplishments or results are allowable.

(24) *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for the program is allowable.

(25) *Taxes.* In general, taxes or payments in lieu of taxes which the State agency is legally required to pay are allowable.

(26) *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits the program is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by FNS.

(27) *Transportation.* Costs incurred for freight, cartage, express, postage, and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

(28) *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to the program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two. The charges must be consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available. Notwithstanding the provisions of paragraphs C (7) and (10), travel costs of officials covered by those paragraphs, when specifically related to grant programs, are allowable with the prior approval of a grantor agency.

B. *Costs allowable with approval of FNS*

(1) *General-Acquisition requirement.* A State shall obtain prior written approval from FNS when it plans to acquire ADP equipment or services that it anticipates will have total acquisition costs of $100,000 or more in Federal and State funds over a 12-month period, or $200,000 or more in Federal or State funds for the total acquisition. A State shall also obtain prior written approval from FNS when it plans to acquire noncompetitively from a commercial source ADP equipment or services that cost more than $25,000 in Federal and State funds. A State shall notify FNS when it plans to acquire ADP equipment or services that will cost $25,000 to $100,000 over a 12-month period in Federal and State funds. The State shall send the prior notice of acquisition to FNS 60 days before the planned acquisition.

(2) *Definitions.*

(a) *"Acceptance documents"* means written evidence of satisfactory completion of an approved phase of work or contract, and acceptance thereof by the State agency.

(b) *"Advance Planning Document" or "APD"* means a written plan of action to acquire the proposed APD services, system, or equipment. The APD must contain a statement of needs and objectives:

(i) The feasibility study;

(ii) A preliminary cost/benefit analysis including lease/purchase options;

(iii) A personnel resource statement indicating availability of qualified and adequate staff including a project director to accomplish the project objectives;

(iv) A detailed description of the nature and scope of the activities to be undertaken and the methods to be used;

(v) A proposed schedule;

(vi) A proposed budget; and

(vii) A statement indicating the period of time for which the services, system, or equipment described are expected to be used; for integrated computer systems, a statement of the percentage allocated to FNS and a breakdown or explanation of how the percentage was determined.

(c) *"Automatic Data Processing" or "ADP"* means data processing performed by a system of electronic or electrical machines so interconnected and interacting as to minimize the need for human assistance or intervention.

(d) *"Automatic Data Processing equipment" or "ADP equipment"* means:

(i) Electronic digital computers, regardless of size, capacity, or price, that accept data input, store data, perform calculations, and other processing steps, and prepare information;

(ii) All peripheral or auxiliary equipment used in support of electronic computers whether selected and acquired with the computer or separately;

(iii) Data transmission or communications equipment that is selected and acquired solely or primarily for use with a configuration of ADP equipment which includes an electronic computer; and

(iv) "Data input equipment" means equipment used to enter data directly or indirectly into an electronic digital computer; peripheral or auxiliary equipment; or data transmission or communication equipment.

(e) *"Automatic Data Processing services" or "ADP services"* means:

(i) Services to operate ADP equipment, either by private sources, or by employees of the State agency, or by State or local organizations other than the State agency; and/or

(ii) Services provided by private sources or by employees of the State agency or by State and local organizations other than the State agency to perform such tasks as feasibility studies, system studies, system design efforts, development of system specifications, system analysis, programming and system implementation.

(f) *"Data processing"* means the preparation of source media containing data or basic elements of information and the use of such source media according to precise rules of procedures to accomplish such operations as classifying, sorting, calculating, summarizing, recording and transmitting.

(g) *"Feasibility study"* means a preliminary study to determine whether it is sufficiently probable that effective and efficient use of ADP equipment or systems can be made to warrant the substantial investment of staff, time, and money. The study shall project for a three year period the requirements for ADP equipment, services, and systems.

(h) *"Request for proposal" or "RFP"* means the document used for public solicitations of competitive proposals from qualified sources as outlined in 7 CFR 277.14.

(i) *"Service agreement"* means a document signed by the State or local agency and a second State or local organization providing ADP services to the State or local agency which: (i) Identifies those ADP services to be provided by the provider agency;

(ii) Includes, preferably as an amendable attachment, a schedule of changes for each identified ADP service, and a certification that these charges apply equally to all users;

(iii) Includes a description of the method(s) of accounting for the services rendered under the agreement and computing services changes;

(iv) Includes assurances that services provided shall be timely and satisfactory; and

(v) Requires the provider agency to obtain prior State agency approval and to follow competitive procurement procedures equivalent to those contained in 7 CFR 277.14 for the acquisition of any ADP services in support of or in addition to the service agreement.

(j) *"Software"* means a set of computer programs, procedures, and associated documentation by which ADP equipment is used and operated.

(k) *"System design"* means the putting together of a new or more efficient ADP system which avoids the deficiencies and discrepancies in the old system.

(l) *"System specifications"* means information about the new ADP system—such as workload descriptions, input data, information to be maintained and processed, data processing techniques, and output data which is required to determine the ADP equipment and software necessary to implement the system design.

(m) *"System study"* means the examination of existing information flow and operational procedures within an organization to determine how to provide more timely, accurate, and meaningful information for management decision-making and to develop new or improved ADP systems to service, control and coordinate the activities of the organization to improve operational efficiency. The study essentially consists of three basic phases: data gathering or investigation of the present system and new information requirements; analysis of the data gathered in the investigation; and synthesis, or refitting, of the parts and relationships uncovered through the analysis into an efficient system.

(3) *Obtaining approval.* Prior approval by FNS is required for costs of ADP equipment or ADP services in support of the Food Stamp Program which exceed $100,000 in combined Federal and State funds per project. Requests for Approvals must be forwarded through the State agency prior to submittal to FNS. Approval by FNS will be based on a review of the studies conducted by or for the agency that will justify the acquisition of the proposed ADP equipment or ADP services. Written approval or the Advance Planning Document must be obtained from FNS by the State agency prior to entering into contractual agreements or making any other commitment for acquisition of ADP equipment or ADP services.

(4) *Approval by the State agency.* Approval by the State agency is required for all documents specified in this regulation prior to submittal for FNS approval. In addition, State agency approval is also required for those acquisitions of ADP equipment and ADP services not requiring prior approval by FNS.

(5) *Competitive procurement.* Acquisition of ADP equipment and purchase of ADP services shall be based on competitive procurement procedures specified in 7 CFR 277.14 when Food Stamp Program funds are involved. State agency officials responsible for such procurement will ensure that formal advertising is the method of procurement unless the conditions for negotiation in 7 CFR 277.14 are met. Notwithstanding the existence of circumstances justifying negotiation, competitive procurement shall be obtained to the maximum extent practicable. The competitive procurement policy shall be applicable except for ADP services provided by the agency itself, or by other State or local agencies.

(6) *Submittol of documents.*

(a) Prior to claiming funding under the Food Stamp Program the State agency will be required to submit:

(i) The Advance Planning Document;

(ii) The Service Agreement (when data processing services are to be provided by a State central data processing facility or by another State or local agency);

(iii) The Request for Proposal, prior to its issuance when service or equipment proposals are being solicited from commercial sources; and

(iv) The Contract, prior to signature of the contracting officer when services or equipment are to be acquired commercially.

(b) Voluntary submittal, or when requested by FNS, will be made of:

(i) The system study,

(ii) The system design,

(iii) The system specifications,

(iv) The acceptance document.

(7) *Methods for charging costs.* Methods and procedures for properly charging the

costs of all systems whether acquired from public or private sources shall be in accordance with this regulation and applicable FNS instructions.

(8) *Access.* Access to the system by FNS in all of its aspects, including design

of the Food Stamp Program. Should FNS determine from such surveys or reviews or otherwise that the State agency has improperly used Food Stamp Program funds, funding may be invoked. Such termination would be limited to the costs of the data

agency shall demonstrate to FNS that such a cost is:

(a) Necessary and reasonable for proper and efficient administration of the program, and allocable thereto under the principles provided herein; and

other agencies (including municipal governments) may only include allowable direct costs plus a pro rata share of allowable supporting costs and supervision directly required in performing the service. Allowable supporting costs are those services which

Interest on borrowings, bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable.

(10) Legislative expenses. Salaries and other expenses of the State legislature or

agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information

costs of all systems whether acquired from public or private sources shall be in accordance with this regulation and applicable FNS instructions.

(8) *Access.* Access to the system by FNS in all of its aspects, including design, development, and operation, including work performed by any source, and including cost records of contractors and subcontractors, shall be made available by the State at intervals as are deemed necessary by FNS to determine whether the conditions for approval are being met and to determine the efficiency, economy and effectiveness of the system. Failure to provide full access by appropriate State and Federal representatives to all parts of the system shall result in termination of Food Stamp Program funds in the costs of the system and its operation.

(9) *Ownership rights.*

(a) *Software.* The State will have all ownership rights in software or modification thereof and associated documentation designed, developed or installed with Food Stamp Program funds except that FNS reserves a royalty-free, nonexclusive license to reproduce, publish, or otherwise use, and to authorize others to do so, such software, modification and documentation. Proprietary software which is provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions of this section.

(b) *Automatic data processing equipment.* The policies and procedures governing title, use and disposition of property purchased with Food Stamp Program funds, which are covered in 7 CFR 277.13 are applicable to automatic data processing equipment.

(10) *Use of ADP system.* ADP systems designed, developed or installed with Food Stamp Program funds shall be used for a period of time consistent with the Advance Planning Document as approved, or which FNS shall determine is sufficient to justify the Federal funds invested.

(11) *Basis for continued Federal Financial Participation.* Periodic onsite surveys and reviews of State and local agency ADP methods and practices may be conducted by or for FNS to determine the adequacy of such methods and practices and to assure that ADP equipment and services are utilized for the purposes for which Federal funds were authorized. Such surveys may include:

(a) *Pre-installation readiness.* A pre-installation survey including an onsite evaluation of the physical site and the State agency's readiness to use the proposed ADP services, equipment or system when installed and operational.

(b) *Post-installation.* A review conducted after installation of ADP equipment or systems to assure that the objectives for which Federal Financial Participation was approved is being accomplished.

(c) *Utilization.* A continuing review of ADP facilities to determine whether or not the ADP equipment or services are being efficiently and effectively utilized in support of the Food Stamp Program. Should FNS determine from such surveys or reviews or otherwise that the State agency has improperly used Food Stamp Program funds, funding may be invoked. Such termination would be limited to the costs of the data processing services or equipment in question as specified in the written notification of termination by FNS.

(12) *Application of this Section.* The conditions of this section apply for initial and continuing authority to claim Food Stamp Program funding for automatic data processing services and equipment. Due to the nature of the procurement of ADP equipment and services, approved cost allocation plans will not be valid unless documentation required under B(1) of this Section is submitted and approvals are obtained.

(13) *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the Program is allowable subject to the following conditions.

(a) The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality.

(b) The cost of space may not be charged to FNS for periods of nonoccupancy, without authorization of FNS.

(i) *Rental Cost.* The rental cost of space in a privately-owned building is allowable.

(ii) *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

(iii) *Rearrangements and alterations.* Costs incurred for rearrangement and alteration of facilities required specifically for the program or those that materially increase the value or useful life of the facilities (Section B(3) of these principles) are allowable when specifically approved by FNS.

(iv) *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in paragraph A(11) of these principles.

(v) *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by FNS.

(14) *Capital expenditures.* The cost, net of any credits, of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets, and/or of nonexpendable personal property, having a useful life of more than one year and a net acquisition costy of more than $5,000 per unit after allocation to FNS as projected for one year after purchase, is allowable when such procurement is specifically approved by FNS. No such approval shall be granted unless the State agency shall demonstrate to FNS that such a cost is:

(a) Necessary and reasonable for proper and efficient administration of the program, and allocable thereto under the principles provided herein; and

(b) That procurement of such item or items has been or will be made in accordance with the standards set out in 277.14. In no case shall such a cost become a program charge against FNS prior to approval in writing by FNS of the procurement and the cost. When assets acquired with Food Stamp funds are (i) sold, (ii) no longer available for use in a Federally-sponsored program, or (iii) used for purposes not authorized by FNS, FNS's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

(15) *Insurance.*

(a) Cost of insurance to secure the State agency against financial losses involved in the acceptance, storage, and issuance of food coupons and ATP cards is allowable with FNS approval.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(i) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(ii) Costs of insurance or contributions to any reserve covering the risk of loss of, or damage to, Federal government property are unallowable except to the extent that FNS approves such cost.

(16) *Management Studies.* The cost of management studies to improve the effectiveness and efficiency of program management for the Food Stamp Program is allowable. However, FNS must approve cost in excess of $2,500 for studies performed by outside consultants or agencies other than the State agency.

(17) *Preagreement costs.* Costs incurred prior to the effective date of approval of the amended indirect cost proposal or the revised Statewide cost allocation plan, whether or not they would have been allowable thereunder if incurred after such date, are allowable only when subsequently provided for in the plan or approved indirect cost proposal.

(18) *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the State agency is allowable. Prior authorization must be obtained from FNS for cost exceeding a total of $2,500.

(19) *Proposal costs.* Costs of preparing indirect cost proposals or amendments for allocating, distributing, and implementing provisions for payment of portions of the costs of administering the Food Stamp Program by the State agency are allowable.

(20) *Cost incurred by Agencies other than the State.* The cost of services provided by other agencies (including municipal governments) may only include allowable direct costs plus a pro rata share of allowable supporting costs and supervision directly required in performing the service. Allowable supporting costs are those services which may be centralized and includes such functions as procurement, payroll, personnel services, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service and the like. Supervision costs will not include supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in the operation of the program. In lieu of determining actual indirect cost related to a particular service performed by another agency, either of the following alternative methods may be used during the fiscal year involved and is specifically provided for in the indirect cost proposal:

(a) Standard indirect rate equal to ten percent of direct labor cost in providing the service (excluding overtime, shift or holiday premiums, and fringe benefits) may be allowed in lieu of actual allowable cost.

(b) A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated.

C. *Unallowable costs.* The following costs shall not be allowable:

(1) Costs of determining Food Stamp eligibility incidental to the determination of AFDC eligibility are not chargeable to FNS.

(2) Bad debts. Any losses arising from uncollectable accounts or other claims, and related costs, are unallowable.

(3) Contingencies. Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

(4) Contributions and donations. Unallowable.

(5) Entertainment. Costs whose purpose is for amusement, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities are unallowable.

(6) Fines and penalties. Costs resulting from violations of or failure to comply with Federal, State and local laws and regulations are unallowable.

(7) Governor's expenses. The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable. However, for a federally-recognized Indian tribal government, only that portion of the salaries and expenses of the office of the chief executive that is a cost of general government is unallowable. The portion of salaries and expenses directly attributable to managing and operating programs is allowable.

(8) Indemnification. The cost of indemnifying the State against liabilities to third parties and other losses not compensated by insurance is unallowable.

(9) Interest and other financial costs. Interest on borrowings, bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable.

(10) Legislative expenses. Salaries and other expenses of the State legislature or similar local governmental bodies are unallowable.

(11) Losses. Losses which could have been covered by permissible insurance are unallowable.

(12) Underrecovery of cost under agreements. Any excess of cost over Federal contribution under one agreement is unallowable under another agreement.

(13) The acquisition of land or buildings is an unallowable cost.

Note.—The reporting and recordkeeping requirement contained in this rule are being submitted for approval by the Office of Management and Budget in accordance with the Federal Reports Act of 1942. The reporting and recordkeeping requirements may be subject to revision prior to implementation if the requirements as presently formulated are not approved without change by OMB.

(91 Stat. 958 (7 U.S.C. 2011–2027))

(Catalog of Federal Domestic Assistance Program No. 10551 Food Stamp)

Dated: December 22, 1980.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 80-40407 Filed 12-29-80; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 285]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Serices, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period December 28–January 3, 1981. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: December 28, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on December 22, 1980, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is good.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Section 910.585 is added as follows:

§ 910.585 Lemon Regulation 285.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period December 28, 1980, through January 3, 1981, is established at 210,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 23, 1980.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-40454 Filed 12-23-80; 2:00 pm]

Regulations, designating Certified Brucellosis-Free Areas, Modified Certified Brucellosis Areas, and Noncertified Areas, respectively, are revised to read as follows:

Madison, Marion, Marshall, Mason, Massac, McDonough, McHenry, McLean, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Ogle, Peoria, Perry, Piatt, Pike, Pope, Pulaski,

McCook, McPherson, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Sully, Todd, Tripp, Turner, Union, Walworth, Washabaugh,

Mobile, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, Winston.

Kentucky. Adair, Allen, Anderson, Ballard, Barren, Bath, Boone, Bourbon, Boyd, Boyle, Bracken, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Carroll, Carter, Casey,

Dated: December 23, 1980.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-40454 Filed 12-23-80; 2:00 pm]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 78

Brucellosis Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: These amendments add the county of Lipscomb in Texas, to the list of Modified Certified Brucellosis Areas and delete it from the list of Certified Burcellosis-Free Areas because it has been determined that this county now qualifies only as a Modified Certified Brucellosis Area. The effect of this action will provide for more restrictions on cattle moved interstate from this area. These amendments also add the county of Vernon in Missouri to the list of Modified Certified Brucellosis Areas and delete such county from the list of Noncertified Areas because it has been determined that this county now qualifies as a Modified Certified Brucellosis Area. The effect of this action will provide for less restrictions on cattle moved interstate from this area.

EFFECTIVE DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. A. D. Robb, USDA, APHIS, VS, Room 805, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8713.

SUPPLEMENTARY INFORMATION: A complete list of Brucellosis Areas was published in the **Federal Register** (45 FR 44253-44256) effective July 1, 1980. These amendments update the complete list. These amendments add the county of Lipscomb in Texas to the list of Modified Certified Brucellosis Areas in § 78.21 and delete it from the list of Certified Brucellosis-Free Areas in § 78.20, because it has been determined that it now qualifies only as a Modified Certified Brucellosis Area as defined in § 78.1(m) of the regulations. These amendments add the county of Vernon in Missouri to the list of Modified Certified Brucellosis Areas in § 78.21 and delete such county from the list of Noncertified Areas in § 78.22 because it has been determined that such county now qualifies as a Modified Certified Brucellosis Area.

Accordingly, §§ 78.20, 78.21, and 78.22 of Part 78, Title 9, Code of Federal Regulations, designating Certified Brucellosis-Free Areas, Modified Certified Brucellosis Areas, and Noncertified Areas, respectively, are revised to read as follows:

§ 78.20 Certified Brucellosis-Free Areas.

The following states, or specified portions thereof, are hereby designated as Certified Brucellosis-Free Areas:

(a) *Entire States.*

Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Iowa, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, Virgin Islands.

(b) *Specific Counties Within States.*

Alabama. Dale, Geneva.

Arkansas. Baxter, Bradley, Columbia, Crittenden, Dallas, Drew, Fulton, Garland, Grant, Jefferson, Marion, Monroe, Montgomery, Newton, Ouachita, Stone, Union, Woodruff.

Florida. Baker, Bay, Calhoun, Citrus, Dixie, Franklin, Holmes, Jackson, Leon, Liberty, Monroe, Okaloosa, Santa Rosa, Seminole, St. Johns, Taylor, Wakulla, Walton.

Georgia. Appling, Atkinson, Bacon, Banks, Brantley, Bryan, Bulloch, Burke, Butts, Camden, Candler, Charlton, Chatham, Chattahoochee, Clarke, Clayton, Cook, Crawford, De Kalb, Echols, Effingham, Evans, Fannin, Franklin, Glascock, Glynn, Greene, Habersham, Jeff Davis, Johnson, Lanier, Laurens, Liberty, Long, McIntosh, Monroe, Peach, Rabun, Richmond, Screven, Stephens, Taylor, Toombs, Treutlen, Twiggs, Upson, Ware, Wayne, Wheeler, White, Wilkinson.

Idaho. Ada, Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Clark, Clearwater, Custer, Elmore, Gem, Idaho, Kootenai, Latah, Lemhi, Lewis, Minidoka, Nez Perce, Owyhee, Payette, Power, Shoshone, Teton, Valley, Washington.

Illinois. Adams, Alexander, Bond, Boone, Brown, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Cook, Crawford, Cumberland, De Kalb, DeWitt, Douglas, Du Page, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Grundy, Hamilton, Hancock, Hardin, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Kane, Kankakee, Kendall, Knox, Lake, La Salle, Lawrence, Lee, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, Massac, McDonough, McHenry, McLean, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Ogle, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Rock Island, St. Clair, Saline, Sangamon, Schuyler, Scott, Shelby, Stark, Stephenson, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Will, Williamson, Winnebago, Woodford.

Kansas. Anderson, Barber, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Coffey, Comanche, Crawford, Decatur, Dickinson, Doniphan, Douglas, Edwards, Ellsworth, Finney, Ford, Geary, Gove, Graham, Grant, Gray, Greeley, Hamilton, Harvey, Haskell, Hodgeman, Jewell, Johnson, Kearney, Kingman, Kiowa, Labette, Lane, Leavenworth, Lincoln, Logan, Marion, Marshall, Meade, Miami, Mitchell, Ness, Norton, Osage, Osborne, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Republic, Riley, Rooks, Rush, Saline, Scott, Seward, Shawnee, Sheridan, Sherman, Smith, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson, Wyandotte.

Kentucky. Bell, Breathitt, Campbell, Clay, Floyd, Harlan, Johnson, Kenton, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Lewis, Magoffin, Martin, McCreary, Minifee, Morgan, Owsley, Pendleton, Perry, Pike, Robertson, Trimble, Whitley, Wolfe.

Mississippi. Harrison.

Missouri. Audrain, Dunklin, Gasconade, Hickory, Lewis, Moniteau, Montgomery, Perry, Platte, Pulaski, St. Louis, Schuyler, Shelby.

Nebraska. Banner, Box Butte, Burt, Chase, Cheyenne, Clay, Colfax, Cuming, Dakota, Deuel, Dodge, Douglas, Dundy, Franklin, Hitchcock, Jefferson, Lancaster, Nuckolls, Perkins, Saline, Seward, Sioux, Stanton, Thayer, Thurston, Washington, Wayne.

New Mexico. Catron, Colfax, De Baca, Dona Ana, Grant, Guadalupe, Harding, Hidalgo, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Union, Valencia.

Oklahoma. Alfalfa, Cimarron, Custer, Ellis, Jackson, Woodward.

South Dakota. Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchison, Hyde, Jackson, Jerauld, Kingsbury, Lake, Lawrence, Lincoln, Lyman, Marshall,

McCook, McPherson, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Sully, Todd, Tripp, Turner, Union, Walworth, Washabaugh, Yankton, Ziebach.

Tennessee. Anderson, Blount, Campbell, Carter, Claiborne, Fentress, Grainger, Hamblen, Hancock, Johnson, Knox, Lake, Lewis, Meigs, Morgan, Perry, Polk, Roane, Robertson, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren.

Texas. Armstrong, Bandera, Borden, Brewster, Childress, Comal, Crane, Culberson, Ector, Gillespie, Glasscock, Gray, Hansford, Hartley, Hempill, Hudspeth, Hutchinson, Irion, Jeff Davis, Kendall, Kerr, Kimble, Llano, Loving, Martin, Mason, Menard, Midland, Moore, Newton, Ochiltree, Pecos, Presidio, Reagan, Real, Roberts, Schleicher, Sherman, Sterling, Sutton, Terrell, Tom Green, Val Verde, Ward, Winkler, Yoakum.

Utah. Beaver, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, Wayne, Weber.

Puerto Rico. Adjuntas, Aguada, Aguadilla, Aguas Buenas, Aibonito, Anasco, Arroyo, Barceloneta, Barranquitas, Bayamon, Cabo Rojo, Caguas, Canovanas (Loiza), Catano, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerio, Corozal, Culebra, Dorado, Fajardo, Guanica, Guayama, Guaynabo, Guayanilla, Hormigueros, Humacao, Jayuya, Juana Diaz, Juncos, Lajas, Leres, Las Marias, Luquillo, Manati, Maricao, Maunabo, Mayaguez, Moca, Naranjito, Orocovis, Patillas, Penuelas, Ponce, Rincon, Rio Grande, Rio Piedras, Sabana Grande, Salinas, San German, San Juan, San Lorenzo, Santa Isabel, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Vieques, Villalba, Yabucoa, Yauco.

§ 78.21 Modified Certified Brucellosis Areas.

The following States, or specified portions thereof, are hereby designated as Modified Certified Brucellosis Areas:

(a) *Entire States.* Alaska.

(b) *Specific Counties Within States.*

Alabama. Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, De Kalb, Elmore, Etowah, Escambia, Fayette, Franklin, Greene, Hale, Henry, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Mobile, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, Winston.

Arkansas. Arkansas, Ashley, Benton, Boone, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Conway, Craighead, Crawford, Cross, Desha, Faulkner, Franklin, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Lonoke, Madison, Miller, Mississippi, Nevada, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Pulaski, Randolph, Saline, Scott, St. Francis, Searcy, Sebastian, Sevier, Sharp, Van Buren, Washington, White, Yell.

Florida. Alachua, Bradford, Brevard, Broward, Clay, Collier, Columbia, Dade, De Sota, Duval, Escambia, Flagler, Gadsden, Gilichrist, Glades, Gulf, Hamilton, Hendry, Hernando, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Levy, Madison, Manatee, Marion, Martin, Nassau, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Lucie, Sarasota, Sumter, Suwanee, Union, Volusia, Washington.

Georgia. Baker, Baldwin, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Carroll, Catoosa, Chattooga, Cherokee, Clay, Clinch, Cobb, Coffee, Colquitt, Columbia, Coweta, Crisp, Dade, Dawson, Decatur, Dodge, Dooly, Dougherty, Douglas, Early, Elbert, Emanuel, Fayette, Floyd, Forsyth, Fulton, Gilmer, Gordon, Grady, Gwinnett, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jefferson, Jenkins, Jones, Lamar, Lee, Lincoln, Lowndes, Lumpkin, Macon, Madison, Marion, McDuffie, Meriwether, Miller, Mitchell, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Pickens, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Randolph, Rockdale, Schley, Seminole, Spalding, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Telfair, Terrell, Thomas, Tift, Towns, Troups, Turner, Union, Walker, Walton, Warren, Washington, Webster, Whitfield, Wilcox, Wilkes, Worth.

Idaho. Cassia, Franklin, Fremont, Gooding, Jefferson, Jerome, Lincoln, Madison, Oneida, Twin Falls.

Illinois. Jo Daviess.

Kansas. Allen, Atchison, Barton, Butler, Cloud, Cowley, Elk, Ellis, Franklin, Greenwood, Harper, Jackson, Jefferson, Linn, Lyon, McPherson, Montgomery, Morris, Morton, Nemaha, Neosho, Ottawa, Reno, Rice, Russell, Sedgwick, Stafford.

Kentucky. Adair, Allen, Anderson, Ballard, Barren, Bath, Boone, Bourbon, Boyd, Boyle, Bracken, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carlisle, Carroll, Carter, Casey, Christian, Clark, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Franklin, Fulton, Gallatin, Garrard, Grant, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jackson, Jefferson, Jessamine, Larue, Laurel, Lincoln, Livingston, Logan, Lyon, Madison, Marion, Marshall, Mason, McCracken, McLean, Meade, Mercer, Metcalfe, Monroe, Montgomery, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Powell, Pulaski, Rockcastle, Rowan, Russell, Scott, Shelby, Simpson, Spencer, Taylor, Todd, Twigg, Union, Warren, Washington, Wayne, Webster, Woodford.

Louisiana. Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Catahoula, Claiborne, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Jefferson Davis, Lafayette, La Salle, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John The Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, Winn.

Mississippi. Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, De Soto, Forrest, Franklin, George, Greene, Grenada, Hancock, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, LeFlore, Lincoln, Lowndes, Madison, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxube, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishimingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo.

Missouri. Adair, Andrew, Atchinson, Barry, Barton, Bates, Benton, Bollinger, Boone, Buchanan, Butler, Caldwell, Callaway, Camden, Cape Girardeau,

Carroll, Carter, Cass, Cedar, Chariton, Christian, Clark, Clay, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, DeKalb, Dent, Douglas, Franklin, Gentry, Greene, Grundy, Maury, McMinn, McNairy, Monroe, Montgomery, Moore, Obion, Overton, Pickett, Putnam, Rhea, Rutherford, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Warren, Washington,

(b) *Specific Counties Within States.*

Florida. Charlotte, Hardee, Highlands, Okeechobee; *Louisiana.* Cameron, Lafourche.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1

the Harry S Truman Animal Import Center (HSTAIC). This amendment provides:

1. That at least 60 days prior to any drawing notice will be given in the

savings to the Federal Government and should facilitate the allocation of space for the HSTAIC. Therefore, they should be implemented for the third importation.

The regulations also presently require that the selected applicants deliver the cooperative agreement set forth in § 92.41(c) and the payment required under such agreement to the Department

Carroll, Carter, Cass, Cedar, Chariton, Christian, Clark, Clay, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, DeKalb, Dent, Douglas, Franklin, Gentry, Greene, Grundy, Harrison, Henry, Holt, Howard, Howell, Iron, Jackson, Jasper, Jefferson, Johnson, Knox, Laclede, Lafayette, Lawrence, Lincoln, Linn, Livingston, Macon, Madison, Maries, Marion, McDonald, Mercer, Miller, Mississippi, Monroe, Morgan, New Madrid, Newton, Nodaway, Oregon, Osage, Ozark, Pemiscot, Pettis, Phelps, Pike, Polk, Putnam, Ralls, Randolph, Ray, Reynolds, Ripley, St. Charles, St. Clair, St. Francois, St. Genevieve, Saline, Scotland, Scott, Shannon, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Warren, Washington, Wayne, Webster, Worth, Wright.

Nebraska. Adams, Antelope, Arthur, Blaine, Boone, Boyd, Brown, Buffalo, Butler, Cass, Cedar, Cherry, Custer, Dawes, Dawson, Dixon, Fillmore, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Holt, Hooker, Howard, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, McPherson, Merrick, Morrill, Nance, Nemaha, Otoe, Pawnee, Phelps, Pierce, Platte, Polk, Redwillow, Richardson, Rock, Sarpy, Saunders, Scotts Bluff, Sheridan, Sherman, Thomas, Valley, Webster, Wheeler, York.

New Mexico. Bernalillo, Chaves, Curry, Eddy, Lea, Roosevelt.

Oklahoma. Adair, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Delaware, Dewey, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jefferson, Johnson, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, Major, Marshall, Mayes, McClain, McCurtain, McIntosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Roger Mills, Rogers, Seminole, Sequoyah, Stephens, Texas, Tillman, Tulsa, Wagoner, Washington, Washita, Woods.

South Dakota. Faulk, Jones, Stanley.

Tennessee. Bedford, Benton, Bledsoe, Bradley, Cannon, Carroll, Cheatham, Chester, Clay, Cocke, Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Dyer, Fayette, Franklin, Gibson, Giles, Greene, Grundy, Hamilton, Hardeman, Hardin, Hawkins, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Lauderdale, Lawrence, Lincoln, Loudon, Macon, Madison, Marion, Marshall, Maury, McMinn, McNairy, Monroe, Montgomery, Moore, Obion, Overton, Pickett, Putnam, Rhea, Rutherford, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Warren, Washington, Wayne, Weakley, White, Williamson, Wilson.

Texas. Anderson, Andrews, Angelina, Aransas, Archer, Atascosa, Austin, Bailey, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Bosque, Bowie, Brazoria, Brazos, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, De Witt, Dickens, Dimmitt, Donley, Duval, Eastland, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hardeman, Hardin, Harris, Harrison, Haskell, Hays, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Jack, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kenedy, Kent, King, Kinney, Kleberg, Knox, Lamar, Lamb, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Lubbock, Lynn, McCulloch, McLennan, McMullen, Madison, Marion, Matagorda, Maverick, Medina, Milam, Mills, Mitchell, Montague, Montgomery, Morris, Motley, Nacogdoches, Navarro, Nolan, Nueces, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Polk, Potter, Rains, Randall, Red River, Reeves, Refugio, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Scurry, Shackelford, Shelby, Smith, Somervell, Starr, Stephens, Stonewall, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, Wood, Young, Zapata, Zavala.

Utah. Box Elder, Garfield.

Puerto Rico. Arecibo, Camuy, Carolina, Gurabo, Hatillo, Isabela, Las Piedras, Morovis, Naguabo, Quebradillas, San Sebastian.

§ 78.22 Noncertified Areas.

The following States, or specified portions thereof, are hereby designated as Noncertified Bruellosis Areas:

(a) *Entire States.*

Yellowstone National Park.

(b) *Specific Counties Within States.*

Florida. Charlotte, Hardee, Highlands, Okeechobee; *Louisiana.* Cameron, Lafourche.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132, 21 U.S.C. 111–113, 114a–1, 115, 117, 120, 121, 125, 134b, 134f; 37 FR 28464, 28477; 38 FR 19141, 9 CFR 76.25)

The amendment designating an areas as a Modified Certified Brucellosis Area imposes restrictions presently not imposed on cattle moved from that area in interstate commerce. The restrictions are necessary in order to prevent the spread of brucellosis from such area.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Paul Becton, Director, National Brucellosis Eradication Program, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without the opportunity for public comment and preparation of an impact analysis statement at this time.

This final rule will be scheduled for review under provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 22nd day of December 1980.

Norvan L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-40408 Filed 12-29-80; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 92

Cattle Imported Through Harry S Truman Animal Import Center; Procedures

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the procedures to be used for the allotment of quarantine space for cattle to be imported through the Harry S Truman Animal Import Center (HSTAIC). This amendment provides:

1. That at least 60 days prior to any drawing notice will be given in the **Federal Register** of the date, time and place of the drawing. The notice shall also designate the geographic areas from which animals will be considered for importation and shall include the fee schedule for the proposed importation.

2. That the application to import animals shall be accompanied by a certified check or money order in the amount of $1,000 for each animal requested and that the application be received by the Department at least 5 days prior to the date of the drawing.

3. That the applicant, or their designated legal agent or representative, be present at the drawing at which time the cooperative agreement shall be executed and the financial responsibility shall be assumed by the successful applicants.

4. Editorial changes are provided to clarify the procedures and the importers' financial responsibility.

These changes are believed necessary to better administer the facility and help insure that the facility is fully utilized.

EFFECTIVE DATE: December 23, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, USDA, APHIS, VS, Federal Building, Room 819, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8170. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant".

Dr. Milton J. Tillery, Director, National Program Planning Staffs, has determined that an emergency situation exists which warrants that this final rule become effective less than 30 days after publication in the **Federal Register,** because the lottery for the third importation of animals imported into the United States through the HSTAIC will be on January 6, 1981, and the procedures required by this amendment concern the application process and system of allocation of space at HSTAIC. Potential applicants should be notified of these procedures as soon as possible. Further, these procedures should result in a substantial cost savings to the Federal Government and should facilitate the allocation of space for the HSTAIC. Therefore, they should be implemented for the third importation.

On Friday, June 6, 1980, there was published in the **Federal Register** (45 FR 38036–38038) an amendment that provided a method of selecting alternate applicants to replace applicants originally selected who have not delivered the required cooperative agreement and the required funds, payment bond or letter of credit to the Department. The intended effect of that action was to achieve maximum utilization of all available quarantine space at HSTAIC.

A period of 60 days was provided for receipt of comments, which expired August 5, 1980. No comments were received. The amendment was determined to be essential in order to allow the Department to better coordinate and allocate personnel and materials to the facility and to provide maximum utilization of the facility. However, the procedures were time consuming, were difficult to administer and did not provide the desired results.

On Tuesday, October 14, 1980, there was published in the **Federal Register** (45 FR 67669–67673) a proposed amendment to the regulations of § 92.41 (9 CFR 92.41) concerning the procedures to be used for the allotment of quarantine space for cattle to be imported through the Harry S Truman Animal Import Center which, among other provisions, proposed to amend the procedures of the Friday, June 6, rulemaking.

A period of 30 days was provided for receipt of comments which expired November 13, 1980. Only one comment was received. It stated that the cost schedule would make it prohibitive to import any more animals through HSTAIC, that even if affordable, it would be impossible to bring a letter of credit at the time of the drawing, and suggesting a meeting be held with interested importers to resolve these matters.

The costs associated with the operation of the Harry S Truman Animal Import Center are to be borne by the importers using this facility and will vary in accordance with the actual number of animals utilizing the facility during a given importation period. Each importer who has been authorized a special permit in the drawing, must sign a cooperative agreement which, among other things, sets forth the payment requirements prior to being awarded a special permit to import cattle into HSTAIC.

The regulations also presently require that the selected applicants deliver the cooperative agreement set forth in § 92.41(c) and the payment required under such agreement to the Department within a specified time. This has resulted in the Department not being able to determine if the applicants selected by lottery are going to exercise their right to obtain a special permit. This could result in less than full utilization of the HSTAIC for a particular importation. Therefore, it is essential that the importers, prior to issuance of the special permits, assume fiscal responsibility of the expenses to be incurred. Due to the unusual nature of the service and the need to have adequate funds available to the Department for the cost of the services which will be performed in connection with the importation of animals into the HSTAIC in accordance with the provisions of section 1 of the Act of May 6, 1970 (21 U.S.C. 135), the Department requires either advance payment, a payment bond or a letter of credit, meeting the requirements specified in the cooperative agreement, be deposited with the Service (Veterinary Services) at the time of the drawing. The Department believes that while it could require only cash advance payment of the entire fee, alternative mechanisms for payment are necessary to provide the importer ways to participate in the importation process without "tying up" an importer's cash reserve from the outset of the importation process. The alternative methods of payment are believed to be workable alternatives to requiring that funds be deposited in cash at the outset of the importation process. If the letter of credit option does not prove feasible, the importer may rely on either the advance payment in cash or the use of a bond to cover the cost of the service.

Further, the Department has found that the formula for the fees prescribed for the quarantine period that are based upon full utilization of the facility do not provide for all contingencies. If there is less than full utilization of the facility during the quarantine period, then it will not be self-supporting to the fullest extent possible as Congress intended. However, whether or not the facility will actually be fully utilized depends on several factors, the first of which is the ability of all prospective importers to obtain the necessary financing to enter into the required cooperative agreement. If a prospective importer cannot obtain such financing, the facility will not be fully utilized, unless there is time for another importer to be offered the space in accordance with the regulations and he has time to make all the necessary

financial and pre-entry quarantine arrangements.

Therefore, in order to provide sound financial management both for the prospective importers and the Department, it is essential that the HSTAIC which shall be received by Veterinary Services at least 5 days prior to the date of the drawing.[14] The applicant shall state on the application the number of animals he desires to import into the HSTAIC and their

into the center. This selection process shall continue in the same manner until no available space exists for importing animals into the HSTAIC. However, if the total applications received are for less than 400 animals, each applicant

HSTAIC shall not be assigned or transferred, not shall any interest be assigned or transferred.

(b) *Fees.* (1) Cost associated with the maintenance and operation of the facility shall be borne by applicants who

Inspection Service funds expended for administrative support.

(4) Any test performed on animals in excess of the number of animals specified in a cooperative agreement is not included in the fees authorized in

4. To pay for all laboratory tests in addition to those identified in the Veterinary Services protocol for importing animals into the HSTAIC deemed necessary by the Department to determine freedom from communicable animal diseases.

V 4 5 D E 3 0 8 0 UMI

financial and pre-entry quarantine arrangements.

Therefore, in order to provide sound financial management both for the prospective importers and the Department, it is essential that the importers, prior to the approval and issuance of the special permits, assume fiscal responsibility for the expenses to be incurred.

The suggestion that the Department meet with prospective importers is rejected since, as stated previously, the lottery for the third importation will be on January 6, 1981, and there is not sufficient time to advise interested persons and schedule such a meeting. Therefore, since this amendment concerns the application process, the proposed amendment is adopted without change.

The Animal and Plant Health Inspection Service (APHIS) is quite concerned about the escalating cost of importing cattle through HSTAIC. APHIS is committed to analyzing its procedures for HSTAIC and to try to identify and implement cost-cutting measures in the operation of the Center. Along with this, APHIS is also exploring the legality and practical feasibility of alternative uses of the facility, or portions thereof in the event that there is less than maximum utilization of the Center during a given importation period, in order to cut costs associated with the importation of cattle through HSTAIC.

Accordingly, Part 92, Title 9, Code of Federal Regulations is amended in the following respects:

1. Sections 92.41 (a) and (b) are revised to read:

§ 92.41 Requirements for the importation of animals into the United States through the Harry S Truman Animal Import Center.

(a) *Special authorization.* Because of the extended period of time required to process cattle intended for importation from countries affected with exotic diseases not otherwise eligible for importation into the United States, including foot-and-mouth disease, through the Harry S Truman Animal Import Center, (HSTAIC), special authorization shall be required before any animal may enter the facility for quarantine. Such authorization will be issued on a lottery basis in accordance with the following procedures:

(1) *Drawing; contents of applications and deposits.* For each importation of animals into the HSTAIC, a drawing will be held of the names of applicants who desire to import animals into the facility at that particular time. Each applicant shall complete an application for importing animals through the HSTAIC which shall be received by Veterinary Services at least 5 days prior to the date of the drawing.[14] The applicant shall state on the application the number of animals he desires to import into the HSTAIC and their country of origin. Each application shall be accompanied by a certified check or money order payable to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of one thousand dollars ($1.000), for each animal for which special authorization is requested on the application. In the event the applicant does not receive special authorization for animals for which he has applied, the amount deposited with the application for each animal not so authorized will be returned. If the applicant receives special authorization, the deposited amount shall be applied against the total cost of importation of each animal. At least 60 days prior to any drawing, notice will be given in the Federal Register of the date, time and place of the drawing for interested persons to submit an application. The notice shall also designate the geographic areas from which animals will be considered for importation into the HSTAIC and shall also include the fee schedule for the proposed importation. All applicants, or their designated legal agents or representatives, shall be required to appear in person at the drawing. Such designated legal agent or representative shall have a notarized statement of authority signed by the applicant.

(2) *Drawing for special authorization.* At the time, date, and places specified in the Notice of Drawing, if there are more than 400 applicants, a Department employee shall consecutively draw the names of applicants, until a maximum of 400 names have been selected to receive special authorization to qualify one animal for entry into the United States through the HSTAIC. If there are less than 400 applicants for 400 animals or more, the procedure for the consecutive drawings for spaces shall be as follows: A drawing will be held of the names of those applicants seeking to import at least one animal into the HSTAIC. Then a drawing will be held on the names of applicants wishing to import at least two animals. If after these names have been selected, available space in the HSTAIC still exists, a drawing will be held of the names of those applicants seeking to import at least three animals into the center. This selection process shall continue in the same manner until no available space exists for importing animals into the HSTAIC. However, if the total applications received are for less than 400 animals, each applicant shall receive special authorization for the number requested on their application in acordance with the provisions of subparagraph (4) of this paragraph (a). Further, if available space at the HSTAIC still exists at the designated time of the drawing, each of the applicants shall be offered an opportunity to request additional space(s). If the requests for additional space(s) exceed the space(s) available, a lottery drawing shall be conducted for the additional spaces in the same manner as provided above from those interested applicants. Each applicant shall receive special authorization for the additional space(s) in accordance with the provisions of subparagraph (4) of this paragraph (a). At the end of the drawing when the total number of animals has been determined, the fee will be established in accordance with the graduated fee scale. If any person selected to receive a special authorization declines acceptance, the other applicants will be offered the opportunity to receive the special authorization as provided above in this subparagraph. If any such additional authorization is not requested, the fee per animal shall increase in accordance with the graduated fee schedule: *Provided,* That if the total number of animals for which special authorizations are requested is not at least 50, there shall not be a lottery or importation and the deposits shall be refunded to the applicants.

(3) *Area of origin; limitations.* All applications received will be carefully reviewed prior to the public drawing. In the event applications are received for the importation of cattle which originate from areas in which conditions are considered to be unacceptable as specified in § 92.4(a)(3), the applicant will be so advised in writing and the money submitted with the application will be returned.

(4) *Requirements for special authorization.* On the day of the drawing applicants selected to receive special authorization for cattle to be qualified for importation through the HSTAIC, or their designated legal agents or representatives shall be required to execute a cooperative agreement described in § 92.41(c) and pay the required fee in accordance with the provisions of the cooperative agreement. Authorization to qualify cattle into the United States through HSTAIC shall not be assigned or transferred, not shall any interest be assigned or transferred.

(b) *Fees.* (1) Cost associated with the maintenance and operation of the facility shall be borne by applicants who receive a special authorization under this section in accordance with the provisions of a cooperative agreement specified in paragraph (c) of this section.

(2) The Deputy Administrator is authorized to establish reasonable fees of the costs incurred by the Department in the maintenance and operation of the HSTAIC. Such fees shall include certain pre-entry services provided by the Department to prepare HSTAIC and animals for entry into that facility. Fees shall also include costs incurred while animals are in the facility and for a period of 30 days subsequent to the animals leaving the facility for costs incurred in its cleaning and disinfecting.

(3) The fees authorized in this section shall be based upon the following items:

(i) *Personnel.* The hourly rates including appropriate premium pay in accordance with 5 U.S.C. 5541–5549 for Veterinary Services' employees who perform the service.

(ii) *Travel.* The costs of travel and per diem of Veterinary Services' employees from their official duty station to their temporary duty station and return in order to qualify animals for entry into the facility. Travel costs shall also include costs to courier test samples from temporary duty stations overseas to Plum Island for testing.

(iii) *Utilities.* The cost of electricity, oil and water for operating the HSTAIC for the five month period of quarantine plus one month for cleaning and disinfection.

(iv) *Laboratory costs.* The cost of conducting three series of laboratory tests for each animal as authorized by the cooperative agreement and in accordance with a Veterinary Services protocol [14a] to qualify for importation into the Harry S Truman Animal Import Center.

(v) *Supplies.* The cost of supplies (feed, bedding, disinfectants, contact test animals and miscellaneous supplies for the animal care, maintenance, and testing at the facility) for the five month period of quarantine plus one month for cleaning and disinfection.

(vi) *Overhead.* A surcharge for overhead based on the most current historical data available showing the percentage of Animal and Plant Health Inspection Service funds expended for administrative support.

(4) Any test performed on animals in excess of the number of animals specified in a cooperative agreement is not included in the fees authorized in this section. The Deputy Administrator shall charge the importer for whom the service is performed the actual cost of conducting such test. Payment shall be due upon receipt by such person of a bill for the services from the Department.

(5) The cost of any additional laboratory tests deemed necessary by the Deputy Administrator to determine an animal's freedom from communicable disease is not included in the fees authorized in this section. Also, any treatment performed on animals while at the Harry S Truman Animal Import Center is not included in the fees authorized in this section. The Deputy Administrator shall charge the importer for whom the service is performed the actual cost of such testing or treatment. Payment shall be due upon receipt by that person of a bill for the services from the Department.

(6) The importer shall be reimbursed for any monies advanced for feed, bedding or laboratory tests for animals at the HSTAIC if such feed or bedding are not used or if such laboratory test for animals are not performed by Veterinary Services.

(7) Fees shall be based on the expected level of occupancy of the HSTAIC as determined by the number of cattle for which importers have been specially authorized to import the Center.

§ 92.41 [Amended]

2. In § 92.41(c) the first paragraph is revised to read:

* * * * *

(c) *Cooperative agreements.* Each applicant, or their legal agent or representative, selected to be specially authorized to qualify animals for importation through the HSTAIC shall enter into and abide by the provisions of the following cooperative agreement with the Department. Financial obligation for the amount detailed in the following cooperative agreement is to be provided at the time the cooperative agreement is signed.

* * * * *

3. In § 92.41(c) paragraph (A) of the "Cooperative Agreement" is amended in subparagraphs 4, 5, 6, and 7 by renumbering 5, 6, 7, and 8 respectively and adding a new subparagraph 4 to read:

* * * * *

(c) * * *

(A) * * *

4. To pay for all laboratory tests in addition to those identified in the Veterinary Services protocol for importing animals into the HSTAIC deemed necessary by the Department to determine freedom from communicable animal diseases.

* * * * *

(Sec. 1, Pub. L. 91–239 (21 U.S.C. 135); 37 FR 28464, 28477; 38 FR 19141)

Done at Washington, D.C., this 23d day of December, 1980.

Norvan L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80–40511 Filed 12–23–80; 4:02 pm]

BILLING CODE 3410–34–M

[14] Application forms may be obtained upon request from and completed applications should be sent to Import-Export Animals and Products Staff, Veterinary Services, APHIS, U.S. Department of Agriculture, 8505 Belcrest Road, Room 815, Hyattsville, MD 20782.

[14a] A protocol concerning the requirements to be observed may be obtained upon request from Import-Export Animals and Products Staff, Veterinary Services, APHIS, VS, U.S. Department of Agriculture, 6505 Belcrest Road, Room 819, Hyattsville, MD 20782.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions; Share, Share Draft and Share Certificate Accounts

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: On November 14, 1980, the National Credit Union Administration (NCUA) published for public comment a proposed rule concerning a premium or gift given by a Federal Credit Union for establishing an account, renewing an account or adding to an existing account. The proposed rule would consider such a premium or gift a promotional or advertising expense, and not a dividend for purposes of 12 CFR 701.35(h), f (1) the premium or gift is given only at the time of the opening of a new account or an addition to, or renewal of, an existing account; (2) no more than two premiums per account are given within a 12-month period; and (3) the value of the premium or gift (including shipping, warehousing, packaging and handling) does not exceed $10 for share purchases of less than $5,000 or $20 for share purchases of $5,000 or more. The costs of the premium may not be averaged. Prior to the beginning of a premium program, an official of the credit union must certify that the total cost of the premium or gift, including shipping, warehousing, packaging and handling does not exceed the applicable $10/20 limitations and that no portion of the total cost of any premium has been attributed to development, advertising, promotional or other expenses. Certification and supporting documents must be retained in the files of the Federal credit union until the next examination and be made available to NCUA upon request.

The period for comments expired on December 10, 1980. After reviewing and considering all comments received and views expressed, the NCUA Board has decided to adopt the proposed

premium campaign if the limit imposed by this requirement has already been reached. Therefore, the NCUA Board has deleted this requirement from the final regulation.

the credit union. The regulation now reflects this requirement.

Accordingly § 701.35 is amended by a adding a new paragraph (m) to read as set forth below.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to delete the provision that requires advisory committees which meet entirely in open session to issue

21 CFR Parts 73 and 81

[Docket No. 80N–0447]

Postponement of Closing Date for Provisional Listing of Lead Acetate;

complete the evaluation of the objections and publish a final decision concerning them in the **Federal Register.** Therefore, the agency concludes that a brief postponement is necessary, and

The period for comments expired on December 10, 1980. After reviewing and considering all comments received and views expressed, the NCUA Board has decided to adopt the proposed regulation as a final regulation with the exception of the requirement that only two premiums may be given per account in any 12 month period.

EFFECTIVE DATE: December 31, 1980.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: James J. Engel, Assistant General Counsel or Todd A. Okun, Assistant General Counsel, both at above address; telephone (202) 357–1030.

SUPPLEMENTARY INFORMATION: Of the approximately 20 comments received, nearly all from Federal credit unions, the vast majority expressed the belief that there was no evidence of abuse to justify the proposed rule and that the proposal represented a burdensome and unnecessary new regulation and not a deregulation, which is the mandate of the Depository Institutions Deregulation Committee (Committee) whose regulation is the parallel for NCUA's proposal.

It is the view of the NCUA Board that the concurrent establishment of a dividend earning account (or renewal of, or addition to, an account) and the giving of a gift or premium of value could lead to impermissibly exceeding the dividend limitations on Federal credit union accounts prescribed at 12 CFR 701.35(h). Therefore, there is an obligation on the NCUA Board to assure that this does not occur. Coupled with this duty is the knowledge that premiums have, in fact, been valuable to Federal credit unions in attracting new funds. Previous policy in this area, common to all financial regulatory agencies, delineated *de minimus* amounts that could be given as premiums but that would not be considered as dividends. The final rule recognizes that economic conditions have changed since 1970 and, hence, it doubles the permissible value of premiums that may be given without being considered dividends.

The NCUA Board does not consider the rule to be burdensome except for the requirement that only two premiums may be given per account in any twelve month period. This requirement would impose a confusing and burdensome recordkeeping requirement and would inhibit a Federal credit union board of directors in its decision as to the proper timing and form of a premium campaign. It could serve to stifle innovation and preclude the use of a badly needed premium campaign if the limit imposed by this requirement has already been reached. Therefore, the NCUA Board has deleted this requirement from the final regulation.

While Federal credit unions are not bound by rules promulgated by the Committee, the NCUA Board believes that, in this case, parallel rules as to the value of permissible premiums that will not be considered dividends are appropriate. All financial regulatory agencies have, since 1970, promulgated parallel rules or policies in this area. Because of this fact and the belief of the NCUA Board that the substance of the regulation itself is not overly restrictive or burdensome, the proposed rule as to amounts is adopted as final. The NCUA Board believes that, within the rule's guidelines, innovative and effective promotional programs can be undertaken while retaining the integrity of the dividend limitations.

One commenter asked about the applicability of the proposed rule to a promotional program wherein establishment of accounts and renewals of, or additions to, accounts are rewarded with changes of winning a television set or automobile through a random drawing. It has been, and continues to be, NCUA policy that the nominal value of each chance need not be considered in relation to the applicable dividend guidelines. In addition, the value of the ultimate prize awarded at the drawing is not considered a dividend to the recipient. The prize should be of reasonable value, as determined by the board of directors. Before initiating such a program, however, a Federal credit union would be well advised to consult with an attorney to determine whether any given program might run afoul of either Federal or state lottery laws.

Another commenter asked about the use of such "goodwill" items as pens, calendars, luggage tags and the like. These items need not be considered dividends unless they are specifically offered, and only given, in connection with the establishment of, addition to, or renewal of a Federal credit union account. That same commenter suggested that the proposed rule should apply to promotional activities designed to induce loans. However, the purpose of the rule is to ensure that the dividend guidelines in connection with share purchases are not exceeded. Premiums to induce loans are not covered by the final rule and are within the discretion of a board of directors.

Inadvertently omitted from the proposed rule was the fact that required certification would not have to be kept on file beyond the next examination of the credit union. The regulation now reflects this requirement.

Accordingly § 701.35 is amended by a adding a new paragraph (m) to read as set forth below.

Rosemary Brady,

Secretary to the Board, National Credit Union Administration.

December 22, 1980.

(Sec. 107(6), 94 Stat. 132 (12 U.S.C. 1757(6)), sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and Sec. 209, 84 Stat. 1104 (12 R.S.C. 1789)).

§ 701.35 Share Accounts and Share Certificate Accounts.

* * * * *

(m) *Premiums.* (1) Premiums given by a Federal credit union, whether in the form of merchandise or cash, are regarded as an advertising or promotional expense rather than the payment of a dividend if:

(i) The premium is given only at the time of the establishment of a new account or an addition to, or renewal of, an existing account; and

(ii) The value of a premium, including shipping, warehousing, packaging and handling costs does not exceed $10 for share purchases of less than $5,000 or $20 for share purchases of $5,000 or more; and

(iii) The costs of premiums are not averaged; and

(iv) An official of the credit union, prior to the inception of a premium program, certifies in writing that the total cost of a premium, including shipping, warehousing, packaging and handling cost does not exceed the applicable $10/20 limitations and that no portion of the total cost of the premium has been attributed to development, advertising, promotional or other expenses. The certification and supporting documents must be maintained in the Federal credit union files until the next examination of the credit union.

[FR Doc. 80–40342 Filed 12–29–80; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

[Docket No. 80N–0345]

Public Hearing Before a Public Advisory Committee; Advisory Committee Annual Reports

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to delete the provision that requires advisory committees which meet entirely in open session to issue annual reports. This provision is no longer necessary.

EFFECTIVE DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 12, 1980 (45 CFR 60449), FDA published a proposal to eliminate annual reports from committees which meet entirely in open session and invited public comment through November 12, 1980. No comments were received.

Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) requires that any advisory committee that holds a closed meeting issue a report at least annually setting forth a summary of its activities as would be informative to the public. FDA's regulations implemented this requirement (21 CFR 14.60(d)) and further extended this obligation to all agency advisory committees whether or not they held any closed sessions (21 CFR Part 14.60(e)). The purpose of the report was to inform the public of the advisory committees' membership, functions, recommendations, and other actions. In light of the public accessibility to this information (21 CFR 14.75), particularly for committees which meet entirely in open session, § 14.60(e) is no longer necessary. Thus, with this change, FDA's regulations conform to Federal Advisory Committee Act requirements of reports only for committees that have held closed sessions.

§ 14.60 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 14 is amended in § 14.60 *Minutes and reports of advisory committee meetings* by deleting paragraph (e).

Effective date. December 29, 1980.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)).)

Dated: December 12, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–0284 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Parts 73 and 81

[Docket No. 80N–0447]

Postponement of Closing Date for Provisional Listing of Lead Acetate; Notice of Stay of Regulations

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of lead acetate for use as a color additive in cosmetics that color the hair on the scalp. A new closing date of March 3, 1981 is being established to complete the agency's evaluation of objections received in response to the final regulation approving the petition for the permanent listing of lead acetate. The regulation that permanently lists lead acetate and deletes lead acetate from the provisional list is stayed until final agency action is taken on the objections.

EFFECTIVE DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: The current closing date of December 31, 1980, for the color additive provisional listing of lead acetate was established by a regulation published in the **Federal Register** of October 31, 1980 (45 FR 72117). The December 31, 1980, closing date for lead acetate was established to provide for receipt and evaluation of any objections received in response to the final regulation approving the petition for the permanent listing of lead acetate.

After the review and evaluation of the data relevant to the color additive petition for lead acetate used in hair dyes, the agency concluded that lead acetate was safe and suitable for that use. Therefore, FDA issued a regulation that would permanently list lead acetate. The listing regulation was published in the **Federal Register** of October 31, 1980 (45 FR 72112). It was stated in the text of the listing regulation that the regulation shall become effective December 1, 1980, except as to provisions that may be stayed by filing of proper objections.

FDA has received several objections to the listing regulation. Because of the objections the agency is staying the regulations that permanently lists lead acetate and that delete lead acetate from the color additive provisional list until the agency can rule upon the objections. It is expected that the agency will need only a brief period of time to complete the evaluation of the objections and publish a final decision concerning them in the **Federal Register.** Therefore, the agency concludes that a brief postponement is necessary, and the regulation set forth below will postpone the December 31, 1980, closing date for the provisional listing of that color additive until March 3, 1981.

Because the current closing date expires on December 31, 1980, FDA has concluded that the use of a notice and public procedure on this regulation is impracticable. Moreover, good cause exists for issuing this postponement as a final rule and such action is consistent with the protection of the public health since the agency has previously concluded that lead acetate is safe for its intended use under the Color Additive Amendments of 1960. This regulation will permit the uninterrupted use of this color additive until March 3, 1981. To prevent any interruption in the provisional listing of lead acetate, and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on December 30, 1980.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706(b), (c), and (d), 70 Stat. 919 as amended, 74 Stat. 399–403 (21 U.S.C. 371(e), 376(b), (c), and (d))) and the Transitional Provisions of the Color Additive Amendments (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

§ 73.2396 [Stayed]

1. Part 73 is amended by staying § 73.2396 *Lead acetate.*

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

2. Part 81 is amended as follows:

§ 81.1 [Amended]

a. In § 81.1 *Provisional lists of color additives* the amendment in paragraph (g) of deleting the entry "Lead acetate" is stayed, and the entry "Lead acetate" and its closing date, "March 3, 1981", are added.

§ 81.27 [Amended]

b. In § 81.27 *Conditions of provisional listing of additives,* the closing date for

"Lead acetate" in paragraph (b) is revised to read "March 3, 1981."

Effective date. This regulation is effective December 30, 1980.

(Secs. 701(e), 706(b), (c), and (d), 70 Stat. 919 as amended, 74 Stat. 399–403 (21 U.S.C.

regulations should be amended as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–40505 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority

Effective dote. This regulation shall become effective December 30, 1980.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: December 19, 1980.

listing for "043734" the entry "Formica Laboratories," and inserting in its place "Mountaire Feeds & Vitamin Premixes, Division of Mountaire Corp.," to read as follows:

"Lead acetate" in paragraph (b) is revised to read "March 3, 1981."

Effective date. This regulation is effective December 30, 1980.

(Secs. 701(e), 706(b), (c), and (d), 70 Stat. 919 as amended, 74 Stat. 399–403 (21 U.S.C. 371(e), 376(b), (c), and (d)); (sec. 203, 74 Stat. 404–407 (21 U.S.C. 378, note))

Dated: December 22, 1980.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-40580 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 173

[Docket No. 76F-0371]

Secondary Direct Food Additives Permitted in Food for Human Consumption; 1-Hydroxyethylidene-1,1-Diphosphonic Acid and its Sodium and Potassium Salts

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the food additive regulations to provide for the safe use of 1-hydroxyethylidene-1, 1-diphosphonic acid and its sodium and potassium salts as boiler water additive used in the preparation of steam that will contact food. The agency is taking this action in response to a petition filed by Monsanto Co.

DATES: Effective December 30, 1980.; objections by January 29, 1981.

ADDRESS: Written objections to the Dockets Management Branch (formly the Hearing Clerk's office)(HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James B. Lamb, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 29, 1976 (41 FR 42970), FDA announced that a petition (FAP 6A3163) had been filed by Monsanto Co., 800 N. Lindbergh Blvd., St. Louis, MO 63166, proposing to amend § 173.310 *Boiler water additives* (21 CFR 173.310) to provide for the safe use of 1-hydroxyethylidene-1, 1-diphosphonic acid and its sodium and potassium salts as boiler water additives used in the preparation of steam that will contact food.

Having evaluated data in the petition and other relevent material, FDA concludes that the food additive regulations should be amended as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 173 is amended in § 173.310(c) by alphabetically inserting a new item in the list of substances to read as follows:

§ 173.310 Boiler water additives.

* * * * *

(c) * * *

Substances	Limitations
* * * *	
1-hydroxyethylidene-1,1-diphosphonic acid (CAS Reg. No. 2809-21-4) and its sodium and potassium salts	
* * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before January 29, 1981, submit to the Dockets Management Branch (formly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective December 30, 1980.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-40505 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 178

[Docket No. 80F-0169]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Antistatic and/or Antifogging Agents in Food-Packaging Materials

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the food additive regulations to provide for the safe use of sodium *n*-alkylsulfonate as an antistatic agent in polyolefin films intended for food-contact use. This action is in response to a petition filed by British Cellophane Ltd.

DATES: Effective December 30, 1980. Objections by January 29, 1981.

ADDRESS: Written objections to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 3, 1980 (45 FR 37524), FDA announced that a food additive petition (FAP 9B3476) had been filed by British Cellophane Ltd., Bath Rd., Bridgewater, Somerset TA6 4PA, England, proposing that the food additive regulations be amended to provide for the safe use of sodium *n*-alkylsulfonate as an antistatic agent in polyolefin films intended to contact food.

Having evaluated data in the petition and other relevant material, FDA concludes that the food additive regulations should be amended as set forth below.

The agency has considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that document may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 178 is amended in § 178.3130(b) by alphabetically inserting a new item in the list of substances to read as follows:

§ 178.3130 Antistatic and/or antifogging agents in food-packaging materials.

* * * * *

(b) * * *

List of substances	Limitations
* * * *	
Sodium *n*-alkylsulfonate (alkyl group in the range of C_{11}-$_{18}$ with not less than 50 percent C_{14}-$_{16}$)..	For use only as an antistatic agent at levels not to exceed 0.1 percent by weight of polyolefin films that comply with § 177.1520 of this chapter: *Provided,* That the finished olefin polymers contact foods only of types I, II, III, IV, V, VI—A, VI-B, VII, VIII, and IX described in table 1 of § 176.170(c) of this chapter, and under conditions of use E, F, and G described in table 2 of § 176.170(c) of this chapter.

Any person who will be adversely affected by the foregoing regulation may at any time on or before January 29, 1981 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective December 30, 1980.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: December 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-40506 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 510

Change of Sponsor Name; New Animal Drugs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration amends the animal drug regulations to reflect change of sponsor for several new animal drug applications (NADA's) from Formica Laboratories to Mountaire Feeds & Vitamin Premixes, Division of Mountaire Corp., and to revise the list of sponsors of approved NADA's to reflect the name change.

EFFECTIVE DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT: Robert S. Brigham, Bureau of Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Mountaire Feeds & Vitamin Premixes, Division of Mountaire Corp., 124 E. Fifth St., Little Rock, AR 72119, advised the agency of a change of sponsor name from Formica Laboratories. The Bureau of Veterinary Medicine is amending the regulations in 21 CFR 510.600 to reflect the change.

This action, the change of sponsor of several NADA's, does not involve changes in manufacturing facilities, equipment, procedures, or personnel. Under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of this action does not require reevaluation of the safety and effectiveness data in the parent applications.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 510 is amended in § 510.600 by deleting the entry for "Formica Laboratories" in paragraph (c)(1) and adding a new sponsor alphabetically, and by deleting from paragraph (c)(2) in the numerical listing for "043734" the entry "Formica Laboratories," and inserting in its place "Mountaire Feeds & Vitamin Premixes, Division of Mountaire Corp.," to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Mountaire Feeds and Vitamin Premixes, Division of Mountaire Corp., 124 E. Fifth St., P.O. Box 5391, Little Rock, AR 72119..	043734
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
043734	Mountaire Feeds and Vitamin Premixes, Division of Mountaire Corp., 124 E. Fifth St., P.O. Box 5391, Little Rock, AR 72119.
* * * * *	

Effective date. December 29, 1980.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: December 16, 1980.

Max L. Crandall,

Associate Director for Surveillance and Compliance.

[FR Doc. 80-40283 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

CFR Part 607

[Docket No. 79N-0396]

Exemption of Certain Transfusion Services and Clinical Laboratories From Registration

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to exempt transfusion services and clinical laboratories that are approved for Medicare reimbursement from FDA's registration and product listing requirements. This rule implements a Memorandum of Understanding concluded between the Public Health Service (PHS), including FDA, and the Health Care Financing Administration (HCFA). To avoid unnecessary

regulatory duplication, FDA has agreed not to conduct routine inspections of these exempted facilities.

EFFECTIVE DATE: December 30, 1980.

process blood and blood components * * *." Section 510(g)(3) exempts from registration only those manufactures of drugs and devices used solely "* * * in

b. For clarification, the term, "routinely collect or process" means the collection or processing (see definition of "processing" under 21 CFR 608.3(i)) of blood or a blood component on a regular

Accordingly, for the reasons stated in a. through d. above, the comment is rejected.

2. One comment, by a representative of HCFA, concerned the reference in

that routinely process red blood cells from units of whole blood. The comments noted that this "packing" of red blood cells is an uncomplicated process involving minimal danger to the

considered. Accordingly, the comments are rejected at this time.

As noted in the proposal, FDA has reviewed the Forms FDA-2830, "Blood Establishment Registration and Product

regulatory duplication, FDA has agreed not to conduct routine inspections of these exempted facilities.

EFFECTIVE DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT: About this final rule: Steven F. Falter, Bureau of Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306; about registration or for notification of a change in registration status: Herbert W. Dorsey, Bureau of Biologics (HFB–14), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–5368.

SUPPLEMENTARY INFORMATION: In early October 1979, a Memorandum of Understanding (MOU) was concluded between PHS, including FDA, and HCFA. The MOU was approved by the Secretary on January 21, 1980. HCFA agreed to assume sole responsibility for the routine inspection (survey) of certain transfusion services and clinical laboratories approved for Medicare reimbursement. HCFA also agreed to assume responsibility for any other routine compliance activities that are necessary to ensure that these facilities are in compliance with FDA's technical and scientific standards. The MOU was published in the **Federal Register** of March 25, 1980 (45 FR 19316).

To implement this MOU, FDA proposed in the **Federal Register** of September 30, 1980 (45 FR 64601) to amend the biologics regulations to exempt the tranfusion services and clinical laboratories affected by the MOU from the registration and product listing requirements under Part 607 (21 CFR Part 607). Under section 510(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(h)), registered establishments must be inspected by FDA at least once every 2 years. Thus, an exemption from registration would also exempt the establishment from the requirement of biennial inspection by FDA, thereby fulfilling the objective of the MOU.

The proposal provided 30 days for public comment. Sixty-two letters, some containing more than one comment, were received in response to the proposed rule. A summary of the comments and FDA's response follow:

1. One comment requested that the proposed regulations be amended or withdrawn on the ground that they conflict with the requirements of the act. Specifically, the comment contended that:

a. Proposed § 607.65(f) violates section 510(g)(3) of the act (21 U.S.C. 360(g)(3)). Proposed § 607.65(f) would exempt certain transfusion services which "* * * neither routinely collect nor process blood and blood components * * *." Section 510(g)(3) exempts from registration only those manufactures of drugs and devices used solely "* * * in research, teaching, or chemical analysis and not for sale." The comment contended that the proposed rule provides for the limited (nonroutine) collection and processing by exempt facilities of a drug (blood) which is for sale and that this exemption expands upon 510(g)(3) of the act. The comment concluded that such legislative powers are beyond those delegated by Congress to an administrative agency such as FDA.

b. The expressions "neither routinely collect nor process," "emergency situation," and "responsible person" were not adequately defined in the proposal or MOU.

c. The effective enforcement of the act is impeded because, although FDA retains ultimate authority for enforcement of the act and, when necessary, will exercise this authority, HCFA has been delegated the responsibility for determining when enforcement of the act by FDA may be necessary.

d. No provision is made in proposed § 607.65(f) and (g) for FDA to inform HCFA inspectors of a fatal transfusion reaction reported by an exempt facility.

FDA disagrees with this comment. FDA's response to each contention within the comment is as follows:

a. Section 510(g)(3) of the act exempts from registration those manufacturers of drugs or devices for certain uses other than for sale. Conversely, it does not exempt this broad class of persons (i.e., manufacturers of drugs or devices) from registration if the products are offered for sale. However, section 510(g)(4) of the act does provide for the exemption of specific classes of persons upon a finding that registration "* * * is not necessary for the protection of the public health." FDA considers this paragraph to grant FDA the authority to exempt those classes of persons whose registration is not necessary for the protection of the public health but which could not be identified by Congress at the time of enactment. This authority does indeed extend beyond the specific exemptions granted in section 510(g) (1). (2) and (3) of the act. The lack of significant public comment on the question of the protection of the public health confirms FDA's (and HCFA's) finding the public health will continue to be adequately protected with the exemption of the subject facilities. Accordingly, FDA finds that the proposed regulations are consistent with section 510 of the act.

b. For clarification, the term, "routinely collect or process" means the collection or processing (see definition of "processing" under 21 CFR 606.3(i)) of blood or a blood component on a regular (nonemergency) basis. For the purpose of this regulation, "an emergency situation" is when a person with the authority for making such a determination, i.e., "a responsible person," determines that blood or a blood component is needed immediately, and the urgency of the situation prohibits the obtaining of the blood or blood component through routine channels, and the circumstances justifying the action are suitably documented in writing. The responsible person is, in effect, the same as the designated, qualified person described in § 606.20(a) (21 CFR 606.20(a)) as the person who shall exercise control of the establishment in all matters related to compliance with the biologics regulations. FDA believes that these terms are adequately understood by the affected facilities and no further clarification in the regulations is necessary.

c. The MOU provides for the joint survey (inspection) by HCFA and FDA of transfusion services or clinical laboratories to certify and document any alleged significant deficiency or deficiencies which would, if confirmed to be present, adversely affect the safety or efficacy of products, or the health and safety of a donor or patient. The initial determination of the possible significance of an alleged deficiency is the responsibility of HCFA; however, in cases where the possible significance is unclear, the district FDA office may be contacted by the HCFA representative for consultation and, if necessary, a joint inspection initiated. In view of the continuing high compliance rate of the subject facilities, few actions of this kind are anticipated. FDA finds this arrangement adequate for the proper enforcement of the act for the protection of the public health.

d. The MOU provides that exempt facilities continue to report to FDA fatal transfusion reactions, as required by § 606.170(b) (21 CFR 606.170(b)). The reports received by FDA from transfusion services or those involving fatalities resulting from errors and accidents in areas of a hospital unrelated to the collection or processing of blood or blood components are transmitted to HCFA for followup action. Because the procedures for notifying HCFA officials are adequately documented in the MOU no corresponding revision of § 607.65 (f) and (g) is necessary.

Accordingly, for the reasons stated in a. through d. above, the comment is rejected.

2. One comment, by a representative of HCFA, concerned the reference in § 607.65 (f) and (g) to "Medicare/Medicaid reimbursement." The comment noted that approval of laboratories for participation in the Medicaid program is the function of the local State agency administering the State's Medicaid program, and not HCFA. Consistently, the MOU made no mention of clinical laboratories approved solely for participation in the Medicaid program and the sole responsibility for routine compliance activities for such facilities has not been transferred to HCFA.

FDA agrees with the comment. The MOU did not relieve those facilities participating solely in the Medicaid program from FDA inspection nor was it intended in the proposed rules that these facilities be exempted from FDA registration. During the 1980 registration period (commencing November 1979), the potential status of all registering blood establishments was determined. Only those establishments participating, or those parts of a facility participating, in the Medicare program and otherwise qualified for exemption under the proposed rules were notified by letter that with the publication of this final rule they would be exempt from FDA registration and inspection. The remaining facilities, including those clinical laboratories participating solely in Medicaid, were notified that they must continue to register and be inspected by FDA. Therefore, the clinical laboratories participating in Medicaid but not Medicare are aware that, consistent with the terms of the MOU, they must continue to register with and be inspected by FDA. Accordingly, § 607.65 (f) and (g) are amended in the final rule by changing the term "Medicare/Medicaid/reimbursement" to read "Medicare reimbursement."

3. One comment by a HCFA representative on proposed § 607.65(f), noted that transfusion services per se are not approved by HCFA for Medicare reimbursement; rather, a hospital or independent laboratory, of which transfusion services may be a part, may be approved by HCFA for Medicare.

FDA agrees with the comment and for clarity § 607.65(f) is amended in the final rule to read "Transfusion services which are part of a facility approved for Medicare reimbursement and * * *."

4. The majority of the comments received requested that § 607.65(f) be amended also to exempt from registration those transfusion services approved for Medicare reimbursement that routinely process red blood cells from units of whole blood. The comments noted that this "packing" of red blood cells is an uncomplicated process involving minimal danger to the eventual recipient of the blood component. Furthermore, the process is essentially the same as that used for recovering plasma from whole blood, a procedure which, under the proposed rules, may be performed by exempt facilities. The comments argued that in view of the high compliance rate of the facilities and HCFA's extensive experience in the regulation of the facilities, the dual inspection of transfusion services routinely packing red blood cells is a regulatory burden which is unnecessary for the protection of the public health.

FDA advises that the exemption from registration of transfusion services packing red blood cells is beyond the scope of this final rulemaking. In the MOU a "transfusion service" was defined, in part, as a facility which "* * * is not engaged in the routine collection or processing of blood or plasma (except recovered plasma) * * *." As a result, facilities routinely processing red blood cells from whole blood are by definition not included in the transfer to HCFA of routine inspectional responsibilities. However, FDA believes the comment has merit and will explore the possibility of amending the MOU to provide for the transfer of these responsibilities to HCFA. Upon amendment of the MOU, FDA intends to publish a proposed rule for comment by all interested persons to exempt the additional transfusion services from FDA registration. Accordingly, the comment is rejected at this time.

5. A number of comments were received from persons who, in some manner, either routinely collect or routinely process blood or blood components requesting that they be exempt from FDA registration and inspection.

Exemption of additional classes of persons is beyond the scope of this document. Before exemption of these persons could be contemplated, the individual merits of each request must be considered by FDA to determine if alternatives to FDA registration and inspection are possible which will continue to ensure the adequate protection of the public health. In any event, further agreements for the transfer of inspectional responsibilities would be necessary before an exemption from FDA registration for any additional classes of persons could be considered. Accordingly, the comments are rejected at this time.

As noted in the proposal, FDA has reviewed the Forms FDA–2830, "Blood Establishment Registration and Product Listing" and related inspection records for the facilities registering for 1980. Those facilities notified by FDA as qualifying for exemption are exempt from FDA registration and inspection with the publication of this final rule. Approximately 3,500 facilities become exempt from registration by this final rule. FDA will continue to review the Forms FDA–2830 submitted each year and will identify those additional facilities qualified for exemption. Facilities should notify the Bureau of Biologics, FDA, at the address given above when a change in the registration status of the facility occurs, such as the commencement of the routine collection or processing of blood or blood components, so that the correct registration status may be determined.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 510, 710, 52 Stat. 1040–1042 as amended 1055–1056 as amended, 76 Stat. 794–795 as amended (21 U.S.C. 321, 360, 371)) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 607 is amended in § 607.65 by adding new paragraphs (f) and (g) to read as follows:

§ 607.65 Exemptions for blood product establishments.

* * * * *

(f) Transfusion services which are a part of a facility approved for Medicare reimbursement and engaged in the compatibility testing and transfusion of blood and blood components, but which neither routinely collect nor process blood and blood components. The collection and processing of blood and blood components in an emergency situation as determined by a responsible person and documented in writing, therapeutic collection of blood or plasma, and the preparation of recovered human plasma for further manufacturing use are not acts requiring such transfusion services to register.

(g) Clinical laboratories that are approved for Medicare reimbursement and are engaged in the testing of blood products in support of other registered blood establishments.

Effective date. This regulation becomes effective on December 30, 1980. This regulation both grants an exemption and relieves an unnecessary regulatory burden from the affected establishments. Accordingly, under § 10.40(c)(4)(i) (21 CFR 10.40(c)(4)(i)), the agency finds that a delayed effective date is unnecessary.

(Secs. 201, 510, 710, 52 Stat. 1040–1042 as amended, 1055–1056 as amended, 76 Stat. 794–795 as amended (21 U.S.C. 321, 360, 371) and sec. 351, 58 Stat. 702 as amended (42

General Provisions

Section 527 provides special tax treatment for political organizations which are organized and operated primarily for an exempt function, such

Certain Expenditures by Organizations Described in Section 501(c)

Generally, section 527(f) provides that an organization described in section 501(c) is subject to tax if it makes expenditures for an exempt function as

activity of the organization aside from the need for funds or income in order for the proceeds to qualify as exempt function income. See § 1.527–3 (d) and (e).

Drafting Information

§ 1.527–2 Definitions.

For purposes of section 527 and these regulations—

(a) *Political organization*—(1) *In general.* A "political organization" is a party, committee, association, fund, or

(b) *Segregated fund*—(1) *General rule.* A "segregated fund" is a fund which is established and maintained by a political organization or an individual separate from the assets of the organization or the personal assets of

agency finds that a delayed effective date is unnecessary.

(Secs. 201, 510, 710, 52 Stat. 1040–1042 as amended, 1055–1056 as amended, 76 Stat. 794–795 as amended (21 U.S.C. 321, 360, 371) and sec. 351, 58 Stat. 702 as amended (42 U.S.C. 282).)

Dated: December 18, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80-40228 Filed 12-22-80; 10:57 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7744]

Income Tax; Taxation of Political Organizations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the taxation of political organizations. Changes to the applicable tax law were made by the Act of January 3, 1975. These regulations provide necessary guidance to political organizations for compliance with the law, and affect all political organizations that are entitled to receive special tax treatment.

DATE: Generally, except where otherwise provided, the regulations are effective for taxable years beginning after December 31, 1974.

FOR FURTHER INFORMATION CONTACT: Jason R. Felton of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W. Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On November 24, 1976, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 527 of the Internal Revenue Code of 1954, 41 FR 51840. The amendements were proposed to conform the regulations to section 10 (a) of the Act of January 3, 1975 (88 Stat. 2116). A public hearing was held on February 24, 1977. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

General Provisions

Section 527 provides special tax treatment for political organizations which are organized and operated primarily for an exempt function, such as supporting candidates for public office. Generally, organizations that qualify as political organizations as defined in section 527 are treated as exempt organizations. Thus, income such as contributions and dues is not taxed if segregated for use only for an exempt function. However, generally, the investment income of a political organization, such as interest income, is subject to tax.

1978 Statutory Changes

In 1978, Congress amended the definition of exempt function income to include proceeds from the conducting of any bingo game (as defined in section 512 (f)(2)). Act of October 21, 1978 (92 Stat. 1702). This amendment will be the subject of a notice of proposed rulemaking and thus is not reflected in these final regulations.

Operational Test

Generally, a political organization must be operated primarily to receive contributions or make expenditures for an exempt function. Under the proposed regulations, if more than an insubstantial amount of exempt function income was spent for nonexempt function purposes, the political organization could lose its exempt status. In response to a number of comments this position has been modified. Such expenditures will, generally, cause the political organization to lose its exempt status only if such organization is primarily engaged in nonexempt function activities. However, amounts of exempt function income expended for nonexempt function activities might result in the taxation of amounts remaining in the political organization's segregated fund. See § 1.527–2(b).

Exempt Function

Generally, the term "exempt function" means the function of receiving contributions or making expenditures for the purpose of influencing or attempting to influence the selection, nomination, election, or appointment of individuals for Federal, State, or local public office. The definition of exempt function has been clarified, and a number of examples have been added to illustrate the general principles. See § 1.527–2(c).

Certain Expenditures by Organizations Described in Section 501(c)

Generally, section 527(f) provides that an organization described in section 501(c) is subject to tax if it makes expenditures for an exempt function as defined in section 527(e)(1). Several commentators suggested that certain expenditures made by an organization described in section 501(c) should be treated differently from identical expenditures made by a political organization. These commentators state that activities that are not considered to be political activities under Federal or State election laws should not be treated as exempt function activities under section 527. In particular they argue that under the Federal Election Campaign Act (FECA) labor unions and trade associations, among others, may engage in certain activities that under the proposed regulations could result in taxation of expenditures for such activities. These activities are (1) communications with members about candidates for public office, (2) paying the costs of establishing a fund and soliciting contributions to such fund, and (3) engaging in certain nonpartisan activities during a political campaign such as voter registration drives. They therefore argue that those expenditures should not be considered an expenditure for an exempt function.

Paragraph (b) (2) and (3) of § 1.527–6 is reserved pending resolution of the relationship between section 527 and FECA and similar State statutes. When adopted as a Treasury decision, paragraph (b) (2) and (3) will apply on a prospective basis if the commentators' position is rejected and taxpayers are thereby adversely affected. The final regulations also adopt the position that under certain circumstances commenting on potential appointees for public office will not be considered an exempt function activity.

Deductible Expenditures

In response to several comments, the final regulations adopt the position that where an expenditure relates to an exempt function activity and to an activity to produce political organization taxable income, the expenditure is allocated between the two uses on a reasonable and consistent basis. See § 1.527–4(c).

Other Changes

The final regulations delete the substantially related test with respect to fund raising and entertainment events, and sale of campaign materials. However, in any such case, the event or sale must still relate to a political

activity of the organization aside from the need for funds or income in order for the proceeds to qualify as exempt function income. See § 1.527–3 (d) and (e).

Drafting Information

The principal author of this regulation is Jason R. Felton of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations.

Accordingly, 26 CFR Part 1 is amended by adding §§ 1.527–1 through 1.527–8 as follows:

* * * * *

Sec.

1.527–1 Political organizations; Generally.
1.527–2 Definitions.
1.527–3 Exempt function income.
1.527–4 Special rules for computation of political organization taxable income.
1.527–5 Activities resulting in gross income to an individual or political organization.
1.527–6 Inclusion of certain amounts in the gross income of an exempt organization which is not a political organization.
1.527–7 Newsletter fund.
1.527–8 Effective date; filing requirements; and miscellaneous provisions.

Authority: Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; (26 U.S.C. 7805)).

§ 1.527–1 Political organizations; Generally.

Section 527 provides that a political organization is considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes. A political organization is subject to tax only to the extent provided in section 527. In general, a political organization is an organization that is organized and operated primarily for an exempt function as defined in § 1.527–2(c). Section 527 provides that a political organization is taxed on its political organization taxable income (see § 1.527–4) which, in general, does not include the exempt function income (see § 1.527–3) of the political organization. Furthermore, section 527 provides that an exempt organization, other than a political organization, may be subject to tax under section 527 when it expends an amount for an exempt function, see § 1.527–6. Finally, the taxation of newsletter funds is provided under section 527, see § 1.527–7.

§ 1.527–2 Definitions.

For purposes of section 527 and these regulations—

(a) *Political organization*—(1) *In general.* A "political organization" is a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures for an exempt function activity (as defined in paragraph (c) of this section). Accordingly, a political organization may include a committee or other group which accepts contributions or makes expenditures for the purpose of promoting the nomination of an individual for an elective public office in a primary election, or in a meeting or caucus of a political party. A segregated fund (as defined in paragraph (b) of this section) established and maintained by an individual may qualify as a political organization.

(2) *Organizational test.* A political organization meets the organizational test if its articles of organization provide that the primary purpose of the organization is to carry on one or more exempt functions. A political organization is not required to be formally chartered or established as a corporation, trust, or association. If an organization has no formal articles of organization, consideration is given to statements of the members of the organization at the time the organization is formed that they intend to operate the organization primarily to carry on one or more exempt functions.

(3) *Operational test.* A political organization does not have to engage exclusively in activities that are an exempt function. For example, a political organization may—

(i) Sponsor nonpartisan educational workshops which are not intended to influence or attempt to influence the selection, nomination, election, or appointment of any individual for public office,

(ii) Pay an incumbent's office expenses, or

(iii) Carry on social activities which are unrelated to its exempt function,

provided these are not the organization's primary activities. However, expenditures for purposes described in the preceding sentence are not for an exempt function. See § 1.527–2 (c) and (d). Furthermore, it is not necessary that a political organization operate in accordance with normal corporate formalities as ordinarily established in bylaws or under state law.

(b) *Segregated fund*—(1) *General rule.* A "segregated fund" is a fund which is established and maintained by a political organization or an individual separate from the assets of the organization or the personal assets of the individual. The purpose of such a fund must be to receive and segregate exempt function income (and earnings on such income) for use only for an exempt function or for an activity necessary to fulfill an exempt function. Accordingly, the amounts in the fund must be dedicated for use only for an exempt function. Thus, expenditures for the establishment or administration of a political organization or the solicitation of political contributions may be made from the segregated fund, if necessary to fulfill an exempt function. The fund must be clearly identified and established for the pruposes intended. A savings or checking account into which only contributions to the political organization are placed and from which only expenditures for exempt functions are made may be a segregated fund. If an organization that had designated a fund to be a segregated fund for purposes of segregating amounts referred to in section 527(c)(3) (A) through (D), expends more than an insubstantial amount from the segregated fund for activities that are not for an exempt function during a taxable year, the fund will not be treated as a segregated fund for such year. In such a case amounts referred to in section 527(c)(3)(A)–(D), segregated in such fund will not be exempt function income. Further, if more than insubstantial amounts segregated for an exempt function in prior years are expended for other than an exempt function the facts and circumstances may indicate that the fund was never a segregated fund as defined in this paragraph.

(2) *Record keeping.* The organization or individual maintaining a segregated fund must keep records that are adequate to verify receipts and disbursements of the fund and identify the exempt function activity for which each expenditure is made.

(c) *Exempt function*—(1) *Directly related expenses.* An "exempt function", as defined in section 527(e)(2), includes all activities that are directly related to and support the process of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to public office or office in a political organization (the selection process). Whether an expenditure is for an exempt function depends upon all the facts and circumstances. Generally, where an organization supports an

individual's campaign for public office, the organization's activities and expenditures in futherance of the individual's election or appointment to

organization for the purpose of attempting to solicit its support. The amount expended for travel, lodging, food, and similar expenses are for an exempt function.

(ii) *Example (2).* B, a member of the United

(iii) Proceeds from a political fund raising or entertainment event, or proceeds from the sale of political campaign materials, which are not

event is related to a political activity aside from the need of the organization for income or funds. For example, an event that is intended to rally and encourage support for an individual for

relationship to the production of such income and have been incurred in the production of such income. Items of deduction attributable solely to items of political organization taxable income

receipt of income. Amounts are expended for the personal use of an individual where a direct or indirect financial benefit accrues to such individual. For example, if a political

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individual's campaign for public office, the organization's activities and expenditures in futherance of the individual's election or appointment to that office are for an exempt function of the organization. The individual does not have to be an announced candidate for the office. Furthermore, the fact that an individual never becomes a candidate is not crucial in determining whether an organization is engaging in an exempt function. An activity engaged in between elections which is directly related to, and supports, the process of selection, nomination, or election of an individual in the next applicable political campaign is an exempt function activity.

(2) *Indirect expenses.* Expenditures that are not directly related to influencing or attempting to influence the selection process may also be an expenditure for an exempt function by a political organization. These are expenses which are necessary to support the directly related activities of the political organization. Activities which support the directly related activities are those which must be engaged in to allow the political organization to carry out the activity of influencing or attempting to influence the selection process. For example, expenses for overhead and record keeping are necessary to allow the political organization to be established and to engage in political activities. Similarly, expenses incurred in soliciting contributions to the political organization are necessary to support the activities of the political organization.

(3) *Terminating activities.* An exempt function includes an activity which is in furtherance of the process of terminating a political organization's existence. For example, where a political organization is established for a single campaign, payment of campaign debts after the conclusion of the campaign is an exempt function activity.

(4) *Illegal expenditures.* Expenditures which are illegal or are for a judicially determined illegal activity are not considered expenditures in furtherance of an exempt function, even though such expenditures are made in connection with the selection process.

(5) *Examples.* The following examples illustrate the principles of paragraph (c) of this section. The term "exempt function" when used in the following examples means exempt function within the meaning of section 527(e)(2).

(i) *Example (1).* A wants to run for election to public office in State X. A is not a candidate. A travels throughout X in order to rally support for A's intended candidacy. While in X, A attends a convention of an organization for the purpose of attempting to solicit its support. The amount expended for travel, lodging, food, and similar expenses are for an exempt function.

(ii) *Example (2).* B, a member of the United States House of Representatives, is a candidate for reelection. B travels with B's spouse to the district B represents. B feels it is important for B's reelection that B's spouse accompany B. While in the district, B makes speeches and appearances for the purpose of persuading voters to reelect B. The travel expenses of B and B's spouse are for an exempt function.

(iii) *Example (3).* C is a candidate for public office. In connection with C's campaign, C takes voice and speech lessons to improve C's skills. The expenses for these lessons are for an exempt function.

(iv) *Example (4).* D, an officeholder and candidate for reelection, purchases tickets to a testimonial dinner. D's attendance at the dinner is intended to aid D's reelection. Such expenditures are for an exempt function.

(v) *Example (5).* E, an officeholder, expends amounts for periodicals of general circulation in order to keep informed on national and local issues. Such expenditures are not for an exempt function.

(vi) *Example (6).* N is an organization described in section 501(c) and is exempt from taxation under section 501(a). F is employed as president of N. F, as a representative of N, testifies in response to a written request from a Congressional committee in support of the confirmation of an individual to a cabinet position. The expenditures by N that are directly related to F's testimony are not for an exempt function.

(vii) *Example (7).* P is a political organization described in section 527(e)(2). Between elections P does not support any particular individual for public office. However, P does train staff members for the next election, drafts party rules, implements party reform proposals, and sponsors a party convention. The expenditures for these activities are for an exempt function.

(viii) *Example (8).* Q is a political organization described in section 527(e)(2). Q finances seminars and conferences which are intended to influence persons who attend to support individuals to public office whose political philosophy is in harmony with the political philosophy of Q. The expenditures for these activities are for an exempt function.

(d) *Public office.* The facts and circumstances of each case will determine whether a particular Federal, State, or local office is a "public office." Principles consistent with those found under § 53.4946–1(g)(2) (relating to the definition of public office) will be applied.

§ 1.527–3 Exempt function income.

(a) *General rule*—(1) For purposes of section 527, exempt function income consists solely of amounts received as—

(i) Contributions of money or other property,

(ii) Membership dues, fees, or assessments from a member of a political organization, or

(iii) Proceeds from a political fund raising or entertainment event, or proceeds from the sale of political campaign materials, which are not received in the ordinary course of any trade or business,

but only to the extent such income is segregated for use only for exempt functions of the political organization.

(2) Income will be considered segregated for use only for an exempt function only if it is received into and disbursed from a segregated fund as defined in § 1.527–2(b).

(b) *Contributions.* The rules of section 271(b)(2) apply in determining whether the transfer of money or other property constitutes a contribution. Generally, money or other property, whether solicited personally, by mail, or through advertising, qualifies as a contribution. In addition, to the extent a political organization receives Federal, State, or local funds under the $1 "checkoff" provision (sections 9001–9013), or any other provision for financing of campaigns, such amounts are to be treated as contributions.

(c) *Dues, fees, and assessments.* Amounts received as membership fees and assessments from members of a political organization may constitute exempt function income to the political organization. Membership fees and assessments received in consideration for services, goods, or other items of value do not constitute exempt function income. However, filing fees paid by an individual directly or indirectly to a political party in order that the individual may run as a candidate in a primary election of the party (or run in a general election as a candidate of that party) are to be treated as exempt function income. For example, some States provide that a certain percentage of the first year's salary of the office sought must be paid to the State as a filing (or "qualifying") fee and party assessment. The State then transfers part of this fee to the candidate's party. In such a case, the entire amount transferred to the party is to be treated as exempt function income. Furthermore, amounts paid by an individual directly to the party as a qualification fee are treated similarly.

(d) *Fund raising events*—(1) *In general.* Amounts received from fund raising and entertainment events are eligible for treatment as exempt function income if the events are political in nature and are not carried on in the ordinary course of a trade or business. Whether an event is "political" in nature depends on all facts and circumstances. One factor that indicates an event is a political event is the extent to which the event is related to a political activity aside from the need of the organization for income or funds. For example, an event that is intended to rally and encourage support for an individual for public office would be a political fund raising event. Examples of political events can include dinners, breakfasts, receptions, picnics, dances, and athletic exhibitions.

(2) *Ordinary course of any trade or business.* Whether an activity is in the ordinary course of a trade or business depends on the facts and circumstances of each case. Generally, proceeds from casual, sporadic fund raising or entertainment events are not in the ordinary course of a trade or business. Factors to be taken into account in determining whether an activity is a trade or business include the frequency of the activity, the manner in which the activity is conducted, and the span of time over which the activity is carried on.

(e) *Sale of campaign materials.* Amounts received from the sale of campaign materials are eligible for treatment as exempt function income if the sale is not carried on in the ordinary course of a trade or business (as defined in paragraph (d)(2) of this section), and is related to a political activity of the organization aside from the need of such organization for income or funds. Proceeds from the sale of political memorabilia, bumper stickers, campaign buttons, hats, shirts, political posters, stationery, jewelry, or cookbooks are related to such a political acitivity where such items can be identified as relating to distributing political literature or organizing voters to vote for a candidate for public office.

§ 1.527–4 Special rules for computation of political organization taxable income.

(a) *In general.* Political organization taxable income is determined according to the provisions of section 527(b) and the rules set forth in this section.

(b) *Limitation on capital losses.* If for any taxable year a political organization has a net capital loss, the rules of sections 1211(a) and 1212(a) apply.

(c) *Allowable deductions*—(1) *In general.* To be deductible in computing political organization taxable income, expenses, depreciation, and similar items must not only qualify as deductions allowed by chapter 1 of the Code, but must also be directly connected with the production of political organization taxable income.

(2) *"Directly connected with" defined.* To be "directly connected with" the production of political organization taxable income, an item of deduction must have a proximate and primary relationship to the production of such income and have been incurred in the production of such income. Items of deduction attributable solely to items of political organization taxable income are proximately and primarily related to such income. Whether an item of deduction is incurred in the production of political organization taxable income is determined on the basis of all the facts and circumstances of each case.

(3) *Dual use of facilities or personnel.* Expenses, depreciation, and similar items that are attributable to the production of exempt function income and political organization taxable income shall be allocated between the two on a reasonable and consistent basis. For example, where facilities are used both for an exempt function of the organization and for the production of political organization taxable income, expenses, depreciation, and similar items attributable to such facilities (for example, items of overhead) shall be allocated between the two uses of a reasonable and consistent basis. Similarly, where personnel are employed both for an exempt function and for the production of political organization taxable income, expenses and similar items attributable to such personnel (for example, items of salary) shall be allocated between the activities on a reasonable and consistent basis. The portion of any such item so allocated to the production of political organization taxable income is directly connected with such income and is allowable as a deduction in computing political organization taxable income to the extent that it qualifies as an item of deduction allowed by chapter 1 of the Code. Thus, for example, assume that X, a political organization, pays its manager a salary of $10,000 a year and that it derives political organization taxable income. If 10 percent of the manager's time during the year is devoted to deriving X's gross income (other than exempt function income), a deduction of $1,000 (10 percent of $10,000) would generally be allowable for purposes of computing X's political organization taxable income.

§ 1.527.5 Activities resulting in gross income to an individual or political organization.

(a) *In general*—(1) *General rule.* Amounts expended by a political organization for an exempt function are not income to the individual or individuals on whose behalf such expenditures are made. However, where a political organization expends any other amount for the personal use of any individual, the individual on whose behalf the amount is expended will be in receipt of income. Amounts are expended for the personal use of an individual where a direct or indirect financial benefit accrues to such individual. For example, if a political organization pays a personal legal obligation of a candidate for public office, such as the candidate's federal income tax liability, the amount paid is includible in such candidate's gross income. Similarly, if a political organization expends any amount of its exempt function income for other than an exempt function, and the expenditure results in a direct or indirect financial benefit to the political organization, it must include the amount of such expenditure in its gross income. For example, if a political organization expends exempt function income for making an improvement or addition to its facilities, or for equipment, which is not necessary for or used in carrying out an exempt function, the amount of the expenditure will be included in the political organization's gross income. However, if a political organization expends exempt function income to make ordinary and necessary repairs on the facilities the political organization uses in conducting its exempt function, such amounts will not be included in the political organization's gross income.

(2) *Expenditure for an illegal activity.* Expenditures by a political organization that are illegal or for an activity that is judicially determined to be illegal are treated as amounts not segregated for use only for the exempt function and shall be included in the political organization's taxable income. However, expenses incurred in defense of civil or criminal suits against the organization are not treated as taxable to the organization. Similarly, voluntary reimbursement to the participants in the illegal activity for similar expenses incurred by them are not taxable to the organization if the organization can demonstrate that such payments do not constitute a part of the inducement to engage in the illegal activity or part of the agreed upon compensation therefor. However, if the organization entered into an agreement with the participants to defray such expenses as part of the inducement, such payments would be treated as an expenditure for an illegal activity. Except where necessary to prevent the period of limitation for assessment and collection of a tax from expiring, a notice of deficiency will not generally be issued until after there has been a final determination of illegality by an appropriate court in a criminal proceeding.

(b) *Certain uses not treated as income to a candidate.* Except as otherwise

provided in paragraph (a) of this section, if a political organization—

(1) Contributes any amount to or for the use of any political organization described in section 527(e)(1) or

rule. If an organization described in section 501(c) which is exempt from tax under section 501(a) expends any amount for an exempt function, it may be subject to tax. There is included in

(4) *Appointments or confirmations.* Where an organization described in paragraph (a) of this section appears before any legislative body in response to a written request by such body for the

(d) *Modifications.* The modifications described in section 527(c)(2) apply in computing the tax under paragraph (a)(2) of this section. Thus, no net operating loss is allowed under section

an organization described in section 501(c)(3) is precluded from engaging in any political campaign activities. The fact that section 527 imposes a tax on the exempt function (as defined in

(e) *Excess funds.* Excess funds held by a newsletter fund which has ceased to engage in the preparation and circulation of the newsletter are treated as expended for the personal use of the

provided in paragraph (a) of this section, if a political organization—

(1) Contributes any amount to or for the use of any political organization described in section 527(e)(1) or newsletter fund described in section 527(g),

(2) Contributes any amount to or for the use of any organization described in paragraph (1) and (2) of section 509(a) which is exempt from taxation under section 501(a), or

(3) Deposits any amount in the general fund of the U.S. Treasury or in the general fund of any State or local government,

such amount shall not be treated as an amount expended for the personal use of a candidate or other person. No deduction shall be allowed under the Internal Revenue Code of 1954 for the contribution or deposit described in the preceding sentence.

(c) *Excess funds*—(1) *General rule.* Generally, funds controlled by a political organization or other person after a campaign or election are excess funds and are treated as expended for the personal use of the person having control over the ultimate use of such funds. However, such funds will not be treated as excess funds to the extent they are—

(i) Transferred within a reasonable period of time by the person controlling the funds in accordance with paragraph (b) of this section, or

(ii) Held in reasonable anticipation of being used by the political organization for future exempt functions.

(2) *Excess funds transferred at death.* Where excess funds are held by an individual who dies, and these funds go to the individual's estate or any other person (other than an organization or fund described in paragraph (b) of this section), the funds are income of the decedent and will be included in the decedent's gross estate unless the estate or other person receiving such funds transfers the funds within a reasonable period of time in accordance with paragraph (b) of this section.

This paragraph (c)(2) will not apply where the individual who dies provides that the funds be transferred to an organization or fund described in paragraph (b) of this section.

§1.527-6 Inclusion of certain amounts in the gross income of an exempt organization which is not a political organization.

(a) *Exempt organizations—General rule.* If an organization described in section 501(c) which is exempt from tax under section 501(a) expends any amount for an exempt function, it may be subject to tax. There is included in the gross income of such organization for the taxable year an amount equal to the lesser of—

(1) The net investment income of such organization for the taxable year, or

(2) The aggregate amount expended during the taxable year for an exempt function.

The amount included will be treated as political organization taxable income.

(b) *Exempt function expenditures*—(1) *Directly related expenses.* (i) Except as provided in this section, the term "exempt function" will generally have the same meaning it has in § 1.527-2(c). Thus, expenditures which are directly related to the selection process as defined in § 1.527-2(c)(1) are expenditures for an exempt function. Expenditures for indirect expenses as defined in § 1.527-2(c)(2), when made by a section 501(c) organization are for an exempt function only to the extent provided in paragraph (b)(2) of this section. Expenditures of a section 501 (c) organization which are otherwise allowable under the Federal Election Campaign Act or similar State statute are for an exempt function only to the extent provided in paragraph (b)(3) of this section.

(ii) An expenditure may be made for an exempt function directly or through another organization. A section 501(c) organization will not be absolutely liable under section 527(f)(1) for amounts transferred to an individual or organization. A section 501(c) organization is, however, required to take reasonable steps to ensure that the transferee does not use such amounts for an exempt function.

(2) *Indirect expenses.* [Reserved].

(3) *Expenditures allowed by Federal Election Campoign Act.* [Reserved].

(4) *Appointments or confirmations.* Where an organization described in paragraph (a) of this section appears before any legislative body in response to a written request by such body for the purpose of influencing the appointment or confirmation of an individual to a public office, any expenditure directly related to such appearance is not treated as an expenditure for an exempt function.

(5) *Nonpartisan activity.* Expenditures for nonpartisan activities by an organization to which paragraph (a) of this section applies are not expenditures for an exempt function. Nonpartisan activities include voter registration and "get-out-the-vote" campaigns. To be nonpartisan voter registration and "get-out-the-vote" campaigns must not be specifically identified by the organization with any candidate or political party.

(c) *Character of items included in gross income*—(1) *General rule.* The items of income included in the gross income of an organization under paragraph (a) of this section retain their character as ordinary income or capital gain.

(2) *Special rule in determining character of item.* If the amount included in gross income is determined under paragraph (a)(2)(ii) of this section, the character of the items of income is determined by multiplying the total amount included in gross income under such paragraph by a fraction, the numerator of which is the portion of the organization's net investment income that is gain from the sale or exchange of a capital asset, and the denominator of which is the organization's net investment income. For example, if $5,000 is included in the gross income of an organization under paragraph (a)(2) of this section, and the organization had $100,000 of net investment income of which $10,000 is long term capital gain, then $500 would be treated as long term capital gain:

Capital gain net investment income	X	Amount expended on an exempt function	=	Portion of income subject to tax under section 1201
$ 10,000 / $100,000	X	$5,000	=	$500

(d) *Modifications.* The modifications described in section 527(c)(2) apply in computing the tax under paragraph (a)(2) of this section. Thus, no net operating loss is allowed under section 172 nor is any deduction allowed under part VIII of subchapter B. However, there is allowed a specific deduction of $100.

(e) *Transfer not treated as exempt function expenditures.* Provided the provisions of this paragraph (e) are met, a transfer of political contributions or dues collected by a section 501(c) organization to a separate segregated fund as defined in paragraph (f) of this section is not treated as an expenditure for an exempt function (within the meaning of § 1.527-2(c)). Such transfers must be made promptly after the receipt of such amounts by the section 501(c) organization, and must be made directly to the separate segregated fund. A transfer is considered promptly and directly made if:

(1) The procedures followed by the section 501(c) organization satisfy the requirements of applicable Federal or State campaign law and regulations;

(2) The section 501(c) organization maintains adequate records to demonstrate that amounts transferred in fact consist of political contributions or dues, rather than investment income; and

(3) The political contributions or dues transferred were not used to earn investment income for the section 501(c) organization.

(f) *Separate segregoted fund.* An organization or fund described in section 527(f)(3) is a separate segregated fund. To avoid the application of paragraph (a) of this section, an organization described in section 501(c) that is exempt from taxation under section 501(a) may, if it is consistent with its exempt status, establish and maintain such a separate segregated fund to receive contributions and make expenditures in a political campaign. If such a fund meets the requirements of § 1.527-2(a) (relating to the definition of a political organization), it shall be treated as a political organization subject to the provisions of section 527. A segregated fund established under the Federal Election Campaign Act will continue to be treated as a segregated fund when it engages in exempt function activities as defined in § 1.527-2(c), relating to State campaigns.

(g) *Effect of expenditures on exempt status.* Section 527(f) and this section do not sanction the intervention in any political campaign by an organization described in section 501(c) if such activity is inconsistent with its exempt status under section 501(c). For example, an organization described in section 501(c)(3) is precluded from engaging in any political campaign activities. The fact that section 527 imposes a tax on the exempt function (as defined in § 1.527-2(c)) expenditures of section 501(c) organizations and permits such organizations to establish separate segregated funds to engage in campaign activities does not sanction the participation in these activities by section 501(c)(3) organizations.

§ 1.527-7 Newsletter funds.

(a) *In general.* For purposes of this section, a fund established and maintained by an individual who holds, has been elected to, or is a candidate (within the meaning of section 41(c)(2)) for nomination or election to, any Federal, State, or local elective public office for the use by such individual exclusively for an exempt function, as defined in paragraph (c) of this section, shall be a newsletter fund. If assets of a newsletter fund are used for any purpose other than the exempt function of the newsletter fund as defined in paragraph (c) of this section, such amount shall be treated as expended for the personal use of the individual who established and maintained such fund. In addition, future contributions to such fund are treated as income to the individual who established and maintained the fund. In such a case, the facts and circumstances may indicate that the fund was never established and maintained exclusively for an exempt function as defined in paragraph (c) of this section.

(b) *Determination of taxable income.* A newsletter fund shall be treated as if it were a political organization for purposes of determining its taxable income. However, the specific $100 deduction provided by section 527(c)(2)(A) shall not be allowed.

(c) *Exempt function.* For purposes of this section, the exempt function of a newsletter fund consists solely of the preparation and circulation of the newsletter. Among the expenditures treated as preparation and circulation expenditures of the newsletter are—

(1) Secretarial services,

(2) Printing,

(3) Addressing, and

(4) Mailing.

(d) *Nonexempt function purposes.* Newsletter fund assets may not be used for campaign activities. Therefore, an exempt function of a newsletter fund does not include—

(1) Expenditures for an exempt function as defined in § 1.527-2(c) or

(2) Transfers of unexpended amounts to a political organization described in section 527(e)(1).

(e) *Excess funds.* Excess funds held by a newsletter fund which has ceased to engage in the preparation and circulation of the newsletter are treated as expended for the personal use of the individual who established and maintained such fund. However, to the extent such excess funds are within a reasonable period of time—

(1) Contributed to or for the use of any organization described in paragraph (1) or (2) of section 509(a) which is exempt from taxation under section 501(a),

(2) Deposited in the general fund of the U.S. Treasury or in the general fund of any State or local government (including the District of Columbia), or

(3) Contributed to any other newsletter fund as described in paragraph (a) of this section,

the excess funds are not treated as expended for the personal use of such individual. In such a case the individual is not allowed a deduction under the Internal Revenue Code of 1954 for such contribution or deposit.

§ 1.527-8 Effective date; filing requirements; and miscellaneous provisions.

(a) *Assessment and collections.* Since the taxes imposed by section 527 are taxes imposed by subtitle A of the Code, all provisions of law and of the regulations applicable to the taxes imposed by subtitle A are applicable to the assessment and collection of the taxes imposed by section 527. Organizations subject to the tax imposed by section 527 are subject to the same provisions, including penalties, as are provided for corporations, in general, except that the requirements of section 6154 concerning the payment of estimated tax do not apply. See, generally, sections 6151, et. seq., and the regulations prescribed thereunder, for provisions relating to payment of tax.

(b) *Returns.* For requirements of filing annual returns with respect to political organization taxable income, see section 6012 (a) (6) and the applicable regulations.

(c) *Taxable years, method of accounting, etc.* The taxable year (fiscal year or calendar year, as the case may be) of a political organization is determined without regard to the fact that such organization may have been exempt from tax during any prior period. See sections 441 and 446, and the regulations thereunder in this part, and section 7701 and the regulations in Part 301 of this chapter (Regulations on Procedure and Administration). Similarly, in computing political organization taxable income, the determination of the taxable year for which an item of income or expense is

taken into account is made under the provisions of sections 441, 446, 451, 461, and the regulations thereunder, whether or not the item arose during a taxable year beginning before, on, or after the

employee's exposure is computed by assuming that while respirators are worn, ambient cotton dust levels are reduced by the assigned class protection factor of the respirator being worn.

would have become effective as to all employers covered by the standard. These respirator provisions (29 CFR 1910.1043(f)) require, among other things, respirator use (i) during the time period

as necessary to ensure compliance with the PEL. Some adjustment of the nominally required wearing times is made to allow for occasional lapses in protection due to brief respirator

program is effective. Although OSHA has as a matter of necessity accepted the use of respirators under some circumstances, this does not mean that respirators are as effective, reliable, or

nominal minimum time of use of the respirator required to comply with the PEL.

$$1000=[1400(1)+(1400/10)(2)+1200(T_2)+(1200/10)(T_4)]/8$$

taken into account is made under the provisions of sections 441, 446, 451, 461, and the regulations thereunder, whether or not the item arose during a taxable year beginning before, on, or after the effective date of the provisions imposing a tax upon political organization taxable income. If a method for treating bad debts was selected in a return of income (other than an information return) for a previous taxable year, the taxpayer must follow such method in its returns under section 527, unless such method is changed in accordance with the provisions of § 1.166–1. A taxpayer who has not previously selected a method for treating bad debts may, in its first return under section 6012 (a) (6), exercise the option granted in § 1.166–1.

(d) *Effective date.* Except as provided in paragraph (b) (2) of § 1.527–6, the regulations under section 527 apply to taxable years beginning after December 31, 1974.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954.

(68A Stat. 917; 26 U.S.C. 7805).

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: December 15, 1980.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 80–40500 Filed 12–29–80; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Cotton Dust

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of respirator-use enforcement policy concerning the period of use of respirators as required by the cotton dust standard.

SUMMARY: This notice enunciates a respirator use enforcement policy for the provisions of the OSHA cotton dust standard, 29 CFR 1910.1043 with respect to the period of use of respirators. The administrative stay of paragraphs 1910.1043(f)(1) (i) and (iii), published at 45 FR 64872 has now expired. Enforcement of these provisions will commence in accordance with this enforcement policy, which requires that respirators are to be worn to the extent necessary to assure that each employee's 8-hour time weighted average exposure is maintained at less than the permissible exposure limit. The employee's exposure is computed by assuming that while respirators are worn, ambient cotton dust levels are reduced by the assigned class protection factor of the respirator being worn.

DATES: Effective January 19, 1981, 29 CFR 1910.1043(f)(1) (i) and (iii) will be enforced in accordance with this policy.

FOR FURTHER INFORMATION CONTACT: Dr. Bailus Walker, Occupational Safety and Health Administration, Room N3718, U.S. Department of Labor, Washington, D.C. 20210. Telephone (202) 523–7076, or Mr. Frank Tipton, Occupational Safety and Health Administration, Room N3718, U.S. Department of Labor, Washington, D.C. 20210. Telephone (202) 523–7174.

SUPPLEMENTARY INFORMATION: OSHA issued a final occupational safety and health standard for occupational exposure to cotton dust on June 19, 1978 (codified at 29 CFR 1910.1043); published at 43 FR 27350–399, June 23, 1978. The standard applied to textile manufacturing and non-textile industries. Petitions for review of the standard were consolidated in the U.S. Court of Appeals for the District of Columbia Circuit and a stay of the standard pending judicial review was issued on October 20, 1978. Petitions filed by representatives of the cotton waste processing industries and purchasers and users of cotton batting were severed from the main action on November 1, 1978. No decision respecting these industries has been issued as of this time. On Ocotober 24, 1979, the D.C. Circuit affirmed the standard in the main action except as applied to cotton seed oil mills. It subsequently denied petitions for rehearing, suggestions for rehearing en banc, and motions to continue the stay (except for cottonseed oil mills), and the standard became effective and enforceable on March 27, 1980. See 45 FR 12416, February 26, 1980. Thereafter, the Department suspended enforcement of the standard in the classing and warehousing industries for further consideration in light of the Supreme Court's ruling in Industrial Union Department, AFL–CIO v. American Petroleum Institute. (Nos. 78–911 and 78–1036). See 45 FR 50328, July 29, 1980. Petitions for certiorari to review the Court of Appeal's decision in the main action were granted by the U.S. Supreme Court.

Under the timetable for implementation of the requirements of the standard, employers were required to complete initial monitoring of covered facilities by September 27, 1980. Accordingly, on that date, the provisions of the standard for respirator usage would have become effective as to all employers covered by the standard. These respirator provisions (29 CFR 1910.1043(f)) require, among other things, respirator use (i) during the time period necessary to install or implement feasible engineering controls and work practice controls and (ii) in work situations where feasible engineering controls are not yet sufficient to reduce exposure to or below the permissible exposure limit. However, it became apparent that there was widespread misunderstanding throughout the textile industry and among employees about how an effective respirator program should be implemented, which resulted in an unsuccessful implementation of the respirator provisions. Therefore, on September 30, 1980, at 45 FR 64872, OSHA published a notice of an administrative stay of 75 days ending December 15, 1980, of 29 CFR 1910.1043(f)(1) (i) and (iii). That notice included a commitment to develop guidelines for implementing effective respirator programs in the textile industry and in doing so to "meet with representatives of the cotton textile industry, workers and their unions and the National Institute for Occupational Safety and Health." These meetings were held and OSHA received many useful comments.

In addition to the parties mentioned above, these meetings also included state plan representatives, respirator manufacturers and independent organizations. All of the comments and criticisms have been carefully evaluated in developing this enforcement policy.

By this notice, OSHA announces this enforcement policy with respect to the use of respirators under the cotton dust standard, 29 CFR 1910.1043, and sets forth in detail the meaning and application of the enforcement policy. It must be noted that this interpretation is based on the unique circumstances involved in the cotton dust standard and therefore is limited to that standard. This enforcement policy will be incorporated into the compliance directive now being prepared for the cotton dust standard. The policy concerns the period of required use of respirators and allows the partial shift wearing of respirators on the condition that each employee's 8-hour time weighted average exposure is kept below the permissible exposure limit (PEL). In computing the exposure of an employee who is wearing a respirator, the respirator is assumed to reduce the ambient concentration of cotton dust by a factor equal to the assigned class protection factor of the respirator. Respirators need be worn only as long as necessary to ensure compliance with the PEL. Some adjustment of the nominally required wearing times is made to allow for occasional lapses in protection due to brief respirator removal and to arrange an easily administered program.

Partial shift use is clearly implied in the cotton dust standard in paragraph (k)(1)(ii)(b) which requires a record of the "type of protective devices worn, if any, and length of time worn." Partial shift use of respirators is also incorporated in the lead standard (section 1910.1025).

The partial shift use of respirators as enunciated in this notice does not affect the requirement for using respirators during so-called "blow down" cleaning using compressed air, nor any other respirator provision of the standard not subject to the administrative stay of September 30, 1980. The requirement for respirators contained in paragraph (g)(1) is in addition to the routine use of respirators needed to comply with the PEL's.

In the interest of facilitating implementation of the partial shift use and of fostering understanding of the partial shift policy, industry suggested that OSHA include in its notice a table which would set forth a single set of specific times for donning and removing respirators that would constitute compliance with the standard in the presence of various increments of cotton dust concentration. Although this may appear reasonable, OSHA has concluded that such an approach would unnecessarily limit employers' flexibility and unnecessarily interfere with employers normal routines, both of which are often-mentioned industry concerns. By contrast the tables which have been provided below are a compilation, for the simplest case, of cotton dust levels and respirator use durations that satisfy the enforcement policy states herein.

The enforcement policy being enunciated by this notice clarifies what is the minimum actual respirator requirements of the cotton dust standard. OSHA recognizes that this may be somewhat less than the procedures being used in some existing respirator use schedules. However, OSHA continues to endorse and recommend that all employees on their own initiative wear respirators as much as possible when they are likely to be over exposed to toxic materials, whether cotton dust or other materials.

The concentration dependent time of use concept for respirators in no way makes a respiratory protection program inexpensive and does not by itself assure that a respiratory protection program is effective. Although OSHA has as a matter of necessity accepted the use of respirators under some circumstances, this does not mean that respirators are as effective, reliable, or safe as primary control of a hazardous contaminant at the source by engineering controls.

Partial Use Enforcement Policy

When respirators are required to comply with the permissible exposure limit (PEL) the required time of use of the respirators depends on the levels of cotton dust in the air and the type of respirator that is worn. The respirators must be worn a sufficient amount of time to assure that no employee is subjected to an 8-hour average concentration in excess of the PEL as explained below. While the employee is wearing a respirator the actual exposure that employee sustains may be assumed to be reduced by the assigned class protection factor for the respirator. The overall exposure is then computed using the formula found in appendix A to the standard and in § 1910.1000(d)(1)(i). An employee's 8-hour time weighted average exposure is constructed by multiplying each dust concentration by the time the employee is exposed to it, adding these quantities, and then dividing by eight. Hence, if the employee works in two different concentrations of cotton dust and wears a respirator part of the time in each environment then the employee has four different exposure times and levels. Thus

(eqn 1) $TWA = (C_1T_1 + C_2T_2 + C_3T_3 + \ldots + C_nT_n)/8$

where TWA = 8 hour time weighted average (in micrograms).

C = constant concentation for a time period (in micrograms).

T = time in hours that concentration exists.

The sum of all time periods equals 8 hours.

If time period two is the time of wearing a respirator in the environment with concentration C_1, then $C_2 = C_1$ divided by the protection factor (PF) of the respirator. If we assume a similar relationship for time periods 3 and 4 and that the same respirator is worn both times, then the formula becomes

(eqn 2) $TWA = (C_1T_1 + (C_1/PF)T_2 + C_3T_3 + (C_3/PF)T_4)/8$

Again, $T_1 + T_2 + T_3 + T_4 = 8$

For example, if a half mask respirator is worn in a yarn manufacturing process; the dust level in the first period of 3 hours is 1400 micrograms per cubic meter and the respirator is worn for 2 hours; and the dust level in the second period, of 5 hours, is 1200 micrograms, equation 2 can be used to find the nominal minimum time of use of the respirator required to comply with the PEL.

$1000 = [1400(1) + (1400/10)(2) + 1200(T_3) + (1200/10)(T_4)]/8$

Combining, and substituting from $T_3 + T_4 = 5$.

$1000 = [1680 + 1200(5 - T_4) + 120T_4]/8$

$8 - 1080T_4 = 320$

which indicates clearly that T_4 is a negative value. This indicates that the use of respirators is not required for the second period. In fact equation 2 indicates a TWA of 960 micrograms per cubic meter without respirator use in the second period. The above calculation also demonstrates the advisability of using respirators first in the areas of highest concentration, a practice OSHA strongly endorses.

Alternatively, if an employee works in a single cotton dust concentration all day and wears a respirator part of the time the expression comparable to equation 2 is

(eqn 3) $TWA = (C_1T_1 + (C_1/PF)T_2)/8$

Since $T_1 + T_2 = 8$ hours, equation 3 can be rearranged to solve explicitly for the nominal minimum time of use of the respirator required to comply with the PEL, if the value of the PEL is substituted for the TWA, as

$T = (C - PEL)/C(1 - 1/PF)/8$

With a half mask respirator used in a slashing and weaving operation, this expression becomes

$T = (C - 750)/.9C/8$

or

$T = (C - 750)/.112C$

The employer has the responsibility to ensure that respirators are worn a sufficient amount of time to reduce each employee's actual exposure below the PEL's. Respirator wear for time in excess of that necessary to keep the actual exposure below the PEL is not required by the standard unless an employee requests the extra use (see para (f)(1)(v)).

All contributions to an employee's exposure to cotton dust must be included in the above computation. That is, the cotton dust exposure in *any* place in an employer's plant must be measured and included. This applies to service areas, break areas, etc. in addition to assigned work stations. If these other areas are not monitored, then the work station dust levels shall be applied. For work shifts longer than eight hours, the maximum allowable average cotton dust concentrations shall be proportionately reduced. For example, for a ten hour shift, an 8-hour

PEL of 500 μg/m³ becomes 400 μg/m³ instead.

One can expect that there may be, under most circumstances, brief

Rationale

The basis for the standard, which is designed to reduce worker exposure to cotton duct, and the basis for the

should be not ignored and shall not be ignored.

Direct comparison with the practice of other industries is not possible because unlike in those other industries the

ALLOWABLE COTTON DUST LEVELS*

[Respirator PF = 5]

Assigned time (hours)	PEL (μg/m³)			
	200	500	750	1,000

ALLOWABLE COTTON DUST LEVELS*—Continued

[Respirator PF = 100]

Assigned time	PEL (μg/m³)

development. This certification attests only to the fact that Wyoming now has in place those structural components necessary for an effective program. It does not render judgment, either

PEL of 500 μg/m³ becomes 400 μg/m³ instead.

One can expect that there may be, under most circumstances, brief occasions that employees will remove respirators for such purposes as personal hygiene, drinking, readjusting the respirator, or vital communications. Consequently it is inappropriate to assume constant wear of a respirator when using equation (1). To properly apply this equation, all periods, even short ones, that an employee is not wearing a respiratory must be accounted for because the exposure contribution without a respirator is so much larger than with a respirator. Since doing this accurately for each employee would be quite time consuming and burdensome, OSHA will accept a simpler procedure of lengthening by 10% the nominal wearing periods otherwise indicated by equation (1). It is OSHA's judgement that a 10% adjustment makes adequate allowance for these expected interruptions in periods normally considered to be periods of respirator wear. Such adjustment is more reasonable and feasible than the technically correct method of calculating exposure for each time interval when the respirator is removed. Alternatively and equivalently, when using the 10% adjustment and using equation 1 to calculate the resulting TWA, the assigned time of wear of the respirator shall be reduced by 9% (recall that 9% of 110 equals 10) and that difference interval shall be added to the unprotected exposure time.

The wearing period for respirators has a practical upper bound that is less than a full work shift regardless of cotton dust concentration. Lunch periods and other breaks that can be expected to involve substantial interference with wearing a respirator may not be included in the scheduled wearing periods for respirators.

Reasonable program administration and supervision, as well as OSHA enforcement, requires that a certain degree of uniformity and regularity be applied to the respirator wearing schedules. To this end, and as neccessary to prevent an unwieldy complexity of schedules, all required periods of respirator wearing shall be rounded up to the next quarter hour so that all schedules will begin and end on a quarter hour.

The assigned class protection factors to be used in equation 1 are those in table 1 of the standard, namely, 5 for a single use or quarter mask; 10 for a half mask; 100 for a full facepiece; and 1000 for positive pressure devices.

Rationale

The basis for the standard, which is designed to reduce worker exposure to cotton duct, and the basis for the supporting health risk analysis is the cumulative effects of an average daily dose and not the immediate or acute effects of an instantaneous exposure level. The standard does not contain requirements for a maximum instantaneous ceiling on cotton dust exposure levels. Instead an averaged exposure is relied upon for protection. Hence partial shift wearing of a respirator is consistent with the basis of the standard.

Reference to exposure periods without respirators as uncontrolled may be misleading in the context of employee exposure. These periods may be uncontrolled by engineering means but they should result in known and controlled exposures of employees. As described above, the employer is required to accurately quantify the exposure contribution from all aspects of an employee's work. Therefore a high exposure during one period must be offset by correspondingly lower exposures at other times. In addition, the dust generating processes must be continuous or repetitive, resulting in predictable dust levels, for any exposure calculations to be meaningful.

Because paragraph (d) of the standard requires complete exposure determination, the exposure contribution of any period during a work shift will be known without regard to the use of respirators. Each employer was required to monitor by September 27, 1980 any area, including break areas, etc. that he had any reason to believe contained cotton dust.

No new uncertainties or inaccuracies in exposure determinations or in employee protection are introduced by using respirators on a schedule that is dependent on the cotton dust concentrations. At the same time these schedules do not reduce any of the uncertainties with respect to adequate protection that have always been a part of reliance on respiratory protection to protect employee health.

One policy alternative suggested to OSHA was that employees should be allowed to remove respirators only at assigned break times or in assigned break areas including rest rooms, and that exposure during these periods be ignored. So limiting the removal of respirators could be overly restrictive (depending on cotton dust levels). Such a policy could easily become unreasonable by ignoring the real and legitimate causes for brief removals of a respirator. These periods of exposure should be not ignored and shall not be ignored.

Direct comparison with the practice of other industries is not possible because unlike in those other industries the workplaces with cotton dust do not have clean areas conveniently accessible to which an employee can go to remove a respirator to clean it or his face, get a drink, etc. Since the cotton dust contaminated areas are not immediately dangerous to life and health (IDLH) and have no sensory warning properties, it is even more likely that these brief removals of the respirators will occur in the significantly contaminated areas. There has been no showing that cotton dust levels in break areas are negligible, especially in view of the fact that many employees take their breaks and lunch right at their assigned work stations. Without monitoring, or some other specific demonstrable reason, the dust levels in other areas cannot be assumed to be negligible. This includes rest rooms since they are normally under negative pressure from the odor control exhaust ventilation.

Tables

Tables I, II, III show the maximum allowable 8-hour time weighted average cotton dust concentrations for the various PEL's as a function of assigned time of use of the respirators. The inclusion of these tables was requested at the informal meetings and address the simplest yet most common situation. The tables incorporate the short cut approach of using the 10% time adjustment and apply only to the case where an employee is exposed to a single cotton dust concentration in which the respirator is used part of the time. The assumption is also made that all time spent without a respirator is time exposed to cotton dust, which has repeatedly been affirmed to OSHA as the normal situation. The maximum time of assigned respirator use is seven and one quarter hours to allow for lunchs and normal breaks. The table values were computed from a rearrangement of equation 3, C=8 PEL/(8–KT) where K=1–1/PF.

The values in these tables clearly demonstrate that a major influence in increasing the average actual employee exposure is the removal of a respirator. Because of this it will be observed that the highest values in the table fall far short of the PEL times the PF of the respirator even at seven and one quarter hours of assigned wear. This is not surprising since each minute without a respirator contributes 5, 10 or 100 times (depending on respirator) the dose to the employee as each minute wearing a respirator.

ALLOWABLE COTTON DUST LEVELS*

[Respirator PF=5]

Assigned time (hours)	PEL (μg/m³)			
	200	500	750	1,000
.25	205	512	767	1,023
.5	210	524	786	1,048
.75	215	537	805	1,073
1.0	220	550	825	1,100
1.25	226	564	846	1,126
1.50	232	579	869	1,158
1.75	238	595	892	1,189
2.0	244	611	917	1,222
2.25	251	629	943	1,257
2.5	259	647	971	1,294
2.75	267	667	1,000	1,334
3.0	275	688	1,032	1,376
3.25	284	710	1,065	1,420
3.5	293	734	1,101	1,467
3.75	304	759	1,139	1,518
4.0	314	786	1,179	1,572
4.25	326	815	1,223	1,631
4.5	339	847	1,270	1,693
4.75	352	881	1,321	1,761
5.0	367	917	1,376	1,835
5.25	383	957	1,436	1,915
5.5	400	1,001	1,502	2,002
5.75	420	1,049	1,573	2,098
6.0	441	1,101	1,652	2,203
6.25	464	1,159	1,739	2,319
6.5	490	1,224	1,836	2,448
6.75	518	1,296	1,944	2,592
7.0	551	1,377	2,066	2,755
7.25	588	1,470	2,204	2,939

*Table values (in μg/m³) are maximum allowable 8-hour time weighted averages for a single cotton dust environment (see eqn 3). Assigned time is of respirator use; all other time is assumed to be at full exposure. Standard 10 percent adjustment has been included.

ALLOWABLE COTTON DUST LEVELS*

[Respirator PF=10]

Assigned time (hours)	PEL (μg/m³)			
	200	500	750	1,000
.25	205	513	770	1,026
.5	211	527	790	1,054
.75	217	542	812	1,083
1.0	223	557	836	1,114
1.25	229	573	860	1,147
1.50	236	591	886	1,181
1.75	244	609	914	1,218
2.0	251	629	943	1,257
2.25	260	650	974	1,300
2.5	269	672	1,008	1,344
2.75	278	696	1,044	1,392
3.0	289	722	1,082	1,443
3.25	300	749	1,124	1,499
3.5	312	779	1,169	1,558
3.75	325	812	1,217	1,623
4.0	339	847	1,270	1,693
4.25	354	885	1,328	1,770
4.5	371	927	1,391	1,854
4.75	389	973	1,460	1,946
5.0	410	1,024	1,536	2,049
5.25	432	1,081	1,622	2,162
5.5	458	1,144	1,716	2,289
5.75	486	1,216	1,823	2,431
6.0	518	1,296	1,944	2,592
6.25	555	1,388	2,082	2,777
6.5	598	1,494	2,242	2,989
6.75	647	1,618	2,427	3,237
7.0	706	1,764	2,647	3,529
7.25	776	1,940	2,909	3,879

*Table values (in μ/m³) are maximum allowable 8-hour time weighted averages for a single cotton dust environment (see eqn 3). Assigned time is of respirator use; all other time is assumed to be at full exposure. Standard 10 percent adjustment has been included.

ALLOWABLE COTTON DUST LEVELS*

[Respirator PF = 100]

Assigned time (hours)	PEL (μg/m³)			
	200	500	750	1,000
.25	206	514	772	1,029
.5	212	530	795	1,060

ALLOWABLE COTTON DUST LEVELS*—Continued

[Respirator PF=100]

Assigned time (hours)	PEL (μg/m³)			
	200	500	750	1,000
.75	218	546	819	1,092
1.0	225	563	845	1,127
1.25	233	582	873	1,164
1.5	241	602	902	1,203
1.75	249	623	934	1,245
2.0	258	645	968	1,290
2.25	268	669	1,004	1,339
2.5	278	696	1,043	1,391
2.75	290	724	1,086	1,448
3.0	302	755	1,132	1,509
3.25	315	788	1,182	1,576
3.5	330	825	1,237	1,649
3.75	346	865	1,297	1,730
4.0	364	909	1,364	1,818
4.25	383	958	1,437	1,916
4.5	405	1,013	1,519	2,025
4.75	430	1,074	1,611	2,148
5.0	457	1,143	1,714	2,286
5.25	489	1,221	1,832	2,443
5.5	525	1,311	1,967	2,623
5.75	566	1,416	2,124	2,832
6.0	615	1,538	2,308	3,077
6.25	674	1,684	2,526	3,368
6.5	744	1,860	2,791	3,721
6.75	831	2,078	3,117	4,156
7.0	941	2,353	3,529	4,706
7.25	1,085	2,712	4,068	5,424

*Table values (in μg/m³) are maximum allowable 8-hour time weighted averages for a single cotton dust environment (see eqn 3). Assigned time is of respirator use; all other time is assumed to be at full exposure. Standard 10 percent adjustment has been included.

This notice was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, Frances Perkins Labor Department Building, 3rd Street and Constitution Avenue, N.W., Washington, D.C. 20210.

(Secs. 6, 8, 84 Stat. 1593–96, 1599, [29 U.S.C. 655, 657]; Secretary of Labor's Order 8–76 [41 FR 25059]; [29 CFR Part 1911])

Signed at Washington, D.C., this 22nd day of December, 1980.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 80–40444 Filed 12–23–80; 11:56 am]

BILLING CODE 4510–26–M

29 CFR Part 1952

Certification of Completion of Developmental Steps for Wyoming State Plan

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: Wyoming, on July 31, 1980, submitted documentation attesting to the completion of all structural, developmental aspects of its approved State plan. After extensive review and opportunity for State correction, all developmental plan supplements have now been approved. This notice certifies this completion and the beginning of the final evaluation phase of State plan development. This certification attests only to the fact that Wyoming now has in place those structural components necessary for an effective program. It does not render judgment, either positively or negatively, on the adequacy of the State's actual performance. In addition, although original State plan commitments on staffing and resources have been met, these initial commitments may not be interpreted as meeting the ultimate requirements of the Occupational Safety and Health Act of 1970 for "sufficient staff" as redefined by the U.S. Court of Appeals decision in "AFL–CIO v. Marshall", 570 F. 2d 030 (D.C. Cir. 1978).

EFFECTIVE DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT: Charles Y. Boyd, Project Officer, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Rm N3613, Washington, D.C. 20210—(202) 523–8081.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act," 29 U.S.C. 667) provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards shall submit for Federal approval a State plan for such development and enforcement. Part 1902 of Title 29, Code of Federal Regulations, sets forth procedures under which the Assistant Secretary of Labor for Occupational Safety and Health ("Assistant Secretary") shall approve such plans. Under the Act and regulations, plan approval is essentially a two-step procedure. A State must first submit its plan for an initial determination under section 18(b) of the Act. If the Assistant Secretary, after reviewing the State's submission, determines that the plan satisfies or will satisfy the criteria set forth in section 18(c) of the Act, a decision of "initial approval" is issued and the State may begin enforcement of its safety and health standards in accordance with the plan and with concurrent enforcement by the Occupational Safety and Health Administration (OSHA).

A State plan may receive initial approval even though at the time of submission not all essential components of the plan are in place. As provided at 29 CFR 1902.2(b) the Assistant Secretary may intially approve the submission as a "developmental plan," and a schedule within which the State must complete specified "Developmental steps" is issued as part of the initial approval decision.

When the Assistant Secretary finds that the State has completed all developmental steps specified in the initial approval decision, a notice of such completion is published in the

System approved by the Assistant Secretary on July 2, 1976. (41 FR 28789, July 13, 1976.)

d. The State plan has been amended to include an Affirmative Action Plan

Location of the Plan and Its Supplements for Inspection and Copy

Copies of the supplements, along with the approved plan, may be inspected and copied during normal business

completed all developmental steps specified in the plan as approved on April 25, 1974, on or before April 25, 1977. This certification attests to structural completion, but does not render judgment on adequacy of

commercial taking of humpback whales. In 1970, the humpback whale was designated an endangered species under the Endangered Species Conservation Act of 1969. Additionally, humpback

stay, but left, accompanied by all but three animals of the first entry phase.

In 1979, only a few humpbacks entered Glacier Bay, and again, only three or four remained in up Bay feeding

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When the Assistant Secretary finds that the State has completed all developmental steps specified in the initial approval decision, a notice of such completion is published in the **Federal Register** (see 29 CFR 1902.34 and 35). Certification of completion of developmental steps initiates a thorough evaluation of the State plan by the Assistant Secretary to determine, on the basis of actual operations, whether the plan adequately protects safety and health of the State's workers. Certification does not render judgment as to the adequacy of State performance.

Final approval of the plan under section 18(e) of the Act and 29 CFR Part 1902 may not be granted until at least three years after initial approval and until at least one year after completion of developmental steps. Thereafter, when the Assistant Secretary determines on the basis of actual performance under the plan that the Act's criteria are being applied, a decision of final approval may be granted.

On May 3, 1974, a notice was published in the **Federal Register** (39 FR 15394) of initial approval of the developmental Wyoming plan and the adoption of Subpart BB of Part 1952 containing the decision, a description of the plan and the developmental schedule.

On July 31, 1980, Donald Owsley, Administrator of the Wyoming Occupational Health and Safety Department, submitted documentation attesting to the completion of each State developmental commitment for review and approval as provided in 29 CFR Part 1953. Following Departmental review, opportunity for public comment and subsequent modification of the State's submissions, as deemed appropriate, the Assistant Secretary has approved the completion of all individual Wyoming developmental steps.

Completion of Developmental Steps

All developmental steps specified in the May 3, 1974 notice of initial approval have been completed as follows:

a. The State adopted Federal standards covering all the issues contained in 29 CFR Part 1910, Subparts D through S, and Part 1926 (the State will not cover Parts, 1915, 1916, 1917, and 1918). (40 FR 8948, March 4, 1975; 41 FR 26767, June 29, 1976.)

b. Wyoming's Occupational Health and Safety posters for private and local government employees were approved by the Assistant Secretary on July 14, 1976. (41 FR 30329, July 23, 1976.)

c. Wyoming has developed and implemented a Management Information System approved by the Assistant Secretary on July 2, 1976. (41 FR 28789, July 13, 1976.)

d. The State plan has been amended to include an Affirmative Action Plan outlining the State's policy of equal employment opportunity. (42 FR 45907, September 13, 1977.)

e. Guidelines and Procedures for implementing the State's health and safety program for public employees were approved by the Assistant Secretary on June 1, 1978. (41 FR 51011, Nov. 19, 1976.) (43 FR 4510–26, June 13, 1978.)

f. Administrative regulations for recordkeeping and reporting, variances, posting requirements, employee complaint procedures, inspections under the Act, employee exposure to toxic materials, providing information to employees on their exposure to hazards, personal protective equipment, medical examinations, and monitoring, safeguarding trade secrets, administrative review of citations, proposed penalties, and abatement periods were approved by the Assistant Secretary on December 19, 1980. (45 FR 83485.)

g. Legislation revising the enabling law to provide for civil enforcement of safety and health violations and revised regulations establishing procedures for review of enforcement actions was approved by the Assistant Secretary on December 19, 1980. (45 FR 83483.)

h. The State has met its plan commitment for hiring enforcement staff under an approved merit system for administration of its health and safety program pursuant to a July 3, 1980 memo from Don Owsley, Administrator of the Wyoming Occupational Health and Safety Department.

i. As required by 29 CFR 1902.34(b)(3), the personnel operations of the Wyoming Occupational Health and Safety Department have been found to be in substantial conformity with the "Standards for a Merit System of Personnel Administration" by the Office of Personnel Management in a letter dated October 17, 1980.

This certification covers all occupational safety and health issues covered under the Federal program except for longshoring and maritime standards found in 29 CFR Parts 1915, 1916, 1917 and 1918 (longshoring, ship repairing, ship building, and ship breaking), which are excluded from coverage under the plan. This certification also covers the State's program covering State and local government employees.

Location of the Plan and Its Supplements for Inspection and Copy

Copies of the supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations:

Office of the Director of Federal and State Programs, Occupational Safety and Health Administration, Room N–3613, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Office of the Regional Administrator, Occupational Safety and Health Administration, Region VIII, Federal Building, Room 1554, 1961 Stout Street, Denver, Colorado 80294.

Office of the Administrator, Occupational Health and Safety Department, 200 East Eighth Avenue, Cheyenne, Wyoming 82002.

Effect of Certification

The Wyoming plan is certified effective December 30, 1980 as having completed all developmental steps on or before April 25, 1977. This certification attests to structural completion, but does not render judgment on adequacy of performance.

The Wyoming occupational health and safety program will be monitored and evaluated for a period of not less than one year after publication of this certification to determine whether the State program in operation provides for an effective program of enforcement. The Assistant Secretary will then determine whether Federal authority should be withdrawn with respect to issues covered by the plan pursuant to Section 18(e) of the Act.

Level of Federal Enforcement

In accordance with 29 CFR 1902.35, Federal enforcement authority under sections 5(a)(2), 8, 9, 10, 13 and 17 of the Act (29 U.S.C. 654 (a)(2), 657, 658, 659, 662 and 666) and Federal standards authority under section 6 of the Act (29 U.S.C. 655) will not be relinquished during the evaluation period. However, OSHA's concurrent Federal enforcement authority will be exercised on a limited basis.

In accordance with this certification, 29 CFR 1952.344 is hereby amended to reflect successful completion of the developmental period by changing the title of the section and by adding paragraph (j) as follows:

§ 1952.344 Completion of developmental steps and certification.

* * * * *

(j) In accordance with § 1902.34 of this chaper, the Wyoming occupational safety and health plan was certified, effective December 30, 1980, as having completed all developmental steps specified in the plan as approved on April 25, 1974, on or before April 25, 1977. This certification attests to structural completion, but does not render judgment on adequacy of performance.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 18th day of December 1980.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 80–40220 Filed 12–29–80; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Glacier Bay National Monument; Protection of Humpback Whales

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The regulations set forth below are designed to protect declining populations of the humpback whale (*Megaptera Novaeangliae*) within Glacier Bay National Monument. To minimize the effects of vessel-whale interactions, these regulations establish numerical limitations upon small vessels within the monument. These regulations also prohibit the commercial harvesting of the major organisms upon which the humpback whales feed. Both these regulations and the final regulations published on May 15, 1980 (45 FR 32234 and 32228), the latter of which addressed: (1) Operating restrictions on all vessels within the monument and (2) numerical limitations on entries by large vessels (vessels at or in excess of 100 tons gross), will be in effect through May 15, 1983, subject to ongoing review and modification by the National Park Service where warranted.

EFFECTIVE DATE: January 29, 1981.

FOR FURTHER INFORMATION CONTACT: Superintendent, Glacier Bay National Monument, P.O. Box 1089, Juneau, Alaska 99802; Telephone: (907) 586–7137.

SUPPLEMENTARY INFORMATION:

The Humpback Whale

As a result of commercial whaling during the first half of this century, the number of humpback whales in the North Pacific was seriously reduced from former levels. Populations have declined from an estimated 15,000 in 1905 to a present estimate of 1,000. In 1966, the International Whaling Commission placed a prohibition on the commercial taking of humpback whales. In 1970, the humpback whale was designated an endangered species under the Endangered Species Conservation Act of 1969. Additionally, humpback whales are protected by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), The Marine Mammal Protection Act of 1972, as amended (16 U.S.C. *et seq*), and the Convention of International Trade in Endangered Species of Wild Fauna and Flora, March 3, 1973 (T.I.A.S. No. 8249).

It is estimated that between 70 and 100 humpback whales spend the summer months in the waters of Southeastern Alaska. They have been known to frequent these inland waters since before 1900. When humpback whales historically began occupying Glacier Bay is unknown. Their presence in Glacier Bay has been documented by National Park Service personnel since the area was staffed on-site in the 1950's.

Glacier Bay National Monument

Glacier Bay National Monument was established by Presidential Proclamation on February 26, 1925 (43 Stat. 1988), and expanded by subsequent proclamations on April 18, 1939 (53 Stat. 2534), and December 1, 1978 (43 FR 57053).

The primary purpose of the monument's establishment and enlargements is the protection and preservation of a wide array of geological, ecological and biological resources to be preserved in their natural condition.

The boundaries of Glacier Bay National Monument include approximately 973 square miles of marine waters. The Pacific Ocean marine life of the monument is one of the major attractions of the 120,000 visitors using the area annually. Of this marine life, the humpback whale is a high point in a visitor's experience.

Records indicate that in the years 1967 through 1977, an annual average of 20–25 individual whales were observed to use the Bay for summer feeding, entering in two stages (June and July) following the neap tides, and remaining into early fall. This period of occupancy is commonly referred to as the whale season. Seven years of scientific research and improved photo identification techniques indicate that certain individual whales repeatedly return to feed in Glacier Bay. In 1978, during the first entry stage, the whales entered the mouth of the Bay and several whales successfully moved up Bay into feeding areas. However, the whales of the second entry stage did not stay, but left, accompanied by all but three animals of the first entry phase.

In 1979, only a few humpbacks entered Glacier Bay, and again, only three or four remained in up Bay feeding areas.

Research Investigations and Findings

Research into the behavioral responses of humpback whales to vessels has been conducted under contract in Glacier Bay since 1976. Preliminary results of this research indicate adverse impacts on humpback behavior from interaction with increasing numbers of vessels using the Bay. Although there is disagreement over the severity of impact caused by each vessel class and method of operation, it is clear that vessels can create stress in whale behavior.

Prior to the 1979 visitor season, vessel operating guidelines were publicized and discussed with boaters. Some of these were similar to the regulations now in effect. Basically, all motorized vessels were asked to remain ¼ mile from any humpback whale, and cruise ships were asked to proceed through designated waters at 10 knots or less. These requests were complied with in most respects, but the number of whales entering the Bay and remaining through their historic use period continued to decline.

On August 6, 1979, when these procedures appeared to have no beneficial effect on the use of Glacier Bay by humpback whales, the National Park Service requested a formal consultation with the National Marine Fisheries Services (NMFS) in accordance with the provisions of the Endangered Species Act. In their formal response to the consultation process, the National Marine Fisheries Service concluded "* * * that uncontrolled increase of vessel traffic, particularly of erratically traveling charter/pleasure craft, probably has altered the behavior of humpback whales in Glacier Bay * * *, "and" * * * that continued increased in the amount of vessel traffic * * * is likely to jeopardize the continued existence of the humpback whale population frequenting Southeast Alaska."

NMFS recomended "* * * that total vessel use of the Bay be restricted to 1976 levels, at the very least, * * * "and further, that "* * * regulations should address vessel routing and vessel maneuvering * * *," and "* * * the system should be flexible enough to accommodate changes of areas of concentrated feeding activity." In a letter to the Superintendent of Glacier Bay dated October 15, 1980, the NMFS Director, Alaska Region unequivocably

reconfirmed NMFS' vessel use restriction recommendations.

The National Park Service and professional marine biologists recognize

Furthermore, the Organic Act authorizes the Secretary of the Interior to "make such rules and regulations as he may deem necessary or proper for

"The act of taking need not be intentional. The operation of motorized vessels in waters in which these animals are found in a manner prohibited by the proposed rule can clearly constitute

pleasure craft entries while three others recommended further reducing the number of small vessel entries. The National Park Service appreciates the support it has received for its response

number of entries per day in 1976. And third, the maximum number of vessels permitted in Glacier Bay at any one time shall not be allowed to exceed the maximum number reported in the Bay in

National Monument; William F. Paleck, Alaska Regional Office; Deborah L. Williams, Solicitor's Office, Anchorage.

Impact Analysis

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reconfirmed NMFS' vessel use restriction recommendations.

The National Park Service and professional marine biologists recognize that a full understanding of marine mammal behavior and habitat processes is a complex problem, and that worldwide research to date has not provided final answers to many issues. However, until such time as additional research yields a more complete picture, the Service must exercise its responsibility to the total environment of the monument it manages. In addition, the Service must comply with the mandate of the Endangered Species Act to take appropriate steps to protect an endangered species and to mitigate any possible adverse impacts resulting from the actions of man.

The Service will re-evaluate the regulations promulgated today in approximately two and one-half years in order to consider any new or relevant information. The designation of a two and one-half year period does not eliminate the flexibility to take more stringent or relaxed measures if necessary or warranted.

Legal Authorities

On February 26, 1925, pursuant to his authority under the Antiquities Act, 16 U.S.C. 431 *et seq.* (1976), President Coolidge established Glacier Bay National Monument and directed the National Park Service to administer it in accordance with the Act of August 25, 1916, 16 U.S.C. 1 *et seq.* (hereinafter "the National Park Service Organic Act"). Proclamation No. 1733 (February 26, 1925) 43 Stat. 1988. Under the same authority, Presidents Roosevelt and Carter subsequently enlarged the monument in 1939 and 1978, respectively. Proclamation No. 2330 (April 18, 1939), 53 Stat. 2534; Proclamation No. 4618 (December 1, 1978), 43 FR 57053. The boundaries of Glacier Bay National Monument encompass approximately 973 square miles of marine waters.

The National Park Service Organic Act directs the National Park Service to "promote and regulate the use of the Federal areas known as 'national monuments,' including Glacier Bay National Monument" by such means and measures as conform to the "fundamental purpose of the said * * * monuments * * * which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. 1 (1976).

Furthermore, the Organic Act authorizes the Secretary of the Interior to "make such rules and regulations as he may deem necessary or proper for the use and management of the monuments * * * under the jurisdiction of the National Park System". Id. S 1(a)–2(h) (1976).

In addition to the National Park Service Organic Act, both the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972, as amended, provide authority for the regulations proposed today to protect humpback whales. 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 1361 *et seq.* With respect to the Endangered Species Act, the humpback whale is listed as an endangered species of whale under the Act. 50 CFR 17.11; see also, Convention on International Trade in Endangered Species of Wild Fauna and Flora, March 3, 1973 (T.I.A.S. No. 8249). The Endangered Species Act directs the Secretary of the Interior to utilize all the programs which he administers in furtherance of the purposes of this Act. It also directs all Federal agencies to "utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered species * * *" 16 U.S.C. 1536(a); 1531(c). By its terms, the Act's purposes "are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of each endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the (listed) treaties and conventions * * *" Id. S 1531(b).

The Endangered Species Act defines "conservation" broadly to mean "all methods and procedures which are necessary to bring any endangered species to the point at which the measures provided pursuant to this Act are no longer necessary." Id. S 1532(2). The Endangered Species Act also makes it unlawful for any person "to take any such (endangered) species within the United States * * *" Id. S 1538(a)(1)(B). The Act defines "take" broadly to include, inter alia, "harass, harm, pursue." Id. S 1532(14); see 50 CFR 17.3.

The Marine Mammal Protection Act also protects humpback whales. 16 U.S.C 1361 *et seq.* The Act prohibits, except as specifically permitted, the taking of marine mammals including, by definition, humpback whales. Id. 1372(a); 1362(5). Again, taking is defined broadly to include harassing or attempting to harass. Id. S 1362(13). As stated in the Act's legislative history:

"The act of taking need not be intentional. The operation of motorized vessels in waters in which these animals are found in a manner prohibited by the proposed rule can clearly constitute harassment." H.R. Rep. No. 707, 92d Cong., 1st Sess. 23.

The Marine Mammal Protection Act recognizes that "there is inadequate knowledge of the ecology and population dynamics of * * * marine mammals." 16 U.S.C. 1361(3). Nevertheless, the Act directs each Federal agency to protect significant habitat for marine mammals from the "adverse effect of man's actions." Id. S S 1361(2); 1362 (a), (b). The above proclamations and acts provide the legal authority for the regulations which the National Park Service is promulgating today. These regulations are also based on the opinion of the National Marine Fisheries Service quoted above. Both the Endangered Species Act and the Marine Mammal Protection Act confer major responsibility for management of the endangered humpback whales on the National Oceanic and Atmospheric Administration. *See* Reorganization Plan No. 4 of 1970, 35 FR 15627; 16 U.S.C. 1532(10), 1533(a)(2); 50 CFR 17.2, see, also, 16 U.S.C. 1362 *et seq.*, and 16 U.S.C. 916 *et seq.*

Public Participation on the Interim Rules

The National Park Service has published two sets of regulations designed to protect the summer habitat of the humpback whale within Glacier Bay. The Service published final rules limiting large vessel entries and governing methods of operation for all vessels on May 5, 1980 (45 FR 32228). On the same date, interim rules governing small vessel entries and commercial fishing activities were published (45 FR 32234) as well as a request for public comments regarding those interim rules. The period for public comment on the interim rules closed July 14, 1980.

The National Park Service received eleven timely comments on its interim regulations. Of these, seven comments were from private individuals, three were from organizations, and one was from the State of Alaska.

The Service has carefully considered each of these comments and has adopted numerous suggestions made by the commenters. The comments received and the Service's reasons for accepting or rejecting the comments are as follows:

Commenters on Small Vessel Entries

1. Eight comments indicated general support for limiting the number of small vessel entries during the whale season. One individual suggested prohibiting all

pleasure craft entries while three others recommended further reducing the number of small vessel entries. The National Park Service appreciates the support it has received for its response to a difficult but important problem. That response involves a literal application of the NMFS recommendation to return all vessel entries to 1976 levels. This includes small vessel entries for which the very best available historic use data has been applied. That historic data base has been re-evaluated since these regulations were published in proposed form on May 15, 1980.

For small vessels other than charter vessels, the Bartlett Cove vessel observation sheets have been carefully examined and show total use during the 1976 whale season of 339. Since a conservative approach toward establishing a 1976 use level is warranted and no reasonable method of estimating uncounted vessels has been developed, a total entry limit of 339 private small vessels during the whale season is applied.

For charter vessels, which include the Park concessioner as well as special use permit operators the historic data base indicates the following: Concession entries in 1976 totaled 368. Since these entries are already controlled through a concessions contract they will not be subject to the small vessel permit system. Instead, the 1976 concessioner use level will be maintained through contract provisions. Likewise, charter vessel operators are controlled via special use permits. Rather than impose a second permit system on these individuals, the special use permit itself will limit charter vessel use to 1976 levels (an estimated 78 entries) or less.

The Service is confident that these levels reflect 1976 vessel use of Glacier Bay.

2. Several commenters asked specific questions regarding the permit system being implemented. These included five comments regarding entries allocated to the concession operation at Bartlett Cove, one request to limit the period of stay for any small vessel in Glacier Bay to three days, and one recommendation that unused daily entry allocations not be accumulated for later use without a firm ceiling on the maximum number of vessels permitted in the Bay. The permit system for small vessels set forth in these regulations responds affirmatively to these comments. Essentially, three limited use levels will be in effect. All are based upon 1976 use records. First, total entries for small vessels for the whale season will be at 1976 levels. Second, the maximum number of entries per day will be based upon the average number of entries per day in 1976. And third, the maximum number of vessels permitted in Glacier Bay at any one time shall not be allowed to exceed the maximum number reported in the Bay in 1976.

As discussed above, while the concessionaire has increased the number of vessels he operates since 1976 he will not be permitted more vessel entries than those recorded for 1976.

All other charter vessels will similarly be restricted to 1976 levels.

3. One commenter alleged that the National Park Service has failed to provide sufficient funds for the enforcement of these regulations. As with any other Law Enforcement Programs, voluntary compliance is critical to success. Voluntary compliance is gained through public understanding of the need for the regulations, publicizing widely the nature of the regulations, facilitating compliance, and visible enforcement and the apprehension of violators. During the 1980 whale season the Service addressed all four areas through public education programs, public announcements, a clear and simple permit system, and an active enforcement program which resulted in several warnings and violation citations. Few, if any, enforcement programs are completely effective. However, the current level of compliance with previous regulations is remarkably high. Still, the Service maintains the flexibility to reallocate resources in response to significant enforcement problems and will do so at Glacier Bay if necessary.

Comments on Commercial Fishing

1. The State of Alaska, Department of Fish and Game, made three specific recommendations regarding commercial fishing of whale feed species. These recommendations included (1) applying the prohibition against fishing for certain species year around (2) applying them only within Glacier Bay proper, and (3) prohibiting the retention of those species as opposed to the incidental capture. Each of these recommendations has been adopted.

2. One comment questioned the exemption of commercial fishing vessels from entry limits. The data clearly indicates a significant reduction in commercial fishing vessel entries since 1976 making regulated limits unnecessary.

Drafting Information

The following persons participated in the writing of these regulations: John Chapman, Superintendent; Donald D. Chase, Chief of Operations. Glacier Bay National Monument; William F. Paleck, Alaska Regional Office; Deborah L. Williams, Solicitor's Office, Anchorage.

Impact Analysis

The National Park Service has made a determination that the regulations contained in this rulemaking are not significant, as that term is defined under Executive Order No. 12044 as amended, and 43 CFR Part 14, nor do they require the preparation of a regulatory analysis pursuant to the provisions of these authorities. In addition, the Service has determined that these regulations do not represent a major Federal action significantly affecting the quality of the human environment which would require preparation of an Environmental Impact Statement. An Environmental Assessment and Finding of No Significant Impact have been prepared and are available at the address listed at the beginning of this rulemaking.

Authority: Presidential Proclamations No. 1733 (43 Stat. 1988), 2330 (53 Stat. 2534), and 4618 (43 FR 57053); Act of August 25, 1916 (39 Stat. 535, as amended, 16 U.S.C. 1 *et seq.*); 245 DM 1 (44 FR 23384); National Park Service Order 77 (38 FR 7478), as amended.

John F. Chapman,
Superintendent.

In consideration of the foregoing, § 7.23 of Title 36 of the Code of Federal Regulations is amended by the addition of paragraphs (e) and (f) as follows:

§ 7.23 Glacier Bay National Monument, Alaska.

* * * * *

(e) *Small Vessel Entry Restrictions.* (1) Entries into Glacier Bay during the whale season by all small vessels, except charter vessels and commercial fishing vessels, will be limited to a total of 339. (2) Entries into Glacier Bay during the whale season by charter vessels will be at 1976 levels. (3) No small vessel operator shall enter or remain in Glacier Bay National Monument without a valid permit issued by the Superintendent, or in the case of charter vessel operators without special use permit or concession contract. (4) Upon entering and leaving Glacier Bay, each small boat operator shall notify the designated Park Service official. (5) The Superintendent shall develop, announce, and implement a permit system which details (i) how permits can be obtained, (ii) who the operator must contact when entering and leaving Glacier Bay (iii) the average number of small vessel entries to be allowed each day during the whale season (iv) the maximum number of small vessels to be allowed in Glacier Bay at any one time during the whale season and (v) the allocation of entry

permits among concessionaire, charter and all other types of small vessels.

(f) *Commercial Fishing.* (1) No commercial or charter fishing operator will actively fish for, or retain if

Central Docket Section (10A–79–6), West Tower Lobby, Gallery I, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Deterioration (PSD) and standards for new source performance.

In this notice the problems interfering with SIP approval are discussed, comments from the State and the public

20372) as supplemented in the **Federal Register** on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182). These

III. Plan Review

As stated above, this section is divided into three major sub-sections. The first, "General Regulations," briefly describes the regulatory portions of the

a. *Source Applicability:* 18 AAC 50.300(a) excludes many sources with potential emissions equal to or greater than 100 tons per year. This must be changed to require NSR in accordance

permits among concessionaire, charter and all other types of small vessels.

(f) *Commercial Fishing.* (1) No commercial or charter fishing operator will actively fish for, or retain if incidentally caught, capeline *(Mallotus)*, sandlance *(Ammodytes)*, euphausids *(Thalassia)*, or shrimp *(Pandalidae)* within Glacier Bay. (2) These restrictions on fishing shall apply throughout the year but shall only apply to the waters inside the mouth of Glacier Bay.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL 1710-8]

Alaska; Approval and Promulgation of Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this notice is to indicate final action on the transportation control plan portion of the Alaska State Implementation Plan (SIP) dealing with Part D (Plan Requirements for Nonattainment Areas) of the Clean Air Act (hereafter referred to as Act) as amended in 1977 (42 U.S.C. 1857 et seq.). EPA is conditionally approving the transportation control plan (TCP) portions of the Anchorage and Fairbanks carbon monoxide (CO) attainment strategies and is taking no action on the portions of the SIP addressing Part D New Source Review, Section 110 Preconstruction Review, Section 111 Standards for a New Source Performance and Part C Prevention of Significant Deterioration. Action on these other than Part D nonattainment SIP's will be taken at a later date and will incorporate the new EPA requirements promulgated August 7, 1980 as a result of *Alabama Power* v. *Costle*. In accordance with conditional approvals, the State of Alaska is required to submit to EPA additional materials to satisfy the conditions no later than 120 days after publication of this final rulemaking.

EFFECTIVE DATE: December 30, 1980.

ADDRESSES: Copies of the related material for this revision may be examined during normal business hours at the following locations:

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408

Central Docket Section (10A-79-6), West Tower Lobby, Gallery I, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Air Programs Branch, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101

FOR FURTHER INFORMATION CONTACT: Richard R. Thiel, P.E., Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101; Telephone No. (206) 442-1226; FTS 399-1226.

SUPPLEMENTARY INFORMATION:

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I. Introduction

EPA finds that good cause exists for making the action taken in this notice immediately effective for the following reasons: (1) Implementation plan revisions are already in effect under State law and EPA approval poses no additional regulatory burden, and (2) EPA has a responsibility under the Clean Air Act to take final action on the portion of the SIP which addresses Part D regulations by July 1, 1979 or as soon thereafter as possible.

On September 16, 1980 the Environmental Protection Agency published in the **Federal Register** a notice of proposed rulemaking (45 FR 61319) which described the nature of the SIP revision, discussed certain provisions which, in the opinion of EPA, did not comply with the Act, and requested public comment.

As discussed in greater detail below, EPA has reviewed public comments received on the September 16, 1980 **Federal Register** proposal and is taking the following action:

1. Conditional Approval

(a) Anchorage CO nonattainment area TCP.

(b) Fairbanks CO nonattainment area TCP.

2. No Final Action

(a) Title 18 Alaska Annotated Code Chapter 50 (18 AAC 50)—provisions for New Source Review (NSR) in nonattainment areas, preconstruction review, Prevention of Significant Deterioration (PSD) and standards for new source performance.

In this notice the problems interfering with SIP approval are discussed, comments from the State and the public are presented, and EPA's responses to comments on its proposal are presented. In addition, the notice describes final action with regard to conditional approval of the Alaska SIP. It should be noted that only the requirements pertaining to Part D of the Act are discussed.

Following this introduction, the information in this notice is divided into three sections entitled, "Background," "Plan Review" and "SIP Requirements for Conditional Approval." The first section outlines the background leading to the development of the Alaska SIP in relation to the Clean Air Act Amendments of 1977. The "Plan Review" portion is divided into three major sub-sections. The first, "General Regulations," discusses regulatory portions of the plan applicable to more than one nonattainment area; e.g., New Source Review. The second sub-section, "Nonattainment Area Plans," provides a description of each Part D nonattainment plan element for (CO). Deficiencies, together with appropriate corrective actions, which were proposed earlier, are summarized at the end of each topical discussion section.

Further public comments pertaining to those deficiencies, proposed corrective actions and other concerns regarding the SIP are then summarized along with EPA's responses. Following the public comment section, final EPA action is then described for each deficiency noted as well as EPA final action regarding other major elements of the SIP.

The third sub-section contains a discussion of other pertinent comments of a general nature, which apply to this action but were not in response to identified deficiencies.

II. Background

On March 3, 1978 (43 FR 8962), and September 11, 1978 (43 FR 40435), pursuant to the requirements of Section 107 of the Act, EPA designated certain areas of the State of Alaska as not attaining certain National Ambient Air Quality Standards (NAAQS). Part D of the Act requires States to revise their State Implementation Plans (SIP) for all areas that have not attained the NAAQS. The Alaska SIP revisions were developed and submitted to EPA to satisfy the requirements of the Act and are intended to update the present EPA approved SIP. The basic criteria for an approvable Part D SIP are summarized in a General Preamble published in the April 4, 1979, **Federal Register** (44 FR

20372) as supplemented in the **Federal Register** on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182). These criteria are incorporated by reference and will not be restated here. Additional guidance was published in the " EPA/DOT Transportation Planning guidelines" and the "Transportation SIP Checklist" and general requirements for all SIPs are found in EPA regulations in 40 CFR Part 51.

In accordance with Section 174 of the Act, primary responsibility for preparing carbon monoxide (CO) control plans was delegated by the Governor of Alaska to organizations of local elected officials. These designated organizations are the Municipality of Anchorage (MOA) for the Anchorage CO nonattainment area and the Fairbanks North Star Borough (FNSB) for the Fairbanks CO nonattainment area. As a result of these designations, a description of the responsibilities between the various State and local agencies involved in the planning process was developed. Designated lead agencies were responsible for transportation control plan development, while the State, in general, retained responsibility for stationary source control efforts.

The CO control strategies for Anchorage and Fairbanks were developed in early 1979. Public hearings were held on March 22, and April 5, 1979, in Fairbanks and Anchorage, respectively. These plans were then submitted to the Alaska Department of Environmental Conservation (ADEC). Additional public hearings were then held on the entire State SIP in Anchorage and Fairbanks on May 15 and 16, 1979, respectively. Just before these hearings, a draft SIP was submitted informally to EPA for comment. After the public hearings, this version of the SIP was finalized and submitted to EPA by the Governor on June 28, 1979.

On July 18, 1979 EPA submitted comments to the State covering all aspects of the SIP. The State revised the SIP and submitted a second version for comments on January 20, 1980. EPA's review comments were then discussed in-depth with the State on May 7 and 8, 1980. Agreement was reached on all the changes that were required to make the SIP approvable.

On September 16, 1980 EPA proposed action on the revised Alaska Part D TCPs for Anchorage and Fairbanks CO nonattainment areas.

III. Plan Review

As stated above, this section is divided into three major sub-sections. The first, "General Regulations," briefly describes the regulatory portions of the plan applicable to more than one nonattainment area; e.g., New Source Review, and discusses the deficiencies and specifically states which category of action EPA is proposing to take. The second sub-section, "Nonattainment Area Plans" discusses each area-pollutant-specific plan in terms of plan development, emission reduction required, control strategy proposed, deficiencies identified and corrective actions required, State response, public comments, and EPA's final action. The third "General Comments," contains a discussion of other pertinent comments on subjects not specifically defined as deficiencies in this action.

A. New Source Review (NSR)

Title 18 Alaska Annotated Code Chapter 50 (18 AAC 50) does not include provisions to satisfy the requirements of Section 172(b)(6) and 173 of the Act for major sources of CO in the Anchorage and Fairbanks nonattainment areas. Provisions must be added to ensure that (1) reasonable further progress (RFP) is achieved in attainment and maintenance of CO NAAQS; (2) no permit is granted to a source unless other sources in the State owned by the same company are in compliance with the Act; and (3) that lowest achievable emission rate (LAER) is required for emission control.

The State has prepared revisions to the regulation to correct this deficiency. The revised regulation was subject to public hearing on September 9 and 10, 1980 and is currently being revised based on comments received. Therefore, EPA is not taking action on Part D New Source Review at this time.

Until EPA takes final action to approve or conditionally approve the Part D CO attainment plans for the Anchorage and Fairbanks areas, which include new source review procedures submitted by the State, the ban on construction of new and modified major stationary sources of CO required by Section 110(a)(2)(I) of the Act, will remain in effect. These restrictions apply only in the designated nonattainment areas and only to new or modified major stationary sources. The restriction does not affect existing sources (unless they are being modified) or sources which applied for permits to construct before July 1, 1979.

Other deficiencies in 18 AAC 50 which affect the New Source Review (NSR) process are outlined below:

1. Deficiencies:

a. *Source Applicability:* 18 AAC 50.300(a) excludes many sources with potential emissions equal to or greater than 100 tons per year. This must be changed to require NSR in accordance with Section 302(j) of the Act, which defines major source as one which has the potential to emit 100 tons or more per year of any air pollutant.

b. *Potential emissions* or *potential to emit:* 18 AAC 50 contains no definition for either of these terms. This terminology must be defined in order to ensure that NSR provisions apply to all required sources.

c. *Emission standard* or *emission limitation:* 18 AAC 50 contains no definition for either of these terms. This terminology must be defined to ensure proper understanding of the underlying permit review criteria.

2. State Response: The State is correcting these deficiencies and others as a result of EPA regulations promulgated after the final court decision on *Alabama Power vs. Costle*, and will resubmit the regulations at a later date.

3. Public Comment: None.

4. EPA Action: *No Action.* As explained earlier, EPA will take final action on the NSR program at a later date when the Alaska regulations have been revised.

B. Nonattainment Area Plans

Alaska's two nonattainment areas, located in Achorage and Fairbanks, are both designated for carbon monoxide (CO). They will be discussed in terms of a brief description of the area, extensions requested, control measures proposed, any problems that would interfere with SIP approval, State actions to correct the problems, public comment and EPA's final action.

1. *Extension Requests:* Under Section 172(a)(2) of the Act, the State has described a need for an extension of the attainment date for CO for both the Anchorage and Fairbanks areas. This requires that the plans demonstrate the application of all reasonably available control measures (RACM), establish a program for determining costs and benefits of proposed facilities, and commit to expand public transportation. Attainment of the standard by 1987 in both areas will be defined upon completion of the alternatives analysis.

EPA approves extensions for the Anchorage and Fairbanks areas thus requiring an enforceable transportation control plan by July 1, 1982. EPA approves the CO SIP's conditioned upon the inclusion of provisions in each control strategy for cost benefit analyses as required by Section 172(b)(11)(A) of the Act. Further, EPA finds that the SIP's

reasonably available control measures

Act and in the EPA-DOT

result in attainment any faster than

contain adequate demonstrations of the application of RACM's and that commitments to expand public transportation are evident in the SIP and other planning documents. It should be noted that even though EPA's 200,000 population criterion exempts both cities from the inspection maintenance requirement, Anchorage and Fairbanks are each considering it as one of the alternatives for the 1982 SIP.

2. *Carbon Monoxide:*

a. *Anchorage:* i. *Background:* The Anchorage area consists of a large portion of the urbanized area which was defined based on air monitoring conducted in 1977 and 1978. The area is bounded by Elmendorf Air Force Base to the North, Muldoon Road and Lake Otis Parkway to the East, O'Malley Road to the South and Cook Inlet to the West.

The designated lead agency is the Municipality of Anchorage (MOA). The MOA worked with the Anchorage Air Pollution Control Program, the Alaska Department of Transportation (ADOT), the Federal Highway Administration (FHWA) and the Alaska Department of Environmental Conservation (ADEC) in developing the plan. Public participation was realized largely through the Citizens Delphi Panel and the Air Quality Citizens Advisory Committee. Public hearings on the Plan were held April 5 and May 15, 1979.

ii. *Emission Reduction Required:* For CO the maximum hotspot emission reduction required to achieve standards is 52 percent. At this time an attainment date for NAAQS will fall beween 1983 and 1987. It is apparent, though, that the Federal Motor Vehicle Emission Control Program (FMVECP) will only produce a 17 percent reduction by 1982 and a 35 percent reduction by 1987. Reductions attributable to other alternative measures are currently being determined using the latest mobile source emission factors. There is also an effort underway by EPA to determine the effectiveness of an inspection and maintenance program (I/M) as an alternative measure in cold weather climates.

iii. *Control Strategy:* Carbon monoxide is primarily a transportation-related pollutant. In Anchorage transportation sources contribute about 85 percent of the emissions with commercial, residential and industrial stationary sources of fuel generation contributing the remaining 15 percent.

In light of the dominant motor vehicle contribution to the CO nonattainment problem, the control strategy focuses on transportation measures. Typical reasonably available control measures are listed in Section 108(f)(1)(A) of the Act. It should be noted that measures designed to reduce vehicle emissions operate in one of three basic ways: (a) by reducing trips and miles traveled; i.e., improved mass transit, carpooling, etc., or (b) improving traffic speeds; i.e., improved traffic signalization, traffic flow improvements, parking restrictions, etc., or (c) by reducing the emissions from individual vehicles; i.e., an inspection and maintenance program and the FMVECP.

The overall strategy will be based on the results of the comprehensive analysis of the alternative transportation control measures outlined below:

(1) Selected Restrictions of Commercial and Other Vehicles [a]
(2) Pedestrian Facilities [b]
(3) Inspection and Maintenance Program [c]
(4) Vehicle Idling Controls [a]
(5) Fleet Vehicle Controls [b]
(6) Cold Start Strategies [b]
(7) Public Transit Improvements [a]
(8) Paratransit Improvements [a]
(9) Parking Management [a]
(10) Flex-Time and Staggered Work Hour Schedules [a]
(11) Indirect Source Review [b]
(12) Traffic Improvement—Capital Intensive [a]
(13) Traffic Improvements—Non-Capital Intensive [a]

[a] Currently implemented measure which will be expanded in scope.
[b] New measure.
[c] Voluntary measure which may become mandatory.

This analysis was due to be completed in April 1980, but has been delayed until December 1980 due to the revisions to the EPA mobile source emission factors. The 1982 strategy will contain sufficient measures from the above list to show attainment no later than December 31, 1987.

iv. *Deficiencies/Comments/EPA Action:* (1) *Deficiencies:* The CO TCP for the Anchorage area addresses all the requirements contained in Part D of the Act and in the EPA–DOT Transportation-Air Quality Guidelines Checklist except as described below. Accordingly, EPA approves the Anchorage TCP with the following conditions:

(a) The emissions inventory must be updated to include area sources and emissions associated with parking and idling activities.

(b) The population growth rates used to project CO emissions for 1982 and 1987 must be included in the SIP and shown to be consistent with Bureau of Economic Affairs (BEA) population projections or other more localized projections such as those used in water quality planning under Sections 201 and 208 of the Federal Clean Water Act.

(c) Provisions must be included for cost-benefit analysis as required by Section 172(b)(11)(A) of the Act.

(2) *State Response:* The State has agreed to adopt and submit the required changes.

(3) *Public Comment:* The Muncipality of Anchorage commented that information to correct the deficiencies was being developed.

(4) *EPA Action: Conditional Approval.* The action proposed by the State will correct the deficiencies.

b. *Fairbanks:* i. *Background:* The Fairbanks area consists of the major portion of the urbanized areas of Fairbanks and North Pole and Fort Wainwright military post.

The designated lead agency is the Fairbanks North Star Borough (FNSB). The FNSB worked with the Fairbanks/North Pole Metropolitan Air Quality Planning Organization and a technical advisory committee, which included representation from the City of Fairbanks, ADEC, ADOT, EPA Arctic Research Laboratory to develop the plan. Public participation was realized largely through a series of six public meetings and three public hearings prior to the June 29, 1979 submission of the SIP. A speakers bureau and a voluntary inspection and maintenance program were other means of informing the public and obtaining public input regarding the efforts underway to control CO emissions.

ii. *Emission Reduction Required:* The CO hotspot emission reduction required to achieve standards is 66 percent. At this time, an attainment date for NAAQS will fall between 1983 and 1987. It is apparent, though, that the reduction from the FMVECP will be offset in 1982 because of expected population growth. The FMVECP reduction expected for 1987 is 40 percent. Reductions attributable to alternate measures are currently being revised using the latest mobile source emission factors. In addition, there is an effort underway by EPA to determine the effectiveness of an inspection and maintenance program (I/M) as an alternative measure in cold weather climates.

iii. *Control Strategy:* In Fairbanks CO is primarily a transportation-related pollutant. CO from transportation sources contributes about 85 percent of the emissions with commercial, residential and industrial stationary sources of fuel generation contributing the remaining 15 percent.

In light of the dominant motor vehicle contribution to the CO nonattainment problem, the control strategy focuses on transportation measures. Typical reasonably available control measures are listed in Section 108(f)(1)(A) of the Act. It should be noted that measures designed to reduce vehicle emissions operate in one of three basic ways: (a) by reducing trips and miles traveled; i.e., improved mass transit, carpooling, etc., or (b) improving traffic speeds; i.e., improved traffic signalization, traffic flow improvements, parking restrictions, etc., or (c) by reducing the emissions from individual vehicles; i.e., an inspection and maintenance program and the FMVECP.

A preliminary analysis of all reasonably available control measures resulted in the selection of the measures outlined below:

(1) Implementation of a Transportation System Management Plan [b]
(2) Implementation of a Transit Plan [b]
(3) Implementation of a Parking Management Plan [a]
(4) Plug-in Regulations [a]
(5) Provision for Plug-ins in Parking Lots [a]
(6) Carpooling Program [a]
(7) Inspection and Maintenance Program [c]
(8) Auto-start Retrofit [b]
(9) Low Temperature Automobile Standard [b]
(10) Idling Controls [a]
(11) Gasohol [b]
(12) Restricted Delivery Hours. [b]

[a] Currently implemented measure which will be expanded in scope.
[b] New measure.
[c] Voluntary measure which may become mandatory.

A comprehensive analysis was due to be completed in January 1980, but was delayed until July 1980. A preliminary package is currently being reviewed by EPA.

The remaining measures listed below were excluded due to the extremely limited reduction attributable to each due to the magnitude of the CO problem in a small urban area (60,000 population) with cold temperature climate. These measures will be reconsidered if the analysis currently in progress does not show attainment by the end of 1987.

(1) Vehicle Free Zones
(2) Land Use Controls
(3) Gasoline Tax Changes
(4) Indirect Source Review
(5) Preferential High Occupancy Vehicle Lanes
(6) Changes in Work Schedules (Flex-Time)
(7) Ski Trails and Facilities
(8) Long Range Transit Improvements

iv. *Deficiencies/Comments/EPA Action:* The TCP portion of the CO SIP for the Fairbanks area addresses all the requirements contained in Part D of the Act and in the EPA–DOT Transportation-Air Quality Guidelines Checklist except as described below. Accordingly, EPA approves the Fairbanks TCP with the following conditions:

(1) Deficiencies: (a) The emissions inventory must be updated to include area sources and emissions associated with parking and idling activities.

(b) The population growth rates used to project CO emissions for 1982 and 1987 must be included in the SIP and shown to be consistent with Bureau of Economic Affairs (BEA) population projections or other more localized projections such as those used in water quality planning under Sections 201 and 208 of the Federal Clean Water Act.

(c) Procedures for carrying out an air quality consistency analysis program in order to retain eligibility for DOT and other Federal grants for highway improvement must be included in the SIP.

(d) Provisions must be added for a cost-benefit analysis as required by Section 172(b)(11)(A) of the Act.

(2) *State Response:* The State has agreed to adopt and submit the required changes.

(3) *Public Comment:* Comment was received from the Alaska office of the FHWA in regard to their purported agreement with Fairbanks to conduct air quality consistency analyses as required under Section 176(c) of the Act. According to the commenter, there is no agreement. However, the commenter felt that since Fairbanks has no Metropolitan Planning Organization (as designated by DOT) which would perform that required function in an officially recognized capacity, the procedure to conduct the analysis should be described in the SIP. EPA agreed and conditioned the approval accordingly.

(4) *EPA Action:* Conditional Approval: The agreement by the State to include in the SIP a procedure to describe the air quality consistency analysis will satisfy the condition.

C. National Comments

One commenter submitted extensive comments which were requested to be considered part of the record for each State plan. Although most of the issues raised are not relevant to provisions in Alaska's submission, EPA has placed its response to those comments in the Regional Office docket and in the Public Information Reference Unit in Washington, D.C., in relation to this action, the commenter questioned EPA's requirement for a demonstration that application of all reasonably available control measures (RACM) would not result in attainment any faster than application of less than all RACM. In EPA's view, the statutory deadline is that date by which attainment can be achieved as expediously as practicable. If application of all RACM results in attainment more expeditiously than application of less than all RACM, the statutory deadline is the earlier date. While there is no requirement to apply more RACM than is necessary for attainment, there is a requirement to apply controls which will ensure attainment as soon as possible. Consequently, the State must select the mix of control measures that will achieve the standards most expeditiously, as well as assure reasonable further progress.

The commenter also suggested that all RACM may not be "practicable." By definition, RACM are only those measures which are reasonable. If a measure is impracticable, it would not constitute a reasonable available control measure.

IV. Additional SIP Requirements

EPA is taking final action to conditionally approve certain elements of Alaska's plan. A discussion of conditional approval and its practical effect appears in a supplement to the General Preamble, 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53716 (September 17, 1979), and 44 FR 67182 (November 23, 1979). As proposed, the conditional approval requires the State to submit additional materials within 120 days of the effective date of this action. There will be no extensions of conditional approval deadlines which are being promulgated today. EPA will follow the procedures described below when determining whether the State has satisfied the conditions.

1. If the State submits the required additional documentation according to schedule, EPA will publish a notice in the **Federal Register** announcing receipt of the material. The notice of receipt will also announce that the conditional approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the State's submission to determine if the conditions are fully satisfied. After review is complete, a **Federal Register** notice will be published either approving or disapproving the State's action. If the action is disapproved, the funding limitations under Sections 176 and 316 of the Act may be imposed. Growth limitations under Section 110(a)(2)(I) will remain in effect until both stationary and mobile source portions of the plan are approved.

3. If the State fails to timely submit the required materials needed to meet a condition, EPA will publish a **Federal Register** notice shortly after the expiration of the time limit for

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(7) Revisions to the SIP including Part D nonattainment plans and

FOR FURTHER INFORMATION CONTACT:
Ms. Eileen M. Glen, 3AH11, Air Programs Branch, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Curtis Building, 10th

Dated: December 11, 1980.

Jack J. Schramm,
Regional Administrator.

Part 52 of Title 40, Code of Federal Regulations, is corrected to read as

(Special Provisions), § 4.02(a), (a)(1), (a)(2), (b), (c), and (d) (Formerly § 2.04) and § 4.03; and Part VII (Air Pollution Episode), §§ 7.04 (a), (b), (d), and (e) submitted on October 20, 1976 by the

3. If the State fails to timely submit the required materials needed to meet a condition, EPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved and funding limitations under Section 176 and 316 may be imposed. Section 110(a)(2)(I) restrictions on growth will continue to be in effect.

If funding limitations are necessary, procedures for applying them would be consistent with those published in the **Federal Register** on April 10, 1980 (45 FR 24692). These procedures will not be discussed in detail here.

Section 316 of the Act also allows the Administrator of the EPA of withhold, condition or restrict grants for the construction of sewage treatment works in nonattainment areas where the State is not making reasonable further progress towards attainment of all NAAQS.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Under Section 307(b)(1) of the Clean Air Act, judicial review of EPA's final action conditionally approving the transportation control plan portions of the Anchorage and Fairbanks CO nonattainment strategies is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(Secs. 110(a) and 172 of the Clean Air Act as amended (42 U.S.C. 7410(a) and 7502))

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Alaska was approved by the Director of the Federal Register on July 1, 1980.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows.

Subpart C—Alaska

1. In § 52.70, paragraphs (c)(7) and (8) are added as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(7) Revisions to the SIP including Part D nonattainment plans and modifications to Title 18 Chapter 50 Alaska Annotated Code to provide for Part C Prevention of Significant Deterioration (PSD) Section 111 New Source Performance Standards (NSPS) and Section 110(a)(2)(D) (Preconstruction Review) were submitted June 29, 1979.

(8) Revisions to the June 29, 1979 submission to further modify 18AAC 50 and to include Part D New Source Review (NSR).

2. Section 52.71 is amended by changing the hearing "photochemical oxidants (hydrocarbons)" to "ozone." Also, in the Table the listing for Cook Inlet Intrastate carbon monoxide, "III" is changed to "I."

§ 52.71 [Amended]

3. In § 52.76 paragraph (a) is removed and new paragraphs (a) and (b) are added as follows:

§ 52.76 Control strategy: Carbon monoxide.

(a) The transportation control plan portion of the Anchorage carbon monoxide attainment plan required under Part D of the Clean Air Act is approved conditioned upon receipt within 120 days of the effective date of this action of information to satisfy the following conditions:

(1) Update emission inventory to including parking and idling emissions.

(2) Show that population projections are consistent with Bureau of Economic Affairs (BEA) population projections or other more localized projections, such as those used in water quality planning under Sections 201 and 208 of the Federal Clean Water Act.

(3) Add provisions for a cost-benefit analysis required by Section 172(b)(11)(A) of the Act.

(b) The transportation control plan portion of the Fairbanks carbon monoxide attainment plan required under Part D of the Clean Air Act is approved conditioned upon the receipt within 120 days of the effective date of this action of information to satisfy the following conditions:

(1) Update the emission inventory to include parking and idling emissions.

(2) Show that population projections are consistent with Bureau of Economic Affairs (BEA) population projections or other more localized projections such as those used for water quality planning under Sections 201 and 208 of the Federal Clean Water Act.

(3) Add procedures for carrying out an air quality consistency analysis for transportation projects in the nonattainment area.

(4) Add provisions for a cost-benefit analysis required by Section 172(b)(11)(A) of the Act.

Until EPA takes final action to approve the Part D carbon monoxide attainment plan for the Anchorage and Fairbanks areas which includes the new source review procedures submitted by the State, the ban on construction of new and modified major stationary sources required by Section 110(a)(2)(I) of the Clean Air Act as amended, will remain in effect.

§ 52.71 Classification of regions [Amended]

4. Section 52.71 is amended by changing the Table for Cook Inlet Intrastate carbon monoxide form the letter "d" to "e" and by replacing the date "May 31, 1977" for the Northern Alaska Intrastate with the letter "e". The following footnote is then added; "e. December 31, 1987." Also, the heading is changed on the Table from "Photochemical Oxidants (hydrocarbons)" to "Ozone."

§ 52.81 Attainment dates for national standards [Amended]

5. In Section 52.81, paragraph (c) is added as follows:

§ 52.81 Extensions

* * * * *

(b) * * *

(c) The Administrator hereby extends the attainment date for carbon monoxide in the Anchorage and Fairbanks nonattainment areas to December 31, 1987.

[FR Doc. 80-40222 Filed 12-29-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 52

[A-3-FRL 1714-1]

Virginia State Implementation Plan; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correction of final rulemaking.

SUMMARY: This Notice corrects several errors in the codification of several revisions to the Virginia State Implementation Plan. On August 19, 1980 (45 FR 55180) and October 8, 1980 (45 FR 66789 and 66792), EPA published final approval and disapproval actions regarding changes to the Virginia SIP. Since that time, we have become aware of several errors in the CFR codification.

EFFECTIVE DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT:
Ms. Eileen M. Glen, 3AH11, Air Programs Branch, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Curtis Building, 10th Floor, Philadelphia, Pennsylvania 19106, (215) 597-8187.

SUPPLEMENTARY INFORMATION:
Amendments to § 52.2420 (Identification of Plan) of 40 CFR, Subpart VV (Virginia) which appeared in the **Federal Register** on August 19, 1980, 45 FR 55180, omitted two amendments because they were inadvertently listed under 40 CFR 52.2423 (Approval Status). Because of this omission, subsequent publications on October 8, 1980 (45 FR 66789 and 66792) erroneously listed amendments under paragraphs (c) (29) thru (36) of § 52.2420. Therefore, to avoid any confusion we are now reprinting § 52.2420 (c) (27) thru (37) as it should now appear. Paragraphs (c)(1) thru (c)(26) of 40 CFR 52.2420 remain unchanged.

In addition, amendments to 40 CFR 52.2423 (Approval Status) published on August 19, 1980 at 45 FR 55180 were inadvertently listed under § 52.2423 (d) and (f) rather than under § 52.2420(c) (28) and (29).

An amendment to 40 CFR 52.2436 was also incorrect in that it was listed here as (b) rather than in 40 CFR 52.2423(e).

Because of the above errors, 40 CFR 52.2423 (Approval Status) must also be renumbered.

On August 19, 1980, an amendment to 40 CFR 52.2431 (Control Strategy: Carbon Monoxide and Ozone) was published and inadvertently listed the revision under § 52.2431 (d) rather than (e).

This Notice serves to correct all of the above errors and since it does not alter previously approved revisions, only the codification of said revisions, EPA finds that a notice and comment period are unnecessary. See 5 U.S.C. 552(b)(A)(B). Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and, therefore, subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. 7401-7642)

Dated: December 11, 1980.

Jack J. Schramm,

Regional Administrator.

Part 52 of Title 40, Code of Federal Regulations, is corrected to read as follows:

Subpart VV—Virginia

1. In § 52.2420, the previous additions to paragraph (c) are correctly renumbered as (c) (27) through (37) and republished as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(27) On January 11, 1979, the Governor submitted the nonattainment area plans for Virginia with respect to ozone and carbon monoxide.

(28) The following portions of Virginia's September 6, September 21, and December 17, 1979, submittals are approved:

(1) September 6, 1979, submittal: Section 2.33(g)(1)(vi) of the regulation.

(2) September 21, 1979, submittal, the following Sections of Virginia's regulations: Section 4.57(b)(2)(ii); 4.55(f)(4)(i); 4.56(e); 4.52(a); 2.03(a)(1); 2.33(f)(3); Part I of the regulations, the definitions of "Delayed Compliance Order" and "Nonattainment Area;" Sections 4.02(f)(1) through 4.02(f)(5); Appendix N; and those portions of Sections 4.54, 4.55 and 4.56 where the phrase "will be considered acceptable compliance by the Board" has been modified.

(3) December 17, 1979, submittal: Chapter 3, Control Strategy Demonstration, design value for Northern Virginia.

(29) The following portions of Virginia's August 14, 1975, August 31, 1977, and January 11, 1979, submittals as they relate to Section 2.33 are approved:

(1) August 14, 1975, submittal: Section 2.33 (b) and (i).

(2) August 31, 1977, submittal: Section 2.33(h).

(3) January 11, 1979, submittal: Section 2.33 (a), (c), (d), (e), (f), (g) and (k).

(30) Amendments of Part I (Definitions), §1.02; Part II (General Provisions). Sections 2.02 (a), (c), and (e) (former §2.11 (a), (b), and (d)), § 2.05(b), § 2.11; and Part IV (Regulations for Existing sources), §§ 4.10, 4.11, and 4.13 deletion of the following regulations from Part IV: Former §§ 4.03.02, 4.05.03, 4.05.04, 4.05.05(b), 4.10.03, 4.705.04, and 4.705.05 submitted on August 14, 1975 by the Secretary of Commerce and Resources.

(31) Amendments on Part I (Definitions), § 1.02; Part III (Ambient Air Quality Standards), § 3.02(c); Part IV (Special Provisions), § 4.02(a), (a)(1), (a)(2), (b), (c), and (d) (Formerly § 2.04) and § 4.03; and Part VII (Air Pollution Episode), §§ 7.04 (a), (b), (d), and (e) submitted on October 20, 1976 by the Secretary of Commerce and Resources.

(32) Amendments of Part II, (General Provisions), § 2.02(b) submitted on March 11, 1977, by the Secretary of Commerce and Resources.

(33) Amendments on Part II, (General Provisions), § 2.02(d) submitted on September 20, 1978, by the Secretary of Commerce and Resources.

(34) Amendments to Part II (General Provisions), § 2.06 (b) and (c); and Part VII (Air Pollution Episode), § 7.03(d); and deletion of Part IV (Existing Sources), Rule EX-7, § 4.07.05 submitted on August 14, 1975, by the Secretary of Commerce and Resources.

(35) Amendments to Part I (Definitions), § 1.02; Part II (General Provisions), § 2.06 (a) and (d); Part III (Ambient Air Quality Standards), § 3.02 (a) and (b); Part IV (Existing Sources), §§ 4.20, 4.21, 4.23 (formerly § 4.41), 4.25, 4.26, 4.27, and 4.51(a); Part VII (Air Pollution Episode), former § 4.51 (b) through (g) are changed to § 4.51 (c) through (h). Section 7.01(b) and 7.02 (a), (b), and (d); and Appendix A; and, deletion of former §§ 4.20, 4.21, and 4.22 submitted on September 20, 1978 by the Secretary of Commerce and Resources.

(36) Amendments to Part VII (Air Pollution Episode), §§ 7.03 (c) and (e) and 7.04(c); and deletion of Part II (General Provisions), § 2.04(a)(2) as submitted on March 11, 1977 by the Secretary of Commerce and Resources.

(37) Amendments to Part I (Definitions), § 1.02; Part IV (Existing Sources), Rule EX-2, § 4.22; and Part VII (Air Pollution Episode), § 7.03 (a) and (b) as submitted on September 21, 1979 by the Secretary of Commerce and Resources.

2. Section 52.2423 is corrected by revising paragraphs (c) through (f) to read as follows:

§ 52.2423 Approval status.

* * * * *

(c) With the exceptions set forth in this subpart, the Administrator approves Virginia's plan for the attainment and maintenance of national standards under Section 110 of the Clean Air Act. Furthermore, the Administrator finds that the plan satisfies all requirements of Part D, Title I, of the Clean Air Act as amended in 1977, except as noted below in § 52.2431. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal, by each subsequent January following January 1980, of additional RACT

requirements for sources covered by CTGs issued by the previous January.

(d) The portion of the January 11, 1979 SIP submittal pertaining to Smyth County is not approved, pending a

retesting of vehicles initially failing the annual emissions test, along with a commitment to prohibit registration or provide some equally effective mechanism to prevent vehicles not

requirements (beyond those required prior to November 3, 1980) are stayed pending clearance by the Office of Management and Budget (OMB) under the Federal Reports Act and until further

which have heretofore not been subject to minority utilization goals, and (b) on nonfederal construction work performed in geographic areas which have heretofore been subject to minority utilization goals but in which the

Date: December 19, 1980.

Ray Marshall,

Secretary of Labor.

Donald Elisburg,

Assistant Secretary, Employment Standards

the account of Federal executive agencies.

GSA received comments on the proposal from 18 sources—12 Federal agencies (Department of Agriculture, Department of Energy, Department of

requirements for sources covered by CTGs issued by the previous January.

(d) The portion of the January 11, 1979 SIP submittal pertaining to Smyth County is not approved, pending a possible redesignation of the area to attainment status.

(e) The requirements of § 51.22 are not met with respect to § 4.55(b) of the Virginia regulations, because the regulation is not adequately enforceable. Therefore, § 4.55(b) is disapproved.

(f) Section 4.02(a)(3) of Part IV of the Virginia Regulations for the Control and Abatement of Air Pollution is not considered part of the Applicable plan because it contradicts a previously approved section of the SIP.

3. Section 52.2431 is corrected by adding paragraph (e) to read as set forth below. At 45 FR 55196, August 19, 1980, this addition was erroneously codified as (d).

§ 52.2431 Control strategy: Carbon monoxide and ozone.

* * * * *

(e) The nonattainment plan for Carbon Monoxide and Ozone is approved provided that the following conditions are satisfied:

(1) *Margin for Growth.* A system for tracking emissions growth must be submitted.

(2) RACT as expeditiously as practicable. The following regulations contain RACT deficiencies that must be remedied:

(i) The emission limitation on automobile and light duty truck coating in § 4.55(e)(2).

(ii) The exemption from Stage I vapor controls for gasoline service stations with a throughput of less than 20,000 gallons per month, contained in § 4.56(d)(3)(ii) (for Richmond only).

(iii) The general exemption for sources of VOC emissions contained in § 4.54(a)(4)(i), as it applies to § 4.54(c) dealing with Solvent Metal Cleaning (For Richmond and Northern Virginia only).

(iv) The regulations covering cutback asphalt paving in § 4.57(b) must be remedied to correct two deficiencies: first, the maximum allowable solvent content of emulsified asphalt of 15% is not RACT; second, allowing the use of cutback asphalt as a tack coat is not allowed under RACT.

(3) *Inspection and Maintenance (I/M).* Adequate I/M legislation must be submitted. The SIP must include, as a minimum, a schedule for implementation of the I/M program and a clear commitment to implement and enforce the program and to reduce emissions by 25% by 1987. Specifically, the SIP should include a commitment to require retesting of vehicles initially failing the annual emissions test, along with a commitment to prohibit registration or provide some equally effective mechanism to prevent vehicles not complying with applicable emission requirements from operating on public roads.

(4) *Enforceability.* (i) Acceptable test methods and procedures for determining compliance with §§ 4.54, 4.55, 4.56 and 4.57 must be submitted.

(ii) An acceptable definition of "reasonable further progress" must be submitted.

(5) *Conformity and requirement.* Commitments must be adopted by each lead agency and Metropolitan Planning Organization (MPO) in the Northern Virginia, Richmond, Peninsula, and Southeastern Virginia areas that no project, program, or plan will be approved that does not conform with the SIP. These commitments must be adpoted by the designated lead agencies and MPOs, be endorsed by the State, and be submitted to EPA.

(6) *Carbon monoxide.* A "hot spot" analysis for Carbon Monoxide, as well as a line of reasonable further progress, must be submitted for the Carbon Monoxide nonattainment areas.

[FR Doc. 80-40343 Filed 12-24-80; 8:45 am]

BILLING CODE 6560-38-M

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Part 60-4

Construction Contractors, Affirmative Action Requirements

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Effective date of reporting requirements stayed and goals for female utilization extended.

SUMMARY: Final regulations were published in the **Federal Register** of October 3, 1980 (45 FR 65976), clarifying the requirement in 41 CFR 60-4.1 that a non-exempt construction contractor's total construction workforce is covered under 41 CFR Part 60-4 even though some of the contractor's employees perform work on non-Federal or nonfederally assisted construction contracts or subcontracts, and even though such nonfederally related work may occur in geographical areas where the contractor does not currently have work on Federal or federally assisted construction projects. While those regulations took effect on November 3, 1980 (45 FR 65976), increased reporting requirements (beyond those required prior to November 3, 1980) are stayed pending clearance by the Office of Management and Budget (OMB) under the Federal Reports Act and until further **Federal Register** notice.

In addition, pursuant to 41 CFR Part 60-4.6, the goal for female utilization by Federal and federally assisted construction contractors, which is now 6.9%, is extended until further notice.

EFFECTIVE DATE: Both the stay of the reporting requirements and the extension of the goals for female utilization is effective December 30, 1980 and until further notice.

FOR FURTHER INFORMATION CONTACT: James Cisco, Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, room C-3324, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone (202) 523-9426.

SUPPLEMENTARY INFORMATION:

(1) Reporting Requirements

On October 3, 1980, the Office of Federal Contract Compliance Programs (OFCCP) published in the **Federal Register** a final rule clarifying the requirement in 41 CFR Part 60-4.1 that a non-exempt construction contractor's total construction workforce is covered under 41 CFR Part 60-4 even though some of the contractor's employees perform work on non-Federal or nonfederally assisted construction contracts or subcontracts, and even though such nonfederally related job work may occur in geographical areas where the contractor does not currently have work on Federal or federally assisted construction projects (45 FR 65976). Published on the same date was a final Notice pursuant to 41 CFR Part 60-4.6 establishing goals under Executive Order 11246, as amended, for minorities working on construction projects located in certain areas (45 FR 65979). Both the final rule and the minority goals are scheduled to become effective on November 3, 1980 (45 FR 65976, 65984).

It has come to the attention of the OFCCP that the final rule (45 FR 65976) and new minority goals (45 FR 65979) may involve the imposition of new reporting requirements which are subject to clearance by the Office of Management and Budget (OMB) pursuant to its authority under the Federal Reports Act.

Specifically, contractors will be required to submit Monthly Employment Utilization Reports (Form CC-257) showing minority utilization (a) on Federal and nonfederal construction work performed in geographic areas which have heretofore not been subject to minority utilization goals, and (b) on nonfederal construction work performed in geographic areas which have heretofore been subject to minority utilization goals but in which the contractor performs no Federal or federally assisted construction work. Under existing OFCCP practice, construction contractors have generally been submitting Forms CC-257 showing minority utilization only for construction work performed in geographic areas in which they hold Federal or federally assisted construction contracts and in which there has been a minority goal applicable.

In addition, contractors will be required to submit Forms CC-257 showing female utilization on construction work performed in geographic areas in which the contractor performs no Federal or federally assisted construction work. Since the female utilization goals took effect in May 1978, it has been OFCCP's intent that such reporting occur. However, OFCCP's experience has shown that there is confusion in this area. Therefore, for present purposes, OFCCP will treat this as a potential new reporting requirement.

Accordingly, the potential increased reporting burdens, as outlined above, are stayed pending clearance by OMB and further notice to be published in the **Federal Register**. However, all other requirements published on October 3, 1980 (i.e., the applicability of 41 CFR Part 60-4 to a nonexempt construction contractor's total workforce, and goals for minorities working on construction projects in certain areas) shall, as scheduled, take effect on November 3, 1980.

(2) Goals for Women

OFCCP regulations at 41 CFR 60-4.6 provide, *inter alia*, as follows:

> The director, from time to time, shall issue goals and timetables for minority and female utilization * * * which shall cover construction projects, or construction contracts performed in specific geographical areas. The goals * * * shall be published as notices in the **Federal Register** * * *.

Goals for the utilization of women by Federal and federally assisted construction contractors were last published on April 7, 1978 (43 FR 14888, 14900). The April 7, 1978, publication included a 6.9% goal for the period from April 1, 1980, until March 31, 1981. Pursuant to 41 CFR 60-4.6, the 6.9% goal for female utilization is extended until further notice.

Date: December 19, 1980.

Ray Marshall,

Secretary of Labor.

Donald Elisburg,

Assistant Secretary, Employment Standards Administration.

Weldon J. Rougeau,

Director, Office of Federal Contract Compliance Programs.

[FR Doc. 80-40219 Filed 12-29-80; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Services

41 CFR Part 101-40

[FPMR Amendment G-49]

Transportation and Traffic Management Policies and Procedures

AGENCY: Transportation and Public Utilities Service, General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is changing its policies and procedures in the area of transportation and traffic management. This rule establishes traffic management regulations pertaining to shipments of household goods and personal effects and defines disqualification measures which may be imposed upon carriers which fail to meet the transportation needs and requirements of executive agencies. Further, in exercise of its mandate as traffic manager of executive agencies, GSA prescribes parameters by which agencies are required to obtain rate and/or routing information from specified GSA regional Transportation and Travel Management Divisions. Part 101-40 is amended to achieve a more efficient traffic management program in meeting the transportation needs and requirements of executive agencies.

EFFECTIVE DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT: Joseph M. Napoli, Traffic Programs Branch, Transportation and Public Utilities Service, General Services Administration (TTMP), Washington, DC 20406 (202-275-0654).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 15, 1979 (44 FR 59247), GSA proposed to amend Part 101-40 by revising existing policies and procedures relative to transportation and traffic management and by adding new procedures providing for temporary exclusion of carriers participating in passenger or freight transportation for the account of Federal executive agencies.

GSA received comments on the proposal from 18 sources—12 Federal agencies (Department of Agriculture, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of Justice, Department of Transportation, Department of the Treasury, Environmental Protection Agency, Federal Emergency Management Agency, National Aeronautics and Space Administration, U.S. General Accounting Office, and Veterans Administration); 3 carrier associations (Association of American Railroads; American Trucking Associations, Inc.; and Air Transport Association of America); 2 railroad companies (Boston and Maine Corporation, and St. Louis-San Francisco Railway Company); and 1 motor carrier (American Freight System, Inc.).

The following is a summary of the major comments received and the response GSA has made in addressing them:

1. Five agencies suggested that exemption from the requirements of § 101-40.301(a) be given for exigencies arising from national disasters, national defense, critical aerospace activity, firefighting emergencies, and isolated areas involved in shipping or receiving household goods.

GSA finds these exigencies appropriate for relief, and exceptions have been stated in this rule.

2. Carriers, in general, took issue with the routing factor "most fuel efficient carrier or mode." These opinions seemed weighted by the subjective interest of the particular carrier or mode. The energy crisis obligates GSA to weight fuel efficiency in proper balance with service, cost and socioeconomic factors. Reliance is placed upon the traffic manager to become sufficiently knowledgeable of a carrier's operating practices and thus enable the manager to identify the most fuel efficient carrier or mode.

3. The carrier industry requested clarification of the conditions which would justify the use of Government-owned equipment.

In deleting the phrase "and when their use will result in substantial economies," GSA accentuates the use of commercial carriers except in cases when suitable common carriage does not exist to meet the Government's service needs or where the use of Government-owned equipment provides the most economical and efficient complement to commercial carriage.

4. The Department of Agriculture suggested that GSA develop courses in managerial aspects of transportation in addition to operational-type training.

GSA will give this suggestion future

101-40.110 Assistance to economically disadvantaged transportation businesses.
101-40.110-1 Small business enterprises.
101-40.110-2 Minority business enterprises.

Subparts 101-40.5—101-40.6—[Reserved]

Subpart 101-40.49 Forms, Formats, and Agreements

101-40.4906-1 GSA Form 420, Freight Rate and Route Request/Response

10007, FTS 264-1286, COML 212-264-1286; New Jersey, New York, Puerto Rico, Virgin Islands.
Region 3, General Services Administration (3TT), 9th & Market Streets, Philadelphia, PA 19107, FTS 597-1247, COML 215-597-

(See also § 101-40.305-1.) Agencies shall submit their requests and recommendations for these actions to the appropriate GSA office specified in § 101-40.101-1.

§ 101-40.105 Use of Government-owned transportation equipment.

Generally, the preferred method of transporting property for the Government is through use of the

4. The Department of Agriculture suggested that GSA develop courses in managerial aspects of transportation in addition to operational-type training.

GSA will give this suggestion future consideration.

5. In establishing criteria for temporary nonuse, disqualification and suspension of carriers, GSA affected appropriate revisions affording carriers due process.

The addition of Subpart 101–40.2 supersedes FPMR Temporary Regulation A–12, dated January 26, 1978 (43 FR 5436, February 8, 1978) and its Supplement 2 (44 FR 37929, June 29, 1979), which are deleted and removed from the appendix at the end of Subchapter G in 41 CFR Chapter 101. The temporary regulation established procedures for a centralized household goods traffic management program by which GSA provides executive agencies with carrier selections and routings for domestic moves based on cost comparisons.

Sections 101–40.4906–1, 101–40.4906–2, 101–40.4906–3, 101–40.4906–4, are revised to illustrate the current editions of GSA Form 420 (Rev. 9–76), Optional Form 280 (3–80), Standard Form 361 (Rev. 11–79] and the Guidelines for Preparation of Standard Form 361, respectively. Sections 101–40.4906–8 and 101–40.4906–9 are added to illustrate GSA Form 2485 (Rev. 8–80) and GSA Form 3080 (Rev. 8–80), respectively.

The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or an individuals and, therefore, is not significant for the purposes of Executive Order 12044.

Accordingly, Part 101–40 is amended as follows:

1. The table of contents for Part 101–40 is amended by revising, adding, reserving, or deleting the following entries:

PART 101–40—TRANSPORTATION AND TRAFFIC MANAGEMENT

Subpart 101–40.1—General Provisions

Sec.

101–40.101–1 Freight and passenger transportation management assistance.
101–40.101–2 GSA transportation and traffic management liaison.
101–40.103–2 International transportation.
101–40.105 Use of Government-owned transportation equipment.
101–40.108 Transportation seminars and workshops.
101–40.109 Availability of transportation-related contracts and agreements.
101–40.109–1 Miscellaneous transportation-related contracts and agreements.
101–40.109–3 Mandatory use of transportation-related contracts and agreements.
101–40.110 Assistance to economically disadvantaged transportation businesses.
101–40.110–1 Small business enterprises.
101–40.110–2 Minority business enterprises.
101–40.113 Employees travel and relocation allowances.

Subpart 101–40.2—Centralized Household Goods Traffic Management

101–40.200 Scope of subpart.
101–40.201 Applicability.
101–40.202 The General Services Administration, Household Goods. Tender of Service (TOS) agreement.
101–40.203 Household goods movement evaluation procedures.
101–40.203–1 Household goods rate tenders.
101–40.203–2 The actual expense method.
101–40.203–3 The commuted rate system.
101–40.203–4 Cost comparisons.
101–40.204 Carrier selection and distribution of shipments.
101–40.205 Quality control.
101–40.206 Household goods carriers' liability.
101–40.207 Household goods loss and damage claims.
101–40.208 Disqualification or suspension of household goods carriers.

Subpart 101–40.3—Rates, Routes, and Services

101–40.301 GSA rate and routing services.
101–40.303 Application of the standard routing principle.
101–40.303–3 Most fuel efficient carrier mode.
101–40.303–4 Equitable distribution of traffic among carriers.
101–40.305 Transportation negotiations.
101–40.305–2 Cost analysis required on substantial movements.
101–40.305–4 [Deleted]
101–40.305–5 [Deleted]
101–40.306–1 Recommended rate tender format.
101–40.306–2 Required shipping documents and annotations.
101–40.307 [Deleted]
101–40.307–1 [Deleted]
101–40.307–2 [Deleted]

Subpart 101–40.4—Temporary Nonuse, Disqualification and Suspension of Carriers

101–40.400 Scope of subpart.
101–40.401 General.
101–40.402 Temporary nonuse of carriers.
101–40.402–1 Agency responsibility.
101–40.403 Administrative disqualification of carriers.
101–40.403–1 Causes and conditions for disqualification.
101–40.403–2 Disqualification procedures.
101–40.404 Suspension of carriers.
101–40.404–1 Causes and conditions for suspension.
101–40.404–2 Period of suspension.
101–40.404–3 Restrictions during period of suspension.
101–40.404–4 Notice of suspension.
101–40.404–5 Review of suspension.

Subparts 101–40.5—101–40.6—[Reserved]

Subpart 101–40.49 Forms, Formats, and Agreements

101–40.4906–1 GSA Form 420, Freight Rate and Route Request/Response.
101–40.4906–2 Optional Form 280, Uniform Tender of Rates and/or Charges for Transportation Charges.
101–40.4906–8 GSA Form 2485, Cost Comparison for Shipping Household Goods (Commuted Rate System vs. Actual Expense Method).
101–40.4906–9 GSA Form 3080, Household Goods Shipment Report.

2. Section 101–40.000 is revised to read as follows:

§ 101–40.000 Scope of part.

This part prescribes regulations that apply to the freight and passenger transportation and traffic management activities of executive agencies except the Department of Defense. It also covers arrangements for transportation and related services by bill of lading type commitments. These regulations are designed to ensure that all transportation and traffic management activities will be carried out on the basis most advantageous to the Government in terms of economy, efficiency, and service.

3. Subpart 101–40.1 is revised to read as follows:

Subpart 101–40.1—General Provisions

§ 101–40.101 Transporation Assistance.

§ 101–40.101–1 Freight and passenger transportation management assistance.

(a) Executive agencies of the United States shall request assistance from the Department of State on shipments of household goods moving to, from and between foreign countries. The administrative support provided by the Department of State will include carrier cost comparison, carrier selections and quality control assistance.

(b) Executive agencies of the United States without transportation officers or those in need of assistance concerning freight (except shipments of household goods moving to, from and between foreign countries) and passenger transportation management matters shall request assistance from the Transportation and Public Utilities Service (TPUS), General Services Administration, Regional offices having jurisdiction over shipments originating in the following areas:

Region 1, General Services Administration (1TT), J. W. McCormack, P.O. and Court House (Room 820), Boston, MA 02019, FTS 223–2735; COML 617–223–2735; Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Region 2, General Services Administration (2TT), 26 Federal Plaza, New York, NY 10007, FTS 264–1286, COML 212–264–1286; New Jersey, New York, Puerto Rico, Virgin Islands.

Region 3, General Services Administration (3TT), 9th & Market Streets, Philadelphia, PA 19107, FTS 597–1247, COML 215–597–1247, Delaware, Maryland (except Prince Georges and Montgomery counties), Pennsylvania, Virginia (except Prince William, Loudoun, Fairfax, and Arlington counties).

Region 4, General Services Administration (4TT), 75 Spring Street, SW., Atlanta, GA 30303, FTS 242–5121, COML 404–221–5121; Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Region 5, General Services Administration (5TT), 230 S. Dearborn Street, Chicago, IL 60604, FTS 353–0818, COML 312–353–0818; Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Region 6, General Services Administration (6TT), 1500 E. Bannister Road, Kansas City, MO 64131, FTS 258–3841, COML 816–258–3841; Iowa, Kansas, Missouri, Nebraska.

Region 7, General Services Administration (7TT), 819 Taylor Street, Fort Worth, TX 76102, FTS 334–2733, COML 817–334–2733; Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Region 8, General Services Administration (8TT), Building 41, Denver Federal Center, Denver, CO 80225, FTS 234–2626, COML 303–234–2626; Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Region 9, General Services Administration (9TT), 525 Market Street (MS 42), San Francisco, CA 94105, FTS 556–3271, COML 415–556–3271; Arizona, California, Hawaii, Nevada.

Region 10, General Services Administration (10TT), GSA Center, Auburn, WA 98002, FTS 396–5411, COML 206–833–6500; Alaska, Idaho, Oregon, Washington.

National Capital Region, General Services Administration (WTT), 7th and D Streets SW., Washington, DC 20407, FTS 472–2003, COML 202–472–2003; Washington, DC, Maryland, (Prince Georges and Montgomery counties), Virginia (Prince William, Loudoun, Fairfax, and Arlington counties).

§ 101–40.101–2 GSA Transportation and traffic management liaison.

GSA will maintain a continuing transportation and traffic management liaison program with the executive agencies to assist in the establishment, improvement, and maintenance of effective freight and passenger transportation and traffic management policies, practices, and procedures to meet executive agency program requirements.

§ 101–40.102 Representation before regulatory bodies.

GSA, in behalf of executive agencies, will, as it considers appropriate, institute formal or informal action before Federal or State regulatory bodies with respect to carriers' tariffs, rates, and operating authority matters. (See also § 101–40.305–1.) Agencies shall submit their requests and recommendations for these actions to the appropriate GSA office specified in § 101–40.101–1.

§ 101–40.103 Selection of carriers.

§ 101–40.103–1 Domestic transportation.

Preferential treatment, normally, shall not be accorded to any commercial mode of transportation (motor, rail, air, or water) or to any particular commercial carrier when arranging for domestic transportation services. However, where for valid reasons, a particular mode of transportation or a particular carrier within that mode must be used to meet specific program requirements and/or limitations, only that mode or carrier shall be considered. Examples of valid reasons for considering only a particular mode or carrier are (a) where only a certain mode of transportation or individual carrier is able to provide the needed service or is able to meet the required delivery date; and (b) where the consignee's installation and related facilities preclude or are not conducive to service by all modes of transportation. (See also § 101.40.303–1.)

§ 101–40.103–2 International transportation.

(See § 1–1.323 of this title and 4 CFR 52.2 for a certificate required for nonuse of U.S.-flag vessels or U.S.-flag certificated air carriers.)

(a) *U.S.-flag ocean carriers.* Arrangements for international ocean transportation services shall be made in accordance with the provisions of section 901(b) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241 (b)), concerning the use of privately owned U.S.-flag vessels. (See also § 5A–19.108 of this title for implementing policies and procedures followed by the General Services Administration.)

(b) *U.S.-flag certificated air carriers.* Arrangements for international air transportation services shall be made in accordance with the provisions of section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, dated January 3, 1975 (49 U.S.C. 1517), which requires the use of U.S.-flag certificated air carriers for international travel of persons or property to the extent that service by these carriers is available.

§ 101–40.104 Insurance against transportation hazards.

The policy of the Government with respect to insurance of its property while in the possession of commercial carriers is set forth in § 1–19.107 of this title.

§ 101–40.105 Use of Government-owned transportation equipment.

Generally, the preferred method of transporting property for the Government is through use of the facilities and services of commercial carriers. However, under certain circumstances, Government vehicles may be used when they are available. They may be used for such purposes as local transfer of property, pickup or delivery services which are not performed by the commercial carriers in connection with the line-haul transportation, transportation of property to meet emergencies, and accomplishment of program objectives which cannot be attained through use of commercial carriers.

§ 101–40.106 Reports.

Each executive agency shall submit reports concerning its transportation procedures, practices, and operations to the Transportation and Public Utilities Service, General Services Administration (TT), Washington, DC 20406, whenever so requested or as prescribed in the individual sections of this subpart or as provided in each specific request.

§ 101–40.107 Surveys.

As necessary and after adequate advance notice to the agencies affected, or upon request of agencies, GSA will make onsite surveys of transportation activities and will make recommendations, when necessary, for changes in agencies' policies, standards, practices, and procedures to improve transportation concepts and operations at all levels.

§ 101–40.108 Transportation seminars and workshops.

GSA will, from time to time, conduct transportation seminars and workshops for the benefit of executive agency personnel assigned functions relating to the movement of persons or materials. The objective of this training is to broaden traffic management knowledge and experience within the agency and to economy of operations. Agencies desiring assistance should direct their request to the Assistant Commissioner, Office of Transportation and Travel Management (TT), Transportation and Public Utilities Service, General Services Administration, Washington, DC 20406.

§ 101–40.109 Availability of transportation-related contracts and agreements.

§ 101–40.109–1 Miscellaneous transportation-related contracts and agreements.

(a) The Transportation and Public

Note.—Arrangements for office relocations expected to cost less than $1,500 may be handled by the agency requiring the services.

(d) Whether an office relocation is made under a GSA term moving contract or under a specific contract

and contracts. Agencies shall encourage transportation-related minority enterprises regardless of the mode of transportation to identify themselves and provide services that will support the agencies' transportation

Household Goods. These regulations are incorporated by reference into Part 101–7. Amendments are made to these regulations from time to time as conditions warrant. Suggestions or questions concerning regulations

§ 101–40.203 Household goods movement evaluation procedures.

§ 101–40.203–1 Household goods rate tenders.

GSA will accept or reject household goods carriers' rate tenders (see § 101–

economical means of shipment and the employee chooses to move all or part of the household goods by some other means, reimbursement will be limited to the cost that would have been incurred by the Government if the shipment had

§ 101-40.109 Availability of transportation-related contracts and agreements.

§ 101-40.109-1 Miscellaneous transportation-related contracts and agreements.

(a) The Transportation and Public Utilities Service, General Services Administration, will, as considered necessary, enter into agreements or contracts for transportation and related services, including but not limited to stevedoring, passenger charters, storage, drayage, packing, marking, ocean freight forwarding, accessorial services, demurrage, and weighing. (See § 101-41.304-2 for the use of commercial forms and procedures instead of Government bills of lading.) These contracts and agreements will be made for and in behalf of all executive agencies.

(b) The availability of these contracts and agreements will be announced through GSA bulletins which will outline the specific contractual services and the terms of the agreements. After distribution of these bulletins, GSA will furnish copies of the contracts and agreements to agencies upon request.

§ 101-40.109-2 Office relocation contracts.

(a) In accordance with the provisions of Part 101-17, Assignment and Utilization of Space, prior approval is required from the Public Buildings Service, GSA, for agencies desiring to relocate office space which has been assigned by GSA.

(b) The Transportation and Public Utilities Service, GSA, offices specified in § 101-40.101-1 will enter into term contracts for office relocations, estimated to cost $5,000 or less, in cities where it is determined that these contracts are warranted. On single office moves exceeding $5,000, GSA will arrange to contract for the required moving services under competitive bidding procedures. The availability of term contracts for office relocations will be announced through GSA bulletins as indicated in § 101-40.109(b).

(c) In cities where term contracts are not available and where an executive agency anticipates an office relocation estimated to cost $1,500 or more, GSA will enter into, in behalf of the agency, a specific relocation contract or other appropriate relocation arrangement. As soon as possible before the move, preferably 90 calendar days, the appropriate GSA office specified in § 101-40.101-1 shall be contacted and furnished with pertinent information concerning the proposed relocation, such as the origin, destination, moving date, property to be moved, and the agency relocation coordinator.

Note.—Arrangements for office relocations expected to cost less than $1,500 may be handled by the agency requiring the services.

(d) Whether an office relocation is made under a GSA term moving contract or under a specific contract entered into by GSA in behalf of an individual agency, the agency being relocated shall make operational arrangements directly with the moving contractor. These arrangements shall include: (1) Issuing the purchase order or placing the work order; (2) arranging for direct billing; (3) supervising the actual move; (4) processing loss and damage claims, if any; (5) providing certification on the contractor's invoices; and (6) processing the invoice for direct payment to the contractor. The GSA contracting office shall be notified upon completion of the relocation and is prepared to provide technical assistance as necessary.

§ 101-40.109-3 Mandatory use of transportation-related contracts and agreements.

(a) When a contract or agreement for transportation-related services, including office relocations, is awarded in response to an agency's specific request, the use of the contract or agreement is mandatory for that requesting agency.

(b) When term contracts or agreements for transportation-related services, including office relocations, are entered into and awarded by GSA for use "as required," the term contract or agreement is mandatory upon all executive agencies; however, exceptions to the mandatory use of term contracts or agreements may be granted by the appropriate GSA office cited in § 101-40.101-1.

§ 101-40.110 Assistance to economically disadvantaged transportation businesses.

§ 101-40.110-1 Small business enterprises.

Consistent with the policies of the Government with respect to small business as set forth in Subpart 1-1.7 of this title, executive agencies shall place with small business concerns a fair proportion of the total purchases and contracts for intrastate and interstate transportation and related services, such as packing and crating, loading and unloading, and local drayage.

§ 101-40.110-2 Minority business enterprises.

Consistent with the policies of the Government stated in Subpart 1-1.13 of this title, minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government purchases and contracts. Agencies shall encourage transportation-related minority enterprises regardless of the mode of transportation to identify themselves and provide services that will support the agencies' transportation requirements. The GSA offices cited in § 101-40.101-1 may be contacted for assistance, if needed.

§ 101-40.111 Maintenance of tariff files.

(a) The Transportation and Public Utilities Services, National Capital Region, General Services Administration (WTT), Washington, DC 20407, shall maintain a master file of carrier tariffs covering all modes and methods of transportation commonly used by executive agencies. Each of the 10 other Transportation and Public Utilities Service, GSA, regional offices will maintain a tariff file sufficient to meet the normal requirements of the executive agencies located within the area of responsibility of the GSA regional office.

(b) Executive agencies may maintain only those tariffs necessary to meet their routine operational requirements. Agencies may use GSA tariff files to meet unusual or abnormal transportation needs; or, alternatively, may request GSA to furnish rates, freight or passenger routings, or other tariff information. (See § 101-40.301 for use of GSA-furnished rates and routes.)

§ 101-40.112 Transportation factors in the location of Government facilities.

(a) Transportation rates, charges, and commercial carrier transportation services shall be considered and evaluated before selecting new site locations and during the planning and construction phases in the establishment of leased or relocated Government installations or facilities.

(b) If changes in the location, relocation or deactivation of Government installations or facilities are contemplated and will result in significant changes in the movement of property, executive agencies shall use the traffic management services of GSA to ensure that consideration is given to the various transportation factors that may be involved in this relocation or deactivation.

§ 101-40.113 Employee travel and relocation allowances.

The General Services Administration has the responsibility to prescribe and promulgate regulations governing employee travel and relocation allowances. These allowances are published in the Federal Travel Regulations and the Commuted Rate Schedule for Transportation of

Household Goods. These regulations are incorporated by reference into Part 101-7. Amendments are made to these regulations from time to time as conditions warrant. Suggestions or questions concerning regulations governing employee travel and relocation allowances may be addressed to the Director, Federal Travel Management Division, Transportation and Public Utilities Service, General Services Administration (TTT), Washington, DC 20406.

4. Subpart 101-40.2 is added to read as follows:

Subpart 101-40.2—Centralized Household Goods Traffic Management

§ 101-40.200 Scope of subpart.

This subpart prescribes regulations concerning the movement of household goods and personal effects of Government employees (and their families) who are eligible for relocation in connection with their employment. Under the centralized household goods traffic management program, GSA will provide agencies with cost comparisons, the names of carriers eligible to handle specific shipments, and requested administrative support related to the Government employees' household goods movements.

§ 101-40.201 Applicability.

(a) This subpart applies to executive agencies. In addition to the Department of Defense, uniformed personnel of the U.S. Coast Guard are exempt from this subpart.

(b) Cost comparisons between the commuted rate system and the actual expense method, as required in § 101-40.203-4, apply only to movements within the conterminous United States.

§ 101-40.202 The General Services Administration Household Goods Tender of Service (TOS) agreement.

As part of the centralized household goods traffic management program, GSA has developed a master household goods tender of service (TOS) agreement. This agreement establishes carrier service and performance standards which participating carriers agree to provide. Commercial carriers who desire to participate in this program must enter into an individual TOS agreement with GSA, acting in behalf of executive agencies. Carriers that desire to enter into a TOS agreement or agencies desiring additional information should contact the Office of the Assistant Commissioner for Transportation and Travel Management, General Services Administration (TTMS), Washington, DC 20406.

§ 101-40.203 Household goods movement evaluation procedures.

§ 101-40.203-1 Household goods rate tenders.

GSA will accept or reject household goods carriers' rate tenders (see § 101-40.306) on behalf of executive agencies.

(a) *Interstate shipments.* Household goods carriers' TOS agreements and individual carrier rate tenders covering interstate shipments shall be submitted to the Office of the Assistant Commissioner for Transportation and Travel Management, General Services Administration (TTMS), Washington, DC 20406.

(b) *Intrastate shipments.* Household goods carriers' TOS agreements and individual carrier rate tenders covering intrastate shipments shall be submitted to the appropriate GSA office specified in § 101-40.101-1 which has responsibility over the State specified in the rate tender.

§ 101-40.203-2 The actual expense method.

(a) For the purpose of the centralized household goods traffic management program described in this Subpart 101-40.2, authorized shipments of Government employees' household goods moving under a Government bill of lading (GBL) are classified as "actual expense method" shipments. Under this method the appropriate GSA office specified in § 101-40.101-1 that processes the shipment (1) furnishes the cost comparison (see § 101-40.230-4), (2) specifies the name(s) of carrier(s) eligible to handle the shipment, and (3) will assist in an advisory capacity in filing loss and damage claims, if requested. Under this method, the Government, not the employee, is considered as the shipper, and the Government reimburses the carrier for the applicable transportation charges. The actual cost of transportation, including related accessorial carrier services, falling within the employee's authorized weight allowance (11,000 pounds for employees with immediate families; 7,500 pounds for employees without immediate families) shall be allowed at the Government's expense. Under the actual expense method, the shipment is made using a GBL. Agencies are responsible for preparing the GBL, booking the shipment and filing loss and damage claims.

(b) When an agency makes the final determination that the actual expense method will be used, the Government's financial obligation for the shipment of the employee's household goods is established. Once the actual expense method is authorized as the most economical means of shipment and the employee chooses to move all or part of the household goods by some other means, reimbursement will be limited to the cost that would have been incurred by the Government if the shipment had been made in one lot from one origin to one destination by the available low cost carrier on a Government bill of lading.

(c) When an employee chooses, for personal reasons, to use a higher cost carrier than the carrier selected by the Government, excess costs will be paid by the Government directly to the carrier and then collected from the employee. Agencies are cautioned to counsel employees as to their responsibilities under this alternative.

(d) When an employee chooses to use a rental truck, trailer or private conveyance, reimbursement will be limited to the actual costs incurred (e.g., truck rental, material handling equipment, packaging materials, gasoline, toll charges, etc.) not to exceed the maximum amount authorized in paragraph (b) above.

§ 101-40.203-3 The commuted rate schedule.

The commuted rate schedule is published in GSA Bulletin FPMR A-2 and contains allowances for reimbursement of Government employees who are authorized to transport their household goods at Government expense. In addition to transportation allowances, the commuted rate schedule includes allowances for various related accessorial expenses, including packing and crating, storage-in-transit, carrier labor charges, appliance servicing, and piano/organ handling. Under the commuted rate schedule the employee is responsible for making all arrangements with the carrier; filing loss and damage claims, if any, with the carrier; and making payment to the carrier after the shipment has been completed. Under the commuted rate schedule, the shipment is moved using a commercial bill of lading (CBL). The use of household goods rate tenders (see § 101-40.203-1) is not authorized when household goods are shipped under the commuted rate schedule.

§ 101-40.203-4 Cost comparisons.

(a) As stated in paragraph 2-8.3c(4)(a) of the Federal Travel Regulations (FPMR Part 101-7), the commuted rate system shall be used for individual employee transfers without consideration being given to the actual expense method, except that the actual expense method may be used if the actual costs to be incurred by the Government for packing

and other accessorial services are predetermined (at least as to price per 100 pounds) and if that method is expected to result in a real savings to the Government of $100 or more. Under the actual expense method, the shipment shall be completed by the moving employee. The agency's employee should be instructed to complete the GSA Form 3080, indicating the quality of performance of the household goods

under the commuted rate system using a CBL, the employee, as the shipper, is responsible for filing claims. When shipments are made under the actual expense method using a GBL, the issuing

Shipment category	Shipment weight
Surface shipments (other than uncrated used household goods)	10,000 pounds and over or shipments that occupy the full visible capacity (see note) of a railcar or intercity motor vehicle regardless of weight.

by the use of GSA Form 420 or GSA 2485, as appropriate.

(1) On shipments that are rated or routed by GSA, agencies will furnish the necessary details concerning the

meet an agency's transportation service requirements for each individual shipment:

(a) Availability and suitability of carrier equipment;

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and other accessorial services are predetermined (at least as to price per 100 pounds) and if that method is expected to result in a real savings to the Government of $100 or more. Under the centralized household goods traffic management program, agencies shall obtain cost comparisons from the appropriate GSA, TPUS, office specified in § 101–40.101–1.

(b) Requests for cost comparisons shall be made as far in advance of the moving date as possible (preferably 30 calendar days) and shall contain the following information:

(1) Name of employee to be moved;
(2) Origin city, county, and State;
(3) Destination city, county, and State;
(4) Anticipated or actual date household goods are to be picked up;
(5) Estimated weight of shipments;
(6) Number of days storage-in-transit is required (if applicable); and
(7) Other pertinent data.

(c) Agencies should use GSA Form 2485, Cost Comparison for Shipping Household Goods (Commuted Rate System vs. Actual Expense Methods) for this purpose. (See § 101–40.4906–8.) In case of an emergency or an imminent moving date (less than 10 workdays), these details may be transmitted to GSA by phone. If information is received by phone, the response will be made by phone when requested. Regardless, all cost comparisons and carrier selection information will be confirmed in writing by GSA. Agencies will make the final determination as to the method of shipment (actual expense method or commuted rate system), based on the results of the cost comparison furnished by GSA.

§ 101–40.204 Carrier selection and distribution of shipments.

Results of the cost comparison will be furnished to the requesting agency together with the names and points of contract for at least three qualified carriers eligible to handle the shipment. If the rates of these carriers differ, the carrier offering the lowest rate should be used by the requesting agency. Carriers offering higher rates or charges should be used only if the less costly carrier cannot accept the shipment.

§ 101–40.205 Quality control.

(a) When the GSA, TPUS, Office specified in § 101–40.101–1 furnishes a cost comparison indicating that the actual expense method is less costly, a GSA Form 3080, Household Goods Shipment Report (See § 101–4906–9) shall be provided together with GSA Form 2485 to the requesting agency. CSA Form 3080 is a mailable form that contains a self-addressed portion, which shall be completed by the moving employee. The agency's employee should be instructed to complete the GSA Form 3080, indicating the quality of performance of the household goods carrier upon completion of the household goods move, and to mail it to the GSA office which provided the cost comparison. Information compiled from completed reports will be used by GSA to monitor carrier performance and to determine whether suspension or disqualification actions should be considered as provided in § 101–40.208.

(b) Agencies may submit other documented instances of inadequate carrier service or performance to GSA, TPUS, offices specified in § 101–40.101–1. Sufficient details must be furnished to identify specific shipments.

§ 101–40.206 Household goods carriers' liability.

(a) Ordinarily, it is the policy of the Government to assume its own risks of loss. (See also § 1–19.107 of this title.) This policy also applies to personal property during transportation. Therefore, when a Government employee's household goods are shipped under the commuted rate system using a CBL or under the actual expense method using a GBL, they are based on a limited carrier liability of 60 cents per pound per article.

(b) In the event of loss or damage, the employee's recovery from the carrier is restricted to this limited carrier liability. Carriers have tariff provisions that provide increased liability at a valuation of $1.25 times the weight of the shipment in pounds or a higher lump sum according to the employee's value of the shipment. These higher valuations are generally available at 50 cents per $100 of valuation. However, the added cost for the increased carrier liability is not reimbursable by the Government but must be borne by the employee. Under the actual expense method, if the employee requests a higher valuation and agrees in writing, the excess cost will be paid by the Government and then collected from the employee. This information applies to interstate shipments. Carrier liability and increased valuation charges may differ on intrastate shipments. For these shipments, the appropriate GSA office should be contacted.

§ 101–40.207 Household goods loss and damage claims.

Claims for loss or damage to household goods will normally be filed and processed with the destination or delivering carrier as part of the bill of lading contract between the carrier and the shipper. When shipments are made under the commuted rate system using a CBL, the employee, as the shipper, is responsible for filing claims. When shipments are made under the actual expense method using a GBL, the issuing agency, as the shipper, will assist the employee in filing claims. Under the Military and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 241), employees may file claims against the United States for not more than $15,000 for damage to or loss of personal property incident to the employee's service; this applies to commuted rate moves as well as actual expense moves. If the carrier's liability stated in § 101–40.206 is less than the loss or damage sustained by the employee, executive agencies may use the provisions of this act to more fully compensate the employee. Agencies should advise their employees regarding the use of this act for reimbursement of loss and damage to household goods shipments using a CBL or GBL. Additional information concerning processing loss and damage claims may be obtained from the appropriate GSA, TPUS, office specified in § 101–40.101–1.

§ 101–40.208 Disqualification or suspension of household goods carriers.

Based on information obtained from completed GSA Forms 3080 or documented instances of other service complaints or deficiencies, GSA, TPUS offices or executive agencies may disqualify or suspend household goods carriers in accordance with the procedures specified in § 101–40.4.

5. Subpart 101–40.3, with a new caption, is revised to read as follows:

Subpart 101–40.3—Rates, Routes, and Services

§ 101–40.300 Scope of subpart.

This subpart prescribes regulations governing the determination and use of rates and related data in the transportation of persons and property for the Government; selection of the mode of transportation and the carrier or carriers within the mode; and negotiations of classification ratings, rates, and services.

§ 101–40.301 GSA rate and routing services.

(a) Except as otherwise provided in this subpart, executive agencies shall obtain rate and/or routing information from the appropriate GSA transportation office specified in § 101–40.101–1 when they have a planned group of 25 or more individuals traveling at one time from the same origin to the same destination or when they have freight shipments that fall within the following categories:

Shipment category	Shipment weight
Surface shipments (other than uncrated used household goods) (See 101–40.305–3(a) for exemption).	10,000 pounds and over or shipments that occupy the full visible capacity (see note) of a railcar or intercity motor vehicle regardless of weight.
Air shipments	1,000 pounds and over.
Uncrated used household goods shipments.	All shipments, regardless of weight (except will not apply on shipments moving in foreign commerce). (See Subpart 101–40.2 for shipments moving within the conterminous U.S.)

Note.—Full visible capacity generally means that quantity of freight which in the manner loaded so fills a vehicle that no additional article in the shipping form tendered identical in size to the largest article in the shipment can be loaded in or on the vehicle. Consult governing tariffs for precise definition and application.

(1) Exemption to the provisions of § 101–40.301(a) is granted to the Federal Emergency Management Agency (FEMA), Department of Energy (DOE), National Aeronautics and Space Administration (NASA) and United States Department of Agriculture (USDA) to the following extent:

FEMA Initial positioning of mobile homes shipped in response to disasters.
DOE Priority energy and classified defense and nuclear waste management shipments.
NASA Shipments of key, critical items necessary to the success of space and aerospace research, development, acquisition, flight or launch activities.
USDA Emergency shipments of forest fire fighting materials and equipment. Household goods shipments to and from isolated areas.

(2) To meet other transportation exigencies of a critical and recurring nature, executive agencies including those agencies exempted to the extent noted in paragraph (1) of this section may request the GSA transportation office having jurisdiction (See § 101–40.101–1) to grant relief from the routing requirements of this section. In a local emergency, which precludes the requesting of routing instructions in accordance with the requirements of this section, routing by any mode may be made without prior approval. Requests for exemption shall be in writing, and the GSA transportation office will accept or deny the request by written instructions to the requesting agency. Exemptions will apply for a duration of time not to exceed one year, however, on written request an exemption may be renewed or extended.

(b) Agencies shall submit requests for rate and route information to the appropriate regional office, Transportation and Public Utilities Service, General Services Administration, listed in § 101–40.101–1. Agencies may telephone urgent requests to GSA. Replies will be made by telephone and confirmed upon request by the use of GSA Form 420 or GSA 2485, as appropriate.

(1) On shipments that are rated or routed by GSA, agencies will furnish the necessary details concerning the shipment as far in advance of the proposed shipping date as possible. For freight shipments, GSA Form 420, Freight Rate and Route Request/Response (see § 101–40.4906–1) may be used for this purpose. The procedures in Subpart 101–40.2 shall be followed when requesting household goods rate and route information on shipments moving within the conterminous United States.

(2) To eliminate the need for repetitive routing instructions, the GSA transportation offices listed in § 101–40.101–1 may issue standing route orders to cover normal repetitive movements (two or more shipments per month) of specifiec items between specified points by any mode of transportation. Ordinarily, a standing route order will be issued when the origin, destination, commodity(ies) and frequency of shipments constitute a repetitive traffic pattern. The GSA transportation office will maintain a standing route order file and review routings at 60 day intervals from the date of their issuance to assure current application of rates, ratings, routes and classification. When required by changed conditions, GSA shall provide the requesting agency with revised routing instructions.

(c) Agencies are encouraged, but not required, to request GSA-furnished rate or routing information for their freight shipments that are less than the shipment weights specified in paragraph (a) of this section.

(d) Executive agency shippers will comply with all state and local, as well as Federal, laws and regulations relating to vehicular size and weight limitations.

§ 101–40.302 Standard routing principle.

Shipments shall be routed using the mode of transportation, or individual carrier or carriers within the mode, that can provide the required service at the lowest overall delivered cost to the Government.

§ 101–40.303 Application of the standard routing principle.

In the application of the standard routing principle, the major factors to be considered are, in the order of their importance, satisfactory carrier service, overall cost considerations, most fuel efficient carrier/mode, and equitable distribution of traffic among carriers.

§ 101–40.303–1 Service requirements.

The following factors shall be considered in determining whether a carrier or mode of transportation can meet an agency's transportation service requirements for each individual shipment:

(a) Availability and suitability of carrier equipment;
(b) Shipping and receiving facilities at origin and destination;
(c) Pickup and/or delivery service (including inside pickup or delivery), if required;
(d) Availability of required accessorial and special services, if needed;
(e) Estimated time in transit;
(f) Record of past performance of the carrier; and
(g) Transit privileges when available.

§ 101–40.303–2 Cost considerations.

When developing cost comparisons to determine the most economical routing of shipments consistent with service requirements, consideration shall be given to costs of packing, loading and unloading, bracing, blocking, extra handling, drayage, pickup and delivery, and other accessorial services, as well as the line-haul rate.

§ 101–40.303–3 Most fuel efficient carrier/mode.

When more than one mode, or more than one carrier within a mode, can satisfy the service requirements of a specific shipment at the same lowest aggregate delivered cost, the carrier/mode determined to be the most fuel efficient shall be selected. In determining the most fuel efficient carrier/mode, consideration shall be given to such factors as use of the carrier's equipment in "turn around" service, proximity of carrier equipment to the shipping activity, and ability of carriers to provide the most direct service to the destination points.

§ 101–40.303–4 Equitable distribution of traffic among carriers.

When more than one mode of transportation, or more than one carrier within a mode, can provide equally satisfactory service at the same overall cost and all modes are equally fuel efficient, the traffic shall be distributed as equally as practicable among the modes and among the carriers within the modes.

§ 101–40.304 Description of property for shipment.

(a) Each shipment shall be described on the bill of lading or other shipping document as specified by the governing freight classification, carrier's tariff, or rate tender. Shipments shall be described as specifically as possible. Trade names such as "Foamite" or "Formica" or general terms such as "vehicles," "furniture," or "Government

supplies," shall not be used as bill of lading descriptions.

(b) A shipment containing hazardous materials, such as explosives, flammable liquids, flammable solids, oxidizers, or poison A or poison B, shall shipments will not exceed 100,000 pounds.

Note.—Agencies making surface shipments under agency-negotiated rates are exempt from obtaining GSA rate and routing information as required in § 101–40.101–1.(1).

(b) Carriers may purchase Optional Form 280 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or print it commercially. When ordering this form from the Superintendent of Documents,

to the Transportation and Public Utilities Service, General Services Administration WTT, Washington, DC 20407. Also, two copies (including at least one signed copy) shall be promptly

day nonuse periods shall require advance approval of the Director, Transportation Management Division, TPUS, General Services Administration (TTM), Washington, DC 20406, *and shall*

documentation shall be forwarded immediately to: Director, Transportation Management Division, Transportation and Public Utilities Service, General Services Administration (TTM),

supplies," shall not be used as bill of lading descriptions.

(b) A shipment containing hazardous materials, such as explosives, flammable liquids, flammable solids, oxidizers, or poison A or poison B, shall be prepared for shipment and described on bills of lading or other shipping documents in accordance with the Department of Transportation Hazardous Materials Regulations, 49 CFR Parts 170 thru 177.

(c) Agency requests for specific freight descriptions shall be submitted to the appropriate Transportation and Public Utilities Service office as listed in § 101–40.101–1.

§ 101-40.305 Transportation negotiations.

§ 101-40.305-1 Negotiations by GSA.

Except as provided in § 101–40.305–3, GSA will conduct all transportation negotiations for executive agencies to establish or modify rates, fares, charges, ratings, services, and the rules or regulations pertaining thereto.

§ 101-40.305-2 Cost analysis required on substantial movements.

Except as provided in § 101–40.305–3, executive agencies shall submit to the appropriate GSA regional Transportation and Public Utilities Service office, as listed in § 101–40.101–1, complete information concerning planned transportation so that a cost analysis may be made to determine whether negotiation is appropriate. This information should be submitted as far in advance of the planned transportation as possible. The information supplied shall be detailed and shall include but not be limited to the number of individuals traveling as a group, property characteristics (those requiring shipment in bags, boxes or bulk; hazardous properties; weight; dimension; density; value; and susceptibility to damage), origin, destination, number of shipments, weight per shipment, planned shipping schedule, and planned required delivery date. The provisions of this subsection shall apply to all transportation payable by the Government.

§ 101-40.305-3 Negotiations by other executive agencies.

Except for the transportation of an employee's personal household goods and the relocation of offices, the executive agencies are authorized to initiate and conduct negotiations on their own behalf under the following conditions:

(a) When the total planned quantity of property to be shipped does not exceed 100,000 pounds per shipment or when the known aggregate of several shipments will not exceed 100,000 pounds.

Note.—Agencies making surface shipments under agency-negotiated rates are exempt from obtaining GSA rate and routing information as required in § 101–40.101–1.(1).

(b) Except as otherwise provided in the Federal Property Management Regulations A–15, or as it may be amended, when planned group travel, under Standard Form 1169, U.S. Government Transportation Request, consists of fewer than 25 individuals traveling at one time from the same origin to the same destination.

(c) When the planned shipment is less than that which would require the assessment of carload or truckload rates.

(d) When approval to negotiate is granted by the General Services Administration (TT), Washington, DC 20406, or the appropriate GSA regional Transportation and Public Utilities office.

Note.—§ 101–40.305–3 does not prohibit executive agencies from seeking GSA assistance in negotiations.

§ 101-40.306 Rate tenders to the Government.

Under the provisions of section 10721 (formerly section 22) of the Interstate Commerce Act (49 U.S.C. 10721), common carriers are permitted to submit tenders to the Government which contain rates lower than published tariff rates available to the general public. In addition, rate tenders may be applied to shipments other than those made by the Government provided the total benefits accrue to the Government; that is, provided the Government pays the charges or directly and completely reimburses the party that initially bears the freight charges (Interpretation of Government Rate Tariff for Eastern Central Motor Carriers Association, Inc., 332 I.C.C. 161 (1968)).

§ 101-40.306-1 Recommended rate tender format.

(a) Only those rate tenders which have been submitted by the carriers in writing and which apply to shipments of the U.S. Government shall be considered for use by executive agencies. Carriers should be encouraged to use Optional Form 280, Uniform Tender of Rates and/or Charges for Transportation Services, illustrated in § 101–40.4906–2, when preparing and submitting rate tenders to the Government. Rate tenders that are ambiguous in meaning shall be resolved in favor of the Government; therefore, explicit terms and conditions are necessary to preclude misunderstandings by the parties to the rate tender.

(b) Carriers may purchase Optional Form 280 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or print it commercially. When ordering this form from the Superintendent of Documents, specify national stock number 7540–01–092–8057. When printing this form commercially, carriers shall ensure that the form conforms to the same size, wording, and arrangement of the approved optional form and, while no minimum grade or paper is set, carriers shall provide a reasonable grade of paper stock.

§ 101-40.306-2 Required shipping documents and annotations.

(a) To qualify for transportation under section 10721 rates, property must be shipped by or for the Government on:

(1) Government bills of lading;

(2) Commercial bills of lading endorsed to show that these bills of lading are to be converted to Government bills of lading after delivery to the consignee; or

(3) Commercial bills of lading showing that the Government is either the consignor or the consignee and endorsed with the following statement: "Transportation hereunder is for the (name the specific agency, such as the General Services Administration) and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and are to be reimbursed by, the Government."

(b) When a rate tender is used for transportation furnished under a cost-reimbursable contract, the following endorsement shall be used on covering commercial bills of lading:

"Transportation hereunder is for the (name the specific agency, such as the General Services Administration), and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are to be reimbursed by the Government, pursuant to cost reimbursable contract number ( ). This may be confirmed by contacting the agency representative at (name and telephone number)." (See 332 ICC 161.)

(c) To ensure proper application of a Government rate tender on all shipments qualifying for their use, the issuing officer shall show on the bills of lading covering these shipments the applicable rate tender number and carrier identification, such as, "ABC Transportation Company, Tender ICC No. 374." In addition, if commercial bills of lading are used, they shall be endorsed as specified in paragraphs (a) or (b) of this section, as necessary.

§ 101-40.306-3 Distribution.

Each agency receiving rate tenders shall promptly submit one signed copy

to the Transportation and Public Utilities Service, General Services Administration WTT, Washington, DC 20407. Also, two copies (including at least one signed copy) shall be promptly submitted to the General Services Administration (TAD), Chester A. Arthur Building, Washington, DC 20406.

§ 101-40.306-4 Bill of lading endorsements.

To ensure application of Government rate tenders to all shipments qualifying for their use, bills of lading covering the shipments shall be endorsed with the applicable tender or quotation number and carrier identification; e.g., "Section 10721 quotation ABC Transportation Company I.C.C. No. 143." In addition, where commercial bills of lading are used rather than Government bills of lading, the commercial bills of lading shall be endorsed in conformance with the provisions set forth in § 101–40.306–2(a). (For specific regulations covering transportation generated under cost-reimbursement type contracts, see § 1–19.109 of this title.)

6. Subpart 101–40.4 is added to read as follows:

Subpart 101-40.4—Temporary Nonuse, Disqualification, and Suspension of Carriers

§ 101-40.400 Scope of subpart.

This subpart prescribes policies and procedures governing the temporary nonuse, disqualification, and suspension of carriers transporting freight, household goods, or passengers for the account of executive agencies.

§ 101-40.401 General.

Temporary nonuse, disqualification, and suspension are measures taken to exclude carriers from participating in GSA routed or unrouted movements of persons or freight under tariffs, tenders of service, commercial or Government bills of lading, and similar arrangements. To ensure that the Government derives the benefits of full and free competition of interested carriers, temporary nonuse, disqualification, and suspension shall not apply for any period of time longer than necessary to protect the interests of the Government.

§ 101-40.402 Temporary nonuse of carriers.

GSA, TPUS regional offices or other executive agencies may place carriers that serve the agency in a temporary nonuse status for a maximum period of 30 calendar days when the carriers do not show a willingness or ability to meet the transportation service requirements of the agency. (Consecutive 30 calendar day nonuse periods shall require advance approval of the Director, Transportation Management Division, TPUS, General Services Administration (TTM), Washington, DC 20406, *and shall not be used to avoid the procedures and requirements of* § *101–40.403 or* § *101–40.404.*) No component of an executive agency shall apply temporary nonuse actions against a carrier for a violation made by that same carrier in serving a different component of the same or another agency. Compliance with applicable laws and regulations that preclude arbitrary or capricious actions, among other things, rests upon the agency placing a carrier in this status.

§ 101-40.402-1 Agency responsibility.

(a) Agencies placing a particular carrier in a temporary nonuse status shall fully document that action with specific instances of carrier nonperformance, which may include but are not limited to the causes and conditions set forth in § 101–40.403–1. The documentation shall also include information showing that the carrier was provided with prior notices of service deficiencies and was afforded a reasonable opportunity to correct or explain these deficiencies.

(b) The carrier shall, by certified mail, with return receipt requested, be notified by the agency concerning the proposed 30 calendar day temporary nonuse status. This notice shall include:

(1) The proposed period of nonuse;

(2) The reasons for placing the carrier in a temporary nonuse status;

(3) The corrective actions that may be taken by the carrier for reinstatement;

(4) The time period of 7 calendar days afforded the carrier to present information refuting the proposed temporary nonuse status (information from the carrier must be *received* by the agency within 7 calendar days from the date notice is received by the carrier. If the carrier presents information within the allotted time, the agency must determine within 7 calendar days of receiving the carrier's data whether to place the carrier in temporary nonuse status).

(5) The date on which temporary nonuse status commences in the event that information from the carrier is not received by the agency within the 7 calendar day period provided in paragraph (4) of this section.

(c) The agency shall review the carrier's reply, and shall prepare a response according to the facts presented. The agency's decision is administratively final.

(d) Copies of the notification to the carrier of the proposed temporary nonuse status and supporting documentation shall be forwarded immediately to: Director, Transportation Management Division, Transportation and Public Utilities Service, General Services Administration (TTM), Washington, DC 20406.

(e) The agency shall also furnish the Director, Transportation Management Division, Transportation and Public Utilities Service, General Services Administration (TTM), Washington, DC 20406, a recommendation for disqualification or suspension, if considered necessary. If further action is warranted, appropriate measures in accordance with the provisions of this Subpart 101–40.4 will be initiated.

§ 101-40.403 Administrative disqualification of a carrier.

GSA may, in the public interest, disqualify a carrier from participation in traffic for any of the causes and under any of the conditions set forth in § 101–40.403–1.

§ 101-40.403-1 Causes and conditions for disqualification.

The causes and conditions for which a carrier may be disqualified by GSA are set forth in paragraphs (a) through (h) of this § 101–40.403–1.

(a) Willful violations of the terms of the tariffs, tenders of service, commercial or Government bills of lading, or similar arrangements determining the relationship of the parties.

(b) A record of failure to perform or of unsatisfactory performance in accordance with the terms of tariffs, tenders of service, commercial or Government bills of lading, or similar arrangements determining the relationship of the parties. Failure to perform or unsatisfactory performance includes but is not limited to the following:

(1) Failure to meet requested packing/pickup dates;

(2) Deliveries exceeding time-in-transit standards when established by the Government; e.g., the General Services Administration household goods tender of service and transit times established for shipments from Federal Supply Service distribution facilities;

(3) Failure to meet required delivery dates on Government or commercial bills of lading;

(4) Failure to furnish and use clean and safe equipment;

(5) Violation of Department of Transportation (DOT) hazardous materials regulations;

(6) Mishandling of freight; e.g., damaged or missing transportation seals or improper loading, blocking, packing, or bracing;

(7) Excessive loss or damage;

(8) Improper routing;

(9) Failure to pay just debts so as to subject Government shipments to possible frustration, unlawful seizure, or

Travel Management, Transportation and Public Utilities Service, General Services Administration (TTM), Washington, DC 20406. Notwithstanding the provisions of § 101–40.403–2, the

disqualification applies, the notice will specify the reasons for the disqualification as well as the period during which disqualification will be in effect.

affiliates, a notice of proposed disqualification which states:

(i) The disqualification is being considered;

(ii) The reasons that disqualification is being considered;

failure to comply with the provisions of the Equal Employment Opportunity clause will be for a reasonable, specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance. As a

carrier of a determination by certified mail with return receipt requested.

§ 101-40.404 Suspension of carrier.

Suspension is an action that GSA may take against a carrier which is

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(7) Excessive loss or damage;
(8) Improper routing;
(9) Failure to pay just debts so as to subject Government shipments to possible frustration, unlawful seizure, or detention;
(10) Failure to maintain insurance coverage;
(11) Expiration of carrier exemption, permit, or authority;
(12) Failure to settle claims in accordance with applicable Government regulations; and
(13) Repeated failure to comply with the regulations of DOT, the Interstate Commerce Commission, or State and local governments; or repeated failure to comply with any other applicable Government regulations.

(c) A conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract, thereunder, or as an incident to performing the contract or subcontract;

(d) A conviction under the Organized Crime Control Act of 1970 or a conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a carrier of Government property.

(e) A conviction under the Federal antitrust statutes arising out of the submission of bids or proposals.

(f) Inclusion in a list issued by the Comptroller General (as provided in part 5, section 56(b) of the regulations issued by the Secretary of Labor under the authority of Reorganization Plan 14 of 1950) as found by the Secretary of Labor to be in aggravated or willful violation of the prevailing wage or overtime pay provisions of applicable regulations or statutes;

(g) A finding by the Director, Office of Federal Contract Compliance, Department of Labor, of noncompliance with the provisions of the Equal Employment Opportunity Clause; and

(h) Any other cause or condition of a serious or compelling nature affecting the present responsibility as a carrier of Government property.

§ 101-40.403-2 Disqualification procedures.

(a) *Disqualification for periods of 90 calendar days or less*—(1) *Determining official.* A determination to disqualify a carrier for 90 calendar days or less will be made by the following GSA offical: Director, Transportation Management Division, Office of Transportation and Travel Management, Transportation and Public Utilities Service, General Services Administration (TTM), Washington, DC 20406. Notwithstanding the provisions of § 101-40.403-2, the Director, if he determines such action to be in the best interest of the United States, may deny awards of Government traffic to a carrier during the period commencing with the notice of proposed disqualification and continuing during the pending disqualification determination. In such event, the carrier shall be advised of the action and the basis therefor.

(2) *Notice of proposed disqualification.* GSA will, by certified mail, with return receipt requested, forward to the carrier and, if appropriate, to the carrier's known affiliates, a notice of proposed disqualification which will state:

(i) That disqualification is being considered;

(ii) The reasons that disqualification is being considered;

(iii) The proposed period of disqualification;

(iv) The time period of 10 calendar days afforded the carrier to present information refuting the proposed disqualification (information from the carrier must be *received* by GSA within 10 calendar days from the date the carrier receives the notice. The carrier may within that 10 calendar day period request the Director, Transportation Management Division (TTM), to grant an additional 5 days for presenting refuting information).

(3) *Carrier presentation of information.* The carrier may present information refuting the proposed disqualification in writing, in person, or through representation, to the Director, Transportation Management Division.

(4) *Disqualification determination.* (i) If within the time limit specified in paragraph (a)(2)(iv) of this section GSA receives the carrier's data refuting the proposed disqualification, GSA's determination to disqualify the carrier must be made within 20 calendar days after receipt of those data.

(ii) If, within the time period specified in paragraph (a)(2)(iv) of this section, the carrier neither refutes the notice of proposed disqualification nor requests additional time to present refuting information, GSA shall disqualify the carrier for the period specified in the notice of proposed disqualification.

(5) *Carrier notification of disqualification determination.* When a carrier's refuting information is duly filed and received, GSA will notify the carrier by certified mail, with return receipt requested, whether the disqualification will apply. If the disqualification applies, the notice will specify the reasons for the disqualification as well as the period during which disqualification will be in effect.

(6) *Period of disquolification.* A period of disqualification for 90 calendar days or less shall begin on the first day following the date on which the carrier is notified of the determination to disqualify. If the carrier neither refutes the notice of proposed disqualification nor requests additional time to present refuting information as provided in paragraph (b)(2)(iv) of this section, the period of disqualification will commence on the first day following the expiration of the appeal period.

(7) *Request for review of determination.* A carrier may request that a review of a determination to disqualify for 90 calendar days or less be made by the Assistant Commissioner for Transportation and Travel Management, Transportation and Public Utilities Service, GSA. The request for review shall be forwarded to the General Services Administration (TT), Washington, DC 20406, within 10 calendar days after receipt of the disqualification notice. The Assistant Commissioner will issue a determination within 10 calendar days after receipt of the carrier's request. The carrier will be notified of this determination by certified mail with return receipt requested. The determination of the Assistant Commissioner shall be administratively final.

(b) *Disqualification for periods of more that 90 calendar days*—(1) *Determining official.* A determination to disqualify a carrier for more than 90 calendar days will be made by the following GSA official: Assistant Commissioner for Transportation and Travel Management, Transportation and Public Utilities Service, General Services Administration (TT), Washington, DC 20406. Nothwithstanding the provisions of § 101-40.403-2, the Assistant Commissioner, if he determines such action to be in the best interest of the United States, may deny awards of Government traffic to a carrier during the period commencing with the notice of proposed disqualification and continuing during the pending disqualification determination. In such event, the carrier shall be advised of the action and the basis therefor.

(2) *Notice of proposed disqualification.* GSA will, by certified mail, with return receipt requested, forward to the carrier and, if appropriate, to the carrier's known affiliates, a notice of proposed disqualification which states:

(i) The disqualification is being considered;

(ii) The reasons that disqualification is being considered;

(iii) The proposed period of disqualification; and

(iv) The time period of 20 calendar days afforded the carrier to present information refuting the proposed disqualification (information from the carrier must be *received* by GSA within 20 calendar days from the date carrier receives the notice. The carrier may within that 20 calendar day period request the Assistant Commissioner for Transportation and Travel Management, to grant an additional 5 days for presenting refuting information).

(3) *Carrier presentation of information.* The carrier may present information refuting the proposed disqualification in writing, in person, or through representation, to the Assistant Commissioner.

(4) *Disqualification determination.* (i) If within the time limit specified in paragraph (b)(2)(iv) of this section, GSA receives the carrier's data refuting the proposed disqualification, GSA's determination whether to suspend the carrier will be made within 30 calendar days after receipt of those data.

(ii) If within the time limit specified in paragraph (b)(2)(iv) of this section the carrier neither refutes the notice of proposed disqualification nor requests additional time to present refuting information, GSA shall disqualify the carrier for the period of time specified in the notice of proposed disqualification.

(5) *Carrier notification of disqualification determination.* When a carrier's refuting information is duly filed and considered, GSA will notify the carrier by certified mail, with return receipt requested, whether disqualification will apply. If disqualification applies, the notice will specify the reasons for the disqualification as well as the period during which disqualification will be in effect.

(6) *Period of disqualification.* (i) A period of disqualification for more than 90 calendar days shall begin on the first day following the date on which the carrier is notified of the determination to disqualify. If the carrier neither refutes the notice of proposed disqualification nor requests additional time to present refuting information as provided in paragraph (b)(2)(iv) of this section, the period of disqualification will commence on the first day following the expiration of the appeal period.

(ii) A disqualification under this § 101-40.403-2(b) for causes other than failure to comply with the provisions of the Equal Employment Opportunity clause will be for a reasonable, specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance. As a general rule, a period of disqualification will not exceed 3 years. If it is determined necessary to extend a period of disqualification, GSA will forward a new notice of proposed disqualification in accordance with § 101-40.403-(b)(2) on or about the expiration date of the disqualification period. Notifications of extended periods of disqualifications will be handled in the same manner as initial periods of disqualifications.

(iii) A disqualification under this § 101-40.403-2(b) for failure to comply with the provisions of the Equal Employment Opportunity clause will generally continue until removed by the Director, Office of Federal Contract Compliance, Department of Labor.

(7) *Request for review of determination.* A carrier may request that a review of a determination to disqualify for more than 90 calendar days be made by the Commissioner, Transportation and Public Utilities Service (TPUS), GSA. The request for review shall be forwarded to the General Services Administration (T), Washinton, DC 20406, within 10 calendar days after receipt of the disqualification notice. The Commissioner will issue a determination within 30 calendar days after receipt of the carrier's request. The carrier will be notified of this determination by certified mail. The determination of the Commissioner shall be administratively final.

(8) *Application for relief from disqualification.* Except as precluded by statute, GSA may terminate or reduce the period of time of a disqualification on the basis of appropriate evidence that the causes and conditions for which the disqualification was imposed have been eliminated or corrected. A carrier may apply to the Assistant Commissioner for Transportation and Travel Management for the granting of relief from a disqualification at any time after receipt of the notice of disqualification. The application shall fully document the reasons for the requested relief, which may include but are not limited to the discovery of new material evidence, the reversal of a conviction, or the bona fide change of ownership or management. The Assistant Commissioner for Transportation and Travel Management will review the application and supporting documentation and notify the carrier of a determination by certified mail with return receipt requested.

§ 101-40.404 Suspension of carrier.

Suspension is an action that GSA may take against a carrier which is suspected, on the basis of adequate evidence, of engaging in criminal, fraudulent, or seriously improper conduct. In determining whether the evidence merits invoking a suspension, GSA will consider the creditability of the evidence available, the existence or absence of corroboration as to important allegations, and the inferences which may be drawn from the existence or absence of affirmative facts. This assessment will include an examination of basic documents, such as contracts, inspection reports, and correspondence. A suspension may be modified whenever GSA determines that it is in the best interest of the Government to do so.

§ 101-40.404-1 Causes and conditions for suspension.

GSA may, in the interest of the Government, suspend a carrier from participation in traffic for the causes and under the conditions set forth in this § 101-40.404-1:

(a) Suspicion, based upon adequate evidence, of the following:

(1) Commission of fraud or a criminal offense either as an incident to obtaining or attempting to obtain a public contract or in the performance of a public contract;

(2) Violation of the Federal antitrust statutes arising out of the submission of bids or proposals; or

(3) Commission of an act in violation of the Organized Crime Control Act of 1970 or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a carrier of Government property.

(b) Any cause of a serious and compelling nature affecting the responsibility of a carrier which, in the determination of GSA, warrants suspension. However, suspensions relating to matters involving the Equal Opportunity clause shall be handled in accordance with regulations prescribed by the Secretary of Labor.

§ 101-40.404-2 Period of suspension.

Suspension is for a temporary period pending the completion of an investigation and any subsequent legal proceedings. If prosecution has not been initiated by the Department of Justice

(DOJ) within 12 months from the issue date of a notice of suspension (see § 101-40.404-4), GSA will terminate the suspension unless DOJ requests continuance of the suspension. (GSA

carrier be provided an opportunity to present information refuting the suspension to the Commissioner, in person, in writing, or through representation. The request for review

Subparts 101-40.5—101-40.6—[Reserved]

8. Section 101-40.49 is revised to read as follows:

9999) for each DISREP issued within the calendar year.

3. *To.*—Name, address, activity address code (if assigned) and ZIP code of activity which is to receive the original of the report.

e. *Documents attached.*—Check applicable block(s).

f. *Date carrier signed for shipment.*—Enter date carrier signed for shipment in section B to designate whether rail, carload; motor, truckload, etc., as appropriate.

Issue Data (May be obtained from packing list or authorized shipping document accompanying the shipment i.e, GSA or DD Form 1348-1, direct delivery purchase document, etc.)

(DOJ) within 12 months from the issue date of a notice of suspension (see § 101–40.404–4), GSA will terminate the suspension unless DOJ requests continuance of the suspension. (GSA will notify DOJ of a proposed suspension termination 30 calendar days before expiration of the 12-month period.) If a continuation is requested, the suspension may remain in effect for an additional 6 months. However, no suspension shall continue beyond 18 months unless prosecution has been initiated within that period. If prosecution has been initiated, a suspension may continue until the legal proceedings are completed.

§ 101–40.404–3 Restrictions during period of suspension.

A suspended carrier will not be permitted to transport freight or passengers for the Government during the period of suspension, unless otherwise determined by GSA to be in the best interest of the Government.

§ 101–40.404–4 Notice of suspension.

A carrier that has been suspended by GSA will, by certified mail, with return receipt requested, be furnished with a notice of suspension issued by the following GSA official: Assistant Commissioner for Transportation and Travel Management, Transportation and Public Utilities Service, General Services Administration (TT), Washington, DC 20406. The notice of suspension shall state that:

(a) The suspension is based on (1) an outstanding indictment or (2) adequate evidence that the carrier has committed irregularities which seriously reflect on the propriety of further dealings of the carrier with the Government. (The notice will identify the indictment or describe the nature of the irregularities in general terms, without disclosing the Government's evidence.);

(b) The suspension is for a temporary period pending the completion of an investigation and any subsequent legal proceedings; and

(c) The carrier will be excluded from participating in the movement of freight and passengers for the Government, unless otherwise determined by the Assistant Commissioner for Transportation and Travel Management to be in the best interest of the Government.

§ 101–40.404–5 Review of suspension.

(a) *Carrier request for review.* A carrier suspended by GSA may request that a review of the suspension action be made by the Commissioner, Transportation and Public Utilities Service (TPUS), GSA, and that the carrier be provided an opportunity to present information refuting the suspension to the Commissioner, in person, in writing, or through representation. The request for review shall be forwarded to the General Services Administration (T), Washington, DC 20406.

(b) *Coordination with other executive agencies.* Upon receipt of a request for a review, GSA will seek the advice of other interested executive agencies as set forth below.

(1) *Coordination with Department of Justice (DOJ).* In all instances, GSA will solicit the formal advice of DOJ concerning the possible impact that the release of evidence could have on possible civil or criminal action against the carrier.

(2) *Coordination with the Department of Labor (DOL).* If the suspension is based upon violations of labor standards subject to legal proceedings before administrative law judges of DOL, GSA will solicit the formal advice of DOL concerning the possible proceedings against the carrier.

(c) *Response to carrier request for review.* GSA's decision on whether to grant the requested review will be based on the advice received from DOJ or DOL as to the possible effects of the release or disclosure of Government evidence. The Commissioner, TPUS, GSA, will notify the carrier of this decision by certified mail with return receipt requested. If a review is granted, GSA will, as necessary, determine the extent of the review and the conditions under which the review will be conducted and the carrier will be so notified. If a review is denied, the carrier will be notified that the release or disclosure of evidence which would occur as the result of a review would be prejudicial to the interest of the Government but that the carrier may, nevertheless, present any information refuting the suspension action to the Commissioner, TPUS, GSA.

(d) *GSA determination and carrier notification.* GSA will determine whether to continue or terminate the suspension following a review of the suspension action and/or consideration of information presented by the carrier to refute the suspension. The Commissioner, TPUS, GSA shall notify the carrier of this determination by certified mail with return receipt requested.

7. Subparts 101–40.5 and 101–40.6 are reserved.

Subparts 101–40.5—101–40.6—[Reserved]

8. Section 101–40.49 is revised to read as follows:

Subparts 101–40.49—Forms, Formats, and Agreements

§ 101–40.4906–1 GSA Form 420, Freight Rate and Route Request/Response.

Note.—The form illustrated in § 101–40.4906–1 is filed as part of the original document and does not appear in this volume.

§ 101–40.4906–2 Optional Form 280, Uniform Tender of Rates and/or Charges for Transportation Services.

Note.—The form illustrated in § 101–40.4906–2 is filed as part of the original document and does not appear in this volume.

§ 101–40.4906–3 Standard Form 361, Discrepancy in Shipment Report.

Note.—The form illustrated in § 101–40.4906–3 is filed as part of the original document and does not appear in this volume.

§ 101–40.4906–4 Guidelines for Preparation of Standard Form 361, Discrepancy in Shipment Report (Short Title "DISREP") (Rev. 11–79)

(a) Page 1 of Guidelines for Preparation of Standard Form 361.

Section A

General

a. The November 1979 edition of Standard Form 361, Discrepancy in Shipment Report (DISREP) requires the use of codes for certain information. A stub attached to the top of the form provides instructions concerning where to locate these codes for civilian agencies and the Department of Defense. The codes furnished in this section are uniform codes for civilian agencies to use in preparing the DISREP.

b. The DISREP is a two page form, but, when used by civilian agencies, the back requires completion only when the spaces in items 12 and 13 do not provide adequate space to fully describe the discrepancies being reported. Items 19 and 20 are primarily for use by the Department of Defense.

Item Details. The following are detailed instructions of the data required in completing the DISREP:

Item Number, Title and Data Entry

1. *Date.*—Date on which report is prepared in the sequence of: year, month and day; e.g., November 6, 1979, would be entered as 79 Nov. 6.
2. *File Reference.*—Activity address code (if assigned) of reporting activity and a 4-digit number (0001–9999) for each DISREP issued within the calendar year.
3. *To.*—Name, address, activity address code (if assigned) and ZIP code of activity which is to receive the original of the report.
4. *Reporting Activity.*—Name, address, activity code (if assigned) and ZIP code of reporting activity.
5. *Consignor.*—Name, address, activity address code (if assigned) and ZIP code of activity making or directing the shipment. When shipper is a contractor or vendor always enter name and activity address code (if assigned) of the Government office responsible for documenting or arranging for shipment.
6. *Consignee.*—Name, address, activity address code (if assigned) and ZIP code of activity scheduled to receive the shipment. If same as item 4, enter "same as item 4".
7. *Shipper (if other than consignor).*—Name, address, activity address code (if assigned) and ZIP code of the activity physically making shipment for the account of the consignor shown in item 5. When a container shipment, enter name of activity stuffing the container in item 13.
8. *Point of origin (city and state).*—Enter city and state where carrier accepted shipment.
9. *Identification (conveyance/voyage number) and carrier routing.*—Enter identification number of railcar, truck, trailer, or name of vessel, as appropriate and routing shown on covering transportation document. Enter MILVAN, SEAVAN or CONEX type code in parentheses and trailer/container number and SEAVAN carrier. Enter TCN number of SEAVAN, MILVAN or CONEX or other consolidation container, and, when known, the voyage number.
10. *Destination (city and state).*—Enter city and state of destination as shown on covering transportation document.
11. Documentation Data:
    a. *Carrier's pro/freight bill number.*—Enter number appearing on carrier's delivery receipt (waybill, pro, freight bill, lading, warrant or similar document).
    b. *Bill of lading number.*—Enter document number under appropriate heading. Enter port of exit with an ocean bill of lading number.
    c. *Exception noted on carrier's delivery receipt.*—Check "yes" or "no" as appropriate.
    d. *Type of shipment code.*—Enter alpha or numeric code as listed in section B to designate whether rail, carload; motor, truckload, etc., as appropriate.
    e. *Documents attached.*—Check applicable block(s).
    f. *Date carrier signed for shipment.*—Enter actual date carrier signed for shipment.
    g. *Date consignee received shipment.*—Enter actual date consignee received shipment.
    h. *Date discrepancy discovered.*—Enter actual date discrepancy was discovered.
    i. *Date carrier notified.*—Enter date carrier was first notified of discrepancy i.e., by phone, in person or by SF 363.
    j. *This is a survey document.*—Check "yes" or "no" as applicable (primarily used by military activities).
    k. *Seal numbers and condition.*—Check appropriate block to indicate condition of seals at delivery. Enter seal numbers. Explain when there is a variance between seal numbers shown on transportation documentation and numbers of seals on vehicles. Explanation may be continued in item 13.
    l. *Inspection date.*—Check appropriate block. Attach document(s) as required, when reporting damage, pilferage or partial loss.
    m. *Disposition date.*—Check appropriate block and attach document(s) as required.
12. Discrepancy Data (When necessary, multiple lines may be used for each requisition line item involved):
    (a) *Acquisition document and/or transportation control number.*—Enter applicable acquisition document number e.g., requisition or purchase request and/or transportation control number.
    (b) *Commodity Description and/or National Stock Number (NSN).*—Enter noun description of commodity and/or National Stock Number.
    (c) *Type of pack.*—Enter the 2 position code from section C to describe type of pack for shipment involved. (Codes applicable for CONEX, SEAVAN, MILVAN or other consolidation container will be entered in item 9 only.)
    (d) *Quantity discrepant (pieces).*—Enter actual number of pieces of freight that are discrepant as evidenced by the covering bill of lading or governing transportation document.
    (e) *Type and cause code.*—Enter the 2 position code as shown in section D that most closely identifies the cause or type of discrepancy.
    Issue Data (May be obtained from packing list or authorized shipping document accompanying the shipment i.e, GSA or DD Form 1348–1, direct delivery purchase document, etc.)
    (f) *Unit of issue.*—Enter the 2 letter abbreviation for type of unit under which material was issued.
    (g) *Units billed/shipped.*—Enter actual number of units of issue billed (invoiced) or shipped as evidenced by the applicable shipping document.
    (h) *Discrepant units.*—Enter actual number of units discrepant.
    (i) *Discrepant weight.*—Enter weight of discrepant quantity.
    (j) *Value or cost of repairs.*—Enter acutal value of loss sustained, cost of repairs and/or cost to rea?oper (materials and labor), as appropriate. Enter value of material when reporting over/astray freight.
13. *Remarks.* This item is for use in providing detailed information or other data required by items referencing this item. Information should specify facts and not personal opinions unless substantiated by documentation, e.g., affidavits or certified statements. Other discrepancies or deficiencies in transportation such as improper loading, stowing, handling, blocking, bracing, lashing, excessive transit time, improper placarding or labeling of hazardous materials, etc., should be described in this item. When the discrepancy involves classified material, enter the applicable acquisition document or transportation control number and the appropriate security classification code, e.g., "S" (secret), "C" (confidential).
14. *Responsibility.* The transportation or appropriate receiving personnel normally would make this determination based on findings and factual evidence available and check the appropriate block. If sufficient evidence to make such a determination is not available, check "other" and specify appropriate activity.
15. *Distribution of Copies.* Enter name and address of office(s) to receive copies as directed by agency regulations.
16. *Prepared by*
    a. *Typed name, title and telephone extension.* Type name, title and commercial telephone number of the person whose signature is entered in item 16b.
    b. *Signature.* Signature of person preparing this report.

17. *Discrepancy Data (continuation of item 12).* This item is a continuation of items 12a thru 12j, if required.
18. *Remarks.* (Continuation of item 13). This item is a continuation of item

Section C—Continued

Code	Type of Pack Code (Item 12c or 17c)
BG	Bag, burlap or cloth
BL	Barrel
BS	Basket
BX	Box

Section D

Code	Type and Cause Code (Item 12e or 17e)
	Astray
A3	Incomplete marking or missing label or tag
A4	Defaced or illegible marking

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 33

refuges shall be in accordance with all applicable State and Federal regulations, subject to additional special regulations and conditions as indicated. Portions of refuges which are open to sport fishing are designated by signs

season for sport fishing extends from May 16, 1981 through November 30, 1981, inclusive. Fishing is allowed between sunrise and sunset only. The use of canoes and boats, without motors, is allowed for sport fishing on

V 45 D E 3 0 8 0 UMI

17. *Discrepancy Data (continuation of item 12).* This item is a continuation of items 12a thru 12j, if required.
18. *Remarks.* (Continuation of item 13). This item is a continuation of item 13, if required.
19. *Action for Reviewing Officials.* Sections a, b, c and d under this item are for use in connection with inventory and financial adjustments of accounts in accordance with individual service/agency regulations. Section e will be completed by an official authorized to approve the report for use as a survey document and/or inventory and financial adjustment of accounts or when individual agency or service regulations require approval by an official other than the individual shown in item 16A.
20. *Action by Finance Center.* For use by finance center, as required (primarily for DOD).

Section B

Code	Type of Shipment Code (Item 11d)
A	Motor, truckload
B	Motor, less than truckload
C	Van (unpacked, uncrated personal or Government property)
D	Driveaway, truckaway, towaway
E	Bus
F	Military Airlift Command (MAC)
G	Parcel post, surface
H	Parcel post, air
I	Government trucks, for shipment outside local delivery area
J	Small package carrier
K	Rail, carload*
L	Rail, less than carload*
M	Freight forwarder
N	LOGAIR (commercial air charter service—Air Force controlled)
O	Organic military air
P	Through Government bill of lading (TGBL)
Q	Air freight, air express, air charter (commercial)
R	Expedited air freight
S	Reserved
T	Air freight forwarder
U	Quicktrans (commercial air charter service—Navy controlled)
V	SEAVAN
W	Water, river, lake coastal (commercial)
X	Reserved
Y	Intratheater airlift service
Z	MSC (Military Sealift command—controlled contract or arranged space)
2	Government watercraft, barge lighter
3	RORO (roll-on, roll-off)
4	ARFCOS (Armed Forces Courier Service)
5	United Parcel Service
6	Military official mail (MOM)
7	Weapon System Pouch Service
8	Pipeline
9	Local delivery, by Government or commercial truck including deliveries between air or water terminals and adjacent activities. Within CONUS, the local delivery area is defined in tariffs governing local application of carrier service as filed with regulatory authorities.

*Includes trailer/container-on-flat-car (excluding SEAVAN)

Section C

Code	Type of Pack Code (Item 12c or 17c)
BD	Bundle
BE	Bale

Section C—Continued

Code	Type of Pack Code (Item 12c or 17c)
BG	Bag, burlap or cloth
BL	Barrel
BS	Basket
BX	Box
CA	Cabinet
CB	Carboy
CC	Household goods containers, wood, type II (Fed. Spec. PPP-B-580)
CL	Coil
CN	Can
CO	Container, other than CU, CW or X
CR	Crate
CS	Case
CT	Carton
CU	Container, Navy cargo, transporter
CW	Container, commercial highway lift (PTTC)
CY	Cylinder
DB	Dufflebag
DR	Drum
EC	Engine container
ED	Engine cradle or dolly
FK	Footlocker
HA	Hamper
KE	Keg
LS	Loose (not packaged)
MN	Multiwall container (formerly referred to as triple wall or triwall secured or attached to pallet)
MX	Mixed (more than one type of shipping container)
PC	Piece
PL	Pail
PT	Palletized unit load (other than code MW)
RL	Reel
RO	Roll
RT	Roll-on/roll-off trailer
SA	Sack, paper
SB	Skid box
SD	Skid
SH	Sheet
SL	Spool
SW	Suitcase
TB	Tub
TK	Trunk
TU	Tube
UX	Unitized (unitized cargo on roll-on/roll-off vehicles is considered roll-on/roll-off)
VE	Vehicle
VO	Vehicle in operating condition
VS	Sea-van-tote
WR	Wrapped
X	Container, CONEX (second position based on CONEX number, will be assigned as follows):
0	00000 to 99999
1	100000 to 199999
2	200000 to 299999
3	300000 to 399999
4	400000 to 499999
5	500000 to 599999
6	600000 to 699999
7	700000 to 799999
8	800000 to 899999
9	900000 to 999999

A-MSCVAN (MSC leased/controlled SEAVAN or MILVAN)
Y-MILVAN
Z-SEAVAN
(Second position identifies the loading data and loaded capacity as follows):
A Loaded to capacity by ocean carrier.
B Loaded to capacity by military terminal.
C Loaded to capacity by military shipping activity.
D Loaded to capacity by vendor/commercial supplier.
E Loaded to capacity by contract shipment consolidation facility.
F Loaded to less than capacity by military shipping activity, loading completed by contract shipment consolidation facility.
3 Loaded to less than capacity by military shipping activity.
4 Loaded to less than capacity by vendor/commercial supplier.
5 Loaded to less than capacity by contract shipment consolidation facility.
L Loaded to less than capacity by military shipping activity, loading completed by military terminal.
M Loaded to less than capacity by vendor/commerical supplier, loading completed by military terminal.
N Loaded to less than capacity by contract shipment consolidation facility, loading completed by military terminal.
T Loaded to less than capacity by military shipping activity, loading completed by ocean carrier.
U Loaded to less than capacity by vendor/commerical supplier, loading completed by ocean carrier.
V Loaded to less than capacity by contract shipment consolidation facility, loading completed by ocean carrier.
W Loaded to less than capacity by vendor/commercial supplier, loading completed by contract shipment consolidation facility.
Z Empty MILVAN or SEAVAN.

Section D

Code	Type and Cause Code (Item 12e or 17e)
	Astray
A3	Incomplete marking or missing label or tag
A4	Defaced or illegible marking
AA	Unknown
	Overage
05	Improper documentation
03	Incomplete marking or missing label or tag
04	Defaced or illegible marking
OK	Improper loading or stowing
OO	Unknown
	Shortage
SL	Leakage, spoilage, or evaporation
S5	Improper documentation
ST	Theft
SP	Pilferage
SI	Status "W" cargo (MMC terminal use only)
SK	Improper loading or stowing
SS	Unknown
	Damage
DF	Fire
DK	Improper loading, stowing, lashing, blocking and bracing
D6	Materials handling equipment
D1	Marine casualty
DG	Spoilage
DQ	Rough handling
D2	Stevedoring
DE	Water damage
DW	Wreck
DV	Vandalism
DZ	Concealed damage
DD	Unknown, visible or apparent damage
	Other
XB	Broken, missing, improper, or inadequate seals
XC	Carrier tariff or tender agreements, Government transportation regulations not observed on other than classified or protected material
XH	Excess transit time
X3	Incomplete marking or missing label or tag
X4	Defaced or illegible marking
XJ	Improper carrier handling, service or equipment
XK	Improper loading, stowing, lashing, blocking or bracing (when no actual damage is involved)
XM	Improper marking or labeling of dangerous or hazardous material
XN	Misconsignment
XR	Government transportation regulations, carrier tariff or tender agreements, not observed on classified or protected material
XX	Not specified above (describe in remarks)

9. Sections 101–40.4906–8 and 101–40.4906–9 are added to read as follows:

§ 101–40.4906–8 GSA Form 2485, Cost Comparison for Shipping Household Goods (commuted rate system versus actual expense method).

Note.—The form illustrated in § 101–40.4906–8 is filed as part of the original document and does not appear in this volume.

§ 101–40.4906–9 GSA Form 3080, Household Goods Shipment Report.

Note.—The form illustrated in § 101–40.4906–8 is filed as part of the original document and does not appear in this volume.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: December 17, 1980.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80-40330 Filed 12-29-80; 8:45 am]

BILLING CODE 6820-AN-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 33

National Wildlife Refuges in Illinois, Iowa, Minnesota and Wisconsin; Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to sport fishing of certain National Wildlife Refuges is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which sport fishing will be permitted on portions of certain National Wildlife Refuges in Illinois, Iowa, Minnesota and Wisconsin.

DATES: Effective on December 30, 1980 for duration of calendar year 1981, subject to exceptions noted below for individual refuge areas.

FOR FURTHER INFORMATION CONTACT: The Area Manager or appropriate Refuge Manager at the address or telephone number listed below:

George G.P. Bekeris, Area Manager, U.S. Fish and Wildlife Service, 530 Federal Building & U.S. Court House, 316 North Robert Street, St. Paul, MN 55101.

James Heinecke, Refuge Manager, Big Stone National Wildlife Refuge, 25 N.W. 2nd Street, Ortonville, MN 56278. Telephone: (612) 839–3700.

John Toll, Refuge Manager, Horicon National Wildlife Refuge, Route #2, Mayville, WI 53050. Telephone: (414) 387–2658.

James M. Carroll, Jr., Refuge Manager, Necedah National Wildlife Refuge, Star Route, Necedah, WI 54646. Telephone: (608) 565–2551.

David Heffernan, Refuge Manager, Rice Lake National Wildlife Refuge, Route 2, McGregor, MN 55760. Telephone: (218) 768–2402.

Ronald Papike, Refuge Manager, Sherburne National Wildlife Refuge, Route #2, Zimmerman, MN 55398. Telephone: (612) 389–3323.

Omer N. Swenson, Refuge Manager, Tamarac National Wildlife Refuge, Rural Route, Rochert, MN 56578. Telephone: (218) 847–4355.

Robert Howard, Refuge Manager, Upper Mississippi Wildlife and Fish Refuge, 122 W. 2nd Street, Winona, MN 55987. Telephone: (507) 452–4232.

SUPPLEMENTARY INFORMATION: Sport fishing on portions of the following refuges shall be in accordance with all applicable State and Federal regulations, subject to additional special regulations and conditions as indicated. Portions of refuges which are open to sport fishing are designated by signs and/or delineated on maps. Special conditions applying to individual refuges and maps are available at refuge headquarters or from the Office of the Area Manager (addresses listed above).

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds were available for the development, operation and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

§ 33.5 Special regulations; sport fishing for individual wildlife refuge areas.

Minnesota

Big Stone National Wildlife Refuge

Sport fishing on Big Stone National Wildlife Refuge is allowed between sunrise and sunset during the State fishing season. Summer fishing shall be from the shoreline only except that fishing from boats without motors is permitted on the Minnesota River channel canoe trail which is designated by signs. Winter ice fishing is permitted in accordance with the state season except that ice fishing west of the Highway 75 dam, terminates on January 31. Portable fish shelters may be used but may not be left overnight.

Rice Lake National Wildlife Refuge

Sport fishing is permitted on the Rice Lake National Wildlife Refuge, Aitkin County, Minnesota, and the Sandstone Unit, Pine County, Minnesota, only on those areas designated by signs as being open to fishing. These areas comprise approximately 80 acres. The open season for sport fishing extends from May 16, 1981 through November 30, 1981, inclusive. Fishing is allowed between sunrise and sunset only. The use of canoes and boats, without motors, is allowed for sport fishing on that portion of Rice River posted as open to fishing and on the Twin Lakes fishing area only.

Sherburne National Wildlife Refuge

Sport fishing is permitted on Sherburne National Wildlife Refuge in accordance with State seasons and regulations. Special conditions include the following: Fishing is only allowed on the St. Francis River at designated access sites during daylight hours. Boats without motors are allowed on the portion of the river as noted in the refuge brochure. A permit must be obtained from the refuge manager before using a shelter for ice fishing.

Tamarac National Wildlife Refuge

Sport fishing is permitted on the Tamarac National Wildlife Refuge in areas designated on maps or by signs as being open to fishing. Fishing shall be in accordance with all applicable State and/or White Earth Reservation regulations.

All sport fishing is subject to the following conditions:

1. Only that part of Tamarac Lake north of the dike is open during regular State season.
2. Fishing on Two Island, Wauboose, Lost, and Blackbird lakes is permitted only from the State season opening in May through Labor Day.
3. Bank fishing is permitted 50 yards either side of the Ottertail River bridges on County Roads No. 26 and No. 126 only.

Wisconsin

Horicon National Wildlife Refuge

Sport fishing is permitted on the Horicon National Wildlife Refuge, Wisconsin, only on the approximately 5 acres designated by signs as being open to fishing from May 15, 1981 through September 15, 1981, inclusive. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

1. The use of boats is not permitted.
2. Fishing during daylight hours only.

Necedah National Wildlife Refuge

Sport fishing is permitted on the Necedah National Wildlife Refuge, Wisconsin, only on the areas designated by signs as being open to fishing. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

Fishing is permitted only on the Sprague and Goose Pools, including the outlets of these pools as far south as the Sprague-Mather Road, from January 1 through March 15, 1981, and from June 1,

Proposed Rules

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Fishing is permitted only on the Sprague and Goose Pools, including the outlets of these pools as far south as the Sprague-Mather Road, from January 1 through March 15, 1981, and from June 1, through September 15, 1981, and from December 15, through December 31, 1981. Fishing is allowed between sunrise and sunset only. The use of boats, without motors, is permitted.

Illinois, Iowa, Minnesota, Wisconsin

Upper Mississippi River Wild Life and Fish Refuge

Sport fishing, commercial fishing, and the taking of frogs, turtles, crayfish and clams on the Upper Mississippi River Wild Life and Fish Refuge, are permitted on all water areas of the refuge. The refuge water areas comprise 125,000 acres. All fish, frogs, turtles, crayfish and clams shall be taken in accordance with all applicable state regulations and seasons. All sport and commercial fishing on the Spring Lake Closed Area of the Upper Mississippi River Wild Life and Fish Refuge in Carroll County, Illinois, is prohibited from October 1 through December 20, 1981. All persons, including their helpers, exercising the privilege of commercial fishing on the Spring Lake Closed Area must possess a valid commercial fishing permit issued by the Refuge Manager and must comply with the conditions which are set forth in the permit.

December 17, 1980.

Richard E. Toltzmann,

Acting Area Manager.

[FR Doc. 80-40489 Filed 12-29-80; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 45, No. 251
Tuesday, December 30, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1006, 1007, 1011-1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1062, 1064, 1065, 1068, 1071, 1073, 1075, 1076, 1079, 1093, 1094, 1096-1099, 1102, 1104, 1106, 1108, 1120, 1124-1126, 1131-1139

Handling of Milk in Federal Milk Marketing Areas; Extension of Time for Filing Comments on Reconstituted Milk Impact Statement

7 CFR Parts and Marketing Areas

1001 New England.
1002 New York-New Jersey.
1004 Middle Atlantic.
1006 Upper Florida.
1007 Georgia.
1011 Tennessee Valley.
1012 Tampa Bay.
1013 Southeastern Florida.
1030 Chicago Regional.
1032 Southern Illinois.
1033 Ohio Valley.
1036 Eastern Ohio-Western Pennsylvania.
1040 Southern Michigan.
1044 Michigan Upper Peninsula.
1046 Louisville-Lexington-Evansville.
1049 Indiana.
1050 Central Illinois.
1062 St. Louis-Ozarks.
1064 Greater Kansas City.
1065 Nebraska-Western Iowa.
1068 Upper Midwest.
1071 Neosho Valley.
1073 Wichita, Kansas.
1075 Black Hills, S. Dakota.
1076 Eastern South Dakota.
1079 Iowa.
1093 Alabama-West Florida.[1]
1094 New Orleans-Mississippi.
1096 Greater Louisiana.
1097 Memphis, Tenn.
1098 Nashville, Tenn.
1099 Paducah, Kentucky.
1102 Fort Smith, Ark.
1104 Red River Valley.
1106 Oklahoma Metropolitan.
1108 Central Arkansas.
1120 Lubbock-Plainview, Texas.
1124 Oregon-Washington.
1125 Puget Sound, Washington.
1126 Texas.
1131 Central Arizona.
1132 Texas Panhandle.
1133 Inland Empire.
1134 Western Colorado.
1135 Southwestern Idaho-Eastern Oregon.[1]
1136 Great Basin.
1137 Eastern Colorado.
1138 Rio Grande Valley.
1139 Lake Mead.

[1] A final decision on whether or not to adopt a proposed new order for this marketing area is pending before the Department.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time to submit additional comments or proposals.

SUMMARY: On November 7, 1980, the Department issued a preliminary impact statement concerning the potential effect of proposals to change the regulatory treatment of reconstituted milk under all Federal milk orders. Interested parties were invited to submit comments on the impact statement and also any alternative proposals that would mitigate any adverse economic impacts of the proposals. This notice extends the initial 45-day filing period, which would have expired on January 2, 1981.

DATE: Comments and proposals should be submitted by February 16, 1981, to assure their consideration in this matter.

ADDRESS: Comments and proposals (two copies) should be mailed to: Deputy Administrator, Marketing Program Operations, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250 (telephone: 202-447-4824).

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Pre-Notice of hearing: issued November 13, 1979; published November 16, 1979 (44 FR 65989). Extension of time: issued January 15, 1980; published January 18, 1980 (45 FR 3593). Preliminary Impact Statement: issued November 7, 1980; published November 17, 1980 (45 FR 75956).

The Community Nutrition Institute, a fluid milk processor, and three individual consumers have requested that a public hearing be held on proposed changes in all Federal milk marketing orders. The proposals relate to the regulatory treatment of reconstituted milk products.

A preliminary impact statement presenting an analysis of the potential impact of the proposals was issued by the Department on November 7, 1980. The public was invited to submit by January 2, 1981, comments on the impact statement and also any additional proposals that would mitigate any adverse economic impacts of the proposals.

The Department has received requests from the National Milk Producers Federation and other producer groups for an extension of the comment period. The producer organizations indicate that an additional 45 days is needed in view of the time that was involved in distributing copies of the impact statement to interested parties, the complex nature of the issues involved, and the time constraints stemming from the several holidays in the initial comment period.

An extension of the comment period is reasonable under these circumstances. Accordingly, notice is hereby given that the time for filing comments on the preliminary impact statement and alternative proposals is extended from January 2, 1981, to February 16, 1981.

Signed at Washington, D.C., on December 22, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-40503 Filed 12-29-80; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 91

Animal Export Regulations; Pseudorabies Test of Export Swine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the animal export regulations to require that all swine to be exported from the United States, except swine for immediate slaughter, shall be handled in accordance with certain procedures and be negative to an official pseudorabies test or tests. This action is necessary to provide assurance that swine exported

from the United States, except swine exported for immediate slaughter, are not infected with or exposed to pseudorabies. The intended effect of this action is to provide assurance to the severity of outbreaks of pseudorabies have increased dramatically throughout the world during the past 3 years. This trend is expected to continue and to cause serious financial losses to swine that the swine to be exported are not infected with or exposed to pseudorabies. Such swine would be from a qualified pseudorabies negative herd, as defined in Title 9, Code of

separated from other animals and effluent drainage therefrom so that no new sources of infection with pseudorabies could be introduced into the group of swine intended for export. upon request from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. animals or effluent drainage therefrom during such movement.

§ 91.9 [Amended]

2. In § 91.9 present footnote 7 and the

from the United States, except swine exported for immediate slaughter, are not infected with or exposed to pseudorabies. The intended effect of this action is to provide assurance to the animal health authorities of other countries that swine exported from the United States, except swine exported for immediate slaughter, are not infected with or exposed to pseudorabies.

DATE: Comments on or before March 2, 1981.

ADDRESS: Written comments to Deputy Administrator, USDA, APHIS, VS, Room 821, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Harold A. Waters, USDA, APHIS, VS, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8383. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "significant". Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that pursuant to 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 37 FR 28464, 28477; 38 FR 19141, the Animal and Plant Health Inspection Service is considering amending Part 91, Title 9, Code of Federal Regulations.

On Friday, February 16, 1979, there was published in the **Federal Register** (44 FR 10306–10313) regulations intended to prevent the spread of pseudorabies in the United States. Pseudorabies, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is primarily a disease of swine caused by a herpes virus.

Susceptible animals other than swine are not known to become carriers and are not known to transmit the disease after a period of 21 days following exposure to the disease. Therefore, animals other than swine are believed not to be potential spreaders of pseudorabies after a period of 21 days since their last exposure to the virus.

Swine are more resistent to pseudorabies than most other livestock, and some swine develop an inapparent carrier state. Such swine are capable of transmitting the disease to other animals even though these carrier swine are apparently healthy. The number and severity of outbreaks of pseudorabies have increased dramatically throughout the world during the past 3 years. This trend is expected to continue and to cause serious financial losses to swine producers and the swine industry in general. For this reason, pseudorabies in swine has become a significant factor in the United States Export Animal health Program. In order to prevent the exportation of swine (for other than slaughter purposes), which may be infected with or exposed to pseudorabies, certain testing requirements are needed. Therefore, present § 91.5(c) (Specific export requirements for swine) would be redesignated § 91.5(c)(1) and additional requirements which the Department believes would prevent the exportation of swine (except swine exported for immediate slaughter) infected with or exposed to pseudorabies would be added in proposed § 91.5(c)(2).

Specifically, proposed § 91.5(c)(2) would provide exporters with two options under which swine, other than swine for immediate slaughter, could be exported.

Proposed § 91.5(c)(2)(i) would require that swine to be exported, except swine for immediate slaughter be (A) from a qualified pseudorabies negative herd, (B) found negative to an official pseudorabies test within 30 days prior to the date of export, (C) moved directly from the qualified pseudorabies negative herd to the port of embarkation after such test, and (D) physically separated so as to prevent physical contact with other animals or effluent drainage therefrom during such movement.

In lieu of the proposed requirements in § 91.5(c)(2)(i) an exporter could export swine in accordance with proposed § 91.5(c)(2)(ii) which would require that swine to be exported, except swine to be exported for immediate slaughter, be physically separated so as to prevent physical contact with other animals or effluent drainage therefrom. Further, the proposal would require that the swine are found negative to two official pseudorabies tests at intervals of not less than 30 days nor more than 60 days between tests during such separation. The last test would be required to be conducted within 30 days prior to the date of export. After such tests, the swine would be required to be moved directly to the port of embarkation and physically separated so as to prevent physical contact with all other animals and the effluent drainage therefrom during such movement.

The Department believes that the requirements in proposed § 91.5(c)(2)(i) would provide reasonable assurance that the swine to be exported are not infected with or exposed to pseudorabies. Such swine would be from a qualified pseudorabies negative herd, as defined in Title 9, Code of Federal Regulations, § 85.1(ee). A qualified pseudorabies negative herd is monitored for pseudorabies at regular intervals and the entrance of other swine into such a herd is restricted to swine which have been found negative to two official pseudorabies tests not less than 30 days or more than 60 days apart before being added to the herd or are from another qualified pseudorabies negative herd. Therefore, herds of swine which have attained qualified pseudorabies negative herd status are far less likely to contain swine which are either exposed to or infected with pseudorabies than the remainder of the swine population.

Proposed § 91.5(c)(2)(i) would require that swine to be exported from qualified pseudorabies negative herds be moved directly from such herds to the port of embarkation and be physically separated so as to prevent physical contact with other animals and effluent drainage therefrom during such movement. This physical separation could be attained in any manner. The intention is that swine do not come into physical contact with other animals or their effluent drainage. This requirement would insure that such swine to be exported only come into physical contact with other swine from qualified pseudorabies negative herds prior to arrival at the port of embarkation.

To further insure that swine to be exported, except swine exported for immediate slaughter, are not infected with or exposed to pseudorabies, proposed § 91.5(c)(2)(ii) would require that such swine be found negative to an official pseudorabies test within 30 days prior to the date of export. Such official test would be conducted prior to the swine being moved to the port of embarkation. The Department believes that the requirement that the negative finding to the official pseudorabies test be within 30 days prior to the date of export is necessary to reduce the risk of tested swine becoming infected with pseudorabies between the test and the date of export and gives an exporter a reasonable amount of time in which to have the swine tested.

As stated above, proposed § 91.5(c)(2)(ii) would provide exporters with a second method by which swine, except swine exported for immediate slaughter, could be exported. Under this provision, such swine to be exported, other than for immediate slaughter, would be required to be physically separated from other animals and effluent drainage therefrom so that no new sources of infection with pseudorabies could be introduced into the group of swine intended for export. This physical separaton could be attained in any manner (artificial barriers, natural barriers or even distance). The intention is that such swine do not come into physical contact with other animals or the effluent drainage. During such physical separation, the group of swine to be exported would be required to be found negative to two official pseudorabies tests at intervals of not less than 30 nor more than 60 days between tests. The Department believes that the official pseudorabies tests would provide reasonable assurance that the swine so tested are neither infected with nor exposed to pseudorabies. The interval which would be required between the two tests is necessary to allow any swine exposed to pseudorabies at the time of the first test to incubate the disease long enough to become positive to the second test. Further, proposed § 91.5(c)(2)(ii) would require that the last test be conducted within 30 days prior to the date of export because the Department believes that this requirement would reduce the risk of the tested swine becoming infected with pseudorabies between the test and the date of export. Further, 30 days would give and exporter a reasonable amount of time in which to have the swine tested. To eliminate the risk of infection with or exposure to pseudorabies, proposed § 91.5(c)(2)(ii) would require that after such tests the swine be moved directly to the port of embarkation and during such movement be physically separated so as to prevent physical contact with other animals or effluent drainage therefrom.

Proposed new footnotes 7 and 8 would be referred to in proposed § 91.5(c)(2). Proposed new footnote 7 would appear directly after the term "qualified peudorabies negative herd" and would refer the reader to Title 9, Code of Federal Regulations, § 85.1(e) which contains the definition of that term. Proposed new footnote 8 would appear directly after the term "official pseudorabies test" and would refer the reader to Title 9, Code of Federal Regulations, § 85.1(q) which contains the definition of that term. Further, proposed new footnote 8 would inform the reader that copies of the test protocols (Recommended Mimimum Standards for Diagnostic Tests Employed in the Diagnosis of Pseudorabies) were published as a Veterinary Services Notice, May 17, 1978, and are available upon request from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

The Department believes that these proposed new footnotes are necessary to clarify the terms "qualified pseudorabies negative herd" and "official pseudorabies test". The additon of proposed footnotes 7 and 8 would require that present footnote 7 and the reference thereto be renumbered footnote 9; present footnote 8 and the reference thereto be renumbered footnote 10; and present footnote 9 and the reference thereto be renumbered footnote 11.

Accordingly, Part 91, Title 9, Code of Federal Regulations, would be amended in the following respects:

1. In § 91.5, paragraph (c) would be redesignated as paragraph (c)(1) and a new paragraph (c)(2) and new footnotes 7 and 8 would be added to read:

§ 91.5 Specific export requirements.

* * * * *

(c) *Swine.* * * *

(2) Swine to be exported, except swine to be exported for immediate slaughter, shall be:

(i)(A) From a qualified pseudorabies negative herd;[7]

(B) Found negative to an official pseudorabies test [8] within 30 days prior to the date of export;

(C) Moved directly from the qualified pseudorabies negative herd to the port of embarkation after such test; and

(D) Physically separated so as to prevent physical contact with other animals or the effluent drainage therefrom during such movement; or

(ii)(A) Physically separated so as to prevent physical contact with other animals or effluent drainage therefrom;

(B) During such physical separation, found negative to two official pseudorabies tests [8] at intervals of not less than 30 days nor more than 60 days between tests during such separation. The last test shall be conducted within 30 days prior to the date of export;

(C) Moved directly to the port of embarkation after such tests; and

(D) Physically separated so as to prevent physical contact with other animals or effluent drainage therefrom during such movement.

§ 91.9 [Amended]

2. In § 91.9 present footnote 7 and the reference thereto would be redesignated footnote 9; in § 91.13 present footnote 8 and the reference thereto would by designated footnote 10; and in § 91.33 present footnote 9 and the reference thereto would be deisgnated footnote 11.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 825, Hyattsville, Maryland, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (9 CFR 1.27(b)).

Comments submitted should bear a reference to the dat and page number of this issue in the **Federal Register.**

Done at Washington, D.C., this 22nd day of December 1980.

Jerry C. Hill,

Deputy Assistant Secretary for Marketing and Transportation Services.

[FR Doc. 80-40552 Filed 12-29-80; 8:45 am]

BILLING CODE 3410-34-M

[7] A qualified pseudorabies negative herd is defined in § 85.1(ee) of this chapter.

[8] "Official pseudorabies test" is defined in § 85.1(q) of this chapter. Copies of the test protocols (Recommended Minimum Standards for Diagnostic Tests Employed in the Diagnosis of Pseudorabies) published as a Veterinary Services Notice, May 17, 1978, are available upon request from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

15 CFR Parts 923 and 931

Advance Notice of Proposed Rulemaking for Improving Coastal Management in the United States

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: Pub. L. No. 96–464, the Coastal Zone Management Improvement Act of 1980 (the Act), which amended the Coastal Zone Management Act of 1972 (CZMA), requires the Secretary of Commerce to issue regulations for improving the administration of the Federal coastal zone management program established by the CZMA. This notice deals with proposed rules for: (1) Focusing state management efforts on achieving significant improvements in meeting certain national coastal management objectives; (2) enhancing the protection of nationally significant coastal resources; (3) allocating among eligible states grants to administer approved state coastal management programs; (4) awarding grants to eligible states to mitigate adverse coastal impacts caused by coal and alternative

ocean energy activities; (5) awarding grants to eligible coastal states for preserving specific coastal areas, redeveloping urban waterfronts and ports, and providing access to public

External Relations at the above address in order to be placed on the mailing list.

IV. Proposed and Final Rules

NOAA will issue proposed rules to

"significant improvement" in achieving the coastal management objectives specified in Section 303? Against what baseline should improvements be measured?

—What types of management activities may a state perform as a means of making

—How should the shoreline, coastal area and populaton factors be weighted in the formula used to allocate administrative grants?

—What other factors are "relevant" and how much weight should they be given?

defined? Should facilities be water dependent in order to qualify a state for impact assistance?

—How should "alternative ocean energy activities" be defined?

—How should coal and alternative ocean

evaluation by third parties, self-evaluations or nationwide evaluation with respect to specific national objectives? If so, what alternatives should be considered?

—What should the evaluation team review to determine whether the state has (1)

ocean energy activities; (5) awarding grants to eligible coastal states for preserving specific coastal areas, redeveloping urban waterfronts and ports, and providing access to public beaches and coastal waters; (6) reviewing and evaluating the performance of coastal states with respect to adherence to approved coastal management programs and achievement of significant improvement in meeting national coastal management objectives; and (7) awarding grants to assist eligible states in preserving islands.

NOAA will publish a separate advance notice of proposed rulemaking outlining issues relevant to clarifying the term "directly affected" in Section 307 of the CZMA.

This advance notice of proposed rulemaking is issued to provide interested persons with an early opportunity to contribute to the development of these regulations. It is designed to elicit both views on the issues posed below and identification of other issues that should be addressed. Interested persons are invited to submit detailed written comments.

DATE: Comments should be received by January 31, 1981.

ADDRESS: Submit comments concerning the advance notice to: Jane P. Rogers, Deputy Director, Office of Policy, Evaluation and External Relations, Office of Coastal Zone Management, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT:
Jane P. Rogers, Dan Hoydysh or Vickie Allin, Office of Policy, Evaluation and External Relations, (202–634–4245).

SUPPLEMENTARY INFORMATION:

I. Authority

This advance notice of proposed rulemaking is issued under authority of Section 317 of the CZMA and Sections 5, 7 and 9 of the Act.

II. Availability of Comments

All comments submitted in response to this advance notice of proposed rulemaking will be available for examination during normal business hours in Room 310, Page Building Number 1, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235.

III. Mailing List

Any person interested in receiving public regulatory documents as they are developed during this rulemaking should submit his/her name, address, affiliation, and phone number to the Deputy Director, Policy, Evaluation, and External Relations at the above address in order to be placed on the mailing list.

IV. Proposed and Final Rules

NOAA will issue proposed rules to implement the Act after comments received in response to this ANPR have been evaluated. NOAA plans to issue the proposed rules in April 1981 and final rules in July 1981.

V. Regulatory Issues

A. General Background

The CZMA was enacted in 1972 to encourage and assist states in developing and implementing management programs to preserve, protect, develop, and where possible, to restore or enhance the resources of our nation's coast. The primary purpose of the 1980 amendments is to reaffirm the nation's commitment to the wise use and management of our coastal resources through the coastal zone management program. To this end, Section 306, which provides funds to coastal states to implement approved coastal management programs, was reauthorized for five years by the Act, and certain key provisions of the CZMA were strengthened to require significant improvements in state coastal management programs.

B. Legislative Amendments and Issues to be Resolved Through Rulemaking

1. *Improving Coastal Zone Management—Sections 303/306*

The following provisions of the Act relate to improving coastal management:

—Section 303 was amended to clarify national coastal policy by describing specific national objectives that warrant full consideration during the implementation of approved State coastal management programs.

—Section 306(a) was amended to encourage more effective coastal management by requiring states with approved programs to expend an increasing proportion of administrative grants (up to a maximum of 30 percent unless a state agrees to a higher percentage) on activities that will result in significant improvement in achieving the national coastal objectives specified in Section 303.

—Section 312 was amended to require the Secretary to evaluate the extent to which a state addresses the national coastal objectives in Section 303 and to reduce or withdraw up to 30 percent of the financial assistance available to any coastal state under Section 306 if that state is failing to make "significant improvement" in achieving these objectives.

Comments are requested with respect to the following and any other relevant issues:

—What guidelines or standards should be used in determining what constitutes a "significant improvement" in achieving the coastal management objectives specified in Section 303? Against what baseline should improvements be measured?

—What types of management activities may a state perform as a means of making significant improvements?

—How long should an activity be eligible to be considered an "improvement?" One year? If longer, based on what factors?

—How should priorities be set for determining in which areas of national concern a state needs to make significant improvements?

—How should the phrase "increasing proportion of each grant" be defined? Against what baseline should the increasing proportion be measured?

—What guidelines and procedures should be followed to determine the amount of funding that will be withheld or withdrawn if the state has failed to make "significant improvements"?

2. *Protecting Resources of National Significance—Section 306(i)*

New Section 306(i) encourages states to increase protection of coastal resources of national significance by inventorying and designating such resources and developing "specific and enforceable standards" for their protection. The Secretary is directed to monitor state progress in carrying out these activities and to deny grants under section 306A to states that have not made "satisfactory progress" in accomplishing these tasks by September 30, 1984.

Comments are requested with respect to the following and any other relevant issues:

—What criteria should be provided to states to guide them in their determination of whether a resource is one of national significance?

—How should "satisfactory progress" in achieving the objectives of Section 306(i) be measured?

—When should states begin activities designed to protect nationally significant resources in order to support a finding of satisfactory progress by 1984?

—How should "specific and enforceable standards" be defined?

—To what extent have some states with approved programs already satisfied the requirements of Section 306(i) and how should this compliance be demonstrated?

3. *Allocating Administrative Grants—Section 306(b)*

Section 306(b) requires that administrative grants under Section 306 be allocated among coastal states with approved programs in accordance with rules and regulations that take into account "the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors."

Comments are requested with respect to the following and any other relevant issues:

—How should the shoreline, coastal area and populaton factors be weighted in the formula used to allocate administrative grants?

—What other factors are "relevant" and how much weight should they be given?

4. *Resource Management Improvement Grants—Section 306A*

New Section 306A establishes a grant program to assist states in preserving and restoring specific areas, redeveloping urban waterfronts and ports, and providing access to public coastal areas and coastal waters. Section 306A grants may be used for acquiring interests in land, low-cost construction projects, engineering designs and specifications, and educational interpretive and management costs determined by the Secretary to be consistent with the purposes of the section. No state is eligible to receive Section 306A grants unless it is making "satisfactory progress" in activities designed to result in significant improvements as discussed above.

Comments are requested with respect to the following and any other relevant issues:

—What methodology should be followed for allocating 306A grants, i.e. should grants be allocated by formula or competitively? If by formula, what factors should be included? If competitively, what criteria should be used?

—How should funds available under 306A be allocated among the three purposes of (1) preserving and restoring specific areas, (2) redeveloping urban waterfronts and ports, and (3) providing public access to coastal areas and coastal waters.

—What should be the allowable uses and costs that are eligible under section 306A.

5. *Coal and Alternative Ocean Energy Impact Grants—Section 308(c)(3)*

The Act established a new Section 308(c)(3) under the Coastal Energy Impact Program (CEIP), authorizing the Secretary to make grants to eligible coastal states for preventing or mitigating unavoidable environmental and recreational losses in the coastal zone resulting from the "transportation, transfer or storage of coal or from alternative ocean energy activities." Funds available under Section 308(c)(3) must be allocated among eligible states in accordance with "rules and regulations * * * which shall take into account the number of coal or alternative ocean energy facilities, the nature of their impacts, and other relevant factors * * *"

Comments are requested with respect to the following and any other relevant issues:

—How should "coal transportation, transfer or stroage" activities and facilities be defined? Should facilities be water dependent in order to qualify a state for impact assistance?

—How should "alternative ocean energy activities" be defined?

—How should coal and alternative ocean energy impact grants be allocated among eligible states? Should one formula be developed that includes coal and alternative ocean energy facilities? Should available funds be split between coal and alternative energy impacts and separate formulas developed? Should a competitive system be used rather than state-by-state allocations based upon a formula?

—How should eligibility of coastal states for coal and alternative ocean energy grants be determined? Should states not receiving OCS formula grants be given priority consideration?

—What should be the allowable uses of these grants? Should the same uses eligible under environmental and recreational loss grants (Selection 308(b)(5)(c)) be allowed or should uses be restricted—e.g., planning only or planning and land acquisition only?

6. *Review of Performance (Evaluation)—Section 312*

Section 312 requires a "continuing review of the performance of coastal states with respect to coastal management." This review must include a written evaluation which assesses the extent to which the state has: (1) Implemented and enforced its approved program; (2) addressed the coastal management needs identified in Section 303(2) (A)–(I); and (3) adhered to the terms of any grant, loan or cooperative agreement funded under the CZMA, as amended. The Act requires that a public meeting be conducted as part of each evaluation and that opportunity be provided for oral and written comment by the public. Evaluation reports must be issued following each review of state performance. The Secretary is directed to reduce financial assistance under the Act by up to 30 percent if it is determined that a state is not making significant improvement in achieving the coastal management objectives identified in Section 303(2)(A)–(I) and to withdraw program approval and financial assistance if it is found that a state is failing to adhere to or is unjustifiably deviating from its approved program or the terms of any grant or cooperative agreement and refuses to remedy the deviation. The statute outlines procedural safeguards (such as notice to the state and an opportunity for a public hearing) that must be observed if the Secretary finds that program approval and financial assistance should be withdrawn.

Comments are requested with respect to the following and any other relevant issues:

—Should the regulations allow use of alternative types of evaluation, such as evaluation by third parties, self-evaluations or nationwide evaluation with respect to specific national objectives? If so, what alternatives should be considered?

—What should the evaluation team review to determine whether the state has (1) implemented and enforced its approved program (2) addressed the coastal management needs identified in Section 303 (2) (A)–(I), and (3) adhered to the terms of any grant, loan, or cooperative agreement?

—Should state coastal zone management programs and coastal energy impact programs be evaluated in a separate or integrated manner? For example, should the CEIP evaluation be conducted on the same schedule as the CZM porogram evaluation? How should the CEIP be assessed with respect to consistency with CZM program goals? Should there be separate regulations for CEIP evaluations?

—What factors, criteria or standards should be developed for determining whether a state is "adhering to" its approved program, "addressing" the national coastal management needs identified in Section 303(2)(A)–(I), and "implementing and enforcing" the approved program or is "unjustifiably deviating from" the program?

—At what point in the grant cycle should evaluation site visits take place and draft and final findings be issued? Should a uniform approach be adopted, or should timing be set on a state by state basis? Should timing be established by regulation or should it be left flexible?

—What should be the guidelines for withdrawing program approval and financial assistance to any state that is unjustifiably deviating from its approved program or the terms of any grant, or cooperative agreement and refuses to remedy the deviation?

—What procedures should be established for providing oral and written comments and for holding public meetings? What procedures should be used for distributing evaluation reports?

7. *Island Preservation—Section 315*

Section 315 of the Act authorizes the Secretary to make grants for (1) acquiring, developing and operating estuarine sanctuaries, and (2) acquiring lands to provide for the preservation of islands or portions thereof. Regulations implementing the estuarine sanctuary program were issued by NOAA in 1974 (15 CFR Part 921).

Comments are requested with respent to the following and any other relevant issues.

—For what purposes should island preservation grants be made? For example, should such grants be made only for the purpose of preserving islands, or portions thereof in their natural state, should they encompass acquisition for compatible uses such as research, education, or public recreational access, should they encompass other purposes and, if so, what purposes?

—Should the procedures for administration of the island preservation program be integrated with or separate from those of the estuarine sanctuary program with respect to programmatic objectives, grant application

process, public participation, and operation and management of acquired lands?

—How should appropriations for Section 315 be allocated between island preservation and the estuarine sanctuary program?

ADDRESS: Written comments, preferably in five copies, should be sent to: Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments received may be seen

to consumer product safety rules, it may be useful for rules issued under other sections of the CPSA or under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1211 et seq.), the

outcome to regulate. Commission decisions to issue consumer product safety rules are premised on a thorough consideration of the benefits and costs. The Commission notes that it is often

result of the comments. In addition, as the state of the art in the area of risk assessment or economic analysis for health and safety regulations advances

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process, public participation, and operation and management of acquired lands?

—How should appropriations for Section 315 be allocated between island preservation and the estuarine sanctuary program?

—By what criteria should grant applications for island preservation be evaluated? Should certain types of islands, such as barrier islands, be given priority over others for awards?

VI. Availability of Funds for Public Participation

In order to promote a full and fair determination of the issues involved, OCZM is making available $5,000 to compensate persons eligible under the criteria set forth in NOAA regulations (15 CFR Part 904) for their participation in this proceeding. The closing date for the receipt of applications for compensation is March 1, 1980.

Available Fund: A total fund of $5,000 is available to compensate eligible applicants. This fund may be distributed among one or more applicants, or, at the discretion of the Administrator, not distributed at all.

Eligible Persons: In accordance with the criteria of 15 CFR 904.3, persons who represent an interest the presentation of which can reasonably be expected to contribute substantially to a fair determination of the issues described above may be eligible for compensation from these funds. In determining eligibility and the amount of compensation, the Administrator may take into account:

(a) Whether the interest will be adequately represented otherwise;

(b) The need to encourage participation by segments of the public who may have little economic incentive to participate;

(c) The importance of the representation to a fair balance of interests;

(d) The number and complexity of the issues presented;

(e) The importance of public participation; and

(f) The applicant's resources available for participation.

Eligible Costs: The Administrator may compensate eligible persons for some or all of the reasonable costs incurred in participating including:

(1) Salaries for participants or employees of participants;

(2) Fees for consultants, experts, contractual services, and attorneys;

(3) Travel and travel related costs such as lodging, meals, tipping, telephone calls, etc.; and

(4) Document reproduction, postage, etc.

Procedures for applying: Applications may be filed with the Office of General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230, no later than March 1, 1980, and shall contain the information required by and be filed in accordance with NOAA's financial participation regulations, 15 CFR 904.4.

Dated: December 19, 1980.

Robert W. Knecht,

Acting Assistant Administrator for Coastal Zone Management.

[FR Doc. 80-40480 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-08-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1020

Proposed Methodology for Commission Consideration of Findings Under Section 9(c) of the Consumer Product Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes a regulation setting forth its general methodology for Commission consideration of the various findings under section 9(c) of the Consumer Product Safety Act. These findings are required for the issuance or material amendment of consumer product safety standards or bans. To the extent section 9(c) requires the Commission to evaluate the effect of a rule in terms of reduced risks and increased costs, this document contains the Commission policy on risk assessment and economic considerations, including benefit and cost issues, relevant to issuance of consumer product safety standards or bans.

DATES: (1) Written comments concerning the proposed rule must be received by March 2, 1981. Comments or other relevant information received after this date will be considered only to the extent practicable.

(2) There will be an opportunity for interested persons to orally present data, views, or arguments on Tuesday, February 3, 1981, at 9:30 a.m. Those wishing to make oral presentations should notify the Office of the Secretary by Tuesday, January 27, 1981. Additionally, a summary or copy of testimony is to be submitted to the Office of the Secretary two working days prior to the public meeting.

(3) The Commission proposes that this rule become effective 30 days after publication of the final rule in the Federal Register.

ADDRESS: Written comments, preferably in five copies, should be sent to: Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments received may be seen in the Office of the Secretary, Third floor, 1111 18th St., NW., Washington, D.C. during working hours (8:30 a.m.–5:00 p.m.) Monday through Friday. Persons wishing to make oral presentations should contact Richard Danca in the Office of the Secretary. These oral presentations will be held in the Commission's 3rd floor hearing room at the address above.

FOR FURTHER INFORMATION CONTACT: Carole Roth, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207 (202–634–7770). Persons wishing to make oral presentations should contact: Richard Danca, Office of the Secretary (202–634–7700).

SUPPLEMENTARY INFORMATION: In this document the Commission proposes a regulation setting forth its general methodology for Commission consideration of the various findings under section 9(c) (15 U.S.C. 2058(c)) of the Consumer Product Safety Act (CPSA). The seven separate findings of section 9(c)(1) and 9(c)(2) are required to be made by the Commission prior to promulgating a consumer product safety rule under the Act or a material amendment to such a rule. (This includes consumer product safety standards or bans under sections 7 and 8 of the CPSA, respectively. (15 U.S.C. 2056, 2057)). In addition, the Commission is required to include its section 9(c) findings in the rules. To revoke a consumer product safety rule, the Commission is required to make the negative finding that the rule is not reasonably necessary to address an unreasonable risk of injury. (See section 9(e).)

The section 9(c) findings relate to the risk which will be eliminated or reduced by a rule and the costs of a rule. While these findings are made in issuing individual consumer product safety rules, the Commission believes that a rule generally interpreting the requirements of section 9(c) will assist the public in understanding CPSC decision-making processes regarding these findings and will be helpful to the Commission in providing an overall approach for consideration of the findings in individual cases.

The provisions of the regulation below are essentially self-explanatory. The regulation follows section 9(c) subsection by subsection. Certain subsections are highlighted in this preamble. While this Part only applies

to consumer product safety rules, it may be useful for rules issued under other sections of the CPSA or under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1211 et seq.), the Flammable Fabrics Act (FFA) (15 U.S.C. 1191 et seq.), the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471 et seq.) and the Refrigerator Safety Act (RSA) (15 U.S.C. 1211 et seq.) to the extent these other statutory provisions require findings similar to the 9(c) findings. The Commission emphasizes that Part 1020 is a general interpretive rule; as provided in proposed § 1020.2(c) below, individual rule may incorporate in their 9(c) findings information or approaches not specifically mentioned here or may omit portions of the information discussed in this Part. If a substantial departure from this rule occurs, an explanation will be provided in the individual rule.

The Commission notes that the process of describing benefits and costs of a rule for the purpose of section 9(c) is a complex one. While the Commission prepares individually articulated findings as required by the section, information considered under the various findings may overlap since the findings are interrelated (e.g., the finding concerning the approximate number of consumer products subject to the rule (§ 1020.6 below) provides information useful in calculating the various costs of a rule (§ 1020.7 below) and also helps determine the finding involving the extent of consumer exposure to the products being regulated (§ 1020.5 below on the nature and degree of the risk).)

The Commission also points out that benefits and costs of its rules, when described in numerical terms, may often, because of the inherent uncertainties in risk estimation, best be represented by a range of values rather than a single point estimate. This fact is recognized in several places in the rule proposed below. Section § 1020.5 on the degree and nature of the risk of injury includes statements in both the acute and chronic area that estimates of the number and kinds of injuries or illnesses that will be affected by a rule may be expressed as a range of possible harm and may reflect any uncertainties involved in estimating risks to humans. Similarly, § 1020.7 on cost recognizes that cost estimates are likely to be expressed as ranges of costs.

The Commission, furthermore, emphasizes that while the findings of section 9(c) can be related to the elements of analyzing benefits and costs, the Commission uses quantified cost-benefit analyses as one of many tools in regulatory decisionmaking and does not rely solely on the cost-benefit outcome to regulate. Commission decisions to issue consumer product safety rules are premised on a thorough consideration of the benefits and costs. The Commission notes that it is often difficult to assign monetary values to human suffering in a meaningful way for regulatory purposes. (Therefore, § 1020.5(a)(4) and § 1020.5(b)(5) provide that the Commission, *where feasible*, estimates the costs of injuries or illnesses that will be eliminated by a rule.) The Commission believes that the ultimate issues involved in issuing health and safety regulations are likely to require judgments on values much as on judgments characterized by numerical estimations. In this regard it should be noted that the legislative history of the CPSA indicates that the Commission is not required to conduct a cost-benefit analysis prior to promulgating a consumer product safety rule. (H.R. Rep. No. 1153, 92nd Cong., 2nd Sess. 33 (1972).)

While the Commission is not required to conduct a formal cost-benefit analysis prior to issuing a consumer product safety rule, the Commission is required to find that the rule is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the regulated product. (Section 9(c)(2)(A) of the CPSA.) This is the central finding for issuance of a consumer product safety rule since it is made after and based upon the individual findings contained in section 9(c)(1) of the CPSA. A number of court cases have interpreted this finding to mean that the Commission must find that the expected benefits of a rule bear a reasonable relationship to the anticipated costs. (See *Aqua Slide "N" Dive* v. *CPSC*, 569 F.2d 831, at 842 (5th Cir. 1978); *Southland Mower Co.* v. *CPSC*, 619 F.2d 499, at 523 (5th Cir. 1980).) This test, which does not require the Commission to find that the quantifiable costs are outweighed by the quantifiable benefits but rather to determine that the total benefits, in the judgment of the Commission, justify the costs, is incorporated in the proposal below at § 1020.10(c).

As a means of designing the most effective regulations, the proposed regulation provides for consideration of alternatives to a mandatory consumer product safety standard or ban. These are listed at § 1020.8(b) below.

Conclusion

The Commission is proposing this rule for public comment in order to have the benefit of diverse views on the complicated and often controversial subjects dealt with in the rule and may revise the rule in the final version as a result of the comments. In addition, as the state of the art in the area of risk assessment or economic analysis for health and safety regulations advances and the Commission's procedures in this area change, the Commission will amend this rule, as needed and appropriate.

In addition to written comments, because of the importance of this interpretive rule, interested persons will be afforded an opportunity to make an oral presentation of data, views, or arguments on any aspect of the proposed rule on February 3, 1981. The proceedings for the oral presentation will be held at 9:30 am at the Commission's third floor hearing room at 1111 18th St., NW., Washington, D.C. The Commission's procedural regulations for oral presentation, 16 CFR Part 1109, (40 FR 49122), shall govern this proceeding.

The Commission is particularly interested in receiving written and oral comments on the following three issues:

1. Whether, in considering costs and benefits of proposed regulations, the Commission should ever assign a monetary value to life, types of injuries, and pain and suffering and if so, in what circumstances;

2. Whether the Commission should discuss in the rule its methodology or methodologies available for assessing risk, particularly risk from chronic hazards such as carcinogens, including specification of preferred risk assessment models (e.g. linear, multistage, and so forth); and

3. Whether the Commission should discuss in detail in the rule the types of indirect benefits (e.g. pain and suffering avoided) it expects from regulations and the methods used for assigning values to such indirect benefits.

The Commission proposes that this rule become effective 30 days after publication of the final rule.

Accordingly, pursuant to the provision of the Consumer Product Safety Act (section 9(c), Pub. L. 92–572, 86 Stat. 1216), the Commission proposes to add a new Part 1020 to Title 16 as follows:

PART 1020—METHODOLOGY FOR COMMISSION CONSIDERATION OF FINDINGS UNDER SECTION 9(c) OF THE CONSUMER PRODUCT SAFETY ACT

Subpart A—General

Sec.
1020.1 Purpose.
1020.2 Scope.
1020.3 Definitions.

Subpart B—Specific Findings under Section 9(c)(1)

1020.5 The degree and nature of the risk of injury the rule is designed to eliminate or reduce.
1020.6 The approximate number of

Consumer Product Safety Act prior to promulgating a consumer product safety standard or ban under sections 7 and 8 of the CPSA, respectively, or a material amendment to such a standard or ban.

progressive or persistent disease after a single or continual exposure to various levels of a certain chemical.

(c) The term "risks assessment" means an evalulation, in qualitative or

Electronic injury Surveillance System (NEISS), which provides information on injuries treated in hospital emergency rooms; death certificates; news clips and consumer complaints available to the

in question are likely to cause chronic illness in humans. In some instances, this evaluation will be based on the experience of workers or other populations exposed to the substance

rule to arrive at a determination of the benefits of a rule.

(6) Risk assessment for chronic risks may involve consideration of such factors as the special vulnerability of

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Subpart B—Specific Findings under Section 9(c)(1)

1020.5 The degree and nature of the risk of injury the rule is designed to eliminate or reduce.
1020.6 The approximate number of consumer products, or types or classes thereof, subject to such rule.
1020.7 The need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need.
1020.8 Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commerical practices consistent with the public health and safety.

Subpart C—Summary Findings under Section 9(c)(2)

1020.10 The rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product.
1020.11 The promulgation of the rule is in the public interest.
1020.12 In the case of a rule declaring the product a banned hazardous product, that no feasible consumer product safety standard under this Act would adequately protect the public from the unreasonable risk of injury associated with the product.

Authority: Sec. 9(c), Pub. L. 92–573, 86 Stat. 1216; 15 U.S.C. 2058(c).

Subpart A—General

§ 1020.1 Purpose.

(a) The purpose of this Part 1020 is to set forth the methodology the Commission will generally use in making the findings required by section 9(c) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2058(c)) for issuance or material amendment of consumer product safety rules. For revocation of consumer product safety rules, the Commission must find that the rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury. (Section 1020.10 of the rules below may be helpful in this regard.)

(b) The various findings under section 9(c) can be related to the elements of analyzing the expected costs to industry and consumers of Commission regulatory action in the light of the health and safety benefits to be obtained. To the extent section 9(c) mandates the use by the Commission of evaluations of the effect of a rule, this Part contains the Commission policy on benefit and cost considerations relevant to issuance of consumer product safety rules.

§ 1020.2 Scope.

(a) This Part contains the Commission's general policy for making findings under section 9(c) of the Consumer Product Safety Act prior to promulgating a consumer product safety standard or ban under sections 7 and 8 of the CPSA, respectively, or a material amendment to such a standard or ban.

(b) Regulations issued under other sections of the Consumer Product Safety Act or under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1211, et seq.), the Flammable Fabrics Act (FFA) (15 U.S.C. 1191, et seq.), the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471 et. seq.), and the Refrigerator Safety Act (RFA) (15 U.S.C. 1211, et. seq.) will be issued in accordance with the findings required by the appropriate statutory authority. However, to the extent these other statutory provisions require findings similar to the 9(c) findings, the kinds of information and methodologies discussed in this Part may be used by the Commission.

(c) In issuing individual consumer product safety rules, the Commission may find it necessary to consider information or approaches not specifically mentioned in this rule in order to make the section 9(c) findings. Similarly, in individuals cases, it may not be appropriate or necessary for making section 9(c) findings to consider all of the information discussed in this Part. Where a substantial departure from this rule occurs, the departure will be fully explained in the individual rule.

(d) The Commission makes preliminary section 9(c) findings when it proposes a consumer product safety rule or a material amendment to such a rule. These preliminary findings may be subject to revision in issuing the final rule based on public comments received on the proposed rule.

§ 1020.3 Definitions.

(a) The term "risks of acute injury or illness" means the potential for injury or illness which can occur immediately or shortly after a single or limited number of exposures to a consumer product. The injuries associated with acute risks are characterized by sudden or short onset and temporary or permanent damage. Examples include the injury which can result from contact with a sharp blade or exposure to a faulty electrical connection.

(b) The term "risks of chronic injury or illness" means the potential for injury or illness which can occur after a significant period of time following single or multiple exposures to a consumer product. The injuries or illnesses associated with chronic risks are often characterized by lengthy duration or frequent recurrence over a long time. Examples include the contracting of a form of cancer or other progressive or persistent disease after a single or continual exposure to various levels of a certain chemical.

(c) The term "risks assessment" means an evalulation, in qualitative or quantiative terms or both, of the effects of exposure to hazards in consumer products. The evaluation includes an analysis of the nature of the hazard and the likelihood of injury or illness that will result from exposure to certain products. Assessing the likelihood of injury or illness may require the development of ranges of risk estimates based partly on data and partly on scientific or medical theory. The evaluation may also take into account factors other than the overall magnitude of the risk, such as the special vulnerability of children, the elderly or the handicapped; the foreseeability or hidden nature of the risk; and to what extent the manner or duration of product use affects injuries.

Subpart B—Specific Findings under Section 9(c)(1)

§ 1020.5 The degree and nature of the risk of injury the rule is designed to eliminate or reduce.

This finding by the Commission is fundamental to a determination of the benefits that can be expected from a consumer product safety rule. The Commission evaluates the frequency and severity of risks of both acute and chronic injury or illness, which are discussed separately below:

(a) *Acute injury or illness.* The Commission shall prepare a qualitative discussion of the kind and extent of acute harm that results from exposure to the product being regulated. The Commission may base this finding on engineering, medical, scientific, or human factor analyses or injury potential. Where practicable and appropriate, however, in assessing the risks of acute injury or illness, the Commission also prepares a quantified risk assessment as part of its analysis of the degree and nature of the risk of injury. If such quantification is not possible in particular cases, the Commission explains why a quantitative assessment has not been prepared. The following steps are generally used in assessing risks of acute injury or illness:

(1) The Commission estimates the number and kinds of injuries and illnesses annually associated with the hazard being regulated. This estimate can include a range of possible harm, reflecting whatever uncertainties may exist in the data and theory used in deriving the estimate. Data sources for these estimates include but are not limited to the Commission's National Electronic injury Surveillance System (NEISS), which provides information on injuries treated in hospital emergency rooms; death certificates; news clips and consumer complaints available to the Commission; and data from burn treatment centers and poison control centers.

(2) The Commission then estimates the number and kinds of injuries or illnesses which would be eliminated annually if all consumer products subject to the rule were in compliance with the rule.

(3) If determinable, factors such as expected industry compliance with the rule and the rate of product replacement by consumers are considered to arrive at an estimate of the number and kinds of injuries or illnesses which would be eliminated after promulgation of the rule.

(4) The Commission, where feasible, estimates the "costs" of the injuries or illnesses that will be eliminated by a rule to arrive at a determination of the safety or health benefits of a rule. Where a numerical description of these costs is not possible, the Commission describes them in qualitative terms. Costs may include indirect costs (e.g., social costs, lost wages, pain and suffering) as well as direct medical costs associated with injuries or illnesses.

(5) Risk assessment for acute risks may involve consideration of such factors as the special vulnerability of certain populations such as children, the elderly, or the handicapped; the foreseeability of the risk by the consumer; and to what extent the manner or duration of product use affects injuries.

(b) *Chronic injury or illness.* The Commission prepares a qualitative discussion of the kind and extent of chronic harm that results from exposure to the product being regulated. Where practicable and appropriate, the Commission uses a quantified risk assessment as discussed in paragraph (a) of this section as a tool in regulatory decisionmaking. Many chronic risks of injury or illness, such as cancer, typically occur years after first exposure, making it difficult to link incidence of disease to exposure to specific consumer products. The Commission must often evaluate risk on the combined basis of scientific theory and available empirical evidence rather than using injury data alone. The following steps will generally be used in assessing risks of chronic injury or illness. (Where a quantitative assessment is not possible in particular cases, the Commission explains why):

(1) The Commission evaluates whether the substances in the products in question are likely to cause chronic illness in humans. In some instances, this evaluation will be based on the experience of workers or other populations exposed to the substance for long periods. In other instances, the evaluation will be based on animal experiments. Data from predictive *in vitro* tests and chemical structure-activity relationships will also be used in evaluating a chronic hazard. With regard to carcinogenic risks, the Commission is assisted by the work and conclusions of various expert research organizations, including but not limited to the International Agency for Research on Cancer (IARC) and the National Cancer Institute (NCI) as well as other regulatory agencies such as the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA).

(2) The Commission assesses the nature and extent of consumer exposure to the substances in the products being regulated. A theoretical model may be developed to determine typical consumer exposure. For example, in the case of a gas released from an aerosol product, the Commission might use predictions concerning the likely concentration of the chemical in the air and the likely amount inhaled by a consumer, based on assumptions concerning the quantity of chemical released under a specified set of conditions and the rate of air exchange.

(3) Combining the evaluation of the chronic injury or illness potential of the substance in the products and the exposure evaluation, the Commission assesses the risk to consumers from the consumer products. Where feasible, the assessment includes an estimate of the number or range of numbers of incidents of disease or deaths associated with exposure to the product, and the number of incidents which will be eliminated by the rule. Where numerical assessments are made, the Commission will explain any assumptions made as well as the extent to which the resulting conclusions may be uncertain.

(4) In evaluating the risk from a potential carcinogen, the Commission is assisted by scientific work concerning risk assessment, such as the Interagency Regulatory Liaison Group document entitled Scientific Basis for Identification of Potential Carcinogens and Estimation of Risks, (44 FR 39858, July 6, 1979) and the Regulatory Council's cancer policy, Regulation of Chemical Carcinogens (44 FR 60038; October 17, 1979).

(5) As with risks of acute injury or illness, where feasible, the Commission estimates the "costs" of the injuries or illnesses that will be eliminated by a rule to arrive at a determination of the benefits of a rule.

(6) Risk assessment for chronic risks may involve consideration of such factors as the special vulnerability of certain populations, the foreseeability of the risk by the consumer, and to what extent the manner or duration of product use affects the risk.

§ 1020.6 The approximate number of consumer products, or types or classes thereof, subject to such rule.

Information from this finding serves two purposes: it helps determine the extent of consumer exposure to the products being regulated, thus aiding in risk assessment and it provides a basis for calculating the various costs of the rule to industry and consumers. The Commission considers the following elements in making this finding:

(a) The Commission attempts to determine current production and sales of the products or the product types or classes covered by the rule. It also taken into account expected changes in production and sales as a result of the rule and other relevant changes such as long term trends in production or sales or the use of close substitutes. Sources for these estimates include published data of federal and other government units, private publications, direct contact with manufacturers and distributors, industry trade associations, consumer surveys, and direct staff observation.

(b) While consumer product safety rules do not apply to products already in consumers' hands, estimates of the stock of goods to which consumers are exposed are useful in assessing risk. Therefore, on a case-by-case basis, the Commission considers such estimates. Factors which are taken into account in estimating the stock in consumers' hands include previous production, expected product life, product maintenance, and consumer patterns of use and abuse.

(c) Where the products potentially covered by a rule include items used in the consumer environment and items used in industrial settings, the Commission develops criteria for distinguishing among the products to identify those consumer products covered by the rule.

(d) Complete description of all of the individual products involved may not be feasible for rules which potentially affect a wide range of products for a specific hazard (e.g., rules setting requirements for consumer products containing a certain chemical). In such cases, the Commission considers representative information about the

types and classes of products subject to the rule.

§ 1020.7 The need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need.

This finding serves two purposes: it helps determine the extent of consumer exposure to the products being regulated, thus aiding in risk assessment and it provides a basis for calculating the various costs of the rule to industry and consumers. The Commission considers the following elements in making this finding:

(a) The Commission estimates the cost to consumers of compliance with a CPSC rule. Such costs include estimated changes in product price, utility, and availability as alternatives as exemptions for small business and differing requirements according to the type of firm or product regulated ("tiering").

§ 1020.12 In the case of a rule declaring the product a banned hazardous product, that no feasible consumer product safety standard under this Act would adequately protect the public from the unreasonable risk of injury associated with the product.

consumer Product Safety Commission, Washington, D.C. 20207.
FOR FURTHER INFORMATION CONTACT:
Harry I. Cohen, Office of Program Management, Consumer Product Safety

could include glazing material in an exterior wall window because that window could be interpreted as forming "all or part of the wall * * * of a shower stall."

V 4 5 D E 3 0 8 0 UMI

types and classes of products subject to the rule.

§ 1020.7 The need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need.

This finding requires that the Commission consider four factors: the need for the products being regulated, the effect of the rule on the utility of the products for their users, the effect of the rule on the cost of the products, and the effect of the rule on the availability of the products. Each factor is discussed separately below:

(a) The Commission measures the need for a product by the extent to which the product is bought by the public, the uses to which it is put, and the extent to which close substitutes exist.

(b) The Commission evaluates the potential effect of its action on the utility of the product for its users by describing or analyzing how the functional attributes of the product may be changed, how the esthetic appeal of the product may be altered, and how other kinds of utility that may attach to the product may be modified. Particularly in case of a product ban, where close substitutes for the regulated product exist, the Commission takes the characteristics of these substitutes into account in evaluating the overall effect of the rule on the consumer. Sources for the evaluation of a rule's impact on utility include the opinions of the Commission's technical staff and comments from manufacturers, trade associations, and consumers, as well as comments from the public generally.

(c) The Commission considers the following kinds of costs (costs may be expressed as a range of costs):

(1) *Costs to affected firms.* The Commission estimates costs to manufacturers and others in the chain of distribution of producing and distributing complying products or where appropriate, of no longer being able to produce or distribute the regulated product. These cost estimates are based on CPSC determinations as to reasonable costs of compliance and on estimates by producers and others as to actual expected costs, including any significant costs of capital, labor, materials, distribution and sales. The Commission considers possible shifts in product lines by firms reacting to a rule. The Commission considers all significant production and distribution effects to estimate the total impact on firms.

(2) *Costs to consumers.* CPSC estimates the cost to consumers of compliance with a CPSC rule. Such costs include estimated changes in product price, utility, and availability as a result of a rule. Where there may be significant changes in the value of the product because of such factors as changes in quality, durability, or maintenance costs, these are included in the estimates of cost to consumers.

(3) *Other effects.* The Commission discusses any other significant costs of a rule such as changes in sales and employment for some firms, effects on international trade, competitive disruptions, or other changes in normal business practice. The Commission may consider how any such effects may be offset by changes in the market for close substitutes. (e.g., substitute products may increase sales and employment for other firms.)

(d) The Commission discusses whether the availability of products will be affected by a rule, taking into account such factors as whether changes in the state of technology are required by a rule, how fast affected firms can adapt to a rule, and the availability of substitute products or new technologies to fill consumers' needs.

§ 1020.8 Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

This finding requires the Commission to consider alternatives to the rule or parts of the rule which will accomplish the objective of the rule but will be less disruptive to industry. The Commission considers the following elements under this finding:

(a) The Commission considers effects the rule may have on processes of production, distribution and sale of the products subject to the rule. Particular attention is given to effects on small business, on competition, and on foreign trade.

(b) The Commission considers alternative ways, consistent with protecting the public health and safety, to minimize any adverse impacts identified. Such alternatives may include different effective dates; different substantive requirements, including labeling requirements; the use, where feasible, of performance rather than design requirements; and voluntary standards or information disclosure by CPSC rather than mandatory CPSC regulations. The Commission also may consider, where appropriate and authorized by law, such regulatory alternatives as exemptions for small business and differing requirements according to the type of firm or product regulated ("tiering").

Subpart C—Summary Findings Under Section 9(c)(2)

§ 1020.10 The rule (including its effective date) is reasonably necessary to eliminate or reduce and unreasonable risk of injury associated with such product.

This is the central finding for issuance or material amendment of a consumer product safety rule. It concerns the relationship between the anticipated injury or illness reduction from a rule and the costs of the rule. The Commission takes the following steps in making this finding:

(a) The Commission reviews the information contained in the individual findings for a rule under section 9(c)(1) of the CPSA.

(b) The Commission considers the expected effectiveness of a rule in eliminating or reducing the number of accidents, injuries and illnesses and their costs, in light of the costs to the public of eliminating or reducing the hazards.

(1) A variety of factors may be involved in estimating the effectiveness of a rule in addressing a risk, including engineering, scientific, behavorial and enforcement considerations; and predictions about the response of industry and the public in general.

(c) The Commission may make this finding if it concludes that the expected benefits of a rule bear a reasonable relationship to the anticipated costs.

§ 1020.11 The promulgation of the rule is in the public interest.

Issuance of rules where the benefits bear a reasonable relationship to the costs (i.e., rules which are reasonably necessary to address an unreasonable risk of injury) will generally also be in the public interest. However, where a rule is reasonably necessary to address and unreasonable risk of injury, some other factor may make issuance of the rule more or less desirable. Under this finding, the Commission, where it has found a rule to be reasonably necessary to address an unreasonable risk of injury, reviews any other relevant factors; such as adequacy of voluntary actions and societal concerns, such as environmental, energy, or international trade concerns, to determine whether issuance of the rule is in the best interest of the public.

§ 1020.12 In the case of a rule declaring the product a banned hazardous product, that no feasible consumer product safety standard under this Act would adequately protect the public from the unreasonable risk of injury associated with the product.

Under this finding, the Commission looks at the particular product being regulated and determines whether a standard, including a labeling rule, could be designed and met so as to render what is being regulated safe. The Commission consider only "feasible" standards. "Feasibility" under this provision means technically and economically possible within a reasonable time period, given current technology or technology expected to be developed in the near future.

Dated: December 23, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80-40495 Filed 12-29-80; 8:45 am]

BILLING CODE 6355-01-M

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16 CFR Part 1201

Proposed Interpretation of Architectural Glazing Materials Safety Standard; Decision on Petition CP 78-18

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed interpretation; decision on petition.

SUMMARY: The Commission's safety standard for architectural glazing materials applies to several products, including bathtub and shower doors and enclosures. The Commission is proposing an interpretation of the standard that clarifies that the terms "bathtub doors and enclosures" and "shower door and enclosure" do not include glazing materials in a window located over a bathtub or within a shower stall and in the exterior wall of a building. The interpretation is intended to resolve questions which have arisen among firms whose activities are subject to regulation by the standard. This proposed interpretation grants a portion of a petition from the National Glass Dealers Association. The Commission has denied the other portions of that petition, which requested amendments to the standard, and in this notice explains the reasons for its decision.

DATE: Comments on the proposed interpretation should be submitted by March 2, 1981. The interpretation is proposed to become effective 30 days after it is published in final form.

ADDRESS: Comments should be submitted to the Office of the Secretary, consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Harry I. Cohen, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6453.

SUPPLEMENTARY INFORMATION: In January 1977 the Consumer Product Safety Commission issued a safety standard to reduce unreasonable risks of injury associated with architectural glazing materials and certain products incorporating those materials (42 FR 1428; 16 CFR Part 1201). The standard prescribes tests to ensure that the glazing materials either do not break when impacted with a specified energy or break with such characteristics that they are less likely than other glazing materials to present an unreasonable risk of injury. The standard became effective on July 6, 1977.

The standard is applicable to glazing materials used in six specific products and to the products themselves. These products, each defined in the standard, are storm doors, doors, bathtub doors and enclosures, shower doors and enclosures, sliding glass doors (patio-type), and glazed panels. On August 28, 1980 the Commission revoked the provisions applicable to glazed panels (45 FR 57383). Therefore, as of August 28, 1981, the standard will apply only to five products and the glazing materials used in those products.

Bathtub and shower windows

The standard defines the term "bathtub doors and enclosures" to mean "assemblies of panels and/or doors that are installed on the lip of or immediately surrounding a bathtub" (§ 1201.2(a)(2)). The standard defines the term "shower door and enclosure" to mean "an assembly of one or more panels installed to form all of part of the wall and/or door of a shower stall" (§ 1201.2(a)(30)).

Since the effective date of the standard, firms whose activities are regulated by the standard have raised the question of whether these definitions include glazing materials in a window that is located over a bathtub or within a shower stall and in the exterior wall of a building. The definitions of bathtub and shower doors and enclosures contain no specific exemption for glazing materials in such windows. The text of § 1201.2(a)(2), if read literally, could include glazing material in an exterior wall window located above a bathtub because that window could be interpreted as being "immediately surrounding" the bathtub. Similarly, the text of § 1201.2(a)(30), if read literally, could include glazing material in an exterior wall window because that window could be interpreted as forming "all or part of the wall * * * of a shower stall."

In September, 1978 the National Glass Dealers Association (NGDA) petitioned the Commission to amend the architectural glazing standard (Petition CP 78-18). A portion of the petition requested amendments to the definitions of bathtub and shower doors and enclosures to exclude any glazing material in a window that is located over a bathtub or within a shower stall and in the exterior wall of a building.

The Commission, when it issued the standard in 1977, did not intend to include within the definitions of bathtub and shower doors and enclosures any item of glazing material that is contained in a window in an exterior wall of a building. In response to the petition, the Commission has reevaluated its original intention and found that it was appropriate to exclude from the standard glazing material in such windows. The Commission is aware of no injuries that have been associated with exterior wall windows surrounding bathtubs or within shower stalls. In addition, a common sense understanding of doors and enclosures would include the panels used to assemble bathtubs and showers inside the house, but not the actual walls of the house.

The existing definitions of bathtub and shower doors and enclosures could reasonably be interpreted either to include or exclude the glazing materials in exterior wall windows. Therefore, the Commission has decided to propose for public comment an interpretation of the architectural glazing standard that clarifies the Commission's original and present intention that the standard does not apply to such glazing materials. This initiation of a proceeding provides NGDA with the relief that it sought on this issue and the Commission has thus granted the portion of NGDA's petition concerning bathtub and shower exterior windows.

Because the Commission clarification does not amend the standard, the provisions of section 9(e) of the Consumer Product Safety Act do not apply. Nevertheless, the Commission wants to obtain the views of any member of the public who may be affected by it. Therefore, the Commission proposes the clarification below as an interpretation. If issued in final form, the interpretation will be codified in a new Subpart C so that anyone referring to the standard will also be able to refer to the interpretation.

Other portions of petition

Aside from the bathtub and shower exterior window issue, NGDA's petition requested amendments to the Commission's architectural glazing

products must certify that their products comply with the standard. This certification is a useful enforcement tool because most violations of the standard thus far have resulted from the

pursuant to sections 7 and 9 of the Consumer Product Safety Act, 15 U.S.C. 2056, 2058, the Commission proposes to amend Title 16, Chapter II, Subchapter B, Part 1201 of the Code of Federal

over a bathtub or within a shower stall and in the exterior wall of a building. The Commission clarifies that the Standard does not apply to such items of glazing material or such windows. This interpretation applies only to the

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8299 or John Bassett/Ting Chin, (202) 357-8595.

SUPPLEMENTARY INFORMATION:

Issued: December 19, 1980.

stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil

Other portions of petition

Aside from the bathtub and shower exterior window issue, NGDA's petition requested amendments to the Commission's architectural glazing standard. As discussed below, the Commission has denied these other portions of the petition, and this **Federal Register** document shall serve as the Commission's publication of its reasons for denial, as required by section 10 of the CPSA:

1. NGDA has requested amendments to the glazed panel provisions of the standard. However, the Commission revoked all of the glazed panel provisions on August 28, 1980, to become effective on August 28, 1981.

Before revoking the glazed panel provisions, the Commission solicited public comment on possible amendments to them. The Commission evaluated these comments before deciding to revoke the glazed panel provisions in final form. The Commission's **Federal Register** documents that proposed and issued the revocation fully discuss the Commission's reasons for revoking the provisions instead of amending them (44 FR 31218, May 31, 1979; 45 FR 57383, August 28, 1980). Briefly, the Commission determined that enforcement of glazed panel provisions by local building officials would be more effective than a federal enforcement program (45 FR 57388).

Because the glazed panel provisions of the standard have been revoked, the Commission has denied the portions of the NGDA petition that concern those provisions.

2. NGDA has also requested that six products containing glazed materials be deleted from the architectural glazing standard. If this were done, the standard would still apply to the glazing materials contained in the six products (after the glazed panel revocation becomes effective, five products).

NGDA's position is that application of the standard to the six products is unnecessary because consumers would be adequately protected by the applicability of the standard to the glazing materials incorporated into the six products. For example, a storm door need not fall within the standard because the glazing material comprising the storm door panel is within the standard.

The Commission disagrees with the NGDA position and has decided to deny this portion of the petition.[1] Under the existing standard, installers and fabricators of architectural glazing products must certify that their products comply with the standard. This certification is a useful enforcement tool because most violations of the standard thus far have resulted from the intentional use of noncomplying glazing materials by installers and fabricators. If the standard were amended as requested by NGDA, installers and fabricators would no longer be "manufacturing" a product within the standard and they would not have to issue any certification. If the Commission did not have the certification requirement to use as an enforcement tool against installers and fabricators who use noncomplying glazing material, consumers would not be protected as well as they currently are.

3. Finally, the NGDA petition requested terminology changes in the standard. One was to add the phrase "or installations" to the term "architectural glazing products." The other was to define and use the term "installers" so that it is distinguished from the term "fabricators." NGDA's primary reason for requesting these changes is that installers are more familiar with these terms than the ones currently contained in the standard. NGDA has described the changes as "technical" ones that would have no impact on consumer protection.

The Commission does not dispute that segments of the glazing industry might well be more familiar with the terms "installations" and "installers" than with the terms now used in the standard. However, the Commission has no indication that the installers are confused about the application of the standard to them and their activities. To the contrary, the Commission's numerous contacts with the installers all indicate a high level of awareness on their part. In large part because of the educational efforts of NGDA and other glazing trade associations, the Commission believes that this level of awareness will continue. If any terminology changes are made to the standard now, the Commission cannot be sure that new questions will not be raised and uncertainty about applicability of the standard fostered. Therefore, the Commission has decided to deny this portion of the petition.

Conclusion

The Commission has denied the portions of the NGDA petition concerning amendments to the glazed panel provisions, deletion of six products, and changes in terminology. The Commission has granted the portion concerning bathtub and shower doors and enclosures and, accordingly, pursuant to sections 7 and 9 of the Consumer Product Safety Act, 15 U.S.C. 2056, 2058, the Commission proposes to amend Title 16, Chapter II, Subchapter B, Part 1201 of the Code of Federal Regulations, by adding a new Subpart C, as follows:

[1] The vote on this portion was 4 to 1, with Commissioner Sloan voting to grant.

PART 1201—SAFETY STANDARD FOR ARCHITECTURAL GLAZING MATERIALS

Subpart A—The Standard

* * * * *

Subpart B [Reserved]

* * * * *

Subpart C—Statements of Policy and Interpretation

§ 1201.40 Interpretation concerning bathtub and shower doors and enclosures.

(a) *Purpose and background.* The purpose of this section is to clarify the scope of the terms "bathtub doors and enclosures" and "shower door and enclosure" as they are used in the Standard at Subpart A. The Standard lists the products that are subject to it (§ 1201.1(a)). This list includes "bathtub doors and enclosures," a term defined in the Standard to mean "assemblies of panels and/or doors that are installed on the lip of or immediately surrounding a bathtub" (§ 1201.2(a)(2)). The list also includes "shower doors and enclosures," a term defined to mean "(assemblies) of one or more panels installed to form all or part of the wall and/or door of a shower stall" (§ 1201.2(a)(30)). Since the Standard became effective on July 6, 1977, the question has arisen whether the definitions of these products include glazing materials in a window that is located over a bathtub or within a shower stall and in the exterior wall of a building. The definitions of the terms "bathtub doors and enclosures" and "shower door and enclosure" contain no specific exemption for glazing materials in such windows. If read literally, the Standard could include glazing materials in an exterior wall window located above a bathtub because that window could be interpreted as being "immediately surrounding" the bathtub. Similarly, the Standard, if read literally, could include glazing materials in an exterior wall window because that window could be interpreted as forming "all or part of the wall * * * of a shower stall."

(b) *Interpretation.* When the Consumer Product Safety Commission issued the Standard, it did not intend the standard to apply to any item of glazing material in a window that is located over a bathtub or within a shower stall and in the exterior wall of a building. The Commission clarifies that the Standard does not apply to such items of glazing material or such windows. This interpretation applies only to the terms "bathtub doors and enclosures" and "shower door and enclosure" and does not affect the applicability of the Standard to any other product.

(Secs. 7, 9 of the Consumer Product Safety Act (15 U.S.C. 2056, 2058))

Dated: December 23, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80-40496 Filed 12-29-80; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76 (Texas-7)]

Ceiling Prices

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendation of the Texas Railroad Commission that the Lower Wilcox Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on January 21, 1981.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on January 7, 1981.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8299 or John Bassett/Ting Chin, (202) 357-8595.

SUPPLEMENTARY INFORMATION:

Issued: December 19, 1980.

I. Background

On December 11, 1980, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), that the Lower Wilcox Formation, located in the southeastern part of the State of Texas, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Lower Wilcox Formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Lower Wilcox Formation, encountered in the southern portion of Austin County, the northern portion of Wharton County, and the eastern portion of Colorado County, Texas, be designated as a tight formation. The particular area being recommended entails a 2.5 mile radius around a well which is located 467 feet from the southwestern boundary and 650 feet from the northwestern boundary of the Frank R. Moore Survey A-377 in Austin County. (A more detailed description of the recommended area is contained in the recommendation on file with the Commission.) The Lower Wilcox Formation is located below the Claiborne Formation and above the Midway Formation. The top of the recommended portion of the Lower Wilcox Formation is located at an approximate depth of 11,700 feet and the base is located at an approximate depth of 12,700 feet, giving a thickness of 1,000 feet.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy.

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing State and Federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Lower Wilcox Formation, as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 21, 1981. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76 (Texas—7), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than January 7, 1981.

(Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3432)

Accordingly, the Commission proposes to amend the regulations in

Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

concluded that the cost of processing the simplest liquidated damages case is $41.50. The cost to Customs has increased since that study was made.

consignee or other person of any duty-free merchandise, the bonded carrier is subject to a penalty imposed by Customs as liquidated damages in an

be transported in bond; that is certain Customs documents are required to support the movement and the carriers must be bonded by Customs for this

Department stated that it considers each regulation or amendment to an existing regulation published in the **Federal Register** and codified in the Code of

19 CFR Part 132, 141, and 142

Proposed Customs Regulations Amendments Relating to Quota Merchandise, Statistical Information

Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams

Director, Office of Pipeline and Producer Regulation.

Section 271.703(d) is amended by adding new subparagraph (27) to read as follows:

§ 271.703 Tight Formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, as subindexed below, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

* * * * *

(11) through (26) [Reserved]

(27) *Lower Wilcox Formation in Texas*

(i) *Delineation of formation.* The Lower Wilcox Formation is found in the southern portion of Austin County, the northern portion of Wharton County, and the eastern portion of Colorado County, Texas.

(ii) *Depth.* The top of the Lower Wilcox is located at an approximate depth of 11,700 feet and the base is located at an approximate depth of 12,700 feet, giving a thickness of 1,000 feet.

[FR Doc. 80-40392 Filed 12-29-80; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 18

Transportation in Bond and Merchandise in Transit; Proposed Customs Regulations Amendments Relating to the Assessment of Liquidated Damages Under Carrier's Bonds

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: Bonded carriers are responsible for shortages, irregular deliveries, or nondeliveries of imported merchandise received by them to be transported from one port to another. In the case of any shortage, failure to deliver, or direct delivery to the consignee or other person of any duty-free merchandise, the bonded carrier is subject to a penalty imposed by Customs as liquidated damages in an amount equal to the value of the merchandise not to exceed $25 in any one shipment.

Customs has determined that the maximum penalty has failed to act as a deterrent to future violations and does not cover the administrative costs of processing the penalty. This document proposed to amend the Customs Regulations to increase the penalty to a minimum of $50 and a maximum of $100, in any one shipment, to be determined within the discretion of the district director.

Bonded carriers are also responsible for any internal revenue taxes or other taxes due to the United States on the missing merchandise. While customs duties are included in these taxes, they are not expressly mentioned. Accordingly, this document also proposes to include the term "duties" within the category of liabilities assumed by bonded carriers for shortage, nondelivery, or irregular delivery of merchandise.

DATE: Comments must be received on or before March 2, 1981.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations and Research Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: William G. Rosoff, Carriers, Drawback and Bonds Division, 202–566–5856; Operational Aspects: Thomas Hargrove, Cargo Processing Division, 202–566–5354; U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Generally, when merchandise is imported into the United States it must be entered for Customs purposes at the first port at which the merchandise arrives. However, under certain circumstances, imported merchandise may be placed in a Customs bonded warehouse or transported from the first port in the United States to another port. This procedure postpones final Customs formalities, including payment of duties due, until the merchandise arrives at the other port. The merchandise then may be entered, warehoused, or exported. In order to forward imported merchandise to another port, the merchandise must be transported in bond; that is certain Customs documents are required to support the movement and the carriers must be bonded by Customs for this purpose. Carriers bonded to transport merchandise in bond must follow certain procedures specified in Part 18, Customs Regulations (19 CFR Part 18), and they will incur penalties if shipments, together with the necessary documents, are not properly transported and delivered to Customs at the port of destination.

Section 18.10, Customs Regulations (19 CFR 18.10), lists five types of entries or withdrawals which may be made for merchandise to be transported in bond. Under § 18.8, Customs Regulations (19 CFR 18.8), carriers of merchandise transported in bond are responsible for any shortage, irregular delivery, or nondelivery at the port of destination or port of exit of bonded merchandise received by them. If there is a shortage, irregular delivery, or nondelivery, the bonded carrier is assessed liquidation damages under its bond. The amount of the liquidated damages depends on the dutiable status of the merchandise and the type of nonperformance by the carrier.

Section 18.8(b)(1), Customs Regulations (19 CFR 18.8(b)(1)), provides that if there is a shortage, irregular delivery, or nondelivery of duty-free merchandise, the penalty to be imposed as liquidated damages will be an amount equal to the value of the missing merchandise, not to exceed $25 in any one shipment.

In addition to the penalties prescribed by § 18.8(b)(1), § 18.8(c), Customs Regulations (19 CFR 18.8(c)), provides that the bonded carrier is also responsible to pay any internal revenue taxes or other taxes owed to the United States on the missing merchandise, as well as all costs, charges, and expenses caused by the failure to make the required transportation, report, and delivery.

Discussion

Customs has determined that the maximum amount of the penalty imposed as liquidated damages assessed against the carrier's bond for shortage, nondelivery, or irregular delivery of duty-free merchandise is insufficient to act as a deterrent to future violations. In addition, the $25 maximum penalty permitted under § 18.8(b)(1) does not nearly meet the administrative costs to Customs of processing claims for liquidated damages. In a study performed in the Houston, Texas, Customs Region, it was concluded that the cost of processing the simplest liquidated damages case is $41.50. The cost to Customs has increased since that study was made.

Accordingly, Customs proposes to amend § 18.8(b)(1) to increase the amount of the liquidated damages that can be assessed to a minimum of $50 and maximum of $100, in any one shipment, to be determined within the discretion of the district director.

Although the provisions of § 18.8(c) have been used to collect customs duties under a carrier's bond on any missing merchandise, and the authority to collect duties under the carrier's bond has been recognized by the U.S. Customs Court in *Art Craft Jewelry Co. v United States*, 64 Cust. Ct. 414, C.D. 4010 (1970), the term "duties" does not expressly appear in § 18.8(c). Accordingly, for purposes of clarity, Customs proposes to amend § 18.8(c) to expressly include the term "duties" among the liabilities imposed upon a carrier in the case of shortage, nondelivery, or irregular delivery of merchandise.

Customs Forms

If this proposal is adopted, Customs Forms 3587 ("Carrier's Bond"), 3583 ("Private Carrier's Bond"), and 3855 ("Bond of Customs Cartman or Lighterman") would be revised to conform to the proposed amendments.

Authority

These amendments are proposed under the authority of R.S. 251, as amended, and sections 551, 623, 624, 46 Stat. 742, as amended, 759, as amended, (19 U.S.C. 66, 1551, 1623, 1624).

Comments

Before adopting this proposal, consideration will be given to any written comments, preferably in triplicate, submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

Applicability of Executive Order 12044

This document is subject to the Treasury Department directive published in the Federal Register on November 8, 1978 (43 FR 52120), implementing E.O. 12044, "Improving Government Regulations," and was the subject of Work Plan 79–11, approved by the Department on May 1, 1979.

In the directive, the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the Federal Register and codified in the Code of Federal Regulations to be "significant". However, regulations which are nonsubstantive, are essentially procedural, do not materially change existing or establish new policy, and do not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected, with Secretarial approval, may be determined not to be significant. Accordingly, it has been determined that this proposal does not meet the criteria in the directive for "significant" regulations.

Drafting Information

The principal author of this document was Laurie Strassberg Amster, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Proposed Amendments

It is proposed to revise § 18.6(b)(1) and (c), Customs Regulations (19 CFR 18.8(b)(1), (c)), to read as follows:

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

* * * * *

(b) Penalties imposed as liquidated damages under the carrier's bond for shortage, failure to deliver, or irregular delivery shall be as follows:

(1) In the case of shortage, failure to deliver, or delivery direct to the consignee or other person of any merchandise free of duty, a minimum of $50 and a maximum of $100, in any one shipment, to be determined within the discretion of the district director.

* * * * *

(c) In addition to the penalties described in paragraph (b) of this section, the carrier shall pay any internal-revenue taxes, duties, or other taxes accruing to the United States on the missing merchandise, together with all costs, charges, and expenses caused by the failure to make the required transportation, report, and delivery.

William T. Archey,

Acting Commissioner of Customs.

Approved: December 15, 1980.

Richard J. Davis,

Assistant Secretary of the Treasury.

[FR Doc. 80-40341 Filed 12-29-80; 8:45 am]

BILLING CODE 4810-22-M

19 CFR Part 132, 141, and 142

Proposed Customs Regulations Amendments Relating to Quota Merchandise, Statistical Information, and Merchandise Released Under the Immediate Delivery Procedure

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: Pub. L. 95–410, the "Customs Procedural Reform and Simplification Act of 1978," made significant changes in the Customs laws relating, in part, to the entry and warehousing of imported merchandise. Amendments to the Customs Regulations implementing these changes were recently published; however, several sections of the Customs Regulations need further changes. This document proposes to amend the Customs Regulations to:

(1) Clarify the procedure relating to quota merchandise when the quota is nearing fulfillment;

(2) Remove a mandatory requirement to aggregate statistical information from multiple invoices;

(3) Clarify the circumstances under which a district director may authorize release of merchandise from warehouse under a special permit; and

(4) Clarify what documentation may be filed after merchandise is released under the immediate delivery procedure.

DATE: Comments must be received on or before March 2, 1981.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Regulations and Reserach Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Relating to quota merchandise—Helen Rohrbaugh, Duty Assessment Division, (202–566–8592); Relating to statistical information—William L. Marchi, Duty Assessment Division, (202–566–8235); Relating to merchandise released under the immediate delivery procedure—Benjamin H. Mahoney, Entry Procedure and Penalties Division, (202–566–5778). U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Pub. L. 95–410, the "Customs Procedural Reform and Simplification Act of 1978," made significant changes in the Customs laws relating, in part, to the entry and warehousing of imported merchandise. Final amendments to the Customs Regulations implementing these Changes were published in the

Federal Register on August 9, 1979, as T.D. 79–221 (44 FR 46794).

Based upon recent experience and further review, Customs has determined that several sections of the Customs

Section 132.12, Customs Regulations, relating to the opening of potentially filled quotas, provides a procedure in paragraph (c)(2) to be used in the event quantities specified on entry summaries

complaints. Accordingly, a notice was published in the Federal Register as T. D. 79–248 on September 24, 1979 (44 FR 55001), delaying implementation of §§ 141.61 (e)(1)(i) and (f)(2), to January 1,

However, it appears that some importers, who do not travel great distances between their bonded warehouses and the customhouse and, therefore, can obtain prompt release of

transportation and exportation, or an application to destroy, may be filed for merchandise released under a special permit for immedate delivery and later found to be prohibited.

amendments relate, was in process before May 22, 1978, the effective date of the directive. The proposal has been under extensive study by Customs, the International Trade Commission, and

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Federal Register on August 9, 1979, as T.D. 79–221 (44 FR 46794).

Based upon recent experience and further review, Customs has determined that several sections of the Customs Regulations amended by T.D. 79–221 need further changes. Accordingly, this document proposes to amend the following sections of the customs Regulations:

1. Section 132.13(a)(1), Customs Regulations (19 CFR 132.13(a)(1)), to clarify the procedure relating to quota merchandise when the quota is nearing fulfillment;

2. Sections 141.61(e)(1(i) and (f)(2), Customs Regulations (19 CFR 141.61(e)(1)(i), (f)(2)), to remove a mandatory requirement to aggregate statistical information from multiple invoices;

3. Section 142.21(f), Customs Regulations (19 CFR 142.21(f)), to clarify the circumstances under which a district director may authorize release of merchandise from warehouse under a special permit; and

4. Section 142.22(b), Customs Regulations (19 CFR 142.22(b)), to clarify what documentation may be filed after merchandise is released under the immediate delivery procedure.

Discussion of Proposed Changes

Section 132.13(da)(1)

As amended by T.D. 79–221, the first sentence of § 132.13(a)(1)(ii) provides that "Except in emergency cases, as provided for in § 142.21(e)(2) of this chapter, absolute quota merchandise shall not be released under this immediate delivery procedure if the quota is nearing fulfillment." To correct an inconsistency in the regulations, this sentence subsequently was amended by T.D. 80–26, published in the Federal Register on January 21, 1980 (45 FR 3901), to provide that "Absolute quota merchandise shall not be released under the immediate delivery procedure if the quota is nearing fulfillment."

A question of interpretation has been raised as to whether absolute quota merchandise could be released under the immediate delivery procedure if the quota were not nearing fulfillment. To clarify this point, this document proposes to further amend § 132.13(a)(1)(ii) to provide that except as provided for in § 142.21(e)(2) (relating to perishable merchandise of a class approved by Headquarters subject to an absolute quota) and § 142.21(g) (relating to release of merchandise when authorized by Headquarters), absolute quota merchandise shall not be released under the immediate delivery procedure.

Section 132.12, Customs Regulations, relating to the opening of potentially filled quotas, provides a procedure in paragraph (c)(2) to be used in the event quantities specified on entry summaries for consumption or withdrawals for consumption shall be prorated against the quota quantity.

This document further proposes to amend § 132.13(a)(1) by deleting the last sentence of § 132.13(a)(1)(ii) and by adding a new § 132.13(a)(1)(iii) to provide that the procedure set forth under § 132.13(c)(2), relating to the opening of potentially filled quotas, also applies to tariff and absolute quota when the quota is nearing fulfillment.

Sections 141.61(e)(1)(i) and (f)(2)

Section 141.61 (e)(1)(i), as amended by T.D. 79–221, provides that if a class or kind of merchandise from the same country of origin subject to the same statistical reporting number is included in more than one invoice, the information shall be combined and reported under one statistical reporting number. That section also provides that when consolidating information from several invoices under one reporting number, a worksheet itemizing the entered value of the merchandise from each invoice shall be attached to the appropriate form.

Section 141.61(f)(2), as amended by T. D. 79–221, relating to values on multiple invoices, requires that the aggregate of the entered values of all the merchandise on each of the multiple invoices be shown on an attached worksheet.

The new procedures relating to aggregating statistical information were proposed initially to reduce the loss of statistical data because detailed information on line items of the Tariff Schedules of the United States Annotated (TSUSA) valued under $250 was not reported. By combining data under one TSUSA number, many line items valued under $250 could be included in the detailed data. Additionally, many TSUSA line items on Customs entry summaries could be eliminated, thus realizing significant savings in computer processing time.

The effective date for implementing these sections was September 10, 1979. However, after publication of T.D. 79–221 on August 9, 1979, a number of individual customhouse brokers, their trade association, and other interested parties advised Customs of serious problems and burdens they were experiencing in attempting to establish procedures to comply with the new regulations.

After reviewing this matter, Customs found there was merit to these complaints. Accordingly, a notice was published in the Federal Register as T. D. 79–248 on September 24, 1979 (44 FR 55001), delaying implementation of §§ 141.61 (e)(1)(i) and (f)(2), to January 1, 1980. Subsequently, on October 26, 1979, Customs field personnel were directed by Customs Headquarters to advise importers, brokers, and other interested parties that there would be an indefinite delay in implementing these sections.

Customs has determined that the problems and financial burden that the new requirements would impose on certain segments of the importing public outweigh the benefits to be gained in reducing processing costs and time, and providing more complete statistical data.

On the other hand, some importers and nonautomated brokers prefer to aggregate the TSUSA numbers. A practice has been established in many locations to permit entry summaries to be filed in this manner.

Therefore, Customs has determined to permit importers and brokers, at their option, to either:

1. Aggregate the TSUSA number regardless of the number of invoices involved; or

2. List the TSUSA number within each invoice.

This document proposes to amend §§ 141.61 (e)(1)(i) and (f)(2) to provide that the broker and importer may use either procedure.

Section 142.21(f)

Section 142.21(f), Customs Regulations (19 CFR 142.21(f)), as amended by T.D. 79–221, provides that at the discretion of the district director, merchandise may be released from a warehouse under a special permit provided the importer has on file one of the types of Customs bonds provided for in § 142.4, Customs Regulations (19 CFR 142.4).

The purpose of this provision is to avoid unnecessary delay in releasing merchandise from a bonded warehouse when an importer must travel a great distance from (1) the bonded warehouse to the customhouse to file the withdrawal for consumption with estimated duties attached, and (2) the customhouse to the bonded warehouse to obtain release of the merchandise.

Under § 142.21(f), an importer may obtain prompt release of merchandise from a bonded warehouse by filing Customs Form 3461. The importer may accumulate several of these forms over a period of days and then make one trip to the customhouse within the required 10-day period to file the withdrawal for consumption with estimated duties attached.

However, it appears that some importers, who do not travel great distances between their bonded warehouses and the customhouse and, therefore, can obtain prompt release of merchandise from the warehouse, may take advantage of the benefit of § 142.21(f) merely to forestall the payment of estimated duties until 10 days after release of the merchandise from the bonded warehouse.

This document proposes to amend § 142.21(f) to ensure that the procedure will not be used by some importers merely to delay payment of estimated duties. Section 142.21(f) would be amended to provide that the district director may authorize release from warehouse under a special permit only under the following circumstances:

1. The warehouse is located a considerable distance from the customhouse and actual release of the merchandise from the warehouse could not be effected within the next full busines day after the day of the payment of duty, and

2. The district has sufficient manpower to permit such practice.

Section 142.22(b)

Section 142.21, Customs Regulations (19 CFR 142.21), as amended by T.D. 79–221, provides that merchandise may be released under a special permit for immediate delivery, in accordance with section 448(b), Tariff Act of 1930, as amended, under circumstances relating to the following:

1. Contiguous countries,
2. Fresh fruits and vegetables,
3. Agency of the U.S. Government,
4. Articles of a trade fair,
5. Quota-class merchandise,
6. Release from warehouse followed by warehouse withdrawal for comsumption, and
7. When authorized by Headquarters.

Section 142.22(b), Customs Regulations (19 CFR 142.22(b)), lists the documentation which must be filed after the release of merchandise for which a special permit for immediate delivery had been issued. They are:

1. An entry summary for consumption, with estimated duties attached, an entry summary for warehouse, or an entry summary for entry under a temporary bond;

2. A withdrawal for consumption, with estimated duties attached;

3. An entry for transportation and exportation, immediate transportation without appraisement, or direct exportation; or

4. An application to destroy.

Section 142.28, Customs Regulations (19 CFR 142.28), provides, in part, that an entry for exportation, or for transportation and exportation, or an application to destroy, may be filed for merchandise released under a special permit for immedate delivery and later found to be prohibited.

A question of interpretation was raised by Customs personnel as to under what circumstances, relating to the release of merchandise under the immediate delivery procedure of § 142.21, would the transportation entries specified in § 142.22(b)(3) be used. Transportation entries may be used only with respect to the release of fresh fruits and vegetables under § 142.21(b) and absolute quota merchandise under § 142.21(e)(2). However, § 142.22(b)(3) does not set forth these two circumstances under which the transportation entries may be used. Therfore, an ambiguity may be raised concerning the proper document to be used.

In a related matter, § 142.28 provides for the use of an entry for exportation, or for transportation and exportation, or an application to destroy merchandise released and later found to be prohibited. However, neither § 142.22(b)(3) nor § 142.22(b)(4) makes any reference to mechandise released under the immediate delivery procedure and later found to be prohibited. An ambiguity also may be raised with regard to the proper documents to be used.

This document proposes to amend § 142.22(b)(3) to provide that the transportation entries shall be filed only in the circumstances under §§ 142.21 (b) and (e)(2), and to provide that an entry for exportation, or for transportation and exportation, shall be filed in the circumstance under § 142.28.

Similarly, this document proposes to amend § 142.22(b)(4) to provide that an application to destroy shall be filed in the circumstances under § 142.21 (b) and (e)(2), and § 142.28.

Two additional changes to § 142.22(b) are proposed in this document. It is proposed to amend § 142.22(b)(1) to clarify that the entry summary documents may be filed in any of the circumstances listed in § 142.21 except for merchandise released from warehouse under § 142.21(f). It is proposed to amend § 142.22(b)(2) to clarify that a withdrawal for consumption shall be filed only for merchandise released from warehouse under § 142.21(f).

Inapplicability of Executive Order 12044

This document is not subject to the provisions of the Treasury Department directive implementing E.O. 12044, "Improving Government Regulations" because T.D. 79–221, to which these amendments relate, was in process before May 22, 1978, the effective date of the directive. The proposal has been under extensive study by Customs, the International Trade Commission, and the Bureau of Census since T.D. 79–221 was published on August 19, 1979.

Authority

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), section 484, 552, 553, 557, 624, 46 Stat. 722, as amended, 742, as amended, 744, as amended, 759, (19 U.S.C. 1484, 1552, 1553, 1557, 1624.); 92 Stat. 888, (Pub. L. 95–410), October 3, 1978).

Comments

Before adopting this proposal, consideration will be given to any written comments, preferably in triplicate, that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229.

Drafting Information

The principal author of this document was Charles D. Ressin, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Proposed Amendments

It is proposed to amend Parts 132, 141, and 142, Customs Regulations (19 CFR Parts 132, 141, 142), in the following manner:

PART 132—QUOTAS

1. It is proposed to revise the first sentence of § 132.13(a)(1)(ii) to read as follows:

§ 132.13 Quotas after opening.

(a) *Procedure when nearing fulfillment.*—(1) *For release of merchandise.*

* * * * * *

(ii) *Absolute.* Except as provided for in § 142.21 (e)(2) and (g) of this chapter, absolute quota merchandise shall not be released under the immediate delivery procedure.

2. It is proposed to remove the last sentence of § 132.13(a)(1)(ii).

3. It is proposed to add a new § 132.13(a)(1)(iii) to read as follows:

§ 132.13 Quotas after opening.

(a) *Procedure when nearing fulfillment.*—(1) *For release of merchandise.* * * *

(iii) *Quota Proration.* When it is

may, at his option (1) list each invoice separately on the appropriate form listed under paragraph (e)(1)(i)(A) of this section and for each class or kind of merchandise within each invoice subject

PART 142—ENTRY PROCESS

1. It is proposed to revise § 142.21(f) to read as follows:

§ 142.21 Merchandise eligible for special

under §§ 142.21(b) and (e)(2), and § 142.28.

William T. Archey,
Acting Commissioner of Customs.
Approved: December 16, 1980.

short periods of time to temperatures other than those prescribed in § 610.53 must be transported at temperatures prescribed in § 600.15(a) (21 CFR 600.15(a)) to assure that the products

products in chemical ice or wet ice to assure that the ice does not contact the product container and lower the temperature below 1° C.

It should be noted that existing

§ 132.13 Quotas after opening.

(a) *Procedure when nearing fulfillment.*—(1) *For release of merchandise.* * * *

(iii) *Quota Proration.* When it is determined that entry summaries for consumption or withdrawals for consumption must be amended to permit only the quantity of tariff-rate and absolute quota merchandise determined to be within the quota, the entry summaries for consumption or withdrawals for consumption must be returned to the importer for adjustment. The time of presentation for quota purposes in that event shall be the same as the time of the initial presentation of the entry summaries for consumption or withdrawals for consumption provided—

(A) An adjusted entry summary for consumption, or withdrawals for consumption, with estimated duties attached, is deposited within 5 working days after Headquarters authorizes release of the merchandise, and

(B) The importer takes delivery of the merchandise within 15 working days after release is authorized.

PART 141—ENTRY OF MERCHANDISE

1. It is proposed to revise § 141.61(e)(1)(i) to read as follows:

§ 141.61 Completion of entry and entry summary documentation.

* * * * *

(e) *Statistical information*—(1) *Information required on entry summary or withdrawal form*—(i) *Where form provides space*—(A) *Single invoice.* For each class or kind of merchandise subject to a separate statistical reporting number, the applicable information required by the General Statistical Headnotes, Tariff Schedules of the United States Annotated ("TSUSA"), shall be shown on the appraisement entry, Customs Form 7500; the entry summary, Customs Form 7501 or 7502; the transportation entry and manifest of goods, Customs Form 7512, when used to document an incoming vessel shipment proceeding to a third country by means of an entry for transportation and exportation, or immediate exportation; the rewarehouse entry, Customs Form 7519; the manufacturing warehouse entry, Customs Form 7521; the withdrawal form, Customs Form 7505 or 7506; or the record of vessel/aircraft foreigh repair or equipment purchase, Customs Form 226, in the space provided.

(B) *Multiple invoices.* If a class or kind of merchandise from the same country of origin subject to the same statistical reporting number is included in more than one invoice, the importer may, at his option (1) list each invoice separately on the appropriate form listed under paragraph (e)(1)(i)(A) of this section and for each class or kind of merchandise within each invoice subject to a separate statistical reporting number, report the applicable information required by the General Statistical Headnotes, Tariff Schedules of the United States Annotated (TSUSA); or (2) combine the information for each class or kind of merchandise and report it under one statistical reporting number for all invoices. When consolidating information from several invoices under one reporting number, a worksheet itemizing the entered value of the merchandise from each invoice in the manner prescribed in paragraph (f)(2)(ii) of this section shall be attached to the appropriate form.

§ 141.61 [Amended]

2. It is proposed to revise § 141.61(f)(2) to read as follows:

* * * * *

(f) *Value of each invoice.* (1) * * *

(2) *Multiple invoices.* (i) If the importer or his agent elects the first option specified in paragraph (e)(1)(i)(B) of this section, the information required to be restated by paragraph (f)(1) of this section for a single invoice shall be restated for each invoice. The required information shall be shown on a worksheet attached to the form or placed across columns (2a) or (2b) on Customs Form 7501 and 7502, and in the same general location on Customs Forms 7505, 7506, 7519, and 7521.

(ii) If the importer or his agent elects the second option specified in paragraph (e)(1)(i)(B) of this section, the information required to be restated by paragraph (f)(1) of this section for a single invoice shall be restated for each invoice. The final amount in the summary computation shall represent the aggregate of the entered values of all the merchandise on each of the multiple invoices. The required information shall be shown on an attached worksheet.

(iii) The worksheet also shall contain:

(A) A statistical reporting number restatement for the merchandise from each invoice subject to the same statistical reporting number from the same country of origin, and

(B) An aggregate total value which represents the entered value.

(iv) To permit the identification of the merchandise entered under each reporting number, each class or kind of merchandise from one country reported under a single statistical reporting number shall be coded identically on each invoice and on the worksheet.

PART 142—ENTRY PROCESS

1. It is proposed to revise § 142.21(f) to read as follows:

§ 142.21 Merchandise eligible for special permit for immediate delivery.

* * * * *

(f) *Release from warehouse followed by warehouse withdrawal for consumption.* Merchandise may be released from warehouse under a special permit—

(1) At the discretion of the district director when

(i) The warehouse is located a considerable distance from the customhouse and actual release of the merchandise from the warehouse could not be effected within the next full business day after the day of the payment of duty, and (ii) The district has sufficient manpower to permit such practice;

(2) The importer shall have on file one of the types of Customs bonds provided for in § 142.4; and

(3) The immediate delivery permit shall be annotated to state that a warehouse withdrawal for consumption will be filed for this merchandise.

2. It is proposed to revise § 142.22(b) to read as follows:

§ 142.22 Application for special permit for immediate delivery.

(a) * * *

(b) *Customs custody.* Merchandise for which a special permit for immediate delivery has been issued under § 142.21 shall be considered to remain in Customs custody until the filing of one of the following:

(1) An entry summary for consumption, with estimated duties attached, an entry summary for warehouse, or an entry summary for entry under a temporary importation bond, which may be filed in any of the circumstances under § 142.21 except for merchandise released from warehouse under § 142.21(f);

(2) A withdrawal for consumption, with estimated duties attached, which shall be filed only for merchandise released from warehouse under § 142.21(f);

(3) An entry for transportation and exportation, immediate transportation without appraisement, or direct exportation, which shall be filed in those circumstances under § 142.21(b) and (e)(2); or entry for transportation and exportation, or direct exportation, which shall be filed in the circumstances under § 142.28 or

(4) An application to destroy, which shall be filed in those circumstances

under §§ 142.21(b) and (e)(2), and § 142.28.

William T. Archey,
Acting Commissioner of Customs.
Approved: December 16, 1980.
Richard J. Davis,
Assistant Secretary of the Treasury.

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BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 600

[Docket No. 80N-0497]

Shipping Temperature Requirements for Certain Biological Products

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations to require that certain adsorbed biological products be maintained at temperatures between 1° and 10° C. This proposal is being made to assure that the safety, purity, and potency of the biological products are maintained during shipment.

DATE: Comments by March 2, 1981.

ADDRESS: Comments may be addressed to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Paul K. Hiranaka, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: Diphtheria Toxoid Adsorbed, Tetanus Toxoid Adsorbed, and Pertussis Vaccine Adsorbed are vaccines that are used individually and in combination to produce active immunity against the diseases Diphtheria, Tetanus, and Pertussis, respectively. The dating periods for these vaccines, as prescribed in § 610.53(a) (21 CFR 610.53(a)), are based on data relating to usage, clinical experience or laboratory tests that establish the period beyond which the products cannot be expected beyond reasonable doubt to yield their specific results and retain their safety, purity, potency, and effectiveness provided that the products are maintained at the recommended temperatures. Biological products that may become unstable during transport when subjected for short periods of time to temperatures other than those prescribed in § 610.53 must be transported at temperatures prescribed in § 600.15(a) (21 CFR 600.15(a)) to assure that the products will retain their safety, purity, potency, and effectiveness throughout their dating periods.

The agency has reviewed and placed on file with the Dockets Management Branch, FDA, data from two studies concerning the physical appearance of biological products adsorbed on aluminum salts at temperatures below 2° C and above 8° C. One study was conducted by the agency's Bureau of Biologics and the other study was conducted by a licensed manufacturer of Diptheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed. The studies demonstrate that biological products adsorbed on aluminum salts undergo physical changes, ranging from the development of very granular suspensions to the development of large strands of aggregated material which are difficult or impossible to resuspend, when the products are subjected to freezing temperatures. Similar, but not as drastic, effects were observed in some products exposed to temperatures above 10° C.

Data available to the agency demonstrate the continued satisfactory stability when the products are stored at temperatures of 2° C to 8° C. Data on some biological products, such as live Measles, Mumps and Rubella Virus Vaccines demonstrate a decrease in potency when the products are not maintained at appropriate temperatures during shipment. As a result of the data demonstrating effects of inappropriate shipping temperatures on potency of live Measles, Mumps and Rubella Virus Vaccines, and because of the changes in the resuspension characteristics of Diptheria, Tetanus Toxoid and Pertussis Vaccines, adsorbed, alone or in combination, the agency believes that inappropriate shipping temperatures may cause unacceptalbe variability of the dose or may otherwise affect the desired or expected response resulting from the use of the products. Therefore, the agency believes it is in the interest of public health to require that Diptheria, Tetanus Toxoid and Pertussis Vaccines, Adsorbed, alone or in combination, be required to be maintained at temperatures between 1° C to 10° C during shipment. Accordingly, the agency is proposing to amend § 600.15 to require that certain adsorbed biological products be maintained at temperatures between 1° C and 10° C during shipment. Special precautions should be taken when shipping these products in chemical ice or wet ice to assure that the ice does not contact the product container and lower the temperature below 1° C.

It should be noted that existing § 600.15(b) provides for exemptions from the shipping temperature requirements. Manufacturers proposing such an exemption for their adsorbed vaccines should submit supporting data to the Director, Bureau of Biologics, in the form of an amendment to their product license application. The agency also encourages all interested persons to submit available data relating the physical effects resulting from storage at temperatures below 1° C and above 10° C and the effects on the safety, purity, potency, and effectiveness of these products.

The agency has determined pursuant to 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 701, 52 Stat. 1040-1042 as amended, 1050-1051 as amended, 52 Stat. 1055-1056 as amended (21 U.S.C. 321, 352, 371)); the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 600 in § 600.15(a) by alphabetically adding "Diphtheria and Tetanus Toxoids Adsorbed"; "Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed"; "Diphtheria Toxoid Adsorbed"; "Pertussis Vaccine Adsorbed"; "Tetanus and Diphtheria Toxoids Adsorbed (For Adult Use)"; and "Tetanus Toxoid Adsorbed" to read as follows:

§ 600.15 Temperatures during shipment.

* * * * *

(a) *Products*

Product	Temperature
* * * * *	
Diphtheria and tetanus toxoids adsorbed	Between 1° and 10° C
Diphtheria and tetanus toxoids and pertussis vaccine adsorbed	Do.
Diphtheria Toxoid adsorbed	Do.
* * * * *	
Pertussis vaccine adsorbed	Between 1° and 10° C
* * * * *	
Tetanus and diphtheria toxoids adsorbed (for adult use)	Between 1° and 10° C
Tetanus toxoid adsorbed	Do.
* * * * *	

* * * * *

Interested persons may, on or before March 2, 1981 submit to the Dockets Management Branch (HFA-305), Food

with those Acts and would affect public school teachers and employees of certain tax exempt organizations.

DATES: Written comments and requests

submitted (preferably six copies) to the Commissioner of Interior Revenue. All comments will be available for public inspection and copying. A public

employee attains age 59½, unless the employee (A) becomes disabled or dies, (B) leaves the service of the employer, or (C) encounters financial hardship, as determined under paragraph (h)(13),

person of the existence of a qualifying financial hardship and of the amount required to be distributed to meet the need created by the hardship. The independent person must be designated

regulations is proposed to be issued under the authority contained in sections 167 and 7805 of the Internal Revenue Code (85 Stat. 508, 26 U.S.C. 167; 68A Stat. 917, 26 U.S.C. 7805).

* * * * *

Interested persons may, on or before March 2, 1981 submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221,, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Dockets Management Branch, Food and Drug Administration.

Dated: December 18, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-40285 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-17-78]

Custodial Accounts for Regulated Investment Company Stock; Amendment of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to a notice of proposed rulemaking which was published in the Federal Register on February 10, 1978 (43 FR 5852). That notice contains proposed regulations relating to custodial accounts for regulated investment company stock. Changes to the applicable tax law were made by the Employee Retirement Income Security Act of 1974, the Tax Reform Act of 1976, and the Revenue Act of 1978. The regulations would provide the guidance needed to comply with those Acts and would affect public school teachers and employees of certain tax exempt organizations.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 2, 1981. The amendments and the original notice of proposed rulemaking are proposed to be effective for contributions to custodial accounts made after December 31, 1973.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-17-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: H. B. Hartley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to custodial accounts for regulated investment company stock under section 403(b)(7) of the Internal Revenue Code of 1954. On February 10, 1978, the Federal Register published proposed amendments to the Income Tax Regulations under section 403 of the Internal Revenue Code (43 FR 5852). The regulations in this document are being proposed in order to replace portions of those earlier proposed regulations which were rendered obsolete by section 154 of the Revenue Act of 1978 (92 Stat. 2801, 26 U.S.C. 403). The proposed regulations are issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

The proposed regulations published in the Federal Register on February 10, 1978, provided that a section 403(b)(7) custodial account could make no distributions to the employee until the employee attained age 65, unless the employee (A) died or became disabled, or (B) attained age 55 and left the service of the employer. Section 154 of the Revenue Act of 1978 changed this requirement. That Act provides that no distributions can be made from a custodial account before the employee attains age 59½, unless the employee (A) dies or becomes disabled, (B) separates from service, or (C) encounters financial hardship.

Comments and Requests for A Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Interior Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register. Persons who requested a public hearing on the original notice of proposed rulemaking, as published February 10, 1978, need not again request a hearing if their original comments involved only issues not affected by the amendments contained in this notice. Any such persons who do not submit comments and request a public hearing on these amendments will be individually contacted by the Internal Revenue Service to ascertain whether they still desire to testify at any hearing held on the proposed regulations. Persons who originally commented and requested a public hearing on issues affected by these amendments will not be so contacted.

Drafting Information

The principal author of these proposed regulations is H. B. Hartley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Proposed amendments to the regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Paragraph (h)(2)(vi) of proposed § 1.403(b)-1, published in the Federal Register on February 10, 1978, (43 FR 5852), is amended by striking the third sentence thereof.

Par. 2. Paragraphs (h)(2)(vii) and (h)(2)(viii) of proposed § 1.403(b)-1, published in the Federal Register on February 10, 1978, (43 FR 5852), are redesignated as paragraphs (h)(2)(viii) and (h)(2)(ix) respectively, and a new paragraph (h)(2)(vii) is added to read as follows:

§ 1.403(b)-1 Taxability of beneficiary under annuity purchased by a section 501(c)(3) organization or public school.

* * * * *

(h) *Custodial accounts*—* * *

(2) *Description of custodial account.*

* * *

(vii) The custodial agreement must provide that the custodian is not to make any distributions to the employee or to his or her beneficiaries before the employee attains age 59½, unless the employee (A) becomes disabled or dies, (B) leaves the service of the employer, or (C) encounters financial hardship, as determined under paragraph (h)(13).

* * *

Par. 3. Paragraph (h)(4)(ii) of proposed § 1.403(b)-1(h), published in the Federal Register on February 10, 1978, (43 FR 5852), is amended by adding the following new sentence to the end thereof:

§ 1.403(b)-1 Taxability of beneficiary under annuity purchased by a section 501(c)(3) organization or public school.

* * * * *

(h) *Custodial accounts*—* * *

(4) *Distributions*—* * *

(ii) * * * Any purchase and distribution of an annuity contract under this subdivision (ii) can occur only at a time when distributions are otherwise permitted under the provisions of paragraph (h)(2) (vi) or (vii).

Par. 4. A new paragraph (h)(13) to read as follows is added at the end of proposed § 1.403(b)-1, published in the Federal Register on February 10, 1978 (43 FR 5852):

§ 1.403(b)-1 Taxability of beneficiary under annuity purchased by a section 501(c)(3) organization or public school.

* * * * *

(h) *Custodial accounts*—* * *

(13) *Determination of financial hardship*—(i) For purposes of paragraph (h)(2)(vii), distribution will be on account of financial hardship if—

(A) The distribution is necessary in light of immediate and heavy financial needs of the employee,

(B) The distribution would meet the requirements for a hardship distribution under a profit-sharing plan qualified under section 401(a) of the Code, and

(C) An independent person or persons (designated as provided in paragraph (h)(13)(iii)) has determined, in accordance with uniform and nondiscriminatory standards established at the time that person or persons are designated, that the conditions described in (A) and (B) above exist.

(ii) No distribution based upon financial hardship can exceed the amount determined pursuant to paragraph (h)(13)(iii) to be required to meet the immediate financial need created by the hardship and not reasonably available from other resources of the employee.

(iii) No distributions based upon financial hardship shall be made except following written notification to the custodian by an independent person (or persons) of a determination by that person of the existence of a qualifying financial hardship and of the amount required to be distributed to meet the need created by the hardship. The independent person must be designated by the employer before any distributions based upon financial hardship are made. The independent person can be any person other than the employee, the custodian, an employee or director of the regulated investment company, or any other person who would be a disqualified person within the meaning of section 4975 if the custodial account were a qualified plan under section 401. All determinations by the independent person must be made in accordance with uniform and nondiscriminatory standards which are established at the time the person is designated.

William E. Williams,

Commissioner of Internal Revenue.

[FR Doc. 80-40461 Filed 12-29-80; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[LR-261-79]

Income Tax; Charitable Contribution of Property Elected Under the Asset Depreciation Range System

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation relating to the treatment of eligible property elected under the Asset Depreciation Range System and retired by charitable contribution.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 2, 1981. The amendment to the regulations is proposed to be effective with respect to property retired after December 30, 1980.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-261-79), Washington, D.C. 20224.

FOR FURTHER INFORMATION, CONTACT: Harold T. Flanagan, Jr., of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T, 202-566-3459).

SUPPLEMENTARY INFORMATION:

Background

This document contains a proposed amendment to the Income Tax Regulations (26 CFR Part 1) under section 167 of the Internal Revenue Code of 1954. This amendment to the regulations is proposed to be issued under the authority contained in sections 167 and 7805 of the Internal Revenue Code (85 Stat. 508, 26 U.S.C. 167; 68A Stat. 917, 26 U.S.C. 7805).

General Rule

The proposed regulation would require that a charitable contribution of eligible property which is elected under the Asset Depreciation Range system be treated as an extraordinary retirement. Upon retirement of the asset, the unadjusted basis of the contributed property will be removed from the vintage account and an adjustment will be made to the depreciation reserve.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of this proposed regulation is Harold T. Flanagan, Jr., of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed amendment to the regulations

The proposed amendment to 26 CFR Part 1 is as follows:

Section 1.167(a)-11(d)(3)(ii) (relating to definitions of ordinary and extraordinary retirements) is amended by adding a new subdivision (*d*) after subdivision (*c*), to read as follows:

§ 1.167(a)-11 Depreciation based on class lives and asset depreciation ranges for property placed in service after December 31, 1970.

* * * * *

(d) *Special rules for salvage, repairs and retirements.* * * *

(3) *Treatment of retirements.* * * *

(ii) *Definitions of ordinary and extraordinary retirements.* * * *

(*d*) The asset is section 1245 property which is retired after December 30, 1980 by a charitable contribution for which a

deduction is allowable under section 170.

* * * * *

William E. Williams,

Tax Reform Act of 1976 (90 Stat. 1667), and the regulations under section 6104(a)(1) (B), (C) and (D) to section 1022(g) of the Employee Retirement Income Security Act of 1974 (88 Stat. withheld from inspection by plan participants.

National defense information is not open to inspection by the public or a plan participant whether or not the

thereof under the provisions of section 503 or 504 (as in effect on December 31, 1969), or under the corresponding provisions of any prior revenue law, is considered an application for tax

(i) The application letter and a copy of the articles of incorporation, declaration of trust, or other instrument of similar import that sets forth the permitted powers or activities of the organization,

exemption and related material, see § 301.6104(a)-6.

(i) *Material not open to public inspection under section 6104 or 6110.* Under section 6110 certain written

deduction is allowable under section 170.

* * * * *

William E. Williams,
Acting Commissioner of Internal Revenue.

[FR Doc. 80-40499 Filed 12-29-80; 8:45 am]
BILLING CODE 4830-01-M

26 CFR Part 301

[EE-28-78]

Inspection of Applications for Tax Exemption and Similar Material

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to public inspection of applications for tax exemption, applications for determination of the qualification of pension and other plans, and other related material. Changes to the applicable law were made by the Employee Retirement Income Security Act of 1974 and the Tax Reform Act of 1976. The regulations would provide the public guidance on how the documents may be obtained for inspection, and would affect all persons wishing to inspect the documents, as well as those persons submitting them.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 2, 1981.

The amendments are generally proposed to be effective for applications for tax exemption filed after October 31, 1976, and applications for determination letters for pension and other plans that are filed after September 2, 1974.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T:EE-28-78, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Paul G. Accettura of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T:EE-28-78, 202-566-3422 (Not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 6104(a)(1)(A) of the Internal Revenue Code of 1954. The amendments are proposed to conform the regulations under section 6104(a)(1)(A) to section 1201(d) of the Tax Reform Act of 1976 (90 Stat. 1667), and the regulations under section 6104(a)(1) (B), (C) and (D) to section 1022(g) of the Employee Retirement Income Security Act of 1974 (88 Stat. 940). The amendments are to be issued under the authority contained in sections 6104(a)(1)(A), 6104(a)(1)(B) and 7805 of the Internal Revenue Code of 1954 (72 Stat. 1660, 88 Stat. 940, 68A Stat. 917; 26 U.S.C. 6104(a)(1)(A), 6104(a)(1)(B), 7805).

Public Inspection of Applications for Tax Exemption

Code section 6104(a)(1)(A) was amended by the Tax Reform Act of 1976. Prior to the amendment, the public could inspect approved applications for tax exemption and supporting documents filed by tax exempt organizations. The amendment extends the material open to public inspection to include documents or letters issued by the Internal Revenue Service which relate to approved applications for tax exemption.

Public Inspection of Applications for Determination Letters Filed for Deferred Compensation Plans

Code section 6104(a)(1) was also amended by the Employee Retirement Income Security Act of 1974 ("ERISA"). ERISA authorizes public inspection of applications for determination letters and supporting documents filed after September 2, 1974, concerning the qualification of a pension, profit-sharing, stock bonus, annuity or bond purchase plan, or an individual retirement account or annuity. It also authorizes public inspection of applications for tax exemption and supporting documents filed for a related trust or custodial account. Any letter or document issued by the Internal Revenue Service after September 2, 1974, which relates to the qualification of a plan or account, or the exempt status of a related trust or custodial account, is also available for public inspection.

Applications and other documents are not open to public inspection, however, if a plan has fewer than 26 participants, inspection is then limited to plan participants.

Material Withheld From Inspection

An applicant may request that information relating to a trade secret, patent, process, style of work, or apparatus not be open to public inspection. The information will be withheld from public inspection if the Secretary determines that public disclosure would adversely affect the applicant. In the case of pension or other plan, the information will also be withheld from inspection by plan participants.

National defense information is not open to inspection by the public or a plan participant whether or not the applicant requests that it be withheld. In the case of a pension or other plan, information from which an individual's compensation (including deferred compensation) may be ascertained is also not open to inspection by the public or a plan participant whether or not the applicant requests that it be withheld.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be publish in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations was Paul G. Accettura of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service participated in developing the regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 301 are as follows:

Paragraph 1. The following new §§ 301.6104(a)-1 through 301.6104(a)-6 are added in the appropriate place:

§ 301.6104(a)-1 Public inspection of material relating to tax-exempt organizations.

(a) *Application for tax exemption and supporting documents.* If the Internal Revenue Service determines that an organization described in section 501(c) or (d) is exempt from taxation for any taxable year, the application for tax exemption upon which the determination is based, together with any supporting documents, is open to public inspection. Some applications for tax exemption have been destroyed and therefore are not available for inspection. For purposes of determining the availability for public inspection, a claim for tax exemption filed to reestablish exempt status after denial

thereof under the provisions of section 503 or 504 (as in effect on December 31, 1969), or under the corresponding provisions of any prior revenue law, is considered an application for tax exemption.

(b) *Letters or documents issued by the Internal Revenue Service with respect to an application for tax exemption.* If an application for tax exemption is filed with the Internal Revenue Service after October 31, 1976, and is open to public inspection under paragraph (a) of this section, then any letter or document issued to the applicant by the Internal Revenue Service which relates to the application is also open to public inspection. For rules relating to when a letter or document is issued, see § 301.6110-2(h). Letters or documents to which this paragraph applies include, but are not limited to—

(1) Favorable rulings and determination letters (see § 601.201(n)(1)) issued in response to applications for tax exemption,

(2) Technical advice memoranda (see § 601.201(n)(9)) issued with respect to an approved, or subsequently approved, application for tax exemption, and

(3) Letters issued in response to an application for tax exemption that propose a finding that the organization is not entitled to be exempt from tax, if the organization is subsequently determined, on the basis of the application, to be exempt from tax.

(c) *Requirement of exempt status.* An application for tax exemption, supporting documents, and letters or documents issued by the Internal Revenue Service that relate to the application will not be open to public inspection before the organization filing the application is determined, on the basis of the application, to be exempt from taxation for any taxable year. On the other hand, if the organization is determined to be exempt for any taxable year, the material will not be withheld from public inspection on the ground that the organization is determined not to be exempt for any other taxable year.

(d) *Documents included in the term "application for tax exemption". For purposes of this section—*

(1) *Prescribed application form.* If a form is prescribed for an organization's application for tax exemption, the application for tax exemption includes the form and all documents and statements the Internal Revenue Service requires to be filed with the form.

(2) *No prescribed application form.* If no form is prescribed for an organization's application for tax exemption, the application for tax exemption includes:

(i) The application letter and a copy of the articles of incorporation, declaration of trust, or other instrument of similar import that sets forth the permitted powers or activities of the organization,

(ii) The bylaws or other code of regulations,

(iii) The latest financial statement showing assets, liabilities, receipts and disbursements,

(iv) Statements showing the character of the organization, the purpose for which it was organized, and its actual activities,

(v) Statements showing sources of income and receipts and the disposition thereof, and whether or not any income or receipts is credited to surplus or may insure to the benefit of any private shareholder or individual, and

(vi) Any other statements or documents the Internal Revenue Service requires to be filed with the application letter.

(3) *Prohibited transactions.* An application for tax exemption does not include a request for a ruling as to whether a proposed transaction is a prohibited transaction under section 503.

(e) *Supporting documents defined.* For purposes of this section, "supporting documents", as used with respect to an application for tax exemption, means any statement or document not described in paragraph (d) of this section that is submitted by an organization is support of its application. For example, a legal brief submitted in support of an application for tax exemption is a supporting document.

(f) *Statement of exempt status.* In addition to having the opportunity to inspect material relating to tax exempt organizations, a person may request a statement setting forth the following information:

(1) The subsection and paragraph of section 501 (or the corresponding provision of any prior revenue law) under which an organization has been determined, on the basis of an application open to public inspection, to qualify for exemption from taxation, and

(2) Whether the organization is currently held to be exempt.

The request for the statement must be made in the same manner as a request for inspection (see § 301.6104(a)-6).

(g) *Withholding of certain information from public inspection.* For rules relating to certain information contained in an application for tax exemption and related material which will be withheld from public inspection, see § 301.6104(a)-5(a).

(h) *Procedures for inspection.* For rules relating to procedures for public inspection of applications for tax exemption and related material, see § 301.6104(a)-6.

(i) *Material not open to public inspection under section 6104 or 6110.* Under section 6110 certain written determinations issued by the Internal Revenue Service are made available for public inspection. Section 6110 does not apply, however, to matters on which the determination of availability for public inspection is made under section 6104. Accordingly, § 301.6110-1(a) describes matters which, for purposes of section 6110, are considered within the ambit of section 6104. Some determination letters and other documents relating to tax exempt organizations that are not open to public inspection under section 6104(a)(1)(A) and this section are nevertheless within the ambit of section 6104 for purposes of section 6110. These determination letters and other documents are therefore not available for public inspection under either section 6104 or section 6110. They include, but are not limited to—

(1) Unfavorable rulings or determination letters (see § 601.201(n)) issued in response to applications for tax exemption,

(2) Rulings or determination letters revoking or modifying a favorable determination letter (see § 601.201(n)(6)),

(3) Technical advice memoranda (see § 601.201(n)(9)) relating to a disapproved application for tax exemption or the revocation or modification of a favorable determination letter,

(4) Any letter or document filed with or issued by the Internal Revenue Service relating to whether a proposed or accomplished transaction is a prohibited transaction under section 503,

(5) Any letter or document filed with or issued by the Internal Revenue Service relating to an organization's status as an organization described in section 509(a) or 4942(j)(3), unless the letter or document relates to the organization's application for tax exemption, and

(6) Any other letter or document filed with or issued by the Internal Revenue Service which, although it relates to an organization's tax exempt status as an organization described in section 501 (c) or (d), does not relate to that organization's application for tax exemption, within the meaning of paragraph (d).

§ 301.6104(a)-2 Public inspection of material relating to pension and other plans.

(a) *Material open to inspection.* Except as provided in § 301.6104(a)-4 with respect to plans having fewer than 26 participants, an application for a determination letter which is filed with

the Internal Revenue Service after September 2, 1974, together with supporting documents filed by the applicant in support of the application, will be open to public inspection under

requires to be submitted with the application letter.

(c) *Documents not constituting an "application for a determination letter".* The following are not applications for a

custodial account described in section 401(f), or

(3) The approval of a master, prototype, pattern or other such plan or account.

(see § 601.201 (p) (q)) or notification letters issued with respect to pattern plans.

(d) *Extent letter or document open to public inspection.* A letter or document

§ 301.6104(a)-4 Requirement for 26 or more plan participants.

(a) *Inspection by plan participants.* In the case of a plan, annuity or account described in § 301.6104(a)-2(b) and

open to inspection only by plan participants or their authorized representatives. In either case, material open to public inspection pursuant to the number of plan participants

the Internal Revenue Service after September 2, 1974, together with supporting documents filed by the applicant in support of the application, will be open to public inspection under section 6104(a)(1)(B) (i) and (ii). An application for a determination letter and supporting documents will be open to public inspection whether or not the application is withdrawn by the applicant, and whether or not the Internal Revenue Service determines that the plan, account, or annuity to which the application relates is qualified or that any related trust or custodial account is exempt from tax.

(b) *Documents included in the term "application for a determination letter"*—(1) *Employees' plans and individual retirement plans.* For purposes of this section, the term "application for a determination letter" includes the documents that an applicant files with respect to a request that the Internal Revenue Service determine the qualification of—

(i) A pension, profit-sharing, or stock bonus plan under section 401(a),

(ii) An annuity plan under section 403(a), or

(iii) A bond purchase plan under section 405(a), or

(iv) An individual retirement account or annuity described in section 408 (a), (b) or (c).

(2) *Tax exempt trusts or custodial accounts.* The term "application for a determination" letter also includes the documents an applicant files with respect to a request that the Internal Revenue Service determine the exemption from tax under section 501(a) of an organization forming part of a plan or account described in subparagraph (1) of this paragraph, or a custodial account described in section 401(f).

(3) *Master, prototype and pattern plans.* The term "application for a determination letter" also includes documents which an applicant files with respect to a request for approval of a master, prototype, pattern or other such plan or account.

(4) *Prescribed forms and application letters.* With respect to an application for a determination letter described in this paragraph (b) for which a application form is prescribed, the application for a determination letter includes the form and all documents and statements required to be filed in connection with the form. With respect to an application for a determination letter for which no application form is prescribed, the application for a determination letter includes the application letter and all documents and statements the Internal Revenue Service requires to be submitted with the application letter.

(c) *Documents not constituting an "application for a determination letter".* The following are not applications for a determination letter for purposes of this section:

(1) An incomplete application that is returned without action for proper completion,

(2) An application that is returned without action to the applicant for failure to notify all interested parties in accordance with the regulations under section 7476 (relating to declaratory judgments), and

(3) A request for a ruling as to whether a proposed transaction is a prohibited transaction under section 4975.

(d) *Supporting documents.* "Supporting documents", as used with respect to an application for a determination letter which is open to public inspection under this section, means any statement or document submitted in support of the application which is not specifically required by the application form or the Internal Revenue Service. For example, a legal brief submitted in support of an application for a determination letter is a supporting document.

(e) *Applicant.* For purposes of this section, § 301.6104(a)–3 (relating to Internal Revenue Service letters and documents open to public inspection) and § 301.6104(a)–5) relating to the withholding of certain information from public inspection), an "applicant" includes, but is not limited to, an employer, plan administrator (as defined in section 414(g)), labor union, bank, or insurance company that files an application for a determination letter.

§ 301.6104(a)–3 Public inspection of Internal Revenue Service letters and documents relating to pension and other plans.

(a) *In general.* Except as provided in § 301.6104(a)–4 with respect to plans having fewer than 26 participants, a letter or other document issued by the Internal Revenue Service after September 2, 1974, is open to public inspection under section 6104(a)(1)(B)(iv) and this section, if it is issued with respect to—

(1) The qualification of a pension, profit-sharing or stock bonus plan under section 401(a), an annuity plan under section 403(a), a bond purchase plan under section 405(a), or an individual retirement account or annuity described in section 408 (a), (b) or (c),

(2) The exemption from tax under section 501(a) of an organization forming part of such a plan or account, or a custodial account described in section 401(f), or

(3) The approval of a master, prototype, pattern or other such plan or account.

(b) *Scope.* Internal Revenue Service letters and documents open to public inspection under section 6104(a)(1)(B)(iv) and this section are not limited to those issued in response to an application for a determination letter described in § 301.6104(a)–2. They are, however, limited to those issued by the Internal Revenue Service to the person or organization which either did or could file an application for a determination letter for the plan, account or annuity to which the letter or document relates. If such person or organization designates a representative having a power of attorney, however, then the letter or document will be open to inspection if issued to the representative. For rules relating to when a letter or document is issued, see § 301.6110–2(h). Internal Revenue Service letters and documents are open to public inspection under section 6104(a)(1)(B)(iv) and this section whether or not the Internal Revenue Service determines that the plan, account or annuity to which the letter or document relates is qulified or that any related trust or custodial account is exempt from tax.

(c) *Letters and documents open to public inspection.* Internal Revenue Service letters and documents open to public inspection under section 6014(a)(1)(B)(iv) and this section include, but are not limited to:

(1) Determination letters relating to the qualification of a plan, account or annuity described in paragraph (a) (1) of this section (see § 601.201 (o)),

(2) Technical advice memoranda (see § 601.201(n)(9)) relating to the issuance of such determination letters,

(3) Technical advice memoranda relating to the continuing qualification of a plan, account or annuity previously determined to be qualified, or to the qualification of a plan, account or annuity for which no determination letter has been issued,

(4) Letters or documents revoking or modifying any prior favorable determination letter or denying the qualification of a plan, account or annuity for which no determination letter has been issued,

(5) Determination letters relating to the exemption from tax of a trust or custodial account described in paragraph (a) (2) of this section (see § 601.201 (o) (2) (i) (*b*)), or

(6) Opinion letters relating to the acceptability of the form of any master, prototype or other such plan or account (see § 601.201 (p) (q)) or notification letters issued with respect to pattern plans.

(d) *Extent letter or document open to public inspection.* A letter or document issued by the Internal Revenue Service is open to public inspection under section 6104(a) (1) (B) (iv) and this section only to the extent it relates directly to the qualification of a plan, account or annuity, the exemption from tax of a related organization or custodial account, or the approval of a master, prototype, pattern or other such plan. Any part of the letter or document which does not directly relate to such qualification, exemption or approval is not open to public inspection. For example, a letter to an employer which concludes that an employees' plan is not qualified and the related trust is not tax exempt will be open to public inspection. However, that same letter may also assert an income tax deficiency because employer contributions to the trust are, therefore, not deductible. In such a case, that part of the letter relating to the tax deficiency will be deleted before the letter is opened to public inspection.

(e) *Letters or documents issued with respect to tax return examination.* In the case of an examination of a taxpayer's return or consideration of a taxpayer's claim for credit or refund, no letter or document issued to the taxpayer before the preliminary or "30-day" letter described in § 601.105 (d) (1) is issued to the taxpayer will be open to public inspection under section 6104 (a) (1) (B) (iv) and this section. The "30-day" letter and any statutory notice of deficiency subsequently issued to the taxpayer under section 6212 will be open to public inspection to the extent provided in paragraph (d) of this section. If any letter or document other than a statutory notice of deficiency is issued to the taxpayer after the "30-day" letter is issued, such letter or document will be open to inspection to the extent provided in paragraph (d) of this section only if it finally resolves or otherwise disposes of a plan qualification or tax exemption issue raised in the "30-day" letter.

(f) *Letters or documents issued after September 2, 1974.* Section 6104(a) (1) (B) (iv) and this section apply to letters or documents issued by the Internal Revenue Service after September 2, 1974, even though the relevant application for a determination letter or other initiating correspondence from the applicant was filed with the Internal Revenue Service before September 2, 1974.

§ 301.6104(a)–4 Requirement for 26 or more plan participants.

(a) *Inspection by plan participants.* In the case of a plan, annuity or account described in § 301.6104(a)–2(b) and § 301.6104(a)–3(a) that has fewer than 26 participants, material described in §§ 301.6104(a)–2 and 301.6104(a)–3 as open to public inspection is only open to inspection by a plan participant or the participant's authorized representative. This limitation does not apply, however, with respect to documents which an applicant files with respect to a request for approval of a master, prototype, pattern or other such plan (see § 301.6104(a)–2(b)(3)) or to opinion, notification or other such letters issued by the Internal Revenue Service with respect to such plans (see § 301.6104(a)–3(a)(3)).

(b) *Determining number of plan participants*—(1) *In general.* For purposes of determining whether a plan has fewer than 26 participants, the number of plan participants will be the number indicated on the most recent annual return filed for the plan under section 6058. Where an annual return indicates the number of participants both at the beginning and end of the plan year, the number indicated on the return means the number at the end of the plan year. If no annual return has been filed for the plan, then the number of plan participants will be the number indicated on the most recent application for a determination letter filed for the plan. If, however, the number of plan participants is increased prior to final Internal Revenue Service action on the application, the number of plan participants will be that increased number.

(2) *Decreasing number of plan participants.* If a plan having 26 or more participants, as indicated on an annual return or application for a determination letter, subsequently files an annual return indicating fewer than 26 plan participants, then material relating to the plan which is issued or received by the Internal Revenue Service after the date the annual return is filed will be open to inspection only by plan participants or their authorized representatives. Similarly, if a plan having 26 or more participants as indicated on an annual return or an application for a determination letter, subsequently files an application for a determination letter which indicates fewer than 26 plan participants, then that application and related material as well as any other material relating to the plan which is received or issued by the Internal Revenue Service after the date of receipt of that application, will be open to inspection only by plan participants or their authorized representatives. In either case, material open to public inspection pursuant to the number of plan participants indicated on previous annual returns or applications for a determination letter will remain open to public inspection.

(3) *Increasing number of plan participants.* If a plan having fewer than 26 plan participants, as indicated on an annual return or application for a determination letter, files a subsequent return or application indicating 26 or more plan participants, all the plan's prior applications and other material received or issued by the Internal Revenue Service after September 2, 1974, will be open to public inspection regardless of the number of plan participants indicated on any prior return or application.

(c) *Plan participant.* Solely for purposes of determining who is a plan participant permitted to inspect material relating to a plan having fewer than 26 participants, the term "plan participant" includes, but is not limited to, former employees (such as certain retired and terminated employees) who have a nonforfeitable right to benefits under the plan. An individual who is merely a beneficiary of an employee or former emplyee is not a plan participant, unless the individual is a beneficiary of a deceased former employee and is receiving benefits or entitled to receive future benefits under the plan. The term "plan participant" also includes the administrator, executor, or trustee of the estate of a deceased plan participant. That material may be available for inspection to an individual under this paragraph does not constitute a determination by the Internal Revenue Service that the individual is a plan participant for any purpose other than inspection under section 6104 (a) (1) (B).

(d) *Authorized representative.* "Authorized representative" means the representative of a plan participant designated by the participant in writing to inspect material described in §§ 301.6104(a)–2 and 301.6104(a)–3. The document designating the authorized representative must be signed by the plan participant and must specify that the representative is authorized to inspect the material. The document, or a copy, must be filed with the office of the Internal Revenue Service in which the authorized representative is to inspect the material. A copy which is reproduced by a photographic process need not be certified as a true and corrrect copy of the original.

§ 301.6104(a)–5 Withholding of certain information from public inspection.

(a) *Tax exempt organizations*—(1) *Trade secrets, patents, processes, styles of work, or apparatus.* An organization

(i) In the case of the separate schedule to certain applications for a determination letter which is provided for the purpose of setting forth confidential compensation information

national defense. The information will be withheld whether or not submitted on a separate document pursuant to subparagraph (2) of this paragraph.

(4) *Confidential compensation*

Attention: Freedom of Information Reading Room, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Requestes for inspection in the office of a district director should be made in

photographically at the place of inspection. Photographic copying is subject to reasonable supervision with regard to the facilities and equipment used. A fee will be charged for copies of

Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Washington, D.C. 20210, (202) 523–8602. These are not toll free numbers.

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§ 301.6104(a)–5 Withholding of certain information from public inspection.

(a) *Tax exempt organizations*—(1) *Trade secrets, patents, processes, styles of work, or apparatus.* An organization whose application for tax exemption is open to public inspection under section 6104(a)(1)(A) and § 301.6104(a)–1 may in writing request the withholding of information contained in the application or supporting documents which relates to any trade secret, patent, process, style of work, or apparatus of the organization. The information will be withheld from public inspection if the Commissioner determines that the disclosure of such information would adversely affect the organization. Requests for withholding information from public inspection should be filed with the office with which the organization files the documents containing the information. The request must clearly identify the material desired to be withheld (the document, page, paragraph, and line) and must state why the information should not be open to public inspection. The organization will be notified of the Commissioner's determination as to whether the information will be withheld from public inspection.

(2) *National defense material.* The Internal Revenue Service will withhold from public inspection any information which is submitted by an organization whose application for tax exemption is open to inspection under section 6104(a)(1) (C) or (D) should not be included in an application for a determination letter, supporting documents, or any other document open to inspection under section 6104(a)(1)(A) and § 301.6104(a)–1, if the Commissioner determines that public disclosure would adversely affect the national defense.

(b) *Pension and other plans*—(1) *Applicant's exclusion of certain information.* Except as provided in subparagraph (2) of this paragraph, information that, in the opinion of the applicant, is of the type described in section 6104(a) (1) (B). Accordingly, an applicant should not include in an application for a determination letter or supporting documents confidential compensation information as described in subparagraph (4) of this paragraph. Neither should an applicant include information relating to any trade secret, patent, process, style of work or apparatus, the disclosure of which would be adverse to the applicant.

(2) *Exception for separate document.* The rule that an applicant should exclude from an application for a determination letter or other documents information of the type in section 6104(a) (1) (C) or (D) does not apply—

(i) In the case of the separate schedule to certain applications for a determination letter which is provided for the purpose of setting forth confidential compensation information (as described in subparagraph (4) of this paragraph) which must be submitted by the applicant,

(ii) If the applicant determines that it is impossible to provide the Internal Revenue Service with sufficient information to support an application for a determination letter without submitting what is believed to be information of the type described in section 6104(a)(1)(C) or (D), or

(iii) If the Internal Revenue Service requests that the applicant submit information of the type described in section 6104(a)(1)(C) and (D).

In a case described in subdivision (ii) or (iii) of this subparagraph, the applicant is to set forth the information in a document separate from the remainder of the application for a determination letter or other documents. The separate document is to state why the information is to be withheld from public inspection under section 6104(a)(1)(C) or (D). If the Internal Revenue Service has not requested the information, the separate document is to also state why it is impossible to provide the Internal Revenue Service sufficient information to support the application for a determination letter without including information which is to be withheld. The separate document should clearly identify the relevant portion of the application for a determination letter or other document (the document, page, paragraph, and line) to which the information set forth in the separate document relates. The Internal Revenue Service will withhold from public inspection (including inspection by a plan participant or authorized representative) information contained in the separate document if the Commissioner determines that the information is in fact information of the type described in section 6104(a)(1)(C) or (D), and, in the case of information relating to any trade secret, patent, process, style of work or apparatus, the Commissioner further determines that disclosure would be adverse to the applicant.

(3) *Notional defense material.* The Internal Revenue Service will withhold from public inspection (including inspection by a plan participant or authorized representative) any information which is included in an application for a determination letter or supporting documents if the Commissioner determines that public disclosure would adversely affect the national defense. The information will be withheld whether or not submitted on a separate document pursuant to subparagraph (2) of this paragraph.

(4) *Confidential compensation information.* If an application for a determination letter, supporting document, or related letter or document referred to in section 6104(a)(1)(B) and §§ 301.6104(a)–2 and 301.6104(a)–3 contains information (including aggregate figures) from which an individual's compensation (including deferred compensation) may be ascertained, that information is not open to public inspection (including inspection by a plan participant or authorized representative). Confidential compensation information includes the amount of benefit a specific plan participant may expect to receive at normal or early retirement age and the amount of the employer's contributions under the plan that may be allocated to a specific plan participant. However, so long as a plan has more than one participant, the amount of benefit provided under the plan to plan participants, in general, at normal or early retirement, age, or the amount of the employer's contributions under the plan that are allocable to plan participants, in general, does not constitute confidential compensation information. Further, a description of the numbers of individuals covered and not covered by a plan, listed by compensation range, does not constitute confidential compensation information.

§ 301.6104(a)–6 Procedural rules for inspection.

(a) *Place of inspection; tax exempt organizations and pension and other plans.* Material relating either to tax exempt organizations or to pension and other plans that is open to public inspection under section 6104(a)(1) and § 301.6104(a)–1 through § 301.6104–3 will be made available for inspection at the Freedom of Information Reading Room, National Office, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, and in the office of any district director of internal revenue.

(b) *Request for inspection*—(1) *Tax exempt orgonizctions and pension and other plans; public inspection.* Material relating to either tax exempt organizations or pension and other plans that is open to public inspection under section 6104(a)(1) and §§ 301.6104(a)–1 through § 301.6104–(a)–3 will be available for inspection only upon request. If inspection at the National Office is desired, a request should be made in writing to the Commissioner of Internal Revenue.

Attention: Freedom of Information Reading Room, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Requestes for inspection in the office of a district director should be made in writing to the district director's office. The requests must describe the material to be inspected in reasonably sufficient detail so that Internal Revenue Service personnel can locate the material. If a tax-exempt organization has more than one application for tax exemption open to public inspection, or if a pension or other plan has more than one application for a determination letter open to public inspection, only the most recent application and related material will be made available for inspection unless the request states otherwise. Further, in the case of a pension or other plan, only Internal Revenue Service documents issued or delivered after the date of the filing of the most recent application for a determination letter will be made available for inspection, unless the request states otherwise.

(2) *Pension and other plans; inspection by plan participant or authorized representative.* As described in § 301.6104(a)–4, material relating to plans having fewer than 26 participants is only open to inspection by a plan participant or authorized representative. In the case of such a plan, the rules described in subparagraph (1) of this paragraph apply, except that the request for inspection must be in writing. The request for inspection must include satisfactory evidence that the person requesting inspection is a plan participant (see § 301.6104(a)–4 (c)) or an authorized representative of such a plan participant within the meaning of § 301.6104(a)–4 (d).

(c) *Time and extent of inspection.* A person requesting inspection will be notified when the material will be made available for inspection. The material will be made available for inspection at times that will not interfere with its use by the Internal Revenue Service or exclude other persons from inspecting it. In addition, the Commissioner or district director may limit the number of applications for tax exemption, applications for a determination letter, supporting documents, or letters and documents issued by the Internal Revenue Service that will be made available to any person for inspection on a given date. Inspection will be allowed only in the presence of an Internal Revenue Service employee and only during regular business hours.

(d) *Copies.* Notes may be taken of the material open for inspection. Copies may be made manually or, if a person provides the equipment, photographically at the place of inspection. Photographic copying is subject to reasonable supervision with regard to the facilities and equipment used. A fee will be charged for copies of the material furnished by the Internal Revenue Service. Copies will be certified upon request.

§§ 301.6104–2, 301.6104–3 and 301.6104–4 [Redesignated as §§ 301.6104(b)–1, 301.6104(c)–1 and 301.6104(d)–1]

Par. 2. Sections 301.6104–2, 301.6104–3 and 301.6104–4 are redesignated §§ 301.6104(b)–1, 301.6104(c)–1 and 301.6104(d)–1, respectively.

William E. Williams,

Acting Commissioner of Internal Revenue.

[FR Doc. 80-40498 Filed 12-29-80, 8:45 am]

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DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

29 CFR Part 2520

Proposed Revision of Annual Return/Reports and Regulations Regarding Plans Which Participate in a Master Trust

AGENCY: Department of Labor.

ACTION: Notice of proposed revision of annual report forms and annual reporting regulations.

SUMMARY: This document contains proposed revisions to the Form 5500, (annual return/report form) filed under the Employee Retirement Income Security Act of 1974 (the Act) and a proposed revision of related employee benefit plan annual reporting regulations. If adopted, these revisions would affect the reporting of financial information by plans which participate in a master trust.

DATES: Written comments (at least three copies) concerning the proposed revisions must be received by the Department on or before February 13, 1981. The revisions, if adopted, will be effective for plan years beginning on or after January 1, 1981.

ADDRESS: Written comments should be addressed to "Master Trust", Office of Reporting and Plan Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4508, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: John Christensen, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, (202) 523–8684 or Roger Thomas, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Washington, D.C. 20210, (202) 523–8602. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department has under consideration proposed revisions to 29 CFR 2520.103–1, relating to the contents of the annual report, Form 5500 (annual return/report), and instructions thereto. The annual return/report provides financial information regarding an employee benefit plan to the Department of Labor (the Department) and the Internal Revenue Service. The plan administrator must make the annual return/report available for examination by plan participants and beneficiaries.

The proposed revisions relate to the treatment of plans participating in master trusts for annual reporting purposes. Generally, a master trust is a trust maintained by certain financial institutions to hold the assets of several plans that are all sponsored by a single employer or by several employers which are under common control. The Department has been advised that when the assets of several plans are combined in a single master trust, significant economies in recordkeeping and asset management expenses can often be achieved.

The Department's annual reporting requirements are set forth at 29 CFR 2520.103–1 *et seq.* In accordance with these regulations plans generally file annual reports on Forms of the 5500 Series (Forms 5500, 5500–C, and 5500–K). The annual report includes financial statements, which include a statement of assets and liabilities (Item 13 of Form 5500) and a statement of income, expenses and changes in net assets (Item 14 of Form 5500). Plan assets, liabilities, income and expenses are grouped in categories and sub-categories ("line items"). In general, the instructions to the forms currently require that if the assets of two or more plans are maintained in one trust (as in the case of a master trust), the statement of assets and liabilities and the statement of income, expenses, and changes in net assets should be completed by entering the allocable portion of each line item for the plan in question. [1]

The department has received correspondence from representatives of banks and the banking industry with regard to the treatment of master trusts

[1] This rule does not apply with respect to common or collective trusts. See 29 CFR 2520.103–3.

for annual reporting purposes.[2] This correspondence has generally expressed the view that the current method of reporting is confusing and presents

in such a manner that each plan has the same percentage interest in each pooled investment fund within the master trust as in the master trust as a whole. Other

consist of a pool of assets, such as the pooled funds typically maintained in master trusts, or of a single asset. Any asset which is "dedicated" to a single

investment losses allocated to the plan for the plan year.[3]

A separate schedule would list each master investment account in which the plan has an interest and would show the

Plan Holdings in Both Master Trusts and Other Funding Media

If some plan assets are held in a master trust and other plan assets are

Under the proposal, the trustee of a master trust would furnish to the plan administrator of a plan participating in the master trust copies of the required statements, schedules and other

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for annual reporting purposes.[2] This correspondence has generally expressed the view that the current method of reporting is confusing and presents financial information relating to a plan's participation in a master trust in a manner which they characterize as misleading. These letters have generally recommended that a plan which participates in a master trust report the value of the plan's interest in the master trust as a single asset under item 13, and that the plan's share of earnings and realized and unrealized gains and losses of the master trust be reported as a single figure representing the increase or decrease in the value of the plan's interest in the master trust under item 14. With respect to the schedules of assets held for investment, loans or leases in default or classified as uncollectable, party in interest transactions and reportable transactions required in item 22(a), the banking representatives have generally recommended that such schedules be filed by the master trust, instead of by individual plans.

Upon consideration of these comments, the Department is proposing revisions to the forms and the regulations to obtain financial information from plans which participate in a master trust in a manner which the Department believes more accurately reflects the financial condition of each plan participating in the master trust. The Department expects that the revisions will reduce or eliminate uncertainty on the part of the public as to the reporting requirements for such plans. The proposed revisions, which largely utilize the concepts suggested by the commentators with certain modifications, are described below.

Investment Accounts

According to representatives of banks serving as trustees of master trusts, master trusts commonly include various types of investment funds in which assets of participating plans are pooled for investment purposes, such as equity funds, real-estate funds, bond funds, and money-market funds. These pooled investment funds within the master trust may be managed by the trustee or by other investment managers. Under some master trusts, the assets of the plans participating in the master trust must be allocated among these investment funds in such a manner that each plan has the same percentage interest in each pooled investment fund within the master trust as in the master trust as a whole. Other master trusts, however, permit fiduciaries of each plan, such as the plan's investment committee, to specify the portion of the plan's interest in the master trust to be allocated to each separate fund within the master trust. Thus, for example, such fiduciaries may direct that 60% of the plan's interest in the master trust be allocated to the master trust's equity fund, 30% to the master trust's bond fund, 10% to the master trust's real-estate fund, and nothing to the master trust's money-market fund. If each plan's assets are allocated in this manner, each plan will ordinarily have a different percentage interest in each pooled fund and in the master trust as whole. Moreover, many master trusts permit separate assets to be held and managed by the master trust outside of any pooled investment fund, for the benefit of one or more (but not necessarily all) participating plans.

Under many master trusts, therefore, the plan's percentage interest in the master trust as a whole does not necessarily bear any relationship to the plan's interest in each separate pooled fund and each separate asset within the master trust. Thus, in order to determine accurately the share of each item of assets, liabilities, income, expense, etc. Allocated to the plan from the master trust, it is necessary to know relevant financial information for each pooled investment fund and each separately held asset in the master trust, as well as each plan's percentage or dollar interest in each pooled investment fund and each separately held asset. Accordingly, the Department is proposing revisions which, if adopted, would provide that the bank, trust company, or similar institution maintaining the master trust shall complete such information for each participating plan.

In the proposed instructions, the term "investment account" is used to mean both pooled investment funds and separately held assets in the master trust. Each of the following would be treated as a separate investment account: (1) each pool of assets such that each plan has the same fractional interest in each asset in the pool and each plan is unable to dispose of its interest in any asset in the pool without disposing of its interest in the pool, and (2) each asset held in the master trust which is not part of such a pool of assets. Thus, every asset held in the master trust would be considered to be held in an investment account. An investment acccount, therefore, could consist of a pool of assets, such as the pooled funds typically maintained in master trusts, or of a single asset. Any asset which is "dedicated" to a single plan or to several plans (i.e., an asset held exclusively for the benefit of such plan or plans apart from any pool of investments) would itself be treated as comprising a separate investment account. In the case of a master trust in which each plan has the same percentage interest in each pooled investment fund (and in each separate asset, if any), the definition of "investment account"; would permit all of the assets in the master trust to be viewed as a single pool of assets appropriate for treatment as a single investment account.

A principal feature of the proposed reporting revisions would be that detailed financial information would be provided with respect to each investment account maintained within the master trust, as explained more fully below. By contrast with current requirements, it would not be necessary to determine the plan's allocable share of each line item of Form 5500 for assets held in the master trust.

Assets and Liabilities

The current value of a plan's interest in a master trust at the beginning and end of the plan year would be reported in item 13(c)(x) of Form 5500. The value of the plan's interest in a master trust would be the sum of the net values of the plan's interest in each master trust investment account. No other information regarding the assets held in the master trust and liabilities attributable to those assets would be reported in item 13 of the plan's Form 5500.

Detailed information on assets held in the master trust would be provided with respect to each master trust investment account in a statement in the format of item 13, showing the assets and liabilities of the investment account at the beginning and end of the most recent fiscal year of the investment account.

Income, Expenses and Changes in Net Assets

In item 14(n)(ii) of the plan's Form 5500, the net investment gain (or loss) allocated to the plan from all master trust investment accounts for the plan year would be reported. This figure would be determined by adding together all net investment gains allocated to the plan for the plan year and by subtracting from that sum any net investment losses allocated to the plan for the plan year.[3]

A separate schedule would list each master investment account in which the plan has an interest and would show the net investment gain (or loss) allocated to the plan from each such master trust investment account for the plan year.

A statement prepared for each investment account would report, in the format of item 14, the income, expenses and change in net assets and net increase (decrease) in net assets of the investment account during the most recent fiscal year of the investment account.

Any expenses which are incurred by the plan in connection with the master trust but which are not subtracted from the gross income of one of the master trust investment accounts in determining the net increase (decrease) in net assets of such investment accounts would be reported in item 14(j) or (k) of the plan's Form 5500.

Fees, Commissions or Other Compensation

Item 12 of the plan's Form 5500 would include the plan's share of amounts of compensation paid during the plan year to the trustee of the master trust and to persons providing services to the master trust, if such compensation is not subtracted from the gross income of any investment account in determining the investment account's net increase (decrease) in net assets. Any amounts of compensation paid to persons providing services to an investment account which are subtracted from the gross income of the investment account in determining the net increase (decrease) in net assets of the investment account would be reported in a statement prepared for the investment account in the same format as item 12 of Form 5500.

Item 22(a) Schedules

Schedules of the information specified in item 22(a) (i.e., party in interest transactions, assets held for investment, loans and leases in default or classified as uncollectable and reportable transactions) would, if appropriate, be completed for each investment account.

Plan Holdings in Both Master Trusts and Other Funding Media

If some plan assets are held in a master trust and other plan assets are held in other funding media, all applicable lines in items 12, 13, 14, and 22(a) of Form 5500 must be completed to report information regarding the plan assets held in the other funding media. for example, if a plan invests all of its funds in master trust except cash temporarily deposited in a checking account held in a separate trust to pay administrative expenses unrelated to the master trust (such as the accountant's fee or charges for disclosing plan information to participants and beneficiaries). information regarding such cash must be shown in the annual report in addition to information regarding plan assets held in the master trust.

Proposed Regulation

The revisions to Form 5500 would be accompanied by a regulation, which is proposed in this document (29 CFR § 2520.103–1(e)), and which would require the plan administrator of a plan participating in a master trust to follow the instructions to Form 5500 regarding master trust. Corresponding revisions are proposed to § 2520.103–1(c).

Filing of Reports

Under the proposed regulation, a plan participating in a master trust, including a plan which would normally file a Form 5500–C or 5500–K,[4] would be required to file form 5500, in order to ensure uniformity of reporting among all plans participating in a single master trust. It is contemplated that the instructions to Forms 5500–C and 5500–K would be modified by adding a statement to the effect that those forms should not be used for filing the annual report for plans participating in a master trust. However, the plan administrator of a plan covering fewer than 100 participants at the beginning of the plan year is not required to engage an accountant to examine the financial statements of the plan or to include within the annual report a report of such accountant. (Since such plan is required to file Form 5500 because it participates in a master trust, the plan is not deemed to be making an election under 29 CFR 2520.103–1(d); therefore, the waiver of the accountant's examination and report, provided by § 2520.104–46, applies to the plan).

Under the proposal, the trustee of a master trust would furnish to the plan administrator of a plan participating in the master trust copies of the required statements, schedules and other information relating to the master trust investment accounts as specified in the instructions and would file these documents directly with the Department. It is the Department's opinion that the information required to be provided for each plan by the trustee of the master trust constitutes a part of a plan's annual report for purposes of satisfying a plan's disclosure obligations to participants and beneficiaries.[5] The required information would be filed with the Department no later than the earliest date on which Form 5500 must be filed for any plan participating in the master trust. The Department believes that the direct filing of master trust information in this manner would eliminate duplicative reporting and would provide financial information on such plans in a more useful form. The annual report of a plan participating in the master trust would be filed by the plan administrator in accordance with the "General Instructions" provided on Form 5500.

Arrangements Other Than Master Trusts

Under the proposals contained in this document, annual reporting along the lines described above would be limited to plans participating in master trusts. Although the Department is aware that arrangements other than master trusts may exist in which assets of more than one plan are pooled for investment purposes, it does not have an adequate factual basis for expanding the scope of the master trust proposals to cover plans participating in such arrangements. Special rules are currently provided in 29 CFR § 2520.103–3 for plans participating in common or collective trusts, in § 2520.103–4 for plans participating in insurance company pooled separate accounts meeting specified requirements, and in § 2520.103–21 and § 2520.103–43 for plans participating in certain group insurance arrangements. Furthermore, the instructions for Forms 5500 and 5500–C provide special reporting instructions, in the section entitled

[2] Letters received by the Department regarding the treatment of master trusts under the regulations are available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

[3] The net investment gain (or loss) allocated to the plan from each investment account for the plan year would be determined by subtracting the value of the plan's interest in the investment account at the beginning of the plan year from the value of the plan's interest at the end of the plan year and by adjusting that difference to eliminate the effect of any transfers of assets into or out of the investment account by the plan (i.e., by subtracting any such transfers into the investment account and by adding transfers out of the investment account).

[4] Forms 5500–C and 5500–K contain abbreviated financial statements of assets and liabilities and statements of income, expenses and changes in net assets.

[5] Section 104(b)(2) of the Act gives any plan participant or beneficiary the right to examine the plan's latest annual report at the plan administrator's principal office and such other places as may be necessary to make available all pertinent information to all participants. Further, section 104(b)(4) gives any plan participant or beneficiary the right to receive, upon his or her written request, a complete copy of the plan's latest annual report. The plan administrator may make a reasonable charge to cover the costs of furnishing such copy. (See also 29 CFR § 2520.104b–1 and § 2520.104b–30).

"Type of Filer", for a single plan of a controlled group of corporations or trades or businesses under common control, a multiemployer plan, a

the section headed "What to File" in the instructions to these forms.

* * * * *

(e) *Plan which participate in a master*

master trust may also contain assets which are not held in such a pool. Each such asset must also be treated as a separate master trust investment account.

Financial information must generally be

5. Enter in sub-item 14(n)(ii) the net investment gain (or loss) allocated to the plan for the plan year from all master trust investment accounts. The net investment gain (or loss) allocated to the plan for the plan

digit plan number. The required information shall be filed with the Department of Labor by mailing it to: Master Trust, Office of Reports and Disclosure, Pension and Welfare Benefit Programs, U.S. Department of Labor,

"General Instructions" in the instructions for Form 5500, for detailed filing information for plans participating in master trusts. (An accountant's examination and report is not required for a plan which meets the

"Type of Filer", for a single plan of a controlled group of corporations or trades or businesses under common control, a multiemployer plan, a multiple-employer-collectively-bargained plan, and a multiple-employer plan (other).

The Department invites comments regarding appropriate reporting methods for multiple plan arrangements which are not entitled to follow any of the reporting methods or instructions mentioned in the preceding paragraph and which do not involve master trusts. Such comments should include a detailed explanation of both the form and operation of any such other multiple plan arrangement. Suggestions for special reporting methods for any other multiple plan arrangement will be considered separately from the subject proposal for plans participating in master trusts.

Drafting Information

The principal authors of these proposed revisions are Miriam Freund of the Pension and Welfare Benefit Programs and Roger Thomas of the Plan Benefits Security Division, Office of the Solicitor, Department of Labor. However, other persons in the Department of Labor and in the Internal Revenue Service participated in developing the proposed revisions, both on matters of substance and style.

Proposed Revisions of Annual Return/Reports and of Annual Reporting Regulation

1. In consideration of the matters discussed above, it is proposed to amend § 2520.103–1 of Title 29 of the Code of Federal Reglations by revising paragraph (c) and adding a new paragraph (e) to read as set forth below.

§ 2520.103–1 Contents of the annual report.

* * * * *

(c) *Contents of the annual report for plans with fewer than 100 participants.* Except as provided in paragraphs (d) and (e) of this section and in §§ 2520.104–43 and 2520.104a–6, the annual report of an employee benefit plan which covers fewer than 100 participants at the beginning of the plan year shall be Form 5500–C "Return/Report of Employee Benefit Plan (with fewer than 100 participants)" or 5500–K "Return/Report of Employee Pension Benefit Plan for Sole Proprietorships and Partnerships (with fewer than 100 participants and at least one owner-employee)", or 5500–R "Registration Statement of Employee Benefit Plan (with fewer than 100 participants)." See the section headed "What to File" in the instructions to these forms.

* * * * *

(e) *Plan which participate in a master trust.* The plan administrator of a plan which participates in a master trust shall file an annual report on Form 5500 in accordance with the specific instructions relating to master trusts on Form 5500 and instructions thereto. A master trust is a trust which is maintained by a bank, trust company, or similar institution regulated, supervised, and subject to periodic examination by a State or Federal agency, and which contains only assets of more than one plan of a single employer or more than one plan of several employers, all of which are members of a controlled group of corporations or trades or businesses under common control (as defined in section 414(b) and (c) of the Internal Revenue Code).

(2) It is proposed to amend the annual return/report (Forms 5500, 5500–C, and 5500–K) and instructions thereto in the manner described below.

I. Revisions to Form 5500

Add new sub-item 13(c)(x) "Value of Interest in Master Trust" and renumber current 13(c)(x) and 13(c)(xi) as 13(c)(xi) and 13(c)(xii) respectively.

Add new sub-item 14(n)(ii) "Net investment gain (or loss) from all master trust investment accounts". Renumber current sub-item 14(n)(ii) ("Other changes") as 14(n)(iii).

II. Revisions to Instructions for Form 5500

[Insert at the end of "A. What to File" under "General Instructions".]

Plans Participating in Master Trust(s)

A. *Definitions and General Information.*

For purposes of this form, a master trust is deemed to exist where the assets of more than one plan of a single employer or more than one plan of several employers, all of which are members of a single controlled group of corporations or trades or businesses under common control (as defined in section 414(b) and (c) of the Code) are held in trust maintained by a bank, trust company, or similar institution regulated, supervised, and subject to periodic examination by a State or Federal agency.

For purposes of this form, the assets of a master trust are considered to be held in one or more "investment accounts". A master trust investment account may contain a pool of assets or a single asset. Each pool of assets held in a master trust must be treated as a separate master trust investment account if each plan which has an interest in the pool has the same fractional interest in each asset in the pool as its fractional interest in the entire pool, and if each such plan is unable to dispose of its interest in any asset in the pool without disposing of its interest in the pool. A master trust may also contain assets which are not held in such a pool. Each such asset must also be treated as a separate master trust investment account.

Financial information must generally be provided with respect to each master trust investment account as specified in Part C, "Reporting Information Relating to Master Trusts and Master Trust Investment Accounts," below.

Each plan participating in a master trust must file Form 5500, regardless of the number of participants in the plan. If such a plan covers fewer than 100 participants at the beginning of the plan year, the accountant's examination and report described in section 103(a)(3)(A) of the Act is not required (see 29 CFR 2520.104–46).

B. *Reporting Information Relating to the Individual Plan* 1. In item 12 include the plan's share of amounts of compensation for services paid during the plan year to the master trustee and to persons providing services to the master trust if such compensation is not subtracted from the gross income of any master trust investment account in determining the net investment gain (or loss) from the investment account (see ¶B6, below). Amounts of compensation subtracted from investment account gross income in determining the net investment gain (or loss) from the investment account must be reported on separate schedules (see ¶C3, below).

2. Enter the current value of the plan's interest in the master trust at the beginning of the plan year and at the end of the plan year on line 13(c)(x). The value of the plan's interest in a master trust is the sum of the net values of the plan's interests in master trust investment accounts. The net values of such interests are obtained by multiplying the plan's percentage interest in each master trust investment account by the net assets of the investment account reported in the applicable column of the "net assets" line item of the statement of assets and liabilities filed for the investment account (see ¶C4, below). If some plan funds are held in a master trust and other plan funds are held in other funding media, complete all applicable sub-items of item 13 with regard to assets held in other funding media.

3. In sub-items 14 (d), (e), (f), (i), (j), (k), and (n)(i), do not report earnings, expenses, gains or losses, and unrealized appreciation or depreciation which were included in computing the net investment gain (or loss) from any master trust investment account. (See ¶B6, below, for explanation of net investment gain (or loss) from master trust investment account). If some plan funds are held in a master trust and other plan funds are held in other funding media, complete all applicable sub-items of item 14 to report plan earnings, expenses, gains or losses, and unrealized appreciation or depreciation relating to the other funding media.

4. In sub-item 14(j), report all administrative expenses (by specified category) paid by or charged to the plan which were not subtracted from the gross income of a master trust investment account in determining the net investment gain (or loss) from the investment account (see ¶B6, below).

5. Enter in sub-item 14(n)(ii) the net investment gain (or loss) allocated to the plan for the plan year from all master trust investment accounts. The net investment gain (or loss) allocated to the plan for the plan year from all master trust investment accounts is obtained by subtracting any net investment losses allocated to the plan from master trust investment accounts from the sum of net investment gains allocated to the plan from master trust investment accounts. The net investment gain (or loss) allocated from each master trust investment account is reported on a separate schedule (see ¶B6, below).

6. State the name of the master trust used in the master trust's filing with the Department of Labor (see Part C, below). Attach a list of each master trust investment account in which the plan has an interest. In tabular format show the plan's fractional interest, in the form of a percentage, in each investment account at the beginning of the plan year and at the end of the plan year; the total amount of transfers to the investment account, and the total amount of transfers from the investment account, by the plan during the plan year; and the net investment gain (or loss) allocated to the plan for the plan year from the investment account. The net investment gain (or loss) allocated to the plan for the plan year from the investment account is equal to:

—the current value of the plan's interest in the investment account at the end of the plan year, *minus*

—the current value of the plan's interest in the investment account at the beginning of the plan year, *plus*

—any amounts transferred out of the investment account by the plan during the plan year, *minus*

—any amounts transferred into the investment account by the plan during the plan year.

7. Do not complete sub-item 22(a) if all plan funds are held in master trusts. If some plan funds are held in master trusts and other plan funds are held in other funding media, complete sub-item 22(a) to report information relating to the other funding media. In such cases, complete item 22(a)(v) only with respect to transactions involving assets of the plan which are not held in a master trust. In determining the 3 percent figure, do not include the value of plan assets held in the master trust in the current value of the plan's assets at the beginning of the plan year. Do not report acquisitions or dispositions of interests in a master trust in sub-item 22(a)(v). (See ¶C6, below, with respect to information that must be included concerning each master trust investment account.)

C. Reporting Information Relating to Master Trusts and Master Trust Investment Accounts

For each plan participating in the master trust, the bank, trust company or similar institution maintaining the master trust shall furnish to the plan administrator and file directly with the Department of Labor the information described below. Each of the required statements and schedules should indicate the name of the plan, the sponsor's employer identification number, and the three digit plan number. The required information shall be filed with the Department of Labor by mailing it to: Master Trust, Office of Reports and Disclosure, Pension and Welfare Benefit Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. The required information must be filed with the Department no later than the earliest date on which Form 5500 must be filed for any plan participating in the master trust.

1. The name and fiscal year of the master trust and the name and address of the master trustee.

2. A list of all plans participating in the master trust, showing each plan's name and its percentage interest in each master trust investment account as of the beginning and end of the most recent fiscal year of the investment account.

3. A statement, in the same format as item 12 of Form 5500, for each master trust investment account, showing amounts of compensation paid during the most recent fiscal year of the investment account to persons providing services with respect to the investment account and subtracted from the gross income of the investment account in determining the net increase (decrease) in net assets of the investment account (see ¶C5, below).

4. A statement in the same format as item 13 of Form 5500, for each master trust investment account, showing the assets and liabilities of the investment account at the beginning and end of the most recent fiscal year of the investment account.

5. A statement in the same format as item 14 of Form 5500 for each master trust investment account, showing the income, expenses, changes in net assets, and net increase (decrease) in net assets of each such investment account during the most recent fiscal year of the investment account. In place of sub-items (a), (b), and (c) of item 14, show all transfers of assets into the investment account by participating plans. In place of sub-item (h) of item 14, show all transfers of assets out of the investment account by participating plans. Do not complete sub-item 14(n)(ii).

6. Schedules in the format set forth in the instructions to item 22 of Form 5500, of the following items with respect to each master trust investment account for the most recent fiscal year of the investment account: assets held for investment, nonexempt party in interest transactions, defaulted or uncollectable loans and leases, and 3 percent transactions involving assets in the investment account. The 3 percent figure shall be determined by comparing the current value of the transaction at transaction date with the current value of the investment account assets at the beginning of the fiscal year of the investment account.

III. Revisions to Instructions for Form 5500–C

1. [Insert at the end of the first sentence under "A. What to File" under "General Instructions":]

* * * and for each plan, regardless of the number of participants, which participants in a master trust. See "A. What to File" under "General Instructions" in the instructions for Form 5500, for detailed filing information for plans participating in master trusts. (An accountant's examination and report is not required for a plan which meets the requirements of 29 CFR § 2520.104–46 and which participates in a master trust.)

2. [Insert at end of second paragraph under "A. What to File" under "General Instructions":]

Exception: Plan participating in master trusts must file Form 5500, as noted in the preceding paragraph, rather than Form 5500–C.

IV. Revisions to Instructions for Form 5500–K

[Insert at end of first paragraph under "A. What to File" under "General Instructions":]

Exception: A plan that participates in a master trust must file Form 5500, regardless of the number of participants in the plan; Form 5500–K should not be filed for such plan. See "A. What to File" under "General Instructions" in the instructions for Form 5500, for detailed filing information for plans participating in master trusts. (An accountant's examination and report is not required for a plan which meets the requirements of 29 CFR 2520.104–46 and which participates in a master trust.)

Signed at Washington, D.C. this 23rd day of December, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80–40554 Filed 12–24–80; 9:02 am]

BILLING CODE 4510–29–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Surface Coal Mining and Reclamation and Enforcement Under Federal Program for Ohio

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Notice of intent to prepare Federal Program, Suspension of Ohio schedule for State program resubmission, and Notice of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) was advised by the State of Ohio of the existence of injunctions enjoining the State from resubmitting its State regulatory program to the Department of the Interior for a period of one year. Accordingly, the Secretary of the Interior is temporarily suspending the

determination. The Secretary has not yet

Mining Control and Reclamation Act

that the Federal enforcement program

Ohio schedule for resubmission and is initiating action to prepare a Federal program for the regulation of surface coal exploration, mining and reclamation on non-Federal and non-Indian lands in Ohio. The Federal program will not be implemented before December 1, 1981, unless the injunctions cease to remain in effect or are no longer determined effective under Section 503(d) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201, *et seq.* In any event, Ohio will be given the opportunity to resubmit a State program before a Federal program is implemented. If Ohio does resubmit, the program will be reviewed in accordance with the Secretary's regulations. A Federal program will be implemented only if the State fails to resubmit, or if the resubmitted program is disapproved. Public comment is also being sought on the preparation of a Federal program for Ohio and on Ohio's actions under the interim program.

DATE: Public comments must be received by OSM by 5:00 p.m., January 29, 1981.

ADDRESS: Information and comments should be sent to: Office of Surface Mining, Room 153, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, OSM, State and Federal Programs, 1951 Constitution Avenue, N.W., U.S. Department of the Interior, Washington, D.C. 20240, (202) 343-4225.

SUPPLEMENTARY INFORMATION: Under the Surface Mining Control and Reclamation Act of 1977 (the "Act"), a State which seeks to regulate surface coal mining and reclamation operations within its borders may apply to the Secretary of the Interior for approval of a State program. In order for a program to be approved, a State must develop a program that contains laws and regulations which are consistent with the Act and the regulations of the Secretary of the Interior. The Act says that once a State makes a program submission, the Secretary of the Interior has six months in which to consider the State's application. At the end of that six-month period the Secretary has to decide whether to approve, conditionally approve, approve in part and disapprove in part, or completely disapprove the State program submission. If the Secretary partially or completely disapproves the State program submission, the State, under normal conditions, has sixty days to revise and resubmit its program. The statute then gives the Secretary sixty days to consider the resubmitted program and to make a final decision. If, after the end of this ten month period, the Secretary is unable to approve or conditionally approve the State Program, he is required to promulgate a Federal program.

As announced in the October 1, 1980, Federal Register notice, 45 FR 64962, the Secretary of the Interior reviewed the State of Ohio's initial program submission and disapproved that program. Ohio had until December 1, 1980, to resubmit a revised program.

In a letter dated November 26, Charles E. Call, Chief of the Division of Reclamation, Ohio Department of Natural Resources, informed the Office of Surface Mining that the Ohio Department of Natural Resources was enjoined on November 24, 1980, by the Common Pleas Court of Franklin County, Ohio, and on November 25, 1980, by the Common Pleas Court of Belmont County, Ohio, from resubmitting to the Office of Surface Mining a State program for the regulation of surface coal mining and reclamation operations. Ohio did not resubmit a program by the December 1, 1980 deadline.

Section 503(d) of the Surface Mining Control and Reclamation Act provides:

> . . . [T]he inability of State to take any action the purpose of which is to prepare, submit or enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result * * * in the imposition of a Federal Program. Regulations of the surface coal mining and reclamation operations covered or to be covered by the State program subject to an injunction shall be conducted by the State pursuant to Section 502 of this Act, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of Section 503 and 504 shall again be fully applicable.

The Secretary has completed all the actions in the review of the Ohio State program that can be done without further participation by the State of Ohio. Because the Secretary of the Interior has received notification that the State of Ohio is enjoined from taking further formal action, the Secretary is temporarily suspending the State program approval process for Ohio as of November 24, 1980 (the date of the first injunction), which was the 54th day of the 60 days that Ohio had for resubmission.

The effect of this action is that federal enforcement of the interim program requirements, e.g., two federal inspections per year of each mine or regulated facility, will continue until the injunctions are lifted, expire, or are determined not to invoke the operation of Section 503(d). Since the Act allows the state access to its reserved portion of the Abandoned Mine Land Fund only after it has achieved regulatory primacy, Ohio's access to the Fund must be delayed. The amount currently reserved for Ohio is $15,652,069.98.

The Secretary has considered various options in rescheduling Ohio's state program approval process. First, because the 60 day resubmission period expired on December 1, 1980, and because the injunctions give Ohio more time than the 60 days normally allowed, Ohio could be required to resubmit its state program on the day the injunctions are lifted. However, an immediate deadline for resubmission after the injunctions are lifted appears abrupt and would ignore the fact period when the first injunction was issued. Second, Ohio could be given 60 days after the lifting of the injunctions to resubmit its state program. However, 60 additional days appears excessive, because (1) Ohio has already had 54 days to develop its resubmission, (2) it would be unfair to other states which only had 60 days to resubmit and (3) the operation of the injunctions has already given Ohio considerably more time than the normal 60 days to develop an acceptable program. Third, Ohio could be given the amount of time it hads remaining to resubmit its program, six days. This would take into account the time Ohio already had for resubmission, would be fair to other states involved in the process, and would be a reasonable deadline for the state to meet.

The Secretary has chosen the third option. Beginning on November 24, 1981, or, if the injunctions are lifted or determined to be ineffective before that date, then on the date when the injunctions are lifted or deemed ineffective, Ohio will have six days to resubmit an acceptable program. In any event, the deadline for Ohio's resubmission will not be later than November 30, 1981. The Secretary will make every effort to notify Ohio by letter prior to that date for resubmission in order to assist Ohio in meeting the deadline.

The legislative history of Section 503(d) indicates that its purpose is to avoid penalizing states which make good faith efforts to comply with the Act but are prevented by court action from achieving full compliance. Where, however, attendant circumstances lead the Secretary to determine that an injunction does not invoke the operation of Section 503(d), or that the State has failed to make a good faith effort to comply with the Act, the Secretary will not suspend the statutory timetable for state programs beyond the date of such determination. The Secretary has not yet determined, at this time, whether Section 503(d) is applicable in Ohio. The Secretary is reviewing the circumstances under which the injunctions were entered and the jurisdictional competence of the state courts to hear the matter. The Secretary believes that the delay and relief available under Section 503(d) is limited to those States which are seeking in good faith to prepare and adopt a permanent surface coal mining and reclamation program. Section 503 is not meant to be used as an artifice or device to avoid the requirements of the Surface Mining Act.

Section 503(d) does not provide general authority to extend the statutory timetable established under that Act. Accordingly, the Secretary requests public comment on the issues bearing upon the applicability of Section 503(d) in Ohio. If, after review, the Secretary determines that Section 503(d) is inapplicable to Ohio under the circumstances, Ohio will have six days from the date of such determination within which to resubmit an acceptable state program. If it fails to do so, the Secretary will implement a Federal program for Ohio in accordance with Section 504 of the Act. Until a determination is made, the Secretary will presume that Section 503(d) applies, and thus will suspend the running of the resubmission period provided by Section 503(c). However, the Secretary expressly reserves that right to take appropriate action if he concludes that the circumstances surrounding the entry of the injunctions warrant doing so.

Section 503(d) also requires a State which is subject to an injunction prohibiting resubmission of a state program to regulate surface coal mining and reclamation operations pursuant to Section 502 of the Act (the interim program) until such time as the injunction terminates or until one year after the injunction is entered, whichever comes first. The Secretary construes Section 503(d) of the Act to authorize implementation of a Federal program if a State fails to implement Section 502 during the term of an injunction. Thus, while the Secretary fully endorses the intent of Congress to have the State assume regulatory primacy under the Act, he also is required to implement a Federal program in cases where that becomes necessary because of a State's failure to carry out its responsibilities under Section 502.

Consequently, the Secretary is also examining the compliance by the State of Ohio with Section 502 of the Surface Mining Control and Reclamation Act and the interim program regulations issued by the Department of the Interior related to Section 502 (42 FR 62639, December 13, 1977). Within the next three months and after receipt or public comments and completion of this preliminary analysis, the Secretary will decide what further steps are necessary and should be taken. At that time, he may conclude that there is no basis for further examination because the State of Ohio is adequately enforcing the requirements of Section 502 of the Act; alternatively, he may decide there is the need for a public hearing or additional public comment. If the Secretary ultimately determines there is a lack of compliance, he will recommence the State program review process after appropriate notice to Ohio.

One additional effect of the injunctions, if they run a full year, is to delay the permanent program in Ohio for a period of approximately eight to twelve months beyond that applicable to most other States in the country. In addition, if Ohio is ultimately unsuccessful in obtaining approval of its program, the Secretary will then have to adopt a Federal program for that State. This could cause an additional delay of six months or more if the process for adoption of the Federal program were delayed until after the injunctions are lifted.

To reduce the potential delay in the application of the permanent surface coal mining reclamation program in Ohio if a Federal program becomes necessary, the Secretary has decided to begin preparation of a Federal program for Ohio within the next three months. This action is considered necessary both to reduce the time during which the environmental objectives established by Congress are not fully achieved because a permanent program has not been implemented and to reduce the potential for competitive economic disadvantages among states because implementation of permanent programs in the different states are unlikely to be concurrent. The Secretary will not actually implement this program until Ohio either fails to meet the six day deadline to resubmit its program or resubmits but fails to obtain approval of its program.

In the meantime, the Secretary has instructed the Director of the Office of Surface Mining to make every effort during the period of the injunctions to accomplish the following: (1) work with the State toward correcting the remaining deficiencies in its proposed program to the extent the State can participate in such an effort, given the existence of the injunctions; (2) ensure that the Federal enforcement program under Section 502 is diligently pursued in order to obtain compliance with the provisions of the Act and the interim program regulations; and (3) determine whether Ohio is adequately carrying out its responsibilities under Section 502 of the Act.

A major purpose of this notice is to seek public comment on preparing a Federal program in Ohio and to receive specific suggestions for how the Secretary of the Interior ought to adopt or modify the permanent program regulations to meet the local conditions in the State of Ohio. Section 504(a) of the Act and 30 CFR 736.22(a)(1) require that each Federal program consider the nature of the topography soils, climate and biological, chemical, geological, hydrological, agronomic and other physical conditions of the State involved. For important information, the reader is referred to "General Background on the Permanent Program" and "Criteria for Promulgating Federal programs" previously published in the **Federal Register** on May 16, 1980 (45 FR 32328). That notice explains how the Secretary will consider unique conditions in a State, how existing State laws will be considered, and what standards will be used in adopting regulations. The reader should also refer to the Secretary's decision concerning the Ohio program published in the **Federal Register** on October 1, 1980. (45 FR 64962 *et seq.*)

This action of proposing the preparation of a contingent Federal program for Ohio is not significant under the criteria of Executive Order 12044 and 43 CFR Part 14 and does not require preparation of regulatory analysis, nor is this action a major Federal action significantly affecting the environment under the National Environmental Policy Act.

PUBLIC COMMENT PERIOD: The comment period announced in this notice will extend until January 30, 1981. All written comments must be received at the address given above by 5:00 p.m. on that date.

Comments on the preparation of a Federal program received after that hour will not be considered in drafting the proposed Federal program; they will be considered to the extent applicable in subsequent actions under that program.

Dated: December 18, 1980.

Joan Davenport,

Assistant Secretary, Energy and Minerals.

[FR Doc. 80-40452 Filed 12-29-80; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 162

This proposed regulation was also submitted to the FIFRA Scientific Advisory Panel on November 26, 1980, for its review, as required by sec. 25(d)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 162

[OPP-250023A; PH-FRL 1715-2]

Exemption of Certain Biological Control Agents From Regulation; Notification of Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule Related Notice.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a proposed regulation exempting certain biological control agents (generally, organisms of an order higher than microorganisms) from further regulation under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, because that are adequately regulated by other Federal agencies.

FOR FURTHER INFORMATION CONTACT: Ronald E. Ney, Jr., Hazard Evaluation Division (TS-769), Office of Pesticide Programs, 401 M St. SW., Washington, D.C. 20460, (703 577-7347).

SUPPLEMENTARY INFORMATION: Pursuant to sec. 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA) (Pub. L. 92-516, 86 Stat. 973; 7 U.S.C. 136 et seq.), the Administrator of EPA sent the Secretary of Agriculture a copy of a proposed rule exempting certain biological control agents (i.e., organisms of a class higher than microorganisms) from further regulation under FIFRA. This rule is being proposed, under FIFRA sec. 25 (b)(1), which authorizes EPA to exempt from regulation under FIFRA any pesticides which are adequately regulated by other Federal agencies.

This proposed rule was submitted to the Secretary of Agriculture on November 26, 1980. If the Secretary comments in writing within 30 days after receiving the proposed regulation, the Administrator shall publish in the **Federal Register** (along with the proposed regulation) the comments of the Secretary and the response of the Administrator. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the regulation for publication in the **Federal Register** anytime after such 30 day period.

Pursuant to FIFRA sec. 25(a)(3), a copy of the proposed regulation was forwarded on December 18, 1980, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate.

This proposed regulation was also submitted to the FIFRA Scientific Advisory Panel on November 26, 1980, for its review, as required by sec. 25(d) of FIFRA. (Sec. 25, Pub.L. 92-515, 86 Stat. 973; Pub.L. 94-140, 89 Stat. 753; 7 U.S.C. 136 et seq.)

Dated: December 19,1980

Robert V. Brown,

Acting Deputy Assistant Administrator for Pesticide Programs

[FR Doc. 80-40473 Filed 12-29-80; 8:45 am]

BILLING CODE 6560-32-M

Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Oglala Sioux Indian Tribe in South Dakota

Pursuant to the authority set forth in Section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Oglala Sioux Indian Tribe on the Pine Ridge Indian Reservation in South Dakota has been materially increased and become acute because of severe and prolonged drought substantially reducing range forage and hay production, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Oglala Sioux Indian Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be an acute distress area and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 10, 1981, or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C. on December 18, 1980.

John E. Gibbs,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 80-40255 Filed 12-29-80; 8:45 am]

BILLING CODE 3410-05-M

Feed Grain Donations for the Crow Creek and Lower Brule Indian Tribes in South Dakota

Pursuant to the authority set forth in Section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11338, I have determined that:

1. The chronic economic distress of the needy members of the Crow Creek and Lower Brule Indian Tribes in South Dakota has been materially increased and become acute because of severe and prolonged drought substantially reducing range forage and hay production, thereby creating a serious shortage of feed and causing increased economic distress. The Indian reservations involved are designated for Indian use and are utilized by members of the Crow Creek and Lower Brule Tribes for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribes will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribes to be an acute distress area and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribes utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 10, 1981, or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C. on December 18, 1980.

John E. Gibbs,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 80-40254 Filed 12-29-80; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

Determinations Regarding the 1981-Crop Loan Rate for Upland Cotton and for Extra-Long Staple (ELS) Cotton, the Payment Rate for ELS Cotton, and the Loan Program for Seed Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of the 1981-crop loan rates for upland and ELS cotton, the payment rate for ELS cotton, and the loan program for seed cotton.

SUMMARY: The purpose of this notice is to set forth the basis for the determinations announced by the Secretary of Agriculture on October 31, 1980 with respect to (1) the 1981 loan rate for Strict Low Middling (SLM) one and one-sixteenth inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States, (2) the 1981 loan rate and a payment rate with respect to the 1981 crop of ELS cotton, and (3) the 1981 loan program for seed cotton.

These determinations were required to be made by the Secretary in accordance with provisions of Sections 101(f) and 103(f) of the Agricultural Act of 1949, as amended, and Section 5(a) of the Commodity Credit Corporation Charter Act, as amended.

EFFECTIVE DATE: December 29, 1980.

ADDRESS: Director, Production Adjustment Division, ASCS-USDA, 3630 South Building, P.O. Box 2415, Washington, D.C. 20013

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Chief Program Analysis Branch, Production Adjustment Division, ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447-7873. The Final Impact Statement describing the options considered in developing this Notice of Determinations and the impact of implementing each option is available from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in

Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant."

The title and number of the federal assistance program that this notice

Final Determinations

1. *Upland Cotton Loan Rate.* Based on the formula prescribed in Section 103(f) of the Agricultural Act of 1949, as amended (hereinafter referred to as the

The Northern Europe calculation is as follows:

(1) Average Northern Europe quotation for SM 1-1/16 inch cotton July 1 through Oct. 14, 1980...	95.35
(2) Average difference between average Northern Europe quotation and the U.S. spot market	

minimum total support is 99.0 cents per pound (55 percent of parity), and the maximum total support is $1.62 per pound (90 percent of parity).

Supplies of ELS cotton are projected to continue tight during the remainder of

will be held in the South Agriculture Building, 12th Street and Independence Avenue, SW., Room 3840, beginning at 8 a.m.

This Committee, comprised of 12 members from a broad spectrum of

DATE: Since these rates have already gone through full notice and comment procedures when they were originally established for Reeve, the institution of show-cause procedures on these rates is unnecessary and they are effective on

Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant."

The title and number of the federal assistance program that this notice applies to are: Title-Commodity Loans and Purchases; Number-10.051; as found in the Catalog of Federal Domestic Assistance.

This action will not have significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95, was not used to assure that units of local government are informed of this action.

A notice that determinations were to be made with respect to these provisions of the Agricultural Act of 1949, as amended, and the Commodity Credit Coporation Chater Act, as amended, was published in the Federal Register on August 29, 1980 (45 FR 57751) in accordance with 5 U.S.C. 553 and Executive Order 12044. Interested persons were given until October 28, 1930, to submit recommendations, views, and comments.

A total of nine responses were received concerning the loan rate for upland cotton or the seed cotton loan program. Five persons from Texas, two from Arkansas, and one each from Washington, D.C. and California responded.

Of the eight responses concerning the loan rate for upland cotton, two recommended a loan rate of 52.46 cents, and four others recommended levels which were outside legislative authority. Four persons stated that the loan level likely to be in effect would be insufficient when compared to the cost of producing uplan cotton.

One comment was received concerning the loan rate and payment rate for ELS cotton recommending a loan rate of 99.0 cents and a payment rate of zero.

Five persons recommended that a seed cotton loan program be instituted for the 1981 crop. No respondent opposed the program.

All comments received were duly considered were within statutory authority.

It was essential that these determinations be announced as soon as possible so that farmers could make their farming and marketing plans. Accordingly, these determinations with respect to the 1981 crops of uplan, ELS, and seed cotton were announced by the Secretary on October 31, 1980. The basis for these determinations is set forth herein.

Final Determinations

1. *Upland Cotton Loan Rate.* Based on the formula prescribed in Section 103(f) of the Agricultural Act of 1949, as amended (hereinafter referred to as the "1949 Act"), the loan rate for Strict Low Middling (SLM), one and one-sixteenth inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States has been determined to be 52.46 cents per pound. This figure is calculated using the domestic spot market prices as required by Section 103(f) of the 1949 Act.

The loan rate for upland cotton must be the smaller of: (a) 85 percent of the average price (weighted by market and month) of SLM 1 1/16-inch upland cotton (micronaire 3.5 through 4.9) quoted in the designated United States spot markets during the five year period ending July 31, 1980, excluding the year with the highest and the year with the lowest average price, or (2) 90 percent of the average, for the fifteen-week period beginning July 1, 1980, of the five lowest priced growths of the growths quoted for Strict Middling (SM) 1 1/16-inch cotton C.I.F. Northern Europe (adjusted downward by the average difference during the period April 15, 1980, through October 15, 1980, between such average Northern Europe price quotation for such quality of cotton and the market quotations in the designated United States spot markets for SLM 1 1/16-inch cotton (micronaire 3.5 through 4.9)).

In no event, however, shall such loan level be less than 48 cents per pound. Further, if the level which is determined based upon the calculation of the average Northern Europe quotation results in a loan level that is less than the level which is determined based on the calculation of the average United States spot market price, the Secretary may increase the loan level to such level as the Secretary deems appropriate, but not in excess of the level which is determined based upon the calculation of the the average United States spot market price.

The spot market calculation is as follows: (1) Weighted average spot market prices for SLM 1–1/16 inch upland cotton, micronaire 3.5 through 4.9:

August 1975 through July 1976 - 55.29 cents.
August 1976 through July 1977 - 71.59 cents.
August 1977 through July 1978 - 51.15 cents.
August 1978 through July 1979 - 61.01 cents.
August 1979 through July 1980 - 68.87 cents.

(2) Average of the five years, excluding the highest and lowest years: 55.29 + 61.01 + 68.87 / 3 = 61.72 cents.

(3) Loan rate based on U.S. spot market calculation: 61.72 x 0.85 = 52.46 cents.

The Northern Europe calculation is as follows:

(1) Average Northern Europe quotation for SM 1-1/16 inch cotton July 1 through Oct. 14, 1980	95.35
(2) Average difference between average Northern Europe quotation and the U.S. spot market average for SLM 1-1/16 inch, mic. 3.5 through 4.9 Apr. 15 through Oct. 15, 1980	-11.18
(3) Adjusted Northern Europe average	84.17
(4) 90 percent of adjusted average	75.75

Accordingly, the 1981 upland cotton loan rate is 52.46 cents per pound.

2. The loan level for 1981-crop ELS cotton is 99.0 cents per pound, and the payment rate is zero. Section 101(f) of the 1949 Act requires that price support shall be made available to cooperators for the 1968 and each subsequent crop of ELS cotton, if producers have not disapproved marketing quotas therefor, through loans at a level which is not less than 85 percent or more than 135 percent in excess of the loan level established for Strict Low Middling 1-1/16 inch upland cotton of such crop at average location in the United States (except that such loan level for ELS cotton shall in no event be less than 35 cents per pound). Section 101(f) also provides for price support payments at a rate which, together with the loan level established for such crop, shall be not less than 55 percent or more than 90 percent of the parity price for ELS cotton as of the month in which the payment rate so determined is announced. Section 401 of the 1949 Act requires that, in determining the level of support in excess of the minimum level prescribed for ELS cotton, consideration shall be given to the supply of the commodity in relation to the demand therefor, the price levels at which other commodities are being supported, the availability of funds, the perishability of the commodity, the importance of the commodity to agriculture and the national economy, the ability to dispose of stocks acquired through a price support operation, the need for offsetting temporary losses of export markets, and the ability and willingness of producers to keep supplies in line with demand.

The loan rate of 52.46 cents per pound for 1981-crop upland cotton is basis 3.5 through 4.9 micronaire. This rate must be converted to average micronaire by deducting 0.85 cents—the estimated premium included in the upland rate for 3.5 through 4.9 micronaire—before it can serve as the basis for the ELS loan rate. The possible range of the loan rate for ELS cotton is 95.48 to 121.28 cents (85 percent to 135 percent in excess of the adjusted rate for upland cotton). The parity price for ELS cotton applicable for October 1980 is $1.80 per pound. The minimum total support is 99.0 cents per pound (55 percent of parity), and the maximum total support is $1.62 per pound (90 percent of parity).

Supplies of ELS cotton are projected to continue tight during the remainder of the 1980/81 marketing year. Stocks carried into the 1981/82 marketing year, which begins on August 1, 1981, are projected at 31,000 bales. The market price for ELS cotton is likely to be sufficient incentive for producers to increase their plantings of ELS cotton in 1981/82. Therefore, there is no need to provide a total support above the minimum level of 55 percent of parity, and there is no need to provide a direct support payment for the 1981 crop of ELS cotton.

It is determined that the loan rate for 1981-crop ELS cotton is 99.0 cents per pound. Since 99.0 cents per pound is equal to the statutory minimum of 55 percent of the October 1980 parity price for ELS cotton, no support payments are required to be made.

The loan rate of 99.0 cents per pound for 1981-crop ELS cotton would encourage the production of ELS cotton for the marketplace and minimize government expenditures for the ELS program. This level is expected to provide adequate returns to ELS producers and would not constrict export sales or domestic mill use.

3. The seed cotton loan program has been reviewed, and it has been determined that seed cotton from the 1981 crops of upland and ELS cotton will again be elegible for loans. Recourse loans are offered to producers of seed cotton pursuant to the Commodity Credit Corporation Charter Act as a means of affording interim financing to producers until their cotton is ginned in the form in which it can be marketed and eligible for regular nonrecoure loans under the upland and ELS cotton programs under the provisions of the 1949 Act, as amended.

Detailed regulations concerning the seed cotton loan program will be published later.

Signed at Washington, D.C. on December 22, 1980.

Jim Williams,

Acting Secretary of Agriculture.

[FR Doc. 80-40391 Filed 12-29-80; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

National Forest System Advisory Committee; Meeting

The National Forest System Advisory Committee will meet in Washington, D.C., January 15–16, 1981. The meeting will be held in the South Agriculture Building, 12th Street and Independence Avenue, SW., Room 3840, beginning at 8 a.m.

This Committee, comprised of 12 members from a broad spectrum of geographic and interest areas, advises the Secretary of Agriculture and the Forest Service on the planning and management of the National Forests. The purpose of the meeting is to bring to completion subcommittee positions or recommendations on *energy* (biomass, transmission corridors, small hydroelectric facilities, and energy minerals), *Resources Planning Act, human resources programs* (and their use in achieving National Forest outputs), and *subjects recommended for further study* and evaluation. This will include non-Forest uses on Forest lands and information on land grant college assistance to States and Federal agencies as in the case of the Range Improvement Task Force at New Mexico State University.

Phillip L. Thornton, Acting Deputy Assistant Secretary for Natural Resources and Environment, and Kay Ceniceros, Advisory Committee chairperson, will cochair the meeting.

The meeting will be open to the public. Persons who wish to attend should notify Floyd J. Marita, Executive Secretary, USDA-Forest Service, P.O. Box 2417, Room 3021–S, Washington, D.C. 20013, telephone (202) 447–6341. Written statements may be filed with the Committee before or after the meeting.

Jerome A. Miles,

Deputy Chief.

December 22, 1980.

[FR Doc. 80-40359 Filed 12-29-80; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

Alaska International Air, Inc.; Service Mail Rates Investigation

AGENCY: Civil Aeronautics Board.

ACTION: Summary of Order 80–12–107 modifying the temporary subsidy mail rate for Alaska International Air, Inc., effective November 4, 1980, retroactively.

SUMMARY: The Board adopted an order, modifying Alaska International Air's temporary mail rates as prescribed by Order 80–10–1, insofar as they relate to points in the Aleutian Islands. Instead, the final mail rates established by Order 80–5–33 for Reeve Aleutian Airways for mail service to points in the Aleutians will apply to AIA.

DATE: Since these rates have already gone through full notice and comment procedures when they were originally established for Reeve, the institution of show-cause procedures on these rates is unnecessary and they are effective on and after November 4, 1980, the date on which Alaska International Air filed its rate petition.

FOR FURTHER INFORMATION CONTACT: Peter Bonanno, Jr., Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Ave., N.W., Washington, D.C. 20428.

The complete text of Order 80–12–107 is available from our Distribution Section, Room 516, 1825 Connecticut Ave., N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 80–12–107 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: December 19, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-40380 Filed 12-29-80; 8:45 am]

BILLING CODE 6320-01-M

[Order 80-12-94; Docket 38504]

Mississippi Valley Airlines, Inc.; Intent To Terminate Essential Air Service at Ottumwa, Iowa

Adopted by the Civil Aeronautics Board at its offices in Washington, D.C. on the 18th day of December, 1980.

Application of Mississippi Valley Airlines, Inc. for compensation for losses in providing essential air transportation at Ottumwa, Iowa, under section 419(a)(3) of the Federal Aviation Act of 1958, as amended; Docket 38504.

On July 21, 1980, Mississippi Valley Airlines, Inc. (MVA) filed a notice of intent to terminate essential air service at Ottumwa, Iowa, effective August 20, 1980. By Order 80–8–108, August 20, 1980, we prohibited the carrier from suspending or reducing its servcie at Ottumwa for a 30-day period, through September 19, 1980.[1]

On October 22, 1980, MVA filed an application for compensation for losses at Ottumwa for the period August 20 through September 19, 1980, inclusive. The carrier porvided a detailed explanation of its estimated traffic, revenue, expenses, and operating statistics and sought interim compensation of $39,989.07, excluding profit, for each 30-day period of forced service. On Novmeber 17, 1980, the carrier reduced its compensation

[1] We have since extended the carrier's obligation

request to $32,188.56 exclusive of profit, to reflect actual rather than estimated August costs, and a change from flight hours to seat miles as a basis for

Katherine K. Wallman, Deputy Director for Social Statistics, Office of Federal Statistical Policy and Standards. $5,512—to be paid 1/12/81

Dated: December 23, 1980.

Vincent P. Barabba,

Director, Bureau of the Census.

[FR Doc. 80-40540 Filed 12-29-80; 8:45 am]

SUPPLEMENTARY INFORMATION: A notice of "Final Countervailing Duty Determination," T.D. 76–13, was published in the Federal Register of January 9, 1976 (41 FR 1588–89). The *ad volorem* for any company for the period January 1977 through September 1979. The Government of Korea argued that this level was *de minimus*.

On January 1, 1980, Title I of the Trade

and may request disclosure and/or a hearing on or before January 14, 1981.

The Department will publish a notice of final results of administrative review after analysis of issues raised in written

request to $32,188.56 exclusive of profit, to reflect actual rather than estimated August costs, and a change from flight hours to seat miles as a basis for allocating most indirect expenses.

We have reviewed MVA's application and find that the information contained therein reasonably supports the requested compensation on an interim basis with but one exception. We are reallocating certain indirect expenses using revenue passenger miles rather than seat miles. This reduces compensation to $30,305, exclusive of profit, for each 30-day period of compulsory service. A profit element will be considered when we propose a final settlement of the carrier's claim.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 102, 204, 419, and 1002(d) thereof, and the regulations promulgated in 14 CFR 302 and 304:

1. We set the interim level of compensation for losses sustained by Mississippi Valley Airlines, Inc. by virtue of its provision of essential air transportation at Ottumwa, Iowa at $120.737 for each scheduled flight completed beginning August 20, 1980, subject to a maximum compensaton of $30,305 per 30-day period;

2. This proceeding shall remain open pending entry of an order fixing the final rate of compenstaiton, and the amount of such rate of compensation may be the same as, lower than, or higher than the interim rate of compensation set here; and

3. We shall serve the order upon all parties to this proceeding.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-40379 Filed 12-29-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Senior Executive Service; Bonuses

Below is a listing of Senior Executive Service employees who are scheduled to receive bonuses:

Allan H. Young, Deputy Director, Bureau of Economic Analysis, $5,512—to be paid 1/12/81

Robert P. Parker, Chief, National Income and Wealth Division, Bureau of Economic Analysis, $5,512—to be paid 1/12/81

Carol S. Carson, Chief, Current Business Analysis Division, Bureau of Economic Analysis, $5,512—to be paid 1/12/81

Beatrice N. Vaccara, Director, Bureau of Industrial Economics, $5,512—to be paid 1/12/81

Katherine K. Wallman, Deputy Director for Social Statistics, Office of Federal Statistical Policy and Standards, $5,512—to be paid 1/12/81

Jo Ann Sondey-Hersh,

Executive Secretary, Economic and Statistical Affairs Performance Appraisal System.

[FR Doc. 80-40469 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-BS-M

Bureau of the Census

Neighborhood Statistics Program; Application Deadline Extension

The Director of the Bureau of the Census is issuing below a statement that extends the application deadline of the 1980 census Neighborhood Statistics Program from December 31, 1980, to June 30, 1981. The final criteria for program participation and an explanation of the application procedure were announced in the November 21, 1979, issue of the **Federal Register** (Vol. 44, Number 226, pages 66862 and 66863). Expressions of interest in this program or requests for further information should be sent to the Director, Bureau of the Census, Washington, D.C. 20233.

1980 Census Neighborhood Statistics Program

Because of the great interest that has been expressed in the Neighborhood Statistics Program, the Bureau of the Census is extending the application deadline for program participation to June 30, 1981. The new deadline is the date by which all documentation described below must be submitted to the Bureau.

Any locality which is interested in the Neighborhood Statistics Program but has not yet notified the Census Bureau is urged to do so as soon as possible. Participation in the program should be initiated by a written request from either the chief elected official of the local government or an appropriate officer of a central neighborhood council or coalition that represents all neighborhoods in the locality. The request should include a description of how the neighborhoods meet the final criteria and a map showing the boundaries of all the neighborhoods. The letter requesting participation also should designate a person who will coordinate program activities in the locality and serve as contact person for the Bureau of the Census.

Dated: December 23, 1980.

Vincent P. Barabba,

Director, Bureau of the Census.

[FR Doc. 80-40540 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-07-M

Economic Development Administration

Senior Executive Service Performance Awards

As authorized by 5 USA 5384, notice is hereby given that the following senior executives in the Department of Commerce, Economic Development Administration will receive SES performance awards in the amount of $5,500 on January 25, 1981:

SES Members:

Harold W. Williams, Deputy Assistant Secretary

George T. Karras, Deputy Assistant Secretary for Economic Development Operations

John E. Corrigan, Director, Philadelphia Regional Office

Dated: December 22, 1980.

Robert T. Hall,

Assistant Secretary for Economic Development.

[FR Doc. 80-40435 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration

Footwear From Republic of Korea; Preliminary Results of Administrative Review of Countervailing Duty Order and of Tentative Determination To Revoke

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order and of Tentative Determination to Revoke.

SUMMARY: This notice is to advise the public that, as a result of an administrative review of the countervailing duty order on footwear from the Republic of Korea, the Department of Commerce has tentatively determined to revoke such order on the grounds that net subsidies have been *de minimis* for at least two years. Interested parties are invited to comment on this decision.

EFFECTIVE DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT:

Josephine Russo, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Room 1126, Washington, D.C. 20230 (202-377-4023).

SUPPLEMENTARY INFORMATION: A notice of "Final Countervailing Duty Determination," T.D. 76-13, was published in the **Federal Register** of January 9, 1976 (41 FR 1588-89). The notice stated that the Treasury Department has determined that exports of rubber and non-rubber footwear from the Republic of Korea were provided bounties or grants, within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)("the Act"). Accordingly, imports into the United States of this merchandise were subject to countervailing duties. Concurrently with that determination, however, Treasury published T.D. 76-14 (41 FR 1587-88) waiving the imposition of those duties on rubber footwear under the authority of section 303(d) of the Act.

The term "rubber footwear" as used throughout this proceeding covers footwear which is either: (1) over 50 percent by weight of rubber or plastics; or (2) over 50 percent by weight of a combination of fibers with rubber or plastics, with at least 10 percent by weight of rubber or plastics. Such footwear is currently classifiable under items 700.51, 700.52, 700.53, 700.54 and 700.58 (both formerly 700.55), or 700.60, Tariff Schedules of the United States (TSUS). "Non-rubber footwear" covers all other footwear classifiable under Part I, Subpart A, of Schedule 7 of the TSUS.

The countervailable programs under the Final Determination are: (1) preferential short-term export financing, (2) special tax benefits provided to enterprises located in the Masan Free Trade Zone, (3) tax benefits resulting from the inclusion in loss accounts of reserve funds for losses accruing from overseas activities, and (4) accelerated depreciation of fixed assets utilized for export production. The Treasury Department found that Korean manufacturers or exporters of footwear received bounties or grants of 0.7 percent *ad valorem*.

On November 19, 1979, the Treasury Department received a request for revocation of the order from the Government of the Republic of Korea. In its submission, the Republic of Korea alleged that only three footwear companies received benefits from reserve funds and that, for more than a two-year period (through September 1979), reserve fund benefits were less than 0.3 percent. Four other companies were located in the Masan Free Trade Zone. Only one of these exported footwear after 1976, and it ceased exporting to the United States after May 1977. With regard to all of the programs, total benefits did not exceed 0.3 percent *ad volorem* for any company for the period January 1977 through September 1979. The Government of Korea argued that this level was *de minimus*.

On January 1, 1980, Title I of the Trade Agreements Act of 1979 (93 Stat. 150)("the TAA") went into effect. On January 2, 1980, the authority for administering the countervailing duty law was transferred from the Treasury Department to the Department of Commerce ("the Department"). Because Korea was not a "country under the Agreement" (as defined in section 701(b) of the Act), the Department revoked the waiver on February 21, 1980 for rubber footwear (45 FR 12860). On April 7, 1980, liquidation was suspended on all shipments of footwear from Korea entered, or withdrawn from warehouse, for consumption retroactive to January 1, 1980. Subsequently, the Department conducted an administrative review of the information submitted by the Korean Government. We confirmed that the benefits received by the exporting firms were no more than 0.30 percent *ad valorem* from January 1977 through December 1979.

We verified the information by examining Korean Government laws and documents; company books and records; and consulting with economic officials of the United States consulate in the Republic of Korea.

As a result of our administrative review, we preliminarily conclude that the imported merchandise has not benefitted from more than *de minimis* net subsidies for at least the two-year period specified in section 355.42, Commerce Regulationas. As further required by this section, the manufacturers and exporters have agreed in writing to an immediate suspension of liquidation and, if appropriate, reinstatement of the order if circumstances develop which indicate that the imported merchandise benefits from a net subsidy.

Therefore, the Department has tentatively detemined to revoke the countervailing duty order concerning footwear from Kora. If this order is revoked, it shall apply with respect to unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Additionally, entries from January 1, 1980 to the date of publication, assuming no change in the *de minimis* rate, will be liquidated without regard to countervailing duties. The suspension of liquidation previously ordered will continue until further notice.

Interested parties may submit written comments on or before January 29, 1981, and may request disclosure and/or a hearing on or before January 14, 1981.

The Department will publish a notice of final results of administrative review after analysis of issues raised in written comments or at a hearing.

This administrative review, tentative determination to revoke, and notice publication are in accordance with section 751(a)(1), (c) of the Act (93 Stat. 175-76, 19 U.S.C. 1675(a)(1), (c)) and sections 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42, 45 FR 4947-48).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

December 18, 1980.

[FR Doc. 80-40365 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Agency

Financial Assistance Application Announcement

December 18, 1980.

The Minority Business Development Agency announces that it is seeking applications under its program to operate one project for a twelve month period beginning April 1, 1981. The total cost of the project will not exceed $340,000.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a grant.

Program Description: The General Business Services Program (GBS) of the Minority Business Development Agency (MBDA) provides technical assistance to minority business persons and firms for the purpose of improving their stability by increasing their management and marketing capabilities. MBDA offers competitive grants to consulting firms (either non-profit or commercial entities). These firms must be capable of providing such services as:

Preparation of business plans;
Financial packaging;
Industrial management assistance;
Personnel management services;
Marketing planning.

and a broad range of other business services excluding legal services.

Applications are invited for the following project: One grant for a management and technical assistance project to operate in the Columbia, Greenville, Spartanburg, and Charleston SMSAs in South Carolina. The project will operate at a cost not to exceed $340,000. The Project I.D. Number is 04-10-80002-01. This project will also

include supplying specialized consulting services.

Eligibility Requirements: There are no restrictions. Any profit or non-profit institution is eligible to submit an

processing standards. Interpretation number 7 to Federal Standard COBOL (FIPS Pub 21-1) is being recommended for Federal use. It pertains to the OCCURS clause.

Issues

The situation of concern arises where there are occurrences of a data item which lie beyond the maximum occurrence for a table determined by the

value of data-name-1 will be used in the operation."

Discussion:

Consider the following excerpts from a COBOL program:

executing the statement in PARA-2 which reduces the value of B or any subsequently executed statement in PARA-3 or PARA-4, the contents of D(6), D(7), D(8), and D(9) may be

receiving field when the group data item C was referenced in the execution of the MOVE statement in PARA-3.

This appearance is not, however,

include supplying specialized consulting services.

Eligibility Requirements: There are no restrictions. Any profit or non-profit institution is eligible to submit an application.

Pre-application Conference: A Pre-application Conference for this project will be held on January 8, 1981 at 1:30 p.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE, Suite 505, Conference Room, Atlanta, Georgia 30309.

Application Materials: An application kit for this project may be requested by writing the following address: U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE, Suite 505, Conference Room, Atlanta, Georgia 30309.

In requesting an application kit, the applicant must specify its profit status; i.e., State or local government, federally recognized Indian tribal units, educational institutions, hospitals, or other type of profit or non-profit institution. This information is necessary to enable MBDA to include the appropriate cost principles in the application kit.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. Specific criteria by which applications will be evaluated is included in the application kit.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to allow sufficient time to prepare and submit an application before the closing date of january 21, 1981. Applications received after this date will not be considered.

(11.800 Minority Business Development, Catalog of Federal Domestic Assistance)

Note.—This program is not subject to the requirements of OMB Circular A–95.

Dated: December 18, 1980.

Charles F. McMillan,

Regional Director.

[FR Doc. 80–40381 Filed 12–29–80; 8:45 am]

BILLING CODE 3510–21–M

National Bureau of Standards

Federal Standard COBOL (FIPS Pub. 21–1); Proposed Interpretation

Under the provisions of Public Law 89–306 (79 Stat. 1127; 40 U.S.C. 759 (f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards. Interpretation number 7 to Federal Standard COBOL (FIPS Pub 21–1) is being recommended for Federal use. It pertains to the OCCURS clause.

This proposed interpretation is in accordance with the Interpretation Procedures for Federal Standard COBOL as contained in Federal Information Processing Standards Publication 29, dated June 30, 1974. The proposed interpretation, if adopted, will serve as an additional specification to Federal Standard COBOL, which is an adoption of the voluntary industry standard (COBOL, X3.23–1974) that has been developed by the American National Standards Institute.

The proposed interpretation contains a definition of the problem identification of the issues, recommended interpretation, supporting justification for the proposed interpretation, necessary clarifications to Federal Standard COBOL to effect the resolution, and the effective date of the interpretation.

Prior to approval of the proposed interpretation by the National Bureau of Standards, it is essential to assure that proper consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

Interested parties may submit comments in writing to the Standards Administration Office, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, not later than March 30, 1981. Telephone inquiries should be directed to Mable V. Vickers at (301) 921–3485.

Dated: December 22, 1980.

Ernest Ambler,

Director.

Federal Standard COBOL Interpretation No. 7—The OCCURS Clause

Definition of the problem

When a group data item, having subordinate to it an entry that specifies the OCCURS DEPENDING ON clause, is the receiving field in a statement which moves data to the item, is it permissible for contents of subordinate variable-occurrence data items whose occurrence numbers exceed the value of the data item referenced in the OCCURS DEPENDING ON clause to be changed in a predictable way as a side effect of executing the statement?

Issues

The situation of concern arises where there are occurrences of a data item which lie beyond the maximum occurrence for a table determined by the value of another data item referenced in an OCCURS DEPENDING ON clause. It is necessary to determine the extent to which an implementation is permitted to change the contents of these occurrences. In particular, the question must be answered whether or not it is allowed for the contents of such occurrences to be changed as if they were part of the table area during the execution of statements which refer to a group data item which has the variable-occurrence data item subordinate to it.

Interpretation

This interpretation applies to American National Standard COBOL, X3.23–1974, as it has been adopted as Federal Standard COBOL, FIPS Pub 21–1. The interpretation is that the contents of data items whose occurrence numbers exceed the value of the data item referenced in the OCCURS DEPENDING ON clause are not predictable and may be changed or left intact as the implementor sees fit unitl the value of the data item referenced in the OCCURS DEPENDING ON clause is increased. After the value of the data item referenced in the OCCURS DEPENDING ON clause is increased, the varable-occurrence data items which previously had unpredictable contents cannot be assumed to contain or not to contain any particular values until data is next moved into them.

Supporting justification

References: The following references are to American National Standard COBOL, X3.23–1974:

(a) Pages III–3 and III–4, Paragraph 2.1.4, General Rule 3.b, states: ". . . the current value of the data item referenced by data-name-1 represents the number of occurrences. This format specifies that the subject of this entry has a varable number of occurrences. . . . This does not imply that the length of the subject entry is variable, but that the number of occurrences is variable. . . . Reducing the value of the data item referenced by data-name-1 makes the contents of data items, whose occurrence number now exceed the value of the data item referenced by data-name-1 unpredictable."

(b) Page III–4, Paragraph 2.1.4, General Rule 4, states: "When a group item, having subordinate to it an entry that specifies Format 2 of the OCCURS clause, is referenced, only that part of the table area that is specified by the value of data-name-1 will be used in the operation."

Discussion:

Consider the following excerpts from a COBOL program:

```
01  A.
    02 B PICTURE IS 9.
    02 C.
       03 D OCCURS 1 TO 9 TIMES DEPENDING ON B
          PICTURE IS X.
          .
          .
          .
PARA-1. MOVE 9 TO B.
        MOVE "ABCDEFGHI" TO C.
PARA-2. MOVE 5 TO B.
PARA-3. MOVE "123456789" TO C.
PARA-4. MOVE 9 TO B.
PARA-5. IF C = "12345FGHI"
           PERFORM INTACT
        ELSE IF C = "123456789"
           PERFORM SIDE-EFFECT.
```

(a) Execution of the two statements in paragraph PARA–1 establish the size of C as nine characters, including all nine occurrences of D, and results in the contents of C being "ABCDEFGHI". Execution of the statement in PARA–2 then causes C to include only the first five occurrences of D for purposes of executing subsequent statements which refer to C. The last four occurrences of D have unpredictable content according to reference (a). The statement in PARA–3 results in "12345" being moved into the leftmost characters of C according to reference (b). The statement in PARA–4 causes C to include all nine occurrences of D for purposes of executing subsequent statement. During execution of the following IF statement, control will pass to the procedure INTACT if the last four occurrences of D have been left intact throughout the execution of the statements in PARA–2, PARA–3, and PARA–4. Control will pass to the procedure SIDE–EFFECT if the result of executing the statement in PARA–3, in apparent violation of reference (b), is "as if" all nine occurrences of D had been used as the receiving field for the movement of data. This interpretation of Federal Standard COBOL allows for control to pass to either procedure or to neither of the procedures.

(b) Reducing the value of B to five in the statement in PARA–2, according to reference (a), causes the contents of D(6), D(7), D(8), and D(9) to be unpredictable. Concurrently with executing the statement in PARA–2 which reduces the value of B or any subsequently executed statement in PARA–3 or PARA–4, the contents of D(6), D(7), D(8), and D(9) may be changed since they are unpredictable. In PARA–4 the value of B is increased to nine. After completing the execution of this statement, the contents of D(6), D(7), D(8), and D(9) must no longer be changed except by execution of statements which move data to them according to the rules for the various COBOL statements. There are no statements to reinitiate the data in D(6), D(7), D(8), and D(9) after the value of B is increased in PARA–4. Therefore, either or both of the two conditions in the following IF statements can be false. Control need not pass to either of the procedures INTACT or SIDE–EFFECT.

(c) The specifications in American National Standard COBOL, X3.23–1974, are directed both to implementors of COBOL compilers and to users who write programs for interchangeable use with various compilers. Reference (a) specifies that the contents of occurrences which lie outside the current table area are unpredictable. Reference (a) is obviously not intended to require that an implementation must introduce indeterminacy in the contents of data items outside the table area. For a given implementation, these contents may be predictable, and this does not make the compiler noncompliant with the standard. In the example presented, reference (a) is no obstacle to passing control to either of the procedures INTACT or SIDE–EFFECT.

The specification of unpredictability is directed instead to the programmer. Standard-complaint programs cannot depend for their correctness upon the contents of occurrences which lie outside the current table area either being left intact or being changed in a particular way, despite the fact that any one implementation may give consistent results.

(d) Reference (b) specifies that only the occurrences that are part of the current table area will be used in an operation referencing a group data item to which the occurrences are subordinate. If, at the time of executing the statements in PARA–5, the contents of D(6), D(7), D(8), and D(9) are "6", "7", "8", "9", respectively, control passes to the procedure SIDE–EFFECT. It appears "as if" all occurrences of D, rather than just the first five, had been used as the receiving field when the group data item C was referenced in the execution of the MOVE statement in PARA–3.

This appearance is not, however, prohibited by reference (b). Neither reference (a) nor any other specification restricts the times at which the contents of occurrences outside the current table area can be changed once they become unpredictable. If these contents are subsequently found to have any particular values, this is an accident of implementation that need not be attributed to any one operation during the execution of statements. This is true even if the values are the same as those which could result from a hypothetical aberrant execution of a statement.

Clarification of Federal Standard COBOL. None.

Effective date of interpretation.—The effective date of this interpretation shall be 30 days after the date the approved interpretation is published in the **Federal Register.**

[FR Doc. 80–40344 Filed 12–29–80; 8:45 am]

BILLING CODE 3510–13–M

Solicitation of Comments Concerning Protocol Standards for Local Area Networks

Under the provisions of Pub. L. 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform automatic data processing standards. The National Bureau of Standards (NBS) is considering the development of Federal Information Processing Standards (FIPS) for local area networks. These protocol standards which are being developed correspond to layers one and two of the International Organization for Standardization (ISO), *Reference Model for Open Systems Interconnection*, (document number ISO/TC97/SC16 N227), and are meant to be applicable to local area networks in the one-to-twenty million bit per second speed range, covering distances of one-to-five kilometers and supporting over one hundred fifty drops or interfaces.

NBS is requesting comments on the following items:

1. The desirability of issuing a family of such protocol standards (as opposed to a single standard) dealing with the different local area network technologies that have been developed and are being developed.

Examples include carrier sense multiple access networks and token bus access networks.

2. The desirability of the issuance, as soon as possible, of protocol standards applicable

Dated: December 12, 1980.

Donald W. Fowler,

Acting Assistant Administrator for Coastal Zone Management.

National Technical Information Service

U.S. Government-Owned Inventions; Availability for Licensing

The inventions listed below are

Patent 4,212,800: Inhibition of Lanthionine Formation During Alkaline Treatment of Keratinous Fibers; filed September 26, 1978, patented July 15, 1980; not available NTIS

Patent 4,214,873: Tris(N-Carbalkoxylaminomethyl-phosphine

Patent application 6–152,211: Thorium Oxide-Containing Catalyst and Method of Preparing Same; filed May 21, 1980

Patent application 6–152,212: Selective Paging and Intercommunication System; filed May 21, 1980

Patent 4,197,517: High Speed Frequency Tunable Microwave Filter; filed November 3, 1978, patented April 8, 1980; not available NTIS

Patent 4,200,686: High Energy Density Thermal Cell; filed February 5, 1979,

Examples include carrier sense multiple access networks and token bus access networks.

2. The desirability of the issuance, as soon as possible, of protocol standards applicable to carrier sense multiple access networks due to the relative maturity of this type of technology.

3. The desirability of specifying protocol standards which can meet user requirements and can be implemented in a cost effective manner in LSI technology.

Comments should be provided in writing by March 2, 1981 to the following address: National Bureau of Standards, Director, Institute for Computer Sciences and Technology, Administration Building, Room A200, Washington, D.C. 20234. ATTN: Comments on LAN Standards.

For additional information contact: Robert P. Blanc, Chief, Systems and Network Architecture Division, Building 225, Room B218, Washington, D.C. 20234, (301) 921–3817.

Dated: December 22, 1980.

Ernest Ambler,

Director.

[FR Doc. 80-40440 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Coastal Zone Management Programs

AGENCY: Office of Coastal Zone Management.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the California, Delaware and Hawaii Coastal Zone Management Programs.

Section 312 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.) requires the conduct of a continuing review of the performance of each coastal state under its federally approved coastal zone management program. All 3 states evaluated were found to be adhering to their management programs as a result of which accomplishments are occurring with respect to resource protection, management of coastal development, increased recreational access, and improved government decisionmaking.

A copy of findings made by the Acting Assistant Administrator for Coastal Zone Management for each of these states may be obtained on request from: Rosella Sussman, Evaluation Officer, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street, N.W., Washington, D.C. 20235 (telephone: (202) 634–4245).

Dated: December 12, 1980.

Donald W. Fowler,

Acting Assistant Administrator for Coastal Zone Management.

[FR Doc. 80-40465 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-08-M

Western Pacific Fishery Management Council's Pelagic Fishery Resources Subpanel, Spiny Lobster Subpanel and Scientific and Statistical Committee; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Western Pacific Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265), has established a Spiny Lobster Subpanel, a Pelagic Fishery Resources Subpanel, and a Scientific and Statistical Committee (SSC), which will meet separately. The spiny Lobster Subpanel will meet to review the final Spiny Lobster Fishery Management Plan (FMP); the Pelagic Fishery Resources Subpanel will meet to review a final draft of the billfish source document, and the SSC will meet to review the final Spiny Lobster FMP, a final draft of the billfish source document, a work plan for the bottomfish fisheries, as well as other business.

DATES: The Spiny Lobster Subpanel meeting will convene on Friday, January 23, 1981, at approximately 1:30 p.m., and will adjourn at approximately 4:30 p.m. The Pelagic Fishery Resources Subpanel meeting will convene on Monday, January 26, 1981, at approximately 9 a.m., and will adjourn at approximately 5:30 p.m. and the SSC meeting will convene on Tuesday, January 27, 1981, at approximately 9 a.m., and will adjourn on Wednesday, January 28, 1981, at approximately 3:30 p.m. These meetings are open to the public.

ADDRESS: All of the above meetings will take place at the Honolulu Laboratory, Southwest Fisheries Center, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT:

Western Pacific Fishery Management Council, Room 1608, 1164 Bishop Street, Honolulu, Hawaii 96813, Telephone: (808) 523–1368.

Dated: December 23, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80-40535 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

U.S. Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly, foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $5.00 each ($10.00 outside North American Continent). Requests for copies of patent applications must include the PAT–APPL number. Claims are deleted from patent application copies sold to avoid premature disclosure. Claims and other technical data will usually be made available to serious prospective licensees upon execution of a non-disclosure agreement.

Requests for information on the licensing of particular inventions should be directed to the addresses cited for the agency-sponsors.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

U.S. Department of Agriculture, Program Agreements and Patent Branch, Administrative Services Division, Federal Building, Science and Education Administration, Hyattsville, Md. 20782

Patent application 6–151,068: Control of Nematodes and Other Helminths; filed May 19, 1980

Patent application 6–156,292: Process for the Preparation of Tris(N-carbalkoxylaminomethyl) phosphine Oxides and Sulfides; filed June 4, 1980

Patent application 6–160,752: A Dry Chemical Process for Grafting Acrylic and Methyl Acrylic Ester and Amide Monomers Onto Starch-Containing Materials; filed June 18, 1980

Patent application 6–160,753: Process and Apparatus for Encapsulating Additives in Resealed Erythrocytes for Disseminating Chemicals via the Circulatory System; filed June 18, 1980

Patent application 6–160,754: Preferential Degradation of Lignin in Gramineous Materials; filed June 18, 1980

Patent application 6–163, 850: Control of Cotton Seedling Disease Pathogens with Pyrrolnitrin; filed June 27, 1980

Patent 4,209,433: Method of Bonding Particle Board and the Like Using Polyisocyanate/Phenolic Adhesive; filed December 19, 1978, patented June 24, 1980; not available NTIS

Patent 4,212,800: Inhibition of Lanthionine Formation During Alkaline Treatment of Keratinous Fibers; filed September 28, 1978, patented July 15, 1980; not available NTIS

Patent 4,214,873: Tris[N-Carbalkoxylaminomethyl-phosphine Oxides and Sulfides; filed April 30, 1979, patented July 29, 1980; not available NTIS

U.S. Department of Health and Human Services; National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20205

Patent 4,201,773: 7-0-(2,6–Dideoxy-alpha-L/Lyxo-Hexopyranosyl)-Caunomycinone, Desmethoxy Daunomycinone, Adriamycinone, and Carminomycinone; filed July 26, 1978, patented May 6, 1980; not available NTIS

Patent 4,206,208: Use of 4–Carboxy-Phthalato(1,2-Diaminocyclohexane)-Platinum (II) and Alkali Metal Salts Thereof with Cyclophosphamide and 5-fluorouracil in Alleviating L1210 Murine Leukemia; filed December 22, 1978, patented June 3, 1980; not available NTIS

Patent 4,206,226: Use of 4-Carboxy-Phthalato-(1, 2-Diaminocyclohexane)-Platinum (II) and Alkali Metal Salts Thereof in Alleviating L1210 Murine Leukemia; filed July 19, 1978, patented June 3, 1980; not available NTIS

Patent 4,210,745: Procedure for the Preparation of 9-beta-D-Arabinofuranosyl-2-Fluoroadenine; filed November 20, 1978, patented July 1, 1980; not available NTIS

Patent 4,217,795: Automated Test Tube Stopper Remover; filed April 30, 1979, patented August 19, 1980; not available NTIS

U.S. Department of the Interior; Branch of Patents; 18th And C Streets, NW., Washington, D.C. 20240

Patent application 6–108,191: Electrowinning of Lead from H2SiF6 Solution; filed December 27, 1979

Patent application 6–109,361: Permeability Restoration and Lowering of Uranium Leakage From Leached Ore Beds; filed January 3, 1980

Patent application 6–115,695: Extraction of Metals from Mixtures of Oxides or Silicates; filed January 30, 1980

Patent application 6–116,897: Recovery of Lithium from Low-Grade Ores; filed January 30, 1980

Patent application 6–125,408: Process for Recovering Ni(II), Co(II) and Co(II) from an Ammoniacal-Ammonium Sulfate Leach Liquor; filed February 28, 1980

Patent application 6–138,397: Polyimide Reverse Osmosis Membranes; filed April 8, 1980

Patent application 6–140, 360: Method for Wrought and Cast Aluminum Separation; filed April 14, 1980

Patent application 6–141,087: Leaching Gold-Silver Ores; filed April 17, 1980

Patent application 6–141,088: Leaching Gold-Silver Ores; filed April 17, 1980

Patent application 6–147,690: Method and Apparatus For the Measurement of Ionic Activities in Water With Differential Pressure Transducers; filed May 7, 1980

Patent application 6–152,211: Thorium Oxide-Containing Catalyst and Method of Preparing Same; filed May 21, 1980

Patent application 6–152,212: Selective Paging and Intercommunication System; filed May 21, 1980

Patent application 6–162,542: High Surface Area Transition Metal Catalysts and Method of Preparing Same; filed June 24, 1980

Patent 4,198,297: Removal of Trace Copper Ions From Water; filed November 23, 1976, patented April 15, 1980; not available NTIS

Patent 4,203,192: Method of Anchoring a Vibrating Wire into a Hollow Gauge Body; filed October 23, 1978, patented May 20, 1980; not available NTIS

Patent 4,208,275: Froth Flotation Using Lanolin Modifier; filed January 24, 1979, patented June 17, 1980; not available NTIS

Patent 4,208,294 Dilution Stable Water Based Magnetic Fluids; filed February 12, 1979, patented June 17, 1980; not available NTIS

U.S. Department of Energy, Assistant General Council for Patents, Washington, D.C. 20546

Patent 4,188,173: Vertical Pump with Free Floating Check Valve, Filed October 6, 1976, patented February 12, 1980; not available NTIS

Patent 4,192,714: Reactor Safety Method. Filed December 7, 1966, patented March 11, 1980; not available NTIS

Patent 4,205,278: Multiple Excitation Regenerative Amplifier Inertial Confinement System; filed January 11, 1978, patented May 27, 1980; not available NTIS

U.S. Department of the Navy Director, Navy Patent Program/Patent Council for the Navy, Office of Naval Research, Code 302, Arlington, Va. 22217

Patent application 6–156,441: Intense Ion Beam Generation with an Inverse Reflex Tetrode (IRT); filed June 4, 1980

Patent application 6–158,006: Transformer Core Clamp; filed June 9, 1980

Patent application 6–162,346: Autocorrelation Sidelobe Reduction Device for Phase-Coded Signals; filed June 23, 1980

Patent application 6–163,000: High-Agility Reflector support and Drive System; filed June 25, 1980

Patent application 6–172,848: Method and Composition for Cleaning Metal Surfaces; filed July 25, 1980

Patent 4,172,408: Liquid Propellant Gun, Breech Pressure Axial Injection; filed August 29, 1977, patented October 30, 1979; not available NTIS

Patent 4,173,002: Method of Lasing with 7-Hydroxy-Coumarin-8-Methyleneiminoblisacetic Acid and Metal Complexes Thereof. filed March 20, 1978, patented October 30, 1979; not available NTIS

Patent 4,184,018: Non-Flashing Electrolyte for use with Calcium Anode; filed February 5, 1979, patented January 15, 1980, not available NTIS

Patent 4,193,966: Carbon Dioxide Absorbent Cannister with Condensate Control; filed June 15, 1978, patented March 18, 1980; not available NTIS

Patent 4,197,510: Isochronous cyclotron; filed June 23, 1978, patented April 8, 1980; not available NTIS

Patent 4,197,517: High Speed Frequency Tunable Microwave Filter; filed November 3, 1978, patented April 8, 1980; not available NTIS

Patent 4,200,686: High Energy Density Thermal Cell; filed February 5, 1979, patented April 29, 1980; not available NTIS

Patent 4,200,733: Water-Soluble Fluorescing and Lasing Dyes; filed November 17, 1978, patented April 29, 1980; not available NTIS

Patent 4,204,659: Energy Absorber; filed April 25, 1978, patented May 27, 1980; not available NTIS

Patent 4,206,364: Device for Producing Extended Elongated Plasmas for X-Ray Lasers; filed January 16, 1979, patented June 3, 1980; not available NTIS

Patent 4,207,622: Direction-Finding Array of Crossed Dipoles; filed April 13, 1978, patented June 10, 1980; not available NTIS

Patent 4,207,625: Doppler Compensator for Heterodyne Correlation Devices; filed March 6, 1961, patented June 10, 1980; not available NTIS

Patent 4,209,767: Acousto-Optic Coupler for Glide Slope Control Systems; filed March 3, 1977, patented June 24, 1980; not available NTIS

Patent 4,210,847: Electric Wind Generator; filed December 28, 1978, patented July 1, 1980; not available NTIS

Patent 4,210,881: Millimetor Wave Microstrip Tripiexer; filed November 9, 1978, patented July 1, 1980; not available NTIS

Patent 4,211,502: Breakaway Pin Release; filed July 6, 1979, patented July 8, 1980; not available NTIS

Patent 4,213,029: Radiation Transmissive Housing Having a Heated Load Bearing Gasket; filed February 21, 1979, patented July 15, 1980; not available NTIS

Patent 4,215,291: Collective Particle Accelerator; filed February 2, 1979, patented July 29, 1980; not available NTIS

National Aeronautics and Space Administration, Assistant General Council for Patent Matters, NASA Code GP–2, Washington, D.C. 20545

Patent Application 6–161,256: Photocapacitive Image Converter; filed June 20, 1950

Patent 4,204,037: Method and Automated Apparatus for Detecting Coliform Organisms; filed April 4, 1978, patented May 20, 1980; not available NTIS

Patent 4,210,401: Visible and Infrared Polarization Ratio Spectroreflectometer; filed July 26, 1978, patented July 1, 1950; not available NTIS

Patent 4,210,474: Silicone Containing Solid Propellant; filed October 16, 1978, patented July 1, 1960; not available NTIS

Patent 4,212,199. System for Use in Conducting Wake Investigation for a Wing in Flight; filed February 28, 1979, patented July 15, 1980; not available NTIS

Patent 4,212,477: Circumferential Shaft Seal; filed March 31, 1976, patented July 15, 1980; not available NTIS

Patent 4,212,690: Heat Treat Fixture and Method of Heat Treating; filed March 23, 1979, patented July 16, 1980; not available NTIS

Patent 4,213,051: Dual Acting Slit Control Mechanism; filed September 8, 1978, patented July 15, 1960; not available NTIS

Patent 4,213,131: Scannable Beam Forming Interferometer Antenna Array System; filed May 14, 1979, patented July 15, 1980; not available NTIS

[FR Doc. 80-40468 Filed 12-29-80; 8:45 am]

obtained from Robert Hunter, NTIA/DOC, Office of Chief Counsel, 1800 G Street, N.W., Room 703, Washington, D.C. 20504. Telephone (202) 377–1866.

(Catalog Program Number 11.550)

Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the negotiations is not yet established, comments should be submitted

Announcing Import Restraint Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products From Macau, Effective on January 1, 1981; Correction

consumption, of textile products in the foregoing categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period which begins on January 1, 1981

produced or manufactured in Korea, in excess of the indicated levels of restraint:

Category	12-mo. level of restraint
Group I (300, 301, 310–	141,285,894 square yards equiva-

Patent 4,213,131: Scannable Beam Forming Interferometer Antenna Array System: filed May 14, 1979, patented July 15, 1980; not available NTIS

[FR Doc. 80-40468 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-04-M

National Telecommunications and Information Administration

Grant Appeals Board of the Public Telecommunications Facilities Program; Open Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: By this notice we announce the rescheduling of a meeting of the Grant Appeals Board of the Public Telecommunications Facilities Program (PTFP).

PURPOSE: To consider the petition of Barbara Wheeler Gilbert, on behalf of the Wiconi Project of the South Dakota United Indian Association (Wiconi), seeking reconsideration of an action of the PTFP staff declining to accept for filing Wiconi's application for grant under the Public Telecommunications Financing Act of 1978, Pub. L. No. 95-567, 92 Stat. 2405, 47 U.S.C. 390, *et seq.* (1978), refusing to waive the closing date for the filing of applications and denying Wiconi's petition for extraordinary relief to become the substitute applicant for the American Indian Satellite Project.

TIME: January 15, 1981, at 10:00 a.m.

PLACE: National Telecommunications and Information Administration, 1800 G Street, N.W., Room 765, Washington, D.C.

COMMENTS: Interested parties are encouraged to submit comments on the petition for reconsideration of Ms. Gilbert. A copy of Ms. Gilbert's petition and the staff decision rejecting Wiconi's petition for extraordinary relief were published as appendices to our initial notice of this meeting. 45 F.R. 72,243 (October 31, 1980). An original and seven copies of any comments should be filed on or before January 8, 1981, with: Office of Chief Counsel, NTIA/DOC, 1800 G Street, N.W., Room 703, Washington, D.C. 20504. A certificate of service must be attached to the comments reflecting that a copy of the comments has been served on: Barbara W. Gilbert; Project Director, American Indian Satellite Project, 905 6th Street, S.W., Washington, D.C. 20024.

Additional information may be obtained from Robert Hunter, NTIA/DOC, Office of Chief Counsel, 1800 G Street, N.W., Room 703, Washington, D.C. 20504. Telephone (202) 377-1866.

(Catalog Program Number 11.550)

Gregg P. Skall,
Chief Counsel.

[FR Doc. 80-40541 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-60-M

Senior Executive Service; Bonuses

Below is a listing of Senior Executive Service employees who are scheduled to receive bonuses:

Stanley I. Cohn, Deputy Administrator for Operations, $5,512—to be paid 1/12/81
Dale N. Hatfield, Associate Administrator for Policy Analysis and Development, $8,018—to be paid 1/12/81
William F. Utlaut, Deputy Director, Institute for Telecommunication Sciences, $4,009—to be paid 1/12/81

Jo Ann Sondey-Hersh,
Executive Secretary, National Telecommunications and Information Administration Performance Appraisal System.

[FR Doc. 80-40470 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-BS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Soliciting Public Comment on Bilateral Negotiations During 1981 With Governments of Japan, Mexico, Singapore and Sri Lanka

December 1980.

In accordance with the Committee for the Implementation of Textile Agreements' desire to solicit public comment whenever practicable on actions implementing the GATT Arrangement Regarding International Trade in Textiles (the "Multifiber Arrangement" or "MFA") and pursuant to the bilateral textile agreements, the U.S. Government anticipates holding negotiations during 1981 with the Governments of Japan, Mexico, Singapore and Sri Lanka regarding certain aspects of the agreements.

Any party wishing to comment or provide data on information regarding these agreements, or to comment on domestic production or availability of textiles and apparel affected by the agreements, is invited to submit such comments or information in ten copies to Mr. Paul O'Day, Chairman, Committee for the Implementation of Textile Agreement and Deputy Assistant Secretary of Commerce for Textiles and Apparel, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the negotiations is not yet established, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 2808, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the MFA or agreements entered into thereunder, or the implementation thereof, is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) and 554 (a)(4) relating to matters which constitute "a foreign affairs function of the United States."

Paul T. O'Day,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40494 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-25-M

Announcing an Import Restraint Level for Certain Man-Made Fiber Textile Products From Costa Rica, Effective January 1, 1981; Correction

December 23, 1980.

In FR Doc. 80-37046, appearing at pages 79136 and 79137 in the issue for Friday, November 28, 1980, the first sentence of paragraph 2 of the letter to the Commissioner of Customs, appearing on page 79137, which established an import restraint level for certain man-made fiber textile products from Costa Rica, effective on January 1, 1981, should be corrected to read as follows:

In carrying out this directive entries of textile products in Category 649 which have been exported to the United States on and after January 1, 1980 and extending through December 31, 1980, shall, to the extent of any unfilled balances, be charged against the level of restraint established for such goods during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980.

Paul T. O'Day,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40537 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-25-M

Announcing Import Restraint Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products From Macau, Effective on January 1, 1981; Correction

December 23, 1980.

In FR Doc. 80-38471, appearing at page 81643 in the issue for Thursday, December 11, 1980, the first sentence of paragraph 2 of the letter to the Commissioner of Customs establishing import restraint levels for certain cotton, wool and man-made fiber textile products from Macau, effective on January 1, 1981, should be corrected to read as follows:

In carrying out this directive entries of textile products in the foregoing categories which have been exported to the United States on and after January 1, 1980 and extending through December 31, 1980, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period which began on January 1, 1980 and extends through December 21, 1980.

Paul T. O'Day,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40538 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-25-M

Announcing Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products From the Republic of Korea, Effective on January 1, 1981

December 23, 1980

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import levels for certain cotton, wool and man-made fiber textile products imported from the Republic of Korea, effective on January 1, 1981.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea, establishes specific ceilings for cotton, wool and man-made fiber textile products in Categories 333/334/335, 338/339, 340, 341, 347/348, 433/434, 440, 444, 445/446, 633/634/635, 638/639, 640, 641, 643, 645/646, and 659 pt., among others, during the agreement year which begins on January 1, 1981 and extends through December 31, 1981. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period which begins on January 1, 1981 and extends through December 31, 1981, in excess of the designated levels. The level for Category 645/646, among others, may be adjusted later in the year as a result of consultations between the two governments.

During the twelve-month period beginning on January 1, 1981, and also pursuant to the terms of the bilateral agreement, the United States Government has decided also to control Group I (Categories 300, 301, 310-320, 330, 360-363, 369, 600-605, 610-614, 625-627, 630, 665, 666, and 669) at the group level of 141,285,894 square yards equivalent.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506)).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: William Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

Paul T. O'Day,
Chairman, Committee for the Implementation of Textile Agreements.

United States Department of Commerce,
International Trade Administration,
Washington, D.C., December 23, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury, *Washington, D.C.*

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1981 and for the twelve-month period extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Korea, in excess of the indicated levels of restraint:

Category	12-mo. level of restraint
Group I (300, 301, 310-320, 330, 360-363, 369, 600-605, 610-614, 625-627, 630, 665, 666 and 669).	141,285,894 square yards equivalent.
333/334/335	92,475 dozen of which not more than 52,618 dozen shall be in Category 333/334 and not more than 53,728 dozen shall be in Category 335.
338/339	504,099 dozen.
340	163,226 dozen.
341	101,689 dozen.
347/348	243,326 dozen of which not more than 171,625 dozen shall be in Category 347 and not more than 132,336 dozen shall be in Category 348.
433/434	16,691 dozen of which not more than 12,196 dozen shall be in Category 433 and not more than 6,224 dozen shall be in Category 434.
440	206,059 dozen.
444	3,806 dozen.
445/446	50,413 dozen.
633/634/635	1,347,719 dozen of which not more than 170,228 dozen shall be in Category 633; not more than 764,220 dozen shall be in Category 634; and not more than 585,418 dozen shall be in Category 635.
638/639	5,367,695 dozen.
640 pt.[1]	4,320,773 dozen.
640 pt.[2]	1,598,731 dozen.
641	984,774 dozen.
643	58,903 dozen.
645/646	3,126,416 dozen.
659 pt.[3]	2,134,965 pounds.

[1] In Category 640, only T.S.U.S.A. numbers 380.0455, 380.6431 and 380.6433.
[2] In Category 640, all T.S.U.S.A. numbers except those listed in footnote 1.
[3] In Category 659, only T.S.U.S.A. numbers 703.0520, 703.1000 and 703.1515.

In carrying out this directive, entries of textile products in the foregoing categories, except Category 659 pt., which have been exported to the United States on and after January 1, 1980 and extending through December 31, 1980, shall, to the extent of any unfilled balances be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980. In the event that the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in Category 659 pt. which have been exported prior to January 1, 1981 shall not be subject to this directive.

The levels of restraint set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea, which provide, in part, that: (1) within the aggregate and applicable group limits, specific levels of restraint may be adjusted by designated percentages; (2) these same levels may be adjusted for carryover and carryforward up to 11 percent of the applicable category limit; (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions

of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limted to review of research and development programs which the

552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,
OSD Federal Register Liaison Officer, Washington Headquarters Services.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the

jurisdiction of the Board. For information concerning the Board and its procedures, see the Board's final regulations published in the **Federal Register** on April 3, 1980 (45 FR 22634).

of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool and man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40539 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-25-M

Announcing Import Restraint Levels For Certain Cotton and Man-Made Fiber Textile Products From the People's Republic of China, Effective January 1, 1981; Correction

December 22, 1980.

In **Federal Register** Doc. 80-37652, appearing at page 80324 in the issue for Thursday, December 4, 1980, the first sentence of paragraph 2 of the letter to the Commissioner of Customs establishing import restraint levels for certain cotton and man-made fiber textile products from the People's Republic of China, effective on January 1, 1981, should be corrected to read as follows:

In carrying out this directive entries of textile products in the foregoing categories which have been exported to the United States on and after January 1, 1980 and extending through December 31, 1980, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-40433 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

The DoD Advisory Group on Electron Devices (AGED) will meet in closed session on March 9–10, 1981, at the Advisory Group on Electron Devices, 201 Varick Street, New York, New York, 10014.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of Electron Devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities, or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with 5 U.S.C. App. 1 Sec. 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 22, 1980.

[FR Doc. 80-40360 Filed 12-29-80; 8:45 am]

BILLING CODE 3810-70-M

DOD Advisory Group on Electron Devices, Working Group A; Advisory Committee Meeting

Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electronic Devices (AGED) will meet in closed session on 22 January, 1981, at the Advisory Group on Electron Devices, 201 Varick Street, New York, New York 10014.

The mission of the Advisory group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limted to review of research and development programs which the military propose to inititate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with 5 U.S.C. App. 1 Sec. 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 22, 1980.

[FR Doc. 80-40361 Filed 12-29-80; 8:45 am]

BILLING CODE 3810-70-M

DOD Advisory Group on Electron Devices, Working Group B; Advisory Committee Meeting

Working Group B (Mainly Low Power Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session 17 February 1981, at the Advisory Group on Electron Devices, 201 Varick Street, New York, New York 10014.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with 5 U.S.C. App. 1 Sec. 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 22, 1980.

[FR Doc. 80-40362 Filed 12-29-80; 8:45 am]

BILLING CODE 3810-70-M

DOD Advisory Group on Electron Devices, Working Group C; Advisory Committee Meeting

Working Group C (Mainly Imaging and Display) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session 21–22 January 1981, at the Naval Ocean Systems Center, 271 Catalina Blvd., San Diego, Ca. 92152, and on 26 February 1981 at the Palisades Institute for Research Services, AGED, 1925 N. Lynn Street, Arlington, Virginia 22209.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This special device area includes such programs as infrared and night vision sensors. The review will include classified program details throughout.

In accordance with 5 U.S.C. App 1 Sec. 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 22, 1980.

[FR Doc. 80-40363 Filed 12-29-80; 8:45 am]

BILLING CODE 3810-70-M

DOD Advisory Group on Electron Devices, Working Group D; Advisory Committee Meeting

Working Group D (Mainly Laser Devices) of the DoD Advisory Group on Electronic Devices (AGED) will meet in closed session 3 and 4 February 1981, at the Palisades Institute or Research Services, Inc., 1925 North Lynn Street, Arlington, Virginia 22209.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The laser area includes programs on developments and research related to low energy lasers for such applications as battlefield surveillance, target designation, ranging, communications, weapon guidance and data transmission. The review will include classified program details throughout.

In accordance with 5 U.S.C. App 1 Sec. 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 22, 1980.

[FR Doc. 80-40364 Filed 12-29-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF EDUCATION

Education Appeal Board; Applications for Review Accepted for Hearing

AGENCY: Department of Education.

ACTION: Notice of Applications for Review Accepted for Hearing by Education Appeal Board.

SUMMARY: This notice lists the applications for review that were received and accepted for hearing by the Education Appeal Board between July 1, 1980, and December 8, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, S.W. (Room 2141, FOB–6), Washington, D.C. 20202. Telephone (202) 245–7835.

SUPPLEMENTARY INFORMATION: Under sections 451 through 456 of the General Education Provisions Act (20 U.S.C. 1234), the Education Appeal Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board. For information concerning the Board and its procedures, see the Board's final regulations published in the **Federal Register** on April 3, 1980 (45 FR 22634).

This notice lists the applications for review that were received and accepted for hearing by the Education Appeal Board between July 1, 1980, and December 8, 1980.

One application for review involved programs conducted under the Vocational Education Act of 1963, as amended: *Appeal of the State of Maryland*, Docket No. 10–(65)–80.

The State appealed a final audit determination by the Assistant Secretary for Vocational and Adult Education that Federal funds authorized under the Vocational Education Act of 1963 were misspent. The audit exceptions, based on two audits by the HEW Audit Agency, involve a number of State and city programs. The contested issues include the propriety of the State's procedure for determining recipient eligibility, the failure of the State to show how a funded curriculum project would benefit disadvantaged students, and the use of Vocational Education funds for projects covered by the Vocational Rehabilitation Act. Also in dispute are expenditures for city vocational education and work study programs, and for city administrative and wage costs. Finally, the State contests the audit finding that Consumer and Homemaking funds were improperly distributed. The Department of Education requested a refund from the State in the total amount of $513,712.

One application for review involved programs conducted under Title I of the Elementary and Secondary Education Act of 1965, as amended: *Appeal of the State of Illinois*, Docket No. 9–(64)–80.

The State appealed final audit determinations that: [1] one local educational agency failed to provide services from State and local funds to schools serving Title I project areas comparable to services provided schools in non-Title I project areas; [2] one local education agency used Title I funds to supplant State and local funds by charging Title I for a portion of the salaries of three principals; [3] the State educational agency awarded excess Title I funds to local districts after the period for obligating the funds had lapsed and without determining the need for additional funds or monitoring the use of these funds; and [4] two local educational agencies overstated indirect cost rates and misapplied indirect cost rates to capital expenditures under Title I. The Department of Education requested a refund of $718,458 from the State.

Intervention

Section 78.43 of the final regulations establishing procedures for the Education Appeal Board provides that

"school facilities" nor were they essential to the success of the local educational agency's Title I program, therefore the construction costs of these

and wife from serving concurrently on a Title I advisory council, the local agency violated the rule. Further, the Panel held that the California State Department of

Dated: December 15, 1980.

David S. Pollen,

Chairman, Education Appeal Board.

[FR Doc. 80-40397 Filed 12-29-80; 8:45 am]

Intervention

Section 78.43 of the final regulations establishing procedures for the Education Appeal Board provides that an interested person, group, or agency may, upon application to the Board Chairperson, intervene in appeals before the Education Appeal Board, including the appeals listed above.

An application to intervene must indicate to the satisfaction of the Board Chairperson or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in and information relevant to the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

All these applications or questions should be addressed to Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, S.W. (Room 2141, FOB–6), Washington, D.C. 20202, telephone (202) 245–7835.

(20 U.S.C. 1234)

Note.— Catalog of Federal Domestic Assistance Number not applicable.

Dated: December 15, 1980.

David S. Pollen,

Chairman, Education Appeal Board.

[FR Doc. 80-40398 Filed 12-29-80; 8:45 am]

BILLING CODE 4000-01-M

Education Appeal Board; Summaries of Final Actions

AGENCY: Department of Education.

ACTION: Summaries of final actions of the Education Appeal Board.

SUMMARY: This notice contains summaries of two decisions of the Education Appeal Board which were adopted as the final decisions of the Department of Education between July 1, 1980, and December 8, 1980. Also included is a summary of a cease and desist order issued by the EAB and a summary of an appeal dismissed by the Board during the same period.

FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, S.W. (Room 2141, FOB–6), Washington, D.C. 20202. Telephone (202) 245–7835.

SUPPLEMENTARY INFORMATION: Under sections 451 through 456 of the General Education Provisions Act (20 U.S.C. 1234), the Education Appeal Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board. For information concerning the Board and its procedures, see the Board's final regulations published in the **Federal Register** on April 3, 1980 (45 FR 22834).

This notice summarizes two decisions of the Education Appeal Board that were adopted as the final decisions of the Department of Education between July 1, 1980, and December 8, 1980. Also included is a summary of a cease and desist order issued and a summary of an appeal dismissed by the EAB during the same period. Summaries of the Board's final actions and decisions are published on a semiannual basis in order to keep the public informed as to the Board's activities.

The summaries are prepared as a convenience to the public and are intended only to highlight the holdings of the Education Appeal Board. The summaries are not official parts of the decisions and should not be relied upon as guidance from the Department of Education or legal precedent. Copies of the full decisions of Education Appeal Board are available at the address given above on request and with payment of the full costs of reproduction.

SUMMARY OF FINAL DECISION: *Appeal of the State of Pennsylvania,* Docket No. 10–(25)–76, July 12, 1980.

The State of Pennsylvania appealed five final audit determinations made by the Deputy Commissioner for Elementary and Secondary Education involving programs conducted by local educational agencies (LEAs) under Title I of the Elementary and Secondary Education Act of 1965, as amended. The Commissioner sought a refund of $664,707.21 from the State. Three LEAs intervened in the appeal, and the State of Pennsylvania moved the Panel to join two additional LEAs as indispensable parties. The Hearing Panel denied the State's motion as it found it had no direct jurisdiction to join parties. One of the LEAs in question entered the appeal voluntarily. The other LEA objected to being joined but promised full cooperation with the State on issues related to the appeal. The Panel held, therefore, that there was no prejudice to the State by its ruling.

On additional prehearing motions filed by the State, the Panel held that the Commissioner (now the Secretary) was authorized to seek recovery of improperly spent Title I funds; that the EAB had jurisdiction to review the final audit determinations and make an initial decision advising the Commissioner (now the Secretary) whether the audit exceptions were properly taken; that the procedures of the EAB as stated in the Board's regulations and general provisions were reasonable; and that the contested amount was reduced by application of the statute of limitations.

In the final opinion, the Panel upheld four audit exceptions. The Panel found that the two LEAs improperly used Title I funds to pay the salaries of personnel whose services were not designed to meet the special educational needs of educationally deprived children. The Panel found that two other LEAs improperly used Title I funds to provide services in schools that did not have high concentrations of children from low-income families and therefore were ineligible to receive Title I funds.

The Panel also found that although one LEA used Title I funds to pay the salaries of art, music and physical education teachers and library personnnel who served all the children in the LEA's elementary schools, virtually all the children in the schools were educationally deprived and the services were designed to meet the children's special educational needs. The Panel ruled that Pennsylvania did not have to refund to the Department the $242,282.92 at issue for this exception.

On several collateral issues, the Panel ruled that Pennsylvania's interests in a properly conducted audit were sufficiently protected by the appeal process, that the date of expenditure governed the application of the statute of limitations, and that Pennsylvania and the LEAs had sufficient notice of the evidentiary hearings held in the appeal.

The Hearing Panel issued a decision on May 7, 1980, requiring Pennsylvania to refund $422,424.29 to the U.S. Department of Education. This decision was adopted as the final decision of the U.S. Department of Education on July 12, 1980.

SUMMARY OF FINAL DECISION: *Appeal of the State of West Virginia,* Docket No. 3–(33)–77, August 30, 1980.

West Virginia appealed a final audit determination, made by the Deputy Commissioner for Elementary and Secondary Education, that a local educational agency agency within the State of West Virginia improperly used Federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended, to help pay construction costs of an administrative office building in 1975. The Deputy Commissioner requested a refund from the State in the amount of $125,000.

The Hearing Panel sustained the Deputy Commissioner's position, holding that Title I funds could not be used to help pay construction costs of an administrative office building. The Panel found that the administrative offices used to house Title I personnel were not "school facilities" nor were they essential to the success of the local educational agency's Title I program, therefore the construction costs of these offices were not allowed by the Title I statute. Further, post-construction use of the offices for Title I purposes not contemplated and described by the local educational agency in its project application could not justify the use of Title I funds for construction.

On June 20, 1980, the Hearing Panel issued a decision requiring West Virginia to refund $125,600 to the U.S. Department of Education. The Panel's decision was adopted as the final decision of the U.S. Department of Education on August 30, 1980.

SUMMARY OF CEASE AND DESIST ORDER: *Cease and Desist Hearing for the State of California and the Richmond, California Unified School District,* Docked No. 4–(59)–80 September 27, 1980.

The Richmond, California Unified School District appeared before the EAB, for itself and with the authorization of the California State Department of Education, to argue against the issuance of a cease and desist order by the Board based on a cease and desist complaint issued by the Commissioner of Education on April 4, 1980. In the cease and desist complaint the Commissioner charged that the Richmond Unified School District violated advisory council requirements under Title I of the Elementary and Secondary Education Act of 1965, as amended, as interpreted in the Interpretive Rule issued by the Office of Education on October 27, 1976, by prohibiting a husband and wife from serving concurrently on a Title I advisory council. The Commissioner also charged that the California State Department of Education failed to carry out its Title I administrative responsibilities with regard to Richmond.

On preliminary matters, the Hearing Panel ruled that the Commissioner had complied with the Board's regulations providing for the issuance of a cease and desist complaint, and that the State educational agency and local educational agency had a right to appear to present reasons why the cease and desist order should not be issued.

The Panel held that it was required to enforce the Interpretive Rule, as EAB regulations prohibited the Panel from waiving the rule or ruling on its validity. The Panel found that the Interpretive Rule was applicable to the Richmond local educational agency and that, by its admitted policy of prohibiting a husband and wife from serving concurrently on a Title I advisory council, the local agency violated the rule. Further, the Panel held that the California State Department of Education violated the Interpretive Rule by failing to enforce it according to that agency's administrative responsibilities under Title I.

The Hearing Panel issued an order on July 24, 1980, requiring the Richmond Unified School District to cease and desist from enforcing its policy, and ordering the California State Department of Education to take apparopriate administrative steps to ensure compliance with the cease and desist order by the local educational agency. The order became final on September 27, 1980.

SUMMARY OF DISMISSAL OF ACTION: *Appeal of the State of Ohio,* Docket No. 5–(41)–78, November 20, 1980.

The State of Ohio appealed a final audit determination issued by the Department of HEW's Regional Commissioner of Region V in 1976. The audit exception was based on a transfer of $1,000,000 in Federal funds from the State Library Board to the State General Fund. The Federal money was awarded to the State under the Library Services and Construction Act (LSCA). The transfer was in accordance with a State appropriations act which provided State funds for library support during a period when LSCA funds were impounded by the Federal government. The State law directed the State finance director to recover these State expenditures for the general fund once Federal monies became available. At the State finance director's request, the State Library Board transferred $1,000,000 in subsequent LSCA Federal funds to the State Emergency Purposes fund. This transfer constituted partial replacement of $3,000,000 in State appropriations expended for library support during the period of impoundment, as required by the State law. The final audit determination maintained that such a transfer was improper.

The Assistant Secretary for Educational Research and Improvement further reviewed the final determination letter and vacated it as not supported by sufficient evidence. The Assistant Secretary moved the Hearing Panel to dismiss the appeal. The State of Ohio concurred in the motion. The Hearing Panel issued an Order Dismissing the Appeal on November 20, 1980.

Note.—Catalog of Federal Domestic Assistance Number not applicable.

Dated: December 15, 1980.

David S. Pollen,

Chairman, Education Appeal Board.

[FR Doc. 80-40397 Filed 12-29-80; 8:45 am]

BILLING CODE 4000-01-M

Grants for Research on Knowledge Use and School Improvement

AGENCY: Department of Education.

ACTION: Amendment to Application Notice.

The application notice published in the **Federal Register** on December 5, 1980 (45 FR 80575–80576) is amended by revoking the January 6, 1981 closing date for submittal of preapplications for major grants under the Grants for Research on Knowledge Use and School Improvement program. There is no longer a requirement for the submittal of preapplications for major grants under this program.

This action is taken because of administrative delays in preparing the program announcement package.

FURTHER INFORMATION: For further information, contact Mr. Rolf Lehming, Team Leader, Knowledge Use and School Improvement Studies, DIP, NIE, OERI, who is located in Room 619B, 1200 19th Street, N.W., Washington, D.C. and whose telephone number is (202) 254–6050.

(Catalog of Federal Domestic Assistance Number 84.117, Educational Research and Development; formerly 13.950)

Dated: December 22, 1980.

F. James Rutherford,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 80-40396 Filed 12-29-80; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Handicapped Research; Transmittal of Applications

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications.

Applications are invited for noncompeting continuation projects under the National Institute of Handicapped Research.

Authority for this program is contained in Section 204 of the Rehabilitation Act of 1973, as amended, by Pub. L. 95-602.

Under this program awards are issued to public and private agencies and organizations, including institutions of higher education.

The purpose of the awards is planning and conducting research, demonstration and related activities which bear

directly on the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to handicapped

Application Forms: Application forms will be mailed to applicants approximately 90 days before applications are due.

II. A meeting of the Industry Working Party (IWP) to the International Energy Agency (IEA) will be held on January 14 and 15, 1981, at the offices of Texaco

Energy, Forrestal Building—Room 8C067, 1000 Independence Avenue, SW., Washington, D.C. 20585 Telephone: 202–252–5187.

Purpose of the Committee: To advise the Secretary on the scope and pace of

of Energy (DOE) is issuing this notice in order to clarify the status of the license fees formerly imposed on imports of petroleum and petroleum products by Presidential Proclamation 3279, as amended. Although the Proclamation

must be obtained from the Office of Oil Imports prior to the importation of petroleum and petroleum products. Section 213.35(a)(6) of the Mandatory Oil Import Program's regulations, contained in Title 10 of the Code of

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directly on the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to handicapped individuals, especially those with the most severe handicaps.

Closing Date for Transmittal of Applications: To be assured of consideration for funding, applications for a noncompeting continuation award should be mailed or hand delivered no later than 90 days prior to the end of the current budget period.

If the application is late, the Department of Education may lack sufficient time to review it and may decline to accept it.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, *Attention:* 84.133, Washington, D.C. 20202.

An applicant should show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building No. 3, 7th and D Streets, S.W., Washington, D.C.

The Application Center Control will accept a hand delivered application between 8:00 a.m., and 4:30 p.m. (Washington, D.C. time) daily, except Saturday, Sundays, and Federal holidays.

Available Funds: The funding level for the National Institute of Handicapped Research is expected to be approximately $35 million for fiscal year 1981.

Application Forms: Application forms will be mailed to applicants approximately 90 days before applications are due.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. Applicants are urged not to submit information that is not requested.

Applicable Regulations: Regulations governing this program include the following:

(a) Regulations governing the National Institute of Handicapped Research; and

(b) Education Division General Administrative Regulations (EDGAR) (34 CFR, Part 75, and 77) published in the Federal Register on April 3, 1980 (45 FR 22494).

Note.—Program regulations governing the institute are currently undergoing revision. Prior to final publication of these regulations, the Institute will review and make grant awards solely under the provisions of EDGAR.

Further Information: For further information contact Margaret J. Giannini, M.D., F.A.A.P., Director, National Institute of Handicapped Research, 400 Maryland Avenue, S.W., (Room 3070, Switzer Building), Washington, D.C. 20202. *Telephone:* 202–245–0565.

Dated: December 22, 1980.

(Catalog of Federal Domestic No. 84.133, National Institute of Handicapped Research)

Edwin Martin,

Assistant Secretary for Special Education Services.

[FR Doc. 80-40421 Filed 12-29-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C 6272), notice is hereby provided of the following meetings:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on January 6, 1981, at the offices of Mobil Oil Corporation, 150 East 42nd Street, New York, New York, beginning at 9:30 a.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. Review of ISAG draft report on AST–3, and of matters arising from AST–3.
3. Closing remarks and confirmation of next meeting date.

II. A meeting of the Industry Working Party (IWP) to the International Energy Agency (IEA) will be held on January 14 and 15, 1981, at the offices of Texaco Inc., 2000 Westchester Avenue, White Plains, New York, beginning at 9:30 a.m. on January 14. The agenda for the meeting is as follows:

1. Status of Standing Group on the Oil Market (SOM) and IWP activities and arrangements for future meetings.
2. Questions concerning a review of the crude and oil product import registers.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings will not be open to the public.

Pursuant to section 252(c)(3) of the Energy Policy and Conservation Act, a verbatim transcript of these meetings will be made; the transcript, with such deletions as are determined to be necessary or appropriate pursuant to E.O. 12065 (43 FR 23949, July 3, 1978), E.O. 11932 (41 FR 32691, August 5, 1976) and 22 CFR 9a.1–9a.9, will be available in the Reading Room of the Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:00 AM and 4:00 PM weekdays, except Federal holidays.

Issued in Washington, D.C., December 22, 1980.

Craig S. Bamberger,

Assistant General Counsel, International Trade & Emergency Preparedness.

[FR Doc. 80-40477 Filed 12-29-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Solar Photovoltaic Energy Advisory Committee and Subcommittee of the Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meetings:

Name: Solar Photovoltaic Energy Advisory Committee (SPEAC) and Central Utilities Applications Pilot Plant Subcommittee (CUAPPS) of the Energy Research Advisory Board.

Date and time:
January 19, 1981—9 a.m.–4 p.m. (SPEAC)
January 20, 1981—9 a.m.–12 noon (SPEAC)
January 20, 1981—1 p.m.–4 p.m. (CUAPPS)
January 21, 1981—9 a.m.–4 p.m. (SPEAC)

Place: *January 19–20, 1981* (SPEAC and CUAPPS), Sandia Laboratory, Room B–6, Koronado Club, Kirtland Air Force Base, Albuquerque, New Mexico.
January 21, 1981 (SPEAC), Solar Power Research Institute, Building 17, Room 4A, 1617 Cole Boulevard, Golden, Colorado.

Contact: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy, Forrestal Building—Room 8G067, 1000 Independence Avenue, SW., Washington, D.C. 20585 Telephone: 202–252–5187.

Purpose of the Committee: To advise the Secretary on the scope and pace of research and development with respect to solar photovoltaic energy systems; the need for and timing of solar photovoltaic energy systems demonstration projects; the need for change in any research, development, or demonstration program established under this Act; and the economic, technological, and environmental consequences of the use of solar photovoltaic energy systems.

Tentative agenda:
January 19–20, 1981—*SPEAC*
—Review of the photovoltaic systems development activities
—Review of the photovoltaic concentrator subsystem activities
—Public Comment (10 minute rule)
January 20, 1981—*CUAPPS*
—Discussion of need for pilot plant
—Public Comment (10 minute rule)
January 21, 1981—*SPEAC*
—Review of photovoltaic research and development activities
—Public Comment (10 minute rule)

Public participation: The meetings are open to the public. Written statements may be filed with the Committee and Subcommittee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at the address or telephone number listed above. Requests must be received at least 5 days prior to the meetings and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee and Subcommittee are empowered to conduct the meetings in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Executive summary: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C. on December 22, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80-40476 Filed 12-29-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Mandatory Oil Import Program

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is issuing this notice in order to clarify the status of the license fees formerly imposed on imports of petroleum and petroleum products by Presidential Proclamation 3279, as amended. Although the Proclamation currently provides that no fee shall be in effect through December 31, 1980, it is silent as to the status of license fees after that date. Consequently, in the absence of any further amendment of the Proclamation by the President, a zero fee will remain in effect indefinitely. Importers must continue to observe all the other requirements imposed by the Proclamation, including the requirement that they obtain licenses prior to the importation of petroleum and petroleum products.

FOR FURTHER INFORMATION CONTACT:

Martin J. Berrigan (Office of Oil Imports), Economic Regulatory Administration, 2000 M Street NW., Room 6222, Washington, D.C. 20461, (202) 653–3443

Robert D. R. de Sugny (Office of General Counsel), Department of Energy, 1000 Independence Avenue SW., Forrestal Building, Room 6F–094, Washington, D.C. 20585, (202) 252–2900

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street NW., Room 110–B, Washington, D.C. 20461, (202) 653–3511.

SUPPLEMENTAL INFORMATION:

Proclamation 3279 was amended in 1973 in order to impose per barrel license fees of $0.21 on crude oil and $0.63 on unfinished oils and finished products. Since that time the domestic and international oil markets have experienced significant changes. Domestic markets were made subject to price and allocation controls pursuant to the Emergency Petroleum Allocation Act, while international markets have experienced large price increases and fluctuating levels of supply. In order to meet those rapidly changing conditions, the amount of the fees has been changed on several occasions and the original $0.21 and $0.63 license fees have been suspended entirely since April 1979. The suspension was extended most recently in June of this year in order to provide time for a reassessment of the need for the $0.21 and $0.63 fees (Presidential Proclamation 4766, 45 FR 41599, June 23, 1980). At that time, no provision was made for the reimposition of any particular fee. Therefore, the license fee will remain at the zero level as long as the President does not take any further action to amend Proclamation 3279.

All other requirements of Proclamation 3279, as amended, remain in effect, which means that licenses still must be obtained from the Office of Oil Imports prior to the importation of petroleum and petroleum products. Section 213.35(a)(6) of the Mandatory Oil Import Program's regulations, contained in Title 10 of the Code of Federal Regulations, provides that licenses shall remain valid for such period as a zero fee is in effect. Therefore, an otherwise valid license may continue to be used by an importer despite the fact that a December 31, 1980, expiration date may appear on the face of the license. The foregoing does not apply to licenses issued for the exchange of Canadian crude oil under section 213.28(b) of the regulations; such licenses are valid for one year from the date of issuance unless fees are reimposed or the license is completely utilized at an earlier date.

Issued in Washington, D.C., December 22, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

[FR Doc. 80-40463 Filed 12-29-80; 8:45 am]

BILLING CODE 6450-01-M

Mapco, Inc.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order and provides an opportunity for public comment on the proposed Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

Comments by: January 29, 1981.

ADDRESS: Send comments to Alan L. Wehmeyer, Chief, Crude Products Program Management Branch, Central Enforcement District, 324 East 11th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Alan L. Wehmeyer, Chief, Crude Products Program Management Branch, Central Enforcement District, 324 East 11th Street, Kansas City, Missouri 64106. Phone (816) 374–5932.

SUPPLEMENTARY INFORMATION: On December 2, 1980, the Office of Enforcement of the ERA executed a proposed Consent Order with Mapco, Inc. ("Mapco"). Under 10 CFR, 205.199J(b), a proposed Consent Order which involves a sum of $5,000 or more in the aggregate, excluding penalties and interest, becomes effective only after the

DOE has received comments with respect to the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $31,500,000 within 60 months after the Consent Order becomes effective. Refunded overcharges will be After potential claims are identified, procedures for the making of proof of claims may be established. Failure of a person to provide written notification of a potential claim within the comment

A. Eckhoff, Box 808, Melville, Long Island, New York 11747.

Project Description—The project would consist of existing project works including: (1) a reinforced concrete dam, intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests

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DOE has received comments with respect to the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate an alternative Consent Order.

I. The Consent Order

Mapco, with its home office located in Tulsa, Oklahoma, is engaged in the processing and sale of natural gas liquids (NGL) and NGL products, and is subject to the Mandatory Petroleum and Allocation and Price Regulations at 10 CFR Parts 210, 211, and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Mapco, the ERA Office of Enforcement and Mapco entered into a Consent Order, the significant terms of which are as follows:

1. The Office of Enforcement has examined Mapco's books and records and reviewed all pertinent matters relating to Mapco's compliance with the DOE petroleum price regulations in effect during the period from September 1, 1973 through October 31, 1980. All civil matters pertaining to compliance with the DOE petroleum price regulations and prices charged by Mapco in sales of NGL and NGL products during the period September 1, 1973 through October 31, 1980 are resolved by this Consent Order.

2. Mapco will refund the aggregate amount of $31,500,000, which includes interest through the date on which the Consent Order becomes effective, plus further interest as specified in the Consent Order. In addition, Mapco will reduce by $15,097,160 the amount of increased product costs incurred but not recovered as of September 30, 1980, and otherwise available for recovery in sales of covered NGL products after September 30, 1980.

3. Execution of the Consent Order constitutes neither an admission by Mapco nor a finding by DOE that Mapco has violated any statutes or applicable regulations of the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration or the Department of Energy.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Mapco agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $31,500,000 within 60 months after the Consent Order becomes effective. Refunded overcharges will be distributed as follows:

a. With respect to its sales of propane through Thermogas, Inc. (Thermogas), Mapco will, beginning on the first day of the first month after the effective date of this Consent Order and continuing until such refund is completed, implement price reductions of not more than eight cents ($.08) per gallon but not less than one cent ($.01) per gallon in its sales of propane through Thermogas, in order to accomplish a refund in the aggregate of $22,500,000.

b. With respect to its sales of NGL products through Mapco Products Company (Mapco Products), Mapco agrees to refund the sum of $9,000,000, plus interest, in the form of checks made payable to the United States Department of Energy and delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, overcharges may have been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimant:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure of a person to provide written notification of a potential claim within the comment period for this notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order. You should submit your comments or written notification of a claim within 30 days after publication of this notice to Alan L. Wehmeyer, Chief, Crude Products Program Management Branch, ERA Central Enforcement District, U.S. Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106. You may obtain a free copy of the Consent Order by writing to the same address.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Mapco Consent Order." We will consider all comments we receive within 30 days after the publication of this notice. You should identify any information or data which is, in your opinion, confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Kansas City, Missouri, on the 4th day of December 1980.

William D. Miller,

District Manager, Economic Regulatory Administration.

Concurrence:

Robert J. Wehrle-Einhorn,

Acting Chief Enforcement Counsel.

[FR Doc. 80-40385 Filed 12-29-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 3273]

Chittenden Falls Hydro Power, Inc., Application for Short-Form License (Minor)

December 19, 1980.

Take notice that Chittenden Falls Hydro Power, Inc. (Applicant filed on July 30, 1980, an application for license pursuant to the Federal Power Act, 16 U.S.C. 791 (a)–825 (r) for construction and operation of a water power project to be known as Chittenden Falls Hydroelectric Project No. 3273. The project would be located on Kinderhook Creek at Stockport in Columbia County, New York. Correspondence with the Applicant should be directed to: Mary

A. Eckhoff, Box 808, Melville, Long Island, New York 11747.

Project Description—The project would consist of existing project works including: (1) a reinforced concrete dam, 320 feet long and 4 feet high, set on a natural rock ledge at the top of waterfalls 27 feet high; (2) a reservoir of negligible storage at surface elevation 59.6 feet m.s.l., (3) a timber sluiceway 8 feet wide, 8 feet deep, and 69 feet long; (4) a steel penstock, 90 inches in diameter and 46 feet long; (5) a powerhouse, 50 feet long and 30 feet wide, containing a 440-HP turbine and a 178-HP turbine; (6) a tailrace channel; and new project works to include (7) two horizontally mounted replacement generators, one rated at 300 kW and one rated at 125 kW, attached to the 440 HP turbine and 178 HP turbine, respectively; and (8) other appurtenances. Applicant estimates annual generation would average 2.5 million kWh.

Purpose of Project—Project energy would be sold to Niagara Mohawk Power Corporation.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before February 23, 1981, either the competing applicaton itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than June 23, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), *as amended,* 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 433 (a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before February 23, 1981. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 40306 Filed 12-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-171-000]

Duke Power Co.; Supplement to Electric Power Contract

December 19, 1980.

Take notice that Duke Power Company (Duke Power) tendered for filing on December 15, 1980 a supplement to the Company's Electric Power Contract with Blue Ridge Electric Cooperative, Inc. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 142.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following new delivery point: Delivery Point No. 19 with a designated demand of 4,500 KW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeding the effective date. Duke Power proposes an effective date of February 18, 1981.

According to Duke Power copies of this filing were mailed to Blue Ridge Electric Cooperative, Inc. and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the preceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-40368 Filed 12-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-172-000]

Duke Power Co.; Supplement to Electric Power Contract

December 19, 1980.

Take notice that Duke Power Company (Duke Power) tendered for filing on december 15, 1980 a supplement to the Company's Electric Power Contract with Pee Dee Electric Membership Corporation. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 137.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following increase in designated demand: Delivery Point No. 3 from 2,000 KW to 2,100 KW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceeding and for the twelve months immediately succeding the effective date. Duke Power proposes and effective date of November 19, 1980.

According to Duke Power copies of this filing were mailed to Pee Dee Electric Membership Corporation and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18) CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

purpose, to require the customers to absorb the subject overrun penalties.

The petition states further that the overrun penalties in question constitute an inequitable financial burden on each

791(a)—825(r), for amendment of its license for its Upper and Lower Swift Creek Project, FERC No. 1651, located on the Swift Creek, in the Bridger-Teton National Forest, Lincoln County,

Commission's address is: 825 N. Capital Street, NE, Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of

the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plum,

Secretary.

[FR Doc. 80-40367 Filed 12-29-80, 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP81-23-000]

El Paso Natural Gas Co.; Petition for Relief

December 19, 1980.

Take notice that on December 9, 1980, El Paso Natural Gas Company ("El Paso"), a Delaware corporation, whose mailing address is Post Office Box 1492, El Paso, Texas, 79978, filed, on behalf of five (5) customers served by El Paso's interstate pipeline system,[1] pursuant to Section 1.7 of the Commission's Rules of Practice and Procedure, a petition for relief from the unauthorized overrun gas provisions set forth in El Paso's currently effective FERC Gas Tariff.

The instant petition states that El Paso's experience in administering said unauthorized overrun gas provisions has made it aware that such provisions fail to take into account the possibility that mechanical failure or human error may result in daily deliveries to El Paso's customers in excess of their daily entitlement. By reason of mechanical failure and/or human error, customers can and do inadvertently receive gas in excess of daily entitlements, thereby unnecessarily incurring daily overrun penalties. Upon request by certain of its customers for a joint review of El Paso's penalty invoices, it has been determined that five (5) of El Paso's interstate pipeline system customers have been assessed penalty charges resulting from mechanical failures or human errors, and that a request for relief therefrom is appropriate. El Paso states that in four of the five instances referred to, the error arose in a system that was installed for the purpose of more accurately controlling gas flows and thus preventing overruns. Further, in all five instances, the problem was remedied as soon as it was recognized. In El Paso's view, given the unintentional nature of the overruns, which occurred despite (and, perhaps even as a consequence of) the efforts made by the parties to keep overruns from occurring, it would be inequitable in the extreme, and serve no good purpose, to require the customers to absorb the subject overrun penalties.

The petition states further that the overrun penalties in question constitute an inequitable financial burden on each of those five customers. El Paso therefore requested that the Commission expeditiously grant the relief sought by this petition.

Any person desiring to be heard or to make any protest with reference to said petition should, on or before Jan. 6, 1981, file with the Federal Energy Regulatory Commission Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practive and Procedure (18 CFR 1.8 or 1.10) and the Regulations Under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 4 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this petition if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the authorization is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-40375 Filed 12-29-80, 8:45 am]

BILLING CODE 6450-85-M

[Project No. 1651]

Lower Valley Power and Light, Inc.; Application for Amendment of License

December 19, 1980.

Take notice that on October 14, 1980, Lower Valley Power and Light, Inc. (Licensee) filed an application pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r), for amendment of its license for its Upper and Lower Swift Creek Project, FERC No. 1651, located on the Swift Creek, in the Bridger-Teton National Forest, Lincoln County, Wyoming. Correspondence with the Applicant should be directed to: M. Boyd A. Parker, General Manager, Lower Valley Power and Light, Inc., P.O. Box 188, Afton, Wyoming 83110, and CH2M Hill, Attention: Loren A. Baker, P.O. Box 428, Corvallis, Oregon 97330.

Applicant requests that its license be amended to authorize the following proposed changes in the project: (1) at the upper development, replace all 7,000 feet of the existing unserviceable 36-inch diameter penstock with a new 48-inch diameter concrete penstock; (2) at the lower penstock; (b) construct a new development: (a) replace the previously removed 1,200-foot long 54-inch diameter wood stave penstock with a new 2,000-long penstock; (b) construct a new powerhouse about 800 feet downstream from the existing unserviceable powerhouse; and (c) install two new turbine-generator units, one rated at 250 kW and one rated at 500 kW; and (3) at both developments, install new appurtenant electrical facilities to include switchgear, transformers, and protective devices.

Rehabilitation of the project will also include limited dredging of reservoirs, and at the lower dam, earthwork to repair eroded areas of the downstream toe of the dam, and other necessary dam embankment repairs.

The above described proposed changes in the project will increase the total installed capacity of the project from 980 kW to 1,340 kW. Annual energy production of the rehabilitated project will be 7,000,000 kWh which is equivalent to saving 11,500 barrels of oil or 3,249 tons of coal.

Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before February 9, 1981. The Commission's address is: 825 N. Capital Street, NE, Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-40369 Filed 12-29-80, 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-175-000]

Missouri Utilities Co.; Proposed Change in Rates

December 19, 1980.

Please take notice that on December 15, 1980, Missouri Utilities Company, of Cape Girardeau, Missouri, pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder, tendered for filing a change in rates applicable to electric service rendered to its Southeast Missouri wholesale electric customers. These changes in rates are proposed to become effective customers. These changes in rates are proposed to become effective as of February 13, 1981. Missouri Utilities Company indicates that the proposed changes in rates are to compensate Missouri Utilities Company primarily for increased power costs and to provide an adequate return on investments relative to the effected customers.

Missouri Utilities Company states that its current wholesale rates in Southeast Missouri are deficient by $201,680.47 annually based on sales volumes for the test year ended June 30, 1980, as set forth in the statements accompanying its Notice of Change in Rates.

Copies of the proposed rate schedules and their revenue effect have been served upon the Missouri Utilities Company's effected wholesale customers namely the Missouri Cities of Jackson, Malden and Kennett.

Any person desiring to be heard to protest said notice should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20425, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Missouri Utilities Company's proposed tariff sheets and rate filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-40370 Filed 12-29-80, 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3622-000]

Mitchell Energy Company, Inc.; Application for Preliminary Permit

December 19, 1980.

Take notice that Mitchell Energy Company, Inc. (Applicant) filed on October 31, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for the proposed Mississippi Lock & Dam No. 8 Hydroelectric Project, FERC No. 3622 to be located at the U.S. Army Corps of Engineers Mississippi Lock and Dam No. 8, a navigational aid project, on the Upper Mississippi River near Genoa, Wisconsin, Vernon County, Wisconsin. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Mitchell L. Dong, 173 Commonwealth Avenue, Boston, Massachusetts 02116. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize and existing U.S. Army Corps of Engineers' lock and dam. Project No. 3622 would consist of: (1) a proposed powerhouse located below the existing dam and equipped with turbine/generator units with a total capacity of approximately 14 megawatts; (2) proposed transmission lines; and (3) appurtenant facilities. Applicant's facilities would be located on U.S. land.

The Applicant estimates that the average annual energy output would be 86,000,000 kWh.

Purpose of Project—Energy produced at the proposed project would be purchased by a local utility in the Genoa area.

Proposed Scope and Cost of Studies under Permit—Applicant has requested a 24 month permit to prepare a definitive project report, including preliminary design and economic feasibility studies, hydrological studies, environment and social studies, soil and foundation data. The cost of the aforementioned activities along with obtaining agreements with other Federal, State and local agencies is estimated to be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before February 23, 1961, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than April 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in 1.10 for protests. In determing the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before February 23, 1981.

[1] The five customers are: Arizona Public Service Company, ASARCO Incorporated—Hayden, Arizona, Magma Copper Company, Phelps Dodge Corporation and Southern Union Gas Company.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT", "COMPETING APPLICATION", "PROTEST", "PETITION TO INTERVENE", as appropriate, and must set forth the project number of this proceeding. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Licensed Projects, Federal Energy Regulatory Commission, at the above address. A copy of any document must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Lois D. Cashell,

Acting Secretary.

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Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3622.

Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commision's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-40371 Filed 12-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3553]

Rauniker, Inc.; Application for Preliminary Permit

December 19, 1980.

Take notice that Rauniker, Inc. (Applicant) filed on October 9, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for proposed Project No. 3553 to be known as the Lowell Water Power Project located on Spring River and Shoal Creek in Cherokee County, Kansas. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Richard L. Rauniker, President, Rauniker, Inc., 220 Fairway Drive, Carl Junction MO 64834. Lowell Dam is owned by the Empire District Electric Company. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would be operated primarily run-of-river with limited storage capacity for peaking operation and would consist of: (1) an existing dam comprising a 1,100-foot-long spillway section, an 800-foot-long earth embankment, and a 475-foot-long, 40 feet high, concrete gravity section containing five spillway bays; (2) an 826-acre resevoir having a normal water surface elevation of 807.25 feet msl; (3) existing penstocks requiring repair; (4) a powerhouse integral with the dam's concrete gravity section requiring rehabilitation and which would contain generating units with a total rated capacity between 2,300 kw and 4,200 kw; (5) a tailrace; (6) a new transmission line; and (7) appurtenant facilities.

The Applicant estimates that the average annual energy output would be between 9,500,000 kWh and 12,000,000 kWh.

Purpose of Project—Project energy would be sold to The Empire District Electric Company.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $53,200.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Application—Anyone desiring to file a competing application must submit to the Commission, on or before February 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than April 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before February 23, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION," "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3553. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W. Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-40372 Filed 12-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-173-000]

Vermont Electric Power Company, Inc.; Rate Schedule Filing

December 19, 1980.

Take notice that on December 15, 1980, Vermont Electric Power Company, Inc. (VELCO) tendered for filing a rate schedule containing a lease agreement between VELCO and Citizens Utilities Company dated as of August 1, 1980, and an addendum thereto.

VELCO states that the service to be rendered under this rate schedule consists of the use by Citizens of a 15/20 MVA transformer which is owned by VELCO. The purpose of the addendum is to revise Section 8 of the agreement which concerns Repairs and Replacement.

The estimated monthly charge under this agreement is $764. The basis of the charge is one-twelfth of the annual amount determined by multiplying the original cost of the facilities involved by fifteen percent. Since the revenue from these charges will be credited to the state there will be no change in VELCO's overall rate of return and no cost of service studies were prepared in connection with the derivation of the rate.

VELCO further states that as a result of unavoidable delay in resolving certain aspects of negotiations for this rate schedule, VELCO was not able to file the schedule in a timely manner. In addition, it was necessary to submit the agreement to the Vermont Public Service Board for approval. As a result of these circumstances VELCO could not comply with the notice requirements of § 35.11 since the circumstances described constitute a good cause for a waiver. Approval of this agreement was granted by the Vermont Public Service Board.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 9, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-40373 Filed 12-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP81-10-001]

Western Gas Interstate Co.; Motion To Place Tariff Sheets Into Effect and Proposed PGA Rate Adjustment (Revised)

December 19, 1980.

Take notice that on December 2, 1980, Western Gas Interstate Company (Western) filed (1) Western's Motion To Place Tariff Sheets Into Effect in FERC Docket No. RP81-10-001; (2) Substitute Sixteenth Revised Sheet No. 3A; and (3) Western's agreement and undertaking to comply with the terms and conditions of Section 154.67 of the Commission's Regulations. Said tariff sheet is proposed to become effective on December 2, 1980, pursuant to the Commission's "Order Accepting For Filing And Suspending Certain Tariff Sheets, Subject To Refund And Rejecting Other Tariff Sheets", issued on November 28, 1980. Western states that the proposed rate changes filed in this docket on October 31, 1980, have been modified by the concurrent filing of "Substitute Sixteenth Revised Sheet No. 3A: to its FERC Gas Tariff, Original Volume No. 1, to reflect on intervening purchased gas cost change.

Western also states that the rates filed in its "Substitute Fifteenth Revised Sheet No. 3A", reflected an increased rate of .01¢ per Mcf in Western's Rate Schedule G-N calculated on the revised rates filed by Colorado Interstate Gas Company (CIG) in Docket No. TA81-1-32 (PGA81-1)(IP81-1) dated October 22, 1980. Thus, Western's "Substitute Sixteenth Revised Sheet No. 3A" reflects those rates originally filed in this proceeding and the increased CIG rate under Rate Schedule G-N.

Western states that copies of this filing were served upon Western's transmission system customers and the interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capital Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 6, 1981. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-40374 Filed 12-29-80; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS—50026; TSH, FRL 1715-2]

Enviro Control, Inc.; Data Transfer to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data transfer.

SUMMARY: EPA's contractor, Enviro Control, Inc. (ECI) is assisting EPA in reviewing information submitted by chemical manufacturers under the Toxic Substances Control Act (TSCA) on certain chemicals as part of EPA's evaluation of the ecological impact of those chemicals for purposes of proposing testing requirements under Section 4 of TSCA. Some of the information ECI will review may be claimed confidential.

DATE: The transfer of information to ECI will begin no sooner than January 14, 1981.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office (TS-799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 202/544-1404 or toll-free 800/424-9065.

SUPPLEMENTARY INFORMATION: Under Section 4(e) of TSCA, the TSCA Interagency Testing Committee (ITC) has periodically recommended lists of chemicals or categories of chemicals to EPA for priority testing under TSCA Section 4. The agency is analyzing available information, including physicochemical properties, environmental distribution, aquatic toxicity and ecological impact, on these substances in order to determine what testing, if any, to propose. Among the sources of this information are reports submitted to EPA by manufacturers in response to requests for information on the chemicals recommended for testing

by the ITC in compliance with Section 4 of TSCA. Some of the information in these reports may be claimed confidential.

ECI will assist EPA in its evaluation of the ecological impact of the chemicals or categories of chemicals under study (Contract Nos. 68–01–6147, 68–01–6149, and 68–01–6150). In doing so, it will need to review the reports submitted by industry, some of which may contain Confidential Business Information. On completion of its task, ECI will return all originals and copies of documents containing confidential information to the EPA Document Control Officer.

Pursuant to 40 CFR 2.306(j), EPA has determined that in certain instances it will be necessary for ECI to have access to Confidential Business Information to satisfactorily perform its work under these contracts. In accordance with provisions of its contracts with EPA, ECI is required to safeguard from any unauthorized disclosure the Confidential Business Information it receives from EPA. Information generated by ECI from its review of Confidential Business Information will also be treated as confidential.

ECI has been authorized under the EPA/TSCA Confidential Business Information Security Manual to have access to Confidential Business Information. A security plan for ECI has been approved. EPA has conducted the required inspection of the ECI facilities and has found them to be in compliance with the requirements of the Manual. ECI is required to treat all TSCA Confidential Business Information in accordance with the requirements of that Manual.

(Section 4 of TSCA (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 et. seq.))

Dated: December 15, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

[FR Doc. 80-40471 Filed 12-29-80; 8:45 am]

BILLING CODE 6560-31-M

[A-4-FRL 1715-1]

Standards of Performance for New Stationary Sources; National Emissions Standards for Hazardous Air Pollutants; Delegation of Authority to the State of North Carolina

AGENCY: Environmental Protection Agency.

ACTION: Informational notice.

SUMMARY: Sections 111(c) and 112(d) of the Clean Air Act permit EPA to delegate to the states the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS) and in 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS). On May 2, 1980, the State of North Carolina asked EPA to delegate to it authority for NSPS and NESHAPS promulgated between March 1976 and July 1, 1979. EPA granted the State's request on October 22, 1980. The State now has authority to implement and enforce NSPS for ferroalloy production facilities, kraft pulp mills, lime manufacturing plants, and grain elevators, and NESHAPS for vinyl chloride. Applications and reports required under these regulations should be sent to the State's Division of Environmental Management rather than to EPA Region IV.

EFFECTIVE DATE: October 22, 1980.

ADDRESSES: Applications and reports required under all NSPS and NESHAPS promulgated prior to July 1, 1979, should be addressed to the Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, North Carolina 27611, rather than to EPA Region IV.

FOR FURTHER INFORMATION CONTACT:
Walter Bishop of the EPA Region IV, Air Programs Branch, telephone 404/881–3043 or FTS 257–3043.

SUPPLEMENTARY INFORMATION: On November 24, 1976, EPA delegated to North Carolina authority to implement and enforce the NSPS and NESHAPS that had been promulgated through March 23, 1976 (see 41 FR 56886, December 30, 1976). On May 2, 1980, the State requested that EPA delegate to it authority for the NSPS and NESHAPS promulgated in the period between March 23, 1976, and July 1, 1979. Delegation of these standards was made by the following letter on October 22, 1980. (Copy of Rebecca Hanmer's Letter to Neil Grigg.)

Effective immediately, all applications, reports, and other correspondence required under the NSPS for ferroalloy production facilities, kraft pulp mills, lime manufacturing plants, and grain elevators, and NESHAPS for vinyl chloride should be sent to the North Carolina Divison of Environmental Management (see address above) rather than to the EPA Region IV office in Atlanta.

(Sections 111(c) and 112(d) of the Clean Air Act (42 U.S.C. 7411(c) and 7412(d))

Dated: December 15, 1980.

John A. Little,

Acting Regional Administrator.

October 22, 1980.

Dr. Neil S. Grigg,
Director, Division of Environmental Management, North Carolina Department of Natural Resources & Community Development, P.O. Box 27687, Raleigh, North Carolina

Dear Dr. Grigg: On November 24, 1976, we delegated to the State of North Carolina the authority for implementation and enforcement of the Standards of Performance for New Stationary Sources (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) that had been promulgated by EPA as of March 23, 1976. On May 4, 1976, February 23, 1978, March 7, 1978, and August 3, 1978, EPA promulgated NSPS for ferroalloy production facilities, kraft pulp mills, lime manufacturing plants, and grain elevators, respectively; on October 21, 1976, EPA promulgated NESHAPS for vinyl chloride. In your letter of May 2, 1980, you requested that EPA delegate to the State of North Carolina the authority for implementation and enforcement of these new Federal regulations.

As stated in our letter of November 24, 1976, we have reviewed the pertinent laws of the State of North Carolina and your rules and regulations and have determined that they provide an adequate and effective procedure for implementing and enforcing the NSPS and NESHAPS in the State of North Carolina. Therefore, we hereby delegate our authority for the implementation and enforcement of the NSPS and NESHAPS to the State of North Carolina as follows:

A. Authority for all sources located or to be located in the State of North Carolina subject to the Standards of Performance for New Stationary Sources for ferroalloy production facilities, kraft pulp mills, lime manufacturing plants, and grain elevators promulgated in 40 CFR Part 60 as of the date of this letter.

B. Authority for all sources located or to be located in the State of North Carolina subject to the National Emission Standards for Hazardous Air Pollutants for vinyl chloride promulgated in 40 CFR Part 61 as of the date of this letter.

This delegation is based upon the same conditions as those stated in our letter of November 24, 1976, except that condition 5, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. A copy of the November 24, 1976, letter was published in the Notices section of the Federal Register of December 30, 1976 (41 FR 56886), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new sources shall be submitted to the State of North Carolina (41 FR 56805). All those conditions except condition 5, relating to Federal facilities, are hereby incorporated into this delegation by reference. A notice announcing this delegation will be published in the Federal Register in the near future.

Since this delegation is effective immediately, there is no need for the State to notify EPA of its acceptance. Unless we receive from you written notice of objections within ten days of the date on which you receive this letter, the State of North Carolina will be deemed to have accepted all of the terms of the delegation.

Sincerely yours,

Rebecca W. Hanmer,

Regional Administrator.

[FR Doc. 80-40472 Filed 12-29-80; 8:45 am]

BILLING CODE 6560-38-M

[OPTS-59039A; TSH FRL 1714-6]

Ammonium Salt of Substituted Alkyl Phosphoric Acid; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 8, 1980, EPA received an application for a test marketing exemption (TM–80–44) from the premanufacturing notification requirements of section 5 of the Toxic Substances Control Act (TSCA). The manufacturer has claimed its identity confidential.

EPA has determined that the manufacturer's test marketing of this chemical substance will no present any unreasonable risk of injury to health or the environment. Therefore, the Agency has granted this manufacturer an exemption from the TSCA premanufacture reporting requirements for test marketing of the substance in the manner described in the application.

DATE: Interested persons may submit written comments on or before January 29, 1981.

ADDRESS: Written comments to: Document Control Officer (TS–793), Management Support Division, Office of Pesticide and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M Street, S.W., Washington, D.C. 20460, (202–755–8050).

FOR FURTHER INFORMATION CONTACT:
Kirk Maconaughey, Chemical Control Division (TS–794), Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460 (202–426–3936).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is one that is not on the Inventory of existing chemical substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b), to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of its disposition in the Federal Register. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

The application was assigned test marketing exemption number TM 80–44. Due to administrative error, EPA failed to publish in the Federal Register notice of receipt of the application. EPA has granted this Test Market Exemption Application and the submitter is proceeding with his test marketing activities, however interested persons will have until January 29, 1981, to submit comments on this test marketing exemption. All comments will be reviewed and evaluated by the Agency, and should new information be brought to EPA's attention the decision to grant the exemption may be modified.

The manufacturer claimed its identity, the specific chemical identity of the chemical and the specific use of the chemical as confidential business information.

The substance is described generically as ammonium salt of substituted alkyl phosphoric acid; its generic use is as a materials coating. Six thousand, six hundred pounds of the substance will be manufactured as an approximate 50 percent solution during the test marketing period not to exceed six months. EPA has established that the test marketing of TM 80–44, under the conditions set out in the application, will not present any unreasonable risk of injury to health or the environment for the reasons explained below.

While the company provided no information on the test market substance they did supply toxicity data on a very close structural analogue. The acute toxicity level for that analogue (acute oral LD_{50}) was approximately 7 grams/kilogram. The analogue was found to be minially irritating in an eye irritation study. No other adverse chronic health effects were noted for this close structural analogue. The Agency believes that the data submitted on the analogue is representative of that expected for the test market substance.

No significant worker exposure to the substance is expected. The product will be manufactured in a closed system. The reaction is instantaneous and complete. There are no by-products. The substance, a materials coating, is applied mechancially with no worker exposure. Consumer exposure to the test market substance is very limited. The substance once applied to products is complexed and then further sealed, making it unavailable for consumer uptake. Environmental release of the substance will be low and is not judged to be a concern.

Based on the facts and information obtained and reviewed, EPA grants the manufacturer a test marketing exemption for TM 80–44, effective immediately, but subject to all conditions set out in the exemption application, and in particular those enumerated below:

1. This exemption is granted solely to this manufacturer.

2. The applicant must maintain records of the date(s) of shipment(s) to the one customer specified in the application who will test market the substance, and the quantities shipped in each shipment, and must make these records available to EPA upon request.

3. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

4. The production volume of the new substance may not exceed the quantity of 6,600 pounds described in the test market application.

5. The test marketing acitivity approved in this notice is limited to a 6 month period commencing on the date of publication of the notice in the Federal Register.

6. The substance will be manufactured in a closed system as specified in the application.

7. The number of workers, both manufacturers and processors' should not exceed that specified in the application and the exposure levels and duration of exposure should not exceed that specified.

8. The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which indicates that the substance may present an unreasonable risk of injury to human health or the environment.

Dated: December 22, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-40388 Filed 12-29-80; 8:45 am]

find that the test marketing activities will not present an unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of receipt,

contacts between EPA and the submitter;

4. That the company maintain records of customers to whom the test market substance has been given or sold and

ADDRESSES: The relevant material may be examined during normal business hours at the following locations:
Central Docket Section (10A–80–23).
West Tower Lobby, Gallery I.

The same notification also appeared in the public notice section of the *Oregonian Journal* on October 24, 1980 (page A24).

The notice established November 24,

Intended Action

Finding that the procedural requirements have been met and that Oregon's 1980 statewide budget cuts are nonselective, Region 10 has awarded a

Dated: December 22, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-40388 Filed 12-29-80; 8:45 am]

BILLING CODE 6560-31-M

[OPTS—59038A; TSH-FRL 1714-5]

Polymer of: D-Glucose; Succinic Acid; Propanoic Acid, 2-Oxo; and Galactose; Approval of Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 6, 1980, EPA received an exemption application for test marketing purposes from Kelco, Division of Merck and Co., Inc. The Test Marketing Exemption (TME) case number assigned to the substance was T80-43. EPA has determined that the manufacturer's test marketing of the chemical substance will not present any unreasonable risk of injury to health or the environment. Therefore, the Agency has granted the manufacturer an exemption from the TSCA premanufacture reporting requirements for test marketing in the manner described in the application. The exemption is effective immediately.

FOR FURTHER INFORMATION CONTACT: Robert W. Jones, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-208, Washington, DC 20460 (202-426-8815).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is one that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(D) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions," contains several provisions for exempt from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exemption persons from any requirement of section 5(a) or section 5(b), to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present an unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of receipt, and under section 5(h)(6) the Agency must publish a notice of its disposition in the Federal Register. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On October 6, 1980, EPA received an application from Kelco, Division of Merck and Co. Inc., for an exemption from the requirements of section 5(a) and 5(b) of TSCA, to manufacture a copolymer of D-glucose; succinic acid; propanoic acid, 2-oxo; galactose for test marketing purposes.

A Federal Register notice published on November 10, 1980 (45 FR 74563) announced receipt of the exemption application and summarized information submitted by Kelco. The Federal Register notice requested comments on the appropriateness of granting the exemption. However, the Agency received no public comments concerning the application. Review of the TME application raised little or no concern with regard to health and environmental effects from the TME substance.

Considering both the toxicity and exposure, the Agency has determined that the manufacture, production, and use of this substance, in the manner described in the test market application, will not present any unreasonable risk to the people who come into contact with it during manufacture, processing, or use. There are no environmental concerns with the release or disposal of this substance. Thus, the Agency has decided to grant a test market exemption to Kelco, Division of Merck Co. Inc., for the limited manufacture of the substance as described in the test marketing exemption application.

At least 90 days prior to manufacturing the substance listed in the application for commercial purposes other than test marketing or in small quantities solely for research and development activities, the manufacturer must submit a premanufacture notice (PMN) as required under section 5(a) of TSCA. This exemption is granted solely to the applicant of TME T80-43 with the following provisions.

1. That the company not exceed the production amounts specified on the test market application;

2. That worker exposure not exceed the levels specified;

3. That the company only use the TME substance for the purpose described in the test market application and in other contacts between EPA and the submitter;

4. That the company maintain records of customers to whom the test market substance has been given or sold and that these records may be inspected by EPA;

5. That each shipment contains a statement informing the recipient that the substance shipped may only be used for the purpose allowed in the exemption;

6. The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which indicates that the substance may present an unreasonable risk of injury to human health or the environment.

Section 5(h)(6) of TSCA requires EPA to approve or deny a test marketing exemption within 45 days of its receipt by the Agency. The 45-day period for this exemption application expired on November 20, 1980. EPA regrets the delay in approving this application. However, simultaneously with the processing of test marketing exemption applications, EPA is Charged by TSCA with the task of examining a much larger number of premanufacture notices. The health and environmental implications associated with these notices are generally more significant and widespread than those associated with a test marketing exemption application, requiring EPA to preferentially allocate its very limited resources to the examination of the notices. In the near future EPA will communicate a set of informal guidelines to regulated industry that will help EPA make Test Marketing Exemption Application decisions in a more timely manner.

Dated: December 22, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-40387 Filed 12-29-80; 8:45 am]

BILLING CODE 6560-31-M

[A-10-FRL 1715-3]

Issuance of Clean Air Act Program Grant; State of Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Grant Award.

SUMMARY: The U.S. Environmental Protection Agency, Region 10 (EPA) announces award of a grant to the State of Oregon to assist the Oregon Department of Environmental Quality in the funding of its air pollution control program for Federal fiscal year 1981.

ADDRESSES: The relevant material may be examined during normal business hours at the following locations:

Central Docket Section (10A-80-23).
West Tower Lobby, Gallery I.
Environmental Protection Agency,
Waterside Mall, 401 M Street S.W.,
Washington, D.C. 20460.
Air Programs Branch, Environmental
Protection Agency, 1200 Sixth Avenue,
Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Richard R. Thiel, P.E., Chief, Air Programs Branch M/S 629, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

SUPPLEMENTARY INFORMATION:

Background Information

For several years, EPA has provided financial assistance to the State of Oregon to aid the Department of Environmental Quality (DEQ) in administration of its air pollution control program. This assistance has been provided through a grant under Section 105 of the Clean Air Act [42 U.S.C. 7405(b)].

Section 105 of the Clean Air Act prevents award of such grants where the recipient agency's:

> Expenditures of non-Federal funds for other than noncurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government.[1]

The Oregon DEQ has budgeted 24 percent (24%) fewer dollars from its general fund for the air program in 1981. DEQ has provided EPA with information indicating that (1) the programs of all agencies of the executive branch of State government have also been scheduled for a reduction in expenditures (although the percentage reductions vary somewhat from agency to agency) and (2) the air pollution control program and DEQ have not been selectively targeted by the State for a disproportionate reduction in funding.

Request for Comments—Opportunity for Hearing

On October 23, 1980 (45 FR 70313), EPA published in the Federal Register a request for public comment on the intent to award a grant and also provided an opportunity to request a public hearing. The same notification also appeared in the public notice section of the *Oregonian Journal* on October 24, 1980 (page A24).

The notice established November 24, 1980 for a tentative public hearing on this matter. The hearing was to be cancelled if no request for a hearing was received. No request for such a hearing was received. However, at the appointed time and place, an EPA representative was present to receive public comments had anyone appeared.

Response to Comments

Three written comments were received during the comment period. The Washington Department of Ecology, the State's air agency, expressed full support of EPA's intended action to award the grant.

Comments were also received from the State of New Hampshire's Air Resources Commission and the State of Maine's Department of Environmental Protection. Both recognized that Section 105 of the Clean Air Act allows States to reduce the State funding for air programs if EPA determines the budget reduction is a "nonselective reduction in expenditures in programs of all executive branches of the applicable unit of government," but felt the reduction would set an unfortunate national precedent. Due to the extensive documentation provided by Oregon, indicating that this cut was not selective, EPA believes no unfortunate national precedent will be set.

Evaluation of Oregon's Reduction in Expenditures

A considerable amount of documentation was submitted by the State of Oregon to substantiate that the cut was not selective. Based upon this documentation, it appears that the Oregon reduction was in the State's general fund and was applied to all executive branches of government using the same criteria. Variations in the level of funding cuts among the various State agencies were also due to other factors, such as the need to maintain essential services and to minimize personnel layoffs. Based on the documentation submitted, EPA could find no evidence that the State's air program was deliberately chosen for a disproportionately large reduction. The briefing memorandum supporting this decision and documentation from Oregon supporting the determination are available on request from Laurie M. Kral at the address listed above as well as at the document locations listed.

Intended Action

Finding that the procedural requirements have been met and that Oregon's 1980 statewide budget cuts are nonselective, Region 10 has awarded a grant to the State of Oregon to assist the Oregon Department of Environmental Quality in the funding of its air pollution control program for the Federal fiscal year 1981.

Dated: December 18, 1980.

L. Edwin Coate,

Acting Regional Administrator.

[FR Doc. 80-40500 Filed 12-29-80; 8:45 am]

BILLING CODE 6560-38-M

[1] Authority to award Section 105 grant awards was delegated to the Regional Administrators on January 28, 1976. [EPA Delegations Manual, Chapter 7, Item 1.]

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Request for Comments on the Feasibility and Usefulness of Requiring Depository Institutions Which Make Small Business Loans To Compile and Publicly Disclose Information Regarding Such Loans.

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice of request for comments.

SUMMARY: The Federal Financial Institutions Examination Council (Council), which is composed of representatives of the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, National Credit Union Administration and Office of the Comptroller of the Currency, is required by Section 311(d) of the Housing and Community Development Act of 1980 (Pub. L. 96-399) to conduct a study to assess the feasibility and usefulness of requiring depository institutions which make small business loans to compile and publicly disclose information regarding such loans. The results of this study are to be reported to the House and Senate Banking Committees not later than March 1, 1981.

As part of its study, the Council requests comment from the public—including small businesses, financial institutions, community organizations, trade associations and the academic community—on the general feasibility and usefulness of public disclosure of small business loan activity and on various issues related to method of disclosure should such a requirement be deemed appropriate.

DATE: Comments must be received on or before February 17, 1981.

ADDRESS: Comments should be sent to David K. Schweitzer, Deputy Executive Secretary, Federal Financial Institutions

Examination Council, Eighth Floor, 490, L'Enfant Plaza SW, Washington, DC, 20219.

FOR FURTHER INFORMATION CONTACT:

ISSUES: A. Specific Issues. 1. Definition of "Small Business." If disclosure of small business lending activity were to be required, the term "small business"

dollar amounts (of original principle originated or purchased). Considering that commercial loans are less homogeneous in character than

B. Summary Issues. 1. General Feasibility. In addition to the foregoing specific issues the Council requests comment, especially from depository

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

the National Institute on Drug Abuse and the Food and Drug Administration in implementing the jointly published Narcotic Addict Treatment regulations. The MOU will help reduce the

Examination Council, Eighth Floor, 490, L'Enfant Plaza SW, Washington, DC, 20219.

FOR FURTHER INFORMATION CONTACT: David K. Schweitzer, Deputy Executive Secretary, Federal Financial Institutions Examination Council, (202) 287–4206.

SUPPLEMENTARY INFORMATION: The Congressional call for this study on small business loan disclosures appears to have originated from a concern in some communities that lenders are giving insufficient attention to the credit needs of small business, especially those located in low- and moderate-income neighborhoods. It has been suggested that small business lending patterns in a community can be identified most effectively by requiring public disclosure of the small business lending activities of local depository institutions, just as public disclosure of mortgage lending data under the Home Mortgage Disclosure Act (HMDA) is seen by many as useful in identifying mortgage lending patterns.

Although the mandatory disclosure of small business lending activity might be judged both feasible and useful in an absolute sense, the Council requests that all comments be directed to the relative value of such disclosures in terms of real costs and benefits. Depository institutions should consider carefully the additional demands such a disclosure requirement would place on their business operations, and potential users of the data should describe clearly the benefits the proposed disclosures would provide to them.

For purposes of the issues raised below, the term "depository institution" means any commercial bank, savings bank, savings and loan association, credit union, or similar institution (including any majority-owned subsidiaries) the deposits or accounts of which are insured by an agency of the federal government or which is regulated by any agency of the federal government. The definition of "small business loan" is open for comment under Issue A2. In general, however, "business loans" may be considered to include all credit extended to any natural person, business, or organization, which is not considered "consumer credit" under Federal Reserve Regulation Z, Truth in Lending (TIL), and is exempted from TIL disclosure requirements on the basis of 12 CFR 226.3(a).[1]

ISSUES: A. Specific Issues. 1. Definition of "Small Business." If disclosure of small business lending activity were to be required, the term "small business" would have to be defined. Possible definitions could be based upon the complex eligibility standards established by the small Business Administration (SBA) for use in its various programs, simplified variations of the SBA standards (e.g., abbreviated Standard Industrial Classification, asset size, and employee count), or a single criterion such as number of employees at the borrowing firm. Comment is requested on the advantages and disadvantages of various approaches to defining "small business" and specifically on the feasibility of using number of employees as the determinant. Comments should include discussion of whether the borrower characteristics needed for a particular definition are currently recorded by financial institutions; and, if not, whether the information is readily available from borrowers and the anticipated expense of modifying recordkeeping systems to collect it. If SBA guidelines were used to define the size of a business, information such as sales, asset size, employment, etc., would have to be recorded on a consolidated basis where the borrowing business was a subsidiary or division of a larger commercial enterprise. What effect would imposing this procedure have on the lender's ability to collect required information and on the utility of the resulting data to community users? Alternatively, would disclosures based on unconsolidated information relating only to the local borrower (e.g., the subsidiary) have any value?

2. Definition of "Small Business Loan." The Council seeks comment on whether all credit granted to a borrower meeting the definition of "small business" should be considered a small business loan for disclosure purposes. Where the lender has more than one department approving various types of credit to small businesses, what difficulties, if any, could be encountered in attempting to consolidate loan data from multiple departments? Should a line of credit be counted as one loan for the total amount at the time it is established, or should each draw against that line be counted as a separate loan? Are there other unique commercial credit arrangements that could complicate disclosures?

3. Loan Data. HMDA requires mortgage loan data to be compiled in terms of number of loans and total dollar amounts (of original principle originated or purchased). Considering that commercial loans are less homogeneous in character than residential mortgages, comment is sought on the appropriate loan data disclosures for small business loans. Comment is specifically requested on the feasibility and usefulness of separating disclosures on the basis of such criteria as (a) purpose of loan, (b) term of loan, or (c) conventional versus government guaranteed. The Council also requests comment on whether disclosures should be broken down by the borrower's type of industry. For example, what added costs and benefits would result if loans were separated on the basis of the nine basic industry groups identified by U.S. Standard Industrial Classification numbers?

4. Data Aggregation and Itemization. HMDA requires that institutions with offices in standard metropolitan statistical areas (SMSA's) disclose mortgage loan data aggregated by SMSA and that, within SMSA's, data be itemized by census tract. HMDA also provides that reporting institutions record aggregated data on lending outside of the SMSA without itemization. The Council requests comment on whether similar requirements would be feasible and useful for disclosures of loans to small businesses. What kind of geographic information is routinely recorded on commercial loan applications? If a borrower operates at multiple locations, what additional information would have to be recorded to allow identification of the business location receiving primary benefit of the credit extended? What additional costs would be incurred in this process? If no single location receives the primary benefit, how should such a loan be identified geographically for disclosure purposes?

Specific comment on the feasibility and usefulness of compiling and disclosing small business loan data in non-SMSA (e.g., rural) areas is also requested.

5. Exemptions. Section 309 of HMDA (and Section 203.3(a)(1) of Regulation C-12 CFR 203) specifically exempts depository institutions with less than $10 million in assets from mortgage loan disclosure requirements. The Council solicits comment on whether a similar exemption would be appropriate with regard to any requirement for small business loan disclosures. Views on the role of small institutions in providing credit to small businesses and on what effect exclusion of small institution loan data would have on the usefulness of disclosures would be helpful.

[1] Regulation Z [12 CFR 226] Section 226.2[p] states in part " 'consumer credit' means credit offered or extended to a natural person . . . primarily for personal, family, household or agricultural purposes." The exemption in Section 226.3[a] covers "extentions of credit to organizations, including governments, or for business or commercial purposes, other than agricultural purposes."

B. Summary Issues. 1. General Feasibility. In addition to the foregoing specific issues the Council requests comment, especially from depository institutions, on the overall increase in cost of operations that would result from required small business loan disclosures. Would such costs be variable or fixed, one time or recurring, related to the size of the institution, etc.? In addition, the Council requests comment on whether past cost/benefit experience under HMDA is relevant to the recording and disclosure of small business loans. What unique characteristics of business lending might pose special problems not found with disclosures of mortgage lending activity? How can such problems be overcome and at what cost? Commentors are requested to substantiate their conclusions on this issue by describing in detail the factors considered.

2. General Usefulness. Potential users of disclosures of small business loan activity are assumed to be primarily the same groups currently using HMDA data (i.e., community action groups, local and state government agencies, private and government researchers, the federal financial regulatory agencies, etc.) plus the business community itself. The Council requests comment from all categories of potential users on what specific needs or problems currently exist which they expect to be satisfied or resolved by requiring depository institutions to compile and publicly disclose information regarding loans to small businesses. The Council considers it important for potential users to substantiate both that information is needed and that public disclosure of small business lending by depository institutions would be the most effective means of obtaining it.

Any person or organization wishing to comment on the issues outlined above may do so by filing a written submission with the Council. See DATE and ADDRESS at the beginning of this Notice. All submissions will become part of the record and will be available for public review.

Dated: December 22, 1980.

Robert J. Lawrence,
Executive Secretary, Federal Financial Institutions Examination Council.

Marie Giblin,
Office of the Comptroller of the Currency, Communications Division.

[FR Doc. 80-40457 Filed 12-29-80; 8:45 am]
BILLING CODE 6722-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

National Center for Health Care Technology; Scientific Evaluation of Medical Technology

The National Center for Health Care Technology (Center) announces that it is beginning a scientific evaluation of the clinical safety and effectiveness of the Bentonite flocculation test, DNA antibody test, mycoplasma complement fixation test, Kunkel test, and joint scans used in the diagnosis and treatment of rheumatoid arthritis. Based on this evaluation, a recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide the Center with information relevant to this evaluation should do so in writing no later than March 2, 1981. To enable the Center's staff to give appropriate consideration to any literature references or analyses of clinical data, a written summary no longer than 10 pages should be attached to any such material submitted.

Written material should be submitted to: National Center for Health Care Technology, Room 17A–29, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Stephen P. Heyse, M.D., M.P.H., Health Science Analyst, National Center for Health Care Technology, Room 17A–29, Parklawn Building, Rockville, Maryland 20857, (301) 443–4990.

Dated: December 22, 1980.

Wayne C. Richey, Jr.,
Acting Executive Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 80-40556 Filed 12-29-80; 8:45 am]
BILLING CODE 4110-85-M

Food and Drug Administration

[FDA-225-81-3000]

Medical Treatment Standards for Methadone Treatment Programs; Memorandum of Understanding With National Institute on Drug Abuse

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration has executed a memorandum of understanding (MOU) with the National Institute on Drug Abuse. The purpose of the MOU is to describe the cooperative relationship and procedures to be followed by both the National Institute on Drug Abuse and the Food and Drug Administration in implementing the jointly published Narcotic Addict Treatment regulations. The MOU will help reduce the likelihood of inconsistent interpretations of the regulations.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Bureau of Drugs (HFD–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6490.

SUPPLEMENTARY INFORMATION: The Comprehensive Drug Abuse Prevention and Control Act of 1970 (CDAP&C Act) as amended, assigned to the Secretary of Health and Human Services (HHS) a number of responsibilities regarding the treatment of narcotic addicts. The Secretary delegated these responsibilities to the Director, National Institute on Drug Abuse (NIDA) and the Commissioner, Food and Drug Administration (FDA) (see 37 FR 27646, December 19, 1972; 38 FR 27315, October 2, 1973; and 21 CFR 5.1). Because of the unavoidable overlap in certain of these delegated responsibilities, FDA and NIDA have agreed to enter into this memorandum of understanding (MOU). This MOU will help reduce the likelihood of inconsistent interpretations of the jointly published regulations on narcotic addict treatment (see 45 FR 62694; September 19, 1980).

Under the notice published in the Federal Register of October 3, 1974 (39 FR 35697) stating that future memoranda of understanding and agreements between FDA and others would be published in the Federal Register, the following memorandum of understanding is issued:

Memorandum of Understanding Between the National Institute on Drug Abuse and the Food and Drug Administration

I. Purposes

The purposes of this MOU are: (a) to describe the cooperative relationship and procedures to be followed by the National Institute on Drug Abuse (NIDA) and the Food and Drug Administration (FDA) in implementing the jointly published narcotic addict treatment regulations; (b) to establish a mechanism that ensures a systematic and timely input from NIDA to FDA about decisions on the operation of narcotic treatment programs under those regulations; and (c) to reduce the likelihood of inconsistent interpretations of those regulations. This agreement does not affect FDA's authority to make and issue all final decisions under the regulations.

II. Background

In 1974 the Controlled Substances Act (CSA), Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (CDAP&C Act), was amended by the Narcotic Addict Treatment Act (NATA). The NATA was intended primarily to establish the basis for more control of narcotic addict treatment programs by the Drug Enforcement

with a draft copy of the notice, send to NIDA the supporting information upon which the action is based, and obtain NIDA's written recommendation as to whether the notice should issue.

4. Before granting or denying an exemption until it is terminated. This agreement may be terminated by either agency upon 90 days' advance written notice to the other.

VII. Revisions

Revisions to this agreement may be made

Bureau of Community Health Services, Room 7A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1153.

Maternal and Child Health Research Grants Review Committee—Contact

Dated: December 22, 1980.

Mamie Welborne,
HDS Committee Management Officer.

[FR Doc. 80-40481 Filed 12-29-80; 8:45 am]
BILLING CODE 4110-92-M

to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the

(CDAP&C Act), was amended by the Narcotic Addict Treatment Act (NATA). The NATA was intended primarily to establish the basis for more control of narcotic addict treatment programs by the Drug Enforcement Administration (DEA) and the Department of Health and Human Services (HHS) to prevent diversion of narcotic drugs, and to ensure proper treatment of narcotic addicts. The NATA amended the CSA to provide for registration (through DEA) of practitioners conducting narcotic treatment programs. The fundamental purpose of the NATA, according to its legislative history, is to increase the Government's control over methadone and other narcotic drugs used in the treatment of narcotic addicts. This additional control would both ensure proper treatment and prevent diversion. The legislative history of the NATA further states that it is intended to complement the DEA and HHS controls in force at the time of enactment and to establish the basis for additional joint regulation of treatment programs by these two agencies.

The NATA, among other things, gives the Secretary of HHS authority to establish treatment standards for practitioners who use narcotic drugs for either maintenance or detoxification treatment of persons dependent upon narcotic drugs. Practitioners providing this treatment obtain a special registration which must be renewed annually from the Attorney General (through DEA) and, as a condition of registration, must comply with standards established by the Secretary. Under the NATA (21 U.S.C. 823(g)), the Secretary must (a) determine if an applicant/practitioner is qualified, and (b) determine if the applicant/practitioner will comply with the standards about the quantities of narcotic drugs which may be provided for unsupervised use by persons in such treatment and then report this determination to DEA. As noted above, HHS responsibilities under the NATA are carried out by FDA and NIDA.

In 1975 the Commissioner of Food and Drugs and the Director, National Institute on Drug Abuse agreed to jointly publish revisions to the methadone regulations. Accordingly, in 1977 they proposed a revision of the treatment standards. The final revised treatment standards were recently published in the Federal Register on Friday, September 19, 1980 (45 FR 62694). This revision of the methadone regulations includes the Secretary's treatment standards under the NATA.

III. Substance of Agreement

A. FDA agrees to the following terms:

1. FDA will continue to inspect and monitor narcotic addict treatment programs for compliance with the jointly published treatment standards.

2. Before issuing a letter of noncompliance to a narcotic addict treatment program, FDA will provide NIDA with a draft copy of the letter, send to NIDA the supporting information upon which the action is based, and obtain NIDA's written recommendation as to whether the letter should issue.

3. Before notifying the DEA not to certify a treatment program under the jointly published standards, FDA will provide NIDA with a draft copy of the notice, send to NIDA the supporting information upon which the action is based, and obtain NIDA's written recommendation as to whether the notice should issue.

4. Before granting or denying an exemption under section (d)(12) of the jointly published treatment standards, FDA will notify NIDA of the request for an exemption, send to NIDA the information supporting the request, and obtain NIDA's written recommendation as to whether to grant or deny the request. However, if the request involves a medical emergency or an exception for a specific patient, the notification may be made orally by telephone or in person.

5. FDA will notify NIDA in writing before taking action which is contrary to NIDA's recommendations under items 2, 3, and 4 above.

6. FDA will make the final determination in matters which relate to safety and effectiveness of drugs or to the approval of new drugs to be used in the treatment of narcotic addicts.

B. NIDA agrees to the following terms:

1. Within seven (7) days of receipt of the information from FDA described in items 2 and 3 above, NIDA will give FDA its written recommendation and, in the event of disagreement with a proposed FDA action, state the reason(s) for disagreement including, when appropriate, a recommended alternative action.

2. Within ten (10) days of receipt of the information from FDA described in item 4 above, NIDA will give FDA its written recommendation.

3. In the event of disagreement with a proposed FDA action, NIDA will state the reasons for disagreement including, when appropriate, a recommended alternative action. However, if the request involves a medical emergency or an exception for a specific patient, the recommendation may be made orally by telephone or in person.

C. NIDA and FDA agree to the following terms:

1. Jointly publish any future revisions of the methadone treatment regulations;

2. Consult each other before issuing interpretations and opinions under the treatment standards which would have broad policy implications; and

3. Consult each other on the need to update, develop, or revise the regulations and policy affecting narcotic addict treatment.

IV. Name and Address of Participants

A. National Institute on Drug Abuse, 5600 Fishers Lane, Rockville, MD 20857.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

V. Liaison Officers

A. Liaison Officer for NIDA: Mr. Nathan M. Kight, National Institute On Drug Abuse, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4877.

B. Liaison Officer for FDA: Mr. Edwin V. Dutra, Jr., Food and Drug Administration (HFD–30), 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

VI. Period of Memorandum of Understanding

This agreement becomes effective when signed by both parties and remains in effect until it is terminated. This agreement may be terminated by either agency upon 90 days' advance written notice to the other.

VII. Revisions

Revisions to this agreement may be made by mutual consent of the agencies.

Approved and accepted for the Food and Drug Administration:
By: Mark Novitch for Jere E. Goyan.
Title: Commissioner of Food and Drugs.
Date: November 20, 1980.

Approved and accepted for the National Institute on Drug Abuse:
By: William Pollin,
Title: Director, National Institute on Drug Abuse.
Date: October 30, 1980.

Effective date. This memorandum of understanding becomes effective November 20, 1980.

Dated: December 22, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-40518 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

Health Services Administration

Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Reports for the following Health Services Administration Federal Advisory Committees have been filed with the Library of Congress:

National Advisory Council on the National Health Service Corps
National Advisory Council on Migrant Health
Maternal and Child Health Research Grants Review Committee.

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, S.E. Washington, D.C. or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, North Building, Room 1436, 300 Independence Avenue, S.W., Washington, D.C. 20201, Telephone (202) 245–6791.

Copies may be obtained from the following committee contacts:

National Advisory Council on the National Health Service Corps—Mr. Billy Sandlin, Bureau of Health Personnel Development and Service, Room 6–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443–4434.

National Advisory Council on Migrant Health—Mr. Jaime L. Manzano, Bureau of Community Health Services, Room 7A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1153.

Maternal and Child Health Research Grants Review Committee—Contran Lamberty, Dr. P. H., Bureau of Community Health Services, Room 7–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2190.

Dated: December 17, 1980.

William H. Aspden, Jr.,

Associate Administrator for Management.

[FR Doc. 80-40448 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-84-M

Office of Human Development Services

White House Conference on Aging; Technical Committee on Creating an Age-Integrated Society: Implications for the Family; Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Public Law 92–463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Creating an Age-Integrated Society: Implications for the Family will hold their next meeting Wednesday, January 14, 1981, from 9:00 a.m. until 5:00 p.m. at the Andrus Gerontology Center, University of Southern California, Los Angeles, California 90007.

The purpose of the meeting will be to: (1) complete review of technical paper by committee (Chapters I, II, III were reviewed on 12/12/80) and (2) to review Chapters IV and V on Policy and Recommendations, and the chapter on Ethnic Families.

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 245–1914. Technical Committee meetings are open for public observation.

Dated: December 22, 1980.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 80-40481 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-92-M

White House Conference on Aging; Technical Committee on Creating an Age-Integrated Society: Implications for Education; Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Public Law 92–463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Creating an Age-Integrated Soceity: Implications for Education will hold their next meeting Monday, January 19, 1981 and Tuesday, January 20, 1981 from 9 a.m. until 5 p.m. each day. The meeting will be held at the Institute of Gerontology at the University of Michigan, 520 E. Liberty Street, Ann Arbor, Michigan 48108.

The purpose of the meeting will be to review draft of committee report for revisions and finalization.

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue, SW., Washington, D.C. 20201, telephone (202) 245–1914. Technical Committee meetings are open for public observation.

Dated: December 22, 1980.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 80-40482 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-92-M

White House Conference on Aging; Technical Committee on Creating an Age-Integrated Society: Implications for Societal Institutions; Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Public Law 92–463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Creating an Age-Integrated Society—Implications for Societal Institutions will convene its fourth meeting on Friday, January 16, 1981 and Saturday, January 17, 1981 from 9:30 am until 5:30 pm each day. The meeting will be held in Room 403–425A at the Hubert H. Humphrey Bldg., 200 Independence Avenue, S.W., Washington, D.C. 20201.

The purpose of the meeting will be to review segments of the draft final report and to make plans for the completion of the committee's report.

Furiher information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 245–1914. Technical Committee meetings are open for public observation.

Dated: December 22, 1980.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 80-40483 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-92-M

White House Conference on Aging; Technical Committee on the Family, Social Services and Other Support Systems; Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Public Law 92–463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on the Family, Social Services and Other Support Systems will convene its final meeting on Thursday, January 15, 1981 from 9:00 am until 5:00 pm in Room 5542 at HHS-North Bldg., 330 Independence Avenue, S.W., Washington, D.C. 20201.

The purpose of the meeting will be to review the final draft of the policy paper and to approve the recommendations.

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence

White House Conference on Aging; Technical Committee on Physical and Social Environment and Quality of Life; Meeting

The White House Conference on

meeting on Monday, January 12, 1981 and Tuesday, January 13, 1981 from 9:00 am to 5:00 pm each day. The meeting will be held at the Federal Building, Room 13216 (13th Floor), 450 Golden

National Institutes of Health, Bethesda, Maryland 20205.

Donald S. Fredrickson,

Director, National Institutes of Health.

GEORGIA

Heard County

Franklin, *Heard County Jail,* Court Sq. and Shady Lane

of the Interior is responsible for managing a program for the competitive leasing of Federal coal. In addition, he is to ensure that Federal coal is leased at its fair market value. Considerations for

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 245–1914. Technical Committee meetings are open for public observation.

Dated: December 22, 1980.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 80-40484 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-92-M

White House Conference on Aging; Technical Committee on Health Maintenance and Health Promotion; Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Public Law 92-463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Health Maintenance and Health Promotion will hold their meeting on Thursday, January 15, 1981 and Friday, January 16, 1981 from 9:00 am to 5:00 pm each day in the Hawaii Room, 26th floor, of the General Services Administration Building, 525 Market Street, San Francisco, California.

The purpose of the meeting will be to review the final draft of the Technical Committee's report to the Conference and to make policy recommendations to be contained in the report.

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 245–1914. Technical Committee meetings are open for public observation.

Dated: December 22, 1980.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 80-40485 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-92-M

White House Conference on Aging; Technical Committee on Physical and Social Environment and Quality of Life; Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Public Law 92-463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Physical and Social Environment and Quality of Life will hold their next meeting on Tuesday, January 6, 1981 from 9:30 am to 5:00 pm and Wednesday, January 7, 1981 from 8:30 am until 4:30 pm at the St. Louis Area Agency on Aging, St. Louis, Missouri.

The purpose of the meeting will be to review segments of draft final report and make plans for completion of the report.

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 245–1914. Technical Committee meetings are open for public observation.

Dated: December 22, 1980.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 80-40486 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-92-M

White House Conference on Aging; Technical Committee on Research on Aging; Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Public Law 92-463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Research on Aging will hold their next meeting on Monday, January 12, 1981 and Tuesday, January 13, 1981 from 9:00 am to 5:00 pm each day. The meeting will be held at the Federal Building, Room 13216 (13th Floor), 450 Golden Gate Avenue, San Francisco, California.

The purpose of the meeting will be to finalize draft of Technical Paper, the Recommendations, and the Executive Summary.

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue, SW., Washington, D.C. 20201, telephone (202) 245–1914. Technical Committee meetings are open for public observation.

Dated: December 22, 1980.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 80-40487 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-92-M

National Institutes of Health

Cinnamyl Anthranilate; for Possible Carcinogenicity; Availability

Cinnamyl anthranilate (CAS 87-29-6) has been tested for cancer-causing activity with rats and mice in the Bioassay Program of the national Toxicology Program. A report is available to the public.

Summary: A bioassay of cinnamyl anthranilate (a synthetic flavoring agent) for possible carcinogenicity was conducted by administering the test chemcial in food to F344 rats and B6C3F1 mice.

It was concluded that under the conditions of this bioassay cinnamyl anthranilate was carcinogenic for male and female B6C3F1 mice, including increased incidences of hepatocellular carcinomas or adenomas. The test chemcial was also carcinogenic for male F344 rats, inducing low incidences of acinar-cell carcinomas or adenomas of the pancreas and adenocarcinomas or adenomas of the renal cortex. Cinnamyl anthranilate was not carcinogenic for female F344 rats.

Single copies of the report, Bioassay of Cinnamyl anthranilate for Possible Carcinogenicity (T.R. 196), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20205.

Donald S. Fredrickson,

Director, National Institutes of Health.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

[FR Doc. 80-39421 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-08-M

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before December 19, 1980. Pursuant to § 1202.13 of 36 CFR Part 1201, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 14, 1981.

Ronald M. Greenberg,

Acting Chief, National Register Division.

ARIZONA

Maricopa County

Tempe, *Frankenberg House*, 129 W University Dr.

CALIFORNIA

Alameda County

Berkeley, *U.S. Post Office*, 2000 Milvia St.

Los Angeles County

Los Angeles, *U.S. Post Office and Courthouse*, 312 N. Spring St.

Santa Barbara County

Santa Barbara, *Santa Barbara County Courthouse*, 1100 Anacapa St.

Sierra County

Nevada City vicinity, *Foote's Crossing Road*, Tahoe National Forest (also in Nevada County)

Sierra City, *Kentucky Mine*, CA 49

COLORADO

Gunnison County

Pitkin vicinity, *Alpine Tunnel Historic District*

Jefferson County

Morrison vicinity, *Peterson House (Ticen House)*, E of Morrison on Morrison Rd.

GEORGIA

Heard County

Franklin, *Heard County Jail*, Court Sq. and Shady Lane

NEW HAMPSHIRE

Coos County

Bretton Woods vicinity, *Fabyan Guard Station*, NW of Bretton Woods on Cherry Mountain Rd.

OHIO

Lucas County

Neapolis vicinity, *Providence Site (33-Lu-150)*, S of Neapolis in Providence Metropolitan Park

Montgomery County

Trotwood, *Trotwood Railroad Station and Depot*, 2 W. Main St.

Adair County

Westville vicinity, *Alberty Chapel Cemetery*, SE of Westville

Creek County

Drumright, *Washington School*, 214 W. Federal St.

Garfield County

Enid, *Government Springs*, 4th St. and East Pk.

Okmulgee County

Henryetta vicinity, *Wilson School*, NW of Henryetta

OREGON

Umatilla County

Umatilla vicinity, *Umatilla (35 UM 1)*, N of Umatilla

UTAH

Salt Lake County

Salt Lake City, *Utah State Fair Grounds*, 10th W. and N. Temple Sts.

WISCONSIN

Belleville, *Library Park*, Bounded by vine, Main, Park and Pearl Sts.

Walworth County

Delavan vicinity, *Mile Long Site*, S of Delavan (boundary decrease)

[FR Doc. 80-40510 Filed 12-29-80; 8:45 am]

BILLING CODE 4310-03-M

Bureau of Land Management

Federal-Private Cooperative Coal Leasing Proposal

AGENCY: Bureau of Land Management, Interior.

ACTION: Request for public comment on the Federal-private cooperative coal leasing proposal.

SUMMARY: Under the Mineral Leasing Act of 1920, as amended, the Secretary of the Interior is responsible for managing a program for the competitive leasing of Federal coal. In addition, he is to ensure that Federal coal is leased at its fair market value. Considerations for ensuring receipt of fair market value were studied by a Department of the Interior task force that concluded its efforts in the spring of 1980.

One of the recommendations of the Fair Market Value Task Force on Federal coal leases was to enhance Federal coal sale competition by working cooperatively with private coal owners to jointly market coal from potential logical mining units comprised of both Federal and private coal. A cooperative leasing procedure would be of significant benefit to the systematic development of private-Federal mixed ownership coal, especially checkerboard coal. Acting on the task force's recommendation, a working group within the Department has designed a proposed method for cooperative leasing which it hopes to apply in the October 1981 lease sale in the Green River-Hams Fork Federal Coal Region in northwest Colorado and southwest Wyoming. This method and its benefits, costs, and potential problems are described in the enclosed appendix. The two suitable tracts for cooperative leasing, Red Rim and China Butte, are juxtaposed with the lands owned by Rocky Mountain Energy Company. Rocky Mountain Energy Company and the Department have already conducted preliminary discussions concerning the possibility of cooperative leasing on these tracts.

The public is invited to comment on the validity of this specific cooperative leasing proposal, as well as the concept of cooperative leasing itself; to suggest modifications to the proposed methods; or to suggest other means to accomplish the same ends. The next step in the process, following analysis of comments, will be to enter into formal negotiations with Rocky Mountain Energy Company over cooperative leasing.

DATES: Written comments will be received on or before January 29, 1981.

ADDRESS: Send comments to Director (160), Bureau of Land Management, 18th & C Streets, N.W. Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ryan Dudley, Office of Coal Management, Bureau of Land Management, (202) 343–4537.

Dated: December 22, 1980.

Ed Hastey,

Associate Director, Bureau of Land Management.

II. The Concept of Cooperative Leasing

The most serious problems created by checkerboarding may be overcome if it is possible to obtain and package all the

other in a two-party bargaining situation.

In the case of a potential logical mining unit (LMU) composed of Federal

on a competitive basis with the revenues from the lease being divided according to the preagreed sharing rule. This arrangement, however, might

The factor referred to will be called the "Federal-Private Bid Ratio." This is simply a pre-sale announced fixed ratio between the bid on the Federal lease

Dated: December 22, 1980.

Ed Hastey,

Associate Director, Bureau of Land Management.

Appendix—Federal-Private Cooperative Coal Leasing Proposal

I. Introduction

This country has vast reserves of coal. Its coal deposits are widely distributed and vary greatly in quality and value. Much of this coal is privately owned and with a few notable exceptions, namely certain concentrated railroad holdings, private ownership is widely dispersed. The States also own significant reserves. However, the most significant single owner of U.S. coal reserves is the United States Government and most of these reserves are located in the West.

The "checkerboard" pattern of ownership occurs in some of the richest coal fields in the West, such as the Green River Basin in Wyoming. This pattern may have a significant effect on the development of U.S. coal and competition for Federal coal leases. Checkerboarding occurs where alternate sections of land are owned by the United States and a private landowner or corporation, most often a railroad company or its affiliate. Coal deposits in many areas of these checkerboard regions underlie a number of sections of land owned by the government and private parties, making efficient development of the deposit as a single economic unit difficult. Unless these coal deposits are controlled through lease or ownership by a single operator, the coal deposit may be mined piecemeal in a manner that is neither efficient nor economical. When a coal deposit underlies unleased Federal lands and adjoining privately owned land, the competitive interest in the unleased Federal coal may also be diminished because prospective Federal lessees may be uncertain of their ability to arrive at satisfactory contractual agreements with the adjoining private owner or owners. Also, the time needed to bring a Federal lease into production in a checkerboard area may be significantly lengthened by the extra time needed for land assembly. In short, the checkerboard pattern of ownership may constitute a significant impediment to efficient mining of coal in the checkerboard, may reduce the value of any Federal lease to a potential bidder, and may reduce competition as well. The total effect may be inefficient mining of the coal, a loss in the Department's effectiveness in meeting leasing targets, and a significant reduction in Federal leasing revenues.

II. The Concept of Cooperative Leasing

The most serious problems created by checkerboarding may be overcome if it is possible to obtain and package all the rights that are necessary for efficient mining of a potential logical mining unit prior to the sale so that the entire package can be put up for bid. Competition could then assure that the public receives a fair return from the sale of the Federal coal. Efficient development of the coal resources would also be promoted, many costly uncertainties would be eliminated, and, if the packaging can be done cheaply, there may be significant savings in transaction costs. Therefore, it is important to explore the possibility of packaging Federal and private rights, which we shall refer to as "cooperative leasing," prior to leasing Federal deposits. If cooperative leasing is adopted, the winning bidder for a Federal lease will have the opportunity to acquire all the public and private property rights that are required for efficient mining. If packaging takes place prior to auction, it eliminates the most serious problems presented by a checkerboard. There are a number of important practical and theoretical questions associated with the concept of cooperative leasing. For example, one question is what legal or procedural means should be used to effect the cooperation? This is important because different procedures have very different implications for risk bearing, capital requirements, and the need for revenue sharing rules, etc. A second question is which party should initiate the cooperative agreement: the government, one of the private parties owning rights that would be included in the package, or a third party acting as a broker? A third question is whether a workable and fair rule for sharing revenues can be defined and implemented. The list of possible questions regarding the hows and wherefores of cooperative leasing is a long one. The department believes these questions can best be answered by the experience gained through attempting to conduct a cooperative lease sale. The following discussion outlines the procedure the Department might follow for such a trial run.

III. Current Proposal for Cooperative Leasing

Even though several Department studies have been done relating to the question of cooperative leasing, a great many technical issues still need resolution for it to become a reality. Up until now, no single preferred method has been developed by, or presented to, the Department. This proposal came about as a result of the Secretary's commitment that the Department make every attempt to find a feasible way to include one "unitized" tract in the first Green River-Hams Fork regional lease sale in 1981.

As a result of this commitment, a task group set up under the guidance of the Office of Coal Leasing, Planning and Coordination has selected a workable method from among all the prior proposals. The task force has rejected, as far as this first attempt is concerned, all methods of cooperative leasing which do not meet certain, basic criteria. These criteria include the following:

1. The proposal must provide for *pre-sale* packaging of Federal and private coal. This has no applicable precedents in Federal mineral leasing. The unitization procedures common to oil and gas are *post-sale* procedures and do not solve the problems in holding a competitive sale in a checkerboard area.

2. Any lease terms affecting the value of the lease must be the same in both the public and private leases.

3. The Department has no legal authority for compulsory pre-sale packaging of Federal and private tracts; nor is it clear that such authority would be purely beneficial. Consequently, we must rely upon a voluntary agreement between the Department and willing private coal owners.

4. The proposal must be in accord with all current laws and regulations governing Federal coal leasing.

5. A potential additional criterion would provide that the private cooperator could not participate in the sale as a bidder.

With these criteria in mind, the task group sifted through the numerous theoretical proposals advanced by earlier studies. The proposal presented here is one that appeared to be both feasible and relatively simple to execute. No doubt other methods also exist which meet the criteria. The task group and the Office of Coal Leasing are anxious to receive any and all such proposals for consideration. If other methods turn out to be clearly more workable, they will be adopted. At this time, however, the need is to bring the cooperative leasing concept out of the realm of theory and into a single, concrete, and workable proposal.

A. Leasing with checkerboard ownership.—In this proposal, we focus on specific procedures for cooperative leasing in the one case of most widespread importance, namely, checkerboard ownership. Here the government and a private owner own alternate sections of land and face each other in a two-party bargaining situation.

In the case of a potential logical mining unit (LMU) composed of Federal coal and private coal controlled by one party, the policy objectives should be to form the potential LMU at minimum cost to society and to develop procedures that allow the public to recieve a fair share of the LMU rents. Transaction costs of assembly in checkerboard potential LMU may be high both for the Department and for its future lessees. For this reason, bidders other than the private owner or a party that had already reached an understanding with the private owner might ordinarily be discouraged from bidding on the unconcolidated tract.

The bilateral situation requires that the government have the pre-sale cooperation of the private owner in order to reach agreement that his property will be put up as part of a potential logical mining unit and sold at the same time as the Federal property for specified terms. The winning bidder would thereby acquire at one sale a tract of land that can be approved and operated as an LMU without costly effort on his part.

As part of this agreement, the government and the private owner must agree on a rule by which they will split the revenues from the LMU. Because of the efficiencies of scale, the LMU will be worth substantially more than the worth of either party's tracts individually. To encourage private sector cooperation, the government should attempt to devise a sharing rule that would split the gains from forming an LMU in a way roughly proportional to each party's interests in that unit.

While the initial costs of bargaining between the government and the private owner might be substantial, once the basis for an agreement has been reached within a coal field where checkerboarding occurs, costs would be reduced for future bargaining to form additional public-private LMUs. In other words, once the basis of agreement has been established, it would likely extend without major changes to all properties and all potential LMUs in the checkerboard region. Therefore, the potential exists for a savings in the future costs associated with attempting to assemble preliminary LMUs.

In practice, the simplest way to administer cooperative leasing in the checkerboard case might be to have the private owner and the government agree on a sharing rule and then have the private owner lease to the government with written permission to sublease. Then, the entire potential logical mining unit could be offered by the government on a competitive basis with the revenues from the lease being divided according to the preagreed sharing rule. This arrangement, however, might require legislation giving the Department of the Interior authority to lease privately owned land. An alternative arrangement would be to have competitors bid separately on the total mining unit as two individual mining units in a simultaneous sale. Here an agreement would be needed whereby the winning bidder must lease the government's land and the private land separately, but at or above a price determined by the prespecified sharing rule and the level of the winning bid for the total potential LMU. Simultaneous auctions appear too cumbersome, however. The method proposed in the following section is to conduct a single auction for the Federal coal land. The private owner would not assign any rights to the Federal Government, but would, instead, agree to offer his coal lease to the successful bidder on the Federal tract upon terms which he and the Federal Government would agree upon. For the present, sales would proceed through the variable bonus/fixed royalty bidding system. Whether deferred bonuses would be used has been decided.

B. *Federal-private cooperative coal leasing proposal.*—The task force has labeled its proposal for pre-sale coal lease packaging "Federal-Private Cooperative Coal Leasing." The intent of this proposal is to provide an opportunity for any interested party, to obtain at the same time separate leases for both Federal and private coal necessary for an efficient mining operation in a checkerboard area. The sale of the Federal coal lease will be conducted in the usual and customary manner with the winning bidder obtaining the Federal lease. By means of a pre-sale cooperative leasing agreement, the winning bidder for Federal coal would be given the opportunity also to buy the private coal.

To accomplish this, the Department would enter into a presale cooperative agreement with the private coal owner. The agreement would provide that the private coal owner would sell a private coal lease at the same time as the Federal sale to the winning bidder in the Federal sale. The agreement would also contain a key provision to fix the share of the total bonus going to the private coal owner and the amount going to the Federal Government. This allows each bidder to calculate the total amount to be spent for the entire mining unit, both Federal and private coal.

The factor referred to will be called the "Federal-Private Bid Ratio." This is simply a pre-sale announced fixed ratio between the bid on the Federal lease and the selling price on the private lease which each bidder for the Federal lease is required to adhere to. This ratio will be set by agreement between the Department and the private coal owner and will be based upon economic evaluations of the tracts and arrived at through bilateral negotiations. The minimum acceptable bid for the Federal lease and its concomitant private selling price would also be set at this ratio.

Any increase in the bid for the Federal lease above the minimum will also require raising the selling price for the private lease in order to keep the ratio constant. Thus, the high bidder in the Federal sale will always be paying a "fair" price to the private cola holder also. Of course, this system requires that royalties, rentals, and any other financial consideration be equal before the sale.

c. *Proposed agreement.*—In order to further clarify the proposed pre-sale packaging procedure, the following is the task force's outline of the terms which it believes might be included in a cooperative leasing agreement.

1. The parties agree that it would be mutually advantageous to hold coordinated sales of coal leases covering deposits of Federal and X Company coal.

2. The Department and X Company shall delineate a tract, called the combined tract, which shall not exceed 25,000 acres in size. The combined tract shall be an area of land in which the coal resources can be developed in an efficient, economical, and orderly unit with due regard to conservation of the coal reserves and other resources.

The combined tract shall be delineated from all of the following Federal lands (called the "Federal tract"): [To be described]

The combined tract shall also include all or portions of the following lands owned by X Company (called the X Company tract): [to be described]

All of the lands included in the combined tract shall be contiguous. (An alternative is for the parties to agree to a combined tract constituting a potential logical mining unit prior to entering into the agreement. The agreement would then simply recite a land description of the combined tract.)

3. The X Company shall supply to the Department all available geologic information, including drill logs and isopachous maps, which the Department needs to determine the amount and quality of the coal reserves on the X Company tracts. This information must

then be available to the public without condition. The Department shall also provide like information to X Company, except where the disclosure of such

Company's agreement to lease to anyone satisfying these terms.

X Company shall not accept any offer that does not conform to the fixed ratio

date from December 22, 1980 to December 30, 1980.

Tom Allen,

Associate State Director.

INTERNATIONAL COMMUNICATION AGENCY

United States Advisory Commission on Public Diplomacy

measures to insure compliance with the judgment and the antitrust laws.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be

United States of America, Plaintiff, v. *B.F. Goodrich Company*, Defendant.

Plaintiff, the United States of America, having filed its Complaint herein on August 8, 1978, and defendant, The B.F. Goodrich Company, having answered the Complaint

then be available to the public without condition. The Department shall also provide like information to X Company, except where the disclosure of such information would violate the Department's confidentiality agreements or the laws respecting the nondisclosure of proprietary information. In such cases, the Department will first request the holder of the proprietary data to release it or, failing that, notify X Company of the existence of such data.

4. The Department will conduct an economic evaluation of that portion of the combined tract which embraces the Federal lands in accordance with the regulations in 43 CFR Subpart 3422. Minimum bonus bids in the Federal tract shall not be less than $25 per acre. Royalties in the lease for the Federal and private tract shall be 12 1/2 percent for a surface mine and 8 percent for an underground mine.

The Department shall, at the same time it evaluates the Federal tract, conduct an economic evaluation of the combined tract and of the X Company tract in accordance with accepted Departmental procedures. The economic evaluation shall be based on the information made available to the Department by X Company as well as other relevant data. The Department and X Company shall use the Department's evaluation of the combined tract and other relevant information to arrive at a mutually acceptable minimum bid and Federal-private bid ratio for the X Company tract. All terms of both sales would be published for comment simultaneously with the request for comment on fair market value of the Federal tract.

5. The Department will hold a lease sale for the Federal tract in October 1981.

The lease sale procedures in 43 CFR Subpart 3422 shall be followed. The Department shall not issue a lease on the Federal tract to any bidder who does not meet the leaseholder qualifications of the Mineral Leasing Act, 30 U.S.C. 181, *et seq*., or the regulations under 34 CFR Part 3400.

The Department shall issue a lease on the Federal tract to the highest qualified bidder, who has 45 days to conclude a sale agreement with X Company at an amount determined by the bid ratio.

X Company would agree to offer the X Company tract to the highest qualified bidder on the Federal tract. The terms for the sale of the X Company tract (including the bid ratio) shall be published simultaneously with the sale notices of the Federal tract required by 43 CFR 3422.2 together with X Company's agreement to lease to anyone satisfying these terms.

X Company shall not accept any offer that does not conform to the fixed ratio between the bid on the Federal lease and the bid on the private lease which was agreed to by the Department and X Company. The sale notices for the X Company shall specify this ratio.

D. *Post-sale Procedures.*—Once the leases have been issued, the lessee should petition to have the private coal included in the LMU containing the Federal lease at approximately the same time that a mine plan is submitted. The Department is examining two methods of royalty payment distribution for such a consolidated LMU. Under the first alternative, royalties would be received by the Department on an as-mined basis. Distinct and obvious differences in the timing of royalties to the private and public owners could be compensated for in setting the bonus ratio. As a second alternative, the Department is considering whether a proration approach would be feasible. Under such a distribution method, royalties would be paid to the parties in accordance with a sharing formula based on the relative ownership of the coal deposits within the LMU.

E. *Conclusion.*—An approach that potentially allows the systematic cooperative leasing of Federal checkerboard areas has been described. The Department will proceed to implement this procedure barring significant adverse comment and will make changes as appropriate. This approach is based on solving problems as they occur rather than trying to anticipate all possible complexities and resolving them in advance. At the conclusion of the Green River-Hams Fork cooperative leasing sale, the Department will assess the benefits and costs of this method, its general level of workability, and future potential gains or losses to determine a final course of action on cooperative leasing.

[FR Doc. 80-40357 Filed 12-29-80; 8:45 am]

BILLING CODE 4310-84-M

Arizona; Public Land, Wilderness Intensive Inventory Final Decision Protest Period Extension Date; Correction

In FR Doc. 80-38282 appearing on page 81264, Column 2, in the issue of Wednesday, December 10, 1980, in the third paragraph, seventh line, change date from December 22, 1980 to December 30, 1980.

Tom Allen,

Associate State Director.

December 17, 1980.

[FR Doc. 80-40464 Filed 12-29-80; 8:45 am]

BILLING CODE 4310-84-M

Office of the Secretary

Oil Shale Environmental Advisory Panel; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Oil Shale Environmental Advisory Panel will be held on January 13, 1981, at the Cosmopolitan Hotel, 1780 Broadway, Denver, Colorado. The meeting will begin at 8:30 a.m. on Tuesday, January 13, in the Century Room and conclude by 5:00 p.m.

The Panel was established to assist the Department of the Interior in the performance of its functions in connection with the supervision of oil shale leases issued under the Prototype Oil Shale Leasing Program.

The purpose of this meeting is to review a Draft of the Revised Detailed Development Plan prepared by Rio Blanco Oil Shale Company for Oil Shale Lease Tract C-a in Rio Blanco County, Colorado, to receive progress reports from Interior officials, and to consider any other matters which have come before the Panel. The Panel will also receive a status report on Interior's plans for additional oil shale leasing.

The meeting is open to the public. It is expected that space will permit at least 100 persons to attend the meeting in addition to the panel members. Interested persons may make brief presentations to the Panel on Tuesday afternoon, January 13, or file written statements with the Chairman. Requests to speak to the Panel should be made to Mr. Henry O. Ash, Chariman, Office of the Oil Shale Environmental Advisory Panel, Department of the Interior, Room 690, Building 67, Denver Federal Center, Denver, Colorado 80225, telephone (303) 234-3275.

Further information concerning this meeting may be obtained from Mr. Ash's office. Minutes of the meeting will be available for public inspection 30 days after the meeting at the panel office.

Dated: December 23, 1980.

James W. Curlin,

Acting Assistant Secretary of the Interior.

[FR Doc. 80-40349 Filed 12-29-80; 8:45 am]

BILLING CODE 4310-10-M

INTERNATIONAL COMMUNICATION AGENCY

United States Advisory Commission on Public Diplomacy

The U.S. Advisory Commission on Public Diplomacy will meet on January 14, 1981 in Room 600—1750 Pennsylvania Ave., NW., Washington, D.C. from 9:15 a.m. to 4 p.m. The topic of discussion will be: Past Activities and Future Programs for the Commission.

Because space is limited please call Elizabeth Fahl, (202) 724-9243, if you are interested in attending the meeting.

Jane S. Grymes,

Management Analyst, Management Analysis/Regulations Staff, Associate Directorate for Management, International Communication Agency.

[FR Doc. 80-40441 Filed 12-29-80; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment in United States v. B.F. Goodrich Co. and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Panalties Act. 15, U.S.C. Sections 16(b)-(h), that a proposed final judgment and a competitive impact statement as set out below have been filed with the United States Disrict Court for the Northern District of California in Civil No. C-78-1785-WAI, *United States v. B.F. Goodrich Company*. The Complaint in this case alleged that B.F. Goodrich conspired to fix, raise, maintain and stabilize the retail and wholesale prices of passenger tires in the western United States in violation of Section 1 of the Sherman Act.

The proposed judgment prohibts B.F. Goodrich from having any agreement or understanding with any tire dealer to fix, raise, maintain or stabilize prices, discounts, or mark-ups for B.F. Goodrich tires. The defendant is also enjoined from entering into agreements or understandings with tire dealers which prohibit either tire dealers or B.F. Goodrich from advertising the price of tires. B.F. Goodrich Company is also forbidden from soliciting or encouraging any complaints by tire dealers concerning prices, disounts, or price-related advertisements regarding B.F. Goodrich tires, as well as from acting on any such complaints.

The judgment requires B.F. Goodrich to mail out copies of the judgment to its present dealers, and to take internal measures to insure compliance with the judgment and the antitrust laws.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and file with the Court. Comments should be directed to Anthony E. Desmond, Chief, San Francisco Field Office, Antitrust Division, Department of Justice 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Bernard H. Meyers, Glenda R. Jermanovich, Shauna I. Marshall; Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Room 16216C, Box 36046, San Francisco, CA 94102, Telephone: 415/556-6300

United States District Court for the Northern District of California

Civil No. C-78-1785 WAI

Stipulation

Filed: December 15, 1980

United States of America, Plaintiff, v. *B.F Goodrich Company*, Defendant.

it is stipulated by and between the plaintiff, the United States of America, and the defendant, B.F. Goodrich Company, by their respective attorneys, that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act [15 U.S.C. § 16] and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing said notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to plaintiff and defendant in this or any other proceeding.

Dated: December 15, 1980.

For the plaintiff:

Sanford M. Litvack, *Assistant Attorney General Antitrust Division;* Joseph H. Widmar; Anthony E. Desmond, *Attorneys, Department of Justice;* Bernard H. Meyers; Glenda R. Jermanovich; Shauna I. Marshall, *Attorneys, Department of Justice.*

For defendant B.F. Goodrich Company: Jones, Day, Reavis & Pogue, Attorneys for Defendant B.F. Goodrich Company; By Gerald W. Palmer, Esq., and Harold G. Munter, Esq., Corporate Counsel, The B.F. Goodrich Company; Harold G. Munter, Esq.

United States District Court, Northern District of California

Civ. No. C-78-1785-WAI

Final Judgment

Filed: December 15, 1980.

United States of America, Plaintiff, v. *B.F. Goodrich Company*, Defendant.

Plaintiff, the United States of America, having filed its Complaint herein on August 8, 1978, and defendant, The B.F. Goodrich Company, having answered the Complaint and having appeared by its counsel, and both parties by their respective attorneys having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence against or an admission by any party consenting hereto with respect to any such issue:

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed, as follows:

I

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The Complaint states claims upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment:

(A) "Defendant" means defendant The B.F. Goodrich Company;

(B) "Person" means any individual, partnership, corporation, association, firm or any other business or legal entity;

(C) "Tires" means tires used on automobiles, recreational vehicles and/or light trucks, except for those tires actually delivered to and installed by original equipment manufacturers on new vehicles;

(D) "Dealer" or "tire dealer" shall mean any person who is in the business of selling tires; and

(E) "B.F. Goodrich brand tires" means tires on which appear the name "B.F. Goodrich," "BFG," "Goodrich," or the B.F. Goodrich pentagonal, or any other tires sold through the BFG Brand Replacement Sales organization, or successors thereto.

III

(A) This Final Judgment applies to the defendant and to each of its officers, directors, agents, employees, domestic subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise; provided, however, that nothing contained herein shall apply to any transaction solely between defendant and its officers, directors, employees, domestic subsidiaries, or any of them when acting in such capacity.

(B) The Defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets of the B.F. Goodrich Tire Group (formerly, the B.F. Goodrich Tire Division), or that subdivision of defendant (by whatever name that subdivision is known) responsible for producing and distributing B.F. Goodrich brand tires, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the Plaintiff, its consent to be bound by this Final Judgment.

(C) This Final Judgment shall apply throughout the United States.

IV

Defendant is enjoined and restrained from: (A) entering into, adhering to, maintaining, furthering, or enforcing any agreement or understanding with any tire dealer to fix, raise, maintain or stabilize prices, discounts, or mark-ups for B.F. Goodrich tires; (B) entering into, adhering to, maintaining, furthering, or enforcing any agreement or understanding with any tire dealer which prohibits either tire dealers or B.F. Goodrich from advertising the price of tires; (C) soliciting or encouraging any complaints by tire dealers concerning prices, discounts, or price-related advertisements regarding B.F. Goodrich tires, as well as from acting on any such complaints.

V

(A) Defendant shall mail a copy of this Final Judgment to each of its present dealers in the United States within 60 days after the entry of this Final Judgment.

(B) Defendant shall mail a copy of this Final Judgment to each person who becomes a dealer in the United States during the term of this Final Judgment within 60 days after such person becomes a dealer.

(C) Defendant shall mail a copy of this Final Judgment to each of its officers, directors, and employees who have responsibility for the sale of tires within 60 days after the entry of this Final Judgment.

(D) Defendant shall mail a copy of this Final Judgment to each of its officers, directors, and employees who assume responsibility for the sale of tires within 60 days after such person assumes such responsibility.

VI

(A) Defendant shall establish a program to assure that its officers, directors, and employees who have responsibility for the sale of tires understand and comply with this Final Judgment.

(B) Defendant shall establish a program to assure that its dealers understand and comply with this Final Judgment.

(C) Defendant shall establish a program to assure that its officers, directors, and employees who have responsibility for the sale of tires report to the Antitrust Division of the Department of Justice any information concerning non-compliance with this Final Judgment by any dealer or by any officer, director, or employee of defendant.

(D) Defendant shall establish a program to assure that its officers, directors, and employees who have responsibility for the sale of tires report to the Antitrust Division of the Department of Justice any information concerning non-compliance with this Final Judgment by any officer, director, or employee of defendant.

(E) Defendant shall establish a program to assure that its officers, directors, and employees who have responsibility for the sale of tires report to the Antitrust Division of the Department of Justice any information concerning non-compliance with such program and this Final Judgment will result in appropriate disciplinary action determined by the defendant and which may include dismissal, and (b) advice that the defendant's legal staff is available at all reasonable times to confer

the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise permitted by law;

(C) if at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to defendant before any such material is disclosed or otherwise made available (for the purpose of such notice, unless otherwise ordered by this Court, the office of the General Counsel of defendant shall be deemed the proper recipient of such material as to which a claim of protection is asserted); and

(D) in the event of disclosure by plaintiff to any other department, agency, or governmental authority of the United States of information or documents furnished by defendant to plaintiff, then plaintiff shall give to defendant, to the extent consistent with the purpose for which the information or documents are disclosed, 10 days notice before divulging such information or documents to any person other than a duly authorized representative or employee of the Executive Branch of the United States (for the purpose of such notice, unless otherwise ordered by this Court, the office of the General Counsel of defendant shall be deemed the proper recipient of such information or documents).

VIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

IX

Entry of this Final Judgment is in the public interest.

Dated: December 15, 1980.

United States District Judge

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On August 8, 1978, the United States filed a civil antitrust complaint alleging that defendant The B.F. Goodrich Company ("B.F. Goodrich") had conspired with other tire manufacturers to fix, raise, maintain and stabilize the retail and wholesale prices of passenger tires in the western United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The complaint sought injunctive relief against the continuation of the conspiracy.

Entry by the Court of the proposed Consent Judgment will terminate this action. The Court will retain jurisdiction over this matter for such further proceedings as may be

(C) This Final Judgment shall apply throughout the United States.

IV

Defendant is enjoined and restrained from:

(A) entering into, adhering to, maintaining, or enforcing any contract, agreement, combination or mutual understanding with any tire dealer:

(1) to fix, raise, maintain or stabilize the price, discount, markup or margin of profit at which B.F. Goodrich brand tires are sold, or offered for sale; and/or

(2) by which said dealer or defendant is not to advertise the price of B.F. Goodrich brand tires;

(B) encouraging or soliciting any complaints by any tire dealer regarding the pricing, discounting or price-related advertising of B.F. Goodrich brand tires by any other tire dealer; or

(C) taking any coercive or joint action with respect to any tire dealer because of any complaint or other communication by any other tire dealer or wholly-owned B.F. Goodrich tire outlet regarding the pricing, discounting or price-related advertising of B.F. Goodrich brand tires.

V

Defendant is enjoined and restrained from:

(A) suggesting or requiring that any tire dealer establish, adopt, advertise or adhere to any fixed, suggested or specified price, discount, markup or margin of profit on the sale of any B.F. Goodrich brand tires; provided, however, that nothing in this provision shall prohibit the defendant from unilaterally suggesting resale prices, discounts, markups or margins of profit for the sale of B.F. Goodrich brand tires on the conditions (a) that any such oral suggestion shall include a statement in substance that each dealer, and the defendant as well, is free to sell at whatever prices, discounts, markups or margins of profit such dealer or the defendant may unilaterally choose; (b) that any such written suggestion shall include a statement on each page of any such writing in substance that each dealer, and the defendant as well, is free to sell at whatever prices, discounts, markups or margins of profit such dealer or defendant may unilaterally choose; and (c) that no less frequently than once each year defendant notify its dealers that notwithstanding any such suggestion, each dealer, and the defendant as well, is free to sell at whatever prices, discounts, markups or margins of profit each may unilaterally choose;

(B) suggesting or requiring that any tire dealer not offer the tire dealer's own guarantee on any B.F. Goodrich brand tire; or

(C) coercing or attempting to coerce any tire dealer to change its price or terms for the sale of B.F. Goodrich brand tires.

VI

Nothing in this Final Judgment shall prohibit defendant from:

(A) Proposing to any B.F. Goodrich dealer or prospective B.F. Goodrich dealer that it join in any joint advertisement to promote the sale of B.F. Goodrich brand tires, or agreeing with any such dealer to participate in any such joint advertisement or publishing or causing to be published any such joint advertisement; provided, however, that any such actual or proposed joint advertisement shall include a statement to the effect that any advertised prices are those offered by defendant and are not necessarily those offered by participating B.F. Goodrich dealers;

(B) Engaging in negotiations or communications with any person for the purpose of a proposed or actual bona fide sale by defendant of B.F. Goodrich brand tires; or

(C) formulating or submitting with any B.F. Goodrich dealer a bona fide joint bid or quotation, made in writing and in response to a formal invitation, for the sale of B.F. Goodrich brand tires to any public or private entity where performance of any contract entered into as a result of that bid or quotation is to be carried out, in whole or in part, through the sale or delivery of B.F. Goodrich brand tires by one or more B.F. Goodrich dealers.

VII

Defendant is ordered and directed:

(A) within 60 days after entry of this Final Judgment to provide a copy of this Final Judgment to

(1) each of defendant's officers and directors with responsibility for selling, pricing or advertising B.F. Goodrich brand tires;

(2) each of defendant's employees with responsibility for selling, pricing, or advertising B.F. Goodrich brand tires to dealers; and

(3) each of defendant's employees having managerial responsibility for selling, pricing or advertising B.F. Goodrich brand tires from B.F. Goodrich retail outlets; and to obtain and retain for 10 years documents sufficient to show receipt thereof;

(B) for a period of 10 years from the date of entry of this Final Judgment, to provide a copy of this Final Judgment to each of its future officers, directors and employees in the positions described in Paragraph A above and to obtain and retain for 10 years documents sufficient to show receipt thereof;

(C) to file with this Court and serve upon the plaintiff within 90 days after the date of entry of this Final Judgment an affidavit as to the fact and manner of compliance with subsections A and D of this Section VII;

(D) within 60 days after entry of this Final Judgment to provide a copy of this Final Judgment to all of defendant's present dealers, and within the ensuing four years, to provide a copy of this Final Judgment to each new franchised dealer;

(E) during the period in which this Final Judgment is in effect, to advise each of its officers and employees in positions described in paragraph (A) above of its and their obligations under this Final Judgment. Defendant shall maintain a program to insure compliance with this Final Judgment, which program shall include at a minimum the following with respect to each of such persons:

(1) the annual distribution to them of this Final Judgment;

(2) the annual submission to them of a written directive setting forth the defendant's antitrust compliance program, with such directive to include (a) an admonition that non-compliance with such program and this Final Judgment will result in appropriate disciplinary action determined by the defendant and which may include dismissal, and (b) advice that the defendant's legal staff is available at all reasonable times to confer with such persons regarding any compliance questions or problems;

(3) the imposition of an annual requirement that each of them sign and submit to the defendant a certificate in substantially the following form:

The undersigned hereby acknowledges that he/she (1) has received a copy of the Final Judgment and a written directive setting forth the Company policy regarding compliance with the antitrust laws and with such Final Judgment, (2) has read and understands such Final Judgment and directive, (3) has been advised and understands that non-compliance with such policy and Final Judgment will result in appropriate disciplinary measures determined by the Company and which may include dismissal, and (4) has been advised and understands that non-compliance with the Final Judgment may also result in conviction for contempt of court and imprisonment and/or fine; and

(4) the holding of one or more meetings with them to review the terms of this Final Judgment and the obligations it imposes, with such meetings to be arranged and conducted so that each of them attends at least one such meeting with approximately each twelve-month period.

VIII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted:

(1) access during the office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in the possession or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, directors, agents, partners, members or employees of defendant, who may have counsel present, regarding any such matters;

(B) defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise permitted by law;

(C) if at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim for protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

IX

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violation thereof.

X

The provisions of this Final Judgment shall be in effect for a period of not longer than ten (10) years from the date of entry of this Final Judgment.

XI

Entry of this Final Judgment is in the public interest.

Dated: ——————.

——————,

United States District Judge.

Bernard H. Meyers, Glenda R. Jermanovich, Shauna I. Marshall, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, CA 94102, Telephone: 415/556–6300.

United States District Court, Northern District of California

Civ. No. C–78–1765–WAI

Competitive Impact Statement

Filed: December 15, 1980.

United States of America, Plaintiff, v. B F Goodrich Company, Defendant.

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. § 16(b)] the United States hereby submits this Competitive Impact Statement relating to the proposed Consent Judgment submitted for entry in this civil antitrust proceeding.

I. Nature of Proceeding

On August 8, 1978 the United States Department of Justice filed a civil complaint against the B.F. Goodrich Company pursuant to Section 4 of the Sherman Act [15 U.S.C. § 4], alleging a conspiracy to fix, raise, maintain and stabilize the retail and wholesale prices of B.F. Goodrich tires sold in the western United States. The Complaint asks the Court to find that the defendant has violated Section 1 of the Sherman Act [15 U.S.C. § 1] and further requests the Court to enjoin the continuance of the conspiracy.

Entry by the Court of the proposed Consent Judgment will terminate this action. The Court will retain jurisdiction over this matter for such further proceedings as may be required to interpret, modify or enforce the proposed judgment or to punish violations thereof.

II. Description of Practices Involved in the Alleged Violation

The defendant, the B.F. Goodrich Company, manufactures tires and sells them to, among others, independent wholesalers and retailers. B.F. Goodrich also sells tires to the public through its company-owned stores and leased department operations. Because of this distribution system, B.F. Goodrich and independent wholesale distributors are actual or potential competitors for the sale of B.F. Goodrich tires to independent retailers. Similarly, by selling B.F. Goodrich tires to the public through its company-owned stores and leased department operations, B.F. Goodrich competes with independent retailers for the sale of B.F. Goodrich tires to the public.

The Complaint in the case alleges that beginning at least as early as 1972 and continuing through at least the date of the commencement of the suit (August, 1976) the defendant met and communicated with independent wholesalers and retailers in order to fix, raise, maintain and stabilize retail and wholesale prices of B.F. Goodrich tires. The Complaint further alleged that 1) the prices of B.F. Goodrich brand passenger tires have been fixed, raised, maintained and stabilized at artificial and non-competitive levels; 2) purchasers of B.F. Goodrich tires have been deprived of the benefits of free and open competition in the marketing of B.F Goodrich tires; and 3) competition between and among B.F. Goodrich and the conspirators in the sale of B.F. Goodrich tires has been reduced and restrained.

III. Explanation of the Proposed Consent Judgment

The United States and defendant, the B.F. Goodrich Company, have agreed, in a stipulation, that the consent judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed judgment provides that there has been no admission by either party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the consent judgment by the Court is conditioned upon a determination of the Court that the proposed judgment is in the public interest.

A. *Prohibited Conduct*

The proposed judgment will prohibit the defendant for a period of 10 years from the date of the Final Judgment from entering into or adhering to any agreement, combination or mutual understanding with any tire dealer to fix, raise, maintain or stabilize the price, discount, mark-up or margin of profit at which B.F. Goodrich tires are sold. The defendant is also enjoined from entering into any agreement or understanding with tire dealers which prohibits either tire dealers or B.F. Goodrich from advertising the price of B.F. Goodrich tires. B.F. Goodrich is also forbidden from encouraging or soliciting any complaints by any tire dealer with respect to the pricing, discounting or price-related advertising of any other tire dealer (including B.F. Goodrich's own outlets). Nor may B.F. Goodrich take any coercive or joint action against any tire dealer due to any complaint or any communication from any other tire dealer (including B.F. Goodrich's own outlets).

B.F. Goodrich may only suggest resale prices to tire dealers under the conditions that in so doing it state to each dealer that the prices are only being suggested by B.F. Goodrich and that B.F. Goodrich and each dealer are free to sell at whatever price, discount, markup or margin of profit they may unilaterally choose. B.F. Goodrich is also prohibited from suggesting or requiring that any tire dealer not offer the dealer's own guarantee on B.F. Goodrich tires, and from coercing or attempting to coerce any tire dealer to change its prices or terms for the sale of B.F. Goodrich tires. The proposed judgment covers all B.F. Goodrich tires used on passenger cars, recreational vehicles, or light trucks. It does not apply to B.F. Goodrich Brand tires sold to and actually used by original equipment manufacturers. The proposed judgment also covers B.F. Goodrich tires bearing the name B.F. Goodrich (or variations thereof), and tires sold through the B.F. Goodrich Brand Replacement Sales organization (or successors thereto). Although the complaint only alleged violations in the six western states, the proposed judgment applies throughout the United States.

The proposed judgment applies to the defendant, its officers, directors, employees, agents, successors and assigns. Before the defendant may sell all or substantially all of its Tire Group assets, the acquiring party must agree to be bound by the judgment.

B. *Other Provisions*

The defendant is ordered for a period of 10 years to distribute a copy of the judgment to each of its employees, officers and directors with responsibility for the selling, pricing and advertising of B.F. Goodrich tires at the wholesale or retail level. The defendant must also provide a copy of the judgment to all of its present dealers, and for a period of 4 years, to each new franchised dealer. The defendant must distribute the initial copy to employees, directors, officers and dealers within 60 days after entry of the final judgment. An affidavit stating the manner of compliance must be filed by defendant within 90 days after entry of the judgment.

In addition to the annual distribution of the judgment, B.F. Goodrich must conduct a compliance program. The program shall require the defendant to take affirmative steps, including the holding of annual meetings, to advise each of the officers and other employees with any responsibility for the selling, pricing and advertising of B.F. Goodrich tires of their obligations under the judgment.

The United States Department of Justice is given access under the proposed judgment to the files and records of B.F. Goodrich, to examine such records for compliance or non-compliance with the judgment. The

Department is also granted access to interview employees of the defendant to determine whether the defendant is complying with the judgment.

C. *Effect of the Proposed Judgment on Competition*

VI. Procedures Available for Modification of the Proposed Judgment

The proposed consent judgment is subject to a stipulation by and between the United States and the defendant which provides that the United States may withdraw its consent action and concludes that the proposed Judgment provides appropriate relief against the violation alleged in the Complaint.

Public comment is invited within the statutory 60-day comment period. Such

attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment's constituting any evidence against or an admission by any party with respect to any such issue;

all or to a class of customers or prospective customers; and

2. information concerning industrial nitrocellulose production capacity, excess production capacity, or production available for export; provided that this prohibition shall not apply to information disseminated in the

(2) advice that the defendant's legal advisers are available at all reasonable times to confer with such persons regarding any compliance question or problem;

(D) File with this Court and serve upon the plaintiff within ninety (90) days after the date of entry of this Final Judgment and annually

Department is also granted access to interview employees of the defendant to determine whether the defendant is complying with the judgment.

C. *Effect of the Proposed Judgment on Competition*

The relief encompassed in the proposed consent judgment is designed to prevent a recurrence of any of the activities alleged in the complaint. The prohibitory language of the judgment should ensure that wholesale and retail prices of B.F. Goodrich tires shall be arrived at independently by both the defendant and individual tire dealers. The judgment contains sufficient record-keeping requirements and access to defendant's records to allow the Department to adequately monitor defendant's activities in the future.

Accordingly, it is the opinion of the Department of Justice that the proposed judgment is fully adequate to prevent future antitrust violations by the defendant. It is also the view of the Department that disposition of the case without additional litigation is appropriate in view of the fact that the proposed judgment includes the form and scope of relief equal to that which might be obtained after a full airing of the issues.

IV. Alternatives to the Proposed Consent Judgment

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint.

In line with the Antitrust Division's policy in existence at the time the case was filed, the Government originally sought a perpetual decree. Thereafter, the Division's policy in this regard changed to insistence on a term of 10 years, the term specified in the decree.

V. Remedies Available to Potential Private Plaintiffs

Section 4 of the Clayton Act [15 U.S.C. § 15] provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorneys' fees. Following the filing of the Government's Complaint in this action, several lawsuits were brought on behalf of various classes of persons allegedly injured as a result of the violation of the antitrust laws alleged in the Government's suit. These lawsuits are now in the discovery phase and are pending before this Court. (*In Re B.F. Goodrich Antitrust Litigation*, MDL-366 including: *State of California* v. *B.F. Goodrich Co.*, Civil No. C-78-2263; *State of Arizona* v. *B.F. Goodrich Co.*, Civil No. 79-1841; *State of Colorado* v. *B.F. Goodrich*, Civil No. C-80-0252). These plaintiffs and any potential plaintiff will retain the same rights to seek monetary and equitable remedies that they would have had if the proposed judgment had not been entered. However, pursuant to Section 5(a) of the Clayton Act [15 U.S.C. § 16(a)], this judgment has no *prima facie* effect in the lawsuits which have been brought or may be brought against defendant B. F. Goodrich.

VI. Procedures Available for Modification of the Proposed Judgment

The proposed consent judgment is subject to a stipulation by and between the United States and the defendant which provides that the United States may withdraw its consent to the proposed judgment at any time before the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed consent judgment provides for the Court's retention of jurisdiction of this action in order, among other reasons, to permit either of the parties thereto to apply to the Court for such orders as may be necessary or appropriate for the modification of the Final Judgment.

As provided by Section 2(b) of the Antitrust Procedures and Penalties Act, any persons wishing to comment on the proposed consent judgment may, for the sixty (60) day period prior to the effective date of the judgment, submit written comments to: Anthony E. Desmond, Chief, San Francisco Field Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, CA 94102.

The comments, and the responses thereto, will be filed with the Court and published in the Federal Register. The Department of Justice will evaluate all such comments and determine whether there are any reasons for withdrawal of its consent to the judgment.

VII. Determinative Documents

Since there are no materials or documents which were determinative in formulating a proposal for the consent judgment, none are being filed by the plaintiff pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act.

Glenda R. Jermanovich,
Shauna I. Marshall,
Attorneys, Department of Justice.

[FR Doc. 80-40466 Filed 12-29-80; 8:45 am]
BILLING CODE 4410-01-M

Proposed Final Judgment in United States v. Hercules Incorporated and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and penalties Act, 15 U.S.C. § 16(b)-(h), that on December 16, 1980, a proposed Final Judgment and a Competitive Impact Statement ("CIS") as set out below have been filed with the United States District Court for the District of New Jersey in *United States* v. *Hercules Incorporated*, Civil Action No. 80-136. The Complaint in this case alleges that Hercules violated the Sherman Act by monopolizing the U.S. industrial nitrocellulose market through exchanging price information with foreign competitors.

The proposed Judgment enjoins the defendant from engaging in or renewing any of the alleged illegal conduct and requires the defendant to refrain from exchanging price information with its competitors.

The CIS describes the terms of the Judgment and the background of the action and concludes that the proposed Judgment provides appropriate relief against the violation alleged in the Complaint.

Public comment is invited within the statutory 60-day comment period. Such comments, and response thereto, will be published in the *Federal Register* and filed with the Court. Comments should be directed to Kevin R. Sullivan, attorney, Foreign Commerce Section, Antitrust Division, Department of Justice, Washington, D.C. 20530.

Joseph H. Widmar,
Director of Operations.

United States District Court, District of New Jersey

Hon. Dickinson R. Debevoise

Civil Action No. 80-136

Filed: December 16, 1980.
Entered: ————.

United States of America, Plaintiff, v. *Hercules Incorporated*, Defendant.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A Final Judgment in the form attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceding. Dates: December 16, 1980

For the plaintiff:
Sanford M. Litvak, *assistant Attorney General*; Joseph H. Widmar, *Director of Operations*; Charles F. B. McAleer, *Special Assistent for Judgment Negotiations*; Charles S. Stark; Kevin R. Sullivan; Jane C. Luxton; James J. Egan.

For the defendant:
Carpenter, Bennett & Morrissey, By: Thomas L. Morrissey, *A Member of the Firm*; Foley, Lardner, Hollabaugh & Jacobs, By: Ephraim Jacobs, *A Member of the Firm.*

United States District Court, District of New Jersey

Hon. Dickinson R. Debevoise
Civil Action No. 80-136

Final Judgment

Filed: December 16, 1980.

United States of America, Plaintiff, v. *Hercules Incorporated*, Defendant.

Plaintiff, United States of America, having filed its complaint herein on January 11, 1980, and plaintiff and defendant, Hercules Incorporated ("Hercules"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment's constituting any evidence against or an admission by any party with respect to any such issue:

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

Ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint states a claim upon which relief may be granted against the defendant under Section 2 of the Sherman Act (15 U.S.C. § 2).

II

As used in this Final Judgment, the term:

(A) "Person" means any individual, corporation, partnership, firm, association, or other business or legal entity;

(B) "Industrial nitrocellulose" means a dry white amorphous synthetic chemical produced by the chemical action of nitric acid on cellulose. Commonly made from the cellulose found in wood pulp or cotton linters, industrial nitrocellulose is classified by its uses and has a nitrogen content between 10.8 percent and 12.2 percent;

(C) "Nitrocellulose producer" means those persons engaged in the business of manufacturing nitrocellulose;

(D) "Distributor" means (so long as they serve in that capacity) any person in the U.S. who has been publicly designated as an agent or distributor, or whose designation as such is otherwise made known to the defendant by the producer, distributor, or agent;

(E) "Subsidiary" shall mean a company of which the parent owns more than 50% of capital stock; and

(F) "Affiliate" shall mean an entity of which the defendant has more than 50% non-stock ownership interest or has less than 50% interest and exercises or has the right to exercise control.

III

This Final Judgment applies to the defendant, Hercules, and to its officers, directors, agents, employees, subsidiaries, affiliates, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Subject to the exceptions provided in Articles V and VI herein, defendant Hercules is enjoined and restrained from:

(A) Furnishing to or requesting from any other industrial nitrocellulose producer, or distributor in the U.S. for such producer:

1. information concerning the prices, terms or other conditions of sale which any industrial nitrocellulose producer intends to charge or is considering submitting to any actual or prospective purchaser of industrial nitrocellulose; provided that this prohibition shall not apply to information disseminated in the form of a press release or public announcement, or to written notification to all or to a class of customers or prospective customers; and

2. information concerning industrial nitrocellulose production capacity, excess production capacity, or production available for export; provided that this prohibition shall not apply to information disseminated in the form of a press release or public announcement, or to written notification to all or to a class of customers or prospective customers; and

(B) Acting as a distributor or agent in the United States for industrial nitrocellulose produced by any other industrial nitrocellulose producer.

V

Nothing in this Final Judgment shall be applicable to any communications with any other industrial nitrocellulose producer, or distributor in the United States for such producer, concerning price, other terms and conditions of sale, or production available for sale, in connection with a bona fide potential purchase or sale of industrial nitrocellulose between Hercules and such other industrial nitrocellulose producer, or distributor in the United States for such producer. The parties agree that, while it is not possible to anticipate all bona fide situations that might lead to buyer-seller relations between producers in the purchase or sale of industrial nitrocellulose, usually such relations are the result of: temporary inability of a producer to meet the demands of a growing market; shortage or cessation of supply capabilities; interruption of manufacturing or distribution capabilities because of explosion, fire, accident, strike or other work stoppage; and the desire or need of a producer to obtain a type or grade of industrial nitrocellulose it does not manufacture.

VI

Nothing in this Final Judgment shall be applicable to the furnishing or requesting of information described in Article IV hereof in connection with a possible acquisition, sale or licensing of assets, business or stock, or a joint venture; provided that in such circumstances, defendant is ordered and directed, prior to the furnishing or requesting of such information, to advise plaintiff of the nature of the transaction and of the information to be furnished or requested.

VII

Defendant is ordered and directed to:

(A) Furnish a copy of this Final Judgment to each of its officers, directors, sales and service managers concerned with the production or sale of industrial nitrocellulose within thirty (30) days of entry of this Final Judgment;

(B) Furnish a copy of this Final Judgment to each successor to those persons described in Paragraph VII (A) hereof within sixty (60) days after each such successor is employed;

(C) Attach to each a copy of this Final Judgment furnished pursuant to Subparagraph VII (A) and (B) hereof a statement advising each person of his or her obligations; such statement shall include (1) an instruction that non-compliance with this Final Judgment will result in appropriate disciplinary action determined by the defendant which may include dismissal, and (2) advice that the defendant's legal advisers are available at all reasonable times to confer with such persons regarding any compliance question or problem;

(D) File with this Court and serve upon the plaintiff within ninety (90) days after the date of entry of this Final Judgment and annually thereafter on the anniversary of this Final Judgment an affidavit as to the fact and manner of its compliance with Paragraph VII hereof; and

(E) Serve upon the plaintiff annually on the anniversary of this Final Judgment the following information concerning bona fide purchases and sales of industrial nitrocellulose between Hercules and any other industrial nitrocellulose producer pursuant to Article V hereof: indentity of purchaser and seller; amount of industrial nitrocellulose purchased or sold; and price of nitrocellulose purchased or sold. If Hercules is the purchaser, the information so furnished shall include a statement of the reasons for such purchase.

VIII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted:

(1) Access during regular office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, who may have counsel present; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees, and agents of defendants, who may have counsel present;

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested;

(C) No information or documents obtained in the means provided in this Section VIII shall be divulged by an representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law; and

(D) If at the time information or documents are furnished by defendant to plaintiff by the means provided in this Section VIII, and defendant at the time represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to

claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceedings (other than a grand jury proceeding) to which defendant is not a

II

Description of the Practices Giving Rise to the Alleged Violation of the Antitrust Laws

Industrial nitrocellulose is used in combination with other chemicals as a

and continues to monopolize the industrial nitrocellulose market in the United States; (b) actual and potential competition in the production and sale of industrial nitrocellulose in the United States has been restrained; and (c) purchasers of industrial

any such transaction before furnishing or requesting such information.

2. Affirmative Obligations

The proposed Final Judgment (Paragraph VII) requires that the defendant furnish a

provides all the relief which the United States sought in its Complaint, and the additional expense of litigation would not result in additional public benefit.

IV

pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(h).

Kevin R. Sullivan,
Attorney, United States Department of Justice.
Jane C. Luxton,

claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceedings (other than a grand jury proceeding) to which defendant is not a party.

IX

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or the carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, or for the punishment of violation hereof.

X

Defendant shall require, as a condition of the sale or disposition of all, or substantially all, of the assets used by it in its industrial nitrocellulose business, that the acquiring party agree to be bound by the provisions of this Final Judgment, and that such agreement be filed with the Court.

XI

The term of this Final Judgment shall be ten (10) years from the date of entry.

XII

Entry of this Final Judgment is in the public interest.

Dated:

_____,

United States District Judge.

United States District Court, District of New Jersey

Civil Action No.

Filed: December 16, 1980.

United States of America, plaintiff, v. *Hercules Incorporated,* Defendant.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. §§ 16(b)–(h), the United States of America submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

The Nature and Purpose of the Proceeding

On January 11, 1980, the Department of Justice filed a civil antitrust complaint under Section 4 of the Sherman Act (15 U.S.C. § 4), alleging that the defendant violated Section 2 of the Sherman Act (15 U.S.C. § 2). The Complaint alleged that the defendant has attempted to monopolize and has monopolized the production and sale of industrial nitrocellulose in the United States.

The Complaint sought equitable relief to prevent continuing violations of the Sherman Act by Hercules, Inc. ("Hercules"), which have had the effect of restraining actual and potential competition in the production and sale of industrial nitrocellulose in the United States.

II

Description of the Practices Giving Rise to the Alleged Violation of the Antitrust Laws

Industrial nitrocellulose is used in combination with other chemicals as a bonding agent in various coatings. Applied in solutions, industrial nitrocellulose forms hard, smooth finishes known for their short drying time and attractive appearance. Industrial nitrocellulose is widely used in wood finishes, lacquers, paints, primers, textile and paper coatings, book bindings, printing inks, cellophane film, coatings and fingernail polishes.

Before July 1977, Hercules and E. I. duPont de Nemours and Company, Inc. ("duPont") produced and sold all of the industrial nitrocellulose used in the United States. In 1977 approximately 64 million pounds of industrial nitrocellulose were sold in the United States. Hercules' sales accounted for approximately 65 percent of 1977 U.S. sales, and duPont's sales accounted for approximately 35 percent of the U.S. total.

On July 19, 1977, duPont announced its decision to discontinue the production and sale of industrial nitrocellulose at the end of 1977. This decision left Hercules as the sole domestic nitrocellulose producer.

Shortly after the duPont announcement, foreign industrial nitrocellulose producers, especially those based in Europe, began to consider selling this product in the United States in competition with Hercules. For its part, Hercules did not have sufficient capacity to supply the entire U.S. demand, and was considering expanding its production.

Hercules' first effort, before it decided whether to expand, was to seek to ensure sufficient supplies of industrial nitrocellulose at reasonable prices for the short term. Hercules proposed to European producers that it act as the importer for all European producers interested in selling industrial nitrocellulose in the United States. After that effort was abandoned, Hercules continued to have meetings and other communications with foreign producers, the purpose and effect of which were to control the price of industrial nitrocellulose in the United States. During those communications, present prices and future price intentions were exchanged. In the last quarter of 1977 and throughout 1978, the dry weight price of substantially all the industrial nitrocellulose sold by Hercules, Societe Nationale des Poudres et Explosifs ("SNPE"), and Wolff Walsrode A.G. ("Wolff") was stabilized, exclusive of drum and duty costs.

In 1978, Hercules' sales accounted for more than 75 percent of the industrial nitrocellulose sold in the United States. The balance purchased in the United States in 1978 was produced and sold by foregin manufacturers in Europe and Japan. In that year, Hercules announced a plan to expand its industrial nitrocellulose plant capacity by 30 million pounds, by mid-1980, enough to enable Hercules to more than satisfy the entire American demand for industrial nitrocellulose.

The Complaint alleges that Hercules' actions have had the following effects, among others: (a) the defendant has monopolized and continues to monopolize the industrial nitrocellulose market in the United States; (b) actual and potential competition in the production and sale of industrial nitrocellulose in the United States has been restrained; and (c) purchasers of industrial nitrocellulose have been denied the benefits of a free and competitive market.

III

A. Explanation of the Proposed Final Judgment

The United States and the defendant have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA, 15 U.S.C. § 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or an admisson by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, the proposed Final Judgment may not be entered until the Court determines that entry is in the public interest.

1. Prohibited Conduct

Paragraph IV(A) of the proposed Final Judgment prohibits the defendant from furnishing to or requesting from any other nitrocellulose producer, or the distributor in the United States for such producer, information concerning the prices, terms, or other conditions of sale which any nitrocellulose producer intends to charge, or is considering submitting to any actual or prospective purchaser of industrial nitrocellulose, and from furnishing to or requesting from such producer and distributor for such producer, any information concerning industrial nitrocellulose production capacity, excess production capacity, or production available for export. This Paragraph does allow price and capacity information to be disseminated to the public in the form of a press release, public announcement, or written notification to all or to a class of customers.

Paragraph IV(B) enjoins Herrcules from acting as a distributor or agent for industrial nitrocellulose produced by any other nitrocellulose producers.

Paragraph V provides that nothing in the proposed Final Judgment shall be applicable to any discussions of price or other terms and conditions of sale offered by Hercules to any other nitrocellulose producer or offered by any other nitrocellulose producer to Hercules in connection with a *bona fide* purchase or sale of industrial nitrocellulose between Hercules and such other nitrocellulose producer. *Bona fide* situations include those which are the result of temporary inability of a producer to meet the demand of a growing market, shortage or cessation of supply capabilities, interruption of manufacturing or distribution capabilities because of explosion, fire, accident, strike, or other work stoppage; or because of the desire or need of a producer to obtain a type of industrial nitrocellulose it does not manufacture.

Paragraph VI provides that the Final Judgment is not applicable to information furnished or requested in connection with a possible acquisition, sale or licensing situation, provided that Hercules is required to advise the Government of the nature of any such transaction before furnishing or requesting such information.

2. Affirmative Obligations

The proposed Final Judgment (Paragraph VII) requires that the defendant furnish a copy of the Final Judgment to each of its officers, directors, sales managers, and to each successor of those persons within thirty (30) days after each successor is employed, together with a statement advising each person of his or her obligations under the Final Judgment, of the possible disciplinary actions for non-compliance, and of the availability of advice from the company's legal advisers. Paragraph VI also requires the defendant to serve on the plaintiff within ninety (90) days after entry of the Final Judgment, and annually therafter, an affidavit as to the fact and manner of its compliance with Paragraph VII. Paragraph VII requires the defendant to serve plaintiff with certain information concerning *bona fide* purchases and sales of industrial nitrocellulose, including the identity of the purchaser and the seller, the amount of industrial nitrocellulose involved, the price, and, if Hercules is the purchaser, a statement of the reason for the purchase.

Section VIII of the Final Judgment will provide the Justice Department with access, upon reasonable notice, to Hercules' records and personnel in order to determine Hercules' compliance with the Judgment. Paragraph X will require any purchaser of all or substantially all the assets used by Hercules in its nitrocellulose business to enter an agreement to be bound by the provisions of the Final Judgment, and to file that agreement with the Court.

3. Scope of the Proposed Judgment

The proposed Final Judgment will remain in effect for a period of ten (10) years from the date of entry. It applies to the defendant Hercules and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

4. Effect of the Proposed Judgment on Competition

The relief in the proposed Final Judgment is designed to prevent any recurrence of the activities alleged in the Complaint. The prohibitive language of the Judgment is designed to ensure that Hercules will act independently in determining prices, terms and conditions at which it will sell or offer to sell industrial nitrocellulose. It will also prevent Hercules from controlling the price or distribution in the United States of foreign-produced industrial nitrocellulose. The affirmative obligations are designed to ensure that Hercules' employees are aware of their obligations under the decree in order to avoid a repetition of the kinds of behavior that occurred.

The Department of Justice believes that the proposed Final Judgment contains adequate provisions to prevent further violations by the defendant of the type of activities upon which the Complaint is based. The Department believes that disposition of the lawsuit without further litigation is appropriate because the proposed Judgment provides all the relief which the United States sought in its Complaint, and the additional expense of litigation would not result in additional public benefit.

IV

Procedures Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against this defendant.

V

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Kevin R. Sullivan, Antitrust Division, United States Department of Justice, Washington, D.C. 20530 within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register.** All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for its modification, interpretation or enforcement.

VI

Alternatives to the Proposed Final Judgment

The Department considers the substantive language of the Judgment to be of sufficient scope and effectiveness to make litigation on relief unnecessary, as the Judgment provides all relief which reasonably could have been expected after trial.

The Division considered, but did not propose, relief which would include divestiture of part of Hercules' industrial nitrocellulose production capacity. This possibility was not prayed for in the Compiaint and was not requestd from the defendant because it did not seem warranted by the facts, and because Hercules' single plant production capacity could not practicably be divided.

VII

Determinative Materials and Documents

No materials or documents were considered determinative by the United States in formulating the proposed Final Judgment. Therefore, none are being filed pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(h).

Kevin R. Sullivan,

Attorney, United States Department of Justice.

Jane C. Luxton,

Attorney, United States Department of Justice.

[FR Doc. 80-40567 Filed 12-29-80; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Established 1981 Aggregate Production Quotas.

SUMMARY: This notice estalishes 1981 aggregate production quotas for tetrahydrocannabinols, a Schedule I substance, and dextropropoxyphene and pethidine intermediate-A, Schedule II substances, as required under the Controlled Substances Act of 1970.

EFFECTIVE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Regulatory Control Division, Drug Enforcement Administration, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled substances Act (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration in accordance with § 0.100 of Title 28 of the Code of Federal Regulations.

On November 7, 1980, a notice of the proposed 1981 aggregate production quotas for tetrahydrocannabinols, dextropropoxyphene, and pethidine intermediate-A was published in the **Federal Register** (45 FR 74092). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before December 7, 1980.

One comment was received from Eli Lilly and Company of Indianapolis, Indiana, concerning dextropropoxyphene. Lilly has expressed concern that the proposed 1981 aggregate production quota for this substance will be insufficient to meet total U.S. medical needs. Because of the uncertainty attendant to the control of dextropropoxyphene in Schedule II, Lilly has requested that comments be continued to be considered by DEA after the issuance of the 1981 manufacturing

quotas to the companies who have applied for them. DEA will take into consideration any such comments received after the issuance of these

Respondent at Silver Spring, Maryland, and AO8266733, issued to the Respondent at Brooklyn, New York, should not be revoked for reasons stated

Dated: December 22, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

He charged as mush as five times the legitimate price for these prescriptions. In at least one instance, Mr. Goldberg "doctored" a prescription for his own use and on several occasions, he himself

Administrator does not believe that a pharmacist who has abused the trust placed in members of his professions and who has diverted controlled

Dated: December 22, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

quotas to the companies who have applied for them. DEA will take into consideration any such comments received after the issuance of these quotas. However, unless extraordinary events require otherwise, full consideration of them will be deferred until early 1981, when the quotas for all Schedule II substances are reviewed and, where necessary, revised. No other comments and no requests for a hearing relative to any of the substances involved were received. In accordance with § 1303.11(c) of Title 21 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration has determined that no hearing relative to the above mentioned comment is necessary at this time.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the 1981 aggregate production quotas for dextropropoxyphene and pethidine intermediate-A, expressed as anhydrous base, and tetrahydrocannabinols be established as follows:

Controlled substance	1981 aggregate production quota (grams)
Tetrahydrocannabinols (Schedule I)	20,000
Dextropropoxyphene (Schedule II)	44,798,000
Pethidine Intermediate-A (Schedule II)	6,877,000

DEA will review the above established quotas early in 1981 to take into consideration actual 1980 sales and actual December 31, 1980 inventories, as well as other information which might be available to DEA at that time.

Dated: December 22, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 80-40488 Filed 12-29-80; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 80-31]

Dennis Stephen Oddo, D.D.S.; Revocation of Registrations

On October 7, 1980, the Administrator of the Drug Enforcement Administration [DEA] issued to Dennis Stephen Oddo, D.D.S. [Respondent], Orders to Show Cause as to why DEA Certificates of Registration AO8138605, issued to the Respondent at Silver Spring, Maryland, and AO8266733, issued to the Respondent at Brooklyn, New York, should not be revoked for reasons stated in the Orders to Show Cause. The Respondent, through counsel, has waived a hearing on the issues raised by the Orders to Show Cause.

The Administrator has considered the investigative file and the record of these proceedings and, pursuant to the provisions of Title 21, Code of Federal Regulations, Sections 1301.54(e) and 1316.67, hereby publishes his final order, based upon the findings of fact and conclusions of law hereinafter set forth.

The Administrator finds that on September 22, 1980, in the Circuit Court of Montgomery County, State of Maryland, in Docket No. 23766, the Respondent was convicted, in 43 counts, of violating Section 286(a)(1), Article 27, Annotated Code of Maryland, each of such counts being a felony offense relating to controlled substances. There are, therefore, lawful or statutory grounds for the revocation of the Respondent's registrations under Title 21, United States Code, Section 824(a)(2).

The Administrator further finds that by order of the Board of Dental Examiners of the State of Maryland, effective January 4, 1980, the Respondent's license to practice dentistry was suspended, thereby terminating his authority to prescribe, dispense or otherwise handle controlled substances in the course of professional practice in that State. The Administrator, therefore, concludes that there is an additional statutory basis for the revocation of the DEA registration issued to the Respondent in the State of Maryland. 21 U.S.C. 824(a)(3).

Having concluded that there are statutory grounds for the revocation of the Respondent's DEA registrations, and having been presented no legal or factual reasons for any other determination, it is the Administrator's decision that DEA Certificates of Registration AO6138605 and AO8266733, previously issued to Dennis Stephen Oddo, D.D.S., should be revoked, effective immediately. Accordingly, pursuant to the authority granted to the Attorney General by 21 U.S.C. 824, and redelegated to the Administrator of the Drug Enforcement Administration by 28 CFR § 0.100, the Administrator hereby orders that the Respondent's DEA registrations be, and they hereby are, revoked, effective immediately.

Dated: December 22, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 80-40452 Filed 12-29-80; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 80-11]

Gold Drugs, Inc.; Permission To Retain DEA Registration

On April 15, 1980, the Administrator of the Drug Enforcement Administration [DEA] directed to Gold Drugs, Inc. [Respondent] of Hartford, Connecticut, an Order to Show Cause proposing to revoke Respondent's DEA Certificate of Registration [AG6333252] and to deny Respondent's pending application for renewal of that registration for reason that Everett Goldberg, president of Gold Drugs, Inc., had been convicted of felony offenses relating to controlled substances. The Respondent, through Counsel, requested a hearing on the issues raised by the Order to Show Cause.

Following the completion of prehearing procedures, the hearing in this matter was held in Washington, D.C. on June 11, 1980. Administrative Law Judge Francis L. Young presided. On October 2, 1980, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and on October 30, 1980, pursuant to 21 CFR 1316.65, he transmitted the record of these proceedings to the Administrator. The record contains, *inter alia*, the Administrative Law Judge's report or opinion, the hearing transcript, the Administrative Law Judge's orders and rulings, all exhibits which had been placed in the record, and the papers filed by the respective parties.

The Administrator has considered this record in its entirety and, pursuant to 21 CFR § 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge's report has been extremely helpful in this matter, Judge Young has carefully identified the issues and has clearly, thoroughly and fairly summarized the evidence in this case. The Administrator hereby adopts the recommended findings of fact and conclusions of law in their entirety.

The Administrator finds that Mr. Goldberg was responsible for the diversion of large quantities of Schedule II controlled substances. He knowingly filled fraudulent prescriptions for drugs such as Dilaudid, Quaalude, Percodan and various amphetamine preparations.

He charged as much as five times the legitimate price for these prescriptions. In at least one instance, Mr. Goldberg "doctored" a prescription for his own use and on several occasions, he himself authored prescriptions in order to maintain the appearance of accountability in his dispensing records. These illegal activities began within weeks of the date on which Mr. Goldberg opened his pharmacy for business. It was a time period during which Mr. Goldberg was beset by financial, physical, psychological and family problems. These activities resulted in Mr. Goldberg's arrest and, ultimately, his guilty plea to five felony counts charging violations of the Connecticut controlled substance laws. Mr. Goldberg is now on probation and has paid a $2,500.00 fine.

In early January 1978, the Connecticut Pharmacy Commission suspended Mr. Goldberg's license as a registered pharmacist. The suspension is effective until January 20, 1982. The Pharmacy Commission has permitted Mr. Goldberg to continue the operation of the Respondent pharmacy through the employment of another pharmacist who acts as the pharmacist-manager and who is responsible for the lawful operation of the pharmacy business. Since the date of his suspension by the Connecticut authorities, Mr. Goldberg has restricted his activities to the retail merchandising aspect of the business—he does not work as a pharmacist.

The Administrator concludes, as did the Administrative Law Judge, that there is a lawful statutory basis pursuant to 221 U.S.C 824(a)(2) for the revocation of the Respondent's DEA registration and for the denial of its pending application by reason of the conviction of its president of felony offenses relating to controlled substances. The conviction of an owner or officer of a corporate registrant is sufficient ground for the revocation of the corporation's DEA registration. *In the Matter of Lynnfield Drug, Inc.*, Docket No. 76-6, 42 FR 8435 (1977); *Arenstein* v. *California State Board*, 71 Cal. Rptr. 357, 265 Cal. App. 179 (1968).

The illicit activities and felony conviction of Mr. Goldberg notwithstanding, the Administrative Law Judge felt that the circumstances which has led to Mr. Goldberg's violations has been eliminated, that the threat of further diversion by Mr. Goldberg was remote, and that, therefore, the pharmacy should be permitted to retain its DEA registration.

The Administrator reaches the same conclusion, but for different reasons than those discussed by the Administrative Law Judge. The Administrator does not believe that a pharmacist who has abused the trust placed in members of his professions and who has diverted controlled substances to individuals whom he knew were disposing of them in the illicit market should be entrusted with the responsibility for maintaining controlled substances within the closed system of distribution envisaged by the Controlled Substances Act. The action of the Connecticut Pharmacy Commission, suspending Mr. Goldberg's license and requiring him to hire a pharamacist-manager, has provided an opportunity to observe that the pharmacy can be run, lawfully and regularly, through the agency of this other pharmacist. The pharamacist-manager is responsible for the ordering, dispensing and security of the Respondent's controlled substances. He must see that dispensing records are accurately kept, that a true accountability is maintained, and that controlled substances are dispensed only pursuant to lawfully issued prescriptions in usual course of the pharmacy's professional activity. The continued employment of an independent registered pharmacist-manger is a much surer way to protect the public than to speculate that Mr. Goldberg is unlikely to again violate the law.

Accordingly, it is the Administrator's decision, pursuant to the discretion vested in him by 21 U.S.C. 824 and 28 CFR § 0.100, not to revoke the Respondent's DEA registration or to deny its pending application for renewal of such registration. This decision is conditioned, however, upon the maintenance of the *status quo* with respect to the employment of a pharmacist-manager other than Mr. Goldberg. In the event that this condition is violated, or if there is any further diversion of controlled substances from the Respondent pharmacy, the Administrator will not hesitate to order the immediate revocation of the Respondent's registration, based upon its president's conviction.

After Mr. Goldberg's license to practice pharmacy has been restored by the Connecticut authorities, and once there has been an adequate period of time in which to observe Mr. Goldberg, working as a pharmacist in conjunction with the pharmacist-manager, the Administrator will consider an application to vacate the condition imposed by this order.

Dated: December 22, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 80-40543 Filed 12-29-80; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 80-28]

Marshall S. Tuck, M.D.; Revocation of Registration

On August 22, 1980, the Administrator of the Drug Enforcement Administration [DEA] issued to Marshall S. Tuck, M.D. [Respondent], an Order to Show Cause proposing to revoke the Respondent's DEA Certificate of Registration, AT1479939, for reason that the Respondent was not licensed to practice medicine in the State of Arizona and was not, therefore, authorized to prescribe, dispense, administer or otherwise handle controlled substances under the laws of that State. Simultaneously, citing his finding of imminent danger to the public health and safety, the Administrator ordered the immediate suspension of the Respondent's registration pending a final determination in these proceedings.

In a two-sentence letter dated September 23, 1980, the Respondent, *pro se*, requested a hearing on the issues raised by the Order to Show Cause.

By Order dated October 3, 1980, the Administrative Law Judge noted that the only ground stated in the Order to Show Cause in support of the proposed revocation seemed to present only an issue of law and granted Government counsel an opportunity to file a motion for summary judgment. The order also provided that the Respondent was to have an opportunity to file a response or opposing motion. Government counsel filed a Motion for Summary Disposition on October 20, 1980. No response has been received from the Respondent and the period of time provided him for the filing of same has expired.

The Government's motion was supported by a certification of the Associate Executive Director of the Arizona State Board of Medical Examiners attesting to the fact that as of October 7, 1980, the Respondent was not licensed, either as a physician or a physician's assistant, in the State of Arizona. The Respondent is not, therefore, a practitioner authorized to dispense or conduct research with controlled substances under the laws of Arizona. Accordingly, DEA is without statutory authority to register the Respondent in Arizona and must terminate his registration. 21 U.S.C. 823(f).

In administrative proceedings in which the Order to Show Cause alleges lack of state authorization to handle controlled substances, this agency has consistently held that, absent a showing

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications

Additions to List of Eligible Labor Surplus Areas Under Executive Orders 12073 and 10582—June 1, 1980 through May 31, 1981

Labor Surplus Area and Geographic Description

in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment, as defined by the Secretary of Labor. Areas

Pension and Welfare Benefit Programs

[Application No. D-2219]

United Cotton Goods Company, Inc., Employee Stock Ownership Plan;

from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by counsel for United pursuant to section 408(a) of the

In administrative proceedings in which the Order to Show Cause alleges lack of state authorization to handle controlled substances, this agency has consistently held that, absent a showing that such state authorization in fact exists, the DEA is without statutory authority to issue or maintain a registration. In such cases, if a hearing is requested, the proceedings may be terminated summarily, that is, without an evidentiary hearing, once it is determined or established, on the record, that the prerequisite state authority is lacking. See, *James Waymon Mitchell*, Dk. 79–16, 44 FR 71466 (1979); *Alfred Tennyson Smurthwaite*, Dk. 77–29, 43 FR 11873 (1978); *John W. Whitenight, D. O.*, Dk. 77–30, 43 FR 28259 (1978); and *David Sachs, M.D.*, Dk. 77–2, 42 FR 29112 (1977).

It is settled law that when no fact question is involved or the facts are agreed, a plenary, adversary administrative proceeding involving evidence, cross examination of witnesses, and the like, is not obligatory—even though a pertinent statute prescribes a hearing. In such situations, the rational is that Congress does not intend for administrative agencies to perform meaningless tasks. *United States* v. *Consolidoted Mines and Smelting Co., Ltd.*, 455 F. 2d 432, 453 (9th Cir. 1971).

In this case, Government counsel has provided documentary evidence establishing that the Respondent is not licensed to practice medicine in the State of Arizona and that he is not, therefore, authorized to administer, dispense, prescribe or otherwise handle controlled substances under the laws of that State. The Administrative Law Judge has recommended that the Respondent's registration be revoked. The Administrator, after considering the record of this matter, concurs, in all respects, with the recommendations of the Administrative Law Judge.

Accordingly, pursuant to the authority granted to the Attorney General by 21 U.S.C. 824, and redelegated to the Administrator of the Drug Enforcement Administration by 28 CFR § 0.100, the Administrator hereby orders that DEA Certificate of Registration AT1479939, previously issued to Marshall S. Tuck, M.D., be, and it hereby is, revoked, effective immediately.

Dated: December 22, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 80-40544 Filed 12-29-80; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Additions to Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce a determination by the Department to add 12 areas to the list of labor surplus areas effective December 1, 1980.

FOR FURTHER INFORMATION CONTACT: James W. Higgins, Assistant Chief, Division of Labor Market Information, 601 D Street NW., Washington, D.C. 20213 (202–376–6263).

SUPPLEMENTARY INFORMATION: The areas described below have been classified by the Assistant Secretary for Employment and Training as labor surplus areas for purposes of Executive Orders 12073 and 10582 pursuant to 20 CFR 654.5(c) and added to the "Listing of Eligible Labor Surplus Areas" for June 1, 1980, through May 31, 1981, effective December 1, 1980.

Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under this Order for classifying and designating areas which are labor surplus areas. Under Executive Order 10582, executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment, as defined by the Secretary of Labor. Areas of substantial unemployment are defined by Department of Labor regulations as labor surplus areas at 20 CFR 654.13.

The Department's labor surplus area classification procedures are set forth at 20 CFR Part 654, Subpart A. The regulations require that the Assistant Secretary for Employment and Training classify labor surplus areas and publish the labor surplus areas together with corresponding geographic descriptions. Accordingly, the following additions to the list of labor surplus areas are published for the use of all Federal departments and agencies in directing procurement activity.

Additions to List of Eligible Labor Surplus Areas Under Executive Orders 12073 and 10582—June 1, 1980 through May 31, 1981

Labor Surplus Area and Geographic Description

Alabama:
Morgan County—Morgan County
North Carolina:
Person County—Person County
Ohio:
Ashtabula County—Ashtabula County
Crawford County—Crawford County
Defiance County—Defiance County
Balance of Lucas County—Lucas County less Toledo City
Paulding County—Paulding County
Shelby County—Shelby County
Toledo City—Toledo City
Williams County—Williams County
Wyandot County—Wyandot County
Pennsylvania
Balance of Montgomery County—Montgomery County less Abington Township and Lower Merion Township

Signed at Washington, D.C. the 8th day of December 1980.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 80-40338 Filed 12-29-80; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Additions to Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce a determination by the Department to add 19 areas to the list of labor surplus areas effective October 1, 1980.

FOR FURTHER INFORMATION CONTACT: James W. Higgins, Assistant Chief, Division of Labor Market Information, 601 D Street, NW., Washington, D.C. 20213 (202–376–6263).

SUPPLEMENTARY INFORMATION: The areas described below have been classified by the Assistant Secretary for Employment and Training as labor surplus areas for purposes of Executive Orders 12073 and 10582 pursuant to 20 CFR 654.5(c) and added to the "Listing of Eligible Labor Surplus Areas" for June 1, 1980, through May 31, 1981, effective October 1, 1980.

Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under this Order for classifying and designating areas which are labor surplus areas. Under Executive Order 10582, executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment, as defined by the Secretary of Labor. Areas of substantial unemployment are defined by Department of Labor regulations as labor surplus areas at 20 CFR 654.13.

The Department's labor surplus area classification procedures are set forth at 20 CFR Part 654, Subpart A. The regulations require that the Assistant Secretary for Employment and Training classify labor surplus areas and publish the labor surplus areas together with corresponding geographic descriptions. Accordingly, the following additions to the list of labor surplus areas are published for the use of all Federal departments and agencies in directing procurement activity.

Additions to List of Eligible Labor Surplus Areas Under Executive Orders 12073 and 10582

June 1, 1980 through May 31, 1981.

Labor Surplus Area, and Geographic Description

Illinois
Whiteside County, Whiteside County.
Michigan
Balance of Eaton County, Eaton County less Lansing City (part).
Balance of Ingham County, Ingham County less East Lansing City and Lansing City (part).
Balance of Kent County, Kent County less Grand Rapids City and Wyoming City.
Lincoln Park City, Lincoln Park City in Wayne County.
Balance of Saginaw County, Saginaw County less Saginaw City.
Balance of Washtenaw County, Washtenaw County less Ann Arbor City.
Wyoming City, Wyoming City in Kent County.
New York
Chemung County, Chemung County.
Orange County, Orange County.
Orleans County, Orleans County.
Ohio
Elyria City, Elyria City in Lorain County.
Erie County, Erie County.
Huron County, Huron County.
Lorain City, Lorain City in Lorain County.
Balance of Lorain County, Lorain County less Elyria and Lorain Cities.
Marion County, Marion County.
Medina County, Medina County.
Balance of Summit County, Summit County less Akron City.

Signed at Washington, D.C. the 24th day of November, 1980.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 80-40319 Filed 12-29-80; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefit Programs

[Application No. D-2219]

United Cotton Goods Company, Inc., Employee Stock Ownership Plan; Griffin, Georgia; Proposed Exemption for Certain Transactions

AGENCY: Department of Labor

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt, effective December 30, 1980: (1) the sale by the United Cotton Goods Company, Inc. Employee Stock Ownership Plan (the Plan) of 56,109 shares (the Plan Shares) of the common stock of United Cotton Goods Company, Inc. (United) to Doag Georgia, Inc. (Georgia), for cash and a note of Georgia (the Purchase Money Note); (2) the extension of credit by the Plan to Georgia; and (3) the guarantee of payment on the Purchase Money Note by Doag USA, Inc. (USA), the parent of Gerogia. The proposed exemption, if granted would affect United, Georgia, USA, the participants and beneficiaries of the Plan and other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before February 6, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2219. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Antsen of the Department, Telephone (202) 523–6915. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by counsel for United pursuant to section 408(a) of the Act and section 4975(c) (2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is an employee stock ownership plan established effective September 1, 1975. The assets of a prior frozen profit sharing plan were transferred to the Plan on its effective date so the Plan contains both employer securities and a segregated fund containing the assets of the prior profit sharing plan. As of August 31, 1980, the Plan had assets of approximately $1,944,000 and 240 participants. The corporate trustee of the Plan is the Commercial Bank and Trust Company, (Commercial). Commercial is a directed trustee with all instructions regarding purchase or sale of United stock coming from the Plan's Administrative Committee. The Administrative Committee is composed of A. L. Blanton (Blanton), J. Frank Stovall (Stovall) and Joyce M. Jones (Jones), all of whom are officers, directors and/or employees of United. However, pursuant to a resolution of the Board of Directors of United, Commercial will be designated as having complete fiduciary responsibility with respect to this transaction. This responsibility will include: (1) evaluating the terms and conditions of the Purchase Money Note and (2) determining whether the sale of the Plan Shares is in the best interests of the participants and beneficiaries of the Plan.

2. United is a closely held corporation engaged in the business of importing, manufacturing and selling textile products to hospital, physicians, hotels, motels and linen supply companies. United's principal place of business is Griffin, Georgia. There is no public trading market for the common stock of

United. As of August 31, 1979, the net worth of United was $6,245,965 or $22.57 per share. Earnings for the fiscal year after taxes were $905,073 or $3.27 per

all of Angelica's shares of United stock on November 1, 1980, at a discount price of $27.00 per share. The total cost to United for such redemption was

Note payable over a five year period with interest at ten (10) percent per annum. It is anticipated that the expenses of the transaction will be paid

c. USA will be precluded from upstreaming any funds from United other than those that may result from tax savings for a period of two years and thereafter only if such funding

of the notice of pendency of the exemption as published in the Federal Register and inform the interested persons of their right to comment and the right to request a hearing within the

should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth

United. As of August 31, 1979, the net worth of United was $6,245,965 or $22.57 per share. Earnings for the fiscal year after taxes were $905,073 or $3.27 per share.

3. On November 2, 1980, United had issued and outstanding 229,022 shares of common stock, of which 149,381 shares or sixty five (65) percent were held by Blanton and Stovall, the principals of United, and their immediate families. The remaining shares and their percentage of the total issued and outstanding shares of United were held as follows: (1) the Plan Shares—twenty five (25) percent; (2) three United employees (including Jones)—15,925 shares or seven percent; and (3) twenty six (26) minority shareholders each owning less than 3,000 shares—7,498 shares or three percent.

4. The proposed transaction was described in an agreement (the Agreement and Plan of Merger) which was executed by the parties on October 24, 1980. The Agreement and Plan of Merger states that the transaction involves the acquisition by merger of United by Doag Griffin, Inc. (Griffin). It is anticipated that the effective date of the merger (Effective Date) will be December 30, 1980. The surviving corporate entity will retain the name United.

5. Griffin is a wholly owned subsidiary of Georgia which in turn is a wholly owned subsidiary of USA. All three Doag corporations are incorporated in Georgia. All outstanding and issued stock of USA is owned by Doag Warenhandels, a Republic of West Germany corporation having its principal office in Hamburg, Germany, and whose stock is traded on both the Hamburg and Berlin stock exchanges.

6. Prior to November 2, 1980, Angelica Corp. (Angelica), an entity unrelated to any of the parties to this transaction, had been a minority shareholder of United and held 54,208 shares of United common stock. In seeking to implement the Agreement and Plan of Merger, the management of United was advised by Angelica that Angelica would not consent to the Agreement and Plan of Merger unless it could be guaranteed by September 30, 1980, that the transaction would close in one of two specified fiscal periods. Angelica was motivated by, among other reasons, its desire to book the entire transaction in the same fiscal year that it contemplated losses from a change in its accounting procedures. Since absolute assurances could not be given to Angelica of such a closing and since their dissent could preclude a closing, management of United negotiatied with Angelica on September 30, 1980, to redeem for cash all of Angelica's shares of United stock on November 1, 1980, at a discount price of $27.00 per share. The total cost to United for such redemption was $1,463,616.

7. In order to defray the impact on United of such redemption, Georgia has agreed to contribute $1,000,000 to the capital of United on February 10, 1981 by the purchase of additional common stock of United and the pledge of such stock as additional collateral for the Purchase Money Note. This redemption, in addition to allowing the transaction to be consummated, results in an increase in the purchase price being paid all other United shareholders of approximately $1.55 per share. The Plan will receive approximately $85,000 more from the proposed transaction as a result of the redemption of Angelica's stock.

8. Pursuant to the agreement and Plan of Merger, Griffin will be merged into United with each issued and outstanding share of common stock of United being converted into and exchanged for either cash, or cash and a participation in the Purchase Money Note equal to that percentage of stock ownership covered by the Purchase Money Note. Each share of common stock of Griffin will be converted into and exchanged for one share of United common stock. As a result of the merger, United will become a wholly owned subsidiary of Georgia.

9. Based on the results of a certified audit of United, prepared by Touche ross & Co., for its fiscal year ended August 31, 1980, the purchase price for all shares of United has been established as $8,093,725. When this amount is rounded to a per share value each share of United common stock will have a value of $35.34. The purchase price for each share of United reflects an increase in the per share value of $12.77 from the 1979 audit valuation. This amount will be reduced by the expenses of the transaction which shall be borne proportionately by the shareholders of United. It has been represented that the maximum projections for such expenses will not exceed sixty-five (65) cents per share. Therefore, the net sale price to all shareholders of United, including the Plan, will be not less than $34.69 per share.

10. The terms of the Agreement and Plan of Merger provide that all shareholders of United, except as noted below, will be treated equally. The method of payment for the respective stock interests will be twenty-nine (29) percent in cash on the Effective Date of the Agreement and Plan of Merger and the balance represented by a participation in the Purchase Money Note payable over a five year period with interest at ten (10) percent per annum. It is anticipated that the expenses of the transaction will be paid from the funds received on the Effective Date of the Agreement and Plan of Merger and charged to the separate accounts of the United Shareholders in proportion to their respective stock interests.

11. As set forth in paragraph 3 above, twenty-six (26) shareholders, some of whom are employees of United, own a total of 7,498 shares of United's common stock. In order to accommodate this proposed transaction without the necessity of registering the Purchase Money Note under the Securities Act of 1933 and complying with the Trust Indenture Act as a part of such registration, thereby incurring additional costs and delays, the Agreement and Plan of Merger provides that these minority shareholders will receive full cash payment for their stock on the Effective Date.

12. The Purchase Money Note will be secured by the guaranty of USA and the pledge of all of the issued and outstanding stock of United with Commercial, an independent commercial bank, as escrow agent. The escrow agreement (Escrow Agreement) states that holders of the Purchase Money Note shall exercise their rights and remedies through a person or persons designated as the Holders Representatives. Blanton and Stovall have been designated as the Holders Representatives. In addition, Commercial has been designated a Holders Representative insofar as the Plan is concerned. Accordingly, Commercial, in the event of a breach of any of the terms or conditions of the Purchase Money Note, shall have the unilateral authority to initiate action to protect the Plan's interests. In the event of a default, any of the Representatives would notify Commercial, who, in turn, shall make a written demand upon Georgia. Such written demand would notify Georgia of the acceleration of the Purchase Money Note and would demand payment of all accrued interest and unpaid principal remaining on the Purchase Money Note within ten (10) days of such notice. In addition to the normal safeguards present in a security arrangement of this type, additional safeguards will be provided as follows:

a. Existing management (Messrs. Blanton and Stovall) will be retained under five year incentive employment agreements, including representation on the Board of Directors of United.

b. The employment agreements provide that existing management will retain operational control of United.

c. USA will be precluded from upstreaming any funds from United other than those that may result from tax savings for a period of two years and thereafter only if such funding transfers do not result in the net worth of United dropping below an amount equal to twice the amount of the then outstanding principal balance and remaining interest due on the Purchase Money Note.

d. At the end of each fiscal year, United will be required to have a minimum of $5,000,000 working capital and a ratio of current assets to current liabilities equal to the lower of (i) 2 to 1 or (ii) United's ratio at August 31, 1980 (3 to 1).

13. In summary, the applicant represents that the statutory criteria contained in section 408(a) of the Act have been satisfied as follows: (a) the Administrative Committee represents that the Plan is receiving equal treatment with all other shareholders of United (except for those small shareholders who will be receiving a cash only distribution on the Effective Date); (b) the price per share represents a price exceeding that price paid in prior transactions involving United common stock and substantially exceeds the valuation arrived at by and independent appraiser in 1979; (c) no public trading market existed in which the Plan Shares could alternatively have been sold; (d) the rights of the Plan under the Purchase Money Note are protected through the Escrow Agreement; (e) the Purchase Money Note is collateralized by the common stock of United which exceeds the balance owed to the Plan and other United shareholders; and (f) prior to the effective date of the exemption Commercial, as and independent fiduciary on behalf of the Plan, will review the terms and conditions of the Purchase Money Note and make a determination that the transaction is in the best interests of the Plan and its participants.

Notice to Interested Persons

Within five days following the publication in the Federal Register notice of the proposed exemption will be provided to all active Plan participants and to all former participants or benificiaries who have outstanding account balances, and to Commercial, as corporate trustee of the Plan. The notice will be posted prominently in locations customarily used by United for notices to employees with regard to labor-management relations; notice by mail will be given as required for persons who cannot reasonably be expected to receive notice by the posting. Such notice shall contain a copy of the notice of pendency of the exemption as published in the Federal Register and inform the interested persons of their right to comment and the right to request a hearing within the period set forth in the notice of pendency.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an Administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, effective December 30, 1980 to: (1) the sale of the Plan Shares of United to Georgia provided that the Plan recieve not less than fair market value at the time of sale; (2) the extension of credit by the Plan to Georgia; and (3) the guarantee of payment on the Purchase Money Note by USA.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 23rd day of December, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-40551 Filed 12-24-80; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1522 and Application No. D-1611]

Proposed Class Exemption for Life Insurance Company Discretionary Asset Management

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document is a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed with respect to such transactions under the Internal Revenue code of 1954 (the Code). The proposed

exemption would allow a life insurance company to direct the allocation of assets of employee pension plans among certain investment funds, including separate accounts maintained by such

Council of Life Insurance are collectively referred to in this notice as the "applicants"). The applications were filed pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and

Pooled separated accounts are accounts established for a number of plans each of which has an interest in the account. When a plan's funds are allocated to a pooled separate account, the plan is usually credited with units of

and the financial stability of the plan's sponsor. Once the insurer has directed investment of plan assets in order to achieve the basic asset mix objective, the insurer's investment personnel monitor, and from time to time make

determined by applying the fee for each category of investment to the amount of account assets invested in that category.

Life insurance companies also make certain other charges in connection with their management of plan assets

the plan may participate; information concerning the contractual provisions for discontinuance of discretionary asset management services (which would be required to be permitted on no more than 30 days' notice); and information

exemption would allow a life insurance company to direct the allocation of assets of employee pension plans among certain investment funds, including separate accounts maintained by such insurance company, and to receive reasonable compensation for the performance of such allocation services. If it is granted, the proposed exemption would affect participants and beneficiaries of certain employee pension plans, fiduciaries of such plans, and life insurance companies.

DATE: Written comments and requests for a public hearing must be received by March 2, 1981.

ADDRESS: Written comments and requests for a public hearing (preferably at least three copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, Washington, D C. 20216. Attention: Discretionary Asset Management Exemption. The applications for exemption, as well as all comments and requests for a public hearing, will be available for public inspection in the Public Documents Room, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: William A. Schmidt, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20216, telephone (202) 523-8610. This not a toll free number.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed class exemption from certain of the prohibited transaction restrictions of section 406 or ERISA, and from the taxes imposed by section 4975(a) and (b) of the Code by reason of certain transactions described in section 4975(c)(1) thereof.[1] The relief provided by the proposed exemption was requested in an application filed by six life insurance companies [2] and in an application filed by the American Council of Life Insurance [3] (the six insurance companies and the American Council of Life Insurance are collectively referred to in this notice as the "applicants"). The applications were filed pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor.

[2] Application Number D-1522, filed August 31, 1979. The six insurance company applicants are: Aetna Life Insurance Company, Connecticut General Life Insurance Company, The Equitable Life Assurance Society of the United States, John Hancock Mutual Life Insurance Company, The Mutual Life Insurance Company of New York, and The Prudential Insurance Company of America.

[3] Application Number D-1711, filed October 31, 1979.

Summary of the Applications

The representations made by the applicants with respect to the proposed class exemption are summarized below. However, interested persons are referred to the applications on file with the Department for the complete representations of the applicants.

The applicants request an exemption that would permit life insurance companies, and certain affiliates of such companies, to perform "discretionary asset management" services for employee benefit plans, and to receive compensation for such services. Generally, the expression "discretionary asset management," as used in reference to these applications, means the allocation of plan assets among separate accouts maintained by a life insurance company, or among separate accounts and one or more "advisory accounts" with respect to which the life insurance company provides investment advice or serves as investment manager. Discretionary asset management services may also consist of the allocation of assets within a separate account to different categories of investments with respect to which different fees are charged.

Life insurance companies issue contracts to employee benefit plans under which all or part of the insurance company's obligation is based on the investment results of a separate account of the company.[4] Typically, a group annuity contract is issued to the trustees of the plan or to an employer, and such contract provides for the deposit and accumulation of funds under both the "general account" provisions of the contract and the "separate account" provisions of the contract.

[4] Separate accounts are established by resolution of boards of directors of life insurance companies and are maintained pursuant to provisions of state laws relating to separate accounts. The applicants also state that the principal feature of separate accounts is that the insurer's contractual obligation normally varies in direct relation to the investment results, including changes in market value, of the assets that are held in the separate account. This description is consistent with section 3(17) of ERISA which provides that the term "separate account" means "an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company."

Pooled separated accounts are accounts established for a number of plans each of which has an interest in the account. When a plan's funds are allocated to a pooled separate account, the plan is usually credited with units of participation in the account which reflect a unit value based on the fair market value of the account's assets on valuation dates specified in the contract, and when such funds are withdrawn, these units are liquidated and the amounts paid are also determined on the basis of unit values. Instead of using the unit method, some companies state a plan's interest in a pooled separate account as a dollar amount which reflects the fair market value of account assets on the applicable valuation dates. Transfers of funds between separate accounts are generally based on the fair market value of the interests being acquired or disposed of.

Some separate accounts are established to hold all or part of the funds of a plan or plans of a single employer or sponsor. Traditionally, such accounts have been maintained in order to invest the plan's assets in one category of investments. However, some insurers may invest funds which are allocated to a single customer account in more than one category of investments.

In addition to its authority to direct the investments of its separate accounts, an insurer also may have discretion over funds of an employee benefit plan which are held by an entity unrelated to the insurance company, such as a bank. These funds are referred to as "advisory accounts." In some cases, the insurer may be authorized to allocate funds among one or more advisory accounts and one or more separate accounts. In other cases, the insurer may be authorized to allocate plan assets only among two or more adivsory accounts, and, in these circumstances, plan assets may not be invested in any of the insurer's separate accounts.

Discretionary asset management services are performed pursuant to a written agreement between the life insurance company performing such services and an independent plan fiduciary, and such an independent fiduciary is informed of the terms on which the life insurance company will perform discretionary asset management. Ordinarily the insurer's exercise of discretion with respect to the investment of plan assets is preceded by analysis intended to established a desired ratio of fixed income to equity risk for the plan, taking into account plan liquidity and diversification needs, current and projected benefit payments, the general funding status of the plan,

and the financial stability of the plan's sponsor. Once the insurer has directed investment of plan assets in order to achieve the basic asset mix objective, the insurer's investment personnel monitor, and from time to time make changes in, the plan's participation in the accounts available to the plan under its agreement with the insurer. Plan fiduciaries are regularly informed of allocations and transfers made by the insurer pursuant to its discretionary authority.

A plan fiduciary may generally terminate an insurer's discretionary authority and, once the fiduciary indicates its intention to terminate the insurance company's authority, such termination is typically effective within a period not exceeding 30 days after notice to the insurer. The plan fiduciary may also discontinue the plan's participation in one or more separate accounts; however, the applicable group annuity contract may impose limitations on large withdrawals which the insurer may invoke when necessary to maintain stability and liquidity in the account. In addition, some pooled separate accounts are designed to invest in a selected group of long-term debt obligations on a closed-end basis, and these accounts, by their terms, substantially limit withdrawals.

Life insurance companies that perform discretionary asset management services receive fees for managing the assets in a single customer or pooled separate account or in an advisory account. This investment management fee is usually expressed as a percentage of the value of a plan's investment in the account and varies depending on the kind of investments that are made by the account.[5] In addition, some of the applicants use the same fee structure for their various separate accounts, but scale the investment management fee downward at specified breakpoints as the plan's total interest in the various accounts of that insurer increases.

In those cases where an insurer invests in different categories of investments within a single customer separate account, the investment management fee for that account may be determined by applying the fee for each category of investment to the amount of account assets invested in that category.

Life insurance companies also make certain other charges in connection with their management of plan assets invested in a separate account. For example, a charge is commonly made by a life insurance company to cover its accounting and recordkeeping expenses incurred in connection with a plan's disposition of an interest in one account and its acquisition of an interest in another. Also, the applicants state that when a plan invests funds in a separate account, or withdraws funds from the account, a charge is made in order to compensate the separate account for the expenses related to the investment or withdrawal of such funds.

Some of the life insurance companies that provide discretionary asset management services make a separate charge for such services. In one case, the fee charged to the plan is based on the actual time spent by insurance company personnel in providing such services. In another case, the life insurance company charges a fee expressed as a percentage of plan assets under discretionary asset management.

The applicants request an exemption which would provide that the restrictions of section 406 of ERISA and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) thereof shall not apply to any transaction, including the provision of services, involving the allocation or transfer of plan assets by, or at the direction of, a life insurance company or certain affiliates of such life insurance company [6]—(1) between two or more life insurance company separate accounts, (2) between one or more advisory accounts and one or more separate accounts, or, (3) within a single customer separate account if such separate account is invested in different types of assets. The exemption suggested by the applicants would be subject to several conditions including a condition requiring that discretionary asset management services be provided pursuant to a written agreement between the life insurance company and an unrelated plan fiduciary. In addition, other conditions to the suggested exemption would provide for written disclosure of certain information to the authorizing plan fiduciary concerning fees with respect to each separate account or advisory account in which the plan may participate; information concerning the contractual provisions for discontinuance of discretionary asset management services (which would be required to be permitted on no more than 30 days' notice); and information concerning the contractual provisions relating to the discontinuance of a plan's participation in a separate account. The applicants also suggest a condition which would require that a life insurance company disclosure to the authorizing fiduciary any changes in the information previously disclosed if the effect of such changes is adverse to the plan; and a condition requiring quarterly reporting to the authorizing plan fiduciary of all allocations and transfers among separate accounts and advisory accounts. Finally, the applicants suggest a condition which would require that no commission or similar fee be payable to the life insurance company solely on account of an allocation of plan assets to a separate account or advisory account at the direction of the life insurance company.

The exemption requested by the applicants also would permit an insurance company to make a separate charge for the performance of discretionary asset management services. In this regard, the applicants state that provision for a separate charge for life insurance company discretionary asset management and a separate charge for portfolio management of an account in which a plan may have an interest is not inconsistent with Prohibited Transaction Exemption 77-4,[7] which permits a fiduciary who is an investment advisor with respect to a plan to cause the plan to purchase shares in a mutual fund for which the fiduciary also serves as investment manager. Among the conditions to the availability of that exemption is a requirement that the plan whose assets are managed by an investment advisor who also manages the assets of a mutual fund does not pay an investment management, investment advisory, or similar fee with respect to plan assets that are invested in shares of such mutual fund for the entire period of such investment.

According to the applicants, an insurance company that provides asset management services, unlike an investment advisor subject to Prohibited Transaction Exemption 77-4, undertakes two separate responsibilities: the responsibility to manage the assets of its separate accounts, and the responsibility to determine the proper asset mix of the plan and the timing of allocations or transfers among the

[5] Investment management fees are charged regardless of whether a plan's interest in an account is acquired at the direction of an insurance company pursuant to discretionary asset management authority. The applicants indicate that investment management fees charged with respect to funds invested in common stock and bond separate accounts may range from .25 to .40 percent of asset value, and that investment management fees for real estate separate accounts may range from 1 to 1.25 percent of asset value; fees for private placement accounts are between those for common stock and bond accounts and those for real estate accounts.

[6] The applicants suggest that the exemption be made available to any affiliate of the life insurance company that is a member of any "controlled group of corporations," as defined in section 1563(a) of the Code, of which the life insurance company is also a member.

[7] 42 FR 18732, April 8, 1977.

available accounts. In addition, the applicants state that proper performance of the insurer's responsibility as investment manager to its separate accounts requires that time and

company's compliance with such criteria may be readily determined and audited.

Treatment of Discretionary Asset Management Under ERISA

Assets held in a separate account of

the exemption in section 408(b)(8) applies to such transactions.[9]

The Proposed Exemption

The exemption being proposed by the Department in this notice would permit

life insurance company to recommend the allocation of plan assets among its separate accounts or between one or more of its separate accounts and one or more advisory accounts with respect to

annuity contracts, and in connection with the investment of plan assets in a separate account or an advisory account may not exceed "reasonable compensation" within the contemplation

exemption therefore would not be available for discretionary asset management services performed by an insurance company for a plan covering its own employees, the Department

available accounts. In addition, the applicants state that proper performance of the insurer's responsibility as investment manager to its separate accounts requires that time and attention be given to the composition of the account in light of the objectives and policies established for that account, while proper performance of its discretionary asset management responsibility requires that time and attention be given to the mix of assets of a particular plan in light of its needs and objectives and the range of available alternatives. Accordingly, the applicants assert, a separate fee for discretionary asset management is for a separate service, and is not duplicative of the separate account investment management fee.

The applicants state that the exemption is in the interests of plans and their participants and beneficiaries because it will assure the availability of investment services that are desired by plans and will better enable plan fiduciaries to carry out their responsibilities with respect to the management of plan assets. In this regard, the applicants represent that plan fiduciaries have expressed a strong interest in discretionary asset management services, and insurance companies have begun providing such services in order to satisfy the needs of plan sponsors and fiduciaries. Further the applicants state that they are not aware of any investment advisors or consultants who currently provide advice to plans with respect to the allocation and transfer of plan assets among life insurance company separate accounts, and that the provision of such services by unrelated parties would result in fees that would almost surely be significantly higher than those charged by an insurance company.

The applicants state that the exemption would be protective of plan participants and beneficiaries because an independent fiduciary would approve the provision of such services after being provided with sufficient disclosure materials to evaluate the transaction, and because such authorizing fiduciary would receive periodic reports that would enable him to evaluate the performance of such services. In addition, the applicants note that the suggested exemption would require that the authorizing fiduciary retain the right to terminate the insurer's discretionary asset management authority.

Finally, the applicants state that the exemption they request is administratively feasible because it establishes objective criteria for its application, and an insurance company's compliance with such criteria may be readily determined and audited.

Treatment of Discretionary Asset Management Under ERISA

Assets held in a separate account of an insurance company to support obligations under contracts purchased by, or on behalf of, employee benefit plans are plan assets, and thus, an insurance company maintaining such a separate account is, under section 3(21) of ERISA, a fiduciary with respect to those plan assets and also is, under section 3(14)(A) of ERISA, a party in interest with respect to the plans that participate in such separate account.[8] Similarly, an insurance company that exercises any authority or control respecting management or disposition of plan assets held in an advisory account or renders investment advice for a fee or other compensation, direct or indirect, with respect to such assets, or has any authority or responsibility to do so, would be a fiduciary with respect to such assets and, therefore, a party in interest with respect to the plans that participate in the advisory account. *See* section 3(21)(a)(ii) of ERISA.

In performing discretionary asset management services an insurance company would also be exercising control over plan assets other than the investments of the separate account—*i.e.*, a plan's interest in the separate account—and, therefore, would be a fiduciary with respect to the plans for which it performs such services. In this regard, section 408(b)(8) of ERISA provides an exemption from the prohibitions of section 406(a) for, among other things, the sale or purchase of an interest in a pooled investment fund of an insurance company qualified to do business in a State provided certain conditions are met. The transactions described in section 406(b) of ERISA, however, impose additional restrictions regarding the conduct of fiduciaries, and are separately prohibited. The Department is not prepared to state that the exemption in section 408(b)(8) applies to such transactions.[9]

The Proposed Exemption

The exemption being proposed by the Department in this notice would permit life insurance companies to perform discretionary asset management services of the kind described in the application. However, the exemption is subject to a number of conditions that differ from, or are in addition to, those suggested by the applicants. These conditions are primarily to provide sufficient protection to plans whose assets are held in a separate account (and to protect participants and beneficiaries of such plans) by means of assuring that the transactions are subject to approval and periodic review by an informed and disinterested fiduciary. This approach is similar to that taken by the Department in other "multiple services" exemptions—specifically Prohibited Transaction Exemption 77–9, referred to above, and Prohibited Transaction Exemption 79–1 (44 FR 5963, January 30, 1979), (relating to the effecting or execution of securities transactions on behalf of a plan by a person who is a fiduciary with respect to the plan)—and elements of the conditions to each of these exemptions are incorporated in the conditions to the exemption being proposed in this notice.

The major features of the proposed exemption are discussed below.

I. Scope.

The proposed exemption would provide relief from the prohibitions of sections 406(a)(1) (A), (C), and (D) and 406(b) (1) and (2) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1) (A), (C), (D) and (E) thereof for certain described transactions. First, the exemption would permit the acquisition or sale of an interest in a pooled separate account at the direction of the life insurance company that maintains such separate account, and the transfer of assets to or from an advisory account at the direction of a life insurance company that provides investment advice to, or serves as investment manager of, such advisory account. Second, the exemption would allow a life insurance company to recommend the allocation of plan assets among its separate accounts or between one or more of its separate accounts and one or more advisory accounts with respect to which it provides investment advice or serves as investment manager. Third, a life insurance company would be permitted to receive periodic investment management or advisory fees with respect to a separate account or advisory account in which plan assets have been invested at the direction of such life insurance company.[10] Finally, the proposed exemption would allow a life insurance company to allocate assets held in a separate account that is maintained for the plan or plans of a single employer among different classes of investments, notwithstanding that the fees received by the insurance company with respect to the assets held in such account are determined at different rates for each of the different classes of investments to which the assets of the account may be allocated.

II. Conditions to the Exemption

A. *General Conditions.* The proposed exemption, if granted, would be effective from January 1, 1975. However, the exemption would be subject to two conditions that would be applicable both before and after the date a final exemption is published. First, the discretionary asset management services must be authorized pursuant to a written agreement between the insurance company and the plan (or a fiduciary on behalf of the plan), signed by an independent fiduciary.[11] Second, the combined total of all fees, commissions, and other consideration received by the life insurance company and its affiliates for the provision of services to the plan, in connection with the purchase of any insurance or annuity contracts, and in connection with the investment of plan assets in a separate account or an advisory account may not exceed "reasonable compensation" within the contemplation of section 408(b)(2) and 408(c)(2) of ERISA and section 4975(d)(2) and 4975(d)(10) of the Code.[12] *See* 29 CFR 2550.408b-2(d), 2550.408c-2(b).

B. *Prospective Conditions.* The proposed exemption includes a number of conditions that would be applicable, in addition to the two conditions described above, for transactions occurring on and after a date 90 days from the date and exemption is granted.

1. *Conditions Relating to a Life Insurance Company's Authorization to Engage in Certain Transactions.* The first prospective condition to the proposed exemption would require that neither the insurance company providing discretionary asset management services to a plan pursuant to the exemption nor any affiliate of the insurance company may be a trustee or administrator of the plan or an employer of any participant in the plan. This condition is included because the proposed exemption provides for the supervision and monitoring of discretionary asset management services by an informed and disinterested fiduciary in order to protect affected plans and their participants,[13] and an exemption that would be available in circumstances where the insurer can effectively control the activities of the plan (such as where it is a sponsoring employer with respect to the plan) presents additional issues not specifically addressed by the applicants.[14] Although the proposed exemption therefore would not be available for discretionary asset management services performed by an insurance company for a plan covering its own employees, the Department would consider expanding the scope of the exemption to cover such transactions if the comments received provide a sufficient basis for such relief.

The second prospective condition to the proposed exemption would require an independent plan fiduciary to specifically approve the allocation of plan assets to a pooled separate account or advisory account any of the assets of which are invested in assets other than "publicly traded" securities (or, in the case of a single-customer separate account, any investment of plan assets in such property).[15] This condition is included because the Department believes that is would not necessarily be in the interests of plan participants, or protective of their rights, for an insurance company to allocate plan assets to an account the assets of which are composed of relatively illiquid securities or real property (and with respect to which the insurance company will receive periodic investment management fees) without specific scrutiny by an independent plan fiduciary. However, in view of the additional burden this condition may impose on the insurance company and the authorizing fiduciary, the Department specifically invites comments concerning other ways in which meaningful supervison of the insurance company's allocation of plan assets to illiquid investment funds can be assured.

Another condition to the proposed exemption would require that an independent plan fiduciary renew its authorization of discretionary asset management services at least annually. In addition, the insurance company is required to provide the authorizing fiduciary with such reasonably available information as the life insurance company believes is

[8] *See* the Notice of Proposal of an Exemption (42 FR 54866, October 11, 1977) to what was subsequently adopted as Prohibited Transaction Exemption 78–19 (43 FR 59915, October 22, 1978). *See also*, the Department's proposed rule under section 401 of ERISA which states in part that in the case of a plan which is funded in whole or in part by a contract or policy of insurance issued by an insurer, the assets of the plan shall include the contract or policy under which the benefits are insured but shall not, solely by reason of the issuance of such contract or policy under which the benefits are insured but shall not, solely by reason of the issuance of such contract or policy, include the assets of the insurer issuing the contract or policy except to the extent that such assets are maintained by the insurer in one or more separate accounts and do not constitute surplus in any such account. Proposed 29 CFR 2550.401b–1(d), 44 FR 50363, 50368, August 28, 1979.

[9] In addition Prohibited Transaction Exemption 77–9, as amended, (42 FR 32395, June 24, 1977; as amended 44 FR 1479, January 5, 1979, and 44 FR 52365, September 7, 1979) provides an exemption from the prohibitions of section 406(a) and 406(b) of ERISA for the purchase with plan assets, or sale of an insurance or annuity contract from an insurance company. However, this exemption is not available for a transaction involving a fiduciary who is expressly authorized in writing to manage, acquire or dispose of assets of a plan on a discretionary basis.

[10] The proposed exemption would not expressly permit an insurance company to receive fees for the performance of asset allocation services on behalf of a plan. However, section 408(b)(2) of ERISA provides an exemption from the restrictions of section 406(a) of ERISA for, among other things, contracting for services necessary to the operation of the plan if no more than reasonable compensation is paid, and section 408(c)(2) of ERISA generally permits a fiduciary to receive reasonable compensation for services rendered. Accordingly, the receipt by a life insurance company of reasonable compensation for the performance of asset allocation services would not, in itself, be a prohibited transaction. *See* 29 CFR 2550.408b-2; 29 CFR 2550.408c-2. Nonetheless, as discussed below, the proposed exemption would not be available if the aggregate of all fees received by the insurance company exceeds "reasonable compensation."

[11] In the Department's view, a transaction entered into by an insurance company would be "authorized" only if the authority existed at the time of the transaction; therefore, an independent fiduciary's ratification of past activities of an insurance company would not satisfy this condition.

[12] As discussed below, the exemption would be available for transactions occurring on and after a date 90 days from the date an exemption is granted only if the insurer receives no fees in connection with an investment of plan assets in a separate account or advisory account at the direction or recommendation of the insurer other than those that are specified in a condition to the exemption.

[13] In other exemptions that permit a fiduciary to perform multiple services for a plan, the Department has included conditions that preclude application of the exemption to transactions involving fiduciaries whose influence over the general operation of the plan is so great that another plan fiduciary would not be able to examine critically and objectively the multiple service arrangements. *See e.g.*, section V(a) of Prohibited Transaction Exemption 77–9, as amended, (44 FR 1479, 1483, January 30, 1979).

[14] *Cf.* note 13, above (describing the provisions of other "multiple service" exemptions issued by the Department). In this regard, the Department has granted an exemption for transactions involving the "in-house" plans of certain investment advisors (Prohibited Transaction Exemption 77–3; 42 FR 18734, April 18, 1977). In addition, section 406(b)(5) of ERISA and section 4975(d)(5) of the Code provide an exemption from the prohibited transaction restrictions of ERISA for the purchase of life insurance, health insurance or annuities from a life insurance company that employs participants in a plan if certain conditions are met. Further, the Department recognizes that the policy underlying these exemptions might also apply to an exemption permitting the provision of discretionary asset management services by an insurance company to a plan in which its employees participate. *Cf.* H.R. Rep. No. 1280, 93d Cong., 2d Sess., 314 (1974) (indicating that it would be contrary to normal business practice to require the plan of an insurance company to purchase its insurance from another insurance company). However, the Department is not prepared to conclude at this time that section 408(b)(5) provides an exemption for the performance of discretionary asset management services by an insurance company for a plan covering its own employees.

[15] "Publicly traded" securities are defined in the proposed exemption as securities that are not "restricted securities" within the meaning of Rule 144 under the Securities Act of 1933.

reasonably necessary in order for the independent fiduciary to determine whether the authorization should be granted or renewed, and also requires

transactions that would be subject to the exemption, the prospective conditions describe the specific fees that a life insurance company may charge in

services imposes responsibilities on the insurer that are distinct from the insurer's responsibilities as investment manager of its separate accounts.[18] However, the Department specifically

Another condition specifies the charges that an insurance company may impose with respect to a plan's withdrawal from an account. Generally, these are limited to charges for

III. Definitions

The proposed exemption contains definitions of various terms used in the exemption which generally are the same

and section 4975(c)(2) of the Code. The Department must find that the exemption is administratively feasible: in the interest of the plan(s) and of participants and beneficiaries of the

reasonably necessary in order for the independent fiduciary to determine whether the authorization should be granted or renewed, and also requires that the insurance company provide certain additional information concerning the matter in response to a reasonable request from the independent fiduciary.

The general disclosure standard with respect to an independent plan fiduciary's grant or renewal of an authorization is supplemented by conditions that require certain specific information to be disclosed to an authorizing fiduciary in connection with an initial authorization or the renewal of an authorization, as the case may be. These specific requirements are intended to assure that information that is essential to informed approval of discretionary asset management services, and to the effective oversight of the performance of such services, is brought to the attention of the authorizing fiduciary. Further, no change in the matters specifically required to be described in connection with an initial authorization may be effective as to a plan until the change has been disclosed to an authorizing fiduciary, and such fiduciary has either specifically consented to the change or has renewed the insurance company's authorization after such disclosure has been made.

2. *Conditions Relating to Periodic Reporting Regarding Performance of Discretionary Asset Management Services.* A prospective condition to the proposed exemption would require an insurance company that performs discretionary asset management services for a plan to provide quarterly reports to the plan fiduciary who authorized such services. This report would include a statement of the total charges incurred by the plan in connection with any plan assets with respect to which the life insurance company provides asset allocation services, and a further description of such charges by category. In addition, the report would include a description of each acquisition with plan assets or disposition of an interest in a separate account, as well as each transfer of plan assets to or from an advisory account. This quarterly report is intended to allow the authorizing fiduciary to monitor, on a continuing basis, the services performed on behalf of the plan by the insurance company.

3. *Conditions Relating to Fees Imposed in Connection With the Investment of Plan Assets in a Separate Account or Advisory Account.* In addition to the general standard of reasonableness applicable to transactions that would be subject to the exemption, the prospective conditions describe the specific fees that a life insurance company may charge in connection with the investment of plan assets in a separate account or advisory account. Generally, these charges are limited to fees for asset allocation and investment management services that are specifically disclosed to an authorizing plan fiduciary; a reasonable charge for accounting and recordkeeping services actually rendered in connection with an investment of plan assets in a separate account or advisory account; and charges that do not exceed the amount reasonably necessary to reimburse a separate account or advisory account for direct expenses properly and actually incurred in connection with the investment of plan assets that have been allocated to such an account.[16]

In regard to the fees that are permitted to be charged by an insurance company providing discretionary asset management services, as discussed above, Prohibited Transaction Exemption 77–4 would not permit an investment advisor who invests plan assets in a mutual fund pursuant to that exemption to receive a separate investment advisory fee with respect to the assets so invested. In addition, as the department indicated in the notice accompanying the proposed exemption that was granted as Prohibited Transaction Exemption 77–4[17] the applicants for that exemption represented that it has generally been the practice of investment advisory firms utilizing publicly marketed mutual funds in the management of plan assets to deduct the value of assets invested in mutual fund shares from the asset base on which the plan account fees are periodically computed, and that this procedure essentially eliminates the possibility of the investment advisor receiving a "double fee" on assets invested in mutual fund shares.

Notwithstanding the provisions of Prohibited Transaction Exemption 77–4, the Department has not included in the exemption being proposed here a condition that would prohibit an insurance company which performs discretionary asset management services from making a separate charge for such services because the applicants state that the performance of discretionary asset management services imposes responsibilities on the insurer that are distinct from the insurer's responsibilities as investment manager of its separate accounts.[18] However, the Department specifically invites comments addressing whether, in light of the restrictions imposed by Prohibited Transaction Exemption 77–4 on the fees that may be charged by an investment advisor, an additional condition should be included in the final class exemption relating to discretionary asset management that would prohibit or restrict an insurance company's imposition of separate charges for the performance of asset allocation services.

4. *Conditions Relating to Termination of an Agreement to Perform Discretionary Asset Management Services and Liquidation of a Plan's Investment in a Separate Account or Advisory Account.* Prospective conditions to the proposed exemption provide that the portion of any agreement under which an insurance company performs discretionary asset management services must be terminable by the plan, without penalty or other charge, on no more than 30 days' notice. In addition, the proposed exemption contains a condition that would enable a plan to withdraw from any separate account or advisory account in which its assets have been invested at the direction of a life insurance company that acts as investment manager of, or provides investment advice to, such account on not more than 90 days' notice (unless an independent plan fiduciary has consented in writing to an extension of such 90-day period).[19]

[16] The Department's regulations under section 408(c)(2) of ERISA indicate that an expense is not a direct expense to the extent it would have been sustained had the service not been provided or if it represents an allocable portion of overhead costs. 29 CFR 2550.408c–2(b)(3).

[17] 41 FR 50518, November 16, 1976.

[18] Although an insurance company would, under the proposed exemption, be permitted to impose a separate charge for the performance of discretionary asset management services, other conditions to the proposed exemption would require the insurer to specifically disclose all charges to an authorizing fiduciary, and also could require that the fees charged by the insurance company be, in the aggregate, reasonable. In the Department's view, if an insurer is paid a separate charge that is characterized as a charge for "discretionary asset management" where the services involved merely duplicate services that the insurer is required to perform in managing plan assets that are invested in its separate accounts, the aggregate fees received by the insurer would not, in such circumstances, be reasonable. Therefore, an independent fiduciary authorizing the payment of such fees would violate his obligations in approving the payment. In addition, in determining whether to pay a separate fee to an insurance company for the performance of discretionary asset management services, an authorizing fiduciary would be obligated to consider the terms on which the plan could obtain comparable services from other sources. *See e.g.*, sections 404(a)(1)(A)–(B), 405(a) and section 406(a)(1)(D) of ERISA.

[19] As discussed above, the applicants indicate that some pooled separate accounts limit withdrawals. Accordingly, the requirement that a plan be permitted to liquidate its interest in a

Footnotes continued on next page

Another condition specifies the charges that an insurance company may impose with respect to a plan's withdrawal from an account. Generally, these are limited to charges for accounting and recordkeeping expenses, and charges that reimburse the separate account or advisory account for direct expenses properly and actually incurred in connection with the plan's withdrawal (*e.g.*, the direct costs of disposing of securities in order to liquidate the plan's interest in the account).[20] However, where assets of a separate account consist of investments that may be illiquid, an additional charge is permitted to be made. This charge is equal to the difference between the fair market value of plan assets that are disposed of in order to liquidate the plan's interest in the account and the amount actually received on such disposition (adjusted to exclude that portion of the difference that is attributable to the withdrawing plan's interest in the account), and is intended to allow an insurance company to prevent any diminution in the value of other plans's interests in the separate account that might otherwise occur as a result of the plan's withdrawal from the account.[21]

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separate account within a fixed period may require alteration of insurance companies' existing practices in some cases. Nonetheless, the Department believes that the ability of an independent fiduciary to terminate a plan's relationship with an insurance company is a very important factor in the fiduciary's effective supervision of discretionary asset management services. However, as discussed below, because prompt liquidation of a plan's investment in a pooled separate account may, in some cases, have adverse consequences to other plans that participate in the account, another condition to the proposed exemption would permit certain additional charges to be made to a plan that withdraws from separate accounts whose assets are illiquid. These charges are intended to protect the interests of other plans that participate in such accounts (see note 21, below). The Department is also prepared to consider modifications to the condition that requires that a plan be permitted to withdraw from a separate account if the changes would protect the interests of the withdrawing plan as well as other plans for which the insurance company is acting as a fiduciary.

[20] See note 16, above.

[21] The additional charge described in the proposed exemption is intended to allow an insurance company to protect the interests of other plans in a separate account from any diminution in the value of their interests in the account that would result from the sale of assets held in the separate account for an amount less than "fair market value" in order to promptly liquidate the interest of the withdrawing plan. In this regard, if the value of the assets of a separate account are determined on a basis other than fair market value, the disposition of assets at a discount attributable to interest rate fluctuations in order to liquidate the interest of a withdrawing plan may arguably also result in a diminution in the interests of the plans that continue to participate in the account. The proposed exemption does not permit a separate charge to prevent such diminution because the applicants indicate that assets of separate accounts are generally determined on the basis of fair market value and no other basis for valuation is described in the applications. Nonetheless, the Department recognizes that an insurance company has fiduciary obligations with respect to plans that retain interests in a separate account as well as plans that elect to liquidate their interests, and, accordingly, it will consider, on the basis of public comments received regarding the proposed exemption, permitting other charges to be made on a plan's withdrawal from certain separate accounts if such charges are equitable to the withdrawing plan and reasonably designed to protect the interests of plans that continue to participate in the account.

[22] See e.g., Prohibited Transaction Exemption 78–19 (43 FR 59915, December 22, 1978).

III. Definitions

The proposed exemption contains definitions of various terms used in the exemption which generally are the same as the definitions of those terms in other class exemptions available to life insurance companies.[22] However, the term "life insurance company" is defined to include a corporate affiliate of a life insurance company that is a member of a "controlled group of corporations," within the meaning of section 1563(a) of the Code, of which the life insurance company also is a member. This definition has the effect of allowing certain affiliates of life insurance companies to perform discretionary asset management services under the exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible; in the interest of the plan(s) and of participants and beneficiaries of the plan(s); and protective of the rights of such participants and beneficiaries.

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

The Department has under consideration the granting of the following class exemption pursuant to the authority of section 408(a) of the Act and section 497(c)(2) of the Code and in accordance with the procedure set forth in ERISA Procedure 75–1.

Section I. Covered Transactions. Effective January 1, 1975, the restrictions of sections 406(a)(1)(A), (C) and (D), 406(b)(1), and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A), (C)(D), and (E) therof shall not apply to the transactions described below if the applicable conditions set forth in Section II are met.

A. The acquisition with pension plan assets, or disposition, of an interest in a pooled separate account at the direction of the life insurance company that maintains such account.

B. The transfer of pension plan assets to or from an advisory account at the direction of a life insurance company that provides investment advice to, or serves as investment manager of, such advisory account.

C. A life insurance company's recommendation that pension plan assets be allocated to—

1. a separate account maintained by such life insurance company, or,

2. an advisory account for which such life insurance company serves as investment manager, or to which it provides investment advice, and any investment of pension plan assets in a

Act and section 4975(d)(2) and 4975(d)(10) of the Code.

B. Effective [a date 90 days from the date an exemption is granted], the exemption provided for transactions

rendered by such life insurance company;

(b) the schedule of the specific fees charged by the life insurance company for the performance of discretionary

investment, if any, in each separate account or advisory account to which its assets have been allocated at the direction or recommendation of such life insurance company (regardless of when

of such transaction and the amount involved.

9. No commission or other charge is payable to a life insurance company performing discretionary asset

the date of withdrawal, of any assets of the account that are disposed of in order to liquidate the plan's investment and the amount actually received on disposition; less,

2. an advisory account for which such life insurance company serves as investment manager, or to which it provides investment advice, and any investment of pension plan assets in a separate account or advisory account that results from such recommendation.

D. The receipt by a life insurance company of periodic investment management or advisory fees with respect to a separate account or advisory account in which plan assets have been invested at the direction or recommendation of such life insurance company.

E. The allocation by a life insurance company of pension plan assets among different classes of investments within a separate account that is maintained by such life insurance company and which is funded solely by assets of pension plans that are sponsored by a single employer or by affiliated employers, the receipt by such life insurance company of compensation for such services, and the receipt by such life insurance company of periodic investment management fees with respect to the assets held in such separate account, notwithstanding that the fees received by such life insurance company are determined at different rates for each of the different classes of investments to which plan assets may be allocated.

For the purposes of this exemption, asset allocation services that constitute, or may result in, a transaction described in this Section I are referred to as "discretionary asset management services."

Section II. Conditions. A. Effective January 1, 1975, the exemption provided for transactions described in Section I is available only if each of the following conditions is met:

1. The descretionary asset management services are authorized pursuant to a written agreement between a plan (or a fiduciary on behalf of a plan) and an insurance company, which agreement has been signed by an independent fiduciary of the plan for which the discretionary asset management services are performed.

2. The combined total of all fees, commissions, and other consideration received by such life insurance company and its affiliates:

(a) For the provision of services to the plan and,

(b) In connection with the purchase of insurance or annuity contracts by such plan, or by a fiduciary on behalf of the plan, or in connection with the investment of plan assets in a separate account or an advisory account.

Is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and 408(c)(2) of the Act and section 4975(d)(2) and 4975(d)(10) of the Code.

B. Effective [a date 90 days from the date an exemption is granted], the exemption provided for transactions described in Section I is available only if each of the following conditions is satisfied in addition to each of the conditions described in paragraph A of this Section II:

1. Neither the life insurance company engaging in the transaction nor any affiliate of such life insurance company is a trustee or administrator of the plan or an employer of any employee covered by the plan.

2. In the case of any transaction described in paragraphs A through C of Section I that constitutes, or results in, the investment of plan assets in any separate account or advisory account any of the assets or which are, or may be, assets other than "publicly traded securities," and any transaction described in paragraph E of Section I that constitutes or results in, an investment in assets other than "publicly traded securities," such transaction is specifically authorized by an independent fiduciary of the plan whose assets are involved in such transaction. For the purposes of this paragraph B(2) and paragraph B(12)(c) of this section, "publicly traded securities" are securities that are not "restricted securities" within the meaning of Rule 144 of the Securities Act of 1933.

3. The authorization referred to in paragraph A(1) of this section (relating to the authorization of a life insuraance company to perform discretionary asset management services) continues in effect for more than one year only if such continuance is authorized in writing at least annually by an independent fiduciary of the plan for which the discretionary asset management services are performed.

4. No such authorization is made or renewed unless the life insurance company receiveing such authorization shall have furnished the authorizing plan fiduciary with any reasonably available information which the life insurance company which seeks the authorization reasonably believes to be necessary to determine whether such authorization should be made or renewed, and any other reasonably available information regarding the matter that the authorizing fiduciary may reasonably request.

5. In the case of an intial authorization, the information required by paragraph B(4) of this Section II shall include, but is not limited to:

(a) a description of the discretionary asset management services to be rendered by such life insurance company;

(b) the schedule of the specific fees charged by the life insurance company for the performance of discretionary asset management services, and the schedule of any asset management or advisory fees charged by such life insurance company with respect to—

(i) any separate account or advisory account in which plan assets may be invested at the direction or recommendation of such life insurance company; or,

(ii) any separate account for which a life insurance company performs allocation services described in paragraph E of Section I;

(c) a description of all other charges that may be imposed with respect to the performance of discretionary asset management services and in connection with each separate account or advisory account in which plan assets may be invested at the direction or recommendation of such life insurance company, including fees charged in connection with the acquisition or disposition of an interest in a separate account or the transfer of plan assets to or from an advisory account;

(d) a description of the steps a plan must take in order to terminate the agreement made for it by its independent fiduciary with the life insurance company which authorizes the performance of discretionay asset management services;

(e) a description of the steps a plan must take to liquidate its investment in any separate account or advisory account that has been made at the direction or recommendation of such life insurance company; and,

(f) a full description of the consequences to the plan of terminating any agreement under which the insurance company performs discretionary asset management services and a full description of the consequences to the plan of the liquidation of any investment of plan assets in a separate account or advisory account that may be made at the direction or recommendation of such life insurance company.

6. In the case of any renewal of an authorization, the information required to be disclosed by paragraph B(4) of this Section II shall include, but is not limited to:

(a) a description of any changes in matters specifically required to be disclosed by paragraph B(5) of this Section II (relating to an initial authoriaztion);

(b) a statement of the value, as of a date within 90 days of the date such information is furnished, of the plan's investment, if any, in each separate account or advisory account to which its assets have been allocated at the direction or recommendation of such life insurance company (regardless of when such allocation was made);

(c) a general statement of the manner in which such life insurance company determines the value of the plan's investment in each separate account or advisory account to which its assets have been allocated.

7. No change in the substance of any matter specifically required to be disclosed by paragraph B(5) of this Section II (relating to an initial authorization) is effective as to a plan until the earlier of:

(a) the date on which an independent plan fiduciary specifically consents to such change; or,

(b) the first date after disclosure of such change pursuant to paragraph B(6) of this Section II on which an independent plan fiduciary renews the insurance company's authorization to perform discretionary asset management services.

8. The life insurance company furnishes the authorizing fiduciary with a report containing at least the following information not less frequently than every three months and not later than 45 days following the end of the period to which the report relates:

(a) the total of all charges incurred by the plan during the preceding three months in connection with any plan assets with respect to which the life insurance company provides discretionary asset management services;

(b) the amount of such charges, by category, including

(i) fees for the provision of discretionary asset management services,

(ii) the investment management, or advisory fee charged to the plan (or that portion of any such fee charged to a separate account or advisory account that is attributable to the plan's interest is such account) with respect to each separate account or advisory account in which the plan's assets are invested during the period to which the report relates,

(iii) any charge relating to the acquisition or disposition of an interest in a separate account or the transfer of plan assets to or from an advisory account; and,

(c) a description of each acquisition with plan assets or disposition of the plan's interest in a separate account and each transfer of plan assets to or from an advisory account, including the date of such transaction and the amount involved.

9. No commission or other charge is payable to a life insurance company performing discretionary asset management services or to any affiliate of such life insurance company, in connection with any investment of plan assets in a separate account or advisory account at the direction or recommendation of such life insurance company or affiliate, except the following:

(a) fees that are described in paragraph (B)(5)(b) of this Section II;

(b) a reasonable charge for accounting and recordkeeping services actually rendered in connection with such investment; and,

(c) a charge not in excess of the amount reasonably necessary to reimburse the separate account or advisory account for direct expenses properly and actually incurred in connection with the initial investment of plan assets that have been allocated to such account.

10. That portion of any agreement pursuant to which a life insurance company performs discretionary asset management services is terminable by the plan, without penalty or charge, on not more than 30 days' notice.

11. The plan is able to liquidate its investment in any separate account or advisory account to which its assets have been allocated at the direction or recommendation of a life insurance company on not more than 90 days' notice (unless an independent plan fiduciary has agreed in writing to an extension of such 90 day period).

12. No penalty or other charge is made with respect to the withdrawal of plan assets from a separate account or advisory account, except the following:

(a) a reasonable charge for accounting and recordkeeping services actually rendered in connection with such liquidation;

(b) a charge not in excess of the amount reasonably necessary to reimburse the separate account or advisory account for direct expenses properly and actually incurred in connection with the liquidation of the plan's investment in the account; and,

(c) in a case where a plan has requested withdrawal of its assets from a separate account any of the assets of which are invested in property other than "publicly traded securities" (as defined in paragraph B(2) of this Section II), a charge not in excess of the amount reasonably necessary to reimburse to such separate account an amount equal to—

(i) the difference, if any, between the "fair market value," determined as of the date of withdrawal, of any assets of the account that are disposed of in order to liquidate the plan's investment and the amount actually received on disposition; less,

(ii) that portion of such difference that bears the same relationship to the total amount of the difference as the value of the withdrawing plan's interest in the separate account, determined immediately prior to its withdrawal, bears to the aggregate value of all interests in such separate account, determined immediately prior to the plan's withdrawal.

For the purposes of this paragraph B(12), the "fair market value" of an asset means the fair market value of such asset as reasonably determined in writing by a person who is reasonably qualified to form an opinion regarding the fair market value of the asset and who is agreed to in writing by an independent fiduciary of the withdrawing plan. Such person may be designated in the instrument authorizing the life insurance company to perform discretionary asset management services.

Section III. Definitions. For the purpose of this exemption—

A. An "advisory account" means an asset or pool of assets, other than a life insurance company's general assets or a separate account, with respect to which a life insurance company provides investment management services or investment advice.

B. An "affiliate" of a person includes—

(1) any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) any officer, director, employee (including in the case of an insurance company, an insurance agent thereof, whether or not the agent is a common law employee of the insurance company), or relative of, or partner in, any such person; and,

(3) any corporation or partnership of which such person is an officer, director, partner or employee.

C. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

D. The term "discretionary asset management services" has the meaning given it in Section I.

E. The term "life insurance company" means an insurance company authorized to do business as a life insurance company under the laws of a State. For purposes of this exemption, the term "life insurance company" shall include a corporate affiliate of a life

insurance company that is a member of a "controlled group of corporations," within the meaning of section 1563(a) of the Code, of which such life insurance

Signed at Washington, D.C., this 15th day of December 1980.

Harold A. Bratt,

Deputy Director, Office of Trade Adjustment

[TA-W-8193]

Borg-Warner Corp., Warner Gear Division; Affirmative Determination Regarding Application for

contributed importantly to the separations, or threat, thereof, and to the absolute decline in sales or production.

Negative Determinations

contribute importantly to worker separations at the firm.

TA-W-8646; Shuron Division of Textron, Inc., Rochester, NY.

Investigation revealed that criterion (3)

Batavia, IL, Arden, NC, and Aberdeen, MI. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly

insurance company that is a member of a "controlled group of corporations," within the meaning of section 1563(a) of the Code, of which such life insurance company is a member.

F. The term "party in interest" includes a "disqualified person" described in section 4975(e)(2) of the Code.

G. The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(5) of the Code), or a brother, a sister, or a spouse of a brother or sister.

Signed at Washington, D.C. this 22nd day of December 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-40436 Filed 12-29-80; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

[TA-W-8602]

Active Products Corp.; Correction and Clarification

On June 9, 1980, the Department instituted an investigation under TA-W-8602 incorrectly designating the petitioning workers as Active Tool and Manufacturing Company, Incorporated, Detroit, Michigan, published in the **Federal Register** on June 13, 1980 (45 FR 40257). In fact, the petition was filed on behalf of workers at the company's division, Active Products Corporation, Marion, Indiana.

On June 27, 1980, the Department published in the **Federal Register** (45 FR 43484) a Notice of Termination of Investigation concering employees of Active Tool and Manufacturing, Detroit, Michigan (TA-W-8602). Subsequently, the Department on its own motion reinstituted the investigation of the petition having recognized that the intent of petition TA-W-8602 was to petition for assistance of the Marion workers. The Department inadvertently failed to publish notice of the reinstitution of the investigation of the Marion workers. In due course, following investigation, the Department issued a Notice of Negative Determination denying trade adjustment assistance to the Marion workers on December 10, 1980, published in the **Federal Register** on December , 1980 (45 FR ———).

Signed at Washington, D.C., this 15th day of December 1980.

Harold A. Bratt,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-40545 Filed 12-29-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-11,277]

APCO Knitwear, Inc. (Formerly Known as APCO Manufacturing Company, Incorporated); Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 14, 1980 in response to a worker petition received on October 6, 1980 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's and boys' knit shirts at APCO Knitwear, Incorporated, Brodhead, Wisconsin.

The Notice of Investigation was published in the **Federal Register**. No public hearing was requested and none was held.

The petitioning group of workers in this case was included in a determination (TA-W-4752) issued on March 30, 1979 which certified as eligible to apply for adjustment assistance all workers engaged in employment related to the production of men's knit sport shirts at APCO Manufacturing Company, Incorporated, Brodhead, Wisconsin. APCO Manufacturing Company was sold in September 1979 and the name was changed to APCO Knitwear, Incorporated. No changes were made in the day-to-day operation of the firm. Only the name and ownership changed. Since all workers separated, totally or partially from APCO Knitwear, Incorporated, formerly known as APCO Manufacturing Company, Incorporated, on or after January 18, 1978 (impact date) and before March 30, 1981 (expiration date of the determination) are covered by an existing determination, a new investigation would serve no purpose. Therefore, this investigation has been terminated.

Signed at Washington, D.C. this 19th day of December 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-40547 Filed 12-29-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8193]

Borg-Warner Corp., Warner Gear Division; Affirmative Determination Regarding Application for Reconsideration

On November 25, 1980, after being granted a filing extension, counsel for the petitioners requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance for workers and former workers of the Warner Gear Division plant in Muncie, Indiana of the Borg-Warner Corporation. The determination was published in the **Federal Register** on October 3, 1980 (45 FR 65703).

Among other things, the application for reconsideration claimed that the Department's customer survey was not adequate.

Conclusion

After review of the application, I conclude that the counsel's claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 17th day of December 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-40548 Filed 12-29-80; 8:45 am]

BILLING CODE 4510-28-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period December 15–19, 1980.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have

contributed importantly to the separations, or threat, thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA-W-8095; Firestone Tire and Rubber Co., Corporate Headquarters, Akron, OH. Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9331; Weldmation, Inc., Madison Heights, MI. Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of welding and assembly machinery are negligible.

TA-W-9970; Gothen Industries, Inc., Roseville, MI. Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of automobile tools and dies are negligible.

TA-W-7948; C.A. Baltz and Sons, Inc., Kingston, NY. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8159; Lattimore and Tessmer, Inc., Southfield, MI. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8808 & 8808A; Means Stamping Industries, Inc., Means Stamping Div., Saginaw, MI and Delta Metal Products Div., Bay City, MI. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-9481; Adell Industries, Inc., Novi, MI. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-7997; Motor City Stamping, Inc., Sterling Heights, MI. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8343; Excel Pattern Works, Inc., Dearborn, MI. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8646; Shuron Division of Textron, Inc., Rochester, NY. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8887; Eagle Clothes, Inc., New York, NY. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-9300 & 9300A-B; American Sunroof Corp., Paramount, CA, Los Angeles, CA, and San Francisco, CA. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8811; General Tire and Rubber Co., Aidora Mills, Barnesville, GA. Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of tire cord are negligible.

TA-W-8286; McIntosh—Division of Norris Industries, Detroit, MI. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8334; Eifel Pattern and Model, Fraser, MI. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-9328; Tiger Babe Sportswear, Inc., Newark, NJ. Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of blouses did not increase as required for certification.

TA-W-9615 & 9973; Republic Steel Corp., Buffalo District, New York Plant, Buffalo, NY and New York Sales Office, Amherst, NY. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-7351, 9241, & 10,993; General Electric Co., Engineering Section, Cleveland, OH, Memphis, TN, and Lexington, KY. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8588, 8589, 8673-76, 8678, 8679, and 8681-83; Walker Mfg. Co., Grass Lake, MI, Jackson, MI, Seward, NE, Racine, WI, Newark, OH, Jonesboro, AR, Harrisonburg, VA, Greenville, TX, Batavia, IL, Arden, NC, and Aberdeen, MI. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-9164; Rockford Headed Products, Inc., Rockford, IL. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8346; Visioneering, Inc., Fraser, MI. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8039 & 8039A-M; American Sunroof Corp., Southgate, MI. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-11,147; American Sunroof Corp., Glass and Trim Plant, Lansing, MI. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-10,459; American Sunroof Corp., Warren, MI. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-10,963; Square D Environmental Contracting Corp., Detroit, MI. Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of duct work are negligible.

TA-W-9993 & 9993A; Quinault Cedar Products, Neillon, WA. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-9060; Hall Heating and Air Conditioning, Inc., Burton, MI. Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of duct work are negligible.

TA-W-7947; Balfour Industries, Inc, Detroit, MI. Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-9055; Rockwell International, Inc., Logansport, IN. With respect to workers producing suspension springs, a certification was issued applicable to all

such workers separated from employment on or after June 16, 1979.

With respect to workers producing mechnical springs the investigation revealed that criterion (3) has not been

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the

Signed at Washington, D.C., this 15th day of December 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

Atmosphere (NACOA) will meet Thursday and Friday, January 15–16, 1981. The Subgroup will meet in the B-100 conference room of Page Building No. 1, 2001 Wisconsin Avenue, NW.,

Date & Time: January 23–24, 1981, 8:30 a.m.–5:00 p.m. each day.
Place: Hilton Inn, Room 339, Salt Lake City, Utah.
Type of Meeting: Closed.
Contact Person: Dr. Fred Stollnitz

computers for university-based Theoretical Physics research and recommend an appropriate strategy for meeting the computational needs of this area of research.
Agenda:

such workers separated from employment on or after June 16, 1979.

With respect to workers producing mechnical springs the investigation revealed that criterion (3) has not been met Surveyed customers did not increase purchases of imports while decreasing purchases from the subject firm.

TA-W-10,689; Keuffel and Esser Co., Cope May Court House, NJ. A certification was issued covering all workers of the firm separated on or after April 1, 1980 and before October 1, 1980.

TA-W-10,510; Trim Trends, Inc., Clawson, MI. A certification was issued covering all workers of the firm separated on or after March 15, 1980.

TA-W-8203; Motor Wheel Corp., Mendota, IL. A certification was issued applicable to all workers engaged in employment related to the production of automobile wheels who were separated from employment on or after August 6, 1979.

With respect to workers engaged in employment related to the production of agricultural and industrial wheels, criterion (3) has not been met. Surveyed customers did not buy imports of agricultural of industrial wheels.

I hereby certify that the aforementioned determinations were issued during the period December 15–19, 1980. Copies of these determinations are available for inspection in Room S-5314, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

Dated: December 22, 1980

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-40550 Filed 12-29-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,699]

First Ford; Negative Determination Regarding Application for Reconsideration

By letter of November 17, 1980, (copy attached) one of the petitioners for the former workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers of that company. The determination was published in the **Federal Register** on October 24, 1980, (45 FR 70604).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioner claims that Ford Motor Company (Ford) has a substantial degree of proprietary control over First Ford since the loss of auto sales caused Ford to close First Ford.

The Department's review showed that First Ford was an independent, franchised dealership which sold and serviced Ford automobiles and trucks and, as such, did not produce an article within the meaning of Section 222(3) of the Trade Act.

Since workers at First Ford do not produce an article, they may be certified only if Ford is the "workers' firm" within the meaning of Section 222 of the Act. Ford may be determined to be the "workers' firm" if Ford and First Ford, an independent dealership, are related by ownership or by a substantial degree of proprietary control, or if the workers are *de facto* employees of Ford. Ford is not the "workers' firm" under either test. There is no element of ownership or control between the firms. The workers also are not *de facto* employees of Ford since all payroll transactions, personnel actions and employee benefits are under the control of First Ford. The mere fact that the Ford Motor Credit Company, a subsidiary of Ford, lent First Ford money to purchase new cars and equipment and the further fact that Ford Leasing Development Company petitioned the Des Plaines Zoning Board of Appeals for a change in zoning are not sufficient in themselves to support a determination that the Ford Motor Company is the "workers' firm".

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 15th day of December 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-40546 Filed 12-29-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-9957]

Solix Sportswear Corp., Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 11, 1980 in response to a worker petition received on July 29, 1980 which was filed on behalf of former workers at Solix Sportswear Corporation, New York, New York. The workers produced men's outerwear.

The investigation revealed that the petitioning group of workers in this case was included in a determination (TA-W-8051) issued on June 25, 980 which certified as eligible to apply for adjustment assistance all workers of Solix Sportswear Corporation who became totally or partially separated from employment on or after May 8, 1979 and before December 1, 1979. The three workers who filed the present petition were separated from employment at Solix in November 1979 and were never recalled. All production of men's outerwear by Solix ceased in November 1979. A totally new product line was introduced during February 1980.

Since all workers separated totally or partially from Solix Sportswear Corporation, New York, New York on or after May 8, 1979 and before December 1, 1979 are eligible to apply for adjustment assistance under an existing determination a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 17th day of December 1980.

Marvin M. Fooks,

Director, Office of Trade Administration Assistance.

[FR Doc. 80-40549 Filed 12-29-80; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting

Pursuant to Sec. 10(a)(2), of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Marine Transportation Subgroup of the Independent Areas Task Force (IATF) of the National Advisory Committee on Oceans and Atmosphere (NACOA) will meet Thursday and Friday, January 15–16, 1981. The Subgroup will meet in the B-100 conference room of Page Building No. 1, 2001 Wisconsin Avenue, NW., Washington, D.C.

The session, which will be open to the public, will convene at 9:00 a.m. and adjourn at 4:00 p.m. each day. The agenda for the meeting of the Marine Transportation Subgroup is as follows:

Ocean Problems and Transoceanic Shipping

A. U.S. merchant marine capabilities to meet national trade and defense needs.
B. Flags of convenience.
C. Other issues.

NACOA has initiated a study to formulate national goals and objectives for the oceans in the decade of the 1980's and beyond. To support the conduct of this study, the Secretary of Commerce has established the IATF for NACOA. The IATF will be responsible for the preparation of preliminary recommendations in the areas of energy, fisheries, marine transportation, ocean minerals, ocean operations and services, pollution, and waste management.

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairperson of the Subgroup on Marine Transportation, Dr. Don Walsh, in advance of the meeting. The Chairperson retains the prerogative to impose limits on the duration of oral statements and discussion. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the NACOA Executive Director, Mr. Steven N. Anastasion, or CDR Tom Nunes, the Staff Member for the Marine Transportation Subgroup. The mailing address is: NACOA, 3300 Whitehaven Street NW. (Suite 438, Page Building No. 1), Washington, D.C. 20235.

Steven N. Anastasion,

Executive Director.

[FR Doc. 80-40455 Filed 12-29-80; 8:45 am]

BILLING CODE 3510-12-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Behavioral and Neural Sciences; Subcommittee for Psychobiology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Psychobiology of the Advisory Committee for Behavioral and Neural Sciences.
Date & Time: January 23–24, 1981, 8:30 a.m.–5:00 p.m. each day.
Place: Hilton Inn, Room 339, Salt Lake City, Utah.
Type of Meeting: Closed.
Contact Person: Dr. Fred Stollnitz Program Director, Psychobiology Program, Room 320, National Science Foundation, Washington, D.C. (202) 357-7949.
Purpose of Subcommittee: To provide advice and recommendations concerning support for research in psychobiology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financical data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

December 22, 1980.

[FR Doc. 80-40458 Filed 12-29-80; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Physics; Subcommittee on Computational Facilities for Theoretical Research; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics—Subcommittee on Computational Facilities for Theoretical Research.
Date and Time: January 15–17, 1981; 9 a.m. to 5 p.m. each day.
Place: National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550, Room 628 each day.
Type of Meeting: Open.
Contact Person: Dr. Richard A. Isaacson, Division of Physics, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-7979.
Summary of Minutes: Will be available as an attachment to the minutes of the full Committee meeting to be held in February, 1981.
Purpose of Subcommittee: To examine present and future trends for the usage of computers for university-based Theoretical Physics research and recommend an appropriate strategy for meeting the computational needs of this area of research.
Agenda:

January 15, 1981, 9 a.m. to 5 p.m.: Review of available studies on the usage of computers for theoretical research by university scientists. Preliminary discussion of Subcommittee recommendations.

January 16, 1981, 9 a.m. to 5 p.m.: Continuation of previous day's discussion.

January 17, 1981, 9 a.m. to 5 p.m.: Continuation of previous day's discussion.

M. Rebecca Winkler,

Committee Management Coordinator.

December 22, 1980.

[FR Doc. 80-40459 Filed 12-29-80; 8:45 am]

BILLING CODE 7555-01-M

Advisory Council; Task Group No. 15; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Task Group No. 15 of the NSF Advisory Council.
Place: Room 523, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.
Date: Friday, January 30, 1981.
Time: 9:00 a.m. till 5:00 p.m.
Type of Meeting: Open.
Contact Person: Ms. Jeanne Hudson, Executive Secretary of the NSF Advisory Council, National Science Foundation, Room 518, 1800 G Street, N.W., Washington, D.C. 20550. Telephone: 202/357-9433.
Purpose of Task Group: The purpose of the Task Group, composed of members of the NSF Advisory Council, is to provide the full Advisory Council with a mechanism to consider numerous issues of interest to the Council that have been assigned by the National Science Foundation.
Summary Minutes: May be obtained from the contact person at above stated address.
Agenda: The Task Group is asked to determine the role of NSF in the science education for the general public. The task Group will focus on mechanisms to encourage greater interagency cooperation and will suggest mechanisms to foster increased and/or expanded in-school as well as out-of-school programs for education in the sciences and technology.

M. Rebecca Winkler,

Committee Management Coordinator.

December 22, 1980.

[FR Doc. 80-40460 Filed 12-29-80; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-389]

Florida Power & Light Co. (St. Lucie

Support of Nuclear Power Plants," was issued for interim use and comment. Comments have been received and evaluated. The Nuclear Regulatory Commission and the Federal Emergency

Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based on all the information available to it, that the extension of unlisted trading privileges pursuant to such application

Interest on the notes will be payable at the rate of 14 percent per annum.

Paul H. Taylor,

Fiscal Assistant Secretary.

Supplementary Statement

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-389]

Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 2); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this construction permit proceeding:

Richard S. Salzman, Chairman.
Dr. W. Reed Johnson.

Dated: December 19, 1980.

C. Jean Bishop,

Secretary to the Appeal Board.

[FR Doc. 80-40376 Filed 12-29-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-354 and 50-355]

Public Service Electric & Gas Co. and Atlantic City Electric Co. (Hope Creek Generating Station, Units 1 and 2); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following Panel members to serve as the Atomic Safety and Licensing Appeal Board for this construction permit proceeding:

Richard S. Salzman, Chairman.
Dr. W. Reed Johnson.
Thomas S. Moore.

Dated: December 18, 1980.

C. Jean Bishop,

Secretary to the Appeal Board.

[FR Doc. 80-40377 Filed 12-29-80; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

FEDERAL EMERGENCY MANAGEMENT AGENCY

Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants (NUREG-0654/FEMA-REP-1, Rev. 1)

In January 1980, NUREG-0654/FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," was issued for interim use and comment. Comments have been received and evaluated. The Nuclear Regulatory Commission and the Federal Emergency Management Agency have used the comments in revising the document. The revision process included close coordination with State and local planning groups.

As a result, Revision 1 of NUREG-0654/FEMA-REP-1 was published in November 1980. Wide distribution is being made to industry and to State and local officials who are responsible for radiological emergency planning and preparedness. This document is consistent with NRC and FEMA regulations and supersedes other previous guidance and criteria published by FEMA and NRC on this subject. It will be used by reviewers in determining the adequacy of State, local, and nuclear power plant licensee emergency plans and preparedness.

Single copies of this document are available free, to the extent of supply, by writing to the Director, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or to Headquarters, Federal Emergency Management Agency, 1725 I Street NW., Washington, D.C. 20472, Attention: Administrative Services Division. Copies will also be available for review in the NRC Public Document Room, Washington, D.C.; the local NRC Public Document Rooms; at FEMA Headquarters, Administrative Services Division; and the FEMA Regional Offices.

Dated at Washington, D.C., this 17th day of December 1980.

For the Nuclear Regulatory Commission.

E. Kevin Cornell,

Deputy Executive Director for Operations.

For the Federal Emergency Management Agency.

Frank A. Camm,

Associate Director for Plans and Preparedness.

[FR Doc. 80-40378 Filed 12-29-80; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Cincinnati Stock Exchange; Application for Unlisted Trading Privileges and of Opportunity for Hearing

December 18, 1980.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

Dart & Kraft Incorporated, Common Stock, $2.50 Par Value (File No. 7-5795).

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 12, 1981 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40383 Filed 12-29-80; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

December 18, 1980.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

Paine Webber, Inc., Common Stock, $1 Par Value (File No. 7-5796).

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 12, 1981 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based on all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40382 Filed 12-29-80; 8:45 am]

BILLING CODE 8010-01-M

SYNTHETIC FUELS CORPORATION

Proposal Workshops

Action: Notice/Invitation.

Summary

The U.S. Synthetic Fuels Corporation will conduct two pre-proposal workshops on January 19 at the Hilton Hotel in New York City and on January 28 at the Fairmont Hotel in Denver. The purpose of these workshops is to provide prospective proposers and interested parties an opportunity to meet SFC officers and staff to discuss our solicitation, evaluation and selection process and the various forms of financial assistance available through the SFC.

Note.—The SFC is authorized to financially assist the commercial production of synthetic fuels from coal (including peat and lignite), shale, tar sands (including heavy oils), and water (as a source of hydrogen through electrolysis).

Inquiries: Lillian Clarke/Jim Ajello.
Telephone 202/653-4400.
Address: 1200 New Hampshire Avenue, N.W., Suite 460, Washington, D.C. 20586.

United States Synthetic Fuels Corporation.

For the Board of Directors.

John C. Sawhill,

Chairman.

December 22, 1980.

[FR Doc. 80-40386 Filed 12-29-80; 8:45 am]

BILLING CODE 8450-01-M

DEPARTMENT OF THE TREASURY

[Supplement to Department Circular Public Debt Series No. 38-80]

Series H-1984 Notes; Interest Rate

December 22, 1980.

The Secretary announced on December 18, 1980 that the interest rate on the notes designated Series H-1984 described in Department Circular—Public Debt Series—No. 38-80 dated December 11, 1980, will be 14 percent. Interest on the notes will be payable at the rate of 14 percent per annum.

Paul H. Taylor,

Fiscal Assistant Secretary.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 80-40475 Filed 12-29-80; 8:45 am]

BILLING CODE 4810-40-M

85864-85912

Sunshine Act Meetings

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Vol. 45, No. 251
Tuesday, December 30, 1980

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Sunshine Act Meetings

Federal Register
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This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

NATIONAL CREDIT UNION ADMINISTRATION.

TIME AND DATE: 10 a.m., Tuesday, December 30, 1980.

PLACE: 1776 G. Street, NW., Washington, D.C., 7th Floor Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Merger. Closed pursuant to exemptions (8) and (9)(A)(ii).
2. Establishment of Special Reserves under Section 201 of the Federal Credit Union Act or Alternatively Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (10).
3. Requests from federally insured credit unions for special assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

FOR MORE INFORMATION CONTACT: Joan O'Neill, Program Assistant, telephone (202) 357-1100.

[S-2356-80 Filed 12-29-80; 8:45 am]

BILLING CODE 7535-01-M

2

NATIONAL CREDIT UNION ADMINISTRATION.

Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required that the previously announced open meeting on December 18, 1980, include an additional item, which was open to public observation.

Consideration of DIDC Actions of December 12, 1980.

The previously announced items were:

1. Review of Central Liquidity Facility Lending Rate.
2. Consideration of a waiver of the regular reserve transfer for the fourth quarter of 1980.
3. Consideration of a revision of the regulations applying to retirement accounts.
4. Consideration of Advance Notice of Proposed Rulemaking for revising Regulation 721, Federal Credit Union insurance and group purchasing activities.
5. Consideration of Interpretive Ruling and Policy Statement regarding the use of statistical sampling for the verification of members' accounts that is required by Section 115 of the Federal Credit Union Act and Section 741.2 of the NCUA Rules and Regulations.
6. Final Rule on Premiums.
7. Adoption of an NCUA System of Grievance Records.
8. Publication of Fifth Semi-Annual Agenda in Federal Register.
9. Report on actions taken under delegations of authority.
10. Applications for charters, amendments to charters, bylaw amendments, mergers as may be pending at that time.

The meeting was held at 9:30 a.m., in the 7th Floor Board Room, 1776 G St., NW., Washington, D.C.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

[S-2357-80 Filed 12-29-80; 8:45 am]

BILLING CODE 7535-01-M

3

NATIONAL CREDIT UNION ADMINISTRATION.

Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required that the previously announced closed meeting on December 18, 1980, include an additional item, which was closed to public observation.

Personnel Action. Closed pursuant to exemption (2).

The previously announced items were:

1. Proposed mergers. Closed pursuant to exemptions (8) and (9)(A)(ii).
2. Report of action taken under Section 201(c)(2) of the Federal Credit Union Act. Closed pursuant to exemption (9)(A)(ii).
3. Administrative Actions under Section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (10).
4. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (10).
5. Administrative Actions under Section 207 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
6. Requests from federally insured credit unions for special assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
7. Division of Assets, Liabilities and Capital. Closed pursuant to exemptions (8) and (9)(A)(ii).
8. Request for special assistance under Section 208 and purchase and assumption under Sections 107 and 205 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
9. Allocations of Executive Positions and Noncareer Appointment Authority. Closed pursuant to exemptions (2) and (6).
10. Consideration of change to NCUA policy regarding share-to-Loan Transfers in involuntary liquidations. Closed pursuant to exemption (9)(B).
11. Delegation of 208 Assistance to assist in the voluntary liquidation of solvent insured credit unions. Closed pursuant to exemption (2).
12. Consideration of Policy change to permit the use of collection agencies. Closed pursuant to exemption (9)(B).
13. Consideration of Policy change to allow Finance companies to bid on loan portfolios. Closed pursuant to exemption (9)(E).

The meeting was held at 10:30 a.m., in the 7th Floor Board Room, 1776 G Street, NW., Washington, D.C.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

[S-2359-80 Filed 12-29-80; 8:45 am]

BILLING CODE 7535-01-M

4

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 p.m., Wednesday, January 7, 1981.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Ratification of Board actions taken by notation voting during the month of December, 1980.

(2) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523-5920.

DATE OF NOTICE: December 22, 1980.

[S-2360-80 Filed 12-29-80; 8:45 am]

BILLING CODE 7550-01-M

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

Note: There were no items eligible for inclusion in the list of **Rules Going Into Effect Today.**

List of Public Laws

Last Listing December 30, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.J. Res. 615 / Pub. L. 96-563 Providing for appointment of David C. Acheson as a citizen regent of the Board of Regents of the Smithsonian Institution (December 22, 1980; 94 Stat. 3304) Price $1.

S. 2227 / Pub. L. 96-564 To grant the consent of the United States to the Red River Compact among the States of Arkansas, Louisiana, Oklahoma, and Texas (December 22, 1980; 94 Stat. 3305) Price $1.25.

H.R. 7217 / Pub. L. 96-565 To establish the Kalaupapa National Historical Park in the State of Hawaii, and for other purposes (December 22, 1980; 94 Stat. 3321) Price $1.

H.J. Res. 642 / Pub. L. 96-566 Providing for convening of the first regular session of the Ninety-seventh Congress on January 5, 1981, and for other purposes (December 22, 1980; 94 Stat. 3328) Price $1.

H.R. 7865 / Pub. L. 96-567 Nuclear Safety Research, Development, and Demonstration Act of 1980 (December 22, 1980; 94 Stat. 3329) Price $1.

S. 3027 / Pub. L. 96-568 Disaster Relief Act Amendments of 1980 (December 22, 1980; 94 Stat. 3334) Price $1.

S. 2726 / Pub. L. 96-569 Environmental Research, Development, and Demonstration Authorization Act of 1981 (December 22, 1980; 94 Stat. 3335) Price $1.

H.R. 2111 / Pub. L. 96-570 To extend the service area for the Sacramento Valley Canals, Central Valley project, California, and for other purposes (December 22, 1980; 94 Stat. 3339) Price $1.

S. 1784 / Pub. L. 96-571 Alaska Federal-Civilian Energy Efficiency Swap Act of 1980 (December 22, 1980; 94 Stat. 3341) Price $1.

S. 1148 / Pub. L. 96-572 To reauthorize title I of the Marine Protection, Research, and Sanctuaries Act, and for other purposes (December 22, 1980; 94 Stat. 3344) Price $1.

S. 2189 / Pub. L. 96-573 Low-Level Radioactive Waste Policy Act (December 22, 1980; 94 Stat. 3347) Price $1.

H.R. 999 / Pub. L. 96-574 To amend the Plant Variety Protection Act (7 U.S.C. 2321 et seq.) to clarify its provisions, and for other purposes (December 22, 1980; 94 Stat. 3350) Price $1.

H.R. 4941 / Pub. L. 96-575 To name a dam and reservoir on the San Gabriel River, Texas, as the "North San Gabriel Dam" and "Lake Georgetown", respectively (December 22, 1980; 94 Stat. 3353) Price $1.

H.R. 8345 / Pub. L. 96-576 To name the United States Customs House in Ogdensburg, New York, the "Robert C. McEwen United States Customs House" (December 22, 1980; 94 Stat. 3355) Price $1.

H. J. Res. 337 / Pub. L. 96-577 Designating February 11, 1981, "National Inventors' Day" (December 22, 1980; 94 Stat. 3357) Price $1.

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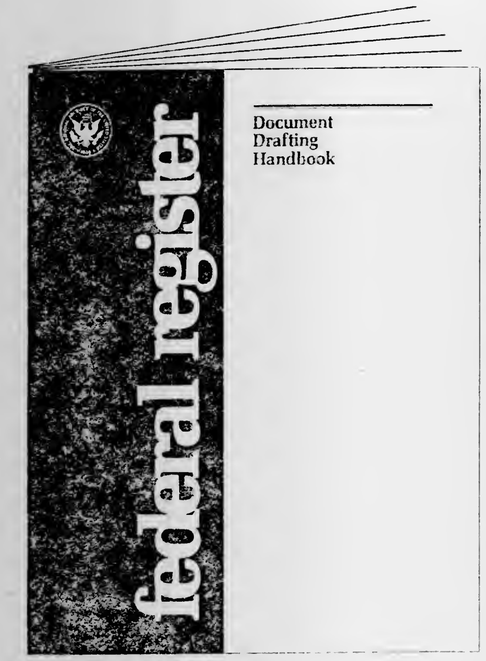
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federal register

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85916 Part II—Commerce/ITA:
Publication of Advisory Notes, the Commodity Control List and Commodity Interpretations in the Code of Federal Regulations

85962 Part III—HHS/FDA:
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Part II

Department of Commerce

International Trade Administration

Publication of Advisory Notes, the Commodity Control List and Commodity Interpretations in the Code of Federal Regulations

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 385 and 399

Publication of Advisory Notes, the Commodity Control List and Commodity Interpretations in the Code of Federal Regulations

Rulemaking Requirements

Section 13(a) of the Export Administration Act of 1979 ("the Act") exempts regulations promulgated thereunder from the public participation in rulemaking procedures of the

(d) Equipment for determining the friction sensitivity of explosives when exposed to charges not exceeding 36 kg in weight.

1081A Machinery for use in the manufacture of aircraft, as follows:

(a) Machinery specially designed for the working or forming of aircraft sheet, plate or

(0.0004 in./ft.) and 0.005 mm for each additional 300 mm (0.0002 in./additional ft.);

(ii) Radial axis motion measured at the spindle axis equal to or greater than 0.0008 mm (0.00003 in.) TIR (peak-to-peak) in one revolution of the spindle (for lathes and other turning machines); and

additional card rack locations, wiring provisions for more than two servo-loops, nor physical space for later additions of these types of items);

(3) Memory is limited to and not capable of being extended beyond that enabling a maximum of two-axes simultaneous velocity and path generation, plus 400 characters (8-

made of 90% or more tantalum, titanium or zirconium, either separately or combined, *except when such surfaces are made of materials containing more than 97% and less than 99.7% titanium.*

Note.—Licenses are likely to be approved for export of valves, cocks and pressure

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DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 385 and 399

Publication of Advisory Notes, the Commodity Control List and Commodity Interpretations in the Code of Federal Regulations

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: This revision makes technical changes in the regulations which are necessary to include the full text of the following sections in the Code of Federal Regulation (CFR): Advisory Notes for Selected CCL Entries (Supplement No. 1 to Part 385), Commodity Control List (§ 399.1), and Commodity Interpretations (§ 399.2). In prior years these documents were incorporated by reference. This document also revises the authority citation for Part 399 by updating it to reflect the latest statutory and departmental authorizations.

EFFECTIVE DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT: Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, Room 1617M, Washington, D.C. 20230, 202-377-4738.

SUPPLEMENTARY INFORMATION:

Advisory Notes for Selected CCL Entries

The Advisory Notes appear in Supplement 1 to Part 385. They were printed in the **Federal Register** on June 25, 1980 (45 FR 43012-43054). They are revised and set out in full text in today's document. The Advisory Notes will be included in the next edition of Title 15 of the CFR, revised as of January 1, 1981.

Commodity Control List (CCL)

The Commodity Control List was printed in the **Federal Register** on June 25, 1980 (45 FR 43060-43138). Today, the Department announces its intention to include the CCL in full text in the next revision of Title 15 of the CFR. The CCL is designated Supplement 1 to § 399.1. In addition, replacement pages issued since the June 25, 1980, publication are printed in today's document and the authority section is revised and updated.

Commodity Interpretations

The Department has decided to include the Commodity Interpretations in the next revision of Title 15 of the CFR. Therefore, the full text of the interpretations is included in today's document as Supplement 1 to § 399.2.

Rulemaking Requirements

Section 13(a) of the Export Administration Act of 1979 ("the Act") exempts regulations promulgated thereunder from the public participation in rulemaking procedures of the Administrative Procedure Act. Section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form, is not applicable because these regulations do not impose controls on exports. It has been determined that these regulations are not "significant" within the meaning of Department of Commerce Administrative Order 218-7 (44 FR 2082, January 9, 1979) and International Trade Administration Administrative Instruction 1-6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations." Therefore these regulations are issued in final form. Although there is no formal comment period, public comments on the regulations are welcome on a continuing basis.

In consideration of the reasons set out in the preamble, 15 CFR Chapter III is amended as set forth below.

(Secs. 4, 5, 6, 7, 13, 15, 17(d) and 21, Pub. L. 96-72 (50 U.S.C. app. 2401 *et seq.*); Executive Order 12214 (45 FR 29783, May 6, 1980); Departmental Organization Order 10-3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Order 41-1 (45 FR 11862, January 30, 1980))

Kent N. Knowles,
Director, Office of Export Administration.

1. Supplement 1 to Part 385 is revised to read as follows:

Supplement No. 1 to Part 385—Advisory Notes for Selected CCL Entries

2018A Specialized machinery, equipment, gear, and specially designed parts and accessories therefor, specially designed for the examination, manufacture, testing, and checking of the arms, ammunition, appliances, machines, and implements of war.

Note.—Licenses are likely to be approved for export to satisfactory end-users of equipment used to determine the safety data of explosives, as required by the International Convention on the Transport of Dangerous Goods (C.I.M.), articles 3 and 4 in Annex 1 RID, provided that such equipment will be used only by the railway authorities of current C.I.M. members, or by Government accredited testing facilities in those countries, for the testing of explosives to transport safety standards, as follows:

(a) Equipment for determining the ignition and deflagration temperatures;

(b) Equipment for steel-shell tests;

(c) Drop hammers not exceeding 20 kg in weight for determining the sensitivity of explosives to shock;

(d) Equipment for determining the friction sensitivity of explosives when exposed to charges not exceeding 36 kg in weight.

1081A Machinery for use in the manufacture of aircraft, as follows:

(a) Machinery specially designed for the working or forming of aircraft sheet, plate or extrusion; or

(b) Machinery specially designed for the milling of aircraft skin.

Note.—Licenses are likely to be approved for export to satisfactory end-users provided that the machinery does not present an improvement on machinery in production before the 1st January of the year ten years preceding the year of the proposed export

1091A (a) Units for numerically controlling simultaneously coordinated (contouring and continuous path) movements of machine tools and dimensional inspection machines in two or more axes, *except units having all of the following charocteristics:*

(1) Hardwired (not softwired, i.e., not Computerized Numerical Control (CNC));

(2) No more than two contouring interpolating axes can be simultaneously coordinated (interpolating is understood to be any mathematical function including linear and circular; the units may have one or more positioning axes in addition to two contouring axes. The units may have more than one set of two contouring axes (e.g. units controlling two independent railheads on a vertical turret lathe), provided a separate feedrate number is required for each set of two contouring axes, and a single feedrate number (standard or optional) does not control more than two contouring axes);

(3) Minimum programmable increment equal to or greater (coarser) than 0.001 mm (0.0004 in.); and

(4) Without interface to allow direct computer input;

(b) Machine tools and dimensional inspection machines, which according to the manufacturer's technical specifications can be equipped with controls described in sub-entry (a) above, *except:*

(1) Boring mills, milling machines, and machining centers, having all of the following characteristics:

(i) Maximum slide travel in any axis equal to or less than 3,000 mm (10 ft.);

(ii) Positioning accuracy of any axis equal to or greater than ±0.01 mm per 300 mm (0.0004 in./ft.) and 0.005 mm for each additional 300 mm (.0002 in./additional ft.);

(iii) Spindle horsepower equal to or less than 20 kW (25 hp);

(iv) Single-working spindle;

(v) Axial and radial axis motion measured at the spindle axis in one revolution of the spindle equal to or greater than $D \times 2 \times 10^{-5}$ TIR (peak-to-peak) where D is the spindle diameter; and

(vi) Not more than 3 axes capable of simultaneously coordinated contouring motion regardless of the NC unit connected to the machine;

(2) Machine tools (other than the machines described in sub-entry (1) above) and dimensional inspection machines having all of the following characteristics:

(i) Positioning accuracy of any axis equal to or greater than ±0.01 mm per 300 mm (0.0004 in./ft.) and 0.005 mm for each additional 300 mm (0.0002 in./additional ft.);

(ii) Radial axis motion measured at the spindle axis equal to or greater than 0.0008 mm (0.00003 in.) TIR (peak-to-peak) in one revolution of the spindle (for lathes and other turning machines); and

(iii) Not more than 3 axes capable of simultaneously coordinated contouring motion regardless of the NC unit connected to the machine; (the machines in sub-entry (b)(*1*)(*iv*) above may have multiple tool heads or turrets, but only one working spindle (standard or optional) may be operative at a time; the machines defined in sub-entries (b)(*1*)(*vi*) and (b)(*2*)(*iii*) above may have more than one work station, but each station shall be limited to 2-axes contouring (e.g. vertical turret lathes with two independent railheads). The machines may have one or more discrete positioning mode axes (e.g. discrete positioning index table) in addition to the three contouring axes. Secondary contouring axes parallel to primary contouring axes (e.g. W-axis of a boring mill that has a primary Z-axis) are not to be considered when determining the number of contouring axes; the value of the positioning accuracy described in sub-entries (b)(*1*)(*ii*) and (b)(*2*)(*i*) above does not include the width of blacklash. This value is determined by the usual statistical methods (random tests), i.e. by approaching from only one direction a minimum of five measurement points up to a maximum of twenty-five measurement positions as random tests along one axis. National standards, e.g. the German VDI standards No. 2354, sheet 1 and/or the United States NMTBA standard ("Definition and Evaluation of Accuracy and Repeatability for Numerically-controlled Machine-Tools," August 1972), can be taken as binding standards for this measuring method);

(c) Direct Numerical Control (DNC) systems consisting of a dedicated stored program computer acting as a host computer and controlling, on-line or off-line, one or more numerically-controlled machine tools or inspection machines, as defined in sub-entry (b) above, related software, and interface and communication equipment for data transfer between the host computer memory, the interpolation functions, and the numerically-controlled machine tools; and

(d) Specially designed sub-assemblies which, according to the manufacturer's technical specifications, can upgrade the capabilities of numerical control units and machine tools to meet the specifications described in sub-entries (a), (b), or (c) above.

Note.—Licenses are likely to be approved for export to satisfactory end-users of Computer Numerical Control (CNC) units for uses other than aerospace, provided that:

(a) At the time of export, the units are mounted on non-controlled machine tools or equipment;

(b) The CNC units are designed to have all of the following characteristics:

(1) No more than two contouring interpolating axes can be simultaneously coordinated ("Interpolating" is understood to be any mathematical function including linear and circular. Units may not have additional positioning axes);

(2) The cabinet shall be designed for only 2-axes operation (i.e. there shall be no additional card rack locations, wiring provisions for more than two servo-loops, nor physical space for later additions of these types of items);

(3) Memory is limited to and not capable of being extended beyond that enabling a maximum of two-axes simultaneous velocity and path generation, plus 400 characters (8-bit) of part program storage;

(4) Power supply is limited to two-axes operation;

(5) Minimum programmable increment equal to or greater (coarser) than 0.001 mm; and

(6) Without interface to enable data exchange with another computer;

(c) The information exported with and pertaining to the control unit shall:

(1) Be limited to machine language, binary format, control software enabling a maximum of two-axes simultaneous velocity and path generation;

(2) Not include flow charts, logic diagrams, nor source program documentation for the control software;

(3) Reflect only two-axes parameters in all electrical/mechanical installation, operation, or maintenance of documentation.

2120A Cryogenic equipment, the following:

(a) • • •

(b) Electrical, magnetic, and electronic equipment or components, and electrical conductors, specially designed for operation continously or discontinuously at ambient temperatures below −274° F (−170° C), as follows:

(1) Superconductive metals, alloys, compounds, composites, and intercalate materials, *except:*

(i) Superconductive wire having a filament cross-sectional area of 4.42 x 10^{-3} sq.mm. (or 75 microns diameter) or greater; or

(ii) Superconductive niobium-titanium wire having a filament cross-sectional area of 1.26 x 10^{-3} sq.mm. (or 40 microns diameter) or greater in a copper matrix;

(2) • • •

(3) • • •

(4) • • •

(c) • • •

Note.—Licenses are likely to be approved for export to satisfactory end-users of individual shipments of niobium-titanium wire covered by sub-entry (b)(1) above having a filament cross-sectional area of 9.5 x 10^{-5} sq.mm. (or 11 microns diameter) or greater in a copper matrix, in quantities not exceeding 10 kg.

1131A Pumps (except vacuum pumps listed under entry No. 1129) having *any* of the following characteristics:

(a) • • •

(b) Having all flow contact surfaces made of 90 percent or more tantalum, titanium, or zirconium, either separately or combined, *except when such surfaces are made of materials containing more than 97 percent and less than 99.7 percent titanium; and*

(c) • • •

Note.—Licenses are likely to be approved for export of pumps covered by sub-entry (b) above to bona fide civil end-users for non-aerospace end-uses.

1133A Valves, cocks and pressure regulators having all flow contact surfaces made of 90% or more tantalum, titanium or zirconium, either separately or combined, *except when such surfaces are made of materials containing more than 97% and less than 99.7% titanium.*

Note.—Licenses are likely to be approved for export of valves, cocks and pressure regulators to bona fide civil end-users for non-aerospace end-uses.

1205A Electro-chemical, semi-conductor, and radioactive devices for the direct conversion of chemical, solar, or nuclear energy to electrical energy, as follows:

(a) Electro-chemical devices, as follows:

(1) Fuel cells operating at temperatures of 392° F (200° C) or less, including regenerative cells, i.e., cells for generating electric power, to which all the consumable components are supplied from outside the cell (the temperature of 392° F (200° C) or less is intended to refer to the fuel cell and not the fuel conditioning equipment, which may be either an ancillary or an integral part of the fuel cell battery and which may operate at over 392° F (200° C));

(2) • • •

(3) • • •

(4) • • •

(b) • • •

(c) Power sources other than nuclear reactors based on radioactive materials systems, *except:*

(1) *Those having an output power of less than 0.5 Watt and a total weight of more than 200 lbs. (90.7 kg); or*

(2) *Those specially designed and developed for medical use within the human body; and*

(d) • • •

Notes.—1. Licenses are likely to be approved for export to satisfactory end-users of fuel cells covered by sub-entry (a)(1) above, having a maximum output power level greater than 10 kW using gaseous pure hydrogen and oxygen/air reactants, alkaline electrolytic, and a catalyst support by carbon either pressed on a metal mesh electrode, or attached to a conducting porous plastic.

2. Licenses are likely to be approved for export to satisfactory end-users of devices covered by sub-entry (c) above, having an output power of 0.5 Watt or more and an overall efficiency of 6 percent or less. (The overall efficiency is obtained by dividing the electrical output, expressed in watts, by the thermal input, expressed in watts. It is understood that this efficiency is to be measured at the beginning of life.)

3261A Neutron generator systems, including tubes, designed for operation without an external vacuum system and utilizing electrostatic acceleration to induce a tritium-deuterium nuclear reaction; and specially designed parts therefor.

Note.—Licenses are likely to be approved for the export to satisfactory end-users of tubes and systems whose technical specifications are essentially the same as those for previously approved exports, provided that they are for civil use.

1312A Presses and specialized controls, accessories, and parts therefor, as follows:

(a) • • •

(b) Hydraulic presses, as follows:

(1) Vertical presses having a total rated force of over 10,000 tons; or

(2) Horizontal presses having a total rated force of over 5,000 tons;

(c) Isostatic presses, as follows (isostatic presses are those capable of pressurizing a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal force in all directions within the cavity upon a workpiece or material):

1355A Machinery and equipment for the manufacture of electronic equipment, components and materials; related test gear; parts and specialized controls and accessories thereof, as follows:

(a) • • •

(b) Equipment for the manufacture of semi-conductor, acoustic wave and film memory

performance of the wind tunnel and, for normally-consumable replacement parts, will not exceed a 6-month supply.

1371A Anti-friction bearings, as follows:

(a) Ball and roller bearings having an inner bore diameter of 10 mm or less and tolerances of ABEC 5, RBEC 5 (or national equivalents) or better and either of the

(c) • • •

(d) Gyrostabilizers used for other purposes than aircraft control, *except those for stabilizing an entire surface vessel;*

(e) • • •

(f) Accelerometers with a threshold of 0.005 g or less, or a linearity error within 0.25

(ii) Utilizing the constant velocity and/or rectilinear propagation characteristics of electromagnetic waves having frequency less than 4×10^{14} Hz (0.75 micron);

(iii) Radio altimeters, the following:

(*a*) Pulse modulated;

(*b*) Frequency modulated having a

(v) Utilizing a Doppler technique for any purpose, other than M.T.I. systems using a conventional double or triple pulse delay line cancellation technique *except those utilized for surveillance and control radar for aerial navigation in civil airports;*

(vi) Including any digital signal processing

(2) Horizontal presses having a total rated force of over 5,000 tons;

(c) Isostatic presses, as follows (isostatic presses are those capable of pressurizing a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal force in all directions within the cavity upon a workpiece or material):

(1) Capable of achieving a maximum working pressure of 20,000 psi (1,406 kg/cm^2) or greater and possessing a chamber cavity with an inside diameter in excess of 16 inches (40.6 cm); or

(2) Capable of achieving a maximum working pressure of 5,000 psi (351 kg/cm^2) or greater and having a controlled thermal environment within the closed cavity, *except those possessing a chamber cavity with an inside diameter of less than 5 inches (127 mm) and which are also capable of achieving and maintaining a controlled thermal environment only between +176° F (+80° C) and −31° F (−35° C);* and

(d) Control equipment, accessories, and parts which are specially designed for the above presses.

Notes.—1. Licenses are likely to be approved for export to satisfactory end-users of hydraulic presses covered by sub-entry (b) above, provided that:

(i) The total rated force is less than 30,000 tons for vertical presses, and 10,000 tons or less for horizontal presses;

(ii) The presses are not specially designed for use in forming aircraft, missile or space vehicle parts, in powder metallurgy or in ceramics production; and

(iii) The presses could not reasonably be used for strategic purposes.

2. Licenses are likely to be approved for export to satisfactory end-users of isostatic presses covered by sub-entry (c) above, provided that:

(i) Isostatic presses having a controlled thermal environment within the closed cavity are limited as follows:

(a) Maximum working pressure not exceeding 20,000 psi (1,406kg/cm^2);

(b) Chamber cavity with an inside diameter not exceeding 10 inches (25.4 cm);

(c) Capable of achieving and maintaining a controlled thermal environment within the closed cavity of no greater than 1,200° C;

(ii) Isostatic presses, other than those dealt with under sub-paragraph (i) above, are limited as follows:

(a) Maximum working pressure not exceeding 30,000 psi (2,109 kg/cm^2);

(b) Chamber cavity with an inside diameter not exceeding 20 inches (50.8); and provided the equipment will be used for specific non-strategic applications and will not be used for any nuclear or aerospace applications.

3. Licenses are likely to be approved for export to satisfactory end-users of normal amounts of equipment covered by sub-entry (d) above to service presses licensed for export under Note 1 above.

1353A Equipment specially designed for the manufacture of communication cable described in entry No. 1526.

Note.—Licenses are likely to be approved for export to satisfactory end-users of equipment specially designed for the manufacture of cable covered by entry No. 1526 sub-entry II (b).

1355A Machinery and equipment for the manufacture of electronic equipment, components and materials; related test gear; parts and specialized controls and accessories thereof, as follows:

(a) • • •

(b) Equipment for the manufacture of semi-conductor, acoustic wave and film memory devices, of electronic equipment and components covered by sub-entry 1564II (b) and (c), and of parts, materials and subassemblies thereof, as follows:

(1) Equipment for the processing of semi-conductor materials for the manufacture of devices, equipment and components specified in the heading of this sub-entry as follows:

(i) • • •

(ii) Crystal pullers, furnaces, and gas systems, as follows:

(a) • • •

(b) • • •

(c) • • •

(d) • • •

(e) Crystal pullers having any of the following characteristics:

(1) • • •

(2) Capable of operation at pressures above 10^5 pascals (1 atmosphere absolute);

(3) • • •

(f) • • •

(iii) • • •

(iv) • • •

(v) • • •

(vi) • • •

(vii) • • •

(viii) • • •

(ix) • • •

(2) • • •

(3) • • •

(4) • • •

(5) • • •

(6) • • •

Note.—Licenses are likely to be approved for satisfactory civil end-users of crystal pullers covered by subparagraph (b)(1)(ii)(e)(2) above which can be operated at pressures up to 2.5×10^5 pascals (2.5 atmospheres absolute).

1361A Wind tunnels, as follows:

(a) Supersonic (Mach 1.4 to Mach 5), hypersonic (Mach 5 to Mach 15) and hypervelocity (above Mach 15) wind tunnels, *except wind tunnels specially designed for educational purposes and having a test section size (measured internally) of less than 10 in.* (25 cm). (By "test section size" is understood the diameter of the circle, or the side of the square, or the longest side of the rectangle constituting possible shapes of the test section.);

(b) • • •

(c) • • •

(d) Specially designed parts and accessories.

Notes.— 1. Licenses are likely to be approved for export to satisfactory end-users of supersonic wind tunnels which are capable of Mach velocities of 1.4 or more but less than 5, and are not specially designed for or fitted with means of preheating the air.

2. Licenses are likely to be approved for export to satisfactory end-users of specialized parts and assemblies covered by sub-entry (d) for wind tunnels previously exported under Note 1, provided that such parts and assemblies will not upgrade the performance of the wind tunnel and, for normally-consumable replacement parts, will not exceed a 6-month supply.

1371A Anti-friction bearings, as follows:

(a) Ball and roller bearings having an inner bore diameter of 10 mm or less and tolerances of ABEC 5, RBEC 5 (or national equivalents) or better and either of the following characteristics:

(1) Made of special materials, *i.e.* with rings, balls or rollers made from any steel alloy or other material including, but not limited to high-speed tool steels, Monel metal, beryllium, metaloids, ceramic, and sintered metal composites, *except the following: low-carbon steel; SAE–52100 high carbon chromium steel; SAE–4615 nickel molybdenum steel; AISI–440C (SAE 51440C) stainless steel; or national equivolents; and/or*

(2) Manufactured for use at normal operating temperatures over 302° F (150° C) either by use of special materials or by special heat treatment;

(b) Ball and roller bearings *except separable ball bearings and thrust ball bearings,* having an inner bore diameter exceeding 10 mm and having tolerances of ABEC 7, RBEC 7 (or national equivalents) or better (ABEC 5 in the case of hollow bearings) and either of the following characteristics:

(1) Made of special materials, *i.e.* with rings, balls or rollers made from any steel alloy or other material including, but not limited to high-speed tool steels, Monel metal, beryllium, metaloids, ceramic, and sintered metal composites, *except the following: low-carbon steel; SAE–52100 high carbon chromium steel; SAE–4615 nickel molybdenum steel; AISI 440C (SAE 51440C) stainless steel; or notional equivolents;* and or

(2) Manufactured for use at normal operating temperatures over 302° F (150° C) either by use of special materials or by special heat treatment;

(c) Ball and roller bearings having tolerances better than ABEC 7 (or national equivalents); and

(d) Bearing parts usable only for bearings covered by this entry, as follows: outer rings, inner rings, retainers, balls, rollers, and sub-assemblies. (See § 376.7.)

Note.—Licenses are likely to be approved for export of reasonable quantities of bearings covered by this item to satisfactory civil end-users which have furnished assurances that the bearings will be incorporated in equipment previously imported from Canada or countries in Country Group T or V.

1485A Compasses, gyroscopes, accelerometers, and inertial equipment, as follows:

(a) • • •

(b) Integrated flight instrument systems for aircraft which include gyrostabilizers and/or automatic pilots (An integrated flight instrument system is a primary instrument display system of attitude and azimuth with facilities for giving maneuver guidance information to the pilot and often integrated with an autopilot to the extent of embodying a common unit for setting up the required demands);

(c) • • •

(d) Gyrostabilizers used for other purposes than aircraft control, *except those for stabilizing an entire surface vessel;*

(e) • • •

(f) Accelerometers with a threshold of 0.005 g or less, or a linearity error within 0.25 percent of full scale output or both, which are designed for use in intertial navigation systems or in guidance systems of all types;

(g) Gyros with a rated free directional drift rate (rated free precession) of less than 0.5 degree (1 Sigma or r.m.s.) per hour in a 1 g environment;

(h) • • •

(i) Specially designed parts and components, and test, calibration, and alignment equipment for the above.

Note.—Licenses are likely to be approved for export to satisfactory end-users of equipment, as follows:

(a) Types and series covered by sub-entry (b) above, provided the equipment has been in normal civil use for more than two years, is standard equipment of aircraft excluded from control under entry No. 1460, and is, or is to be, installed in civilian aircraft.

(b) Types and series covered by sub-entry (d) above, provided the equipment has been in normal civil use for more than two years and is intended for a clearly civil application in the importing country.

(c) Parts, components and equipment covered by sub-entry (i) above, provided they are not also covered by sub-entries (f) and (g) above, and are intended for use with exports meeting the conditions of sub-paragraphs (a) and (b) of this Note.

1501A Navigation, direction finding, radar and airborne communication equipment, as follows: (See also entry No. 1485 sub-entries (b) and (h), and entry No. 2120 sub-entries (b) and (c).)

(a) Airborne communication equipment and specialized parts and components therefor, having *any* of the following characteristics:

(1) Designed to operate at frequencies greater than 156 MHz;

(2) Incorporating facilities for:

(i) The rapid selection of more than 200 channels per equipment, or

(ii) Equipment using frequency synthesis techniques (see also entry No. 1531), *except equipment operating in the frequency range of 108 to 136 MHz with 720 channels or fewer at not less than 25 kHz spacing, and which has been in normal civil use for at least one year;*

(3) Pressurized throughout;

(4) Rated for continuous operation over a range of ambient temperatures extending from below −55° C to +55° C; or

(5) Designed for modulating methods employing any form of digital modulation using time and frequency redundancy such as "Quantized Frequency Modulation" (QFM);

(b) Navigation and direction finding equipment (and specialized parts and accessories, specialized testing or calibrating equipment and training or simulating equipment therefor), as follows:

(1) Airborne navigation equipment and direction finding equipment, as follows:

(i) Designed to make use of "Doppler" frequency phenomena;

(ii) Utilizing the constant velocity and/or rectilinear propagation characteristics of electromagnetic waves having frequency less than 4×10^{14} Hz (0.75 micron);

(iii) Radio altimeters, the following:

(*a*) Pulse modulated;

(*b*) Frequency modulated having a displayed electrical output accuracy better than ±3 feet [±0.914 m) over the range between 0 and 100 feet (30.4 m) or better than ±3 percent above 100 feet (30.4 m); or

(*c*) Frequency modulated which have been in normal civil use for less than one year;

(iv) Direction finding equipment operating at frequencies greater than 5 MHz, *except equipment specially designed for search and rescue purposes, provided that the receiver operates on a crystal controlled fixed frequency of 121.5 MHZ or an alternating frequencies of 121.5 MHz and 243 MHz;*

(v) Pressurized throughout; or

(vi) Rated for continuous operation over a range of ambient temperatures extending from below −55° C to above +55° C;

(2) Ground and marine equipment for use with airborne navigation equipment utilizing the constant velocity and/or the rectilinear propagation characteristics of electromagnetic waves having frequency less than 4×10^{14} Hz (0.75 micron); or

(3) Ground and marine direction finding equipment operating at frequencies greater than 30 MHz; and

(c) Radar equipment and specialized parts and accessories, specialized testing or calibrating equipment and training or simulating equipment therefor, as follows: (For Lidar Equipment see entry No. 1522.)

(1) Airborne radar equipment; or

(2) Ground and marine radar equipment having one or more of the following features:

(i) Operating at a frequency not in normal civil use or at a frequency of more than 10.5 GHz;

(ii) Operating at a frequency of less than 1.5 GHz and having a peak output power from the transmitter greater than 2.5 MW; or operating at a frequency within the range of 1.5 to 3.5 GHz and having a peak output power from the transmitter greater than 1.5 MW; or operating at a frequency within the range of 3.5 to 6 GHz and having a peak output power from the transmitter greater than 1 MW; or operating at a frequency within the range of 6 to 10.5 GHz and having a peak output power from the transmitter greater than 500 kW;

(iii) Operating at a frequency of less than 3.5 GHz and having an 80 percent or better probability of detection for a 10 sq. m. target at a free space range of 250 nautical miles; or operating at a frequency within the range of 3.5 to 10.5 GHz and having an 80 percent or better probability of detection for a 10 sq. m. target at a free space range of 100 nautical miles;

(iv) Utilizing other than pulse modulation with a constant and/or staggered pulse repetition frequency, in which the carrier frequency of the transmitted signal is not changed deliberately between groups of pulses, from pulse to pulse or within a single pulse, *except civil commercial airport radars using a carrier frequency that may change from pulse to pulse between two fixed frequencies separated in time and in frequency by constant magnitudes;*

(v) Utilizing a Doppler technique for any purpose, other than M.T.I. systems using a conventional double or triple pulse delay line cancellation technique *except those utilized for surveillance and control rodar for aerial navigation in civil airports;*

(vi) Including any digital signal processing techniques used for automatic target tracking, or having a facility for electronic tracking;

(vii) Including signal processing techniques other than those covered by sub-entry (c)(2)(vi) above, which have been in normal civil use for a period of less than two years; or

(viii) In the case of ground radar, having been in commercial use for a period of less than one year.

Notes.—1. Licenses are likely to be approved for export to satisfactory end-users of commercial airborne equipment needed to equip civil aircraft, or as normal standard equipment incorporated in civil aircraft being exported for civil commercial use, and not containing characteristics in sub-entry (a)(5) above.

2. Licenses are likely to be approved for export to satisfactory end-users of navigation equipment covered by sub-entry (b)(1)(i) above, provided that it is to be installed in civil aircraft or helicopters, and is normal standard equipment of a type installed in civil aircraft or helicopters in TV country groups.

3. Licenses are likely to be approved for export to satisfactory end-users of standard commercial airborne equipment listed in sub-entries (b)(1) (ii) and (iii) above, needed to equip civil aircraft, or as normal standard equipment incorporated in civil aircraft being exported for civil commercial use, provided that such equipment is equivalent in all characteristics and performance to standard equipment of aircraft not subject to control, and which:

(a) For equipment covered by sub-entry (b)(1)(ii) above, is in conformity with ICAO standards and assures no function exceeding those resulting from such standards, and is not designed to make use of hyperbolic grids at frequencies greater than 3 MHz. [Standard commercial airborne equipment designed to make use of hyperbolic grids at frequencies of less than 3 MHz may be exported if coordinate conversion equipment, which has been in normal civil use for less than one year, or which could not be shipped under the provisions of entry No. 1565, is not included and is not separately supplied), and

(b) For equipment covered by sub-entry (b)(1)(iii) above, are frequency modulated radio altimeters which have been in normal civil use for a period of more than one year.

4. Licenses are likely to be approved for export to satisfactory end-users of ground equipment for use at civil airports or for civil use in association with airborne equipment which meets the criterion of Note 3 to sub-entry (b)(1)(ii) above, and approved for export, provided that such equipment:

(a) is in conformity with ICAO standards and assures no function exceeding those resulting from such standards;

(b) is not designed to make use of hyperbolic grids at frequencies greater than 3 MHz.

5. Licenses are likely to be approved for export to satisfactory end-users of equipment covered by sub-entry (b)(3) above, provided:

(a) The equipment is to be installed at civil airports or for use on civil air routes;

(b) The equipment is designed to operate at frequencies between 30 MHz and 157 MHz, excluding single side band equipment;

(vii) or (viii) above, or both, provided it is specially designed for meteorological observation.

1502A Communication, detection or tracking equipment of a kind using ultra-violet radiation, infrared radiation or ultrasonic waves; *except ultrasonic devices which operate in contact with a controlled*

end-users of acoustic hydrophones and transducers which have all of the other characteristics of sub-entry (i)(B), but which either:

(a) Have a sensitivity no greater than −204 dB (reference 1 volt micropascal), and are designed for operation at greater than 100 meters depth but not greater than 1,000

equipment employing exclusively the direct current transmission technique: electronic measuring equipment, suitable for use with PCM transmission equipment defined in CCITT recommendation series G 700 (ITU Geneva), as follows:

(a) Employing analog transmission

country, and is to be used for general commercial traffic, as follows:

(a) A total digital bit rate at the highest level multiplex point of 6.5 million bits per second or less; and either

(b) A total number of voice channels per each physical bearer (wire or radio) of 120 or

channels for the operation of such networks and the engineering service circuits required for the maintenance of telecommunications links.

5. Licenses are likely to be approved for the export to satisfactory end-users of tropospheric scatter communication

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5. Licenses are likely to be approved for export to satisfactory end-users of equipment covered by sub-entry (b)(3) above, provided:

(a) The equipment is to be installed at civil airports or for use on civil air routes;

(b) The equipment is designed to operate at frequencies between 30 MHz and 157 MHz, excluding single side band equipment;

(c) The equipment employs a loop system or a system employing a number of spaced vertical aerials uniformly disposed around the circumference of a circle, excluding electronically commutated types.

6. Licenses are likely to be approved for export to satisfactory end-users of equipment covered by sub-entry (c) above, when it is to be installed in civil aircraft, provided that this equipment:

(a) Has been in normal commercial service for at least one year;

(b) Is specially designed for use as a commercial weather radar;

(c) Is a normal and reasonable equipment for such civil aircraft; and

(d) Does not contain significant advanced technology of strategic value for other applications.

7. Licenses are likely to be approved for export to, satisfactory end-users of secondary radar equipment covered by sub-entry (c) above, designed specifically for civil air traffic identification and control purposes.

8. Licenses are likely to be approved for export to satisfactory end-users of the following:

(a) Radar equipment covered only sub-entries (c)(2) (i), (ii) and/or (iii) above, provided that both of the following conditions are met:

(i) It is specially designed for the surveillance and coordination of airfield surface traffic; and

(ii) It is to be installed at airports operating scheduled commercial flights.

(b) Radar equipment covered only by sub-entries (c)(2) (ii) or (iii) above, or by both, provided that all the following conditions are met:

(i) Operating at a frequency of not more than 1.5 GHz and having a peak output power from the transmitter not greater than 5 MW; or operating at a frequency within the range of 1.5 to 3.5 GHz and having a peak output power not greater than 2.5 MW;

(ii) Having an 80 percent or better probability of detection for a 10 sq. m. target at a free space range of 270 nautical miles;

(iii) Having a pulse repetition frequency exceeding 300 pulses per second; and

(iv) It is to be installed for air traffic control of scheduled international commercial flights;

(c) Radar equipment covered only by sub-entries (c)(2) (iv) and/or (v) above, provided it is to be installed for air traffic control purposes in international airports and has been in normal civil use for a period of not less than three years;

(d) Radar equipment covered by sub-entry (c)(2)(vi) above, provided it is specially designed for marine, harbor or meteorological use, or has been in normal civil use for not less than three years;

(e) Radar equipment covered only by sub-entry (c)(2)(vii) above, provided it is specially designed for marine (or harbor) use, or radar equipment covered only by sub-entries (c)(2) (vii) or (viii) above, or both, provided it is specially designed for meteorological observation.

1502A Communication, detection or tracking equipment of a kind using ultra-violet radiation, infrared radiation or ultrasonic waves; *except ultrasonic devices which operate in contact with a controlled material to be inspected, or which are used for industrial cleaning, sorting or materials handling, industrial and civilian intrusion alarm, traffic and industrial movement control and counting systems, medical applications, emulsification, homogenisation, or simple educational or entertainment devices; underwater ultrasonic communications equipment designed for operation with amplitude modulation and having a communications range of 500 m or less (sea state 1), a carrier frequency of 40 to 60 kHz and a carrier power supplied to the transducer of 1 W or less; industrial equipment employing cells not described in entry Nos. 1548 or 1550; industrial and civilian intrusion alarm, traffic and industrial movement control and counting systems; medical equipment; industrial equipment used for inspection, sorting or analysis of the properties of materials; simple educational or entertainment devices which employ photo cells; flame detectors for industrial furnaces; equipment for non-contact temperature measurement for laboratory or industrial purposes utilizing a single detector cell with no scanning of the detector; or instruments capable of measuring radiated power or energy having a response time constant exceeding 10 milliseconds;* and specialized parts therefor.

Note.—Licenses are likely to be approved for export to satisfactory end-users of infra-red geodetic equipment covered by this entry, provided that the equipment uses a lighting source other than a laser and is manually operated, or that it uses a lighting source (other than a laser or a light-emitting diode) remote from the measuring equipment.

1510A Acoustic and/or ultrasonic systems or equipment specially designed for detecting or locating underwater or subterranean objects or features, and specially-designed components of such systems or equipment (including but not limited to hydrophones and transducers, towed hydrophone arrays, software therefor, and beamformers), *except:*

(i) *Marine systems or equipment, as follows:*

(A) • • •

(B) Passive (receiving, whether or not related in normal application to separate active equipment) acoustic hydrophones and/or transducers having *all* of the following characteristics:

(1) Incorporating sensitive elements made of piezoelectric ceramics or crystal, and with a sensitivity no greater than −192 dB (reference 1 volt per micropascal);

(2) Not designed for operation at depths greater than 100 meters;

(3) Independently mounted or configured and not reasonably capable of assembly by the users into a towed hydrophone array;

(ii) • • •

Notes.—1. Licenses are likely to be approved for export for civil end-use by civil end-users of acoustic hydrophones and transducers which have all of the other characteristics of sub-entry (i)(B), but which either:

(a) Have a sensitivity no greater than −204 dB (reference 1 volt micropascal), and are designed for operation at greater than 100 meters depth but not greater than 1,000 meters depth; or

(b) Are not acceleration compensated, have a sensitivity no greater than −180 dB (reference 1 volt per micropascal) and are not designed for operation at depths greater than 100 meters.

2. Licenses are likely to be approved for export for civil end-use by civil end-users of towed acoustic hydrophone arrays having all of the following characteristics:

(a) Not specially designed for operation at greater than 100 meters depth or at tow speeds in excess of 8 knots;

(b) Not incorporating temperature or heading sensors;

(c) Having hydrophone groups uniformly spaced at not less than 25 meters and not more than 80 meters;

(d) Having an assembled diameter of 40 mm or greater and using metallic strength members only;

(e) Not having multiplexed hydrophone group signals;

(f) Not having a configuration for multiple or overlapping acoustic aperture operation;

(g) Not having characteristics better than those specified in sub-entries (i)(B) (1) and (2) above;

(h) Not having associated processing equipment which provides any of the following features:

(1) Electronically-steerable beamforming capabilities;

(2) Side-lobe suppression techniques such as shading coefficients;

(3) On-line real-time processing or off-line batch pre-processing capabilities exceeding the limits specified in entries 1529 and 1565.

1519A Single and multi-channel communications transmission equipment, including terminal, intermediate amplifer or repeater equipment and multiplex equipment used for communications (line, cable, optical fiber cable, or radio) systems, and data modems making use of the aforementioned communication systems and associated multiplex equipment, *except telemetering, telecommand and telesignalling equipment designed for industrial purposes, together with data transmission equipment not intended for the transmission of written or printed text and specialized ports, accessories and test equipment therefor (by telemetering, telecommand and telesignalling equipment is meant: sensing heads for the conversion of information into electrical information, the systems used for its long-distance transmission, the processes used to translate electrical information into coded data (telemetering), into control signals (telecommand), and into display signals (telesignalling)); facsimile equipment other than that employing cipher, cryptographic and/or coding devices and equipment that are designed to ensure the secrecy of communications and thus prevent clear reception by anyone other than the intended receiver (see Supplement No. 2 to Part 370);*

equipment employing exclusively the direct current transmission technique; electronic measuring equipment, suitable for use with PCM transmission equipment defined in CCITT recommendation series G 700 (ITU Genevo), as follows:

(a) Employing analog transmission techniques with analog input and output, designed to deliver, carry or receive baseband frequencies higher than 19 MHz into, or in, a communications system, but only higher than 300 kHz for equipment suitable for use with submarine cable (analog transmission techniques include, inter alia, frequency division multiplex (FDM));

(b) Employing digital transmission techniques designed for operation at a data signalling rate exceeding 2.1 Megabits per second, with analog input and output, designed for use on communications circuits (digital transmission techniques include, inter alia, pulse code modulation (PCM));

(c) Data communications equipment employing digital transmission with digital input and output, including telegraphic and data transmission, having any of the following characteristics:

(1) Designed for operation at a data signalling rate in bits per second, excluding servicing and administrative channels, numerically exceeding either:

(i) 4,800; or

(ii) 160 percent of the channel (or sub-channel) bandwidth in Hertz;

(2) Employing an automatic error detection and correction system having both of the following characteristics:

(i) Retransmission is not required for correction; and

(ii) A data signalling rate exceeding 300 bits per second; and

(d) Components, accessories, and sub-assemblies specially designed for the above equipment, and test equipment specially designed for the equipment covered by sub-entry (b) above, except connectors for use with optical fibers or cable with a repeatable coupling loss of 0.5 dB or more.

Notes.—1. Licenses are likely to be approved for export to satisfactory end-users of equipment covered by sub-item (a) above, and components, accessories and sub-assemblies thereof, as follows:

(a) Equipment specially designed for the transmission of television signals by cable between camera and studio or between studio and television transmitter not exceeding 50 miles (80 km) for a link with respect to any one installation. (For radio relay links see entry No. 1520.)

(b) Equipment to be used for closed circuit television or television distribution (community aerial systems and cable television systems) with an upper frequency limit of 960 MHz.

(c) Equipment designed to deliver, carry or receive baseband frequencies up to and including 82 MHz.

2. Licenses are likely to be approved for the export to satisfactory end-users of equipment covered by sub-item (b) above, and components, accessories and sub-assemblies and cable therefor, provided that it is for other than submarine use, is to be permanently installed in a circuit operated by the civilian authorities of the importing country, and is to be used for general commercial traffic, as follows:

(a) A total digital bit rate at the highest level multiplex point of 8.5 million bits per second or less; and either

(b) A total number of voice channels per each physical bearer (wire or radio) of 120 or less; or

(c) A monochrome or color television channel with a maximum nominal bandwidth of 8 MHz, and associated sound channels.

3. Licenses are likely to be approved for the export to satisfactory end-users of the data modems described in sub-entry (c)(1) above, conforming to CCITT recommendations and/or specially designed for civil end-use, and operating at speeds up to 9,600 bits per second or 320% of the channel (or sub-channel) bandwidth in hertz, provided they are to be permanently installed in a circuit operated by the civilian authorities of the importing countries for general commerical traffic.

1520A Radio relay communications equipment designed for use at frequencies exceeding 960 MHz, and components, accessories and sub-assemblies therefor.

Notes.—1. Licenses are likely to be approved for export to satisfactory end-users of equipment covered by this item, and components, accessories and sub-assemblies therefor, specially designed for the transmission of television signals between camera and studio or between studio and television transmitter, and not exceeding a line of sight distance with respect to any one installation.

2. Licenses are likely to be approved for export to satisfactory end-users of equipment covered by this item, and components, accessories and sub-assemblies therefor, as follows:

(a) Ground communication radio equipment for use with temporary fixed services operated by the civilian authorities of the importing country and designed to be used at fixed frequencies not exceeding 13.5 GHz with a power output of not more than 5 watts;

(b) Equipment to be permanently installed in a circuit operated by the civilian authorities of the importing country for civil television transmission nor for general commerical traffic, provided that:

(1) Associated multiplex equipment is considered separately under the provisions of entry No. 1519; and

(2) No equipment with a base bandwidth exceeding the limits set forth in Note 3 to entry No. 1519 is included.

3. Licenses are likely to be approved for export to satisfactory end-users of equipment covered by this item, for communications satellite earth stations provided that it is to be installed for operation in the framework of an INTELSAT satellite communications system.

4. Licenses are likely to be approved for export to satisfactory end-users of equipment with a maximum capacity of 300 voice channels of 4 kHz each, components, accessories, sub-assemblies and specialized test equipment for industrial use, e.g. remote supervision, control and metering of oil and gas pipelines, public utility services (e.g. electricity networks) including telephone channels for the operation of such networks and the engineering service circuits required for the maintenance of telecommunications links.

5. Licenses are likely to be approved for the export to satisfactory end-users of tropospheric scatter communication equipment, and components, accessories and sub-assemblies therefor, covered by this entry, provide that it will be permanently installed at specified sites for civil communication purposes and has all of the following characteristics:

(a) Fixed frequency of 2.7 GHz or less;

(b) Frequency modulation;

(c) Power amplifier output of 10 kW or less.

1522A Lasers and laser systems (including active and passive components in semi-fabricated forms as well as in fabricated forms) and equipment containing them, as follows:

(a) Lasers and specially designed components and parts therefor, including amplification stages, *except the following when not contained in equipment:*

(i) • • •

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(vi) Nd: YAG lasers having an output wavelength of 1.06 micrometers with either of the following characteristics:

(1) A pulsed output not exceeding 0.5 joule per pulse and a maximum rated average single- or multi-mode output power not exceeding 10 watts or a continuous wave maximum rated single- or multi-mode output power not exceeding 50 watts;

(2) • • •

(vii) Nd: Glass lasers with both of the following characteristics:

(1) An output wavelength of 1.06 micrometers;

(2) A pulsed output not exceeding 0.5 joule per pulse;

(viii) • • •

(ix) • • •

(x) • • •

(b) Equipment containing lasers and laser systems, *except equipment listed below containing lasers listed in (a) above as exceptions:*

(i) Specially designed for industrial and civilian intrusion detection and alarm systems;

(ii) Specially designed for medical applications;

(iii) Equipment for educational and laboratory purposes;

(iv) Specially designed for traffic and industrial movement control and counting systems;

(v) Specially designed for detection of environmental pollution;

(vi) Optical spectrometers and densitometers;

(vii) Equipment containing continuous wave helium-neon gas lasers but see sub-entries (c) and (d) below;

(viii) Textile-cutting and textile-bonding equipment;

(ix) Paper cutting equipment;

(x) Equipment containing lasers for drilling diamond dies far the wire drawing industry;

(xi) Electronic daylight scanning equipment with auxiliary electronic

screening units especially designed for printing processes;

(xii) Laser-radar (lidar) equipment

(3) • • •

(b) Instruments, as follows:

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technology, which include active circuit elements (for acoustic wave devices, see entry No. 1586) (see also entry No. 1564);

(b) Greater than 3 GHz and less than 12.5 GHz and having a noise figure of more than 6.5 dB;

screening units especially designed for printing processes;

(xii) Laser-radar (lidar) equipment specially designed for surveying or meteorological observation;

(xiii) Consumer, disc-type video and audio recorders and reproducers;

(xiv) Price scanners (point of sale); and

(xv) Systems designed for surveying purposes; provided there is no capability of measuring range;

(c) * * *

(d) * * *

Note.—Licenses are likely to be approved for export to satisfactory end-users of equipment listed in sub-entry (b) containing lasers described in (a) (vi)(1) and (vii) provided the lasers have a maximum pulsed output not exceeding 2 joules per pulse. The shipment of spare laser rods for equipment exported under this Note will be restricted to rods having no greater output power and/or energy capability than those originally exported with the equipment.

1526A Cable, as follows:

I. * * *

II. Communications cable, as follows:

(a) Submarine cable, as follows:

(1) Reversed-twist, double-armored cable used for towing or suspending and communicating with submerged devices;

(2) Unarmored or single-armored ocean cable having an attenuation of 1.6 dB per nautical mile (0.97 dB/km) or less, measured at a frequency of 600 kHz;

(b) Coaxial cable using a dielectric aired by discs, beads, spiral, screw, or any other means, with an inner diameter of the outer conductor of the cores greater than 14 mm (0.551 in.);

(c) Graded index or single-mode step index optical fiber communications cable and optical fibers therefor, having either of the following characteristics:

(1) An attenuation at any operating wavelength of 5 dB/km or less;

(2) A tensile strength greater than 7×10^9 N/m^2; or

(d) * * *

Notes.—1. Licenses are likely to be approved for the export to satisfactory end-users of cable covered by sub-entry II(a)(1) above when used for civil applications in oceanographic research or in natural resources exploration.

2. Licenses are likely to be approved for the export to satisfactory end-users of cable covered by sub-entries II (a)(2), (b) and (c) above, provided that:

(a) The cable is for a specific civil end-use;

(b) The quantities of cable required are normal for the purpose; and

(c) (applicable to sub-entry II(c) above only) The cable is not specially designed for underwater use.

1529A Electronic measuring, calibrating, counting, testing, and/or time interval measuring equipment, whether or not incorporating frequency standards, having any of the following characteristics:

(a) Equipment, as follows:

(1) * * *

(2) Designed for fixed ground use and containing frequency standard(s), with a stability over 24 hours of 1 part in 10^9 or better; or

(3) * * *

(b) Instruments, as follows:

(1) * * *

(2) * * *

(3) * * *

(4) Spectrum analyzers employing time compression of the input signal or FFT (Fast Fourier Transform) techniques;

(5) Incorporating computing facilities with user accessible reprogramming capability and an alterable memory of more than 8,192 bits;

(6) * * *

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Notes.—1. Licenses are likely to be approved for export to satisfactory end-users of items covered only by sub-entry (a)(2) above, provided that:

(a) The stability over 24 hours is not better than 5 parts in 10^{10}; and

(b) The equipment is a reasonable requirement for the stated legitimate civil end-use.

2. Licenses are likely to be approved for export to satisfactory end-users of items covered by sub-entry (b)(4) above, having either of the following characteristics:

(a) Capable of computing 512 complex spectral lines in 200 milliseconds or more;

(b) Capable of computing 512 real spectral lines in 100 milliseconds or more;

3. Licenses are likely to be approved for export to satisfactory end-users of instruments covered by sub-entry (b)(5) above, provided that:

(a) The instruments have been designed for non-strategic use and by nature of design, software, microprogram control (firmware), specialized logic control (hardware) or performance are substantially restricted to the particular application for which they have been designed.

(b) The instruments are not covered by any other part of this entry and do not exceed the limits of Note 4 to entry No. 1565.

1531A Frequency synthesizers (and equipment containing such frequency synthesizers), as follows (frequency synthesizer means any kind of frequency source or signal generator, regardless of the actual technique used, providing a multiplicity of simultaneous or alternative output frequencies, from one or more outputs, controlled by, derived from or disciplined by a lesser number of standard (or master) frequencies):

(a) * * *

(b) Instrument frequency synthesizers and synthesized signal generators designed for ground laboratory use, producing output frequencies whose accuracy and short and long term stability are controlled by, derived from or disciplined by the input frequency or internal master standard frequency, and having any of the following characteristics:

(1) * * *

(2) * * *

(3) Electrically programmable (in that the output frequency can be controlled or selected by the injection of digitally coded electrical signals from an external control source) with a switching speed from one selected output frequency to another selected output frequency less than 10 milliseconds;

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Note.—Licenses are likely to be approved for export to satisfactory end-users of equipment covered by sub-entry (b)(3) above, with a switching speed not less than 5 milliseconds.

1532A Precision linear and angular measuring systems and components, as follows:

(a) Contact-type systems and linear voltage differential transformers (LVDT) therefor, as follows:

(1) Systems having all of the following characteristics:

(i) Range equal to or less than 5 mm;

(ii) Linearity equal to or less than 0.1 percent;

(iii) Drift equal to or less than 0.1 percent per day at standard ambient test room temperatures ±1° C;

(2) Linear voltage differential transformers with no compensation networks and having either of the following characteristics:

(i) Range equal to or less than 5 mm;

(ii) Linearity equal to or less than 0.2 percent; (linearity measurements are made in the static mode);

(b) Linear measuring machines, *except optical comparators*, with two or more axes having both of the following characteristics:

(1) Range in any axis greater than 200 mm;

(2) Accuracy (including any compensation) less (finer) than 0.0008 mm per any 300 mm segment of travel;

(c) Angular measuring systems having an accuracy equal to or less than 1 second of arc, *except optical instruments, such as autocollimators, using collimated light to detect angular displacements of a mirror;*

(d) Non-contact type systems having either of the following characteristics:

(1) Effective probe measurement diameter less than 0.5 mm and drift less than 0.5 percent per day at standard ambient test room temperatures ±1° C;

(2) Linearity less than 0.3 percent and drift less than 0.5 percent per day at standard ambient test room temperature ±1° C.

Note.—Licenses are likely to be approved for export of equipment covered by this item to civil end-users not engaged in aerospace activities.

1533A Radio spectrum analyzers (i.e. apparatus capable of indicating the single-frequency components of multi-frequency signals), specialized components, accessories and parts therefor, as follows (for spectrum analyzers employing time compression of the input signal or FFT techniques, see entry No. 1529(b)(4)):

(a) * * *

(b) * * *

(c) * * *

(d) Incorporating computing facilities with user accessible reprogramming capability and an alterable memory of more than 8,192 bits;

(e) * * *

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Note.—Licenses are likely to be approved for export to bona fide civil end-users for civil end-use of equipment covered by sub-entry (d) above.

1534A Flatbed microdensitometers, *except cathode-ray types*, specially designed parts, components and assemblies therefor, having any of the following characteristics:

(a) A recording or scanning rate exceeding 5,000 data points per second;

(b) A figure of merit better (less) than 0.1, defined as the product of the density resolution (expressed in density units) and the spatial resolution (expressed in micrometers);

(c) An optical density range greater than 0 to 4.

Notes.—1. Licenses are likely to be approved for export of equipment specially designed for medical applications, provided the equipment is a reasonable requirement for the stated application.

2. Licenses are likely to be approved for export to civil end-users for civil end-uses of equipment covered only by sub-entry (b) above, provided the spatial resolution is not better (less) than 2 micrometers and the density resolution is not better (less) than 0.01 in density units.

1537A Microwave equipment, including parametric amplifiers, capable at frequencies over 1 GHz (other than microwave equipment covered by entries 1501, 1517, 1520, 1526(I), 1529 and Supplement No. 2 to part 370), as follows:

(a) * * *

(b) * * *

(c) Waveguide components, as follows:

(1) * * *

(2) * * *

(3) Magnetic including gyro-magnetic waveguide components;

(d) TEM mode device using magnetic including gyro-magnetic properties;

(e) TR and anti-TR tubes and components therefor *except those designed for use in waveguides and having any of the following characteristics, which are in normal civil use for ground or marine radar:*

(i) Operating at a peak power not exceeding 3 MW and at a frequency of 1.5 GHz or less;

(ii) Operating at a peak power not exceeding 1.2 MW and at a frequency over the range of 1.5 GHz to 6 GHz; or

(iii) Operating at a peak power not exceeding 300 kW and at a frequency over the range of 6 GHz to 10.5 GHz;

(f) Assemblies and sub-assemblies in which the isolating base material functions as a dielectric (as used in stripline, microstrip or slotline) except for those items specifically designed for use in civil television systems to meet ITU standards and using as an isolating material paper base phenolics, glass cloth melamine, glass epoxy resin, polyethylene terephthalate or other isolating material with an operating temperature not exceeding 302° F (150° C);

(g) * * *

(h) Microwave assemblies and sub-assemblies having circuits fabricated by the same processes used in integrated circuit technology, which include active circuit elements (for acoustic wave devices, see entry No. 1586) (see also entry No. 1564);

(i) * * *

(j) Amplifiers (see also entry No. 1521);

(k) * * *

(l) * * *

Notes.—1. Licenses are likely to be approved for export to satisfactory end-users of items covered by sub-entries (c)(3) and (d) above, required as replacement parts in specific civil equipment not exceeding the capability of that which could be exported under entry No. 1501 or entry No. 1520, provided such parts do not upgrade the initial performance of that equipment.

2. Licenses are likely to be approved for export to satisfactory end-users of items covered by sub-entry (e) above required as replacement parts in specific civilian equipment not exceeding the capability of that which could be exported under entry No. 1501, provided such parts do not upgrade the initial performance of that equipment.

3. Licenses are likely to be approved for export to satisfactory end-users of items covered by sub-entry (f) above, designed and intended for use in civil telecommunications systems at frequencies allocated by the ITU for that purpose.

4. Licenses are likely to be approved for export to satisfactory end-users of items covered by sub-entry (h) above, for use at frequencies between 1 GHz and 3 GHz.

5. Licenses are likely to be approved for export to satisfactory end-users of equipment containing parametric amplifying or paramagnetic amplifiers covered by sub-entry (j) above;

(a) Specially designed for medical applications or for use in simple educational devices and operating at ISM frequencies; or

(b) Having an output power of not more than 10 watts, which is specially designed for industrial and civilian intrusion detection and alarm systems, traffic and industrial movement control and counting systems, environmental pollution of air or water detection systems, or for simple educational devices.

1541A Cathode-ray tubes having any of the following characteristics:

(a) * * *

(b) With traveling wave or distributed deflection structure using delay lines, or incorporating other techniques to miminize mismatch of fast phenomena signals to the deflection structure; or

(c) * * *

(d) * * *

Note.—Licenses are likely to be approved for export to satisfactory end-users of cathode-ray tubes covered by sub-entry (b) above, which utilize segmented plate (sectioned Y-plate) structures.

1544A Semi-conductor diodes and dice and wafers therefor (*except those made from germanium, selenium or copper oxide*), designed or rated for use at input or output frequencies above 12.5 GHz or having any of the following characteristics:

(a) (i) * * *

(ii) Schottky diodes designed or rated for mixer use at input or output frequencies of:

(a) 3 GHz or less and having a noise figure of more than 6 dB; or

(b) Greater than 3 GHz and less than 12.5 GHz and having a noise figure of more than 6.5 dB;

(iii) Schottky diodes designed or rated for detector use at input or output frequencies of less than 12.5 GHz and having a minimum rated tangential sensitivity of either worse than −45 dBm under unbiased conditions to worse than −50 dBm under biased conditions;

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) Non-coherent light-emitting diodes with a peak radiant intensity at a wavelength of greater than 1,000 nanometers (for coherent light-emitting diodes, see entry No. 1522).

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Notes.—1. Licenses are likely to be approved for the export to satisfactory end-users of shipments for civil use containing up to 200 of the Schottky diodes mentioned in sub-entries (a) (ii) and (iii) above, having a maximum frequency not exceeding 3 GHz irrespective of noise level or tangential sensitivity.

2. Licenses are likely to be approved for the export to satisfactory end-users of non-coherent light-emitting diodes covered by sub-entry (f) above, for use in identifiable civilian communications systems.

1545A Transistors and dice and wafers therefor (for phototransistors see entry No. 1548) as follows:

(a) * * *

(b) Using silicon as the bulk semi-conductor material and having any of the following characteristics:

(1) * * *

(2) An operating frequency of 1.5 MHz or below and a maximum collector dissipation exceeding 300 watts, or an operating frequency greater than 1.5 MHz and a maximum collector dissipation exceeding 250 watts;

(3) An operating frequency greater than 200 MHz and a product of the operating frequency (in GHz) and the maximum collector dissipation (in watts) exceeding 5;

(4) Majority carrier devices, including but not limited to junction field-effect transistors and metal-oxide semi-conductor transistors, *except field-effect transistors having a maximum power dissipation of 500 mW or less and a maximum operating frequency of 1 GHz or less.*

Notes.—1. Licenses are likely to be approved for export to satisfactory end-users of transistors covered by sub-entries (b) (2) and (3) above, specially designed for television transposers or for civil mobile communication equipment, and having a product of the operating frequency (in GHz) and the maximum collector dissipation (in watts) not exceeding 20.

2. Licenses are likely to be approved for export to satisfactory end-users of transistors covered by sub-entry (b)(4) above which are suitable for and will be used in civil TV, AM or FM receivers or audio frequency equipment.

1547A Thyristors and dice and wafers therefor, as follows:

(a) Designed for use in pulse modulators having a rated turn-on time of less than 1 microsecond where the rated peak current exceeds 150 Amperes:

(b) Having a rated turn-off time of less than 1 microsecond:

(c) Having a rated turn-off time of from 1 microsecond to less than 2.3 microseconds *except those having a rated peak current of*

capability of that which could be exported under the Commodity Control List, provided that these parts do not upgrade the initial performance of such equipment.

1555A Electron tubes and specialized components and parts therefor, *except commercial standard television camera tubes*, as follows:

(a) Tubes designed for use as pulse modulators for radar or similar applications, having a peak anode voltage the peak pulse output power (expressed in watts) and the square of the maximum frequency (expressed in GHz) is greater than 4.5×10^4;

(3) Tubes specially designed for use as pulse modulators for radar or similar applications, having a peak anode voltage

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Note.—Licenses are likely to be approved for export to satisfactory end-users of the following:

(a) Tubes covered by sub-entries (a) and (c)

(ii) Encapsulated micro-circuits which are not designed or rated as radiation hardened, which are not rated for operation below −40° C or above +85° C, which are packaged in TO–5 outline cases (0.305 inch to 0.370 inch diameter) or in non-hermetically sealed cases and which are:

(1) Bipolar types designed for operation as

(5) Memory microcircuits as follows:

(a) MOS dynamic RAM's having all of the following characteristics:

(i) A maximum number of bits per package of 1,024 bits and an access time of no less than 250 nanoseconds;

(ii) Not rated for operation below −20° C or above +75° C;

microsecond where the rated peak current exceeds 150 Amperes:

(b) Having a rated turn-off time of less than 1 microsecond;

(c) Having a rated turn-off time of from 1 microsecond to less than 2.3 microseconds *except those having a rated peak current of 50 Amperes or less and encapsulated in non-hermetically sealed packages;*

(d) Having a rated turn-off time of from 2.3 to 10 microseconds and a figure of merit greater than 25 (the figure of merit is defined as the product of the repetitive peak off-state voltage (V DRM) in kilovolts and the repetitive peak on-state current (I TRM) in Amperes as shown on the thyristor data sheets; and

(e) Specially designed parts and accessories therefor.

Notes.—1. Licenses are likely to be approved for export to satisfactory end-users of thyristors required as replacement parts in specific civil equipment provided they do not upgrade the initial performance of that equipment.

2. Licenses are likely to be approved for export to satisfactory end-users of thyristors covered by this entry, provided that they have been designed and are intended for civil applications other than in radar or laser modulators.

1548A Photosensitive components and dice and wafers therefor, as follows:

(a) Photosensitive components (including photodiodes, phototransistors, photothyristors, photoconductive cells and similar photosensitive components) with a peak sensitivity at a wavelength longer than 1,200 nanometers or shorter than 190 nanometers;

(b) Semi-conductor photodiodes and phototransistors with a response time constant of 0.25 microsecond or less measured at the operating temperature for which the time constant reaches a minimum.

Notes.—1. Licenses are likely to be approved for the export to satisfactory end-users of infra-red single-element encapsulated photoconductive cells or pyroelectric detectors intended for civil applications and using any of the following:

(a) Evaporated lead sulphide;

(b) Triglycine sulphate with a surface area of 20 mm^2 or less;

(c) Lead-lanthanum-zirconium titanate ceramic.

2. Licenses are likely to be approved for the export to satisfactory end-users for civil applications of semi-conductor photodiodes covered by sub-entry (b) above, with a response time constant of 0.5 nanosecond or more and with a peak sensitivity at a wavelength neither longer than 920 nanometers nor shorter than 300 nanometers.

1549A Photomultiplier tubes, as follows:

(a) For which the maximum sensitivity occurs at wavelengths longer than 0.75 micrometer or shorter than 0.3 micrometer; or

(b) * * *

(c) * * *

Note.—Licenses are likely to be approved for export to satisfactory end-users of non-ruggedized tubes covered by sub-entry (a) above, required as replacement parts for specific civil equipment not exceeding the capability of that which could be exported under the Commodity Control List, provided that these parts do not upgrade the initial performance of such equipment.

1555A Electron tubes and specialized components and parts therefor, *except commercial standard television camera tubes not having fiber optic faceplates and commercial standard X-ray amplifier tubes,* as follows:

(a) Image intensifiers and image converters incorporating fiber-optic faceplates and/or microchannel-plate electron multipliers, and camera tubes incorporating or coupled with such intensifiers or converters;

(b) Electronic storage tubes, including memory transformers of radar pictures, *except signal converter storage tubes specially designed for television purposes;*

(c) Camera tubes with fiber optic faceplates and/or microchannel-plate electron multipliers;

(d) Ruggedized camera tubes having a maximum length-to-bulb diameter ratio of 5.1 or less.

Notes.—1. Licenses are likely to be approved for export to satisfactory end-users of reasonable quantities of non-ruggedized tubes covered by this entry, provided that the tubes will be used for bona fide medical applications.

2. Licenses are likely to be approved for export to satisfactory end-users of non-ruggedized direct view storage tubes covered by sub-entry (b) above, having an effective diameter or diagonal not exceeding 280 mm, for civil radar or oscilloscope applications.

3. Licenses are likely to be approved for export to satisfactory end-users of camera tubes covered by sub-entries (c) and (d) incorporating fiber optic faceplates but not microchannel-plate electron multipliers, provided that the tubes will be used for bona fide civil television applications.

1558A Electronic vacuum tubes (valves), and specialized parts, as follows:

(a) Tubes in which space charge control is utilized as the primary functional parameter, including but not limited to triodes and tetrodes, as follows:

(1) Tubes rated for continuous wave operation having either of the following characteristics:

(i) Above 4 GHz at maximum rated anode dissipation; or

(ii) Within the frequency range 0.3 to 4 GHz and for which, under any condition of cooling, the product of the maximum rated anode dissipation (expressed in watts) and the square of the maximum frequency (expressed in GHz) is greater than 10^4, *except for tubes specially designed for television transmitters operating in the frequency range of 0.47 to 0.96 GHz and rated for operation without a grid current, for which the product of the rated anode dissipation (expressed in watts) and the square of the maximum frequency (expressed in GHz) may reach* 2×10^4;

(2) Tubes rated only for pulse operation having either of the following characteristics:

(i) Above 1 GHz at the peak pulse output power; or

(ii) Between 0.3 and 1 GHz and for which, under any condition of cooling, the product of the peak pulse output power (expressed in watts) and the square of the maximum frequency (expressed in GHz) is greater than 4.5×10^4;

(3) Tubes specially designed for use as pulse modulators for radar or similar applications, having a peak anode voltage rating of 100 kV or more, or rated for a peak pulse power of 6 MW or more (see also entry No. 1514);

(b) Tubes which utilize interaction between a beam of electrons and microwave elements and in which the electrons travel in a direction perpendicular to the applied magnetic field, including but not limited to magnetrons, crossed-field amplifier tubes and crossed-field oscillator tubes, *except:*

(1) Fixed frequency and tunable pulsed magnetrons and crossed-field amplifier tubes which are in normal civil use in equipment which may be exported under the terms of this List as follows:

(i) Magnetrons designed to operate at frequencies below 3 GHz with a maximum rated peak output power of 1.5 MW or less, or between 3 and 12 GHz with the product of the maximum rated peak output power (expressed in kW) and the frequency (expressed in GHz) less than 4,200;

(ii) Crossed-field amplifier tubes designed to operate at frequencies below 4 GHz with a maximum rated peak output power of 1.2 MW or less and with less than 15 dB gain;

(2) Fixed frequency continuous wave magnetrons designed for medical use or for industrial heating or cooking purposes operating at a frequency of 2.375 GHz ±0.05 GHz or 2.45 GHz ±0.05 GHz with a maximum rated power not exceeding 6kW or at a frequency lower than 1 GHz with a maximum rated power not exceeding 25 kW;

(c) Tubes which utilize interaction between a beam of electrons and microwave elements or cavities and in which the electrons travel in a direction parallel to the applied magnetic field, including but not limited to klystrons and traveling wave tubes, *except:*

(1) Continuous wave tubes for use in civil communications designed for octave or lesser bandwidth (where the highest operating frequency is equal to or less than two times the lowest operating frequency) having the following characteristics:

(i) Designed to operate below 20 GHz;

(ii) The product of the rated output power (expressed in watts) and the frequency (expressed in GHz) is less than 800;

(2) Pulsed tubes for civil applications designed for octave or less bandwidth and having either of the following characteristics:

(i) Peak saturated output power not exceeding 1 kW and average power not exceeding 40 watts at or below 10 GHz;

(ii) Peak saturated output power not exceeding 100 watts and average power not exceeding 20 watts between 10 and 20 GHz;

(3) Pulsed tubes for civil applications designed for fixed frequency operation at frequencies below 3.5 GHz, peak output power of 1.6 MW or less, and operating bandwidth less than 1 percent;

(4) Low power oscillator tubes designed to operate at frequencies below 20 GHz with maximum output power of less than 3 watts;

(d) * * *

(e) * * *

(f) * * *

(g) * * *

(h) * * *

(i) * * *

Note.—Licenses are likely to be approved for export to satisfactory end-users of the following:

(a) Tubes covered by sub-entries (a) and (c) above, specially designed for television purposes and which are to be used in television transmitters, the precise location of which is known, for civil telecasting according to CCIR or OIR standards;

(b) Tubes covered by sub-entries (a), (b) and (c) above required as replacement parts for specific civilian equipment not exceeding the capability of that which could be exported under other Commodity Control List entries, provided that these parts do not upgrade the initial performance of that equipment;

(c) Pulsed amplifier klystrons and fixed frequency and mechanically tunable pulsed magnetrons covered by sub-entries (b) and (c) above intended for civil radar equipment previously exported, provided that they do not upgrade the initial performance of that equipment.

1559A Hydrogen thyratrons of ceramic-metal construction rated for a peak pulse power output of 12.5 MW or more; and specially designed parts and accessories therefor.

Note.—Licenses are likely to be approved for export to satisfactory end-users of ceramic-metal structured hydrogen thyratrons to replace such thyratrons in specific civil radar equipment previously exported, provided that they do not upgrade the initial performance of that equipment.

1564A Electronic component assemblies, sub-assemblies, printed circuit boards, and microcircuits:

I. * * *

II. Listed as follows:

(a) Printed circuit boards (single sided, double sided, or multilayer) designed to mount and provide interconnection between electronic components, *except those manufactured from any of the following insulating materials:*

(i) Poper base phenolics;

(ii) Glass cloth melamine;

(iii) Glass epoxy resin;

(iv) Polyethylene terephthalate; or

(v) Any insulating material with a maximum continuous rated operating temperature not exceeding 150° C;

(b) Assemblies, modules and printed circuit boards with mounted components, as follows:

(1) Those including printed circuit boards covered by sub-entry II(a) above;

(2) Those which contain microprocessor, microcomputer or memory microcircuits or embargoed components, *except:*

(i) Assemblies, not containing microprocessor, microcomputer, or memory circuits, whose only embargoed components are capacitors;

(ii) Power supply assemblies;

(c) Microcircuits (monolithic integrated circuits, microprocessor, microcomputer, multichip, hybrid, film or integrated optical types), *except:*

(i) Encapsulated passive networks; or

(ii) Encapsulated micro-circuits which are not designed or rated as radiation hardened, which are not rated for operation below −40° C or above +85° C, which are packaged in TO–5 outline cases (0.305 inch to 0.370 inch diameter) or in non-hermetically sealed cases and which are:

(1) Bipolar types designed for operation as digital logic circuit elements but limited to gates, inverters, buffers, bilateral switches, drivers, counters, latches, adders, comparators, parity generators, multiplexers, expanders, flip-flops, multivibrators, code converters, registers, encoders, decoders, demultiplexers, diode matrices, multipliers and Schmidt-triggers, and having all of the following characteristics:

(a) A product of the typical basic gate propagation delay time (in nanoseconds) and the power dissipation per basic gate (in milliwatts) not less than 30p] (i.e. speed-power product/gate not less than 30p]);

(b) A typical propagation delay time not less than 3 nanoseconds; and

(c) Encapsulated in a package having 24 terminals or less;

(2) CMOS types designed for operation as digital logic circuit elements but limited to gates, inverters, buffers, flip-flops, latches, multivibrators, bilateral switches, display drivers, fixed counters, fixed frequency dividers, storage registers, decoders, voltage translators, encoders, and Schmidt-triggers, and having both of the following characteristics:

(a) A minimum propagation delay time under any rated conditions of not less than 10 nanoseconds;

(b) Encapsulated in a package having 24 terminals or less;

(3) Silicon single-chip microcomputer microcircuits that are mask programmed for a civil application prior to export and having all of the following characteristics:

(a) A word size/speed ratio of less than or equal to a 0.4 bit per microsecond;

(b) A speed-power dissipation product of greater than or equal to 4 microjoules;

(c) An on-chip read-only memory (ROM), not including the microcode, of less than or equal to 2,048 bytes;

(d) An on-chip random-access memory (RAM) of less than or equal to 512 bits;

(e) An operand (data) word length of less than or equal to 8 bits;

(f) Not capable of addressing off-chip program memory;

(g) Not rated for operation below −20° C or above +75° C;

(Speed is defined as the time (in microseconds) to add C to D where C and D are both in memory, and put the result back in C.)

(4) Silicon microprocessor microcircuits having all of the following characteristics:

(a) A word size/speed ratio of less than or equal to 0.4 bit per microsecond;

(b) A speed-power dissipation product of greater than or equal to 4 microjoules;

(c) Containing no on-chip ROM or on-chip RAM;

(d) An operand (data) word length of less than or equal to 8 bits;

(e) Capable of addressing off-chip program memory of less than or equal to 32,768 bytes;

(f) Not rated for operation below −20° C or above +75° C;

(5) Memory microcircuits as follows:

(a) MOS dynamic RAM's having all of the following characteristics:

(i) A maximum number of bits per package of 1,024 bits and an access time of no less than 250 nanoseconds;

(ii) Not rated for operation below −20° C or above +75° C;

(b) Mask programmed ROMs not rated for operation below −20° C or above +75° C, as follows:

(i) With a maximum number of bits per package of 2,048 bits and an access time of no less than 450 nanoseconds;

(ii) PMOS or NMOS types with a maximum number of bits per package of 4,096 bits and an access time of no less than 700 nanoseconds;

(c) MOS static RAM's having both of the following characteristics:

(i) A maximum number of bits per package of 256 bits;

(ii) An access time of no less than 450 nanoseconds;

(d) Bipolar RAM's as follows:

(i) With a maximum number of bits per package of 64 bits and an access time of no less than 30 nanoseconds;

(ii) With a maximum number of bits per package of 256 bits and an access time of no less than 40 nanoseconds;

(iii) With a maximum number of bits per package of 1,024 bits and an access time of no less than 45 nanoseconds;

(6) (a) Non-reprogrammable microcircuits, not capable of addressing external memory, specially designed for, and which by virtue of circuit design are normally limited to use only for simple calculators which perform a single function in response to a keystroke, capable of performing a floating point addition of 13 decimal digits (mantissa only) or less in no less than 0.02 second;

(b) Programmable microcircuits specially designed for, and which by virtue of circuit design are normally limited to use only for simple key programmable calculators having both of the following characteristics:

(i) Capable of executing a sequence of no more than 256 program steps introduced into a program memory on the chip by a sequence of keystrokes;

(ii) Capable of performing a floating point addition of 13 decimal digits (mantissa only) or less in no less than 0.02 second;

(c) P-channel or N-channel MOS microcircuits specially designed as, and which by virtue of circuit design are normally limited to use only as, serial digital shift registers with a maximum clock rate of 2.5 MHz, and a maximum number of bits per package of 1,024;

(7) (a) Unturned AC amplifier microcircuits having a bandwidth of less than 3 MHz and a maximum rated power dissipation of 5 watts or less at a case temperature of 25° C;

(b) Audio amplifier microcircuits having a maximum rated continuous power output of 25 watts or less at a case temperature of 25° C;

(8) Operational amplifier microcircuits having all of the following characteristics:

(a) A typical unity-gain open-loop bandwidth of not more than 4MHz;

(b) A typical open-loop voltage gain of not ore than 500,000 or 115 dB;

(c) A maximum intrinsic rated input offset voltage of not less than 2.5 mV; and

(d) A typical slew rate at unity gain not exceeding 2.5 volts/microsecond;

(9) Analog multiplier and/or divider microcircuits having both of the following

(ii) A typicol input threshold voltage of not less than 10 millivolts;

(c) Memory and clock drivers, having all of the following characteristics:

(i) A maximum rated output current of 500 milliamperes or less;

(d) Unembargoed cameras (including cine cameras[1] but excluding imaging microcircuits;

(e) Cardiac pacemakers;

(A microcircuit whose function cannot be altered by accepting or executing instructions from any external source is non-

microcircuits) covered by sub-entry II(b)(2) above, if the components are likely to be approved for export to satisfactory end-users.

2. Licenses are likely to be approved for export to satisfactory end-users of devices covered by sub-entry II(b), and not released by sub-entries II(c) (i) and (ii) above, when transmitted as a composite whole), storing (buffering) data groups as necessary, processing part or all of the data groups for control (routing, priority, formatting, code conversion, error control, retransmission or journaling), transmission or multiplexing purposes as necessary, and retransmitting

of analog computers covered by sub-entry (b) above, and related equipment therefore covered by sub-entry (h) above, provided that:

(a) The equipment is primarily used in non-strategic applications;

(b) The equipment will be used primarily

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(c) A maximum intrinsic rated input offset voltage of not less than 2.5 mV; and

(d) A typical slew rate at unity gain not exceeding 2.5 volts/microsecond;

(9) Analog multiplier and/or divider microcircuits having both of the following characteristics:

(a) A best case rated non-linearity of not better than 0.5 percent of full scale;

(b) A −3 dB small-signal bandwidth of not more than 500 kHz;

(10) Isolation amplifier microcircuits;

(11) Instrumentation amplifier microcircuits having all of the following characteristics:

(a) A best case rated non-linearity of not better than 0.02 percent at a gain of 100;

(b) A maximum gain-bandwidth product not greater than 5 MHz (e.g., a maximum band width of 50 kHz at −3 dB and at a gain of 100);

(c) A typical slew rate at unity gain not exceeding 1 volt/microsecond;

(12) Voltage regulator microcircuits, as follows:

(a) Linear types, having both of the following characteristics:

(i) A rated nominal output voltage of 40 volts or less;

(ii) A maximum output current of 1 A or less;

(b) Switching types, having both of the following characteristics:

(i) A rated nominal output voltage of 40 volts or less;

(ii) A maximum output current of 150 mA or less;

(For voltage regulators, the +85° C upper temperature limit specified in II(c)(ii) is not applicable. The lower limit of −40° C is applicable.)

(13) Voltage comparator microcircuits, having both of the following characteristics:

(a) A maximum input offset voltage of not less than 2 mV; and

(b) A typical switching speed or typical response time of not less than 30 nanoseconds;

(14) Bipolar microcircuits designed for operation in civil applications as externally controlled (by inductive, magnetic or optical means) electronic switches, or as threshold value switches with switching times of 0.5 microsecond or greater;

(15) Non-coherent light-emitting alphanumeric displays not incorporating an integrated circuit;

(16) Non-coherent light-emitting alphanumeric displays incorporating an integrated circuit used for decoding, controlling and/or driving that display, provided that the integrated circuit is not integral with the actual display device;

(17) Simple encapsulated photo-coupler (transoptor) assemblies with electrical input and output and which incorporate non-coherent light-emitting diodes;

(18) Interface microcircuits, as follows:

(a) Line drivers and line receivers having a typical propagation delay time from data input to output of not less than 15 nanoseconds;

(b) Sense amplifiers, having both of the following characteristics:

(i) A typical propagation delay time from data input to output of not less than 15 nanoseconds;

(ii) A typical input threshold voltage of not less than 10 millivolts;

(c) Memory and clock drivers, having all of the following characteristics:

(i) A maximum rated output current of 500 milliamperes or less;

(ii) A maximum rated output voltage of 30 volts or less;

(iii) A typical propagation delay time from data input to output of not less than 20 nanoseconds;

(d) Peripheral and display drivers, having all of the following characteristics:

(i) A maximum rated output current of 500 milliamperes or less;

(ii) A typical propagation delay time from data input to output of not less than 20 nanoseconds;

(iii) A maximum rated output voltage of 80 volts or less:

(When propagation delay time is not specified, typical turn-on or turn-off time, whichever is less, should be used.)

(19) Voltage-to-frequency converter microcircuits not employing delta or delta/sigma modulation techniques, having both of the following characteristics:

(a) A rated non-linearity of not better than 0.01 percent of full scale;

(b) A settling/response time of not less than 20 microseconds for a full scale input change;

(20) Rms-to-dc voltage converter microcircuits having both of the following characteristics:

(a) A rated conversion accuracy, with or without external adjustment, of not better than 0.2 percent of full scale;

(b) A ±1 percent amplitude error bandwidth of not greater than 100 kHz;

(21) Analog-to-digital and digital-to-analog converter microcircuits as follows:

(a) Analog-to-digital converter microcircuits having both of the fallawing characteristics:

(i) A conversion time to maximum resolution of not less than 20 microseconds;

(ii) A rated non-linearity of not better than 0.05 percent of full scale over the specified operating temperature range;

(b) Digital-to-analog converter microcircuits having both of the following characteristics:

(i) A settling time to rated linearity of not less than 5 microseconds for "voltage output", and not less than 300 nanoseconds for units not incorporating an output amplifier;

(ii) A rated non-linearity of not better than 0.05 percent of full scale over the specified operating temperature range;

(22) Non-reprogrammable microcircuits which are specially designed for and by virtue of circuit design are normally limited to use for functional purposes in the following applications:

(a) Automotive, including safety, comfort, operations and pollution;

(b) Home electronics, including radio and television, appliances, clocks, watches, audio and video tape recorders, safety, comfort and amusement;

(c) Personal communications up to 150 MHz, including amateur radio communications and intercom;

(d) Unembargoed cameras (including cine cameras[1] but excluding imaging microcircuits;

(e) Cardiac pacemakers;

(A microcircuit whose function cannot be altered by accepting or executing instructions from any external source is non-reprogrammable.)

(Programmed microcircuits are only eligible for export if the program is unalterably stored at the time of manufacture and the performance of the function has been established for the intended end-use.)

(The temperature limits specified in the heading of II(c)(ii) above do not apply to sub-sections II(c)(ii)(22)(a) or (d).)

(23) Timing microcircuits having both of the following characteristics:

(a) A typical timing error of not less than 0.5 percent;

(b) A typical rise time of not less than 100 nanoseconds;

(iii) Unencapsulated monolithic integrated circuits which are not designed or rated as radiation hardened, and which are:

(1) Bipolar types designed for operation as digital logic circuit elements but limited to gates, inverters, buffers, bilateral switches, drivers, counters, latches, adders, comparators, parity generators, multiplexers, expanders, flip-flops, multivibrators, code converters, registers, encoders, decoders, demultiplexers, diode matrices, multipliers and Schmidt-triggers, and having both of the following characteristics:

(a) A product of the typical basic gate propagation delay time (in nanaseconds) and the power dissipation per basic gate (in milliwatts) not less than 70 pJ (i.e., speed-power product/gate not less than 70 pJ);

(b) A typical propagation delay time not less than 5 nanoseconds;

(2) Operational amplifiers, having all of the following characteristics:

(a) A typical unity-gain open-loop bandwidth of not more than 5 MHz;

(b) A typical open-loop voltage gain of not more than 100,000 or 100 dB;

(c) A maximum intrinsic rated input offset voltage of not less than 5 mV;

(d) A typical slew rate at unity gain not exceeding 1 volt/microsecond;

(3) Audio amplifiers having a maximum rated power output of 10 watts or less at a case temperature of 25° C;

(4) Non-reprogrammable types which are specifically designed for and by virtue of circuit design are normally limited to civil uses in television and radio receivers, having all of the following characteristics:

(a) Rated for operation at 11 MHz or less;

(b) Not specially designed for station scanning applications;

(c) Not utilizing charge-coupled device (CCD) technology;

(d) Not intended for beam lead bonding;

(e) Not intended for video and/or luminance amplifiers with maximum rated supply voltages exceeding 30 volts or with typical bandwidths greater than 7.5 MHz.

Notes.—1. Licenses are likely to be approved for export to satisfactory end-users for civil applications of assemblies, modules and printed circuit boards with mounted components (excluding those containing microprocessor, microcomputer and memory

microcircuits) covered by sub-entry II(b)(2) above, if the components are likely to be approved for export to satisfactory end-users.

2. Licenses are likely to be approved for export to satisfactory end-users of devices covered by sub-entry II(b), and not released by sub-entries II(c) (i) and (ii) above, when they consist of, or are incorporated in, plug-in printed circuit boards or plug-in modules for use in specifically identified equipment previously exported, and which do not upgrade the initial performance of that equipment, provided that the plug-in printed circuit boards or plug-in modules cannot operate independently from the equipment to which they are likely to be connected or inserted.

3. Licenses are likely to be approved for export to satisfactory end-users of integrated circuits covered by sub-entry II(c)(ii) above only by virture of being encased in hermetically sealed dual-in-line packages, provided that the stated legitimate civil end-use requires such a package.

4. Licenses are likely to be approved for export to satisfactory end-users of devices, encapsulated or unencapsulated, covered by sub-entries II (b) and (c) above, provided the devices have been designed specifically for identifiable civil applications and, by nature of design or performance, are substantially restricted to the particular application for which they have been designed.

1565A Electronic computers and related equipment, as follows:

(a) Analog computers designed or modified for use in airborne vehicles, missiles or space vehicles and rated for continuous operation at temperatures from below −45° C to above +55° C; and equipment or systems incorporating such computers;

(b) Other analog computers capable of accepting, processing and putting out data in the form of one or more continuous variables and capable of incorporating a total of at least 20 summers, integrators, multipliers or function generators with facilities for readily varying the interconnection of these components;

(c) Digital computers and digital differential analyzers (incremental computers), as follows:

(1) Designed or modified for use in airborne vehicles, missiles, or space vehicles and rated for continuous operation at temperatures from below −45° C to above +55° C;

(2) Designed or modified to limit electromagnetic radiation to levels much less than those required to meet appropriate government civil interference specifications;

(3) Designed as ruggedized equipment and capable of meeting military specifications for ruggedized equipment or modified for military use;

(4) Designed or modified for "data (message) switching" or those incorporating equipment, devices, or techniques, including software, microprogram control (firmware) and/or specialized logic control (hardware), for accepting, storing, processing and retransmitting data groups ("Data (message) switching" is the technique (including but not limited to store and forward or packet switching) for accepting data groups (including messages, packets or other digital or telegraphic information groups that are transmitted as a composite whole), storing (buffering) data groups as necessary, processing part or all of the data groups for control (routing, priority, formatting, code conversion, error control, retransmission or journaling), transmission or multiplexing purposes as necessary, and retransmitting (processed) data groups when transmission and/or receiving facilities are available); and

(5) Equipment or systems incorporating such computers;

(d) Digital computers with one or more of the following characteristics:

(1) Floating point operations are implemented by hardware or microprogram control (firmware);

(2) The computer is equipped with peripherals (other than those free from control under sub-entry (h) below);

(3) The computer is equipped with cathode-ray tube or other displays (other than those free from control under sub-entry (h) below), as follows:

(i) Used to display alphanumeric, graphic and/or similar data or information; or

(ii) With light gun or other graphic input devices;

(e) Other digital computers operated by one or more common control units and capable of all of the following:

(1) Accepting, storing, processing, and producing an output in numerical or alphabetical form;

(2) Storing in fixed or alterable (writable) storage devices more than 512 numerical and/or alphabetical characters or having an internal fixed or alterable memory of more than 2,048 bits;

(3) Performing a stored sequence of operations that are modifiable by means (including replacement of fixed storage devices) other than a physical change in wiring or interconnections; and

(4) Selecting a sequence from a pluality of stored operations based upon data or an internally computed result;

(f) Computers capable of operating both analog and digital modes and related equipment, as follows:

(1) Equipment whose analog portion meets the conditions of sub-entry (b) and whose digital portion meets the conditions of sub-entry (e) and which also provides facilities for processing in the digital section numeric data from the analog section and/or vice versa;

(2) Equipment for interconnecting the analog and digital portions of computers as defined in sub-entry (f)(1); and

(3) Digital or analog computers containing interconnecting equipment as defined in sub-entry (f)(2);

(g) Related equipment for the above (including that also described in entry Nos. 1572 and 1588), designed or modified as described in sub-entry (a) or (c), i.e. specialized parts, components, peripherals, displays, sub-assemblies, accessories, and spare parts; and

(h) Other related equipment for the above (including that also described in entry Nos. 1572 and 1588), i.e., specialized parts, components, peripherals, displays, sub-assemblies, accessories, and spare parts.

Notes.—1. Licenses are likely to be approved for export to satisfactory end-users of analog computers covered by sub-entry (b) above, and related equipment therefore covered by sub-entry (h) above, provided that:

(a) The equipment is primarily used in non-strategic applications;

(b) The equipment will be used primarily for the specific non-strategic applications for which the export would be approved and that the number, type and characteristics of such equipment are normal for the approved use;

(c) The computers and related equipment are not covered by and would not thereby become covered by sub-entry (a), (f), or (g) above, or exceed the limits of this Note:

(d) The analog computers are limited as follows:

(1) The rated errors for summers, inverters and integrators are not less than (i) Static: 0.01%; (ii) Total at 1 kHz: 0.15%.

(2) The rated errors for multipliers are not less than (i) Static: 0.025%; (ii) Total at 1 kHz: 0.25%.

(3) The rated error for fixed function generators (log x and sine/cosine) is not less than Static: 0.1%.

(4) No more than 350 operational amplifiers; and

(5) No more than four integrator time scales switchable during one program;

Technical Notes.—(1) The percentage for Note 1(d)(1)(i) above applies to the actual output voltage; all other percentages apply to full scale, that is from maximum negative to maximum positive reference voltages.

(2) Total errors at 1 kHz for Note 1(d) (1)(ii) and (2)(ii) above, are to be measured with those resistors incorporated in the inverter, summer or integrator which provide the least error.

(3) Total error measurements include all errors of the unit resulting from, for example, tolerances of resistors and capacitors, tolerances of input and output impedances of amplifiers, the effect of loading, the effects of phase shift, and the generating of functions.

2. Favorable consideration for export to satisfactory end-users of digital computers covered by sub-entry (c)(4) above will depend in part upon the degree of conformity with the following:

(a) The equipment is specially designed to meet the requirements of CCITT recommendation F–31 or ICAO recommendations for civilian aviation communication networks;

(b) The equipment will be used primarily for the specified civil application and will be operated by the civil authorities of the importing country for general civil traffic, or for traffic with links with Western countries, or for an international Service to fulfill a commitment to ITU, ICAO, or any other inter-governmental organization which includes Western countries;

(c) The computers are not covered by the remainder of sub-entry (c) above, or by sub-entries (f) or (g) above, or do not exceed the limits of this Note;

(d) The number, type and characteristics of such equipment are normal for the approved use and that the equipment will be limited as follows:

(1) Suitable combinations of circuits not exceeding:

(i) 250 circuits with "data signaling rates" of less than 150 bits per second;

(ii) 60 circuits with "data signaling rates" of 150 to 1,000 bits per second; and/or

(iii) 8 circuits with "data signaling rates" of greater than 1,000 to 4,800 bits per second;

(2) The maximum "data signaling rate" of any circuit does not exceed 4,800 bits per second;

(3) The sum of the "data signaling rates" of

(e) For the interface equipment with which the digital computer is equipped (to be provided only for administrative and control communications purposes):

(1) The "total effective bit transfer rate" of remote "terminal devices" does not exceed 2,400 bits per second;

(2) The "effective bit transfer rate" of any

(3) The "total internal memory available to the user" does not exceed 32,768 bits;

(4) For peripheral devices with which the computer is equipped:

(i) No more than one magnetic tape transport which does not exceed:

(a) 1,600 bits per inch per track;

(b) 9 tracks per ½ inch (12.7mm) tape

programmed logic arrays (PLAs), etc.) covered by entry No. 1564 or 1588 are held to the minimum performance and quantity appropriate for the type and quantity of equipment they are intended for, assuming normal usage patterns.

6. Licenses are likely to be approved for export to satisfactory end-users of related

(5) The "effective bit transfer rate" of any "terminal device" located remote from the "computer operating area" does not exceed 2,400 bits per second;

(6) For interface equipment with which the computer is equipped:

(i) The "total effective bit transfer rate" (excluding parity, word marker and flag bits)

the equipment would not thereby exceed the limits with the following additional limits on peripheral memory devices with which the computer is equipped:

(a) The "effective bit transfer rate" of any peripheral memory or data channel does not exceed 1.6 million bits per second;

(b) For peripheral memory devices other

(ii) 60 circuits with "data signaling rates" of 150 to 1,000 bits per second; and/or

(iii) 8 circuits with "data signaling rates" of greater than 1,000 to 4,800 bits per second:

(2) The maximum "data signaling rate" of any circuit does not exceed 4,800 bits per second;

(3) The sum of the "data signaling rates" of all circuits does not exceed 27,500 bits per second;

(4) The sum of the "data signaling rates" of all circuits with "data signaling rates" greater than 1,000 bits per second does not exceed 19,200 bits per second;

Technical Note.—"Data signaling rate" is as defined in ITU Recommendation 53–36, taking into account that, for non-binary modulation, "bauds" and "bits per second" are not equal. Bits for coding, checking and synchronization functions are to be included.

(e) The disclosure of software and technical information for the equipment exported is held to the minimum necessary for the application, operation and maintenance of the equipment in the stated civil end-use.

3. Favorable consideration for export to satisfactory end-users of digital computers covered by sub-entries (d) (1) or (2), or (e) above, and related equipment therefor covered by sub-entry (h) above, will depend in part upon the degree of conformity with the following:

(a) The equipment is primarily used in "telephone circuit switching" or "telegraph (telex) circuit switching" systems designed for fixed civil applications;

(b)(1) The equipment will be installed in "telephone circuit switching", or "telegraph (telex) circuit switching" systems designed for fixed civil applications;

(2) The equipment in total represents no more than 30 percent of the value of the switching system (during the initial installation of a partially-equipped system, this total may approach 50 percent); and

(3) The switching system will be either:

(i) Operated by civil authorities of the importing country for general civil traffic, or for traffic with links with Western countries, or for an international service to fulfill a commitment to ITU, ICAO or any other inter-governmental organization which includes Western countries; or

(ii) Used in a private exchange or private branch exchange (in each case of no more than 5,000 lines) which will be used in a civil installation situated in a densely-populated industrial area in a proscribed destination, and for which a responsible representative of the end-user or importing agency has furnished a signed statement describing the end-use and the location of the exchange and certifying that the equipment will only be used for that specific end-use;

(c) The computers and related equipment are not covered by and would not thereby become covered by sub-entires (c), (f), or (g) above, or exceed the limits of this Note;

(d) The number, type and characteristics of such equipment are normal for the approved use and that the equipment will be limited to the minimum system configuration necessary to control a 50,000 line exchange for the uses cited in sub-paragraph (b)(3)(i) above, or to control a 5,000 line exchange for the uses cited in sub-paragraph (b)(3)(ii) above;

(e) For the interface equipment with which the digital computer is equipped (to be provided only for administrative and control communications purposes):

(1) The "total effective bit transfer rate" of remote "terminal devices" does not exceed 2,400 bits per second;

(2) The "effective bit transfer rate" of any interfaced "communication channel" does not exceed 2,400 bits per second;

(3) The interface equipment is located within the "computer operating area" and limits the "effective bit transfer rate" to those specified in sub-paragraphs (1) and (2) above; and

(4) All interfaced "communication channels" are dedicated full time to the given application;

(f) The disclosure of software and technical information for the equipment exported is held to the minimum necessary for the application, operation and maintenance of the equipment in the stated civil end-use.

Technical Notes.—(1) "Telephone Circuit Switching" is the technique for establishing within an exchange, on demand and until released, an exclusive direct or PCM (CCITT Recommendations G–11, G–732 and G–733) connection between calling and called telephone circuits based solely on subscriber-type of telephone dialing information derived from the calling circuit. The telephone circuits may carry any type of signal, e.g. telephony, telegraph or telex, compatible with a voice channel bandwidth of 3,100 Hz. No information available on the circuit other than the subscriber dialing information is utilized for any other function.

(2) "Telegraph (Telex) Circuit Switching" utilizes techniques essentially identical to "Telephone Circuit Switching" for establishing connections between telegraph (telex) circuits based on the same type of dialing information. The telegraph (telex) circuits (which may be telephone circuits) may carry any telegraph (telex) signal compatible with a voice channel bandwidth of 3,100 Hz or less. No information available on the circuit other than the subscriber dialing information is utilized for any other function.

4. Licenses are likely to be approved for export to satisfactory end-users of digital computers and/or devices covered by sub-entries (d)(1) or (2) or (e) above, and related peripherals covered by sub-entry (h) above, provided that:

(a) The digital computers and/or devices have been designed for identifiable office and personal use and, by nature of design, software, microprogram control (firmware), specialized logic control (hardware) or performance, are substantially restricted to the particular application for which they have been designed;

(b) The digital computers and/or devices and the related peripherals and displays are not covered by sub-entries (c), (f) or (g) above, or do not exceed the limits of this Note;

(c) The digital computers and/or devices are limited as follows:

(1) The "CPU data handling rate" does not exceed 2 million bits per second;

(2) The "CPU numerical processing rate" for units capable of arithmetic operations does not exceed 0.1 million bits per second;

(3) The "total internal memory available to the user" does not exceed 32,768 bits;

(4) For peripheral devices with which the computer is equipped:

(i) No more than one magnetic tape transport which does not exceed:

(a) 1,600 bits per inch per track;

(b) 9 tracks per ½ inch (12.7mm) tape width;

(c) ½ inch (12.7mm) tape width; and

(d) 25 inches (65.6cm) per second tape read/write speed;

(ii) Cassette/cartridge tape drives described in sub-paragraph (d) below;

(iii) Digital computer peripherals and displays free from control under sub-entry (h) above; and

(iv) Digital recording and reproducing equipment specially designed to use magnetic card, tag, label or bank check recording media free from control under entry No. 1572 sub-entry (a)*(ii)*;

(d) The related peripherals are limited as follows:

Cassette/cartridge tape drives operating serially one track at a time, provided they have:

(i) No more than 800 bits per inch per track; and

(ii) No more than 6,000 bits per second maximum bit transfer rate.

Technical Notes.—(1) "CPU data handling rate" is defined as the maximum number of bits that can be accessed in parallel from an internal memory divided by the minimum time (including access time) for the execution of any instruction operating on this number of bits.

(2) "CPU numerical processing rate" is defined as the number of bits used to represent an arithmetic operand divided by the average time required for execution of a multiplication operation, assuming the most efficient arithmetic data coding and the fastest hardware, microprogram control (firmware) and/or software multiplication technique available to the user.

(3) "Total internal memory available to the user" is defined as the sum of the storage capacities of all user-alterable internal storage devices plus all user-replaceable fixed storage devices that may be incorporated in the equipment at one time and that may be used to store microprogram control (firmware) and/or software instructions and data.

5. Licenses are likely to be approved for export to satisfactory end-users of related specialized parts, components, sub-assemblies, accessories and spare parts covered by sub-entry (h) above, for equipment previously exported pursuant to Note 4, provided that:

(a) The related specialized parts, components, sub-assemblies, accessories and spare parts:

(1) Will not upgrade the equipment beyond the limits of Note 4;

(2) Are in reasonable quantities based on the quantity of equipment previously exported from the country; and

(3) Are only for equipment previously exported from the country;

(b) Advanced technology components (microprocessors, arithmetic logic units (ALUs), fixed or alterable storage devices,

programmed logic arrays (PLAs), etc.) covered by entry No. 1564 or 1588 are held to the minimum performance and quantity appropriate for the type and quantity of equipment they are intended for, assuming normal usage patterns.

6. Licenses are likely to be approved for export to satisfactory end-users of related specialized parts, components, sub-assemblies, accessories and spare parts covered by sub-entry (h) above, for tape drives previously exported pursuant to Note 4 (c)(4)(ii) and (d), provided that they will not upgrade the tape drives beyond the limits of Note 4.

7. Licenses are likely to be approved for export to satisfactory end-users of digital computers covered by sub-entries (d) (1) or (2) or (e) above, and related equipment therefor covered by sub-entry (h) above, provided that:

(a) The equipment is primarily used in non-strategic applications;

(b) The equipment will be used primarily for the specific non-strategic applications for which the export would be approved and that the number, type and characteristics of such equipment are normal for the approved use;

(c) The computers and related equipment are not covered by and would not thereby become covered by sub-entries (c), (f) or (g) above, or exceed the limits of this Note;

(d) The digital computers are limited, as follows:

(1) The sum of either the "I/O bus rate" or the "total effective bit transfer rate", whichever is less, and the "CPU bus rate" does not exceed 45 million bits per second;

(2) The "processing data rate" for CPUs which implement floating point operations by hardware or microprogram control (firmware) does not exceed 8 million bits per second;

(3) The internal memory total connected capacity (excluding parity, word marker and flag bits) does not exceed 2.36 million bits;

(4) For peripheral devices with which the computer is equipped:

(i) The "total effective bit transfer rate" (excluding data channels not equipped with peripheral memory units) does not exceed 8 million bits per second;

(ii) The "effective bit transfer rate" of any peripheral memory or data channel does not exceed 1.6 million bits per second;

(iii) No more than 12 magnetic tape transports;

(iv) Magnetic tape transports which do not exceed:

(a) 1,600 bits per inch per track;

(b) 9 tracks per ½ inch (12.7 mm.) tape width; and

(c) ½ inch (12.7 mm.) tape width;

(v) For peripheral memory devices other than magnetic tape transports:

(a) Total connected "net capacity" does not exceed 960 million bits;

(b) For each independent device with an "average access time" of less than 30 milliseconds, the "memory performance factor" does not exceed 8,000;

(c) For each independent device with an "average access time" of 30 milliseconds or greater, the "memory performance factor" does not exceed 43,000;

(d) "Total number of access" does not exceed 150 per second;

(5) The "effective bit transfer rate" of any "terminal device" located remote from the "computer operating area" does not exceed 2,400 bits per second;

(6) For interface equipment with which the computer is equipped:

(i) The "total effective bit transfer rate" (excluding parity, word marker and flag bits) of remote "terminal devices" does not exceed 4,800 bits per second;

(ii) The "effective bit transfer rate" of any interfaced "communication channel" does not exceed 1,200 bits per second;

(iii) The interface equipment is located within the "computer operating area" and limits the "effective bit transfer rates" to those specified in sub-paragraphs (i) and (ii) above; and

(iv) All interfaced "communication channels" are dedicated full time to the given application.

8. Licenses are likely to be approved for export to satisfactory end-users of additional internal memory or peripheral memory devices covered by sub-entry (h) above, for equipment previously exported pursuant to Note 7, provided that:

(a) Two years have elapsed since the initial installation of the equipment;

(b) The equipment would not thereby exceed the limits of Note 7(d) with the following modified limits on internal memory and peripheral memory devices:

(1) The internal memory total connected capacity (excluding parity, word marker and flag bits) does not exceed 4.72 million bits;

(2) For peripheral memory devices other than magnetic tape transports:

(i) Total connected "net capacity" does not exceed 1,400 million bits;

(ii) "Total number of accesses" does not exceed 200 per second;

(c) The conditions of Note 7 continue to be met.

9. Licenses are likely to be approved for export to satisfactory end-users of reasonable quantities of peripherals covered by sub-entry (h) above, as follows:

(a) Disc drives utilizing non-rigid magnetic media, provided they have:

(1) No more than a 7.88 in. (201 mm.) disc;

(2) No more than 3.2 million bit "net capacity";

(3) No more than 250,000 bits per second maximum bit transfer rate; and

(4) No less than 250 millisecond "average access time";

(b) Cassette/cartridge tape drives operating serially one track at a time, provided they have:

(1) No more than 1,600 bits per inch per track;

(2) No more than 48,000 bits per second maximum bit transfer rate;

(c) Non-impact line printers operating at 2,000 lines per minute or less and non-impact character printers operating at 300 characters per second or less;

(d) Graphic displays specially designed for signature security checking having an active display area not exceeding 150 sq.cm.

10. Licenses are likely to be approved for export to satisfactory end-users of additional internal memory and peripheral memory devices covered by sub-entry (h) above, for equipment previously exported, provided that the equipment would not thereby exceed the limits with the following additional limits on peripheral memory devices with which the computer is equipped:

(a) The "effective bit transfer rate" of any peripheral memory or data channel does not exceed 1.6 million bits per second;

(b) For peripheral memory devices other than magnetic tape transports:

(1) Total connected "net capacity" does not exceed 1,900 million bits;

(2) For each independent device with an "average access time" of 30 milliseconds or greater, the "memory performance factor" does not exceed 64,000.

1568A Equipment, as follows:

(a) * * *

(b) * * *

(c) * * *

(d) * * *

(e) * * *

(f) * * *

(g) Precision potentiometers, *except potentiometers using only switched elements* (for the purpose of this sub-entry, a precision potentiometer means one having a rated conformity better than 0.25 percent for a linear potentiometer; or 1 percent for a non-linear potentiometer), and special instruments rated to have the same characteristics as potentiometers in (1) and (2) below, such as Vernistats, as follows:

(1) Linear potentiometers having a constant resolution and a rated linearity of better than 0.05 percent absolute;

(2) Non-linear potentiometers having a variable resolution and a rated conformity of:

(i) 1 percent or less when the resolution is inferior to that obtained with a linear potentiometer of the same type and of the same track length; or

(ii) 0.5 percent or less when the resolution is better than or equal to that obtained with a linear potentiometer of the same type and of the same track length; or

(3) * * *

(h) * * *

(i) * * *

(j) * * *

(k) * * *

(l) * * *

(m) * * *

Note.—Licenses are likely to be approved for export to bona fide end-users of potentiometers covered by subentries (g) (1) and (2) above, provided they have been designed for civil use, and have been in use in civil equipment for a period of not less than five years.

1572A Recording and/or reproducing equipment as follows (for equipment which may be exported in conjunction with computer shipments, see entry No. 1565.):

(a) Using magnetic techniques, *except:*

(i) Those specifically designed for voice or music;

(ii) Those specifically designed to use magnetic cord, tag, label or bank check recording media with a magnetic surface area not exceeding 10 sq. in. (65 sq. cm.); or

(iii) Digital recording and reproducing equipment operating serially with a packing density not exceeding 800 bits per inch per track specially designed for use with, and incorporated in, typewriter systems used for preparing, correcting and/or composing text;

(b) Using electron beam(s) operating in a vacuum, and/or laser-produced light beams (see also entry No. 1522) that produce patterns or images directly on the recording surface, and specialized equipment for image development, *except equipment specifically designed for television recording and/or*

(c) Systems for use in civil aircraft or helicopters to record flight data for safety and/or maintenance purposes, and having all of the following characteristics:

(i) In normal civil use for more than one year;

(ii) Not exceeding 100 input channels;

inch (9,042 flux changes per inch) along the length of the tape;

(ii) A magnetic coating thickness not less than 0.40 mil (10.2 microns);

(iii) A tape width not exceeding 1 inch (25.4 mm);

(iv) A tape length not exceeding 3,600 feet (1,097.3 meters);

(a) The oscilloscope or system bandwidth is not rated in excess of 200 MHz;

(b) In the case of systems, the characteristics of individual plug-ins or mainframes are not in excess of what is required for the overall system performance;

(c) The equipment is a reasonable requirement for the stated legitimate civil

(1) Switching speed of 0.3 microsecond or faster at the minimum field strength required for switching at 104° F (40° C); or

(2) A maximum dimension less than 30 mils (0.76 mm);

(c) * * *

(d) * * *

(e) * * *

(b) Nickel powder in uncompacted powder form made by the carbonyl process, in quantities of 50 kg or less.

1673A Artificial graphite having an apparent relative density of 1.90 or greater when compared with water at 60° F (15.50° C), *except artificial graphite which has been*

(b) Using electron beam(s) operating in a vacuum, and/or laser-produced light beams (see also entry No. 1522) that produce patterns or images directly on the recording surface, and specialized equipment for image development, *except equipment specifically designed for television recording and/or reproducing on discs;*

(c) Graphic instruments capable of continuous direct recording of sinusoidal waves at frequencies exceeding 20 kHz; and

(d) Specialized parts and components for the above and recording media used in equipment covered by subentries (a) and (b). (The term "recording media" is intended to include all types and forms of specialized recording media used in such recording techiques, including but not limited to tapes, drums, discs and matrices.)

Notes.—1. Licenses are likely to be approved for export to satisfactory end-users of reasonable quantities of equipment covered by sub-entry (a) above, and specialized parts, components and recording media therefor covered by sub-entry (d) above, for use with the exported equipment, as follows:

(a) Video magnetic tape recorders, specially designed for television recording, using a signal registered with the C.C.I.R., or specifically designed or adapted for use with medical equipment, and having all of the following characteristics:

(1) 3 dB recording bandwidth not exceeding 6 MHz;

(2) Maximum length of time of a single scan not exceeding 20 milliseconds;

(3) Not ruggedized;

(b) Analog magnetic tape recorders having all of the following characteristics:

(1) Bandwidth capability at maximum design speed not exceeding 100kHz per track;

(2) Recording density not exceeding 5,000 magnetic flux sine waves per linear inch (25.4 mm) per track;

Technical Note.—Recording density is, for direct recorders, the recording band width divided by the tape speed; and, for FM recorders, the sum of the carrier frequency and the deviation divided by the tape speed;

(3) Not ruggedized;

(4) Not rated for continuous operation in ambient temperatures from below −20° C to above +55° C;

(5) Not specifically designed for underwater use;

(6) Not including recording and/or reproducing heads of the rotary or floating types or designed for use in equipment with characteristics superior to those designed in subparagraph (b) (1) and (2) above;

(7) Tape speed not exceeding 60 inches (152.4 cm) per second;

(8) Number of recording tracks (excluding audio voice track) not exceeding 16;

(9) Start-stop time not less than 25 milliseconds;

(10) Equipped with tape-derived (off-tape) servo speed control and with a time displacement (base) error of not less than ±25 microseconds at a tape speed of 60 inches (152.4 cm) per second and not less than ±50 microseconds at any lower tape speed measured in accordance with IRIG document 118–71, paragraph 5.2.2.5, or document EIA RS–413/ANSI C 83.94–1973;

(c) Systems for use in civil aircraft or helicopters to record flight data for safety and/or maintenance purposes, and having all of the following characteristics:

(i) In normal civil use for more than one year;

(ii) Not exceeding 100 input channels;

(iii) Sum of the individual channel recording bandwidths not exceeding 500 Hz;

(d) Recording equipment not intended for use in conjuction with equipment or materials covered by other items, provided that the capability of the recorder is limited to both:

(1) A tape width not exceeding ¼ inch (6.35 mm);

(2) Digital recording techniques in serial form with a packing density not exceeding 800 bits per inch.

Technical Note.—Packing density is, for digital recorders, the number of bits per second per track divided by the tape speed;

(e) Incremental recorders and/or reproducers (i.e. equipment designed for discontinuous sampling and/or collection of data in an incremental manner) having all of the following characteristics:

(1) The maximum tape speed, at the maximum stepping rate, does not exceed 2 inches (50.8 mm) per second;

(2) The equipment has all the characteristics specified in sub-paragraphs (3) to (6) inclusive in Note 1(b) above;

(f) Digital magnetic recorders specially designed for seismic/geophysical applications, operating in the frequency range of 5 to 800 Hz and limited to the following operational parameters:

(1) A maximum bit packing density of 1,600 bits per inch (63 bits per mm) per track;

(2) A maximum bit transfer rate of 0.96 million bits per second;

(3) A maximum tape read-write speed of 75 inches (190.5 cm) per second.

Technical Note.—Packing density is, for digital recorders, the number of bits per second per track divided by the tape speed.

2. Licenses are likely to be approved for export to satisfactory end-users of reasonable quantities of magnetic tape and flexible disc cartridge recording media covered by sub-entry (d) above, for use in civil television recording and reproducing applications or with computers as appropriate, provided that:

(a) The base material consists only of polyethylene terephthalate or cellulose acetate;

(b) The magnetic coating material consists only of undoped gamma-ferric (iron) oxide with a rated intrinsic coercitivity not exceeding 350 oersteds (video tape considered under subparagraph (c)(1) below, may also include chromium dioxide-coated tape with a rated intrinsic coercitivity not exceeding 500 oersteds and a width not exceeding 1 inch (25.4 mm)); and

(c) The magnetic recording media is limited to the following types and characteristics:

(1) Video tape designed for television recording and reproduction with a tape width not exceeding 2 inches (50.8 mm);

(2) Computer tape designed for digital longitudinal recording and reproduction and having all of the following characteristics:

(i) A magnetic coating certified for a maximum packing density of 6,250 bits per inch (9,042 flux changes per inch) along the length of the tape;

(ii) A magnetic coating thickness not less than 0.40 mil (10.2 microns);

(iii) A tape width not exceeding 1 inch (25.4 mm);

(iv) A tape length not exceeding 3,600 feet (1,097.3 meters);

(3) Computer tape in cassettes/cartridges designed for digital longitudinal recording and reproduction and having all of the following characteristics:

(i) A magnetic coating certified for a maximum packing density of 1,600 bits per inch (3,200 flux changes per inch) along the length of the tape;

(ii) A magnetic coating thickness not less than 0.17 mil (4.32 microns);

(iii) A tape width not exceeding ¼ inch (6.35 mm);

(iv) A tape length not exceeding 900 feet (274.3 meters);

(4) Computer flexible disc cartridges designed for digital recording and reproduction and having all of the following characteristics:

(i) A magnetic coating certified for a maximum packing density of 13,262 flux changes per radian (3,268 bits per inch at a radius of 2.029 inches (51.536 mm)) around the disc;

(ii) A magnetic coating thickness not less than 0.1 mil (2.54 microns);

(iii) A disc thickness not exceeding 0.003 inch (80 microns);

(iv) A disc outer diameter not exceeding 7.88 inches (201 mm);

(v) A disc inner diameter of 1.5 inch (38.1 mm).

3. Licenses are likely to be approved for export to satisfactory end-users of reasonable quantities of recording media covered by sub-entry (d) above, specially designed for digital recording and reproducing equipment operating serially with a packing density not exceeding 800 bits per inch per track specially designed for use with, and incorporated in, typewriter systems used for preparing, correcting and/or composing text. (The digital recording and reproducing equipment described in this Note is not covered by sub-entry (a) above.)

1584A Cathode-ray oscilloscopes and specialized parts therefor, including associated plug-in units and external amplifiers, preamplifiers, and sampling devices, having any of the following characteristics:

(a) An amplifier bandwidth greater than 100 MHz (defined as the band of frequencies over which the deflection on the cathode-ray tube does not fall below 70.7 percent of that at maximum point measured with a constant input voltage to the amplifier);

(b) Containing or designed for use with cathode-ray tubes covered by entry 1541 (b) or (c);

(c) * * *

(d) * * *

(e) * * *

(f) * * *

Note.—Licenses are likely to be approved for export to satisfactory end-users of oscilloscopes (including mainframe/amplifier systems) and probes therefor, covered only by sub-entries (a) and (b) above, provided that:

(a) The oscilloscope or system bandwidth is not rated in excess of 200 MHz;

(b) In the case of systems, the characteristics of individual plug-ins or mainframes are not in excess of what is required for the overall system performance;

(c) The equipment is a reasonable requirement for the stated legitimate civil end-use; and

(d) The cathode-ray tube contains no electron multiplier.

1586A Acoustic wave devices and specialized parts therefor, as follows:

(a) Surface acoustic wave and surface skimming acoustic wave devices (*i.e.*, signal processing devices employing elastic waves in materials, including but not limited to, lithium niobate, lithium tantalate, bismuth germanium oxide, silicon, quartz, yttrium garnet, aluminum oxide and magnesium aluminum oxide) which permit direct processing of signals, including but not limited to, amplifiers, correlators (fixed, programmable and memory), oscillators, bandpass filters (transversal and resonator), multiplexers, dispersive expansion and compression filters, delay lines (fixed and tapped) and non-linear devices, having any of the following characteristics:

(1) A carrier frequency of greater than 400 MHz;

(2) * * *

(b) * * *

Note.—Licenses are likely to be approved for export to satisfactory end-users of devices covered by sub-entry (a)(1) above, which are specially designed for use in civil television equipment and which operate at frequencies below 1 GHz.

1587A Quartz crystals and assemblies thereof in any stage of fabrication (i.e. worked, semi-finished or mounted), *except optical grade quartz crystals*, as follows:

(a) For use as filter elements, and having either of the following characteristics:

(1) Designed for operation over a temperature range wider than 125° C; or

(2) Crystals or assemblies of crystals which use the trapped energy phenomenon (i.e. those which have more than one series or parallel resonance on a single quartz element);

(b) * * *

(c) * * *

Note.—Licenses are likely to be approved for export to satisfactory end-users of items covered by sub-entry (a) above, which have either of the following characteristics:

(a) Designed for operation as intermediate frequency filters operating from 10.5 to 11 MHz or from 21 to 22 MHz with 3 dB bandwidths not exceeding 40 kHz; or

(b) Designed for operation as single sideband filters operating at from 1 to 10 MHz with 3 dB bandwidths not exceeding 4kHz.

1588A Materials composed of crystals having spinel, hexagonal, orthorhombic or garnet crystal structures; thin film devices; assemblies of the foregoing; and devices containing them, as follows (for equipment which may be exported in conjunction with computer shipments, see entry No. 1565):

(a) * * *

(b) Single aperture forms possessing either of the following characteristics:

(1) Switching speed of 0.3 microsecond or faster at the minimum field strength required for switching at 104° F (40° C); or

(2) A maximum dimension less than 30 mils (0.76 mm);

(c) * * *

(d) * * *

(e) * * *

(f) * * *

(g) * * *

Note.—Licenses are likely to be approved for export to satisfactory end-users of single aperture forms covered by sub-entry (b) above, provided they have a switching speed of slower than 0.3 microsecond and a maximum dimension of 14 mils (0.36 mm) or more.

1595A Gravity meters (gravimeters), and specialized parts therefor, designed or modified for airborne or marine use.

Note.—Licenses are likely to be approved for export to civil end-users for civil end-uses of marine gravimetric systems having a static accuracy of 1 milligal or above, or an in-service (operational) accuracy of 1 milligal or above with a time to steady-state registration of two minutes or greater under any combination of attendant corrective compensations and motional influences.

3604A Zirconium metal; alloys containing more than 50% zirconium by weight; and compounds in which the ratio of hafnium content to zirconium content is less than one part to five hundred parts by weight; manufacturers wholly thereof; *except*

(i) Zirconium metal and alloy in shipments of 5 kg or less;

(ii) Zirconium in the form of foil or strip having a thickness not exceeding 0.025 mm (0.00095 in.) and specially fabricated and intended for use in photo flash bulbs, in shipments of 200 kg or less.

Note.—Licenses are likely to be approved for export to satisfactory end-users of:

(a) Finished parts made of zirconium metal or alloys, specially designed for an identified civil research or power reactor, such as cladding tubes and plugs and separators therefor, liner tubes, thermal insulating tubes, pressure tubes and calandria tubes, provided that:

(1) None of the parts contains fissile materials; and

(2) The importing country has agreed to the application of the Safeguards of the International Atomic Energy Agency (IAEA) in connection with the nuclear reactor facility;

(b) Contained zirconium metal, or parts made therefrom, in individual shipments not exceeding 100 kg, when intended for use in, or in support of, an identified civil research or power reactor facility, in connection with which it is contemplated that IAEA Safeguards would be applied.

3605A Nickel powder and porous nickel metal, as follows:

(a) Powder with a nickel content of 99 percent or more, and a particle size of less than 100 micrometers; and

(b) * * *

Note.—Licenses are likely to be approved for export to satisfactory end-users of:

(a) Nickel powder in uncompacted powder form not made by the carbonyl process; or

(b) Nickel powder in uncompacted powder form made by the carbonyl process, in quantities of 50 kg or less.

1673A Artificial graphite having an apparent relative density of 1.90 or greater when compared with water at 60° F (15.50° C), *except artificial graphite which has been impregnated or composited with inorganic materials for the purpose of improving only its electrical conductivity, its mechanical resistance or its mechanical friction properties; and electrical resistors, artificial loads for microwave applications, cable waveguide terminations, brush stock, special joints for electrodes, boats and crucibles and high density graphite optical elements.*

Note.—Licenses are likely to be approved for export to satisfactory end-users of the following:

(a) Pyrolitic graphite (e.g. graphite made by vapor deposition at temperatures exceeding 2,732° F. (1,500° C)) in crude or semi-fabricated forms, the dimension of any one of which does not exceed 4 inches (10. cm) in any direction, in individual shipments not exceeding 55 pounds (25 kg);

(b) Non-pyrolitic graphite, having a relative density of less than 1.95 which has not been coated or composited with other elements or compounds to improve its performance at elevated temperatures or reduce its permeability to gases.

1754A Fluorocarbon compounds and manufactures, as follows:

(a) Monomeric and polymeric materials, as follows:

(1) Polychlorotrifluoroethylene, oily and waxy modifications only;

(2) * * *

(3) * * *

(4) * * *

(5) * * *

(b) Greases, lubricants and dielectric, damping and flotation fluids made wholly of any of the materials in sub-entry (a) above;

(c) * * *

Note.—Licenses are likely to be approved for export to satisfactory end-users of up to 5 US gallons (18.9 liters) of polychlorotrifluoroethylene-based lubricating oils covered jointly by sub-entries (a)(1) and (b) above, for bona fide civil uses.

1755A Silicone fluids and greases, as follows:

(a) * * *

(b) Silicone lubricating grease capable of operating at temperatures of 356° F (180° C) or higher and having a drop point (method of test being ASTM or ITP) of 428° F (220° C) or higher.

Note.—Licenses are likely to be approved for export to satisfactory end-users of silicone lubricating greases covered by sub-entry (b) above, provided they are not capable of operating at temperatures of 400° F (205° C) or higher.

1763A Fibrous and filamentary materials which may be used in composite structures or laminates and manufactures thereof, as follows:

(a) Having both of the following characteristics:

(1) Specific modulus greater than 1.25×10^6, and

(2) Specific tensile strength greater than 3×10^5;

(b) Having both of the following characteristics:

(1) Specific modulus greater than 1×10^6, and

Commodity Number (ECCN). The first digit relates to the strategic level of control; the second digit identifies the Group to which the commodity belongs; and the remaining two digits identify related commodities within a Group.

proposed transaction will generally have to be issued prior to shipment. If a commodity is covered by a CCL entry but is intended for export to a country that is *not* included in a country group for which control is indicated, the

Code letters	Country groups for which validated license is required
A	PQSTVWYZ (Multilaterally controlled to all destinations.) Only "A" commodities are subject to IC/DV procedure (see § 375.1).
B	PQSTVWYZ (Unilaterally controlled to all destinations.)
C	PQSWYZ and certain other countries

commodity may not be exported under a General License even though, from an examination of the CCL, it appears to meet the requirements for export under a General License. Exporters should review, in particular, Parts 376, 378, and

Electronic Equipment Division (EE), Capital Goods and Production Material Division (MG), and Short Supply Division (SS). Only those entries on the CCL that have the same processing code may be entered on a single application

(2) Specific tensile strength greater than 3×10^6.

(b) Having both of the following characteristics:

(1) Specific modulus greater than 1×10^8, and

(2) Melting or sublimation point higher than 3,000° F (1,649° C) in an inert environment;

except carbon fibers having a specific modulus of less than 2×10^6 and a specific tensile strength of less than 1×10^6.

(c) * * *

Note.—Licenses are likely to be approved for export for bona fide civil end-uses, of carbon fibers covered by sub-entries (a) and (b) above having both of the following characteristics:

(a) Specific modulus less than 4.5×10^6, and

(b) Specific tensile strength less than 4×10^6.

1767A Preforms of glass or any other material specially designed for the fabrication of optical transmission fibers intended for the manufacture of cable covered by entry No. 1526 II(c).

Note.—Licenses are likely to be approved for export to satisfactory end-users of the preforms described in this entry.

2. The authority citation for Part 399 is revised to read as follows:

Authority: Sec. 4, Pub. L. 96-72 (50 U.S.C. app. 2403); (E.O. 12214, 45 FR 29783, May 8, 1980), Department Organization Order 10-3, (45 FR 6141, January 25, 1980) and International Trade Administration Organization and Function Order 41-1 (45 FR 11862, January 30, 1980).

3. Section 399.1 is revised to read as set forth below. The Commodity Control List printed in the **Federal Register** of June 25, 1980 (45 FR 43060-43138) is reconfirmed and is designated Supplement 1 to § 399.1. Supplement 1 is amended by removing pages CCL-5, 10, 19, 21, 22, 23, 24, 28, 66, 70, 72, 77 and 79 printed at 45 FR 43064, 43069, 43078, 43080, 43081, 43082, 43083, 43087, 43125, 43129, 43131, 43136, and 43138, and inserting in their place replacement pages CCL-5, 10, 19, 21, 22, 23, 24, 28, 66, 70, 72, 77 and 79 set forth below.

§ 399.1 The commodity control list and how to use it.

(a) *Commodity Coverage.* The Commodity Control List (CCL) includes all commodities except those specifically controlled for export by another department or agency of the U.S. Government. For example, arms, ammunition, and implements of war are controlled for export by the Office of Munitions Control, U.S. Department of State. See § 370.10 for a listing of exports controlled by other U.S. Government departments and agencies.

(b) *Commodity Categories.* The commodities under OEA jurisdiction are grouped on the CCL under 10 general categories. Each CCL entry is preceded by a four-digit Export Control Commodity Number (ECCN). The first digit relates to the strategic level of control; the second digit identifies the Group to which the commodity belongs; and the remaining two digits identify related commodities within a Group.

Group	Types of commodities
0	Metal-working machinery
1	Chemical and petroleum equipment
2	Electrical and power-generating equipment
3	General industrial equipment
4	Transportation equipment
5	Electronics and precision instruments
6	Metals, minerals, and their manufactures
7	Chemicals, metalloids, petroleum products, and related materials
8	Rubber and rubber products
9	Miscellaneous

Within the ten general categories, specific CCL entries define the commodities under control to the destinations included in the country groups specified in the CCL column headed "Validated License Required." See Supplement No. 1 to Part 370 for a listing of the countries included in each country group.

(c) *Embargo Destinations.* Almost all CCL entries include Country Groups S and Z, embargo destinations, in the column headed "Validated License Required." Generally, the last entry in each commodity category is a "basket" entry asserting control over exports to destinations in Country Groups S and Z of commodities that are not elsewhere specified in that commodity category. In a few instances, however, certain entries are excepted from the general embargo policy and are specifically identified. The commodities so excepted may be exported under General License *G-DEST*. Certain other General Licenses may also apply, *e.g.*, General License *GIFT*. With these exceptions, no commodity may be exported or reexported to a destination in Country Group S or Z unless an export license application (Form ITA-622P) or request to reexport (Form ITA-699P) has been filed with the Office of Export Administration and a validated export license or reexport approval covering the proposed transaction has been issued to the exporter. See § 385.1 for general policy statements with respect to embargo destinations.

(d) *All Other Destinations, except Canada.* If a commodity is intended for export to a destination in Country Group P, Q, T, V, W, or Y and is covered by a CCL entry that includes P, Q, T, V, W, or Y, as appropriate, in the column headed "Validated License Required," an export license application or reexport request will generally have to be filed with the OEA and a validated export license or reexport authorization covering the proposed transaction will generally have to be issued prior to shipment. If a commodity is covered by a CCL entry but is intended for export to a country that is *not* included in a country group for which control is indicated, the commodity may be shipped under authority of General License *G-DEST*, provided none of the parties involved is currently denied export privileges (see Supplement No. 1 to Part 388) and the export is not restricted by the special licensing requirements summarized in (f)(3) below. A small value shipment of a commodity included in a CCL entry may be eligible for export to a destination in Country Group Q, T, or V under the authority of General License *GLV*. In addition, one of the other, more specialized, General Licenses set forth in Part 371 may be applicable. Exporters should review the General License provisions in Part 371 prior to filing an application to ascertain whether any apply to the proposed shipment or conversely require a validated license.

(e) *Canada.* Canada is not included in any of the Country Groups, and most commodities may be exported to Canada for consumption or use in that country without a validated export license. In the few instances where a validated license is required, Canada is specifically named. See § 385.6 for a general policy statement with respect to exports to Canada. Note also the special licensing requirements summarized in (f)(3) below.

(f) *How To Use the CCL.*—(1) *General categories.* The first step is to identify which CCL entry covers the commodity proposed for export. This can usually be determined by reviewing the appropriate general category within which the commodity is most likely to be included. If the exporter is uncertain of the proper CCL entry, he should consult the Office of Export Administration.

Once the CCL entry has been located, the Export Control Commodity Number (ECCN) should be noted. This consists of a four-digit number that must appear on your export license application or reexport request, if one is required. The four-digit number will be followed by a code letter. This code letter is a key to the documentation requirements of Part 375, and is used elsewhere in the Regulations to indicate the country group level of control for CCL entries. This code letter need not appear on the export license application or reexport request. The letters used and the respective country groups are:

Code letters	Country groups for which validated license is required
A	POSTVWYZ (Multilaterally controlled to all destinations.) Only "A" commodities are subject to IC/DV procedure (see § 375.1).
B	POSTVWYZ (Unilaterally controlled to all destinations.)
C	POSWYZ and certain other countries.
D	POSWYZ only.
E	PSWYZ.
F	SZ and certain other countries.
G	SZ only.
I	None
M	Various (Country Group control level is governed by another entry on the CCL.)

(2) *Country of destination and value of shipment.* Having located the ECCN for a commodity that is to be exported, the next step is to determine if a validated export license is required for *the particular shipment* in question. This is determined by reference to the column of the CCL headed "Validated License Required" and, in certain cases, by the value of the shipment.

(i) If the code letter following the ECCN is A or B, and the country of destination is in Country Group T or V, a validated export license is required if the value of the shipment exceeds the value shown in the column of the CCL headed "GLV $ Value Limit." However, see § 371.5 for restrictions on the use of General License *GLV*.

(ii) If the code letter following the ECCN is A and the country of destination is in Country Group P, Q, S, W, Y, or Z, a validated export license is required *regardless of the value of the shipment.*

(iii) If the code letter following the ECCN is B, C, D, or E, and the country of destination is in Country Group P, S, W, Y or Z or specifically named in the column of the CCL headed "Validated License Required," a validated export license *is* required, regardless of the value of the shipment. If the country of destination is in Country Group Q, a validated export license is required unless the code letter is E, F, G or I, or there is a GLV $ value shown in a footnote to the entry and the value of the shipment does not exceed the GLV $ value. The GLV $ value limit for Country Group Q is "0" unless stated otherwise in a footnote for the entry. However, see § 371.5 for restrictions on the use of General License *GLV*.

(iv) If the code letter following the ECCN is F or G, and the country of destination is in Country Group S or Z or is specifically named in the column of the CCL headed "Validated License Required," a validated export license *is* required, regardless of the value of the shipment.

(3) *Special licensing requirements.* Under certain circumstances, a commodity may not be exported under a General License even though, from an examination of the CCL, it appears to meet the requirements for export under a General License. Exporters should review, in particular, Parts 376, 378, and 385. For example—

(i) The commodity is related to nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source materials, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 378.3, or the technical data are related to any of these activities, as described in § 379.4(c)(1), unless the technical data may be exported under the provisions of General License *GTDA*;

(ii) An individual validated export license is required to export any commodity or technical data (except data meeting the conditions of General License *GTDA*) where the exporter knows or has reason to know that the commodity, the data, or any product of the data, will be sold to or used by or for military or policy entities in the Republic of South Africa or Namibia. See also § 385.4 with respect to controls over other commodities for export to the Republic of South Africa or Namibia.

(g) *Commodity Control List Headings.* The Commodity Control List contains two headings designed to inform applicants of information that must be included on an export license application or reexport request, and one heading to inform applicants of the reason for control of the commodity.

(1) *Unit of quantity.* The quantity classification given for each commodity in the "Unit" column of the CCL must be shown on the export license application. If dashes (——) are shown in this column, the license is issued in terms of dollar value, unless a specific unit of quantity is required by a footnote in this column. However, if another unit of quantity is commonly used in the trade, the application should show the quantity in terms of that unit. If a unit of weight or measure is listed in the unit column, a shipping tolerance is allowed. (See § 386.7.)

(2) *Processing code.* For each entry on the Commodity Control List, a processing code, *i.e.*, CD, EE, MG, or SS, appears in the "Processing Code" column. These processing codes must be shown on the application for export license or reexport request, since they are used to facilitate the routing and processing of export license applications within the Office of Export Administration. These processing codes stand for Computer Division (CD), Electronic Equipment Division (EE), Capital Goods and Production Material Division (MG), and Short Supply Division (SS). Only those entries on the CCL that have the same processing code may be entered on a single application for export license. (For complete information the inclusion of related commodities on a single application, see § 372.4 (d).)

(3) *Reason for control.* The reason for control for each entry is specified in the last column[1], using the following number code—

Code No.	Reason for control
1	National security [1]
2	Short supply [2]
3	Foreign policy [3]
4	Nuclear non-proliferation [4]
5	Crime control (foreign policy) [5]

[1] Export Administration Act of 1979, Section 5, Pub. L. 96-72, 93 Stat. 507, to be codified at 50 U.S.C. app. § 2404.
[2] Export Administration Act of 1979, Section 7, Pub. L. 96-72, 93 Stat. 515, to be codified at 50 U.S.C. app. § 2406. Other statutes controlling petroleum and other commodities include: Energy Policy and Conservation Act, Section 103, Pub. L. 94-163, 89 Stat. 877, 42 U.S.C. § 6212; Trans-Alaska Pipeline Authorization Act, Section 101, Pub. L. 93-153, 87 Stat. 576, amending 30 U.S.C. § 185; Naval Petroleum Reserve Production Act of 1976, Section 201(10), Pub. L. 94-258, 90 Stat. 309, amending 10 U.S.C. § 7430.
[3] Export Administration Act of 1979, Section 6, Pub. L. 96-72, 93 Stat. 513, to be codified at 50 U.S.C. app. § 2405.
[4] Export Administration Act of 1979, Sections 5, 6, and 17(d), Pub. L. 96-72, 93 Stat. 507, to be codified at 50 U.S.C. app. § 2416(d), Nuclear Non-Proliferation Act of 1978, Section 309(c), Pub. L. 95-242, 92 Stat. 141, to be codified at 42 U.S.C. § 2139a.
[5] Export Administration Act of 1979, Section 6(j), Pub. L. 96-72, 93 Stat. 515, to be codified at 50 U.S.C. app. § 2405(j).

In some cases, more than one reason for control is given for one entry. If an entry is controlled for more than one reason, but not to an identical list of countries, the lesser degree of control is explained in a footnote. Also, all entries (except those showing "none" in the "Validated License Required" column) are controlled for foreign policy reasons to Country Groups S and Z due to certain embargo programs, and all entries having both a "V" in the "Validated License Required" column and a "1" in the "Reason for Control" column are controlled for foreign policy reasons to Syria, Iraq, Libya, and the People's Democratic Republic of Yemen. In some cases, sub-entries of a CCL entry are controlled for different reasons. In these cases, a dash (—) will be shown in the first line of the entry, and the code number is shown in the "Reason for Control" column exactly opposite each sub-entry (a), (b), etc. (For example, see CCL entry No. 1110.)

(h) *The Abbreviation "n.e.s."* The abbreviation "n.e.s." appearing in various CCL entries means "not elsewhere specified." If a commodity intended for export appears to be covered by a CCL entry and the

[1] In accordance with section 5(c)(1) and 6(k) of the Export Administration Act of 1979.

commodity description carries the limitation "n.e.s.," that CCL entry should not be used until a check has been made to determine whether another CCL entry specifically covers the commodity.

(i) *Commodity Description on*

commodity description carries the limitation "n.e.s.," that CCL entry should not be used until a check has been made to determine whether another CCL entry specifically covers the commodity.

(i) *Commodity Description on Applications or Reexport Requests.* Phrases such as "specify by name," "specify by name and model number," "give full specifications," etc., are included in various CCL entries. This information is required by the OEA on export license applications or reexport requests in order to evaluate the proposed export. Failure to provide the requested information may delay processing or result in the application or reexport request being returned without action.

(j) *Commodity Groups.* Export control commodity classifications are divided into major groups of related commodities. Below are the titles appearing on the Commodity Control List and initial page number of each group.

(k) *Control Over End Products.* Certain commodities that are under export control to all destinations for national security reasons may be used as components in end products that, because of their peaceful use, are under control only to embargo destinations. Where a controlled component is the principal element in such an end product, however, and can feasibly be removed or used for other purposes, the object of the control program is defeated unless the end product is subject to the same control as the component. This explains why, in some instances, commodities that do not appear to qualify for control for national security reasons are under validated license control to all destinations.

Note.—The foregoing portion of this § 399.1 is explanatory only and does not modify or supersede other Parts of the *Export Administration Regulations.*

BILLING CODE 3510-25-M

Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limits T&V	Processing Code	Reason for Control
4094B Mandrels and bellows forming dies, as follows:	--------	PQSTVWYZ and Canada	0	MG	4
(a) Mandrels or forming dies, two piece cylindrical having a single indented circumferential convolution bisected by the two halves and having the following dimensions:					
(1) 8 in. to 16 in. outside diameter;					
(2) ½ in. or more in length; and					
(3) Single convolution depth more than 2 mm; and					
(b) Mandrels or forming dies, hollow two piece cylindrical having a single internal indented circumferential convolution bisected by the two halves and having the following dimensions:					
(1) 8 in. to 16 in. inside diameter;					
(2) ½ in. or more in length; and					
(3) Single convolution depth more than 2 mm.					
6098F Other machinery and equipment (including tools, fixtures, and jigs) specially designed or modified for the manufacture of equipment utilized in the exploration for, or production of, petroleum or natural gas; and specially designed parts and accessories therefor, as follows: Dowel hole drilling machines, Cone hit drilling machines, Cone bit milling machines, Bit-arm milling machines, Pipe perforating machines, Liner mills, Casing mills, Cone buster mills, Collar mills, Packer mills, and Machinery and equipment, n.e.s., specially designed or modified for the manufacture of equipment utilized in the exploration for, or production of, petroleum or natural gas.	--------	SZ, Afghanistan and the USSR [1, 2]	—	MG	3
6099G [2, 3] Other metal-working machinery, n.e.s.; and parts and accessories, n.e.s.	--------	SZ [2, 3]	—	MG	3

GROUP 1—CHEMICAL AND PETROLEUM EQUIPMENT [4]

Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limits T&V	Processing Code	Reason for Control
1110A Gas liquefying equipment, as follows:	------- [5]	PQSTVWYZ	500	MG	—
(a) Equipment for the production of liquid hydrogen, *except plants with a capacity of less than 1½ tons per 24-hour day and not designed for, or capable of, the production of hydrogen slush;*					1
(b) Equipment for the production of liquid fluorine; and					1, 4 [6]
(c) Specially designed parts and accessories therefor.					1, 4 [6]

[1] Including Estonia, Latvia, and Lithuania.
[2] A validated license also is required for export to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations or for use in servicing equipment owned, controlled, or used by or for these entities. See §§ 371.2(c)(11) and 385.4(a).
[3] A validated license is also required for export or reexport to the U.S.S.R. if the exporter knows or has reason to know the commodity is for any use directly in preparation for, in conduct of, in support of, or visually identified with the 1980 Summer Olympic Games scheduled to commence in Moscow on July 19, 1980. These commodities are subject to controls under the authority of the foreign policy provisions contained in section 6 of the Export Administration Act of 1979. This commodity control list entry as well as the other entries in this Group are subject to controls on the basis of the above criteria.
[4] See § 370.10 for commodities which require export authorization from other U.S. Government Departments and Agencies.
[5] Report equipment in "number."
[6] The countries to which commodities in this entry are controlled for nuclear reasons are those not listed in Supp. No. 2 or Supp. No. 3 to Part 373.

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Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limits T&V	Processing Code	Reason for Control
1206A Electric arc devices for generating a flow of ionized gas in which the arc column is constricted, *except devices wherein the flow of gas is for isolation purposes only and devices of less than 100 kW for cutting, welding, melting, plating, and/or spraying;* equipment incorporating such devices; and specially designed parts, accessories, and control or test equipment for such devices.	-------	PQSTVWYZ	500	MG	4 [1]
3240A Now covered by entry No. 3261.					
4240R Now covered by entry No. 4261.					
3261A Neutron generator systems, including tubes, designed for operation without an external vacuum system, and utilizing electrostatic acceleration to induce a tritium-deuterium nuclear reaction; and specially designed parts therefor.	------- [2]	PQSTVWYZ	0	EE	1, 4
4261B Particle accelerators having *all* of the following specifications:	------- [3]	PQSTVWYZ	500	EE	4
(a) Peak beam power exceeding 500 MW;					
(b) Output energy exceeding 500 kV; and					
(c) An output beam intensity exceeding 2,000 amperes with a pulse width of 0.2 microsecond or less; and					
(d) Specially designed parts and accessories therefor.					
6299G [4, 5] Other electrical and power generating equipment, n.e.s.; and parts and accessories, n.e.s.	--------	SZ [4, 5]	—	MG	3

GROUP 3—GENERAL INDUSTRIAL EQUIPMENT [6, 7]

Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limits T&V	Processing Code	Reason for Control
1305A Metal rolling mills, as follows:	--------	PQSTVWYZ	1,000	MG	1
(a) Mills specially designed or re-designed for the rolling of metals and alloys with a melting point exceeding 1,900°C; and					
(b) Specialized controls, parts, and accessories for the above mills.					
1312A Presses and specialized controls, accessories, and parts therefor, as follows:	------- [8]	PQSTVWYZ	1,000	MG	—
(a) Presses specially designed or re-designed for the working or forming of metals, alloys, or other materials with a melting point exceeding 3,452°F (1,900°C);					1
(b) Hydraulic presses, as follows:					1
(1) Vertical presses having a total rated force of over 10,000 tons; or					
(2) Horizontal presses having a total rated force of over 5,000 tons;					
(c) Isostatic presses, as follows (isostatic presses are those capable of pressurizing a closed					1, 4

[1] The countries to which commodities in this entry are controlled for nuclear reasons are those not listed in Supp. No. 2 or Supp. No. 3 to Part 373.
[2] Report systems and tubes in "number."
[3] Report accelerators in "number."
[4] A validated license also is required for export to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations or for use in servicing equipment owned, controlled, or used by or for these entities. See § 371.2(c)(11) and § 385.4(a).
[5] A validated license is also required for export or reexport to the U.S.S.R. if the exporter knows or has reason to know the commodity is for any use directly in preparation for, in conduct of, in support of, or visually identified with the 1980 Summer Olympic Games scheduled to commence in Moscow on July 19, 1980. These commodities are subject to controls under the authority of the foreign policy provisions contained in section 6 of the Export Administration Act of 1979. This commodity control list entry as well as the other entries in this Group are subject to controls on the basis of the above criteria.
[6] See § 370.10 for commodities which require export authorization from other U.S. Government Departments and Agencies.
[7] For mechanical measuring instruments, see entry No. 1532.
[8] Report machines in "number."

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Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limits TSV	Processing Code	Reason for Control
4463M Nuclear reactor and nuclear power plant related equipment as follows:		PQSTVWYZ[1]	0	MG	4
(a) Reactor and power plant simulators, models or mock-ups;					
(b) Process control systems intended for use with nuclear reactors;					
(c) Generators, turbine-generator sets, steam turbines, heat exchangers, and heat exchanger type condensers designed or intended for use in a nuclear reactor; and					
(d) Commodities, parts and accessories specially designed or prepared for use with nuclear plants (*e.g.*, snubbers, airlocks, reactor inspection equipment) except items licensed by the NRC pursuant to 10 CFR 110.					
1370A Turning machines for generating optical quality surfaces using a single point cutting tool, and components and accessories therefor, as follows:	No.	PQSTVWYZ	500	MG	1, 4
(a) Turning machines having all of the following characteristics:					
(1) Slide positioning accuracy less (finer) than 0.0005 mm per 300 mm of travel, TIR (peak-to-peak);					
(2) Slide positioning repeatability less (finer) than 0.00025 mm per 300 mm of travel, TIR (peak to-peak);					
(3) Spindle runout (radial and axial) less than 0.0004 mm TIR (peak-to-peak);					
(4) Angular deviation of the slide movement (yaw, pitch and roll) less (finer) than 2 seconds of arc (peak-to-peak) over full travel;					
(5) Slide perpendicularity less than 0.001 mm per 300 mm of travel, TIR (peak-to-peak); (Turning machines will be evaluated under the conditions yielding the most accurate values, including but not limited to the incorporation of control systems which permit mechanical, electronic and software compensation.)					
(b) Components, as follows:					
(1) Spindle assemblies, consisting of spindles and bearings as a minimal assembly, *except those assemblies with axial and radial axis motion measured along the spindle axis in one revolution of the spindle equal to or greater (coarser) than 0.0008 mm TIR (peak-to-peak);*					
(2) Linear induction motors used as drives for slides, having all of the following characteristics:					
(i) Stroke greater than 200 mm;					
(ii) Nominal force rating greater than 45 N; and					
(iii) Minimum controlled incremental movement less than 0.001 mm; or					
(c) Accessories, *i.e.*, single point diamond cutting tool inserts having all of the following characteristics:					
(1) Flawless and chip-free cutting edge when magnified 400 times in any direction;					
(2) Cutting radius between 0.1 and 5 mm; and					
(3) Cutting radius out-of-roundness less than 0.002 mm TIR (peak-to-peak); and					
(d) Specially designed parts and components therefor.					
1371A Anti-friction bearings, as follows:		PQSTVWYZ	500	MG	1
(a) Ball and roller bearings having an inner bore diameter of 10 mm or less and tolerances of ABEC 5, RBEC 5 (or national equivalents) or better and either of the following characteristics:					
(1) Made of special materials, *i.e.*, with rings, balls or rollers made from any steel alloy or other material including, but not limited to high-speed tool steels, Monel metal, beryllium, metaloids, ceramic, and					

[1] A validated license is not required for export of these commodities [illegible] to the destinations listed in part 372.

Export Administration Regulations

Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limits TSV	Processing Code	Reason for Control
GROUP 4—TRANSPORTATION EQUIPMENT[1]					
2404A Rockets and missiles, guided or unguided, as follows:		PQSTVWYZ	500	MG	1
(a) Meteorological sounding rockets;					
(b) Non-irritant smoke flares, canisters, grenades, and charges;					
(c) Other pyrotechnic articles having dual military and commercial use;					
(d) Rocket launching ramps, towers, and associated equipment for meteorological rockets; and					
(e) Specially designed parts for the above.					
2406A Vehicles specially designed for military purposes, as follows:		PQSTVWYZ	0	MG	1, 3, 5
(a) Specially designed military vehicles, excluding vehicles listed in Supplement No. 2 to Part 370;					
(b) Pneumatic tire casings *(excluding tractor and farm implement types)*, of a kind specially constructed to be bullet proof or to run when deflated;					
(c) Engines for the propulsion of the vehicles enumerated above, specially designed or essentially modified for military use; and					
(d) Specially designed components and parts therefor.					
(See § 399.2, Interpretation 19, for aid in determining whether your commodity is covered by this entry.)					
5406D[2] Diesel engines, nonmagnetic, 50 brake horsepower and over, having a nonmagnetic content exceeding 60 percent, up to but not exceeding 75 percent of total weight; and parts and accessories, n.e.s. (Specify brake hp at rated rpm.)		PQSWYZ[3] and Afghanistan	—	MG	1
2409A Naval equipment as follows:		PQSTVWYZ	1,000	MG	1
(a) Diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over specially designed for submarines;					
(b) Electric motors specially designed for submarines, i.e., over 1,000 hp, quick reversing type, liquid cooled, and totally enclosed;					
(c) Nonmagnetic diesel engines, 50 hp and over, specially designed for military purposes (An engine shall be presumed to be specially designed for military purposes if it has nonmagnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines, or its nonmagnetic content exceeds 75 percent of total weight.);					
(d) Other magnetic, pressure, and acoustic underwater detection devices specially designed for military purposes; and controls and components thereof;					
(e) Marine boilers designed to have any of the following characteristics:					
(1) Heat release rate (at maximum rating) equal to or in excess of 190,000 BTU's per hour per cubic foot of furnace volume; or					
(2) Ratio of steam generated in pounds per hour (at maximum rating) to the dry weight of the boiler in pounds equal to or in excess of 0.83; and					
(f) Components, parts, accessories, and attachments for the above.					

[1] See § 370.13 for commodities which require export authorization from other U.S. Government Departments and Agencies.
[2] Aircraft, vehicular, and engines to which [illegible] are required for export to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in those destinations or for use in servicing equipment owned, controlled, or used by or for those entities. See § 371.5(e)(111) and § 385.4(a).
[3] Report engines in number.
[4] The GLV $ value limit for Country Group Q is $100.
[5] Report engines and motors in number.

Export Administration Regulations

Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limits TSV	Processing Code	Reason for Control
4409B Water tube boilers, marine type, designed to have a heat release rate (at maximum rating) equal to 180,000 BTU, up to but not including 190,000 BTU per hour per cubic foot of furnace volume; boiler superheaters, feedwater heaters, and economizers therefor; and parts and accessories therefor.		PQSTVWYZ	1,000	MG	1
2410A Pressure refuellers, pressure refuelling equipment, and equipment specially designed to facilitate operations in confined areas and ground equipment, not elsewhere specified, developed specially for aircraft and helicopters, and specially designed parts and accessories, n.e.s.		PQSTVWYZ	500	MG	1, 3
1416A Vessels, as follows:		PQSTVWYZ	1,000	MG	1
(a) Hydrofoil vessels with automatically controlled foil systems which are capable of speeds of above 40 knots in rough water (Sea State Five);					
(b) Vessels incorporating any item included in a CCL entry beginning with the numeral 2 or listed in Supplement No. 2 to Part 370, any item described in entry Nos. 1485, 1501, 1502, and 1510 *(except all types of fish-finding or whale-finding equipment)*, or incorporating degaussing facilities; and					
(c) Specially designed parts and accessories for the above. (Also see §§ 370.10(a) and (f).)					
1418A Deep submergence vehicles, manned or unmanned, tethered or untethered, capable of operating at depths exceeding 1,000 meters, and specially designed equipment, components and materials therefor, including but not limited to pressure housings or pressure hulls specially designed for normal operating pressures of more than 101 bars. (For syntactic foam, see entry No. 1759.)		PQSTVWYZ	1,000	MG	1
1431A Gas turbine engines for marine propulsion of 3,500 rated shaft hp and above, whether originally designed as such or adapted for such use from aero-engines; and specially designed parts, n.e.s.		PQSTVWYZ	1,000	MG	1
4431B Other marine propulsion steam turbines specially designed for naval use; and parts and accessories, n.e.s. (Specify hp or kW.)		PQSTVWYZ	1,000	MG	1
5431D[1] Compressors, fans, and blowers, any type, specially designed or modified for military or naval shipboard use; and parts and attachments, n.e.s. (Specify by name.)		PQSWYZ[2] and Afghanistan	—[3]	MG	1
1460A Nonmilitary aircraft and helicopters, aero-engines, and aircraft and helicopter equipment, as follows:		PQSTVWYZ	1,000	MG	—
(a) Helicopters over 10,000 lbs. (4,530 kg) empty weight, and power transmission systems therefor (empty weight is understood to include normal installation and normal minimum crew, but does not include fuel or payload);					1, 3[4]
(b) Other nonmilitary aircraft and helicopters, *except those which do not contain equipment listed in Supplement No. 2 to Part 370 or entry Nos. 1485 or 1501 and which are of types which are in common use by non-Warsaw Pact countries for civil use*; (specify make and model of aircraft and type of avionic equipment on aircraft) and					1, 3[4]

[1] Report vessels or vehicles in number.
[2] Report engines in number.
[3] A validated license also is required for export to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in those destinations or for use in servicing equipment owned, controlled, or used by or for those entities. See § 371.5(e)(111) and § 385.4(a).
[4] The GLV $ value limit for Country Group Q is $500.
[5] Report aircraft, helicopters, and engines in number.
[6] Foreign policy controls apply to helicopters over 15,000 lbs. empty weight for Libya, Syria, Iraq, the People's Democratic Republic of Yemen, the Republic of South Africa, and Namibia.
[7] Foreign policy controls apply to the Republic of South Africa and Namibia, for both aircraft and helicopters regardless of value, and to Libya, Syria, Iraq, and the People's Democratic Republic of Yemen for fixed-wing aircraft valued at $3,000,000 or more. Foreign policy controls do not apply to parts or engines.

Export Administration Regulations

Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limits TSV	Processing Code	Reason for Control
Entry No. 1460 (cont.)					
(c) Aero-engines and specially designed parts and accessories, n.e.s., *except:*					1
(1) Piston engines;					
(2) Jet engines of less than 5,000 lbs. (2,265 kg) thrust; or					
(3) Turbo-prop or turbo-shaft engines of less than 2,500 hp or with a residual thrust of less than 1,000 lbs. (453 kg).					
(Specify make, model and pound thrust or horsepower.) (Also see § 399.2, Interpretation 20.)					
4460B Nonmilitary aircraft and helicopters, aero-engines, and aircraft and helicopter equipment, as follows:		PQSTVWYZ	1,000	MG	1
(a) Other jet, turbo-prop, turbo-shaft, and gas turbine aircraft engines, as follows:					
(1) Under development for nonmilitary use, experimental or non-certified; or					
(2) Certified engines which have been in civil use for 3 years or less; and					
(3) Parts and accessories, n.e.s., therefor;					
(Specify make, model and pound thrust or horsepower); and					
(b) Parts and accessories, n.e.s., specially designed for nonmilitary:					
(1) Helicopters over 10,000 pounds weight; or					
(2) Helicopters 10,000 pounds or less empty weight or fixed-wing aircraft, of types which have been in normal civil use and containing one or more of the items listed in entry No. 1485 or 1501, or Supplement No. 2 to Part 370.					
(Specify make and model of aircraft, and type of avionic equipment on aircraft.) (Also see § 399.2, Interpretation 20.)					
5460F[1] Other nonmilitary aircraft and demilitarized military aircraft valued at $3,000,000 each or more.		SZ[2] and Syria, Iraq, Libya, People's Dem. Rep. of Yemen, Rep. of South Africa & Namibia	—	MG	3
6460F[1] Other aircraft and helicopters, as follows:		SZ[2] and the Rep. of South Africa & Namibia	—	MG	3
(a) Military aircraft, demilitarized (not specifically equipped or modified for military operations), *the following only:*					
(1) Cargo, "C-45 through C-118" inclusive, and "C 121",					
(2) Trainers, bearing a "T" designation and using piston engines,					
(3) Utility, bearing a "U" designation and using piston engines,					
(4) Liaison, bearing an "L" designation, and					
(5) Observation, bearing an "O" designation and using piston engines; and					
(b) Other nonmilitary helicopters and aircraft.					

[1] Report aircraft, helicopters and engines in number.
[2] A validated license also is required for export or reexport to the U.S.S.R. if the exporter knows or has reason to know the commodity is for any use directly in connection with preparation for, conduct of, or support of, or specially identified with the 1980 Summer Olympic Games which is to commence in Moscow on July 19, 1980. Those commodities are subject to controls under the authority of the foreign policy provisions contained in section 6 of the Export Administration Act of 1979. This commodity control list entry as well as the other entries in this Group are subject to controls on the basis of the above criteria.

Export Administration Regulations

Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limit TAV	Processing Code	Reason for Control
Entry No. 6460 (cont.) (Specify make and model of aircraft and type of avionic equipment on aircraft. See § 399.2, Interpretation 20. Also see Supplement No. 2 to Part 370 or entry No. 1685 or 1501 for aircraft which are not covered under this entry.)					
5480B[1] Nonmilitary mobile crime science laboratories; and parts and accessories, n.e.s. (See § 376.14.)	--------	PQSTVWYZ[1]	0	MG	5
1485A Compasses, gyroscopes, accelerometers, and inertial equipment, as follows:	--------	PQSTVWYZ	1,000	MG	1
(a) Gyro compasses with provision for determining and transmitting ship's level reference data (roll, pitch) in addition to own ship's course data;					
(b) Integrated flight instrument systems for aircraft which include gyrostabilisers and/or automatic pilots (An integrated flight instrument system is a primary instrument display system of attitude and azimuth with facilities for giving maneuver guidance information to the pilot and often integrated with an autopilot to the extent of embodying a common unit for setting up the required demands.);					
(c) Gyro-astro compasses and other devices which derive position and/or orientation by means of automatically tracking celestial bodies;					
(d) Gyrostabilisers used for other purposes than aircraft control, *except those for stabilizing on entire surface vessel;*					
(e) Automatic pilots used for other purposes than aircraft control *except marine types for surface vessels;*					
(f) Accelerometers with a threshold of 0.005 g or less, or a linearity error within 0.25 percent of full scale output or both, which are designed for use in inertial navigation systems or in guidance systems of all types;					
(g) Gyros with a rated free directional drift rate (rated free precession) of less than 0.5 degree (1 Sigma or r.m.s.) per hour in a 1 g environment;					
(h) Inertial or other equipment using accelerometers described in sub-entry (f) above and/or gyros described in sub-entry (g) above, and systems incorporating such equipment; and					
(i) Specially designed parts and components, and test, calibration, and alignment equipment for the above.					
5485D Now covered by entry No. 6499.					
6490F[2,3] Off-highway wheel tractors of carriage capacity 10 tons or more; and parts and accessories, n.e.s.	-------	SZ[4,5] and Libya	—	MG	3
6499C[5] Other transportation equipment, n.e.s.; and parts and accessories, n.e.s.	--------	SZ[4,5]	—	MG	3
9499M Vehicles mounted with telecommunications equipment (including radar). (See Group 5—Electronics and Precision Instruments.) (Specify mounted equipment.) (Report telecommunications equipment, including radar, exported as replacements or accessories under appropriate Export Control Commodity Number.)	No.	Export controls applicable to vehicles included in this entry are those which apply to the equipment mounted on the vehicle.		EE	—[6]

[1] A validated license is not required for export of these commodities to Australia, Belgium, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Turkey and the United Kingdom.
[2] A validated license also is required for export to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in those destinations or for use in servicing equipment owned, controlled, or used by or for those entities. See § 371.2(a)(11) and § 385.4(a).
[3] A validated license is not required for export or reexport to the U.S.S.R. if the exporter knows or has reason to know the commodity is for any use directly in preparation for, in support of, or visually identified with the 1980 Summer Olympic Games scheduled to commence in Moscow on July 19, 1980. These commodities are subject to controls under the authority of the foreign policy provisions contained in section 5 of the Export Administration Act of 1979. This commodity control list entry as well as the other entries in this Group are subject to controls on the basis of the above criteria.
[4] Report tractors in number.
[5] The reasons for control applicable to vehicles included in this entry are those which apply to the equipment mounted on the vehicle.

Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limit TAV	Processing Code	Reason for Control
Entry No. 1510 (cont.) *(i) Incorporating sensitive elements made of piezoelectric ceramics or crystal, and with a sensitivity no greater than −192 dB (reference 1 volt per micropascal);*					
(ii) Not designed for operation at depths greater than 100 meters;					
(iii) Independently mounted or configured and not reasonably capable of assembly by the user into a towed hydrophone array;					
(iv) Terrestrial systems or equipment not reasonably capable of conversion by the user to underwater or marine applications as embargoed above.					
(Passive hydrophone sensitivities in this entry are based on sensitivity being defined as 20 times the logarithm to the base 10 of the ratio of rms output voltage to a 1 volt reference, when the hydrophone sensor is placed in a plane wave acoustic field having an rms pressure of 1 micropascal. For example, a hydrophone of −160 dB (reference 1 volt per micropascal) would yield an output voltage of 10 volts in such a field, while one of −180 dB sensitivity would yield only 10 volts ouptut.)					
5510D[1] Doppler sonar navigation equipment; and parts and accessories therefor.	--------	PQSWYZ[1] and Afghanistan	—	MG	1
1516A Pulse modulators capable of providing electric impulses of peak power exceeding 5 MW or of a duration of less than 0.1 microsecond, or with a duty cycle in excess of 0.002; and pulse transformer, pulse-forming equipment or delay lines being specialized parts of such modulators; and specially designed parts and accessories therefor. (Specify by name and type number.)	--------	PQSTVWYZ	1,000	EE	1
1516A Receivers, and specialized parts and accessories therefor, as follows:	--------	PQSTVWYZ	0[2]	EE	1, 5
(a) Panoramic radio receivers (which search or scan automatically a part of the electromagnetic spectrum and indicate or identify the received signals); *except ancillary equipment for commercial receivers with which the frequency spectrum searched does not exceed either ±10 percent of the intermediate frequency of the receiver or ±2 MHz;*					
(b) Digitally-controlled radio receivers, whether or not computer controlled, which search or scan automatically a part of the electromagnetic spectrum, in which the switching operation takes less than 10 milliseconds, and which indicate or identify the received signals, *except non-ruggedized digitally-controlled per-set type radio receivers designed for use in civil communications which have 300 selective channels or fewer* (For digitally-controlled radio receivers using frequency synthesizers see also entry No. 1531.); or					
(c) Receivers for spread spectrum and frequency agile systems having a total transmitted bandwidth which is: (1) 100 or more times greater than the bandwidth of any one information channel; and (2) In excess of 50 kHz. ("Spread spectrum" is defined as the technique whereby energy in a relatively narrow-band communications channel is spread over a much wider energy spectrum under the control of a random or pseudo-random bit stream. On receipt, the signal is correlated with the same bit stream to achieve the reverse process of					

[1] A validated license also is required for export to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in those destinations or for use in servicing equipment owned, controlled, or used by or for those entities. See § 371.2(a)(11) and § 385.4(a).
[2] The G.L.V. $ value limit for the following countries is $500: Australia, Belgium, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Turkey and the United Kingdom.

Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limit TAV	Processing Code	Reason for Control
5597B[1] Polygraphs (except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint equipment and analyzers; fingerprint cameras and equipment; automated fingerprint and identification retrieval systems (whether or not computerized); psychological testing machines; infrared and ultraviolet film and plates and other photo anodized plates, sensitized and unexposed; and specially designed parts and accessories, n.e.s.	--------	PQSTVWYZ[1]	0	EE	5
6598F Geophysical and mineral prospecting instruments; and other instruments and equipment specially designed or modified for the examination or testing of equipment utilized in the exploration for, or production of, petroleum or natural gas; and specially designed parts and accessories therefor. (See § 399.2, Interpretation 30 for illustrative list of commodities included in this entry.)	--------	SZ, Afghanistan and the USSR[2]	—	MG	3
6599C[3,4] Other electronic and precision instruments, including photographic equipment and film, n.e.s.; and parts and accessories, n.e.s.	--------	SZ[4,5]	—	EE	3
7599I Exposed and developed microfilm reproducing in whole or in part, the content of printed books, pamphlets, and miscellaneous publications including newspapers and periodicals, children's picture and painting books, music books, sheet music, and calendars; motion picture film and sound track, exposed and developed, and advertising printed matter exclusively related thereto.	--------	None	—	MG	—

GROUP 6—METALS, MINERALS, AND THEIR MANUFACTURES[6]

1601A Now covered by entry No. 1371.						
4601B Aircraft landing mats	Sq. ft.	PQSTVWYZ	1,000[7]	MG	1
2603A Specifically designed components and parts for ammunition, *except cartridge cases, powder bags, bullets, jackets, cores, shells, projectiles, boosters, fuzes and components, primers, and other detonating devices and ammunition belting and linking machines.* (Specify by name.)	--------	PQSTVWYZ	0[7]	MG	1, 3, 5
3604A Zirconium metal; alloys containing more than 50 percent zirconium by weight; compounds in which the ratio of hafnium content to zirconium content is less than one part to five hundred parts by weight; manufactures wholly thereof; and waste and scrap; *except zirconium metal and alloy in shipments of 5 kilograms or less; and zirconium in the form of foil or strip having a thickness not exceeding 0.025 mm (0.00025 in.) and specially fabricated and intended for use in photo flash bulbs, in shipments of 500 kilograms or less.*	Lb.	PQSTVWYZ	500	MG	1, 4
3605A Nickel powder and porous nickel metal, as follows: (a) Powder with a nickel content of 99 percent or more, and a particle size of less than 100 micrometers; and	Lb.	PQSTVWYZ	100	MG	1, 4

[1] A validated license is not required for export of these commodities to Australia, Belgium, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Turkey and the United Kingdom.
[2] Report instruments and equipment in "number."
[3] Including Estonia, Latvia, and Lithuania.
[4] A validated license also is required for export to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in those destinations or for use in servicing equipment owned, controlled, or used by or for those entities. See § 371.2(a)(11) and § 385.4(a).
[5] A validated license is not required for export or reexport to the U.S.S.R. if the exporter knows or has reason to know the commodity is for any use directly in preparation for, in support of, or visually identified with the 1980 Summer Olympic Games scheduled to commence in Moscow on July 19, 1980. These commodities are subject to controls under the authority of the foreign policy provisions contained in section 5 of the Export Administration Act of 1979. This commodity control list entry as well as the other entries in this Group are subject to controls on the basis of the above criteria.
[6] See § 375.10 for commodities which require export authorization from other U.S. Government Departments and Agencies.
[7] The G.L.V. $ value limit for the following countries is $500: Australia, Belgium, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Turkey and the United Kingdom.

Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limit TAV	Processing Code	Reason for Control
4676B Cylindrical rings, or single convolution bellows, made of high-strength steels having all of the following characteristics:	--------	PQSTVWYZ and Canada	0	MG	4
(a) Tensile strength of greater than or equal to 150,000 psi;					
(b) Wall thickness of 3 millimeters or less;					
(c) Diameter of 3 inches or more.					
4677B Cylindrical discs, in raw, semifabricated, or finished form, having all of the following characteristics:	--------	PQSTVWYZ and Canada	0	MG	4
(a) Having a ¼ to 2 inch peripheral lip;					
(b) Having a diameter of 3 inches or more;					
(c) Made of maraging steel or aluminum alloy (7000 series).					
4678B Corrosion-resistant sensing elements of nickel, nickel alloys, phosphor bronze, stainless steel, or aluminum specially designed for use with equipment which measures pressures to 100 Torr or less.	--------	PQSTVWYZ[1]	0	MG	4
5680B[2] Nonmilitary protective vests, helmets, leg irons, shackles, handcuffs, thumbcuffs, thumbscrews, and saps.	--------	PQSTVWYZ[2]	0	MG	5
6699C[3,4,5] Other metals, minerals, and their manufactures, n.e.s.	--------	SZ[3,4,5]	—	MG	3

GROUP 7—CHEMICALS, METALLOIDS, PETROLEUM PRODUCTS AND RELATED MATERIALS[6]

1701A Lead azide and primary explosives or priming compositions (mixtures) containing azides and/or azide compounds or complexes (for example, orthofluorophenyl azide, silver chloroazide, cuprammonium azide).	Lb.	PQSTVWYZ	500	MG	1
1702A Hydraulic fluids which are or which contain as the principal ingredients petroleum (mineral) oils or synthetic hydrocarbon oils and which have all of the following characteristics: (a) A pour point of −80°F (−34°C) or lower; (b) A viscosity index of 75 or greater; and (c) Are thermally stable at +650°F (+343°C). (See § 377.6(d)(6) and § 377.6(e)(2) for special documentation requirements. Also see § 371.5(d) for special provisions regarding shipments under General License *GLV.*)	Bbl.	PQSTVWYZ	500	MG	1

[1] A validated license is not required for export of these commodities to the countries listed in Supps. No. 2 and No. 3 to Part 370.
[2] A validated license is not required for export of these commodities to Australia, Belgium, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Turkey and the United Kingdom.
[3] A validated license also is required for export to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in those destinations or for use in servicing equipment owned, controlled, or used by or for those entities. See § 371.2(a)(11) and § 385.4(a).
[4] A validated license is required for export or reexport to the U.S.S.R. if the exporter knows or has reason to know the commodity is for any use directly in preparation for, in support of, or visually identified with the 1980 Summer Olympic Games scheduled to commence in Moscow on July 19, 1980. These commodities are subject to controls under the authority of the foreign policy provisions contained in section 5 of the Export Administration Act of 1979. This commodity control list entry as well as the other entries in this Group are subject to controls on the basis of the above criteria.
[5] Aluminum powder, or aluminum-magnesium alloy powder, atomized or spherical, with an average particle diameter of 100 microns or less with a purity of 97.5 percent or greater, and aluminum alloy plates, sheets, and other wrought forms of Temper H alloy and all 6061 alloys, or Part 370.
[6] See § 375.10 for commodities which require export authorization from other U.S. Government Departments or Agencies.

Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limits T&V	Processing Code	Reason for Control
3709A Beryllium oxide ceramic and refractory tubes, pipes, crucibles, and other shapes in semi-fabricated or fabricated form, *except forms specially designed for electronic component parts or as substrates for electronic circuits.*	Lb.	PQSTVWYZ	500	MG	1, 4[1]
3711A Chlorine trifluoride, *except shipments of 5 kilograms or less.*	Lb.	PQSTVWYZ	50	MG	1, 4
4712B Now covered by entry No. 3709.					
1715A Boron, as follows:	Lb.	PQSTVWYZ	500	MG	1, 4[2]
(a) Boron element, boron compounds and mixtures in which the boron-10 isotope comprises more than 20 percent of the total boron content;					
(b) Boron element (metal) all forms; and					
(c) Boron compounds, mixtures and composites containing 5 percent or more of boron, *except pharmaceutical specialties packaged for retail sale,* as follows:					
(1) Boron carbide, *except powder,* having a boron content of 70 percent or more by weight and composites thereof in crude or semi-fabricated forms;					
(2) Boron nitride (hexagonal close-packed structure, white form) and composites thereof in crude or semi-fabricated forms; other boron-nitrogen compounds (*e.g.,* borazanes, borazines, and boropyrazoyls);					
(3) Boron hydrides (*e.g.,* boranes), *except sodium boron hydride, potassium boron hydride, monoborane, diborane and triborane;*					
(4) Organoboron compounds; including metalloorganoboron compounds; and					
(5) Borides with purities above 98.5 percent and having melting points of 3,632°F (2,000°C) or higher and composites thereof in crude or semi-fabricated forms.					
3715A Now covered by entry No. 3711.					
4720B Radioisotopes, cyclotron-produced or naturally occurring, *except those having an atomic number 3 through 83,* and compounds and preparations thereof. (Specify by name and isotope number.)	MC	PQSTVWYZ	100[3]	MG	4
4721B Helium isotopically enriched in the helium-3 isotope, in any form or quantity, and whether or not admixed with other materials, or contained in any equipment or device.	Liters	PQSTVWYZ and Canada	1,000	MG	1
1746A Polymeric substances and manufactures thereof, where the value of the polymeric component, either alone or in combination with other materials included on the Commodity Control List under an Export Control Commodity Number that is followed by the code letter "A", is 50 percent or more of the total value of the materials, as follows:	Lb.	PQSTVWYZ	100[4]	MG	1

[1] The countries to which commodities are controlled for nuclear reasons are those not listed in Supp. No. 2 or Supp. No. 3 to Part 378.
[2] Nuclear controls apply to all of this entry except sub-entries (c)(2)(3), (4) and (5).
[3] The GLV $ value limit for Country Group Q is $100.
[4] For protective vests and devices manufactured of aromatic polyamides described in sub-entry (d), General License *GLV* applies only to exports to Australia, Belgium, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Turkey and the United Kingdom.

Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limits T&V	Processing Code	Reason for Control
4781B Petroleum, crude or partly refined, including tar sands, shale oil and topped crudes, listed in Supplement No. 2 to Part 377.	Bbl.	PQSTVWYZ and Canada	0[1]	SS	2
4782B Other petroleum products listed in Supplement No. 2 to Part 377. (See §§ 371.16 and 371.5(d) for special provisions regarding shipments under General Licenses *G-NNR* and *GLV.*)	--------	PQSTVWYZ and Canada	250[2, 3]	SS	2
4783B Natural gas liquids and other natural gas derivatives listed in Supplement No. 2 to Part 377. (See §§ 371.16 and 371.5(d) for special provisions regarding shipments under General Licenses *G-NNR* and *GLV.*)[4]	Bbl.	PQSTVWYZ and Canada	250[2]	SS	2
4784B Manufactured gas and synthetic natural gas (except when commingled with natural gas and thus subject to export authorization from the Department of Energy) listed in Supplement No. 2 to Part 377. (See §§ 371.16 and 371.5(d) for special provisions regarding shipments under General Licenses *G-NNR* and *GLV.*)	MCF	PQSTVWYZ and Canada	250[2]	SS	2
6794F[7] Phosphate rock; phosphoric acid of all concentrations; and processed phosphatic fertilizers of all concentrations (as listed in § 399.2, Interpretation 27).[8]	--------	SZ, Afghanistan and the USSR[5]	—	SS	3
4799B[9] Chemical agents, including tear gas formulations containing 1 percent or less of orthochlorobenzalmalononitrile (CS), or 1 percent or less of chloracetophenone (CN), and smoke bombs; and fingerprint powders, dyes and inks. (Specify by name.) (See § 376.14.)	--------	PQSTVWYZ[5, 6]	0	MG	3
5799D[12] Other chemicals, chemical materials and products, plastic materials, regenerated cellulose, artificial resins, and miscellaneous related materials and products, n.e.s., *except those listed in § 399.2, Interpretation 24.*	--------	PQSWYZ[12] and Afghanistan	—[11]	MG	1
6799C[10, 12] Chemicals, chemical materials and products, plastic materials, regenerated cellulose, artificial resins, and miscellaneous related materials and products, n.e.s., listed in § 399.2, Interpretation 24.	--------	SZ[10, 11]	—	MG	3

GROUP 8—RUBBER AND RUBBER PRODUCTS[13]

Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limits T&V	Processing Code	Reason for Control
1801A Synthetic rubber, as follows:	Lb.	PQSTVWYZ	500	MG	1

[1] The GLV $ value limit for exports to Canada is the same as the value limit for Country Groups T and V.
[2] The GLV $ value limit for exports to Canada and to Country Group Q is $250.
[3] The GLV dollar value limit for petroleum asphalt and paving mixtures is $5,000.
[4] Natural gas, and liquified natural gas (L.N.G.) and synthetic natural gas commingled with natural gas require export authorization from the U.S. Department of Energy. See § 378.13(e).
[5] Including Estonia, Latvia, and Lithuania.
[6] Report unit of quantity for each commodity as specified in Statistical Classification of Domestic and Foreign Commodities Exported from the United States, Schedule B.
[7] These commodities are subject to control under the authority of the foreign policy provisions contained in section 6 of the Export Administration Act of 1979.
[8] A validated license is not required for export of these commodities to Australia, Belgium, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Turkey, and the United Kingdom.
[9] All other forms of tear gas are controlled by the U.S. Department of State, Office of Munitions Control.
[10] A validated license also is required for export to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations or for use in servicing equipment owned, controlled, or used by or for these entities. See § 371.2(c)(11) and § 385.4(a).
[11] The GLV $ value limit for Country Group Q is $100.
[12] A validated license is also required for export or reexport to the U.S.S.R. if the exporter knows or has reason to know the commodity, except medicine and medical supplies, is for any use directly in preparation for, in conduct of, in support of, or visually identified with the 1980 Summer Olympic Games scheduled to commence in Moscow on July 19, 1980. These commodities are subject to controls under the authority of the foreign policy provisions contained in section 6 of the Export Administration Act of 1979. This commodity control list entry as well as the other entries in this Group are subject to controls on the basis of the above criteria.
[13] See § 376.10 for commodities which require export authorization from other U.S. Government Departments and Agencies.

Export Control Commodity Number and Commodity Description	Unit	Validated License Required	GLV $ Value Limits T&V	Processing Code	Reason for Control
6998F[1, 2] Shotgun shells, and parts.	--------	SZ[1, 2] and the Rep. of South Africa, Namibia, Botswana, Lesotho, and Swaziland	—	MG	3
4999B Horses for export by sea.	--------	PQSTVWYZ and Canada	0	SS	2
5999B[3, 4] Saps; straight jackets; bullet and blast resistant garments, helmets and shields; and parts and accessories, n.e.s.	--------	PQSTVWYZ[3]	0	MG	5
6999C[1, 2] Other commodities, n.e.s.; and parts and accessories, n.e.s.	--------	SZ[1, 2]	—	MG	3
7999I Prerecorded phonograph records reproducing in whole or in part, the content of printed books, pamphlets, and miscellaneous publications, including newspapers and periodicals; printed books, pamphlets, and miscellaneous publications, including bound newspapers and periodicals; children's picture and painting books; newspapers and periodicals, unbound, excluding waste; music books; sheet music; calendars and calendar blocks, paper; maps, hydrographical charts, atlases, gazeteers, globe covers, and globes (terrestrial or celestial) and advertising printed matter exclusively related thereto.	--------	NONE	—	MG	—
9999M Technical models for demonstration.	The validated export license control applicable to each model is the same as the control which is applicable to the full size commodity represented by the model as exercised by Commerce (OEA and/or Maritime Administration), State (OMC), or Nuclear Regulatory Commission.				—

[1] A validated license also is required for export to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations or for use in servicing equipment owned, controlled, or used by or for these entities. See § 371.2(c)(11) and § 385.4(a).
[2] A validated license is also required for export or reexport to the U.S.S.R. if the exporter knows or has reason to know the commodity, except medicine and medical supplies, is for any use directly in preparation for, in conduct of, in support of, or visually identified with the 1980 Summer Olympic Games scheduled to commence in Moscow on July 19, 1980. These commodities are subject to controls under the authority of the foreign policy provisions contained in section 6 of the Export Administration Act of 1979. This commodity control list entry as well as the other entries in this Group are subject to controls on the basis of the above criteria.
[3] A validated license is not required for export of these commodities to Australia, Belgium, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Turkey and the United Kingdom.
[4] Gas masks designed for protection against tear gas and other chemical agents are controlled by the Office of Munitions Control. See § 376.16.

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4. Section 399.2 and Supp. 1 to § 399.2 are revised to read as follows:

§ 399.2 Commodity Interpretations

The commodity interpretations set

unless the activities cited in (a) above are involved.

Interpretation 2: Ball and Roller Bearings and Specially Designed Parts

(a) A ball or roller bearing physically

Interpretation 4: Classification of "Parts" of Machinery, Equipment, or Other Items

(a) *Where an assembled machine or unit of equipment is being exported.* Where one or more assembled machines or units of equipment are being exported, the individual

which includes: (*a*) Computer—a dedicated stored program computer to perform some or all of the basic numerical control functions which include, but may not be limited to, velocity and path generation. A stored program computer is further defined as a computer processor controlled by stored

(3) Minimum programmable increment equal to or greater (coarser) than 0.001 mm, *and*

(4) Without interface to enable direct computer input.

(c) Boring mills, milling machines, and machining centers, having *all* of the following

commodities, as parts, accessories, equipment or as scrap.

Interpretation 11

[Reserved]

Interpretation 12: Scrap Arms, Ammunition,

4. Section 399.2 and Supp. 1 to § 399.2 are revised to read as follows:

§ 399.2 Commodity interpretations

The commodity interpretations set forth in Supplement No. 1 to this §399.2 are for use in determining (1) the appropriate Export Control Commodity Numbers under which certain commodities are classified, or (2) the validated license requirements for these commodities. They are intended to clarify the question of control where it has been demonstrated that such clarification may prove helpful to the export community, and where such control is not readily apparent from the Commodity Control List and the Export Administration Regulations.

Supplement No. 1 to § 399.2—Interpretations

Interpretation 1: Electronic Computers and Related Equipment (ECCN 1565)

The following equipment is subject to nuclear non-proliferation controls and requires a validated license for Country Groups P, Q, S, T, V, W, Y, and Z, and in the case of (a) (1) through (4) below to Canada:

(a) Electronic computers intended for ultimate consignees engaged directly or indirectly in any of the following activities:

(1) Designing, developing or fabricating nuclear weapons or nuclear explosive devices; or devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions;

(2) Designing, assisting in the design of, constructing, fabricating or operating facilities for the chemical processing of irradiated special nuclear material, for the production of heavy water, for the separation of isotopes of any source or special nuclear material, or specially designed for the fabrication of nuclear reactor fuel containing plutonium;

(3) Designing, assisting in the design of, constructing, fabricating or furnishing equipment or components specially designed, modified or adapted for use in such facilities; or

(4) Training in any of the above activities; and

(b) Advanced electronic digital computers with a bus rate of 60 million bits per second or more, or a processing data rate of 20 million bits per second or more (including digital differential analyzers), *except*

(1) *Electronic computers that do not exceed either a CPU bus rate of 500 million bits per second or a processing data rate of 225 million bits per second are not subject to nuclear non-proliferation controls for destinations listed in Supplement No. 2 to Part 373 of the Export Administration Regulations unless the activities cited in (a) above are involved; or*

(2) *Electronic computers that do not exceed either a CPU bus rate of 200 million bits per second or a processing data rate of 60 million bits per second are not subject to nuclear non-proliferation controls for destinations listed in Supplement Nos. 2 and 3 to Part 373 of the Export Administration Regulations unless the activities cited in (a) above are involved.*

Interpretation 2: Ball and Roller Bearings and Specially Designed Parts

(a) A ball or roller bearing physically incorporated in a segment of a machine or in a complete machine prior to shipment loses its identify as a bearing and the machine or segment of machinery *containing the bearing* is the item subject to export license requirements.

(b) A ball or roller bearing *not* incorporated in a segment of a machine prior to shipment but shipped as a component of a complete unassembled (knocked-down) machine is considered a component of the machine, and the *complete machine* is the item subject to export license requirements.

(c) Ball or roller bearings shipped as spares or replacements are classified under ECCN 1371 and 6699 (ball, roller, or needle-roller bearings and parts). This applies to separate shipments of ball or roller bearings *and* ball or roller bearings shipped with machinery or equipment for which they are intended to be used as spares or replacement parts.

Interpretation 3: Gear Making and Finishing Machinery

Certain Types of gear-making and gear-finishing machines, Export Control Commodity No. 1088, require a validated license for shipments to all destinations except Canada if they are capable of producing gears finer than 48 diametral pitch. In order to clairfy the meaning of the term "diametral pitch finer than 48," examples are given of how diametral pitch is computed. In addition, there is also given below an explanation of how to distinguish between "geartooth grinding machines, generating types" and "nongenerating types of grinding machines."

(a) *Diametral pitch* of a gear is the ratio of the number of teeth to the number of inches in the pitch diameter. It indicates the number of teeth in the gear for each inch of pitch diameter. ("Pitch diameter" is the diameter of the pitch circle which is the circle through the pitch point having its center at the axis of the gear.) *Module* (British or metric) is the ratio of the pitch diameter in millimeters to the number of teeth. The larger the proportion of teeth to pitch diameter, the finer the diametral pitch. Example of diametral pitch: If a gear has a 1-inch pitch diameter and has 48 teeth, the ratio would be 48:1, or a 48 diametral pitch gear. Additional teeth in the same pitch diameter gear, *i.e.*, 49, would result in a finer diametral pitch; fewer teeth, *i.e.*, 47, would result in a gear of coarser diametral pitch. Examination of a gear making or finishing machine may not disclose whether it is capable of producing a gear of finer than 48 diametral pitch. If the exporter has no information on the ability of the machine to be exported for making gears of finer than 48 diametral pitch, he should obtain the information from the manufacturer or distributor.

(b) *Generating type geartooth grinding machines* are those in which the grinding wheel and the gear are both power-driven for continuous circular motion while grinding, rather than an intermittent or indexing operation as with the non-generating type.

Interpretation 4: Classification of "Parts" of Machinery, Equipment, or Other Items

(a) *Where an assembled machine or unit of equipment is being exported.* Where one or more assembled machines or units of equipment are being exported, the individual component parts which are physically incorporated into the machine or equipment do not require a separate validated export license. The validated license or the general license under which the complete machine or unit of equipment is exported will also cover its component parts, *provided* that the parts are normal and usual components of the machine or equipment being exported; or that the physical incorporation is not used as a device to evade the requirement for a validated export license.

(b) *Where parts are exported as spares, replacements, for resale, or for stock.* Where parts are exported as spares, replacements, for resale or for stock, a validated export license is required only if the appropriate entry for the part specifies that a validated license is required for the intended destination.

Interpretation 5: Wire or Cable Cut to Length

(a) Wire or cable may be included as a component of a system or piece of equipment, whether or not the wire or cable is cut to length and whether or not it is fitted with connectors at one or both ends so long as it is in normal quantity necessary to make the original installation of the equipment end is necessary to its operation.

(b) Wire or cable shipped as replacement or spares, or for further manufacture overseas, shall be reported under the applicable wire or cable classification only. This includes wire or cable, whether or not cut to length or fitted with connectors at one or both ends.

Interpretation 6

[Reserved]

Interpretation 7: Numerical Control Systems

(a) Numerical control systems for machine tools are systems in which actions are controlled by the direct insertion of numerical data at some point. The system must automatically interpret at least some portion of this data. Units defined in 1091 include:

(1) Units consisting of fixed and dedicated circuits of discrete logic elements and storage devices (referred to as hardwired units);

(2) Units consisting of and including stored instructions (routines and/or programs), defined as logic states of alterable and nondedicated logic elements which determine various control functions of the machine(s), such as slide movements, cutter compensation, readout, adaptive control, part program editing and tool offsets (softwired or stored program units);

(3) Hardwired unit—a numerical control system wherein fixed and dedicated circuit interconnections of discrete, decision elements are used for primary system control. These circuits may include, but not necessarily, freely programmable memory devices which would be limited to use for data files, part program storage, or output control of machine tool interfacing;

(4) Softwired Unit (Computer Numerical Control (CNC))—a numerical control system which includes: (*a*) Computer—a dedicated stored program computer to perform some or all of the basic numerical control functions which include, but may not be limited to, velocity and path generation. A stored program computer is further defined as a computer processor controlled by stored instructions that can synthesize, store, and in some cases, alter instructions as though they were data and subsequently execute these instructions, (*b*) Software—a control program (routines and/or programs) stored in the read/write memory of the computer which implements the basic numerical control functions, (*c*) Interface—the means by which the data is transmitted between the stored program computer and the machine;

(5) Direct Numerical Control (DNC)—a system connecting a set of numerically controlled machines to a common memory within a computer for part program or machine program storage with provision for on-demand distribution of data to the machines. Direct Numerical Control systems typically have additional provisions for collection, display, or editing of part programs, operator instructions, or data related to the numerical control process;

(6) Software—control programs, used with CNC and DNC systems, which are stored in a read/write memory of a computer and implement numerical functions, including but not limited to, velocity and path generation, on-line adaptive control and special purpose data distribution, recall, and editing programs for DNC applications. Software used in part programming, *e.g.*, APT, EXAPT, IFAPT, post processors, and similar programs are not considered among these control programs used for CNC and DNC systems.

Where the system is shipped complete (machine and controls) it shall be reported as a complete machine under the appropriate Export Control Commodity Number for the machine. Where a control system for a machine tool is not shipped as part of the original installation of the machine it shall be reported under Export Control Commodity No. 1091.

Note.—When preparing an *export license application* for a numerical control system, the machine and the control unit are classified separately. If either the machine or the control unit requires a validated license, then the entire system requires a license. If either a machine or a control unit is exported separately from the system, it is classified on the export license application without regard to the other parts of a possible system.

When preparing the *Shipper's Export Declaration* (SED), however, a system being shipped complete (*i.e.*, machine and control unit), should be reported under the Schedule B number for the machine. When either a control unit or a machine is shipped separately, it should be reported under the Schedule B number appropriate for the individual item being exported.

(b) Units for numerically controlling machine tools and dimension inspection machines having *all* of the following characteristics:

(1) Hardwired (not softwired, *i.e.*, Computerized Numerical Control (CNC)).

(2) No more than 2 contouring interpolating axes can be simultaneously coordinated.

(3) Minimum programmable increment equal to or greater (coarser) than 0.001 mm, *and*

(4) Without interface to enable direct computer input.

(c) Boring mills, milling machines, and machining centers, having *all* of the following characteristics:

(1) Maximum slide travel in any axis equal to or less than 3,000 mm.

(2) Positioning accuracy of any axis equal to or greater than plus or minus 0.01 mm per 300 mm and 0.005 mm for each additional 300 mm.

(3) Spindle power equal to or less than 20 kw.

(4) Single working spindle.

(5) Axial and radial axis motion measured at the spindle axis in one revolution of the spindle equal to or greater than $D \times 2 \times 10^{-5}$ mm TIR (peak-to-peak) where D is the spindle diameter in millimeters, *and*

(6) Not more than 3 axes capable of simultaneously coordinated contouring motion regardless of the NC unit connected to the machine.

(d) Machine tools, other than the machines described in (c) above, and dimensional inspection machines, which according to the manufacturer's technical specifications can be equipped with controls covered by paragraph (b) above, having *all* of the following characteristics:

(1) Positioning accuracy of any axis equal to or greater than plus or minus 0.01 mm per 300 mm and 0.005 mm for each additional 300 mm.

(2) Radial axis motion measured at the spindle axis equal to or greater than 0.008 mm TIR (peak-to-peak) in one revolution of the spindle (for lathes and other turning machines), *and*

(3) Not more than 3 axes capable of simultaneously coordinated contouring motion regardless of the NC unit connected to the machine.

Interpretation 8

[Reserved]

Interpretation 9

[Reserved]

Interpretation 10: Ports, Accessories, and Equipment Exported as Scrap

Parts, accessories, or equipment which are being shipped as scrap should be described on the Shipper's Export Declaration in sufficient detail to be identified under the proper Commodity Control List Number. When commodities declared as parts, accessories, or equipment are shipped in bulk, or are otherwise not packaged, packed, or sorted in accordance with normal trade practices, the Customs Officer may require evidence that the shipment is not scrap. Such evidence may include, but is not limited to, bills of sale, orders and correspondence indicating whether the commodities are scrap or are being exported for use as parts, accessories, or equipment. Exporters should consult the Exporters' Service Staff, Office of Export Administration, Room 1623, U.S. Department of Commerce, Washington, D.C. 20230, when in doubt regarding the proper Commodity Control List Number of commodities, as parts, accessories, equipment or as scrap.

Interpretation 11

[Reserved]

Interpretation 12: Scrap Arms, Ammunition, and Implements of War

Arms, ammunition, and implements of war, as defined in the U.S. Munitions List (see Supplement No. 2 to Part 370), are under the jurisdiction of the U.S. Department of State, with the following exceptions:

(a) Cartridge and shell cases which have been rendered useless beyond the possibility or restoration to their original identity by means of excessive heating, flame treatment, mangling, crushing, cutting, or by any other method are "scrap" and under the jurisdiction of the U.S. Department of Commerce.

(b) Cartridge and shell cases which have been sold by the armed services as "scrap" are under the jurisdiction of the U.S. Department of Commerce, whether or not they have been heated, flame-treated, mangled, crushed, cut, or reduced to scrap by any other method.

(c) Other commodities on the Munitions List are "scrap" and under the jurisdiction of the U.S. Department of Commerce if they have been rendered useless beyond the possibility of restoration to their original identify *only* by means of mangling, crushing, or cutting. When in doubt as to whether a commodity covered by the Munitions List has been rendered useless, exporters should consult the Office of Munitions Control, U.S. Department of State, Washington, D.C. 20520, or the Exporter's Service Staff, Office of Export Administration, Room 1623, U.S. Department of Commerce, Washington, D.C. 20230, before reporting a shipment as metal scrap.

Interpretation 13–18

[Reserved]

Interpretation 19: Military Automotive Vehicles

(a) *Military automotive vehicles.* (1) For purposes of U.S. export controls, military automotive vehicles "possessing or built to current military specifications differing materially from normal commercial specifications" may include, but are not limited to, the following characteristics:

(i) Special fittings for mounting ordnance or military equipment,

(ii) Bullet-proof glass,

(iii) Armor plate,

(iv) Fungus preventive treatment,

(v) Twenty-four volt electrical systems,

(vi) Shielded electrical system (electronic emission suppression), or

(vii) Puncture-proof or run-flat tires.

(2) These automotive vehicles fall into two categories:

(i) *Military automotive vehicles on the Munitions List, new and used.* Automotive vehicles in this category are primarily combat (fighting) vehicles, with or without armor and/or armament, "designed for specific fighting function." These automotive vehicles are licensed by the U.S. Department of State. See list with descriptions, Supplement No. 2 to Part 370, Category VII.

(ii) *Military automotive vehicles not on the U.S. Munitions List, new and used.* Automotive vehicles in this category are primarily transport vehicles designed for non-combat military purposes (transporting cargo, personnel and/or equipment, and/or for towing other vehicles and equipment over

(iii) Utility, bearing a "U" designation and using piston engines;

(iv) Liaison, bearing an "L" designation; and

(v) Observation, bearing an "O" designation and using piston engines.

(3) All reciprocating engines.

(iii) Incorporating any digital signal processing technique used for automatic target tracking, or having a facility for electronic tracking.

Interpretations 21–23

[Reserved]

Alkyl aryl phosphate diphenyl, 2-ethyl hexyl phosphate
Alkyl dicyclophosphate
Allantoin
Allene
Alloxane
Allylamine
Allyl bromide
Amprolium
Amyl acetate
Amyl alcohol
n-Amyl alcohol, primary
tert-Amyl alcohol
Amylase
n-Amyl bromide
Benzhydrol
Benzhydroxylamine HCl
Benzidine
Benzidine sulfate
Benzil
Benzoguanamine
Benzoic acid

V 45 D E 3 0 8 0 UMI

(ii) *Military automotive vehicles not on the U.S. Munitions List, new and used.* Automotive vehicles in this category are primarily transport vehicles designed for non-combat military purposes (transporting cargo, personnel and/or equipment, and/or for towing other vehicles and equipment over land and roads in close support of fighting vehicles and troops). These automotive vehicles are licensed by the U.S. Department of Commerce.

(b) *Parts for military automotive vehicles.* Functional parts are defined as those parts making up the power train of the vehicles, including the electrical system, the cooling system, the fuel system, and the control system (brake and steering mechanism), the front and rear axle assemblies including the wheels, the chassis frame, springs and shock absorbers.

Parts specifically designed for military automotive vehicles on the Munitions List are licensed for export by the U.S. Department of State.

(c) *General instructions.* Manufacturers of non-Munitions List automotive vehicles and/or parts will know whether their products meet the conditions described above. Merchant exporters and other parties who are not sure whether their products (automotive vehicles and/or parts) meet these conditions should check with their suppliers for the required information before making a shipment under general license or submitting an application to the Office of Export Administration for an export license.

Interpretation 20: Aircraft, Parts, Accessories and Components

(a) *Aircraft, and parts, accessories and components therefor.*[1]

Aircraft, parts, accessories, and components defined in Categories VIII and IX of the Munitions List (see supplement No. 2 to Part 370) are under the export licensing authority of the U.S. Department of State. All other aircraft, and parts, accessories and components therefor, are under the export licensing authority of the U.S. Department of Commerce.

The following aircraft, parts, accessories and components are under the licensing authority of the U.S. Department of Commerce:

(1) Any aircraft (except an aircraft that has been demilitarized, but including aircraft specified in paragraph (2) below) that conforms to a Federal Aviation Agency type certificate in the normal, utility, acrobatic, transport, or restricted category, provided such aircraft has not been equipped with or modified to include military equipment, such as gun mounts, turrets, rocket launchers, or similar equipment designed for military combat or military training purposes.

(2) Military aircraft, demilitarized (aircraft not specifically equipped, reequipped, or modified for military operations), *the following only:*

(i) Cargo, bearing designations "C–45 through C–118 inclusive, " and "C–121";

(ii) Trainers, bearing a "T" designation and using piston engines;

(iii) Utility, bearing a "U" designation and using piston engines;

(iv) Liaison, bearing an "L" designation; and

(v) Observation, bearing an "O" designation and using piston engines.

(3) All reciprocating engines.

(4) Other aircraft engines not specifically designed or modified for military aircraft.

(5) Parts, accessories, and components (including propellers), designed exclusively for aircraft and engines described in (1), (2), (3), and (4) above.

(6) General purpose parts, accessories, and components usable interchangeably on either military or civil aircraft.

(b) *Normal civil use.* Aircraft listed on the Commodity Control List under No. 1460 are those that are in normal civil use *and* contain one or more of the following:

(1) Any item on the Munitions List (see Supplement No. 2 to Part 370),

(2) Inertial navigation or other inertial equipment,

(3) Integrated flight instrument systems that have been in normal civil use for less than two years,

(4) Airborne communications equipment having *any* of the following characteristics:

(i) Designed to operate at frequencies greater than 156 MHz,

(ii) Incorporating facilities for (a) the rapid selection of more than 200 channels per equipment, *except equipment operating in frequency range 108–136 MHz with 720 or fewer channels at not less than 25 kHz spacing and which has been in normal civil use for at least one year,* or (b) using frequency synthesis techniques with a speed of switching from one selected output frequency to another selected output frequency less than 10 milliseconds,

(iii) Pressurized throughout,

(iv) Rated for continuous operation over a range of ambient temperatures extending from below minus 55° C to above plus 55° C, and/or

(v) Designed for modulating methods employing any form of digital modulation using time and frequency redundancy such as "Quantized Frequency Modulation" (QFM).

(5) Airborne navigation and direction finding equipment having *any* of the following characteristics:

(i) Pressurized throughout,

(ii) Rated for continuous operation over a range of ambient temperatures extending from below minus 55° C to above plus 55° C,

(iii) Frequency modulated radio altimeters which have been in normal civil use for less than one year,

(iv) Pulse modulated radio altimeters,

(v) Is not in conformity with ICAO standards or provides a function exceeding those resulting from such standards,

(vi) Is designed to make use of hyperbolic grids at frequencies greater than 3 MHz, and/or

(vii) Direction finding equipment operating at frequencies greater than 5 MHz, other than equipment designed for search and rescue.

(6) Airborne radar having *any* of the following:

(i) In normal commercial service for less than one year, and/or

(ii) Specially designed for use other than as a commercial weather radar,

(iii) Incorporating any digital signal processing technique used for automatic target tracking, or having a facility for electronic tracking.

Interpretations 21–23

[Reserved]

Interpretation 24: Chemicals

The commodities listed below require a validated license for export to Country Groups S and Z.

Organic chemicals

Acenapthene
Acenapthenequinone
Acetal
Acetaldehyde
Acetamide
3-Acetamido-4 hydroxybenzene-arsonic acid
2-Acetamidoethyl (p-chlorophenyl) (m-trifluoro methyl phenoxy) acetate
Acetanilide
Acetic acid
Acetic anhydride
Acetin
Acetoacetic acid
Acetobromopropyl lactate
Acetone
Acetone cyanohydrin
Acetonitrile
Acetonylacetone
Acetophenetidin
Acetophenone
Acetoxime
Acetylacetone
para-Acetylaminophenol
para-Acetylaminophenyl salicylate
Acetyl chloride
Acetylene tetrabromide
N-Acetyleneuraminic acid
Acetylhistamine
N-Acetyl-L-tyrosine
N-Acetyl-L-tyrosine ethyl ester
Acetylpyridine
Acetylsalicylic acid
Acetyl triallyl citrate
Acetyl tributyl citrate
Acetyl triethyl citrate
Acetyl tri-2-ethyl hexyi citrate
Aconitic acid
Acrolein
Acrylamide
Acrylic acid
Acrylonitrile
Actase
Adenine
Adenine sulfate
Adenosine
Adenosine-2,3-cyclophosphate
Adenosine-3,5-cyclophosphate
Adenosine-5-diphosphate
Adenosine-5-monophosphate
Adenosine-5-triphosphate disodium
Adenosine-5-triphosphate trihydrate
Adenosyl-L-methionine iodide
Adenylic acid
Adipic acid
Adiponitrile
Adrenalone
Adrenalone hydrochloride
Agarose
Alanine
beta-Alanine
Aldol
Alginic acid

[1] This interpretation does not refer to electronic communication and navigational commodities usable on aircraft.

Alkyl aryl phosphate diphenyl, 2-ethyl hexyl phosphate
Alkyl dicyclophosphate
Allantoin
Allene
Alloxane
Allylamine
Allyl bromide
Allyl chloride
Allyl iodide
Allyl isocyanate
Allyl isothiocyanate
N-Allyl-morpholine
Aluminum acetate
Aluminum dihydroxyaminoacetate
Aluminum ethylhexoate
Aluminum formate solutions
Aluminum isopropylate
Aluminum lactate
Aluminum octoate
Aluminum oxyquinolate
Aluminum stearate solution
Ambrettolide
Ambutonium bromide
N-Amidino 3,5-diamino-6-chlorophyazine carboxamide and its salts
Amino-acetophenone
Aminoanthraquinone
p-Aminobenzamidine HCl
Aminobenzoic acid
para-Aminobenzoic acid
2-Amino-1-butanol
Aminobutyric acid
Aminodiazine
para-Aminodiethylaniline
para-Aminodiethylaniline hydrochloride
para-Aminodimethylaniline
para-Aminodiphenylamine
2-Aminoethanethiol
PTH (PTC-S-Aminoethyl) cysteine
3-(2-Aminoethyl) indole hydrochloride
N-Aminoethylpiperazine
Aminoethylpyrimidine
L-Amino-beta-guanidinopropionic acid
4-Amino-5-imidazole carboxamide
5-Amino-4-imidazole carboxamide
Aminoisobutyric acid
2-Amino-2-methyl-1-propanol
Aminomethylpyrimidine
Aminonapthol sulfonic and disulfonic acids
O-Aminonitrobenzene
2-Amino-5-nitrothiazole
Aminopentamide
meta-Aminophenol
ortho-Aminophenol
para-Aminophenol
ortho-Aminophenol hydrochloride
para-Aminophenol hydrochloride
2-Amino-1-phenol-4-sulfonic acid
Aminophenylacetic acid
Aminophylline
beta-Aminopropionitrile
2-Aminopyrimidine
Aminopyrine
4-Aminosalicylic acid
5-Aminosalicylic acid
2-Aminothiazole
L-3-Aminotyrosine dihydrochloride
Ammonium acetate
Ammonium benzoate
Ammonium bitartrate
Ammonium ferric oxalate
Ammonium gluconate
Ammonium mandelate
Ammonium oxalate
Ammonium thioglycollate
Amprolium
Amyl acetate
Amyl alcohol
n-Amyl alcohol, primary
tert-Amyl alcohol
Amylase
n-Amyl bromide
tert-Amyl bromide
tert-Amyl chloride
alpha-Amyl cinnamic aldehyde
Amyl mercaptan
tert-Amyl mercaptan
Amyl nitrate
Amyl nitrite
Amyl salicylate
Amylopectin
Amylose
ortho-sec-Amylphenol
para-tert-Amylphenol
Amyl salicylate
n-Amyl sebacate
Amyl ziram
Anethole
Aniline hydrochloride
Aniline oil
Aniline salt
Aniline sulfate
Anisic acid
Anisic aldehyde
ortho-Anisidine
para-Anisidine
Anthracene
Anthranilic acid
Anthraquinone
Anthrone
Antimony lactate
Antimony potassium tartrate
Antimony triacetate
Antipyrine
Apiol
Apoferritin
Apolysin
Arabinose
Arachidic acid
Arachidonic acid
Arginine
Arginine hydrochloride
Arrhenal
Asparagine
Asparagine hydrate
Aspartic acid
Aubepine
Aurothioglucose
5-Azacytidine
8-Azaguanine
6-Azathymine
6-Azauracil
6-Azauridine
Azelaic acid
d-Azetidine-2 carboxylic acid
Azetylcholine chloride
1-Aziridineethanol
Azobenzene
Azocoll
Azosulfamide
Banana oil
Barbital
Barbital sodium
Barbituric acid
Barium styphnate
Behenic acid
Benzaldehyde
Benzalkonium chloride
Benzanthrone
Benzene
Benzenesulfonic acid
Benzhydrol
Benzhydroxylamine HCl
Benzidine
Benzidine sulfate
Benzil
Benzoguanamine
Benzoic acid
Benzonitrile
3,3',4,4'-Benzophenone tetracarboxylic dianhydride
Benzotriazole
Benzotrichloride
Benzotrifluoride
N-alpha-Benzoyl-L-arginine ether ester hydrochloride
Benzoyl chloride
Benzoyl peroxide
2-Benzoyl pyridine
4-Benzoyl pyridine
Benzthiazide
Benztropin mesylate
Benzyl acetate
Benzyl alcohol
Benzyl amine
N-Benzyl-para-amino phenol
Benzyl benzoate
Benzyl bromide
Benzyl chloride
Benzyl cinnamate
Benzyl cyanide
Benzyl formate
Benzylidene acetate
Benzyl salicylate
Benzyl succinate
Benzyltriphenylphosphonium chloride
Betaine
Betaine hydrochloride
Bilirubin
2-(4-Biphenyl)-6 phenyl benzoxazole
N,N-Bis-(3-aminopropyl) methylamine
2,5-Bis-2-(5-tert-butylbenzoxazolyl)-thiophene
Bis-(2-dimethylaminoethyl) ether
Bis (2-ethylhexyl) peroxydicarbonate
N,N-Bis-(2-hydroxyethyl) alkylamine
N,N-Bis-(2-hydroxyethyl) glycine sodium salt
N,N-Bis (2-hydroxypropyl) aniline
1,4-Bis [2-(4-methyl-5-phenyloxazolyl)] benzene (methyl POPOP)
Bismuth citrate
Bismuth subgallate
Bismuth tannate
Bisphenol A
1,4-Bis-2-(5-phenyloxazolyl) benzene
N-N-Bis (trimethylsilyl) acetamide
Bis (trimethylsilyl) trifluoroacetamide
Bis-triphenylsilyl chromate
Bithionol
Borneol
Bornyl acetate
Bornyl formate
Bromelain-Pure
N-Bromoacetamide
Bromoactic acid
Bromobenzene
sym-Bromochloroethane
Bromochloromethane
1-Bromo-3-chloropropane
5-Bromodeoxyuridine
N-(2-Bromoethyl) phthalimide
Bromomethylethyl ketone
Bromoform
Bromomonochlorodifluoromethane
alpha-Bromonapthalene
Bromosuccinic acid
N-Bromosuccinimide
Bromostyrol

Bromotrifluoromethane
Butabarbital acid
Butabarbital sodium salt
Butacaine sulfate
1,4 Butanediamine dihydrochloride
Butanediol succinate
2,3-Butanedione monoxime

Calcium linoleate
Calcium mandelate
Calcium phenosulfonate
Calcium propionate
Calcium salicylate
Calcium stearate
Calcium succinate

para-Chloronitrobenzene
2-Chloro-6-nitrotoluene
4-Chloro-2-nitrotoluene
Chloropentafluoroethane
meta-Chlorophenol
ortho-Chlorophenol
para-Chlorophenol

Cyclohexane
Cyclohexanol
Cyclohexanone
Cyclohexene
Cyclohexylamine
1-Cyclohexyl-3-(2-morpholinoethyl)-carbodiimide metho-p-toluene sulfonate

2,5-Debiphenyloxazole
Dibromodifluoromethane
1,3-Dibromo-5,5,-Dimethylhydantoin
Dibromoethylbenzene
Dibromomonochlorotrifluoroethane
alpha, beta-Dibromopropionic acid
Dibutylamine

Diethylene glycol dibutyl ether
Diethylene glycol diethyl ether
Diethylene glycol dimethyl ether
Diethylene glycol ethyl ether
Diethylene glycol mono-butyl ether
Diethylene glycol mono-butyl ether acetate
Diethylene glycol mono-ethyl ether acetate

Bromotrifluoromethane
Butabarbital acid
Butabarbital sodium salt
Butacaine sulfate
1,4 Butanediamine dihydrochloride
Butanediol succinate
2,3-Butanedione monoxime
1-Butoxyethoxy-2-propanol
Butoxytriglycol
Butyl acetate
Butyl acetyl ricinoleate
n-Butyl acrylate
tert-Butyl acrylate
N-Butyl alcohol
n-Butylamine
tert-Butylamine
(-)-1-(tert-Butylamino)-3-[(4-morpholino-1,2,5 thiadiazol-3yl)oxy]-2 propanol maleate (1:1) and its salts
Butylate hydroxyanisole
n-Butyl benzene
sec-Butyl benzene
tert-Butyl benzene
Butyl benzyl phthalate
n-Butyl Bromide
sec-Butyl bromide
tertiary Butyl bromide
p-tert-Butyl catechol
n-Butyl chloride
sec-Butyl chloride
tert-Butyl chloride
6-tert-Butyl-meta-cresol
Butyl-meta-cresol methyl ethers
n-Butyl diethyl malonate
Butylene glycol
1,2-Butylene oxide
2,3-Butylene oxide
Butyl ether
tert-Butyl hydroperoxide
Butyl isocyanate
n-Butyl lactate
Butyl methacrylate
n-Butyl myristate
Butyl octyl phthalate
tert-Butyl perbenzoate
di-tert-Butyl peroxide
di (sec-Butyl) peroxydicarbonate
Butylphenol
o-sec-Butyl phenol
tert-Butyl phenol 2,2,4-trimethyl dihydroquinoline
2-(4-t-Butylphenyl)-5-(4-biphenyl)-1,3,4-oxdiazole
Butyl phthalyl butyl glycollate
n-Butyl propionate
tert-Butylquinoline
Butyl stearate
Butyne diol
Butyraldehyde
Butyric acid
Butyrolactone
Cadmium acetate
Cadmium octoate
Cadmium salicylate
Caffeine
Caffeine sodium benzoate
Calcium acetate
Calcium benzoate
Calcium citrate
Calcium cyanamide
Calcium cyclamate
Calcium formate
Calcium gluconate
Calcium glycerophosphate
Calcium lactate
Calcium levulinate
Calcium linoleate
Calcium mandelate
Calcium phenosulfonate
Calcium propionate
Calcium salicylate
Calcium stearate
Calcium succinate
Calcium tannate
Calcium tartrate
Calcium undecylenate
Camphene
Camphor (natural or synthetic)
Camphor bromate
Camphoric acid
Camphorsulfonic acid
Camphosulfuric acid
Capric acid
Caproic acid
Caprolactam
epsilon-Caprolactone
Caprylic acid
Canavanine sulfate
N-Carbamoylarsanilic acid
Carazole
Carbinoxamie antihistamines
Carbodiimide (cyanamide)
Carbon tetrachloride
Carbonyl chloride (phosgene)
Carbonyl cyanide, m-chlorophenylhydrazone
Carbosine
Carboxylic acid anhydride
Carisoprodol (n-isopropyl-2-methyl-2-propyl-1,3-propanediol discarbamate)
Carvacrol
Carvone
Cedryl acetate
Cellulase
Cerotic acid
Cerous oxalate
Cetyl alcohol
Cetylpyridinium chloride
Chloral
Chloral formamide
Chlorbetamide
Chlorendic acid
Chlormrodrin
meta-Chloroaniline
ortho-Chloroaniline
para-Chloroaniline
Chloroacetic acid
Chlorobenzene
para-Chlorobenzhydrol
meta-Chlorobenzoic acid
ortho-Chlorobenzoic acid
para-Chlorobenzoic acid
Chlorobenzotriazole
otho-Chlorobenzotrichloride
para-Chlorobenzotrichloride
meta-Chlorobenzotrifluoride
ortho-Chlorobenzotrifluoride
para-Chlorobenzotrifluoride
1-(p-Chlorobenzoyl)-5-methoxy-2-methylindole-3-acetic acid
Chlorobiphenyl
Chlorobutanol
3'Chloro-4'-(p-chlorophenoxy)-3,5-diiodosalicyanilide
1-Chloro-2,4-dinitrobenzene
Chlorogenic acid
Chlorohydroquinone
p-Chloromercuribenzoate
2-Chloro-4-nitroaniline
4-Chloro-2-nitroaniline
4-Chloro-3-nitroaniline
meta-Chloronitrobenzene
ortho-Chloronitrobenzene
para-Chloronitrobenzene
2-Chloro-6-nitrotoluene
4-Chloro-2-nitrotoluene
Chloropentafluoroethane
meta-Chlorophenol
ortho-Chlorophenol
para-Chlorophenol
p-Chlorophenylalanine
Chlorophyll, dry
Chlorophyll, solution in oil
Chloroprene
Chloroquine base
Chloroquine phosphate
N-Chlorosuccinimide
6-Chloro-7-sulfamyl-1,2,4-benzothidiazine-1,1-dioxide
6-Chloro-7-sulfamyl-3,4-dihydro-1,2,4-benzothiadiazine-1,1-dioxide
Chlorothen citrate anti-histamines
Chlorothymol
alpha-Chlorotoluene
meta-Chlorotoluene
ortho-Chlorotoluene
para-Chlorotoluene
Chlorotrifluoromethane
Cholesterol
Cholic acid
Choline
Choline bitartrate
Choline chloride
Chondroitin sulfate
Chromic acetate
Chymar
Chymotripsin, pure
Cinnamic acid
Cinnamic alcohol
Cinnamic aldehyde
Citral
Citrazinic acid
Citric acid
Citronella
Cobalt salts, n.e.s.
Cobinamide cyanide phosphate 3'-ester with 5,6 dimethyl-1-a-D-ribofuranosylbenzimidazole inner salt
Cobinamide hydroxide phosphate 3'-ester with 5,6 dimethly-1-a-D-ribofuranosylbenzimidazole inner salt
Cocarboxylase
Colace
Colchicine
2,4,6-Collidine (2,4,6 trimethylpyridine)
Compound N (Conmel) granulation
Copper acetate
Corticosterone
Coumarin
Coumarone
Creatine
Creatinine
m-Cresol
o-Cresol
p-Cresol
Cresotic acid
Cresyl diphenyl phosphate
Cresylic acid
Crotonic acid
Crontonaldehyde
Cumene
Cumidine
Cyanacetamide
3-Cyanopyridine
4-Cyanopyridine
Cyanuric acid
Cyanuric chloride
Cyclizine antihistamines
Cyclocyamine

Cyclohexane
Cyclohexanol
Cyclohexanone
Cyclohexene
Cyclohexylamine
1-Cyclohexyl-3-(2-morpholinoethyl)-carbodiimide metho-p-toluene sulfonate
para-Cyclohexylphenol
N-Cyclohexyl para toluene sulfonamide
Cyclopentamine hydrochloride
Cyclopentane
Cyclopentanol
Cyclopentanone
Cyclopentene
Cyclopentyl bromide
Cymene
Cystathionine
Cysteic acid
Cysteine
Cystine
Cytidine
Cytidine-5-diphosphate trisodium
Cytidine-5-monophosphate
Cytidine-5-monophosphate hydrate
Cytidine-3,2-phosphoric
Cytidine-5-triphosphate
Cytidine-5-triphosphate hexahydrate
Cytidylic acid
Cytidylyl 3'-5' adenosine
Cytidylyl 3'-5'-cytidine
Cytidylyl 3'-5'-guanosine
Cytidylyl 3'-5'-uridine
Cytosine beta-d-arabinofuranoside HCl
Cytosine hemihydrate
Decahydronapthalene
1-Decanol
Dehydroabietylamine
Dehydroabietylamine acetic acid salt
Dehydroabietylamine ethylene oxide
Dehydroacetic acid
trans-Dehydroandrosterone acetate semicarbazone
Dehydrocholic acid
Dehydrothio-para-toluidine
Deoxyadenosine
Deoxyadenosine-5-triphosphate
Deoxyadenylic acid
Deoxycytidine
Deoxycytidine-5-triphosphate
Deoxyguanosine
Deoxyguanosine monohydrate
Deoxyguanosine-5-triphosphate
Deoxyguanylic acid
Deoxyinosine
Deoxyribonucleic acid
Desoxyadenosine monohydrate
Diacetone alcohol
Diacetyl
Diallylbarbituric acid
Diallyl maleate
Diallyl phthalate
1,2-Diaminopropane
1,3-Diaminopropane
Diaminoazoxytoluene
L-2,4-Diaminobutyric acid hydrochloride
2,4-Diaminodiphenylamine
Diamthazole dihydrochloride
Diamylphenol
Dianisidine
ortho-Dianisidine dihydrochloride
Diastase
Diastatic enzymes
Diastefor
Diazoaminobenzene
Diazodinitrophenol
4-(5H-Dibenzo (a,d) cyclohepten-5-ylidene)-1-methylpiperidine and its salts
2,5-Debiphenyloxazole
Dibromodifluoromethane
1,3-Dibromo-5,5,-Dimethylhydantoin
Dibromoethylbenzene
Dibromomonochlorotrifluoroethane
alpha, beta-Dibromopropionic acid
Dibutylamine
Dibutylamine Pyrophosphate
4,6-Di-tert-butyl-meta-cresol
2,6-Di-tert-butyl-para-cresol
2,6-Di-tert-butyl-alpha-dimethyl-amino-para-cresol
Di-tert-butyl disulfide
Dibutyl fumarate
Dibutyl itaconate
Dibutyl maleate
Dibutyl phosphate
Dibutyl phthalate
Dibutyl sebacate
Dibutyl tetrachlorophthalate
Dibutylthiourea
Dibutyl tin compounds
Dibutyryladenosine
Dicapryl adipate
Dicapryl phthalate
Dicapryl sebacate
3,4-Dichloroaniline
Dichlorobenzene
meta-Dichlorobenzene
ortho-Dichlorobenzene
para-Dichlorobenzene
2,5-Dichlorobenzenesulfonic acid
3,3'-Dichlorobenzidine
3,3'-Dichlorobenzidine dihydrochloride
2,4-Dichlorobenzoic acid
3,4-Dichlorobenzoic acid
2,4-Dichlorobenzoyl peroxide
Dichlorodifluoromethane
Dichlorodiphenyl sulfone
Dichloroethylene
Dichloroethylether
Dichloroisocyanuric acid
Dichloroisopropyl ether
[2,3-Dichloro-4-[2-methylene-butyryl) phenoxy] acetic acid
2,3-Dichloro-1,4-napthoquinone
2,6-Dichloro-4-nitroaniline
2,4-Dichlorophenol
Dichloropropane
Dicumyl peroxide
Dicyanodiamide
Dicyclohexylamine
Dicyclohexyl phthalate
Dicyclomine hydrochloride
Dicyclopentadiene
Dienestrol
Diethanolamine
Diethylaluminum ethoxide
Diethylaluminum hydride
Diethylamine
Diethylaminoethanol
meta-Diethylaminophénol
N,N-Diethylaniline
Diethylbarbituric acid
Diethylbenzene
Di-(2-ethylbutyl) phthalate
Diethylcarbamazine
Diethylcarbamazine citrate
Diethyl carbonate
diethyl chromium (chromocene)
Diethylene dichloride
Diethylene glycol
Diethylene glycol adipate
Diethylene glycol bis (allyl carbonate)
Diethylene glycol-n-butyl ether
Diethylene glycol dibenzoate
Diethylene glycol dibutyl ether
Diethylene glycol diethyl ether
Diethylene glycol dimethyl ether
Diethylene glycol ethyl ether
Diethylene glycol mono-butyl ether
Diethylene glycol mono-butyl ether acetate
Diethylene glycol mono-ethyl ether acetate
Diethylene glycol mono-methyl ether
Diethylene glycol mono-methyl ether acetate
Diethylene glycol succinate
Diethylene triamine
Di (2-ethylhexyl) adipate
Di (2-ethylhexyl) isophthalate
Di (2-ethylhexyl) phosphoric acid
Di (2-ethylhexyl) phthalate
Di (2-ethylhexyl) sebacate
Diethyl ketone
Diethyl malonate
3,3-Diethyl-5-methyl-2,4-piperidinedione
Diethyl phosphate
O,O-Diethyl phosphorochloridothioate
Diethyl phthalate
Diethylstilbestrol
Difluoroethane
Digitalin
Dihydrocholic acid USP
10,11-Dihydro-N,N-dimethyl-5H-dibenzo (a,d) cycloheptene-delta-5-gamma-propylamine and its salts
Dihydrouracil
1,2-Dihydroxyanthraquinone
1,4-Dihydroxyanthraquinone
1,5-Dihydroxyanthraquinone
1,8-Dihydroxyanthraquinone
Dihydroxy diphenyl sulfone
dl-3,4-Dihydroxyphenylalanine levo-3-(3,4-Dihydroxyphenyl)-2-methylalanine and its salts and esters
Dihydroxyuridine-2,3,-monophosphate
Diiodo-tyrosine
Diisoamyl phthalate
Diisobutylcarbinol
Diisobutyl ketone
Diisobutyl phthalate
Diisodecyl adipate
Diisodecyl phthalate
Diisooctyl adipate
Diisooctyl phthalate
Diisooctyl sebacate
Diisopropanolamine
Diisopropylamine
Diisopropyl benzene
meta-Diisopropyl benzene
para-Diisopropyl benzene
Diisopropyl benzene hydroperoxide
Diisopropyl carbinol
Diisopropyl fluophosphates
Diketene
2,5-Dimethoxybenzaldehyde
2,6-Dimethoxybenzoic acid
Dimethoxytetraglycol
Dimethyl acetal
Dimethyl acetamide
Dimethyl adipimide dihydrochloride
Dimethylallylamine
Dimethyl aluminum chloride
Dimethyl aluminum hydride
Dimethyl amine
para-Dimethylaminobenzaldehyde
2-Dimethylaminoethanol
Dimethylaminomethylphenol
5-Dimethylamino-1-naphthalene sulfonyl chloride
Dimethylaminopropylamine
5-(3-Dimethylaminopropylidene)-dibenzo (a,d) (1,4) cycloheptadiene pamoate

6-Dimethylamino purine
2,4-Dimethylaniline
N,N-Dimethylaniline
Dimethylbenzenesulfonic acid
N,N-Dimethylbenzylamine
Dimethylbenzyl carbinol acetate
2,5-Dimethyl-2,5-bis, (tert-butyl peroxy)
Djenkolic acid
1-Dodecene
Dodecenylsuccinic acid
Dodecenylsuccinic anhydride
Dodecylaniline
Dodecylphenol
Dulcitol
Ethyl estragole cinnamate
Ethy ether
1-Ethyl-2-[3(1-ethylnaptho[1,2d)-thiazolin-2-ylidene)-2-methyl-propenyl]naptho[1,2d] thiazolium bromide
Ethyl fluid
Ethyl formate

Glucose-6-phosphate, disodium salt
Glucuronic acid
Glucuronolactone
Glutamic acid
Glutamine
Glutaraldehyde
Glutaric acid
Hexylresorcinol
Hippuric acid
Histamine
Histamine phosphate
Histidine
Histidine hydrochloride
Homatropine and its salts
Isoamyl alcohol, primary
Isoamyl bromide
Isoamyl butyrate
Isoamyl chloride
Isoamyl phthalate
Isoamyl valerate
Isoborneol

6-Dimethylamino purine
2,4-Dimethylaniline
N,N-Dimethylaniline
Dimethylbenzenesulfonic acid
N,N-Dimethylbenzylamine
Dimethylbenzyl carbinol acetate
2,5-Dimethyl-2,5-bis, (tert-butyl peroxy) hexyne-3
2,5-Dimethyl-2,5-Di (tert-butyl peroxy) hexane
Dimethyl dioctadecyl ammonium bentonite
2,5-Dimethyl-2,5-Diperbenzoxyhexane
2,5-Dimethyl-2,5-Diperoctoxyhexene
Dimethyl ether
Dimethylformamide
Dimethyl glyoxime
Dimethyl isophthalate
Dimethyl itaconate
Dimethyl malonate
2,6-Dimethylmorpholine
Dimethyl-alpha-napthylamine
Dimethyl-beta-napthylamine
N,N-Dimethyl-para-nitrosoaniline
3,6-Dimethyl-3-octanol
3,7-Dimethyl-1-octanol
Dimethylolpropionic acid
Dimethylphenylbenzyl ammonium hydroxide
Dimethyl phthalate
Dimethyl stearamide
Dimethyl sulfate
Dimethyl sulfolane
Dimethyl sulfoxide
Dimethyl terephthalate
2,4-Dimethyl tetrahydrothiophene-1,1-Dioxide
Dinitrobenzene
4,4' Dinitrocarbanilide and 2-Hydroxy-4,6-Dimethyl pyrimidine complex
Dinitromethylbutylacetophenone
Dinitronapthalene
Dinitrophenol
3,5-Dinitro-o-toluamide (zoalene)
Dinitrotoluene
Dinonyl phthalate
Di (n-octyl, n-decyl) adipate
Di (n-octyl, n-decyl) phthalate
Dioctyl phthalate
Diorgano siloxanes
1,4-Dioxane
Dipentaerythritol acetate
Dipentaerythritol hexabutyrate
Dipentaerythritol hexapropionate
Diphemanil methyl sulfate
Diphenic acid
Diphenyl
Diphenylamine
Diphenyldichlorosilane
Diphenylhydantoin sodium
Diphenylmethane
Diphenylmethane 4,4'-Diisocyanate
2,5-Diphenyloxazole
Diphenyl oxide
Diphenyl phthalate
Diphenylsilanediol
4,4-Diphenylstilbene
Diphosphopyridine nucleotide
Dipropylene glycol
Dipropylene glycol dibenzoate
Dipropylene glycol methyl ether
p-(Dipropylsulfamyl) benzoic acid
alpha, alpha-Dipyridyl
2,2-Dipyridylamine
2,2'-Dithiodibenzoic acid
5,5-Dithio-bis-(2-nitrobenzoic acid)
Dithiothreitol (cleland's reagent)
Ditridecyl phthalate
Diundecyl phthalate
Divinyl benzene
Djenkolic acid
1-Dodecene
Dodecenylsuccinic acid
Dodecenylsuccinic anhydride
Dodecylaniline
Dodecylphenol
Dulcitol
Durene
1-Eicosanol
Elaidic acid
Epichlorhydrin
Epinephrine
Ergosterol
Erucic acid
Erythorbic acid
Erythrityl tetranitrate
Ethanolamine
Ethanolformamide
Ethoheptazine
Ethoheptazine citrate
P-[(p-Ethoxybenzylidene)-amino] benzonitrile
2-Ethoxy-3,4-dihydro-2H-pyran
Ethoxy triglycol
Ethyl acetate
Ethyl acetoacetate
Ethylacetylene
Ethylacrylate
Ethylalcohol
Ethyl aluminum dichloride
Ethyl aluminum sesquichloride
Ethyl amine
Ethyl amyl ketone
N-Ethyl aniline
ortho-Ethyl aniline
Ethyl benzene
Ethyl benzoate
Ethyl bromide
2-Ethylbutyl acetate
2-Ethylbutyl alcohol
Ethyl butyl ketone
2-Ethyl-2-butylpropanediol-1,3
2-Ethylbutyraldehyde
Ethylbutyrate
2-Ethylbutyric acid
Ethylchloride
Ethylchloroacetate
Ethylchlorocarbonate
Ethylcyanoacetate
Ethylene carbonate
Ethylene chlorohydrin
Ethylene cyanohydrin
Ethylenediamine
Ethylenediamine dihydroiodide
Ethylenediamine tetraacetic acid
Ethylene dibromide
Ethylene dichloride
Ethylene glycol
Ethylene glycol n-butyl ether
Ethylene glycol diacetate
Ethylene glycol dibutyl ether
Ethylene glycol ethyl ether
Ethylene glycol methyl ether
Ethylene glycol monoacetate
Ethylene glycol monobutyl ether
Ethylene glycol monobutyl ether acetate
Ethylene glycol monohexyl ether
Ethylene glycol monomethyl ether
Ethylene glycol monomethyl ether acetate
Ethylene glycol monoethyl ether acetate
Ethylene glycol phenyl ether
Ethylene glycol succinate
Ethylene glycol tetrachlorophthalate
Ethyleneimine
Ethylene maleic anhydride
Ethylene oxide
Ethylene thiourea
Ethyl estragole cinnamate
Ethy ether
1-Ethyl-2-[3(1-ethylnaptho[1,2d)-thiazolin-2-ylidene)-2-methyl-propenyl]naptho[1,2d] thiazolium bromide
Ethyl fluid
Ethyl formate
2-Ethyl-hexaldehyde
2,2'-(2-Ethylhexamido) diethyl Di(2-Ethyl hexoate)
2-Ethylhexanediol-1,3
2-Ethylhexoic acid
2-Ethylhexyl acetate
2-Ethylhexyl acrylate
2-Ethylhexyl alcohol
2-Ethylhexyl isodecyl phthalate
Ethyl Hydrogen sulfate
5-Ethylidene-2-norbornene
Ethyl iodoacetate
Ethyl lactate
Ethyl malonate
Ethyl mercaptan
N-Ethylmorpholine
Ethylnitrite
Ethyl orthoacetate
Ethyl phenylacetate
Ethyl phthalyl ethyl glycollate
Ethyl silicate
Ethyl sulfide
Ethyl stearate
Ethyl thioethanol
N-Ethyl para-toluenesulfonamide
Ethyl vanillin
Eucatropine hydrochloride
Eugenol
Exol
Fenchone
Ferric ammonium citrate
Ferric ammonium oxalate
Ferric glycerophosphate
Ferrous gluconate
Ferrous oxalate
Ferulic acid
Ficin, pure
Fluoranthene
Fluorescein
9-Fluoro-11 beta, 17,21-trihydroxy-16a-methylpregna—1,4-diene-3,20 dione and its salts and esters
dl-p-Fluorophenylalanine
5-Fluorotryptophan
6-Fluorotryptophan
5-Fluorouracil
Folic acid
Formaldehyde
Formamide
Formic acid
Fructose
Fructose-1,6-diphosphate sodium salt
Fructose-1-phosphate
D-Fucose
L-Fucose
Fumaric acid
Furan
Furazolidone
Furfural
Furfuryl alcohol
Furfuryl mercaptan
Galactose
Gallic Acid
Gentiobiose
Geranyl cinnamate
Gluconic acid
Glucono-delta-lactone
D-Glucosamine
Glucose, pharmaceutical

Glucose-6-phosphate, disodium salt
Glucuronic acid
Glucuronolactone
Glutamic acid
Glutamine
Glutaraldehyde
Glutaric acid
Glutaric anhydride
Glutaronitrile
Glutathione
Glycerin
Glycerol monooleate
Glycerophosphates
Glycerophosphoric acid and salts
Glyceryl monostearate
Glyceryl tri-(acetyl ricinoleate)
Glyceryl tributyrate (tributyrin)
Glycidyl acrylate
Glycine
Glycylglycine
Glycocholic acid (cholylglycine)
Glyoxal
Guaiacol
Guaiacol carbonate
Guaiacol glyceryl ether
Guaiamar
Guanidine
gamma-Guanidinobutyric acid
Guanidinopropionic acid
Guanine
Guanosine
Guanosine-2,3-cyclic
Guanosine-3,5-cyclic phosphate
Guanosine dihydrate
Guanosine-5-diphosphate
Guanosine-5-monophosphate
Guanosine-5-triphosphate
Guanosine-5'-triphosphate trilithium tetrahydrate
3-Guanylic acid
5-Guanylic acid
Guanylyl-3,5-adenosine
Guanylyl-3,5-cytidine
Guanylyl-3',-5'-guanosine
Guanylyl-3',5'-uridine
Heliotropine
Hemimellitene (1,2,3-trimethylbenzene)
Hemin (chlorohemin; hemin chloride)
Heparin sodium (heparin)
n-Heptadecanoic acid
n-Heptadecanol
Heptafluorobutyric acid (perfluorobutyric acid)
n-Heptenoic acid
l-Heptanol
Heptylic acid
Hexachlorobenzene
Hexachlorocyclopentadiene
Hexachloroethane
n-Hexadecane
l-Hexadecanol
Hexa-2-ethylbutoxydisiloxane
Hexafluoroacetone
Hexahydrobenzoic acid
Hexahydrophthalic anhydride
Hexamethonium chloride
Hexamethylene diammonium adipate (nylon salt)
Hexamethylenediamine
Hexamethyleneimine
Hexamethylenetetramine
l-Hexanol
Hexestrol NNR
n-Hexyl bromide
n-Hexyl chloride
Hexylene glycol
Hexylresorcinol
Hippuric acid
Histamine
Histamine phosphate
Histidine
Histidine hydrochloride
Homatropine and its salts
Homocystine
Homoserine
Hyaluronidase
Hydantoin
(-)-l-a-Hydrazino-3,4-dihydroxy-a-methyl-hydrocinnamic acid monohydrate
Hydrazobenzene
Hydrindantin, including hydrated forms
Hydrocholin
Hydrolase powder
Hydroorotic acid
Hydroquinone
Hydroquinone monobenzyl ether
Hydroxyacetic acid
meta-Hydroxybenaldehyde
para-Hydroxybenzaldehyde
meta-Hydroxybenzoic acid
ortho-Hydroxybenzoic acid
para-Hydroxybenzoic acid
3-Hydroxy-2-butanone
dl-Hydroxybutyric acid sodium salt
p-Hydroxychlorobenzene
Hydroxycitronella
2-Hydroxy-4n dodecyloxybenzophenone
Hydroxyethyl cellulose
Hydroxyethylethylenediamine
N-Hydroxyethylpiperazine
N-2-Hydroxyethylpiperazine-N'-2'-ethanesulfonic acid
Hydroxylapatite
Hydroxylsine hydrochloride
Hydroxymethyl 6-(2-amino-2-phenylacetamido)-3,3-dimethyl-7-oxo-4-thia-l-azabicylo (3,2,0) heptane-2-carboxylate pivalate and its salts and esters
5-Hydroxymethylcytosine
5-Hydroxymethyl deoxyuridine
3-Hydroxy-2-napthoic acid
2-Hydroxyphenylmercuric chloride
Hydroxyproline
Hydroxyquinoline and oxyquinoline anti-infective agents
Hydroxystearic acid
5-Hydroxytryptophan
3-Hydroxytyramine hydrochloride
Hydroxyzine
Hypoxanthine
3-3'-Iminobispropylamine
Iminodiacetonitrile
Indene
Indole
3-Indoleacetic acid
3-Indolebutyric acid
Indolyl-3 acetyl-L-aspartic acid
Indomethacin
Inosine
Inosine-5'-diphosphate
Inosine-5'-monophosphate
Inosine-5'-triphosphate
Inosinic acid
alpha-Iodoacetamide
5-Iododeoxyuridine
Iodoform
Ionones
Irisone ketone
Iron protoxalate
Iron sodium oxalate
Isatoic anhydride
Isoamyl alcohol, primary
Isoamyl bromide
Isoamyl butyrate
Isoamyl chloride
Isoamyl phthalate
Isoamyl valerate
Isoborneol
Isobutene
Isobutyl acetate
Isobutyl acrylate
Isobutyl alcohol
Isobutyl allyl barbituric acid
Isobutylamine
Isobutyl benzene
Isobutyl benzoate
Isobutyl bromide
Isobutyl chloride
Isobutyl methacrylate
Isobutyl phenyl acetate
Isobutyl quinoline
N-Isobutylundecyleneamide
Isobutyraldehyde
Isobutyric acid
Isobutyronitrile
dl-Isocitrate trisodium
Isoctyl thioglycolate
Isodecanol
Isoeugenol
Isoleucine
Isoniazid
Isooctyl alcohol
Isooctyl isodecyl phthlate
Isopentanoic acid
Isophorone
Isophthalic acid
Isopropenyl acetate
Isopropyl acetate
Isopropyl alcohol (isopropanol)
Isopropyl ethyl thionocarbamate
Isopropylamine
Isopropyl bromide
Isopropyl chloride
Isopropyl ether
Isopropyl iodide
Isopropyl palmitate
Isopropyl phenol
Isopropyl 2-(4 thiazolyl)-5-benzimidazole carbamate
Isosafrole
Itaconic acid
beta-Ketoglutaric acid
Khellin
Kinetin-6-furfurylaminopurine
Kojic acid
Lactic acid and salt(s)
Lactonitrile
Lanthionine
Lauric acid
Lauroyl peroxide
Lauryl alcohol
Lauryl aldehyde
Lauryl chloride
Lauryl mercaptan
Lead acetate
Lead formate
Lead maleate tribasic
Lead stearate
Lead styphnate
Lead tetraacetate
Lecithin, n.e.c.
Leucine
Leucenol leucenine
Levulinic acid
Lignoceric acid
D-Limonene
Linalool

Linalyl acetate
Linoleic acid
Linolinic acid
Linalyl acetate
Lithium benzoate
Lithium salts
Lutidine
Methylaluminum sesquichloride
Methylamine
Methylamyl acetate
Methyl amyl alcohol
Methyl-n-amyl carbinol
Methyl amyl ketone
N/Methylaniline (monomethylaniline)
Methyl palmitate
Methyl palmitoleate
Methylparaben
2-Methylpentaldehyde
2-Methyl-1-pentanol
3-Methyl-1-pentyn-3-ol
Methylphenyldichlorosilane

Nithiazide
meta-Nitroaniline
ortho-Nitroaniline
para-Nitroaniline
meta-Nitroanisole
ortho-Nitroanisole
para-Nitroanisole
Palmitoleic acid
Palmitoyl chloride
Pancreatin
Papain
Paradichlorobenzene
Paraffin, chlorinated
Paraformaldehyde
N-Phenyl-alpha-napthylamine
N-Phenyl-beta-napthylamine
Phenylneopentyl phosphite
Phenyl nerol
o-Phenyl phenol
N-Phenylpiperazine
Phenylpropanolamine

Linalyl acetate
Linoleic acid
Linolinic acid
Linalyl acetate
Lithium benzoate
Lithium salts
Lutidine
2,4-Lutidinic acid
Lysine
Lysine hydrochloride
Lysozyme
D-Lyxose
Magnesium benzoate
Magnesium citrate
Magnesium citrate, dibasic
Magnesium p-(dipropylsulfamoyl) benzoate
Magnesium glycerophosphate
Magnesium salicylate
Magnesium stearate
Magnesium sulfate
Magnesium oxyphenyl arsenate
Maleic acid
Maleic anhydride
Malic acid
Malonic acid
Malt diastase
Maltose
Mandelic acid
Manganese acetate
Manganese citrate
Manganese glycerophosphate
Mannitol
D-Mannose
Margaric acid
Meclizine
Melamine
Melissic acid
Menadione (2-methyl-1,4-naphthoquinone)
para-Menthane hydroperoxide
Menthol
Mephentermine
Mephentermine sulfate
Mercaptobenzothiazole
Mercaptoethanol
beta-Mercaptopropionic acid
6-Mercaptopurine
Mercuric acetate
Mercuric salicylate
Mesityl oxide
Mesitylene (1,3,3-trimethylbenzene)
Metamine (trolnitrate phosphate)
Metanilic acid
Methacrylic acid
Methacrylonitrile
Methallyl chloride
Methanesulfonyl chloride (mesyl chloride)
Methantheline bromide
Methapyralene antihistamines
Methenamine anti-infective agents
Methionine
Methionine hydroxy analogue
Methionine sulfone
Methoxyphenamine hydrochloride
Methoxytriglycol
Methoxytriglycol acetate
Methyl acetate
Methyl-4-acetamido-2-ethoxy benzoate
Methyl acetanilide
Methyl acetone
Methyl acetophenone
Methyl acetylene
Methyl acetyl ricinoleate
Methyl acrylate
Methyl alanine
Methylallyl alcohol
Methylaluminum sesquibromide
Methylaluminum sesquichloride
Methylamine
Methylamyl acetate
Methyl amyl alcohol
Methyl-n-amyl carbinol
Methyl amyl ketone
N/Methylaniline (monomethylaniline)
alpha-Methylanthracene
Methyl antranilate
Methyl anthraquinone
Methyl arachidate
alpha-Methylbenzyl alcohol
alpha-Methylbenzyl ether
Methyl-bicyclo (2.2.1) heptene-2,3-dicarboxylic anhydride isomers
2-Methyl-l-butanol
Methyl butynol
Methyl caproate (methyl hexanoate)
Methyl chavicol
Methyl chloride
Methyl cinnamate
Methylcyclohexane
Methylcyclohexanol
Methylcyclohexanol acetate
Methylcyclohexanone
Methylcyclopentane
N-Methyl-5H-dibenzo (a,d) cycloheptene-5-propyl-amine and its salts
Methyl dichloroacetate
Methyldiethanolamine
Methyl di-hydrogenated tallow tertiary amine
Methylelaidate
N,N-Methylene bisacrylamide
Methylene blue
Methylene bromide
Methylene chloride
Methylene iodide
N-Methylethanolamine
2-Methyl-2-ethyl-1,3-dioxolane
Methylethylketone
Methylethylketone and cyclohexanone peroxide
Methylethylketone peroxide
2-Methyl-5-ethylpyridine
N-Methylglucamine
Methyl glutamate
Methyl glycolate
Methyl heneicosanoate
Methyl heptine carbonate
Methyl hexyl ketone
Methyl histidine
Methyl alpha-hydroxy behenate
Methyl alpha-hydroxy eicosanoate
Methyl alpha-hydroxy-lignocerate
Methyl alpha-hydroxy myristate
Methyl alpha-hydroxy palmitate
Methyl alpha-hydroxy stearate
Methylinoacetaldehyde
Methyl iodide
Methyl ionone
Methyl isoamyl ketone
Methyl isobutyl ketone
Methyl isopropenyl ketone
Methyl laurate
Methyl linoleate
Methyl linolenate
Methyl mercaptan
Methyl methacrylate monomer
N-Methyl morpholine
Methyl myristate
alpha-Methylnapthalene
beta-Methylnapthalene
(1-Methyl-5-nitroimidazol-2-yl)methyl carbamate
Methyl nonadecanoate
Methyl oleate
Methyl palmitate
Methyl palmitoleate
Methylparaben
2-Methylpentaldehyde
2-Methyl-1-pentanol
3-Methyl-1-pentyn-3-ol
Methylphenyldichlorosilane
3-Methyl-1-phenyl-2-pyrazolin-5-one
n-Methyl-o-phenylenediamine dihydrochloride
Methyl phthalate
Methyl phthalyl ethylglycollate
N-Methylpiperazine
2-Methyl piperidine
Methyl propyl ketone
n-Methyl-2-pyrrolidine
Methyl salicylate
Methyl stearate
alpha Methyl styrene
N-Methyltaurine and aqueous solutions
N-Methyltaurine slurry
Methyl tricosanoate
Methyl tridecanoate
dl-5-Methyl-tryptophan-2,5-hydrate
beta-Methylumbelliferone
2-Methyl-5-vinylpyridine
Mimosine
Monobutylamine
Monochlorodifluoroethane
Monochlorodifluoromethane
Monoethanolamine
Monoethylamine
Monoisopropanolamine
Monopentaerythritol diacetate dibutyrate
Monopentaerythritol tetrabutyrate
Monosodium glutamate
Montanic acid
Morpholine
Musk ambrette
Musk ketone
Musk xylene
Myristic acid
Myristoleic acid
Myristyl alcohol
Myristyl bromide
Nalidixic acid
Naphazoline hydrochloride
Napthalene
Napthalenesulfonic and disulfonic acids
Napthionic acid
alpha-Napthol
beta-Napthol
Napthol sulfonic and disulfonic acids and salts
1,2-Napthoquinone
1,4-Napthoquinone
alpha-Napthylamine
beta-Napthylamine
Napthylamine sulfonic, disulfonic and trisulfonic acids
2-Napthyl benzoate
Napthyl ethyl ether
Napthyl methyl ether
2-(l-Napthyl)-5-phenyl oxazole
Neopentyl glycol
Neopentyl glycol adipate
Neopentyl glycol sebacate
Neopentyl glycol succinate
Neotridecanoic
Nerol
Nialamide
Nicarbazin
Nickel acetate
Nickel formate
Nikethamide
Ninhydrin

Nithiazide
meta-Nitroaniline
ortho-Nitroaniline
para-Nitroaniline
meta-Nitroanisole
ortho-Nitroanisole
para-Nitroanisole
3-Nitrobenzaldehyde
Nitrobenzene
n-Nitrobenzenesulfonyl chloride
p-Nitrobenzenesulfonamide
meta-Nitrobenzoic acid
ortho-Nitrobenzoic acid
para-Nitrobenzoic acid
meta-Nitrobenzoyl chloride
para-Nitrobenzoyl chloride
ortho-Nitrobiphenyl
meta-Nitrochlorobenzene
ortho-Nitrochlorobenzene
para-Nitrochlorobenzene
Nitroethane
Nitrofurantoin
Nitromersol
Nitromethane
l-Nitronapthalene
para-Nitrophenetole
Nitrophenide
meta-Nitrophenol
ortho-Nitrophenol
para-Nitrophenol
p-Nitrophenyl-B-D-glucuronide
p-Nitrophenyl phosphate
p-Nitrophenyl-thymidine-5-phosphate
N-Nitrosodiphenylamine
beta-Nitrostyrene
meta-Nitrotoluene
ortho-Nitrotoluene
para-Nitrotoluene
Nitroxylene
Nonadecylic acid
Nonanal
n-Nonyl alcohol
Nonyl bromide
l-Nonylene
Nonyl phenol
Nordihydroguaiaretic acid
Norleucine
Norvaline
Nucleosides
Nucleotides or mono nucleotides
l-Octadecanol
Octafluorocyclobutane
Octanoic acid
1-n-Octanol
2-n-Octanol
n-Octyl bromide
n-Octyl chloride
n-Octyl, n-decyl adipate
n-Octyl, n-decyl phthalate
Octylene glycol titanate
2 Octyl iodide
Octyl phenol
alpha-Olefins
Oleic acid
Olein (Triolein, Glyceryl trioleate)
Ornithine
Orotic acid (Uracil-6-carboxylic acid; 6-Carboxyuracil)
Oxalic acid
Oxamide
Oxphencyclimine
Oxyalkylated alkylene glycol
beta, beta'-Oxydipropionitrile
Pamaquine naphthoate
Palmitelaidic acid
Palmitic acid
Palmitoleic acid
Palmitoyl chloride
Pancreatin
Papain
Paradichlorobenzene
Paraffin, chlorinated
Paraformaldehyde
Paraldehyde
Pelargonic acid
dl-Penicillinamine acetone
Penicillinase
Pepsin
Pepsin, spongy
Pentachloroethane
Pentadecylic acid
Pentaerythritol
Pentaerythritol tetrastearate
Pentamethylene dibromide
Pentane diol
2,4-Pentane dione
Pentanol
2-Pentanol
3-Pentanol
Pentazocine
Pentobarbital sodium
Pentobarbituric acid
Peracetic acid
Perchloroethylene
Perchloropentacyclodecane
Perpinyl acetate
Phenacetin
Phenanthrene
Phenanthrenequinone
Phenazine
ortho-Phenetidine
para-Phenetidine
Phenetsal
Phenhydramine hydrochloride antihistamine
Pheniramine maleate antihistamines
Phenobarbital
Phenobarbital sodium
Phenol
Phenolphthalein
Phenolphthalein glucaronide
Phenolsulfonephthalein (phenol red)
Phenosulfonic acid
Phenyl acetate
Phenyl acetic acid
Phenyl aceticaldehyde
Phenylalanine
Phenyl-2-amino-5-napthol-7-sulfonic acid
Phenyl-2-amino-8-napthol-6-sulfonic acid
N-Phenylanthranilic acid
Phenylazo diamino pyridine
1,3,4-Phenyl-biphenyloxadiazole
Phenylbutazone
1-Phenyl-3-carbethoxy-pyrazolone-5
Phenyl carbinol
Phenyldiethanolamine
Phenyldimethylpyrazolomethyl amino methane
Phenylephrine hydrochloride
m-Phenylenediamine
o-Phenylenediamine
Phenylethanolamine
Phenylethyl acetate
Phenylethyl alcohol
Phenylethyl barbituric acid
Phenyl ethyl salicylate
N-Phenyl glycine
alpha-Phenyl glycine
Phenyl glycine
Phenyl isocyanate
Phenyl isothiocyanate
Phenyl magnesium bromide
Phenylmethyl sulfonyl fluoride
N-Phenyl-alpha-napthylamine
N-Phenyl-beta-napthylamine
Phenylneopentyl phosphite
Phenyl nerol
o-Phenyl phenol
N-Phenylpiperazine
Phenylpropanolamine
Phenyl propylacetate
Phenyl salicylate
Phenyl sulfide (diphenyl sulfide)
Phenyl sulfone (diphenyl sulfone)
Phenyl sulfoxide (diphenyl sulfoxide)
Phenyl trichlorosilane
alpha-Pinene
beta-Pinene
Phloroglucinol
Phosphatase, alkaline
Phosphate diethylacetal
Phosphatidyl inositol
Phosphatidyl serine
2-Phosphoenol pyruvic acid
2-Phosphoglyceric acid
o-Phospho-dl-serine
Phthalamide
Phthalic acid
Phthalic anhydride
ortho-Phthalimide
Phthalonitrile
Phthaloyl chloride
Phytol
alpha-Picoline
beta-Picoline
gamma-Picoline
Picramic acid
Picric acid
Pimelic acid
d-Pipecolic acid
dl-Pipecolic acid
l-Pipecolic acid
Pipecolic acid hydrochloride
d-Pipecolic anhydride
dl-Pipecolic anhydride
l-Pipecolic anhydride
Piperazine
Piperazine adipate
Piperazine calcium edetate
Piperazine citrate
Piperazine dihydrochloride
Piperazine hexahydrate
Piperidine
Piperonal
Pivaloyloxymethyl-D-a-aminobenzyl penicillinate
Polyadenylic acid
Polycytidylic acid
Polyethylene glycol dibenzoate
Polyethylene glycols
Polyethyleneimine
Polyglycerol
Polyglycol distearate
Polymeric isocyanate
Polymethylene polyphenylisocyanate
Polyoxypropylene triol
Polypropylene diols
Polypropylene glycol
Polytetramethylene ether glycol
Polythiazide
Polythiazide, non-sterile
Polyuridylic acid
Polyuridylic acid potassium
Pontalin granulation
Pontalin powder
Potassium acetate
Potassium amyl xanthate
Potassium biphthalate
Potassium bitartrate

Potassium chloride
Potassium citrate
Potassium dichloroisocyanurate
Potassium ethyl xanthate
Potassium hexyl xanthate
Potassium oxalate
Potassium oxichinolin sulfonate
Potassium salicylate
Rhodinol
Ricinoleic acid and salts
Ristocetin
Rochelle salts
Saccharin
Saffrole
Salicin
Salicylaldehyde
Stearic acid
Stearin
Stearyl alcohol
Stilbestrol
Strontium acetate
Strontium lactate
Strontium oxalate
Streptokinase

Thiothixene
2-Thiouracil
Thiourea
Threonine
Thrombin topical
Thromboplastin
Thymidine
Trifluoroacetic acid
Trifluoromonochloroethylene
Tri-n-hexylaluminum
Triisobutylaluminum
Triisohexylaluminum
Triisopropanolamine
Trilinolein
Vinyl acetate
Vinyl benzene (styrene)
Vinyl bromide
Vinyl-n-butyl ether
Vinyl chloride
Vinyl-2-chloroethyl ether
Vinyl ether

V 45 D E 3 0 8 0 UMI

Potassium chloride
Potassium citrate
Potassium dichloroisocyanurate
Potassium ethyl xanthate
Potassium hexyl xanthate
Potassium oxalate
Potassium oxichinolin sulfonate
Potassium salicylate
Potassium tetroxalate
Proline
Prominal
Propargyl alcohol
Propargyl bromide
Propenyl guaethol
Prophenpyridamine maleate
beta-Propiolactone
Propionaldehyde
Propionic acid
Propionic anhydride
Propionyl chloride
Propiophenone
d-Propoxyphene hydrochloride
n-Propyl acetate
n-Propyl alcohol
Propyl amine
n-Propyl bromide
n-Propyl chloride
Propylene carbonate
Propylene chlorohydrin
Propylene dichloride
1,2-Propylene glycol
Propylene glycol methyl ether
Propylene oxide
Propyl gallate
Propylhexadrine
n-Propyl iodide
Propylparaben
Protamine sulfate
Protoporphyrin
Pseudocumene (1,2,4-trimethylbenzene)
Pseudocumidine
Pseudouridine (salmine)
Purine
Pyramidon
Pyranisamine maleate
Pyrene
Pyridine (refined)
3,4-Pyridinecarboxylic acid
Pyridium
Pyrilamine maleate (benzal)
Pyrilamine maleate N.N.R.
Pyrocatechol
Pyrogallol acid
Pyroligneous acid
Pyromellitic acid and dianhydrides
Pyruvic acid
Pyruvic aldehyde
Quinacrine hydrochloride
Quinaldine
Quinhydrone
Quinic acid
Quinizarin
Quinoline
Quinone
N[1]-(2-Quinoxalinyl) sulfanilamide
Racephedrine
Raffinose
Rennet
Rennin
Resorcinol
Resorcinol acetate
Resorcinol dimethyl ether
Resorcinol monobenzoate
alpha-Resorcylic acid
beta-Resorcylic acid
Rhamnose
Rhodinol
Ricinoleic acid and salts
Ristocetin
Rochelle salts
Saccharin
Saffrole
Salicin
Salicylaldehyde
Salicylamide
Salicylic acid, technical grade
Salicylic acid, USP grade
Salol
Salophen
Santalol
Santonin
Sarcosine
Sebacic acid
Secobarbital sodium salicylate
Selenium diethylthiocarbonate
Serine
Serotonin
Serotonin creatinine sulfate
Serotonin creatin sulfate complex
Shikimic acid (3,4,5,-trihydroxyl;-1-carboxylic acid)
Silanes
Skatole
Sodium acetate
Sodium allyl arsenate
Sodium para-aminobenzoate
Sodium para-aminosalicylate
Sodium arsanilate
Sodium benzoate
Sodium bitartrate
Sodium biphthalate
Sodium-sec-butyl xanthate
Sodium chloride
Sodium-4-chlorophthalate
Sodium citrate
Sodium dehydroacetate
Sodium diacetate
Sodium dibutyl napthalene sulfonate
Sodium dichloro isocyanurate
Sodium dimethyl-S-sulfo isophthalate
Sodium dodecyl benzene sulfonate
Sodium erythorbate
Sodium formate
Sodium gentisate
Sodium gluconate
Sodium glycolate
Sodium isobutyl xanthate
Sodium isopropyl xanthate
Sodium lactate
Sodium N-lauroyl sarcosinate
Sodium lignosulfonate
Sodium methylate
Sodium methyl siliconate
Sodium oxalate
Sodium phenolsulfonate
Sodium potassium tartrate
Sodium proprionate
Sodium saccharin
Sodium saccharinate
Sodium salicylate
Sodium tetroxalate
Sodium undecylenate
Sodium zirconium lactate
Sorbic acid
Sorbitol
Sorbose
Spermidine trihydrochloride
Spermidine tetrahydrochloride
Sphingomyelin
Squalane
Squalene
Stannous 2-ethylhexoate
Stearic acid
Stearin
Stearyl alcohol
Stilbestrol
Strontium acetate
Strontium lactate
Strontium oxalate
Streptokinase
Styrene oxide
Suberic acid
Succinic acid
Succinic acid disodium salt
Succinic anhydride
Succinimide
Sucrose
Sucrose acetate butyrate
Sulfanilic acid
meta-Sulfobenzoic acid
ortho-Sulfobenzoic acid
Sulfonamide drugs
4,4-Sulfonyldianiline
4-Sulfophthalic acid
Tartar emetic
Tartaric acid
Taurine
Terephthalic acid
Terephthaloyl chloride
para-Terphenyl
Terpin hydrate
Terpineol
Terpinyl acetate
Tetrabutyl titanate
Tetrachlorodifluoroethane
sym-Trachloroethane
Tetrachlorophthalic acid
Tetrachlorophthalic anhydride
5-Tetradecenoic acid
1,1,3,3-Tetraethoxypropane
Tetraethylene glycol
Tetraethylene pentamine
Tetraethyl lead
Tetrafluoroethylene
Tetrafluoromethane
Tetrahydrofuran
Tetrahydrofurfuryl alcohol
Tetrahydrofurfuryl oleate
Tetrahydrolinalool
Tetrahydronapthalene
Tetrahydrophthalic anhydride
Tetrahydropyran-2-methanol
Tetrahydrothiophene 1,1-dioxide (sulfolane)
Tetrahydroxyethylethylenediamine
Tetrahydrozoline
Tetrahydrozoline hydrochloride
Tetraisopropyl titanate
N,N,N,N,-Tetramethyl-1,3-butane diamine
Tetramethyldiaminobenzhydrol
Tetramethyldiaminobenzophenone
Tetramethyldiaminodiphenylmethane
N,N,N,N,-Tetramethylene diamine
Tetramethyl lead
1,1,4,4,-Tetraphenylbutadiene
Tetraphenyltin
Tetrapropylene
Tetrazene
2-(4'-Thiazolyl) benzimidazole
beta-2-Thienylalanine
2-Thiobarbituric acid
Thiodiglycol
Thiodipropionic acid
Thioglycerol
Thioglycolic acid
Thiophene
alpha-Thiophenealdehyde
Thiophenol
Thiosalicylic acid

Thiothixene
2-Thiouracil
Thiourea
Threonine
Thrombin topical
Thromboplastin
Thymidine
Thymidine-3,5-diphosphate
Thymidine-5-diphosphate
Thymidine-5-monophosphate
Thymidine-5-triphosphate
Thymine (5-methyluracil)
Thymol
Thymol blue
Thymol iodide
Titanium potassium oxalate
Titanyl acetylacetonate
ortho-Tolidine
ortho-Tolidine dihydrochloride
Toluene
Toluene-2,4-diamine
Toluene diisocyanates, except the 2–4 isomer with 85 percent purity and above.
Toluene sulfonamide
ortho-Toluenesulfonamide
para-Toluenesulfonamide
ortho-Toluenesulfonic acid
para-Toluenesulfonic acid
p-Toluenesulfonylchloride
para-Toluene sulfonyl-L-arginine methyl ester, HCl
o-Toluidine
Tolyl acetate
ortho-Tolyl biguanide
para-Tolyl-1-napthyl-amine-8-sulfonic acid
Triacetin
N-Triacontane (Melissic acid)
Triallyl cyanurate
Tribromoacetic acid
Tribromoethanol
Tributoxyethyl phosphate
Tri-n-butyl aconitate
Tributyl citrate
Tributyl phosphate
Tributyl phosphite
Trichloroacetic acid
1,2,3-Trichlorobenzene
1,2,4-Trichlorobenzene
1,1,1-Trichloroethane
Trichloroethylene
Trichlorofluoromethane
Trichloroisocyanuric acid
Trichloromethane (chloroform)
Trichloromethyl chloroformate (diphosgene)
Trichloropropane
Tricresyl phosphate
Tridecyl alcohol
Tri-n-decylaluminum
Tridecylic acid
2,4,6-Tri(dimethylaminomethyl) phenol
Triethanolamine
Triethanolamine titanate
1,1,3-Triethoxyhexane
Triethyl aluminum
Triethylamine
Triethyl citrate
Tri-2-ethylhexyl phosphate
Triethyl phosphate
Triethylenediamine
Triethylene glycol
Triethylene glycol dibenzoate
Triethylene glycol di(2-ethylbutyrate)
Triethylene glycol di(2-ethylhexoate)
Triethylene glycol monobutyl ether phosphate
Triethylenetetramine
Trifluoroacetic acid
Trifluoromonochloroethylene
Tri-n-hexylaluminum
Triisobutylaluminum
Triisohexylaluminum
Triisopropanolamine
Trilinolein
Trimellitic acid and anhydrides
Trimethyl aluminum
3,4,5-Trimethylcyclohexanol-1
Trimethylene bromide
Trimethylene chlorohydrin
Trimethylene glycol
2,6,8-Trimethyl-4-nonanone
2,6,8-Trimethylnonyl-4-alcohol
Trimethylolethane
Trimethylolpropane
2,2,4-Trimethyl-1,3-pentanediol
2,2,4-Trimethyl-1,3-pentanediol di-isobutyrate
2,2,4-Trimethyl-1,3, pentanediol mono-isobutyrate
2,4,4-Trimethylpentene
Tri-2-methylpentylaluminum
2,4,6-Trinitrobenzene sulfonic acid
Trinonylphenyl phosphite
Tri-n-octylaluminum
Tripalmitin (Palmitin, glyceryl tripalmitate)
Tripelennamine anti-histamines
Triphenyl phosphate
Triphenyl phosphite
Triphenyl phosphorus
Triphosphopyridine nucleotide
Tripropylene
Tripropylene glycol methyl ether
Tris-B-chloroethyl phosphate
Tris (2,3-dibromopropyl) phosphate
Tris dichloropropyl phosphate
Tris (hydroxymethyl) aminomethane
Trixylenyl phosphate
Trypsin powder
Trypsin pure
Tryptar trypsin
Tryptophan
Tyramine
Tyrosine
Undecalactone
Undecanaldehyde
1-Undecanol
2-Undecanol
Undecylic acid
Undecylenic acid
Uracil
Uranine
Urea
Urease
Uric acid
Uridine
Uridine-5-diphosphate
Uridine-5-diphosphogalactose
Uridine-5-diphosphomannose
Uridine-5-monophosphate
Uridine-5-triphosphate
Uridylic acid
Uridylyl-3',5'-cytidine
Uridylyl-3',5'-uridine
n-Valeraldehyde
Valeric acid
Valine
d Valine
dl Valine
l Valine
Vanadium ethylate
Vannilin
Varidase streptokinase-streptodornase
Veratraldehyde
Vetivert acetate
Vinyl acetate
Vinyl benzene (styrene)
Vinyl bromide
Vinyl-n-butyl ether
Vinyl chloride
Vinyl-2-chloroethyl ether
Vinyl ether
Vinyl ethyl ether
Vinylidene chloride
Vinyl isobutyl ether
Vinyl methyl ether
Vinyl methyl ketone
Vinyl pyridine
1-Vinyl-2-pyrrolidone
Vinyltoluene
Wintodon granulation
Xanthine
Xanthophyll feed supplement
Xanthosine
Xanthosine-5-phosphate
Xanthydrol
Xylene
ortho-Xylene
para-Xylene
Xylenol
Xylidine
Xylenyl phosphate
Xylose
Yttrium salts
Zinc acetate
Zinc 1,4-phenosulfonate
Zinc stearate
Zinc undecylenate

Plastic Materials and Artificial Resins, as Follows:

Acetal resins
Acrylic acid esters
Acrylic polymers
Acrylonitrile-butadiene-styrene copolymer (ABS resin)
Alkyd resins
Amino resins
Ammonium alginate
Carboxy vinyl polymers, water soluble [1]
Cellulose, chemical derivatives
Cellulose, regenerated
Chlorendic alkyd resins
Chlorinated polyether resins
Composites or laminates n.e.s., containing polyimides, polybenzimidazoles, polyimidazopyrrolones, aromatic polyamides, polyparxylylenes, polyimide-polyamide, silica, quartz, carbon or graphite fibers, polytetrafluoroethylene, polyvinylfluoride, or solid forms of polychlorotrifluoroethylene
Copolymer of tetrafluoroethylene and perfluoroalkyl-vinyl ether
Coumarone-indene resins
Epoxy resins, n.e.s.
Ethylene oxide polymers, water soluble [1]
Ethylene maleic anhydride resins
Ethylene-propylene
Ethylene-vinyl acetate
Flocculating agents [1]
Floor tile and flooring, plastic or plastic composition
Furan resins
High styrene resins masterbatches
Hydroxyvinyl resins
Ion exchange liquids, membranes, and resins

[1] A validated license is required for export of these commodities to the USSR, Estonia, Latvia, and Lithuania.

Ionomer resins
Laminates (including metal-clad) composed of two or more products included in Commodity Interpretation 24
Melamine-formaldehyde resins
Methacrylic acid esters
Methyl methacrylate, n.e.s.
Modified natural resins, including ester gum
Proteins, hardened
Resorcinol-formaldehyde resins
Silicone diffusion pump fluids having the capacity for producing ultimate pressures of 10^{-8} torr and greater
Silicone rubber and compounds, n.e.s.
Sodium alginate
Styrene-acrylonitrile copolymers

Chlorinated hydrocarbon wax preparations
Clarifier for beer or ale
Clarifying powder for wines
Collecting reagents (preparations) for concentration of ores, metals, or minerals
Compounds and mixtures of rare earth metals, yttrium, or scandium n.e.s.
Composite solvents, paint removers, thinners,

agricultural chemicals [2] and similar products n.e.s. *except organic phosphate insecticides and pesticidal compounds containing more than 75 per cent by weight of organic phosphates.*
Inulin
Iron oxide suspension
Laundry sour
Polyester of adipic acid and phthalic acids and propylene glycol
Polymeric isocyanate
Polymeric (modified)-adipic acid
Polysaccharides
Polyvinyl acetate emulsion glues and adhesives
Potassium or sodium soaps of rosins in liquid,

of polytetrafluoroethylene, coagulated dispersion grades only; polyvinylidenefluoride; the copolymers of tetrafluoroethylene and hexafluoropropylene; or dibromotetrafluoroethane having a purity of 99.8 percent or less and containing at least 25 particles of 200 microns or larger in

Ionomer resins
Laminates (including metal-clad) composed of two or more products included in Commodity Interpretation 24
Melamine-formaldehyde resins
Methacrylic acid esters
Methyl methacrylate, n.e.s.
Modified natural resins, including ester gum
Natural rubber, chemical derivatives
Nylon 6, 66, 610, and 612
Pentaerythritol resins
Phenol-formaldehyde adhesive and resins
Phenolic resins, n.e.s.
Phenoxy resins
Pipe and tubing made of, or lined and covered with, fluorocarbon polymers or copolymers, n.e.s.[1]
Polyallomer resins
Polyamide resins, n.e.s.
Polybutadiene resins
Polybutene resins
Polycaprolactone resins
Polycarbonate film, n.e.s.
Polycarbonate resins, molding and extrusion forms
Polychlorotrifluoroethylenem, solid forms
Polydivinylbenzene
Polyester resins, n.e.s.
Polyester tapered filaments
Polyethylene film, sheeting, laminates or wax containing any boron
Polyethyleneimine
Polyethylene, n.e.s.
Polyethylene oxide-based resins
Polyethylene terephthalate film
Polyimide-polyamide resins
Fully cured polyimide or polyimide-based film, sheet, tape, or ribbon having a maximum thickness of 10 mils (0.010 inch or 0.254 mm) whether or not coated or laminated with heat- or pressure-sensitive resinous substances of an adhesive nature, which contain no fibrous reinforcing materials, and which have not been coated or laminated with carbon, graphite, metals, or magnetic substances
Polymethylpentene resins
Polypropylene
Polystyrene
Polysulfone resins, n.e.s.
Polyterpene resins
Polytetrafluoroethylene, coagulated dispersion grades only; polyvinylidenefluoride; the copolymers of tetrafluoroethylene and hexafluoropropylene; and dibromotetrafluorethane having a purity of 99.8 percent or less and containing at least 25 particles of 200 microns or larger in size per 100 ml; and damping, dielectric, or flotation fluids wholly made thereof
Polytetrafluoroethylene, nondispersion grades
Polyurethane resins
Polyvinyl acetal resins
Polyvinyl acetate resins
Polyvinyl alcohol
Polyvinyl butyral
Polyvinyl chloride
Polyvinylidine chloride resins
Polyvinyl ether resins
Polyvinylfluoride
Polyvinyl formal
Polyvinyl pyrrolidone
Potassium alginate
Products, n.e.s., made of flurorcarbon polymers or copolymers [1]
Proteins, hardened
Resorcinol-formaldehyde resins
Silicone diffusion pump fluids having the capacity for producing ultimate pressures of 10^{-8} torr and greater
Silicone rubber and compounds, n.e.s.
Sodium alginate
Styrene-acrylonitrile copolymers
Styrene-butadiene copolymers
Sulfonamide-formaldehyde resins
Urea-formaldehyde resins
Vinylidene chloride acrylonitrile copolymers
Vulcanized fiber

Chemical preparations and compounds, miscellaneous related materials and products, n.e.s., as follows:

Acetone oil
Acid cupric chromate solution
Activated carbon for petroleum or chemical processing
Activated natural mineral products
Additives for fuel oils
Adhesives or cements containing polyimides, polybenzimidazoles, polyimidazopyrrolones, aromatic polyamides, polyparaxylylenes, or polyimide-polyamide, n.e.s.
Albumins, albuminates, and other albumin derivatives
Alkane sulfonic acid; mixed
Alkyl aryl phosphate
Alkyl aryl phthalate blend with alkyl benzene
Alkyl benzenes (detergent alkylates) with straight-chain alkyl groups containing 8 or more carbon atoms
Animal black, except activated
Articles, finished, of artificial plastic materials, n.e.s.
Artificial graphite, n.e.s.
Aryl-modified butyl benzyl phthalate ester
Auxiliary preparations for soldering, brazing, or welding (fluxes, powders, pastes) containing metal and other constituents
Azeotropic mixture of trifluoromethane and monochlorotrifluoromethane (R–503)
Boiler feed water compounds
Boric acid esters
Brewers' tank coating compounds pH Buffer salt and solution mixtures
Calcium lignosulfate
Calcium naphthenate
Carnauba wax, micronized
Calcium sulfate impregnated silica gel adsorbent carbon or graphite fibers, n.e.s.
Casein
Catalysts, n.e.s.
Cementing preparations not of fish, animal or vegetable origin, *the following only:* cementing preparations for pyroxylin watch glasses; film cement with paraffin; floor cement; floor patch, concrete; iron cement; linoleum cement except rubber; linoleum paste except rubber; polishing wheel cement; roofing cement; running board cement; soil pipe cementing preparation; solder glue; automobile top sealer; wall board cementing preparation; thread lubricant and seal compound; acrylic based glues, adhesives, or cement; and tire cut filler
Charges for fire extinguishers
Chemical compounds for manufacturing ice cream
Chill proofing compounds
Chlorinated hydrocarbon wax preparations
Clarifier for beer or ale
Clarifying powder for wines
Collecting reagents (preparations) for concentration of ores, metals, or minerals
Compounds and mixtures of rare earth metals, yttrium, or scandium n.e.s.
Composite solvents, paint removers, thinners, and other similar products, n.e.c.
Concrete hardeners
Concrete plasticizer compounds
Concrete waterproofing compounds
Conversion coating compounds
Copper naphthenate
Corrosion-inhibiting compounds
Cyanoacrylate adhesives and glues
Dental impression compounds and modelling pastes in plates, sticks, and similar forms
Dental plasters and preparations
Dextrins
Diethyl chromium (Chromocene) in toluene
Digestive enzymes (Glycerol Red Bone Marrow)
Diphenyl and diphenyl oxide heat transfer mixtures
N,N-Diphenyl-meta-phenylene-diamine
N,N-Diphenyl-para-phenylene-diamine
Dyeing, tanning, and coloring materials, natural and synthetic, n.e.s.
pH Electrode electrolyte solution mixtures
Epoxy-based adhesives or cements
Essential oils and perfume materials
Esters of saturated aliphatic monohydric alcohols containing more than six carbon atoms with adipic or azelaic or sebacic acids
Esters of dibasic saturated aliphatic acids combined with polyglycols, where one or both of the two constituents contain six or more carbon atoms, or saturated monohydric alcohols with dibasic saturated aliphatic acids where both of the two constituents contain six or more carbon atoms
Esters of trimethylol propane or trimethylol ethane or pentaerythritol with saturated monobasic acids containing more than six carbon atoms
Explosives and pyrotechnic products, n.e.s.
Ferrocerium and other pyrophoric alloys
Film developers
Flocculating agents, n.e.s.[1]
Glues and adhesives of fish, animal, or vegetable origin
Gluten and gluten flour
Glyceride kit MDT
Glycerol stearate
Glyceryl tri-(12-hydroxystearate)
Graphite, artificial and colloidal, n.e.s.
Gum rosin
Gum turpentine
Hat finishing powders
Herbicidal or antiplant preparations, n.e.s.
Hydraulic fluids, oils, and lubricants, n.e.s.
Hydrocarbon N-paraffin mixes
Hydrogenated tallow primary amine
Indicating pastes
Ink conditioners or eradicators
Ink thinners for cellophane printing
Inorganic and organic insecticides, pesticides, defoliants, herbicides, fumigants,

[1] A validated license is required for export of these commodities to the USSR, Estonia, Latvia, and Lithuania.

agricultural chemicals [2] and similar products n.e.s. *except organic phosphate insecticides and pesticidol compounds containing more than 75 per cent by weight of orgonic phosphates.*
Inulin
Iron oxide suspension
Laundry sour
Lead naphthenate
Leather binding compounds
Lipstick bases and waxes
Magnesium silicate impregnated silica gel adsorbent
Manganese naphthenate
Manufactured fertilizers
Meat curing compounds
Medicinal and pharmaceutical products in bulk, in dosage form, or as preparations, mixtures, or compounds, for human or veterinarian use, n.e.s.
Melamine-formaldehyde or Resorcinol-formaldehyde adhesives and glues
Metal patch solvents
Metallic hardeners for cement floors
Metanephrine
Methyl ethyl ketone peroxide 60 percent solution in dimethyl phthalate
Mineral or vegetable waxes, modified
Mixture of isobutyl ethers of propylene glycol and its homologs
Mixture of n-ethyl ortho and paratoluene ethyl sulfonamide
Mixture of ortho and para toluene sulfonamides
Mixtures or solutions containing two or more of any product included in Commodity Interpretation 24
Molecular sieves, loaded
Molecular sieves, not loaded
Monoglycerides
Natural and man-made staple, tow, fibers, filaments, yarn, fabrics, and made-up articles, clothing, and related products, new, used or waste, n.e.s.
Nickel compound catalysts and other catalysts, n.e.s.
Noncyclic-phosphates (plasticizers) n.e.s.
Nonmetallic mineral manufactures, n.e.s.
Oil-field demulsifying agents[1]
Peptones
Petroleum and petroleum products natural or synthetic, n.e.s.
Photographic chemicals and paper, n.e.s.
Photoresist thinners and rinses, synthetic polymer
Phthalate plasticizer incorporating coesterified mixed alkyl alcohols in the range of $C_7C_9C_{11}$
Pickling preparations for metal surfaces
Pigments, inorganic n.e.s.
Pine oil, *except pine-needle oil*
Platinum plating solutions
Polyether triols of alkylene oxides
Polyethylene glycol plus nitro (STAP)
Polyethylene glycol reacted with 2-nitro terephthalic acid (FFAP)
Polyethylene glycol, solidified
Polonium metal, salts and compounds
Polyester of adipic acid and butylene glycol
Polyester of adipic acid and phthalic acids and propylene glycol
Polymeric isocyanate
Polymeric (modified)-adipic acid
Polysaccharides
Polyvinyl acetate emulsion glues and adhesives
Potassium or sodium soaps of rosins in liquid, paste, or powder form
Prepared additives for petroleum lubricants, n.e.s.
Prepared additives for synthetic lubricants
Prepared brighteners and addition agents used in the following electroplating systems: antimony, arsenic, copper and copper alloy, cadmium, chromium, gold, indium, iridium, iron, lead, and lead alloy, nickel, palladium, platinum, rhodium, ruthenium, silver, tin and tin alloy, and zinc.
Prepared culture media
Prepared anti-knock compounds, n.e.s.
Prepared glazings, dressings, mordants, and sizes
Prepared rubber accelerators and compounding agents
Protein substances, including edible and inedible gelatins
Putty powder
Radioisotopes, cyclotron-produced or naturally occurring, having an atomic number 3 through 83, and compounds and preparations thereof; and stable isotopes and their compounds, n.e.s.
Radium and radium salts, alloys, and compounds
Road binding compounds
Rodenticides, inorganic
Rosin and resin acid derivatives, except ester gums
Rubber compounding chemicals, preparations and compounds, n.e.s.
Rubber thread lubricating compounds
Rust-preventive compounds
Screening pastes
Shark deterrents
Shaving cream bases
Silanized diatomaceous earth
Silica-based refractory core coatings
Silk-stocking savers, tablet form
Silver nitrate impregnated silica gel adsorbent
Soda lime
Sodium biphenyl in dimethoxyethane
Solvents, compounds, cutting fluids, or mixtures, containing less than 95 per cent of Trichlorotrifluoroethane (R–113) or Dichlorotetrafloroethane (R–114)
Starches
Sulfite lye, concentrated
Talc paste
Tall oil
Tall oil resins
Terphenyl resin plasticizer, partially hydrogenated
Terpenic solvents, n.e.s.
Tetrapropylene
Toilet, polishing and cleansing preparations
Ultraviolet light absorbers
Urea formaldehyde adhesives and glues
Urine concentrate
Vegetable pitch and products based thereon or on rosin
Water purifiers
Water softeners
Waxes, greases, lubricants, and damping dielectric, or flotation fluids wholly made of polytetrafluoroethylene, coagulated dispersion grades only; polyvinylidenefluoride; the copolymers of tetrafluoroethylene and hexafluoropropylene; or dibromotetrafluoroethane having a purity of 99.8 percent or less and containing at least 25 particles of 200 microns or larger in size per 100 ml.
Weed killers, consisting primarily of boron compounds
Wood creosote
Wood naphtha
Wood rosins
Wood rosin liquid tire chain solution
Wood tar
Wood tar oils
Wood turpentine

Inorganic chemicals elements, acids, oxides, hydroxides, peroxides, and halogen salts, as follows:

Alumina, n.e.s.
Antimony pentoxide
Antimony trioxide
Argon, *except liquified*
Arsenic disulfide
Arsenic, metallic
Arsenic powder
Arsenic trichloride
Arsenic triiodide
Arsenic trioxide
Artificial corundum (fused aluminum oxide), n.e.s.
Barium hydroxide monohydrate
Barium hydroxide octahydrate
Barium hydroxide pentahydrate
Barium oxide
Barium peroxide
Bismuth trioxide
Boric acids, n.e.s.
Boron, n.e.s.
Cadmium oxide
Carbon black, all forms
Carbon disulfide
Cerium oxide
Chlorine
Chlorine dioxide
Chlorosulfonic acid
Chromic acid
Chromic anhydride
Chromium oxides, anhydrides, and hydroxides, n.e.s.
Copper hydroxide
Copper oxide, black
Copper oxide, red
Dihydrazine sulfate
Ferric hydroxide
Fluosilicic acid
Germanium oxides, hydroxides, and peroxides
Hafnium oxides, n.e.s.
Hexafluorophosphoric acid
Hydrazine hydrate
Hydrazine mixtures containing less than 70 percent of hydrazine equivalent
Hydriodic acid
Hydrobromic acid
Hydrochloric acid
Hydrocyanic acid
Hydrofluoric acid
Hydrogen bromide, anhydrous
Hydrogen chloride
Hydrogen sulfide
Hydroxylamine
Hydroxylamine hydrochloride

[2] A validated license is required for export of phosphate rock and processed phosphatic fertilizers of all concentrations to the U.S.S.R.

[1] A validated license is required for export of these commodities to the U.S.S.R., Estonia, Latvia, and Lithuania.

Hypophosphorous acid
Iodic acid and its salts
Iodine U.S.P. (resublimed)
Iron oxides and hydroxides, n.e.s.
Lead oxides, n.e.s.
Lithium, n.e.s.
Thionyl chloride
Tin oxides
Titanium, n.e.s.
Tungsten trioxide
Tungstic acid
Tungstic oxide
Cadmium carbonate
Cadmium chloride
Cadmium iodide
Cadmium nitrate
Cadmium sulfate
Calcium bromide

Hydrogen peroxide, concentrations of less than 85 percent
Hydroxylapatite
Iron chloride
Iron phosphate
Iron sulfate
Iron sulfide, artificial
Lead antimonate
Potassium bicarbonate
Potassium bisulfate
Potassium bromate
Potassium bromide
Potassium carbonate
Potassium chlorate
Potassium chlorochromate
Sodium hypochlorite
Sodium hypophosphite
Sodium iodide
Sodium metabisulfite
Sodium metaphosphate
Sodium metasilicate
Sodium metavanadate

V 45 DE 30 80 UMI

Hypophosphorous acid
Iodic acid and its salts
Iodine U.S.P. (resublimed)
Iron oxides and hydroxides, n.e.s.
Lead oxides, n.e.s.
Lithium, n.e.s.
Magnesium hydroxide
Magnesium oxide
Magnesium peroxide
Manganese oxides, n.e.s.
Manganic hydroxide
Mercuric oxide, red
Mercuric oxide, yellow
Mercury (quicksilver)
Molybdenum oxides
Monocrystalline gallium compounds, n.e.s.
Monocrystalline and polycrystalline forms of molybdenum or tungsten, n.e.s.
Muriatic acid
Neon, *except liquified*
Nickel oxides, hydroxides, and peroxides
Niobium, n.e.s.
Nitric acid, *except fuming nitric acid*
Nitric oxide
Nitrogen, *except liquified*
Nitrogen pentoxide
Nitrous oxide
Oleum
Oxygen, *except liquified*
Perchloric acid
Phosphomolybdic acid
Phosphoric acid [1]
Phosphoric anhydride
Phosphorus, elemental
Phosphorus oxychloride
Phosphorus pentasulfide
Phosphorus sesquisulfide
Phosphorus trichloride
Phosphorus trisulfide
Polyphosphoric acid
Potassium hydroxides
Potassium peroxide
Rhenium oxides, hydroxides, and peroxides
Rubidium hydroxide
Selenium
Selenium dioxide
Selenium oxychloride
Selenium sulfide
Selenous acid
Silanes
Silica aerogel
Silica, colloidal
Silica, gel
Silica, pyrogenic
Silicic acid
Silicon, n.e.s.
Silicon dioxide, hydrated
Silicon monoxide
Silicon tetrachloride
Silicotungstic acid
Sodium hydroxide, solid and liquid
Sodium peroxide
Strontium hydroxide
Strontium oxide
Strontium peroxide
Sulfamic acid
Sulfur, except crude sulfur
Sulfur dioxide
Sulfuric acid
Sulfur trioxide
Tantalum, n.e.s.
Tantalum-niobium, n.e.s.
Thallium monoxide

[1] A validated license is required for export of this commodity to the U.S.S.R.

Thionyl chloride
Tin oxides
Titanium, n.e.s.
Tungsten trioxide
Tungstic acid
Tungstic oxide
Vanadium pentoxide
Vanadium tetraoxide
Vanadium trioxide
Yttrium metal and powders
Zinc oxides and peroxides, n.e.s.
Zirconium oxides, hydroxides, and peroxides, n.e.s.

Other inorganic chemicals n.e.s., as follows:

Alum, crystallized
Aluminum ammonium sulfate
Aluminum chloride, anhydrous
Aluminum chloride hydrate
Aluminum fluoride
Aluminum fluosilicate
Aluminum hydride
Aluminum nitrate
Aluminum phosphate
Aluminum silicate
Aluminum sulfate
Ammonia alum
Ammonium bicarbonate
Ammonium bifluoride
Ammonium borate
Ammonium bromide
Ammonium carbonate
Ammonium chloride
Ammonium chromate
Ammonium dichromate
Ammonium fluosilicate
Ammonium hexafluoroaluminate
Ammonium iodide
Ammonium metavanadate
Ammonium persulfate
Ammonium phosphate, dibasic
Ammonium phosphate, monobasic
Ammonium polyphosphate
Ammonium reineckate
Ammonium sulfate
Ammonium sulfide
Ammonium tungstate
Antimony pentachloride
Antimony pentafluoride
Antimony trichloride
Antimony trifluoride
Antimony trisulfide
Arsenic pentoxide
Arsenic trioxide
Barium chlorate
Barium carbonate
Barium chloride
Barium cyanide
Barium fluoride
Barium nitrate
Barium phosphate, dibasic or secondary
Barium silicate
Barium thiocyanate
Barium titanate
Bismuth chloride
Bismuth iodide
Bismuth nitrate
Bismuth oxychloride
Bismuth subcarbonate
Bismuth subnitrate
Bismuth sulfate
Bismuth tetraoxide
Bismuth trioxide
Borates, refined
Boron compounds and mixtures, n.e.s.
Cadmium bromide
Cadmium carbonate
Cadmium chloride
Cadmium iodide
Cadmium nitrate
Cadmium sulfate
Calcium bromide
Calcium carbide
Calcium carbonate
Calcium carbonate, precipitated
Calcium chloride
Calcium fluoride
Calcium hydride
Calcium hydroxide
Calcium hypochlorite
Calcium hypophosphite
Calcium iodide
Calcium peroxide
Calcium phosphate
Calcium polysulfide
Calcium pyrophosphate
Calcium silicate
Calcium sulfate
Calcium thiosulfate
Calcium tungstate
Carbic cake
Carbic carbide
Carbide powder, *except abrasive powders*
Cesium bromide
Cesium chloride
Cesium iodide
Cesium sulfate
Chalk, precipitated
Chloroplatinic acid
Chromic chloride
Chromic sulfate
Chromium ammonium sulfate
Chromium potassium sulfate
Cobalt compounds, n.e.s.
Copper alloy containing more than 8 percent phosphor
Copper chloride
Copper cyanide
Copper nitrate
Copper oxychloride
Copper sulfate
Copper sulfate, ammoniated
Cupric bromide
Cupric carbonate, basic
Cupric chloride
Cuprous chloride
Cuprous cyanide
Cuprous iodide
Cuprous sulfide
Cyanogen bromide
Cyanogen chloride
Dicalcium phosphate
Dihydroxyaluminum sodium carbonate
Disodium phosphate
Epsom salts
Ferric ammounium sulfate
Ferric bromide
Ferric hypophosphite
Ferric pyrophosphate
Ferrophosphorous containing 15 percent or more by weight of phosphorous
Ferrous ammonium sulfate
Ferrous carbonate
Ferrous chloride
Ferrous sulfate
Fluoroborates, n.e.s.
Gallium compounds, n.e.s.
Germanium compounds
Gold cyanide
Gold sodium thiosulfate
Gold trichloride
Hafnium compounds, n.e.s.

Hydrogen peroxide, concentrations of less than 85 percent
Hydroxylapatite
Iron chloride
Iron phosphate
Iron sulfate
Iron sulfide, artificial
Lead antimonate
Lead arsenite
Lead iodide
Lead nitrate
Lead silicate
Lead silicate, basic
Lead sulfate
Lead sulfate, basic
Lead sulfate, blue basic
Lead sulfate, tribasic
Lead thiocyanate
Lime bisulfate
Lime, chlorinated
Lime phosphate
Lithium compounds, n.e.s.
Magnesium arsenide
Magnesium carbonate
Magnesium chloride
Magnesium fluosilicate
Magnesium hypophosphite
Magnesium perchlorate
Magnesium phosphate
Magnesium silicate
Magnesium silicofluoride
Magnesium stannate
Magnesium sulfate
Magnesium thiosulfate
Magnesium trisilicate
Magnesium tungstate
Manganese acetate
Manganese carbonate
Manganese hypophosphite
Manganous chloride
Manganous nitrate
Manganous sulfate
Manganous sulfide
Mercuric bromide
Mercuric chloride
Mercuric cyanide
Mercuric iodide
Mercuric nitrate
Mercuric oxycyanide
Mercuric potassium iodide
Mercuric sulfate
Mercuric sulfide, black
Mercuric sulfide, red
Mercuric thiocyanate
Mercurous chloride
Mercurous nitrate, hydrated
Mercurous sulfate
Mercury, ammoniated
Mercury fulminate
Molybdenum salts and compounds
Monocalcium phosphate
Monocalcium sulphate
Nickel ammonium sulfate
Nickel carbonate
Nickel chloride
Nickel nitrate
Nickel phosphate
Nickel sulfate
Niobium (columbium) compounds, n.e.s.
Palladium chloride
Palladium salts and compounds
Pea carbide
Potash alum
Potash magnesia carbonate
Potassium alum
Potassium aluminum sulfate
Potassium arsenite
Potassium bicarbonate
Potassium bisulfate
Potassium bromate
Potassium bromide
Potassium carbonate
Potassium chlorate
Potassium chlorochromate
Potassium chromate
Potassium cyanide
Potassium dichromate
Potassium ferricyanide
Potassium ferrocyanide
Potassium fluoride
Potassium fluosilicate
Potassium gold cyanide
Potassium hypophosphite
Potassium iodate
Potassium iodide
Potassium metabisulfite
Potassium nitrate, particle size greater than 100 microns
Potassium perchlorate
Potassium periodate
Potassium permanganate
Potassium persulfate
Potassium phosphate, dibasic
Potassium phosphate, monobasic
Potassium phosphate, tribasic
Potassium pyrophosphate
Potassium silicate
Potassium stannate
Potassium sulfate
Potassium sulfide
Potassium thiocyanate
Potassium tripolyphosphate
Rhenium compounds
Rubidium iodide
Sal soda
Silanes
Silicon carbide, n.e.s.
Silver chloride
Silver cyanide, industrial
Silver iodide
Silver nitrate
Silver oxide
Silver sulfate
Silver sulfide
Soda alum
Sodium aluminate
Sodium ammonium phosphate
Sodium aluminum sulfate
Sodium aluminum phosphate
Sodium antimonate
Sodium arsenate
Sodium azide
Sodium bicarbonate
Sodium bifluoride
Sodium bisulfate
Sodium bisulfite
Sodium bromide
Sodium carbonate
Sodium carbonate peroxide
Sodium chlorate
Sodium chlorite
Sodium chromate
Sodium cyanide
Sodium dichromate
Sodium ferricyanide
Sodium ferrocyanate
Sodium fluorosilicate
Sodium gold cyanide
Sodium hexafluorosilicate
Sodium hexametaphosphate
Sodium hydride and dispersions
Sodium hydrosulfide
Sodium hydrosulfite
Sodium hypochlorite
Sodium hypophosphite
Sodium iodide
Sodium metabisulfite
Sodium metaphosphate
Sodium metasilicate
Sodium metavanadate
Sodium nitrate
Sodium nitrite
Sodium nitroferricyanide
Sodium orthosilicate
Sodium orthovanadate
Sodium paraperiodate
Sodium perborate
Sodium perchlorate
Sodium periodate
Sodium persulfate
Sodium phosphate
Sodium phosphate, dibasic
Sodium phosphate, monobasic
Sodium phosphate, tribasic
Sodium phosphite
Sodium polyphosphate
Sodium polysulfide
Sodium pyrophosphate
Sodium pyrophosphate, acid
Sodium pyrovanadate
Sodium selenite
Sodium sesquicarbonate
Sodium silicate
Sodium silico aluminate
Sodium stannate
Sodium sulfate
Sodium sulfide
Sodium sulfite
Sodium thiocyanate
Sodium thiosulfate
Sodium trimetaphosphate
Sodium tripolyphosphate
Sodium tungstate
Stannic chloride
Stannous chloride
Stannous sulfate
Strontium bromide
Strontium carbonate
Strontium chloride
Strontium iodide
Strontium nitrate
Strontium sulfate
Tantalum compounds, n.e.s.
Tantalum-niobium compounds, n.e.s.
Theophylline
Titanium carbide
Titanium sulfate
Titanium tetrachloride
Titanium trichloride
Tricalcium phosphate
Vanadium carbide
Vanadyl sulfate
Zinc ammonium chloride
Zinc carbonate
Zinc chloride
Zinc chromate
Zinc cyanide
Zinc hydrosulfite
Zinc nitrate
Zinc oxide, U.S.P.
Zinc phosphate
Zinc phosphide
Zinc silicate
Zinc sulfate
Zinc thiocyanate
Zirconium compounds containing one part or more of hafnium to 500 parts of zirconium by weight
Zirconium carbonate, basic

Zirconium phosphate
Zirconium silicate
Zirconium sulfate

Interpretations 25–26

[*Reserved*]

Interpretation 27: Phosphate Materials

Methanococcus
Micrococcus
Peptococcus
Sarcina
Veillonella
Eubacterium
Lactobacillus

Interpretation 29: General Industrial Equipment

The commodities listed below require a validated license for export to **Country Groups S and Z.**

General industrial equipment and parts therefor, n.e.s. *the following only:*

Floor finishers, sanders, scrubbers, and surfacers, industrial type
Flourescent disposal units
Food processing machines
Freeze dryers
Fumigation chambers
Fur-blowing
Fur-treating
Plastic working, n.e.s.
Power sweepers
Power transmission equipment, n.e.s.
Presses, n.e.s.
Printed circuit board laminating presses and lead masters
Printing machines, n.e.s.
Proportioning, mixing, and dispensing resins
Weed cutting, underwater
Weighing machines
Welders, plastic, ultrasonic
Welding machines, n.e.s.
Welding rod brushing and feeders
Wheel tractors, including garden, log skidders, and contractors earthmoving types, n.e.s.

Zirconium phosphate
Zirconium silicate
Zirconium sulfate

Interpretations 25–26

[*Reserved*]

Interpretation 27: Phosphate Materials Subject to Validated Licensing to the U.S.S.R. and Afghanistan

The commodities described below are included in ECCN 6794F and are subject to the policy set forth in §§ 385.2(e) and 385.4(f).

Schedule B[1] No.	Commodity description
416.3000	Phosphoric acid, other than fertilizer grade
480.4500	Phosphates, crude and apatite
480.7015	Phosphoric acid, less than 65 percent available P_2O_5 equivalents
480.7025	Phosphoric Acid, 65 percent or more available P_2O_5 equivalents
480.7030	Normal and enriched superphosphates
480.7050	Concentrated superphosphates
480.7075	Other superphosphates
480.8005	Diammonium phosphates
480.8010	Monoammonium phosphates
480.8018	Other ammonium phosphates
480.8027, 480.8065	Other mixed chemical fertilizers containing 1 percent or more P_2O_5

[1] Commodity description, not Schedule B Number, determines the commodity subject to validated licensing.

Interpretation 28: Commodities and Transactions Not Classified According to Kind

The commodities below require a validated license for export to **Country Groups S and Z.**

Bacteria and protozoa, as follows:
1. Bacteria, as follows:
(a) Attenuated or inactivated systems.
(b) Orders and Suborders, *the following only:*
Chlamydobacteiales
Hyphomicrobiales
Caryophanales
Beggiatoales
Myxobacterales
Rhodobacteriineae
(c) Families and Subfamilies, *the following only:*
Nitrobacteraceae
Methanomonadaeae
Thiobacteriaceae
Caulobacteraceae
Siderocapsaceae
Azatobacteraceae
Rhizobiaceae
Brevibacteriaceae
Propionibacteriaceae
Streptomycetaceae
Serratia
(d) Genera, *the following only:*
Acetobacter
Alginomonas
Azotomonas
Mycoplana
Photobacterium
Protaminobacter
Zymomonas
Achromobacter
Agarbacterium
Alcaligenes
Aerobacter
Alginobacter
Paracolobactrum
Methanococcus
Micrococcus
Peptococcus
Sarcina
Veillonella
Eubacterium
Lactobacillus
Leuconostoc
Pediococcus
Mycococcus
Saprospira
Spirochaeta
Grahamella
Anaplasma
Ehrlichia
Neorickettsiella
Symbiotes
Wolbachia
2. Protozoa, as follows:
(a) Classes, *the following only:*
Ciliata
Suctoria
(b) Orders, *the following only:*
Chrysomonadida
Cryptomonadida
Phytomonadida
Euglenoidida
Chloromonadida
Hypermastigida
Proteomyxida
Mycetomyxida
Testacida
Foraminiferida
Heliozoida
Radiolarida
Gregarinida
(c) Families, *the following only:*
Prorocentridae
Cystodiniidae
Pronoctilucidae
Pauchetiidae
Noctilucidae
Polykrikidae
Peridiniidae
Dinophysidae
Multiciliidae
Phalansteriidae
Cadosigidae
Bicosoecidae
Amphimonadidae
Trimastigidae
Streblomastigidae
Pyrsonymphidae
Devesconvinidae
Calonymphidae
Naegleriidae
Amoebidae
Paramoebidae
Selenococcidiidae
Aggregatidae
Dabelliidae
Adeleidae
Ceratomyxidae
Trilosporidae
Myxidiidae
Tetractionomyxidae
Sphaeractionomyxidae
Trisctionomyxidae
Heractionomyxidae
Coccosporidae
Mrazekiidae
Telomyxidae

Interpretation 29: General Industrial Equipment

The commodities listed below require a validated license for export to **Country Groups S and Z.**

General industrial equipment and parts therefor, n.e.s. *the following only:*
Abrasive circulators
Abrasive-coating
Accumulators, hydraulic
Aerators
Agricultural machines and applicances, n.e.s.
Air-conditioning machines, n.e.s.
Air or gas compressors, n.e.s.
Air heaters, portable, fuel, fired, n.e.s.
Armature winding
Assembling fixtures, production, *except for production of military equipment*
Basket-making
Battery-making
Binoculars and telescopes, including astronomical telescopes, n.e.s.
Bituminous pavers, finishers, and spreaders
Blenders
Boiler room specialty tools
Bottling, canning, cleaning, dishwashing, filling, packaging, and sealing machines, n.e.s.
Broom-making
Brush-making
Button covering
Button-making
Cable-making, n.e.s.
Cable spinning
Calendering machines and similar rolling machines, n.e.s.
Candle making
Carpet sweepers, hand
Cattle stunners
Centrifuges, filtering, and purifying machines for liquids, air, and gases, n.e.s.
Cigarette and cigar making and other tobacco processing
Clay guns
Cleaners, ultrasonic, n.e.s.
Cleaning equipment, n.e.s., for magnetic tape and other recording media
Cleaning units, sack
Coil winding for electrical components
Coiling, flexible casing or flexible tube
Color mixing and dispensing
Concrete pavers, finishers, and spreaders
Coolers, evaporative type
Cordage making
Cranes, n.e.s., nonmilitary
Creosoting, wood products
Dehumidifiers, non-freezing
Diving bells or suits, mechanically equipped
Drawing, marking out, calculating, drafting, measuring, and checking appliances and machines, mechanical, nonelectric, or non-electronic, n.e.s.
Environmental chambers, n.e.s.
Excavating, leveling, mining, oilwell drilling, well drilling, construction, and maintenance equipment, n.e.s.[1]
Fans and blowers, n.e.s.
Fermentors
Filament winding, n.e.s.
Filters, ferro-magnetic
Flame arrestors

[1] A validated license is required for export of oil well drilling equipment and oil field wire line and down hole equipment to the USSR, Estonia, Latvia, and Lithuania.

Floor finishers, sanders, scrubbers, and surfacers, industrial type
Flourescent disposal units
Food processing machines
Freeze dryers
Fumigation chambers
Fur-blowing
Fur-treating
Garbage grinders, commercial and industrial
Gas operated welding, cutting, brazing, and surface tempering machines and appliances, n.e.s.
Gas or liquid supply meters, n.e.s.
Gas turbine engines, n.e.s.
Glass working machines, n.e.s.
Grinders and crushers, laboratory
Hand tools, n.e.s.
Hat-blocking and hat-making
Homogenizers, laboratory
Humidifiers, air
Ice breakers
Ice-crusher slingers
Ice saw and drill, combination type, engine driven
Impregnators, non-centrifugal
Incinerators, commercial and industrial
Incubator shalkers
Industrial and laboratory nonelectric furnaces and ovens, n.e.s.
Internal combustion engines, reciprocating
Internal pneumatic line-up clamps for welding transmission line pipe
Lifting, loading, and conveying machines and equipment, n.e.s.
Line-travelling coating and wrapping for pipes and tubes
Linoleum-making
Lubricating
Machinery and equipment, n.e.s., for the manufacturing and assembling of electronic components, n.e.s.
Machines, n.e.s., for processing and working wood, cork, bone, ebonite, glass, plastics, cement products, stone, and similar mineral materials.
Machines, n.e.s., for treatment of a material involving a change in temperature.
Mattress filling
Measureograph for measuring cloth
Mechanical appliances for testing physical properties of industrial materials, n.e.s.
Mechanical instruments, n.e.s., for measurement, transmission, or control of temperature, pressure, or other variables of liquids or gases
Mechanical watches and clocks
Metal finishing, chemical
Metallurgical, mill, and foundry equipment, n.e.s.
Metering and mixing, n.e.s.
Microscopes, except electron and proton, n.e.s.
Nutters
Office machines, n.e.s.
Oil field wire line and downhole equipment[1]
Optical elements and appliances, n.e.s.
Paint markers and mixers
Paper making machinery
Photoprinters, n.e.s.
Pin ticketing (tag-to-product applying)
Pipe line cleaning
Plastic working, n.e.s.
Power sweepers
Power transmission equipment, n.e.s.
Presses, n.e.s.
Printed circuit board laminating presses and lead masters
Printing machines, n.e.s.
Proportioning, mixing, and dispensing resins
Pulsating dampeners
Pumps for liquids, n.e.s.
Reels, hose and cable, power operated
Refractory injection guns
Refrigerant charging apparatus, automatic
Refrigeration equipment, n.e.s.
Ribbon coiling
Roller coaters, n.e.s.
Rope-making
Rubber extruding and processing
Rubber products manufacturing, n.e.s.
Searchlights and spotlights
Shaking machines, laboratory
Shock absorbers, mechanical or hydraulic
Shoelace tipping
Smoke generators, *except military*
Snow throwers, self-propelled
Soldering, automotive wave and reflow type
Sonic sewing machines
Special purpose industrial vehicles, n.e.s., non-military, *e.g.*, cement mixers, street and airfield cleaning, asphalt mixers, seismograph thumper mounted trucks, mine shuttle vehicles, trucks with derrick assembly and similar equipment for drilling, mounted integral to truck frame, etc.
Spinning
Spraying machines, n.e.s.
Steam cleaning
Steam generating power boilers, engines, and turbines, n.e.s.
Stone products manufacturing
Surgical dressing making
Surveying, hydrographic, meteorological, hydrological, and geophysical instruments, n.e.s.
Sweepers, road
Tank-cleaning
Tanks with agitators
Taping machines for covering wire and cable
Textile and leather working machines, n.e.s.
Tire building, recapping, and repairing
Toothbrush manufacturing
Track press for repairing tractor crawlers or tracks
Transfer machines, nonmetalworking, *except for assembling, gauging, or packing of munitions*
Tube cleaners
Tube expanders, maintenance type
Typemaking and typesetting machines, n.e.s.
Vacuum cleaners
Valves, plumbing fixtures, cocks, and taps, n.e.s.
Vegetable oil mill
Vibrating paper joggers
Vibrators, hydraulic
Wall-board plaster core
Watch-cleaning
Water bath shakers
Watercraft controls, nonelectric, *except military* (for example, steering equipment excluding rudders and remote controls)
Water turbines, water engines, wind, and hot air engines
Wax molding
Waxing, industrial
Weed cutting, underwater
Weighing machines
Welders, plastic, ultrasonic
Welding machines, n.e.s.
Welding rod brushing and feeders
Wheel tractors, including garden, log skidders, and contractors earthmoving types, n.e.s.
Wind tunnels, subsonic
Winding, n.e.s.
Windshield wipers, nonelectric
Wire braiding, wire rope-making, wire stitching, and measuring, stripping, cutting, and terminal attaching
Zipper manufacturing

[1] A validated license is required for export of oil well drilling equipment and oil field wire line and down hole equipment to the U.S.S.R., Estonia, Latvia and Lithuania.

Interpretation 30: Petroleum and Natural Gas Exploration and Production Equipment

The following is an illustrative list of petroleum and natural gas exploration and production equipment subject to validated license control for export to the USSR, Estonia, Latvia, and Lithuania. This list is illustrative only. It does not include all commodities which are covered by CCL entry Nos. 6191, 6391, and 6598.

(1) All equipment related to off-shore floating or bottom-supported drilling and producing structures, including all gathering equipment.

(2) Production and pipeline equipment designed for use in Arctic regions and the Polar Seas.

(3) Rotary type well drilling rigs and derricks.

(4) Parts, accessories, and equipment for well drilling machines, including, but not limited to, drill bits, box and pin tool joints, drill pipe, drill collars, rotary tables, and blow-out preventors.

(5) Petroleum gas-lift equipment.

(6) Oil well and oil field pumps, including, but not limited to, high performance types of submersible or conventional pumping units.

(7) Pipeline valves for oil and gas pipelines and high pressure steel hoses, pipes, and connections.

(8) Wire line and down-hole equipment and accessories, including, but not limited to, collars, stabilizers, mandrels, packers, multicompletion equipment, gun perforators, and telemetry equipment.

(9) Optical, electrical, or electronic geophysical and mineral prospecting instruments, including magnetic, gravity, seismic, bore-hole logging and high-resolution remote sensing equipment.

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federal register

Tuesday
December 30, 1980

Part III

Department of Health and Human Services

Food and Drug Administration

Medical Devices; Classification

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 78N-2830]

as follows: class I, general controls; class II, performance standards; and class III, premarket approval.

Most devices are not classified under section 513 of the act until after FDA has (1) received a recommendation from a device classification panel (an FDA Panel's tentative classification recommendations on file with the office of the Hearing Clerk (HFA–305), Food and Drug Administration, and announced the availability of the report to the public by notice published in the **Federal Register** of June 25, 1976 (41 FR

its registration and listing name and three-letter code and used for purposes of device listing under section 510 of the act (21 U.S.C. 360). However, FDA is still making changes in the names and identifications of generic types of devices in the classification regulations

Individual Dental Device Classification Regulations

Elsewhere in this issue of the **Federal Register**, FDA is issuing 185 individual proposed regulations to classify each dental device. FDA is proposing to

section 510(k) of the act (21 U.S.C. 360(k)) and Part 807 (21 CFR Part 807) of the regulations cannot show merely that the device is accurately described by the section title and identification provisions of a classification regulation. Although a newly offered device may be

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 78N-2830]

Classification of Dental Devices; Development of General Provisions

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing general rules applicable to the classification of all dental devices. The Medical Device Amendments of 1976 require FDA to classify all medical devices intended for human use into three categories: class I, general controls; class II, performance standards; and class III, premarket approval. In the preamble to this proposal, FDA describes the development of the proposed regulations classifying individual dental devices, which are being published elsewhere in this issue of the **Federal Register.** The preamble also describes the activities of the Dental Device Section of the Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel, an FDA advisory committee, that makes recommendations to FDA concerning the classification of dental devices.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Device Classification System

The Medical Device Amendments of 1976 (Pub. L. 94-295, hereinafter called the amendments) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) establishes three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories are as follows: class I, general controls; class II, performance standards; and class III, premarket approval.

Most devices are not classified under section 513 of the act until after FDA has (1) received a recommendation from a device classification panel (an FDA advisory committee); (2) published the Panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. These steps must precede the classification of any device that was in commercial distribution before May 28, 1976 (the date of enactment of the amendments) and that was not previously regarded by FDA as a new drug under section 505 of the act (21 U.S.C. 355). A device that is first offered for commercial distribution after May 28, 1976, and that is substantially equivalent to a device classified under this scheme, is classified in the same class as the device to which it is substantially equivalent.

A device that FDA previously regarded as a new drug, or a newly offered device that is not substantially equivalent to a device that was in commercial distribution before the amendments, is classified by statute into class III. These two types of devices are classified into class III without any FDA rulemaking proceedings. The agency determines whether new devices are substantially equivalent to previously offered devices by means of the premarket notification procedure in section 510(k) of the act (21 U.S.C. 360(k)) and Part 807 of the regulations (21 CFR Part 807).

Related Regulations

In the **Federal Register** of July 28, 1978 (43 FR 32988), FDA issued final regulations describing the procedures for classifying devices intended for human use. These regulations, which were proposed in the **Federal Register** of September 13, 1977 (42 FR 46028), supplement the agency's regulations in Part 14 (21 CFR Part 14) governing the use of advisory committees. The agency also issued interim device classification procedures in a notice published in the **Federal Register** of May 19, 1975 (40 FR 21848).

Activities of Panel

Anticipating enactment of the amendments, FDA established several advisory committees to make preliminary recommendations on device classification. The Dental Device Classification Panel (the Panel) was originally chartered on October 15, 1974, as the Panel on Review of Dental Devices. FDA placed a report of the Panel's tentative classification recommendations on file with the office of the Hearing Clerk (HFA-305), Food and Drug Administration, and announced the availability of the report to the public by notice published in the **Federal Register** of June 25, 1976 (41 FR 26245). On August 9, 1976, the Panel and other preamendments device classification panels were recharterd to reflect their new responsibilities under the amendments. The agency directed each panel to reconsider its preamendments classification recommendations in light of the new requirements. In 1976 and 1977, the Panel reviewed all devices that FDA had referred to it to make certain that its recommendations were in accord with the amendments. Throughout the Panel's deliberations, interested persons were given an opportunity to present their views, data, and other information concerning the classification of dental devices. The Panel also invited experts to testify and sought information on many devices from the published literature.

In October 1977, the Panel submitted to FDA a preliminary report of its recommendations. The report included a roster of current and former Panel members and consultants and listed all meeting dates. The agency placed a copy of the report in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, and announced its availability to the public by notice published in the **Federal Register** of November 29, 1977 (42 FR 60792). Also available in the office of the Hearing Clerk are summary minutes from all Panel meetings, verbatim transcripts of meetings held after May 28, 1976 (the date of enactment of the amendments), and all references cited in individual dental device proposed classification regulations.

On April 28, 1978, the agency terminated all of the device classification panels, and then reestablished them with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, and 21668) and May 26, 1978 (43 FR 22672 and 22673). The Dental Device Classification Panel was terminated, and its functions are now conducted by the Dental Device Section of the Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel.

Relationship Between the Device Names in the Device Registration and Listing Codes and the Device Names in Classification Regulations

Some manufacturers have become accustomed to identifying a device by its registration and listing name and three-letter code and used for purposes of device listing under section 510 of the act (21 U.S.C. 360). However, FDA is still making changes in the names and identifications of generic types of devices in the classification regulations for all devices for which final regulations have not been published. Because FDA has not use the present device registration and listing names in the proposed and final classification regulations, FDA has prepared an index of names of generic types of medical divices used in classification regulations to aid a manufacturer in matching its device with the proper classification regulation. The index shows the device registration and listing product code for each device reviewed by a classification panel and the corresponding name of the generic type of device and classification panel in which the device classification will be published in the **Federal Register.** The Agency announced the availability of this index in the **Federal Register** of March 6, 1979 (44 FR 12269). If necessary, this index will be updated and the availability of the revised index will be reannounced in the **Federal Register.** FDA believes that, because this index is available, it is unnecessary to include or cross-reference the present device registration and listing name and product code in the classification regulations. In the future, following publication of most of the device classification regulations, the agency will revise and reissue the device registration and listing product code, so the device names to be used for registration and listing correspond to the device names in the final device classification regulations.

List of Dental Devices

In 1972, FDA surveyed device manufacturers to identify the devices for which classification regulations would be needed. Following this survey, FDA developed a list of dental devices. The Panel supplemented the list utilizing its members' knowledge of dental devices in use. Devices that were solely for experimental or investigational use or that were not generally available were not included.

FDA is proposing to establish a new Part 872 in Title 21 of the Code of Federal Regulations. Part 872 will consist of sections identifying each dental device with a brief narrative description and stating the classification of that device. A list of the dental devices appears elsewhere in this preamble.

Individual Dental Device Classification Regulations

Elsewhere in this issue of the **Federal Register,** FDA is issuing 185 individual proposed regulations to classify each dental device. FDA is proposing to classify 49 dental devices into class I (general controls), 122 dental devices into class II (performance standards), 13 dental devices into class III (premarket approval); and one dental device into either class I or class II, depending upon the construction of the device. The agency also is publishing the recommendations of the Panel regarding these devices, as required by section 513(c)(2) and (d)(1) of the act (21 U.S.C. 360c(c)(2) and (d)(1)).

Interaction Between the Bureau of Medical Devices and the Bureau of Radiological Health

In addition to its authority under the amendments, FDA has authority to regulate some medical devices under the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602). Public Law 90-602 authorized FDA to establish and execute a program to control electronic product radiation that includes performance standards for electronic products and their related accessories. Radiation emission performance standards have been, and will continue to be, established for those medical devices that emit electronic product radiation. Performance standards have already been promulgated for diagnostic X-ray systems and their major components (21 CFR 1020.30); radiographic equipment (21 CFR 1020.31); fluoroscopic equipment (21 CFR 1020.32); laser products (whether or not for medical use) (21 CFR 1040.11), and ultrasonic therapy products (21 CFR 1050.10). The agency will continue to use its authority over radiation-emitting electronic medical products under both the amendments and the Radiation Control for Health and Safety Act of 1968, as appropriate.

Published Panel Recommendations

Each published Panel recommendation concerning a dental device includes the information described below.

1. *Identification.* Both the Panel recommendation and the proposed FDA classification regulation include a brief narrative identification of the device. The identification statement is necessarily broad because it applies to a category or type of device rather than to a specific device. As explained in proposed § 872.1, any manufacturer of a newly offered device who files a premarket notification submission under section 510(k) of the act (21 U.S.C. 360(k)) and Part 807 (21 CFR Part 807) of the regulations cannot show merely that the device is accurately described by the section title and identification provisions of a classification regulation. Although a newly offered device may be described accurately by the title and identification in a classification regulation, it is nevertheless in class III under section 513(f) of the act if it is not substantially equivalent to a preamendments device (or to a postamendments device that has already been reclassified from class III into class I or class II). It is not practical for FDA to publish an identification of each type of device that is so detailed as to anticipate every product feature that may be relevant in determining whether a new device is substantially equivalent to previous devices classified by the regulation. The agency believes that this problem was recognized in, and addressed by, the premarket notification procedures in section 510(k) of the act. Accordingly, any manufacturer who submits a premarket notification submission should state why the manufacturer believes the device is substantially equivalent to other devices in commercial distribution, as required by § 807.87 (21 CFR 807.87), and whether the device is described in a classification regulation.

2. *Recommended classification.* Each Panel's recommendation describes whether the device is recommended for classification into class I (general controls), class II (performance standards), or class III (premarket approval).

For each device recommended for classification into class I, the Panel considered whether the device should be exempt from any requirements under certain sections of the act: section 510 (21 U.S.C. 360, registration), section 519 (21 U.S.C. 360i, records and reports), and section 520(f) (21 U.S.C. 360j(f), the good manufacturing practice requirements). The Panel recommended that several devices be exempted from section 510, section 519, and section 520(f) of the act in the manufacture of these devices. The agency's policy concerning these exemption recommendations is discussed below in the section of this proposal concerning "Exemptions for Class I Devices."

A Panel recommendation that a device be classified into class II includes the Panel's recommended priority ("high," "medium," or "low") for establishing a performance standard for the device. Similarly, each Panel recommendation that a device be classified into class III includes the

Panel's recommended priority ("high," "medium," or "low") for application of premarket approval requirements to that device. As explained below in the section of this notice concerning "Priorities for Class II and III Devices,"

5. *Risks to health.* In identifying the risks to health presented by dental devices, the Panel recognized that few devices are completely free of risk. The Panel listed the risks it considered most significant, especially those that are

of the agency's letter to members of the Section is on file with the Hearing Clerk, at the address noted above (Ref. 1).

FDA cautions that the final classification of a device may differ from the proposal. Factors that may

and other relevant factors. The agency's priorities will be reflected in the agency's annual budget request and other publicly available documents and may be published in the **Federal Register.**

The agency intends to proceed as

provides that FDA may exempt a device recommended for classification into class I from a requirement under the following sections of the act: section 510 (21 U.S.C. 360), registration; section 519 (21 U.S.C. 360i), records and reports; and

part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation under Part 820 (21 CFR Part 820), published in the **Federal Register** of July 21, 1978 (43 FR 31508). In

Panel's recommended priority ("high," "medium," or "low") for application of premarket approval requirements to that device. As explained below in the section of this notice concerning "Priorities for Class II and III Devices," the agency is not, however, proposing the establishment of FDA priorities at this time.

3. *Summary of reasons for recommendation.* The summary of reasons for the Panel's recommendation explains why the Panel believes that a particular device meets the statutory criteria for classification into class I, II, or III.

Except in those instances in which FDA's classification proposal differs from the Panel's recommendation, FDA is adopting the Panel's summary of reasons as the agency's statement of the reasons for issuing the regulations, as required by section 517(f) of the act (21 U.S.C 360g(f)).

4. *Summary of date on which the recommendation is based.* In many cases, the Panel based its recommendations on Panel members' personal knowledge of, and clinical experience with, the devices under review. The Panel particularly relied upon clinical experience and judgment when considering a simple device that had been used extensively and was accepted widely before the amendments were enacted. The legislative history of the amendments provides that the term "data" has a special meaning in section 513(c)(2)(A) of the act, which requires that a Panel recommendation summarize the data upon which a recommendation is based. As used in that section, "data" refers not only to the results of scientific experiments, but also to less formal evidence, other scientific information, or judgments of experts (House Committee on Interstate and Foreign Commerce, Medical Device Amendments of 1976, H.R. Rept. No. 94–853, 94th Congress, 2d Session 40 (1976)). FDA has determined that clinical experience and judgment constitute valid scientific evidence for classifying certain devices.

In many cases, FDA sought more data and information concerning the classification of a device than were cited by the Panel. References to these data and information are found in the "Proposed Classification" section of the preambles to individual dental device regulations. The agency is adopting as its statement of the basis for issuing the regulation under section 517(f) of the act the Panel's summary of the data on which a recommendation to classify a device is based, together with any additional data and information cited in the preamble to the proposed classification regulation.

5. *Risks to health.* In identifying the risks to health presented by dental devices, the Panel recognized that few devices are completely free of risk. The Panel listed the risks it considered most significant, especially those that are unique to the individual device. In some cases, FDA has identified risks to health presented by a device in addition to those listed by the Panel. These additional risks are set out in the section of the preamble concerning the "Proposed Classification" of a particular device.

In addition to those hazards explicitly mentioned, the Panel and FDA recognize that there are general hazards associated with certain types of devices. For example, trauma may be associated with moving or powered device components. In any diagnostic device, accurate results must be obtained in a usable form in order to avoid misdiagnosis and incorrect patient management or to avoid the additional radiation exposure necessitated by a repeat procedure. The absence of a discussion of these general hazards does not imply that they are insignificant or that they were not considered in determining a proposed classification.

Because the classification recommendations and FDA regulations may not identify all risks to health presented by dental devices, future regulations establishing performance standards under section 514 of the act (21 U.S.C. 360d) or requiring premarket approval under section 515(b) of the act (21 U.S.C. 360e(b)) may identify additional risks to health to be addressed by FDA requirements.

Proposed classification

Each proposed regulation to classify a dental device states whether FDA agrees with the Panel's recommendation, describes the agency's proposed classification of the device, and proposes a new section in Part 872 in which the device classification will be codified. FDA is proposing that 75 of the devices that the Dental Device Section of the Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel recommended for classification into class I be classified into class II. The agency has identified risks to health, such as lack of biocompatibility of materials used in the devices, that would be controlled by performance standards. The agency believes that general controls alone are insufficient to control the risks to health presented by these 75 devices. In March 1979, FDA sent a letter to each member of the Dental Device Section. The letter to the members of the Section explained the agency's proposed change in the classification of the 75 devices. A copy of the agency's letter to members of the Section is on file with the Hearing Clerk, at the address noted above (Ref. 1).

FDA cautions that the final classification of a device may differ from the proposal. Factors that may cause such a change include comments, the agency's reconsideration of existing data and information, and the agency's consideration of new data and information.

Panel Definition of a Dental Implant

The Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel identified a dental implant as a device that is surgically placed into, or in opposition to, the maxilla or mandible and which protrudes through the mucosa of the oral cavity. According to this Panel definition, restorative materials placed in the teeth, such as amalgams, gold alloys, silicates, and cements, are not implants.

Priorities for Class II and Class III Devices

For a device that the Panel recommends classification into class II or class III, section 513(c)(2)(A) of the act requires that the Panel recommendation include, to the extent practicable, a recommendation for the assignment of a priority for application to the device of performance standards or premarket approval requirements. In developing its advice concerning priorities ("high," "medium," or "low") of devices recommended for classification into class II or class III, the Panel compared the device with other dental devices, based on information available to the Panel members concerning the relative importance of use of the device and the relative risks presented by the device. The Panel recommended assignment of a "high priority" only to those class II or class III devices that the Panel believed should receive the agency's immediate attention.

FDA is not proposing at this time to establish priorities for development of performance standards for all class II devices. Section 513(d)(3) of the act authorizes, but does not require, establishment of these priorities. In the **Federal Register** of February 1, 1980 (45 FR 7489 and 45 FR 7493), FDA published notices identifying which class II devices the agency found to warrant a high priority for the development of performance standards. At a later date, the agency will establish priorities for the development of standards for the remaining class II devices. All priorities established by the agency are based on the classification panels' recommendations, available resources,

and other relevant factors. The agency's priorities will be reflected in the agency's annual budget request and other publicly available documents and may be published in the **Federal Register.**

The agency intends to proceed as quickly as the statute and panel resources permit to require premarket approval of devices classified into class III. Two factors affect the length of time before FDA requires submission of premarket approval applications for any particular device that is classified by an FDA regulation into class III: the number of devices reviewed by a panel and the priority of a particular device in relation to other class III devices considered by a panel. For example, where FDA classifies into class III only a few devices within a Panel's specialty area, FDA may, at the same time, publish regulations under section 515(b) of the act requiring premarket approval for many of the class III devices considered by the Panel, regardless of whether of a high or a low priority. Where practical, FDA will publish these section 515(b) regulations during the grace period (30 months) following classification, during which 30 month period a device classified into class III by FDA regulation may lawfully remain on the market without a premarket approval application. The grace period is provided for in section 501(f) of the act (21 U.S.C. 351(f)).

Products That Have Both Medical and Nonmedical Uses

Some products have both medical and nonmedical uses. FDA will regulate a multipurpose product as a medical device if it is intended for a medical purpose, i.e., for "use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease," or "to affect the structure or any function of the body." Section 210(h) of the act (21 U.S.C. 321(h)). FDA will determine the intended use of a product based upon the expressions of the person legally responsible for its labeling and by the circumstances surrounding its distribution. The most important factors the agency will consider in determining the intended use of a particular product are the labeling, advertising, and other representations accompanying the product. Products that have medical uses only are clearly intended for medical purposes and, therefore, will be regulated as medical devices whether or not medical claims are made for them.

Exemptions for Class I Devices

Section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c) provides that FDA may exempt a device recommended for classification into class I from a requirement under the following sections of the act: section 510 (21 U.S.C. 360), registration; section 519 (21 U.S.C. 360i), records and reports; and section 520(f) (21 U.S.C. 360j(f)), good manufacturing practice.

Under section 510 of the act, a person "engaged in the manufacture, preparation, propagation, compounding or processing of * * * a device or devices" must register with FDA (section 510 (b) through (i)), file a list of devices (section 510(j)), and notify FDA at least 90 days before beginning commercial distribution of a device (section 510(k)). (See 21 CFR Part 807.) Section 510(g)(4) authorizes the agency to exempt a device from section 510 if it finds that compliance with that section is not necessary for the protection of the public health. In § 807.65 (21 CFR 807.65), FDA has exempted certain classes of persons from section 510 of the act. Several device panels have recommended that manufacturers of certain class I devices also be exempted from all or some of the requirements of section 510. The agency has determined that protection of the public health requires that manufacturers of medical devices, other than those already exempt under § 807.65, register and list their products with FDA to ensure that the agency can identify these manufacturers and their products and conduct necessary inspections.

The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions for certain devices. Thus, the agency has proposed to exempt manufacturers of certain devices from Subpart E of Part 807 of the regulations, which implements section 510(k) of the act. The agency does not, at this time, anticipate that premarket approval will be required for these devices. The agency believes that the semiannual updating of device listing under section 510(j)(2) of the act will provide FDA with adequate notice of new products within these generic types of devices.

Section 519 of the act authorizes FDA to issue regulations requiring device manufacturers, importers, and distributors to establish and maintain such records, make such reports, and provide such information as the agency may reasonably require to assure that devices are not adulterated or misbranded and to otherwise assure their safety and effectiveness. The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation under Part 820 (21 CFR Part 820), published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations in accordance with section 519 of the act, incuding a regulation requiring reports to FDA of experiences with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempted from the requirements, and FDA will issue exemptions that are appropriate.

The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from most requirements of the device GMP regulation. As explained below the exemption will not extend to two device GMP records requirements.

The device GMP regulation was published in final form in the **Federal Register** of July 21, 1978. At the time of the Panel's recommendations, the GMP regulation had not yet been promulgated, and the agency had not yet developed criteria for exempting manufacturers of a class I device from GMP requirements. The agency has now decided that, if any one of the following criteria is met, FDA will consider exempting from the GMP regulation manufacturers of a class I device that is not labeled or otherwise represented as sterile. The agency will not, however, exempt manufacturers of a device from general requirements concerning records or complaint files. The criteria are:

1. FDA has determined, based on adequate information about current practices in the manufacture of the device and about user experience with the device, that application of the GMP regulation is unlikely to improve the safety and effectiveness of the device.

2. FDA has determined that all possible defects relating to the safety and effectiveness of the device are readily detectable before use, either through visual examination by the user or routine testing before use, e.g., testing a clinical laboratory reagent with positive and negative controls.

3. FDA has determined that any defect in the device that is not readily detectable will not result in a device failure that could have an adverse effect on the patient or other user.

FDA has determined that no device that is labeled or otherwise represented as sterile will be exempted from the device GMP regulation. A sterile device must be subject to the entire GMP

proposed exemptions of manufacturers of devices, whether the exemptions are proposed in response to recommendations of the panels or on the agency's initiative. Comments

exemption or variance from the device GMP regulation. These petitions may be submitted in accordance with provisions of section 520(f)(2) opf the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(f)(2)). The agency announced the

Section	Device	Docket No.	Class
	Subpart D—Dental Prosthetic Devices—Continued		
872.3500	Polyvinylmethylether maleic anhydride (PVM-MA), acid co-polymer and carboxymethyl cellulose sodium (NACMC) denture adhesive	78N-2676	III

FDA has determined that no device that is labeled or otherwise represented as sterile will be exempted from the device GMP regulation. A sterile device must be subject to the entire GMP regulation to ensure that manufacturers adequately reduce the bioburden (number of microorganisms) on the device and its components during the manufacturing process. This reduction is accomplished through adherence to a comprehensive quality assurance program as is required by the GMP regulation, with adequate environmental controls, trained personnel, appropriate maintenance and calibration of sterilization equipment, recordkeeping concerning lot sterility, strict packaging and labeling controls, and other quality assurance measures.

The agency also has determined that no exemption from the device GMP regulation will extend to § 820.180, with respect to general requirements concerning records, or § 820.198, with respect to complaint files. The agency believes that granting exemptions from these sections would not be in the public interest and that compliance with these sections is not unduly burdensome for device manufacturers. To ensure that device manufacturers have adequate systems for complaint investigation and followup, all manufacturers are required to comply with the complaint file requirements. All device manufacturers also are required to comply with the general requirements concerning records to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, can determine whether the manufacturer's corrective actions are adequate, and can determine whether the exemption from other sections of the GMP regulation is still appropriate.

In general, FDA has not initiated proposals to exempt manufacturers of devices from requirements under section 510 or 520(f) of the act, but has acted on the basis of exemption recommendations of the device classification panels. However, FDA has proposed occasionally to exempt manufacturers of certain devices classified into class I or class II from the requirements of certain sections of the GMP regulation, according to the above exemption criteria. Manufacturers and other interested persons may submit comments on the appropriateness of the proposed exemptions of manufacturers of devices, whether the exemptions are proposed in response to recommendations of the panels or on the agency's initiative. Comments requesting additional exemptions should be supported by information showing that the exemption of manufacturers of a device from the premarket notification requirement or the GMP regulation is consistent with the criteria discussed above.

Guidelines for Preparing Petitions Requesting Exemption or Variance From the Device GMP Regulation for Devices Classified Into Class I or Class II

FDA has prepared guidelines on the procedures that should be followed by persons who wish to submit petitions for exemption or variance from the device GMP regulation. These petitions may be submitted in accordance with provisions of section 520(f)(2) opf the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(f)(2)). The agency announced the availability of the guidelines in a notice published in the **Federal Register** of January 18, 1980 (45 FR 3671).

List of Dental Devices

The following is a list of dental devices that FDA is proposing to classify, the section and subpart of Part 872 in the Code of Federal Regulations under which the regulation classifying the device will be codified, the docket number of the proposed classification regulation, and the proposed classification of each device.

Section	Device	Docket No.	Class
	Subpart B—Dental Diagnostic Devices		
872.1500	Gingival fluid measurer	78N-2831	I
872.1720	Pulp tester	78N-2834	II
872.1730	Electrode gel for pulp taster	78N-2835	II
872.1800	Extraoral source X-ray system	78N-2836	II
872.1810	Intraoral source X-ray system	78N-2837	II
872.1820	Dental X-ray exposura alignment device	78N-2838	II
872.1830	Cephalometer	78N-2839	II
872.1840	Dental X-ray position indicating device	78N-2840	II
872.1850	Lead-lined position indicator	78N-2841	II
872.1905	Dental X-ray film holder	78N-2842	II
	Subpart D—Dental Prosthetic Devices		
872.3050	Amalgam alloy	78N-2843	II
872.3060	Gold-based alloy for clinical use	78N-2844	II
872.3070	Precious metal alloy for clinical use	78N-2845	II
872.3080	Mercury and alloy dispenser	78N-2846	II
872.3100	AC-powered dental amalgamator	78N-2847	II
872.3110	Dental amalgam capsule	78N-2848	II
872.3130	Preformed anchor	78N-2849	II
872.3140	Resin applicator	78N-3024	I
872.3150	Articulator	78N-2850	I
872.3165	Precision attachment	78N-2851	II
872.3175	Performed bar	78N-2852	II
872.3200	Resin tooth bonding agent	78N-2853	I
872.3220	Facebow	78N-2854	I
872.3240	Dental bur	78N-2855	II
872.3250	Calcium hydroxide cavity liner	78N-2856	II
872.3260	Cavity varnish	78N-2857	II
872.3275	Dental cement	78N-2858	II
872.3285	Preformed clasp	78N-2859	II
872.3295	Preformed wire clasp	78N-2860	II
872.3300	Hydrophilic resin coating for dentures	78N-2861	II
872.3310	Coating material for resin fillings	78N-2862	II
872.3330	Preformed crown	78N-2863	II
872.3350	Gold and stainless steel cusp	78N-2864	II
872.3360	Praformed cusp	78N-2865	II
872.3400	Acacia and karaya with sodium borate denture adhesive.	78N-2866	III
872.3410	Carboxymethylcellulose sodium (40 to 100 percent) denture adhesive.	78N-2867	II
872.3420	Carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive.	78N-2868	III
872.3430	Carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) denture adhesive.	78N-2869	II
872.3440	Carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesive.	78N-2870	II
872.3450	Karaya denture adhesive	78N-2871	II
872.3460	Karaya and ethylene oxide homopolymer denture adhesive	78N-2872	II
872.3470	Karaya with sodium borate denture adhesive	78N-2873	III
872.3480	Polyacrylamide polymer (modified cationic) denture adhesive	78N-2874	III
872.3490	Polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive.	78N-2875	II

Section	Device	Docket No.	Class
	Subpart D—Dental Prosthetic Devices—Continued		
872.3500	Polyvinylmethylether maleic anhydride (PVM-MA), acid co-polymer and carboxymethyl cellulose sodium (NACMC) denture adhesive	78N-2876	III
872.3510	Polyvinylmethylether maleic acid calcium-sodium double salt and carboymehtylcellulose sodium denture adhesive.	78N-2877	II
872.3520	OTC Denture cleanser	78N-2878	II
872.3530	Mechanical denture cleaner	78N-2879	II
872.3540	Over-the-counter (OTC) denture cushion	78N-2880	III
872.3550	Over-the-counter (OTC) denture pad	78N-2881	III
872.3560	Over-the-counter (OTC) denture reliner	78N-2882	III
872.3570	Over-the-counter (OTC) denture repair kit	78N-2883	III
872.3580	Preformed gold denture teeth	78N-2884	II
872.3590	Preformed plastic denture teeth	78N-2885	II
872.3600	Partially fabricated denture kit	78N-2886	III
872.3640	Endosseous implant	78N-2887	III
872.3645	Titanium subpenosteal implant material	78N-2888	II
872.3650	Cobalt chrome molybdenum subperiosteal implant material	78N-2889	II
872.3660	Impression material	78N-2890	II
872.3670	Resin impression tray material	78N-2891	I
872.3680	Polytetrafluoroethylene (PTFE) vitreous carbon material	78N-2892	II
872.3690	Tooth shade resin material	78N-2893	II
872.3700	Dental mercury	78N-2894	II
872.3710	Base metal alloy	78N-2895	II
872.3730	Pantograph	78N-2897	I
872.3740	Retentive and splinting pin	78N-2898	II
872.3750	Bracket adhesive resin and tooth conditioner	78N-2899	II
872.3760	Denture relining, repairing, or rebasing resin	78N-2900	II
872.3765	Pit and fissure sealant and conditioner	78N-2901	II
872.3770	Temporary crown and bridge resin	78N-2902	II
872.3810	Root canal post	78N-2904	II
872.3820	Root canal filling resin	78N-2905	II
872.3830	Endodontic paper point	78N-2906	II
872.3840	Endodontic silver point	78N-2907	II
872.3850	Gutta percha	78N-2908	II
872.3890	Endodontic stabilizing splint	78N-2909	II
872.3900	Posterior artificial teeth with metal insert	78N-2910	II
872.3910	Backing and facing for artificial teeth	78N-2911	II
872.3920	Porcelain teeth	78N-2912	II
872.3980	Zinc oxide eugenol	78N-2913	II
	Subpart E—Dental Surgical Devices		
872.4040	Endodontic broach	78N-2927	II
872.4075	Dental wax carver	78N-2914	I
872.4120	Manual bone drill and wire dirver	78N-2915	II
872.4130	Intraoral dental drill	78N-2916	II
872.4140	Powered bone drill	78N-2917	II
872.4150	Endodontic pulp canal file	78N-3026	II
872.4200	Air-powered dental handpiece	78N-2918	II
872.4220	Belt-driven dental handpiece	78N-2919	II
872.4240	Rotary bone-cutting handpiece	78N-2920	II
872.4260	Contra angle handpiece attachment	78N-2921	II
872.4280	Direct drive handpiece	78N-2922	II
872.4300	Foot controller for handpiece	78N-2923	I
872.4320	Water-powered handpiece	78N-2924	II
872.4465	Gas-powered jet injector	78N-2925	II
872.4475	Spring-powered jet injector	78N-2926	II
872.4500	Hand instrument for calculus removal	78N-2927	II
872.4520	Dental depth gauge instrument	78N-2928	I
872.4535	Dental diamond instrument	78N-2929	II
872.4555	Plastic dental filling instrument	78N-2930	I
872.4565	Dental hand instruments	78N-2931	I
872.4575	Dental instrument handle	78N-2932	I
872.4600	Intraoral ligature and wire lock	78N-2933	II
872.4620	Fiber optic dental light	78N-2934	II
872.4630	Dental operating light	78N-2935	II
872.4640	Surgical headlight	78N-2936	II
872.4730	Dental injecting needle	78N-2937	II
872.4760	Bone plate	78N-2938	II
872.4820	AC-powered bone saw	78N-2941	II
872.4840	Rotary scaler	78N-2942	II
872.4850	Ultrasonic scaler	78N-2943	II
872.4875	Surgical tissue scissors	78N-2945	II
872.4880	Intraosseous fixation screw	78N-2946	II
872.4920	Dental electrosurgical unit and accessories	78N-2947	II
872.4950	Intraosseous fixation wire	78N-2948	II
	Subpart F—Dental Therapeutic Devices		
872.5400	Orthodontic elastic band	78N-2950	II
872.5410	Orthodontic preformed band	78N-2951	II
872.5420	Orthodontic band driver	78N-2952	I
872.5430	Orthodontic band material	78N-2953	II
872.5440	Orthodontic band pusher	78N-2954	I
872.5450	Orthodontic band setter	78N-2955	I
872.5460	Orthodontic metal bracket	78N-2956	II
872.5470	Orthodontic plastic bracket	78N-2957	II
872.5480	Orthodontic bracket aligner	78N-2958	I
872.5490	Orthodontic wire clamp	78N-2959	II
872.5500	Extraoral orthodontic headgear	78N-2960	II

Section	Device	Docket No.	Class
	Subpart B—Dental Diagnostic Devices—Continued		
872.5510	Preformed orthodontic space maintainer	78N-2961	II
872.5520	Orthodontic pliers	78N-2962	I
872.5525	Preformed tooth positioner	78N-3025	II
872.5530	Orthodontic expansion screw retainer	78N-2963	II
872.5540	Orthodontic spring	78N-2964	II

Luer-lock drug syringe—General Medical
Tongue depressor—General Medical
Gauze sponge—Surgical and Rehabilitation
Surgical knife—Surgical and Rehabilitation
Dental suture—Surgical and Rehabilitation
Iontophoresis device—Surgical and Rehabilitation

Neurological Device Section—November 28, 1978. 43 FR 54640–55732 (proposals); September 4, 1979, 44 FR 51726–51778 (final regulations)

Surgical and Rehabilitation Devices Panel

Physical Medicine device section—August 28,

that Panel recommendation, classifying the dry heat sterilizer into class II.

2. The Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel recommends that both the air or water bulb syringe and the irrigating syringe be classified

Section	Device	Docket No.	Class
	Subpart B—Dental Diagnostic Devices—Continued		
872.5510	Preformed orthodontic space maintainer	78N-2961	II
872.5520	Orthodontic pliers	78N-2962	I
872.5525	Preformed tooth positioner	78N-3025	II
872.5530	Orthodontic expansion screw retainer	78N-2963	II
872.5540	Orthodontic spring	78N-2964	II
872.5550	Teething ring	78N-2965	I, II
872.5560	Orthodontic tube	78N-2966	II
872.5570	Orthodontic ligature tucking instrument	78N-2967	I
872.5580	Orthodontic wire	78N-2968	II
	Subpart G—Dental Miscellaneous Devices		
872.6010	Abrasive disk	78N-2969	II
872.6020	Abrasive point	78N-2970	II
8072.6030	Oral cavity abrasive polishing agent	78N-2971	II
872.6035	Polishing agent strip	78N-2972	I
872.6040	Polishing wheel	78N-2973	I
872.6050	Paper saliva absorber	78N-2974	I
872.6070	Ultraviolet activator for polymerization	78N-2975	II
872.6080	Airbrush	78N-2976	III
872.6100	Anesthetic warmer	78N-2977	I
872.6140	Articulation paper	78N-2978	I
872.6200	Base plate shellac	78N-2979	II
872.6250	Dental chair with operative unit	78N-2980	II
872.6260	Dental chair without operative unit	78N-2981	II
872.6280	Cotton roll	78N-2982	I
872.6290	Prophylaxis cup	78N-2983	I
872.6300	Rubber dam	78N-2984	I
872.6310	Rubber dam clamp	78N-2985	I
872.6320	Rubber dam frame	78N-2986	I
872.6350	Ultraviolet detector	78N-2987	II
872.6370	Oral cavity evacuator	78N-2988	I
872.6390	Dental floss	78N-2989	I
872.6400	Forceps for articulation paper	78N-2990	I
872.6410	Forceps for dental dressing	78N-2991	I
872.6420	Forceps for a rubber dam clamp	78N-2992	I
872.6465	Guard for an abrasive disk	78N-2993	I
872.6475	Heat source for bleaching teeth	78N-2994	II
872.6510	Oral irrigation unit	78N-2996	II
872.6550	Dental matrix band	78N-2997	I
872.6560	Matrix retainer	78N-2998	I
872.6570	Impression tube	78N-2999	I
872.6800	Mouth mirror	78N-3000	I
872.6620	Saliva ejector mouthpiece	78N-3001	I
872.6640	Dental operative unit	78N-3002	II
872.6645	Suction operative unit	78N-3003	II
872.6650	Massaging pick	78N-3004	II
872.04		78N-30	I
872.6660	Porcelain powder for clinical use	78N-3005	II
872.6670	Silicate protector	78N-3006	I
872.6680	Dental retractor (all types)	78N-3007	II
872.6690	Dental retractor accessories	78N-3008	II
872.5710	Boiling water sterilizer	78N-3009	II
872.6730	Endodontic dry heat sterilizer	78N-3011	III
872.6750	Air or water syringe unit	78N-3012	I
872.6770	Cartridge syringe	78N-3014	II
872.6800	Periodontic or endodontic irrigating syringe	78N-3016	I
872.6810	Restorative or impression material syringe	78N-3017	I
872.6850	Rubber tip for oral hygiene	78N-3018	I
872.6855	Manual toothbrush	78N-3019	I
872.6865	Powered toothbrush	78N-3020	II
872.6870	Disposable fluoride tray	78N-3021	I
872.6880	Preformed impression tray	78N-3022	I
872.6890	Intraoral dental wax	78N-3023	II

Devices Considered by Two or More Panels

The Dental Device Section of the Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel and the other panels listed below made classification recommendations concerning the following devices:

Device—Other Panels

X-ray film cassette—Obstetrics-Gynecology and Radiologic
Extra oral X-ray dental film—Obstetrics-Gynecology and Radiologic
Intra oral X-ray dental film—Obstetrics-Gynecology and Radiologic
Intensifying radiographic screen—Obstetrics-Gynecology and Radiologic
Automatic radiographic film processor—Obstetrics-Gynecology and Radiologic
Leaded apron—Obstetrics-Gynecology and Radiologic
Leaded operator radiation protector—Obstetrics-Gynecology and Radiologic
Anesthesia flowmeter—Respiratory and Nervous System
Compressed gas cyliner and valve—Respiratory and Nervous System
Analgesia/anesthesia gas machine—Respiratory and Nervous System
Resuscitation and emergency oxygen unit—Respiratory and Nervous System
Cotton applicator—General Medical
Autoclave—General Medical
Ethylene oxide gas sterilizer—General Medical
Luer-lock drug syringe—General Medical
Tongue depressor—General Medical
Gauze sponge—Surgical and Rehabilitation
Surgical knife—Surgical and Rehabilitation
Dental suture—Surgical and Rehabilitation
Iontophoresis device—Surgical and Rehabilitation

The agency is not at this time publishing the recommendations of the Dental Device Section of the Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel to classify the devices listed above. The agency has published, or will publish, these recommendations and proposed classification regulations along with the recommendations of other Panels that reviewed the devices. Some of these other Panels' recommendations have already been published in the **Federal Register**. The following table shows the current structure of the advisory committees involved with classification of medical devices and a list of all proposed and final classification regulations published to date:

Panel/Section Name—Publication Date in Federal Register

Circulatory Systems Devices Panel—March 9, 1979 44 FR 13284–13434 (proposals); February 5, 1980, 45 FR 7904–7971 (final regulations)

Clinical Chemistry and Hematology Devices Panel

Clinical Chemistry Device Section
Clinical Toxicology Device Section
Hematology and Pathology Device Section—September 11, 1979, 44 FR 52950–53063 (proposals); September 12, 1980, (45 FR 760576–06051 (final regulations)

General Medicol Devices Panel

General Hospital and Personal Use Device Section—August 24, 1979, 44 FR 49844–49954 (proposals); October 21, 1980, 45 FR 69678–69737 (final regulations)
Gastroenterology-Urology Device Section

Immunology and Mircrobiology Devices Panel

Immunology Device Section—April 22, 1980, 45 FR 27204–27359 (proposals)
Microbiology Device Section—April 22, 1980, 45 FR 27204–27359 (proposals)

Obstetrics-Gynecology and Radiologic Devices Panel

Obstetrics-Gynecology Device Section—April 3, 1979, 44 FR 19894–19971 (proposals); February 26, 1980, 45 FR 12682–12720 (final regulations).
Radiology Device Section

Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel

Ophthalmic Device Section
Ear, Nose, and Throat Device Section
Dental Device Section

Respiratory and Nervous System Devices Panel

Anesthesiology Device Section—November 2, 1979, 44 FR 63293–63426 (proposals)
Neurological Device Section—November 28, 1978, 43 FR 54640–55732 (proposals); September 4, 1979, 44 FR 51726–51778 (final regulations)

Surgical and Rehabilitation Devices Panel

Physical Medicine device section—August 28, 1979, 44 FR 50458–50537 (proposals)
Orthopedic Device Section
General and Plastic Surgery Device Section

FDA has determined that the following devices reviewed by the Ophthalmic Ear, Nose, Throat, and Dental Devices Panel are identical to devices that have been reviewed by the General Hospital and Personal Use Device Section of the General Medical Devices Panel and classified by regulations published with that Panel: Dry heat sterilizer; air or water bulb syringe; and irrigating syringe. FDA has also determined that these dental devices should be included in the generic types of devices that have already been classified in regulations published with the General Medical Devices Panel. However, because the proposed general hospital and personal use device classifictiaon regulations were published before-FDA determined that the devices in question were identical, the agency did not publish the recommendations of the Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel at that time. Accordingly, the agency is publishing the recommendations of the Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel for these devices, as required by the amendments. Interested persons are invited to comment, in accordance with the procedure set forth at the end of this notice, on the Panels' recommendations and on the agency's determinations that the devices described below are identical to the general hospital and personal use devices.

1. The Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel recommends that the dry heat sterilizer be classified into class II because it believes that the dry heat sterilizer should be capable of sterilizing dental instruments properly. The Panel based its recommendation on the Panel members' clinical experience with this device. The Panel identified infection in the patient as a risk to health from use of this device.

FDA has determined that the dry heat sterilizer classified by the Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel is identical to the device with the same name considered by the General Hospital and Personal Use Device Section of the General Medical Devices Panel. On August 24, 1979, FDA published in the **Federal Register** (44 FR 49947) a proposed regulation, based on that Panel recommendation, classifying the dry heat sterilizer into class II.

2. The Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel recommends that both the air or water bulb syringe and the irrigating syringe be classified into class I with exemptions from premarket notification procedures and the good manufacturing practice requirements because it believes that both the air or water bulb syringe and the irrigating syringe are simple devices that present no risks to health. The Panel based its recommendation on the Panel members' clinical experience with these devices.

The agency has determined that both the air or water bulb syringe and the irrigating syringe classified by the Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel are identical to the irrigating syringe considered by the General Hospital and Personal Use Device Section of the General Medical Devices Panel. On August 24, 1979, FDA published in the **Federal Register** (44 FR 49951) a proposed regulation based on that Panel recommendation classifying the irrigating syringe into class I.

Dental Products Regulated as Drugs

The Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel made classification recommendations concerning the following three dental products that FDA has determined will be regulated as drugs rather than as devices: plaque-disclosing kits, lingual ascorbic acid tests, and root canal cleansers. The agency is not publishing proposal classification regulations for these products.

Environmental Impact

The agency has determined under 21 CFR 25.24(b)(12) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, the agency has concluded that neither an environmental assessment nor an environmental impact statement is required.

Reference

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. and 4 p.m., Monday through Friday.

1. Letter dated March 22, 1979 from D. Gregory Singleton, Executive Secretary, Dental Device Section of the Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel to members of this Section.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513 and 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21

U.S.C. 360c, 371(a)]), and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes that Chapter I of Title 21 of the code of Federal Regulations be amended with the Hearing Clerk, Food and Drug Administration.

Dated: December 16, 1980.

William F. Randolph,

Acting Associate Commissioner for

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)),

inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

21 CFR Part 872

[Docket No. 78N-2834]

Medical Devices; Classification of Pulp Testers

cause electrical shock to the patient or user. Moreover, the amount of power delivered by the device must be controlled, because insufficient voltage could cause erroneous evaluation and excessive voltage could cause burns to

U.S.C. 360c, 371(a)]), and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes that Chapter I of Title 21 of the code of Federal Regulations be amended by adding new Part 872, Subpart A, to read as follows:

PART 872—DENTAL DEVICES

Subpart A—General Provisions

Sec.
871.1 Scope.

Authority: Secs. 513 and 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c and 371(a)).

Subpart A—General Provisions

§ 872.1 Scope.

(a) This part sets forth the classification of dental devices intended for human use.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 cannot show merely that the device is accurately described by the section title and identification provision of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a dental device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed in one subpart only.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: December 16, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39814 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2831]

Medical Devices; Classification of Gingival Fluid Measurers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying gingival fluid measurers into class I § (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of gingival fluid measurers:

1. Identification: A gingival fluid measurer is a gauge device used to measure the amount of fluid in the gingival sulcus (depression between the tooth and gums) in order to determine if there is a gingivitis condition.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that gingival fluid measurers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, gingival fluid measurers in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that gingival fluid measures be classified into class I (general controls). FDA believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device.

In response to the Panel's recommendation that manufacturers of gingival fluid measures be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that that these manufacturers be subject to registration, device listing, and premarket notification under section 510(a) through 510(k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of gingival fluid measurers, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, and to conduct necessary

inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540.546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 by adding new Subpart B and new § 872.1500, to read a follows:

Subpart B—Dental Diagnostic Devices

§ 872.1500 Gingival fluid measurer.

(a) *Identification.* A gingival fluid measurer is a gauge device used to measure the amount of fluid in the gingival sulcus (depression between the tooth and gums) to determine if there is a gingivitis condition.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39815 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2834]

Medical Devices; Classification of Pulp Testers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying pulp testers into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of pulp testers:

1. Identification: A pulp tester is an A.C. or battery powered device used to evaluate the pulpal vitality of teeth, by employing high frequency current, transmitted by an electrode, to stimulate the nerve tissue in the dental pulp.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that pulp testers be classified into class II because improper electrical design of the device could cause electrical shock to the patient or user. Moreover, the amount of power delivered by the device must be controlled, because insufficient voltage could cause erroneous evaluation and excessive voltage could cause burns to oral tissue. The Panel believes that general controls alone would not provide sufficient control over the performance and electrical characteristics of this device. The Panel believes that a performance standard would provide reasonable assurance of safety and effectiveness of the device and that there is sufficient information to establish a standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Electrical shock: Improper electrical design or malfunction of the device could cause electrical shock to the patient or user. (b) Erroneous evaluation: Improper mechanical or electrical design of the device may result in erroneous evaluation and subsequent therapy that is inappropriate. (c) Tissue burns: If the voltage delivered by the device is excessive, burns to oral tissue may result.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that pulp testers be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the

proposes to amend Part 872 in Subpart B by adding new § 872.1730, to read as follows:

§ 872.1730 Electrode gel for pulp testers.

(a) *Identification.* An electrode gel for pulp testers is a device that is applied to

Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug

electrical shock to the patient or operator.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart B by adding new § 872.1720, to read as follows:

§ 872.1720 Pulp tester.

(a) *Identification.* A pulp tester is an A.C. or battery powered device used to evaluate the pulpal vitality of teeth, by employing high frequency current, transmitted by an electrode, to stimulate the nerve tissue in the dental pulp.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39816 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2835]

Medical Devices; Classification of Electrode Gel for Pulp Testers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying electrode gel for pulp testers into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of electrode gel for pulp testers:

1. Identification: An electrode gel for pulp testers is a device that is applied to the surface of a tooth before use of a pulp tester to aid conduction of electrical current.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that electrode gel for pulp testers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, electrode gel for pulp testers in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that electrode gel for pulp testers be classified into class II (performance standards). This device comes into direct contact with oral tissue. It is essential that the materials used in the device be biocompatible. Changes in the composition of the device or contamination of the device with other materials may lead to adverse tissue reactions (painful burns or infections), thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that electrode gel for pulp testers should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from premarket notification procedures under section 510(k), records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 ad 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart B by adding new § 872.1730, to read as follows:

§ 872.1730 Electrode gel for pulp testers.

(a) *Identification.* An electrode gel for pulp testers is a device that is applied to the surface of a tooth before use of a pulp tester to aid conduction of electrical current.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39817 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2836]

Medical Devices; Classification of Extraoral Source X-Ray Systems

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying estraoral souce X-ray systems into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia, Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of extraoral source X-ray systems:

1. Identification: An extraoral source X-ray system is an AC-powered device that produces X-rays and is used for dental radiographic examination and diagnosis of diseases of the teeth, jaw, and oral structures. The X-ray source (a tube) is located outside the mouth. This generic type of device may include patient and equipment supports and component parts.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that estraoral X-ray source systems be classified into class II because the device directs radiation at the body, and malfunction could result in the patient's exposure to unsafe levels of radiation. Moreover, the electrical design of the device must be regulated to assure electrical safety. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Exposure to unsafe levels of radiation: Improper shielding of the patient, or improper design or malfunction of the device may result in the unnecessary exposure of the patient to radiation. (b) Electrical shock: Improper electrical design or malfunction of the device could cause electrical shock to the patient or operator.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that extraoral source X-ray sustems be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device. Any standards developed for the device must conform to the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 262 et seq.) and the regulations governing radiation safety promulgated under that act, as well as the electrical safety regulations promulgated under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.)

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart B by adding new § 872.1800, to read as follows:

§ 872.1800 Extraoral source X-ray system.

(a) *Identification.* An extraoral source X-ray system is an AC-powered device that produces X-rays and is used for dental radiographic examination and diagnosis of diseases of the teeth, jaw, and oral structures. The X-ray source (a tube) is located outside the mouth. This generic type of device may include patient and equipment supports and component parts.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville MD 20857, written

submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposal regulation.

intraoral source X-ray systems be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls

malfunction of the device, could have an adverse effect on the safety and effectiveness of the device. Also, the agency believes that improper design of the device, resulting in improper beam

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Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m. Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39818 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 872

[Docket No. 78N–2837]

Medical Devices; Classification of Intraoral Source X-Ray Systems

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying intraoral source X-ray systems into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of intraoral source X-ray systems:

1. Identification: An intraoral source X-ray system is an AC-powered device that produces X-rays and is used for dental radiographic examination and diagnosis of diseases of the teeth, jaw, and oral structures. The X-ray source (a tube) is located inside the mouth. This generic type of device may include patient and equipment supports and component parts.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that intraoral source X-ray units be classified into class II because the device directs radiation at the body, and malfunction could result in the patient's exposure to unsafe levels of radiation. Moreover, the electrical design of the device must be regulated to assure electrical safety. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a standard. The Panel also recommends that because the source of the X-rays is placed inside the mouth, systems should be required to bear special labeling which describes the risks involved in using the device without a radiation shield.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Exposure to unsafe levels of radiation: Improper shielding of the patient, improper design, or malfunction of the device may result in unnecessary exposure of the patient to radiation. (b) Electrical shock: Improper design or malfunction of the device could result in electrical shock to the patient or operator.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that intraoral source X-ray systems be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device. Any standards developed for the device must conform to the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 262 et seq.) and the regulations governing radiation safety promulgated under the act, as well as the electrical safety regulations promulgated under the Occupational Safety and Health Act (29 U.S.C. 651 et seq.).

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart B by adding new § 872.1810, to read as follows:

§ 872.1810 Intraoral source X-ray system.

(a) *Identification.* An intraoral source X-ray system is an electrically-powered device that produces X-ray and is used for dental radiographic examination and diagnosis of diseases of the teeth, jaw, and oral structures. The X-ray source (a tube) is located inside the mouth. This generic type of device may include patient and equipment supports and component parts.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39819 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 872

[Docket No. 78N–2838]

Medical Devices; Classification of Dental X-Ray Exposure Alignment Device

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental X-ray exposure alignment devices into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying the device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposal regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of a dental X-ray exposure alignment device:

1. Identification: A dental X-ray exposure alignment device is a device used to position and hold X-ray film and to align the examination site with the X-ray beam.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that dental X-ray exposure alignment devices be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because it is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, dental X-ray exposure alignment devices in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that dental X-ray exposure alignment devices be classified into class II (performance standards). The design and function of dental X-ray exposure alignment devices affect the amount of radiation to which patients are exposed. Alteration of the beam size or change in alignment of the beam, both of which could result from improper design or malfunction of the device, could have an adverse effect on the safety and effectiveness of the device. Also, the agency believes that improper design of the device, resulting in improper beam alignment, would require repeating the X-ray, thus exposing a patient to unnecessary radiation. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that dental X-ray exposure alignment devices should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from premarket notification procedures under section 510(k), records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart B by adding new § 872.1820, to read as follows:

§ 872.1820 X-ray beam aligner.

(a) *Identification.* A dental X-ray exposure alignment device is a device used to position X-ray film and to align the examination site with the X-ray beam.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug

Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be

The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of cephalometers:

1. Identification: A cephalometer is a device used in dentistry during X-ray

proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere

is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the

members' personal knowledge of, and clinical experience with, the device in the practice of dentistry, and on a presentation by FDA's Bureau of Radiological Health which described the potential hazards associated with the

§ 872.1840 Dental X-ray position indicating device.

(a) *Identification.* A dental X-ray position indicating device is a device, such as a collimator, cane, or aperture, that is used in dental radiographic

Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39820 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2839]

Medical Devices; Classification of Cephalometers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying cephalometers into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of cephalometers:

1. Identification: A cephalometer is a device used in dentistry during X-ray procedures. The device is used to place and to hold a patient's head in a standard position during dental X-rays.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that cephalometers be classified into class II because a performance standard is necessary to assure that the measuring and positioning functions of the device are sufficiently accurate to prevent misdiagnosis. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: Misdiagnosis: Improper design of the device may result in misdiagnosis and subsequent inappropriate therapy.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that cephalometers be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device to assure the accuracy of its measuring and positioning functions and because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart B by adding new § 872.1830, to read as follows:

§ 872.1830 Cephalometer.

(a) *Identification.* A cephalometer is a device used in dentistry during X-ray procedures. The device is used to place and to hold a patient's head in a standard position during dental X-rays.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39821 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2840]

Medical Devices; Classification of Dental X-Ray Position Indicating Devices

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental X-ray position indicating devices into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATE: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental X-ray position indicating devices.

1. Identification: A dental position indicating device is a device, such as a collimator, cone, or apertune, that is used in dental radiographic examination. The device aligns the examination site with the X-ray beam and also restricts the dimensions of the dental X-ray field by limiting the size of the primary X-ray beam.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The panel recommends that dental X-ray position indicating devices be classified into class II because improper design of the device may expose the patient and the operator unnecessarily to radiation. The panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is,based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry, and on a presentation by FDA's Bureau of Radiological Health which described the potential hazards associated with the device (Ref. *1*).

5. Risks to health: Exposure to unsafe levels of radiation: Improper design of the device may result in unnecessary exposure of the patient and the operator to radiation.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that dental X-ray position indicating devices be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Reference

The following information has been placed on file in the office of the Hearing Clerk (address above) and may be seen by interested persons, from 9 a.m. to 4 p.m., Monday through Friday.

1. Transcript of Dental Device Classification Panel Meeting, Washington, DC, December 5, 1977.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart B by adding new § 872.1840, to read as follows:

§ 872.1840 Dental X-ray position indicating device.

(a) *Identification.* A dental X-ray position indicating device is a device, such as a collimator, cane, or aperture, that is used in dental radiographic examination. The device aligns the examination site with the X-ray beam and also restricts the dimensions of the dental X-ray field by limiting the size of the primary X-ray beam.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identifeid with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39822 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2841]

Medical Devices; Classification of Lead-Lined Position Indicators

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying lead-lined position indicators into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

inaccurate X-rays and subsequent misdiagnosis and inappropriate treatment. (b) Overexposure to radiation: If the lining of the device has an insufficient lead content, the patient may be exposed to unnecessary

submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between

development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental X-ray film holders:

would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39824 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of lead-lined position indicators:

1. Identification: A lead-lined position indicator is a cone-shaped device that is attached to a dental X-ray tube and is used to aid in positioning the tube, to prevent the misfocusing of the X-rays by absorbing divergent radiation, and to prevent leakage of radiation by use of the lead lining.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that lead-lined position indicators be classified into class II because the Panel believes that performance standards are necessary to assure that the X-ray beam is properly controlled by the indicator and, thereby, protects the patient and operator. Faulty design of the cone could cause improper alignment of the X-ray beam at the tip of the cone and, as a result, proper collimation of the X-ray beam (elimination of the divergent portion of the beam) may not occur. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Misdiagnosis and inappropriate treatment: Improper design of the device may result in inaccurate X-rays and subsequent misdiagnosis and inappropriate treatment. (b) Overexposure to radiation: If the lining of the device has an insufficient lead content, the patient may be exposed to unnecessary radiation.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that lead-lined position indicators be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart B by adding new § 872.1850, to read as follows:

§ 872.1850 Lead-lined position indicator.

(a) *Identification.* A lead-lined position indicator is a cone-shaped device that is attached to a dental X-ray tube and is used to aid in positioning the tube, to prevent the misfocusing of the X-rays by absorbing divergent radiation, and to prevent leakage of radiation by use of the lead-lining.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39823 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2842]

Medical Devices; Classification of Dental X-Ray Film Holders

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental X-ray film holders into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental X-ray film holders:

1. Identification: A dental X-ray film holder is a device used to position and to hold X-ray film inside the mouth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360(f)).

3. Summary of reasons for recommendation: The Panel recommends that dental X-ray film holders be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification notification procedures, records and reports requirements, and the good manufacturing practice regulation because the Panel believes that defects in this device are readily apparent to the user.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, dental X-ray film holders in the practice of dentistry.

5. Risks to health: Infection: If the materials used in the device cannot be properly sterilized, a patient may contract an infection.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that dental X-ray film holders be classified into class II (performance standards). This decision is based on the knowledge that a single dental X-ray film holder may be used for many patients and has the potential for transmitting microorganisms between patients. Therefore, these devices must be constructed of materials that can be properly sterilized. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that dental X-ray film holders should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel's recommendation that this device be exempt from premarket notification procedures under section 510(k), records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart B by adding new § 872.1905, to read as follows:

§ 872.1905 X-ray film holder.

(a) *Identification.* A dental X-ray film holder is a device used to position and to hold X-ray film inside the mouth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39824 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2843]

Medical Devices; Classification of Amalgam Alloys

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying amalgam alloys into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposed that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of amalgam alloys:

1. Identification: An amalgam alloy is a device that consists of a metallic substance that is mixed with mercury to form filling material for dental caries.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a medium priority.

3. Summary of reasons for recommendation: The Panel recommends that amalgam alloys be

U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 by adding new Subpart C, which is reserved, and

actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that gold-based alloy for clinical use be classified into class II (performance

9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for

contain smaller quantities of other metals, such as copper, gold, and platinum. It is used to fabricate dental applicances such as crowns and bridges.

2. Recommended classification: Class II (performance standards). The Panel

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performance standard for this device be a medium priority.

3. Summary of reasons for recommendation: The Panel recommends that amalgam alloys be classified into class II because materials used in the device that contact the body should meet a generally accepted and satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Adverse gastric or respiratory response: Ingestion of the powdered alloy or the mixed amalgam may be harmful to the patient's digestive or respiratory tract. (b) Adverse tissue reaction: If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that amalgam alloys be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the advice. A performance standard would provide reasonable assurances of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 by adding new Subpart C, which is reserved, and adding new Subpart D and § 872.3050, to read as follows:

Subpart C—Reserved

Subpart D—Prosthetic Devices

§ 872.305 Amalgam alloy.

(a) *Identification.* An amalgam alloy is a device that consists of a metallic substance that is to be mixed with mercury to form filling material for dental caries.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39825 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2844]

Medical Devices; Classification of Gold-Based Alloy for Clinical Use

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying gold-based alloy for clinical use into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of gold-based alloy for clinical use:

1. Identification: A gold-based alloy for clinical use is a mixture of metals, the major component of which is gold. It may also contain smaller quantities of silver, copper, platinum, or palladium. It is used to fabricate custom-made dental appliances, such as crowns and bridges.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for gold-based alloy for clinical use be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that gold-based alloy for clinical use be classified into class II because the materials used in the device that contact the body should meet a generally accepted and satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: Adverse tissue reaction: If materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that gold-based alloy for clinical use be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3060, to read as follows:

§ 872.3060 Gold-based alloy for clinical use.

(a) *Identification.* A gold-based alloy for clinical use is a mixture of metals, the major component of which is gold. It may also contain smaller quantities of silver, copper, platinum, or palladium. It is used to fabricate custom-made dental appliances, such as crowns and bridges.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39826 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2845]

Medical Devices; Classification of Precious Metal Alloys for Clinical Use

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying precious metal alloys for clinical use into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of the classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of precious metal alloys for clinical use:

1. Identification: A precious metal alloy for clinical use is a mixture of metals, the major components of which are silver and palladium. It may also contain smaller quantities of other metals, such as copper, gold, and platinum. It is used to fabricate dental applicances such as crowns and bridges.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for precious metal alloys for clinical use by a low priority.

3. Summary of reasons for recommendation: The Panel recommends that precious metal alloys for clinical use be classified into class II because the materials used in the device that contact the body should meet a generally accepted satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that precious metal alloys for clinical use be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classfication regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the

general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority

former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food,

provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the

members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Adverse tissue reaction: Improper design of the device, resulting in improper mixing of the amalgam, could cause an adverse tissue

general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3070, to read as follows:

§ 872.3070 Precious metal alloy for clinical use.

(a) *Identification.* A precious metal alloy for clinical use is a mixture of metals, the major components of which are silver and palladium. It may also contain smaller quantities of other metals, such as copper, gold, and platinum. It is used to fabricate dental appliances such as crowns and bridges.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

FR Doc. 80-39827 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N–2846]

Medical Devices; Classification of Mercury and Alloy Dispensers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying mercury and alloy dispensers into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regualtion based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of mercury and alloy dispensers:

1. Identification: A mercury and alloy dispenser is a device used to measure and dispense a predetermined amount of dental mercury in droplet form and a premeasured amount of alloy pellets. The device uses a spring-activated valve to deliver the materials into a mixing capsule.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that mercury and alloy dispensers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, mercury and alloy dispensers in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that mercury and alloy dispensers be classified into class II (performance standards). Mercury is toxic to humans. For many years, spillage or leakage of mercury has been considered a hazard to dental patients, the dentist, and staff workers. Leakage of mercury from the device may cause acute or chronic mercury toxicity through inhalation of mercury vapors. Failure of the device to dispense an accurate amount of mercury could affect the physical properties of the carie filling material, resulting in early failure of the filling. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that mercury and alloy dispensers should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from premarket notification procedures under section 510(k), records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3080, to read as follows:

§ 872.3080 Mercury and alloy dispenser.

(a) *Identification.* A mercury and alloy dispenser is a device used to measure and dispense a predetermined amount of dental mercury in droplet form and a premeasured amount of alloy pellets. The device uses a spring-activated valve to deliver the materials into a mixing capsule.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39828 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N–2847]

Medical Devices; Classification of AC-Powered Dental Amalgamators

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying AC-powered dental amalgamators into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of AC-powered dental amalgamators:

1. Identification: An AC-powered dental amalgamator is an electrically-powered device used to mix, by shaking, amalgam capsules containing mercury and dental alloy particles, such as silver, tin, zinc, and copper. The resulting amalgam material is used for filling dental caries.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for AC-powered dental amalgamators be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that AC-powered dental amalgamators be classified into class II because the electrical design of the device should be controlled to assure that the amalgam will be mixed properly and the assure the electrical safety of the device. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of safety and effectiveness of the device and that there is sufficient information to establish a standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Adverse tissue reaction: Improper design of the device, resulting in improper mixing of the amalgam, could cause an adverse tissue reaction in the patient. (b) Electrical shock: Improper electrical design of the device could cause an electrical shock to users.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that AC-powered dental amalgamators be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3100, to read as follows:

§ 872.3100 AC-powered dental amalgamator.

(a) *Identification.* An AC-powered dental amalgamator is an electrically-powered device used to mix, by shaking, amalgam capsules containing mercury and dental alloy particles, such as silver, tin, zinc, and copper. The resulting dental amalgam material is used for filling dental caries.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing

Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be

of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39829 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2848]

Medical Devices; Classification of Dental Amalgam Capsules

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental amalgam capsules into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become 78–2448 effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides backgound information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental amalgam capsules:

1. Identification: A dental amalgam capsule is a container device in which silver alloy is mixed with mercury to form dental amalgam.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that dental amalgam capsules be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with records and reports requirements and the good manufacturing practice regulation because it is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, dental amalgam capsules in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that dental amalgam capsules be classified into class II (performance standards). Dental amalgam capsules are used to mix amalgam materials, one component of which is mercury. Mercury is toxic to humans. For many years, spillage or leakage of mercury has been considered a hazard to dental patients, the dentist and staff workers. Leakage of mercury from the device may cause acute or chronic mercury toxicity through inhalation of mercury vapors. The agency believes that a performance standard is necessary to assure that dental amalgam capsules can safely be used to perform this mixing process without exposing patients and dental care workers to mercury vapors and because general controls alone are insufficent to control the risks to health presented by this device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that dental amalgam capsules should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666,, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3110, to read as follows:

§ 872.3110 Dental amalgam capsule.

(a) *Identification.* A dental amalgam capsule is a container device in which silver alloy is mixed with mercury to form dental amalgam.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39830 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2849]

Medical Devices; Classification of Preformed Anchors

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying preformed anchors into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of preformed anchors:

1. Identification: A preformed anchor is a prefabricated device made of metal, such as stainless steel or titanium, that is incorporated in to a dental appliance, such as a denture, to help stabilize the appliance in the patient's mouth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that preformed anchors be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, preformed anchors in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that preformed anchors be classified into class II (performance standards). The properties of the materials used to form preformed anchors depend upon the proper composition of these materials. Moreover, preformed, anchors directly contact oral tissue. Altering the composition of the materials used in the device, or contamination of the materials with other substances, may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that preformed anchors should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3130, to read as follows:

§ 872.3130 Preformed anchor.

(a) *Identification.* A preformed anchor is a device made of metal, such as stainless steel or titanium, that is incorporated into a dental appliance, such as a denture, to help stabilize the appliance in the patient's mouth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received Comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39831 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

recommends resin applicators be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device

movements of a patient's upper and lower jaw. Plaster casts of the patient's teeth and gums are placed in the device to reproduce the occlusion (bite) and articulation of the patient's jaws. An articulator is used to fit dentures or

listing, and premarket notification by manufacturers of articulators, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39831 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-3024]

Medical Devices; Classification of Resin Applicators

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying resin applicators into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of resin applicators:

1. Identification: A resin applicator is a brushlike device that is used to spread dental resin on a tooth prior to application of tooth shade material.

2. Recommended classification: Class I (general controls). The Panel recommends that there be no exemptions.

3. Summary of reasons for recommendation: The Panel recommends resin applicators be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, resin applicators in the practive of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that resin applicators be classified into class I (general controls) with no exemptions. The agency believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872-3140, to read as follows:

§ 872.3140 Resin applicator.

(a) *Identification.* A resin applicator is a brushlike device that is used to spread dental resin on a tooth prior to application of tooth shade material.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39832 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2850]

Medical Devices; Classification of Articulators

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying articulators into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of articulators:

1. Identification: An articulator is a mechanical device used to simulate movements of a patient's upper and lower jaw. Plaster casts of the patient's teeth and gums are placed in the device to reproduce the occlusion (bite) and articulation of the patient's jaws. An articulator is used to fit dentures or provide orthodontic treatment.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that articulators be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purposes recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, articulators in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that articulators be classifed into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In respone to the Panel recommendation that manufacturers of articulators be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of articulators, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of articulators be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requriements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

FDA disagrees with the Panel's recommendation that manufacturers of articulators be exempt from the good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness, and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of articulators having defects that could harm users.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3150, to read as follows:

§ 872.3150 Articulator.

(a) *Identification.* An articulator is a mechanical device used to simulate movements of a patient's upper and lower jaw. Plaster casts of the patient's teeth and gums are placed in the device to reproduce the occlusion (bite) and articulation of the patient's jaws. An articulator is used to fit dentures or provide orthodontic treatment.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39833 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2851]

Medical Devices; Classification of Precision Attachments

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39834 Filed 12-29-80; 8:45 am]

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cast metal, that is incorporated into a dental appliance, such as a denture, to connect the part of the dental appliance.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt

information to establish a performance standard for this device.

Because the agency has determined that preformed bars should be classified into class II rather than class I, the agency is not required to publish a

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ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying precision attachments into class II (performance standards). FDA is also publishing the recommendation of the Dental Service Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendations regarding the classfication of precision attachments:

1. Identification: A precision attachment is a device made of cast metal that is used in restorative dentistry in conjunction with removable partial dentures. Various forms of the device are used to connect a lower partial denture, with another lower partial denture to connect an upper partial denture with another upper partial denture, to connect either an upper or lower partial denture to a tooth or a crown, or to connect a fixed bridge to a partial denture.

2. Recommended classification: Class I (general controls). The Panel recommends that precision attachments be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(i)), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that precision attachments be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, precision attachments in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that precision attachments be classified into class II (performance standards). The properties of the materials used to form precision attachments depend upon the proper composition of these materials. Moreover, precision attachments directly contact oral tissue. Altering the composition of the materials used in the device, or contamination of the materials with other substances, may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessay for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that precision attachments should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from records and reports requirements under section 519 and the good manufacturing practices regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21668, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue in the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3165, to read as follows:

§ 872.3165 Precision attachment.

(a) *Identification.* A precision attachment is a device made of cast metal that is used in restorative dentistry in conjunction with removable partial dentures. Various forms of the device are used to connect a lower partial denture with another lower partial denture, to connect an upper partial denture with another upper partial denture, to connect either an upper or lower partial denture to a tooth or a crown, or to connect a fixed bridge to a partial denture.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39834 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 872

[Docket No. 78N–2852]

Medical Devices; Classification of Preformed Bars

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying preformed bars into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305). Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of preformed bars:

1. Identification: A preformed bar is a prefabricated device made of metal, such as heavy wire, wrought metal, or cast metal, that is incorporated into a dental appliance, such as a denture, to connect the part of the dental appliance.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that preformed bars be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, preformed bars in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that preformed bars to be classified into class II (performance standards). The properties of the materials used to form preformed bars depend upon the proper composition of these materials. Moreover, preformed bars directly contact oral tissue. Altering the composition of the materials used in the device, or contamination of the materials with other substances, may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device beause general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that preformed bars should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation indentifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3175, to read as follows:

§ 872.3175 Preformed bar.

(a) *Identificoiton.* A preformed bar is a prefabricated device made of metal, such as heavy wire, wrought metal, or cast metal, incoporated into a dental appliance such as a denture, to connect the parts of a removable denture.

(c) *Classificoiton.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39835 Filed 12–29–80; 8:45 am]

recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and the good manufacturing practice regulation under section 520(f) of the act certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is

Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may

The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of facebows:

1. Identification: A facebow is a device used in denture fabrication to

section 510(a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer fom section 510 only if it finds that compliance with this section is not necessary for the protection of the

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

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21 CFR Part 872

[Docket No. 78-2853]

Medical Devices; Classification of Resin Tooth Bonding Agents

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying resin tooth bonding agents into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of resin tooth bonding agents:

1. Identification: A resin tooth bonding agent is a device, such as methyl methacrylate, that is painted on the interior of a prepared cavity of a tooth to improve retention of a restoration, such as a filling.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that resin tooth bonding agents be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, resin tooth-bonding agents in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that resin tooth bonding agents be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

FDA disagrees with the Panel recommendation that manufacturers of resin tooth bonding agents be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820,198 (21 CFR 820.198), with respect to complaint files.

FDA disagrees with the Panel recommendation that manufacturers of resin tooth bonding agents be exempt from the good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness, and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of resin tooth bonding agents having defects that could harm users.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3200, to read as follows:

§ 872.3200 Resin tooth-bonding agent.

(a) *Identification.* A resin tooth bonding agent is a device, such as methyl methacrylate, that is painted on the interior of a prepared cavity of a tooth to improve retention of a restoration, such as a filling.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39836 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78-2854]

Medical Devices; Classification of Facebows

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying facebows into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classifed into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of facebows:

1. Identification: A facebow is a device used in denture fabrication to determine the spatial relationship between the upper and lower jaws. This determination is used to place denture casts accurately into an articulator (a device that holds a set of plaster dental casts and reproduces jaw movements) and, thereby, to aid the correct placement of artificial teeth into the denture base.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that facebows be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel Members' personal knowledge of, and clinical experience with, facebows in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that facebows be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel recommendation that manufacturers of facebows be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510(a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer fom section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of facebows, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of facebows be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that included records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel recommendation that manufacturers of facebows be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation other than §§ 820.180 and 820.198, is

unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of facebows must be required to comply with the complaint file requirements of

published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the

liners into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into

reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Dental Panel

unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of facebows must be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of facebows must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 7012(a) 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3220, to read as follows:

§ 872.3220 Facebow.

(a) *Identification.* A facebow is a device used in denture fabrication to determine the spatial relationship between the upper and lower jaws. This determination is used to place denture casts accurately into an articulator (a device that holds a set of plaster dental casts and reproduces jaw movements) and, thereby, to aid the correct placement of artificial teeth into the denture base.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39837 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2855]

Medical Devices; Classification of Dental Burs

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental burs into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFA–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification following recommendation regarding the classification of dental burs:

1. Identification: A dental bur is a rotary cutting device made from carbon steel or tungsten carbide used to cut hard mouth, such as teeth or bone. It is also used to cut hard metals, plastics, porcelains, and similar materials that are used in the fabrication of dental devices.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for dental burs be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that dental burs be classified into class II because materials used in the device should meet mechanical and structural performance standards to prevent breakage and possible tissue damage to patients. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: Tissue damage: Breakage of the bur due to inadequate mechanical or structural properties may cause severe tissue damage to the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that dental burs be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA

published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3240, to read as follows:

§ 872.3240 Dental bur.

(a) *Identification.* A dental bur is a rotary cutting device made from carbon steel or tungsten carbide that is used to cut hard structures in the mouth, such as teeth or bone. It is also used to cut hard metals, plastics, porcelains, and similar materials that are used in the fabrication of dental devices.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39838 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2856]

Medical Devices; Classification of Calcium Hydroxide Cavity Liners

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying calcium hydroxide cavity liners into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305, Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of calcium hydroxide cavity liners: 1. Identification: A calcium hydroxide cavity liner is a device material that is applied to the interior of a prepared cavity and provides protection for the pulp of the tooth. The device is applied to the area to be restored prior to the insertion of restorative material, such as amalgam.

2. Recommended classification: Class I (general controls). The panel recommends that calcium hydroxide cavity liners be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(i)), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that calcium hydroxide cavity liners be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Dental Panel believes that manufacturers should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, calcium hydroxide cavity liners in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that calcium hydroxide cavity liners be classified into class II (performance standards). Calcium hydroxide cavity liners are constructed of a material with certain properties, properties that depend upon the correction composition and purity of the material. Moreover, calcium hydroxide cavity liners directly contact oral tissue. Altering the composition of the material used in the device or contamination of the material with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that calcium hydroxide cavity liners should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26,

1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3260, to read as follows:

§ 872.3260 Temporary crown and bridge material.

(a) *Identification.* Temporary crown and bridge material is a device used to fabricate temporary crowns and bridges. It is made of a variety of materials, such as polymethylmethacrylate, polycarboxylate, and zinc oxide-eugenol.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39839 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2857]

Medical Devices; Classification of Temporary Crown and Bridge Material

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying temporary crown and bridge material into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of temporary crown and bridge material: 1. Identification: Temporary crown and bridge material is a device used to fabricate temporary crowns and bridges. It is made of a variety of materials, such as polymethylmethacrylate, polycarboxylate, and zinc oxide-eugenol.

2. Recommended classification: Class I (general controls). The Panel recommends that temporary crown and bridge material be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(i)), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that temporary crown and bridge material be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Dental Panel believes that manufacturers should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members personal knowledge of, and clinical experience with, the device, and on two articles in the dental literature which suggest that dental cement containing polycarboxylate may irritate dental pulp (Refs. *1* and *2*).

may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority

comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective

based its recommendation on the Panel members personal knowledge of, and clinical experience with, the device, and on two articles in the dental literature which suggest that dental cement containing polycarboxylate may irritate dental pulp (Refs. *1* and *2*).

1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3250, to read as follows.

§ 872.3250 Calcium hydroxide cavity liner.

(a) *Identification.* A calcium hydroxide cavity liner is a device material that is applied to the interior of a prepared cavity and provides protection for the pulp of the tooth. The device is applied to the area to be restored prior to the insertion of restorative material, such as amalgam.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

FR Doc. 80-39839 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2857]

Medical Devices; Classification of Cavity Varnishes

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying cavity varnishes into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering publich comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of cavity varnishes:

1. Identification: A cavity varnish is a device that consists of a compound used to coat a prepared cavity of a tooth prior to insertion of restorative materials. The varnish prevents penetration of the restorative materials, such as amalgam, into the dentinal tissue.

2. Recommended classification: Class I (general controls). The Panel recommends that cavity varnishes be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that cavity varnishes be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, cavity varnishes in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that cavity varnishes be classified into class II (performance standards). Cavity varnishes are composed of materials with certain properties, properties that depend upon the correct composition and purity of these materials. Moreover, cavity varnishes directly contact oral tissues. Altering the composition of the materials used in the device, or contamination of the materials with other substances, may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that cavity varnishes should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3260, to read as follows:

§ 872.3260 Cavity varnish.

(a) *Identification.* A cavity varnish is a device that consists of a compound used to coat the prepared cavity of a tooth prior to insertion of restorative materials. The varnish prevents penetration of the restorative materials, such as amalgam, into the dentinal tissue.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39840 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2858]

Medical Devices; Classification of Dental Cement

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental cement into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classifed into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of dental cement:

1. Identification: Dental cement is a device used to affix dental filling materials and dental devices, such as crowns and bridges, to provide a restorative base for the protection of tooth pulp, and to serve as a temporary filling material for caries. The device is composed of materials such as zinc oxide-eugenol.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that dental cement be classified into class II because materials used in the device should meet a generally accepted and satisfactory level of tissue compatibility. Improper phosphoric acid content in the device may irritate or destroy dental pulp. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard. The Panel also recommends that the phosphoric acid content and the need for appropriate pulp protection be stated in the labeling.

4. Summary of the data on which the recommendation is based: The Panel based its recommendation on the Panel members personal knowledge of, and clinical experience with, the device, and on two articles in the dental literature which suggest that dental cement containing polycarboxylate may irritate dental pulp (Refs. *1* and *2*).

5. Risks to health: (a) Adverse tissue reaction: If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction. (b) Irritation or destruction of dental pulp: Dental pulp may be irritated or destroyed by improper amounts of phosphoric acid in the device.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that dental cement be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

References

The following information has been placed in the office of the Hearing Clerk (HFA–305) (address above), and may be seen by interested persons, from 9 a.m. to 4 p.m., Monday through Friday.

1. Plant, C. G., "The Effect of Polycarboxylate Containing Stannous Fluoride on the Pulp," *British Dental Journal*, 135:317, 1973.

2. Spangberg, L., H. Rodriguez, and K. Langeland, "Biologic Effect of Dental Materials," *Oral Surgery*, January, 1974, p. 113.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the

Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3275, to read as follows:

§ 872.3275 Dental cement.

delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3285, to read as follows:

§ 872.3285 Dental filling material.

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Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3275, to read as follows:

§ 872.3275 Dental cement.

(a) *Identification.* Dental cement is a device used to affix dental filling materials and dental devices, such as crowns and bridges, to provide a restorative base for the protection of tooth pulp, and to serve as a temporary filling material for caries. The device is composed of materials such as zinc oxide-eugenol.

(b) *Classification.* Class II (performance standards).

Interested persons, may on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associote Commissioner for Regulatory Affairs.

[FR Doc. 80–39841 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2859]

Medical Devices; Classification of Preformed Clasps

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying preformed clasps into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of preformed clasps:

1. Identification: A preformed clasp is a prefabricated device made of cast metal, such as chrome-cobalt, that is incorporated into a dental appliance, such as a partial denture, to help stabilize the appliance in the patient's mouth by fastening the clamp to an adjacent tooth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that preformed clasps be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, preformed clasps in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that preformed clasps be classified into class II (performance standards). The properties of the materials used to form preformed clasps depend upon the proper composition of these materials. Moreover, preformed clasps directly contact oral tissue. Altering the composition of the materials used in the device, or contamination of materials with other substances, may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard § is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that preformed clasps should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from premarket notification procedures under section 510(k), records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a) 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority

delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3285, to read as follows:

§ 872.3285 Preformed clasp.

(a) *Identification.* A preformed clasp is a prefabricated device made of cast metal, such as chrome-cobalt, that is incorporated into a dental appliance, such as a partial denture, to help stabilize the appliance in the patient's mouth by fastening the appliance to an adjacent tooth.

(b) *Classificotion.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39842 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2860]

Medical Devices; Classification of Preformed Wire Clasps

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying preformed wire clasps into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of preformed wire clasps:

1. Identification: A preformed wire clasp is a device made of bendable stainless steel wire that is incorporated into a dental appliance, such as an orthodontic retainer, and is used to anchor the applicance to a tooth.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for preformed wire clasps be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that preformed wire clasps be classified into class II because the materials used in the device that contact the body should meet a generally accepted level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device.

5. Risks to health: Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that preformed wire clasps be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). The proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3295, to read as follows:

§ 872.3295 Preformed wire clasp.

(a) *Identification.* A preformed wire clasp is a device made of bendable stainless steel wire that is incorporated into a dental appliance, such as an orthodontic retainer, and is used to anchor the appliance to a tooth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner far Regulatory Affairs.

FR Doc. 80–39843 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 872

[Docket No. 78N–2861]

Medical Devices; Classification of Hydrophilic Resin Coatings for

recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and the good manufacturing practice regulation under section 520(f) of the act that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency

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[Docket No. 78N–2862]

Medical Devices; Classification of Coating Materials for Resin Fillings

resin fillings be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(i)) and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

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21 CFR Part 872

[Docket No. 78N-2861]

Medical Devices; Classification of Hydrophilic Resin Coatings for Dentures

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying hydrophilic resin coatings for dentures into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFA-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of hydrophilic resin coatings for dentures:

1. Identification: A hydrophilic resin coating for dentures is a device used to improve denture retention and comfort. The device consists of a water-retaining polymer cream that is applied to the base of a denture before the denture is inserted into the patient's mouth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that hydrophilic resin coatings for dentures be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommend.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, hydrophilic resin coatings for dentures in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that hydrophilic resin coatings for dentures be classified into class II (performance standards). The properties of the materials used to form hydrophilic resin coatings for dentures depend upon the proper composition of these materials. Moreover, the device directly contacts oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that hydrophilic resin coatings for dentures should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the panel recommendation that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3300, to read as follows:

§ 872.3300 Hydrophilic resin coating for dentures.

(a) *Identification.* A hydrophilic resin coating for dentures is a device used to improve denture retention and comfort. The device consists of a water-retaining polymer cream that is applied to the base of a denture before the denture is inserted into the patient's mouth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39844 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2862]

Medical Devices; Classification of Coating Materials for Resin Fillings

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying coating materials for resin fillings into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of coating materials for resin fillings:

1. Identification: A coating material for resin fillings is a device that is applied to the surface of a restorative resin dental filling in order to attain a smooth glaze-like finish on the surface of the filling.

2. Recommended classification: Class I (general controls). The Panel recommends that coating materials for resin fillings be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(i)) and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that coating materials for resin fillings be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, coating materials for resin fillings in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that coating materials for resin fillings be classified into class II (performance standards). The properties of the materials used to form coating materials for resin fillings depend upon the proper composition of these materials. Moreover, the device directly contacts oral tissues. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that coating materials for resin fillings should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3310, to read as follows:

§ 872.3310 Coating material for resin fillings.

(a) *Identification.* A coating material for resin fillings is a device that is applied to the surface of a restorative resin dental filing in order to attain a smooth glaze-like finish on the surface of the filling.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 10, 1980.

Willam F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39845 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2863]

Medical Devices; Classification of Preformed Crowns

decayed deciduous (baby) tooth until the adult tooth erupts.

2. Recommended classification: Class I (general controls). The Panel recommends that preformed crowns be exempt from premarketed notification under section 510(k) of the Federal Food

Because the agency has determined that preformed crowns should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from premarket notification

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39846 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

made of gold and stainless steel that provides a permanent cusp (a projection on the chewing surface of a prosthetic tooth of a denture) and is used to ac occlusal harmony (a proper bite) between the teeth and a removable

presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance

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21 CFR Part 872

[Docket No. 78N-2863]

Medical Devices; Classification of Preformed Crowns

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying preformed crowns into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposed that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 310-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of preformed crowns:

1. Identification: A preformed crown is a prefabricated device made of plastic or metal that is affixed temporarily to a tooth after removal of, or breakage of, the natural crown (that portion of the tooth that normally protrudes above the gums). It is used as a functional restoration until a permanent crown is constructed. The device also is used as a functional restoration for a badly decayed deciduous (baby) tooth until the adult tooth erupts.

2. Recommended classification: Class I (general controls). The Panel recommends that preformed crowns be exempt from premarketed notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that preformed crowns be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be requried to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, preformed crowns in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that performed crowns be classified into class II (performance standards). The properties of the materials used to form preformed crowns depend upon the proper composition of these materials. Moreover, preformed crowns directly contact oral tissues. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that preformed crowns should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from premarket notification procedures under section 510(k), records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsehwere in this issue in **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3330, to read as follows:

§ 872.3330 Preformed crown.

(a) *Identification.* A preformed crown is a prefabricated device made of plastic or metal that is affixed temporarily to a tooth after removal of, or breakage of, the natural crown (that portion of the tooth that normally protrudes above the gums). It is used as a functional restoration until a permanent crown is constructed. The device also is used to as a functional restoration for a badly decayed deciduous (baby) tooth until the adult tooth erupts.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39846 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2864]

Medical devices; Classification of Gold and Stainless Steel Cusps

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying gold and stainless steel cusps into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendations regarding the classification of gold and stainless steel cusps:

1. Identification: A gold and stainless steel cusp is a prefabricated device made of gold and stainless steel that provides a permanent cusp (a projection on the chewing surface of a prosthetic tooth of a denture) and is used to ac occlusal harmony (a proper bite) between the teeth and a removable denture.

2. Recommended classification: Class I (general controls). The Panel recommends that gold and stainless steel cusps be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that gold and stainless steel cusps be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, gold and stainless steel cusps in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that gold and stainless steel cusps be classified into class II (performance standards). The properties of the materials used to form gold and stainless steel cusps depend upon the proper composition of these materials. Moreover, gold and stainless steel cusps directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that gold and stainless steel cusps should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(K), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3350, to read as follows:

§ 872.3350 Gold and stainless steel cusp.

(a) *Identification.* A gold and stainless steel cusp is a prefabricated device made of gold and stainless steel that provides a permanent cusp (a project on the chewing surface of a prosthetic tooth of a denture) and is used to achieve occlusal harmony (a proper bite) between the teeth and a removable denture.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading

of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39847 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2865]

Medical Devices; Classification of Preformed Cusps

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying preformed cusps into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendations regarding the classification of preformed cusps:

1. Identification: A preformed cusp is a prefabricated device made of plastic that is used as a temporary cusp (a projection on the chewing surface of a prosthetic tooth of a denture) and is used to achieve occlusal harmony (a proper bite) between the teeth and a removable denture. Moreover, the device directly contacts oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient

2. Recommended classification: Class I (general controls). The Panel recommends that preformed cusps be exempt from premarketed notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that preformed cusps be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be requried to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, preformed cusps in the practice of dentistry.

5. Risks to health: (A) Chronic toxicity: The boron in this device may cause chronic toxicity to users. (b) Adverse tissue reaction: If the materials in the device are not biocompatible, the

of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39847 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2865]

Medical Devices; Classification of Preformed Cusps

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying preformed cusps into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of preformed cusps:

1. Identification: A preformed cusp is a prefabricated device made of plastic that is used as a temporary cusp (a projection on the chewing surface of a tooth) to achieve occlusal harmony (a proper bite) prior to permanent restoration of the tooth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notificaiton procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that preformed cusps be classified into class I (general controls) because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no unreasonable risks to health. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements and the good manufacturing practice regulation, because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, preformed cusps in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that preformed cusps be classified into class II (performance standards). The properties of the materials used to form preformed cusps are dependent upon the proper composition of these materials. Moreover, the device directly contacts oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a preformance standard for this device.

Because the agency has determined that performed cusps should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3360, to read as follows:

§ 872.3360 Preformed cusp.

(a) *Identification.* A preformed cusp is a prefabricated device made of plastic that is used as a temporary cusp (a projection on the chewing surface of a tooth) to achieve occlusal harmony (a proper bite) prior to permanent restoration of the tooth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39848 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2866]

Medical Devices; Classification of Acacia and Karaya With Sodium Borate Denture Adhesives

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying acacia and karaya with sodium borate denture adhesives into class III (premarket approval). FDA is also publishing § the recommendation of the Dental Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA Proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classfication of acacia and karaya with sodium borate denture adhesives:

1. Identification: A acacia and karaya with sodium borate denture adhesive is a device composed of acacia, karaya, and sodium borate that is applied to the base of denture before the denture is inserted into the patient's mouth. The device is used to improve denture retention and comfort.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that acacia and karaya with sodium borate be classified into class III because the device presents a potential unreasonable risk of illness or injury. Long-term exposure to the borate in the device may cause chronic toxicity in denture wearers. The The Panel believes that general controls would not provide sufficient control over this characteristic. The Panel also believes that sufficient data do not exist to establish an adequate performance standard to assure the safety and effectiveness of the device. Premarket approval is necessary for this device to assure that manufacturers demonstrate satisfactory performance of the device and thus assure its safety and effectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry and on a report of the Bureau of Drugs OTC Panel on Dentifrices and Dental Care Agents (Ref. 1). This report states that there is a lack of information concerning the safety of adhesives containing sodium borate and a lack of information concerning the effectiveness of acacia in denture adhesives. The report states that the sodium borate concentration of 12 to 20 percent of the adhesive's total weight is equivalent to 2.6 to 5.3 percent boron. Because at least a portion of a denture adhesive is ingested, this amount of boron could cause chronic toxicity in denture wearers (Ref. 2). The Panel agrees that there is a lack of data concerning the safety and effectiveness of acacia and karaya with sodium borate.

5. Risks to health: (A) Chronic toxicity: The boron in this device may cause chronic toxicity to users. (b) Adverse tissue reaction: If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that acacia and karaya with sodium borate be classified into class III (premarket approval). The agency believes that the device presents a potential unreasonable risk of illness or injury because the boron in the device may cause toxicity, and because there is a lack of information available to determine the safety and effectiveness of acacia and karaya with sodium borate as a denture adhesive. A review of the literature confirmed that little is known about the possible effects of sodium borate in denture adhesives and no effectiveness data are available for acacia. In addition, the device is purported or represented to be for a use (affixing dentures to the gums) that is of substantial importance in preventing impairment of human health. The agency believes that insufficient information exists to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device, and that insufficient information exists to establish a performance standard for this device.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Summary Report on Denture Aids and Plaque Disclosants Transferred to the Bureau of Medical Devices," by the OTC Panel on Dentifrices and Dental Care Agents, March 11-12, 1978.

2. Blacow, N. W. (ed.), "Martindale: The Extra Pharmacopeia," The Pharmaceutical Press, London, 1972, pp. 1084-1085.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory

committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513,

class I, the agency is not required to publish a regulation adopting or rejecing the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39850 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2867]

Medical Devices; Classification of Carboxymethylcellulose Sodium and Cationic Polyacrylamide Polymer Denture Adhesives

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesives into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classfication of carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesives:

1. Identification: A carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive is a device composed

committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3400, to read as follows:

§ 872.3400 Acacia and karaya with sodium borate denture adhesive.

(a) *Identification.* An acacia and karaya with sodium borate denture adhesive is a device composed of acacia, karaya, and sodium borate that is applied to the base of a denture before the denture is inserted into the patients mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39849 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2867]

Medical Devices; Classification of Carboxymethylcellulose Sodium (40 to 100 Percent) Denture Adhesives

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying carboxymethylcellulose sodium (40 to 100 percent) denture adhesives into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of carboxymethylcellulose sodium (40 to 100 percent) denture adhesives:

1. Identification: A carboxymethylcellulose sodium (40 to 100 percent) denture adhesive is a device containing 40 to 100 percent of carboxymethylcellulose sodium—that is applied to the base of a denture before the denture is inserted in the patient's mouth. The device is used to improve denture retention and comfort.

2. Recommended classification: Class I (general controls). The Panel recommends that carboxymethylcellulose sodium (40 to 100 percent) denture adhesives be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that carboxymethylcellulose sodium (40 to 100 percent) denture adhesives be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The device materials that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Sumamry of data on which the recommendation is based: The Panel based its recommendation on the Panel member's personal knowledge of, and clinical experience with, carboxymethylcellulose sodium denture adhesives in the practice of dentistry.

5. Risks to health: Patient discomfort and poor dental health: If the adhesive fails to anchor the denture in its proper position, the patient may experience discomfort and poor dental health.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that carboxymethylcellulose sodium (40 to 100 percent) denture adhesives be classified into class II (performance standards). The properties of the materials used to form carboxymethylcellulose sodium denture adhesives depend upon the proper composition of these materials. Moreover, carboxymethylcellulose sodium denture adhesives directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that carboxymethylcellulose sodium (40 to 100 percent) denture adhesive should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecing the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3410, to read as follows:

§ 872.3410 Carboxymethylcellulose sodium (40 to 100 percent) denture adhesives.

(a) *Identification.* A carboxymethylcellulose sodium (40 to 100 percent) denture adhesive is a device containing 40 to 100 percent of carboxymethylcellulose sodium that is applied to the base of a denture before the denture is inserted in the patient's mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39850 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2868]

Medical Devices; Classification of Carboxymethylcellulose Sodium and Cationic Polyacrylamide Polymer Denture Adhesives

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesives into class III (premarket approval). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device to be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesives:

1. Identification: A carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive is a device composed of carboxymethylcellulose sodium and cationic polyacrylamide polymer that is applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesives be classified into class III. If the device fails to anchor the denture adequately in its proper position, a change in the distance between the upper and lower jaws occurs which may lead to gum irritation and bone loss due to alteration of biting pressures. Therefore, the device presents a potential unreasonable risk of illness or injury. The Panel believes that general controls would not provide sufficient control over this characteristic. The Panel also believes that insufficient data exist to establish adequate performance standards to assure the safety and effectiveness of this device, and therefore, premarket approval is necessary for this device.

4. Summary of data on which the recommendation was based: The Panel based its recommendation on the lack of information available to demonstrate the effectiveness of carboxymethylcellulose sodium and cationic polyacrylamide in dental adhesives and on a report of the Bureau of Drugs OTC Panel on Dentifrices and Dental Care Agents. According to the report, the belief that carboxymethylcellulose sodium is safe is based, in part, on its widespread use in food products such as milk and ice cream (Ref. 2). Tests of cationic polyacrylamide acute oral toxicity, eye irritation, dermal and inhalation toxicity, and subacute and chronic feeding experiments in animals have been negative. (Ref. 1). Human patch tests also have been negative (Ref. 2). However, no data were submitted to the Panel to demonstrate, and the literature did not establish, the effectiveness of carboxymethylcellulose sodium and cationic polyacrylamide polymer as a denture adhesive.

5. Risks to health: Bone loss from lack of effectiveness: If the adhesive fails to anchor the denture in its proper position,

a change in the distance between the upper and lower jaws may occur which may lead to gum irritation and bone loss due to alteration of biting forces.

Proposed Classification

FDA agrees with the Panel

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs

Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the

3. Summary of reasons for recommendation: The Panel recommends that carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) dental adhesives be classified into class I

establish a performance standard for this device.

Because the agency has determined that carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) denture adhesives should be be classified into

submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through

a change in the distance between the upper and lower jaws may occur which may lead to gum irritation and bone loss due to alteration of biting forces.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesives be classified into class III (premarket approval). The agency believes the device presents a potential unreasonable risk of illness or injury because failure of the device to anchor the denture in place may cause a change in the distance between the upper and lower jaw, causing gum irritation and bone loss. Additionally, there is a lack of information necessary to determine the effective of this device as a denture adhesive. In addition, the device is purported or represented to be for a use (affixing dentures to the gums) that is of substantial importance in preventing impairment of human health. The agency believes that insufficient information exists to determine that general controls would provide reasonable assurance of the effectiveness of the device, and that insufficent information exists to establish a performance standard for this device.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Summary Report on Denture Aids and Plaque Disclosants Transferred to the Bureau of Medical Devices," by the OTC Panel on Dentifrices and Dental Care Agents, 1978.

2. "GRAS (Generally Recognized as Safe) Food Ingredients—Cellulose and Derivatives," Prepared for the Food and Drug Administration by Informatics, Inc., National Technical Information Service, U.S. Dept. of Commerce, PB 221228, 1972, OTC Volume 080090.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsehwere in this issue in **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–548 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3420, to read as follows:

§ 872.3420 Carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive.

(a) *Identification.* A carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive is a device composed of carboxymethylcellulose sodium and cationic polyacrylamide polymer that is applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39851 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2869]

Medical Devices; Classification of Carboxymethylcellulose Sodium (32 percent) and Ethylene Oxide Homopolymer (13 Percent) Denture Adhesives

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) denture adhesives into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administraton, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) denture adhesives:

1. Identification: a Carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) denture adhesive is a device composed of carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) that is applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

2. Recommended classification: Class I (general controls). The Panel recommends that this denture adhesive device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) dental adhesives be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials use in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) denture adhesives in the practice of dentistry.

5. Risks to health: Patient discomfort and poor dental health: If the adhesive fails to anchor the denture in its proper position, the patient may experience discomfort and poor dental health.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing the carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) denture adhesives be classified into class II (performance standards). The properties of the materials used to form carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) denture adhesive depend upon the correct composition of these materials. Moreover, this denture adhesive directly contacts oral tissues. Altering the composition of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) denture adhesives should be be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3430, to read as follows:

§ 872.3430 Carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) denture adhesive.

(a) *Identification.* A carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) denture adhesive is a device composed of carboxymethylcellulose sodium (32 percent) and ethylene oxide homopolymer (13 percent) that is applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39852 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2870]

Medical Devices; Classification of Carboxymethylcellulose Sodium (49 Percent) and Ethylene Oxide Homopolymer (21 Percent) Denture Adhesives

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesives into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesives in the practice of dentistry.

5. Risks to health: Patient discomfort and poor dental health: If the adhesive fails to anchor the denture in its proper position, the patient may experience discomfort and poor dental health.

into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3440, to read as follows:

§ 872.3440 Carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesive.

(a) *Identification.* A carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesive is a device composed of carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) that is applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39853 Filed 12–29–80; 8:45 am]

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Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesives:

1. Identification: A carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesive is a device composed of carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) that is applied to the base of a denture before the denture is inserted in the patient's mouth. The device is used to improve denture retention and comfort.

2. Recommended classification: Class I (general controls). The Panel recommends that this denture adhesivs device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesives be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesives in the practice of dentistry.

5. Risks to health: Patient discomfort and poor dental health: If the adhesive fails to anchor the denture in its proper position, the patient may experience discomfort and poor dental health.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesives be classified into class II (performance standards). The properties of the materials used to form carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesives depend upon the proper composition of these materials. Moreover, carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesives directly contact oral tissues. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesives should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3440, to read as follows:

§ 872.3440 Carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesive.

(a) *Identification.* A carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) denture adhesive is a device composed of carboxymethylcellulose sodium (49 percent) and ethylene oxide homopolymer (21 percent) that is applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class II (performance standards).

Interested persons, may on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39853 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2871]

Medical Devices; Classification of Karaya Denture Adhesives

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying karaya denture adhesives into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of karaya denture adhesives:

1. Identification: A karaya denture adhesive is a device composed of karaya (a gum from the bark of a tree of the genus *astragolus*) that is applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

2. Recommended classification: Class I (general controls). The Panel recommends that this karaya denture adhesive device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that karaya denture adhesives be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, karaya denture adhesives in the practice of dentistry.

5. Risks to health: Patient discomfort and poor dental health: If the adhesive fails to anchor the denture in its proper position, the patient may experience discomfort and poor dental health.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that karaya denture adhesives be classified into class II (performance standards). The properties of the materials used to form karaya denture adhesives depend upon the correct composition of these materials. Moreover, karaya denture adhesives directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that karaya denture adhesives should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3450, to read as follows:

§ 872.3450 Karaya denture adhesive.

(a) *Identification.* A karaya denture adhesive is a device composed of karaya (a gum from the bark of a tree of the genus *astragolus*) that is applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to the submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39854 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2872]

Medical Devices; Classification of Karaya and Ethylene Oxide Homopolymer Denture Adhesives

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying karaya with sodium borate denture adhesives into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of karaya with sodium borate denture adhesives:

1. Identification: A karaya with sodium borate denture adhesive is a device composed of karaya (a gum from

may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

because the boron in the device may cause toxicity, and because there is a lack of information available to determine the safety and effectiveness of karaya with sodium borate as a

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying karaya and ethylene oxide homopolymer denture adhesives into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of karaya and ethylene oxide homopolymer denture adhesives:

1. Identification: A karaya and ethylene oxide homopolymer denture adhesives is a device composed of karaya (a gum from the bark of a tree of the genus *astragalus*) and ethylene oxide homopolymer that is applied to the base of a denture before the denture is inserted in the patient's mouth. The device is used to improve denture retention and comfort.

2. Recommended classification: Class I (general controls). The Panel recommends that karaya and ethylene oxide homopolymer denture adhesives be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that karaya and ethylene oxide homopolymer denture adhesives be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, karaya and ethylene oxide homopolymer denture adhesives in the practice of dentistry.

5. Risks to health: Patient discomfort and poor dental health: If the adhesive fails to anchor the denture in its proper position, the patient may experience discomfort and poor dental health.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that karaya and ethylene oxide homopolymer denture adhesives be classified into class II (performance standards). The properties of the materials used to form karaya and ethylene oxide homopolymer denture adhesives depend upon the correct composition of these materials. Moreover, karaya and ethylene oxide homopolymer denture adhesives directly contact oral tissues. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that karaya and ethylene oxide homopolymer denture adhesives should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3460, to read as follows:

§ 872.3460 Karaya and ethylene oxide homopolymer denture adhesive.

(a) *Identification.* A karaya and ethylene oxide homopolymer denture adhesive is a device composed of karaya (a gum from the bark of a tree of the genus *astragalus*) and ethylene oxide homopolymer that is applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39855 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M §

21 CFR Part 872

[Docket No. 78N-2873]

Medical Devices; Classification of Karaya With Sodium Borate Denture Adhesives

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying karaya with sodium borate denture adhesives into class III (premarket approval). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFA–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of karaya with sodium borate denture adhesives:

1. Identification: A karaya with sodium borate denture adhesive is a device composed of karaya (a gum from the bark of a tree of the genus *astragalus*) and sodium borate that is applied to the base of a denture before the denture is inserted in the patient's mouth. The device is used to improve denture retention and comfort.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that karaya with sodium borate denture adhesives be classified into class III because the device presents a potential unreasonable risk of illness or injury. Long-term exposure to borate may cause chronic toxicity in denture wearers. The Panel believes that general controls would not provide sufficient control over this characteristic. The Panel also believes that sufficient data do not exist to establish an adequate performance standard to assure the safety and effectiveness of this device because satisfactory performance has never been demonstrated. Therefore, the device should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the device, and thus, assure its safety and effectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry and on a report of the Bureau of Drugs OTC Panel on Dentifrices and Dental Care Agents (Ref. *1*). This report states that sodium borate concentration of 12 to 20 percent of the adhesive's total weight is equivalent to 2.6 to 5.3 percent boron (Ref. *2*). Because at least a portion of a denture adhesive is ingested, this amount of boron could cause chronic toxicity in denture wearers.

5. Risks to health: (a) Toxicity: The boron in this device may cause chronic toxicity to users. (b) Adverse tissue reaction: If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that karaya with sodium borate denture adhesives be classified into class III (premarket approval). The agency believes the device presents a potential unreasonable risk of illness or injury because the boron in the device may cause toxicity, and because there is a lack of information available to determine the safety and effectiveness of karaya with sodium borate as a denture adhesive. A review of the literature confirmed that little is known about the possible effects of sodium borate in denture adhesives. In addition, the device is purported or represented to be for a use (affixing dentures to the gums) that is of substantial importance in preventing impairment of human health. The agency believes that insufficient information exists to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device, and that insufficient information exists to establish a peformance standard for this device.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Summary Report on Denture Aids and Plaque Disclosants Transferred to the Bureau of Medical Devices," by the OTC Panel on Dentrifices and Dental Care Agents.

2. Blacow, N.W. (ed.), "Martindale: The Extra Pharmacopeia," The Pharmaceutical Press, London, 1972, p. 1084–1085.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, § 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3470, to read as follows:

§ 872.3470 Karaya with sodium borate denture adhesive.

(a) *Identification.* A karaya with sodium borate denture adhesive is a device composed of karaya (a gum from the bark of a tree of the genus *astralagus*) and sodium borate that is

applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class III (premarket approval).

Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug

inhalation toxicity in subacute and chronic feeding experiments in animals have been negative (Ref. *1*). Human patch tests also have been negative (Ref. *2*). However, no data were submitted to the Panel to demonstrate, and the literature did not establish, the

published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive into class II (performance standards). FDA is also publishing the

requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel

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applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner, Regulatory Affairs.

[FR Doc. 80-39856 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2874]

Medical Devices; Classification of Polyacrylamide Polymer (Modified Cationic Denture Adhesives

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying polyacrylamide polymer (modified cationic) denture adhesives into class III (premarket approval). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device to be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of polyacrylamide polymer (modified cationic) denture adhesives:

1. Identification: A polyacrylamide polymer (modified cationic) denture adhesive is a device composed of polyacrylamide polymer (modified cationic) that is applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that polyacrylamide polymer (modified cationic) be classified into class III because the device presents a potential unreasonable risk of illness or injury. If the device fails to anchor a denture in its proper position, a change in the distance the upper and lower jaws may occur which may lead to irritation of the gums and bone loss due to alteration of biting forces. The Panel believes that general controls would not provide sufficient control over this characteristic. The Panel also believes that sufficient data do not exist to establish an adequate performance standard to assure the safety and effectiveness of this device because satisfactory performance has never been demonstrated. Therefore, the device should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the device and thus, assure its safety and effectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, this device, and on a report of the Bureau of Drugs' OTC Panel on Dentifrices and Dental Care agents. Tests of polyacrylamide polymer (modified cationic) for acute oral toxicity, eye irritation, and dermal and inhalation toxicity in subacute and chronic feeding experiments in animals have been negative (Ref. *1*). Human patch tests also have been negative (Ref. *2*). However, no data were submitted to the Panel to demonstrate, and the literature did not establish, the effectiveness of polyacrylamide polymer as the sole ingredient of a denture adhesive.

5. Risks to health: (a) Bone loss: If the adhesive fails to anchor the denture in its proper position, and the distance between the upper and lower jaw is changed, then bone loss and gum irritation may occur.

(b) Adverse tissue reaction: If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that polyacrylamide polymer (modified cationic) denture adhesives be classified into class III (premarket approval). The agency believes the device presents a potential unreasonable risk of illness or injury because failure of the device to anchor the denture in place may result in bone loss, and because there is a lack of information to determine the effectiveness of polyacrylamide polymer as the sole ingredient of a denture adhesive. In addition, the device is purported or represented to be for a use (affixing dentures to the gums) that is of substantial importance in preventing impairment of human health. The agency believes that insufficient information exists to determine that general controls provide reasonable assurance of the safety and effectiveness of the device, and that in sufficient information exists to establish a performance standard for this device.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Summary Report on Denture Aids and Plaque Disclosants Transferred to the Bureau of Medical Devices" by the OTC Panel on Dentifrices and Dental Care Agents, 1978.

2. "GRAS [Generally Recognized as Safe] Food Ingredients—Cellulose and Derivatives." Prepared for the Food and Drug Administration by Informatics, Inc., National Technical Information Service, U.S. Dept. of Commerce, PB 221228, 1972 OTC Vol. 080090.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3480, to read as follows:

§ 872.3480 Polyacrylamide polymer (modified caticnic) denture adhesive.

(a) *Identification.* A polyacrylamide polymer (modified caticnic) denture adhesive is a device composed of polyacrylamide polymer (modified cationic) to be applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39857 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2875]

Medical Devices; Classification of Polyvinylmethylether Maleic Acid Calcium-Sodium Double Salt Denture Adhesives

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of polyvinylmethylether maleic acid calcium-sodium double salt denture adhesives:

1. Identification: A polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive is a device composed of polyvinylmethylether maleic acid calcium-sodium double salt that is applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

2. Recommendated classification: Class I (general controls). The Panel recommends that this adhesive be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that polyvinylmethylether maleic acid calcium-sodium double salt denture adhesives be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, polyvinylmethylether maleic acid calcium-sodium double salt denture adhesives in the practice of dentistry.

5. Risks to health: Patient discomfort and poor dental health: If the adhesive fails to anchor the denture in its proper position, the patient may experience discomfort and poor dental health.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that polyvinylmethylether maleic acid calcium-sodium double salt denture adhesives be classified into class II (performance standards). The properties of the materials used to form polyvinylmethylether maleic acid calcium-sodium double salt denture adhesives depend upon the proper composition of these materials. Moreover, polyvinylmethylether maleic acid calcium-sodium double salt denture adhesives directly contact oral tissues. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the

device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that polyvinylmethylether maleic acid

of an acid pH of 2 to 3, which can burn the tissues in the mouth.

5. Risks to health: (a) Toxicity: Ingestion of the materials in this device may cause chronic toxicity to users. (b) Adverse tissue reaction: If the materials in the device are not biocompatible, the

regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513,

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose sodium denture adhesives into class II (performance

device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3490, to read as follows:

§ 872.3490 Polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive.

(a) *Identification.* A polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive is a device composed of polyvinylmethylether maleic acid calcium-sodium double salt that is applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39358 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2876]

Medical Devices; Classification of Polyvinylmethylether Maleic Anhydride (PVM–MA), Acid Copolymer and Carboxymethylcellulose Sodium (NACMC) Denture Adhesives

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesives into class III (premarket approval). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesives:

1. Identification: A polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive is a device composed of polyvinylmethylether maleic anhydride, acid copolymer, and carboxymethylcellulose sodium that is applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer and carboxymethylcellulose sodium (NACMC) be classified into class III because the device presents a potential unreasonable risk of illness or injury. The materials used in the device are toxic if ingested; the possible acidity of the device may also cause tissue burns. The Panel believes that general controls would not provide sufficient control over this characteristic. The Panel also believes that sufficient data do not exist to establish an adequate performance standard to assure the safety and effectivness of this device. Therefore, the device should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the device and thus, assure its safety and effectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device and on a report of the Bureau of Drugs' OTC Panel on Dentifrices and Dental Care Agents. The report states that sufficient data are not available to demonstrate the safety and effectiveness of a combination of PVM–MA and NACMC used as a denture adhesive. (Ref. *1*). The Panel also based its recommendation on a publication by Blacow (Ref. *2*) which states that the pH and stability of the anhydride and diacid forms may be hazardous due to the possible presence

of an acid pH of 2 to 3, which can burn the tissues in the mouth.

5. Risks to health: (a) Toxicity: Ingestion of the materials in this device may cause chronic toxicity to users. (b) Adverse tissue reaction: If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction. Acidity of the adhesive may burn tissues in the mouth.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesives be classified into class III (premarket approval). The agency believes the device presents a potential unreasonable risk of illness or injury because the materials in the device may cause chronic toxicity or oral tissue burns, and because there is a lack of information to determine the safety and effectiveness of the PVM–MA and NACMC combination as a denture adhesive. The literature confirms that little is known about possible effects of long-term use of this material. In addition, the device is purported or represented for a use (affixing dentures to the gums) that is of substantial importance in preventing impairment of human health. The agency believes that insufficient information exists to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device and that insufficient information exists to establish a performance standard for this device.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Summary Report on Denture Aids and Plaque Disclosants Transferred to the Bureau of Medical Devices," by the OTC Panel on Dentifrices and Dental Care Agents, 1978.

2. Blacow, N. W. (ed.), "The Extra Pharmacopeia," The Pharmaceutical Press, London, pp. 1084–1085, 1972.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 of Subpart D by adding new § 872.3500, to read as follows:

§ 872.3500 Polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive.

(a) *Identification.* polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive is a device composed of polyvinylmethylether maleic anhydride, acid copolymer, and carboxymethylcellulose sodium that is applied to the base of a denture before the denture is inserted in a patient's mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class III (premarket approval).

Interested persons, may on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39359 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2877]

Medical Devices; Classification of Polyvinylmethylether Maleic Acid Calcium-Sodium Double Salt and Carboxymethylcellulose Sodium Denture Adhesives

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose sodium denture adhesives into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose sodium denture adhesives

1. Identification: A polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose sodium denture adhesives is a device composed of polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose sodium that is applied to the base of a denture before the denture is inserted into a patient's mouth. The device is used to improve denture retention and comfort.

2. Recommended classification: Class I (general controls). The Panel recommends that this adhesive be

exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good

tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by

mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

OTC denture cleansers be classified into class II (performance standards). Residues of the cleansers that may remain on the dentures have the potential for burning oral tissues. Porous dental plaque frequently accumulates on dentures, preventing the complete

from removable prosthetic dental appliances, such as bridges or dentures. The dental appliance is removed from the patient's mouth when the applicance is cleaned.

(b) *Classification.* Class II (performance standards).

exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose sodium denture adhesives be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because it is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose sodium denture adhesives in the practice of dentistry.

5. Risks to health: Patient discomfort and poor dental health: If the adhesive fails to anchor the denture in its proper position, the patient may experience discomfort and poor dental health.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose sodium denture adhesives be classified into class II (performance standards). The properties of the materials used to form polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose sodium denture adhesives depend upon the proper composition of these materials. Polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose denture adhesives also directly contact oral tissues. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose sodium denture adhesives should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3510, to read as follows:

§ 872.3510 Polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose sodium denture adhesive.

(a) *Identification.* A polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose sodium denture adhesive is a device composed of polyvinylmethylether maleic acid calcium-sodium double salt and carboxymethylcellulose sodium that is applied to the base of a denture before the denture is inserted into a patient's mouth. The device is used to improve denture retention and comfort.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39860 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2878]

Medical Devices; Classification of OTC Denture Cleansers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying OTC denture cleansers into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of OTC denture cleansers:

1. Identification: An OTC denture cleanser is a device that consists of material in the form of a powder, tablet, or paste, that is used to remove debris from removable prosthetic dental appliances, such as bridges or dentures. The dental appliance is removed from the patient's mouth when the appliance is cleaned.

2. Recommended classification: Class I (general controls). The Panel recommends that OTC denture cleansers be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that OTC denture cleansers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, denture cleansers in the practice of dentistry.

5. Risks to health: Oral tissue damage: Denture cleanser residue remaining on dentures may burn oral tissues.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that OTC denture cleansers be classified into class II (performance standards). Residues of the cleansers that may remain on the dentures have the potential for burning oral tissues. Porous dental plaque frequently accumulates on dentures, preventing the complete removal, by rinsing, of denture cleansers from denture surfaces. Performance standards for denture cleansers would control the cleanser formulations to assure that expected low levels of cleanser residues would not harm users. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risk to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that OTC denture cleansers should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3520, to read as follows:

§ 872.3520 OTC denture cleanser.

(a) *Identification.* An OTC denture cleanser is a device that consists of material in the form of a powder, tablet, or paste that is used to remove debris from removable prosthetic dental appliances, such as bridges or dentures. The dental appliance is removed from the patient's mouth when the applicance is cleaned.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39861 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2879]

Medical Devices; Classification of Mechanical Denture Cleaners

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying mechanical denture cleaners into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305).

Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of OTC denture cleansers:

1. Identification: An OTC denture cleanser is a device that consists of material in the form of a powder, tablet, or paste, that is used to remove debris from removable prosthetic dental appliances, such as bridges or dentures. The dental appliance is removed from the patient's mouth when the appliance is cleaned.

2. Recommended classification: Class I (general controls). The Panel recommends that OTC denture cleansers be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that OTC denture cleansers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, denture cleansers in the practice of dentistry.

5. Risks to health: Oral tissue damage: Denture cleanser residue remaining on dentures may burn oral tissues.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that OTC denture cleansers be classified into class II (performance standards). Residues of the cleansers that may remain on the dentures have the potential for burning oral tissues. Porous dental plaque frequently accumulates on dentures, preventing the complete removal, by rinsing, of denture cleansers from denture surfaces. Performance standards for denture cleansers would control the cleanser formulations to assure that expected low levels of cleanser residues would not harm users. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risk to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that OTC denture cleansers should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3540, to read as follows:

§ 872.3540 Over-the-counter (OTC) denture cushion.

(a) *Identification.* An over-the-counter (OTC) denture cushion is a prefabricated or noncustom made device consisting of a material, such as wax or cotton fibers, that is intended to cause alteration in the vertical dimension of a denture, resulting in bone degeneration in the upper and lower jaw. (b) Carcinomas: Long-term irritation of oral tissues caused by incorrect vertical dimension may cause

Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of mechanical denture cleaners:

1. Identification: A mechanical denture cleaner is an AC-powered denture cleaning device that mechanically agitates the denture cleansing solution.

2. Recommended classification: Class I (general controls). The Panel recommends that mechanical denture cleaners be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that mechanical denture cleaners be classified into class I (general controls) because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purposes recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, mechanical denture cleaners in the practice of dentistry.

5. Risks to health: Pacemaker interference: Operation of mechanical denture cleaners may cause interference with the proper function of a heart pacemaker.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that mechanical denture cleaners be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. This AC-powered device may interfere with the proper function of a heart pacemaker. In addition, leakage current or a malfunction of the device could result in an electrical shock. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that mechanical denture cleaners should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3530, to read as follows:

§ 872.3530 Mechanical denture cleaner.

(a) *Identification.* A mechanical denture cleaner is an AC-powered denture cleaning device that mechanically agitates the denture cleansing solution.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-38862 Filed 12-29-80; 8:45 am]
BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2880]

Medical Devices; Classification of Over-the-Counter (OTC) Denture Cushions

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying over-the-counter (OTC) denture cushions into class III (premarket approval). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of over-the-counter (OTC) denture cushions.

1. Identification: An over-the-counter (OTC) denture cushion is a prefabricated or noncustom made device consisting of a material, such as wax or cotton fibers, that is intended to be applied to the entire base or inner surface of a denture before the denture is inserted in a patient's mouth. The device is used to improve temporarily the fit of a loose or uncomfortable denture and can be purchased over-the-counter.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that over-the-counter (OTC) denture cushions be classified into class III because the device presents a potential unreasonable risk of illness or injury. Use of the device may cause an improper vertical dimension of a denture which may result in increased occlusal (biting) forces and lead to bone loss through resorption (degeneration of the bone through gradual dissolution). The Panel also believes that long-term irritation of oral tissue caused by incorrect vertical dimension could cause the formation of carcinomas. The Panel believes that general controls would not provide sufficient control over this characteristic. The Panel also believes that sufficient data do not exist to establish an adequate performance standard to assure the safety and effectiveness of this device because satisfactory performance has never been demonstrated. Therefore, the device should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the device and thus assure its safety and effectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel member's personal knowledge of, and clinical experience with, the device. The Panel also based its recommendation on statements by representatives of the Bureau of Drugs that further studies are necessary to determine the safety and effectiveness of this device (Ref. 1).

5. Risks to health: (a) Bone degeneration: Use of the device may cause alteration in the vertical dimension of a denture, resulting in bone degeneration in the upper and lower jaw. (b) Carcinomas: Long-term irritation of oral tissues caused by incorrect vertical dimension may cause formation of carcinomas.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that over-the-counter (OTC) denture cushions be classified into class III (premarket approval). The agency believes that the device presents a potential unreasonble risk of illness or injury because the device may cause a change in the vertical dimension of the denture resulting in bone loss. In addition long term irritation of oral tissue caused by incorrect vertical dimension may cause the formation of carcinomas. The agency believes that insufficient information exists to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device and that insufficient information exists to establish a performance standard for this device.

Reference

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Summary Report on Denture Aids and Plaque Disclosants Transferred to the Bureau of Medical Devices," by the OTC Panel on Dentifrices and Dental Care Agents, May 22, 1978.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3540, to read as follows:

§ 872.3540 Over-the-counter (OTC) denture cushion.

(a) *Identification.* An over-the-counter (OTC) denture cushion is a prefabricated or noncustom made device consisting of a material, such as wax or cotton fibers, that is intended to be applied to the entire base or inner surface of a denture before the denture is inserted in the patient's mouth. The device is used to improve temporarily the fit of a loose or uncomfortable denture and can be purchased over-the-counter.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-38863 Filed 12-29-80; 8:45 am]
BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2681]

Medical Devices; Classification of Over-the-Counter (OTC) Denture Pads

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying over-the-counter (OTC) denture pads into class III (premarket approval). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the

denture reliners into class III (premarket approval). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device

1. "Summary Report on Denture Aids and Plaque Disclosants Transferred to the Bureau of Medical Devices," by the OTC Panel on Dentifrices and Dental Care Agents, 1978.

On April 28, 1978, the agency terminated all of the device

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of over-the-counter (OTC) denture pads:

1. Identification: An over-the-counter (OTC) denture pad is a prefabricated or noncustom-made device consisting of a material, such as wax or cotton fibers, that is intended to be applied to a portion of the base or inner surface of a denture before the denture is inserted in a patient's mouth. The device is used to soothe temporarily sore areas of the gums caused by an improperly fitting denture and can be purchased over-the-counter.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that over-the-counter (OTC) denture pads be classified into class III because the device presents a potential unreasonable risk of illness or injury. Use of the device may cause an improper vertical dimension of the denture which may result in increased occlusal (biting) forces and lead to bone loss through resorption (degeneration of the bone through gradual dissolution). The Panel also believes that long-term irritation of oral tissue caused by incorrect vertical dimension could cause formation of carcinomas. The Panel believes that general controls would not provide sufficient control over this characteristic. The Panel believes that sufficient data do not exist to establish an adequate performance standard to assure the safety and effectiveness of this device because satisfactory performance has never been demonstrated. Therefore, the device should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the device and thus assure its safety and effectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device. The Panel also based its recommendation on statements by representatives of the Bureau of Drugs that further studies are necessary to determine the safety and effectiveness of this device (Ref. 1).

5. Risks to Health: (a) Bone degeneration: Use of the device may cause alteration in the vertical dimension of a denture and result in bone degeneration in the upper and lower jaw. (b) Carcinomas: Long-term irritation of oral tissues caused by incorrect vertical dimension may cause formation of carcinomas.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that over-the-counter (OTC) denture pads be classified into class III (premarket approval). The agency believes that the device presents a potential unreasonable risk of illness or injury because the device may cause a change in the vertical dimension of the jaw, resulting in bone loss. In addition, long-term irritation of oral tissue caused by incorrect vertical dimension may cause the formation of carcinomas. The agency believes that insufficient information exists to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device and that insufficient information exists to establish a performance standard for this device.

Reference

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Summary Report on Denture Aids and Plaque Disclosants Transferred to the Bureau of Medical Devices," by the OTC Panel on Dentifrices and Dental Care Agents, 1978.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3550, to read as follows:

§ 872.3550 Over-the-counter (OTC) denture pad.

(a) *Identification.* An over-the-counter (OTC) denture pad is a prefabricated or noncustom-made device consisting of a material, such as wax or cotton fibers, that is intended to be applied to a portion of the base or inner surface of a denture before the denture is inserted in a patient's mouth. The device is used to soothe temporarily sore areas of the gums caused by an improperly fitting denture and can be purchased over-the-counter.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39864 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2882]

Medical Devices; Classification of Over-the-Counter (OTC) Denture Reliners

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying over-the-counter (OTC) denture reliners into class III (premarket approval). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacuter of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of over-the-counter (OTC) denture reliners:

1. Identification: An over-the-counter (OTC) denture reliner is a device consisting of a material, such as plastic resin, that is intended to be applied as a permanent coating or lining on the base or tissue-contacting surface of a denture. The device is used to replace a worn denture lining and can be purchased over-the-counter.

2. Recommended classification: Class III (premarket approval). The Panel recommends that the premarket approval of this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that over-the-counter (OTC) denture reliners be classified into class III because the device presents a potential unreasonable risk of illness or injury. Use of the device may cause an improper vertical dimension of the denture which may result in increased occlusal (biting) forces and lead to bone loss through resorption (degeneration of the bone through gradual dissolution). The Panel also believes that long-term irritation of oral tissue caused by incorrect vertical dimension could cause formation of carcinomas. The Panel believes that general controls would not pvovide sufficient control over this characteristic.The Panel believes that sufficient data do not exist to establish an adequate performance standard to assure the safety and effectiveness of this device because satisfactory performance has never been demonstrated. Therefore, the device should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the device and thus assure its safety and effectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry. The Panel also based its recommendation on statements by representatives of the Bureau of Drugs that further studies are necessary to determine the safety and effectiveness of this device (Ref. *1*).

5. Risks to health: (a) Bone degeneration: Use of the device may cause an alteration in the vertical dimension of the denture and result in bone degeneration in the upper and lower jaw. (b) Carcinomas: Longterm irritation of oral tissues caused by incorrect vertical dimension may cause formation of carcinomas.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that over-the-counter (OTC) denture reliners be classified into class III (premarket approval). The agency believes that the device presents a potential unreasonable risk of illness or injury because the device may cause a change in the vertical dimension of the jaw, resulting in bone loss. In addition, long-term irritation of oral tissues caused by incorrect vertical dimension may cause formation of carcinomas. The agency believes that insufficient information exists to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device and that insufficient information exists to establish a performance standard for this device.

Reference

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Summary Report on Denture Aids and Plaque Disclosants Transferred to the Bureau of Medical Devices," by the OTC Panel on Dentifrices and Dental Care Agents, 1978.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3560, to read as follows:

§ 872.3560 Over-the-counter (OTC) denture reliner.

(a) *Identification.* An over-the-counter (OTC) denture reliner is a device consisting of a material such as plastic resin, that is intended to be applied as a permanent coating or lining on the base or tissue-contacting surface of a denture. The device is used to replace a worn denture lining and can be purchased over-the-counter.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39865 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2883]

Medical Devices; Classification of Over-the-Counter (OTC) Denture

Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel,

composition of the materials used in the device or contaminaton of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device

21 CFR Part 872

[Docket No. 78N-2883]

Medical Devices; Classification of Over-the-Counter (OTC) Denture Repair Kits

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying over-the-counter (OTC) denture repair kits into class III (premarket approval). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of over-the-counter (OTC) denture repair kits:

1. Identification: An over-the-counter (OTC) denture repair kit is a device consisting of material, such as a resin monomer system of powder and liquid glues, that is intended to be applied permanently to a denture to mend cracks or breaks. The device can be purchased over-the-counter.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that over-the-counter (OTC) denture repair kits be classified into class III because the device presents a potential unreasonable risk of illness or injury. If the repaired denture does not have the same characteristics and fit as the original denture, the repaired denture may cause a change in the vertical dimension of the denture which may result in increased occlusal (biting) forces and lead to bone loss through resorption (degeneration of the bone through gradual dissolution). The Panel also believes that long-term irritation of oral tissue caused by incorrect vertical dimension could cause formation of carcinomas. The Panel believes that general controls would not provide sufficient control over these characteristics. The Panel believes that sufficient data do not exist to establish an adequate performance standard to assure the safety and effectiveness of this device because satisfactory performance has never been demonstrated. Therefore, the device should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the device and thus assure its safety and effectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the potential hazards associated with the inherent properties of this device and on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry. The Panel also based its recommendation on statements by representatives of the Bureau of Drugs that further studies are necessary to determine the safety and effectiveness of this device (Ref. *1*).

5. Risks to health: Bone degeneration: If the repaired denture does not have the same characteristics and fit as the original denture, the repaired denture may cause alteration of the vertical dimension of the patient's jaw and lead to bone degeneration in the jaws. (b) Carcinomas: Long term irritation of oral tissue caused by incorrect vertical dimension may cause formation of carcinomas.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that over-the-counter (OTC) denture repair kits be classified into class III (premarket approval). The agency believes that the device presents a potential unreasonable risk of illness or injury because the device may cause a change in the vertical dimension of the jaw, resulting in bone loss. In addition, long term irritation of oral tissue caused by incorrect vertical dimension may cause the formation of carcinomas. The agency believes that insufficient information exists to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device and that insufficient information exists to establish a performance standard to provide this assurance.

Reference

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Summary Report on Denture Aids and Plaque Disclosants Transferred to the Bureau of Medical Devices," by the OTC Panel on Dentifrices and Dental Care Agents, 1978.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3570, to read as follows:

§ 872.3570 Over-the-counter (OTC) denture repair kit.

(a) *Identification.* An over-the-counter (OTC) denture repair kit is a device consisting of a material, such as a resin monomer system of powder and liquid glues, that is intended to be applied permanently to a denture to mend cracks or breaks. The device can be purchased over-the-counter.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39861 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2884]

Medical Devices; Classification of Preformed Gold Denture Teeth

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying preformed gold denture teeth into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of preformed gold denture teeth:

1. Identification: A preformed gold denture tooth is a device composed principally of gold metal and containing other metals, that is used as a tooth or a portion of a tooth in a fixed or removable partial denture.

2. Recommended classification: Class I (general controls). The Panel recommends that preformed gold denture teeth be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that prefabricated gold denture teeth be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, preformed gold denture teeth in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that preformed gold denture teeth be classified into class II (performance standards). The properties of the materials used to form preformed gold denture teeth depend upon the correct composition of these materials. Moreover, preformed gold denture teeth directly contact oral tissues. Altering the composition of the materials used in the device or contaminaton of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that preformed gold denture teeth should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3580, to read as follows:

§ 872.3580 Preformed gold denture tooth.

(a) *Identification.* A preformed gold denture tooth is a device composed principally of gold metal and containing other metals, that is used as a tooth or a portion of a tooth in a fixed or removable partial denture.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written

comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading

an FDA advisory committee, made the following recommendation regarding the classification of preformed plastic denture teeth:

1. Identification: A preformed plastic denture tooth is a prefabricated device

regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food,

regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These

technique that omits a number of generally accepted steps in the fabrication of denture prostheses. The Panel believes that general controls would not provide sufficient control over these characteristics. The Panel

identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere

comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39867 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2885]

Medical Devices; Classification of Preformed Plastic Denture Teeth

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying preformed plastic denture teeth into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of preformed plastic denture teeth:

1. Identification: A preformed plastic denture tooth is a prefabricated device composed of materials, such as methyl methacrylate, that is used as a tooth in a denture.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that plastic denture teeth be classified into class II because the materials used in the device that contact the body should meet a generally accepted satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: Adverse tissue reaction: If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that preformed plastic denture teeth be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 abd 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3590, to read as follows:

§ 872.3590 Preformed plastic denture teeth.

(a) *Identification.* A preformed plastic denture tooth is a prefabricated device composed of materials, such as methyl methacrylate, that is used as a tooth in a denture.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39868 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2886]

Medical Devices; Classification of Partially Fabricated Denture Kits

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying partially fabricated denture kits into class III (premarket approval). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of partially fabricated denture kits:

1. Identification: A partially fabricated denture kit is a device, composed of connected preformed teeth, that is used in the construction of dentures. A denture base is constructed, using the patient's mouth as the mold, by partially polymerizing the resin denture base materials while the materials are in contact with the oral tissues. After the denture base is constructed, the connected preformed teeth are inserted into the base.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that partially fabricated denture kits be classified into class III because the device presents a potential unreasonable risk of illness or injury. Failure of the device to reproduce accurately the physiological dimensions of the mouth may cause dysfunction of the jaw.

In addition, the necessity of partial polymerization of the materials used in the device while these materials are in contact with oral tissue may cause unnecessary tissue irritation and damage. The Panel believes that use of this device involves a questionable technique that omits a number of generally accepted steps in the fabrication of denture prostheses. The Panel believes that general controls would not provide sufficient control over these characteristics. The Panel also believes that sufficient data does not exist to establish an adequate performance standard to assure the safety and effectiveness of this device because satisfactory performance has never been demonstrated. Therefore, premarket approval is necessary for this device. The Panel further recommends that use of this device be reserved for emergency situations until a conventional denture can be made.

4. Summary of data on which the recommendation is based: The Panel based its recommendation of the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry. The Panel members believe that the absence of a generally accepted denture construction procedure using this device produces a denture that is not as safe and effective as a prosthesis constructed in a conventional manner.

5. Risks to health: (a) Jaw joint dysfunction: Jaw joint dysfunction may result from inaccurate reproduction of the physiologic dimensions of the mouth. (b) Adverse tissue reaction: Irritation of oral tissues may result from the polymerization of the lining materials while in contact with the tissues of the mouth.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that partially fabricated denture kits be classified into class III (premarket approval). The agency believes that premarket approval is necessary for this device because the device presents a potential unreasonable risk of illness or injury. Failure of the device to reproduce accurately the physiologic dimensions of the mouth may cause jaw joint dysfunction. The agency believes that insufficient information exists to determine that general controls would provide reasonable assurance of the safety and effectiveness of this device, and that insufficient information exists to establish a performance standard to provide this assurance.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3600 to read as follows:

§ 872.3600 Partially fabricated denture kit.

(a) *Identification.* A partially fabricated denture kit is a device, composed of connected preformed teeth, that is used in the construction of dentures. A denture base is constructed using the patient's mouth as the mold, by partially polymerizing the resin denture base materials while the materials are in contact with the oral tissues. After the denture base is constructed, the connected preformed teeth are inserted into the base.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39869 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2887]

Medical Devices; Classification of Endosseous Implants

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying endosseous implants into class III (premarket approval). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to provide reasonable assurance of the safety and effectiveness of the device. Therefore, the device should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the device and thus assure its safety and effectiveness. Furthermore, the device is an implant, which the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(d)) requires to be classified into class III unless the agency determines that premarket approval is not necessary to preventing impairment of human health.

jaw arches to provide support for prosthetic devices, such as artificial teeth, and to restore the patient's chewing function.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 2, 1981 submit to the Hearing

Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8657 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of

Localized tissue degeneration and infection: Localized tissue degeneration may result from exposure of the tissues to micro-organisms entering the body at the site of the implant, causing infection. (c) Pain: Nerve impingement by the device, as a result of chewing force, may cause pain.

also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of endosseous implants:

1. Identification: An endosseous implant is a device of a material, such as titanium, that is surgically placed in the bone of the upper or lower jaw arches to provide support for prosthetic devices, such as artificial teeth, and to restore the patient's chewing function.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that endosseous implants be classified into class III because the device is implanted into the human body and because the device presents a potential unreasonable risk of illness or injury. Use of this device involves a risk of abnormal spontaneous pain due to nerve impingement by the implant and a risk of perforation of the lingual and labial bony plates of the upper or lower jaws. The Panel also believes that sufficient data do not exist to establish an adequate performance standard to provide reasonable assurance of the safety and effectiveness of the device. Therefore, the device should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the device and thus assure its safety and effectiveness.

(4) Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, endosseous implants in the practice of dentistry and on a presentation by the Oral Implant Subcommittee (Ref. *1*). The Subcommittee presented information regarding adverse conditions and injuries caused by the device, and stated that there is an absence of criteria for determining a successful implant. The Panel believes that further research will be required to obtain this information.

5. Risks to health: (a) Tissue degeneration: Localized tissue degeneration may be caused by endosseous implants due to excessive mobility. (b) Pain: Nerve impingement by the device may cause pain. (c) Bone perforation: Improper design of the device may cause excess mobility of the implant following surgical placement and subsequent perforation of the bony plates of the upper or lower jaws. (d) Infection: Micro-organisms may be harbored between the implant and the gums and cause localized infection.

Proposed Classification

FDA has sought additional information and data concerning the use of endosseous implants in dentistry. According to some of the literature, these implants may be engulfed by a fibrous tissue layer when they are not exposed to the oral cavity and show only low-grade chronic inflammation, if any (Ref. *2*). However, Natiella, et al. (Ref. *3*) assert that there are not adequate data to determine the indications for use of the implants and the response of oral tissues to these devices. Furthermore, the agency is aware, through informal discussions of the Panel, that opinions of investigators differ as to epithelial proliferation, inflammatory infiltration, and response of subperiosteal tissues.

FDA agrees with the Panel recommendation and is proposing that Endosseous Implants be classified into class III (premarket approval). FDA believes that the device presents a potential risk of illness or injury to the patient if there are not adequate data to assure the safe and effective use of the device. In addition, the device is purported or represented to be for a use (support of prosthetic dental devices) that is of substantial importance in preventing impairment of human health. Furthermore, the device is an implant, which the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(d)) requires to be classified into class III unless the agency determines that premarket approval is not necessary to provide reasonable assurance of a device's safety and effectiveness. In this case, the agency has determined that premarket approval is necessary for the device because general controls and performance standards are insufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is insufficient information to establish a standard to provide reasonable assurance of the safety and effectiveness of the device.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Minutes to the Oral Implant Subcommittee, FDA, Bureau of Medical Devices, July 19, 1976.

2. Langeland, K., and L. Spangberg, "Methodology and Criteria in Evaluation of Dental Endosseous Implants," *Journal of Dental Research*, 54:B158-B165, June 1975.

3. Natiella, J. R., et al., "Current Evalution of Dental Implants," *Journal of the American Dental Association*, 84:1358, June 1972.

On April 28, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3640, to read as follows:

§ 872.3640 Endosseous implant.

(a) *Identification.* An endosseous implant is a device made of a material, such as titanium, that is surgically placed in the bone of the upper or lower jaw arches to provide support for prosthetic devices, such as artificial teeth, and to restore the patient's chewing function.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39870 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2888]

Medical Devices; Classification of Titanium Subperiosteal Implant Materials

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying titanium subperiosteal implant materials into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8657 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of titanium subperiosteal implant materials:

1. Identification: Titanium subperiosteal implant material is a device composed of titanium that is used to construct custom prosthetic devices which are surgically implanted into the lower or upper jaw between the periosteum (connective tissue covering the bone) and supporting bony structures. The device provides support for prostheses, such as dentures.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that titanium subperiosteal implant materials be classified into class II. Although this device is implanted into the human body, the Panel believes that premarket approval is not necessary to assure its safety and effectiveness because it has been used successfully for years as a subperiosteal implant material and sufficient data exist to establish performance standards.

Materials used in the device should meet a generally accepted satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a standard.

4. Summary of data on which the recommandation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry, on the past use of this device in the fabrication of subperiosteal implants, and on the studies of laboratory animals which demonstrate the device's biocompatibility (Ref. *1*).

5. Risks to health: (a) Bone loss: Bone loss may result from impingement by the device on the bony ridge of the jaws. (b) Localized tissue degeneration and infection: Localized tissue degeneration may result from exposure of the tissues to micro-organisms entering the body at the site of the implant, causing infection. (c) Pain: Nerve impingement by the device, as a result of chewing force, may cause pain.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that titanium subperiosteal implant materials be classified into class II (performance standards). FDA has reviewed the literature regarding the use of titanium materials in the fabrication of subperiosteal implants and the research conducted with these materials. Research on the biocompatibility of materials used in the construction of implanted devices has established the properties necessary for acceptable implant materials. Muratori (Ref. *2*) specifies that tissue compatibility, hardness, and resistance to fatigue (mechanical failure due to stress over time) are the most important considerations. These findings are supported by Bodine (Ref. *3*) who evaluated the success rate of subperiosteal implants. Bodine concludes that a major cause of subperiosteal implant failure is inflammation due to deterioration of the implant material, a deterioration caused by impurities in that material. FDA believes that a performance standard for titanium materials used in subperiosteal implants can be established to detail the properties necessary for a safe and effective implant. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficent information to establish a performance standard for this device.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Harris, R., "Implantation of Chrome Cobalt Alloy Forms in the Rabbit's Mandible," *Australian Dental Journal*, 14:396, 1969.

2. Muratori, Giordano, "Multi-Type Oral Implantology," The Marino Cantellic Publishing Co., 64:156, June 1973.

3. Bodine, R., "Implant Dentures," *Journal of Prosthetic Dentistry*, 32(2):188-197, August 1974.

On April 28, 1976, the agency terminated all of the device

21 CFR Part 872

[Docket No. 78N-2889]

Medical Devices, Classification of Cobalt Chrome Molybdenum

compatibility, hardness, and resistance to fatigue (mechnical failure due to stress over time) are the most important considerations. These findings are supported by Bodine (Ref. *3*) who evaluated the success rate of

recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that cobalt chrome

by adding new § 872.3650, to read as follows:

§ 872.3650 Cobalt chrome molybdenum subperiosteal implant material.

(a) *Identification.* Cobalt chrome

based on this proposal become effective 30 days after the date of its publication in the **Federal Register**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-

3. Bodine, R., "Implant Dentures," *Journal of Prosthetic Dentistry*, 32(2):188–197, August 1974.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3645, to read as follows:

§ 872.3645 Titanium subperiosteal implant material.

(a) *Identification.* Titanium subperiosteal implant material is a device composed of titanium that is used to construct custom prosthetic devices which are surgically implanted into the lower or upper jaw between the periosteum (connective tissue covering the bone) and supporting bony structures. The device provides support for prostheses, such as dentures.

(b) *Classification.* Class II (performance standards).

Interested persons may on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39872 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2889]

Medical Devices, Classification of Cobalt Chrome Molybdenum Subperiosteal Implant Materials

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying cobalt chrome molybdenum subperiosteal implant material into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATE: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of cobalt chrome molybdenum subperiosteal implant material:

1. Identification: Cobalt chrome molybdenum subperiosteal implant material is a device composed of cobalt chrome molybdenum that is used to construct custom prosthetic devices which are surgically implanted into the lower or upper jaw between the periosteum (connective tissue covering the bone) and supporting bony structures. The device provides support for prostheses, such as dentures.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that cobalt chrome molybdenum subperiosteal implant materials be classified into class II. Although this device is implanted into the human body, the Panel believes that premarket approval is not necessary to assure its safety and effectiveness because it has been used successfully for years as a subperiosteal implant material and sufficient data exist to establish performance standards. Materials used in the device should meet a generally accepted satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry, on the past use of this device in the fabrication of subperiosteal implants, and on the studies of laboratory animals which demonstrate the device's biocompatibility (Ref. *1*).

5. Risks to health: (a) Bone loss: Bone loss may result from impingement by the device on the bony ridge of the jaws. (b) Localized tissue degeneration and infection: Localized tissue degeneration may result from exposure of tissues to oral microorganisms which may enter the body at the site of the implant causing infection. (c) Pain: Nerve impingement by the device, as a result of chewing force, may cause pain.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that cobalt chrome molybdenum subperiosteal implant materials be classified into class II (performance standards).

FDA has reviewed the literature regarding the use of cobalt chrome molybdenum materials in the fabrication of subperiosteal implants and the research conducted with these materials. Research on the biocompatibility of materials used in the construction of implanted devices has established the properties necessary for acceptable implant materials. Muratori (Ref. *2*) specifies that tissue compatibility, hardness, and resistance to fatigue (mechnical failure due to stress over time) are the most important considerations. These findings are supported by Bodine (Ref. *3*) who evaluated the success rate of subperiosteal implants. Bodine concludes that a major cause of subperiosteal implant failure is inflammation due to deterioration of the implant material, a deterioration caused by impurities in that materials. FDA believes that a performance standard for cobalt chrome molybdenum materials used in subperiosteal implants can be established to detail the properties necessary for a safe and effective implant. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Harris, R., "Implantation of Chrome Cobalt Alloy Forms in the Rabbit's Mandible," *Australian Dental Journal*, 14:396, 1969.

2. Muratori, G., "Multi-Type Oral Implantology," The Marino Cantellic Publishing Co:. 64:156, June 1973.

3. Bodine, R., "Implant Dentures," *Journal of Prosthestic Dentistry*, 32(2):188–197, August 1974.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3650, to read as follows:

§ 872.3650 Cobalt chrome molybdenum subperiosteal implant material.

(a) *Identification.* Cobalt chrome molybdenum subperiosteal implant material is a device composed of cobalt chrome molybdenum that is used to construct custom prosthetic devices which are surgically implanted into the lower or upper jaw between the periosteum (connective tissue covering the bone) and supporting bony structures. The device provides support for prostheses, such as dentures.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. to 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39872 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2890]

Medical Devices; Classification of Impression Materials

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying impression materials into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of impression materials:

1. Identification: Impression material is a device composed of materials, such as alginate or polysulfide, that are placed on a preformed impression tray and used to reproduce the structure of a patient's teeth and gums. The device provides models for study and for production of restorative and prosthetic devices, such as gold inlays and dentures.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that impression materials be classified into class II because the materials used in the device should meet a generally accepted satisfactory level of tissue compatibility. The quality of the materials must also be controlled to prevent trauma to surrounding tissues or an allergic response in the patient. The Panel believes that general controls alone would not provide sufficient control over the characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry, and on references in the literature that state that impression materials may cause an allergic reaction or trauma to surrounding tissue (Refs. *1* and *2*).

5. Risks to health: (a) Adverse tissue reaction: If the materials of the device are not biocompatible, the patient may have an adverse tissue reaction. (b) Tissure trauma: If the material is not of adequate quality, trauma to the patient's

placed on a preformed impression tray and used to reproduce the structure of a patient's teeth and gums. The device provides models for study and for production of restorative and prosthetic devices, such as gold inlays and

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

clinical experience with, resin impression tray material in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the panel

about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the

material and inserted into the patient's mouth to make an impression, from which a final, more precise, model of the patient's mouth is cast.

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation

5. Risks to health: (a) Adverse tissue reaction: If the materials of the device are not biocompatible, the patient may have an adverse tissue reaction. (b) Tissure trauma: If the material is not of adequate quality, trauma to the patient's oral tissue may result.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that impression materials be classified into class II (performance standards). The agency bellieves that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Kaloyamides, T. M. and D. J. Kapari, "Mixtures of Elastomer Impression Materials: II. " *Journal of Dental Research*, 54:493, 1975.

2. Glenwright, H. D., "Bone Regeneration Following Damage by Polysulfide Impression Material," *Journal of Clinical Periodontology*, 2:250–252, 1975.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–564 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart B by adding new § 872.3660, to read as follows:

§ 872.3660 Impression material.

(a) *Identification.* Impression material is a device composed of materials, such as alginate or polysulfide, that are placed on a preformed impression tray and used to reproduce the structure of a patient's teeth and gums. The device provides models for study and for production of restorative and prosthetic devices, such as gold inlays and dentures.

(b) *Classification.* Class II (performance standard).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in bracket in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Date: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39873 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR PART 872

[Docket No. 78N–2891]

Medical Devices; Classification of Resin Impression Tray Material

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying resin impression tray material into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of resin impression tray material:

1. Identification: Resin impression tray material is a device used in a two-step dental mold fabricating process. The device consists of a resin material, such as methyl methacrylate, and is used to form a custom impression tray is not suitable, such as in the fabrication of crowns, bridges, or full dentures. A preliminary plaster or stone model of the patient's teeth and gums is made. The resin impression tray material is applied to this preliminary study model to form a custom tray. This tray is then filled with impression material and inserted into the patient's mouth to make an impression, from which a final, more precise, model of the patient's mouth is cast.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that resin impression tray material be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, resin impression tray material in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the panel recommendation and is proposing that resin impression tray material be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

FDA disagrees with the Panel's recommendation that manufacturers of resin impression tray material be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of resin impression tray material be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198)), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of resin impression tray material must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of resin impression tray material must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3670, to read as follows:

§ 870.3670 Resin impression tray material.

(a) *Identification.* Resin impression tray, material is a device used in a two-step dental mold fabricating process. The device consists of a resin material, such as methyl methacrylate, and is used to form a custom impression tray for use in cases in which a preformed impression tray is not suitable, such as in the fabrication of crowns, bridges, or full dentures. A preliminary plaster or stone model of the patient's teeth and gums is made. The resin impression tray material is applied to this preliminary study model to form a custom tray. This tray is then filled with impression material and inserted into the patient's mouth to make an impression, from which a final, more precise, model of the patient's mouth is cast.

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in bracket in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph.

Acting Associate Commissioner for Regulatory Affairs

[FR Doc. 80-39874 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2892]

Medical Devices; Classification of Polytetranluoroethylene (PTFE) Vitreous Carbon Materials

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying polytetrafluoroethylene (PTFE) vitreous carbon materials into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of polytetrafluoroethylene (PTFE) vitreous carbon materials:

1. Identification: Polytetrafluoroethylene (PTFE) vitreous carbon materials are devices composed of materials, such as polytetrafluoroethylene (PTFE) vitreous carbon, that are used to reproduce the structure of a patient's teeth and gums. The device provides models for study and for production of restorative and prosthetic devices, such as gold inlays and dentures.

2. Recommended classification: Class II (performance standards). The Panel recommends that this device be classified into class II because the Panel believes that general controls are insufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

3. Summary of reasons for recommendation: The Panel recommends that polytetrafluoroethylene (PTFE) vitreous carbon materials be classified into class II because the Panel believes that general controls are insufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry and on presentation by a developer, a manufacturer, and a user of the material which discussed the use and success of

regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation

The article states that before a composite resin is used for restoration, the tooth enamel is etched with 50 percent phosphoric acid, which may irritate the tooth pulp.

by adding new § 872.3690, to read as follows:

§ 872.3690 Tooth shade resin material.

(a) *Identification.* Tooth shade resin material is a device composed of

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of polytetrafluoroethylene (PTFE) vitreous carbon materials:

1. Identification: Polytetrafluoroethylene (PTFE) vitreous carbon material is a device composed of polytetrafluoroethylene (PTFE) vitreous carbon that is used in maxillofacial alveolar ridge augmentation (building up the upper jaw area that contains the sockets in which teeth are rooted) and to coat metal surgical implants in the alveoli (sockets in which the teeth are rooted) and the temporomandibular joints (the joint between the upper and lower jaws).

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of the reasons for recommendation: The Panel recommends that polytetrafluoroethylene (PTFE) vitreous carbon materials be classified into class II. Although this device is implanted into the human body, the Panel believes that premarket approval is not necessary to assure its safety and effectiveness. Adverse reactions to this device are minimal and generally, are the result of poor surgical technique rather than material failure. However, Materials used in the device should meet a generally acceptable satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard to provide such assurance.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry and on presentation by a developer, a manufacturer, and a user of the material which discussed the use and success of polytetrafluoroethylene polymer material in oral surgery (Ref. *1*)

5. Risks to health: (a) Infection: If the device cannot be sterilized adequately, postsurgical infection may result. (b) Adverse tissue reaction: If the materials of the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that polytetrafluoroethylene vitreous carbon materials be classified into class II (performance standards). Although this device is implanted into the human body, the agency believes that premarket approval is not necessary to assure its safety and effectiveness. The agency believes that a performance standard is necessary for this device because general controls alone are sufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Reference

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Kent, J. N., C. A. Homsy, and A. Abbott, Presentation, Dental Device Classification Panel, "Proplast Implant Devices," December 5, 1977.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs., 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3680, to read as follows:

§ 872.3680 polytetrafluoroethylene (PTFE) vitreous carbon materials.

(a) *Identification.* polytetrafluoroethylene (PTFE) vitreous carbon material is a device composed of polytetrafluoroethylene (PTFE) vitreous carbon that is used in maxillofacial alveolar ridge augmentation (building up the upper jaw area that contains the sockets in which teeth are rooted) and to coat metal surgical implants in the alveoli (sockets in which the teeth are rooted) and the temporomandibular joints (the joint between the upper and lower jaws).

(b) *Classification.* Class II (performance standards).

Interested persons may, on on before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39675 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

[21 CFR Part 872]

[Docket No. 78N–2893]

Medical Devices; Classification of Tooth Shade Resin Materials

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying tooth shade resin materials into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of tooth shade resin materials:

1. Identification: Tooth shade resin material is a device composed of materials such as bisphenol-A and glycidyl methacrylate (Bis-GMA) that is used to restore carious lesions or structural defects in teeth.

2. Recommended clasification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that tooth shade resin materials be classified into class II because improper chemical composition of the resin may cause roughening of the restorative surface, which results in discoloration of tooth enamel and plaque accumulation on the tooth. The materials used in the device should meet a generally accepted satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of denistry, and on an article by G. L. Lee, M.D., et a., (ref. *1*).

The article states that before a composite resin is used for restoration, the tooth enamel is etched with 50 percent phosphoric acid, which may irritate the tooth pulp.

5. Risks to health: (a) Periodontal disease: Discoloration and roughening of a restoration made with this device may cause plaque accumulation and lead to periodontal disease. (b) Pulp damage: Etching with 50 percent phosphoric acid before the restoration is completed may cause tooth pulp damage, unless the pulp is properly protected.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that tooth shade resin materials be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Reference

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Lee, G. L., J. A. Orlowshi, G. C. Schidt, and R. L. Ihsen, "Histological Studies of an Adhesive Paint-on Restorative for Cervical Abrasions," *Australian Dental Journal*, 20:304–308, 1975.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3690, to read as follows:

§ 872.3690 Tooth shade resin material.

(a) *Identification.* Tooth shade resin material is a device composed of materials such as bisphenol-A glycidyl methacrylate (Bis-GMA) that is used to restore carious lesions or structural defects in teeth.

(b) *Classification.* Class II (performance standards).

Interested persons May, on or before March 2, 1980 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39676 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2894]

Medical Devices; Classification of Dental Mercury

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental mercury into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305).

Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug

5. Risks to health: (a) Mercury poisoning: If the device is not handled properly, the user may suffer mercury poisoning from inhalation of mercury vapors. (b) Adverse tissue reaction: If the material in the device is not

is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the

members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Adverse tissue reaction: If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction. (b)

copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between

Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental mercury:

1. Identification: Dental mercury is a device composed of mercury that is used as a component of amalgam alloy in the restoration of dental cavities or broken teeth.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that dental mercury be classified into class II because the material in the device should meet a generally accepted satisfactory level of tissue compatibility. Dental mercury is a toxic substance and must be handled properly to control the hazards it presents. The Panel believes that general controls alone would not provide sufficient control over this characteristic.

The Panel believes that a performace standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry, and on an article published in the *Journal of the American Dental Association* "An Environmental Study of Mercury Contamination in Dental Offices" (Ref. *1*). The article discusses the hazards associated with use of mercury in dentistry and concludes that there is no danger of systemic poisoning for patients whose teeth have been restored with amalgam containing mercury. However, if proper procedures are not followed, there are potential hazards to those who handle mercury.

5. Risks to health: (a) Mercury poisoning: If the device is not handled properly, the user may suffer mercury poisoning from inhalation of mercury vapors. (b) Adverse tissue reaction: If the material in the device is not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that dental mercury be classified into class II (performance standards).

FDA has reviewed the medical literature on use of dental mercury in dentistry and has found evidence to support the Panel recommendation. Kawahara et al. concluded that the cytotoxicity of the amalgam is related to free mercury available after mixing the alloy and the mercury, but that cytotoxicity was nearly nonexistent after complete setting of the amalgam (Ref. *2*). Cataldo and Santis studied the results of implantation of amalgam into the oral tissues (Ref. *3*). Encapsulation in connective tissue occurred with the smallest pieces of amalgam without inflammatory response, and larger pieces had connective tissue encapsulation with some macrophage (microorganism) response. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard for this device.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "An Environmental Study of Mercury Contamination in Dental Offices," *Journal of the American Dental Association*, Vol. 89, Nov. 1974.

2. Kawahara, H., et al., "Cellular Responses to Dental Amalgam in Vitro," *Journal of Dentistry Research*, 54(2):394–401, March–April 1975.

3. Cataldo, E., and H. Santis, "Response of the Oral Tissue to Exogenous Foreign Materials," *Journal of Periodontics*, 45(2):93–106, February 1974.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3700, to read as follows:

§ 872.3700 Dental mercury.

(a) *Identification.* Dental mercury is a device composed of mercury that is used as a component of amalgam alloy in the restoration of dental cavities or broken teeth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39677 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2895]

Medical Devices; Classification of Base Metal Alloys

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying base metal alloys into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of base metal alloys:

1. Identification: A base metal alloy is a device composed of a material, such as a mixture of nickel and chromium, that is used in the fabrication of a custom-made dental device, such as porcelain veneer for a tooth.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a medium priority.

3. Summary of reasons for recommendation: The Panel recommends that base metal alloys be classified into class II because the materials used in the device contact the body and should meet a generally accepted satisfactory level of tissue compatibility. The composition of the materials should also be controlled to prevent toxic reactions to the alloys. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard to provide such assurance.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Adverse tissue reaction: If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction. (b) Toxic reaction: Alloys containing nickel and beryllium may cause a toxic reaction in the patient.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that base metal alloys be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3710, to read as follows:

§ 872.3710 Base metal alloy.

(a) *Identification.* A base metal alloy is a device composed of a material, such as a mixture of nickel and chromium, that is used in the fabrication of a custom-made dental device, such as porcelain veneer for a tooth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39678 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2697]

Medical Devices; Classification of Pantographs

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying pantographs into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–406), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of pantographs:

1. Identification: A pantograph is a device that is attached to a patient's head and is used to duplicate lower jaw movements to aid in the construction of restorative and prosthetic dental devices. A marking pen is attached to

movements to aid in the construction of restorative and prosthetic dental devices. A marking pen is attached to the lower jaw component of the device and, as the patient's mouth opens, the pen records on graph paper the angle between the upper and lower jaw

the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration and listing by manufacturers of

good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation

actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication

used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, retentive and

1. Identification: A pantograph is a device that is attached to a patient's head and is used to duplicate lower jaw movements to aid in the construction of restorative and prosthetic dental devices. A marking pen is attached to the lower jaw component of the device and, as the patient's mouth opens, the pen records on graph paper the angle between the upper and lower jaw.

2. Recommended classification: Class I (performance controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that pantographs be classified into class I because the Panel believes that general controls are suffcient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation, because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, pantographs in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that pantographs be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of pantographs be exempted from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration and device listing under section 510(a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration and listing by manufacturers of pantographs, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning pantographs. The agency does not at this time anticipate the premarket approval will be required for this device. The agency believes that the semiananual updating of device listing under section 510(j)(2) will provide FDA will adequate notice concerning new products within this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of pantographs be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experiences with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirments concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of pantographs be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other then §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of pantographs must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems from complaint investigation and followup. The agency also believes that manufacturers of pantographs must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3730, to read as follows:

§ 872.3730 Pantograph.

(a) *Identification.* A pantograph is a device that is attached to a patient's head and is used to duplicate lower jaw movements to aid in the construction of restorative and prosthetic dental devices. A marking pen is attached to the lower jaw component of the device and, as the patient's mouth opens, the pen records on graph paper the angle between the upper and lower jaw.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39879 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N–2898]

Medical Devices; Classification of Retentive and Splinting Pins

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying retentive and splinting pins into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of retentive and splinting pins:

1. Identification: A retentive and splinting pin is a device made of a material, such as titanium, that is placed permanently in a tooth to provide retention and stabilization for a restoration, such as a crown, or to join two or more teeth together.

2. Recommended classification: Class I (general controls). The Panel recommends that retentive and splinting pins be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that retentive and splinting pins be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, retentive and splinting pins in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that retentive and splinting pins be classified into class II (performance standards). The properties of the materials used to form retentive and splinting pins depend upon the correct composition of these materials. Moreover, retentive and splinting pins directly contact oral tissues. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that retentive and splinting pins should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513,

701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3740, to read as

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the

decalcification of a tooth and the development of dental caries.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that bracket adhesive resin and tooth

Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket

background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of denture relining, repairing, or rebasing resin bases:

them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This

701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3740, to read as follows:

§ 872.3740 Retentive and splinting pin.

(a) *Identification.* A retentive and splinting pin is a device made of a material, such as titanium, that is placed permanently in a tooth to provide retention and stabilization for a restoration, such as a crown, or to join two of more teeth together.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39680 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2899]

Medical Devices; Classification of Bracket Adhesive Resin and Tooth Conditioners

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying bracket adhesive resin and tooth conditioners into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of bracket adhesive resin and tooth conditioners:

1. Identification: A bracket adhesive resin and tooth conditioner is a device composed of an adhesive compound of polymethyl methacrylate that is used to cement an orthodontic bracket to a tooth surface.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that bracket adhesive resin and tooth conditioners be classified into class II because the device contains an acid that may cause decalcification of the tooth and the development of dental caries if it contacts tooth enamel. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry, and on the Guide to Dental Materials (Ref. 1), which states that little or no tissue reaction has been reported with the use of this device.

5. Risks to health: Decalcification: The conditioner in the resin may cause decalcification of a tooth and the development of dental caries.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that bracket adhesive resin and tooth conditioners be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Reference

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Guide to Dental Materials and Devices," *American Dental Association*, pp. 143–144, Chicago, Illinois, 1976.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3750, to read as follows:

§ 872.3750 Bracket adhesive resin and tooth conditioner.

(a) *Identification.* A bracket adhesive resin and tooth conditioner is a device composed of an adhesive compound of polymethyl methacrylate that is used to cement an orthodontic bracket to a tooth surface.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug

Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39681 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2900]

Medical Devices; Classification of Denture Relining, Repairing, or Rebasing Resin

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying denture relining, repairing, or rebasing resin bases into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATE: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of denture relining, repairing, or rebasing resin bases:

1. Identification: A denture relining, repairing, or rebasing resin is a device composed of materials, such as methyl methacrylate, that is used to reline a denture surface that contacts tissue, to repair a fractured denture, or to form a new denture base. This device is not available for over-the-counter (OTC) use.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that denture relining, repairing, or rebasing resin be classified into class II because the chemical properties of this device may cause oral tissue irritation. Materials used in the device should meet a generally accepted satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard will provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a standard.

4. Summary of data on which the recommendation is based: The panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: Tissue irritation: The materials used in the device may cause oral tissue irritation.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that denture relining, repairing, or rebasing resins be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3760, to read as follows:

§ 872.3760 Denture relining, repairing, or rebasing resin.

(a) *Identification.* A denture relining, repairing, or rebasing resin is a device composed of materials, such as a methyl methacrylate, that is used to reline a denture surface that contacts tissue, to repair a fractured denture, or to form a new denture base. This device is not available for over-the-counter (OTC) use.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39682 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2901]

Medical Devices; Classification of Pit and Fissure Sealants and Conditioners

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying pit and fissure sealants and conditioners into class II (performance standards). FDA is also publishing the recommendation of the Dental Device

alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to

published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information

classifying temporary crown and bridge resins into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into

because the Panel believes general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and

the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying pit and fissure sealants and conditioners into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATE: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of pit and fissure sealants and conditioners:

1. Identification: A pit and fissure sealant and conditioner is a device composed of resin, such as polymethyl methacrylate, that is used primarily in young children to seal pit and fissure depressions (faults in tooth enamel) in the biting surfaces of teeth in order to prevent cavities.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that pit and fissure sealants and conditioners be classified into class II because tooth decay may result if the sealant fails to remain in the tooth. Materials used in the device should also meet a generally accepted satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel member's personal knowledge of, and clinical experience with, the device in the practice of dentistry, and on review of the literature (Refs. *1, 2,* and *3).* The literature review reveals that pit and fissure sealants and conditioners, if applied to areas without caries, are safe and effective.

5. Risks to health: (a) Tooth decay: Acid etchant (removal of tooth enamel coating to enhance resin bonding) may cause decalcification of tooth enamel and lead to tooth decay.

(b) Adverse tissue reaction: If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that pit and fissure sealants and conditioners be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Pit and Fissure Sealants," Council on Dental Materials and Devices, *Journal of the American Dental Association*, 88:390, 1974.

2. Rock, W. P., A. R. Bailey, and R. M. Brown, "Tissue Reaction to Two Fissure Sealant Reactants," *Journal of Oral Pathology*, 3:224–231, 1974.

3. Handelman, S. L., M. G. Buonocore, P. C. Schoute, "Progress Report on the Effect of a Fissure Sealant on Bacteria in Dental Caries," *Journal of the American Dental Association*, 87:1189–1191, 1973.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3765, to read as follows:

§ 872.3765 Pit and fissure sealant and conditioner.

(a) *Identification.* A base pit and fissure sealant and conditioner is a device composed of resin, such as polymethylmethacrylate, that is used primarily in young children to seal pit and fissures depressions (faults in tooth enamel) in the biting surfaces of teeth in order to prevent cavities.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39983 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2902]

Medical Devices; Classification of Temporary Crown and Bridge Resins

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying temporary crown and bridge resins into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Devices Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fisher Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of temporary crown and bridge resins:

1. Identification: A temporary and bridge resin is a device composed of a material, such as polmethylmethacrylate, that is used to make a temporary prothesis, such as a crown or bridge. The temporary prothesis is used until a permanent restoration is fabricated.

2. Recommended classification: Class I (general controls). The Panel recommends that temporary crown and bridge resins be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j (f)).

3. Summary of reasons for recommendation: The Panel recommends that temporary crown and bridge resins be classified into class I because general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, temporary crown and bridge resins in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that temporary crown and bridge resins be classified into class II (performance standards). The properties of the materials used to form temporary crown and bridge resins depend upon the proper composition of these materials. Moreover, temporary crown and bridge resins directly contact oral tissues. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is neccessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that temporary crown and bridge resins should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3770, to read as follows:

§ 872.3770 Temporary crown and bridge resin.

(a) *Identification.* A temporary crown and bridge resin is a device composed of a material, such as polymethylmethacrylate, that is used to make a temporary prothesis, such as a crown or bridge. The temporary prothesis is used until a permanent restoration is fabricated.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39984 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2904]

Medical Devices; Classification of Root Canal Posts

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying root canal posts into class II

(performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of root canal posts:

1. Identification: A root canal post is a metal device that is cemented into the root canal of a tooth to stabilize and support a restoration.

2. Recommended classification: Class I (general controls). The Panel recommends that root canal posts be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that root canal posts be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, root canal posts in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that root canal posts be classified into class II (performance standards). The properties of the materials used to form root canal posts depend upon the correct composition of these materials. Moreover, root canal posts directly contact oral tissues. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that root canal posts should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 2168) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elswhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3810, to read as follows:

§ 872.3810 Root canal post.

(a) *Identification.* A root canal post is a metal device that is cemented into the root canal of a tooth to stabilize and support a restoration.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-38985 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2905]

Medical Devices; Classification of Root Canal Filling Resins

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying root canal filling resins into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of

the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of root canal filling resins:

1. Identification: A root canal filling resin is a device composed of a material, such as methyl methacrylate, that is used during endodontic therapy to fill the root canal of a tooth.

2. Recommended classification: Class I (general controls). The Panel recommends that root canal filling resins be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that root canal filling resins be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents to undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, root canal filling resins in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that root canal filling resins be classified into class II (performance standards). The properties of the materials used to form root canal filling resins depend upon the correct composition of these materials. Moreover, root canal filling resins directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that root canal filling resins should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3820, to read as follows:

§ 872.3820 Root canal filling resin.

(a) *Identification.* A root canal filling resin is a device composed of material, such as methylmethacrylate, that is used during endodontic therapy to fill the root canal of a tooth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-38986 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2906]

Medical Devices; Classification of Endodontic Paper Points

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying endodontic paper points into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the

device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of endodontic paper points:

1. Identification: A root canal paper point is a device composed of absorbent paper that is used during endodontic therapy to dry the root canal of a tooth.

2. Recommended classification: Class I (general controls). The Panel recommends that endodontic paper points be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that endodontic paper points be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, endodontic paper points in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that endodontic paper points be classified into class II (performance standards). The properties of the materials used to form endodontic paper points depend upon the correct composition of these materials. Moreover, endodontic paper points directly contact oral tissues. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that endodontic paper points should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3830, to read as follows:

§ 872.3830 Endodontic paper point.

(a) *Identification.* An endodontic paper point is a device composed of absorbent paper that is used during endodontic therapy to dry the root canal of a tooth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-38987 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of endodontic silver points:

1. Identification: A root canal silver point is a device composed of silver that is used during endodontic therapy to fill the root canal of a tooth.

2. Recommended classification: Class I (general controls). The Panel recommends that endodontic silver points be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that endodontic silver points be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, endodontic silver points in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel's recommendation and is proposing that endodontic silver points be classified into class II (performance standards). The properties of the materials used to

§ 872.3840 Endodontic silver point.

(a) *Identification.* An endodontic silver point is a device made of silver that is used during endodontic therapy to fill permanently the root canal of a tooth.

device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendations regarding the classification of endodontic paper points:

1. Identification: A endodontic paper point is a device made of paper that is used during endodontic therapy to dry, or apply medication to, the root canal of a tooth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the Act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that endodontic paper points be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, endodontic paper points in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel's recommendation and is proposing that endodontic paper points be classified into class II (performance standards). The properties of the materials used to form endodontic paper points depend upon the proper composition of these materials. Moreover, endodontic paper points directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that endodontic paper points should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3830, to read as follows:

§ 872.3830 Endodontic paper point.

(a) *Identification.* An endodontic paper point is a device made of paper that is used during endontic therapy to dry, or apply medication to, the root canal of a tooth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39687 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2907]

Medical Devices; Classification of Endodontic Silver Points

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying endodontic silver points into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device to be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the porposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of endodontic silver points:

1. Identification: An endodontic silver point is a device made of silver that is used during endodontic therapy to fill permanently the root canal of a tooth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that endodontic silver points be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, endodontic silver points in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel's recommendation and is proposing that endodontic silver points be classified into class II (performance standards). The properties of the materials used to form endodontic silver points depend upon the proper composition of these materials. Moreover, endodontic silver points directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that endodontic silver points should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3840, to read as follows:

§ 872.3840 Endodontic silver point.

(a) *Identification.* An endodontic silver point is a device made of silver that is used during endodontic therapy to fill permanently the root canal of a tooth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39688 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2906]

Medical Devices; Classification of Gutta Percha

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying gutta percha into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that gutta percha be classified into class II (performance standards). The properties of the materials used to form gutta percha depend upon the proper composition of these materials. Moreover, gutta percha directly contacts oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that gutta percha should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3850, to read as follows:

§ 872.3850 Gutta percha.

(a) *Identification.* Gutta percha is a device made of the coagulated juice of certain tropical trees that is used to fill the root canal of a tooth. The gutta percha is softened by heat and inserted into the root canal, where it hardens as it cools.

(b) *Classification.* Class II

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

standards). The agency believes that endodontic stabilizing splints should be considered implants, because they are designed to be placed within the tissues of the human body and remain for an indefinite period of time. The agency

committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513,

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of gutta percha:

1. Identification: Gutta percha is a device made from coagulated sap of certain tropical trees that is used during endodontic therapy to fill the root canal of a tooth. The gutta percha is softened by heat and inserted into the root canal, where it hardens as it cools.

2. Recommended classification: Class I (general controls). The Panel recommends that gutta percha be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that gutta percha be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, gutta percha in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that gutta percha be classified into class II (performance standards). The properties of the materials used to form gutta percha depend upon the correct composition of these materials. Moreover, gutta percha directly contacts oral tissues. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that gutta percha should be classified into class II rather then class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3850, to read as follows:

§ 872.3850 Gutta percha.

(a) *Identification.* Gutta percha is a device made from coagulated sap of certain tropical trees that is used to fill the root canal of a tooth. The gutta percha is softened by heat and inserted into the root canal, where it hardens as it cools.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39890 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2909]

Medical Devices; Classification of Endodontic Stabilizing Splints

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying endodontic stabilizing splints into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of the classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of endodontic stabilizing splints.

1. Identification: An endodontic stabilizing splint is a device made of a material such as titanium that is used to stabilize a tooth by inserting the device through the root canal and into the upper or lower jaw bone.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that endodontic stabilizing splints be classified into class II because improperly constructed devices may cause infection or adverse tissue reactions. Materials used in the device should meet a generally accepted satisfactory level of tissue compatibility. The panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Infection: If the device cannot be properly sterilized, postsurgical infection may occur. (b) Fracture of the root: If faulty materials are used to construct the device, the stabilizing splint could break within the root canal, causing fracture of the tooth's root and possible infection. (c) Adverse tissue reaction: If the materials used in construction of the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that endodontic stabilizing splints be classified into class II (performance standards). The agency believes that endodontic stabilizing splints should be considered implants, because they are designed to be placed within the tissues of the human body and remain for an indefinite period of time. The agency believes that, although the device is an implant, premarket approval is not necessary to assure the safety and effectiveness of the device. Strock and Strock (Ref. *1*) report a method for increasing the stability of anterior teeth, the roots of which were shortened or amputated by disease. After the pulp and granulation tissue have been removed from a tooth, a vitallium or tantalum rod is inserted through the crown and into the root. Regeneration of bone occurs around the end of the rod, increasing the stability of the tooth. Linkow, et al. (Ref. *2*) state that there is substantial radiographic evidence that endodontic implants are well tolerated by tissue and that bone regeneration occurs around the implant. According to Linkow, because endodontic implants are completely imbedded in tissue and do not protrude into the oral cavity, there is no danger of infection or irritation from chemical reactions caused by substances in the mouth. FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Strock, A., and M. Strock, method of Reinforcement for Pulpless Anterior Teeth, *Journal of Oral Surgery*, 1:252-255, 1943.

2. Linkow, L. I., and R. Chercheve, "Theories and Techniques of Oral Implantology," Chapter 13, pp. 586-593, 1974.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3890, to read as follows:

§ 872.3890 Endodontic stabilizing splint.

(a) *Identification.* An endodontic stabilizing splint is a device made of a material such as titanium that is used to stabilize a tooth by inserting the device through the root canal and into the upper or lower jaw bone.

(b) *Classification.* Class III (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39890 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2910]

Medical Devices; Classification of Posterior Artificial Teeth With Metal Inserts

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying posterior artificial teeth with metal inserts into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the

safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final

Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation

identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere

Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device.

effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply

the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory

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safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976

DATES: Comments by March 2, 1981. FDA Proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classfication of posterior artificial teeth with metal inserts:

1. Identification: A posterior artificial tooth with metal insert is a porcelain device with a metal insert that is used to replace a natural tooth. The device is attached to surrounding teeth by a bridge and provides both an improvement in appearance and a functional occlusion (bite) which improves chewing ability.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that posterior artificial teeth with metal inserts be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, posterior artificial teeth with metal inserts in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that posterior artificial teeth with metal inserts be classified into class II (performance standards). The properties of the materials used to form posterior artificial teeth with metal inserts depend upon the correct composition of these materials. Moreover, posterior artificial teeth with metal inserts directly contact oral tissues. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that posterior artificial teeth with metal inserts should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3900, to read as follows:

§ 872.3900 Posterior artificial tooth with metal insert.

(a) *Identification.* A posterior artificial tooth with a metal insert is a porcelain device with metal insert that is used to replace a natural tooth. The device is attached to surrounding teeth by a bridge and provides both an improvement in appearance and a functional occlusion (bite) which improves chewing ability.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39891 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2911]

Medical Devices; Classification of Backing and Facing for Artificial Teeth

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying backing and facing for artificial teeth into class II (performance standards). FDA is also publishing the recommendation of the Dental Device

Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA Proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classfication of backing and facing for artificial teeth:

1. Identification: A backing and facing for an artificial tooth is a device used in the fabrication of a fixed or removable dental appliance, such as a crown or bridge. The backing, which is made of gold, is attached to the dental appliance and supports the tooth-colored facing, which is made of porcelain or plastic.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that backing and facing for artificial teeth be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, backing and facing for artificial teeth in the practice of dentistry.

5. Risk to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that backing and facing for artificial teeth be classified into class II (performance standards). The properties of the materials used to form backing and facing for artificial teeth depend upon the proper composition of these materials. Moreover, backing and facing for artificial teeth directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that backing and facing for artificial teeth should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart C by adding new § 872.3910, to read as follows:

§ 872.3910 Backing and facing for artificial teeth.

(a) *Identification.* A backing and facing for an artificial tooth is a device used in the fabrication of a fixed or removable dental appliance, such as a crown or bridge. The backing, which is made of gold, is attached to the dental appliance and supports the tooth-colored facing, which is made of porcelain or plastic.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39892 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2912]

Medical Devices; Classification of Porcelain Teeth

AGENCY: Food and Drug. Administration.

ACTION Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation

classifying porcelain teeth into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II

the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel

Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3920, to read as follows:

§ 872.3920 Procelain teeth.

(a) *Identification.* A porcelain tooth is

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical

insufficient to control the risks to health presented by the device. A performance standard woule provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance

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21 CFR Part 872

[Docket No. 78N-3027]

Medical Devices; Classification of Endodontic Broaches

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

classifying porcelain teeth into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of porcelain teeth:

1. Identification: A porcelain tooth is a device made of porcelain powder for clinical use that is used in the construction of both fixed and removable prostheses, such as crowns and partial dentures.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that porcelain teeth be classified into class II because the materials used in the device should meet a generally accepted satisfactory level of tissue compatibility. In addition, the fluorescing agents in the porcelain powder for clinical use that is used to make the porcelain teeth may contain radioactive components which decay, resulting in the production of prosthetic devices that emit readiation. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Exposure to radiation: The patient may be exposed to radiation emitted by fluorescent agents in the porcelain by protheses made from porcelain powder for clinical use that contains radioactive ingredients. (b) Adverse tissue reaction: If the materials used in the construction of the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that porcelain teeth be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. Exposure of surrounding tissue to the ionizing radiation emitted by radioactive material that may be present in dental products fabricated from porcelain powder for clinical use may result in acute tissue damage, if the radiation is sufficiently intense, or in neoplastic (abnormal) changes, if radiation is chronically received at lower levels. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3920, to read as follows:

§ 872.3920 Procelain teeth.

(a) *Identification.* A porcelain tooth is a prefabricated device made of porcelain powder for clinical use that is used in the construction of both fixed and removable prostheses, such as crowns and partial dentures.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39803 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2913]

Medical Devices; Classification of Zinc Oxide Eugenol

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying zinc oxide eugenol into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of the classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of zinc oxide eugenol:

1. Identification: Zinc oxide eugenol is a device material that is used as a base cement for temporary fillings and as a cementing agent.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that zinc oxide eugenol be classified into class II because the device may cause irritation to tooth pulp. Materials used in the device should meet a generally accepted satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: Adverse tissue reaction: If the materials used in the device are biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that zinc oxide eugenol be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard woule provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.3980, to read as follows:

§ 872.3980 Zince oxide eugenol.

(a) *Identification.* Zinc oxide eugenol is a device material that is used as a base cement for temporary fillings and as a cementing agent.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that indivuduals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 39894 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M §

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21 CFR Part 872

[Docket No. 76N-3027]

Medical Devices; Classification of Endodontic Broaches

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying endodontic broaches into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA Proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classfication of endodontic broaches:

1. Identification: An endodontic broach is a hand-held device used to remove the pulp from a tooth during endodontic (root canal) procedures.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)) and the good manufacturing

practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that endodontic broaches

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA

classifying dental wax carvers into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I

manufacturers of this device not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because a dental wax carver is a simple device that presents no undue risks to

part, by section 519. The most extensive of these requirements is found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish

complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

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practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that endodontic broaches be classified into class I because the Panel believes that general controls are sufficient to ensure the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purposes recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, endodontic broaches in the practice of dentistry.

5. Risk to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that endodontic broaches be classified into class II (performance standards). The properties of the materials used to form endodontic broaches depend upon the proper composition of these materials. Moreover, endodontic broaches directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that endodontic broaches should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart B by adding new § 872.4040, to read as follows:

§ 872.4040 Endodontic broach.

(a) *Identification.* An endodontic broach is a hand-held device used to remove the pulp from a tooth during endodontic (root canal) procedures.

(b) *Classification.* Class II (Performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39805 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2914]

Medical Devices; Classification of Dental Wax Carvers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental wax carvers into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA Proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classfication of dental wax carvers:

1. Identification: A dental wax carver is a device used to shape wax into a mold cavity for casting removable and fixed restorative dental appliances. The device is a hand instrument with a smoothing tip at one end and a carving tip at the opposite end.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that dental wax carvers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The Panel believes that

manufacturers of this device not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because a dental wax carver is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, dental wax carvers in the practice of dentistry.

5. Risk to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that dental wax carvers be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendations that manufacturers of dental wax carvers be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration and device listing under section 510(a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration and listing by manufacturers of dental wax carvers, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning dental wax carvers. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of dental wax carvers be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements is found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of dental wax carvers be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of dental wax carvers must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of dental wax carvers must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4075, to read as follows:

§ 872.4075 Dental wax carver.

(a) *Identification.* A dental wax carver is a device used to shape wax into a mold cavity for casting removable and fixed restorative dental appliances. The device is a hand instrument with a smoothing tip at one end and a carving tip at the opposite end.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39806 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for manual bone drill and wire drivers be a low priority.

3. Summary of reasons for recommendation: The Panel

regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513,

assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the

notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4130, to read as follows:

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39696 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2915]

Medical Devices; Classification of Manual Bone Drill and Wire Drivers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying manual bone drill and wire drivers into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FUR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of manual bone drill and wire drivers:

1. Identification: A manual bone drill and wire driver is a metal rotary device that is used in reconstructive oral surgery to drill a hole into the upper or lower jaw in preparation for insertion of a wire, pin, or screw.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for manual bone drill and wire drivers be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that manual bone drill and wire drivers be classified into class II because improper design of the device may cause bone damage from unnecessary heat buildup. In addition, the materials used in the device that contact the body should meet a generally accepted satisfactory level of tissue compatibility. The panel believes that general controls alone would not provide sufficient control over these characteristics. The panel believes that a performance standard would provide reasonable assurance of safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Infection: If the device cannot be cleaned properly, use of the device could cause an infection. (b) Bone damage: Improper design of the device may cause bone damage from unnecessary heat buildup. (c) Adverse tissue reaction: If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that manual bone drill and wire drivers be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4120, to read as follows:

§ 872.4120 Manual bone drill and wire driver.

(a) *Identification.* A manual bone drill and wire driver is a metal rotary device that is used in reconstructive oral surgery to drill a hole into the upper or lower jaw in preparation for insertion of a wire, pin, or screw.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39697 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2916]

Medical Devices; Classification of Intraoral Dental Drills

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying intraoral dental drills into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of intraoral dental drills:

1. Identification: An intraoral dental drill is a rotary device that is attached to a dental handpiece and is used to drill holes in teeth in order to secure cast or preformed pins used to retain operative dental appliances.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21. U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that intraoral dental drills be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, intraoral dental drills in the practice of dentistry.

5. Risks to health: Tissue damage: If the device does not have adequate strength and hardness, teeth and underlying tissue may be damaged.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that intraoral dental drills be classified into class II (performance standards). Dental drills are used to cut human tooth structure, and must meet standards of minimum hardness and strength to be able to accomplish this cutting function. The agency also believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency believes that there is sufficient information to establish a standard for this device.

Because the agency has determined that intraoral dental drills should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4130, to read as follows:

§ 872.4130 Intraoral dental drill.

(a) *Identification.* An intraoral dental drill is a rotary device that is attached to a dental handpiece and is used to drill holes in teeth in order to secure cast or preformed pins used to retain operative dental appliances.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39698 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2917]

Medical Devices; Classification of Powered Bone Drills

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying powered bone drills into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation

based on this proposal become effective

an FDA advisory committee, made the following recommendation regarding the

alone are insufficient to control the risks to health presented by the device. A

9 a.m. and 4 p.m., Monday through Friday.

based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of powered bone drills:

1. Identification: A powered bone drill is an AC-powered rotary device that is used in reconstructive oral surgery to drill a hole into the upper or lower jaw in preparation for insertion of a wire, pin, or screw.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that powered bone drills be classified into class II because improper design of the device may cause bone degeneration from unnecessary heat buildup. The electrical design of the device also must be controlled to ensure electrical safety. Moreover, the materials used in the device that contact the body should meet a generally accepted satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Infection: If the device cannot be cleaned properly, use of the device could cause an infection. (b) Bone damage: Improper design of the device may cause bone damage from unnecessary heat buildup. (c) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction. (d) Electrical shock: Faulty electrical design or malfunction of the device may cause an electrical shock to the patient or the user.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that powered bone drills be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4140, to read as follows:

§ 872.4140 Powered bone drill.

(a) *Identification.* A powered bone drill is an AC-powered rotary device that is used in reconstructive oral surgery to drill a hole into the upper or lower jaw in preparation for insertion of a wire, pin, or screw.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39899 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-3926]

Medical Devices; Classification of Endodontic Pulp Canal Files

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying endodontic pulp canal files into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of endodontic pulp canal files:

1. Identification: An endodontic pulp canal file is a hand-held device with a finely serrated surface that is used to smooth, enlarge, and clean the pulp canal during endodontic (root canal) procedures.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that this device be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because it is a simple device that presents no undue risks to health when used in a normal manner and for the purposes recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that endodontic pulp canal files be classified into class II (performance standards). The properties of the materials used to form endodontic pulp canal files depend upon the correct composition of these materials. Moveover, endodontic pulp canal files directly contact oral tissue. Alteration of the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that endodontic pulp canal files should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 701(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4150, to read as follows:

§ 872.4150 Endodontic pulp canal file.

(a) *Identification.* An endodontic pulp canal file is a hand-held device with a finely serrated surface that is used to smooth, enlarge and clean the pulp canal during endodontic (root canal) procedures.

(b) *Classification.* Class I (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39900 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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1. Identification: An air-powered dental handpiece is a device powered by compressed air that is used to prepare dental cavities for restorations, such as fillings, and for cleaning teeth. A burr or cleaning tip is inserted into the handpiece, which is rotated by the

such as fillings, and for cleaning teeth. A bur or cleaning tip is inserted into the handpiece, which is rotated by a belt running over a series of pulleys.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt

Because the agency has determined that belt-driven dental handpieces should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39902 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

1. Identification: An air-powered dental handpiece is a device powered by compressed air that is used to prepare dental cavities for restorations, such as fillings, and for cleaning teeth. A burr or cleaning tip is inserted into the handpiece, which is rotated by the pressure of the compressed air.

2. Recommended classification: Class I (general controls). The Panel recommends that air-powered dental handpieces be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that air-powered dental handpieces be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practices regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, air-powered dental handpieces in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that air powered dental handpieces be classified into class II (performance standards). The device must be capable of sterilization to avoid contamination and transmission of infection between patients. A performance standard also is needed to assure that the device stops immediately upon release of the foot control in order to prevent injury to the patient. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that air-powered dental handpieces should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4200, to read as follows:

§ 872.4200 Air-powered dental handpiece.

(a) *Identification.* An air-powered dental handpiece is a device powered by compressed air that is used to prepare dental cavities for restorations, such as fillings, and for cleaning teeth. A bur or cleaning tip is inserted into the handpiece, which is rotated by the pressure of the compressed air.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-38601 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2919]

Medical Devices; Classification of Belt-Driven Dental Handpieces

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying belt-driven dental handpieces into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of belt-driven dental handpieces:

1. Identification: A belt-driven dental handpiece is a device that is used to prepare dental cavities for restorations, such as fillings, and for cleaning teeth. A bur or cleaning tip is inserted into the handpiece, which is rotated by a belt running over a series of pulleys.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that belt-driven dental handpieces be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, belt-driven dental handpieces in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that belt driven dental handpieces be classified into class II (performance standards). The device must be capable of sterilization to avoid contamination and transmission of infection between patients. A performance standard is also needed to control the electrical design of the device in order to prevent electrical shock to the patient or user. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that belt-driven dental handpieces should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1976, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4220, to read as follows:

§ 872.4220 Belt-driven dental handpiece.

(a) *Identification.* A belt-driven dental handpiece is a device that is used to prepare dental cavities for restorations, such as fillings, and for cleaning teeth. A bur or cleaning tip is inserted into the handpiece, which is rotated by a belt running over a series of pulleys.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-38602 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2920]

Medical Devices; Classification Of Rotary Bone-Cutting Handpieces

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying rotary bone-cutting handpieces into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of rotary bone-cutting handpieces:

1. Identification: A rotary bone-cutting handpiece is an AC-powered dental device used to cut and shape bone in the oral cavity.

2. Recommended classification: Class II (performance standards). The Panel

recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that rotary bone-cutting

members' personal knowledge of, and clinical experience with, contra angle handpiece attachments in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

dental handpiece. The device is bent at an angle to allow easy access to, and movement within, the mouth. It is used to prepare dental cavities for restorations, such as fillings, and for cleaning teeth.

Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug

recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that rotary bone-cutting handpieces be classified into class II because the electrical properties of the device need to be controlled in order to prevent electrical shock to the patient or user. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel member's personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: Bone damage: Improper design of the blade could cause bone damage.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that rotary bone-cutting handpieces be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4240, to read as follows:

§ 872.4240 Rotary bone-cutting handpiece.

(a) *Identification.* A rotary bone-cutting handpiece is an AC-powered dental device used to cut and shape bone in the oral cavity.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39903 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 76N–2921]

Medical Devices; Classification of Contra Angle Handpiece Attachments

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying contra angle handpiece attachments into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of contra angle handpiece attachments:

1. Identification: A contra angle handpiece attachment is an accessory device that is attached to the end of a dental handpiece. The device is bent at an angle to allow easy access to, and movement within, the mouth. It is used to prepare dental cavities for restorations, such as fillings, and for cleaning teeth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that contra angle handpiece attachments be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, contra angle handpiece attachments in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that contra angle handpiece attachments be classified into class II (performance standards). The device must be capable of sterilization to avoid contamination and transmission of infection between patients. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that contra angle handpiece attachments should be classified into class II rather than Class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4260, to read as follows:

§ 872.4260 Contra angle handpiece attachment.

(a) *Identification.* A contra angle handpiece attachment is an accessory device that is attached to the end of a dental handpiece. The device is bent at an angle to allow easy access to, and movement within, the mouth. It is used to prepare dental cavities for restorations, such as fillings, and for cleaning teeth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39904 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 76N–2922]

Medical Devices; Classification of Direct Drive Handpieces

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying direct drive handpieces into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of direct drive handpieces:

1. Identification: A direct-drive handpiece is an AC-powered rotary device used to prepare dental cavities for restorations, such as fillings, and for cleaning teeth. The handpiece is powered by a motor without a pulley.

2. Recommended classification: Class I (general controls). The Panel recommends that direct drive handpieces be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that direct drive handpieces be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel member's personal knowledge of, and clinical experience with, direct drive handpieces in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that direct drive handpieces be classified into class II (performance standards). The device must be capable of

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation.

cleaning teeth. The handpiece is powered by a motor without a pulley.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing

these manufacturers be subject to registration, device listing and premarket notification under section 510(a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from

manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)). FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with

user's foot that is used to control the speed and direction of rotation of dental handpieces, such as a dental drill.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820, with the exception of

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that direct drive handpieces be classified into class II (performance standards). The device must be capable of sterilization to avoid contamination and transmission of infection between patients. A performance standard is also needed to control the electrical properties of the device in order to prevent electrical shock to the patient or user. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that direct drive handpieces should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4280, to read as follows:

§ 872.4280 Direct drive handpiece.

(a) *Identification.* A direct-drive handpiece is an AC-powered rotary device used to prepare dental cavities for restorations, such as fillings, and for cleaning teeth. The handpiece is powered by a motor without a pulley.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39905 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2923]

Medical Devices; Classification of Foot Controllers for Handpieces

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying foot controllers for handpieces into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of foot controllers for handpieces:

1. Identification: A foot controller for handpieces is a device operated by the user's foot that is used to control the speed and direction of rotation of dental handpieces, such as a dental drill.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that foot controllers for handpieces be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because the Panel believes that the quality of the device is easily discernible and defects are readily apparent to the user.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, foot controllers for handpieces in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel's recommendation and is proposing that foot controllers for handpieces be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of foot controllers for handpieces be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing and premarket notification under section 510(a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of foot controllers for handpieces, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections, and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of foot controllers for handpieces be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of foot controllers for handpieces be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of foot controllers for handpieces must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of foot controllers for handpieces must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.4300, to read as follows:

§ 872.4300 Foot controller for handpieces.

(a) *Identification.* A foot controller for handpieces is a device operated by the user's foot that is used to control the speed and direction of rotation of dental handpieces, such as a dental drill.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180 regarding general requirements concerning records, and § 820.198 regarding complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39906 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2924]

Medical Devices; Classification of Water-Powered Handpieces

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying water-powered handpieces into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by [March 2, 1981. FDA proposes that the final regulation based on this proposal become effective

30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD

based its recommendation on the Panel members' personal knowledge of, and clinical experience with, water-powered handpieces in the practice of dentistry.

5. Risks to health: None identified.

FDA disagrees with the Panel's recommendation and is proposing that

handpiece through coaxial (a tube inside a tube) plastic tubing; the pressurized water powers the device.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing

Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of

into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39908 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of water-powered handpieces:

1. Identification: A water-powered handpiece is a rotary device used to prepare dental cavities for restorations, such as fillings, and for cleaning teeth. An AC-powered water pump provides water under pressure to the device hand-piece through coaxial (a tube inside a tube) plastic tubing; the pressurized water powers the device.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that water-powered handpieces be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, water-powered handpieces in the practice of dentistry.

5. Risks to health: None identified.

FDA disagrees with the Panel's recommendation and is proposing that water-powered handpieces be classified into class II (performance standards). The device must be capable of sterilization to avoid contamination and transmission of infection between patients. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that water-powered handpieces should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under secten 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4320, to read as follows:

§ 872.4320 Water-powered handpiece.

(a) *Identification.* A water-powered handpiece is a rotary device used to prepare dental cavities for restorations, such as fillings, and for cleaning teeth. An AC-powered water pump provides water under pressure to the device handpiece through coaxial (a tube inside a tube) plastic tubing; the pressurized water powers the device.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39907 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2925]

Medical Devices; Classification of Gas-Powered Jet Injectors

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying gas-powered jet injectors into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of gas-powered jet injectors:

1. Identification: A gas-powered jet injector is a syringe device used to administer a local anesthetic. The syringe is powered by a cartridge containing pressurized carbon dioxide which provides the pressure to force the anesthetic out of the syringe.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that gas-powered jet injectors be classified into class II because the Panel believes that a performance standard is necessary to assure that the device is properly designed so as to allow aspiration. By syringe aspiration, the user determines whether a blood vessel has been penetrated during the injection procedure. Penetration of a blood vessel during an injection may cause an adverse reaction in the patient. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: Adverse reaction: If the aspiration mechanism of the device is not adequate, the user may not be able to determine whether the anesthetic has been injected directly into a blood vessel; injection into a blood vessel may cause the patient to have an adverse reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that gas-powered jet injectors be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4465, to read as follows:

§ 872.4465 Gas-powered jet injector.

(a) *Identification.* A gas-powered jet injector is a syringe device used to administer a local anesthetic. The syringe is powered by a cartridge containing pressurized carbon dioxide which provides the pressure to force the anesthetic out of the syringe.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39908 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2926]

Medical Devices; Classification of Spring-Powered Jet Injectors

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying spring-powered jet injectors into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of spring-powered jet injectors:

1. Identification: A spring-powered jet injector is a syringe device used to administer a local anesthetic. The syringe is powered by a srping mechanism which provides the pressure to force the anesthetic out of the syringe.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for

5. Risks to health: (a) Tissue trauma: Improper design of the device may cause unnecessary trauma to gum tissue. (b) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

1. Identification: A dental depth gauge instrument is a slender metal device that is used in endodontic (root canal) treatment to prepare for placement of a retentive or splinting pin. The device is used to measure the depth of a small hole in a tooth.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that spring-powered jet injectors be classified into class II because the Panel believes that a performance standard is necessary to assure that the device is properly designed as to follow aspiration. By syringe aspiration, the user determines whether a blood vessel has been penetrated during the injection procedure. Penetration of a blood vessel during an injection may cause an adverse reaction in the patient. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: Adverse reaction: If the aspiration mechanism of the device is not adequate, the user may not be able to determine whether the anesthetic has been injected directly into a blood vessel; injection into a blood vessel may cause the patient to have an adverse reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that spring-powered jet injectors be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4475, to read as follows:

§ 872.4475 Spring-powered jet injector.

(a) *Identification.* A spring-powered jet injector is a syringe device used to administer a local anesthetic. The syringe is powered by a spring mechanism which provides the pressure to force the anesthetic out of the syringe.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 39909 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2927]

Medical Devices; Classification of Hand Instruments for Calculus Removal

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying hand instruments for calculus removal into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of hand instruments for calculus removal:

1. Identification: A hand instrument for calculus removal is a hand-held, metal scraper device used to remove calculus deposits form tooth surfaces.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that hand instruments for calculus removal be classified into class II because the materials used in the device that contact the body should meet a generally accepted satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Tissue trauma: Improper design of the device may cause unnecessary trauma to gum tissue. (b) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that hand instruments for calculus removal be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4500, to read as follows:

§ 872.4500 Hand instrument for calculus removal.

(a) *Identification.* A hand instrument for calculus removal is a hand-held metal scraper device used to remove calculus deposits from tooth surfaces.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-40910 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2928]

Medical Devices; Classification of Dental Depth Gauge Instruments

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental depth gauge instruments into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental depth gauge instruments:

1. Identification: A dental depth gauge instrument is a slender metal device that is used in endodontic (root canal) treatment to prepare for placement of a retentive or splinting pin. The device is used to measure the depth of a small hole in a tooth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that dental depth gauge instruments be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, dental depth gauge instruments in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that dental depth gauge instruments be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of dental depth gauge instruments be exempt from section 510(k) of the act (21 U.S.C. 360), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510

only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of dental depth gauge instruments, the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of dental depth gauge instruments having defects that could harm users.

On April 28, 1978, the agency

[21 CFR Part 872]

[Docket No. 78N–2929]

Medical Devices; Classification of Dental Diamond Instruments

performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that dental diamond instruments be classified into class II because if the abrasive properties of the

by adding new § 872.4535, to read as follows:

§ 872.4535 Dental diamond instrument.

(a) *Identification.* A dental diamond instrument is an abrasive device used to

30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD

only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of dental depth gauge instruments, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notifications from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of dental depth gauge instruments be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.130 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

FDA disagrees with the Panel's recommendation that manufacturers of dental depth gauge instruments be exempt from the good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness, and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of dental depth gauge instruments having defects that could harm users.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4520, to read as follows:

§ 872.4520 Dental depth gauge instruments.

(a) *Identification.* A dental depth gauge instrument is a slender metal device that is used in endodontic (root canal) treatment to prepare for placement of a retentive or splinting pin. The device is used to measure the depth of a small hole in a tooth.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39911 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

[21 CFR Part 872]

[Docket No. 78N-2929]

Medical Devices; Classification of Dental Diamond Instruments

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental diamond instruments into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of dental diamond instruments:

1. Identification: A dental diamond instrument is an abrasive device used to smooth tooth surfaces during the fitting of crowns or bridges. The device consists of a shaft which is inserted into a handpiece and a head which has diamond chips imbedded into it. Rotation of the diamond instrument provides an abrasive action when it contacts the tooth.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that dental diamond instruments be classified into class II because if the abrasive properties of the device are inadequate the device may cause damage to the dental pulp. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: Tissue damage: Inadequate abrasive properties of the device may cause damage to the dental pulp.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that dental diamond instruments be classified into class II (performance standards). The agency believes that a performance standards is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4535, to read as follows:

§ 872.4535 Dental diamond instrument.

(a) *Identification.* A dental diamond instrument is an abrasive device used to smooth tooth surfaces during the fitting of crowns or bridges. The device consists of a shaft which is inserted into a handpiece and a head which has diamond chips imbedded into it. Rotation of the diamond instrument provides an abrasive action when it contacts the tooth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39912 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2930]

Medical Devices; Classification of Plastic Dental Filling Instruments

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying plastic dental filling instruments into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of plastic dental filling instruments:

1. Identification: A plastic dental filling instrument is a device made of plastic that is used to carry filling material to the site of a restoration in the oral cavity.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that plastic dental filling instruments be classified into class I (general controls) because general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The device materials that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, plastic dental filling instruments in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that plastic dental filling instruments be

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental hand instruments into class I (general controls). FDA is also publishing the recommendation of the

premarket notification by manufacturers of dental hand instruments, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that plastic dental filling instruments be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of plastic dental filling instruments be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration and device listing under section 510(a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration and listing by manufacturers of plastic dental filling instruments, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning plastic dental filling instruments. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of plastic dental filling instruments be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive use of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experiences with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP requirements. The exemption wil not extend to two device GMP requirement, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of plastic dental filling instruments be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of plastic dental filling instruments must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of plastic dental filling instruments must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 361c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4555, to read as follows:

§ 872.4555 Plastic dental filling instrument.

(a) *Identification.* A plastic dental filling instrument is a device made of plastic that is used to carry filling material to the site of a restoration in the oral cavity.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is also exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39913 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2931]

Medical Devices; Classification of Dental Hand Instruments

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental hand instruments into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the devices be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the devices. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental hand instruments:

1. Identification: A dental hand instrument is a hand-held device used to perform various tasks in general dentistry and oral surgery procedures. The following devices are included in this generic type device: operative burnisher, operative amalgam carrier, operative dental amalgam carver, surgical bone chisel, operative amalgam and foil condenser, endodontic curette, operative curette, periodontic curette, surgical curette, dental surgical elevator, operative dental excavator, operative explorer, surgical bone file, operative margin finishing file, periodontic file, periodontic probe, surgical rongeur forceps, surgical tooth extractor forceps, surgical hemostat, periodontic hoe, operative matrix contouring instrument, operative cutting instrument, operative margin-finishing knife, periodontic knife, periodontic marker, operative pliers, endodontic root canal plugger, endodontic root canal preparer, surgical biopsy punch, endodontic pulp canal reamer, crown remover, periodontic scaler, collar and crown scissors, endodontic pulp canal filling material spreader, and surgical osteotome chisel.

2. Recommended classification: Class I (general controls). The Panel recommends that these devices be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that dental hand instruments be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the devices. These devices have been used in dentistry for many years. The materials used in the devices that contact the body have known and acceptable properties. The Panel believes that manufacturers of these devices should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because they are simple devices that present no undue risks to health when used in a normal manner and for the purposes recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, dental hand instruments in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that dental hand instruments be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by these devices.

In response to the Panel's recommendation that manufacturers of dental and hand instruments be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of dental hand instruments, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspection and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of dental hand instruments be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

FDA disagrees with the Panel's recommendation that manufacturers of dental hand instruments be exempt from the good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness, and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of dental hand instruments having defects that could harm users.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 361c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4555, to read as follows:

§ 872.4555 Plastic dental filling instrument.

(a) *Identification.* A plastic dental filling instrument is a device made of plastic that is used to carry filling material to the site of a restoration in the oral cavity.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is also exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

manufacturers of dental instrument handles, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning plastic dental filling instruments. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of plastic dental filling instruments be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive use of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experiences with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP requirements. The exemption wil not extend to two device GMP requirement, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of plastic dental filling instruments be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of plastic dental filling instruments must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of plastic dental filling instruments must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 361c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4555, to read as follows:

§ 872.4555 Plastic dental filling instrument.

(a) *Identification.* A plastic dental filling instrument is a device made of plastic that is used to carry filling material to the site of a restoration in the oral cavity.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart D by adding new § 872.4565, to read as follows:

§ 872.4565 Dental hand instrument.

(a) *Identification.* A dental hand instrument is a hand-held device used to perform various tasks in general dentistry and oral surgery procedures. The following devices are included in this generic type device: operative burnisher, operative amalgam carrier, operative dental amalgam carver, surgical bone chisel, operative amalgam and foil condenser, endodontic curette, operative curette, periodontic curette, surgical curette, dental surgical elevator, operative dental excavator, operator explorer surgical bone file, operative margin finishing file, periodontic file, periodontic probe, surgical rongeur forceps, surgical tooth extractor forceps, surgical hemostat, periodontic hoe, operative matrix contouring instrument, operative cutting instrument, operative marginfinishing periodontic knife, periodontic marker, operative pliers, endodontic root canal plugger, endodontic root canal preparer, surgical biopsy punch, endodontic pulp canal reamer, crown remover, periodontic scaler, collar and crown scissors, endodontic pulp canal filling material spreader, and surgical osteotome chisel.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39814 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2932]

Medical Devices; Classification of Dental Instrument Handles

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is isssuing for public comment a proposed regulation classifying dental instrument handles into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental instrument handles:

1. Identification: A dental instrument handle is a device made of metal or plastic that is used as a grip for working tips and mirrors used during dental procedures.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: Panel recommends that dental instrument handles be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, dental instrument handles in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that dental instrument handles be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of dental instrument handles be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration and device listing under section 510 (a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations. Under section 516(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration and listing by manufacturers of dental instrument handles, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning dental instrument handles. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of dental instrument handles be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of dental hand instrument be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of dental instrument handles must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of dental instrument handles must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4575, to read as follows:

§ 872.4575 Dental instrument handle.

(a) *Identification.* A dental instrument handle is a device made of metal or plastic that is used as a grip for working tips and mirrors used during dental procedures.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39815 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2933]

Medical Devices; Classification of Intraoral Ligature and Wire Locks

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying intraoral ligature and wire locks into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of intraoral ligature and wire locks:

1. Identification: An intraoral ligature and wire lock is a metal device used to constrict fractured bone segments in the oral cavity. The bone segments are stabilized by wrapping the ligature (wire) around the fractured bone

62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of intraoral ligature and wire locks:

1. Identification: An intraoral ligature and wire lock is a metal device used to constrict fractured bone segments in the oral cavity. The bone segments are stabilized by wrapping the ligature (wire) around the fractured bone

biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that intraoral ligature and wire locks be

§ 872.4600 Intraoral ligature and wire lock.

(a) *Identification.* An intraoral ligature and wire lock is a metal device used to constrict fractured bone segments in the oral cavity. The bone segments are stabilized by wrapping the ligature (wire) around the fractured bone

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that fiber optic dental lights be classified into class II (performance standards). The device must be capable of sterilization

device is used to illuminate oral structures.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing

62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTAL INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of intraoral ligature and wire locks:

1. Identification: An intraoral ligature and wire lock is a metal device used to constrict fractured bone segments in the oral cavity. The bone segments are stabilized by wrapping the ligature (wire) around the fractured bone segments and locking the ends together.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that intraoral ligature and wire locks be classified into class II because if the device is poorly constructed and the lock breaks, the bone fracture may reopen. Also, the materials used in the device that contact the body should meet a generally accepted satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Infection: If the device connot be properly sterilized or is contaminated, an infection may result.

(b) Reopening of the fracture: If the ligature or wire lock breaks as a result of poor construction, the bone fracture may reopen which could lead to infection, requiring additional surgical procedures or administration of antibiotics.

(c) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that intraoral ligature and wire locks be classified into class II (performance standards). FDA believes that intraoral ligature and wire locks should be considered implants. This device is designed to be placed within the tissues of the human body for an indefinite period of time. However, the agency believes that premarket approval is not necessary to assure the safety and effectiveness of the device. Intraoral ligature and wire locks are completely imbedded in tissues, and there is no possibility that microorganisms will enter and cause an infection. Moreover, because the device does not protrude into the oral cavity, there is no possibility of irritation caused by chemical reactions from substances in the mouth. The materials used in the construction of the device have been used in dentistry for many years and have demonstrated acceptable biocompatibility characteristics. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also belives that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4600, to read as follows:

§ 872.4600 Intraoral ligature and wire lock.

(a) *Identification.* An intraoral ligature and wire lock is a metal device used to constrict fractured bone segments in the oral cavity. The bone segments are stabilized by wrapping the ligature (wire) around the fractured bone segments and locking the ends together.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Date: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 39916 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2934]

Medical Devices; Classification of Fiber Optic Dental Lights

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying fiber optic dental lights into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Greg Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of fiber optic dental lights:

1. Identification: A fiber optic dental light is an AC-powered device, usually attached to a dental handpiece, that consists of glass or plastic fibers which have special optical properties. The device is used to illuminate oral structures.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that fiber optic dental lights be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, fiber optic dental lights in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that fiber optic dental lights be classified into class II (performance standards). The device must be capable of sterilization to avoid contamination and transmission of infection between patients. A performance standard is needed to control the electrical design of the device in order to prevent electrical shock to the patient or user. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that fiber optic dental lights should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commisisoner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4620, to read as follows:

§ 872.4620 Fiber optic dental light.

(a) *Identification.* A fiber optic dental light is an AC-powered device, usually attached to a dental handpiece, that consists of glass or plastic fibers which have special optical properties. The device is used to illuminate oral structures.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39917 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2935]

Medical Devices; Classification of Dental Operating Lights

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental operating lights into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposed become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug

Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of intraoral ligature and wire locks:

1. Identification: An intraoral ligature and wire lock is a metal device used to constrict fractured bone segments in the oral cavity. The bone segments are stabilized by wrapping the ligature (wire) around the fractured bone segments and locking the ends together.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that intraoral ligature and wire locks be classified into class II because if the device is poorly constructed and the lock breaks, the bone fracture may reopen. Also, the materials used in the device that contact the body should meet a generally accepted satisfactory level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Infection: If the device connot be properly sterilized or is contaminated, an infection may result.

(b) Reopening of the fracture: If the ligature or wire lock breaks as a result of poor construction, the bone fracture may reopen which could lead to infection, requiring additional surgical procedures or administration of antibiotics.

(c) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that intraoral ligature and wire locks be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health

following recommendation regarding the classification of surgical headlights:

1. Identification: A surgical headlight is a device which is attached to the user's head that is used as a

21 CFR Part 872

[Docket No. 78N–2937]

Medical Devices; Classification of

Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental operating lights:

1. Identification: A dental operating light is an AC-powered device used to illuminate oral structures and operating areas.

2. Recommendation classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that dental operating lights be classified into class II because the design and performance of this device must be controlled in order to prevent photosensitization (abnormal reaction of the skin to light) and burns to the facial area of patients and to ensure electrical safety. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry, and on an article by Russell Paravecchio, M.D. (Ref. *1*). This article described a patient who developed facial lesions after exposure to light from a dental operating lamp.

5. Risks to health: (a) Photosensitization: If the device is improperly designed, various wavelengths of ultraviolet light may leak, causing photosensitization.

(b) Burns: If the temperature of the light housing exceeds tolerable levels, contact with the light could burn the patient or user.

(c) Electrical shock: If the electrical design of the device is faulty, the user may receive an electrical shock.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that dental operating lights be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Reference

The following information has been placed on file in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Paravecchio, R. "Photosensitization of a Patient with Discoid Lupus Erythematosus by a Dental Operating Light, Report of Case," *Journal of the American Dental Association*, 94:907–909, 1977.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therfore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4630, to read as follows:

§ 872.4630 Dental operating light.

(a) *Identification.* A dental operating light is an AC-powered device used to illaminate oral structures and operating areas.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that the individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39016 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2936]

Medical Devices; Classification of Surgical Headlights

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying surgical headlights into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the

following recommendation regarding the classification of surgical headlights:

1. Identification: A surgical headlight is a device which is attached to the user's head that is used as a supplementary or auxiliary light source to illuminate the patient's oral cavity during surgical procedures.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that surgical headlights be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The Panel believes that manufacturers of this device should not be required to comply with the premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation, because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, surgical headlights in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that surgical headlights be classified into class II (performance standards). The electrical design of this device must be controlled in order to prevent electrical shock to the user. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that surgical headlights should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes amend Part 872 in Subpart E by adding new § 872.4640, to read as follows:

§ 872.4640 Surgical headlight.

(a) *Identification.* A surgical headlight is a device which is attached to the user's head that is used as a supplementary or auxiliary light source to illuminate the patient's oral cavity during surgical procedures.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39019 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2937]

Medical Devices; Classification of Dental Injecting Needles

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental injecting needles into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental injecting needles:

1. Identification: A dental injecting needle is a slender, hollow metal device with a sharp point that is attached to a syringe and is used to inject local anesthetics and other drugs.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that dental injecting needles be classified into class II because tissue damage may result if the

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device is not sufficiently sharp or straight. The needle is used in conjunction with a syringe; the entire apparatus may be hazardous if it is not satisfactorily assembled, maintained, or used. The Panel believes that general

proposes to amend Part 872 in Subpart E by adding new § 872.4730, to read as follows:

§ 872.4730 Dental injecting needle.

(a) *Identification.* A dental injecting

Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug

(performance standards). FDA believes that bone plates should be considered implants. This device is designed to be placed within the tissues of the human body for an indefinite period of time. However, the agency also believes that

Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may

background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of AC-powered bone

device is not sufficiently sharp or straight. The needle is used in conjunction with a syringe; the entire apparatus may be hazardous if it is not satisfactorily assembled, maintained, or used. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Tissue trauma: Poorly constructed needles with defective points or the use of inferior materials may cause tissue trauma and require an additional injection. (b) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that dental injecting needles be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4730, to read as follows:

§ 872.4730 Dental injecting needle.

(a) *Identification.* A dental injecting needle is a slender, hollow metal device with a sharp point that is attached to a syringe and is used to inject local anesthetics and other drugs.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39920 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2938]

Medical Devices; Classification of Bone Plates

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administation (FDA) is issuing for public comment a proposed regulation classifying bone plates into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposed that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of bone plates:

1. *Identification:* A bone plate is a metal device used to stabilize fractured bone structures in the oral cavity. The bone segments are attached to the plate with screws to prevent movement of the segments.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that bone plates be classified into class II because faulty construction of the device could result in a reopening of the bone fracture. The materials used in the device that contact the body should meet a generally accepted level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Infection: If the device cannot be properly sterilized or is contaminated, an infection may result. (b) Bone damage: If the device is improperly constructed, bone damage may occur. (c) Adverse tissue reaction: If the materials in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that bone plates be classified into class II (performance standards). FDA believes that bone plates should be considered implants. This device is designed to be placed within the tissues of the human body for an indefinite period of time. However, the agency also believes that premarket approval is not necessary to assure the safety and effectiveness of the device. Bone plates are completely imbedded in tissues, and there is no possibility of entry of microorganisms causing infection. Moreover, because the device does not protrude into the oral cavity, there is no possibility of irritation for chemical reactions with substances placed in the mouth. The materials used in the construction of bone plates have been used in dentistry for many years and have demonstrated acceptable biocompatibility characteristics. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4760, to read as follows:

§ 872.4760 Bone plate.

(a) *Identification.* A bone plate is a metal device used to stabilize fractured bone structures in the oral cavity. The bone segments are attached to the plate with screws to prevent movement of the segments.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39921 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2941]

Medical Devices; Classification of AC-Powered Bone Saws

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying AC-powered bone saws into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of AC-powered bone saws:

1. Identification: An AC-powered bone saw is a device with a serrated edge that is used during oral surgery for cutting and contouring bone.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that AC-powered bone saws be classified into class II because the electrical design of the device should be controlled to prevent electrical shock to the patient or user. The general design of the device should be controlled to prevent bone and tissue trauma. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Bone and adverse tissue trauma: Improper design of the device may cause trauma to bone and underlying tissue. (b) Electrical shock: Improper electrical design of the device may cause electrical shock to the patient or user.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that AC-powered bone saws be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA

published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This

identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through

and periodontal (gum) therapy to remove calculus deposits from teeth by application of an ultrasonically vibrating scaler tip to the teeth.

2. Recommended classification: Class

committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food,

published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4820, to read as follows:

§ 872.4820 AC-powered bone saw.

(a) *Identification.* An AC-powered bone saw is a device with a serrated edge used during oral surgery for cutting and contouring bone.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39922 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2942]

Medical Devices; Classification of Rotary Scalers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying rotary scalers into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposed become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of rotary scalers:

1. Identification: A rotary scaler is an abrasive devices that is attached to a powered handpiece and is used to remove calculus deposits from teeth during dental cleaning and periodontal (gum) therapy.

2. Recommendation clasification: Class II (performance standards). The Panel recommends that establishing a performance standard for rotary scalers to be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that rotary scalers be classified into class II because the abrasive qualities of the device must be controlled to reduce the surface damage to tooth enamel and dental pulp which may be caused by the scouring action and heat from the device during calculus removal. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of safety and effectiveness of the device and that there is suffiicient information to establish a standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: Damage to tooth structures: The scouring action of the device may generate heat. Both the abrasive action and heat may damage the teeth and gums.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that rotary scalers be classified into class II (performance standards). FDA believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. FDA also believes that there is is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4840, to read as follows:

§ 872.4840 Rotary scaler.

(a) *Identification.* A rotary scaler is an abrasive device that is attached to a powered handpiece and is used to remove calculus deposits from teeth during dental cleaning and periodontal (gum) therapy.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39923 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2943]

Medical Devices; Classification of Ultrasonic Scalers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying ultrasonic scalers into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of ultrasonic scalers:

1. Identification: An ultrasonic scaler is a device used during dental cleaning and periodontal (gum) therapy to remove calculus deposits from teeth by application of an ultrasonically vibrating scaler tip to the teeth.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that ultrasonic scalers be classified into Class II because standards are needed to control the pulsation strength and frequency and to provide proper cooling for the teeth during cleaning to avoid dental pulp damage. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Pulp destruction: Excessive amplitude of vibration or inadequate cooling may cause damage to dental pulp. (b) Pacemaker interference: Electronic interference may have an adverse effect on heart pacemaker function.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that ultrasonic scalers be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4850, to read as follows:

§ 872.4850 Ultrasonic scaler.

(a) *Identification.* An ultrasonic scaler is a device used during dental cleaning and periodontal (gum) therapy to remove calculus deposits from teeth by application of an ultrasonic vibrating scaler tip to the teeth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39924 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2945]

Medical Devices; Classification of Surgical Tissue Scissors

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying surgical tissue scissors into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a

device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the

the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend part 872 in Subpart E by adding new § 872.4875, to read as

based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305),

mechanical trauma or failure of the bone segments to unite.

(c) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an

by adding new § 872.4880, to read as follows:

§ 872.4880 Intraosseous fixation screw.

(a) *Identification.* An intraosseous

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device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of surgical tissue scissors:

1. Identification: Surgical tissue scissors are a device used to cut soft tissue of the mouth, such as gums, during surgical procedures. The device has short, slightly curved stainless steel blades which allow easy access to the surgical site.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that surgical tissue scissors be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, surgical tissue scissors in the practice of dentistry.

5. Risks to health: None identified.

FDA disagrees with the Panel's recommendation and is proposing that surgical tissue scissors be classified into class II (performance standards). The properties of the materials used to form surgical tissue scissors depend upon the proper composition of these materials. Moreover, surgical tissue scissors directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that surgical tissue scissors should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 513, 701(a). 52 Stat 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend part 872 in Subpart E by adding new § 872.4875, to read as follows:

§ 872.4875 Surgical tissue scissors.

(a) *Identification.* Surgical tissue scissors are a device used to cut soft tissue of the mouth, such as gums, during surgical procedures. The device has short, slightly curved stainless steel blades which allow early access to the surgical site.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39925 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2946]

Medical Devices; Classification of Intraosseous Fixation Screws

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying intraosseous fixation screws into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane. Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of intraosseous fixation screws:

1. Identification: An intraosseous fixation screw is a metal device that is used to stabilize fractured jaw bone segments by inserting it into both bone segments, thereby preventing their movement.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that intraosseous fixation screws be classified into class II because improper design or construction of the device may cause bone degeneration and failure of the bone segments to reunite. The materials used in the device that contact the body should meet a generally accepted level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Infection: If the device cannot be sterilized or is contaminated, infection may result.

(b) Bone damage: If the device is improperly designed or constructed, bone damage may occur due to mechanical trauma or failure of the bone segments to unite.

(c) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that intraosseous fixation screws be classified into class II (performance standards).

FDA believes that intraosseous fixation screws should be considered implants. This device is designed to be placed within the tissues of the human body for an indefinite period of time. However, the agency also believes that premarket approval is not necessary to assure the safety and effectiveness of the device. Intraosseous fixation screws are completely imbedded in tissue, and there is no possibility of entry of microorganisms causing infection. Moreover, because the device does not protrude into the oral cavity, there is no possibility of irritation caused by chemical reactions from substances put into the mouth. The materials used to construct intraosseous fixation screws have been used in dentistry for many years and have demonstrated acceptable biocompatibility characteristics. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4880, to read as follows:

§ 872.4880 Intraosseous fixation screw.

(a) *Identification.* An intraosseous fixation screw is a metal device that is used to stabilize fractured jaw bone segments by inserting it into both bone segments, thereby preventing their movement.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39926 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

[21 CFR Part 872]

[Docket No. 78N-2947]

Medical Devices; Classification of Dental Electrosurgical Units and Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental electrosurgical units and accessories into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the Office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

(b) Electrical shock: Improper design of the device may cause electrical shock to the patient or user.

Proposed Classification

FDA agrees with the Panel

The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of intraosseous fixation wires:

1. Identification: An intraosseous

Moreover, because the device does not protrude into the oral cavity, there is no possibility of irritation caused by chemical reactions from substances put in the mouth. The materials used in the construction of intraosseous fixation

Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket

office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

ADDRESS: Written comments to the Office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental electrosurgical units and accessories:

1. Identification: A dental electrosurgical unit and accessories is an AC-powered device consisting of a controlled power source and a set of cutting and coagulating electrodes. This device is used to cut or remove soft tissue or to control bleeding during surgical procedures in the oral cavity. An electrical current passes through the tip of the electrode into the tissue and, depending upon the operating mode selected, cuts through soft tissue or coagulates the tissue.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommmendation: The Panel recommends that dental electrosurgical units and accessories be classified into class II because the electrical properties of the device must be controlled to prevent electrical shock and burns to the patient or user. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Tissue damage: If, due to improper or inadequate performance of the device, the cutting process is prolonged, extensive heat-induced damage may occur in the tissue surrounding the surgical site.

(b) Electrical shock: Improper design of the device may cause electrical shock to the patient or user.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that dental electrosurgical units and accessories be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identified each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4920, to read as follows:

§ 872.4920 Dental electrosurgical unit and accessories.

(a) *Identification.* An electrosurgical unit and accessories is an AC-powered device consisting of a controlled power source and a set of cutting and coagulating electrodes. This device is used to cut or remove soft tissue or to control bleeding during surgical procedures in the oral cavity. An electrical current passes through the tip of the electrode into the tissue and, depending upon the operating mode selected, cuts through soft tissue or coagulates the tissue.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39927 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2948]

Medical Devices; Classification of Intraosseous Fixation Wires

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying intraosseous fixation wires into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after of its publication in the **Federal Register**

ADDRESS: Written comments to the Office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation.

The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of intraosseous fixation wires:

1. Identification: An intraosseous fixation wire is a metal device that is used to stabilize and constrict fractured jaw bone segments by wrapping the wire around the ends of the bone segments.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that intraosseous fixation wires be classified into class II because improper design or construction of the device may cause bone degeneration and failure of the bone segments to reunite. The materials used in the device that contact the body should meet a generally accepted level of tissue compatibility. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Infection: If the device cannot be sterilized or is contaminated, infection may result.

(b) Bone damage: If the device is improperly designed, bone damage may occur.

(c) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that intraosseous fixation wires be classified into class II (performance standards). FDA believes that intraosseous fixation wires should be considered implants. This device is designed to be placed within the tissues of the human body for an indefinite period of time. However, the agency also believes that premarket approval is not necessary to assure the safety and effectiveness of the device. Intraosseous fixation wires are completely imbedded in tissue, and there is no possibility of entry of microorganisms causing infection. Moreover, because the device does not protrude into the oral cavity, there is no possibility of irritation caused by chemical reactions from substances put in the mouth. The materials used in the construction of intraosseous fixation wires have been used in dentistry for many years and have demonstrated acceptable biocompatibility characteristics. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.4950, to read as follows:

§ 872.4950 Intraosseous fixation wires.

(a) *Identification.* An intraosseous fixation wire is a metal device that is used to stabilize and constrict fractured jaw bone segments by wrapping the wire around the ends of the bone segments.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that the individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39926 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2950]

Medical Devices; Classification of Orthodontic Elastic Bands

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic elastic bands into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of orthodontic elastic bands:

1. Identification: An orthodontic elastic band is a device made of rubber that is used with orthhodontic appliances to alter the position of teeth by applying pressure on them.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that orthodontic elastic bands be classified into class II because the device must be controlled to prevent damage to the teeth. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard for this device.

Because the agency has determined

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39929 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

device made of metal. In orthodontic treatment, the device is affixed to a tooth to provide a foundation for anchoring orthodontic appliances so that pressure can be exerted on the teeth.

standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for

1. Identification: An orthodontic elastic band is a device made of rubber that is used with orthodontic appliances to alter the position of teeth by applying pressure on them.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that orthodontic elastic bands be classified into class I because the Panel believes that general controls are sufficent to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic elastic bands in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that orthodontic elastic bands be classified into class II (performance standards). The properties of the materials used to form orthodontic elastic bands depend upon the correct composition of these materials. Moreover, orthodontic elastic bands directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that orthodontic elastic bands should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5400, to read as follows:

§ 872.5400 Orthodontic elastic band.

(a) *Identification.* An orthodontic elastic band is a device made of rubber that is used with orthodontic appliances to alter the position of teeth by applying pressure on them.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39929 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2951]

Medical Devices; Classification of Preformed Orthodontic Bands

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment and proposed regulation classifying preformed orthodontic bands into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of preformed orthodontic bands:

1. Identification: A preformed orthodontic band is a prefabricated device made of metal. In orthodontic treatment, the device is affixed to a tooth to provide a foundation for anchoring orthodontic appliances so that pressure can be exerted on the teeth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(fS) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that preformed orthodontic bands be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' pesrsonal knowledge of, and clinical experience with, preformed orthodontic bands in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that preformed orthodontic bands be classified into class II (performance standards). The properties of the materials used to form preformed orthodontic bands depend upon the proper composition of these materials. Moreover, preformed orthodontic bands directly contact oral tissue. Altering the composition of materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that preformed orthodontic bands should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5410, to read as follows:

§ 872.5410 Preformed orthodontic band.

(a) *Identification.* A preformed orthodontic band is a prefabricated device made of metal. In orthodontic treatment, the device is affixed to a tooth to provide a foundation for anchoring orthodontic appliances so that pressure can be exerted on the teeth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39930 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2952]

Medical Devices; Classification of Orthodontic Band Drivers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic band drivers into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of orthodontic band drivers:

1. Identification: An orthodontic band driver is a spring-activated hand instrument that is used to place orthodontic bands on teeth. The device drives the band onto the tooth when the spring is released.

2. Recommended classification: Class

necessary inspections and to receive

and 820.198, is unlikely to improve the

Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written

Panel Recommendation

upon the proper composition of these materials. Moreover, orthodontic band

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2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360 (k)), records and reports requirements under section 519 of the act (21 U.S.C 360), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that orthodontic band drivers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic band drivers in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that orthodontic band drivers be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the panel's recommendation that manufacturers of orthodontic band drivers be exempt from section 510(k) of the act (21 U.S.C. 360), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of orthodontic band drivers, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of orthodontic band drivers be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of orthodontic band drivers be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device who does not label or otherwise represent it as sterile be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of orthodontic band drivers, even when the device is not labeled or otherwise represented as sterile, must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of orthodontic band drivers must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, can determine whether the manufacturer's corrective actions are adequate, and can determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notice of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5420, to read as follows:

§ 872.5420 Orthodontic band driver

(a) *Identification:* An orthodontic band driver is a spring-activated hand instrument that is used to place orthodontic bands on teeth. The device drives the band onto the tooth when the spring is released.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39931 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2953]

Medical Devices; Classification of Orthodontic Band Materials

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic band materials into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of orthodontic band materials:

1. Identification: Orthodontic band material, such as stainless steel, is a device that is used to construct a custom orthodontic band. The band is placed around a tooth which, because of its size or location, cannot be fitted with a preformed orthodontic band. The band provides a foundation for anchoring orthodontic appliances, so that pressure can be exerted on the teeth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that orthodontic band materials be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic band materials in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that orthodontic band materials be classified into class II (performance standards). The properties of the materials used to form orthodontic band materials depend upon the proper composition of these materials. Moreover, orthodontic band materials directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that orthodontic band materials should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5430, to read as follows:

§ 872.5430 Orthodontic band material.

(a) *Identification.* Orthodontic band material, such as stainless steel, is a device that is used to construct a custom orthodontic band. The band is placed around a tooth which, because of its size or location, cannot be fitted with a preformed orthodontic band. The band provides a foundation for anchoring

orthodontic appliances, so that pressure can be exerted on the teeth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation.

from section 510(k) of the act (21 U.S.C. 360), FDA is proposing that these manufacturers be subject to registration and device listing under section 510(a) through (j) of the act, but exempt from

will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint

U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5440, to read as

actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective

orthodontic appliances, so that pressure can be exerted on the teeth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39932 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2954]

Medical Devices; Classification of Orthodontic Band Pushers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic band pushers into class I (general controls). FDA is also publishing the recommendation of the Dentral Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, Md 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of orthodontic band pushers:

1. Identification: An orthodontic band pusher is a barlike stainless steel device used is orthodontic treatment to apply pressure on orthodontic bands in order to place the bands on teeth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that orthodontic band pushers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation, because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic band pushers in the practice of dentistry.

5. Risks to health: None identified.

Proposed classification

FDA agrees with the Panel recommendation and is proposing that orthodontic band pushers be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of orthodontic band pushers be exempt from section 510(k) of the act (21 U.S.C. 360), FDA is proposing that these manufacturers be subject to registration and device listing under section 510(a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration and listing by manufacturers of orthodontic band pushers, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning orthodontic band pushers. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of orthodontic band pushers be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experiences with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of orthodontic band pushers be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 350(f)), FDA is proposing that a manufacturer of this device be except, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of orthodontic band pushers must still be required to comply with the complaint file requirements of § 820.298 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of orthodontic band pushers must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 50 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5440, to read as follows:

§ 872.5440 Orthodontic band pusher.

(a) *Identification.* An orthodontic band pusher is a bar-like stainless steel device used in orthodontic treatment to apply pressure on orthodontic bands in order to place the bands on teeth.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockvile, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets, in the heading of this document. Received comments may be seen in the above office betwen the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39933 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2955]

Medical Devices; Classification of Orthodontic Bank Setters

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic band setters into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administraton, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of orthodontic band setters:

1. Identification: An orthodontic band setter is a bar-like device used in orthodontic treatment to position orthodontic bands on teeth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that orthodontic band setters be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements and the good manufacturing practice regulation, because this is a simple device that presents no undue risk to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel

based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic band setters in the practice of dentistry.

5. Risks to health: None identified.

Proposed classification

FDA agrees with the Panel recommendation and is proposing that orthodontic band setters be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of orthodontic band setters be exempt from section 510(k) of the act (21 U.S.C. 360), FDA is proposing that these manufacturers be subject to registration and device listing under section 510(a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration and listing by manufacturers of orthodontic band setters, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning orthodontic band setters. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of orthodontic band setters be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experiences with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of orthodontic band setters be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 350(f)), FDA is proposing that a manufacturer of this device be except, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of orthodontic band setters must still be required to comply with the complaint file requirements of § 820.298 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of orthodontic band setters must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 50 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5450, to read as follows:

§ 872.5450 Orthodontic band setter.

(a) *Identification.* An orthodontic band setter is a bar-like device used in orthodontic treatment to position orthodontic bands on teeth.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets, in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39934 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic band setters in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that orthodontic band setters be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of orthodontic band setters be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration and device listing under section 510(a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration and listing by manufacturers of orthodontic band setters, the agency cannot make the required findings. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning orthodontic band setters. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of orthodontic band setters be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (CMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device CMP regulation. The exemption will not extend to two device CMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of orthodontic band setters be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of orthodontic band setters must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of orthodontic band setters must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5450, to read as follows:

§ 872.5450 Orthodontic band setter.

(a) *Identification.* an orthodontic band setter is a bar-like device used in orthodontic treatment to position orthodontic bands on teeth.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associcte Commissioner for Regulatory Affairs.

[FR Doc. 80-39934 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N–2956]

Medical Devices; Classification of Orthodontic Metal Brackets

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic metal brackets into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of orthodontic metal brackets:

1. Identification: An orthodontic metal bracket is a metal device that is welded to an orthodontic band or bonded to a tooth and that applies pressure from flexible orthodontic wire to the tooth in order to alter the position of the tooth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that orthodontic metal brackets be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic metal brackets in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that orthodontic metal brackets be classified into class II (performance standards). The properties of the materials used to form orthodontic metal brackets depend upon the proper composition of these materials. Moreover, orthodontic metal brackets directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that orthodontic metal brackets should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21678) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5460, to read as follows:

§ 872.5460 Orhrodontic metal bracket.

(a) *Identification.* An orthodontic metal bracket is a metal device that is welded to an orthodontic band or bonded to a tooth and that applies pressure from a flexible orthodontic wire to the tooth in order to alter the position of the tooth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m. Monday through Friday.

Dated: November 19, 1980.

William F. Randolph.

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39935 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N–2957]

Medical Devices; Classification of Orthodontic Plastic Brackets

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administation (FDA) is issuing for public comment a proposed regulation classifying orthodontic plastic brackets

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic bracket aligners

aligners be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many

notice concerning new products within this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of orthodontic bracket aligners be exempt from records and reports regulations

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ACTION: Proposed rule.

SUMMARY: The Food and Drug Administation (FDA) is issuing for public comment a proposed regulation classifying orthodontic plastic brackets into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of orthodontic plastic brackets:

1. Identification: An orthodontic plastic bracket is a plastic device that is bonded to a tooth and that applies pressure from a flexible orthodontic wire to the tooth in order to alter the position of the tooth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that orthodontic plastic brackets be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic plastic brackets in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that orthodontic plastic brackets be classified into class II (perfomance standards). The properties of the materials used to form orthodontic plastic brackets depend upon the proper composition of these materials. Moreover, orthodontic plastic brackets directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that orthodontic plastic brackets should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1976 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5470, to read as follows:

§ 872.5470 Orthodontic plastic bracket.

(a) *Identification.* An orthodontic plastic bracket is a plastic device that is bonded to a tooth and that applies pressure from a flexible orthodontic wire to the tooth in order to alter the position of the tooth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39186 Filed 12-29-80; 8:45 am]

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21 CFR Part 872

[Docket No. 78N-2958]

Medical Devices; Classification of Orthodontic Bracket Aligners

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic bracket aligners into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the Office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of orthodontic bracket aligners:

1. Identification: An orthodontic bracket aligner is a plier-like device used to align brackets on orthodontic bands that are affixed to the teeth. To align the brackets, the gauge on the device is set to the desired height and the stop of the device is placed against the bottom edge of the tooth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that orthodontic bracket aligners be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, record and reports requirements, and the good manufacturing practice regulation, because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic bracket aligners in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that orthodontic bracket aligners be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of orthodontic bracket aligners be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration and device listing under section 510 (a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration and listing by manufacturers of orthodontic bracket aligners, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning orthodontic bracket aligners. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of orthodontic bracket aligners be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposed device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of orthodontic bracket aligners be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of orthodontic bracket aligners must still be required to comply with the

complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of

other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of extraoral orthodontic headgear:

complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of orthodontic bracket aligners must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective action are adequte, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elswhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5480, to read as follows:

§ 872.5480 Orthodontic Bracket Aligner.

(a) *Identification.* An orthodontic bracket aligner is a plier-like device used to align brackets on orthodontic bands that are affixed to the teeth. To align the brackets, the guage on the device is set to the desired height and the stop of the device is placed against the bottom edge of the tooth.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39937 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2959]

Medical Devices; Classification of Orthodontic Wire Clamps

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic wire clamps into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of orthodontic wire clamps:

1. Identification: An orthodontic wire clamp is a device that is attached to the arch wire to prevent movement of the arch wire.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that orthodontic wire clamps be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic wire clamps in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that orthodontic wire clamps be classified into class II (performance standards). The properties of the materials used to form orthodontic wire clamps depend upon the proper composition of these materials. Moreover, orthodontic wire clamps directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that orthodotic wire clamps should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation idntifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5490, to read as follows:

§ 872.5490 Orthodontic wire clamp.

(a) *Identification.* An orthodontic wire clamp is a device that is attached to the arch wire to prevent movement of the arch wire when placed in a tube on an orthodontic band.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39938 filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2960]

Medical Devices; Classification of Extraoral Orthodontic Headgear

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying extraoral orthodontic headgear into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that, the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of extraoral orthodontic headgear:

1. Identification: An extraoral orthodontic headgear is a device that is used, in conjunction with an orthodontic appliance, to exert pressure on the teeth from outside the mouth. The headgear has a strap that wraps around the patient's neck or head and an inner bow portion that is fastened to the orthodontic appliance in the patient's mouth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that extraoral orthodontic headgears be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for may years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, extraoral orthodontic headgear in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that extraoral orthodontic headgear be classified into class II (performance standards). The properties of the materials used to form extraoral orthodontic headgear depend upon the proper composition of these materials. Moreover, extraoral orthodontic headgear directly contact oral tissue. Altering the composition of the

materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that orthodotic wire clamps should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation idntifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5490, to read as follows:

§ 872.5490 Orthodontic wire clamp.

(a) *Identification.* An orthodontic wire clamp is a device that is attached to the arch wire to prevent movement of the arch wire when placed in a tube on an orthodontic band.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39939 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

(performance standards). The properties of the materials used to form preformed orthodontic space maintainers depend upon the proper composition of these materials. Moreover, preformed orthodontic space maintainers directly

the orthodontic bands affixed to the teeth adjacent to the space, preventing movement of the adjacent teeth into the empty space.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39940 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that extraoral orthodontic headgear should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5500, to read as follows:

§ 872.5500 Extraoral orthodontic headgear.

(a) *Identification.* An extraoral orthodontic headgear is a device that is used, in conjunction with an orthodontic appliance, to exert pressure on the teeth from outside the mouth. The headgear has a strap that wraps around the patient's neck or head and an inner bow portion that is fastened to the orthodontic applicance in the patient's mouth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39939 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2961]

Medical Devices; Classification of Preformed Orthodontic Space Maintainers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying preformed orthodontic space maintainers into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of preformed orthodontic space maintainers:

1. Identification: A preformed orthodontic space maintainer is a metal device that is used to preserve the space between teeth. The device is welded to the orthodontic bands affixed to the teeth adjacent to the space, preventing movement of the adjacent teeth into the empty space.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that preformed orthodontic space maintainers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel member's personal knowledge of, and clinical experience with, preformed orthodontic space maintainers in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that preformed orthodontic space maintainers be classified into class II (performance standards). The properties of the materials used to form preformed orthodontic space maintainers depend upon the proper composition of these materials. Moreover, preformed orthodontic space maintainers directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that preformed orthodontic space maintainers should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5510, to read as follows:

§ 872.5510 Preformed orthodontic space maintainer.

(a) *Identification.* A preformed orthodontic space maintainer is a metal device that is used to preserve the space between teeth. The device is welded to the orthodontic bands affixed to the teeth adjacent to the space, preventing movement of the adjacent teeth into the empty space.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39940 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2962]

Medical Devices; Classification of Orthodontic Pliers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic pliers into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of orthodontic pliers:

1. Identification: Orthodontic pliers are a device used to shape and to adjust wires and bands used in orthodontic treatment.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that orthodontic pliers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic pliers in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that orthodontic pliers be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by this device.

In response to the Panel's recommendation that manufacturers of orthodontic pliers be exempt from

section 510(k) of the act (21 U.S.C. 360 (k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premaket notification under section 510(a) through (k) of the

regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness,

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21 CFR Part 872

[Docket No. 78N–3025]

Medical Devices; Classification of

into a final position or to maintain the teeth in their corrected position.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt

there is sufficient information to establish a performance standard for this device.

Because the agency has determined that preformed tooth positioners should

9 a.m. and 4 p.m., Monday through Friday.

Dated November 19, 1980.

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section 510(k) of the act (21 U.S.C. 360 (k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premaket notification under section 510(a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification manufacturers of orthodontic pliers, the agency cannot make the required findings. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notification from manufactuers to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of orthodontic pliers be exempt from records and reports regulations under section 59 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

FDA disagrees with the Panel's recommendation that manufacturers of orthodontic pliers be exempt from the good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness, and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of orthodontic pliers having defects that could harm users.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5520,to read as follows:

§ 872.5520 Orthodontic pliers.

(a) *Identification.* Orthodontic pliers are a device used to shape and to adjust wires and bands used in orthodontic treatment.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39941 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-3025]

Medical Devices; Classification of Preformed Tooth Positioners

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying preformed tooth positioners into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of preformed tooth positioners:

1. Identification: A preformed tooth positioner is a plastic device used to prevent a patient's teeth from shifting position or to move teeth to a final position after orthodontic appliances (braces) have been removed. The device is an impression of a perfected bite. The patient bites down on the device for several hours a day to force the teeth into a final position or to maintain the teeth in their corrected position.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)) and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that preformed tooth positioners be classified into class I because the Panel believes that general controls are sufficient to ensure the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures and the good manufacturing practice regulation because it is a simple device that presents no undue risks to health when used in a normal manner and for the purposes recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, preformed tooth positioners in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that preformed tooth positioners be classified into class II (performance standards). Preformed tooth positioners are composed of materials with certain properties, properties that depend upon the correct compostion of these materials. Moreover, preformed tooth positioners directly contact oral tissue. Altering the composition of the materials used in the device or contaminating the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. Performance standards are necessary to assure that the materials in the device are nontoxic and of adequate strength to prevent movement of teeth and to assure that the device fits properly. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that preformed tooth positioners should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and as new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5575, to read as follows:

§ 872.5575 Preformed tooth positioner.

(a) *Identification.* A preformed tooth positioner is a plastic device used to prevent a patient's teeth from shifting position or to move teeth to a final position after orthodontic appliances (braces) have been removed. The device in an impression of a perfected bite. The patient bites down on the device for several hours a day to force the teeth into a final position or to maintain the teeth in their corrected position.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated November 19, 1980.

William F. Randolph.

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39942 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-2963]

Medical Devices; Classification of Orthodontic Expansion Screw Retainers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic expansion screw retainers into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the

classification of orthodontic expansion screw retainers:

1. Identification: An orthodontic expansion screw retainer is a device used to exert pressure on the teeth

agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance

submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments

development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of orthodontic springs:

1. Identification: An orthodontic wire

because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency

may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph

Acting Associate Commissioner for

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classification of orthodontic expansion screw retainers:

1. Identification: An orthodontic expansion screw retainer is a device used to exert pressure on the teeth during orthodontic treatment. The retainer has an adjustable screw that, when turned, expands the device laterally and, thereby, enlarges an area of the oral cavity, such as the palate.

2. Recommended classification: Class I (general controls). The Panel recommends that orthodontic expansion screw retainers be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

(3) Summary of reasons for recommendation: The Panel recommends that orthodontic expansion screw retainers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic expansion screw retainers in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that orthodontic expansion screw retainers be classified into class II (performance standards). The properties of the materials used to form orthodontic expansion screw retainers depend upon the proper composition of these materials. Moreover, orthodontic expansion screw retainers directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device. Because the agency has determined that orthodontic expansion screw retainers should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5530, to read as follows:

§ 872.5530 Orthodontic expansion screw retainer.

(a) *Identification.* An orthodontic expansion screw retainer is a device used to exert pressure on the teeth during orthodontic treatment. The retainer has an adjustable screw that, when turned, expands the device laterally and thereby enlarges an area of the oral cavity, such the palate.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39343 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2964]

Medical Devices; Classification of Orthodontic Springs

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic springs into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of orthodontic springs:

1. Identification: An orthodontic wire spring is a metal device that is attached to the orthodontic bands affixed to adjacent teeth and is used to apply pressure to teeth to correct their position.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that orthodontic springs be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic springs in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that orthodontic springs be classified into class II (performance standards). The properties of the materials used to form orthodontic springs depend upon the proper composition of these materials. Moreover, orthodontic springs directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that orthodontic springs should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5540, to read as follows:

§ 872.5540 Orthodontic spring.

(a) *Identification.* An orthodontic spring is a metal device that is attached to the orthodontic bands affixed to adjacent teeth and is used to apply pressure to teeth to correct their position.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39344 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2965]

Medical Devices; Classification of Teething Rings

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying fluid-filled teething rings into class II (performance standards) and classifying nonfluid-filled teething rings into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the fluid-filled teething rings be classified into class I (general controls). The Panel recommendation did not include a recommended classification for nonfluid-filled teething rings. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying teething rings. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, Md 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the

regarding compliant files. (2) Class II (performance standards), if the teething ring contains a liquid, such as water.

Interested persons may, on or before March 2, 1981 submit to the Hearing

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

class II (performance standards). The properties of the materials used to form orthodontic tubes depend upon the correct composition of these materials. Moreover, orthodontic tubes directly

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development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of fluid-filled teething rings:

1. Identification: A fluid-filled teething ring is a soft plastic device containing a liquid, such as water. Prior to use, the liquid may be chilled by refrigerating the device. The device is used by infants to soothe gums during the teething process.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(i)) and from the good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that fluid-filled teething rings be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The device materials that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, fluid-filled teething rings in the practice of dentistry.

5. Risks to health: Infection: If the fluid in the device becomes contaminated and the teething ring ruptures, the patient may develop an infection.

Proposed Classification

With respect to fluid-filled teething rings, FDA disagrees with the Panel recommendation and is proposing that these rings be classified into class II (performance standards). Contamination of the fluid in the device has the potential for causing infection, if the teething ring ruptures. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risk to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that fluid-filled teething rings should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device by exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

FDA has revised the identification of the device to clarify that the regulation applies only to products intended for use as an aid in teething, and to include nonfluid-filled teething rings as well as fluid-filled teething rings. Because nonfluid-filled teething rings do not present a risk of infection due to contaminated fluid, FDA is proposing to classify them into class I. FDA is also proposing to exempt nonfluid-filled teething rings from the premarket notification requirement under section 510(k) of the act and Subpart E of Part 807 of the regulations (21 CFR Part 807, Subpart E) and from most provisions of the GMP regulation under section 520(f) of the act (21 U.S.C. 360j(f)) and Part 820 of the regulations. The agency has determined that is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning a nonfluid-filled teething ring. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new types of nonfluid-filled teething rings.

FDA is proposing that a manufacturer of a nonfluid-filled teething ring who does not label or otherwise represent it as sterile be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of a nonfluid-filled teething ring, even when it is not labeled or otherwise represented as sterile, must still be required to comply with the complaint file requirements to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of nonfluid-filled teething rings must still be required to comply with the general requirements concerning records to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate. A manufacturer of a nonfluid-filled teething ring that it labeled or otherwise represented as sterile is, in the manufacture of this device, subject to the GMP regulation in its entirety.

Teething rings may also be subject to regulation by the Consumer Product Safety Commission under the Federal Hazardous Substances Act (15 U.S.C. 1261–1275).

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5550, to read as follows:

§ 872.5550 Teething ring.

(a) *Identification.* A teething ring is a device intended for use by infants to soothe gums during the teething process.

(b) *Classification.* (1) Class I (general controls), if the teething ring does not contain a liquid, such as water. This nonfluid-filled teething ring is exempt from the premarket notification procedures in Subpart E of Part 807. If the nonfluid-filled device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of §820.180, regarding general requirements concerning records, and § 820.198, regarding compliant files. (2) Class II (performance standards), if the teething ring contains a liquid, such as water.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39945 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 872

[Docket No. 78N–2966]

Medical Devices; Classification of Orthodontic Tubes

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic tubes into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of orthodontic tubes:

1. Identification: An orthodontic tube is a metal device that is used in orthodontics to attach a wire or headgear to bands cemented to the teeth. The tube is welded to a band or bonded to the last tooth and allows insertion of an arch wire or headgear appliance.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that orthodontic tubes be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, record and reports requirements, and the good manufacturing practice regulation, because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic tubes in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that orthodontic tubes be classified into class II (performance standards). The properties of the materials used to form orthodontic tubes depend upon the correct composition of these materials. Moreover, orthodontic tubes directly contact oral tissue. Altering the composition of the materials used in the device or contaimination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insuffient to control the risks to health presented by the device. A performance standard would provide reasonable assurance for the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency had determined that orthodontic tubes should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5560, to read as follows:

§ 872.5560 Orthodontic tube.

(a) *Identification.* An orthodontic tube is a metal device that is used in orthodontics to attach a wire or headgear to bands cemented to the teeth. The tube is welded to a band or bonded to the last tooth and allows

insertion of an arch wire or headgear appliance.

(b) *Classificotion.* Class II (performance standards).

Interested persons may on or before

Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of orthodontic ligature tucking instruments

from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements,

may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority

publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to

insertion of an arch wire or headgear appliance.

(b) *Classification.* Class II (performance standards).

Interested persons may on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39948 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2967]

Medical Devices; Classification of Orthodontic Ligature Tucking Instruments

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic ligature tucking instruments into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposed that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of orthodontic ligature tucking instruments:

1. Identification: An orthodontic ligature tucking instrument is a device used to push the end of a ligature under the arch wire so that soft tissues are not irritated by these ends. A ligature is the wire that fastens an orthodontic arch wire to the orthodontic band on a tooth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that orthodontic ligature tucking instruments be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of and clinical experience with orthodontic ligature tucking instruments in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that orthodontic ligature tucking instruments be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of orthodontic ligature tucking instruments be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration and device listing under section 510 (a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration and listing by manufacturers of orthodontic ligature tucking instruments, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that it is not necesary for the protection of the public health that FDA receive premarket notification submissions concerning orthodontic ligature tucking instruments. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semi-annual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of orthodontic ligature tucking instruments be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption

from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of orthodontic ligature tucking instruments be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the CMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of orthodontic ligature tucking instruments must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of orthodontic ligature tucking instruments must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5570, to read as follows:

§ 872.5570 Orthodontic ligature tucking instrument.

(a) *Identification.* An orthodontic ligature tucking instrument is a device used to push the end of a ligature under the arch wire so that soft tissues are not irritated by these ends. A ligature is the wire that fastens an orthodontic arch wire to the orthodontic band on a tooth.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individual may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday thorugh Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39947 Filed 12-29-80 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2968]

Medical Devices; Classification of Orthodontic Wires

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying orthodontic wires into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of orthodontic wires:

1. Identification: An orthodontic wire is a device that is incorporated into an orthodontic appliance and is used to exert pressure on teeth in order to alter their position.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C.360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that orthodontic wires be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device

has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply

idntifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere

assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will

with records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6010, to read as

applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, orthodontic wires in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that orthodontic wires be classified into class II (performance standards). The properties of the materials used to form orthodontic wires depend upon the proper composition of these materials. Moreover, orthodontic wires directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that orthodontic wires should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart F by adding new § 872.5580, to read as follows:

§ 872.580 Orthodontic wire.

(a) *Identification.* An orthodontic wire is a device that is incorporated into an orthodontic appliance and is used to exert pressure on teeth in order to alter their position.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except the individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39948 filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2969]

Medical Devices; Classification of Abrasive Disks

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying abrasive disks into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of abrasive disks:

1. Identification: An abrasive disk is a device constructed of various abrasives, such as diamond chips, that are glued to shellac-based paper. The device is used to remove excessive restorative material, such as gold, and to smooth rough surfaces from oral restorations, such as crowns. The device is attached to a shank that is held by a handpiece.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that abrasive disks be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, abrasive disks in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that abrasive disks be classified into class II (performance standards). The properties of the materials used to form abrasive disks depend upon the proper composition of these materials. Moreover, abrasive disks directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that abrasive disks should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6010, to read as follows:

§ 872.6010 Abrasive disk.

(a) *Identification.* An abrasive disk is a device constructed of various abrasives, such as diamond chips, that are glued to shellac-based paper. The device is used to remove excessive restorative material, such as gold, and to smooth rough surfaces from oral restorations, such as crowns. The device is attached to a shank that is held by a handpiece.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39949 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2970]

Medical Devices; Classification of Abrasive Points

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying abrasive points into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 104–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of abrasive points:

1. Identification: An abrasive point is a device used to remove excessive restorative material, such as gold, and to remove rough surfaces on oral restorations, such as amalgam fillings. The device may be constructed of diamond or silica particles molded into different shapes and fused to a shank that is held by a handpiece.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that abrasive points be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, oral cavity abrasive polishing agents in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that oral cavity abrasive polishing agents be classified into class II (performance standards). The properties of the materials used to form oral cavity abrasive polishing agents depend upon the proper composition of these materials. Moreover, oral cavity abrasive polishing agents directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that oral cavity abrasive polishing agents should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6020, to read as follows:

§ 872.6020 Abrasive point.

(a) *Identification.* An abrasive point is

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health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, abrasive points in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that abrasive points be classified into class II (performance standards). The properties of the materials used to form abrasive points depend upon the proper composition of these materials. Moreover, abrasive points directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that abrasive points should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6020, to read as follows:

§ 872.6020 Abrasive point.

(a) *Identification.* An abrasive point is a device used to remove excessive restorative material, such as gold, and to remove rough surfaces on oral restorations, such as amalgam fillings. The device may be constructed of diamond or silica particles molded into different shapes and fused to a shank that is held by a handpiece.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39950 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2971]

Medical Devices; Classification of Oral Cavity Abrasive Polishing Agents

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying oral cavity abrasive polishing agents into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of oral cavity abrasive polishing agents:

1. Identification: An oral cavity abrasive polishing agent is a device in paste or powder form that contains an abrasive material, such as silica pumice, and is used to remove debris from the teeth. The abrasive polish is applied to the teeth by a handpiece attachment (prophylaxis cup).

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that oral cavity abrasive polishing agents be classified into class I because general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel

based its recommendation on the Panel members' personal knowledge of, and clinical experience with, oral cavity abrasive polishing agents in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that oral cavity abrasive polishing agents be classified into class II (performance standards). The properties of the materials used to form oral cavity abrasive polishing agents depend upon the proper composition of these materials. Moreover, oral cavity abrasive polishing agents directly contact oral tissue. Altering the composition of materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that oral cavity abrasive polishing agents should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 State. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6030, to read as follows:

§ 872.6030 Oral cavity abrasive polishing agent.

(a) *Identification.* An oral cavity abrasive polishing agent is a device in paste or powder form that contains an abrasive material, such as silica pumice, and is used to remove debris from the teeth. The abrasive polish is applied to the teeth by a handpiece attachment (prophylaxis cup).

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39951 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2972]

Medical Devices; Classification of Polishing Agent Strips

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying polishing agent strips into class I (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of polishing agent strips:

1. Identification: A polishing agent strip is a device composed of a plastic strip to which an abrasive material is affixed. The device is used to polish restorative materials, such as amalgam or silicate, especially in areas between the teeth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that polishing agent strips be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with records and reports requirements, and the good manufacturing practice regulation, because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and

clinical experience with, polishing agent strips in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that polishing agent strips be classified into class II (performance standards). The properties of the materials used to form polishing agent strips depend upon the proper composition of these materials. Moreover, polishing agent strips directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that polishing agent strips should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6035, to read as follows:

§ 872.6035 Polishing agent strip.

(a) *Identification.* A polishing agent strip is a device composed of a plastic strip to which an abrasive material is affixed. The device is used to polish restorative materials, such as amalgam

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

polishing wheels be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in

manufacturers of polishing wheels must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39953 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

clinical experience with, polishing agent strips in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that polishing agent strips be classified into class II (performance standards). The properties of the materials used to form polishing agent strips depend upon the correct composition of these materials. Moreover, the polishing agent strips directly contact oral tissue. Altering the composition of the materials used in the device or contamination of the materials with other substances may cause adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that polishing agent strips should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6035, to read as follows:

§ 872.6035 Polishing agent strip.

(a) *Identification.* A polishing agent strip is a device composed of a plastic strip to which an abrasive material is affixed. The device is used to polish restorative materials, such as amalgam or silicate, especially in areas between the teeth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk, (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39952 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2973]

Medical Devices; Classification of Polishing Wheels

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying polishing wheels into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of polishing wheels:

1. Identification: A polishing wheel is a device composed of a material such as hard rubber, that is used to polish restorative materials in readily accessible areas of the oral cavity. The device is held by a dental handpiece.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that polishing wheels be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, polishing wheels in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that polishing wheels be classified into Class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

FDA disagrees with the Panel's recommendation that manufacturers of polishing wheels be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements in found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of polishing wheels be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of polishing wheels must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667 and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6040, to read as follows:

§ 872.6040 Polishing wheel.

(a) *Identification.* A polishing wheel is a device composed of a material such as hard rubber, that is used to polish restorative materials in readily accessible areas of the oral cavity. The device is held by a dental handpiece.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39953 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2974]

Medical Devices; Classification of Paper Saliva Absorbers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying paper saliva absorbers into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of paper saliva absorbers:

1. Identification: A paper saliva absorber is a device made of paper that is used to absorb moisture from the oral cavity during dental procedures.

2. Recommended classification: Class I (general controls). The Panel recommends that paper saliva absorbers be exempt from premarket notification procedures under section 510(k) of the

Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under

existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of paper saliva absorbers be exempt from

identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere

to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry. The Panel also

new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation

Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that paper saliva absorbers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, paper saliva absorbers in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that paper saliva absorbers be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of paper saliva absorbers be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of paper saliva absorbers, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of paper saliva absorbers be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

FDA disagrees with the Panel recommendation that manufacturers of paper saliva absorbers be exempt from the good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness, and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of paper saliva absorbers having defects that could harm users.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart C by adding new § 872.6050, to read as follows:

§ 872.6050 Paper saliva absorber.

(a) *Identification.* A paper saliva absorber is a device made of paper that is used to absorb moisture from the oral cavity during dental procedures.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that the individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39954 Filed 12-29-80; 8:45 am]

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21 CFR Part 872

[Docket No. 78N–2975]

Medical Devices; Classification of Ultraviolet Activators for Polymerization

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying ultraviolet activators for polymerization into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards

to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of ultraviolet activators for polymerization:

1. Identification: An ultraviolet activator for polymerization is a device that produces ultraviolet radiation which is used to polymerize (set) resinous dental pit and fissure sealants or restorative materials by transmission of the light through a rod.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that ultraviolet activators for polymerization be classified into class II becasue the amount of ultraviolet light emitted by the device must be controlled to prevent possible eye damage to users. The design and output characteristics of this device should meet a generally acceptable satisfactory level of performance. Also, the electrical properties or the device must be controlled to ensure electrical safety. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a performance standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry. The Panel also based its recommendation on a report published in the *Journal of the American Dental Association* (Ref. 1). The report states the ultraviolet radiation of 320–400 nanometers (nm) is usually innocuous to human skin. However, ultraviolet light radiation in the 320–400 nm range can cause erythema (redness of the skin produced by congestion of the capillaries) and pigmentation in persons naturally susceptible to ultraviolet light and persons ingesting certain drugs or other chemicals that act as photosensitizing agents.

5. Risks to health: (a) Adverse skin reaction: A phototoxic or photoallergic skin reaction (erythema and pigmentation) may occur after moderate to excessive exposure to ultraviolet radiation emitted by the device.

(b) Eye damage: Eye damage may be caused by exposure to ultraviolet radiation emitted by the device.

(c) Electrical shock: Improper electrical design of the device may cause electrical shock to the patient or user.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that ultraviolet activators for polymerization be classified into class II (performance standards). A performance standard for this device would control the exposure of the patient to unnecessary ultraviolet light radiation. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Reference

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Council on Dental Materials and Devices, "Guidelines on the Use of Ultraviolet Radiation in Dentistry," *Journal of the American Dental Association*, Volume 92:775–776, April 1976.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6070, to read as follows:

§ 872.6070 Ultraviolet activator for polymerization.

(a) *Identification.* An ultraviolet activator for polymerization is a device that produces ultraviolet radiation which is used to polymerize (set) resinous dental pit and fissure sealants or restorative materials by transmission of the light through a rod.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39955 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N–2976]

Medical Devices; Classification of Air Brushes

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying air brushes into class III

(premarket approval). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class III. The effect of classifying a device into

actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, anesthetic warmers in the practice of dentistry.

persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification

(premarket approval). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of air brushes:

1. Identification: An air brush is an AC-powered device used in conjunction with articulation paper. The device uses air-driven particles to roughen the surfaces of dental restorations; uneven areas of the restorations are then identified by use of articulation paper.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that air brushes be classified into class III because the device presents a potential unreasonable risk of illness or injury. Use of the device may cause soft and hard tissue damage or cause inhalation or harmful particulate matter by creating excessive abrasive particles in the mouth. The Panel believes that general controls would not provide sufficient control over these characteristics. The Panel also believes that sufficient data do not exist to establish an adequate performance standard for this device because statisfactory performance has never been demonstrated. Therefore, the Panel recommends that the device should be subject to premarket approval to assure that manufacturers demonstrate satisfactory performance of the device and, thus, assure its safety and effectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Inhalation of particles: Improper design of the device could create excessive abrasive particles which could be inhaled by the patient.

(b) Tissue trauma: The device could cause unnecessary trauma to hard and soft tissue structures of the mouth due to the abrasive nature of the particulates.

(c) Adverse tissue reaction: If the materials used in the device are not biocompatible, the patient may have an adverse tissue reaction.

(d) Electrical shock: Improper design or a malfunction of the device may cause electrical shock to the patient or user.

Proposed Classfication

FDA agrees with the Panel recommendation and is proposing that air brushes be classified into class III (premarket approval). The agency believes that the device presents a potential unreasonable risk of illness or injury because use of the device to roughen surfaces of dental restorations may cause the patient to inhale harmful particles or to suffer trauma to hard and soft tissues of the mouth. The agency believes that sufficient information exists to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device and that insufficient information exists to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6080, to read as follows:

§ 872.6080 Air brush.

(a) *Identification.* An air brush is an AC-powered device used in conjunction with articulation paper. The device uses air-driven particles to roughen the surfaces of dental restorations. Uneven areas of the restorations are then identified by use of articulation paper.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39956 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2977]

Medical Devices; Classification of Anesthetic Warmers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying anesthetic warmers into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of anesthetic warmers:

1. Identification: An anesthetic warmer is an AC-powered device into which tubes containing anesthetic solution are placed in order to warm them prior to the administration of the anesthetic.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that anesthetic warmers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, anesthetic warmers in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that anesthetic warmers be classified into Class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of anesthetic warmers be exempt from section 510(k) of the act (21 U.S.C. 360), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of anesthetic warmers, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of anesthetic warmers be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

FDA disagrees with the Panel's recommendation that manufacturers of anesthetic warmers be exempt from the good manufacturing practice (GMP) regulation under section 520(f) of the act (2 U.S.C. 360j(f)). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness, and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of anesthetic warmers having defects that could harm users.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6100, to read as follows:

§ 872.6100 Anesthetic warmer.

(a) *Identification.* An anesthetic warmer is an AC-powered device into which tubes containing anesthetic solution are placed in order to warm them prior to the administration of the anesthetic.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug

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Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may

following recommendation regarding the classification of articulation paper:

1. Identification: Articulation paper is a device composed of paper coated with an ink dye that is placed between the

only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers

requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and

§ 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing

Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39957 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2978]

Medical Devices; Classification of Articulation Paper

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying articulation paper into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of articulation paper:

1. Identification: Articulation paper is a device composed of paper coated with an ink dye that is placed between the patient's upper and lower teeth when the teeth are in the bite position. The articulation paper is used to locate uneven or high areas.

2. Recommended classification: Class I (general controls): The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that articulation paper be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, articulation paper in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that articulation paper be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of articulation paper be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of articulation paper, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of articulation paper be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (CMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of articulation paper be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of articulation paper must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of articulation paper must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and compliants about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a). 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6140, to read as follows:

§ 872.6140 Articulation paper.

(a) *Identification.* Articulation paper is a device composed of paper coated with an ink dye that is placed between the patient's upper and lower teeth when the teeth are in the bite position. The articulation paper locates uneven or high areas.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820, with the exception of

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21 CFR Part 872

[Docket No. 78N-2979]

Medical Devices, Classification of Base Plate Shellacs

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying base plate shellacs into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elswhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of base plate shellacs:

1. Identification: Base plate shellac is a device composed of shellac that is used to rebuild the occlusal rim of full or partial dentures.

2. Recommend classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that base plate shellacs be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, base plate shellac in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that base plate shellacs be classified into class II (performance standards). The properties of the materials used to form base plate shellacs depend upon the proper composition of these materials. Moreover, base plate shellacs directly

contact oral tissues. Altering the composition of the materials or contamination of the materials with other substances may lead to adverse tissue reactions, thus placing the patient

controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is

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contact oral tissues. Altering the composition of the materials or contamination of the materials with other substances may lead to adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that base plate shellacs should be classified into Class II rather than Class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under Section 519, and the good manufacturing practice regulation under Section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each devices panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewehre in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6200, to read as follows:

§ 872.6200 Base plate shellac.

(a) *Identification.* Base plate shellac is a device composed of shellac that is used to rebuild the occlusal rim of full or partial dentures.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39959 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2980]

Medical Devices; Classification of Dental Chairs with Operative Units

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is isssuing for public comment a proposed regulation classifying dental chairs with operative units into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental chairs with operative units:

1. Identification: A dental chair with operative unit is a device that consists of an AC-powered chair or lounger in which the patient is positioned during dental procedures. Attached to the chair is an AC-powered operative unit that supplies power to, and serves as the base for, dental handpieces, lights, and other devices and that holds syringes for air and water.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)) and records and reports requirements under section 519 of the act (21 U.S.C. 360i).

3. Summary of reasons for recommendation: Panel recommends that dental chairs with operative units be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that devices contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures and records and reports requirements because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, dental chairs with operative units in the practice of dentistry.

5. Risks to health: Electrical shock: Improper electrical design of the device may cause electrical shock to the patient.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that dental chairs with operative units be classified into class II (performance standards). This decision is based on the potential for electric shock posed by the power supply of the device. The agency believes that a performance standard is necessary for this device to ensure electrical safety and that general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that dental chairs with operative units should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k) and records and reports requirements under section 519 of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 7019(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6250, to read as follows:

§ 872.6250 Dental chair with operative unit.

(a) *Identification.* A dental chair with operative unit is a device that consists of an AC-powered chair or lounger in which the patient is positioned during dental procedures. Attached to the chair is an AC-powered operative unit that supplies power to, and serves as the base for, dental handpieces, lights, and other devices and that holds syringes for air and water.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39960 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2981]

Medical Devices; Classification of Dental Chairs Without Operative Units

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental chairs without operative units into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classfiying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental chairs without operative units:

1. Identification: A dental chair without operative unit is a device that consists of an AC-powered chair or lounger in which the patient is positioned during dental procedures. The Chair does not have an operative unit device attached.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that dental chairs without operative units be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for may years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with the premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, dental chairs without operative units in the practice of dentistry.

5. Risks to health; Electrical shock: Improper electrical design of the device may cause electrical shock to the patient.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that dental chairs without operative units be classified into class II (performance standards). This decision is based on the potential for electric shock posed by the power supply of the device. The Agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health

presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard for

manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of cotton rolls be exempt from records and

presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard for this device.

Because the agency has determined that dental chairs without operative units should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6260, to read as follows:

§ 872.6260 Dental chair without operative unit.

(a) *Identification.* A dental chair without operative unit is a device that consists of an AC-powered chair or lounger in which the patient is positioned during dental procedures. The chair does not have an operative unit device attached.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39961 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

21 CFR PART 872

[Docket No. 78N–2982]

Medical Devices; Classification of Cotton Rolls

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying cotton rolls into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305) Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Greg Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of cotton rolls:

1. Identification: A cotton roll is a tube shaped device composed of cotton fibers that is used to absorb moisture in the oral cavity during dental procedures.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(dk) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that cotton rolls be classified into class I because the Panel believed that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, cotton rolls in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that cotton rolls be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of cotton rolls be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing and premarket notification by manufacturers of cotton rolls, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of cotton rolls be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

FDA disagrees wih the Panel's recommendation that manufacturers of cotton rolls be exempt from the good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of cotton rolls having defects that could harm users.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6280, to read as follows:

§ 872.6280 Cotton roll.

(a) *Identification.* A cotton roll is a tube shaped device composed of cotton fibers that is used to absorb moisture in the oral cavity during dental procedures.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39962 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 872

[Docket No. 78N–2983]

Medical Devices; Classification of Prophylaxis Cups

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying prophylaxis cups into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of prophylaxis cups:

1. Identification: A prophylaxis cup is a device made of rubber that is held by a dental handpiece and used to apply polishing agents during prophylaxis (cleaning). The dental handpiece spins the rubber cup holding the polishing agent and the user applies it to the teeth to remove debris.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that prophylaxis cups be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, prophylaxis

Compliance with the GMP regulation will help prevent production of prophylaxis cups having defects that could harm users.

On April 28, 1978, the agency

21 CFR Part 872

[Docket No. 78N–2984]

Medical Devices; Classification of Rubber Dams

manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel

several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice

complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, prophylaxis cups in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that prophylaxis cups be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

FDA disagrees with the Panel's recommendation that manufacturers of prophylaxis cups be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

FDA disagrees with the Panel's recommendation that manufacturers of prophylaxis cups be exempt from the good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness, and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of prophylaxis cups having defects that could harm users.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). The proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 862 in Subpart G by adding new § 872.6290, to read as follows:

§ 872.6290 Prophylaxis cup.

(a) *Identification.* A prophylaxis cup is a device made of rubber that is held by a dental handpiece and used to apply polishing agents during prophylaxis (cleaning). The dental handpiece spins the rubber cup holding the polishing agent and the user applies it to the teeth to remove debris.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk, (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39963 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 872

[Docket No. 78N–2984]

Medical Devices; Classification of Rubber Dams

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying rubber dams into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305). Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of rubber dams:

1. Identification: A rubber dam is a device composed of a thin sheet of latex with a hole in the center that is used to isolate a tooth from fluids in the mouth during dental procedures, such as filling a cavity. The device is streched around a tooth by inserting the tooth through the hole in the center.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that rubber dams be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, rubber dams in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that rubber dams be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of rubber dams be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing and premarket notification by manufacturers of rubber dams, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of rubber dams be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of rubber dams be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of rubber dams must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of rubber dams must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6300, to read as follows:

§ 872.6300 Rubber dam.

(a) *Identification.* A rubber dam is a device composed of a thin sheet of latex with a hole in the center that is used to isolate a tooth from fluids in the mouth during dental procedures, such as filling a cavity. The device is stretched around a tooth by inserting the tooth through the hole in the center.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated November 19, 1980

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39964 Filed 12–29–80; 8:45 am]

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Dated November 19, 1980

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39964 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2985]

Medical Devices; Classification of Rubber Dam Clamps

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying rubber dam clamps into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the Office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of rubber dam clamps:

1. Identification: A rubber dam clamp is a device used to anchor a rubber dam (a barrier used to isolate a tooth from fluids in the mouth during dental procedures, such as filling a cavity).

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that rubber dam clamps be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is base: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, rubber dam clamps in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that rubber dam clamps be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of rubber dam clamps be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of rubber dam clamps, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of rubber dam clamps be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of rubber dam clamps be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of rubber dam clamps must still be required to

comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of rubber dam clamps must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6310, to read as follows:

§ 872.6310 Rubber dam clamp.

(a) *Identification.* A rubber dam clamp is a device used to anchor a rubber dam (a barrier used to isolate a tooth from fluids in the mouth during dental procedures, such as filling a cavity).

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39965 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2986]

Medical Devices; Classification of Rubber Dam Frames

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying rubber dam frames into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of rubber dam frames:

1. Identification: A rubber dam frame is a plastic or metal device used to stretch and apply a rubber dam (a barrier used to isolate a tooth from fluids in the mouth during procedures, such as filling a cavity).

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that rubber dam frames be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation, because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, rubber dam frames in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that rubber dam frames be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel recommendation that manufacturers of rubber dam frames be exempt from section 510(k) of the act (21 U.S.C. 360), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of rubber dam frames, the agency cannot make the required finding. In

order to conduct necessary inspections, and, thereby, to protect the public health, the agency must be able to

agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to

Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be

The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the

Proposed Classification

FDA agrees with the Panel

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug

order to conduct necessary inspections, and, thereby, to protect the public health, the agency must be able to identify the firms manufacturing this device. Likewise, the agency must receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of rubber dam frames be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of rubber dam frames be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of rubber dam frames must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of rubber dam frames must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about products defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6320, to read as follows:

§ 872.6320 Rubber dam frame.

(a) *Identification.* A rubber dam frame is a plastic or metal device used to stretch and apply a rubber dam (a barrier used to isolate a tooth from fluids in the mouth during dental procedures, such as filling a cavity).

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39966 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2987]

Medical Devices, Classification of Ultraviolet Detectors

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying ultraviolet detectors into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. after considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administraton, 8757 Georgia Ave., Silver spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendations

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of ultraviolet detectors:

1. Identification: An ultraviolet detector is a device that provides a source of ultraviolet light which is used to identify otherwise invisible material, such as dental plaque, present in or on teeth.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a high priority.

3. Summary of reasons for recommendation: The Panel recommends that ultraviolet detectors be classified into class II because the amount of ultraviolet light emitted by the device must be controlled to prevent eye damage. The design and ouput characteristics of this device should meet a generally acceptable satisfactory level of performance. Also, the electrical properties of the device must be controlled to assure electrical safety. The Panel believes that general controls alone would not provide sufficient control over these characteristics. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry. The Panel also based its recommendation on a report published in the *Journal of the American Dental Association* (Ref. *1*). The report stated that ultraviolet radiation of 320–400 nanometers (nm) is usually innocuous to human skin. However. ultraviolet light radiation in the 320–400 nm can cause erythema (redness of the skin produced by congestion of the capillaries) and pigmentation in persons naturally susceptible to ultraviolet light and persons ingesting certain drugs or other chemicals that act as photosensitizing agents.

5. Risks to health: (a) Adverse skin reaction: A phototoxic or photoallergic skin reaction (erythema and pigmentation) may occur after moderate to excessive exposure to ultraviolet radiation emitted by the device.

(b) Eye damage: Eye damage may be caused by exposure to ultraviolet radiation emitted by the device.

(c) Electrical shock: Improper electrical design of the device may cause electrical shock to the patient or users.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that ultraviolet detectors be classified into Class II (performance standards). A performance standard for this device would control the exposure of the patient to unnecessary ultraviolet light radiation. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Reference

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m., to 4 p.m., Monday through Friday.

1. Council on Dental Materials and Devices, "Guidelines on the Use of Ultraviolet Radiation in Dentistry," *Journal of the American Dental Association,* Volume 92:775–778, April 1976.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360, (a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6350, to read as follows:

§ 872.6350 Ultraviolet detector.

(a) *Identificotion.* An ultraviolet detector is a device that provides a source of ultraviolet light which is used to identify otherwise invisible material, such as dental plaque, present in or on teeth.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305). Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39967 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2988]

Medical Devices; Classification of Oral Cavity Evacuators

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying oral cavity evacuators into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides

background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of oral cavity evacuators:

act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration,

and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of oral cavity evacuators having defects that could harm users.

21 CFR Part 872

[Docket No. 78N-2989]

Medical Devices; Classification of Dental Floss

practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that dental floss be classified into class I because the Panel believes that general controls are

the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorizd, wholly or in part, by 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in

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background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of oral cavity evacuators:

1. Identification: An oral cavity evacuator is a hand-held device that consists of a plastic tube attached to a suction unit and is used to remove fluids from the oral cavity during dental procedures.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that oral cavity evacuators be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, oral cavity evacuators in the practice of dentistry

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that oral cavity evacuators be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of oral cavity evacuators be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing and premarket notification by manufacturers of oral cavity evacuators, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of oral cavity evacuators be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposed device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

FDA disagrees with the Panel's recommendation that manufacturers of oral cavity evacuators be exempt from the good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of oral cavity evacuators having defects that could harm users.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6370, to read as follows:

§ 872.6370 Oral cavity evacuator.

(a) *Identification.* An oral cavity evacuator is a hand-held device that consists of a plastic tube attached to a suction unit and is used to remove fluids from the oral cavity during dental procedures.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39968 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 872

[Docket No. 78N–2989]

Medical Devices; Classification of Dental Floss

AGENCY: Food and Drug Administration.

ACTION: Proposed rule

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental floss into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental floss:

1. Identification: Dental floss is a string-like device made of cotton or other fibers that is intended to be used to remove plaque and food particles from between the teeth to reduce tooth decay. The fibers of the device may be coated with wax for easier use.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360 (k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that dental floss be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, dental floss in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that dental floss be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of dental floss be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing and premarket notification under section 510(a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing and premarket notification by manufacturers of dental floss, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of signficant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of dental floss be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorizd, wholly or in part, by 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31503). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR § 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

FDA disagrees with the Panel's recommendation that manufacturers of dental floss be exempt from the good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness, and compliance with the adulation and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of dental floss having defects that could harm users.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, forceps for an articulation paper in the practice of

regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39976 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6390, to read as follows:

§ 872.6390 Dental floss.

(a) *Identification.* Dental floss is a string-like device made of cotton or other fibers that is intended to be used to remove plaque and food particles from between the teeth to reduce tooth decay. The fibers of the device may be coated with wax for easier use.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39969 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2990]

Medical Devices; Classification of Forceps for an Articulation Paper

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying forceps for an articulation paper into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of forceps for an articulation paper:

1. Identification: Forceps for an articulation p aper are a device used to hold articulation paper in the proper position between the patient's upper and lower teeth when the teeth are in the bite position. The articulation paper locates uneven or high areas.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that forceps for an articulation paper be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, forceps for an articulation paper in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that forceps for an articulation paper be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of forceps for an articulation paper be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration and device listing under section 510 (a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration and listing by manufacturers of forceps for an articulation paper, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning forceps for an articulation paper. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of forceps for an articulation paper be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other

regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of forceps for an articulation paper be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of forceps for an articulation paper must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of forceps for an articulation paper must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the maufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elswhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6400, to read as follows:

§ 872.6400 Forceps for an articulation paper.

(a) *Identification.* Forceps for an articulation paper are a device used to hold articulation paper in the proper position between the patient's upper and lower teeth when the teeth are in the bite position. The articulation paper locates uneven or high areas.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested parties may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph.

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39970 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2991]

Medical Devices; Classification of Forceps for Dental Dressings

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying forceps for dental dressings into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of forceps for dental dressings:

1. Identification: Forceps for dental dressings are a handheld, tweezer-like device used to apply dressings to areas in the mouth during dental procedures.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures

under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under

inspections. The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning forceps for dental dressings. The agency does not at

of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk, (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel,

forceps for a rubber dam clamp be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510

under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that forceps for dental dressings be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, forceps for dental dressings in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with Panel recommendation and is proposing that forceps for dental dressings be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of forceps for dental dressings be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration and device listing under section 510 (a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration and listing of manufacturers of forceps for dental dressings, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning forceps for dental dressings. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of forceps for dental dressings be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of forceps for a dental dressing be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of forceps for dental dressings must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of forceps for dental dressings must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart C by adding new § 872.6410, to read as follows:

§ 872.6410 Forceps for dental dressings.

(a) *Identification.* Forceps for dental dressings are a hand-held, tweezer-like device used to apply dressings to areas in the mouth during dental procedures.

(b) *Classification.* Class I (general controls). The device is exempt from premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk, (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39971 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2992]

Medical Devices; Classification of Forceps for a Rubber Dam Clamp

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying forceps for a rubber dam clamp into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of forceps for a rubber dam clamp:

1. Identification: Forceps for a rubber dam clamp are a plier-like device that are used to spread a rubber dam clamp (a device used to anchor a rubber dam in place) during insertion and removal of the clamp.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that forceps for a rubber dam clamp be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, forceps for a rubber dam clamp in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that forceps for a rubber dam clamp be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of forceps for a rubber dam clamp be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of forceps for a rubber dam clamp, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of forceps for a rubber dam clamp be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of

forceps for a rubber dam clamp be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt,

§ 872.6420 Forceps for a rubber dam clamp.

(a) *Identification.* Forceps for a rubber dam clamp are a plier-like device that are used to spread a rubber dam clamp (a device used to anchor a rubber dam

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

abrasive disk in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel

proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements

general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the

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forceps for a rubber dam clamp be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198)), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of forceps for a rubber dam clamp must still be required to comply with complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of forceps for a rubber dam clamp must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6420, to read as follows:

§ 872.6420 Forceps for a rubber dam clamp.

(a) *Identification.* Forceps for a rubber dam clamp are a plier-like device that are used to spread a rubber dam clamp (a device used to anchor a rubber dam in place) during insertion and removal of the clamp.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that the individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39972 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2993]

Medical Devices; Classification of Guards for an Abrasive Disk

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying guards for an abrasive disk into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of guards for abrasive disks:

1. Identification: A guard for an abrasive disk is a metal device that clips onto the dental handpiece. The guard shields soft tissue from injury by an abrasive disk when the disk is being used during the contruction of a restoration.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedure under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that guards for an abrasive disk be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, the records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, guards for an abrasive disk in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that guards for an abrasive disk be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of guards for an abrasive disk be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510(a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing and premarket notification by manufacturers of guards for an abrasive disk, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of guards for an abrasive disk be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of guards for an abrasive disk be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of guards for an abrasive disk must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of guards for an abrasive disk must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6465, to read as follows:

§ 872.6465 Guard for an abrasive disk.

(a) *Identification.* A guard for an abrasive disk is a metal device that clips onto the dental handpiece. The guard shields soft tissue from injury by an abrasive disk when the disk is being used during the construction of a restoration.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820 of this chapter, with the exception of § 802.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Firday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39973 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2994]

Medical Devices; Classification of Heat Sources for Bleaching Teeth

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying heat sources for bleaching teeth into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into

class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of heat sources for bleaching teeth:

1. Identification: A heat source for bleaching teeth is a device that is used to apply heat to the teeth to accelerate the bleaching process.

2. Recommended classification: Class II (performance standards). The Panel recommends that this device be exempt from premarket notification procedure under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that heat sources for bleaching teeth be classified into class II because the Panel believes that general controls are insufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, heat sources for bleaching teeth.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that heat sources for bleaching teeth be classified into class II (performance standards). The agency believes that general controls are insufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of heat sources for bleaching teeth be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510(a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing and premarket notification by manufacturers of heat sources for bleaching teeth, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of heat sources for bleaching teeth be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of heat sources for bleaching teeth be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of heat sources for bleaching teeth must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of heat sources for bleaching teeth must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Food, Drug, and Cosmetic Act (sec. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated

class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposed that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of heat sources for bleaching teeth:

1. Identification: A heat source for bleaching teeth is an AC-powered device used to apply heat to a tooth after the tooth is coated with a bleaching agent. The heat source may be either a light or an electric heater.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that heat sources for bleaching teeth be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, heat sources for bleaching teeth in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that heat sources for bleaching teeth be classified into class II (performance standards). This device directs heat energy at oral tissue. This heat may cause burns to the patient if it is too intense and the device may be ineffective if it does not have sufficient intensity. The electrical properties of the device must also be controlled to prevent electrical shock to the patient or user. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that heat sources for bleaching teeth should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Subpart G by adding new § 872.6475, to read as follows:

§ 872.6475 Heat source for bleaching teeth.

(a) *Identification.* A heat source for bleaching teeth is an AC-powered device used to apply heat to a tooth after the tooth is coated with a bleaching agent. The heat source may be either a light or an electric heater.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39974 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2996]

Medical Devices; Classification of Oral Irrigation Units

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying oral irrigation units into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of oral irrigation units:

1. Identification: An oral irrigation unit is an AC-powered device intended to be used to remove food particles from between the teeth and promote good periodontal (gum) condition by means of a pressurized water stream.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that oral irrigation units be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and good manufacturing practice regulation, because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, oral irrigation units in the practice of dentistry.

5. Risks to health: Infection and tissue trauma: Infection and trauma to soft tissues may result from the pressure of the water stream driving microorganisms into the gum pockets surrounding the user's teeth.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that oral irrigation units be classified into class II (performance standards). The agency believes that the design and performance characteristics of the device which regulate the output pressure of the water stream must be controlled to prevent infection and trauma to soft tissues. Excessive pressure may drive microorganisms and debris into the gum pockets surrounding the user's teeth, causing infection. The agency believes that general controls alone are insufficient to control the risks to health presented by this device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a standard for this device.

Because the agency has determined that oral irrigation units should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Food, Drug, and Cosmetic Act (sec. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6510, to read as follows:

§ 872.6510 Oral irrigation unit.

(a) *Identification.* An oral irrigation unit is an AC-powered device intended to be used to remove food particles from between the teeth and promote good periodontal (gum) condition by means of a pressurized water stream.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39975 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2997]

Medical Devices; Classification of Dental Matrix Bands

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental matrix bands into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6515, to read as follows:

§ 872.6515 Dental matrix band.

(a) *Identification.* A dental matrix band is a device used to hold a restorative material in place during the restoration of a tooth.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39976 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental matrix bands:

1. Identification: A dental matrix band is a device made of stainless steel that is used as a mold and is placed around a tooth to provide support for restorative materials while filling a tooth.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that dental matrix bands be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simply device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, dental matrix bands in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that dental matrix bands be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of dental matrix bands be exempt from section 510(k) of the act (21 U.S.C. 360), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510(a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of dental matrix bands, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, and to receive premarket notification from manufacturers to conduct necessary inspection to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of dental matrix bands be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements is found in the device good manufacturing practice (GMP) regulation published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of dental matrix bands be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of dental matrix bands must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of dental matrix bands must still be required to comply with the general requirements concerning records, in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6550, to read as follows:

§ 872.6550 Dental matrix band.

(a) *Identification.* A dental matrix band is a device made of stainless steel that is used as a mold and is placed around a tooth to provide support for restorative materials while filling a tooth.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39976 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-2998]

Medical Devices; Classification of Matrix Retainers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying matrix retainers into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of matrix retainers:

1. Identification: A matrix retainer is a device used to fasten together the ends of a matrix band (a mold placed around a tooth to provide support for restorative materials) and to tighten the matrix band around the tooth during restoration and filling.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that matrix retainers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and report requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, matrix retainers in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that matrix retainers be classified into Class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of matrix retainers be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of matrix retainers, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections, and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices, for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of matrix retainers be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain

classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and

former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere

effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final

device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to

the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other

the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information

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classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of matrix retainers be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of matrix retainers must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of matrix retainers must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a)) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding § 872.6560, to read as follows:

§ 872.6560 Matrix retainer.

(a) *Identification.* A matrix retainer is a device used to fasten together the ends of a matrix band (a mold placed around to tooth to provide support for restorative materials) and to tighten the matrix band around the tooth during restoration and filling.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practices regulation in Part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 39977 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–2999]

Medical Devices; Classification of Impression Tubes

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying impression tubes into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of impression tubes.

1. Identification: An impression tube is a device consisting of a hollow copper tube that is used to take an impression of a single tooth. The hollow tube is filled with impression material. One end of the tube is sealed with a softened material, such as wax; the remaining end is slipped over the tooth to make the impression.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that impression tubes be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this

device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personnel knowledge of, and clinical experience with, impression tubes in the practice of dentistry.

5. Risks to health. None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that impression tubes be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of impression tubes be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification 510(a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of impression tubes, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of signficant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of impression tubes be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements is found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of impression tubes be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of impression tubes must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of impression tubes must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6570, to read as follows:

§ 872.6570 Impression tube.

(a) *Identification.* An impression tube is a device consisting of a hollow copper tube that is used to take an impression of a single tooth. The hollow tube is filled with impression material. One end of the tube is sealed with a softened material, such as wax; the remaining end is slipped over the tooth to make the impression.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39978 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–3000]

Medical Devices; Classification of Mouth Mirrors

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation

still be required to comply with the general requirements concerning records in § 820.189 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may

9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for

looped over the patient's lips and is attached to a suction unit.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying mouth mirrors into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of mouth mirrors:

1. Identification: A mouth mirror is a hand-held metal or glass device that is used as a visual aid to reflect oral structures during examination and treatment of the teeth and the oral cavity.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that mouth mirrors be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, mouth mirrors in the practice of dentistry.

5. Risks of health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that mouth mirrors be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of mouth mirrors be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration and device listing under section 510 (a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration and listing by manufacturers of mouth mirrors, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning mouth mirrors. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products with this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of mouth mirrors be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of mouth mirrors be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of mouth mirrors must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of mouth mirrors must still be required to comply with the general requirements concerning records in § 820.189 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6600, to read as follows:

§ 872.6600 Mouth mirror.

(a) *Identification.* A mouth mirror is a hand-held metal or glass device that is used as a visual aid to reflect oral structures during examination and treatment of the teeth and the oral cavity.

(b) *Classificotion.* Class I (general controls). This device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39979 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N–3001]

Medical Devices; Classification of Saliva Ejector Mouthpieces

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying saliva ejector mouthpieces into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of saliva ejector mouthpieces:

1. Identification: A salivia ejector mouthpiece is a device consisting of a plastic tube that is used to remove saliva continuously from the oral cavity during dental treatment. The tube is looped over the patient's lips and is attached to a suction unit.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i)), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that saliva ejector mouthpieces be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, saliva ejector mouthpieces in the practice of denstistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that saliva ejector mouthpieces be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of saliva ejector mouthpieces be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of saliva ejector mouthpieces, the

agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections, and receive premarket notification from

agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes that manufacturers of saliva ejector

Clerk, (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel,

not designed properly, contamination of the air and water may occur, thereby putting the patient at risk of harm. A performance standard is necessary to control the electrical design of the device to prevent electrical shock to the

Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may

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agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections, and receive premarket notification from manufacturers to assure that FDA learns of new devices, and of significant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of saliva ejector mouthpieces be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of saliva ejector mouthpieces be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes that manufacturers of saliva ejector mouthpieces must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency believes that manufacturers of saliva ejector mouthpieces must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6620, to read as follows:

§ 872.6620 Saliva ejector mouthpiece.

(a) *Identification.* A saliva ejector mouthpiece is a device consisting of a plastic tube that is used to remove saliva continuously from the oral cavity during dental treatment. The tube is looped over the patient's lips and is attached to a suction unit.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk, (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39980 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-3002]

Medical Devices; Classification of Dental Operative Units

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental operative units into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental operative units:

1. Identification: A dental operative unit is an AC-powered device that supplies power to, and serves as the base for, dental handpieces, lights, or other dental devices and holds syringes for air and water. It can be attached to the dental chair or cabinet or located on a portable cart.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that dental operative units be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation, because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, dental operative units in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that dental operative units be classified into class II (performance standards). Dental operative units indirectly contact patients because air and water supplied through the unit are used to clean the operating area of debris. If the unit is not designed properly, contamination of the air and water may occur, thereby putting the patient at risk of harm. A performance standard is necessary to control the electrical design of the device to prevent electrical shock to the patient or user. The agency believes that performance standards are necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that dental operative units should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that is device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart E by adding new § 872.6640, to read as follows:

§ 872.6640 Dental operative unit.

(a) *Identification.* A dental operative unit is an AC-powered device that supplies power to, and serves as the base for, dental handpieces, lights, or other dental devices and holds syringes for air and water. It can be attached to the dental chair or cabinet or located on a portable cart.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated November 19, 1980

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39981 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-3003]

Medical Devices; Classification of Suction Operative Units

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying suction operative units into class II (performance standards.) FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the

recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports

manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's

massaging picks must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of suction operative units:

1. Identification: A suction operative unit is an AC-powered device that is attached to a dental operative unit and is used to remove fluids from the oral cavity by suction supplied by tubing to a saliva ejector mouthpiece or an oral cavity evacuator.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that suction operative units be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with the premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, suction operative units in the practice of dentistry.

5. Risks to health: Electrical shock: Improper electrical design of the device may cause electrical shock to the patient or user.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that suction operative units be classified into class II (performance standards). The agency believes that the amount of suction generated by the device must be controlled to prevent injury to soft tissues, and that the electrical design of the device must be controlled to prevent electrical shock to the patient or user. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6645, to read as follows:

§ 872.6645 Suction operative unit.

(a) *Identification.* A suction operative unit is an AC-powered device used to remove fluids from the oral cavity by suction supplied by tubing to a saliva ejector mouthpiece or an oral cavity evacuator.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39582 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-3004]

Medical Devices; Classification of Massaging Picks

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying massaging picks into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of massaging picks:

1. Identification: A messaging pick is a pointed device made of wood or plastic that is intended to be used manually to stimulate and massage the gums to promote good periodontal (gum) condition. The end of the pick is placed at the base of the teeth and moved gently.

2. Recommended classification: Class I (general controls). The Panel

recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that massaging picks be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, massaging picks in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that massaging picks be classifed into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of massaging picks be exempt from section 510(k) of the act (21 U.S.C. 360). FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listings and premarket notification by manufacturers of massaging picks, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of massaging picks be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of massaging picks be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of massaging picks must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency believes that manufacturers of massaging picks must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6650, to read as follows:

§ 872.6650 Massaging pick.

(a) *Identification.* A massaging pick is a pointed device made of wood or plastic that is intended to be used manually to stimulate and massage the gums to promote good periodontal (gum) condition. The end of the pick is placed at the base of the teeth and moved gently.

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk, (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may

submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between

classification of porcelain powder for clinical use:

1. Identification: Porcelain powder for clinical use is a device consisting of a mixture of kaolin, felspar, quartz, or

result in acute tissue damage, if the radiation is sufficiently intense, or in neoplastic (abnormal changes), if radiation is chronically received at lower levels. A performance standard would provide reasonable assurance of

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39984 Filed 12-29-80; 8:45 am]

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from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under

assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's

submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39983 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-3005]

Medical Devices; Classification of Porcelain Powder for Clinical Use

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying porcelain powder for clinical use into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class II. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of porcelain powder for clinical use:

1. Identification: Porcelain powder for clinical use is a device consisting of a mixture of kaolin, felspar, quartz, or other substances that is used in the production of artificial teeth in fixed or removable dentures, of jacket crowns, facings, and veneers. The device is used in restorative dentistry by heating the powder mixture to a high temperature in an oven to produce a hard prosthesis with a glass-like finish.

2. Recommended classification: Class II (performance standards). The Panel recommends that establishing a performance standard for this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that porcelain powder for clinical use be classified into class II because the composition of the porcelain powder must be controlled. The fluorescing agents in the porcelain powder for clinical use may contain radioactive components which may decay, resulting in the production of prosthetic devices that emit radiation. The Panel believes that general controls alone would not provide sufficient control over this characteristic. The Panel believes that a performance standard would provide reasonable assurance of the safety and effectiveness of the device and that there is sufficient information to establish a standard.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: (a) Exposure to radiation: The patient may be exposed to radiation emitted by prostheses made from porcelain powder that contains radioactive ingredients. (b) Adverse tissue reaction: If the materials used in the construction of the device are not biocompatible, the patient may have an adverse tissue reaction.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that procelain powder for clinical use be classified into class II (performance standards). The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. Exposure of surrounding tissue to the ionizing radiation emitted by the radioactive material that may be present in dental products fabricated from porcelain powder for clinical use may result in acute tissue damage, if the radiation is sufficiently intense, or in neoplastic (abnormal changes), if radiation is chronically received at lower levels. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6660, to read as follows:

§ 872.6660 Porcelain powder.

(a) *Identification.* Porcelain powder for clinical use is a device consisting of a mixture of kaolin, felspar, quartz, or other substances that is used in the production of artificial teeth in fixed or removable dentures, of jacket crowns, facings, and veneers. The device is used in restorative dentistry by heating the powder mixture to a high temperature in an oven to produce a hard prosthesis with a glass-like finish.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39984 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-3006]

Medical Devices; Classification of Silicate Protectors

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying silicate protectors into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of silicate protectors:

1. Identification: A silicate protector is a device made of silicone that is applied with an absorbent tipped applicator to the surface of a new restoration to exclude temporarily fluids from its surface.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that silicate protectors be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, record and reports requirements, and the good manufacturing practice regulation, because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, silicate protectors in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that silicate protectors be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of silicate protectors be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of silicate protectors, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections, and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of silicate protectors be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until there regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of silicate protectors be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of silicate

protectors must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and

information to establish a performance standard for this device.

Because the agency has determined that dental retractors (all types) should be classified into class II rather than

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39986 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

classification of dental retractors (all types):

1. Identification: A dental retractor (any type) is a device used to fold back oral tissues by pulling back the cheeks at the lips to aid operating procedures.

that is used with a dental retractor (a device used to fold back oral tissue during operating procedures) to aid in pulling back the cheek as far as possible.

2. Recommended classification: Class

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protectors must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of silicate protectors must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding § 872.6670, to read as follows:

§ 872.6670 Silicate protector.

(a) *Identification.* A silicate protector is a device made of silicone that is applied with an absorbent tipped applicator to the surface of a new restoration to exclude temporarily fluids from its surface.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 39985 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–3007]

Medical Devices; Classification of Dental Retractors (All Types)

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental retractors (all types) into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental retractors (all types):

1. Identification: A dental retractor (any type) is a device used to fold back oral tissues by pulling back the cheeks at the lips to aid operating procedures.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that dental retractors (all types) be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, record and reports requirements, and the good manufacturing practice regulation, because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, dental retractors in the practice of dentistry.

5. Risks to health: Infection: If the materials used in the device cannot be sterilized, infection to the patient may occur.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that dental retractors (all types) be classified into class II (performance standards). Dental retractors may be reused, and therefore, have a potential for transmitting microorganisms between patients. For this reason, the device must be capable of sterilization. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by this device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that dental retractors (all types) should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6680, to read as follows:

§ 872.6680 Dental retractor (any type).

(a) *Identification.* A dental retractor (any type) is a device used to fold back oral tissues by pulling back the cheeks at the lips to aid operating procedures.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–39986 Filed 12–29–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 872

[Docket No. 78N–3008]

Medical Devices; Classification of Dental Retractor Accessories

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying dental retractor accessories into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of dental retractor accessories:

1. Identification: A dental retractor accessory is a device, such as a spring, that is used with a dental retractor (a device used to fold back oral tissue during operating procedures) to aid in pulling back the cheek as far as possible.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f).

3. Summary of reasons for recommendation: The Panel recommends that dental retractor accessories be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, dental retractor accessories in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that dental retractor accessories be classified into class II (performance standards). Dental retractor accessories may be reused, and therefore, have a potential for transmitting microorganisms between patients. For this reason, the device must be capable of sterilization. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that dental retractor accessories should be classified into class II rather than

class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under

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21 CFR Part 872

[Docket No. 78N–3009]

Medical Devices; Classification of Boiling Water Sterilizers

and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that boiling water

FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory

classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information

believes that it is not possible to establish an adequate performance standard for this device because satisfactory performance has never been demonstrated. Therefore, the device should be subject to premarket approval

class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Futher information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6690, to read as follows:

§ 872.6690 Dental retractor accessory.

(a) *Identification.* A dental retractor accessory is a device, such as a spring, that is used with a dental retractor (a device used to fold back oral tissue during operating procedures) to aid in pulling back the check as far as possible.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39987 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-3009]

Medical Devices; Classification of Boiling Water Sterilizers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying boiling water sterilizers into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of boiling water sterilizers:

1. Identification: A boiling water sterilizer is an AC-powered device used to sterilize dental and surgical instruments by submersion of the instruments into boiling water.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that boiling water sterilizers be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. The Panel believes that manufacturers of this device should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, boiling water sterilizers in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that boiling water sterilizers be classified into class II (performance standards). This device is used to sterilize instruments which directly contact the patients' oral tissues. If the water is inadequately heated, the instruments will not be properly sterilized, possibly resulting in the transmission of microorganisms between patients. Also, the electrical design of the device must be controlled to prevent electrical shock to the user. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that boiling water sterilizers should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519 and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6710, to read as follows:

§ 872.6710 Boiling water sterilizer.

(a) *Identification.* A boiling water sterilizer is an AC-powered device used to sterilize dental and surgical instruments by submersion of the instruments into boiling water.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39988 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-3011]

Medical Devices; Classification of Endodontic Dry Heat Sterilizers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying endodontic dry heat sterilizers into class III (premarket approval). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class III. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application at a date to be set in a future regulation. Each premarket approval application would include information concerning safety and effectiveness tests for the device. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of endodontic dry heat sterilizers:

1. Identification: An endodontic dry heat sterilizer is a device used to sterilize endodontic and other dental instruments by the application of dry heat. The heat is supplied through glass beads which have been heated by electricity.

2. Recommended classification: Class III (premarket approval). The Panel recommends that premarket approval of this device be a low priority.

3. Summary of reasons for recommendation: The Panel recommends that endodontic dry heat sterilizers be classified into class III because the device presents a potential unreasonable risk of illness or injury. In tests of the device, it has failed to sterilize adequately various endodontic and dental instruments. Such failure may be a result of faulty thermostats which register higher temperatures than those generated within the device or may be caused by the inability of glass beads to sterilize adequately and uniformly despite sufficient heat. The Panel believes that general controls would not provide sufficient control over these characteristics. The Panel believes that it is not possible to establish an adequate performance standard for this device because satisfactory performance has never been demonstrated. Therefore, the device should be subject to premarket approval to assure that manufacturers of this device demonstrate satisfactory performance of the device and thus assure its safety and effectiveness. The Panel believes that further study is needed to determine the causes of this device's ineffectiveness.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, the device in the practice of dentistry.

5. Risks to health: Infection: The inability of the device to sterilize adequately endodontic and other dental instruments may lead to the transmission of micro-organisms among patients and subsequent spread of infection.

Proposed Classification

The agency has sought other information concerning the application of endodontic dry heat sterilizers in dentistry. Some of the literature indicates that endodontic dry heat sterilizers are more effective than other methods of sterilization such as isopropyl alcohol (70 percent), glutoraldehyde solution (buffered to 7.4), or sterile saline solution used with gauze sponges to wipe the instruments (Ref. 1). However, Dayoub, et al., (Ref. 2) found that a large degree of variation occurs among currently marketed endodontic dry heat sterilizers in terms of reaching and maintaining claimed temperature levels. Koehler and Hefferren (Ref. 3) found that large temperature gradients exist within the same endodontic dry heat sterilizer, which causes uneven heat transfer to instruments being sterilized.

FDA agrees with the Panel recommendation and is proposing that endodontic dry heat sterilizers be classified into class III (premarket approval). The agency believes that the device presents a potential unreasonable risk of illness of injury to the patient because the device may fail to sterilize dental instruments adequately. In addition, the device is purported or represented to be for a use (sterilization of endodontic and other dental instruments) that is of substantial importance in preventing impairment of human health. The agency believes that insufficient information exists to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device

and that insufficient information exists to establish a performance standard for this device.

References

The following information has been

needs to be able to identify the firms manufacturing this device, to conduct necessary inspection and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant

new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation

II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to

and that insufficient information exists to establish a performance standard for this device.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Hubbard, T. M., et al., "Chairside Decontamination of Endodontic Files," *Oral Surgery*, (40):1, 148–152, July, 1975.

2. Dayoub, M. B., et al., "Endodontic Dry-Heat Sterilizer Effectiveness," *Journal of Endodontics*, (2):11.

3. Koehler, H. M., et al., "The Temperature Relations of Dental Instruments Heated in Root-Canal Instrument Sterilizers," *Journal of Dental Research*, 41:182, Jan.–Feb., 1962.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6730, to read as follows:

§ 872.6730 Endodontic dry heat sterilizer.

(a) *Identification.* An endodontic dry heat sterilizer is a device used to sterilize endodontic and other dental instruments by the application of dry heat. The heat is supplied through glass beads which have been heated by electricity.

(b) *Classification.* Class III (premarket approval).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39989 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-3012]

Medical Devices; Classification of Air or Water Syringe Units

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying air or water syringe units into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of air or water syringe units:

1. Identification: An air or water syringe unit is a device consisting of a tube to deliver air or water to the patient's mouth that is used for the irrigation or drying of tooth or gum tissue. The device may be attached to a dental operative unit.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that air or water syringe units be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, air or water syringe units in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that air or water syringe units be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of air or water syringe units be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of air or water syringe units, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspection and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant notifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of air or water syringe units be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirement, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

FDA disagrees with the Panel's recommendation that manufacturers of air or water syringe units be exempt from the good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness, and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of air or water syringe units having defects that could harm users.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart C by adding new § 872.6750, to read as follows:

§ 872.6750 Air or water syringe unit.

(a) *Identification.* An air or water syringe unit is a device consisting of a tube to deliver air or water to the patient's mouth that is used for the irrigation or drying of tooth or gum tissue. The device may be attached to a dental operative unit.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39990 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-3014]

Medical Devices; Classification of Cartridge Syringes

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying cartridge syringes into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of cartridge syringes:

1. Identification: A cartridge syringe is a device used to inject anesthetic agents subcutaneously or intramuscularly. The device consists of a metal syringe body into which a disposable, previously filled, glass carpule (a cylindrical cartridge) containing anesthetic is placed. After attaching a needle to the syringe body and activating the carpule by partially inserting the plunger on the syringe, the device is used to administer an injection to the patient.

2. Recommended classification Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and the food manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that cartridge syringes be

classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, cartridge syringes in the practice of dentistry.

5. Risks to health: Adverse reaction: If the syringe is incapable of being aspirated, the drug may be injected directly into a blood vessel, thus causing an adverse reaction in the patient.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that cartridge syringes be classified into class II (performance standards).

FDA has reviewed the Panel recommendation and has sought other information and data describing the use of cartridge syringes in dentistry. Some of the literature discusses injection of local anesthetic agents used in dentistry into blood vessels. Schiano et al. (Ref. 1) found that 11 percent of mandibular (lower jawbone) blocks, 14.3 percent of sphenopalative blocks (in the region of the sphenoid and parietal bone), and 15.0 percent of posterior super alveolar nerve blocks (nerve at the back of the mouth) were positive, or showed presence of blood when aspirated, indicating the needle's, and drug's, entry into blood vessels. Although the incidence of fatalities from this event has been low (less than one death per 1 million administrations of local anesthetic (Refs. 1 and 2)), adverse responses to the anesthetic, such as headaches, nausea, and vomiting, occur in much higher frequency (Ref. 3). The agency believes that the device may present a potential unreasonable risk to the patient's health if the mechanism for aspiration is inadequate. That mechanism enables the practitioner to determine whether a blood vessel has been penetrated during injection procedures. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that cartridge syringes should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

References

The following information has been placed in the office of the Hearing Clerk (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Schiano, A. M. and R. C. Strambi, "Frequency of Accidental Intravascular Injection of Local Anesthetic in Dental Practice," *Oral Surgery, Oral Medicine and Oral Pathology*, February 1964.

2. Seldin, H. M., "Survey of Anesthetic Fatalities in Oral Surgery and a Review of the Etiologic Factors in Anesthetic Deaths," *Journal of the American Dental Society of Anesthesiology, Inc.*, 5(6), February 1958.

3. Proch, R. C., "Post Injection Complications in Local Anesthesia and Their Treatment," *Journal of Kansas City District Dental Society*, Volume 34, April 1958.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21066, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6770, to read as follows:

§ 872.6770 Cartridge syringe.

(a) *Identification.* A cartridge syringe is a device used to inject anesthetic agents subcutaneously or intramuscularly. The device consists of a metal syringe body into which a disposable, previously filled, glass carpule (a cylindrical cartridge) containing anesthetic is placed. After attaching a needle to the syringe body and activating the carpule by partially inserting the plunger on the syringe, the device is used to administer an injection to the patient.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39691 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-3016]

Medical Devices; Classification of Periodontic or Endodontic Irrigating Syringes

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying periodontic or endodontic irrigating syringes into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of periodontic or endodontic irrigating syringes:

1. Identification: A periodontic or endodontic irrigating syringe is a device used for the irrigation of tissues in the mouth such as gums in periodontic therapy and root canals in teeth in endodontic therapy.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that periodontic or endodontic irrigating syringes be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, periodontic or endodontic irrigating syringes in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that periodontic or endodontic irrigating syringes be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of periodontic or endodontic irrigating syringes be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of periodontic or endodnotic irrigating syringes, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modification of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of periodontic or endodontic irrigating syringes be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of periodontic or endodontic irrigating syringes be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of periodontic or endodontic irrigating syringes must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of periodontic or endodontic irrigating syringes must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 2168, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further informatio regarding the device advisory committees and list of their new may be found in the preamble to

general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority

classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, periodontic or endodontic irrigating syringes in the practice of dentistry.

5. Risks to health: None identified.

regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until

manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

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BILLING CODE 4110-03-M

general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6800, to read as follows:

§ 872.6800 Periodontic or endodontic irrigating syringe.

(a) *Identification.* A periodontic or endodontic irrigating syringe is a device used for the irrigation of tissues in the mouth such as gums in periodontic therapy and root canals in teeth in endodontic therapy.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180., regarding general requirements, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39892 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-3017]

Medical Devices; Classification of Restorative or Impression Material Syringes

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying restorative or impression material syringes into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of restoration or impression material syringes:

1. Identification: A restorative or impression material syringe is a device used in the placement of impression material (alginate) or restorative material (amalgam) in the oral cavity. It consists of a hollow tube syringe body with a plunger at one end and a narrow opening at the opposite end, through which the impression or restorative material is forced by the plunger.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that restorative or impression material syringes be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no unreasonable risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, restorative or impression material syringes in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that restorative or impression material syringes be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of restorative or impression material syringes be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of restorative or impression material syringes, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of restorative or impression material syringes be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the dvice good manufacturing practice (GMP) regulation, published in the **Federal Register** of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of restorative or impression material syringes be exempt from the device food manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of restorative or impression material syringes must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of restorative or impression material syringes must still be required to comply with general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulations is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6810, to read as follows:

§ 872.6810 Restorative or impression material syringe.

(a) *Identification.* A restorative or impression material syringe is a device used in the placement of impression material (alginate) or restorative material (amalgam) in the oral cavity. It consists of a hollow tube syringe body with a plunger at one end and a narrow opening at the opposite end, through which the impression or restorative material is forced by the plunger.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 8320.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39893 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-3018]

Medical Devices; Classification of Rubber Tips for Oral Hygiene

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying rubber tips for oral hygiene into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of rubber tips for oral hygiene:

1. Identification: A rubber tip for oral hygiene is a device made of rubber that is intended to be used manually to stimulate and massage the gums to promote good periodontal (gum) condition. It is attached to a metal or plastic handle or to the handle of a toothbrush.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that restorative or impression material syringes be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no unreasonable risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, restorative or impression material syringes in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that restorative or impression material syringes be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of restorative or impression material syringes be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of restorative or impression material syringes, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that it is not necessary for the protection of the public health that FDA

premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning

Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of manual toothbrushes be exempt from section 510(k) the act (21 U.S.C. 360(k)),

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that rubber tips for oral hygiene be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, rubber tips for oral hygiene in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

The agency agrees with the Panel recommendation and is proposing that rubber tips for oral hygiene be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of rubber tips for oral hygiene be exempt from section 510(k) of the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration and device listing under section 510(a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration and listing by manufacturers of rubber tips for oral hygiene, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device and to conduct necessary inspections. The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning rubber tips for oral hygiene. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device.

FDA disagrees with the Panel's recommendation that manufacturers of rubber tips for oral hygiene be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of rubber tips for oral hygiene must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of rubber tips for oral hygiene must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21668, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6850, to read as follows:

§ 872.6850 Rubber tip for oral hygiene.

(a) *Identification.* A rubber tip for oral hygiene is a device made of rubber that is intended to be used manually to stimulate and massage the gums to promote good periodontal (gum) condition. It is attached to a metal or plastic handle or to the handle of a toothbrush.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39994 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 872

[Docket No. 78N-3019]

Medical Devices; Classification of Manual Toothbrushes

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying manual toothbrushes into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of manual toothbrushes:

1. Identification: A manual toothbrush is a device that is intended to be used to remove adherent plaque and food debris from the teeth to reduce tooth decay. It is composed of a shaft with either natural or synthetic bristles at one end.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that manual toothbrushes be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, manual toothbrushes in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that manual toothbrushes be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of manual toothbrushes be exempt from section 510(k) the act (21 U.S.C. 360(k)), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510 (a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 520 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of manual toothbrushes, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, to conduct necessary inspections and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers or manual toothbrushes be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21

CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of manual toothbrushes be exempt from

by adding new § 872.6855, to read as follows:

§ 872.6855 Manual toothbrush.

(a) *Identification.* A manual toothbrush is a device that is intended

device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective

health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel Members' personal knowledge of, and

Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6865, to read as follows:

§ 872.6865 Powered toothbrush.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that manufacturers of manual toothbrushes be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacture of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of manual toothbrushes must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of manual toothbrushes must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6855, to read as follows:

§ 872.6855 Manual toothbrush.

(a) *Identification.* A manual toothbrush is a device that is intended to be used to remove adherent plaque and food debris from the teeth to reduce tooth decay. It is composed of a shaft with either natural or synthetic bristles at one end.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, regarding general requirements concerning records and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39995 Filed 12-29-80; 8:45 am]

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21 CFR Part 872

[Docket No. 78N-3020]

Medical Devices; Classification of Powered Toothbrushes

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying powered toothbrushes into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of powered toothbrushes:

1. Identification: A powered toothbrush is an AC or battery-powered device that is intended to be used to remove plaque and food particles from the teeth to reduce tooth decay. It consists of a handle containing a motor that provides mechanical vibrations to a toothbrush that is inserted in one end.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that powered toothbrushes be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements, and the good manufacturing practice regulation, because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel Members' personal knowledge of, and clinical experience with, powered toothbrushes in the practice of dentistry.

5. Risks to health: Electrical shock: Improper electrical design of the device may cause electrical shock to the patient.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that power toothbrushes be classified into class II (performance standards). The agency believes that a level of vibration must be controlled to prevent injury to soft tissue and excessive abrasion to teeth, and that the electrical design of the device must be controlled to prevent electrical shock. The agency believes that a performance standard is necessary for this device because general controls alone are insufficient to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that powered toothbrushes should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the premarket notification procedures under section 510(k), the records and reports requirements under section 519, and the good manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6865, to read as follows:

§ 872.6865 Powered toothbrush.

(a) *Identification.* A powered toothbrush is an AC or battery-powered device that is intended to be used to remove plaque and food particles from the teeth to reduce tooth decay. It consists of a handle containing a motor that provides mechanical vibrations to a toothbrush that is inserted in one end.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39996 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-3021]

Medical Devices; Classification of Disposable Fluoride Trays

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying disposable fluoride trays into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, and FDA advisory committee, made the following recommendation regarding the classification of disposable fluoride trays:

1. Identification: A disposable fluoride tray is a device made of styrofoam that is used for the topical application of fluoride to the teeth. To employ the tray, the patient bites down on the tray which has been filled with a fluoride solution.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that disposable fluoride trays be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, disposable fluoride trays in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that

disposable fluoride trays be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

FDA disagrees with the Panel's

that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements and

regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future,

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in

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disposable fluoride trays be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

FDA disagrees with the Panel's recommendation that manufacturers of disposable fluoride trays be exempt from records and reports regulations under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

FDA disagrees with the Panel's recommendation that manufacturers of disposable fluoride trays be exmpt from the good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f). The agency believes that compliance with this regulation is necessary to assure the quality of this device and thus its safety, effectiveness, and compliance with the adulteration and misbranding provisions of the act. Compliance with the GMP regulation will help prevent production of disposable fluoride trays having defects that could harm users.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart B by adding new § 872.6870, to read as follows:

§ 872.6870 Disposable fluoride tray.

(a) *Identification.* A disposable fluoride tray is a device made of styrofoam that is used for the topical application of fluoride to the teeth. To employ the tray, the patient bites down on the tray which has been filled with a fluoride solution.

(b) *Classification.* Class I (general controls).

Interested persons may, on or before March 2, 1981 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39997 Filed 12-29-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 872

[Docket No. 78N-3022]

Medical Devices; Classification of Preformed Impression Trays

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying preformed impression trays into class I (general controls). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the Federal Register provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of preformed impression trays:

1. Identification: A preformed impression tray is a metal or plastic device that is used to hold impression material, such as alginate, during the making of an impression of a patient's teeth or alveolar process (bony tooth sockets). The impression is used to reproduce the structure of a patient's teeth and gums.

2. Recomended classification: Class I (general controls). The Panel recommends that this device be exempt from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), records and reports requirements under section 519 of the act (21 U.S.C. 360i), and the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that preformed impression trays be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The materials used in the device that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with premarket notification procedures, records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, preformed impression trays in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA agrees with the Panel recommendation and is proposing that preformed impression trays be classified into class I (general controls). The agency believes that general controls are sufficient to control the risks to health presented by the device.

In response to the Panel's recommendation that manufacturers of preformed impression trays be exempt from section 510(k) of the act (21 U.S.C. 360), FDA is proposing that these manufacturers be subject to registration, device listing, and premarket notification under section 510(a) through (k) of the act. Under section 510(g)(4) of the act, the agency may exempt a manufacturer from section 510 only if it finds that compliance with this section is not necessary for the protection of the public health. In the case of registration, listing, and premarket notification by manufacturers of preformed impression trays, the agency cannot make the required finding. To protect the public health, the agency needs to be able to identify the firms manufacturing this device, and to receive premarket notification from manufacturers to assure that FDA learns of new devices and of significant modifications of existing devices for which premarket approval is required.

FDA disagrees with the Panel's recommendation that manufacturers of preformed impression trays be exempt from records and reports regulation under section 519 of the act (21 U.S.C. 360i). The records and reports requirements in several of FDA's present device regulations are authorized, wholly or in part, by section 519. The most extensive of these requirements are found in the device good manufacturing practice (GMP) regulation, published in the Federal Register of July 21, 1978 (43 FR 31508). In the future, FDA will publish other regulations under section 519, including regulations requiring reports to FDA of experience with medical devices. Until these regulations are issued, FDA believes that it cannot properly issue exemptions from them. In the future, whenever the agency proposes device regulations that include records and reports requirements, interested persons may submit comments requesting that certain classes of manufacturers or other persons be exempt from the requirements, and FDA will issue exemptions that are appropriate. The only type of exemption from records and reports requirements that FDA is proposing now, in device classification regulations, is an exemption of certain manufacturers from requirements of the device GMP regulation. The exemption will not extend to two device GMP requirements, § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files.

In response to the Panel's recommendation that maunfacturers of preformed impression trays be exempt from the device good manufacturing practice (GMP) regulation under section 520(f) of the act (21 U.S.C. 360j(f)), FDA is proposing that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 (21 CFR 820.180), with respect to general requirements concerning records, and § 820.198 (21 CFR 820.198), with respect to complaint files. Based on available information about current practices used in the manufacure of the device and user experience with the device, the agency has determined that application of the GMP regulation, other than §§ 820.180 and 820.198, is unlikely to improve the safety and effectiveness of the device. The agency believes, however, that manufacturers of preformed impression trays must still be required to comply with the complaint file requirements of § 820.198 to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of preformed impression trays must still be required to comply with the general requirements concerning records in § 820.180 to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6880, to read as follows:

§ 872.6880 Preformed impression tray.

(a) *Identification.* A preformed impression tray is a metal or plastic device that is used to hold impression material, such as alginate, during the making of an impression of a patient's teeth or alveolar process (body tooth sockets). The impression is used to reproduce the structure of a patient's teeth and gums.

(b) *Classification.* Class I (general controls). This device is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk Docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39998 Filed 12-29-80; 8:45 am]

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21 CFR Part 872

[Docket No. 78N-3023]

Medical Devices; Classification of

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21 CFR Part 872

[Docket No. 78N-3023]

Medical Devices; Classification of Intraoral Dental Waxes

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment a proposed regulation classifying intraoral dental waxes into class II (performance standards). FDA is also publishing the recommendation of the Dental Device Classification Panel that the device be classified into class I (general controls). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. After considering public comments, FDA will issue a final regulation classifying the device. These actions are being taken under the Medical Device Amendments of 1976.

DATES: Comments by March 2, 1981. FDA proposes that the final regulation based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Bureau of Medical Devices (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION:

Panel Recommendation

A proposal elsewhere in this issue of the **Federal Register** provides background information concerning the development of the proposed regulation. The Dental Device Classification Panel, an FDA advisory committee, made the following recommendation regarding the classification of intraoral dental waxes:

1. Identification: Intraoral dental wax is a device made of wax that is used to construct patterns from which custom made metal dental prostheses, such as crowns and bridges, are cast. In orthodontic dentistry, the device is used to make a pattern of the patient's bite so that crowns and bridges have the proper biting surface contact.

2. Recommended classification: Class I (general controls). The Panel recommends that this device be exempt from records and reports requirements under section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) and from the good manufacturing practice regulation under section 520(f) of the act (21 U.S.C. 360j(f)).

3. Summary of reasons for recommendation: The Panel recommends that intraoral dental waxes be classified into class I because the Panel believes that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device. This device has been used in dentistry for many years. The device materials that contact the body have known and acceptable properties. The Panel believes that manufacturers of this device should not be required to comply with records and reports requirements and the good manufacturing practice regulation because this is a simple device that presents no undue risks to health when used in a normal manner and for the purpose recommended.

4. Summary of data on which the recommendation is based: The Panel based its recommendation on the Panel members' personal knowledge of, and clinical experience with, intraoral dental waxes in the practice of dentistry.

5. Risks to health: None identified.

Proposed Classification

FDA disagrees with the Panel recommendation and is proposing that intraoral dental waxes be classified into class II (performance standards). The properties of the materials used to form intraoral dental waxes depend upon the proper composition of these materials. Moreover, intraoral dental waxes directly contact oral tissue. Altering the composition of the materials used in the device or the contamination of the materials with other substances may lead to adverse tissue reactions, thus placing the patient unnecessarily at risk. The agency believes that a performance standard is necessary for this device because general controls alone are insufficent to control the risks to health presented by the device. A performance standard would provide reasonable assurance of the safety and effectiveness of the device. The agency also believes that there is sufficient information to establish a performance standard for this device.

Because the agency has determined that intraoral dental waxes should be classified into class II rather than class I, the agency is not required to publish a regulation adopting or rejecting the Panel recommendation that this device be exempt from the records and reports requirements under section 519 and the food manufacturing practice regulation under section 520(f) of the act.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). This proposed classification regulation identifies each device panel by the former name. Further information regarding the device advisory committees and list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371 (a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 872 in Subpart G by adding new § 872.6890, to read as follows:

§ 872.6890 Intraoral dental wax.

(a) *Identification.* Intraoral dental wax is a device made of wax that is used to construct patterns from which custom made metal dental prostheses, such as crowns and bridges, are cast. In orthodontic dentistry, the device is used to take a pattern of the patient's bite so that crowns and bridges have the proper biting surface contact.

(b) *Classification.* Class II (performance standards).

Interested persons may, on or before March 2, 1981, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-39699 Filed 12-29-80; 8:45 am]

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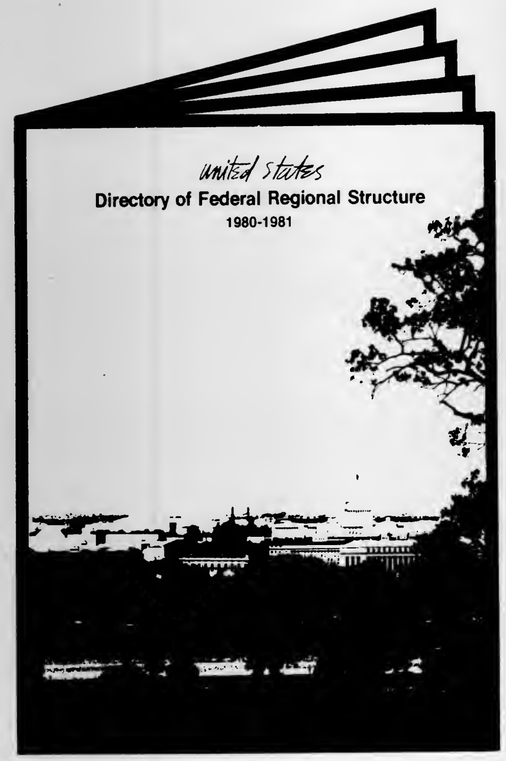
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Part IV

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision

encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained

North Carolina:
NC80-1022 (NC81-1135) ..... Jan. 4, 1980.
NC78-1035 (NC81-1137) ..... Apr. 14, 1978.
NC80-1021 (NC81-1138) ..... Jan. 4, 1980.
NC80-1019 (NC81-1139) ..... Do.
NC80-1024 (NC81-1140) ..... Do.

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DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21136) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

None.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Arkansas:	
AR80-4079	Nov. 7, 1980.
AR80-4080	Oct. 31, 1980
AR80-4082	Nov. 7, 1980.
Florida:	
FL79-1039	Feb. 18, 1979
FL79-1110	July 20, 1979.
Kentucky: KY80-1093	Aug. 22, 1980
Maine: ME80-2069	Aug. 15, 1980
Montana:	
MT80-5141	Nov. 21, 1980
MT80-5142	Do.
MT80-5143	Do.
Mississippi: MS80-1121	Dec. 12, 1980
North Dakota: ND80-5132	Oct. 10-1980.
New Jersey: NJ80-3024	May 2, 1980.
Pennsylvania:	
PA80-3011	Feb. 22, 1980
PA80-3012	Feb. 15, 1980.
PA80-3029	Apr. 25, 1980.
PA80-3055	Oct. 3, 1980.
PA80-3056	Sept. 12, 1980
PA80-3058	Oct. 3, 1980.
PA80-3059	Oct. 3, 1980.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama:	
AL79-1079 (AL81-1122)	May 4, 1979.
AL80-1014 (AL81-1123)	Feb. 1, 1980.
AL78-1094 (AL81-1124)	Nov. 13, 1978.
AL78-1045 (AL81-1125)	May 5, 1978.
AL77-1064 (AL81-1126)	May 13, 1977.
AL77-1071 (AL81-1127)	June 3, 1977.
AL79-1121 (AL81-1128)	Oct 5, 1979.
AL77-1063 (AL81-1129)	May 13, 1977
AL77-1066 (AL81-1130)	Do.
AL79-1150 (AL81-1131)	Dec. 28, 1979
AL79-1152 (AL81-1132)	Do.
AL80-1043 (AL81-1133)	Jan. 25, 1980.
AL79-1151 (AL81-1134)	Dec. 28, 1979.
New York: NY80-3002 (NY80-3079)	Jan. 18, 1980

North Carolina:	
NC80-1022 (NC81-1135)	Jan. 4, 1980.
NC78-1035 (NC81-1137)	Apr. 14, 1978.
NC80-1021 (NC81-1138)	Jan. 4, 1980.
NC80-1019 (NC81-1139)	Do.
NC80-1024 (NC81-1140)	Do.
NC80-1026 (NC81-1141)	Do.
NC78-1036 (NC81-1142)	Apr. 14, 1978.
NC80-1025 (NC81-1143)	Jan. 4, 1980.
NC77-1135 (NC81-1144)	Nov 11, 1977.
NC80-1023 (NC81-1145)	Jan. 4, 1980.
NC78-1027 (NC81-1146)	Mar. 24, 1976
NC78-1037 (NC81-1147)	Apr. 14, 1980
NC79-1125 (NC81-1148)	Sept. 7, 1979
NC78-1061 (NC81-1149)	July 7, 1978.
NC79-1107 (NC81-1151)	Aug. 17, 1979.
NC80-1017 (NC81-1152)	Jan. 4, 1980.
South Carolina: SC78-1087 (SC81-1150)	Oct 13, 1978

Cancellation of General Wage Determination Decisions

The general wage decisions listed below are cancelled. Agencies with construction projects pending to which one of the cancelled decisions would have been applicable should utilize the project determination procedure by submitting Form SF-308. See Regulations Part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.7(b)(2), the incorporation of one of the cancelled decisions in contract specifications, the opening of bids is within ten (10) days of this notice, need not be affected.

LA77-4031—Ouachita Parish, Louisiana, dated February 18, 1977 in 42 FR 10237—Residential Construction

AZ80-5123—Maricopa County, Arizona, dated August 1, 1980 in 45 FR 51393—Residential Construction

This is to advise all interested parties that the Department of Labor intends to withdraw 14 days from the date of this notice the following general wage determination: AZ80-5124—Pima County, Arizona, dated August 1, 1980, in 45 FR 51388—Residential Construction.

Signed at Washington, D.C., this 19th day of December 1980.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

Education and/or Appr. Tr.													
.08	.04	.05	.05	.05	.05	.035	.035	.05	.10	.06	.06	.05	.05

Education and/or Appr. Tr.		
.04	.02	.16

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MODIFICATION P. 1

DECISION #AR80-4079-Mod.#2 45FR74344-November 7, 1980 Garland, Hot Springs and Clark Counties, Arkansas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE: ELECTRICIANS: Electricians Cable splicers	$11.57 11.695		3%+1.00 3%+1.00		1/4% 1/4%
DECISION #AR80-4080-Mod.#3 45FR72439-October 31, 1980 Jefferson County, Arkansas					
CHANGE: ELECTRICIANS: Electricians Cable splicers	12.35 12.475	.55 .55	3%+1.35 3%+1.35		1/4% 1/4%
DECISION #AR80-4082-Mod.#2 45FR74345-November 7, 1980 Union & Ouachita Counties, Arkansas					
CHANGE: ELECTRICIANS: Electrical contracts over $20,000.00: Electricians	13.18		3%		1/4%

MODIFICATION P. 2

Decision #FL79-1039 - Mod #5 (44 FR 10228 - February 16, 1979) Volusia County (except Cape Kennedy Space Flight Center and Cape Canaveral Air Force Station, Florida)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers	12.59	.55	1.10		.08
Boilermakers	11.75	1.275	1.10		.04
Electricians:					
Base Zone (within 40 miles Daytona Beach					
Electricians	10.04	.50	3% + .83		.05
Cable Splicers	10.29	.50	3% + .83		.05
Zone I (all work beyond 40 miles from Daytona Beach and not accessible by public roads & including power generation plants and industrial over 3,000,000 total permit):					
Electricians	11.42	.50	3% + .83		.05
Cable Splicers	11.67	.50	3% + .83		.05
Elevator Constructors:					
Mechanic	10.455	1.045	.82	a+b	.035
Helper	7.32	1.045	.82	a+b	.035
Ironworkers	11.28	.80	.90	.65	.05
Millwrights	12.17	.70	.70		.10
Painters					
Brush & Roller	8.95	.50	.45		.06
Paperhangers, Sandblasters & Spray	9.45	.50	.45		.06
Plumbers:					
Commercial	11.45	.60	.60		.05
Industrial	14.40	.60	.60		.05
Roofers					
Roofers	8.90	.35	.25		
Kettlemen	7.45	.35	.25		

MODIFICATION P. 3

Decision #FL79-1039 - Mod. #5 cont.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sheet Metal Workers	10.96	.55+3%	.44		.08
Sprinkler Fitters	12.40	.85	1.20		.10

DECISION NO. FL79-1110 - MOD. #8 (44FR 42858 - July 20, 1979) Dade County, Florida	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Elevator Constructors					
Mechanic	12.84	1.195	.95		.035
Helper	8.99	1.195	.95		.035
Probationary Helper	6.42				
Millwrights	12.17	.70	.70		.10
Sprinkler Fitters	12.40	.85	1.20		.10

MODIFICATION P. 4

DECISION NO. KY80-1093 - MOD. #2 (45FR 56287-56290, August 22, 1980) Boone, Cambell, Kenton, and Pendleton Counties, KY.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	12.50	1.275	1.20	2.00	.04
Bricklayers & Stonemasons	14.945	.80	.45		.02
Sheet Metal Workers					
Pendleton County	14.19	1.607	1.61		.16

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MODIFICATION P. 5

DECISION NO. ME80-2069 - (45 FR 54614 - August 15, 1980)
Cumberland County, Maine

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Sheet Metal Workers	$ 9.46	.62	.465		.07

MODIFICATION P. 6

DECISION NO. MT80-5141 Mod. No. 1
(45 FR 77286 November 21, 1980)

STATEWIDE, MONTANA	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Electricians					
Area 2					
Electricians	$14.55	.70	3%+.75		5%
Cable Splicers	15.00	.70	3%+.75		5%
Plumbers					
Area 4	15.90	1.00	1.10		.20

Education and/or Appr. Tr.
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MODIFICATION P. 7

DECISION NO. MT80-5142 Mod. #1
(45 FR 77295 November 21, 1980)

STATEWIDE, MONTANA	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Asbestos Workers	$16.69	.78	1.45		.04
Electricians					
Area 2					
Electricians	14.55	.70	3%+.75		5%
Cable Splicers	15.00	.70	3%+.75		5%
Laborers					
Flathead, Glacier National Park, Lincoln, and that area of Lake and Sanders Cos. lying 5 miles north of the 5th parallel.					
Group 1	9.90	.70	.60	.20	.05
Group 2	10.05	.70	.60	.20	.05
Group 3	10.20	.70	.60	.20	.05
Laborers					
Daniels, Garfield, Petroleum, Phillips, Richland, Roosevelt, Sheridan, and Valley Counties.					
Group 1	9.80	.70	.60	.20	.05
Group 2	10.05	.70	.60	.20	.05
Group 3	10.15	.70	.60	.20	.05
Group 4	10.20	.70	.60	.20	.05
Group 5	10.30	.70	.60	.20	.05
Group 6	10.35	.70	.60	.20	.05
Plumbers					
Area 4	15.90	1.00	1.10		.20
Carpenters					
Area 6					
Carpenters	11.28	.80	.75		.02
Millwrights	12.28	.80	.75		.02
Pildrivermen	11.53	.80	.75		.02

MODIFICATION P. 8

DECISION NO. MT80-5142 Mod. #1 cont'd

ADD:

POWER EQUIPMENT OPERATORS

Big Horn, Carter, Custer, Fallon, Musselshell, Powder River, Rosebud, Treasure, Yellowstone, Stillwater, Carbon, Sweetgrass, Golden VAlley, Petroleum, Garfield, and Prairie Counties.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
A-Frame Truck Crane Oper.	$11.94	.87	.75	.50	.07
Air Compressor Oper., single	11.68	.87	.75	.50	.07
Asphalt Paving Machine Oper.	12.19	.87	.75	.50	.07
Air Doctor	12.19	.87	.75	.50	.07
Belt Finishing Operator	11.86	.87	.75	.50	.07
Bit Grinder	12.19	.87	.75	.50	.07
Bituminous Mixer Operator	12.19	.87	.75	.50	.07
Bulldozer Operator	12.19	.87	.75	.50	.07
Boring Machine Oper., small	11.75	.87	.75	.50	.07
Boring Machine Oper., large	12.19	.87	.75	.50	.07
Cableway Operator	12.71	.87	.75	.50	.07
Cement Silo Operator	11.96	.87	.75	.50	.07
Concrete Batch Plant Oper.	12.08	.87	.75	.50	.07
Concrete Finish Machine, paving	12.19	.87	.75	.50	.07
Concrete Float Operator and Spreader	12.19	.87	.75	.50	.07
Conveyor Operator	11.89	.87	.75	.50	.07
Chip & Gravel Spreader	11.89	.87	.75	.50	.07
Crane Operator, to & including 80' boom	12.35	.87	.75	.50	.07
Crane Operator, 81' to 130' boom	12.50	.87	.75	.50	.07
Crane Operator, 131' to 150' boom	12.55	.87	.75	.50	.07
Crane Operator, 151' to 170' boom	12.60	.87	.75	.50	.07
(An additional 5¢ per hour is added for each 20' of boom)					
All cranes with jibs, an additional 25¢ per hour is added to above crane rates.					

Education and/or Appr. Tr.
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MODIFICATION P. 9

DECISION NO. MT80-5142 Mod. #1 (cont'd)

POWER EQUIPMENT OPERATORS: (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Crane Oiler-Driver, rubber tired	$11.74	.87	.75	.50	.07
Electric Overhead Crane Operator	12.38	.87	.75	.50	.07
Crusher and/or Screening Plant Operator, portable	12.19	.87	.75	.50	.07
Crusher and/or Screening Plant Tender, if over 2 units	11.68	.87	.75	.50	.07
Crusher and/or Screening Plant Operator, Stationary	12.08	.87	.75	.50	.07
Distributor Operator	12.19	.87	.75	.50	.07
Drilling Machine Operator, does not include Jack-hammer, Wagondriller, Waterliner	12.09	.87	.75	.50	.07
Euclid Loader & similar type	12.28	.87	.75	.50	.07
Tractor, rubber-tired, industrial	11.63	.87	.75	.50	.07
Elevating Grader	12.19	.87	.75	.50	.07
Field Equipment Serviceman	12.09	.87	.75	.50	.07
Fireman	11.75	.87	.75	.50	.07
Fork Lift, on construction site	11.98	.87	.75	.50	.07
Front End Loader, rubber-tired, under 1 yd	11.88	.87	.75	.50	.07
Front End Loader, 1yd. and including 3 yds.	12.19	.87	.75	.50	.07
Front End Loader, rubber-tired, over 3 yds. and including 5 yds.	12.32	.87	.75	.50	.07
Front End Loader, rubber-tired, over 5 yds. and including 10 yds.	12.42	.87	.75	.50	.07
Front End Loader, rubber-tired, over 10 yds. and including 15 yds.	12.52	.87	.75	.50	.07
Front End Loader, rubber-tired, over 15 yds. (Factory struck rating, not to include sideboards)	11.89	.87	.75	.50	.07

MODIFICATION P. 10

DECISIONS NO. MT80-5142 Mod. #1

POWER EQUIPMENT OPERATORS: (cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Grade Setter	$11.65	.87	.75	.50	.07
Heavy Duty Drills-Rotary-Quarry Master	12.19	.87	.75	.50	.07
Heavy Duty Rotary Drill Tender	11.64	.87	.75	.50	.07
Helicopter Hoist Operator	12.69	.87	.75	.50	.07
Herman Nelson Heaters & Similar type	11.65	.87	.75	.50	.07
Hoist Operator, single drum	11.94	.87	.75	.50	.07
Hoist Operator, two or more drums	12.19	.87	.75	.50	.07
Hot Plant Operator	12.19	.87	.75	.50	.07
Hot Plant Fireman	12.19	.87	.75	.50	.07
Industrial Locomotive	12.19	.87	.75	.50	.07
LeTourneau Operator, single and similar type	12.32	.87	.75	.50	.07
LeTourneau Operator, tandem and similar type	12.49	.87	.75	.50	.07
Loaders, Barber Green & similar types	11.10	.87	.75	.50	.07
Mechanic and/or Welder on job	12.29	.87	.75	.50	.07
Mechanic and/or Welder Tender	11.64	.87	.75	.50	.07
Mixer Operator, concrete, 3 bags or under	11.75	.87	.75	.50	.07
Mixer Operator, concrete, 4 bags or over	12.00	.87	.75	.50	.07
Mixermobile	12.28	.87	.75	.50	.07
Motor Patrol Operator	12.32	.87	.75	.50	.07
Mucking Machine Operator	12.19	.87	.75	.50	.07
Oiler	11.64	.87	.75	.50	.07
Pavement breaker, Emsco & similar type	12.19	.87	.75	.50	.07
Paver Mixer Operator	12.19	.87	.75	.50	.07
Power Saw Operator-self-propelled, multiple cut	12.19	.87	.75	.50	.07
Pumpcrete or Grout Machine Operator	12.19	.87	.75	.50	.07
Pumpman	11.69	.87	.75	.50	.07
Quad Cat	12.49	.87	.75	.50	.07

MODIFICATION P. 11

DECISION NO. MT80-5142 Mod. #1

POWER EQUIPMENT OPERATORS:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Retort Operator	$11.75	.87	.75	.50	.07
Roller Operator, grade or finish	11.88	.87	.75	.50	.07
Roller Operator, finish high type pavement	12.19	.87	.75	.50	.07
Ross & similar type carriers, on construction site	12.19	.87	.75	.50	.07
Roller, 25 ton or over	12.19	.87	.75	.50	.07
Screed Operator	12.19	.87	.75	.50	.07
Shovels, including all attachments under 1 yd.	12.19	.87	.75	.50	.07
Shovels, including all attachments 1 yd. to and including 4 yds.	12.38	.87	.75	.50	.07
Shovels, over 4 yds.	12.68	.87	.75	.50	.07
Shovel Oiler for shovel over 4 yds. ($.50¢ per hour under shovel operator)					
Stiff Leg & Guy Derrick Operator	12.68	.87	.75	.50	.07
Tournapull, DW 20, 21, & similar type	12.38	.87	.75	.50	.07
Scraper, twin engine	12.42	.87	.75	.50	.07
Scraper, tandem, 3 engine	12.68	.87	.75	.50	.07
Track type tractor, with or without attachments incl. track-type loader, front end up to & incl. 5 yds.	12.19	.87	.75	.50	.07
Track type front end loaders, over 5 yds. to and incl. 10 yds.	12.42	.87	.75	.50	.07
Track type front end loaders, over 10 yds. to and incl. 15 yds.	12.52	.87	.75	.50	.07
Track type front end loaders, over 15 yds.	12.62	.87	.75	.50	.07
Traxcavator, & Athey type loader	12.19	.87	.75	.50	.07

MODIFICATION P. 12

DECISION NO. MT80-5142 Mod. # 1

POWER EQUIPMENT OPERATORS:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Trench Machine Operator	$12.13	.87	.75	.50	.07
Wagner Roller & Similar type	12.19	.87	.75	.50	.07
Winch Truck Operator with hydraulic boom	12.09	.87	.75	.50	.07
Tower Crane	12.68	.87	.75	.50	.07
Automatic Finegrader, Gurries and similar type	12.32	.87	.75	.50	.07
Concrete Conveyor, under 40'	11.77	.87	.75	.50	.07
Concrete Conveyor, over 40'	12.52	.87	.75	.50	.07
Concrete Pump	12.52	.87	.75	.50	.07
Raygo Giant	12.77	.87	.75	.50	.07
Quad Loader & similar type	12.77	.87	.75	.50	.07
Loadmans: 25¢ per hour above highest paid oper.					
Elevator Constructor Helper	9.54	1.045	.82	a	.035
Probationary Helper	6.82	1.045	.82	a	.035

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MODIFICATION P. 13

DECISION NO. MT80-5143 Mod. #1
(45 FR 77311 November 21,1980)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cascade, Deer Lodge, Hill, Gallatin, Glacier, Missoula, Silver Bow, and Valley Counties					
CHANGE:					
Asbestos Workers	$16.69	.78	1.45		.04
Carpenters					
Area 8					
Carpenter	11.28	.80	.75		.02
Millwrights	12.28	.80	.75		.02
Piledrivermen	11.53	.80	.75		.02
Ironworkers					
Area 2	13.21	.90	1.45		.04
Laborers					
Valley County					
Group 1	9.80	.70	.60	.20	.05
Group 2	10.05	.70	.60	.20	.05
Group 3	10.15	.70	.60	.20	.05
Group 4	10.20	.70	.60	.20	.05
Group 5	10.30	.70	.60	.20	.05
Group 6	10.55	.70	.60	.20	.05
ADD:					
Elevator Constructors					
Helper	9.54	1.045	.82	a	.035
Probationary Helper	6.82	1.045	.82	a	.035

MODIFICATION P. 14

DECISION NO. MS80-1121, Mod. #1
(December 12, 1980, 45 FR 81975)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Description of Work to read: Heavy Construction (including Water & Sewer Lines) excluding all work in conjunction with the Tennesse Tombigbee Waterway Project.					

DECISION NO. ND80-5132 - Mod #1
(45 Fr 67525 - Oct. 10, 1980)
Burleigh, Cass, Grand Forks, Morton, Richland, Steele, Traill, Walsh, and Ward Counties, North Dakota

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
LABORERS:					
Building Construction:					
Grand Forks, Steele, and Traill Counties					
Group 1	$8.22	.50	.15		
Group 2	8.37	.50	.15		
Group 3	8.57	.50	.15		
Burleigh and Morton Counties					
Group 1	7.85	.50	.15		
Group 2	7.95	.50	.15		
Group 3	8.05	.50	.15		
Cass and Richland Counties					
Group 1	7.89	.50	.15		
Group 2	7.99	.50	.15		
Group 3	8.04	.50	.15		
Ward County					
Group 1	7.89	.50	.15		
Group 2	7.99	.50	.15		
Group 3	8.14	.50	.15		

MODIFICATION P. 15

DECISION NO. NJ80-3024 - MOD. #3
(45 FR 29515 - May 2, 1980)
Bergen, Essex, Hudson and Passaic Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
ASBESTOS WORKERS	15.04	1.41	1.67		.04
DOCKBUILDERS & PILEDRIVERMEN	13.25	1.85	1.78	1.01	.05
ELECTRICIANS & CABLE SPLICERS:					
Other Residential Construction:					
Bergen & Hudson Cos.	15.35	12%	9%+.58		.5%
GLAZIERS:					
Essex & Hudson Counties	13.45	1.00	2.00		.05
IRONWORKERS-STRUCURAL, ORNAMENTAL & REINFORCING	13.35	1.05	2.85	1.15	.11
LABORERS:					
Zone 6					
Group 1	8.50	.75	1.25		.10

MODIFICATION P. 16

DECISION NO. PA80-3011
MOD. NO. 5
(45 FR 12118 - February 22, 1980)
Greene, Somerset & Potter Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Truck Drivers:					
Zone 1					
Class 1	$8.27	a	b		
Class 2	8.35	a	b		
Class 3	8.42	a	b		
Class 4	8.17	a	b		

DECISION NO. PA80-3012
MOD. NO. 5
(45 FR 10595 - February 15, 1980)
Armstrong, Allegheny, Beaver, Butler, Fayette, Indiana, Washington, Westmoreland Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Painters:					
Zone 1					
Commercial					
Brush	13.33	.90	.80		.03
Paperhangers	13.33	.90	.80		.03
Spray	13.83	.90	.80		.03
Industrial					
Brush	13.88	.90	.80		.03
Spray	14.38	.90	.80		.03

MODIFICATION P. 17

DECISION NO. PA80-3029 MOD. NO. 6 (45 FR 28069 - April 25, 1980) Lebanon County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Electricians:					
That portion of Lebanon County which extends South and East of Interstate Route 81	$11.59	.65	3%+.67		1/4%
Painters:					
West of Route 72					
Brush	10.27	.45	.38		.02
Structural Steel	10.72	.45	.38		.02
Spray	11.02	.45	.38		.02
Plumbers:					
East of Route 501	13.83	.85	1.40		.14
West of Route 501	11.80	1.00	1.00		.12
Steamfitters:					
East of Route 501	13.86	.80	1.45		.11
West of Route 501	11.80	1.00	1.00		.14

MODIFICATION P. 18

DECISION NO. PA80-3055 MOD. NO. 2 (45 FR 65902 - October 3, 1980) Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Glaziers					
Zone 1	$11.93	.95	1.80		.01
Plumbers					
All other work					
Zone 1	14.23	.85	1.40		.14
Zone 2	13.83	.85	1.40		.14
Steamfitters					
Zone 1	14.26	.80	1.45		.11
Zone 2	13.86	.80	1.45		.11

AREA COVERED BY STEAMFITTERS ZONES

ZONE - 1 - Chester, Delaware, Montgomery, Philadelphia Counties, Remainder of Bucks County

ZONE - 2 - Bucks County; Townships of Bridgton, Durham, Haycock, Milford, Nockamixon, Richland, East Rockhill, West Rockhill and Springfield

DECISION NO. PA80-3056 MOD. NO. 1 (45 FR 60748 - September 12, 1980) Lackawanna, Susquehanna, Wayne and Wyoming Counties, Pennsylvania					
CHANGE:					
Bricklayers & Stonemasons:					
Susquehanna & Wyoming Cos.	11.35	1.05	.05		
Carbondale in Lackawanna Co.	11.85	1.50	.40		

MODIFICATION P. 19

DECISION NO. PA80-3058 MOD. NO. 1 (45 FR 65898 - October 3, 1980) Lawrence & Mercer Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Soft floor layers:					
Lawrence County	$12.30	.76	.81	.51	.05
Sheet metal workers	13.75	1.12	1.66		.23
DECISION NO. PA80-3059 MOD. NO. 1 (45 FR 65895 - October 3, 1980) Erie County, Pennsylvania					
CHANGE:					
Electricians	14.55	.72	3%+.28	.75	½ of 1%
Painters:					
Brush	11.10	.60	.50		.02
Structural Steel	11.85	.60	.50		.02
Spray	11.60	.60	.50		.02
Plumbers	14.12	.75	1.05		.06
Steamfitters	14.12	.75	1.05		.06
Sheet metal workers	13.75	1.12	1.66		.23

SUPERSEDEAS DECISION

STATE: ALABAMA

COUNTIES: Calhoun, Cherokee, DeKalb, Cleburne, and Etowah.

DECISION NUMBER: AL81-1122

DATE: Date of Publication

Supersedes Decision No.: AL79-1079, May 4, 1979 in 44 FR 26405

DESCRIPTION OF WORK: Residential construction consisting of single family homes and apartments up to and including four stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning/heating mechanic	$ 3.75				
Bricklayers	7.00				
Carpenters	6.15				
Concrete finishers	4.50				
Drywall finishers	6.00				
Drywall hangers	6.00				
Electricians	10.45				
Insulators	4.65				
Laborers	3.35				
Painters:					
brush	6.00				
Plumbers & Pipefitters	7.95	.40	.35		
Power Equipment Operators:					
bulldozer	5.00				
Roofers	8.00				
Sheet Metal workers	4.35				
Soft floor layers	6.25				
Welders - receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

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SUPERSEDEAS DECISION

STATE: ALABAMA COUNTY: MONTGOMERY
DECISION NUMBER: AL81-1123 DATE: Date of Publication
Supersedes Decision No.: AL80-1014, February 1, 1980 in 45 FR 7441
DESCRIPTION OF WORK: Building Construction(does not include residential construction consisting of single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanics	5.72				
Bricklayers	7.15				
Carpenters	5.66				
Form setters	3.35				
Cement masons	4.15				
Electricians	7.58				
Elevator constructors	10.56	.895	.69	a+b	.03
Glaziers	7.15	.50	.40		
Ironworkers, structural & ornamental	4.40				
Ironworkers, reinforcing	4.00				
Laborers:					
Laborers	3.35				
Asphalt raker	3.75				
Pipelayers	4.00				
Lathers	6.75				
Painters:					
Brush	5.90				
Sandblasters and spray	7.80		.40		
Plasterers	5.75				
Plumbers & pipefitters	6.60				
Roofers	4.67				
Kettlemen	3.50				
Sheet metal workers	5.81				
Soft floor layers	5.41				
Sprinkler fitters	6.45				
Tile setters	6.00				
Truck drivers	3.75				
Welders - rate for craft					
POWER EQUIPMENT OPERATORS:					
Asphalt rollers	4.75				
Asphalt spreader	5.25				
Backhoe	4.90				
Bulldozers	6.00				
Crane operator	6.61				
Finishing machine	4.00				
Front end loader	4.85				
Motor grader	6.00				
Motor patrol	8.51				
Piledriver	5.50				
Screed operator	3.50				
Tractor	3.75				

FOOTNOTES:
a. Six paid holidays

b. Employer contributes 8% of basic hourly rate for over 5 years service and 6% for 6 months to 5 years service as vacation pay credit.

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

Shelby,

	Education and/or Appr. Tr.

scope of the labor

SUPERSEDEAS DECISION

STATE: ALABAMA COUNTIES: *See below
DECISION NUMBER: AL81-1124 DATE: Date of Publication
Supersedes Decision No.: AL78-1394, November 13, 1978 in 43 FR 52633
DESCRIPTION OF WORK: Residential construction consisting of single family homes and apartments up to and including four stories

*Counties: Autauga, Bullock, Butler, Chilton, Clarke, Conecuh, Coosa, Crenshaw, Dallas, Elmore, Lowndes, Monroe, Montgomery, Pike, and Wilcox.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanics	$5.69				
Bricklayers	6.13				
Carpenters	4.50				
Cement Masons	4.50				
Drywall finishers	4.55				
Drywall hangers	4.50				
Electricians	8.53				
Laborers	3.35				
Painters:					
brush	5.35				
Plumbers & Pipefitters	7.87				
Power Equipment Operators:					
backhoe	4.00				
bulldozer	4.36				
loader	4.00				
motor grader	4.00				
Roofers	7.00				
Soft floor layers	5.35				
Tile setters	4.64				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: ALABAMA COUNTIES: *See below
DECISION NUMBER: AL81-1125 DATE: Date of Publication
Supersedes Decision No.: AL78-1045, May 5, 1978 in 43 FR 19541
DESCRIPTION OF WORK: Residential construction consisting of single family homes and apartments up to and including four stories

*Counties: Barbour, Coffee, Covington, Dale, Geneva, Henry, Houston, and Russell.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanic	$5.25				
Bricklayers	5.00				
Carpenters	4.16				
Cement Masons	4.00				
Drywall finishers	5.50				
Drywall hangers	5.00				
Electricians	3.50				
Insulators	3.35				
Laborers	3.35				
Painters:					
brush	5.00				
Plumbers & Pipefitters	4.05				
Power Equipment Operators:					
bulldozer	3.63				
Roofers	4.25				
Sheet Metal workers	4.29				
Soft floor layers	3.35				
Truck drivers	3.50				
Welders - receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

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SUPERSEDEAS DECISION

STATE: ALABAMA
DECISION NUMBER: AL81-1126
Supersedes Decision No.: AL77-1064, May 13, 1977 in 42 FR 24553
DESCRIPTION OF WORK: Heavy construction

COUNTIES: *See below
DATE: Date of publication

*Counties: Autauga, Barbour, Bibb, Bullock, Butler, Chambers, Chilton, Coffee, Coosa, Covington, Crenshaw, Dale, Dallas, Elmore, Geneva, Hale, Henry, Houston, Lee, Lowndes, Macon, Montgomery, Perry, Pike, Russell and Tallapoosa.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters:					
carpenters	$3.75				
piledrivermen	4.00				
Cement Masons	3.60				
Electricians	9.30	.40	1%		
Ironworkers:					
structural, ornamental, & reinforcing	8.25	.40	.47		
Laborers:					
unskilled	3.35				
asphalt rakers	3.35				
Painters	3.90				
Power Equipment Operators:					
asphalt distributor	3.60				
asphalt roller	3.60				
asphalt spreader	3.60				
backhoe	4.15				
bulldozer	6.28				
crane, derrick, & dragline	4.15				
front end loader	3.35				
motor patrol	5.79				
oiler-greaser	6.91	.30	.20		.10
pump	7.57	.30	.20		.10
scraper	7.91	.30	.20		.10

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: ALABAMA
DECISION NUMBER: AL81-1127
Supersedes Decision No.: AL77-1071, June 3, 1977 in 42 FR 28728
DESCRIPTION OF WORK: Sewer and Water Line construction

COUNTIES: *See below

*Counties: Calhoun, Etowah, Greene, Jefferson, Pickens, St. Clair, Shelby, Sumter, Talladega, Tuscaloosa, and Walker.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$5.00				
Cement Masons	5.25				
Laborers:					
unskilled	3.35				
drillers, wagon drill	3.95				
asphalt rakers	3.85	.20	.30		
powdermen, blasters	3.60				
Power Equipment Operators:					
air compressor	4.00				
backhoe	5.23				
bulldozer	5.50				
cranes, derrick, dragline	5.25				
front end loader	5.00				
motor patrol	5.60				
roller	5.60				
Truck drivers	3.71				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: ALABAMA
DECISION NUMBER: AL81-1128
Supersedes Decision No.: AL79-1121, October 5, 1979 in 44 FR 57623
DESCRIPTION OF WORK: Sewer, Water, and Storm Drainage construction

COUNTIES: *See below
DATE: Date of publication

*Counties: Baldwin, Choctaw, Clarke, Conecuh, Escambia, Marengo, Mobile, Monroe, Washington, and Wilcox.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$5.00				
Cement Masons	5.50				
Cement finishers	5.50				
Ironworkers:					
structural and reinforcing	5.70				
Laborers:					
unskilled	3.68				
mortar mixers	3.75				
pipelayers	3.75				
Power Equipment Operators:					
backhoe	5.79				
bulldozer	5.31				
crane	5.86				
loader	4.29				
Truck drivers:					
truck drivers	3.35				
multi-rear axle	4.25				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: ALABAMA
DECISION NUMBER: AL81-1129
Supersedes Decision No.: AL77-1063, May 13, 1977 in 42 FR 24553
DESCRIPTION OF WORK: Sewer and Water Line construction

COUNTIES: *See below
DATE: Date of publication

*Counties: Autauga, Barbour, Bibb, Bullock, Butler, Chambers, Chilton, Coffee, Coosa, Covington, Crenshaw, Dale, Dallas, Elmore, Geneva, Hale, Henry, Houston, Lee, Lowndes, Macon, Montgomery, Perry, Pike, Russell, and Tallapoosa.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$4.75				
Carpenters	5.75				
Laborers:					
unskilled	3.35				
air tool operators	3.40				
pipelayers	3.35				
Plumbers & Pipefitters	5.00				
Power Equipment Operators:					
backhoe	4.63				
bulldozer	4.50				
trenching machine	4.66				
front end loader	4.37				
Truck drivers	3.35				
Welders-receive rate prescribed fro craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: ALABAMA COUNTY: Jefferson
DECISION NUMBER: AL81-1131
Supersedes Decision No.: AL79-1150, December 28, 1979, 44 FR 77104
DESCRIPTION OF WORK: Highway construction (excluding tunnels, buildingsstructures in rest area projects and railroad construction; bascule, suspension, and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$ 3.66				
Carpenters	5.66				
Concrete finishers	5.23				
Concrete saw	3.35				
Electricians	12.05	.55	3% + .40		1%
Ironworkers:					
structural	9.25				
reinforcing	5.19				
Laborers:					
air tool operators	3.35				
asphalt rakers	4.35				
concrete laborers	4.00				
pipelayers	3.45				
powdermen and blasters	4.00				
saw	3.50				
side rail or form setters	5.00				
unskilled	3.35				
wagon drill	4.00				
Painters	5.75				
Piledrivermen	5.60				
Power Equipment Operators:					
aggregate spreader	4.10				
air compressor	3.35				
asphalt distributor	5.51				
asphalt spreader	6.65				
asphalt mixer and pug mills & batch plants	3.95				
asphalt plant driers	3.95				
bulldozer	6.00				
bull floats	3.35				
concrete mixers(3 bags & under)	3.35				
concrete mixers(over 3 bags)	3.95				
concrete paving machine	3.95				
concrete paving finishing machine	3.95				
concrete paving spreaders	3.95				
cranes, clamshells, backhoe derricks, dragline or shovels	6.55				
conveyors	3.35				
crusher & screening plants	3.95				
drilling machines	5.00				
elevating graders, gradalls, or trenching	6.23				
firemen	3.35				
form graders	3.35				

SUPERSEDEAS DECISION

STATE: ALABAMA COUNTIES: *See below
DECISION NUMBER: AL81-1132 DATE: Date of publication
Supersedes Decision No.: AL79-1152, December 28, 1979 in 44 FR 77107
DESCRIPTION OF WORK: Highway Construction (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

*Counties: Calhoun, Etowah, St. Clair, Shelby, Talladega, Tuscaloosa and Walker.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$ 3.66				
Carpenters	5.27				
Concrete finishers	4.75				
Concrete saw	3.35				
Electricians	12.05	.55	3% + .40		1%
Ironworkers:					
structural	5.80				
reinforcing	4.50				
Laborers:					
air tool operators	3.35				
asphalt rakers	4.60				
concrete laborers	3.35				
pipelayers	3.50				
powdermen and blasters	4.00				
saw	3.50				
side rail or form setters	3.72				
unskilled	3.35				
wagon drill	4.00				
Painters	5.50				
Piledrivermen	5.40				
Power Equipment Operators:					
aggregate spreader	4.10				
air compressor	3.35				
asphalt distributor	5.29				
asphalt spreader	5.29				
asphalt mixer and pug mill & batch plant	3.95				
asphalt plant driers	3.95				
bulldozers	5.72				
bull floats	3.35				
concrete mixer(3 bags & under)	3.35				
concrete mixer(over 3 bags)	3.95				
concrete paving machine	3.95				
concrete paving finishing machine	3.95				
concrete paving spreader	3.95				
cranes, clamshells, backhoes derricks, draglines or shovels	5.55				
conveyors	3.35				
crusher and screening plant	3.95				
drilling machine	5.00				
elevating graders, gradalls or trenching	4.75				

SUPERSEDEAS DECISION

STATE: ALABAMA COUNTIES: *See below
DECISION NUMBER: AL81-1130 DATE: Date of publication
Supersedes Decision No.: ALT7-1066, May 13, 1977 in 42 FR 24554
DESCRIPTION OF WORK: Sewer and Water Line construction

*Counties: Blount, Cherokee, Clay, Cleburne, Colbert, Cullman, DeKalb, Fayette, Franklin, Jackson, Lamar, Lauderdale, Lawrence, Limestone, Madison, Marion, Marshall, Morgan, Randolph, and Winston.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cement Masons	$6.80				
Ironworkers	8.80				
Laborers:					
unskilled	3.35				
pipelayers	3.50				
Power Equipment Operators:					
air compressor	6.00				
backhoe	5.00				
bulldozer	5.25				
drilling machine	6.00				
loader	4.91				
mechanic	5.83				
trenching machine	5.00				
Truck drivers	3.65				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

DECISION NUMBER: AL81-1131 page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:(con't)					
hoist(2 drums or 2 cages or more)	3.95				
hoist(1 drum)	3.55				
mechanics	6.00				
motor patrols	6.60				
oilers & greasemen	5.91				
paving subgraders	3.35				
piledrivers	4.55				
pumps	3.55				
pumpcretes	3.55				
rollers(self-propelled)	5.72				
rollers(self-propelled on asphalt bases & pavements)	6.00				
scale operators	3.35				
scalemen	3.35				
scrapers	6.00				
seeding & mulching machines	4.00				
striping machines(paint)	4.75				
tractors & loaders(farm rubber tired)	3.50				
tractors & loaders(80 h.p.or less, drew-bar capacity)	4.95				
tractors & loaders(over 80 h.p.)	6.00				
Truck drivers:					
under 1½ tons	3.35				
single-rear axle	3.35				
multi-rear axle or heavy duty, off-road sinlge axle	3.48				
winch truck & A-frame	3.79				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

DECISION NUMBER: AL81-1132 page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:(con't)					
firemen	3.35				
form graders	3.35				
hoist(2 drums or 2 cages or more)	3.95				
hoist(1 drum)	3.35				
mechanic	6.00				
motor patrol	5.91				
oiler and greasemen	4.00				
paving subgraders	3.35				
piledrivers	3.66				
pumps	3.35				
pumpcretes	3.35				
rollers(self-propelled)	4.00				
rollers(self-propelled on asphalt bases and pavements)	4.11				
scale operators	3.35				
scalemen	3.35				
scrapers	6.00				
seeding and mulching machine	4.00				
striping machine(paint)	4.10				
tractors & loaders(80 h.p. or less, draw-bar capacity)	4.00				
tractors & loaders(over 80 h.p.)	5.17				
Truck drivers:					
under 1½ tons	3.35				
single-rear axle	3.35				
multi-rear axle or heavy duty, off-road, single axle	3.35				
winch truck and A-frame	3.35				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: ALABAMA COUNTIES: *See below
DECISION NUMBER: AL81-1133 DATE: Date of publication
Supersedes Decision No.: AL80-1043, January 25, 1980 in 45 FR 6293
DESCRIPTION OF WORK: Highway Construction (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation bridges involving marine construction; and other major bridges)

*Counties: Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clark, Clay, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Cleburne, Dale, Dallas, DeKalb, Elmore, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Houston, Jackson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, Sumter, Tallapoosa, Washington, Wilcox, and Winston.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$3.65				
Carpenters	4.90				
Concrete finishers	4.40				
Concrete saw	3.35				
Electricians	5.80				
Ironworkers:					
structural	5.80				
reinforcing	4.50				
Laborers:					
air tool operators	3.35				
asphalt rakers	3.75				
concrete laborers	3.35				
pipelayers	3.75				
powdermen and blasters	4.00				
saw	3.50				
side rail or form setters	3.72				
unskilled	3.35				
wagon drill	4.00				
Painters	5.50				
Piledrivermen	4.80				
Power Equipment Operators:					
aggregate spreader operator	4.10				
air compressors	3.35				
asphalt distributor	4.25				
asphalt spreader	4.75				
asphalt mixer and pug mills & batch plants	3.35				
asphalt plant driers	3.95				
bulldozer	4.64				
bull floats	3.35				
concrete mixer(3 bags & under)	3.35				
concrete mixer(over 3 bags)	3.95				
concrete paving machine	3.95				
concrete paving finishing machine	3.95				
concrete paving spreader	3.95				
cranes, clamshells, backhoe derricks, draglines or shovels	5.22				

DECISION NUMBER: AL81-1133 page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:(con't)					
conveyors	3.35				
crusher and screening plant	3.95				
drilling machine	5.00				
elevating graders, gradalls or trenching	3.85				
firemen	3.35				
form graders	3.35				
hoist(2 drum or 2 cages or more)	3.95				
hoist(1 drum)	3.35				
mechanics	5.36				
motor patrols	5.00				
oilers and greasemen	3.60				
paving subgraders	3.35				
piledrivers	4.85				
pumps	3.35				
pumpcretes	3.35				
roller(self-propelled)	4.17				
roller(self-propelled, on asphalt bases and pavements)	4.43				
scale operators	3.35				
scalemen	3.35				
scrapers	4.32				
seeding and mulching machine	4.00				
striping machine(paint)	4.31				
tractors & loaders(farm rubber tired)	3.35				
tractors & loaders(80 h.p. or less, draw-bar capacity)	3.78				
tractors & loaders(over 80 h.p.)	4.00				
Truck drivers:					
under 1½ tons	3.35				
single-rear axle	3.35				
multi-rear axle or heavy duty, off-road, single axle	3.35				
winch trucks and A-frame	3.35				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

STATE: ALABAMA COUNTY: Mobile
DECISION NUMBER: AL81-1134 DATE: Date of publication
Supersedes Decision No.: AL79-1151, December 28, 1979, 44 FR 77106
DESCRIPTION OF WORK: Highway construction (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$ 3.65				
Carpenters	5.00				
Concrete finishers	5.50				
Concrete saw	3.35				
Electricians	12.05	.55	3% + .40		.05
Ironworkers:					
Reinforcing	6.00				
Structural	6.50				
Laborers:					
Air tool operators	3.35				
Asphalt rakers	3.75				
Concrete laborers	4.00				
Pipelayers	3.75				
Powdermen and blasters	4.00				
Saw	3.50				
Side rail and form setters	5.00				
Unskilled	3.35				
Wagon drill	4.00				
Painters	5.75				
Piledrivermen	6.75				
Power Equipment Operators.					
Asphalt spreader operator	4.10				
Air compressor	3.35				
Asphalt distributor	5.00				
Asphalt spreader	5.38				
Asphalt mixers and pug mills & batch plants	3.95				
Asphalt plant driers	3.95				
Bulldozers	4.50				
Bull floats	3.44				
Concrete mixer(3 bags and under)	3.44				
Concrete mixer(over 3 bags)	3.95				
Concrete paving machine	3.95				
Concrete paving finishing machine	3.95				
Concrete paving spreader	3.95				
Cranes, clamshells, backhoe derricks, draglines or shovels	7.00				
Conveyors	3.35				
Crusher and screening plants	3.95				
Drilling machine	5.00				
Elevating graders, gradalls or trenching	5.25				

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DECISION NUMBER: AL81-1134 page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment operators:(con't)					
Firemen	3.35				
Form graders	3.35				
Hoist(2 drums or 2 cages or more)	3.95				
Hoist(1 drum)	3.44				
Mechanics	6.41				
Motor patrols	5.85				
Oilers and greasemen	4.00				
Paving subgraders	3.35				
Piledrivers	4.85				
Pumps	3.35				
Pumpcretes	3.35				
Roller(self-propelled)	3.50				
Roller(self-propelled on asphalt bases and pavements)	5.08				
Scale operators	3.35				
Scalemen	3.35				
Scrapers	4.50				
Seeding and mulching machines	4.00				
Striping machine(paint)	4.00				
Tractors and loaders(farm rubber tired)	3.50				
Tractors and loaders(80 h.p. or less, draw-bar capacity)	4.00				
Tractors and loaders(over 80 h.p.)	4.75				
Truck drivers:					
Under 1½ tons	3.35				
Single-rear axle	3.35				
Multi-rear axle or heavy duty, off road, single axle	3.83				
Winch trucks and A-Frame	3.35				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATES: CONNECTICUT, DELAWARE, MAINE, MARYLAND, MASSACHUSETTS, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, PENNSYLVANIA & RHODE ISLAND
DECISION NO.: NY80-3079 DATE: DATE OF PUBLICATION
Supersedes Decision No. NY80-3002 dated January 18, 1980, in 45 FR 3866
DESCRIPTION OF WORK: All Dredging on the Atlantic Coast from the Canadian Border to the southerly border of the State of Maryland & tributary waters emptying into the Atlantic Ocean, the Cheaspeake & Delaware Canal, Baltimore City & Baltimore County, Md.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DIPPER & CLAMSHELL DREDGES:					
Operator	12.45	.73	.70	7%+a	
Engineer	12.36	.73	.70	7%+a	
Craneman	12.13	.73	.70	7%+a	
Maintenance Engineer	11.96	.73	.70	7%+a	
Welder	11.80	.73	.70	7%+a	
Mate	11.25	.73	.70	7%+a	
Fireman and Oiler	10.42	.73	.70	7%+a	
Deckhand, Handyman and Tug Deckhand	10.18	.73	.70	7%+a	
Scowman and Rodman	10.07	.73	.70	7%+a	
HYDRAULIC DREDGES:					
Leverman	12.25	.73	.70	7%+a	
Engineer and Derrick Operator	12.13	.73	.70	7%+a	
Maintenance Engineer	11.96	.73	.70	7%+a	
Boilerman; Dredge Carpenter; Dredge Blacksmith; Electricians and Dredge Welder	11.80	.73	.70	7%+a	
Spider Barge Operator	11.69	.73	.70	7%+a	
Mate	11.25	.73	.70	7%+a	
Fireman and Oiler	10.42	.73	.70	7%+a	
Tug Deckhand	10.18	.73	.70	7%+a	
Deckhand; Handyman; Shoreman and Rodman	10.07	.73	.70	7%+a	
COMPANY LEAD DREDGEMAN:					
Lead Dredgeman	12.25	.73	.70	7%+a	
TUG Boats over 400 H.P. (with master or captain having license endorsed for 200 miles off shore):					
Tug Engineer	11.75	.73	.70	7%+a	
Tug Deckhand	10.23	.73	.70	7%+a	
TUG Boats over 400 H.P. (without master or Captain having license endorsed for 200 miles off shore):					
Tug Engineer	11.32	.73	.70	7%+a	
Tug Deckhand	10.18	.73	.70	7%+a	

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DECISION NO. NY80-3079

FOOTNOTES:
a. Paid holidays include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday and Veterans Day.

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA COUNTY: Orange
DECISION NUMBER: NC81-1135 DATE: Date of publication
Supersedes Decision No.: NC80-1022, January 4, 1980, 45 FR 1372
DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$6.25				
Carpenters	4.83				
Cement Masons	5.00				
Electricians	5.00				
Glaziers	5.22				
Ironworkers:					
ornamental & reinforcing	5.21				
structural	5.21				
Laborers	3.35				
Painters	4.12				
Plumbers & Pipefitters	5.00				
Power Equipment Operators:					
backhoe	4.37				
front end loader	4.25				
roller	3.75				
Roofers	4.00				
Sheet Metal workers	4.50				
Tile setters	6.50				
Truck drivers	3.35				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

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SUPERSEDEAS DECISION

STATE: NORTH CAROLINA COUNTIES: Camden, Currituck, Dare, Pasquotank, Perquimans, and Tyrell

DECISION NUMBER: NC81-1138 DATE: Date of publication

Supersedes Decision No.: NC80-1021, January 4, 1980, 45 FR 1369

DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	$7.00				
Bricklayers	7.00				
Carpenters	3.72				
Cement masons	4.25				
Electricians	4.25				
Glaziers	4.00				
Ironworkers:					
structural	4.50				
Laborers:					
mortar mixer	3.50				
pipelayer	5.00				
unskilled	3.35				
Painters	3.85				
Plasterers	5.00				
Plumbers	4.25				
Power Equipemnt Operators:					
crane	5.00				
mechanic	6.45				
Roofers	3.50				
Sheet metal workers	3.75				
Terrazzo workers	4.00				
Tile setters	5.50				
Truck drivers	3.35				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA COUNTY: Wake

DECISION NUMBER: NC81-1139 DATE: Date of publication

Supersedes Decision No.: NC80-1019, January 4, 1980, 45 FR 1373

DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanics	$5.25				
Bricklayers	6.00				
Carpenters	4.99				
Cement masons	4.00				
Drywall mechanics	5.20				
Electricians	4.96				
Elevator constructors	7.82	.745	.69	a	.025
Glaziers	6.00				
Ironworkers:					
reinforcing	5.50				
structural & ornamental	5.00				
Laborers:					
air tool operator(jackhammers, vibrators)	3.75				
mason tender	3.35				
mortar mixer	3.50				
pipelayer	3.35				
unskilled	3.35				
Lathers	7.40				
Marble setters	6.50				
Painters	4.00				
Pipefitters	5.20	.13		.10	
Plasterers	6.25				
Plumbers	4.91				
Power Equipment Operators:					
backhoe	3.94				
bulldozer	4.50				
crane	5.55				
finishing machine	4.50				
front end loader	3.75				
motor grader	4.75				
roller	4.00				
scraper	4.00				
tractor	4.00				
Roofers:					
roofers	4.04				
water proofers	4.65				

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sheet metal workers	4.90				
Soft floor layers	5.03				
Terrazzo workers	6.50				
Tile setters	7.00				
Truck drivers	3.35				
Welders-receive rate prescribed for craft to which it is incidental					

FOOTNOTE:

a. Employer contributes 6% of basic hourly rate for 6 months to 5 years service and 8% for over 5 years of service as vacation pay credit; also six paid holidays

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA
COUNTIES: Edgecombe, Greene, Johnston, Nash, and Wilson
DECISION NUMBER: NC81-1140
DATE: Date of publication
Supersedes Decision No.: NC80-1024, January 4, 1980, 45 FR 1369
DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including four storie)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$ 6.00				
Carpenters	4.36				
Cement masons	3.66				
Electricians	3.60				
Glaziers	4.22				
Ironworkers:					
structural	3.35				
Laborers:					
pipelayer	3.50				
unskilled	3.35				
Lathers	6.95				
Painters:					
brush	4.00				
Plasterers	5.65				
Plumbers & Steamfitters	3.70				
Power Equipment Operators:					
backhoe	3.50				
blade grader	3.35				
bulldozer	3.42				
crane, derricks & draglines	4.29				
distributor	3.75				
finishing machine	3.36				
motor grader	3.35				
pump	3.35				
scraper	3.54				
shovel	3.75				
screed	3.50				
trenching machine	4.00				
Roofers	3.46				
Sheet metal workers	3.35				
Soft floor layers	5.10				
Sprinkler fitters(Wilson co.)	11.00	.85	1 20		.08
Tile setters	5.29				
Truck drivers	3.35				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDE'S DECISION

STATE: NORTH CAROLINA
COUNTY: Cumberland
DECISION NUMBER: NC81-1141
DATE: Date of publication
Supersedes Decision No.: NC80-1026, January 4, 1980, 45 FR 1368
DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	$ 6.50				
Boilermakers	6.25				
Bricklayers	6.00				
Carpenters:					
carpenters	6.05				
millwrights	6.50				
Cement masons	5.25				
Electricians	6.50				
Glaziers	4.39				
Ironworkers:					
structural & reinforcing	6.50				
Laborers:					
pipelayer	3.72				
plasterer tender	3.35				
unskilled	3.35				
Lathers	5.00				
Painters:					
brush	4.75				
spray	5.00				
Plasterers	5.85				
Plumbers & Pipefitters	6.50				
Power Equipment Operators:					
bulldozer	4.00				
cranes, derricks & draglines	5.53				
forklift	4.40				
front end loader	3.37				
grader	3.90				
mechanic	5.95				
motor grader	3.98				
roller(asphalt)	3.45				
saw operator	4.00				
scraper	3.75				
Roofers	5.00				
Sheet metal workers	4.82				
Sprinkler fitters	11.00	.85	1.20		.06
Soft floor layers	4.32				
Terrazzo workers	4.63				
Tile setters	5.28				
Truck drivers	3.35				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA
COUNTY: Guilford
DECISION NUMBER: NC81-1142
DATE: Date of publication
Supersedes Decision No.: NC78-1036, April 14, 1978, 43 FR 16095
DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$ 6.14				
Carpenters	5.25				
Cement masons	4.67				
Drywall installers	6.00				
Electricians	5.36				
Elevator constructors	7.82	.745	.56	a	.025
Glaziers	4.85				
Ironworkers:					
structural & ornamental	5.50				
reinforcing	5.00	.25		.10	.05
Laborers:					
mason tenders	3.68				
mortar mixers	3.71				
pipelayers	4.25				
unskilled	3.35				
Painters:					
brush	4.17				
Plasterers	6.25				
Plumbers & Steamfitters	5.75				
Power Equipment Operators:					
backhoe	4.45				
bulldozer	4.25				
crane, derrick, & dragline	6.00				
distributor	4.75				
finishing machine	4.75				
fork lift operator	4.00				
front end loader	4.25				
motor grader	4.76				
roller	4.03				
Roofers	4.32				
Sheet metal workers	4.85				
Soft floor layers	4.02				
Sprinkler fitters	11.00	.85	1.20		.08
Tile setters	5.19				
Terrazzo workers	5.76				
Truck drivers	3.76				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA
COUNTY: Durham
DECISION NUMBER: NC81-1143
DATE: Date of publication
Supersedes Decision No.: NC80-1025, January 4, 1980, 45 FR 1371
DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	$ 5.25				
Bricklayers	6.00				
Carpenters	5.00				
Cement masons	4.75				
Electricians	5.00				
Glaziers	5.25				
Ironworkers:					
structural & ornamental	5.50				
reinforcing	5.50				
Laborers:					
mortar mixers	3.35				
unskilled	3.35				
Lathers	6.95				
Marble setters	5.25				
Painters:					
brush	3.76				
Plasterers	6.35				
Plumbers & Pipefitters	5.33				
Power Equipment Operators:					
backhoe	3.75				
bulldozer	3.90				
finishing machine	3.85				
front end loader	4.25				
motor grader	4.39				
roller	4.10				
scraper(pan)	4.01				
tractor	3.90				
Roofers	4.00				
Sheet metal workers	4.81				
Soft floor layers	4.31				
Sprinkler fitters	11.00	.85	1.20		.08
Terrazzo workers	6.00				
Tile setters	5.20				
Truck drivers	3.35				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

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SUPERSEDEAS DECISION

STATE: NORTH CAROLINA COUNTY: Granville
DECISION NUMBER: NC81-1144 DATE: Date of publication
Supersedes Decision No.: NC77-1135, November 11, 1977, 42 FR 58928
DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$6.00				
Carpenters	4.31				
Cement masons	4.30				
Drywall hangers	6.00				
Electricians	5.00				
Ironworkers:					
structural	5.07				
reinforcing	4.75				
Laborers	3.35				
Painters:					
brush	4.38				
spray	4.50				
Plumbers & Pipefitters	5.30				
Power Equipment Operators:					
backhoe	5.00				
bulldozer	4.00				
loader	4.13				
Roofers	4.75				
Sheet metal workers	5.00				
Tile setters	6.50				
Truck drivers	3.63				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA COUNTIES: Cartaret, Craven, Jones, Lenior, Onslow, and Pamlico
DECISION NUMBER: NC81-1145 DATE: Date of publication
Supersedes Decision No.: NC80-1023, January 4, 1980, 45 FR 1372
DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$5.50				
Carpenters	4.50				
Cement masons	4.23				
Electricians	4.56				
Glaziers	3.55				
Ironworkers:					
structural	4.75				
reinforcing	4.25				
Laborers:					
pipelayers	4.35				
plasterer tenders	3.50				
unskilled	3.35				
Painters	5.00				
Plasterers	6.00				
Plumbers & Pipefitters	5.51				
Power Equipment Operators:					
backhoe	4.50				
motor grader	4.00				
roller	5.00				
Roofers	5.52				
Sheet metal workers	3.83				
Sprinkler fitters(Onslow co.)	5.375				
Sprinkler fitters(Cartaret co.)	11.00	.85	1.20		.08
Soft floor layers	5.10				
Tile setters	6.00				
Truck drivers	3.35				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

STATE: NORTH CAROLINA COUNTIES: Gaston, Lincoln, Mecklenburg, and Union
DECISION NUMBER: NC81-1146 DATE: Date of publication
Supersedes Decision No.: NC78-1027, March 24, 1978, 43 FR 12602
DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning/heating mechanics	$ 4.88				
Asbestos workers	4.85				
Bricklayers	5.93				
Carpenters	5.04				
Cement masons	4.83				
Electricians	6.12				
Elevator constructors	7.53	.745	.56	a	.025
Glaziers	4.83				
Ironworkers:					
structural	5.52				
reinforcing	4.83				
Laborers:					
mason tenders	3.35				
mortar mixers	3.50				
pipelayers	4.10				
plasterer tenders	3.35				
unskilled	3.35				
Lathers	7.40				
Painters:					
brush	4.46				
Plasterers	6.51				
Plumbers, Pipefitters & Steamfitters	6.19				
Power Equipment Operators:					
backhoe	3.98				
bulldozer	4.00				
crane, derrick, & dragline	5.26				
finishing machine	4.00				
forklift	3.35				
front end loader	4.50				
motor grader	4.29				
pan operator	3.85				
roller	3.43				
scraper	3.85				
shovel	4.00				
tractor	4.76				
Roofers	4.57				
Sheet metal workers	5.23				
Soft floor layers	4.50				
Sprinkler fitters(Mecklenburg & Union cos.)	11.00	.85	1.20		.08

DECISION NUMBER: NC81-1146 page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Stone masons	4.25				
Terrazzo workers	4.00				
Tile setters	5.38				
Truck drivers	3.46				
Water proofing mechanics	3.35				

Footnote:
a. employer contributes 6% of basic hourly rate for 6 months to 5 years service and 8% for over 5 years service as vacation pay credit: also six paid holidays.

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA COUNTY: New Hanover
DECISION NUMBER: NC81-1147 DATE: Date of publication
Supersedes Decision No.: NC78-1037, April 14, 1978, 43 FR 16096
DESCRIPTION OF WORK: Building Construction (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos workers	$ 5.75				
Bricklayers	6.00				
Carpenters	5.00				
Cement Masons	4.50				
Electricians	5.25				
Ironworkers:					
structural & ornamental	5.30				
Laborers:					
air tool operators	3.50				
unskilled	3.35				
Painters:					
brush	4.50				
Plumbers & Steamfitters	6.50				
Power Equipment Operators:					
bulldozer	5.00				
crane	4.75				
forklift	4.50				
Roofers	4.00				
Sheet metal workers	5.00				
Sprinkler fitters	11.00	.85	1.20		.08
Terrazzo workers	4.75				
Tile setters	5.00				
Truck drivers	3.35				
Welders-receive rate prescribed for craft to which it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA COUNTIES: Statewide
DECISION NUMBER: NC81-1148 DATE: Date of publication
Supersedes Decision No.: NC79-1125, September 7, 1979, 44 FR 52577
DESCRIPTION OF WORK: Water and Sewer construction projects and Heavy construction projects excluding Dam construction projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$4.47				
Carpenters	5.16				
Cement masons	5.01				
Fence erectors	4.04				
Ironworkers:					
structural	4.81				
Laborers:					
asphalt rakers	3.95				
pipelayers	3.98				
powdermen	5.95				
unskilled	3.37				
Manhole builders	4.00				
Millwrights	4.00				
Painters	5.50				
Piledrivermen	6.29				
Plumbers & Pipefitters	5.25				
Power Equipment Operators:					
asphalt paver	3.98				
backhoe	4.99				
boom operator	4.00				
bulldozer	4.50				
compactor	3.75				
crane	5.87				
dragline	5.50				
drill:					
air	4.81				
well	4.50				
loader	4.48				
mechanic	5.16				
motor grader	4.25				
oiler	3.75				
pump operator	3.75				
roller	3.35				
scraper(pan)	4.25				
screed	4.08				
tractor	4.75				
trenching machine	5.00				
Truck drivers	3.67				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NORTH CAROLINA COUNTIES: Statewide
DECISION NUMBER: NC81-1149 DATE: Date of publication
Supersedes Decision No.: NC78-1061, July 7, 1978, 43 FR 29463
DESCRIPTION OF WORK: Highway construction projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asphalt rakers	$3.76				
Builders - curb & gutter	3.44				
Carpenters	4.76				
Carpenters helpers	3.74				
Concrete finishers	4.35				
Electricians	5.59				
Form setters(road)	4.01				
Ironworkers:					
reinforcing	5.24				
Laborers	3.33				
Lutemen	3.35				
Masons	4.83				
Mechanics	4.81				
Mechanics' helpers	3.35				
Oilers	3.72				
Piledriver leadsmen	4.86				
Pipelayers	3.69				
Powdermen	3.50				
Power Equipment Operators:					
asphalt distributor	4.11				
aspahlt plant	4.00				
asphalt paver	4.32				
bulldozer	4.22				
bulldozer(utility)	3.83				
concrete finishing machine	4.56				
concrete paver	5.51				
concrete saw	5.00				
concrete spreader	4.82				
crane, backhoe, dragline, and shovel:					
1 yd. & under	4.43				
over 1 yd.	4.76				
curb machine(concrete)	4.29				
drill operator	3.86				
greasemen	3.81				
hydro seeder	4.10				
loader operator	4.01				
motor grader:					
fine	4.81				
rough	3.83				

DECISION NUMBER: NC81-1149 page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:(con't)					
power tool operator	4.18				
roller:					
rough	3.35				
finish	3.90				
scraper	3.95				
screed(asphalt)	4.12				
sign erector	4.75				
stone spreader	4.20				
subgrader machine	4.09				
sweeper	3.35				
tractor(crawler)	3.89				
tractor(utility)	3.38				
Truck drivers:					
single axle(rear)	3.35				
multi rear axle	3.38				
concrete	3.58				
heavy duty	3.39				
Welders	4.55				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

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SUPERSEDEAS DECISION

STATE: NORTH CAROLINA

COUNTIES: Bladen, Columbus, Richmond, Robeson, and Scotland

DECISION NUMBER: NC81-1151

DATE; Date of publication

Supersedes Decision No.: NC79-1107, August 17, 1979, 44 FR 48584

DESCRIPTION OF WORK: Residential construction (including single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning mechanics	$4.81				
Bricklayers	6.00				
Carpenters	4.73				
Cement masons	5.65				
Drywall finishers	4.00				
Drywall hangers	5.00				
Electricians	4.59				
Insulation installer	3.53				
Laborers:					
mason tenders	3.35				
pipelayers	3.35				
unskilled	3.35				
asphalt raker	4.25				
Painters:					
brush	3.71				
spray	4.00				
Paperhangers	3.35				
Plumbers & Pipefitters	4.93				
Power Equipment Operators:					
backhoe	4.69				
bulldozer	5.16				
grader	4.25				
loader	4.33				
paver	3.72				
roller	3.42				
screed	4.25				
tractor	5.25				
Roofers	5.00				
Sheet metal workers	4.55				
Soft floor layers	5.29				
Truck drivers	3.35				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDES DECISION

STATE: NORTH CAROLINA

COUNTIES: Beaufort, Bertie, Chowan, Dare, Edgecombe, Franklin, Halifax, Hertford, Hyde, Martin, Nash, Northampton, Pitt, Tyrrell, Vance, Warren, and Wilson

DECISION NUMBER: NC81-1152

Supersedes Decision No.: NC80-1017, January 4, 1980, 45 FR 1370

DESCRIPTION OF WORK: Residential Construction consisting of single family homes and apartments up to and including four stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Acoustical spray applicators	$4.10				
Air conditioning/heating mechanics	4.50				
Bricklayers	6.00				
Carpenters	4.98				
Carpet layers	5.00				
Cement masons	4.90				
Drywall finishers	5.00				
Drywall hangers	5.00				
Electricians	4.50				
Insulation installers	3.66				
Ironworkers:					
structural	5.20				
reinforcing	5.20				
Laborers:					
asphalt rakers	3.55				
mortar mixers	3.35				
pipelayers	4.00				
unskilled	3.35				
Painters:					
brush	4.25				
Plumbers & Pipefitters	5.02				
Power Equipment Operators:					
back hoe	4.50				
bulldozer	4.90				
distributor(asphalt)	4.24				
forklift	4.25				
grader	4.50				
loader	4.64				
pans-scraper	4.25				
paver	4.25				
roller	4.40				
screed	4.21				
tractor	4.00				
Roofers	4.71				
Sheet metal workers	4.50				
Soft floor layers	5.00				
Tile setters	6.00				
Truck drivers	3.46				

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: SOUTH CAROLINA

COUNTIES: BERKELEY, CHARLESTON, & DORCHESTER

DECISION NUMBER: SC81-1150

DATE: DATE OF PUBLICATION

Supersedes Decision Number SC78-1087, dated October 13, 1978, in 43 FR 47443.

DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING & HEATING MECHANICS	$ 6.80				
BOILERMAKERS	12.75	1.275	1.10		.04
BRICKLAYERS	8.25				
CARPENTERS	6.47				
CEMENT MASONS	6.39				
ELECTRICIANS	10.45	.55	3% + .50	a	½ of 1%
IRONWORKERS	10.00	.60	1.00		.05
LABORERS	3.71				
MILLWRIGHTS	9.60	.45	.35		
PAINTERS	4.66				
PLASTERERS	7.00				
PLUMBERS & PIPEFITTERS	10.00	.55	.50		.10
ROOFERS	5.07				
SHEET METAL WORKERS	5.80				
SOFT FLOOR LAYERS	4.93				
SPRINKLER FITTERS	11.00	.85	1.20		.08
TILE SETTERS	6.46				
TRUCK DRIVERS	4.02				
WELDERS - Rate for craft.					
POWER EQUIPMENT OPERATORS:					
Backhoe	5.86				
Bulldozer	5.01				
Crane, derrick, dragline	8.50	.60	.55		
Motor grader	7.75				
Oiler	7.25				
Piledriver	5.49				

FOOTNOTE:

a. One Paid Holiday (8 Hours Pay): Labor Day, provided the employee is on the employer's payroll the last regular working day preceding Labor Day.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

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Tuesday
December 30, 1980

Part V

Department of Labor

Office of Federal Contract Compliance Programs

Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans, Veterans of the Vietnam Era, and Handicapped Workers; Proposed Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

and subcontractors to take affirmative action to employ and advance in employment qualified handicapped individuals. Regulations implementing section 503 were published in the

integrate the regulations of the various laws OFCCP enforces to the extent clarity permits, the definition changes proposed herein will appear in 41 CFR Part 60–1, when they are finally codified.

504 regulations and are proposed to be adopted here.

One area in which the DOL regulations under section 504 departed from those under section 503 is the

openings with an appropriate local office of the state employment service.

Summary of Proposed Regulations

There are several proposed

related nor designed specifically for affirmative action purposes. Although pre-employment medical examinations may continue to be given if all applicants for the job are subject to

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60-1, 60-250 and 60-741

Obligations of Contractors and Subcontractors; Affirmative Action Obligations of Contractors and Subcontractors for Disabled Veterans and Veterans of the Vietnam Era and Handicapped Workers

AGENCY: Office of Federal Contract Compliance Programs, Department of Labor.

ACTION: Proposed Rule.

SUMMARY: These proposed amendments to Department of Labor regulations implementing sections 503 of the Rehabilitation Act of 1973, as amended, and 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 will conform these regulations to the employment section of the Department of Labor regulations implementing section 504 of the Rehabilitation Act published on October 7, 1980 (45 FR 66706). It also deletes reporting requirements which are not necessary for proper performance under section 402, and it incorporates recent statutory changes in the definitions of disabled and Vietnam era veterans.

DATES: Comments are invited from other Federal agencies and the public. They must be received on or before March 2, 1981.

ADDRESSES: Comments should be sent to Director, Division of Program Policy, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: James Cisco, Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone (202) 523-9426.

SUPPLEMENTARY INFORMATION:

Background

Section 503 of the Rehabilitation Act of 1973, as amended (hereinafter the Act), requires government contractors and subcontractors to take affirmative action to employ and advance in employment qualified handicapped individuals. Regulations implementing section 503 were published in the Federal Register on June 11, 1974 (39 FR 20566) and amended on April 19, 1976 (41 FR 16148). Section 504 of the Act prohibits discrimination against qualified handicapped individuals in any program or activity receiving Federal financial assistance. On April 28, 1976, the President issued Executive Order 11914, which, in section 1, delegated to the Department of Health, Education and Welfare (HEW) responsibility for coordinating agency implementation of section 504 so that consistent policies, practices and procedures are adopted among all the Federal departments with respect to enforcement of section 504. (Executive Order 11914 has been superseded by Executive Order 12250 which among other things, transferred HEW's lead agency role on section 504 to the Department of Justice.)

Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 requires government contractors and subcontractors to take affirmative action to employ and advance in employment disabled and Vietnam era veterans. Regulations implementing Section 402 were published in the Federal Register on June 25, 1976 (41 FR 26386).

Those regulations were written to parallel the preexisting regulations issued pursuant to Section 503. Both regulations are presently identical, except where differences are necessary because of the nature of the protected class or differences in the statutes, to assure that covered contractors are bound to consistent requirements in both programs. Therefore, in an effort to retain consistency and avoid confusion and conflict, it is proposed to amend both regulations simultaneously.

Published as Part IV of this Federal Register are final regulations which consolidate and amend other provisions in the 503 and 402 regulations and generally renumber the various sections of Parts 60-250 and 60-741. Therefore references in this proposal are to the sections as renumbered in the final rule published today. Furthermore, because the purpose of the consolidation is to integrate the regulations of the various laws OFCCP enforces to the extent clarity permits, the definition changes proposed herein will appear in 41 CFR Part 60-1, when they are finally codified.

Section 2 of Executive Order 11914 required each Federal agency to issue rules, regulations and directives to implement section 504 consistent with the standards and procedures to be established by the Secretary of HEW. The rules, regulations and orders which HEW issued to implement section 504 could not be inconsistent with or duplicative of policies adopted by other Federal agencies relating to the handicapped, including those adopted in accordance with section 503.

HEW issued two sets of regulations under section 504. 45 CFR Part 85 sets forth the guidelines for Federal agency regulations, and 45 CFR Part 84 sets forth HEW's requirements with respect to its own programs of Federal financial assistance. The latter regulations are broader and more detailed than the guidelines for other Federal agencies.

In drafting its own regulations to implement section 504, which were proposed on January 4, 1980 (45 FR 1392), and published in final form on October 7, 1980, the Department of Labor generally followed HEW's guidelines and also incorporated substantial portions of HEW's regulations for its own programs when they were relevant to Department of Labor programs. However, there was some variance from the HEW guidelines and regulations based on the experiences of the handicapped community, employers and the public. Some parts of the existing section 503 and 402 regulations were incorporated in the 504 regulations, such as the requirement to review job qualifications and demonstrate that they are job related and consistent with business necessity. In the area of preemployment medical examinations, the Department of Labor section 504 regulations developed an approach which accomplishes the same objective as the HEW regulations while allowing more flexibility in the timing of the examination. That approach is adopted in these proposed amendments. The more detailed HEW definitions of handicapped individual and reasonable accommodation were included in the

504 regulations and are proposed to be adopted here.

One area in which the DOL regulations under section 504 departed from those under section 503 is the requirement in section 504 that every recipient must have an internal review procedure for handling complaints, and that complainants must utilize that procedure before filing with the Department of Labor. Published as Part VI of this Federal Register is a final rule amending the existing internal review procedures (41 CFR 60-741.25(b)) to permit a complainant to veto a referral of his or her complaint to the contractor's internal review procedure. This proposal does not affect that amendment. This distinction between the programs will not impose inconsistent requirements on contractors who are also covered under section 504, since compliance with the section 504 procedures by contractors would not constitute a violation of section 503.

With these proposed amendments to the section 503 regulations, the Department of Labor 503 and 504 regulations will not be inconsistent so that an employer which is both a government contractor and a recipient of Federal financial assistance from the Labor Department would not be subject to conflicting requirements with regards to employment.

The 504 regulations at 29 CFR 32.2(b), (45 FR 66709, Oct. 7, 1980), provide that government contractors who are also recipients and who are in compliance with section 503 shall be deemed in compliance with the employment provisions of section 504. The converse is not necessarily true, however. Section 504 prohibits discrimination against handicapped individuals, whereas section 503 goes beyond passive non-discrimination by mandating affirmative action to employ and advance in employment qualified handicapped individuals. Non-discrimination is just one element of an affirmative action effort.

In addition to amendments proposed to ensure uniformity in the handicapped and veterans enforcement programs, this proposal also deletes the existing obligation in the section 402 regulations for contractors to file quarterly reports of veterans hired with the appropriate local office of the state employment service. Accordingly, Federal contractors no longer need to submit or retain copies of these quarterly reports.

However, elimination of this reporting requirement does not affect the requirement that covered Federal contractors list suitable employment openings with an appropriate local office of the state employment service.

Summary of Proposed Regulations

There are several proposed amendments to the definitions section. The definitions of "disabled veteran" and "veteran of the Vietnam era" are being revised pursuant to recent statutory amendments extending coverage to greater numbers of disabled and Vietnam era veterans. The proposal also amends the definition of "handicapped individual" to conform to the definition under section 504.

This proposed amendment would modify the definitions of "qualified handicapped individual" and "qualified disabled veteran" to add the phrase "essential functions of the job". This would clarify the duty to make reasonable accommodations for handicapped individuals and disabled veterans qualified to perform the primary objectives of a job, but not all of its peripheral duties. Although it is not intended to require employers to conduct a formal job analysis for each job, addition of this phrase obligates employers to give careful consideration to reassignment of specific duties which a handicapped person or disabled veteran cannot perform and making other appropriate accommodations with respect to job functions which cannot reasonably be reassigned.

In applying the definition of qualified handicapped individual, contractors should be aware that the standards used to determine whether an individual is capable of safely and adequately performing the job shall be applied equally to all applicants and employees.

A definition of "reasonable accommodation" has also been added.

The proposal would also amend the affirmative action contract clauses at 41 CFR 60-741.3(a) and 41 CFR 60-250.3 by delineating in greater detail the types of employment activities covered under the regulations.

The proposed amendment would also conform 41 CFR 60-741.5(c) (3) and 41 CFR 60-250.5(c) (3), which deal with pre-employment medical examinations, to the Department's 504 regulations. They would restrict pre-employment inquiries into the medical status of an applicant to that information which is necessary to determine whether the applicant is capable of performing the requirements of the job or jobs for which the individual is applying. Where a number of jobs requiring different skills are available, information could be obtained under this proposal for proper job placement. However, contractors may no longer inquire on application forms into information which is neither job-related nor designed specifically for affirmative action purposes. Although pre-employment medical examinations may continue to be given if all applicants for the job are subject to them, the proposal would require that a medical examination follow a conditional decision to hire or be the last factor considered in the employment process.

The proposal also defines the role of the examining physician, which is to make an assessment of the employee's or applicant's functional abilities and limitations (e.g. no lifting over 30 pounds; 25 per cent reduction in peripheral vision) rather than to determine whether or not he or she should be hired or placed. The physician may advise and assist the placement officers, but actual decisions on suitability for jobs must be made by persons capable of evaluating physical or mental demands of particular jobs and matching applicants with appropriate jobs based upon those assessments. Because the pre-employment medical examination is a point in the screening process that is particularly susceptible to discrimination against the handicapped, the Department of Labor will scrutinize the practices of employers utilizing pre-employment medical examinations. In particular, the practices of employers which have not traditionally used such exams but institute them for the first time now will be closely examined to ensure that the requirements of these regulations are being carefully followed.

It is important to note that the purpose of conducting a medical examination under this proposal must be to determine an individual's current physical or mental ability, not to speculate about the long term possibility that the condition will progress or lead to inability to work. Thus, although an employer can consider disqualifying a person because his handicap creates a substantial risk of imminent injury, disqualification based on speculation about the risk of injury or speculation about inability to work at some imprecise time in the future is not permissible.

Although these amendments add no reporting requirements, and delete certain existing reporting requirements for veterans, they extend to three years the retention period for records regarding internal complaints. This consistent with the equivalent provision in the section 504 regulations, and will provide more adequate information to investigators regarding contractors' compliance practices.

An appendix is added to the regulations which gives examples of

several types of accommodation. This list is not all-inclusive, because accommodations arise in response to specific needs of particular employees or applicants, and cannot always be

PART 60-1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

1. The definitions of "Disabled veteran", "Handicapped individual"

(4) "Has a record of such an impairment" means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially

disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975. However, no veteran may be considered to be a veteran of the Vietnam era under this paragraph after

employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in

provisions and has so advised the state system, there is no need to advise the state system of subsequent contracts. The contractor may advise the state system when it is no longer bound by this contract clause.

(f) This clause does not apply to the listing

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several types of accommodation. This list is not all-inclusive, because accommodations arise in response to specific needs of particular employees or applicants, and cannot always be anticipated in advance. The entire purpose of accommodation involves matching individual needs with particular jobs at the point when they are needed. This appendix has a section not found in the appendix to the section 504 regulations dealing with architectural access. This section is added in these regulations because the nature of the 503 and 402 program differs from 504 in that they serve only employees and applicants of contractors, not program access for beneficiaries. Thus in section 503 and 402 architectural access is an element of the duty to provide reasonable accommodations rather than an independent obligation. We find this distinction necessary because, unlike section 504, 503 and 402 do not serve the general public. Therefore, they are designed to meet the specific needs of individuals at the time those needs arise. Since potential applicants or employees cannot be anticipated in advance, it would not be appropriate under section 503 and 402 to require costly renovations which might never be utilized. Therefore contractors must only renovate for access when an individual applies and is found qualified who needs architectural alterations. However, since employment offices and the employement process do serve the general public, they must be made accessible even in the absence of present handicapped employees or applicants. New construction and renovations and modifications of buildings must also meet appropriate desgin standards fot access at the time of construction or alteration.

It has been determined that this document does not contain a major proposal requiring preparation of a regulatory analysis under Executive Order 12044 (43 FR 12661) or under the Department's guidelines implementing Executive Order 12044 published at 44 FR 5570 on January 26, 1979.

In consideration of the foregoing, it is proposed to amend Parts 60–1, 60–250 and 60–741 of Chapter 60 of Title 41, Code of Federal Regulations, as set forth below.

Signed at Washington, D.C., this 22nd day of December 1980.

Ray Marshall,
Secretary.

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

1. The definitions of "Disabled veteran", "Handicapped individual", "Qualified disabled veteran" "Qualified handicapped individual" and "Veteran of the Vietnam era" at § 60–1.3 are revised and a new definition of "Reasonable accommodation" is added to read as follows:

§ 60–1.3 Definitions.

* * * * *

"Disabled veteran" means (a) a veteran who is entitled to compensation under laws administered by the Veterans' Administration, or (b) a person who was discharged or released from active duty because of a service-connected disability.

* * * * *

"Handicapped individual"

(a) "Handicapped individual" means any person who:

(1) Has a physical or mental impairment which substantially limits one or more major life activities; or

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment

(b) As used in the preceding paragraph of this section, the phrase:

(1) "Physical or mental impairment" means

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin and endocrine;

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) "substantially limits" means the degree that the impairment affects an individual's employability. A handicapped individual who is likely to experience difficulty in securing, retaining, or advancing in employment would be considered substantially limited.

(3) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and receiving education or vocational training.

(4) "Has a record of such an impairment" means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activity.

(5) "Is regarded as having such an impairment" means that the individual

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a contractor as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (b)(1) of this section but is treated by a contractor as having an impairment.

* * * * *

"Qualified disabled veteran" means a disabled veteran as defined in §60–1.3 who is capable of performing the essential functions of the job or jobs for which he or she is being considered with reasonable accommodation to his or her disability.

"Qualified handicapped individual" means a handicapped individual as defined in § 60–1.3 who is capable of performing the essential functions of the job or jobs for which he or she is being considered with reasonable accommodation to his or her handicap.

"Reasonable accommodation" means the changes and modifications which can be made in the structure of a job or in the manner in which a job is performed unless it would impose an undue hardship on the conduct of the contractor's business. Reasonable accommodation may include:

(a) Making the facilities used by handicapped employees, including common areas used by all employees such as hallways, restrooms, cafeterias and lounges, readily accessible to and usable by handicapped workers and

(b) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

* * * * *

"Veteran of the Vietnam era" means a person who (a) served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964 and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge, or (b) was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964 and May 7, 1975. However, no veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1991.

(Sec. 503, Pub. L. 93–112, 87 Stat. 393 (29 U.S.C. 793), as amended by sec. 111, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706) and sec. 112, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 790) and Executive Order 11758. Sec. 503(a), Pub. L. 92–540, 86 Stat. 1097 (38 U.S. 2012), as amended by sec. 402, Pub. L. 93–508, 88 Stat. 1593 (38 U.S.C. 2012) and sec. 508 and 509, Pub. L. 96–466, 94 Stat 2171 (38 U.S.C 2012))

PART 60–250—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

2. The authority citation for 41 CFR Part 60–250 is revised to read as follows:

Authority: Sec. 503(a), Pub. L. 92–540, 86 Stat. 1097 (38 U.S.C. 2012), as amended by sec. 508 and 509, Pub. L. 96–466, 94 Stat. 2171 (38 U.S.C. 2012).

3. Section 60–250.1 is revised to read as follows:

§ 60–250.1 Purpose and application.

The purpose of the regulations in this part is to assure compliance with section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, which requires government contractors to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era. The regulations in this part apply to all government contracts, including Federal deposit or share insurance, for the furnishing of supplies and services or for the use of personal property (including construction) in the amount of $10,000 or more. Contractors in compliance with this part which are also recipients of Federal financial assistance from the Department of Labor will be deemed in compliance with the employment provisions of the Department of Labor 504 regulations (see 29 CFR 32.2(b)).

4. Section 60–250.3 is revised to read as follows:

§ 60–250.3 Affirmative action clause.

Each agency and each contractor shall include the following affirmative action clause in each of its covered Government contracts (and modifications, renewals, or extensions thereof if not included in the original contract):

Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era

(a) The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following:

(1) Recruitment, advertising and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of pgression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the contractor;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer-sponsored activities including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(b) The contractor agrees that all suitable employment openings of the contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occuring at an estalishment of the contractor other than the one wherein the contract is being performed, but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the state employment service system wherein the opening occurs.

(c) Listings of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruiting source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. This listing of employment openings does not require the hiring of any particular job applicant or hiring from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.

(d) Documentation, including personnel records respecting job openings, recruitment and placement shall be made available.

(e) Whenever the contractor becomes contractually bound to the listing provision of this clause, it shall advise the employment service system in each state where it has establishments of the name and location of each hiring location in the state. As long as the contractor is contractually bound to these provisions and has so advised the state system, there is no need to advise the state system of subsequent contracts. The contractor may advise the state system when it is no longer bound by this contract clause.

(f) This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

(g) The provisions of paragraphs (b), (c), (d), and (e) of this clause do not apply to openings which the contractor proposes to fill from within its own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(h) As used in this clause: (1) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: Production and non-production; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings as are compensated on a salary basis of less than $25,000 per year. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the contractor proposes to fill from within its own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be in the best interest of the Government.

(2) "Appropriate office of the state employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(3) "Openings which the contractor proposes to fill from within its own organization" means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists.

(4) "Openings which the contractor proposes to fill pursuant to a customary and tranditional employer-union hiring arrangement" means employment openings which the contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the contractor and representatives of its employees.

(i) The contractor agrees to comply with the rules, regulations, and relevant orders of

the Secretary of Labor issued pursuant to the Act.

(j) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules,

consistent with business necessity and safe performance.

(2) Whenever a contractor applies job qualifications in the selection of applicants or employees for employment

disability, but shall provide selecting or referring officials sufficient information regarding any functional limitations relevant to proper job placement or referrral to appropriate training

evaluated by the employing official before a final decision to make an offer of employment is made, and

(B) The medical examination results shall be transmitted to the employing official and to the applicant only after a

(4) A contractor may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the

unable to perform the duties of their positions because of a physical or mental condition, contractors may be required to grant liberal time off or leave without pay when paid sick leave is exhausted and when disability is of a nature that is likely to respond to treatment or hospitalization. See, e.g. 339 Federal

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the Secretary of Labor issued pursuant to the Act.

(j) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(k) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be precribed by the Director, provided by or through the contracting officer. Such notice shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and vererans of the Vietnam era and the rights of applicants and employees.

(l) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement of other contractual understanding, that the contractor is bund by the terms of the Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(m) The contractor will include the provisions of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of the Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

5. Paragraphs (a), (c) and (d) of § 60–250.5 are revised to read as follows:

§ 60–250.5 Affirmative action policy, practices and procedures.

(a) *General requirements.* Under the affirmative action obligation imposed by section 402 of the Act, contractors are required to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era at all levels of employment, including the executive level. Such action shall apply to all employment practices including, but not limited to, those practices specified in paragraph (a) of the affirmative action clause set forth in §60–250.3.

* * * * *

(c) *Job qualifications.* (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the review of the appropriateness of all job qualifications to ensure that, to the extent job qualifications tend to exclude qualified disabled veterans because of their disability, they are related to the performance of the job and are consistent with business necessity and safe performance.

(2) Whenever a contractor applies job qualifications in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, which would tend to exclude qualified disabled veterans because of their disability, the qualifications shall be related to the specific job or jobs for which the individual is being considered and shall be consistent with business necessity and safe performance. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph.

(3) Except as provided in this section, a contractor may not conduct pre-employment medical examinations or make pre-employment inquiry of an applicant as to whether the applicant is a disabled veteran or as to the nature or the severity or a disability. A contractor may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.

(4) When a contractor is taking remedial action to correct the effects of past discrimination, when a contractor is taking voluntary action to overcome the effects of conditions that resulted in limited employment opportunities for qualified disabled veterans, or when a contractor is taking affirmative action under section 402 and the regulations in this part, the contractor may invite applicants for employment to indicate whether and to what extent they are disabled verterans if:

(i) The contractor states clearly on a written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts.

(ii) The contractor states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (c)(6) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(5) A contractor who routinely requires medical examinations as part of the employment selection process must demonstrate that each of the requirements of this subsection are met:

(i) The medical examination shall be performed by a physician qualified to make functional assessments of individuals in a form which will express residual capacity for work or training. Such an assessment does not require clinical determinations of disease or disability, but shall provide selecting or referring officials sufficient information regarding any functional limitations relevant to proper job placement or referrral to appropriate training programs. Factors which may be assessed may include, for example, use of limbs and extremities, mobility and posture, endurance and energy expediture, ability to withstand various working conditions and environments, use of senses and mental capacity.

(ii) The results of the medical examination shall be specific and objective so as to be susceptible to review by independent medical evaluators and shall be transmitted to the applicant or employee at the same time as the employing official;

(iii) The results of the medical examination shall not be used to screen out qualified applicants and employees but to determine proper placement and reasonable accommodation. The employing official using physical or mental information obtained pursuant to this section should be familiar with physical or mental activities involved in performing the job, and the working conditions and environment in which it is carried out. If the applicant is being considered for a variety of jobs having different requirements or skills, the employing official should make a functional assessment of the physical or mental demands of the jobs in order to match the applicant with the most suitable vacancy;

(iv) All potential employees for the job shall be subject to the medical examination;

(v) The procedures for using medical examinations or the medical information shall be constructed in such a manner that:

(A) A conditional job offer was made or the individual was conditionally placed in a job pool or conditionally placed on an eligibility list prior to the medical examination being performed; or

(B) The results of the medical examination were considered by the employing official only after a conditional decision to make a job offer or the individual had been placed conditionally in a job pool or conditionally placed on an eligibility list; that is, the medical results were the last factor evaluated by the employing official before a final decision to make an offer of employment was made.

(vi) Unless a conditional job offer is made prior to the medical examination, all potential employees for the job shall be informed at the time of the medical examination that:

(A) The results of the medical examination are the last factor evaluated by the employing official before a final decision to make an offer of employment is made, and

(B) The medical examination results shall be transmitted to the employing official and to the applicant only after a conditional decision to make a job offer has been made.

(6) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(i) Employing officials may obtain the information after making a conditional decision to make a job offer to the applicant or the applicant was placed conditionally in a job pool or placed conditionally on an eligibility list.

(ii) Supervisors and managers may be informed regarding restrictions on the work or duties of disabled veterans and regarding necessary accommodations;

(iii) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency care or treatment; and

(iv) Government officials investigating compliance with the Act shall be provided information upon request.

(d) *Reasonable accommodation.* (1) A contractor shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled veteran unless the contractor demonstrates that the accommodation would impose an undue hardship on the conduct of the contractor's business.

(2) Reasonable accommodation may include:

(i) Making the facilities used by employees readily accessible to and usable by disabled veterans, and,

(ii) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(3) In determining pursuant to paragraph (d)(1) of this subsection whether an accommodation would impose an undue hardship on the conduct of a contractor's business, factors which may be considered include:

(i) The overall size of the contractor's operation with respect to the number of employees, number and type of facilities, and financial resources;

(ii) The type of the contractor's operation, including the composition and structure of the contractor's workforce; and

(iii) The nature and cost of the accommodation needed.

(4) A contractor may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

Note.—For further explanation and examples of reasonable accommodations, see Appendix C.

* * * * *

6–7. Section 60–250.31(a) is revised to read as follows:

§ 60–250.31 Recordkeeping.

(a) Each contractor shall maintain for a period not less than three years records regarding complaints and actions taken thereunder, and such employment or other records as required by the Director or by this part and shall furnish such information in the form required by the Director or as the Director deems necessary for the administration of the Act and regulations in this part.

* * * * *

8. A new Appendix C is added as follows:

Appendix C

Accommodations may take many forms based on the type of disability and the needs of the individual. In developing appropriate accommodations, the individual should be consulted as to particular needs.

The following is a list of possible types of accommodations provided for guidance and technical assistance.

Reasonable Accommodations for Employees

(a) Job restructuring means the procedure which includes:

(1) Identifying the separate tasks that comprise a job or group of jobs;

(2) Developing new position descriptions which retain some of the tasks of the original job; and

(3) Developing a career ladder which builds upward from the new positions which contain the lesser skilled tasks to regular jobs. A restructured job can be clearly different from the original one in terms of skills, knowledge, abilities, and work experience needed to perform the work. Job restructuring is intended to maximize the abilities of the particular handicapped person and is not intended to permit a contractor to under-employ or job-stereotype that person. A restructured job, for example, could be one in which the more highly skilled but physically less demanding duties are retained, e.g. operating controls and switches in a steel mill, and less skilled, physically taxing duties, e.g. lifting, pulling, are reassigned to non-handicapped employees.

(b) Modify job schedules, for example, by allowing for a flexible schedule a few days a week so that an employee may undergo medical treatment or therapy. Work-time may also be altered to permit disabled veterans to travel to and from work during non-rush hours. For employees who become unable to perform the duties of their positions because of a physical or mental condition, contractors may be required to grant liberal time off or leave without pay when paid sick leave is exhausted and when disability is of a nature that is likely to respond to treatment or hospitalization. See, e.g. 339 Federal Personnel Manual–1–3(b)(1).

(c) Relocate particular offices or jobs so that they are in facilities accessible to and usable by disabled veterans. For example, an employee with a respiratory ailment can be placed in a "nonsmoking" and/or well-ventilated office.

(e) Acquire or modify equipment or devices. For hearing-impaired employees, this may include placing amplifiers on telephone receivers, making telephone equipment compatible with hearing aids, providing flashing lights to supplement telephone rings, or installing telecommunications devices (TDD'S or TTY's). For blind employees, this may include providing tape recorders or dictating machines for those who cannot type. For wheelchair-users, this may include raising on blocks a desk that is otherwise to low for the employee, rather than purchasing a specially-made desk. A contractor is not obligated to acquire or modify equipment that enables an employee to perform a particular job until after an employee with a need for these modifications is hired.

(f) Provide readers, interpreters, and similar assistance as needed for deaf, blind and other handicapped employees. In most instances, this would not require a full-time assistant.

(g) Decrease reliance solely on one form of communication. For example, for deaf employees this may include supplementing job orientation sessions with written manuals and other visual materials. If appropriate, a visual warning system should be installed. It may also include providing flashing lights to supplement auditory signals such as sirens and alarm bells. For blind employees, this may include making some communications available in braille, enlarged print or cassette recordings. A contractor should tailor the accommodations listed above to the needs of the individual employees who have been hired for a particular job.

(h) Provide human relations-sensitivity training on issues pertaining to discrimination against disabled veterans to all employees.

(i) Conduct ongoing training and planning sessions with supervisors, managers, personnel, technical experts and disabled veterans advocates to implement and evaluate methods of reasonable accommodation.

Accommodation for Applicants

(a) Announce job vacancies in a form readily understandable by mentally disabled veterans and by persons with impaired vision or hearing, for example, by making the announcement available in braille or on cassette tapes. Contractors shall undertake to explain, as appropriate, job announcements to mentally disabled veterans. For example, this might entail notifying known mentally disabled veterans of openings for positions that they might be able to perform and taking specific steps to explain clearly the nature of the job and its benefits to that individual.

(b) Provide readers, interpreters, and other similar assistance during the application, testing, and interview process.

(c) Appropriately adjust or modify examinations so that the test results accurately reflect the applicant's skills

PART 60–741—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR HANDICAPPED WORKERS

9. The authority citation for 41 CFR

(6) Fringe benefits available by virtue of employment, whether or not administered by the contractor;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other

(2) Whenever a contractor applies job qualifications in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, regarding any functional limitations relevant to proper job placement. Factors which may be assessed may include, for example, use of limbs and extremities, mobility and posture,

(B) The medical examination results shall be transmitted to the employing official and to the applicant only after a conditional decision to make a job offer has been made.

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(b) Provide readers, interpreters, and other similar assistance during the application, testing, and interview process.

(c) Appropriately adjust or modify examinations so that the test results accurately reflect the applicant's skills, aptitudes or whatever other factor that test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). This may require the extension of traditional time deadlines or allowing, for example, a blind person to answer an examination orally.

(d) If necessary, waive traditional tests and permit the applicant to demonstrate his or her skills through alternate techniques and utilization of adapted tools, aids, and devices.

Architectural Access

(a) Reasonable accommodation includes the duty to make the employment office, worksite and common areas accessible to handicapped applicants and employees. To the extent possible, employment offices, testing areas, waiting rooms and rest rooms serving the employment office should be accessible. A contractor whose only employment office is inaccessible and cannot reasonably be made accessible must develop an alternative method or sites for obtaining applications, conducting interviews and, where applicable, giving tests to disabled veteran applicants.

(b) When a disabled veteran qualifies for employment, the contractor must make the worksite and other common areas which the employee will use accessible unless such alterations would be unreasonable under the standards of these regulations. Common areas may include hallways, rest rooms, cafeterias, lounges, auditoriums, libraries, parking lots, credit-unions and other facilities generally have an affirmative action duty to ensure that any facilities constructed, acquired by purchase or lease or renovated after the effective date of its affirmative action program must be barrier-free, unless the contractor can establish that no mobility-impaired veteran could work in the affected worksite for reasons of business necessity. However, the business necessity reason which may relieve, for example, a coal mine, shipyard, logging camp or similar facility from the duty to be barrier free will not apply to the contractor's office jobs or other parts of the worksite where mobility-impaired workers may be qualified for jobs.

(d) For purposes of this appendix, newly built, acquired or renovated facilities will be deemed in compliance if they meet the standard for physical accessibility prescribed by the General Services Administration under the Architectural Barriers Act at 41 CFR 101–19.6. For specific employees, the contractor shall make whatever reasonable architectural modifications necessary which will enable the individual disabled veteran to work.

PART 60–741—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR HANDICAPPED WORKERS

9. The authority citation for 41 CFR Part 60–741 is revised to read as follows:

Authority: Sec. 503, Pub. L. 93–112, 87 Stat. 393 (20 U.S.C. 793), as amended by sec. 111, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706) and Sec. 122, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 790) and Executive Order 11758.

10. Section 60–741.1 is revised to read as follows:

§ 60–741.1 Purpose and application.

The purpose of the regulations in this part is to assure compliance with section 503 of the Rehabilitation Act of 1973, which requires government contractors to take affirmative action to employ and advance in employment qualified handicapped individuals. The regulations in this part apply to all government contracts and subcontractors, including Federal deposit or share insurance, for the furnishing of supplies and services or for the use of personal property (including construction) in excess of $2500. Contractors in compliance with this part which are also recipients of Federal financial assistance from the Department of Labor will be deemed in compliance with the employment provisions of the Department of Labor 504 regulations (see 29 CFR 32.2(b)).

11. Paragraph (a) of the affirmative action clause contained in § 60–741.3 is revised to read as follows:

§ 60–741.3 Affirmative action clause.

* * * * *

Affirmative Action for Handicapped Workers

(a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following:

(1) Recruitment, advertising and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the contractor;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer-sponsored activities including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

* * * * *

12. Paragraphs (a), (b), (c) and (d) of § 60–741.5 are revised to read as follows:

§ 60–741.5 Affirmative action policy, practices and procedures.

(a) *General requirements.* Under the affirmative action obligation imposed by section 503 of the Act, contractors are required to take affirmative action to employ and advance in employment qualified handicapped individuals at all levels of employment, including the executive level. Such action shall apply to all employment practices including but not limited to those practices specified in paragraph (a) of the affirmative action clause set forth in § 60–741.3.

(b) *Proper consideration of qualifications.* Contractors shall review their personnel processes to determine whether their present procedures assure careful, thorough and systematic consideration of the job qualifications of known handicapped applicants and employees for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. To the extent that it is necessary to modify their personnel procedures, contractors shall include the development of new procedures for this purpose in their affirmative action program required under this part. These procedures must be designed so as to facilitate a review of the implementation of this requirement by the contractor or the government. (Appendix B attached is an example of an appropriate set of procedures. The procedures in Appendix B are not required and contractors may develop other procedures which are appropriate to their circumstances.)

(c) *Job qualifications.* (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the review of the appropriateness of all job qualification requirements to ensure that, to the extent job qualifications tend to exclude handicapped individuals because of their handicap they are related to the performance of the job and are consistent with business necessity and safe performance.

(2) Whenever a contractor applies job qualifications in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, which would tend to exclude handicapped individuals because of their handicap, the qualifications shall be related to the specific job or jobs for which the individual is being considered and shall be consistent with business necessity and safe performance. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph.

(3) Except as provided in this section, a contractor may not conduct pre-employment medical examinations or make pre-employment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or the severity of a handicap. A contractor may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.

(4) When a contractor is taking remedial action to correct the effects of past discrimination, when a contractor is taking voluntary action to overcome the effects of conditions that resulted in limited employment opportunities for qualified handicapped individuals, or when a contractor is taking affirmative action under section 503 and the regulations in this part, the contractor may invite employees and applicants for employment to indicate whether and to what extent they are handicapped if:

(i) The contractor states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts;

(ii) The contractor states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (c)(6) of section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(5) A contractor who routinely requires medical examinations as part of the employment selection process must demonstrate that each of the requirements of this subsection are met:

(i) The medical examination shall be performed by a physician qualified to make functional assessments of individuals in a form which will express residual capacity for work or training. Such an assessment does not require clinical determinations of disease or disability, but shall provide selecting or referring officials sufficient information regarding any functional limitations relevant to proper job placement. Factors which may be assessed may include, for example, use of limbs and extremities, mobility and posture, endurance and energy expenditure, ability to withstand various working conditions and environments, use of senses and mental capacity.

(ii) The results of the medical examination shall be specific and objective so as to be susceptible to review by independent medical evaluators and shall be transmitted to the applicant or employee at the same time as the employing official;

(iii) The results of the medical examination shall not be used to screen out qualified applicants and employees but to determine proper placement and reasonable accommodation. The employing official using physical or mental information obtained pursuant to this section should be familiar with physical or mental activities involved in performing the job, and the working conditions and environment in which it is carried out. If applicant is being considered for a variety of jobs having different requirements or skills, the employing official should make a functional assessment of the physical or mental demands of the jobs in order to match the applicant with the most suitable vacancy;

(iv) All potential employees for the job shall be subjected to the medical examination;

(v) The procedures for using medical examinations or the medical information shall be constructed in such a manner that:

(A) A conditional job offer was made or the individual was conditionally placed in a job pool or conditionally placed on an eligibility list prior to the medical examination being performed; or

(B) The results of the medical examination were considered by the employing official only after a conditional decision to make job offer or the individual had been placed conditionally in a job pool or conditionally placed on an eligibility list; that is, the medical results were the last factor evaluated by the employing official before a final decision to make an offer of employment was made.

(vi) Unless a conditional job offer is made prior to the medical examination, all potential employees for the job shall be informed at the time of the medical examination that:

(A) The results of the medical examination are the last factor evaluated by the employing official before a final decision to make an offer of employment is made, and

(B) The medical examination results shall be transmitted to the employing official and to the applicant only after a conditional decision to make a job offer has been made.

(6) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(i) Employing officials may obtain the information after making a conditional decision to make a job offer to the applicant or the applicant was placed conditionally in a job pool or placed conditionally on an eligibility list;

(ii) Supervisors and managers may be informed regarding restrictions on the work or duties of qualified handicapped persons and regarding necessary accommodations;

(iii) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(iv) Government officials investigating compliance with the Act shall be provided information upon request.

(d) *Reasonable accommodation.* (1) A contractor shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the contractor demonstrates that the accommodation would impose an undue hardship on the conduct of the contractor's business.

(2) In determining pursuant to paragraph (d)(1) of this section whether an accommodation would impose an undue hardship on the conduct of a contractor's business, factors which may be considered include:

(i) The overall size of the contractor's operation with respect to the number of employees, number and type of facilities, and financial resources;

(ii) The type of the contractor's operation, including the composition and structure of the contractor's workforce; and

(iii) The nature and cost of the accommodation needed.

(3) A contractor may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

Note.—For further explanation and examples of accommodations, see Appendix C.

* * * * *

13. Section 60–741.30(a) is revised to read as follows:

§ 60–741.30 Recordkeeping.

(a) Each contractor shall maintain for a period not less than three years records regarding complaints and actions taken thereunder and such

(d) Relocate particular offices or jobs so that they are in facilities accessible to and usable by handicapped persons. For example, an employee with a respiratory ailment can be placed in a "nonsmoking" and/or well-ventilated office.

skills through alternate techniques and utilization of adapted tools, aids, and devices.

Architectural Access

(a) Reasonable accommodation includes the duty to make the employment office,

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§ 60–741.30 Recordkeeping.

(a) Each contractor shall maintain for a period not less than three years records regarding complaints and actions taken thereunder and such employment or other records as required by the Director or agency or by this part and shall furnish such information in the form required by the Director or agency or as the Director deems necessary for the administration of the Act and regulations issued under this part.

* * * * *

Appendix A [Removed]; Appendices B and C [Redesignated as Appendices A and B]

14. Appendix A is removed and Appendices B and C are designated as A and B and a new Appendix C is added as follows:

Appendix C

Accommodations may take many forms based on the type of handicap and the needs of the individual. In developing appropriate accommodations, the individual should be consulted as to particular needs.

The following is a list of possible types of accommodations provided for guidance and technical assistance.

Accommodations for Employees

(a) Job restructuring means the procedure which includes:

(1) Identifying the separate tasks that comprise a job or group of jobs;

(2) Developing new position descriptions which retain some of the tasks of the original job; and

(3) Developing a career ladder which builds upward from the new positions which contain the lesser skilled tasks to regular jobs. A restructured job can be clearly different from the original one in terms of skills, knowledge, abilities, and work experience needed to perform the work. Job restructuring is intended to maximize the abilities of the particular handicapped person and is not intended to permit a contractor to under-employ or job-stereotype that person. A restructured job, for example, could be one in which the more highly skilled but physically less demanding duties are retained, e.g. operating controls and switches in a steel mill, and less skilled, physically taxing duties, e.g. lifting, pulling, are reassigned to non-handicapped employees.

(b) Modify job schedules, for example, by allowing for a flexible schedule a few days a week so that an employee may undergo medical treatment or therapy. Worktimes may also be altered to permit handicapped individuals to travel to and from work during non-rush hours. For employees who become unable to perform the duties of their positions because of a physical or mental condition, contractors may be required to grant liberal time off or leave without pay when paid sick leave is exhausted and when the disability is of a nature that is likely to respond to treatment or hospitalization. See, e.g. 339 Federal Personnel Manual–1–3(b)(1).

(c) Modify work procedures and training time.

(d) Relocate particular offices or jobs so that they are in facilities accessible to and usable by handicapped persons. For example, an employee with a respiratory ailment can be placed in a "nonsmoking" and/or well-ventilated office.

(e) Acquire or modify equipment or devices. For hearing-impaired employees, this may include placing amplifiers on telephone receivers, making telephone equipment compatible with hearing aids, providing flashing lights to supplement telephone rings or installing telecommunications devices (TTD's or TTY's). For blind employees, this may include providing tape recorders or dictating machines for those who cannot type. For wheelchair-users, this may include raising on blocks a desk that is otherwise too low for the employee, rather than purchasing a specially-made desk. A contractor is not obligated to acquire or modify equipment that enables an employee to perform a particular job until after an employee with a need for these modifications is hired.

(f) Provide readers, interpreters, and similar assistance as needed for deaf, blind and other handicapped employees. In most instances, this would not require a full-time assistant.

(g) Decrease reliance solely on one form of communication. For example, for deaf employees this may include supplementing job orientation sessions with written manuals and other visual materials. If appropriate, a visual warning system should be installed. It may also include providing flashing lights to supplement auditory signals such as sirens and alarm bells. For blind employees, this may include making some communications available in braille, enlarged print or cassette recordings. A contractor should tailor the accommodations listed above to the needs of the individual employees who have been hired for a particular job.

Accommodation for Applicants

(a) Announce job vacancies in a form readily understandable by mentally handicapped persons and by persons with impaired vision or hearing, for example, by making the announcement available in braille or on cassette tapes. Contractors shall undertake to explain, as appropriate, job announcements to mentally disabled veterans. For example, this might entail notifying known mentally handicapped employees of openings for positions that they might be able to perform and taking specific steps to explain clearly the nature of the job and its benefits to that individual.

(b) Provide readers, interpreters, and other similar assistance during the application, testing and interview process.

(c) Appropriately adjust or modify examinations so that the test results accurately reflect the applicant's skills, aptitudes or whatever other factor that test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). This may require the extension of traditional time deadlines or allowing, for example, a blind person to answer an examination orally.

(d) If necessary, waive traditional tests and permit the applicant to demonstrate his or her skills through alternate techniques and utilization of adapted tools, aids, and devices.

Architectural Access

(a) Reasonable accommodation includes the duty to make the employment office, worksite and common areas accessible to handicapped applicants and employees. To the extent possible, employment offices, testing areas, waiting rooms and rest rooms serving the employment office should be accessible. A contractor whose only employment office is inaccessible and cannot reasonably be made accessible must develop an alternative method or sites for obtaining applications, conducting interviews and, where applicable, giving tests to handicapped applicants.

(b) When a handicapped individual qualifies for employment, the contractor must make the worksite and other common areas which the employee will use accessible unless such alterations would be unreasonable under the standards of these regulations. Common areas may include hallways, rest rooms, cafeterias, lounges, auditoriums, libraries, parking lots, credit-unions and other facilities generally available for employee use.

(c) If there are no present handicapped employees or applicants, a contractor is not required to retrofit facilities in the absence of need. However, contractors have an affirmative action duty to ensure that any facilities constructed, acquired by purchase or lease or renovated after the effective date of its affirmative action program must be barrier-free, unless the contractor can establish that no mobility-impaired individual could work in the affected worksite for reasons of business necessity. However, the business necessity reason which may relieve, for example, a coalmine, shipyard, logging camp or similar facility from the duty to be barrier free will not apply to the contractor's office jobs or other parts of the worksite where mobility-impaired workers may be qualified for jobs.

(d) For purposes of this appendix, newly built, acquired or renovated facilities will be deemed in compliance if they meet the standard for physical accessibility prescribed by the General Services Administration under the Architectural Barriers Act at 41 CFR 101–19.6. For specific employees, the contractor shall make whatever reasonable architectural modifications necessary which will enable the handicapped individual to work.

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December 30, 1980

Part VI

Department of Labor

Office of Federal Contract Compliance Programs

Government Contractors; Affirmative Action Requirements; Final Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

on December 28, 1979. The December 28, 1979, proposal also stated that nonsubstantive editorial changes would be made on final rulemaking, and that consideration would be given to

Register are proposed amendments to Parts 60–250 and 60–741 which are designed to conform these two parts to the Department of Labor's regulations implementing section 504 of the

regulations and that some of the regulations already contained in Part 60–1 would be applicable to the Veterans and handicapped programs. The amendment is adopted as proposed.

programs. No useful purpose is served by maintaining separate sections in three different and separate parts of the regulations for definitions. This view makes particular sense because the

the Government. But the major problem raised by the comments relates to the definition in its employment context. The basic problem perceived by the comments is the breadth of the

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1, 60–2, 60–4, 60–20, 60–30, 60–50, 60–60, 60–250, and 60–741

Government Contractors; Affirmative Action Requirements

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Final rule.

SUMMARY: The regulations published today amend a limited number of the regulatory provisions under Executive Order 11246, as amended, and under sections 402 and 503 of the Vietnam Era Veterans' Readjustment Assistant Act of 1974, as amended, and the Rehabilitation Act of 1973, as amended, respectively. This final rule also consolidates and integrates certain portions of the regulations pertaining to sections 402 and 503 into 41 CFR Part 60–1 which, heretofore, has been devoted solely to regulations implementing Executive Order 11246.

EFFECTIVE DATE: These regulations, except new reporting and recordkeeping requirements established by this final rule (see discussion following item 49 below), shall take effect January 29, 1981.

FOR FURTHER INFORMATION CONTACT: James W. Cisco, Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, Room C–3324, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523–9426.

SUPPLEMENTARY INFORMATION: On December 28, 1979, the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, published in the **Federal Register** (44 FR 77006) a proposed rule to amend, consolidate, and integrate certain regulatory provisions pertaining to the three programs administered by OFCCP: Executive Order 11246, as amended; section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; and section 503 of the Rehabiliation Act of 1973, as amended. The December 28 publication stated that comments would be received until February 26, 1980. However, the comment deadline was extended until March 24, 1980, by a notice published in the **Federal Register** on February 22, 1980 (45 FR 11856), which also proposed that a new paragraph (g) be added to proposed § 60–1.29, originally published on December 28, 1979. The December 28, 1979, proposal also stated that nonsubstantive editorial changes would be made on final rulemaking, and that consideration would be given to republishing 41 CFR Chapter 60 in its entirety so that users of the OFCCP regulations would have all parts intact until they could be codified in the Code of Federal Regulations. Some editorial changes have been made in the final rule published today. No changes have been made in Part 60–3, the Uniform Guidelines on Employee Selection Procedures (1978), and Part 60–3 is not being republished today. Three clarifying amendments to Part 60–4, pertaining to construction contractors, were published on October 3, 1980, (45 FR 65976), and became effective on November 3, 1980. Part 60–4, including the November 3, 1980, amendments thereto, is republished in its entirety today so that users of Part 60–4 will have a single document which contains all the construction regulations under Executive Order 11246 until they have been published in codified form. Part 60–40, pertaining to disclosure of documents, presently is being considered for revision as a result of the Supreme Court's opinion in *Chrysler Corporation v. Brown*, 441 U.S. 281, and is not being republished today. Part 60–60 is being deleted from the regulations today. However, some parts of 60–60 have been transferred to Parts 60–1 and 60–2. See discussion of Part 60–60 below. Except as indicated above, 41 CFR Chapter 60 is being republished today. Those parts of Chapter 60 which are not being republished today may be found in the latest edition of 41 CFR Chapter 60. It is not expected that the regulations published today will be codified into 41 CFR Chapter 60 until July 1981, and that revised Title should be available to the public early in 1982.

Since consolidation of the Executive Order program into the Department of Labor, it has been OFCCP's practice to review simultaneously a contractor's compliance with each of the three laws administered by OFCCP. To reflect this unified approach of administering and enforcing the three laws, an effort has been made to consolidate and integrate the regulations of each of the three programs to the extent clarity permits. The regulations published today, therefore, incorporate into Part 60–1 important elements which are common to each of the three laws. Some of these provisions previously appeared in Parts 60–250 (veterans) and 60–741 (handicap). Some rearrangement of specific sections also has been made. In addition, published as the Part V of this **Federal Register** are proposed amendments to Parts 60–250 and 60–741 which are designed to conform these two parts to the Department of Labor's regulations implementing section 504 of the Rehabilitation Act of 1973. The latter regulations were published on October 7, 1980 (45 FR 66706), and the preamble to those regulations stated that such conforming amendments would be proposed.

A total of 602 comments were received on the December 28, 1979, and February 22, 1980, proposals. Comments also were received after the comment period closed. This latter group of comments were reviewed, analyzed and considered but are in addition to the 602 comments.

Section-by-Section Analysis

1. *Section 60–1.1.* This section describes the purpose and application of the regulations contained in Part 60–1. Presently, Part 60–1 applies only to Executive Order 11246. However, the proposal would amend Part 60–1 by transferring some of the regulations in Part 60–250 (pertaining to section 402 of the Vietnam Era Veterans' Readjustment Assistance Act) and in Part 60–741 (pertaining to section 503 of the Rehabilitation Act of 1973) to Part 60–1. Also, the proposal would amend Part 60–1 to make certain procedures (e.g., show cause notice and preaward reviews), heretofore applicable only to the Executive Order, applicable to sections 402 and 503. In view of these proposed amendments, it was necessary to expand the scope of § 60–1.1 to reflect that Part 60–1, in addition to implementing requirements of the Executive Order, implements requirements of sections 402 and 503.

The comments received on § 60–1.1 assumed that all requirements under the Executive Order program would be applicable to sections 402 and 503 if the proposed amendment were adopted. Specifically, they were concerned that contractors would be required to develop affirmative action programs (AAPs) for Vietnam Era and disabled veterans and handicapped workers pursuant to Executive Order 11246 procedures. One comment also raised questions as to whether sections 402 and 503 were being extended to cover federally assisted construction contracts. Other comments suggested that the proposed amendment was an attempt to evade the Contracts Disputes Act of 1978 (92 Stat. 2383).

The proposed amendment was intended merely to reflect that some of the regulations applicable to the sections 402 and 503 programs were being transferred to Part 60–1 of the

regulations and that some of the regulations already contained in Part 60–1 would be applicable to the Veterans and handicapped programs. The amendment is adopted as proposed.

The Part 60–1 regulations which have been transferred from Parts 60–250 and 60–741 are specifically identified as being applicable only to the veterans and handicapped programs. Regulations already contained in Part 60–1, for the most part, now state whether they are applicable to sections 402 and 503. An expressed statement is not made if the application of the regulation is clear from the context. The definition of "Vietnam era veteran" in § 60–1.3, for example, is not specifically limited to section 402, but that definition has no meaning for Executive Order purposes.

Regulations regarding the development of AAPs for the veterans and handicapped programs are still published in Parts 60–250 and 60–741, respectively. The regulations do not require contractors to follow Executive Order procedures in Part 60–2 in developing AAP's under sections 402 and 503. Neither do sections 402 and 503 apply to federally assisted construction contracts.

Presumably, the sentence in the proposed amendment to § 60–1.1(b) which stated that the regulations in Chapter 60, Title 41 of the Code of Federal Regulations govern a contractor's compliance obligations under the Executive Order and sections 402 and 503, led some persons submitting comments to conclude that the regulations attempt to evade the Contract Disputes Act. The thrust of the statement in § 60–1.1(b) is that with regard to matters of equal employment opportunity, the OFCCP regulations, not the disputes clause in the contract, determine whether the contractor is in compliance. This provision has been in § 60–1.1 since at least 1968 (see 33 FR 7804). The Contract Disputes Act is not in issue. The Department of Labor view of the Contract Disputes Act, however, is that it does not change the obligations of contractors with regard to the programs administered by OFCCP.

2. *Section 60–1.3.* Presently, each of the three OFCCP programs has separate regulations. Each set of regulations contains a definitions section. Because of the similarities among the three programs, certain words and phrases are common to each, and the definitions of such words and phrases are identical. Thus, words like contract, contractor, contracting agency, complaint, and Government, to list a few, are common to each program. Of course, there also are definitions which are peculiar or unique to only one of the three programs. No useful purpose is served by maintaining separate sections in three different and separate parts of the regulations for definitions. This view makes particular sense because the regulations of all three contract compliance programs have been consolidated into 41 CFR Chapter 60. Prior to 1976, the section 402 regulations appeared in Title 29 of the CFR and the section 503 regulations appeared in Title 20 of the CFR. Accordingly, the December 28, 1979, proposal would amend 41 CFR Chapter 60 by consolidating the definitions relating to the three contract compliance programs into 41 CFR 60–1.3. The major amendment proposed to § 60–1.3 last December related to consolidating the definitions. Modifications of four definitions and the addition of a small number of new definitions also were proposed.

Some definitions were proposed to avoid repetitions throughout the regulations. Where the regulations prohibit certain conduct or describe activities which may result in a violation, for example, the practice has been to state in the regulations that the act or omission is a violation of the Order, the Equal Opportunity clause and the regulations implementing the Order. Similar clauses are used in the sections 402 and 503 regulations. The definition of "Order" therefore was proposed to include Executive Order 11246 and its predecessor executive orders, the equal opportunity clause and the rules, regulations or orders issued pursuant to the Executive Order. Sections 402 and 503 also were defined to make it clear that references to the regulations, for example, were not necessary to bind contractors to their 402 and 503 obligations.

Similarly, the word "contractor" was proposed to be amended to include the word "subcontractor," to avoid the present practice of repeating subcontractor each time contractor is used in the regulations in order to demonstrate that the particular regulation applies to both contractors and subcontractors. The same is true with regard to the words "contract" and "subcontract."

The amendment to the definition section is adopted essentially as proposed. Some changes in the definitions have been made based on the comments, however. We now consider the definitions about which the comments raised specific problems.

Applicant. The proposal recognized that this word relates to one who is seeking employment, and in the context of federally assisted construction, one who is seeking financial assistance from the Government. But the major problem raised by the comments relates to the definition in its employment context. The basic problem perceived by the comments is the breadth of the definition of "applicant for employment." The comments were concerned more about what they characterized as informal applications for employment and related problems which would result in attempting to maintain applicant flow data on telephone inquiries, for example.

In attempting to define an applicant for employment, an effort has been made to provide a workable definition. The Department of Labor's view is that the definition must be sufficiently broad to protect from discrimination all persons who apply for work. It would be easy to limit the term applicant to one who has filed a written application for employment with a contractor. Such a definition, however, would permit a contractor to prescreen too easily those persons who would be given an opportunity to file the formal application. On the other hand, a contractor is certainly in a position to gather more data on a person who submits a formal application and is granted some type of an interview than it is on a person who makes only a casual inquiry about employment. But it is unlikely that any definition of applicant can be constructed with such precision that reasonable people would not disagree about specific factual circumstances fitting within the definition. On balance, the definition provides adequate protection and gives a contractor a fair standard to follow. In the event that disagreements develop with regard to specific factual circumstances, they can be resolved through conciliation and enforcement procedures.

Complaint. Except for the addition of the phrase, "former employee," the definition of complaint is adopted as proposed. The addition of this new phrase is technical in nature and is made simply to avoid disputes as to whether a former employee may file complaints. Several comments were submitted on the proposed definition, but they relate more to proposed § 60–1.23 and therefore have been treated in the discussion on that section.

Establishment. The proposal attempted to balance the obligation of all contractors subject to 41 CFR 60–1.40 and Part 60–2 to cover all employees with an affirmative action plan with the fact that some establishments are so small that it would not be unreasonable to combine them for affirmative action program purposes. Individuals

submitting comments were primarily concerned with the fact that the term "small locations" was not defined and that almost all physical locations have

transferred to §§ 60–1.45, 60–1.46 and 60–1.47, respectively. In addition, as part of the consolidation of the regulations, these sections have been amended to

depositors, the questions remain of whether deposit or share insurance are contracts within the meaning of Executive Order 11246, sections 402 and

from their vendors and others which may have or develop a contractual relationship with them.

The proposed amendment, consistent

on Equal Employment Opportunity. The present regulations continue that policy and provide for hearings and other efforts with regard to employee

Accordingly, the proposed amendment to § 60–1.9 is adopted as modified. (See discussion of § 60–1.25

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submitting comments were primarily concerned with the fact that the term "small locations" was not defined and that almost all physical locations have someone who exercises a degree of personnel authority, even though most decisions are made at some other location. In order to meet those concerns, a revision has been made in the definition adopted today. "Small" has been defined as less than 50 employees, and such locations may be combined regardless of whether some personnel functions are exercised there. However, in order to prevent against possible misuse of the ability of contractors to consolidate establishments, the definition clarifies the fact that they must be in the same SMSA or labor area. In addition, § 60–2.2 has been clarified so that there can be no doubt regarding each covered contractor's obligation to include all its employees in an AAP.

Handicapped individual. A change was proposed in this definition. However, no major revisions in the section 503 program were proposed because efforts are underway to conform as much as possible the section 503 and the Department of Labor's section 504 regulations. Therefore any amendment to the 503 regulations will be deferred to that effort.

Minority group. No amendment was proposed to this definition; however, it is being deleted from the regulations because it no longer serves a useful purpose. It was added initially to require construction contractors to include at least minority women in their goals efforts. Since May 1978 female utilization goals have been required of construction contractors.

Prime contractor. A number of comments objected to this definition and to the definition of "contractor" because they include persons holding, and for purposes of enforcement, persons who have held a contract. The comments expressed the view that whenever the procured goods or services have been delivered in accordance with the contract, the contractor's obligation is terminated. The provisions objected to, however, have been in the regulations since 1968 (see 33 FR 7805), and were not proposed to be amended. The rationale of the provision is that, for example, a contractor which has delivered the goods under the contract may nevertheless be sanctioned if it has not performed the equal employment opportunity obligations of the contract.

3. *Section 60–1.4.* Paragraphs (d), (e) and (f) of this section relating to incorporation by reference, incorporation by operation of the Order and adaptation of language have been transferred to §§ 60–1.45, 60–1.46 and 60–1.47, respectively. In addition, as part of the consolidation of the regulations, these sections have been amended to include sections 402 and 503 within their ambit, and comparable sections in Parts 60–250 and 60–741 have been deleted.

4. *Section 60–1.5(a).* Generally, contracts for $10,000 or less are exempt from the requirements of the Order. This exemption has not been applied to financial institutions which are covered by the Order if they act as depositories of Federal funds in any amount or as issuing or paying agents for U.S. savings bonds or savings notes in any amount.

OFCCP believes that Federal deposit and share insurance are contracts within the meaning of the Order and of sections 402 and 503. Such contracts are excluded from the generally applicable $10,000 and under exemption of the Order. (The jurisdictional amount under section 402 is $10,000 and must exceed $2,500 under section 503.) OFCCP's opinion that deposit and share insurance are contracts within the meaning of the Order and sections 402 and 503 is contested by the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Board of Governors of the Federal Reserve System (FRB) and the Comptroller of the Currency (Comptroller). These financial institutions regulatory agencies believe that deposit and share insurance are not contracts within the meaning of the Order and of sections 402 and 503. These agencies and the Federal Home Loan Bank Board (FHLBB) contend that only the financial institutions regulatory agencies themselves have the authority to debar, deny, suspend or terminate deposit or share insurance.

On February 22, 1980, OFCCP published a clarification, at 45 FR 11856, of its proposal of December 28, 1979. In the clarification, OFCCP indicated that it did not intend to debar financial institutions from deposit or share insurance. Rather, in a proposed addition to § 60–1.29 (Enforcement Proceedings), OFCCP indicated that, where a financial institution which has Federal deposit or share insurance is alleged to have violated the Order, section 402 or section 503, the Department of Labor would pursue one of two options with respect to the insurance relationship—either refer the matter to the appropriate Federal financial institutions regulatory agency for action under that agency's procedures or to the Department of Justice.

While the clarification should relieve public concern that OFCCP would not endanger the accounts of innocent depositors, the questions remain of whether deposit or share insurance are contracts within the meaning of Executive Order 11246, sections 402 and 503 and whether the financial institutions regulatory agencies have exclusive jurisdiction to deny or terminate deposit or share insurance. All agencies will be free to argue their respective legal positions, if necessary, in any subsequent legal proceedings that may arise.

Under the regulations published today, where financial institutions have contractual relationships with the Federal Government (other than deposit or share insurance), OFCCP may enforce any suspected violations of the Order or of sections 402 or 503 in any manner described in § 60–1.29, including referral of the matter to the appropriate financial institution regulatory agency for enforcement action. See § 60–1.29(i).

In those few instances in which the only nexus between a financial institution and the Federal Government is deposit or share insurance, OFCCP will refer the matter to the Department of Justice under section 209(a)(2) of Executive Order 11246 and § 60–1.29(f) of the regulations for injunctive relief or, if appropriate, exercise its discretion pursuant to section 209(a)(3) of Executive Order 11246 § 60–1.29(h) of these regulations to recommend to the EEOC that proceedings be instituted under Title VII of the Civil Rights Act of 1964. In addition, OFCCP also may refer such matters to financial institutions regulatory agencies.

Regulations for the FHLBB explicitly prohibit employment discrimination. See 12 CFR 528.7 (1979). OFCCP and EEOC encourage the FDIC and NCUA to publish similar regulations.

The proposed amendment to add utilities which comprise part of a State or local government to the list of agencies of such governments which must develop and maintain written affirmative action programs has been adopted.

5. *Section 60–1.7.* This section requires contractors with 50 employees and a contract of $50,000 to file the EEO–1 report. It also requires contractors to make certain certifications in their bids with regard to AAPs and other aspects of compliance. In addition, prime contractors are required to obtain the same certifications from their subcontractors. The certification requirement has resulted in a major paperwork requirement. Contractors, not knowing precisely when they may be required to make such certifications or require them of their subcontractors, have adopted the practice of requiring on an annual basis such certifications from their vendors and others which may have or develop a contractual relationship with them.

The proposed amendment, consistent with the proposed amendments to § 60–1.40 and § 60–2.1, would require a contractor with 50 employees and contracts which total $50,000 to file the EEO–1 report. No amendments were proposed regarding the certification requirements. Nevertheless, the comments raised the paperwork burden argument both with respect to EEO–1 reports and the certification requirements.

The proposed amendment to § 60–1.40 and to § 60–2.1 which would require contractors to accumulate contracts to $50,000 for purposes of coverage under Revised Order 4 is adopted (see discussion under § 60–1.40 below). Similary, the proposed amendment to § 60–1.7 to require such contractors to submit EEO–1 reports is adopted.

The certification of the prime contractor to the contracting agency is retained. However, the obligation of prime contractors to obtain certifications from subcontractors is discontinued. In other words, prime contractors will make the certification only to the contracting agency and only with respect to their own practices. They no longer will be required to obtain certifications from their subcontractors.

Finally, paragraph (c) of this section which states that data obtained under § 60–1.7 will be used only in connection with administering the Executive Order and the Civil Rights Act of 1964 was not proposed to be amended. Paragraph (c), however, is viewed as a potential obstacle to sharing information for purposes of enforcing other EEO laws. It is very likely, for example, that OFCCP will share information with Federal agencies which have EEO responsibilities under statutes other than the Civil Rights Act. Therefore, in the regulation adopted today, paragraph (c) has been deleted from § 60–1.7. See discussion of § 60–1.43 below.

6. *Section 60–1.8.* This section requires a certification that the contractor's facilities are not segregated. The proposal would delete the certification but contractors would continue to have an obligation not to maintain facilities on a segregated basis. Contractors also would be required to assure privacy between the sexes in toilet, changing and similar facilities. The regulation is adopted as proposed.

7. *Section 60–1.9.* The regulatory policy of providing for limited union participation in the compliance process under the Executive Order dates back to the days of the President's Committee on Equal Employment Opportunity. The present regulations continue that policy and provide for hearings and other efforts with regard to employee representatives, to assist in implementing the purposes of the Order. They also provide that collective bargaining representatives shall be given an opportunity to present their views to OFCCP when compliance with the Order necessitates a revision of the labor agreement. In addition, the Director of OFCCP may notify Federal, state and local agencies when unions are violating equal employment laws.

The proposal would restructure § 60–1.9. The proposal also would transfer comparable provisions from the veterans (Part 60–250) and the handicapped (Part 60–741) regulations as part of the general consolidation of the regulations, and delete the corresponding provisions in Parts 60–250 and 60–741. The thrust of the comments was that the proposal would allow union participation in activities which essentially are matters between the Government and contractors, and that such participation should not occur without concomitant duties on the unions.

As pointed out above, the concepts embodied in this regulation have remained consistent since the early 1960s and revisions of those concepts were not proposed. Moreover, this section and the corresponding sections in Parts 60–250 and 60–741 have not generated substantial activity. It also is considered to be essential that unions be allowed to present their views, particularly when a bargaining agreement may require revision, in order to achieve compliance under the three laws administered by OFCCP. This approach is consistent with the concept of conciliation which is a touchstone of all Federal equal employment opportunity laws. Accordingly, this section has been amended to require notification to the union of on site reviews and an invitation to participate in conciliation discussions to the extent those discussions involve proposed changes in the collective bargaining agreement.

Contractors are obligated to advise labor unions and other workers' representative of the contractors' contractual obligations under the Executive Order. The OFCCP also expects contractors to inform unions and other workers' representatives of items disclosed in the compliance review which require changes in a collective bargaining agreement, and initially seek a resolution with the union.

Accordingly, the proposed amendment to § 60–1.9 is adopted as modified. (See discussion of § 60–1.25 relating to show cause notices.)

8. *Section 60–1.20.* This section outlines in broad form the basic procedures for conducting compliance reviews. The proposal would amend § 60–1.20 by consolidating therein all the general procedures relating to compliance reviews except for preaward reviews. The proposal also would transfer certain items relating to compliance reviews to this section from Revised Order 14 (Part 60–60) which today is being deleted from the regulations. Finally, the proposal would amend § 60–1.20 to state that compliance reviews under sections 402 and 503 would be governed by this section also.

Some comments objected to the references to sections 402 and 503 on the grounds that compliance reviews are not authorized under those two statutes. These statutes, of course, provide for broad rulemaking authority. They emphasize complaint processing but nothing in the statutes indicates that compliance is to be achieved only through investigations of complaints. Indeed, if Congress had intended that compliance activity should depend upon receipt of a complaint it could have so provided explicitly. The only reasonable conclusion is that Congress intended that a full complement of enforcement mechanisms be available to achieve compliance with sections 402 and 503.

Some of the comments raised objections to the provision which states that contractors will be notified that commitments in a conciliation agreement do not preclude future determinations of noncompliance based either on a finding that the commitments are inadequate to achieve compliance or on a violation not previously revealed. This concept has been in the regulations since 1968 (see 33 FR 7808). Moreover, it is not unusual for conciliation agreements or even court orders to be modified in order to achieve full compliance. If circumstances do occur where further corrective action is required, it is appropriate to attempt other resolutions to achieve full compliance. In such event, the rule adopted today requires that the contractor be given notice by show cause rather than by the 15-day notice of violations. See § 60–1.25. The comments also raised questions about delegations of authority to conduct compliance reviews. The practice is, as reflected in the proposal, that compliance reviews are conducted under the general supervision of the OFCCP Assistant

Regional Administrators. However, from time-to-time, national office officials also conduct compliance reviews, and

increases in the preaward threshold, but urged extension of the thresholds to $10 million and 36 months.

associations agreed with the increased preaward thresholds and recommended even higher thresholds. Neither

accepted debarments rather than comply. Such contractors must come into compliance with the Order and sections 402 and 503 before they may

the small number of persons who would not file themselves or authorize another to file on their behalf. The contractors recommended that the section be

the complainant would be notified of any deferral. Complaints deferred to EEOC and unresolved at the time of a later OFCCP compliance review, as well

Regional Administrators. However, from time-to-time, national office officials also conduct compliance reviews, and the purpose of the delegation is to continue to allow for that possibility.

The section is adopted as proposed. However, small technical word changes have been incorporated into the final rule such as substituting the word "action" for "commitment" in § 60-1.20(c).

9. *Section 60–1.21.* The proposal would add a new section to the regulations which would modify the existing preaward concept. Preawards would also be applied to the veterans and handicapped workers programs. Forty-five days notice from contracting agencies to OFCCP would be required for formally advertised competitive contracts, and 120-days notice would be required for negotiated contracts, in place of the present 30-days notice for all contracts subject to the preaward requirement. Preaward reviews would be mandated only where the proposed contact exceeds $1 million, and the proposed contract is to be performed at an establishment with 250 or more employees where a compliance review has not been conducted in the previous 24 months. Currently, there is no employee number threshold. The present monetary threshold is "exceeding $1 million" and the previous compliance review period is 12 months. A new provision would give the Director, OFCCP, discretionary authority to conduct preaward compliance reviews of any contractor even though the establishment has less than 250 employees and a compliance review has been conducted within the last 24 months. If the compliance review is not completed or if the contractor/bidder's alleged noncompliance is not resolved prior to the award date of the contract, the proposal would also permit the Director to request the contracting agency to delay the award of the contract until such time as the contractor is found eligible or ineligible for the contract in accordance with the hearing procedures proposed in § 60-30.38. If the Director requested a delay, the contracting agency would be required to delay award unless it determined that a delay would be contrary to the national security. In all other cases where the preaward review is not completed, clearance would be granted.

Civil rights groups were about evenly split on the proposal with half favoring retention of present thresholds and the remainder favoring the "freed-up resources" to concentrate on target reviews. Contractors favored the increases in the preaward threshold, but urged extension of the thresholds to $10 million and 36 months.

Contractors and Federal agencies opposed the provisions requiring 45 days advance notice for competitive contracts and 120 days for negotiated contracts (paragraph c). Both groups stated that the time delay would increase costs and, in many instances, would hamper Federal agencies in their procurement efforts. Most of these comments recommended that the present 30-days notice be retained.

Contractors objected to the delay of award (paragraph (f)) because they viewed such a procedure as a debarment without a hearing, and Federal agencies viewed it as an interference with the procurement process. One comment recommended adding a provision that the contracting agency would be obligated to delay the award only where it was feasible.

Several comments stated that the subsection is not clear, especially the provision which provides that unless a preliminary hearing has been commenced, or would be invoked shortly, the award of the contract shall not be withheld. They said the word "shortly" is indefinite. One contractor recommended that a specific number of days be set.

Some contractors and a Federal agency opposed paragraph (i) which would authorize the Director to direct a preaward review on the basis of a contractor's prior statement that it would no longer contract with the Government. The Federal agency questioned how the Government would know when a contractor has made such a statement. Contractors commented that the paragraph would constitute retaliation against contractors for exercising their freedom of speech.

This section and the entire proposal, consistent with Executive Order 12044, were subject to intensive participation by the public prior to publication in the Federal Register. Persons thought to have an interest were directly contacted and a series of open conferences was held. As a result of this public participation, this section went through a number of revisions prior to publication for comment. The suggestions for change made by the various groups in the formal comments reflect the fact that the proposal represents a balancing of interests. While the increase in the thresholds for preawards was not popular with some civil rights groups, others recognized the benefits which will result from the use of "freed-up" resources to concentrate on reviews which may produce greater results. Contractors and contractor associations agreed with the increased preaward thresholds and recommended even higher thresholds. Neither contractors nor Federal agencies favored the increased timeframes for advance notice for preaward reviews or authority for the Director to request delay of award. Both groups complained of the increased costs and delays that would result from delay of award. Most contractors objected to paragraph (i), which would give the Director discretion to order a preaward review where a contractor has stated that it will not contract with the Government.

The rule adopted today has been modified further to take into account some of the objections raised in the comments. The prime concerns of the Department of Labor are that the interest of groups protected under the three programs be assured and that procedures be designed which accomplish that goal in a fair and uniform way with consideration being given to the resources available to perform the job. The proposal was designed to achieve these goals. The timeframes proposed with regard to notice from contracting agencies, the Department believes, give OFCCP just a bit more flexibility to process preaward requests. However, the 120-day notice proposed for negotiated contracts has been dropped and a flat 45-day preaward notice has been adopted for both advertised and negotiated contracts. The extension of the review threshold to 24 months also assists in that same connection. (For a discussion of the types of problems the present preaward procedures are causing see 44 FR 77006.)

Although the number of reviews mandated under the present preaward procedure will be reduced because of the increased thresholds, discretionary preaward reviews are being authorized so that even if such reviews are not mandated, they will be conducted where warranted.

Paragraph (i) as proposed has not been adopted. The sole idea behind proposed paragraph (i) was that where a contractor discontinues contracting with the Government because of what the contractor perceives as burdens of the contract compliance programs, it was considered to be a fair requirement to determine whether the contractor is complying with equal employment obligations before it resumes a contractual relationship with the Government. After considering all factors, however, paragraph (i), as proposed, is not necessary to achieve this goal. For example, there have been instances where contractors have

accepted debarments rather than comply. Such contractors must come into compliance with the Order and sections 402 and 503 before they may resume Government contracting. Moreover, a noncomplying contractor may be debarred even though it has performed the goods or services aspects of its contract (see discussion above regarding the definition of prime contractor). Also, paragraph (e) of this section as adopted today provides adequate authority to conduct preaward reviews in such situations.

Finally, with regard to requests that awards be delayed so that the preliminary enforcement proceeding be instituted, the word "shortly" has been deleted and the phrase, "15 working days," has been substituted. The concept is that a decision to pursue the hearing route has been made at least preliminarily before the request to the contracting agency is made. Such delays would allow the necessary paperwork and filing procedures to be completed.

A clarification has been added to show that the request applies to all other pending contracts at the establishment which triggered the preaward review. The request would not apply to establishments which are not part of the preaward review.

10. *Section 60–1.22.* No substantive changes were proposed in this section. It would combine present §§ 60–1.21 and 60–1.22. The proposal is adopted.

11. *Section 60–1.23.* The proposed amendment to this section relates to complaints filed by third parties.

All contractors and contractor associations opposed the addition of third party complaints which do not identify the complainant. The female and minority groups which commented upon this section favored the addition of third party complaints.

All contractors which submitted detailed statements on the third party complaint issue were of the opinion that permitting complaints by unidentified third parties would be a denial of due process. Most said the procedure would be unfair and that contractors have the right to know their accusers. Others commented that unidentified third party complaints would lead to contractor harassment; that third party complaints would frequently be frivolous; that such a process constituted an unwarranted fishing expedition; that it would lead to forum shopping; that the process is not needed because persons are protected from intimidation and interference; that unions would be able to file against contractors under this provision which would permit OFCCP to interfere in the collective bargaining process; and that it is not needed as it would apply only to the small number of persons who would not file themselves or authorize another to file on their behalf. The contractors recommended that the section be deleted or that the complainant be identified. It was also recommended that the contractor receive a copy of the complaint before any investigation. Educational institutions, as a whole, were opposed to inclusion of third party complaints.

The wording of proposed § 60–1.23(a) which states that, "Signed third party complaints will be accepted which do not identify the complainant * * *" is confusing. Obviously, if a complaint is signed, the complainant is identified. The confusion was compounded because the proposal would delete a provision in the existing regulations at § 60–1.23(a) which permits class type complaints that do not identify the discriminatees. The intent was and is to permit a complaint alleging class type discrimination to be filed by third parties regardless of whether the discriminatees are identified. Individual complaints may be filed by the discriminatee or the discriminatee's authorized representative. Third parties would be able to file class type complaints without authorization from the discriminatees.

The drafting problems discussed above have been corrected and the proposal as modified is adopted. Comparable changes have been made in the complaint provisions of the veterans and handicapped regulations (41 CFR 60–250.23 and 41 CFR 60–741.23). The comments regarding due process, etc., are not well founded. A complaint simply precipitates the investigatory process. If the allegations in the complaint are verified by the investigation, then the Department of Labor becomes the accuser and attempts resolution through conciliation. Moreover, it is essential that information regarding employment discrimination be available to the Department. This avenue to employment discrimination information should not be closed because a victim of discrimination is reluctant to make direct contact on his/her own behalf. Indeed, other enforcement programs administered by the Department for many years have observed the practice of accepting anonymous complaints.

12. *Section 60–1.24.* The proposal would permit OFCCP the discretion to "defer," rather than "refer," complaints to EEOC. Deferral would mean that OFCCP would retain jurisdiction over the complaints and could later investigate the complaints if OFCCP chose to do so. The proposal states that the complainant would be notified of any deferral. Complaints deferred to EEOC and unresolved at the time of a later OFCCP compliance review, as well as those retained at OFCCP, would be investigated and resolved during that compliance review of the contractor against which the complaints are filed.

Nearly all comments were opposed to deferral. Contractors and contractor associations thought the OFCCP should not process complaints, except for broadly based systemic complaints, and should refer all other complaints to EEOC. Others objected that retaining complaints to be resolved during compliance reviews was impractical; that complicated complaints take more time to resolve than is permitted during the compliance review process; that merging complaint resolution with compliance reviews gives OFCCP disproportionate leverage to force settlement; that concentrating on complaints will give a few persons attention at the expense of women and minorities in general; and that deferral was contrary to President Carter's Reorganization Plan. Contractors also recommended that OFCCP notify them of deferrals in the interest of fairness. Most contractors and contractor associations expressed fear that deferral would lead to multiple investigations of the same complaint.

As proposed, § 60–1.24 undoubtedly would expand the number of complaints processed by OFCCP. OFCCP, as a matter of policy and procedure, traditionally has referred most individual complaints to EEOC for investigation and normally retained only class type complaints for investigation. Under proposed paragraph (b), OFCCP would be required to investigate all complaints which it elected to retain and not defer to EEOC. In addition, all class type complaints would be deemed to be retained by OFCCP, even though a copy may have been sent to EEOC. The class or systemic complaints would be required to be investigated and resolved in the next compliance review of the contractor.

In the final regulation, paragraph (b) has been modified to make it clear, consistent with OFCCP past practice, that all systemic and class complaints will be retained, investigated and resolved by OFCCP. However, EEOC, under the final rule adopted today, could request that such class complaints be referred to it in order to avoid duplication and to assure effective law enforcement. In resolving the class complaints referred to EEOC at its request, the two agencies will consult and coordinate with each other to

ensure that the resolution of such complaints comports with the requirements of the two agencies. As modified, the proposal is adopted. In addition, this section has been amended

the word "existing," paragraph (a) is voided. The contractors recommended that paragraph (b) be eliminated.

Paragraph (b). Several contractors and two construction contractor associations

under section 503. A contractor stated that a conciliation agreement should be accepted when signed rather than 45 days after receipt by the Director.

On the matter of when a conciliation

and relates to the authority of the Director to reconsider matters. See discussion under § 60–1.24 herein.

16. *Section 60–1.28.* The present regulation prohibits intimidation or

invoke a preliminary enforcement proceeding suggesting that the procedure will be abused. The prime purpose of a preliminary enforcement proceeding is to obtain results promptly

The amendment is adopted as proposed. In addition, a requirement has been added to § 60–1.31 that notification be provided to prime contractors when reinstatement of a debarred contractor

ensure that the resolution of such complaints comports with the requirements of the two agencies. As modified, the proposal is adopted. In addition, this section has been amended on final rulemaking to state that OFCCP will also investigate and resolve individual complaints, on file with OFCCP at the commencement of a compliance review, against the contractor establishment if resolution of such individual complaints does not unduly delay completion of the compliance review. Also, on final rule making the word "refer" has been substituted for "defer."

With regard to OFFCCP investigating complaints, the Executive Order specifically authorizes complaint investigations. Moreover, all Federal EEO agencies are making every effort to ensure that duplication (in this instance separate investigations by EEOC and OFCCP on the same issue) is eliminated.

Paragraph (c)(5), regarding the authority of the Director to reconsider matters pending in OFCCP has been transferred to 41 CFR 60–1.27 because paragraph (c)(5) has application and implications beyond complaints.

13. *Section 60–1.25.* This amendment was proposed as a new section dealing with show cause notices and notices of violation. Paragraph (a) would set forth the circumstances under which a show cause notice or a notice of violation would be served on the contractor. Paragraph (b) delineates the contents of a show cause notice and when it would be used.

Paragraph (c) would provide the circumstances under which a notice of violation would be used. A notice of violation would be permitted where circumstances do not permit 30 days to resolve the matters under investigation; where there is a serious violation; and where the violation is the subject of a prior conciliation agreement, letter of commitment or consent or other decree.

Paragraph (d) would provide that where a notice to show cause or notice of violation proposes a change in a collective bargaining agreement, the collective bargaining representative would be given notice of the proposed change and invited to participate in conciliation.

Paragraph (a). This paragraph would have provided for a show cause notice in appropriate circumstances if deficiencies revealed in the course of a review or investigation have not been resolved by some form of an agreement. Paragraph (b) would have provided for a show cause notice in appropriate circumstances where the deficiency is not covered by an "existing" agreement. One comment argued that as a result of the word "existing," paragraph (a) is voided. The contractors recommended that paragraph (b) be eliminated.

Paragraph (b). Several contractors and two construction contractor associations recommended deletion of the last sentence which permits finding a previous conciliation agreement inadequate.

Paragraph (c). An association claimed that the paragraph is vague as to when a notice of violation would be used. An association and two educational institutions further stated that 15 days would be insufficient to conciliate and respond. Further, the association believed that a serious violation would require more, not less, time to resolve.

Paragraph (d). One contractor stated that OFCCP should not get involved in union-management disputes unless there is an impasse. A union commented that there is not enough participation by unions.

The rule adopted today follows the concepts contained in the proposal. However, certain changes have been added to conform this section to other regulations and to take into account problems raised by the comments. Some restructuring of this section has been made in this process.

Under present regulations a show cause notice is not required in all instances. Accordingly, § 60–1.25 has been modified to refer to situations in which a show cause notice is not required to be used. With respect to paragraph (b), the intention was to show that in some circumstances a notification other than a show cause notice must be used. However, the phraseology was confusing. This confusion has been eliminated by cross referencing other sections of the regulations which describe the situations when a notification other than a show cause is required.

With regard to the comments concerning inadequate remedies in conciliation agreements and concerning collective bargaining, see the discussions above relating to compliance reviews (§ 60–1.20) and unions participating in the conciliation process (§ 60–1.9).

14. *Section 60–1.26.* This section would consolidate the regulations dealing with the contents of conciliation agreements. The major amendment proposed was that conciliation agreements would not be entered into after enforcement proceedings have been initiated.

The general tenor of the comments received from contractors is that clarification is needed as to when a letter of commitment would be required. Another comment stated that a complaint is necessary for jurisdiction under section 503. A contractor stated that a conciliation agreement should be accepted when signed rather than 45 days after receipt by the Director.

On the matter of when a conciliation agreement would be used, paragraph (e) states that a letter of commitment, rather than a concilation agreement, is to be used for "minor technical deficiencies." The OFCCP manual provides instruction as to when conciliation agreements as opposed to letters of commitment should be used.

The provision that a conciliation agreement will not be entered into after enforcement proceedings have commenced contemplates that subsequent settlements normally will be in the form of consent decrees rather than conciliation agreements. It was not intended to suggest that settlements would not be made after enforcement proceedings commence.

Contractors recommended that conciliation agreements become effective when signed by the Assistant Regional Administrator because otherwise they are uncertain whether the conciliation agreement has been accepted by the Director. However, the 45-day review period is considered to be important at least for the immediate future in order to ensure uniformity and consistency among the regions.

The amendment is adopted as proposed.

15. *Section 60–1.27.* Subsection (a) of this section which presently is section 60–1.25 permits the Director to assume jurisdiction over matters pending in OFCCP. The only substantive change proposed to this section would be to add a reference to sections 402 and 503. The thrust of the comments was that this section was an unnecessary statement of the obvious and recommended that the section be deleted.

This section was designed at a time when compliance responsibilities were assigned to various compliance agencies and was intended to give OFCCP some control, in appropriate circumstances, over cases being processed by the former compliance agencies or which would normally be within the jurisdiction of a particular compliance agency. The present regulations, however, do make specific delegations in certain instances (see 41 CFR 60–1.20(b)). By stating in the regulations that the Director may assume jurisdiction over matters pending in OFCCP, a number of process questions will be avoided which have arisen from time-to-time even after the Executive Order program was consolidated into the Department of Labor. Subsection (b) of this section as adopted today presently is contained in § 60–1.24(c)(5) and relates to the authority of the Director to reconsider matters. See discussion under § 60–1.24 herein.

16. *Section 60–1.28.* The present regulation prohibits intimidation or interference because an individual participates in compliance activities (e.g., filing a complaint, assisting in an investigation, etc.). The prohibition applies to such participation under Federal and state and local laws. The proposed amendment would transfer comparable provisions in the section 402 and 503 regulations to this section. The proposed amendment also would add a new provision which would prohibit a contractor from intimidating or interfering with an individual because he/she opposed an employment practice under any Federal or state or local law. The latter provision was added to the regulations at the request of the EEOC in consultations with that agency under Executive Order 12067 prior to publication of the December 28, 1979, proposal.

The comments objected to the references to state and local laws. This reference, of course, has been in the regulations for a number of years albeit not in the specific context of the new provisions. The objective of this section is not, as the comments suggest, to enforce a state or local law but to proscribe activities which interfere with a person's exercise of his/her rights under a state or local law. The amendment is adopted as proposed.

17. *Section 60–1.29.* This section sets forth in general outline form the procedures governing legal proceedings to enforce the Order and sections 402 and 503. The proposal would reorganize the present regulation and transfer it from 41 CFR 60–1.26 to 41 CFR 60–1.29. The major additions to the section would be paragraphs (e), (h) and (i). The latter two paragraphs relate, in part, to the issue of Federal deposit and share insurance, and are discussed under § 60–1.5(a).

Paragraph (e) would establish a preliminary enforcement procedure under 41 CFR 60–30.38. The Preliminary enforcement proceeding would be utilized when: (1) The contractor is engaging in unlawful employment practices; (2) the contractor has refused or failed to develop or submit a current AAP; (3) the contractor has failed or refused to supply requested records; (4) the contractor has failed or refused to permit access to its premises, records, or to its employees or witnesses for interviewing; or (5) the contractor has engaged in intimidation or retaliation.

The comments expressed the view that "unlawful employment practices" is too broad a standard upon which to invoke a preliminary enforcement proceeding suggesting that the procedure will be abused. The prime purpose of a preliminary enforcement proceeding is to obtain results promptly in those circumstance where the issues lend themselves to quick resolution and where a prompt resolution is needed; for example, when there are impediments to completing the review. When such impediments exist, a process should be available to resolve them promptly. Like the expedited hearing procedure, the preliminary enforcement procedure is not to be used for resolution of complex factual issues, including complex issues of affected class relief.

The comments are correct in stating that "unlawful employment practices" is a broad standard on which to invoke the preliminary enforcement procedures. However, the other standards are specific and relatively well defined. It is conceivable that practices could be revealed in an investigation which are not conveniently catalogued under one of the specific standards but which nevertheless could be resolved promptly. The general standard would permit the processing of such practices under the procedure. At the same time, however, it must be acknowledged that the timeframes involved in the preliminary enforcement procedure apply to the Department as well as to the contractor. The timeframes themselves will operate to confine the procedure to circumstances which actually are suitable for prompt resolution. In addition, the word "unlawful" has been deleted and the phrase, "which violate its contractual obligations," has been added to further define "employment practices."

Section 60–1.29 is adopted as proposed with the modifications discussed here and elsewhere in this preamble.

18. *Section 60–1.30.* The present regulation states that no contractor will be debarred without being afforded an opportunity for a hearing. A similar requirement is contained in the section 402 and 503 regulations. The proposal would consolidate the requirements for each program into this section. In addition, the proposal would add the requirement that prime contractors would be notified when contractors are ineligible for subcontracts.

A small number of comments were received on the proposal which focused on the notification of prime contractors requirement. The comments objected to the notification requirement, but also suggested that if there were to be notification of debarments, fair play dictated that comparable notification be provided when reinstatement is ordered. The amendment is adopted as proposed. In addition, a requirement has been added to § 60–1.31 that notification be provided to prime contractors when reinstatement of a debarred contractor is ordered.

19. *Section 60–1.31.* This section and comparable sections in Parts 60–250 and 60–741 presently provide that a debarred contractor may petition for reinstatement in a letter to the Director, and that the burden will be on the contractor to show that it has established and will carry out policies and practices in compliance with the Order, section 402 and section 503, as appropriate.

The proposal would establish a single reinstatement procedure for each of the OFCCP programs. The contractor would have the burden to demonstrate that it is entitled to reinstatement. The Director could require a compliance review before reinstating the contractor or remand the matter to the Administrative Law Judge before making a final determination on the petition for reinstatement. Also, any party or person who participated in the debarment proceeding would have a right to participate in the reinstatement procedure.

A relatively small number of comments were received on this proposed amendment. The thrust of the comments was that a petition for reinstatement should be granted promptly, and that reinstatement should not be impeded by complex procedures.

The amendment is adopted. However, a requirement has been added that the petition for reinstatement be served on the parties to the original debarment proceeding. If parties to the proceeding are going to be able to participate meaningfully in the reinstatement procedure as they will have a right to do under 41 CFR 60–1.31(e), a copy of the petition is necessary.

In addition, clarifications have been made on final rulemaking with regard to procedures to be followed when the Director remands a matter subsequent to a petition for reinstatement.

The procedures which have been added are based on experience with petitions for reinstatement and the need for a process to gather facts so that the Department may determine whether the contractor will implement and carry out employment practices and policies which are in compliance with the Order and sections 402 and 503, as appropriate. In some instances, a compliance review may be necessary to make that determination and in others a hearing before the Administrative Law Judge may be appropriate. In either situation, the objective is to determine

what the facts are and to provide fair procedures in making these determinations.

20. *Section 60–1.40.* This section presently establishes the dollar volume

1.40 adopt AAPs which include the noncraft positions.

The basic concept behind the aggregation of contracts to reach the $50,000 volume is that consideration

Compliance and University of California, Berkeley, Case No. 78–OFCCP–7.

It frequently is necessary to include source documents in the investigation

25. *Section 60–2.2.* This section provided for contractor "pass overs," in certain instances, without a hearing, based on a finding of nonresponsibility. It also provided for determinations of

requirement that the confidentiality of data be maintained prior to determination of relevancy also has been retained. As mentioned earlier in this preamble, Part 60–40, pertaining to

sex has played no role in the setting of levels of pay." The portion emphasized is the proposed amendment.

The contractor comments stated that the proposal was an attempt to assert

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what the facts are and to provide fair procedures in making these determinations.

20. *Section 60–1.40.* This section presently establishes the dollar volume and employee thresholds for requiring written affirmative action programs under the Executive Order. The proposal would add two new requirements to this section. Contractors with 50 or more employees would be required to aggregate their contracts and would be subject to the written AAP requirement if the total dollar value of the contracts is $50,000 or more. Also, a construction contractor with 50 noncraft employees and a $50,000 or more contract or contracts totaling $50,000 or more would be required to develop and implement a written AAP.

The majority of the comments expressed objection either to the aggregation of the dollar value of contracts or to the expansion of § 60–1.40 to encompass the noncraft workforce of construction contractors.

Some technical language modifications in the proposal have been made. Also paragraph (b) of the section has been amended to clarify that when a contractor becomes subject to § 60–1.40, it must develop and implement a written AAP at each of its establishments within 120 days from the date it is first covered. With these changes, the proposed amendment has been adopted.

A loophole always has existed under the Executive Order program's written AAP requirements with regard to noncraft employees of construction contractors who are not included in the construction affirmative action plans. Section 60–1.40 does not expressly exclude construction contractors in imposing the written AAP requirement. However, § 60–2.1 of Revised Order 4, which provides the guidelines for developing an AAP, specifically limits the application of Revised Order 4 to nonconstruction contractors. Because of the inconsistencies in the language of the two sections, no concerted effort has ever been made to require construction contractors to develop AAPs for their noncraft employees. The noncraft employees include categories such as estimators, project managers, financial personnel, clerks, secretaries and typists. Some nonconstruction contractors also employ the same types of employees and are required to include such job categories in their AAPs. There is no reasonable basis for allowing the loophole to continue to exist with regard to noncraft employees of construction contractors, and the final rule adopted today requires that construction contractors subject to § 60–1.40 adopt AAPs which include the noncraft positions.

The basic concept behind the aggregation of contracts to reach the $50,000 volume is that consideration should be given to the total amount of Government business the contractor has in addition to the size of a particular contract.

21. *Section 60–1.43.* This section presently requires access to the contractor's records for inspection and copying. Comparable provisions are contained in the sections 402 and 503 regulations. The proposal would amend the regulations by incorporating the sections 402 and 503 requirements into this section. The proposal also would include the present practice of interviewing employees as part of the compliance review and would add computer tapes and print-outs to the list of specific types of data contractors would be required to produce in the investigation or compliance review.

The comments basically were concerned about data gathered in the investigation, taken off-site and subsequently disclosed pursuant to a request under the Freedom of Information Act. Some comments also were opposed to allowing employee interviews.

The issues raised by the proposal and the comments go to the ability of the Government to conduct its investigation. If the data are not needed for the investigation it should not be gathered in the investigation, and procedures are incorporated into the regulations to allow contractors to obtain rulings with regard to data they believe are not relevant to the investigation. See, e.g., 41 CFR 60–2.4. If they are needed, on the other hand, obtaining copies and making them part of the investigation file should not depend upon whether the Freedom of Information Act may require disclosure if a request is received. Indeed, the provision that information obtained under this section will be used only in connection with the Order and the Civil Rights Act of 1964 was not included in the proposal but is being deleted from this section by the regulation adopted today because, *inter alia*, a representation that the use of the information will be so limited may conflict with the Freedom of Information Act. Nevertheless, the Department of Labor is sensitive to contractor concerns regarding the possible confidentiality of data gathered in compliance reviews and has taken steps to ensure that confidential data is not routinely released. See e.g., the Decision and Administrative Order of the Secretary of Labor *In the matter of U.S. Department of Labor, Office of Federal Contract Compliance and University of California, Berkeley*, Case No. 78–OFCCP–7.

It frequently is necessary to include source documents in the investigation file because of the need for review by supervisory and other personnel, such as lawyers, in the event enforcement procedures are required.

Interviews of employees also are critical to the investigation process, and it is more convenient and saves time and money for interviews to be conducted at the time of the on-site review. This is standard operating procedure in law enforcement programs. Accordingly, the amendment is adopted as proposed and with the deletion mentioned above.

22. *Sections 60–1.44, 60–1.45, 60–1.46 and 60–1.47.* These sections relate to rulings and interpretations; adaptation of language in the equal opportunity clause in the Order and the affirmative action clauses of sections 402 and 503; incorporation by reference; and incorporation by operation of law, respectively. The proposal would simply provide for a single regulation, applicable to each program, on each issue, and would delete the corresponding sections in Parts 60–250 and 60–741. See discussion of § 60–1.4. These sections are adopted as proposed.

23. *Section 60–1.48.* This section presently appears at § 60–1.24(c)(4). The present regulation allows a contractor to comply with the demands of OFCCP and then request a hearing. The proposal requested comments as to whether it should be deleted or retained. The comments supported retaining the regulation. However, because of the way the regulations have been reorganized, it no longer fits properly in § 60–1.24 and has been transferred to § 60–1.48. In addition, a provision has been added to reflect the practice under this provision that hearings normally will be on the record before the Director.

24. *Section 60–2.1.* This section sets forth the purpose and scope of Revised Order 4 (Part 60–2). The purpose of the proposed amendment was to conform § 60–2.1 to the amendment proposed to § 60–1.40 regarding accumulation of contracts for the purpose of meeting the $50,000 contract volume requirement for written AAPs, the proposed amendments regarding Federal deposit or share insurance and the obligation of construction contractors to develop written AAPs for their noncraft employees. The amendment is adopted as proposed. See the discussion herein of § 60–1.5(a) for a treatment of the deposit or share insurance issue and § 60–1.40 for a treatment of the accumulation of contracts issue.

25. *Section 60–2.2.* This section provided for contractor "pass overs," in certain instances, without a hearing, based on a finding of nonresponsibility. It also provided for determinations of substantial issues of law or fact with regard to the contractor's responsibility. A determination that the contractor's responsibility raised substantial issues of law or fact had the effect of clearing the contractor for award pending a hearing on the issue. The proposal would delete these procedures thereby making the opportunity for a hearing a requirement before a responsive bidder could be denied a contract.

The comments were largely favorable to this proposal and the amendment is adopted as proposed with a few clarifying modifications.

26. *Section 60–2.3.* The proposal would add a new section providing procedures for submitting the AAP and support data. Most of the procedures contained in the section previously appeared in Part 60–60. A new time frame of 15 days, in lieu of the 30 days in the present regulations, would be established for submitting the AAP and support data.

Most of the comments on this section were received from contractors and contractor associations, and these comments primarily focused on issues of confidentiality of data and the 15-day time frame. The confidentiality and disclosure of data issue already has been treated to some degree in the discussion on § 60–1.7 and § 60–1.43, and is further treated in § 60–2.4. With regard to the 15-day time frame, there are strong indications that the current 30-day period is being used routinely to require that the AAP be updated on an annual basis and the 30-day time frame was not designed to allow time for the annual update. The 15 days should be adequate for the ministerial function of forwarding the AAP and also should provide an incentive for contractors to update the AAP in a timely fashion rather than to wait for a request for the AAP before beginning that process. Moreover, it is essential that the AAP be current in the event that a preaward review of the contractor is conducted, and, more importantly, to ensure its implementation.

The section is adopted as proposed with a few clarifying modifications.

26–A. *Section 60–2.4.* This section was not proposed. However, because of the number of concerns raised by contractors regarding the confidentiality of data gathered in compliance reviews, this section has been added. This section continues the procedure presently contained in 41 CFR 60–60.4 for coding data and making determinations of relevancy of data. The requirement that the confidentiality of data be maintained prior to determination of relevancy also has been retained. As mentioned earlier in this preamble, Part 60–40, pertaining to disclosure of documents, presently is being revised.

26–B. *Part 60–4.* Amendments to the construction regulations were published in the **Federal Register** on October 3, 1980. Part 60–4 is republished today incorporating those amendments. In addition, conforming changes have been made to Part 60–4 to reflect other changes in Part 60–1. See, e.g., § 60–4.7.

27. *Section 60–20.2.* Only minor language changes were proposed for this section. No comments were received on § 60–20.2 and it is adopted as proposed.

27–A. *Section 60–2.3.* No amendment to this section was proposed in the December 28, 1979, notice. Previously, however, an amendment to this section had been proposed and that proposal is still under consideration. On final rulemaking, paragraph (c) has been amended to reflect the dictates of the Supreme Court's opinion in *Los Angeles Department of Water and Power* v. *Manhart*, 435 U.S. 702 (1978), regarding the equal benefits, equal contributions rule. In addition, a subparagraph (ii) has been reserved to indicate an additional amendment to the fringe benefit regulation.

28. *Section 60–20.4.* As proposed, the section would read: "Where they exist, seniority lines and lists must not be based upon sex. Where such a separation has existed, the contractor must eliminate this distinction *and provide appropriate relief.*" The portion emphasized is the proposed amendment.

The comments focused upon the restrospective aspects of the proposed amendments and argued that the Executive Order was limited to prospective relief. The Department of Labor has required retroactive relief under the contract compliance program since at least 1961 and has outlined its position on the issue in the **Federal Register** and other publications. See, e.g., 41 FR 77000. The section is adopted as proposed.

29. *Section 60–20.5.* As proposed, § 60–20.5(a) would read: "The contractor's wage schedules must not be related to or based on the sex of the employees.

"While the more obvious cases of discrimination exist where employees of different sexes are paid different wages on jobs which require substantially equal skill, effort and responsibility and are performed under similar working conditions, *compensation practices with respect to any job where males or females are substantially underutilized will be scrutinized closely to assure that sex has played no role in the setting of levels of pay.*" The portion emphasized is the proposed amendment.

The contractor comments stated that the proposal was an attempt to assert jurisdiction over the comparable worth issue, some stating that the proposal was a violation of the Equal Pay Act and Title VII of the Civil Rights Act. All contractor groups were opposed to the proposal. The Congress, courts, and EEOC were variously thought to be the proper authorities to promulgate this doctrine. Other comments suggested that OFCCP should defer its regulations on this issue until it has been accepted by the courts. Women's groups viewed the proposal as an attempt to clarify Executive Order jurisdiction over the comparable worth issue and approved of the proposal.

The Executive Order prohibits discrimination based on sex. The prohibition is broad and does not depend upon characterizations such as comparable worth. OFCCP has conducted investigations which involve the wage discrimination issue. The Department also is involved presently in litigation where wage discrimination is an issue. The proposed amendment simply codifies policies and practices the Department already is following.

30. *Section 60–20.6.* The proposed amendment would not make substantive changes. Rather the paragraphs have been rearranged and small language changes have been made on final rulemaking. This section is adopted.

31. *Section 60–20.7.* The proposed amendment would add a new section to incorporate some of the features of the Pregnancy Discrimination Act of 1978.

A total of nine comments were received on this proposal. The Women's groups were generally supportive of this change but objected to the exclusion of abortion from coverage.

Some very detailed comments from contractor groups stated that the proposal goes beyond the Pregancy Discrimination Act.

As proposed, this section essentially would have adopted EEOC's Guidelines (29 CFR 1604.10) on the subject, which implement the Pregnancy Discrimination Act (PDA) (see 44 FR 23804, April 20, 1979). The PDA provides, *inter alia*, that the prohibition against sex discrimination contained in Section 701 of the Civil Rights Act of 1964, as amended, includes discrimination "because of or on the basis of pregnancy, childbirth, or related medical conditions." However, under the PDA an employer is not required to provide health insurance benefits for abortion, "except where the life of the mother would be endangered if the fetus were

provides for concluding discovery at

carried to term, or except where medical complications have arisen from an abortion." Although OFCCP believes that the PDA, including the abortion exemption, applies only to the Civil Rights Act and not to the Executive Order program, the rule adopted today follows the EEOC's Guidelines and the PDA, including the provision relating to benefits for abortion. In addition, the present regulations require a reasonable period of time away from work for childbearing purposes and reinstatement after a reasonable period of time to a similar job without loss of service credits. In adopting the EEOC Guidelines, the final rule eliminates the present regulation. However, as with abortion, OFCCP believes that the PDA applies only to the Civil Rights Act and does not require the change in the Executive Order regulations.

32. *Section 60–20.8.* This is a new proposal designed to protect employees from the sexual advances of persons who are in a position to affect their employment opportunities as well as to prohibit employment decisions based upon sexual favors.

Twenty-eight comments were received on this section from female groups and contractor groups.

Female groups were supportive of the proposed amendment as a recognition of a very serious problem in the workplace. The female groups thought the regulation did not go far enough and should specifically make reference to harassment by coworkers, clients and customers and that a specific reference on the subject should be required in a contractor's policy statement.

Contractors primarily were opposed to the language that liability attaches if the contractor "knows or should have known" of the prohibited activities. Questions were also raised as to the meaning of "official authority." Some thought that OFCCP should not get into this area at all. Finally, it was suggested that the standards enunciated in some court cases should be used.

The rule adopted today has been redrafted and is consistent with EEOC's Guidelines on the subject. A contractor is liable under the rule adopted today for the acts of its officials, managers and supervisors when they engage in sexual advances or favors regardless of whether their specific acts were authorized by the contractor and whether the constractor knew or should have known of their occurence. Althought the rule adopted today also refers to the liability of the contractor for the acts of a contractor's customers and clients as do the EEOC Guidelines.

The rule adopted today also holds a contractor responsible for the sexual advances and favors of nonsupervisory employees, if the contractor or its agents or supervisory employees should have known of the conduct. This element was not contained in the proposal but is already an Executive Order violation.

33. *Section 60–30.1.* The rule adopted today simply adds references to sections 402 and 503 to reflect that the rules of practice also govern hearings before Administrative Law Judges under these two programs.

34. *Section 60–30.3.* The rule adopted today excludes intermediate Saturdays, Sundays and legal holidays observed by the Federal Government when the time for responding to a matter is less than seven days.

35. *Section 60–30.4.* No substantive changes have been made from the existing regulations.

36. *Section 60–30.5.* The amendment adopted today emphasizes that notice rather than fact pleading obtains under the rules of practice. However, fact pleading is required for preliminary enforcement proceedings under § 60–30.38. Also, the requirement that an amended answer be responded to has been deleted.

37. *Section 60–30.7.* Because contractors have a right to an opportunity for a hearing initiated by an administrative complaint, the requirement that the Administrative Law Judge respond to the request for a hearing has been deleted in the rule adopted today. Also, a requirement has been added that the Administrative Law Judge conduct a final pretrial conference.

38. *Section 60–30.8.* The rule adopted today amends § 60–30.8(b) to require every reasonable effort by the Administrative Law Judge to dispose of all outstanding motions prior to the hearing. A new paragraph (c) has been added requiring counsel to attempt resolution of discovery issues prior to filing motions to compel discovery.

39. *Section 60–30.9.* This section is amended by deleting the references to filing times in order to conform the timeframes to the changes adopted today at 41 CFR 60–30.12(c)(3). Finally, § 60–30.9 is amended to require that discovery documents be filed with the Administrative Law Judge.

40. *Section 60–30.11.* Subsection (c) of this section is adopted to bring the rules for objecting to questions at depositions more closely into conformity with the Federal Rules of Civil Procedure.

41. *Section 60–30.12.* This section is amended by adding a new paragraph (c) which contains mandatory requirements for a final prehearing conference and the exchange of witness lists and hearing exhibits by the parties. In addition, it provides for concluding discovery at least 30 days prior to the hearing or at such other times as ordered by the Administrative Law Judge.

42. *Section 60–30.15.* This section is amended to add to the Administrative Law Judge's powers the authority (1) to invoke a presumption that answers or actions ordered, if made, would be unfavorable or adverse to the party ordered to answer or act and (2) to issue interlocutory decisions pursuant to the preliminary enforcement proceedings under 41 CFR 60–30.38.

43. *Section 60–30.18.* This section is amended by placing limitations on the introduction of deposition testimony into evidence in lieu of testimony given at the hearing.

44. *Section 60–30.19.* This section is amended by adding a new requirement at the end of paragraph (c) to the effect that an "offer of proof" made during a hearing contain a specific statement regarding the significance of the excluded evidence.

45. *Section 60–30.30.* This section has been amended to provide for final Administrative Orders by the Under Secretary of Labor in the absence of the Secretary or when the Secretary disqualifies himself/herself for some reason. It also mandates compliance with the consultation requirements of Section 209(a)(5) of Executive Order 11246 before an order terminating, suspending, or cancelling contracts becomes effective.

46. *Section 60–30.38.* The amendment adopted today adds a new section containing a new preliminary enforcement procedure. The preliminary enforcement procedure already has been treated in the discussion of § 60–1.29. However, when the procedure was proposed, the preamble stated that the preliminary enforcement procedure would replace the expedited hearing procedure adopted on December 28, 1979. Upon reflection, the two types of hearings serve different purposes and a decision has been made to retain both. However, some timeframes have been changed in the expedited hearing procedure.

47. *Section 60–50.1.* The proposal stated that OFCCP would defer any amendments on religious accommodation until the EEOC Guidelines on the same subject are made final. EEOC has published final Guidelines which are being reviewed by the Department of Labor to determine whether they may be adopted as a final rule without the necessity to publish them as a proposal.

With regard to § 60–50.1(b), the two comments which were received on the proposed amendment raised no objection to it, and it is adopted as proposed. In addition, some editorial changes such as substituting the word "contractor" for the word "employer" have been made throughout Part 60–50.

48. *Part 60–60.* The proposal would delete this part from the regulations. However, as already discussed herein, some of the sections in Part 60–60 which are regulatory in nature have been transferred to Parts 60–1 and 60–2. Most of Part 60–60 is properly characterized as internal operating procedures. Such procedures should be in the OFCCP contract compliance manual rather than in the regulations. The comments on this part focused primarily on the provisions in § 60–60.4 which provide some degree of confidentiality with regard to data furnished to OFCCP by contractors. The key elements of § 60–60.4 have been adopted in a new § 60–2.4 in response to some of the concerns raised by contractors. Accordingly, Part 60–60 is deleted.

49. *Parts 60–250 and 60–741.* The basic changes in these parts adopted today were made to conform these two parts to the general consolidation of a number of regulations relating to sections 402 and 503 into Part 60–1. Consequently, a number of sections have been transferred from Parts 60–250 and 60–741 and the remaining sections have been renumbered.

The regulations adopted today impose new reporting and recordkeeping requirements. These new requirements have not been cleared by the Office of Management and Budget under the Federal Reports Act, however. The Office of Federal Contract Compliance Programs is in the process of preparing the necessary clearances required under the Federal Reports Act for all its recordkeeping and reporting requirements. Accordingly, the new reporting and recordkeeping requirements adopted in the regulations published today will be held in abeyance until OMB has granted the necessary clearances under the Federal Reports Act. This means that contractors will not be required to keep records or report on items which are adopted for the first time today.

After the new recordkeeping and reporting requirements have been cleared by OMB, appropriate notice of the effective dates of the new reporting and recordkeeping requirements will be published in the **Federal Register**. The new reporting and recordkeeping requirements which will be held in abeyance include those which increase and decrease recordkeeping and reporting requirements.

The new recordkeeping and reporting requirements which will be held in abeyance are:

1. *Section 60–1.7* (a). This section presently requires contractors with 50 employees and a contract of at least $50,000 to file the EEO–1 report. The new requirements would expand this reporting requirement to include contractors which have 50 employees and contracts which total $50,000 in a 12-month period. The new requirement is held in abeyance until OMB clearance and further notice in the **Federal Register**.

(b) The present regulations also require construction contractors performing work at the site of construction to file the EEO–1 report if they have 50 employees and a contract of at least $50,000. The regulations adopted today would delete this requirement and such contractors would file only the CC–257. However, until the deletion of this requirement is cleared by OMB such contractors must continue to report.

2. *Section 60–1.8.* This section presently requires contractors to maintain nonsegregated facilities and to so certify "in the form approved by the Director" of OFCCP. The quoted language makes the certification subject to the Federal Reports Act. This requirement is deleted from the regulations adopted today. However, it must be continued until approved by OMB.

3. *Section 60–1.40.* (a) This section requires contractors with 50 employees and a contract of at least $50,000 or Government bills of lading which total $50,000 in a 12-month period to develop and implement an affirmative action program. Certain recordkeeping and reporting requirements are associated with developing and implementing an AAP. The regulation adopted today would expand the written AAP requirement to those contractors with 50 employees and contracts which total $50,000. This new requirement, as it relates to reports and recordkeeping, will be held in abeyance until OMB has cleared the new requirement and notice has been published in the **Federal Register**. However, contractors with Government bills of lading which total $50,000 will continue to keep records and report as in the past. In addition, contractors covered for the first time by the AAP requirement will also be obligated to prepare and implement the AAP although they will not be required to keep any new records or make any new reports.

(b) the written AAP also is being required for the first time of construction contractors with regard to their noncraft employees if they have 50 such employees and a $50,000 contract or contracts which total $50,000 in a 12-month period. The reporting and recordkeeping requirements but not the requirement to develop and implement the AAP is held in abeyance until OMB has cleared the reporting and recordkeeping requirements and until further notice in the **Federal Register**.

4. *Section 60–2.1.* This section repeats the requirements of § 60–1.40. See item 3 above.

5. *Section 60–2.3.* This section requires contractors to submit their AAPs and supporting documentation within 15 days of receipt of a request from OFCCP. The present requirement is 30 days. The 30-day requirement will remain in effect until the new time frame has been cleared by OMB.

It has been determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under Executive Order 12044 (43 FR 12661) or under the Department of Labor's guidelines implementing Executive Order 12044.

This document was prepared under the direction and control of Weldon J. Rougeau, Director, Office of Federal Contract Compliance Programs.

Accordingly, 41 CFR Chapter 60 is amended by removing Part 60–60 and by revising Parts 60–1, 60–2, 60–4, 60–20, 60–30, 60–50, 60–250 and 60–741 as set forth below.

December 22, 1980.

Ray Marshall,

Secretary of Labor.

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

Part

60–1 Obligations of contractors and subcontractors.
60–2 Affirmative action programs.
60–3 Guidelines on employee selection procedures.
60–4 Construction contractors—affirmative action requirements.
60–20 Sex discrimination guidelines.
60–30 Rules of practice for administrative proceedings to enforce equal opportunity under Executive Order 11246, Section 402 and Section 503.
60–40 Examination and copying of OFCCP documents.
60–50 Guidelines on discrimination because of religion or national origin.
60–250 Affirmative action obligations of contractors and subcontractors for disabled veterans and veterans of the Vietnam era.
60–741 Affirmative action obligations of contractors and subcontractors for handicapped workers.

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

Subpart A—Preliminary Matters; Equal Opportunity Clause; Compliance Reports

§ 60–1.1 Purpose and application.

Subpart A—Preliminary Matters Equal Opportunity Clause: Compliance Reports

affect rights and remedies provided elsewhere by law, regulation, or contract. Neither do the regulations limit the exercise by the Secretary of powers not herein specifically set forth but

employee, applicant for employment or by a third party alleging discriminatory employment practices under the Order, or under section 402 or section 503.

"Construction work" means the construction, rehabilitation, alteration,

"Equal opportunity clause" means the contract provisions set forth in section 202 of the Order, and in § 60–1.4(a) or (b), as appropriate.

"Facilities" means buildings, structures, equipment, roads, walks,

agreements, amendments, and extensions.

"Order," "Executive Order," or "Executive Order 11246" means parts II, III, and IV of Executive Order 11246 dated September 24, 1965 (30 FR 12319).

PART 60-1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

Subpart A—Preliminary Matters; Equal Opportunity Clause; Compliance Reports

Sec.

60-1.1 Purpose and application.
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60-1.40 Affirmative action programs
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60-1.45 Adaptation of language.
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60-1.48 Request for hearing after compliance.
60-1.49 Existing contracts and subcontracts.
60-1.50 Delegation of authority by the Director.

Authority: Sec. 201, 202, 205, 211, 301, 302, 303, 401, E.O. 11246 (30 FR 12319), as amended by E.O. 12086; Sec. 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 2012); Sec. 503 of the Rehabilitation Act of 1973, (29 U.S.C. 793), as amended by Sec. 111(a), Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706) and by Sections 119 and 122 of the Rehabilitation Comprehensive Services and Development Disabilities Amendment of 1978, Pub. L. 95-602, 92 Stat. 2955 and Executive Order 11758.

Subpart A—Preliminary Matters Equal Opportunity Clause: Compliance Reports

§ 60-1.1 Purpose and application.

(a) The purpose of the regulations in this part is to set forth the general obligations of Government contractors and subcontractors (hereinafter referred to simply as contractor; see definition of contractor in § 60-1.3) and of contractors performing on federally assisted construction contracts and subcontracts (hereinafter referred to simply as contract; see definition of contract in § 60-1.3) under Executive Order 11246, and to promote and ensure equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, employed or seeking employment with Government contractors or with contractors performing under federally assisted construction contracts. The regulations in this part also set forth some general obligations which are equally applicable to contractors covered by section 503 of the Rehabilitation Act of 1973, as amended, and section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974. When the regulations in this part implement sections 402 and 503 the regulations expressly indicate that fact. Specific obligations of contractors covered under the three laws are set forth in other parts of the regulations in this chapter.

(b) The regulations in this part apply to all contracting agencies of the Government and to contractors which perform under Government contracts. The regulations in this part also apply to all agencies of the Government administering programs involving Federal financial assistance which results in a construction contract, to applicants seeking or receiving such assistance and to all contractors performing under construction contracts which are related to any such programs. The procedures set forth in the regulations in this chapter govern all disputes relative to a contractor's compliance with its obligations under the three laws regardless of whether its contract contains a "Disputes" clause. Failure of a contractor or applicant to comply with any provision of the regulations in this part shall be grounds for the imposition of any or all the sanctions authorized by the Order or by the regulations implementing sections 402 and 503. The regulations in this chapter do not apply in any action taken to effect compliance with respect to employment practices subject to Title VI of the Civil Rights Act of 1964. The rights and remedies of the Government hereunder are not exclusive and do not affect rights and remedies provided elsewhere by law, regulation, or contract. Neither do the regulations limit the exercise by the Secretary of powers not herein specifically set forth but granted to him/her by the Order or by sections 402 and 503.

§ 60-1.2 Administrative responsibility.

The Director has been delegated authority and assigned responsibility for carrying out the responsibilities assigned to the Secretary under the Executive Order. All correspondence regarding the Order should be directed to the Director, Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

§ 60-1.3 Definitions.

As used in this chapter, "Act" means the Vietnam Era Veterans Readjustment Assistance Act, as amended, (38 U.S.C. 2012), and the Rehabilitation Act, as amended, (29 U.S.C. 793), as applicable.

"Administering agency" means any department, agency or establishment in the executive branch of the Government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts.

"Administrative complaint" means the pleading which commences an administrative enforcement proceeding under the Order, section 402 or section 503.

"Administrative law judge" means an administrative law judge appointed as provided in 5 U.S.C. 3105 and subpart B of part 930 of title 5 of the Code of Federal Regulations (see 37 FR 16787) and qualified to preside at hearings under 5 U.S.C. 557.

"Affirmative action clause" means the contract clause set forth at 41 CFR 60-250.3 or at 41 CFR 60-741.3, as applicable.

"Agency" means any contracting or any administering agency of the Government.

"Applicant" means a person applying for Federal assistance involving, or which results in, a construction contract or a person who has received such assistance. "Applicant" also means a person who is seeking employment or who has sought employment with a contractor.

"Assistance Secretary" means the Assistant Secretary of Labor for Employment Standards or his/her designee.

"Complaint" means a charge filed with OFCCP by an employee, former

employee, applicant for employment or by a third party alleging discriminatory employment practices under the Order, or under section 402 or section 503.

"Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

"Contract" means any Government contract or subcontract, and with respect to the Order, any federally-assisted construction contract or subcontract. The regulations in this chapter frequently refer only to contract. The word subcontract is subsumed under the word contract.

"Contracting agency" means any department, agency, establishment, or instrumentality in the executive branch of the Government, including any wholly owned Government corporation, which enters into contracts.

"Contractor" means a Government contractor or subcontractor, and with respect to the Order, a federally-assisted construction contractor or subcontractor. For the purpose of Subpart B of this part and part 60-30 of this chapter the term also includes any person who has held a contract. The regulations in this chapter frequently refer only to contractor. The word subcontractor is subsumed under the word contractor.

"Director" means the Director of the Office of Federal Contract Compliance Programs of the United States Department of Labor or his/her designee.

"Disabled veteran" means a person entitled to disability compensation under laws administered by the Veterans Administration for disability rated at 30 per centum or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.

"Establishment," except as used in the definition of "administering agency" and "contracting agency" contained in this section, means the location of a contractor's business or operations generally having some component which exercises personnel authority and responsibilities. Small locations (i.e., those having fewer than 50 employees) may be considered to be part of an establishment in a different location if such locations are in the same Standard Metropolitan Statistical Area or labor area and are within the same chain of command.

"Equal opportunity clause" means the contract provisions set forth in section 202 of the Order, and in § 60-1.4(a) or (b), as appropriate.

"Facilities" means buildings, structures, equipment, roads, walks, parking lots or other real or personal property.

"Federally assisted construction contract" means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan insurance, or guarantee under which the applicant itself participates in the construction work.

"Government" means the Government of the United States of America.

"Government contract" means any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. But sections 402 and 503 do not apply to contracts for the use of real property. The term "services", as used in this section includes, but is not limited to the following services: Utility, construction, transportation, research, insurance, and fund depository, irrespective of whether the Government is the pruchaser or seller. The term "Government contract" does not include (1) agreements in which the parties stand in the relationship of employer and employee and (2) federally assisted construction contracts.

"Handicapped individual" means any person who (a) has a physical or mental impairment which substantially limits one or more of the person's major life activities; (b) has a record of such impairment; or (c) is regarded as having such an impairment. A handicapped individual is "substantially limited" if he or she is likely to experience difficulty in securing, retaining, or advancing in employment because of a real or perceived handicap. For purposes of this chapter, "major life activities" includes employment or training. "Regarded as" means the employer perceives the individual as having an impairment whether or not there is an impairment.

"Modification" means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

"Order," "Executive Order," or "Executive Order 11246" means parts II, III, and IV of Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive Order amending such Order, and any other Executive Order superseding such Order. Order specifically includes the equal opportunity clause and the rules, regulations and orders issued pursuant to the Order. The short form reference of Order is used simply to avoid needless repetition of the above phrases.

"Person" means any natural person, corporation, partnership, unincorporated association, state or local government, and any agency, instrumentality, or subdivision of such a government.

"Prime contractor" means any person holding a contract and, for the purposes of Subpart B of this part and 41 CFR Part 60-30, any person who has held a contract subject to the Order or to sections 402 and 503.

"Qualified disabled veteran" means a disabled veteran as defined in this section 60-1.3 who is capable of performing a particular job, with reasonable accommodation to his or her handicap or disability.

"Qualified handicapped individual means a handicapped individual capable of performing a particular job with reasonable accommodation to his or her handicap or disability.

"Recruiting and training agency" means any person who refers workers to any contractor or who provides for employment by any contractor.

"Rules, regulations, and relevant orders of the Secretary of Labor" used in paragraph (4) of the equal opportunity clause means rules, regulations, and relevant orders of the Secretary of Labor or his/her designee issued pursuant to the Order.

"Secretary" means the Secretary of Labor, U.S. Department of Labor.

"Section 503" means section 503 of the Rehabilitation Act, as amended. The reference, section 503, specifically includes rules and regulations promulgated pursuant to the Act.

"Section 402" means section 402 of the Vietnam Era Veterans' Readjustment Assistant Act, as amended. The reference, section 402, specifically includes rules and regulations promulgated pursuant to the Act.

"Site of construction" means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility at which a contractor

or other participating party meets a demand or performs a function relating to the contract.

"Subcontract" means any agreement or arrangement between a contractor

national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of

subcontractor with litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the

contractor debarred from, or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties

unless the purchaser has reason to believe that the amount to be ordered in any year under such contract will not exceed $10,000. The applicability of the equal opportunity clause shall be

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or other participating party meets a demand or performs a function relating to the contract.

"Subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed: *Provided,* That sections 402 and 503 do not apply to contracts relating to real property.

"Subcontractor" means any person holding a subcontract and, for the purposes of Subpart B of this part, any person who has held a subcontract subject to the Order. The term "First-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

"United States" means the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, the Panama Canal Zone, American Samoa and the Trust Territory of the Pacific Islands.

"Veteran of the Vietnam Era" means a person (a) who (1) served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge, or (2) was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975, and (b) who was so discharged or released within 48 months preceding the alleged violation of the Act.

§ 60–1.4 Equal opportunity clause.

(a) *Government contracts.* Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the Order in each of its Government contracts (and modifications thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractors will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) the contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applications for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) the contractor will include the provisions of paragraphs (1) thorugh (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Federally assisted construction contracts.* (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex; or national origin. The contractor will take affirmative action ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, such action shall include, but not be limited to the following: Employment, upgrading demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contract will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to races, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee), refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) Subcontracts.

Each nonexempt contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

Note.—See, also, § 60–1.46 and § 60–1.47 regarding incorporation by reference and incorporation by operation of law, respectively.

§ 60–1.5 Exemptions.

(a) *General.*—(1) *Transactions of $10,000 or under.* Contracts not exceeding $10,000, other than (i) Government bills of lading and (ii) contracts with financial institutions which serve as depositories of Government funds in any amount, or which serve as issuing or redeeming agents for U.S. savings bonds and savings notes or which subscribe to Federal deposit or share insurance, are exempt from the requirements of the Order. In determining the applicability of this exemption to any federally assisted construction contract, the amount of such contract rather than the amount of the Federal financial assistance shall govern. No agency or contractor shall procure supplies or services in a manner so as to avoid applicability of the order: *Provided,* That where a contractor has contracts with the Government in any 12-month period which have an aggregate total value (or can reasonably be expected to have an aggregate total value) exceeding $10,000, the $10,000 or under exemption does not apply, and the contracts are subject to the order regardless of whether any single contract exceds $10,000.

(2) *Contracts for indefinite quantities.* With respect to contracts for indefinite quantities (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the purchaser has reason to believe that the amount to be ordered in any year under such contract will not exceed $10,000. The applicability of the equal opportunity clause shall be determined by the purchaser at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order exceeds $10,000. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Work outside the United States.* Contracts are exempt from the requirements of the equal opportunity clause with regard to work performed outside of the United States by employees who were not recruited within the United States.

(4) *Contracts with state or local governments.* The Order, and sections 402and 503, with respect to a contract with a state or local government (or any agency thereof) shall apply only to the agency or agencies of such government which perform on the contract. Agencies, instrumentalities or subdivisions of state or local governments, except educational institutions, utilities, and medical facilities, are exempt from filing the annual compliance report required by § 60–1.7(a)(1) of this part and from maintaining a written affirmative action program prescribed by § 60–1.40 of this part and Part 60–2 of this chapter.

(5) *Contracts with certain educational institutions.* It shall not be a violation of the equal opportunity clause for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion. The primary thrust of this provision is directed at religiously oriented church-related colleges and universities and should be so interpreted.

(6) *Work on or near Indian reservations.* It shall not be a violation of the equal opportunity clause for a contractor to extend a publicly announced preference in employment to

Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word "near" would include all that area reasonably proximate to the reservation. The term "reservation" includes Indian reservations established by treaty, executive order, or the Secretary of the Interior.

(7) *Religious corporations, associations, educational institutions, and societies.* The Order does not require religious corporations, associations, educational institutions, or societies to perform or refrain from performing any act that is inconsistent with their religious tenets.

(8) *Facilities not connected with contracts.* The Order does not apply to the facilities of a contractor that are wholly unrelated to the contract. This exemption will not be considered unless the contractor segregates the facilities for the purposes of employment and makes such facilities, employees, and employment practices available for review.

(9) *Indian tribes.* Native American tribes are exempt from the Order and the equal opportunity clause.

(10) *Officials not to avoid responsibilities.* Officials and agencies may not avoid their responsibilities under the Order or take any action to circumvent the requirements of the Order, such as certifying that a particular contractor or subcontractor is not a contractor or subcontractor.

(b) *Specific contracts and classes of contracts.* The Director may exempt certain contracts, subcontracts or classes of contracts and subcontracts from the requirements of the Order and this chapter upon a finding that the application of the requirements of the Order to such contracts or subcontracts would not effectuate the purposes of the Order. Such contracts may include, but are not limited to, contracts and subcontracts for standard commercial supplies or raw materials, or involving work connected with a particular Government project or program for which special labor standards have been established under the Order, on account of which it would be impracticable to require the equal opportunity clause.

(c) *Facilities.* The Director may exempt certain facilities of a contractor from the requirements of the Order upon a finding that all employees working at such facilities are employed in connection with contracts and subcontracts which are exempt from the requirements of the Order.

(d) *Procedures.* Requests for exemptions under paragraphs (b) and (c) of this section shall be submitted to the Director through the contracting agency. Each request shall include a statement of the facts and reasons supporting the contractor's belief that the exemption is justified.

(e) *Burden of proof.* The burden of proving the applicability of any exemption is upon the contractor or subcontractor.

(f) *Notification.* The Director will notify the contracting agency of the Director's action on each request for exemption. Whenever an exemption is granted, the contracting agency shall promptly notify the contractor or subcontractor.

(g) *Termination.* Each exemption will remain in effect until terminated by the Director or the Secretary of Labor.

§ 60–1.6 [Reserved]

Executive Order or with section 402 or 503 at the same time the contractor is notified.

(2) Whenever compliance with the Order or with section 402 or 503 effects the terms or conditions of employment

Subpart B—General Enforcement; Review and Complaint Procedure

§ 60–1.20 Compliance reviews.

(a) The purpose of a compliance review is to determine if the contractor

§ 60–1.21 Preward reviews.

(a) The purpose of a preward compliance review is to determine whether a responsive contractor or bidder will be able to comply with the requirements of the Order and with

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Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word "near" would include all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such a preference shall not excuse a contractor from complying with the other requirements contained in this chapter.

(b) *Specific contracts and facilities*—(1) *Specific contracts.* The Director may exempt an agency or any person from requiring the inclusion of any or all of the equal opportunity clause in any specific contract or subcontract when he/she deems that special circumstances in the national interest so require. The Director may also exempt groups or categories of contracts or subcontracts of the same type where he/she finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the Order.

(2) *Facilities not connected with contracts.* The Director may exempt from the requirements of the equal opportunity clause any of a contractor's facilities which he/she finds to be in all respects separate and distinct from activities of the contractor related to the performance of the contract, provided that he/she also finds that such an exemption will not interfere with or impede the effectuation of the Order.

(c) *National security.* Any requirement set forth in the regulations in this part shall not apply to any contract whenever the head of an agency determines that such contract is essential to the national security and that its award without complying with such requirement is necessary to the national security. Upon making such a determination, the head of the agency will notify the Director in writing within 30 days.

(d) *Withdrawal of exemption.* When any contract is of a class exempted under this section, the Director may withdraw the exemption for a specific contract or group of contracts when in his/her judgment such action is necessary or appropriate to achieve the purposes of the Order. Such withdrawal shall not apply to contracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

§ 60–1.6 [Reserved]

§ 60–1.7 Reports and other required information.

(a) *Requirements for contractors.* (1) Each contractor shall file annually, on or before the 31st day of March, complete and accurate reports on Standard Form 100 (EEO–1) promulgated jointly by the Office of Federal Contract Compliance Programs and the Equal Employment Opportunity Commission or such form as may hereafter be promulgated in its place if such contractor (i) has 50 or more employees; and has a contract of $50,000 or more; or (ii) has contracts which total $50,000 or more, or which reasonably may be expected to total $50,000 or more, in any 12-month period; or (iii) is a financial institution which serves as a depository for Government funds in any amount, acts as an issuing or redeeming agent for U.S. savings bonds and notes in any amount, or subscribes to federal deposit or share insurance.

(2) Each contractor required by § 60–1.7(a)(1) to submit reports shall file such report within 30 days after the award to it of a contract unless such contractor has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with § 60–1.7(a)(1), or at such other intervals as the Director may require. The Director may extend the time for filing any report.

(3) The Director or the applicant, on their own motions, may require a contractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as the Director or the applicant deems necessary for obtaining compliance under the Order.

(4) Failure to file timely, complete and accurate reports as required constitutes noncompliance with the contractor's obligations under the Order and is ground for the imposition of any sanction authorized by the Order

(b) *Requirements for bidders or prospective prime contractors* (1) *Certification of compliance with Part 60–2: Affirmative Action Programs.* Each contracting agency shall require each bidder or prospective prime contractor to state in the bid or in writing at the outset of negotiations for the contract: (i) Whether it has developed and has on file at each establishment affirmative action programs pursuant to Part 60–2 of this chapter; (ii) whether it has participated in any previous contract or subcontract subject to the Order; and (iii) whether it has filed with the Joint Reporting Committee, the Director or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(2) *Additional information.* A bidder or prospective prime contractor shall be required to submit such information as the Director requests prior to the award of the contract. When a determination has been made to award the contract to a specific contractor, such contractor shall be required, prior to award, or after the award, or both, to furnish such other information as the applicant or the Director requests.

§ 60–1.8 Segregated facilities.

To comply with its obligations under the Order, a contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. This obligation extends to all contracts regardless of the amount of the contract. The term "facilities" as used in this section means waiting rooms, work areas, restaurants, and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees: *Provided,* That separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

§ 60–1.9 Compliance by labor unions and by recruiting and training agencies.

(a) The policy of OFCCP is to use its best efforts, directly and through agencies, contractors, applicants, state and local officials, public and private agencies, and all other available instrumentalities, to cause any labor union, recruiting and training agency or other representative of workers who are or may be engaged in work under contracts to cooperate with, and to comply in the implementation of, the purposes of the Order and of sections 402 and 503.

(b) To effectuate the purposes of paragraph (a) of this section, the Director may hold hearings, public or private, with respect to the practices and policies of any such labor union or recruiting and training agency.

(c)(1) The collective bargaining representatives shall be given written notice of the commencement of any on site investigation of compliance with the

Executive Order or with section 402 or 503 at the same time the contractor is notified.

(2) Whenever compliance with the Order or with section 402 or 503 effects the terms or conditions of employment which are governed by the provisions of a collective bargaining agreement, the collective bargaining representatives shall be given notice and an opportunity to present their positions and supporting evidence to OFCCP and shall be invited to participate in conciliation discussions to the extent those discussions relate to any proposed changes, prior to any resolution or agreement between OFCCP and the contractor relating to such matters. (See 41 CFR 60–1.25(e).)

(d) The Director may notify any Federal, state or local agency of his/her conclusions and recommendations with respect to any such labor organization or recruiting and training agency which in his/her judgment has failed to cooperate with OFCCP, agencies, contractors or applicants in carrying out the purposes of the Order or of sections 402 and 503. The Director also may notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies when there is reason to believe that the practices of any such labor organization or agency violate Title VII of the Civil Rights Act of 1964 or other provisions of Federal law.

§ 60–1.10 Foreign government practices.

Contractors shall not discriminate on the basis of race, color, religion, sex, or national origin when hiring or making employee assignments for work to be performed in the United States or abroad. Contractors are exempted from this obligation only when hiring persons outside of the United States for work to be performed outside of the United States (see 41 CFR 60–1.5(a)(3)). Therefore, a contractor hiring workers in the United States for either Federal or nonfederally connected work shall be in violation of Executive Order 11246, as amended, by refusing to employ or assign any person because of race, color, religion, sex, or national origin regardless of the policies of the country where the work is to be performed or for whom the work will be performed. Should any contractor be unable to acquire a visa of entry for any employee or potential employee to a country in which or with which it is doing business, and which refusal it believes is due to the race, color, religion, sex, or national origin of the employee or potential employee, the contractor must immediately notify the Department of State and the Director of such refusal.

Subpart B—General Enforcement; Review and Complaint Procedure

§ 60–1.20 Compliance reviews.

(a) The purpose of a compliance review is to determine if the contractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, terminated, and otherwise treated during employment without regard to race, color, religion, sex, national origin, veteran status or handicap. It shall consist of a comprehensive analysis and evaluation of each aspect of the aforementioned practices and policies and conditions resulting therefrom. Compliance reviews normally are conducted in three stages (desk audit, on-site review and off-site analysis). The desk audit may be shortened or omitted, however, when an immediate on-site review (e.g., where a preaward compliance review is involved, where intimidation is alleged or other circumstances do not permit a desk audit) is required. (See, 41 CFR 60–1.24(b).)

(b) Compliance reviews generally are conducted under the direction of an OFCCP Assistant Regional Administrator, but the Director is authorized to designate other OFCCP officials for this purpose.

(c) Where deficiencies or violations are found, reasonable efforts shall be made to secure compliance through conciliation and persuassion. Before the contractor can be found to be in compliance with the Order, section 402 or section 503, it must make a specific commitment, in a written conciliation agreement or a letter of commitment, as appropriate, to correct any such deficiencies or violations. Minor technical deficiencies usually may be resolved in a letter of commitment from the contractor. The agreement or letter must include the precise actions to be taken and dates for completion. The time period allotted shall be no longer than the minimum period necessary to effect such changes. Upon approval by OFCCP, the contractor may be considered in compliance, on condition that the actions are faithfully taken. The contractor shall be notified, however, that taking such actions does not preclude future determinations of noncompliance based either on a finding that the actions are not sufficient to achieve compliance or on violations not previously revealed in a compliance review or complaint investigation.

§ 60–1.21 Preaward reviews.

(a) The purpose of a preaward compliance review is to determine whether a responsive contractor or bidder will be able to comply with the requirements of the Order and with sections 402 and 503.

(b) Each contracting agency shall include in the invitation for bids for each formally advertised nonconstruction contract or state at the outset of negotiations for each negotiated nonconstruction contract, that if the award, when let, should exceed $1 million, the prospective contractor and known first-tier subcontractors with subcontracts in excess of $1 million will be subject to a compliance review before the award of the contract.

(c) Prior to the award of any nonconstruction contract in excess of $1 million, the contracting agency shall give written notice of the proposed award to the OFCCP Assistant Regional Administrator of the Region in which the contract is to be performed as far in advance of the award date as possible. In any event, the notice shall be given no less than 45 days in advance of the award date. The notice shall identify the projected prime contractor and all known first-tier subcontractors or prospective subcontractors projected to receive subcontracts in excess of $1 million.

(d) If the establishment where the contract or subcontract is to be performed has 250 or more employees and no compliance review of that establishment has been conducted in the 24 months prior to the notification, a compliance review of the establishment shall be commenced on a priority basis.

(e) OFCCP is authorized to conduct preaward compliance reviews of any contractor receiving a contract in excess of $1 million even though the establishment has less than 250 employees and a compliance review has been conducted within the last 24 months. In determining whether to conduct a preaward review under this paragraph (e), OFCCP may consider, for example, (1) the past EEO performance of the contractor, including its current EEO profile and indications of underutilization; (2) the volume and nature of complaints filed by employees or applicants against the contractor; (3) whether the contractor is in a growth industry; (4) the level of employment or promotional opportunities resulting from the expansion of or turnover in the contractor's work force; (5) the employment opportunities likely to result from the contract in issue; and (6)

whether resources are available to conduct the review.

(f) If, prior to the award date of the contract or subcontract, the contracting agency has not provided the notice required by paragraph (c) of this section, the award date shall be delayed for a period sufficient to provide the notice.

§ 60–1.23 Contents of complaint.

(a) The complaint shall include the name, address, and telephone number of the complainant, the name and address of the contractor committing the alleged discrimination, a description of the acts

unresolved individual complaints which have been referred to EEOC, OFCCP will consult with EEOC at the commencement of the compliance review to determine whether EEOC or OFCCP will investigate and resolve such

(iv) A suggested date for the conciliation conference.

(2) The contractor shall be accorded 30 days, or such longer period as may be authorized by the Director or his/her designee, to establish that it is not

rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

60–1.27 Assumption of jurisdiction by the Director.

(a) The Director may inquire into the status of any pending matter. Where the Director considers it necessary or appropriate to the achievement of the

whether resources are available to conduct the review.

(f) If, prior to the award date of the contract or subcontract, the contracting agency has not provided the notice required by paragraph (c) of this section, the preaward compliance review has not been completed or the contractor-bidder's alleged noncompliance has not been resolved, the Director may request the contracting agency to delay the award of the contract, until such time as the contractor is found eligible or ineligible for the contract in accordance with the preliminary hearing procedures in 41 CFR 60–30.38 of this chapter. The request shall also be applicable to all other contracts which are then (or become) pending at the establishment where the preaward review which triggered the request was conducted. The request shall not be applicable to contracts pending at other establishments which are not part of the preaward review. If such a request is made, the award of the contract(s) shall be delayed, unless the contracting agency determines that a delay is contrary to the national security of the United States. Written notification of such determination shall be given to the Director within 30 days of the determination (see 41 CFR 60–1.5(c)): *Provided*, That unless the preliminary hearing procedures in 41 CFR 60–30.38 have been invoked or will be invoked within 15 working days, Executive Order, and sections 402 and 503 clearance for award of the contract shall not be withheld.

(g) The preaward review authorized by this section shall be conducted in accordance with the procedures of § 60–1.20 of this part to the extent that those procedures are not inconsistent with the provisions of this section.

(h) If by the award date, the preaward compliance review has not been completed or a decision to invoke the preliminary hearing procedure in 41 CFR 60–30.38 of this chapter has not been made, Executive Order, and sections 402 and 503 clearance for the contract shall be granted, except as provided in paragraph (f) of this section, and the review shall be completed on an expedited basis.

§ 60–1.22 Filing complaints.

Complaints shall be filed within 180 days of the alleged violation unless the time for filing is extended by the Director for good cause shown. Complaints may be filed with the OFCCP, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, or with any OFCCP regional or area office.

§ 60–1.23 Contents of complaint.

(a) The complaint shall include the name, address, and telephone number of the complainant, the name and address of the contractor committing the alleged discrimination, a description of the acts considered to be discriminatory, and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant or his/her authorized representative. Signed third party complaints which allege class-type discrimination and which do not identify the alleged discriminatees will be accepted, whether or not the third party signing the complaint is an authorized representative, provided that the other information required by this paragraph is included.

(b) If a complaint contains incomplete information, OFCCP shall seek the needed information from the person filing the complaint. In the event such information is not furnished within 60 days of the date of such request, the case may be closed.

§ 60–1.24 Processing complaints.

(a) *Complaints.* OFCCP may refer individual complaints to the Equal Employment Opportunity Commission (EEOC) for processing under Title VII of the Civil Rights Act of 1964, as amended, in lieu of processing them under the Order. Upon referring a complaint to the EEOC, OFCCP shall promptly notify the complainant. OFCCP also may transmit a copy of any complaint to EEOC and to any state or local agency with jurisdiction over the subject of the complaint.

(b) *Complaint investigations under the Order.* (1) OFCCP will retain and investigate class or systemic complaints. However, where EEOC is about to initiate or is in the process of an investigation of any contractor against which OFCCP has received a class complaint, OFCCP may, at the request of EEOC, refer the complaint to EEOC for processing in order to avoid duplication and to assure effective law enforcement. In resolving such class complaints, the agencies will consult and coordinate with each other to ensure that the resolution of the complaints comports with the law enforcement requirements of each agency.

(2) During a compliance review, OFCCP will investigate and resolve individual complaints on file with OFCCP and unresolved at the commencement of the compliance review: *Provided*, That resolution of such individual complaints does not unduly delay the completion of the compliance review. With regard to unresolved individual complaints which have been referred to EEOC, OFCCP will consult with EEOC at the commencement of the compliance review to determine whether EEOC or OFCCP will investigate and resolve such complaints.

(c) *Resolution of matters.* (1) If any complaint investigation indicates a violation of the Order, reasonable efforts shall be made to secure compliance through conciliation and persuasion. (2) Where any complaint investigation indicates a violation of the Order and the matter has not been resolved by informal means, the matter may be recommended to the Office of the Solicitor for consideration of legal enforcement proceedings.

§ 60–1.25 Show cause notices and notices of violation.

(a) *General Rule.* At the conclusion of a compliance review or complaint investigation conducted pursuant to the Order or sections 402 and 503, a notice to show cause or a notice of violation shall be served on the contractor if the deficiencies which were disclosed in the review or investigation have not been corrected through a conciliation agreement, letter of commitment or consent decree. Where appropriate, show cause notices may be used at any other stage of the review.

(b) *Show cause notices—exceptions to the general rule.* A notice to show cause why enforcement proceedings should not be initiated shall be used when an uncorrected deficiency is disclosed in a compliance review or complaint investigation, except when: (1) A notice of violation under paragraph (d) of this section is appropriate; (2) a violation of a conciliation agreement under paragraph (f) of this section is alleged; (3) one or more special violations as discussed in § 60–1.29(d) of this part is alleged; or (4) OFCCP contemplates judicial enforcement under § 60–1.29(f) of this part.

(c) *Show cause notices—contents and timeframes.* (1) A notice to show cause should contain:

(i) An itemization of the sections of the Order, sections 402 and 503, and of the regulations with which the contractor has been found in violation, with a description of the conditions, practices, facts, or circumstances which give rise to each violation;

(ii) A statement of the corrective actions proposed by OFCCP to achieve compliance;

(iii) A request for a written response to the findings, including commitments to corrective actions or the presentation of opposing facts and evidence; and

(iv) A suggested date for the conciliation conference.

(2) The contractor shall be accorded 30 days, or such longer period as may be authorized by the Director or his/her designee, to establish that it is not covered by or is in compliance with the Order and sections 402 and 503, or to enter into a conciliation agreement or letter of commitment.

(d) *Notice of Violation.* (1) A notice of violation may be used where circumstances do not permit 30 days to resolve the matters (e.g. pre-award compliance reviews), and may be used at any time during the compliance review or complaint investigation (e.g. where serious violations such as intimidation, or interference with the orderly process of the review or investigation are alleged). A notice of violation shall contain a short and plain statement of the deficiency adequate to put the contractor on notice of the violation with which it is charged. The notice shall accord the contractor a reasonable period of time (not to exceed 15 days) in which to respond and for conciliation.

(2) A notice of violation also may be used when the compliance review or complaint investigation discloses a violation of a matter which is the subject of a conciliation agreement, letter of commitment or consent or other decree between the contractor and the Department of Labor, the Attorney General acting on behalf of OFCCP, or a former compliance agency (see 41 CFR 60–1.25(b)).

(e) *Participation by collective bargaining representatives.* When a notice to show cause or a notice of violation proposes a change in the terms or conditions of employment which are governed by the provisions of a collective bargaining agreement the collective bargaining representatives shall be given notice of the proposed change and an opportunity to present their positions and supporting evidence to OFCCP and shall be invited to participate in conciliation discussions to the extent those discussions relate to such changes, prior to any resolution or agreement between OFCCP and the contractor relating to such matters.

(f) *Procedure when a conciliation agreement is violated.* When a conciliation agreement has been violated, the following procedures are applicable: (1) A written notice shall be sent to the contractor setting forth the violations alleged and summarizing the supporting evidence. The contractor shall have 15 days from receipt of the notice to respond, except in those cases in which such a delay would result in irreparable injury to the employment rights of affected employees or applicants.

(2) During the 15-day period the contractor may demonstrate in writing that it has not violated its commitments.

(3) If the contractor is unable to demonstrate that it has not violated its commitments, or if the notice alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement contained in this chapter.

§ 60–1.26 Conciliation agreements.

(a) A conciliation agreement is a written agreement between OFCCP and a contractor by which the contractor undertakes specific obligations to correct or remedy noncompliance with the Order or with sections 402 and 503. A conciliation agreement normally is required where a compliance review, complaint investigation or some other review discloses violations of the Order or of sections 402 and 503, and (1) the contractor is willing to correct the violations or deficiencies and (2) OFCCP determines that a settlement (rather than formal enforcement) is appropriate. The agreement shall provide for the remedial relief necessary to correct the violations or deficiencies, which may include priority rights to hire or promotion, training, back pay, front pay and retroactive seniority, etc., for an affected class or for individuals, as appropriate.

(b) A conciliation agreement shall include (1) A statement of each deficiency or violation; (2) the corresponding precise remedial action to be taken and a timetable for implementation; (3) a requirement for periodic reporting to OFCCP as to implementation of the agreement, if appropriate; and (4) a copy of the notice to show cause or notice of violation when such has been previously issued.

(c) A conciliation agreement is effective when it has been signed by the contractor and the proper Assistant Regional Administrator, OFCCP, unless within 45 days of receipt from the Assistant Regional Administrator, the Director rejects the agreement.

(d) Conciliation agreements shall not be entered into after enforcement proceedings have been initiated. Settlements of enforcement proceedings by the Office of the Solicitor normally will be by consent decree.

(e) Letters of commitment, in lieu of conciliation agreements, are appropriate for resolving minor technical deficiencies.

60–1.27 Assumption of jurisdiction by the Director.

(a) The Director may inquire into the status of any pending matter. Where the Director considers it necessary or appropriate to the achievement of the purposes of the Order or of sections 402 and 503, he/she may assume jurisdiction over the matter and proceed as provided in this chapter. Whenever the Director assumes jurisdiction over any matter, he/she may conduct, or have conducted, such investigation, hold such hearings, including record hearings, and hearings under § 60–1.9(b) of this part, make such findings, issue such recommendations and directives and take such other action as may be necessary or appropriate to achieve the purposes of the Order or of sections 402 and 503.

(b) For reasonable cause shown, the Director may, on his/her own motion or pursuant to a request, reconsider or cause to be reconsidered a matter arising under the Order or under sections 402 and 503 which presently is pending in OFCCP.

§ 60–1.28 Intimidation and interference.

The sanctions and penalties contained in Subpart D of the Order, and in Parts 60–250 and 60–741 of this chapter may be exercised against any contractor or applicant which fails to take all necessary steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the Order, sections 402 and 503 or any other Federal, state or local laws requiring equal employment opportunity. Such sanctions and penalties also apply to contractors or applicants which discriminate against a person because he or she has opposed any employment practice unlawful under the Order, sections 402 and 503, Title VII of the Civil Rights Act of 1964, as amended, or any other Federal, state or local laws.

§ 60–1.29 Enforcement proceedings.

(a) *General.* If, as a result of a compliance review, complaint investigation or some other review, OFCCP believes that the Order or that sections 402 and 503 have been violated, the matter may be referred to the Office of the Solicitor for consideration of legal enforcement proceedings.

(b) *Violations.* Violations may be found based upon, *inter alia*, any of the following: (1) the results of a compliance review or complaint investigation; (2) analysis of an affirmative action

program; (3) the results of an on-site review of the contractor's compliance with the Order or of sections 402 and 503; (4) a contractor's refusal or failure to submit an affirmative action program; (5) the contractor has failed to change the practices); (2) the contractor has refused or failed to develop or submit a current affirmative action program; (3) the contractor has failed or refused to

such compliance without contested litigation.

(5) As used in this part, the Attorney General shall mean the Attorney General, the Assistant Attorney General for Civil Rights, or any other person

(j) *Enforcement policy regarding Federal deposit and share insurance.* The Department of Labor will not debar financial institutions (e.g., banks, savings and loan associations and credit

on the contractor to demonstrate that it is entitled to reinstatement.

(b) Rescission of the debarment order and reinstatement of the contractor's eligibility for further contracts may be

(d) The Director's or Secretary's decision on the petition for reinstatement shall constitute a final administrative order.

(e) Any party or person who

program; (3) the results of an on-site review of the contractor's compliance with the Order or of sections 402 and 503; (4) a contractor's refusal or failure to submit an affirmative action program; (5) a contractor's refusal or failure to permit an on-site compliance review or complaint investigation to be conducted; (6) a contractor's refusal or failure to maintain records and other information, or to supply copies of such records or information required to be maintained or supplied by the Order or by sections 402 and 503; and (7) any substantial or material violation of the contractual provisions of the Order or of the regulations implementing sections 402 and 503.

(c) *Administrative enforcement proceedings.* Administrative enforcement proceedings are brought by the Office of the Solicitor and shall be conducted under the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity under Executive Order 11246, Section 402 and Section 503 contained in Part 60–30 of this chapter. Administrative enforcement proceedings may be commenced to enjoin violations of the Order or of sections 402 and 503, to seek appropriate relief (which may include back pay, front pay, retroactive seniority, training, priority rights to hire or promotion, etc., for an affected class or for individuals) or to impose sanctions.

(d) *Special violations.* If the contractor refuses or fails to (1) submit an affirmative action program; (2) supply copies of relevant records or other requested information; (3) allow OFCCP access to its premises for an on-site review or investigation; or if the contractor is being charged with intimidation or interference under § 60–1.28 of the part, and if conciliation efforts under this part are unsuccessful, administrative enforcement proceedings may be commenced without serving the contractor with a show cause notice or a notice of violation.

(e) *Preliminary administrative enforcement proceedings.* Preliminary or summary enforcement proceedings under 41 CFR 60–30.38 may be appropriate when the evidence indicates one or more of the following violations of the Order, section 402 or section 503: (1) The contractor is engaging in employment practices which violate its contractual obligations so as to made the contractor not responsible to perform its contractual EEO obligations (such as, where a preaward or other compliance review discloses evidence that the contractor is engaging in prohibited employment practices and the contractor has failed to change the practices); (2) the contractor has refused or failed to develop or submit a current affirmative action program; (3) the contractor has failed or refused to supply requested records or other information it is required to supply; (4) the contractor has failed or refused to permit access to its premises, to its records for reviewing or copying or to its employees or witnesses for interviewing or questioning during an on-site review or investigation; (5) the contractor has engaged in intimidation or retaliation in violation of § 60–1.28 of this part. Preliminary enforcement proceedings involving one or more such violations may be commenced by the office of the Solicitor, and shall be conducted pursuant to the rules of practice for such proceedings under Part 60–30 of this chapter.

(f) *Judicial enforcement—referrals to the Department of Justice.* (1) Violations of the Order or section 402 or 503 or the threat of violations of the Order or section 402 or 503 may be referred to the Department of Justice for judicial enforcement. There are no procedural prerequisites to a referral to the Department of Justice.

(2) Whenever a matter has been referred to the Department of Justice for consideration of judicial proceedings, the Attorney General may bring a civil action against the contractor or any other person in the appropriate district court of the United States requesting a temporary restraining order, preliminary or permanent injunction, and an order for such additional equitable relief, including back pay, deemed necessary or appropriate to ensure the full enjoyment of the rights secured by the Order or section 402 or 503, or any of the above.

(3) The Attorney General is authorized to conduct such investigation of the facts as he/she may deem necessary or appropriate to carry out his/her responsibilities under these regulations.

(4) Prior to the institution of any judicial proceedings, the Attorney General, on behalf of the Director, is authorized to make reasonable efforts to secure compliance with the contract provisions of the Order. He/she may do so by providing the contractor and any other person with reasonable notice of findings, his/her intent to file suit, and the actions he/she believes necessary to obtain compliance with the contract provisions of the Order without contested litigation, and by offering the contractor and any other person a reasonable opportunity for conference and conciliation, in an effort to obtain such compliance without contested litigation.

(5) As used in this part, the Attorney General shall mean the Attorney General, the Assistant Attorney General for Civil Rights, or any other person authorized by regulations or practice to act for the Attorney General with respect to the enforcement of equal employment opportunity laws, orders and regulations generally, or in a particular matter or case.

(g) *Recommendations to the Attorney Generol for investigation and possible suit.* In addition to recommending that suit be instituted upon referral under 41 CFR 60–1.29(f) above, the Department of Labor may recommend that the Attorney General conduct further investigation of a contractor to determine whether there are substantial violations of the Order, section 402, section 503 or other contractural obligations assumed by the contractor that warrant the initiation of a lawsuit. Upon doing so the Department of Labor shall promptly notify the contractor of that recommendation. Upon receipt of such a recommendation the Attorney General is authorized to take any action, with respect to a contractor, which is authorized by a referral under 41 CFR 60–1.29(f) above.

(h) *Referrals to the Equal Employment Opportunity Commission.* The Department of Labor may recommend that the Equal Employment Opportunity Commission institute appropriate proceedings under Title VII of the Civil Rights Act of 1964. In addition, and where appropriate, the Department of Labor will make such recommendations to the EEOC in connection with alleged violations by financial institutions whose only nexus to the Federal Government is Federal deposit or share insurance.

(i) *Referrals to financial institution regulatory agencies.* Where appropriate, the Department of Labor may refer alleged violation of the Order, section 402 or section 503 by financial institutions to the appropriate Federal financial institutions regulatory agency for actions under that agency's procedures. Whenever the Department of Labor refers a violations by a financial institution to the appropriate regulatory agency, the agency, after consultation with the Department of Labor, may take such action, in its sole discretion, as it deems appropriate. These agencies are: (1) Federal Home Loan Bank Board; (2) Federal Deposit Insurance Corporation; (3) Comptroller of the Currency; (4) the Board of Governors of the Federal Reserve System; and (5) the National Credit Union Administration

(j) *Enforcement policy regarding Federal deposit and share insurance.* The Department of Labor will not debar financial institutions (e.g., banks, savings and loan associations and credit unions) from future Federal deposit or share insurance, or cancel, terminate or suspend existing Federal deposit or share insurance. In the event that a financial institution which has Federal deposit or share insurance is alleged to be in violation of its contractual commitments under the Executive Order, section 402 or section 503, the Department of Labor will pursue one of the options mentioned in paragraphs (f), (h) and (i) of this section with respect to the deposit or share insurance relationship. Such recommendations or referrals as described in paragraphs (f), (h) and (i) of this section may take place without or after an administrative hearing in the Department of Labor.

§60–1.30 Debarment and contract ineligibility list.

No order for debarment from further Government contracts or subcontracts pursuant to section 209(a)(6) of the Order or pursuant to the regulations implementing sections 402 and 503 shall be made without affording the contractor an opportunity for a hearing, either administrative or judicial. The Director periodically shall distribute a list to all executive departments and agencies giving the names of contractors which have been declared ineligible under the Order or under sections 402 and 503 for further Government contracts and subcontracts. The Director shall promptly notify the Comptroller General of the United States when contracts have been cancelled or terminated or when a contractor has been debarred from further Government contracts under the Order or under sections 402 and 503. The Director shall take appropriate steps to notify prime contractors of the debarred contractor's ineligibility for subcontracts.

§ 60–1.31 Petition for reinstatement for debarred contractors.

(a) Any contractor declared ineligible under the Order or under section 402 or 503 for further contracts may petition the Director for reinstatement. A copy of the petition for reinstatement shall be served on the parties to the original proceeding which led to the debarment. The petition for reinstatement shall set forth what actions the contractor has taken to comply, as applicable, with the Order, section 402 or section 503 and in what way the contractor will comply with requirements which may involve future performance. The burden shall be on the contractor to demonstrate that it is entitled to reinstatement.

(b) Rescission of the debarment order and reinstatement of the contractor's eligiblity for further contracts may be conditioned on the contractor satisfying the Director that it has established and will implement personnel and employment policies in compliance with the provisions of the Order or of section 402 or 503. In carrying out his/her responsibilities under this section, the Director may require that compliance reviews be conducted of the contractor's establishments, and that the contractor supply copies of any information relevant to determining its compliance with the Order or with sections 402 or 503. Reinstatement also may be conditioned on a program of compliance which may include meeting requirements not specifically mentioned in the debarment order where meeting these requirements is necessary to achieve compliance under the Order or under section 402 or 503. Where the debarment was based on a determination of the contractor's liability but the extent of the relief or the number or identity of persons entitled to relief has not been determined or where there are other issues appropriate for hearing, the Director may remand the matter to the Administrative Law Judge for a recommended determination of such issues prior to reinstatement. On remand from the Director, the Administrative Law Judge shall follow the procedures in Part 60–30 of this chapter in making his/her recommended determination of the number of identity of the individuals entitled to relief and the amount of relief. Reasonable discovery shall be allowed on those issues. The matter shall then proceed in accordance with §§ 60–30.25 through 60–30.30 of this chapter. Reinstatement by the Director or Secretary, as applicable, may be conditioned on the contractor's satisfying any relief finally determined by the Secretary or Director, as applicable, to be owed.

(c) Any conditions upon which the recission of the debarment order and reinstatement of the contractor are based shall be set forth by the Director or the Secretary, as appropriate, in an order which shall be filed with the Administrative Law Judge and made a part of the record in the original proceeding from which the debarment resulted. The Administrative Law Judge shall retain jurisdiction, and any subsequent violations involving the same issues which gave rise to the debarment order or which are included in the reinstatement order may be raised by motion in the original proceeding.

(d) The Director's or Secretary's decision on the petition for reinstatement shall constitute a final administrative order.

(e) Any party or person who participated (pursuant to 41 CFR 60–30.24) in the proceeding which gave rise to the debarment order may make submissions opposing or supporting the contractor's petition for reinstatement.

(f) When a debarred contractor is reinstated, the Director shall take prompt action to notify the contractors, Comptroller General and the agencies which received notice of the debarment.

Subpart C—Ancillary Matters

§ 60–1.40 Affirmative action programs.

(a) *Requirements of programs.* Each nonconstruction contractor which has 50 or more employees and (1) has a contract of $50,000 or more; or (2) has contracts (including Government bills of lading) which, in any 12-month period total $50,000 or more, or reasonably may be expected to total $50,000 or more; or (3) is a financial institution which serves as a depository for Government funds in any amount, acts as an issuing or redeeming agent for U.S. savings bonds and savings notes in any amount, or subscribes to Federal deposit or share insurance, shall develop a written affirmative action program for each of its establishments. Each nonconstruction contractor shall require each subcontractor which has 50 or more employees and (i) has a subcontract of $50,000 or more; or (ii) has subcontracts (including Government bills of lading) which, in any 12-month period total $50,000 or more, or reasonably may be expected to total $50,000 or more; or (iii) is a financial institution which serves as a depository for Government funds in any amount, acts as an issuing or redeeming agent for U.S. savings bonds and savings notes in any amount, or subscribes to Federal deposit or share insurance, to develop a written affirmative action program for each of its establishments. A necessary prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority and female employment and an evaluation of opportunities for utilization of minority group and female personnel. The contractor's program shall provide in detail for specific steps to guarantee equal employment opportunity keyed to the problems and needs of members of minority groups and women, including, when there is underutilization or other deficiencies, the development of specific goals and timetables for the prompt

achievement of full and equal employment opportunity.

(b) *Maintenance of programs.* Contractors currently subject to this section and Part 60–2 of this chapter must have an affirmative action program

equal consideration for employment without regard to race, color, religion, sex, or national origin;

(d) Uses a single advertisement in which appears in clearly distinguishable

Constitution Avenue, N.W., Washington, D.C. 20210 or an OFCCP regional office, listed in most telephone directories under U.S. Government, Department of Labor. Complaints specifically under the veterans' law may also be filed directly with the

affirmative action clauses of sections 402 and 503 shall be considered to be a part of every contract and subcontract required by the Order and sections 402 and 503 to include such clauses regardless of whether the clauses are

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60–2.12 Establishment of goals and timetables.
60–2.13 Additional required ingredients of affirmative action programs.
60–2.14 Program summary.
60–2.15 Compliance status.

(b) Relief, including back pay, where appropriate, for members of an affected class or individuals who by virtue of past discrimination continue to suffer the present effects of that discrimination, shall be provided in the

achievement of full and equal employment opportunity.

(b) *Maintenance of programs.* Contractors currently subject to this section and Part 60–2 of this chapter must have an affirmative action program in place at each establishment. If a contractor is not currently subject to this section and Part 60–2 it must, within 120 days from the commencement of the contract, develop, implement, and maintain separate affirmative action programs for each of its establishments. A copy of the appropriate affirmative action program shall be maintained at each of the contractor's locations. An affirmative action program shall be part of the staffing and training plans for each new establishment and shall be developed and made available prior to the staffing of such establishment. A report of the results of such program shall be compiled annually and the program shall be updated at that time. This information shall be made available to OFCCP upon request and the contractor's affirmative action program and the results it produces shall be evaluated as part of compliance review activities.

(c) *Application to construction contractors.* The provisions of this section 60–1.40 shall be applicable to the nonconstruction employees of a construction contractor which has 50 or more nonconstruction employees and which has (1) a contract of $50,000 or more; or (2) contracts (including Government bills of lading) which, in any 12-month period total $50,000 or more, or reasonably may be expected to total $50,000 or more.

§ 60–1.41 Solicitations or advertisements for employees.

In solicitations or advertisements for employees placed by or on behalf of a contractor, the requirements of paragraph (2) of the equal opportunity clause shall be satisfied whenever the contractor complies with any of the following:

(a) States expressly in the solicitations or advertising that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin;

(b) Uses display or other advertising, and the advertising includes an appropriate insignia prescribed by the Director. The use of the insignia is considered subject to the provisions of 18 U.S.C. 701;

(c) Uses a single advertisement, and the advertisement is grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants equal consideration for employment without regard to race, color, religion, sex, or national origin;

(d) Uses a single advertisement in which appears in clearly distinguishable type the phrase "an equal opportunity employer."

§ 60–1.42 Notices to be posted.

(a) Unless alternative notices are prescribed by the Director, the notices which contractors are required to post by paragraphs (1) and (3) of the equal opportunity clause will contain the following language in English and Spanish and will be provided by the contracting or administering agencies:

Equal Employment Opportunity Is the Law—Discrimination Is Prohibited by the Civil Rights Act of 1964 and by Executive Order No. 11246

Private Industry, State, and Local Government

Title VII of the Civil Rights Act of 1964, as amended, prohibits job discrimination because of race, color, religion, sex or national origin.

Applicants to and employees of private employers, state/local governments, and public/private educational institutions are protected. Also covered are employment agencies, labor unions and apprenticeship programs. Any person who believes he or she has been discriminated against should contact immediately:

The U.S. Equal Employment Opportunity Commission (EEOC), 2401 F St. N.W., Washington, D.C. 20506.

Federal Contract Employment

Executive Order 11246, as amended, prohibits job discrimination because of race, color, religion, sex or national origin and requires affirmative action to ensure equality of opportunity in all aspects of employment.

Section 503 of the Rehabilitation Act of 1973 prohibits job discrimination because of handicap and requires affirmative action to employ and advance in employment qualified handicapped workers.

Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 prohibits job discrimination and requires affirmative action to employ and advance in employment (1) qualified Vietnam era veterans during the first four years after their discharge and (2) qualified disabled veterans throughout their working life if they have a 30 percent or more disability.

Applicants to and employees of any company with a Federal Government contract or subcontract are protected. Any person who believes a contractor has violated its affirmative action obligations, including nondiscrimination under Executive Order 11246, as amended or under Section 503 of the Rehabilitation Act, or under Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 should contact immediately:

The Employment Standards Administration, Office of Federal Contract Compliance Programs (OFCCP), Third and Constitution Avenue, N.W., Washington, D.C. 20210 or an OFCCP regional office, listed in most telephone directories under U.S. Government, Department of Labor. Complaints specifically under the veterans' law may also be filed directly with the Veterans' Employment Service through local offices of the state employment service.

All complaints must be filed within 180 days from the date of the alleged violation.

(b) The requirements of paragraph (3) of the equal opportunity clause will be satisfied whenever the contractor posts copies of the notification prescribed by or pursuant to paragraph (a) of this section in conspicuous places available to employees, applicants for employment, and representatives of each labor union or other organization representing its employees with which it has a collective-bargaining agreement or other contract or understanding.

§ 60–1.43 Access to records and site of employment.

Each contractor shall permit access during normal business hours to its premises for the purpose of conducting on-site compliance reviews which include interviewing employees, inspecting, copying and removing off-site copies of such books, records, accounts, and other material such as computer tapes and printouts as may be relevant to the matter under investigation and pertinent to compliance with the Order or with sections 402 and 503.

§ 60–1.44 Rulings and interpretations.

Rulings under or interpretations of the Order and of sections 402 and 503 shall be made by the Director.

§ 60–1.45 Adaptation of language.

Such necessary changes in language may be made in the equal opportunity clause of the Order and in the affirmative action clauses of sections 402 and 503 as shall be appropriate to identify properly the parties and their undertakings.

§ 60–1.46 Incorporation by reference.

The equal opportunity clause and the affirmative action clauses may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts as the Director may designate.

§ 60–1.47 Incorporation by operation of law.

By operation of the Order and sections 402 and 503, the equal opportunity clause of the Order and the affirmative action clauses of sections 402 and 503 shall be considered to be a part of every contract and subcontract required by the Order and sections 402 and 503 to include such clauses regardless of whether the clauses are physically incorporated into such contracts and regardless of whether the contract is written.

§ 60–1.48 Request for hearing after compliance.

When a contractor, without a hearing, shall have complied with the recommendations or orders of the OFCCP and believes such recommendations or orders to be erroneous, it shall, upon filing a request therefore within 10 days of such compliance, be afforded an opportunity for a hearing and review of the alleged erroneous action. Such hearings normally will be record hearings before the Director.

§ 60–1.49 Existing contracts.

All contracts in effect prior to October 24, 1965, which are not subsequently modified shall be administered in accordance with the nondiscrimination provisions of any prior applicable Executive Orders. Any contract or subcontract modified on or after October 24, 1965, shall be subject to Executive Order 11246. Complaints received by and violations coming to the attention of OFCCP regarding contracts and subcontracts which were subject to Executive Orders 10925 and 11114 shall be processed as if they were complaints regarding violations of Executive Order 11246.

§ 60–1.50 Delegation of authority by the Director.

The Director is authorized to redelegate the authority given to him/her by the regulations in this chapter. The authority redelegated by the Director pursuant to the regulations in this chapter shall be exercised under his/her general direction and control.

PART 60–2—AFFIRMATIVE ACTION PROGRAMS

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60–2.31 Preemption.
60–2.32 Supersedure.

Authority: 5 U.S.C. 553(a)(3)(B); 29 CFR 2.7; section 201, E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303, as amended by E.O. 12086.

Subpart A—General

§ 60–2.1 Title, purpose and scope.

(a) The regulations in this part implement provisions of Executive Order 11246 only. This part shall also be known as "Revised Order No. 4" and shall cover nonconstruction contractors. The provisions of this part also shall apply to the nonconstruction employees of a construction contractor with 50 or more nonconstruction employees and one or more contracts which meet the criteria set forth in section 60–1.40 of this chapter. Section 60–1.40 of this chapter, requires that within 120 days from the commencement of a contract each contractor which has 50 or more employees and (1) has a contract of $50,000 or more; or (2) has contracts (including Government bills of lading) which, in any 12-month period, total or can reasonably be expected to total $50,000 or more; or (3) which is a financial institution which (i) serves as a depository of Government funds in any amount; (ii) acts as an issuing or redeeming agent for U.S. savings bonds and savings notes in any amount; or (iii) subscribes to Federal deposit or share insurance, shall develop, implement and maintain a written affirmative action program for each of its establishments. This part sets forth guidelines to be used by contractors and the OFCCP in developing and judging written affirmative action programs as well as the good faith effort required to transform these programs from paper commitments to equal employment opportunity.

(b) Relief, including back pay, where appropriate, for members of an affected class or individuals who by virtue of past discrimination continue to suffer the present effects of that discrimination, shall be provided in the conciliation agreement entered into pursuant to 41 CFR 60–1.26 of this chapter. An affected class problem must be remedied before a contractor may be considered in compliance. Section 60–2.2 of this part, pertaining to an acceptable affirmative action program, also is applicable to a contractor's failure to remedy discrimination against members of an affected class.

§ 60–2.2 Requirements for contractors.

Any contractor required by 41 CFR 60–1.40 of this chapter to develop an affirmative action program at each of its establishments which has not complied fully with that section is not in compliance with the Order. Until such programs are developed and found to be acceptable in accordance with the standards and guidelines set forth in §§ 60–2.10 through 60–2.32 of this part, the contractor is unable to comply fully with the Order. An affirmative action program shall be deemed to have been accepted by OFCCP at the time the appropriate OFCCP area, regional or national office has accepted such program unless within 45 days thereafter the Director has disapproved such program. The intention of 41 CFR 60–1.40 and this part is that each contractor establishment will be covered by a written affirmative action program and that all the contractor's employees will be included in an affirmative action program regardless of where they work. Contractors may reach agreements with OFCCP on nationwide AAP formats or methodology.

§ 60–2.3 Submission of affirmative action programs and support data.

(a) The contractor shall submit the affirmative action program and supporting documentation within 15 days of receipt of a request from OFCCP. The terms "affirmative action program" and "supporting documentation" refer to the required contents of Affirmative Action Programs, as set forth in Subpart B of this part, and Methods of Implementing the Requirements of Subpart B, set forth in Subpart C of this part.

(b) The contractor also shall submit the affirmative action program and supporting documentation upon OFCCP's request when a complaint is being investigated or a preaward compliance review is being conducted.

(c) The contractor in accordance with 41 CFR 60–1.43, shall provide full access to and copies of all additional, relevant information and data for the on-site phase of the review.

(d) The contractor shall provide, for inspection under the Freedom of Information Act, 5 U.S.C. 552. If a contractor believes that information should be withheld from public inspection, it shall, at the time of

(EEO–1) designations: Officials and managers, professionals, technicians, sales workers, office and clerical and craftsmen (skilled). As categorized by the EEO–1 designations, women are likely to be underutilized in departments

(i) The minority population of the labor area surrounding the facility;

(ii) The size of the minority unemployment force in the labor area surrounding the facility;

contractor should consider at least the factors listed in § 60–2.11.

(b) Involve personnel relations staff, department and division heads, and local and unit managers in the goal-

to progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority and sex status.

(n) Copies of affirmative action

(c) The contractor in accordance with 41 CFR 60–1.43, shall provide full access to and copies of all additional, relevant information and data for the on-site phase of the review.

(d) The contractor shall provide, for off-site review, all data or information determined by the compliance officer to be necessary to analyze more fully alleged deficiencies or violations before a determination of compliance is made.

(e) If a contractor fails or refuses to submit its affirmative action program and supporting documentation or other information as required by paragraphs (a), (b), (c) and (d) of this section, enforcement proceedings authorized by this chapter may be initiated against the contractor after appropriate conciliation efforts have been attempted, without issuing a show cause notice or notice of violations.

§ 60–2.4 Confidentiality and relevancy of information.

(a) *Desk audit data.* If the contractor is concerned with the confidentiality of such information as lists of employees, employee names, reasons for termination and pay data, then alphabetic or numeric coding or the use of an index of pay and pay ranges are acceptable for desk audit purposes.

(b) *Data required for off-site analysis.* The contractor must provide all data determined by the compliance officer to be necessary for off-site analysis pursuant to § 60–2.3(d) of this part. Such data may only be coded if the contractor makes the code available to the compliance officer. If the contractor believes that particular information which is to be taken off-site is not relevant to compliance with the Executive Order, the contractor may request a ruling by the OFCCP Area Director. The OFCCP Area Director shall issue a ruling promptly. The contractor may appeal that ruling to the OFCCP Assistant Regional Administrator within 10 days of receipt. The Assistant Regional Administrator shall issue a final ruling promptly. Pending a final ruling, the information in question must be made available to the compliance officer off-site, but OFCCP shall take all necessary precautions to safeguard the confidentiality of such information until a final determination is made. Such information may not be copied and access to the information shall be limited to the compliance officer and personnel involved in the determination of relevancy. Data determined to be not relevant to the investigation will be returned to the contractor immediately.

(c) *Public access to information.* Information obtained from contractors under this chapter may be subject to public inspection under the Freedom of Information Act, 5 U.S.C. 552. If a contractor believes that information should be withheld from public inspection, it shall, at the time of submission of the information to the agency, clearly mark the materials "subject to a claim of confidentiality." If the agency receives a request from the public for such materials under the Freedom of Information Act, it will notify the contractor of the request and solicit a statement of reasons why the information should be withheld. As to any claim that the information contains trade secrets, or commercial or financial information which is privileged or confidential, the contractor shall set forth, with respect to each reasonably segregable portion of the materials, the manner in which it is claimed that release of the material would cause harm to the competitive position of the contractor. If information to which the contractor has filed an objection to disclosure is determined by OFCCP to be disclosable under 5 U.S.C. 552, the contractor shall be notified of such determination at least ten days prior to disclosure of the information.

Subpart B—Required Contents of Affirmative Action Programs

§ 60–2.10 Purpose of affirmative action program.

An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits itself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to achieve prompt and full utilization of minorities and women, at all levels and in all segments of its work force where deficiencies exist.

§ 60–2.11 Required utilization analysis.

Based upon the Government's experience with compliance reviews under the Executive Order program and the contractor reporting system, minority groups are most likely to be underutilized in departments and jobs within departments that fall within the following Employer's Information Report (EEO–1) designations: Officials and managers, professionals, technicians, sales workers, office and clerical and craftsmen (skilled). As categorized by the EEO–1 designations, women are likely to be underutilized in departments and jobs within departments as follows: Officials and managers, professionals, technicians, sales workers (except over-the-counter sales in certain retail establishments), craftsmen (skilled and semi-skilled). Therefore, the contractor shall direct special attention to such jobs in its analysis and goal setting for minorities and women. Affirmative action programs must contain the following information:

(a) Workforce analysis which is defined as a listing of each job title as it appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit, including departmental or unit supervision. If there are separate work units or lines of progression within a department, a separate list must be provided for each such work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles should be listed by department, job families, or disciplines, in order of wage rates or salary ranges. For each job title, the total number of incumbents, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job title must be given. All job titles, including all managerial job titles, must be listed.

(b) An analysis of all major job groups at the facility, with explanation if minorities or women are currently being underutilized in any one or more job groups ("job groups" herein meaning one or a group of jobs having similar content, wage rates and opportunities). "Underutilization" is defined as having fewer minorities or women in a particular job group than would reasonably be expected by their availability. In making the utilization analysis, the contractor shall conduct such analysis separately for minorities and women.

(1) In determining whether minorities are being underutilized in any job group, the contractor will consider at least all of the following factors:

(i) The minority population of the labor area surrounding the facility;

(ii) The size of the minority unemployment force in the labor area surrounding the facility;

(iii) The percentage of the minority work force as compared with the total work force in the immediate labor area;

(iv) The general availability of minorities having requisite skills in the immediate labor area;

(v) The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;

(vi) The availability of promotable and transferable minorities within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

(2) In determining whether women are being underutilized in any job group, the contractor will consider at least all of the following factors:

(i) The size of the female unemployment force in the labor area surrounding the facility;

(ii) The percentage of the female workforce as compared with the total workforce in the immediate labor area;

(iii) The general availability of women having requisite skills in the immediate labor area;

(iv) The availability of women having requisite skills in an area in which the contractor can reasonably recruit;

(v) The availability of women seeking employment in the labor or recruitment area of the contractor;

(vi) The availability of promotable and transferable female employees within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.

§ 60–2.12 Establishment of goals and timetables.

(a) The goals and timetables developed by the contractor should be attainable in terms of the contractor's analysis of its deficiencies and its entire affirmative action program. Thus, in establishing the size of its goals and the length of its timetables, the contractor should consider the results which could reasonably be expected from its putting forth every good faith effort to make its overall affirmative action program work. In determining levels of goals, the contractor should consider at least the factors listed in § 60–2.11.

(b) Involve personnel relations staff, department and division heads, and local and unit managers in the goal-setting process.

(c) Goals should be significant, measurable, and attainable.

(d) Goals should be specific for planned results, with timetables for completion.

(e) Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

(f) In establishing timetables to meet goals and commitments, the contractor will consider the anticipated expansion, contraction, and turnover of and in the work force.

(g) Goals, timetables, and affirmative action commitments must be designed to correct any identifiable deficiencies.

(h) Where deficiencies exist and where numbers or percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables separately for minorities and women.

(i) Such goals and timetables, with supporting data and the analysis thereof, shall be a part of the contractor's written affirmative action program and shall be maintained at each establishment of the contractor.

(j) A contractor or subcontractor extending a publicly announced preference for Indians as authorized in 41 CFR 60–1.5(a)(6) may reflect in its goals and timetables the permissive employment preference for Indians living on or near an Indian reservation.

(k) Where the contractor has not established a goal, its written affirmative action program must specifically analyze each of the factors listed in § 60–2.11 and must detail its reason for a lack of a goal.

(l) In the event it comes to the attention of the Office of Federal Contract Compliance Programs that there is a substantial disparity in the utilization of a particular minority group or men or women of a particular minority group, OFCCP may require separate goals and timetables for such minority group and may further require, where appropriate, such goals and timetables by sex for such group for such job classifications and organizational units specified by the OFCCP.

(m) Support data for the required analysis and program shall be compiled and maintained as part of the contractor's affirmative action program. This data will include but not be limited to progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority and sex status.

(n) Copies of affirmative action programs and/or copies of support data shall be made available to the Office of Federal Contract Compliance Programs, upon request, for such purposes as may be appropriate to the fulfillment of its responsibilities under Executive Order 11246, as amended.

§ 60–2.13 Additional required ingredients of affirmative action programs.

Effective affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.

(b) Formal internal and external dissemination of the contractor's policy.

(c) Establishment of responsibilities for implementation of the contractor's affirmative action program.

(d) Identification of problem areas (deficiencies) by organizational units and job group.

(e) Establishment of goals and objectives by organizational units and job groups, including timetables for completion.

(f) Development and execution of action-oriented programs designed to eliminate problems and further designed to attain established goals and objectives.

(g) Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.

(h) Compliance of personnel policies and practices with the Sex Discrimination Guidelines (41 CFR Part 60–20).

(i) Active support of local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and women.

(j) Consideration of minorities and women not currently in the work force having requisite skills who can be recruited through affirmative action measures.

§ 60–2.14 Program summary.

The affirmative action program shall be summarized and updated annually. The program summary shall be prepared in a format which shall be prescribed by the Director and published in the Federal Register as a notice before becoming effective. Contractors shall submit the program summary to OFCCP each year on the anniversary date of the affirmative action program.

§ 60–2.15 Compliance status.

No contractor's compliance status shall be judged alone by whether or not it reaches its goals and meets its timetables. Rather, each contractor's compliance posture shall be reviewed

(3) Conduct special meetings with executive, management, and supervisory personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

vendors, and suppliers requesting appropriate action on their part.

§ 60–2.22 Responsibility for implementation.

(a) An executive of the contractor

(6) Career counseling for all employees.

(7) Periodic audit to insure that each location is in compliance in areas such as:

(i) Posters are properly displayed.

occurring at a lesser rate (compared to work force mix) than that of nonminority or male employees.

(3) The selection process eliminates a significantly higher percentage of minorities or women than nonminorities

organizational unit and by job title using job performance criteria. Special attention should be given to academic, experience and skill requirements to insure that the requirements in themselves do not constitute inadvertent

§ 60-2.15 Compliance status.

No contractor's compliance status shall be judged alone by whether or not it reaches its goals and meets its timetables. Rather, each contractor's compliance posture shall be reviewed and determined by reviewing the contents of its program, the extent of its adherence to this program, and its good faith efforts to make its program work toward the realization of the program's goals within the timetables set for completion. There follows an outline of examples of procedures that contractors and OFCCP should use as a guideline for establishing, implementing, and judging an acceptable affirmative action program.

Subpart C—Methods of Implementing the Requirements of Subpart B

§ 60-2.20 Development or reaffirmation of the equal employment opportunity policy.

(a) The contractor's policy statement should indicate the chief executive officer's attitude on the subject matter, assign overall responsibility and provide for a reporting and monitoring procedure. Specific items to be mentioned should include, but not be limited to:

(1) Recruit, hire, train, and promote persons in all job titles, without regard to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. (The term "bona fide occupational qualification" has been construed very narrowly under the Civil Rights Act of 1964. Under Executive Order 11246, as amended, and this part, this term will be construed in the same manner.)

(2) Base decisions on employment so as to further the principle of equal employment opportunity.

(3) Ensure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities.

(4) Ensure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, social and recreation programs, will be administered without regard to race, color, religion, sex, or national origin.

§ 60-2.21 Dissemination of the policy.

(a) The contractor should disseminate its policy internally as follows:

(1) Include it in contractor's policy manual.

(2) Publicize it in company newspaper, magazine, annual report, and other media

(3) Conduct special meetings with executive, management, and supervisory personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(4) Schedule special meetings with all other employees to discuss policy and explain individual employee responsibilities.

(5) Discuss the policy thoroughly in both employee orientation and management training programs.

(6) Meet with union officials to inform them of policy, and request their cooperation.

(7) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to insure they are nondiscriminatory.

(8) Publish articles covering EEO programs, progress reports, promotions, etc., of minority and female employees, in company publications.

(9) Post the policy on company bulletin boards.

(10) When employees are featured in product or consumer advertising, employee handbooks or similar publications both minority and nonminority, men and women should be pictured.

(11) Communicate to employees the existence of the contractor's affirmative action program and make available such elements of its program as will enable such employees to know of and avail themselves of its benefits.

(b) The contractor should disseminate its policy externally as follows:

(1) Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer minorities and women for all positions listed.

(2) Incorporate the equal opportunity clause in all purchase orders, leases, contracts, etc., covered by Executive Order 11246, as amended, and its implementing regulations.

(3) Notify minority and women's organizations, community agencies, community leaders, secondary schools, and colleges, of company policy, preferably in writing.

(4) Communicate to prospective employees the existence of the contractor's affirmative action program and make available such elements of its program as will enable such prospective employees to know of and avail themselves of its benefits.

(5) When employees are pictured in consumer or help wanted advertising, both minority and nonminority men and women should be shown.

(6) Send written notification of company policy to all subcontractors, vendors, and suppliers requesting appropriate action on their part.

§ 60-2.22 Responsibility for implementation.

(a) An executive of the contractor should be appointed as director or manager of company equal opportunity programs. Depending upon the size and geographical alignment of the company, this may be his or her sole responsibility. He or she should be given the necessary top management support and staffing to execute the assignment. His or her identity should appear on all internal and external communications on the company's equal opportunity programs. His or her responsibilities should include, but not necessarily be limited to:

(1) Developing policy statements, affirmative action programs, internal and external communication techniques.

(2) Assisting in the identification of problem areas.

(3) Assisting line management in arriving at solutions to problems.

(4) Designing and implementing audit and reporting systems that will:

(i) Measure effectiveness of the contractor's programs.

(ii) Indicate need for remedial action.

(iii) Determine the degree to which the contractor's goals and objectives have been attained.

(5) Serve as liaison between the contractor and enforcement agencies.

(6) Serve as liaison between the contractor and minority organizations, women's organizations and community action groups concerned with employment opportunities of minorities and women.

(7) Keep management informed of latest developments in the entire equal opportunity area.

(b) Line responsibilities should include, but not be limited to the following:

(1) Assistance in the identification of problem areas and establishment of local and unit goals and objectives.

(2) Active involvement with local minority organizations, women's organizations, community action groups and community service programs.

(3) Periodic audit of training programs, hiring and promotion patterns to remove impediments to the attainment of goals and objectives.

(4) Regular discussions with local managers, supervisors, and employees to be certain the contractor's policies are being followed.

(5) Review of the qualifications of all employees to insure that minorities and women are given full opportunities for transfers and promotions.

(6) Career counseling for all employees.

(7) Periodic audit to insure that each location is in compliance in areas such as:

(i) Posters are properly displayed.

(ii) All facilities, including company housing, which the contractor maintains for the use and benefit of its employees, are in fact desegregated, both in policy and use. If the contractor provides facilities such as dormitories, locker rooms and rest rooms, they must be comparable for both sexes.

(iii) Minority and female employees are afforded a full opportunity and are encouraged to participate in all company sponsored educational, training, recreational, and social activities.

(8) Supervisors should be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results, as well as other criteria.

(9) It shall be a responsibility of supervisors to take actions to prevent harassment of employees placed through affirmative action efforts.

§ 60-2.23 Identification of problem areas by organizational units and job groups.

(a) An in-depth analysis of the following should be made, paying particular attention to trainees and those categories listed in § 60-2.11(b).

(1) Composition of the work force by minority group status and sex.

(2) Composition of applicant flow by minority group status and sex.

(3) The total selection process including position descriptions, position titles, worker specifications, application forms, interview procedures, test administration, test validity, referral procedures, final selection process, and similar factors.

(4) Transfer and promotion practices.

(5) Facilities, company sponsored recreation and social events, and special programs such as educational assistance.

(6) Seniority practices and seniority provisions of union contracts.

(7) Apprenticeship programs.

(8) All company training programs, formal and informal.

(9) Work force attitude.

(10) Technical phases of compliance, such as poster and notification to labor unions, retention of applications, notification to subcontractors, etc.

(b) If any of the following items are found in the analysis, special corrective action should be appropriate.

(1) An "underutilization" of minorities or women in specific job groups.

(2) Lateral and/or vertical movement of minority or female employees occurring at a lesser rate (compared to work force mix) than that of nonminority or male employees.

(3) The selection process eliminates a significantly higher percentage of minorities or women than nonminorities or men.

(4) Application and related preemployment forms not in compliance with Federal legislation.

(5) Position descriptions inaccurate in relation to actual functions and duties.

(6) Formal or scored selection procedures not validated as required by the OFCCP Uniform Guidelines on Employee Selection Procedures (see 41 CFR Part 60-3).

(7) Test forms not validated by location, work performance and inclusion of minorities and women in sample.

(8) Referral ratio of minorities or women to the hiring supervisor or manager indicates a significantly higher percentage are being rejected as compared to nonminority and male applicants.

(9) Minorities or women are excluded from or are not participating in company sponsored activities or programs.

(10) De facto segregation still exists at some facilities.

(11) Seniority provisions contribute to overt or inadvertent discrimination, i.e., a disparity by minority group status or sex exists between length of service and types of job held.

(12) Nonsupport of company policy by managers, supervisors or employees.

(13) Minorities or women underutilized or significantly underrepresented in training or career improvement programs.

(14) No formal techniques established for evaluating effectiveness of EEO programs.

(15) Lack of access to suitable housing inhibits recruitment efforts and employment of qualified minorities.

(16) Lack of suitable transportation (public or private) to the work place inhibits minority employment.

(17) Labor unions and subcontractors not notified of their responsibilities.

(18) Purchase orders do not contain EEO clause.

(19) Posters not on display.

§ 60-2.24 Development and execution of programs.

(a) The contractor should conduct detailed analyses of position descriptions to insure that they accurately reflect position functions, and are consistent for the same position from one location to another.

(b) The contractor should validate worker specifications by division, department location or other organizational unit and by job title using job performance criteria. Special attention should be given to academic, experience and skill requirements to insure that the requirements in themselves do not constitute inadvertent discrimination. Specifications should be consistent for the same job title in all locations and should be free from bias as regards to race, color, religion, sex (except where sex is a bona fide occupational qualification) or national origin. Where requirements screen out a disproportionate number of minorities or women, such requirements should be professionally validated to job performance.

(c) Approved position descriptions and worker specifications, when used by the contractor, should be made available to all members of management involved in the recruiting, screening, selection, and promotion process. Copies should also be distributed to all recruiting sources.

(d) The contractor should evaluate the total selection process to insure freedom from bias and, thus, aid the attainment of goals and objectives.

(1) All personnel involved in the recruiting, screening, selection, promotion, disciplinary, and related processes should be carefully selected and trained to insure elimination of bias in all personnel actions.

(2) The contractor shall observe the requirements of the OFCCP Uniform Guidelines on Employee Selection Procedures.

(3) Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups and women. Such techniques include but are not restricted to, unscored interviews, unscored or casual application forms, arrest records, credit checks, considerations of marital status or dependency or minor children. Where there exist data suggesting that such unfair discrimination or exclusion of minorities or women exists, the contractor should analyze its unscored procedures and eliminate them if they are not objectively valid.

(e) Suggested techniques to improve recruitment and increase the flow of minority or female applicants follow:

(1) Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., Concentrated Employment programs, Neighborhood Youth Corps, Secondary Schools, Colleges, and City Colleges with high minority enrollment, the State Employment Service, specialized employment agencies, Aspira, LULAC, SER, the G.I. Forum, the Commonwealth of Puerto Rico are normally prepared to

refer minority applicants. Organizations prepared to refer women with specific skills are: National Organization for Women, Welfare Rights organizations, Women's Equity Action League, Talent

(i) Technical and nontechnical co-op programs with predominately Negro and women's colleges.

(ii) "After school" and/or work-study jobs for minority youths, male and

(h) Encourage child care, housing and tranportation programs appropriately designed to improve the employment opportunities for minorities and women.

§ 60-2.31 Preemption.

To the extent that any state or local laws, regulations or ordinances, including those which grant special benefits to persons on account of sex,

construction contractors and subcontractors for Federal nonconstruction contractors and subcontractors if the construction work is necessary in whole or in part to the

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in

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refer minority applicants. Organizations prepared to refer women with specific skills are: National Organization for Women, Welfare Rights organizations, Women's Equity Action League, Talent Bank from Business and Professional Women (including 26 women's organizations), Professional Women's Caucus, Intercollegiate Association of University Women, Negro Women's sororities and service groups such as Delta Sigma Theta, Alpha Kappa Alpha, and Zera Phi Beta; National Council of Negro Women, American Association of University Women, YWCA, and sectarian groups such as Jewish Women's Groups, Catholic Women's Groups and Protestant Women's Groups, and women's colleges. In addition, community leaders as individuals shall be added to recruiting sources.

(2) Formal briefing sessions should be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority and female employees, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefings. Formal arrangements should be made for referral of applicants, followup with sources, and feedback on disposition of applicants.

(3) Minority and female employees, using procedures similar to subparagraph (2) of this paragraph, should be actively encouraged to refer applicants.

(4) A special effort should be made to include minorities and women on the Personnel Relations staff.

(5) Minority and female employees should be made available for participation in Career Days, Youth Motivation Programs, and related activities in their communities.

(6) Active participation in "Job Fairs" is desirable. Company representatives so participating should be given authority to make on-the-spot commitments.

(7) Active recruiting programs should be carried out at secondary schools, junior colleges, and colleges with predominant minority or female enrollments.

(8) Recruiting efforts at all schools should incorporate special efforts to reach minorities and women.

(9) Special employment programs should be undertaken whenever possible. Some possible programs are:

(i) Technical and nontechnical co-op programs with predominately Negro and women's colleges.

(ii) "After school" and/or work-study jobs for minority youths, male and female.

(iii) Summer jobs for underprivileged youth, male and female.

(iv) Summer work-study programs for male and female faculty members of the predominantly minority schools and colleges.

(v) Motivation, training and employment programs for the hardcore unemployed, male and female.

(10) When recruiting brochures pictorially present work situations, the minority and female members of the work force should be included, especially when such brochures are used in school and career programs.

(11) Help wanted advertising should be expanded to include the minority news media and women's interest media on a regular basis.

(f) The contractor should insure that minority and female employees are given equal opportunity for promotion. Suggestions for achieving this result include:

(1) Post or otherwise announce promotional opportunities.

(2) Make an inventory of current minority and female employees to determine academic, skill and experience level of individual employees.

(3) Initiate necessary remedial, job training and workstudy programs.

(4) Develop and implement formal employee evaluation programs.

(5) Make certain "worker specifications" have been validated on job performance related criteria. (Neither minority nor female employees should be required to possess higher qualifications than those of the lowest qualified incumbent.)

(6) When apparently qualified minority or female employees are passed over for upgrading, require supervisory personnel to submit written justification.

(7) Establish formal career counseling programs to include attitude development, education aid, job rotation, buddy system and similar programs.

(8) Review seniority practices and seniority clauses in union contracts to ensure that such practices or clauses are nondiscriminatory and do not have a discriminatory effect.

(g) Make certain facilities and company-sponsored social and recreation activities are desegregated. Actively encourage all employees to participate.

(h) Encourage child care, housing and tranportation programs appropriately designed to improve the employment opportunities for minorities and women.

§ 60-2.25 Internal audit and reporting systems.

(a) The contractor should monitor records of referrals, placements, transfers, promotions and terminations at all levels to ensure that nondiscriminatory policy is carried out.

(b) The contractor should require formal reports form unit managers on a schedule scheduled basis as to the degree to which corporate or unit goals are attained and timetables met.

(c) The contractor should review report results with all levels of management.

(d) The contractor should advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

§ 60-2.26 Support of action programs.

(a) The contractor should appoint key members of management to serve on merit employment councils, community relations boards and similar organizations.

(b) The contractor should encourage minority and female employees to participate actively in National Alliance of Businessmen programs for youth motivation.

(c) The contractor should support vocational guidance institutes, vestibule training programs and similar activities.

(d) The contractor should assist secondary schools and colleges in programs designed to enable minority and female graduates of these institutions to compete in the open employment market on a more equitable basis.

(e) The contractor should publicize achievements of minority and female employees in local and minority news media.

(f) The contractor should support programs developed by such organizations as National Alliance of Businessmen, the Urban Coalition and other organizations concerned with employment opportunities for minorities or women.

Subpart D—Miscellaneous

§ 60-2.30 Use of goals.

The purpose of a contractor's establishment and use of goals is to insure that it meet its affirmative action obligation. It is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, sex, or national origin.

§ 60-2.31 Preemption.

To the extent that any state or local laws, regulations or ordinances, including those which grant special benefits to persons on account of sex, are in conflict with Executive Order 11246, as amended, or with the requirements of this part, OFCCP will regard them as preempted under the Executive order.

§ 60-2.32 Supersedure.

All orders, instructions, regulations, and memorandums of the Secretary of Labor, other officials of the Department of Labor and contracting agencies are hereby superseded to the extent that they are inconsistent herewith, including a previous "Order No. 4" from this office dated January 30, 1970. Nothing in this part is intended to amend 41 CFR Part 60–3 or 41 CFR Part 60–20.

PART 60-4—CONSTRUCTION CONTRACTORS—AFFIRMATIVE ACTION REQUIREMENTS

Sec.

60–4.1 Scope and application.
60–4.2 Solicitations.
60–4.3 Equal opportunity clauses.
60–4.4 Affirmative action requirements.
60–4.5 Hometown plans.
60–4.6 Goals and timetables.
60–4.7 Effect on other regulations.
60–4.8 Show cause notice.
60–4.9 Incorporation by operation of the Order.

Authority: Secs. 201, 202, 205, 211, 301, 302, and 303 of E.O. 11246, as amended, 30 FR 12319; 32 FR 14303, as amended by E.O. 12086.

§ 60-4.1 Scope and application.

This part applies to all contractors and subcontractors which hold any Federal or federally assisted construction contract in excess of $10,000. The regulations in this part are applicable to all of a construction contractor's or subcontractor's construction employees who are engaged in on site construction including those construction employees who work on a non-Federal or nonfederally assisted construction site. This part also establishes procedures which all Federal contracting officers and all applicants, as applicable, shall follow in soliciting for and awarding Federal or federally assisted construction contracts. Procedures also are established which administering agencies shall follow in making any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of Executive Order 11246, as amended.

In addition, this part applies to construction work performed by construction contractors and subcontractors for Federal nonconstruction contractors and subcontractors if the construction work is necessary in whole or in part to the performance of a nonconstruction contract or subcontract.

§ 60-4.2 Solicitations.

(a) All Federal contracting officers and all applicants shall include the notice set forth in paragraph (d) of this section and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth in § 60–4.3 of this part in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts to be performed in geographical areas designated by the Director pursuant to § 60–4.6 of the part. Administering agencies shall require the inclusion of the notice set forth in paragraph (d) of this section and the specifications set forth in § 60–4.3 of this part as a condition of any grant, contract, subcontract, loan, insurance or guarantee involving federally assisted construction covered by this Part 60–4.

(b) All nonconstruction contractors covered by Executive Order 11246 and the implementing regulations shall include the notice in paragraph (d) of this section in all construction agreements which are necessary in whole or in part to the performance of the covered nonconstruction contract.

(c) Contracting officers, applicants and nonconstruction contractors shall give written notice to the Director within 10 working days of award of a contract subject to these provisions. The notification shall include the name, address and telephone number of the contractor; employer identification number; dollar amount of the contract, estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed.

(d) The following notice shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of $10,000 to be performed in geographical areas designed by the Director pursuant to § 60–4.6 of this part (see 41 CFR 60–4.2(a)):

Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation in each trade
... ...	Insert goals for each year	Insert goals for each year

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60–4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60–4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60–4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor, employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical

area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the

Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal

Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the

referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred,

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations

area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

§ 60-4.3 Equal opportunity clauses.

(a) The equal opportunity clause published at 41 CFR 60-1.4(a) of this chapter is required to be included in and is part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts. The equal opportunity clause published at 41 CFR 60-1.4(b) is required to be included in, and is a part of, all nonexempt federally assisted construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers, all applicants and all nonconstruction contractors, as applicable, shall include the specifications set forth in this section in all Federal and federally assisted construction contracts in excess of $10,000 to be performed in geographical areas designated by the Director pursuant to § 60-4.6 of this part and in construction subcontracts in excess of $10,000 necessary in whole or in part to the performance of nonconstruction Federal contracts and subcontracts covered under the Executive Order.

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the **Federal Register** in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and femal contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and

its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these

§ 60-4.4 Affirmative action requirements.

(a) To implement the affirmative action requirements of Executive Order 11246 in the construction industry, the Office of Federal Contract Compliance

§ 60-4.5 Hometown plans.

(a) A contractor participating, either individually or through an association, in an approved Hometown Plan (including heavy highway affirmative

demonstrate their participation and document their compliance with the provision of the Hometown Plan.

§ 60-4.6 Goals and timetables.

§ 60-4.9 Incorporation by operation of the order.

By operation of the Order, the equal opportunity clause contained in § 60-1.4, the Notice of Requirement for

indicate that a particular sex is sought, desired or better suited for a particular job unless sex is a bona fide occupational qualification for the job. The placement of an advertisement in

its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60–4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(b) The notice set forth in 41 CFR 60–4.2 and the specifications set forth in 41 CFR 60–4.3 replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR Part 60–4 become effective.

§ 60–4.4 Affirmative action requirements.

(a) To implement the affirmative action requirements of Executive Order 11246 in the construction industry, the Office of Federal Contract Compliance Programs previously has approved affirmative action programs commonly referred to as "Hometown Plans," has promulgated affirmative action plans referred to as "Imposed Plans" and has approved "Special Bid Conditions" for high impact projects constructed in areas not covered by a Hometown or an Imposed Plan. All solicitations for construction contracts made after the effective date of the regulations in this part shall include the notice specified in § 60–4.2 of this part and the specifications in § 60–4.3 of this part in lieu of the Hometown and Imposed Plans including the Philadelphia Plan and the Special Bid Conditions. Until the Director has issued an order pursuant to § 60–4.6 of this part establishing goals and timetables for minorities in the appropriate geographical areas or for a project covered by Special Bid Conditions, the goals and timetables for minorities to be inserted in the Notice required by 41 CFR 60–4.2 shall be the goals and timetables contained in the Hometown Plan, Imposed Plan or Special Bid Conditions presently covering the respective geographical area or project involved.

(b) Signatories to a Hometown Plan (including heavy highway affirmative action plans) shall have 45 days from the effective day of the regulations in this part to submit under such a Plan (for the director's approval) goals and timetables for women and to include female representation on the Hometown Plan Administrative Committee. Such goals for female representation shall be at least as high as the goals established for female representation in the notice issued pursuant to 41 CFR 60–4.6. Failure of the signatories, within the 45-day period, to include female representation and to submit goals for women or a new plan, as appropriate, shall result in an automatic termination of the Office of Federal Contract Compliance program's approval of the Hometown Plan. At any time the Office of Federal Contract Compliance Programs terminates or withdraws its approval of a Hometown Plan, or when the plan expires and another plan is not approved, the contractors signatory to the plan shall be covered automatically by the specifications set forth in § 60–4.3 of this part and by the goals and timetables established for that geographical area pursuant to § 60–4.6 of this part.

§ 60–4.5 Hometown plans.

(a) A contractor participating, either individually or through an association, in an approved Hometown Plan (including heavy highway affirmative action plans) shall comply with its affirmative action obligations under Executive Order 11246 by complying with its obligations under the plan: *Provided,* That each contractor or subcontractor participating in an approved plan is individually required to comply with the equal opportunity clause set forth in 41 CFR 60–1.4; to make a good faith effort to achieve the goals for each trade participating in the plan in which it has employees; and that the overall good performance by other contractors or subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the plan's goals and timetables. If a contractor is not participating in an approved Hometown Plan it shall comply with the specifications set forth in § 60–4.3 of this part and with the goals and timetables for the appropriate area as listed in the notice required by 41 CFR 60–4.2 with regard to that trade. For the purposes of this Part 60–4, a contractor is not participating in a Hometown Plan for a particular trade if it:

(1) Ceases to be signatory to a Hometown Plan covering that trade;

(2) Is signatory to a Hometown Plan for that trade but is not party to a collective bargaining agreement for that trade;

(3) Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with labor organizations which are not or cease to be signatories to the same Hometown Plan for that trade;

(4) Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with a labor organization for that trade but the two have not jointly executed a specific commitment to minority and female goals and timetables and incorporated the commitment in the Hometown Plan for that trade;

(5) Is participating in a Hometown Plan for that trade which is no longer acceptable to the Office of Federal Contract Compliance Programs;

(6) Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with a labor organization for that trade and the labor organization and the contractor have failed to make a good faith effort to comply with their obligations under the Hometown Plan for that trade.

(b) Contractors participating in Hometown Plans must be able to demonstrate their participation and document their compliance with the provision of the Hometown Plan.

§ 60–4.6 Goals and timetables.

The Director, from time to time, shall issue goals and timetables for minority and female utilization which shall be based on appropriate workforce, demographic or other relevant data and which shall cover construction projects or construction contracts performed in specific geographical areas. The goals, which shall be applicable to each construction trade in a covered contractor's or subcontractor's entire workforce which is working in the area covered by the goals and timetables, shall be published as notices in the Federal Register, and shall be inserted by the contracting officers and applicants, as applicable, in the Notice required by 41 CFR 60–4.2. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed.

§ 60–4.7 Effect on other regulations.

The regulations in this part are in addition to the regulations contained in this chapter which apply to construction contractors and subcontractors generally. See particularly, 41 CFR 60–1.4 (a), (b), and (c); 60–1.5; 60–1.7; 60–1.8; 60–1.28; 60–1.29; 60–1.30; 60–1.31; 60–1.32; 60–1.41; 60–1.42; 60–1.43; 60–1.46; 60–1.47; 60–1.48; and 41 CFR Part 60–3; Part 60–20; Part 60–30; Part 60–40; and Part 60–50.

§ 60–4.8 Show cause notice.

If an investigation or compliance review reveals that a construction contractor or subcontractor has violated the Executive Order, any contract clause, specifications or the regulations in this chapter and if administrative enforcement is contemplated, the Director shall issue to the contractor or subcontractor a notice to show cause which shall contain the items specified in (i)–(iv) of 41 CFR 60–1.25(c)(1). If the contractor does not show good cause within 30 days, or in the alternative, fails to enter an acceptable conciliation agreement which includes where appropriate, make up goals and timetables, back pay, and seniority relief for affected class members, the OFCCP shall follow the procedure in 41 CFR 60–1.29: *Provided,* That where a conciliation agreement has been violated, no show cause notice is required prior to the initiation of enforcement proceedings.

§ 60–4.9 Incorporation by operation of the order.

By operation of the Order, the equal opportunity clause contained in § 60–1.4, the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) contained in § 60–4.2, and the Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) contained in § 60–4.3 shall be deemed to be a part of every solicitation or of every contract and subcontract, as appropriate, required by the Order and the regulations in this chapter to include such clauses whether or not they are physically incorporated in such solicitation or contract and whether or not the contract is written.

PART 60–20—SEX DISCRIMINATION GUIDELINES

Sec.
60–20.1 Title and purpose.
60–20.2 Recruitment and advertisement.
60–20.3 Job policies and practices.
60–20.4 Seniority systems.
60–20.5 Discriminatory wages and placements.
60–20.6 Affirmative action.
60–20.7 Pregnancy, childbirth and related medical conditions.
60–20.8 Sexual advances and favors.

Authority: Sec. 201, E. O. 11246, 30 FR 12319, and E. O. 11375, 32 FR 14303, as amended by E. O. 12086.

§ 60–20.1 Title and purpose.

The purpose of the provisions in this part is to set forth the interpretations and guidelines of the Office of Federal Contract Compliance Programs regarding the implementation of Executive Order 11246, as amended, for the promotion and ensuring of equal opportunities for all persons employed or seeking employment with Government contractors or with contractors performing under federally assisted construction contracts, without regard to sex. Experience has indicated that special problems related to the implementation of the Executive Order require a definitive treatment beyond the terms of the Order itself. These interpretations are to be read in connection with existing regulations, set forth in Parts 60–1 and 60–2 of this chapter.

§ 60–20.2 Recruitment and advertisement.

(a) Contractors engaged in recruiting activity shall recruit employees of both sexes for all jobs unless sex is a bona fide occupational qualification.

(b) Advertisements in newspapers and other media for employment sponsored by or on behalf of contractors shall not depict, express a preference, or indicate that a particular sex is sought, desired or better suited for a particular job unless sex is a bona fide occupational qualification for the job. The placement of an advertisement in columns headed "Male" or "Female", or similar wording, will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

§ 60–20.3 Job policies and practices.

(a) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of sex. If the contractor deals with a bargaining representative for its employees and there is a written agreement on conditions of employment, such agreement shall not be inconsistent with these guidelines.

(b) Employees of both sexes shall have an equal opportunity to any available job that he or she is qualified to perform, unless sex is a bona fide occupational qualification.

Note.—In most Government contract work there are only limited instances where valid reasons can be expected to exist which would justify the exclusion of all men or all women from any given job.

(c)(1) The contractor must not make any distinction based upon sex in employment opportunities, wages, hours or other conditions of employment, including fringe benefits. As the Supreme Court held in *Los Angeles Department of Water and Power* v. *Manhart,* 435 U.S. 702 (1978), fringe benefits for similarly situated men and women must be equal, notwithstanding that the contractor's contributions for men and women are unequal.

(2) [Reserved.]

(d) Any distinction between married and unmarried persons of one sex that is not made between married and unmarried persons of the opposite sex will be considered to be a distinction made on the basis of sex. Similarly, a contractor must not deny employment to women with young children unless it has the same exclusionary policies for men; or terminate an employee of one sex in a particular job classification upon reaching a certain age unless the same rule is applicable to members of the opposite sex.

(e) The contractor's policies and practices must assure appropriate physical facilities to both sexes. The contractor may not refuse to hire men or women, or deny men or women a particular job because there are no restroom or associated facilities, unless the contractor is able to show that providing the facilities would be

unreasonable for such reasons as excessive expense or lack of space.

(f)(1) A contractor must not deny a female employee the right to any job that she is qualified to perform in

company may have a production division with three functional units: One (assembly) all female; another (wiring), all male; and a third (circuit boards), also all male. The highest wage

accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth or related

individuals engage in the activities described in paragraph (a) of this section, regardless of whether their specific acts were authorized or forbidden by the contractor and

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issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal

unreasonable for such reasons as excessive expense or lack of space.

(f)(1) A contractor must not deny a female employee the right to any job that she is qualified to perform in reliance upon a state "protective" law. For example, such laws include those which prohibit women from performing in certain types of occupations (e.g., a bartender or a core-maker); from working at jobs requiring more than a certain number of hours; and from working at jobs that require lifting or carrying more than designated weights.

(2) Such legislation was intended to be beneficial, but, instead, has been found to result in restricting employment opportunities for men and/or women. Accordingly, it cannot be used as a basis for denying employment or for establishing sex as a bona fide occupational qualification for the job.

(g) The contractor must not specify any differences for male and female employees on the basis of sex in either mandatory or optional retirement age.

(h) Nothing in these guidelines shall be interpreted to mean that differences in capabilities for job assignments do not exist among individuals and that such distinctions may not be recognized by the contractor in making specific assignments. The purpose of these guidelines is to ensure that such distinctions are not based upon sex.

§ 60-20.4 Seniority systems.

When they exist, seniority lines and lists must not be based upon sex. Where such a separation has existed, the contractor must eliminate this distinction and provide appropriate relief.

§ 60-20.5 Discriminatory wages and placements.

(a) *Wages.* The contractor's wage schedules must not be related to or based on the sex of the employees.

While the more obvious cases of discrimination exist where employees of different sexes are paid different wages on jobs which require substantially equal skill, effort and responsibility and are performed under similar working conditions, compensation practices with respect to any jobs where males or females are concentrated will be scrutinized closely to assure that sex has played no role in the setting of levels of pay.

(b) *Placements.* The Contractor may not discriminatorily restrict one sex to certain jobs. In such a situation, the contractor shall provide appropriate relief and shall ensure that all jobs are made available to all qualified employees without regard to sex. (Example: An electrical manufacturing company may have a production division with three functional units: One (assembly) all female; another (wiring), all male; and a third (circuit boards), also all male. The highest wage attainable in the assembly unit is considerably less than that in the circuit board and wiring units. In such a case the contractor must take steps to provide qualified female employees opportunity for placement in job openings in the other two units with red circling of wages, where appropriate, and without loss of seniority.)

§ 60-20.6 Affirmative action.

(a) Women typically have not been found in significant numbers in management. In many companies management trainee programs are one of the ladders to management positions. Traditionally, few if any, women have been admitted into these programs. An important element of affirmative action shall be a commitment to include female candidates in such programs.

(b) Distinctions based on sex may not be made in other training programs. Both sexes should have equal access to all training programs and affirmative action programs should demonstrate that such access has been provided.

(c) The contractor shall take affirmative action to recruit women for jobs in which they previously have been excluded or are underrepresented. The contractor also shall take affirmative action to encourage the participation of women in training programs for jobs in which they have been previously excluded or are underrepresented.

Note.—This can be done by various methods. Examples include, but are not limited to (1) including in itineraries of recruiting trips, (i) women's colleges where graduates with skills desired by the contractor can be found, and (ii) female students of coeducational institutions and (2) stating in advertisements that women will be considered equally with men for jobs.

§ 60-20.7 Pregnancy, childbirth and related medical conditions.

(a) Employees or applicants for employment shall not be denied employment because of pregnancy, childbirth or related medical conditions.

(b) Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth or related medical conditions on the same terms and conditions as they are applied to other disabilities. Health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion, are not required to be paid by the contractor; nothing herein, however, precludes the contractor from providing abortion benefits or otherwise affects bargaining agreements in regard to abortion.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Order if it has a disparate impact on employees of one sex and is not justified by business necessity.

(d)(1) Any fringe benefit program, or fund, or insurance program which is in effect on October 31, 1978, which does not treat women affected by pregnancy, childbirth, or related medical conditions the same as other persons not so affected but similar in their ability or inability to work, must be in compliance with the provisions of § 60-20.7(b) by April 29, 1979. In order to come into compliance with the provisions of § 60-20.7(b) there can be no reduction of benefits or compensation which were in effect on October 31, 1978, before October 31, 1979, or the expiration of a collective bargaining agreement in effect on October 31, 1978, whichever is later.

(2) Any fringe benefit program implemented after October 31, 1978, must comply with the provisions of § 60-20.7(b) upon implementation.

§ 60-20.8 Sexual harassment and favors.

(a) Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature are violations of the Order when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of "unreasonably" interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

(b) A contractor is liable under the Order for the acts of its officials, managers and supervisors when these individuals engage in the activities described in paragraph (a) of this section, regardless of whether their specific acts were authorized or forbidden by the contractor and regardless of whether the contractor knew or should have known of their occurrence.

(c) With respect to conduct between fellow employees, a contractor is responsible for acts of sexual harassment in the workplace where the contractor (or its officials, managers and supervisors) knows or should have known of the conduct and fails to take immediate and appropriate action.

(d) A contractor also may be responsible for the acts of nonemployees, with respect to sexual harassment of employees in the workplace, where the contractor (or its officials, managers and supervisors) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, OFCCP will consider the extent of the contractor's control and any other legal responsibility which the contractor may have with respect to the conduct of such nonemployees.

(e) Where employment opportunity or benefits are granted because of an individual's submission to the contractor's sexual advances or requests for sexual favors, the contractor may be held liable under the Order for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

PART 60-30—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECTUVIE ORDER 11246, SECTION 402, AND SECTION 503

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Authority: Secs. 201, 205, 208, 209, 301, 302(b) and 303(a) of the Executive Order 11246, as amended, 30 FR 12319; 32 FR 14303; § 60-1.26 of Part 60-1 of this chapter (41 CFR Part 60-1), as amended by E.O. 12086.

General Provisions

§ 60-30.1 Applicability of rules.

This part provides the rules of practice for all administrative proceedings, instituted to enforce equal employment opportunity under Executive Order 11246, section 402 of the Vietnam Era Veterans Readjustment Assistance Act and section 503 of the Rehabilitation Act. In the absence of a specific provision, procedures shall be in accordance with the Federal Rules of Civil Procedure. This part is not applicable to hearings held by the Director under §§ 60-1.9, 60-1.27, or 60-1.48 of this chapter.

§ 60-30.2 Waiver, modification.

Upon notice to all parties, the Administrative Law Judge may, with respect to matters pending before him/her modify or waive any rule herein upon a determination that no party will be prejudiced and that the ends of justice will be served thereby.

§ 60-30.3 Computation of time.

In computing any period of time under the rules in this part or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government in which event it includes the next business day. When the period of time allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays observed by the Federal Government shall be excluded from the computation.

§ 60-30.4 Form, filing, service of pleadings and papers.

(a) *Form.* The original of all pleadings and papers in a proceeding conducted under the regulations in this part shall be filed with the Administrative Law Judge assigned to the case or with the Chief Administrative Law Judge if the case has not been assigned. Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case file number assigned by the Administrative Law Judge, and a designation of the pleading or paper (e.g., complaint, motion to dismiss, etc.). The pleading or papers shall be signed and shall contain the address and telephone number of the person representing the party or the person on whose behalf the pleading or paper was filed. Unless the Administrative Law Judge otherwise orders with respect to specific pleadings and papers in a specific case, all such papers and pleadings are public documents.

(b) *Service.* Service upon any party shall be made by the party filing the pleading or document by delivering a copy to the party or by mailing a copy to the party's last known address. When a party is represented by an attorney, service shall be made upon the attorney.

(c) *Proof of service.* A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of service, shall be proof of service.

Prehearing Procedures

§ 60-30.5 Administrative complaint.

(a) *Filing.* The Solicitor of Labor, Associate Solicitor for Civil Rights and Regional Solicitors, upon referral from the Office of Federal Contract Compliance Programs, are authorized to institute enforcement proceedings by filing a complaint and serving the complaint upon the contractor which shall be designated as the defendant. The Department of Labor, OFCCP, shall be designated as plaintiff.

(b) *Contents.* The complaint shall contain a concise jurisdictional statement, and a clear and concise statement sufficient to put the defendant

on notice of the acts or practices it is alleged to have committed in violation of the Order, or section 402 or 503. The complaint shall also contain a prayer regarding the relief being sought, a statement of whatever sanctions the material allegations of fact contained in the complaint shall constitute a waiver of hearing. Upon such admission, the Administrative Law Judge, without further hearing, may prepare his/her decision in which he/she shall adopt as

§ 60-30.9 Interrogatories, and admissions as to facts and documents.

(a) *Interrogatories.* Any party may serve upon a party written interrogatories. Each interrogatory shall be answered separately and fully in

party, or someone acting on its behalf, to inspect and copy any unprivileged documents, phonorecords, and other compilations, including computer tapes and printouts, which contain or may lead to relevant information and which examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its there was valid justification for the witness' failure or refusal to answer the answer the question: *Provided,* That the examining party shall note on the record during the deposition the question which the deponent has failed, or refused to

on notice of the acts or practices it is alleged to have committed in violation of the Order, or section 402 or 503. The complaint shall also contain a prayer regarding the relief being sought, a statement of whatever sanctions the Government will seek to impose and the name and address of the attorney who will represent the Government. The notice pleading contemplated by this paragraph (b) shall conform to notice pleading under the Federal Rules of Civil Procedure.

(c) *Amendment.* The complaint may be amended once as a matter of course before an answer is filed, and the defendant may amend its answer once as a matter of course not later than 10 days after the filing of the original answer. Other amendments of the complaint or of the answer to the complaint shall be made only by leave of the Administrative Law Judge or by written consent of the adverse party; and leave shall be freely given where justice so requires. An amended complaint shall be answered within 14 days of its service, or within the time for filing an answer to the original complaint, whichever period is longer. If a response is required to an amended answer, such response shall be made within 14 days of service of the amended answer.

§ 60-30.6 Answer.

(a) *Filing and service.* Within 20 days after the service of the complaint, the defendant shall file an answer; the answer shall be filed with the Chief Administrative Law Judge if the case has not been assigned to an Administrative Law Judge. The answer shall be signed by the defendant or its attorney, and served on the Government in accordance with § 60-30.4(b).

(b) *Contents; failure to file.* The answer shall (1) contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny, each of the allegations of the complaint unless the defendant is without knowledge, in which case the answer shall so state; or (2) state that the defendant admits all the allegations of the complaint. The answer may contain a waiver of hearing; and if not, a separate paragraph in the answer shall request a hearing. The answer shall contain the name and address of the defendant, or of the attorney representing the defendant. Failure to file an answer or to plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

(c) *Procedure upon admission of facts.* The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the complaint shall constitute a waiver of hearing. Upon such admission, the Administrative Law Judge, without further hearing, may prepare his/her decision in which he/she shall adopt as his/her proposed findings of fact the material facts alleged in the complaint. The parties shall be given an opportunity to file exceptions to the decision and to file briefs in support of the exceptions.

§ 60-30.7 Notice of prehearing conference.

Within 45 days after the answer is filed, the Administrative Law Judge shall notice the parties for a prehearing conference. The Administrative Law Judge shall conduct a final prehearing conference in accordance with § 60-30.12(c)(1) of this part.

§ 60-30.8 Motions; disposition of motions.

(a) *Motions.* Motions shall state the relief sought, the authority relied upon and the facts alleged, and shall be filed with the Administrative Law Judge. If made before or after the hearing itself, the motions shall be in writing. If made at the hearing, motions may be stated orally; but the Administrative Law Judge may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Unless otherwise ordered by the Administrative Law Judge, written motion shall be accompanied by a supporting memorandum. Within 10 days after a written motions is served, or such other time period as may be fixed, any party may file a response to a motion.

(b) *Disposition of motions.* The Administrative Law Judge may not grant a written motion prior to expiration of the time for filing responses thereto, except upon consent of the parties or following a hearing, but may overrule or deny such motion without awaiting response. The Administrative Law Judge shall make every reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing; *Provided,* That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions.

(c) *Motions to compel discovery.* Prior to filing a motion to compel discovery under sections 60-30.9 through 60-30.11 of this part, counsel for the moving party shall communicate with opposing counsel concerning the matter in dispute and attempt to resolve it. Counsel for the moving party shall file with the motion a certificate of compliance with this rule.

§ 60-30.9 Interrogatories, and admissions as to facts and documents.

(a) *Interrogatories.* Any party may serve upon a party written interrogatories. Each interrogatory shall be answered separately and fully in writing under oath, unless objected to. Answers are to be signed by the person making them and objections are to be signed by the attorney or by whomever is representing the party. Answers and objections shall be filed and served within 25 days of service of the interrogatory. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

(b) *Admissions.* Any party may serve upon a party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters as to which an admission is requested shall be deemed admitted, unless within 25 days after service, the party to whom the request is directed serves upon the requesting party a sworn statement either (1) denying specifically the matter as to which an admission is requested, or (2) setting forth in detail the reasons why it cannot truthfully either admit or deny such matters.

(c) *Objections or failures to respond.* The party submitting the interrogatory or request may move for an order with respect to any objection or other failure to respond.

(d) *Filing with Administrative Law Judge.* All interrogatories and requests for admissions, and all responses thereto, shall be filed with the Administrative Law Judge and shall become a part of the record of the case.

§ 60-30.10 Production of documents and things and entry upon land for inspection and other purposes.

(a) After commencement of the action, any party may serve on any other party a request to produce and/or permit the party, or someone acting on its behalf, to inspect and copy any unprivileged documents, phonorecords, and other compilations, including computer tapes and printouts, which contain or may lead to relevant information and which are in the possession, custody, or control of the party upon whom the request is served. If necessary, translation of data compilations shall be done by the party furnishing the information.

(b) After commencement of the action, any party may serve on any other party a request to permit entry upon designated property which may be relevant to the issues in the proceeding and which is in the possession or control of the party upon whom the request is served, for the purpose of inspection, measuring, surveying or photographing, testing, or sampling the property or any designated object or area.

(c) Each request shall set forth with reasonable particularity the items to be inspected and shall specify a reasonable time and place for making the inspection and performing the related acts.

(d) The party upon whom the request is served shall respond within 25 days after the service of the request. The response shall state, with respect to each item, that inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for each objection shall be stated. The party submitting the request may move for an order with respect to any objection or other failure to respond.

§ 60-30.11 Depositions upon oral examination.

(a) *Depositions: notice of examination.* After commencement of the action, any party may take the testimony of any person, including a party, having personal or expert knowledge of the matters in issue, by deposition upon oral examination. A party desiring to take a deposition shall give reasonable notice in writing to every other party to the proceeding, and may use an administrative subpena. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice shall also set forth the categories of documents the witness is to bring to the deposition, if any. A copy of the notice shall be furnished to the person to be examined unless his/her name is unknown.

(b) *Production of witnesses; obligation of parties; objections.* It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Unless the parties agree otherwise, depositions shall be held within the county in which the witness resides or works. The party or prospective witness may file with the Administrative Law Judge an objection within 5 days after notice of production of such witness is served, stating with particularity the reasons why the party cannot or ought not to produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness. All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or, with due diligence, might have been ascertained.

(c) *Before whom taken; scope of examination; failure to answer.* Depositions may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the deposition is held. At the time and place specified in the notice, each party shall be permitted to examine and cross-examine the witness under oath upon any matter which is relevant to the subject matter of the proceeding, or which is reasonably calculated to lead to the production of relevant and otherwise admissible evidence.

Errors which might be cured at the taking of the deposition, including errors in the manner of taking the deposition, in the form of the questions or answers, in the oath, or in the conduct of the parties, are waived unless objection is made at the taking of the deposition. All other objections may, in the discretion of the objecting party, be raised at the taking of the deposition or reserved until the hearing. All objections made at the taking of the deposition shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. A refusal or failure on the part of any person under the control of a party to answer a question shall operate to create a presumption that the answer, if given, would be unfavorable to the controlling party, unless the question is subsequently ruled improper by the Administrative Law Judge or the Administrative Law Judge rules that there was valid justification for the witness' failure or refusal to answer the answer the question: *Provided.* That the examining party shall note on the record during the deposition the question which the deponent has failed, or refused to answer, and state his/her intention to invoke the presumption if no answer is forthcoming.

(d) *Subscription; certification; filing.* The testimony shall be reduced to typewriting, either by the officer taking the deposition or under his/her direction, and shall be submitted to the witness for examination and signing. If the deposition is not signed by the witness because he/she is ill, dead, cannot be found, or refuses to sign it, such fact shall be noted in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver the original copy of the transcript, together with his/her certificate, in person or by mail to the Administrative Law Judge. Copies of the transcript and certificate shall be furnished to all persons desiring them, upon payment of reasonable charges, unless distribution is restricted by order of the Administrative Law Judge for good cause shown.

(e) *Rulings on admissibility; use of deposition.* Subject to the provisions of this section, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying. Any part or all of a deposition, so far as admissible in the discretion of the Administrative Law Judge, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice, in accordance with the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or was designated to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a party may be used by the adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Administrative Law Judge finds: (i) that the witness is dead; or (ii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iii) that the party offering the deposition has been unable to procure the attendance of the witness

by subpoena; or (iv) upon application and notice, that such exceptional circumstances exist as to make it desirable to allow the deposition to be used.

§ 60-30.13 Consent findings and order.

(a) *General.* At any time after the issuance of a complaint and prior to or during the reception of evidence in any proceeding, the parties may jointly move and papers shall be filed with the Chief Administrative Law Judge.

§ 60-30.15 Authority and responsibilities of Administrative Law Judges.

The Administrative Law Judge shall

(k) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice;

(l) Recommend whether the defendant violated the Order, section 402 or

(c) The party or prospective witness may file an objection within 5 days after notice of production of such witness is served stating with particularity the reasons why the party cannot produce a

an offer of proof is within the discretion of the Administrative Law Judge.

§ 60-30.20 Ex parte communications.

The Administrative Law Judge shall

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by subpoena; or (iv) upon application and notice, that such exceptional circumstances exist as to make it desirable to allow the deposition to be used.

(4) If only part of a deposition is introduced in evidence by a party, any party may introduce any other parts by way of rebuttal and otherwise.

(f) *Stipulations.* If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

§ 60-30.12 Prehearing conferences.

(a) Upon his/her own motion or a motion of a party, the Administrative Law Judge may direct the parties or their counsel to meet with him/her for a conference to consider:

(1) Simplification of the issues;

(2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitation;

(3) Stipulation, admissions of fact and contents and authenticity of documents;

(4) Limitation of the number of witnesses;

(5) Scheduling dates for the exchange of witness lists and of proposed exhibits; and

(6) Such other matters as may tend to expedite the disposition of the proceedings.

(b) The record shall show the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such action.

(c)(1) A final prehearing conference shall be scheduled by the Administrative Law Judge a reasonable time in advance of the hearing to develop a prehearing order. The prehearing order shall contain any matters described in subparagraph (a) of this section agreed upon by the parties or ordered by the Administrative Law Judge. The prehearing order also shall contain the general factual and legal contentions of the parties.

(2) Witness lists and hearing exhibits shall be exchanged at least 10 days in advance of the hearing, or such other later time as is set by the Administrative Law Judge. Each party shall provide to all other parties copies of all exhibits that it then plans to use at the hearing.

(3) All discovery should be concluded at least 30 days prior to the hearing or by such other later time as ordered by the Administrative Law Judge for good cause shown. Administrative Law Judges, however, shall allow adequate time for discovery.

§ 60-30.13 Consent findings and order.

(a) *General.* At any time after the issuance of a complaint and prior to or during the reception of evidence in any proceeding, the parties may jointly move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the Administrative Law Judge after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint and the agreement;

(3) That any further procedural steps are waived; and

(4) That any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement is waived.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the Administrative Law Judge for his/her consideration;

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed, the Administrative Law Judge, within 30 days, shall accept such agreement by issuing his/her decision based upon the agreed findings, and the decision shall constitute the final Administrative Order.

Hearings and Related Matters

§ 60-30.14 Designation of Administrative Law Judges.

Hearings shall be held before an Administrative Law Judge of the Department of Labor who shall be designated by the Chief Administrative Law Judge of the Department of Labor. After commencement of the proceeding but prior to the designation of an Administrative Law Judge, pleadings and papers shall be filed with the Chief Administrative Law Judge.

§ 60-30.15 Authority and responsibilities of Administrative Law Judges.

The Administrative Law Judge shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He/she shall have all powers necessary to those ends, including but not limited to, the power to:

(a) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding by consent of the parties or upon his/her own motion;

(b) Require parties to state their position with respect to the various issues in the proceedings;

(c) Require parties to produce for examination those relevant witnesses and documents under their control; and require parties to answer interrogatories, and requests for admission, in full and produce documents for examination and copying;

(d) Administer oaths;

(e) Rule on motions and other procedural items or matters pending before him/her;

(f) Regulate the course of the hearing and conduct of participants therein;

(g) Examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(h) Receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or unduly repetitious;

(i) Fix time limits for submission of written documents in matters before him/her and extend any time limits established by this part upon a determination that no party will be prejudiced and that the ends of justice will be served thereby;

(j) Impose appropriate sanctions against any party or person failing to obey an order under these rules which may include:

(1) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting it from introducing designated matters into evidence;

(2) Excluding all testimony of an unresponsive or evasive witness, or determining that the answer of such witness, if given, would be unfavorable to the party having control over him/her;

(3) Expelling any party or person from further participation in the hearing; and

(4) Involking a presumption that the answers or actions ordered if made, would be unfavorable or adverse to the party ordered to answer or act.

(k) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice;

(l) Recommend whether the defendant violated the Order, section 402 or section 503, as well as the nature of the relief necessary to ensure the full enjoyment of the rights secured by the Order, section 402 or section 503;

(m) Issue subpenas;

(n) Render interlocutory decisions for the Department of Labor in preliminary enforcement proceedings under § 60-30.38; and

(o) Take any action authorized by these rules.

§ 60-30.16 Appearances.

(a) *Representation.* The parties or other persons or organizations participating pursuant to this part 60-30 have the right to be represented by counsel.

(b) *Failure to appear.* In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election to present its evidence in whole or such portion thereof sufficient to make a prima facie case before the Administrative Law Judge. Failure to appear at the hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's recommended decision and to file exceptions to it.

§ 60-30.17 Appearance of witnesses.

(a) A party wishing to procure the appearance at the hearing of any person having personal or expert knowledge of the matters in issue shall serve on the prospective witness a notice, which may be accomplished by an administrative subpena, setting forth the time, date, and place at which he/she is to appear for the purpose of giving testimony. The notice shall also set forth the categories of documents the witness is to bring with him/her to the hearing, if any. A copy of the notice shall be filed with the Administrative Law Judge and additional copies shall be served upon the parties.

(b) It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Due regard shall be given to the convenience of witnesses in scheduling their testimony so that they will be detained no longer than reasonably necessary.

(c) The party or prospective witness may file an objection within 5 days after notice of production of such witness is served stating with particularity the reasons why the party cannot produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness.

§ 60-30.18 Evidence; testimony.

Formal rules of evidence shall not apply, but rules or principles, including the Federal Rules of Evidence, designed to assure production of the most probative evidence available shall be applied. Testimony shall be given orally by witnesses at the hearing. Except as set forth in § 60-30.11(e), depositions may not be introduced into evidence in lieu of testimony given at the hearing. A witness shall be available for cross-examination, and, at the discretion of the Administrative Law Judge, may be cross-examined without regard to the scope of direct examination as to any matter which is relevant and material to the proceeding. The Administrative Law Judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

§ 60-30.19 Objections; exceptions; offer of proof.

(a) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, it shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made on the record may be relied upon subsequently in the proceedings.

(b) *Exceptions.* Formal exception to an adverse ruling is not required. Rulings by the Administrative Law Judge shall not be appealed prior to the transfer of the case to the Secretary. Exceptions to such rulings shall be filed in accordance with 41 CFR 60-30.28.

(c) *Offer of proof.* An offer of proof made in conection with an objection taken to any ruling excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in written form or consists of references to documents, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof. The offer of proof should clearly and specifically indicate the significance of the excluded evidence, unless the substance is apparent from the context. Allowance of an offer of proof is within the discretion of the Administrative Law Judge.

§ 60-30.20 Ex parte communications.

The Administrative Law Judge shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate. No employee or agent of the Federal Government engaged in the investigation and prosecution of this case shall participate or advise in the rendering of the recommended or final decision in the case, except as witness or counsel in the proceeding.

§ 60-30.21 Oral argument.

Any party shall be entitled upon request to a reasonable period between the close of evidence and termination of the hearing for oral argument. Oral arguments shall be included in the official transcript of the hearing.

§ 60-30.22 Official transcript.

The official transcripts of testimony taken, together with any exhibits, briefs, or memorandums of law, shall be filed with the Administrative Law Judge. Transcripts of testimony may be obtained from the official reporter by the parties and the public as provided in section 11(a) of the Federal Advisory Committee Act (86 Stat. 770). Upon notice to all parties, the Administrative Law Judge may authorize such corrections to the transcript as are necessary to reflect accurately the testimony.

§ 60-30.23 Summary judgment.

(a) *For the Government.* At any time after the expiration of 20 days from the commencement of the action, or after service of a motion for summary judgment by the defendant, the Government may move with or without supporting affidavits for a summary judgment upon all claims of any part.

(b) *For defendant.* The defendant may, at any time after commencement of the action, move with or without supporting affidavits for summary judgment in its favor as to all claims or any part.

(c) *Other parties.* Any other party to a formal proceeding under this part may support or oppose motions for summary judgment made by the Government or defendant, in accordance with this section, but may not move for summary judgment in its own behalf.

(d) *Statement of uncontested facts.* All motions for summary judgment shall be accompanied by a "Statement of Uncontested Facts" in which the moving party sets forth all alleged uncontested material facts which shall provide the basis for its motion. At least 5 days prior to the time fixed for hearing on the

motion, any party contending that any material fact regarding the matter covered by the motion is in dispute, shall file a "Statement of Disputed

(3) Any person or organization wishing to participate as a party under this section shall file with the Administrative Law Judge and serve on

at such time as the parties submit briefs and exceptions, and he/she shall serve a copy on each party.

Post-Hearing Procedures

§ 60-30.29 Record.

After expiration of the time for filing exceptions and responses, the Secretary shall make a final decision, which shall

(b) The answer shall be filed in accordance with 41 CFR 60-30.6 (a) and (b).

(c) Failure to request a hearing within

conclusions, and a decision. The Administrative Law Judge may permit the parties to file written post-hearing briefs within this time period, but the

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motion, any party contending that any material fact regarding the matter covered by the motion is in dispute, shall file a "Statement of Disputed Facts." Failure to file a "Statement of Disputed Facts" shall be deemed as an admission to the "Statement of Uncontested Facts."

(e) *Motion and proceedings.* The motion shall be served upon all parties at least 15 days before the time fixed for the hearing on the motion. The adverse party or parties may serve opposing affidavits prior to the day of hearing. The judgment sought shall be rendered forthwith if the complaint and answer, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Summary judgment rendered for or against the Government or the defendant shall constitute the findings and recommendations on the issues involved. Hearings on motions made under this section shall be scheduled by the Administrative Law Judge.

(f) *Case not fully adjudicated on motion.* If on motion under this section judgment is not rendered upon the whole case or for all the relief asked and a final hearing is necessary, the Administrative Law Judge at the hearing of the motion, by examining the notice and answer and the evidence before him/her and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. He/she shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which relief is not in controversy, and directing such further proceedings as are just. At the hearing on the merits, the facts so specified shall be deemed established, and the final hearing shall be conducted accordingly.

§ 60–30.24 Participation by interested persons.

(a)(1) To the extent that proceedings hereunder involve employment of persons covered by a collective bargaining agreement, and compliance may necessitate a revision of such agreement, any labor organization which is a signatory to the agreement shall have the right to participate as a party.

(2) Other persons or organizations shall have the right to participate as parties if the final Administrative Order could adversely affect them or the class they represent, and such participation may contribute materially to the proper disposition of the proceedings.

(3) Any person or organization wishing to participate as a party under this section shall file with the Administrative Law Judge and serve on all parties a petition within 25 days after the commencement of the action or at such other time as ordered by the Administrative Law Judge, so long as it does not disrupt the proceeding. Such petition shall concisely state: (i) Petitioner's interest in the proceedings; (ii) who will appear for petitioner; (iii) the issues on which petitioner wishes to participate; and (iv) whether petitioner intends to present witnesses.

(4) The Administrative Law Judge shall determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interest, the Administrative Law Judge may request all such petitioners to designate a single representative to represent all such petitioners: *Provided,* That the representative of a labor organization qualifying to participate under paragraph (a)(1) of the section must be permitted to participate in the proceedings. The Administrative Law Judge shall give each petitioner written notice of the decision on its petition; and if the petition is denied, he/she shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae. The Administrative Law Judge shall give written notice to each party of each petition granted.

(b)(1) Any other interested person or organization wishing to participate as amicus curiae shall file a petition before the commencement of the final hearing with the Administrative Law Judge. Such petition shall concisely state: (i) The petitioner's interest in the hearing; (ii) who will represent the petitioner; and (iii) the issues on which petitioner intends to present argument. The Administrative Law Judge may grant the petition if he/she finds that the petitioner has a legitimate interest in the proceedings, and that such participation may contribute materially to the proper disposition of the issues. An amicus curiae is not a party but may participate as provided in this section.

(2) An amicus curiae may present a brief oral statement at the hearing at the point in the proceeding specified by the Administrative Law Judge. He/she may submit a written statement of position to the Administrative Law Judge prior to the beginning of a hearing and shall serve a copy on each party. He/she may also submit a brief or written statement at such time as the parties submit briefs and exceptions, and he/she shall serve a copy on each party.

Post-Hearing Procedures

§ 60–30.25 Posthearing briefs.

Each party and amicus may file a brief. The time for filing briefs shall be established by the Administrative Law Judge. Such briefs shall be served simultaneously on all parties and amici, and a certificate of service shall be furnished to the Administrative Law Judge. Requests for additional time in which to file a brief shall be made in writing, and copies shall be served simultaneously on the other parties. Requests for extensions shall be received not later than 3 days before the date such briefs are due. No reply brief may be filed except by special permission of the Administrative Law Judge.

§ 60–30.26 Record for recommended decision.

The transcript of testimony, exhibits, and all papers, documents, and requests filed in the proceedings, including briefs, but excepting the correspondence section of the docket, shall constitute the record for decision.

§ 60–30.27 Recommended decision.

Within a reasonable time after the filing of briefs, the Administrative Law Judge shall recommend findings, conclusions, and a decision. These recommendations shall be certified, together with the record to the Secretary of Labor for a final Administrative Order. The recommended findings, conclusions, and decision shall be served on all parties and amici to the proceeding.

§ 60–30.28 Exceptions to recommended decisions.

Within 30 days after receipt of the recommended findings, conclusions, and decision, any party may submit exceptions to said recommendation. These exceptions may be responded to by other parties within 14 days of their receipt by said parties. All exceptions and responses shall be filed with the Secretary. Service of exceptions and responses shall be made simultaneously on all parties to the proceeding. Requests to the Secretary for additional time in which to file exceptions and responses shall be in writing and copies shall be served simultaneously on other parties. Requests for extensions must be received no later than 3 days before the exceptions are due.

§ 60–30.29 Record.

After expiration of the time for filing exceptions and responses, the Secretary shall make a final decision, which shall be the final Administrative Order, on the basis of the record. The record shall consist of the record for recommended decision, the rulings and recommended decision of the Administrative Law Judge and the exceptions and responses filed subsequent to the Administrative Law Judge's decision.

§ 60–30.30 Final Administrative Order.

After expiration of the time for filing exceptions, and responses thereto, the Secretary or the Under Secretary, in the absence of the Secretary or if the Secretary disqualifies himself or herself for any reason, shall make a final Administrative Order which shall be served on all parties. If the Secretary concludes that the defendant has violated the Order, section 402 or section 503, an Administrative Order shall be issued which shall enjoin the violations, and require the contractor to provide whatever remedies are appropriate, and which shall impose whatever sanctions are appropriate, or any of the above. In any event, failure to comply with the Administrative Order shall result in the immediate termination and suspension of the defendant's contracts and/or debarment of the defendant from further contracts: *Provided,* That the portion of any order under Executive Order 11246 terminating, cancelling, or suspending contracts shall not become effective until the consultation requirements of section 209(a)(5) of the Order, as amended by Executive Order 12086, have been satisfied.

Expedited Hearing Procedures

§ 60–30.31 Expedited hearings—when appropriate.

Expedited Hearings may be used, *inter alia,* when a contractor or subcontractor has violated a conciliation agreement; has not adopted and implemented an acceptable affirmative action program; has refused to give access to or to supply records or other information as required by the equal opportunity clause; or has refused to allow an on-site compliance review to be conducted.

§ 60–30.32 Administrative complaint and answer.

(a) Expedited hearings shall be commenced by filing an administrative complaint in accordance with 41 CFR 60–30.5. The complaint shall state that the hearing is subject to these expedited hearing procedures.

(b) The answer shall be filed in accordance with 41 CFR 60–30.6 (a) and (b).

(c) Failure to request a hearing within the 20 days provided by 41 CFR 60–30.6(a) shall constitute a waiver of hearing, and all the material allegations of fact contained in the complaint shall be deemed to be admitted. If a hearing is not requested or is waived, within 25 days of the complaint's filing, the Administrative Law Judge shall adopt as findings of fact the material facts alleged in the complaint, and shall order the appropriate sanctions and/or penalties sought in the complaint. The Administrative Law Judge's findings and order shall constitute a final Administrative Order, unless the Office of the Solicitor, U.S. Department of Labor, files exceptions to the findings and order within 10 days of receipt thereof. If the Office of the Solicitor, U.S. Department of Labor, files exceptions, the matter shall proceed in accordance with § 60–30.36 of this Part.

(d) If a request for a hearing is received within 20 days as provided by 41 CFR 60–30.6(a), the hearing shall be convened within 45 days of receipt of the request and shall be completed within 15 days thereafter, unless more hearing time is required.

§ 60–30 33 Discovery.

(a) Any party may serve requests for admissions in accordance with § 60–30.9 (b) and (c).

(b) Witness lists and hearing exhibits will be exchanged at least 10 days in advance of the hearing.

(c) For good cause shown, and upon motion made in accordance with § 60–30.8, the Administrative Law Judge may allow the taking of depositions. Other discovery will not be permitted.

§ 60–30.34 Conduct of hearing.

(a) At the hearing, the Government shall be given an opportunity to demonstrate the basis for the request for sanctions and/or remedies, and the contractor shall be given an opportunity to show that the violation complained of did not occur and/or that good cause or good faith efforts excuse the alleged violations. Both parties shall be allowed to present evidence and argument and to cross-examine witnesses.

(b) The hearing shall be informal in nature, and the Administrative Law Judge shall not be bound by formal rules of evidence.

§ 60–30.35 Recommended decision after hearing.

Within 30 days after the hearing is concluded, the Administrative Law Judge shall recommend findings, conclusions, and a decision. The Administrative Law Judge may permit the parties to file written post-hearing briefs within this time period, but the Administrative Law Judge's recommendations shall not be delayed pending receipt of such briefs. These recommendations shall be certified, together with the record, to the Secretary for a final Administrative Order. The recommended decision shall be served on all parties and amici to the proceeding.

§ 60–30.36 Exceptions to recommendations.

The provisions of 41 CFR 60–30.28 shall be applicable to exceptions to the Administrative Law Judge's recommendations.

§ 60–30.37 Final Administrative Order.

(a) After expiration of the time for filing exceptions, and responses thereto, the Secretary shall issue a final Administrative Order which shall be served on all parties. Unless the Secretary issues a final Administrative Order within 45 days after the expiration of the time for filing exceptions, and responses thereto, the Administrative Law Judge's recommended decision shall become a final Administrative Order which shall become effective on the 46th day after expiration of the time for filing exceptions and responses thereto. Except as to specific time periods required in this subsection, 41 CFR 60–30.30 shall be applicable to this subsection.

§ 60–30.38 Preliminary administrative enforcement proceedings.

(a) A preliminary enforcement proceeding is commenced by filing an administrative complaint. (See 41 CFR 60–1.29(e).) An administrative complaint may combine general allegations and prayers for relief and sanctions with a prayer for preliminary relief and sanctions or it may be limited to preliminary relief and sanctions, in the event an administrative complaint seeks preliminary and general enforcement, the allegations relating to preliminary enforcement shall be so designated and stated separately in the complaint.

An administrative complaint which is limited to preliminary relief and sanctions may be amended in accordance with 41 CFR 60–30.5(c) to make general allegations of violations and to request general relief and sanctions.

(b) The administrative complaint, as it relates to preliminary enforcement proceeding issues, shall contain a clear and concise factual statement sufficient

to inform the defendant with reasonable definiteness of the acts and practices it is alleged to have committed which constitute a violation. That is, fact pleading in lieu of notice pleading which

issued within 10 working days after the conclusion of the hearing. The decision shall not be delayed to await the preparation of a transcript of posthearing submissions by the parties.

Programs regarding the implementation of Executive Order 11246, as amended, for promoting and ensuring equal employment opportunities for all persons employed or seeking employment with Government

problems relating to religion and national origin are most likely to occur. Based upon the findings of such reviews, contractors shall undertake appropriate outreach and positive recruitment activities, such as those listed below, in

to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the contractor's business. As part of this obligation, a contractor must make reasonable accommodations to

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60–250.30 Responsibilities of the Deputy Assistant Secretary for Veterans' Employment
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Appendix A

to inform the defendant with reasonable definiteness of the acts and practices it is alleged to have committed which constitute a violation. That is, fact pleading in lieu of notice pleading which applies under § 60–30.5 of this part, shall apply to preliminary enforcement proceeding issues. The complaint also shall contain a statement of any relief being sought and/or any sanctions which are sought to be imposed.

(c) No answer, as required by 41 CFR 60–30.6 of this part, shall be required with respect to the issues in the complaint which seek preliminary enforcement proceedings. However, the Administrative Law Judge shall notify the parties of the time and place of the hearing within 10 days after the complaint is filed.

(d) The plaintiff shall submit with the administrative complaint any affidavits and other documentation and a supporting memorandum. The defendant shall have 15 days after service of the complaint to submit any affidavits and other documentation and supporting memorandum.

(e) The Administrative Law Judge is authorized to conduct any prehearing conferences or procedures to expedite the hearing process.

(f) Discovery with regard to preliminary enforcement issues shall be granted only upon leave of the Administrative Law Judge for compelling reasons.

(g) The preliminary administrative enforcement proceeding is intended to provide a speedy hearing and decision on limited issues, and the Administrative Law Judge shall take all measures consistent with these rules and procedural fairness to achieve this end. The hearing shall commence within 20 days of the date of the notice of hearing specified in 41 CFR 60–30.38(c).

(h) If an administrative complaint is limited to preliminary relief and/or sanctions, the Administrative Law Judge shall follow the procedures in this § 60–30.38. If the Administrative complaint combines general allegations and prayers for relief with a prayer for preliminary relief and sanctions, the Administrative Law Judge shall bifurcate the proceeding. The hearing regarding the preliminary enforcement issues shall proceed in accordance with the procedures in this § 60–30.38. The issues involving the general allegations shall proceed in accordance with the regulations in this part but shall be stayed by the Administrative Law Judge pending his/her resolution of the preliminary enforcement proceeding.

(i) The decision of the Administrative Law Judge regarding the preliminary enforcement hearing issues shall be issued within 10 working days after the conclusion of the hearing. The decision shall not be delayed to await the preparation of a transcript of posthearing submissions by the parties. The decision shall set forth findings of fact and conclusions of law, including the imposition of sanctions and/or relief, where appropriate, against the contractor.

(j) If the contractor's eligibility as a Government contractor or subcontractor is an issue in the preliminary enforcement proceeding and if, at the conclusion of such proceeding, the Administrative Law Judge determines that the contractor's practices violate the Order or section 402 or 503, the decision and order shall state whether the contractor is eligible or ineligible for the award of Government contracts or subcontracts or under what circumstances the contractor will be eligible for such contracts or subcontracts during the pendency of the proceeding involving the general allegations of the administrative complaint if any were alleged in addition to the preliminary enforcement issues. In addition, it shall state whether existing contracts and subcontracts, if any, are to be cancelled, terminated, or suspended, and if so, under what conditions. Provided, however, that such cancellation termination or suspension is subject to the contracting agency consultation required by Section 209(a)(5) of the Order. Such decision and order, for purposes of judicial review, shall constitute the final administrative decision of the Department of Labor on the preliminary enforcement issues. The decision and order entered at the conclusion of the preliminary enforcement stage of a bifurcated proceeding shall not prejudice either party with regard to the appropriateness of relief and sanctions which may be obtained against the contractor at the conclusion of the hearing on the general allegations in the administrative complaint.

PART 60–50—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION OR NATIONAL ORIGIN

Sec.
60–50.1 Purpose and scope.
60–50.2 Equal employment policy.
60–50.3 Accommodations to religious observance and practice.
60–50.4 Enforcement.
60–50.5 Nondiscrimination.

§ 60–50.1 Purpose and scope.

(a) The purpose of the provisions in this part is to set forth the interpretations and guidelines of the Office of Federal Contract Compliance Programs regarding the implementation of Executive Order 11246, as amended, for promoting and ensuring equal employment opportunities for all persons employed or seeking employment with Government contractors or with contractors performing under federally assisted construction contracts, without regard to religious or national origin.

(b) Members of various religious and ethnic groups continue to be excluded from executive, middle-management, and other job levels because of discrimination based upon their religion and/or national origin. These guidelines are intended to remedy such unfair treatment.

(c) These guidelines also are intended to clarify the obligations of contractors with respect to accommodating to the religious observances and practices of employees and prospective employees.

(d) The employment problems of blacks, Hispanics, Asians or Pacific Islanders, American Indians or Alaskan natives are treated under Part 60–2 of this chapter and under other regulations and procedures implementing the requirements of Executive Order 11246, as amended. Accordingly, the remedial provisions of § 60–50.2(b) shall not be applicable to the employment problems of these groups.

(e) Nothing contained in this Part 60–50 is intended to supersede or otherwise limit the exemption set forth in § 60–1.5(a)(5) of this chapter for contractors with certain educational institutions.

§ 60–50.2 Equal employment policy.

(a) *General requirements.* Under the equal opportunity clause contained in section 202 of Executive Order 11246, as amended, contractors are prohibited from discriminating against employees or applicants for employment because of religion or national origin, and must take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their religion or national origin. Such action includes, but is not limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) *Outreach and positive recruitment.* Contractors shall review their employment practices to determine whether members of the various religious and/or ethnic groups are receiving fair consideration for job opportunities. Special attention shall be directed toward executive and middle-management levels, where employment problems relating to religion and national origin are most likely to occur. Based upon the findings of such reviews, contractors shall undertake appropriate outreach and positive recruitment activities, such as those listed below, in order to remedy existing deficiencies. It is not contemplated that contractors necessarily will undertake all the listed activities. The scope of the contractor's efforts shall depend upon all the circumstances, including the nature and extent of the contractor's deficiences and the contractor's size and resources.

(1) Internal communication of the contractor's obligation to provide equal employment opportunity without regard to religion or national origin in such a manner as to foster understanding, acceptance, and support among the contractor's executive, management, supervisory, and all other employees and to encourage such persons to take the necessary action to aid the contractor in meeting this obligation.

(2) Development of reasonable internal procedures to ensure that the contractor's obligation to provide equal employment opportunity without regard to religion or national origin is being fully implemented.

(3) Periodically informing all employees of the contractor's commitment to equal employment opportunity for all persons, without regard to religion or national origin.

(4) Enlisting the assistance and support of all recruitment sources (including employment agencies, college placement directors, and business associates) for the contractor's commitment to provide equal employment opportunity without regard to religion or national origin.

(5) Reviewing employment records to determine the availability of promotable and transferable members of various religious and ethnic groups.

(6) Establishment of meaningful contacts with religious and ethnic organizations and leaders for such purposes as advice, education, technical assistance, and referral of potential employees.

(7) Engaging in significant recruitment activities at educational institutions with substantial enrollents of students from various religious and ethnic groups.

(8) Use of religious and ethnic media for institutional and employment advertising.

§ 60–50.3 Accommodations to religious observance and practice.

A contractor must accommodate to the religious observances and practices of an employee or prospective employee unless the contractor demonstrates that it is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the contractor's business. As part of this obligation, a contractor must make reasonable accommodations to the religious observances and practices of an employee or prospective employee who regularly observes Friday evening and Saturday, or some other day of the week, as the Sabbath and/or who observes certain religious holidays during the year and who is conscientiously opposed to performing work or engaging in similar activity on such days, when such accommodations can be made without undue hardship on the conduct of the contractor's business. In determing the extent of the contractor's obligations under this section, at least the following factors shall be considered: (a) Business necessity, (b) financial costs and expenses, and (c) resulting personnel problems.

60–50.4 Enforcement.

The provisions of this part are subject to the general enforcement, compliance review, and complaint procedures set forth in Part 60–1 of this chapter.

§ 60–50.5 Nondiscrimination.

The provisions of this part are not intended and shall not be used to discriminate against any qualified employee or applicant for employment because of race, color, religion, sex, or national origin.

PART 60–50—CONTRACTOR EVALUATION PROCEDURES FOR CONTRACTORS FOR SUPPLIES AND SERVICES [REMOVED]

PART 60–250—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

Subpart A—Preliminary Matters, Affirmative Action Clause, Compliance

Sec.
60–250.1 Purpose and application.
60–250.2 Coverage and waivers.
60–250.3 Affirmative action clause.
60–250.4 Applicability of the affirmative action program requirement.
60–250.5 Affirmative action policy, practices and procedures.
60–250.6 Determination of disability.

Subpart B—General Enforcement and Complaint Procedures

60–250.20 Subcontracts.
60–250.21 Duties of agencies.
60–250.22 Evaluations by the OFCCP Assistant Regional Administrators.
60–250.23 Complaint procedures.

Subpart C—Ancillary Matters

Sec.
60–250.30 Responsibilities of the Deputy Assistant Secretary for Veterans' Employment
60–250.31 Recordkeeping.
Appendix A
Appendix B

Authority: Sec. 503(a), Pub. L. 92–540, 86 Stat. 1097 (38 U.S.C. 2012), as amended by Sec. 402, Pub. L. 93–508, 88 Stat. 1593 (38 U.S.C. 2012).

Subpart A—Preliminary Matters, Affirmative Action Clause, Compliance

§ 60–250.1 Purpose and application.

The purpose of the regulations in this part is to assure compliance with section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, which requires Government contractors to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era. The regulations in this part apply to all Government contracts, including Federal deposit or share insurance, for the furnishing of supplies or services or for the use of personal property (including construction) for $10,000 or more.

§ 60–250.2 Coverage and waivers.

(a) *General.* (1) *Transactions for less than $10,000.* Contracts and subcontracts for less than $10,000 are not covered by the Act. No agency or contractor shall procure supplies or services in less than usual quantities to avoid the applicability of the affirmative action clause.

(2) *Contracts for indefinite quantities.* With respect to indefinite delivery-type contracts (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the affirmative action clause shall be included unless the contracting agency has reason to believe that the amount to be ordered in any year under such contract will be less than $10,000. The applicability of the affirmative action clause shall be determined at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the affirmative action clause shall be applied to such contract whenever the amount of a single order is $10,000 or more. Once the affirmative action clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Work outside of the United States.* The requirements of the affirmative action clause are waived with respect to

contracts with regard to work performed outside of the United States by employees who were not recruited within the United States.

(4) *Contracts with State or local*

withdrawal, except that in procurement entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made

in Executive Orders or regulations regarding nondiscrimination in employment.

(d) The reports required by paragraph (b) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local

customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing,

will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions including action for noncompliance.

benefit from this program. Nothing in this section shall relieve a contractor from liability for discrimination under the Act.

§ 60–250.5 Affirmative action policy.

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contracts with regard to work performed outside of the United States by employees who were not recruited within the United States.

(4) *Contracts with State or local governments.* The requirements of the affirmative action clause in any contract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

(5) *Facilities not connected with contracts.* The Director may waive the requirements of the affirmative action clause with respect to any of a contractor's facilities which he or she finds to be in all respects separate and distinct from activities of the contractor related to the performance of the contract, provided that he or she also finds that such a waiver will not interfere with or impede the effectuation of the Act. Such waivers shall be considered only upon the request of the contractor.

(b) *Waivers.* (1) *Specific contracts and classes of contracts.* The head of an agency, with the concurrence of the Director, may waive the application to any contract of any part of or all the affirmative action clause when he or she deems that special circumstances in the national interest so require. The agency head, with the concurrence of the Director, may also grant such waivers to groups or categories of contracts of the same type where it is (i) in the national interest, (ii) found impracticable to act upon each request individually, and (iii) where such waiver will substantially contribute to convenience in administration of the Act.

(2) *National security.* Any requirement set forth in the regulations in this Part 60–250 shall not apply to any contract whenever the head of the contracting agency determines that such contract is essential to the national security and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the agency will notify the Director in writing within 30 days.

(c) *Withdrawal of waiver.* When a waiver has been granted for any class of contracts under this section other than contracts granted waivers under paragraph (b)(2) of this section, the Director may withdraw the waiver for a specific contract or group of contracts to be awarded, when in his or her judgment such action is necessary or appropriate to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded prior to the withdrawal, except that in procurement entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

§ 60-250.3 Affirmative action clause.

Each agency and each contractor shall include the following affirmative action clause in each of its covered Government contracts (and modifications, renewals, or extensions thereof if not included in the original contract):

Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era

(a) The conctractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: Employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees that all suitable employment openings of the contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

State and local government agencies holding Federal contracts of $10,000 or more shall also list all the suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e).

(c) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. This listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.

(d) The reports required by paragraph (b) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the contractor has more than one hiring location in a State, with the central office of that State, employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.

(e) Whenever the contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The contractor may advise the State system when it is no longer bound by this contract clause.

(f) This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(g) The provisions of paragraphs (b), (c), (d), and (e) of this clause do not apply to openings which the contractor proposes to fill from within its own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once the contractor decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(h) As used in this clause: (1) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: Production and non-production; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings as are compensated on a salary basis of less than $25,000 per year. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the contractor proposes to fill from within its own organization or to fill pursuant to a

customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.

(2) "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(3) "Openings which the contractor proposes to fill from within its own organization" means employment openings for which no consideration will be given to persons outside of the contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists.

(4) "Openings which the contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the contractor proposes to fill from union halls, which is part of the customary and tradional hiring relationship which exists between the contractor and representatives of its employees.

(i) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(j) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(k) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notice shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.

(l) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(m) The contractor will include the provisions of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions including action for noncompliance.

§ 60-250.4 Applicability of the affirmative action program requirement.

(a) Within 120 days of the commencement of a contract, every Government contractor which has 50 or more employees and (1) has a contract of $50,000 or more or (2) has contracts (at least one of which is at least $10,000) which total $50,000 or more in any 12-month period shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices and procedures in accordance with § 60–250.5 of this part. This program may be integrated into or kept separate from other affirmative action programs of the contractor which OFCCP requires it to maintain pursuant to this chapter.

(b) The affirmative action program shall be reviewed and updated annually. If there are any significant changes in procedures, rights or benefits as a result of the annual updating, those changes shall be communicated to employees and applicants for employment.

(c) The contractor shall submit the affirmative action program within 15 days of receipt of a request from OFCCP. The contractor shall also submit the affirmative action program upon OFCCP's request when a complaint is being investigated or a preaward compliance review is being conducted.

(d) The full affirmative action program shall be available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment.

(e) The contractor shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment and that it will be used only in accordance with the Act, and regulations in this part. If an applicant or employee so identifies himself or herself, the contractor should also seek the advice of the applicant or employee regarding proper placement and appropriate accommodation (an acceptable form for such an invitation is set forth in appendix A attached). Nothing in this section shall preclude an employee from informing a contractor at a future time of his or her desire to benefit from this program. Nothing in this section shall relieve a contractor from liability for discrimination under the Act.

§ 60-250.5 Affirmative action policy, practices and procedures.

(a) *General requirements.* Under the affirmative action obligation imposed by the Vietnam Era Veterans Readjustment Assistance Act of 1974, contractors are required to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era at all levels of employment, including the executive level. Such action shall apply to all employment practices, including, but not limited to, the following: hiring, upgrading, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship and on-the-job training programs under 38 U.S.C. 1787.

(b) *Proper consideration of qualifications.* Contractors shall review their personnel processes to determine whether their present procedures assure careful, thorough and systematic consideration of the job qualifications of known disabled veteran applicants and Vietnam era veteran applicants for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. In determining the qualifications of a covered veteran, the contractor shall consider only that portion of the military record, including discharge papers, relevant to the specific job qualifications for which the veteran is being considered. To the extent that it is necessary to modify their personnel procedures, contractors shall include the development of new procedures for this purpose in their affirmative action program required under this part. These procedures must be designed so as to facilitate a review of the implementation of this requirement by the contractor or the Government. (The appendix attached is an example of an appropriate set of procedures. The procedures in appendix B are not required and contractors may develop other procedures which are appropriate to their circumstances.)

(c) *Physical and mental qualifications.* (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the review of all physical or mental job qualification requirements to ensure that, to the extent qualification requirements tend to screen out qualified disabled veterans, they are job related and are consistent with business necessity and the safe performance of the job.

(2) Whenever a contractor applies physical or mental job qualification requirements in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion, or

for employment and advancement of qualified disabled veterans and veterans of the Vietnam era. Based upon the findings of such reviews, contractors shall undertake appropriate outreach and positive recruitment activities, such

each establishment where hiring takes place for the recruitment of covered veterans; and

(vi) Local veterans' groups and veterans' service centers in the area of each establishment where employment

(6) Meet with union officials to inform them of the contractor's policy, and request their cooperation.

(7) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they

(v) Ensure that each location is in compliance with the Act and the regulations in this Part 60–250.

(4) Serve as liaison between the contractor and enforcement agencies.

(5) Serve as liaison between the

facilities which specialize in training or educating disabled veterans.

(9) The contractor should use all available resources to continue or establish federally assisted apprenticeship and on-the-job training

(2) Whenever a contractor applies physical or mental job qualification requirements in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion, or training, to the extent that qualification requirements tend to screen out qualified disabled veterans, the requirements shall be related to the specific job or jobs for which the individual is being considered and shall be consistent with business necessity and the safe performance of the job. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph.

(3) Nothing is this section shall prohibit a contractor from conducting a comprehensive medical examination prior to employment provided that the results of such an examination shall be used only in accordance with the requirements of this section. Whenever a contractor inquires into an applicant's or employee's physical or mental condition or conducts a medical examination prior to employment or change in employment status information obtained in response to such inquiries or examination shall be kept confidential except that:

(i) Supervisors and managers may be informed regarding restrictions on the work or duties of disabled veterans and regarding accommodations; and

(ii) first aid and safety personnel may be informed, where and to the extent appropriate, if the condition might require emergency treatment; and

(iii) Government officials investigating compliance with the Act shall be informed.

(d) *Accommodation to physical and mental limitations of employees.* A contractor must make a reasonable accommodation to the physical and mental limitations of a disabled veteran unless the contractor can demonstrate that such an accommodation would impose an undue hardship on the conduct of the contractor's business. In determining the extent of a contractor's accommodation obligations, the following factors among others may be considered: (1) Business necessity and (2) financial costs and expenses.

(e) *Compensation.* In offering employment or promotions to disabled veterans, and veterans of the Vietnam era, the contractor may not reduce the amount of compensation offered because of any disability income, pension or other benefit the applicant or employee receives from another source.

(f) *Outreach, positive recruitment, and external dissemination of policy.* Contractors shall review their employment practices to determine whether their personnel programs provide the required affirmative action for employment and advancement of qualified disabled veterans and veterans of the Vietnam era. Based upon the findings of such reviews, contractors shall undertake appropriate outreach and positive recruitment activities, such as those listed below. It is not contemplated that contractors will necessarily undertake all the listed activities or that their activities will be limited to those listed. The scope of a contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.

(1) The contractor should develop internal communication of its obligation to engage in affirmative action efforts to employ qualified disabled veterans and veterans of the Vietnam era in such a manner as to foster understanding, acceptance and support among the contractor's executive, managment, supervisory and all other employees and to encourage such persons to take the necessary action to aid the contractor in meeting this obligation.

(2) The contractor should develop reasonable internal procedures to ensure that its obligation to engage in affirmative action to employ and promote qualified disabled veterans and veterans of the Vietnam era is being fully implemented.

(3) The contractor should periodically inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified disabled veterans and veterans of the Vietnam era.

(4) The contractor should enlist the assistance and support of all recruiting sources including as follows:

(i) The local Veterans Employment Representative or his or her designee in the State Employment Service Office nearest each establishment where hiring takes place to recruit job ready veterans and to develop on-the-job training opportunities for covered veterans wherever feasible;

(ii) The Veterans Administration Regional Office nearest each establishment to develop on-the-job training opportunities for covered veterans, and to recruit job ready veterans;

(iii) The office of the National Alliance of Businessmen nearest each establishment where hiring takes place in order to cooperate in the Jobs for Veterans' Program;

(iv) The veterans' counselors and coordinators ("Vet-Reps" and "VCIPS") on college campuses for the recruitment of covered veterans;

(v) The service officers of the national veterans groups active in the area of each establishment where hiring takes place for the recruitment of covered veterans; and

(vi) Local veterans' groups and veterans' service centers in the area of each establishment where employment services are performed near major cities, for the recruitment of covered veterans.

(5) The contractor should establish meaningful contacts with appropriate veterans' service organizations which service disabled veterans or veterans of the Vietnam era, for such purposes as advice, technical assistance and referral of potential employees. Technical assistance from the resources listed in this paragraph may consist of advice on proper placement, recruitment, training and accommodations contractors may undertake, but no such resource providing technical assistance shall have the authority to approve or disapprove the acceptability of affirmative action programs.

(6) The contractor should review employment records to determine the availability of promotable and transferrable qualified known disabled veterans and veterans of the Vietnam era presently employed, and to determine whether their present and potential skills are being fully utilized or developed.

(7) The contractor should send written notification of company policy to all subcontractors, vendors and suppliers, requesting appropriate action on their part.

(8) The contractor should consider all qualified disabled veterans and veterans of the Vietnam era not currently in the workforce having requisite skills who can be recruited through affirmative action measures.

(g) *Internal dissemination of policy.* A strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor should adopt, implement and disseminate this policy internally as follows:

(1) Include it in the contractor's policy manual.

(2) Publicize it in the company newspaper, magazine, annual report and other media.

(3) Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(4) Schedule special meetings with all employees to discuss policy and explain individual employee responsibilities.

(5) Discuss the policy thoroughly in both employee orientation and management training programs.

(6) Meet with union officials to inform them of the contractor's policy, and request their cooperation.

(7) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

(8) Include articles on accomplishments of disabled veterans and veterans of the the Vietnam era in company publications.

(9) Post the policy on company bulletin boards, including a statement that employees and applicants are protected from coercion, intimidation, interference or discrimination for filing a complaint or assisting in an investigation under the Act.

(h) *Responsibility for implementation.* An executive of the contractor should be designated as director or manager of company affirmative action activities under these regulations. His or her identity should appear on all internal and external communications regarding the company's affirmative action programs. This executive should be given necessary top management support and staff to manage the implementation of this program, including the following activities:

(1) Develop policy statements, affirmative action programs, and internal and external communication techniques. The latter techniques should include regular discussions with local managers, supervisors and employees to be certain the contractor's polcies are being followed. In addition, supervisors should be advised that:

(i) Their work performance is being evaluated on the basis of their affirmative action efforts and results, as well as other criteria.

(ii) The contractor is obligated to prevent harassment of employees placed through affirmative action efforts, as set forth in 41 CFR 60–1.28.

(2) Identify problem areas in conjunction with line management and known disabled veterans, in the implementation of the affirmative action programs, and develop solutions. This is particularly important for the accommodations requirements.

(3) Design and implement audit and reporting systems that will:

(i) Measure effectiveness of the contractor's programs.

(ii) Indicate need for remedial action.

(iii) Determine the degree to which the contractor's objectives have been attained.

(iv) Determine whether known disabled veterans and veterans of the Vietnam era have had the opportunity to participate in all company sponsored educational, training, recreational and social activities.

(v) Ensure that each location is in compliance with the Act and the regulations in this Part 60–250.

(4) Serve as liaison between the contractor and enforcement agencies.

(5) Serve as liaison between the contractor and organizations of and for disabled veterans and veterans of the Vietnam era, and arrange for the active involvement by company representatives in the community service programs of local organizations of and for disabled veterans and veterans of the Vietnam era.

(6) Keep management informed of the latest developments in the entire affirmative action area.

(7) Arrange for career counseling for known disabled veterans and veterans of the Vietnam era.

(i) *Development and execution of affirmative action programs.* (1) Job qualification requirements reviewed pursuant to paragraph (c) of this section should be made available to all members of management involved in the recruitment, screening, selection, and promotion process.

(2) The contractor should evaluate the total selection process including training and promotion to ensure freedom from stereotyping disabled veterans and veterans of the Vietnam era in a manner which limits their access to all jobs for which they are qualified.

(3) All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes should be carefully selected and trained to ensure that the commitments in its affirmative action program are implemented.

(4) Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Plant tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefings. Formal arrangements should be made for referral of applicants, follow up with sources, and feedback on disposition of applicants.

(5) A special effort should be made to include qualified disabled veterans or veterans of the Vietnam era on the personnel relations staff.

(6) Active participation in veterans "job fairs" is desirable.

(7) Recruiting efforts at all educational institutions should incorporate special efforts to reach disabled veterans and veterans of the Vietnam era.

(8) An effort should be made to participate in workstudy programs with Veterans' Administration rehabilitation facilities which specialize in training or educating disabled veterans.

(9) The contractor should use all available resources to continue or establish federally assisted apprenticeship and on-the-job training programs under 38 U.S.C. 1787.

§ 60–250.6 Determination of disability.

Any disabled veteran filing a complaint under this part shall submit documentation from the Veterans Administration or military service from which the person was discharged or released which indicates the disability. Such documentation shall be updated within one year prior to filing the complaint if there has been a major change in the veteran's condition or if the Veterans Administration is reviewing the veteran's case.

Subpart B—General Enforcement and Complaint Procedure

§ 60–250.20 Subcontracts.

Each nonexempt contractor shall include the affirmative action clause prescribed in § 60–250.3 in each of its nonexempt subcontracts. The clause may be incorporated by reference in accordance with 41 CFR 60–1.46.

§ 60–250.21 Duties of agencies.

Each agency shall cooperate with the Director in the performance of his or her responsibilities under the Act. Such cooperation shall include the responsibility to ensure that contractors are fully cognizant of their obligations under the Act and this part, to provide the Director with any information which comes to its attention that the contractor is not in compliance with the Act or this part, and to take such actions for noncompliance as set forth in this chapter as may be ordered by the Director.

§ 60–250.22 Evaluations by the OFCCP Assistant Regional Administrators.

The Assistant Regional Administrators, OFCCP, shall be primarily responsible for undertaking compliance reviews and investigations of complaints against contractors as may be necessary to assure that the purposes of the Acts are being carried out effectively.

§ 60–250.23 Complaint procedures.

(a) *Filing complaints.* Complaints shall be filed within 180 days of the alleged violation unless the time for filing is extended for good cause shown.

(b) *Where to file.* Complaints may be filed with the OFCCP, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, or with any OFCCP regional or area office.

Complaints also may be filed with the Veterans Employment Service of the Department of Labor. Complaints filed with the Veterans Employment Service shall be referred to OFCCP promptly for

(g) *Resolution of matters.* (1) If the complaint investigation shows no violation of the Act or regulations, or if the matter is not recommended to the Office of the Solicitor for legal

employment openings listed by contractors pursuant to this part.

(d) The local state employment service staff shall make appropriate job development contacts with identified

Appendix B

The following is a set of procedures which contractors may use to meet the requirements of § 60–250.5(b).

(1) The application or personnel form of

Subpart A—Preliminary Matters, Affirmative Action Clause, Compliance

§ 60–741.1 Purpose and application.

The purpose of the regulations in this Part 60–741 is to assure compliance with

(4) Contracts with state or local governments. The requirements of the affirmative action clause in any contract with a state or local government (or any agency, instrumentality or subdivision

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Complaints also may be filed with the Veterans Employment Service of the Department of Labor. Complaints filed with the Veterans Employment Service shall be referred to OFCCP promptly for investigation.

(c) *Contents of complaints.* Complaints must be signed by the complainant or an authorized representative and must contain the following information. (1) name and address (including telephone number) of the complainant; (2) name and address of the contractor who committed the alleged violation; (3) a description of the act or acts considered to be a violation; (4) a statement that the alleged discriminatee is a disabled or Vietnam era veteran; and (5) any other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted. Complaints alleging class-type violations which do not identify the alleged discriminatee or discriminatees will be accepted provided the other requirements of this paragraph are met. Signed third party complaints which do not identify the alleged discriminatee will be accepted, whether or not the third party signing the complaint is an authorized representative provided that the other information required by this paragraph is included.

(d) *Incomplete information.* If a complaint contains incomplete information, OFCCP shall seek the needed information from the person who filed the complaint. If the information is not furnished within 60 days of the date of the request, the case may be closed.

(e) *Investigations.* The OFCCP shall institute a prompt investigation of each complaint, and shall be responsible for developing a complete case record.

(f) *Referral to contractor.* When a complaint concerns an employee of a contractor and the contractor has an applicable internal review procedure, the complaint may be referred to the contractor for processing under that procedure if the employee gives his/her consent. The contractor shall be informed of the elements of the complaint either by being furnished a copy or a sanitized version. The complaint and all actions taken thereunder shall be kept confidential by the contractor. If the contractor is able to resolve the complaint to the satisfaction of the employee prior to the OFCCP investigation, the contractor shall notify OFCCP of the results in writing within 60 days of the referral. The case will be closed upon verification with the employee.

(g) *Resolution of matters.* (1) If the complaint investigation shows no violation of the Act or regulations, or if the matter is not recommended to the Office of the Solicitor for legal enforcement proceedings, the matter shall be closed and the complainant shall be so notified.

(2) If an investigation indicates that the contractor has not complied with the requirements of the Act, efforts shall be made to secure compliance through conciliation and persuasion within a reasonable time. Before the contractor can be found to be in compliance, it must make a specific commitment in accordance with the procedure in 41 CFR 60–1.26.

(3) If a complaint investigation or compliance review indicates a violation of the Act, and the matter has not been resolved by informal means, OFCCP may refer the matter in accordance with the procedure in 41 CFR 60–1.29(a) for consideration of any action authorized under 41 CFR 60–1.29. After a matter arising under the Act is referred to the Office of the Solicitor, the provisions of 41 CFR 60–1.29 through 60–1.31 shall be applicable to the matter in the same way those provisions apply to a matter arising under Executive Order 11246.

Subpart C—Ancillary Matters

§ 60-250.30 Responsibilities of the Deputy Assistant Secretary for Veterans' Employment.

(a) In accordance with the provisions of 38 U.S.C. 2002A, the Deputy Assistant Secretary for Veterans' Employment (DASVE) has responsibilities in all Department of Labor employment and training programs for veterans. The DASVE is responsible for assuring that the Veterans Employment Service shall monitor and evaluate adherence to the contractor job listing provisions of § 60–250.3 by state employment security agencies. Deficiencies noted by the Veterans Employment Service shall be reported through the DASVE to OFCCP. OFCCP, in coordination with the DASVE, will review contractor compliance with the mandatory job listing requirements in the course of regularly scheduled compliance reviews.

(b) Any job openings listed pursuant to § 60–250.3, which requires contractors to list their job openings with state employment services offices, shall be utilized by state employment security agencies to refer qualified disabled veterans and veterans of the Vietnam era. (See 20 CFR 653.221(a)(7).)

(c) The local offices of the Federal-state employment service shall give priority in referral of disabled veterans and veterans of the Vietnam era to such employment openings listed by contractors pursuant to this part.

(d) The local state employment service staff shall make appropriate job development contacts with identified contractors to obtain orders for job openings. Information so obtained which is pertinent to determining compliance with the requirements to list job openings and to take affirmative action shall be made available to OFCCP.

§ 60-250.31 Recordkeeping.

(a) Each contractor shall maintain for a period not less than one year records regarding complaints and actions taken thereunder, and such employment or other records as required by the Director or by this part and shall furnish such information in the form required by the Director or as the Director deems necessary for the administration of the Act.

(b) Failure to maintain complete and accurate records as required under this section or failure to update annually the affirmative action program as required by § 60–250.4(b) constitutes noncompliance with the contractor's obligations under the Act and is a ground for the imposition of appropriate sanctions.

Appendix A

This employer is a Government contractor subject to Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 which require Government contractors to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era. If you are a disabled veteran covered by this program and would like to be considered under the affirmative action program, please tell us. This information is voluntary and refusal to provide it will not subject you to discharge or disciplinary treatment. Information obtained concerning individuals shall be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the work or duties of disabled veterans, and regarding necessary accommodations, and (ii) first aid personnel may be informed, when and to the extent appropriate, if the condition might require emergency treatment. In order to assure proper placement of all employees, we do request that you answer the following question: If you have a disability which might affect your performance or create a hazard to yourself or others in connection with the job for which you are applying, please state the following: (1) The skills and procedures you use or intend to use to perform the job notwithstanding the disability and (2) the accommodations we could make which would enable you to perform the job properly and safely, including special equipment, changes in the physical layout of the job, elimination of certain duties relating to the job or other accommodations.

Appendix B

The following is a set of procedures which contractors may use to meet the requirements of § 60–250.5(b).

(1) The application or personnel form of each known protected veteran should be annotated to identify each vacancy for which he or she was considered, and the form should be quickly retrievable for review by the agency, the Department of Labor and the contractor's personnel officials for use in investigations and internal compliance activities.

(2) The personnel or application records of each known protected veteran should include (i) the identification of each promotion for which he or she was considered, and (ii) the identification of each training program for which he or she was considered.

(3) In each case where a protected veteran is rejected for employment, promotion or training, a statement of the reasons should be appended to the personnel file or application form. This statement should include a comparison of the qualifications of the protected veteran and the person(s) selected, as well as a description of the accommodations considered. This statement should be available to the applicant or employee concerned upon request.

(4) Where applicants or employees are selected for hire, promotion or training and the contractor undertakes any accommodation which makes it possible for the contractor to place a protected veteran on the job, the application form or personnel record should contain a description of that accommodation.

PART 60-741—AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR HANDICAPPED WORKERS

Subpart A—Preliminary Matters, Affirmative Action Clause, Compliance

Sec.

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Authority: Sec. 503, Pub. L. 93–1112, 87 Stat. 393 (20 U.S.C. 793), as amended by sec. 111, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706) and Executive Order 11758.

Subpart A—Preliminary Matters, Affirmative Action Clause, Compliance

§ 60-741.1 Purpose and application.

The purpose of the regulations in this Part 60–741 is to assure compliance with section 503 of the Rehabilitation Act of 1973, which requires Government contractors to take affirmative action to employ and advance in employment qualified handicapped individuals. The regulations in this part apply to all Government contracts, including Federal deposit or share insurance, for the furnishing of supplies or services or for the use of personal property (including construction) in excess of $2,500. Compliance of a contractor with the provisions of this part will not necessarily determine its compliance with the requirements of section 504 of the Rehabilitation Act of 1973 and compliance with section 504 will not necessarily determine compliance with section 503 and the regulations in this part.

§ 60-741.2 Coverage and waivers.

(a) *General.*—(1) *Transactions for $2,500 or less.* Contracts for $2,500 or less are not covered by the Act. No agency or contractor shall procure supplies or services in less than usual quantities to avoid the applicability of the affirmative action clause.

(2) Contracts for indefinite quantities. With respect to indefinite delivery-type contracts (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the affirmative action clause shall be included unless the contracting agency has reason to believe that the amount to be ordered in any year under such contract will be $2,500 or less. The applicability of the affirmative action clause shall be determined at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the affirmative action clause shall be applied to such contract whenever the amount of a single order is in excess of $2,500. Once the affirmative action clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) Work outside of the United States. The requirements of the affirmative action clause are waived with respect to contracts with regard to work performed outside of the United States by employees who were not recruited within the United States.

(4) Contracts with state or local governments. The requirements of the affirmative action clause in any contract with a state or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

(5) Facilities not connected with contracts. The Director may waive the requirements of the affirmative action clause with respect to any of a contractor's facilities which he or she finds to be in all respects separate and distinct from activities of the contractor related to the performance of the contract, provided that he or she also finds that such a waiver will not interfere with or impede the effectuation of the Act. Such waivers shall be considered only upon the request of the contractor.

(b) *Waivers.* (1) Specific contracts and classes of contracts. The head of an agency, with the concurrence of the Director, may waive the application to any contract of any part of or all the affirmative action clause when he or she deems that special circumstances in the national interest so require. The agency head, with the concurrence of the Director, may also grant such waivers to groups or categories of contracts of the same type where it is (i) in the national interest, (ii) found impracticable to act upon each request individually, and (iii) where such waiver will substantially contribute to convenience in administration of section 503 of the Act.

(2) National security. Any requirement set forth in the regulations in this Part 60–741 shall not apply to any contract whenever the head of the contracting agency determines that such contract is essential to the national security and that its award without complying with such requirements is necessary to the national security. Upon making such a determination the head of the agency will notify the Director in writing within 30 days.

(c) *Withdrawal of waiver.* When a waiver has been granted for any class of contracts under this section other than contracts granted waivers under paragraph (b)(2) of this section, the Director may withdraw the waiver for a specific contract or group of contracts to be awarded, when in his or her judgment such action is necessary or appropriate to achieve the purposes of the Act. The withdrawal shall not apply to contracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal shall not

apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

§ 60-741.3 Affirmative action clause.

Each agency and each contractor and

enforce such provisions, including action for noncompliance.

§ 60-741.4 Applicability of the affirmative action program requirement.

(a) Within 120 days of the

(3) Nothing in this section shall relieve a contractor of its obligation to take affirmative action with respect to those applicants or employees of whose handicap the contractor has actual knowledge: *Provided,* That the

(2) Whenever a contractor applies physical or mental job qualification requirements in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training,

Contractors shall review their employment practices to determine whether their personnel programs provide the required affirmative action for employment and advancement of qualified handicapped individuals.

(6) The contractor should establish meaningful contacts with appropriate social service agencies, organizations of and for handicapped individuals, vocational rehabilitation agencies or facilities, for such purposes as advice,

apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

§ 60-741.3 Affirmative action clause.

Each agency and each contractor and subcontractor shall include the following affirmative action clause in each of its covered Government contracts (and modifications, renewals, or extensions thereof if not included in the original contract).

Affirmative Action for Handicapped Workers

(a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(c) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(e) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(f) The contractor will include the provisions of this clause in every subcontract or purchase order in excess of $2,500 unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

§ 60-741.4 Applicability of the affirmative action program requirement.

(a) Within 120 days of the commencement of a contract, every Government contractor which has 50 or more employees and (1) has a contract of $50,000 or more or (2) has contracts (at least one of which exceeds $2,500) which total $50,000 or more in any 12-month period shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices and procedures in accordance with § 60-741.5 of this part. This program may be integrated into or kept separate from other affirmative action programs of the contractor which OFCCP requires it to maintain pursuant to this chapter.

(b) The affirmative action program shall be reviewed and updated annually. If there are any significant changes in procedures, rights or benefits as a result of the annual updating, those changes shall be communicated to employees and applicants for employment.

(c) The contractor shall submit the affirmative action program within 15 days of a request from OFCCP. The contractor shall also submit the affirmative action program upon OFCCP's request when a complaint is being investigated or a preaward compliance review is being conducted.

(d) The full affirmative action program shall be available to any employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment.

(e)(1) The contractor shall invite all applicants and employees who believe themselves covered by the Act and who wish to benefit under the affirmative action program to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with the Act and the regulations in this part. If an applicant or employee so identifies himself or herself, the contractor should also seek the advice of the applicant or employee regarding proper placement and appropriate accommodation. (An acceptable form for such an invitation is set forth in Appendix B attached.)

(2) Nothing in this section shall preclude an employee from informing a contractor at any future time of his or her desire to benefit under the program.

(3) Nothing in this section shall relieve a contractor of its obligation to take affirmative action with respect to those applicants or employees of whose handicap the contractor has actual knowledge: *Provided*, That the contractor is not obligated to search the medical files of any applicant or employee to determine the existence of a handicap.

(4) Nothing in this section shall relieve a contractor from liability for discrimination under the Act.

§ 60-741.5 Affirmative action policy, practices, and procedures.

(a) *General requirements.* Under the affirmative action obligation imposed by section 503 of the Rehabilitation Act of 1973, contractors are required to take affirmative action to employ and advance in employment qualified handicapped individuals at all levels of employment, including the executive level. Such action shall apply to all employment practices, including, but not limited to, the following: Hiring, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) *Proper consideration of qualifications.* Contractors shall review their personnel processes to determine whether their present procedures assure careful, thorough and systematic consideration of the job qualifications of known handicapped applicants and employees for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. To the extent that it is necessary to modify their personnel procedures, contractors shall include the development of new procedures for this purpose in their affirmative action program required under this part. These procedures must be designed so as to facilitate a review of the implementation of this requirement by the contractor or the Government. (Appendix C attached is an example of an appropriate set of procedures. The procedures in Appendix C are not required and contractors may develop other procedures which are appropriate to their circumstances.)

(c) *Physical and mental qualifications.* (1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the review of all physical or mental job qualification requirements to ensure that, to the extent qualification requirements tend to screen out qualified handicapped individuals, they are job related and are consistent with business necessity and the safe performance of the job.

(2) Whenever a contractor applies physical or mental job qualification requirements in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to the extent that qualification requirements tend to screen out qualified handicapped individuals, the requirements shall be related to the specific job or jobs for which the individual is being considered and shall be consistent with business necessity and the safe performance of the job. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph.

(3) Nothing in this section shall prohibit a contractor from conducting a comprehensive medical examination prior to employment provided that the results of such an examination shall be used only in accordance with the requirements of this section. Whenever a contractor inquires into an applicant's or employee's physical or mental condition or conducts a medical examination prior to employment or change in employment status information obtained in response to such inquiries or examination shall be kept confidential except that:

(i) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped individuals and regarding accommodations; and

(ii) First aid and safety personnel may be informed, where and to the extent appropriate, if the condition might require emergency treatment; and

(iii) Government officials investigating compliance with the Act shall be informed.

(d) *Accommodation to physical and mental limitations of employees.* A contractor must make a reasonable accommodation to the physical and mental limitations of an employee or applicant unless the contractor can demonstrate that such an accommodation would impose an undue hardship on the conduct of the contractor's business. In determining the extent of a contractor's accommodation obligations, the following factors among others may be considered: (1) business necessity and (2) financial cost and expenses.

(e) *Compensation.* In offering employment or promotions to handicapped individuals, the contractor may not reduce the amount of compensation offered because of any disability income, pension or other benefit the applicant or employee receives from another source.

(f) *Outreach, positive recruitment, and external dissemination of policy.* Contractors shall review their employment practices to determine whether their personnel programs provide the required affirmative action for employment and advancement of qualified handicapped individuals. Based upon the findings of such reviews, contractors shall undertake appropriate outreach and positive recruitment activities, such as those listed below. It is not contemplated that contractors will necessarily undertake all the listed activities or that their activities will be limited to those listed. The scope of a contractor's efforts shall depend upon all the circumstances, incuding the contractor's size and resources and the extent to which existing employment practice are adequate.

(1) The contractor should develop internal communication of its obligation to engage in affirmative action efforts to employ qualified handicapped individuals in such a manner as to foster understanding, acceptance and support among the contractor's executive, managment, supervisory and all other employees and to encourage such persons to take the necessary action to aid the contractor in meeting this obligation.

(2) The contractor should develop reasonable internal procedures to ensure that its obligation to engage in affirmative action to employ and promote qualified handicapped individuals is being fully implemented.

(3) The contractor should periodically inform all employees and prospective employees of its commitment to engage in affirmative action to increase employment opportunities for qualified handicapped individuals.

(4) The contractor should enlist the assistance and support of recruiting sources (including state employment security agencies, state vocational rehabilitation agencies or facilities, sheltered workshops, college placement officers, state education agencies, labor organizations and organizations of or for handicapped individuals) for the contractor's commitment to provide meaningful employment opportunities to qualified handicapped individuals. (A list of numerous national organizations serving the handicapped, many of which have state or local affiliates, is found in the "Directory of Organizations Interested in the Handicapped" published by the Committee for the Handicapped People-to-People Program, Washington, D.C.)

(5) The contractor should engage in recruitment activities at educational institutions which participate in training of the handicapped, such as schools for the blind, deaf, or retarded.

(6) The contractor should establish meaningful contacts with appropriate social service agencies, organizations of and for handicapped individuals, vocational rehabilitation agencies or facilities, for such purposes as advice, technical assistance and referral of potential employees. Technical assistance from the resources described in this paragraph may consist of advice on proper placement, recruitment, training and accommodations contractors may undertake, but no such resource providing technical assistance shall have the authority to approve or disapprove the acceptability of affirmative action programs.

(7) The contractor should review employment records to determine the availability of promotable and transferable qualified known handicapped individuals presently employed, and to determine whether their present and potential skills are being fully utilized or developed.

(8) The contractor should include handicapped workers when employees are pictured in consumer, promotional or help wanted advertising.

(9) The contractor should send written notification of company policy to all subcontractors, vendors and suppliers, requesting appropriate action on their part.

(10) The contractor should take positive steps to attract qualified handicapped persons not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These persons may be located through the local chapters of organizations of and for handicapped individuals described in paragraph (f)(4) of this section.

(g) *Internal dissemination of policy.* A strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees, who may have had limited contact with handicapped persons in the past. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor should adopt, implement and disseminate this policy internally as follows:

(1) Include it in the contractor's policy manual.

(2) Publicize it in the company newspaper, magazine, annual report and other media.

(3) Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(4) Schedule special meetings with all employees to discuss policy and explain individual employee responsibilities.

(5) Discuss the policy thoroughly in both employee orientation and

(iii) Determine the degree to which the contractor's objectives have been attained.

(iv) Determine whether known handicapped employees have had the

and related activities in their communities.

(7) Recruiting efforts at all schools should incorporate special efforts to reach handicapped students.

§ 60-741.7 Listing of employment openings.

Contractors should request state employment security agencies to refer qualified handicapped individuals for

documentation of impairment, or was regarded by the contractor as having an impairment; and (5) any other pertinent information available which will assist in the investigation and resolution of the

accordance with the procedure in 41 CFR 60-1.26.

(3) When a complaint investigation or compliance review indicates a violation of the Act, and the matter has not been

(4) Schedule special meetings with all employees to discuss policy and explain individual employee responsibilities.

(5) Discuss the policy thoroughly in both employee orientation and management training programs.

(6) Meet with union officials to inform them of the contractor's policy, and request their cooperation.

(7) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

(8) Include articles on accomplishments of handicapped workers in company publications.

(9) Post the policy on company bulletin boards, including a statement that employees and applicants are protected from coercion, intimidation, interference or discrimination for filing a complaint or assisting in an investigation under the Act.

(10) When employees are featured in employee handbooks or similar publications for employees, include handicapped employees.

(h) *Responsibility for implementation.* An executive of the contractor should be designated as director or manager of company affirmative action activities under these regulations. His or her identity should appear on all internal and external communications regarding the company's affirmative action programs. This executive should be given necessary top management support and staff to manage the implementation of this program, including the following activities:

(1) Develop policy statements, affirmative action programs, and internal and external communication techniques. The latter techniques should include regular discussions with local managers, supervisors and employees to be certain the contractor's policies are being followed. In addition, supervisors should be advised that:

(i) Their work performance is being evaluated on the basis of their affirmative action efforts and results, as well as other criteria.

(ii) The contractor is obligated to prevent harassment of employees placed through affirmative action efforts, as set forth in 41 CFR 60–1.28.

(2) Identify problem areas in conjunction with line management and known handicapped employees, in the implementation of the affirmative action programs, and develop solutions. This is particularly important for the accommodations requirements.

(3) Design and implement audit and reporting systems that will:

(i) Measure effectiveness of the contractor's programs.

(ii) Indicate need for remedial action.

(iii) Determine the degree to which the contractor's objectives have been attained.

(iv) Determine whether known handicapped employees have had the opportunity to participate in all company sponsored educational, training, recreational and social activities.

(v) Ensure that each location is in compliance with the Act and the regulations in this part.

(4) Serve as liaison between the contractor and OFCCP.

(5) Serve as liaison between the contractor and organizations of and for handicapped persons, and arrange for the active involvement by company representatives in the community service programs of local organizations of and for the handicapped.

(6) Keep management informed of the latest developments in the entire affirmative action area.

(7) Arrange for career counseling for known handicapped employees.

(i) *Development and execution of affirmative action programs.* (1) Job qualification requirements reviewed pursuant to paragraph (c) of this section should be made available to all members of management involved in the recruitment, screening, selection, and promotion process.

(2) The contractor should evaluate the total selection process including training and promotion to ensure freedom from stereotyping handicapped persons in a manner which limits their access to all jobs for which they are qualified.

(3) All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes should be carefully selected and trained to ensure that the commitments in the contractor's affirmative action program are implemented.

(4) Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Plant tours, clear and concise explanations of current and future job openings, position, descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefings. Formal arrangements should be made for referral of applicants, follow up with sources, and feedback on disposition of applicants.

(5) A special effort should be made to include qualified handicapped persons on the personnel relations staff.

(6) Handicapped employees should be made available for participation in career days, youth motivation programs, and related activities in their communities.

(7) Recruiting efforts at all schools should incorporate special efforts to reach handicapped students.

(8) An effort should be made to participate in workstudy programs with rehabilitation facilities and schools which specialize in training or educating handicapped individuals.

(9) The contractor should use all available resources to continue or establish on the job training programs.

(j) *Sheltered workshops.* Contracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified handicapped individuals in the contractor's own workforce. Contracts with sheltered workshops may be included within an affirmative action program if the sheltered workshop trains employees for the contractor and the contractor is obligated to hire trainees at full compensation when such trainees become qualified as "qualified handicapped individuals" as defined in this chapter.

§ 60–741.6 Determination of handicap.

(a) Any handicapped individual filing a complaint with the Director under this part shall submit with his or her complaint a signed statement specifying the handicapping impairment or situation (see 41 CFR 60–1.3 definition of "handicapped individual"). If the Director determines that further documentation is necessary, he or she may require the complainant to provide additional information.

(b) Any contractor requiring a determination of an applicant's or employee's handicap may require the applicant or employee to provide medical,documentation of the impairment or, in the alternative, may require the applicant or employee to undergo a medical examination at the contractor's expense.

(c) Any determination of handicap required pursuant to paragraph (b) of this section must meet the requirements of § 60–741.4(c) and must be for the purpose of affirmative action and proper job placement. Information obtained therefrom shall not be used to exclude or otherwise limit the employment opportunities of qualified handicapped individuals.

(d) All medical documentation required under this section shall be based upon the American Medical Association Guides to the Evaluation of Permanent Impairment, provided that the Guides shall be used only to determine the existence of impairment without regard to the degree of impairment.

§ 60–741.7 Listing of employment openings.

Contractors should request state employment security agencies to refer qualified handicapped individuals for consideration under their affirmative action programs.

Subpart B—General Enforcement and Complaint Procedure

§ 60–741.20 Subcontracts.

Each nonexempt contractor shall include the affirmative action clause prescribed in § 60–741.3 in each of its nonexempt subcontracts. The clause may be incorporated by reference in accordance with 41 CFR 60–1.46.

§ 60–741.21 Duties of agencies.

(a) General responsibility. Each agency shall cooperate with the Director in the performance of his or her responsibilities under the Act. Such cooperation shall include the responsibility to ensure that contractors are fully cognizant of their obligations under the Act and this part, to provide the Director with any information which comes to its attention that the contractor is not in compliance with the Act or this part, and to take such actions for noncompliance as set forth in this chapter as may be ordered by the Director.

§ 60–741.22 Evaluations by the OFCCP Assistant Regional Administrator.

The Assistant Regional Administrators, OFCCP, shall be primarily responsible for undertaking such investigations of complaints against contractors and conducting compliance reviews as may be necessary to assure that the purposes of the Act are being carried out effectively.

§ 60–741.23 Complaint procedures.

(a) *Filing complaints.* Complaints shall be filed within 180 days of the alleged violation unless the time for filing is extended for good cause shown.

(b) *Where to file.* Complaints may be filed with the OFCCP, 200 Constitution Avenue, N.W., Washington, D.C. 20210, or with any OFCCP regional or area office.

(c) *Contents of complaints.* Complaints must be signed by the complainant or an authorized representative and must contain the following information: (1) Name and address (including telephone number) of the complainant; (2) name and address of the contractor who committed the alleged violation; (3) a description of the act or acts considered to be a violation; (4) a statement that the alleged discriminatee is handicapped, has a history of a handicap, has documentation of impairment, or was regarded by the contractor as having an impairment; and (5) any other pertinent information available which will assist in the investigation and resolution of the complaint, including the name of any known Federal agency with which the employer has contracted. Complaints alleging class-type violations which do not identify the alleged discriminatee or discriminatees will be accepted, provided the other requirements of this paragraph are met. Signed third party complaints which do not identify the alleged discriminatee will be accepted, whether or not the third party signing the complaint is an authorized representative provided that the other information required by this paragraph is included.

(d) *Incomplete information.* If a complaint contains incomplete information, OFCCP shall seek the needed information from the person who filed the complaint. If the information is not furnished within 60 days of the date of the request, the case may be closed.

(e) *Investigations.* The OFCCP shall institute a prompt investigation of each complaint, and shall be responsible for developing a complete case record.

(f) *Referral to contractor.* When a complaint concerns an employee of a contractor and the contractor has an applicable internal review procedure, the complaint may be referred to the contractor for processing under that procedure if the employee gives his/her consent. The contractor shall be informed of the elements of the complaint either by being furnished a copy or a sanitized version. The complaint and all actions taken thereunder shall be kept confidential by the contractor. If the contractor is able to resolve the complaint to the satisfaction of the employee prior to the OFCCP investigation, the contractor shall notify OFCCP of the results in writing within 60 days of the referral. The case will be closed upon verification with the employee.

(g) *Resolution of matters.* (1) If the complaint investigation shows no violation of the Act or regulations in this part, or if the matter is not referred to the Office of the Solicitor for consideration of legal enforcement proceedings, the matter shall be closed and the complainant shall be so notified.

(2) If an investigation indicates that the contractor has not complied with the requirements of the Act, efforts shall be made to secure compliance through conciliation and persuasion within a reasonable time. Before the contractor can be found to be in compliance, it must make a specific commitment in accordance with the procedure in 41 CFR 60–1.26.

(3) When a complaint investigation or compliance review indicates a violation of the Act, and the matter has not been resolved by informal means, OFCCP may refer the matter in accordance with the procedure in 41 CFR 60–1.29(a) for consideration of any action authorized under 41 CFR 60–1.29. After a matter arising under the Act is referred to the Office of the Solicitor, the provisions of 41 CFR 60–1.29 through 60–1.31 shall be applicable to the matter in the same way those provisions apply to a matter arising under Executive Order 11246.

Subpart C—Ancillary Matters

§60–741.30 Recordkeeping.

(a) Each contractor shall maintain for a period not less than one year records regarding complaints and actions taken thereunder, and such employment or other records as required by the Director or by this part and shall furnish such information in the form required by the Director or as the Director deems necessary for the administration of the Act.

(b) Failure to maintain complete and accurate records as required under this section or failure to update annually the affirmative action program as required by § 60–741.4(b) constitutes noncompliance with the contractor's obligations under the Act and is a ground for the imposition of appropriate sanctions.

Appendix A—Guidelines on the Application of the Definition "Handicapped Individual."

The Rehabilitation Act of 1973, as amended, defines a handicapped individual for the purposes of the program as any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such impairment, or is regarded as having such an impairment.

"Life activities" may be considered to include communication, ambulation, selfcare, socialization, education, vocational training, employment, transportation, adapting to housing, etc. For the purpose of section 503 of the Act, primary attention is given to those life activities that affect employability.

The phrase *"substantially limits"* means the degree that the impairment affects employability. A handicapped individual who is likely to experience difficulty in securing retaining or advancing in employment would be considered substantially limited.

"Has a record of such an impairment" means that an individual may be completely recovered from a previous physical or mental impairment. It is included because the attitude of employers, supervisors, and coworkers toward that previous impairment may result in an individual experiencing difficulty in securing, retaining, or advancing in employment. The mentally restored and

those who, for example, have had heart attacks or cancer often experience such difficulty. Also, this part of the definition would include individuals who may have been erroneously classified and may experience discrimination based on this

identification of each training program for which the handicapped employee was considered.

(3) In each case where a handicapped employee or applicant is rejected for employment, promotion or training, a

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those who, for example, have had heart attacks or cancer often experience such difficulty. Also, this part of the definition would include individuals who may have been erroneously classified and may experience discrimination based on this misclassification. This group may include persons such as those who have been misclassified as mentally retarded or mentally restored.

"Is regarded as having such an impairment" refers to those individuals who are perceived as having a handicap, whether an impairment exists or not, but who, because of attitudes or for any other reason, are regarded as handicapped by employers or supervisors who have an effect on the individual securing retaining or advancing in employment.

Appendix B

1. This employer is a Government contractor subject to section 503 of the Rehabilitation of Act of 1973, which requires Government contractors to take affirmative action to employ and advance in employment qualified handicapped individuals. If you have such a handicap and would like to be considered under the affirmative action program, please tell us. Submission of this information is voluntary and refusal to provide it will not subject you to discharge or disciplinary treatment. Information obtained concerning individuals shall be kept confidential, except that (i) supervisors and managers may be informed regarding restrictions on the work or duties of handicapped individuals, and regarding necessary accommodations, (ii) first aid and safety personnel may be informed, when and to the extent appropriate, if the condition might require emergency treatment, and (iii) Government officials investigating compliance with the Act shall be informed.

2. If you are handicapped, we would like to include you under the affirmative action program. It would assist us if you tell us about (1) any special methods, skills and procedures which qualify you for positions that you might not otherwise be able to do because of your handicap, so that you will be considered for any positions of that kind, and (2) the accommodations which we could make which would enable you to perform the job properly and safely, including special equipment, changes in the physical layout of the job, elimination of certain duties relating to the job, or other accommodations.

Appendix C

The following is a set of procedures which contractors may use to meet the requirement of § 60-741.5(b).

(1) The application or personnel form of each known handicapped applicant should be annotated to identify each vacancy for which the applicant was condsidered, and the form should be quickly retrievable for review by the Department of Labor and the contractor's personnel officials for use in investigations and internal compliance activities.

(2) The personnel or application records of each known handicapped employee should include (i) the identification of each promotion for which the handicapped employee was considered, and (ii) the identification of each training program for which the handicapped employee was considered.

(3) In each case where a handicapped employee or applicant is rejected for employment, promotion or training, a statement of the reason should be appended to the personnel file or application form. This statement should include a comparison of the qualifications of the handicapped appliance or employee and the person(s) selected, as well as a description of the accommodations considered. This statement should be available to the applicant or employee concerned upon request.

(4) Where applicants or employees are selected for hire, promotion or training and the contractor undertakes any accommodation which makes it possible for the contractor to place a handicapped individual on the job, the application form or personnel record should contain a description of that accommodation.

CHAPTERS 60-60 THROUGH 60-100 [RESERVED.]

[FR Doc. 80-40227 Filed 12-29-80; 8:45 am]
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federal register

Tuesday
December 30, 1980

Part VII

Department of Health and Human Services

Food and Drug Administration

Recycled Animal Waste

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

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standards for a nonuniform product subject to differing processing methods. Nevertheless, the agency emphasizes the need for processing for control of pathogens of all animal waste intended

grant universities. Thirty-seven responses were received, and there were indications that recycled animal waste was being used for feed to some degree in 27 of the 37 states responding. The data presented (Ref. 1), although

local activity and that this practice presents risks to the health of animals or humans that are not controlled by State agencies. FDA will take an active role in the regulatory control of recycled animal waste.

wastes: (1) those that are collected from animals that have been fed drugs, or have been tested and found to contain drug residues; and (2) those that are collected from animals that have not been fed drugs, or have been tested and

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 500

[Docket No. 77N-0245]

Recycled Animal Waste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking its announced policy regarding the use of poultry litter as an animal feed ingredient. This will leave the regulation of the use of recycled animal waste to the individual States.

EFFECTIVE DATE: December 29, 1980.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION:

I. Introduction

Livestock and poultry producers, including egg-laying operations, accumulate large quantities of animal waste that present ecological and economic problems of disposal. The use of animal waste as a fertilizer is a partial solution to the disposal problem. A great deal of research has established that these animal wastes have nutrient value as an ingredient of certain animal feeds. Information available to FDA shows that edible products derived from animals receiving feeds containing recycled animal waste are indistinguishable from food products derived from animals receiving feeds not containing animal waste.

In the **Federal Register** of September 2, 1967 (32 FR 12714), FDA issued a statement of policy regarding the use of poultry litter as animal feed (21 CFR 500.40). It stated that FDA did not sanction the use of poultry litter as a feed or as a component of feed for animals and that poultry litter offered for animal feed use that was under the jurisdiction of the Federal Food, Drug, and Cosmetic Act would be considered adulterated within the meaning of section 402(a)(1), (a)(2)(C), and/or (a)(3) of the act. Subsequently, FDA adopted this policy for all animal waste with potential for use as an ingredient in animal feeds because the amount of information then available was not considered adequate to provide a basis for concluding that recycled animal waste is safe as a feed ingredient.

In the **Federal Register** of December 27, 1977 (42 FR 64662) (hereinafter cited as the 1977 notice), FDA issued a request for submission of data, information, and views to provide additional data regarding the use of recycled animal waste as an animal feed ingredient. The notice was in response to a growing interest in the use of animal waste as an animal feed ingredient. The 1977 notice discussed in detail the information then available to FDA including the historical development of the practice of feeding waste to animals, economic and environmental considerations, human health and aesthetics, animal health, and legal considerations.

The initial comment period, which closed June 26, 1978, was subsequently extended by FDA to September 25, 1978 by notice published in the **Federal Register** of July 28, 1978 (43 FR 32867).

Seventy-three responses were received including 28 from university researchers and administrators, 6 from State and Federal departments of agriculture, and 7 from national societies and organizations. Many of the comments included published research and research reports that added substantially to the information previously available to the agency. This information and copies of the comments may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857 (Docket Number 77N-0245, Recycled Animal Waste).

Since publication of the agency's policy statement, extensive research has provided a great deal of additional information. The scope of additional information comprises approximately 1,000 publications in the scientific and periodical literature.

The agency concludes from its extensive review that some processing of animal waste intended for use as a feed ingredient is necessary to minimize the possibility of harmful levels of pathogenic microorganisms that may be present in the waste. Procedures that have been used successfully as practical processing methods include dehydration, ensiling, composting, physical fractionation, fermentation, heat treatment, and addition of preservative chemicals such as formaldehyde. These treatment procedures, and the extent to which some processing of waste is mandated by practical considerations (e.g., the requirement for dehydration to reduce handling costs and difficulties and to preserve the quality of dietary components) were discussed in the 1977 notice. FDA recognizes the numerous difficulties in setting microbiological standards for a nonuniform product subject to differing processing methods. Nevertheless, the agency emphasizes the need for processing for control of pathogens of all animal waste intended for use as a feed ingredient and encourages development by the State feed regulatory bodies of quality standards in this area.

The agency recognizes that there are questions concerning the composition of wastes and effects of processing on animal wastes which research has not yet answered. The development of research efforts to add to the information on the extent to which drug residues and possible drug metabolites are present and biologically available in recycled waste presents formidable research problems. Quantifying drug metabolites and residues would require major expenditures of resources, with the possibility of results being dependent upon variables such as recycling systems, feeding and management practices, processing methods, and animal species. Additional research in this area may or may not strengthen the basis for future judgments concerning safety.

As noted in the summary of the section on human health and aesthetics in the 1977 notice, the data available to FDA as a result of extensive literature review and provided in response to the 1977 notice do not resolve all the questions of safety that are raised by the possible occurrence of residues of drugs and drug metabolites in recycled waste. Moreover, it has become clear that such questions might not be answerable in the foreseeable future even if extensive research efforts were devoted solely to this purpose. Hence, the agency recognizes that it is necessary to weigh associated safety factors such as the levels likely to be fed, the consuming species and production classes of animals, the probability of practical withdrawal periods following feeding, and the overall extent of the practice of recycling animal wastes in this country in order to develop an assessment of the safety impact of such feeding practices. A number of these safety factors were discussed in some detail in the 1977 notice.

Additional relevant information was submitted pertaining to the extent to which animal waste feeding is now being practiced in the United States (Ref. *1*). The usage level has been assessed by sending questionnaires to producers and to individuals active in animal waste management in 50 States and Puerto Rico. Other questionnaires were forwarded to the Directors of the Cooperative Extension Services in land-

grant universities. Thirty-seven responses were received, and there were indications that recycled animal waste was being used for feed to some degree in 27 of the 37 states responding. The data presented (Ref. *1*), although approximate, indicate that a maximum of slightly more than 1 percent in any category of animals in production are being fed wastes as a part of their ration. The category in which the estimated usage level was approximately 1 percent was the case in which cattle waste was being fed to beef feeder cattle. From this information, it appears that the extent of use in this country of recycled animal waste as feed is very small.

II. FDA Regulatory Policy

The recycling of animal waste is primarily a local practice. The bulk and weight of the end product are such that shipment to distant places is uneconomic because of transportation costs. Thus, the use of such material is largely a local matter. For this reason, the State feed control agencies have taken the initiative in promulgating standards regarding the use of animal waste as an animal feed ingredient. Indeed, some State agencies have established programs which control the use of such waste more directly and in greater detail than would be feasible from the Federal level.

Because of the local character of animal waste use and because the States have the capacity to effectively regulate this use, FDA has decided to revoke its previous policy statement (§ 500.40 *Use of poultry litter as animal feed* [21 CFR 500.40]). The revocation of the policy statement represents a lessening of Federal regulatory intervention in favor of State control. Although FDA's regulatory action regarding recycled animal waste has been extremely limited and no enforcement actions involving this product have been brought in court, the agency believes its position should be clear. The revocation of the policy statement does not constitute a positive endorsement of the use of recycled animal waste, make any regulatory classificaiton of waste (e.g., generally recognized as safe or food additive), or represent a concession that FDA lacks authority to regulate animal waste in the future if there exists the necessary connection with interstate commerce, e.g., interstate shipment of a component. FDA is merely stepping back from its current regulatory role in the control of animal waste. If, in the future, the agency determines that the use of recycled animal waste as a feed ingredient has ceased being largely a local activity and that this practice presents risks to the health of animals or humans that are not controlled by State agencies, FDA will take an active role in the regulatory control of recycled animal waste.

The foregoing policy will not preclude FDA's taking regulatory action on an ad hoc basis against a particular shipment of animal waste that clearly presents a health hazard. Such action would likely be taken only if the State(s) involved were unable to take necessary action.

Comments from several States and the Association of American Feed Control Officials (AAFCO) argued persuasively for control at the State level and have expressed a willingness to superintend the commerce of animal waste used as a feed ingredient in a manner similar to that used for traditional feed ingredients. AAFCO has developed a Model Regulation for processed animal wastes and adopted this regulation in 1979 (Ref. *2*). AAFCO's model regulation will enhance control at the State level to the extent that the regulation and its provisions are adopted by States where the feeding of animal wastes is practiced. In addition, regulatory uniformity will be enhanced. State feed control agencies have authority to impose various sanctions against violative feed products. For example, such products may be seized and other sanctions may be imposed by a State's refusing to permit further registration or shipment of a product. Moreover, the model regulation contains a provision that requires recordkeeping for each day's production or other identifiable lot for a period of 2 years including information on the source of the animal waste, quantity produced, sales and distribution, and assay records of testing. By monitoring these records, State feed control agencies will be able to judge the degree of acceptance and volume of use of animal waste as a commercial product.

Valuable cumulative data on the quality and composition of processed animal waste products sold commercially in California have recently been made available (Ref. *3*). This publication documents California's experience since 1974 in administering that State's commercial feed license regulations regarding the sale of processed animal waste products for feed. The publication describes the procedures whereby the processing methods, quality standards, and product safety have been controlled by the State.

The AAFCO model regulation and the States with specific regulations governing animal waste usage have recognized two categories of animal wastes: (1) those that are collected from animals that have been fed drugs, or have been tested and found to contain drug residues; and (2) those that are collected from animals that have not been fed drugs, or have been tested and found to be free of drug residues. FDA recommends that this distinction between the types of animal wastes be maintained for maximum safety. FDA encourages application of future research and State-level emphasis on testing for possible drug residues in animal waste because the agency views the use of animal waste that contains possible drug residues or metabolites with greater concern than the use of that which does not. Present consideration and future research should be directed toward the presence, accumulation, and depletion of such drugs or residues including (1) whether these substances are present in the waste products, (2) whether they are in sufficient levels to be considered unsafe or transmitted to food, and (3) if present, how processing and proper management can ensure the safety of such food products.

III. Comments

1. Several comments opposed the continued use of recycled animal waste as a feed ingredient, asserting that animal waste may contain drug residues, microorganisms that could increase transmission of disease, excessive amounts of minerals, or possibly toxic end products of metabolism.

The agency recognizes that animal waste, while also a source of nutritional value, shares the other characteristics of more traditional feed ingredients in that waste may be contaminated by undesirable microorganisms through spoilage or improper processing, or may occasionally contain elevated levels of minerals or toxic contaminants. Thus, as is true for other feed ingredients, animal waste must be monitored for contaminants as well as for nutritional values. Potential contamination problems due to industrial chemicals or pesticides, for example, would be common to both the well-known animal feed ingredients such as corn and soybean meal and the less well-known byproduct feeds and animal wastes.

2. One comment (Ref. *4*) provided mineral element profiles of animal wastes and of edible tissues from cattle fed animal wastes. Samples of waste from broilers, caged layers, cattle, and swine from several regions in the United States were analyzed. Broiler litter arsenic and copper values were 54 and 441 parts per million, respectively. Dried poultry waste contained variable levels of ash, crude protein, cadmium, and

selenium. Aluminum, cadmium, and copper levels of cattle waste were higher than values reported in the literature.

Only a small amount of data on mineral content of wastes was available

In Israel, animals in some places are periodically vaccinated to prevent botulism outbreaks. A large amount of controlled testing has been carried out with animals wastes in Israel. Sterilization by heat treatment and

animal wastes for disease control. For example, ensiling, deep-stacking, heat treatment, and use of chemicals have been investigated (Ref. *10*). As this problem becomes better defined, it may be possible to determine the extent to

reviews of the health aspects of feeding animal waste (Refs. *14* and *15*) or in the numerous research articles received by the agency during the comment period. The early research has apparently not been confirmed with regard to practical

investigate the degree of freedom from microbiological contamination that can be achieved by ensiling and other processing methods (Ref. *18*).

7. One comment stated that there were questions concerning transfer of R-

waste feeding in the United States. Hewins, S. O., *Health and Other Considerations of Animal Refeeding as an Alternative to Animal Waste Disposal*, M.S. Thesis, University of North Carolina, Chapel Hill, 143 pp., 1977.

selenium. Aluminum, cadmium, and copper levels of cattle waste were higher than values reported in the literature.

Only a small amount of data on mineral content of wastes was available at the time the 1977 notice was published. The data provided by the comment are significant because they present values from a wider range of sampling than previously available. The data are directly related to and support the discussion in the 1977 notice. In that discussion, the occurrence of traces of toxic mineral elements in conventional feed constituents was described and compared with the present and potential bioaccumulation in recycled animal waste.

Excessive intake of some minerals by livestock occurs under many natural circumstances and the effect of ingestion at higher levels on tissue mineral content is variable. Levels of some minerals may be elevated in cattle waste and broiler litter when soil is incidentally included when the animal waste is collected. It has been reported that cattle may consume substantial quantities of mineral-containing soil during normal grazing, especially when grazing areas with sparse herbage (Ref. *5*). The analytical level of minerals in feeds and the degree of biological absorption often do not correspond, so quantitative mineral data on feeds are often misleading in regard to extent of absorption or toxicity (Ref. *6*). Information submitted in a separate comment (Ref. *7*) presented evidence that the mineral content of animal waste-containing diets was not a potential hazard unless the feedstuff to which the animal waste was added contained excessive levels.

Thus, the effects on animals and edible tissues of ingestion of minerals from feeding animal waste do not appear to differ from the results of ingestion of minerals contained in other feedstuffs.

3. One comment stated that an outbreak of disease in cattle in Israel in 1977 resulted from feeding poultry litter and that *Clostridium botulinum* was the suspected cause. References from Refuah Veterinarith submitted with the comment report on the followup examination of this incident in Israel, but do not conclude that the poultry litter or faulty processing of the poultry litter was the cause of the deaths (Ref. *8*). Another comment explained that the botulinum microorganism is endemic in that country, especially in southern Israel, and that this is a recurring problem with all feed ingredients, the poultry wastes presenting no more of a problem than other feeds (Ref. *8*).

In Israel, animals in some places are periodically vaccinated to prevent botulism outbreaks. A large amount of controlled testing has been carried out with animal wastes in Israel. Sterilization by heat treatment and ensiling are extensively used for processing. The officially sanctioned use of animal wastes in feedmills began in 1972. At the time of the botulism outbreak in 1977, it has been estimated that 15,000 to 18,000 tons of heat sterilized waste and 3 to 4 times this amount of ensiled and other types of poultry waste were being fed annually. After the outbreak of botulism and followup investigations, the feeding of wastes to cattle in Israel was resumed.

4. One comment submitted extensive information on the presence and survival of Leptospires in animal waste (Ref. *9*). Leptospirosis is a contagious disease of animals and man due to infection with *Leptospira spp.* Following acute infections, the organisms localize in the kidney and may be excreted in the urine for months or years. If infected shedder animals are introduced into a herd which has been free of the disease, leptospirosis is rapidly disseminated through physical contact or, by the most common mode, from contact with urine or contaminated feed or water. Control is usually achieved by fencing the herd from surface waters, by rodent depopulation, or by vaccination of animals.

Studies have been conducted on leptospiral survival in cattle manure and the possibilities of an animal health problem from this source (Ref. *9*). Specifically, information using a model oxidation ditch treatment system has been reported. In this model, hamsters susceptible to leptospiral infection were exposed to aerosols from aerated cattle manure under oxidation ditch conditions and also fed recycled feed which had been suspended in a contaminated slurry. Hamsters exposed to the ambient air of the oxidation ditch and hamsters fed the recycled feed were serologically and culturally negative to leptospiral infection. However, Leptospires were detected surviving in the model oxidation ditch for at least 136 days. Leptospires isolated from the slurry of the model oxidation ditch 17 days after seeding lost measurable virulence, so there is a possibility that the disease-transmission factor or virulence is reduced by the aerobic slurry environment.

The effects of treatment systems other than oxidation ditch methods on leptospiral pathogens are not available. Investigators are considering methods to efficiently and economically process animal wastes for disease control. For example, ensiling, deep-stacking, heat treatment, and use of chemicals have been investigated (Ref. *10*). As this problem becomes better defined, it may be possible to determine the extent to which the feeding of recycled waste contributes to the transmission of this pathogen and the extent to which transmission may differ from that accepted for land application or other means of waste disposal.

The oxidation ditch method of enhancing the protein quality of waste has been used very little, and then primarily for experimental purposes. Most pathogenic organisms do not compete effectively in an oxidation ditch (Ref. *10*), and few have been observed as health problems. Price increases of electrical power for mechanically aerated liquid manure as in the oxidation ditch method have reduced interest in the aerobic treatment of livestock manure (Ref. *11*).

5. A comment stated that further studies should be made of the male hormone content of animal waste products and of the possible adverse or beneficial effects of feeding animal waste to other animals (Ref. *12*). The comment cited research published during the years 1947 to 1956 showing that dried manure from female ruminant animals induced an androgenic response when fed to chicks. The authors suggested that progesterone might be converted by microorganisms in the rumen into androgens, since fecal androgenic activity seemed to be related to endogenous and exogenous progesterone metabolism. Parallel studies have been conducted (Ref. *13*) to determine the kind and amount of hormonal activity present in poultry excreta processed for use as livestock feed. These more recent studies indicated that caged laying hen excreta under certain processing conditions contained androgenic activity that ranged from 2.2 to 7.4 micrograms of testosterone equivalents per gram of dried excreta. This activity was not present in fresh excreta. The information reported suggests that a metabolite may be converted to androgens by bacteria in the manure, and that the androgenic activity is not eliminated by subsequent heating.

In the years since the early work was reported there has been very little information on the subject of hormonal activity in waste, and no additional information was supplied by the comments submitted in response to the agency's request for data, information, and views. Hormonal activity was not, however, identified as a problem in

reviews of the health aspects of feeding animal waste (Refs. *14* and *15*) or in the numerous research articles received by the agency during the comment period. The early research has apparently not been confirmed with regard to practical significance. The agency is unable to conclude from the information in this comment or from the information submitted to the agency that there is a safety problem due to androgenic activity in waste.

6. A comment expressed concern that avian tuberculosis could be transmitted to swine as a result of swine coming into contact with chicken excreta (Ref. *16*). The comment referenced supporting documentation (Ref. *17*) printed since publication of the agency's 1977 notice. The supporting documentation did not specifically refer to poultry waste, but to the general subject of disease transfer to swine.

Relevant information on disease-producing bacteria in animal waste was discussed in the 1977 notice. Limited information concerning processing that would inactivate mycobacteria was referenced. In addition, the general discussion in the 1977 notice of microbiological contamination as related to human health is applicable. The concerns of the agency in regard to proper processing of animal waste that may be recycled were expressed as a part of that discussion.

Information recently received by the agency from the United States Department of Agriculture (Meat and Poultry Inspection, Food Safety and Quality Service) indicates that the rate of condemnation due to avian tuberculosis in mature poultry (includes both heavy and light hens) has been 0.01 percent or less in recent years; the disease has therefore practically been eradicated from national flocks. Lesions of this disease are not found at all in broiler chickens which constitute by far the largest portion of commerical flocks in this country.

In any event, as explained in the 1977 notice, the feeding of waste from chickens to swine would typically never occur, or occur only rarely, since the uric acid nitrogen in the chicken waste is not useable by swine. Because of the high fiber content and the nonprotein nitrogen in poultry waste, the material can readily be used by ruminants, but not by nonruminants. Swine, as nonruminants, require a source of preformed protein for efficent utilization of feed ingredients.

The agency concludes that the potential for infection of swine with mycobacteria from properly processed chicken waste is small. Research projects are underway, however, to investigate the degree of freedom from microbiological contamination that can be achieved by ensiling and other processing methods (Ref. *18*).

7. One comment stated that there were questions concerning transfer of R-plasmids in enteric microorganisms when animal waste was recycled (Ref. *19*).

Experimental studies which relate the effect of recycling animal waste to antibiotic resistance in enteric bacteria are not known to the agency. Animal wastes may contain antibiotics, as described in FDA's 1977 notice, because a large percentage of all animal feeds contain antibiotics which are included to increase the rate of weight gain and to improve feed efficiency.

It is recognized that plasmid-mediated or R-factor resistence is the most significant form of antibiotic resistance. In the 1977 notice, the agency did not discuss R-factor resistance in relation to antibiotics in animal wastes because the circumstance of antibiotic resistance appears to involve the entire spectrum of animal feeding as well as human and animal therapeutic treatment. It was not, therefore, considered to be particularly related to animal waste utilization.

No information has been has received since 1977 which would lead the agency to conclude that the presence of such antibiotics or possibly antibiotic-resistant bacteria in animal waste would present any more of a problem than is usual in mixed feeds for animals, which may contain similar amounts of antibiotics and antibiotic-resistant organisms (Refs. *20* and *21*).

8. One comment noted that there was an incorrect entry on page 64669 of the 1977 notice, that the statement, "data collected indicated that treatment of cattle waste with 0.74 percent formaldehyde solution destroys microbial activity and prevents mold growth for a *minimum of 3 months*" should read "* * * prevents mold growth for *up to 3 months.*"

The agency agrees with the comment which is supported by reference number 5 cited in the 1977 notice. Because the statement as published in the **Federal Register** was only one of many in the broad discussion of numerous preservation and treatment techniques, it would not materially alter the general nature of the discussion or any subsequent agency conclusions concerning the subject.

References.

1. Comment C–21, received in response to Recycled Animal Waste, Request for Data, Information, and Views, published in the **Federal Register** of December 27, 1977; 42 FR 64662. Survey of extent of use of animal waste feeding in the United States. Hewins, S. O., *Health and Other Considerations of Animal Refeeding as an Alternative to Animal Waste Disposal*, M.S. Thesis, University of North Carolina, Chapel Hill, 143 pp., 1977.

2. Association of American Feed Control Officials, Inc., Official Publication, pp. 196–201, 1979.

3. Helmer, J. W., "Monitoring the Quality and Safety of Processed Animal Waste Products Sold Commercally as Feed," *Journal of Animal Science*, 50(2):349, 1980.

4. Comment RPT–03, received in response to Recycled Animal Waste, Request for Data, Information, and Views, published in the **Federal Register** of December 27, 1977; 42 FR 64662. Information on Mineral Element Profiles of Animal Wastes and Edible Tissues from Cattle Fed Animal Wastes.

5. Thornton, I., "Biogeochemical and Soil Ingestion Studies in Relation to the Trace-element Nutrition of Livestock," *in* W. G. Hoekstra, J. W. Suttie, H. E. Ganther and W. Mertz (Eds.), *Trace Element Metabolism in Animals–2*, University Park Press, Baltimore, 1974.

6. Underwood, E. J. *Trace Elements in Human and Animal Nutrition*, 4th ed., Academic Press, New York, pp. 1–12, 472–478, 1977.

7. Comment C–41, received in response to Recycled Animal Waste, Request for Data, Information, and Views published in the **Federal Register** of December 27, 1977; 42 FR 64662. Comment comparing mineral content of recycled animal waste and original feedstuffs.

8. Comments C–37, C–49, and RPT–07, received in response to Recycled Animal Waste, Request for Data, Information, and Views, published in the **Federal Register** of December 27, 1977; 42 FR 64662. Information on a botulism outbreak in Israel.

9. Comment REF–02, received in response to Recycled Animal Waste, Request for Data, Information, and Views, published in the **Federal Register** of December 27, 1977; 42 FR 64662. Information concerning the survival of pathogens in animal manure; Environmental Protection Agency Report 660/2–75–012.

10. Day, D. L. and B. G. Harmon, "A Recycled Feed Source from Aerobically Processed Swine Wastes." *Transact. American Society of Agricultural Engineers*, 17(1):82, 1974.

11. Comments C–33 and C–42, received in response to Recycled Animal Waste, Request for Data, Information, and Views, published in the **Federal Register** of December 27, 1977; 42 FR 64662. Information submitted on aerobic processing by oxidation ditch methods.

12. Comment C–27, received in response to Recycled Animal Waste, Request for Data, Information, and Views, published in the **Federal Register** of December 27, 1977; 42 FR 64662. Information and research article citations concerning hormonal activity in cattle waste.

13. Calvert, C. C., L. W. Smith, and T. R. Wrenn, "Hormonal Activity in Poultry Excreta Processed for Livestock Feed," Poultry Science, 57(1):265, 1978.

14. Fontenot, J. P. and K. E. Webb, "Health Aspects of Recycling Animal Wastes by

Feeding," *Journal of Animal Science*, 40:1267, 1975.

15. Bhattacharya, A. N. and J. C. Taylor, "Recycling Animal Waste as a Feedstuff," *Journal of Animal Science*, 41(5): 1438, 1975.

16. Comment MT–01, received in response

Dated: December 17, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

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December 30, 1980

Feeding," *Journal of Animal Science*, 40:1267, 1975.

15. Bhattacharya, A. N. and J. C. Taylor, "Recycling Animal Waste as a Feedstuff," *Journal of Animal Science*, 41(5): 1438, 1975.

16. Comment MT–01, received in response to Recycled Animal Waste, Request for Data, Information, and Views, published in the **Federal Register** of December 27, 1977; 42 FR 64662. Telephone communication concerning tuberculosis in swine.

17. Baker, R. (ed.), "Tuberculosis" *Maryland Agri-Views*, Maryland Department of Agriculture, Annapolis, Vol. 5. No. 1, p. 1, August 1978.

18. Comment RPT–04, received in response to Recycled Animal Waste, Request for Data, Information, and Views, published in the **Federal Register** of December 27, 1977; 42 FR 64662. Information on research plans of S–139 Regional Technical Committee in regard to animal health and food safety aspects of feeding animal wastes.

19. Comment C–22, received in response to Recycled Animal Waste, Request for Data, Information, and Views, published in the **Federal Register** of December 27, 1977; 42 FR 64662. Comment relating concern about transfer of R-plasmids in microorganisms.

20. Hartley, C. L., K. Howe, A. H. Linton, K. B. Linton, and M. H. Richmond, "Distribution of R-Plasmids Among the O-Antigen Types of *Escherichia coli* Isolated from Human and Animal Sources," *Antimicrobial Agents and Chemotherapy*, 8:122–131, 1975.

21. Huber, W. G., D. Korica, T. P. Neal, P. R. Schnurrenberger, and R. J. Martin, "Antibiotic Sensitivity Patterns and R-Factors in Domestic and Wild Animals," *Archives of Environmental Health*, 22:561–567, 1971.

IV. Environmental Impact

The agency has determined pursuant to 21 CFR 25.24 (b)(5) and (b)(11) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

§ 500.40 [Removed]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402(a) (1), (2)(C), and (3) and 701(a), 52 Stat. 1046 as amended, 52 Stat. 1055 (21 U.S.C. 342(a) (1), (2)(C), and (3) and 371(a))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 500 is amended by removing §500.40 *Use of poultry litter as animal feed.*

Effective date. This revocation is effective December 29, 1980.

(Secs. 402(a) (1), (2)(C), and (3) and 701(a), 52 Stat. 1046 as amended, 52 Stat. 1055 (21 U.S.C. 342(a) (1), (2)(C), and (3) and 371(a)))

Dated: December 17, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80–40282 Filed 12–26–80; 8:45 am]

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federal register

Tuesday
December 30, 1980

Part VIII

Environmental Protection Agency

Pressure Sensitive Tape and Label Surface Coating Operations; Standards of Performance for New Stationary Sources; Public Hearing and Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

Request to Speak at Hearing. Persons wishing to present oral testimony should contact EPA by January 23, 1981.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if

limits of the CTG document. In this analysis the CTG limits were used as a comparison baseline because they reflect the control level most likely to be instituted in the states' air pollution control regulations (State

energy situation would occur if all solvent-based coating lines used incinerators to control VOC emissions. All solvent would be destructed and no recovery value could be obtained. A potential national energy demand of

Approximately 80 percent of all pressure sensitive tapes and labels are coated with organic solvent-based coatings. All but a very small percentage of this solvent is emitted during the manufacturing process. The pressure

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRC 1533-8]

Standards of Performance for New Stationary Sources; Pressure Sensitive Tape and Label Surface Coating Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Notice of Public Hearing.

SUMMARY: Standards of performance are proposed to limit the emission of volatile organic compounds (VOC) from new, modified, or reconstructed pressure sensitive tape and label (PSTL) manufacturing facilities. Emissions would be limited to 0.20 kilograms of VOC per kilogram of coating solids applied for each affected coating line as measured by Reference Methods 24 and 25 (promulgated in the Federal Register on October 3, 1980 45 FR 65956). As an alternative, the owner or operator may demonstrate either a 90 percent overall VOC emission reduction or an overall percent emission reduction which is equivalent to the 0.20 kilograms per kilogram of coating solids applied level, whichever is less stringent. This overall reduction is based on the amount of solvent applied with the coating solids.

The proposed standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that industrial paper coating facilities contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Pressure sensitive tape and label manufacturing is one of the largest contributors to air pollution in the industrial paper coating category. The intended effect of this proposal is to require new, modified, and reconstructed pressure sensitive tape or lable manufacturing facilities to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* Comments must be received on or before March 2, 1981.

Public Hearing. A public hearing will be held on January 30, 1981 (about 30 days after proposal) beginning at 9 a.m.

Request to Speak at Hearing. Persons wishing to present oral testimony should contact EPA by January 23, 1981.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket Number A-79-38, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Public Hearing. The public hearing will be held at OA Auditorium EPA, R.T.P. North Carolina. Persons wishing to present oral testimony should notify Mrs. Naomi Durkee, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5331.

Background Information Document. The Background Information Document (BID) for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Pressure Sensitive Tape and Label Surface Coating Industry, Background Information Document for Proposed Standards, "EPA-450/3-80-003a.

Docket. Docket Number A-79-38, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Central Docket Section, Room 2902, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene W. Smith, Standards Development Branch, Emission Standards and Engineering Division (M-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5421.

SUPPLEMENTARY INFORMATION:

Proposed Standards

The proposed standards would apply to new, modified, and reconstructed adhesive, release, and precoat coating lines used in the manufacture of PSTL. The emission of VOC would be limited to 0.20 kilograms per kilogram of coating solids applied. As an alternative, the owner or operator may demonstrate either a 90 percent overall VOC emission reduction or an overall percent emission reduction which is equivalent to the 0.20 kilograms per kilogram of coatings solids applied level, whichever is less stringent. Compliance will be determined over a calendar month averaging period by Reference Method 24. Reference Method 25 will be used to performance test coating lines controlled by incineration systems. Coating lines which emit no more than 125 kilograms of VOC per day and 15 megagrams of VOC per year are not subject to the emission limits of the proposed standard. If either the daily or yearly limit is exceeded, the coating line will become subject to the proposed emission limit of 0.20 kg VOC per kg coating solids applied. If the daily or yearly limits are not exceeded an affected facility is only subject to the recordkeeping and reporting requirements of the proposed standard.

The proposed standards are based on an overall VOC emission reduction. The overall reduction is calculated by multiplying the operational efficiency of the control device (carbon adsorbers or incinerators) by the operational efficiency of the vapor capture system (hooding or enclosures). The resultant efficiency is the overall VOC emission reduction achievable by a coating facility.

The proposed standard allows for compliance by using either low-solvent coatings or add-on control equipment. Carbon adsorption and thermal incineration control systems are capable of meeting the proposed standard. Generally, hot melt and waterborne adhesive coatings and 100 percent solid and waterborne release coatings would comply with the proposed standard because they would contain less than 0.20 kilograms of VOC per kilogram of coating solids applied.

Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts of a new source performance standard (NSPS) are expressed as incremental differences between the impacts for facilities complying with the proposed standard and for those complying with a typical State Implementation Plan (SIP) emission standard. Most existing PSTL surface coating operations are located in areas which are considered nonattainment areas for purposes of achieving the National Ambient Air Quality Standard (NAAQS) for ozone. New facilities are expected to locate in similar areas. For the purpose of this analysis it is assumed that states have adopted or will adopt the recommended guidelines in the control techniques guideline (CTG) document, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coil, Paper, Fabrics, Automobiles and Light-Duty Trucks" (EPA-450/2-77-008 [CTG]). The States, however, are not legally bound to adopt the recommended emission

limits of the CTG document. In this analysis the CTG limits were used as a comparison baseline because they reflect the control level most likely to be instituted in the states' air pollution control regulations (State Implementation Plans).

Compared to emission control levels recommended in the CTG document, the proposed standards of performance would further reduce emissions of VOC from new, modified, or reconstructed pressure sensitive tapes and labels manufacturing operations by about 16 percent in 1985. National emissions of VOC would be reduced by about 4,300 megagrams (metric tons) per year in 1985.

National wastewater discharges would be 13 percent greater than those occurring from plants controlled to the CTG level. National discharges of wastewater would increase in 1985 by about 2.5 million liters (661,000 gallons) as a result of the 13 percent change. This increase is reasonable in light of the nationwide reduction in VOC emissions being achieved.

The solid waste impact of the proposed standards would be small compared to the amount of solid waste generated by the daily production operations of a PSTL coating facility. A coating facility can generate large quantities of solid waste consisting of flawed coated products, imperfect face stock, substandard release paper, empty cartons, and spools. The only additional solid waste from a controlled facility is spent activated carbon from carbon adsorption units. In 1985 the maximum expected increase in national solid waste as a direct result of the NSPS would be about 55 megagrams (metric tons). The proposed standard is reasonable despite this solid waste increase.

The national energy impact would be dependent on whether the majority of new solvent-based coating lines used incineration, carbon adsorption, or low-solvent coatings for VOC control purposes. Because the Agency is unable to predict with certainty the fraction of new facilities which will use each of these technologies, this analysis is performed on the two technologies—carbon adsorption and incineration—which would result in the extreme impacts. The best case energy situation would result if all lines used carbon adsorption. If, in 1985, all solvent-based lines used carbon adsorption controls, a potential net national energy savings equivalent to 27,100 barrels (4.3 million liters) of crude oil per year is projected. A savings is possible because of the large credit received for usable recovered solvent. The worst case energy situation would occur if all solvent-based coating lines used incinerators to control VOC emissions. All solvent would be destructed and no recovery value could be obtained. A potential national energy demand of 31,000 barrels (4.9 million liters) of crude oil for VOC control is estimated. The proposed standard is reasonable even taking into account the worst case energy estimate.

The proposed standards would have minimal economic impact on the PSTL industry. The maximum expected price increase necessary to offset the impact of the proposed standards would be 0.9 percent. Nationwide in 1985, the anticipated incremental annualized cost of compliance, including depreciation and interest, would be $2.6 million. Effects on growth, industry structure, and profitability would not cause significant inflationary impacts or market withdrawals.

In addition to emission reductions beyond those achieved by a typical SIP, standards of performance have other benefits. They establish a degree of national uniformity to avoid situations in which some States may attract industries by relaxing air pollution standards relative to other States. Further, standards of performance improve the efficiency of case-by-case determinations of best available control technology (BACT) for facilities located in attainment areas, and lowest achievable emission rates (LAER) for facilities located in nonattainment areas, by providing a starting point for these determinations. This results from the process for developing a standard of performance, which involves a comprehensive analysis of regulatory alternatives. Detailed cost and economic analyses of various regulatory alternatives are presented in the supporting documents for the proposed standards.

Rationale

Selection of Source

The "Priority List and Additions to the List of Categories of Stationary Sources for New Source Performance Standards under the Clean Air Act Amendments of 1977", promulgated at 44 FR 49222 on August 21, 1979, ranked sources according to the impact that the standards promulgated in 1980 would have on emissions and public health in 1990. The paper coating industry ranked fourth on this list of 59 sources to be controlled for air pollutants. The manufacture of pressure sensitive tapes and labels is the largest organic solvent-using segment of the paper coating industry.

Approximately 80 percent of all pressure sensitive tapes and labels are coated with organic solvent-based coatings. All but a very small percentage of this solvent is emitted during the manufacturing process. The pressure sensitive tape and label surface coating source consists of any rollcoating operation which applies pressure sensitive adhesives, release coatings or precoats on a continuous web material. Decals and adhesive specialty products are included in the definition of pressure sensitive tapes and labels because plant visits and industry literature showed that the manufacturing operations and coating formulations for all of these products are similar.

In 1978 nationwide emissions of VOC from the pressure sensitive tape and label industry were estimated at 600,000 megagrams (metric tons). This estimate was based on PSTL industry production data and typical formulation data. Very few of these emissions were controlled by State regulations.

Selection of Pollutants and Affected Facilities

VOC are the primary air pollutants emitted from pressure sensitive tape and label surface coating operations. VOC along with nitrogen oxides are precursors to the formation of ozone and oxygenated organic aerosols (photochemical smog). Ozone and oxygenated organic aerosols result in a variety of adverse impacts on health and welfare, including impaired respiratory function, eye irritation, deterioration of materials such as rubber, and necrosis of plant tissue. Further information on these effects can be found in the April 1978 EPA document "Air Quality Criteria for Ozone and Other Photochemical Oxidants", EPA-600/8-78-004. This document can be obtained from the EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777.

Solvent drying ovens are potentially a source of pollutants other than VOC (for example NO_x, SO_2, and particulates). The drying ovens are operated with electricity, indirect heat sources, or direct-fired burners. The electrical ovens do not add to the pollutants expected at the source. The indirect-heated ovens are usually steam-tube heaters with an on-site steam boiler. Control of the boiler emissions is being examined by EPA in a separate strdy of industrial boilers.

Generally, natural gas or liquid petroleum gas is used in the direct-fired heaters. Coal and fuel oil are not used because fly ash material in the oven gases can adversely affect the expected

tape or label quality. The SO_2 emissions rate from the combustion of natural gas is very low. Also, the relatively low temperature environments in the direct-fired burners would result in low NO_x emissions.

health and environmental effects, and energy requirements) at all new and modified sources, there is a presumption that a narrower designation of the affected facility if proper. This ensures that new emission sources within plants

environmental analysis to support the position taken.

New coating lines which do not discharge into the atmosphere more than 125 kilograms of VOC per day or 15 megagrams of VOC per year would not

estimated that one-half a day or 4 hours is usually sufficient for these R&D coating situations. Based on this information and the model plant figures, the daily emission limit of 125 kg (275 lb)

environmental alternative for reducing VOC emissions. By 1985, it is estimated that 80 percent of all pressure sensitive coatings will be low-solvent-type coatings. These alternative coatings are

achieving at leat 95 percent efficiency in reducing VOC from an inlet feed stream. Chapter 4 of the BID examines the use of catalytic incineration for PSTL plants. However, the primary incineration focus

tape or label quality. The SO_x emissions rate from the combustion of natural gas is very low. Also, the relatively low temperature environments in the direct-fired burners would result in low NO_x emissions.

Based on their overall volume magnitude and their severity as an air pollutant problem, VOC emissions would be the only pollutants regulated by this standard.

For the purposes of this standard, a single coating line, consisting primarily of an adhesive, release, or precoating head, a drying/curing oven, and the flashoff area between the coating head and oven, if defined as the affected facility. For systems which have tandem coating facilities, each individual coating line would be considered as an affected facility. A tandem coating facility is one which coats releases and adhesives in series on one line.

The choice of the affected facility for this standard is based on the Agency's interpretation of Section 111 of the Act, and judicial construction of its meaning.* Under Section 111, the NSPS must apply to "new sources"; "source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant" (Section 111(a)(3)). Most industrial plants, however, consist of numerous pieces or groups of equipment which emit air pollutants, and which might be viewed as "sources." EPA therefore uses the term "affected facility" to designate the equipment, within a particular kind of plant, which is chosen as the "source" covered by a given standard.

In choosing the affected facility, EPA must decide which pieces or groups of equipment are the appropriate units for separate emission standards in the particular industrial context involved. The Agency must do this by examining the situation in light of the terms and purpose of Section 111. One major consideration in this examination is that the use of a narrower definition results in bringing replacement equipment under the NSPS sooner; if, for example, an entire plant were designated as the affected facility, no part of the plant would be covered by the standard unless the plant as a whole is "modified." If, on the other hand, each piece of equipment is designated as the affected facility, then as each piece is replaced, the replacement piece will be a new source subject to the standard. Since the purpose of Section 111 is to minimize emissions by the application of the best demonstrated control technology (considering cost, other health and environmental effects, and energy requirements) at all new and modified sources, there is a presumption that a narrower designation of the affected facility if proper. This ensures that new emission sources within plants will be brought under the coverage of the standards as they are installed. This presumption can be overcome, however, if the Agency concludes that the relevant statutory factors (technical feasibility, cost, energy, and other environmental impacts) point to a broader definition. The application of these factors is discussed below.

Designation of the entire coating operation from unwind to rewind as an affected facility was also considered. Such a designation would allow those sources that achieve highly effective control on some coating sections (of a single coating line) to provide less control on other sections, so long as the aggregate emissions from the coating line are less than or equal to those allowed under the proposed standard. The proponents of a broader designation of affected facility (as the operation from unwind to rewind) believe it would provide additional incentive to industry for the innovative use of low-solvent technology in processes where it is not currently available.

Based on currently available information, EPA believes that the cost and energy savings already associated with using low solvent technology are so great that any additional incentive derived through the use of the broader designation of affected facility will have little or no impact on the rate of innovation. If this is true, the proposed designation of affected facility would give more total emission reduction than the alternative broader designation because the low-solvent materials would be used regardless and the other sections of the coating line would still have to be fully controlled with a capture system and a control device.

In order to promulgate the broader designation, EPA would have to find that it would achieve greater total emission reductions or equivalent total reductions with significant other benefits such as reduced costs, energy consumption or other environmental impacts. EPA solicits comments on this issue.

Persons urging consideration of the alternative broader designation should specifically address the issue of how much additional incentive (or disincentive) the designation of affected facility is likely to provide for an owner or operator's decision to use low-solvent coatings. Where possible the comments should present an economic and environmental analysis to support the position taken.

New coating lines which do not discharge into the atmosphere more than 125 kilograms of VOC per day or 15 megagrams of VOC per year would not be subject to the emission limits of the proposed new source standard. A major factor influencing the institution of these limits was PSTL industry comment concerning the treatment of research and development (R&D) coating lines. The industry felt that R&D lines should not be subject to the same emission limits as a production facility. Upon examination of these operations, the EPA determined that: the cost to control R&D emissions would be high, the achievable emissions reduction would be minimal, and normal production coating lines would operate well above the stated daily and yearly limits. For these reasons the exemption limits were developed. The limits were based on industry information concerning R&D operations. The exemption limits, however, apply to all new, modified, or reconstructed coating lines, and not just to R&D facilities. If either the daily or yearly limit is exceeded, the coating line would be subject to all the requirements of the proposed standard. If the exemption limits are not exceeded, the owner or operator must only record solvent usage at the coating line and report it to the Administrator.

The daily and yearly exemption limits are based on data received from tape and label companies on their R&D facilities and on the model plant analysis in Chapter 6 of the BID Manufacturers in the tape and label industry have indicated that 61 cm (24 in) coaters are very popular for use in R&D projects. This size corresponds to the small size model plant in the BID analysis. Industry sources also stated that R&D coaters, when used, only run about two hours a day. The model plant analysis determined that a 61 cm coater will use, on the average, about 29 kg (64 lb) of solvent per hour. A typical PSTL facility will then consume about 58 kg (128 lb) of solvent per day for R&D purposes. Taken on an annual basis, this translates to about 15 megagrams of solvent for a facility operating 6000 hours a year. The EPA feels this number is reasonable because industry sources proposed exemption emission limits of 5 to 10 megagrams per year for R&D coating lines.

Manufacturers also indicated that R&D projects are run for more than two hours a day in some cases. These cases occur when larger quantities of material are needed for quality testing and marketing purposes. Industry sources estimated that one-half a day or 4 hours is usually sufficient for these R&D coating situations. Based on this information and the model plant figures, the daily emission limit of 125 kg (275 lb) was calculated and determined to be reasonable. The level of the daily limit allows coating firms greater flexibility in their R&D operations.

*The most important case if *ASARCO, Inc.* v. EPA, 578 F. 2d 319 (D.C. Cir. 1978).

The affected facility was chosen to incorporate the primary sources of VOC emissions from PSTL coating. The drying/curing oven represents the major source of VOC emissions within the affected facility. The coated web is heated in the oven where 80 to 95 percent of the solvent is evaporated and vented either to the atmosphere or to a control device. These oven emissions can be effectively controlled by ducting them so they discharge to the atmosphere through either a carbon adsorption or a thermal incineration system. One to eighteen percent of the total applied solvent escapes as fugitive emissions and zero to five percent ends up trapped in the final coated product. The area from the coating head to the entrance of the oven is potentially the highest source of fugitive VOC emissions. Hoods or enclosures can be used in this area to effectively capture fugitive emissions. Once captured the fugitives may be ducted to either the oven or to a control device.

Other equipment such as wind and rewind stations are a part of the affected coating line, but are not VOC emission sources. VOC emissions from formulation, storage, and cleanup operations are not included in this regulation. These emissions are not being regulated at this time because: (1) Formulation emissions are already controlled to low levels due to occupational safety reasons and (2) the solvent cleanup emissions are generally low concentration, low volume sources which are very difficult to capture and control.

Selection of Basis of Proposed Standards

This section describes the emission control technology applicable to the PSTL industry and the regulatory alternatives considered by EPA in the development of this standard. Included is a summary of the environmental, energy, and economic impacts, and nonair quality health impacts of the aternatives and a description of the basis of the proposed standards.

Control Technologies. Available control technologies for reducing VOC emissions from PSTL facilities include the use of low-solvent coatings or an emission capture and control system. Low-solvent coatings provide the best environmental alternative for reducing VOC emissions. By 1985, it is estimated that 80 percent of all pressure sensitive coatings will be low-solvent-type coatings. These alternative coatings are available for both adhesives and releases and can be purchased as waterborne, emulsion, or 100 percent solids formulations. Advantages of these coatings include low cost, low energy use, good viscosity even at a high solids content, and negligible air pollution, toxicity, or fire hazards. However, low-solvent coatings are not technologically advanced to the point where they can be interchanged with all solvent-based formulations. Major technical problem areas for low-solvent coatings include cohesive strength, solvent resistance, UV degradation, wettability, and dimensional stability. The added difficulty of total customer acceptance further reduces the range of product substitutability for low-solvent coatings. Because low-solvent coatings cannot be applied in all cases, they cannot be used as the sole basis for the proposed standard.

Carbon adsorption and thermal incineration used in conjunction with emission capture systems have both been used as control devices to reduce VOC emissions from pressure sensitive tape and label coating facilities. Available performance data indicate that the two devices are equivalent in reducing VOC emissions. Although both control devices have experienced operating problems, it has been demonstrated that they can be successfullly used. Two of the problems are: (1) Poor control performance on low VOC concentration gas streams and (2) plugging or fouling problems resulting from volatilization of oligomeric adhesive and release materials. Both of these problems can be reduced or eliminated through proper design and operation of drying ovens and the control devices to the extent that a facility will comply with the proposed standard.

A thermal incinerator is an effective VOC emission control device for all types of solvents. Thermal incinerators operating at temperatures greater than 760°C (1400°F) have demonstrated the ability to achieve at least 95 percent reduction of all VOC in the incinerator feed. The EPA document, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume I: Control Methods for Surface Coating Operations" (EPA–450/2–76–028), verifies that this level of reduction is achievable. Catalytic incineration has also been demonstrated, in the same EPA document, to be capable of achieving at least 95 percent efficiency in reducing VOC from an inlet feed stream. Chapter 4 of the BID examines the use of catalytic incineration for PSTL plants. However, the primary incineration focus in this rationale was devoted to thermal incineration, because no catalytic incineration was found in use in PSTL facilities for VOC emissions control.

Thermal incineration is most cost effective when heat exchange equipment is used to recover the heat from the combustion of the solvent and any additional fuels. At 40 percent of the lower explosive limit (LEL), the implementation of primary (preheating of the incinerator feed gases) and secondary heat recovery could supply the primary and secondary heat requirements for one coating line and the secondary requirements for another line. At the very least, primary heat recovery should be included in new incinerator design. Additional heat can be easily recovered and used as heat energy for work area space heating.

The question of LEL is important for safety and economic reasons. The LEL is the lowest vapor concentration in air, expressed as volume percent, at which the mixture would support a flame or explosion at temperatures below 121°C (250°F). Insurance safety regulations require normal operation at less than about 25 percent of the LEL. Operation up to 50 to 60 percent of the LEL is permitted when continuous vapor monitoring systems are employed to control the vapor concentration in the air. The operation of an incinerator at higher LEL values is cost effective because less supplemental fuel is required. While optimal, operating at high LEL levels is not always possible in every coating facility. Factors such as poor coating line design, operation at slow line speeds, and stream dilution by excess ventilation air may limit the achievable LEL. Occupational Safety and Health Administration (OSHA) rules may require excess ventilation air in some facilities to meet certain maximum solvent concentrations in the worker area.

Heat exchanger fouling has been one of the greatest problems with incineration systems. This is especially true in silicone release and adhesive systems. The silicone monomers which volatilize are oxidized in the incinerator and coat the heat exchanger surfaces as a silica material. Operating experience has indicated that routine heat exchanger surface cleanup is required for proper incinerator operation. The experience of one manufacturer with this type of system and these operating

problems is detailed in Chapter 4 of the BID.

The second means of effectively controlling VOC emissions from pressure sensitive tape and label coating maintained through design of drying ovens with high turn down ratios and air tight gas ducting systems. Operators can also minimize the low VOC concentration problem by, whenever label stock materials. Their operations are typified by short products runs (less than four hours), varied line speeds, and varied solvent-adhesive mixtures. These operating conditions make this facility a

are designed to control: (1) The oven emissions only or (2) the oven and fugitive emissions together.

Regulatory Alternative I is a no additional regulation alternative. This alternative represents what could

on a comparison of the expected impacts of Regulatory Alternatives II and III to Regulatory Alternative I. The overall impacts of the regulatory alternatives are heavily influenced by the predicted decline in the use of

recovered solvent. Generally this water is routed into local waste treatment systems or is emitted directly to the environment. If one assumes that all VOC emissions from PSTL coating facilities are controlled by carbon

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problems is detailed in Chapter 4 of the BID.

The second means of effectively controlling VOC emissions from pressure sensitive tape and label coating lines is carbon adsorption. Several plants in the industry presently use this technology with success. Test data from PSTL plants and self-monitoring data supplied by PSTL manufacturers have indicated that operational efficiency levels of at least 95 percent or greater are attainable with carbon adsorbers. For the purposes of this analysis, carbon adsorbers were assumed to be 95 percent efficient in reducing VOC emissions. This efficiency level has been attained in PSTL facilities despite the occurrence of problems such as: bed fires, carbon fouling, freeze damage, corrosion, and low LEL inlet streams. Carbon adsorption systems are generally regenerated with steam, although any hot, non-reactive gas can be used to strip the beds. If steam is used, the carbon adsorption system is generally limited to solvents which are not water soluble (unless the operator uses add-on distillation or separation processes). All systems currently operating on PSTL coating lines in the United States use steam for carbon bed regeneration. Fouling of the carbon beds by volatilized adhesives and releases is a recurring operational problem. This problem can be adequately reduced by filtering the feed gas before it enters the carbon beds. Again silicone materials are a greater problem than the adhesive resins. Generally carbon beds on silicone coating lines are changed twice as often as beds on rubber or acrylic resin coating lines.

Low VOC concentration gas streams (less than 10 percent LEL) are a problem for both carbon adsorption and incineration VOC control equipment. In incinerators the low concentration gas stream will require much more fuel to incinerate the same amount of solvent gases as in a high concentration stream. The higher fuel usage will mean higher operating costs. Data from existing PSTL facilities demonstrate that the attainment of a 90 percent overall VOC emission reduction, on a monthly basis, is possible at less than 10 percent LEL.

For carbon adsorption systems, the low VOC concentration means poor bed performance. The beds are usually designed for a certain maximum VOC concentration based on a desired outlet VOC concentration. Operating experience has shown that at low solvent concentrations the performance of the bed decreases resulting in a lower overall VOC reduction. Higher gas stream VOC concentrations can be maintained through design of drying ovens with high turn down ratios and air tight gas ducting systems. Operators can also minimize the low VOC concentration problem by, whenever possible, coating products with similar solvent loadings on the same coating line.

The use of hoods or enclosures can be an effective means for capturing fugitive solvent emissions around the coater area. Fugitive solvent is that solvent which is emitted from the coating applicator and flashoff areas. The hood can be located directly over the web to capture vapors released from the coated surface. In small lines the time interval between when the web is coated and when it enters the oven is about two to five seconds. In large and medium lines the interval is two seconds or less. Since most solvents are heavier than air, floor seeps and hooding under the web can also be used to effectively capture emissions. The ideal situation is to totally enclose the coater and get an effective 100 percent VOC capture. When a hood or enclosure is used, all of the captured fugitive solvent emissions should be ducted back into the system and the control device. If the captured gases are used as makeup air to the ovens, the dilution of the oven gases is minimized.

Presently no total enclosure structures are used in the pressure sensitive tape and label industry. However, when surveyed, firms engaged in similar coating operations (for example, zinc oxide paper coating) responded favorably concerning the use of totally enclosed coaters. No problems related to enclosure use were given. In addition to environmental benefits, occupational safety concerns were also given as a reason for enclosure use. Enclosures were useful in reducing VOC levels along the floor and in the general work area around the coater, thereby lessening any potential explosion hazards.

In the tape and label industry one firm does operate a total building air evacuation system. This system removes all air from the coating building and sends it to a carbon adsorber. In effect the plant operates a total building enclosure. Calculations on the overall efficiency of this system indicate that a solvent capture efficiency of 95 percent is being obtained.

The best controlled coating operating examined in the tape and label manufacturing industry has four coating lines controlled by one carbon adsorption unit. Three of the lines are 0.71 meters (28 inches) wide and one line is 1.4 meters (56 inches) wide. The company produces a wide variety of label stock materials. Their operations are typified by short products runs (less than four hours), varied line speeds, and varied solvent-adhesive mixtures. These operating conditions make this facility a more difficult control situation than operations which run on a continuous basis. Over a four week period this system has shown an overall solvent recovery efficiency of slightly greater than 93 percent. During that time the company performed 140 runs and used such solvents as toluene, acetone, hexane, ethyl acetate, methyl ethyl ketone, rubber solvent, heptane, xylene, ethyl alcohol, isopropanol and recovered solvents. The coating lines use hoods to capture VOC emissions over the freshly coated web. The hoods are ducted into the ovens. The oven makeup air is pulled from the coater room with the ovens running at a slightly negative pressure with respect to the room. The overall effect is to draw all fugitive emissions into the oven with their eventual discharge through the carbon adsorption system. This plant demonstrated that high VOC reductions can be achieved even with low VOC concentration streams. During this four week recovery period the LEL in the system was less than ten percent.

A second tape coating facility with a carbon adsorption control system has a near 90 percent overall reduction. This system has hoods over the coating areas; however, all hood gases are vented directly to the atmosphere. Test data indicate that if the solvent vapors captured by the hoods are ducted back into the ovens the system would show a greater than 90 percent overall VOC reduction. Further data from this plant indicated an average overall VOC reduction of 90 percent for the entire year of 1979. The overall reduction for most of the calendar months was 90 percent or more. In the latter part of the year the overall reduction dropped below 90 percent on a monthly basis. This drop occurred because the carbon life of the control device had been exceeded by several months. With the installation of new carbon the overall reduction efficiency once again reached 90 percent or more. Through April of 1980 an average overall VOC reduction of about 94 percent has been attained.

Regulatory alternatives. The regulatory alternatives considered in developing the standard are based on the methods available to control the VOC emissions from the PSTL industry. In this industry the two primary emission sources are the oven exhausts and fugitives, with the oven exhausts being the more significant source. Therefore, the regulatory alternatives

are designed to control: (1) The oven emissions only or (2) the oven and fugitive emissions together.

Regulatory Alternative I is a no additional regulation alternative. This alternative represents what could happen if no NSPS were written and new sources were regulated by the SIP regulations. The recommended guideline for the SIP regulations represents a system which captures 90 percent of all volatilized solvents and then destroys or recovers 90 percent of those emissions. The overall reduction of VOC emissions from all affected facilities would be about 80 percent. The Alternative I control level is the baseline of comparison for the other regulatory alternatives. Regulatory Alternative I control could be achieved by the use of carbon adsorption, incineration, or low-solvent coatings.

Regulatory Alternative II is based on the control of oven emissions only. This regulatory alternative is very similar to Alternative I except that the efficiency of the add-on control device is selected as 95 percent rather than the 90 prcent control level because it is more indicative of current control system operations. Therefore, with a capture efficiency of 90 percent, the overall VOC reduction for this control system is approximately 85 percent. Carbon adsorption, incineration, or low-solvent coatings could be used to control emissions under this alternative.

Regulatory Alternative III is based on the control of both oven and fugitive VOC emissions. To obtain a high degree of fugitive capture a fugitive control device (such as a hood or a complete enclosure of the coating area) is used between the coater and the oven. The caputured fugitive VOC emissions are ducted into the oven or the add-on control device. The recommended method of ducting is to use the captured gases containing fugitive VOC as makeup air to the drying oven. Control of the fugitives results in a higher VOC capture. In this case, 95 percent of the applied solvent that is volatilized is captured. Under Alternative III the control device reduces 95 percent of the captured emissions, and an overall VOC reduction of 90 percent or greater is achieved. Data from existing well-designed pressure sensitive tape and label coating facilities indicate that up to 93 percent overall VOC reduction can be achieved. Chapter 4 and Appendix C of the BID examine data from well-controlled facilities in greater detail.

Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts of the NSPS are based on a comparison of the expected impacts of Regulatory Alternatives II and III to Regulatory Alternative I. The overall impacts of the regulatory alternatives are heavily influenced by the predicted decline in the use of organic solvent-based systems. Currently, 80 to 85 percent of all pressure sensitive tape and label coatings are applied with organic solvent formulations. By the year 1990 it is predicted that organic solvent coating will only constitute 10 percent of PSTL all coatings. Based on total solvent use these numbers represent approximately 600,000 megagrams (metric tons) of solvent used in 1978 while only 91,000 megagrams (metric tons) are expected in 1990. The use of organic solvent coatings will decline because of: (1) The increasing availability of alternative low-solvent coatings, (2) the high cost and lessening supply of organic solvents, and (3) increasing environmental regulations relating to solvent use.

Environmental Impacts. An analysis was made to compare the estimated national impacts of VOC emissions, wastewater effluents, solid waste generation, and energy use associated with the regulatory alternatives. The impacts in 1978 are based only on Regulatory Alternative I which represents no NSPS action and SIP adoption of the CTG recommended emission limit. For all environmental parameters the impacts decrease due to the predicted dramatic increase in the use of energy-efficient, low-solvent coating technology. In 1985 the expected increases in adverse environmental impacts from Regulatory Alternatives II and III are not major.

By 1985 it is predicted that the PSTL industry will use 125,000 megagrams (metric tons) of solvents. Regulatory Alternative I (no NSPS with SIP control only) would result in expected total VOC emissions of 27,400 megagrams (metric tons) per year. If Regulatory Alternative II is applied these emissions are expected to be reduced by 2,600 megagrams (metric tons) to 24,800 megagrams (metric tons) per year. This represents a 9.5 percent reduction in emissions. If Alternative III control is exercised the total VOC emissions are expected to be 23,100 megagrams (metric tons) per year. This represents a 16 percent reduction in total emissions over the projected baseline control level.

Wastewater discharge from PSTL coating operations increases with the use of carbon adsorption systems for VOC control. The additional wastewater comes from steam condensate which is separated from the recovered solvent. Generally this water is routed into local waste treatment systems or is emitted directly to the environment. If one assumes that all VOC emissions from PSTL coating facilities are controlled by carbon adsorption units (worst case estimate), the resulting wastewater flow for Alternative III is 13 percent greater than that expected from systems required to meet the Alternative I control level. In 1985, if all the solvent-based coating facilities used carbon adsorption, the total amount of wastewater would be about 20 million liters per year. The amount of VOC potentially in this volume of water is about 10 megagrams (metric tons). Even in the worst case situation the proposed standard is reasonable.

The solid waste impact from the addition of VOC controls in the PSTL industry is expected to be small. The use of carbon adsorption systems produces waste activateds carbon. The carbon must be replaced every one to six years depending on performance. The waste carbon can be landfilled, burned as a solid fuel, or sold to firms which reactivate the carbon. The landfill operation represents the greatest potential adverse environmental problem. This problem can be minimized by proper design, construction, and operation of the landfill site. In 1985 the estimated national incremental carbon solid waste production from PSTL facilities is approximately 55 megagrams (metric tons). This waste load would occur under Regulatory Alternative III control. The solid waste impact is reasonable when compared to the total nationwide VOC reduction being achieved.

Energy Impact. The total industry-wide use of electricity and fossil fuels is expected to decline in the next ten years. The primary reasons for this decline is the greater use of more fuel efficient, low-solvent systems, such as hot melts and waterborne adhesives and 100 percent solids and waterborne releases. The low-solvent systems eliminate the need for large, full-consuming solvent drying ovens.

For an individual coating facility, the supplement energy use is higher for a solvent-type coating line with an add-on VOC control device than a line with no controls at all. More electrical energy is needed to power an increased number of fans and fans with higher capacities. For coating lines controlled by carbon adsorption units, fossil fuels must be used to run the steam boilers. Coating lines controlled by incineration would have fuel requirements that are dependent on the concentration of the

incinerator feed gases. If the concentration can be maintained near 40 percent LEL, fuel requirements will be low.

There is a potential in the PSTL

Economic Impact. The economic impacts of all three regulatory alternatives are minimal. In cases where they can be used, owners or operators will invest in low-solvent coating

generated by an investment. All impacts represent the situation in 1985.

An economic analysis was not performed for the precoat coating lines because the physical and operational

growth rate and structure. The availability of low-solvent technologies and the small price and ROI impacts on the conventional solvent-based systems imply that the regulatory alternatives

emissions from all exhaust gases discharged to the atmosphere, (2) kilograms of emissions per unit of production, (3) control efficiency, and (4) kilograms of emissions per unit weight

first would be to set a control level across the add-on control device. This form would provide a good means for reducing oven emissions but would not insure the control of fugitive emissions.

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incinerator feed gases. If the concentration can be maintained near 40 percent LEL, fuel requirements will be low.

There is a potential in the PSTL industry for a net national energy savings. This savings would be possible if many or all solvent-based coating lines used solvent recovery control systems. The recovered solvent more than offsets the supplemental energy needed to operate the systems. The net recovered solvent could be translated into barrels of oil, consequently equaling barrels of oil that would not then have to be imported.

In 1985, Regulatory Alternative II would have an increased energy requirement of about 7,900 barrels (1.26 million liters) of crude oil per year above that required by Regulatory Alternative I. If all solvent-based coating lines were controlled by carbon adsorption to the Alternative II level, a best case, gross energy savings of about 23,500 barrels (3.75 million liters) of crude oil is estimated. By deducting the required energy for controls, a potential net national energy savings of 15,700 barrels (2.5 million liters) of crude oil exists.

Under Regulatory Alternative III an incremental (above Alternative I) energy demand of approximately 12,000 barrels (1.9 million liters) of crude oil is projected. Assuming all controls are carbon adsorption units, a gross national energy savings of about 39,100 barrels (6.2 million liters) of crude oil is predicted. This gross savings equates to a potential net national energy savings of 27,100 barrels (4.3 million liters) of crude oil for Alternative III. This estimate reflects the best case energy impact.

If all sovlent-based coating lines were controlled by incineration the worst case national energy impacts result. Because no solvent is recovered, there are no credits to offset the increased energy used by the VOC control systems. For Alternative II control an annual 17,700 barrels (2.8 million liters) of crude oil may be consumed by the PSTL industry over that required under Alternative I. Under Alternative III incinerations controls would require aproximately 31,000 barrels (4.9 million liters) of crude oil per year.

Neither total carbon adsorption nor total incineration control is anticipated in this industry. The actual use of the two control devices will be determined by the availability and price of solvent, the applicability of alternative fuels, the rapidity with which low-solvent technologies replace solvent-based ones, and the stringency of environmental regulations.

Economic Impact. The economic impacts of all three regulatory alternatives are minimal. In cases where they can be used, owners or operators will invest in low-solvent coating methods such as 100 percent solids or waterborne coatings. If technological constraints prevent the use of waterborne and 100 percent solid technologies, the regulatory alternatives will have a small impact on the industry. Based on the net present value (NPV) analysis, the large lines will generally experience a greater impact than the medium and small lines. Industry-wide, it is estimated that a price increase of 0.0 to 0.9 percent would be required to offset the impact of the NSPS.

The economic impact of the NSPS was evaluated through the costing of model facilities. These model facilities are based on sizes and flow-rates which represent typical new coating facilities. For this study, three line widths (0.61 m, 0.9 m and 1.5 m) and three line speeds (0.13 m/sec, 0.50m/sec, and 1.2 m/sec) were examined. The large width and high speed were combined in one case to represent a facility which is a large volume (39 million m^2/year) producer. The medium and small widths and slower speeds were combined to represent facilities which are small volume (1.7 million m^2/year and 5.8 million m^2/year) coating operations. The adhesive coating cases were examined separately from the silicone release coating operations. Tandem coating facilities were also analyzed during the economic study.

In the impact analysis, alternative low-solvent technologies are used to give a comparison for the systems which required add-on VOC controls. These alternative systems include hot melt and waterborne adhesives and 100 percent solid and waterborne silicone releases.

Detailed cost data were developed for the adhesive and silicone release model plants. All cost data were based on model plants that would be operating for 6,000 hours per year. The model plant costs were used in an economic model to assess the economic impact of the proposed standard. Both control equipment and coating line costs were developed. A discount rate of 16 percent and capacity utilization rates of 75 and 100 percent were used in the analysis. Inputs on different company structures were also used in the economic model. The model takes all the inputs and analyzes the various alternatives to rate them on net present value (NPV). The alternatives with the highest NPV's are considered as the best alternatives. High NPV's are advantageous because they represent the highest annual cash flows generated by an investment. All impacts represent the situation in 1985.

An economic analysis was not performed for the precoat coating lines because the physical and operational characteristics of a precoat line are very similar to those of release coat lines. To avoid duplications of effort and information, only release coat lines were examined in the economic analysis. Conclusions determined for release coat lines would apply to precoat coating lines.

To adequately represent the alternatives available to a coating operation the economic analysis is done from two perspective cases. In the unconstrained case, it is assumed that both low-solvent and high-solvent technologies can be used as identical product substitutes. This means that the 100 percent solid and waterborne formulations will produce a product equal to that of the solvent systems. In the constrained case, it is assumed that neither waterborne nor 100 percent solids coatings can be used as solvent-based product substitutes. A firm may only use solvent-based technology (with controls) to produce a tape or label product.

In the unconstrained cases, Regulatory Alternative II and III would have no impacts on the pressure sensitive tapes and labels industry. Waterborne and 100 percent solids coatings are available that meet the control requirements of these alternatives. Because low-solvent systems are more profitable than solvent-based ones, firms in the PSTL industry would have an economic incentive to adopt them even in the absence of an NSPS based on Alternatives II or III. The regulatory alternatives would not force firms to change the type of coating line they would build in the absence of any regulatory alternatives.

In the constrained cases, Regulatory Alternatives II and III would have minor impacts. Under Alternative II control, a product price increase of 0.0 to 0.4 percent would result if all costs for controls were passed on to the consumer. If all costs were absorbed by the manufacturer, an industry-wide decrease in return on investment (ROI) of 0.0 to 0.6 percent would result. Under Alternative III control, a product price increase of 0.0 to 0.9 percent is predicted. Full cost absorption by the manufacturer would reduce the ROI by 0.0 to 1.0 percent. With both regulatory alternatives, the large coating lines would be slightly more impacted than the medium and small lines.

The regulatory alternatives would have little or no impact on the industry's

growth rate and structure. The availability of low-solvent technologies and the small price and ROI impacts on the conventional solvent-based systems imply that the regulatory alternatives would not deter new investment and adversely affect growth. Although the large facilities would be affected more than the medium and small facilities, the difference is not great enough to put the large facilities at a competitive disadvantage. Thus, the regulatory alternatives would not cause any significant changes in the structure of the industry.

Best System of Emission Reduction

Based on the environmental, energy, and economic impacts, Regulatory Alternative III is selected as the best system of continuous emission reduction. This alternative is considered affordable and the impacts reasonable. Although this alternative is based on the use of a control device operated in conjunction with a well-designed VOC capture system, it is recognized that low-solvent coatings are available for some applications and are just as effective in reducing VOC emissions.

The control device may be either a carbon adsorber or incinerator. Both control devices have been determined to be capable of at least 95 percent efficiency in reducing VOC emissions. The attainable efficiency of VOC capture systems has been estimated based on PSTL facilities' overall VOC emission reduction data and control device efficiencies for these systems. Based on these calculations the best hooding and enclosure systems are 95 percent efficient in capturing all VOC emissions from a coating operation. The remaining five percent of total emissions are trapped in the coated product or are lost as fugitive emissions. The continuous overall emission reduction achievable by the best system is 90 percent. After consideration, the Administrator has determined that under normal operating conditions all affected facilities could achieve the level of the proposed standard using the best system.

Selection of Format of Proposed Standard

The formats were examined based on their effectiveness in ensuring overall VOC control. The criteria for choosing the format are effectiveness, compatibility with existing coatings and control systems, complexity of compliance testing, and ease of application in the industry.

The formats considered for the pressure sensitive tape and label industry were: (1) Total concentration of emissions from all exhaust gases discharged to the atmosphere, (2) kilograms of emissions per unit of production, (3) control efficiency, and (4) kilograms of emissions per unit weight or volume of coating solids. The following paragraphs discuss the advantages and disadvantages of the regulatory formats.

An allowable concentration of emissions in the exhaust gases discharged to the atmosphere is the easiest standard to enforce. Direct emission measurements can be made using Reference Method 25 on a single effluent stream. The major disadvantage of this format is its poor effectiveness in identifying overall VOC control. The level of fugitive emissions capture cannot be determined with a single point measurement. Such a determination requires either absolute containment or material balance testing of all potential points. As stated earlier, fugitives may amount to 18 percent of the total applied solvent. Another disadvantage is that it does not promote efficient oven energy use. In order to reduce oven energy consumption, the operator generally tries to increase the concentration of solvent in the oven exhaust gases. Therefore, more solvent leaves in a smaller volume of gas. This means lower energy consumption because energy use is approximately proportional to oven exhaust gas flow rate. With the higher concentration the operator is required to get a higher percent VOC reduction than an operator with less efficient ovens. In fact, concentration limits allow an operator to emit twice as much solvent by simply doubling the amount of dilution air drawn through the ovens. The overall effect is to promote higher energy consumption, while allowing greater total VOC emissions.

A format of kilograms of emissions per unit of production relates emissions to individual plant production on a direct basis. This type of standard would be inequitable for different types of coatings. In the PSTL industry, adhesive coatingss vary in thickness and in kilograms of VOC coated per unit area of production. This is further complicated by the inclusion of solvent silicone release and precoat coatings. These coatings tend to be much thinner and contain less VOC per unit area of production than adhesive coatings. Therefore, if a single value for the standard was used, some solvent coatings would require no additional controls while others would require a very high level of control.

The control efficiency standard would be developed from two viewpoints. The first would be to set a control level across the add-on control device. This form would provide a good means for reducing oven emissions but would not insure the control of fugitive emissions. The second viewpoint would require an overall VOC reduction based on the total amount of solvent in the formulated coating before application. This would include both fugitive VOC emissions and oven emissions. Compliance testing for this situation would require a material balance-type test which is a problem for any standard.

A regulatory format which would relate total allowable mass of VOC emissions to the amount of coating applied would be a very effective standard. For the PSTL industry, this form was examined for mass of VOC emissions with respect to volume of coating, volume of coating solids, and weight of coating solids. Weight of coating solids was chosen as the best of these forms because most formulations are derived on a weight basis. Generally, resin density is constant. Therefore, the weight basis is easy to calculate from formulation data.

The format of the proposed standard is a combination of the percent overall VOC reduction and the mass of VOC emissions per mass of coating solids formats. The percent overall VOC reduction would provide an effective means of requiring an overall VOC control, while not being prohibitive for high-solvent coatings. The mass emission per weight of coating solids would allow the use of low-solvent coatings without the need for all-on VOC control devices. This combination would permit add-on VOC controls for nearly all solvent-based coating systems and promote the development and use of low-solvent coatings.

Selection of Emission Limits

Section 111(a)(1) requires the emission limits to reflect "application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements)the Administrator determines has been adequately demonstrated." Section 111(a)(1). The "best technological system" defined by Section 111(a)(1) is one that is not "exorbitantly costly." *Essex Chemical Corp.* v. *Ruckleshaus*, 486 F. 2d 427, 433 (D.C. Cir. 1973).

Application of the "best technological system" results in a two-step standard: for coatings with VOC contents of 2 kg/kg of coating solids or less, the standard is 0.2 kg/kg; for coatings with greater

than 2 kg/kg VOC content, the standard is a 90 percent reduction in VOC emissions.

As discussed earlier, VOC reductions of 90 percent are achievable by systems proposed standard. Therefore EPA believes that 90 percent overall emission reduction efficiency can be achieved under all solvent retention conditions.

Selection of Compliance Procedures

Every affected facility using add-on control devices to achieve compliance with the proposed standard, must determine the weighted average of the mass of VOC used per mass of coating

the production is kept under the maximum design of the oven. If production is increased above the maximum designed for the oven, a significant capital expenditure will be made for larger exhaust fans and

or any three hour period during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test complying with

2369–73, "Standard Test Method for Volatile Content of Paints." For coatings with water, the previously mentioned procedure (ASTM D 2369–73) is combined with another procedure which determines the water content of the

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than 2 kg/kg VOC content, the standard is a 90 percent reduction in VOC emissions.

As discussed earlier, VOC reductions of 90 percent are achievable by systems of capture and control. However, the cost and energy requirements of achieving VOC emission reductions vary according to the VOC content of the coating being controlled. The lower the VOC content of the coating, the higher are the cost and energy requirements of achieving a given reduction in emissions. This is for two reasons. First, a given percent control of lower VOC coatings generally requires capture and control systems of at least the same size and cost as the same percent control of higher-VOC coatings, but it achieves less mass emission reduction because there is less VOC to be controlled. Second, the cost and energy requirements of controlling lower-VOC coatings in incinerators are further increased by the need to use additional supplemental fuel to operate the incinerator.

In the Administrator's judgment, the cost and energy requirements of a capture and control system that achieves 90 percent reduction are reasonable on coatings with VOC contents of 2.0 kg/kg and greater. Such a control system is therefore the "best technological system," and the standard for such high VOC coatings is 90 percent reduction.

For coatings with lower VOC contents, the "best technological system" is one that can achieve 0.2 kg/kg. In the Administrator's judgment, the cost and energy requirements of achieving significantly greater emission reduction on such lower VOC coatings would be exorbitant. Therefore, the standard for such coatings is 0.2 kg/kg. This can be achieved by all sources at reasonable cost and energy requirments.

The effect of solvent retention in the final tape of label product and its impact on the achievability of a 90 percent overall emission reduction were considered. Test data obtained during this study indicate that the amount of solvent retained in the product does not affect the ability of a facility to achieve the proposed standard. A well-controlled PSTL facility has demonstrated a four-week overall VOC emission reduction of 93 percent. This overall reduction includes the amount of solvent that was retained in the product. During this period the facility coated 18 different adhesives with varying amounts of retained solvent. Neither the four week period nor the many varied adhesive products coated (i.e., varied amounts of retained solvent) affected the plant's ability to achieve the proposed standard. Therefore EPA believes that 90 percent overall emission reduction efficiency can be achieved under all solvent retention conditions.

Selection of Compliance Procedures

After the required initial performance test, compliance with the proposed standard will be determined on a calendar month basis. Every calendar month will be considered a performance test for carbon adsorption-controlled coating lines, for incinerator-controlled coating lines, and for coating lines using low-solvent coating technology. The owner or operator will report to the Administrator within ten days following the end of a calendar month only if an affected facility exceeded the proposed standard for that calendar month being reported.

The variability of operation of the PSTL industry makes it well-suited to a monthly compliance period. Many products are produced in this industry using hundreds of different coatings. Operating parameters such as line speed, line width, length of a coating run, product solvent retention, and control device solvent hold-up vary substantially within this industry on a daily basis. The combination of these factors influences the quantity of emissions and the ability to meet a standard. Compliance with the proposed standard on a monthly basis would allow enough time for coating system fluctuations to average out.

To determine compliance with the proposed standard, an owner or operator of an affected facility using low-solvent coatings must calculate the weighted average of the mass of VOC (solvent) used per mass of coating solids applied each calendar month. The mass of VOC per mass of coating solids applied can be obtained by using a modified version of Reference Method 24 or coating manufacturer's formulation data. At any time the Administrator may require a Reference Method 24 test to verify the VOC content. The reference method must be performed so that mass per mass units are obtained and not mass per volume units as the method is currently written. The mass per mass modification actually simplifies the method. If the calculated weighted average is less than or equal to 0.20 kg VOC per kg of coating solids applied, compliance with the proposed standard would be demonstrated. Affected facilities with weighted averages greater than 0.20 would have to install add-on control devices to achieve compliance with the proposed standard. For enforcement purposes Reference Method 24 and not manufacturer's formulation data would be used.

Every affected facility using add-on control devices to achieve compliance with the proposed standard, must determine the weighted average of the mass of VOC used per mass of coating solids applied each calendar month. The weighted average VOC content would be compared to the 0.20 kg limit each month to determine the required level of overall VOC reduction. The maximum required overall VOC reduction is 90 percent.

Affected facilities controlled by carbon adsorption will determine monthly compliance using a solvent inventory test. The total mass of solvent used every calendar month will be divided by the total mass of solvent recovered by the carbon adsorber every month to determine the overall VOC emission reduction obtained. If the overall VOC emission reduction obtained is greater than or equal to the required overall reduction, compliance with the proposed standard is demonstrated.

Affected facilities controlled by incineration will determine monthly compliance by comparing the required overall VOC emission reduction of each calendar month to the overall VOC emission reduction demonstrated during the most recent performance test which complied with the proposed standard. If the required monthly reduction is less than or equal to the performance test reduction, the affected facility is in compliance with the proposed standard.

Modification and Reconstruction

Facilities which are modified or reconstructed as defined in 40 CFR 60.14 and 60.15 after the date of proposal of this standard are subject to the standard. In the case of PSTL facilities, a modification, and thus an increase in VOC emissions, will most likely be related to an increase in production. Production increases contributing to emission increases can result from changes in web width, line speed, or hours of operation. An increase in the hours of operation is specifically excluded from new source performance standards. If changes in line speed and line width are part of the existing equipment capability and do not require capital expenditures, they are also excluded from new source performance standards.

Production increases, however, may require capital expenditures, although this is not expected to be a frequent occurrence. A coating line with a drying oven is usually designed for a maximum solvent vaporization loading. The limiting factor is the LEL level allowed in the ovens. Line speed and line width can often be readily changed as long as the production is kept under the maximum design of the oven. If production is increased above the maximum designed for the oven, a significant capital expenditure will be made for larger exhaust fans and possibly larger recirculation fans, and larger drive motors for the coater and wind and unwind equipment. If there is an increase in VOC emissions the facility will be a modification and will have to comply with the proposed standard. All control procedures previously discussed are applicable to modified PSTL facilities, therefore, the proposed standard is determined to be reasonable for such facilities.[11]Reconstructed facilities are also a potential occurrence in this industry. Existing control technologies would be applicable to the VOC emissions from such facilities. Because the emissions from reconstructed facilities can be controlled to the level specified in Regulatory Alternative III, the proposed standard would be reasonable for these types of facilities.

Selection of Monitoring Requirements

Monitoring requirements are included in the proposed standard to ensure good operation and maintenance of the VOC emission control equipment. Monitoring procedures for the proposed standard were chosen based on three factors: Reasonable cost, ease of execution, and utility of the resulting data to both the owner and to EPA for assuring continued proper operation.

Affected facilities controlled by incineration must monitor the temperature of the incinerator exhaust gases. The average temperature is being monitored to determine the occurrence of improper incinerator operation. The temperature drops stated below shall be indications of improper incinerator operation. For thermal incinerators the exhaust gas temperature must be continuously monitored and recorded. Any three hour period (during actual coating operations) during which the average temperature of the device is more than 28C° (50F°) less than the average temperature of the device during the most recent performance test complying with the proposed standard shall be reported to the Administrator. For catalytic incinerators the gas temperature upstream and downstream of the catalyst bed must be monitored. Any three hour period (during actual coating operations) during which the average temperature of the device immediately before the catalyst bed is more than 28C° (50F°) less than the average temperature of the device during the most recent performance test complying with the proposed standard, or any three hour period during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test complying with the proposed standard shall be reported to the Administrator.

Temperature monitoring equipment is usually a standard feature on most incinerators. For this reason, the requirement to monitor temperature should not be an additional cost burden on the industry. If it is not included, the cost to purchase and install an accurate temperature measurement device and recorder is estimated at $1,200.

Any affected facility which use incinerators to comply with the proposed standard and which uses a hood or enclosure to capture fugitive VOC emissions, must operate a monitoring device which continuously indicates that the hood or enclosure is operating. Examples of such devices include fan amperage meters and flow meters in ducts. No continuous monitoring will be required if the hood or enclosure system is interlocked with the affected facility's oven air recirculation system.

Selection of Performance Tests Methods

Performance test methods are used to determine the solvent content in the coating and the overall control efficiency of the add-on control system. Furthermore, the test method for determining control efficiency differs depending on whether carbon adsorption or incineration is used.

The proposed method for measuring the solvent content in the coating is Reference Method 24 promulgated at October 3, 1980 45 FR 65956 "Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings." This method combines several ASTM standard methods to determine the volatile matter content, density of the coating, volume of solid, and water content of the paint, varnish, lacquer, and related surface coatings. From this information, the mass of volatile organic compounds (VOC) per unit volume of solids is calculated.

Because the proposed PSTL regulation for coating is in units of mass of volatile organic compounds per mass of coating solids, Reference Method 24 must be modified so its results are in the same units as the standard. This actually shortens the test method by eliminating several steps because only the non-aqueous volatile content needs to be determined. For non-aqueous coatings, the procedure to be used is ASTM D 2369-73, "Standard Test Method for Volatile Content of Paints." For coatings with water, the previously mentioned procedure (ASTM D 2369-73) is combined with another procedure which determines the water content of the coating. There are two acceptable procedures for this: (1) ASTM D 3792, "Standard Test Method for Water in Water Reducible Paint by Direct Injection into a Gas Chromatograph," and (2) an ASTM draft "Standard Test Method for Water in Paint or Related Coatings by the Karl Fischer Titration Method." The results from these procedures are the nonaqueous volatile content of the coating (as a weight fraction) and the water content (as a weight fraction). The weight fraction solids content in the coating can also be determined from these procedures. The VOC content in the coating, in mass of VOC per mass of coating solids applied, may be determined by dividing the weight fracton of non-aqueous volatiles by the weight fraction of solids.

The estimated cost of analysis per coating sample is $50 for the total volatile content procedure (ASTM D 2369-73). For aqueous coatings, there is an additional $100 per sample for water content determination. Since the testing equipment is standard laboratory apparatus, no additional purchasing costs are expected.

In certain cases, for the proposed PSTL standard, the density of a particular coating may be required. The density may be determined from the coating manufacturer's formulation data or from a procedure that is a part of Reference Method 24. The procedure in Method 24 is ASTM D 1475-60, "Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products." The analysis of a coating sample would cost about $25. Testing can be performed with standard laboratory equipment.

If the amount of solvent in the coating exceeds 0.20 kg per kg of coating solids applied, then the efficiency of the vapor control system must be determined. The overall efficiency is determined by comparing the amount of solvent controlled (either recovered or destroyed) to the potential amount of solvent emitted with no controls. For the proposed standard two different performance test methods were selected. The method to use depends upon the type of add-on control device being installed. In the PSTL industry, only two types of control devices are expected: carbon adsorbers and incinerators.

For carbon adsorbers, performance is demonstrated by comparing the solvent used versus the solvent recovered. In

using a solvent inventory system, it is necessary to monitor two things: The amount used of each coating, and the amount of solvent recovered by the vent versus the outlet vent. The overall incinerator system control efficiency is determined by relating the amount destroyed to all the potential emissions. after considering several factors. It is usually preferable to have the same performance test method regardless of the type of control device. In this case,

Section 60.447 of the proposed standard explains specific reporting requirements in further detail.

Public Hearing

unwind to final wind. Any comments submitted to the Administrator on this issue should contain specific information and data pertinent to an evaluation of the affected facility

in Section 169(1)) employ "best available control technology" (BACT) as defined in Section 169(3) for all pollutants regulated under the Act. Best

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using a solvent inventory system, it is necessary to monitor two things: The amount used of each coating, and the amount of solvent recovered by the carbon adsorption system.

The performance test will consist of a one calendar month solvent inventory as opposed to the three test runs method specified in § 60.8(f). Compliance in the months following the performance test will also be determined on a calendar month basis.

To determine the efficiency of the carbon adsorber system, these data would be collected over a period of one calendar month. This time interval allows the test to be conducted using a representative variety of coatings and products, as well as reducing the impact of variations in the process that would otherwise affect the representativeness of a short-term test. It should be noted that this procedure determines the overall control efficiency based on the original amount of solvent used, not on the amount entering the carbon adsorber, and fugitive emissions are allowed as long as the overall control efficiency meets the standard.

The cost of such a performance test should be minimal since the solvent inventory data would be part of normal operating equipment in the plant. If not, the estimated purchase cost of two accurate liquid weight meters is $1,400.

Because incinerators destroy the solvent rather than recover it, a different type of performance test is used. The proposed procedure measures the mass of VOC (as carbon) in the incinerator system vents (incinerator inlet, incinerator outlet, and fugitive emission vents), and determines the incinerator system's overall control efficiency. There are important differences between the carbon adsorber and incinerator test procedures that should be noted. The test procedure for the carbon adsorber system relates the original amount of solvent used at the coating head to the amount of solvent controlled, i.e. recovered, by the adsorber. It is possible to compare the two amounts because the same measurement method is used (liquid solvent used versus liquid solvent recovered). However, for incinerator systems, the amount of solvent used should not be directly related to the amount of solvent controlled, i.e. destroyed, because different measurement procedures are used, (liquid solvent used in the coating is measured as mass of solvent, while the gaseous emissions destroyed are measured as mass of carbon). Thus, for incinerators, the amount controlled or destroyed is determined by using the amount of solvent measured in the inlet vent versus the outlet vent. The overall incinerator system control efficiency is determined by relating the amount destroyed to all the potential emissions.

To make the incinerator test procedure equivalent to the carbon adsorber test procedure, one must be able to measure all the potential emissions, both fugitive emissions and oven emissions ducted into the incinerator. That is, all fugitive VOC emissions from the web coating area must be captured and vented through stacks suitable for testing. Prior to the performance test for incineration-controlled affected facilities, the owner or operator will be required to construct a temporary total enclosure around the coating line for the purpose of capturing fugitive VOC emissions. A total enclosure is defined as any structure or building around the coating applicator and flashoff area or the entire coating line for the purpose of confining and totally capturing fugitive VOC emissions. If a permanent total enclosure exists on the line prior to the performance test, and the enforcing agency is satisfied that the enclosure is totally capturing fugitive emissions; the construction of a temporary enclosure is not required.

The concentration of VOC (as carbon) in the incinerator vent system is measured by Reference Method 25, "Determination of Total Gaseous Nonmethane Organic Emissions as Carbon (TGNMO)." The results of this method combined with the results of Reference Methods 1 through 4 yields the mass of VOC (as carbon) in the vent.

Three one-hour runs of Reference Method 25 are required for a complete test, with Reference Methods 2, 3 and 4 being performed at least twice during that period. Measurements at the inlet, outlet and fugitive emission vents should be performed simultaneously. The total time required for one complete performance test is estimated at 8 hours, with an estimated overall cost $4,000, plus $2,000 for each fugitive vent measured.

The TGNMO method (Reference Method 25) was selected to measure the VOC concentration in incinerators for certain reasons. It is simple to use, especially in explosive atmospheres or when sampling high-temperature, moist streams. Also because the detector used in Reference Method 25 measures all the non-methane organics as methane, all carbon atoms give an equivalent instrument response. Therefore, the problem of varying response ratios for different organic compounds (typical of all flame ionization units) is avoided.

The decision to propose two different performance test methods was made after considering several factors. It is usually preferable to have the same performance test method regardless of the type of control device. In this case, the stack sampling procedure described for incinerators is also applicable to carbon adsorbers. However, the solvent inventory method is a far more practical and accurate procedure. It is very inexpensive, requires no special technical sampling and analytical procedures, and has a test period of one month, so that a representative variety of coatings can be tested. Unfortunately, an inventory-type method cannot be applied to incinerators. The one-day TGNMO inlet and outlet stack test procedure is the best method for testing incinerators, but this method would become exorbitantly expensive and impractical if a longer test period were required. The advantages of the solvent inventory-type test for carbon adsorbers outweigh the disadvantages of having two different performance test methods.

Reports Impact Analysis

The reporting requirements necessitated by the proposed standard are authorized in Section 114 of the Clean Air Act. The proposed standard would require the preparation of three types of reports. First, the general provisons (Subpart A of 40 CFR Part 60) would require notification reports which inform the agency of facilities subject to new source performance standards (NSPS). These reports include notification of construction, anticipated start-up, acutal start-up, and physical or operational changes. Second, reports of performance test results and performance evaluations of the continuous monitoring systems would be required. These reports show whether a facility is initially meeting the level of the standard. Third, monthly reports explaining whether an affected facility is in or out of compliance with the standard would be required

The respondent group to the reporting requirements of the proposed standard would be the pressure sensitive tapes and labels (PSTL) industry. It is estimated that through the fifth year of standard applicability, approximately 290 new PSTL sources will have been established which would have to comply with the reporting requirements of the proposed standard. This number of sources includes adhesive, release, and precoat coating facilities. To implement the reporting requirements of the proposed standard, through the first five years of applicability, the PSTL industry would incur a manpower demand of about 12 man-years. Comments are invited on any of the reporting requirements of the proposed standard.

Section 60.447 of the proposed standard explains specific reporting requirements in further detail.

Public Hearing

A public hearing will be held to discuss the proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see ADDRESSES section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review.

Miscellaneous

As prescribed by Section 111, establishment of standards of performance for the manufacture of pressure sensitive tapes and labels was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues, and on the proposed test methods.

Comments are specifically invited from small PSTL companies on the definition of the affected facility. Larger companies in this industry have objected to the present definition. They feel the affected facility should be defined as a coating line from initial unwind to final wind. Any comments submitted to the Administrator on this issue should contain specific information and data pertinent to an evaluation of the affected facility definition. Alternative courses of action should be suggested.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> ". . . application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(1))."

Although there may be emission control available that can reduce emissions below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emissions control. In fact, the Act requires (or has the potential for requiring) the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources located in nonattainment areas, i.e., those areas where statutorily-mandated health and welfare standards are being violated. In this respect, Section 173 of the Act requires that new or modified sources constructed in an area which exceeds the National Ambient Air Quality Standard (NAAQS) must reduce emissions to the level which reflects the "lowest achievable emission rate" (LAER), as defined in Section 171(3) for such category of source. The statute defines LAER as that rate of emissions based on the following, whichever is more stringent:

> (A) The most stringent emission limitation which is contained in the implementation plan of any State for such class of category of source, unless the owner of operator of the proposed source demonstrates that such limitations are not achievable, or
>
> (B) The most stringent emission limitation which is achieved in practice by such class of category of source.

In no event can the emission rate exceed any applicable new source performance standard (Section 171(3)).

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (Part C). These provisions require that certain sources (referred to in Section 169(1)) employ "best available control technology" (BACT) as defined in Section 169(3) for all pollutants regulated under the Act. Best available control technology must be determined on a case-by-case basis, taking energy, environmental and economic impacts and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by an applicable standard established pursuant to Section 111 (or 112) of the Act.

In all events, State Implementation Plans (SIP's) approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of NAAQS designed to protect public health and welfare. For this purpose, SIP's must in some cases require greater emission reduction than those required by standards of performance for new sources.

Finally, States are free under Section 116 of the Act to establish even more stringent emission limits than those established under Section 111 or those necessary to attain or maintain the NAAQS under Section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than standards of performance under Section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

This regulation will be reviewed four years from the date of promulgated. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, and improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance under Section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to insure that the proposed standards would represent the best system of emission reduction considering costs. The economic impact assessment is included in the Background Information Document.

Dated: December 22, 1980.

Douglas M. Costle,

Administrator.

It is proposed that 40 CFR Part 60 be amended by adding a new Subpart RR

"Oven" means a chamber which uses heat or irradiation to bake cure, polymerize, or dry a surface coating.

"Precoat" means a coating operation in which a primer, lacquer, or tackifying

of each effluent gas stream (j) exiting the emission control device, in dry standard cubic meters per second.

"Q_{bi}" means the volumetric flow rate of each effluent gas stream (i) entering

$$G = \frac{\sum_{i=1}^{n} (M_{oi} \times M_{si})}{}$$

monthly compliance by comparing the monthly required overall VOC emission reduction specified in § 60.443(b) to the overall VOC emission reduction demonstrated in the most recent performance test which complied with

performance test, and a new calendar month's average VOC emission reduction is calculated to show compliance with the standard.

(g) If a common emission control device is used to recover or destruct

Dated: December 22, 1980.

Douglas M. Costle,

Administrator.

It is proposed that 40 CFR Part 60 be amended by adding a new Subpart RR as follows:

Subpart RR—Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations

Sec.

60.440 Applicability and designation of affected facility.
60.441 Definitions and symbols.
60.442 Standard for volatile organic compounds.
60.443 Compliance provisions.
60.444 Performance test procedures.
60.445 Monitoring of operations and recordkeeping.
60.446 Test methods and procedures.
60.447 Reporting requirements.

Authority: Sec. 111, 301(a) of the Clean Air act as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart RR—Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations

§ 60.440 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each pressure sensitive adhesive coating line, each release coating line, and each precoat coating line used in the manufacture of pressure sensitive materials.

(b) This subpart applies to any affected facility which begins construction, modification, or reconstruction after [—— date of publication in **Federal Register**].

§ 60.441 Definitions and symbols.

(a) Except as otherwise required by the context, terms used in this subpart are defined in the Act, in Subpart A of this part, or in this section as follows:

"Coating applicator" means an apparatus used to apply a surface coating to a continuous web.

"Coating line" means a coating applicator, flashoff area, and oven.

"Coating solids applied" means the solids content of the coated adhesive, release, or precoat as defined by Reference Method 24.

"Flashoff area" means the portion of a coating line after the coating applicator and usually before the oven entrance.

"Fugitive volatile organic compounds" means any volatile organic compounds which are emitted from the coating applicator and flashoff areas and are not emitted in the oven.

"Hood or enclosure" means any device used to capture fugitive volatile organic compounds.

"Oven" means a chamber which uses heat or irradiation to bake cure, polymerize, or dry a surface coating.

"Precoat" means a coating operation in which a primer, lacquer, or tackifying coating (or their equivalent) is applied to a surface as a precursor to the production of a pressure sensitive or release product.

"Pressure sensitive tape and label surface coating operation" means any coating line which coats a continuous web with either pressure sensitive adhesive, release or precoat coatings associated with pressure sensitive products.

"Solvent applied in the coating" means all organic solvent contained in the adhesive, release, and precoat formulations that is metered into the coating applicator from the formulation area.

"Total enclosure" means a structure or building around the coating applicator and flashoff area or the entire coating line for the purpose of confining and totally capturing fugitive VOC emissions.

"Volatile organic compound (VOC)" means any organic compound which is measured by Reference Methods 24 or 25.

(b) All symbols used in this subpart not defined below are given meaning in the Act or in Subpart A of this part.

"a" means the gas stream vents exiting the emission control device.

"b" means the gas stream vents entering the emission control device.

"C_{aj}" means the concentration of VOC (carbon equivalent) in each gas stream (j) exiting the emission control device, in parts per million by volume.

"C_{bi}" means the concentration of VOC (carbon equivalent) in each gas stream (i) entering the emission control device, in parts per million by volume.

"C_{ak}" means the concentration of VOC (carbon equivalent) in each gas stream (k) emitted directly to the atmosphere, in parts per million by volume.

"G" means the calculated weighted average mass (kg) of VOC per mass (kg) of coating solids applied each calendar month.

"M_{bi} means the mass (kg) of VOC per mass (kg) of coating solids applied in each coating (i) used in the calendar month.

"M_r" means the total mass (kg) of solvent recovered for a calendar month.

"M_{si}" means the mass (kg) of coating solids applied in each coating (i) used in the calendar month as measured by the reference method specified in § 60.446(a) or by the coating manufacturer's formulation data.

"Q_{aj}" means the volumetric flow rate of each effluent gas stream (j) exiting the emission control device, in dry standard cubic meters per second.

"Q_{bi}" means the volumetric flow rate of each effluent gas stream (i) entering the emission control device, in dry standard cubic meters per second.

"Q_{ak}" means the volumetric flow rate of each effluent gas stream (k) emitted to the atmosphere, in dry standard cubic meters per second.

"R" means the overall VOC emission reduction achieved for a calendar month (in percent).

"R_q" means the required overall VOC emission reduction (in percent).

§ 60.442 Standard for volatile organic compounds.

(a) On and after the date on which the performance test required by § 60.8 has been completed each owner or operator subject to this subpart shall—

(1) Cause the discharge into the atmosphere from an affected facility not more than 0.20 kg VOC/kg of coating solids applied as calculated on a weighted average basis for one calendar month; or

(2) Demonstrate for each affected facility:

(i) A 90 percent overall VOC emission reduction as calculated over a calendar month; or

(ii) The percent overall VOC emission reduction specified in § 0.443(b) as calculated over a calendar month.

(b) Any coating line which causes the discharge into the atmosphere of not more than 125 kilograms of VOC per day and 15 megagrams of VOC per year is not considered an affected facility and is not therefore subject to the emission limits of § 60.442(a). If either the 125 kilogram per day limit or the 15 megagram per year limit are exceeded, the coating line shall become an affected facility and will be subject to § 60.442(a) and all its associated subparts.

§ 60.443 Compliance provisions.

(a) To determine compliance with § 60.442(1), the owner or operator of the affected facility shall calculate a weighted average of the mass of solvent used per mass of coating solids applied for a one calendar month period according to the following procedures:

(1) Measure the VOC content (kg VOC/kg coating solids applied) of all coatings applied using the reference method specified in § 60.446(a) of this subpart or by using the coating manufacturer's formulation data.

(2) Compute the weighted average by the following equation:

$$G = \frac{\sum_{i=1}^{n} (M_{oi} \times M_{si})}{\sum_{i=1}^{n} M_{si}}$$

(3) For each affected facility where the value of G is less than or equal to 0.20 kg VOC per kg of coating solids applied, the affected facility is in compliance with § 60.442(a)(1).

(b) To determine compliance with § 60.442(a)(2), the owner or operator shall calculate the required overall VOC emission reduction according to the following equation:

$$R_q = \left(\frac{G - 0.20}{G} \right) \times 100$$

If R_q is less than or equal to 90 percent, then the required overall VOC emission reduction is R_q. If R_q is greater than 90 percent, than the required overall VOC emission reduction is 90 percent.

(c) Where compliance with the emission limits specified in § 60.442(a)(2) is achieved through the use of a solvent recovery system, the owner or operator shall determine the overall VOC emission reduction for a one calendar month period by the following equation:

$$R = \left[\frac{M_r}{\sum_{i=1}^{n} (M_{oi} \times M_{si})} \right] \times 100$$

If the R value is equal to or greater than the R_q value specified in § 60.443(b), then compliance with § 60.442(a)(2) is demonstrated.

(d) Where compliance with the emission limit specified in § 60.442(a)(2) is achieved through the use of a solvent destruction device, the owner or operator shall determine calendar monthly compliance by comparing the monthly required overall VOC emission reduction specified in § 60.443(b) to the overall VOC emission reduction demonstrated in the most recent performance test which complied with § 60.442(a)(2). If the monthly required overall VOC emission reduction is less than or equal to the overall VOC reduction of the most recent performance test, the affected facility is in compliance with § 60.442(a)(2).

(e) Where compliance with § 60.442(a)(2) is achieved through the use of a solvent destruction device, the owner or operator shall continuously record the destruction device combustion temperature during coating operations for thermal incineration destruction devices or the gas temperature upstream and downstream of the incinerator catalyst bed during coating operations for catalytic incineration destruction devices. For thermal incineration destruction devices the owner or operator shall report all three hour periods (during actual coating operations) during which the average temperature of the device is more than 28C° (50F°) below the average temperature of the device during the most recent performance test complying with § 60.442(a)(2). For catalytic incineration destruction devices, the owner or operator shall report all three hour periods (during actual coating operations) during which the average temperature of the device immediately before the catalyst bed is more than 28C°(50F°) below the average temprature of the device during the most recent performance test complying with § 60.442(a)(2), and all three hour periods (during actual coating operations) during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test complying with § 60.442(a)(2).

(f) After the initial performance test required for all affected facilities under § 60.8, compliance with the VOC emission limitation and percentage reduction requirements under § 60.442 is based on the average emission reduction for one calendar month. A separate performance test is completed at the end of each calendar month after the initial performance test, and a new calendar month's average VOC emission reduction is calculated to show compliance with the standard.

(g) If a common emission control device is used to recover or destruct solvent from more than one affected facility, the performance of that control device is assumed to be equal for each of the affected facilities. Compliance with § 60.442(a)(2) is determined by the methods specified in § 60.443(c) and § 60.443(e) and is performed simultaneously on all affected facilities.

(h) If a common emission control device is used to recover solvent from an existing facility (or facilities) as well as from an affected facility (or facilities), the overall VOC emission reduction for the affected facility (or facilities), for the purpose of compliance, shall be determined by the following procedures:

(1) The owner or operator of the existing facility (or facilities) shall determine the mass of solvent recovered for a calendar month period from the existing facility (or facilities) prior to the connection of the affected facility (or facilities) to the emission control device.

(2) The affected facility (or facilities) shall then be connected to the emission control device.

(3) The owner or operator shall determine the total mass of solvent recovered from both the existing and affected facilities over a calendar month period. The mass of solvent determined in paragraph (h) (1) of this section from the existing facility shall be subtracted from the total mass of recovered solvent to obtain the mass of solvent recovered from the affected facility (or facilities). The overall VOC emission reduction of the affectcd facility (or facilities) can then be determined as specified in § 60.443(c).

(i) If a common emission control device is used to destruct solvent from an existing facility (or facilities) as well as from an affected facility (or facilities), the overall VOC emission reduction for the affected facility (or facilities), for the purpose of compliance, shall be determined by the following procedures:

(1) The owner or operator shall operate the emission control device with both the existing and affected facilities connected.

(2) The concentration of VOC (in parts per million by volume) after the common emission control device shall be determined as specified in § 60.444(c). This concentration is used in the

(3) Determine the performance of the solvent destruction device by the following procedures:

recovery device shall maintain a calendar month record of the amount of solvent applied in the coating at each affected facility.

(c) The owner or operator of an affected facility controled by a solvent

§ 60.446 Test methods and procedures.

(a) The VOC content per unit of coating solids applied and compliance with § 60.442(a)(1) shall be measured by either Reference Method 24 or

amount of the solvent applied in the coating for each operating day. Every fourth quarter the yearly amount of solvent applied in the coating shall be reported.

(2) The concentration of VOC (in parts per million by volume) after the common emission control device shall be determined as specified in § 60.444(c). This concentration is used in the calculation of compliance for both the existing and affected facilities.

(3) The volumetric flow out of the common control device attributable to the affected facility (or facilities) shall be calculated as a weighted average of the volumetric flows into the control device from the affected facility (or facilities) and the existing facility (or facilities). Compliance is determined by the use of the equation specified in § 60.444(c).

§ 60.444 Performance test procedures.

(a) The performance test for affected facilities complying with § 60.442(a) without the use of add-on controls shall be identical to the procedures specified in 60.443(a).

(b) The performance test for affected facilities controlled by a solvent recovery device shall be conducted as follows:

(1) The performance test will consist of one calendar month run and not the average of three runs as specified in § 60.8(f).

(2) The weighted average mass of VOC per mass of coating solids applied for a one calendar month period shall be determined as specified in § 60.443(a)(1) and § 60.443(a)(2).

(3) Calculate the required overall VOC emission reduction as specified in § 60.443(b).

(4) Inventory solvent usage and solvent recovery for a one calendar month period.

(5) Determine the performance of the solvent recovery device as specified in § 60.443(c).

(c) The performance test for affected facilities controlled by a solvent destruction device shall be conducted as follows:

(1) The weighted average mass of VOC per mass of coating solids applied for a one calendar month period shall be determined as specified in § 60.443(a)(1) and § 60.443(a)(2).

(2) Calculate the requried overall VOC emission reduction as specified in § 60.443(b).

(3) Determine the performance of the solvent destruction device by the following procedures:

$$R = \left[\frac{\sum_{i=1}^{n} (Q_{bi} \times C_{bi}) - \sum_{j=1}^{m} (Q_{aj} \times C_{aj})}{\sum_{r=1}^{n} (Q_{br} \times C_{br}) + \sum_{k=1}^{l} (Q_{fk} \times C_{fk})} \right] \times 100$$

(i) The owner or operator of the affected facility shall construct the overall VOC emission reduction system so that all volumetric flow rates and total VOC emissions can be accurately determined by the applicable test methods and procedures specified in § 60.446(b).

(ii) The owner or operator of an affected facility shall construct a temporary total enclosure around the coating line applicator and flashoff area during the performance test for the purpose of capturing fugitive VOC emissions. If a permanent total enclosure exists in the affected facility prior to the performance test and the Administrator is satisfied that the enclosure is totally capturing fugitive VOC emissions, then no additional total enclosure will be required for the performance test.

(iii) For each affected facility where the value of R is greater than or equal to the value of R_s calculated in § 60.443(b), compliance with § 60.442(a)(2) is demonstrated.

(iv) The performance of the solvent destruction device shall be determined by averaging the results of three runs as specified in § 60.8(f).

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.445 Monitoring of operations and recordkeeping.

(a) The owner or operator of an affected facility subject to this subpart shall maintain a calendar month record of all coatings used and the results of the reference test method specified in § 60.446(a) or the manufacturer's formulation data used for determining the VOC content of those coatings.

(b) The owner or operator of an affected facility controlled by a solvent recovery device shall maintain a calendar month record of the amount of solvent applied in the coating at each affected facility.

(c) The owner or operator of an affected facility controled by a solvent recovery device shall install, calibrate, maintain, and operate a monitoring device for indicating the cumulative amount of solvent recovered by the device over a calendar month period. The monitoring device shall be accurate within ±2.0 percent. The owner or operator shall maintain a calendar month record of the amount of solvent recovered by the device.

(d) The owner or operator of a coating line operating at the conditions specified in § 60.442(b) shall maintain a daily and yearly record of the amount of solvent applied in the coating at the facility.

(e) The owner or operator of an affected facility controlled by a thermal incineration solvent destruction device shall install, calibrate, maintain, and operate a monitoring device which continuously indicates and records the temperature of the solvent destruction device's exhaust gases. The monitoring device shall have an accuracy of the greater of ±0.75 percent of the temperature being measured expressed in degrees Celsius or ±2.5°C.

(f) The owner or operator of an affected facility controlled by a catalytic incineration solvent destruction device shall install, calibrate, maintain, and operate a monitoring device which continuously indicates and records the gas temperature both upstream and downstream of the catalyst bed.

(g) The owner or operator of an affected facility controlled by a solvent destruction device which uses a hood or enclosure to capture fugitive VOC emissions shall install, calibrate, maintain, and operate a monitoring device which continuously indicates that the hood or enclosure is operating. No continuous monitor shall be required if the owner or operator can demonstrate that the hood or enclosure system is interlocked with the affected facility's oven recirculation air system.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.446 Test methods and procedures.

(a) The VOC content per unit of coating solids applied and compliance with § 60.442(a)(1) shall be measured by either Reference Method 24 or manufacturers' formulation data. In the event of any inconsistency between a Method 24 test and manufacturers' formulation data, a Method 24 test will govern. The Administrator may require an owner or operator to perform Method 24 tests during such months as he deems appropriate.

(1) For Reference Method 24, the coating sample must be a one liter sample taken at a point which will be representative of the coating applied to the web substrate. The one liter sample is to be divided into three aliquots for triplicate analyses.

(b) Reference Method 25 shall be used to determine the VOC concentration, in parts per million by volume, of each effluent gas stream entering and exiting the solvent destruction device or its equivalent, and each effluent gas stream emitted directly to the atmosphere. Reference Methods 1, 2, 3, and 4 shall be used to determine the sampling location, volumetric flow rate, molecular weight, and moisture of all sampled gas streams. For Reference Method 25, the sampling time for each of three runs must be at least one hour. The minimum sampling volume must be 0.003 dscm except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Administrator.

(c) If the owner or operator can demonstrate to the Administrator's satisfaction that testing of representative stacks yields results comparable to those that would be obtained by testing all stacks, the Administrator will approve testing of representative stacks on a case-by-case basis.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.447 Reporting requirements.

(a) For all affected facilities, the performance test data from the initial performance test are submitted to the Administrator.

(b) The owner or operator of a coating line operated at the conditions specified in § 60.442(b) shall report the total amount of the solvent applied in the coating for each operating day. Every fourth quarter the yearly amount of solvent applied in the coating shall be reported.

(c) For affected facilities complying with § 60.442 without solvent recovery or solvent destruction devices the weighted average VOC content for each calendar month as specified in § 60.443(a)(2) shall be reported to the Administrator.

(d) For all affected facilities complying with § 60.442 by using a solvent recovery device, the following information shall be reported to the Administrator for each calendar month.

(1) The required overall emission reduction specified in § 60.443(b).

(2) The demonstrated overall emission reduction as specified in § 60.443(c).

(e) For all affected facilities complying with § 60.442 by using a solvent destruction device, the following information shall be reported to the Administrator for each calendar month.

(1) The required overall emission reduction specified in § 60.443(b).

(2) The overall emission reduction demonstrated during the most recent performance test which complied with § 60.442.

(3) All periods of temperature drop as defined under § 60.443(f).

(f) The owner or operator of an affected facility shall submit the written reports required under paragraphs (a) and (b) of this section to the Administrator for every calendar quarter. All quarterly reports shall be postmarked by the 30th day following the end of each calendar quarter.

(g) The owner or operator of an affected facility shall submit the written reports required under paragraphs (c), (d), and (e) of this section to the Administrator within ten days following the end of the calendar month being reported only if:

(1) The emissions limits of § 60.442 were exceeded during the calendar month; or

(2) Temperature drops as defined under § 60.443(f) occurred during the calendar month.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

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Part IX

Department of Education

Office of the Secretary

Nomenclature and Technical Amendments

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Subtitle A and Subtitle B, Chapters I–VII

Accordingly, 34 CFR Parts 75 through 796 inclusive are amended as follows:

1. Title 34 CFR, Subtitle A is amended by adding the following note after each of the following sections: 75.734, 75.741,

Office of Elementary and Secondary Education—Continued

34 CFR Part	Old CFDA No	New CFDA No.
215	13 433	84 014

Office of Vocational and Adult Education—Continued

34 CFR Part	Old CFDA No.	New CFDA No.
432	13 579	84 093

Office of Educational Research and Improvement—Continued

34 CFR Part	Old CFDA No.	New CFDA No.
718	13 950	84 117

§ 75.591 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation of the program by the Secretary.

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Subtitle A and Subtitle B, Chapters I–VII

Nomenclature and Technical Amendments

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: This document makes nomenclature and technical amendments in regulations transferred to Title 34 of the Code of Federal Regulations. These changes are necessary to update the Code of Federal Regulations to reflect the shift of responsibility for these programs to the Department of Education.

EFFECTIVE DATE: December 30, 1980.

FOR FURTHER INFORMATION CONTACT: A. Neal Shedd, Director, Division of Regulations Management, 400 Maryland Avenue, S.W., Room 2129, Washington, D.C. 20202. Telephone: (202) 245–7091.

SUPPLEMENTARY INFORMATION: The Department of Education (ED) published on November 21, 1980, at 45 FR 77368, a final rule for the transfer and redesignation of ED regulations in Title 34 of the Code of Federal Regulations.

This final rule makes the specific and general nomenclature and technical amendments necessary in the regulations redesignated on November 21, 1980, as well as specific amendments correcting Part 106, published on May 9, 1980 at 45 FR 30955. Specific changes are listed before general changes. All changes are made in the order that they appear in the list. Unless otherwise specified, general changes apply to 34 CFR Parts 75 through 796 inclusive.

The publication of this document as a proposed rule for public comment is unnecessary because it contains only the nomenclature and technical amendments described above. No substantive changes are made in the regulations.

(Department of Education Organization Act, Pub. L. 96–88, Oct. 17, 1979, 93 Stat. 668 (20 U.S.C. 3401 *et. seq.*))

(Catalog of Federal Domestic Assistance Number not applicable.)

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

Accordingly, 34 CFR Parts 75 through 796 inclusive are amended as follows:

1. Title 34 CFR, Subtitle A is amended by adding the following note after each of the following sections: 75.734, 75.741, 76.101, 76.103, 76.301, 76.401, 76.705, 76.706, 76.734, 76.741, 76.783, and 99.1: (Note: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extent the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.)

1a. The undesignated introductory material preceding Part 75 is removed.

2. Wherever they appear in 34 CFR Part 75, the following terms are changed to "the Secretary" in the order listed:

Old nomenclature	*New nomenclature*
Each appropriate official of the Education Division	the Secretary
The Appropriate official of the Education Division	the Secretary
The Appropriate official	the Secretary
The official	the Secretary.

2a. The following table lists the part number for Title 34 of the Code of Federal Regulations, the prior Catalog of Federal Domestic Assistance (CFDA) number, and the new CFDA number effective on September 15, 1980. The part numbers are listed in order by the ED Staff Offices. Parts 75 and 76 are amended by changing all references to the old CFDA numbers in accordance with the table.

Office of Elementary and Secondary Education

34 CFR Part	Old CFDA No.	New CFDA No.
200	13.428	84.009
201	13.430	84.012
203	13.431	84.013
204	13.429	84.011
208	13.486	84.043
211	13.577	84.092

Office of Elementary and Secondary Education—Continued

34 CFR Part	Old CFDA No.	New CFDA No.
215	13.433	84.014
218	13.477	84.040
219	13.477	84.040
220	13.478	84.041
221	13.477	84.040
222	13.478	84.041
240	13.410	84.006
241	13.591	84.103
250	13.534	84.060
251	13.534	84.060
252	13.551	84.072
253	13.535	84.061
254	13.536	84.062
255	13.551	84.072
256	13.535	84.061
257	13.535	84.061
258	13.551	84.072
259	13.535	84.061
260	13.536	84.062
261	13.536	84.062
262	13.536	84.062
263	13.569	84.087
270	13.405	84.004
280	13.531	84.143
	13.532	84.057
	13.685	84.106
	13.686	84.107
	13.687	84.108
	13.689	84.110
296	13.554	84.074

Office of Special Education and Rehabilitative Services

34 CFR Part	Old CFDA No.	New CFDA No.
300	13.449	84.027
301	13.449	84.027
302	13.427	84.012
305	13.450	84.028
307	13.445	84.025
309	13.444	84.024
315	13.567	84.086
318	13.451	84.029
320	13.446	84.026
324	13.443	84.023
338	13.560	84.078
330	13.446	84.026
331	13.446	84.026
332	13.446	84.026
333	13.446	84.026
345	13.562	84.080
346	13.562	84.080
347	13.562	84.080
361	13.624	84.126
362	13.628	84.128
	13.629	84.129

Office of Vocational and Adult Education

34 CFR Part	Old CFDA No.	New CFDA No.
400	13.493	84.048
	13.494	84.049
	13.495	84.050
	13.499	84.052
408	13.498	84.051
	13.588	84.101
425	13.400	84.002
426	13.400	84.002
431		84.116
432	13.692	84.113

Office of Vocational and Adult Education—Continued

34 CFR Part	Old CFDA No.	New CFDA No.
402	13.579	84.093
		84.093
440	13.563	84.081
441	13.563	84.081
442	13.563	84.081
443	13.563	84.081
444	13.563	84.081

Office of Bilingual Education and Minority Languages Affairs

34 CFR Part	Old CFDA No.	New CFDA No.
500	13.403	84.003
501	13.403	84.003
502	13.403	84.003
503	13.403	84.003
504	13.403	84.003
505	13.403	84.003
510	13.403	84.003
514	13.403	84.003
515	13.403	84.003
520	13.403	84.003
525	13.558	84.077
526	13.588	84.099
527	13.587	84.100
537	13.545	84.068

Office of Postsecondary Education

34 CFR Part	Old CFDA No.	New CFDA No.
605	13.550	84.071
606	13.585	84.098
610	13.491	84.016
614		84.142
617	13.457	
	13.458	
	13.459	
	13.593	
	13.594	
621	13.453	84.135
624	13.454	84.031
629	13.540	84.064
631	13.510	84.055
639		84.097
643	13.488	84.044
644	13.543	84.066
645	13.492	84.047
646	13.582	84.096
647	13.631	84.112
648	13.580	84.094
649	13.555	84.075
650	13.567	84.085
655	13.436	84.017
662	13.438	84.019
	13.439	84.020
	13.440	84.021
	13.441	84.022
667	13.581	84.095
674	13.470	84.037
	13.471	84.038
675	13.463	84.033
676	13.418	84.007
682	13.460	84.032
686	13.548	84.069
690	13.539	84.063
692	13.539	84.063
695	13.582	84.096

Office of Educational Research and Improvement

34 CFR Part	Old CFDA No.	New CFDA No.
700		84.117
701		84.117
702		84.117
703	13.950	84.117
705		84.117
708	13.950	84.117
710	13.950	84.117
714	13.950	84.117
716	13.950	84.117

Office of Educational Research and Improvement—Continued

34 CFR Part	Old CFDA No.	New CFDA No.
718	13.950	84.117
720	13.950	84.117
726	13.922	84.114
730	13.925	84.116
740	13.420	84.008
745	13.565	84.083
752	13.561	84.079
753	13.568	84.084
755	13.564	84.082
757	13.693	84.123
758	13.522	
765	13.544	84.067
766	13.599	84.105
767	13.599	84.105
768	13.599	84.105
769	13.549	84.070
770	13.464	84.034
	13.465	84.035
773	13.406	84.005
774	13.570	84.088
	13.571	84.084
		84.089
776	13.468	84.036
777	13.475	84.039
778	13.576	84.091
790		84.124
793	13.489	84.045
795	13.950	84.117
796	13.553	84.073

PART 75—DIRECT PROTECT GRANT AND CONTRACT PROGRAMS

§ 75.100 [Amended]

3. Section 75.100 is amended by removing the note following the citation of authority for the section.

4. Section 75.220 is amended by revising paragraph (b)(3) to read as follows:

§ 75.220 Procedures the Department uses under § 75.219(a).

* * * * *

(b) * * *

(3) A Department employee who is not a program officer of the program but who is qualified to evaluate the application.

* * * * *

5. Section 75.221 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 75.221 Procedures the Department uses under § 75.219(b).

* * * * *

(b) * * *

(1) * * *

(iii) A Department employee who is not a program officer for any of the programs under which the applicant wants funds but who is qualified to review the application.

* * * * *

6. Section 75.59 is revised to read as follows:

§ 75.591 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation of the program by the Secretary.

(20 U.S.C. 1226c, 1231a)

7. Section 75.620 is amended by revising paragraph (b) to read as follows:

§ 75.620 General conditions on publication.

* * * * *

(b) *Required Statement.* The grantee shall ensure that any publication that contains project materials also contains the following statements:

"The contents of this (insert type of publication; e.g., book, report, film) were developed under a grant from the Department of Education. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government."

(20 U.S.C. 3474)

8. Section 75.626 is amended by revising paragraph (a) to read as follows:

§ 75.626 Show Federal support; give papers to vest title.

(a) Any patent application filed by a grantee for an invention made under a grant must include the following statement in the first paragraph:

"The invention described in this application was made under a grant from the Department of Education."

* * * * *

9. Section 75.720 is amended by revising paragraph (b) to read as follows:

§ 75.720 Financial and performance reports.

* * * * *

(b) A grantee shall submit these reports annually, unless the Secretary allows less frequent reporting. However, the Secretary may require a grantee of the National Institute of Education to submit performance reports more often than annually.

* * * * *

10. Section 75.901 is amended by removing and reserving paragraph (a), removing paragraph (c), and revising paragraph (b) to read as follows:

§ 75.901 Suspension and termination.

(a) [Reserved]

(b) The Secretary may use the Education Appeal Board to resolve disputes that are not subject to other procedures. Cross-reference: See the following sections in Part 74:

(1) Section 74.113 (Violation of terms).
(2) Section 74.114 (Suspension).
(3) Section 74.115 (Termination).
(4) The last sentence of § 74.73(c) (Financial reporting after a termination).

definitions in Part 74 of this title apply to the regulations in Title 34 of the Code of Federal Regulations. The section of Part 74 that contains the definition is given in parentheses.

20. Section 200.1 is amended by revising paragraph (b) to read as follows:

PART 200—FINANCIAL ASSISTANCE

25. Section 208.10 is amended by revising paragraph (e) to read as follows:

PART 208—STRENGTHENING STATE

PART 221—ASSISTANCE FOR SCHOOL CONSTRUCTION IN AREAS AFFECTED BY FEDERAL ACTIVITIES

28. Section 221.64 is amended by

this title" to "45 CFR Part 70" and "§ 70.4 of this title" to "45 CFR 70.4".

§ 361.151 [Amended]

34. Section 361.151(f) is amended by

(1) Section 74.113 (Violation of terms).
(2) Section 74.114 (Suspension).
(3) Section 74.115 (Termination).
(4) The last sentence of § 74.73(c) (Financial reporting after a termination).
(5) Section 74.112 (Amounts payable to the Federal Government).

(20 U.S.C. 1221e-3(a)(1))

§ 75.902 [Removed]

11. Section 75.902 is removed.

12. Section 75.903 is amended by revising paragraph (c) to read as follows:

§ 75.903 Effective date of termination.

* * * * *

(c) The date of a final decision of the Secretary under Part 78 of this title.

(20 U.S.C. 3474)

PART 76—STATE-ADMINISTERED PROGRAMS

13. Section 76.591 is revised to read as follows:

§ 76.591 Federal evaluation—cooperation by a grantee.

A State and subgrantee shall cooperate in any evaluation of a program by the Secretary.

(20 U.S.C. 1226c, 1231a, 3474)

14. Section 76.600 is amended by revising paragraph (b) to read as follows:

§ 76.600 Where to find construction regulations.

* * * * *

(b) The State shall perform the functions that the Secretary performs under §§ 75.602 (Preservation of historic sites) and 75.605 (Approval of drawings and specifications) of this title.

* * * * *

15. The title of Part 77 is revised to read as follows:

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

16. Section 77.1 is amended by removing and reserving paragraph (a), removing the definition of "HEW" from paragraph (b) and the definitions of "Appropriate official of the Education Division," "Assistant Secretary," "Commissioner," and "Education Division" from paragraph (c), and revising the introductory text and indicated terms in paragraphs (b) and (c) to read as follows:

§ 77.1 Definitions that apply to all Department programs.

(a) [Reserved]

(b) Unless a statute or regulation provides otherwise, the following definitions in Part 74 of this title apply to the regulations in Title 34 of the Code of Federal Regulations. The section of Part 74 that contains the definition is given in parentheses.

* * * * *

(c) Unless a statute or regulation provides otherwise, the following definitions also apply to the regulations in this title:

* * * * *

"Department" means the U.S. Department of Education.

* * * * *

"ED" means the U.S. Department of Education.

"EDGAR" means the Education Department General Administrative Regulations (34 CFR Parts 74, 75, 76, 77, and 78).

* * * * *

"Secretary" means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

* * * * *

§ 77.2 [Removed]

17. Section 77.2 is removed.

PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

§ 106.4 [Amended]

(a) In § 106.4 paragraph (a) is revised by changing the reference "§86.3(a)" to read "§ 106.3(a)".

18. Section 106.11 is revised to read as follows:

§ 106.11 Application.

Except as provided in this subpart, this Part 106 applies to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

19. Section 106.15 is amended by revising paragraph (b) to read as follows:

§ 106.15 Admissions.

* * * * *

(b) *Administratively separate units.* For the purposes only of this section, §§ 106.16 and 106.17, and Subpart C, each administratively separate unit shall be deemed to be an educational institution.

* * * * *

20. Section 200.1 is amended by revising paragraph (b) to read as follows:

PART 200—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES AND STATE AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED, HANDICAPPED, MIGRANT, AND NEGLECTED AND DELINQUENT CHILDREN—GENERAL PROVISIONS

§ 200.1 Applicability.

* * * * *

(b) *Education Department General Administrative Regulations.* Assistance provided under this part is subject to Parts 76 and 77 of this title.

* * * * *

§ 200.2 [Amended]

21. In § 200.2 paragraph (b) is amended by removing the word "Commissioner" from the list of terms.

22. Section 201.1 is amended by revising paragraph (b) to read as follows:

PART 201—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED AND NEGLECTED AND DELINQUENT CHILDREN

§ 201.1 Applicability.

* * * * *

(b) Assistance under this part is subject to the Educational Department General Administrative Regulations in Parts 76 and 77 of this title.

* * * * *

PART 204—GRANTS TO STATE EDUCATIONAL AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF MIGRATORY CHILDREN

23. Section 204.12 is amended by revising paragraph (b)(12) to read as follows:

§ 204.12 What provisions are required in a State's annual program plan?

* * * * *

(b) * * *

(12) *Monitoring and enforcement.* An SEA shall include in its plan a monitoring and enforcement plan (in the format prescribed by the Secretary) or an appropriate reference to a currently approved plan on file with the Secretary.

* * * * *

24. In § 208.4 paragraph (b) is amended by removing "Commissioner" from the list of defined terms.

25. Section 208.10 is amended by revising paragraph (e) to read as follows:

PART 208—STRENGTHENING STATE EDUCATIONAL AGENCY MANAGEMENT

§ 208.10 State plan.

* * * * *

(e) The SEA may submit amendments to its title V–B State plan so long as they conform to the requirements for amendments in Parts 75 or 76 of this title, whichever is applicable.

(20 U.S.C. 3162 and 30964 (a)(12))

PART 209—ADMINISTRATION OF EDUCATION PROGRAMS AND DUTIES OF THE STATE EDUCATIONAL AGENCY

26. In § 209.4 paragraph (b) is amended by removing "Commissioner" from the list of defined terms.

27. Section 219.1 is amended by revising paragraph (c) to read as follows:

PART 219—SCHOOL CONSTRUCTION ASSISTANCE IN CASES OF CERTAIN DISASTERS

§ 219.1 Definitions.

* * * * *

(c) "Disaster review team" means a group comprised of representatives of the Department, Office of Facilities Engineering and Property Management, the State educational agency (when available), and local educational agencies.

(20 U.S.C. 646)

* * * * *

PART 220—ASSISTANCE FOR CURRENT SCHOOL EXPENDITURES IN CASES OF CERTAIN DISASTERS

27a. Section 220.1 is amended by revising paragraph (d) to read as follows:

§ 220.1 Definitions.

* * * * *

(d) "Disaster review team" means a group comprised of representatives of the Department, Office of Facilities Engineering and Property Management, the State educational agency (when available), and local educational agencies.

(20 U.S.C. 2141–1(a))

* * * * *

PART 221—ASSISTANCE FOR SCHOOL CONSTRUCTION IN AREAS AFFECTED BY FEDERAL ACTIVITIES

28. Section 221.64 is amended by revising paragraph (b) to read as follows:

§ 221.64 Disposal of federally owned temporary school facilities provided under section 9.

* * * * *

(b) The Secretary may, as appropriate, declare temporary school facilities surplus to the needs of the local educational agency and may dispose of the facilities.

(20 U.S.C. 639)

29. Part 221, Appendix A, paragraph (a)(1) of section 2.7 is amended by removing the words "of the Department of Health, Education, and Welfare".

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

§ 222.70 [Amended]

29a. Section 222.70 is amended by revising the references in paragraph (a) as follows:
Change "45 CFR Part 84 ff" to "34 CFR Part 104 ff".
Change "45 CFR Part 121 ff" to "34 CFR Part 300 ff".
Change "45 CFR Part 116" to "34 CFR Part 200".

30. Section 222.83 is amended by revising paragaph (c) to read as follows:

§ 222.83 Monitoring.

* * * * *

(c) If the Department has already audited an applicant's section 5(e) program or project, it is not expected that the State educational agency would audit the same program or project.

* * * * *

31. In Parts 361, 362, 369, and 370 the phrase "Rehabilitation Services Administration" is changed to "Department", *except* in sections 361.86(c)(2) and 370.2(a).

PART 361—THE STATE VOCATIONAL REHABILITATION PROGRAM

§ 361.1 [Amended]

32. Section 361.1 is amended by removing paragraphs (e), (v), and (hh).

§ 361.15 [Amended]

33. Section 361.15(b) is amended by changing the references to "Part 70 of this title" to "45 CFR Part 70" and "§ 70.4 of this title" to "45 CFR 70.4".

§ 361.151 [Amended]

34. Section 361.151(f) is amended by changing the reference to "Part 46 of this title" to "45 CFR Part 46".

PART 362—PROJECT GRANTS AND OTHER ASSISTANCE IN VOCATIONAL REHABILITATION

§ 362.1 [Amended]

35. In § 362.1 paragraph (a) is amended by removing "Commissioner", "Department", and "Secretary" from the list of defined terms.

§ 362.14 [Removed]

36. Section 362.14 is removed.

§ 362.19 [Amended]

37. Section 362.19 is amended by changing "Assistant Secretary for Health, Department of Health, Education, and Welfare" to "Secretary."

§ 362.24 [Amended]

38. Section 362.24 is amended by changing the reference to "Part 46 of this title" to "45 CFR Part 46."

PART 369—VENDING FACILITY PROGRAM FOR THE BLIND ON FEDERAL AND OTHER PROPERTY

§ 369.1 [Amended]

39. Section 369.1 is amended by removing and reserving paragraphs (e) and (r).

40. Section 526.612 is amended by revising paragraph (b) to read as follows:

§ 526.612 Eligible programs.

* * * * *

(b) In-service and developmental programs designed to enable instructional and ancillary personnel to continue to improve their qualifications while participating in bilingual vocational training programs; fellowships or traineeships for persons engaged in activities described in paragraphs (a) and (b) of this section are an allowable cost. A fellowship is an award to an individual student made by the Department. A traineeship is an award to an institution for student support (stipends or allowances) and for institutional support (either in a predetermined amount or based on actual costs).

(Secs. 186, 187; 20 U.S.C. 2416, 2417)

PART 537—INDOCHINA REFUGEE CHILDREN ASSISTANCE

§ 537.3 [Amended]

41. In § 537.3 paragraph (b) is

available funds, ED reserves the option to approve either a direct loan or a grant to a particular applicant.

* * * * *

PART 695—INCENTIVE GRANTS FOR STATE STUDENT FINANCIAL ASSISTANCE TRAINING PROGRAM

§ 695.8 State matching requirements.

PART 770—LIBRARY SERVICES, PUBLIC LIBRARY CONSTRUCTION, AND INTERLIBRARY COOPERATION

§ 770.3 [Amended]

60a. Section 770.3 is amended by

Old nomenclature—New nomenclature
Director—Secretary
Institute—Department
NIE—ED
National Institute of Education—Department.

65. Wherever it appears in Parts 75

I of the Vocational Education Act of 1963, as amended by section 202 of Title II of the Education Amendments of 1976, Pub. L. 94–482 (referred to as "the Act") may be used for making grants or contracts for bilingual vocational training programs.

PART 537—INDOCHINA REFUGEE CHILDREN ASSISTANCE

§ 537.3 [Amended]

41. In § 537.3 paragraph (b) is amended by removing "Commissioner" from the list of defined terms.

42. Section 537.4 is amended by revising paragraph (b) to read as follows:

§ 537.4 How does a State apply for funds?

* * * * *

(b) A State application, as required by section 205(a) of the Act and by Part 76 of this title.

(20 U.S.C. 1232d)

43. Section 603.4 is revised to read as follows:

PART 603—COMMISSIONER'S RECOGNITION PROCEDURES FOR NATIONAL ACCREDITING BODIES AND STATE AGENCIES

§ 603.4 Inclusion on list.

Any accrediting agency or association which desires to be listed by the Secretary as meeting the criteria set forth in § 603.6 should apply in writing to the Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, Department of Education, Washington, D.C. 20202.

(20 U.S.C. 1141(a))

44. Section 603.22 is revised to read as follows:

§ 603.22 Inclusion on list.

Any State agency which desires to be listed by the Secretary as meeting the criteria set forth in § 603.24 should apply in writing to the Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, Department of Education, Washington, D.C. 20202.

(20 U.S.C. 1087–1(b))

PART 614—COLLEGE HOUSING PROGRAMS ADMINISTERED BY THE DEPARTMENT OF EDUCATION

§ 614.1 [Amended]

45. Section 614.1 is amended by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

46. Section 614.4 is amended by revising paragraph (a) to read as follows:

§ 614.4 Applications.

(a) Applications will be received periodically and considered concurrently for both the direct loan and grant subsidy programs. In order to maintain flexibility in the allocation of available funds, ED reserves the option to approve either a direct loan or a grant to a particular applicant.

* * * * *

§ 614.60 [Amended]

47. Section 614.60 is amended by removing the definition of "Field Office".

§ 614.62 [Amended]

48. Section 614.62 is amended by changing "the appropriate HUD Field Office" and "the appropriate Field Office" to "ED" wherever they appear.

49. Part 614 is amended by removing and reserving Subparts B and C, reserving Subpart D, and by changing "HUD" to "ED" wherever it appears in Subparts A, E, and F.

50. Part 655, Appendix, Chapter II, paragraph (a) of section 1.2 is amended by changing the words "Office" to "Department" and "Bureau" to "Office".

PART 655—MODERN FOREIGN LANGUAGE AND AREA STUDIES

51. Part 655, Appendix, Chapter V, section 1.1 is amended by changing the reference to "41 CFR 3–4.5202–1(b)" to "41 CFR 34–4.5202–1(b)".

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAM

52. Part 675, Appendix B is amended by changing "Department of Health, Education, and Welfare" to "Department of Education" wherever it appears.

PART 682—GUARANTEED STUDENT LOAN PROGRAM

§ 682.200 [Amended]

53. Section 682.200 is amended by removing the definitions of "Commissioner", "Nonprofit institution", and "State".

54. Section 682.600 is amended by revising paragraph (a)(1) to read as follows:

§ 682.600 Participation agreement between an eligible school and the Secretary.

(a) * * *

(1) Establish its basic eligibility as an institution of higher education or vocational school, as defined in § 682.200, through certification by the Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, Department of Education; and

* * * * *

55. Section 695.8 is revised to read as follows:

PART 695—INCENTIVE GRANTS FOR STATE STUDENT FINANCIAL ASSISTANCE TRAINING PROGRAM

§ 695.8 State matching requirements.

The Federal funds expended under this part must be matched by an equal amount of State funds. In satisfying this matching requirement, the State is subject to Part 74 of this title. The matching must be from non-federal sources and may be cash or in kind. The State shall maintain supporting records to indicate the amount and sources of such matching.

(20 U.S.C. 1088b–3)

PART 700—GENERAL

§ 700.1 [Amended]

56. Section 700.1 is amended by removing the definitions of "Director" and "Institute".

57. Section 700.2 is amended by revising paragraph (a)(2) to read as follows:

§ 700.2 Regulations that apply to programs of the National Institute of Education.

(a) * * *

(2) The regulations in this Chapter VII.

* * * * *

58. Section 726.03 is amended by removing the definition of "Administrator."

59. Part 726 is amended by changing the term "Administrator" to "Secretary" wherever it appears.

60. Section 730.1 is revised to read as follows:

PART 730—SUPPORT FOR IMPROVEMENT OF POSTSECONDARY EDUCATION

§ 730.1 Purpose.

The purpose of the regulations in this part is to implement the provisions of Title X of the Higher Education Act of 1965, which provides for grants to, and contracts with, institutions of postsecondary education and other public and private educational institutions and agencies to improve postsecondary educational opportunities. The program is administered by the Fund for the Improvement of Postsecondary Education, a unit within the Office of the Assistant Secretary for Educational Research and Improvement of the Department of Education, with the advice of a Board of Advisors.

(20 U.S.C. 1135)

PART 770—LIBRARY SERVICES, PUBLIC LIBRARY CONSTRUCTION, AND INTERLIBRARY COOPERATION

§ 770.3 [Amended]

60a. Section 770.3 is amended by removing "Commissioner" from the list of defined terms.

61. Section 795.1 is amended by revising paragraph (a)(2) to read as follows:

PART 795—STATE DISSEMINATION GRANTS PROGRAM

§ 795.1 Regulations that apply to the State Dissemination Grants Program.

(a) * * *

(2) The general provisions for NIE grants in 34 CFR Parts 700–702.

* * * * *

62. Section 795.5 is amended by revising paragraphs (a)(7) and (b)(2) to read as follows:

§ 795.5 Types of awards; funding requirements.

(a) * * *

(7) Each application must show an SEA contribution, in funds or in kind, to be included from the commencement of the project, in accordance with 34 CFR Part 74.

(b) * * *

(2) Salary cost of regular SEA staff properly attributable to the carrying out of the project will be considered an in kind SEA contribution to the project, in accordance with Part 74 of this title.

* * * * *

63. Wherever they appear in the Parts 75 through 795 inclusive, excluding Parts 99, 100, 101, 104, and 106, the terms listed are changed as follows:

Old nomenclature—New nomenclature

U.S. Office of Education—Department
U.S.O.E.—ED
OE—ED
O.E.—ED
An Education Division—a Department
An Office of Education—a Department
Education Division General Administrative Regulations—Education Department General Administrative Regulations
Education Division—Department
Secretary of Health, Education, and Welfare—Secretary
Secretary of the Department of Health, Education, and Welfare—Secretary
Assistant Secretary for Education—Secretary
U.S. Commissioner of Education—Secretary
United States Commissioner of Education—Secretary
41 CFR Chapters 1 and 3—41 CFR Chapters 1 and 34.

64. Wherever they appear in 34 CFR Parts 700, 701, 702, 703, 705, 708, 710, 714, 716, 718, 720, and 795 the terms listed are changed as follows:

Old nomenclature—New nomenclature

Director—Secretary
Institute—Department
NIE—ED
National Institute of Education—Department.

65. Wherever it appears in Parts 75 through 796 inclusive, excluding Parts 99, 100, 101, 104, and 106, the term "Office of Education" is changed to "Department," except in: the *Comment* following § 300.303, § 662.12(d), § 662.22(d), § 662.32(c), § 662.42(c), Appendix D to Part 674, and the Appendix to Part 793.

66. Wherever it appears in Parts 75 through 796 inclusive, excluding Parts 99, 100, 101, 104, and 106, the term "Commissioner" is changed to "Secretary", except in the Appendix to Part 793.

67. Wherever it appears in Parts 75 through 795 inclusive, excluding Parts 99, 100, 101, 104, and 105, the term "HEW" is changed to "ED", except in § 215.2 where it is changed to "HHS".

68. Wherever it appears in the Parts 75 through 796 inclusive, excluding Parts 99, 100, 101, 104, and 106, the term "Commissioner of Education" is changed to "Secretary", except in the *Comment* following § 300.307.

69. The sections in former 45 CFR Part 105 which were redesignated as 34 CFR Parts 403, 525, 526, and 527 at 45 FR 77362 (November 21, 1980) are renumbered as follows:

Old sections—New sections

105.1–105.504 (Appendices A, B)—406.1–406.504 (Appendices A, B)
105.601–105.607—525.601–525.607
105.611–105.617—526.611–526.617
105.621–105.627—527.621–527.627.

70. An authority citation for 34 CFR Parts 525, 526, and 527 is added to read as follows:

Authority: Secs. 101–195 of Title II of Pub. L. 94–482 as further amended by Pub. L. 95–40 (20 U.S.C. 2301 to 2461), unless otherwise noted.

PART 525—BILINGUAL VOCATIONAL TRAINING PROGRAM

71. Section 525.601 is revised to read as follows:

§ 525.601 Purpose.

The purpose of the bilingual vocational training program is to prepare persons of limited English-speaking ability to perform adequately in an environment requiring English language skills and to fill the critical need for more and better trained persons in occupational categories vital to both the persons and the economy. Funds available to the Secretary pursuant to section 183 of Part B of Title I of the Vocational Education Act of 1963, as amended by section 202 of Title II of the Education Amendments of 1976, Pub. L. 94–482 (referred to as "the Act") may be used for making grants or contracts for bilingual vocational training programs.

(Sec. 181; 20 U.S.C. 2411; Conf. Rept. No. 94–1701, p. 228)

72. Section 526.611 is revised to read as follows:

PART 526—BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

§ 526.611 Purpose.

The purpose of the bilingual vocational instructor training program is to provide training programs to meet the critical shortage of instructors possessing both the job knowledge and skills and the dual language capabilities required for adequate instruction of persons handicapped by their limited English-speaking ability. Funds available to the Secretary pursuant to section 183 of Part B of Title I of the Vocational Education Act of 1963, as amended by section 202 of Title II of the Education Amendments of 1976, Pub. L. 94–482 (referred to as "the Act") may be used for making grants or contracts for bilingual vocational instructor training programs.

(Sec. 186; 20 U.S.C. 2416)

73. Section 527.621 is revised to read as follows:

PART 527—BILINGUAL VOCATIONAL INSTRUCTIONAL MATERIALS, METHODS, AND TECHNIQUES PROGRAM

§ 527.621 Purpose.

The purpose of the bilingual vocational instructional materials, methods, and techniques program is to develop instructional materials and encourage research programs and demonstration projects to meet the critical shortage of such instructional materials suitable for bilingual vocational training programs. Funds available to the Secretary pursuant to section 183 of Part B of Title I of the Vocational Educational Act of 1963, as amended by section 202 of Title II of the Education Amendments of 1976, Pub. L. 94–482 (referred to as "the Act") may be used for making grants or contracts for bilingual vocational instructional materials, methods, and techniques.

[FR Doc. 80–40420 Filed 12–23–80; 8:45 am]
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Part X

Department of Education

Educational Programs; Proposed Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 692

State Student Incentive Grant Program

Existing Regulations	Proposed Regulations
692.2 (All other definitions).	692.4.
692.3.	Deleted (covered by the statute).
692.4(a)–(c), (e)–(h), (j).	692.21.

PART 692—STATE STUDENT INCENTIVE GRANT PROGRAM

Subpart A—General

Sec.

692.1 What is the State Student Incentive

(c) The regulations in this Part 692.

(20 U.S.C. 1070c)

§ 692.4 What definitions apply to the State Student Incentive Grant Program?

The following definitions apply to the

(2) Increasing the size of grants.

(20 U.S.C. 1070c)

Subpart C—How Does a State Apply to Participate in This Program?

before the fiscal year in which the State first received funds under this program;

(h) Provides for State expenditures under the State program of an amount that is not less than—

DEPARTMENT OF EDUCATION

34 CFR Part 692

State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: These regulations simplify existing rules for the State Student Incentive Grant Program and incorporate statutory changes made by the Education Amendments of 1980.

DATES: All comments must be received on or before February 13, 1981.

ADDRESSES: Any comments on these proposed regulations should be addressed to Lanora G. Smith, Acting Chief, State Student Incentive Grant Program, Regional Office Building 3, Room 4004, 7th and D Streets, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Lanora G. Smith, telephone (202) 472-4265.

SUPPLEMENTARY INFORMATION: On September 14, 1977, final regulations for the State Student Incentive Grant Program were published in the Federal Register (45 CFR Part 192). The regulations were amended April 3, 1980 (45 FR 22542). On November 21, 1980, 45 CFR Part 192 was redesignated as 34 CFR Part 692. The Department proposes to simplify the language and requirements of the existing regulations, telescope initial and continuation awards into a single program, and otherwise conform the regulations to changes made by the Education Amendments of 1980 (Pub. L. 96-374). The following table shows where the existing regulations have been incorporated into the proposed regulations.

Existing Regulations	Proposed Regulations
(34 CFR Part 692—Formerly 45 CFR Part 192)	
§ 692.1.	692.1, 692.10
692.1-1.	692.3.
692.2 (Definitions of "continuation award", "cost of education", "dependent student", "expected family contribution of a dependent student", "expected family contribution of an independent or self-supporting student", "half-time student", "independent student", "initial award", "National of the United States", "undergraduate student")	Deleted
692.2 (All other definitions).	692.4.
692.3.	Deleted (covered by the statute).
692.4(a)-(c), (e)-(h), (j).	692.21.
692.4(d).	692.40.
692.4(i).	Deleted (covered by section 1203 of the Act).
692.5.	692.20(b).
692.6.	692.40.
692.7.	Deleted—See proposed 692.41.
692.8.	Deleted.
692.9.	692.21(h).
692.10.	692.21(g).

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. In developing final regulations for this program, the Department will consider all comments received on or before the 45th day after publication of this document.

All written comments submitted in response to the proposed regulations will be available for inspection, both during and after the comment period, in Room 4004, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Saturdays, Sundays, and Federal holidays.

Assessment of Educational Impact

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

Dated: December 22, 1980.

(Catalog of Federal Domestic Assistance Number 84.069; State Student Incentive Grant Program)

Shirley M. Hufstedler,

Secretary of Education.

The Secretary proposes to revise Part 692 of Title 34 of the Code of Federal Regulations to read as follows:

PART 692—STATE STUDENT INCENTIVE GRANT PROGRAM

Subpart A—General

Sec.

692.1 What is the State Student Incentive Grant Program?
692.2 Who is eligible to participate in the State Student Incentive Grant Program?
692.3 What regulations apply to the State Student Incentive Grant Program?
692.4 What definitions apply to the State Student Incentive Grant Program?

Subpart B—What Does the Department Assist Under This Program?

692.10 For what purposes may a State use its payments under this program?

Subpart C—How Does a State Apply to Participate in This Program?

692.20 What agreement must a State have with the Secretary?
692.21 What requirements must be met by a State program?

Subpart D [Reserved]

Subpart E—How Does a State Select Students for Grants?

692.40 What are the requirements for student eligibility?
692.41 What standards may a State use to determine substantial financial need?

AUTHORITY: Secs. 415A-415D of Title IV of the Higher Education Act of 1965, as amended, 83 Stat. 255, 90 Stat. 2094, 91 Stat 218, 94 State. 1406-1407 (20 U.S.C. 1070c-1070c-3), unless otherwise noted.

Subpart A—General

§ 692.1 What is the State Student Incentive Grant Program?

The State Student Incentive Grant Program assists States that provide grants to eligible students who attend institutions of higher education and have substantial financial need.

(20 U.S.C. 1070c-1070c-3)

§ 692.2 Who is eligible to participate in the State Student Incentive Grant Program?

(a) *State participation.* A State that meets the requirements in §§ 692.20-692.21 is eligible to receive payments under this program.

(b) *Student participation.* A student who meets the requirements of § 692.40 is eligible to receive a grant from a State under this program.

(20 U.S.C. 1070c-1)

§ 692.3 What regulations apply to the State Student Incentive Grant Program?

The following regulations apply to the State Student Incentive Grant Program:

(a) The Education Department General Administrative Regulations (EDGAR) in Part 76 (State-Administered Programs) and Part 77 (Definitions).

(b) The regulations in Part 668 that implement section 1203 of the Act (Federal-State Agreement).

(c) The regulations in this Part 692.

(20 U.S.C. 1070c)

§ 692.4 What definitions apply to the State Student Incentive Grant Program?

The following definitions apply to the regulations in this part:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in Part 77:

Nonprofit
Secretary
State

(b) *Definition in Part 668.* The following definition in Part 668 of this title applies to the regulations in this part:

Institution of higher education (§ 668.1(a)(2)(i))

(c) *Other definitions that apply to this part.* The following additional definitions apply to this part:

"Academic year" means a period of time during which a full-time student is expected to complete the equivalent of one of the following:

(1) Two semesters.
(2) Two trimesters.
(3) Three quarters.
(4) Nine hundred clock hours of instruction.

"Act" means the Higher Education Act of 1965, as amended. "Clock hour" means a period of time that is equivalent to—

(1) A 50- to 60-minute class, lecture, or recitation; or

(2) A 50- to 60-minute faculty-supervised laboratory, ship training, or internship.

"Full-time student" means a student carrying a full-time academic workload—other than by correspondence—as measured by both of the following:

(1) Coursework or other required activities, as determined by the institution that the student attends or by the State.

(2) The tuition and fees normally charged for full-time study by that institution.

(20 U.S.C. 1070c-1070c-3, 1088)

Subpart B—What Does the Department Assist Under This Program?

§ 692.10 For what purposes may a State use its payments under this program?

A State may use its payments under the State Student Incentive Grant Program to—

(a) Make grants to students under new student grant programs; or

(b) Expand grants under existing student grant programs by—

(1) Making grants to additional eligible students; or

(2) Increasing the size of grants.

(20 U.S.C. 1070c)

Subpart C—How Does a State Apply to Participate in This Program?

§ 692.20 What agreement must a State have with the Secretary?

To participate in the State Student Incentive Grant Program, a State must—

(a) Enter into an agreement with the Secretary under section 1203 of the Act (Federal-State Agreement); and

(b) For each fiscal year that it wishes to participate, submit an application that contains information that shows that the State's student grant program meets the requirements in § 692.21.

(20 U.S.C. 1070c-2(a))

(Cross-reference: See 34 CFR Part 604, Federal-State Agreements.)

§ 692.21 What requirements must be met by a State program?

To receive a payment under this program for any fiscal year, a State must have a program that—

(a) Is administered by a single State agency in accordance with the Federal-State Agreement under section 1203 of the Act;

(b) Awards grants only to students who meet the eligibility requirements in § 692.40;

(c) Provides that a grant to a full-time student will not be more than $2,000 for each academic year;

(d) Provides for the selection of students to receive grants on the basis of substantial financial need determined annually by the State on the basis of standards that the State establishes and the Secretary approves. Cross-reference: See § 692.41.

(e) Provides that all nonprofit institutions of higher education in the State are eligible to participate unless that participation is in violation of—

(1) The constitution of the State; or

(2) A State statute that was enacted before October 1, 1978.

(f) Provides that, with the approval of the State agency, an institution of higher education may use any proportion of the payments under this program for grants to students who are not carrying or planning to carry at least one-half the normal full-time workload;

(g) Provides that—

(1) The State will pay at least 50 percent of each grant; and

(2) The amount that the State expends during a fiscal year for grants under this program represents an additional amount for grants to students attending institutions of higher education over the amount expended by the State for that purpose during the second fiscal year before the fiscal year in which the State first received funds under this program;

(h) Provides for State expenditures under the State program of an amount that is not less than—

(1) The average annual aggregate expenditures for the preceding three fiscal years; or

(2) The average annual expenditure per full-time equivalent student for those years; and

(i) Provides for reports to the Secretary that are necessary to carry out the Secretary's functions under this part.

(20 U.S.C. 1070c-2)

Subpart D—[Reserved]

Subpart E—How Does a State Select Students for Grants?

§ 692.40 What are the requirements for student eligibility?

(a) To be eligible for a grant and to receive payments under the grant, a student must—

(1)(i) Be a United States citizen or National;

(ii) Be a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that the student is in the United States for other than a temporary purpose with the intention of becoming a permanent resident of the United States; or

(iv) Be a permanent resident of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands;

(2) Be enrolled or accepted for enrollment at an institution of higher education;

(3) Have substantial financial need as determined annually in accordance with the State's criteria approved by the Secretary;

(4) In accordance with the standards and practices of the institution at which the student is enrolled, maintain satisfactory progress in a course of study;

(5)(i) Not owe a refund on a grant received for attendance at that institution under the Pell Grant, Supplemental Educational Opportunity Grant, or State Student Incentive Grant programs;

(ii) Not be in default on a loan made by the institution under the National Defense Student Loan or National Direct Student Loan programs unless the student has made arrangements, satisfactory to the institution, to repay the loan; and

(iii) Not be in default on a loan insured under the Guaranteed Student Loan or the Parent Loans for Undergraduate Students (PLUS) program unless the Secretary (for a

federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the loan; and

ADDRESS: Comments should be addressed to Mr. Stephen Freid, Office of General Counsel, Department of Education, 400 Maryland Avenue, SW., Room 4091, Washington, D.C. 20202.

provisions governing the submission of written objections or the show cause hearing.

These proposed regulations contain specific procedures and timelines so

PART 201—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED AND

(c) The hearing officer notifies the LEA, SEA, and the representatives of the private school children of the time and place of the hearing.

(d) The LEA, SEA, and the

Authority: Sec. 406 of Title IV of the Elementary and Secondary Education Act, as amended by Pub. L. 95-561 (20 U.S.C. 3088; 92 Stat. 2234-2236).

(2) The following three sections are

federally insured loan) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the loan; and

(6) File with the institution (or with the lender, in the case of a loan or a loan guarantee) a statement that the money attributable to the grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at the institution.

(b) The Secretary does not consider a National Defense Student Loan, a National Direct Student Loan, or a Guaranteed Student Loan that is discharged in bankruptcy to be in default for purposes of this section.

(20 U.S.C. 1070c–2, 1091)

§ 692.41 What standards may a State use to determine substantial financial need?

A State may determine substantial financial need by using—

(a) The State's own needs analysis system, if approved by the Secretary;

(b) The criteria and standards for determining need promulgated by the Secretary under section 482 of the Act; or

(c) A combination of these systems.

(20 U.S.C. 1070c–2, 1089)

[FR Doc. 80-40413 Filed 12-29-80; 8:45 am]

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34 CFR Parts 201 and 774

Title I and Title IV of the Elementary and Secondary Education Act—Financial Assistance to Local Educational Agencies for Children With Special Educational Needs (Title I) and Grants to State Educational Agencies for Educational Improvement, Resources, and Support (Title IV)

AGENCY: Department of Education.

ACTION: Proposed regulations.

SUMMARY: The Secretary issues proposed regulations for Title I and Title IV of the Elementary and Secondary Education Act (ESEA). These proposed regulations contain procedures for the submission of written objections and show cause hearings, when the Secretary proposes to implement a by-pass to provide equitable services for private school children. These proposed regulations contain specific timelines and procedures to ensure that an expeditious and fair decision is made on whether a by-pass is implemented.

DATE: All comments on these proposed regulations must be received on or before March 2, 1981.

ADDRESS: Comments should be addressed to Mr. Stephen Freid, Office of General Counsel, Department of Education, 400 Maryland Avenue, SW., Room 4091, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Freid. Telephone (202) 426–6300.

SUPPLEMENTARY INFORMATION: Under Title I and Title IV of ESEA, local educational agencies (LEAs) are required to provide equitable services and programs for children attending private schools (20 U.S.C. 2740, 3086). The specific requirements relating to the services and programs that must be provided for private school children are contained in the Title I and Title IV statutes, and the regulations that have been issued to implement these statutes (34 CFR Parts 201, 774).

The Education Division General Administrative Regulations (EDGAR), which were published in the **Federal Register** in final form on April 3, 1980 (45 FR 22494–22631), contain additional requirements on the participation of private school children that are applicable to the Title I program, but not to the Title IV program.

In some instances LEAs have been unable or unwilling to provide the required services and programs for private school children. This situation occurs sometimes as a result of State laws that limit the types of services that LEAs can provide for private school children.

Because LEAs may be unable or unwilling to provide equitable services and programs for private school children under Title I or Title IV, the Secretary is authorized to provide these services through a by-pass. Under a by-pass, the Secretary waives the LEA's responsibility for providing services for private school children under the affected program, and arranges for the provision of equitable services for the private school children. The Secretary normally hires a contractor to provide these services for the private school children and pays for the services from the appropriate allocations of the affected LEA and State educational agency (SEA). Title I and Title IV by-passes are presently in operation in number of States and LEAs.

Before a by-pass can be implemented under Title I or Title IV, the Secretary must provide both the affected LEA and SEA an opportunity to submit written objections and an opportunity to appear before the Secretary, or the Secretary's designee, to show cause why the by-pass should not be implemented. Presently, the Title I and Title IV regulations do not contain any provisions governing the submission of written objections or the show cause hearing.

These proposed regulations contain specific procedures and timelines so that the submission of written objections and the show cause hearing are handled in a fair and expeditious manner. Opportunity is provided to all concerned parties—the LEA, the SEA, and representatives of the private school children—to present their views on whether the by-pass should be implemented.

In addition, the proposed regulations for Title IV contain a section on the procedures the Secretary uses in making the initial decision to implement a by-pass (§ 774.83). The notice of proposed rulemaking for Title I that was published in the **Federal Register** on June 11, 1980 (45 FR 39712) already contains these procedures in § 116a.95. Those procedures are not repeated in these proposed regulations for Title I, but are cross-referenced as § 201.91 rather than § 116a.95 to correspond to the numbering system that will be used in the final Title I regulations.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4091, 400 Maryland Avenue, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance Nos. 84.010, Educationally Deprived Children—Local Educational Agencies; 84.088, Instructional Materials and School Library Resources;

The Secretary amends Parts 201 and 774 of Title 34 of the Code of Federal Regulations to read as follows:

PART 201—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET THE SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED AND NEGLECTED AND DELINQUENT CHILDREN

(1) The following sections are added to the table of contents under Subpart F of Part 201:

Subpart F—Evaluation

Sec.
201.58–201.91 [Reserved]
201.92 Submission of written objections to the proposed by-pass.
201.93 Show cause hearing.

Authority: Sec. 130 of Title I of the Elementary and Secondary Act, as amended by Pub. L. 95–561 (20 U.S.C. 2740; 92 Stat. 2171–2172).

(2) The following two sections are added to Subpart F of Part 201:

§ 201.92 Submission of written objections to the proposed by-pass.

(a) If an LEA or SEA submits written objections to the proposed by-pass in accordance with § 201.91(a)(2)(i), the Secretary—

(1) Sends a copy of the written objections to appropriate representatives of the private school children in the affected LEA; and

(2) Allows the representatives of the private school children 30 days to submit written comments on whether a by-pass should be implemented in the affected LEA.

(b) After the close of the 30 day period for the submission of written comments by the representatives of the private school children, the Secretary—

(1) Makes a final decision concerning whether a by-pass should be implemented; or

(2) Determines that further proceedings should be conducted under § 201.93.

(Sec. 130(b)(4)(A); 20 U.S.C. 2740(b)(4)(A))

§ 201.93 Show cause hearing.

(a) If an LEA or SEA requests an opportunity for a hearing to show cause why a proposed by-pass should not be implemented in accordance with § 201.91(a)(2)(ii), or if the Secretary determines that further proceedings should be conducted under § 201.92(b)(2), the Secretary—

(1) Notifies appropriate representatives of the private school children in the affected LEA that a show cause hearing will be held, and that they may participate in the hearing; and

(2) Designates a hearing officer.

(b) The Secretary may combine show cause hearings that involve similar legal or factual issues.

(c) The hearing officer notifies the LEA, SEA, and the representatives of the private school children of the time and place of the hearing.

(d) The LEA, SEA, and the representatives of the private school children each may be represented by legal counsel.

(e) The hearing officer does not have authority to—

(1) Issue subpoenas;

(2) Require or conduct discovery; or

(3) Rule on the validity of any statute or regulation, including these procedures.

(f) At the show cause hearing—

(1) A transcript is taken; and

(2) The LEA, SEA, and representatives of the private school children each may submit oral or written evidence and arguments.

(g) At the close of the hearing, or within 10 days thereafter, the hearing officer—

(1) Requests further information from the LEA, SEA, representatives of the private school children or appropriate Department of Education officials, to be filed within 30 days; or

(2) Indicates that a decision will be issued on the basis of the existing record.

(h) After the hearing, the hearing officer—

(1) Issues a written decision on whether the LEA and SEA have demonstrated that the proposed by-pass should not be implemented; and

(2) Sends copies of the decision to the LEA, SEA, representatives of the private school children, and the Secretary.

(i) The LEA, SEA, and representatives of the private school children have 10 days from receipt of the hearing officer's decision to submit written comments on the decision to the Secretary.

(j) The Secretary adopts, reverses, or modifies the hearing officer's decision within 45 days of the close of the comment period stated in paragraph (i) of this section.

(Sec. 130(b)(4)(A); 20 U.S.C. 2740(b)(4)(A))

PART 774—GRANTS TO STATE EDUCATIONAL AGENCIES FOR EDUCATIONAL IMPROVEMENT, RESOURCES, AND SUPPORT

(1) The following sections are added to the table of contents under Subpart I of Part 774:

Subpart I—Section 406 Compliance Procedures

774.83 Secretary's procedures for by-pass actions.
774.84 Submission of written objections to the proposed by-pass.
774.85 Show cause hearing.

Authority: Sec. 406 of Title IV of the Elementary and Secondary Education Act, as amended by Pub. L. 95–561 (20 U.S.C. 3086; 92 Stat. 2234–2236).

(2) The following three sections are added to Part 774:

§ 774.83 Secretary's procedures for by-pass actions.

Before taking any final by-pass action under § 774.81 and § 774.82, the Secretary provides the LEA and SEA with—

(a) Written notice of the Secretary's intent to by-pass the LEA. This notice—

(1) Indicates the reasons for the by-pass;

(2) Advises the LEA and SEA that, within 45 days, they may—

(i) Submit written objections to the proposed by-pass; and

(ii) Request in writing the opportunity for a hearing to show cause why the by-pass should not be implemented; and

(3) Is sent by certified mail with a return receipt requested; and

(b) An opportunity to appear at a hearing before the Secretary, or the Secretary's designee, to show cause why the by-pass should not be implemented.

(Sec. 406(h); 20 U.S.C. 3086(h))

§ 774.84 Submission of written objections to the proposed by-pass.

(a) If an LEA or SEA submits written objections to the proposed by-pass in accordance with § 774.83(a)(2)(i), the Secretary—

(1) Sends a copy of the written objections to appropriate representatives of the private school children in the affected LEA; and

(2) Allows the representatives of the private school children 30 days to submit written comments on whether a by-pass should be implemented in the affected LEA.

(b) After the close of the 30 day period for the submission of written comments by the representatives of the private school children, the Secretary—

(1) Makes a final decision concerning whether a by-pass should be implemented; or

(2) Determines that further proceedings should be conducted under § 774.85.

(Sec. 406(h); 20 U.S.C. 3086(h))

§ 774.85 Show cause hearing.

(a) If an LEA or SEA requests an opportunity for a hearing to show cause why a proposed by-pass should not be implemented in accordance with § 774.83(a)(2)(ii), or if the Secretary determines that further proceedings should be conducted under § 774.84(b)(2), the Secretary—

(1) Notifies appropriate representatives of the private school children in the affected LEA that a show cause hearing will be held, and that they

34 CFR Part 605

Continuing Education Outreach—State-Administered Program

comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All comments submitted in response

Subpart G—What Are the Administrative Responsibilities of a State and Its Subgrantees and Contractors?

605.60 Annual report.
605.61 Child care project restrictions.
605.62 Administrative funds.

for adults whose educational needs have been inadequately served;

(ii) Expanding and improving postsecondary educational programs that help adults develop their

handicapped, older individuals, migrant and seasonal farm workers, individuals who can participate in programs only on a part-time basis, and individuals who otherwise would be unlikely to continue

(1) Notifies appropriate representatives of the private school children in the affected LEA that a show cause hearing will be held, and that they may participate in the hearing; and

(2) Designates a hearing officer.

(b) The Secretary may combine show cause hearings that involve similar legal or factual issues.

(c) The hearing officer notifies the LEA, SEA, and the representatives of the private school children of the time and place of the hearing.

(d) The LEA, SEA, and the representatives of the private school children each may be represented by legal counsel.

(e) The hearing officer does not have authority to—

(1) Issue subpoenas;

(2) Require or conduct discovery; or

(3) Rule on the validity of any statute or regulation, including these procedures.

(f) At the show cause hearing—

(1) A transcript is taken; and

(2) The LEA, SEA, and representatives of the private school children each may submit oral or written evidence and arguments.

(g) At the close of the hearing, or within 10 days thereafter, the hearing officer—

(1) Requests further information from the LEA, SEA, representatives of the private school children, or appropriate Department of Education officials, to be filed within 30 days; or

(2) Indicates that a decision will be issued on the basis of the existing record.

(h) After the hearing, the hearing officer—

(1) Issues a written decision on whether the LEA and SEA have demonstrated that the proposed by-pass should not be implemented; and

(2) Sends copies of the decision to the LEA, SEA, representatives of the private school children, and the Secretary.

(i) The LEA, SEA, and representatives of the private school children have 10 days from receipt of the hearing officer's decision to submit written comments on the decision to the Secretary.

(j) The Secretary adopts, reverses, or modifies the hearing officer's decision within 45 days of the close of the comment period stated in paragraph (i) of this section.

(Sec. 406(h); 20 U.S.C. 3066(h))

[FR Doc. 80-40414 Filed 12-29-80; 8:45 am]
BILLING CODE 4000-01-M

34 CFR Part 605

Continuing Education Outreach—State-Administered Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary is issuing proposed regulations for the Continuing Education Outreach—State-Administered Program. The proposed regulations are being issued to reflect the statutory changes resulting from the Education Amendments of 1980. Activities previously carried out under the Community Service and Continuing Education Program, the Education Information Centers Program, and the State Planning Commissions Program have been consolidated into a single program and revised. The proposed regulations will govern a comprehensive program of planning, information services, and continuing education projects. Institutions of higher education, public and private organizations, community based educational institutions, business, industry, and labor are eligible to receive subgrants and contracts.

DATES: Comments must be received on or before March 2, 1981.

Public meetings are planned to take comments on these proposed regulations. A notice giving the city, time, and location will be published later in the Federal Register.

ADDRESSES: Comments should be addressed to Mr. Charles I. Griffith, Office of Postsecondary Education, U.S. Department of Education, (Room 3717, ROB-3), 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. John E. Donahue, Office of Postsecondary Education, U.S. Department of Education, (Room 3717, ROB-3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 245-9868.

SUPPLEMENTARY INFORMATION:

Assessment of Educational Impact

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given in this preamble. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3717, ROB-3, 7th and D Streets, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority

A citation of statutory of other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number not yet assigned)

PART 610—[REMOVED]

The Secretary proposes to (1) remove Part 610, and (2) revise Part 605 of Title 34 of the Code of Federal Regulations to read as follows:

PART 605—CONTINUING EDUCATION OUTREACH—STATE-ADMINISTERED PROGRAM

Subpart A—General

Sec.

605.1 Continuing Education Outreach—State-Administered Program.
605.2 Eligible parties.
605.3 Regulations that apply to the Continuing Education Outreach—State-Administered Program.
605.4 Definitions that apply to the Continuing Education Outreach—State-Administered Program.

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant to a State?

605.20 How does the secretary initially allot programs funds?
605.21 What are the requirements for subsequent allotments?
605.22 How does a State determine the amount of funds to be used for comprehensive statewide planning?
605.23 How does a State determine the amount of funds to be used for information services?
605.24 How does a State determine the amount of funds to be used for continuing education?

Subpart D [Reserved]

Subpart E [Reserved]

Subpart F—What Conditions Must be Met by a State?

605.50 Coordination.
605.51 Limitation on payments to the States.

Subpart G—What Are the Administrative Responsibilities of a State and Its Subgrantees and Contractors?

605.60 Annual report.
605.61 Child care project restrictions.
605.62 Administrative funds.

Authority: Sections 111 through 115 of the Higher Education Act of 1965, as amended by Pub. L. 96-374 (20 U.S.C. 1011-1015).

Subpart A—General

§ 605.1 Continuing Education Outreach—State-Administered Program.

(a) *General description.* The Continuing Education Outreach—State-Administered Program provides Federal financial assistance primarily to increase access to programs of continuing education for adults whose educational needs have been inadequately served. Recipients shall use this assistance to help traditional and non-traditional learners through—

(1) Comprehensive statewide planning;

(2) Information services; and

(3) Continuing education.

(20 U.S.C. 1011-1015)

(b) *Comprehensive statewide planning.* (1) Each State shall use the funds available for comprehensive statewide planning to support planning, and related studies, designed to achieve—

(i) Improved access to programs of postsecondary education for traditional and non-traditional learners;

(ii) Improved retention of traditional and non-traditional learners in programs of postsecondary education;

(iii) Effective coordination of educational occupational information and counseling services for youths and adults; and

(iv) More effective use of resources available for continuing education.

(2) Comprehensive statewide planning funds may also be used to prepare the annual report described in § 605.60.

(20 U.S.C. 1013(a))

(c) *Information services.* Each State shall use the funds available for information services to develop and coordinate new and existing—

(1) Postsecondary education information and counseling services for traditional and non-traditional learners; and

(2) Occupational information and counseling services for youth and adults. (20 U.S.C. 1014(a)).

(d) *Continuing education.* (1) Each State shall use the funds available for continuing education to make subgrants and award contracts for—

(i) Promoting access to and retention in postsecondary educational programs for adults whose educational needs have been inadequately served;

(ii) Expanding and improving postsecondary educational programs that help adults develop their occupational potential and prepare for transitions between education and work;

(iii) Eliminating barriers—posed by previous education or training, age, sex, race, handicap, national origin, rural isolation, or economic circumstance—that may place adults at a disadvantage in seeking postsecondary educational opportunities;

(iv) Strengthening statewide and other mechanisms of information, counseling, and referral that provide access to postsecondary education and serve the special needs of adults; and

(v) Developing strategies to promote the financial self-sufficiency of postsecondary educational programs initiated under this part.

(2) Eligible continuing education projects include such activities as:

(i) Creation or expansion of labor education, training, and technical assistance programs;

(ii) Development of cooperative relationships between State and local labor organizations and institutions and agencies that provide opportunities for continuing education;

(iii) Removal of barriers to continuing education caused by rural isolation or other rural-related factors;

(iv) Preretirement continuing education programs related to legal, vocational, and health services available to older adults;

(v) Promotion of sharing resources for innovative uses of technology on an inter-state or intra-state basis, including telecommunications, to overcome barriers to postsecondary educational opportunities;

(vi) Educational and occupational information and counseling services designed to meet the special needs of adult women, particularly homemakers, and to assist their entry or re-entry into postsecondary education and the labor force;

(vii) Collection and dissemination of information, including the creation of data banks, on sources of student financial assistance and information designed to assist individuals to make choices among postsecondary institutions, programs, and other educational opportunities;

(viii) Community education activities, consistent with the purposes of this part, for adults in rural areas;

(ix) Postsecondary educational programs suited to individuals whose educational needs have been inadequately served, especially the handicapped, older individuals, migrant and seasonal farm workers, individuals who can participate in programs only on a part-time basis, and individuals who otherwise would be unlikely to continue their education beyond high school;

(x) Child care services to assist individuals desiring to participate in continuing education programs in order to enter or re-enter the field of postsecondary education and the labor force; and

(xi) Promotion or delivery of postsecondary education services to women at the places of their employment or in conjunction with their employment.

(20 U.S.C. 1015)

§ 605.2 Eligible parties.

(a) States that have entered into a Federal-State relationship agreement with the Secretary as specified in 34 CFR Part 604 are eligible to receive grants for Statewide planning, information services, and continuing education.

(20 U.S.C. 1012-1015, 1143)

(b) Institutions of higher education and public and private organizations—including business, industry, labor, and community based educational institution—are eligible to receive subgrants and contracts from the States for information and counseling services and continuing education projects.

(20 U.S.C. 1014(c), 1015(b))

§ 605.3 Regulations that apply to the Continuing Education Outreach—State-Administered Program.

The following regulations apply to the Continuing Education Outreach—State-Administered Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 76 (State-Administered Programs) and 34 CFR 77 (General);

(b) The regulations in this part 605; and

(c) The regulations in 34 CFR Part 604.

§ 605.4 Definitions that apply to the Continuing Education Outreach—State-Administered Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Contract
Fiscal year
Grant
Private
Project
Public
Secretary
State
Subgrant
Subgrantee

(b) *Definitions that apply to this part.* The following definitions apply to this part.

"Adults whose educational needs have been inadequately served" means

§ 605.22 How does a State determine the amount of funds to be used for comprehensive statewide planning?

(a) The amount of funds available for planning depends on the amount of the total annual appropriation for the allotment, whichever is greater, to provide information services.

(20 U.S.C. 1014(a))

§ 605.24 How does a State determine the amount of funds to be used for continuing

Subpart G—What Are the Administrative Responsibilities of a State and Its Subgrantees and Contractors?

§ 605.60 Annual report.

(20 U.S.C. 1015(d))

[FR Doc. 80-40415 Filed 12-29-80; 8:45 am]
BILLING CODE 4000-01-M

Office of Elementary and Secondary

Invitation to Comment

Interested parties are invited to submit comments and recommendations on these proposed regulations. Written comments may be sent to Mr. Carroll U.

(b) *Definitions that apply to this part.* The following definitions apply to this part.

"Adults whose educational needs have been inadequately served" means individuals 18 years of age or older who—because of circumstances of age, sex, low income, handicap, minority status, rural isolation, status of employment or underemployment, lack of education, or other significant barriers—have been discouraged from obtaining equal educational opportunities.

"Continuing education" means postsecondary instruction and support services designed to meet the educational needs of adults, including the expansion of available learning opportunities for adults whose educational needs are inadequately served by current educational offerings in their communities.

"Act" means the Higher Education Act of 1965, as amended.

"Adult population" means the population eighteen years of age and older.

"Youth" means an individual between 16 and 18 years of age who is seeking, or considering seeking, employment.

"Planning for continuing education" means planning to improve access to programs of postsecondary education for adults in a State, particularly those who have been inadequately served, and to promote more effective and efficient use of available resources, including efforts to ensure equal treatment of applicants in the evaluation of subgrant proposals.

(20 U.S.C. 1013(c); 1018)

Subpart B (Reserved)

Subpart C—How Does the Secretary Make a Grant to a State?

§ 605.20 How does the Secretary initially allot program funds?

The Secretary makes the initial allotment of programs funds after a State has consummated an agreement with the Secretary as required in 34 CFR Part 604. The allotment is made according to the formula in section 112 (a)(1) of the Act.

(20 U.S.C. 1012)

§ 605.21 What are the requirements for subsequent allotments?

The Secretary makes an allotment to a State in subsequent fiscal years after the Secretary receives a satisfactory annual report as provided for in § 605.60.

(20 U.S.C. 1012, 1013)

§ 605.22 How does a State determine the amount of funds to be used for comprehensive statewide planning?

(a) The amount of funds available for planning depends on the amount of the total annual appropriation for the Continuing Education Outreach Program.

(1) In a fiscal year in which the appropriation is less than $18,500,000, the State shall use at least 15 percent but not more than 20 percent of its allotment for comprehensive statewide planning.

(2) In a fiscal year in which the appropriation is at least $18,500,000 but not more than $23,999,999, the State may use from ten to fifteen percent of its allotment for comprehensive statewide planning.

(3) In a fiscal year in which the appropriation is $24,000,000 or more, the State shall use up to 10 percent of its allotment for comprehensive statewide planning.

(b) If the State does not wish to receive comprehensive planning funds in a particular fiscal year, the State must so notify the Secretary of this prior to the beginning of that fiscal year, so that funds can be reallocated to the other States.

(c) A State may use up to 50 percent of the funds available to it for comprehensive statewide planning for the purpose of supporting continuing education projects.

(d) A State shall use 50 percent of the funds remaining for comprehensive statewide planning—after implementing the set-aside in paragraph (c), if any—for planning for continuing education, unless a waiver is granted.

(e) On application from a State, the Secretary grants a waiver of the requirement in paragraph (d) if the State satisfactorily demonstrates that—

(1) Planning for postsecondary continuing education has been an integral part of its existing planning process;

(2) It regularly collects data related to adult learners, including those who are being inadequately served;

(3) It periodically assesses the statewide postsecondary educational needs of adults; and

(4) It consults with public advisory groups composed of persons knowledgeable about the postsecondary educational needs of adults.

(20 U.S.C. 1013(a)(c); S. Rept. 96-733 at 8)

§ 605.23 How does a State determine the amount of funds to be used for information services?

A State shall use not less than $50,000 nor more than 12 percent of its allotment, whichever is greater, to provide information services.

(20 U.S.C. 1014(a))

§ 605.24 How does a State determine the amount of funds to be used for continuing education?

A State shall use the funds remaining from its allotments—after reserving the amounts required for comprehensive statewide planning and information services—for subgrants and contracts for continuing education projects.

(20 U.S.C. 1015)

Subpart D [Reserved]

Subpart E [Reserved]

Subpart F—What Conditions Must Be Met by a State?

§ 605.50 Coordination

A State shall coordinate its comprehensive statewide planning and information services activities to the maximum extent feasible with Federal, State, and local planning and information services being done under the following programs:

(a) Subpart 4 of Part A of Title IV of the Higher Education Act (Special Programs for Students from Disadvantaged Backgrounds).

(b) Part B of Title IV of the Higher Education Act (Guaranteed and Insured Student Loans).

(c) Section 485 of the Higher Education Act (Institutional and Financial Assistance Information for Students).

(d) The Vocational Education Act.

(e) The Comprehensive Employment and Training Act.

(f) The Older Americans Act of 1965.

(g) The Rehabilitation Act of 1973.

(h) The Career Education Incentive Act.

(i) The Adult Education Act.

(j) The Veterans Readjustment Assistance Act.

(k) Other Federal, State, and local programs that provide educational outreach, guidance, counseling, and information.

(20 U.S.C. 1013(d), 1014(b))

§ 605.51 Limitation on payments to the States.

(a) The Secretary does not make payments to the States in excess of two-thirds of the total costs of the State's program under this part.

(b) The State may not use funds from other Federal programs for matching.

(20 U.S.C. 1019)

Subpart G—What Are the Administrative Responsibilities of a State and Its Subgrantees and Contractors?

§ 605.60 Annual report.

(a) In addition to the requirements of EDGAR, 34 CFR 78.720, a State that receives funds under this program shall submit to the Secretary at the end of each fiscal year a report on each aspect of its Continuing Education Outreach Program. This report shall include the following:

(1) A list of each activity supported, including the amount of Federal and non-Federal funds allocated to planning, information services, and continuing education programs.

(2) A description of each activity supported.

(3) A detailed analysis of the relationship between the activities carried out and the priorities established by the comprehensive statewide planning process. This shall include:

(i) An evaluation of the fiscal year's activities; and

(ii) A projection of the types of activities the State plans to support in the next fiscal year.

(b)(1) The State entity responsible for comprehensive planning under this part shall be responsible for submission of the annual report.

(2) If a State does not receive funds for statewide planning, the State shall designate the State entity that shall be responsible for the report.

(20 U.S.C. 1013(b))

§ 605.61 Child care project restrictions.

A State may not award grants or contracts for the provision of child care services for the benefit of persons participating in continuing education projects unless—

(a) The State entity responsible for comprehensive statewide postsecondary education planning has established a cooperative agreement with the State agency responsible for coordinating child care services; and

(b) The grantee or contractor is licensed by the State to provide child care services, or is in the process of renewing its license and is likely to have that renewal approved.

(20 U.S.C. 1015(c))

§ 605.62 Administrative funds.

A State may use up to five percent of the funds available for continuing education, or $40,000, whichever is greater, for the administration of continuing education activities or the direct operation of continuing education projects.

(20 U.S.C. 1015(d))

[FR Doc. 80-40415 Filed 12-29-80; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

34 CFR Part 222

School Assistance in Federally Affected Areas—Special Impact Aid Program for Refugees

AGENCY: Department of Education.

ACTION: Notice of proposed regulations.

SUMMARY: The Secretary of Education proposes regulations to implement the Special Impact Aid Program for Refugees under the authority of the Education Amendments of 1980. This program authorizes Federal financial assistance to local educational agencies (LEAs) which experience in any school year an enrollment increase of at least 20 students who have fled from Cambodia, Vietnam, Laos, Cuba, or Haiti.

DATES: Comments on these proposed regulations must be received (on or before 60 days after publication in the Federal Register).

ADDRESSES: Written comments should be addressed to Mr. Carrol U. Dexter, Department of Education, 300 Independence Avenue, S.W., Room G660, Washington, D.C. 20201. Telephone (202) 472-4014.

FOR INFORMATION CONTACT: Carroll U. Dexter. Telephone: (202) 472-4014

SUPPLEMENTARY INFORMATION:

Background

This program is designed to provide Federal financial assistance to local educational agencies (LEAs) which experience an enrollment increase of at least twenty students from Cambodia, Vietnam, Laos, Cuba, or Haiti.

An eligible LEA is authorized to receive for FY 1981 an amount equal to the product of the number of eligible children in excess of 20 in average daily attendance in the LEA multiplied by the current local expenditure rate per pupil of that LEA, plus $200 for each eligible child in excess of 20.

For example, if the LEA had an increase of 23 eligible children and a local expenditure rate of $1,000 per child, the entitlement would be calculated as follows: the number of eligible children in excess of 20 multiplied by the local expenditure rate (3 × $1,000) plus $200 for each eligible child in excess of 20 (3 × 200). This LEA would be entitled to $3,600.

Invitation to Comment

Interested parties are invited to submit comments and recommendations on these proposed regulations. Written comments may be sent to Mr. Carroll U. Dexter, 300 Independence Avenue, S.W., Room G660, Washington, D.C. 20202. All comments received on or before 60 days after publication of these proposed regulations will be considered in the development of the final regulations.

Comments submitted in response to these proposed regulations will be available for public inspection during and after the comment period in Room G660, 300 Independence Avenue, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Information Requirements

The Department particularly requests comments on whether the program requirements in this document would require transmission of information that is already being gathered by or is available for any other agency or Department of the United States.

Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive section of these proposed regulations.

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.041, School Assistance in Federally Affected Areas—Maintenance and Operation)

The Secretary amends 34 CFR Part 222 to add a new Subpart K to read as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENT FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATION AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

* * * * *

Subpart K—Special Impact Aid Program for Refugees

Sec.

222.130 What is the special impact aid program for refugees?
222.131 What regulations apply to the special impact aid program for refugees?
222.132 What definitions apply to the special impact aid program for refugees?
222.133 What documents must an LEA submit to receive a grant?

Sec.
222.134 How does an LEA count "eligible children?"
222.135 How does the LEA compute the current local expenditure rate?

(2) Aliens who fled from Cuba or Haiti and who, on or after November 1, 1979—

(i) Were admitted into the United States as refugees under section 207 of

available to the applicant by the Federal Government.

(c) The current local expenditure rate shall be based upon the most recent

Avenue, S.W., Washington, D.C. 20202. Telephone No. (202) 245-2993.

SUPPLEMENTARY INFORMATION: The Library Research and Demonstration Program awards and administers grants

Washington, D.C. between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(3) developmental projects;

(b) Training in librarianship; and

(c) The improvement of information technology.

Sec.
222.134 How does an LEA count "eligible children?"
222.135 How does the LEA compute the current local expenditure rate?
222.136 How does the secretary determine the size of a grant to an LEA?
222.137 What records must a grantee maintain?

Authority: Education Amendments of 1980, Pub. L. 96-374, 20 U.S.C. 239a.

Subpart K—Special Impact Aid Program for Refugees

§ 222.130 What is the special impact aid program for refugees?

This program authorizes Federal financial assistance to any local educational agency (LEA) which experiences in any school year an enrollment increase of at least 20 eligible students who either—

(a) Fled from Cambodia, Vietnam, or Laos and were admitted into the United States on or after January 1, 1979; or

(b) Fled from Cuba or Haiti and were admitted into the United States on or after November 1, 1979.

(20 U.S.C. 239a)

§ 222.131 What regulations apply to the special impact aid program for refugees?

The following regulations apply to the Special Impact Aid Program for Refugees:

(a) The regulations in this Part 222.

(b) The definitions in the Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 77 (General).

(20 U.S.C. 239a, 1221e-3(2)(1))

§ 222.132 What definitions apply to the special impact aid program for refugees?

(a) The following terms used in this part are defined in EDGAR (34 CFR Part 77):

Applicant
Application

(20 U.S.C. 239a, 1221e-3(a)(1))

(b) *Definitions that apply to this part.* The following definitions apply specifically to this part:

"Act" means the Education Amendments of 1980 (Pub. L. 96-374).

"Eligible children" means—

(1) Aliens who fled from Cambodia, Vietnam, or Laos, and who, on or after January 1, 1979—

(i) Were admitted into the United States as refugees under section 207 of the Immigration and Nationality Act;

(ii) Are applicants for asylum or have been granted asylum in the United States; or

(iii) Were paroled into the United States as refugees under section 212(d)(5) of the Immigration and Nationality Act; or

(2) Aliens who fled from Cuba or Haiti and who, on or after November 1, 1979—

(i) Were admitted into the United States as refugees under section 207 of the Immigration and Nationality Act;

(ii) Are applicants for asylum or have been granted asylum in the United States;

(iii) Are paroled into the United States as refugees under section 212(d)(5) of the Immigration and Nationality Act; or

(iv) Are Cuban or Haitian entrants (status pending) who entered the United States on or after that date.

(20 U.S.C. 239a)

§ 222.133 What documents must an LEA submit to receive a grant?

(a) To apply for assistance under the Act, the applicant LEA shall file an application with the Secretary which includes—

(1) An accurate count of the total number of eligible children;

(2) The current local expenditure rate of the applicant LEA stated in § 222.135.

(3) An assurance that no eligible child counted for purposes of this section shall be counted for payments made under any other provision of Pub. L. 81-874.

(4) Any other information and assurances the Secretary considers as necessary to make appropriate decisions and ensure that the applicant complies with the Act and regulations.

(20 U.S.C. 239a)

§ 222.134 How does the LEA count eligible children?

The applicant LEA shall conduct a survey to determine the number of eligible children in average daily attendance (ADA). For each eligible child the LEA shall establish in its survey—

(a) The country from which the child migrated to the United States;

(b) The date of the child's entry into the United States;

(c) That the child is in the United States under one of the provisions referred to in paragraphs (1) (i), (ii) or (iii), or (2) (i), (ii), (iii) or (iv) of the definition of "eligible children" in § 222.132(b); and

(d) The date that the child originally enrolled in the applicant LEA.

§ 222.135 How does the LEA compute the current local expenditure rate?

(a) The current local expenditure rate is the amount of funds per child that the applicant derives and expends from State and local sources of revenue for free public education.

(b) The current local expenditure rate does not include amounts of funds made available to the applicant by the Federal Government.

(c) The current local expenditure rate shall be based upon the most recent year for which the applicant LEA has data.

(20 U.S.C. 239a)

§ 222.136 How does the Secretary determine the size of a grant to an LEA?

(a) To determine the size of a grant, the Secretary multiplies the number of eligible children in excess of 20 in the applicant LEA by the current local expenditure rate of the LEA, and adds $200 for each eligible child in excess of 20.

(b) In the event that the appropriation is not large enough to fully fund all eligible LEAs in accordance with paragraph (a) of this section, the Secretary proportionately reduces the entitlement for each eligible LEA.

(20 U.S.C. 239a)

§ 222.137 What records must a grantee maintain?

The grantee shall maintain, and make available to the Secretary upon request, adequate written records to substantiate its entitlement to funds under the Special Impact Aid Program for Refugees.

(20 U.S.C. 239a)

[FR Doc. 80-40422 Filed 12-29-80; 8:45 am]
BILLING CODE 4000-01-M

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34 CFR Part 777

Library Research and Demonstration Program (Title II-B HEA)

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Library Research and Demonstration Program. The regulations are being amended to reflect the statutory changes contained in the Education Amendments of 1980, to incorporate the general selection criteria in the Education Division General Administrative Regulations (EDGAR), and to reflect administrative experience.

DATES: Comments must be received on or before January 29, 1981.

ADDRESSES: Comments should be addressed to Mr. Henry Drennan, Library Research and Demonstration Branch, U.S. Department of Education, Room 3319-A, ROB-3, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Library Research and Demonstration Branch, U.S. Department of Education, Room 3319-A, ROB-3, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone No. (202) 245-2993.

SUPPLEMENTARY INFORMATION: The Library Research and Demonstration Program awards and administers grants and contracts for research and demonstration projects to improve libraries, including the promotion of economical and efficient information delivery, cooperative efforts related to librarianship, and developmental projects; to improve training in librarianship; to improve information technology; and to disseminate information that is derived from Library Research and Demonstration Program projects.

The revisions to these regulations reflect: The Education Amendments of 1980, Pub. L. 96-374, the Education Division General Administrative Regulations (EDGAR), and administrative experience.

The most signficant revisions to the proposed regulations are the following:

(a) The selection criteria for judging applications is changed to place more emphasis on the plan of operation, quality of key personnel, and significance of the proposed project.

(b) The purpose of the program has been expanded to include the promotion of economical and efficient information delivery, the promotion of cooperative efforts related to librarianship, the support of developmental projects, and the improvement of information technology.

(c) Eligibility for grants and contracts is expanded to include profit making organizations, agencies, and institutions.

These regulations will be codified in Title 34 of the Code of Federal Regulations along with other Department of Education programs.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 30th day after publication of this document will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3319-A, ROB-3, 7th and D Streets, S.W., Washington, D.C. between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.039, Library Research and Demonstration Program. Part I of OMB Circular A-95 does not apply to this program)

The Secretary proposes to amend Part 777 of 34 CFR to read as follows:

PART 777—LIBRARY RESEARCH AND DEMONSTRATION PROGRAM

Subpart A—General

Sec.
777.1 Description of the Library Research and Demonstration Program.
777.2 Eligible parties.
777.3 Regulations that apply to grants.
777.4 Regulations that apply to contracts.
777.5 Definitions that apply to the Library Research and Demonstration Program.

Subpart B—Kinds of Projects for Which Grants and Contracts are Made

777.10 Program elements.

Subpart C—How to Apply for a Grant

777.20 Application requirements.

Subpart D—How a Grant is Made

777.30 How the Secretary judges applications.
777.31 Selection criteria for evaluating applications.

Subpart E—Conditions that Must be Met by a Grantee

777.40 Coordination with other groups.

Subpart F—The Administrative Responsibilities of a Grantee

777.50 Performance reports.

Authority: Part B of Title II of the Higher Education Act of 1965, as amended by Section 261 of the Education Amendments of 1980, 94 Stat. 1383 (20 U.S.C. 1021 et seq.).

Subpart A—General

§ 777.1 Description of the Library Research and Demonstration Program.

The purpose of the Library Research and Demonstration Program is to encourage research and development relating to—

(a) The improvement of libraries, including:

(1) the promotion of economical and efficient information delivery,

(2) cooperative efforts related to librarianship, and

(3) developmental projects;

(b) Training in librarianship; and

(c) The improvement of information technology.

(Section 201, 223 of the Act; 20 U.S.C. 1021, 1033)

§ 777.2 Eligible parties.

Applications for grants and contracts may be submitted by—

(a) An institution of higher education; or

(b) A public or private agency, institution or organization.

(Section 223 of the Act; 20 U.S.C. 1033)

§ 777.3 Regulations that apply to grants.

The following regulations apply to grants under the Library Research and Demonstration Program:

(a) The Education Division General Administration Regulations (EDGAR) 34 CFR 75 and 34 CFR 77.

(b) The regulations in this Part 777.

(20 U.S.C. 3474)

§ 777.4 Regulations that apply to contracts.

The regulations in this part do not govern the award of contracts under the Library Research and Demonstration Program. Contracts under this part are governed by—

(a) Federal and Department procurement regulations in 41 CFR Chapters 1 and 34; and

(b) The requests for proposals for the procurement, if any, referenced in the Commerce Business Daily.

(20 U.S.C. 3474)

§ 777.5 Definitions that apply to the Library Research and Demonstration Program.

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR Part 77:

Applicant	Grant
Application	Grantee
Award	Nonprofit
Budget	Private
Contract	Project
Department	Public
Equipment	Secretary
Facilities	Supplies

(b) Definitions that apply to this Part. The following definitions apply to this Part:

"Act" means the Higher Education Act of 1965, as amended.

"Institution of higher education" means such an institution as defined by Section 1201 of the Act.

"Librarianship" means the principles and practices of the library and information science, including the acquisition, organization, storage, retrieval and dissemination of information, and reference and research

use of library and other information resources.

(20 U.S.C. 3474)

Subpart B—Kinds of Projects for

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and

objective and produce data that are quantifiable.

(e) *Adequacy of resources* (5 points)

(1) The Secretary reviews each application for information that shows

(Section 223 of the Act; 20 U.S.C. 1033)

[FR Doc. 80-40423 Filed 12-29-80; 8:45 am]
BILLING CODE 4000-01-M

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34 CFR Parts 385, 386, 387, 388, 389, and 606

Continuing Education Outreach—Special Projects

AGENCY: Department of Education.

preamble. All comments received on or before March 2, 1981, will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be

use of library and other information resources.

(20 U.S.C. 3474)

Subpart B—Kinds of Projects for Which Grants and Contracts are Made

§ 777.10 Authorized activities.

(a) The Secretary may award a grant or contract to support a research and demonstration project that will

(1) Improve—

(i) Libraries;

(ii) Training in librarianship; or

(iii) Information technology: and

(2) Disseminate information that is derived from a project funded under this Part.

(b) A project that includes any one or more of the activities described in § 777.10(a) may be supported under this Part.

(Section 201, 223 of the Act; 20 U.S.C. 1021 and 1033)

Subpart C—How to Apply for a Grant

§ 777.20 Application requirements.

An applicant must demonstrate, on the application form furnished by the Secretary, that the proposed project meets the requirements of the Act and all applicable regulations. The applicant must address each of the Selection Criteria for Evaluating Applications in Subpart D.

(Section 223 of the Act; 20 U.S.C. 1033)

Subpart D—How a Grant is Made

§ 777.30 How the Secretary judges applications.

(a) The Secretary evaluates an application on the basis of the criteria in § 777.31 and awards up to 100 points for these criteria.

(b) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(20 U.S.C. 3474)

§ 777.31 Selection criteria for evaluating applications.

(a) *Plan of operation* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(b) *Quality of key personnel* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1) and (2) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as, members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Significance of proposed project* (30 points)

The Secretary reviews each application for information that shows the extent to which—

(1) The proposed project—

(i) Addresses an important library or information problem;

(ii) Is likely to improve operations or service in a significant number of libraries; or

(iii) Is likely to fulfill unmet informational, educational or cultural needs related to libraries and information science.

(2) The applicant demonstrates and understanding of the nature and magnitude of the needs to be addressed as well as the success or failure of related research and development actvity, and

(3) The proposed project addresses any priorities established for this program.

(g) *Dissemination* (5 points)

The Secretary reviews each application for information that shows—

(i) Results of the project will be adequately disseminated, and

(ii) To the extent possible, the project will be continued or replicated after the termination of Federal funding.

(Section 223 of the Act; 20 U.S.C. 1033)

Subpart E—Conditions That Must be Met by a Grantee

§777.40 Coordination with other groups.

Each institution of higher education that receives a grant under this part shall annually inform the State agency, designated under Section 1203 of the Act, of its project activities.

(Section 202 of the Act; 20 U.S.C. 1022)

Subpart F—The Administrative Responsibilities of a Grantee

§ 777.50 Performance reports.

The grantee shall submit the performance report required under 34 CFR Part 74, Subpart J, on a quarterly basis.

(Section 223 of the Act; 20 U.S.C. 1033)

[FR Doc. 80-40423 Filed 12-29-80; 8:45 am]

BILLING CODE 4000-01-M

34 CFR Parts 385, 386, 387, 388, 389, and 390

Rehabilitation Training Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking: Cross-reference.

SUMMARY: The Secretary proposes regulations for the Rehabilitation Training Program in Title 34 of the Code of Federal Regulations:

(a) Rehabilitation Training—General (Part 385)

(b) Rehabilitation Long-Term Training (Part 386)

(c) Experimental and Innovative Training (Part 387)

(d) State Vocational Rehabilitation Unit In-Service Training (Part 388).

(e) Rehabilitation Continuing Education Programs (Part 389).

(f) Rehabilitation Short-Term Training (Part 390).

The Secretary invites comments on these proposed regulations.

The texts of the regulations on which the Secretary invites comments are published in the Rules and Regulations section of this issue of the **Federal Register.** They have been adopted as final regulations and will govern these programs until the Secretary issues new regulations based on public comment.

DATES: All comments, suggestions, or objections must be received on or before.

ADDRESSES: Comments should be addressed to: Mr. Harold F. Shay, Director, Division of Manpower Development, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Room 3321, Mary E. Switzer Building, 330 C Street, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Harold F. Shay, Telephone: (202) 245-0079.

INVITATION TO COMMENT: For additional details on how to comment, see the Preamble of the final regulations for these programs published in this issue of the **Federal Register.**

(Catalog of Federal Domestic Assistance Number 84.129, Rehabilitation Training)

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 80-40424 Filed 12-29-80; 8:45 am]

BILLING CODE 4000-01-M

34 CFR Part 606

Continuing Education Outreach—Special Projects

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes regulations for the Continuing Education Outreach—Special Projects program for the first time. The regulations are proposed to reflect statutory changes in the Education Amendments of 1980. The proposed regulations will govern the administration of a program primarily designed to demonstrate the effectiveness of alternative providers and approaches which serve the postsecondary education needs of underserved adults. The proposed regulations will ensure that a wide range of applicants, including institutions of higher education, public and private organizations, States, business, industry, and labor, will be eligible to participate in the program.

DATES: Comments must be received on or before March 2, 1981. Public meetings are planned to take coments on these proposed regulations. A notice giving the city, time, and location will be published later in the **Federal Register.**

ADDRESSES: Comments should be addressed to Mr. Charles I. Griffith, Office of Postsecondary Education, U.S. Department of Education, (Room 3717, ROB-3), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. John E. Donahue, Office of Postsecondary Education, U.S. Department of Education, (Room 3717, ROB-3), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone (202) 245-9868.

SUPPLEMENTARY INFORMATION: The Continuing Education Outreach—Special Projects program is the successor to the Community Service and Continuing Education—Special Projects program. The primary focus has been changed from assisting in the solution of national and regional problems to expanding access to continuing educational opportunities for underserved adults. Eligibility for grants has been expanded to include institutions of higher education, public and private organization community-based educational institutions, States, business, industry, and labor.

Invitation To Comment: Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given earlier in this preamble. All comments received on or before March 2, 1981, will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3717, ROB-3, 7th and D Streets, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority: A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number not yet assigned)

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary proposes to amend Part 606 of Title 34 of the Code of Federal Regulations to read as follows:

PART 606—CONTINUING EDUCATION OUTREACH—SPECIAL PROJECTS PROGRAM

Subpart A—General

Sec.

606.1 Continuing Education Outreach—Special Projects Program.

606.2 Eligible grantees.

606.3 Regulations that apply to the Continuing Education Outreach—Special Projects Program.

606.4 Definitions that apply to the Continuing Education Outreach—Special Projects Program.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

606.10 Eligible activities.

606.11 Funding priorities.

Subpart C—How Does One Apply for a Grant?

606.20 How to apply for funds.

Subpart D—How Does the Secretary Make a Grant?

606.30 Procedures for evaluating applications.

606.31 Criteria for evaluating applications.

606.32 Project length.

Subpart E—What Condition Must Be Met by a Grantee?

606.40 Matching requirement.

Authority: Title I of the Higher Education Act of 1965, as amended by Pub. L. 96-374 (20 U.S.C. 1016), unless otherwise noted.

Subpart A—General

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

The Secretary looks for information

Subpart E—What Condition Must Be Met by a Grantee?

§ 606.40 Matching requirement

A grantee shall pay from non-federal

V 4 5 D E 3 0 8 0 UMI

Authority: Title I of the Higher Education Act of 1965, as amended by Pub. L. 96-374 (20 U.S.C. 1016), unless otherwise noted.

Subpart A—General

§ 606.1 Continuing Education Outreach—Special Projects.

The Continuing Education Outreach—Special Projects program provides Federal financial assistance for projects designed to demonstrate the effectiveness of alternative providers and approaches in increasing access to postsecondary continuing educational opportunities for underserved adult learners.

(20 U.S.C. 1016)

§ 606.2 Eligible grantees.

The following parties are eligible to receive grants under this program:

(a) Institutions of higher education.

(b) Public and private institutions and organizations, including business, industrial, and labor organizations.

(c) States.

(d) Any combination of these institutions, organizations, or States.

(20 U.S.C. 1016)

§ 606.3 Regulations that apply to the Continuing Education Outreach—Special Projects Program.

The following regulations apply to Continuing Education Outreach—Special Projects:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General).

(b) The regulations in this Part 606.

(20 U.S.C. 1016; 20 U.S.C. 1221e-3(a)(1))

§ 606.4 Applicable definitions that apply to the Continuing Education Outreach—Special Projects Program.

(a) *Definitions in EDGAR.* The following terms used in this part as defined in 34 CFR Part 77:

Applicant	Private
Application	Project
Budget period	Project period
Contract	Public
Fiscal year	Secretary
Grant	State
Grantee	

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means Title XII of the Higher Education Act of 1965, as amended.

"Adults whose educational needs have been inadequately served" means individuals 18 years of age or older who—because of circumstances of age, sex, low income, handicap, minority status, rural isolation, status of unemployment, lack of education, or other significant barriers—have been discouraged from obtaining equal educational opportunities.

"Continuing education" means postsecondary instruction and support services designed to meet the educational needs of adults, including the expansion of available learning opportunities for adults whose educational needs are inadequately served by current educational offerings in their communities.

(20 U.S.C. 1016)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 606.10 Eligible activities.

The Secretary makes grants for projects that:

(a) Develop and evaluate innovative delivery systems, particularly those involving alternative providers, that increase access to postsecondary education for adults;

(b) Expand the range of educational and community resources that meet the needs of underserved adults for continuing education;

(c) Promote the development of interstate educational delivery systems, cooperative and consortial arrangements, and programs—including telecommunications—that more effectively address regional needs for continuing education;

(d) Stimulate and evaluate creative approaches to the problems of access for adults inadequately served by existing educational offerings;

(e) Develop statewide, regional, or national programs to coordinate educational and occupational information, including information on student financial assistance, through creation and expansion of data banks for the more effective coordination and dissemination of such information;

(f) Assist States to perform more effectively their functions of accrediting institutions of higher education in their State;

(g) Provide preservice and inservice training to personnel involved in child-care, including the recruitment and training of low-income parents for positions in childcare;

(h) Provide specialized training in early childhood education;

(i) Develop improved teacher certification criteria for child-care programs.

(20 U.S.C. 1016)

§ 606.11 Funding priorities.

(a) For any fiscal year the Secretary establishes priorities for the funding of proposed projects. The priorities shall be consistent with the objectives listed in § 606.10 and shall be announced in the **Federal Register.**

(b) To be eligible for funding a proposed project must respond to one of the priorities established by the Secretary.

(20 U.S.C. 1016)

Subpart C—How Does One Apply For a Grant?

§ 606.20 How to apply for funds.

(a) An applicant requesting funds under this part shall use the following procedures:

(1) The procedures contained in EDGAR (34 CFR Part 75, Subpart C); and

(2) The following special application procedures;

(i) On or before the deadline date for submitting its application to the Secretary, the applicant shall submit a copy of its application, with a letter asking for comment, to the State agency responsible for comprehensive postsecondary education planning under section 1203 of the Act (Federal-State agreements).

(ii) The applicant shall attach to its application to the Secretary a copy of its letter requesting the State agency to comment on the application.

(b) An applicant shall apply for a grant that extends from 18 to 30 months in duration.

(20 U.S.C. 1016)

Subpart D—How Does the Secretary Make a Grant?

§ 606.30 Procedure for evaluating applications.

(a) The Secretary evaluates an application on the basis of the criteria in § 606.31.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum score for each criterion is indicated in parentheses.

(d) The Secretary considers the rank order of applications in selecting projects to be awarded grants.

(20 U.S.C. 1016)

§ 606.31 Criteria for evaluating applications.

(a) *Plan of Operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the projects;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualification of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the projects.

(d) *Evaluation plan.* (12 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

The Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(f) *Innovation.* (10 points)

The Secretary reviews each application to determine the extent to which the proposed project duplicates current or past projects in the field of postsecondary continuing education.

(g) *Responsiveness to priorities.* (14 points)

The Secretary reviews each application to determine the extent to which the proposed project is responsive to one of the priorities established under § 606.11 for the fiscal year in which the application is submitted.

(h) *Replicability.* (12 points)

The Secretary reviews each application for information that describes the methods the applicant plans to use to disseminate the results of the proposed project to the general public and to professionals in the field of continuing education.

(i) *Dissemination.* (12 points)

The Secretary reviews each application for information that describes the methods the applicant plans to use to disseminate the results of the project to the general public and to professionals in the field of continuing education.

(j) *Value to the field of continuing education.* (15 points)

The Secretary reviews each application to assess the degree to which the proposed project would employ, or result in the development of, new approaches, methods, or materials of value in increasing the effectiveness of continuing education programs.

(20 U.S.C. 1016)

§ 606.32 Project length.

(a) The Secretary funds projects that are designed to be from eighteen to thirty months in length.

(1) The Secretary may issue a grant for a budget period of up to 12 months.

(2) The grantee may apply for a continuation grant on a noncompetitive basis contingent upon satisfactory performance and the availability of funds.

(20 U.S.C. 1016)

Subpart E—What Condition Must Be Met by a Grantee?

§ 606.40 Matching requirement

A grantee shall pay from non-federal funds at least one-third of the cost of its project funded under this part.

(20 U.S.C. 1019)

[FR Doc 80-40425 Filed 12-29-80; 8:45 am]
BILLING CODE 4000-01-M

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34 CFR Parts 350, 351, 352, 353, 354, 355, and 356

National Institute of Handicapped Research

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary is proposing regulations to implement the new and revised research authorities contained in Title II of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Public Law 95-602). These include revisions to existing grant authorities under which the scope of permissible research activity and the class of eligible applicants has been broadened. The regulations also cover a number of new special purpose grants and other assistance programs, a new research fellowship program, and requirements governing the peer review of all applications for grant assistance, all authorized by the 1978 Amendments.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed regulations on or before March 2, 1981.

ADDRESS: All written comments and suggestions should be sent to Nathan Ed Acree, National Institute of Handicapped Research, Department of Education, Switzer Office Building 3511, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Nathan Ed Acree, National Institute of Handicapped Research, Room 3428, Switzer Office Building, 330 C Street, S.W., Washington, D.C. 20202. Area Code (202) 472-5248 or TTY (202) 245-0591.

SUPPLEMENTARY INFORMATION: The Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 located within a single title, Title II, all of the rehabilitation research authorities and established a National Institute of Handicapped Research within the Department of Health, Education, and Welfare to administer these programs. All functions of the National Institute of Handicapped Research were subsequently transferred to the

Department of Education under section 301(a)(4)(c) of the Department of Education Organization Act (Public Law 96-88).

Statutory Changes

research programs to include private profitmaking agencies and organizations. Previously, eligibility was limited to States and public or nonprofit agencies and organizations;

grant application procedures, peer review, confidentiality, non-Federal matching requirements, and selection criteria to be used in reviewing and evaluating all applications for grant

statistical studies, and information dissemination. These activities are considered to be research "related activities which bear directly on the development of methods, procedures,

Subpart B—Reserved

Subpart C—How Does One Apply for a Grant?

350.20 What are the application procedures for these programs?

(4) Research grants for establishment and operation of model training centers (34 CFR Part 354);

(5) Knowledge dissemination and research utilization projects (34 CFR

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Department of Education under section 301(a)(4)(c) of the Department of Education Organization Act (Public Law 96–88).

Statutory Changes

The 1978 Amendments authorized a number of new Federal grant and other assistance programs to support the conducting of rehabilitation research. These include:

(1) A program under section 204(b)(6) of the Act to conduct research concerning the use of existing telecommunication systems which have the potential for substantially improving service delivery methods;

(2) A program under section 204(b)(7) of the Act to conduct joint projects with the National Institutes of Health, the Health Services Administration, the Administration on Aging, the National Science Foundation, the Veterans' Administration, the Office of Education, the National Aeronautics and Space Administration, other Federal agencies, and private industry in areas of joint interest involving rehabilitation;

(3) A program under section 204(b)(8) of the Act to conduct research related to the rehabilitation of handicapped children and of handicapped individuals who are aged sixty or older;

(4) A program under section 204(b)(9) of the Act to conduct research to develop and demonstrate innovative methods of attracting and retaining professionals to serve in rural areas;

(5) A model research and demonstration project under section 204(b)(10) of the Act to assess the feasibility of establishing a center for producing and distributing to deaf individuals captioned video cassettes providing a broad range of educational, cultural, scientific, and vocational programming;

(6) A model research and demonstration program under section 204(b)(11) of the Act to develop innovative methods of providing services to preschool age handicapped children;

(7) A model research and training program under section 204(b)(12) of the Act to establish model training centers to develop and use more advanced and effective methods of evaluating and developing the employment potential of handicapped individuals; and

(8) A fellowship program under section 202(d) of the Act to procure the assistance of highly qualified research fellows from the United States and foreign countries.

The 1978 Amendments also revised existing grant authorities by:

(1) Expanding the class of applicants eligible for grant assistance under all research programs to include private profitmaking agencies and organizations. Previously, eligibility was limited to States and public or nonprofit agencies and organizations;

(2) Broadening the scope of research activity under the general research and demonstrations authority of section 204(a) of the Act from a purely vocational or employment focus to encompass all rehabilitation problems encountered by handicapped individuals in their daily activities. Research under this authority now includes "basic research where related to rehabilitation techniques or services" and research related to psychiatric factors affecting rehabilitation; and

(3) Requiring Rehabilitation Research and Training Centers under section 204(b)(1) of the Act to conduct research based on the particular needs of handicapped individuals in the geographic area that the Center serves.

The 1978 Amendments also expanded, under certain of the new specialized research programs, the group of handicapped persons intended to benefit from research findings. Although the primary beneficiaries of the Institute's research programs continue to be State vocational rehabilitation agency clients, there are newly authorized grant programs that focus on the needs of preschool age handicapped children, other handicapped children, deaf persons, and handicapped individuals who are aged sixty or older.

Format and Content of the Proposed Regulations

Organizationally, the proposed regulations are divided into seven parts: a general part (Part 350) that contains provisions common to all of the research programs; five parts (Parts 351, 352, 353, 354, and 355) devoted to separate and distinct research grant programs; and a final part (Part 356) related to the research fellowship program.

Although section 204 of the Act contains 13 different authorities for making research grants, an administrative decision was made to organize these 13 authorities into five distinct research grant programs to correspond with the annual budget categories used by Congress in appropriating funds for these programs.

Part 350

Part 350, the general part, contains a statement of the purposes of the various rehabilitation research programs and a list of the various agencies and organizations eligible for grant assistance. It identifies the regulations and definitions that are applicable to these programs. Part 350 also contains grant application procedures, peer review, confidentiality, non-Federal matching requirements, and selection criteria to be used in reviewing and evaluating all applications for grant assistance.

The selection criteria proposed for the rehabilitation research programs are based primarily on the selection criteria set forth in the Education Division General Administrative Regulations (EDGAR) located in 34 CFR 75.202–206. Four additional selection criteria have been developed, however, that cover important elements of an effective research project that are not addressed by the EDGAR criteria. These are: project concept or national need (34 CFR 350.36(a)); research design (34 CFR 350.36(b)); research utilization plan (34 CFR 350.36(g)); and literature review (34 CFR 350.36(i)).

Specialized Research Grant Programs

Parts 351, 352, 353, 354, and 355 contain all of the specific requirements that apply to the direct grant programs established in section 204 of the Act.

Part 351, the Research and Demonstrations Projects Program, consists of all project activities except those related to technology and engineering, knowledge dissemination and utilization, and those activities specifically conducted by Research and Training Centers, Engineering Centers, and Model Training Centers. This includes a majority of the research activities authorized by section 204(a) of the Act as well as specialized projects under sections 204(b)(3), 204(b)(4), 204(b)(5), 204(b)(7), 204(b)(8), 204(b)(9), and 204(b)(11) of the Act.

Part 352 contains provisions related to the conduct of research and training activities by Rehabilitation Research and Training Centers authorized under section 204(b)(1) of the Act.

Part 353, the Rehabilitation Engineering Program, contains provisions related to research activities conducted by Rehabilitation Engineering Research Centers authorized by section 204(b)(2) of the Act. It also contains provisions related to specialized research activities that have an engineering focus under sections 204(b)(6) (telecommunications systems) and 204(b)(10) (video cassettes for deaf) of the Act.

Part 354 consists of regulations governing Model Training Centers authorized under section 204(b)(12) of the Act.

Part 355, the Knowledge Dissemination and Utilization Program, consists of project activities concerned with the development of practical applications for research findings, statistical studies, and information dissemination. These activities are considered to be research "related activities which bear directly on the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to handicapped individuals" authorized under section 204(a) of the Act. Projects supported under this part assist the Director of the National Institute of Handicapped Research in carrying out the knowledge dissemination functions mandated under 202(b) of the Act.

Research Fellowship Program

Part 356 contains requirements that apply to the Research Fellowship Program authorized by section 202(d) of the Act. Under this program assistance will be provided to individual researchers to engage in activities related to the solution of specific rehabilitation problems encountered by handicapped persons.

Assessment of Educational Impact

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

A citation of statutory authority is placed in parenthesis on the line following each substantive provision of the proposed regulations. The first citation is the appropriate section of the Rehabilitation Act of 1973, as amended, and it is followed by a citation to the same provision in the United States Code.

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.133, National Institute of Handicapped Research)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 350 to read as follows:

Part 350—HANDICAPPED RESEARCH: GENERAL PROVISIONS

Subpart A—General

Sec.

350.1 Handicapped Research.
350.2 Who is eligible for assistance under these programs?
350.3 What regulations apply to these programs?
350.4 What definitions apply to these programs?

Subpart B—Reserved

Subpart C—How Does One Apply for a Grant?

350.20 What are the application procedures for these programs?
350.21 How does an applicant inform the Secretary of its participation in the support of a project or center?

Subpart D—How Does the Secretary Make a Grant?

350.30 To whom does the Secretary refer an application?
350.31 What is the purpose of a peer review?
350.32 What is the composition of peer review panel?
350.35 How does the Secretary evaluate an application?
350.36 What selection criteria does the Secretary use in reviewing a grant application?

Subpart E—What Conditions Apply to a Grantee?

350.40 What are the matching requirements?

Subpart F—What are the Administrative Responsibilities of a Grantee or Fellow?

350.50 What are the requirements with respect to protection, use, and release of personal information?

Authority: Title II of the Rehabilitation Act of 1973 (Public Law 93–112), as amended by Public Law 95–602 (29 U.S.C 760–762; 92 Stat. 2962–2966).

Subpart A—General

§ 350.1 Handicapped research.

(a) The Secretary provides financial assistance to—

(1) Support the conduct of research, demonstration projects and related activities for the rehabilitation of handicapped individuals, including programs designed to train persons who provide rehabilitation services and persons who conduct research;

(2) Facilitate the distribution of information concerning developments in rehabilitation procedures, methods, and devices;

(3) Improve the distribution of technological devices and equipment; and

(4) Increase the scientific and technological information presently available in the field of rehabilitation.

(b) The Secretary awards financial assistance through six types of programs—

(1) Research and demonstration projects (34 CFR Part 351);

(2) Research grants for establishment and operation or rehabilitation research and training centers (34 CFR Part 352);

(3) Research grants for establishment and operation of rehabilitation engineering programs (34 CFR Part 353);

(4) Research grants for establishment and operation of model training centers (34 CFR Part 354);

(5) Knowledge dissemination and research utilization projects (34 CFR Part 355); and

(6) Research fellowships (34 CFR Part 356).

(Section 200 and 204; 29 U.S.C. 760 and 762)

§ 350.2 Who is eligible for assistance under these programs?

The following agencies and organizations are eligible for grants or contracts as appropriate under these programs:

(a) State and public agencies or organizations;

(b) Private agencies or organizations; and

(c) Institutions of higher education.

(Section 204; 29 U.S.C. 762)

§ 350.3 What regulations apply to these programs?

The following regulations apply to grants under the Handicapped Research Programs—

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs).

(b) The EDGAR regulations in 34 CFR Part 77 (Definitions);

(c) The regulations in this Part, 34 CFR Part 350;

(d) The regulations in 34 CFR Parts 351, 352, 353, 354, 355, or 356, as appropriate; and

(e) 45 CFR Part 46 (Protection of Human Subjects).

(Sections 202 and 204; 29 U.S.C. 761a, 762)

§ 350.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR Part 77 apply to the programs under Handicapped Research—

Applicant	Preschool
Application	Private
Award	Project
Budget Period	Project Period
Department	Public
Grant Period	Secretary
Nonprofit	State
Nonpublic	

(Section 202(i)(1); 29 U.S.C. 761a(i)(1)

(b) The following definitions also apply to programs under Handicapped Research.

"Act" means the Rehabilitation Act of 1973 (Public Law 93–112), as amended.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1))

"Core area" means a program of research in which the entire activity is planned so as to contribute in a sequential or complementary way to a centralized body of knowledge of manageable scope.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1)

"Demonstration" means the application of results derived from previous research, testing, or practice for purposes of establishing the feasibility of applying findings to practical applications in planning, policy-making, program administration, and service practice in the delivery of services to handicapped persons.

Handicapped Research Programs to a peer review panel established by the Secretary. The procedures for review by a group of experts under EDGAR § 75.217 (a) and (b) do not apply.

(Section 202e; 29 U.S.C. 761a(e))

§ 350.36 What selection criteria does the Secretary use in reviewing a grant application?

(iv) The way the applicant plans to use its resources and personnel to achieve each objective (3 of the 15 points);

(v) A clear description of how the

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Research utilization plan* (10

(Section 202(i)(1); 29 U.S.C. 761a(i)(1)

"Demonstration" means the application of results derived from previous research, testing, or practice for purposes of establishing the reliability, furthering the validity, or determining the cost effectiveness of new rehabilitation procedures.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1))

"Development" means the systematic use of knowledge and understanding gained from research, directed toward creating useful materials, devices, systems, or methods, including design and development of prototypes and processes.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1))

"Director" means Director of the National Institute of Handicapped Research.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1))

"Fellowship" means a financial award to procure the assistance of highly qualified research fellows from the United States and foreign countries. It is not a grant.

(Section 202(d); 29 U.S.C. 761a(d))

"Handicapped individual" means any individual who (i) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment; and (ii) can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services.

(Section 7(7)A; 29 U.S.C. 706(7)(A))

"Institute" means the National Institute of Handicapped Research.

(Section 202(a); 29 U.S.C. 761a(a))

"Project concept" means a statement of the purpose, scope, and objectives of a project.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1))

"Research" means intensive systematic study directed toward new or fuller scientific knowledge or understanding of the subject or problem studied. Research is classified as basic or applied.

(i) *"Basic research"* is research in which the investigator is concerned primarily with gaining new knowledge or understanding of the subject under study.

(ii) *"Applied research"* is research in which the investigator is primarily interested in a practical use of well established basic information for the purpose of meeting a recognized need.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1))

"Research utilization" means activities seeking to link research findings to practical applications in planning, policy-making, program administration, and service practice in the delivery of services to handicapped persons.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1))

"State rehabilitation agency" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Section 101(a)(1)(A); 29 U.S.C. 721(a)(1)(A))

"Target population" means the group of individuals, organizations, or other entities which would be affected by the results of research and to whom results would ordinarily be communicated. More than one target group may be involved since research results may affect those who receive services, provide services, or administer services.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1))

"Training" means a planned and systematic sequence of instruction under competent supervision which is designed to impart predetermined skills and knowledge.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1))

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 350.20 What are the application procedures for these programs?

An applicant for assistance under 34 CFR Parts 351, 352, 353, 354, or 355 shall submit a copy of the application to the State rehabilitation agency for comment in accordance with the procedures in EDGAR §§ 75.155–75.159.

(Sections 204c, 306(i); 29 U.S.C. 762(c), 776(i))

§ 350.21 How does an applicant inform the Secretary of its participation in the support of a project or center?

With the exception of 34 CFR Part 356 (Fellowships), an applicant shall identify in the application the financial contribution it proposes to make to support the proposed project or center.

(Section 204; 29 U.S.C. 762)

Subpart D—How Does the Secretary Make a Grant?

§ 350.30 To whom does the Secretary refer an application?

(a) The Secretary refers each application for a grant under the Handicapped Research Programs to a peer review panel established by the Secretary. The procedures for review by a group of experts under EDGAR § 75.217 (a) and (b) do not apply.

(b) The peer review panel reviews the application for the Secretary on the basis of the criteria described in § 350.36.

(Section 202(e); 29 U.S.C. 761a(e))

§ 350.31 What is the purpose of peer review?

The purpose of peer review is to insure that those activities supported by the Institute are of the highest scientific, administrative, or technical quality and that the results may be widely applied to appropriate population groups and situations.

(Section 202(e); 29 U.S.C. 761a(e))

§ 350.32 What is the composition of a peer review panel?

(a) The Secretary selects as members of a peer review panel non-Federal scientists and other experts qualified by training and experience in particular scientific, administrative, or technical fields to give expert advice on the scientific or technical merit of grant applications.

(b) In selecting an individual for membership on a peer review panel, the Secretary takes into account, among other factors, the following:

(1) The level of formal scientific or technical education completed by the individual;

(2) The extent to which the individual has engaged in scientific, technical, or administrative activities appropriate to the category of applications that the panel will consider, the role of the individual in those activities, and the quality of those activities; and

(3) The recognition received by the individual as reflected by awards and other honors from scientific and professional agencies and organizations outside the Department.

(Section 202(e); 29 U.S.C. 761a(e))

§ 350.35 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application under 34 CFR Parts 351, 352, 353, 354, and 355 on the basis of the criteria in § 350.36, except as set forth in § 355.31(b).

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses after the descriptive title of the criterion. For two of the criteria there is also a designation of the maximum score assigned to each of the component elements of those criteria.

(Section 202e; 29 U.S.C. 761a(e))

§ 350.36 What selection criteria does the Secretary use in reviewing a grant application?

(a) *Project concept or national need* (5 points).

(1) The Secretary reviews each application for information that shows the quality of the "project concept" or "national need" statement.

(2) The Secretary looks for information that shows—

(i) For any application that is addressing a specific project concept published by the Secretary in a **Federal Register** Application Notice, how well the project would contribute to its achievement.

(ii) For any application not addressed to a specific project concept (but responding to an Application Notice published in the **Federal Register** asking for field designed proposals), what national need the application will address, how clearly this need is described, how important the need is, and how well the project will meet the need.

(b) *Research design* (35 points).

(1) The Secretary reviews each application for information that shows the quality of the research design of the project.

(2) The Secretary looks for information that shows—

(i) Clearness and achievability of the project objectives (10 of the 35 points);

(ii) Soundness of the procedures to be utilized in achieving each objective (5 of the 35 points);

(iii) Precise definitions of terms where necessary (5 of the 35 points);

(iv) Description of subject population and appropriateness of sample size (5 of the 35 points);

(v) Appropriateness of statistical and other instruments to be used (5 of the 35 points); and

Adequacy of data analysis and basis for the conclusions reached (5 of the 35 points).

(c) *Plan of operation* (15 points).

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the operational design of the project (3 of the 15 points);

(ii) An effective plan of management that insures proper and efficient administration of the project (3 of the 15 points);

(iii) A clear description of how the objectives of the project relate to the purpose of the program (3 of the 15 points);

(iv) The way the applicant plans to use its resources and personnel to achieve each objective (3 of the 15 points);

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Handicapped persons;

(B) The elderly;

(C) Women; and

(D) Members of racial or ethnic minority groups (3 of the 15 points).

(d) *Evaluation plan* (10 points).

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective, and produce data that are quantifiable.

(e) *Quality of key personnel* (10 points).

(1) The Secretary reviews each application for information that shows the quality of key personnel proposed for the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (2)(i) and (ii) of ths section will commit to the project; and

(iv) The extent to which the applicant as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented such as—

(A) Handicapped persons;

(B) The elderly;

(C) Women; and

(D) Members of racial or ethnic minority groups.

(3) To determine personnel qualifications, the Secretary considers the experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(f) *Adequacy of resources* (5 Points).

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Research utilization plan* (10 points).

(1) The Secretary reviews each application for information that shows the quality of the research utilization plan.

(2) The Secretary looks for information that show—

(i) What will be delivered to the Department;

(ii) The format in which the results, products, or outcomes will be delivered to the Department;

(iii) The way in which results, products, or outcomes will be developed or provided for dissemination purposes to specified target populations; and

(iv) The procedures to be used in dissseminating the results, products, or outcomes at the local, State, or national levels.

(h) *Budget and cost effectiveness* (5 points).

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(i) *Literature review* (5 Points).

(1) The Secretary reviews each application for information that shows the quality of the literature review.

(2) The Secretary looks for information that shows—

(i) A description of what has been done previously to alleviate the problem; and

(ii) An identification of the gaps that may be alleviated by the proposed project.

(34 CFR 75.201 through 75.206)

(Section 202(e) and 202(i)(1); 29 U.S.C. 761a(e) and 761a(i)(1))

Subpart E—What Conditions Apply to a Grantee?

§ 350.40 What are the matching requirements?

(a) Research and demonstration projects which bear directly on the development of procedures, methods, and devices to assist in the provision of vocational and other rehabilitation services can only be partially funded by the Secretary. It is expected that the grantee will participate in the costs of such projects. No specific percentage of

matching is required. Generally 10 percent is considered adequate.

(b) Grants may be made to pay for part or all of the costs of the following

PART 351—HANDICAPPED RESEARCH: RESEARCH AND DEMONSTRATION PROJECTS

Subpart A—General

§ 351.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

Subart C—Reserved

Subpart D—How Does the Secretary Make a Grant?

(4) Costs incident to necessary modification of a patient's living quarters;

(5) Hospital and related medical expenses for a donor of a kidney:

rehabilitation services and to provide training (including graduate training) for rehabilitation research and other rehabilitation personnel.

(Section 204(b)(1); 29 U.S.C. 762(b)(1))

matching is required. Generally 10 percent is considered adequate.

(b) Grants may be made to pay for part or all of the costs or the following activities: Rehabilitation Research and Training Centers; Rehabilitation Engineering Centers; model training centers; and research projects on spinal cord injury, end-stage renal disease, telecommunications, joint projects with other Federal agencies and private industry, rehabilitation of handicapped children and handicapped individuals who are aged sixty or older, attraction and retention of professional workers in rural areas, captioned video cassetts for deaf individuals, and services for preschool handicapped children and their parents. The Secretary will determine at the time of the award whether the grantee must pay a portion of the project costs.

(Section 204; 29 U.S.C. 762)

Subpart F—What are the Administrative Responsibilities of a Grantee or Fellow?

§ 350.50 What are the requirements with respect to protection, use, and release of personal information?

(a) All personal information about individuals served or participating in any project under these parts, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the consent of the individual to whom the information applies, or his or her representative, have been obtained in writing. The Secretary and other Federal or State officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final product of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1))

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 351 to read as follows:

PART 351—HANDICAPPED RESEARCH: RESEARCH AND DEMONSTRATION PROJECTS

Subpart A—General

Sec.
351.1 What is the Research and Demonstration Projects Program?
351.2 Who is eligible for assistance under this program?
351.3 What regulations apply to this program?
351.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

351.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

351.30 How is peer review conducted under this program?
351.31 What selection criteria are used under this program?
351.32 What are the priorities for funding under this program?

Subpart E—What Conditions Apply to a Grantee Under This Program?

351.40 What are the allowable costs?

Authority: Title II of the Rehabilitation Act of 1973 (Public Law 93-112) as amended by Public Law 95-602 (29 U.S.C. 760-762; 92 Stat. 2962-2966).

Subpart A—General

§ 351.1 What is the Research and Demonstration Projects Program?

A research project under this program is designed—

(a) To assist in the provision of vocational and other rehabilitation services to handicapped individuals, especially the most severely handicapped, through planning and conducting of research, demonstration, and specialized research activities;

(b) To cooperate with and assist in developing and sharing information found useful in other nations in the rehabilitation of handicapped individuals; or

(c) To assist in development of solutions to problems encountered by handicapped individuals in their daily activities, especially problems related to employment.

(Sections 202(g)(1); 204; 29 U.S.C. 761a(g)(1), 762)

§ 351.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are described in 34 CFR 350.2.

(Section 204; 29 U.S.C. 762)

§ 351.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Sections 202 and 204; 29 U.S.C. 761a, 762)

§ 351.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 351.10 What types of projects are authorized under this program?

The Research and Demonstration Projects Program provides financial assistance for the following types of projects—

(a) Medical and other scientific, technical, methodological, and other investigations into the nature of disability, methods of analyzing it, restorative techniques, including basic research where related to rehabilitation techniques or services; studies and analyses of industrial, vocational, social, psychiatric, psychological, economic and other factors affecting rehabilitation of handicapped individuals; special problems of homebound and institutionalized individuals; and other research related to problems encountered by handicapped individuals in their daily activities, especially problems related to employment.

(b) Specialized research activities as follows—

(1) Spinal cord injury research and demonstrations;

(2) End-state renal disease research and demonstrations;

(3) International research, demonstrations, training, and exchange of experts and technical assistance;

(4) Joint projects with other Federal agencies and private industry;

(5) Research related to handicapped children and handicapped individuals aged 60 years and older;

(6) Special research and demonstration projects designed to develop and demonstrate methods to attract and retain professionals to serve in rural areas in the rehabilitation of handicapped individuals; and

(7) Research and demonstration projects related to the provision of services to handicapped preschool children.

(Sections 204(a), 204(b)(3)-(5), 204(b)(7)-(9), 204(b)(11); 29 U.S.C. 762(a), 762(b)(3)-(5), 762(b)(7)-(9), 762(b)(11))

Subpart C—Reserved

Subpart D—How Does the Secretary Make a Grant?

§ 351.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30-350.32.

(Section 202(e); 29 U.S.C. 761a(e))

§ 351.31 What selection criteria are used under this program?

The selection criteria for this program are established and described in 34 CFR 350.36, with the weighted scores distributed as follows:

(a) Project concept or national need (5 Points).
(b) Research design (35 Points).
(c) Plan of operation (15 Points).
(d) Evaluation plan (10 Points).
(e) Quality of key personnel (10 Points).
(f) Adequacy of resources (5 Points).
(g) Research utilization (10 Points).
(h) Budget and cost effectiveness (5 Points).
(i) Literature review (5 Points).

(Sections 202(e) and 202(i)(1); 29 U.S.C. 761a(e) and 761a(i)(1))

§ 351.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support some or all of the types of projects listed in § 350.10.

(b) The Secretary advises the public of these priorities through an Application Notice published in the Federal Register.

(Sections 202(g), 204; 29 U.S.C. 761a(g), 762)

Subpart E—What Conditions Apply to a Grantee Under This Program?

§ 351.40 What are the allowable costs?

(a) In addition to those allowable costs set forth in EDGAR §§ 75.530-75.534, the following items are allowable under end-stage renal disease projects:

(1) Medical and technical expenses pursuant to treatment for end-stage renal disease;

(2) Purchase or rental or renal dialysis and other machines and supplies necessary for the treatment of end-stage renal disease, when such machines and supplies are not available under other Federal, State, or other program resources;

(3) Costs incident to the training of a patient with end-stage renal disease or members of the family in the use of renal dialysis and related equipment and in other aspects of end-stage renal disease care, including the use of home aides;

(4) Costs incident to necessary modification of a patient's living quarters;

(5) Hospital and related medical expenses for a donor of a kidney;

(6) Laboratory fees; and

(7) Tissue matching.

(b) If an individual selected to participate in an end-stage renal disease research project under this Part is eligible for and is receiving services for the treatment of end-stage renal disease under any other Federal, State, or other programs, the costs of these services shall not be attributed to a grant under this Part.

(Section 204(b)(4); 29 U.S.C. 762(b)(4))

The Secretary proposes to amend Title 34 of the code of Federal Regulations by adding a new Part 352 to read as follows:

PART 352—HANDICAPPED RESEARCH: REHABILITATION RESEARCH AND TRAINING CENTERS

Subpart A—General

Sec.
352.1 What is the Rehabilitation Research and Training Centers Program?
352.2 Who is eligible for assistance under this program?
352.3 What regulations apply to this program?
352.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Assist Under This Program?

352.10 What types of centers are authorized under this program?

Subpart C—Reserved

Subpart D—How Does the Secretary Make a Grant?

352.30 How is peer review conducted under this program?
352.31 What selection criteria are used under this program?
352.32 What are the priorities for funding under this program?

Authority: Title II of the Rehabilitation Act of 1973 (Public Law 93-112), as amended by Public Law 95-602 (29 U.S.C. 760-762; 92 Stat. 2962-2966).

Subpart A—General

§ 352.1 What is the Rehabilitation Research and Training Centers Program?

This program is designed to support—

(a) The conduct of coordinated and advanced programs of research in rehabilitation;

(b) The dissemination and active promotion of the utilization of findings resulting from such research; and

(c) The conduct of training programs (including graduate training) to assist individuals to more effectively provide rehabilitation services and to provide training (including graduate training) for rehabilitation research and other rehabilitation personnel.

(Section 204(b)(1); 29 U.S.C. 762(b)(1))

§ 352.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are described in 34 CFR 350.2

(Section 204; 29 U.S.C. 762)

§ 352.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Sections 202 and 204; 29 U.S.C. 761a, 762)

§ 352.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1))

Subpart B—What Kinds of Activities Does the Department Assist Under This Program?

§ 352.10 What types of centers are authorized under this program?

Rehabilitation reserarch and training centers are established and supported under this program. Within each center three types of activities are prescribed as follows:

(a) The research to be conducted at each center shall be determined on the basis of the particular needs of handicapped individuals by utilizing the geographic area served by the center as one source for identifying those problems which are national in scope. It may include basis research, where related to identifiable rehabilitation techniques or services, applied medical rehabilitation research, research regarding the psychological and social aspects of rehabilitation, and research related to vocational rehabilitation, independent living, and the rehabilitation of handicapped children and handicapped individuals aged 60 or older. The center shall develop practical applications for the findings of its research. Each separate study or investigation shall have a reasonable relationship to a central topic or research core area and shall contribute cumulatively to a coherent body of knowledge for the resolution of rehabilitation problems.

(b) Training programs at a center shall endeavor to: widely disseminate and actively promote utilization of new knowledge resulting from research; incorporate rehabilitation education into all rehabilitation related University undergraduate and graduate curricula;

and provide short-term, in-service and continuing education to improve the skills of professionals, paraprofessionals, consumers, parents, and other personnel involved in

(i) Literature review (5 Points).

(Sections 202(e) and 202(i)(1); 29 U.S.C. 761a(e) and 761a(i)(1))

§ 352.32 What are the priorities for funding under this program?

(Sections 200(3), 204(b)(2); 29 U.S.C. 760(3), 762(b)(2))

§ 353.2 Who is eligible for assistance under this program?

Those agencies and organizations

engineering design and reductions of environmental barriers adapted to meet the special needs of handicapped individuals;

(iii) Cooperative projects with public or private agencies and organizations;

(b) The Secretary advises the public of these priorities through an Application Notice published in the Federal Register.

(Section 202(g); U.S.C. 761a(g))

The Secretary proposes to amend

§ 354.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Sections 202(i)(1); 29 U.S.C. 761a(i)(1))

and provide short-term, in-service and continuing education to improve the skills of professionals, paraprofessionals, consumers, parents, and other personnel involved in rehabilitation with respect to new knowledge generated through research findings.

(c) Service program components shall be developed to achieve the integration of services, research, and training necessary to—

(1) Provide direct knowledge and awareness of the needs of handicapped persons;

(2) Provide the linkage and structure to enable a center to more adequately and realistically assess these needs; and

(3) Provide a laboratory for the development, testing, implementation and demonstration of methods, techniques, procedures, and systems, to respond to these needs. Grants may include funds for services rendered by the center to handicapped individuals in connection with research and training activities.

(d) The three major activities—research, training, and services—are expected to be mutually supportive. Specifically, this concept calls for research needs to derive from service delivery problems; for research results to be assessed and applied in service delivery settings; and for research results to be disseminated through training.

(Section 204(b)(1); 29 U.S.C. 762(b)(1))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 352.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32.

(Section 202(e); 29 U.S.C. 761a(e))

§ 352.31 What selection criteria are used under this program?

The selection criteria for this program are established and described in 34 CFR 350.36 with the weighted points distributed as follows:

(a) Project concept or national need (5 Points).

(b) Research design (35 Points).

(c) Plan of operation (15 Points).

(d) Evaluation plan (10 Points).

(e) Quality of key personnel (10 Points).

(f) Adequacy of resources (5 Points).

(g) Research utilization plan (10 Points).

(h) Budget and cost effectiveness (5 Points).

(i) Literature review (5 Points).

(Sections 202(e) and 202(i)(1); 29 U.S.C. 761a(e) and 761a(i)(1))

§ 352.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support some or all of the types of research projects listed in 34 CFR 352.10.

(b) The Secretary advises the public of these priorities through an Application Notice in the **Federal Register.**

(Sections 202(g) and 204; 29 U.S.C. 761a(g) and 762)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 353 to read as follows:

PART 353—HANDICAPPED RESEARCH: REHABILITATION ENGINEERING PROGRAM

Subpart A—General

Sec.

353.1 What is the Rehabilitation Engineering Program?

353.2 Who is eligible for assistance under this program?

353.3 What regulations apply to this program?

353.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

353.10 What kinds of centers and projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

353.30 How is peer review conducted under this program?

353.31 What selection criteria are used under this program?

353.32 What are the priorities for funding under this program?

Authority: Title II of the Rehabilitation Act of 1973 (Public Law 93–112), as amended by Public Law 95–602 (29 U.S.C. 760–762; 92 Stat. 2962–2966).

Subpart A—General

§ 353.1 What is the Rehabilitation Engineering Program?

This program is designed to support—

(a) Development of innovative methods of applying advanced medical technology, scientific achievement, and psychiatric, psychological, and social knowledge to solve rehabilitation problems;

(b) Development of systems of technical and engineering information exchange and coordination; and

(c) Improvement in the distribution of technological devices and equipment to handicapped individuals.

(Sections 200(3), 204(b)(2); 29 U.S.C. 760(3), 762(b)(2))

§ 353.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are set forth in 34 CFR 350.2.

(Section 204; 29 U.S.C. 762)

§ 353.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Sections 202 and 204; 29 U.S.C. 761a and 762)

§ 353.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 353.10 What types of projects are authorized under this program?

The Rehabilitation Engineering Research program provides financial assistance for—

(a) Rehabilitation Engineering Research Centers.

(i) Each Rehabilitation Engineering Research Center must be developed around one or more research core areas, each of which must be explored in depth to solve the problems in rehabilitation of handicapped individuals through the combined efforts of medical, engineering, and related sciences;

(ii) Each center must be located in a clinical rehabilitation setting which provides an environment for cooperative research and the transfer of research findings to rehabilitation practice at a reasonable cost.

(iii) Centers may emphasize the medical-technological management of disabling conditions, the adjustment to limitations of function of the individual and to the environment, service delivery systems, or other core areas, utilizing the application of new and innovative technology, and other areas as approved by the Secretary.

(iv) Centers must cooperate with State and other appropriate agencies in developing systems of information exchange and coordination to insure the prompt utilization of research findings.

(b) Research and demonstration projects as follows—

(i) Research and demonstration projects including basic research when related to rehabilitation techniques or services;

(ii) Studies, analyses, and demonstrations of architectural and engineering design and reductions of environmental barriers adapted to meet the special needs of handicapped individuals;

(iii) Cooperative projects with public or private agencies and organizations;

(iv) Projects concerning existing telecommunication systems;

(v) International research, demonstrations, training and exchange of experts and technical assistance related to technology and engineering;

(vi) A project to assess the feasibility of establishing a center to produce and distribute captioned video casseties to deaf individuals; and

(vii) Joint project with other Federal agencies and with private industry, including stimulation of private industry in the development and distribution of devices and systems to solve problems of handicapped individuals; and

(viii) Projects of manpower training in Rehabilitation Engineering.

(Sections 204(b)(2), 204(a), 204(b)(5)–(7), 204(b)(10); 29 U.S.C. 762(b)(2), 762(a), 762(b)(5)–(7), 762(b)(10))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 353.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32.

(Section 202(e); 29 U.S.C. 761a(e))

§ 353.31 What selection criteria are used under this program?

The selection criteria for this program are established and described in 34 CFR 350.36 with the weighted points distributed as follows:

(a) Project concept or national need (5 Points).

(b) Research design (35 Points).

(c) Plan of operation (15 Points).

(d) Evaluation plan (10 Points).

(e) Quality of key personnel (10 Points).

(f) Adequacy of resources (5 Points).

(g) Research utilization plan (10 Points).

(h) Budget and cost effectiveness (5 Points).

(i) Literature review (5 Points).

(Sections 202(e) and 202(i)(1); 29 U.S.C. 761a(e) and 761a(i)(1))

§ 353.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support some or all of the types of research projects listed in 34 CFR 353.10.

(b) The Secretary advises the public of these priorities through an Application Notice published in the **Federal Register.**

(Section 202(g); U.S.C. 761a(g))

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 354 to read as follows:

PART 354—HANDICAPPED RESEARCH: MODEL RESEARCH AND TRAINING PROGRAM

Subpart A—General

Sec.

354.1 What is the Model Research and Training Program?

354.2 Who is eligible for assistance under this program?

354.3 What regulations apply to this program?

354.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

354.10 What types of centers are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

354.30 How is peer review conducted under this program?

354.31 What selection criteria are used under this program?

354.32 What are the priorities for funding under this program?

Authority: Title II of the Rehabilitation Act of 1973 (Public Law 93–112), as amended by Public Law 95–602 (29 U.S.C. 760–762; 92 Stat. 2962–2966).

Subpart A—General

§ 354.1 What is the Model Research and Training Program?

This program is designed to develop and utilize more advanced and effective methods of evaluating and developing the employment potential of handicapped individuals.

(Section 204(b)(12); 29 U.S.C. 762(b)(12))

§ 354.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are set forth in 34 CFR 350.2.

(Section 204; 29 U.S.C. 762)

§ 354.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Sections 202 and 204; 29 U.S.C. 761a and 762)

§ 354.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Sections 202(i)(1); 29 U.S.C. 761a(i)(1))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 354.10 What types of centers are authorized under this program?

The model research and training program provides financial assistance for part or all of the costs of establishing and operating model training centers.

(a) Each model training center must be developed around one or more research core areas, each of which must be explored in depth. Each separate study or investigation within a core area shall contribute cumulatively to a coherent body of knowledge for the resolution of a rehabilitation problem. It must be undertaken on the basis of a predetermined plan that reflects what is already known about the topic. The development of a core area must involve a review of the literature; development of one or more hypotheses; selection or development of data gathering instruments; a series of demonstrations, experiments, surveys, or studies to test the hypotheses; the refinement of one or more hypotheses into a theory; and further validation studies and consultation with the prospective target population during the entire process.

(b) Each center must be located in a rehabilitation setting which provides an environment for cooperative research and the transfer of research findings to rehabilitation practice at a reasonable cost.

(c) The following categories of activities may be undertaken within model training centers:

(1) Training and continuing education for personnel involved with employment of handicapped individuals;

(2) Model procedures for testing and evaluating the employment potential of handicapped individuals;

(3) Model training programs to teach handicapped individuals skills which will lead to appropriate employment;

(4) New approaches for job placement of handicapped individuals, including new follow-up procedures relating to such placement; and

(5) Information services regarding education, training, employment and job placement for handicapped individuals.

(Section 204(b)(12); 29 U.S.C. 762(b)(12))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

Sec.

355.30 How is peer review conducted under this program?

355.31 What selection criteria are used under this program?

355.32 What are the priorities for funding under this program?

Authority: Title II of the Rehabilitation Act of 1973 (Public Law 93–112), as amended by Public Law 95–602 (29 U.S.C. 760–762; 92 Stat. 2962–2966).

Subpart A—General

§ 355.1 What is the Rehabilitation Research and Demonstration Program?

This program is designed to support—

(a) Development of innovative methods of applying advanced medical technology, scientific achievement, and psychiatric, psychological, and social knowledge to solve rehabilitation problems;

(b) Development of systems of technical and engineering information exchange and coordination; and

(c) Improvement in the distribution of technological devices and equipment to handicapped individuals.

(Sections 200(3), 204(b)(2); 29 U.S.C. 760(3), 762(b)(2))

§ 355.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are set forth in 34 CFR 350.2.

(Section 204; 29 U.S.C. 762)

§ 355.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Sections 202 and 204; 29 U.S.C. 761a and 762)

§ 355.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Section 202(i)(1); 29 U.S.C. 761a(i)(1))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 355.10 What types of projects are authorized under this program?

The Rehabilitation Research and Demonstration program provides financial assistance for—

(a) Research and demonstration projects including basic research when related to rehabilitation techniques or services;

(b) Studies, analyses, and demonstrations of architectural and engineering design and reductions of environmental barriers adapted to meet the special needs of handicapped individuals;

(c) Cooperative projects with public or private agencies and organizations;

(d) Projects concerning existing telecommunication systems;

(e) International research, demonstrations, training and exchange of experts and technical assistance related to technology and engineering;

(f) A project to assess the feasibility of establishing a center to produce and distribute captioned video casseties to deaf individuals; and

(g) Joint project with other Federal agencies and with private industry, including stimulation of private industry in the development and distribution of devices and systems to solve problems of handicapped individuals; and

(h) Projects of manpower training in Rehabilitation Engineering.

(Sections 204(b)(2), 204(a), 204(b)(5)–(7), 204(b)(10); 29 U.S.C. 762(b)(2), 762(a), 762(b)(5)–(7), 762(b)(10))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 355.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32.

(Section 202(e); 29 U.S.C. 761a(e))

§ 355.31 What selection criteria are used under this program?

The selection criteria for this program are established and described in 34 CFR 350.36 with the weighted points distributed as follows:

(a) Project concept or national need (5 Points).

(b) Research design (35 Points).

(c) Plan of operation (15 Points).

(d) Evaluation plan (10 Points).

(e) Quality of key personnel (10 Points).

(f) Adequacy of resources (5 Points).

(g) Research utilization plan (10 Points).

(h) Budget and cost effectiveness (5 Points).

(i) Literature review (5 Points).

(Section 202(e) and 202(i)(1); 29 U.S.C. 761a(e) and 761a(i))

§ 355.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support some or all of the types of research projects listed in 34 CFR 355.10.

(b) The Secretary advises the public of these priorities through an Application Notice published in the **Federal Register.**

(Section 202(g); U.S.C. 761a(g))

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 356 to read as follows:

PART 356—HANDICAPPED RESEARCH: RESEARCH FELLOWSHIPS

Subpart A—General

Sec.

356.1 What is the Research Fellowships program?

356.2 Who is eligible for assistance under this program?

356.3 What regulations apply to this program?

356.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

356.10 What types of projects are authorized under this program?

Subpart C—How Does One Apply for Assistance Under This Program?

356.20 What are the application procedures under this Part?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 354.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32.

(Section 202(e); 29 U.S.C. 761a(e))

§ 354.31 What selection criteria are used under this program?

The selection criteria for this program are established and described in 34 CFR 350.36 with the weighted points distributed as follows:

(a) Project concept or national need (5 Points).
(b) Research design (35 Points).
(c) Plan of operation (15 Points).
(d) Evaluation plan (10 Points).
(e) Quality of key personnel (10 Points).
(f) Adequacy of resources (5 Points).
(g) Research utilization plan (10 Points).
(h) Budget and cost effectiveness (5 Points).
(i) Literature review (5 Points).

(Sections 202(e) and 202(i)(1); 29 U.S.C. 761a(e) and 761(i)(1))

§ 354.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support some or all of the types of research activities listed in 34 CFR 354.10(c).

(b) The Secretary advises the public of these priorities through an Application Notice published in the Federal Register.

(Section 202(g); 29 U.S.C. 761a(g))

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 355 to read as follows:

PART 355—HANDICAPPED RESEARCH: KNOWLEDGE DISSEMINATION AND UTILIZATION

Subpart A—General

Sec.
355.1 What is the Knowledge dissemination and Utilization Program?
355.2 Who is eligible for assistance under this program?
355.3 What regulations apply to this program?
355.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

355.10 What types of activities are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

Sec.
355.30 How is peer review conducted under this program?
355.31 What selection criteria are used in this program?
335.32 What are the priorities for funding under this program?

Authority: Title II of the Rehabilitation Act of 1973 (Public Law 93–112), as amended by Public Law 95–602 (29 U.S.C. 760–762; 92 Stat. 2962–2966).

Subpart A—General

§ 355.1 What is the Knowledge Dissemination and Utilization Program?

This program is designed to assist in developing and implementing activities that will insure that rehabilitation knowledge generated from projects and centers funded by the Institute and from other sources is fully utilized to improve the lives of handicapped persons.

(Sections 202 and 204(a); 29 U.S.C. 761a and 762(a))

§ 355.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible to apply under this program are described in 34 CFR 350.2

(Section 204; 29 U.S.C. 762)

§ 355.3 What regulations apply to this program?

The regulations referenced in 34 CFR 350.3 apply to this program.

(Sections 202 and 204; 29 U.S.C. 761a and 762)

§ 355.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.
(Section 202(i)(1); 29 U.S.C. 761(i)(1))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 355.10 What types of activities are authorized under this program?

The knowledge dissemination and utilization program provides financial assistance for the following types of projects—

(a) Research utilization;
(b) Research on the process of research utilization;
(c) Information dissemination activities;
(d) Building public awareness about ways of rehabilitating handicapped persons;
(e) Demographic studies of handicapped individuals.

(Sections 200(2), 202(b)(4)–(6)(8), 204(a), 204(b)(7); 29 U.S.C. 761a(b)(2), 761a(b)(4)–6)(8), 762(a), 762(b)(7))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 355.30 How is peer review conducted under this program?

Peer review is conducted under this program in accordance with 34 CFR 350.30–350.32.

(Section 202e; 29 U.S.C. 761a(e))

§ 355.31 What selection criteria are used under this program?

(a) The selection criteria for projects described in § 355.10(b) and (e) (research on the process of research utilization and demographic studies) are established in § 350.36 with the weighted points distributed as follows:

(1) Project concept or national need (5 Points).
(2) Research design (35 Points).
(3) Plan of operation (15 Points).
(4) Evaluation plan (10 Points).
(5) Quality of key personnel (10 Points).
(6) Adequacy of resources (5 Points).
(7) Research utilization plan (10 Points).
(8) Budget and cost effectiveness (5 Points).
(9) Literature review (5 Points).

(b) The selection criteria for projects described in § 355.10(a), (c) and (d) are:

(1) Project concept or national need (5 Points). See § 350.36(a).
(2) Project design (40 Points).
(i) The Secretary reviews each application for information that shows the quality of the project design.
(ii) The Secretary looks for information that shows—
(A) Description of linkage system to prospective target populations (10 of the 40 Points);
(B) Need assessment procedures (10 of the 40 Points);
(C) That rehabilitation knowledge or devices will be adapted or modified to facilitate greater understanding and use by the rehabilitation community (10 of the 40 Points); and
(D) Procedures for disseminating the rehabilitation knowledge or devices referred to in paragraph (C) (10 of the 40 Points).
(3) Plan of operation (15 Points). See § 350.36(c).
(4) Evaluation plan (15 Points). See § 350.36(d).
(5) Quality of key personnel (10 Points). See § 350.36(e).
(6) Adequacy of resources (5 Points). See § 350.36(f).
(7) Budget and cost effectiveness (5 Points). See § 350.36(h).
(8) Literature review (5 Points). See § 350.36(i).

(Section 202(e) and 202(i)(1); 29 U.S.C. 761a(e) and 761a(i))

§ 355.32 What are the priorities for funding under this program?

(a) The Secretary may from time to time reserve funds to support some or all of the types of projects listed in 34 CFR 355.10.

(b) The Secretary advises the public of these priorities through an Application Notice published in the Federal Register.

(Section 204; 29 U.S.C. 762)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 356 to read as follows:

PART 356—HANDICAPPED RESEARCH: RESEARCH FELLOWSHIPS

Subpart A—General

Sec.
356.1 What is the Research Fellowship Program?
356.2 Who is eligible for assistance under this program?
356.3 What regulations apply to this program?
356.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

356.10 What types of activities are authorized?
356.11 What types of problems may be researched under the fellowship program?

Subpart C—How Does One Apply for Assistance Under This Program?

356.20 What are the application procedures under this Part?
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356.50 What kinds of payments are allowed under this program?
356.51 What programmatic reports are required of fellows?

Subpart G—May Fellowships Be Terminated?

356.60 Termination of fellowships.

Authority: Title II of the Rehabilitation Act of 1973 (Public Law 93–112) as amended by Public Law 95–602 (29 U.S.C. 760–762; 92 Stat. 2962–2966).

Subpart A—General

§ 356.1 What is the Research Fellowships Program?

The purpose of this program is to procure the assistance of highly qualified individuals in the research program of the Institute.

(Sec. 202(d); 29 U.S.C. 761a(d))

§ 356.2 Who is eligible for assistance under this program?

Any person is eligible for assistance under this program who has training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of handicapped persons.

(Sec. 202(d); 29 U.S.C. 761a(d))

§ 356.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The peer review and confidentiality requirements contained in 34 CFR 350.31–350.32 and 350.50.

(b) The regulations in this part—34 CFR Part 356; and

(c) 45 CFR Part 46 (Protection of Human Subjects).

(Sec. 202(d); 29 U.S.C. 761a(d))

§ 356.4 What definitions apply to this program?

The definitions listed in 34 CFR 350.4 apply to this program.

(Sec. 202(i)(1); 29 U.S.C. 761a(i)(1))

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 356.10 What type of activities are authorized?

Research fellowships provide awards of Federal assistance to enable individuals to carry out discrete research activities which have been identified in Application Notices published in the Federal Register.

(Sec. 202(d); 29 U.S.C. 761a(d))

§ 356.11 What types of problems may be researched under the fellowship program?

Problems encountered by handicapped persons in their daily lives that are due to the presence of a handicapping condition, problems associated with the provision of rehabilitation services to handicapped persons, and problems connected with the conduct of handicapped research may be addressed under this program.

(Sec. 202(d), 202(g)(1), 204; 29 U.S.C. 761a(d), 761a(g)(1), 762)

Subpart C—How Does One Apply for Assistance Under This Program?

§ 356.20 What are the application procedures under this Part?

From time to time the Secretary will publish in the Federal Register an Application Notice that announces the availability of fellowship assistance under this Part.

(Sec. 202(d); 29 U.S.C. 761a(d))

§ 356.21 What is the fellowship review process?

Fellowship applications will be reviewed in accordance with the peer review requirements governing grants in 34 CFR 350.30–350.32.

(Sec. 202(d); 29 U.S.C. 761a(d))

Subpart D—How Does the Secretary Select a Fellow?

§ 356.30 What selection criteria are used for this program?

Individuals applying for a research fellowship will be evaluated on the basis of—

(a) Quality and level of formal education received;
(b) Work experience;
(c) Recommendations of former or present supervisors or colleagues and other independent evidence that indicate an ability to work creatively in scientific research;

Sec. 202(d); 29 U.S.C. 761a(d))

Subpart E—What Conditions Have to be Met by a Fellow?

§ 356.40 What is the length of a fellowship award?

Fellowships may be approved for a maximum of 48 months. The initial award may be for any period not to exceed one year. Upon a finding of satisfactory progress toward accomplishment of the purposes of the fellowship the Secretary may make one or more continuation awards of 12 months in duration, not to exceed a total of 48 months support for any one fellowship.

(Sec. 202(d); 29 U.S.C. 761a(d))

§ 356.41 Employment during fellowship period.

Fellows are engaged fulltime in the activities authorized by the award and shall not engage in other employment, unless approved by the Secretary.

(Sec. 202(d); 29 U.S.C. 761a(d))

§ 356.42 What acknowledgement of support is required?

Publication, distribution, and disposition of all manuscripts and other materials resulting from a fellowship

awarded under this Part must acknowledge that assistance was received from the Department and the Institute. Three copies of these publications or other materials must be

fellow's performance is unsatisfactory or that the fellow is unable to carry out the purpose of the fellowship. The fellow shall be notified in writing of any termination.

amount of the payment would be based on veteran enrollment on April 16. This single-payment system would replace the three-payment system now in use. This new system would ease the

payment is broadened to cover veterans who have a service-connected disability or who are disabled.

(6) The maximum grant to any institution is lowered from $135,000 to $75,000.

Sec.
629.4 Regulations that apply to the Veterans' Cost-of-Instruction Payments program.
629.5 Definitions that apply to the Veterans' Cost-of-Instruction Payments program.

academic year following one during which it has received assistance under this part will be eligible to receive payments under this part if—

(1) The applicant meets the criteria for initial eligibility as defined in paragraph

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awarded under this Part must acknowledge that assistance was received from the Department and the Institute. Three copies of these publications or other materials must be furnished to the Secretary.

(Sec. 202(d); 29 U.S.C. 761a(d))

Subpart F—What are the Administrative Responsibilities of a Fellow?

§ 356.50 What kinds of payments are allowed under this program?

(a) A *fellowship award* may include the following payments:

(1) A *stipend* in an amount authorized by the Secretary.

(2) A *health insurance allowance.*

(3) A *travel and transportation allowance.*

(i) Round trip travel, for the fellow only, from place of residence to the location of fellowship activity.

(ii) No allowance will be granted for shipping personal effects or household goods.

(iii) No allowance will be granted for transporting dependents, except as authorized by the Secretary for travel undertaken by dependents to join a fellow who is located during the period of fellowship activity in a coutry other than his or her country of residence. "Dependent" means the spouse or dependent children of a fellow.

(4) *Other allowances.*

The Secretary may authorize allowances for payment of the following expenses—tuition, fees, equipment, supplies, attendance at meetings required to carry out the purpose of the fellowship, or other related expenses of the fellowship.

(Sec. 202(d); 29 U.S.C. 761a(d))

§ 356.51 What programmatic reports are required?

Fellows are required to submit annual and final reports (along with work plans for the next fellowhsip period if applicable). Each report must contain as a minimum an analysis of the significance of the project and an assessment of the degree to which the objectives of the project have been achieved.

(Sec. 202(d); 29 U.S.C. 761a(d))

Subpart G—May Fellowships Be Terminated?

§ 356.60 Termination of fellowships.

(a) The Secretary may terminate a fellowship upon receipt from the fellow of a written request for termination. The Secretary shall terminate any fellowship prior to the date it would otherwise expire if it is determined that the fellow's performance is unsatisfactory or that the fellow is unable to carry out the purpose of the fellowship. The fellow shall be notified in writing of any termination.

(b) When a fellowship is terminated prior to the end of the fellowship period, all remaining unexpended funds must be returned to the Secretary.

(Sec. 202(d); 29 U.S.C. 761a(d))

[FR Doc. 80-40426 Filed 12-29-80 8:45 am]

BILLING CODE 4000-01-M

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34 CFR Part 629

Veterans' Cost-of-Instruction Payments Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Veterans' Cost-of-Instruction Payments (VCIP) Program. The regulations are being amended to reflect the statutory changes in the Education Amendments of 1980 and to reflect several administrative policy decisions. The proposed changes affect the eligibility criteria, the requirements of each grantee, and the payment process. The regulations have also been completely reorganized for the purposes of simplification and clarification.

DATES: Comments must be received on or before March 2, 1981.

ADDRESSES: Comments should be addressed to Stanley B. Patterson, Office of Postsecondary Education, Office of Institutional Support, U.S. Department of Education (Room 3514, ROB–3), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Stanley B. Patterson. Telephone: (202) 245–2806.

SUPPLEMENTARY INFORMATION: The Veterans' Cost-of-Instruction Payments Program began in 1973 as a formula grant program which assists institutions of higher education in the provision of educational services to veterans. Grants support full-time offices of veterans' affairs which provide outreach, recruitment, counseling and tutorial services, and special programs for *educationally disadvantaged veterans.*

The proposed text of the revised regulations governing the VCIP program is printed following this preamble. The proposed changes in the regulations reflect the following administrative policy decisions:

(1) An amendment is proposed in Section 629.31(d) to give institutions their entire grant in one payment at the beginning of the academic year. The amount of the payment would be based on veteran enrollment on April 16. This single-payment system would replace the three-payment system now in use. This new system would ease the reporting requirements of grantees and enable an institution to plan its program activities more effectively.

(2) An amendment is proposed to delete as unnecessary the section entitled, Criteria for assessing the adequacy of veterans' programs, presently found in 34 CFR Section 629.16. Many of these criteria are already covered in Section 629.11 of the proposed regulations.

(3) An amendment is proposed to modify the definitions of "institution of higher education", "student", and "undergraduate" to bring the VCIP regulations into conformity with standard Education Department definitions.

The current regulations are also being amended to reflect the statutory changes in the Education Amendments of 1980. These revisions include:

(1) The eligibility criteria are amended so that a renewal applicant will no longer be eligible if it merely maintains its undergraduate veteran enrollment. It will be eligible, however, if its veteran enrollment increases by 10 percent, or if it meets the requirements of one of the other methods by which a renewal applicant can establish eligibility.

(2) An institution accepting a grant must now make an adequate effort to carry out outreach activities with a special emphasis on service-connected disabled veterans, other disabled or handicapped veterans, and incarcerated veterans in addition to educationally disadvantaged veterans.

(3) Institutions are required to make an adequate effort to coordinate their activities with the readjustment counseling program authorized under section 620 of title 38, and with the veterans employment and training initiatives authorized under the Comprehensive Employment and Training Act and under chapters 41 and 42 of title 38, in order to assist in serving the readjustment, rehabilitation, personal counseling and employment needs of veterans.

(4) The enrollment ceiling of 2500 undergraduate students below which an institution can enter a consortium arrangement is deleted. This deletion does not pertain to the ceiling of 2500 undergraduate students below which an institution need only maintain a full-time office of veterans's affairs and provide recruitment and counseling services.

(5) The second category of veterans for which an institution will receive a payment is broadened to cover veterans who have a service-connected disability or who are disabled.

(6) The maximum grant to any institution is lowered from $135,000 to $75,000.

(7) The percentage of funds which an institution must use to carry out the required services of the program is increased from 75 percent to 90 percent.

Invitation To Comment:

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before March 2, 1981, will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3514, ROB–3, 7th and D Streets, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance No. 84.540, Higher Education Veterans' Cost-of-Instruction Program (VCIP))

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary amends Title 34 Part 629 of the Code of Federal Regulations to read as follows:

PART 629—VETERANS' COST-OF-INSTRUCTION PAYMENTS TO INSTITUTIONS OF HIGHER EDUCATION

Sec.

Subpart A—General

629.1 Veterans' Cost-of-Instruction Payment program.
629.2 Eligible parties.
629.3 Ineligible parties.
629.4 Regulations that apply to the Veterans' Cost-of-Instruction Payments program.
629.5 Definitions that apply to the Veterans' Cost-of-Instruction Payments program.

Subpart B—What Kinds of Activities Does the Department Assist under This Program?

629.11 Required activities.

Subpart C—How Does One Apply for a Grant?

629.21 Application requirements.

Subpart D—How Does the Secretary Make a Grant?

629.31 Calculation of cost-of-instruction payments.

Subpart E—What Conditions Must Be Kept by a Grantee?

629.41 Expenditure requirements.

Authority: Section 420, Higher Education Act of 1965, as amended (20 U.S.C. 1070e–1), unless otherwise noted.

Subpart A—General

§ 629.1 Veterans' Cost-of-Instruction Payment program.

This program provides funds to institutions of higher education for the educational needs of veterans. Funds are used to establish and maintain a full-time Office of Veterans' Affairs which provides outreach and recruitment activities, counseling and tutorial services, and special programs for educationally disadvantaged veterans.

(20 U.S.C. 1070e–1)

§ 629.2 Eligible parties.

(a) *Criteria for initial eligibility.* An institution of higher education is eligible to receive payments under this part if the number of qualified undergraduate veteran students who are receiving benefits under chapter 31 or chapter 34 of title 38, United States Code (or who have received benefits under subchapter V or subchapter VI of chapter 34 while attending the institution during the academic year) equals at least 25 in number and at least one of the following:

(1) 110 percent of the number of such qualified undergraduate veteran students in attendance on April 16 of the preceding academic year.

(2) 10 percent of the total number of undergraduate students in attendance at the institution during the current academic year, if this number does not constitute a percentage of its undergraduate students which is less than the percentage for the preceding academic year.

(b) *Criteria for continuing eligibility.* An institution of higher education which is applying for assistance during an academic year following one during which it has received assistance under this part will be eligible to receive payments under this part if—

(1) The applicant meets the criteria for initial eligibility as defined in paragraph (a) of this section;

(2) The applicant has a percentage decline in the number of undergraduate veteran students receiving benefits under chapter 31 or chapter 34 of title 38, United States Code, no greater than the national percentage decline in the number of undergraduate veteran students enrolled in all institutions of higher education since the applicant's initial year of eligibility;

(3) The Secretary determines that the applicant is making a reasonable effort to recruit, enroll, and provide necessary services to veterans, taking into consideration the extent to which the number of persons referred to in paragraph (a) of this section falls short of meeting the ratio criteria set forth in that paragraph.

(c) *Criteria for renewed eligibility.* An applicant which has qualified for payment during any preceding fiscal year, but subsequently became ineligible, is eligible to receive payments under this part if—

(1) The applicant would have been eligible had paragraph (b) of this section been in effect when the applicant became ineligible;

(2) The applicant has had a full-time office of veterans' affairs since its last year of participation in the program; and

(3) The appropriations made available during the fiscal year in which the award would be made are in excess of—(i) $14,380,000, or (ii) the amount requested in the President's budget, whichever is greater, by an amount sufficient to make payments to all institutions meeting the requirements of paragraphs (c)(1) and (c)(2) of this section.

(20 U.S.C. 1070e–1)

§ 629.3 Ineligible parties.

School or departments of divinity and proprietary institutions are not eligible to receive assistance under this part.

(20 U.S.C. 1070e–1)

§ 629.4 Regulations that apply to the Veterans' Cost-of-Instruction Payments program.

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions) and the regulations in this part 629 apply to the Veterans' Cost-of-Instruction Payments program.

(20 U.S.C. 1070e–1, 1088, 1141)

§ 629.5 Definitions that apply to the Veterans' Cost-of-Instruction Payments program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Subpart B—What Kinds of Activities Does the Department Assist Under This Program?

§ 629.11 Required activities.

(a) A grantee must maintain a full-

functions to be carried out under a consortium agreement between the institution and one or more such institutions located within a reasonable commuting distance.

(e) All services must be readily

(ii) $112.50 per three-quarter-time student.

(iii) $75 per half-time student.

(b) No payments will be made to grantees for students who are not full-time, three-quarter-time, or half-time

(20 U.S.C. 1070e–1)

[FR Doc. 80-40427 Filed 12-29-80 8:45 am]

BILLING CODE 4000-01-M

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34 CFR Part 651

Training in the Legal Profession

§ 629.5 Definitions that apply to the Veterans' Cost-of-Instruction Payments program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Department
Fiscal Year
Grant
Grant Period
Secretary
State

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Academic year" means a period beginning on July 1 and ending the following June 30.

"Cost-of-Instruction payment," or "payment," means an amount calculated with respect to an institution of higher education for an academic year on the basis of eligible undergraduate veteran student enrollment.

"Counseling" means professional assistance available to veterans for consultation on personal, family, educational, and career problems.

"Full-time" with respect to an Office of Veterans' Affairs, means that the Office of Veterans' Affairs: (1) is staffed by at least one person who is employed by an institution on a full-time basis and whose sole institutional responsibility is that of coordinating the activities of the office and (2) provides services at times and places convenient to the veterans being served. An institution described in §629.11(c) may employ part-time employees for this purpose who together assume the responsibility of at least one full-time employee.

"Institution of higher education" is defined in the Higher Education Act of 1965, as amended, Pub. L. 89–329, Section 1201(a).

"Instructional expenses in academically related programs" means the expenditures of instructional departments of an institution of higher education for salaries, office expenses, equipment and research.

"Outreach" means an extensive coordinated, community-wide program of reaching veterans, with special emphasis on educationally disadvantaged veterans, service-connected disabled veterans, other disabled or handicapped veterans, and incarcerated veterans within the institution's service area to determine their needs and to make appropriate referral and follow-up arrangements with relevant service agencies.

"Qualified undergraduate veteran student" means an undergraduate veteran student who is in attendance at the institution on April 16 of the academic year in which the institution is applying, or when this date falls between academic terms of the institution, the end of the previous academic term.

"Recruitment" means a concerted effort to interest veterans in taking advantage of opportunities for a wide variety of post-secondary training experiences at the institution or other agencies providing educational programs.

"School or department of divinity" is defined in the Higher Education Act of 1965, as amended, Pub. L. 89–329, Section 1201(l).

"Special education programs" means specially designed remedial, tutorial, and motivational programs designed to promote success in the postsecondary experience.

"Student" means a person in attendance as at least a half-time student at an institution of higher education. The term is further defined as follows:

(1) "Full-time student" means a student who is enrolled for the equivalent of not less than 12 semester hours and is being charged on the basis of the institution's full-time fee schedule.

(2) "Three-quarter-time student" means an enrolled student who is carrying a three-quarter-time academic work load as detetermined by the institution and which amounts to at least three-quarters of the course-load of a full-time student.

(3) "Half-time student" means an enrolled student who is carrying a half-time academic work load as determined by the institution and which amounts to at least one-half the course-load of a full-time student.

"Undergraduate student" means a student enrolled in an undergraduate course of study at an institution of higher education who (1) has not been awarded a baccalaureate or first professional degree, (2) is pursuing a program of studies at a two-year institution leading to a certificate, degree, or diploma, or (3) is receiving or has received educational assistance under subchapter V or subchapter VI of chapter 34 of title 38, United States Code.

"Veteran" means a person receiving benefits under chapter 31 or chapter 34 of title 38, United States Code, or who, if enrolled in an institution of higher education, would be eligible for such benefits.

(20 U.S.C. 1070e–1, 1088, 1141)

Subpart B—What Kinds of Activities Does the Department Assist Under This Program?

§ 629.11 Required activities.

(a) A grantee must maintain a full-time office of veterans' affairs which has responsibility for veterans' outreach, recruitment, and special education programs, and which provides educational, vocational, and personal counseling for veterans.

(b) A grantee must also make an adequate effort to—

(1) Provide programs designed to prepare educationally disadvantaged veterans for study at an institution of higher education (i) under subchapter V of chapter 34 of title 38, United States Code; and (ii) in the case of any institution located near a military installation, under subchapter VI of chapter 34 of title 38;

(2) Provide active outreach services with special emphasis on service-connected disabled veterans, handicapped veterans, incarcerated veterans, and educationally disadvantaged veterans, recruiting, and counseling activities through the use of funds available under federally assisted work/study programs (with special emphasis on the veterans-student services program under section 1685 of title 38, United States Code);

(3) Provide an active tutorial assistance program, including dissemination of information regarding such programs, in order to make maximum use of the benefits available under section 1692 of title 38, United States Code; and

(4) Coordinate activities provided under this part with the readjustment counseling program authorized under section 620 of title 38, United States Code, and with the veterans' employment and training initiatives authorized under the Comprehensive Employment and Training Act, and under chapters 41 and 42 of title 38, United States Code, in order to assist in serving the readjustment, rehabilitation, personal counseling and employment needs of veterans.

(c) A grantee with less than 2500 undergraduate students in attendance on April 16 of the academic year in which the institution applies (or, when this date falls between academic terms of the institution, the end of the previous academic term) need only maintain a full-time office of veterans' affairs which provides recruitment and counseling services.

(d) If a grantee cannot reasonably be expected to carry out all of the required functions by itself, the Secretary may permit one or more of the required functions to be carried out under a consortium agreement between the institution and one or more such institutions located within a reasonable commuting distance.

(e) All services must be readily accessible to all veterans served by the project.

(20 U.S.C. 1070e–1)

Subpart C—How Does One Apply for a Grant?

§629.21 Application requirements.

(a) Each application must contain the following information:

(a) Data showing that the institution is eligible for assistance.

(b) Information that shows the amount of the payment to the applicant would be entitled.

(c) An assurance that the institution will expend during the award period for all academically-related programs of the institution, in terms of either total or per student expenditure, at least the average amount expended during the preceding three academic years.

(20 U.S.C. 1070e–1)

Subpart D—How Does the Secretary Make A Grant?

§ 629.31 Calculation of cost-of-instruction payments.

(a) The Secretary determines a grantee's cost-of-instruction payment based on the following institutional data:

(1) the number of qualified undergraduate veteran students who are receiving vocational rehabilitation subsistence under chapter 31 of title 38, United States Code, or educational assistance under chapter 34 of title 38, United States Code, and to whom services required under the terms of a grant will be reasonably accessible.

For students meeting this requirement, a grantee will receive the following payments:

(i) $300 per full-time student.

(ii) $225 per three-quarter-time student.

(iii) $150 per half-time student.

(2) The number of qualified undergraduate veteran students who have ever received educational assistance under subchapter V or subchapter VI of chapter 34 of title 38 or who have a service-connected disability as defined in Section 101(16) of title 38, United States Code, and to whom the services required under the terms of a grant will be reasonably accessible. For students meeting this requirement, a grantee will receive the following payments:

(i) $150 per full-time student.

(ii) $112.50 per three-quarter-time student.

(iii) $75 per half-time student.

(b) No payments will be made to grantees for students who are not full-time, three-quarter-time, or half-time students.

(c) The maximum payment in any fiscal year to any institution of higher education, or any branch thereof located in a different community is $75,000.

(d) Funds which become available as a result of the limitation on payments described in paragraph (b) of this section shall be apportioned so that all instituions to which VCIP payments are to be made will receive a minimum of $9,000, and then in excess of $9,000, to the extent that funds remain available. No grantee shall receive funds in excess of the amounts calculated according to paragraph (a) of this section.

(e) Funds appropriated will be apportioned so that each grantee will receive one payment based on the grantee's enrollment data.

(f) Funds obligated to an individual institution which are later deobligated shall be reallocated proportionately to grantee institutions at a later date.

(20 U.S.C. 1070e–1)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 629.41 Expenditure requirements.

(a) At least (1) 90 percent of the funds awarded to an institution or (2) the amount of funds needed to implement the required services, whichever is greater, shall be used by the institution to implement these services. Any remaining awarded funds must be used solely to defray instructional expenses in academically related programs.

(b) The grantee must engage in all activities listed in § 629.11, except as provided in § 629.11(c) and (d).

(c) VCIP funds may be used to pay for travel expenditures only if such expenditures are incurred by the grantee in connection with recruitment and outreach activities, attendance at Department-sponsored meetings providing technical assistance, and attendance at Department approved professional meetings.

(d) A proposed budget for the operation of the Office of Veterans' Affairs must be submitted to the Department within 90 days of receipt of the Notice of Award specifying the institution's share of funds in any fiscal year.

(20 U.S.C. 1070e–1)

[FR Doc. 80-40327 Filed 12-29-80; 8:45 am]

BILLING CODE 4000-01-M

34 CFR Part 651

Training in the Legal Profession

AGENCY: Department of Educations.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary of Education issues proposed regulations for the Legal Profession Training Program. The proposed regulations authorize awards to assist individuals from disadvantaged backgrounds to undertake training for the legal profession. The proposed regulations cover eligible activities and costs under the program.

DATES: Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulations on or before March 2, 1981.

ADDRESSES: Written comments should be addressed to Donald Bigelow, Chief, Graduate Training Branch, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 3060, ROB–3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Donald M. Bigelow, Telephone: (202) 245–2347.

SUPPLEMENTARY INFORMATION: The Legal Profession Training Program is designed to help admit to accredited law schools disadvantaged students who, but for the program, would not have been admitted and to assist these students in obtaining a legal education and law degree. The program funds preliminary training to prepare students for law school, counseling and related services, and stipends to help support the students during both their preliminary and law school training.

Since its inception, the program has been carried out through a non-competitive award to the Council on Legal Educational Opportunity (CLEO), a non-profit private agency. With substantial funding from other sources, CLEO started the program before it was authorized in the Higher Education Act. The program has been popularly known as the "CLEO Program."

The proposed regulations authorize the Secretary to continue to carry out the program through an award to CLEO, consistent with the legislative history of the statute. (H.R. Rep. No. 96–520, 96th Cong. 1st Sess. 55 (1979); S. Rep. No. 96–733, 96th Cong. 2d Sess. 72 (1980)). As called for by the statute, the proposed regulations also supply criteria for identifying eligible individuals from disadvantaged backgrounds and provisions on eligibile activities.

Invitation to Comment:

Interested persons are invited to submit comments and recommendations regarding the proposed regulations.

Authority: Part D of Title IX of the Higher Education Act of 1965, as amended by Sec. 904 of Pub. L. 96–374, 94 Stat. 1486–87 (20 U.S.C. 1134l).

Subpart A—General

§ 651.1 What is the Legal Profession Training Program?

The Legal Profession Training Program provides financial assistance to individuals from disadvantaged backgrounds to undertake training for the legal profession.

§ 651.2 Who is eligible for assistance?

(a) To be eligible for assistance, an individual must be from a disadvantaged background and have been admitted to an accredited law school.

(b) An individual is from a disadvantaged background if he or she has been identified by the grantee as having the academic, cultural, economic, or social disadvantages which present a barrier to successful pursuit of a legal education and has been certified by the grantee as meeting the requirements of this section.

§ 651.3 What activities may be assisted?

(a) Preliminary training for students who have been admitted to an accredited law school.

(b) Counseling and related services for students who have been admitted to an accredited law school.

(c) Stipends for students who have been admitted to an accredited law school.

§ 651.4 What costs may be paid?

(a) Costs of preliminary training, counseling and related services, and stipends.

(b) Costs of administering the program.

(c) Costs of evaluating the program.

(d) Costs of disseminating information about the program.

(e) Costs of recruiting students for the program.

(f) Costs of publishing a law review or other publication by students participating in the program.

(g) Costs of bar review courses for students participating in the program.

(h) Costs of bar examination fees for students participating in the program.

(i) Costs of travel for students participating in the program.

(j) Costs of tuition and fees for students participating in the program.

(k) Costs of books and supplies for students participating in the program.

(l) Costs of room and board for students participating in the program.

(m) Costs of dependent allowances for students participating in the program.

(n) Costs of child care for students participating in the program.

(o) Costs of transportation for students participating in the program.

(p) Costs of other reasonable expenses directly related to training for the legal profession.

§ 651.5 What limitations apply to the costs that may be paid?

(a) Costs of preliminary training may be paid for participating students not more than six months prior to their commencement of law school courses; and

(b) Costs of stipends may be paid for participating students only during the period of their law school training.

34 CFR Part 690

Pell Grant Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Pell Grant Program to implement statutory changes made by the Middle Income Student Assistance Act of 1978 and the Education Amendments of 1980. The proposed regulations would establish the maximum Pell Grant award for the 1981–82 award year, and would implement statutory changes concerning the calculation of Pell Grant awards.

DATES: Interested persons are invited to submit comments and recommendations regarding the proposed regulations on or before February 2, 1981.

ADDRESSES: Written comments should be addressed to Director, Division of Policy Development, Office of Student Financial Assistance, 400 Maryland Avenue, S.W., (Room 4318, ROB–3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Director, Division of Policy Development, Office of Student Financial Assistance, 400 Maryland Avenue, S.W., (Room 4318, ROB–3), Washington, D.C. 20202. Telephone: (202) 245–9720.

SUPPLEMENTARY INFORMATION: The Pell Grant Program provides financial assistance to undergraduate students who have financial need. Pell Grants are awarded by institutions of higher education that participate in the program. The Secretary proposes to amend the regulations governing the Pell Grant Program to implement statutory changes made by the Middle Income Student Assistance Act of 1978 and the Education Amendments of 1980. The proposed regulations would establish the maximum Pell Grant award for the 1981–82 award year, and would implement statutory changes concerning the calculation of Pell Grant awards.

The proposed regulations would establish the maximum Pell Grant award for the 1981–82 award year at $1,800. The maximum award is established by statute at 50 percent of the cost of attendance at an institution of higher education, but not more than $1,800 for the 1981–82 award year. The proposed regulations would also implement statutory changes concerning the calculation of Pell Grant awards. The Education Amendments of 1980 changed the method of calculating the amount of a student's Pell Grant award by requiring that the student's family contribution be determined by using a formula established by the Secretary. The proposed regulations would implement this statutory change by establishing the formula for calculating the family contribution. The proposed regulations would also implement statutory changes concerning the calculation of Pell Grant awards for students who are independent of their parents and for students who are dependent on their parents.

The proposed regulations would also implement statutory changes concerning the calculation of Pell Grant awards for students who are independent of their parents and for students who are dependent on their parents.

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Invitation to Comment:

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before (the 60th day after publication of this document) will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3060 ROB–3, 7th Street, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact:

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority:

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary of Education proposes to amend Title 34 by adding a new Part 651 to read as follows:

PART 651—TRAINING IN THE LEGAL PROFESSION

Subpart A—General

Sec.
651.1 Training in the Legal Profession.
651.2 Eligible parties.
651.3 Regulations that apply to this program.
651.4 Definitions.

Subpart B—What Kinds of Activites Does the Secretary Support Under This Program?

651.10 What kinds of support does the program provide?
651.11 What activities are eligible for support?

Subpart C—[Reserved]

Subpart D—How Is an Award Made?

651.20 How does the Secretary select an award recipient?

Subpart E—What Conditions Must Be Met by an Award Recipient?

651.30 What are the limitations on allowable costs?

Authority: Part D of Title IX of the Higher Education Act of 1965, as amended by Sec. 904 of Pub. L. 96–374, 94 Stat. 1486–87 (20 U.S.C. 1134l).

Subpart A—General

§ 651.1 Training in the Legal Profession.

(a) The Legal Profession Training Program assists individuals from disadvantaged backgrounds to undertake training for the legal profession.

(b) The program is designed to help admit to accredited law schools disadvantaged students who, but for the program, would not have been admitted, and to assist these students in obtaining a legal education and law degree.

(20 U.S.C. 1134l)

§ 651.2 Eligible parties.

(a) Public and private agencies and organizations other than institutions of higher education may receive grants or contracts under these regulations.

(b) The Secretary may implement this program through the award of a single grant or contract.

(c) Unless the Secretary implements the program through one or more procurement contracts or through a single noncompetitive grant, applications will be invited annually through an application notice published in the **Federal Register**.

(20 U.S.C. 1134l(a))

§ 651.3 Regulations that apply to this program.

(a) *Regulations for procurement contracts.* The following regulations apply to any procurement contract under the Legal Profession Training Program:

(1) Federal and U.S. Department of Education procurement regulations in 41 CFR Chapters 1 and 34; and

(2) The regulations in this Part 651.

(b) *Regulations for grants.* The following regulations apply to any grants under the Legal Profession Training Program:

(1) The Education Division General Administrative Regulations (EDGAR) in Part 75 (Direct Grant Program) and Part 77 (General).

(2) The regulations in this Part 651.

(20 U.S.C. 1221e–3)

§ 651.4 Definitions.

As used in these regulations—

(a) "Act" means the Higher Education Act of 1965, as amended.

(20 U.S.C. 1221e–3)

(b) "Disadvantaged Backgrounds" are backgrounds that hinder individuals from gaining admission to law school and completing a course of legal study, including:

(1) Family income dependent in whole or in part on public assistance or inadequate to provide for needs beyond basic necessities such as food, housing and clothing;

(2) Rural isolation;

(3) Limited English proficiency as defined in section 703(a)(1) of the Bilingual Education Act (20 U.S.C. 880b–1(a)(1)); or

(4) Attendance at a minority group isolated school, as defined for purposes of the Emergency School Aid Act in § 185.02(g) of this chapter; or

(5) Other cultural or educational deprivations resulting from an environment that failed to develop skills and understandings that would enable an individual to gain admission to law school and complete a legal course of study.

(20 U.S.C. 1221e–3)

Subpart B—What Kinds of Activities Does the Secretary Support Under this Program?

§ 651.10 What kinds of support does the program provide?

The program provides financial support for activities that assist individuals from disadvantaged backgrounds in obtaining a legal education.

(20 U.S.C. 1134l(a))

§ 651.11 What activities are eligible for support?

The following activities are eligible for support under a grant or contract awarded under these regulations:

(a) Selecting individuals from disadvantaged backgrounds for training for the legal profession, including disseminating information about the program to eligible students;

(b) Making arrangements with accredited law schools to arrange entry of participating students into these schools;

(c) Providing counseling and related services—both prior to and during law school training—designed to assist participating students in preparing for and completing law school training;

(d) Providing preliminary legal education training for participating students to prepare them for law school.

(1) Preliminary training may include, but need not be limited to, orientation of students to the legal process, the epistemology of law, and law school learning methods; evaluation of the law school potential of students; and development of students' legal reading, research, and writing skills.

(2) Preliminary training may be provided for participating students not more than six months prior to their commencement of law school courses; and

(e) Stipends to participating students for any period of preliminary training and for the period of law school training, as provided in § 651.30.

(20 U.S.C. 1134l(b))

Subpart C—[Reserved]

Subpart D—How is an Award Made?

§ 651.20 How does the Secretary select an award recipient?

(a) The Secretary decides to make one or more awards and selects the award recipient(s) based on a judgment of what arrangements most effectively contribute to the purposes of Title IX–D of the Act.

(b) The Secretary may decide to make a non-competitive award to implement the program if—in the Secretary's judgment—there is one eligible organization that is exclusively or predominantly qualified to carry out effectively the purposes of Title IX–D of the Act in the light of its legislative history. If a noncompetitive contract award is made, the decision will be made in accordance with 41 CFR Chapter 34.

(20 U.S.C. 1221e–3; 1134l)

Subpart E—What Conditions Must Be Met By an Award Recipient?

§ 651.30 What are the limitations on allowable costs?

(a) Allowable costs under an award are direct and indirect costs incurred by the award recipient in carrying out the approved project.

(b) Allowable costs include, but are not limited to:

(1) Administrative costs of the award recipient in carrying out the eligible activities described in § 651.11.

(2)(i) Stipends for participating students, including allowances for travel and for dependents of participating students—during any period of preliminary training—or for the period of law school training during which the student maintains satisfactory academic progress, as determined by the Secretary.

(ii) The Secretary annually may set limits on the amount of stipends.

(20 U.S.C. 1134l(b))

[FR Doc. 80-40428 Filed 12-29-80; 8:45 am]

BILLING CODE 4000-01-M

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34 CFR Part 690

Pell Grant Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking: Cross-reference.

SUMMARY: The Secretary proposes regulations for the Pell Grant Program in Title 34 of the Code of Federal Regulations.

The text of the regulations on which the Secretary invites comments are published in the Rules and Regulations section of this issue of the **Federal Register.** They have been adopted as final regulations and will govern this program until the Secretary issues new regulations based on public comment.

DATES: All comments, suggestions, or objections must be received on or before March 2, 1981.

ADDRESSES: Comments should be addressed to: William L. Moran, Chief of the Policy Section, Basic Grant Branch, and Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4318, ROB–3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Moran, Telephone: (202) 472–4300.

INVITATION TO COMMENT: For additional details on how to comment, see the Preamble of the final regulations for these programs published in this issue of the **Federal Register.**

(Catalog of Federal Domestic Assistance Numbers 84.063, Pell Grant Program)

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 80-40429 Filed 12-29-80; 8:45 am]

BILLING CODE 4000-01-M

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34 CFR Part 206

Special Educational Programs for Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork—High School Equivalency Program and College Assistance Migrant Program

AGENCY: Department of Education.

ACTION: Proposed regulations.

SUMMARY: The Secretary proposes regulations to govern grants under the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP). These programs provide grants to institutions of higher education for projects of educational and supporting services designed to assist students—whose families are engaged in migrant and other seasonal farmwork—in obtaining the equivalent of a secondary school diploma and in successfully adjusting to postsecondary school. These programs implement Title IV, Section 418A, of the Higher Education Act (HEA), as amended by the Education Amendements of 1980.

DATES: Comments must be received on or before March 2, 1981.

ADDRESSES: Comments should be addressed to Mr. Vidal A. Rivera, Jr., Deputy Assistant Secretary for Migrant Education, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (ROB–3, Room 3608), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Vidal A. Rivera, Jr. Telephone No. (202) 245–2222.

SUPPLEMENTARY INFORMATION:

Background

The High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP) were previously authorized under Title III, section 303(c)(2), of the Comprehensive Employment and Training Act (CETA) (Pub. L. 93–203), and were administered by the Department of Labor. However, the Department of Education Reorganization Act (Pub. L. 96–88) transferred the authority for the administration of HEP and CAMP to the Department of Education (ED).

On October 3, 1980, the Education Amendments of 1980 (Pub. L. 96–374) became law. These amendments provide a new Title IV of the Higher Education Act (Pub. L. 89–329), entitled "Student Assistance." Title IV, HEA, now includes a new Part A, Subpart 5, entitled "Student Assistance." Title IV, HEA, now includes a new Part A, Subpart 5, entitled "Special Programs For Students Whose Families Are Engaged In Migrant and Seasonal Farmwork," which authorizes the HEP and CAMP programs.

In summary, these proposed regulations—

(a) Describe the types of projects that may be funded under HEP and CAMP;

(b) Describe the types of services that may be provided by a project;

(c) Describe the evaluation process for grant proposals and the selection criteria that the Secretary uses in that evaluation process;

(d) Describe conditions and requirements that must be met by a grantee; and

(e) Define the eligibility requirements for students to participate in a project.

How To Review These Proposed Regulations

These proposed regulations (34 CFR Part 206) contain only those requirements that are proposed to apply solely to HEP and CAMP. These

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND

(b) The College Assistance Migrant Program (CAMP) is designed to assist students—whose families are engaged in migrant and other seasonal farmwork—who are enrolled on a full-time basis in the first academic year at

either wages or personal subsistence, on a farm, ranch, or similar establishment.

(4) "Full-time," with respect to an individual, means a student who is carrying a full-time academic workload, as defined in 34 CFR Part 690 (Basic

Subpart B—What Kinds of Activities Does the Secretary Assist Under these Programs?

§ 206.10 What types of services may be provided?

(iii) Other essential supporting services that have been approved by the Secretary as needed to ensure the success of the participants in meeting the project's objectives and in completing postsecondary school.

How To Review These Proposed Regulations

These proposed regulations (34 CFR Part 206) contain only those requirements that are proposed to apply solely to HEP and CAMP. These proposed regulations do not contain certain types of general requirements that are covered in the Education Division General Administrative Regulations, which are found in 34 CFR Parts 75–77. EDGAR contains requirements that apply to all ED programs, including by incorporation the Grants Administration regulations, 34 CFR Part 74, that apply to all ED programs.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments that are received on or before March 2, 1981, will be considered in developing the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Regional Office Building 3, Room 3608, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Information Requirements

The Department particularly requests comments on whether the program requirements in this document would require transmission of information that is already being gathered by or is available from any other agency or Department of the United States.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations. References to "sec." in these citations refer to sections of the Higher Education Act of 1965, as amended by the Education Amendments of 1980.

(Catalog of Federal Domestic Assistance No. 84.144; Migrant Education Program—High School Equivalency Program and College Assistance Migrant Program)

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding Part 206 to read as follows:

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM

Subpart A—General

Sec.

206.1 What are the special educational programs for students whose families are engaged in migrant and other seasonal farmwork?
206.2 Who is eligible to participate as a grantee?
206.3 What regulations apply to these programs?
206.4 What definitions apply to these programs?
206.5–206.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under these Programs?

206.10 What types may be provided?
206.11–206.19 [Reserved]

Subpart C—How Does One Apply for a Grant?

206.20 What must be included in an application?
206.21–206.29 [Reserved]

Subpart D—How Is a Grant Made to an Applicant?

206.30 How does the Secretary evaluate an application?
206.31 What selection criteria does the Secretary use to evaluate an application?
206.32–206.39 [Reserved]

Subpart E—What Conditions Must be Met by a Grantee?

206.40 What is the special population to be served?
206.41 What is the requirement for maintaining participant records?
206.42 What restrictions are there on expenditures?
206.43–206.49 [Reserved]

Authority: Subpart 5, Part A, of Title IV of the Higher Education Act of 1965 (Pub. L. 89–329), as amended by the Education Amendments of 1980 (Pub. L. 96–374)(20 U.S.C. 1070d–2).

Subpart A—General

§ 206.1 What are the special educational programs for students whose families are engaged in migrant and other seasonal farmwork?

(a) The High School Equivalency Program (HEP) is designed to assist students—whose families are engaged in migrant and other seasonal farmwork—to obtain the equivalent of a secondary school diploma and to subsequently gain employment or be placed in an insitution of higher education (IHE).

(b) The College Assistance Migrant Program (CAMP) is designed to assist students—whose families are engaged in migrant and other seasonal farmwork—who are enrolled on a full-time basis in the first academic year at an IHE.

(Sec. 418A(a); 20 U.S.C. 107d–2)

§ 206.2 Who is eligible to participate as a grantee?

An institution of higher education may apply for a grant to operate a HEP or a CAMP project.

(Sec. 418A(a); 20 U.S.C. 1070d–2

§ 206.3 What regulations apply to these programs?

The following regulations apply to HEP and CAMP:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General).

(b) The regulations in this Part 206.

(Sec. 418A(a); 20 U.S.C. 1070d–2)

§ 206.4 What definitions apply to these programs?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77 (EDGAR, General):

Applicant
Application
Department
Elementary school
Facilities
Project
Secondary school
Secretary
State

(b) *Definitions in the Grants Administration Regulations.*

The following terms used in this part are defined in 34 CFR Part 74 (Administration of Grants):

Budget
Equipment
Grant
Grantee
Supplies

(c) *Program definitions.* The following additional definitions apply specifically to the HEP and CAMP programs:

(1) "Act" means the Higher Education Act of 1965, as amended by the Education Amendments of 1980.

(2) "Agricultural activity" means—

(i) Any activity directly related to the production of crops, dairy products, poultry, or livestock;

(ii) Any activity directly related to the cultivation or harvesting of trees; or

(iii) Any activity directly related to fish farms.

(3) "Farmwork" means any agricultural activity, performed for either wages or personal subsistence, on a farm, ranch, or similar establishment.

(4) "Full-time," with respect to an individual, means a student who is carrying a full-time academic workload, as defined in 34 CFR Part 690 (Basic Educational Opportunity Grant Program Regulations).

(5) "Institution of higher education" means an educational institution that—

(i) Is in a State;

(ii) Is authorized by that State to provide a program of education beyond secondary school;

(iii) Is a public or nonprofit institution;

(iv) Admits as a regular student only a person who—

(A) Has a secondary school diploma;

(B) Has the recognized equivalent of a secondary school diploma; or

(C) Is beyond the age of compulsory school attendance in that State and has the ability to benefit from the training offered by the institution;

(v) Provides—

(A) An educational program for which it awards a bachelor's degree; or

(B) At least a two-year program that is acceptable for full credit toward a bachlor's degree;

(vi)(A) Is accredited by a nationally recognized accrediting agency or association;

(B) Has satisfactorily assured the Secretary that it will meet the accreditation standards of a nationally recognized accrediting agency or within a reasonable time considering the resources available to the institution, the period of time, if any, it has operated, and its effort to meet accreditation standards; or

(C) Has its credits accepted on transfer by at least three accredited institutions on the same basis as those institutions accept transfer credits from fully accredited institutions.

(6) "Migrant farmworker" means a seasonal farmworker—as defined in paragraph (c)(7) of this section—whose employment required travel such that the farmworker was unable to return to his or her domicile (permanent place of residence) within the same day.

(7) "Seasonal farmworker" means a person who, within the past 24 months, was employed for at least 100 days in farmwork, and whose primary employment was in farmwork on a temporary or seasonal basis (that is, not a constant year-round activity).

(Sec. 418A(a); 20 U.S.C. 1070d–2)

Subpart B—What Kinds of Activities Does the Secretary Assist Under these Programs?

§ 206.10 What types of services may be provided?

(a) *General.* A grantee may use funds to support approved projects designed to provide educational and supporting services to students whose families are engaged in migrant and other seasonal farmwork.

(b) *Types of services.* (1) *HEP projects.* A HEP project may provide the following types of services to assist participants in obtaining the equivalent of a secondary school diploma and as needed to ensure the success of the participants in meeting the project's objectives and in succeeding at the secondary school level and beyond:

(i) Recruitment services for enrolling project participants.

(ii) Institutional services in academic subject areas such as reading, writing, oral language skills, and mathematics, and in related areas such as study skills.

(iii) Special academic, career, and personal guidance, counseling, and testing services.

(iv) Housing support or on-campus residential programs during the operation of the project.

(v) Services designed to acquaint participants with the range of career options available to them—including appropriate career-oriented work study activities.

(vi) Services designed to expose participants to academic institutions and programs, cultural events, and other activities not usually available to the participants and supportive of their intellectual, cultural, social, and personal development.

(vii) Appropriate in-service training activities for project staff members.

(viii) Other essential supporting services that have been approved by the Secretary as needed to ensure the success of the participants in meeting the project's objectives and in succeeding at the secondary school level and beyond.

(2) *CAMP projects.* A CAMP project may provide the following types of services to assist the participants in meeting the project's objectives and in succeeding in postsecondary school:

(i) The services described in items (i) and (iii) through (vii), inclusive, of paragraph (b)(1) of this section.

(ii) Tutoring and supplementary instructional services in the following areas:

(A) Basic skills.

(B) Subject areas in which the participants are enrolled.

(C) Related areas such as study skills.

(iii) Other essential supporting services that have been approved by the Secretary as needed to ensure the success of the participants in meeting the project's objectives and in completing postsecondary school.

(Sec. 418A(a); 20 U.S.C. 1070d–2)

Subpart C—How Does One Apply for a Grant?

§ 206.20 What must be included in an application?

In applying for a grant, an applicant shall—

(a) Follow the procedures and meet the requirements stated in Subpart C of 45 CFR Part 75 (EDGAR-Direct Grant Programs); and

(b) Provide the following assurances:

(1) The grantee will develop and implement a plan for identifying, informing, and recruiting eligible participants who need the assistance provided by the project.

(2) The grantee will develop and implement a plan for identifying and using the resources of the IHE and the community to supplement and enhance the services provided by the project.

(Sec. 418A(a); 20 U.S.C. 1070d–2)

Subpart D—How Is a Grant Made to an Applicant?

§ 206.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application under HEP or CAMP on the basis of the selection criteria listed in § 206.31 of these regulations.

(b) The Secretary awards up to 100 possible points for meeting these criteria.

(c) The maximum number of points possible for meeting each individual criterion is indicated in parentheses after the heading for that criterion.

(Sec. 418A(a); 20 U.S.C. 1221e–3(a)(1))

§ 206.31 What selection criteria does the Secretary use to evaluate an application?

(a) *Plan of operation.* (40 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows the following:

(i) High quality in the design of the project.

(ii) An effective plan of management that assures proper and efficient administration of the project.

(iii) A clear description of how the objectives of the project relate to the purpose of the program.

(iv) A clear description of the way that the applicant plans to use its

resources and personnel to achieve each objective of the project.

(v) A clear description of how the applicant will provide equal access and treatment for eligible participants who are members of both sexes and of racial or national origin minority groups.

(vi) A plan of evaluation that includes appropriate methods for determining the extent to which the project objectives are being achieved.

(vii) A plan of evaluation that is appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(b) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows the adequacy of the resources that the applicant plans to devote to the project.

(2) The Secretary looks for information that shows the adequacy of the proposed project budget and the extent to which costs are reasonable in relation to the objectives of the project.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows the following:

(i) The qualifications of the director or principal beneficiary, including relevant training and experience in fields related to the objectives of the project.

(ii) The qualifications of each of the other personnel to be used in the project, including relevant training and experience in fields related to the objectives of the project.

(iii) The extent to which the applicant plans to employ personnel who are members of racial or national origin minority groups.

(iv) The extent to which the applicant plans to employ personnel who are migrant or seasonal farmworkers.

(d) *Relevance to the purpose of the program.* (10 points)

(1) The Secretary reviews each application for information that shows the relevance of the project to the purpose of the program.

(2) The Secretary looks for information that shows the following:

(i) The extent to which the project will provide services that are appropriate to the needs of the participants.

(ii) The extent to which the project will provide services that are likely to assist participants in overcoming educational problems.

(iii) The extent to which the project will provide services that are likely to assist participants in obtaining employment or in entering postsecondary education.

(e) *Quality of the project design.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the project design.

(2) The Secretary looks for information that shows the following:

(i) The extent to which the project will provide services that are of sufficient duration to produce benefits for participants.

(ii) The extent to which the project will provide services that are of sufficient intensity to produce benefits for participants.

(iii) The extent to which the project will provide services that are likely to produce benefits for participants that last beyond the period of participation in the project.

(iv) The extent to which the project will provide services that are likely to assist participants in overcoming educational problems.

(v) The extent to which the project will provide services that are likely to assist participants in obtaining employment or in entering postsecondary education.

(f) *Quality of project services.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the services to be provided by the project.

(2) The Secretary looks for information that shows the following:

(i) The extent to which the project will provide services that are of sufficient duration to produce benefits for participants.

(ii) The extent to which the project will provide services that are of sufficient intensity to produce benefits for participants.

(iii) The extent to which the project will provide services that are likely to produce benefits for participants that last beyond the period of participation in the project.

(iv) The extent to which the project will provide services that are likely to assist participants in overcoming educational problems.

(v) The extent to which the project will provide services that are likely to assist participants in obtaining employment or in entering postsecondary education.

(g) *Quality of project evaluation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation to be conducted of the project.

(2) The Secretary looks for information that shows the following:

(i) The extent to which the evaluation will be thorough, objective, and produce data that are quantifiable.

(ii) The extent to which the evaluation will determine the impact of the project on participants.

(iii) The extent to which the evaluation will measure the progress of participants in achieving the objectives of the project.

(iv) The extent to which the evaluation will assess the effectiveness of project services.

(h) *Adequacy of support services.* (10 points)

(1) The Secretary reviews each application for information that shows the adequacy of the support services the applicant plans to provide.

(2) The Secretary looks for information that shows the adequacy of the support services the applicant plans to provide, including services related to financial assistance, health, housing, and child care.

(i) *Adequacy of follow-up activities.* (10 points)

(1) The Secretary reviews each application for information that shows the adequacy of the follow-up activities the applicant plans to provide.

(2) The Secretary looks for information that shows the adequacy of the follow-up activities the applicant plans to provide, including activities designed to assist participants who obtain employment or who enter postsecondary education.

(Sec. 418A(a); 20 U.S.C. 1070d–2)

Subpart E—What Conditions Must be Met by a Grantee?

§ 206.40 What is the special population to be served?

(a) A grantee shall provide services only to migrant and seasonal farmworkers and members of their immediate families.

(b) A grantee shall provide services only to participants who are certified as eligible by the Secretary.

(Sec. 418A(a); 20 U.S.C. 1070d–2)

§ 206.41 What is the requirement for maintaining participant records?

A grantee shall maintain records with respect to each participant that show the following:

(a) The benefits received by the participant.

(b) The progress of the participant toward the objectives of the project.

(c) The services provided by the project in order to complete an academic program of study at the IHE.

(Sec. 418A(a); 20 U.S.C. 1070d–2)

DATES: Public comments must be received on or before January 29, 1981.

ADDRESSES: Comments should be addressed to Mr. Frank Z. Alejandro, U.S. Department of Education, National

practices of the Department of Education:

(i) § 703.1 makes for-profit organizaions eligible for grants;

(ii) § 703.4 limits the effective period

hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Citation of Legal Authority

A citation of statutory or other legal

resources and personnel to achieve each objective of the project.

(v) A clear description of how the applicant will provide equal access and treatment for eligible participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows adequate qualifications for the key personnel the applicant plans to use in the project.

(2) The Secretary looks for information that shows the following:

(i) The qualifications of the project director (if one is to be used).

(ii) The qualifications of each of the other key personnel to be used in the project.

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project.

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training—in fields related to the objectives of the project—as well as other information that the applicant provides.

(c) *Budget and cost-effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows the following:

(i) The budget for the project is adequate to support the project activities.

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows the following:

(i) The facilities that the applicant plans to use are adequate.

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Recruitment.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the recruitment plan for the project.

(2) The Secretary looks for information that shows that the applicant has adequate plans for identifying, informing, and recruiting eligible participants who are most in need of the assistance provided by the project.

(20 U.S.C. 1221e-3(a)(1))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 206.40 What is the special population to be served?

(a) *General.* To be eligible to participate in a HEP or CAMP project, an individual must be a migrant or other seasonally-employed farmworker (or a dependent of a migrant or other seasonally-employed farmworker), as defined in § 206.4(c) of these regulations.

(b) *Special HEP qualifications.* To be eligible to participate in a HEP project, a migrant or other seasonally-employed farmworker (or dependent) must—

(1) Not have earned a secondary school diploma or its equivalent;

(2) Not be currently enrolled in an elementary or secondary school;

(3) Be above the age of compulsory school attendance in the State where the project is located; and

(4) Be determined by the grantee to need the financial and academic services provided by the project in order to attain the equivalent of a secondary school diploma.

(c) *Special CAMP qualifications.* To be eligible to participate in CAMP, a migrant or other seasonally-employed farmworker (or dependent) must—

(1) Be enrolled as a full-time student at the IHE that is serving as the grantee;

(2) Not be beyond the first academic year of a program of study at the participating IHE, as determined under the standards of the IHE; and

(3) Be determined by the grantee to need the financial and academic services provided by the project in order to complete an academic program of study at the IHE.

(Sec. 418A(a); 20 U.S.C. 1070d-2)

§ 206.41 What is the requirement for maintaining participant records?

(a) *General.* A grantee shall develop and implement a system that provides accurate and accessible records on participants.

(b) *Contents.* To document the progress of each participant, each record must include at least the following:

(1) Information used to determine the participant's eligibility, as stated in § 206.4(c) of these regulations.

(2) The criteria used to identify the participant as needing the financial and academic services provided by the project.

(3) A statement of the participant's academic needs at the time of entering into the project.

(4) A description of the individual program designed to assist the participant in meeting the project's objectives.

(5) A brief summary of the actual services the participant received including both educational and education-support services.

(Sec. 418A(a); 20 U.S.C. 1070d-2)

§ 206.44 What restrictions are there on expenditures?

Funds provided under HEP or CAMP may not be used for construction of facilities or remodeling.

(Sec. 418A(a); 20 U.S.C. 1070d-2)

[FR Doc. 80-40430 Filed 12-29-80; 8:45 am]

BILLING CODE 4000-01-M

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34 CFR Part 703

Experimental Program for Opportunities in Advanced Study and Research in Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations that apply to grants administered under the National Institute of Education's Experimental Program for Opportunities in Advanced Study and Research in Education. This amendment does not change the program objectives. The changes include revised language and format necessary to make the regulations conform with administrative directives to improve the quality of all regulations. These regulations, previously designated as Part 1430 of Title 45 CFR Chapter XIV, are now included under Title 34 CFR Chapter VII, and as revised are redesignated as Part 703.

DATES: Public comments must be received on or before January 29, 1981.

ADDRESSES: Comments should be addressed to Mr. Frank Z. Alejandro, U.S. Department of Education, National Institute of Education, Room 609, 1200 19th Street, N.W., Washington, D.C. 20208.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Z. Alejandro, Telephone number (202) 254-8827.

SUPPLEMENTARY INFORMATION:

A. Background of the Program

In 1978, the National Institute of Education (NIE) established an experimental program to improve opportunities for minorities and women emphasizing such opportunities for advanced study and research on problems in educational research and development. Grants for institutional projects as well as for special projects were awarded in order to enable the Federal government to utilize the existing capabilities of institutions and organizations that have a record of success in recruiting and training minorities and women in educational research, and in advancing the careers of those traditionally underrepresented persons.

B. Changes in the Regulations

(1) The Education Department General Administrative Regulations (EDGAR) were published on April 3, 1980 (45 FR 22494) and, at the same time, amendments to these program regulations were published in the **Federal Register** (45 FR 22544) to make them conform with EDGAR in all respects other than the selection criteria. Those selection criteria did not change.

(2) Inasmuch as EDGAR applies to this program, the amended program regulations do not repeat certain types of requirements that are covered in EDGAR. These include

- Subpart C,
  How to apply for a grant;
- Subpart, D,
  How grants are made;
- Subpart D,
  How grants are made;
- Subpart E,
  What conditions must be met by a grantee;
- Subpart F,
  What are the administrative responsibilities of a grantee;
- Subpart C,
  What procedures does the Secretary use to assure compliance.

(3) the following changes are made in order to make these program regulations comply with current policies and practices of the Department of Education:

(i) § 703.1 makes for-profit organizaions eligible for grants;

(ii) § 703.4 limits the effective period for these regulations;

(iii) § 703.14 specifies activities which are ineligible for support under this program;

(iv) § 703.31(d) provides for a balanced distribution of awards based upon geographic considerations;

(v) § 703.32 (f) and (g) are restatements of the criteria which previously appear in these regulations.

(vi) § 703.32(e) adds a criterion which is required by EDGAR;

(vii) § 703.32 (a) through (g) assign new weight values to each selection criterion;

(viii) § 703.43 places certain financial restrictions on a profit-type grantee.

Effective Period of These Regulations

These regulations apply only to awards made prior to December 31, 1981.

Classification and Regulatory Analysis

The Department of Education has determined that these regulations will not impose an unnecessary burden on the economy or on individuals and, therefore, are not significant for the purpose of Executive Order 12044 (Improving Government Regulations). Further, a regulatory analysis is not required for this particular rulemaking process.

Application Information

An application notice, containing the closing date for receipt of applications under this program, is being published in the **Federal Register** concurrently with the publication of this Notice of Proposed Rulemaking. To obtain the program announcement, which supplements the information of the application notice, please contact Mr. Frank Z. Alejandro, at telephone number (202) 254-8827.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed amendments. Written comments and recommendations may be sent to the address given in this preamble. All comments received by the date that public comments are due will be considered in the development of the final regulations. All comments submitted will be available for public inspection during and after the comment period in Room 609, 1200 19th Street, N.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Citation of Legal Authority

A citation of statutory or other legal authority appears in parentheses in each section of these regulations.

(Catalog of Federal Domestic Assistance Number 84.117, Education Research and Development, formerly 13.950)

December 23, 1980.

Shirley M. Hufstedler,

Secretary of Education.

Title 34 of the Code of Federal Regulations adds a new Part 703 to read as follows:

PART 703—EXPERIMENTAL PROGRAM FOR OPPORTUNITIES IN ADVANCED STUDY AND RESEARCH IN EDUCATION

Subpart A—General

Sec.

703.1 Purpose of the experimental program for opportunities in advanced study and research in education.
703.2 Eligible parties.
703.3 Regulations that apply to this program.
703.4 Effective period of these regulations.
703.5 Definitions that apply to this program

Subpart B—What Types of Projects are Assisted Under this Program?

703.11 Types of projects and general requirements.
703.12 Additional requirements for Institutional projects.
703.13 Additional requirements for Special projects.
703.14 Projects and activities that are ineligible for support.

Subpart C—How Does One Apply for a Grant?

703.21 Application procedures.

Subpart D—How Does the Secretary Make a Grant?

703.31 How does the Secretary evaluate an application?
703.32 What selection criteria does the Secretary use?

Subpart E—What Conditions Must be Met by a Grantee?

703.41 Restrictions on the use of grant funds.
703.42 Allowable costs.
703.43 Restrictions on for-profit type grantees.

Authority.—Section 405 of the General Education Provisions Act, Sec. 301(a)(2) of Pub. L. 92-318, 86 Stat. 328, 332, as amended (20 U.S.C. 1221e).

Subpart A—General

§ 703.1 Purpose of the experimental program for opportunities in advanced study and research in education.

This Program supports experimental activities that demonstrate effective

ways of increasing the participation of minorities and women in the field of education and educational research. These activities are expected to be used to—

(a) Enhance equality of opportunity

(b) *Specific program definitions:* Other definitions used in this part are:

"Educational research" means research (basic and applied), planning, surveys, evaluation, investigations, experiments, developments, or institutions which represent minorities or women.

§ 703.12 Additional requirements for Institutional Projects.

Each Institutional Project must meet

have appropriate academic backgrounds and experience;

(3) Identify and promote non-traditional research in areas, on approaches, or on topics associated with the needs and status of minorities and

following the identification of each selection criterion.

(d) The Secretary decides whether or not to fund a meritorious application, based on its rank order as determined by the independent review process and

(D) The elderly.

(3) In determining the qualifications of key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the program as well as other information

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ways of increasing the participation of minorities and women in the field of education and educational research. These activities are expected to be used to—

(a) Enhance equality of opportunity within the educational research workforce;

(b) Increase the relevance and credibility of educational research through greater inclusion of contributions and perspectives of minorities and women; and

(c) Improve the overall quality of educational research by drawing upon those talented minorities and women who currently are engaged in research other than educational research or are non-research professionals who are capable of making a significant contribution to educational research.

(20 U.S.C. 1221e(b)(2))

§ 703.2 Eligible parties.

A college, university, State or local educational agency, other public or private non-profit or for-profit agency or organization, or any combination of these, is eligible to receive a grant.

(20 U.S.C. 1221e(e)(1))

§ 703.3 Regulations that apply to this program.

The following regulations apply to this program:

(a) In addition to the regulations in this part, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General) apply, except sections 75.130 through 75.134 which concern preapplications.

(b) Administration of Grants in 34 CFR Part 74, as republished in the Federal Register on May 9, 1980. (45 FR 30856).

§ 703.4 Effective period of these regulations.

These regulations apply only to awards made prior to December 31, 1981.

(20 U.S.C. 3474)

§ 703.5 Definitions that apply to this program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Local Educational Agency
Non-profit
Public
Project
Secretary
State Educational Agency.

(b) *Specific program definitions:* Other definitions used in this part are:

"Educational research" means research (basic and applied), planning, surveys, evaluation, investigations, experiments, developments, or demonstrations in the field of education.

"Minorities" means individuals who compose the following groups: Black, Hispanic, American, Indian, Asian, Pacific Islander, or Alaskan Native.

"Experienced professional" means a person with a year or more of graduate level education that is relevant to educational research and at least one more year of related professional work experience.

(20 U.S.C. 3474)

Subpart B—What Types of Projects are Assisted Under This Program?

§ 703.11 Types of projects and general requirements.

The Secretary awards grants for two types of projects: Institutional Projects and Special projects. Each project must satisfy one or more of the following general requirements:

(a) Develop and demonstrate effective ways to overcome barriers to the employment and advancement of minorities and women in educational research;

(b) Provide advanced study opportunities needed especially by minorities and women who are preparing for employment in educational research or who are seeking ways to improve utilization of their educational research capabilities. Such advanced study is to occur only in conjunction with research under the grant;

(c) Furnish information about such advanced study opportunities provided by others;

(d) Make arrangements for obtaining advice from experts on the application of concepts and methods from relevant fields and disciplines to research or other project activities;

(e) Engage persons to serve as mentors and role models. One function of such persons is to advise minorities and women about means for gaining access to essential communication channels in educational research;

(f) Assist well-qualified minorities and women to participate at an advanced level in educational research and related work;

(g) Ensure the participation of minorities and women in planning for and advising on the conduct of the project; or

(h) Coordinate the planning and conduct of the project with organizations, associations, or institutions which represent minorities or women.

§ 703.12 Additional requirements for institutional Projects.

Each Institutional Project must meet the following additional requirements:

(a) Support opportunities for individuals engaged in post-doctoral studies or for experienced professionals to conceive and conduct educational research that reflects concerns and perspectives of minorities and women. (Full-time predoctoral graduate work is not a priority, and support is not provided for this activity without the prior approval of the Secretary.)

(b) Develop and implement a set of policies and procedures for increasing the involvement and professional growth and the opportunities for advancement, of minorities and women within one or more units of the grantee organization.

(c) These projects are funded for an initial period of 12 months and if an application is for a multi-year project, the project may be continued for additional periods provided the project does not exceed 36 months.

§ 703.13 Additional requirements for special projects.

Each Special Project must meet one or more of the following additional requirements:

(a) Provide short-term advanced study opportunities, including, but not limited to, workshops, seminars, short courses, or brief residential programs directed toward the specific needs of minorities and women who are preparing for, entering, or advancing within educational research careers;

(b) Furnish information abut such short-term advanced study opportunities which are provided by others;

(c) Develop and demonstrate replicable, short-term activities intended to accomplish one or more of the following objectives:

(1) Increase the involvement of minorities and women in communication networks by providing information about, or access to, groups or individuals who informally share knowledge of training and employment opportunities, funding sources, and substantive educational research results;

(2) Assist mid-career entry and re-entry of minorities and women into educational research by using methods that:

(i) Stimulate the interest of non-educational researchers to enter the educational research field or

(ii) Attract to the educational research field those non-research persons who have appropriate academic backgrounds and experience;

(3) Identify and promote non-traditional research in areas, on approaches, or on topics associated with the needs and status of minorities and women in education.

(4) Provide for the development of specific skills needed in educational research. These include statistical skills and skills needed to conduct syntheses and transformations of knowledge.

(5) Enhance the potential for publication and dissemination of the results of significant educational research performed by minorities and women by providing information and training concerning research techniques, report writing, and publishing processes.

(d) These projects are funded for an initial period of 12 months and if an application is for a multi-year project, the project may be continued for additional periods provided the project does not exceed 36 months and provided also that the project offers a sequence of short-term activities that are recurring or intermittent.

§ 703.14 Projects and activities that are ineligible for support.

Grants will not be awarded in support of the following:

(a) Pre-college or undergraduate programs of any type.

(b) Course work or other education or training that is not adapted specifically to the requirements of this program.

(c) Research that is not part of an Institutional Project as described in these regulations.

(d) Activities that do not emphasize the increasing or strengthening of participation by minorities and women in educational research.

(20 U.S.C. 1221e(e)(1), 3474)

Subpart C—How Does One Apply for a Grant?

§ 703.21 Application procedures.

One applies for a grant under the procedures of EDGAR sections 75.100 through 75.129.

(20 U.S.C. 3474)

Subpart D—How Does the Secretary Make a Grant?

§ 703.31 How Does the Secretary Evaluate an Application?

(a) The Secretary evaluates an application on the basis of the selection criteria in section 703.32.

(b) The Secretary awards up to 100 total points based upon the degree to which each of these criteria is satisfied.

(c) The maximum possible score for each criterion is indicated in parenthesis following the identification of each selection criterion.

(d) The Secretary decides whether or not to fund a meritorious application, based on its rank order as determined by the independent review process and on whether the funding of the proposed project will contribute to the widest possible distribution of projects throughout the United States.

(20 U.S.C. 3474)

§ 703.32 What selection criteria does the Secretary use?

(a) *Plan of operation. (20 points)*

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each key person will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) In determining the qualifications of key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the program as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation Plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows that the facilities, equipment, and supplies planned to be used are adequate.

(f) *Significance of the proposed project in meeting the purpose of the program.* (25 points)

The Secretary looks for information that shows the significance of the proposed project in terms of the potential for developing methods for removing barriers to the participation of minorities and women in educational research and in advancing careers for minorities and women in educational research.

(g) *Commitment of the applicant to the purpose of the program.* (20 points)

(1) The Secretary reviews each application for information that shows the extent to which the applicant is committed to meeting the purpose of the program.

(2) The Secretary looks for information that shows the commitment of the applicant to—

(i) The adoption of successful methods which are developed under the project; or

(ii) The continuation of exemplary practices initiated under the project.

(20 U.S.C. 3474)

Subpart E—What Conditions Must be Met by a Grantee?

§ 703.41 Restrictions on the use of grant funds.

No grant funds may be used for

SUPPLEMENTARY INFORMATION: The Education Amendments of 1980 amended Title VII of the Higher Education Act. That title authorizes programs of grants and loans to public

regulations emphasize certain aspects of the special purposes:

(i) For energy conservation projects, the Secretary proposes to give greater consideration to projects proposing to

"threshold cost" requirement from these proposed regulations.

These proposed regulations also contain, in §§ 618.60 through 618.62, provisions for which there is no

PART 617—FINANCIAL ASSISTANCE FOR CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES: GENERAL

Subpart A—General

§ 617.1 Financial assistance for construction, reconstruction, and renovation of academic facilities.

Subpart E—What Conditions Must be Met by a Grantee?

§ 703.41 Restrictions on the use of grant funds.

No grant funds may be used for construction, repair, modeling, or alteration of facilities or sites.

(20 U.S.C. 3474)

§ 703.42 Allowable costs.

(a) Allowable direct costs for each grant under this program may not exceed the amount set forth in the grant award document.

(b) Assistance for Special projects may be provided at $30 for each full day of participation, but may not exceed $150 a week.

(230 U.S.C. 3474)

§ 703.43 Restriction on for-profit type grantees.

A for-profit type grantee is required to forgo profits and to cost-share to the same extent that is required of a non-profit grantee.

(20 U.S.C. 3474)

[FR Doc. 80-40431 Filed 12-29-80; 8:45 am]
BILLING CODE 4000-01-M

34 CFR Parts 617, 618, 619, 620, and 621

Financial Assistance for Construction, Reconstruction, and Renovation of Higher Education Facilities

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the programs of Financial Assistance for Construction, Reconstruction, and Renovation of Higher Education Facilities to reflect statutory changes contained in the Education Amendments of 1980. The proposed regulations revise certain selection criteria for grants and loans in order to focus applications for Federal financial assistance on special purposes specified in the amended statute.

DATES: All comments, suggestions, or objections must be received on or before March 2, 1981.

ADDRESSES: Comments should be addressed to Thomas F. McAnallen, Office of Institutional Support, Office of Postsecondary Education, U.S. Department of Education, (Room 3716, ROB-3), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Thomas F. McAnallen. Telephone No. (202) 245-3235.

SUPPLEMENTARY INFORMATION: The Education Amendments of 1980 amended Title VII of the Higher Education Act. That title authorizes programs of grants and loans to public and private institutions of higher education for the construction, reconstruction, and renovation of higher education academic facilities. The amended statute repeals the general purpose of providing Federal financial assistance to meet the expansion of student enrollment capacity and provides, instead, specified purposes for which funds under this law may be expended.

Funds appropriated under the Act may now be used to enable institutions—

(a) To economize on the use of energy resources;

(b) To improve their research facilities, including libraries, and to acquire special research equipment;

(c) To construct, reconstruct, or renovate facilities to meet unusual increases in enrollments;

(d) To remove architectual barriers to the handicapped in order to comply with the Architectual Barriers Act of 1968 and Section 504 of the Rehabilitation Act of 1973;

(e) To bring facilities into conformity with environmental protection or health and safety laws enacted subsequent to the date of construction; and

(f) To detect, remove, or contain asbestos hazards in academic or other facilities used by students.

Summary of Proposed Changes

(a) The proposed regulations are simplified in language and divided into five separate regulations: one containing general provisions common to all or most of the four other parts, and the other four governing, respectively, procedures for obtaining—

(1) Grants for undergraduate facilities;

(2) Grants for graduate facilities;

(3) Loans for undergraduate or graduate facilities; and

(4) Annual interest grants for undergraduate or graduate facilities.

(b) The proposed regulations contain the following provisions to reflect changes made by the Education Amendments of 1980:

(1) Definitions are provided for new terms in the Act, such as "research facilities, including libraries," "usual increases in enrollment," and "other facilities used by students" in relation to removal of asbestos hazards.

(2) Through the assignment of maximum possible points for individual criteria used in the selection of grant and loan recipients, the proposed regulations emphasize certain aspects of the special purposes:

(i) For energy conservation projects, the Secretary proposes to give greater consideration to projects proposing to use one or more of: coal, solar energy, and renewable resources.

(ii) For projects to remove architectural barriers, the Secretary proposes to give greater consideration to projects that hold promise of accomplishing exemplary programs of compliance with Section 504 that would be helpful to other institutions around the country and would not likely be carried out in the absence of Federal funds.

(iii) For projects to improve research facilities, the Secretary proposes to give greater consideration to projects that hold promise of having the greatest impact on the up-grading of institutions' research facilities.

(iv) For projects to accommodate unusual increases in student enrollment, the Secretary proposes to give greater consideration to projects that serve otherwise underserved student populations.

(v) For projects relating to asbestos hazards, the Secretary proposes to give greater consideration to projects addressing conditions of critical need.

(c) The proposed regulations provide that in any year in which the Congress appropriates funds for fewer than all of the special purposes, the Secretary will announce the congressional priorities or priorities through a notice in the Federal Register. If the Congress appropriates funds without specification, no special purpose will be given priority by the Secretary.

(d) The proposed regulations omit a previous provision in the definitions establishing a "period of Federal interest" in facilities *renovoted or reconstructed* for a special purpose. The statutory provision on which this was based was repealed. However, in the case of facilities *constructed* with Federal assistance, the proposed regulations retain the "period of Federal interest" for 20 years after construction, since this provision was reenacted by the Education Amendments of 1980.

(e) The proposed regulations incorporate a change made by the Secretary in response to comments on interim final provisions of the regulations for Title VII published on April 29, 1980 (45 FR 28666-28683).

Comment. Several commenters felt that the "threshold cost" requirement for eligibility for assistance to remove architectural barriers unduly reduced the number of eligible applicants.

Response. A change has been made. The Secretary has omitted the "threshold cost" requirement from these proposed regulations.

These proposed regulations also contain, in §§ 618.60 through 618.62, provisions for which there is no statutory authority. Before it was amended by the Education Amendments of 1980, Title VII of the Higher Education Act provided for allocation to the States of funds for construction of undergraduate facilities and a State plan for ranking applications, but it also provided for the awarding of grants by the Secretary.

In order to continue orderly administration of the program, a technical amendment to restore the authority of the Secretary to make the awards is being presented to the Congress. If the Congress enacts the technical amendment, these provisions will be part of the final regulations. The public is invited to comment on the appropriate course of action for the Department if the Congress does not enact the technical amendment.

Assesssment of Educational Impact

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments submitted on or before (the 60th day after publication of this document) will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3716, ROB-3, 7th and D Streets S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary proposes to revise Part 617 of Title 34 of the Code of Federal Regulations to read as follows:

PART 617—FINANCIAL ASSISTANCE FOR CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES: GENERAL

Subpart A—General

Sec.

617.1 Financial assistance for construction, reconstruction, and renovation of academic facilities.
617.2 Eligible parties: Grants for the construction, reconstruction, and renovation of undergraduate academic facilities.
617.3 Eligible parties: Grants for the construction, reconstruction, and renovation of graduate academic facilities.
617.4 Eligible parties: Loans for the construction, reconstruction, and renovation of academic facilities.
617.5 Eligible parties: Annual interest grants for the construction, reconstruction, and renovation of academic facilities.
617.6 Regulations that apply to programs of financial assistance for construction, reconstruction, and renovation of academic facilities.
617.7 Definitions that apply to programs of financial assistance for construction, reconstruction, and renovation of academic facilities.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under These Programs?

617.10 Grants and loans for academic facilities and special research equipment.
617.11 Types of projects the secretary considers for assistance.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

617.30 Determination of costs eligible for Federal assistance: general.
617.31 Conditions for grant approval and determination of costs eligible for Federal assistance: projects related to energy conservation, architectural barriers, environmental protection, health and safety, or asbestos hazards.
617.32 Determination of costs eligible for Federal assistance: projects related to research facilities, special research equipment, or unusual increases in enrollment.
617.33 Avoidance of duplication of facilities and programs.

Subpart E—What Conditions Must Be Met by an Applicant?

617.40 Cost requirements.

Authority: Secs. 701-742 of Pub. L. 96-374, Title VII of the Higher Education Act, as amended (20 U.S.C. 1132a-1132e-1) unless otherwise noted.

Subpart A—General

§ 617.1 Financial assistance for construction, reconstruction, and renovation of academic facilities.

The Secretary awards financial assistance to institutions of higher education for the construction, reconstruction, and renovation of academic facilities through four programs:

(a) Grants for the Construction, Reconstruction, and Renovation of Undergraduate Academic Facilities (34 CFR Part 618).

(b) Grants for the Construction, Reconstruction, and Renovation of Graduate Academic Facilities (34 CFR Part 619).

(c) Loans for the Construction, Reconstruction, and Renovation of Academic Facilities (34 CFR Part 620).

(d) Annual Interest Grants for the Construction, Reconstruction, and Renovation of Academic Facilities (34 CFR Part 621).

(20 U.S.C. 1132a-1132e-1)

§ 617.2 Eligible parties: Grants for the construction, reconstruction, and renovation of undergraduate academic facilities.

The following two categories of institutions (paragraphs (a) and (b) of this section) are eligible to apply for grants for the construction, reconstruction, and renovation of undergraduate facilities:

(a)(1) Under section 713(b) of the Act (allotment of funds for grants to public community colleges and public technical institutes)—

(i) Public community colleges;

(ii) Public technical institutes; and

(iii) Branch campuses of other types of institutions of higher education.

(20 U.S.C. 1132e-1 (6)

(2) An institution qualifies for grants under Section 713(b) of the Act if—

(i) The Secretary determines that the institution meets the requirements of both of the following definitions in the Act:

(A) Section 742(6) of the Act (definition of "public community college and public technical institute").

(B) Section 1201(a) of the Act (definition of "institution of higher education"); and

(ii) The State commission has found that—

(A) The institution is organized principally to provide two-year academic programs of the types specified in Section 742(6) of the Act; and

(B) More than 50 percent of the institution's full-time equivalent student enrollment is in those types of programs.

(20 U.S.C. 1132b-2; 1132e-1(6))

(b)(1) Under section 713(c) of the Act (allotment of funds for grants to all institutions of higher education other than public community colleges and

Construction, Reconstruction, and Renovation of Academic Facilities:

(a) For grants for the construction, reconstruction and renovation of undergraduate or graduate academic

(i) All rooms or areas used regularly for instruction of students, for faculty offices, or for library purposes; and

(ii) Service areas that adjoin and are used in connection with the rooms or

(20 U.S.C. 1132e-l(3)(A))

"Act" means the Higher Education Act of 1965 (Pub. L. 89-329), as amended. Unless otherwise indicated, title references are to titles of the Act.

substance. Equipment is further subdivided into two categories—built-in equipment and intitial equipment—defined as follows:

(1) "Built-in equipment" means

providing or financing the construction, reconstruction, or renovation of academic facilities for the applicant institution.

(20 U.S.C. 1132e-l(5))

(20 U.S.C. 1132b–2; 1132e–1(6))

(b)(1) Under section 713(c) of the Act (allotment of funds for grants to all institutions of higher education other than public community colleges and public technical institutes), all other institutions of higher education.

(2) An institution qualifies for grants under Section 713(c) of the Act if the Secretary determines that the institution does not meet the requirements of Section 742(6) of the Act (definition of "public community college and public technical institute") but does meet the requirement of Section 1201(a) of the Act (definition of "institution of higher education").

(20 U.S.C. 1132b–2, 1141(a))

§ 617.3 Eligible parties: Grants for the construction, reconstruction, and renovation of graduate academic facilities.

(a) Institutions of higher education are eligible to apply to grants for the construction, reconstruction, and renovation of graduate academic facilities.

(20 U.S.C. 1132c)

(b) For a construction, reconstruction, or renovation project involving combined graduate and undergraduate facilities, an otherwise eligible applicant shall apply for a grant under 34 CFR Part 618 (Grants for the Construction, Reconstruction, and Renovation of Undergraduate Academic Facilities).

(20 U.S.C. 1132b(g))

§ 617.4 Eligible parties: Loans for the construction, reconstruction, and renovation of academic facilities.

The following are eligible to apply for loans for the construction, reconstruction, and renovation of academic facilities:

(a) Institutions of higher education.

(b) Higher education building agencies.

(20 U.S.C. 1132d(a))

§ 617.5 Eligible parties: Annual interest grants for construction, reconstruction, and renovation of academic facilities.

The following are eligible to apply for annual interest grants for the construction, reconstruction, and renovation of academic facilities:

(a) Institutions of higher education.

(b) Higher education building agencies.

(20 U.S.C. 1132d–3(a))

§ 617.6 Regulations that apply to programs of financial assistance for construction, reconstruction, and renovation of academic facilities.

The following regulations apply to programs of Financial Assistance for Construction, Reconstruction, and Renovation of Academic Facilities:

(a) For grants for the construction, reconstruction and renovation of undergraduate or graduate academic facilities (34 CFR Parts 618 and 619):

(1) The Education Division General Administrative Regulations (EDGAR), 34 CFR Part 75, with the following exceptions:

(i) Section 75.107: Applications for new grants under a discretionary grant program.

(ii) Sections 75.150 through 75.154, regarding State approval procedures.

(iii) Sections 75.155 through 75.160, regarding State comment procedures.

(iv) Sections 75.200 through 75.206, regarding selection of new projects.

(v) Sections 75.215 through 75.222, regarding selection procedures.

(vi) Section 75.232: The cost analysis; basis for grant amount.

(vii) Section 75.233: Setting the amount of the grant.

(viii) Sections 75.580 and 75.581, regarding coordination.

(b) Assistance under 34 CFR Part 620 (loans) and 34 CFR Part 621 (annual interest grants) is subject to the provisions of EDGAR relating to construction, 34 CFR 75.600 through 75.615.

(c) EDGAR, 34 CFR Part 75 (General).

(d) The regulations in this Part 617.

(e) The regulations in 34 CFR Parts 618, 619, 620, or 621 as applicable.

(20 U.S.C. 1232)

§ 617.7 Definitions that apply to programs of financial assistance for construction, reconstruction, and renovation of academic facilities.

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal Year
Grant
Grantee
Nonprofit
Private
Public
Recipient
Supplies
Secretary
Work of art.

(b) The following definitions apply to this part: "Academic facilities," as defined in section 742(1)(A) of the Act, are further defined and subdivided into the following categories:

(1) "Instructional and library facilities" means—

(i) All rooms or areas used regularly for instruction of students, for faculty offices, or for library purposes; and

(ii) Service areas that adjoin and are used in connection with the rooms or areas referred to in paragarph (a)(1) of this definition.

(2) "Instruction-related facilities" means—

(i) All rooms or areas—other than instructional and library facilities—used for purposes related to the instruction of students, for research, or for the general administration of the educational or research programs of an institution of higher education; and

(ii) Service areas that adjoin and are used in conjunction with the rooms or areas referred to in paragraph (2)(i) of this definition.

(3) "Health-care facilities," as authorized under Parts A and C of Title VII of the Act, means—

(i) Infirmaries and all other rooms or areas used for medical examination or treatment of students and institutional personnel; and

(ii) Service areas that directly serve the rooms or areas referred to in paragraph (3)(i)of this definition.

(20 U.S.C. 1132e–l(1)(A))

(4) "Public health facilities" means facilities as defined in section 742(1)(B)(v) of the Act (Definitions) if—

(i) These facilities are owned, operated, and maintained by the institution of higher education requesting the approval of a project authorized under section 701(l) of the Act (funds to enable an institution to economize on energy);

(ii) Funds available for the project are used solely for conversion or modernization to economize on the use of energy resources; and

(iii) The project is not limited to facilities described in section 742(1)(B)(v) of the Act (facilities excluded from the definition of academic facilities).

(20 U.S.C. 1132e–l(1)(B)(v))

(5) "Related supporting facilities" means all other areas and facilities necessary for the use, operation, and maintenance of instructional and library facilities, instruction-related facilities, or health-care facilities. This term includes building service and circulation areas and central maintenance and utility facilities that serve more than one building, to the degree that these central facilities are used to serve academic facilities eligible under Title VII of the Act.

(20 U.S.C. 1132e–l(1)(A))

"Acquisition" means taking ownership of property through purchase.

(20 U.S.C. 1132e–l(3)(A))

"Act" means the Higher Education Act of 1965 (Pub. L. 89–329), as amended. Unless otherwise indicated, title references are to titles of the Act.

"Assignable areas"—

(1) Means square footage of floor space in facilities designed and available for assignment to specific functional purposes—such as instruction, research, and administration—and including purposes that are ineligible for assistance under Title VII—such as students' sleeping rooms, apartments, or chapels; but

(2) Does not mean—

(i) Areas used for general circulation within a building;

(ii) Areas for public washrooms;

(iii) Areas for building maintenance or custodial services; or

(iv) Areas in central maintenance and utility facilities that exist only to support the operation and use of other structures on the campus and that are not available for assignment to specific functional purposes as illustrated in paragraph (1) of this definition.

(20 U.S.C. 1123e–l(1)(A))

"Brach campus" means, an institution of higher education, in a unit that—

(a) Is separately organized;

(b) Is located apart from the parent institution; and

(c) Meets in its own right the definition of an institution of higher education as defined in the Act.

(20 U.S.C. 1123e–l(6))

"Capacity/enrollment ratio."

(1) This term means the ratio of (i) the square feet of assignable area of instructional and library facilities to (ii) the total student clock-hour enrollment at the campus of an institution.

(2) For purposes of this definition, "student clock-hour enrollment" means the aggregate clock hours (sometimes called contact hours) per week in classes or supervised laboratory or shop work for which all resident students—i.e., students enrolled for credit courses on the campus—are enrolled as of a particular date.

(3) A campus having a formally established independent study program or programs may include systematically determined equivalents of class or laboratory hours.

(20 U.S.C. 1132a (4))

"Equipment"—other than special research equipment—means a manufactured item that has an extended useful life, is not consumed in use, and has an identity and function that are not lost through incorporation into a different or more complex unit of substance. Equipment is further subdivided into two categories—built-in equipment and intittal equipment—defined as follows:

(1) "Built-in equipment" means equipment that is a permanent part of a structure.

(2) "Initial equipment" means equipment—other than built-in equipment—necessary and appropriate for the initial functioning of a particular academic facility for that facility's specific purpose.

(20 U.S.C. 1132e–l(2)(A) and (B))

"Full-time-equivalent number of students" means the following:

(1)(i) For purposes of determining State allotments—

(A) The number of full-time students enrolled in programs that consist wholly or principally of studies normally creditable toward a bachelor's or higher degree;

(B) One third of the number of part-time students enrolled in the programs referred to in paragraph (1)(i)(A) of this definition;

(C) Forty percent of the number of students enrolled in programs that are not normally creditable toward a bachelor's or higher degree; and

(D) Twenty-eight percent of the remaining number of the students referred to in paragraph (1)(i)(C) of this definition.

(ii) For the purposes of this computation, student enrollment figures for each fiscal year will be those in the most recent U.S. Department of Education survey containing data on opening fall enrollment in higher education.

(2)(i) For purposes of reporting undergraduate enrollment trends and projections in connection with an application for financial assistance for an individual institution under 34 CFR Part 618, the "full-time equivalent number of students" may be defined by each State commission through a specific provision in its State plan.

(ii) If a State plan does not define the term, "full-time-equivalent number of students"—for application purposes—means the total number of full-time students plus one-third of the number of part-time students.

(3) For the purpose of the definition of "full-time-equivelant number of students," full-time students are those carrying at least 75 percent of a normal student-hour load.

(20 U.S.C. 1132b-2(c))

"Higher education building agency" means any public or nonprofit entity—other than the applicant institution—legally established for the purpose of providing or financing the construction, reconstruction, or renovation of academic facilities for the applicant institution.

(20 U.S.C. 1132e–l(5))

"Institution" or "institutions of higher education" meand that part of an educational institution that meets the requirements in section 1201(a) of the Act. The term "educational institution" is limited to an institution at which teaching is conducted.

(20 U.S.C. 1141(a))

"Other facilities used by students" means, in connection with projects relating to asbestos hazards, any facilities that are normally used by students on campus, even if those facilities are otherwise ineligible for Federal assistance under Title VII of the Act.

(20 U.S.C. 1132a(5))

"Project" means all or a portion of one or more structures—

(1) That are eligible for grant or loan assistance under Title VII;

(2) For which grant or loan assistance is requested in a single application; and

(3) That are part of a unified construction, reconstruction or renovation activity on the same campus.

(20 U.S.C. 1132e–l(2))

"Reconstruction or renovation project under section 701 (1), (2), and (5) of the Act" means a reconstruction or renovation project designed primarily to enable an institution to—

(1) Economize on the use of energy resources;

(2) Bring its facilities into conformity with the requirements of Pub. L. 90–480, commonly known as the Architectural Barriers Act of 1968, as amended by Pub. L. 91–205;

(3) Bring its facilities into conformity with the requirements of Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, as amended);

(4) Bring its academic facilities into conformity with environmental protection or health and safety programs mandated by Federal, State, or local law, if those requirements were not in effect at the time the facilities were constructed; or

(5) Detect, remove, or contain asbestos hazards in academic or other facilities used by students.

(20 U.S.C. 1132a (1), (2), and (5))

"Research facilities, including libraries."

(1) This term means facilities used in connection with research at institutions of higher education that have been

defined and classified as research universities by the Carnegie Council on Policy Studies in Higher Education.

(2) No distinction is made with regard to the type of research.

(3) Now find themselves with increasing enrollments and limited facilities.

(20 U.S.C. 1132a(4); House Report 96–520, page 53)

(20 U.S.C. 1132a-1132e-1 House Report 96–520, page 54)

Subpart C—[Reserved]

Subpart D—How Does the Secretary

(i) Must have accomplished minimum energy conservation measures required by the Secretary; and

(ii) Must have demonstrated that the proposed project will result in

(2)(i) The Secretary considers as eligible only those costs specifically related to one—or a combination—of the reconstruction or renovation purposes specified in the definition of

§ 617.33 Avoidance of duplication of facilities and programs.

(a) In addition to other eligibility requirements in the Act and these regulations, a project proposed by a

defined and classified as research universities by the Carnegie Council on Policy Studies in Higher Education.

(2) No distinction is made with regard to the type of research.

(20 U.S.C. 1132a(3))

"Special research equipment."

(1) This term means equipment used in connection with research at institutions of higher education that have been defined and classified as research universities by the Carnegie Council on Policy Studies in Higher Education.

(20 U.S.C. 1132a(3))

(2) No distinction is made with regard to the type of research equipment.

(3) However, books or other library materials are excluded from this definition.

"Section 504" means Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, as amended) and its implementing regulations (34 CFR Part 104).

"State commission" means, in each State, the agency designated or established by that State—in its agreement with the Secretary under section 1203 of the Act—to administer a program of construction, reconstruction, and renovation of undergraduate academic facilities.

(20 U.S.C. 1132b; 1143)

"State plan" means the document—submitted by a State and approved by the Secretary of Education—that describes the standards, methods, and administrative procedures the State commission uses to—

(1) Review each project proposed by an applicant in its State for a Federal grant for the construction, reconstruction, and renovation of undergraduate academic facilities;

(2) Determine and recommend the relative priority of that project; and

(3) Determine and recommend for that project the Federal share of the costs eligible for Federal financial assistance.

(20 U.S.C. 1132b

"Unusual increase in enrollment" means, at institutions of higher education listed in paragraphs (1) through (3) of this definition, an average increase in student enrollment of more than 10 percent per year, over a period of three years going back to the fall term beginning three years prior to the filing date for applications. The institutions to which this definition applies are those that—

(1) Enroll traditionally underserved populations;

(2) Have been successful in their access and outreach efforts; and

(3) Now find themselves with increasing enrollments and limited facilities.

(20 U.S.C. 1132a(4); House Report 96–520, page 53)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under These Programs?

§ 617.10 Grants and loans for academic facilities and special research equipment.

These programs provide grants and loans for the construction, reconstruction, and renovation of academic facilities and the acquisition of special research equipment if the primary purpose of an applicant's proposed project is to achieve one or more of the following—

(a) Economize on the use of energy resources. The Secretary gives priority consideration to a project that includes the use of one or more of the following: coal, solar energy, and renewable resources;

(b) Bring the applicant's academic facilities into conformity with the requirements of—

(1) Pub. L. 90–480, commonly known as the Architectural Barriers Act of 1968, as amended by Pub. L. 91–205; or

(2) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112), as amended;

(c) Bring the applicant's academic facilities into conformity with the requirements of environmental protection or health and safety programs mandated by Federal, State, or local law, if those requirements were not in effect at the time the facilities were constructed;

(d) Detect, remove, or contain asbestos hazards in academic or other facilities used by students;

(e) Construct, reconstruct, or renovate the applicant's research facilities, including libraries, and acquire special research equipment; or

(f) Construct, reconstruct, or renovate the applicant's facilities to provide for unusual increases in enrollment.

(20 U.S.C. 1132b-1132d-4)

§ 617.11 Types of projects the Secretary considers for assistance.

(a) The Secretary may announce the specific project purpose or purposes—from among those listed in § 617.10—that the Secretary will consider for assistance in any given fiscal year.

(b) The Secretary makes the announcement referred to in paragraph (a) of this section through a notice published in the Federal Register.

(c) The Secretary makes this announcement based on the purpose or purposes for which the Congress has appropriated funds for that year.

(20 U.S.C. 1132a-1132e-1 House Report 96–520, page 54)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 617.30 Determination of costs eligible for Federal assistance: general.

The Secretary determines separately for each proposed project the costs eligible for Federal assistance.

The Secretary bases the determination on—

(a) The factors in § 617.31 or § 617.32, as applicable;

(b) The factors in § 617.33, if applicable; and

(c) The following:

(1) The date on which the applicant incurred or contracted for a given cost.

(2) Whether the cost is an allowable development cost, as defined in section 742(3) of the Act (Definitions).

(3) Whether the applicant has incurred that cost in accordance with these regulations.

(4) That portion of the facility eligible under the type of assistance for which the applicant has submitted the application.

(5) The amount of any other Federal financial assistance the applicant has obtained or is assured of obtaining for the project.

§ 617.31 Conditions for grant approval and determination of costs eligible for Federal assistance: projects related to energy conservation, architectural barriers, environmental protection, health and safety, or asbestos hazards.

(a) The conditions in paragraphs (b) through (c) of this section apply to an application for assistance for—

(1) A construction, reconstruction, or renovation project related to energy conservation; or

(2) A reconstruction or renovation project related to—

(i) Bringing facilities into conformity with the Architectural Barriers Act of 1968 or Section 504 of the Rehabilitation Act of 1973;

(ii) Bringing facilities into conformity with environmental protection or health and safety programs mandated by law; or

(iii) The detection and control of asbestos hazards.

(b) The Secretary approves an application only if it contains sufficient information to demonstrate that the applicant's proposed project meets the following requirements:

(1) For assistance for energy conservation, the applicant—

(i) Must have accomplished minimum energy conservation measures required by the Secretary; and

(ii) Must have demonstrated that the proposed project will result in significant savings in energy consumption or related costs;

(iii) To receive priority consideration by the Secretary, must include in the proposed project the use of one or more of the following: coal, solar energy, and renewable resources.

(2) For assistance for the removal of architectural barriers for the handicapped, the proposed project must—

(i) Be deemed necessary to provide program accessibility under Section 504; and

(ii) Conform to the requirements of Pub. L. 90–480 commonly known as the Architectural Barriers Act of 1968;

(iii) Meet the most recently published standards of the American national Standards Institute (ANSI Standards); and

(iv) To receive priority consideration by the Secretary, hold promise of accomplishing an exemplary program of compliance with Section 504 that would be helpful to similar institutions around the country and would not likely be carried out in the absence of Federal funds.

(House Report 96–520, page 54)

(3) For assistance in meeting environmental or health and safety requirements, the proposed project must be required by local, State, or Federal law provided—in the case of a reconstruction or renovation project—those requirements were not in effect at the time the facilities were constructed.

(4) For projects relating to asbestos hazards, the applicant must justify to the satisfaction of the Secretary that the proposed project is urgently needed to detect, remove or contain asbestos hazards in academic or other facilities used by students.

(5)(i) An application involving a combination of two or more of the purposes in paragraphs (b)(1), (2), (3), or (4) of this section must satisfy each of the specific requirements.

(ii) Any portion of an application not meeting the applicable requirements is ineligible for assistance, except as permitted under paragraph (d)(2)(ii) of this section.

(c) The Secretary considers a project only if it has a total eligible cost, as specified in paragraph (c) of this section, of at least $10,000.

(d)(1) The Secretary bases the determination of costs eligible for Federal assistance on a review of each application.

(2)(i) The Secretary considers as eligible only those costs specifically related to one—or a combination—of the reconstruction or renovation purposes specified in the definition of "Reconstruction or renovation project under section 701 (1), (2), and (5) of the Act."

(ii) However, the Secretary may approve costs not specifically related to the purposes in that definition to the extent that they do not exceed 10 percent of costs that are specifically related, if the Secretary finds that the costs not specifically related are part of the project for which Federal assistance is requested.

(e) The Secretary awards a grant or loan on condition that the recipient award the contract or begin on-site work within 18 months from the date of loan approval or the date of grant approval or—in the case of a recipient having both a grant and a loan—the earlier of the date of loan approval or the date of grant approval.

(20 U.S.C. 1132a (1), (2), (5); 20 U.S.C. 1132e-1(3))

§ 617.32 Determination of costs eligible for Federal assistance: projects related to research facilities, research equipment, or unusual increases in enrollment.

(a) The conditions in paragraphs (b) and (c) of this section apply to an application for assistance for a construction, reconstruction, or renovation project related to—

(i) Research facilities;

(ii) The acquisition of special research equipment; or

(iii) An unusual increase in enrollment.

(b) The Secretary approves the development cost of a proposed project only if the application contains sufficient information to demonstrate that the applicant's proposed project meets the following requirements:

(1) For assistance to construct, reconstruct, or renovate research facilities, including libraries, or to acquire special research equipment, the applicant must have demonstrated that the proposed project is necessary for the up-grading of the research facilities at the institution.

(2) For assistance to construct, reconstruct, or renovate academic facilities to increase student enrollment capacity, the applicant must have demonstrated that the institution has experienced an unusual increase in enrollment as defined in § 617.7(b).

(c) The Secretary bases the determination of costs eligible for Federal assistance on a review of each application.

§ 617.33 Avoidance of duplication of facilities and programs.

(a) In addition to other eligibility requirements in the Act and these regulations, a project proposed by a public institution of higher education must—in order to avoid duplication of facilities and programs—meet the requirements of urgency as described in paragraph (b) of this section.

(b)(1) The Secretary bases the determination of urgency of need under paragraph (a) of this section on whether—

(i) The applicant has a history of not serving persons of a particular race, color, or national origin; or

(ii) There are within the geographic area the applicant serves one or more other public institutions of higher education that have a history of not serving persons of a particular race, color, or national origin.

(2) If either condition described in paragraph (b)(1) of this section is present, the Secretary determines—or the State commission, in the case of an application for a grant for undergraduate academic facilities shall determine—that urgency of need does not exist unless the applicant provides evidence satisfactory to the Secretary—or to the commission, if appropriate—that the proposed project and the proposed use of the facilities to be constructed, reconstructed, or renovated under the project will not—

(i) Establish or increase the identifiability of any of the institutions on the basis of race, color, or national origin; or

(ii) Impede the elimination of the identifiability of any of the institutions on the basis of race, color, or national origin.

(20 U.S.C. 1132a; 1132b—1132d–3: Shannon vs. HUD, 436 F. 2d 809)

Subpart E—What Conditions Must Be Met by an Applicant?

§ 617.40 Cost requirements.

(a) If, under the Act, an applicant files for assistance for a proposed project for the first time on or after the effective date of these regulations, the Secretary excludes the following from eligible development costs:

(1) Any cost for land incurred more than two years before the applicant files the application.

(2) Any cost for land in connection with an application for reconstruction or renovation.

(3) Any cost for the acquisition of a structure incurred more than one year before the applicant files the application.

(4) Any cost for the acquisition of a structure in connection with an application for reconstruction or renovation.

(5) Any cost for initial equipment

Sec.

618.32 Invitation for bids.
618.33 Documents a State commission must submit to the Secretary.
618.34 Notification of an applicant.
618.35 Disposition of all applications not

construction, reconstruction, and renovation of undergraduate facilities are listed in 34 CFR 617.2.

(20 U.S.C. 1132(b) and (c))

(b) An applicant shall apply under this

§ 618.12 Amendment to State plan.

(a) A State may at any time submit a proposed amendment to its State plan.

(b) The Secretary determines the form in which the State submits the proposed amendment.

requirements of section 711 of the Act (State plan).

(20 U.S.C. 1132b)

Subpart D—How Does an Applicant Apply to a State for a Grant?

(2) In that case the commission shall consider the application at only those closing dates that occur no later than 12 months after the applicant has begun the construction, reconstruction, or renovation.

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(4) Any cost for the acquisition of a structure in connection with an application for reconstruction or renovation.

(5) Any cost for initial equipment incurred before the date the applicant files the application.

(6) Any cost for construction, reconstruction, renovation, or built-in equipment if the contract was entered into—

(i) Before the date the applicant filed the application; and

(ii) Before the Secretary concurred in the awarding of the contract.

(b) A grantee must obtain from the Secretary a determination of eligible costs—

(1) Before advertising for or soliciting bids; and

(2) Before awarding any contract for construction, reconstruction, or renovation under the Act.

(c) The Secretary approves costs only after the Secretary or the appropriate official of another Federal agency has approved Federal assistance for the construction, reconstruction, or renovation of the facility.

(20 U.S.C. 1132e–1(3))

The Secretary proposes to add a new Part 618 to Title 34 of the Code of Federal Regulations to read as follows:

Part 618—GRANTS FOR THE CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF UNDERGRADUATE ACADEMIC FACILITIES

Subpart A—General

Sec.

618.1 Grants for the Construction, Reconstruction, and Renovation of Undergraduate Academic Facilities.
618.2 Eligible parties.
618.3 Regulations that apply to grants for the Construction, Reconstruction, and Renovation of Undergraduate Academic Facilities.
618.4 Defintions that apply to grants for the Construction, Reconstruction, and Renovation of Undergraduate Academic Facilities.

Subpart B—How Does a State Apply To Participate?

618.10 State plan.
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618.12 Amendment to State plan.
618.13 Standards for determining the Federal share of eligible projects.

Subpart C—How Does the Secretary Approve a State Plan?

618.20 Approval of a State plan.

Subpart D—How Does an Applicant Apply to a State for a Grant?

618.30 Submission of application to State commission.
618.31 Application closing dates.
618.32 Invitation for bids.
618.33 Documents a State commission must submit to the Secretary.
618.34 Notification of an applicant.
618.35 Disposition of all applications not recommended for a grant.
618.36 Amendment to an application.
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Subpart E—How Does a State Rank Applications and Recommend Them for Approval by the Secretary?

618.40 Standards and methods for ranking proposed projects.
618.41 Selection criteria: general.
618.42 Selection criteria: projects based on unusual increases in enrollment.
618.43 Selection criteria: projects dealing with research facilities, including libraries, and the acquisition of special research equipment.
618.44 Selection criteria: projects based on energy conservation.
618.45 Selection criteria: projects to remove architectural barriers.
618.46 Selection criteria: projects to meet environmental protection or health and safety programs mandated by law.
618.47 Selection criteria: projects to detect, remove, or contain asbestos hazards.
618.48 Selection criteria: projects directed to two or more purposes.
618.49 Selection criteria: additional criteria.
618.50 Verification of application data and institutional and project eligibility.
618.51 Determination of relative priorities and Federal shares.
618.52 Procedures if funds are insufficient.
618.53 Apportionment of State allotment among closing dates.
618.54 Procedures if State allotment is apportioned or not apportioned among closing dates.
618.55 Offer of a partial Federal share.

Subpart F—How Does the Secretary Make a Grant?

618.60 Conditions for grant approval.
618.61 Grant award.
618.62 Adjustment in the amount of the Federal share.

Authority.—Secs. 701–742 of Pub. L. 96–374, title VII, the Higher Education Act, as amended, (20 U.S.C. 1132a–1132e–1) unless otherwise noted.

Subpart A—General

§ 618.1 Grants for the construction, reconstruction, and renovation of undergraduate academic facilities.

This State-administered program provides grants for the construction, reconstruction, and renovation of undergraduate academic facilities if the primary purpose of an applicant's proposed project is to achieve one or more of the objectives listed in 34 CFR 617.10.

(20 U.S.C. 1132b)

§ 618.2 Eligible parties.

(a) The two categories of parties eligible to apply for grants for construction, reconstruction, and renovation of undergraduate facilities are listed in 34 CFR 617.2.

(20 U.S.C. 1132(b) and (c))

(b) An applicant shall apply under this part for a project involving combined graduate and undergraduate facilities.

(20 U.S.C. 1132b–2(g))

§ 618.3 Regulations that apply to grants for the construction, reconstruction, and renovation of undergraduate academic facilities.

The following regulations apply to this program:

(a) The regulations in 34 CFR 617.6.

(b) The regulations in this Part 618.

(c) The regulations in 34 CFR Part 604, which implements section 1203 of the Act (Federal-State agreement).

(20 U.S.C. 1132)

§ 618.4 Definitions that apply to grants for the construction, reconstruction, and renovation of undergraduate academic facilities.

The definitions in 34 CFR 617.7 apply to this program.

Subpart B—How Does a State Apply to Participate?

§ 618.10 State plan.

(a) A State that desires to participate in the program of Grants for the Construction, Reconstruction, and Renovation of Undergraduate Academic Facilities shall—

(1) Have an agreement with the Secretary under section 1203 of the Act; and

(2) Submit annually, through its State commission, a State plan.

(b) The Secretary—

(1) Determines the form in which the State submits its plan;

(2) Specifies the type of information that the State shall supply; and

(3) Specifies criteria the State plan must include for determining relative priorities of proposed projects (as explained in § 618.40).

(c) The plan may include a definition of "full-time-equivalent number of students" other than the definition in 34 CFR 617.7(b).

(d) The Secretary must receive the plan at least 60 days prior to the first closing date contained in the plan.

(20 U.S.C. 1132b; 1143)

§ 618.11 Continuation of State plan.

If a State intends to continue its existing plan for the following fiscal year, the Secretary must receive notification of this in writing from the State at least 60 days before the first closing date of that next fiscal year.

§ 618.12 Amendment to State plan.

(a) A State may at any time submit a proposed amendment to its State plan.

(b) The Secretary determines the form in which the State submits the proposed amendment.

(c) If the Secretary approves the amendment, the State shall uniformly apply that amendment to all applications received by the first closing date following the approval.

(d) Unless otherwise specified in the State plan, an amendment becomes effective immediately when the Secretary approves it.

(e) Paragraph (d) of this section does not apply to an amendment that—

(1) Affects the standards and methods for determining priorities;

(2) Alters the Federal share; or

(3) Changes a closing date.

(f) The types of amendments referred to in paragraph (e) of this section become effective—

(1) No sooner than 60 days after the Secretary receives them; and

(2) In any event, no sooner than 30 days after the Secretary approves them.

(g) If an amendment to the State plan is required by legislation or new or revised regulations, that amendment may be effective immediately after the Secretary approves it.

(20 U.S.C. 1132b)

§ 618.13 Standards for determining the Federal share of eligible projects.

(a) A State plan must—

(1) Specify as a uniform percentage the Federal share of the costs eligible for Federal financial assistance; or

(2) Prescribe the standards or methods by which the State commission determines the Federal share of the costs.

(20 U.S.C. 1132b(a)(2)(B))

(b) The Federal share of a project's costs may not exceed 50 percent of the eligible development costs.

(20 U.S.C. 1132b–1(a)(3); 1132–1(4))

(c) Standards and methods for determining the Federal share of eligible costs must—

(1) Be objective and simple to apply;

(2) Be based on the data that an applicant is required to include in its application; and

(3) Be consistent with the standards in the State plan for determining relative priorities.

(20 U.S.C. 1132b(a)(2)(B))

Subpart C—How Does the Secretary Approve a State Plan?

§ 618.20 Approval of a State plan.

The Secretary approves a State plan if the Secretary is satisfied it meets the requirements of section 711 of the Act (State plan).

(20 U.S.C. 1132b)

Subpart D—How Does an Applicant Apply to a State for a Grant?

§ 618.30 Submission of application to State commission.

(a) An applicant shall submit directly to its State commission—

(1) Its application; and

(2) Any supplemental information the commission may require.

(b) The commission shall officially record the date of receipt of the application.

(20 U.S.C. 1132b(a)(4))

§ 618.31 Application closing dates.

(a) In its State plan a State shall establish closing dates for submission of applications for funds allotted under section 713(b) and 713(c) of the Act (allotment for grants to public community colleges and public technical institutes; allotment for grants to all other institutions of higher education).

(b) The State plan shall provide at least two closing dates during a Federal fiscal year for each of the two categories of institutions referred to in 34 CFR 617.2.

(c)(1) All closing dates established in the State plan must be between October 31 and May 15.

(2) The first closing date must be prior to January 1.

(d) If the Secretary permits, after determining the presence of unusual circumstances—

(1)(i) The State commission may waive a closing date if the commission gives reasonable prior notice of waiver to the institutions that may be affected by that date.

(ii) In that case an applicant may file an application before the next closing date established by the State commission for that fiscal year;

(2) The State plan may provide for a closing date after May 15; or

(3) Both paragraphs (d)(1) and (2) of this section.

(20 U.S.C. 1132b–2(b) and (c))

§ 618.32 Invitation for bids.

(a) An applicant may not invite bids for construction, reconstruction, or renovation under its proposed project before submitting its initial application to the State commission.

(b)(1) However, paragraph (a) of this section does not apply if an agency of the United States has already approved assistance for the project under Title VII or some other Federal construction program.

(2) In that case the commission shall consider the application at only those closing dates that occur no later than 12 months after the applicant has begun the construction, reconstruction, or renovation.

(20 U.S.C. 1132b–2 (b) and (c)

§ 618.33 Documents a State commission must submit to the Secretary.

On completing its consideration of applications for each closing date, but no later than 45 days after each closing date, a State commission shall forward the following to the Secretary:

(a) A current application summary report, in a form prescribed by the Secretary, for each category of applicants. The commission shall list in its report—

(1) Each application received for that closing date, including those carried over from the previous closing date;

(2) Each application returned to an applicant and the reason for the return of that application; and

(3) The priority and Federal share—determined according to the State plan—for each project recommended for Federal assistance.

(b) For each project to which the commission has assigned a priority high enough to enable that project to qualify for a Federal grant within the amount of funds available in the allotment for the State, the application form and exhibits in the number of copies the Secretary requests.

(20 U.S.C. 1132b(a)(2); 1132b–2(c))

§ 618.34 Notification of an applicant.

A State commission shall—

(a) Promptly notify an applicant of the results of all determinations regarding its applications as of each closing date; and

(b) On request and according to procedures that the commission has established, give an applicant access to the records of official proceedings on the basis of which the commission determined relative priorities and Federal shares of all applications.

§ 618.35 Disposition of all applications not recommended for a grant.

(a) A State commission shall notify all unsuccessful applicants when funds are no longer available in the State allotments for that fiscal year.

(b) The commission may retain until the end of the fiscal year an application that it does not recommend for a grant.

(c) The commission may reconsider for the following fiscal year an application that it has not recommended for a grant if the applicant requests the commission, in writing, to reconsider its application in that subsequent year.

(d) If the commission carries over an application from one closing date to the next, the applicant—if necessary—shall amend those portions of the application requiring data on enrollments and

Subpart E—How Does a State Rank Applications and Recommend Them for Approval by the Secretary?

§ 618.40 Standards and methods for ranking proposed projects.

in favor of or adverse to the ranking of an application:

(1) The type of control or sponsorship of the applicant institution.

(2) The fact that the project had commenced before the date of the

with the year that began three years preceding the closing date for which the application is being considered.

(3) The commission shall assign at least 20 percent of the total possible point score to this criterion.

energy resources, based on an estimate of savings in annual operating costs.

(2) The estimated savings, if any, in annual operating costs are the difference between—

(i) The average routine operating

§ 618.46 Selection criteria: projects to meet environmental protection or health and safety programs mandated by law.

For reconstruction or renovation projects to meet environmental protection or health and safety programs

(d) If the commission carries over an application from one closing date to the next, the applicant—if necessary—shall amend those portions of the application requiring data on enrollments and available instructional and library or health care facilities or both—as appropriate—to reflect most recent fall term data.

(20 U.S.C. 132b(a))

§ 618.36 Amendments to an application.

(a) Any time prior to a closing date for which an applicant asks its State commission to consider its application, the applicant may make changes in the application by informing the commission, in writing, of those changes.

(b) After the closing date the commission may not permit changes in the application except for corrections or the submission of additional data the commission requests.

(20 U.S.C. 1132b–1)

§ 618.37 Project changes.

After a State commission has forwarded a recommended project to the Secretary, the Secretary does not approve any substantial changes in the nature or scope of the project unless the Secretary determines that those changes would not have affected the commission's original recommendation of the project for a grant.

(20 U.S.C. 1132b–1)

§ 618.38 Supplemental application.

(a) If an applicant has received approval of a grant for undergraduate academic facilities but has not received the maximum Federal share allowable under the Act or the applicable State plan, the applicant may file a supplemental application.

(b) A supplemental application—

(1) Must be in the form of a written request to the State commission; and

(2) Must contain all amended application data necessary to enable the commission to assign a priority to the application and to calculate a revised eligible development cost of the project, if applicable.

(c) However, the commission may not consider a supplemental application for—

(1) A closing date that is more than 12 months after the applicant has started construction, reconstruction, or renovation; or

(2) A closing date that is after the date the applicant has substantially completed the project.

(20 U.S.C. 1132b–1)

Subpart E—How Does a State Rank Applications and Recommend Them for Approval by the Secretary?

§ 618.40 Standards and methods for ranking proposed projects.

The following requirements govern the standards and methods for ranking proposed projects under a State plan:

(a) In its plan a State shall specify criteria and methods for assessing and ranking proposed projects for the construction, reconstruction, and renovation of undergraduate academic facilities. The State shall specify these criteria and methods separately for—

(1) Public community colleges and public technical institutes; and

(2) Other institutions of higher education.

(b) For all proposed projects under this program, the State plan must include—

(1) The selection criteria in § 618.41; and

(2) As applicable, the selection criteria in §§ 618.42, 618.43, 618.44, 618.45, 618.46, 618.47, or 618.48.

(c) (1) The State plan may include additional criteria—worth up to 40 percent of the total possible point score—for assessing and ranking proposed projects as long as none of those criteria is inconsistent with the criteria specified in §§ 618.41 through 618.48.

(2) The State commission may apply the additional criteria referred to in paragraph (c)(1) of this section if those criteria are approved by the Secretary.

(d) (1) The State commission shall assign points to each criterion according to an objective method contained in the State plan.

(2) In determining relative priorities among applicants, the commission shall apply each criterion uniformly.

(e) The State shall develop its criteria and methods for determining relative priorities on the basis of—

(1) Information to be included by the applicant in the application form that the Secretary prescribes;

(2) Supplemental information requested from all applicants by the State commission; and

(3) Data on file with the State commission, including public reports or publications.

(f) In its plan the State shall specify criteria and methods for determining priority between or among applications receiving identical scores.

(g) The State plan may not consider adverse to the ranking of an application an institution's readiness to admit out-of-State students.

(h) The State plan may not consider any of the following as a priority either in favor of or adverse to the ranking of an application:

(1) The type of control or sponsorship of the applicant institution.

(2) The fact that the project had commenced before the date of the application.

(3) The fact that part of the cost of the project had been incurred prior to, or under a contract entered into before, the date of the application.

(i) The commission shall insure that all potential applicants are informed about the forms, definitions, and supplementary data sources that the commission uses—

(1) In applying the required and optional criteria in the State plan; and

(2) In determining relative priorities.

(20 U.S.C. 1132b(a)(2)(A))

§ 618.41 Selection criteria: general.

Among its criteria for determining relative priorities for institutions and branch campuses under this program, the State shall include the following:

(a) *Use of existing facilities.* (1) One or more criteria shall deal with the effective use of existing academic facilities.

(2) The commission shall assign at least 10 percent of the total possible point score to this criterion.

(b) *Enrollment of low-income students.* (1) A criterion shall deal with the extent of the applicant's commitment to the enrollment of a substantial number of students from low-income families.

(2) The commission shall assign at least five percent of the total possible point score to this criterion.

(c) *Enrollment of disabled veterans.* (1) A criterion shall deal with the extent of the applicant's commitment to the enrollment of a substantial number of disabled veterans.

(2) The commission shall assign at least five percent of the total possible point score to this criterion.

(20 U.S.C. 1132b)

§ 618.42 Selection criteria: projects based on unusual increases in enrollment.

For construction, reconstruction, or renovation projects based on unusual increases in enrollment (section 701(4) of the Act), the State plan shall, in addition to the criteria in § 618.41, include at least the following criteria:

(a) *Increase in enrollment.* (1) One or more criteria shall deal with the extent of the actual numerical or percentage increase, or both, in full-time-equivalent student enrollment at the campus at which the construction, reconstruction, or renovation is to take place.

(2) The increase shall be measured by covering three years separately, starting with the year that began three years preceding the closing date for which the application is being considered.

(3) The commission shall assign at least 20 percent of the total possible point score to this criterion.

(b) *Increase in capacity.* (1) One or more criteria shall deal with the amount or percentage, or both, by which the proposed project will increase the assignable area at that campus.

(2) The commission shall assign at least 20 percent of the total possible point score to this criterion.

(20 U.S.C. 1132b–1; 1132a(4))

§ 618.43 Selection criteria: projects dealing with research facilities, including libraries, and the acquisition of special research equipment.

For construction, reconstruction, or renovation projects dealing with research facilities, including libraries, and the acquisition of special research facilities (section 701(3) of the Act), the State plan shall, in addition to the criteria in § 618.41, include at least the following criteria:

(a) *Amount of research space to be upgraded.* (1) One or more criteria shall deal with the amount of research space to be upgraded by the proposed project.

(2) The commission shall assign at least 20 percent of the total possible point score to this criterion.

(b) *Percentage of research space to be upgraded.* (1) One or more criteria shall deal with the percentage of the applicant's research space—on that campus—that is to be upgraded by the proposed project.

(2) The commission shall assign at least 20 percent of the total possible point score to this criterion.

(20 U.S.C. 1132b–1; 1132a(3))

§ 618.44 Selection criteria: projects based on energy conservation.

For construction, reconstruction, or renovation projects based on energy conservation (section 701(1) of the Act), the State plan shall, in addition to the criteria in § 618.41, include at least the following criteria:

(a) *Use of coal, solar, and renewable resources.* (1) One or more criteria shall deal with the extent to which an institution proposes to use one or more of the following: coal, solar energy, and renewable resources.

(2) The commission shall assign at least 20 percent of the total possible point score to this criterion.

(b) *Estimated savings in annual operating costs.* (1) One or more criteria shall deal with the extent to which the proposed project is likely to enable the institution to economize on the use of energy resources, based on an estimate of savings in annual operating costs.

(2) The estimated savings, if any, in annual operating costs are the difference between—

(i) The average routine operating expenses for the previous three years; and

(ii) Future annual operating expenses based on the current prices of fuel supplies and related services.

(3) The commission shall assign at least 20 percent of the total possible score to this criterion.

(20 U.S.C. 1132b–1; 1132a(1))

§ 618.45 Selection criteria: projects to remove architectural barriers.

For construction or renovation projects to remove architectural barriers (section 701(2) (A) and (B) of the Act), the State plan shall, in addition to the criteria in § 618.41, include at least the following criteria:

(a) Exemplary program of compliance with Section 504.

(1) One or more criteria shall deal with the extent to which a proposed project holds promise of accomplishing an exemplary program of compliance with Section 504 that would be helpful to similar institutions around the country and that would not likely be carried out in the absence of Federal funds.

(2) The commission shall assign at least 10 percent of the total possible point score to this criterion. (House Report 96–520, page 54)

(b) *Amount of assignable square feet of academic facilities to be made accessible by the proposed project.* (1) One or more criteria shall deal with the amount of assignable square feet of academic facilities to be made accessible to the handicapped by the proposed project.

(2) The commission shall assign at least 10 percent of the total possible point score to this criterion.

(c) *Percentage of assignable square feet of academic facilities to be made accessible by the proposed project.* (1) One or more criteria shall deal with the percentage of assignable square feet of academic space—on the applicant's campus—to be made accessible to the handicapped by the proposed project.

(2) The commission shall assign at least 10 percent of the total possible point score to this criterion.

(d) *Costs required by Section 504 per full-time-equivalent student enrollment.* (1) One or more criteria shall deal with the costs required by Section 504 per full-time-equivalent student enrollment.

(2) The commission shall assign at least 10 percent of the total possible point score to this criterion.

§ 618.46 Selection criteria: projects to meet environmental protection or health and safety programs mandated by law.

For reconstruction or renovation projects to meet environmental protection or health and safety programs mandated by Federal, State or local law (section 701(2)(C) of the Act), the State plan shall, in addition to the criteria in § 618.41, include at least the following criteria:

(a) *Campuswide cost per full-time-equivalent student.* (1) One or more criteria shall deal with the campuswide cost—per full-time-equivalent student—of complying with the law.

(2) The commission shall assign at least 20 percent of the total possible point score to this criterion.

(b) *Campuswide cost per square foot of assignable space.* (1) One or more criteria shall deal with the campuswide cost—per square foot of assignable space—of complying with the law.

(2) The commission shall assign at least 20 percent of the total possible point score to this criterion.

(20 U.S.C. 1132b–1; 1132a(2)(c))

§ 618.47 Selection criteria: projects to detect, remove, or contain asbestos hazards.

For reconstruction or renovation projects to detect, remove, or contain asbestos hazards (section 701(5) of the Act), the State plan shall, in addition to the criteria in § 618.41, include at least the following criteria:

(a) *Amount of gross square feet of facilities space with known or suspected asbestos hazards.* (1) One or more criteria shall deal with the amount of gross square feet of facilities space with known or suspected asbestos hazards.

(2) The commission shall assign at least 20 percent of the total possible point score to this criterion.

(b) *Estimated cost of detecting, removing, or containing asbestos hazards.* (1) One or more criteria shall deal with the estimated cost—per campuswide assignable square foot—of one or more of the following: detecting, removing, or containing asbestos hazards.

(2) The commission shall assign at least 20 percent of the total possible point score to this criterion.

(20 U.S.C. 1132b–1; 1132a(5))

§ 618.48 Selection criteria: project directed to two or more purposes.

If a proposed project is directed to a combination of two or more of the purposes under section 701 of the Act, the State plan shall, in addition to the criteria in § 618.41, include at least the following criteria in place of the criteria in §§ 618.42 through 618.47:

(a) *Readiness to commence project.* (1) One of more criteria shall deal with the timeliness by which an applicant can start its project.

(2) The commission shall assign at

(b) Assign to that application, in accordance with the provisions of the State plan, its—

(1) Relative priority; and

(2) Recommended Federal share.

(1) Shall carry over to any subsequent closing dates in the same fiscal year all eligible applications for which a full Federal share is not available; and

(2) Is prohibited from requiring those

funds under this program and has been recommended by the State commission, the Secretary—

(a) Approves the development costs contained in the application;

Subpart B—What Kinds of Projects Does the Department of Education Assist under This Program?

Sec.

619.10 Projects for which grants may be

§ 619.4 Definitions that apply to grants for the construction, reconstruction, and renovation of graduate academic facilities.

The definitions in 34 CFR 617.7 apply to this program.

(a) *Readiness to commence project.* (1) One of more criteria shall deal with the timeliness by which an applicant can start its project.

(2) The commission shall assign at least 20 percent of the total possible point score to this criterion.

(b) *The cost of the project as a percentage of the applicant's average annual educational and general expenditures.* (1) One or more criteria shall deal with the cost of the project as a percentage of the applicant's average annual educational and general expenditures, as reported in the annual NCES Survey "Financial Statistics of Institutions of Higher Education" for the three most recent institutional fiscal years.

(2) The commission shall assign at least 20 percent of the total possible point score to this criterion.

§ 618.49 Selection criteria: additional criteria.

For any types of projects under this program, a State commission may uniformly apply additional criteria—as described in § 618.40(d)—worth up to 40 percent of the total possible point score.

(20 U.S.C. 1132b–1)

§ 618.50 Verification of application data and institutional and project eligibility.

(a) Before determining the relative priority or Federal share for any application under this program, the State commission shall determine that—

(1) The data in the application are valid; and

(2) The institution and the project meet basic eligibility requirements of the Act and the regulations governing the administration of the Act.

(b)(1) If, in the opinion of the commission, the eligibilty of an institution is questionable, the commission shall promptly forward a copy of the application to the Secretary for a clarification of the eligibilty.

(2) In that case the commission shall—

(i) Continue to process and rank the application as if that application were eligible; and

(ii) Delay final action on that application until the Secretary notifies the commission regarding the applicant's eligibility.

(20 U.S.C. 1132b–2)

§ 618.51 Determination of relative priorities and Federal shares.

A State commission shall—

(a) Consider each eligible application received by each specified closing date together with all other applications in the same category of eligible applicants (34 CFR 617.2); and

(b) Assign to that application, in accordance with the provisions of the State plan, its—

(1) Relative priority; and

(2) Recommended Federal share.

(20 U.S.C. 1132b(a)(2))

§ 618.52 Procedure if funds are insufficient.

(a) If, under a State's allotment, funds are insufficient to cover all eligible applications that the state commission considers in a particular category as of a particular closing date, the commission shall follow the procedures in paragraph (b) of this section.

(b) The commission shall determine—according to the State plan—the full Federal share for each project, in order of relative priority, until the remaining funds are insufficient to provide the full Federal share for the next project in order of priority.

(20 U.S.C. 1132b(a)(2)(B))

§ 618.53 Apportionment of State allotment among closing dates.

(a) A State plan may provide for apportionment of the State's allotment among closing dates during the same fiscal year.

(b) If the State plan provides for the apportionment described in paragraph (a) of this section, the plan may also provide for the commission to make available immediately—from funds apportioned to later closing dates, if any, in the same fiscal year—funds sufficient to provide a full Federal share, as initially calculated, for the first project for which only part of the Federal share would otherwise have been available.

(20 U.S.C. 1132b–1(a)(1))

§ 618.54 Procedures if State allotment is apportioned or not apportioned among closing dates.

(a) If a State plan contains the provision described in both paragraphs (a) and (b) of 618.53, the commission shall—

(1) Make available immediately funds sufficient to provide a full Federal share, as initially calculated, for the first project for which only part of the Federal share would otherwise have been available; and

(2) Carry over to any subsequent closing dates in the same fiscal year all other eligible but unfunded applications in that category without requiring the applicants to submit new applications for those projects for that fiscal year.

(b) If the State plan contains the provision described in paragraph (a) of § 618.53 but does not contain the provision described in paragraph (b) of § 618.53, the commission—

(1) Shall carry over to any subsequent closing dates in the same fiscal year all eligible applications for which a full Federal share is not available; and

(2) Is prohibited from requiring those applicants to submit new applications for those projects for the same fiscal year.

(c) However, if the State plan does not apportion the State's allotment among closing dates or if the closing date is the last closing date in a fiscal year, the commission shall offer the remaining Federal funds as a partial Federal share for the first project—in order of relative priority—for which less than the full Federal share, as calculated, is available.

(20 U.S.C. 1132b(a))

§ 618.55 Offer of a partial Federal share.

(a) A State commission or the applicant may not regard an offer and acceptance of a partial Federal share as diminishing the scope of the project for which the partial share is accepted.

(b) The commission shall give the applicant that agrees to accept a partial federal share the option to submit a supplemental application, as provided in § 618.38.

(c) If an applicant declines to accept the commission's offer of a partial Federal share, the commission shall carry over to the next closing date, if any, in the same fiscal year—

(1) The remaining funds; and

(2) The application for which an applicant declined the partial Federal share.

(20 U.S.C. 1132b(a))

Subpart F—How Does the Secretary Make a Grant?

§ 618.60 Conditions for grant approval.

The Secretary approves the development costs under this program only if the Secretary is satisfied, on the basis of information submitted with the application, that—

(a) The facilities included in the proposed project are intended predominately for—

(1) Programs of undergraduate instruction or programs of graduate instruction if the project involves combined undergraduate and graduate facilities;

(2) Health care to students or personnel of the institution; or

(3) Both; and

(b) The application meets all of the requirements of the Act regarding the submission and contents of applications.

§ 618.61 Grant award.

For an application that meets all eligibility requirements for an award of funds under this program and has been recommended by the State commission, the Secretary—

(a) Approves the development costs contained in the application;

(b) Reserves for the project proposed in the application Federal funds from the appropriate State allotment; and

(c) Prepares and sends to the applicant a grant award that contains the pertinent terms and conditions of the grant.

§ 618.62 Adjustment in the amount of the Federal share.

(a) If the Secretary finds that the costs eligible for Federal assistance in a project are less than those provided for in the grant award, the Secretary redetermines the amount of the Federal share.

(b) The Secretary bases the amount of the revised grant on—

(1) The lesser eligible costs, using the State plan provisions that were in effect at the time the State commission recommended the project for a grant; and

(2) The assumption that sufficient funds were available in the State allotment at that time to provide the maximum Federal share.

(c)(1) If the Secretary finds that the redetermined share is less than the maximum amount authorized by the grant, the Secretary reduces the grant accordingly.

(2) If the Secretary finds that there has been an overpayment of Federal funds, the grantee shall immediately remit that overpayment to the Secretary.

(3) If the Secretary finds that the redetermined Federal share is equal to or greater than the maximum amount authorized by the grant, the amount of the grant shall be the Federal share.

The Secretary proposes to add a new Part 619 to Title 34 of the Code of Federal Regulations to read as follows:

PART 619—GRANTS FOR THE CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF GRADUATE ACADEMIC FACILITIES

Subpart A—General

Sec.

619.1 Grants for the Construction, Reconstruction, and Renovation of Graduate Academic Facilities.
619.2 Eligible parties.
619.3 Regulations that apply to Grants for the Construction, Reconstruction, and Renovation of Graduate Academic Facilities.
619.4 Definitions that apply to Grants for the Construction, Reconstruction, and Renovation of Graduate Academic Facilities.

Subpart B—What Kinds of Projects Does the Department of Education Assist under This Program?

Sec.

619.10 Projects for which grants may be used.

Subpart C—How Does One Apply for a Grant?

619.20 Submission of application.
619.21 Invitation for bids.

Subpart D—How Does the Secretary Make a Grant?

619.30 Facilities panel reviews applications.
619.31 Selection criteria for evaluating proposed projects.
619.32 Selection criteria: general.
619.33 Selection criteria: projects based on unusual increases in enrollment.
619.34 Selection criteria: projects dealing with research facilities, including libraries, and the acquisition of special research equipment.
619.35 Selection criteria: projects based on energy conservation.
619.36 Selection criteria: projects to remove architectural barriers.
619.37 Selection criteria: projects to meet environmental protection or health and safety programs mandated by law.
619.38 Selection criteria: projects to detect, remove, or contain asbestos hazards.
619.39 Selection criteria: projects directed to two or more purposes.
619.40 Ranking applications with identical scores.

Authority: Secs. 701–742 of Pub. L. 89–374, Title VII, of the Higher Education Act, as amended (20 U.S.C. 1132a–1132e–1) unless otherwise noted.

Subpart A—General

§ 619.1 Grants for the construction, reconstruction, and renovation of graduate academic facilities.

This program provides grants for the construction, reconstruction, and renovation of graduate academic facilities.

(20 U.S.C. 1132c)

§ 619.2 Eligible parties.

Institutions of higher education are eligible to apply for grants for the construction, reconstruction, and renovation of graduate academic facilities.

(20 U.S.C. 1132e)

§ 619.3 Regulations that apply to grants for the construction, reconstruction, and renovation of graduate academic facilities.

The following regulations apply to this program:

(a) The regualtions in 34 CFR 617.6.

(b) The regulations in this Part 619.

(20 U.S.C. 1132)

§ 619.4 Definitions that apply to grants for the construction, reconstruction, and renovation of graduate academic facilities.

The definitions in 34 CFR 617.7 apply to this program.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 619.10 Projects for which grants may be used.

This program provides grants for the construction, reconstruction, or renovation of graduate academic facilities if the primary purpose of an applicant's proposed project is to achieve one or more of the objectives listed in 34 CFR 617.10.

(20 U.S.C. 1132c; 1132a)

Subpart C—How Does One Apply for a Grant?

§ 619.20 Submission of application.

(a) An applicant shall submit its application for construction, reconstruction or renovation of graduate facilities to the Secretary in response to an application notice published in the **Federal Register.**

(20 U.S.C. 1132c)

(b) For a construction, reconstruction, or renovation project involving combined graduate and undergraduate facilities, an otherwise eligible applicant shall submit its application under 34 CFR Part 618 (Grants for the Construction, Reconstruction, and Renovation of Undergraduate Academic Facilities).

(20 U.S.C. 1132b–2(g))

§ 619.21 Invitation for bids.

(a) An applicant may not invite bids for construction, reconstruction, or renovation under its proposed project before submitting its application to the Secretary.

(b)(1) However, paragraph (a) of this section does not apply if—

(i) The Secretary has already approved assistance for the project under Title VII; or

(ii) Some other agency of the United States has already approved assistance for the project under some other Federal construction program.

(2) In that case, the Secretary considers the application only if the applicant submits it in response to an application notice or State plan closing date occurring no later than 12 months after the applicant has begun the construction, reconstruction, or renovation.

(20 U.S.C. 1132c)

Subpart D—How Does the Secretary Make a Grant?

§ 619.30 Facilities panel reviews applications.

(a) The Secretary appoints a facilities panel to review applications for construction, reconstruction, or renovation projects.

(b) The panel reviews each application that the Secretary considers for a grant award.

(c) The panel evaluates each application on the basis of the selection criteria in this subpart.

(d) The panel recommends to the Secretary the relative priority of each application.

(20 U.S.C. 1132c(b))

§ 619.31 Selection criteria for evaluating proposed projects.

(a) The Secretary uses the selection criteria in this subpart to evaluate applications for construction, reconstruction, or renovation projects.

(b) The Secretary awards up to 100 points for the criteria in this subpart.

(c) The Secretary distributes the points among the criteria according to the importance of each criterion.

(d) The Secretary notifies each applicant of the criteria that will be used to evaluate its application.

(20 U.S.C. 1132c(b))

§ 619.32 Selection criteria: general.

(a) *The extent to which the proposed facilities are needed.* (1) The Secretary awards up to a maximum of 15 points for this criterion.

(2) The Secretary awards up to a maximum of 15 points for this criterion.

(d) *The extent to which the proposed facilities for which assistance is being requested.*

(20 U.S.C. 1132c(b), 1132a(3))

§ 619.35 Selection criteria: projects based on energy conservation.

For construction, reconstruction, or renovation projects based on energy

The percentage of assignable square feet of academic space—on the applicant's campus—to be made accessible to the handicapped by the proposed project.

(2) The Secretary awards up to a

§ 619.39 Selection criteria: projects directed to two or more purposes.

If a project is directed to a combination of two or more of the purposes under section 701 of the Act,

Sec.

620.21 Special application procedures.
620.22 Special terms and conditions.
620.23 Opinion of bond counsel.
620.24 Invitation for bids.

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Subpart D—How Does the Secretary Make a Grant?

§ 619.30 Facilities panel reviews applications.

(a) The Secretary considers an application for a grant for construction, reconstruction, or renovation of graduate academic facilities only after obtaining the advice and recommendation of a panel of specialists who are not regular full-time employees of the Federal Government and who are competent to evaluate the application.

(b) The panel—referred to in this Part 619 as a facilities panel—

(1) Reviews the application in terms of the applicable criteria listed in § 619.31; and

(2) Makes a recommendation to the Secretary for the approval or disapproval—in whole or in part—of the application.

(20 U.S.C. 1132c(b))

§ 619.31 Selection criteria for evaluation proposed projects.

In determining relative priorities for recommending to the Secretary applications for grants for the construction, reconstruction, or renovation of graduate academic facilities, a facilities panel takes into consideration—

(a) The criteria in § 619.32, worth up to 60 possible points; and

(b) As applicable, the criteria in §§ 619.33, 619.34, 619.35, 619.36, 619.37, 619.38 or 619.39, worth up to 40 possible points.

§ 619.32 Selection criteria: general.

Among its criteria for determining relative priorities for graduate institutions under this program, a facilities panel takes into consideration the following:

(a) *Use of existing facilities.* (1) The extent to which an applicant makes effective use of its existing facilities.

(2) The Secretary awards up to a maximum of 15 points for this criterion.

(b) *The need to upgrade the applicant's existing academic facilities.* (1) The extent of the applicant's need to upgrade its existing academic facilities with respect to the demand made on those facilities and the demands that can reasonably be expected to be made on them in the foreseeable future.

(2) The Secretary awards up to a maximum of 15 points for this criterion.

(c) *The quality of the applicant's graduate programs.* (1) The quality of the applicant's graduate programs, in particular those programs that are housed or are to be housed in the facilities for which assistance is being requested.

(2) The Secretary awards up to a maximum of 15 points for this criterion.

(d) *The extent to which the proposed project is likely to preserve and enhance the applicant's programs.* (1) The extent to which the proposed project is likely to preserve and enhance the applicant's graduate programs, in particular those programs that are housed or to be housed in the facilities that are to be constructed, reconstructed, or renovated.

(2) The Secretary awards up to a maximum of 15 points for this criterion.

§ 619.33 Selection criteria: projects based on unusual increases in enrollment.

For construction, reconstruction, or renovation projects based on unusual increases in enrollment (section 701(4) of the Act), the facilities panel applies the following criteria in addition to the criteria in § 619.32:

(a) *Increase in enrollment.* (1) The extent of the actual numerical or percentage increase, or both, in full-time-equivalent student enrollment at the campus at which the construction, reconstruction, or renovation is to take place.

(2) The increase is measured by covering three years separately, starting with the year that began three years preceding the closing date for which the application is being considered.

(3) The Secretary awards up to a maximum of 20 points for this criterion.

(b) *Increase in capacity.* (1) The amount or percentage, or both, by which the proposed project will increase the assignable area at that campus.

(2) The Secretary awards up to a maximum of 20 points for this criterion.

§ 619.34 Selection criteria: projects dealing with research facilities, including libraries, and the acquisition of special research equipment.

For construction, reconstruction, or renovation projects dealing with research facilities, including libraries, and the acquisition of special research facilities (section 701(3) of the Act), the facilities panel in addition to the criteria in § 619.32:

(a) *Amount of research space to be upgraded.* (1) The amount of research space to be upgraded by the proposed project.

(2) The Secretary awards up to a maximum of 20 points for this criterion.

(b) *Percentage of research space to be upgraded.* (1) The percentage of the applicant's research space—on that campus—that is to be upgraded by the proposed project.

(2) The Secretary awards up to a maximum of 20 points for this criterion.

(20 U.S.C. 1132c(b), 1132a(3))

§ 619.35 Selection criteria: projects based on energy conservation.

For construction, reconstruction, or renovation projects based on energy conservation (section 701(1) of the Act), the facilities panel applies the following criteria in addition to the criteria in § 619.32:

(a) *Use of coal, solar energy, and renewable resources.* (1) The extent to which an institution proposes to use one or more of the following: coal, solar energy, and renewable resources.

(2) The Secretary awards up to a maximum of 20 points for this criterion.

(b) *Estimated savings in annual operating costs.* (1) The extent to which the proposed project is likely to enable the institution to economize on the use of energy resources, based on an estimate of savings in annual operating costs.

(2) The estimated savings, if any, in annual operating costs are the difference between—

(i) The average routine operating expenses for the previous three years; and

(ii) Future annual operating exepenses based on the current prices of fuel supplies and related services.

(3) The Secretary awards up to a maximum of 20 points for this criterion.

§ 619.36 Selection criteria: projects to remove architectural barriers.

For reconstruction or renovation projects to remove architectural barriers (section 701(2) (A) and (B) of the Act), the facilities panel applies the following criteria in addition to the criteria in § 619.32:

(a) Exemplary program of compliance with Section 504.

(1) The extent to which a proposed project holds promise of accomplishing an exemplary program of compliance with Section 504 that would be helpful to similar institutions around the country and that would not likely be carried out in the absence of Federal funds.

(2) The Secretary awards up to a maximum of 10 points for this criterion.

(House Report 96–520, page 54)

(b) *Amount of assignable square feet of academic facilities to be made accessible by the proposed project.* (1) The amount of assignable square feet of academic facilities to be made accessible to the handicapped by the proposed project.

(2) The Secretary awards up to a maximum of 10 points for this criterion.

(c) *Percentage of assignable square feet of academic facilities to be made accessible by the proposed project.* (1) The percentage of assignable square feet of academic space—on the applicant's campus—to be made accessible to the handicapped by the proposed project.

(2) The Secretary awards up to a maximum of 10 points for this criterion.

(d) Costs required by Section 504 per full-time-equivalent student enrollment.

(1) The costs required by Section 504 per full-time-equivalent student enrollment.

(2) The Secretary awards up to a maximum of 10 points for this criterion.

(20 U.S.C. 1132c(b); 1132a(2)(A) and (B))

§ 619.37 Selection criteria: projects to meet environmental protection or health and safety programs mandated by law.

For reconstruction or renovation projects to meet environmental protection or health and safety programs mandated by Federal, State, or local law (section 701(2)(C) of the Act), the facilities panel applies the following criteria in addition to the criteria in § 619.32:

(a) *Campus-wide cost per full-time-equivalent student.* (1) The campus-wide cost—per full-time-equivalent student—of complying with the law.

(2) The Secretary awards up to a maximum of 20 points for this criterion.

(b) *Campus-wide cost per square foot of assignable space.* (1) The campus-wide cost—per square foot of assignable space—of complying with the law.

(2) The Secretary awards up to a maximum of 20 points for this criterion.

(20 U.S.C. 1132c(b); 1132a(2) (A) and (B))

§ 619.38 Selection criteria: projects to detect, remove, or contain asbestos hazards.

For reconstruction or renovation projects to detect, remove, or contain asbestos hazards (section 701(5) of the Act), the facilities panel applies the following criteria in addition to the criteria in § 619.32:

(a) *Amount of gross square feet of facilities space with known or suspected asbestos hazards.* (1) The amount of gross square feet of facilities space with known or suspected asbestos hazards.

(2) The Secretary awards up to a maximum of 20 points for this criterion.

(b) *Estimated cost of detecting, removing, or containing asbestos hazards.* (1) The estimated cost of one or more of the following: detecting, removing, or containing asbestos hazards.

(2) The Secretary awards up to a maximum of 20 points for this criterion.

(20 U.S.C. 1132c(b); 1132(a)(5))

§ 619.39 Selection criteria: projects directed to two or more purposes.

If a project is directed to a combination of two or more of the purposes under section 701 of the Act, the facilities panel in addition to applying the criteria in § 619.32, applies the following criteria in place of the criteria in 619.33–619.38:

(a) *Readiness to commence project.* (1) The timeliness by which an applicant can state its project.

(2) The Secretary awards up to a maximum of 20 points for this criterion.

(b) *The cost of the project as a percentage of the applicant's average annual educational and general expenditures.* (1) The cost of the project as a percentage of the applicant's average annual educational and general expenditures, as reported in the annual NCES Survey "Financial Statistics of Institutions of Higher Education," for the three most recent institutional fiscal years.

(2) The Secretary awards up to a maximum of 20 points for this criterion.

(20 U.S.C. 1132c(b); 1132a)

§ 619.40 Applications with identical scores.

If the facilities panel assigns identical total scores to two or more applications, the Secretary assigns priority on the basis of the projected date for the start of construction, reconstruction, or renovation, with the project having the earliest date receiving the highest priority.

(20 U.S.C. 1132c)

The Secretary proposes to add a new Part 620 to Title 34 of the Code of Federal Regulations to read as follows:

PART 620—LOANS FOR THE CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES

Subpart A—General

Sec.
620.1 Loans for the Construction, Reconstruction, and Renovation of Academic Facilities.
620.2 Eligible parties.
620.3 Regulations that apply to Loans for the Construction, Reconstruction, and Renovation of Academic Facilities.
620.4 Definitions that apply to Loans for the Construction, Reconstruction, and Renovation of Academic Facilities.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

620–10 Projects for which loans may be used.

Subpart C—How Does One Apply for a Loan?

620.20 Submission of applications.
620.21 Special application procedures.
620.22 Special terms and conditions.
620.23 Opinion of bond counsel.
620.24 Invitation for bids.

Subpart D—How Does the Secretary Make a Loan?

620.30 Selection criteria for evaluating a proposed project.
620.31 Selection criterion: general.
620.32 Selection criteria: projects based on unusual increases in enrollment.
620.33 Selection criteria: projects dealing with research facilities, including libraries, and the acquisition of special research equipment.
620.34 Selection criteria: projects based on energy conservation.
620.35 Selection criteria: projects to remove architectural barriers.
620.36 Selection criteria: projects to meet environmental protection or health and safety programs mandated by law.
620.37 Selection criteria: projects to detect, remove, or contain asbestos hazards.
620.38 Selection criteria: projects directed to two or more purposes.
620.39 Ranking applications with identical scores.
620.40 Determination of non-availability of equally-as-favorable terms and conditions.
620.41 Loan offer.
620.42 Loan agreement.
620.43 Security for loan.
620.44 Evidence of approved debt instrument.
620.45 Loan closing.
620.46 Interim financing.

Subpart E—What Conditions Must Be Met by a Borrower?

620.50 Length and maturity of loan.
620.51 Construction fund.
620.52 Investment of idle construction funds.
620.53 Disposal of balance remaining in the construction fund.
620.54 Moratorium on principal or interest payments on a loan.

Authority: Secs. 701–742 of Pub. L. 96–374, Title VII of the Higher Education Act, as amended, (20 U.S.C. 1132a–1132e–1) unless otherwise noted.

Subpart A—General

§ 620.1 Loans for the construction, reconstruction, and renovation of academic facilities.

This program provides loans for the construction, reconstruction, and renovation of academic facilities.

(20 U.S.C. 1132d–1132d–2)

§ 620.2 Eligible parties.

The following are eligible to apply for loans for the construction, reconstruction, and renovation of academic facilities:

(a) Institutions of higher education.

(b) Higher education building agencies.

(20 U.S.C. 1132d(a))

§ 620.3 Regulations that apply to loans for the construction, reconstruction, and renovation of academic facilities.

The following regulations apply to this program:

§ 620.22 Special terms and conditions.

The applicant shall submit to the Secretary, together with its application, the following evidence and assurances:

(a) Satisfactory evidence that the

(b) As used in this section, "bond counsel" means a law firm or individual lawyer—

(1) Who is thoroughly experienced in the financing of construction,

(ii) Whose opinions with regard to that type of financing have been previously accepted by responsible lenders of lending institutions.

(20 U.S.C. 1132d–1(b)(1))

reconstruction, or renovation is to take place.

(2) The Increase is measured by covering three years separately, starting with the year that began three years preceding the closing date for which the

(i) The average routine operating expenses for the previous three years; and

(ii) Future annual operating expenses based on the current prices of fuel supplies and related services

§ 620.3 Regulations that apply to loans for the construction, reconstruction, and renovation of academic facilities.

The following regulations apply to this program:

(a) The regulations in 34 CFR 617.6 (b) through (e), as appropriate.

(b) The regulations in this Part 620.

(20 U.S.C. 1232)

§ 620.4 Definitions that apply to loans for the construction, reconstruction, and renovation of academic facilities.

The definitions in 34 CFR 617.7 apply to this program.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 620.10 Projects for which loans may be used.

This program provides loans for the construction, reconstruction, and renovation of graduate and undergraduate academic facilities if the primary purpose of an applicant's proposed project is to achieve one or more of the objectives listed in 34 CFR 617.10.

(20 U.S.C. 1132d; 1132a)

Subpart C—How Does One Apply for a Loan?

§ 620.20 Submission of application.

An applicant for a loan shall submit its application at the time, in the manner, and containing the information that the Secretary specifies.

(20 U.S.C. 1132d)

§ 620.21 Special application procedures.

(a) An applicant shall send a copy of its application to its State commission before submitting the application to the Secretary.

(b) The commission shall review and evaluate the application and provide comments to the Secretary regarding—

(1) Use of space;

(2) Enrollment data; and

(3) The overall need for the facility—or for the reconstruction or renovation of the facility—for which the applicant has requested assistance.

(c) Following its review, the commission shall furnish its evaluation to the applicant.

(d) If the applicant does not agree with the evaluation, the applicant may include with its application to the Secretary a statement supporting its position.

(e) The commission shall submit the application to the Secretary together with all State clearinghouse comments required by OMB Circular A–95.

(20 U.S.C. 1132d(a))

§ 620.22 Special terms and conditions.

The applicant shall submit to the Secretary, together with its application, the following evidence and assurances:

(a) Satisfactory evidence that the applicant has or will have a full title or interest in the site, including right of access, that is sufficient to insure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(b) Satisfactory assurance that if the Secretary grants the loan and the applicant accepts the loan, the applicant will comply with the appropriate terms and conditions for repayment of the loan.

(c) Satisfactory assurance that the applicant will secure the loan in a manner the Secretary finds will reasonably assure repayment. The security may be one or a combination of the items listed in § 620.34.

(d) Satisfactory evidence that the applicant has the necessary legal authority to—

(1) Finance; construct, reconstruct, or renovate, and maintain the proposed facilities;

(2) Apply for and receive the proposed loan; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan.

(e) Satisfactory assurance that the applicant will not, without the consent of the Secretary, mortgage to others during the life of the loan the facility constructed, reconstructed, or renovated with the aid of the loan.

(f)(1) Satisfactory assurance that the applicant will finance not less than 20 percent of the development cost of the facility from non-Federal sources.

(2) However, the Secretary waives this assurance for an institution that is eligible for assistance under Title III of the Act.

(20 U.S.C. 1132d(a))

§ 620.23 Opinion of bond counsel.

(a) At appropriate stages in a loan application and development procedure, an applicant shall submit—or arrange to have submitted—to the Secretary opinions of bond counsel—or of legal counsel, as provided in paragraph (d) of this section—with respect to—

(1) The legality of the bond or note issue that the applicant proposes to offer to secure the loan;

(2) The legal authority of the applicant to offer the issues and secure it by the proposed collateral; and

(3) The legality of the issue on delivery.

(b) As used in this section, "bond counsel" means a law firm or individual lawyer—

(1) Who is thoroughly experienced in the financing of construction, reconstruction, and renovation projects by the issuance of bonds;

(2) Whose approving opinions have previously been accepted by purchasers of bonds offered at public sales; and

(3) Who, if the borrower is a public institution or agency, is a recognized bond counsel in the municipal field.

(c) In each case the applicant shall present the following:

(1) A memorandum by the counsel, submitted with the loan application—

(i) Stating that the applicant has or will have authority to—

(A) Finance, construct, and maintain the project;

(B) Issue the proposed obligations; and

(C) Pledge or mortgage the assets or revenues that the applicant is offering to secure the loan; and

(ii) Citing the basis for the authority referred to in paragraph (C)(1)(i) of this section.

(2) A preliminary approving opinion of the counsel—submitted at the time the applicant proposes to advertise for bids for construction, reconstruction, or renovation—to the effect that when the bonds or notes described in the loan agreement are sold and delivered, they will—

(i) Comply with the applicable provisions of the loan agreement; and

(ii) Be valid and binding obligations of the issuer payable in accordance with their terms.

(3) A final approving opinion of the counsel—delivered at the same time as the delivery of the bonds or notes—stating that the bonds or notes—

(i) Are those described in the loan agreement and the authorizing proceedings;

(ii) Have been duly authorized, sold, and delivered to the Secretary; and

(iii) Constitute the valid and binding obligations of the issuer payable in accordance with their terms.

(d)(1) The Secretary may accept the opinion of legal counsel, other than a bond counsel as defined in paragraph (b) of this section, after considering such factors as—

(i) The amount, term, and security for the loan; and

(ii) The legal or financial complexity of the transaction.

(2) As used in paragraph (d)(1) of this section, "Legal counsel" means a law firm or individual lawyer—

(i) Having experience in the financing of construction, reconstruction, and renovation projects; and

(ii) Whose opinions with regard to that type of financing have been previously accepted by responsible lenders of lending institutions.

(20 U.S.C. 1132d–1(b)(1))

§ 620.24 Invitation for bids.

(a) An applicant may not invite bids for construction, reconstruction, or renovation under its proposed project before submitting its application to the Secretary.

(b)(1) However, paragraph (a) of this section does not apply if—

(i) The Secretary has already approved assistance for the project under Title VII; or

(ii) Some other agency of the United States has already approved assistance for the project under some other Federal assistance program.

(2) In that case the Secretary considers the application only if the applicant submits it in response to an application notice occurring no later than 12 months after the applicant has begun the construction, reconstruction, or renovation.

(20 U.S.C. 1132d–1(b)(1))

Subpart D—How Does the Secretary Make a Loan?

§ 620.30 Selection criteria for evaluating proposed projects.

In evaluating a proposed project for which an applicant has applied for a loan under this program, the Secretary takes into consideration—

(a) The criterion in 620.31, worth up to 20 possible points; and

(b) As applicable, the criteria in §§ 620.32, 620.33, 620.34, 620.35, 620.36, 620.37, or 620.38, worth up to 80 possible points.

§ 620.31 Selection criterion: general.

(a) Among the criteria for evaluating a proposed project under this program, the Secretary considers the extent to which the applicant makes effective use of its existing facilities.

(b) The Secretary awards up to a maximum of 20 points for this criterion.

(20 U.S.C. 1132d; 1132a)

§ 620.32 Selection criteria: projects based on unusual increases in enrollment.

For construction, reconstruction, or renovation projects dealing with unusual increases in enrollment (section 701(4) of the Act), the Secretary applies the following criteria in addition to the criterion in § 620.31:

(a) *Increase in enrollment.*

(1) The extent of the actual numerical or percentage increase, or both, in full-time-equivalent student enrollment at the campus at which the construction, reconstruction, or renovation is to take place.

(2) The Increase is measured by covering three years separately, starting with the year that began three years preceding the closing date for which the applicaiton is being considered.

(3) The Secretary awards up to a maximum of 40 points for this criterion.

(b) Increase in capacity.

(1) The amount of percentage, or both, by which the proposed project will increase the assignable area at that campus.

(2) The Secretary awards up to a maximum of 40 points for this criterion.

(20 U.S.C. 1132d; 1132a(4))

§ 620.33 Selection criteria: projects dealing with research facilities, including libraries, and the acquisition of special research equipment.

For construction, reconstruction, or renovation projects dealing with research facilities, including libraries, and the acquisition of special research equipment (section 701 (3) of the Act), the Secretary applies the following criteria in addition to the criterion in § 620.31:

(a) *Amount of research space to be upgraded.* (1) The amount of research space to be upgraded by the proposed project.

(2) The Secretary awards up to a maximum of 40 points for this criterion.

(b) *Percentage of research space to be upgraded.* (1) The percentage of the applicant's research space—on that campus—that is to be upgraded by the proposed project.

(2) The Secretary awards up to a maximum of 40 points for this criterion.

(20 U.S.C. 1132d; 1132a(3))

§ 620.34 Selection criteria: projects based on energy conservation.

For construction, reconstruction, or renovation projects dealing with energy conservation (section 701(1) of the Act), the Secretary applies the following criteria in addition to the criterion in § 620.31:

(a) *Use of coal, solar energy, and renewable resources.* (1) The extent to which an institution proposes to use one or more of the following: coal, solar energy, and renewable resources.

(2) The Secretary awards up to a maximum of 40 points for this criterion.

(b) *Estimated savings in annual operating costs.* The extent to which the proposed project is likely to enable the institution to economize on the use of energy resources, based on an estimate of savings in annual operating costs.

(2) The estimated savings, if any, in annual operating costs are the difference between—

(i) The average routine operating expenses for the previous three years: and

(ii) Future annual operating expenses based on the current prices of fuel supplies and related services.

(3) The Secretary awards up to a maximum of 40 points for this criterion.

(20 U.S.C. 1132d; 1132a(1))

§ 620.35 Selection criteria: projects to remove architectural barriers.

For reconstruction or renovation projects to remove architectural barriers (section 701(2)(A) and (B) of the Act), the Secretary applies the following criteria in addition to the criterion in § 620.31:

(a) *Exemplary program of compliance with Section 504.* The extent to which a proposed project holds promise of accomplishing an exemplary program of compliance with Section 504 that would be helpful to similar institutions around the country and that would not likely be carried out in the absence of Federal funds.

(House Report 96–520, page 54)

(2) The Secretary awards up to a maximum of 20 points for this criterion.

(b) *Amount of assignable square feet of academic facilities to be made accessible by the proposed project.*

(1) The amount of assignable square feet of academic facilities to be made accessible to the handicapped by the proposed project.

(2) The Secretary awards up to a maximum of 20 points for this criterion.

(c) *Percentage of assignable square feet of academic facilities to be made accessible by the proposed project.*

(1) The percentage of assignable square feet of academic space—on the applicant's campus—to be made accessible to the handicapped by the proposed project.

(2) The Secretary awards up to a maximum of 20 points for this criterion.

(d) *Costs required by Section 504 per full-time-equivalent student enrollment.*

(1) The costs required by Section 504 per full-time-equivalent student enrollment.

(2) The Secretary awards up to a maximum of 20 points this criterion.

(20 U.S.C. 1132d; 1132a(2)(A) and (B))

§ 620.36 Selection criteria: projects to meet environmental protection or health and safety programs mandated by law.

For reconstruction or renovation projects to meet environmental protection or health and safety programs mandated by Federal, State, or local law (section 701(2)(C) of the Act), the Secretary applies the following criteria in addition to the criterion in § 620.31:

(a) *Campuswide cost per full-time-equivalent student.* (1) The campuswide cost—per full-time-equivalent student—of complying with the law.

§ 620.39 Ranking applications with identical scores.

If two or more applications receive equal total scores, the Secretary gives

endowment or other trust fund acceptable to the Secretary.

(d) A pledge of a specified portion of the applicant's annual general or special

(d) The Secretary may approve a loan that does not mature serially if that type of loan is necessary to be compatible with an applicant's total financial

§ 620.53 Disposal of balance remaining in the construction fund.

Upon full settlement with all contractors, suppliers, and the other parties to whom it has incurred

621.21 Submission of application.
621.22 Special application procedures.
621.23 Approvable financing plan.
621.24 Evidence of lowest possible cost of loan.

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(a) *Campuswide cost per full-time-equivalent student.* (1) The campuswide cost—per full-time-equivalent student—of complying with the law.

(2) The Secretary awards up to a maximum of 40 points for this criterion.

(b) *Campuswide cost per square foot of assignable space.* (1) The campuswide cost—per square foot of assignable space—of complying with the law.

(2) The Secretary awards up to a maximum of 40 points for this criterion.

§ 620.37 Selection criteria: projects to detect, remove, or contain asbestos hazards.

For reconstruction or renovation projects to detect, remove, or contain asbestos hazards (section 701(5) of the Act), the Secretary applies the following criteria in addition to the criterion in § 620.31:

(a) *Amount of gross square feet of facilities space with known or suspected asbestos hazards.* (1) The amount of gross square feet of facilities space with known or suspected asbestos hazards.

(2) The Secretary awards up to a maximum of 40 points for this criterion.

(b) *Estimated cost of detecting, removing, or containing asbestos hazards.* (1) The estimated cost—per campuswide assignable square foot—of one or more of the following: detecting, removing, or containing asbestos hazards.

(2) The Secretary awards up to a maximum of 40 points for this criterion.

§ 620.38 Selection criteria: projects directed to two or more purposes.

If a project is directed to a combination of two or more of the purposes under section 701 of the Act, the Secretary, in addition to applying the criterion in § 620.30, applies the following criterion in place of the criteria in §§ 620.31–630.37:

(a) *Readiness to commence project.* (1) The timeliness by which an applicant can start its project.

(2) The Secretary awards up to a maximum of 40 points for this criterion.

(b) *The cost of the project as a percentage of the applicant's average annual educational and general expenditures.* The cost of the project as a percentage of the applicant's average annual educational and general expenditures, as reported in the annual NCES Survey "Financial Statistics of Institutions of Higher Education," for the three most recent institutional fiscal years.

(2) The Secretary awards up to a maximum of 40 points for this criterion.

(20 U.S.C. 1132d; 1132a)

§ 620.39 Ranking applications with identical scores.

If two or more applications receive equal total scores, the Secretary gives priority consideration to the following types of applicants in this order:

(a) An institution eligible for assistance under Title III of the Act.

(b) An institution with the earliest date for the start of construction, reconstruction, or renovation.

(20 U.S.C. 1132d–1(b)(1))

§ 620.40 Determination of non-availability of equally-as-favorable terms and conditions.

(a) The Secretary considers making a loan only if the Secretary finds that the applicant is unable to secure from other sources a loan with terms and conditions equally as favorable as the terms and conditions applicable to loans under this part.

(b) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may establish, including public advertising for bids.

(20 U.S.C. 1132d(a)(2))

§ 620.41 Loan offer.

(a) The Secretary prepares and sends a loan offer to an applicant if—

(1) The application meets all requirements of the Act and the regulations governing administration of the Act; and

(2) The Secretary approves the project and reserves funds for it.

(b) The loan offer—

(1) Contains the terms and conditions for the loan; and

(2) Is conditioned on the fulfillment of these terms and conditions.

(20 U.S.C. 1132d(a))

§ 620.41 Loan agreement.

The accepted loan offer constitutes the loan agreement between the Secretary and the applicant for the partial financing of the construction, reconstruction, or renovation of the approved project.

(20 U.S.C. 1132d(a))

§ 620.42 Security for loan.

At the time of accepting a loan offer, a borrower shall secure the loan in a manner the Secretary finds will reasonably assure repayment. The security may be one or a combination of the following:

(a) A first mortgage on the facilities and site of those facilities.

(b) Negotiable stocks or bonds of a quality and value acceptable to the Secretary.

(c) A pledge of unrestricted and unencumbered income from an endowment or other trust fund acceptable to the Secretary.

(d) A pledge of a specified portion of the applicant's annual general or special revenues acceptable to the Secretary.

(e) General obligations issued by a State or local public body on behalf of the applicant.

(f) Other types of security that the Secretary finds acceptable in specific instances.

(20 U.S.C. 1132d–1(b)(6))

§ 620.44 Evidence of approved debt instrument.

(a) After signifying to the Secretary its acceptance of a loan offer, a borrower shall furnish to the Secretary the approved debt instrument in the form the Secretary prescribes in the loan agreement and in the terms and conditions of the loan agreement.

(b) The approved debt instrument referred to in paragraph (a) of this section shall include—

(1) A recorded copy of the executed trust indenture between the borrower and the trustee institution or other paying agent; and

(2) The bond, note, or other security approved by the Secretary.

(20 U.S.C. 1132d–(b)(1))

§ 620.45 Loan closing.

Loan closing occurs at a time determined by the Secretary.

(20 U.S.C. 1132d–1(b)(1))

§ 620.46 Interim financing.

(a) If necessary, an applicant shall arrange for interim financing, subject to the approval of the Secretary, to cover the cost of construction, reconstruction, or renovation pending the loan closing.

(b) If the Secretary finds that the applicant is unable to secure necessary interim financing on reasonable terms, the Secretary may provide for advances against the approved loan.

(20 U.S.C. 1132d–1(b)(1))

Subpart E—What Conditions Must Be Met by a Borrower?

§ 620.50 Length and maturity of loan.

(a) The maximum repayment period for a loan under this program shall be 30 years, unless the Secretary finds that a longer repayment period required.

(b) In no case may a loan repayment period exceed the estimated useful life of the facilities to be constructed, reconstructed, or renovated with the aid of the loan.

(c) Unless the Secretary authorizes otherwise, the borrower shall repay the loan in substantially level annual installments of principal and interest.

(d) The Secretary may approve a loan that does not mature serially if that type of loan is necessary to be compatible with an applicant's total financial planning.

(20 U.S.C. 1132d(b))

§ 620.51 Construction funds.

(a)(1) A borrower shall deposit in a separate bank account—

(i) The proceeds of the sale of the bonds or notes;

(ii) Any interim advances against the approved loans; and

(iii) All other money that the borrower will use in paying for the construction, reconstruction, or renovation of the approved project.

(2) The separate account shall be known as the construction fund.

(3) The borrower shall keep this account in a bank of its choice.

(4) The borrower shall make all expenditures for the construction, reconstruction, or renovation from this fund.

(5) Accounting for this fund shall be in accordance with accepted accounting principles.

(b)(1) If necessary and appropriate, the Secretary may approve other arrangements for—

(i) The deposit of construction funds; and

(ii) The accounting for those funds.

(2) Those other arrangements must provide adequate accountability for all receipts to and expenditures from the funds.

(20 U.S.C. 1132d–1(b)(1))

§ 620.52 Investment of idle construction funds.

(a) If the money on deposit in the construction fund exceeds the estimated disbursements for the project for the next 90 days, the Secretary encourages the borrower—if permitted by State or local law—to invest those excess funds.

(b) If the borrower chooses to invest the funds referred to in paragraph (a) of this section, the borrower—unless otherwise prohibited by State of local law—shall invest those funds in—

(1) Direct obligations of the U.S. Government; or

(2) Obligations whose principal and interest are guaranteed by the U.S. Government.

(c) An investment made in accordance with paragraph (b) of this section shall be in obligations that will mature not later than 18 months from the date of the investment.

(20 U.S.C. 1132d–1(b)(1))

§ 620.53 Disposal of balance remaining in the construction fund.

Upon full settlement with all contractors, suppliers, and the other parties to whom it has incurred obligations under the project, the borrower shall dispose of any money remaining in the construction fund in accordance with the provisions of the loan agreement.

(20 U.S.C. 1132d–1(b)(1))

§ 620.54 Moratorium on principal or interest payments on a loan.

A borrower may request—and the Secretary may approve—a moratorium on the repayment of principal and interest installments on a loan if the borrower—

(a) Can demonstrate a temporary inability to make those payments without undue financial hardship; and

(b) Furnishes, in a plan acceptable to the Secretary, a specific schedule for repayment of the amounts in arrears. However, the Secretary may permit the borrower to defer submission of the plan if the borrower—

(1) Clearly demonstrates that it cannot reasonably project a specific repayment schedule due to circumstances beyond its control; and

(2) Satisfactorily assures the Secretary that it will develop a repayment schedule for consideration at a future date that the Secretary designates.

(20 U.S.C. 1132d–1(b)(5))

The Secretary proposes to add a new Part 621 to Title 34 of the Code of Federal Regulations to read as follows:

PART 621—ANNUAL INTEREST GRANTS FOR THE CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES

Subpart A—General

Sec.

621.1 Annual Interest Grants for the Construction, Reconstruction, and Renovation of Academic Facilities.
621.2 Eligible parties.
621.3 Regulations that apply to Annual Interest Grants for the Construction, Reconstruction, and Renovation of Academic Facilities.
621.4 Definitions that apply to Annual Interest Grants for the Construction, Reconstruction, and Renovation of Academic Facilities.

Subpart B—What Kinds of Projects Does the Department of Education Assist under This Program?

621.10 Projects for which annual interest grants may be used.

Subpart C—How Does One Apply for an Annual Interest Grant?

621.20 Application dates.
621.21 Submission of application.
621.22 Special application procedures.
621.23 Approvable financing plan.
621.24 Evidence of lowest possible cost of loan.
621.25 Invitation for bids.

Subpart D—How Does the Secretary Make an Annual Interest Grant?

621.30 Selection criteria for evaluating a proposed project.
621.31 Conditions for approval of annual interest grants.
621.32 Conditions for making an annual interest grant.
621.33 Annual interest grant agreement.
621.34 Amount of annual interest grant.
621.35 Limits of Federal assistance.
621.36 Payment of annual interest grant.
621.37 Provisions not exhaustive of authority of the Secretary.

Subpart E—What Conditions Must Be Met by a Grantee?

621.40 Reduction of grant if refinancing produces lower costs.

Authority: Secs. 701–742 of Pub. L. 96–374, Title VII of the Higher Education Act, as amended (20 U.S.C. 1132a–1132e–1) unless otherwise noted.

Subpart A—General

§ 621.1 Annual interest grants for the construction, reconstruction, and renovation of academic facilities.

This program provides annual interest grants to reduce the cost of borrowing funds—other than those available under 34 CFR Part 620—for the construction, reconstruction, and renovation of academic facilities.

(20 U.S.C. 1132d–3)

§ 621.2 Eligible parties.

(a) The following are eligible to apply for annual interest grants for the construction, reconstruction, and renovation of academic facilities:

(1) Institutions of higher education.

(2) Higher education building agencies.

(20 U.S.C. 1132d–3(a))

§ 621.3 Regulations that apply to annual interest grants for the construction, reconstruction, and renovation of academic facilities.

The following regulations apply to this program:

(a) The regulations in 34 CFR 617.5(b) through (e), as appropriate.

(b) The regulations in 34 CFR 620.31 through 620.39.

(c) The regulations in this Part 621.

(20 U.S.C. 1232)

§ 621.4 Definitions that apply to annual interest grants for the construction, reconstruction, and renovation of academic facilities.

The definitions in 34 CFR 617.7 apply to this program.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 621.10 Projects for which annual interest grants may be used.

The Secretary approves an application for annual interest grants only if the Secretary is satisfied that the plan submitted under this program must—

(1) Provide that the terms of the loan for which the applicant requests an annual interest grant does not exceed the lesser of—

(2) The applicant shall have given each of those institutions the information necessary to enable it to specify in its offer the—

(i) Amount of the loan;

(ii) Interest rate;

§ 621.31 Conditions for approval of annual interest grants.

The Secretary approves an application for annual interest grants only if the Secretary is satisfied that—

(a) The applicant will have available,

(c)(1) The applicant may not enter into the agreement—

(i) For the benefit of third parties; or

(ii) To induce—

(A) The making of loans by third parties; or

the Secretary approves annual interest grants does not exceed $5 million per campus for a Federal fiscal year.

(20 U.S.C. 1132d–3)

§ 621.36 Payment of annual interest grant.

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Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 621.10 Projects for which annual interest grants may be used.

This program provides annual interest grants to reduce the cost of borrowing funds—other than those available under 34 CFR Part 620—for the construction, reconstruction, or renovation of academic facilities if the primary purpose of an applicant's proposed project is to achieve one or more of the objectives listed in 34 CFR 617.10.

(20 U.S.C. 1132d–3)

Subpart C—How Does One Apply for an Annual Interest Grant?

§ 621.20 Application dates.

The Secretary publishes an application notice in the **Federal Register** establishing the date for submission of applications for annual interest grants.

(20 U.S.C. 1132d–3)

§ 621.21 Submission of application.

An applicant for an annual interest grant shall submit its application at the time, in the manner, and containing the information that the Secretary specifies.

§ 621.22 Special application procedure.

(a) An applicant shall send a copy of its application to its State commission before submitting the application to the Secretary.

(b) The commission shall review and evaluate the application and provide comments to the Secretary regarding—

(1) Use of space;

(2) Enrollment data; and

(3) The overall need for the facility—or for the reconstruction or renovation of the facility for which the applicant has requested assistance.

(c) Following its review the commission shall furnish its evaluation to the applicant.

(d) If the applicant does not agree with the evaluation, the applicant may include with its application to the Secretary a statement supporting its position.

(e) The commission shall submit the application to the Secretary, together with all State clearinghouse comments required by OMB Circular A–95.

(f) The applicant may not invite bids under the project before submitting its application to the Secretary.

(20 U.S.C. 1132d–3)

§ 621.23 Approvable financing plan.

(a) Except as provided in paragraph (b) of this section, in order to be approved by the Secretary, a financing plan submitted under this program must—

(1) Provide that the terms of the loan for which the applicant requests an annual interest grant does not exceed the lesser of—

(i) Thirty years; or

(ii) The useful life of the facilities that the applicant proposes to construct, reconstruct, or renovate with the help of the loan;

(2) Provide that the borrower is to repay the loan in substantially level annual installments of interest and principal over the term of the loan, except that the borrower may pay interest only for an initial period not exceeding five years; and

(3) Contain other provisions that will assure the Secretary that the support provided by the Secretary over the term of the loan is no more than is necessary to carry out the purposes of this program.

(b)(1) If the Secretary finds that unusual circumstances warrant an exception, the Secretary may accept a financing plan related to a loan for which—

(i) The term is longer than 30 years;

(ii) The annual installments of interest and principal are not substantially level; or

(iii) Both.

(2) However, the term of a loan otherwise eligible for assistance under this subpart may not exceed 40 years.

(20 U.S.C. 1132d–3(a))

§ 621.24 Evidence of lowest possible cost of loan.

(a) An applicant shall demonstrate to the satisfaction of the Secretary that the loan it proposes to obtain is at the lowest possible net interest cost.

(b)(1) If an applicant proposes to issue tax-exempt bonds to finance the construction, reconstruction, or renovation of academic facilities, the Secretary considers the applicant to meet the requirement in paragraph (a) of this section if the applicant proposes to sell those securities after publicly advertising for bids for the securities in an advertising medium acceptable to the Secretary.

(2) Before advertising these bonds for sale, the applicant shall submit for the Secretary's approval—

(i) A draft of the notice of sale; and

(ii) A statement of essential facts concerning the sale.

(c)(1) An applicant proposing to issue securities that are not tax-exempt shall submit to the Secretary offers from at least three lending institutions normally engaged in making long-term construction, reconstruction, and renovation loans.

(2) The applicant shall have given each of those institutions the information necessary to enable it to specify in its offer the—

(i) Amount of the loan;

(ii) Interest rate;

(iii) Maturity period;

(iv) Security provisions; and

(v) Repayment provisions.

(d) The applicant—whether proposing to issue tax-exempt bonds or proposing to issue securities that are not tax-exempt—may not enter into a firm and binding agreement with a lender before the Secretary has approved the loan offer.

(20 U.S.C. 1132d–3(c))

§ 621.25 Invitation for bids.

(a) An applicant may not invite bids for construction, reconstruction, or renovation under its proposed project before submitting its application to the Secretary.

(b)(1) However, paragraph (a) of this section does not apply if—

(i) The Secretary has already approved assistance for the project under Title VII; or

(ii) Some other agency of the United States has already approved assistance for the project under some other Federal assistance program.

(2) In that case the Secretary considers the application only if the applicant submits it in response to an application notice occurring no later than 12 months after the applicant has begun the construction, reconstruction, or renovation.

(20 U.S.C. 1132d–3)

Subpart D—How Does the Secretary Make an Annual Interest Grant?

§ 621.30 Selection criteria for evaluating a proposed project.

(a) In evaluating a proposed project for which an applicant has applied for an annual interest grant under this program, the Secretary applies—

(1) The criterion in 34 CFR 620.31, worth up to 20 possible points;

(2) As applicable, the criteria in 34 CFR 620.32, 620.33, 620.34, 620.35, 620.36, 620.37, or 620.38, worth up to 80 possible points; and

(3) For ranking applications with identical scores, the priority considerations in 34 CFR 620.39.

(b) In applying the criteria referred to in paragraph (a) of this section, the Secretary awards the same maximum possible points as those contained in 34 CFR 620.31 through 620.38.

(20 U.S.C. 1132d–3)

§ 621.31 Conditions for approval of annual interest grants.

The Secretary approves an application for annual interest grants only if the Secretary is satisfied that—

(a) The applicant will have available, as required, funds to pay the total development cost of the facilities;

(b) The applicant has or will have a full title or interest in the site, including right of access, that is sufficient to insure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer;

(c) The applicant has the necessary legal authority to—

(1) Finance; construct, reconstruct, or renovate; and maintain the proposed facilities;

(2) Apply for and receive the proposed loan and annual interest grants; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan; and

(d) The applicant's financing plan meets the conditions of § 621.22 and is otherwise practicable and feasible.

(20 U.S.C. 1132d–3)

§ 621.32 Conditions for making an annual interest grant.

(a)(1) The Secretary considers making an annual interest grant only if the applicant is unable to secure from other sources a loan—up to the amount the Secretary may subsidize under the law—with an interest rate equally as favorable as the rate applicable to direct Federal loans under section 734 of the Act.

(2) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may establish, including public advertising for bids.

(b) The Secretary does not make an annual interest grant for a loan if a borrower is legally obligated under that loan before it has filed an application under this program.

(20 U.S.C. 1132d–3(d)(2))

§ 621.33 Annual interest grant agreement.

(a)(1) After approving an application for an annual interest grant, the Secretary prepares and sends to the applicant a proposed agreement containing the terms and conditions of the grant.

(2) The Secretary enters into this agreement for the benefit of the applicant institution only.

(b) The proposed agreement provides that the Secretary does not make any grant payments under the agreement unless the Secretary concurs in the rate of interest and other terms and conditions of the loan.

(c)(1) The applicant may not enter into the agreement—

(i) For the benefit of third parties; or

(ii) To induce—

(A) The making of loans by third parties; or

(B) The sale of bonds to third parties;

(2) The Secretary does not entertain grievances or claims of third parties with respect to the agreement between the Secretary and the applicant institution.

(20 U.S.C. 1132d–3)

§ 621.34 Amount of annual interest grant.

(a) Each interest grant that the Secretary makes is approximately equal to, but not more than, the difference between—

(1) The average annual debt service that the borrower is required to pay on the amount borrowed from private sources for the project covered by the application; and

(2) An average annual debt service on the same amount at an interest rate of four percent.

(b) The Secretary may amend the amount of the annual interest grant stipulated in the agreement to reflect changes in the amount or terms of the loan.

(c)(1) If the borrower increases its loan, it may request of the Secretary an increase in the amount of its annual interest grant.

(2) The borrower must make this request—

(i) Not later than 12 months after it has begun construction, reconstruction, or renovation; and

(ii) By submitting to the Secretary an amended application.

(3) The Secretary considers the request subject to the availability of funds.

(d) If, at the time the borrower becomes legally obligated under a loan, there has been a change in the rate of interest or the terms of the loan, the borrower may request of the Secretary an increase in the amount of its annual interest grant.

(20 U.S.C. 1132d–2(a))

§ 621.35 Limits of Federal assistance.

(a) The principal amount of a loan—or portion of a loan—on which the Secretary approves an annual interest grant, together with the amount of any other Federal financial assistance the applicant has obtained or is assured of obtaining under any other Federal program, may not exceed 90 percent of the eligible development costs.

(20 U.S.C. 1132d–3(d)(1))

(b) The aggregate principal amount of loans—or portions of loans—on which the Secretary approves annual interest grants does not exceed $5 million per campus for a Federal fiscal year.

(20 U.S.C. 1132d–3)

§ 621.36 Payment of annual interest grant.

(a) The Secretary makes payments under an annual interest grant agreement once a year.

(b) The date of payment coincides as closely as possible with—

(1) The anniversary date of the loan; or

(2) The date when debt service requirement related to the loan is greatest.

(c) The payment date remains fixed for the duration of the loan.

(d) The Secretary pays an annual interest grant—

(1) Directly to the grantee; or

(2) To a trustee, paying agent, or lender to whom the grantee assigns the payment with the permission of the Secretary.

(20 U.S.C. 1132d–3)

§ 621.37 Preceding provisions not exhaustive of authority of the Secretary.

The provisions of this Subpart D do not exhaust the authority of the Secretary to impose, at any time the Secretary considers appropriate, additional limitations with regard to—

(a) The amount of an annual interest grant; or

(b) The amount on which that grant is based.

(20 U.S.C. 1132d–3)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 621.40 Reduction of grant if refinancing produces lower costs.

If the Secretary finds that a grantee could have accelerated repayment of an outstanding loan or obtained a new loan that would have resulted in a net savings in the cost of the loan, the Secretary may recompute the amount of the annual interest grant as though the grantee had undertaken that refinancing.

(20 U.S.C. 1132d–3)

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Part XI

Department of Health and Human Services

Food and Drug Administration

Infant Formula Quality Control Procedures; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 106

nutrient, chloride. By 1979 a substantial number of cases concerning a medical disorder, known as hypochloremic metabolic alkalosis, were reported. This serious medical condition is most frequently characterized by the infant's

February and March 1980. The final House bill, H.R. 6940, was considered by the Committee on Interstate and Foreign Commerce on April 16, 1980, and ordered reported by unanimous vote (see H.R. Rept. No. 96–936, 96th Cong.,

periodic testing of infant formulas to determine whether they are in compliance with this section.

The legislative history describes the anticipated infant formula "quality control procedure" regulations in terms

testing, and analysis which requires (1) an acceptance protocol for ingredients assuring that they conform to strict specifications for composition and purity; (2) an in-process operational control program of ingredient addition

Definitions

Proposed section 106.3 (21 CFR 106.3) incorporates the definitions and interpretations contained in section 201 of the act (21 U.S.C. 321), when such

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 106

[Docket No. 80N-0025]

Infant Formula Quality Control Procedures

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: In accordance with the Infant Formula Act of 1980 (Pub. L. 96-359; 94 Stat. 1190), the Food and Drug Administration (FDA) is proposing to establish a new Part 106 (21 CFR Part 106) that requires quality control procedures for the manufacture of infant formula products. The proposed regulations specify a systematic procedure of sampling, testing, analyses, and recordkeeping for in-process and finished formulas and require manufacturers to establish the following: an acceptance protocal for ingredients assuring that they conform to strict specifications for composition and purity; and in-process operational control program of ingredient addition, blending, homogenization, and standardization; and a finished product evaluation system that specifies sampling frequency and an analytical format that defines product release ranges at which the product may be shipped. This proposal ensures that infant formula products contain the necessary nutrients at the specified levels as required by the Infant Formula Act of 1980.

DATES: Comments by March 2, 1981. Proposed compliance date for all affected products initially introduced or initially delivered for introduction in interstate commerce or prepared from raw materials shipped in interstate commerce is 180 days after date of publication of the final regulation.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305). Food and Drug Administration, Rm. 4-62, 5600 Fisher Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Bureau of Foods (HFF-204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3117.

SUPPLEMENTARY INFORMATION: In 1978 a major manufacturer of soy protein-based infant formulas reformulated two of its products. The reformulation resulted in products containing an inadequate amount of the essential nutrient, chloride. By 1979 a substantial number of cases concerning a medical disorder, known as hypochloremic metabolic alkalosis, were reported. This serious medical condition is most frequently characterized by the infant's failure to thrive. These cases of infant illness were found to be associated with prolonged exclusive use of the chloride-deficient soy formulas. This incident made it clear that greater regulatory control over the formulation and processing of infant formulas was necessary.

In response to the chloride-deficient soy formula occurrence, the Commissioner of Food and Drugs contacted members of the infant formula industry requesting information concerning quality assurance and quality control procedures and nutrient analytical methodology. After the submission of these data, the agency, held an open public meeting and an informal public hearing on the general issues of infant formula processing, testing, composition, and safety (see the Federal Register of January 29, 1980; 45 FR 6702). The meeting was conducted in Washington, DC on February 19, 1980, to obtain public comment on the issues of open date labeling, quality control and quality assurance practices, and clinical testing needs for infant formulas. The hearing, also in Washington, DC, was conducted on March 12, 1980, and gathered public comment on the adequacy of the current nutrient composition of infact formulas and whether revision of FDA's infant formula nutritional labeling regulation, 21 CFR 105.65, was necessary. The comments relevant to the proposed quality control procedure regulations which were received in response to these public proceedings are on file with the Dockets Management Branch under the docket number set forth above.

The Congress was also quick in recognizing the need for more stringent government control over these vital food products. As early as November 8, 1979, several legislative proposals, each entitled the Infant Formula Act of 1980, were introduced by various members of the U.S. House of Representatives, most notably by Messrs. Gore, Mottl, and Carter, and were referred to the House Subcommittee on Health and the Environment (Subcommittee). These proposals were intended to require a broad range regulatory scheme for infant formula products which included periodic testing, a statutory nutrient table, and recordkeeping requirements for assuring their safety and nutritional quality. Hearings on these proposals were conducted by the Subcommittee in February and March 1980. The final House bill, H.R. 6940, was considered by the Committee on Interstate and Foreign Commerce on April 16, 1980, and ordered reported by unanimous vote (see H.R. Rept. No. 96-936, 96th Cong., 2d Sess., p. 4 (May 12, 1980)).

Similar legislation to tighten regulatory control over infant formulas was introduced in the U.S. Senate by Messrs. Metzenbaum, Baucus, and Leahy on March 27, 1980. The Senate bill, S. 2490, was referred to the Committee on Labor and Human Resources (Committee). Hearings on the legislation were conducted by the Subcommittee on Health and Scientific Research on June 12 and August 5, 1980, and it adopted and accepted the House companion bill, H.R. 6940, with one amendment. On August 21, 1980, S. 2490 was ordered reported by the full Committee (see S. Rept. No. 96-916, 96th Cong., 2d Sess., p. 2 (August 26, 1980)).

Thereafter, this bill was passed by both Houses of Congress. On September 26, 1980, the President signed into law the Infant Formula Act of 1980 (Pub. L. 96-359, 94 Stat. 1190). This amendment to the Federal Food, Drug, and Cosmetic Act (the act) establishes a new section 412 (21 U.S.C. 350a) and creates a separate category of food designated as "infant formula." It requires that infant formulas meet specified standards of quality and safety. Section 412(g) of the act provides that an infant formula shall contain nutrients at specified levels in accordance with a table set forth therein. If a formula product, except for a special formula as defined in section 412(f) of the act, fails to contain the nutrients in the specified amounts, it is deemed adulterated under new section 412(a)(1)(A). In addition, if a formula, except for one defined in section 412(f), does not meet certain quality factor requirements (section 412(a)(1)(B)) or if a formula is not manufactured or processed in compliance with certain quality control procedures (section 412(a)(1)(C)), it is also deemed adulterated.

Section 412(a)(2)(D) of the new law gives the Secretary of Health and Human Services the authority to promulgate regulations * establishing:

> Such quality control procedures * * * necessary to assure that an infant formula provides nutrients in accordance with this section and establish requirements respecting the retention of records of procedures required under this clause (including maintaining necessary nutrient testing records) * * *. Quality control procedures prescribed by the Secretary shall include the

* This authority is delegated to the Commissioner of Food and Drugs, 21 CFR 5.1(a)(1).

periodic testing of infant formulas to determine whether they are in compliance with this section.

The legislative history describes the anticipated infant formula "quality control procedure" regulations in terms which encompass the entire manufacturing process:

> * * * Quality control procedures are those procedures which would assure proper manufacturing of formula products.
>
> Quality control procedures are not limited to those "good manufacturing practices" applicable to food. Quality control procedures are intended to insure that the safety and nutritional potency of a formula is built into the manufacturing process. This authority is necessary as the absence of quality control mechanisms was a major factor in the production and subsequent sale last year of two formula products critically deficient in chloride. Existing statutory authority in this area is inadequate as it is limited to assurances that infant formula is filth free and is manufactured in a sanitary facility. S. Rept. No. 96-916, 96th Cong., 2d Sess., pp. 5-6 (August 26, 1980); H.R. Rept. No. 96-936, 96th Cong. 2d Sess., pp. 6-7 (May 12, 1980).

It is therefore clear that such procedures for infant formulas are to be in addition to those procedures currently codified under the good manufacturing practice (GMP) regulations applicable to food sanitation (21 CFR Part 110) and the GMP requirements for low-acid canned foods (21 CFR Part 113).

Until the agency promulgates infant formula quality control procedure regulations, the new law requires manufacturers to test their formula products to assure their nutritional quality and safety and report to FDA every 90 days that their formulas provide nutrients required by the table in section 412(g) (see section 412(b)(1) of the act).

The Congress expected FDA to move expeditiously in proposing, promulgating, and establishing quality control procedures for the manufacturing of infant formulas. S. Rept. No. 96-916, 96th Cong., 2d Sess., p. 6 (August 26, 1980). Thus, the agency is now proposing to establish new Part 106 (21 CFR Part 106) specifying the infant formula quality control procedures. These procedures are applicable to the entire infant formula manufacturing process, from the receipt of ingredients until the finished infant formula is released for shipping.

A total quality control program for the manufacture of infant formulas is necessary to ensure that each batch of the formula is uniform in its composition and conforms to the requirements of section 412 of the act. These proposed regulations constitute a planned and systematic procedure of sampling, testing, and analysis which requires (1) an acceptance protocol for ingredients assuring that they conform to strict specifications for composition and purity; (2) an in-process operational control program of ingredient addition, blending, homogenization, and standardization; and, (3) a finished product evaluation system that specifies sampling frequency and an analytical format that defines the product release ranges at which the product may be shipped. These procedures necessarily include requirements for establishing and maintaining adequate quality control records to document that each formula meets the testing and nutrient requirements of section 412 of the act. In addition, the agency is including as a subpart to this proposal the notification format to be followed by manufacturers in reporting to FDA under those situations set forth at sections 412(b) and 412(c) of the act. Notice of these reporting procedures was published in the **Federal Register** of November 21, 1980 (45 FR 77136) and do not require public comment. The instruction to promptly notify FDA of a suspected adulteration or misbranding of an infant formula has been modified to provide for telephone notification (see § 106.130(d)) of either the Director of the appropriate FDA district office or the Emergency and Epidemiological Operations Branch in headquarters.

Status and Applicability of Quality Control Procedure Regulations

Proposed § 106.1 (21 CFR 106.1) states that the criteria set forth in proposed §§ 106.20, 106.25, 106.30, and 106.100 shall apply in determining whether the controls used in the manufacture, processing, and packing of infant formula products meet the requirements of section 412 of the act as to safety, quality, and nutritional composition. (See sections 412(a)(1)(C) and 412(a)(2)(D) of the act.) A manufacturer's failure to comply with the applicable requirements of these regulations after their effective date shall render the infant formula product adulterated under section 412(a)(1)(C) of the act, and such formula as well as the person who is responsible for the failure to comply may be subject to regulatory action. Thus, these regulations, after promulgation, will have the full force and effect of law. See *Weinberger* v. *Hynson, Wescott & Dunning, Inc.*, 412 U.S. 609 (1973); *United States v. Nova Scotia Food Products Corp.*, 568 F.2d 240 (2d Cir. 1977); *National Nutritional Foods Ass'n* v. *Weinberger*, 512 F.2d 688 (2d Cir. 1975).

Definitions

Proposed section 106.3 (21 CFR 106.3) incorporates the definitions and interpretations contained in section 201 of the act (21 U.S.C. 321), when such terms are used in these proposed regulations. Other more technical terms are defined in this proposed regulation and are based on FDA's experience in regulating foods and common usage in the infant formula industry.

Quality Control Requirements

Receipt of ingredients. Proposed § 106.20 (21 CFR 106.20) describes those procedures applicable to the receipt of infant formula ingredients which are essential for assuring that each ingredient meets its stated specifications and, therefore, assuring that the finished product conforms to section 412(g) of the act. To assure that ingredients, which contain nutrients likely to be affected by shipping, storage, or other conditions (such as an error in the mixing of nutrients by the supplier), conform to their specifications, each lot of ingredient which may be affected must be analyzed for such nutrients, or if appropriate, an indicator nutrient. An indicator nutrient is one, usually a label ingredient of a premix, the concentration of which is measured at several stages during the production of the infant formula product because it is most likely to be affected by the process. If ingredients, including nutrients and nutrient premixes, are not certified or guaranteed by the supplier or labeled as meeting prescribed standards, an extensive sampling and testing plan must be employed utilizing a statistically random sampling followed by confirmatory quantitative analysis for each nutrient required by section 412(g) of the act. The proposed section requires that an identifying number or code be used in recording the disposition of each nutrient ingredient, as examples, when they are rejected to the supplier or when they are added to a premix or batch.

In-Process Control

Proposed § 106.25 (21 CFR 106.25) describes the requirements for infant formula in-process control. Each distinct processing operation shall be entered on a batch record and its satisfactory completion recorded by the operator. A designated supervisor shall check and sign each batch record. A second person shall confirm the addition of each ingredient. Sampling the in-process batch after various additions of nutrients, analyzing the composition for uniformity and indicator nutrients, and standardizing the completed batch

assures the formula's conformity to the nutritional requirements of section 412(g) of the act.

Base Blend

process batch. FDA is proposing in § 106.25(d) to require that the presence of the proper quantity of that nutrient be verifed by analysis of each in-process batch for that nutrient, unless the frequency of sampling and analysis of finished product after processing and packaging is required.

Release of Product for Heat Sterilization

section 412(g) of the act and those claimed on the label, the timeframe for analyses is not uniform for all nutrients. FDA believes that less frequent analyses for certain nutrients are

evaluated to ascertain and implement steps that need to be taken to maintain the product in conformity with section 412(g) of the act.

Changes in Ingredients or Processes

National Confectioner Ass'n v. *Califano*, 569 F.2d 690, 695 (D.C. Cir. 1978).

In addition, Congress has reemphasized in the Infant Formula Act of 1980 the importance of the concepts

assures the formula's conformity to the nutritional requirements of section 412(g) of the act.

Base Blend

Production of an in-process batch usually begins with the formulation of a base blend, generally from either milk or soy ingredients, or other sources of protein, as well as other sources of fat or carbohydrate. The base blend may also contain various electrolytes, emulsifiers, stabilizers, and other functional ingredients. FDA is proposing in § 106.25(b) that each base blend be sampled after thorough mixing and analyzed for protein, fat, ash, moisture, and carbohydrate to confirm the levels of the major components in the base blend.

Premixes

Certain infant formula ingredients such as vitamins, minerals, and amino acids are sometimes added to the in-process batch as premixes. Commonly used premixes for infant formula production generally include an oil-soluable premix and one or more water-soluble premixes. FDA is proposing in § 106.25(c) that a premix which is made from individual nutrient components by the infant formula manufacturer shall be analyzed for each nutrient prior to its addition to the base blend, unless analyses for each nutrient contributed by the premix are performed on the contents of the holding tank(s) as prescribed in proposed § 106.25(e). When a premix is analyzed for each nutrient as set forth in proposed § 106.25(c), FDA is proposing that the in-process batch be analyzed for the appropriate indicator nutrient as provided by § 106.25(d). After the addition of premixes to the base blend, the proper quantity of each premix in an in-process batch may be verified (proposed in paragraph (d)) by analyzing each in-process batch for one or more of the indicator nutrients of each of the premixes used. Unless analyses for each nutrient contributed by a premix are perfomed in-process, such analyses must be performed on the contents of the holding tank(s). If the indicator nutrient is within the prescribed limit of specification, the other component nutrients are expected to be in the in-process batch within specification. However, selected batches of finished product in containers are to be analyzed for all nutrients specified in section 412(g) of the act (proposed in § 106.30(a), (b), and (c)).

When a nutrient ingredient is not suitable for use in the preparation of a uniform, stable premix, that nutrient is sometimes added separately to the in-process batch. FDA is proposing in § 106.25(d) to require that the presence of the proper quantity of that nutrient be verifed by analysis of each in-process batch for that nutrient, unless the analysis is later performed on samples from the holding tank(s) as prescribed in proposed § 106.25(e). After the addition of premixes and nutrients added individually, proposed § 106.25(f) requires the in-process batch to be adjusted as necessary to confrom to the batch formula.

Product in Holding Tanks

One or more in-process batches may be accumulated in a holding tank(s) to form a filling batch which then is standardized prior to further processing. FDA is proposing in § 106.25(e) to require the testing of samples from each holding tank of the product for solids, homogeneity, osmolality, and sedimentation as indicators of nutrient dispersal and consequent product uniformity. Testing for other physical attributes of infant formulas is not included in this proposed regulation because most physical attributes normally are used as a measure of the organoleptic properties of the product and do not aid in determining that nutrient levels in the product are being maintained. FDA is also proposing in § 106.25(e)(1) to (5) to require that samples taken from the holding tank be analyzed for major nutrients (protein, fat, and carbohydrate); for indicator nutrients in premixes; for each nutrient in a premix made from individual nutrient components by the infant fromula manufacturer unless analyzed prior to use; and for nutrients added independently of premixes during formulation of the product, unless analyzed in the in-process batch.

The level of testing and analyses proposed for the product in the holding tank, together with the previously discussed requirements for the sampling and analysis of ingredients and in-process product, provides the manufacturer with an increased ability to detect and correct product compositional defects prior to heat sterilization or dehydration and packaging into individual containers. For those nutrients that are heat-labile, appropriate indicator nutrients shall be checked after heat processing or dehydration to assure their adequacy in the finished product (proposed in § 106.30(b)(1)(ii)). In this manner, an increased level of assurance of finished product integrity is attained at the earliest possible time in the porcess, thus averting expensive finished product rework or recall if distributed. At the same time, a decreased level and frequency of sampling and analysis of finished product after processing and packaging is required.

Release of Product for Heat Sterilization or Dehydration

FDA proposes in § 106.25(f) that if the product in each holding tank conforms to its specifications, it may be released for subsequent heat sterilization or dehydration and packaging. Otherwise, it shall be adjusted and reanalyzed to verify the efficacy of standardization.

Finished Product Analyses Prior to Shipment

FDA proposes in § 106.30 (21 CFR 106.30) that random samples of product taken after heat sterilization or dehydration and packaging be tested for physical attributes and analyzed for indicator nutrients that measure possible product damage before the product is released from the manufacturer's control. FDA is proposing product analysis for indicator nutrients that measure possible damage because certain nutrients that are sensitive to heat, light, oxygen, pH, or a combination thereof may be affected by the manufacturing processes. Trace minerals, such as copper and iron, and enzymes may catalyze these effects. Heating and/or the presence of reducing sugars may degrade protein quality by decreasing the biological availability of certain essential amino acids of the protein. The indicator nutrient(s) selected to measure process damage in any formulation must be the nutrient(s) most susceptible to process damage.

When two or more nutrients are equally suitable to fulfill an indicator role, the complexity and cost of the analytical methods for these nutrients are additional factors affecting the selection decision. In addition, the same nutrient may be adequate to fulfill more than one indicator role, simplifying part of the control process. Thus, vitamin A may serve as an indicator of the oil-soluble premix addition to the in-process batch and as a measure of process damage in the finished product.

When the history of nutrient stability gathered during product development indicates that a satisfactory indicator nutrient level gives assurance of proper levels of nutrients similar to the indicator, the product may be shipped if the result of that analysis is satisfactory.

Finished Product Analyses of Selected Batches

FDA proposes in § 106.30(b) a three-tiered staggered analyses program for finished formula products. While samples of the finished product must be monitored for all nutrients required by section 412(g) of the act and those claimed on the label, the timeframe for analyses is not uniform for all nutrients. FDA believes that less frequent analyses for certain nutrients are reasonable; many require a longer time to analyze than other nutrients that can satisfactorily serve as indicators. There are no documented cases of deficiencies in normal infants of biotin, choline, and inositol. Vitamins D and K are well retained in the human body; vitamin D also is highly stable in infant formulas, while vitamin K intake in infants other than newborns is usually augmented by intestinal bacterial production of this vitamin. The vegetable oils now used as fat sources are rich in linoleic acid. Protein efficiency ratio (PER) and tryptophan (the content of which may be used in meeting the niacin requirement in section 412(g) of the act) are not expected to vary unless there is a change in the protein ingredients or processing procedures, at which time an analysis of these components is required.

Although thickening and stabilizing agents may be added to infant formulas to maintain the consistency and to prolong the stability of the product over its shelf life, there may be some changes in consistency and nutritional qualities during storage. Therefore, FDA is proposing in § 106.30(b)(3) that samples from selected filling batches be checked at 3 month intervals throughout the shelf life of the product to ascertain its stability and nutritional adequacy. Scheduling a bioanalysis of vitamin D and the biological evaluation of PER to occur over a 6-month cycle rather than every 3 months is considered appropriate because of the length of time required to complete the bioanalysis.

Criteria for accepting and rejecting a product

FDA is proposing in § 106.30(c) that the ranges of nutrient composition in the finished product shall be such that their lower limits do not fall below, and their upper limits do not exceed, the minimum and maximum levels, respectively, specified in section 412(g) of the act and that the composition shall be consistent with label declarations. To assure that the upper and lower levels of the listed nutrients in the act are met, proposed § 106.30(d) requires the establishment of an appropriate finished product acceptance/rejection system based on statistical quality control criteria. The proposal further requires that when the results of testing three consecutive filling batches show a trend in deviations from specified ranges in one or more nutrients, the product shall be evaluated to ascertain and implement steps that need to be taken to maintain the product in conformity with section 412(g) of the act.

Changes in Ingredients or Processes

FDA proposes in § 106.30(e) that an infant formula manufactured after changes in the formulation or processing has occurred must be controlled more stringently than products manufactured without such changes. To assure the adequacy of the nutrient composition of formulas manufactured after a change in formulation or processing has occurred, FDA is proposing that a manufacturer be required to evaluate the effects of changes in ingredients or processing conditions in the first and last of the first 10 filling-batches together with product from any 2 of the other 8 filling batches. As set forth in proposed § 106.30(e)(1), if the changes in formula are minor (e.g., changing ingredients from one supplier to another whose products differ only in minor aspects from those previously used), composite samples are to be analyzed for all nutrients changed and for those nutrients affected by the change. As set forth in proposed § 106.30(e)(2), if the changes in formulation are major (e.g., changing type of ingredients, such as soy flour to soy isolate, or replacing a heat exchanger with a steam injector-vapor tank system), a complete analysis of all required nutrients and of PER is to be performed on the 1st and 10th filling batches as well as on any two of the other eight filling batches, except that analyses for linoleic acids, vitamin D, vitamin K, choline, inositol, biotin, PER, and tryptophan (if necessary as part of the declaration of niacin equivalents) need be made only on the 1st and 10th batches if they meet specifications. These detailed analyses are necessary to further assure nutritional adequacy, i.e., that the priemix system is functioning as intended, and that no unexpected losses of nutrients are occurring during processing.

Coding

The coding of food products is necessary and important in ascertaining positive lot identification. Positive lot identification facilitates the identification, the segregation, and the traceability of contaminated products or products that may be otherwise unfit for their intended use. Congress has recognized the utility of this type of product coding, as have many members of the food industry, who have developed guidelines for their segments of the industry. The courts too recognized the self-evident rationality of the coding of food products. See *National Confectioner Ass'n* v. *Califano*, 569 F.2d 690, 695 (D.C. Cir. 1978).

In addition, Congress has reemphasized in the Infant Formula Act of 1980 the importance of the concepts of coding and traceability for infant formulas by requiring each infant formula manufacturer to make and retain necessary records respecting the distribution of the infant formula through any establishment owned or operated by such manufacturer as may be necessary to effect and monitor a recall of the formula. (See section 412(e)(1) of the act). Accordingly, FDA is proposing in § 106.90 (21 CFR 106.90) to require the manufacturer to place permanent and conspicuous legible coding marks on each infant formula package delivered or displayed to pruchasers, so that such code marks can be easily seen on the unopened package. The marks must identify at a minimum, the establishment where the formula is packed, the product that is contained therein, the year and day and product that is packed, and the period during which, the product is packed. Further, FDA is proposing that the packing period code be changed with sufficient frequency to enable the identification of a period of time when certain personnel were on duty and in-plant conditions were relatively constant.

Records and Reports

The Infant Formula Act of 1980 expanded the agency's inspectional authority in section 704 of the act (21 U.S.C. 374), by permitting duly authorized FDA employees to have access to and to copy and verify any records bearing on whether any infant formula meets the requirements of section 412 of the act. Thus, FDA is proposing in § 106.100 (21 CFR 106.100) that infant formula manufacturers maintain: (a) Records of the results of examinations or copies of supplier guarantees or certifications verifying that the raw materials, packing materials, and infant formulas comply with section 412 of the act and with FDA regulations, guidelines, or action levels, and (b) those quality control procedure records, including in-process and finished product testing records, necessary to show that the nutrient content of infant formulas meets the requirements of section 412 of the act. FDA proposes that these records be kept for a period of time that meets or exceeds the shelf life of the product.

Notification

FDA is including as subpart D to the proposed quality control procedure regulations (proposed §§ 106.120, 106.122, and 106.130; 21 CFR 106.120,

106.122, and 106.130) the notification procedures and format to be followed by manufacturers in reporting to FDA as required by sections 412(b) and 412(c) of the act. Notice of these reporting

provided at the public meeting was not sufficiently specific to constitute a basis for the development of an FDA policy on clinical testing of infant formulas. A copy of the testimony received at the

or to measure the effectiveness (performance) of an infant formula? Although responses to these specific questions are especially desired, comments on any aspect of clinical

Subpart A—General Provisions

§ 106.1 Status and applicability of the quality control procedure regulations.

(a) The criteria set forth in §§ 106.20,

(e) *Manufacturer.* A manufacturer is a person that prepares, reconstitutes, or otherwise changes the phycical or chemical characteristics of an infant

give a composite sample for confirmatory quantitative analysis for each nutrient. The samples shall be analyzed by recognized methods, such as those in the current "Official Methods

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106.122, and 106.130) the notification procedures and format to be followed by manufacturers in reporting to FDA as required by sections 412(b) and 412(c) of the act. Notice of these reporting procedures was published in the **Federal Register** of November 21, 1980 (45 FR 77136) to advise manufacturers of the reporting requirements in new section 412 of the act and to inform them of how to notify the agency and which offices at FDA to submit the required reports.

In that notice, the agency included the reporting requirement of section 412(b)(1) of the act, which directs manufacturers to notify FDA within 90 days following the date of enactment of the Infant Formula Act and on each 90th day thereafter, that each "existing" infant formula produced by a manufacturer provides nutrients required by section 412(g) of the act. Because this reporting requirement expires on the effective date of these proposed quality control procedure regulations, the agency is not including the format for the section 412(b)(1) reporting requirement herein. In addition, the reporting format in § 106.122 for reformulations as required by section 412(b)(3) of the act, has been modified to include a short description of the change(s) in formulation; and the telephone notification in § 106.130(d) has been modified to give the manufacturer the option of contacting either the appropriate FDA District Director or the FDA Emergency and Epidemiological Operations Branch. However, all other reporting formats required by section 412(b) and (c) of the act will continue to be applicable and are therefore being included in these proposed regulations. Because these notification requirements are not substantive and reflect only a statutory interpretation of section 412(b) and (c), public comment is not required.

Clinical Testing

FDA recognizes that premarket clinical evaluation in humans may be appropriate whenever certain changes affecting the nutritional profile of an infant formula are made, particularly in the case of new or reformulated products. FDA also recognizes that the degree and complexity of clinical testing would vary according to the extent of the changes in the formula. The testimony that was received during the February 19, 1980, public meeting was supportive of the need for clinical trials in appropriate situations and indicated that the infant formula industry now makes ad hoc decisions to clinically evaluate formulas based upon recommendations of physicians and nutritionists. However, the discussion provided at the public meeting was not sufficiently specific to constitute a basis for the development of an FDA policy on clinical testing of infant formulas. A copy of the testimony received at the public meeting concerning infant formula clinical testing is on file with the Dockets Management Branch under the docket number set forth above.

FDA also requested recommendations from the Committee on Nutrition of the American Academy of Pediatrics (CON/AAP) on clinical testing of infant formulas. In a statement on June 23, 1980, CON/AAP reported to FDA that clinical testing of new and reformulated products is considered advisable from time to time, and is now carried out in established clinical research centers with the collaboration of technical experts, nutrition scientists, and pediatricians. CON/AAP recommended that, in view of the existing practices governing nutrient content and manufacturing procedures, no regulations be devised for infant formula clinical testing. This recommendation was based on three reasons: (1) Problems with the manufacture of infant formulas have been exceptionally rare in the past; (2) future modifications of infant formulas that are justified nutritionally or economically cannot be wholly predicted, and no simple code can govern all anticipated eventualities; and, (3) future clinical trials will have to be adapted to the evolving ethical codes governing research on infants. A copy of the CON/AAP statement with accompanying background information on infant formula regulations is also on file with the Dockets Management Branch.

Considering the complexities surrounding clinical testing of infant formulas in infants and the fact that such testing is currently an integral part of the manufacturer's development of new formulas, FDA is not now proposing regulations on clinical testing of infant formulas. However, the agency is soliciting public comment on the need for establishing a policy or regulation on clinical testing of infant formulas. Answers to the following questions are essential to the development of an agency policy, and comments thereon are requested: (1) What constitutes a new infant formula, and what constitutes major reformulations of existing formulas that would require clinical testing; (2) what constitutes adequate metabolic testing, growth and development studies, or acceptance and tolerance tests, and in what situations are each of these types of testing appropriate; and (3) what criteria should be used to evaluate the results of tests or to measure the effectiveness (performance) of an infant formula? Although responses to these specific questions are especially desired, comments on any aspect of clinical testing of infant formulas are welcomed. All comments received will be considered by FDA in determining its future course of action with respect to clinical testing of infant formulas.

FDA proposes that all affected products initially introduced into, or initially delivered for introduction into, interstate commerce or prepared from raw materials shipped in interstate commerce on or after 180 days after date of publication in the **Federal Register** of any final regulation adopted on the basis of this proposal, shall comply with that regulation.

The agency has determined under 21 CFR 25.24(d)(13) (proposed December 11, 1979 (44 FR 71742)) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 412, 701(a), 52 Stat. 1055 as amended, 94 Stat. 1190 (21 U.S.C. 350a, 371(a))), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended by adding new Part 106 to read as follows:

PART 106—INFANT FORMULA QUALITY CONTROL PROCEDURES

Subpart A—General Provisions

Sec.

106.1 Status and applicability of the quality control procedure regulations.
106.3 Definitions.

Subpart B—Quality Control Procedures for Assuring Nutrient Content of Infant Formulas

106.20 Ingredients receipt.
106.25 In-process control.
106.30 Finished product evaluation.
106.90 Coding.

Subpart C—Records and Reports

106.100 Records.

Subpart D—Notification Requirements

106.120 New formulations.
106.122 Reformulations.
106.130 Notification format.

Authority: Secs. 412, 701(a), 52 Stat. 1055 as amended, 94 Stat. 1190 (21 U.S.C. 350a, 371(a)).

Subpart A—General Provisions

§ 106.1 Status and applicability of the quality control procedure regulations.

(a) The criteria set forth in §§ 106.20, 106.25, 106.30, 106.90, and 106.100 shall apply in determining whether the controls used in the manufacturing, processing, and packing of infant formula products meet the requirements of section 412 of the act as to safety, quality, and nutritional composition.

(b) The failure to comply with any regulation set forth in §§ 106.20, 106.25, 106.30, 106.90, and 106.100 applicable to the manufacturing, processing, and packing of an infant formula shall render such formula adulterated under section 412(a)(1)(C) of the act, and such formula, as well as the person who is responsible for the failure to comply, may be subject to regulatory action.

(c) The requirements set forth in this part are to be implemented and followed by any person who is a manufacturer of an infant formula.

(d) If a person engages in only some operations subject to the regulations in this part and not others, that person need only comply with those regulations applicable to the operations in which he or she is engaged.

§ 106.3 Definitions.

The definitions and interpretations contained in section 201 of the act are applicable to such terms when used in this part. The following definitions shall also apply:

(a) *Filling batch.* A filling batch is one or more in-process batches combined in a holding tank(s) and standardized for filling into finished product containers over a prescribed filling time.

(b) *Ingredients.* Ingredients are all substances, including the required nutrients specified in section 412(g) of the act, which are necessary for the manufacture of an infant formula product.

(c) *Indicator nutrient.* An indicator nutrient is a nutrient, usually one ingredient of a premix, the concentration of which is measured at several stages during the manufacturing of the infant formula product to confirm one or both of the following characteristics or operations:

(1) Proper addition and proper distribution of premix in the in-process batch and in the holding tank; and

(2) Stability of labile nutrients during production, e.g., vitamin A, vitamic C.

(d) *In-process batch.* An in-process batch is a combination of ingredients, including the base blend, premixer and other nutrients in accordance with a manufacturing order at any point in the process prior to packaging.

(e) *Manufacturer.* A manufacturer is a person that prepares, reconstitutes, or otherwise changes the phycical or chemical characteristics of an infant formula as defined in section 201(aa) of the act and packages the product in a container for distribution.

(f) *Nutrient.* A nutrient is any vitamin, mineral, or other substance required by section 412(g) of the act.

(g) *Nutrient premix.* A nutrient premix is a combination of two or more nutrients which is added as a single ingredient during processing.

Subpart B—Quality Control Procedures For Assuring Nutrient Content of Infant Formulas

§ 106.20 Ingredients

(a) Manufacturers shall ensure that incoming ingredients are not used in the manufacture of infant formulas if they have visable shipping damage or other defects or their label does not comport with order specifications. An identifying number or code shall be used in recording the disposition of each nutrient ingredient.

(b) Ingredients, other than nutrient premixes, which are generally stable in shipping and storage, and which are received under a supplier's guarantee or certification, or are labeled as having compositions complying with specifications in the U.S. Pharmacopeia, the National Formulary, the Food Chemicals Codex, or other similar recognized standards, may be forwarded without analysis for manufacturer use.

(c) When the nutrient(s) in an ingredient is likely to be affected by shipping or storage conditions, it shall be sampled and analyzed by the manufacturer. The ingredients shall be sampled by taking statistically randomized subsamples and a composite of the subsamples shall be analyzed quantitatively for each such nutrient or nutrients.

(d) Nutrient premixes which have been guaranteed or certified by the supplier shall be sampled and analyzed by the manufacturer. Such a premix shall be sampled by taking statistically randomized subsamples, and a composite of the subsamples shall be analyzed quantitatively for an indicator nutrient.

(e) Where ingredients, including individual nutrients or nutrient premixes, are without a supplier's guarantee or certification, or are not labeled as complying with prescribed standards, each lot shall be sampled and analyzed by the manufacturer. Each lot shall be sampled by taking statistically randomized subsamples to give a composite sample for confirmatory quantitative analysis for each nutrient. The samples shall be analyzed by recognized methods, such as those in the current "Official Methods of Analysis of the Association of Official Analytical Chemists," including a chemical method for vitamin D unless otherwise specified in this regulation. If found to be within specifications, the ingredients may be forwarded for manufacturing use.

(f) Lots that are not within specifications shall be conspicuously marked by the manufacturer that they have been rejected and shall be removed to a restricted area pending disposition.

§ 106.25 In-process control.

(a) An appropriate formula based on the composition of the ingredients and prepared for each in-process batch shall be checked and signed by a quality control supervisor. Each ingredient of the batch, and the amount and place of entry of the ingredient into the process, shall be listed on a batch record. Operators shall initial each entry of an ingredient into the process and record nutrient ingredient identification numbers on the batch record. This record shall accompany the batch while in-process and each entry on it shall be initialed by a second person for verification of the kind and the amount of the ingredient. The batch record shall be filed with all processing control records associated with the batch.

(b) A base blend, prepared by mixing the appropriate ingredients, including sources of protein, fat, and carbohydrate with filtered, potable water of quality mandated by the local Public Health Agency shall be thoroughly mixed and sampled by the manufacturer. A proximate analysis for protein, fat, ash, moisture, and carbohydrate shall be performed by the manufacturer on samples from each base blend.

(c) A premix that is made from individual nutrients by the infant formula manufacturer shall be analyzed by such manufacturer for each nutrient prior to its addition to the base blend, unless analyses for each nutrient contributed by the premix are performed on the contents of the holding tank(s) as prescribed in paragraph (e) of this section.

(d) After the addition of the nutrient premixes to the base blend, and homogenization, when appropriate, the inprocess batch may be sampled and analyzed for the apropriate indicator nutrient of each premix (e.g., vitamin A for the oil-soluble premix, vitamin C for the water-soluble vitamin premix, and manganese for the mineral premix). If a

nutrient is not suitable for use in the preparation of a uniform, stable premix, or if the composition of the nutrient is altered significantly with ensuing

(ii) Indicator nutrients to assess process damage, such as vitamin A, vitamin B_1, vitamin B_6, and vitamin C.

(2) *Extended analysis.* Replicate samples of containers for the immediate

exceed, the minimum and maximum levels, respectively, specified in section 412(g) of the act, and the composition shall be consistent with label declarations.

to bring the ranges of nutrient concentration more closely within prescribed release limits; changing ingredients from one supplier to another whose products differ only in minor

with FDA regulations, guidelines, or action levels for raw materials, food-packaging materials, and infant formulas shall be maintained by the manufacturer.

Name:
Address:

(City) (State) (Zip Code)

4. If establishment has a parent company, enter parent company name and address. If

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nutrient is not suitable for use in the preparation of a uniform, stable premix, or if the composition of the nutrient is altered significantly with ensuing processing, it may be added separately at the most advantageous point in the manufacturing process to ensure its presence in prescribed amounts in the finished product. After the addition of such nutrient, the in-process batch may be analyzed for each individual added nutrient. Unless specified nutrient analyses are performed in-process, they shall be performed on the contents of the holding tank(s) as prescribed in paragraph (e) of this section.

(e) The manufacturer shall accumulate in-process batches in the holding tank(s) from which each filling batch is to be drawn. Each filling batch shall be held in storage until the nutrient composition of the contents of each holding tank is verified. After mixing, samples from each holding tank shall be analyzed by the manufacturer for the following physical attributes and nutrients:

(1) Solids, homogeneity, osmolality, and sedimentation.

(2) Protein, fat, and carbohydrate.

(3) Indicator nutrient(s) for premixes.

(4) Each nutrient in a premix made from individual nutrent components by the infant formula manufacturer and not analyzed in the in-process batch.

(5) Nutrients added independently of premixes during formulation of the product if not analyzed in the in-process batch.

(f) If the formula product in each holding tank conforms to its specifications, it may be released for heat sterilization or dehydration and packaging; otherwise it shall be adjusted as required and reanalyzed to verify the efficacy of standardization.

§ 106.30 Finished product evaluation.

(a) The manufacturer shall take random samples of the finished formula product from each packaging line after heat sterilization or dehydration and packaging, to represent the entire filling batch (i.e., from the start of the first holding tank to the end of the last holding tank).

(b) A sufficient number of containers shall be taken by the manufacturer to provide adequate product for the following types of testing:

(1) *Immediate analysis.* A composite sample of three containers taken randomly over each 2-hour period at each packaging line for each filling batch shall be analyzed before shipping for:

(i) Solids, homogeneity, osmolality, and sedimentation.

(ii) Indicator nutrients to assess process damage, such as vitamin A, vitamin B_1, vitamin B_6, and vitamin C.

(2) *Extended analysis.* Replicate samples of containers for the immediate analyses, as described in paragraph (b)(1) of this section, are to be taken from the first of every 10 filling batches or taken semi-monthly, whichever comes first. These samples shall be analyzed for the content-of reducing sugar and all nutrients specified in section 412(g) of the act and declared on the label, except linoleic acid, vitamin D, vitamin K, choline, inositol, biotin, tryptophan (if necessary as part of the declaration of niacin equivalents), and those which were tested in the immediate analyses.

(3) *Progressive analysis.* Using replicates of the samples collected from one filling batch as specified in paragraph (b)(2) of this section, and beginning 3 months after their packaging, progressive analysis shall be initiated on a new filling batch every 3 months. These samples shall be analyzed every 3 months throughout the shelf life of the product for physical attributes (i.e., solids, homogeneity, osmolality, and sedimentation), and for all nutrients declared on the label. Vitamin D may be determined by chemical methods, except that it and the protein efficiency ration (PER) shall be determined by the appropriate AOAC bioassay method of analysis once every 6 months throughout the shelf life of the product.

(i) The rat bioassay method for determining vitamin D shall be the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th ed. (1980), secs. 43.195–43.208 "Vitamin D (30)—Official Final Action,"[1] which is incorporated by reference.

(ii) The method for determining biological quality of protein in terms of PER shall be the method prescribed "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th ed. (1980), sections 43.212–43.216 "Biological Evaluation of Protein Quality (Protein Efficiency Ratio) (32)—Official Final Action,"[1] which is incorporated by reference.

(c) Solids, homogeneity, osmolality, and sedimentation shall conform to release ranges established by the manufacturer. Ranges of the nutrient composition in the finished product shall be such that their lower limits do not fall below, and their upper limits do not exceed, the minimum and maximum levels, respectively, specified in section 412(g) of the act, and the composition shall be consistent with label declarations.

(d) To ensure that the infant formula product contains those nutrients and levels of nutrients set forth in section 412(g) of the act, the manufacturer shall establish controls which shall include the implementation of scientifically sound and appropriate specifications, standards, sampling plans, and test procedures based upon the design and capability of the manufacturing process. The manufacturer shall also establish acceptance criteria for sampling and testing to ensure that batches of infant formula meet nutrient specifications and appropriate statistical quality control criteria as a condition for their approval and release. The statistical quality control criteria shall include appropriate acceptance, warning, and rejection ranges.

(1) The acceptance ranges lie within the upper and lower control limits of a statistical process average having two standard deviations as the limit boundaries. Where a nutrient level is between the second and third standard deviation, corrective measures shall be taken to bring the product into the acceptance range.

(2) If in any composite sample, any nutrient level lies below the three standard deviation limit, or the level of any nutrient having a maximum allowable concentration specified in section 412(g) of the act is above the three standard deviation limit, the filling batch shall be rejected and disposed of unless it is reconditioned and brought within specifications.

(3) When the results of testing three consecutive filling batchs show a trend in deviations from specified ranges in one or more nutrients, the product shall be evaluated to ascertain the steps needed to be taken to maintain the product in conformity with section 412(g) of the act.

(e) The manufacturer shall perform analyses for evaluation of the effect of changes in ingredients or processing conditions which could affect the physical attributes or nutrient levels as indicated in paragraph (e)(1) and (2) of this section. Three samples (each consisting of a composite sample representing the beginning, the middle, and the end of the filling batch) shall be taken from each of the first 10 filling batches for evaluation prior to shipment of finished products to determine the effects of such changes which include, but are not limited to:

(1) Minor changes in ingredients (e.g., changing one or more ingredient levels

[1] Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or examined at the Office of the Federal Register Library.

to bring the ranges of nutrient concentration more closely within prescribed release limits; changing ingredients from one supplier to another whose products differ only in minor aspects from those previously used; changing the water source). The composite samples from the first and tenth filling batches and from two additional filling batches chosen from filling batches two through nine shall be analyzed by the manufacturer for all nutrients changed and those affected by the change.

(2) Major changes of ingredients more significant than those described in paragraph (e)(1) if this section, or changes in processes involving equipment or conditions such that physical attributes will be affected or labile nutrients will degrade beyond previously experienced ranges (e.g., changing type of ingredients, such as soy flour to soy isolate; replacing a heat exchanger with a steam injector-vapor tank system; changing time-temperature conditions of preheating during formulation of product; changing mixing times or mixing temperatures; or changing holding times and temperatures of sterilization). A complete analysis of all nutrients required by section 412(g) of the act and of PER shall be performed by the manufacturer on the composite samples from the first and tenth filling batches; analyses of all such nutrients and PER also shall be made on the composite samples from two additional filling batches chosen from filling batches two through nine, except that analyses for linoleic acid, vitamin D, vitamin K, choline, inositol, biotin, PER, and tryptophan (if necessary as part of the requirement of niacin) need not be made if they are within specification in filling batches 1 and 10.

§ 106.90 Coding.

The manufacturer shall mark each container of a finished infant formula with a conspicuous, permanent, and legible identifying code. Code marks shall be visible to purchasers on unopened packages. The required code shall identify the establishment where packed, the product contained therein, the year packed, the day packed, and the period during which packed. The packing period code shall not extend over a period of more than one personnel shift.

Subpart C—Records and Reports

§ 106.100 Records.

(a) Records of results of examinations and copies of suppliers' guarantees or certifications that verify compliance with FDA regulations, guidelines, or action levels for raw materials, food-packaging materials, and infant formulas shall be maintained by the manufacturer.

(b) Quality control procedure records necessary to ensure nutrient content of infant formulas, including periodic nutrient testing, shall be maintained by the manufacturer and shall contain sufficient information to permit a public health evaluation of any batch of infant formula.

(c) The records required by paragraphs (a) and (b) of this section shall be retained for a period of time that meets or exceeds the shelf life of the infant formula.

Subpart D—Notification Requirements

§ 106.120 New formulations.

The manufacturer shall notify FDA, not later than the 90th day before the first processing of any new infant formula for commercial or charitable distribution for human consumption, that the new infant formula provides the nutrients required by section 412(g) of the act and that the processing meets the quality control procedure requirements prescribed by the Food and Drug Administration and that the infant formula is not adulterated or misbranded within the meaning of the act.

§ 106.122 Reformulations.

The manufacturer, before the first processing of any infant formula produced for commercial or charitable distribution for human consumption, when the manufacturer determines that a change in its formulation or a change (as described in section 412(b)(3) of the act) may affect whether the formula is adulterated, shall notify FDA of such changes, including a description of the changes, and that the reformulated formula provides the nutrients required by section 412(g) of the act.

§ 106.130 Notification format.

(a) The notification requirements prescribed in §§ 106.120 and 106.122 of this subpart are to be submitted to FDA in the following format:

Please Type or Print all Entries

1. Enter the name of the product: _____

2. Check whether the identified infant formula is a "new formulation" _____ or a "reformulation" _____

If the identified formula is a reformulation, provide: a. A description of the change(s) in the formulation and/or processing.

b. How this (these) change(s) may affect whether the formula is adulterated.

3. Enter establishment name and address.

Name: _____

Address: _____

(City) (State) (Zip Code)

4. If establishment has a parent company, enter parent company name and address. If not applicable, check N/A.

Name: _____

Address: _____

(city) (State) (Zip Code)

N/A: _____

5. Notification Statement of the Quality of the Identified Infant Formula:

"I hereby notify FDA that the infant formula identified above meets the nutritional requirements of section 412(g) of the Federal Food, Drug, and Cosmetic Act, that the processing of the infant formula meets the quality control procedure requirements prescribed by the Food and Drug Administration and that the infant formula is not adulterated or misbranded within the meaning of said act.

Signed: _____

Date: _____

(This notification shall be signed and dated by a responsible official.)

(b) The notification requirements prescribed in paragraph (a) of this section shall be submitted to Chief, Regulatory Affairs Staff (HFF–204), Bureau of Foods, Food and Drug Administration, 200 C St., SW., Washington, D.C. 20204.

(c)(1) The manufacturer should submit to FDA one label for each infant formula produced for commercial or charitable distribution for human consumption with its submission for new formulations and reformulations.

(2) All labels are to be submitted to Chief, Regulatory Affairs Staff (HFF–204), and in accordance with the due dates established in §§ 106.120 and 106.122.

(d) The manufacturer shall promptly notify FDA when there is an infant formula in the marketplace which may not provide the nutrients required by section 412(g) of the act or when there is an infant formula otherwise adulterated or misbranded within the meaning of the act and presents a risk to human health. Descriptions of the known or suspected adulteration or misbranding must be provided. This notification shall be made, by telephone, either to the Director of the appropriate FDA district office specified in 21 CFR 5.115 or to FDA's Emergency and Epidemiological Operations Branch at 301–443–4667. After normal business hours (8 a.m. to 4:30 p.m.) the FDA emergency number, 202–737–0448, shall be used. This telephone notification shall be followed promptly by written confirmation which is to be sent to the Division of Regulatory Guidance (HFA—310), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, and to the

appropriate FDA district office specified in 21 CFR 5.115.

Interested persons may, on or before March 2, 1981, submit to the Dockets

Tuesday
December 30, 1980

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appropriate FDA district office specified in 21 CFR 5.115.

Interested persons may, on or before March 2, 1981, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Orders 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Dockets Management Branch, Food and Drug Administration.

Dated: December 22, 1980.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–40507 Filed 12–29–80; 8:45 am]

BILLING CODE 4110-03-M

Tuesday
December 30, 1980

Part XII

Department of Education

Pre-College Teacher Development in Science Program

DEPARTMENT OF EDUCATION

34 CFR Part 797

Pre-College Teacher Development in Science Program

transferred intact. S. Rep. No. 96–49, 96th Cong., 1st Sess. 50 (1979)

The provisions of these final regulations are substantially the same as the provisions of the notice of

With respect to the role of LEAs in project planning, § 797.31(f) stipulates that teachers and other appropriate individuals be consulted during the needs assessment phase of the project

science process and critical thinking skills.

Response. No change is needed. A broad definition of subject matter of science and mathematics is intended,

Response. No change has been made. In order to provide applicants with maximum flexibility in meeting the requirements of the regulations, no single method of conducting a needs

797.12 What types of projects are supported?

Subpart C—How Does One Apply for a Grant? [Reserved]

Subpart D—How Is a Grant Made?

DEPARTMENT OF EDUCATION

34 CFR Part 797

Pre-College Teacher Development in Science Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the Pre-College Teacher Development in Science Program. This program provides support to colleges and universities and certain nonprofit institutions for the continuing education of preschool and elementary school teachers in mathematics, engineering, and the natural and social sciences.

EFFECTIVE DATE: These final regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed if Congress takes certain adjournments. If you want to know the effective dates of these final regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mary G. Lewis, Pre-College Teacher Development in Science Program, U.S. Department of Education, 1832 M Street, N.W. (Room 819 Riviere Building, Washington, D.C. 20236. Telephone (202) 653-5839.

SUPPLEMENTARY INFORMATION: This program was transferred from the National Science Foundation to the Education Department by the Department of Education Organization Act of 1979, Pub. L. 96-88, Section 304. The current Education Department Program was part of the National Science Foundation's Pre-College Teacher Development in Science Program, which also included training opportunities for secondary school teachers. This NSF program was reestablished in fiscal year 1977 by Congress through Public Law 94-378. With the transfer of the preschool and elementary school portion of the program to the Education Department on May 4, 1980, the program for these grades is now subject to the General Education Provisions Act which requires publication of regulations in the Federal Register. (20 U.S.C. 3474(b))

The final rule, like the proposed regulations, essentially implement the operational guidelines of the program as administered by the National Science Foundation. For the initial administration of the program by the Education Department, no major changes have been made in accordance with the Congressional intent that the science education programs be transferred intact. S. Rep. No. 96-49, 96th Cong., 1st Sess. 50 (1979)

The provisions of these final regulations are substantially the same as the provisions of the notice of proposed rulemaking (NPRM) published in the Federal Register on August 13, 1980. Interest persons were given 30 days to comment on the NPRM. Seven persons submitted comments which generally supported the provisions established in the notice.

The paragraphs below summarize the comments and the Secretary's response to them. The comments and responses are presented in the order of the sections to which they pertain. Changes have been made in the final regulations in response to the comments, in addition to the corrections of minor technical and typographical errors.

§ 797.2 Eligible institutions.

Comment. Several commenters recommended expanding eligibility to receive grants under the program to include State educational agencies (SEAs), local educational agencies (LEAs), junior and community colleges, and teacher associations. One commenter suggested that the regulations be more specific on the rule of the LEAs in project planning.

Response. No change has been made. While the Secretary recognizes the effectiveness of SEAs, LEAs and other organizations in providing inservice teacher training, the Secretary views this program as an alternate form of continuing education for teachers which supplements other inservice efforts. During its initial administration by the Education Department, the program will retain the same general operating procedures which governed it previously at the National Science Foundation. No change is made to expand the eligible applicants to include LEAs, SEAs, and two-year colleges.

Many four year colleges and universities are active in pre-service teacher training. Their eligibility under this program stengthens the link between pre-service teacher training activities and the inservice training sponsored by this program. In addition, four year colleges and universities, but not two year institutions, can offer graduate credit to teachers, thereby providing an incentive for their participation. Since a further objective of the program is part to encourage cooperative relationships between scientists at colleges, universities and other eligible scientific institutions and preschool and elementary teachers. These institutions are essential to involve in the program.

With respect to the role of LEAs in project planning, § 797.31(f) stipulates that teachers and other appropriate individuals be consulted during the needs assessment phase of the project development. LEAs are encouraged to participate with eligible institutions in project planning. Local school systems may, and often do, initiate a project developed in conjunction with and sponsored by an eligible college or university, so the role of LEAs in the program is an important one.

§ 797.4 Definitions that apply to the Pre-College Teacher Development in Science Program.

Comment. One commenter suggested that a definition of "elementary school teacher" be included in the regulations, while two other commenters requested clarification as to whether middle schools are considered part of elementary education.

Response. No change has been made. The provisions of the Education Division General Administrative Regulations (EDGAR) are applicable to the program. Section 77.1(c) of EDGAR allows each State to determine the scope of the term elementary education. This decision was considered preferable to imposing an inflexible Federal limitation on the eligible participants in the program. It is therefore impossible to provide a uniform definition of an elementary school teacher, or to determine whether middle schools fall within the scope of elementary education since grade levels of elementary education may vary from State to State. Applicants with questions concerning this issue are urged to contact the appropriate State educational agency for guidance.

A clarification has been made in the final regulations by adding preschool teachers to provisions regarding program scope and participants. While the proposed rule referred only to elementary school teachers, ED had no intention to exclude teachers of educational levels below the elementary level. Since Congress transferred responsibility for both the preschool and elementary school portion of the program to the Education Department, the final rule clarifies the full range of activities and participants under the program. (S. Rept. No. 96-326, 96th Cong. 1st Sess. 50 (1979).

§ 797.10 What is the purpose of the program?

Comment. One commenter expressed concern that the regulations placed too much emphasis on knowledge of subject matter and instructional strategies, thereby ignoring the development of

science process and critical thinking skills.

Response. No change is needed. A broad definition of subject matter of science and mathematics is intended, including science processes and associated critical thinking skills, as well as science concepts and theories.

§ 797.31 What selection criteria does the Secretary use?

Comment. A commenter noted that while the preamble to the regulations stated that participating teachers are expected to carry out further inservice training of teacher colleagues in order to multiply the effect of the project, no provision for this was included in the regulations.

Response. No change has been made. While the Secretary encourages participating teachers to carry out further inservice training of their colleagues, the Secretary realizes the difficulty of evaluating the likelihood of achieving this objective. Therefore, while applicants are encouraged to develop plans to further the impact of the project, they will not be required to document these plans in their proposal. Further, the failure to include provisions for this in an application will not adversely affect the evaluation of an application.

Comment. One commenter suggested that the values assigned to the selection criteria be revised in order to emphasize the importance of training teachers to increase the participation of women, minorities, and the handicapped in science.

Response. No change has been made. Equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented in science is considered in Section 797.31 (a) and (b).

The purpose of the program, as stated in Section 797.10, is to promote the offering of quality science, mathematics, and social studies instruction to the Nation's elementary school students through inservice teacher training. To change the values of the selection criteria to emphasize the participation of traditionally underrepresented groups would be inconsistent with the purpose of the program, which is to serve all teachers.

Comment. One commenter asked whether the needs assessment requirement in Section 797.31(f) referred exclusively to surveys or whether surveys are given preference over other methods of identifying needs. The commenter suggested that if a survey must be used in order to receive maximum points under the criterion, this should be specified in the regulations.

Response. No change has been made. In order to provide applicants with maximum flexibility in meeting the requirements of the regulations, no single method of conducting a needs assessment is stipulated in the regulations.

Applicants may satisfy the requirements of this section in a variety of ways including but not limited to a formal survey of teachers and/or administrators, meeting with teachers and other school personnel, a review of the literature, etc.

A new section has been added to Subpart E—What Conditions Must Be Met by a Grantee?—to clarify the applicable provisions governing costs under this program. Section 797.41 references the section of the Education Division General Administration Regulations (EDGAR) which apply to the Pre-College Teacher Development in Science Program. The statement in the Guide for Preparation of Proposals and Project and Award Management concerning use of the indirect cost rate for educational training projects has been revised in accordance with this new section to permit use of the negotiated rate for projects funded under this program.

CITATION OF LEGAL AUTHORITY: A citation of statutory or other legal authority has been placed in parentheses on the line following each provision.

Dated: December 22, 1980.

(Catalog of Federal Domestic Assistance No. 84119, Pre-College Teacher Development in Science Program)

Shirley M. Hufstedler,
Secretary of Education.

The Secretary adds a new Part 797 to Title 34 of the Code of Federal Regulations as follows:

PART 797—PRE-COLLEGE TEACHER DEVELOPMENT IN SCIENCE PROGRAM

Subpart A—General

Sec.

797.1 Description of the Pre-College Teacher Development in Science Program.
797.2 Eligible institutions.
797.3 Regulations that apply to the Pre-College Teacher Development in Science Program.
797.4 Definitions that apply to the Pre-College Teacher Development in Science Program.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

797.10 What is the purpose of the program?
797.11 What are the general characteristics of the projects?
797.12 What types of projects are supported?

Subpart C—How Does One Apply for a Grant? [Reserved]

Subpart D—How Is a Grant Made?

797.30 How does the Secretary evaluate an application?
797.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Grantee?

797.40 Who may participate in the projects?
797.41 What cost principles apply to this program?

Authority: Pub. L. 81-507; Pub. L. 94-378; Pub. L. 96-88; 42 U.S.C. 1862; 20 U.S.C. 3444.

Subpart A—General

§ 797.1 Description of Pre-College Teacher Development in Science Program.

The Pre-College Teacher Development in Science Program offers continuing education in science, to provide in-service training for preschool and elementary school teachers.

(42 U.S.C. 1862)

§ 797.2 Eligible institutions.

The following institutions are eligible to receive grants:

(a) Institutions of higher education that offer at least a baccalaureate degree in science.

(b) Nonprofit private, non-academic institutions having both the scientific research staff and the facilities necessary to provide a quality science education program for pre-college teachers. This may include institutions such as, scientific research laboratories, field stations, museums, or planetariums.

(42 U.S.C. 1862)

§ 797.3 Regulations that apply to the Pre-College Teacher Development in Science Program.

The following regulations apply to the Pre-College Teacher Development in Science Program:

(a) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General).

(b) The regulations in this Part 797.

(42 U.S.C. 1862; 20 U.S.C. 3444)

§ 797.4 Definitions that apply to the Pre-College Teacher Development in Science Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant	Fiscal year
Application	Nonprofit
Award	Preschool
Department	Project
Elementary school	Secretary

(20 U.S.C. 1221e-3(a)(1))

(b) *Definitions that apply to this Part.* The following definitions apply to this part:

resources that are applicable to classroom instruction.

(42 U.S.C. 1862)

§ 797.12 What types of projects are supported?

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of

(i) *Participant selection.* (10 percent)

(1) The Secretary reviews each application for information that shows the appropriateness of the participant selection process.

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(20 U.S.C. 1221e-3(a)(1))

(b) *Definitions that apply to this Part.* The following definitions apply to this part:

"Science" means the mathematical, biological, physical, engineering, and social sciences.

(42 U.S.C. 1862)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 797.10 What is the purpose of the program?

The major objective of the Pre-College Teacher Development in Science Program is to promote the offering of quality science, social sciences, mathematics, and engineering instruction to the Nation's preschool and elementary school students. This is accomplished by—

(a) Improving preschool and elementary school teachers' knowledge of the subject matter of science and mathematics and their awareness of accompanying appropriate instructional strategies;

(b) Developing and maintaining cooperation and communication between preschool and elementary school teachers and scientists at institutions of higher education and certain other scientific institutions.

(c) Aiding teachers in the identification and use of resources which are appropriate to their level of instruction, and which will aid in their teaching of scientific concepts.

(42 U.S.C. 1862)

§ 797.11 What are the general characteristics of the projects?

(a) Projects supported in this program may involve a group of preschool and elementary school teachers engaged in a learning experience sponsored by the grantee institution and staffed by its faculty members or others selected for their expertise.

(b) Project staff site visits for individual consultation, with participants and group meetings devoted to classroom teaching strategies may be used to augment the instructional phase.

(c) Consistent with the needs of an identified group of teachers, projects provide: (1) instruction on general concepts of science and mathematics, (2) instruction on basic elements and concepts of a particular discipline, or (3) more advanced training in specific disciplines. The instruction may also illustrate appropriate materials and instructional teaching strategies for classroom use, as well as local resources that are applicable to classroom instruction.

(42 U.S.C. 1862)

§ 797.12 What types of projects are supported?

The types of projects supported under this program include but are not limited to:

(a) Academic Year Seminars—Part-time study offered at a central location for teachers within commuting distance, with sessions during the academic year.

(b) Summer Seminars—Part-time study offered during the summer at a central location for teachers within commuting distance with follow-up sessions during the academic year.

(c) Summer Workshops—Full-time projects offered during the summer, generally for 1 to 4 weeks. These projects normally will be regional and intended for more advanced training in specific disciplines. A limited follow-up activity may take place during the academic year.

(42 U.S.C. 1862)

Subpart C—How Does One Apply for a Grant? [Reserved]

Subpart D—How Is a Grant Made?

§ 797.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of the criteria in § 797.31.

(b) The Secretary assigns a maximum of 70 points that an application may receive under all the criteria.

(c) Each criterion is evaluated using a scale of 1–7.

(d) The weight assigned to each complete criterion is indicated in parenthesis following each criterion.

(e) For applications of substantially equal quality, the Secretary gives priority to projects that, nationwide, contribute to achieving overall balance among projects funded under this program in the following categories:

(1) Grade level.
(2) Academic discipline.
(3) Institutional type.
(4) Geographic location.

(42 U.S.C. 1862; 20 U.S.C. 1221e-3(a)(1))

§ 797.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (10 percent)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (10 percent)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, and handicapped persons.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 percent)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to be objectives of the project.

(d) *Evaluation plan.* (5 percent)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 percent)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(iii) Evidence is presented of long term support and institutional commitment to pre-college science education from the host institution. (20 U.S.C. 1221(e)-3(a)(1))

(f) *Need for the project.* (20 percent)

(1) The Secretary reviews each application for information that shows a well-established need for the project.

(2) The Secretary looks for information that shows—

(i) An adequate needs assessment has been carried out;

(ii) Appropriate individuals, especially representative teachers, have been consulted in the needs assessment; and

(iii) Instructional needs have been clearly identified and stated.

(g) *Cooperative relationships.* (10 percent)

(1) The Secretary reviews each application for information that shows the extent to which cooperative teaching relationships will be established between preschool and elementary teachers and college and university faculty or other scientists.

(2) The Secretary looks for information that shows the extent to which the project will advance the long-term program objective of promoting useful relationships between preschool and elementary science teachers and college and university or other scientists beyond the term of the grant.

(h) *Subject matter emphasis.* (20 percent)

(1) The Secretary reviews each application for information that shows the extent to which subject matter in science is emphasized.

(2) The Secretary looks for information that shows—

(i) The extent to which a central focus on science curriculum is intergrated with appropriate teaching strategies; and

(ii) The appropriateness of the content for the designated teacher group.

(i) *Participant selection.* (10 percent)

(1) The Secretary reviews each application for information that shows the appropriateness of the participant selection process.

(2) The Secretary looks for information that shows—

(i) Adequacy of plans to recruit participants; and

(ii) Suitability of participant evaluation and selection procedures.

(42 U.S.C. 1862)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 797.40. Who may participate in the projects?

(a) The program is designed for the continuing education of preschool and elementary school teachers.

(b) Other school leaders such as principals, assistant superintendents, or resource teachers, may team with one or two teachers to represent a school or system.

(42 U.S.C. 1862)

§ 797.41 What cost principles apply to this program?

(a) The general principles to be used in determining costs for projects supported by this program are referenced in Subpart E of the Education Division General Administration Regulations (EDGAR) in 34 CFR Part 75 §§ 75.530–568.

(b) The section governing indirect cost rates for educational training projects contained in § 75.562 of EDGAR does not apply to this program.

(20 U.S.C. 1221e-3(a)(1))

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Part XIII

Department of Education

Rehabilitation Training; Final Rules With Invitation To Comment

DEPARTMENT OF EDUCATION

34 CFR Parts 385, 386, 387, 388, 389, and 390

Rehabilitation Training: Final Regulations With Invitation To Comment

AGENCY: Department of Education.

ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary of Education amends regulations governing the Rehabilitation Training program. The amendments are necessary to implement changes made by the Rehabilitation Act Amendments of 1978 and to reflect the establishment of the Department of Education. The regulations will enable the Department to administer the program effectively and will provide guidance to applicants and grantees.

DATES: These regulations take effect on January 29, 1981. However, the Secretary invites comments on these regulations by February 27, 1981.

ADDRESSES: Comments may be addressed to Mr. Frank Bowe, Director, Division of Training Programs, Rehabilitation Services Administration, Department of Education, 330 C Street, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Bowe, Director, Division of Training Programs, Rehabilitation Services Administration, Department of Education, 330 C Street, SW., Washington, D.C. 20202, (202) 245-0080.

SUPPLEMENTARY INFORMATION: On May 4, 1980, the Secretary published proposed regulations for the Rehabilitation Training program in the Federal Register (45 FR 29420). The proposed regulations would implement changes made by the Rehabilitation Act Amendments of 1978 (Pub. L. 95-602) and would reflect the establishment of the Department of Education.

Prior to the establishment of the Department, the Rehabilitation Services Administration became part of the Office of Special Education and Rehabilitative Services within this new Department. As a result, the publication of regulations under the Rehabilitation Act of 1973, as amended, the Rehabilitation Research Fellowship Program. Regulations for the Rehabilitation Research Fellowship Program are not included in these interim regulations since the National Institute of Handicapped Research has announced that it will be administering

is the appropriate section of the Rehabilitation Act of 1973, as amended, and it is followed by a citation to the same provision in the United States Code.

Dated: December 22, 1980.

and independent living rehabilitation of physically and mentally handicapped individuals, especially those individuals with the most severe handicaps; and

(2) Maintain and upgrade basic skills and knowledge of personnel employed

(b) The following definitions also apply to programs under the Rehabilitation Training program—

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) as amended by the Rehabilitation, Comprehensive Services, and Developmental

DEPARTMENT OF EDUCATION

34 CFR Parts 385, 386, 387, 388, 389, and 390

Rehabilitation Training: Final Regulations With Invitation To Comment

AGENCY: Department of Education.

ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary adopts regulations for the purpose of implementing the Rehabilitation Act of 1973, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602). These regulations include the requirements for Rehabilitation Long-Term Training, Experimental and Innovative Training, State Vocational Rehabilitation Unit In-Service Training, Rehabilitation Continuing Education Programs, and Rehabilitation Short-Term Training.

DATE: These regulations are expected to be effective forty-five days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the Federal Register. The effective date is changed if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

DATES: Comments must be received on or before March 2, 1981.

ADDRESS: Comments should be addressed to Harold F. Shay, Director, Division of Manpower Development, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Department of Education, Room 3321, Mary E. Switzer Building, 330 C Street, SW., Washington, D.C. 20201. Telephone: (202) 245-0079 or TTY (202) 245-0591.

SUPPLEMENTARY INFORMATION:

Waiver of Proposed Rulemaking Procedures Affecting Selection Criteria

The Secretary of Health, Education, and Welfare published a Notice of Proposed Rulemaking in the Federal Register on November 29, 1979 that covered all new vocational rehabilitation and independent living rehabilitation authorities contained in the Rehabilitation, Comprehensive Services and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602). Proposed regulations for the Rehabilitation Training Program were included in this Notice of Proposed Rulemaking.

On May 4, 1980, the Department of Education was established and the Rehabilitation Services Administration became part of the Office of Special Education and Rehabilitative Services within this new Department. As a result, the publication of regulations under the Rehabilitation Act of 1973, as amended, is now subject to the provisions of Section 431 of the General Education Provisions Act and other requirements in effect in the Department of Education. It has become necessary therefore to revise the proposed regulations for the Rehabilitation Training Program in order to make them conform with requirements affecting Department of Education programs, including the selection criteria to be used in the evaluation of applications submitted for grant assistance. These selection criteria had not been included in the previously published Notice of Proposed Rulemaking.

In accordance with Section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), it is the practice of the Department of Education to offer interested parties the opportunity to comment on all proposed regulations, including the selection criteria to be used in discretionary grant programs such as the Rehabilitation Training Program. The publication of an additional proposed rulemaking covering the selection criteria for this program would be impracticable and contrary to the public interest under 5 U.S.C. 553(b) if grants are to be made in a timely manner in FY 1981, however, and the selection criteria are therefore being published as final regulations in this document.

Although the selection criteria for the Rehabilitation Training Program have been previously identified in Application Notices published in the Federal Register, it is recognized that there has not been an opportunity for the public to comment specifically on their appropriateness for these programs. Interested parties are invited therefore to submit comments and suggestions on the selection criteria to be used in the awarding of grants in future fiscal years. All comments and suggestions must be received no later than March 2, 1981.

Summary of Changes

Some comments were received in response to the Notice of Proposed Rulemaking provisions covering the Rehabilitation Training Program and changes are also being made in these revised regulations in response to these comments. A Summary of Comments and Responses to the proposed regulations is included in Appendix A.

The Notice of Proposed Rulemaking had included proposed regulations for the Rehabilitation Research Fellowship Program. Regulations for the Rehabilitation Research Fellowship Program are not included in these interim regulations since the National Institute of Handicapped Research has announced that it will be administering a Rehabilitation Research Fellowship Program in the future and, as a result, the Rehabilitation Services Administration will no longer be awarding Rehabilitation Research Fellowships.

References to EDGAR

Readers will note that reference to the Education Division General Administrative Regulations (EDGAR) cite Title 34 of the Code of Federal Regulations. EDGAR was transferred to Title 34 through final regulations published in the Federal Register on November 21, 1980 (45 FR 77368).

However, EDGAR was initially published in the Federal Register on April 3, 1980 (45 FR 22494) under Title 45 of the Code of Federal Regulations (CFR). For readers wishing to refer to that EDGAR document, the following cross-references will be helpful:

—45 CFR Part 74 is now 34 CFR Part 74
—45 CFR Part 100a is now 34 CFR Part 75.
—45 CFR Part 100b is now 34 CFR Part 76.
—45 CFR Part 100c is now 34 CFR Part 77.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before March 2, 1981 will be considered in any future revisions of the final regulations.

All comments submitted in response to these final regulations will be available for public inspection during and after the comment period in Room 3321, Mary E. Switzer Building, 330 C Street, S.W., Washington, D.C. between 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

The Department also requests comments on whether the regulations in this document would require submission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

A citation of statutory authority is placed in parentheses on the line following each substantive provision of the interim regulations. The first citation is the appropriate section of the Rehabilitation Act of 1973, as amended, and it is followed by a citation to the same provision in the United States Code.

Dated: December 22, 1980.

Shirley M. Hufstedler,
Secretary of Education.

(Catalog of Federal Domestic Assistance Program Number 84.129 Rehabilitation Training)

Accordingly, the Secretary amends Title 34 of the Code of Federal Regulations by adding 34 Part 385 to read as follows:

PART 385—REHABILITATION TRAINING

Subpart A—General

Sec.
385.1 What is the Rehabilitation Training Program?
385.2 Who is eligible for assistance under these programs?
385.3 What regulations apply to these programs?
385.4 What definitions apply to these programs?

Subpart B—[Reserved]

Subpart C—How Does One Apply For a Grant?

385.20 What are the application procedures for these programs?

Subpart D—How Does the Secretary Make a Grant?

385.30 [Reserved]
385.31 How does the Secretary evaluate an application?
385.32 What general selection criteria does the Secretary use in reviewing an application?
385.33 What other factors does the Secretary consider in reviewing an application?

Subpart E—What Conditions Must Be Met by a Grantee?

385.40 What are the requirements pertaining to the membership of a project advisory committee?
385.41 What are the requirements affecting the collection of data from State agencies?
385.42 What are the requirements affecting the dissemination of training materials?

Authority: Secs. 12(c), 304 and 306, Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c), 744 and 776)

Subpart A—General

§ 385.1 What is the Rehabilitation Training Program?

(a) The Rehabilitation Training Program is designed to—

(1) Increase the supply of personnel available for employment in public and private agencies and institutions involved in the vocational rehabilitation and independent living rehabilitation of physically and mentally handicapped individuals, especially those individuals with the most severe handicaps; and

(2) Maintain and upgrade basic skills and knowledge of personnel employed as providers of vocational, medical, social or psychological rehabilitation services.

(b) The Secretary awards financial assistance through five categories of training programs—

(1) Rehabilitation Long-Term Training (Part 386);

(2) Experimental and Innovative Training (Part 387);

(3) State Vocational Rehabilitation Unit In-Service Training (Part 388);

(4) Rehabilitation Continuing Education Programs (Part 389); and

(5) Rehabilitation Short-Term Training (Part 390).

(Section 304 of the Act; 29 U.S.C. 774)

§ 385.2 Who is eligible for assistance under these programs?

State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under the Rehabilitation Training Program.

(Section 304 of the Act; 29 U.S.C. 774)

§ 385.3 What regulations apply to these programs?

The following regulations apply to the Rehabilitation Training Program—

(a) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs);

(b) The regulations in EDGAR, 34 CFR Part 77 (General);

(c) The regulations in this Part 385; and

(d) The regulations in Parts 386, 387, 388, 389, and 390, as appropriate.

(Sections 12(c) and 304 of the Act, 29 U.S.C. 711(c) and 774)

§ 385.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR Part 77 apply to the programs under the Rehabilitation Training Program—

"Applicant"
"Application"
"Award"
"Budget Period"
"Department"
"EDGAR"
"Nonprofit"
"Private"
"Project"
"Project Period"
"Public"
"Secretary"

(Section 12(c) of the Act; 29 U.S.C. 711(c))

(b) The following definitions also apply to programs under the Rehabilitation Training program—

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602).

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Handicapped individual" means an individual—

(1) Who has a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment; and

(2) Who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services, or for whom an extended evaluation of vocational rehabilitation potential is necessary to determine whether he or she might reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services.

(Section 7(7)(A) of the Act; 29 U.S.C. 706(7)(A))

"Independent living rehabilitation services" or "independent living services means."

(1) Counseling services, including psychological counseling, psychotherapeutic counseling, peer counseling, advocacy services and related services;

(2) Housing incidental to the provision of any independent living rehabilitation services, and including appropriate accommodations to, and modifications of any space utilized to serve severely handicapped individuals;

(3) Physical and mental restoration services;

(4) Attendant care;

(5) Transportation;

(6) Interpreter services for deaf individuals, including tactile interpretation for deaf-blind individuals;

(7) Reading services, rehabilitation teaching services, and orientation and mobility services for blind individuals;

(8) Recreational activities;

(9) Services to members of a severely handicapped individual's family when necessary for improving the individual's ability to engage or continue in employment;

(10) Vocational and other training services, including personal and vocational adjustment when necessary for improving a severely handicapped individual's ability to live and function more independently, or to engage or continue in employment;

(11) Job placement services;

(12) Referral services;

(13) Telecommunications, sensory and other technological aids and devices;

(14) Services for children of pre-school age including physical therapy;

(16) Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or

necessary to help handicapped individuals secure needed services from other agencies;

(3) Physical and mental restoration services; necessary to correct or substantially modify a physical or

selection criteria identified in § 385.32 and specific selection criteria identified in Parts 386, 387, 388, 389 and 390. The maximum possible score for each complete criterion under each category of training is stated in parentheses in

(A) Handicapped persons;
(B) The elderly;
(C) Women; and
(D) Members of racial or ethnic minority groups.

(3) To determine personnel

Subpart E—What Conditions Must Be Met by a Grantee?

§ 385.40 What are the requirements pertaining to the membership of a project advisory committee?

(12) Referral services;
(13) Telecommunications, sensory and other technological aids and devices;
(14) Services for children of pre-school age including physical therapy,. development of language and communication skills, and child development services;
(15) Any other vocational rehabilitation services available under the State plan for vocational rehabilitation services which are appropriate to the independent living rehabilitation needs of a severely handicapped individual; and
(16) Any appropriate preventive services necessary to decrease the future needs of a severely handicapped individual.

(Section 702(b) of the Act; 29 U.S.C. 796(b))

"Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

(Section 7(7)(a)(i) of the Act; 29 U.S.C. 706(7)(A)(i))

"Physical and mental restoration services means—
(1) Medical or corrective surgical treatment;
(2) Diagnosis and treatment for mental or emotional disorders by a physician skilled in the diagnosis and treatment of such disorders or by a pyschologist licensed or certified in accordance with State laws and regulations;
(3) Dentistry;
(4) Nursing services;
(5) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;
(6) Convalescent or nursing home care;
(7) Drugs and supplies;
(8) Prosthetic, orthotic or other assistive devices including hearing aids, essential to obtaining or retaining employment;
(9) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids, prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;
(10) Podiatry;
(11) Physical therapy;
(12) Speech or hearing therapy;
(13) Psychological services;
(14) Therapeutic recreation services;
(15) Medical or medically related social work services;
(16) Treatment of either acute or chronic medical complications and emergencies which are associated with or arise out of the provision of physical and mental restoration services; or which are inherent in the condition under treatment;
(17) Special services for the treatment of individuals suffering from end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and
(18) Other medical or medically related rehabilitation services including art therapy, dance therapy, music therapy and psychodrama.

(Section 103(a)(4) of the Act; 29 U.S.C. 723(a)(4))

"State agency" means the sole State agency designated to administer (or supervise local administration of) the State plan for vocational rehabilitation services. The term includes the State agency for the blind, if designated as the sole State agency with respect to that part of the plan relating to the vocational rehabilitation of blind individuals.

(Section 101(a)(1)(A) of the Act; 29 U.S.C. 721(a)(1)(A))

"State unit" or "State vocational rehabilitation unit" means either—
(1) The State agency vocational rehabilitation bureau, division, or other organizational unit which is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of handicapped individuals and which is responsible for the administration of the vocational rehabilitation program of the State agency; or
(2) The independent State commission, board, or other agency which has vocational rehabilitation, or vocational and other rehabilitation as its primary function.

(Section 7(3) of the Act; 29 U.S.C. 706(3))

"Stipend" means financial assistance on behalf of individuals in support of their training, as opposed to salary payment for services provided within the project.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

"Vocational rehabilitation services" means—
(1) Evaluation of vocational rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for, and the nature and scope of services to be provided;
(2) Counseling and guidance, including personal adjustment counseling, to maintain a counseling relationship throughout a handicapped individual's program of services, and referral necessary to help handicapped individuals secure needed services from other agencies;
(3) Physical and mental restoration services: necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;
(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials;
(5) Maintenance;
(6) Transportation;
(7) Services to members of a handicapped individual's family when necessary to the vocational rehabilitation of the handicapped individual;
(8) Interpreter services for the deaf, including tactile interpreting for deaf-blind individuals;
(9) Reader services, rehabilitation teaching services, and orientation and mobility services for the blind;
(10) Telecommunications, sensory and other technological aids and devices;
(11) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment;
(12) Placement in suitable employment;
(13) Post-employment services necessary to maintain suitable employment;
(14) Occupational licenses; and
(15) Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of employability.

(Section 103(a) of the Act; 29 U.S.C. 723(a))

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 385.20 What are the application procedures for these programs?

The Secretary gives the State vocational rehabilitation unit an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are in EDGAR §§ 75.155–75.159.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart D—How Does the Secretary Make a Grant?

§ 385.30 [Reserved]

§ 385.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of general selection criteria identified in § 385.32 and specific selection criteria identified in Parts 386, 387, 388, 389 and 390. The maximum possible score for each complete criterion under each category of training is stated in parentheses in § 386.31, § 387.31, § 388.31, § 389.31, and § 390.31. The number of points awarded each criterion depends on how well the application meets all the elements under that criterion.

(b) The Secretary awards up to 100 possible points for these selection criteria.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 385.32 What general selection criteria does the Secretary use in reviewing an application?

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—
(i) High quality in the design of the project;
(ii) An effective plan of management that insures proper and efficient administration of the project;
(iii) A clear description of how the objectives of the project relate to the purpose of the program;
(iv) The way the applicant plans to use its resources and personnel to achieve each objective;
(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—
(A) Handicapped persons;
(B) The elderly;
(C) Women; and
(D) Members of racial or ethnic minority groups.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of key personnel proposed for the project.

(2) The Secretary looks for information that shows—
(i) The qualifications of the project director;
(ii) The qualifications of each of the other key personnel to be used in the project;
(iii) The time that each person referred to in paragraphs (2)(i) and (ii) of this section will commit to the project; and
(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—
(A) Handicapped persons;
(B) The elderly;
(C) Women; and
(D) Members of racial or ethnic minority groups.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—
(i) The budget for the project is adequate to support the project activities;
(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan. (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.*

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective, and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—
(i) The facilities that the application plans to use are adequate; and
(ii) The equipment and supplies that the applicant plans to use are adequate.

(Sections 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

§ 385.33 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in § 385.32 and Parts 386 through 390, the Secretary, in making awards under this program, considers such factors as—

(a) The geographical distribution of projects in each Rehabilitation Training Program category throughout the country; and

(b) The past performance of the applicant in carrying out similar training activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 385.40 What are the requirements pertaining to the membership of a project advisory committee?

When a project funded under Parts 386 through 390 establishes an advisory committee, its membership must include handicapped persons or other representatives of handicapped individuals, trainees, and providers of vocational rehabilitation and independent living rehabilitation services.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 385.41 What are the requirements affecting the collection of data from State agencies?

When the collection of data is necessary from handicapped individuals being served by two or more State agencies or from employees of two or more of these agencies, the project director must submit requests for the data to appropriate representatives of the affected agencies, as determined by the Secretary. This requirement also applies to employed project staff and individuals enrolled in courses of study supported under these programs.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

§ 385.42 What are the requirements affecting the dissemination of training materials?

A set of any training materials developed under the Rehabilitation Training Program must be submitted to any information clearinghouse designated by the Secretary.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

The Secretary amends Title 34 of the Code of Federal Regulations by redesignating Subpart E of Part 362 as 34 CFR Part 386 and revises the regulations to read as follows:

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

Subpart A—General

Sec.
386.1 What is the Rehabilitation Long-Term Training Program?
386.2 Who is eligible for assistance under this program?
386.3 What regulations apply to this program?
386.4 What definitions apply to this program?

Supart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

386.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

386.30 What selection criteria are used under this program?

§ 386.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

that the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows that the need for the training project has been established in terms of rehabilitation manpower

Subpart E—What Conditions Must Be Met by a Grantee?

§ 386.40 What are the matching requirements?

(a) A grantee must contribute to the cost of a project under this program in

supervision, teaching, or research in the vocational rehabilitation or independent living rehabiliation of physically or mentally handicapped persons, especially those with the most severe handicaps; and

services by State and other rehabilitation agencies.

(Section 304 of the Act; 29 U.S.C. 774)

§ 387.2 Who is eligible for assistance under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

386.30 What selection criteria are used under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

386.40 What are the matching requirements?
386.41 What are allowable costs?
386.42 What are the special requirements affecting the awarding of traineeships?

Authority: Secs. 12(c) and 304, Rehabilitation Act of 1973 (29 U.S.C. 711(c) and 774).

Subpart A—General

§ 386.1 What is the Rehabilitation Long-Term Training Program?

This program is designed to provide a balanced program of academic and non-academic training activities in the fields of—

(a) rehabilitation medicine;
(b) rehabilitation nursing;
(c) rehabilitation counseling;
(d) rehabilitation social work;
(e) rehabilitation psychiatry;
(f) rehabilitation psychology;
(g) physical therapy;
(h) occupational therapy;
(i) speech-language pathology and audiology;
(j) rehabilitation facility administration;
(k) vocational evaluation and work adjustment;
(l) prosthetics and orthotics;
(m) rehabilitation of the blind;
(n) rehabilitation of the deaf;
(o) rehabilitation of the mentally ill;
(p) rehabilitation job placement and job development;
(q) therapeutic recreation;
(r) undergraduate education in the rehabilitation services;
(s) rehabilitation administration;
(t) rehabilitation dentistry; and
(u) other fields that contribute to the rehabilitation of handicapped individuals, including homebound and institutionalized individuals and individuals with limited English-speaking ability.

(Section 304(b) of the Act; 29 U.S.C. 774(b))

§ 386.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR § 385.2.

(Section 304(a) of the Act; 29 U.S.C. 774(a))

§ 386.3 What regulations apply to this program?

The following regulations apply to this program:

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 386.

(Section 304 of the Act; 29 U.S.C. 774)

§ 386.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 386.10 What types of projects are authorized under this program?

The Rehabilitation Long-Term Training Program provides financial assistance for—

(a) Projects that provide basic or advanced training leading to an academic degree in one of those fields of study identified in § 386.1.

(b) Projects that provide a number of interrelated training activities designed to improve the professional competence of employed rehabilitation workers in one of those fields of study indentified in § 386.1 but not directly related to the awarding of an academic degree.

(c) Projects that provide undergraduate medical students an orientation to the concepts and techniques of rehabilitation medicine.

(d) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

(Section 304(b) of the Act, 29 U.S.C. 774(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

§ 386.30 What selection criteria are used under this program?

(a) *Plan of operation.* (30 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points)

The Secretary evaluates each application on the basis of criterion in § 385.32(e).

(f) *Evidence of need.* (10 points)

(1) The Secretary reviews each application for information that shows that the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows that the need for the training project has been established in terms of rehabilitation manpower supply and demand and includes an assessment of the potential of existing programs within the geographical area to meet the employment needs in the specific rehabilitation field for which grant support is sought.

(g) *Relevance to State-Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either to increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of physically or mentally handicapped individuals, or to maintain and improve the skills and quality of professional personnel in the rehabilitation fieled in which the training is to be provided.

(h) *Nature and scope of curriculum.* (20 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to physically and mentally handicapped persons, especially those who are severely handicapped;

(iv) The didactic coursework includes student exposure to vocational rehabilitation or independent living rehabilitation processes, concepts, programs, and services; and

(v) There is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Sections 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 386.40 What are the matching requirements?

(a) A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(b) The grantee is expected to furnish as large a part of the total project cost as possible. In the case of academic training projects with a multi-year project period, the grantee's share of the teaching costs is expected to increase progressively in each succeeding year so that total personnel costs are fully absorbed by the grantee at the termination of the project period.

(Sec. 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774 (a))

§ 386.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530–75.562, the following items are allowable under long-term training projects.

(a) Student stipends;

(b) Tuition and fees; and

(c) Student travel in conjunction with training assignments.

(Sec. 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774 (a))

§ 386.42 What are the special requirements affecting the awarding of traineeships?

(a) A candidate for a rehabilitation traineeship must—

(1) Be a citizen of the United States or a foreign national lawfully admitted to the United States for permanent residence;

(2) Take the training at the educational institution or agency designated in the traineeship award;

(3) Not be an employee of the Federal government;

(4) Not concurrently receiving educational allowances from any other Federal, State or local public or voluntary agency when that allowance is conditioned on a conflicting employment obligation incurred by the trainee, except for federally assisted student loans, or educational allowances or benefits payable under Chapters 34, 35 and 36 of Title 38, U.S.C. as limited by Section 213 of the Veterans Educational and Training Amendments Act of 1972, or educational allowances or benefits payable under any State or local program;

(5) Be enrolled for non-academic study in the grantee institution;

(6) Express interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation or independent living rehabiliation of physically or mentally handicapped persons, especially those with the most severe handicaps; and

(7) Indicate an expectation to seek employment in a State vocational rehabilitation agency or in another rehabilitation agency or facility from which the State agency secures services.

(b) No training or instruction may be provided to an individual for any one course of study extending for a period in excess of four years.

(Sections 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 774 (b))

The Secretary amends Title 34 of the Code of Federal Regulations by adding 34 CFR Part 387 to read as follows:

PART 387—EXPERIMENTAL AND INNOVATIVE TRAINING

Subpart A—General

Sec.
387.1 What is the Experimental and Innovative Training Program?
387.2 Who is eligible for assistance under this program?
387.3 What regulations apply to this program?
387.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

387.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

387.30 What selection criteria are used under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

387.40 What are the matching requirements?
387.41 What are the allowable costs?

Authority: Sections 12(c) and 304 of the Rehabilitation Act of 1973 (29 U.S.C. 711(c) and 774).

§ 387.1 What is the Experimental and Innovative Training Program?

This program is designed—

(a) To develop new types of rehabilitation personnel, and to demonstrate the effectiveness of these new types of personnel in providing rehabilitation services to severely handicapped persons; and

(b) To develop new and improved methods of training rehabilitation personnel so that there may be a more effective delivery of rehabilitation services by State and other rehabilitation agencies.

(Section 304 of the Act; 29 U.S.C. 774)

§ 387.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR § 385.2.

(Section 304(a) of the Act; 29 U.S.C. 774(a))

§ 387.3 What regulations apply to this program?

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 387.

(Section 304 of the Act; 29 U.S.C. 774)

§ 387.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 387.10 What types of projects are authorized under this program?

The Experimental and Innovative Training Program supports time-limited pilot projects through which new types of rehabilitation workers may be trained or through which innovative methods of training rehabilitation workers may be demonstrated.

(Section 304(b) of the Act; 29 U.S.C. 744(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 387.30 What selection criteria are used under this program?

(a) *Plan of operation.* (25 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (15 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (15 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(e).

(f) *Evidence of need.* (10 points)

The Secretary reviews each application for information that shows that the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows that the need for the training project has been established in terms of rehabilitation manpower supply and demand and includes an assessment of the potential of existing programs within the geographical area to meet the employment needs in the specific rehabilitation field for which grant support is sought.

(g) *Relevance to State-Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either to increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of physically or mentally handicapped individuals, or to maintain and improve the skills and quality of professional personnel in the rehabilitation fieled in which the training is to be provided.

(h) *Nature and scope of curriculum.* (20 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to physically and mentally handicapped persons, especially those who are severely handicapped;

(iv) The didactic coursework includes student exposure to vocational rehabilitation or independent living rehabilitation processes, concepts, programs, and services; and

(v) There is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Section 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 388.40 What are the matching requirements?

(a) A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(b) The grantee is expected to furnish as large a part of the total project cost as possible. In the case of academic training projects with a multi-year project period, the grantee's share of the teaching costs is expected to increase progressively in each succeeding year so that total personnel costs are fully absorbed by the grantee at the termination of the project period.

(Sec. 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774 (a))

§ 388.41 What are allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530–75.562, the following items are allowable under long-term training projects.

(a) Student stipends;

(b) Tuition and fees; and

(c) Student travel in conjunction with training assignments.

(Sec. 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774 (a))

§ 388.42 What are the special requirements affecting the awarding of traineeships?

(a) A candidate for a rehabilitation traineeship must—

(1) Be a citizen of the United States or a foreign national lawfully admitted to the United States for permanent residence;

(2) Take the training at the educational institution or agency designated in the traineeship award;

(3) Not be an employee of the Federal government;

(4) Not concurrently receiving educational allowances from any other Federal, State or local public or voluntary agency when that allowance is conditioned on a conflicting employment obligation incurred by the trainee, except for federally assisted student loans, or educational allowances or benefits payable under Chapters 34, 35 and 36 of Title 38, U.S.C. as limited by Section 213 of the Veterans Educational and Training Amendments Act of 1972, or educational allowances or benefits payable under any State or local program;

(5) Be enrolled for non-academic study in the grantee institution;

(6) Express interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation or independent living rehabiliation of physically or mentally handicapped persons, especially those with the most severe handicaps; and

(7) Indicate an expectation to seek employment in a State vocational rehabilitation agency or in another rehabilitation agency or facility from which the State agency secures services.

(b) No training or instruction may be provided to an individual for any one course of study extending for a period in excess of four years.

(Sections 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 774 (b))

Subpart A—General

§ 388.1 What is the State Vocational Rehabilitation Unit In-Service Training Program?

This program is designed to support

responsibility within the unit, or to correct deficiencies identified in the State program.

(b) Training methods may include—

(1) The development of State unit training institutes, short-term training courses, seminars, workshops, conferences, and other similar activities;

(2) Technical assistance to State agencies;

(3) Dissemination of information derived from research and demonstration projects; and

(4) Other methods that can be expected to improve the competence of State unit personnel.

(Section 304 of the Act; 29 U.S.C. 774)

§ 388.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR § 385.2.

(Section 304(a) of the Act; 29 U.S.C. 774(a))

§ 388.3 What regulations apply to this program?

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 388.

(Section 304 of the Act; 29 U.S.C. 774)

§ 388.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 388.10 What types of projects are authorized under this program?

The State Vocational Rehabilitation Unit In-Service Training Program provides financial assistance for—

(a) Training programs for rehabilitation personnel employed by State agencies administering or supervising the administration of the State vocational rehabilitation unit program;

(b) Training programs for rehabilitation personnel employed by public or nonprofit agencies and organizations that provide rehabilitation services to handicapped individuals under a cooperative arrangement with the State unit; and

(c) Training programs for rehabilitation personnel employed by public or nonprofit agencies and organizations that provide rehabilitation services to handicapped individuals under a contract with the State unit.

(Section 304(b) of the Act; 29 U.S.C. 774(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make A Grant?

§ 388.30 What selection criteria are used under this program?

(a) *Plan of operation.* (30 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points)

The Secretary evaluates each application on the basis of criterion in § 385.32(e).

(f) *Evidence of need.* (10 points)

(1) The Secretary reviews each application for information that shows that the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows that the need for the training project has been established in terms of rehabilitation manpower supply and demand and includes an assessment of the potential of existing programs within the geographical area to meet the employment needs in the specific rehabilitation field for which grant support is sought.

(g) *Relevance to State-Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either to increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of physically or mentally handicapped individuals, or to maintain and improve the skills and quality of professional personnel in the rehabilitation fieled in which the training is to be provided.

(h) *Nature and scope of curriculum.* (20 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to physically and mentally handicapped persons, especially those who are severely handicapped;

(iv) The didactic coursework includes student exposure to vocational rehabilitation or independent living rehabilitation processes, concepts, programs, and services; and

(v) There is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Sections 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

The Secretary amends Title 34 of the Code of Federal Regulations by adding 34 CFR Part 389 to read as follows:

Part 389—Rehabilitation Continuing Education Programs

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The Secretary reviews each application for information that shows that the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows that—

(i) The proposed project represents an experimental or innovative approach to the training of rehabilitation workers and provides for the training of new types of rehabilitation workers or the development of innovative training methodologies; and

(ii) The need for the training program has been justified and includes an assessment of the potential of existing training programs of a traditional nature to meet the personnel needs in the rehabilitation field for which support is sought.

(g) *Relevance to State-Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either to increase the supply of trained personnel available to public and private agencies involved in the rehabilitation of physically or mentally handicapped individuals or maintain and improve the skills and quality of rehabilitation workers.

(h) *Nature and scope of curriculum.* (10 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed curriculum.

(2) The Secretary looks for information that shows that—

(i) The scope and nature of the training content can be expected to enable the achievement of the established project objectives of the training project;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practicum or other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to physically and mentally handicapped persons, especially those who are severely handicapped; and

(iv) The didactic coursework includes student exposure to vocational rehabilitation or independent living rehabilitation processes, concepts, programs, and services.

(Section 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 387.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the grant award.

(Section 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

§ 387.41 What are allowable costs?

In addition to those allowable costs established under EDGAR §§ 75.530–75.562, the following items are allowable under experimental and innovative training projects—

(a) Student stipends;

(b) Tuition and fees; and

(c) Student travel in conjunction with training assignments.

(Section 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

The Secretary amends Title 34 of the Code of Federal Regulations by adding 34 CFR 388 to read as follows:

Part 388—State Vocational Rehabilitation Unit In-Service Training

Subpart A—General

Sec.

388.1 What is the State Vocational Rehabilitation Unit In-Service Training Program?
388.2 Who is eligible for assistance under this program?
388.3 What regulations apply to this program?
388.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

388.10 What types of projects are authorized under this program?
388.11 What specific activities may be supported under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

388.30 What selection criteria does the Secretary use in this program?

Subpart E—What Conditions Must Be Met by a Grantee?

388.40 What are the matching requirements?
388.41 What are allowable costs?

Authority: Sections 12(c) and 304 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c) and 774)

Subpart A—General

§ 388.1 What is the State Vocational Rehabilitation Unit In-Service Training Program?

This program is designed to support special projects for training State vocational rehabilitation unit personnel in program areas essential to the effective management of the unit's program of vocational rehabilitation services or in skill areas which will enable staff personnel to improve their ability to provide vocational rehabilitation services to severely handicapped individuals.

(Section 304 of the Act; 29 U.S.C. 774)

§ 388.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR § 385.2.

(Section 304(a) of the Act; 29 U.S.C. 744(a))

§ 388.3 What regulations apply to this program?

The following regulations apply to this program:

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 388.

(Section 304 of the Act; 29 U.S.C. 744)

§ 388.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 388.10 What types of projects are authorized under this program?

State vocational rehabilitation unit in-service training projects are concerned with the staff development and training of State vocational rehabilitation unit personnel in order to assure an improved level of competence in serving State unit clients and to assist in expanding and improving vocational rehabilitation services for handicapped individuals, especially those with the most severe handicaps.

(Section 304(b) of the Act; 29 U.S.C. 774(b))

§ 388.11 What specific activities may be supported under this program?

(a) Training activities supported under a State vocational rehabilitation unit in-service training grant focus primarily on program areas that are essential to the State unit's operation, or on skill areas that will enable staff personnel to improve their ability to function on their job, or prepare for positions of greater

responsibility within the unit, or to correct deficiencies identified in the State program.

(b) Training methods may include—

(1) The development of State unit training institutes concerned with special aspects of State unit administration or service provision;

(2) Attendance for individual employees or groups of employees at special courses conducted in cooperation with an educational institution;

(3) Individualized directed study in priority areas of State unit service or practice; and

(4) Maintenance of agency instructional library resources for books, films, tapes and other resources.

(Section 304(b) of the Act; 29 U.S.C. 744(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 388.30 What selection criteria does the Secretary use in this program?

(a) *Plan of operation.* (25 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(e).

(f) *Evidence of need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the in-service training has been adequately justified.

(2) The Secretary looks for information that shows—

(i) The State unit has conducted a needs assessment of the in-service training needs of State unit employees; and

(ii) The State unit in-service training plan responds to needs identified on the basis of the training needs assessment.

(g) *Relevance to State/Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that shows the proposed project can be expected to improve the competence of State vocational rehabilitation unit personnel in providing vocational rehabilitation services to handicapped individuals or in otherwise contributing to the more effective management of the State unit program.

(h) *Nature ond scope of training program.* (15 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the training activities reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The program primarily includes an integrated sequence of—

(a) workshops, seminars, and other special courses for counselors and other classes of State unit personnel concerned with State unit procedures;

(b) concentrated training activities focusing on improving State unit staff skills in working with specific groups of severely handicapped persons; and

(c) directed individualized or group staff development activities designed to enable selected staff to acquire special skills.

(Section 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 388.40 What are the matching requirements?

The Secretary may make grants for paying part of the costs of projects under this program. The grantee must provide at least 10 percent of the total costs of the project.

(Section 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 744(a))

§ 388.41 What are the allowable costs?

In addition to those allowable costs established in EDGAR §§ 75.530–75.562, the following items are allowable under State vocational rehabilitation unit in-service training projects:

(a) Trainee per diem costs;

(b) Trainee travel in connection with a training course; and

(c) Trainee tuition and fees.

(Section 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

The Secretary amends Title 34 of the Code of Federal Regulations by adding 34 CFR Part 389 to read as follows:

Part 389—Rehabilitation Continuing Education Programs

Subpart A—General

Sec.

389.1 What is the Rehabilitation Continuing Education Program?
389.2 Who is eligible for assistance under this program?
389.3 What regulations apply to this program?
389.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

389.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

389.30 What selection criteria does the Secretary use in this program?

Subpart E—What Conditions Must Be Met by a Grantee?

389.40 What are the matching requirements?
389.41 What are allowable costs?

Authority: Sections 12(c) and 304 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c) and 744(a))

Subpart A—General

§ 389.1 What is the Rehabilitation Continuing Education Program?

This program is designed to support training centers that serve either a Federal region or another geographical area and provide for a broad integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area.

(Section 304 of the Act; 29 U.S.C. 774)

§ 389.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR § 385.2.

(Section 304(a) of the Act; 29 U.S.C. 774(a))

§ 389.3 What regulations apply to this program?

The following regulations apply to this program—

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 389.

(Section 304 of the Act; 29 U.S.C. 774)

§ 389.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

the need for the Rehabilitation Continuing Education Program has been adequately justified.

(2) The Secretary looks for information that shows the need for the training program has been justified and

§ 389.41 What are allowable costs?

In addition to those allowable costs established under EDGAR §§ 75.530–75.562, the following items are allowable under Rehabilitation Continuing Education programs—

(Section 304(a) of the Act; 29 U.S.C. 774(a))

§ 390.3 What regulations apply to this program?

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 390.

(2) The Secretary looks for information that shows the need for the training project that has been established and validated in terms of its potential impact on the rehabilitation service delivery system.

(g) *Relevance to State/Federal*

materials are essential for the conduct of the seminar, institute, workshop or other short course for which the grant support has been provided.

(Sections 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 744(a))

§ 389.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 389.10 What types of projects are authorized under this program?

Rehabilitation Continuing Education Programs—

(a) Train newly employed State agency staff at the administrative, supervisory, professional, subprofessional, or clerical levels in order to develop needs skills for effective agency performance;

(b) Provide training opportunities for experienced State agency personnel at all levels of State agency practice to upgrade their skills and to develop mastery of new program developments dealing with significant issues, priorities and legislative thrusts of the State/Federal vocational rehabilitation program; and

(c) Develop and conduct training programs for staff of private rehabilitation agencies and facilities which cooperate with State vocational rehabilitation units in providing vocational rehabilitation and other rehabilitation services.

(Section 304(b) of the Act; 29 U.S.C. 774(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 389.30 What selection criteria does the Secretary use in this program?

(a) *Plan of operation.* (25 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(e).

(f) *Evidence of need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the Rehabilitation Continuing Education Program has been adequately justified.

(2) The Secretary looks for information that shows the need for the training program has been justified and includes an assessment of the potential of existing programs within the geographical area (including State vocational rehabilitation unit in-service training) to meet the needs for which support is sought.

(g) *Relevance to State/Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows the proposed project appropriately relates to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that the proposed project can be expected to improve the competence of professional and other personnel employed in the rehabilitation agencies serving severely physically and mentally disabled individuals.

(h) *Nature and scope of training program.* (15 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the training activities reflect content that can be expected to enable the achievement of the established project objectives of the training project.

(ii) The program and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program.

(iii) The program includes a broad intergrated sequence of training activities for employed rehabilitation workers.

(iv) The program primarily includes coursework which can be expected to be needed on a recurrent basis throughout the multi-State geographical area to be served.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 389.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the cost to be borne by the grantee is determined by the Secretary at the time of the grant award.

(Sections 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

§ 389.41 What are allowable costs?

In addition to those allowable costs established under EDGAR §§ 75.530–75.562, the following items are allowable under Rehabilitation Continuing Education programs—

(a) Trainee per diem costs;

(b) Trainee travel in connection with a training course;

(c) Trainee tuition and fees; and

(d) Special accommodations for handicapped trainees.

(Sections 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

The Secretary amends Title 34 of the Code of Federal Regulations by adding 34 CFR Part 390 to read as follows:

PART 390—REHABILITATION SHORT-TERM TRAINING

Subpart A—General

Sec.

390.1 What is the Rehabilitation Short-Term Training Program?
390.2 Who is eligible for assistance under this program?
390.3 What regulations apply to this program?
390.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

390.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

390.30 What selection criteria does the Secretary use in this program?

Subpart E—What Conditions Must Be Met by a Grantee?

390.40 What are the matching requirements?
390.41 What are allowable costs?

Authority: Sections 12(c) and 304 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 711(c) and 774).

Subpart A—General

§ 390.1 What is the Rehabilitation Short-Term Training Program?

This program is designed for the support of special seminars, institutes, workshops and other short-term courses in technical matters relating to the delivery of vocational, medical, social, and psychological rehabilitation services.

(Sections 21(a)(2) and 304(a) of the Act; 29 U.S.C. 711(a)(2) and 774(a))

§ 390.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR § 385.2.

(Section 304(a) of the Act; 29 U.S.C. 774(a))

§ 390.3 What regulations apply to this program?

(a) 34 CFR Part 385 (Rehabilitation Training); and

(b) The regulations in this Part 390.

(Section 304 of the Act; 29 U.S.C. 774)

§ 390.4 What definitions apply to this program?

The definitions in 34 CFR Part 385 apply to this program.

(Section 12(c) of the Act; 29 U.S.C. 711(c))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 390.10 What types of projects are authorized under this program?

(a) Projects under this program are designed to provide short-term training and technical instruction in areas of special significance to the delivery of vocational, medical, social, and psychological rehabilitation services.

(b) Short-term training projects may be of regional or national scope.

(c) Conferences and meetings in which training is not the primary focus may not be supported under this program.

(Section 12(a)(2) and 304 of the Act; 29 U.S.C. 711(a)(2) and 774)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 390.30 What selection criteria does the Secretary use in this program?

(a) *Plan of operation.* (25 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (5 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (10 points)

The Secretary evaluates each application on the basis of the criterion in § 385.32(e).

(f) *Evidence of need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows the need for the training project that has been established and validated in terms of its potential impact on the rehabilitation service delivery system.

(g) *Relevance to State/Federal rehabilitation service program.* (10 points)

(1) The Secretary reviews each application for information that shows the proposed project appropriately relates to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that shows the proposed project relates to the mission of the State/Federal rehabilitation service program and can be expected to improve the skills and competence of personnel engaged in the administration or delivery of rehabilitation services, and others with an interest in the delivery of rehabilitation services.

(h) *Nature and scope of training program content.* (15 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary reviews each application for information that shows that—

(i) The educational objectives are clearly defined, measurable and achievable; and

(ii) The proposed course content and methodology to develop and implement the training can be expected to achieve the stated educational objectives.

Subpart E—What Conditions Must Be Met by a Grantee?

§ 390.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(Sections 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 774(a))

§ 390.41 What are allowable costs?

(a) In addition to those allowable costs established in EDGAR §§ 75.530–75.562, the following items are allowable under short-term training projects:

(1) Trainee per diem costs;

(2) Trainee travel in connection with a training course;

(3) Trainee registration fees; and

(4) Special accommodations for handicapped trainees.

(b) The preparation of training materials may not be supported under a short-term training grant unless the materials are essential for the conduct of the seminar, institute, workshop or other short course for which the grant support has been provided.

(Sections 12(c) and 304(a) of the Act; 29 U.S.C. 711(c) and 744(a))

Appendix A—Summary of Comments and Responses To Notice of Proposed Rulemaking Published in Federal Register of November 29, 1979

§ 385.40 What are the requirements pertaining to the membership of project advisory committees? (formerly 1362.10)

Comment. Under the previous proposed regulations, the membership of any advisory committee established in connection with a Rehabilitation Services Administration supported project was required to include "handicapped individuals." Since the term "handicapped individual" is a term defined under the Rehabilitation Act to refer generally to an individual who is eligible for vocational rehabilitation services and a client of a State vocational rehabilitation unit and since the scope of projects supported under the Rehabilitation Act may extend far beyond the provision of vocational rehabilitation services, it was suggested that the use of this term was not fully appropriate in this section.

Response. This section has been revised to ensure that advisory committees include "handicapped persons or other representatives of handicapped individuals" but not necessarily current clients of State units.

Comment. Some comments were received requesting that the majority of the members of any advisory committee established under this section be handicapped persons. It was suggested that at least 51 percent of the membership of any project advisory committee should themselves be handicapped.

Response. No change has been made in this section in this regard. The scope of discretionary projects authorized under the Rehabilitation Act includes service delivery, rehabilitation facility assistance, training of professional personnel, and other special purposes. The membership of any project advisory committee is based on the qualifications of each individual in terms of the purpose of the project. To require that an advisory committee have a majority of membership of physically or mentally handicapped persons might not only minimize the need for the most efficient and effective achievement of project objectives but might arbitrarily minimize the contribution of so very many other qualified persons in the rehabilitation community.

Comment. Comments associated with the specific learning disability issue under the overall Rehabilitation Act proposed regulations requested that the proposed section be revised to require that the membership of each project

so very long a period of time, the section is being revised to include coverage of both general training for rehabilitation administrative personnel and the specialized training related to the provision of dental services to severely

rehabilitation short-term training program.

Response. A change has been made in this section to specify that special accommodations for handicapped trainees may be included in grant costs

Tuesday
December 30, 1980

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Comment. Comments associated with the specific learning disability issue under the overall Rehabilitation Act proposed regulations requested that the proposed section be revised to require that the membership of each project include "handicapped individuals" and in the case of projects which involve school-age students, representatives from educational agencies.

Response. No change has been made in this section in this regard. It is noted that the proposed section already required handicapped individuals and their representatives to be included in the membership of project advisory committees. Since vocational rehabilitation programs are intended for handicapped persons who are or near working age, parents are only one type of representative appropriate for participation in these advisory committees.

The suggestion that educational agency representation be required in project advisory committees was also not accepted. Projects funded under the Rehabilitation Act may cover a broad range of cooperative program service areas and to emphasize one area of cooperative programing at the expense of others would be inconsistent with the traditional flexibility of Rehabilitation Act programing. On the basis of experience it is clear that when an advisory committee is established for any special project which involves educational services, educational agencies are represented on the project advisory committee.

§ *386.1 What is the Rehabilitation Long-Term Training Program?* (formerly 1362.70)

Comment. A few commenters suggested that this section be revised to include the area of rehabilitation administration within the scope of the long-term training program. Other commenters asked that the field of rehabilitation dentistry be similarly identified.

Response. A change has been made in this section. Training in the areas of rehabilitation administration and rehabilitation dentistry have long been supported under the rehabilitation long-term training program, but these areas have never been identified in either the Act or the regulations. The guidelines for the rehabilitation training grant program have reflected the full scope of the program, however, and have identified these areas within the scope of the rehabilitation training grant program.

Since training in rehabilitation administration and rehabilitation dentistry have both been supported for so very long a period of time, the section is being revised to include coverage of both general training for rehabilitation administrative personnel and the specialized training related to the provision of dental services to severely physically and mentally disabled individuals.

§ *390.10 What types of projects are authorized under this program?* (formerly 1362.73)

Comment. As part of the comment received in connection with the specific learning disability issue under the State vocational rehabilitation service regulations, it was suggested that this section be revised to ensure special attention "to addressing the training needs of rehabilitation personnel in the area of development and implementation of cooperative activities with educational agencies, parents and clients."

Response. No change has been made in this section in this regard. It is noted that short-term training priorities under the rehabilitation short-term training program are identified each year and are included within an annual General Plan for Rehabilitation Short-Term Training. This General Plan is prepared with the advice of agencies and organizations knowlegeable about the training needs of employed rehabilitation personnel. Since short-term training needs fall into so many diverse areas and since short-term training needs change.

Response. No change has been made in this section in this regard. It is noted that short-term training priorities under the rehabilitation short-term training program are identified each year and are included within an annual General Plan for Rehabilitation Short-Term Training. This General Plan is prepared with the advice of agencies and organizations knowlegeable about the training needs of employed rehabilitation personnel. Since short-term training needs fall into so many diverse areas and since short-term training needs change extensively from year to year, it would not be appropriate to identify a single area of short-term training as a continuing priority under these regulations.

§ *390.41 What are allowable costs?* (formerly 1362.73)

Comment. It was suggested that this section be revised to clarify that Federal grant funds may be used to provide special accommodations for handicapped persons attending short-term training seminars, institutes, and workshops conducted under the rehabilitation short-term training program.

Response. A change has been made in this section to specify that special accommodations for handicapped trainees may be included in grant costs to provide for such assistance as readers for blind persons, interpreters for deaf persons, attendants for trainees with severe mobility impairments and other accommodations which may be required to ensure the full participation of handicapped trainees in short-term training courses.

[FR Doc. 80-40417 Filed 12-29-80; 8:45 am]
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federal register

Tuesday
December 30, 1980

Part XIV

Department of Education

Federal Assistance to States for Education of Handicapped Children

DEPARTMENT OF EDUCATION
Office of Special Education
Office for Civil Rights
34 CFR Part 104 and 300

SUPPLEMENTARY INFORMATION:

The Issue

The issue is whether Part B of the Education of the Handicapped Act, as amended ("Part B"; 20 U.S.C. 1411-1420) requires a free appropriate public education to be provided without charge to the parents or guardian of a handicapped child. Section 504 of the Rehabilitation Act of 1973 ("Section 504"; 29 U.S.C. 794) prohibits discrimination against handicapped persons solely by reason of their handicap. The Department's Section 504 regulation implementing this statute requires a free appropriate public education to be provided to handicapped persons or their parents or guardian." 34 CFR 104.33(c).

The Secretary interprets the requirements that a free appropriate public education be provided "without charge" or "without cost" to mean that

Call for Public Comment

The Secretary is interested in receiving public comments on the extent to which the Department should provide further guidance on the use of insurance proceeds or other sources of funds to

DEPARTMENT OF EDUCATION

Office of Special Education

Office for Civil Rights

34 CFR Part 104 and 300

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance; and Assistance to States for Education of Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of Interpretation.

SUMMARY: The Secretary of Education interprets Part B of the Education of the Handicapped Act, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended, concerning the use of parents' insurance proceeds to pay for required services. It is the Secretary's interpretation that these statutes and their implementing regulations do not permit an educational agency responsible for the education of a handicapped child to require the parents of that child to use private insurance proceeds to pay for required services where the parents would incur financial loss. This interpretation is issued in response to public inquiries regarding Departmental policy on the matter.

EFFECTIVE DATE: This interpretation is expected to take effect 45 days after it is transmitted to Congress. Interpretations are usually transmitted to Congress several days before they are published in the **Federal Register.** The effective date of interpretations that are subject to the transmittal requirement is changed if Congress takes certain adjournments. Although the interpretation of Section 504 is not subject to this requirement, the Secretary has decided to set its effective date for the same day that the interpretation of Part B of the Education of the Handicapped Act becomes effective. If you want to know the effective date of this interpretation, call or write the Department of Education contact persons.

FOR FURTHER INFORMATION CONTACT:

Ms. Shirley A. Jones, Office of Special Education, Department of Education, Donohoe Building, Room 4030, 400 Maryland Ave. S.W., Washington, D.C. 20202, telephone: (202) 472-7921. Mr. Edward A. Stutman, Office for Civil Rights, Department of Education, Switzer Building, Room 5430, 300 C St., S.W., Washington, D.C. 20202, telephone: (202) 245-0781.

SUPPLEMENTARY INFORMATION:

The Issue

The issue is whether Part B of the Education of the Handicapped Act, as amended, ("Part B"; 20 U.S.C. 1411-1420) and its regulations (34 CFR Part 300; formerly 45 CFR Part 121a) and Section 504 of the Rehabilitation Act of 1973, as amended ("Section 504"; 29 U.S.C. 794) and its regulations (34 CFR Part 104; formerly 45 CFR Part 84) permit an educational agency responsible for the education of a handicapped child to require the child's parents to file insurance claims and use the proceeds to pay for services that must be provided to the child under Part B and Section 504.

The Interpretation

Both Part B and Section 504 prohibit a public agency from requiring parents, where they would incur a financial cost, to use insurance proceeds to pay for services that must be provided to a handicapped child under the "free appropriate public education" requirements of those statutes. The use of parents' insurance proceeds to pay for services in these circumstances must be voluntary on the part of the parents.

Discussion

Under Section 612(2)(B) of Part B (20 U.S.C. 1412(2)(B)), each participating State must make available to all handicapped children within specified ages a free appropriate public education. "Free appropriate public education" is defined in Section 602(18) of the Education of the Handicapped Act, as amended, (20 U.S.C. 1401(18)) as "special education and related services which are provided at public expense, under public supervision and direction, and without charge. . . ." The requirement to provide these services is implemented in 34 CFR 300.300 *et seq.*

Similarly, the Department's regulations implementing Section 504 require any recipient of Federal financial assistance that operates a public elementary or secondary education program to "provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap." 34 CFR 104.33(a). The provision of a free education is defined as "the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian." 34 CFR 104.33(c).

The Secretary interprets the requirements that a free appropriate public education be provided "without charge" or "without cost" to mean that an agency may not compel parents to file an insurance claim when filing the claim would pose a realistic threat that the parents of handicapped children would suffer a financial loss not incurred by similarly situated parents of non-handicapped children. Financial losses include, but are not limited to, the following:

(1) A decrease in available lifetime coverage or any other benefit under an insurance policy;

(2) An increase in premiums or the discontinuation of the policy; or

(3) An out-of-pocket expense such as the payment of a deductible amount incurred in filing a claim.

Financial losses do not include incidental costs such as the time needed to file an insurance claim or the postage needed to mail the claim.

The statutory and regulatory provisions relating to a free appropriate public education guarantee freedom only from financial loss as described above. Therefore, when the educational agency pays the financial costs related to filing a claim and no other cost (such as those listed above) is imposed, the parent suffers no financial loss. In addition, an agency may insist that parents file a claim when they would incur only minor incidental costs such as the time required to complete the form. The agency may require the parents to file a claim if it ensures that parents do not have to bear even a short-term financial loss. For example, if benefits begin only after a $50.00 deductible, the agency may insist that the parents file a claim if it pays for the services and the deductible in advance.

(20 U.S.C. 1401, 1411-1420; 29 U.S.C. 794)

The responsibility to make available a free appropriate public education does not mean that a public educational agency must use only its own funds for that purpose. An agency may use whatever State, local, Federal, and private sources of support are available to pay for required services. See 34 CFR 300.301(a) and 34 CFR 104.33(c)(1). Moreover, nothing in the Part B or Section 504 regulations relieves an insuror or similar third party from an otherwise valid obligation to provide or pay for services to a handicapped child. See 34 CFR 300.301(b) and 34 CFR 104.33(c).

Call for Public Comment

The Secretary is interested in receiving public comments on the extent to which the Department should provide further guidance on the use of insurance proceeds or other sources of funds to pay for services to handicapped children, and on the relationship between educational agencies and insurance carriers. These comments may be sent at any time to the Department contact persons identified in the beginning of this document.

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 80-40418 Filed 12-29-80; 8:45 am]

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Tuesday
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Part XV

Department of Education

Pell Grant Program; Final Rules With Comments Invited

DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program

AGENCY: Department of Education.

The Education Amendments of 1980 also mandate a common need analysis system for the Pell Grant and campus-based programs, Supplemental Educational Opportunity Grant, College Work-Study and National Direct

changed in the new law from a separate appropriation to a reserve from the program appropriation. This allowance must be used to offset the institution's costs of administering the Pell Grant and campus-based programs. The priority for

(2) Ways of reducing any regulatory burdens imposed by these regulations.

(3) Whether a comprehensive general part should be prepared containing common provisions from all student aid

690.6 Pell Grant payments from more than one institution.
690.7 Institutional eligibility.
690.8 Consortium agreements.
690.9 Determination of enrollment status under special circumstances.
690.92 Institutional agreement—Alternate Disbursement System (ADS).
690.93 Change in ownership and change to the Regular Disbursement System (RDS).
690.94 Calculation and disbursement of awards by the Secretary of Education.

DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program

AGENCY: Department of Education.

ACTION: Final regulations with comments invited.

SUMMARY: The Secretary is issuing regulations for the Pell Grant Program (formerly the Basic Educational Opportunity Grant Program). These regulations are being amended to implement the statutory changes contained in the Education Amendments of 1980, Pub. L. 96–374.

DATES: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to the Congress several days before they are published in the **Federal Register.** The effective date is changed by statute if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Comments must be received on or before March 2, 1981.

ADDRESSES: Comments should be addressed to William L. Moran, Office of Postsecondary Education, Office of Student Financial Assistance, U.S. Department of Education, (Room 4318, ROB–3) 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: William L. Moran, Telephone (202) 472–4300.

SUPPLEMENTARY INFORMATION: On October 3, 1980, the Education Amendments of 1980, Pub. L. 96–374, were enacted into law reauthorizing the Pell Grant Program (formerly the Basic Educational Opportunity Grant Program) through the 1985–86 award year.

Most of the statutory changes contained in the new law which affect the administration of the Pell Grant Program are primarily minor or technical in nature. Therefore, in order to facilitate the administration of the program, regulations implementing these changes are being issued in final form.

The Education Amendments of 1980 repealed the existing statutory provisions concerning calculation of a student's cost of attendance for the Pell Grant program. The new law revised the definition of "cost of attendance" and made it applicable to all student financial assistance programs authorized by Title IV of the Higher Education Act. Therefore, the changes to be made to the "cost of attendance" portion of the Pell Grant regulation, Subpart E, will be published separately as a notice of proposed rulemaking.

The Education Amendments of 1980 also mandate a common need analysis system for the Pell Grant and campus-based programs, Supplemental Educational Opportunity Grant, College Work-Study and National Direct Student Loan, begining with the 1982–83 award year. The new law provides that a separate notice of proposed rulemaking for this system will be published in the Federal Register and submitted to Congress for review by July 1, 1981.

The changes required by the new law are outlined in the following summary. In addition to these changes, terminology in these regulations is being updated to reflect the creation of the Department of Education and the change in the name of the Basic Educational Opportunity Grant Program to the Pell Grant Program. Also, other minor technical changes were made to facilitate program administration.

1. The Education Amendments of 1980 increase the maximum Pell grant amount in steps from $1,900 in the 1981–82 award year to $2,600 in 1985–86. In addition, the previous limitation of a student's Pell Grant to 50 percent of his or her cost of attendance has been modified in the new law so that the maximum cost of attendance percentage that may be covered by a Pell Grant in future years increases as the size of the maximum grant increases.

2. Under previous legislation, student eligibility was limited to four years (in some cases, five years) of full-time Basic Grant assistance. The new law provides that a student is eligible to receive Pell Grants during the period required to complete his or her first undergraduate baccalaureate course of study.

Although the four-year eligibility limitation is no longer applicable, the definition of "undergraduate student" in § 690.2 retains the concept that an undergraduate course of study for purposes of the Pell Grant Program is one which usually does not exceed four academic years or is a five academic year program designed to lead to a first degree. A student enrolled in any other length program is considered to be an undergraduate only while taking the academic requirements to complete the first four academic years of the program. This concept does *not* restrict a student to only four Pell Grant awards since it is possible for a student to take longer than four academic years to complete the academic requirements of his or her undergraduate program or undergraduate portion of the program.

3. The source of the administrative cost allowance of $10 per year for each student who receives a Pell Grant at an institution in an award year was changed in the new law from a separate appropriation to a reserve from the program appropriation. This allowance must be used to offset the institution's costs of administering the Pell Grant and campus-based programs. The priority for expenditure of this allowance for student consumer information which was contained in the previous legislation has been deleted.

4. The schedule of Pell Grant reductions provided in the new law for use at less-than-full funding gives the maximum protection to the lowest income students. For example, no reduction is required for a student whose expected family contribution is less than $601.

For the first time, the reduction schedule appears in the text of the regulations. Previously, the regulations referenced the appropriate section of the law. The inclusion of the reduction schedule in these regulations is an attempt to provide a more complete, self-contained set of procedural regulations from which institutions can administer the Pell Grant Program.

Several provisions have been deleted from the previous program regulations because they have been codified in the Student Assistance General Provisions. These include, for example, the definition of an institution of higher education in the former § 190.2a, as well as other terms defined in that section, plus the definition of a recognized equivalent of a high school diploma.

Waiver of Notice of Proposed Rulemaking

The regulatory changes merely reflect the statutory changes made by the Education Amendments of 1980 and a few minor programmatic revisions. In addition, the Secretary wishes to give the higher education community as much advance notice as possible of these changes.

Accordingly, the Secretary finds that the publication of a proposed rule in this instance would be unnecessary, impracticable and contrary to the public interest within the meaning of 5 U.S.C. 553(b), and is publishing these rules as final regulations.

Invitation to Comment

Although notice and comment is not required, the Secretary believes that public comment may be valuable both on the changes made to reflect statutory changes and on other changes that could be made to improve the regulations. The public is particularly invited to comment on the following:

(1) The definitions of undergraduate student, full-time student and of half-time student in § 690.2.

(2) Ways of reducing any regulatory burdens imposed by these regulations.

(3) Whether a comprehensive general part should be prepared containing common provisions from all student aid programs.

Educational Assessment Impact

On November 14, 1980, the Secretary published a notice in the **Federal Register** of the Department's intent to publish regulations necessary to implement the Education Amendments of 1980. In that notice, the Department listed the existing regulations affected by the new law and requested comments whether those regulations required information that is already being gathered by or is available from any other agency or authority of the United States. The regulations in this document are based on regulations listed in the November 14, 1980 notice. Based on any comments received and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

Interested persons are invited to submit comments and recommendations regarding these regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble.

All comments submitted in response to these regulations will be available for public inspection, during and after the comment period, in Room 4318, ROB–3, 7th and D Streets, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

CITATION OF LEGAL AUTHORITY: A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalogue of Federal Domestic Assistance Numbers: Pell Grant Program, 84.063)

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

Part 690 of Title 34 of the Code of Federal Regulations is amended as follows:

PART 690—PELL GRANT PROGRAM

Subpart A—Scope, Purpose and General Definitions

Sec.
690.1 Scope and purpose.
690.2 General definitions.
690.3 Special terms.
690.4 Eligible student.
690.5 Duration of student eligibility.
690.6 Pell Grant payments from more than one institution.
690.7 Institutional eligibility.
690.8 Consortium agreements.
690.9 Determination of enrollment status under special circumstances.
690.10 Administrative cost allowance to participating schools.

Subpart B—Application Procedures for Determining Expected Family Contribution

690.11 Application.
690.12 Certification of information.
690.13 Deadline for filing applications.
690.14 Notification of expected family contribution.
690.15 Applicant's request for reconiputation of expected family contribution because of clerical or arithmetic error.
690.16 Request for recomputation of expected family contribution because of extraordinary circumstances.

Subpart C—Expected Family Contribution

Subpart D—Expected Family Contribution for Independent Students

Subpart E—Cost of Attendance

Subpart F—Determination of Pell Grant Awards

690.61 Submission process and deadline for Student Eligibility Report.
690.62 Calculation of a Scheduled Pell Grant at full funding.
690.63 Calculation of a Scheduled Pell Grant at less than full funding.
690.64 Maximum Pell Grant as percentage cost of attendance.
690.65 Calculation of a Pell Grant for a payment period.
690.66 Calculation of a Pell Grant for a term which occurs in two award periods.
690.67 Transfer student: attendance at more than one institution during an award period.
690.68 Correspondence study.

Subpart G—Administration of Grant Payments—Regular Disbursement System

690.71 Scope.
690.72 Institutional agreement—Regular Disbursement System.
690.73 Termination of agreement—Regular Disbursement System.
690.74 Advancement of funds to institutions.
690.75 Determination of eligibility for payment.
690.76 Frequency of payment.
690.77 Verification of information on the SER—withholding of payments.
690.78 Method of disbursement—by check or credit to student's account.
690.79 Educational purpose statement.
690.80 Recovery of overpayments.
690.81 Recalculation of a Pell Grant award.
690.82 Fiscal control and fund accounting procedures.
690.83 Maintenance and retention of records.
690.84 Submission of reports.
690.85 Audit and examination.

Subpart H—Administration of Grant Payments—Alternate Disbursement System

690.91 Scope.
690.92 Institutional agreement—Alternate Disbursement System (ADS).
690.93 Change in ownership and change to the Regular Disbursement System (RDS).
690.94 Calculation and disbursement of awards by the Secretary of Education.
690.95 Termination of enrollment and refund.
690.96 Maintenance and retention of records; access for purpose of audit.

Authority: Section 411 of the Higher Education Act of 1965 as added by Section 131(b) of Public Law 92–318, 86 Stat. 247–251 as amended (20 U.S.C. 1070a), unless otherwise noted.

1. Subpart A is revised to read as follows:

Subpart A—Scope, Purpose and General Definitions

§ 690.1 Scope and purpose.

The Pell Grant Program awards grants to help financially needy students meet their costs of postsecondary education.

(20 U.S.C. 1070a)

§ 690.2 General definitions.

The following definitions are set forth in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668, Subpart A:

Ability to Benefit: Institution of higher education (including Public or Private nonprofit institution of higher education, proprietary institution of higher education, and postsecondary vocational institution); one-year training program; recognized equivalent of a high school diploma; and six-month training program.

Other definitions used in this part are:

Academic year: (1) A period of time in which a full-time student is expected to complete the equivalent of at least 2 semesters, 2 trimesters or 3 quarters at institutions using credit hours; or

(2) At least 900 clock hours of training for each program at institutions using clock hours.

(20 U.S.C. 1088)

Act: Title IV–A–1 of the Higher Education Act (HEA) of 1965, as amended.

Award year: The period of time between July 1 of one year and June 30 of the following year.

Clock hour: The equivalent of—

(1) A 50 to 60 minute class, lecture or recitation; or

(2) A 50 to 60 minute faculty supervised laboratory, shop training, or internship.

College Work-Study (CW–S) Program: The program of part-time employment authorized by Title IV–C of the Higher Education Act.

Eligibility index: Expected family contribution.

Enrolled: Completion of registration requirements at the institution a student is attending.

Enrollment status: At those institutions using semesters, trimesters, quarters, or other academic terms and week. However, regardless of the work load, no student enrolled solely in correspondence study will be considered more than a half-time student.

National Defense Student Loan

(1) Has not been awarded a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 5

quarters, or other academic terms must have at least two payment periods for each academic year, or for each program which is less than an academic year.

(2) For a fulltime student whose educational program is one academic

of time referred to in paragraph (d)(5)(i) of this section, or

(B) The remaining hours of his or her educational program whichever is completed first.

(6) If an RDS institution chooses to

or she is scheduled to complete within the award year, and

(B) The second payment period begins when the first payment period ends and ends when the student completes all hours he or she was scheduled to

Enrolled: Completion of registration requirements at the institution a student is attending.

Enrollment status: At those institutions using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours, enrollment status equals a student's credit hour work load categorized as either full-time, three-quarter-time, or half-time.

Full-time student: An enrolled student who is carrying a full-time academic work load (other than by correspondence) as determined by the institution and which is applicable to all students enrolled in a particular program. However, the institution's full-time standard must equal or exceed one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in those institutions using standard semester, trimester or quarter hour systems;

(2) 24 semester hours or 36 quarter hours per academic year for institutions using credit hours to measure progress but not using semester, trimester or quarter systems, or the prorated equivalent for programs of less than one academic year;

(3) 24 clock hours per week for institutions using clock hours;

(4) In those institutions using both credit and clock hours, if the sum of the following fractions is equal to or greater than one:

number of credit hours per term divided by 12 plus number of clock hours per week divided by 24

(5) A series of courses or seminars which equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks; or

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

(20 U.S.C. 1088(c)(2))

Guaranteed Student Loan (GSL) Program: The student loan program authorized by title IV-B of the Higher Education Act.

Half-time student. (1) An enrolled student who is carrying a half-time academic work load—as determined by the institution—which amounts to at least half the work load of the appropriate minimum requirement outlined in the definition of a full-time student. (See definition of full-time student.)

(2) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours or preparation of work per week. However, regardless of the work load, no student enrolled solely in correspondence study will be considered more than a half-time student.

National Defense Student Loan (NDSL) Program: The student loan program authorized by Title II of the National Defense Education Act.

National Direct Student Loan (NDSL) Program: The student loan program authorized by Title IV-E of the Higher Education Act.

Parent Loans for Undergraduate Students (PLUS): The Parent Loan Program authorized by Title IV-B of the Higher Education Act.

Payment schedule: (1) A table showing a full-time student's Scheduled Pell Grant for a given award year. This table, published by the Secretary, is based on—

(i) The Expected Family Contribution.

(ii) Attendance costs as defined in Subpart E; and

(iii) The amount of funds available for making Pell Grants.

(2) The Payment Schedule also includes the Disbursement Schedules which are tables showing the grant amounts three-quarter and half-time students would receive for an academic year.

Scheduled Pell Grant: The amount of a Pell Grant which would be paid to a full-time student for a full academic year.

Secretary: The Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

State Student Incentive Grant (SSIG) Program: The grant program authorized by Title IV-A-3 of the Higher Education Act.

Student Eligibility Report (SER): A report provided to an applicant showing the amount of his or her expected family contribution.

Supplemental Educational Opportunity Grant (SEOG) Program: The grant program authorized by Title IV-A-2 of the Higher Education Act.

Three-quarter-time student: An enrolled student who is carrying a three-quarter-time academic work load—as determined by the institution—which amounts to at least three quarters of the work load of the appropriate minimum requirement outlined in the definition of a full-time student. (See defintion of full-time student.)

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who:

(1) Has not been awarded a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

(20 U.S.C. 1070a unless otherwise noted.)

§ 690.3 Special terms.

(a) Eligible program: An undergraduate program of education or training which—

(1) Admits as regular students only persons who—

(i) Have a high school diploma.

(ii) Have a General Education Development Certificate (G.E.D) or a State certificate received after passing a State-authorized examination which the State recognizes as the equivalent of a high school diploma, or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located, and have the ability to benefit from the education or training offered; and

(2)(i) Leads to a bachelor, associate or undergraduate professional degree,

(ii) Is at least a two-year program which is acceptable for full credit toward a bachelor degree,

(iii) Is at least a 1 year program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation. (A 1-year program is defined in 34 CFR Part 668, Subpart A), or

(iv) Is, for a proprietary or postsecondary vocational institution, at least a six-month program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation. (A six-month program is defined in 34 CFR Part 668, Subpart A).

(b) *An eligible program of study by correspondence:* An undergraduate program of education or training which must be designed to require at least 12 hours of preparation a week.

(c) *Regular student:* A person who enrolls in an eligible program at an institution of higher education for the purpose of obtaining a degree or certificate.

(d) *Payment period for an institution that uses the Regular Disbursement System but does not use academic terms.*

(1) An institution participating in the Pell Grant program under the Regular Disbursement System (RDS institution) that does not use semesters, trimesters, quarters, or other academic terms must have at least two payment periods for each academic year, or for each program which is less than an academic year.

(2) For a fulltime student whose educational program is one academic year—

(i) The first payment period is the period of time in which the student completes the first half of his or her academic year (in credit or clock hours), and

(ii) The second payment period is the period of time in which the student completes the second half of that academic year.

(3) For a full-time student whose educational program is more than one academic year, the first and second payment periods shall be calculated under paragraph (d)(2) of this section. For subsequent academic years, or fractions of academic years, each payment period shall be the period of time in which the student completes—

(i) One-half of the academic year, or

(ii) The remaining hours in the student's educational program, which ever is to be completed first.

(4) For a full-time student whose educational program is LESS than an academic year—

(i) The first payment period is the period of time in which the student completes the first half of his or her educational program (in credit or clock hours), and

(ii) The second payment period is the period of time in which the student completes the second half of that educational program.

(5) The payment period for an eligible part-time student shall be calculated as follows:

(i) Determine the length of time it would take a full-time student in the program to complete one academic year or a program of less than one academic year, as appropriate.

(ii) The first payment period is the period of time in which the part-time student completes half the work (in credit or clock hours) he or she is scheduled to complete in the period referred to in paragraph (d)(5)(i) of this section.

(iii) The second payment period begins when the first payment period ends and ends when the student completes the other half of the work that he or she was scheduled to complete in the period referred to in paragraph (d)(5)(i) of this section.

(iv) Each subsequent payment period begins when the previous period ends and ends when the part-time student completes—

(A) Half the work he or she is scheduled to complete during the period of time referred to in paragraph (d)(5)(i) of this section, or

(B) The remaining hours of his or her educational program whichever is completed first.

(6) If an RDS institution chooses to have more than two payment periods in an academic year or in a program of less than an academic year, the rules set forth in paragraphs (d)(2) through (d)(5) of this section shall be modified to reflect the number of payment periods. For example, if an institution chooses to have three payment periods for an academic year, each payment period shall correspond, for a full-time student, to one-third of the academic year.

(e) *Payment period for an institution using the Regular Disbursement System that uses academic terms.*

(1) For an RDS institution that uses semesters, trimesters, quarters or other academic terms, the payment period is the semester, trimester, quarter or other academic term.

(2) If a student's progress is measured in clock hours, a student may not be paid for a subsequent payment period until he or she finishes the hours of the previous payment period for which the student has already been paid.

(f) *Payment period for an institution using the Alternate Disbursement System.* A payment period for an institution participating in the Pell Grant program under the Alternate Disbursement System (ADS institution) shall be calculated as follows:

(1) If an ADS institution uses semesters, trimesters, quarters or other academic terms and measures progress in credit hours, the payment period is the semester, trimester, quarter or other academic term.

(2) If an ADS institution measures progress in clock hours, or measures progress in credit hours but does not use academic terms, it shall have at least two payment periods. The payment periods shall be calculated as follows:

(i) If the student's academic year is within one award year and the student's educational program is at least one academic year—

(A) The first payment period is the period of time in which the student completes the first half of his or her academic year, and

(B) The second payment period is the period of time in which the student completes the second half of his or her academic year.

(ii) If the student's academic year is NOT within one award year or the student's educational program is LESS than a full academic year—

(A) The first payment period is the period of time in which the student completes the first half of the hours he or she is scheduled to complete within the award year, and

(B) The second payment period begins when the first payment period ends and ends when the student completes all hours he or she was scheduled to complete between the beginning of the second payment period and June 30.

(iii) a student with incompleted hours for the second payment period of any award year may complete them during the following award year. In this case, if the student's educational program is more than an academic year, the first payment period of the new award year begins when the student finishes all carried over hours for which he or she was paid.

(20 U.S.C. 1070a)

§ 690.4 Eligible student.

(a) A student is eligible to receive a Pell Grant if the student—

(1) Is a regular student.

(2) Is enrolled as at least a half-time undergraduate student at an institution of higher education;

(3) Is enrolled in an eligible program as a regular student, as defined in § 690.3; and

(4)(i) Is a U.S. citizen or National,

(ii) Is a permanent resident of the U.S.,

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident, or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Mariana Islands.

(b) A member of a religious order, community, society, agency or organization who is pursuing a course of study in an institution of higher education will be considered as having an expected family contribution of at least $2,401 if that religious order—

(1) Has a primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3)(i) Has directed the member to pursue the course of study, or

(ii) Provides subsistence support to its members.

(20 U.S.C. 1070a)

§ 690.5 Duration of student eligibility.

A student is eligible to receive a Pell Grant for the period of time required to complete the first undergraduate baccalaureate course of study being pursued by that student.

(20 U.S.C. 1070a.)

§ 690.6 Pell Grant payments from more than one institution.

A student will not be entitled to receive Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

(2) The amount of funds paid to each Pell Grant recipient for that award year.

(3) The amount due to each student eligible to receive a Pell Grant through the end of the payment period; and

(4) An accounting of the Pell Grant expenditures for that award year to the

course of study leading to that certificate or degree.

(b) Combination of regular and correspondence study.

(1) If—in addition to regular coursework—an eligible student takes

complete as of the date the application is signed.

(c) The address provided by the student must be his or her residence and not the address of the school, unless the student resides at the school.

(20 U.S.C. 1070a)

financial information relating to the tax year immediately following the base year if the conditions in §§ 690.39 or 690.48 apply.

(ii) 50 percent of his or her cost of attendance; or

(iii) the difference between his or her cost of attendance and expected family contribution.

(2) In award year 1982–83,

(i) the difference between $2,100 and

3. Subpart F is amended to read as

§ 690.6 Pell Grant payments from more than one institution.

A student will not be entitled to receive Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

(20 U.S.C. 1070a.)

§ 690.7 Institutional eligibility.

(a)(1) An institution of higher education is eligible to participate in the Pell Grant Program if it—

(i) Meets the appropriate definition set forth in 34 CFR 668, Subpart A,

(ii) Enters into a program participation agreement with the Secretary, and

(iii) Complies with that agreement and with the applicable provisions of 34 CFR Part 668 of this title, "Student Assistance General Provisions."

(2) If an institution becomes eligible during an award year, a student enrolled and attending that institution will be eligible to receive a Pell Grant for the payment period during which the institution became eligible and any subsequent payment period.

(b)(1) An institution of higher education becomes ineligible to participate in the Pell Grant Program if it no longer meets the applicable definition set forth in Part 668 of this title, or if its eligibility is terminated under the procedures set forth for terminating institutions in Part 668 of this title.

(2) If an institution becomes ineligible during an award year, an eligible student who was attending the institution and who submitted a valid SER to the institution, or to the Secretary if the institution participates under the Alternate Disbursement System (ADS), before the date the institution became ineligible, will be paid a Pell Grant for that award year for—

(i) The payment period that the student completed before the institution became ineligible, and

(ii) The payment period in which the institution became ineligible.

(c) An institution participating in the program under ADS which becomes ineligible must provide the Secretary with the name and enrollment status of each student who applied for and was determined eligible for a Pell Grant who was attending the institution when its eligibility was terminated.

(d) An institution participating in the program under the Regular Disbursement System which becomes ineligible must supply to the Secretary—

(1) The name and enrollment status of each eligible student who, during the award year, submitted a valid SER to the institution before it become ineligible.

(2) The amount of funds paid to each Pell Grant recipient for that award year.

(3) The amount due to each student eligible to receive a Pell Grant through the end of the payment period; and

(4) An accounting of the Pell Grant expenditures for that award year to the date of termination.

(20 U.S.C. 1070a.)

§ 690.8 Consortium Agreements.

(a) A consortium agreement is a written agreement between at least two institutions which enables an enrolled student in an eligible program at one institution to take courses at other institutions which apply towards his or her certificate or degree at the first institution.

(b) If two eligible institutions have entered into a consortium agreement, the institution at which the student is enrolled and expects to receive a degree or certificate calculates and pays the student's Pell Grant. However, if the student is attending an institution *other* than the institution at which he or she is enrolled and expects to receive a degree, the institution at which the student is actually in attendance may pay the student's Pell Grant if both institutions agree in writing to that arrangement.

(c) The institution which calculates and pays the student a Pell Grant must take into account courses taken by the student at both institutions in determining the student's enrollment status and cost of attendance.

(20 U.S.C. 1070a.)

§ 690.9 Determination of enrollment status under special circumstances.

(a) Non-credit remedial courses.

(1) When calculating a student's enrollment status, neither the institution nor the Secretary may count any course in a program of instruction leading to a high school diploma or the recognized equivalent of a high school diploma, even if the course is necessary to enable the student to complete the degree or certificate program.

(2) Except as provided in paragraph (a)(1) of this section, in determining a student's enrollment status, the institution and Secretary will include any non-credit remedial course in which the student is enrolled. If a non-credit remedial course is not measured by clock or credit hours, the institution must determine the equivalent number of clock or credit hours which should be included for that work. A non-credit remedial course is a course of study for which no credit is given toward a certificate or degree and which is designed to increase the ability of the student to pursue an undergraduate course of study leading to that certificate or degree.

(b) Combination of regular and correspondence study.

(1) If—in addition to regular coursework—an eligible student takes correspondence courses from either his or her own institution or another institution under a consortium agreement with the student's institution, the correspondence work may be included in determining the student's enrollment status.

(2) Except as noted in subparagraph (3), the correspondence work that will be included is that amount of work which—

(i) Applies toward the student's degree or certificate or is remedial work necessary for the student to proceed in his or her course of study;

(ii) Is completed within the period of time required for regular course work; and

(iii) Does not exceed the amount of the student's regular course work.

(3) Notwithstanding subparagraph (b)(2)(iii), a student who would be a half-time student based solely on his or her correspondence work will be considered a half-time student unless the calculation in subparagraph (b)(2) indicates a greater status.

(20 U.S.C. 1070a.)

§ 690.10 Administrative cost allowance to participating schools.

(a) The Secretary will pay to each participating institution an amount equal to $10 per award year for each student who receives a Pell Grant at that institution for that year.

(b) All funds an institution receives under this section must be used solely for the institution's costs of administering the Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study and National Direct Student Loan programs.

(20 U.S.C. 1096)

2. Subpart B is revised to read as follows:

Subpart B—Application Procedures for Determining Expected Family Contribution

§ 690.11 Application.

(a) As the first step to receiving a Pell Grant, a student applies on an approved form to the Secretary to have his or her expected family contribution determined. Facsimile copies of this form are not acceptable.

(b) The student, and where relevant, the student's parents or spouse, must submit information that is accurate and complete as of the date the application is signed.

(c) The address provided by the student must be his or her residence and not the address of the school, unless the student resides at the school.

(20 U.S.C. 1070a)

§ 690.12 Certification of information.

(a) The applicant, and where relevant the applicant's parents or spouse, must provide (if requested by either the Secretary or the school) information or documents, including a copy of Federal Income Tax Returns, necessary to verify the accuracy of the information provided.

(b) Failure to provide the requested documentation may make the applicant ineligible to receive a Pell Grant.

(20 U.S.C. 1070a)

§ 690.13 Deadline for filing applications.

For each award year the Secretary will establish application filing deadlines for determining expected family contributions.

(20 U.S.C. 1070a)

§ 690.14 Notification of expected family contribution.

The Secretary will send to each eligible applicant a "Student Eligibility Report" (SER) which states the amount of the applicant's expected family contribution and information used in that computation.

(20 U.S.C. 1070a)

§ 690.15 Applicant's request for recomputation of expected family contribution because of clerical or arithmetic error.

(a) An applicant may request a recomputation of his or her expected family contribution if he or she believes a clerical or arithmetic error has occurred, or if the information submitted was inaccurate when the application was signed.

(b) A request for recomputation must be made on an approved form and must be received by the Secretary no later than the annual deadline unless the recomputation is necessary because of a request made by the Secretary to verify information.

(20 U.S.C. 1070a)

§ 690.16 Request for recomputation of expected family contribution because of extraordinary circumstances.

In filing an application to have an expected family contribution determined, an applicant may provide financial information relating to the tax year immediately following the base year if the conditions in §§ 690.39 or 690.48 apply.

(20 U.S.C. 1070a)

3. Subpart F is amended to read as follows:

Subpart F—Determination of Pell Grant Awards

§ 690.61 Submission process and deadline for student eligibility report.

(a)(1) A student applies for a Pell Grant by submitting a valid "Student Eligibility Report" (SER) to his or her institution or to the Secretary, if that institution is participating in the Pell Grant Program under the Alternate Disbursement System (ADS).

(2) The SER is considered valid only if all information used in the calculation of the eligibility index is complete and accurate when the application was signed. Institutions are entitled to rely on SER information except under conditions set forth in § 690.77.

(b) Except as noted in § 690.77, to receive a Pell Grant, a student who enrolls before May 1 of an award year must submit the SER to his or her institution on or before May 31 of that award year.

A student who enrolls for the first time in the award year on or after May 1 of that award year may submit the SER to the institution on or before June 30 of that award year.

(c) A student attending an institution participating in the Pell Grant Program under the ADS has an additional ten days to submit the SER to the Secretary: June 10 for those who enroll before May 1, and July 10 for those who enroll on or after May 1.

(d) A student who submits an SER to an institution when he or she is no longer enrolled and eligible for payment at that institution may not be paid a Pell Grant.

(20 U.S.C. 1070a)

§ 690.62 Calculation of a Scheduled Pell Grant at full-funding.

(a) When funds are available to satisfy all payments, the Secretary will pay each eligible, full-time student for a complete academic year a Scheduled Pell Grant which is the lowest of:

(1) In award year 1981–82,

(i) the difference between $1,900 and the expected family contribution stated on his or her SER; or

(ii) 50 percent of his or her cost of attendance; or

(iii) the difference between his or her cost of attendance and expected family contribution.

(2) In award year 1982–83,

(i) the difference between $2,100 and the expected family contribution stated on his or her SER; or

(ii) 60 percent of his or her cost of attendance; or

(iii) the difference between his or her cost of attendance and expected family contribution.

(3) In award year 1983–84,

(i) the difference between $2,300 and the expected family contribution stated on his or her SER; or

(ii) 65 percent of his or her cost of attendance; or

(iii) the difference between his or her cost of attendance and expected family contribution.

(4) In award year 1984–85,

(i) the difference between $2,500 and his or her expected family contribution stated on his or her SER; or

(ii) 65 percent of his or her cost of attendance; or

(iii) the difference between his or her cost of attendance and expected family contribution.

(5) In award year 1985–86,

(i) the difference between $2,600 and the expected family contribution stated on his or her SER; or

(ii) 70 percent of his or her cost of attendance; or

(iii) the difference between his or her cost of attendance and expected family contribution.

(b) Notwithstanding paragraph (a) of this section, no payment will be made if the student's Scheduled Pell Grant is less than $200.

(20 U.S.C. 1070a(a)(2).)

§ 690.63 Calculation of a Scheduled Pell Grant at less than full funding.

(a) When funds are not available to satisfy all payments, the Secretary calculates a Scheduled Pell Grant at less than full funding by—

(1) Determining the maximum grant award at full funding for that award year. The maximum grant award is the maximum Pell Grant authorized for the award year without regard to an applicant's expected family contribution or cost of attendance;

(2) Subtracting from that amount, the applicant's expected family contribution; and

(3) Reducing the remainder, based on the applicant's expected family

may exceed 50 percent of the recipient's cost of attendance;

(b) If the maximum grant for that award year is at least $1,901 but not more than $2,099, no grant may exceed

would receive, projected on the basis of a full academic year, would be less than either $200 at full funding or $50 at less than full funding; and

(2) The amount of a student's award

second in the same award year, the student must submit an SER to the second institution or to the Secretary for an institution participating in the program under ADS.

(b) The second institution (or the

an agreement with the Secretary to calculate and pay Pell Grant awards.

(20 U.S.C. 1070a)

§ 690.72 Institutional agreement—regular disbursement system (RDS).

Secretary will pay and institution's students ONLY if the institution enters into an ADS agreement (See § 690.92.).

(20 U.S.C. 1070a)

§ 690.74 Advancement of funds to

(2) Subtracting from that amount, the applicant's expected family contribution: and

(3) Reducing the remainder, based on the applicant's expected family contribution, according to the table in paragraph (b) of this section.

(b) If the applicant's expected family contribution is:	The amount calculated in paragraph (a) of this section is reduced by:
$0 to $600	0
$601 to $800	10
$801 to $1,000	20
$1,001 to $1,200	30
$1,201 to $1,400	40
$1,401 or more	50

(c) If the amount appropriated for an award year exceeds the amount needed for making payments under paragraph (a) of this section, the Secretary shall pay the excess to each eligible student in proportion to the degree that the student's award was reduced in accordance with paragraph (b) of this section.

(d) If the amount appropriated for an award year is less than the amount needed for making grants under paragraph (a) of this section, the Secretary shall reduce each amount determined under paragraph (a) of this section according to the following formula:

Scheduled Pell Grant at Pro-Rata Reduction equals amount determined in paragraph (a) of this section times appropriations available for Pell Grants divided by appropriation needed to fund Pell Grants under paragraph (a) of this section.

(e) At less than full funding, the Secretary will pay a Pell Grant to a full time student for a full academic year in an amount which is the lowest of:

(1) The amount calculated in paragraph (a), (c) or (d) of this section, as appropriate;

(2) The appropriate cost of attendance limitation; or

(3) The difference between the student's cost of attendance and expected family contribution.

(f) Notwithstanding paragraph (e) of this section, no payment may be made if

(1) The student's award is less than $50; or

(2) The student's Scheduled Pell Grant at full funding is less than $200.

(20 U.S.C. 1070a)

§ 690.64 Maximum Pell Grant as percentage of cost of attendance.

Notwithstanding § 690.62 and § 690.63, in any award year—

(a) If the maximum grant for that award year is $1,900 or less, no grant may exceed 50 percent of the recipient's cost of attendance;

(b) If the maximum grant for that award year is at least $1,901 but not more than $2,099, no grant may exceed 55 percent of the recipient's cost of attendance;

(c) If the maximum grant for that award year is at least $2,100 but not more than $2,299, no grant may exceed 60 percent of the recipient's cost of attendance; and

(d) If the maximum grant for any award year is at least $2,300 but not more than $2,599, no grant may exceed 65 percent of the recipient's cost of attendance.

(20 U.S.C. 1070a)

§ 690.65 Calculation of a Pell Grant for a payment period.

(a) At those institutions using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours, a student's Pell Grant for each payment period is calculated as follows:

(1) Determine his or her enrollment status for the term.

(2) Based upon that enrollment status, determine his or her annual award from the Payment Schedule (full-time students), or one of the Disbursement Schedules (part-time students), as appropriate.

(3) Divide the amount determined in subparagraph (2) by the number of terms in an academic year if those terms are of equal length.

(4) If those terms are not of equal length, determine that portion of the award derived in subparagraph (2) which reflects the proportion of the academic year represented by that term. However, a payment for any term may not exceed 50 percent of the award determined in subparagraph (2). To insure this, payments for unequal terms must be adjusted if necessary.

(b) At those institutions which measure progress by clock hours or which measure progress by credit hours or units but do not use semesters, trimesters, quarters or other academic terms, a student's Pell Grant for each payment period is calculated by:

(1) Determining the student's Scheduled Pell Grant; and

(2) Multiplying the Scheduled Pell Grant by:

The number of credit or clock hours the student is expected to take in a payment period divided by the number of credit or clock hours that a full-time student would take in an academic year.

(b) Notwithstanding paragraphs (a) and (b) of this section—

(1) A student may not receive a Pell Grant if the amount which the student would receive, projected on the basis of a full academic year, would be less than either $200 at full funding or $50 at less than full funding; and

(2) The amount of a student's award for an award period may not exceed his or her Scheduled Pell Grant award for that award year.

(20 U.S.C. 1070a)

§ 690.66 Calculation of a Pell Grant for a payment period which occurs in two award periods.

A student who enrolls in a payment period which is scheduled to occur in two award years shall be paid in accordance with the following rules—

(a)(1) The entire payment period will be considered to occur within one award year.

(2) The institution will determine the award year in which the payment period will be placed.

(3) The determination made in paragraph (a)(2) of this section must be the same for all Pell Grant recipients for all payment periods (in a program) which begin on the same day.

(4) If the institution places the payment period in the first award year, it must pay the student with funds from the first award year.

(5) If the institution places the payment period in the second award year, it must pay the student with funds from the second award year.

(b) The institution may not make a payment which will result in the student receiving more than his or her Scheduled Pell Grant award for that award year.

(c)(1) If a term-based institution offers a series of mini-sessions which occurs in two award years, the combined sessions will be treated as one term. A student may not receive more than one term's award for completing any combination of these sessions.

(2) For such mini-sessions, a term-based institution must determine the student's enrollment status for the entire term. That enrollment status will be based upon—

(i) The total number of credits enrolled for in all sessions if that number is known when the award is calculated, or

(ii) A projected number of credits based upon the credits enrolled for in the first session, if the number of credits to be taken in subsequent sessions is unknown when the award is calculated.

(20 U.S.C. 1070a)

§ 690.67 Transfer student: attendance at more than one institution during an award period.

(a) If a Pell Grant recipient withdraws from one institution and enrolls at a

second in the same award year, the student must submit an SER to the second institution or to the Secretary for an institution participating in the program under ADS.

(b) The second institution (or the Secretary for ADS schools) calculates the student's award according to § 690.65.

(c) The second institution (or the Secretary for ADS schools) pays a Pell Grant for only that portion of the award year in which the student is enrolled at that institution. The grant must be adjusted to ensure that the student does not exceed the Scheduled Pell Grant for that award year.

(d) A transfer student must repay any amount received in an award year which exceeds the Scheduled Pell Grant.

(20 U.S.C. 1070a)

§ 690.68 Correspondence study.

A student, enrolled in a program of study by correspondence will be paid according to the following procedures:

(a) The institution prepares a written schedule for submission of lessons. This schedule must reflect a work load of at least 12 hours of preparation per week. It is used to determine the length of the program.

(b) The student's Pell Grant for an award year is calculated by:

(1) Determining the Scheduled Pell Grant according to §§ 690.62 or 690.63, whichever is appropriate, taking into account § 690.64, and

(2) Multiplying the Scheduled Pell Grant by the lesser of the following fractions:

½ or the hours of preparation in the award year divided by the hours of preparation in the academic year.

(This procedure insures that students in a program of study by correspondence are paid as half-time students.)

(c) A student will receive two equal payments for an award year. The first payment will be made after the student has submitted 25 percent of the lessons scheduled for the award year.

(e) The final payment will be made after the student has submitted 75 percent of the lessons scheduled for the award year.

(20 U.S.C. 1070a)

4. Subpart G is amended to read as follows:

Subpart G—Administration of Grant Payments—Regular Disbursement System

§ 690.71 Scope.

This subpart deals with program administration by an institution of higher education that has entered into an agreement with the Secretary to calculate and pay Pell Grant awards.

(20 U.S.C. 1070a)

§ 690.72 Institutional agreement—regular disbursement system (RDS).

(a) The Secretary may enter into an agreement with an institution of higher education under which the institution will calculate and pay Pell Grants to its students. The agreement will be on a standard form provided by the Secretary and will contain the necessary terms to carry out this part.

(b) The Secretary will send a Payment Schedule for each award year to an institution that has entered into an agreement under paragraph (a) of this section.

(20 U.S.C. 1070a)

§ 690.73 Termination of agreement—regular disbursement system.

(a) Termination by the Secretary. The Secretary may terminate the agreement with an institution by giving—

(1) 30 days written notice; or

(2) Less than 30 days written notice if it is necessary to prevent the likelihood of a substantial loss of funds to the Federal government or to students.

(b) Information provided. The institution must provide the following information to the Secretary if the Secretary terminates the agreement:

(1) The name and enrollment status of each eligible student who submitted a valid SER to the institution before the termination date;

(2) The amount of funds the institution paid to Pell Grant recipients for the award year in which the agreement is terminated;

(3) The amount due to each student eligible to receive a Pell Grant through the end of the award year; and

(4) An accounting of Pell Grant expenditures to the date of termination.

(c) Termination by the institution. The institution may terminate the agreement by giving the Secretary written notice. The termination becomes effective on June 30 of that award year. The institution must carry out the agreement for the remainder of the award year.

(d) Termination because of a change in ownership which results in a change of control. The agreement automatically terminates when an institution changes ownership which results in a change of control. The Secretary will enter into an agreement with the new owner if the institution complies with requirements set forth in Subpart B of the Student Assistance General Provisions (34 CFR Part 668).

(e) If an agreement is terminated, the institution's eligibility as discussed in § 690.7 is not terminated but the Secretary will pay and institution's students ONLY if the institution enters into an ADS agreement (See § 690.92.).

(20 U.S.C. 1070a)

§ 690.74 Advancement of funds to institutions.

The Secretary will advance funds for each award year, from time to time, to RDS institutions, based on his or her estimate of the institution's need for funds to pay Pell Grants to its students.

(20 U.S.C. 1070a)

§ 690.75 Determination of eligibility for payment.

(a) An institution may pay a Pell Grant to a student only after it determines that the student—

(1) Meets the eligibility requirements set forth in § 690.4;

(2) Is maintaining satisfactory progress in his or her course of study;

(3) Is not in default on any National Defense/Direct Student Loan made by that institution or on any Guaranteed Student Loan or Parent Loan for Undergraduate Students (PLUS) received to meet the cost of attendance at that institution; and

(4) Does not owe a refund on a Pell Grant, a Supplemental Grant or a State Student Incentive Grant received to meet the cost of attending that institution.

(b)(1) Before making any payment to a student, the institution must confirm that he or she continues to meet the criteria set forth in paragraph (a) of this section.

(2) However, if an eligible student submits an SER to the institution and becomes ineligible before receiving a payment, the institution must pay the student only the amount which it determines could have been used for educational purposes before the student became ineligible.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may pay a Pell Grant to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may neither pay the student a Pell Grant for that payment period nor make adjustments in subsequent Pell Grant payments to compensate for the loss of aid for that period.

(e) Conditions under which students who are overpaid grants may continue to receive Pell Grants are are follows:

(1) Overpayment of a Pell Grant. If an institution makes an overpayment of a

Pell Grant to a student, it may continue to make Pell Grant payments to that student if (i) the student is otherwise eligible; and (ii) it can eliminate the overpayment in the award year in which it occurred by adjusting the subsequent

(h) For purposes of this section, an overpayment of a grant means that a student received payment of a grant greater than the amount he or she was entitled to receive.

(20 U.S.C. 1070a)

Secretary in accordance with the procedures referenced in paragraph (c) of this section.

(e) A student corrects an SER by—

(1) Providing accurate information on the SER;

days before the first day of classes of a payment period.

(3) The earliest an institution can credit a registered student's account is 3 weeks before the first day of classes of a payment period.

the Pell Grant account even if it cannot collect the overpayment from the student.

(b) If an institution makes an overpayment for which it is not liable, it must help the Secretary recover the

(ii) The portion of the payment period at the new enrollment status; and

(iii) Any change in the student's cost of attendance.

(20 U.S.C. 1070a.)

§ 690.82 Fiscal control and fund

Pell Grant to a student, it may continue to make Pell Grant payments to that student if (i) the student is otherwise eligible; and (ii) it can eliminate the overpayment in the award year in which it occurred by adjusting the subsequent Pell Grant payments for that award year.

(2) Overpayment of a Pell Grant due to institutional error. In addition to the exception provided in paragraph (e)(1) of this section, if the institution makes an overpayment of Pell Grant to a student as a result of its own error, it may continue to make payments to that student if:

(i) The student is otherwise eligible, and

(ii) The student acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) Overpayment on a Supplemental Grant. An institution may continue to make Pell Grant payments to a student who receives an overpayment on a Supplemental Grant if:

(i) The student is otherwise eligible, and

(ii) It can eliminate the overpayment by adjusting subsequent financial aid payments (other than Pell Grants) in the same award year in which it occurred.

(f) An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program or the PLUS Program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(g) Conditions under which students who are in default on loans made for attendance at that institution may receive Pell Grants are as follows:

(1) Guaranteed Student Loans and Parent Loans for Undergraduate Student (PLUS). An institution may pay a Pell Grant to a student who is in default on a Guaranteed Student Loan or a PLUS Loan if the Secretary (for federally insured loans) or a guaranteed agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) National Defense/Direct Student Loan. An institution may pay a Pell Grant to a student who is in default on a National Defense/Direct Student Loan made at that institution, if the student has made arrangements, satisfactory to the institution, to repay the loan.

(3) The Secretary considers a National Defense Student Loan, a National Direct Student Loan, a Guaranteed Student Loan, or a PLUS Loan which is discharged in bankruptcy to be in default for purposes of this section.

(h) For purposes of this section, an overpayment of a grant means that a student received payment of a grant greater than the amount he or she was entitled to receive.

(20 U.S.C. 1070a)

§ 690.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) Only one payment is required if a portion of an academic year occurring within one award year is less than three months.

(c) The institution may pay funds due a student for any completed period in one lump sum. The student's enrollment status will be determined according to work already completed.

(20 U.S.C. 1070a)

§ 690.77 Verification of information on the SER—withholding of payments.

(a)(1) The Secretary may require that a student verify the information submitted on the application and included on the SER, by submitting appropriate documentation to the institution or to the Secretary.

(2) The Secretary may also require that the institution withhold payment of a student's grant until the institution or the Secretary determines that the student has supplied the correct information.

(b) If an institution believes that any information on the SER used in calculating the student's expected family contribution is inaccurate, or if the application is chosen by the Secretary for verification, the institution must request that the student verify the information on the SER.

(c) The Secretary will establish and publish—

(1) Procedures to be used in verifying information for selected students ("Validation Procedures"), and

(2) The conditions under which payments will be made for these students.

(d)(1) If a student makes a correction which results in a change in his or her expected family contribution, the student must submit the SER to the institution, and the institution must recalculate the student's award based on the verified SER. Any overpayment must be repaid by the student.

(2) If the documentation requested by the institution under this section does not verify the information on the SER, or if the student does not correct the SER, the institution must forward the student's name, social security number and other relevant information to the Secretary in accordance with the procedures referenced in paragraph (c) of this section.

(e) A student corrects an SER by—

(1) Providing accurate information on the SER;

(2) Getting the appropriate signatures on the SER; and

(3) Re-submitting the SER to the Secretary.

(f) If an institution has documentation which indicates that the information used to calculate the student's expected family contribution on the SER is inaccurate, it may not pay a Pell Grant for any award year until the student corrects the error or verifies the data.

(g) If an institution believes, but cannot document, that inaccuracies exist on the SER, it may not withhold payments unless authorized by the Secretary. These cases must be forwarded to the Secretary.

(h)(1) If the Secretary requests documentation, the student must comply within a time period set by the Secretary.

(2)(i) If the student provides the requested documentation on time, he or she will be eligible for Pell Grant payments based upon the verified SER.

(ii) If the verified SER is submitted to the institution after the appropriate deadline as specified in § 690.61, but within an established time period to be determined by the Secretary, the student may be paid only up to the amount withheld because of the verification process.

(3) If the student does not provide the requested documentation within the established time period—

(i) The student will forfeit the Pell Grant for the award year,

(ii) Any grant payments received must be returned to the Secretary, and

(iii) No further Pell Grant applications will be processed for that student until documentation has been provided or the Secretary decides there is no longer need for documentation.

(20 U.S.C. 1070a.)

§ 690.78 Method of disbursement—by check or credit to student's account.

(a) The institution may pay a student either directly by check or by crediting his or her account with the institution. The institution must notify the student of the amount of money he or she can expect to receive, and how he or she will be paid.

(b)(1) The institution may not make a payment to a student for a payment period until the student is registered for that period.

(2) The earliest an institution can directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution can credit a registered student's account is 3 weeks before the first day of classes of a payment period.

(c) The institution must return to the Pell Grant account any funds paid to a student who, before the first day of classes—

(1) Officially or unofficially withdraws, or

(2) Is expelled.

(d)(1) If an institution pays a student directly, it must notify him or her when it will pay the Pell Grant award.

(2) If the student has not picked up the check at the end of the 15 day period, the institution may credit the student's account for any amount owed to it for the award year.

(3) If a student does not pick up the check on time, the institution must keep that check for 15 days after the date the student's enrollment for that award year ends.

(4) A student forfeits the right to receive the proceeds of the check if he or she does not pick up the check by the end of the 15 day period.

(5) Notwithstanding paragraph (d)(4) of this section, the institution may, if it chooses, pay a student who did not pick up the check, through the next payment period.

(20 U.S.C. 1070a.)

§ 690.79 Educational purpose statement.

(a) An institution may not pay a Pell Grant unless the student files a statement of educational purpose with the institution in which the student declares that he or she will use Pell Grant funds solely for educational expenses connected with attendance at the institution.

(b) The Secretary considers the following statement as satisfying this requirement.

Statement of Educational Purpose

I declare that I will use any funds I receive under the Pell Grant program solely for expenses connected with attendance at

_____
(Name of Institution)
(Date) _____
(Signature) _____

(20 U.S.C. 1080)

§ 690.80 Recovery of overpayments.

(a)(1) The student is liable for any overpayment made to him or her.

(2) Also, the institution is liable for an overpayment it makes to a student if the regulations indicate that the payment should not have been made. The institution must restore those funds to the Pell Grant account even if it cannot collect the overpayment from the student.

(b) If an institution makes an overpayment for which it is not liable, it must help the Secretary recover the overpayment by—

(1) Making a reasonable effort to contact the student and recover the overpayment; and, if successful,

(2) Providing the Secretary with the student's name, social security number, amount of overpayment, and other relevant information.

(20 U.S.C. 1070a.)

§ 690.81 Recalculation of a Pell Grant award.

(a) Change in expected family contribution. (1) If the student's expected family contribution changes the institution must recalculate the Pell Grant Award.

(2) Except as provided in § 690.77(h)(ii), the institution must adjust the award and pay the student the amount he or she is entitled to for the award year if the expected family contribution is recalculated because of—

(i) A clerical or arithemetic error under § 690.15, or

(ii) Extraordinary circumstances which affect the expected family contribution under § 690.39 and § 690.48.

(3) If a student's expected family contribution is recalculated because of a correction of the information requested under § 690.12 or § 690.77, the student's Pell Grant for the award year must be adjusted. Where possible, the adjustment must be made within the same award year.

(4) If the recalculation takes place in a subsequent award year, the student will be

(i) Eligible to receive payment unless prohibited under the provisions of § 690.77(h) and

(ii) Required to return any overpayment at the time of recalculation.

(b) Change in enrollment status.

(1) If an institution decides that a student's enrollment status has changed during a payment period, it may (but is not required to) establish a policy under which the student's award may be recalculated.

(2) If such a policy is established, it must apply to all students.

(3) If a student's award is recalculated, the institution determines the total amount the student is entitled to for the entire payment period by taking into account—

(i) The portion of the payment period at the original enrollment status;

(ii) The portion of the payment period at the new enrollment status; and

(iii) Any change in the student's cost of attendance.

(20 U.S.C. 1070a.)

§ 690.82 Fiscal control and fund accounting procedures.

(a)(1)(i) An institution must receive and process all Pell Grant funds through one identifiable bank account.

(ii) This account may be an existing one (preferably one maintained for Federal funds) if the institution maintains adequate accounting records to account for the Pell Grants funds separately from the other funds in that account.

(iii) At no time may the Pell Grant funds in this bank account be less than the balance indicated in the institution's accounting records for these funds.

(2) The institution must account for the receipt and expenditure of Pell Grant funds in accordance with generally accepted accounting principles.

(b) A separate bank account for Pell Grant funds is not required. However, the institution must notify any bank in which it deposits Pell Grant funds of all accounts in that bank in which it deposits Federal funds. This notice can be given by either:

(i) Including in the name of the account the fact that Federal funds are deposited therein; or

(ii) Sending a letter to the bank listing the accounts in which Federal funds will be deposited. A copy of this letter must be retained in the institution's files.

(c) Except for funds received under § 690.10, funds received by an institution under this part are held in trust for the intended student beneficiaries and may not be used or hypothecated for any other purpose.

(20 U.S.C. 1070a.)

§ 690.83 Maintenance and retention of records.

(a) Each institution must maintain adequate records which include the fiscal and accounting records that are required under § 690.82 and records indicating—

(1) The eligibility of all enrolled students who have submitted a valid SER to the institution;

(2) The name, social security number, and amount paid to each recipient;

(3) The amount and date of each payment;

(4) The amount and date of any overpayment that has been restored to the program account;

(5) The "Student Eligibility Report" for each student;

(6) The student's cost of attendance;

(7) How the student's full or part-time enrollment status was determined; and

(8) The student's enrollment period.

(b)(1) The institution must make the records listed in paragraph (a) available for inspection by the Secretary's

(c) The institution must submit audit reports to the institution's local regional office of the Department of Education's Audit Agency. It must give the Audit Agency and the Secretary access to records or other documents necessary to

Secretary for a Pell Grant according to the following procedures:

(1) The student submits an SER to his or her institution and obtains an ED Form 304 from the institution;

(2) The student completes the ED

§ 690.96 Maintenance and retention of records.

(a) An institution under the ADS must establish and maintain for each award year—

(1) Records relating to each Pell Grant

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(7) How the student's full or part-time enrollment status was determined; and

(8) The student's enrollment period.

(b)(1) The institution must make the records listed in paragraph (a) available for inspection by the Secretary's authorized representative at any reasonable time in the institution's offices. It must keep these records for five years after it submits an accounting of each award year's funds to the Secretary.

(2) An accounting of each award year's funds occurs when the institution submits to the Secretary the June 30 Progress Report for that award year. The June 30 Progress Report (ED Form 255–3) is the report on which an institution reports to the Secretary the total amount of money it has expended in the Pell Grant Program during an award year and the total number of Basic Grant recipients at that institution during that award year.

(c) The institution must keep records involved in any claim or expenditure questioned by Federal audit until resolution of any audit questions.

(d) An institution may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

(20 U.S.C. 1070a)

§ 690.84 Submission of reports.

The institution must submit the reports and information the Secretary requires in connection with the funds advanced to it and must comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(20 U.S.C. 1070a)

§ 690.85 Audit and examination.

(a) Federal audits. The institution must give the Secretary, the Comptroller General of the United States, or their duly authorized representatives, access to the records specified in § 690.62 and § 690.83 and to any other pertinent books, documents, papers, and records.

(b) Non-Federal audits. The institution must audit or have audited under its direction all Pell Grant Program transactions to determine at a minimum—

(1) The fiscal integrity of financial transactions and reports; and

(2) If such transactions are in compliance with the applicable laws and regulations. Such audits will be performed in accordance with the Department of Education's "Audit Guide" for the Pell Grant Program.

(3) The institution must have an audit performed at least once every two years.

(c) The institution must submit audit reports to the institution's local regional office of the Department of Education's Audit Agency. It must give the Audit Agency and the Secretary access to records or other documents necessary to the audit's review.

(20 U.S.C. 1070a.)

5. Subpart H is amended to read as follows:

Subpart H—Administration of Grant Payments—Alternate Disbursement System

§ 690.91 Scope.

This subpart deals with program administration by an institution of higher education under the Alternate Disbursement System (ADS). Under the ADS, the Secretary calculates and pays the Pell Grant awards.

(20 U.S.C. 1070a.)

§ 690.92 Institutional agreement—Alternate Disbursement System (ADS).

(a) Under ADS, the Secretary will calculate and pay Pell Grant awards to students enrolled in an institution which has entered into an agreement to carry out this subpart.

(b) Under this agreement, the institution agrees to:

(1) Complete ED Form 304 for each eligible student as specified in § 690.94; and

(2) Maintain and keep records as specified in § 690.90.

(20 U.S.C. 1070a.)

§ 690.93 Change in ownership and change to the Regular Disbursement System (RDS).

(a) Change to RDS. The Secretary may enter into an agreement with an ADS institution which wishes to participate in the program under the Regular Disbursement System. However, the agreement will go into effect July 1 of the succeeding award year.

(b) Termination because of a change in ownership that results in a change in control.

(1) An ADS agreement terminates when an institution changes ownership that results in a change in control.

(2) The Secretary may enter into an agreement with the new owner if the institution complies with the requirements set forth in Subpart B of the Student Assistance General Provisions (34 CFR Part 668).

(20 U.S.C. 1070a.)

§ 690.94 Calculation and disbursement of awards by the Secretary of Education.

(a) An eligible student enrolled in an institution participating in the Pell Grant Program under the ADS applies to the Secretary for a Pell Grant according to the following procedures:

(1) The student submits an SER to his or her institution and obtains an ED Form 304 from the institution;

(2) The student completes the ED Form 304, including the statement of educational purpose described in § 690.79, and submits it to the institution;

(3) On the ED Form 304 the institution certifies that the student—

(i) Meets eligibility requirements of § 690.4,

(ii) Is maintaining satisfactory progress in his or her course of study,

(iii) Does not owe a refund on grants received for attendance at that institution under the Pell Grant, the Supplemental Grant, or the State Student Incentive Grant Programs, and

(iv) Is not in default on any National Defense/Direct Student Loan made by the institution or on any Guaranteed Student Loan received for attendance at that institution. (In determining whether a student is in default on a GSL, the institution may rely on a written statement provided by the student unless the institution has information to the contrary); and

(4) The institution returns the SER and ED Form 304 to the student, who then submits these documents to the Secretary. Both documents must be received by the Secretary on or before the deadline dates described in § 690.61.

(b) If an institution believes that the information on an SER may be in error, the institution must notify the student and request documentation or correction. Any case not resolved by the institution should be reported to the Secretary.

(c) The Secretary will calculate a student's award in accordance with Subpart F of this part and will pay the student once every payment period.

(20 U.S.C. 1070a.)

§ 690.95 Termination of enrollment and refund.

(a) The institution must inform the Secretary of the date when a student officially or unofficially withdraws or is expelled during a payment period for which that student was paid.

(b) A student who officially or unofficially withdraws or is expelled from an institution before completion of 50 percent of a payment period for which he or she has been paid, will refund a prorated portion of the payment as determined by the Secretary.

(20 U.S.C. 1070a.)

§ 690.96 Maintenance and retention of records.

(a) An institution under the ADS must establish and maintain for each award year—

(1) Records relating to each Pell Grant recipient's enrollment status, and attendance costs at the institution; and

(2) Records showing when each recipient was enrolled.

(b) The institution must make these records available at the geographic location where the student will receive his or her degree or certificate of course completion, and must keep them for five years from the end of the award year.

(c) The institution will make available to the Secretary, the Comptroller General of the United States, and their authorized representatives, pertinent books, documents, papers, and records for audit and examination during the five year retention period.

(d) An institution may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

(20 U.S.C. 1070)

6. Appendix A to Part 960 is removed.

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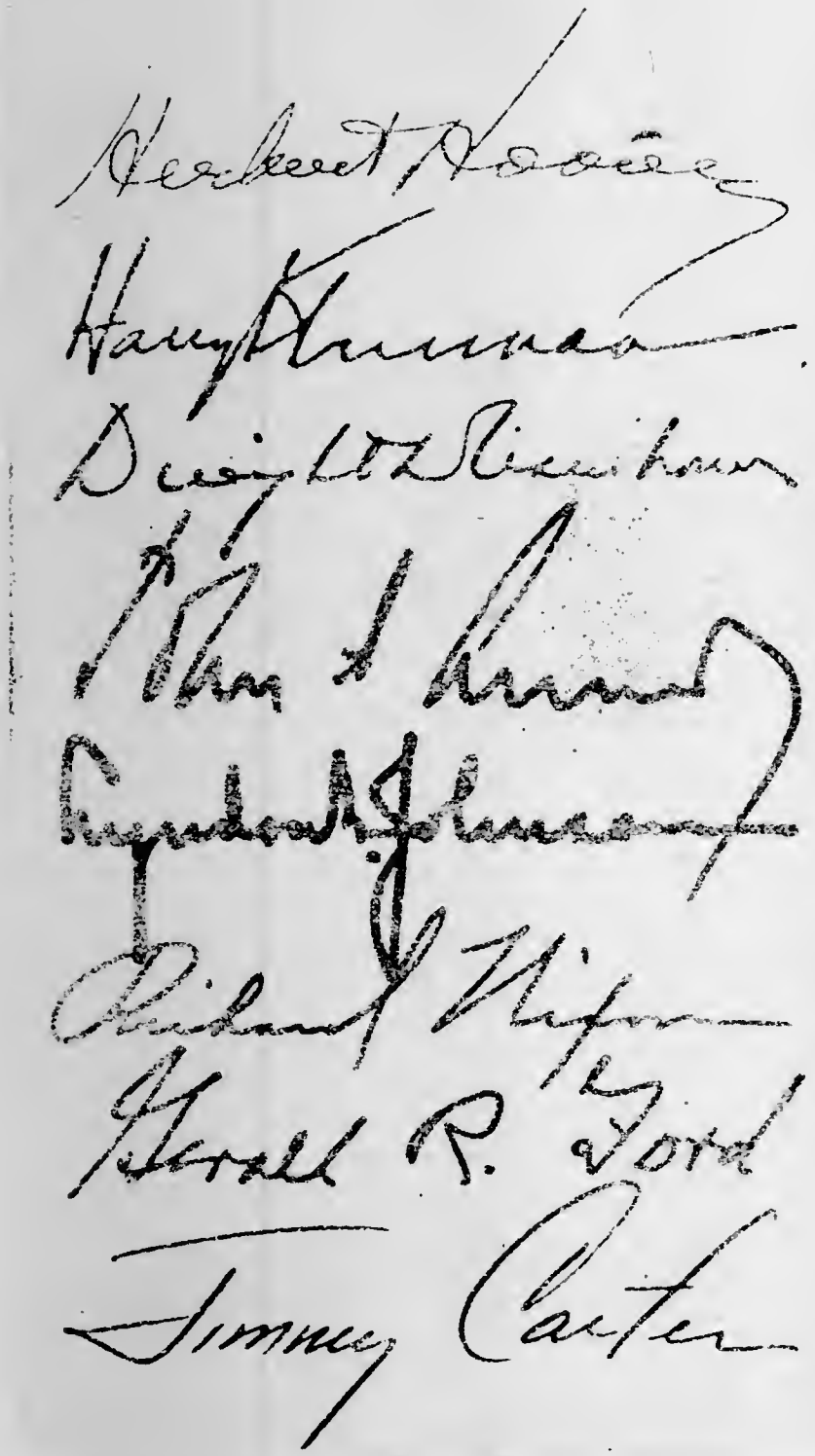
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Federal Register

Book 1 of 2 Books
Wednesday, December 31, 1980

Highlights

Briefings on How To Use the Federal Register—For details on briefings in **Washington, D.C.**, see announcement in the **Reader Aids** section at the end of this issue.

86672 **Incorporations by Reference** OFR has received requests from several agencies to approve materials incorporated by reference into Titles 1 through 16 of the Code of Federal Regulations; effective 1–1–81 (Part II of this issue)

86872 **Education** ED publishes regulations for the International Education Programs; comments by 3–2–81 (Part VIII of this issue)

86407 **Communications** Administrative Conference of the United States publishes recommendation on intragovernmental communications in informal rulemaking

86605 **Veterans** VA revises program guide for use by various regional offices in development and disposition of claims of veterans alleging exposure to ionizing radiation during service while participating in atmospheric testing of nuclear weapons

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Highlights

86812, 86817, 86850 **Foster Care** HHS/HDS/HCFA publishes rules and proposal regarding foster care; effective 12–31–80, comments by 3–16–81 (Part VI of this issue) (3 documents)

86507 **Housing** HHS/SSA publishes proposal regarding coverage and conditions of eligibility in financial assistance programs; comments by 3–2–81

86559 **Continental Shelf** Interior/Sec'y request comments by 2–2–81 on possible revision or reapproval of the 5-year OCS Oil and Gas Leasing Program

86854 **Education** ED publishes regulations regarding student assistance general provisions; comments by 3–2–81 (Part VII of this issue)

86736 **Motor Carriers** ICC publishes eleven documents implementing provisions of the Motor Carrier Act of 1980 (Part V of this issue)

86946 **Air Pollution** EPA sets back effective date until 1–1–83 for all gaseous emissions standards which would otherwise have been effective 1–1–81 for aircraft gas turbine engines (Part XVIII)

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86608 **Sunshine Act Meetings**

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendation on Intragovernmental Communications in Informal Rulemaking

AGENCY: Administrative Conference of the United States.

ACTION: Recommendation.

SUMMARY: The Conference issues Recommendation No. 80–6 concerning intragovernmental communications made to Executive departments and agencies engaged in informal rulemaking proceedings.

DATES: This recommendation was adopted December 12, 1980, and issued December 23, 1980.

FOR FURTHER INFORMATION CONTACT: Charles R. Pouncy, staff attorney, Administrative Conference of the U.S., 2120 L Street, NW., Washington, D.C. 20037, 202–254–7020.

SUPPLEMENTARY INFORMATION: Recommendation 80–6 addresses the question of what are appropriate standards for disclosure of communications made to Executive branch agencies engaged in informal rulemaking by the President and his advisers, as well as by other agencies and administrative bodies. The recommendation urges that the rulemaking agency be free to receive communications containing policy advice and recommendations without being obliged to place such communications in the public file of the proceeding. (However, the recommendation is not intended to suggest any limitation on the agency's discretion to do so.) The recommendation calls on rulemaking agencies to place in the public file communications they receive from elsewhere in the Government containing material factual information, or which reflect comments from persons outside the Government.

This recommendation was adopted at the Twenty-Second Plenary Session of the Conference, pursuant to the Administrative Conference Act, 5 U.S.C. 571–576. It is based on a draft prepared by the Conference's Committee on Agency Decisional Processes, which was published for comment on October 17, 1980 [45 FR 68948], and a study prepared for the Conference by Dean Paul R. Verkuil of the Tulane University School of Law [80 Columbia Law Review 943 (June, 1980)].

The final recommendation differs from the earlier draft in certain respects. A paragraph on the proper focus of judicial review and another paragraph urging inclusion in the public rulemaking file of outside communications sent to a commenting agency were deleted by the Committee after further consideration. References to rulemaking by independent agencies, bracketed in the published draft, were deleted in order to limit the scope of the recommendation to Executive departments and agencies. Language was inserted in the preamble to emphasize the discretion rulemaking agencies possess to place in the public file communications that are not required to be disclosed under the standards set forth in the recommendation. Other minor changes in language were made.

Several members of the Conference who disagree with Recommendation 80–6 have filed a separate statement, which is published immediately following the text of the recommendation in accordance with Section 6(C) of the Bylaws, 1 CFR 302.6(c).

All minutes of the committee in which the recommendation was developed, comments received from the public, and the verbatim transcript of the discussion of this recommendation at the Plenary Session are available for public inspection at the Conference's office, Suite 500, 2120 L Street, NW., Washington, D.C.

1. The table of contents to 1 CFR Part 305 is amended by adding the following new section:

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

. . . . . .

Sec.
305.80–6 Intragovernmental Communications in Informal Rulemaking Proceedings (Recommendation No. 80–6).

2. Section 305.80–6 is added to Part 305, as follows:

§ 305.80–6 Intragovernmental communications in informal rulemaking proceedings (recommendation No. 80–6).

(a) The growing complexity and scope of government regulation resulting from informal rulemaking proceedings have increased the importance of communication and coordination among agencies. Because the President, as the nation's Chief Executive, may be deemed accountable for what agencies do, efforts to achieve policy coordination through Presidential channels have become increasingly significant. In recent years the President has attempted to do this through a variety of analytical and procedural mechanisms, such as the promulgation of Executive Order 12044 and establishment of the Regulatory Analysis Review Group and the Regulatory Council. The exercise of Presidential direction has not been limited to the establishment of general mechanisms, however. The President, his advisers, and units of the Executive Office have also on occasion intervened directly in the formation of policy during particular rulemaking proceedings. This intervention has raised questions by private participants about the manner in which executive influence should be exercised.

(b) This recommendation addresses the appropriate standards for communication to Executive departments and agencies from the President, advisers to the President, units of the Executive Office, and other Executive branch and independent agencies when the recipient agency is making policy decisions through the process of informal rulemaking. It pertains to rulemaking of general applicability, not to proceedings (whether rulemaking or adjudication) that involve the distribution, modification or withdrawal of valuable privileges to identifiable private interests. To some degree it is a corollary to ACUS Recommendation 77–3, which is concerned with restrictions upon private participants' oral and written communications in informal rulemaking. The

recommendation is based upon the need to accommodate two competing elements of a good rulemaking process. The first is the desirability of being able to identify a coherent body of factual

rulemaking proceeding except to the extent called for in paragraph 2.

2. When the rulemaking agency receives communications from the President, advisers to the President, the Executive Office of the President, or other administrative bodies

agencies should be encouraged to provide their views during the public comment period so that the public might respond, or at least be aware of the views expressed. The recommendation actually encourages Executive Branch

decisionmaking, or to provide procedural opportunities for subsequent litigation. Nor do we doubt that future Presidents must control federal Executive Branch agencies more effectively, and ultimately be held

the United States Code as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment contained in this order adds a transportation line to the listing and is editorial in nature.

Immigration and Naturalization Service, 425 Eye Street, NW, Washington, D.C. 20536, Telephone (202) 633–2895.

SUPPLEMENTARY INFORMATION: In the matter of the Supplementary Information in the above noted final rule

recommendation is based upon the need to accommodate two competing elements of a good rulemaking process. The first is the desirability of being able to identify a coherent body of factual information upon which the rulemaking agency's decision is based, and to make this information available to all—other participants in the process, the staff of the agency itself, and reviewing courts. The second is the desirability of affording government officials opportunity to engage in uninhibited internal debate over the policy implications of this body of information, subject only to the requirement that the ultimate conclusion be rational and adequately explained. Both principles are recognized in this recommendation. Units of the government other than the one conducting the rulemaking may have perspectives or expertise not readily available to the rulemaking agency that would enhance the quality of internal debate on the implications of the information in the public file, and their participation should be encouraged. At the same time, rulemaking agencies should not permit, and other units of the government should not request, any opportunity to introduce into the proceeding material factual information (as distinct from indications of governmental policy) not made available to other participants.

(c) The Conference is also concerned with avoiding any possibility that intragovernmental communications from outside the rulemaking agency might serve as undisclosed or inadvertent conduits for new material factual information, and with providing adequate opportunities for other participants to respond to material factual information that is introduced.

(d) The recommendation addresses the degree to which agencies should be free to receive certain kinds of intragovernmental communications in informal rulemaking without having a duty to place them in the public file of the proceeding. It is not intended to suggest any limitation on the discretion of any rulemaking agency to disclose such communications to the public.

Recommendation

1. Any Executive department or agency engaged in informal rulemaking in accordance with the procedural requirements of section 553 of the Administrative Procedure Act should be free to receive written or oral policy advice and recommendations at any time from the President, advisers to the President, the Executive Office of the President, and other administrative bodies, without having a duty to place these intragovernmental communications in the public file of the rulemaking proceeding except to the extent called for in paragraph 2.

2. When the rulemaking agency receives communications from the President, advisers to the President, the Executive Office of the President, or other administrative bodies which contain material factual information (as distinct from indications of governmental policy) pertaining to or affecting a proposed rule, the agency should promptly place copies of the documents, or summaries of any oral communications, in the public file of the rulemaking proceeding. All communications from these sources containing or reflecting comments by persons outside the government should be so identified and placed in the public file, regardless of their content. A rulemaking agency should consider the importance of giving public participants adequate opportunity to respond if the material presents new and important issues or creates serious conflicts of data.

3. The Administrative Conference takes no position in the present recommendation concerning rulemaking by other than Executive departments and agencies.

Separate statement of William A. Butler, Peter A. Bradford, Laurence Gold, Charles R. Halpern, Rhoda H. Karpatkin, Alan B. Morrison, Katherine E. Sasseville, and Thomas M. Susman

We oppose this recommendation because we believe that Executive Branch agencies should be encouraged to disclose, not withhold, all of the factors which may have influenced their decisions in informal rulemaking. The public's right to know the reasons for a decision far outweighs agency decisionmakers' rights to secrecy. We have heard no arguments and are aware of none which convince us that putting written material and summaries of oral comments in the public record created during informal rulemaking will inhibit robust debate in that process. This recommendation takes on added importance given the current trend in administrative law away from cumbersome formal adjudications and towards streamlined informal notice and comment rulemaking. Our fear is that this recommendation will invite public cynicism regarding informal administrative rulemaking, and generate contempt for a process where *post hoc* agency rationales carefully selected from the public record are offered as the bases for decisions reached for what may well be quite different, undisclosed and perhaps legally irrelevant reasons. Such a perception of Executive Branch rulemaking will undermine public confidence in the integrity of agency decisionmaking.

This recommendation extends beyond the President and his closest advisors and allows all Executive Branch agencies to involve themselves secretly in informal rulemaking. In our view agencies should be encouraged to provide their views during the public comment period so that the public might respond, or at least be aware of the views expressed. The recommendation actually encourages Executive Branch agencies as well as the White House to wait until the public record is closed before making their views known. At a minimum, we believe a summary of all oral comments and copies of written comments should be placed in the public file as soon as possible, and in no event later than the date when the rule is promulgated.

We also believe that the fact/policy distinction set up by the recommendation is unworkable in practice. "Material factual information" can easily overlap or be intertwined with "policy advice" or "indications of governmental policy." Indeed, agencies often make that precise point in resisting disclosure under the Freedom of Information Act. There will be an inevitable bias in favor of non-disclosure for fear of revealing "policy advice," and there is no means for the public to know that an agency has made a determination that a particular comment will not be disclosed or to seek judicial review of that determination. Further, we do not understand how a recipient agency is to know whether comments from another agency or the White House are ones "containing or reflecting comments from persons outside the government" using their governmental contacts as conduits, or how the recommendation's supposed safeguard in this respect will be policed. We also believe that in any but the most extraordinary circumstances, a rulemaking agency should give public participants "adequate opportunity to respond if the material presents new and important issues or creates serious conflicts of data" and not simply "consider" doing so.

In all likelihood this recommendation will expose agency heads to increased political pressures from either other executive agencies or outside groups who will use those agencies as conduits. Such pressures are likely to include considerations other than those made relevant by the statutes which the particular rulemaking implements. Moreover, the courts will be unable to serve as a check upon consideration of statutorily irrelevant factors since they cannot review that which is not disclosed.

We are not trying to shut off Executive Branch comment, to impose onerous burdens imported from formal adjudications on informal rulemaking, to prolong or delay government decisionmaking, or to provide procedural opportunities for subsequent litigation. Nor do we doubt that future Presidents must control federal Executive Branch agencies more effectively, and ultimately be held accountable for their actions. The dispute here is over whether the recommendation is a fair, or even a necessary, way to achieve these ends.

We simply do not see the reasons for promoting secrecy. Disclosure is simple and fair. Policies promoting secrecy over disclosure in rulemaking do not constitute good government. Therefore, we dissent.

Dated: December 23, 1980.

Richard K. Berg,

Executive Secretary.

[FR Doc. 80-40687 Filed 12-30-80; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Belize Airways, Ltd.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This amendment to the regulation of the Immigration and Naturalization Service adds a carrier to the list of transportation lines which have entered into agreement with the Commissioner of Immigration and Naturalization to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries. This amendment is necessary because the transportation lines which have signed such agreements are published in the Service's regulations.

EFFECTIVE DATE: November 26, 1980.

FOR FURTHER INFORMATION, CONTACT: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536—Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: This amendment to 8 CFR 238.3 is published pursuant to section 552 of Title 5 of the United States Code [80 Stat. 383] as amended by Pub. L. 93-502 [88 Stat. 1561], and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b), and 8 CFR 2.1. Compliance with the provisions of section 553 of Title 5 of the United States Code as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment contained in this order adds a transportation line to the listing and is editorial in nature.

The Commissioner of Immigration Naturalization Service entered into agreement with the following named carrier on the date indicated to guarantee the passage through the United States of aliens in immediate and continuous transit destined to foreign countries under section 236(d) of the Immigration and Nationality Act and 8 CFR 238: BELIZE AIRWAYS, LTD.

Effective date: November 26, 1980.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

In § 238.3 *Aliens in immediate and continuous transit*, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by adding in alphabetical sequence, BELIZE AIRWAYS, LTD.

* * * * *

(Secs. 103 and 238(d), 8 U.S.C. 1103 and 1228(d))

Dated: December 22, 1980.

David Crosland,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 80-40611 Filed 12-30-80; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Part 292

Representation and Appearances; Clarifying Right to Representation

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Correction to Supplementary Information.

SUMMARY: In Representation and Appearances: Clarifying Right to Representation published in the Federal Register on December 12, 1980, at 45 FR 81732, the Supplementary information section incorrectly states the conditions under which an alien has the right to representation by an attorney or representative.

EFFECTIVE DATE: January 12, 1981.

FOR FURTHER INFORMATION CONTACT: For general information: Stanley J. Kieszkiel, Acting Instructions Officer, 425 Eye Street, NW, Washington, D.C. 20536. Telephone: (202) 633-3048.

For specific information: Paul W. Schmidt, Deputy General Counsel, Immigration and Naturalization Service, 425 Eye Street, NW, Washington, D.C. 20536, Telephone (202) 633-2895.

SUPPLEMENTARY INFORMATION: In the matter of the Supplementary Information in the above noted final rule published in the **Federal Register** on December 12, 1980, at 45 FR 81732, the last sentence of the first paragraph incorrectly states in the disjunctive that an alien's right to representation during primary or secondary inspection attaches only if the alien "has become the focus of a criminal investigation or has been taken into custody."

As corrected, the sentence should read:

To avoid possible confusion as to when the right to representation attaches, 8 CFR 292.5(b) is amended to provide that an applicant for admission processing through primary or secondary inspection does not have the right to representation unless the applicant has become the focus of a criminal investigation and has been taken into custody.

Dated: December 22, 1980.

David Crosland,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 80-40603 Filed 12-30-80; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 51

Brucellosis Indemnity; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects the wording in an amendment to the final regulations governing the payment of indemnity for cattle destroyed because of brucellosis. This action is needed to correct an administrative oversight which resulted in the inadvertent deletion of the regulation that provided the time limit requirement for indemnity payments for destruction of cattle because of brucellosis.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. A. D. Robb, USDA, APHIS, VS, Federal Building, Room 805, Hyattsville, MD 20782, 301-436-8713.

SUPPLEMENTARY INFORMATION: On June 17, 1980, there was published in the **Federal Register** (45 FR 40965-40966) a final rulemaking document amending

the brucellosis indemnity regulations in 9 CFR Part 51. Through a proof reading oversight, the action amending Section 51.6 of the regulations governing the payment of indemnity for cattle

that the Department will not allow claims for indemnity for the destruction of animals or materials which have been moved or handled by the owner thereof or his or its officer, employee or agent,

public comment period on this action because the Department is not able to predict when an outbreak of a disease not endemic to the United States may occur in the United States, thus creating

livestock and poultry. This document amends 9 CFR Part 53, "Foot-and Mouth-Disease, Rinderpest, Pleuropneumonia, and Certain Other Communicable Diseases of Livestock and Poultry," to provide that the

In § 53.10 new paragraph (d) is added to read:

§ 53.10 Claims not allowed.

* * * * *

(d) The Department will not allow

Belcrest Road, Hyattsville, MD 20782, 301-436-8383.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to

the brucellosis indemnity regulations in 9 CFR Part 51. Through a proof reading oversight, the action amending Section 51.6 of the regulations governing the payment of indemnity for cattle destroyed because of brucellosis stated that "In § 51.6, Section (c) is amended to read * * *" It should have stated "In § 51.6, Section (c) is amended by deleting all after the first semicolon and inserting the following in lieu thereof * * *"

§ 51.6 [Amended]

In order to correct this error, § 51.6(c) is corrected to read as follows:

* * * * *

(c) *Time limit for destruction of animals.* Payment of indemnity shall be made under this Part only if the animals are destroyed within days after the date of identification, pursuant to § 51.5 of the regulations in this part, except that the appropriate Veterinarian in Charge may extend the time limit to 30 days when request for such extension is received from the owner prior to the expiration date of the original 15-day period allowed, or when the animals were sold for slaughter prior to the expiration date of the original 15-day period, and when the Veterinarian in Charge determines that such extension will not adversely affect the Brucellosis Eradication Program; and except further, that the Deputy Administrator shall, upon request in specific cases, extend the time limit beyond the 30-day period when unusual and unforeseen circumstances occur which prevent or hinder the destruction of the animals within the 30-day period, such as, but not limited to, floods, storms, or other Acts of God which are beyond the control of the owner, or when destruction is delayed due to requirements of another Federal Agency.

Done at Washington, D.C., this 24th day of December 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services

[FR Doc. 80-40649 Filed 12-30-80; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 53

Foot-and-Mouth Disease, Pleuropneumonia, Rinderpest, and Certain Other Communicable Diseases of Livestock and Poultry

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations in 9 CFR Part 53 to provide that the Department will not allow claims for indemnity for the destruction of animals or materials which have been moved or handled by the owner thereof or his or its officer, employee or agent, acting within the scope of his or its office, employment or agency, in violation of a law or regulation administered by the Secretary for the prevention of the introduction into or dissemination within the United States of any communicable disease of livestock or poultry for which the animal or material was destroyed, or in violation of a law or regulation for the enforcement of which the Secretary enters or has entered into a cooperative agreement for the control or eradication of such disease. Part 53 presently provides for the payment of Federal indemnity to owners for their animals or materials which have been destroyed to prevent the introduction or spread of certain communicable animal diseases including foot-and-mouth disease, pleuropneumonia and rinderpest, regardless of whether such laws or regulations have been violated by them or their officers, employees or agents. The purpose of this amendment is to discourage the movement or use of animals and materials in violation of various laws or regulations administered by the Secretary or by States to prevent the introduction or spread of communicable diseases of livestock or poultry.

DATES: Effective date: December 31, 1980. Comments must be received on or before: March 2, 1981.

ADDRESS: Written comments to Deputy Administrator, USDA, APHIS, VS, Federal Building, Room 748, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. C. G. Mason, APHIS, Emergency Programs, Room 748, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant". The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement. A Final Impact Statement will be developed after public comments have been received.

Dr. J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, Veterinary Services, Animal and Plant Health Inspection Service, has determined that an emergency situation exists which warrants the publication of this final rule without opportunity for a public comment period on this action because the Department is not able to predict when an outbreak of a disease not endemic to the United States may occur in the United States, thus creating the possibility that the Department would have to pay indemnity to persons who have violated certain statutes and regulations intended to prevent such an outbreak.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the **Federal Register**. Comments have been solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

The Secretary of Agriculture, pursuant to the provisions of section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), is authorized to make such regulations and take such measures as he may deem proper to prevent the introduction or dissemination of the contagion of any contagious, infectious, or communicable disease of animals or poultry from any foreign country into the United States or from one State or Territory of the United States or the District of Columbia to another. These measures include authority to seize and dispose of certain materials or animal products whenever, in his judgment, such action is advisable to guard against the introduction or spread of such contagion. Further, the Secretary of Agriculture, pursuant to the provisions of section 11 of the Act of May 29, 1884, as amended (21 U.S.C. 114a), is authorized to cooperate with the States to control and eradicate any communicable disease of livestock or poultry, including the payment of claims growing out of the destruction of animals and materials affected by or exposed to any such disease in accordance with such regulations as the Secretary may prescribe.

The Department in reliance on this authority, has promulgated regulations (9 CFR Part 53) regarding the payment of indemnities for animals and materials destroyed because of the existence of foot-and-mouth disease, pleuropneumonia, rinderpest, and certain other communicable diseases of livestock and poultry. This document amends 9 CFR Part 53, "Foot-and Mouth-Disease, Rinderpest, Pleuropneumonia, and Certain Other Communicable Diseases of Livestock and Poultry," to provide that the Department will not allow claims for indemnity for the destruction and disposal of animals and materials which have been moved or handled by the owner thereof, or his or its officer, employee or agent, acting within the scope of his or its office, employment of agency, in violation of a law or regulation administered by the Secretary for the prevention of the introduction or dissemination within the United States of any communicable disease of livestock or poultry for which the animal or material was destroyed, or in violation of a law or regulation for the enforcement of which the Secretary has entered into a cooperative agreement for the control or eradication of such disease.

"Disease," as used in the regulations, is defined in 9 CFR 53.1 to mean, in pertinent part, "foot-and-mouth disease, rinderpest, contagious pleuropneumonia, or any other communicable disease of livestock or poultry, which in the opinion of the Secretary constitutes an emergency and threatens the livestock industry of the country; or any other communicable disease of livestock or poultry referred to in this paragraph * * *" The term "State" refers to any State, the District of Columbia, and any territory or possession of the United States which has entered into a cooperative agreement with the Department in connection with the control and eradication of diseases referred to in 9 CFR Part 53.

The Department has found that claims for indemnity have been made on animals or materials destroyed because they were found to be infected or exposed to a communicable disease referred to in 9 CFR Part 53, although the owner thereof, or his or its officer, employee, or agent had violated Federal or State laws or regulations intended to prevent the dissemination of such disease. Allowing indemnity claims in such situations undermines the effectiveness of the Department's efforts to prevent the introduction and spread of communicable diseases of livestock and poultry by rewarding a claimant for violating laws and regulations designed to prevent the animal and materials from becoming contaminated. Allowing such claims is contrary to Departmental polices.

Accordingly, Part 53, Title 9, Code of Federal regulations, is amended in the following respect:

In § 53.10 new paragraph (d) is added to read:

§ 53.10 Claims not allowed.

* * * * *

(d) The Department will not allow claims arising out of the destruction of animals or materials which have been moved or handled by the owner thereof or its officer, employee, or agent, acting within the scope of his or its office, employment or agency, in violation of a law or regulation administered by the Secretary for the prevention of the introduction into or the dissemination within the United States of any communicable disease of livestock or poultry for which the animal or material was destroyed, or in violation of a law or regulation for the enforcement of which the Secretary enters or has entered into a cooperative agreement for the control and eradication of such disease.

(Section 2, 32 Stat. 792, and Sec. 11, 23 Stat. 32, as amended (21 U.S.C. 111, 114a))

All written submissions made pursuant to this amendment will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 748, Hyattsville, MD, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the **Federal Register**.

Done at Washington, D.C., this 24th day of December 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services

[FR Doc. 80-40682 Filed 12-30-80; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 91

Inspection and Handling of Livestock for Exportation: Recodification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: 9 CFR Part 91 on inspection and handling of livestock for exportation is recodified to reflect a rearrangement and renumbering of the sections and subsections without substantive change. This action is necessary to reduce editorial confusion and to provide room for future substantive changes.

EFFECTIVE DATE: December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. H. A. Waters, USDA, APHIS, VS, Room 626, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8383.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044.

Dr. M. J. Tillery, Director, National Program Planning Staffs, VS, APHIS, USDA, has made the determination that since this rule relates to agency management it is exempt from the provisions of Executive Order 12044, Improving Government Regulations, and, thus, does not require the preparation of a regulatory impact analysis.

Further, these amendments are nonsubstantive in nature and relate to agency management, and pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are unnecessary and contrary to the public interest, and good cause is found for making these amendments effective less than 30 days after publication in the **Federal Register**.

The Animal and Plant Health Inspection Service (APHIS) is engaged in revising its regulations in 9 CFR Part 91 concerning inspection and handling of livestock for exportation. This revision is being carried out in two stages. The first stage is a rearrangement and renumbering of current regulations. The second stage will include substantive changes in the regulations.

The recodification and renumbering, which is accomplished by this document, is necessary to reduce editorial confusion, to arrange the regulations in an orderly fashion, and to provide space for future substantive changes.

The following table shows the relationship of the former CFR section numbers under Part 91 and their redesignations.

Old section	New section
91.1	91.1
91.2	91.2
91.3	91.14
91.4	91.3
91.5(a)	91.5
91.5(b)	91.5 (redesig.)
91.5(c)	91.5 (redesig.)
91.5(d)	91.5 (redesig.)
91.6	91.9
91.7	91.15
91.8	91.16
91.9	91.17
91.10	91.18
91.11	91.19
91.12	91.20
91.13	91.21
91.14	91.22
91.15	91.23
91.16	91.24
91.17	91.28(a)
91.18	91.28(b)
91.19	91.28(c)
91.20	91.28(d)
91.21	91.28(e)
91.22	91.28(f)
91.23	91.28(g)
91.24	91.28(h)
91.25	91.28(i)
91.26	91.28(j)
91.27	91.28(k)
91.28	91.27
91.29	91.29

Old section	New section
91.21	91.28(a)
91.22	91.18(b)
91.23	91.28(c)
91.24	91.28(d)
91.25	91.28(e)
91.26	91.28(f)

Subpart A—General Provisions

§ 91.4 [Redesignated as § 91.3]

3. Section 91.4 is redesignated § 91.3, and is amended by changing the reference to "sections 91.5(a) (1) and (2), [illegible] paragraph (b) to the Environmental Protection Agency for use in treating animals infested with the ectoparasite involved in accordance with the label requirements. Treatment shall be personally supervised and certified on the origin health certificate by an accredited veterinarian who shall

from premises located in an area quarantined for scrapie.

(1) Sheep exported for immediate slaughter need not comply with the requirements of paragraph (2) of this section.

(2) All sheep intended for export shall

11. A new Subpart D and title are added before § 91.17 to read:

Subpart D—Inspection of Vessels and Accommodations

§ 91.8 [Redesignated as § 91.17]

§ 91.20 [Redesignated as § 91.29]

25. Section 91.20 is redesignated § 91.29.

91.23, 91.25, 91.26 and 91.29 are redesignated Sections 91.28(b), (c), (e), (f), and (g), respectively.

Old section	New section
91.21	91.28(a)
91.22	91.18(b)
91.23	91.28(c)
91.24	91.28(d)
91.25	91.28(e)
91.26	91.28(f)
91.27	91.28(b)
91.28	91.28(c)
91.29	91.28(g)
91.30	91.28(h)
91.31	91.28(i)
91.32	91.28(j)
91.33	91.18
91.34	91.4

Accordingly, 9 CFR Part 91 is recodified in the following respects:

1. A revised index is provided to read:

Subpart A—General Provisions

Sec.
91.1 Definitions.
91.2 Animals to be handled in compliance with regulations.
91.3 General export requirements.
91.4 Other movements and conditions.

Subpart B—Diagnostic Tests, Treatments

91.5 Cattle.
91.6 Goats.
91.7 [Reserved]
91.8 Sheep.
91.9 Swine.
91.10 [Reserved]
91.11 [Reserved]
91.12 [Reserved]
91.13 [Reserved]

Subpart C—Ports of Embarkation, Facilities; Health Certification

91.14 Ports of embarkation and export inspection facilities.
91.15 Inspection of animals for export.
91.16 Certification of animals for export.

Subpart D—Inspection of Vessels and Accommodations

91.17 Accommodations for humane treatment of animals on ocean vessels.
91.18 Cleaning and disinfection of transport carriers for export.
91.19 Inspection of ocean vessels prior to loading.
91.20 General construction.
91.21 Ventilation.
91.22 Protection from heat of boilers and engines.
91.23 Doors and ramps.
91.24 Attendants.
91.25 Space requirements for animals on ocean vessels.
91.26 Flooring.
91.27 Troughs and hayracks.
91.28 Rails and stanchions.
91.29 Hatches.
91.30 Defective fittings.

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b, unless otherwise noted.

2. A new subpart A and title is added before § 91.1 to read:

Subpart A—General Provisions

§ 91.4 [Redesignated as § 91.3]

3. Section 91.4 is redesignated § 91.3, and is amended by changing the reference to "sections 91.5(a) (1) and (2), 91.5(b), and 91.5(c)" in paragraph (b) to read "sections 91.5 (a) and (b), 91.6(a) (1) and (2), and 91.9(a)" and reference to "91.5" in paragraph (c) to read "Section 91.5–91.13". Footnote 3 is redesignated footnote 2, and the reference to that footnote in paragraph (c) is changed from "3" to "2".

§ 91.34 [Redesignated as § 91.4]

4. Section 91.34 is redesignated § 91.4.

5. A new subpart B and title are added before § 91.5 to read:

Subpart B—Diagnostic Tests, Treatments

6. Section 91.5 is redesignated §§ 91.5 to 91.13 and is amended to read as follows:

§ 91.5 Cattle.

In order to be eligible for export, cattle shall be tested with results as specified in this section, and the origin health certificate shall specify the type of tests conducted, the dates of the tests, and the results of the tests.

(a) *Tuberculosis.* All cattle over one month of age shall be negative to a caudal intradermal tuberculin test using 0.1 ml. of tuberculin with a reading obtained 72 hours (plus or minus six hours) after injection as prescribed in Veterinary Services Memorandum 552.15 "Instructions and Procedures for Conducting Tuberculin Tests in Cattle," section VIII A.[3]

(b) *Brucellosis.* All cattle over six months of age shall be negative to a test for brucellosis conducted as prescribed in "Standard Agglutination Test Procedures for the Diagnosis of Brucellosis" [4] or "Supplemental Test procedures for the Diagnosis of Brucellosis"; [4] except, that such tests are not required for official vaccinates of dairy breeds under 20 months of age, official vaccinates of beef breeds under 24 months of age, or steers and spayed heifers.

(c) *Treatment for ectoparasites.* All cattle, except those found free of ectoparasites or those intended for exportation for slaughter purposes to any foreign country shall be treated for ectoparasites within 30 days preceding the date of export. Such treatment shall be made using a pesticide registered by the Environmental Protection Agency for use in treating animals infested with the ectoparasite involved in accordance with the label requirements. Treatment shall be personally supervised and certified on the origin health certificate by an accredited veterinarian who shall be ready to apply an antidote if adverse side effects occur following treatment.

§ 91.6 Goats.

(a) In order to be eligible for export, goats shall be tested with results as specified in this section, and the origin health certificate for such animals shall specify the type of test conducted, the date of the tests, and the results of the tests.

(1) *Tuberculosis.* All goats over 1 month of age shall be negative to a caudal intradermal tuberculin test using 0.1 ml. of tuberculin with a reading obtained 72 hours (plus or minus 6 hours) after injection as prescribed in Veterinary Services Memorandum 552.15.

(2) *Brucellosis.* Dairy and breeding goats shall be negative to a plate or tube agglutination test for brucellosis as prescribed in "Standard Agglutination Test Procedures for the Diagnosis of Brucellosis." [3]

(3) No goat shall be exported if it is affected with or exposed to scrapie, or originated from, or has been on, any premises which then were infected or source flock premises,[4] or if it is the progeny, sire or dam, or a full or half brother or sister of any animal found to be affected with scrapie, or was moved from premises located in an area quarantined for scrapie.

(4) Goats exported for immediate slaughter need not comply with the requirements of paragraphs (a)(1), (2), (3), and (5) of this section.

(5) All goats intended for export shall be identified by eartags or tattoos approved by the Deputy Administrator,[5] except that goats for export to Canada or Mexico for immediate slaughter may be identified by flock brands.

§ 91.7 [Reserved]

§ 91.8 Sheep.

(a) No sheep shall be exported if it is affected with or exposed to scrapie, or originated from, or has been on, any premises which then were infected or source flock premises,[4] or if it is the progeny, sire or dam, or a full or half brother or sister of any animal found to be affected with scrapie, or was moved

[3] Copies of this publication may be obtained from the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, Hyattsville, Maryland 20782.

[4] Infected premises are those on which an animal has been found to be infected with scrapie. Source flock premises are those from which an affected animal was moved within 18 months or less prior to showing signs of scrapie.

from premises located in an area quarantined for scrapie.

(1) Sheep exported for immediate slaughter need not comply with the requirements of paragraph (2) of this section.

(2) All sheep intended for export shall be identified by eartags or tattoos approved by the Deputy Administrator,[5] except that sheep for export to Canada or Mexico for immediate slaughter may be identified by flock brands.

§ 91.9 Swine.

(a) No swine shall be exported if they were fed garbage at any time. The swine shall be accompanied by a certification from the owner stating that they were not fed garbage, and that any additions to the herd made within the 30 days immediately preceding the export shipment, have been maintained isolated from the swine to be exported. All breeding swine shall be tested for and show negative test results to brucellosis by a test prescribed in "Standard Agglutination Test Procedures for the Diagnosis of Brucellosis" [3] or "Supplemental Test Procedures for the Diagnosis of Brucellosis".[3] The test results shall be classified negative in accordance with the provisions prescribed in the Recommended Brucellosis Eradication Uniform Methods and Rules, Chapter 2, Part II, G, 1, 2, and 3.[1]

§§ 91.10–91.13 [Reserved]

7. A new subpart C and title are added before § 91.14 to read:

Subpart C—Ports of Embarkation, Facilities, Health Certification

§ 91.3 [Redesignated as § 91.14]

8. Section 91.3 is redesignated § 91.14, the reference to "section 91.3(a)" in paragraph (b) is amended to read "Section 91.14(a)", the reference to "section 91.9(b)" in paragraph (c)(2) is amended to read "section 91.25(b)", and footnote 2 is redesignated footnote 6, and the reference to that footnote in paragraph (a)(1)(ii) is changed from "2" to "6"

§ 91.6 [Redesignated as § 91.15]

9. Section 91.6 is redesignated § 91.15.

§ 91.7 [Redesignated as 91.16]

10. Section 91.7 is redesignated § 91.16.

[5] Information concerning eartags or tattoos approved by the Deputy Administrator may be obtained, upon request, from the Deputy Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, Hyattsville, Maryland 20782.

[1] See footnote 1 to § 91.1.

11. A new Subpart D and title are added before § 91.17 to read:

Subpart D—Inspection of Vessels and Accommodations

§ 91.8 [Redesignated as § 91.17]

12. Section 91.8 is redesignated § 91.17.

§ 91.33 [Redesignated as § 91.18]

13. Section 91.33 is redesignated § 91.18, the reference therein to footnote "9" is changed to footnote "7", and footnote 9 is redesignated footnote 7.

§ 91.10 [Redesignated as § 91.19]

14. Section 91.10 is redesignated § 91.19

§ 91.11 [Redesignated as § 91.20]

15. Section 91.11 is redesignated § 91.20.

§ 91.13 [Redesignated as § 91.21]

16. Section 91.13 is redesignated § 91.21.

§ 91.12 [Redesignated as § 91.22]

17. Section 91.12 is redesignated § 91.22

§ 91.16 [Redesignated as § 91.23]

18. Section 91.16 is redesignated § 91.23(a).

§ 91.15 [Redesignated as § 91.23]

19. Section 91.15 is redesignated § 91.23(b).

§ 91.14 [Redesignated as § 91.24]

20. Section 91.14 is redesignated § 91.24.

§ 91.9 [Redesignated as § 91.25]

21. Section 91.9 is redesignated § 91.25, footnote 7 is redesignated footnote 9, and the reference therein to that footnote is changed from "7" to "9".

§§ 91.18, 91.27, 91.28 [Redesignated as § 91.26]

22. Section 91.18 is redesignated § 91.26(a). Sections 91.27 and 91.28 are redesignated § 91.26 (b) and (c) respectively, and individual paragraphs within the new subsections are redesignated (1), (2), et seq., respectively.

§ 91.19 [Redesignated as § 91.27]

23. Section 91.19 is redesignated § 91.27.

§§ 91.21–91.26, 91.29–91.32 [Redesignated as § 91.28]

24. Sections 91.21, 91.24, 91.30, 91.31, and 91.32 are redesignated Sections 91.28(a), (d), (h), (i), and (j), respectively, and individual paragraphs within the new subsections are redesignated (1), (2) et seq., respectively. Sections 91.22, 91.23, 91.25, 91.26 and 91.29 are redesignated Sections 91.28(b), (c), (e), (f), and (g), respectively.

§ 91.20 [Redesignated as § 91.29]

25. Section 91.20 is redesignated § 91.29.

§ 91.17 [Redesignated as § 91.30]

26. Section 91.17 is redesignated § 91.30.

Done at Washington, D.C., this 23d day of December 1980.

Norvan L. Meyer

Acting Deputy Administrator Veterinary Services.

[FR Doc. 80-40657 Filed 12-30-80; 8:45 am]

BILLING CODE 3410-34-M

CIVIL AERONAUTICS BOARD

14 CFR Part 203

[Regulation ER-1206; Economic Regulations Amendment No. 1 to Part 203; Docket 38783]

Removal of Certificate Restrictions

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB amends its phased restriction removal program to clarify what route authority carriers will receive after December 31, 1980, when all stop restrictions will be eliminated. When a carrier is awarded authority to a new point during 1981, it will receive nonstop authority between the new point and all other points on its system. The rulemaking is at the CAB's initiative.

DATES: Effective: December 24, 1980. Adopted: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Gerard Boller, Routes Authority Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202–673–5330.

SUPPLEMENTARY INFORMATION: By ER–1139, 44 FR 49188, August 21, 1979, the Board established a program, contained in a new 14 CFR Part 203, for the gradual elimination of all domestic operating restrictions attached to air carrier certificates, except for restrictions in intra-Alaska and intra-Hawaii markets. The program provides that all stop restrictions are to be removed in a four-step process, which began with the smallest markets on August 21, 1979, and will end with the largest markets on December 31, 1980. Under the Airline Deregulation Act, the Board's authority over domestic passenger routes ends on December 31, 1981.

While Part 203 implements this phased removal of route restrictions, it does not explain what type of authority will be granted in response to applications filed after December 31, 1980. Several commenters argue that it contended that AME and dormant authority have been, and should continue to be treated, the same as other certificate authority: "Nothing in the Airline Deregulation Act or the

granted to carriers not previously found fit is a separate issue which we intend to address in another rulemaking proceeding, which will be instituted shortly. Additionally, we note that a

subsequently worked for aerospace contractors.

EFFECTIVE DATE: October 19, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Duggan, Chief, Personnel

and Administrative Litigation, handles all of the Commission's administrative litigation.

Also, the functions of the former Directorate for Engineering and

conduct and relevant evaluation of specific product testing to support general agency regulatory activities. The Directorate develops and evaluates performance criteria, design

V 4 5 D E 3 1 8 0 UMI

While Part 203 implements this phased removal of route restrictions, it does not explain what type of authority will be granted in response to applications filed after December 31, 1980. On October 2, 1980, the Board issued a notice of proposed rulemaking (EDR-409, 45 FR 66473, October 7, 1980) to clarify what authority a carrier will receive in 1981 when there will no longer be any stop restrictions. It proposed to state explicity that a carrier awarded a new point in 1981 also will be given unrestricted authority between that point and all other points on its domestic certificate.

On November 17, Trans World Airlines, Inc. filed a comment supporting this proposed rule. It concurred with the Board and noted that since restrictions will be removed on all existing authority after December 31, 1980, they should not be placed on new authority granted after that date.

Also on November 17, Air California filed comments concerning certain implications of our proposal. It stated that the proposed regulation should include an exception for authority involving environmentally sensitive airports, such as Orange County, and for authority granted through the automatic market entry (AME) and dormant authority programs under the Act. The carrier stated that we deferred implementation for certain markets of Phases I and II of the restriction removal program pending completion of an environmental impact statement, and argued that we do the same explicitly here. In addition, it proposed to exclude any route authority granted through AME or dormant authority provisions from the final stage of the restriction removal program on the grounds that Congress intended that any authority granted under these sections be "carefully limited" and not be treated the same as other route authority.

On November 26, Air California filed an amendment to its comments. In that amendment, it reiterated its argument that authority granted through the AME program should be exempted from the proposed rule. It stated that the AME program provides that each carrier may protect one route and argued that this rule, by awarding unrestricted new authority, deprives carriers of this route protection.

On December 8, 1980, the Commuter Airline Association of America (CAAA) filed comments in opposition to Air California's proposals that we exempt environmentally sensitive airports, and AME and dormant certificate authority from our clarification. It stated that the environmental issue "can be handled in less anticompetitive ways." In addition, it contended that AME and dormant authority have been, and should continue to be treated, the same as other certificate authority: "Nothing in the Airline Deregulation Act or the legislative history of the Act shows that Congress intended such certificate authority to be inferior in any respect to other certificate authority."

We share the environmental concerns expressed by Air California. Thus, we will make an exception from the proposed clarification for cases where we believe that there may be potentially significant environmental effects. This exception is consistent with our past policy of withholding additional route authority at those points where we have determined that our responsibility under the National Environmental Policy Act of 1969 and Part 312 of our regulations requires that we undertake an analysis of the environmental impact of increased route authority. We have deferred, and will continue to defer, awards of additional route authority pending environmental analyses at three points: Orange County, California, and West Palm Beach and Sarasota/Bradenton, Florida.[1]

We will not, however, make any exception for authority granted through the AME or dormant authority provisions of the Act. We agree with CAAA's argument that both of these programs were designed primarily to expedite entry and not as a form of market protection. As Air California points out, Congress was very specific in drafting these two programs. Congress did not make any distinction concerning the legal significance of this authority once it has been granted and added to carriers' certificates. Therefore, we will impose no exemptions here based on a theory of Congressional intent. Moreover, we reject Air California's argument that this rule awarding unrestricted new authority contravenes the statutory provision that each carrier have one protected market. This argument is not persuasive since it overlooks the fact that the right to protect one market applies only vis-a-vis another carrier selecting that market under the AME provisions. Section 401(d)(7)(c).

These conclusions are addressed to the question of dormant authority generically. The question of whether this Part should apply to unused authority granted to carriers not previously found fit is a separate issue which we intend to address in another rulemaking proceeding, which will be instituted shortly. Additionally, we note that a substantial change in the scope of a carrier's operations, even if it had previously been found fit, would require the carrier to submit additional fitness data to the Board under Part 204.

Because all operating restrictions are to be removed as of December 31, there is a need to alert carriers to the Board's decision in this rulemaking before that date. For this reason, there is good cause to make the rule effective immediately.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 203, *Removal of Certificate Restrictions*, as follows:

PART 203 [AMENDED]

1. The authority for Part 203 is:

Authority: Secs. 102, 204, 401, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 754; 49 U.S.C. 1302, 1324, 1371.

2. A new paragraph (f) is added to § 203.3 to read:

§ 203.3 Timetable for automatic removal of restrictions.

* * * * *

(f) After December 31, 1980, any route authority granted by the Board to a carrier will include nonstop authority to all existing points on the carrier's route system, except for those points where new authority has been deferred by Board order pending environmental analysis.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-40669 Filed 12-30-80; 8:45 am]

BILLING CODE 6320-01-M

[1] For a discussion of Orange County, *see California-Nevada Low Fare Route Proceeding*, Order 79-4-85, April 12, 1979, and Order 80-5-56, May 7, 1980; for West Palm Beach, *see Palm Beach Environmental Study*, Order 80-2-16, February 5, 1980; and for Sarasota/Bradenton, *see Additional Northwest/Ohio Valley-Florida Show Cause Proceeding*, Order 80-4-127, April 16, 1980.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1208

Reporting Procedures for NASA and Aerospace Related Employment

AGENCY: National Aeronautics and Space Administration.

ACTION: Revocation.

SUMMARY: Pub. L. 96-470, the "Congressional Reports Elimination Act of 1980," repealed Section 6(d) of the NASA Authorization Act, 1970, (42 U.S.C. 2462(d), 83 Stat. 199), the so-called Proxmire Amendment, and, therefore, abolishes the report that NASA was required to make annually to Congress on the names, duties and rates of pay of former and current NASA employees who previously or subsequently worked for aerospace contractors.

EFFECTIVE DATE: October 19, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Duggan, Chief, Personnel Analysis and Planning Office, Personnel Programs Division, National Aeronautics and Space Administration, Washington, D.C. 20546, telephone (202) 755-3993.

SUPPLEMENTARY INFORMATION: Previous reporting requirements were published in 41 FR 53652, December 8, 1976, as amended at 43 FR 52215, November 9, 1978. Since this action is administrative and editorial in nature, notice and public procedures thereon are not required.

PART 1208 [Reserved]

14 CFR Chapter V is amended by removing and reserving Part 1208.

Robert A. Frosch,

Administrator.

December 22, 1980.

[FR Doc. 80-40612 Filed 12-30-80; 8:45 am]

BILLING CODE 7510-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Commission Organization and Functions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is publishing revisions to its statement of organization and functions to reflect organizational changes made since December 31, 1979.

EFFECTIVE DATE: These revisions are effective December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Sadye Dunn, Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, Telephone 202-634-7700.

SUPPLEMENTARY INFORMATION: The Commission is revising its statement of organization and functions, 16 CFR Part 1000, to include changes since the Part was last published on December 31, 1979, 44 FR 77150.

Currently the functions of the Office of the General Counsel are described in section 1000.14 and the functions of the Directorate for Compliance and Enforcement are described in § 1000.27. This notice revises those sections to reflect the fact that the litigation functions of the offices have been realigned. The Office of General Counsel now handles all of the Commission's federal court litigation while the former Directorate for Compliance and Enforcement, now renamed the Directorate for Compliance and Administrative Litigation, handles all of the Commission's administrative litigation.

Also, the functions of the former Directorate for Engineering and Sciences, currently described in § 1000.25, have been divided between two new organizations: the Directorate for engineering Sciences, and the Directorate for Health Sciences. This notice revises § 1000.25 to describe the Directorate for Engineering Sciences and adds § 1000.26, previously reserved, to describe the Directorate for Health Sciences.

Since this amendment deals only with internal agency organization, it is being made effective immediately and comments are not being solicited.

For the foregoing reasons, Part 1000 of Chapter II of Title 16 of the Code of Federal Regulations is amended as shown.

1. The authority citation for Part 1000 reads as follows:

Authority: 5 U.S.C. 552(a).

2. In Part 1000, §§ 1000.14, 1000.25, 1000.26 and 1000.27 are revised to read as follows:

§ 1000.14 Office of the General Counsel.

The Office of the General Counsel provides advice and counsel to the Commissioners and organizational components of the Commission on matters of law arising from operations of the Commission. It prepares the Commission's legislative program and comments on relevant legislative proposals originating elsewhere. The Office in conjunction with the Department of Justice, is responsible for the conduct of all Federal court litigation to which the Commission is a party. The Office also advises the Commission on administrative litigation matters. The Office provides final legal review of and makes recommendations to the Commission on proposed product safety standards, rules, regulations, petition actions, and substantial hazard actions. It also provides legal review of certain procurement, personnel, and administrative actions and drafts documents for publication in the **Federal Register.**

§ 1000.25 Directorate for Engineering Sciences.

The Associate Executive Director for Engineering Sciences manages the Directorate of Engineering Sciences, which is responsible for developing technical policy and implementing the Commission's engineering programs. The Directorate's functional responsibility includes development and evaluation of product safety standards and test methods based on engineering and other physical sciences and the conduct and relevant evaluation of specific product testing to support general agency regulatory activities. The Directorate develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products and provides scientific and technical expertise to the Commission. It conducts and evaluates engineering tests and test methods, participates in the engineering development of product safety standards, and provides advice on proposed mandatory standards and industry voluntary standard efforts. It performs or monitors research in the engineering sciences including the translation of human factors and engineering factors and provides supervision to the Commission's engineering laboratory and engineering test facility and provides analytical services in support of the Commission's enforcement activities. Engineering conducts studies of the safety of consumer products. It coordinates engineering research testing and evaluation activities with the National Bureau of Standards and other Federal agencies, private industry, and consumer interest groups. The Directorate gives statistical support for the engineering aspects of standards development, certification programs, and sampling for field inspection programs. The Directorate provides technical supervision and direction of all engineering activities including tests and analyses conducted in the field. The Directorate provides engineering technical support to all Commission organizations, activities and programs.

§ 1000.26 Directorate for Health Science.

The Associate Executive Director for Health Sciences manages the Directorate for Health Sciences, which is responsible for management of the Commission's chronic hazards program, development and evaluation of the scientific content of product safety standards and test methods based on the chemical, biological and medical sciences, and the conduct and evaluation of specific product testing to support general agency regulatory activity. The Directorate provides scientific expertise to the Commission and it develops and evaluates performance criteria, design specifications, and quality control standards for certain consumer products. It conducts and evaluates scientific tests and test methods, participates in the scientific development of product safety standards, and provides advice on proposed standards. It collects scientific and technical data, reviews and evaluates toxicological and chemical

hazards, and determines exposure, uptake and metabolism, including identification of the toxicological and psychological bases which cause some population segments to be at special risk. It performs risk assessments for

safety requirements. The Directorate negotiates and subsequently monitors corrective action plans designed to recall defective or non-complying products and gives public warning to consumers where appropriate. It gathers

SUPPLEMENTARY INFORMATION: On February 15, 1979, the Commission published the Safety Standard for Walk-Behind Power Lawn Mowers, 16 CFR Part 1205 (44 FR 9990). The Standard requires a label warning of the danger of

few injuries and constitutes such a small part of the anticipated cost to manufacturers of mowers complying with the Standard that the specific findings set forth in the rule remain unchanged. However, the reference to

label requirement was upheld by the Court under Section 7, § 1205.8(i)(11) of the Standard, relating to the issuance of the label requirement under Section 27(e), is no longer necessary and has been deleted.

§ 1205.8 [Amended]

4. In lines 19 and 20 of § 1205.8(e)(2), ", plus the discharge chute," is removed.

5. The following Figures are substituted for Figs. 3-5 and 7.

BILLING CODE 6355-01-M

V 45 D 31 1980 UMI

hazards, and determines exposure, uptake and metabolism, including identification of the toxicological and psychological bases which cause some population segments to be at special risk. It performs risk assessments for chemical and physical hazards in consumer products. It performs or monitors research, and conducts studies of the safety of or of improving the safety of consumer products. It provides the Commission's primary source of expertise for implementation of the Poison Prevention Packaging Act. It provides the Commission's expertise on manufacturing practices and quality assurance for chemical consumer products and it provides technical supervision to agency field chemistry laboratories and other chemical or toxicological testing facilities. It provides scientific and technical support to all commission organizations, activities, and programs. The Directorate manages the Commission's participation in the Interagency Regulatory Liaison Group and provides technical liaison with the National Toxicological Program, the National Cancer Institute, the Environmental Protection Agency, and other federal programs and organizations concerned with reducing the risks to consumers from exposure to chemical hazards.

§ 1000.27 Directorate for Compliance and Administrative litigation.

The Associate Executive Director for Compliance and Administrative Litigation manages the Directorate for Compliance and Administrative Litigation. The Directorate conducts or supervises the conduct of compliance and administrative enforcement activity under all administered acts, provides advice and guidance to regulated industries on complying with all administered acts and reviews proposed standards and rules with respect to their enforceability. The Directorate's responsibility also includes identifying and acting on safety hazards in consumer products already in distribution, promoting industry compliance with existing safety rules, and conducting litigation before an administrative law judge relative to administrative complaints. It provides advice and case guidance to field offices and participation in the development of standards before their promulgation to assure enforceability of the final product. It enforces the Consumer Product Safety Act requirement that firms identify and report product defects which could present possible substantial hazards. It reviews consumer complaints, in-depth investigations, and other data to identify those consumer products containing such hazards or which do not comply with existing safety requirements. The Directorate negotiates and subsequently monitors corrective action plans designed to recall defective or non-complying products and gives public warning to consumers where appropriate. It gathers information on generic product hazards which may lead to subsequent initiation of safety standard setting procedures. The Directorate develops surveillance strategies and programs designed to assure compliance with Commission standards and regulations. It originates instructions to field offices and provides subsequent interpretations or guidance for field surveillance and enforcement activities.

Dated: December 23, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80-40673 Filed 12-30-80; 8:45 am]

BILLING CODE 6355-01-M

16 CFR Part 1205

Safety Standard for Walk-Behind Power Lawn Mowers

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule

SUMMARY: The Commission amends the Safety Standard for Walk-Behind Power Lawn Mowers to conform its provisions to a recent court decision and a recent congressional enactment and to provide a more detailed figure of the label so that is easier to understand. The changes to the Standard are:

a. The separate requirement for a foot probe test of the discharge chute, that is in addition to the requirement for a foot probe test at the rear of the mower, is deleted. Figs. 3, 4, and 5 are amended accordingly.

b. The effective date of the Standard is changed from December 31, 1981, to June 30, 1982.

c. Additional designations for the colors to be used in the prescribed warning label are provided in Fig. 7.

DATES: The amendments to the Standard are effective January 30, 1981. The performance requirements of the Standard apply to certain rotary power lawn mowers manufactured after June 30, 1982. The labeling requirement is currently in effect and applies to both rotary and reel-type mowers manufactured after December 31, 1979.

FOR FURTHER INFORMATION CONTACT: (1) Concerning the enforcement of the Standard: Paul Galvydis, Directorate for Compliance and Administrative Litigation, (301) 492-6400. (2) Concerning the development of the Standard: David Parrish, Office of Program Management, (301) 492-6557. Consumer Product Safety Commission, Washington, D.C. 20207.

SUPPLEMENTARY INFORMATION: On February 15, 1979, the Commission published the Safety Standard for Walk-Behind Power Lawn Mowers, 16 CFR Part 1205 (44 FR 9990). The Standard requires a label warning of the danger of blade contact on both reel-type and rotary walk-behind power lawn mowers. In addition, the Standard contains performance requirements intended to reduce injuries from contact with the rotating blades of rotary power mowers. In order to reduce injuries to the operator's hands and feet, the Standard requires that rotary walk-behind power mowers have a blade control system that will stop the mower blade within 3 seconds after the operator's hands leave the normal operating position. If the manufacturer chooses to stop the blade by stopping the engine, the mower must be equipped with a power start mechanism. If the mower has only manual start, stopping the blade by stopping the engine is not allowed by the Standard. In order to reduce injuries to the operator's feet, the Standard as originally issued also required that if the rear periphery and discharge chute of a mower are probed with a specified foot probe, neither the probe nor any part of the mower shall enter the path of the blade.

A. Foot Probe of the Discharge Chute

Immediately after the Standard was issued, 6 petitioners associated with the lawn mower industry, and 1 consumer, filed petitions for judicial review of the Standard. These petitions were consolidated in the United States Court of Appeals for the Fifth Circuit.

On June 19, 1980, the Court issued an opinion fully upholding the major provisions of the Standard but vacating the separate requirement that the discharge chute must be tested with the foot probe. *Southland Mower Co. et. al. v. C.P.S.C.*, 619 F.2d 499 (5th Cir. 1980). Accordingly, the version of the Standard printed in the Code of Federal Regulations is being amended to delete the portion of the Standard vacated by the Court. This is accomplished by deleting the words "any discharge opening and" from § 1205.(b)(1)(ii) of the Standard. However, the area required to be probed at the rear of the mower is 60 degrees to the right and 60 degrees to the left of the fore-aft centerline of the cutting width, and this requirement includes probing of any portion of a discharge chute located within this area.

Section 9 of the Consumer Product Safety Act, 15 U.S.C. 2058(c), provides that when consumer product safety rules are issued, the Commission must make certain findings and include these findings in the rule. These findings are as set forth in § 1205.8. The requirement that was vacated by the Court affects so few injuries and constitutes such a small part of the anticipated cost to manufacturers of mowers complying with the Standard that the specific findings set forth in the rule remain unchanged. However, the reference to probing", plus the discharge chute." in § 1205.8(e)(2) has been deleted.

B. Effective Date

When the Standard was issued, it provided that the requirements other than labeling would become effective after December 31, 1981. However, in the 1980 appropriations bill (Pub. L. 96-526), the Congress delayed the effective date until June 30, 1982. Section 1205.2 of the Standard has been amended accordingly.

C. Warning Label

Figure 7 has been amended to add a specific designation for the white backgrounds for the hand symbol and the word "DANGER". Also, the black border lines around the outside edge of the label have been specifically designated. The Commission believes these designations were inherent in the original label figure, but they are being added at this time in order to simplify the understanding of the label requirements. This interpretation is consistent with the labels generally in use in the industry, and the Commission concludes that this change in the label is an interpretative rule exempt from the requirement for a general notice of proposed rule making under the Administrative Procedure Act, 5 U.S.C. 553(b)(A).

D. Other Considerations

Since the amendments described above merely change the Standard as published in the Code of Federal Regulations to reflect the accomplished actions of the Court and the Congress, or otherwise do not have any substantial impact on the public or the regulated industry, the Commission concludes that the amendments to the Standard described above are not material changes to the Standard. Therefore, as stated in Section 9(e) of the Act, 15 U.S.C. 2058(e), the procedures of Sections 7 and 9(a)-(d) of the Act are not applicable.

The Commission originally issued the warning label under the authority of both Sections 7 (15 U.S.C. 2056) and 27(e) (15 U.S.C. 2076(e)) of the Act. In its opinion on the petitions for review of the Standard, the Court upheld the label requirement under Section 7 of the Act, but indicated that this particular label did not constitute "performance and technical data" that could be required under Section 27(e). However, since the label requirement was upheld by the Court under Section 7, § 1205.8(i)(11) of the Standard, relating to the issuance of the label requirement under Section 27(e), is no longer necessary and has been deleted.

On May 23, 1980, the Outdoor Power Equipment Institute petitioned the Commission for a six month extension of the effective date of the Standard (Petition No. CP 80-6) on the ground that additional testing was needed before complying mowers were introduced in the market. On October 2, 1980, the Commission denied this petition because it did not establish that the industry would be unable to perform adequate testing and incorporate necessary changes before the beginning of the 1981-82 production cycle. Ordinarily, the denial of such a petition would be announced in a separate **Federal Register** notice detailing the reasons for denial. However, in view of the congressional action extending the effective date, discussed above, an additional **Federal Register** notice concerning this subject is not necessary.

Section 1205.7 of the Standard is a "stockpiling rule" that prohibits excessive production of noncomplying mowers before the effective date of the Standard. This provision provides that, between the issuance of the standard and its effective date, a manufacturer may not produce noncomplying mowers at a rate that exceeds 120 percent of their rate of production during a 365-day base period selected by the manufacturer between September 1, 1971, and August 31, 1978. Since this provision refers to "the effective date" and not to the particular effective date originally established, § 1205.7 will apply to the period covered by the congressionally enacted extension without the need for any amendment to that section.

Therefore, for the reasons given above, the Commission amends Subpart A of Part 1205, Subchapter B, Chapter II, of Title 16 of the Code of Federal Regulations as follows:

1. The authority citation for Part 1205 is amended to read as follows:

Authority: Secs. 2, 3, 7, 9, 14, 19, Pub. L. 92-573, 86 Stat. 1207, 1208, 1212-1217, 1220, 1224, 15 U.S.C. 2051, 2052, 2056, 2063.

§ 1205.2 [Amended]

2. In § 1205.2, "December 31, 1981" is changed to "June 30, 1982".

§ 1205.4 [Amended]

3. In the third line of § 1205.4(b)(1)(ii), "any discharge opening and" is removed.

§ 1205.8 [Amended]

4. In lines 19 and 20 of § 1205.8(e)(2), ", plus the discharge chute," is removed.

5. The following Figures are substituted for Figs. 3-5 and 7.

BILLING CODE 6355-01-M

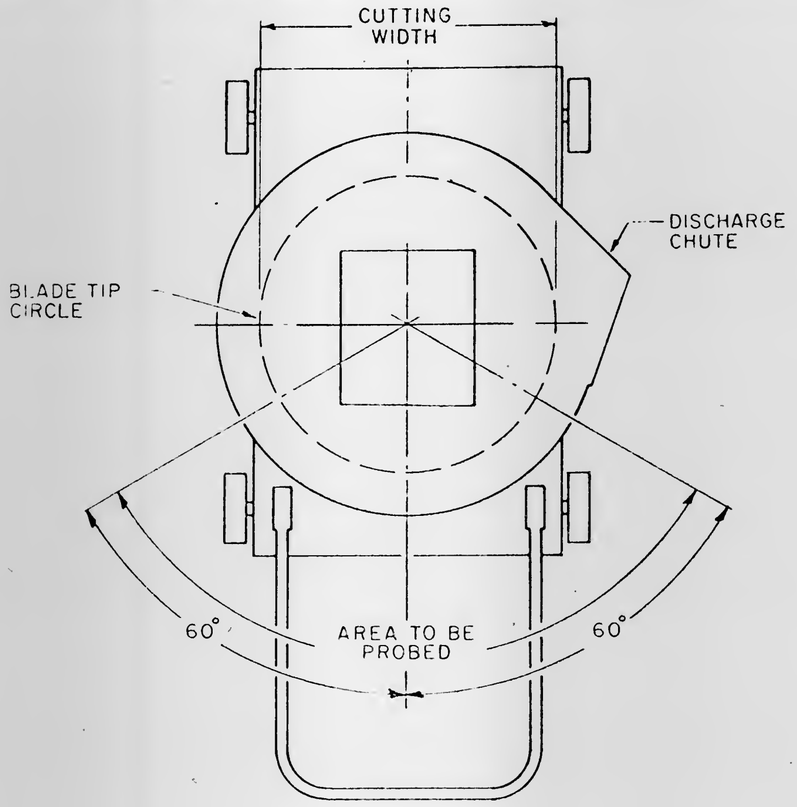


FIGURE 3 - AREA TO BE PROBED

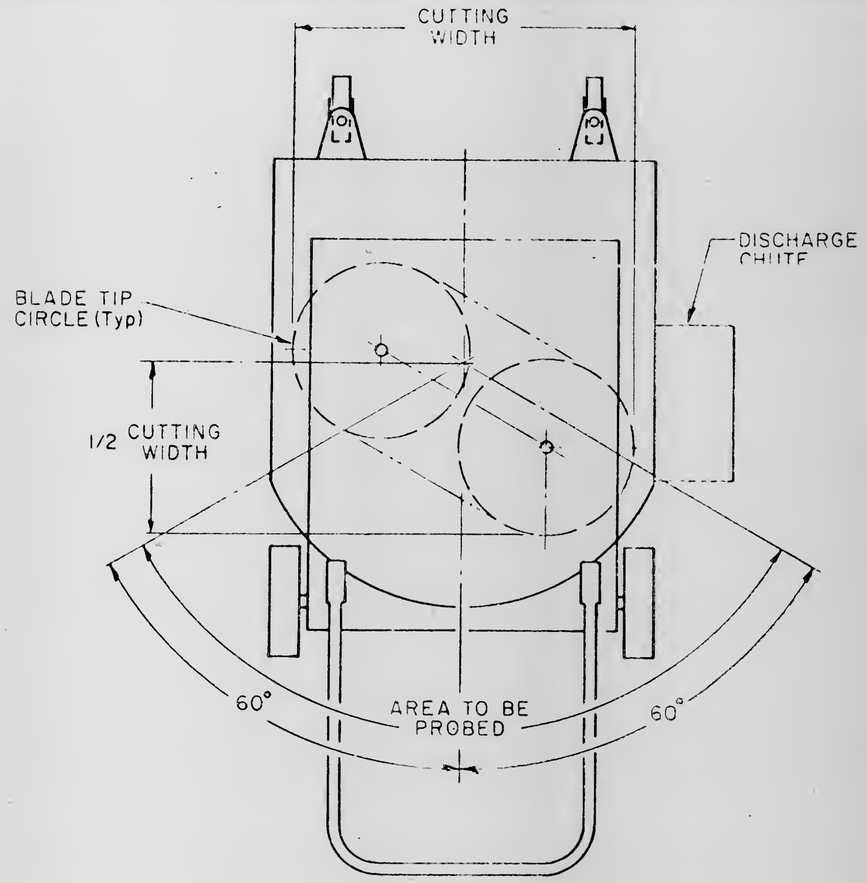


FIGURE 4 - AREA TO BE PROBED MULTI-BLADE MOWERS



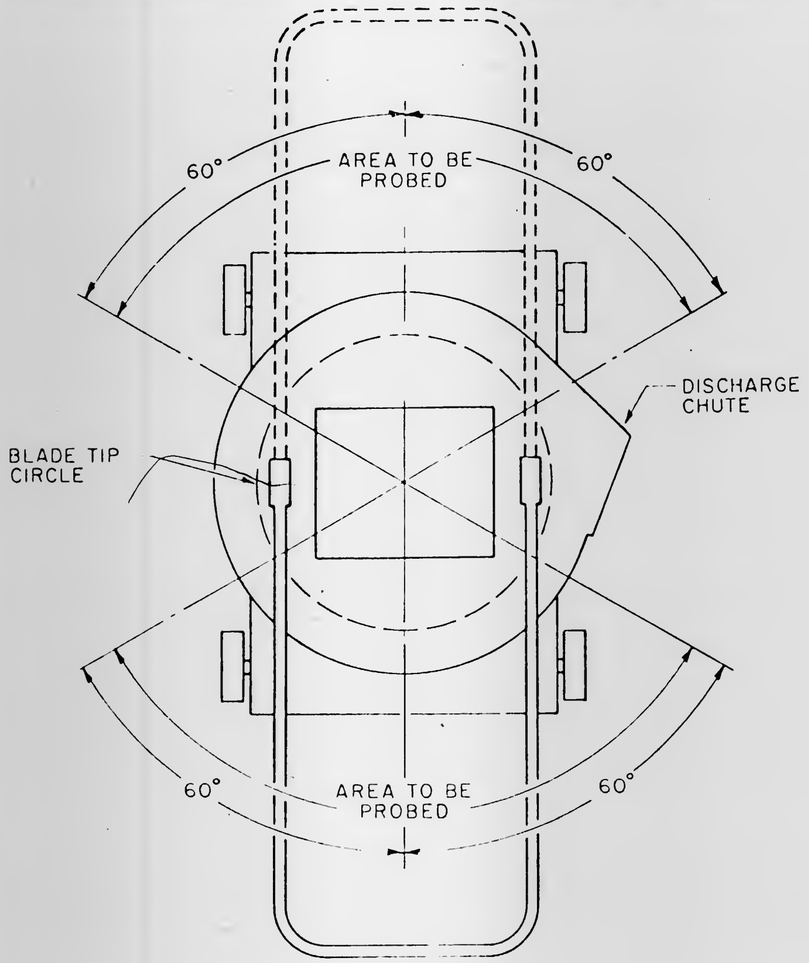


FIGURE 5 - AREA TO BE PROBED SWINGOVER HANDLE

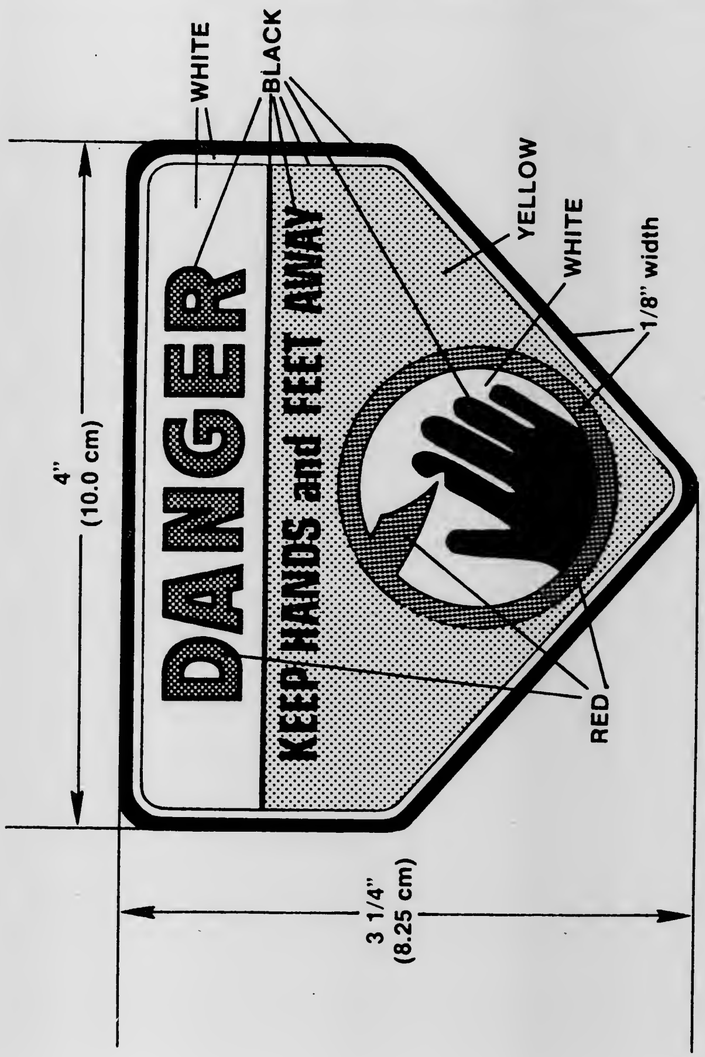


FIGURE 7

§ 1205.8 [Amended]

6. Section 1205.8(i)(11) is removed.

Dated: December 24, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety

accounting principles (GAAP) basis, the Commission has decided to defer the effective date of these amendments until 1978 for life insurance companies whose shares are not actively traded. In addition, the Commission notes that its Advisory Committee on Corporate Disclosure is

reporting requirements, if any, might be modified for them. The Commission intends to make specific proposals in this area early by 1981. Such proposals may have a direct impact on smaller life insurance companies. Accordingly, the

By the Commission.

December 22, 1980.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 80-40969 Filed 12-30-80; 8:45 am]

BILLING CODE 8010-01-M

exempt industrial users at, or above, the Commission's alternative fuel price ceilings. Revisions to § 282.504(e)(2) and (3) relieve natural gas suppliers subject to a state or local incremental pricing plan from the reporting requirements set forth in those sections. With respect to

The regulations set out below explain the eligibility requirements for these benefits, describe how and when individuals may file applications for these benefits, and explain the computation of the amount of benefits to be paid.

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§ 1205.8 [Amended]

6. Section 1205.8(i)(11) is removed.

Dated: December 24, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80-40672 Filed 12-30-80; 8:45 am]

BILLING CODE 6355-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 239

[Release Nos. 33-6273, 34-17397]

Quarterly Reporting Requirements for Smaller Life Insurance Companies Whose Shares Are Not Actively Traded

AGENCY: Securities and Exchange Commission.

ACTION: Rule amendments.

SUMMARY: The Commission is further deferring, until 1982, the effective date of the quarterly reporting requirements for smaller life insurance companies whose shares are not actively traded. Such additional delay is necessary to allow sufficient time for the Commission to consider establishing a system of classifying small issuers for purposes of modifying certain reporting requirements under the Securities Exchange Act of 1934.

EFFECTIVE DATE: December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Michael J. Eizelman, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2644.

SUPPLEMENTARY INFORMATION: On September 20, 1976, the Commission issued Accounting Series Release No. 197 [41 FR 42645][1] to require quarterly financial reporting, on Form 10-Q [17 CFR 249.308a] by life insurance companies and holding companies having only life insurance subsidiaries. In that release the Commission stated:

> Recognizing that some life insurers do not presently prepare quarterly financial information, the Commission believes that the reporting responsibilities imposed by these amendments should first be applied to those life insurance companies whose activities are most closely followed by analysts and investors. At the same time and taking into account the lead time and start-up requirements for those companies not currently preparing quarterly financial information on a generally accepted accounting principles (GAAP) basis, the Commission has decided to defer the effective date of these amendments until 1978 for life insurance companies whose shares are not actively traded. In addition, the Commission notes that its Advisory Committee on Corporate Disclosure is reviewing the overall question of the reporting responsibilities of smaller companies.

In Accounting Series Release No. 228, October 7, 1977, [42 FR 54531], the Commission further deferred through 1978 the effective date of these requirements. Subsequently, on November 3, 1977, the Commission's Advisory Committee on Corporate Disclosure issued its report which included a recommendation that the Commission hold public hearings to determine: (1) whether and to what extent, the Commission should attempt to define a category of "small companies" for the purpose of requiring less burdensome reporting; (2) how such a classification, if desirable and possible, should be defined; and (3) if definition is possible, what reductions of reporting requirements are possible, consistent with the purposes of the Federal securities laws.

During April and May of 1978 the Commission staff conducted a series of public hearings in several parts of the country at which the problems of small companies were discussed. In Accounting Series No. 259, December 28, 1978 [44 FR 1727], and in Securities Act Release No. 6170, December 19, 1979 [44 FR 76777], the Commission again deferred, through 1980, the effective date of the quarterly reporting requirements for life insurance companies whose shares are not actively traded. The reason for these deferrals was to allow the staff time to review the testimony taken at the hearings to ascertain future policies relating to small companies generally and in particular to consider the development of one or more classes of small issuers for purposes of reducing the reporting requirements under Sections 13 and 15(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78m and 78o(d)]. As a result of these efforts, numerous changes in the Commission's rules and regulations have occurred which impact significantly on small businesses. In Securities Exchange Act Release No. 16886, June 2, 1980 [45 FR 40145], the Commission published advance notice of proposed rulemaking regarding the classification of small issuers which might have different reporting and other obligations under the Exchange Act. The Commission asked commentators to recommend specific criteria to be used to define small issuers and which reporting requirements, if any, might be modified for them. The Commission intends to make specific proposals in this area early by 1981. Such proposals may have a direct impact on smaller life insurance companies. Accordingly, the Commission has decided to further defer from fiscal years ending after December 15, 1981 to years ending after December 20, 1982 the effective date of the quarterly reporting requirements for life insurance companies whose shares are not actively traded.

For the reasons stated above and pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.), the Commission finds for good cause that notice and public procedure on these rule amendments are impracticable, unnecessary and contrary to the public interest and that there is good cause for making these amendments effective immediately.

Text of Amendments

The Commission hereby revises paragraphs (c)(1) of §§ 240.13a-13 and 240.15d-13 of 17 CFR Part 240, to defer the effective date specified therein as given below.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.13a-13 Quarterly reports on Form 10-Q (§ 249.308a of this chapter).

* * * * *

(c) * * *

(1) Life insurance companies and holding companies having only life insurance subsidiaries for quarters in fiscal years ending on or before December 20, 1982, if they do not meet the tests specified in item 12, paragraph (a)(1)(i), of § 229.20; or

* * * * *

§ 240.15d-13 Quarterly reports on Form 10-Q (§ 249.308a of this chapter).

* * * * *

(c) * * *

(1) Life insurance companies and holding companies having only life insurance subsidiaries for quarters in fiscal years ending on or before December 20, 1982, if they do not meet the test specified in item 12, paragraph (a)(1)(i), of § 229.20; or

* * * * *

(Secs. 12, 13, 15(d) and 23(a) [15 U.S.C. 781, 78m, 78o(d) and 78w(a)] of the Securities Exchange Act of 1934)

[1] Certain corrections to that release were made in Accounting Series Release No. 206 [42 FR 25674], May 23, 1977.

By the Commission.

December 22, 1980.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 80-40669 Filed 12-30-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79-47]

Incremental Pricing

Issued: December 22, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing.

SUMMARY: On October 21, 1980, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 103) relating to state or local incremental pricing plans and state or local ratemaking plans proposed as alternatives to the Commission's incremental pricing program (45 FR 71781, October 30, 1980). Five petitions for rehearing of Order No. 103 were timely filed. The Commission denies rehearing of Order No. 103, because the arguments raised in the petitions have been fully discussed in Order No. 103.

FOR FURTHER INFORMATION CONTACT: Barbara K. Christin, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8033.

Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., George R. Hall and J. David Hughes. Statewide Exemptions From Incremental Pricing; Order Denying Rehearing.

Issued: December 22, 1980

On October 21, 1980, the Federal Energy Regulatory Commission (Commission) issued a final rule amending its regulations on incremental pricing (18 CFR Part 282) under Title II of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301-3432). The final rule (Order No. 103, 45 FR 71781, October 30, 1980) added new §§ 282.104 and 282.208 relating to state or local incremental pricing plans and alternative plans and revised § 282.504.

With respect to state or local incremental pricing plans, new § 282.104 recognizes the authority of a state or a local municipality to implement an incremental pricing plan that sets retail rates and charges for natural gas to non-exempt industrial users at, or above, the Commission's alternative fuel price ceilings. Revisions to § 282.504(e)(2) and (3) relieve natural gas suppliers subject to a state or local incremental pricing plan from the reporting requirements set forth in those sections. With respect to state or local alternative plans, new § 282.208 establishes procedures for Commission approval and Congressional review of a state or local ratemaking plan proposed as an alternative to the Commission's incremental pricing program.

Timely petitions for rehearing of Order No. 103 were filed by the Fertilizer Institute, American Paper Institute, American Bakers Association, Glass Containers Corporation, and Glass Packaging Institute. The petitioners objected to the Commission's position, set forth in Order No. 103, that a state has the authority to set the retail rates for natural gas used as boiler fuel by industrial facilities at, or above the Commission's alternative fuel price ceilings.

The arguments raised by petitioners in their applications for rehearing have been fully addressed by the Commission in Order No. 103, and further discussion of those issues here would not be helpful. Accordingly, the Commission denies rehearing of Order No. 103.

The Commission Orders:

The petitions for rehearing of Order No. 103 are denied.

By the Commission

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-40659 Filed 12-30-80; 8:45 am]

BILLING CODE 6450-85-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 397 and 398

Milwaukee Railroad Restructuring Act Regulations

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: A new Subchapter I is established for 20 CFR Chapter II.

On November 4, 1979, the Milwaukee Railroad Restructuring Act, Pub. L. 96-101, 93 Stat. 736, was signed into law. The Act is intended to provide for the orderly restructuring of the Milwaukee Railroad and for the protection of the employees of that railroad.

The Milwaukee Railroad Restructuring Act authorizes the Railroad Retirement Board to administer the payment of Supplementary Unemployment Insurance and New Career Training Assistance benefits. The regulations set out below explain the eligibility requirements for these benefits, describe how and when individuals may file applications for these benefits, and explain the computation of the amount of benefits to be paid.

EFFECTIVE DATE: December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Sally Marn, Bureau of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4801 (FTS 387-4801).

SUPPLEMENTARY INFORMATION: In accordance with the Board's report under E.O. 12044, a proposal to develop regulations to implement the Board's responsibilities under the Milwaukee Railroad Restructuring Act was submitted to the Chief Executive Officer for a determination as to whether such regulations would be significant. The Chief Executive Officer determined that, while the proposed regulations would not be significant under the criteria established in the Board's report, the regulations should, nevertheless, be considered as significant and handled accordingly. The proposal was then submitted to the three-member Board and the Board determined that no regulatory analysis would be required.

The Board has received applications for benefits under the Milwaukee Railroad Restructuring Act and has begun paying benefits to eligible individuals. Accordingly, it is necessary for the Board to publish these rules as Final Rules, rather than Proposed Rules. The Board will, however, accept comments from the public concerning these regulations. Interested persons may submit written comments, suggestions, data, or arguments to Ms. Marn. Material thus submitted will be evaluated and acted upon in the same manner as if this document were a proposal. Until such time as further changes are made, however, Parts 397 and 398 shall remain in effect, thus permitting the public business to proceed more expeditiously.

Part 397-8, Employment of Milwaukee Road Employees, was published as a Final Rule at 45 FR 17979 dated March 20, 1980, and when Title 20 of the Code of Federal Regulations was revised effective April 1, 1980, Part 397 was inadvertently carried into Subchapter E.

1. Title 20, Chapter II is amended by adding a new Subchapter I as follows:

SUBCHAPTER I—MILWAUKEE RAILROAD RESTRUCTURING ACT REGULATIONS

2. Part 397 is transferred to Subchapter I and is revised to read as follows:

PART 397—SUPPLEMENTARY UNEMPLOYMENT INSURANCE

Sec.

397.1 Purpose.
397.2 Definitions.
397.3 Eligibility for supplementary

comptroller, counsel, member of the board of directors, or any other person performing such functions.

"Failure to exercise seniority rights" means that the employee either did not make reasonable efforts to learn about the availability of positions that he

(2) The employee was on an approved leave of absence on that date;

(3) The employee was on sick leave on that date;

(4) The employee was in furlough status on September 30, 1979, or otherwise held rights to employment

the application or claim form was originally received by the Board shall be regarded as the filing date.

(c) *Filing in advance.* A claim form which bears a signature date prior to the last day of the month claimed, or which is received by the Board before the last

subsection, the first four days of unemployment in a registration period under the Railroad Unemployment Insurance Act shall not be regarded as compensable days of unemployment under that Act.

(b) *Computation of average monthly*

communicated to the claimant in writing within 15 days after such decision is made. If the effect of the decision is that the claim is still denied in whole or in part, the claimant shall be notified in the communication of his right to appeal as provided in paragraph (d) of this section

PART 397—SUPPLEMENTARY UNEMPLOYMENT INSURANCE

Sec.
397.1 Purpose.
397.2 Definitions.
397.3 Eligibility for supplementary unemployment insurance benefits
397.4 Claims for benefits.
397.5 Determination of benefit rates.
397.6 Initial determinations under the Milwaukee Railroad Restructuring Act and reviews of appeals from such determinations.
397.7 Recovery of benefits.
397.8 Employment of Milwaukee Road Employees.

Authority: Sec. 20, Pub. L. 96-101, 93 Stat. 746 (45 U.S.C. 918).

§ 397.1 Purpose.

The Railroad Retirement Board is delegated the responsibility of administering the supplementary unemployment insurance provisions under section 10 of the Milwaukee Railroad Restructuring Act. The purpose of these regulations is to delineate the Board's functions concerning the payment of supplementary unemployment insurance in accordance with that Act and to set forth the regulations necessary for the Board to pay supplementary unemployment insurance.

§ 397.2 Definitions.

For the purpose of this part, except where the language or context indicates otherwise:

"Act" means the Milwaukee Railroad Restructuring Act.

"Average monthly normal compensation" means the average monthly earnings for the employee in question in employment with the Milwaukee Railroad during the period June 1, 1977 through October 31, 1979, as computed under § 397.5(b) of this part. Included in monthly earnings are straight-time pay, vacation pay, birthday or holiday pay, pay for personal leave days, guarantee pay, and pay while on jury duty.

"Board" means the Railroad Retirement Board.

"Discharge for cause" means termination of employment for a reason relating to the individual as opposed to a termination of employment for a reason relating to a change or reduction in the operations of a rail carrier, to a restructuring of a railroad carrier, or to similar causes.

"Employee" includes any employee of the Milwaukee Railroad who worked on a line of such railroad the sale of which became effective October 1, 1979, but does not include any person serving the Milwaukee Railroad as president, vice-president, secretary, treasurer, comptroller, counsel, member of the board of directors, or any other person performing such functions.

"Failure to exercise seniority rights" means that the employee either did not make reasonable efforts to learn about the availability of positions that he could obtain by exercising his rights under the applicable employment agreement or did not act timely to exercise or to protect such rights.

"Milwaukee Railroad" means the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

"Month of service" means a calendar month during which the employee in question renders service for compensation to or receives pay for time lost from the Milwaukee Railroad.

"Resignation" means any leaving of work under circumstances which indicate an intent by the employee to terminate the employment relation, but does not include the cessation of self employment.

"Restructured Milwaukee Railroad" means the entity that is designated as the reorganized railroad under the reorganization plan for the Milwaukee Railroad finally certified by the Interstate Commerce Commission.

"Retirement" means a withdrawal from the labor market for the purpose of applying for a retirement benefit and includes voluntary retirement due to disability.

"Test period" means the period June 1, 1977 through October 31, 1979.

§ 397.3 Eligibility for supplementary unemployment insurance benefits.

(a) *Eligibility.* Any employee who had an employment relation with the Milwaukee Railroad on September 30, 1979, and who is either employed by the Restructured Milwaukee Railroad and is separated from that employment by reason of a reduction in service prior to April 1, 1984, or is separated from his employment with the Milwaukee Railroad and prior to April 1, 1981 obtains employment with another rail carrier and is separated from such employment prior to April 1, 1984, shall, upon filing an application and claim in accordance with § 397.4 of this part, be entitled to receive monthly supplementary unemployment insurance benefits in accordance with these regulations. Separation from employment includes, but is not limited to, separation by reason of furlough. An employee shall be considered as having an employment relation on September 30, 1979, if:

(1) The employee was paid compensation for that date by the Milwaukee Railroad;

(2) The employee was on an approved leave of absence on that date;

(3) The employee was on sick leave on that date;

(4) The employee was in furlough status on September 30, 1979, or otherwise held rights to employment with the Milwaukee Railroad on that date.

(b) *Maximum number of months for which benefits may be paid.* An eligible employee shall be entitled to receive supplementary unemployment insurance benefits for a maximum of 36 months, except that (1) the period of entitlement of an employee shall not exceed the employee's total months of service with the Milwaukee Railroad, and (2) no supplementary unemployment insurance benefits shall be paid after April 1, 1984, unless (A) additional payments are necessary in order to provide an employee with eight months of such benefits, and (B) the employee is separated on or before April 1, 1984, and is continuously unemployed after such date.

(c) *Disqualifications.* No employee shall be entitled to supplementary unemployment insurance benefits for any month or portion of a month in which such employee is unemployed due to normal seasonal unemployment patterns in the railroad industry. No employee shall be entitled to supplementary unemployment insurance benefits if:

(1) The employee is separated from employment with any carrier by reason of his resignation, retirement, or discharge for cause;

(2) The employee has failed to exhaust all seniority rights or other employment rights under applicable collective bargaining agreements; or

(3) The employee has received a separation allowance under section 5 of the employee protection agreement entered into under the authority of section 9(b) of the Act.

§ 397.4 Claims for benefits.

(a) *Claim for withdrawal of claim.* An employee shall claim supplementary unemployment insurance benefits for a specific month by filing a claim form with respect to such month. A claim for benefits may, in the absence of fraud, be withdrawn by the employee notifying the Board in writing that he no longer wishes to claim entitlement to benefits for such month.

(b) *Completion of application and claim forms.* All of the items on the application and on each claim form must be completed by the employee. If any item is omitted, the application or claim form shall be returned to the individual for completion. However, the date that

the application or claim form was originally received by the Board shall be regarded as the filing date.

(c) *Filing in advance.* A claim form which bears a signature date prior to the last day of the month claimed, or which is received by the Board before the last day of the month claimed, shall be returned to the employee by the Board with a request either to resubmit the claim at the proper time or to sign and date the claim again.

(d) *Time limit for filing.* Benefits shall not be payable with respect to a particular month unless the claim form for such month is received by the Board no later than 30 days after the end of the month claimed.

(e) *Late filing.* A claim form which is received by the Board after the prescribed 30-day time limit has expired shall be considered as timely filed if the claimant was prevented from filing timely due to circumstances beyond his control. Circumstances beyond a claimant's control include, but are not limited to, the following:

(1) Delay by Board office in furnishing a form to the claimant,

(2) Misinformation from a Board employee,

(3) Misinformation from a railway labor organization official or a railroad employer official,

(4) Delay, loss, or damage of the claim form in the mail.

(5) Injury or illness of the claimant or members of his immediate family.

In determining whether a claimant form is timely filed, the Board can require a claimant to furnish a written statement of the actions he took to file his claim or of the circumstances he believes prevented him from filing timely. In no event shall a claim form be considered as timely filed if it is received by the Board more than one year after the month claimed.

§ 397.5 Determination of benefit rates.

(a) *Amount of benefits.* Supplementary unemployment insurance shall be payable to an emplyee on a monthly basis in an amount equal to 80 percent of such employee's average monthly normal compensation as computed under paragraph (b) of this section, less the sum of (1) the amount of any benefits payable to such employee for such month under the Railroad Unemployment Insurance Act or under any state unemployment insurance program, and (2) the amount of any earnings of such employee for such month from employment or selfemployment of any kind. For the pupose of computing the reduction in benefits computed under this subsection, the first four days of unemployment in a registration period under the Railroad Unemployment Insurance Act shall not be regarded as compensable days of unemployment under that Act.

(b) *Computation of average monthly normal compensation.* The employee's average monthly normal compensation is computed by dividing the total normal compensation earned by the employee during the test period as defined in § 397.2(h) of these regulations, by the number of months during the test period in which the employee earned monthly pay.

§ 397.6 Initial determinations under the Milwaukee Railroad Restructuring Act and reviews of appeals from such determinations.

(a) *Initial determinations with respect to applications and claims.* Each claim for supplementary unemployment insurance shall be adjudicated and the initial determination with respect thereto shall be made upon the basis of the claim form, the application, and any statement or supplements filed in connection therewith, the evidence submitted by the claimant, and evidence otherwise available. Claims shall be adjudicated and initial determinations shall be made in accordance with instructions issued by the Director of Unemployment and Sickness Insurance.

(b) *Notice of initial determination.* Notice of an initial determination which denies in whole or in part a claim for benefits shall contain a brief statement of the reason for the denial and shall be communicated in writing to the claimant within 15 days after such intitial determination is made. Such notice shall contain an explanation of the claimant's right to review as provided in paragraph (c) of this section and of this right to appeal as provided in paragraph (d) of this section. Notice shall be deemed to have been communicated to the claimant when it is mailed to the claimant at the latest address furnished by him.

(c) *Review of initial determination and notice of decision upon review.*

(1) *Review.* Within 60 days after notice of an initial determination has been communicated to a claimant, the claimant may make an oral or written request for a review of the initial determination. The official designated by the Director of Unemployment and Sickness Insurance shall review the determination, shall take any further action which may be required, and shall decide whether to sustain or reverse such determination.

(2) *Notice of decision.* Notice of the decision made upon review shall be communicated to the claimant in writing within 15 days after such decision is made. If the effect of the decision is that the claim is still denied in whole or in part, the claimant shall be notified in the communication of his right to appeal as provided in paragraph (d) of this section.

(d) *Appeal from an initial determination.*

(1) Any claimant may appeal from an initial determination denying his claim for benefits in whole or in part whether or not a review of such determination has been made under the provisions of paragraph (c)(2) of this section. An appeal from an initial determination shall be filed by mailing a letter to the Board which is signed by the appellant and states the basis for the appeal. An appeal from an initial determination shall be considered to have been filed when it is received in an office of the Board. Such appeal shall be filed within 60 days from the date on which notice of an initial determination is communicated to the appellant or within 30 days from the date on which notice of the decision made upon review is communicated to the appellant, whichever period ends later. Unless an appeal from an initial determination is filed by the appellant in the manner and with the time provided herein, all rights to further review of the initial determination shall be forfeited.

(2) Within a reasonable time, but not to exceed 45 days, after an appellant has filed an appeal, the Director of Unemployment and Sickness Insurance shall appoint a referee to act in the appeal. Such referee shall not (i) have any interest in the parties or in the outcome of the proceeding, (ii) have directly participated in the initial determination from which the appeal is made, and (iii) have any other interest in the matter which might prevent a fair and impartial hearing.

(3) In the development of an appeal, the referee shall have the power to hold hearings, require and compel the attendance of witnesses, administer oaths, take testimony, and make all necessary investigations.

(4) Promptly after being appointed, the referee shall notify all parties properly interested of their right to participate in the proceeding. Upon the scheduling of a hearing on an appeal, written notice of the hearing specifying the place and time thereof, shall be given to the properly interested parties at least seven days before the date of the hearing, unless such notice is waived by the parties. Such notice shall be mailed to the parties at the latest addresses furnished by them.

(5) The appellant, or the appellant's representative, shall be afforded full

opportunity to present evidence upon any question of fact, orally or in writing or by means of exhibits, to examine and cross-examine witnesses, and to present argument in support of the appeal. If in

shall be mailed to each interested party at the last address of record.

(e) *Finality.* The decision of the referee shall be final and binding on the Board.

claim, or misrepresentation. Compromise is at all times within the discretionary authority of the Board or its designeee.

(2) The following indicate the character of reasons which will be

(d) Rail carriers shall report available job openings to the Board for purposes of inclusion in the list referred to in paragraph (a)(2) of this section. The report for each available job opening

training assistance in accordance with that Act and to set forth the regulations necessary for the Board to pay new career training assistance.

§ 398.2 Definitions.

institution requires from all similarly circumstanced persons pursuing the same educational program.

§ 398.3 Eligibility for new career training assistance.

opportunity to present evidence upon any question of fact, orally or in writing or by means of exhibits, to examine and cross-examine witnesses, and to present argument in support of the appeal. If in the judgment of the referee, evidence not offered by the appellant is available and is relevant and material to the merits of the claim, the referee may obtain such evidence upon the referee's own initiative. If new evidence is obtaind by the referee subsequent to an oral hearing, the referee shall notify the appellant or his representative that such evidence was obtained and shall describe the nature of the evidence in question. In such event, the appellant shall have the right to submit rebuttal evidence or argument or to an oral hearing to confront and challenge such new evidence. The referee shall protect the record against scandal, impertinence, and irrelevancies, but the technical rules of evidence shall not apply.

(6) If the referee finds that no factual issues are presented by an appeal, and the only issues raised by the appellant are issues concerning the application or interpretation of law, the appellant or his representative shall be afforded full opportunity to submit written argument in support of the claim but no oral hearing shall be held.

(7) All evidence presented by any party or by the party's duly authorized representative, and all evidence developed by the referee, shall be preserved. Such evidence, together with a record of the arguments, oral or written, and the file previously made in the adjudication of the claim, shall constitute the record. After an appeal from an initial determination is filed, the compilation of the record shall be initiated by the inclusion therein of the file made in the adjudication of the claim; the compilation of the record shall be kept up-to-date by the prompt addition thereto of all parts of the record subsequently developed. The entire record at any time during the pendency of an appeal shall be available for examination by any properly interested party or by the party's duly authorized representative.

(8) As soon as practicable after the completion of the record, the referee shall render a decision. The decision shall be based on the record and shall be in writing. Such decision shall contain a brief statement of (i) the issue or issues raised, (ii) the evidence submitted, (iii) the findings of fact, (iv) the decision made, and (v) the reasons therefor. Within 15 days after rendition of the decision or submission of the report, a copy of the decision or report shall be mailed to each interested party at the last address of record.

(e) *Finality.* The decision of the referee shall be final and binding on the Board.

§ 397.7 Recovery of benefits.

(a) *Authorization.* Amounts of supplementary unemployment insurance paid under the Milwaukee Railroad Restructuring Act which have been determined to have been paid erroneously shall be recovered in all cases except those in which a compromise is approved under § 397.7(c) of these regulations. An amount determined to have been paid erroneously may be recovered by any one or a combination of the methods described in § 397.7(b) of these regulations.

(b) *Methods of recovery.*

(1) *Recovery by cash payment.* The Board shall have the right to require that amounts recoverable be immediately and fully repaid in cash and any debtor shall have the absolute right to repay such amount recoverable in this manner. However, if the debtor is financially unable to pay the indebtedness in a lump sum, payment may be accepted in regular installments. The amount and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. Whenever possible, installment payments should be sufficient in amounts and frequency to liquidate the debt in not more than three years.

(2) *Recovery of setoff.* An amount which has been determined to have been paid erroneously may be recovered by setoff against any benefit which the employee who received that erroneous payment is entitled to under the Milwaukee Railroad Restructuring Act, the Railroad Unemployment Insurance Act, or the Railroad Retirement Act. In the case of that individual's death, such amount may be recovered from any payments due under those Acts to his estate, designee, next of kin, legal representative, or surviving spouse. In any case in which full recovery is not effected by setoff, the balance due may be recovered by one or more of the other methods described in this part. If the individual dies before recovery is completed, such recovery shall be made from his estate or heirs.

(c) *Compromise of amounts recoverable.*

(1) The Board or its designee may compromise an amount recoverable, provided such amount does not exceed $20,000. Compromise of an amount recoverable may not be considered in any case in which there is an indication of fraud, the presentation of a false claim, or misrepresentation. Compromise is at all times within the discretionary authority of the Board or its designeee.

(2) The following indicate the character of reasons which will be considered in approving a compromise:

(i) The debtor's ability to repay the full amount within a reasonable time;

(ii) The debtor's refusal to pay the claim in full and the Board's inability to effect collection in full within a reasonable time by other collection methods;

(iii) Doubt concerning the Board's ability to prove its cases in court for the full amount; or

(iv) The cost of collecting the amount recoverable does not justify the enforced collection of the full amount.

(d) *Suspension or termination of collection action.* Collection action on a Board claim may be suspended or terminated under the following conditions:

(1) Collection action on a Board claim may be suspended temporarily when the debtor cannot be located and there is reason to believe that future collection action may be productive or that collection may be affected by setoff in the near future.

(2) Collection action may be terminated when:

(i) The debtor is unable to make any substantial payment;

(ii) The debtor cannot be located and setoff is too remote to justify retention of the claim;

(iii) The cost of collection action will exceed the amount recoverable;

(iv) The claim is legally without merit or cannot be substantiated by the evidence.

§ 397.8 Employment of Milwaukee Road employees.

(a) The Railroad Retirement Board shall prepare and maintain the following lists:

(1) A current list of individuals who are separated from employment with the Milwaukee Railroad, and who notify the Board that they wish to have their names included on a list to be available to rail carriers, and who have not yet obtained employment with another rail carrier;

(2) A current list of employment opportunities, by class and by craft, provided by rail carriers.

(b) The Board shall maintain the lists referred to in paragraphs (a)(1) and (a)(2) of this section through December 31, 1984.

(c) The Board shall furnish copies of the list referred to in paragraph (a)(1) of this section to any rail carrier upon request.

(d) Rail carriers shall report available job openings to the Board for purposes of inclusion in the list referred to in paragraph (a)(2) of this section. The report for each available job opening may be made either by telephone or by mail to any office of the Board. Available job openings should be listed with the Board as soon as possible but, in any event, at least concurrently with the use of any other recruitment source or effort.

(e) Each report required to be made under paragraph (d) of this section shall include the following information:

(1) The number of employees to be hired;

(2) The location of the jobs;

(3) The class or craft of the jobs or a description of the work to be performed in those jobs; and

(4) The name, address, and telephone number of the individual with authority to hire employees for each of the job openings.

(f) In order to ensure that the list of employment opportunities remains current and accurate, rail carriers shall notify the Board promptly when previously reported job openings are closed for any reason. The report of any such vacancy closure can be made either by telephone or by mail to the office of the Board with which the vacancy was originally listed. The report should identify the vacancy notice, give the number of employees hired, and give the names and social security account numbers of those hired who are former Milwaukee Road employees.

3. Part 398 (previously reserved) is added to read as follows:

PART 398—NEW CAREER TRAINING ASSISTANCE

Sec.

398.1 Purpose.
398.2 Definitions.
398.3 Eligibility for new career training assistance.
398.4 Application for new career training assistance.
398.5 Amount of benefits.
398.6 Reviews of and appeals from denial of applications for new career training assistance.
398.7 Post-payment audit by Board.

Authority: Sec. 29, Pub. L. 96–101, 93 Stat. 746 (45 U.S.C. 918).

§ 398.1 Purpose.

The Railroad Retirement Board is delegated the responsibility of administering the new career training assistance provisions under section 12 of the Milwaukee Railroad Restructuring Act. The purpose of these reguations is to delineate the Board's functions concerning the payment of new career training assistance in accordance with that Act and to set forth the regulations necessary for the Board to pay new career training assistance.

§ 398.2 Definitions.

For the purpose of this part, except where the language or context indicates otherwise:

"Act" means the Milwaukee Railroad Restructuring Act.

"Board" means the Railroad Retirement Board.

"Educational materials" are the personally owned items required of every student pursuing the same educational program.

"Employee" means any employee of the Milwaukee Railroad who worked on a line of such railroad the sale of which became effective October 1, 1979, but does not include any person serving the Milwaukee Railroad as president, vice-president, secretary, treasurer, comptroller, counsel, member of the board of directors, or any other person performing such functions.

"Expenses for board" are the charges for meals, laundry, and cleaning and pressing of clothes incurred while occupying temporary lodging described as "Room expenses".

"Fees" are payments other than tuition required by an educational institution from every student taking a particular course.

"Milwaukee Railroad" means the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

"New career training" is any educational program which is pursued at or under the auspices of a qualified institution and which is intended to assist in the acquiring of skills and knowledges to facilitate the acquisition of employment.

A "qualified institution" is an educational institution accredited for payment by the Veterans Administration under chapter 36 of title 38 of the United States Code or a State-accredited institution which has been in existence for not less than two years.

"Restructured Milwaukee Railroad" means the entity that is designated as the reorganized railroad under the reorganization plan for the Milwaukee Railroad finally certified by the Interstate Commerce Commission.

"Room expenses" are the lodging charges or room rates of the educational institutions or third party from whom temporary lodging is obtained for lodging which is necessary to enable the student to complete his course of study and is separate from and in addition to the student's permanent residence.

"Tuition" is the normal charge for instruction that an educational institution requires from all similarly circumstanced persons pursuing the same educational program.

§ 398.3 Eligibility for new career training assistance.

Any employee shall, upon filing an application in accordance with § 398.4 of this part, be entitled to receive new career training assistance if:

(a) The employee has elected to receive a separation allowance under section 5 of the employee protection agreement entered into under the authority of section 9(b) of the Act;

(b) The employee begins career training within two years of his date of separation from the Milwaukee Railroad; and

(c) The expense incurred in connection with new career training and for which reimbursement is claimed under this part have been incurred before April 1, 1984.

§ 398.4 Application for new career training assistance.

An employee shall file an application for new career training assistance within six months of having incurred expenses in an amount equal to or greater than $10 for which the employee is eligible for reimbursement in accordance with this part. Applications for amounts less than $10 shall be held by the Board until at least $10 is claimed unless the employee indicates on the application that it is the final application which he intends to file. Such application shall be on a form provided by the Board and shall be filed with the Director of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois, 60611. Acceptable proof that the employee incurred reimbursable expenses must accompany the application.

§ 398.5 Amount of benefits.

New career training assistance shall be payable to an employee in reimbursement for actual expenses for room, board, tuition, fees, or educational materials in a total amount not to exceed $3,000.00.

§ 398.6 Reviews of and appeals from denials of applications for new career training assistance.

The provisions of § 397.6 of this subchapter shall be applicable to an application for new career training assistance.

§ 398.7 Post-payment audit by Board.

If the Director of Unemployment and Sickness Insurance finds that a qualified institution has charged or received from any eligible employee pursuing a program of education under this part

any amount for any course in excess of the changes for tution and fees which such institution requires of similarly circumstanced persons not receiving new career training assistance, the Director may disapprove such

Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–6212).

SUPPLEMENTARY INFORMATION:

Background

The final regulations represent the view of the Treasury Department that the authority delegated by section 3(31) is in fact authority to *further* define acceptable methods, not just authority to identify *additional* acceptable

a career average pay plan and a final pay plan which, on the basis of an assumed salary scale, are designed to provide the same normal retirement benefits. It is argued that, under the regulation, more rapid funding would be required under the final average pay

Anticipated Benefit Changes

A number of comments misunderstood the significance of the phrase "except as otherwise provided by the Commissioner" in the proposed provision relating to anticipated benefit changes. This phrase enables the

The final regulations do not follow the suggestion of some comments that open group funding should be allowed. Unlike acceptable approaches to funding, the open group approach weakens what might be an acceptable method in identical circumstances by producing a

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any amount for any course in excess of the changes for tution and fees which such institution requires of similarly circumstanced persons not receiving new career training assistance, the Director may disapprove such educational institution for the enrollment of any eligible employee not already enrolled therein. The Director may deny new career training assistance for any eligible employee if the Board finds that the program of education or any course in which the employee is enrolled fails to meet any of the requirements of this part or if the Director finds that the educational institution has violated any provision of this part or has failed to meet any of the requirements of this part.

PART 399—[Reserved]

Dated: December 16, 1980.

By Authority of the Board.

R. F. Butler,

Secretary of the Board.

[FR Doc. 80-40497 Filed 12-30-80; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7746]

Income Tax; Taxable Years Beginning After December 31, 1953; Reasonable Funding Methods

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to reasonable funding methods. Changes in the applicable tax law were made by the Employee Retirement Income Security Act of 1974. The regulations provide the public with guidance needed to comply with that Act and affect defined benefit pension plans.

DATE: The regulations are effective for plan years beginning after 1975, but earlier (or later) in the case of some plans as provided for meeting the minimum funding requirements under the Employee Retirement Income Security Act of 1974. However, a transitional rule generally delays the date for complying with the substantive provisions of the regulations to April 30, 1981.

FOR FURTHER INFORMATION CONTACT: Joel E. Horowitz of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-6212).

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1979, the Internal Revenue Service published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 412(c)(3) of the Internal Revenue Code of 1954. These amendments were proposed to conform the regulations to sections 3(31) and 1013(a) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 837, 914). A public hearing was held on February 21, 1980.

After consideration of all the written comments and the oral presentations at the hearing, the proposed amendments are adopted, as revised, by this Treasury decision under the authority of section 3(31) of ERISA (88 Stat. 837; 29 U.S.C. 1002) and section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805). The regulations contained in this document also apply for purposes of section 302(c)(3) of ERISA (88 Stat. 871).

Fundamental Issues

On two fundamental issues, comments were received both from persons who favored the proposed amendments and from persons who opposed them.

The first issue is the scope of the authority upon which the Treasury Department relies in publishing these regulations. That authority arises primarily and specifically from section 3(31) of ERISA.

The first sentence of section 3(31) generically defines a funding method as "a recognized actuarial technique for establishing the amount and incidence of the annual actuarial cost of pension plan benefits and expenses." The second sentence of the section lists six methods that shall be included among the "acceptable actuarial cost methods." The third sentence specifically excludes two methods from the acceptable category. The fourth sentence states: "The Secretary of the Treasury shall issue regulations to further define acceptable actuarial cost methods."

Some of the comments maintained that the use of the six methods listed in the second sentence and any variations of these methods should not be limited by the regulations. These comments suggested that the authority delegated to the Secretary in the fourth sentence should be exercised only with respect to methods that were not variations of the methods identified in section 3(31).

The final regulations represent the view of the Treasury Department that the authority delegated by section 3(31) is in fact authority to *further* define acceptable methods, not just authority to identify *additional* acceptable methods. The Treasury Department's view is that the regulations may further define any of the six methods identified as acceptable in section 3(31). The regulations do this in the case of a variation of the unit credit method which is discussed later.

The second pivotal issue turns on the relationship between the minimum funding requirements of section 412 of the Code and the maximum deduction limits of section 404.

The preamble to the proposed regulations discussed the need to limit abuses of preferential tax treatment by preventing overfunding. Some of the comments suggested that this was not an appropriate interest in structuring the limits of acceptability for a reasonable funding method. However, this suggestion disregards the link in section 404(a)(1)(A) between section 412 (and therefore reasonable funding methods) and section 404. Therefore, the final regulations continue to represent the view of the Treasury Department that under the law as currently structured regulations under section 412 must balance the conflicting interests of sections 404 and 412.

Compensation-Based Allocation of Liabilities

The most controversial provision of the proposed regulations was the following sentence: "An allocation [of liabilities under a unit credit funding method using final pay] based on compensation would not be permitted."

This rule limits the use of certain variations of the unit credit funding method. The unit credit method allocates plan costs for a benefit to the year when that benefit is considered to accrue. Because an employee's compensation tends to increase over the course of his or her career, the allocation of liabilities based on compensation considers benefits to accrue more slowly than if allocations of liabilities were made on the basis provided by the regulation. Thus, by requiring the allocation to be made strictly on the basis of past and anticipated future years of service, the regulation requires that a method reflect these higher benefit accruals and so accumulate funds more rapidly than if a compensation based allocation were permitted.

The major argument raised in connection with the compensation-based allocation contrasts the funding of

a career average pay plan and a final pay plan which, on the basis of an assumed salary scale, are designed to provide the same normal retirement benefits. It is argued that, under the regulation, more rapid funding would be required under the final average pay plan even though, given these assumptions, the final pay plan does not provide for benefits which, at any point in time, exceed those provided by the career average pay plan.

Although a final average pay plan and a career average pay plan may be designed to provide an equivalent benefit for a given combination of age and service (or, depending on the benefit structure, a combination of age, service and compensation), the two types of plans are not necessarily equivalent. First, they will not be equivalent for other ages or years of service or, perhaps, compensation levels. Second, plan commitments are different; although the plans may provide numerically equal benefits for an assumed salary scale, they are committed to levels of benefits which may vary significantly as actual salary progressions differ from those assumed. Third, the difference between salary experience and salary assumed has a greater impact on a final average pay plan than on a career average plan.

Further, different treatment for these two situations is justified in light of differences in benefit security and administrative costs in each case. The Treasury Department believes that the best rule, theoretically, for both final average pay plans and career average pay plans would be to use a projection, adjusted for the nature of the plan, and an allocation of liabilities based on service. However, in the case of a career average pay plan, deviations between this rule and more simple rules are not very great. In general, a career average pay plan will not become dramatically underfunded in a short period of time solely by virtue of large salary increases. Imposition of the best theoretical rule on a career average pay plan would cause an increase in administrative expenses with a relatively small increase in benefit security. Accordingly, career average pay plans may be funded on a basis that is regarded as less than theoretically correct. The same result does not occur in a final average pay plan. A final average pay plan could become dramatically underfunded in a fairly short period of time solely by virtue of large salary increases. The exception that is permitted for career average pay plans, therefore, would be inappropriate for final average pay plans.

Anticipated Benefit Changes

A number of comments misunderstood the significance of the phrase "except as otherwise provided by the Commissioner" in the proposed provision relating to anticipated benefit changes. This phrase enables the Commissioner to provide rules that are less restrictive than the general rules under the regulations. For example, the less restrictive requirements of Rev. Rul. 77-2, 1977-1 C.B. 120, would continue to apply under the regulations.

The comments reflected a broad range of differing opinions regarding the proposal prohibiting the anticipation of benefit changes. These comments generally noted the conflicting directions of this provision and other provisions, and viewed this position as an impediment to adequate funding of plans. The most persuasive of these comments urged the adoption of a permissive rule with respect to the anticipation of increases in benefits provided for future years by the terms of a collective bargaining agreement.

The final regulations reflect the view that, because of the binding nature of benefit increases provided in collective-bargaining agreements, it is reasonable to anticipate such increases for funding purposes in years before the increases are actually effective. This approach encourages faster funding and benefit security. However, the anticipation or failure to anticipate the benefit increases is part of a plan's funding method. Thus, a change in the plan's treatment of anticipated benefit increases is a change in funding method.

Anticipated Future Participants

The regulations as proposed would have provided that a reasonable funding method may not anticipate the affiliation with the plan of future participants. A number of comments that favored the intended effect of the provision, to prohibit open group funding methods, urged that the prohibition apply not to the anticipation of future participants but to the anticipation of future employees. These comments noted that it is common practice for a plan to determine funding requirements for the current year by anticipating the participation in the plan of current employees, subject to an appropriate turnover assumption.

The final regulations follow the suggested approach of these comments and prohibit the anticipation of future employees. However, it is permitted to anticipate the satisfaction of participation requirements by employees who are not presently participants.

The final regulations do not follow the suggestion of some comments that open group funding should be allowed. Unlike acceptable approaches to funding, the open group approach weakens what might be an acceptable method in identical circumstances by producing a low minimum funding requirement during years of corporate growth and producing a high minimum funding requirement during years of corporate decline. The method itself offers no check on such a weakened funding posture for the plan.

Ancillary Benefits

The proposed amendments described a number of methods for funding pre-retirement ancillary benefits. The final regulations do not distinguish between pre- and post-retirement ancillary benefits. They also clarify which benefits are considered ancillary benefits for funding purposes by providing a definition and examples.

Comments received on the proposed regulations addressed proposed rules relating to 1-year term funding. They suggested that the final regulations provide for the approval by the Commissioner of other methods that compare favorably with 1-year term funding. Also, comments suggested that the test for measuring the significance of ancillary costs (and, thus, determining eligibility for using term costs) was inadequate.

The provision indicating the cost range within which an ancillary cost must fall in order to utilize 1-year term funding has been reserved. It is anticipated that a revised provision on this subject will be proposed for public comment at a later date. It is expected that the revised proposal will address the problem of comparing term costs with total plan costs and will concern both 1-year term funding and other methods.

Transitional Rule

The final regulations recognize that immediate compliance may jeopardize the short-term financial stability of certain plans. Thus, two optional procedures are available to ease this burden by allowing a gradual phase-in of the higher costs and amortizing the "waived" costs over the following 15 years.

Effective Dates

In general, the regulations are effective for valuations as of a date after April 30, 1981. For certain collectively bargained plans, the regulations are effective as of the earlier of the expiration of the collective bargaining agreement or April 30, 1984.

Other Changes

The final regulations also differ in other respects from the proposed amendments. These changes consist of minor technical modifications suggested

(i) The normal cost of a plan for a plan year; and, if applicable,

(ii) The bases established under section 412(b)(2)(B), (C), and (D), and (3)(B) ("amortizable bases").

(b) *General rules for reasonable*

(c)(3)(i) of this section unless otherwise provided by the Commissioner. The excludable individuals are participants who would be excluded from participation by the minimum age or service requirement of section 410 but

funding method does not anticipate changes in plan benefits that become effective, whether or not retroactively, in a future plan year or that become effective after the first day of, but during, a current plan year.

(f), ancillary benefit costs must be computed by using the same method used to compute retirement benefit costs under a plan.

(2) *Ancillary benefit defined.* For purposes of this paragraph an ancillary

In effect, then, assets under method A can never equal the present value of future benefits if all assumptions are exactly realized. Therefore, method A is not a reasonable funding method.

Example (2). Assume that a plan, using funding method B, determines normal cost by

Other Changes

The final regulations also differ in other respects from the proposed amendments. These changes consist of minor technical modifications suggested by the comments and structural alterations designed to enhance the clarity of the final regulations.

Drafting Information

The principal author of these final regulations was Joel E. Horowitz of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended by adding in the following new sections immediately after § 1.412(c)(2)–1:

§ 1.412(c)(3)–1 Reasonable funding methods.

(a) *Introduction*—(1) *In general.* This section prescribes rules for determining whether or not, in the case of an ongoing plan, a funding method is reasonable for purposes of section 412(c)(3). A method is unreasonable only if it is found to be inconsistent with a rule prescribed in this section. The term "reasonable funding method" under this section has the same meaning as the term "acceptable actuarial cost method" under section 3(31) of the Employee Retirement Income Security Act of 1974 (ERISA).

(2) *Computations included in method.* See § 1.412(c)(1)–1(b) for a discussion of matters that are, and are not, included in the funding method of a plan.

(3) *Plans using shortfall.* The shortfall method is a method of determining charges to the funding standard account by adapting the underlying funding method of certain collectively bargained plans in the manner described in § 1.412(c)(1)–2. As such, the shortfall method is a funding method. The underlying method of a plan that uses the shortfall method must be a reasonable funding method under this section. The rules contained in this section, relating to cost under a reasonable funding method, apply in the shortfall method to the annual computation charge under § 1.412(c)(1)–2(d).

(4) *Scope of funding method.* Except for the shortfall method, a reasonable funding method is applied to the computation of—

(i) The normal cost of a plan for a plan year; and, if applicable,

(ii) The bases established under section 412(b)(2)(B), (C), and (D), and (3)(B) ("amortizable bases").

(b) *General rules for reasonable funding methods*—(1) *Basic funding formula.* At any time, except as provided by the Commissioner, the present value of future benefits under a reasonable funding method must equal the sum of the following amounts:

(i) The present value of normal costs (taking into account future mandatory employee contributions, within the meaning of section 411(c)(2)(C), in the case of a contributory plan) over the future working lifetime of participants;

(ii) The sum of the unamortized portions of amortizable bases, if any, treating credit bases under section 412(b)(3)(B) as negative numbers; and

(iii) The plan assets, decreased by a credit balance (and increased by a debit balance) in the funding standard account under section 412(b).

(2) *Normal cost.* Normal cost under a reasonable funding method must be expressed as—

(i) A level dollar amount, or a level percentage of pay, that is computed from year to year on either an individual basis or an aggregate basis; or

(ii) An amount equal to the present value of benefits accruing under the method for a particular plan year.

(3) *Application to shortfall.* Paragraph (b)(2) will not fail to be satisfied merely because an amount described in (i) or (ii) is expressed as permitted under the shortfall method.

(c) *Additional requirements*—(1) *Inclusion of all liabilities.* Under a reasonable funding method, all liabilities of the plan for benefits, whether vested or not, must be taken into account.

(2) *Production of experience gains and losses.* If each actuarial assumption is exactly realized under a reasonable funding method, no experience gains or losses are produced.

(3) *Plan population*—(i) *In general.* Under a reasonable funding method, the plan population must include three classes of individuals: participants currently employed in the service of the employer; former participants who either terminated service with the employer, or retired, under the plan; and all other individuals currently entitled to benefits under the plan. See § 1.412(c)(3)–1(d)(2) for rules concerning anticipated future participants.

(ii) *Limited exclusion for certain recent participants.* Under a reasonable funding method, certain individuals may be excluded from the first class of individuals described in paragraph (c)(3)(i) of this section unless otherwise provided by the Commissioner. The excludable individuals are participants who would be excluded from participation by the minimum age or service requirement of section 410 but who, under the terms of the plan, participate immediately upon entering the service of the employer.

(iii) *Special exclusion for "rule of parity" cases.* Under a reasonable funding method, certain individuals may be excluded from the second class of individuals described in paragraph (c)(3)(i) of this section. The excludable individuals are those former participants who have terminated service with the employer without vested benefits and whose service might be taken into account in future years because the "rule of parity" of section 411(a)(6)(D) does not permit that service to be disregarded. However if the plan's experience as to separated employees' returning to service has been such that the exclusion described in this subparagraph would be unreasonable, the exclusion would no longer apply.

(4) *Use of salary scale*—(i) *General acceptability.* The use of a salary scale assumption is not inappropriate merely because of the funding method with which it is used. Therefore, in determining whether actuarial assumptions are reasonable, a salary scale will not be considered to be prohibited merely because a particular funding method is being used.

(ii) *Projection to appropriate salary.* Under a reasonable funding method, salary scales reflected in projected benefits must be the expected salary on which benefits would be based under the plan at the age when the receipt of benefits is expected to begin.

(5) *Treatment of allocable items.* Under a reasonable funding method that allocates assets to individual participants to determine costs, the allocation of assets among participants must be reasonable. An initial allocation of assets among participants will be considered reasonable only if it is in proportion to related liabilities. However, the Commissioner may determine, based on the facts and circumstances, that it is unreasonable to continue to allocate assets on this basis beyond the initial year. Under a reasonable funding method that allocates liabilities among different elements of past and future service, the allocation of liabilities must be reasonable.

(d) *Prohibited considerations under a reasonable funding method*—(1) *Anticipated benefit changes*—(i) *In general.* Except as otherwise provided by the Commissioner, a reasonable funding method does not anticipate changes in plan benefits that become effective, whether or not retroactively, in a future plan year or that become effective after the first day of, but during, a current plan year.

(ii) *Exception for collectively bargained plans.* A collectively bargained plan described in section 413(a) may on a consistent basis anticipate benefit increases scheduled to take effect during the term of the collective-bargaining agreement applicable to the plan. A plan's treatment of benefit increases scheduled in a collective bargaining agreement is part of its funding method. Accordingly, a change in a plan's treatment of such benefit increases (for example, ignoring anticipated increases after taking them into account) is a change of funding method.

(2) *Anticipated future participants.* A reasonable funding method must not anticipate the affiliation with the plan of future participants not employed in the service of the employer on the plan valuation date. However, a reasonable funding method may anticipate the affiliation with the plan of current employees who have not satisfied the participation requirements of the plan.

(e) *Special rules for certain funding methods*—(1) *Applicability of special rules.* Paragraph (e) of this section applies to a funding method that determines normal cost under paragraph (b)(2)(ii) of this section.

(2) *Use of salary scale.* For rules relating to use of a salary scale assumption, see paragraph (c)(4) of this section.

(3) *Allocation of liabilities.* In determining a plan's normal cost and accrued liability for a particular plan year, the projected benefits of the plan must be allocated between past years and future years. Except in the case of a career average pay plan, this allocation must be in proportion to the applicable rates of benefit accrual under the plan. Thus, the allocation to past years is effected by multiplying the projected benefit by a fraction. The numerator of the fraction is the participant's credited years of service. The denominator is the participant's total credited years of service at the anticipated benefit commencement date. Adjustments are made to account for changes in the rate of benefit accrual. An allocation based on compensation is not permitted. In the case of a career average pay plan, an allocation between past and future service benefits must be reasonable.

(f) *Treatment of ancillary benefit costs*—(1) *General rule.* Under a reasonable funding method, except as otherwise provided by this paragraph (f), ancillary benefit costs must be computed by using the same method used to compute retirement benefit costs under a plan.

(2) *Ancillary benefit defined.* For purposes of this paragraph an ancillary benefit is a benefit that is paid as a result of a specified event which—

(i) Occurs not later than a participant's separation from service, and

(ii) Was detrimental to the participant's health.

Thus, for example, benefits payable if a participant dies or becomes disabled prior to separation from service are ancillary benefits because the events giving rise to the benefits are detrimental to the participant's health. However, an early retirement benefit, a social security supplement (as defined in § 1.411(a)–7(c)(4)(ii)), and the vesting of plan benefits (even if more rapid than is required by section 411) are not ancillary benefits because those benefits do not result from an event which is detrimental to the participant's health.

(3) *Exception for certain insurance contracts.* Under a reasonable funding method, regardless of the method used to compute retirement benefit costs, the cost of an ancillary benefit may equal the premium paid for that benefit under an insurance contract if—

(i) The ancillary benefit is provided under the contract, and

(ii) The benefit is guaranteed under the contract.

(4) *Exception for 1-year term funding and other approved methods.* [Reserved]

(5) *Section 401(h) benefits.* Section 412 does not apply to benefits that are described in section 401(h) and for which a separate account is maintained.

(g) *Examples.* The principles of this section are illustrated by the following examples:

Example (1). Assume that a plan, using funding method A, is in its first year. No contributions have been made to the plan, other than a nominal contribution to establish a corpus for the plan's trust. There is no past service liability, and the normal cost is a constant percentage of an annually determined amount. The constant percentage is 99 percent, and the annually determined amount is the excess of the present value of future benefits over plan assets. The present value of future benefits is $10,000. Under paragraph (b)(1) of this section, the present value of future benefits must equal the present value of future normal costs plus plan assets. (No amortizable bases exist, nor are there credit or debit balances.) Under method A, the present value of future normal costs would equal the sum of a series of annually decreasing amounts. Because of the constant percentage factor, the present value of future normal costs over the years can never equal $10,000, the present value of future benefits. In effect, then, assets under method A can never equal the present value of future benefits if all assumptions are exactly realized. Therefore, method A is not a reasonable funding method.

Example (2). Assume that a plan, using funding method B, determines normal cost by computing the present value of benefits expected to be accrued under the plan by the end of 10 years after the valuation date and adding to this the present value of benefits expected to be paid within these 10 years. Plan assets are subtracted from the sum of the two present value amounts. The difference then is divided by the present value of salaries projected over the 10 years. Under paragraph (c)(1) of this section, all liabilities of a plan must be taken into account. Because method B takes into account only benefits paid or accrued by the end of 10 years, it is not a reasonable funding method.

Example (3). Assume that a plan, using funding method C, determines normal cost as a constant percentage of compensation. (This percentage is determined as follows: The excess of projected benefits over accrued benefits is computed. Then the present value of this excess is divided by the present value of future salaries.) However, the accrued liability is computed each year as the present value of accrued benefits. (This computation does not reflect normal cost as a constant percentage of compensation. Thus, normal cost under the plan does not link accrued liabilities under the plan for consecutive years as would be the case, for example, under a unit credit cost method.) In determining gains and losses, method C compares the actual unfunded liability (the accrued liability less assets) with the expected unfunded liability (the sum of the actual unfunded liability in the previous year and the normal cost for the previous year less the contribution made for the previous year, all adjusted for interest). Under paragraph (c)(2) of this section, if actuarial assumptions are exactly realized, experience gains and losses must not be produced. Under method C, the use of a constant percentage in computing normal cost (and the expected unfunded liability) coupled with the manner of computing the accrued liability (and the actual unfunded liability) generally produces gains in the earlier years and losses in the later years if each actuarial assumption is exactly realized. Therefore, method C is not a reasonable funding method.

Example (4). Assume that a plan, using funding method D, bases benefits on final average pay. Under method D, the past service liability on any date equals the present value of the accrued benefit on that date based on compensation as of that date. The normal cost for any year equals the present value of a certain amount. That amount is the excess of the projected accrued benefit as of the end of the year over the actual accrued benefit at the beginning of the year. Accrued benefits, projected as of the end of a year, reflect a 1-year salary projection. Under paragraph (c)(4) of this section, salary scales reflected in projected benefits must project salaries to the salary on which benefits would be based under the plan at the age when the receipt of benefits

under the plan is expected to begin. Because the plan is not a career average pay plan and compensation is projected only 1 year, method D is not a reasonable funding method. (Under paragraph (c)(4) of this section, the use of a salary scale assumption would be required with a unit credit method if

of final salary for the first 10 years of service and 1 percent of final salary for the years of service in excess of 10. Under the plan, no employee may be credited with more than 25 years of service. The actuarial assumptions for the valuation include a salary scale of 5

respect to which the change is first effective.

(2) *Amortization base.* An amortization base must be established in the plan year of the change in method equal to the change in the unfunded

charge or credit described in § 1.412(c)(3)–2(c)) which would be required using the actuarial assumptions and plan benefit structure in effect on the last day of the plan year of change.

(5) *Fifteen-year amortization of*

DATE: The amendments are effective for acquisitions occurring after January 30, 1981.

FOR FURTHER INFORMATION CONTACT:

Raymond W. McKee of the Legislation and Regulations Division, Office of

T's business. Example (2), which is based on *Atlas Tool Co. v. Commissioner*, 70 T.C. 86 (1978), *aff'd* 614 F.2d 860 (3d Cir. 1980), *cert. denied*, — U.S. — (1980), shows that continuity of business enterprise may exist even if

under the plan is expected to begin. Because the plan is not a career average pay plan and compensation is projected only 1 year, method D is not a reasonable funding method. (Under paragraph (c)(4) of this section, the use of a salary scale assumption could be required with a unit credit method if, without the use of a salary scale, assumptions in the aggregate are unreasonable.)

Example (5). Assume that a plan, using method E, a unit credit funding method, calculates a participant's accrued benefit according to the following formula: 2 percent of final salary for the first 10 years of service and 1 percent of final salary for the years of service in excess of 10. Under the plan, no employee may be credited with more than 25 years of service. The actuarial assumptions for the valuation include a salary scale of 5 percent per year. For a participant at age 40 with 15 years of service, a current salary of $20,000 and a normal retirement age of 65, the accrued liability for the retirement benefit is the present value of an annuity of $16,932 per year, commencing at age 65. The $16,932 is calculated as follows:

$$\$20{,}000 \times 3.3864 \times 35\% \times \frac{(10 \times 2) + (5 \times 1)}{(10 \times 2) + (15 \times 1) + (15 \times 0)}.$$

(3.3864 is 1.05 raised to the 25th power; the 25th power reflects the difference between normal retirement age and attained age (65–40).)

Salary under this method is projected to the age when the receipt of benefits is expected to begin. Therefore, method E meets the requirement of paragraph (c)(4) of this section. Also, the allocation of benefits under method E between past and future years of service meets the requirements of paragraph (e)(3) of this section.

Example (6). Assume that a plan that has two participants and that previously used the unit credit cost method wishes to change the funding method at the beginning of the plan year to funding method F, a modification of the aggregate cost method. The modification involves determining normal cost for each of the two participants under the plan. Therefore, it requires an allocation of assets to each participant for valuation purposes. The actuary proposes to allocate the assets on hand at the beginning of the plan year of the change in funding method in proportion to the accrued liabilities calculated under the unit credit cost method. The relevant results of the calculations are shown below:

	Employees		Totals
	M	N	
Accrued Liabilities (unit credit method):			
Dollar amount	15,670	906	16,576
Per cent of total	94.53	5.47	100.00
Assets:			
Dollar amount	7,835	453	8,288
per cent of total	94.53	5.47	100.00

The proposed allocation in proportion to the accrued liabilities under the unit credit cost method satisfies the requirements of paragraph (c)(5) of this section at the beginning of the first plan year for which the new method is used.

Example (7). The facts are the same as in Example (6). However, the actuary proposes to allocate all the assets to employee M, the older employee. Method F, under these facts, is not an acceptable funding method because the allocation is not in proportion to related liabilities as required under paragraph (c)(5) of this section.

§ 1.412(c)(3)–2 Effective dates and transitional rules relating to reasonable funding methods.

(a) *Introduction.* This section prescribes effective dates for rules relating to reasonable funding methods, under section 412(c)(3) and § 1.412(c)(3)–1. Also, this section sets forth rules concerning adjustments to a plan's funding standard account that are necessitated by a change in funding method, and a provision setting forth procedural requirements for use of an optional phase-in of required changes.

(b) *Effective date*—(1) *General rule.* Except as otherwise provided by subparagraph (2) of this paragraph, § 1.412(c)(3)–1 applies to any valuation of a plan's liabilities (within the meaning of section 412(c)(9)) as of a date after April 30, 1981.

(2) *Exception.* If a collective bargaining agreement which determines contributions to a plan is in effect on April 30, 1981, then § 1.412(c)(3)–1 applies to any valuation of that plan's liabilities as of a date after the earlier of the date on which the last such collective bargaining agreement expires or April 30, 1984.

(3) *Transitional rule.* The reasonableness of a funding method used in making a valuation of a plan's liability as of a date before the effective date determined under subparagraph (1) or (2) of this paragraph is determined on the basis of such published guidance as was available on the date as of which the valuation was made.

(c) *Change of funding method without approval*—(1) *In general.* A plan that is required to change its funding method to comply with § 1.412(c)(3)–1 is not required to submit the change of funding method for approval as otherwise required by section 412(c)(5). However, this change must be described on Form 5500, Schedule B for the plan year with respect to which the change is first effective.

(2) *Amortization base.* An amortization base must be established in the plan year of the change in method equal to the change in the unfunded liability due to the change (where both unfunded liabilities are based on the same actuarial assumptions). Such a base must be amortized over 30 years in determining the charges or credits to the funding standard account, unless the Commissioner upon application permits amortization over a shorter period.

(d) *Phase-in of additional funding required by new method*—(1) *In general.* A plan that is required to change its funding method to comply with § 1.412(c)(3)–1 may elect to charge and credit the funding standard account as provided in this paragraph. An election under this paragraph shall be irrevocable.

(2) *Credit in year of change.* In the plan year of the change in method the funding standard account may be credited with an amount not in excess of 0.8 multiplied by the excess (if any) of—

(i) The normal cost under the new method plus the amortization charge (or minus the amortization credit) computed as described in § 1.412(c)(3)–2(c)(2), over

(ii) The normal cost under the prior method, for the plan year of the change in method.

(3) *Credits in the next three years.* In the three years following the year of the change the funding standard account may be credited with an amount not in excess of 0.6, 0.4, and 0.2 respectively in the first, second, and third years, multiplied by either of the following amounts, computed as of the last day of the year of credit—

(i) The excess described in § 1.412(c)(3)–2(d)(2) multiplied by a fraction (not greater than 1), the numerator of which is the number of participants in the year of the credit and the denominator of which is the number of participants in the year of the change, or, at the option of the plan,

(ii) The excess (if any) in the year of credit of—

(A) The net charge to the funding standard account based on the new method, over

(B) The net charge to the funding standing account based on the prior method.

(4) *Computational rules.* For purposes of the calculation described in § 1.412(c)(3)–2(d)(3)(ii), the net charge is the excess of charges under section 412(b)(2) (A) and (B) over the credits under section 412(b)(3)(B) (including the

charge or credit described in § 1.412(c)(3)–2(c)) which would be required using the actuarial assumptions and plan benefit structure in effect on the last day of the plan year of change.

(5) *Fifteen-year amortization of credits.* The funding standard account shall be charged with 15-year amortization of each credit described in § 1.412(c)(3)–2(d) (2) and (3) beginning in the year following each such credit.

(6) *Manner of election.* An election under this paragraph shall be made by the claiming of the credits described in § 1.412(c)(3)–2(d) (2) and (3) on Schedule B to Form 5500 and by filing such other information as may be required by the Commissioner.

(e) *Effect on shortfall method.* The charges and credits described in this section apply in the shortfall method to the annual computation charge described in § 1.412(c)(1)–2(d). The amounts described in § 1.412(c)(3)–2(d) shall be determined before the application of the shortfall method.

This Treasury decision is issued under the authority of section 3(31) of the Employee Retirement Income Security Act of 1974 (88 Stat. 837; 29 U.S.C. 1002) and section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

William E. Williams,
Acting Commissioner of Internal Revenue.

Approved: December 23, 1980.

Emil M. Sunley,
Acting Assistant Secretary of the Treasury.

[FR Doc. 80-40627 Filed 12-29-80; 8:45 am]
BILLING CODE 4830-01-M

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26 CFR Part 1

[T.D. 7745]

Income Tax; Taxable Years Beginning After December 31, 1953; Continuity of Business Enterprise Requirement for Corporate Reorganizations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Treasury decision.

SUMMARY: This document contains final regulations clarifying the continuity of business enterprise requirement for corporate reorganizations. The continuity of business enterprise requirement is fundamental to the notion that tax-free reorganizations merely readjust continuing interests in property. Recent developments involving the availability of tax-free reorganization treatment for certain mutual fund transactions require clarification, in general, of the continuity of business enterprise requirement.

DATE: The amendments are effective for acquisitions occurring after January 30, 1981.

FOR FURTHER INFORMATION CONTACT: Raymond W. McKee of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, Attention: CC:LR:T (202–566–3458 not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1979, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 368 of the Internal Revenue Code of 1954 (44 FR 76813). On the date of publication of the proposed regulation, the Internal Revenue Service also published three documents in the Internal Revenue Bulletin. First, Rev. Rul. 79–434, 1979–2 C.B. 155, held that a transaction that is in effect a purchase is not a reorganization. Second, Rev. Rul. 63–29, 1963–1 C.B. 77, was suspended by Rev. Rul. 79–433, 1979–2 C.B. 155, pending revision. Third, the Service's list of no ruling areas contained in Rev. Proc. 79–14, 1979–1 C.B. 496, was amended by Rev. Proc. 79–68, 1979–2 C.B. 600, to prospectively include transactions that violate the continuity of business enterprise requirement as set forth in the proposed regulation. These amendments were proposed to clarify the requirement of continuity of business enterprise in corporate reorganizations.

A public hearing was held on March 18, 1980. After considering all comments regarding the proposed amendments, those amendments (as revised) are adopted by this Treasury decision.

General Description of Regulation

The regulation sets forth certain basic concepts underlying the continuity of business enterprise requirement. Continuity of business enterprise requires that the transferee (*P*) either continue the transferor's (*T*'s) historic business or use a significant portion of *T*'s historic business assets. *P* is not required to continue *T*'s business. However, there must be significant use of *T*'s historic business assets in *P*'s business.

The facts of the examples in the regulation are based, in large part, upon administrative rulings and judicial opinions. Example (1), which is based on *Lewis v. Commissioner*, 176 F.2d 646 (1st Cir. 1949), shows that continuity of business enterprise requires only that *P* continue one of the significant lines of *T*'s business. Example (2), which is based on *Atlas Tool Co. v. Commissioner*, 70 T.C. 86 (1978), *aff'd* 614 F.2d 860 (3d Cir. 1980), *cert. denied*, — U.S. — (1980), shows that continuity of business enterprise may exist even if *P*'s use of *T*'s assets differs from *T*'s use of those assets.

Example (3) shows that stocks and bonds acquired following the sale of *T*'s historic business as part of a plan of reorganization are not *T*'s historic business assets. *Compare Lester J. Workman*, T.C. Memo 1977–378.

The facts in example (4) are a variation of those in Rev. Rul. 63–29, 1963–1 C.B. 77, although the example reaches a different result. This transaction is not a mere purchase by *T* of *P* stock because *T* receives third party notes which are not cash equivalents. Example (5) shows that a disposition of *T*'s assets by *P* does not differ in result from a disposition of those assets by *T*.

For purposes of issuing advance letter rulings, the Service will determine on a case-by-case basis the portion of a transferor's total assets considered to be "significant" and determine whether a line of business is "significant".

Discussion of Major Comments and Changes

The major comments on the proposed regulation may be divided into three categories:

(1) The proposed regulation reflects unsound tax policy.

(2) The proposed regulation is not legally supportable.

(3) The proposed regulation, if adopted, should be revised to eliminate ambiguities and avoid unintended consequences.

Overall Policy Considerations

A number of taxpayers submitting comments argued that the proposed regulation is inconsistent with the underlying policy of the reorganization provisions since it requires *T*'s shareholders to recognize gain even though the shareholders continue their investment in corporate solution. They suggest that the appropriate time to tax *T*'s shareholders is when they "cash in" their investment through a sale or other taxable disposition of the *P* stock received in the transaction. Similarly, they argue that it is inappropriate to require gain recognition at the shareholder level merely because of a change in asset composition at the corporate level.

Under the general rule of section 1001 (c), an exchange of stock or securities requires recognition of gain or loss unless the exchange falls within the precise specifications of a

nonrecognition provision in the Internal Revenue Code (Code). Nonrecognition is accorded only if the exchange satisfies the underlying purpose of the exception as well as the specific description of the excepted exchange. *See* § 1.1002–1 (b).

for example, a sale of *T*'s business to an unrelated party, as part of the overall plan of reorganization, the interest received in *P* is no different than an interest in any corporation. An exchange of stock without a link to the

A. *Generally accepted principles*

The courts have agreed that *P* must not be formed merely to dispose of *T*'s assets. *See, e.g., Standard Realization Co. v. Commissioner*, 10 T.C. 708 (1948), *acq.* 1948–2 C.B. 3; *Graham v.*

portion of *T*'s assets (land) in its business, or merely used the proceeds form their sale, the differences in business activity and the finding that the land furnished "the means to capitalize" the insurance business indicates the

1965), *T* terminated its business, sold substantially all of its assets, and distributed the proceeds and its remaining assets in liquidation. The court found that at the time of the sale of *T*'s assets the T shareholders did not

cash and liquidate *T*. *P* did not want to use the assets immediately but wanted to continue relying on them as a backup source of supply. Problems with foreign suppliers developed three months after the transfer, and *P* began to use *T*'s

nonrecognition provision in the Internal Revenue Code (Code). Nonrecognition is accorded only if the exchange satisfies the underlying purpose of the exception as well as the specific description of the excepted exchange. *See* § 1.1002–1 (b). The relationship of the exchange to the venture or enterprise is always material. *Id.*

Section 1031 of the Code, which permits deferral of recognition on the exchange of certain property, expressly excludes an exchange of corporate stock or securities. Similarly, section 1036, which applies to an exchange of stock, permits deferral only when stock is exchanged for stock in the same corporation.

An exception to the general rule of gain or loss recognition is contained in the reorganization provisions—sections 354 through 368—of the Code. As stated in § 1.1002–1 (c), the underlying assumption of any tax-free exchange "is that the new property is substantially a continuation of the old investment still unliquidated" and, with respect to corporate reorganizations, nonrecognition results because "the new enterprise, the new corporate structure, and the new property are substantially continuations of the old still unliquidated." *See generally,* Bittker and Eustice, *Federal Income Taxation of Corporations and Shareholders,* ¶ 14.01 at 14–4 (4th ed. 1979).

The courts have long recognized that a tax-free reorganization presupposes that *T*'s shareholders retain a material proprietary interest in *P* (continuity of interest). *See, e.g., LeTulle v. Scofield,* 308 U.S. 415 (1939); *Helvering v. Bashford,* 302 U.S. 454 (1938); *Groman v. Commissioner,* 302 U.S. 82 (1937); *Helvering v. Minnesota Tea Co.,* 296 U.S. 378 (1935); *Pinellas Ice and Cold Storage Company v. Commissioner,* 287 U.S. 462 (1933); *Southwest Natural Gas Co. v. Commissioner,* 189 F.2d 332 (5th Cir. 1951), *cert. denied,* 342 U.S. 860 (1951); *Cortland Specialty Co. v. Commissioner,* 60 F.2d 937 (2d Cir. 1932), *cert. denied,* 288 U.S. 599 (1933). A necessary corollary to this continuity of interest requirement is that the interest retained represent a link to *T*'s business or its business assets. The continuity of business enterprise requirement ensures that tax-free reorganizations effect only a readjustment of the *T* shareholders' continuing interest in *T*'s property under a modified corporate form. *See,* § 1.368–1(b). Absent such a link between *T*'s shareholders and *T*'s business or assets there would be no reason to require *T*'s shareholders to retain a continuing stock interest in *P*. If the shareholders' link to *T*'s business or its assets is broken by, for example, a sale of *T*'s business to an unrelated party, as part of the overall plan of reorganization, the interest received in *P* is no different than an interest in any corporation. An exchange of stock without a link to the underlying business or business assets resembles any stock for stock exchange and, as such, is a taxable event. Thus, it is not enough that the shareholder's investment remains in corporate solution. *See Hendee v. Commissioner,* 98 F.2d 934 (7th Cir. 1938).

Additionally, several taxpayers argued that the proposed regulation is inconsistent with the policy of the reorganization provisions in that it requires two levels of tax. They pointed out that if the corporation's assets are sold to an unrelated party, tax is paid at the corporate level; and if reorganization treatment is denied on the subsequent stock exchange, a tax is imposed also at the shareholder level on the appreciation in the shareholders' stock.

In general, two levels of tax are imposed upon a corporate liquidation. However, if the requirements of the Code are met, only one level of tax may be imposed. This tax would be imposed at the shareholder level, not the corporate level, upon the liquidation of a corporation. *See* sections 331–337. The regulation does not alter this policy. If the requirements of section 337 are met, gain or loss is not recognized, in general, at the corporate level on the disposition of assets. However, as with other similar transactions, gain or loss is recognized, in general, by the shareholders under the liquidation provisions.

Regulation Not Legally Supportable

Most taxpayers submitting comments contended there is no existing judicial authority for the "historic business/assets" limitation in the proposed regulation. They argue primarily on the basis of *Becher v. Commissioner,* 22 T.C. 932 (1954), *aff'd,* 221 F.2d 252 (2d Cir. 1955), that continuity of business enterprise requires only that *P* engage in some business activity after the transaction and that *T*'s shareholders continue their investment in corporate form.

Thus, it is their contention that it is sufficient if *T*'s assets, or the proceeds from the sale of those assets, are used by *P* in a business. Although *Becher* supports the contention made in the comments, there is substantial authority supporting the premise of the regulation that a transaction is not a tax-free reorganization if there is no continuing nexus between the shareholders and their former business or assets.

A. *Generally accepted principles*

The courts have agreed that *P* must not be formed merely to dispose of *T*'s assets. *See, e.g., Standard Realization Co. v. Commissioner,* 10 T.C. 708 (1948), *acq.* 1948–2 C.B. 3; *Graham v. Commissioner,* 37 B.T.A. 623 (1938), *acq.* 1938–2 C.B. 13; *see also Mitchell v. United States,* 451 F.2d 1395 (Ct. Cl. 1971). However, the courts also have agreed, in general, that continuity of business enterprise does not require *P* to carry on the same business conducted by *T. See, e.g., Atlas Tool Co. v. Commissioner,* 614 F.2d 860 (3d Cir. 1980), *aff'g* 70 T.C. 86 (1978), *American Bronze Corp. v. Commissioner,* 64 T.C. 1111 (1975); *Bentsen v. Phinney,* 199 F. Supp. 363 (S.D. Tex 1961); *Becher v. Commissioner, supra.*

B. *Becher*

In *Becher, T* manufactured canvas supplies for the Armed Forces. After World War II, *T* decided to terminate its canvas supply business and enter the upholstery business. Shortly after *T* began to dispose of its canvas supply business, *T*'s shareholders organized *P* which acquired substantially all of *T*'s remaining operating assets. After *P* completed liquidating the canvas supply business, *T* dissolved and distributed substantial cash. The Commissioner argued that there was a reorganization based on the liquidation-reincorporation doctrine and asserted that the cash distribution was boot taxable as a dividend. The court held that the transfer of assets was a reorganization. The court reasoned that continuity of business enterprise does not require *P* to continue *T*'s business; rather it is sufficient if *P* is engaged in some business.

C. *Limited support for Becher view*

Becher is the strongest case in support of the rule advocated by most taxpayers submitting comments. However, only one other case—*Bentsen v. Phinney, supra,* a 1961 District Court decision—has held that continuity of business enterprise may be satisfied merely by the use by *P* of the proceeds of the sale of *T*'s assets in a business.

In *Bentsen, P,* a newly-formed life insurance company, acquired all the assets of three land development companies. The court upheld the taxpayer's contention that the continuity of business requirement was met. The court reasoned that continuity does not require *P* to engage in the same or similar business as *T*, and that *P* need only engage in some business activity. Although the facts do not indicate whether *P* actually used a significant

portion of *T*'s assets (land) in its business, or merely used the proceeds form their sale, the differences in business activity and the finding that the land furnished "the means to capitalize" the insurance business indicates the latter. *Cf. Morley Cypress Trust v. Commissioner,* 3 T.C. 84 (1944), *acq.* 1944 C.B. 20.

A case cited as fully embracing *Becher, United States v. Adkins-Phelps Inc.,* 400 F.2d 737 (8th Cir. 1968), is more limited on its facts. The court in *Adkins-Phelps* rejected the Goverment's contention that the continuity of business enterprise requirement was not met, stating that *P* need only continue to carry on some business activity. However, the court also found that *T* did not sell substantially all of its business assets, that the business was resumed before the meger, and that *T*'s brand name products (which presumably were acquired by *P*) had wide acceptance in the area in which *P* operated.

Other cases *Becher* cites are similarly distinguishable. Thus, in *Pebble Springs Distilling Co.. v. Commissioner,* 23 T.C. 196 (1954), *aff'd,* 231 F.2d 288 (7th Cir. 1956) *cert. denied,* 352 U.S. 836 (1956), *T,* a whiskey distiller, distributed its inventory of whiskey to its shareholders. *T* sold its plant, machinery, goodwill, and other operating assets to *P,* a related corporation, which was empowered to manufacture whiskey and conduct real estate activities. The court upheld the Commissioner's assertion that the transfer of the operating assets from *T* to *P* was a reorganization. Although the court cited *Becher,* in this case a substantial portion of *T*'s operating assets were used by *P* as rental property in a real estate business.

Similarly, in *American Bronze Corp., supra, P* manufactured and sold bronze castings for plumbing fixtures ("jobbing") and *T* manufactured and sold finished cast products ("product line"). Before the merger of *T* into *P, T* entered the jobbing business and sold its product line assets to an unrelated party. The facts indicate that there was no plan to merge *T* into *P* at the time *T* entered the jobbing business. The court upheld the taxpayer's contention that a reorganization occurred. Although the court cites *Becher* for the view that the continuing business need not be the same as the business conducted by *T, P* in fact continued *T*'s jobbing line of business.

D. *Case Authority for Regulation*

A number of cases subsequent to *Becher,* including decisions of the Tax Court, have recognized the principles set forth in the regulation. In *Pridemark v. Commissioner,* 345 F.2d 35 (4th Cir. 1965), *T* terminated its business, sold substantially all of its assets, and distributed the proceeds and its remaining assets in liquidation. The court found that at the time of the sale of *T*'s assets the T shareholders did not intend to revive *T*'s business. After several unsuccessful investments, the *T* shareholders reincorporated into *P.* Only an insignificant portion of *T*'s assets were transferred to *P.* Shortly after *T*'s liquidation, *P* engaged in a similar line of business. The court in holding that there was a complete liquidation of *T* did not consider conduct by *P* of a business similar to *T*'s as sufficient evidence to reach a contrary result.

In *Mitchell v. United States,* 451 F.2d 1395 (Ct. C1.1971), *P* and *T,* which were commonly owned, engaged in similar businesses. *P* acquired *T*'s assets after *T*'s last contract was cancelled. *P* intended to sell *T*'s assets promptly because *T*'s business was in Libya and *P*'s was in Australia. Thus, *P* began to sell *T*'s assets, selling nearly all of them within approximately 6 months. For a short time after *P* acquired *T*'s assets, *P* conducted small amounts of business with *T*'s equipment and two of *T*'s employees.

In deciding whether a liquidation or reorganization had occurred, the relevant inquiry for the court in *Mitchell* was whether *T*'s business was discontinued or was continued by *P* as a going concern. The court found that after the transfer *P* carried on its own business and did not continue *T*'s. The court cited *Pridemark* in holding that the transaction constituted a liquidation. The fact that after the transfer *P* was engaged in business, or may have used the proceeds from the sale of *T*'s assets in its business, did not indicate reorganization treatment.

Similarly, in *Wortham Machinery Co. v. United States,* 521 F.2d 160 (8th Cir. 1975), *T* transferred all of its assets to *P.* The court found that *P* acquired *T*'s assets with the intent to liquidate them. The court took the position that there was no continuity of business enterprise since "liquidation of assets is not continuation of a business enterprise," 521 F.2d at 163.

Two recent Tax Court cases are also consistent with the regulation. In *Atlas Tool Co. v. Commissioner,* 70 T.C. 86 (1978), *aff'd,* 614 F.2d 860 (3d Cir. 1980), *cert. denied,*—U.S.—(1980), *T* supplied *P* with components for *T*'s model train manufacturing business. *P* and *T* were commonly owned. In 1959, *P* began to rely on foreign suppliers for components and use *T* only as a backup source of supply. In 1969, the decision was made to transfer *T*'s operating assets to *P* for cash and liquidate *T. P* did not want to use the assets immediately but wanted to continue relying on them as a backup source of supply. Problems with foreign suppliers developed three months after the transfer, and *P* began to use *T*'s assets. The Tax Court held, and the Third Circuit affirmed, that the transfer of assets was a reorganization and not a liquidation.

Although the Tax Court in *Atlas Tool* cited *Becher* for the view that *P* need only engage in some business activity, it stated that *P* had "used" *T*'s assets even while inactive to reduce the risks of business. 70 T.C. at 104. Example (2) of the final regulation is based on the Tax Court opinion in *Atlas.*

In affirming the Tax Court, the Third Circuit stated that the focus of the nonstatutory requirements for a reorganization is "whether the new corporation carries forward the business enterprise of the old." 614 F.2d at 867. The court reasoned that *P* had continued substantially the same business conducted by *T* (*i.e.,* a backup supplier of components). The court cited *Becher* only for the limited proposition that continuity of business enterprise does not require the continuing business to be identical to the one conducted by *T.* The final regulation does not require that *P* conduct even substantially the same business. Rather, the continuity of business enterprise requirement is met under the final regulation if *P* uses *T*'s assets in any business.

The most recent Tax Court pronouncement on this subject is *Laure v. Commissioner,* 70 T.C. 1037 (1978), *Appeal docketed,* Nos. 79–1231/1232 (6th Cir. Feb. 27, 1979). In *Laure, P* manufactured plastics and plastic molding and *T* conducted an air charter business. *T* was insolvent. *T* contracted to sell its assets and merged into *P.* Some assets were sold prior to the merger and the remaining assets were sold by *P* after the merger under preexisting contracts of sale. For the two separate but related reasons that the transaction lacked a business purpose and continuity of business enterprise, the court rejected the taxpayer's assertion that the transaction was a reorganization. The court, citing *Becher* and *American Bronze Corp., supra,* stated that continuity of business enterprise does not mean that the continuing business must be the same as the one conducted by the transferor. 70 T.C. at 1103. However, the court stated that "[i]f the transferor's business is not continued there must be some use of the transferor's assets in the transferee's business." *Id.* The court added that continuity of business enterprise is

lacking if *P* merely is to dispose of *T*'s assets in a termination of *T*'s business. Thus, even though *P* continued its business activity, the court held that there was a liquidation of *T* and not a reorganization.

The Commissioner argued that if the court compared *P* to *T* as *T* existed after of its operating assets was tax free under section 337 because the sale was pursuant to a liquidation and not a reorganization.

The Commissioner argued that if the court compared *P* to *T* as *T* existed after

Congress expressly rejected a proposal in 1976 to totally deny reorganization treatment for transactions involving investment companies. *See,* Hearing Before the Ways and Means Committee on H.R. 11920, *Taxation of Exchange*

Suggested Revisions

Taxpayers suggested that the proposed regulation, if adopted, be revised to eliminate the "historic" concept and clarify the scope and

are considered in determining whether a line of business or the portion of assets transferred is significant.

D. *Examples*

A number of taxpayers submitting

inferences are intended regarding the law prior to the effective date of the final regulation.

Drafting Information

The principal author of this regulation

lacking if *P* merely is to dispose of *T*'s assets in a termination of *T*'s business. Thus, even though *P* continued its business activity, the court held that there was a liquidation of *T* and not a reorganization.

Laure and *Atlas* suggest that merely continuing business activity is insufficient. The final regulation reflects the emphasis in *Laure* and *Atlas* on continuing either *T*'s business or using *T*'s assets in a different business.

E. *"Historic" concept based on step transaction principles*

The regulation requires a continuing link between *T*'s shareholders and *T*'s business or assets. The examples in the regulation illustrate that the transfer of sale proceeds is not sufficient. It follows that it is not sufficient to transfer assets acquired with the sale proceeds as part of a plan of reorganization. The proposed regulation referred to *T*'s business and business assets immediately prior to the first step of an overall plan intended to result in a reorganization as *T*'s "historic" business/assets. Taxpayers submitting comments criticized the "historic" business/asset concept as legally unprecedented. However, this concept is intended to merely incorporate established step-transaction principles.

The essence of the step transaction doctrine is that an "integrated transaction must not be broken into independent steps or, conversely, that the separate steps must be taken together in attacking tax consequences." *King Enterprises v. United States*, 418 F. 2d 511 (Ct. Cl. 1969), *quoting* Bittker and Eustice, *Federal Income Taxation of Corporations and Shareholders* 18 (1966).

The rationale set forth in the opinion of Judge Raum in *Lester J. Workman*, T.C. Memo. 1977–378 clearly enunciates the principles used by the courts in applying the step transaction doctrine to determine whether a series of steps constitute a single plan of reorganization. In *Workman*, *T* rented land, buildings, and fixtures to a sister corporation engaged in the chemical manufacturing business. *T* sold its operating assets to the chemical manufacturing corporation for a note and mortgage. *T* liquidated, but within a short period of time *T*'s former shareholder *A* organized *P* to give *A* a corporate identity in seeking out new business opportunities. Shortly thereafter, *A* transferred to *P* the note and mortgage distributed in liquidation of *T*. After a year of inactivity, *P* engaged in several unsuccessful business ventures. The court upheld the taxpayer's contention that the sale by *T* of its operating assets was tax free under section 337 because the sale was pursuant to a liquidation and not a reorganization.

The Commissioner argued that if the court compared *P* to *T* as *T* existed after sale of its operating assets there was a reorganization because *P* continued the same activity (*i.e.*, holding the note and mortgage) conducted by *T* after the sale. The court held, however, that *P* must be compared with *T* as *T* existed prior to the sale of its assets. Thus, under the court's analysis there was a liquidation because *P* did not acquire any of *T*'s former assets (*i.e.*, land, building, and fixtures) or continue *T*'s former business. Rather, *T* transferred only the proceeds from the sale of those assets.

Judge Raum contrasted the situation in *Workman* with the one in *Abegg v. Commissioner*, 429 F. 2d 1209 (2d Cir. 1970), *aff'g* 50 T.C. 145 (1968), *cert. denied*, 400 U.S. 1008 (1971), which was cited in several comments as authority for the proposition that changes in the nature of *T*'s business or assets do not preclude a subsequent transfer of the remaining assets from qualifying as a reorganization. In *Abegg*, *T* sold all of its operating assets for stock and other liquid securities. *T* operated as a personal holding company managing the portfolio of liquid securities. After two years *T* distributed its portfolio to its sole shareholder *A*. *A* incorporated *P* and transferred the portfolio to it.

The court in *Abegg* upheld the Commissioner's assertion that the liquidation and reincorporation were in substance a reorganization. The crucial factor distinguishing *Abegg* from *Workman* is that in *Abegg* the sale of *T*'s former operating assets was not part of the plan that encompassed the liquidation and reincorporation. Thus, in *Abegg* the portfolio became *T*'s operating assets for purposes of determining continuity of business enterprise. However, no inference should be drawn that in *Abegg* a significant portion of *T*'s assets were transferred to *P*.

The "historic" business/asset concept is merely an expression of the distinction made by Judge Raum in applying these step transaction principles. The assets transferred by *T* in *Workman* were not *T*'s "historic" business assets. On the other hand, the assets transferred by *T* in *Abegg* were *T*'s "historic" business assets.

F. *Relation to section 368(a)(2)(F)*

Several taxpayers submitting comments argued that the regulation is inconsistent with section 368(a)(2)(F) to the extent it affects investment company reorganizations. Their argument is that Congress expressly rejected a proposal in 1976 to totally deny reorganization treatment for transactions involving investment companies. *See*, Hearing Before the Ways and Means Committee on H.R. 11920, *Taxation of Exchange (Swap) Fund Capital Gains*, 94th Cong., 2d Sess. (March 29, 1976). Instead, Congress enacted section 368(a)(2)(F) which limits reorganization treatment only for undiversified investment companies. Thus, they conclude that Congress intended section 368(a)(2)(F) to be the exclusive limitation on reorganizations of investment companies and that any further limitation requires legislative action.

The determination of whether a transaction qualifies as a reorganization requires a three-step analysis. First, the transaction must be described in section 368(a)(1) and meet the literal requirements of that section. Special rules apply under section 368(a)(2)(A) through (E) in making that determination. Second, the transaction must be tested under section 368(a)(2)(F). Third, a transaction that meets the literal requirements section 368(a)(1), and is not denied reorganization treatment under section 368(a)(2)(F), must in substance comply with the judicial doctrines that ensure transactions comply with the purposes and underlying assumptions of a reorganization. See § 1.368–1(b). Although Congress has amended the reorganization provisions several times, it has never relieved the courts of this "watchdog function". Bittker and Eustice, *Federal Income Taxation of Corporations and Shareholders* (4th ed. 1979) ¶ 1403 at 14–11.

The continuity of business enterprise requirement applies to reorganizations involving all taxpayers, not only those involving investment companies. The examples in the regulations involving investment companies are not directed at those taxpayers alone but are illustrative of generally applicable principles.

Congress in enacting section 368(a)(2)(F) intended only to limit tax-free diversification. Nothing in the legislative history of section 368(a)(2)(F) either indicates that Congress intended to eliminate any of the judicial doctrines restricting reorganization treatment or implies that all investment company transactions satisfy those judicial requirements. Thus, transactions that are not denied reorganization treatment under section 368(a)(2)(F) must satisfy all of the underlying assumptions of a reorganization, including continuity of business enterprise.

Suggested Revisions

Taxpayers suggested that the proposed regulation, if adopted, be revised to eliminate the "historic" concept and clarify the scope and application of the proposed regulation. Although the final regulation contains the "historic" business/asset concept, several clarifying revisions have been made.

A. *Effective date*

The effective date has been clarified to take into account an exchange of stock described in section 368(a)(1)(B). The proposed regulation focused on the date of "transfer" as defined in § 1.381 (b)–1(b). That term does not include "B" reorganizations, which are subject to the continuity of business enterprise requirement. Thus, the final regulation contains a special effective date for purported "B" reorganizations.

The terms "transferor" and "transferee" were replaced with the terms "acquiring corporation" and "acquired corporation" to indicate that the continuity of business enterprise requirement applies to a "B" reorganization, which does not involve a transfer. For convenience, the acquiring corporation is referred to as *P* and the acquired corporation is referred to as *T*.

B. *General rule*

Taxpayers suggested clarification of the treatment of mergers of holding companies. The Service will indicate by ruling how the general rule applies to these transactions and other similar transactions.

C. *"Historic" business/assets*

1. *Overall Plan.* The proposed regulation provided that a corporation's "historic" business is not one the corporation enters into as part of an overall plan intended to result in a reorganization. The intent of this language was to make it clear that under established step transaction principles the continuity of business enterprise test does not necessarily focus on the business conducted immediately before the acquisition by *P*. The term "overall plan intended to result in a reorganization" was used instead of "plan or reorganization" because the transaction may not result in a tax-free reorganization (*e.g.*, if it failed the continuity of business enterprise test). However, the final regulation uses the term "plan of reorganization" which has been used traditionally by the courts in applying step transaction principles.

2. *Significance or business of assets.* The final regulation is clarified to indicate that all facts and circumstances are considered in determining whether a line of business or the portion of assets transferred is significant.

D. *Examples*

A number of taxpayers submitting comments argued that the implication of example (3) was that any assets acquired by *T* before the acquisition by *P* would never be historic business assets if acquired by *T* with the proceeds of the sale of former operating assets. Some taxpayers also suggested the regulation confirm that under appropriate circumstances investment activity may constitute an historic business for purposes of continuity of business enterprise. It was argued further that it is unrealistic to ascribe all steps occurring with a 3½ year period to a single plan.

Example (3) is intended to illustrate the general principle that a reorganization will not result if *T* transfers assets acquired with the proceeds of a sale of *T*'s former operating assets as part of an overall plan. The existence of the plan is determined under traditional step transaction principles. *See King Enterprises, Inc. v. United States*, 418 F. 2d 511 (Ct. Cl. 1969); Mintz and Plumb, Step Transactions in Corporate Reorganizations *NYU Inst. on Fed. Tax*, 247, 285 (1954); compare in the context of a section 355 transaction *Commissioner v. Gordon*, 391 U.S. 83 (1968). The lapse of time between steps is one factor in determining whether those steps were part of a plan of reorganization. However, all facts and circumstances must be considered. Example (3) merely assumes that all steps described were part of a plan of reorganization.

Example (3) is not intended to imply that stocks and securities acquired with the proceeds of the sale of manufacturing assets will never be historic business assets. Investment operations may constitute an historic business if the investment assets were not acquired as part of a plan of reorganization.

A number of taxpayers submitting comments complained that the regulation prevented any post-acquisition change in the business or assets acquired by *P* for an indefinite period. The final regulation clarifies that only dispositions by *P* pursuant to a plan are proscribed.

Effective Date

The final regulation relating to the continuity of business enterprise requirement is effective for transactions that occur after January 30, 1981. No inferences are intended regarding the law prior to the effective date of the final regulation.

Drafting Information

The principal author of this regulation is Richard L. Mull of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of amendments to the regulation

Accordingly, 26 CFR Part 1 is amended as follows:

§ 1.368 [Removed]

Paragraph 1. Section 1.368 is removed.

Par. 2. § 1.368–1 is amended as follows:

1. "The continuity of business enterprise requirement is described in paragraph (d) of this section." is added immediately following the third sentence in paragraph (b).

2. A new paragraph (d) is added to read as set forth below:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

* * * * *

(d) *Continuity of business enterprise*—(1) *Effective date.* (i) This paragraph (d) applies to acquisitions occurring after January 30, 1981.

(ii) For an asset acquisition, the date of acquisition is the date of transfer. To determine the date of transfer, see § 1.381 (b)–1 (b).

(iii) For a stock acquisition, the date of acquisition is the date on which the exchange of stock occurs. If all stock is not exchanged on the same date, the date of exchange is the date the exchange of all stock under the plan of reorganization is complete.

(2) *General rule.* Continuity of business enterprise requires that the acquiring corporation *(P)* either (i) continue the acquired corporation's (*T*'s) historic business or (ii) use a significant portion of *T*'s historic business assets in a business. The application of this general rule to certain transactions, such as mergers of holding companies, will depend on all facts and circumstances. The policy underlying this general rule, which is to ensure that reorganizations are limited to readjustments of continuing interests in property under modified corporate form, provides the guidance necessary to make these facts and circumstances determinations.

(3) *Business continuity.* (i) The continuity of business enterprise

requirement is satisfied if *P* continues *T*'s historic business. The fact *P* is in the same line of business as *T* tends to establish the requisite continuity, but is not alone sufficient.

Example (3). *T* is a manufacturer of boys' and men's trousers. On January 1, 1978, as part of a plan of reorganization, *T* sold all of its assets to a third party for cash and purchased a highly diversified portfolio of stocks and bonds. As part of the plan *T*

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certain interests in corporations created after April 30, 1981. Present law will continue to apply to interests created on or before April 30, 1981.

Thus, although the regulations are adopted in final form, there is a

Section 1.385–2 Summary of Rules

Only conforming changes and minor clarifications have been made in the summary of rules.

Section 1.385–3 Preliminary Rules

Section 1.385–4 Instruments Generally

The regulations provide that if an instrument is treated as stock under section 385, then the instrument is treated as preferred stock for all purposes of the Internal Revenue Code.

requirement is satisfied if *P* continues *T*'s historic business. The fact *P* is in the same line of business as *T* tends to establish the requisite continuity, but is not alone sufficient.

(ii) If *T* has more than one line of business, continuity of business enterprise requires only that *P* continue a significant line of business.

(iii) In general, a corporation's historic business is the business it has conducted most recently. However, a corporation's historic business is not one the corporation enters into as part of a plan of reorganization.

(iv) All facts and circumstances are considered in determining the time when the plan comes into existence and in determining whether a line of business is "significant".

(4) *Asset continuity.* (i) The continuity of business enterprise requirement is satisfied if *P* uses a significant portion of *T*'s historic business assets in a business.

(ii) A corporation's historic business assets are the assets used in its historic business. Business assets may include stock and securities and intangible operating assets such as good will, patents, and trademarks, whether or not they have a tax basis.

(iii) In general, the determination of the portion of a corporation's assets considered "significant" is based on the relative importance of the assets to operation of the business. However, all other facts and circumstances, such as the net fair market value of those assets, will be considered.

(5) *Examples.* The following examples illustrate this paragraph (d).

Example (1). *T* conducts three lines of business: manufacture of synthetic resins, manufacture of chemicals for the textile industry, and distribution of chemicals. The three lines of business are approximately equal in value. On July 1, 1981, *T* sells the synthetic resin and chemicals distribution businesses to a third party for cash and marketable securities. On December 31, 1981, *T* transfers all of its assets to *P* solely for *P* voting stock. *P* continues the chemical manufacturing business without interruption. The continuity of business enterprise requirement is met. Continuity of business enterprise requires only that *P* continue one of *T*'s three significant lines of business.

Example (2). *P* manufactures computers and *T* manufactures components for computers. *T* sells all of its output to *P*. On January 1, 1981, *P* decides to buy imported components only. On March 1, 1981, *T* merges into *P*. *P* continues buying imported components but retains *T*'s equipment as a backup source of supply. The use of the equipment as a backup source of supply constitutes use of a significant portion of *T*'s historic business assets, thus establishing continuity of business enterprise. *P* is not required to continue *T*'s business.

Example (3). *T* is a manufacturer of boys' and men's trousers. On January 1, 1978, as part of a plan of reorganization, *T* sold all of its assets to a third party for cash and purchased a highly diversified portfolio of stocks and bonds. As part of the plan *T* operates an investment business until July 1, 1981. On that date, the plan of reorganization culminates in a transfer by *T* of all its assets to *P*, a regulated investment company, solely in exchange for *P* voting stock. The continuity of business enterprise requirement is not met. *T*'s investment activity is not its historic business, and the stocks and bonds are not *T*'s historic business assets.

Example (4). *T* manufactures children's toys and *P* distributes steel and allied products. On January 1, 1981, *T* sells all of its assets to a third party for $100,000 cash and $900,000 in notes. On March 1, 1981, *T* merges into *P*. Continuity of business enterprise is lacking. The use of the sales proceeds in *P*'s business is not sufficient.

Example (5). *T* manufactures farm machinery and *P* operates a lumber mill. *T* merges into *P*. *P* disposes of *T*'s assets immediately after the merger as part of the plan of reorganization. *P* does not continue *T*'s farm machinery manufacturing business. Continuity of business enterprise is lacking.

This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

William E. Williams,
Acting Commissioner.

Approved: December 23, 1980.

Emil M. Sunley,
Acting Assistant Secretary of the Treasury.

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26 CFR Part 1

[T.D. 7747]

Income Tax; Taxable Years Beginning After December 31, 1953; Treatment of Certain Interests in Corporations as Stock or Indebtedness

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the treatment of certain interests in corporations as stock or indebtedness. The Tax Reform Act of 1969 authorized the Secretary of the Treasury to prescribe such regulations. This document also contains conforming regulations relating to the allocation of income and deductions among taxpayers and certain other matters. The regulations affect corporations and their shareholders and creditors.

DATES: The regulations generally apply to certain interests in corporations created after April 30, 1981.

FOR FURTHER INFORMATION CONTACT: Jack A. Levine of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T, 202-566-3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On March 24, 1980, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 166, 385, 482, and 1371 of the Internal Revenue Code of 1954 (45 FR 18957). These amendments were proposed to conform the regulations to section 415(a) of the Tax Reform Act of 1969 (83 Stat. 613). After consideration of all comments from interested persons regarding the proposed regulations, they are adopted as revised by this Treasury decision.

Explanation of Changes

In response to the many thoughtful and constructive public comments, a number of changes have been made in the proposed regulations. In general, as a result of these changes, the final regulations are of more limited scope than the proposed regulations and should not interfere with the normal operations of small business investment companies, commercial lenders or other independent creditors. For example, straight debt instruments not held proportionately by shareholders (e.g., bank loans) will never be treated as stock under the final regulations.

The more important changes in the proposed regulations are discussed below. In addition, the reasons for not making certain other suggested changes are also discussed below. Some comments raised legitimate questions of interpretation of relatively narrow interest that would be more appropriately addressed by revenue rulings. It is expected that most of these points will ultimately be covered by revenue rulings.

This "Explanation of Changes" supplements the "Supplementary Information" contained in the notice of proposed rulemaking published in the Federal Register on March 24, 1980.

Section 1.385-1 Effective Date and Scope

As proposed on March 24, 1980, the regulations would have applied to certain interests in corporations created after December 31, 1980. However, to provide both additional time for the public to become familiar with the regulations and the opportunity for further public comment, the final regulations generally will apply to

certain interests in corporations created after April 30, 1981. Present law will continue to apply to interests created on or before April 30, 1981.

Thus, although the regulations are adopted in final form, there is a substantial period before they become effective. The Treasury and the Internal Revenue Service invite additional comments on the final regulations during this period.

An exception to the effective date has been added for interests created pursuant to written contracts which are binding on December 29, 1980 and at all times thereafter. This exception applies, for example, to interests issued after the effective date of the regulations but pursuant to a plan of reorganization that had been approved by the shareholders of the parties to the reorganization prior to December 29, 1980, and that was thereafter binding on such parties, subject only to customary third party approvals and other customary third party conditions.

An exception to the effective date has also been added for certain bankruptcy reorganizations. Because bankruptcy reorganizations often involve protracted judicial proceedings, the regulations will not apply to interests created pursuant to a plan of bankruptcy filed before December 29, 1980.

The regulations under section 385 do not apply to an instrument issued before the effective date even if, after the effective date, there is a failure to pay interest or principal when due, the terms of the instrument are changed, or the instrument is a demand note not bearing interest at a reasonable rate.

On the other hand, if an instrument is issued prior to the regulations' effective date but its terms are changed after the effective date, and the change in terms is sufficiently substantial to be considered an exchange of instruments under applicable principles of tax law, then the instrument with the changed terms will be treated as newly issued after the effective date for purposes of the section 385 regulations.

Some comments seemed to assume (incorrectly) that an interest will be treated as indebtedness if it is outside the scope of the regulations. Actually, existing law will continue to apply in these cases. Language has been added to clarify this point (see § 1.385-1(b)(1)).

Certain other sections of the Internal Revenue Code make distinctions that are similar to (but not the same as) the one between stock and indebtedness. Section 385 does not necessarily govern these distinctions. Language has been added to clarify this point (see § 1.385-1(b)(2)).

Section 1.385-2 Summary of Rules

Only conforming changes and minor clarifications have been made in the summary of rules.

Section 1.385-3 Preliminary Rules

Section 1.385-3(a) provides that if a corporation sells an instrument to a shareholder for more or less than its fair market value, the difference is treated as a contribution to capital or as a section 301 or 305 distribution, as the case may be.

Some comments expressed the view that the scope of the term "shareholder" in this context was unclear because there was no explicit reference to attribution rules. However, as pointed out in the preamble to the proposed regulations, the regulations are not intended to deviate from present law as to when a bargain sale to a nonshareholder may be treated as a dividend (see *Harry L. Epstein*, 53 T.C. 459 (1969); *Sammons v. United States*, 433 F. 2d. 728 (5th Cir. 1970), *cert. denied* 402 U.S. 945 (1971); *George W. Knipe*, 24 CCH Tax Ct. Memo 668 (1965), *Aff'd per curiam sub nom. Equitable Publishing Co. v. Commissioner*, 356 F. 2d. 514 (3d. Cir. 1966), *cert. denied* 385 U.S. 822 (1966); Rev. Rul. 69-630, 1969-2 Cum. Bull. 112) or as to how purchases by nonshareholders at prices in excess of fair market value are treated.

A provision has been added enabling the Commissioner to disregard a noncommercial term of an instrument, in determing the fair market value of the instrument or the reasonableness of an interest rate, if the principal purpose of the term is to increase or decrease the instrument's fair market value or reasonable rate of interest (see § 1.385-3(b)(1)(iii). Although this result can also be reached under section 482, it was believed appropriate to cover this point explicitly in the section 385 regulations. This provision would apply, for example, as follows. Assume that a corporation issues an instrument bearing an extremely high interest rate to its sole shareholder, a nonresident alien. Assume further that the instrument contains certain noncommercial terms which would make it very difficult for the holder to enforce his rights thereunder and which were designed to reduce the fair market value of the instrument for tax purposes. This provision enables the Commissioner to disregard these noncommercial terms in determing the fair market value of the instrument and the reasonableness of the interest rate.

Section 1.385-4 Instruments Generally

The regulations provide that if an instrument is treated as stock under section 385, then the instrument is treated as preferred stock for all purposes of the Internal Revenue Code. Such preferred stock is considered to have the same terms (*e.g.*, voting rights) as the instrument has under applicable local law. Also, each class of instruments classified as preferred stock is treated as a separate class of preferred stock. Language has been added to clarify these points (see § 1.385-4(c)(1)(i)).

The regulations also provide that, if an instrument becomes stock under the rules of § 1.385-6 (j), (k) or (l), the instrument is treated as having been exchanged (without recognition of gain or loss) for preferred stock in a recapitalization to which section 368(a)(1)(E) applies. Since the intent is to treat the exchange as taxfree, the exchange is also considered to satisfy section 354(a)(1) (*i.e.*, the instrument is treated as a security for this purpose).

Section 1.385-5 Hybrid Instruments

Several comments exhibited some confusion about the meaning of a "definitely ascertainable" interest rate or principal sum. In order to clarify this point, the final regulations provide generally that a rate of interest or principal sum is definitely ascertainable if (i) it is invariable or (ii) it is variable but determined according to an external standard that is not subject to the borrower's control and that is not related to the success or failure of the borrower's business or activities (see § 1.385-5(d)(4)).

A new example illustrating this rule concludes that an interest rate of "prime plus three points" would be considered a definitely ascertainable rate (see § 1.385-5(e) example (10)).

A provision was also added relating to the treatment of certain payments as fixed that in form are contingent but are guaranteed (see § 1.385-5(d)(7)).

Some comments expressed concern that example (8) of § 1.385-5(e) implies that all nonrecourse loans would be considered to be hybrid. No such implication is intended. An example has been added to clarify this point (see example (14) of § 1.385-5(e)).

Debt issued in redemption of stock. When debt is issued in redemption of stock, state law may subject payments on the debt to limitations similar to those to which distributions on stock are subject, *e.g.*, payments of principal and interest cannot be made if the corporation is insolvent (or would be rendered insolvent). See Herwitz,

Installment Repurchase of Stock: Surplus Limitations, 79 Harv. L. Rev. 303 (1965). The final regulations clarify their application to instruments subject to these types of limitations.

In general, the final regulations treat

makes little difference, except for tax purposes, whether the shareholder receives stock, subordinated debt or a combination of the two. The shareholder will be entitled to the corporation's entire net profits and, except for the tax

unacceptable to independent lenders, particularly in light of the predominance of tax considerations in setting and enforcing the terms of proportionate shareholder debt. The final regulations therefore respect proportionate

enforce the terms of proportionately-held debt, such debt is subject to the rules now contained in § 1.385-6 (j), (k), and (l) that examine shareholders' actions with respect to proportionate debt after it is issued.

based on the assumption that outside creditors would not lend to corporations whose debt-to-equity ratios exceeded 10:1. Many comments have demonstrated that this assumption was wrong. Therefore, under the final

large amounts of proportionate debt (up to a 10:1 debt-equity ratio) at high, noncommercial interest rates. This debt would have produced large interest deductions that could have been used to offset tax at the corporate level without being taxed to the shareholders. The

Installment Repurchase of Stock: Surplus Limitations, 79 Harv. L. Rev. 303 (1965). The final regulations clarify their application to instruments subject to these types of limitations.

In general, the final regulations treat these instruments as debt notwithstanding certain limitations that state law may impose on the payment of principal or interest. A payment of principal or interest is considered fixed by the regulations even though the corporation cannot be required to make the payment if it is insolvent (or would be rendered insolvent by the payment) either in the bankruptcy or equity sense of insolvency (see § 1.385–5(d)(5)(iii)). An insolvency limitation in the bankruptcy sense (*i.e.*, that interest or principal payments cannot be made if liabilities exceed, or would as a result of the payments exceed, assets) is in substance a form of subordination. Since subordination is not generally considered a contingency for purposes of the regulations, it is appropriate that subordination not be a contingency in this context. An insolvency limitation in the equity sense (*i.e.*, that interest or principal payments cannot be made if the corporation is not paying its debts as they become due) is not sufficiently different from insolvency in the bankruptcy sense to justify, as an administrative matter, having a different tax result depending on whether local law defines insolvency in the equity sense or the bankruptcy sense. Therefore, payments conditional on the solvency of the issuer are not considered contingent for purposes of the regulations. (It should be noted that this new provision is also relevant in determining whether payments on certain preferred stock are fixed payments in the nature of principal or interest.)

Two examples have been added to demonstrate the treatment of an instrument issued in redemption of stock (see examples (11) and (12) of § 1.385–5(e)).

Section 1.385–6 Proportionality

Proportionate holdings of stock and debt are of even greater significance in the final regulations than in the proposed regulations. The reason proportionality plays a central role in the final regulations is that it generally makes little economic difference (aside from tax consequences) whether proportionate shareholder advances are made as debt or equity. See Stone, *Debt-Equity Distinctions in the Tax Treatment of the Corporation and its Shareholders*, 42 Tul. L. Rev. 251 (1968).

For example, if a sole shareholder invests $50,000 in its corporation, it makes little difference, except for tax purposes, whether the shareholder receives stock, subordinated debt or a combination of the two. The shareholder will be entitled to the corporation's entire net profits and, except for the tax consequences, will generally be indifferent as to whether the profits are withdrawn from corporate solution as interest and principal payments on a debt or as dividends and payments in redemption of stock. Similarly, if the shareholder elects to receive debt, the allocation of the repayments between principal and interest makes little non-tax difference.

From a tax viewpoint, however, a sole shareholder's decision to receive debt instead of stock is very significant. Because interest is deductible to the corporation and repayments of principal are tax free to the shareholder, the shareholder may be more likely to make the investment in the form of debt. Moreover, once the shareholder has elected to receive debt, the allocation of the repayments between principal and interest can have important tax consequences. To the extent that the repayment is treated as principal, the corporation is not entitled to a deduction but the payment is tax free to the shareholder. However, to the extent the repayment is treated as interest, the shareholder is taxed currently at ordinary income rates but the corporation receives a deduction. In some circumstances the corporation and shareholder may be able to gain a tax advantage by treating more of the repayments as interest and in other circumstances they may gain a tax advantage by treating more of the repayments as principal.

Because the characterization of proportionate advances as debt instead of stock is so heavily influenced by tax considerations, one possibility would have been for the section 385 regulations to classify all proportionately-held debt as stock. Although this has occasionally been suggested by the case law as a possible standard (see Stone, *supra*, at 260, n.41), the final regulations have rejected this approach. Treasury believed it would have been unsound policy in effect to deny corporations access to shareholder capital in the form of indebtedness when loans on the same terms could have been obtained from independent lenders. Thus, the final regulations follow the mainstream of the case law and permit proportionately-held shareholder debt to be treated as debt for tax purposes. However, there is no valid reason to permit shareholders to make proportionate loans to their corporation on terms that would be unacceptable to independent lenders, particularly in light of the predominance of tax considerations in setting and enforcing the terms of proportionate shareholder debt. The final regulations therefore respect proportionate shareholder debt only if the treatment of the debt is in accordance with objective economic criteria.

Generally, the final regulations treat instruments issued proportionately to shareholders as debt if the initial terms of the instrument are arm's length terms. This arm's length standard is necessary because shareholders have no economic incentive to set arm's length terms on proportionately-held debt. Rights foregone by proportionate shareholders in their status as creditors simply enhance the value of their underlying stock interests. For example, to gain a tax advantage, a sole shareholder might be willing to lend money to its corporation at a rate of interest significantly below the market rate. The fact that the interest rate is less than the market rate has little independent economic significance because the difference between the interest the shareholder actually receives and the amount that would have been received if the market rate had been charged will remain in corporate solution, and thereby increase the value of the shareholder's stock *pro tanto*.

When the initial terms of proportionately-held shareholder debt are not arm's length terms, the regulations, where possible, in effect create arm's length terms by adjusting the interest rate. However, when the terms are not arm's length and arm's length terms cannot be created by adjusting the interest rate (*e.g.* debt issued for property), then the final regulations classify the proportionately-held shareholder debt as stock.

The final regulations also require shareholders to enforce the terms of proportionate debt according to an arm's length standard. This requirement is necessary because, even though the terms of the instrument are arm's length terms, the shareholders may have no incentive to enforce these terms. For example, assume that a sole shareholder lends $100,000 to its corporation in exchange for a 10-percent subordinated debenture. To avoid having to pay tax on the interest, the shareholder may decide not to collect the $10,000 of annual interest due on the debenture. This decision will have no independent economic significance because the value of the shareholder's stock will be increased by the full $10,000 of foregone interest. Thus, because shareholders may have no economic incentive to

enforce the terms of proportionately-held debt, such debt is subject to the rules now contained in § 1.385–6 (j), (k), and (l) that examine shareholders' actions with respect to proportionate debt after it is issued.

Even when a shareholder's holdings of stock and debt are not proportionate, however, there may be situations where the shareholder will have no economic incentive to act as an independent creditor. For example, a 50-percent shareholder who owns all of a corporation's outstanding debt might agree to forego $5,000 of interest as part of an arrangement where the other 50-percent shareholder agrees to forego a $5,000 salary payment due from the corporation. In cases like these, the courts have treated the shareholder debt as proportionate. See *Broadway Drive-In Theatre, Inc.* v. *United States*, 220 F. Supp 707 (E.D. Mo. 1963); *Reed* v. *Commissioner*, 242 F. 2d. 334 (2d. Cir. 1957). To assure arm's length behavior by shareholders holding debt non-proportionately, the final regulations treat non-proportionate debt as being held proportionately in these situations (see § 1.385–6(a)(7)).

Definition of proportionality. Because of its increased importance, the definition of proportionality has been clarified to the extent possible. Some additional examples have been provided (see examples (5), (7), (9), (10), (11), (12), (13), (14), and (15) of § 1.385–6(a)(6)). Changes have been made in the rule relating to options (see § 1.385–6(a)(2)(ii) and examples (8) and (9) of § 1.385–6(a)(6)). The rules have been clarified as to when two or more classes of instruments will be treated as a single class (for purposes of ascertaining proportionality) and when two portions of a single class of instruments will be treated as two separate classes of instruments (see § 1.385–6(a) (4) and (5)). The definition of an independent creditor has been made more flexible and, to promote certainty, also contains an objective safe harbor (see § 1.385–6(b)).

A number of comments suggested that numerical guidelines be established to provide guidance in determining when holdings of stock and debt will be considered to be substantially proportionate. The Treasury agrees with these comments. It is anticipated that these guidelines will be published as a revenue procedure.

Nominal capital rules. As proposed, § 1.385–8 (relating to nominal capital) classified any instrument (including an instrument held by an outside creditor) as equity if, at the time the instrument was issued, the corporation's debt-to-equity ratio exceeded 10:1. This rule was based on the assumption that outside creditors would not lend to corporations whose debt-to-equity ratios exceeded 10:1. Many comments have demonstrated that this assumption was wrong. Therefore, under the final regulations, the nominal capital rules (as revised) can operate to classify instruments as equity only if holdings of the instruments and the corporation's stock are substantially proportionate.

In the final regulations, § 1.385–6(f) (relating to excessive debt) replaces § 1.385–8 (relating to nominal capital). Some comments criticized the proposed regulations for adopting an absolute 10:1 debt-equity standard without regard to variations in debt-equity ratios by industry. The Treasury agrees with these comments. The excessive debt provisions of the final regulations take industry practice into account by providing that a corporation's debt will not be considered excessive if all of the instrument's terms and conditions together with the corporation's financial structure would be satisfactory to a bank, insurance company or similar lending institution making ordinary commercial loans. In addition, the excessive debt provisions provide a safe harbor for straight debt instruments issued by corporations that meet two tests. First, the corporation's debt-equity ratio (determined in the ordinary way) must not exceed 10:1. Second, the corporation's inside debt-equity ratio must not exceed 3:1. The inside ratio is determined without taking into account liabilities to independent creditors. There were two reasons for adding to the safe harbor the requirement that the inside ratio not exceed 3:1.

First, the proposed regulations were premised on the assumption that shareholders lending proportionately to their corporations would not create unusually high debt-equity ratios to produce large interest deductions at the corporate level because the interest or discount produced by § 1.385–3 and section 1232 would be taxed currently to the shareholders as ordinary income. In other words, it was believed that the prospect of current ordinary income to the shareholder would be a deterrent to the issuance of large amounts of debt bearing high, noncommercial interest rates. Several comments pointed out, however, that this deterrent was not present in situations where the shareholders were not paying tax on the interest income (*e.g.*, certain nonresident alien shareholders, taxpayers with large net operating losses, or charitable organizations). Nothing in the proposed regulations would have prevented these shareholders from issuing themselves large amounts of proportionate debt (up to a 10:1 debt-equity ratio) at high, noncommercial interest rates. This debt would have produced large interest deductions that could have been used to offset tax at the corporate level without being taxed to the shareholders. The inside debt-equity ratio of 3:1 is intended to limit this potential abuse.

The final regulations permit proportionate shareholder loans to be classified as debt even if the inside debt-equity ratio is greater than 3:1, provided the shareholder can demonstrate that an ordinary commercial lender would have made a loan on the same terms and conditions as the shareholder loan in question. It is not sufficient for this purpose, however, for the shareholders to demonstrate that any independent lender (*e.g.*, a lender in the business of making high risk loans) would have found the terms and conditions of the shareholder loans acceptable. Instead, the shareholders must demonstrate that an institution in the business of making ordinary commercial loans (*e.g.*, a bank or insurance company) would have found the terms acceptable (see example (1) of § 1.385–6(f)(6)).

The second reason for the inside ratio of 3:1 is to limit the situations where very large amounts of discount will be imputed under § 1.385–3 and section 1232. As a general matter, when the inside ratio exceeds 3:1 and the loans do not satisfy the standard of section 1.385–6(f)(2), the proper interest rates would tend to be so high as to be noncommercial (*e.g.*, as high as 30 to 40 percent). The Treasury decided that it would be more realistic to classify such debt as stock rather than to impute these excessive, noncommercial interest rates.

Principal shoreholder rules. The proposed regulations provided certain "second look" rules that could operate to reclassify instruments initially treated as debt as equity if interest or principal was not paid when due, there was a change in terms or a reasonable interest rate was not paid on a demand instrument. Under § 1.385–7 of the proposed regulations, these rules applied to instruments held by principal shareholders of the corporation (*i.e.*, shareholders owning 5 percent or more of the corporation's stock).

Several comments contended that in most cases there will be a sufficient economic incentive for shareholder-creditors to enforce their rights under debt instruments not held in substantially the same proportion as the corporation's stock. Treasury agrees with these comments. The final regulations generally apply these

"second look" rules only to debt instruments issued to shareholders substantially in proportion to their stock holdings (see § 1.385–6 (j), (k) and (l).

The foregoing changes in the nominal capital and principal shareholder rules

creditor holding the outstanding indebtedness would, in the exercise of ordinary diligence, have agreed to the exchange and (ii) the issuing corporation would, in the exercise of ordinary diligence, have agreed to make the

these factors according to their effect on the interest rate (or on the fair market value of the interest in question). Any attempt to reduce the problem further, to a set of purely mechanical formulas, would necessarily result in

Also, an example was added to demonstrate that, under certain circumstances, a bank loan guaranteed by a shareholder may be used as a basis for comparison in determining a reasonable interest rate for a shareholder loan (see example (1) of

and the rate payable on tax refunds under section 6621) have been criticized as too low. The Treasury recognizes that few small businesses are able to borrow at these rates. However, a low rate was chosen deliberately for the benefit of small business. In many instances, this

accordingly altered (see § 1.385–6(g)(3(ii)).

Some comments criticized the proposed rules on debt-to-equity ratios of affiliated corporations. The Treasury agrees that these rules were not explained adequately, and the final

"second look" rules only to debt instruments issued to shareholders substantially in proportion to their stock holdings (see § 1.385–6 (j), (k) and (l).

The foregoing changes in the nominal capital and principal shareholder rules are directly responsive to many of the comments received from small business and others. For example, the final regulations will not interfere with the normal operations of small business investment companies (see examples (11) and (12) of § 1.385–6(a)(6)), commercial lenders or other independent creditors.

Instruments not issued for money. When instruments are issued in exchange for property, the original issue discount rules of section 1232(a)(3) and the amortizable bond premium rules under § 1.61–12(c)(2) generally do not apply. Therefore, § 1.385–6(d) of the regulations requires that a reasonable rate of interest be paid on these instruments to ensure that the holders will be paid principal and interest in the proper proportions (*i.e.*, in the same proportions as would be paid to outside creditors). In the proposed regulations, this rule applied to all instruments issued proportionately except those issued for money. In the final regulations, the application of this rule has been narrowed to those situations where the original issue discount provisions of section 1232 and the bond premium provisions of § 1.61–12(c)(2) are not applicable (see § 1.385–6(d)(1)(iii)). This has the effect of narrowing the application of § 1.385–6(d) in two respects.

First, the original issue discount rules are applicable to certain instruments issued for property (*e.g.*, instruments issued for marketable securities). In such cases, the original issue discount provisions apply and, accordingly, §1.385–6(d)(1) is not applicable.

Second, there are certain situations where it may not be clear under present law whether the original issue discount provisions of section 1232 would apply (*e.g.*, an instrument issued as a dividend or as compensation). Section 1.385–6(d)(1) applies in these situations unless section 1232 is found to be applicable. This is in accordance with the policy of the regulations not to classify proportionately-held instruments as stock because they do not bear a reasonable interest rate if the interest rate can be adjusted to an arm's length rate through the creation of original issue discount or premium.

An exception to the debt-for-property rule has been added for the issuance of a new instrument in exchange for an equal or greater principal amount of indebtedness when (i) an independent creditor holding the outstanding indebtedness would, in the exercise of ordinary diligence, have agreed to the exchange and (ii) the issuing corporation would, in the exercise of ordinary diligence, have agreed to make the exchange with an independent creditor holding the outstanding indebtedness (see § 1.385–6(d)(3) and example (4) of § 1.385–6(d)(4)). The rationale for the exception is that a shareholder holding a debt instrument should not be held to a higher standard, upon exchanging that debt instrument for a new debt instrument, than that of an independent creditor holding the original debt instrument.

Some comments criticized the classification of proportionately-held shareholder debt issued in exchange for property as stock if the debt does not bear a reasonable interest rate as being too harsh. The Treasury believes these comments misconstrue the structure of the regulations. It would have been possible for the section 385 regulations to classify all proportionate shareholder debt (including debt issued for money) as stock if the corporation and its shareholders were not dealing at arm's length with respect to the instruments in question. This approach would have resulted in reclassifying the entire purported debt as stock. Instead, however, the regulations, where possible, have adopted the more liberal policy of in effect creating arm's length terms by adjusting the interest rate through the creation of discount or premium. Only when it is not possible to adjust the interest rate by creating discount or premium (*e.g.*, debt issued for property) do the regulations classify the entire debt as equity.

Reasonable rate of interest. Section 1.385–6(d)(1) of the proposed regulations provided that a rate of interest will be considered reasonable if it is a rate within the range of rates paid to independent creditors on similar instruments by corporations in the same general industry, geographic location and financial condition as the issuer.

A number of comments expressed the view that under this standard it will be difficult for shareholders to determine a reasonable interest rate on loans to their corporations and thus avoid the creation of discount or premium under § 1.385–3 (or in some cases, the classification of their interests as stock). These comments, however, fail to recognize that the debt-equity problem is an extraordinarily difficult one. Nearly all of the factors identified in the course of forty years of case law are relevant. The regulations under section 385 achieve considerable simplification by weighing these factors according to their effect on the interest rate (or on the fair market value of the interest in question). Any attempt to reduce the problem further, to a set of purely mechanical formulas, would necessarily result in oversimplification. There is a certain irreducible core of difficulty in making the debt-equity distinction, and some exercise of judgment is ultimately required. The final regulations present this judgment as a relatively straightforward exercise in valuation, and this is quite possibly the most that can be done.

Moreover, many of these comments have exaggerated the difficulty of ascertaining a reasonable interest rate. In most cases a corporation will have some record of outside borrowing (*e.g.*, a bank loan) to serve as a benchmark for determining the reasonableness of the rate of interest charged on the shareholder loans in question. It should only be in rare and unusual circumstances that a corporation will have borrowed money from its shareholders but not from an outside lender. And even in these cases (as in cases where there are outside borrowings), the interest rate paid by borrowers with superior credit ratings (*e.g.* the U.S. Treasury) on indebtedness with a maturity similar to those of the shareholder loans should provide a floor for establishing a reasonable rate of interest on the shareholder loans.

Other comments criticized the regulations for placing too much emphasis on the interest rate factor to the exclusion of the other factors considered important by the body of case law concerned with the debt-equity distinction. The regulations do not ignore these other factors, however, but instead take them into account by measuring their effect on the interest rate (or fair market value) of the instrument in question. In other words, when an instrument does not bear a reasonable rate of interest, it will be because the corporation and the shareholder-creditor will not have objectively taken into account one or more of the case law factors (*e.g.*, maturity date, subordination, capitalization) in establishing the rate of interest.

Several comments stated that it would be difficult to apply the concept of a "local commercial bank" to a large corporation conducting an extensive national or international business. To eliminate this difficulty, the term "local commercial bank" was extended to include any bank at which the issuing corporation ordinarily does business (see § 1.385–6(e)(4)).

Also, an example was added to demonstrate that, under certain circumstances, a bank loan guaranteed by a shareholder may be used as a basis for comparison in determining a reasonable interest rate for a shareholder loan (see example (1) of § 1.385–6(e)(5)).

Safe harbor. Many comments suggested that the computation of the 1:1 debt-equity ratio contained in the interest rate safe harbor of proposed § 1.385–6 (d)(2) should be based on the fair market value of the corporation's assets rather than their adjusted basis. However, this approach was rejected for two reasons.

First, the purpose of a safe harbor is to promote certainty by providing an objective standard which is easy for both taxpayers and the Internal Revenue Service to apply; if taxpayers satisfy this objective standard, they are assured of a desired tax result. However, if a corporation were able to use the more subjective standard of the fair market value of its assets in computing its debt-equity ratio, the safe harbor would not provide an easy-to-apply objective standard, and its purpose would be defeated.

Second, it must be remembered that the failure to satisfy the safe harbor does not mean that the corporation's instruments are treated as equity—it means only that the corporation must prove that the interest rate paid on the instruments was reasonable. Moreover, the ways of proving the corporation's ability to borrow from outside creditors at commercial rates are similar to those of proving the fair market value of a corporation's assets. For example, demonstrating that the assets can produce a certain income stream is one way of proving the fair market value of the assets, and it is also a way of showing the capacity reliably to repay a loan—and therefore the capacity to borrow at commercial rates. Similarly, demonstrating that the assets are readily salable is another way of proving their value, and it is also a way of showing security for a loan—and therefore the capacity to borrow at commercial rates.

Thus, if a corporation can prove that its assets have a substantial net fair market value, the corporation should also be able to prove its capacity to borrow at commercial rates. It was therefore decided that the safe harbor could be maintained as an objective standard for both taxpayers and the Government (*i.e.*, using adjusted basis of assets) without causing significant disadvantage to taxpayers.

Safe harbor interest rates in the proposed regulations (*i.e.*, the prime rate and the rate payable on tax refunds under section 6621) have been criticized as too low. The Treasury recognizes that few small businesses are able to borrow at these rates. However, a low rate was chosen deliberately for the benefit of small business. In many instances, this will enable small businesses to obtain loans from their shareholders at the same interest rates paid by the largest corporations.

In view of the fact that the safe harbor interest rates are, in most cases, below-market rates, the 1:1 safe harbor ratio has not been increased. If this ratio were increased, most corporations would be able to rely upon the regulations to avoid the uncertainty inherent in the factor-oriented approach of the case law and, at the same time, charge below-market interest rates on proportionate debt.

However, the safe harbor interest rate for corporations having a 1:1 debt-to-equity ratio has been expanded. Under the final regulations, an interest rate determined from time to time by the Secretary taking into consideration the average yield on outstanding marketable obligations of the United States of comparable maturity is an additional safe harbor interest rate for corporations having a 1:1 debt-to-equity ratio (see § 1.385–6 (e)(2)(i) and example (2) of § 1.385–6 (e)(5)). It is anticipated that these rates will be published in a revenue procedure. This change allows corporations to use the interest rates on longer term Treasury obligations as safe harbor rates when the prime rate may not be an accurate indicator of long-term interest rates.

Computing debt-to-equity ratio. The proposed regulations were designed to provide a high degree of certainty in computing a corporation's debt-equity ratio. Because trade accounts payable vary during the ordinary course of business in a way that is largely beyond the control of the shareholders, trade accounts payable were excluded from the liability side of the ratio. Some comments pointed out that certain other liabilities might have a similar effect. Accordingly, the final regulations treat these other liabilities in the same manner as trade account payables (see § 1.385–6(g)(1)(i) and (5)(v)).

Under the proposed regulations, the debt-equity ratio is computed without regard to the treatment of any interest as stock or indebtedness by reason of section 385. A taxpayer could have defeated the purpose of this rule by "lending" to its corporation in exchange for contractual commitments which were nominally preferred stock but would be reclassified as debt under the regulations. The provision was accordingly altered (see § 1.385–6(g)(3(ii)).

Some comments criticized the proposed rules on debt-to-equity ratios of affiliated corporations. The Treasury agrees that these rules were not explained adequately, and the final regulations are more specific (see § 1.385–6(h)).

Change in terms. A new exception in the debt-for-property rules (see § 1.385–6(d)(3)) may also have application to changes in terms of instruments held proportionately. The effect of this new exception is that such a change in terms will not result in the reclassification of the instrument as stock if (i) an independent creditor holding the instrument would, in the exercise of ordinary diligence, have agreed to the change in terms, and (ii) the issuing corporation would, in the exercise of ordinary diligence, have agreed to the change in terms even if the instrument were held by an independent creditor (see examples (1) and (3) of § 1.385–6(j)(4)).

Section 1.385–6(j) applies to a change in the terms of an instrument only for purposes of the section 385 regulations and does not otherwise affect existing law relating to the tax treatment of a change in the terms of an instrument. Thus, for example, § 1.385–6(j) does not change existing law as to when a change in the terms of an instrument will constitute a taxable exchange of instruments.

"Second look" rules. The proposed regulations implied to some that shareholders must sue their corporation if it fails to pay principal or interest. The Treasury recognizes that independent creditors do not always bring suit in these circumstances. The final regulations clarify this point (see § 1.385–6 (k) (2) example (3)).

A provision has been added making it clear that a corporation's payment of interest with property other than money (*e.g.*, a note) will be considered actual payment for purposes of the "second look" rules, but only to the extent of the fair market value of the property (see § 1.385–6(k)(3)).

Section 1.385–7 Certain Other Obligations

The scope of proposed regulation § 1.385–9 (relating to certain unwritten obligations) has been expanded. The expanded version, now contained in § 1.385–7, applies to any loan made by a person other than an independent creditor that is not evidenced by an instrument within six months after the loan is made. In general, this section would apply to two types of loans: (i) unwritten loans and (ii) loans where the

material terms and conditions are contained in a document other than an instrument (*e.g.*, a board of directors' resolution or an entry on a corporation's books).

The comments suggested that the

associated with debt, such as a fixed term and mandatory payment schedules. Several comments have requested clarification on the application of the proposed regulations to these so-called "sinking fund" preferred stocks.

example has been added to demonstrate the applicability of the hybrid instrument rules to a preferred stock treated as an instrument (see example (13) of § 1.385–5(e)).

Some comments stated that it would

regarded as preferred stock for all purposes of the Internal Revenue Code. Thus, no deduction will be allowed for "interest" paid on the note under section 163. Also, if the note becomes worthless, no deduction will be allowed under

Par. 2. New §§ 1.385–1 through 1.385–10 are added to read as follows:

§ 1.385–1 Stock or indebtedness.

(a) *Effective date*—(1) *In general.* The regulations under section 385 apply to

referred to in the section 385 regulations are defined.

Subject	§ 1.385–
Contingent payment	5(d)(1)
Debt-to-equity ratio	6(g)

material terms and conditions are contained in a document other than an instrument (*e.g.*, a board of directors' resolution or an entry on a corporation's books).

The comments suggested that the rules in proposed § 1.385–9 (relating to certain unwritten obligations) should be conformed to the rules in proposed § 1.385–7(d) (relating to instruments payable on demand). The Treasury agrees with these comments and the final regulations largely conform the substance of these two sets of rules. In particular, if a corporation does not have excessive debt, a loan subject to § 1.385–7 of the final regulations will not be reclassified as a contribution to capital if the corporation pays interest on the loan at a reasonable rate.

Some comments also stated that the rules of proposed regulation § 1.385–9 should not apply to shareholders owning *de minimis* amounts of stock because it appeared unlikely that such shareholders would maintain a casual attitude towards their unwritten loans to the corporation. Other comments pointed out that, taken literally, proposed regulation § 1.385–9 would not apply to unwritten loans between brother-sister corporations wholly-owned by a common parent, an unwarranted result. Treasury agrees with both comments. Therefore, § 1.385–7 will apply to loans made by persons other than independent creditors rather than simply to shareholder loans.

The exception for loans up to $25,000 which are repaid within six months has been clarified in its application to overlapping loans (see § 1.385–7(a)(2)).

Section 1.385–8 Locked Interests

This section is substantively unchanged from the proposed regulations.

Section 1.385–9 Guaranteed Loans

Some confusion was generated by the proposed rules on guaranteed loans. The final regulations make it plain that these rules are essentially a restatement of existing case law.

No implication is to be drawn from § 1.385–9 as to the tax treatment of international finance companies.

Section 1.385–10 Certain Preferred Stock

Conventional preferred stock (*i.e.*, with dividends payable at the board of directors' discretion and callable at the corporation's discretion) has always been treated as stock for tax purposes, and will continue to be so treated under the final regulations. In recent years, however, there has been an increased issuance of certain preferred stocks with features that have traditionally been associated with debt, such as a fixed term and mandatory payment schedules. Several comments have requested clarification on the application of the proposed regulations to these so-called "sinking fund" preferred stocks.

The rules governing the treatment of preferred stock as stock or debt for tax purposes are contained in § 1.385–10 of the final regulations. Under § 1.385–10, preferred stock is treated as stock for tax purposes if it does not provide for fixed payments in the nature of principal or interest.

For this purpose, a purported dividend or payment in redemption of stock is not fixed if it is contingent. A payment is contingent if it is payable only out of earned surplus or out of retained earnings. A payment is also contingent if making the payment is discretionary with the board of directors, even if the failure to make such payment prevents the corporation from paying dividends or making redemption payments in respect of more junior issues of stock. Thus, conventional preferred stocks whose dividends and redemption payments are payable only out of earnings or in the discretion of the board of directors are not considered to provide for fixed payments in the nature of principal or interest and are treated as stock under the regulations.

On the other hand, the fact that provision must be made for holders of other interests (*e.g.*, subordinated debt or senior issues of preferred stock) before dividend or redemption payments can be made to the preferred shareholders does not make the payments on the preferred stock contingent because subordination is not generally considered a contingency under the section 385 regulations. Therefore, payment limitations on dividends and redemptions based on insolvency in the bankruptcy sense (*i.e.*, in the sense that liabilities exceed assets) or on impairment of capital are not contingencies because they are essentially forms of subordination. Moreover, insolvency in the equity sense (*i.e.*, the corporation's inability to pay its debts as they become due) is not considered a contingency because it is not sufficiently different from insolvency in the bankruptcy sense to justify, as an administrative matter, having a different result depending on whether local law defines insolvency in the bankruptcy or equity sense.

If the preferred stock provides for fixed payments in the nature of principal or interest, the preferred stock is treated as an instrument. As such, it is subject to the hybrid instrument rules of § 1.385–5 (or § 1.385–6(c)) and may be treated as debt or stock under these rules. An example has been added to demonstrate the applicability of the hybrid instrument rules to a preferred stock treated as an instrument (see example (13) of § 1.385–5(e)).

Some comments stated that it would be difficult to apply the hybrid instrument rules to ascertain the tax treatment of a sinking fund preferred stock. Treasury, while recognizing that these rules cannot be applied with mathematical simplicity, rejected the alternative of treating all preferred stock automatically as stock regardless of the degree of substantive resemblance to debt. However, to aid taxpayers in achieving certainty, a rule of convenience for preferred stock has been provided (see § 1.385–10 (b)).

In addition, four new examples have been added to clarify the preferred stock rules.

Example (2) describes an issue of sinking fund preferred stock which has an average life of less than 10 years. Contributions to the sinking fund are mandatory, subject only to the restrictions in § 66 of the Model Business Corporation Act (2nd Ed. 1971). Example (2) makes it clear that sinking fund preferred stock of this kind is treated as an instrument.

Example (3) illustrates that if the sinking fund preferred stock described in example (2) has an average life of 10 years or more, then it will be treated as stock under the rule of convenience of § 1.385–10 (b).

In example (4), sinking fund payments are conditional on earnings. The example makes it clear that this is a real contingency so that the stock is not treated as indebtedness.

In example (6), payments on a preferred stock with a mandatory redemption feature are subject to the contingency that accrued but unpaid dividends can be paid only out of earned surplus or unrealized appreciation (but not out of capital or capital surplus). Thus it is possible that the common shareholders will be entitled to their contributed capital although the preferred stockholders do not receive all or part of their accrued dividends. Example (6) makes it clear that a contingency of this type is considered a real contingency so that dividend payments subject to this type of contingency are not treated as fixed payments in the nature of interest.

Provisions Relating to Other Sections

Some comments expressed uncertainty about the relationship between section 385 and Subchapter S. If a Subchapter S corporation issues a note and the note is treated as stock under section 385, then the note will be regarded as preferred stock for all purposes of the Internal Revenue Code. Thus, no deduction will be allowed for "interest" paid on the note under section 163. Also, if the note becomes worthless, no deduction will be allowed under section 166 (relating to bad debts). However, the Treasury has not yet determined whether the corporation will have "more than one class of stock" within the meaning of section 1371(a)(4), thus terminating the corporation's election under Subchapter S. This point will be covered exclusively by § 1.1371–1(h).

Provisions have been added to the regulations under sections 482 and 992 to clarify the relationship between section 385 and those sections.

Reporting and Recordkeeping Requirements

The regulations adopted by this Treasury decision impose no new reporting burdens or recordkeeping requirements. The principal effect of the final regulations is to clarify the distinction between stock and indebtedness.

Drafting Information

The principal author of these regulations is Jack A. Levine of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. Section 1.166–9(c) is revised to read as follows:

§ 1.166–9 Losses of guarantors, endorsers, and indemnitors incurred on agreements made after December 31, 1975, in taxable years beginning after such date.

* * * * *

(c) *Obligations issued by corporations.* No treatment as a worthless debt is allowed with respect to a payment made by the taxpayer in discharge of part or all of the taxpayer's obligation as guarantor, endorser, or indemnitor of an obligation issued by a corporation if—

(1) The taxpayer is considered the primary obligor (see § 1.385–9), or

(2) The payment constitutes a contribution to capital by a shareholder.

The rules of this paragraph (c) apply to payments whenever made (see paragraph (f) of this section).

Par. 2. New §§ 1.385–1 through 1.385–10 are added to read as follows:

§ 1.385–1 Stock or indebtedness.

(a) *Effective date*—(1) *In general.* The regulations under section 385 apply to instruments (as defined in § 1.385–3(c)) and preferred stock issued after April 30, 1981, and to loans described in § 1.385–7 and guaranteed loans made after April 30, 1981.

(2) *Exceptions.* The regulations under section 385 do not apply to—

(i) Instruments issued pursuant to a plan of reorganization filed on or before December 29, 1980, in a proceeding under the Federal bankruptcy laws (Title 11, U.S.C.) or under the Regional Rail Reorganization Act of 1973, or

(ii) Instruments, loans described in § 1.385–7, guaranteed loans, or preferred stock issued or made pursuant to a written contract which is binding on December 29, 1980, and at all times thereafter.

(b) *Scope*—(1) *In general.* The regulations under section 385 contain rules under which certain interests in corporations are treated as stock or indebtedness. All other interests (such as bank deposits, insurance policies, claims for wages, and trade accounts payable) are outside the scope of the regulations. Any interest outside the scope of the regulations will be treated as stock or indebtedness under applicable principles of law without reference to the regulations.

(2) *Similar distinctions.* Certain other sections of the Internal Revenue Code make distinctions that are similar to (but not the same as) the one between stock and indebtedness. Section 385 does not necessarily govern these distinctions. Thus, for example, an interest in an organization may be treated as indebtedness under section 385, but the net profits of the organization may, by reason of the indebtedness, inure to the benefit of the holder within the meaning of section 501(c). Similarly, section 385 does not affect the treatment of a loan as an ownership interest within the meaning of section 48(k)(1)(C) (relating to the investment credit for movies). See § 1.48–8(a)(4)(iii).

(c) *Authority.* Sections 1.385–1 through 1.385–10 are prescribed under the authority of section 385. In addition, certain provisions in these sections derive additional authority under section 7805, because they interpret other sections of the Internal Revenue Code, including section 301 (relating to distributions of property), section 1012 (relating to basis), and section 1232 (relating to original issue discount).

(d) *Table of terms.* The following table indicates where some important terms referred to in the section 385 regulations are defined.

Subject	§ 1.385–
Contingent payment	5(d)(1)
Debt-to-equity ratio	6(g)
Excessive debt	6(f)(2)
Failure to pay interest	6(k)(3)
Fair market value	3(b)
Fixed payments; interest	5(d)(2)
Fixed payments; principal	5(d)(3)
Hybrid instrument	3(e)
Independent creditor	6(b)
Instrument	3(c)
Obligation	3(d)
Reasonable rate of interest	6(e)
Straight debt instrument	3(f)

§ 1.385–2 Summary.

(a) *Instruments issued proportionately*—(1) *Straight debt instruments.* Straight debt instruments (as defined in § 1.385–3(f)) issued proportionately to the issuing corporation's shareholders are ordinarily treated as indebtedness. Exceptions may apply where the issuing corporation has excessive debt (see § 1.385–6(f)), or where the instruments are not issued for money (see § 1.385–6(d)) or are payable on demand (see § 1.385–6(l)). Additionally, straight debt instruments initially treated as debt may be reclassified as stock where there is a failure to pay interest or principal when due (see § 1.385–6(k) and (l)(3)) or where there is a change in terms (see § 1.385–6(j)).

(2) *Hybrid instruments.* Hybrid instruments (*e.g.*, income bonds or convertible debentures) are treated as stock if they are issued proportionately (see § 1.385–6(c)).

(b) *Instruments not issued proportionately*—(1) *Straight debt instruments.* Straight debt instruments not issued proportionately are ordinarily treated as indebtedness.

(2) *Hybrid instruments.* Hybrid instruments not issued proportionately are treated as stock if their equity features are predominant (see § 1.385–5). Otherwise, they are generally treated in the same manner as straight debt instruments.

(c) *Ancillary rules*—(1) *In general.* In addition to the primary rules described in paragraphs (a) and (b) of this section, the regulations under section 385 also contain a variety of significant ancillary rules. These rules are subordinate in the sense that they do not apply directly to treat any interest as stock or indebtedness. However, they are essential to the working of the regulations.

(2) *Adjustment of interest rate.* If instruments issued to shareholders do not carry a reasonable rate of interest, then a contribution to the capital of the

corporation or a corporate distribution to the shareholder is imputed under § 1.385–3(a). This ordinarily results in the creation of either orginal issue discount (see section 1232) or amortizable bond premium (see § 1.61–

average yield on outstanding marketable obligations of the United States of comparable maturity, or (iv) any rate in between.

(2) *Debt-to-equity ratio.* The debt-to-equity ratio of the corporation does not

(ii) If a corporation issues an instrument to a shareholder and the instrument is treated as stock, then the amount determined under paragraph (a)(2)(i) of this section is treated as a distribution of stock to which section 305 applies.

is payable only at the discretion of M's board of directors, and the notes are treated as preferred stock under § 1.385–6(c) (relating to hybrid instruments held proportionately). Based on these facts, on January 1, 1982, A and B each receive a $250 distribution of preferred stock on common stock.

(3) *Examples.* The following examples illustrate the application of paragraph (b)(2) of this section:

Example (1). On March 1, 1985, corporation M issues a $1,000, 8-percent, 5-year note at par. Assume that on that date, 10 to 12 percent is the range of rates of interest paid

(b) *Operating rules*—(1) *In general.* The regulations under section 385 determine the status of each instrument (*i.e.*, as stock or indebtedness) at the time the instrument is issued. Except as provided in paragraphs (j), (k), and (l) of § 1.385–6 (relating to proportionality),

corporation or a corporate distribution to the shareholder is imputed under § 1.385–3(a). This ordinarily results in the creation of either orginal issue discount (see section 1232) or amortizable bond premium (see § 1.61–12(c)(2)). This result ensures that the holders take a reasonable amount into income as interest received, and that the issuing corporation takes a reasonable deduction for interest paid on the instruments each year.

(3) *Reasonable rate of interest.* Section 1.385–6(e) contains rules for determining whether a rate of interest is reasonable. These rules are significant—

(i) Where instruments are issued proportionately to shareholders other than in exchange for money (see § 1.385–6(d));

(ii) Where instruments are held proportionately and there is a change in terms (see § 1.385–6(j)) or nonpayment of principal (see § 1.385–6(l)(3));

(iii) Where instruments held proportionately are payable on demand (see § 1.385–6(l));

(iv) Where loans of money made to a corporation by persons other than independent creditors are not evidenced by an instrument (see § 1.385–7); and

(v) In determining the fair market value of an instrument (see § 1.385–3(b)(2)).

(4) *Debt-to-equity ratio.* Paragraphs (g) and (h) of § 1.385–6 contain rules for determining a corporation's debt-to-equity ratio. These rules are significant in determining—

(i) Whether a rate of interest is presumptively reasonable (see § 1.385–6(e)(2)); and

(ii) Whether a corporation has excessive debt (see § 1.385–6(f)).

(5) *Fair market value.* Section 1.385–3(b) contains rules for determining the fair market value of an instrument. These rules are significant in determining—

(i) Whether a contribution to capital or corporate distribution is imputed under § 1.385–3(a); and

(ii) Whether the equity features of a hybrid instrument are predominant (see § 1.385–5).

(d) *Safe harbor.* In general, the regulations under section 385 provide a safe harbor for a straight debt instrument (as defined in § 1.385–3(f)) issued by a corporation whenever all of the following conditions are satisfied:

(1) *Principal and interest.* The instrument has a fixed maturity date and provides for annual payments of interest at (i) the rate in effect under section 6621, (ii) the prime rate in effect at any local commercial bank, (iii) a rate determined from time to time by the Secretary taking into consideration the average yield on outstanding marketable obligations of the United States of comparable maturity, or (iv) any rate in between.

(2) *Debt-to-equity ratio.* The debt-to-equity ratio of the corporation does not exceed 1:1.

(3) *Paid when due.* All principal and interest on the instrument are paid when due.

If a straight debt instrument falls within the safe harbor, then it will be treated as indebtedness when issued, no original issue discount or bond premium will be imputed with respect to it, and (assuming its terms are not changed) it will not be subsequently reclassified as stock.

(e) *Other provisions*—(1) *Certain other loans.* Section 1.385–7 contains rules that apply to certain loans of money made to a corporation by persons other than independent creditors that are not evidenced by an instrument within six months after the day they are made.

(2) *Locked interests.* Section 1.385–8 contains rules that treat locked interests (such as a bond with a nondetachable warrant) as separate and distinct.

(3) *Guaranteed loans.* Section 1.385–9 contains rules that apply to loans made to a corporation and guaranteed by a shareholder. Under these rules, the loan may be treated as made to the shareholder, and the shareholder may be treated as making a contribution to the capital of the corporation.

(4) *Preferred stock.* Section 1.385–10 contains rules that could result in certain purported preferred stock being treated as indebtedness.

(f) *Cautionary note.* This section is merely a summary of the regulations under section 385, and is subject in all respects to the more complete rules contained in §§ 1.385–3 through 1.385–10.

§ 1.385–3 Preliminary rules.

(a) *Excessive or inadequate consideration*—(1) *Excessive consideration.* If a corporation issues an instrument to a shareholder, then (whether the instrument is treated as stock or indebtedness) the excess of—

(i) The consideration paid, over

(ii) The fair market value of the instrument, is a contribution to capital.

(2) *Inadequate consideration.* (i) If a corporation issues an instrument to a shareholder and the instrument is treated as indebtedness, then the excess of—

(A) The fair market value of the instrument, over

(B) The consideration paid,

is a distribution to which section 301 applies. See § 1.301–1(d), (j) and (k).

(ii) If a corporation issues an instrument to a shareholder and the instrument is treated as stock, then the amount determined under paragraph (a)(2)(i) of this section is treated as a distribution of stock to which section 305 applies.

(3) *Illustrations.* The following examples illustrate the application of this paragraph (a) and related provisions:

Example (1). Corporation S is organized in 1985 for the purpose of constructing, owning, and operating a professional office building. Fifteen persons, all medical doctors, subscribe for the capital stock of S at $100 a share. On January 1, 1988, the doctors agree to advance $300 to S for each share of stock subscribed. These advances are represented by 19-year, 7-percent debentures in the principal amount of $300 each. Assume that the debentures are treated as indebtedness under § 1.385–4(a) (relating to instruments generally), and that the fair market value of each debenture is $246. Based on these facts, $54 of each $300 advance is treated as a contribution to capital. Therefore, the doctors' basis in each debenture is $246, and there is an original issue discount of $54 on each debenture. See section 1232.

Example (2). The facts are the same as in example (1), except that the doctors pay $200 for each debenture. Based on these facts, the doctors are treated as receiving a $46 distribution to which section 301 applies on each share of stock. Therefore, the doctors' basis in each debenture is $246 (see § 1.301–1(j)), and there is an original issue discount of $54 on each debenture.

Example (3). The facts are the same as in example (1), except that the debentures bear interest at 9 percent a year. Assume that the fair market value of each 9-percent debenture is $300. Based on these facts, the doctors are not treated as making a contribution to capital or as receiving a distribution to which section 301 applies. Therefore, the doctors' basis in each debenture is $300, and there is no original issue discount on the debentures.

Example (4). The facts are the same as in example (1), except that S issues the debentures together with the capital stock in 1985, and the doctors pay $400 for each unit consisting of one debenture and one share of stock. Based on these facts, the doctors' basis in each debenture is $246 (see § 1.1012–1(d)), their basis in each share of stock is $154, and the original issue discount on each debenture is $54 (see § 1.1232–3(b)(2)(ii)).

Example (5). Individuals A and B each own ½ the common stock of corporation M, which is the only class of stock outstanding. On January 1, 1982, M issues two 12-percent $1,000 notes, one ot A and one to B, each for $1,000 in cash. Assume that the fair market value of each note is $1,250 and that the notes are treated as indebtedness under § 1.385–4(a) (relating to instruments generally). Based on these facts, on January 1, 1982, A and B each receive a $250 distribution to which section 301 applies. Thus, each note has a basis of $1,250 and is issued at a premium of $250 (see section 171(b) and § 1.61–12(c)(2)).

Example (6). The facts are the same as in example (5), except that interest on the notes is payable only at the discretion of M's board of directors, and the notes are treated as preferred stock under § 1.385–6(c) (relating to hybrid instruments held proportionately). Based on these facts, on January 1, 1982, A and B each receive a $250 distribution of preferred stock on common stock.

(b) *Fair market value.* The following rules apply for purposes of the regulations under section 385:

(1) *In general.* (i) The fair market value of an instrument is the price at which it would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of all relevant facts.

(ii) The fair market value of an instrument may be determined by using present value and standard bond tables. See § 1.1232–3(b)(2)(ii)(*d*) for examples in which the fair market values of instruments are determined by the use of these tables.

(iii) (A) In determining the fair market value of an instrument (or the reasonableness of an interest rate), the Commissioner may disregard a noncommercial term of the instrument if the principal purpose of the inclusion of the term is to increase or decrease the fair market value of the instrument (or a reasonable rate of interest for the instrument). See also section 482.

(B) The following example illustrates the application of this subdivision (iii):

Example. N, a nonresident alien of the United States and a resident of country Q is the sole shareholder of domestic corporation W. On January 1, 1987, W issues a $100,000, 28-percent debenture to N in exchange for $100,000. Under provision P of the debenture, an action to enforce the terms of the debenture can be maintained only in the village court of village V, located in Q. Assume that the principal purpose of the inclusion of provision P is to reduce the fair market value of the debenture. Based on these facts, the Commissioner may disregard provision P in determining the fair market value of the debenture.

(2) *Rules of convenience.* (i) On the day of issue, the fair market value of a straight debt instrument is considered to be equal to the face amount if—

(A) The stated annual rate of interest on the instrument is reasonable (within the meaning of § 1.385–6(e)), and

(B) The consideration paid for the instrument is equal to the face amount.

(ii) Notwithstanding any other provision of this paragraph (b), if an instrument is registered with the Securities and Exchange Commission and sold to the public for money, then the fair market value of the instrument on the day of issue is the issue price (as defined in section 1232(b)(2)).

(3) *Examples.* The following examples illustrate the application of paragraph (b)(2) of this section:

Exemple (1). On March 1, 1985, corporation M issues a $1,000, 8-percent, 5-year note at par. Assume that on that date, 10 to 12 percent is the range of rates of interest paid to independent creditors on similar instruments issued by corporations of the same general size and in the same general industry, geographic location, and financial condition; that the rate of interest in effect under section 6621 is 8 percent; that the interest rate for 5-year obligations determined by the Secretary pursuant to § 1.385–6(e)(2)(i) is 7 percent; and that the prime rate at local commercial banks is 9 percent. Also assume that M's debt-to-equity ratio at the end of the taxable year is 1:2. Based on these facts, any rate between 6 and 12 percent is a reasonable rate of interest within the meaning of § 1.385–6(e). In particular, 8 percent is a reasonable rate of interest, and the fair market value of the note is therefore considered to be $1,000.

Exemple (2). The facts are the same as in example (1) except that M's debt-to-equity ratio at the end of the taxable year is 2:1. Based on these facts, paragraph (b)(2)(i) of this section does not apply.

Exemple (3). The facts are the same as in example (2) except that the note provides for annual payments of interest at a rate of 11 percent. Since 11 percent is within the range of rates of interest paid to independent creditors on similar instruments issued by corporations of the same general size and in the same general industry, geographic location, and financial condition, the fair market value of the note is considered to be $1,000.

(c) *Instrument.* The term "instrument" means any bond, note, debenture, or similar written evidence of an obligation.

(d) *Obligation.* The term "obligation" means an interest in a corporation that is treated as indebtedness under applicable nontax law.

(e) *Hybrid instrument.* The term "hybrid instrument" means an instrument that is convertible into stock or one (such as an income bond or a participating bond) that provides for any contingent payment to the holder (other than a call premium).

(f) *Straight debt instrument.* The term "straight debt instrument" means any instrument other than a hybrid instrument.

§ 1.385–4 Instruments generally.

(a) *General rule.* Except as otherwise provided in the regulations under section 385, all instruments (as defined in § 1.385–3(c)) are treated as indebtedness for all purposes of the Internal Revenue Code. For exceptions, see § 1.385–5 (relating to certain hybrid instruments) and § 1.385–6 (relating to proportionality).

(b) *Operating rules*—(1) *In general.* The regulations under section 385 determine the status of each instrument (*i.e.*, as stock or indebtedness) at the time the instrument is issued. Except as provided in paragraphs (j), (k), and (l) of § 1.385–6 (relating to proportionality), the status of an instrument can never change. Thus, for example, the status of an instrument is not affected by a mere change in ownership.

(2) *Special rule.* Under § 1.385–6 (j), (k), and (l), the status of an instrument can change from indebtedness to stock (*e.g.*, in the event of a failure to pay interest when due).

(c) *Effect of classification*—(1) *In general.* (i) If an instrument is treated as stock under section 385, then the instrument is treated as preferred stock for all purposes of the Internal Revenue Code. In particular, all payments of "interest" on the instrument are treated as distributions to which section 301 applies, and all payments of "principal" are treated as distributions in redemption of stock. Such preferred stock is considered to have the same terms (*e.g.*, voting rights) as the instrument has under applicable local law. Each class of instruments classified as preferred stock is treated as a separate class of preferred stock. See § 1.1371–1 for the effect on an election made under Subchapter S. Also see § 1.992–1(d)(2) for an exception to this rule.

(ii) If an instrument becomes stock under § 1.385–6 (j), (k), or (l), then the instrument is treated as having been exchanged (without recognition of gain or loss) for preferred stock in a recapitalization to which section 368(a)(1)(E) applies.

(2) *Illustrations.* The following examples illustrate the application of this paragraph (c):

Example (1). On January 1, 1982, corporation X issues a $100,000 note to A. The note is due on January 1, 1992, and pays interest at a rate of 10 percent a year. Assume that at first the note is treated as indebtedness under paragraph (a) of this section. However, on January 1, 1987, the note becomes stock under § 1.385–6(k) (relating to nonpayment of interest). A is treated as having exchanged the note for preferred stock on January 1, 1987, in a recapitalization to which section 368(a)(1)(E) applies. Moreover, A does not recognize gain or loss merely because the note is reclassified.

Example (2). The facts are the same as in example (1). In addition, on July 1, 1988, A receives $15,000 in interest on the note. The entire $15,000 payment is treated as a distribution to which section 301 applies.

Example (3). Individuals B and C each own 50 percent of the stock of corporation Y. On January 1, 1990, Y distributes one convertible debenture each to B and C as a dividend.

Assume that the convertible debentures are treated as stock under § 1.385–6(c) (relating to hybrid instruments). Also assume that Y has accumulated earnings and profits of $5 million at the time of the distribution. Based on these facts, the debentures are treated as

payment of principal if both of the following conditions are satisfied:

(i) A definitely ascertainable principal sum is payable on demand or due on definitely ascertainable dates.

treat the payment as fixed. See example (5) of § 1.385–10(c).

(8) *Examples.* For examples that illustrate the application of this paragraph (d), see paragraph (a) of each of the examples in paragraph (e) of this

year. In addition, at the discretion of the board of directors of P, the holders of the debenture preference stock may share in the profits of P after a dividend of $6 has been paid on each share of P's common stock. The debenture preference stock matures on

to P "in lieu of interest," with $500 payable on the sale of each house. In addition, W is obligated to return P's $300,000 investment on demand at any time after December 31, 1990. The loan is secured by the general credit of W, and the written agreement contains

debentures pay interest at a fixed rate of 8 percent, are due on August 1, 1993, and provide for the payment of principal and interest in German marks at the exchange rate in effect on August, 1, 1983. Based on these facts, the debentures provide for fixed

Assume that the convertible debentures are treated as stock under § 1.385–6(c) (relating to hybrid instruments). Also assume that Y has accumulated earnings and profits of $5 million at the time of the distribution. Based on these facts, the debentures are treated as section 306 stock unless their distribution is taxable under section 305(b)(5).

Example (4). Individual D is a shareholder in corporation Z. On January 1, 1990, D buys a 20-year, $10,000 subordinated income bond from Z. D transfers $10,000 to Z for the bond, and the bond is treated as stock under $1.385–5 (relating to hybrid instruments). On January 1, 1990, the fair market value of the bond is $8,000. Based on these facts, D has made a contribution of $2,000 to the capital of Z on January 1, 1990, and has paid $8,000 for the bond. See § 1.385–3(a)(1). In addition, because the bond is treated as preferred stock, section 305(c) and § 1.305–5(b) may apply to the $2,000 difference between the purchase price and the redemption price.

§ 1.385–5 Certain hybrid instruments.

(a) *In general.* A hybrid instrument is treated as stock if, on the day of issue—

(1) The fair market value of the instrument without its equity features is less than

(2) Fifty percent of the actual fair market value of the instrument (with those features).

(b) *Equity features.* The equity features of an instrument are the right to convert it into stock and the right to contingent payments (other than a call premium).

(c) *Special rule.* Paragraph (a) of this section shall be applied by substituting "Forty-five percent" for "Fifty percent" if clear and convincing evidence shows that, on the day of issue, both the issuer and holder reasonably believe that—

(1) The fair market value of the instrument without its equity features is not less than

(2) Fifty percent of the actual fair market value of the instrument (with those features).

(d) *Meaning of terms.* The following rules apply for purposes of the regulations under section 385:

(1) *Contingent payment.* The term "contingent payment" means any payment other than a fixed payment of principal or interest.

(2) *Fixed payments; interest.* An instrument provides for fixed payments of interest if both of the following conditions are satisfied:

(i) Interest at a definitely ascertainable rate is due on definitely ascertainable dates.

(ii) Except as provided in paragraph (d)(5) of this section, the holder's right to receive interest when due (or within 90 days thereafter) cannot be impaired without the holder's consent.

(3) *Fixed payments; principal.* An instrument provides for the fixed payment of principal if both of the following conditions are satisfied:

(i) A definitely ascertainable principal sum is payable on demand or due on definitely ascertainable dates.

(ii) Except as provided in paragraph (d)(5) of this section, the holder's right to receive principal when due cannot be impaired without the holder's consent.

(4) *Definitely ascertainable.* (i) A rate of interest is definitely ascertainable if it is applied to a definitely ascertainably principal sum and if it is—

(A) An invariable rate, or

(B) A variable rate determined according to an external standard that is not subject to the borrower's control and that is not related to the success or failure of the borrower's business or activities.

(ii) A principal sum is definitely ascertainable if it is—

(A) An invariable sum, or

(B) A variable sum determined according to an external standard that is not subject to the borrower's control and that is not related to the success or failure of the borrower's business or activities.

A principal sum is not variable simply because it is within the borrower's control to prepay all or a portion of the principal sum.

(5) *Exceptions.* The classification of a payment as fixed is not affected by the fact that:

(i) The instrument is issued under an indenture that satisfies the requirements of section 316 of the Trust Indenture Act of 1939 (15 U.S.C. § 77ppp);

(ii) A holder's right to receive interest or principal may be impaired by the operation of the Federal bankruptcy laws (Title 11, U.S.C.), the Railroad Modification Act (47 U.S.C. § 20b), or a similar provision of law; or

(iii) A holder's right to receive interest or principal may be impaired in the event of the insolvency of the issuing corporation (either in the sense that the corporation is not able to pay its debts as they become due or in the sense that its liabilities exceed its assets).

(6) *Illusory contingencies.* For purposes of this paragraph (d), the Commissioner may disregard a contingency where there is no reasonably foreseeable circumstance in which it could affect the likelihood of payment.

(7) *Certain guarantees.* If—

(i) A payment does not satisfy the requirements of paragraph (d) (2) or (3) of this section, but

(ii) The payment is guaranteed (directly or indirectly) by any person, then (depending on the facts and circumstances) the Commissioner may treat the payment as fixed. See example (5) of § 1.385–10(c).

(8) *Examples.* For examples that illustrate the application of this paragraph (d), see paragraph (a) of each of the examples in paragraph (e) of this section.

(9) *Other terms.* (i) For the definition of the term "fair market value", see § 1.385–3(b).

(ii) For the definition of the term "hybrid instrument", see § 1.385–3(e).

(iii) For the definition of the term "instrument", see § 1.385–3(c).

(e) *Illustrations.* The following examples illustrate the application of this section. It is assumed that § 1.385–6 does not apply to the instruments described in these examples.

Example (1). (a) On July 1, 1987, corporation I issues subordinated income debenture bonds in the principal amount of $1,000 each. The bonds pay interest at the rate of 8 percent a year. However, interest is payable only if earned. The bonds are due on December 31, 2006. Based on these facts, each bond provides for a fixed payment of $1,000 in principal on December 31, 2006, but for contingent payments of interest.

(b) Assume that the fair market value of the 8-percent subordinated income debenture bonds is $1,000 each. The bonds without their equity features would be $1,000 noninterest-bearing subordinated debenture bonds due on December 31, 2006. Assume that the fair market value of such instruments would be $261 each. Based on these facts, the subordinated income debenture bonds are treated as stock because the fair market value of each debenture bond without its equity features (*i.e.*, $261) is less than 50 percent of its actual fair market value (*i.e.*, $1,000/2 = $500).

Example (2). (a) On March 1, 1988, corporation M issues 6-percent subordinated income debentures in the principal amount of $1,000 each due on March 1, 2038. Annual payment of interest is mandatory if net income is available and optional otherwise. Accumulated interest must be paid in all events at maturity. Based on these facts, each debenture provides for fixed payments of $1,000 in principal and $3,000 in simple interest on March 1, 2038.

(b) Assume that the fair market value of the 6-percent subordinated income debentures is $1,000 each. The debentures without their equity features would provide for the payment of $4,000 (total principal and interest) on March 1, 2038, and would be subordinated to the general creditors of M. Assume that the fair market value of such instruments would be $265 each. Based on these facts, the income debentures are treated as stock because the fair market value of each income debenture without its equity features (*i.e.*, $265) is less than 50 percent of its actual fair market value (*i.e.*, $1,000/2 = $500).

Example (3). (a) On February 7, 1987, corporation P issues written obligations called "debenture preference stock" in the principal amount of $50 each. The debenture preference stock bears interest at 6 percent a

year. In addition, at the discretion of the board of directors of P, the holders of the debenture preference stock may share in the profits of P after a dividend of $6 has been paid on each share of P's common stock. The debenture preference stock matures on December 31, 2017, except that the maturity may be extended from time to time (but in no event beyond December 31, 2037) at the discretion of P's board of directors. Based on these facts, the debenture preference stock provides for fixed payments of interest at a rate of 6 percent and a fixed payment of $50 in principal on December 31, 2037.

(b) Assume that the fair market value of the debenture preference stock is $50 each. The debenture preference stock without its equity features would be 6-percent nonparticipating debentures due on December 31, 2037. Assume that the fair market value of such instruments would be $20.12 each. Based on these facts, the debenture preference stock is treated as stock because its fair market value without equity features (*i.e.*, $20.12) is less than 50 percent of its actual fair market value (*i.e.*, $50/2 = $25).

Example (4). (a) On December 1, 1989, corporation T issues variable interest notes in the principal amount of $1,000 each. The notes pay interest at a rate that may vary between 2 percent and 10 percent, depending on the earnings of T. The board of directors of T may, in its discretion, defer all payments of interest until the notes mature on December 1, 2014, and may subordinate the notes to other debts of T. Based on these facts, each note provides for fixed payments of $1,000 in principal and $500 in interest (*i.e.*, 2 percent x $1,000 x 25 years) on December 1, 2014.

(b) Assume that the fair market value of the variable interest notes is $1,000 each. The notes without their equity features would provide for the payment of $1,500 (total principal and interest) on December 1, 2014, and would be subject to subordination at the discretion of the board of directors of T. Assume that the fair market value of such instruments would be $219 each. Based on these facts, the variable interest notes are treated as stock because the fair market value of each note without its equity features *i.e.*, $219) is less than 50 percent of its actual fair market value *i.e.*, $1,000/2=$500).

Example (5). (a) on April 1, 1984, corporation U issues inflation provision notes in the principal amount of $557,700. The notes pay interest at a fixed rate of 6 percent on a fluctuating maturity value, and are due on April 1, 1994. The maturity value is determined according to the Consumer's Price Index, published monthly by the Bureau of Labor Statistics. Based on these facts, the inflation provision notes provide for fixed payments of both principal and interest. See paragraph (d) (4) (i) (A) and (ii) (B) of this section.

(b) The inflation provision notes are treated as indebtedness because they are straight debt instruments.

Example (6). (a) Corporation W owns a tract of land and is building 350 houses there. On August 15, 1985, P lends $300,000 to W pursuant to written agreement. The agreement provides that W will pay $175,000 to P "in lieu of interest," with $500 payable on the sale of each house. In addition, W is obligated to return P's $300,000 investment on demand at any time after December 31, 1990. The loan is secured by the general credit of W, and the written agreement contains appropriate protective provisions. Based on these facts, the written agreement provides for the fixed payment of $300,000 in principal and for contingent payment of $175,000.

(b) Assume that the fair market value of the obligation to P is $300,000. The obligation without its equity features would be a noninterest-bearing note for $300,000 due on December 31, 1990. Assume that the fair market value of such a note would be $170,000. Based on these facts, the obligation to P is treated as indebtedness because its fair market value without equity features (*i.e.*, $170,000) is not less than 50 percent of its actual fair market value (*i.e.*, $300,000/2=$150,000).

Example (7). (a) On May 1, 1982, corporation X issues subordinated debentures due on May 1, 1992, in the principal amount of $1,000 each. Interest is payable annually at the fixed rate of 7 percent a year. Additional interest, which is contingent on the new profits of X, is payable at a maximum rate of 1 percent a year. Default in payment of interest, while not accelerating the maturity of the debenture, gives rise to a cause of action which the debenture holder may maintain against X for nonpayment of interest. Based on these facts, each debenture provides for a fixed $1,000 payment of principal and for fixed payments of interest at the rate of 7 percent a year.

(b) Assume that the fair market value of the subordinated debentures is $1,000 each. The debentures without their equity features would be 7 percent subordinated debentures with no provision for additional interest. Assume that the fair market value of such debentures would be $949 each. Based on these facts, the subordinated debentures issued by X are treated as indebtedness because the fair market value of each debenture without its equity features (*i.e.*, $949) is not less that 50 percent of its actual fair market value *i.e.*, $1,000/2=$500).

Example (8). (a) Corporation Z owns a large tract of land and is engaged in the business of developing, subdividing, and selling the land. On January 25, 1986, Z issues noninterest-bearing debenture bonds having a face value of $500,000 and a maturity date of January 25, 2011. The retirement of the bonds will be secured by the deposit of 10 percent of Z's gross receipts into a special bank account. However, if Z is liquidated after all of its lands have been sold, it will have no further obligation to retire any of the outstanding bonds unless the 10 percent payments have not been made as required. Based on these facts, the bonds do not provide for fixed payments of either principal or interest.

(b) The debenture bonds without their equity features would pay neither principal nor interest. Such instruments would be worthless. Therefore, the debenture bonds are treated as stock.

Example (9). (a) On August 1, 1983, U, an industrial corporation, issues debentures in the principal amount of $1,000 each. The debentures pay interest at a fixed rate of 8 percent, are due on August 1, 1993, and provide for the payment of principal and interest in German marks at the exchange rate in effect on August, 1, 1983. Based on these facts, the debentures provide for fixed payments of both principal and interest. See paragraph (d)(4) (i)(B) and (ii)(B) of this section.

(b) The debentures are treated as indebtedness because they are straight debt instruments.

Example (10). (a) On September 1, 1984, corporation W issues floating rate notes in the principal amount of $100,000. The notes pay interest at 3 percentage points above the prime rate and are due on September 1, 1994. Based on these facts, the floating rate notes provide for fixed payments of both principal and interest. See paragraph (d)(4) (i)(B) and (ii)(A) of this section.

(b) The floating rate notes are treated as indebtedness because they are straight debt instruments.

Example (11). (a) A and B each own 50 percent of the only class of stock of corporation X. In addition to the outstanding stock, X has outstanding debentures held by independent creditors. On January 1, 1988, X redeems all of A's stock in exchange for a 10-year note with a principal amount of $500,000. Under the terms of the note, interest on outstanding principal is payable annually at a rate of 10 percent. Under applicable local law, the note is treated as indebtedness. However, under local law, each payment of principal and interest is subject to the restriction that no payment may be made at a time when the corporation is (or would be rendered) insolvent (*i.e.*, unable to pay its debts as they become due). The insolvency restriction does not affect the classification of the principal or interest payments as fixed payments. See paragraph (d)(5)(iii) of this section. Therefore, the note provides for fixed payments of both principal and interest.

(b) The note is treated as indebtedness because it is a straight debt instrument. The result would be the same if, under local law, payments could not be made when X's liabilities exceeded its assets.

Example (12). (a) The facts are the same as in example (11) except that, under local law, the payments of principal and interest on the note are subject to the additional restriction that each payment can only be made out of X's earned surplus. Based on these facts, the note does not provide for fixed payments of principal or interest.

(b) The note without its equity features would pay neither principal nor interest. Such an instrument would be worthless. Therefore, the note is treated as stock.

Example (13). (a) On January 1, 1990, corporation Y issues 10,000 shares of $100 par value cumulative preferred stock. The preferred stock provides for an $8 dividend, payable annually, and for mandatory redemption beginning on January 1, 1996. Twenty percent of the preferred stock (selected by lot) must be redeemed on January 1 of each of 1996, 1997, 1998, 1999, and 2000. The redemption price is $100 plus all accrued but unpaid dividends. Annual dividends are payable only out of Y's earned surplus but mandatory redemption payments

(including all accrued but unpaid dividends) are payable out of all "legally available funds." Under applicable local law, this means that the preferred stockholders have an absolute right to compel mandatory redemption payments subject to only two

straight debt instruments, they are treated as indebtedness.

Example (2). The facts are the same as in example (1), except that the instruments issued by M are 9-percent Series B income bonds. Interest is not payable on the Series B income bonds unless earned and is

Example (7). The facts are the same as in example (6), except that the Series C convertible bonds pay 2-percent interest and are convertible into four shares of stock of M. A Series C bond without its equity features would be a $1,000, 2-percent bond due on January 1, 2015. Assume that the fair market

(ii) This section does not apply to any instrument held by an independent creditor (as defined in § 1.385–6(b)).

(4) *Two classes treated as one.* Depending on the facts and circumstances, two or more classes of

not apply to the debentures upon their issuance.

Example (4). A, B, and C each own ⅓ of the common stock of corporation Z. Pursuant to a plan, Z issues $100,000 of 10-year, 8-percent debentures to A, $100,000 of 12-year,

for 1,000 shares of class B stock. The class B stock is nonvoting until all the Class A shares are redeemed for $1,000 each. At least 70 percent of D's earnings and profits must be used each year to retire the notes and to redeem the class A stock. I had no control

(including all accrued but unpaid dividends) are payable out of all "legally available funds." Under applicable local law, this means that the preferred stockholders have an absolute right to compel mandatory redemption payments subject to only two restrictions. First, mandatory redemption payments are not permitted if Y is (or would be rendered) insolvent (*i.e.*, not able to pay its debts as they become due). Second, mandatory redemption payments are not permitted if they would impair Y's capital (*i.e.*, if the fair market value of Y's remaining assets would be less than the sum of Y's liabilities and the liquidation value of other classes of preferred stock that are senior or equal in rank). Based on these facts, the preferred stock is treated as an instrument. See example (2) of § 1.385–10(c). Each share of preferred stock provides for fixed payments of $29.60 on January 1, 1996 ($20 redemption payment + ($8 dividend×6)/5), $31.20 on January 1, 1997 ($20 + ($8×7)/5), $32.80 on January 1, 1998 ($20 + ($8×8)/5), $34.40 on January 1, 1999 (420 + ($8×9)/5), and $36.00 on January 1, 2000 ($20 + ($8×10)/5).

(b) Assume that the fair market value of a share of preferred stock is $100. The preferred stock without its equity features would provide for the payment on January 1 of 1996, 1997, 1998, 1999, and 2000, respectively, of $29.60, $31.20, $32.80, $34.40 and $36. Assume that the fair market value of an instrument providing for such payments would be $66.35. Based on these facts, the preferred stock is treated as indebtedness because the fair market value of each share of preferred stock without its equity features (*i.e.*, $66.35) is not less than 50 percent of its actual fair market value (*i.e.*, $100/2=$50).

Example (14). (a) R is a corporation in the business of purchasing and operating office buildings and other commercial real property. On January 1, 1990, R purchases an office building from unrelated corporation S for a purchase price of $20 million. R pays $5 million in cash and issues a 15 year, 12-percent note for the remaining $15 million of the purchase price. The note is secured by a first mortgage on the office building but is otherwise nonrecourse with respect to R. The fair market value of the office building is $20 million and it is customary under the circumstances for the purchase of the building to be financed on a nonrecourse basis. Based on these facts, the note provides for fixed payments of principal and interest.

(b) The note is treated as indebtedness because it is a straight debt instrument.

(f) *Additional illustrations.* The following examples are additional illustrations of the application of this section. It is assumed that § 1.385–6 does not apply to the instruments described in these examples.

Example (1). On January 1, 1990, corporation M issues 7-percent Series A bonds in the principal amount of $1,000 each. The bonds are due on January 1, 2015, and are secured by the general credit of M. They are registered with the Securities and Exchange Commission and sold to the public at par. Because the Series A bonds are straight debt instruments, they are treated as indebtedness.

Example (2). The facts are the same as in example (1), except that the instruments issued by M are 9-percent Series B income bonds. Interest is not payable on the Series B income bonds unless earned and is noncumulative. A Series B bond without its equity features would be a $1,000 noninterest-bearing bond. Assume that the fair market value of such a noninterest-bearing bond would be $184. Based on these facts, the Series B income bonds are treated as stock because the fair market value of each bond without its equity features (*i.e.*, $184) is less than 50 percent of its actual fair market value (*i.e.*, $1,000/2=$500).

Example (3). The facts are the same as in example (2), except that the Series B income bonds are due on January 1, 2000. A Series B bond without its equity features would be a $1,000 noninterest-bearing bond due on January 1, 2000. Assume that the fair market value of such a noninterest-bearing bond would be $508. Based on these facts, the Series B income bonds are treated as indebtedness because the fair market value of each bond without its equity features (*i.e.*, $508) is not less than 50 percent of its actual fair market value (*i.e.*, $1,000/2=$500).

Example (4). The facts are the same as in example (3), except that the Series B income bonds bear 10-percent interest and are subordinated to the general creditors of M. A Series B bond without its equity features would be a $1,000 subordinated noninterest-bearing bond due on January 1, 2000. Assume that the fair market value of such a subordinated noninterest-bearing bond would be $463. Based on these facts, the Series B income bonds are treated as stock because the fair market value of each bond without its equity features (*i.e.*, $463) is less than 50 percent of its actual fair market value (*i.e.*, $1,000/2=$500).

Example (5). The facts are the same as in example (2), except that the Series B income bonds pay 8-percent cumulative interest, and accumulated interest becomes unconditionally due at maturity. A Series B bond without its equity features would be a $1,000 bond paying simple interest at 6 percent, with the interest not due until maturity on January 1, 2015. Assume that the fair market value of such an instrument would be $553. Based on these facts, the Series B income bonds are treated as indebtedness because the fair market value of each bond without its equity features (*i.e.*, $553) is not less than 50 percent of its actual fair market value (*i.e.*, $1,000/2=$500).

Example (6). The facts are the same as in example (1), except that the instruments issued by M are 6-percent Series C convertible bonds. Each Series C bond is convertible into two shares of common stock of M. A Series C bond without its equity features would be a $1,000, 6-percent bond due on January 1, 2015. Assume that the fair market value of such a bond would be $883. Based on these facts, the Series C convertible bonds are treated as indebtedness because the fair market value of each bond without its equity features (*i.e.*, $883) is not less than 50 percent of its actual fair market value (*i.e.*, $1,000/2=$500).

Example (7). The facts are the same as in example (6), except that the Series C convertible bonds pay 2-percent interest and are convertible into four shares of stock of M. A Series C bond without its equity features would be a $1,000, 2-percent bond due on January 1, 2015. Assume that the fair market value of such a bond would be $417. Based on these facts, the Series C convertible bonds are treated as stock because the fair market value of each bond without its equity features (*i.e.*, $417) is less than 50 percent of its actual fair market value (*i.e.*, $1,000/2=$500).

Example (8). The facts are the same as in example (1), except that the instruments issued by M are 7-percent Series D convertible income bonds due on January 1, 2015. The Series D bonds are convertible into two shares of common stock of M, and accumulated interest on the Series D bonds is unconditionally due at maturity. A Series D bond without its equity features would be a $1,000 bond paying simple interest at 7 percent with the interest not due until maturity on January 1, 2015. Assume that the fair market value of such a bond would be $506. Based on these facts, the Series D convertible income bonds are treated as indebtedness because the fair market value of each bond without its equity features (*i.e.*, $506) is not less than 50 percent of its actual fair market value (*i.e.*, $1,000/2=$500).

Example (9). The facts are the same as in example (4), except that the Series B income bonds are privately placed with corporation X. In reliance on an independent appraisal, both X and M reasonably believe that the fair market value of the Series B income bonds without their equity features is $510 each. Based on these facts, the Series B income bonds are treated as indebtedness. See paragraph (c) of this section.

§ 1.385–6 Proportionality.

(a) *In general*—(1) *Scope.* This section applies to a class of instruments if holdings of stock and the instruments are substantially proportionate. This section affects hybrid instruments, instruments not issued for money, instruments that are payable on demand, and certain other instruments where there is a change in terms or a failure to pay principal or interest, or where a corporation's debt-to-equity ratio is excessive.

(2) *Proportionality.* (i) Substantial proportionality is determined from all relevant facts and circumstances, including family or other relationships described in section 318(a).

(ii) Stock constructively owned under section 318(a)(4) (relating to options) is taken into account to the extent it is reasonable to expect, at the time of the determination, that the options may be exercised.

(3) *Exceptions.* (i) This section does not apply if a corporation's stock and instruments are widely held and the instruments are separately traded and readily marketable.

(ii) This section does not apply to any instrument held by an independent creditor (as defined in § 1.385–6(b)).

(4) *Two classes treated as one.* Depending on the facts and circumstances, two or more classes of instruments may be considered together. For example:

(i) If—

(A) Two or more classes of instruments are issued pursuant to a plan, and

(B) Holdings of stock and the instruments will be substantially proportionate on completion of the plan,

then this section applies to each instrument immediately after it is issued.

(ii) If (regardless of whether issued pursuant to a plan)—

(A) Subsequent to their issuance, two or more classes of instruments are treated as a single class, and

(B) Considered as a single class, holdings of stock and such class are substantially proportionate,

then this section applies to each class beginning at the time of such treatment.

(5) *One class treated as two.* If two portions of a class of instruments are treated differently (*e.g.*, interest is paid on one portion but not on the other), then each portion is treated as a separate class beginning at the time of such treatment.

(6) *Illustrations.* The following examples illustrate the application of this paragraph (a):

Example (1). A and B each own 50 percent of the stock of corporation X. In addition, A owns 40 percent of a class of debentures issued by X, and B owns the remaining 60 percent. Based on these facts, holdings of the debentures and holdings of stock in X are substantially proportionate, and this section applies to the debentures. The result would be the same if the debentures owned by B were owned by B's spouse.

Example (2). A, B, and C each own 100 shares of common stock in corporation Y. Y has no other stock of any class outstanding. However, Y does have outstanding subordinated 8-percent debentures in the principal amount of $100,000. A owns $40,000 of the debentures, B owns $30,000, C owns $20,000 and an independent creditor owns the remaining $10,000. Based on these facts, holdings of the debentures and holdings of stock in Y are substantially proportionate, and this section applies to the debentures held by A, B and C. However, this section does not apply to the debentures held by the independent creditor.

Example (3). The facts are the same as in example (2), except that A, B, and C each own $10,000 of debentures, and the independent creditor owns $70,900. Based on these facts, the holdings of stock and debentures are not substantially proportionate. Therefore, this section does not apply to the debentures upon their issuance.

Example (4). A, B, and C each own ⅓ of the common stock of corporation Z. Pursuant to a plan, Z issues $100,000 of 10-year, 8-percent debentures to A, $100,000 of 12-year, 8½-percent debentures to B, and $100,000 of 15-year, 9-percent debentures to C. Based on these facts, upon completion of the plan, holdings of the debentures and Z's stock are substantially proportionate. Therefore, this section applies to the debentures.

Example (5). Corporation P owns all the stock of corporations S and T. In addition, S owns 85 percent of a class of debentures issued by T. Based on these facts, holdings of the T stock and debentures are substantially proportionate. Therefore, this section applies to the debentures.

Example (6). Corporation V has more than 100,000 shareholders. On January 1, 1990, V issues $10 of debentures on each share of stock as a dividend. The stock and debentures are traded separately on a national securities exchange. Based on these facts, this section does not apply to the debentures.

Example (7). A and B each own 50 percent of the common stock of corporation W. In addition, W has outstanding $100,000 of 6-percent debentures owned entirely by A. Based on these facts, this section does not apply to the debentures.

Example (8). A owns all 100 shares of stock in corporation Y. A also owns 50 percent of a class of senior debentures issued by Y, and B owns the remaining 50 percent. In addition, B owns all of a class of junior debentures issued by Y, which are convertible into a total of 100 shares of Y stock of the same class as that held by A. Further, it is reasonable to expect that B may ultimately exercise the conversion privilege. Based on these facts, holdings of stock in Y and the senior debentures are treated as substantially proportionate under paragraph (a)(2) of this section. Consequently, this section applies to the senior debentures. However, holdings of Y stock and the junior debentures are not substantially proportionate.

Example (9). A owns all 100 shares of stock of corporation U. In addition, B owns $100,000 of convertible debentures issued by U. The debentures are convertible into 1,000 shares of U's common stock. Assume that it is reasonable to expect that B may ultimately exercise the conversion privilege. Based on these facts, B is treated as owning 1,000 shares of U common stock, and holdings of the convertible debentures and stock in U are substantially proportionate. Therefore, this section applies, and the convertible debentures are treated as stock under paragraph (c) (relating to hybrid instruments).

Example (10). Corporation M is a large manufacturing company whose products are sold through independent dealers. In order to assist individuals who do not have enough capital to become dealers, M has established a dealer investment plan. Pursuant to the dealer investment plan, M and unrelated individual I organize corporation D on January 1, 1982. M transfers $900,000 to D in exchange for 10-percent notes in the principal amount of $500,000 and 400 shares of class A stock. I transfers $100,000 to D in exchange for 1,000 shares of class B stock. The class B stock is nonvoting until all the Class A shares are redeemed for $1,000 each. At least 70 percent of D's earnings and profits must be used each year to retire the notes and to redeem the class A stock. I had no control over the redemption of stock and no right to have his stock redeemed while any of the class A stock is outstanding. M's investment will thus be systematically eliminated, and I will become the sole owner of D. Because the plan is akin to a security arrangement (see example (14) of § 1.305–3(e)), holdings of the stock and notes are not substantially proportionate. Therefore, this section does not apply to the notes. However, for purposes of section 1232 (relating to original issue discount), the issue price of the notes is equal to their fair market value. See § 1.1232–3(b)(2)(ii) (relating to investment units).

Example (11). Corporation S is a small business investment company operating under the Small Business Investment Act of 1958 (15 U.S.C. 661 and following). Individual J is an electrical engineer. On January 1, 1983, S and J, who are otherwise unrelated, form corporation X to manufacture high technology electrical components. X has a total authorized capital of 2,000 shares of common stock. S transfers $810,000 to X for 9-percent subordinated debentures in the principal amount of $800,000, 100 shares of common stock, and warrants to acquire an additional 900 shares of common stock at $100 a share. J transfers $100,000 to X for 1,000 shares of common stock. Based on these facts, holdings of the stock and debentures are not substantially proportionate. Therefore, this section does not apply to the subordinated debentures. However, for purposes of section 1232 (relating to original issue discount), the issue price of the debentures is equal to their fair market value. See § 1.1232–3(b)(2)(ii) (relating to investment units).

Example (12). Corporation T is a medium-sized supplier of computer software. Individual K is the manager of T's military applications division. On January 1, 1984, K forms corporation Y to acquire the assets of T's military applications division. K transfers $100,000 to Y for all 100 shares of Y's outstanding common stock. In addition, Y obtains financing from the following sources: $2 million from a small business investment company for 8-percent junior subordinated debentures and warrants to acquire 100 shares of common stock, $3 million from an insurance company for 14-percent senior subordinated debentures, and $2,500,000 from a bank for 10-percent secured notes. K is not otherwise related to T, the small business investment company, the insurance company, or the bank. Based on these facts, there is no substantial proportionality between holdings of stock and any class or classes of instruments. Therefore, this section does not apply to any of the instruments. However, for purposes of section 1232 (relating to original issue discount), the issue price of the junior subordinated debentures is equal to their fair market value. See § 1.1232–3(b)(2)(ii) (relating to investment units).

Example (13). A is the sole shareholder of corporation X. On January 1, 1987, X issues $50,000 of Class B debentures to A and $50,000 of Class B debentures to independent

creditor K. Based on these facts, holdings of the X stock and the Class B debentures are not substantially proportionate. However, on January 1, 1989, A voluntarily under paragraph (a)(5) of this section, A's debentures are treated as a separate class

1987, pursuant to an arrangement between A and B, X does not pay the $50,000 of interest on A's note and X pays B $50,000 less compensation than B would be entitled to under B's employment contract with X. Based on these facts, holdings of X's stock and the

of this section) 5 percent or more in value of the stock of corporation Y. Based on these facts, stock owned by Y is attributed to C under the constructive ownership rules of section 318(a) as modified by paragraph (b)(3) of this section. Consequently, C does not

discount under section 1232(a)(3) or amortizable bond premium under § 1.61–12(c)(2).

(2) *Special rule.* For purposes of this paragraph (d), the reasonableness of a rate of interest is determined on the day

property" within the meaning of section 351(b). Thus, no gain or loss is recognized on the transfer of the land to X (see section 351), and X's basis in the land is the same as it was in the hands of A, B, and C (see section 362(a)(1)).

(4) *Local commercial bank.* The term "local commercial bank" includes any commercial bank at which the issuing corporation ordinarily does business.

(5) *Illustrations.* The following examples illustrate the application of

creditor K. Based on these facts, holdings of the X stock and the Class B debentures are not substantially proportionate. However, on January 1, 1989, A voluntarily under paragraph (a)(5) of this section, A's debentures are treated as a separate class beginning on January 1, 1989. Thus, they may be treated as stock under paragraph (j) of this section (relating to a change in terms). The result would be the same if, on January 1, 1989, X missed an interest payment due on A's debentures, but made the payment on K's debentures. In this event, A's debentures might be treated as stock under paragraph (k) of this section (relating to nonpayment of interest).

Example (14). (a) A and B each own 50 percent of the stock of corporation Z, a calendar year taxpayer. Pursuant to a plan, Z issues $100,000 of Class A convertible debentures to A on January 1, 1983 and issues $100,000 of Class B convertible debentures to B on January 1, 1985. Based on these facts, the two classes of debentures are considered together. Therefore, holdings of the debentures and the stock are substantially proportionate and each class of debentures is treated as stock upon issuance under section 1.385–6(c) (relating to hybrid instruments issued proportionately).

(b) The facts are the same as in (a) except that the two classes of debentures are not issued pursuant to a plan. Based on these facts, this section does not apply to either class of debentures upon their issuance.

(c) The facts are the same as in (b) except that Z fails to pay interest on the debentures accrued during 1989. Based on these facts, this section applies to the two classes of debentures as of January 1, 1989 and the debentures may be treated as stock under paragraph (k) of this section (relating to nonpayment of interest). See paragraph (a)(4)(ii) of this section.

Example (15). E owns all of the common stock of corporation X. In addition, F (who is unrelated to E) owns all of the preferred stock of X. The preferred stock is an 8-percent nonparticipating, nonconvertible, nonvoting preferred stock. Further, E owns a class of debentures issued by X. Based on these facts, holdings of the X stock and debentures are substantially proportionate, and this section applies to the debentures. However, if F owned all of the debentures, this section would not apply.

(7) *Special rule.* (i) If, pursuant to an agreement or arrangement—

(A) The terms of an instrument issued to a shareholder are not fixed at arm's length or the instrument is not enforced according to its terms, and

(B) There are related, compensating non-arm's length transactions, then the Commissioner may treat holdings of the instrument and the corporation's stock as substantially proportionate.

(ii) The following examples illustrate the application of this subparagraph (7):

Example (1). A and B each own 50 percent of the common stock of corporation X. On January 1, 1985, A lends $500,000 to X in exchange for a 10-year, 10-percent $500,000 note. B is the general manager of X. During 1987, pursuant to an arrangement between A and B, X does not pay the $50,000 of interest on A's note and X pays B $50,000 less compensation than B would be entitled to under B's employment contract with X. Based on these facts, holdings of X's stock and the note will be treated as substantially proportionate. Therefore, this section applies to the note and the note may be reclassified as stock under paragraph (k) of this section (relating to nonpayment of interest).

Example (2). C and D each own 50 percent of the stock of corporation Y. On January 1, 1987, C leases a townhouse to Y for a ten-year term. Y agrees to pay an annual rent of $10,000 and additional rent equal to 20 percent of the net annual rentals from the townhouse. Also on January 1, 1987, as part of the same arrangement, D lends $100,000 to Y in exchange for a 10-year debenture. Ten percent annual interest is payable on the debenture. In addition, the holder of the debenture is entitled to contingent annual interest equal to 20 percent of the net annual rentals from the townhouse. Based on these facts, holdings of the debenture and Y's stock shall be treated as substantially proportionate. Accordingly, the debenture will be treated as stock under paragraph (c) of this section (relating to hybrid instruments issued proportionately).

(b) *Independent creditor*—(1) *In general.* For purposes of the regulations under section 385, all relevant facts and circumstances must be taken into account in determining whether a creditor is independent.

(2) *Safe harbor.* In applying this section to a class of instruments issued by a corporation, a creditor is deemed to be independent if—

(i) Stock owned by the corporation would not be attributed to the creditor under the constructive ownership rules of section 318(a) (as modified by subparagraph (3) of this paragraph (b)), and

(ii) The creditor's holdings of stock and instruments issued by the corporation are not substantially proportionate.

(3) *Constructive ownership.* For purposes of subparagraph (2)(i) of this paragraph (b)—

(i) The constructive ownership rules of section 318(a) shall be applied by substituting "5 percent" for "50 percent" in sections 318(a)(2)(C) and 318(a)(3)(C), and

(ii) In determining whether any person owns 5 percent or more of the stock of a corporation, stock constructively owned by an unrelated person under section 318(a)(4) (relating to options) is not taken into account.

(4) *Illustrations.* The following examples illustrate the application of this paragraph (b):

Example (1). Individual C owns (actually or under the constructive ownership rules of section 318(a) as modified by paragraph (b)(3) of this section) 5 percent or more in value of the stock of corporation Y. Based on these facts, stock owned by Y is attributed to C under the constructive ownership rules of section 318(a) as modified by paragraph (b)(3) of this section. Consequently, C does not come within the safe harbor of paragraph (b)(2) of this section with respect to instruments issued by Y.

Example (2). Individual A owns all 100 outstanding shares of stock and an option to acquire an additional 1,000 shares of stock in corporation X. Individual B owns an option to acquire 10 shares of stock in X. Applying the constructive ownership rules of section 318(a) as modified by paragraph (b)(3) of this section, B is considered to own 10 out of 110 outstanding shares of stock in X. Therefore, B does not come within the safe harbor of paragraph (b)(2) of this section. The result would be the same if the option owned by B were owned by B's spouse.

Example (3). Corporation Y obtains a $100,000 loan from C, an unrelated commercial bank. As a condition for making a loan, C obtains the right to designate one of Y's directors. Based on these facts, C is an independent creditor of Y.

Example (4). Individual E owns 96 percent of the stock of corporation Z, and individual F owns the remaining 4 percent. In addition, E owns 96.2 percent of a class of debentures issued by Z, and F owns the remaining 3.8 percent. Because F's own holdings of Z stock and debentures are substantially proportionate, F does not come within the safe harbor of paragraph (b)(2) of this section.

(c) *Hybrid instruments*—(1) *In general.* If this section applies to a hybrid instrument immediately after it is issued, then the instrument is treated as stock.

(2) *Hybrid instrument.* For the definition of the term "hybrid instrument", see § 1.385–3(e).

(3) *Illustration.* The following example illustrates the application of this paragraph (c):

Example. Corporation X's only outstanding stock is 100 shares of common stock. Individual A owns 50 shares, individual B owns 30 shares, and individual C owns 20 shares. On January 1, 1990, X issues $100,000 of convertible debentures. Sixty thousand dollars of the convertible debentures are issued to A, $25,000 are issued to B, and the remaining $15,000 are issued to C. Based on these facts, the convertible debentures are treated as stock.

(d) *Instruments not issued for money*—(1) *In general.* An instrument issued by a corporation is treated as stock if—

(i) This section applies to the instrument immediately after it is issued,

(ii) The stated annual rate of interest on the instrument is not reasonable (within the meaning of paragraph (e) of this section), and

(iii) The issuance of the instrument does not give rise to original issue

discount under section 1232(a)(3) or amortizable bond premium under § 1.61–12(c)(2).

(2) *Special rule.* For purposes of this paragraph (d), the reasonableness of a rate of interest is determined on the day an instrument is issued.

(3) *Exception.* (i) This paragraph (d) does not apply to an instrument that is issued in exchange for an equal or greater principal amount of indebtedness of the issuing corporation if—

(A) An independent creditor holding the outstanding indebtedness would, in the exercise of ordinary diligence, have agreed to the exchange, and

(B) The issuing corporation would, in the exercise of ordinary diligence, have agreed to make the exchange with an independent creditor holding the outstanding indebtedness.

(ii) For purposes of subdivision (i) of this subparagraph (3), the principal amount of indebtedness includes interest accrued but unpaid up until the date of the exchange, but only to the extent that such interest is paid with principal in the exchange.

(4) *Illustrations.* The following examples illustrate the application of this paragraph (d):

Example (1). J organizes corporation W on December 10, 1985 to operate a distributorship of radios, television sets, and other types of electrical appliances. On the same day, J transfers certain franchises and other assets to W in exchange for all of W's capital stock and $100,000 of 10-year, 9-percent debenture bonds. Assume that on December 10, 1985, 9 percent is not a reasonable rate of interest (within the meaning of paragraph (e) of this section). Based on these facts, the debenture bonds are treated as stock.

Example (2). Corporation X operates a wholesale electrical supply business. In the course of a recapitalization on December 30, 1990, X issues 2,100 Class B debentures to L in exchange for X common stock. Immediately after the recapitalization, L holds 90 percent of the common stock of X. The principal amount of each Class B debenture is $100, and each debenture pays $50 a year in interest. Assume that on December 30, 1990, 50 percent is not a reasonable rate of interest (within the meaning of paragraph (e) of this section). Based on these facts, the Class B debentures issued to L are treated as stock.

Example (3). On January 1, 1987, individuals A, B, and C transfer a tract of undeveloped land and $4,500 in cash to newly formed corporation X. In exchange, each receives 100 shares of stock and a 2-year, 10-percent promissory note for $110,000. Assume that 10 percent is not a reasonable rate of interest (within the meaning of paragraph (e) of this section). Based on these facts, the promissory notes are treated as stock for all purposes of the Internal Revenue Code. In particular, the notes are not treated as "other property" within the meaning of section 351(b). Thus, no gain or loss is recognized on the transfer of the land to X (see section 351), and X's basis in the land is the same as it was in the hands of A, B, and C (see section 362(a)(1)).

Example (4). B is the sole shareholder of corporation Y. On January 1, 1990, Y issues a $30,000, 10-percent note to B in exchange for $30,000. The note is due on January 1, 2000 and is treated as indebtedness under § 1.385–4(a). Interest on the note is paid according to its terms through 1999. During 1999, Y encounters business difficulties. On December 11, 1999, Y issues a new note to B in exchange for the outstanding note. The terms of the new note are identical to those of the outstanding note except that the new note is due on January 1, 2002 and is subordinated to a new bank loan being made at the time of the exchange. Assume that an independent creditor holding the outstanding note would, in the exercise of ordinary diligence, have agreed to exchange the outstanding note for the new note. Assume also that Y would, in the exercise of ordinary diligence, have agreed to the exchange even if the outstanding note were held by an independent creditor. Based on these facts, this paragraph (d) does not apply to the new note. However, the new note is subject to paragraphs (j), (k), and (l) of this section.

(e) *Reasonable rate of interest*—(1) *In general.* The annual rate of interest on an instrument issued by a corporation is reasonable if it is within the normal range of rates paid to independent creditors on similar instruments by corporations of the same general size and in the same general industry, geographic location, and financial condition on the date the determination is made.

(2) *Rule of convenience.* For purposes of the regulations under section 385, an annual rate of interest on an instrument is considered to be reasonable if—

(i) On the date the determination is made, (A) it is equal to the rate in effect under section 6621, the prime rate in effect any local commercial bank, or a rate determined from time to time by the Secretary taking into consideration the average yield on outstanding marketable obligations of the United States of comparable maturity or (B) it is in between any two of the rates described in subdivision (A) of this subdivision (i), and

(ii) At the end of the taxable year in which the determination is made, the debt-to-equity ratio of the issuing corporation is not greater than 1:1.

(3) *Exception.* Paragraph (e)(2) of this section does not apply to an instrument that evidences a nonrecourse liability.

(4) *Local commercial bank.* The term "local commercial bank" includes any commercial bank at which the issuing corporation ordinarily does business.

(5) *Illustrations.* The following examples illustrate the application of this paragraph (e):

Example (1). Individual A is the sole shareholder of corporation X. On January 1, 1990, A lends $100,000 to X in exchange for a 10-percent note. At about the same time, a local commercial bank lends $100,000 to X in exchange for a 10-percent note with approximately the same terms. The bank loan is personally guaranteed by A. However, the guarantee is required pursuant to the bank's normal lending practice as a substitute for detailed covenants, and the bank loan was made principally on X's credit (and not A's). Based on these facts, 10 percent is a reasonable rate of interest.

Example (2). A is the sole shareholder of corporation X. On July 1, 1989, A lends $100,000 to X in exchange for an 8-year note bearing annual interest at 10 percent. On December 31, 1989, X's debt-to-equity ratio, computed in accordance with the principles of paragraphs (g) and (h) of this section, is 1:1. On July 1, 1989, the section 6621 rate is 12 percent; the prime rate is 14 percent; and the interest rate for 10-year obligations determined by the Secretary pursuant to paragraph (e)(2)(i) of this section is 10 percent. Based on these facts, the rate of interest on the note is considered to be reasonable.

(6) *Cross reference.* For circumstances where the Commissioner may disregard a noncommercial term of an instrument in determining a reasonable interest rate, see § 1.385–3(b)(1)(iii).

(f) *Excessive debt*—(1) *In general.* If, immediately after an instrument is issued by a corporation—

(i) This section applies to the instrument, and

(ii) The corporation's debt is excessive,

then the instrument is treated as stock.

(2) *Excessive debt.* The corporation's debt is "excessive" if (i) all of the instrument's terms and conditions and (ii) the corporation's financial structure, taken together, would not be satisfactory to a bank, insurance company or similar lending institution which makes ordinary commercial loans. For this purpose, the corporation's size, industry, geographic location, and financial condition must be taken into account.

(3) *Safe harbor.* A corporation's debt is not excessive if—

(i) The corporation's outside ratio is less than or equal to 10:1, and

(ii) The corporation's inside ratio is less than or equal to 3:1.

(4) *Ratios.* The corporation's outside ratio is the debt-to-equity ratio determined under paragraphs (g) and (h) of this section. Its inside ratio is

determined in the same manner by excluding liabilities to independent creditors (except in computing stockholders' equity). Both ratios are determined at the end of the taxable

(2) *Stockholders' equity.* The stockholders' equity in a corporation is the excess of—

(i) The adjusted basis of its assets (less reserves for bad debts, if

Assets—$10 million cash. Liabilities and stockholders' equity—$5.0 million debentures; $4.8 million bond premium; $9.8 million total liabilities; $0.2 million stockholders' equity=$10.0 million.

Accordingly, D has a debt-to-equity ratio of

Example. Individual A organizes corporation X on December 31, 1985. X uses the calendar year as the taxable year. A contributes $100,000 in cash and property with a basis of $20,000 to X in exchange for 1,000 shares of common stock and a 10-percent note worth $20,000. On January 4,

the affiliated group. S–1's adjusted basis in the stock of S–2 is $15,000. In addition, S–2 has assets with an adjusted basis of $50,000 and no liabilities.

(b) Based on these facts, S–1 is treated as having $40,000 (*i.e.*, 80 percent of $50,000) of S–2's assets instead of the S–2 stock

agree to extend the maturity of the note until January 1, 2015. Assume that under the terms of the agreement the note will continue to pay 9-percent interest, and that on December 10, 1995, 9-percent is not a reasonable rate of interest (within the meaning of paragraph (e) of this section) for a note due on January 1,

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determined in the same manner by excluding liabilities to independent creditors (except in computing stockholders' equity). Both ratios are determined at the end of the taxable year in which the instrument is issued.

(5) *Exception.* This paragraph (f) does not apply to instruments issued in exchange for an equal or greater principal amount of indebtedness. For purposes of the preceding sentence, the principal amount of indebtedness includes interest accrued but unpaid up until the date of the exchange, but only to the extent that such interest is paid with principal in the exchange.

(6) *Illustrations.* The following examples illustrate the application of this paragraph (f):

Example (1). A, a nonresident alien, forms corporation X on December 31, 1982. X uses the calendar year as the taxable year. A transfers $1 million to X on December 31, 1982 for $200,000 of common stock and $800,000 of 22-percent subordinated notes. In addition, X borrows $200,000 from an unrelated commercial bank. Thus, X's inside debt-to-equity ratio (determined under paragraph (f)(4)) of this section) is greater than 3:1 (*i.e.*, $800,000: $200,000 = 4:1). Assume that a financial institution (such as a commercial bank) which makes ordinary commercial loans normally would lend X a maximum of between 1 and 1½ times A's equity investment under the terms and conditions of the subordinated notes. Assume further, however, that a lender engaged in the business of making high risk loans would lend X four times A's equity investment under the terms and conditions of the subordinate notes. Based on these facts, the subordinated notes are treated as stock.

Example (2). Individual B forms corporation Y on December 31, 1982. Y uses the calendar year as the taxable year. On December 31, 1982, Y acquires rental property from an unrelated third party for $100,000. It obtains the $100,000 from the following sources: $10,000 from B for common stock, $10,000 from C on a second mortgage note, and $80,000 from D on a first mortgage note. Assume that C and D are B's father and mother. Also assume that the terms and conditions of the mortgage notes and Y's financial structure would be satisfactory to financial institutions (such as commercial banks) which make ordinary commercial loans. Based on these facts, the mortgage notes are not treated as stock under this paragraph (f).

(g) *Debt-to-equity ratio.* The following rules apply for purposes of the regulations under section 385:

(1) *In general.* The debt-to-equity ratio of a corporation is the ratio that—

(i) The corporation's liabilities (excluding trade accounts payable, accrued operating expenses and taxes, and other similar items) bears to

(ii) The stockholders' equity.

(2) *Stockholders' equity.* The stockholders' equity in a corporation is the excess of—

(i) The adjusted basis of its assets (less reserves for bad debts, if applicable, and other similar asset offsets) over

(ii) Its liabilities (including liabilities excluded under paragraph (g)(1)(i) of this section).

(3) *Operating rules.* Except as provided in paragraph (g)(5) of this section, the adjusted basis of a corporation's assets and the amount of its liabilities are determined—

(i) In accordance with the tax accounting principles properly used by the corporation in determining taxable income; and

(ii) Without regard to the treatment of any interest as stock or indebtedness by reason of section 385, except that preferred stock is considered a liability if it is treated as indebtedness under the regulations under section 385.

(4) *Illustrations.* The following examples illustrate the application of this paragraph (g):

Example (1). On December 31, 1990, corporation M has assets with an adjusted basis of $150,000 and liabilities of $100,000. The stockholders' equity in M is $50,000 (*i.e.*, $150,000–$100,000). Assume that M has no trade accounts payable, accrued taxes and operating expenses, etc., and that the special rules in paragraph (g)(5) of this section do not apply. Based on these facts, the debt-to-equity ratio of corporation M on December 31, 1990 is 2:1 (*i.e.*, $100,000:$50,000).

Example (2). On December 31, 1990, corporation N has assets with an adjusted basis of $150,000. In addition, N has liabilities of $100,000, including $30,000 of trade accounts payable, accrued taxes and operating expenses, etc. The stockholders' equity in N is $50,000 (*i.e.*, $150,000–$100,000). Assume that the special rules in paragraph (g)(5) of this section do not apply. Based on these facts, N has a debt-to-equity ratio on December 31, 1990 of 7:5 (*i.e.*, $70,000:$50,000).

Example (3). On December 31, 1981, foreign corporation F organizes domestic corporation D to acquire and operate a coal mine. D uses the calendar year as the taxable year. Assume that F transfers $10 million to D on December 31, 1981, in exchange for $5 million of 28-percent, 25-year debentures and 100 shares of common stock. Also assume that the interest rate generally paid on similar debentures issued to independent creditors by corporations of the same general size and in the same general industry, geographical location, and financial condition is approximately 14 percent and that 28 percent is higher than the 3 rates described in paragraph (e)(2)(i) of this section (relating to the reasonable rate of interest rule of convenience). Based on these facts, the fair market value of the debentures is approximately $9.8 million. Therefore, the balance sheet of D on December 31, 1981 is approximately as follows:

Assets—$10 million cash. Liabilities and stockholders' equity—$5.0 million debentures; $4.8 million bond premium; $9.8 million total liabilities; $0.2 million stockholders' equity = $10.0 million.

Accordingly, D has a debt-to-equity ratio of approximately 49:1 (*i.e.*, $9.8 million:$0.2 million).

(5) *Special rules.* (i) In the case of a corporation that uses the cash method of accounting, the adjusted basis of trade accounts receivable shall be deemed to be equal to the face amount of the receivables (less an appropriate reserve for uncollectibles).

(ii) (A) In determining the debt-to-equity ratio of a corporation at the end of a taxable year, the stockholders' equity shall be increased by the amount of any net operating loss (determined without regard to sections 1211(a) and 1212) sustained by the corporation during the taxable year.

(B) The following example illustrates the application of this subdivision (ii):

Example. On January 1, 1985, individual A organizes corporation T and transfers $100,000 to it for $50,000 of stock and a $50,000 note. At the end of T's first taxable year, T has assets with an adjusted basis of $120,000 and liabilities of $80,000, including $30,000 of trade accounts payable, accrued taxes and operating expenses, etc. T also has a net operating loss (determined without regard to sections 1211(a) and 1212) for the taxable year of $10,000. Based on these facts, T's stockholders' equity at the end of the taxable year is $50,000 (*i.e.*, ($120,000–$80,000) + $10,000). Consequently, T's debt-to-equity ratio is 1:1 (*i.e.*, $50,000:$50,000).

(iii) In determining the debt-to-equity ratio of a corporation that is a bank (as defined in section 581) or is primarily engaged in a lending or finance business (as defined in section 279(c)(5)), adjustments shall be made in accordance with the principles of section 279(c)(5)(A).

(iv) In determining the debt-to-equity ratio of an insurance company (as defined in § 1.801–1(b)), insurance reserves shall be treated in the same manner as trade accounts payable.

(v) A liability is treated in the same manner as a trade account payable if it is—

(A) Incurred under a commercial financing agreement (such as an automobile "floorplan" agreement) to buy an item of inventory,

(B) Secured by the item, and

(C) Due on (or before) sale of the item.

(vi) (A) The debt-to-equity ratio shall be computed without regard to distortions created by a temporary contribution to equity or any similar contrivance.

(B) The following example illustrates the application of this subdivision (vi):

Example. Individual A organizes corporation X on December 31, 1985. X uses the calendar year as the taxable year. A contributes $100,000 in cash and property with a basis of $20,000 to X in exchange for 1,000 shares of common stock and a 10-percent note worth $20,000. On January 4, 1986, X redeems 900 shares of stock for $90,000 in cash. Based on these facts, X's debt-to-equity ratio on December 31, 1985 is determined by not treating the $90,000 paid in redemption of stock on January 4, 1986 as an asset of X. Therefore, the debt-to-equity ratio is 2:1 (*i.e.*, $20,000: $10,000).

(h) *Affiliated groups*—(1) *In general.* For purposes of the regulations under section 385, the debt-to-equity ratio of a member of an affiliated group of corporations (within the meaning of section 279(g)) is determined in accordance with paragraph (g) of this section and this subparagraph (1). If one includible corporation ("X") owns stock in another includible corporation ("Y"), then X's debt-to-equity ratio is determined as follows:

(i) X is treated as having a ratable share of Y's assets and liabilities. This ratable share is determined by dividing—

(A) The fair market value of the Y stock owned by X, by

(B) The fair market value of all of Y's stock.

(ii) X's investments in Y and Y's liabilities to X are eliminated. In addition, any other duplication in the amount of X's money and other assets and liabilities resulting from the application of this subparagraph (1) (for example, resulting from Y's ownership of stock in X) is eliminated.

(2) *Illustrations.* The following examples illustrate the application of this paragraph (h):

Example (1). Corporations P and S–1 comprise an affiliated group, P owning all the stock of S–1. On December 31, 1985, P's only asset is stock in S–1, and P has no liabilities. In addition, S–1 has assets with an adjusted basis of $200,000 and liabilities of $150,000. Assume that S–1 has no trade accounts payable, accrued taxes and operating expenses, etc. and that the special rules in paragraph (g)(5) of this section do not apply. Based on these facts, P is treated as having assets with an adjusted basis of $200,000 and liabilities of $150,000. Therefore, P's debt-to-equity ratio is 3:1 (*i.e.*, $150,000:$50,000).

Example (2). The facts are the same as in example (1), except that S–1's liabilities include a $50,000 note payable to P, and P's assets consist of this note and the S–1 stock. Eliminating this note, S–1's liabilities are only $100,000. Based on these facts, P is treated as having liabilities of $100,000 and assets with an adjusted basis of $200,000. Therefore, P's debt-to-ratio is 1:1 (*i.e.*, $100,000:$100,000).

Example (3). (a) The facts are the same as in example (1), except that S–1's assets include 80 percent of the one class of stock of corporation S–2, which also is a member of the affiliated group. S–1's adjusted basis in the stock of S–2 is $15,000. In addition, S–2 has assets with an adjusted basis of $50,000 and no liabilities.

(b) Based on these facts, S–1 is treated as having $40,000 (*i.e.*, 80 percent of $50,000) of S–2's assets instead of the S–2 stock. Therefore, S–1 is treated as having assets with an adjusted basis of $225,000 and liabilities of $150,000. Thus, S–1's debt-to-equity ratio is 2:1 (*i.e.*, $150,000:$75,000).

(i) [Reserved]

(j) *Change in terms*—(1) *In general.* If—

(i) The holder agrees to postpone the maturity date or otherwise to make a substantial change in the terms of an instrument,

(ii) The instrument is treated as indebtedness under the regulations under section 385, and

(iii) This section applies to the instrument on the day of agreement, then (for purposes of the regulations under section 385) the instrument is treated as newly issued in exchange for property on the day of agreement. Thus, beginning on the day of agreement the instrument may be treated as stock under paragraph (c) of this section (relating to hybrid instruments), paragraph (d) of this section (relating to certain instruments not issued for money), paragraph (f) of this section (relating to excessive debt), or paragraph (l) of this section (relating to instruments payable on demand). However, the exceptions to paragraphs (d) and (f) of this section may apply to the constructive exchange. See paragraphs (d)(3) and (f)(5) of this section.

(2) *Substantial.* For purposes of this paragraph (j), each change in the terms of an instrument is substantial if the fair market value of the instrument could be materially affected by that change. Thus, for example, subordination (however effected) or a change in interest rate is ordinarily a substantial change. On the other hand, a mere substitution of collateral need not be a substantial change. In addition, prepayment will not be considered a substantial change in terms.

(3) *Day of agreement.* For purposes of this paragraph (j), the "day of agreement" is the day the issuer and the holder enter into a binding contract to change the terms of an instrument.

(4) *Illustrations.* The following examples illustrate the application of this paragraph (j):

Example (1). A is the sole shareholder of corporation X. On January 1, 1990, X issues a $10,000, 9-percent note to A for $10,000 in cash. The note is due on January 1, 2000, and is treated as indebtedness under § 1.385–4(a). However, on December 10, 1995, A and X agree to extend the maturity of the note until January 1, 2015. Assume that under the terms of the agreement the note will continue to pay 9-percent interest, and that on December 10, 1995, 9-percent is not a reasonable rate of interest (within the meaning of paragraph (e) of this section) for a note due on January 1, 2015. Also assume that an independent creditor holding the note would not, in the exercise of ordinary diligence, have agreed to the extension of maturity and that, therefore, the exception of paragraph (d)(3) of this section is not applicable. Based on these facts, the note would be treated as stock under paragraph (d) of this section if it were newly issued in exchange for property on December 10, 1995. Therefore, the note is reclassified as stock on December 10, 1995.

Example (2). A is the sole shareholder of corporation X. X issues a $20,000, 10-percent note to A for $20,000 in cash on January 1, 2005. The note is due on January 1, 2007, and is treated as indebtedness under § 1.385–4(e). On December 10, 2005, A and X agree to extend the maturity of the note until January 1, 2037, and to increase the interest rate from 10 to 11 percent. For purposes of this paragraph (j), both changes in terms made on December 10, 2005 are substantial because both could materially affect the fair market value of the note. The result is the same even if the two changes are mutually offsetting in the sense that, taken together, they have no material effect on the fair market value of the note.

Example (3). B is the sole shareholder of corporation Y. On January 1, 1990, Y issues a $30,000, 10-percent note to B in exchange for $30,000. The note is due on January 1, 2000 and is treated as indebtedness under § 1.385–4(a). Interest on the note is paid according to its terms through 1999. During 1999, Y encounters business difficulties. On December 11, 1999, B agrees to extend the note until January 1, 2002 and also agrees to subordinate the note to a new bank loan being made at this time. Based on these facts, the note is treated (for purposes of the regulations under section 385) as newly issued in exchange for an equal principal amount of indebtedness. Assume that an independent creditor holding the note would, in the exercise of ordinary diligence, have agreed to both the extension of maturity and the subordination to the new bank loan. Assume also that Y would, in the exercise of ordinary diligence, have agreed to the extension and the subordination even if the note were held by an independent creditor. Based on these additional facts, the note continues to be treated as indebtedness notwithstanding the extension of maturity and the subordination to the new bank loan. See paragraph (d)(3) and example (4) of paragraph (d)(4) of this section. However, the note continues to be subject to this paragraph (j) and to paragraphs (k) and (l) of this section.

(k) *Nonpayment of interests*—(1) *In general.* If—

(i) A corporation fails to pay all or part of the interest due and payable on an instrument during a taxable year,

(ii) This section applies to the instrument on the last day of the taxable year, and

(iii) The owner of the instrument fails to exercise the ordinary diligence of an independent creditor,

then the instrument is treated as stock beginning on the later of the first day of the taxable year during which the failure

collateral as security for the debentures. Taking into account Z's prior record of paying all interest accrued until 1990, the pledge of collateral, and all other relevant facts and circumstances, it is assumed that L has exercised the ordinary diligence of an independent creditor. Based on these facts,

then the instrument is treated as stock beginning on the first day of that taxable year (or portion thereof). For purposes of this subparagraph (2), a rate of interest is considered reasonable if it is reasonable (within the meaning of

reasonable rate of interest (within the meaning of paragraph (e) of this section) on any day during 1989. Based on these facts, the demand notes are treated as stock.

Example (2). On August 24, 1988, F organizes corporation G to own and operate an outdoor amusement business. G uses the

extent that the outstanding balance of such loan, reduced by the outstanding balance of prior qualifying loans, does not exceed $25,000. For this purpose, a prior loan is "qualifying" if—

(A) It is described in paragraph (a)(1)

section, its status as a contribution to capital can never change.

(e) *Illustrations.* The following examples illustrate the application of this section:

Example (1). Corporation M uses the

(iii) The owner of the instrument fails to exercise the ordinary diligence of an independent creditor,

then the instrument is treated as stock beginning on the later of the first day of the taxable year during which the failure to pay occurs or the first day on which this section applied to the instrument.

(2) *Illustrations.* The following examples illustrate the application of paragraph (k)(1) of this section:

Example (1). N is the sole shareholder of corporation Y. On January 1, 1986, Y issues $100,000 of 10-year, 10-percent debentures. Eighty thousand dollars of the debentures are issued to N and are treated as indebtedness under § 1.385–4(a). The remaining debentures are issued to independent creditors. Y pays all interest accrued on the debentures semiannually until 1991. Because of adverse business conditions, Y does not pay the interest accrued in 1991 on either the debentures held by N or the debentures held by the independent creditors. Both N and the independent creditors decide not to bring suit against Y in the hope that conditions will improve and that Y will be able to meet its obligations. Based on these facts, the debentures held by N continue to be treated as indebtedness because N has not failed to exercise the ordinary diligence of an independent creditor.

Example (2). (a) M is the sole shareholder of X, a corporation that uses the calendar year as the taxable year. On January 1, 1985, X issues $100,000 of 10-year, 9-percent debentures. Ten thousand dollars of the debentures are issued to M and are treated as indebtedness under § 1.385–4(a). The remaining debentures are issued to independent creditors. X pays all interest accrued on the debentures semiannually until 1990. Because of adverse business conditions, X does not pay the interest accrued in 1990 on the debentures held by M. However, X continues to pay interest on the debentures held by the independent creditors. Based on these facts, the debentures held by M are treated as a separate class of instruments beginning on January 1, 1990. See paragraph (a)(5) of this section. Since the debentures held by M are treated as a separate class of instruments, the holdings of M's debentures and the stock of X are substantially proportionate as of January 1, 1990.

(b) M has failed to take the steps that a reasonably diligent independent creditor would take to secure payment of interest. Based on these facts, the debentures held by M are treated as stock beginning on January 1, 1990. However, the debentures held by the independent creditors are not affected.

Example (3). L owns 80 percent of the stock of Z, a corporation that uses the calendar year as the taxable year. On January 1, 1985, Z issues $200,000 of 10-year, 10-percent unsecured notes to L. Z pays all interest accrued on the notes semiannually until 1990. Because of adverse business conditions, Z does not pay the interest accrued in 1990 on the notes. On February 1, 1991, L agrees to postpone $10,000 of the interest accrued in 1990 until the notes mature on January 1, 1995. In addition, Z agrees to pledge certain collateral as security for the debentures. Taking into account Z's prior record of paying all interest accrued until 1990, the pledge of collateral, and all other relevant facts and circumstances, it is assumed that L has exercised the ordinary diligence of an independent creditor. Based on these facts, the notes continue to be treated as indebtedness.

(3) *Failure to pay.* For purposes of this section, a corporation fails to pay interest on an instrument during a taxable year of the corporation if the interest is not actually paid within 90 days after the end of the year. For this purpose, payment of interest with property other than money will be considered actual payment, but only to the extent of the fair market value of such property. For example, payment of interest with a note will be considered actual payment, but only to the extent of the fair market value of the note.

(4) *Special rule.* (i) For purposes of this paragraph (k), interest accrued while this section does not apply to the instrument is disregarded.

(ii) The following example illustrates the application of this subparagraph (4):

Example. Individual A owns all the stock of X, a corporation that uses the calendar year as the taxable year. On January 1, 1982, X issues $10,000 of 8-percent debentures to B, an independent creditor. The debentures are treated as indebtedness under § 1.385–4(a) (relating to instruments generally). Interest on the debentures is payable semiannually on January 1 and July 1 of each year. X fails to make the $400 payment of interest due on July 1, 1986, and A then buys the debentures from B. X actually pays the $400 interest due on January 1, 1987, but A forgives the $400 payment that was due on July 1, 1986. Based on these facts, the debentures are not treated as stock under this paragraph (k). There is no requirement that interest accrued while B held the debentures must be paid. However, X may have income under § 1.61–12(a) (relating to discharge of indebtedness).

(l) *Payable on demand*—(1) *Initial classification.* If immediately after it is issued—

(i) This section applies to an instrument,

(ii) By its terms, the instrument is payable on demand, and

(iii) The stated annual rate of interest on the instrument is not reasonable (within the meaning of paragraph (e) of this section),

then the instrument is treated as stock.

(2) *Reclassification.* If for any taxable year (or portion thereof)—

(i) Either by its terms or by operation of paragraph (l)(3) of this section, an instrument is payable on demand,

(ii) This section applies to the instrument, and

(iii) The issuing corporation fails to pay interest on the instrument at a reasonable rate,

then the instrument is treated as stock beginning on the first day of that taxable year (or portion thereof). For purposes of this subparagraph (2), a rate of interest is considered reasonable if it is reasonable (within the meaning of paragraph (e) of this section) as of any day of the taxable year.

(3) *Nonpayment of principal.* If—

(i) The issuing corporation fails to make a scheduled payment of principal on an instrument within 90 days after the payment is due, and

(ii) The holder of the instrument fails to exercise the ordinary diligence of an independent creditor,

then, for purposes of this paragraph (l), the instrument is considered to be payable on demand beginning on the day after the day the principal is due.

(4) *Exceptions.* (i) This paragraph (l) does not apply to an instrument that is actually retired within 6 months after the day of issue provided that the sum of—

(A) The outstanding principal amount of all such instruments, plus

(B) The outstanding balance of all loans described in § 1.385–7(a)(2)(i), does not exceed $25,000 on the day of issue. For this purpose, an instrument is not considered to be actually retired if it is reissued, renewed, or offset in any manner.

(ii) (A) If a failure to pay interest on an instrument at a reasonable rate results solely from a failure to pay interest when due, then paragraph (l)(2) of this section does not apply. See, however, paragraph (k) of this section (relating to nonpayment of interest when due).

(B) The following example illustrates the application of this subdivision (ii):

Example. Individual A owns 100 percent of the stock of corporation X. On January 1, 1990, X issues a 14-percent demand note to A. X uses the calendar year as its taxable year. Assume that 14 percent is a reasonable rate of interest (within the meaning of paragraph (e) of this section) on January 1, 1990, but that X fails to pay any part of the interest due on the note for the taxable year 1990. Based on these facts, paragraph (l)(2) of this section does not apply. However, if A has failed to exercise the ordinary diligence of an independent creditor, the note will be treated as stock under paragraph (k) of this section.

(5) *Illustrations.* The following examples illustrate the application of this paragraph (l) and related provisions:

Example (1). J and N operate a partnership that distributes beer. On April 1, 1989, J and N organize corporation T and transfer the assets of the partnership to the corporation. In exchange for the assets of the partnership, J and N each receive half of the common stock of T and an 8-percent demand note for $45,000. Assume that 8 percent is not a reasonable rate of interest (within the meaning of paragraph (e) of this section) on any day during 1989. Based on these facts, the demand notes are treated as stock.

Example (2). On August 24, 1986, F organizes corporation G to own and operate an outdoor amusement business. G uses the calendar year as its taxable year. On August 25, 1986, F transfers trucking equipment, mechanical rides, and other assets to G in exchange for all the capital stock of G and a 6-percent note for $200,000. The note is due on August 25, 1990, and is classified as indebtedness under § 1.385–4(a). However, G does not pay the principal within 90 days after it is due, and F does not pursue such payment with the ordinary diligence of an independent creditor. Based on these facts, beginning on August 26, 1990, the note is considered to be payable on demand. Assume that during 1990 the lowest reasonable rate of interest on a demand note issued by G (taking into account the financial condition of G) is 12 percent a year, and that under applicable local law the note continues to pay 6 percent interest after maturity. Based on these facts, the note is treated as stock on August 26, 1990.

Example (3). The facts are the same as in example (2) except that G agrees to pay 12-percent interest on the note. In addition, assume that 12 percent is a reasonable rate of interest on August 26, 1990. Based on these facts, the note is not treated as stock under this paragraph (l).

Example (4). The facts are the same as in example (3), except that G issues a 12-percent demand note for $200,000 to F in payment for the 6-percent note due on August 25, 1990. Based on these facts, the 6-percent note is not treated as stock. In addition, the 12-percent note may be treated as indebtedness under § 1.385–4(a).

(m) *Meaning of terms*—(1) *Debt-to-equity ratio.* For the definition of the term "debt-to-equity ratio", see paragraphs (g) and (h) of this section.

(2) *Failure to pay.* For the definition of the term "failure to pay," see paragraph (k)(3) of this section.

(3) *Fair market value.* For the definition of the term "fair market value", see § 1.385–3(b).

(4) *Instrument.* For the definition of the term "instrument", see § 1.385–3(c).

§ 1.385–7 Certain other obligations.

(a) *Scope*—(1) *In general.* This section applies to any loan of money (*e.g.*, a cash advance) made to a corporation unless—

(i) The loan is made by an independent creditor (within the meaning of § 1.385–6(b)), or

(ii) The loan is evidenced by an instrument within six months after the day the loan is made.

(For treatment of the instrument as stock or indebtedness, see §§ 1.385–4 through 1.385–6).

(2) *Exception.* (i) This section does not apply to a loan repaid within six months after the day it is made but only to the extent that the outstanding balance of such loan, reduced by the outstanding balance of prior qualifying loans, does not exceed $25,000. For this purpose, a prior loan is "qualifying" if—

(A) It is described in paragraph (a)(1) of this section, and

(B) This section does not apply to the prior loan by reason of this paragraph (a)(2).

(ii) For purposes of paragraph (a)(2)(i)(A) of this section, a loan is not considered to be actually repaid if it is renewed or offset in any manner.

(b) *Initial classification*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, a loan to which this section applies is treated as indebtedness.

(2) *Exception.* A loan to which this section applies is treated as a contribution to capital if the debtor corporation has excessive debt when the loan is made (under the principles of § 1.385–6 (f)).

(c) *Reclassification*—(1) *In general.* If a loan is treated as indebtedness under paragraph (b)(1) of this section and if the debtor corporation fails to pay interest on the loan at a reasonable rate during any taxable year, then the loan is reclassified as a contribution to capital as of the later of the first day of the taxable year or the date of the loan. For purposes of this subparagraph (1), a rate is considered reasonable if it is reasonable (under the principles of § 1.385–6(e)) as of any day of the taxable year.

(2) *Special rule.* For purposes of paragraph (c)(1) of this section, a corporation is not considered to pay interest on a loan during a taxable year unless the interest is actually paid within 90 days after the end of the year. For this purpose, payment of interest with property other than money will be considered actual payment, but only to the extent of the fair market value of such property. For example, payment of interest with a note will be considered actual payment, but only to the extent of the fair market value of the note.

(d) *Effect of this section*—(1) *Initial classification.* If a loan is treated as a contribution to captial under paragraph (b)(2) of this section, then all payments of principal and interest on the loan are treated as distributions to which section 301 applies.

(2) *Reclassification.* If a loan is reclassified as a contribution to capital under paragraph (c) of this section, then all payments of principal and interest made on the loan after the beginning of the year of reclassification are treated as distributions to which section 301 applies. In addition, once a loan is reclassified under paragraph (c) of this section, its status as a contribution to capital can never change.

(e) *Illustrations.* The following examples illustrate the application of this section:

Example (1). Corporation M uses the calendar year as the taxable year. A is the sole shareholder of M. On March 1, 1968, A advances $73,000 to M, and M establishes an account payable to A in the amount of $73,000. The account payable is entered on the books of M but is not evidenced by an instrument. The account payable is not repaid within six months. In addition, M has excessive debt within the meaning of § 1.385–6(f). Based on these facts, the account payable is classified as a contribution to capital.

Example (2). The facts are the same as in example (1), except that M does not have excessive debt. The account payable is classified as indebtedness. However, if M fails to pay (before April 1, 1987) interest at a reasonable rate on the account payable for the last 10 months of 1986, the account payable will be reclassified as a contribution to capital (effective retroactively to March 1, 1986).

Example (3). Corporation X, which has excessive debt, uses the calendar year as the taxable year. On January 1, 1985, X's sole shareholder advances $60,000 to X. The advance is entered on the books of X but is not evidenced by an instrument. X repays $40,000 of the advance on April 1, 1985 and the remaining $20,000 on October 1, 1985. Based on these facts, this section does not apply to $25,000 of the advance that was repaid on April 1, 1985. The remaining $35,000 is treated as a contribution to capital. Therefore, $15,000 of the amount repaid on April 1 and the entire $20,000 repaid on October 1, are treated as distributions to which section 301 applies.

Example (4). (a) Corporation Y, which has excessive debt, uses the calendar year as the taxable year. A is the sole shareholder of Y. On January 1, 1990, A advances $100,000 to Y. Y repays the advance on August 1, 1990. Based on these facts, the $100,000 advance is treated as a contribution to capital.

(b) On June 1, 1990, A advances an additional $20,000 to Y. The $20,000 advance is also repaid on August 1, 1990. Based on these facts, this section does not apply to the advance of $20,000.

(c) On July 1, 1990, A advances another $10,000 to Y. The $10,000 advance is repaid on July 15, 1990. The $20,000 advance described in (b) is a prior qualifying loan with respect to the $10,000 advance (although this cannot be determined until August 1, 1990). Therefore, this section does not apply to $5,000 (*i.e.*, $25,000–$20,000) of the advance made on July 1, 1990. However, the remaining $5,000 of this advance is treated as a contribution to capital.

Example (5). Corporations S and T are wholly-owned subsidiaries of corporation P. On January 1, 1990, S makes a non-interest bearing advance of $50,000 to T. The advance is entered on the books of T but it is not evidenced by an instrument and it is not repaid within 6 months. Based on these facts, S is treated as distributing $50,000 to P, and P is then treated as contributing this amount to the capital of T.

§ 1.385–8 Locked interests.

(a) *In general.* For purposes of the regulations under section 385, two or

(b) *Illustrations.* The following examples illustrate the application of this section:

Example (1). On September 25, 1982, J organizes corporation N and acquires all of its capital stock. In addition, J guarantees a

price is a reasonable redemption premium under § 1.305–5.

(3) Current dividends on the preferred stock are contingent (*e.g.*, payable only out of earned surplus or only at the board of directors' discretion).

insolvent (i.e., not able to pay its debts as they become due) or would be rendered insolvent by the payment. Second, sinking fund payments are not permitted if they would impair E's capital. The first restriction is not a contingency that prevents the

earned surplus plus unrealized appreciation of H's assets (but not out of capital or capital surplus). Based on these facts, the preferred stock does not provide for fixed payments in the nature of interest but does provide for fixed payments in the nature of principal.

and 7 percent, P lends $10,000 to S on a 6-percent, 10-year note. The fair market value of the note on the day of issue is $8,000. Based on these facts, P is treated as making a contribution of $2,000 to the capital of S (see § 1.385-3(a)(1)), and the issue price of the note

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is then treated as contributing this amount to the capital of T.

§ 1.385–8 Locked interests.

(a) *In general.* For purposes of the regulations under section 385, two or more distinct interests in a corporation are treated as separate even though title to one cannot be transferred without transferring title to the others. Thus, for example, if a corporation issues a bond with a nondetachable warrant, the bond and the warrant are treated as two separate interests in the corporation.

(b) *Illustrations.* The following examples illustrate the application of this section:

Example (1). On January 1, 1989, corporation X issues 20-year, $1,000 debentures with nondetachable warrants. Each warrant entitles the holder to buy 100 shares of common stock in X for $10 a share. Based on these facts, the debentures and the warrants are treated as separate interests.

Example (2). The facts are the same as in example (1), except that each debenture can be surrendered on the exercise of a warrant in lieu of cash. The result is the same as in example (1).

Example (3). On January 1, 1990, corporation Y issues a 25-year, $1,000 debenture to individual A for $1,000 in cash. Y has no other debentures outstanding. The debenture pays interest at a rate of $100 a year; $50 is payable in all events and the other $50 is noncumulative and payable only if earned. Individual A owns 80 percent of the stock in Y, and the fair market value of the debenture is $1,000. Based on these facts, the debenture is treated as stock under § 1.385–6(c) (relating to hybrid instruments held proportionately).

Example (4). The facts are the same as in example (3), except that Y issues a $600 debenture together with four shares of preferred stock to A. The debenture pays fixed interest of $50 a year and has a fair market value of $600. Each share of preferred stock has a liquidation value of $100 and pays a noncumulative dividend of $12.50 a year if earned. In addition, Y is required to redeem the preferred stock at $100 a share at the end of 25 years. Assume that § 1.385–6(f) (relating to excessive debt) does not apply to the debenture. Based on these facts, the debenture is treated as indebtedness under § 1.385–4(a). The result is the same even if A cannot transfer title to the debenture without also transferring title to the preferred stock.

§ 1.385–9 Guaranteed loans.

(a) *In general.* If—

(1) A shareholder in a corporation guarantees a loan made to the corporation (either directly or indirectly, *e.g.*, by pledging collateral), and

(2) Under relevant legal principles (applied without reference to the regulations under section 385), the loan is treated as made to the shareholder, then the shareholder is treated as making a contribution to the capital of the corporation.

(b) *Illustrations.* The following examples illustrate the application of this section:

Example (1). On September 25, 1982, J organizes corporation N and acquires all of its capital stock. In addition, J guarantees a note for $600,000 issued by N on September 28, 1982. Assume that under the principles of *Plantation Patterns, Inc.* v. *Commissioner,* 462 F. 2d 712 (5th Cir. 1972), cert. denied, 409 U.S. 1076 (1972), aff'g T.C. Memo. Dec. 1970–82 (1970), and other relevant case law, the note is properly treated as an obligation of J. Based on these facts, J is treated as making a $600,000 contribution to the capital of N.

Example (2). The facts are the same as in example (1). In addition, N pays $33,000 in interest and $100,000 in principal on the note on September 28, 1983. The total $133,000 in payments is treated as a distribution from N to J to which section 301 applies. Thus, N is not allowed a deduction for interest paid under section 163. However, J is allowed a deduction of $33,000 for interest paid.

Example (3). The facts are the same as in example (1). In addition, N defaults and J is required to pay $500,000 in principal on the note. Because J is treated as the primary obligor on the note (and not merely as a guarantor), the $500,000 payment will in no circumstances be treated as a loss from a loan or as a contribution to the capital of N.

Example (4). The facts are the same as in example (1), except that J does not guarantee the note issued by N until September 28, 1983. Assume that this note is properly treated as an obligation of J beginning on September 28, 1983. Also assume that on that date a principal balance of $400,000 is due on the note. Based on these facts, J is treated as making a $400,000 contribution to the capital of N on September 28, 1983.

§ 1.385–10 Certain preferred stock.

(a) *In general.* Preferred stock is treated as stock if it does not provide for fixed payments (as defined in § 1.385–5(d)) in the nature of either principal or interest. On the other hand, preferred stock is treated as an instrument if it provides for fixed payments in the nature of principal or interest. Accordingly, preferred stock treated as an instrument is classified as indebtedness under § 1.385–4(a) (relating to instruments generally) unless it is classified as stock under § 1.385–5 (relating to hybrid instruments) or § 1.365–6 (relating to proportionality). See example (13) of § 1.385–5(e).

(b) *Rule of convenience.* Notwithstanding paragraph (a) of this section, preferred stock is treated as stock (and not as an instrument) if it satisfies each of the following conditions:

(1) The preferred stock is denominated preferred stock and is treated as preferred stock under applicable nontax law.

(2) The excess (if any) of the preferred stock's redemption price over its issue price is a reasonable redemption premium under § 1.305–5.

(3) Current dividends on the preferred stock are contingent (*e.g.*, payable only out of earned surplus or only at the board of directors' discretion).

(4) The right to receive dividend payments and payments in redemption of the preferred stock may not be enforced under applicable nontax law if either (i) the issuing corporation is insolvent or would be rendered insolvent by such payments or (ii) the making of such payments would impair the issuing corporation's capital (*i.e.*, the fair market value of the remaining assets of the issuing corporation would be less than the sum of its liabilities and the liquidation value of its other classes of preferred stock that are senior or equal in rank).

(5) Default in the making of a dividend payment or a payment in redemption of the preferred stock does not entitle the holder to accelerate redemption payments.

(6) The preferred stock has a term (during which the holder cannot compel redemption) of at least 10 years. In the case of an issue of preferred stock which provides for redemption over a period of years, the term shall be the weighted average life of the issue.

(c) *Illustrations.* The following examples illustrate the application of this section:

Example (1). On August 8, 1985, corporation D issues 500 shares of $100 par value, 6-percent preferred stock. Dividends on the preferred stock are cumulative, and D may not pay dividends on its common stock or repurchase shares of common stock so long as dividends on the preferred stock are in arrears. However, dividends on the preferred stock are payable only if declared by D's board of directors. In addition, the preferred stock is callable after August 8, 1990 for $100 a share at the discretion of D's board of directors. Thus, the holders of the preferred stock cannot compel D to redeem or purchase the stock. Based on these facts the preferred stock does not provide for fixed payments in the nature of principal or interest. Therefore, the preferred stock is treated as stock.

Example (2). On February 2, 1984, corporation E issues 500 shares of cumulative Class A sinking fund preferred stock. The Class A preferred stock provides for quarterly dividends, payable out of E's earnings, and for sinking fund payments, which must be used by E to redeem the preferred stock on specified dates. The weighted average life of the preferred stock issue is less than 10 years. Under E's articles of incorporation, sinking fund payments must be made out of all "legally available funds." Under applicable local law, this means that the preferred stockholders have an absolute right to compel the sinking fund payments subject to only two restrictions. First, sinking fund payments are not permitted if E is insolvent (i.e., not able to pay its debts as they become due) or would be rendered insolvent by the payment. Second, sinking fund payments are not permitted if they would impair E's capital. The first restriction is not a contingency that prevents the payments from being considered fixed. See § 1.385–5(d)(5)(iii). The second restriction is, in effect, a subordination provision in that it merely prevents preferential treatment of the Class A preferred stock over equal or more senior issues of preferred stock. Based on these facts, the Class A preferred stock provides for fixed payments in the nature of principal. Therefore, the Class A preferred stock is treated as an instrument. Assuming that sinking fund payments must include all accrued and unpaid dividends, the Class A preferred stock also provides for fixed payments in the nature of interest. For this purpose, the dividends are considered to be fixed at the time they become part of a sinking fund payment. See example (13) of § 1.385–5(e).

Example (3). The facts are the same as in example (2) except that the weighted average life of the preferred stock issue is more than 10 years. Additionally, the preferred stock is treated as preferred stock under applicable nontax law; the issue price of the preferred stock is equal to its redemption price; and default in the making of a dividend payment does not entitle the holders of the preferred stock to accelerate sinking fund payments. Based on these facts, the Class A preferred stock is treated as stock under paragraph (b) of this section. The result would be the same if, under applicable local law, E would be considered insolvent (and therefore sinking fund payments would not be permitted) if its liabilities exceeded its assets (rather than if E were not able to pay its debts as they became due).

Example (4). F is a large, stable, and consistently profitable corporation. On March 21, 1985, F issues 50,000 shares of $100 par value, 9-percent sinking fund preferred stock. Dividends and sinking fund payments, which begin five years after issuance, are mandatory to the extent of retained earnings. In addition, dividends are cumulative, but they are payable only out of retained earnings. Based on these facts, the preferred stock does not provide for fixed payments in the nature of either principal or interest. Therefore, the preferred stock is treated as stock.

Example (5). The facts are the same as in example (1). In addition, corporation G, which owns all the common stock of D, unconditionally guarantees timely payment of all dividends on the preferred stock. Further, G guarantees that the preferred stock will be called for redemption by August 8, 2005. Based on these facts, the preferred stock is treated as an instrument. See § 1.385–5(d)(7).

Example (6). H, a closely-held corporation, issues 1,000 shares of $100 par value, 12-percent preferred stock on January 1, 1984. Dividends are cumulative but are payable only out of earned surplus. The preferred stock is subject to mandatory redemption after 9 years at a redemption price of $100 per share plus accrued but unpaid dividends. However, the accrued but unpaid dividends are payable, upon redemption, only out of earned surplus plus unrealized appreciation of H's assets (but not out of capital or capital surplus). Based on these facts, the preferred stock does not provide for fixed payments in the nature of interest but does provide for fixed payments in the nature of principal. Therefore, the preferred stock is treated as an instrument.

Par. 3. Section 1.482–2 is amended by adding "(applying section 385, where applicable)" after "bona fide indebtedness" in the first sentence of paragraph (a)(3) and by adding new paragraphs (a)(4), (a)(5) and (a)(6) to read as follows:

§ 1.482–2 Determination of taxable income in specific situations.

(a) *Loans or advances.* * * *

(4) *Relation to section 1232.* In determining the rate of interest actually charged on a loan or advance evidenced by a written instrument there is taken into account—

(i) Any original issue discount included in income by the lender under section 1232(a)(3), or

(ii) Any bond premium deducted by the lender under § 1.61–12(c)(2).

(5) *Relation to section 385.* If a taxpayer is subject both to section 482 and to section 385 with respect to a loan, then the sections will be applied in the following order:

(i) First, sections 385 and 1232 (and the regulations under such sections and under § 1.61–12(c)(2)) are applied to determine:

(A) Whether the loan is treated as stock or indebtedness;

(B) Whether a capital contribution or a distribution under section 301 is imputed; and

(C) Whether there is original issue discount or bond premium.

(ii) Second, section 482 is applied.

The fact that a stated rate of interest on a loan falls within the safe haven of paragraph (a)(2)(iv) of this section does not preclude the application of section 385 to such loan. However, the interest rate actually charged (within the meaning of paragraph (a)(4) of this section) after application of sections 385 and 1232 will ordinarily be considered an arm's length interest rate for purposes of section 482. If a loan is classified as stock under section 385, then subparagraph (1) of this paragraph (a) is inapplicable.

(6) *Illustration.* The following example illustrates the application of subparagraphs (4) and (5) of this paragraph (a):

Example. Domestic corporation P, a calendar year taxpayer, owns all of the stock of domestic corporation S. At a time when the safe haven interest rate of paragraph (a)(2)(iv) of this section is between 5 percent and 7 percent, P lends $10,000 to S on a 6-percent, 10-year note. The fair market value of the note on the day of issue is $8,000. Based on these facts, P is treated as making a contribution of $2,000 to the capital of S (see § 1.385-3(a)(1)), and the issue price of the note within the meaning of section 1232(b)(2) is $8,000. Therefore, P must include $200 in income each year under section 1232(a)(3). As a result, $800 of interest is considered to be actually charged each year, and the rate of interest actually charged on the note is 10 percent (i.e., $800/$8,000). The rate of interest arrived at in this manner is considered to be an arm's length interest rate for purposes of this section.

§ 1.992–1 [Amended]

Par. 4. Section 1.992–1 is amended by adding the phrase "(applying section 385, where applicable)" after the word "debt" in paragraph (d)(2)(i)(*a*) and by inserting the phrase "Notwithstanding section 385, qualifies" in lieu of the word "Qualifies" in paragraph (d)(2)(i)(*b*).

Par. 5. Section 1.1371–1 is amended by deleting the last three sentences of paragraph (g) and by inserting a new paragraph (h) to read as follows:

§ 1.1371–1 Definition of small business corporation.

* * * * *

(h) *Relation section 385.* [Reserved]

(Sections 385 and 7805 of the Internal Revenue Code of 1954 (83 Stat. 613 and 68A Stat. 917; 26 U.S.C. 385 and 7805))

William E. Williams,
Acting Commissioner of Internal Revenue.

Approved: December 23, 1980.

Emil M. Sunley,
Acting Assistant Secretary of the Treasury.

[FR Doc. 80-40626 Filed 12-29-80; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

Conditional Approval of the Permanent Program Submission From the State of New Mexico Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: On February 28, 1980, the State of New Mexico submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of the submission is to demonstrate the

State's intent and the capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

After providing opportunities for

C. General Background on the New Mexico Program Submission.
D. Secretary's Findings.
E. Disposition of Public Comments.
F. Secretary's Decision.

Part A sets forth the statutory and

submitting state programs and minimum standards and procedures the state program must include to be eligible for approval, are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064); and Parts

after the Secretary implements the federal program.

Different criteria apply to various elements of a state program for the purpose of determining whether they can be approved by the Department.

must be the same as or similar to the procedures in Section 518 and 521 of SMCRA and must be consistent with 30 CFR Parts 808, 843, 845, and Subchapter G.

3. *Other State Program Elements*—If a

of several lawsuits challenging the Secretary's permanent regulatory program.

There have been three recent decisions from the District Court that affect the decision-making process.

State's intent and the capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

After providing opportunities for public comment and a thorough review of the program submission, the secretary of the Interior has determined that the New Mexico program meets the minimum requirements of SMCRA and the permanent program regulations, except for minor deficiencies discussed below under "Supplementary Information." Accordingly, the Secretary of the Interior has conditionally approved the New Mexico program.

A new Part 931 is being added to 30 CFR Chapter VII to implement this decision.

EFFECTIVE DATE: This conditional approval is effective December 31, 1980.

This conditional approval will terminate as specified in 30 CFR 931.11, unless the deficiencies identified below have been corrected in accord with 30 CFR 931.11, adopted below.

ADDRESSES: Copies of the New Mexico program and the administrative record on the New Mexico program, including the letter from the Division of Mining and Minerals agreeing to correct the deficiencies which resulted in the conditional approval, are available for public inspection and copying during business hours at:

Energy and Minerals Department, Division of Mining and Minerals, First Northern Plaza, East, Room 200, Santa Fe, New Mexico 87501, Telephone: (505)827–5451.

Office of Surface Mining, Brooks Towers, 1020 15th Street, Denver, Colorado 80202. Telephone: (303) 837–5421.

Office of Surface Mining, Room 153, Interior South Building, 1951 Constitution Ave., NW., Washington, DC 20240, Telephone: (202) 343–4728.

FOR FURTHER INFORMATION CONTACT: Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Ave., NW, Washington, DC 20240, Telephone: (202) 343–4225.

SUPPLEMENTARY INFORMATION:

Introduction

This notice is organized to assist understanding of the findings underlying the Secretary's decision. It is divided into six major parts:

A. General Background on the Permanent Program.
B. General Background on the State Program Approval Process.
C. General Background on the New Mexico Program Submission.
D. Secretary's Findings.
E. Disposition of Public Comments.
F. Secretary's Decision.

Part A sets forth the statutory and regulatory framework of the environmental protection regulatory scheme under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

Part B sets forth the general statutory and regulatory scheme applicable to all states which wish to obtain primary jurisdiction to implement the permanent program within their borders.

Part C summarizes the steps undertaken by New Mexico and officials of the Department of the Interior, beginning with New Mexico's initial program submission and its program amendments and leading to the decision being announced today.

Part D contains the findings the Secretary has made with respect to each of the thirty criteria for evaluation of a state program found in SMCRA and the Secretary's regulations. Part D contains the reasons for each finding. For each finding, only the significant differences between federal laws and rules and the New Mexico program are discussed.

Relevant public comments are analyzed in Part E, and the provisions of New Mexico's program, as revised, are evaluated.

Part F identifies and explains the Secretary's decision.

A. General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501–503 of SMCRA, 30 U.S.C. 1251–1253. The initial program became effective on February 3, 1978, for new coal mining operations on non-federal and non-Indian lands which received state permits on or after that date, and was effectuated on May 3, 1978, for all coal mines existing on that date. The initial program rules were promulgated by the Secretary on December 13, 1977, under 30 CFR Parts 710–725, 42 FR 62639 *et seq.*

The permanent program will become effective in each state upon the approval of a state program by the Secretary of the Interior or implementation of a federal program within the state. If a state program is approved, the state, rather than the federal government, will be the primary regulator of activities subject to SMCRA.

The federal regulations for the permanent program, including procedures for states to follow in submitting state programs and minimum standards and procedures the state program must include to be eligible for approval, are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064); and Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published March 13, 1979 (44 FR 15312–15463). Errata notices were published March 14, 1979 (44 FR 15485), August 24, 1979 (44 FR 49673–49687), September 14, 1979 (44 FR 53507–53509), November 19, 1979 (44 FR 66195), April 16, 1980 (45 FR 26001), June 5, 1980 (45 FR 37818), and July 15, 1980 (45 FR 47424). Amendments to the regulations were published October 22, 1979 (44 FR 60969), as corrected December 19, 1979 (44 FR 75143), December 19, 1979 (44 FR 75303), December 31, 1979 (44 FR 77440–77447), January 11, 1980 (45 FR 2626–2629), April 16, 1980 (45 FR 25998–26001), May 20, 1980 (45 FR 33926–33927), June 10, 1980 (45 FR 39446–39447), and August 6, 1980 (45 FR 52306–52324) and November 20, 1980 (45 FR 76932–76935). Portions of these regulations have been suspended pending further rulemaking. See 44 FR 67942 (November 27, 1979), 44 FR 77447–77454 (December 31, 1979), 45 FR 6913 (January 30, 1980) and 45 FR 51547–51550 (August 4, 1980).

B. General Background on State Program Approval Process

Any state wishing to assume primary jurisdiction for the regulation of coal mining under SMCRA may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission. The federal regulations governing state program submissions are found at 30 CFR Parts 730–732. After review of the submission by the Office of Surface Mining Reclamation and Enforcement (OSM) and other agencies, as well as an opportunity for the state to make additions or modifications to the program, and an opportunity for public comment, the Secretary may approve the program unconditionally; approve it conditioned upon the correction of minor deficiencies in accordance with a specified timetable; or disapprove the program in whole or in part. If the program is disapproved, the state may submit revisions to correct the items that need to be changed to meet the requirements of SMCRA and the applicable federal regulations. If the revised program is also disapproved, SMCRA requires the Secretary of the Interior to establish a federal program in that state. The state may again request approval to assume primary jurisdiction after the Secretary implements the federal program.

Different criteria apply to various elements of a state program for the purpose of determining whether they can be approved by the Department. There are three categories of potential program elements, each with its own standard of review, as follows:

1. *"State window" proposals*—Pursuant to 30 CFR 731.13, an alternative proposed by a state to a provision of the Secretary's regulations must be both in accordance with SMCRA and consistent with the Secretary's regulations. Under 30 CFR 730.5, "in accordance with" SMCRA means that the state alternative meets the minimum requirements and includes all applicable provisions of SMCRA, while "consistent with" the Secretary's regulations means that the state proposal is not less stringent than and meets the applicable provisions of 30 CFR Chapter VII.

The state window provision may not be used to vary the requirements of SMCRA. The Secretary will approve a state window item that achieves the same or greater degree of environmental protection and procedural safeguards as the federal regulations. In addition, the state must demonstrate that the alternative provision is necessary because local requirements or local environmental conditions are such that either the use of the federal regulations would not allow the state to accomplish the intended result or the alternative will accomplish the result in a more efficient or effective manner.

2. *Regulations for Inspection and Enforcement*—As required by Section 518 of SMCRA, the civil and criminal penalty provisions of a state program must be no less stringent than the requirements of Section 518 and must be consistent with the federal regulations in 30 CFR Part 845 (see Item 1 above for meaning of "consistent with"). However, as discussed below, a recent court decision by the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulations Litigation* (Civil Action No. 79–1144, May 16, 1980), has held that states cannot be required to establish a point system like that in Part 845, and the Secretary cannot require that state systems result in penalties as high as those under OSM's point system. Under Section 521 of SMCRA, the sanctions in a state program must also be no less stringent than those in Section 521 and must be consistent with 30 CFR Part 808, Sections 843.11, 843.12, 843.19, and Subchapter G (Permit Systems). State regulations which establish the procedural requirements related to civil and criminal penalties and sanctions must be the same as or similar to the procedures in Section 518 and 521 of SMCRA and must be consistent with 30 CFR Parts 808, 843, 845, and Subchapter G.

3. *Other State Program Elements*—If a state provision is neither a state window alternative nor a procedure or sanction related to inspection and enforcement, then the standard to be applied in evaluating each element is whether the state provision is consistent with the corresponding provision of the federal regulations and in accordance with the relevant section of SMCRA, as set forth in 30 CFR 732.15(b) for each of the 16 state program requirements. Under Section 505 of SMCRA and 30 CFR 730.11, state provisions which provide more stringent land use and environmental controls are not to be considered to be inconsistent with the federal requirements.

The procedure and timetable for the Secretary's review of state programs was initially published March 13, 1979 (44 FR 15326), to be codified at 30 CFR Part 732.

As a result of the litigation in the U.S. District Court for the District of Columbia discussed below the deadline for states to submit proposed programs was extended by August 3, 1979, to March 3, 1980. Section 732.11(d) required that if all required and fully enacted laws and regulations were not part of the program by November 15, 1979, the program would be disapproved. Because the submission deadline had been changed to March 3, 1980, 30 CFR 732.11(d) was amended to provide that program submissions that do not contain all required and fully enacted laws and regulations by the 104th day following program submission will be disapproved pursuant to the procedures for the Secretary's initial decision in § 732.13 (45 FR 33927, May 20, 1980).

The New Mexico program was submitted to OSM on February 28, 1980. The 104th day after February 28 was June 11, 1980.

The Secretary in reviewing state programs, is complying with the provisions of Section 503 of SMCRA, 20 U.S.C. 1253, and 30 CFR 732.15. With respect to the New Mexico program, the Secretary has used as criteria the federal rules as corrected, amended, and suspended in the **Federal Register** notices cited above under "General Background on the Permanent Program," and as affected by three recent decisions of the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144, February 26, May 16, and August 15, 1980). That litigation is a consolidation of several lawsuits challenging the Secretary's permanent regulatory program.

There have been three recent decisions from the District Court that affect the decision-making process. Because of the complex litigation, the court has issued its decision in two "rounds." The Round I opinion, dated February 26, 1980, rejected several generic attacks on the permanent program regulations, but resulted in suspension of remand of all or part of twenty-two specific regulations. The Round II opinion, dated May 16, 1980, rejected additional generic attacks on the regulations but remanded some 40 additional parts, sections or subsections of the regulations.

The court in its Round II opinion also ordered the Secretary to "affirmatively disapprove, under Section 503 [of SMCRA], those segments of a state program that incorporate a suspended or remanded regulation" (Mem. Op., May 16, 1980, p. 49). However, on August 15, 1980, the court stayed this portion of its opinion. The effect of this stay is to allow the Secretary, to approve the state program provisions equivalent to remanded or suspended federal provisions in the three circumstances described in paragraph 1 below.

Therefore, the Secretary is applying the following standards to the review of state program submissions:

1. The Secretary need not affirmatively disapprove state provisions similar to those federal regulations which have been suspended or remanded by the District Court where the state has adopted such provisions in a rulemaking or legislative proceeding which occurred either (1) before the enactment of SMRCA or (2) after the date of the Round II District Court decision, since such state regulations clearly are not based solely upon the suspended or remanded federal regulations. (3) The Secretary need not affirmatively disapprove provisions based upon suspended or remanded federal rules if a responsible state official has requested the Secretary to approve them.

2. The Secretary will affirmatively disapprove all provisions of a state program which incorporate suspended or remanded federal rules and which do not fall into one of the three categories in paragraph one, above. The Secretary believes that the effect of his "affirmative disapproval" of a section in the state's regulations is that the requirements of that section are not enforceable in the permanent program at the federal level to the extent they have been disapproved. That is, no cause of action for enforcement of the provisions,

to the extent disapproved, exists in the federal courts, and no federal inspection will result in notices of violation or cessation orders based upon the "affirmatively disapproved" provisions.

Commission on program provisions based on suspended or remanded federal regulations (Administrative Record No. NM–140). The Commission decided that all sections of New

contained a number of changes from the proposed regulations which were submitted on February 29, 1980.

2. Responses to questions raised during the Regional Director's review of the

disapprove. On October 16, 1980, the State replied that there were no such provisions. (Administrative Record No. NM–140).

On September 5, 1980, representatives of the State of New Mexico met with

Indian and non-federal lands within New Mexico;

(e) New Mexico has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA

carry out the provisions and meet the purpose of SMCRA and 30 CFR Chapter VII. Approval is based upon the following representations made by New Mexico concerning New Mexico law:

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to the extent disapproved, exists in the federal courts, and no federal inspection will result in notices of violation or cessation orders based upon the "affirmatively disapproved" provisions. The Secretary takes no position as to whether the affirmatively disapproved provisions are enforceable under state law and in state courts. Accordingly, these provisions are not being pre-empted or suspended, although the Secretary may have the power to do so under Section 505(b) of SMCRA and 30 CFR 730.11.

3. A state program need not contain provisions to implement a suspended or remanded regulation and no state program will be disapproved for failure to contain a suspended regulation.

4. A state must have authority to implement all permanent program provisions of SMCRA, including those provisions of SMCRA upon which the remanded or suspended regulations were based.

5. A state program may not contain any provision which is inconsistent with a provision of SMCRA.

6. Programs will be evaluated only on provisions other than those that must be disapproved because of the court's order. The remaining provisions will be approved unconditionally, conditionally approved, or disapproved, in whole or in part, in accordance with 30 CFR 732.13.

7. Upon promulgation of new regulations, to replace those that have been suspended or remanded, the Secretary will afford states that have approved or conditionally approved programs a reasonable opportunity to amend their programs, as appropriate. In general, the Secretary expects that the provisions of 30 CFR 732.17 will govern this process.

A list of the regulations suspended or remanded as the result of the Round I and Round II litigation was published in a previous **Federal Register** notice on July 7, 1980 (45 FR 45604). OSM completed an initial review of the New Mexico program submission and published in the July 11, 1980 **Federal Register** (45 FR 46823) notice of the availability of a list of the provisions proposed for disapproval. At that time the Secretary requested public comment on the proposed list. In making today's decision, the Secretary has considered all public comments on this issue and has identified those provisions which he must affirmatively disapprove in the New Mexico program as part of this approval. That notice was also described in detail at the public hearing in Albuquerque on July 23, 1980.

On October 16, 1980, the State of New Mexico advised OSM of the decision of the New Mexico Coal Surface Mining Commission on program provisions based on suspended or remanded federal regulations (Administrative Record No. NM–140). The Commission decided that all sections of New Mexico's regulations will remain in effect until such time as they are amended after public hearing and that any action taken by OSM to suspend or retain these sections will not, as a matter of State law, affect New Mexico's regulations. The State did not request that the Secretary approve State regulations based on suspended and remanded federal regulations therefore, the Secretary has affirmatively disapproved those provisions under 30 CFR 931.12 (adopted below).

To codify decisions on State programs, federal programs, and other matters affecting individual States, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to New Mexico will be found in 30 CFR Part 931.

C. Background on the New Mexico Program Submission

On February 28, 1980, OSM received a proposed regulatory program from the State of New Mexico. The program was submitted by the Energy and Minerals Department, Division of Mining and Minerals, the agency which will be the primary regulatory authority under the New Mexico permanent program. Notice of receipt of the submission initiating the program review was published in the March 5, 1980, **Federal Register** (45 FR 14230–14231) and in newspapers of general circulation within the State. The announcement noted information for public participation in the initial phase of the review process relating to the Regional Director's determination of whether the submission was complete.

On April 15, 1980, a public review meeting on the program and its completeness was held by the Regional Director in Albuquerque, New Mexico. April 24, 1980, was the close of the public comment period on completeness, which had begun March 5, 1980.

On May 1, 1980, the Regional Director published notice in the **Federal Register** announcing that he had determined the program to be complete (45 FR 29072). The notice specified that the submission included all elements required by 30 CFR 731.14(c).

On June 11, 1980, the Energy and Minerals Department, Division of Mining and Minerals, submitted amendments to the February 28, 1980, New Mexico program which contained:

1. A copy of the regulations enacted by the State of New Mexico on May 15, 1980. These enacted regulations contained a number of changes from the proposed regulations which were submitted on February 28, 1980.

2. Responses to questions raised during the Regional Director's review of the New Mexico program submission which were presented to the Division of Mining and Minerals in a letter dated April 28, 1980.

On June 18, 1980, the Regional Director published notice in the **Federal Register** (45 FR 41160–41162) and in the newspapers of general circulation within the State that the revisions to the New Mexico permanent program submission were available for public review and comment. The notice set forth procedures for the public hearing and comment period on the substance of the New Mexico program.

On July 23, 1980, the Regional Director held a public hearing on the New Mexico submission in Albuquerque, New Mexico. The public comment period on the New Mexico permanent regulatory program ended on July 28, 1980.

On August 1, 1980, the Regional Director submitted to the Director of OSM his recommendation that the New Mexico program be conditionally approved, together with copies of the transcript of the public meeting and the public hearing, written presentations, exhibits, copies of all public comments received and other documents comprising the administrative record.

Subsequent to the close of the original public comment period, the Energy and Minerals Department, Division of Mining and Minerals submitted an Attorney General's opinion and its General Counsel's opinion, both dated August 7, 1980, explaining the relationship of certain provisions in the New Mexico State permanent regulatory program to the federal permanent regulatory program (Administrative Record number NM 99). The public comment period was opened on September 4, 1980, and closed again on September 11, 1980 for consideration of these opinions (45 FR 58594, September 4, 1980).

On August 20, 1980, the Director of OSM published in the **Federal Register** a notice of the availability of the views on the New Mexico program submitted by the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and other federal agencies (45 FR 55479–55480).

On August 22, 1980, the Director cabled the division of Mining and Minerals, asking whether there were provisions in the New Mexico program based upon remanded or suspended federal rules which the Division did not want the Secretary to affirmatively disapprove. On October 16, 1980, the State replied that there were no such provisions. (Administrative Record No. NM–140).

On September 5, 1980, representatives of the State of New Mexico met with representatives of OSM, and on September 10, 1980, the Director of the Division of Mining and Minerals, Energy and Minerals Department, State of New Mexico, sent additional material to the Director, OSM.

On September 16, 1980, the Administrator of the Environmental Protection Agency transmitted his written concurrence on the New Mexico program.

On September 30, 1980, the Director of OSM recommended to the Secretary that he conditionally approve the New Mexico program.

On December 2, 1980, the State of New Mexico agreed to the conditions set forth below in 30 CFR 931.11 (Administrative Record No. NM–141).

D. Secretary's Findings

1. In accordance with Section 503(a) of SMCRA, the Secretary finds that New Mexico has, subject to the exception in findings 4(a)(iii), 4(b), 4(c)(x), 4(c)(xix), 4(d)(vi), 4(e), 4(h), 4(j)(i), 4(k)(ii), 4(l)(iii), 4(l)(v), and 4(o) below, the capability to carry out the provisions of SMCRA and to meet its purpose in the following ways:

(a) The New Mexico Surface Mining Act (NMSMA) and the regulations adopted thereunder provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands in New Mexico in accordance with SMCRA;

(b) The New Mexico program provides sanctions for violations of New Mexico laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, and these sanctions meet the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the New Mexico Division of Mining and Minerals or its inspectors;

(c) The New Mexico Division of Mining and Minerals has sufficient administrative and technical personnel and sufficient funds to enable New Mexico to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA;

(d) New Mexico law provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands within New Mexico;

(e) New Mexico has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA, 30 USC 1272;

(f) New Mexico has established, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other federal and State permit processes applicable to the proposed operations;

(g) New Mexico has fully enacted regulations consistent with regulations issued pursuant to SMCRA, subject to the exceptions discussed below in findings 4(a)(iii), 4(b), 4(c)(x), 4(c)(xix), 4(d)(vi), 4(e), 4(h), 4(j)(i), 4(k)(ii), 4(l)(iii) 4(l)(v), and 4(o).

2. As required by Section 503(b)(1)–(3) of SMCRA, 30 USC 1253(b)(1)–(3), and 30 CFR 732.11–732.13, the Secretary has, through OSM:

(a) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies concerned with or having special expertise pertinent to the proposed New Mexico program;

(b) Obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the New Mexico program which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended, 33 USC 1151–1175, and the Clean Air Act, as amended, 42 USC 7401 *et seq.*; and

(c) Held a public review meeting in Albuquerque, New Mexico, on April 15, 1980, to discuss the New Mexico program submission and its completeness, and held a public hearing in Albuquerque, New Mexico, on July 23, 1980, on the substance of the New Mexico program submission.

3. In accordance with Section 503(b)(4) of SMCRA, 30 USC 1253(b)(4), the Secretary finds that the State of New Mexico has the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII.

4. In accordance with 30 CFR 732.15, the Secretary finds, on the basis of information in the New Mexico program submission, including the section-by-section comparison of the New Mexico law and regulations with SMCRA and 30 CFR Chapter VII, public comments, testimony and written presentations at the public hearings, and other relevant information, that: (a) The New Mexico program provides for New Mexico to carry out the provisions and meet the purpose of SMCRA and 30 CFR Chapter VII. Approval is based upon the following representations made by New Mexico concerning New Mexico law:

(i) The Secretary was concerned about the equivalency of several definitions submitted as a part of the New Mexico program. One of the definitions questioned was that which the State submitted for a "cemetery." It appears that the State definition found in 58–17–3 NMSA 1978, is more limiting than the Federal definition found in 30 CFR 761.5. The State admitted that it was more limiting, but presented a local condition as justification for the variation (Administrative Record number NM 89). With New Mexico's long history of settlement by Indian and Spanish peoples, bodies were often buried in places that no longer show any indication that such an action did occur. 30 CFR 761.11 describes a cemetery as one of the areas in which mining is prohibited. New Mexico's definition accomplishes the same aim in areas where grave sites are known to exist. New Mexico has also submitted, as a part of the program, the appropriate State statutes covering the manner in which unexpected graves are to be handled, and these provisions assure adequate protection of human remains. Further, protections in the manner of prevention of disturbance of Indian grave sites are provided in Joint Resolution—American Indian Religious Freedom, Pub. L. 95–341. The Secretary believes that the New Mexico definition and the specific State provisions guaranteeing full protection to discovered graves is in accordance with 30 CFR 761.11.

(ii) The Secretary was also concerned about the definition that New Mexico had developed for "historic lands." The New Mexico definition, contained in the Cultural Properties Act, Section 18–6–1, is not in accord with the definition found in 30 CFR 762.11, insofar as it omits references to "paleontological sites" and "sites having religious or cultural significance to native Americans or religious groups." New Mexico explained that the (1) paleontological sites are covered as sites having scientific value under regulation 3–12(b)(2), and (2) sites having religious or cultural significance to native Americans or religious groups are protected under New Mexico law (Administrative Record No NM 119). Based on these representations the Secretary finds the New Mexico program acceptable in this area.

(iii) The New Mexico definition of "unconsolidated streamlaid deposits

holding streams", contained in State regulation 1–5, effectively excludes ephemeral streams. As a condition of approval, the Secretary requires that, in order to protect alluvial valley floors

alternative of limited highwall retention is available. Such retention in these instances actually reflects the intent of "approximate original contour" since these features were part of the natural

inhabit the area. The rocky slopes, cliffs, and mesa top areas support more than 200 species of plants that do not grow in the colluvial filled valleys of the San Juan Basin. These plant species are

after mining are an acceptable means of implementing Sections 515 and 516 of SMCRA.

In accordance with 30 CFR 731.13, the Secretary finds that:

(A) The proposed alternative

(ii) In Section 20–22 of the New Mexico regulations the State adds language not contained in 30 CFR 816.22. The language allows an operator to request a variance from the Director for stripping an area of topsoil if the

the New Mexico provision. The State provision also requires that an operator must submit drainage basin information and the proposed designs of such control structures as part of a permit application. The Director then has the

holding streams", contained in State regulation 1–5, effectively excludes ephemeral streams. As a condition of approval, the Secretary requires that, in order to protect allevial valley floors consistent with 30 CFR 701.5 and 30 CFR Part 822, the definition of "unconsolidated streamlaid deposits holding streams" must include ephemeral streams.

(b) New Mexico has formally proposed only the following alternate approach to the requirements of 30 CFR Chapter VII, pursuant to 30 CFR 731.13, although other provisions of the New Mexico program (See Findings 4(c)(xvii) and 4(d)(v) may meet the standards for such an alternative:

Performance Standards for Backfilling and Grading. Section 515(b)(3) of SMCRA states that the general performance standards shall require an operator "to backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials) and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this Act)." 30 CFR 816.102(a)(2) implements the statutory directive by stating that, "in all cases the high wall shall be eliminated." New Mexico has proposed an alternative that would allow the retention of limited stretches of highwall if such features are part of the natural landscape of the mine area prior to mine operations. New Mexico Regulation 20–102(a)(2) allows the retention of portions of the highwall if an operator can demonstrate to the Director that:

—The highwall will have a static safety factor of 1.3;
—The highwall will not pose a hazard to persons or wildlife in the area;
—The highwall will be backfilled to cover the uppermost minable coal seam to a minimum depth of 4 feet;
—The retained portion of highwall will not exceed 800 feet in length, and shall be at a minimum of at least 3,000 feet from any other portion of any other highwall which has been approved as a part of the postmining land use;
—The highwall is necessary to replace cliff-type habitats that existed in the natural topography prior to mining; and
—The ends of the highwall left standing will be contoured into the surrounding topography with slopes of 3:1 or less.

If an operator can demonstrate to the satisfaction of the Director that *all* of these criteria can be met, then the alternative of limited highwall retention is available. Such retention in these instances actually reflects the intent of "approximate original contour" since these features were part of the natural pre-mined landscape. In all other cases, the highwall must be eliminated according to 30 CFR 816.102.

New Mexico argues that the language in SMCRA Section 515(b)(3) creates two distinct requirements that often conflict in the specific coal mining districts of New Mexico (Administrative Record number NM 89). In certain areas of the State, the elimination of all highwalls is diametrically opposed to the concept of return to approximate original contour due to the natural features of the landscape. New Mexico believes that there are positive environmental benefits to be gained from a return to approximate original contour (AOC) if the retained highwalls can be demonstrated to be stable. Such highwalls conforming to the topography of the area will preserve wildlife habitat as required under Section 515(b)(25) of SMCRA. Consequently, the State maintains that the return to AOC should take precedence over the elimination of highwalls.

In reviewing New Mexico's proposed alternative, the Secretary considered the circumstances unique to New Mexico (See Administrative Record No. NM 89). New Mexico has a complex and highly variable terrain due to the occurrence of four unique Physiographic Provinces. Of these Provinces, the Colorado Plateau is probably the most significant in terms of cliff topography. The Colorado Plateau is characterized by: structural geology which consists of extensive areas of nearly horizontal formations; structural upwarps that form striking topographic features; igneous structures; and widespread uplifting of as much as 3 miles since the cretaceous; great altitude; a drainage system consisting of deeply incised, steep-walled canyons; aridity and shortage of water; extensive areas of bare rock; sparse vegetation and sparse population; and brightly colored and highly varied desert scenery. While this set of features is descriptive of the entire Colorado Plateau, it most certainly specifically applies to the San Juan Basin. These same features are found to a lesser degree in the other Provinces of New Mexico.

The most striking feature in the San Juan Basin itself is the sandstone capped mesa which possesses cliffs ranging from a few feet to more than 100 feet in height. This mesa type topography has a direct influence on the species of plants and animals that inhabit the area. The rocky slopes, cliffs, and mesa top areas support more than 200 species of plants that do not grow in the colluvial filled valleys of the San Juan Basin. These plant species are growing in places where their root systems are in a more mesic environment than occurs in the deeper, finer colluvial soils of the surrounding valleys. This mesic environment is the result of moisture infiltrating into the joints and fractures of the bedrock. Precipitation concentrated in crevasses increases the amount of moisture per unit area available to the plants.

Exposed vertical bedrock areas produce a more mesic environment at the base of many cliffs. This is due to the fact that most of the moisture emanating from any precipitation event drains down the face of a cliff and concentrates in the soils or the weathered and fractured bedrock near the base. The largest concentrations of browse shrubs occur near these cliff bases. These cliff areas also provide places where trees and shrubs prevalent at higher elevations can find refuge and survive in an otherwise hostile environment. Because of the unique association of cliff areas and floristics in the San Juan Basin, numerous species of fauna rely upon this type of topography for shelter, food, and protection.

In addition to this concept of habitat preservation the Secretary is also concerned with the aesthetic beauty of the natural rugged mesa type-areas in the San Juan Basin. The disruption of this natural landscape form by the substitution of an unnatural rolling hill topography does not meet the purposes of SMCRA. A reclamation process incorporating stretches of highwall duplicating the natural mesa and cliff features is fully in concert with the concept of approximate original contour. Support for this provision was provided by public interest groups with some reservations about the composition of the feature to be left as well as the magnitude relative to what previously existed (See Administrative Record No. NM 79). The Secretary feels that this concern can be adequately addressed by the addition of another provision to the criteria enumerated in the New Mexico regulation. As a condition of approval, New Mexico will include as a criterion, a statement that residual highwalls will not exceed the length of the pre-mined bluff. The addition of this provision to the criteria already established will guarantee the proper usage of this alternative.

The Secretary finds that the New Mexico provisions allowing certain limited stretches of highwall to remain

after mining are an acceptable means of implementing Sections 515 and 516 of SMCRA.

In accordance with 30 CFR 731.13, the Secretary finds that:

(A) The proposed alternative contained in the New Mexico program is in accordance with Sections 515(b)(3) and 515(b)(25) of SMCRA because the State program provides that approximate original contour is achieved, the requirements for stability are the equivalent of the federal requirements, and wildlife habitat is preserved, and

(B) The proposed alternative is necessary because of the local conditions.

In accordance with 30 CFR 732.15(b), the Secretary finds the alternative, as conditioned, to be in accordance with the provisions of SMCRA and consistent with the regulations in 30 CFR Chapter VII.

(c) The Energy and Minerals Department, Division of Mining and Minerals, has the authority under New Mexico laws and regulations to implement, administer, and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K, and the New Mexico program includes provisions to carry out those provisions. The New Mexico law and regulations on performance standards are consistent with SMCRA and 30 CFR Chapter VII, Subchapter K. The following specific issues were considered by the Secretary in evaluating New Mexico law and regulations on performance standards:

(i) Section 20–11 of the New Mexico regulations in the original submission did not clearly state that road markers would be required in addition to perimeter markers. In order to be certain that road markers would not be allowed in lieu of perimeter markers, New Mexico was asked to clarify the provision (See Administrative Record No. NM 58). Written assurance to the Secretary, was provided that what was intended by the State was a requirement for road markers in addition to perimeter markers (See Administrative Record No. NM 89).

New Mexico requires more in the way of signs and markers than 30 CFR 816.11 and 30 CFR 817.11. The State anticipates permitting a number of mines that will be located some distance from a well travelled road. In these instances the State will require signs along the access road to the mine at one mile intervals. This is in addition to the requirement for perimeter markers which is consistent with the federal regulation. The Secretary finds that the New Mexico provision is consistent with 30 CFR 816.11 and 30 CFR 817.11.

(ii) In Section 20–22 of the New Mexico regulations the State adds language not contained in 30 CFR 816.22. The language allows an operator to request a variance from the Director for stripping an area of topsoil if the operator can demonstrate that the removal of topsoil in that area would be technologically infeasible. While noting that the concept is consistent with 30 CFR 816.22(b), which allows the authority to approve alternatives on a case-by-case basis, the Secretary felt that some outside bounds should be placed on the provision. New Mexico responded that the provision will be used only to the extent necessary to insure the safety of equipment operators removing topsoil materials from areas such as the unstable edges of mesa tops, steep outslopes covered with large boulders, or steep slopes which were covered with a thin veneer of soil over bedrock material (See Administrative Record No. NM 89). The State pointed out that the provision places an affirmative burden upon an operator to demonstrate infeasibility to the satisfaction of the Director. This approach allows changing technology to be incorporated into each specific decision made by the Director in a manner that specific slope limitations would not. The Secretary finds that New Mexico provision to be consistent with 30 CFR 816.22, based on New Mexico's representation as to the scope of the variance stated above.

(iii) In the original submission New Mexico provided a different methodology for sediment control in New Mexico regulation Section 20–41 and 20–42 than that developed in 30 CFR 816.41 and 816.42. The State was asked to provide a full justification and development of the concept of regional difference (See Administrative Record No. 58). In the regulations promulgated on May 15, 1980, and submitted to the Secretary on June 11, 1980, the State had changed the approach sufficiently to make New Mexico regulations 20–41 and 20–42 consistent with the comparable federal provisions.

The New Mexico regulations as promulgated follow the dictate of 30 CFR 816.41(d)(1) to utilize "changes in the flow of drainage in preference to the use of water treatment facilities." The State has adopted this concept and has listed examples of the types of techniques that might be used. The additional requirement, not present in 30 CFR 816.41, that such drainage control structures be capable of containing and eliminating all surface flow that would result from a 10-year, 24-hour precipitation event has been added in the New Mexico provision. The State provision also requires that an operator must submit drainage basin information and the proposed designs of such control structures as part of a permit application. The Director then has the necessary information to determine whether these changes in the drainage pattern are adequate to contain the hypothetical event. If they are not, adequate water treatment facilities are then required. These changes have made the New Mexico provisions consistent with the requirements of SMCRA and the regulations promulgated thereunder.

(iv) New Mexico regulation 20–52 describes the requirements for surface and ground water monitoring to which an operator must adhere. The Secretary initially questioned whether the language in the New Mexico provision clearly requires an operator to perform specific tests requested by the Director (See Administrative Record No. 58). The Secretary, upon reevaluation of the New Mexico language, is satisfied that the provision is acceptable.

(v) New Mexico was asked to explain the role of the State Engineer in New Mexico regulation 20–54. The Secretary was concerned about the position of decision-making authority in the area of water rights and water replacement. New Mexico explained that the authority for enforcement and regulation of the NMSMA remains with the Director in all instances (See Administrative Record No. NM 89). The specific approval by the State Engineer of any water replacement plan under 20–54 is but one aspect of compliance which must be met by an operator in addition to final mine plan approval by the Director. New Mexico feels that the State Engineer's Office has specific expertise which enables it to play a vital role in the decision-making process concerning water replacement. New Mexico also notes that the State Engineer has specific authority stemming from a separate statute to approve any dewatering caused by mining. This separate statutory authority is consistent with the intent of SMCRA.

(vi) New Mexico was asked by the Secretary to include language contained in 30 CFR 817.61, enumerating the types of blasting activities associated with underground mining which are to be regulated (See Administrative Record No. NM 58). This has been accomplished by the addition of Section 20–61(d) which is consistent with 30 CFR 817.61.

(vii) New Mexico regulation 20–112 as it was originally submitted appeared to be less stringent than the federal requirement contained in 30 CFR 817.112. The State had omitted language

requiring that a "diverse, effective, and permanent cover" be established. The Secretary requested that this language be incorporated into the New Mexico provision (See Administrative Record No. NM 58). The State responded by

quantifiable and not merely subjective means. The Secretary finds, based on these explanations, that 20–116 is consistent with the requirements of SMCRA and 30 CFR 816.116 and 30 CFR 817.116. New Mexico was also asked to

(xi) New Mexico regulation 20–150 as originally submitted did not contain a requirement that all road design be certified by a registered professional engineer. This requirement was added to the regulation as it was promulgated

to the Director that such restoration will not enhance environmental values. The Secretary is concerned about the intent of this provision which differs from the absolute requirement in 30 CFR 816.156 for restoration of natural drainage. In

New Mexico regulation will provide a degree of protection that is consistent with Section 515(b)(18) of SMCRA. Since the District Court remanded 30 CFR 816.171, the federal rule analogous to New Mexico's Section 20–171, the

Secretary agrees with New Mexico's position and finds that 20–172 is consistent with the requirements of Sections 515(b)(10) and 515(b)(17) of SMCRA. Since the District Court remanded 30 CFR 816.172, the federal

requiring that a "diverse, effective, and permanent cover" be established. The Secretary requested that this language be incorporated into the New Mexico provision (See Administrative Record No. NM 58). The State responded by pointing out that the New Mexico provision governs both surface and underground mining while the federal system employs two distinct provisions, 30 CFR 816.112 and 30 CFR 817.112 (See Administrative Record No. NM 89). New Mexico correctly pointed out that these two provisions contain different standards for revegetation. 30 CFR 817.112, the section covering underground mining, establishes a less stringent standard for the substitution of introduced species than does 30 CFR 816.112. In developing its provision New Mexico has created a requirement equivalent to 30 CFR 816.112. The New Mexico standard governs both surface and underground mining and instills a stricter standard upon the underground operator than 30 CFR 817.112. The Secretary agrees with the New Mexico interpretation, and finds that 20–112 is acceptable.

(viii) New Mexico regulation 20–115 allows an operator to demonstrate that reclaimed land is *capable* of supporting livestock, grazing, if grazing is to be the postmining land use. The federal counterpart, 30 CFR 816.115 requires actual grazing on and mandatory crop production from lands proposed as pasture or farmlands as a postmining use. The Secretary finds that the New Mexico standard is consistent with the intent of SMCRA as interpreted by the U.S. District Court for the District of Columbia on February 26, 1980 (p. 59). The Court Opinion remanded the federal regulation on the basis that it exceeded the statutory authority of SMCRA which requires only that restored lands be "capable" of supporting the designated use. Thus, the New Mexico standard is acceptable.

(ix) New Mexico was asked by the Secretary to clarify the concepts of "acceptable techniques of ecological measurement" and "historic record" as they were used in New Mexico regulation 20–116 (See Administrative Record No. NM 58). New Mexico responded in a letter to Mr. Rocky Beavers of the Region V OSM Office dated April 28, 1980 (See Administrative Record No. NM 102). "Historic record" is a body of data and information accumulated over a period of time that includes both cover and production. The concept of "acceptable techniques of ecological measurement" includes measurements of cover, production, density and diversity measured by quantifiable and not merely subjective means. The Secretary finds, based on these explanations, that 20–116 is consistent with the requirements of SMCRA and 30 CFR 816.116 and 30 CFR 817.116. New Mexico was also asked to incorporate the concept of "half-shrub" into the definition of shrub (See Administrative Record No. NM 58). In the regulations that were promulgated on May 15, 1980, New Mexico defined "half-shrub" separately, in Section 1–5, consistent with the federal definition. This is acceptable to the Secretary and makes 20–116 consistent with 30 CFR 816.116.

New Mexico was also asked to define the term "augmentation" (See Administrative Record No. NM 58). In the regulations that were promulgated on May 15, 1980, in regulation 1–5, this was done in a manner acceptable to the Secretary.

New Mexico regulation 20–116 as originally submitted omitted the term "ground cover". The Secretary was concerned that a problem would be created when this provision was linked with the bonding principles. The State was asked to include the term in its regulation (See Administrative Record No. NM 58). In the regulation promulgated May 15, 1980 the State has included the term.

(x) In the original submission of February 28, 1980, New Mexico regulation 20–117 did not contain specific stocking rates for trees and shrubs as in 30 CFR 816.117. In New Mexico regulation 20–117(b)(1), as promulgated on May 15, 1980, the State places the determination of minimum stocking rates under the authority of the State forester. In a letter, dated September 10, 1980, to Ed Kelly, Chief, Bureau of Surface Mining, the State forester explained the bases for his determinations of minimum stocking rates. The Secretary finds this explanation an insufficient basis on which to find that the State forester will assure stocking at rates which equal or exceed the federal standards and has made the correction of this deficiency a condition of approval. The State may wish to submit additional information meeting the requirements of 30 CFR 731.13 in meeting this condition of approval.

Note.—Paragraphs (xi)–(xvi) below relate to performance standards for roads. Since the federal rules on roads were remanded by the District Court, any problems or issues mentioned in these paragraphs do not constitute a basis for approval or disapproval of the New Mexico program. These paragraphs are printed here for purposes of providing a complete discussion of the review process.

(xi) New Mexico regulation 20–150 as originally submitted did not contain a requirement that all road design be certified by a registered professional engineer. This requirement was added to the regulation as it was promulgated on May 15, 1980. Since the District Court remanded 30 CFR 816.150, the federal rule analogous to New Mexico's Section 20–150, New Mexico's provision need not be evaluated against the federal rule.

(xii) Section 20–152 of the New Mexico regulations allows surface shaping as a technique for erosion control in lieu of revegetation. The Secretary requested further clarification to be certain that equivalent environmental protection is achieved (see Administrative Record No. NM 58). New Mexico responded that this technique was added specifically to be certain that a sound methodology was present in the regulations for dealing with the situation where a road is cut through bedrock outcrops. In that specific case, covering slopes with topdressing material in preparation for attempts to revegetate would be futile. The topdressing would not remain in place and this would lead to erosion problems and high sediment contributions to runoff water. The State asserted that the only viable method for handling erosion control in that specific situation is the use of surface shaping (see Administrative Record No. NM 89). The Secretary agrees that this is consistent with Section 515(b)(17) of SMCRA. Since the District Court remanded 30 CFR 816.152, the federal rule analogous to New Mexico's Section 20–152, New Mexico's provision need not be evaluated against the remanded federal rule.

The Secretary was also concerned that New Mexico had omitted from Section 20–152, requirements present in 30 CFR 816.152 detailing specifications for base material, and requirements calling for structural foundation analysis, compaction design specifications, lift limits and moisture content (see Administrative Record No. NM 58). In the regulation as promulgated on May 15, 1980, New Mexico has included these requirements. The Secretary agrees that this is consistent with Section 515(b)(17) of SMCRA. Since the District Court remanded 30 CFR 816.152, the federal rule analogous to New Mexico's Section 20–152, New Mexico's provision need not be evaluated against the federal rule.

(xiii) New Mexico regulation 20–156 calls for the restoration of natural drainage at such times as roads are reclaimed unless it can be demonstrated to the Director that such restoration will not enhance environmental values. The Secretary is concerned about the intent of this provision which differs from the absolute requirement in 30 CFR 816.156 for restoration of natural drainage. In explaining the regulation, New Mexico stated that this latitude was necessary to deal with specific instances where environmental damage could be minimized by using a different drainage pattern than that which was present prior to mining (see Administrative Record No. NM 89). New Mexico pointed out as an example a situation in which a culverted road created during the mining process crosses a drainage above a deep headcutting area in an arroyo. The headcutting commenced prior to mining. The culverted crossing serves to impede the flow of flood waters and leads to reduced headcutting. The retention of the culverted crossing as part of the reclamation plan would serve to enhance environmental protection by slowing the erosion headcutting to a greater degree than would the restoration of the natural drainage. The State feels and Secretary agrees, that the retention of such structures might, in some cases, achieve the long term benefit of reduced erosion. The Secretary believes that this is consistent with the requirements of Sections 515(b)(4), 515(b)(10), and 515(b)(17) of SMCRA. Since the District Court remanded 30 CFR 816.156, the federal rule analogous to New Mexico's Section 20–156, New Mexico's provision need not be evaluated against the federal rule.

(xiv) New Mexico's regulation 20–171 allows the use of stream fords as a general practice for Class III roads. 30 CFR 816.171 allows fords only in situations of a temporary nature. The Secretary is concerned about this apparent contradiction. New Mexico explained that the usage of such roads will certainly be limited (Administrative Record number NM 89). New Mexico envisions allowing this practice in connection with roads that are used on an infrequent basis for carrying out environmental monitoring tasks. New Mexico realizes that the concern with the usage of such fords is the possibility of contributing additional sediment loads to stream waters. The State points out that these fords will be allowed only in dry arroyo situations. The State has also agreed to include a stipulation in all permits that prohibits the use of the drainage grade crossing at any time when water is flowing. The Secretary believes that this explanation and agreement by the State insures that the New Mexico regulation will provide a degree of protection that is consistent with Section 515(b)(18) of SMCRA. Since the District Court remanded 30 CFR 816.171, the federal rule analogous to New Mexico's Section 20–171, the federal rule analogous to New Mexico's Section 20–171, New Mexico's provision need not be evaluated against the federal rule.

(xv) New Mexico regulation 20–173 does not specify a culvert design size sufficient to pass a 1-year 6-hour precipitation event as the standard for Class III roads. The Secretary noted this omission in OSM's review and informed the State (Administrative Record Number NM 58). New Mexico responded that the design criteria specified in 30 CFR 816.173 may, in some instances, not be of sufficient size to safely pass runoff from intense thunderstorms that are not classifiable under the 1-year 6-hour event criteria. New Mexico wants to retain the prerogative to require larger culverts in specific areas of the State (Administrative Record Number NM 58). The Secretary finds that this is consistent with the requirements of Sections 515(b)(10) and 515(b)(17) of SMCRA. Since the District Court remanded 30 CFR 816.173, the federal rule analogous to New Mexico's Section 20–171, New Mexico's provision need not be evaluated against the federal rule.

(xvi) New Mexico regulation 20–172 has omitted grade limits contained in 30 CFR 816.172. The Secretary requested that these grade limitations be included in the regulation or in the alternative, that the State produce a demonstration of equivalent grade and/or erosion control (Administrative Record Number NM 58). New Mexico responded that Class III roads are considered as light duty roads by the State and that the category may include existing four-wheel drive roads or other existing roads which traverse steep terrain by employing short S-curves (Administrative Record Number NM 89). These roads, which would be subject to limited use, would exceed the standards of the federal provision. Reconstruction of such roads to meet the requirements of 30 CFR 816.172(a)(i) and (iii) would create substantial, unnecessary damage to the environment.

In the case of the construction of new Class III roads, less environmental damage may be done and less land area disturbed under a system which allows the Director to make a case-by-case determination of erosion control methodology. New Mexico cites the case of a road traversing a steep bedrock outcrop area as an example. The Secretary agrees with New Mexico's position and finds that 20–172 is consistent with the requirements of Sections 515(b)(10) and 515(b)(17) of SMCRA. Since the District Court remanded 30 CFR 816.172, the federal rule analogous to New Mexico's Section 20–172, New Mexico's provision need not be evaluated against the federal rule.

(xvii) New Mexico regulation 20–72(b) places discretion in the Director for determining when subdrain systems will be required for fills. The Secretary requested clarification as to the intended extent of this discretion (see Administrative Record No. NM 58). New Mexico explained that subdrain systems will be required in most instances (see Administrative Record No. NM 58). The statement went on to say that the implementation of this provision allows the State the latitude to evaluate each disposal area on a case-by-case basis in relation to size or other alternatives for disposal of excess spoil. New Mexico also noted, and the Secretary agrees, that this discretionary approach is consistent with the suspension of 30 CFR 816.83(a) and 30 CFR 817.83(a) insofar as those regulations preclude an exemption from the underdrain requirement for coal processing waste banks where an operator can demonstrate an alternative to the required subdrainage system would ensure structural integrity of the waste bank and protection of ground and surface water quality.

The State explained further that New Mexico does not have topographical features in coal producing areas which could result in spoil fills being defined as "valley fills" within the meaning of SMCRA. Additionally, there are virtually no coal producing areas where seeps or springs are present so the only drainage to be passed through any constructed subdrain would occur after precipitation events. Because of high natural erosion rates and resulting high sediments loads in runoff, rock drains would be ineffectual. Springs in coal mining areas are rare, and a spoil fill will not be approved in area with a spring or spring drain (Administrative Record No. NM 119). Based on these representations, the Secretary finds that the New Mexico provision is consistent with 30 CFR 816.72 and 817.72.

(xviii) In reviewing the New Mexico program the Secretary raised several questions concerning the consistency of the proposed State provisions with elements of 30 CFR Chapter VII, which were mooted by the decisons of the District Court in the District of Columbia (see Administrative Record No. NM 58).

The provisions which were questioned include:

(A) New Mexico regulation 20–41 and all other regulations in the New Mexico program where the term "permit area"

the Secretary finds New Mexico 20–116 acceptable.

(d) The Division of Mining and Minerals has the authority under New Mexico laws and regulations and the

(e) which are consistent with 30 CFR 779.19 and 783.19.

(iv) In the original submission, New Mexico regulation 8–20 was drafted in such a manner that it appeared that the

permanent resident status. The State, in 11–19(0) does adequately protect adverse modification of critical habitats by reference to State and federal law. Reference to the federal law relating to

irrigated. The Secretary requested a clarification of the manner in which that test would be implemented. New Mexico responded by pointing out that this test is but one of three distinct tests

as a consequence of underground operations during the life of the permit." The requirement appears to limit the area of concern to that, "of the proposed permit and adjacent areas," and may,

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The provisions which were questioned include:

(A) New Mexico regulation 20–41 and all other regulations in the New Mexico program where the term "permit area" has supplanted the term "mine plan area" the latter of which is used in the federal regulations.

(B) New Mexico regulation 20–83 insofar as it allows discretion to vest with the Director to decide when waste banks are to be permitted without a subdrainage system.

(C) New Mexico regulation 20–111, insofar as it allows an operator to demonstrate capability of production rather than actual achievement of production as a test of revegetation success. In line with the Court opinion, New Mexico does not have to make any regulatory changes at this time. If the Secretary decides to appeal these particular provisions, and is successful, the State will be provided sufficient opportunity to add them to the New Mexico program.

(xix) New Mexico regulation 20–71 inadvertently omits the requirement of 30 CFR 816.71 calling for keyway cuts and rock toe buttresses. The promulgated regulation is written as an incomplete sentence, and the State has agreed to make an appropriate correction as a condition of approval.

(xx) New Mexico regulation 25–11, the functional equivalent of 30 CFR 824.11, differs from its federal counterpart in that it does not require an operator to leave an outcrop barrier during the course of mountaintop removal in certain limited situations. The State explained that, at present, there is no mountain top removal mining within the State, and no such mining is anticipated in the future. The State agreed, if and when such mining occurs in New Mexico, to promulgate an acceptable regulation (Administrative Record No. NM 119). The Secretary, therefore, finds regulation 25–11 acceptable.

(xxi) New Mexico regulation 20–116 does not provide for the approval of the Director, OSM, for any change in the guidelines for measuring success of revegetation as in 30 CFR 816.116. The State explained, however, that at no time does it intend to apply standards that have not been approved by the Secretary (Administrative Record No. NM 119). This representation by the State is part of the approved program, and violation of this undertaking will be deemed by the Secretary to constitute a failure to implement the approved program. The Secretary believes that any person who so wishes could hold the State to this undertaking if the State attempted to change the standards without OSM approval. On this basis, the Secretary finds New Mexico 20–116 acceptable.

(d) The Division of Mining and Minerals has the authority under New Mexico laws and regulations and the New Mexico program includes provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G.

Approval is based on the following considerations and representations made by New Mexico concerning New Mexico law and regulations on permit requirements:

(i) 30 CFR 770.12 requires a demonstration of coordination with other federal, State and local agencies and consultation with State and federal agencies concerning fish and wildlife, related environmental values, and historic, cultural and archeological values. The Secretary is concerned that the original submission did not adequately address the consultation requirements. New Mexico was requested to provide additional clarifying material explaining in greater detail the manner in which the consultation process would work (see Administrative Record No. NM 58). New Mexico provided a letter, signed by both the State Archeologist and the State Historic Preservation Officer, detailing the step-by-step procedures to be followed in the case of cultural properties reviews. New Mexico also provided a copy of a memorandum of agreement between the Fish and Wildlife Service and the State Game and Fish Department, detailing the duties of each in instances when endangered or threatened species are concerned (see Administrative Record No. NM 68). The Secretary is fully satisfied that the State of New Mexico has demonstrated a thorough consultation procedure in accordance with 30 CFR 770.12.

(ii) New Mexico's original submission contained no equivalent to 30 CFR 776.14 detailing the public participation requirements for coal exploration approval. The Secretary asked the State to provide for this, and the regulations promulgated on May 15, 1980, include a Section 6–14 which is consistent with 30 CFR 776.14.

(iii) In reviewing New Mexico regulation 8–19, concern was raised that this provision did not contain a mechanism for ensuring that the regulatory authority would be able to require all of the data from an applicant necessary to make an evaluation of revegetation success (see Administrative Record No. NM 58). In the regulation as promulgated on May 15, 1980, the State added 8–19(a)(8) and (e) which are consistent with 30 CFR 779.19 and 783.19.

(iv) In the original submission, New Mexico regulation 8–20 was drafted in such a manner that it appeared that the applicant would play a role in determining the level of study for fish and wildlife. The Secretary requested that this be clarified (see Administrative Record No. NM 58). In the regulation promulgated on May 15, 1980 the language was changed so that it clearly states that such a determination will be made by the Director in consultation with appropriate agencies. However, 30 CFR 779.20 and 30 CFR 783.20 were remanded by the District Court in its February 26, 1980, opinion and accordingly the State provisions have been affirmatively disapproved.

(v) Section 8–24 of the New Mexico regulations requests the names of present owners of lands adjacent to the permit area *where available*. 30 CFR 779.24 does not contain this limitation. The Secretary requested that New Mexico provide an explanation (see Administrative Record No. NM 58). New Mexico responded that in certain areas of the State, land ownership may not be ascertainable even through diligent efforts (see Administrative Record No. NM 89). The State has numerous Spanish Land Grants which are not required to be recorded with State agencies. The Land Grant may date from the 17th century, and it is possible that the original grantee could have as many as 8,000 descendants, all with some color of title. Many are likely to be completely unaware of their own interest in the property. Rather than require an operator to produce all of those names, the State will require a statement that such land is indeed a Land Grant, and the name of the Grant would be made a part of the public notices. Based on this limited application of the "where available" language, the Secretary finds the New Mexico variant acceptable as a State window under 30 CFR 731.13.

(vi) New Mexico regulation 11–19(0) governing "criteria for permit approval or denial" uses the term "indigenous to the state" in conjunction with coverage for activities that would not affect the continued existence of endangered or threatened species. The placement of this term within the New Mexico regulation expressly limits protection to only those species that are "native, not introduced, or immigrates under its own power into an area." Adequate protection would not be provided to migratory species or species that merely pass through the state periodically, but do not necessarily establish any form of

permanent resident status. The State, in 11–19(0) does adequately protect adverse modification of critical habitats by reference to State and federal law. Reference to the federal law relating to endangered or threatened species, however, is missing within the context of New Mexico's 11–19(0). The Secretary has determined that to adequately reflect the provisions of 30 CFR 786.19(0), a direct reference to the Endangered Species Act of 1973 is needed following the phrase "indigenous to the state." The state has expressed concern over the identified potential conflict of the language in the federal Endangered Species Act with the New Mexico Wildlife Conservation Act and contends that adequate protection is provided under existing State or federal laws. The State cites sections 4(D), 6(C)(1) of the Endangered Species Act of 1973 and 17–2–37,39,40 of the State Wildlife Conservation Act as the basis for its contention.

The Secretary is sensitive to the State's contention and is convinced that the state intended to provide the protection equivalent to 30 CFR 786.19(0). However, the State regulation 11–19(0) as written, does not adequately express this intention and must be corrected as outlined above. The State has agreed to make an appropriate modification as a condition of approval.

The Secretary is also concerned about the reference in this regulation to the State Wildlife Conservation Act. The State Act allows the capture, removal or destruction of endangered species in circumstances which the Endangered Species Act of 1973, Pub. L. 93–205, does not. The Secretary requested that New Mexico state that it clearly recognizes the preemptory effect of the federal law in situations where the two statutes conflict (see Administrative Record No. NM 58). New Mexico has stated to the Secretary that the Endangered Species Act preempts the State Wildlife Conservation Act in this regard. To confirm this the Secretary is specifically setting aside, under Section 505(b) of SMCRA, those portions of the State Wildlife Conservation Act which conflict with provisions of SMCRA related to the Endangered Species Act of 1973.

(vii) New Mexico regulation, 10–19 governing the procedures to be used in surface coal mining and reclamation operations on areas or adjacent to areas including alluvial valley floors, includes language not found in 30 CFR 785.19. New Mexico has added a prudent person test to the determination of an alluvial valley floor's existence based on the capability of an area to be flood irrigated. The Secretary requested a clarification of the manner in which that test would be implemented. New Mexico responded by pointing out that this test is but one of three distinct tests employed separately to determine whether or not sufficient water exists to support agricultural activities (see Administrative Record No. NM 89). It is utilized only in the instance in which the Director attempts to determine whether or not an area is *capable* of being flood-irrigated. If the area under study is being flood-irrigated or has a recent history of flood-irrigation or if it can be determined that subirrigation is present, then the prudent person test is never utilized. This test plays a role only if a determination needs to be made concerning the capability of an area to sustain flood irrigation. The State explains further that such a determination will not rest upon historical antecedents, but upon an economic analysis which fully considers the elements of technological change and long-term climatic change. The State points out that this test is implied in the federal language, for without such a test, many arid areas of appropriate configuation could be initially determined to bear alluvial valley floors. The Secretary agrees with the explanation and finds the provision to be consistent with 30 CFR 785.19.

(viii) New Mexico regulation 9–39 entitled, "Subsidence Information and Control Plan," employs a procedural study approach different from the approach taken in 30 CFR 784.20. The federal regulation requires than an applicant, "shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit and adjacent area, and whether subsidence, if it occurred, could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource land." In reviewing this requirement and the preamble to the federal regulations, the Secretary believes that the clear intent is to identify structures and renewable resources subsquent to the establishment of the premise that some subsidence is inevitable and its effects may reach the surface at some point. If any such structures and resources exist, procedures are outlined and implied for determining their initial status and for predicting, monitoring and controlling subsidence if it occurs.

The New Mexico regulation has reversed the procedure. 9–39(1) requires a "map of the proposed permit and adjacent areas identifying the specific areas in which subsidence is anticipated as a consequence of underground operations during the life of the permit." The requirement appears to limit the area of concern to that, "of the proposed permit and adjacent areas," and may, therefore, fail to address the gross relationships of contiguous, permitted underground operations. The requirement addresses, "areas in which subsidence is anticipated * * * during the life of the permit." The permit life of five years is likely to be far too short a time span as subsidence has been known to occur scores of years after mining ceases. The stipulation "anticipated" is not the same standard as the federal language "may occur." That type of standard requires a professional judgment from one with specific expertise in subsidence.

It also infers a position of scientific certainty, which is extremely difficult, if not impossible, to identify. The State explained, however, that it requires a complete description of mining techniques, effects of subsidence description of any structures and renewable resource lands, within the angle of draw above the underground operation (Administrative Record No. NM 119). The Secretary understands this to mean that no permit may be issued in New Mexico unless such information has been provided in the permit application. Based on this representation, the Secretary finds New Mexico regulation 9–39(a)(1) consistent with 30 CFR 784.20.

(e) The New Mexico Division of Mining and Minerals has the authority under New Mexico laws and the New Mexico program includes provisions to regulate coal exploration consistent with 30 CFR 776 and 815, and to prohibit coal exploration that does not comply with 30 CFR 776 and 815. The following specific issue was considered by the Secretary in evaluating New Mexico law and regulations on coal exploration.

New Mexico regulation 19–15, which is the counterpart of 30 CFR 815.15, has added language that allows an exemption to the return to original contour if, "the Director determines that such action would cause excessive environmental degradation". New Mexico explained that the provision is intended to provide the Director with a method to prevent environmental problems such as excessive erosion and excessive sedimentation that might result from reclamation to AOC on exploration sites located in areas with unstable geologic material on slopes that are greater than 3:1 (see Administrative Record No. NM 89).

While the Secretary realizes the potential benefit that might be derived from implementing this provision, he is

not convinced that this is the best method for dealing with the problem. As it stands, the provision is too open-ended, and in order to secure approval the State must place some limitations on this discretion. The Secretary has New Mexico represented that the only information that could be kept confidential was data on coal production, coal exploration, and archeological sites (Administrative Record No. NM 110). The Secretary Secretary that this does not in any way indicate that the enforcement provisions will be compromised both at a meeting held in Washington, D.C. on September 5, 1980 (Administrative Record Number NM 110), and in the September 10, 1980,

by the permittee." The State regulation 1–5, omits this portion of the self-bonding definition. The Secretary finds that this exclusion provides less guarantee of the enforceability of the bond against the company, than the federal counterpart would and conditions his approval on the State providing such clarification.

(vi) 30 CFR 801.16(a) references the applicability of 30 CFR 784.20, 817.121, and 817.126; provides for inclusion of the estimated cost of such measures; provides that liability shall extend to period could begin before augmentation is completed, which is less stringent than federal requirements. In addition, the State's omission relieves the State of any responsibility for approving husbandry practices without regard for whether or not cessation would reduce

not convinced that this is the best method for dealing with the problem. As it stands, the provision is too open-ended, and in order to secure approval the State must place some limitations on this discretion. The Secretary has, therefore, conditioned approval of the New Mexico program upon modification of regulation 19–15 in a manner which is consistent with 30 CFR 815.15.

(f) New Mexico laws and the New Mexico program require that persons extracting coal incidental to government-financed construction maintain information on site consistent with 30 CFR 707.

(g) The Division of Mining and Minerals has the authority under the NMSMA and Section 29–12 of the New Mexico regulations, and the New Mexico program provides provisions to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-federal land within New Mexico, consistent with Section 517 of SMCRA and Subchapter L of 30 CFR. Approval is based upon the following representations made by New Mexico concerning New Mexico law:

(i) NMSA 69–25A–21B includes language that is different from the language found in the federal counterpart, Section 517(b)(2) of SMCRA. The federal provision employs the terminology "hydrologic balance of water use," while the State statute uses the phrase "water supply for water users." New Mexico also makes the same substitution in its counterpart to SMCRA Sections 510(b)(3), 515(b) and 516(b)(9). The Secretary requested an Attorney General's Opinion concerning the equivalency of the two phrases (see Administrative Record No. NM 58). The State responded with an Opinion on August 7, 1980. Additionally, the State pointed to NMSA 69–25A–10(b)(1) and Chapter 148, 1980, Laws of New Mexico, sections 4 and 8(A) as providing protection of both water quality and quantity. The Secretary finds that New Mexico adequately protects both water quality and quantity, and its use of the phrase, "water supply for water users," in the context of its program submission, is acceptable. See Administrative Record No. NM 110. The Secretary believes that protection of water users means not only water used directly by people or commercial enterprises, but also water which naturally supports vegetation and wildlife.

(ii) NMSA 69–25A–2H provides that certain material can be kept confidential if required by law. SMCRA Section 517(f) makes no such provision. At a meeting between representatives of the State and OSM on September 5, 1980, New Mexico represented that the only information that could be kept confidential was data on coal production, coal exploration, and archeological sites (Administrative Record No. NM 110). The Secretary understands that only material in those categories which would be deemed confidential under Sections 507(b)(17), 508(a)(12) and 512(b) will remain confidential. Based on this representation, the Secretary finds NMSA 69–25A–2H consistent with SMCRA Section 517(f).

(iii) New Mexico regulation 29–11(c) does not include all of the language of the federal counterpart, 30 CFR 840.11(d)(i), which states that inspections will "be carried out on an irregular basis so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays." The Secretary requested clarifying information stating the policy of the regulatory agency. The State responded that inspections will be conducted whenever necessary including nights, weekends or holidays (Administrative Record No. NM 119). The Secretary finds that this is consistent with the requirements of Section 517(c) of SMCRA.

(iv) New Mexico regulation 29–11(d)(i), the counterpart of 30 CFR 840.12, does not contain the federal language which details that inspections may be carried out without a search warrant. The Secretary requested that New Mexico submit an Attorney General's Opinion explaining that New Mexico law confers a right of entry equivalent to the federal regulation (see Administrative Record No. NM 58). On August 7, 1980, New Mexico complied with this request and provided an Attorney General's Opinion explaining that a search warrant is necessary only to enter a building and inspect if the operator does not consent to entry. This rationale is consistent with the Preamble to the federal regulations at page 15295, and as such, the Secretary finds the provision consistent with 30 CFR 840.12.

(v) The narrative for the New Mexico program discusses "Inspection and Monitoring Pocedures" on page 25. Although New Mexico's regulations clearly require mandatory enforcement, in the third paragraph of the discussion New Mexico indicates that, "when an inspection is made and problem situations are noted, these conditions are immediately brought to the attention of company officials and *remedial action is recommended.*" (emphasis added) New Mexico submitted clarifying information assuring the Secretary that this does not in any way indicate that the enforcement provisions will be compromised both at a meeting held in Washington, D.C. on September 5, 1980 (Administrative Record Number NM 110), and in the September 10, 1980, letter from Emery C. Arnold to Walter M. Heine (Administrative Record No. 119). Based on this representation and the plain meaning of the regulations which clearly prevail over inconsistent narrative, the Secretary finds the New Mexico program provision consistent with federal requirements.

(h) The Division of Mining and Minerals has the authority under New Mexico laws, and the New Mexico program includes provisions to implement, administer, and enforce a system of performance bonds and liability insurance, or other equivalent guarantees, consistent with 30 CFR Chapter VII, Subchapter J, promulgated on March 3, 1979. Portions of the following federal bonding regulations were proposed for amendment on January 24, 1980 (45 FR 6028–6042): 30 CFR 800.5, 800.11(b)(1), 800.13, Part 801, 805.13, 805.14, 806.11, 806.12, 806.13, 806.14, 806.17, 807.12, 808.11, 808.12, and 808.13(a). Final federal regulations on these sections were published on August 6, 1980 (45 FR 52306–52324). The Secretary will approve State program provisions if they are consistent with the federal rules as they existed on the New Mexico program submission date of February 28, 1980, or if they are consistent with the rules as amended on August 6, 1980.

The State adopted portions of OSM's bonding regulations proposed in the January 24, 1980, Federal Register. These include 30 CFR 800.5(SR 1–5), 30 CFR 800.11 (SR 14–11), 30 CFR 801 (SR 14–14, 14–16, 14–19), 30 CFR 805.13 (SR 75–75), 30 CFR 805.74 (SR 15–14), 30 CFR 806.12 (SR 16–12), 30 CFR 806.14 (SR 16–14), 30 CFR 807.12 (SR 17–12), 30 CFR 808.12 (SR 18–12). On August 6, 1980, final bonding regulations were published in the Federal Register. The State regulations listed above have been reviewed against the new federal regulations. Findings are as follows:

(i) The federal regulations (30 CFR 800.5), stipulate that the self-bond must be "* * * executed by the permittee and by each individual and business organization capable of influencing or controlling the investment or financial practices of the permittee by virtue of this authority as an officer or ownership of all or a significant part of the permittee, and supported by agreements granting the regulatory authority a security interest in real or personal property pledged to secure performance

by the permittee." The State regulation 1–5, omits this portion of the self-bonding definition. The Secretary finds that this exclusion provides less guarantee of the enforceability of the bond against the company, than the federal counterpart would and conditions his approval on the State remedying this deficiency.

(ii) (30 CFR 800.11(b)(1)) The State in SR 14–11 included two out of three of OSM's alternatives for cumulative bonding regulations. The omission of the third may have been inadvertent. However, the State regulation without the third alternative is as stringent as the federal rule and the Secretary will require no change. If the State wishes to add the third alternative it may propose to amend the program under the procedures set forth in 30 CFR 732.17.

(iii) The federal regulations (30 CFR 801.11(a)(1)) provide for the applicability of "* * * surface construction activities included under subsidence-control measures of mine drainage treatment in 30 CFR 801.16;" the State has no such analog. As a result, the Secretary finds these State regulations less comprehensive, and conditions his approval on the State remedying this deficiency.

(iv) The federal regulation (30 CFR 801.13(a)) provides that, "The period of liability for every bond covering a long-term operation * * *" shall begin with issuance of a permit and continue until all reclamation, restoration and abatement work have been completed and the bond is released in accordance with Part 807 or replaced in accordance with Paragraph (b) of this section." The State in SR 14–16(a) limits the bond to the original permit term. However, there would be no bond coverage if the permit expired before reclamation had been successfully completed. Therefore, the Secretary conditions his approval on the State clarifying the period of liability in a manner consistent with the federal rule.

(v) The federal regulation 30 CFR 801.13(b) provides that continuous bond coverage will be provided and that the bond coverage will "* * * cover the initial term of the bond, and be conditioned to extend, replace, or pay the full amount of the bond 120 days prior to the expiration of any bond term, which in no case shall be less than 5 years. Failure to extend or replace bond coverage not less than 120 days prior to expiration shall subject the bond to conditions of forfeiture under Part 808." The State regulation SR 14–16(b) does not include these provisions. The Secretary finds that the State requirement must be clarified and conditions his approval on the State providing such clarification.

(vi) 30 CFR 801.16(a) references the applicability of 30 CFR 784.20, 817.121, and 817.126; provides for inclusion of the estimated cost of such measures; provides that liability shall extend to performance of the construction, site preparation, and relocations approved under 30 CFR 784.20; provides for bond release for construction of control measures only after final inspection, acceptance, and approval by the regulatory authority; and provides that inspections of the construction of surface control measures shall be coordinated with the surface owner, if possible, or considered waived if the surface owner denies reasonable access consistent with 30 CFR 801.16(a). The State regulation SR 14–19(a) does not include these provisions and the Secretary finds that the State regulation is less stringent than the federal regulation because it does not provide as much surety protection. The Secretary conditions his approval on the State appropriately amending its program.

(vii) The federal regulation 30 CFR 801.16(b) provides that, "bond coverage for any subsequent revegetation on that area previously used as an impoundment shall be subject to liability and release of 30 CFR 805.13, 807.11, and 807.12." State regulation SR 14–19(b) does not include this provision. In addition, the federal regulation provides "The estimated bond amount estimated under 30 CFR 805.11 *need* not include * * * drainage." The State regulation provides that the estimated bond amount *shall* not include * * * drainage." The Secretary finds that in the first case, the State analog is less stringent and, in the second case, does not allow the State to cover continuous treatment, monitoring, or potential unpredictable expenses as a result of mine drainage in any instance, even if these should prove to be a problem. Therefore, the Secretary conditions his approval on the State curing these deficiencies.

(viii) 30 CFR 805.13(b), provides for beginning the liability period *after* the last year of augmentation consistent with Section 515(b)(20) of SMCRA and provides for a demonstration by the permittee that discontinuing husbandry practices will not reduce the probability of permanent revegetation success. State regulation SR 15–13(b) provides for beginning the liability period *with* the last year of augmentation and does not include the second provision. The Secretary finds that "with" could be construed to mean that the liability period could begin before augmentation is completed, which is less stringent than federal requirements. In addition, the State's omission relieves the State of any responsibility for approving husbandry practices without regard for whether or not cessation would reduce the probability of permanent revegetation success, which is also less stringent than federal requirements. The State regulation SR 15–13(b) also omits the phrase "or other work in order to assure compliance" found in Section 515(b)(20) of SMCRA. This omission makes the State rule less stringent than the corresponding federal requirement by limiting the conditions which would initiate or cause the liability period to begin again. Therefore, the Secretary conditions his approval on the State amending its regulation to reflect 30 CFR 805.13(b).

(ix) 30 CFR 805.13(e), SR 15–13(e) the federal regulation allows no exception to the liability period of 5 or 10 years for long term, intensive agricultural land-use. The State regulation provides an exception. The Secretary finds that this exception is unacceptable because neither SMCRA nor the federal regulations allow an exception to the liability period. The exception authorized in Section 515(b)(20) of SMCRA relates to the kind of postmining vegetation, not the period of liability. Therefore, the Secretary conditions his approval on the State clarifying its regulations to reflect 30 CFR 805.13(e).

(x) 30 CFR 805.13(g), SR 15–13 the federal regulation provides that if an area is separated "* * * that portion shall be bonded separately and the applicable period of liability * * * shall commence anew, the period of liability for the remaining area shall continue in effect without extension, and the amount of bond on the original bonded area may be adjusted in accordance with 30 CFR 805.14." The States omit this language from SR 15–13. The Secretary finds that the State's omission is unacceptable because the State provisions do not make it clear that liability begins again on separated areas. The Secretary conditions his approval on the State curing this deficiency.

(xi) While the federal rules provide notification on bond actions to, and allow requests for reduction of bonds from, persons who have a financial interest in a bond other than the permittee the New Mexico rules only provide this for the permittee. The Secretary finds the New Mexico provision to be no less stringent than the federal rule, since environmental

protection and public participation will not be compromised by this difference.

(xii) 30 CFR 806.12(g)(2), SR 16–12(g)(2) the federal regulation provides that, "The regulatory authority may

net cash available to the regulatory authority in performing reclamation. The bond value of collateral may be evaluated at any time, but shall be evaluated as part of permit renewal. In

possibility of no funds or collateral being available for the regulatory authority to use to reclaim the land if the company forfeits or goes bankrupt.

30 CFR 806.14(a)(5)(v)(A) (1) and (2)

area until conditions of phase III reclamation for the last increment of the permit area have been met." State regulation SR 17–12(c) allows for an increment to be released from the permit

Secretary agrees with this analysis, and finds the New Mexico provision to be consistent with SMCRA Sections 518 (e), (f), and (g).

(ii) NMSA 69–25A–22H adds language

Mexico civil penalty assessment procedures to the extent they incorporate provisions remanded by the court.

(iv) New Mexico regulation 31–15(b)

protection and public participation will not be compromised by this difference.

(xii) 30 CFR 806.12(g)(2), SR 16–12(g)(2) the federal regulation provides that, "The regulatory authority may approve the *use* of letters of credit * * * in accordance with a schedule approved with the permit. Any bank issuing a letter of credit * * * shall notify the regulatory authority in writing at least 90 days prior to the maturity date of such letter of credit or the expiration of the letter of credit agreement." The State regulation provides for irrevocable letters of credit and allows approval of the withdrawal (rather than use) of a letter of credit only 90 days after notice to the regulatory authority. The Secretary finds the State's regulation consistent with the federal rules, because the regulatory authority will have the notice it needs before the letter of credit must be replaced.

(xiii) 30 CFR 806.12(h)(2)(ii), SR 16–12(h)(2)(ii) the federal regulation provides that the fair market value of real and personal property will be determined by at least two independent appraisers certified in the State and that "... final acceptance of the value of property for bonding purposes shall be subject to regulatory authority determination and shall be based on findings by appointed appraisers when deemed necessary." The State regulation provides that for an appraisal conducted by appraisers appointed by the Director in every case, which is consistent with the federal rule.

(xiv) 30 CFR 806.12(h)(2)(iii)(A), SR 16–12(h)(2)(iii)(A) the federal regulation provides that the status report will be prepared by a "* * * non-affiliated attorney competent to evaluate the asset * * *" The State regulation provides that the report be prepared by an attorney who is satisfactory to the Director as disinterested and competent. The Secretary finds that the State's regulation is acceptable because it assures the neutrality of the person making the report. The Secretary notes that the federal regulation was changed from the version incorporated in the State rule because commenters felt regulatory authorities should not be required by federal rules to pass judgment on the competency of an attorney who has passed a State's bar.

(xv) 30 CFR 806.12(h)(4)(vi), provides that the estimated bond value of all collateral posted as bond assurance under 30 CFR 806.12 (f), (g), and (h) shall be subject to a margin—bond value to market value ratio—determined by the regulatory authority. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority in performing reclamation. The bond value of collateral may be evaluated at any time, but shall be evaluated as part of permit renewal. In no case shall the bond value exceed the market value. State rule SR 16–12(h) does not include this provision. However, the Secretary finds that the State's omission is no less stringent than federal requirements because the State may not accept any securities other than U.S. Government securities and general revenue bonds of the State of New Mexico.

(xvi) Federal regulations on self-bonding are covered in 30 CFR 806.14. The State rule SR 16–14 incorporated proposed amendments issued January 24, 1980 (45 FR 6028), which were subsequently rejected due to comments which cited the proposed rules as providing inadequate financial assurances and economic incentives. OSM as an interim measure to further rulemaking repromulgated self-bonding regulations identical to regulations which were in effect when the State program was submitted. Therefore, the Secretary conditions this approval on reestablishing self-bonding rules as issued March 13, 1979 (44 FR 15387) 30 CFR 806.11(b) or August 6, 1980 (45 FR 52321) 30 CFR 806.14. Major deficiencies identified in the State regulations and corresponding federal requirements are discussed below.

30 CFR 806.14(a)(2), provides that the applicant or parent organization must have a net worth of at least six times the total amount of self-bond obligations on all U.S. permits. The State omits this requirement in SR 16–14(a)(2). The State regulation would allow a company to self-bond that has a net worth less than that required by the federal regulations.

Federal regulation 30 CFR 806.14(a)(3) provides that, "The applicant grants the regulatory authority a mortgage or security interest in real or personal property located in the State which shall have a fair market value equal to or greater than the obligation created under the indemnity agreement." The State rule SR 16–14(a) omits this provision.

In addition, 30 CFR 806.14(a)(4) provides that the regulatory authority can attach, sell, or otherwise dispose of real or personal property offered to secure a self-bond and that the regulatory authority will be the sole secured creditor in cases of bankruptcy. Other criteria must also be included, such as a schedule of the real or personal property. The State rule omits this provision. The omission of security rules would allow a self-bond that was unsecured and therefore, allow for the possibility of no funds or collateral being available for the regulatory authority to use to reclaim the land if the company forfeits or goes bankrupt.

30 CFR 806.14(a)(5)(v)(A) (1) and (2) provide for financial information for the *preceding* 10 year period. SR 16–14(a)(2)(v)(A) (1) and (2) provide for the information for any 10 years. The State regulations would allow the showing of information for a 10 year period which may not include the preceding 10 years, which would be the most reliable indication of relevant financial condition.

30 CFR 806.14(a)(5)(v)(D) provides for "A final determination by an independent certified public accountant regarding the operator's ability to satisfactorily meet all obligations and costs under the proposed reclamation plan for the life of the mine * * *" SR 16–14(a)(5)(v)(D) provides for "A final certification by the independent Certified Public Account that the financial statements as audited have been prepared in accordance with generally accepted accounting principles, with such disclosures that such Certified Public Accountant should make to comply with the Financial Accounting Standards Board." The State regulation is unacceptable because it does not require a determination of the operator's ability to meet all obligations and costs.

30 CFR 806.14(a)(6)(i)(D), provides for execution of the indemnity agreement by the applicant's spouse. SR 16–14(a)(3)(i)(D) provides for execution by the applicant's spouse "* * * if directly involved as part of the business on a regular bona fide basis or as an officer of the organization." The State regulation is unacceptable because it allows for execution by the operator's spouse only if the spouse is involved as part of the business, contrary to federal requirements.

Federal regulation 30 CFR 806.14(a)(6)(iii) provides that, "The indemnity agreement shall be a binding obligation, jointly and severally on all who execute it." State regulation SR 16–14(a)(3)(iii) provides the same but qualified it with "* * * other than corporate officer executing the indemnity agreement of signatories signing in their representative capacities and not as principals, unless the Director determines that the applicant does not qualify for a self-bonding without such joint and several liability." The State regulation provides an exception that the federal regulation does not.

(xvii) Federal regulation 30 CFR 807.12(c) provides that, "No increment shall be totally released from the permit

area until conditions of phase III reclamation for the last increment of the permit area have been met." State regulation SR 17–12(c) allows for an increment to be released from the permit area if successful reclamation of the increment is not dependent on other increments. The Secretary finds the alternative language of the State regulation acceptable because it achieves the intent of the corresponding federal rule and restricts release on increments on which achievement of the land use is dependent. It should be noted, however, that the increment is released from the permit area only through repermitting or permit amendment.

(xviii) Federal regulation 30 CFR 808.12(d) provides that, "The regulatory authority shall utilize funds collected from bond forefeiture to complete the reclamation plan on the permit area on which bond coverage applies, and to cover associated administrative expense." The State has no such analog in rule SR 18–12. The Secretary finds that the State's omission is acceptable because the federal rule was promulgated on August 6, 1980 and the State is not required to include it in its program at this time. The State will be given an opportunity to incorporate the provision at a later date.

(i) The New Mexico Division of Mining and Minerals has the authority under Sections 69–25–22 of the NMSMA, and the New Mexico program includes provisions to provide for civil and criminal sanctions for violation of New Mexico law, regulations, conditions of permits and exploration approvals including civil and criminal penalties in accordance with Section 518 of SMCRA, 30 USC 1268. The approval contained in 30 CFR 931.10 is based upon the following representations of New Mexico law:

(i) New Mexico statutes 69–25A–22E and 69–25A–22G, governing willful violations, has added language not contained in section 518 (e), (f), and (g) of SMCRA, which state that a willful violator is subject to the imposition of certain criminal penalties only if "the time for appeal has exhausted." The Secretary requested that the State submit an Attorney General's Opinion confirming the equivalency of the State and federal provisions. This Opinion was submitted to the Office of Surface Mining on August 7, 1980 (See Administrative Record No. NM 99). New Mexico pointed out that Section 518(c) of SMCRA uses the term "final decision," making it clear that all appeal rights of the individual must run prior to the imposition of criminal penalties. The Secretary agrees with this analysis, and finds the New Mexico provision to be consistent with SMCRA Sections 518 (e), (f), and (g).

(ii) NMSA 69–25A–22H adds language not present in Section 518(h) of SMCRA, regarding relief from the $750 per day failure-to-abate penalty. The Secretary requested that New Mexico submit an Attorney General's Opinion explaining the equivalency of the State language. On August 7, 1980, New Mexico submitted the requested Opinion fully explaining the New Mexico appeals process (See Administrative Record No. NM 99). The process includes two levels of administrative appeal prior to judicial appeal, but there is no relief from the failure-to-abate penalty which is consistent with Section 518(h) of SMCRA. On this basis, the Secretary finds NMSA 69–25A–22H to be consistent with SMCRA Section 518(h).

(iii) The New Mexico regulations provide for a civil penalty point system which, in some aspects, is different from that found in 30 CFR Part 845. First, in the New Mexico System, for each category of the penalty criteria, the Director may assign up to 25 points. In 30 CFR 845.13, up to 30 points may be assigned for history of violations and seriousness, and only up to 10 points may be credited for good faith.

Secondly, Section 31–13(b)(1)(iii) of the New Mexico regulations states that, for purposes of assigning history points, "a violation not resulting in a civil penalty assessment shall not receive more than 50 percent of the points that would have been assigned if the violation had resulted in an assessment." The State scheme of point assignment should result in penalties which, in a number of cases, are lower than those that would be assessed under the federal provisions.

On May 16, 1980, the U.S. District Court for the District of Columbia issued its second round decision in the litigation over the permanent regulations *(In Re: Permanent Surface Mining Regulation Litigation)*. In that decision, the District Court answered the Secretary's request for clarification regarding the Round I decision issued February 26, 1980, regarding penalties. In those decisions, the Court indicated that while Section 518(i) of the Act requires a State to incorporate the penalties, the four criteria, and the procedures explained in Section 518, the Secretary does not have the authority to require States to adopt a system that will result in penalties at least as stringent as those imposed under OSM's point system. Based on the district court's ruling, the Secretary has affirmatively disapproved the New Mexico civil penalty assessment procedures to the extent they incorporate provisions remanded by the court.

(iv) New Mexico regulation 31–15(b) incorporates language limiting the extent to which daily failure-to-abate penalties can accumulate, which was proposed by the Secretary as a rule change to 30 CFR 845.15(b). In the final rule, published on September 4, 1980 (45 FR 58780), the Secretary placed additional requirements upon the regulatory authority. By means of a policy statement, dated September 10, 1980, New Mexico included these additional requirements. Although not specifically included the Secretary assumes that the State will use its powers under NMSA 69–25A–22F to subject directors, officers, or agents, of corporate permittees to civil and criminal penalties in appropriate failure-to-abate cases. (See Administrative Record No. NM 119). On this basis, the Secretary finds regulation 31–15(b) acceptable.

(v) New Mexico regulation 31–17(d) allows the consolidation of an assessment conference and an informal hearing for the review of a violation if the Director determines that such consolidation is appropriate. The Secretary finds that this approach is consistent with the intent of SMCRA and 30 CFR 845.18 and 845.19, because it is only done when appropriate, and in a manner which does not prejudice the rights of operators or citizens.

(j) The New Mexico Division of Mining and Minerals has the authority under New Mexico laws, and the New Mexico program contains provisions, to issue, modify, terminate and enforce notices of violation, cessation orders and show-cause orders in accordance with Section 521 of SMCRA, 30 USC 1271, and with 30 CFR Chapter VII, Subchapter L, including the same or similar procedural requirements. The enforcement authorities in Section 521 of SMCRA and the applicable provisions of 30 CFR Chapter VII, Subchapter L are contained in Section 25 of the New Mexico NMSMA and in Sections 30 and 31 of the New Mexico regulations. Approval of the New Mexico regulatory program is based upon the following representations:

(i) 30 CFR 843.13 (c)(1)–(3) and (d) place certain burdens upon the regulatory authority to publish and post copies of any show cause order to be certain that the public is fully informed. New Mexico regulation 39–13, which covers show cause orders does not include these requirements. In order to fully comply with Section 521 of SMCRA and the above federal regulations, New

Mexico must publish notice of any show cause order and post that order in the regulatory authority office. New Mexico has agreed to make this change.

(ii) The New Mexico statute 69–25A–25 uses the term "designee" in instances

110). Further, in a letter, dated September 10, 1980, from Emery C. Arnold to Walter N. Heine, the State indicated that the phrase, "scope of employmnent," covers acts incidental to the regular duties of an employee (See

penalty criteria. In a letter from Emery C. Arnold to Walter N. Heine, dated September 10, 1980, the State indicated that the public would be given notice of and would be allowed to participate in these informal hearings pursuant to the

regulatory agencies. Upon close examination, it became clear that the New Mexico type of proceeding was not an "adjudicatory" hearing in the traditional sense, but is a hybrid, which allows the witness to select the

compliance with notice, record-keeping, venue, and other requirements of 4–15 and 4–17(2) the creation of 2 categories of witnesses—technical who will be subject to cross-examination, and non-technical who will be subject to cross-

the plaintiff. New Mexico has substituted the language "irreversibly impair a legal interest" in 69–25A–24B. In response to the Secretary's request for information clarifying the differences in language, the State submitted an

Mexico must publish notice of any show cause order and post that order in the regulatory authority office. New Mexico has agreed to make this change.

(ii) The New Mexico statute 69–25A–25 uses the term "designee" in instances where SMCRA Section 521(a) uses "authorized representative." The State was requested to submit an Attorney General's Opinion explaining the equivalency of the terms (See Administrative Record No. 58). On August 7, 1980, the State submitted the requested opinion and explained that it considers the two terms to be equivalent. On that basis the Secretary finds that NMSA 69–25A–25 and SMCRA Section 521(a) are consistent.

(iii) New Mexico regulation 30–11(b) includes language not found in the federal counterpart, 30 CFR 843–11(b), which states, "if affirmative obligations to abate are imposed, the inspector may consider suggestions by the operator concerning the economic and technical feasiblity, in determining the most expeditious means of abatement and the period for the correction of the condition, practice of violation * * *" At the September 5, 1980, meeting (See Administrative Record No. NM 110), New Mexico represented that it intended regulation 30–11(b) to operate in the same manner as 30 CFR 843.11(b). Thus, this language means that if an operator knows of a less expensive and more effective method of abatement, he may so inform the inspector. If the inspector believes the suggested method would assure that the imminent danger will be abated as promptly as possible he should modify his order (See 44FR 15301). On this basis, the Secretary finds New Mexico regulation 30–11(b) consistent with 30 CFR 843.11(b).

(iv) New Mexico regulation 30–13(b)(2) includes different language from the federal counterpart, 30 CFR 843.13. The State language states that all violations associated with any surface coal mining operation shall be attributable to the permittee "unless the permittee establishes by clear and convincing evidence, that the acts were not within the scope of employment or agency." The federal language states that such acts are attributable "unless the permittee establishes that they were acts of deliberate sabotage." At the September 5, 1980, meeting, New Mexico represented that it would not proceed to suspend or revoke an operator's permit if the acts complained of were beyond the "scope of employment," and that this standard was no different than the Director's discretion not to suspend or revoke a permit under 30 CFR 843.13(b) (See Administrative Record No. NM 110). Further, in a letter, dated September 10, 1980, from Emery C. Arnold to Walter N. Heine, the State indicated that the phrase, "scope of employmnent," covers acts incidental to the regular duties of an employee (See Administrative Record No. NM 119). Additionally, *Lang* v. *Cruz*, 394 p. 2d 988 (N. Mex. Sup. Ct. 1964), indicates that any act of an employee in furtherance of the employer's business is within the employee's scope of employment even if such act is in violation of the employer's orders. The Secretary understands that all actions of an employee in connection with the mine are included in the scope of employment, and thus the New Mexico concept is as inclusive as the federal regulation. The Secretary, therefore, finds that the procedures used in New Mexico regulation 30–13(b)(2) are the same or similar to those procedures in 30 CFR 843.13.

(v) 30 CFR 843.13 prescribes events that are triggered by a permit suspension or a permit revocation. The New Mexico counterpart, regulation 30–13, does not refer to permit suspension. The Secretary requested an explanation (See Administrative Record number NM 58). The State responded that the obligation upon an operator to reclaim exists independently from the language in 30 CFR 843.13 and that such obligation is not terminated by the suspension or revocation of a permit. The State can assert the right both to require reclamation after suspension or revocation and to proceed against a bond should reclamation activity not be completed (See Administrative Record number 89). The Secretary finds that explanation consistent with 30 CFR 843.13.

(vi) The State program does not include the language found in 30 CFR 843.18, which states that no notice of violation shall be vacated because of inability to comply. The State explained that an operator with an outstanding notice of violation who fails to comply is given an automatic cessation order under 30–12(e) which replaces the notice of violation. Therefore, a notice of violation and cessation order are analytically equivalent with respect to inability to comply (See Administrative Record Number NM 89). The Secretary agrees that an equivalent result does occur, and he finds the New Mexico approach is similar to the federal regulation.

(vii) The Secretary was unclear as to the operation of New Mexico regulation 30–15, concerning informal hearings, in the areas of public participation, the relationship to the formal hearing process, and the consideration of civil penalty criteria. In a letter from Emery C. Arnold to Walter N. Heine, dated September 10, 1980, the State indicated that the public would be given notice of and would be allowed to participate in these informal hearings pursuant to the New Mexico Open Meetings Act, NMSA 10–15–1 *et seq.* Secondly, the State indicated that if a penalty is arrived at during such an informal hearing, the requirements of part 31 of the regulations must be complied with, including consideration of the four civil penalty criteria with, including consideration of the four civil penalty criteria which are consistent with SMCRA Section 518(a). Lastly, the State indicated that the informal hearing procedure does not preclude an operator from asserting his right to formal review by the Director. Based on these representations, the Secretary finds New Mexico regulation 30–15 acceptable.

(k) The New Mexico Division of Mining and Minerals has the authority under Section 69–25A–26 of the NMSMA, and the New Mexico program contains provisions to designate areas as unsuitable for the surface coal mining consistent with 30 CFR Chapter VII, Subchapter F. Approval of the New Mexico program is based upon the following considerations and representations:

(i) New Mexico was asked by the Secretary to explain why regulation 4–15 did not contain the requirements of 30 CFR 764.15 for publishing public notice in a State register and the maintenance of an administrative record at a local office in the area of concern (See Administrative Record No. NM 58). The State responded that New Mexico has no State register and the only regulatory authority office is located in Santa Fe (See Administrative Record No. NM 89). The administrative record for any proceeding will be kept in the regulatory authority office in Santa Fe. The Secretary finds that this is consistent with the requirements of Section 522(a) of SMCRA and 30 CFR 764.15.

(ii) New Mexico regulation 4–17 specifies that the hearing connected with any petition be adjudicatory and not simply fact-finding in nature. The Secretary was concerned that this type of a hearing conflicted with the clear directive in 30 CFR 764.17 that the hearing be "legislative and fact-finding in nature, without cross-examination of witnessses."

New Mexico was asked by the Secretary to clarify the reasons for making this change (See Administrative Record No. NM 58). The State responded that the "adjudicatory" hearing has a well-developed tradition in New Mexico

regulatory agencies. Upon close examination, it became clear that the New Mexico type of proceeding was not an "adjudicatory" hearing in the traditional sense, but is a hybrid, which allows the witness to select the procedures which will apply to his or her testimony.

New Mexico's position on this type of hearing was supported to some degree, by representatives of the environmental community in the State. At the public hearing of July 23, 1980, representatives of the Sierra Club and the New Mexico Citizens for Clean Air and Water described a process which has developed over the years at hearings conducted by the Environmental Improvement Board in New Mexico (See Administrative Record No. NM 79). Apparently, this process is not codified, but carried on by tradition. The Board recognizes two distinct types of witnesses, one termed a "technical" witness and the other termed an "opinion" witness. Prior to testifying a witness declares himself to be in one category or the other. The "technical" witness is subject to cross-examination while the "opinion" witness is not. Both types of testimony are fully considered by the Board.

A "technical" witness is not to be confused with the legal term of art, expert witness. The "technical" witness category includes industry representatives, representatives of organized environmental groups, and others who wish to present evidence that has some scientific basis. Any person with evidence of a scientific nature who does not wish to be subject to cross examination, can submit the evidence in written form to the regulatory authority or indicate prior to testimony that he or she is an "opinion" witness. A witness in this category is subject to cross-examination by the members of the Board and by others attending the hearing. The environmental representatives endorsed this type of hearing as the type of thing which they would like to see develop with the New Mexico Surface Mining Commission. They cautioned against full acceptance, however, until some sort of tradition had developed.

The Secretary requested that New Mexico provide written procedures detailing how the adjudicatory hearing will operate both in spirit and in practice for evaluation (See Administrative Record No. NM 110). The Mining and Minerals Division and the Surface Mining Commission in its letter, dated September 10, 1980, committed to establishing hearing procedures which include the following features: (1) compliance with notice, record-keeping, venue, and other requirements of 4–15 and 4–17(2) the creation of 2 categories of witnesses—technical who will be subject to cross-examination, and non-technical who will be subject to cross-examination only if they so affirm, (3) in applicability of the civil rules of procedure and rules of evidence, and (4) a notice of hearing which will announce the procedures to be followed in conducting such hearings (Administrative Record No. NM 119). The Secretary finds the procedures in New Mexico regulation 4–17 inconsistent with the provisions of 30 CFR 764.17 and conditions approval of the State program upon this deficiency being remedied. The Secretary agrees to examine the alternative approach outlined by the State when implementing procedures and regulations have been developed to determine if the approach can be found to be consistent with 30 CFR 764.17. The process may be consistent with federal requirements since any person can elect that the hearing, as it involves his or her testimony, be strictly legislative in nature and thus the New Mexico procedure would not have a chilling effect on the designation petition process. During this evaluation public comment on the approach will be sought.

(1) The New Mexico Division of Mining and Minerals has the authority under 69–25A–17, and the New Mexico program contains the provisions for public participation in the development and revision of New Mexico regulations, and the State program, consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. New Mexico also has the authority to provide for public participation in the permitting process and in the enforcement of its laws and regulations.

The New Mexico program was developed by a task force comprised of representatives of industry, the Division of Mining and Minerals, and other State agencies. Environmental group representatives were invited to participate, and were presented with materials to critique as they became available. A public hearing was held on May 15, 1980, in conjunction with the promulgation of the regulations.

Approval of the New Mexico program is based upon the following considerations and representations:

(i) Section 520(b)(2) of SMCRA states that an action cannot be commenced against the regulatory authority on an immediate basis unless the case constitutes an imminent threat to the health or safety of the plaintiff or would immediately "affect a legal interest" of the plaintiff. New Mexico has substituted the language "irreversibly impair a legal interest" in 69–25A–24B. In response to the Secretary's request for information clarifying the differences in language, the State submitted an Attorney General's Opinion on August 7, 1980, indicating that New Mexico law provides an equivalent standard (see Administrative Record No. NM 99). In that opinion, the Attorney General states that the failure of a state official to perform a mandatory non-discretionary duty would constitute the kind of irreversible impairment of a legal interest required in Section 24B. On this basis, the Secretary finds the explanation acceptable.

(ii) Section 520(c) of SMCRA requires that suits against the regulatory authority be brought only in the judicial district in which the operation is located. NMSA 69–25A–24C requires that such suits be brought in the district court of Santa Fe. The Secretary requested a demonstration of equivalency (see Administrative Record No. 58). The State responded that, as it applies to New Mexico, the federal requirement means that a suit under SMCRA could be brought anywhere in New Mexico since the entire State constitutes a federal judicial district (see Administrative Record No. NM 89).

The State also pointed out that New Mexico statutes require that suits against State officers shall be brought in the capital and nowhere else. The requirement in the NMSMA restates this general venue requirement. The Secretary accepts the explanation as a demonstration of equivalency, and finds NMSA 69–25A–24C consistent with Section 520(c) of SMCRA.

(iii) In the original submission of February 29, 1980, New Mexico did not provide a counterpart to 43 CFR Part 4. In the submission to OSM of June 11, 1980, most of the necessary provisions were either added to the regulations, or the appropriate equivalent in other State law was referenced (see Administrative Record No. NM 89). New Mexico did not include a showing of authority for the awarding of attorney's fees consistent with 43 CFR 4.1290–96. As a condition of approval, New Mexico must either implement regulations similar to these, or reference appropriate State law already in effect.

(iv) Section 520(a) of SMCRA specifies that actions may be brought against the United States and against the Secretary. The New Mexico counterpart, 69–25A–24A NMSA 1978, allows actions to be brought against the Commission, but makes no mention of actions against the State of New Mexico. The Secretary requested that the State submit an

Attorney General's Opinion explaining the equivalency of the State statute and the federal provision. On August 7, 1980, the State submitted an Opinion to the Secretary (see Administrative Record No. NM 99), which explains that a suit against the Commission in its official capacity is, in effect, a suit against the

Mexico has not promulgated any regulations at this point. In October of 1979 New Mexico and the Office of Surface Mining entered into a Memorandum of Understanding which specified the arrangement contemplated by 30 CFR 795.11 (a)(3)(ii) under which OSM would implement the SOAP

not impose any demands for additional staffing unless increases in the number of small operators in the State dictate the need for establishment of a permanent SOAP staff. To the extent possible, consistent with funding and staffing limitations, OSM will provide assistance to the State necessary to

69–25A–30A and 30B consistent with SMCRA Section 526(c).

(ii) NMSA 69–25A–29G appears to allow for a *de novo* review in the case of administrative review. SMCRA Section 525(a)(2) clearly states that such review must be "on the record." The Secretary requested that New Mexico submit an Attorney General's Opinion concerning

which would limit court access. On this basis, the Secretary finds NMSA 69–25A–30C consistent with the requirements of Section 526(b) of SMCRA.

(v) Section 526(d) of SMCRA has no counterpart in New Mexico law. This section states that the commencement of a proceeding shall not operate as a stay

New Mexico Water Quality Act and regulations adopted thereunder; the New Mexico Air Act and regulations adopted thereunder; the New Mexico Habitat Protection Act; the New Mexico Cultural Properties Act; the New Mexico Confidentiality of Site Location Act; Section 19–9–1 NMSA—Lease of coal lands; Section 19–70–18 NMSA—Bond

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Attorney General's Opinion explaining the equivalency of the State statute and the federal provision. On August 7, 1980, the State submitted an Opinion to the Secretary (see Administrative Record No. NM 99), which explains that a suit against the Commission in its official capacity is, in effect, a suit against the State. The Secretary, therefore, finds the New Mexico provision consistent with Section 520(a) of SMCRA.

(v) The Secretary points out that New Mexico regulation 29-12(b) concerning citizen request for inspections, contains an apparent typographical error. In order to read correctly, the entire provision should probably be written as a single sentence. As it stands, it is an incomplete thought. As a condition of approval, New Mexico must promulgate a regulation consistent with 30 CFR 842.12.

(vi) New Mexico regulation 29-16 refers to State statutes which govern the inspection of public records. The Secretary requested that New Mexico provide Sections 14-2-1 through 14-2-3 NMSA 1978, which were not a part of the original submission. New Mexico complied with this request on June 11, 1980 (see Administrative Record No. NM 63). Subsequent review allows the Secretary to find that the provisions are consistent with 30 CFR 842.16.

(m) The New Mexico Division of Mining and Minerals has the authority under New Mexico laws and the New Mexico program includes provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the New Mexico Energy and Minerals Department, Division of Mining and Minerals and the New Mexico Surface Mining Commission consistent with 30 CFR 705.

(n) The New Mexico Division of Mining and Minerals has the authority under New Mexico regulations to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA. New Mexico has no regulations on the training, examination, and certification of persons engaged in blasting because 30 CFR 732.15(b)(12) does not require a State to implement regulations governing certification and training of persons engaged in blasting until six months after federal regulations for these provisions have been promulgated. Federal regulations have not been promulgated at this time.

(o) The New Mexico Division of Mining and Minerals has the authority under 69-25A-10C NMSA 1978 to provide small operator assistance. New Mexico has not promulgated any regulations at this point. In October of 1979 New Mexico and the Office of Surface Mining entered into a Memorandum of Understanding which specified the arrangement contemplated by 30 CFR 795.11 (a)(3)(ii) under which OSM would implement the SOAP program for New Mexico. The State had initially requested OSM to assume this responsibility in a letter dated May 18, 1979. The state has adopted this approach because historical experience indicated that very few applications would be forthcoming. This projection has been borne out by the fact that only one application has been filed during the period of the initial Memorandum of Understanding. More explicitly, only one application has been filed since the inception of the program in March 1978. There are no indications that the structure of the coal industry in New Mexico is going to change and alter this present experience with respect to the need for SOAP. New Mexico sent an additional letter, dated June 10, 1980, requesting that the Memorandum of Understanding be renewed and extended for an additional year.

New Mexico does not feel that it would prove cost effective to implement a SOAP program within the Division of Mining and Minerals. In testimony presented at the July 23, 1980, public hearing, the State estimated that the costs of maintaining a staff so that a program could be implemented, apart from the costs involved in processing an application, to be in excess of $50,000 annually (see Administrative Record No. NM 79, p. 37). This figure did not contain any cost figures for retainer payments to insure that suitable laboratory facilities and personnel would be available when needed. The estimated cost of laboratory work for the only application so far submitted is placed at $30,000. Assuming the same number and frequency of SOAP applications will occur in the future, one every two years, New Mexico would incur $100,000 of fixed costs for each $30,000 laboratory contract. New Mexico argues that this is not an effective use of public funds. The State has agreed that, if due to unanticipated and unexperienced developments, the number of small operators in the State increases significantly, the State will implement its statutory authority for a State SOAP. The Secretary is sympathetic to the argument of cost effectiveness, but at the same time realizes the responsibilities imposed by SMCRA. As a condition of approval, new Mexico must promulgate regulations consistent with 30 CFR Part 795. The Secretary will not impose any demands for additional staffing unless increases in the number of small operators in the State dictate the need for establishment of a permanent SOAP staff. To the extent possible, consistent with funding and staffing limitations, OSM will provide assistance to the State necessary to process SOAP applications during this transition period utilizing the procedures and following regulations developed by the State. New Mexico has agreed to this condition.

(p) The New Mexico Division of Mining and Minerals does not have the authority under 69-25A-22(E)NMSA 1978, and the New Mexico program does not contain provisions to provide protection of employees of the Division of Mining and Minerals in accordance with the protection afforded federal employees under Section 704 of SMCRA.

New Mexico has provided a written commitment to make, as an explicit condition of permit approval, the requirement that permittees not willfully resist, prevent, impede, or interfere with the Director (or by definition his authorized representatives) from performing his duties under the Surface Mining Act (see Administrative Record No. NM 99). By making this a permit condition, the penalty provisions of Section 69-25A-22(E) will become applicable, and an operator interfering with an inspector will become liable for a fine of $10,000 or imprisonment for not more than a year or both. Based on this representation, the Secretary approves New Mexico provisions for protection of State employees.

(q) New Mexico has the authority under its laws and the New Mexico program contains provisions for administrative and judicial review of State program actions in accordance with Sections 525 and 526 of SMCRA and 30 CFR Chapter VII, Subchapter L. The approval is based upon the following representations concerning New Mexico law and the New Mexico program:

(i) The Secretary was concerned that NMSA 69-25A-30A appears to allow for interlocutory temporary relief, contrary to the language of SMCRA Section 526(c). The Secretary requested an Attorney General's Opinion demonstrating the equivalency of the provisions. New Mexico responded on August 7, 1980, with an opinion that pointed out that the criteria for temporary relief in the New Mexico program were located in NMSA 69-25A-30B, and that they were the same as the federal criteria in SMCRA Section 526(c) (See Administrative Record No. NM 99). On this basis, the Secretary finds NMSA 69-25A-30A and 30B consistent with SMCRA Section 526(c).

(ii) NMSA 69-25A-29G appears to allow for a *de novo* review in the case of administrative review. SMCRA Section 525(a)(2) clearly states that such review must be "on the record." The Secretary requested that New Mexico submit an Attorney General's Opinion concerning the equivalency of the State and federal provisions (see Administrative Record No. NM 58). On August 7, 1980, the State submitted such an opinion, which indicates that the administrative hearing before the Director is the stage at which the administrative record is developed. The Commission may only order that additional evidence be taken by the Director. The Secretary finds the New Mexico procedure acceptable.

(iii) NMSA 69-25A-30B appears to allow for a *de novo* review in the case of judicial review. SMCRA Section 526(b) clearly states that such review must be "on the record." The Secretary, requested that New Mexico submit an Attorney General's Opinion concerning the equivalence of the State and federal provisions (see Administrative Record No. NM 58). On August 7, 1960, the State submitted such an opinion, which indicates that a judge may not take additional evidence except in cases of alleged omissions or errors in the record. The types of corrections contemplated are errors in the transcript. It is not a method for introducing new material. On this basis, the Secretary finds that NMSA 69-25A-30B meets the requirements of Section 526(b) of SMCRA, as interpreted by the Secretary in his pleadings before the U.S. District Court for the District Court of Columbia, during round one of the permanent program litigation.

(iv) NMSA 69-25A-30C includes language not present in the federal counterpart, SMCRA Section 526(b), which appears to limit access to court. The language in question states that a court may affirm, remand, or reverse the decision of the Commission "if the substantial rights of the petitioner have been prejudiced because of the administrative findings." The Secretary requested that New Mexico submit an Attorney General's Opinion concerning the equivalence of the State and federal provisions (see Administrative Record No. NM 58). On August 7, 1980, the State submitted such an opinion. New Mexico explained that the reviewers had misconstrued the purpose of the State statutory language. The State explained that the language establishes a general standard of review for the district court to apply to the review of Commission decisions, not a standing requirement which would limit court access. On this basis, the Secretary finds NMSA 69-25A-30C consistent with the requirements of Section 526(b) of SMCRA.

(v) Section 526(d) of SMCRA has no counterpart in New Mexico law. This section states that the commencement of a proceeding shall not operate as a stay of an action, order, or decision of the Secretary's unless specifically ordered by the court. In response to the Secretary's request for assurance that New Mexico State law operates in an equivalent manner, the State submitted an Attorney General's Opinion on August 7, 1980 (see Administrative Record No. NM 99). The Opinion pointed to 69-25A-30B NMSA 1978, as the equivalent in terms of the criteria which must be met prior to a court issuing a stay. On this basis, the Secretary finds NMSA 69-25A-30B consistent with Section 526(d) of SMCRA.

(vii) Section 526(a)(2) of SMCRA includes language stating that the availability of review established in this subsection shall be not construed to limit the operation of rights established in Section 520. The State has no comparable provision. The Secretary requested an explanation of equivalence (Administrative Record number 58). The State responded on August 7, 1980, with an Attorney General's opinion that satisfied the concern of the Secretary. The State explained that the right of judicial review established in NMSA 69-25A-30 is completely independent from the right to initiate suit under NMSA 69-25A-24. Nothing in the statute indicates that 69-25A-30 narrows the scope of action under 69-25A-24. On the strength of this opinion, the Secretary finds NMSA 69-25A-30 consistent with SMCRA Section 526(a)(2).

(r) The Division of Mining and Minerals has the authority under New Mexico law, and the New Mexico program contains provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. The provisions for cooperation, coordination, and provision of documents are contained in 69-25-A-27 NMSA 1978.

(s) The following laws and regulations of New Mexico affecting its regulatory program, with the exception discussed below, do not contain provisions which would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII: the New Mexico Surface Mining Act and regulations adopted thereunder; the New Mexico Mine Dewatering Act; the New Mexico Water Quality Act and regulations adopted thereunder; the New Mexico Air Act and regulations adopted thereunder; the New Mexico Habitat Protection Act; the New Mexico Cultural Properties Act; the New Mexico Confidentiality of Site Location Act; Section 19-9-1 NMSA—Lease of coal lands; Section 19-70-18 NMSA—Bond requirements; Section 30-8-2 NMSA—Polluting water; Section 76-8-1 NMSA—Protection of native New Mexico plants; Sections 60-3-6 and 69-3-6—ground water usage; Sections 72-5-1 *et seq.*—surface water appropriation; Section 72-8-1 *et seq.*—offenses and penalties regarding water; Section 72-12-1 *et seq.*—ground water usage; and other laws and regulations of New Mexico.

As discussed in Finding 4(d)(vi), New Mexico has an apparent conflict of requirements in the New Mexico Wildlife Conservation Act. That Act allows for the capture, removal, and destruction of endangered species. New Mexico has stated that the Endangered Species Act of 1973 preempts this State act, and New Mexico recognizes the complete protection afforded those species listed under the federal Act. The New Mexico Wildlife Conservation Act insofar as it conflicts with the Endangered Species Act of 1973 and is, therefore, inconsistent with SMCRA is being pre-empted and superseded in this approval.

(t) The New Mexico Division of Mining and Minerals and other agencies having a role in the program have sufficient legal, technical, and administrative personnel, and sufficient funds to implement, administer and enforce the provisions of the program, the requirements of 30 CFR 732.15(b) and other applicable State and federal laws. Approval is based upon the following representations made by New Mexico concerning New Mexico law and the New Mexico program:

(i) New Mexico's program narrative statement references legal services from the Attorney General's Office as being available through a joint powers agreement with the Mining and Minerals Division. New Mexico was requested to provide a copy of the agreement. The State did provide the requisite document (see Administrative Record No. NM 89), but since that submission the Mining and Minerals Division has employed its own full time attorney, separate from the Attorney General's Office. The attorney is a former Assistant Attorney General in New Mexico who has been involved in the entire process of State program development. The Secretary finds that this insures that the Division is provided adequate legal staffing.

(ii) New Mexico was requested to provide a description of the actual capital and operating budget for the prior fiscal year (FY 79-80) which was not included in the original submission. The request, made in accordance with

narrative section as prescribed by 30 CFR 731.14(f), should be amended to adequately address established forest type vegetation as well as emphasize coordination on faunal aspects. In amending the proposed regulations, the

contact with Soil and Water Conservation Districts while the federal counterpart, 30 CFR 779.21 does not. The Secretary believes that the New Mexico program is consistent with the SMCRA and the regulations promulgated

the statutory authority of SMCRA. The State provision has provided an alternative to the court-perceived defect of actual demonstration.

11. The SCS and the NMSCAC

requirements, the Secretary is satisfied that no conflicts exist.

14. EPA also suggests that the Department of Interior carefully evaluate the apparent differences in the

result of *Alabama Power* v. *Costle*, 606 F. 2d 1068 (C.A.D.C. 1979), air permits are no longer required for coal mines, except those that contain large crushing facilities that are distinct point sources.

(ii) New Mexico was requested to provide a description of the actual capital and operating budget for the prior fiscal year (FY 79–80) which was not included in the original submission. The request, made in accordance with 30 CFR 731.14(1), was answered satisfactorily, and the budget is part of the basis of this decision package (see Administrative Record No. NM 89).

(iii) New Mexico was asked to provide a more complete descriptive statement of the responsibilities for other programs specifically assigned to the Mining and Minerals Division. The original statement contained a broad listing of general programs, but did not include specific details of duties and responsibilities. New Mexico, in the submission of June 11, 1980, provided an appropriate response (see Administrative Record No. NM 89).

(iv) As discussed in Finding 4(o), the Secretary is conditioning this approval on the promulgation of New Mexico regulations consistent with 30 CFR Part 795, governing the small operator assistance program. The Secretary will not impose any demands for additional staffing unless increases in the number of small operators in the State dictate the need for establishment of a permanent SOAP staff.

E. Disposition of Public Comments

The comments received on the New Mexico program during the public comment periods further described under "Background on the New Mexico Program Submission" raised several issues. The Secretary considered these comments in evaluating New Mexico's program, as indicated below.

1. The United States Forest Service asked that the State emphasize in the narrative under 30 CFR 731.14(e) that contact be made with State Forestry personnel on any permit application evaluation which occurs in a forest type. The New Mexico submission of June 11, 1980, contains a new provision that states that stocking rates for any forest types will be in accordance with direction from the State Forestry Division. The Secretary believes that the State Forestry Division will be insured adequate involvement in the decision making process. The Secretary notes that as discussed in Finding 4(c)(x), the State Forester's standards in establishing the stocking do not yet fully meet minimum federal requirements.

2. The Forest Service and the New Mexico State Coordination and Administration Committee (NMSCAC) also contend that the memorandum of understanding between the Secretary of Energy and Minerals and the Secretary of Natural Resources, included in the narrative section as prescribed by 30 CFR 731.14(f), should be amended to adequately address established forest type vegetation as well as emphasize coordination on faunal aspects. In amending the proposed regulations, the Division of Mining and Minerals accorded full recognition to the Department of Natural Resources expertise with regard to forest types in Section 20–117. The Secretary feels that this change insures adequate involvement.

3. The Forest Service and the NMSCAC also expressed its belief that the New Mexico program, once approved, would apply to all operations in the State, including those that might involve federal lands managed by BLM and the Forest Service. The commenter expressed concern over the apparent lack of input available to the land management agencies. OSM will retain full authority for implementation of SMCRA on federal lands until such time as a cooperative agreement is implemented between OSM and New Mexico. A cooperative agreement, if implemented, will directly address the concerns of the Forest Service.

4. The Geological Survey expressed concern over the possibility of confusion arising in the State agency regarding the respective responsibilities of the various Department of Interior agencies under the coal management program. Again, the State of New Mexico will have no jurisdictional authority over federal lands, including federal coal, until such time as a cooperative agreement is implemented. If such an agreement is consummated, the Secretary expects it will fully incorporate the principles enunciated in the memorandum of understanding signed by the Office of Surface Mining, Geological Survey and the Bureau of Land Management.

5. The Soil Conservation Service (SCS) and the NMSCAC suggest that New Mexico's Section 3–11(3) in the regulations be made more specific regarding productivity of rangeland as it affects wildlife. The Secretary notes that the New Mexico provision in question exactly parallels the language of 30 CFR 762.11(b)(3). The standard for the evaluation of a State program is a determination that all provisions are at least as stringent as the federal counterpart. The Secretary believes that the New Mexico provision meets that standard.

6. The SCS and the NMSCAC maintain that New Mexico regulation 8–21(b) should make it a mandatory requirement for a permit applicant to contact Soil and Water Conservation Districts. The Secretary notes that the New Mexico provision mentions the contact with Soil and Water Conservation Districts while the federal counterpart, 30 CFR 779.21 does not. The Secretary believes that the New Mexico program is consistent with the SMCRA and the regulations promulgated thereunder.

7. The SCS and the NMSCAC also suggest that New Mexico regulation 8–15 include a control mechanism to insure that ground water is not substantially altered. The Secretary notes that this section refers only to the informational requirements which an operator must address in a specific permit application. The provisions dealing with the protection of the hydrologic balance are found elsewhere in the program in State regulations 20–41 through 20–59. The Secretary finds that those protections are consistent with SMCRA and 30 CFR Chapter VII.

8. SCS points out a typographical error in New Mexico regulation Section 8–19(a). *Plan* communities should be *plant* communities. New Mexico corrected this error in the Regulations prior to promulgation on May 15, 1980.

9. SCS and the NMSCAC suggest that New Mexico regulation 8–19(a)(6) should require as a benchmark, animal unit months (AUM's) the area is actually supporting, rather than AUM's which the area could support. The Secretary notes that in the New Mexico program both standards are mentioned in the alternative, anticipating the situation where the land in question is not being grazed prior to mining, but is available for grazing after mining. The Secretary believes that the provision is consistent with the federal standard in 30 CFR 779.19.

10. The SCS and the NMSCAC also contend that New Mexico regulation 20–115 should contain a provision insuring that grazing pressure be controlled during post-mining years to insure that plants are not weakened to the point where they are eliminated from the plant community if the operator chooses to demonstrate capability by actual grazing. The Secretary notes that the purpose of this section is to determine whether the land is capable of withstanding grazing pressure and is, therefore, eligible for bond release. The very purpose of the grazing test is to be certain that the event which the commenters fear will not occur after the bond has been released. Proper management will be employed, and the bond will not be released if the land in question cannot withstand the grazing pressure. The Secretary believes that the provision is consistent with 30 CFR 115. The Secretary notes further that the District Court remanded the federal regulations on the basis that it exceeded

the statutory authority of SMCRA. The State provision has provided an alternative to the court-perceived defect of actual demonstration.

11. The SCS and the NMSCAC contend that the standard employed by New Mexico in regulation 20–106(b) as a basis for waiving the requirements for stabilization and revegetation is inadequate. Rather than labeling an acceptable erosion rate as that of surrounding undisturbed lands, the SCS suggests that acceptable soil loss should be determined by a qualified soil scientist. The Secretary notes that in the submission of June 11, 1980, New Mexico added the concept that the surrounding lands must be under proper management to be used as a comparative standard (see Administrative Record No. 89, N.M. Reg. 20–106(B)). This serves as an acceptable standard consistent with § 816.106 of the federal regulations.

12. The SCS and the NMSCAC suggested an addition to the federal permanent regulatory program and, consequently an addition to the New Mexico permanent program, by means of regulation amendment. They proposed a new section outlining provisions whereby reclamation research and demonstration of reclamation technology sponsored by State or federal agencies may occur after a mining permit has been issued. The Secretary notes that Section 10–13 of the New Mexico regulations and 30 CFR 785.13 govern the issuance of permits for experimental practices in reclamation technology. These provisions provide the access that the commenters request. The approval authority of such practices is vested jointly in the Director of the Division of Mining and Minerals and the Director the Office of Surface Mining.

13. The Environmental Protection Agency (EPA) expressed concern that Section 8 of the New Mexico Surface Mining Act contains language which may interfere with federal requirements. The language in question states, "* * * that nothing in the New Mexico Surface Mining Act shall be construed to supersede the authority which any state department or agency has with respect to the management, protection and utilization of the state lands and resources under its jurisdiction." The Secretary has identified only one State law which potentially conflicts with federal requirements. That law, the New Mexico Wildlife Conservation Act, has been set aside by the Secretary in his approval to the extent that it conflicts with the Endangered Species Act of 1973. With regard to other federal requirements, the Secretary is satisfied that no conflicts exist.

14. EPA also suggests that the Department of Interior carefully evaluate the apparent differences in the State regulations concerning "Point System and Penalties" and 30 CFR 845.13. The Secretary has affirmatively disapproved the New Mexico point system to the extent it incorporates provisions remanded by the District Court in the February 26, and March 16, 1980 opinions (see Finding 4(i)(iii)).

15. EPA also notes that the New Mexico program contains no analogue to Section 401 of SMCRA, requiring the establishment of a State Abandoned Mine Fund. The Secretary notes that the approval contained in 931.10 is limited to Title V, and no decisions is being made at this time concerning Title IV of SMCRA.

16. EPA states that the New Mexico submission contains no counterpart to SMCRA Section 703, which prohibits firing or, in any other way, discriminating against an employee because of that employee's instituting or participating in proceedings related to the administration or enforcement of the Act. The Secretary notes that the protections in Section 703 of SMCRA extend to all employees of all operations in the United States as a matter of federal law. As such, it is not necessary for the State to have adopted identical provisions.

17. EPA suggests that New Mexico include in its data base and inventory requirements for designation of lands unsuitable for mining, the data developed by programs administered under the Clean Water Act. The Secretary notes that this suggestion is beyond the requirements of the federal standard mandated by SMCRA in Section 522 or the implementing federal rules in 30 CFR Chapter VII, Subchapter F, and as such, cannot be required of New Mexico.

18. EPA suggests that the New Mexico counterparts to 30 CFR 779.15 and 30 CFR 779.16, 8–15 and 8–16, should include provisions insuring that there will be coordination with the water quality management agency to determine if there are conflicts between water quality activities and mining operations. The Secretary finds that the New Mexico provisions mirror the federal provisions and are, therefore, acceptable.

19. EPA contends that the New Mexico program requires major mines to monitor air emissions in a manner sufficient to estimate increment consumption, but that it does not demand similar information of minor facilities. The Secretary notes that as a result of *Alabama Power* v. *Castle*, 606 F. 2d 1068 (C.A.D.C. 1979), air permits are no longer required for coal mines, except those that contain large crushing facilities that are distinct point sources. The New Mexico regulation is consistent with this concept.

20. The National Park Service (NPS) requests that provision be made in the New Mexico program to allow for NPS involvement in the development of appropriate bond amounts in mine plan approval process in those instances where mining may have the potential to affect the resources of park units in New Mexico. NPS would also like to participate in inspections in cases where NPS units may be affected, especially in instances when inspections are in response to a partition or notification of violation. The Secretary notes that New Mexico's Section 2–11(a) of the regulations spells out that no surface coal mining shall be conducted on any lands which will adversely affect any publicly owned park unless approved jointly by the Director of the Division of Mining and Minerals and the federal, State, or local agency having jurisdiction over the park. The Secretary notes that the NPS has access to the inspection process through the provisions of Part 29 of the New Mexico regulations. The Secretary believes that this should adequately insure involvement of the NPS and other agencies affected by such decisions.

21. NPS objects that the New Mexico program does not provide for coordination with the Advisory Council as required by Section 106 of the National Historic Preservation Act. The Secretary believes that the Programmatic Memorandum of Agreement between OSM and the Advisory Council on Historic Preservation (see 45 FR 41998, June 23, 1980), when implemented will allow the State Historic Preservation Officer to have an integral part in insuring identification of historic lands for each permit application. However, 30 CFR 761.11(e) and 761.12(f)(g) have been suspended to the extent that (1) surface coal mining operations are prohibited on lands that would affect places "eligible for listing on" the National Register of Historic Places, and (2) the prohibitions apply to privately owned places listed on the National Register. Therefore, the Secretary must disapprove any portion of New Mexico's proposed program contatning such language. The Secretary is satisfied that the requirements of SMCRA is met by the program as well as the requirements of Section 106 of the National Historic Preservation Act.

22. NPS contends that it should be given an opportunity to directly participate in developing criteria for designating lands as unsuitable for surface coal mining near NPS units. These criteria, according to NPS, should

exist in sufficient quantities, then topsoil can be left in certain areas.

24. DOE contends that in New Mexico regulation 20–124 the remedy for subsidence problems is limited to compensation of the landowner, while

Mexico civil penalty assessment system to the extent it incorporates provisions remanded by the court. (See Finding 4(i)(iii)).

30. The Fish and Wildlife Service (FWS) expresses concern that New

principle with this approach, but has requested the State to place some outside limits on the use of this alternative. Consistent with Finding 4(e), this has been invoked as a condition of approval.

the regulatory authority. The Secretary believes that the Programmatic Memordum of Agreement betwen OSM and ACHP (see 45 FR 41988, June 23, 1980), when implemented will allow the State Historic Preservation Officer to

landowner or responsible land management agency as well as the applicant and the Department of Game and Fish. The Secretary notes that in accordance with the Court opinion of May 16, 1980, this provision has been

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22. NPS contends that it should be given an opportunity to directly participate in developing criteria for designating lands as unsuitable for surface coal mining near NPS units. These criteria, according to NPS, should be related to all resources of the NPS units, and to the indirect effects which may occur on fragile lands. NPS contends that the establishment of buffer zones around NPS lands must not be left solely to other agencies with interests potentially at variance with NPS policy, especially when the scenic and environmental integrity of the park lands may be involved. The Secretary notes that Section 2–12(e) of the New Mexico regulations spells out the procedures which guarantee the involvement of park management agencies in the lands unsuitable process. The Secretary is satisfied that the mandate of SMCRA is met and that the interests of those agencies are adequately protected in the New Mexico program.

The Secretary has instructed the Park Service not to seek criteria in state programs which would establish "buffer zones" adjacent to National parks as automatically unsuitable for coal mining, unless these lands meet one or more of the other specific criteria for designation. On June 4, 1979, the Secretary made final decisions on the Federal Coal Management Program. Included in those decisions were numerous changes in the proposed unsuitability criteria for federal lands. The Secretary chose to delete the automatic "buffer zone" language for national parks and certain other federal lands from the first criterion (43 CFR 3461.1(a)). Instead, he stated lands adjacent to a national park should only be found unsuitable if they are covered by one of the other specific criteria (43 CFR 3461.1(b)–(t)). This instruction to the Park Service assures that that agency's approach to State unsuitability criteria will be compatible with the Secretary's policy on federal unsuitability criteria.

23. The Department of Energy (DOE) notes that the New Mexico program includes the possibility of a waiver of the topsoil removal requirements of 30 CFR 816.22 in cases where slopes are too steep to operate safely, and contends that the appropriate alternative is to prohibit mining due to high erosion potential. The Secretary is approving the New Mexico program which allows for the substitution of other suitable alternatives in cases where topsoil cannot be saved due to safety considerations. The Secretary feels that if other suitable materials exist in sufficient quantities, then topsoil can be left in certain areas.

24. DOE contends that in New Mexico regulation 20–124 the remedy for subsidence problems is limited to compensation of the landowner, while the federal analogue, 30 CFR 817.124, requires both compensation and restoration. The Secretary believes that the New Mexico proposal is consistent with the federal regulation because 30 CFR 817.124 allows compensation or restoration, but does not require both.

25. DOE asks for an explanation of the reasoning for New Mexico's omission of the 12-inch lift requirement for road construction under 30 CFR 816.152(d)(4). In the regulations that were promulgated on May 15, 1980, and submitted to OSM on June 11, 1980, the 12-inch requirement has been added to New Mexico regulation 20–152. The Secretary also notes that this is one of the provisions being affirmatively disapproved.

26. DOE asks that the New Mexico program include the requirement of 30 CFR 785.17(b)(2) which states that a reclamation plan application shall include the proposed method and type of equipment to be used for removal, storage and replacement of soil. Section 508(a)(5) of SMCRA explicitly calls for a description of equipment to be used in mining and reclamation operations. The Secretary believes that NMSA 69–25A–12(a)(5) includes the requirements of SMCRA Section 508(a)(5).

27. DOE comments that New Mexico had deleted the public participation requirements of 30 CFR 776.12(b), 776.14 and 785.13(g), which include the opportuntiy for public notice and comment and the opportunity for judicial review of agency action. The Secretary notes that the State of New Mexico included these public participation requirements in the regulations which were promulgated on May 15, 1980 and submitted to OSM on June 11, 1980.

28. DOE comments that the New Mexico program should include provisions for the protection of State employees as required by 30 CFR 704. The Secretary notes that New Mexico has agreed to include stipulations in every permit that will allow the State to invoke criminal penalties if a State employee is interfered with during the performance of his duties. As such, the program is consistent with the intent of SMCRA. (See Finding 4(p)).

29. DOE comments that the New Mexico point system for civil penalties described in New Mexico regulation 31–11 is not the equivalent of the federal system. The Secretary notes that the commenter is correct. The Secretary has affirmatively disapproved the New Mexico civil penalty assessment system to the extent it incorporates provisions remanded by the court. (See Finding 4(i)(iii)).

30. The Fish and Wildlife Service (FWS) expresses concern that New Mexico has omitted from its regulations an analogue to 30 CFR 770.12, which requires coordination and review with the applicable requirements of the Endangered Species Act and the Fish and Wildlife Coordination Act. The Secretary believes that New Mexico has demonstrated that the requirements for consultation have been met, and that the program is consistent with SMCRA. (See Finding 4(d)(i)).

31. FWS objects to New Mexico's analogue to 30 CFR 779.20, 8–20, in which the State specifically includes the applicant in the consultation process which determines the level of detail and the extent of the areas to be included in studies of fish and wildlife and their associated habitats. The Secretary notes that in the regulations promulgated on May 15, 1980, and submitted to the Secretary on June 11, 1980, incorporated this change. The Secretary also notes that this provision has been affirmatively disapproved pursuant to the order of the District Court.

32. FWS also requests that the New Mexico analogue to 30 CFR 779.20(c)(3), 8–20(c)(3), include the requirement of the federal regulations that the guidance forthcoming from fish and wildlife agencies be in "written" form in order to insure that the consultation process is made a matter of record. The Secretary notes that because of the District Court decisions, this provision of the program is affirmatively disapproved since it is based upon the remanded federal rule. As a consequence the State cannot be required to add this as a condition of approval at this time.

33. FWS comments that the New Mexico analogues to 30 CFR 780.16 and 30 CFR 780.19, 9–16 and 11–19, have restricted consideration of threatened or endangered species to only those species indigenous to the State. The Secretary has conditioned approval of the State program on modification of regulation 11–19(i) to afford protection of all species protected by the Endangered Species Act of 1973 (see Finding 4(d)(vi)).

34. FWS expressed its support for some additional language, not contained in the Federal regulations, which the State added to its analogue to 30 CFR 815.15(d), 19–15(d). The additional language places discretion in the Director regarding return to approximate original contour if such action would cause excessive environmental degradation. The Secretary agrees in principle with this approach, but has requested the State to place some outside limits on the use of this alternative. Consistent with Finding 4(e), this has been invoked as a condition of approval.

35. The FWS supports the New Mexico change in the analogue to 30 CFR 816.116(d)(2), 20–116, insofar as it eliminates a specified stocking rate of woody plants. The commenter notes, however, that the State alternative is flawed in that it does not consider density prior to disturbance. The State of New Mexico has made a change in this regulation which places the determination of the number of woody plants under the State Forester. This approach should allow density prior to disturbance to be factored into the determination. The Secretary found that these modifications did not meet the requirements for approval of alternatives established in 30 CFR 731.13 and correction of this deficiency a condition of approval (see Finding 4(c)(x)).

36. The FWS expresses concern over the inconsistencies in the New Mexico Wildlife Conservation Act and the Endangered Species Act of 1973. The commenter notes that the only provision in the Endangered Species Act which allows an unauthorized taking of an endangered or threatened species is dependent upon the prevention of bodily harm. The State Act is more lenient in that it allows an unauthorized taking if there is an immediate threat to private property. As described above in Finding 4(d)(vi), the Secretary has determined that the federal statute preempts the State statute insofar as the two acts conflict. The Secretary specifically preempted and superseded the conflicting portion of the State Act as part of the approval of the New Mexico State program.

37. The Advisory Council on Historic Preservation (ACHP) and the NPS contend that, subject to Section 106 of the National Historic Preservation Act, the Secretary is obligated at this time to obtain the written comments of the State Historic Preservation Officer as to the likelihood of the New Mexico permanent regulatory program affecting properties included in, or eligible for inclusion in, the National Register of Historic Places. The Secretary notes that the State Historic Preservation Officer has had the opportunity to comment on the content of the regulatory program that will affect the entire State of New Mexico. Further opportunities to comment will be available on a case-by-case basis in connection with specific mine plan applications that come before the regulatory authority. The Secretary believes that the Programmatic Memordum of Agreement betwen OSM and ACHP (see 45 FR 41988, June 23, 1980), when implemented will allow the State Historic Preservation Officer to have an integral part in insuring identification of historic lands for each permit application. The Secretary believes that these opportunities satisfy the responsibility which he must fulfill under Section 503(b) of SMCRA and Section 106 of the National Historic Preservation Act.

38. The ACHP asks for a specific change in the wording of 8–12(b) to read: "Historic lands as defined in Section 1–5 within the proposed mine plan and adjacent areas. The Historic Preservation Bureau of the State Planning Division in coordination with the State Archeologist shall prescribe the necessary steps to ensure adequate identification of historic lands for each application." Without passing judgment on the merits of the suggestion, the Secretary notes that, as it was finally promulgated on May 15, 1980, the State regulation is a mirror of the federal language contained in 30 CFR 779.13 and 30 CFR 783.13. The standard by which a program is to be judged is that of equivalency with SMCRA, and the Secretary's 30 CFR VII, and the State language meets that test.

39. The ACHP comments on an apparent mistake in cross-referencing in New Mexico regulation 9–31. The cross-reference in the original submission was to regulation 2–12(c). The ACHP contends that the correct reference should be to regulation 2–12(e). The Secretary notes that in the regulation as promulgated on May 15, 1980, the State recognized the error and made the change requested.

40. The ACHP comments that it would like to see the language in regulation 11–11(c)(1) be made more specific in terms of "historic preservation agencies." The Secretary notes that the State language is a mirror of the federal language in 30 CFR 786.11(c)(1), and as such, fully meets the standard for approval.

41. The Army Corps of Engineers (ACE) comments that regulation 8–19 should require as part of each permit application, information on existing carrying capacity in animal units *and* potential carrying capacity instead of allowing either method. The Secretary notes that the requirements of 8–19 are consistent with those in 30 CFR 779.19 and 783.19, and as such, the State provision is acceptable (See Finding 4(d)(iii)).

42. The ACE comments that the consultation process called for in regulation 8–20 should include the landowner or responsible land management agency as well as the applicant and the Department of Game and Fish. The Secretary notes that in accordance with the Court opinion of May 16, 1980, this provision has been affirmatively disapproved since it is based upon remanded federal rule 30 CFR 779.20.

43. The ACE points out an incorrect statutory citation in the body of regulation 9–16(b)(1). ACE states that "17–3–37" should be "17–2–37." This was pointed out to New Mexico and the appropriate change was made.

44. The ACE comments on a perceived inconsistency between the requirements of regulations 20–111 and 20–116. The Secretary is satisfied that both provisions meet the test of equivalency when compared to 30 CFR 816.111 and 30 CFR 816.116 and as such, he has approved them.

45. The Mine Safety and Health Administration (MSHA) comments that New Mexico regulation 20–92 specifies that diversions shall be designed to accommodate the peak runoff from a 100-year, 24-hour precipitation event in accordance with 30 CFR 816.42. The commenter points out that MSHA guidelines recommend a 100-year, 6-hour frequency storm. The Secretary notes that he cannot require regulations more stringent than those in the federal program and, therefore, finds regulation 20–92 acceptable.

46. The State Historic Preservation Officer comments that the language in regulation 6–12(a)(3)(i) which refers to "districts, sites, buildings, structures or objects . . . and known archeological resources," should be changed to some broader, more inclusive language. The Secretary notes that the language in the State provision is a mirror of 30 CFR 776.12, and as such, is acceptable.

47. The General Counsel to the Navajo Nation, the Department of Interior Field Solicitor at Window Rock, Arizona, and the DNA—People's Legal Services, Inc. in Window Rock all expressed concern over the apparent intended assertion of jurisdiction over Indian lands by the State of New Mexico. The New Mexico statute omits any reference to Indian tribes and Indian lands. The regulations also omit all references. The State quite specifically disavows any applicability of the New Mexico program to federal lands, but there is no such disclaimer involving Indian lands. The commentators contended that the effect of this silence is the creation of a blanket of uncertainty concerning the State's intentions on Indian lands. Mr. D. E. Gray, Chairman of the New Mexico Coal Surface Mining Commission speaking on his own behalf,

addressed the jurisdiction of the State of New Mexico over lands within the state. He stated, "the Surface Mining Act as adopted by the New Mexico Legislature makes no distinction concerning the ownership of land subject to the Act

in coal extraction. It should be pointed out that the Secretary, through the Director of OSM, still retains ultimate approval authority over all "Experimental Practices," and the

with SMCRA. The Secretary notes that the New Mexico statute permits any person to initiate rulemaking. Accordingly, any person who wishes to participate in a rulemaking, but was

the New Mexico standard (see Finding 4(i)(i)).

55. The Environmental Policy Institute and the Public Lands Institute have suggested that New Mexico, in its

59. The Environmental Policy Institute and the Public Lands Institute note that New Mexico's counterpart to 30 CFR 764.17 requires an adjudicatory hearing for a designation petition. They feel that

operate in the same manner as the federal provision (see Finding 4(j)(iii)).

63. The Environmental Policy Institute, the Public Lands Institute, and the Sierra Club expressed concern with New

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addressed the jurisdiction of the State of New Mexico over lands within the state. He stated, "the Surface Mining Act as adopted by the New Mexico Legislature makes no distinction concerning the ownership of land subject to the Act other than federal lands." He further stated that certain definitional and substantive provisions of SMCRA address the issue of sovereignty over coal surface mining operations upon Indian land with the proviso "That nothing in this Act shall change the existing jurisdictional status of Indian lands." He indicated that the State will resist any attempt to limit the jurisdiction of the State of New Mexico outside the boundaries of established Indian reservations, until and unless Congress clearly pre-empts that jurisdiction. The commentators requested a specific statement by the State disavowing any jurisdiction on Indian lands as an appropriate remedy.

The Secretary has explicitly stated in his findings that the approval contained in 30 CFR 931.10 is limited to non-federal and non-Indian lands in the State of New Mexico. The Secretary's approval in no way acts to grant or endorse any assertion by New Mexico of jurisdiction over mining on Indian lands.

48. DNA—People's Legal Services, Inc. also expressed concern over the manner in which New Mexico has altered some of the definitions of terms used in the program. The commentator felt that the criteria dealing with land unsuitability had been severely restricted. The terms of specific concern include:

(a) Cemetery.
(b) Fragile lands.
(c) Historic lands.

The Secretary discussed the handling of cemetery in Finding 4(a)(i) and historic lands in Finding 4(a)(ii). The Secretary is satisfied that there is a justifiable rationale for the alteration of the definitions for cemetery and historic lands, and has approved them. With respect to the definition of fragile lands, the Secretary believes that all of the required components are present in accordance with 30 CFR 761.5. New Mexico has omitted only illustrative examples present in the federal definition.

49. DNA—People's Legal Services, Inc. also expressed concern that the New Mexico program was written in a way that might allow experimental practices or pilot projects to be conducted in a manner that might not comply with environmental safeguards. The commentator is apparently referring to the "Experimental Practices" section which is aimed at controlling experimental techniques in reclamation technology not experimental techniques in coal extraction. It should be pointed out that the Secretary, through the Director of OSM, still retains ultimate approval authority over all "Experimental Practices," and the Secretary has the authority to approve, under appropriate circumstances, experimental techniques that might lead to enhanced environmental protection.

50. DNA—People's Legal Services, Inc. asks that language be added to the "Suspension of Rules" section that would ensure that standards challenged in court action would continue to be enforced by the State until all appeals have been exhausted. The Secretary recognizes that the prescribed actions handed down by judicial authority will differ from case to case, and that the request of the commentators may directly conflict with the order of the court in question. The Secretary cites the recent District Court decision as a specific example. In that instance, the Federal District Court for the District of Columbia ordered the Secretary to affirmatively disapprove those portions of a State program which implement OSM regulations that the Court had set aside. Consequently, the language of the State, allowing the deletion of provisions mirroring federal provisions which have been judicially determined to be invalid, remanded, or withdrawn, is consistent with SMCRA.

51. The Environmental Policy Institute and the Public Lands Institute expressed concern with the addition to New Mexico's analogue to SMCRA 201, NMSA Section 6, of the word "reasonable" as a limiting factor on the power of the State to promulgate regulations to implement the Act. The federal Act states that the Secretary shall have the power to "publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of the Act". The Secretary that notes that, even though the federal language does not explicitly use the word "reasonable" as the State provision does, he has an implicit responsibility to ensure that any rulemaking in which he plays a role is done reasonably. The New Mexico provision is acceptable as consistent with the requirements of SMCRA.

52. Another concern of the EPI and PLI is that New Mexico, in its analogue to SMCRA 201, NMSA 69–25A–6, allows only "interested" persons to participate in a rulemaking process, while NMSA Section 7 permits any person to initiate a rulemaking proceeding. The EPI and PLI note that the federal Act and regulations allow "any person" to so participate and contend that New Mexico's statute should be consistent with SMCRA. The Secretary notes that the New Mexico statute permits any person to initiate rulemaking. Accordingly, any person who wishes to participate in a rulemaking, but was successfully challenged on the basis of his or her lack of an "interest," could simply initiate a rulemaking by petition covering the same subject. The Secretary presumes that this person's concerns could then be brought before the regulatory authority. Therefore, the Secretary concludes that any person may also participate in the rulemaking process, thus satisfying the commenters' concern.

53. The Environmental Policy Institute and the Public Lands Institute assert that New Mexico should be required to show that the adjudicatory hearing required by SMCRA Section 514 include full Administrative Procedures Act protections, including cross-examination in accordance with Judge Flannery's decision in the Permanent Regulation Litigation. Also, the EPI and PLI note, NMSA Section 18(F), New Mexico's analogue to SMCRA Section 514, appears to be inadequate in that it allows for administrative review pursuant to NMSA Section 29(b), which statute provides for an appeal to the Commission.

The Secretary has fully examined the adjudicatory hearing process proposed by New Mexico, and believes it is consistent with Section 514 of SMCRA, which requires that such a hearing "shall be of record, adjudicatory in nature, and no person who presided at a conference under Section 513(b) shall either preside at the hearing or participate in the decision thereon". The Secretary also notes that, in terms of appeals, New Mexico has added an additional layer of administrative appeal not present in the federal system. The review of the system prompted the Secretary to require New Mexico to demonstrate that no potential trial *de novo* problem exists. New Mexico made this demonstration in an Attorney General opinion, dated August 7, 1980 (Administrative Record No. NM 99), and the Secretary finds this provision consistent with federal requirements.

54. The Environmental Policy Institute and the Public Lands Institute claim that New Mexico, in NMSA Section 22(E), has seriously weakened the criminal penalty contained in SMCRA Section 518. The State statute provides that there can be no criminal penalty unless the time for appeal has expired or until the right of appeal has been exhausted. The Secretary notes that the State Attorney General's Opinion of August 7, 1980, demonstrated the equivalency of

the New Mexico standard (see Finding 4(i)(i)).

55. The Environmental Policy Institute and the Public Lands Institute have suggested that New Mexico, in its analogue to SMCRA 519, NMSA 69–25A–23, should make it clear that citizens have the right, under the District Court's decision of February 26, 1980, to visit the mine site prior to the bond release hearing. The Secretary has affirmatively disapproved New Mexico regulation 17–11(e) to the extent to which it fails to provide for citizen access to the mine site in conjunction with an informal conference concerning release of the performance bond, in accord with the court's decision.

56. The Environmental Policy Institute and the Public Lands Institute have noted with concern that New Mexico, in its counterpart to SMCRA Section 520(b)(2), NMSA 69–25A–24B, requires that a citizen show that the violation or order complained of would "irreversibly impair" a legal interest in order to bring an immediate action. Under SMCRA Section 520(b)(2), a citizen need show that the violation or order would "immediately affect" a legal interest in order to bring any immediate action. The Secretary finds the requested State response demonstrating the equivalance of the two statutes to be adequate (See Finding 4(1)(i)).

57. The Environmental Policy Institute and the Public Lands Institute note that the New Mexico counterpart to SMCRA Section 521(a)(2) and (3), NMSA 69–25A–25, vests enforcement authority for both cessation orders and notices of violation only in the "Director", while the federal statute vests such authority in both the Secretary and the inspector (authorized representative). The Secretary notes that the State defines Director in a manner that includes his "designated representatives". The State was asked to demonstrate the equivalency of this language. The Attorney General's Opinion submitted on August 7, 1980 demonstrated equivalency to the satisfaction of the Secretary (see Finding 4(j)(ii)).

58. The Environmental Policy and Public Lands Institutes assert that Section 29 of the New Mexico statute does not allow for the assessment of attorneys' fees and costs against the Director or the Commission, as required by SMCRA Section 525(e), which allows attorneys' fee awards against the governmental body. The Secretary notes that this has been recognized as a deficiency in the program, and that it has been presented to New Mexico as one of the conditions of approval (see Finding 4(l)(iii)).

59. The Environmental Policy Institute and the Public Lands Institute note that New Mexico's counterpart to 30 CFR 764.17 requires an adjudicatory hearing for a designation petition. They feel that this is in direct conflict with the federal regulation, the comment asserts, which requires a legislative hearing. The Secretary, as explained in Finding 4(k)(ii), has made the establishment of certain procedures by the State a condition of approval.

60. Regarding New Mexico's counterpart to 30 CFR 787 which concerns administrative and judicial review of decisions on permit applications, the Environmental Policy Institute and the Public Lands Institute question whether the prohibition of contact between parties before the Commission and the Commission applies also to contacts between the Commission and the Director or his representatives in matters before the Commission. EPI and PLI have contended that it must under minimum due process standards. The State of New Mexico has assured the Secretary in the submission of June 11, 1980, that the manner in which New Mexico law operates is consistent with the aim of this comment.

61. The Environmental Policy Institute and the Public Lands Institute note that all enforcement authority in New Mexico's counterpart to 30 CFR 843 (Federal Enforcement) Part 30, is vested in the "Director or his duly authorized representative", while the federal regulation delegates all field authority to the authorized representative. The Secretary requested a clarification from New Mexico on the manner in which field enforcement will be handled. New Mexico provided an Attorney General's Opinion on August 7, 1980, which explains the delegation of enforcement power to field representatives. The Secretary finds this explanation acceptable (see Finding 4(j)(iii)).

62. The Environmental Policy Institute and the Public Lands Institute pointed out that 30–11(b) of the State's regulations states that if affirmative obligations to abate are imposed, the inspector may consider suggestions by the operator concerning the economic and technological feasibility in determining the most expeditious means of abatement. EPI and PLI note that the federal regulations require abatement in the most expeditious manner physically possible, with cost not a consideration. The Secretary believes that the State language is not inconsistent with 30 CFR 843.11(b) as the State has explained that it intends that regulation 30–11(b) operate in the same manner as the federal provision (see Finding 4(j)(iii)).

63. The Environmental Policy Institute, the Public Lands Institute, and the Sierra Club expressed concern with New Mexico's analogue to 30 CFR 843.12(d), regulation 30–12(e)(2), which provides that the Director or his authorized representative *may* issue a cessation order if an interim step is not met. The New Mexico regulations section 30–12(e)(1) states that a cessation order *shall* be issued if the violation is not abated within the time set for abatement. The Secretary finds that the New Mexico regulation is acceptable because there is no obligation to use interim steps in 30 CFR 843.12(b)(2), and the time for accomplishment of an interim step may be extended under 30 CFR 843.12(c).

64. The Environmental Policy Institute and the Public Lands Institute noted that New Mexico's counterpart to 30 CFR 843.13(a)(1), regulation 30–13(b)(2), provides that violations shall not be attributed to the permittee if the permittee can show by clear and convincing evidence that the acts were not within the scope of employment or agency of the person committing the violation. 30 CFR 843.13(a)(1) provides that, "violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage." The Secretary believes that the State regulation will operate in the same manner as 30 CFR 843.13 (See Finding 4(j)(iv)).

65. The EPI and the PLI note that New Mexico regulations 30–11(b) and 30–12(g) do not explicitly eliminate inability to comply as a defense to a notice of violation as does 30 CFR 843.16(a). The State explained that a notice of violation and a cessation order are analytically equivalent with respect to inability to comply, and the Secretary finds this explanation acceptable (See Finding 4(j)(vi)).

66. Concern was expressed by the Environmental Policy Institute and the Public Lands Institute that New Mexico's counterpart to 30 CFR 845.12(b), regulation 31–11(c), provides that civil penalties will normally be assessed when a violation accounts for 31 points or more. This conflicts with the federal regulations, according to the comment, which require a penalty when a certain threshold level is met. The Secretary notes that the New Mexico penalty assessment system has been affirmatively disapproved to the extent it incorporates provisions remanded by

the District Court of the District of Columbia.

67. The EPI and PLI commented that New Mexico should incorporate into its regulations provisions consistent with 43 CFR Part 4. The commenter requests

approach is consistent with the intent of SMCRA and has approved the provision (see Finding 4(1)(ii)).

71. The Sierra Club objected to New Mexico's analogue to 30 CFR 764.17(a), 4–17, concerning the hearing

definition is one aspect of the permanent regulatory program that was remanded by the District Court and the State, therefore, need not have such definition.

74. It was contended by the Public

30 CFR 762.5, the Public Lands Institute and Environmental Policy Institute asserted. The Secretary has found that the State program adequately addresses this issue (see Finding 4(a)(ii)).

79. The Public Lands Institute and the

language of 4–21 is a mirror of the language in 30 CFR 764.21 and, as such, it is acceptable.

85. The Public Lands & Environmental Policy Institutes stated that New Mexico's program does not include the

90. The Public Lands & Environmental Policy Institutes asserted that the New Mexico regulations must include the language found in 30 CFR 840.11(d)(1), which states that operations may be inspected at nights or on weekends and holidays must be included. The

the District Court of the District of Columbia.

67. The EPI and PLI commented that New Mexico should incorporate into its regulations provisions consistent with 43 CFR Part 4. The commenter requests that the Secretary be certain that New Mexico incorporate provisions providing for the award of attorneys' fees in actions against government entities. The Secretary has made this a condition of approval. The commenter also asserts that New Mexico has made no showing that its rules provide for as broad access to administrative proceedings and to discovery as is required by 43 CFR Part 4. The Secretary believes that these concerns are addressed in regulation 12.

68. The New Mexico Citizens For Clean Air & Water expressed concern that the State's program is replete with language giving flexibility to the State, such as language allowing (1) exemptions from returning lands to their original contour, (2) exemption from conducting underground coal mining in a manner which maintains the value and reasonably foreseeable use of surface lands, and (3) surface shaping in lieu of topdressing and seeding. The commenters contended that although flexibility is reasonable, it can be, and has been, reshaped into a loophole by industry lawyers. The commenter urged that New Mexico put into its regulations sufficient guidelines to specify exactly where exemptions may or may not be granted. The Secretary believes that the State program contains sufficient guidance on the flexibility inherent in the cited areas.

69. The New Mexico Citizens For Clean Air & Water also note that New Mexico's hearings on petitions for the designation of lands as unsuitable for mining are adjudicatory in nature, rather than legislative as specified in 30 CFR 764.17(2), but the commenter offered the suggestion that two categories of testimony be allowed: "technical" and "non-technical". Testimony given by witnesses who categorize themselves as "technical" could be cross-examined, while "non-technical" testimony would not be so subjected, according to the comment. The Secretary agrees with the commenter concerning the value of the categorization suggested and will evaluate the proposal when procedures for its implementation have been developed (see Finding 4(k)(ii)).

70. Support for the State's proposal that lawsuits against the Director of New Mexico's Division of Mining and Minerals or the Surface Mining Commission be brought in the District Court in Santa Fe was offered by the New Mexico Citizens For Clean Air & Water. The Secretary agrees that this approach is consistent with the intent of SMCRA and has approved the provision (see Finding 4(1)(ii)).

71. The Sierra Club objected to New Mexico's analogue to 30 CFR 764.17(a), 4–17, concerning the hearing requirements on petitions for the designation of lands as unsuitable for surface coal mining. The commenter notes that the State provides for adjudicatory hearings while the federal regulation states that the hearing shall be legislative in nature. The commenter was satisfied with the approach utilized in New Mexico by the Environmental Improvement Board. This is the process described in Finding 4(k)(ii) that places witnesses in one of two categories. The system appears to accomplish the goal of the federal provision which is the prevention of intimidation of lay witnesses. The Secretary will evaluate the proposal when procedures for its implementation have been developed.

72. Because the District Court has enjoined OSM from approving those portions of State programs which are based upon OSM regulations which have been suspended, remanded, or invalidated, which, it is alleged, has the practical effect of making it impossible for an operator to file a complete permit application, the Chairman of New Mexico's Surface Mining Commission recommended that either approval of the New Mexico program be deferred and the interim State regulatory program be continued, or that OSM otherwise provide that an operator need not submit an application until OSM and the State have adopted programs which will provide complete guidelines consistent with the July 10, 1980, decision of the Circuit Court of Appeals for the District of Columbia.

While the Secretary is sympathetic to the concerns of the State, the Act allows no discretion on the final program approval dates. The extensions that have occurred previously were in direct response to a Court Order of July 25, 1979, emanating from the U.S. District Court for the District of Columbia. The review schedule for the New Mexico submission was altered in accordance with the Court decision, and no further alteration is possible. The Secretary notes that under the Court's August 15, 1980, partial stay, the State may elect to have the Secretary *not* affirmatively disapprove any provisions which the May 16, 1980, opinion would have required him to disapprove. On August 22, New Mexico was informed of this opportunity.

73. The Public Lands & Environmental Policy Institutes noted that the New Mexico program has omitted the definition of "valid existing rights". The definition is one aspect of the permanent regulatory program that was remanded by the District Court and the State, therefore, need not have such definition.

74. It was contended by the Public Lands Institute and the Environmental Policy Institute that New Mexico's definition of "cemetery" is too restrictive and omits many of the areas OSM's definition includes. The Secretary believes that the New Mexico definition, when read in conjunction with other State statutes and other federal statutes, is consistent with the definition contained in 30 CFR 761.5 (See Finding 4(a)(i)).

75. The Public Lands Institute and the Environmental Policy Institute expressed concern that New Mexico has omitted the first sentence of the definition of "fragile lands" as it appears in the Federal regulations. The comment contended that this language must be added to give specificity. The Secretary finds that the New Mexico definition in regulation 1–5 contains all of the concepts enunciated by the definition contained in 30 CFR 761.5, and as such, is acceptable.

76. In their comments, the Public Lands Institute and the Environmental Policy Institute indicated that New Mexico's definition of "substantial legal and financial commitments in a surface coal mining operation" in regulation 1–5 requires the addition of the last two sentences of the definition as it appears in 30 CFR 762.5 so that it will be clear that the costs of acquiring the coal are not included. The Secretary notes that the federal definition does not state that the costs of acquiring the coal are not to be included, but rather that the costs of acquiring the coal are not alone sufficient to constitute such commitments. New Mexico allows those costs of acquisition to be a component of the total costs to be considered. The Secretary believes that the definition in the State program is consistent with 30 CFR 762.5.

77. The Public Lands Institute and the Environmental Policy Institute asked that New Mexico be required to include in its definition of "natural hazard lands" the examples of areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology, which appear in 30 CFR 762.5. The Secretary believes that this language in the federal regulations is illustrative, and that the State need not include equivalent language.

78. New Mexico's definition of "historic lands" does not appear to be consistent with the federal definition in

30 CFR 762.5, the Public Lands Institute and Environmental Policy Institute asserted. The Secretary has found that the State program adequately addresses this issue (see Finding 4(a)(ii)).

79. The Public Lands Institute and the Environmental Policy Institute pointed out that the New Mexico submission does not have an equivalent of 30 CFR 761.11(a) and (b), which prohibit mining in National Parks, the National Wildlife Refuge System, the National System of Trails, etc. This prohibition must be added, the commenters maintain. The Secretary notes that New Mexico will not have permit approval authority over Federal lands until a cooperative agreement is signed. The State has purposely omitted all references to federal lands in this program since New Mexico presently has no authority over federal lands. These references may be more appropriately incorporated into a cooperative agreement.

80. The Public Lands and Environmental Policy Institutes recommend that references be made in regulation 2–12 to 30 CFR 761.11 (a) and (b). The lands referred to in 30 CFR 761.11(a) and 761.11(b) are federal lands over which New Mexico has no jurisdictional authority. Accordingly, New Mexico need not include such references.

81. The Public Lands & Environmental Policy Institutes stated that New Mexico has omitted in its program a counterpart to 30 CFR 761.12(c), concerning mining operations within National Forest boundaries, and insisted that this provision be added. The State of New Mexico is not being granted any jurisdiction over federal lands and, therefore, need not include such a provision.

82. The Public Lands & Environmental Policy Institutes question whether the waiver provision in New Mexico's regulation 2–12(d) is as protective of owners rights as is 30 CFR 761.12(e). Since the State provision requires a written waiver by the owner of the dwelling, the Secretary believes rule 2–12(d) is consistent with 30 CFR 761.12(e).

83. It was contended by the Public Lands & Environmental Policy Institutes that New Mexico's regulation 3–11(a) should reference SMCRA, as does 30 CFR 762.11. The Secretary notes that the authority for the New Mexico regulations stems from the New Mexico Surface Mining Act, not SMCRA. The reference in 3–11(a) is, therefore, proper.

84. The Public Lands & Environmental Policy Institutes contended that New Mexico's regulation 4–21 does not make it clear when the data and inventory system will begin as required by 30 CFR 764.21. The Secretary notes that the language of 4–21 is a mirror of the language in 30 CFR 764.21 and, as such, it is acceptable.

85. The Public Lands & Environmental Policy Institutes stated that New Mexico's program does not include the equivalent of 30 CFR 769, concerning the process for designation on federal lands. The commenter noted that it deserves the right to comment and have such comments on the record when this section is made available. The Secretary notes that federal lands will be addressed in a cooperative agreement, and the procedures governing public comment will apply to the development of that agreement.

86. The Public Lands & Environmental Policy Institutes note that New Mexico had omitted any analogue to SMCRA Section 517(h), thus making no provision for informal review of refusals to issue citations. In the regulations, as promulgated on May 15, 1980, New Mexico has added Sections 29–12, 29–14, 29–15, and 29–16, which guarantee that these rights are available to citizens.

87. It was noted by the Public Lands & Environmental Policy Institutes that the civil suit provision of New Mexico's statute limits civil actions to the Director and the Commission. This provision must be broadened, it was argued, to cover governmental agencies or instrumentalities as is required by SMCRA Section 520(a)(1). The Secretary has requested a demonstration of equivalency, and the State provided an explanation on August 7, 1980, which is satisfactory (see Finding 4(1)(iv)).

88. The Public Lands & Environmental Policy Institutes indicated that New Mexico's counterpart to SMCRA Section 520(e), NMSA 69–25A–24G, should include the language found in the federal statute, which guarantees the citizen's right to seek relief against the director of the State's regulatory authority. The Secretary notes that the State statute contains the same protections as the federal statute in 69–25A–24G of NMSA 1978.

89. It was noted by the Public Lands & Environmental Policy Institutes that New Mexico has omitted from its program the last sentence of SMCRA Section 521(a)(4), which states that if a permittee is unable to show cause, the Director or his authorized representative shall forthwith suspend or revoke the permit. The commenter expressed the belief that this language adds specificity to the action to be taken, and how it is to be taken when the permittee fails to show cause. The Secretary believes that the specificity requested by the commenter is appropriately set out in the New Mexico regulations Section 30–13.

90. The Public Lands & Environmental Policy Institutes asserted that the New Mexico regulations must include the language found in 30 CFR 840.11(d)(1), which states that operations may be inspected at nights or on weekends and holidays must be included. The Secretary requested that the State demonstrate the authority and intent to conduct such inspections. During a meeting with Department of the Interior officials on September 5, 1980, New Mexico provided an assurance that it would conduct inspections on nights, holidays, and weekends. (See Finding 4(g)(iii)).

91. The Public Lands & Environmental Policy Institutes also noted that New Mexico's regulations do not contain the language found in 30 CFR 840.12(a), which provides that the State regulatory authority does not need a search warrant to enter a coal exploration, mining, or reclamation operation. The Secretary requested that the State include a demonstration of equivalency. New Mexico provided an Attorney General's Opinion dated August 7, 1980, which the Secretary finds to establish consistency with 30 CFR 840.12(a) (see Finding 4(g)(iv).

92. It was also noted by the Public Lands & Environmental Policy Institutes that New Mexico's regulations do not include an equivalent to 30 CFR 843.13(a)(4), which provides the method of determining the number of violations per year in order to find patterns of violations. The Secretary notes that the methodology for determining the pattern of violations is contained in New Mexico regulation 30–13(a), which is consistent with 30 CFR 843.13.

93. The Public Lands & Environmental Policy Institutes noted that New Mexico has omitted equivalents to 30 CFR 843.15 (f) and (g). The Secretary notes that the language referred to by the commenters is contained in New Mexico regulation 30–15(c).

94. It was also of concern to the Public Lands & Environmental Policy Institutes that New Mexico also omitted any equivalent to 30 CFR 843.17, which mandates that no notice of violation or cessation order may be vacated for failure to give notice to the state regulatory authority, or because it is later determined that there was insufficient information to justify an inspection. The Secretary notes that 30 CFR 843.17 is a provision stating responsibilities of the Director of OSM toward State regulatory authorities. It is not necessary to include this provision in a state program.

95. The EPI, PLI, and the Sierra Club expressed concern about the extent of field authority enforcement power

vested in the "duly authorized representatives" of the Director. The Secretary believes that New Mexico regulation 30–12 is consistent with 30 CFR 843.11. Additionally, in response to

101. The Sierra Club also commented that the New Mexico civil penalty assessment system is not consistent with the federal regulations in that it does not establish an absolute threshold

Counsel, Mining and Minerals Division, to OSM, the State agreed to add language consistent with SMCRA Section 704 to each permit (Administrative Record No. NM 99). The

Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with state regulatory authority personnel to

result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program.

deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete

vested in the "duly authorized representatives" of the Director. The Secretary believes that New Mexico regulation 30–12 is consistent with 30 CFR 843.11. Additionally, in response to the Secretary's concern, in the September 5, 1980, meeting, the State asserted that duly authorized representatives would be conducting enforcement in the field (See Finding 4(g)(v)).

96. The EPI and the PLI requested that New Mexico regulation 3–11(a) reference SMCRA, as 30 CFR 762.11 does. The Secretary notes that the New Mexico regulation references the New Mexico Surface Mining Act which is the correct underlying authority for the New Mexico regulations. As such, 3–11(a) is consistent with 30 CFR 762.11.

97. The Sierra Club pointed out that NMSA 24(b) employs a different standard than that in SMCRA in deciding whether the 60-day notice of suit against the regulatory authority can be waived. The commenter requests that it be changed to be made consistent with SMCRA. The Secretary requested a demonstration of equivalency, and the State provided an explanation on August 7, 1980, which is satisfactory (see Finding 4(l)(i)).

98. The Sierra Club also noted that Section 525(c) of SMCRA allows the awarding of attorneys fees against a government body, while the New Mexico program does not specifically authorize such action. The Secretary notes that he has imposed as a condition of approval the promulgation of regulations consistent with 43 CFR 4.1290–4.1296, which provide for such award (see Finding 4(l)(iii)).

99. The Sierra Club also asserted that 69–25A–25 NMSA 1978 vests enforcement authority in the Director, whereas the federal counterpart, Section 521 of SMCRA, vests authority in both the Secretary and his duly authorized representatives. The Secretary notes that the New Mexico program defines Director in a manner which includes his designees. The Secretary requested an Attorney General's Opinion confirming the equivalence of "designee" and "duly authorized representative." An Opinion satisfactory to the Secretary was delivered on August 7, 1980 (see Finding 4(j)(ii)).

100. The Sierra Club objected to the language in New Mexico regulation 30–11(b), which allows consideration to be given by an inspector to the suggestions of the operator concerning the economic and technical feasibility in determining the most expeditious means of abatement. The Secretary directs the commenter to his response to Comment No. 62.

101. The Sierra Club also commented that the New Mexico civil penalty assessment system is not consistent with the federal regulations in that it does not establish an absolute threshold level for the imposition of monetary penalties. The Secretary notes that the New Mexico system fulfills the mandatory criteria for a penalty system as enunciated by the District Court of the District of Columbia in its May 16, 1980, decision. As such, it meets the standard for approval by the Secretary (see Finding 4(i)(iii)).

102. The Sierra Club, EPI and PLI commented that some bounds should be placed on the use of the highwall retention alternative in New Mexico regulation 20–102(d). The Secretary notes that the regulation, as promulgated, specifies that highwalls can only be left in areas where natural cliff and bluff topography existed previously. The Secretary also notes that as a condition of approval, he has requested an additional criterion which would specify that in no case may the retained highwall extend for a greater lateral distance than the natural cliff did (see Finding 4(b)).

103. EPI and PLI commented that New Mexico must amend regulation 31–15(b), regarding the $750 per day failure-to-abate penalty, to conform to the revised federal regulation, published on September 4, 1980 (45 FR 58780). In a letter dated September 5, 1980 (Administrative Record No. NM 119), the Director of the New Mexico Mining and Minerals Division declares that it shall be his policy to take appropriate action after the running of the 30-day maximum period for assessing civil penalties following the permittee's failure to abate a violation. Such action shall include issuance of an order to show cause why a permit should not be suspended or revoked, or a request that the Attorney General pursue either an injunctive or criminal action against the permittee. The Secretary believes that the State's policy is consistent with 30 CFR 845.15(b), as revised (see Finding 4(i)(iv)).

104. EPI and PLI objected to what was perceived as an off-the-record resolution by the Secretary regarding New Mexico regulation 30–12(e)(2), which makes issuance of a cessation order discretionary based on a failure to accomplish an interim step. This apparent deficiency was never discussed with the State because the Secretary has found it not to be a problem (See response to Comment 63).

105. EPI and PLI object to New Mexico's lack of a provision comparable to SMCRA Section 704. In a letter dated August 7, 1980, from Charles E. Roybal, Counsel, Mining and Minerals Division, to OSM, the State agreed to add language consistent with SMCRA Section 704 to each permit (Administrative Record No. NM 99). The Secretary has found this approach acceptable (See Finding 4(p)).

106. EPI and PLI objected to New Mexico's explanation of equivalency to the venue requirement of SMCRA Section 520(c)(i). EPI and PLI contend that a citizen should be able to bring suit either locally or in the state capital. The Secretary cannot require states to have procedural requirements which are different from those in SMCRA. Since New Mexico constitutes a federal judicial district, the State venue provision is acceptable (See Finding 4(l)(ii)).

107. EPI and PLI expressed concern over the conflict between the New Mexico Wildlife Conservation Act and the Endangered Species Act of 1973. In Finding 4(d)(vi), the Secretary indicates that, to the extent the State provision conflicts with federal law, it is to be set aside.

108. EPI and PLI objected to the Secretary's reliance on New Mexico's assertion that the material to be kept confidential pursuant to NMSA 69–25A–21H is only data on coal production, coal exploration, and archeological sites (See Administration Record No. NM 119). The Secretary believes that he may rely on such an assertion. Additionally, NMSA 18–6–11–1, regarding the confidentiality of archeological sites, appears in Appendix B of the original submission.

109. EPI and PLI object to the omission of any reference to native Americans in New Mexico regulation 3–11(a)(2). As indicated in Finding 4(a)(ii), the State has assured the Secretary that sites having religious or cultural significance to native Americans are protected under New Mexico law.

F. Secretary's Decision

Background on Conditional Approval

The Secretary is fully committed to two key aims which underlie SMCRA. The Act calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety and for the Secretary to assist the states in becoming the primary regulators under the Act. To enable the states to achieve that primacy, the Secretary has undertaken many activities of which several are particularly noteworthy.

The Secretary has worked closely with several state organizations such as the Interstate Mining Compact Commission, the Council of State

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Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with state regulatory authority personnel to discuss informally how the Act should be administered, with particular reference to unique circumstances in individual states. Often these meetings have been a way for OSM and the states to test new ideas and for OSM to explain portions of the federal requirements and how the states might meet them. Alternative state regulatory options, the "state window" concept, for example, were discussed at several meetings of the Interstate Mining Compact Commission and the National Governors Association.

The Secretary has dispensed over $6.9 million in program development grants and over $37.6 million in initial program grants to help the states to develop their programs, to administer their initial programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances OSM detailed its personnel to states to assist in the preparation of their permanent program submissions. OSM has also met with individual states to determine how best to meet the Act's environmental protection goals.

Equally important, the Secretary structured the state program approval process to assist the states in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each state program to identify needed changes and to allow them to be made without penalty to the state. The Secretary adopted a special policy to insure that communication between him and the states remained open and uninhibited at all times. This policy was critical to avoiding a period of enforced silence with a state after the close of the public comment period on its program and has been a vital part of the program review process (*see* 44 FR 54444, September 19, 1979).

The Secretary has also developed in his regulations the critical ability to approve conditionally a state program. Under the Secretary's regulations, conditional approval gives full primacy to a state even though there are minor deficiencies in a program. This power is not expressly authorized by the Act; it was adopted through the Secretary's rulemaking authority under 30 USC 201(c), 502(b), and 503(a)(7).

The Act expressly gives the Secretary only two options—to approve or disapprove a state program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter-perfect and disapprove all others. To avoid that result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program.

Conditional approval has a vital effect for programs approved in the Secretary's initial decision: it results in the implementation of the permanent program in a state months earlier than might otherwise be anticipated. While this may not be significant in states that already have comprehensive surface mining regulatory programs, in many states that earlier implementation will initiate a much higher degree of environmental protection. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the state's willingness to make good faith efforts to effect the necessary changes. Without the state's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations says, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by the Act and these regulations" (44 FR 14961). That is, a state must be able to operate the basic components of the permanent program: the designation process; the permit and coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be used.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular state in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities through attorney general's opinions, revised regulations, policy statements, changes in the narrative or the side-by-side.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow meaningful public participation in the permitting process. Although this would not render the permit system incomplete because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of the Act that the deficiency would most likely by major.

The use of a conditional approval is not and cannot be a substitute for the adoption of an adequate program. Section 743.13(i) of Title 30 of the regulations gives the Secretary little discretion in terminating programs where the state, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional authority power is to assist, not excuse, states from achieving compliance with SMCRA.

Conditional Approval

As indicated above under "Secretary's Findings," there are minor deficiencies in the New Mexico program which the Secretary requires be corrected. In all other respects, the New Mexico program meets the criteria for approval. The deficiencies identified in prior findings are enumerated below.

The first deficiency, as indicated in Finding 4(c)(xix), is the absence of a requirement for keyway cuts and rock toe buttresses in accordance with 30 CFR 816.71. The deficiency is minor because it is a typographical mistake. In the interim between the date of conditional approval and the date of regulatory amendment, New Mexico will require keyway cuts and rock toe buttresses.

The second deficiency, as indicated in Finding 4(k)(ii), is the lack of procedures for hearings on petitions to designate lands unsuitable. The regulatory amendment will be promulgated prior to the holding of any such hearings and is, therefore, minor.

The third deficiency, as indicated in Finding 4(e), is the inclusion in the New Mexico program of language that allows a variance to returning to approximate original contour in exploration sites in New Mexico. The deficiency is minor because it is an alternative to restoration to approximate original contour that will not be granted in the State until the regulation is changed to conform with 30 CFR 815.15.

The fourth deficiency, as indicated in Finding 4(j)(i), is the lack of a requirement for posting and publishing show cause orders to facilitate full public participation. The deficiency is minor because the State has agreed to post and publish any show cause orders that may be issued in the interim prior to

regulatory amendment to conform with 30 CFR 843.13 (c) (1)–(3) and (d).

The fifth deficiency, as indicated in Finding 4(l)(iii), concerns the lack of a complete set of provisions covering the award of attorney's fees. The deficiency

are promulgated. Permit applications need not be filed until two months after program approval. The regulatory authority then has six months in which to act upon the application.

The eleventh deficiency, as indicated

program. This approval shall terminate if regulations correcting the deficiencies found in the regulations are not enacted by July 1, 1981, or if State legislation correcting the statutory deficiency is not enacted by February 28, 1982.

Dated: December 24, 1980.

Joseph W. Gorrell,

Deputy Assistant Secretary of the Interior for Energy and Minerals.

A new Part 30 CFR Part 931, is adopted to read as follows:

date copies of fully implemented regulations including the requirements for keyway cuts and rock toe buttresses in accordance with 30 CFR 816.71, or otherwise amends its program to accomplish the same result.

[illegible] The approval found in § 931.10 will

(h) The approval found in § 931.10 will terminate on July 1, 1981, unless New Mexico submits to the Secretary by that date copies of fully enacted regulations governing a small operators assistance program in accord with 30 CFR 795, or otherwise amends its program to

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regulatory amendment to conform with 30 CFR 843.13 (c) (1)–(3) and (d).

The fifth deficiency, as indicated in Finding 4(l)(iii), concerns the lack of a complete set of provisions covering the award of attorney's fees. The deficiency is minor because the regulatory amendment will be promulgated prior to the issuance of any orders which could result in petitions for the award of attorney's fees.

The sixth deficiency, as indicated in Finding 4(a)(iii), is the lack of a complete definition for the term "unconsolidated streamlaid deposits holding streams" in accordance with 30 CFR 701.5. The deficiency is minor because it will be eliminated by regulatory amendment in 3 to 4 months. The operators in the State will not have to submit new permit applications until 2 months after the approval date of the program. The regulatory authority will then have six months to review those permit applications. By the time permit decisions are made, New Mexico will have a new definition in place.

The seventh deficiency, as indicated in Finding 4(o), is the lack of regulations governing a small operators assistance program. The deficiency is minor because the State has only had one application since the inception of the federal interim regulatory program, and that was handled through a memorandum of agreement with OSM. The State does not anticipate applications prior to the date of regulatory amendment, but if it occurs, OSM will assist the State in providing assistance to the small operators.

The eighth deficiency, as indicated in Finding 4(b), concerns the imposition of an additional criterion to the opposed State alternative leaving limited highwall stretches. This limitation would prevent any stretch of highwall from exceeding the length of the cliffs present prior to mining. The deficiency is minor because the State will have completed regulatory amendment prior to the date when any permit application decisions will be made.

The ninth deficiency, as indicated in Findign 4(1)(v), is minor because it is an apparent typographical error in New Mexico regulation 29–12(b) concerning citizen requests for inspections and will be corrected promptly.

The tenth deficiency, as indicated in Finding 4(h), involves a number of inconsistencies in the New Mexico bonding regulations. The deficiency is minor because the federal regulations have recently been amended on August 6, 1980, and the State rules may be consistent with either the August 6, 1980, or March 3, 1979, rules. Approval of bonds is unlikely before new regulations are promulgated. Permit applications need not be filed until two months after program approval. The regulatory authority then has six months in which to act upon the application.

The eleventh deficiency, as indicated in Finding 4(c)(x), is the lack of specific stocking rates for trees and shrubs in the New Mexico regulations. The deficiency is minor because the State will have completed regulatory amendment within 6 months and, in the interim, the State Forester will be using the guidelines submitted on September 10, 1980.

The twelfth deficiency, as indicated in Finding 4(d)(vi), concerns State regulation 11–19(0) governing criteria for permit approval that includes the work "indigenous" in the provision referring to protection of threatened and endangered species. The deficiency is minor because although the present definition omits species that have been transplanted from other continents, it provides full protection to any organism that immigrates to New Mexico under its own power, or was once an inhabitant and has been reestablished by man. The State has agreed to modify its regulation to include all species protected under the Endangered Species Act of 1973.

Given the nature of these deficiencies and their magnitude in relation to all the other provisions of the New Mexico program, as detailed above, the Secretary of the Interior has concluded that they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i), because:

1. The deficiencies are of such a size and nature as to render no part of the New Mexico program incomplete since all other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII, and these deficiencies, which will be promptly corrected, will not directly affect environmental performance at coal mines;

2. New Mexico has initiated and is actively proceeding with steps to correct the deficiencies; and

3. New Mexico has agreed by letter dated December 2, 1980, to correct the regulation deficiencies by July 1, 1981, and the statutory deficiency by February 28, 1981.

4. Under the authority of Section 505(b) of SMCRA, and in accordance with the position taken by the State of New Mexico, the Secretary has preempted and superceded the State Wildlife Conservation Act to the extent it is inconsistent with provisions of SMCRA related to the Endangered Species Act of 1973.

Accordingly, the Secretary is conditionally approving the New Mexico program. This approval shall terminate if regulations correcting the deficiencies found in the regulations are not enacted by July 1, 1981, or if State legislation correcting the statutory deficiency is not enacted by February 28, 1982.

This conditional approval is effective December 31, 1980. Beginning on that date, the New Mexico Energy and Minerals Department, Mining and Minerals Division, shall be deemed the regulatory authority in New Mexico and all New Mexico surface coal mining and reclamation operations on non-federal and non-Indian lands and all coal exploration on non-federal and non-Indian lands in New Mexico shall be subject to the permanent regulatory program. On non-federal and non-Indian lands in New Mexico the permanent regulatory program consists of the State program approved by the Secretary.

On federal lands, the permanent regulatory program consists of the federal rules made applicable under 30 CFR Chapter VII, Subchapter D—Parts 740–745. In addition, in accordance with Section 523(a) of SMCRA, 30 USC 1273(a), the federal lands program in New Mexico shall include the requirements of the approved New Mexico permanent regulatory program. The Department of Interior and the State of New Mexico will have the opportunity to enter into a cooperative agreement to include the requirements of the approved New Mexico permanent regulatory program.

The Secretary's approval of the New Mexico program relates only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV under SMCRA, the abandoned mined lands reclamation program. In accordance with 30 CFR Part 884, New Mexico has submitted a State Reclamation Plan which is the subject of a separate rulemaking. See 45 FR 65626–65626 (October 3, 1980).

Additional Findings

The Secretary has determined that pursuant to Section 702(d) of SMCRA, 30 USC 1292(d), no environmental impact statement need be prepared on this conditional approval.

The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this conditional approval.

Dated: December 24, 1980.

Joseph W. Gorrell,

Deputy Assistant Secretary of the Interior for Energy and Minerals.

A new Part 30 CFR Part 931, is adopted to read as follows:

PART 931—NEW MEXICO

Sec.

931.1 Scope.
931.10 State regulatory program approval.
931.11 Conditions of the State program approval.
931.12 New Mexico regulations affirmatively disapproved in accordance with court order.
931.13 Preemption of New Mexico laws and regulations.

Authority: Section 503 of Pub. L. 95–87, 91 Stat. 470 (30 U.S.C. 1253).

§ 931.1 Scope.

This part contains all rules applicable only within New Mexico that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 931.10 State regulatory program approval.

The New Mexico State Program, as submitted on February 28, 1980, and amended and clarified on June 11, 1980, August 7, 1980, and September 10, 1980, is conditionally approved, effective December 31, 1980. Beginning on that date, the New Mexico Energy and Minerals Department, Division of Mining and Minerals shall be deemed the regulatory authority in New Mexico for all surface coal mining and reclamation operations and for all exploration operations on non-federal and non-Indian lands. Copies of the approved program together with copies of the letter of the New Mexico Energy and Minerals Department, Division of Mining and Minerals agreeing to the conditions in 30 CFR 931.11, are available at:

(a) Energy and Minerals Department, Division of Mining and Minerals, First Northern Plaza East, Room 200, Santa Fe, New Mexico 87501, Telephone: (505) 827–5451.

(b) Office of Surface Mining, Brooks Towers, 1020 15th Street, Denver, Colorado 80202, Telephone: (303) 837–5421.

(c) Office of Surface Mining, Room 153, Interior South Building, 1951 Constitution Ave., NW., Washington, DC 20240, Telephone: (202) 343–4728.

§ 931.11 Conditions of the State program approval.

The approval of the State program is subject to the following conditions:

(a) The approval found in § 931.10 will terminate on July 1, 1981, unless New Mexico submits to the Secretary by that date copies of fully implemented regulations including the requirements for keyway cuts and rock toe buttresses in accordance with 30 CFR 816.71, or otherwise amends its program to accomplish the same result.

(b) The approval found in § 931.10 will terminate on July 1, 1981, unless New Mexico submits to the Secretary by that date copies of fully implemented procedural regulations for hearings on petitions to designate lands unsuitable in accord with 30 CFR 764.17, or otherwise amends its program to accomplish the same result.

(c) The approval found in § 931.10 will terminate on July 1, 1981, unless New Mexico submits to the Secretary by that date copies of fully implemented regulations which demonstrate that regulation 24–11 has been changed to delete the specific variance for return to approximate original contour on exploration sites in conformance with 30 CFR 815.15, or otherwise amends its program to accomplish the same result.

(d) The approval found in § 931.10 will terminate on July 1, 1981, unless New Mexico submits to the Secretary by that date copies of fully implemented regulations which include the requirements for posting and publishing notice of show cause orders that may be issued in accordance with 30 CFR 843.13 (c) (1)–(3) and (d), or otherwise amends its program to accomplish the same result.

(e) The approval found in § 931.10 will terminate on February 28, 1982, unless New Mexico submits to the Secretary by that date copies of fully implemented regulations containing provisions which are the same or similar to those in 43 CFR 4.1290–4.1296, relating to the award of costs, including attorney's fees, in administrative proceedings, or otherwise amends its program to accomplish the same result.

(f) The approval found in § 931.10 will terminate on July 1, 1981, unless New Mexico submits to the Secretary by that date copies of fully enacted regulations imposing an additional criterion to the proposed State alternative leaving limited highwall stretches which would prevent any stretch of highwall from exceeding the length of the cliffs present prior to mining, or otherwise amends its program to accomplish the same result.

(g) The approval found in § 931.10 will terminate on July 1, 1981, unless New Mexico submits to the Secretary by that date copies of fully implemented regulations containing a complete definition of "unconsolidated streamlaid deposits holding streams" in accord with 30 CFR 705.5, or otherwise amends its program to accomplish the same result.

(h) The approval found in § 931.10 will terminate on July 1, 1981, unless New Mexico submits to the Secretary by that date copies of fully enacted regulations governing a small operators assistance program in accord with 30 CFR 795, or otherwise amends its program to accomplish the same result.

(i) The approval found in 931.10 will terminate on July 1, 1981, unless New Mexico submits to the Secretary by that date copies of fully implemented regulations which correct a typographical error in New Mexico regulation 29–12(b) concerning citizen requests for inspections in accord with 30 CFR 842.12, or otherwise amends its program to accomplish the same result.

(j) Various state rules were adopted based on OSM's proposed bonding regulations, which require changes in order to conform to the now promulgated bonding regulations. Accordingly, the approval found in Section 906.10 will terminate on July 1, 1981, unless New Mexico submits to the Secretary by that date copies of fully implemented regulations containing provisions which modify:

(1) State regulation 1–5 to provide a guarantee of the enforceability of a self bond, consistent with 30 CFR 800.5, or otherwise amends its program to accomplish the same result.

(2) State regulations to provide for the applicability of surface construction activities under subsidence-control measures of mine drainage treatment, consistent with 30 CFR 801.11(a)(1), or otherwise amends its program to the same result.

(3) State regulations 14–16(a) to provide clarification of the period of bond liability covering long-term operations, consistent with 30 CFR 801.13(a), or otherwise amends its program to accomplish the same result.

(4) State regulation 14–16(b) to provide continuous bond coverage terms, consistent with 30 CFR 801.13(b), or otherwise amends its program to accomplish the same result.

(5) State regulation 14–19(a) to provide surety protection provisions, consistent with 30 CFR 801.16(a), or otherwise amends its program to accomplish the same result.

(6) State regulation 14–19(b) to provide bond coverage for any subsequent revegetation on an area previously used as an impoundment, consistent with 30 CFR 801.16(b), or otherwise amends it program to accomplish the same result.

(7) State regulation 15–13(b) to provide for beginning the liability period after the last year of augmentation, consistent with 30 CFR 805.13(b), or

otherwise amends its program to accomplish the same results.

(8) State regulation 15–13(e) to provide a liability period of 5 or 10 years for long-term, intensive agricultural land-use, consistent with 30 CFR 805.13(e), or

responsibility for" in 2–12(e)(1) is also disapproved. These disapprovals conform to the corresponding suspensions of 30 CFR 761.11(c) and 12(f)(1).

(d) New Mexico regulations 6–11(b)

underground mining operations, in accordance with the court's remand of 30 CFR 817.52(a)(1) and 817.54.

(m) New Mexico regulation 20–95, which requires measures for the control of fugitive dust, is disapproved in

SUPPLEMENTARY INFORMATION: On May 4, 1980, ED was created under the Department of Education Organization Act (Pub. L. 96–88). Section 425, Part B, of Title IV of the Act requires the Secretary to design an Offical Seal. The

when embossed. As so modified, it appears below.

ED, and public appearances of the Secretary or other senior ED officials; and

(7) For other purposes as determined by the Director of the Office of Administrative Resources Management;

otherwise amends its program to accomplish the same results.

(8) State regulation 15–13(e) to provide a liability period of 5 or 10 years for long-term, intensive agricultural land-use, consistent with 30 CFR 805.13(e), or otherwise amends its program to accomplish the same result.

(9) State regulation 15–13 to provide that if an area is separated, that portions shall be bonded separately and the period of liability shall commence anew, while the period of liability for the remaining areas shall continue in effect without extension, consistent with 30 CFR 805.13(g), or otherwise amends its program to accomplish the same result.

(10) State regulation 16–14 to provide for self-bonding rules, consistent with 30 CFR 806.14, or otherwise amends its program to accomplish the same result.

(k) The approval found in § 931.10 will terminate on July 1, 1981, unless New Mexico submits to the Secretary by that date, copies of fully enacted regulations concerning stacking rates consistent with 30 CFR 816.117, or otherwise amends its program to accomplish the same result.

(l) The approval found in § 931.10 will terminate on July 1, 1981, unless New Mexico submits to the Secretary by that date copies of fully implemented regulations for the production of endangered species in accordance with 30 CFR 786.19 or otherwise amends its program to accomplish the same result.

§ 931.12 New Mexico regulations affirmatively disapproved in accordance with court order.

The following provisions of the New Mexico permanent regulatory program submission are hereby disapproved to the extent indicated in compliance with the February 26, 1980, May 16, 1980, and August 15, 1980 opinions and orders of the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144).

(a) The definition of "mine plan area" in New Mexico regulation 1–5 is disapproved, as is the term "mine plan area" in New Mexico regulation 8–22(b) in accordance with the court's remand of the corresponding provisions in the permanent program regulations.

(b) The definition of "road" in New Mexico regulation 1–5 is disapproved in accordance with the court's remand of the corresponding provision in the permanent program regulations.

(c) New Mexico regulations 2–11(a) and 2–12(e)(1) are disapproved to the extent to which they apply to privately owned places listed on the National Register of Historic Places. The language "or a statutory or regulatory responsibility for" in 2–12(e)(1) is also disapproved. These disapprovals conform to the corresponding suspensions of 30 CFR 761.11(c) and 12(f)(1).

(d) New Mexico regulations 6–11(b)(3) and (6) which require submission of a map and an explanation of the basis for an exploration on another's lands are disapproved in accordance with the court's remand of 30 CFR 776.11(b)(3) and (5).

(e) New Mexico regulations 8–20 (a)–(c) and 9–16 (a) and (b), requiring the submission of certain fish and wildlife information by a permit applicant, are disapproved in accordance with the court's remand of 30 CFR 779.20, 780.16, 783.20 and 784.21.

(f) New Mexico regulations 8–21(a)–(c) are disapproved to the extent to which they require soil survey information on lands on which reconnaissance does not suggest a finding of prime farmlands, in accordance with the court's remand of 30 CFR 779.21 and 783.21.

(g) New Mexico regulation 8–14(a)–(b) is disapproved insofar as it requires geological description of the strata down to and immediately below any coal seam for areas to be affected only by surface operations and facilities where no removal of overburden down to the level of the coal seam will occur, in accordance with the suspension of 30 CFR 783.14(a)(1).

(h) New Mexico regulation 8–25(c), (h) and (i), which requires cross sections, maps and plans, is disapproved in accordance with the court's remand of 30 CFR 783.25 (c), (h) and (i).

(i) New Mexico regulation 10–19(c)(i)(ii) is disapproved to the extent to which it fails to specify negligible farmland interruptions and undeveloped range lands as exclusions from its hydrological requirements dealing with alluvial valley floors, in accordance with the court's remand of 30 CFR 785.19(e)(1)(ii).

(j) New Mexico regulation 17–11(e) is disapproved to the extent to which it fails to provide for citizen access to the mine site in conjunction with an informal conference concerning release of the performance bond, in accordance with the court's remand of 30 CFR 807.11(e).

(k) New Mexico regulation 20–42 (1) and (8) is disapproved to the extent to which it requires runoff from reclaimed land to meet the same effluent limitation as that for actively mined land, in accordance with the court's remand of 30 CFR 816.42 (a) (1) and (7).

(l) New Mexico regulations 20–52(a)(1) and 20–54, dealing with water monitoring and replacement of water, are disapproved insofar as they apply to underground mining operations, in accordance with the court's remand of 30 CFR 817.52(a)(1) and 817.54.

(m) New Mexico regulation 20–95, which requires measures for the control of fugitive dust, is disapproved in accordance with the court's remand of 30 CFR 816.95 and 817.95 for containing measures not specifically related to controlling only that air pollution associated with erosion.

(n) New Mexico regulations 20–150 through 20–176, relating to regulation of roads, are disapproved in accordance with the court's remand of 30 CFR 816.150 through 816.176.

(o) The civil penalty assessment procedures contained in New Mexico regulation 31 is disapproved to the extent they incorporate a point system in accordance with the court's remand of 30 CFR 732.15(b)(7) and 30 CFR 840.13(a).

§ 931.13 Preemption of New Mexico laws and regulations.

Under the authority of Sections 505(b) of SMCRA, 30 U.S.C. 1255(b), and in accordance with the position taken by the State of New Mexico, the following provisions of New Mexico law and regulation are hereby preempted and superseded as they may apply to coal exploration and surface coal mining and reclamation operations:

The State Wildlife Conservation Act (17–2–37 to 17–2–46 NMSA 1978) to the extent it is inconsistent with provisions of SMCRA related to the Endangered Species Act of 1973 (16 USC 1531 *et seq.*).

[FR Doc. 80-40674 Filed 12-30-80; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Part 3

Official Seal

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education issues final regulations containing a description of the Department of Education (ED) Seal, requirements for officials who have authority to use the Seal, and approved uses of the Seal.

EFFECTIVE DATE: December 31, 1980.

FOR FURTHER INFORMATION CONTACT:
Mr. Henry Husmann, Director, Office of Administrative Resources Management, U.S. Department of Education, Room 3181, 400 Maryland Avenue, SW, Washington, D.C. 20202. Telephone (202) 245–8240.

SUPPLEMENTARY INFORMATION: On May 4, 1980, ED was created under the Department of Education Organization Act (Pub. L. 96–88). Section 425, Part B, of Title IV of the Act requires the Secretary to design an Offical Seal. The Seal has been designed and was approved by the Secretary on March 31, 1980. Judicial notice of the Seal shall be taken.

These regulations describe the Seal and govern its use.

Dated: December 23, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. not applicable)

PART 3—OFFICIAL SEAL

Sec.
3.1 Definitions.
3.2 Description.
3.3 Authority to affix Seal.
3.4 Use of the Seal by persons or organizations outside the Department.

Authority: Pub. L. 96–88; 20 U.S.C. 3472, 3485, unless otherwise noted.

§ 3.1 Definitions.

For the purposes of this part—

(a) "ED" means all organizational units of the Department of Education.

(b) "Embossing Seal" means a display of the form and content of the Official Seal made on a die so that the Seal can be embossed on paper or other media.

(c) "Official Seal" means the original(s) of the Seal showing the exact form, content, and colors.

(d) "Replica" means a copy of the Official Seal displaying the identical form, content, and colors.

(e) "Reproduction" means a copy of the Official Seal displaying the form and content, reproduced in only one color.

(f) "Secretary" means the Secretary of Education.

§ 3.2 Description.

The Official Seal of the Department of Education is described as follows: Standing upon a mound, an oak tree with black trunk and limbs and green foliage in front of a gold rising sun, issuing gold rays on a light blue disc, enclosed by a dark blue border with gold edges bearing the inscription "DEPARTMENT OF EDUCATION" above a star at either side of the words "UNITED STATES OF AMERICA" in smaller letters in the base; letters and stars in white. The Offical Seal of the Department is modified when used in reproductions in black and white and when embossed. As so modified, it appears below.



§ 3.3 Authority to affix seal.

The Secretary and the Secretary's designees are authorized to affix the Official Seal, replicas, reproductions, and embossing seals to appropriate documents, certifications, and other material for all purposes as authorized by this section.

(20 U.S.C. 3474)

§ 3.4 Use of the seal by persons or organizations outside the Department.

(a) Use by any person or organization outside of the Department may be made only with the Department's prior written approval.

(b) Requests by any person or organization outside of the Department for permission to use the Seal must be made in writing to the Assistant Secretary for Public Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202, and must specify, in detail, the exact use to be made. Any permission granted applies only to the specific use for which it was granted and is not to be construed as permission for any other use.

(c) Replicas may be used only—

(1) For display in or adjacent to ED facilities, in Departmental auditoriums, presentation rooms, hearing rooms, lobbies, and public document rooms;

(2) In offices of senior officials;

(3) For official awards, certificates, medals, and plaques;

(4) For motion picture film, video tape and other audiovisual media prepared by or for ED and attributed thereto;

(5) On official publications which represent the achievements or mission of ED;

(6) In non-ED facilities in connection with events and displays sponsored by ED, and public appearances of the Secretary or other senior ED officials; and

(7) For other purposes as determined by the Director of the Office of Administrative Resources Management;

(d) Reproductions may be used only—

(1) On ED letterhead stationery;

(2) On official ED identification cards, security, and other approved credentials;

(3) On business cards for ED employees;

(4) On official ED signs;

(5) On official publications or graphics issued by and attributed to ED, or joint statements of ED with one or more other Federal agencies, State or local governments, or foreign governments;

(6) On official awards, certificates, and medals;

(7) On motion picture film, video tape, and other audiovisual media prepard by or for ED and attributed thereto; and

(8) For other purposes as determined by the Director of the Office of Administrative Resources Management.

(e) Embossing seals may be used only—

(1) On ED legal documents, including interagency or intergovernmental agreements, agreements with State or local governments, foreign patent applications, certification(s) of true copies, and similar documents;

(2) On official awards and certificates; and

(3) For other purposes as determined by the General Counsel or Assistant Secretary for Management.

(f) Falsely making, forging, counterfeiting, mutilating, or altering the Official Seal, replicas, reproductions, or embossing seals, or knowingly using or possessing with fraudulent intent and altered official seal, replica, reproduction or embossing seal is punishable under 18 U.S.C. 506.

(g) Any person using the Official Seal, replicas, reproductions, or embossing seals in a manner inconsistent with the provisions of this part is subject to the provisions of 18 U.S.C. 1017, which states penalties for the wrongful use of an Official Seal, and to other provisions of law as applicable.

[FR Doc. 80-40523 Filed 12-30-80; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-260040; PH FRL 1716-2]

the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the herbicide and plant growth regulator trifluralin in or on upland cress at 0.05 part per million

alveolar/bronchiolar adenomas were observed in female mice at a statistically significant incidence when compared to controls, but the incidence appeared to be possibly related to the

diet for other leafy vegetables for which a tolerance currently exist. Therefore, 40 CFR Part 180 is amended as set forth below.

Any person adversely affected by this

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending its regulations to update certain provisions of the accident and fire prevention

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-260040; PH FRL 1716-2]

Fenthion; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule editorially amends 40 CFR 180.214 by re-establishing a tolerance for residues of the insecticide fenthion (*O-O*-dimethyl *O*-[4-(methylthio)-*m*-tolyl] phosphorothioate) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities alfalfa and grass at 5 parts per million (ppm). The regulation was established in the Federal Register of December 31, 1969 (34 FR 20425); however, the tolerance was inadvertently omitted from the Code of Federal Regulations (CFR).

EFFECTIVE DATE: Effective on December 31, 1980.

ADDRESSES: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: George T. LaRocca, Product Manager (PM) 15, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-329, 401 M St., SW., Washington, D.C. 20460, (202-426-9490).

SUPPLEMENTARY INFORMATION: The Food and Drug Administration issued a notice that published in the Federal Register of December 31, 1969 (34 FR 20425), that established tolerances for the insecticide fenthion (*O,O*-dimethyl *O*-[4-(methylthio)-*m*-tolyl] phosphorothioate) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities alfalfa hay and grass hay at 18 parts per million (ppm); alfalfa and grass at 5 ppm; and milk at 0.01 ppm (negligible residues).

The tolerance for alfalfa and grass was inadvertently omitted from the Code of Federal Regulations. This rule re-establishes the tolerance as set forth below.

Any person adversely affected by this regulation may, on or before January 30, 1981, file written objections with the Hearing Clerk, EPA, Rm. M-3708, (A-110), 401 M St. SW., Washington, D.C. 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of the Executive Order 12044.

Effective on: December 31, 1980.

(Sec. 408(e), 68 Stat. 514; (21 U.S.C. 346a(e)))

Dated: December 18, 1980.

Robert V. Brown,

Acting Deputy Assistant Administrator for Pesticide Programs.

Therefore, Subpart C of 40 CFR Part 180 is amended by revising § 180.214 to read as follows:

§ 180.214 Fenthion; tolerances for residues.

Tolerances are established for residues of the insecticide fenthion (*O,O*-dimethyl *O*-[4-(methylthio)-*m*-tolyl] phosphorothioate) and its cholinesterase-inhibiting metabolites in or on the following raw agricultural commodities:

Commodity	Parts per million
Alfalfa	5
Alfalfa, hay	18
Cattle, fat	0.1
Cattle, meat	0.1
Cattle (mbyp)	0.1
Grass	5
Grass, hay	18
Hogs, fat	0.1
Hogs, meat	0.1
Hogs (mbyp)	0.1
Milk	0.01(N)
Poultry, fat	0.1
Poultry, meat	0.1
Poultry (mbyp)	0.1
Rice	0.1
Rice, straw	0.5

[FR Doc. 80-40645 Filed 12-30-80; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 180

[PP 9E2224/R282; PH-FRL 1716-3]

Trifluralin; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the herbicide and plant growth regulator trifluralin in or on upland cress at 0.05 part per million (ppm). This regulation was requested by the Interregional Research Project No. 4 (IR-4). This regulation will establish the maximum permissible level for residues of trifluralin on upland cress.

EFFECTIVE DATE: Effective on December 31, 1980.

ADDRESS: Written objections may be submitted to: Clinton Fletcher, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Clinton Fletcher, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St., SW., Washington, D.C. 20460, (202-426-0223).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of September 4, 1980 (45 FR 58600) that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition number 9E2224 to the EPA on behalf of the IR-4 Technical Committee and Agricultural Experiment Station of Tennessee.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, establish a tolerance for the herbicide and plant growth regulator trifluralin in or on the raw agricultural commodity upland cress at 0.05 ppm.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicology data considered in support of the proposed tolerance of 0.05 part per million (ppm) in or on upland cress were 2 two-year rat feeding studies with no observed effect levels (NOEL) of 2,000 ppm; 2 two-year and a three-year dog feeding studies with NOEL's of 400 ppm; a dog breeding study with a NOEL of 400 ppm; a 4-generation rat reproduction study with a NOEL of 200 ppm; a continuous breeding rat study with a NOEL of 2,000 ppm.

Oncogenicity tests conducted by the National Cancer Institute (NCI) with trifluralin technical chemical in rats and mice indicated the chemical is not oncogenic in rats nor in male mice under the terms of the bioassay. Hepatocellular carcinomas and alveolar/bronchiolar adenomas were observed in female mice at a statistically significant incidence when compared to controls, but the incidence appeared to be possibly related to the presence of a dipropylnitrosamine contaminant, *N*-nitroso-di-n-propylamine (NDPA) was found in the trifluralin used in the test at concentrations of 84-88 ppm.

A preliminary report of a recently submitted chronic toxicity/oncogenicity study shows an increase in tumors of the urinary tract in male and female rats treated with trifluralin. However, the theoretical maximum residue contribution (TMRC) from the proposed use is only 2×10^{-5} mg/day/1.5 kg daily diet. This minute increase is considered negligible in comparison with the current estimated TMRC of 0.0429 mg/day/1.5 kg daily diet. In addition, the proposed use does not change the percentage of the acceptable daily intake (ADI) contributed by currently existing tolerances.

The ADI for trifluralin is calculated to be 0.1 mg/kg of body weight (bw)/day with regard to chronic effects other than oncogenicity and based on the NOEL of 400 ppm in the 3 long-term dog feeding studies and using a 100 fold safety factor. The maximum permitted intake (MPI) for a 60 kg person is calculated to be 6 mg/day. Tolerances have previously been established for a variety of commodities, including the crop grouping "leafy vegetables," and range from 0.05 ppm to 2.0 ppm. These tolerances utilize 0.72 percent of the ADI.

On August 30, 1979, the agency published in the Federal Register (44 FR 50911) a notice of determination and availability of a position document concerning trifluralin. After extensive review, the agency determined that the benefits outweighed the risks for all uses if the formulated products contained less than 1 ppm of NDPA. However, the agency will re-evaluate all the existing tolerances for trifluralin when the final report and validation audit of the laboratory records on all the chronic toxicity/oncogenicity studies are available.

Based on the above information considered by the agency and the insignificance of upland cress in the diet, it is concluded that the tolerance of 0.05 ppm in or on upland cress would protect the public health. In light of the chronic toxicity oncogenicity studies, the agency considers the cancer risk from dietary exposure of trifluralin-treated upland cress to be insignificant (negligible) since the ADI and TMRC are not affected by the proposed use, since upland cress can be substituted in the diet for other leafy vegetables for which a tolerance currently exist. Therefore, 40 CFR Part 180 is amended as set forth below.

Any person adversely affected by this regulation may, on or before January 30, 1981, file written objections with the Hearing Clerk, EPA, Rm. M-3708 (A-110), 401 M. St., SW., Washington, D.C. 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. If a hearing is granted, the objections must be supported by grounds legally sufficient to justify the relief sought.

Note.—Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective date: December 31, 1980.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: December 18, 1980.

Robert V. Brown,

Acting Deputy Assistant Administrator for Pesticide Programs.

Therefore, Subpart C of 40 CFR Part 180 is amended by alphabetically inserting "upland cress" in the table under § 180.207 to read as follows:

§ 180.207 Trifluralin; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Upland Cress	0.05
* * * * *	

[FR Doc. 80-40646 Filed 12-30-80; 8:45 am]

BILLING CODE 6560-32-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-20

[FPMR Amendment D-78]

Federal Property Management Regulations; Management of Buildings and Grounds; Accident and Fire Prevention Standards

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending its regulations to update certain provisions of the accident and fire prevention standards. The proposed changes require that GSA ensure that space is consistent with Occupational Safety and Health Act (OSHA) standards, provide a procedure for processing reports of hazardous conditions, and for resolving conflicting complaints that result from safety and health inspections by GSA and occupant agency inspection personnel.

EFFECTIVE DATE: December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Schilder, Chief, Safety Management Branch, Accident and Fire Prevention Division (202-566-0961).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

1. The table of contents for Part 101-20 is amended to recaption and revise two entries and add one entry, as follows:

101-20.109-3 Responsibilities of agencies.
101-20.109-11 Accident prevention and fire protection activities of occupant agencies.
101-20.109-12 Correction of hazardous conditions.

Subpart 101-20.1—Building Operations, Maintenance, Protection, and Alterations.

2. Section 101-20.109-1 is revised to read as follows:

§ 101-20.109-1 Policy.

It is the policy of GSA that:

(a) Standards for space will equal those promulgated under the Occupational Safety and Health Act (OSHA) of 1970 (Public Law 91-596); Executive Order 12196; and 29 CFR 1960, Subpart C—Agency Occupational Safety and Health Standards.

(b) The safety and health of occupants and visitors will not be endangered by exposure to unnecessary risks and intolerable conditions.

(c) Safeguards will be provided to allow emergency forces to accomplish their missions without undue danger of entrapment.

(d) Fire-protection and other safety features will be provided to minimize exposure to the community to unnecessary risks or undue danger.

(e) Safeguards that minimize personal harm, property damage, or impairment

of GSA or agency operations will be provided according to the level of risk which includes the number of persons involved, the value of the property, and the importance of the Federal activity.

3. Section 101-20.109-3 is recaptioned

restrictive. An abatement plan shall be prepared when corrective actions require more than 30 calendar days. This plan shall contain an explanation of why the corrections are delayed, a proposed timetable for the abatement,

documentation. The occupant agency's liaison shall determine that there are reasonable grounds to believe that an unsafe or unhealthful condition exists before presenting the situation to the GSA buildings manager.

Dated: December 18, 1980.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80-40598 Filed 12-30-80; 8:45 am]

BILLING CODE 6820-23-M

changes in the wildlife mitigation plan have necessitated changes in the Environmental Assessment. The Environmental Assessment and the Finding of No Significant Impact have now been completed. Preparation of the

that no filings may be made after July 1, 1982.

* * * * *

[FR Doc. 80-40616 Filed 12-30-80; 8:45 am]

BILLING CODE 4310-09-M

of GSA or agency operations will be provided according to the level of risk which includes the number of persons involved, the value of the property, and the importance of the Federal activity.

3. Section 101–20.109–3 is recaptioned and revised to read as follows:

§ 101–20.109–3 Responsibilities of agencies.

Accidents involving personal injury or property damage to buildings and grounds for which GSA is responsible will be reported immediately to the appropriate GSA buildings manager. Each occupant agency shall ensure that:

(a) Operations and activities and their use in GSA-assigned space conform to the policies of § 101–20.109–1;

(b) All reasonable precautions are taken to avoid accidental injuries, work related illnesses, fires, and property damage; and

(c) A safety, health, and fire protection liaison is appointed with full authority and responsibility to represent the occupant agency management with the GSA buildings manager.

4. Section 101–20.109–11 is amended by revising its caption and paragraph (a) to read as follows:

§ 101–20.109–11 Accident prevention and fire protection activities of occupant agencies.

(a) Periodic inspections, in accordance with Executive Order 12196 and 29 CFR 1960, are required to be conducted by the occupant agency for its operations and activities to include their assigned space within GSA buildings or grounds. All substandard building conditions shall be documented and a copy of the documentation shall be provided to the GSA buildings manager not later than 10 workdays after identification of the substandard condition. These inspections do not relieve GSA of its responsibilities for these areas, nor do inspections by GSA or others relieve occupant agencies of their responsibilities for maintaining full knowledge of conditions.

* * * * *

5. Section 101–20.109–12 is added to read as follows:

§ 101–20.109–12 Correction of hazardous conditions.

(a) Conditions within the occupant agency's responsibility to correct, which affect GSA buildings and grounds and could affect any GSA employees or other agency employees in the performance of their responsibilities, shall be corrected within 30 workdays in accordance with 20 CFR 1960 or established occupant agency program requirements, whichever is more restrictive. An abatement plan shall be prepared when corrective actions require more than 30 calendar days. This plan shall contain an explanation of why the corrections are delayed, a proposed timetable for the abatement, and a summary of steps being taken in the interim to protect GSA and other agency personnel from injury or illness and GSA buildings and grounds from damage by the unsafe or unhealthy working condition. The occupant agency's liaison shall send a copy of the hazard correction plan to the GSA buildings manager. (Usually this plan will be the same as required by 29 CFR 1960). If the abatement will take more than 60 workdays, a copy of the plan shall also be provided by the GSA buildings manager to the appropriate GSA regional Accident and Fire Prevention Branch. Occupant agencies may correct hazardous conditions in accordance with FPMR 101–20.105, which establishes authority for agencies to procure special alteration services of not more than $1,000.

(b) Conditions considered to be within the scope of GSA's responsibility to correct which are identified in occupant agency's assigned space, shall be forwarded to the GSA buildings manager for action. The resolution steps are:

(1) Identification;
(2) Documentation;
(3) Presentation;
(4) Investigation;
(5) Determination; and
(6) Resolution.

(c) To correct a condition considered to be within the scope of GSA's responsibility, six basic steps shall be taken: The occupant agency shall identify, document, and present the problem to the GSA buildings manager, after which GSA will investigate, determine, and resolve the problem. Identification of these conditions may be by an occupant agency employee or by an occupant agency safety and health and fire protection specialist.

When an imminently dangerous situation exists, as defined by 29 CFR 1960.28, a telephone call from the occupant agency's liaison to the GSA buildings manager shall constitute the occupant agency's identification, documentation, and presentation of the problem to GSA. Otherwise, a report shall document the hazardous condition and cite references to specific OSHA standards violated. Documentation should include inspection reports, photographs, sketches or drawings for a safety problem, and an industrial hygiene survey report for health problems. The OSHA Form No. 7 (complaint) may be used as part of the documentation. The occupant agency's liaison shall determine that there are reasonable grounds to believe that an unsafe or unhealthful condition exists before presenting the situation to the GSA buildings manager.

(d) GSA action:

(1) Upon a documented agency request, GSA will investigate reports of unsafe or unhealthful conditions. This investigation, when requiring an onsite inspection, shall be completed within 24 hours for imminent danger situations, 3 working days for potentially serious conditions, and 20 working days for other safety and health conditions.

(2) The GSA buildings manager will determine a plan of action to resolve the problems and inform the agency within 5 working days after the investigation.

(3) Whenever possible, GSA shall resolve the condition within 20 working days after determining the plan of action and shall inform the agency when resolution has been completed.

(4) When resolution will take longer than 30 working days, the GSA buildings manager shall prepare and submit to the occupant agency liaison an abatement plan.

(5) GSA shall give priority in the allocation of resources for prompt abatement of conditions.

(6) The abatement plan shall set forth a timetable for abatement and a summary of interim steps to protect employees. The plan shall include the: Location of the hazard, hazard assessment (probability of occurrence and potential severity), discussion of the hazard, corrective action to be taken, specific reference to OSHA standard(s) violated, justification for deferring corrective action, proposed timetable, interim corrrective action, and the appropriate management signature.

(d) Actions by the buildings manager or other regional management personnel that do not resolve the problem to the satisfaction of the occupant agency's management may be formally presented to the appropriate GSA Regional Administrator by the occupant agency's regional, district, or equivalent management.

(e) Unsatisfactory resolutions by GSA regional management may be formally presented to the Administrator of GSA, Washington, DC 20405, by the agency head or an authorized designee.

(f) Hazardous conditions observed in other than the occupant agency's assigned space should be brought to the attention of the responsible agency's occupant liaison for required action.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: December 18, 1980.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80-40598 Filed 12-30-80; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF THE INTERIOR

Water and Power Resources Service

43 CFR Part 428

Sale of Replacement Farm Units to Teton Flood Victims

AGENCY: Water and Power Resources Service, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior is amending its regulations relating to the sale of replacement farm units to Teton flood victims. The first Environmental Assessment (EA) on the proposed sale of 5,955 acres of Idaho National Energy Laboratory land to victims of the Teton flood was completed on January 18, 1979. The proposed sale was authorized by the provision of Public Law 95–238 which was codified into 43 CFR 428. Fewer farmers than expected qualified for farm units under the regulations. Also, the proposed wildlife mitigation plan was modified following the initial EA. These changes made it necessary to modify the original EA. Preparation of the environmental documents has delayed the sale of the replacement farm units and therefore a change in the regulations is necessary to reflect the delay.

DATE: December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. L. David Williamson, Jr., Senior Staff Assistant, Land Resources Management, Operation and Maintenance Policy Staff, telephone–(202) 343–5204.

SUPPLEMENTARY INFORMATION: On June 5, 1976, the Teton Dam in southeastern Idaho failed and flooded 185 square miles of flat, agricultural lands. Public Law 95–238 was passed by Congress on February 25, 1978. This Act authorized the Federal Government to sell up to 5,955 acres of the Idaho National Energy Laboratory (INEL) lands to Teton flood victims whose lands were damaged beyond repair by the failure of Teton Dam. The Water and Power Resources Service, Department of the Interior, developed regulations codified in 43 CFR 428 to define qualified farmers and to establish procedures and time tables for the sale of these lands. Subsequent changes in the number of qualified farmers reduced the acres to be sold and changes in the wildlife mitigation plan have necessitated changes in the Environmental Assessment. The Environmental Assessment and the Finding of No Significant Impact have now been completed. Preparation of the environmental documents has delayed the date of the sale of the INEL lands to the qualifying farmers and requires that 43 CFR 428.6 be modified to reflect this delay. The proposed change to 43 CFR 428.6 was printed in the Federal Register Vol. 45 No. 54 for Tuesday, March 18, 1980, page 17165–17166, and comments were solicited. No. comments were received; therefore, the proposed modification to 43 CFR 428.6 is final as proposed.

The principal author of this document is Mr. Terence G. Cooper, Staff Assistant for Land Resources Management, Operations and Maintenance Policy Staff, Water and Power Resources Service.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: December 22, 1980.

Cecil D. Andrus,

Secretary of the Interior and Returned.

Accordingly, 43 CFR Part 428 is amended by revising § 428.6(a) to read as follows:

§ 428.6 Sale of replacement farm units.

(a) Replacement farm units shall be made available for purchase by qualifying farmers approximately every 6 months starting after final determinations have been made identifying the qualified farmers; and within approximately 120 days after compliance with applicable Federal laws and regulations, including the National Environmental Policy Act of 1969, provided, however, that sales will be limited to the land made available for this program pursuant to the act of February 25, 1978, (92 Stat. 76) and described in § 428.4(e) hereof. The Secretary shall notify all qualifying farmers, in writing, of the date the first replacement farm units will be offered for sale and will also give notice of the closing date on which the qualifying farmer may file an intent to purchase a replacement farm unit from those offered for sale during the initial sale period. No subsequent notice will be provided; however, each qualifying farmer may file an intent to purchase at any time after the initial sale provided that no filings may be made after July 1, 1982.

* * * * *

[FR Doc. 80-40616 Filed 12-30-80; 8:45 am]

BILLING CODE 4310-09-M

Bureau of Land Management

43 CFR Public Land Order 5796

[NM-37654]

New Mexico; Revocation of Public Land Order No. 3796

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will revoke a withdrawal pertaining to 23,816.48 acres of public lands and, to the extent provided, open the lands to the operation of the public land laws generally.

EFFECTIVE DATE: January 27, 1981.

FOR FURTHER INFORMATION CONTACT: Stella V. Gonzales, New Mexico State Office 505–988–6211.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 3796 of August 17, 1965, which withdrew the following described public lands, administered by the Bureau of Land Management, from entry under the agricultural public land laws, for the protection of the underground water supply in the Hueco-Bolson Area, is hereby revoked:

New Mexico Principal Meridian

T. 26 S., R. 4 E.,
- Sec. 1, NE¼, S½NW¼, SW¼, and W½SE¼;
- Secs. 3 to 11, inclusive;
- Sec. 12, W½NE¼, NW¼, N½SW¼, SE¼SW¼, and SE¼;
- Secs. 13 to 15, inclusive;
- Secs. 17 to 23, inclusive;
- Sec. 24, N½NE¼, SW¼NE¼, NW¼, N½SW¼, N½SE¼, and SE¼SE¼;
- Sec. 25, NE¼NE¼;
- Sec. 27, N½, SW¼, and N½SE¼;
- Secs. 28 to 30, inclusive;
- Sec. 31, lot 6 and E½NE¼;
- Sec. 33, lots 1 to 4, inclusive, and N½;
- Sec. 34, lots 1 to 4, inclusive, and N½;
- Sec. 35, lots 1 to 4, inclusive, NW¼NE¼, S½NE¼, and NW¼.

T. 26 S., R. 5 E.,
- Sec. 5, lot 1;
- Sec. 6, lot 7;
- Secs. 10 to 12, inclusive;
- Sec. 13, N½;
- Sec. 14, N½, SW¼, N½SE¼, and SW¼SE¼.

T. 26 S., R. 6 E.,
- Sec. 1, NE¼SE¼, that portion lying west of the McGregor Range (PLO No. 1470), and NW¼SE¼;
- Sec. 7, S½NE¼, SE¼NW¼, E½SW¼, and

burdensome demands that the import/export license requirement would impose on small entities, particularly small businesses and individuals who only occasionally import or export

Purpose of and Need for the Rule

The Service has received considerable comment that the license requirement would impose disproportionately

Statement of Basis for Omitting Notice and Comment

Pursuant to 5 U.S.C. 553(b)(B) and 43 CFR 14.5(b)(3), the Service for good cause finds that notice and public

Authority: Lacey Act (18 U.S.C. 42–44); Endangered Species Act of 1973 (16 U.S.C. 1538(d)–(f), 1540(f)); Marine Mammal Protection Act of 1972 (16 U.S.C. 1382); Migratory Bird Treaty Act (16 U.S.C. 704, 712); Act of August 31, 1951, Ch. 376, Title 5,

ending December 15, 1980. A public hearing on the proposal was held in Washington, D.C., on December 8, 1980. The comments and action being taken on the rules finalized in this publication

T. 26 S., R. 6 E.,
Sec. 1. NE¼SE¼, that portion lying west of the McGregor Range (PLO No. 1470), and NW¼SE¼;
Sec. 7. S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8. S½NE¼, W½, and SE¼;
Sec. 9. S½N½ and S½;
Sec. 10. S½N½, NE¼SW¼, and SE¼;
Sec. 17;
Sec. 18. E½ and E½W½;
Sec. 19. E½ and E½W½;
Sec. 20. W½W½;
Sec. 29. N½NE¼ and E½NW¼.

The area described aggregates 23,900.59 acres in Dona Ana and Otero Counties of which 84.11 acres are privately owned.

2. At 10 a.m. on January 27, 1981, all the lands except lot 1 sec. 5 and lot 7 sec. 6, T. 26 S., R. 5 E., (private lands), shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, existing classification decisions and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on January 27, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands have been and continue to be open to applications and offers under the mineral leasing laws and to location under the United States mining laws.

Inquiries concerning the lands should be addressed to the Chief, Division of Technical Services, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501.

Guy R. Martin,
Assistant Secretary of the Interior.
December 18, 1980.
[FR Doc. 80-40604 Filed 12-30-80; 8:45 am]
BILLING CODE 4310-84-M

Fish and Wildlife Service

50 CFR Part 14

Excepting Certain Persons From the Import/Export License Requirement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule

SUMMARY: The Service amends the import/export license requirement found in 50 CFR Part 14 to except any person from the license requirement if the value of the wildlife that person imports and exports during a calendar year totals less than $25,000. This action should relieve the disproportionately burdensome demands that the import/export license requirement would impose on small entities, particularly small businesses and individuals who only occasionally import or export wildlife for gain or profit.

EFFECTIVE DATE: December 31, 1980.

FOR FURTHER INFORMATION, CONTACT:
John T. Webb, Division of Law Enforcement, U.S. Fish and Wildlife Service, Suite 300, 1375 K Street, NW, Washington, D.C. 20005, telephone (202) 343-9242.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 1980 (45 FR 56668), the Service published final rules revising 50 CFR Part 14 (Importation, Exportation, and Transportation of Wildlife) to implement provisions of a number of wildlife laws enforced by the Service. As part of that rulemaking and under authority of the Endangered Species Act of 1973 (ESA), an import/export license requirement was imposed on any person who engages in business as an importer or exporter of fish or wildlife unless that person imports or exports certain excepted wildlife or falls within one of the categories of persons excepted from the requirement by the rules. Under section 9(d) of the ESA [16 U.S.C. 1538(d)] it is illegal for any person to engage in business as an importer or exporter of fish or wildlife (other than certain shellfish or fishery products) without first having obtained permission from the Secretary of the Interior. On March 24, 1974 (39 FR 8357), the Service published a notice granting temporary permission to all persons needing it. To replace the temporary permission the Service proposed an import/export license on March 27, 1978 (43 FR 12830). After two comment periods and two public hearings the Service retained the license requirement with certain exceptions in the final rules. The license requirement goes into effect on January 1, 1981.

Licensees must: (1) pay $50 for a license, (2) keep certain records and retain them for five years, (3) allow Service inspection of records and inventories of imported wildlife, and (4) file requested reports. Certain persons excepted from the license requirement by 50 CFR 14.92(b) must still: (1) keep records which fully and correctly disclose each importation or exportation of wildlife by them (2) keep records which fully and correctly disclose the subsequent disposition by them of the imported or exported wildlife, and (3) allow Service inspection of records and inventories of imported wildlife.

Purpose of and Need for the Rule

The Service has received considerable comment that the license requirement would impose disproportionately burdensome demands on small entities, particularly small businesses and individuals who only occasionally import or export fish or wildlife for gain or profit. The license fee and records which must be kept would disrupt the normal business practice of these small entities by requiring them to: (1) adopt new and more costly business practices to comply with the license requirement, or (2) hire additional help in some instances to comply with the more detailed recordkeeping and possible reporting requirements of the license.

Description of the Final Rule

Any person who engages in business as an importer or exporter of fish or wildlife does not have to obtain an import/export license if the value of the wildlife that person imports and exports during a calendar year totals less than $25,000. This exception applies to all qualified persons who engage in business as importers or exporters of fish or wildlife, including those persons identified by 50 CFR 14.91(c). The value the Service will use to determine whether the excepted dollar value has been exceeded is the value declared on the Declaration for Importation or Exportation of Fish or Wildlife (Form 3-177).

Persons Who May Qualify for the Exception

Any person who may qualify for the exception during the next calendar year and has submitted an application for an import/export license to the Service should contact the Special Agent in Charge to whom the application was submitted as soon as possible.

National Environmental Policy Act

The Service prepared an environmental assessment on the final rules published on August 25, 1980 (45 FR 56668), which included a discussion of the implementation of section 9(d) of the ESA. That assessment forms the basis for a finding that this final rule is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

The final assessment is on file in the Service's Division of Law Enforcement, 1375 K Street, N.W., Washington, D.C., and may be examined during regular business hours.

Statement of Basis for Omitting Notice and Comment

Pursuant to 5 U.S.C. 553(b)(B) and 43 CFR 14.5(b)(3), the Service for good cause finds that notice and public procedure on this amendment are impracticable, unnecessary, and contrary to the public interest. The import/export license requirement takes effect on January 1, 1981. 50 CFR 14.91(a); 45 FR 56678. Persons not excepted from the license requirement must insure that a complete application, including the $50 fee, is received by the Service before that date. 50 CFR 13.11(d), 14.93(c); 45 FR 56673, 56678. The purpose of this amendment is to except small entities from the excessive burdens that would result from the application, recordkeeping, and possible reporting provisions of the license requirement. If notice and an opportunity for public comment were provided for this amendment, it would not take effect before January 1, 1981, and the small entities covered by this exception would be forced to comply, within a very limited amount of time, with application and fee requirements. Thus, the very purpose of this amendment would be defeated if notice and an opportunity for public comment on it were provided.

Early in 1981 the Service intends to publish a document in the **Federal Register** which will provide the public with an opportunity to comment on all aspects of 50 CFR Part 14, including the import/export license requirement.

Effective Date of This Rule

Because this rule is a substantive rule which grants or recognizes an exemption and relieves a restriction, the Service has determined to make it effective immediately under authority of 5 U.S.C. 553(d)(1) and 43 CFR 14.5(b)(5).

Classification and Regulatory Analysis

The Department has determined that this document is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Regulations Promulgation

For the reasons set out in the preamble, Part 14, Subchapter B, Chapter I of Title 50, *Code of Federal Regulations*, is amended as set forth below.

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for Part 14 is revised to read as follows:

Authority: Lacey Act (18 U.S.C. 42-44); Endangered Species Act of 1973 (16 U.S.C. 1538(d)-(f), 1540(f)); Marine Mammal Protection Act of 1972 (16 U.S.C. 1382); Migratory Bird Treaty Act (16 U.S.C. 704, 712); Act of August 31, 1951, Ch. 376, Title 5, sec. 501 (31 U.S.C. 483a); Black Bass Act (16 U.S.C. 852c).

2. A new paragraph (6) is added to § 14.92(b) to read as follows:

§ 14.92 Exceptions to license requirement.

* * * * * *

(b) * * *

(6) Any person if the value [as declared on the Declaration for Importation or Exportation of Fish or Wildlife (Form 3-177)] of the wildlife that person imports and exports during a calendar year totals less than $25,000.

Dated: December 19, 1980.

Lynn A. Greenwalt,
Director, Fish and Wildlife Service.

[FR Doc. 80-40617 Filed 12-30-80; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

Foreign Fishing Regulations; Payment of Fees

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Final rule.

SUMMARY: NOAA sets the surcharge on foreign fishing fees at 20 percent; establishes new fee collection procedures; and provides a format for the effort plan. These actions will facilitate the payment of fees and submission of effort plans.

EFFECTIVE DATES: January 1, 1981, for the amended fee collection procedures and 20 percent fee surcharge; January 30, 1981, for the effort plan format.

FOR FURTHER INFORMATION CONTACT:
Denton R. Moore, Chief, Permits and Regulations Division, F/CM7, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: (202) 634-7432.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to establish a new foreign fishing fee collection procedure, to raise the surcharge to 20 percent, and to provide a format for the effort plan was published on November 13, 1980 (45 FR 74948). A new poundage fee schedule, proposed in the same publication, will be finalized at a later date but before January 1, 1981. Comments were invited for 30 days, ending December 15, 1980. A public hearing on the proposal was held in Washington, D.C., on December 8, 1980. The comments and action being taken on the rules finalized in this publication are summarized below.

I. Fishing Vessel and Gear Damage Compensation Fund

No comments were received on raising the initial surcharge collected from 10 percent to the full 20 percent authorized by the Fishermen's Protective Act, as amended. Several commenters spoke against the concept of the Fund; however, such comments are beyond the scope of this rulemaking. One commenter asked NOAA to consider the increased surcharge when setting the 1981 poundage fee. This will be done. Another commenter said that foreign vessel owners are entitled to the information on how the Fund is disbursed. This information may be made available under a Freedom of Information Act request. Foreign nations are advised that the surcharge portion of the letter of credit or cash payment for the first quarter (see part III, below) will be drawn in early January. NOAA must take this action to recapitalize the Fund.

II. Effort Plan

One comment was submitted on the effort plan format. The commenter asked that anticipated foreign fishing in the Pacific billfish and sharks fishery be specified by geographical area. This comment is incorporated into the final regulations. The commenter also requested that effort plans be required when permits are submitted. NOAA feels it cannot do so, since the Federal government requests countries to submit permit applications in October for the next calendar year. The allocations are not released until late in December or afterwards. It would be unfair to require effort plans before a nation knew the quantity and location of its allocation.

III. Fee Collection Procedures

The preamble to the proposed rulemaking explained the difficulties of administering the present fee collection procedure, which requires cash payment for the allocation in advance of catching operations. Establishing a letter of credit is the new procedure. The NOAA will draw on the letter of credit for the poundage fee of the actual catch at the end of each quarter. Most commenters favor this new procedure.

One commenter asked that NOAA allow a cash payment in lieu of the letter of credit for at least the first quarter. NOAA is granting this option to each foreign fishing nation which

notifies NMFS that cash payment will be made before January 1.

A second commenter asked if the owner or operator of the foreign vessel or the government of the vessel's

Accordingly, the Assistant Administrator waives part of the 30-day delay in implementation required under the Administrative Procedures Act. The full 30-day delay for the new effort plan

Name of Country; Fishing area (BSA, NWA, etc.)

Gear type	Type/size of vessel	Main target species	Approximate dates of fishing in FCZ	Estimated catch per vessel day

Exvessel Values Per Metric Ton—Continued

Species	1980 values
Flounders	*397
Hake (Pacific whiting)	*176

for collection as the documentary demand for payment to the confirming bank. If, after 45 days from the end of the quarter, catches have not been reconciled, the estimate of the regional Director will stand and a bill will be

notifies NMFS that cash payment will be made before January 1.

A second commenter asked if the owner or operator of the foreign vessel or the government of the vessel's country of registry would establish the letter of credit. NOAA has no preference when only one vessel owner is harvesting the nation's allocation; the important matter is that a single letter of credit for all vessels of a country be established and maintained in a United States bank. In cases where more than one vessel owner harvests a national allocation, failure to establish or maintain the letter of credit at the required levels would result in cessation of all fishing on the national allocation. The vessel owners or operators should establish the mechanics of payment with their government to ensure continuity of their fishing privileges throughout the year.

A third commenter asked if the letter of credit for the first quarter could be established for less than 25 percent of the 1980 allocation at the 1981 price, since less than 25 percent of the 1980 catch was taken in the first quarter. The final regulations retain the 25 percent requirement in order to minimize bookkeeping and to keep the procedures as simple as possible. NOAA will draw quarterly only the amount needed for fees for actual catch during that quarter, however. The concept of linking the percentage to past catch performance has merit, and NOAA will consider making refinements for 1982 as experience is gained with collection procedures.

IV. Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that these amendments do not constitute a major Federal action within the meaning of the National Environmental Policy Act of 1969, as amended, since the amendments will not affect the quantity of fish harvested. Therefore, no environmental assessment or environmental impact statement is required. The Assistant Administrator also has determined that these amendments do not constitute a significant action under Executive Order 12044, and therefore do not require a regulatory analysis.

The Assistant Administrator has determined that some countries may wish to begin harvesting their 1981 allocation on January 1, 1981. Therefore, the increased fee surcharge of 20 percent and the new fee collection procedures must be effective on January 1, 1981. Accordingly, the Assistant Administrator waives part of the 30-day delay in implementation required under the Administrative Procedures Act. The full 30-day delay for the new effort plan is not waived.

Signed at Washington, D.C., this 19th day of December, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

(16 U.S.C. 1801 *et seq.* and 22 U.S.C. 1971 *et seq.*)

For the reasons set out in the preamble, 50 CFR Part 611 is amended as follows:

1. Section 611.15(a)(6) is amended by removing the word "or".

2. Section 611.15(a) is amended by replacing the period in paragraph (7) with "; or".

3. Section 611.15(a) is amended by adding a new paragraph (8) to read as follows:

§ 611.15 Fishery closure procedures. [Amended]

(a) * * *

(8) The owner or operator of the foreign fishing vessel has not established and maintained the letter of credit required in § 611.22(a)(2)(ii).

* * * * * *

§ 611.20 [Amended]

4. Section 611.20, Total Allowable Level of Foreign Fishing, is amended by removing paragraph (c).

5. Section 611.21 is amended by revising paragraph (b)(1) to read as follows:

§ 611.21 Allocations [Amended]

* * * * *

(b) *Effort Plan.* (1) After the Secretary of State notifies each foreign nation of its allocation or reallocation of target speies, each such nation must prepare and submit an effort plan to the Assistant Administrator for Fisheries, NOAA, NMFS, 3300 Whitehaven Street NW., Washington, D.C. 20235. Effort plans may be submitted after catching begins if adequate time to prepare the plan does not exist between the allocation or reallocation and the start of catching, but the plan must be submitted before 30 days have elapsed after a corresponding allocation or reallocation. The effort plan should follow this format:

Name of Country; Fishing area (BSA, NWA, etc.)

Gear type	Type/size of vessel	Main target species	Approximate dates of fishing in FCZ	Estimated catch per vessel day

In the Pacific billfish and sharks fishery, the fishing area should be further subdivided and identified as West Coast, Hawaii and Midway Islands, Guam and Northern Marianas Islands, American Samoa, or U.S. possessions.

* * * * *

6. Amend § 611.22 as follows:

A. In § 611.22, the first sentence of paragraph (a)(1)(i) is revised.

B. Remove paragraph (a)(2)(ii).

C. Revise paragraph (a)(2)(i) in its entirety.

D. Revise and redesignate paragraph (a)(3) as new paragraph (a)(2)(ii).

E. Revise and redesignate paragraph (c) and paragraph (b), remove old paragraph (b).

F. Add a new subparagraph (iii) to paragraph (a)(2).

The amended, added and revised portion of § 611.22 reads as follows:

§ 611.22 Fee schedule for foreign fishing permits.

(a) * * *

(1) *Permit fees.* (i) Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $50.00 per vessel, plus the surcharge required under paragraph (b) of this section.

* * *

(2) *Poundage fees.* (i) The poundage fees for each allocated species is calculated at 3.5 percent of the actual landed value per metric ton of the species to U.S. fishermen for the most recent year for which such data are available. The following ex-vessel prices to be used for computing fees are based on U.S. commercial landings price using the most recent reliable information for 1979, or based on Japanese prices below:

Exvessel Values Per Metric Ton

Species	1980 values
Atlantic:	
Butterfish	[1] $927
Hake, red	[1] 315
Hake, silver	[1] 369
Herring, river	[1] 113
Mackerel, Atlantic	[1] 530
Other finfish	[1] 930
Sharks (except dogfish)	[1] 1,091
Squid—*Illex*	[2] 176
Squid—*Loligo*	[2] 993
Pacific and North Pacific:	
Atka mackerel	[3] 223
Cod, Pacific	[4] 419
Crabs, Snow (tanner)—*Opilio*	[5] 882

Exvessel Values Per Metric Ton—Continued

Species	1980 values
Flounders	[4] 397
Hake (Pacific whiting)	[6] 176
Herring sea—roeless	[4] 165
Herring, sea—w/roe	[5] 1,488
Jack mackerel	[4] 154
Ocean perch	[4] 397
Other groundfish	756
Pollock	[5] 220
Rockfishes	[4] 397
Rockfish, idiot	[5] 397
Sablefish—longline	[5] 1,567
Sablefish—trawl	[5] 661
Snails (meats)	[5] 638
Squid	[5] 324
Turbot (including arrow tooth flounder and Greenland turbot)	[5] 265
Western Pacific:	
Dolphin	[8] 4,354
Other billfish	[8] 1,111
Seamount groundfish	[3] 397
Sharks (except dogfish)	[8] 625
Striped marlin	[8] 2,816
Swordfish	[8] 3,038
Wahoo	[8] 2,968

[1] Maine, Massachusetts, Rhode Island, New York, New Jersey, and Virginia, U.S. landings—January-June 1979.
[2] U.S. landings, New York, January-June 1979.
[3] Prices in Japan, January-June 1979.
[4] U.S. landings, Alaska, September 1979.
[5] U.S. landings, Alaska, season price, 1979.
[6] U.S. landings, Washington, Oregon and California—September 1979.
[7] Based on price for U.S. landings of northern anchovy—September 1979.
[8] Hawaii landings, 1978.
[9] Ex-vessel price paid in 1979 in Japan for Soviet-caught pollock.

Note.—No fees will be charged for rattails (grenadiers). This species is taken incidentally in the sablefish longline fishery. The species is of no commercial value, and is routinely discarded by U.S. and foreign fishermen.

(ii) *Method of Payment of Poundage Fees.* If a nation chooses to accept an allocation, an irrevocable letter of credit must be established and maintained for at least 25 percent of the previous year's total allocations at the rate in paragraph (a)(2)(i) of this section, or as determined by the Assistant Administrator, plus the surcharge required by paragraph (b) of this section. The Department of Commerce, NOAA, must be designated as the beneficiary. The customer must pay all service charges. The letter of credit must be confirmed by a Federally chartered bank in the United States. No catching will be permitted unless (A) the letter of credit is established, and (B) authorized written notice of its issuance and confirmation are provided to the Assistant Administrator at the address in paragraph (a)(1) of this section. No catching will be permitted if the amount of the letter of credit falls below 25 percent of the poundage fee plus the surcharge required by paragraph (b) of this section.

(iii) *Assessment of Poundage Fees.* Poundage fees will be assessed quarterly for the actual catch during January–March, April–June, July–September, and October–December. The appropriate Regional Director will reconcile catch figures with each country, following the procedures of § 611.15(b). When the catch figures are agreed upon, NOAA will present a bill for collection as the documentary demand for payment to the confirming bank. If, after 45 days from the end of the quarter, catches have not been reconciled, the estimate of the regional Director will stand and a bill will be issued for that amount. If necessary, the catch figures may be refined by the Regional Director during the next 60 days, and any modifications will be reflected in the next quarter's bill.

(b) The owner or operator of each foreign vessel who submits a vessel permit application under paragraph (a)(1) of this section or who accepts and pays poundage fees under paragraph (a)(2) of this section must pay a surcharge equal to 20 percent of the fees. The Assistant Administrator may reduce or waive the surcharge if he determines that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently.

[FR Doc. 80-40567 Filed 12-30-80; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

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indebtedness; (2) matures no earlier than the latest maturity date of any such indebtedness; and (3) is evidenced by a note or bond which: (A) in principal amount equals the aggregate of the outstanding prior indebtedness plus the obtaining funds to purchase residential real property). Second, the wraparound lender must have funds sufficient at all times to make payments on the prior encumbrances. In view of the possibility of acceleration of prior liens, a preemption provisions. Under § 324 of the Housing and Community Development Act, enacted in October, 1980, the preemption will be generally available to loans secured by stock allocated in a residential housing

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Codes and Standards for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering amending its regulations to incorporate by reference new addenda of the ASME Boiler and Pressure Vessel Code. The sections of the ASME Code being incorporated provide rules for the construction of nuclear power plant components and specify requirements for inservice inspection of those components. Adoption of these amendments would permit the use of improved methods for construction and inservice inspection of nuclear power plants.

DATES: Comment period expires February 17, 1981.

ADDRESSES: All interested persons who wish to submit written comments or suggestions in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. E. Baker, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Phone 301–443–5999.

SUPPLEMENTARY INFORMATION: On October 9, 1979 the Nuclear Regulatory Commission published in the Federal Register (44 FR 57911, 44 FR 57912) amendments to its regulation, 10 CFR Part 50, "Licensing of Production and Utilization Facilities." The amendments revised § 50.55a to incorporate by reference the 1977 Edition and Addenda through the Summer 1978 Addenda to Section III, Division 1, "Rules for the Construction of Nuclear Power Plant Components," of the ASME Boiler and Pressure Vessel Code and Section XI, "Inservice Inspection of Nuclear Power Plant Components," of the ASME Code. Since that time the Winter 1978 Addenda and Summer 1979 Addenda have been issued. The Commission proposes to revise § 50.55a to incorporate by reference the Winter 1978 Addenda and Summer 1979 Addenda of Section III and Section XI of the ASME Boiler and Pressure Vessel Code.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 50 is contemplated.

1. In § 50.55a, paragraph (b)(1) is revised to read as follows:

§ 50.55a Codes and standards.

* * * * *

(b)(1) As used in this section, references [1] to Section III of the ASME Boiler and Pressure Vessel Code refer to Section III, Division 1, and include editions through the 1977 Edition and addenda through the Summer 1979 Addenda.

* * * * *

2. In § 50.55a, the introductory portion of paragraph (b)(2) is revised to read as follows:

* * * * *

(b)(2) As used in this section, references [1] to Section XI of the ASME Boiler and Pressure Vessel Code refer to Section XI, Division 1 and include editions through the 1977 Edition and addenda through the Summer 1979 Addenda, subject to the following limitations and modifications:

* * * * *

(Secs. 103, 104, 161b. and i., Pub. L. 83–703; 68 Stat. 936, 937, 948; Sec. 201, Pub. L. 93–438, 88 Stat. 1242; (42 U.S.C. 2133, 2134, 2201(b) and (i), 5841))

Dated at Bethesda, Md., this 22d day of December 1980.

For the Nuclear Regulatory Commission.
William J. Dircks,
Executive Director for Operations.

[FR Doc. 80-40671 Filed 12-30-80; 8:45 am]
BILLING CODE 7590-01-M

[1] These incorporation by reference provisions were approved by the Director of the Federal Register on March 17, 1972, May 4, 1973, and February 7, 1978.

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 590

[No. 80–811]

Federal Usury Preemption

Dated: December 18, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed regulation.

SUMMARY: The Federal Home Loan Bank Board is proposing regulations regarding the status of wraparound mortgages under the preemption of state interest ceilings applicable to Federally-related residential first mortgages. The Board is also proposing amendments to the usury preemption regulations in order to conform those rules with recent statutory changes.

DATE: Comments must be received by: March 2, 1981.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: James C. Stewart, Office of General Counsel, Federal Home Loan Bank Board, at the above address. Telephone number: (202) 377–6457.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted by § 501(f) of Public Law 96–221, the Federal Home Loan Bank Board is proposing an amendment to the Regulations for Federally-Related Mortgage Loans (12 CFR Part 590) to make the Federal usury preemption applicable to certain types of loan transactions that confer rights equivalent to first-lien loans.

The Board has been asked to consider the applicability of the Federal usury preemption statute to wraparound-mortgage loans used for the purchase of residential real property. As described by requestors, a wraparound-mortgage loan is a purchase-money loan that: (1) is secured by a lien on residential real property on which there exists one or more prior liens securing prior indebtedness; (2) matures no earlier than the latest maturity date of any such indebtedness; and (3) is evidenced by a note or bond which: (A) in principal amount equals the aggregate of the outstanding prior indebtedness plus the additional funds advanced by the wraparound lender; (B) requires payments by the wraparound borrower to the wraparound lender of periodic installments at least sufficient to make required current payments on the prior indebtedness; and (C) requires the wraparound lender to make the payments due on the prior indebtedness as long as installments are received from such borrower. In addition, the wraparound lender has the right to cure defaults with respect to any prior indebtedness or to satisfy such indebtedness. The wraparound lender also has the right to obtain from the borrower any funds it advances that are necessary to secure or protect its lien.

Unlike a conventional first-mortgage transaction, the wraparound borrower is able to take advantage of any existing low-interest loan which is secured by the property. Since the wraparound lender advances only a portion of the total purchase price, the combined interest rate on the wraparound note can be much lower than that required in a comparable first-mortgage transaction. If calculated as a percentage of the sums actually advanced, however, the interest rate on the loan may exceed state interest rate ceilings.

Some lenders have submitted to the Board that a wraparound mortgage of the type described above would confer greater rights to a wraparound lender than a regular second mortgage and would be sufficient to satisfy the statutory first-lien requirement. In the event of default by the wraparound borrower, the wraparound lender is in a position to keep payments on the initial lien current and prevent a forclosure of that lien. Thus, the wraparound lender's rights in the collateral are not necessarily subject to prior satisfaction of the initial lien.

The Board believes that in certain circumstances the wraparound mortgage described above would have characteristics and would confer rights sufficient to satisfy the first-lien requirement of the statute. Under the proposed regulation, a wraparound mortgage that met the standards described above would be deem to satisfy the statutory first-lien requirement if it also met the following requirements. First, the wraparound mortgage must be created as part of a purchase-money transaction (*i.e.*, a transaction in which the borrower is obtaining funds to purchase residential real property). Second, the wraparound lender must have funds sufficient at all times to make payments on the prior encumbrances. In view of the possibility of acceleration of prior liens, a wraparound lender must have assets sufficient to satisfy the entire preceding obligation if the lender is to have the equivalent of a first lien.

When previously asked whether wraparound mortgages satisfied the definition of first lien formerly contained in § 541.14 of the Regulations for the Federal Savings and Loan System (12 CFR Subchapter C), the Board's Office of General Counsel has taken the position most recently that wraparound mortgages would satisfy that definition only if the Federal association recorded the amount of prior encumbrances as a liability on the association's books. In this way, the Board's field examiners would be made aware of the potential liability and could ensure that the association was financially able to protect its investment.

The Federal usury preemption statute, however, applies to a much broader range of lenders than the regulations for Federal associations. The Board cannot assume that methods developed for regularly supervised and examined lenders will have equal validity if applied to the other lenders covered by the statute. The proposal therefore draws a distinction between lenders that are regularly examined and supervised by a Federal or state authority and unsupervised lenders. Regulated lenders would meet the requirements for first lien by establishing a liability account descriptive of the lender's prior-lien obligation. The Board specifically requests comments from representatives of unregulated lenders, such as mortgage bankers, regarding alternative standards which might guarantee that such lenders will be able to protect themselves in the event of borrower default. Escrows in the amount of the prior indebtedness have been suggested for this purpose.

The Board is of the view that the proposed regulatory amendment would advance the stated Congressional purposes of the Federal usury preemption by fostering the continued availability of home financing. By providing financing at lower rates than the prevailing rate on other mortgages, wraparound loans should permit greater numbers of households to purchase homes.

The Board also at this time is proposing amendments to the Regulations for Federally-Related Mortgage Loans to reflect recent changes in the statutory usury preemption provisions. Under § 324 of the Housing and Community Development Act, enacted in October, 1980, the preemption will be generally available to loans secured by stock allocated in a residential housing cooperative. The definition of "Federally-related loan" has also been amended to include loans made by individuals financing the sale or exchange of a dwelling used as a principal residence.

Accordingly, the Board hereby proposes to amend Part 590, Subchapter F, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

Regulations for Federally-Related Mortgage Loans

PART 590—PREEMPTION OF STATE USURY LAWS

1. Amend § 590.2(b) by removing the period at the end of subdivision (b)(6)(ii) and adding "; or", and by adding a new paragraph (b)(7) to read as follows:

§ 590.2 Definitions.

* * * * *

(b) * * *

(7) Made by any individual who finances the sale or exchange of residential real property which such individual owns and which such individual occupies or has occupied as his or her principal residence.

2. Amend § 590.2(c) by redesignating the current text as paragraph § 590.2(c)(1), and adding a new § 590.2(c)(2) to read as follows:

* * * * *

(c)(1) * * *

(2) "Loans which are secured by first liens on real estate" shall also include purchase-money loans secured by liens on property subject to prior liens securing prior indebtedness, when the loan so secured:

(i) matures no earlier than the latest maturity date of the prior indebtednesses;

(ii) equals in principal amount the aggregate of the outstanding prior indebtedness plus the additional funds advanced;

(iii) requires periodic payments by the borrower sufficient to meet required current payments on prior indebtedness;

(iv) requires the lender to make payments due on prior indebtedness as long as payments are received from the borrower;

(v) gives the lender the right to cure defaults with respect to any prior indebtedness or to satisfy such indebtedness; and

(vi) obligates the borrower to reimburse the lender for sums advanced

in order to secure or protect the lender's lien;

Provided, that such lender shall at all times have sufficient funds available to satisfy such prior indebtedness. Lenders

Education to prescribe rules of conduct for proceedings before the Education Appeal Board. Rules of conduct before the Board were published on April 3, 1980, at 45 FR 22635–22640 as 45 CFR

parties to file their briefs according to a schedule as soon as a Panel has been assigned to hear the proceeding, these amendments should also help the Panel to proceed expeditiously with its

by certified mail, return receipt requested. Because the implementation of these regulations might create an immediate burden on the resources of the Board and the parties, the Board's

conduct of all proceedings before the Board that involve review of final audit determinations within the Board's jurisdiction (see § 78.2 (Jurisdiction)) in which the amount in controversy in the

(c) An intervenor (see § 78.43 (Intervention)) whose petition to intervene is approved by the Board Chairperson prior to its receipt of a notice that a Panel has been assigned to hear the case, shall file its written

in order to secure or protect the lender's lien;

Provided, that such lender shall at all times have sufficient funds available to satisfy such prior indebtedness. Lenders regularly examined and supervised by a state or Federal authority will be deemed to have sufficient funds available if the amount of prior indebtedness is recorded as a liability on the lender's books.

§ 590.3 [Amended]

4. Amend § 590.3(a)(2)(ii) by striking out the word "stock" the first place it appears and inserting in its place the words "all stock allocated to a dwelling unit", and by striking out the phrase "where the loan, mortgage, or advance is used to finance the acquisition of such stock".

(Sec. 501(f) of the Depository Institutions Deregulation and Monetary Control Act, Pub. L. No. 96–221, 94 Stat. 161 (1980))

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 80-40686 Filed 12-30-80; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 78

Education Appeal Board; Proceedings

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes regulations to establish new rules for expediting the conduct of proceedings before the Education Appeal Board involving appeals from audit findings in which the amount in controversy in the appeal is less than $100,000.

DATE: Comments on these regulations must be received on or before February 17, 1981.

ADDRESSES: Written comments should be addressed to Mona M. Murphy, attorney-advisor, Education Appeal Board, U.S. Department of Education, 400 Maryland Avenue, SW, Room 2141 (FOB–6), Washington, D.C. 20202. Telephone (202) 245–7835.

FOR FURTHER INFORMATION CONTACT: Mona M. Murphy, attorney-advisor to the Education Appeal Board. Telephone: (202) 245–7835.

SUPPLEMENTARY INFORMATION:

A. Background and Overview

Section 451(e) of the General Education Provisions Act, 20 U.S.C. 1234(e), authorizes the Secretary of Education to prescribe rules of conduct for proceedings before the Education Appeal Board. Rules of conduct before the Board were published on April 3, 1980, at 45 FR 22635–22640 as 45 CFR Part 100d (Redesignated at 45 FR 77368 as 34 CFR Part 78).

The Secretary of Education proposes to amend these rules by establishing procedures that will expedite the resolution of audit disputes in which the amount in controversy in the appeal is less than $100,000. In some cases, a Panel of the Board may determine that a particular dispute raises an issue of such complexity, significant legal precedence, or other compelling factor, that the procedures contained in these amendments will not apply. With the recent designation of appeals from final audit determinations in discretionary grant programs to the Education Appeal Board's jurisdiction however, relatively uncomplicated disputes of less than $100,000 now account for a large portion of the Board's docket.

It is in the public interest to have a more expeditious resolution of uncomplicated cases appealed to the Board which involve relatively small amounts of money. The proposed amendments to the Education Appeal Board's regulations are designed to permit the Board to resolve most audit disputes of less than $100,000 in a manner that is both expeditious and fully consistent with considerations of fairness and equity. They simplify these proceedings by establishing, unless the Board's Panel rules otherwise, a fixed schedule for the parties' submissions, and by eliminating certain other provisions that are not necessary to the resolution of these cases. In so doing, the proposed amendments retain the basic elements of practice before the former Department of Health, Education and Welfare Grant Appeals Board in proceedings involving appeals from audit findings in discretionary grant programs.

Under the proposed rules of practice and procedure for cases involving small claims, responsibility for the prompt preparation of the record will lie with the parties themselves. Before audit disputes reach the appeal level, most parties already have had an opportunity to examine each other's supporting documents thoroughly. Consequently, if an appeal is filed with the Board, the parties to the proceeding should immediately be able to submit their arguments without the need for first convening a conference with the Panel. At this stage in the proceedings, the assistance of the Panels should be unnecessary. Moreover, by requiring the parties to file their briefs according to a schedule as soon as a Panel has been assigned to hear the proceeding, these amendments should also help the Panel to proceed expeditiously with its deliberations.

These amendments also specify that the Panel may convene an informal conference or opportunity for oral presentation only if the Panel decides that one is necessary, either to help it resolve adequately an issue of fact or law or to assure that a party otherwise will not be prejudiced. The Panel usually will have the benefit of a complete record when deciding whether a conference or opportunity for oral presentation is necessary.

B. Summary of Major Provisions

1. *Submissions.* Within 90 days of being notified that the Board has assigned a Panel to hear the appeal, the appellant shall file with the Board its brief, discussion of the issues, or other arguments together with any supporting documents it wishes the Board to consider. The Department of Education official who issued the final determination from which the appeal is taken, or other designate of the Secretary, shall do likewise within 45 days of receipt of the appellant's submission.

2. *Exchanges of Information.* The parties are encouraged to exchange any relevant information before the Secretary of Education, or the Secretary's designate, make a final determination that may be appealed to the Board. After an appeal is filed, the parties are expected immediately to conclude any exchanges of information in order to avoid any conflict with the schedule for written submissions.

3. *Conduct of Hearings.* Conferences with the Panel and oral presentations before the Panel will occur only when the Panel requests them. The Panel will provide a party an opportunity to present oral testimony or argument only when it determines that the party would otherwise be prejudiced or where the case includes a dispute as to a material fact or legal issue whose resolution would be materially assisted by oral testimony or argument.

4. *Pending cases.* The Chairman of the Education Appeal Board will notify all parties to matters pending before the Board that are affected by these amendments that they will receive a further notice that a Panel has been assigned to hear the appeal. The Board Chairperson will also notify the parties that the second notice will state that the parties may supplement the records in a manner that is consistent with these amendments. Both notices will be sent

by certified mail, return receipt requested. Because the implementation of these regulations might create an immediate burden on the resources of the Board and the parties, the Board's Chairperson will coordinate efforts to assure that the notices stating that Panels have been assigned are transmitted in an orderly manner. All parties to matters pending before the Board are urged to contact the Board Chairperson immediately in order to specify any scheduling difficulties they anticipate.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations on or before February 17, 1981. Written comments and recommendations may be sent to the address given at the beginning of this notice.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2079, FOB–6, 700 Maryland Avenue, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance No. not applicable)

Dated: December 22, 1980.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding to Part 78 a new Subpart G, to read as follows:

Subpart G—Audit Determinations: Special Small Claims Procedure

Sec.

Sec. 78.101 Applicability of this Subpart.
Sec. 78.102 Relation to rules in Subpart E.
Sec. 78.103 Exchange of information.
Sec. 78.104 Formal submissions.
Sec. 78.105 Additional rule on evidence.
Sec. 78.106 Written submissions normally required.

Authority. Section 1232 of the Education Amendments of 1978, Pub. L. 95–561, 96 Stat. 2347–2351 (20 U.S.C. 1234).

Subpart G—Audit Determinations: Special Small Claims Procedure

§ 78.101 Applicability of this Subpart.

(a) Except as provided in paragraphs (b) and (c) of this section, the rules contained in this Subpart govern the conduct of all proceedings before the Board that involve review of final audit determinations within the Board's jurisdiction (see § 78.2 (Jurisdiction)) in which the amount in controversy in the appeal is less than $100,000.

(b) The Panel may determine that because a proceeding raises an issue of such complexity, significant legal precedence or other compelling factor, the rules contained in this Subpart do not apply to the proceeding.

(c) The rules contained in this Subpart do not apply to any proceeding in which a Panel has established a prehearing schedule prior to the effective date of these regulations.

(20 U.S.C. 1234(e))

§ 78.102 Relation to rules in Subpart E.

All rules of practice and procedure contained in Subpart E (Practice and Procedure) apply to the proceedings governed by this Subpart except those contained in the following:

(a) Exchange of information—§ 78.50.

(b) Written submissions normally required—§ 78.71.

(20 U.S.C. 1234(e))

§ 78.103 Exchange of information.

There is no discovery as conducted under the Federal Rules of Civil Procedure. The parties are encouraged to exchange relevant documents and information at the outset of the proceeding in a timely manner in order to file written submissions according to the schedule set forth in § 78.104 (Formal submissions).

(20 U.S.C. 1234(e))

§ 78.104 Formal submissions.

(a) Within 90 calendar days of either its receipt of a notice from the Board's Chairperson that a Panel has been assigned to hear the case, or the effective date of these regulations if a Panel had already been assigned but no prehearing schedule has been directed, the appellant, in all cases, shall file its written submission with the Board. An appellant that had already filed a written submission with the Board before the effective date of these regulations, may file a further written submission within the same period.

(b) Within 45 calendar days of receipt of the appellant's written submission, or, if the appellant does not file one, within 45 days of the date one would have been due for filing, as provided in paragraph (a) of this section, the Department official who issued the final audit determination, or the Secretary's designate, shall file with the Board a written submission of its case.

(c) An intervenor (see § 78.43 (Intervention)) whose petition to intervene is approved by the Board Chairperson prior to its receipt of a notice that a Panel has been assigned to hear the case, shall file its written submission—

(1) Within the period provided in paragraph (a) of this section, if the intervenor contests all audit findings of which it has an interest;

(2) Within the period provided in paragraph (b) of this section, if the intervenor concurs in all audit findings of which it has an interest; or

(3) Within a period directed by the Panel if the intervenor neither contests nor concurs in all of the audit findings of which it has an interest.

(d) In the event that an intervenor (See § 78.43 (Intervention)) has its petition to intervene approved by the Panel after the Panel is assigned to hear the case, or in the event the intervenor neither contests nor concurs in all audit findings of which it has an interest, the Panel promptly will direct an appropriate schedule for submissions by all parties that is consistent with the time periods contained in this section.

(e) Each party's submission shall consist of—

(1) A brief, or other statement in support of its position; and

(2) Any supporting documents which the party may wish the Panel to consider as evidence.

(f) Each party may make one reply submission, which shall be filed within 20 calendar days of the date of the preceding submission of the opposing party.

(g) Unless the Panel requests them, it will not accept any other submissions from any party.

(20 U.S.C. 1234(e))

§ 78.105 Additional rule on evidence.

Unless the Panel requests a party to submit evidence for the Panel's consideration, it will only consider evidence if the party submitting it has complied with the provisions contained in § 78.104 (Formal submissions).

(20 U.S.C. 1234(e))

§ 78.106 Written submissions normally required.

(a) The parties shall present their positions through briefs and the submission of other documents. They also may request an informal conference as set forth in § 78.62 (Conferences) and an opportunity for oral argument or an evidentiary hearing.

(b) The Panel will not convene a conference, an evidentiary hearing, or an opportunity for oral argument unless it finds that without one—

(1) A party may be prejudiced; or

(2) The Panel may be unable properly to resolve an issue of material fact or law raised in the procedings.

(c) The Panel may designate one of its members to attend the conference, opportunity for oral presentation, or hearing.

(20 U.S.C. 1234(e))

(Catalog of Federal Domestic Assistance No. not applicable)

Dated: December 23, 1980.

Shirley M. Hufstedler,

Secretary of Education.

DEPARTMENT OF THE TREASURY

Postal Service

39 CFR Parts 123 and 124

Nonmailable Matter—Written, Printed, and Graphic; Nonmailable Matter—Miscellaneous

AGENCY: Postal Service.

ACTION: Proposed rules.

SUMMARY: The Postal Service proposes to revise its regulations governing nonmailable matter to implement the Postal Reorganization Act of 1970 and the Postal Service Appropriation Act, 1981. The proposed revisions would delete obsolete provisions, clarify the regulations, and make them more consistent with the statutes.

DATES: Comments must be received on or before January 30, 1981.

ADDRESSES: Written comments should be addressed to the Director, Office of Mail Classification, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in room 6800, 475 L'Enfant Plaza West, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Maxwell, Director, Office of Mail Classification, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260. Telephone (202) 245–4536.

SUPPLEMENTARY INFORMATION: The Postal Service proposes to revise its regulations governing nonmailable matter to implement the Postal Reorganization Act of 1970 and the Postal Service Appropriation Act, 1981. The proposed revisions would delete obsolete provisions, clarify the regulations, and make them more consistent with the statutes.

PART 123—NONMAILABLE MATTER—WRITTEN, PRINTED, AND GRAPHIC

1. Revise 123.3 to read as follows:

123.3 Advice to Mailers-Mailability Decisions

This Part 123 to the Inspection Service refer to the Postal Inspection Service and its authorized personnel, not to military investigative services.

PART 124—NONMAILABLE MATTER—

"MAILING EXTREMELY DANGEROUS MATERIALS, AND POTENTIALLY DANGEROUS MATERIALS WHICH ARE IMPROPERLY PREPARED, IS PROHIBITED BY LAW. YOU MUST INSURE THAT YOUR MAILINGS COMPLY WITH THE LAW. ASK ABOUT POSTAL REQUIREMENTS BEFORE

(1) A party may be prejudiced; or

(2) The Panel may be unable properly to resolve an issue of material fact or law raised in the procedings.

(c) The Panel may designate one of its members to attend the conference, argument or hearing on behalf of the Panel.

(20 U.S.C. 1234(e))

[FR Doc. 80-40525 Filed 12-30-80; 8:45 am]

BILLING CODE 4000-01-M

34 CFR Parts 655, 656, 658, 660, and 667

International Education Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking: Cross-reference.

SUMMARY: The Secretary proposes regulations for the International Education Programs in Title 34 of the Code of Federal Regulations:

(a) International Education Programs—General (Part 655).

(b) National Resource Centers and Fellowships Program for Language and Areas or Language and International Studies (National Resource Centers and Fellowships Program) (Part 656).

(c) Undergraduate International Studies and Foreign Language Program (Part 658).

(d) The International Research and Studies Program (Part 660).

(e) The International Understanding Program (Part 667).

The Secretary invites comments on these proposed regulations.

The texts of the regulations on which the Secretary invites comments are published in the Rules and Regulations section of this issue of the Federal Register. They have been adopted as final regulations and will govern these programs until the Secretary issues new regulations based on public comment.

DATES: All comments, suggestions, or objections must be received on or before March 2, 1981.

ADDRESSES: Comments should be addressed to: Dr. Richard Krasno, Deputy Assistant Secretary for International Education, U.S Department of Education, 400 Maryland Avenue, SW, (Room 3918, ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Krasno. Telephone: (202) 245-9758.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

For additional details on how to comment, see the Preamble of the final regulations for these programs published in this issue of the Federal Register.

Date: December 23, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers 84.015, International Studies Centers and Foreign Language and Area Studies Fellowships; 84.016, International Studies Programs; 84.017, Foreign Language and Area Studies Research; and 84.095, Citizen Education and Cultural Understanding Program)

[FR Doc. 80-40524 Filed 12-30-80; 8:45 am]

BILLING CODE 4000-01-M

POSTAL SERVICE

39 CFR Part 111

Advice to Postal Customers and Rendering Decisions on the Mailability of Matter

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would clarify the responsibilities of postmasters and subordinate employees such as acceptance clerks to provide advice or make determinations concerning the mailability of matter, and to seek enforcement of laws and regulations prohibiting the mailing of certain matter. It would also emphasize that these functions must be performed consonant with the requirements of the mail security regulations in Part 115, *Domestic Mail Manual*.

DATE: Comments must be received on or before January 29, 1981.

ADDRESS: Comments should be written and directed to the Assistant General Counsel, Consumer Protection Division, Law Department, U.S. Postal Service, Washington, D.C. 20260. Copies of all comments received will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday in Room 9124, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: George C. Davis, Telephone: (202) 245-4385.

SUPPLEMENTARY INFORMATION: The Postal Service is concerned that Domestic Mail Manual § 123.3 and portions of § 124.1 as currently worded might be misconstrued to permit unauthorized opening or detention of mail thought to contain nonmailable matter. To help prevent such occurrences, it is proposed to state explicitly that these provisions do not authorize mail opening, delay, detention, or inspection and that mail opening, delay, detention, and inspection are govserned by Part 115;* to transfer (with appropriate revision), from § 123.3 to § 124.1, all procedural guidelines which relate to the mailability provisions of Part 124; and to reword §§ 123.3 and 124.1 in part to make clear that postmasters are not authorized to decide the mailability of written, printed, or graphic matter (proposed § 123.33), but do have such authority with respect to articles and substances (proposed § 124.124).

Posters will be displayed at mail acceptance facilities cautioning the public not to place in the mails dangerous materials which are nonmailable (proposed § 124.122). Acceptance employees will refuse to accept articles the content of which is described by the mailer or otherwise revealed to be a nonmailable substance and will also refuse to accept substances which are nonmailable as packaged. In such cases the mailer will be advised of the reasons why the article was not accepted and any preparation and packaging requirements which must be satisfied before the particular substance would be acceptable for mailing. Specific instructions concerning the limited circumstances under which actual mail matter may be withheld from dispatch or delivery (proposed §§ 123.34, 124.126) or opened or inspected (proposed §§ 123.35, 124.122, 124.125) would be added.

These regulations apply to the military postal system at home and overseas, military postal employees, undelivered mail which is or has been in the custody of that system and those employees, as well as the civilian postal system, civilian postal employees, and undelivered mail which is or has been in civil postal custody. References in the proposal to the Inspection Service are intended to refer to the Postal Inspection Service and not to military investigative services.

Although exempted by 39 U.S.C. § 410(a) from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. § 553(b), (c)) regarding proposed rulemaking, the Postal Service invites public comment on the following proposed revisions of the *Domestic Mail Manual*.

*Part 115 was adopted in substantially its present form as a result of notice-and-comment rulemaking conducted in 1977 and 1978. 42 FR 18,754–18,758; 43 FR 14,308–14,315. Subsequent minor and non-substantive amendments were proposed and adopted as follows: 43 FR 40,812–40,815; 42,768–42,769; 44 FR 3,050–3,051; 3,056; 24,432–24,533; 37,229; 39,742–39,855. A general explanation of the policy of Part 115 and the legal authority for it accompanied the proposal, 42 FR 18,754–18,756, and final rule as originally adopted, 43 FR 14,308–14,312.

PART 123—NONMAILABLE MATTER—WRITTEN, PRINTED, AND GRAPHIC

1. Revise 123.3 to read as follows:

123.3 Advice to Mailers-Mailability Decisions

.31 *General Advice.* When a postal customer seeks advice as to whether, or under what conditions, particular matter described in 123 may be mailed, the customer's attention should be called to any relevant provisions of this part; and the customer may be assisted in using and understanding these provisions.

.32 *Mailer's Responsibility.* The mailer is responsible for compliance with applicable postal laws and regulations governing mailability and preparation for mailing, as well as non-postal laws and regulations pertaining to the possession, treatment, transmission, or transfer of particular matter. The general requirements applicable to preparation, packaging, and packing of mailable matter are contained in part 121. Special requirements applicable to preparation, packaging, and packing of potentially dangerous matter are contained in part 124.

.33 *Certain Mailability Decisions Not Authorized.* Postmasters are not authorized to decide whether written, printed, or graphic matter is, because of its content, nonmailable. Postmasters are not permitted to deny entry to such matter, or exclude it from the mails. As stated in 123.31, postmasters should call the attention of prospective mailers of such matter to any apparently relevant provisions of this part. If, after being so informed, the mailer requires that matter described in this part be accepted for mailing, such matter must be accepted and must be treated as provided in 123.34. Written, printed, or graphic matter which is not properly prepared for mailing may be refused.

.34 *Referral to the Inspection Service.* A report concerning written, printed, or graphic matter found in the mails which appears to be nonmailable must be forwarded to the Inspection Service. Such matter may not be withheld from dispatch or delivery except where the Inspection Service, acting in accordance with 115.31a, specifically instructs such withholding.

.35 *Opening or Inspection of Mail.* Mail may not be opened, detained, delayed, or inspected, except in accordance with Part 115.

.36 *Applicability to Military Postal System.* This Part 123 applies to the military postal system, its employees, and undelivered mail which is or has been in the official custody of that system and its employees. References in this Part 123 to the Inspection Service refer to the Postal Inspection Service and its authorized personnel, not to military investigative services.

PART 124—NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

2. In 124.1, redesignate .15 and .151 through .155 as .14 and .141 through .145 respectively, and revise the remainder of the sections to read as follows:

124.1 General Provisions

.11 *Scope.* The basic premise of the postal mailability statutes is that anything "which may kill or injure another, or injure the mails or other property . . . ." is nonmailable. However, there are a number of *specific statutory exceptions* to this rule which allow particular mailings of otherwise nonmailable matter under specified conditions. Specific statutory exceptions apply to live scorpions, poisonous drugs and medicines, poisons for scientific use, switchblade knives, firearms, motor vehicle master keys, abortive and contraceptive devices. In addition, the statutes provide that the Postal Service may by regulation permit the mailing, under prescribed conditions of preparation and packing, of potentially harmful matter which is not "outwardly or of [its] own force dangerous or injurious to life, health, or property." This part summarizes the statutory prohibitions and exceptions. Publication 52, Acceptance of Hazardous, Restricted or Perishable Matter, repeats the statutory prohibitions and exceptions and sets forth the conditions of preparation and packing under which the Postal Service will accept for mailing many types of potentially harmful matter which otherwise would be nonmailable. See part 123 for rules relating to nonmailable written, printed, or graphic matter.

.12 *Rules and Procedures.*

.121 *Mailer's Responsibility.* The mailer is responsible for compliance with applicable postal laws and regulations governing mailability and preparation for mailing, as well as non-postal laws and regulations pertaining to the shipment of particular matter. The general requirements applicable to preparation, packaging, and packing of mailable matter are contained in part 121.

.122 *Dangerous Materials Notices*

Postmasters and other managers of postal facilities must prominently display in Post Office lobbies, acceptance areas, and at self-service Postal Centers a notice containing the following language:

"MAILING EXTREMELY DANGEROUS MATERIALS, AND POTENTIALLY DANGEROUS MATERIALS WHICH ARE IMPROPERLY PREPARED, IS PROHIBITED BY LAW. YOU MUST INSURE THAT YOUR MAILINGS COMPLY WITH THE LAW. ASK ABOUT POSTAL REQUIREMENTS BEFORE YOU DEPOSIT ANY QUESTIONABLE MATERIALS INTO THE MAILS."

.123 *Procedure for Acceptance Clerks.*

a. If the content of an article presented for mailing is described by the mailer or otherwise revealed to be nonmailable, the acceptance clerk shall refuse to accept the article and shall explain the reasons to the mailer. (Reference Publication 52, Acceptance of Hazardous or Perishable Articles and Publication 42, International Mail).

b. Acceptance clerks must be on the alert for substances which are nonmailable as packaged and where such substances are identified, shall advise the customer of the particular preparation and packaging requirements which must be satisfied before such substances are acceptable for mailing. (Reference Publication 52, acceptance of Hazardous or Perishable Articles and Publication 42, International Mail). If the customer fails to demonstrate that the matter is mailable as packaged, the employee shall refuse to accept the article and shall explain the reasons to the mailer.

.124 *General Advice to Mailers.* When a postal customer seeks advice as to whether, or under what conditions, particular matter may be mailed, or where it appears likely that a customer will mail dangerous matter (as described in part 124), the customer's attention should be called to the relevant provisions of part 124 and any official guides to mailing such articles issued by the Postal Service, such as Publication 52, Acceptance of Hazardous, Restricted or Perishable Matter. Technical questions concerning the proper preparation or packaging of matter may be referred to the appropriate Mail Classification Center where necessary. The scope of a postmaster's authority to decide whether particular matter is nonmailable under 124 and to exclude such matter from the mails in accordance with that decision is determined by 124.126. Mail may not be opened, detained, delayed, or inspected except in accordance with Part 115.

.125 *Other Laws and Regulations.* Particular matter may be mailable under postal statutes and regulations but customers may have responsibilities under non-postal statutes and regulations concerned with possession, treatment, transmission, or transfer of such matter. See, for example, 49 CFR Parts 100 through 177 (Department of

Transportation Regulations); the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513), 21 U.S.C. 801 *et seq.*; and the Gun Control Act of 1968 (Public Law 90-618), 18 U.S.C. 921 *et seq.* Postmasters must

vehicle master keys (124.6); alcohol (124.8); explosive, incendiary or hazardous materials or devices which may present an immediate threat to persons or property (124.2). This provision does not authorize the opening

by the Minnesota Mining and Manufacturing Company (3M). This facility produces coated paper products with 10 paper coaters using a combination of solvent and water based coatings, some of which result in the

be directed to: Mr. David Arnold, Air Programs Branch (3AH12), Air, Toxics and Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, Curtis Building, 10th floor, 6th & Walnut Streets, Philadelphia, PA

incineration or vapor recovery systems to reduce VOC emissions, the DER can grant a company an extension for compliance with the regulations. 3M has requested such an extension in order to develop and implement the new low

limitations established in Section 128.14. After January 1, 1984, a record of all scheduled outages for preventative maintenance must be kept for the solventless coating process. All records required must be kept for 2 years, and

Transportation Regulations); the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91–513), 21 U.S.C. 801 *et seq.*; and the Gun Control Act of 1968 (Public Law 90–618), 18 U.S.C. 921 *et seq.* Postmasters must not give advisory opinions with respect to whether the mailing of particular articles and substances (see 124) would violate or comply with non-postal laws and regulations which are administered by agencies other than the Postal Service, but where the existence of such laws or regulations is known to postmasters, they should refer the customer to the appropriate government agency for any available information. For example, postal customers with questions about the interstate shipment of rifles or shotguns should be referred to the Director, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, D.C. 20226, or to the nearest regional administrator of that Bureau.

.126 *Authorized Mailability Decisions.* Postmasters may decide whether articles and substances other than written, printed or graphic matter are nonmailable and must, where appropriate, refuse to accept for mailing such matter determined to be nonmailable. When necessary, the Mail Classification Centers should be consulted in determining mailability. If the mailer desires review of the postmaster's decision, the postmaster shall, with the mailer's consent, refer a sample and, in any event, send a complete statement of the facts to the Director, Office of Mail Classification, Rates and Classification Department, USPS Headquarters Washington, DC 20260. After the Director's decision is rendered, further appeal may be made by the mailer in accordance with 39 CFR Part 953, Rules of Practice in Proceedings Relative to Mailability. Postmasters are authorized and directed to take any steps reasonable and necessary to protect Postal Service personnel and equipment from the effects of potentially dangerous or injurious materials or substances found in the mails (See 221.3, Administrative Support Manual).

.127 *Referral to the Inspection Service.* Matter within the following categories, when found in the mails, should temporarily be withheld from dispatch or delivery, and the Inspection Service should immediately be advised. Such matter should thereafter be disposed of in accordance with instructions promptly furnished by the Inspection Service: nonmailable firearms and switchblade knives (124.4); controlled substances (124.5); motor vehicle master keys (124.6); alcohol (124.8); explosive, incendiary or hazardous materials or devices which may present an immediate threat to persons or property (124.2). This provision does not authorize the opening or inspection of any mail.

.128 *Referral to Office of Mail Classification.* All matter found in the mails and believed to be nonmailable under part 124, except matter described in 124.127, must be withheld from dispatch or delivery, but a report fully describing such mailing should be referred to the Director, Office of Mail Classification, Rates and Classification Department.

.129 *Administrative Appeals.* A mailer aggrieved by any mailability decision by the Director of the Office of Mail Classification may file a written Notice of Appeal with the Recorder, U.S. Postal Service, Washington, D.C. 20260, together with a copy or description of the determination or ruling in question. The rules of procedure for the determination of such appeals are contained in 39 CFR Part 953, Rules of Practice in Proceedings Relative to Mailability.

.13 *Applicability to Military Postal System.* This Part 124 applies to the military postal system, its employees, and undelivered mail which is or has been in the official custody of that system and its employees. References in this Part 124 to the Inspection Service refer to the Postal Inspection Service and its authorized personnel, not to military investigative services.

(39 U.S.C. 401, 403, 404(a), 3001; 18 U.S.C. 1701, 1702, 1703(a), 1715–1716)

W. Allen Sanders,
Associate General Counsel.

[FR Doc. 80-40597 Filed 12-30-80; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL 1716-8]

Proposed Revision of Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Pennsylvania has submitted a proposed revision to its State Implementation Plan (SIP) to incorporate an Alternative Emission Reduction Option Plan ("bubble"). They have requested that the plan be approved by EPA for the Bristol, Pa. facility owned and operated by the Minnesota Mining and Manufacturing Company (3M). This facility produces coated paper products with 10 paper coaters using a combination of solvent and water based coatings, some of which result in the emissions of volatile organic compounds (VOC). 3M is proposing to install a new coater using innovative solventless technology which will replace an older coater using solvent-based coatings. This proposed alternative emission reduction plan will allow 3M to control VOC sources to a greater degree where control costs are low, and to a lesser degree or not at all where control costs are high, provided that the total emissions from the affected facility are equal to or less than total emissions which would result from control of each source as required under the approved Pennsylvania SIP. A consent order and agreement is being developed to allow a 21 month extension for final compliance with the proposed regulations in order to develop and implement the new solvent technology. The Commonwealth has requested, and EPA has agreed, that this bubble SIP revision be proposed concurrently by EPA and the Department of Environmental Resources (DER) in order to expedite the approval process. Assuming that there are no public comments which would negatively affect the approvability of the bubble, and that the bubble proposal does not change substantively during the public comment period, DER and EPA can then concurrently issue final approval of this bubble plan. However, if this proposal is changed substantively or this proposal is affected negatively by public comment, EPA will repropose this revision.

DATE: Comments must be submitted on or before January 30, 1981.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: Patricia Sheridan (3AH10)
Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120, Attn: Mr. James Hambright
Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW (Waterside Mall), Washington, D.C. 20460

All comments on the proposed revision submitted on or before January 30, 1981, will be considered and should be directed to: Mr. David Arnold, Air Programs Branch (3AH12), Air, Toxics and Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, Curtis Building, 10th floor, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: (AH025PA)

FOR FURTHER INFORMATION CONTACT: Mr. David Arnold (3AH12), U.S. Environmental Protection Agency, Region III, Air Programs Branch, Curtis Building, 10th floor, 6th & Walnut Streets, Philadelphia, PA 19106, (215) 597–7936.

SUPPLEMENTARY INFORMATION: The proposed changes to the Pennsylvania regulations were published in the *Pennsylvania Bulletin* on November 15, 1980. The proposed changes will allow the implementation of an Alternative Emission Reduction Option (bubble) plan, in accordance with EPA's "Bubble Policy" published in the Federal Register on December 11, 1979, 44 FR 71780. DER and EPA are processing this proposal concurrently. The public hearing was held by DER on December 17, 1980. All comments received at the hearing and any written comments received by the DER on or before January 16, 1981 will be considered.

The 3M facility has 10 paper coating machines that produce pressure sensitive tapes using solvent and water based coatings. The Commonwealth has adopted regulations requiring a 74% reduction of potential VOC emissions from these coaters by a compliance date of April 9, 1982. This proposal will result in achievement of limitations of VOC emissions equivalent to DER's existing surface coating regulations while still allowing the use of high solvent coatings. This would be accomplished by the replacement of one solvent-based coater with a coater using innovative, solventless technology. The significant reduction in emissions from this coater would offset the emissions from the other sources, which would be controlled to a lesser degree or not at all.

Therefore, this proposal will allow 3M to implement emission controls in the most cost effective manner. The Company estimates its savings in pollution control costs would be $3 million in capital expenditures and up to $1 to $2 million in annual operating and maintenance costs. However, overall emissions will be equal to or less than those allowed under existing regulations which would require compliance by April 9, 1982. Under these regulations, if a company requires additional time to develop and implement low solvent (VOC) technology, when the alternative is the installation of energy intensive incineration or vapor recovery systems to reduce VOC emissions, the DER can grant a company an extension for compliance with the regulations. 3M has requested such an extension in order to develop and implement the new low solvent technology. DER is proposing approval of such an extension until January 1, 1984, with several incremental reductions in the interim period.

The proposed regulation developed to implement this plan will become "Section 128.14, Minnesota Mining and Manufacturing Company, Bristol, Pennsylvania" of the Pennsylvania Air Resources Regulations. Subsection (a) of this Section identifies the facility and the individual sources to which this plan applies. Subsection (b) prohibits VOC emissions from these sources in excess of the following:

Time Period and Tons of VOC

April 10, 1982 to April 9, 1983—8500
April 9, 1983 through December 31, 1983—6300
January 1, 1984 through December 31, 1984—7000
January 1, 1985 through December 31, 1985—6500
After December 31, 1985, annually—5921

Subsection (c) prohibits emissions of VOC's from these sources in excess of the amounts below:

Time Period and Pounds of VOC Per Gallon of Coating (Minus Water)

April 10, 1983 to December 31, 1983 averaged over the entire period—3.20
After December 31, 1983 determined as a seven-day running average—2.92

Subsection (d) allows the use of a 15-day running average instead of the 7-day running average required under Subsection (c), only during periods when the solventless coater is shut down for preventative maintenance. These shutdowns are limited to no more than two discrete 7-day periods in any one calendar year. Subsection (e) relieves this facility from compliance with Section 129.52(b) of Pennsylvania's Air Resources Regulations when it is in compliance with this Section and any conditions contained in the operating permit for this facility. Subsection (f) causes the cancellation of Section 128.14 if any of the sources listed in Subsection (a) are permanently shut down.

In order for DER to determine compliance with these regulations, reporting and testing requirements have been developed as conditions in the operating permit. 3M must develop and implement a record keeping system, by process, for the ten coating processes. Emissions of VOC must be calculated using methods described in the Appendix to the permit for each of the limitations established in Section 128.14. After January 1, 1984, a record of all scheduled outages for preventative maintenance must be kept for the solventless coating process. All records required must be kept for 2 years, and must be available upon request by DER. In addition, test results of potential and actual emissions from all sources in Subsection 128.14(a) must be submitted to DER, and one coating line must be converted exclusively to water based technology, both by April 9, 1982. Finally, semiannual reports are required which document the progress of reductions of VOC emissions from the ten surface-coating processes.

The public is invited to submit, to the address stated above, comments on whether the proposed changes to the regulations should be approved as a revision of the Pennsylvania SIP.

The Administrator's decision to approve or disapprove the proposed revision will be based on the comments received and on a determination of whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

Note.—Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other "specialized" procedures. I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. Sections 7401–642)

Dated: December 17, 1980.

Jack J. Schramm,
Regional Administrator.

[FR Doc. 80-40648 Filed 12-30-80; 8:45 am]
BILLING CODE 6560-38-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 233

Coverage and Conditions of Eligibility in Financial Assistance Programs Treatment of HUD Housing Subsidies

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed regulation provides that in determining eligibility for and the amount of assistance under the AFDC and adult assistance programs, States will be required to treat HUD housing subsidy benefits

furnished to or on behalf of applicants and recipients in a consistent manner so as not to disadvantage a recipient because of the method used to provide the benefits (vendor, in-kind, or direct cash payments). This proposal affects applicants and recipients to retain some reserves within Federally prescribed limits, such as a home, car, or income producing property. States may also disregard small amounts of nonrecurring income such as birthday gifts or home

maximum basis". Suppose, for example, that in an "as paid" State, the monthly rent for the recipient's apartment is $200 including utilities, that the maximum rent allowance for an assistance grant is $250, and that the amount determined by

and adult assistance programs, based solely on whether or not their monthly rent payment includes or excludes the cost of utilities. This distinction depended on the form in which the subsidy payment was made and is

and to "attain or retain capability for maximum self-support and personal independence." Since both the HUD and the public assistance programs are designed to assist needy persons, the administration of these programs should

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furnished to or on behalf of applicants and recipients in a consistent manner so as not to disadvantage a recipient because of the method used to provide the benefits (vendor, in-kind, or direct cash payments). This proposal affects the AFDC program under title IV–A and the adult assistance programs in Guam, Puerto Rico, and the Virgin Islands under titles I, X, XIV, and SVI (AABD) of the Social Security Act.

DATES: Comments must be received on or before March 2, 1981.

ADDRESSES: Prior to final adoption of the proposed regulation, consideration will be given to any comments submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203. Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health and Human Services, Room 1212 Switzer Building, 330 C Street, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Mrs. Juanita Henderson, Office of Family Assistance, Social Security Administration, 2100 Second Street SW, Washington, D.C. 20024, telephone (202) (245–2021).

SUPPLEMENTARY INFORMATION:

Background

The Social Security Act requires the State agency administering the AFDC and adult assistance programs to take into account the income and resources of each individual in determining his or her need for assistance and the amount of any assistance under those programs. In general, in meeting this requirement, any benefits an applicant or recipient may use to meet basic subsistence needs covered by an AFDC or adult assistance grant, whether paid by Federal, State, or local governments, are counted unless specifically exempted. Present regulations mandate the disregard of certain types of benefits as a result of specific provisions in the Social Security Act or the enabling acts of the programs providing those benefits. In addition, the current regulations permit the States some flexibility in meeting the needs of their applicants and recipients by allowing the States the option of excluding certain limited types of income and resources from consideration in determining eligibility for and the amount of assistance. For example, States have been permitted to allow applicants and recipients to retain some reserves within Federally prescribed limits, such as a home, car, or income producing property. States may also disregard small amounts of nonrecurring income such as birthday gifts or home garden produce and benefits such as payments for vocational rehabilitation, paid by other agencies and organizations provided that no duplication exists between the assistance paid by the State agency and the other agency. Federal practice also permits States to disregard the value of in-kind benefits and vendor payments, provided to or on behalf of applicants and recipients. Adoption of these latter types of disregards are optional with the States. Many States have included one or more of these options in their State plans.

One type of Federal benefit for which public assistance applicants and recipients are frequently eligible is rent subsidies administered under the authority of the Department of Housing and Urban Development (HUD). The U.S. Housing Act of 1937, as amended, authorizes two basic rent subsidy programs for low income families, the "public housing" program and the "Section 8" program. Families participating in these programs may not be required to pay more than 25 percent of their income for rent and utilities; HUD subsidies make up the remainder of the cost. Under the public housing program, an apartment in a public housing project is provided to the family. Under the Section 8 program, after the family has selected a suitable apartment in the private sector, a State or local public housing agency (PHA) contracts with the owner of the housing and pays him or her on behalf of the eligible family to supplement the rent paid by the family.

Where utility costs are paid by the owner or the housing project and are included in the monthly rental, nothing else is required besides the direct payment to the owner or the furnishing of the apartment in the project in order to furnish the full subsidy amount. However, in those cases where the owner or the housing project does not include the cost of utilities in the monthly rent, the public housing agency establishes a separate monthly utility allowance. The family pays its utility costs directly and the amount of the utility allowance is subtracted from the amount the family is required to pay each month as rent. If the family's monthly utility allowance is greater than the total amount of the family's required contribution for rent and utilities, the family makes no rent payment and the housing agency sends the family a check for the amount of the difference between the utility allowance and the family's required contribution. Thus, under these particular circumstances, the rent subsidy benefit is furnished in part directly to the owner, in the case of Section 8, or by providing an apartment in the housing project, in the case of public housing and in part by a direct case payment to the participating family.

Neither the Social Security Act nor the U.S. Housing Act of 1937, as amended, mandates the exclusion of these HUD rent subsidy benefits in determining eligibility for or the amount of assistance under the AFDC and adult assistance programs. Further, HUD benefits are not specifically mentioned in the AFDC and adult assistance program regulations. However, we have determined that of the 54 States (D.C., Guam, Puerto Rico, and the Virgin Islands are viewed as States for purposes of the regulations), 33 States disregard the subsidy payment in total under one or more of the optional methods for disregarding income described earlier, while 21 States take into account the HUD benefits to at least some degree. Based on their treatment of these benefits, the States can be divided into four groups as follows: (1) States that disregard both in-kind or vendor payments and direct cash payments to applicants and recipients; (2) States that take into account both the in-kind or vendor payment and the direct cash payment to applicants and recipients; (3) States that disregard the in-kind or vendor payment but count any direct cash payments to applicants and recipients; and (4) States that take into account the in-kind or vendor payment but disregard the direct cash payments to applicants and recipients.

The States which take into account the HUD payments (groups (2), (3) and (4)) generally do so in one of two ways. The first is by reducing the assistance grant dollar for dollar by the amount of the subsidy payment (up to the amount included in the grant for rent and utilities in the case of vendor or in-kind benefits). For example, if HUD sends the recipient a check for $30 the State will then reduce the AFDC grant by $30. The second method for taking HUD payments into account involves reducing the standard of need. Under this latter method, the recipient receives less money because, as a result of the HUD subsidy, he or she is determined to have less need. This occurs in States where shelter costs are included in the assistance grant on an "as paid, up to a

maximum basis". Suppose, for example, that in an "as paid" State, the monthly rent for the recipient's apartment is $200 including utilities, that the maximum rent allowance for an assistance grant is $250, and that the amount determined by HUD as the recipient's 25 percent rent and utilities contribution for the Section 8 program is $100. In this situation, the recipient will pay his or her landlord $100 and HUD will pay the landlord the remaining $100. In calculating the recipient's monthly assistance grant the State includes $100 for shelter. The amount of the rent "paid" by the recipient does not include the amount of subsidy paid to the landlord by HUD. Thus, the shelter portion of the grant is reduced to the amount which the recipient actually pays the landlord for rent. In the case where no rent is paid to the landlord, no payment is included in the grant.

Recently both HUD and certain recipient groups have voiced concern about the negative effects that the different treatment resulting from partial disregards of housing subsidy benefits has on public assistance applicants and recipients and on the efficient administration of both the welfare and housing subsidy programs. For example, take the case of a State which disregards in-kind or vendor payments but counts any direct cash payments to the applicant or recipient. In this case, where the housing agency makes a cash payment directly to the recipient, the State agency reduces the monthly assistance grant accordingly. This adjustment by the State agency, which decreases the recipient's total income, results in a recomputation by the PHA of the amount of the HUD cash subsidy payable to the recipient, and this is turn causes another further adjustment of the monthly assistance grant. After several rounds of readjustment by both agencies, the rounding off process used by the housing agency results in no further increases in the HUD subsidy amount. The net effect of this cycle is that the recipient receives the same total amount of cash assistance as he or she did before the HUD subsidy payments were made, but from a slightly different source. In this direct cash payment situation, as distinguished from the situation where all HUD subsidy payments are paid directly to the owner or an apartment if furnished to the family, an applicant or recipient does not realize the full benefit of the HUD subsidy.

Thus, within particular States, two similarly situated applicants or recipients have actually received disparate treatment under the AFDC and adult assistance programs, based solely on whether or not their monthly rent payment includes or excludes the cost of utilities. This distinction depended on the form in which the subsidy payment was made and is highly arbitrary. One applicant or recipient received the full benefit of the housing subsidy while the other received only a partial benefit. No considerations of need were involved in producing this result; in fact, it may have been the poorest families who were denied full benefits most often since their "25 percent of income" rent contribution would necessarily be less than that of a family with greater income and resources. Furthermore, with the ever escalating costs of fuel, we anticipate that the numbers of applicants and recipients who are adversely affected by this difference in the treatment of direct and in-kind or vendor payments will continue to grow.

We propose to deal with this problem by amending the regulations to require States to treat HUD housing subsidy payments in a more uniform manner which assures that applicants and recipients are not denied the benefits of those payments solely because of the manner or form in which the subsidy benefits are calculated or paid. Under this approach States would still retain the option of including or excluding HUD housing benefits in determining eligibility for and the amount of benefits under the AFDC and adult assistance programs. However, once this option is exercised, in implementing its decision the State would be required to treat HUD housing subsidies as a single type of benefit regardless of whether it was paid or provided directly to the applicant or recipient or made on his or her behalf to a third party. This change in the regulations will eliminate the current disparity that exists within certain States and will also eliminate the administrative burden which occurs because of the series of adjustments in the computation of housing subsidy and grant amounts.

Basis of the Change

We are proposing to make this regulatory change for several reasons. First, we believe it furthers the purposes of both the Social Security Act and the U.S. Housing Act of 1937 in assisting needy families. The purpose of the HUD statute to "remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income" is clearly consistent with the goals of the public assistance programs to help individuals and families to "maintain and strengthen family life" and to "attain or retain capability for maximum self-support and personal independence." Since both the HUD and the public assistance programs are designed to assist needy persons, the administration of these programs should be coordinated to the maximum extent possible. Consequently, we believe that when HUD discharges its obligation to provide housing and utility subsidy benefits in part by making vendor payments to landlords or furnishing apartments and in part by making direct cash payments to public assistance applicants and recipients, these payments should not be treated in two different ways in determining eligibility for and the amount of assistance under the public assistance programs.

Moreover, the public assistance programs under the Social Security Act have always included in their requirements an underlying standard of equity and uniformity (see 45 CFR 233.20(a)(1)). Basically, this standard has required that classifications included in State plans assure equitable and uniform treatment for all persons who are in the same or very similar circumstances. Under this principle, different treatment of groups of people could only be justified if there was some valid way to distinguish those persons who would not receive benefits from those who would, in the light of the goals of the public assistance programs established by the Social Security Act. While the types of optional disregards selected by those States which only partially exclude HUD housing benefits from consideration in determining eligibility for and the amount of assistance, in all likelihood, were not designed to exclude certain applicants and recipients or to create inequities, that has been the actual effect. The proposed regulation would amend the existing regulations to extend the principle of equitable treatment to this particular situation.

Finally, we view this change as falling within the Secretary's authority to specify rules which are necessary for the proper and efficient administration of the public assistance programs. Essentially, the HUD housing subsidy programs are in-kind or vendor payment programs. With respect to the public housing program, the Secretary of HUD is authorized to "make annual contributions to *public housing agencies* to assist in achieving and maintaining the low-income character of their projects." With respect to the Section 8 program, "the Secretary of HUD is authorized to enter into annual contributions contracts with public housing agencies pursuant to which such

agencies may enter into contracts with *owners of existing dwelling units.*" Direct cash payments are only made in limited circumstances, i.e., where utility costs are not included in the applicant's

program. The proposed regulation will cover any assistance paid with respect to a dwelling unit under the U.S. Housing Act of 1937, as amended, the National Housing Act, section 101 of the

not exceed the maximum set for them by HUD. On the other hand, assume that the Jones family's utilities are not included in their rent and cost $100 a month. Assume that the same State will

Dated: December 15, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: December 23, 1980.

Patricia Roberts Harris,

become necessary to impose new requirements in order to ensure the day-to-day observance of these limitations by recipients.

DATES: Comments must be received on

redesignate current § 1612.4(b) as § 1612.4(d).

The proposed amendments are as follows:

Section 1612.4 is amended by

agencies may enter into contracts with *owners of existing dwelling units.*" Direct cash payments are only made in limited circumstances, i.e., where utility costs are not included in the applicant's or recipient's rent and then only when the applicant's or recipient's utility allowance exceeds his or her required rent contribution. We pursued with HUD the possibility of HUD's utilizing a vendor or two party process in lieu of direct payments to applicants and recipients. HUD felt that this approach was administratively difficult and would involve significant additional administrative costs. This is due to the number of different utility companies which furnish services to applicants and recipients and to the way in which utility allowances are first offset against required rent contributions. Also, the utility payments are not based on actual utility costs each month but are a fixed allowance through out the year. Consequently, adjustments to utility companies for underpayments or overpayments would be required. Rather that HUD instituting changes of this magnitude, we believe it is more reasonable and feasible to require States to treat the direct HUD cash payments to public assistance applicants and recipients in a consistent manner as payments made directly to the landlord or utility company are treated or where an apartment is furnished to the family, Additionally, this approach would significantly reduce the administrative costs of both the public assistance and housing programs in those States where several rounds of readjustments are taking place. Such an approach also would reduce the likelihood of errors being made in the computation of assistance grants.

Scope and Effect of the Changes

The proposed regulation covers all housing benefits provided under HUD administered statutes. Although to date we have only identified problems involving the public housing and Section 8 housing subsidy programs, the same problem could occur in other HUD administered housing programs since benefits may be provided both directly to public assistance applicants and recipients or to third parties on their behalf. We see no reason to single out any one type of housing benefit for special consideration. The inclusion of all HUD housing programs in this regulation governing the AFDC and adult assistance programs is consistent with the treatment of all HUD housing program benefits under the Supplementary Security Income program. The proposed regulation will cover any assistance paid with respect to a dwelling unit under the U.S. Housing Act of 1937, as amended, the National Housing Act, section 101 of the Housing and Urban Development Act of 1965, or title V of the Housing Act of 1949.

Under this new provision, States which take into account all HUD housing benefits and States which disregard the value of all HUD housing benefits will not be required to make any changes in their methods of computing monthly assistance grants. However, States which currently disregard the value of HUD housing benefits paid to third parties on behalf of applicants and recipients, or the value of an apartment furnished to the family, but count any payments made directly to applicants and recipients, will be required to change their procedures either to also disregard the direct cash payments or to rescind their State policy regarding the exclusion of in-kind or vendor payments.

States which currently take into account the value of in-kind or vendor payments, generally by paying shelter costs on an "as paid up to a maximum" basis, but disregard direct cash payments, will have to examine their practices to determine whether or not their method of treating housing subsidy benefits results in applicants and recipients being treated differently based on the form in which the benefits are provided. For example, take the case of the Smith and the Jones families who live in the same State and are eligible for both AFDC and the Section 8 program. Under the AFDC program, the State sets different maximum shelter allowances depending on whether or not utilities are included in the monthly rent. Where utilities are not included in the rent, the State includes an amount for utilities in the non-shelter portion of the grant. Assume that the Smith family's utilities are included in their rent, that the State will pay up to $155 for shelter (including utilities) and that the State includes $217 for other needs in its AFDC grant for a maximum of $372 for a family of four. Assume further that HUD has determined the family's maximum required rent and utility contribution under the Section 8 program to be $75. In this case, the Smith family will pay their landlord $75 and will receive an AFDC grant of $75 + $217 or $292. HUD will pay the landlord the balance of the rent directly. The Smith family receives the full benefit of the HUD subsidy since their rent and utility contribution does not exceed the maximum set for them by HUD. On the other hand, assume that the Jones family's utilities are not included in their rent and cost $100 a month. Assume that the same State will pay up to $125 for shelter and includes $267 for other needs (including utilities) in its AFDC grant for a maximum of $392 for a family of four. Assume further that HUD has determined the Jones family's maximum required rent and utility contribution under the Section 8 program to be $80 and that the utility allowance for families that pay their own utilities is $100. In this case, the utility allowance exceeds the Jones' required contribution by $20, so HUD pays the entire rent cost and sends the family a check for $20 to assure that the family's contribution does not exceed $80. The family is responsible for paying for its own utility bill. Since the family pays no rent to the landlord, no amount is included in the AFDC grant for shelter. Since the State currently disregards the HUD cash payment in determining the amount of the AFDC grant, the Jones family receives the full maintenance amount of $267. Thus, the family has a total income of $287 ($267 + $20). Because the State disregards the direct cash payment, the Jones family's required contribution for rent and utilities does not exceed the maximum established for them by HUD. Consequently, the Jones family also receives the full benefit of the HUD subsidy. However, if the State were to change its policy and reduce the AFDC grant to the Jones family by the amount of the direct HUD cash payment, they would be disadvantaged since their actual contribution would exceed the maximum set by HUD. In that case, the Jones family would receive less than a full HUD subsidy benefit and the difference would have been due to the manner of payment (i.e., part vendor payment and part direct cash payment). Thus, under the new regulation, in order to assure that families receiving direct cash payments are limited to paying only the required contribution, as are families whose utilities are included in their rent, the State must continue to disregard the direct cash payments.

This regulation is to be issued under the authority contained in section 1102 of the Social Security Act, as amended, 49 Stat. 627, as amended, 49 Stat. 647 as amended; 42 U.S.C. 1302.

(Catalog of Federal Domestic Assistance Program No. 13.808, Public Assistance—Maintenance Assistance (State Aid).)

Dated: December 15, 1980.
William J. Driver,
Commissioner of Social Security.

Approved: December 23, 1980.
Patricia Roberts Harris,
Secretary of Health and Human Services.

Chapter II of Title 45 of the Code of Federal Regulations is amended as set forth below:

Section 233.20 is amended by adding a new paragraph (a)(3)(xi) to read as follows:

§ 233.20 Need and amount of assistance.

(a) *Requirements for State Plans.*

* * *

(3) *Income and resources: OAA, AFDC, AB, APTD, AABD.*

* * * * *

(xi) Provide that in determining eligibility for an assistance payment or the amount of the payment, any benefits received by applicants and recipients under a housing program administered by the Department of Housing and Urban Development pursuant to the U.S. Housing Act of 1937, as amended, the National Housing Act, section 101 of the Housing and Urban Development Act of 1965, or title V of the Housing Act of 1949, will be considered by the State agency in a uniform manner regardless of whether the benefits are provided in the form of vendor, in-kind, or direct cash payments, to assure that applicants and recipients are not denied the benefits of those payments solely because of the manner or form in which they are calculated or paid.

* * * * *

[FR Doc. 80-40621 Filed 12-30-80; 8:45 am]
BILLING CODE 4110-07-M

LEGAL SERVICES CORPORATION

45 CFR Part 1612

Restrictions on Certain Activities

AGENCY: Legal Services Corporation.
ACTION: Proposed amendment.

SUMMARY: Section 1007(a)(5)(A) of the Legal Services Corporation Act, 42 U.S.C. 2996f, requires the Corporation to ensure that funds awarded to recipients are not used for legislative advocacy unless such advocacy is a necessary part of the representation of an eligible client, at the request of a legislative body, or in connection with a measure which directly affects the activities of the recipient or the Corporation under the provisions of the Act. On July 28, 1978, the Corporation promulgated Part 1612, § 1612.4 in order to implement the limitations of the Act. After some experience with these provisions, it has become necessary to impose new requirements in order to ensure the day-to-day observance of these limitations by recipients.

DATES: Comments must be received on or before January 30, 1981.

ADDRESS: Legal Services Corporation, 733 15th Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Linda Hanten, 202–272–4010.

SUPPLEMENTARY INFORMATION: These proposed requirements are part of an overall effort to ensure that all recipient legislative advocacy is conducted in compliance with the congressionally imposed restrictions. In addition to promulgating these regulatory changes, the Corporation is focusing on monitoring and training to ensure that recipients are aware of and understand congressional limitations on legislative advocacy. Further, a formal complaint procedure is being initiated so that complaints of impermissible legislative advocacy will be resolved in a consistent and timely manner.

The first proposed addition to Part 1612, § 1612.4(b), will require recipients to implement a system under which appropriate documentation will be secured before any legislative advocacy is undertaken by an employee. If legislative advocacy is to be undertaken on behalf of an eligible client, the recipient will secure an agreement in writing or other appropriate documentation specifically authorizing such representation. Similarly, if the recipient has been requested by a member or a committee of the legislature to engage in legislative advocacy, the request must be appropriately documented. Finally, if legislative advocacy is undertaken because of possible legislation directly affecting the activities of a recipient, the executive or program director will authorize the initiation of such advocacy in writing. Recipients will further be required to notify their staff of this system of prior authorization for legislative advocacy and to insure that it is complied with.

A second proposed addition to § 1612.4, § 1612.4(c) will prohibit programs from establishing legislative offices until the recipient's board of directors, primarily composed of attorneys, approves such an action consistent with the program's priorities, the attorneys' professional responsibility and as an economical and efficient approach to meeting clients' needs for legislative representation.

Finally, because of the proposed amendments, it will be necessary to redesignate current § 1612.4(b) as § 1612.4(d).

The proposed amendments are as follows:

Section 1612.4 is amended by redesignating paragraph (b) as (d) and adding new paragraphs (b) and (c) to read as follows:

§ 1612.4 [Amended]

* * * * *

(b) Recipients shall adopt appropriate procedures and forms to document that the legislative activities in which they engage fall within the activities permitted in § 1612.4(a).

(c) Recipients may not establish full time legislative offices unless the decision to establish such an office is formally made by the Board of Directors of the recipient consistent with the provisions of Section 1620, provided that the legislative activities of these offices are solely activities permitted under § 1612.4(a).

* * * * *

Mario Lewis,
General Counsel, Legal Services Corporation.

[FR Doc. 80-40670 Filed 12-30-80; 8:45 am]
BILLING CODE 6820-35-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 12

Seizure and Forfeiture Procedures: Posting of Notices of Proposed Forfeiture

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to revise § 12.23 of 50 CFR Part 12, entitled "Administrative forfeiture proceedings". The revision would raise the monetary value of seized property which may be the subject of notice by posting from $250 to $1000. In addition, present regulations requiring posting in both the Service's enforcement office and the United States District Court would be revised to allow posting in either location as well as in the United States Customhouse. The revisions reflect the increasing value of seized property as well as of alternative forms of publication, and, in some instances, the impracticability of posting in United States District Courts.

DATES: Comments from the public must be received on or before January 30, 1981.

ADDRESSES: Comments may be mailed to the Director [LE], Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005 or delivered weekdays to the Division of Law Enforcement, U.S. Fish and Wildlife Service, Suite 300, 1375 K Street, NW, Washington, D.C. 20005,

the large number of items valued at slightly more than $250, the cost of publishing a notice of proposed forfeiture in a large urban newspaper is often nearly as great or greater than the

U.S.C. 706–707; Migratory Bird Hunting Stamp Act, 16 U.S.C. 718f–718g; Fish and Wildlife Act of 1956 [Airborne Hunting Amendments], 16 U.S.C. 742j–1(d)–(f); Black Bass Act, 16 U.S.C. 852d–853; Marine Mammal Protection Act of 1972, 16 U.S.C. 1375–1377, 1382;

mining of locatable minerals such as gold, lead, silver, and uranium, but do not include mineral leasing, such as for coal, oil or gas or saleable minerals such as sand and gravel. These rules are modeled after those the Bureau of Land

documents in the process of approving a plan of operations. Similar rules have already been adopted by the National Park Service, Bureau of Land Management, and Forest Service.

operations cannot proceed until the plan is approved, other than to the extent necessary to fulfill requirements of federal and state law; existing operations are given 120 days in which to submit a plan. The authorized officer

Service, P.O. Box 28006, Washington, D.C. 20005 or delivered weekdays to the Division of Law Enforcement, U.S. Fish and Wildlife Service, Suite 300, 1375 K Street, NW, Washington, D.C. 20005, between 7:45 a.m. and 4:15 p.m. Comments should bear the notation REG 12–02–4. All materials received may be inspected at the Service's office in Suite 300, 1375 K Street, NW between 7:45 a.m. and 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Patricia S. Bangert, Office of the Solicitor, U.S. Department of Interior, Washington, D.C. 20240. Telephone: 202–343–2172.

SUPPLEMENTARY INFORMATION:

Background

A number of fish and wildlife conservation statutes administered by the Service provide for forfeiture to the United States of wildlife, plants and other property involved in the violation of the laws. This is generally accomplished by the Solicitor's Office of the Department of the Interior requesting that the Attorney General file a civil action to obtain forfeiture of such property. However, property subject to forfeiture under the Eagle Protection Act, 16 U.S.C. 668 *et seq.*, or the Airborne Hunting Act, 16 U.S.C. 742j–1, or any wildlife or plant subject to forfeiture under the Endangered Species Act, 16 U.S.C. 1531 *et seq.* which is determined to have a value of not greater than $10,000 may be forfeited by means of administrative proceedings, the basis for which is the Tariff Act of 1930, 19 U.S.C. 1602–1624.

In administrative forfeiture proceedings, the Solicitor must issue a notice of proposed forfeiture. This notice must issue a notice of proposed forfeiture. This notice must be published once a week for at least three successive weeks in a newspaper of general circulation in the locality where the property was seized. However, under the present regulations, if the value of the seized property is determined to be less than $250, the notice may be issued by posting, rather than by newspaper publication, for at least three successive weeks in a conspicuous place accessible to the public at the Service's enforcement office and the United States District Court nearest the place of seizure. The Service proposes to revise the monetary limit of seized property for which notice may be accomplished by posting and the locations at which posting may take place.

Increasing costs of newspaper publishing have made the $250 limit on the value of property for which notice may be given by posting unrealistic. For the large number of items valued at slightly more than $250, the cost of publishing a notice of proposed forfeiture in a large urban newspaper is often nearly as great or greater than the value of the item. Furthermore, inflation has rapidly made the valuation figure of $250 obsolete and has significantly reduced the number of seized items that qualify for the notice by posting process. Therefore, the Service proposes the more realistic figure of $1,000 as the limit of the value of property which may be subject to notice by posting.

Furthermore, the Service has found that the requirement that notice be posted in the Service's enforcement office *and* the United States District Court is impractical in some cases. For example, some District Courts do not allow the posting of such notices in the Courthouse. Therefore, the Service proposes to revise the regulations by allowing posting to take place alternatively in the Service's enforcement office, the United States District Court, *or* the United States Customhouse nearest the place of seizure.

Public Comments Invited

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Interested persons are invited to submit written comments regarding the proposed rule. These comments and any additional information received will be considered by the Director in adopting a final rule. Correspondence should be mailed or delivered to the address given at the beginning of this proposal.

The principal author of these regulations is Patricia S. Bangert, Office of the Solicitor, Department of the Interior. (202/343–2172.)

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Regulations Promulgation

For the reasons set out in the preamble, it is hereby proposed to amend Part 12 of Subchapter B of Chapter I of Title 50 of the Code of Federal Regulations as set forth below.

PART 12—SEIZURE AND FORFEITURE PROCEDURES

1. The authority citation for Part 12 reads as follows:

Authority: Act of September 6, 1966, 5 U.S.C. 301; Bald and Golden Eagles Protection Act, 16 U.S.C. 668–668b; National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd(e)–(f); Migratory Bird Treaty Act, 16 U.S.C. 706–707; Migratory Bird Hunting Stamp Act, 16 U.S.C. 718f–718g; Fish and Wildlife Act of 1956 [Airborne Hunting Amendments], 16 U.S.C. 742j–1(d)–(f); Black Bass Act, 16 U.S.C. 852d–853; Marine Mammal Protection Act of 1972, 16 U.S.C. 1375–1377, 1382; Endangered Species Act of 1973, 16 U.S.C. 1540; Lacey Act, 18 U.S.C. 43, 44; Tariff Act of 1930, 19 U.S.C. 1602–1624.

2. In Part 12, paragraph (b)(1)(A) of § 12.23 is revised to read as follows:

§ 12.23 Administrative forfeiture proceedings.

* * * * *

(b) *Procedure*—(1) *Notice of proposed forfeiture.* As soon as practicable following seizure, the Solicitor shall issue a notice of proposed forfeiture.

(A) *Publication.* The notice shall be published once a week for at least three successive weeks in a newspaper of general circulation in the locality where the property was seized. If the value of the seized property as determined under § 12.12 does not exceed $1,000, the notice may be published by posting, instead of newspaper publication, for at least three successive weeks in a conspicuous place accessible to the public at the Service's enforcement office, the United States District Court or the United States Customhouse nearest the place of seizure. In cases of posting, the date of initial posting shall be indicated on the notice. In addition to newspaper publication or posting, a reasonable effort shall be made to serve the notice personally or by registered or certified mail, return receipt requested, on each person whose whereabouts and interest in the seized property are known or easily ascertainable.

Dated: December 18, 1980.

Lynn A. Greenwalt,
Director, Fish and Wildlife Service.

[FR Doc. 80–40618 Filed 12–30–80; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 29

Surface Management of National Wildlife Refuge System Lands Under the U.S. Mining Laws

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rules.

SUMMARY: This proposed rulemaking sets forth rules and procedures to minimize adverse environmental impacts on the fish and wildlife and habitat resources of the National Wildlife Refuge System from operations authorized by the U.S. mining laws (30 U.S.C. 22–54). The proposal, however, would not cover refuges in Alaska. Such operations include hardrock and placer

mining of locatable minerals such as gold, lead, silver, and uranium, but do not include mineral leasing, such as for coal, oil or gas or saleable minerals such as sand and gravel. These rules are modeled after those the Bureau of Land Management promulgated for their areas of environmental concern (43 FR 78902). These rules would apply to all mining operators on refuge lands, and require a plan of operations to be filed for operations which cause more than negligible impacts.

DATE: Comments must be received no later than March 31, 1981.

ADDRESS: Send Comments to: William C. Reffalt, Chief, Division of Refuge Management, U.S. Fish and Wildlife Service, Room 2349, Department of the Interior, 18th and C Sts., N.W., Washington, D.C. 20240. A public file will be available at this address.

FOR FURTHER INFORMATION CONTACT: William C. Reffalt, Chief, Division of Refuge Management, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Sts., N.W., Washington, D.C. 20240. Telephone (202) 343–4791.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service is seeking public input on its proposed decision to promulgate surface management rules for mining operations on National Wildlife Refuges authorized by the U.S. mining laws, including the Mining Law of 1872. Due to the recent passage of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, mining operations on Alaska refuges are not included in this proposal, but will be covered later in a comprehensive rulemaking for Alaska refuges.

Refuges, including those in Alaska, contain in total approximately one-tenth of one percent of all mining claims located under the U.S. mining laws, or roughly 500 to 1700 claims. Current information indicates there are several hundred claims on Kofa National Wildlife Refuge in Arizona, 500 to 1000 claims on Sheldon National Wildlife Refuge in Nevada, and about 500 in Alaska. This number is not expected to grow appreciably since virtually all refuges were withdrawn from the operation of the mining laws when they were created.

The proposed rules do not prescribe particular mining methods. Rather they provide a general framework for controlling the environmental impacts of mining operations on refuge system lands while not placing undue burdens on the mining operator.

The rules would require contemporary reclamation of disturbed areas and site-specific environmental impact documents in the process of approving a plan of operations. Similar rules have already been adopted by the National Park Service, Bureau of Land Management, and Forest Service.

Authorities

Section 2319 of the Revised Statutes (30 U.S.C. 22 *et seq.*) provides that exploration, location, and purchase of valuable mineral deposits, under the mining laws, on federal lands shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations shall be issued by the Secretary. See also 30 U.S.C. 21a.

The Act of July 23, 1955 (30 U.S.C. 612), provides that rights under mining claims located after July 30, 1955, shall prior to issuance of patent therefor, be subject to the right of the United States to manage and dispose of the vegetative surface resources and to manage other surface resources. The Act also provides that, "Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance to patent therefor, for any purposes other than prospecting, mining, or processing operations and uses reasonably incident thereto."

The National Wildlife Refuge System Administration Act, (16 U.S.C. 668dd–668ee) constitutes the "Organic Act" for the National Wildlife Refuge System. The Secretary is authorized to permit uses of the area, including rights-of-way, provided such uses are compatible with the purposes for which such areas were established. The Act provides that the mining laws shall continue to apply to any lands within the System to the same extent they applied prior to October 15, 1966, unless subsequently withdrawn.

The Fish and Wildlife Act of 1956, as amended, (16 U.S.C. 742a–742j) authorizes the Secretary to take such steps as may be required for the development, advancement, management, conservation, and protection of fish and wildlife resources.

Plan of Operation. The basic management tool proposed in these regulations is the "plan of operations", which is required for all operations which create more than negligible impacts. The operator must provide claim identification data, as well as a description of measures to be taken to protect fish and wildlife and habitat resources and to reclaim disturbed areas. On refuge areas withdrawn from the mining laws, mineral information is required in order to judge the validity of the claim. Such information is only required for unpatented claims on the federal lands, and will not be required for any state claims on state lands. New operations cannot proceed until the plan is approved, other than to the extent necessary to fulfill requirements of federal and state law; existing operations are given 120 days in which to submit a plan. The authorized officer will normally act on a plan within 30 days. The plan will be approved if it provides for protection of fish and wildlife and habitat resources, compliance with mandatory environmental protection laws, and for adequate reclamation measures.

The authorized officer of the FWS will prepare an environmental assessment or impact statement, as appropriate, to address the impacts which would result from the proposed operations.

Casual Use. Operations which do not create any appreciable disturbance or damage to fish and wildlife or habitat resources may proceed without a plan of operations. The authorized officer will issue such users a special use permit which contains the determination that the proposed use falls within this category.

Bonding. Bonding is not required for casual use operations, but is required for operations subject to a plan of operations.

Reclamation includes reshaping the land disturbed by operations to its approximate original contour or to an appropriate contour considering the surrounding topography, as determined by the authorized officer. Additionally, stream banks are to be stabilized, wastes safely disposed of, and the area revegetated with native species.

Patented Claims. Patented claims within the refuge boundaries are covered only if the operations are causing significant harm to the surrounding refuge system lands. A plan of operations may be required if the operations are significantly harming the lands.

National Environmental Policy Act Considerations

FWS has prepared an environmental assessment which addresses the impacts of the regulatory provisions as well as the changes from BLM's rules that are being made and has determined that there will be no significant impacts to the human environment. A Finding of No Significant Impact (FONSI) was prepared. Both the EA and FONSI are available for review at the Office of the Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. FWS proposes to adopt applicable parts of the Final Environmental Impact Statement (FEIS) prepared for BLM's rules (August, 1980), since FWS's rules are very similar to BLM's, would have similar impacts, and since the draft BLM

EIS originally covered wildlife refuges as well as public lands.

The Service held a scoping meeting on November 5, 1980, and two organizations submitted comments at

Subpart D—Surface Management of Mining Claims

§ 29.40–1 Purpose and policy.

The purpose of this subpart is to

(f) "Operator" means a person conducting or proposing to conduct operations.

(g) "Person" means any citizen of the United States or person who has

unpatented claim on federal lands not recorded pursuant to the provisions of 43 CFR 3833 shall be conclusively presumed to be abandoned and shall be void.

proposed, how they will be conducted and the period during which the proposed activity will take place;

(5) Measures to be taken to protect fish and wildlife and habitat resources, a statement of the impact which the

be disposed of so as to protect fish and wildlife and habitat resources.

(2) The operator shall reclaim the area disturbed as soon as possible, and in no instance later than 6 months without written approval of the authorized

EIS originally covered wildlife refuges as well as public lands.

The Service held a scoping meeting on November 5, 1980, and two organizations submitted comments at that stage. One commenter suggested that a non-regulatory approach be implemented. The Service believes these regulations are designed to minimize regulatory burdens while achieving important protection of refuge resources. The other organization requested the rules maximize the opportunity for public input, and suggested that various protective provisions of the BLM rules and Forest Service rules be adopted.

The primary authors of this proposal are Wallace Evans and Byron Swift. In accordance with Executive Order 12044 and 43 CFR 14, it was determined that the proposed amendments (the proposed rules) to 50 CFR 29 are not significant and a separate regulatory analysis is not required.

Dated: December 29, 1980.

Robert Herbst,

Assistant Secretary for Fish and Wildlife and Parks.

Subpart D is added to 50 CFR Part 29 to read as follows:

PART 29—LAND USE MANAGEMENT

Subpart D—Surface Management of Mining Claims

Sec.

29.40–1 Purpose and policy.
29.40–2 Definitions.
29.40–3 Recordation.
29.40–4 Scope.
29.41–1 Reclamation.
29.41–2 Casual use.
29.41–3 Plan of operations.
29.41–4 Plan approval.
29.41–5 Modification of plan.
29.41–6 Existing operations.
29.41–7 Bonding requirements.
29.42–1 Environmental assessment.
29.42–2 Other requirements for environmental protection.
29.43–1 Noncompliance.
29.43–2 Access.
29.43–3 Fire prevention and control.
29.43–4 Maintenance and public safety.
29.43–5 Inspection.
29.43–6 Notice of suspension of operations.
29.43–7 Cessation of operations.
29.44 Patented claims.
29.45 Appeals.
29.46 Public availability of information.

Authority: The Mining Law of 1872, as amended, 30 U.S.C. 21 *et seq.;* The Act of July 23, 1955, 30 U.S.C. 612; The Fish and Wildlife Act of 1956, as amended, 16 U.S.C. 742a *et seq.;* The National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd *et seq.*

Subpart D—Surface Management of Mining Claims

§ 29.40–1 Purpose and policy.

The purpose of this subpart is to establish procedures to protect fish and wildlife and habitat resources of refuge system lands which may result from operations authorized by the mining laws of the United States.

The policy of the Department of the Interior is to permit the development of the federal locatable mineral resources pursuant to the mining laws, eliminate invalid claims on withdrawn lands, minimize damage to the environment and other resource values, and provide for reclamation of disturbed lands.

§ 29.40–2 Definitions.

As used in this subpart, the term:

(a) "Authorized Officer" means any employee of the U.S. Fish and Wildlife Service to whom authority has been delegated to perform the duties described in this subpart.

(b) "Casual Use" means activities limited to practices which do not lead to any appreciable disturbance or damage to refuge system lands, and resources. For example, activities are generally considered "casual use" if they do not involve the use of mechanized earth moving equipment or explosives or do not involve the use of motorized vehicles except over established and. open roads.

(c) "Mining claim" means any unpatented mining claim, millsite, or tunnel site located under the mining laws on refuge system lands.

(d) "Mining laws" means, including among others, the Lode Law of July 26, 1866, as amended (14 Stat. 251); the Placer Law of July 9, 1870, as amended (16 Stat. 217); the Mining Law of May 10, 1872, as amended (17 Stat. 91); the Building Stone Act of August 4, 1892, as amended (27 Stat. 348); the Saline Placer Act of January 31, 1901 (31 Stat. 745).

(e) "Operations" means all functions, work, facilities, and activities in connection with prospecting, exploration, development, extraction, and processing of mineral deposits locatable under the mining laws and all other uses reasonably incident thereto, whether on a mining claim or not, including but not limited to the construction of roads, transmission lines, pipelines, and other means of access for support facilities across refuge system lands. Operations do not include activities on claims which have been patented under the mining laws, which are covered separately in section 29.44.

(f) "Operator" means a person conducting or proposing to conduct operations.

(g) "Person" means any citizen of the United States or person who has declared the intention to become such and includes any individual, club, partnership, corporation, association, or other legal entity.

(h) "Project area" means a single tract of land upon which an operator is, or will be, conducting operations, as determined by the authorized officer. It may include one mining claim or a group of mining claims under one ownership on which operations are or will be conducted as well as refuge lands on which an operator is exploring or prospecting prior to locating a mining claim.

(i) "Protection of fish and wildlife and habitat resources" means conducting operations in a manner which uses reasonable and available methods and equipment which reduce to minimum practical levels impacts on fish and wildlife and habitat resources on the refuge system lands.

(j) "Reclamation" means taking such reasonable measures which will protect fish and wildlife and habitat resources of the refuge system lands, including reshaping land disturbed by operations to its approximate original contour or to an appropriate contour considering the surrounding topography, as determined by the authorized officer, preventing subsidence, stabilizing stream banks and preventing acid drainage or other contaminants from entering area streams, and revegetating disturbed areas so as to provide a diverse vegetative cover of native species, where feasible.

(k) "Refuge system lands" means federal lands, waters, and interests of the National Wildlife Refuge System administered by the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, and other areas for the protection and conservation of fish and wildlife, including those that are threatened with extinction.

(l) "Regional Director" means the Regional Director of the U.S. Fish and Wildlife Service having jurisdiction over the refuge system lands in which the operations are located.

§ 29.40–3 Recordation.

Unpatented claims on refuge system lands remain subject to § 314 of the Federal Land Policy and Management Act of 1976 and therefore must be recorded with the Bureau of Land Management in accordance with the provisions of 43 CFR 3833.1–2. Any

unpatented claim on federal lands not recorded pursuant to the provisions of 43 CFR 3833 shall be conclusively presumed to be abandoned and shall be void.

§ 29.40–4 Scope.

(a) These regulations apply to all operations conducted on refuge system lands except for refuge system lands in Alaska.

(b) On refuge system lands which have been withdrawn from the operation of the mining laws, all operations other than access across refuge lands must be conducted on valid existing claims.

§ 29.41–1 Reclamation.

All operations, whether conducted as a casual use or under a plan of operations, shall be reclaimed as required in this title.

§ 29.41–2 Casual use.

No plan of operations is required for casual use operations. The Fish and Wildlife Service will determine on a case-by-case basis what constitutes a casual use operation and will document this determination. Casual use operations are subject to monitoring and oversight by the authorized officer to ensure the protection of fish and wildlife and habitat resources.

§ 29.41–3 Plan of operations.

(a) Except for casual use operations an approved plan of operations is required prior to commencing any operation on refuge system lands.

(b) A plan of operations must be filed in the Refuge Office of the Fish and Wildlife Service having jurisdiction over the refuge system lands in which the claim(s) or project area is located.

(c) No special form is required for filing a plan.

(d) The plan shall include:

(1) The name, mailing address, and phone number of the operator (and claimant if not the operator). Any change of operator or change in the mailing address shall be promptly reported to the authorized officer;

(2) A map, preferably a topographic map, or sketch showing existing and/or proposed routes of access, aircraft landing areas, or other means of access, and size of each area where surface disturbance will occur;

(3) The name of the mining claim(s) and mining claim serial numbers assigned to the mining claim(s) recorded with the Bureau of Land Management pursuant to Title 43 of the Code of Federal Regulations, Part 3833;

(4) Information sufficient to describe or identify the type of operations proposed, how they will be conducted and the period during which the proposed activity will take place;

(5) Measures to be taken to protect fish and wildlife and habitat resources, a statement of the impact which the operations will have on such resources, and measures to reclaim disturbed areas resulting from the proposed operations. Where the operator considers different mining or reclamation methods the operator shall describe the different impacts of the various methods on the fish and wildlife and habitat resources. Where an operator does not have the necessary technical resources to develop such measures, the authorized officer may, in conjunction with the operator, develop such measures. If an operator submits reclamation measures, the authorized officer will ensure that the operator's plan is sufficient to protect fish and wildlife and habitat resources. All reclamation measures developed by the operator or by the authorized officer in conjunction with the operator, shall become a part of the plan of operations.

(e) Where mining claims are located on refuge lands which have been withdrawn from the effect of the mining laws, information regarding the validity of the mining claim shall be required. This information shall include:

(1) The quantity of measured or estimated reserves on the claim remaining to be mined (e.g. cubic yards, tons, etc.) plus a description of any tests conducted or documents which support this estimation of quantity;

(2) the grade or quality of the reserves on the claim remaining to be mined (e.g., ounces per cubic yard, assay, etc.) plus a description of any tests conducted or documents which support this estimation of grade or quality;

(3) if there has been any production from the claim, the last year in which there was any production, the amount of production, and the person or company to whom the ore or concentrates were shipped.

§ 29.41–4 Plan approval.

(a) The authorized officer shall promptly notify the operator whether the plan of operations is adequate to permit assessment of the impacts. If the plan is adequate for that purpose, the authorized officer shall, within sixty (60) days of receipt, analyze the adequacy of the proposal to protect fish and wildlife and habitat resources and provide for reasonable reclamation. Minimum standards are:

(1) All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to protect fish and wildlife and habitat resources.

(2) The operator shall reclaim the area disturbed as soon as possible, and in no instance later than 6 months without written approval of the authorized officer, following each stage of operations by taking reasonable measures to prevent or control on-site or offsite damage of refuge system lands. Revegetation must be commenced within the 6 month period, but is not completed until the authorized officer determines it is likely to be successful.

(3) Reclamation shall include, but shall not be limited to:

(i) saving of topsoil for final application after reshaping of disturbed areas has been completed;

(ii) measures to control erosion, landslides, and water runoff;

(iii) measures to isolate, remove, or control toxic materials;

(iv) reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and

(v) rehabilitation of fisheries and wildlife habitat affected by the operations.

(4) When reclamation of the disturbed area has been completed, the authorized officer shall be notified so that an inspection of the area can be made.

(b) The authorized officer shall notify the operator within the sixty (60) day period:

(1) That the plan is approved by the Regional Director; or

(2) Of any changes in or additions to the plan necessary to meet the requirements of these regulations; or

(3) That the plan is being reviewed, but that more time, not to exceed an additional sixty (60) days, is necessary to complete the review, setting forth the circumstances which require and which justify additional time for review. However, the number of days during which the area of operations is inaccessible for inspection shall not be counted when computing the sixty (60) day period; or

(4) That the plan cannot be approved until thirty (30) days after a final environmental statement has been prepared and filed with the Environmental Protection Agency; or

(5) That the plan cannot be approved until the authorized officer has complied with section 106 of the National Historic Preservation Act or section 7 of the Endangered Species Act.

(c) The authorized officer shall undertake an appropriate level of cultural resource inventory of the area to be disturbed. The inventory shall be completed within the time allowed by these regulations for approval of the

plan (normally 60 days). The operator is not required to do or to pay for an inventory but may do so in order to complete the inventory more expeditiously. The responsibility for and

its review. If the authorized officer determines that operations are not being conducted in a manner that protects the fish and wildlife and habitat resources of the refuge system lands involved, the

completed any portion of the reclamation, the authorized officer shall authorize that the bond be reduced as appropriate to cover the remaining reclamation to be accomplished.

(b) *Water Quality.* All operators shall comply with applicable Federal and State water quality standards, including the Federal Water Pollution Control Act (30 U.S.C. 1151 *et seq.*).

reestablishment of monuments, corners, and bearing and line trees.

(g) *Use of water.* If the operator uses water from a point of diversion within the refuge boundaries, the operator must

(c) The location of access routes and other conditions necessary to protect fish and wildlife and habitat resources, protect the public health and safety, and protect the interests of other lawful

plan (normally 60 days). The operator is not required to do or to pay for an inventory but may do so in order to complete the inventory more expeditiously. The responsibility for and cost of salvage of cultural resources discovered during the inventory shall be the Federal Government's. The responsibility of avoiding adverse impacts on those cultural resources discovered during the inventory shall be the operator's.

(d) Pending final approval of the plan, the authorized officer may approve any operations that may be necessary for timely compliance with requirements of Federal and State laws subject to any terms and conditions that may be needed to protect fish and wildlife and habitat resources.

(e) The transfer of a plan from the claimant to another person shall become effective only after the transferee has satisfied the requirements of § 29.41–7 of this title as it relates to bonding.

(f) The approval of a plan of operations shall not be interpreted as excusing the operator from compliance with other existing State or Federal laws applicable to mining operations, and shall not be deemed to render valid any mining claim which is not otherwise valid under applicable law. Accordingly, the approval of a plan of operations shall not be deemed a waiver of the Secretary's authority to examine, and where appropriate to contest, the validity of unpatented claims.

§ 29.41–5 Modification of plan.

(a) If the development of a plan for an entire operation is not possible, the operator shall initially file a plan setting forth his proposed operation to the degree reasonably foreseeable at that time. Thereafter, the operator shall file a supplemental plan or plans prior to undertaking any operations not covered by the initial plan.

(b) A modification of an approved plan must be reviewed and approved by the authorized officer in the same manner as the initial plan, including approval by the Regional Director.

§ 29.41–6 Existing operations.

(a) Persons conducting operations on the effective date of these regulations, who would be required to submit a plan of operations under § 29.41–3 of this title may continue such operations but shall, within 120 days after the effective date of these regulations submit a plan. Upon a showing of good cause, the authorized officer may grant an extension of time, not to exceed an additional 180 days, to submit a plan.

(b) Ongoing operations may continue according to the submitted plan during its review. If the authorized officer determines that operations are not being conducted in a manner that protects the fish and wildlife and habitat resources of the refuge system lands involved, the authorized officer shall advise the operator of those reasonable and available measures needed to avoid such impacts, and the operator shall take all necessary steps to implement those measures within a reasonable time recommended by the authorized officer. During the period of an appeal, if any, operations may continue without change, subject to other applicable Federal and State laws.

(c) Upon approval of a plan by the authorized officer, operations shall be conducted in accordance with the approved plan.

§ 29.41–7 Bonding requirements.

(a) No bond shall be required for casual use operations.

(b) Any operator who conducts operations under an approved plan of operations shall be required to furnish a bond in an amount specified by the authorized officer. In determining the amount of the bond, the authorized officer shall consider the estimated cost of reasonable reclamation of areas disturbed.

(c) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash or a suitable security interest in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a market value at the time of deposit of not less than the required dollar amount of the bond.

(d) In place of the individual bond on each separate operation, an operator may proceed under a blanket bond covering statewide or nationwide operations, if the terms and conditions, as determined by the authorized officer, are sufficient to comply with these regulations.

(e) In the event that an approved plan is modified in accordance with § 29.41–5 of this title, the authorized officer shall review the initial bond for adequacy and, if necessary, adjust the amount of the bond to conform to the plan as modified.

(f) When all or any portion of the reclamation has been completed in accordance with the approved plan, the operator shall notify the authorized officer who shall promptly inspect the reclaimed area with the operator. The authorized officer shall than notify the operator, in writing, whether the reclamation is acceptable. When the authorized officer has accepted as completed any portion of the reclamation, the authorized officer shall authorize that the bond be reduced as appropriate to cover the remaining reclamation to be accomplished.

(g) When a mining claim is patented, the authorized officer shall release the operator from that portion of the performance bond which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond, including the portion covering approved means of access outside the boundaries of the mining claim, when the operator has completed acceptable reclamation. However, access to patented mining claims shall continue to be regulated under the approved plan.

§ 29.42–1 Environmental assessment.

(a) The authorized officer shall prepare an environmental assessment which covers a plan of operations or a significant modification of the plan, in order to identify the impacts of the proposed operations on the lands and to determine whether an environmental impact statement is required.

(b) In conjunction with the operator, the authorized officer shall use the environmental assessment to determine the adequacy of any mitigating measures and reclamation procedures included in the plan for the protection of the fish and wildlife and habitat resources. If an operator is unable to prepare mitigating measures, the authorized officer, in conjunction with the operator, shall use the environmental assessment as a basis for developing such measures.

(c) If, as a result of the environmental assessment, the authorized officer determines that there is substantial public interest in the plan, the authorized officer shall notify the operator, in writing, that an additional period of time, not to exceed the additional 60 days provided for approval of a plan in § 29.41–4(b) of this title, is required to consider public comments on the environmental assessment.

§ 29.42–2 Other requirements for environmental protection.

All operations, including those under casual use, shall be conducted so as to protect fish and wildlife and habitat resources of the refuge system lands and shall comply with all pertinent Federal and State laws, including but not limited to the following:

(a) *Air Quality.* All operators shall comply with applicable Federal and State air quality standards, including the Clean Air Act (42 U.S.C. 1857 *et seq.*).

(b) *Water Quality.* All operators shall comply with applicable Federal and State water quality standards, including the Federal Water Pollution Control Act (30 U.S.C. 1151 *et seq.*).

(c) *Solid Wastes.* All operators shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes, including regulations issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*). All garbage, refuse, or waste shall either be removed from the affected lands, disposed of, or treated to minimize, so far as is practicable, its impact on fish and wildlife and habitat resources.

(d) *Threatened and Endangered Species of Fish, Wildlife, and Plants.* The operator shall take such action as may be needed to avoid jeopardizing the continued existence of threatened or endangered species, or adversely modifying or destroying their critical habitat.

(e) *Cultural and Paleontological Resources.* (1) Operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological, site, structure, building, or object on refuge system lands.

(2) Operators shall immediately bring to the attention of the authorized officer any cultural and/or paleontological resources that might be altered or destroyed on refuge system lands by the operations, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries upon notification, take action to protect or remove the resource, and allow operations to proceed within 10 working days if feasible.

(3) The Federal Government shall have the responsibility and bear the cost of investigations and salvage of cultural and paleontological values discovered after a plan of operations has been approved, or where a plan is not involved.

(f) *Protection of survey monuments.* To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees, and line trees, against destruction, obliteration, or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated, or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, and bearing and line trees.

(g) *Use of water.* If the operator uses water from a point of diversion within the refuge boundaries, the operator must show that either his or her right to use the water is superior to any claim of the United States to the water, or if not, that the removal of the water from the water system will not damage the resources of the refuge.

§ 29.43–1 Noncompliance.

(a) Whenever the authorized officer determines that an operator is failing or has failed to comply with the requirements of an approved plan of operations, or with the provisions of these regulations, the authorized officer shall serve a notice of noncompliance upon the operator by delivery in person to the operator or his authorized agent, or by certified mail addressed to his last known address.

(b) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of the plan of operations or the provisions of applicable regulations, and shall specify the actions which are in violation of the plan or regulations and the actions which shall be taken to correct the noncompliance and the time limits, not to exceed 30 days, within which corrective action shall be taken.

(c) An operator who conducts mining operations undertaken either without an approved plan of operations, if one is required, or without taking actions specified in a notice of noncompliance within the time specified therein, may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(d) Failure by the operator to take necessary action on a notice of noncompliance, except when an appeal of such notice is pending, shall constitute justification for mandatory bonding of subsequent activities.

§ 29.43–2 Access.

(a) An operator is entitled to access to his operations consistent with the provisions of the mining laws, other applicable federal laws, and these regulations.

(b) All operators must have a Special Use Permit which is provided by the authorized officer pursuant to 50 CFR 25.41 in order to enter upon refuge system lands. The permit shall have a one, three, or five year term. For operations subject to a plan of operations, the approved plan will serve as a Special Use Permit.

(c) The location of access routes and other conditions necessary to protect fish and wildlife and habitat resources, protect the public health and safety, and protect the interests of other lawful users of adjacent land or land traversed by the access routes shall be specified. The authorized officer may also require the operator to use existing roads to minimize the number of access routes, and, if practicable, to construct accesss roads within a designated transportation or utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

§ 29.43–3 Fire prevention and control.

The operator shall comply with all applicable Federal and State fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.

§ 29.43–4 Maintenance and public safety.

During all operations, the operator shall maintain structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and State laws and regulations.

§ 29.43–5 Inspection.

The authorized officer may periodically inspect operations to determine if the operator is complying with these regulations. The operator shall permit the authorized officer access for this purpose.

§ 29.43–6 Notice of suspension of operations.

(a) Except for seasonal suspension, all operators shall notify the authorized office of any suspension of operations within 30 days after such suspension. This notice shall include:

(1) Verification of intent to maintain structures, equipment, and other facilities; and

(2) The expected re-opening date, if such date is known.

(b) The operator shall maintain the operating site, structures, and other facilities in a safe and acceptable condition during non-operating periods.

§ 29.43–7 Cessation of operations.

The operator may be required within a reasonable time following cessation of operations, to remove all structures, equipment, and other facilities, and reclaim the site of operations, unless permission is granted, in writing, from the authorized officer to do otherwise.

§ 29.44 Patented claims.

When operations on patented claims within the boundaries of the refuge cause significant harm to the fish and wildlife and habitat resources of the

officer in accordance with the provisions of the Freedom of Information Act.

(b) The determination concerning specific information which may be

FOR FURTHER INFORMATION CONTACT:
David H. G. Gould, Executive Director, South Atlantic Fishery Management Council, Suite 306, Charleston, S.C. 29407, (803) 571–4366.

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§ 29.44 Patented claims.

When operations on patented claims within the boundaries of the refuge cause significant harm to the fish and wildlife and habitat resources of the refuge system lands outside the claim, the authorized officer may require the operator to prevent such harm, or to file and have approved a plan of operations pursuant to § 29.41.

§ 29.45 Appeals.

(a) Any operator adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal to the Regional Director, pursuant to 50 CFR 25.44.

(b) No appeal shall be considered unless it is filed, in writing, in the office of the authorized officer who made the decision from which an appeal is being taken, within 30 days after the date of the authorized officer's final decision. A decision of the authorized officer from which an appeal is taken shall be effective during the pendency of an appeal. A request for a stay may accompany the appeal.

(c) The appeal to the Regional Director shall contain:

(1) The name and mailing address of the appellant.

(2) When applicable, the name of the mining claim(s) and serial number(s) assigned to the mining claims recorded with the Bureau of Land Management pursuant to subpart 3833 of Title 43 of the Code of Federal Regulations, which are subject to the appeal.

(3) A statement of the reasons for the appeal and any arguments the appellant wishes to present which would justify reversal or modification of the decision.

(d) The Regional Director shall promptly render a decision on the appeal no later than 30 days after its receipt, which shall be the final agency decision on the matter. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the appellant.

§ 29.46 Public availability of information.

(a) Information and data submitted and specifically identified by the operator as containing trade secrets or confidential or privileged commercial or financial information and determined by the Area Director to be confidential or privileged shall not be available for public examination. Other information and data submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act.

(b) The determination concerning specific information which may be withheld from public examination shall be made in accordance with the rules in 43 CFR Part 2.

[FR Doc. 80-40741 Filed 12-30-80; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 643

South Atlantic Fishery Management Council; Public Hearing

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Notice of public hearings.

SUMMARY: The South Atlantic Fishery Management Council will hold public hearings for the purpose of input on the Draft Fishery Management Plan for Atlantic Billfish.

DATES: Written comments on the Billfish Fishery Management Plan from members of the public may be submitted no later than March 20, 1981. Individuals or organizations wishing to comment on the fishery management plan may do so at public hearings to be held as follows:

January 28, 1981; Savannah, Georgia
January 29, 1981; Jacksonville Beach, Florida

All of the above hearings will start at 7:30 p.m and adjourn at 10:00 p.m. The hearings will be tape recorded and the tapes will be filed as an official transcript of the proceedings. A written summary will be prepared.

ADDRESS: Send comments to Chairman, South Altantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407.

Hearing locations:

January 28, 1981; Savannah Science Museum, Explorer Room, 4405 Paulsen Street, Savannah, Georgia 31405.
January 29, 1981; City Council Chamber, 2nd Floor Municipal Building, 11 North 3rd Street, Jacksonville Beach, Florida 32250.

Additional hearings will be held in other locations under the jurisdiction of the South Atlantic Council at some future time.

FOR FURTHER INFORMATION CONTACT:
David H. G. Gould, Executive Director, South Atlantic Fishery Management Council, Suite 306, Charleston, S.C. 29407, (803) 571-4366.

Dated: December 19, 1980.

Robert K. Crowell,
Deputy Executive Director, National Morine Fisheries Service.

[FR Doc. 80-40451 Filed 12-30-80; 8:45 am]

BILLING CODE 3510-22-M

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Western Spruce Budworm Management Plan, Carson National Forest, Taos County, New Mexico; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Agriculture. Forest Service, will prepare an environmental impact statement for management of the Western Spruce Budworm infestation within Carson National Forest lands and adjacent State, private, and Taos Pueblo lands. A range of alternatives for determining a course of action in 1981 and future years will be evaluated. One of these will be (1) no action. Other alternatives will consider (2) silvicultural practices, (3) evaluation of *Bacillus thuringiensis* as a promising insecticide for future use, and the (4) use of the insecticide carbaryl (Sevin®) for suppression.

Early in the environmental analysis, Federal, State, and local agencies, individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process, which includes: (a) identification of the issues to be addressed; (b) identification of issues to be analyzed in depth; and (c) elimination of insignificant issues, or those which have been covered by a previous environmental review, and (d) determine potential cooperating agencies and assign responsibilities.

The Fish and Wildlife Service of the Department of the Interior will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the infested area which could be treated.

Environmental assessment reports were prepared in 1979 and 1980 in response to this insect outbreak and public meetings were held in August and December 1980 in several local communities. Additional meetings may be scheduled.

The environmental analysis is expected to take about five months. The draft environmental impact statement should be available for public review in February 1981. The final environmental impact statement is scheduled to be completed in April 1981.

Questions about the proposed action and environmental impact statement should be directed to John F. Hutt, Timber Staff Officer, Carson National Forest, P.O. Box 558, Taos, New Mexico. 87571 by January 9, 1981. His telephone number is (505) 758-2238.

Written comments and suggestions concerning this analysis should be sent to John S. Crellin, Forest Supervisor, Carson National Forest, Taos, New Mexico, 87571.

M. J. Hassell, Regional Forester, Southwestern Region is the responsible official.

Dated: December 16, 1980.

M. J. Hassell,
Regional Forester.

[FR Doc. 80-40574 Filed 12-30-80; 8:45 am]

BILLING CODE 3410-11-M

BOARD FOR INTERNATIONAL BROADCASTING

Privacy Act of 1974; Annual Publication of Systems of Records.

The purpose of this document is to give notice, pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a (e)(4), of intent to add a system of records to those previously maintained by the Board for International Broadcasting (BIB). No changes have been made in the BIB's Systems of Records since its latest publication on September 20, 1977. This notice meets the requirement of annual publication of Systems of Records under the Privacy Act. The added system of records will be known as BIB-3 Grievance Records. Because this system is being adopted from an existing system published by the Office of Personnel Management no report on the new system is being filed with the president of the Senate, the Speaker of the House of Representatives or the Office of Management and Budget.

DATES: Any interested party may submit written comments regarding the additional system. To be considered, comments must be received on or before January 30, 1981. The addition shall become effective as proposed without further notice on January 30, 1981, unless comments are received that would result in a determination to the contrary.

ADDRESS: Address comments to the Board for international Broadcasting, 1030 15th Street, NW., Suite 430, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:
Arthur D. Levin, Budget and Administrative Officer, Board of International Broadcasting, 1030 15th Street, N.W., Suite 430, Washington, D.C. 20005.

Walter R. Roberts,
Executive Director.

BIB—3

System name:

Grievance Records—BIB.

System location:

Agency Liaison Division, General Services Administration (GSA), which under contractual arrangement holds such records. Board for International Broadcasting (BIB) personnel files contain copies.

Categories of individuals covered by the system:

Current and former Board Members, staff and consultants.

Categories of records in the system:

System contains records relating to grievances filed by current and former Board Members, staff and consultants. Case files contain all douments related to a given grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, copy of the original decision and related correspondence and exhibits.

Authority for maintenance of the system:

31 U.S.C. generally; Public Law 93-129, October 19, 1973.

Routine uses of records maintained in the system:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of

1030 15th Street, N.W., Suite 430, Washington, D.C. 20005.

Notification procedure:

It is required that individuals submitting grievances be provided a

d. Organizational component involved.

Individuals requesting access must also follow the BIB's Privacy Act regulations regarding access to records and verification of identity (1 CFR IV

completion of the *Marketing* case, is contrary to its policy of encouraging experimentation in the marketing of air transportation. In support of its position, ASTA cites Order 80-2-112, February 21, 1980, where the Board approved

the DOD proposal in House Report 96-1317, DOD filed a supplementary answer construing the House report to be favorable to its position. The Chief Counsel for Advocacy of the U.S. Small Business Administration has filed a

appear to require any signficant reorientation of the proceeding. In short, we consolidated the DOD petition into the *Marketing* case because it appeared to be a convenient forum in which the issues it raised could be quickly

a. To disclose pertinent information to the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance to the exent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. By the National Archives and Records Service of the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

e. To disclose information to officials of the National Merit Sytems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission, when requested in performance of their authorized duties.

f. To provide information to officials of labor organizations reorganized under the Civil Service Reform Act, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting work conditions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

These records are maintained in file folders.

Retrievability:

These records are retrieved by the names of the individuals on whom they are maintained.

Safeguards:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

Retention and disposal:

These records are destroyed 3 years after closing of a given case. Disposal is by shredding or burning.

System manager(s) and address:

Budget and Administrative Officer, Board for International Broadcasting, 1030 15th Street, N.W., Suite 430. Washington, D.C. 20005.

Notification procedure:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel office or other such designated office where the action was processed, regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Records access procedures:

It is required that individuals submitting grievances by provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the BIB Budget and Administrative Officer.

Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting access must also follow the BIB's Privacy Act regulations regarding access to records and verification of identity (1 CFR IV Part 415).

Contesting record procedures:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case and will not include a review of the merits of the action, determination or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the agency personnel office or other such designated office where the grievance was processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individuals requesting access must also follow the BIB's Privacy Act regulations regarding access to records and verification of identity (1 CFR IV Part 415).

[FR Doc. 80-40442 Filed 12-30-80; 8:45 am]

BILLING CODE 6155-01-M

CIVIL AERONAUTICS BOARD

[Order 80-12-91; Docket Nos. 35986 and 36595]

Defense Department Petition; Competitive Marketing of Air Transportation, Investigation; Order on Reconsideration and To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 18th day of December, 1980.

In the matter petition of Department of Defense to disapprove ATC's prohibition against commissions to travel agents for air transportation sales for official government travel (Docket 35986); and Investigation into the Competitive Marketing of Air Transportation (Docket 36595).

By Order 80-2-152, February 28, 1980, we denied a petition of the Department of Defense (DOD) for an order to show cause why the Air Traffic Conference (ATC) resolution banning the payment of commissions to travel agents on government travel should not be disapproved.[1] In addition, we consolidated the issue of the legality of the provision into the *Competitive Marketing Investigation*. The American Society of Travel Agents (ASTA) has filed a petition requesting that we reconsider Order 80-2-152. It asks us to reverse our decision and disapprove the provision immediately, without waiting for a final decision in the *Marketing* case.

In support of its petition,[2] ASTA argues that the provision restricts the "level" of commissions carriers may pay agents. As such, the provision should be disapproved in accordance with the terms of Order 80-2-33, February 5, 1980 which disapproved all ATC and IATA agreements which restrict how carriers can compensate their agents. ASTA also argues that the Board's action, continuing approval of the ban pending

[1] DOD and ASTA specifically seek disapproval of paragraph 11 of Resolution 90.2. With the recent revisions to the ATC Sales Agency Agreement the provision now appears as section XXI.C.6 of Resolution 90.3.

[2] ASTA's petition was accompanied by a request for leave to file an otherwise unauthorized document, which we will grant.

completion of the *Marketing* case, is contrary to its policy of encouraging experimentation in the marketing of air transportation. In support of its position, ASTA cites Order 80-2-112, February 21, 1980, where the Board approved experimental group contractor fares on the condition that data revealing the success of the experimental fares be filed in Docket 36595.

The American Automobile Association (AAA) and DOD have filed answers in support of ASTA's petition. AAA expresses "surprise" at the Board's reluctance to suspend approval of an anticompetitive agreement to the extent necessary to permit carriers to experiment with compensating travel agents for sales of government travel. DOD stresses that its petition only sought a lifting of the ATC ban to the extent necessary to allow it to conduct a specific test. Moreover, DOD asserts that it will be of limited value as a party to the *Marketing* case because it cannot represent all government agencies on this issue and cannot be assumed to be acting for them at the hearing.[3] As to the Board's finding that the provision relates more to a travel agency function—promoting air transportation—than commission levels, DOD indicates that government travelers are in the same position as other nondiscretionary travelers, particularly businessmen. DOD suggests that the fact that ATC permits carriers to pay commissions on businessmen's tickets refutes the notion that agents should not be compensated for merely ticketing passengers. Finally DOD argues that ATC may be unjustly discriminating between commercial and government nondiscretionary travel purchased through travel agents.

ATC has filed an answer.[4] It asserts that granting the ASTA petition would prejudice the parties who have prepared their cases for the *Marketing* case on the assumption that the desirability of continuing the ban on commissions on government travel would be in issue.[5]

Subsequently, when the House Appropriations Committee referred to the DOD proposal in House Report 96-1317, DOD filed a supplementary answer construing the House report to be favorable to its position. The Chief Counsel for Advocacy of the U.S. Small Business Administration has filed a document in which it makes similar arguments. ATC, on the other hand, has filed a reply in which it construes the House Report to be unfavorable to the DOD experiment.[6]

We have decided to grant the ASTA petition. On reconsideration, we reverse our decision in Order 80-2-152 to consolidate into the *Competitive Marketing Investigation* the issue of whether the Board should withdraw approval and antitrust immunity for the provision of the ATC passenger sales agency agreement banning commissions for sales of government travel. We will also sever a similar IATA prohibition from the *Marketing* case. Consolidation in that proceeding has already unduly delayed resolution of the issue and is likely to foreclose a decision in the near future. Moreover, consolidation of the issue has only served to further complicate the already complex *Marketing* case. Consequently, we are severing the issue of commissions for government travel and we are directing the presiding administrative law judge in forward the pleadings, exhibits and submissions of the parties on this issue to the Board as soon as possible. Furthermore, on the basis of pleadings in Docket 35986, we have decided to direct all interested persons to show cause why the ATC and IATA agreements, insofar as they ban commissions for sale of government transportation, should not be disapproved. We will consider the exhibits and submissions that have already been presented in the *Marketing* case in conjunction with comments and objections to our tentative findings.

Order on Reconsideration

When we consolidated the DOD petition into the *Marketing* case last February, we noted that it was desirable that the issue be resolved quickly. DOD had allowed that the federal treasury would save substantial sums if its plan were allowed to go into effect. Whether, and to what extent, the public would realize savings from the plan appeared to be a type of issue well-suited for hearing procedures, especially when a broad ranging inquiry into the travel agency industry was already underway and consoldiation of the issue did not appear to require any signfiicant reorientation of the proceeding. In short, we consolidated the DOD petition into the *Marketing* case because it appeared to be a convenient forum in which the issues it raised could be quickly resolved.

Unfortunately, the proceeding has been subject to several prolonged delays.[7] Nine months have passed since we consolidated the petition and yet the hearing in the *Marketing* case will not begin until mid-January. Absent immediate action, it appears that it will be some time before the questions raised in the DOD petition will be decided. Removing the question of whether travel agents should be able to earn commissions on sales of government travel may help simplify the *Competitive Marketing Investigation*. Whether agents should be able to earn commissions on sales or government travel involves only two minor provisions of the rather extensive agency agreements at issue. They appear to present simple issues of peripheral importance in the case. The government travel issue does not affect the other agency programs issues which parties perceive to be central to the *Marketing* case. Although the ban on commissions for government travel may be a provision with limited ramifications, it has nonetheless complicated that proceeding and been a factor in keeping the case from moving forward quickly. The government travel issue does not affect the other agency program issues which parties perceive to be central to the *Marketing* case.

Consequently, we have decided to sever the government travel issue from the *Marketing* case. We direct the presiding judge to forward forthwith, for inclusion in Docket 35986, all pleadings, exhibits and submissions parties have filed on the issue of whether the provision of the ATC passenger sales agency agreement and the similar IATA provision which foreclose carriers from paying commissions for sales of government travel should continue to have Board approval and antitrust immunity under sections 412 and 414 of the Federal Aviation Act.

Order to Show Cause

We have also decided to grant DOD's original request for relief and to direct interested persons to show cause why the ATC and IATA bans on travel agent commissions for government travel should not be disapproved. On the basis of the pleadings filed in Docket 35986,

[3] According to DOD, the General Services Administration is responsible for the purchase of air transportation by federal executive agencies other than DOD.

[4] Its filing was accompanied by a motion to file an otherwise unauthorized document, which we will grant.

[5] ATC has also raised technical objections to the ASTA petition. ATC argues that the petition was filed out of time, without sufficient justification. We disagree. ASTA has shown good cause for the delay in filing its petition. It states it interpreted the order to grant final relief, for which our procedures afford 20 days for petitions for reconsideration, not interlocutory relief, for which our procedures allow 10 days for petitions for reconsideration. *See* 14 CFR § 392.37. We believe their interpretation was reasonable and will consider the petition.

[6] All three filings were accompanied by motions for leave to file unauthorized documents, which we will grant. The pertinent portion of the report is attached as appendix A.

[7] The resignation of the presiding administrative law judge and the illness of ATC's chief policy witness are just two examples.

we find there is a significant showing that those provisions should be disapproved.[8] Section 412(c)(2) of the Federal Aviation Act, as amended, provides that we must disapprove any

Furthermore, the provision may be inimical to the public interest. DOD has alleged that its plan will save taxpayers substantial sums. It indicates that an unusually small portion of government

ATC Resolution 90.2; (2) disapprove Agreement CAB 28217 to the extent it established section XXI.C.6 of ATC Resolution 90.3; (3) disapprove Agreement CAB 28045-R3 to the extent

service to DOD travelers at 141 locations at little or no cost to the Department of Defense. The remaining 25 SATO locations will receive electronic travel service equipment in the near future, again with little or no cost to DOD. Not only do the SATO's provide "one-

allows substantially reciprocal customs and tax exemptions to aircraft of U.S. registry in connection with international commercial operations to those exemptions granted to aircraft of foreign

Preclearance Requests

SUMMARY: This notice is to advise the public which companies have applied for preclearance, under the preclearance procedures, in addition to those

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we find there is a significant showing that those provisions should be disapproved.[8] Section 412(c)(2) of the Federal Aviation Act, as amended, provides that we must disapprove any agreement which substantially reduces or eliminates competition unless we find that the agreement is necessary to meet a serious transportation need or to secure important public benefits and we find that such need can be met or such benefits can be secured by reasonably available alternative means having materially less anticompetitive effects.

We have tentatively concluded that the agreements substantially reduce competition by precluding travel agents from competing with the airlines and one another for government travel dollars. The agreements appear to perpetuate the present system of carrier run ticket offices, which usually serve the government's air travel needs, and limit the government's opportunities to obtain air travel services.

We also tentatively conclude that the provisions are not justified by a serious transportation need or to meet a public purpose which could not be achieved by reasonably available less anticompetitive means. In the past, proponents of the ban on commissions for government travel justified the constraint on the grounds that travel agents had a limited role in the marketing of air transportation. They perceived the primary function of travel agents to be to promote, rather than merely sell, air travel services—particularly to nondiscretionary travelers. Air carriers and the public were seen to benefit so long as travel agents served in this limited role, but not when they merely performed functions air carriers could provide. However, such arguments may no longer be valid in view of the increasing numbers of nondiscretionary travelers travel agents now serve. While the notion of a special role for travel agents may have some validity in the context of other agency agreements, we conclude it does not, by itself, justify continuing the ban on travel agent commissions on government travel.

[8] Specifically, we have tentatively decided to disapprove Agreements CAB 27001, to the extent it established the ban on government commissions set out in paragraph 11 of ATC Resolution 90.2. We are also proposing to reverse our decision in Order 80–9–161 to grant interim approval and immunity to the ATC ban on travel agent commissions on government travel in ATC's revised sales agency agreement, which we then approved subject to conditions. By this order we propose to disapprove Agreement CAB 28217 to the extent it established section XXI.C.6 of the ATC Resolution 90.3. Finally, we propose to disapprove Agreement CAB 28045–R3 to the extent it establishes section (G)(7)(a) of IATA Resolution 810.

Furthermore, the provision may be inimical to the public interest. DOD has alleged that its plan will save taxpayers substantial sums. It indicates that an unusually small portion of government travelers move on discount fares. It believes that if it is permitted to enter into an agreement with a travel agent to provide an unbiased computerized reservation service, the proportion of government travelers moving on discount fares will increase and the federal treasury will be saved substantial sums.[9]

Interested persons will be given 30 days following service of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to support their objections, if any, with detailed answers specifically setting forth the findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of fact or law and should be supported by legal precedent or detailed economic analysis. We intend to consider all the materials certified to us and parties are encouraged to cite evidence submitted in Docket 36595 and certified to the Board in accordance with this order. General, vague or unsupported objectives will not be entertained. Replies will be filed with the Board within 14 days of the date on which objections are due.

Accordingly: 1. We grant ASTA's petition for reconsideration of Order 80–2–152, February 28, 1980;

2. On reconsideration of that order we reverse our decision to consolidate Docket 35986 into the *Investigation Into the Competitive Marketing of Air Transportation*, Docket 36595;

3. We are severing the issue of whether the provisions of the ATC and IATA agency agreements proscribing travel agency commissions on government travel should be disapproved and antitrust immunity withdrawn and we are directing the presiding administrative law judge in the *Competitive Marketing Investigation* to forward the pleadings, exhibits and other submissions of the parties on this issue to Docket 35986 forthwith;

4. We grant all motions for leave to file unauthorized documents;

5. ATC, IATA and other interested persons are directed to show cause why the Board should not: (1) disapprove Agreement CAB 27001, to the extent it established the ban on government commissions set out in paragraph 11 of ATC Resolution 90.2; (2) disapprove Agreement CAB 28217 to the extent it established section XXI.C.6 of ATC Resolution 90.3; (3) disapprove Agreement CAB 28045–R3 to the extent it establishes section (G)(7)(a) of IATA Resolution 810; and (4) otherwise make final the tentative findings and conclusions set forth here;

6. Any interested person having objections to the issuance of an order making final these tentative findings and conclusions shall within 30 days after the date of service of this order, file with the Board in Docket 35986 and serve on the parties named in paragraph 11, a statement of objections specifying the tentative findings or conclusions objected to and providing statistical data and/or other evidence to support the statement of objections;

7. Replies to objections shall be filed with the Board within 14 days of the date on which objections are due and served upon the persons named in paragraph 11;

8. Notwithstanding paragraphs 6 and 7, individuals may submit their views by filing a single copy with the Board;

9. If timely and properly supported objections are filed, full consideration will be accorded the matter or issues raised before futher action is taken by the Board;

10. If no objections are filed to this order, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with its tentative findings and conclusions;

11. This order will be served on all parties to the *Competitive Marketing Investigation*, Docket 36595; and

12. This order shall be published in the **Federal Register.**

All Members concurred.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

Appendix A—Official Travel and the Use of Scheduled Airlines Traffic (Ticket) Offices (SATO's)

In Report No. 96–450 on the fiscal year 1980 Defense Appropriations this committee directed DOD to suspend the procurement or leasing of all automated equipment and travel agency services pending the submission of a complete report to this Committee on the subject of travel services. This report has been received and thoroughly reviewed along with other data relating to how the Department of Defense can most efficiently, effectively and economically satisfy its passenger transportation requirements. (See part 6 of the Hearings, pages 516–552).

The Scheduled Airlines Traffic or Ticket Office (SATO) Program presently provides the latest state-of-the-art electronic travel service to DOD travelers at 141 locations at little or no cost to the Department of Defense. The remaining 25 SATO locations will receive electronic travel service equipment in the near future, again with little or no cost to DOD. Not only do the SATO's provide "one-call" electronic travel services, but they are expanding upon these services to include management information reports in order to facilitate an improved traffic management function within the DOD. This management information system is being implemented at minimal costs to the Department, compared to the appropriated funds which would be expended to effect DOD plans for a Standard Travel Advance Reservation System (STARS) and the procurement of in-house DOD electronic reservation and ticketing equipment. There is little or no data available to support the DOD contention that significant savings in travel expenses will result from operating its own ADP equipment and/or relying on travel agents to handle tickets and accommodations. The DOD reports that it will provide the Committee cost information when it is provided to the Civil Aeronautics Board.

"As a result of the present and expanded service being provided through the SATO's, the Committee does not believe that the Department of Defense should duplicate these existing services, but continue to work with the scheduled airline industry to further improve the SATO system and to insure that the lowest possible fare is obtained.

"The Committee does, however, recommend that DOD purchase teleticketing machines for those installations which do not have SATO's and where the DOD can certify that such purchase will result in net savings. The Committee also agrees that a test using travel agents (Commercial Ticket Office, CTO) to process government travel request should be conducted if CAB can be persuaded to overturn an air traffic conference resolution prohibiting the payment of a commission to travel agents handling official government travel. Also, approval of the GAO is required since it has in force a special prohibition on the use of travel agents to manage official travel. After these approvals have been obtained the test plan should be submitted to the Committee for study prior to implementation."

[FR Doc. 80–40656 Filed 12–30–80; 8:45 am]

BILLING CODE 6320–01–M

[9] DOD places the savings at $28.5 million. As such, elimination of the provision may result in greater use of discount fares by DOD or other government travelers.

DEPARTMENT OF COMMERCE

International Trade Administration

Exemption of Foreign Air Carriers From Customs Duties and Taxes; Request for Finding of Reciprocity (Kuwait)

Notice is hereby given that the Department of Commerce is undertaking to determine whether, pursuant to sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), and section 4221 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 4221), the Government of Kuwait allows substantially reciprocal customs and tax exemptions to aircraft of U.S. registry in connection with international commercial operations to those exemptions granted to aircraft of foreign registry under the aforementioned statutes. The basis of this undertaking is a request by Kuwait Airways for a finding of such reciprocity.

The above-cited statutes provide exemptions for aircraft of foreign registry from payment of import duties and certain internal revenue taxes on the import or purchase of supplies in the United States for such aircraft in connection with their international commercial operations. "Supplies" as used in this context indicates a wide range of articles used by aircraft in international operations, including fuel and lubricants, spare parts, consumable supplies, and ground handling and support equipment. These exemptions apply upon a finding by the Secretary of Commerce, or his designee, and communicated to the Department of the Treasury, that such country allows, or will allow, "substantially reciprocal privileges" to aircraft of U.S. registry with respect to imports or purchases of such supplies in that country.

Interested parties are invited to submit their views and comments in writing concerning this matter to Mr. Abraham Katz, Assistant Secretary for International Economic Policy, Room 3830B, U.S. Department of Commerce, Washington, D.C. 20230. All submissions should be made in five copies and should be received no later than thirty days from the date of this notice.

Copies of all written comments received will be available for public inspection between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, in the Freedom of Information Records Inspection Facility, International Trade Administration, Room 3102, Department of Commerce, Washington, D.C.

It is suggested that those desiring additional information contact Mr. C. William Johnson, International Services Division, Office of International Finance, Investment and Services, Room 2204, Washington, D.C. 20230, or call area code 202–377–5012.

Abraham Katz,

Assistant Secretary for International Economic Policy.

[FR Doc. 80–40575 Filed 12–30–80; 8:45 am]

BILLING CODE 3510–25–M

Steel Trigger Price Mechanism

AGENCY: U.S. Department of Commerce, International Trade Administration.

Preclearance Requests

SUMMARY: This notice is to advise the public which companies have applied for preclearance, under the preclearance procedures, in addition to those published on November 24 in the Federal Register (45 FR 77500).

FOR FURTHER INFORMATION CONTACT: F. Lynn Holec, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202) 377–3793.

The Department of Commerce uses trigger prices to monitor imports of steel mill products into the U.S. Sales below trigger price indicate possible sales of the subject merchandise at less than fair value within the meaning of Title VII, Tariff Act of 1930, as amended. In those instances, where imports appear to be priced at less than fair value, the Secretary of Commerce may exercise his authority to self-initiate antidumping investigations.

The Department of Commerce recognizes, however, that there may be certain manufacturers/exporters that can produce and/or export steel to the U.S. at prices below the TPM which are not at less than fair value. Where this is the case, the foreign producer/exporter can avoid the risk of a TPM initiated antidumping investigation by requesting preclearance and cooperating with the Department's preclearance review of the producer's/exporter's production costs and pricing practices.

A number preclearance requests have already been filed and were published on November 24 in the **Federal Register** (45 FR 77501). A list of those companies which have subsequently requested preclearance follows in Table I.

Any additional requests for preclearance should be filed with the U.S. Department of Commerce, International Trade Administration, Import Administration, Office of Compliance, Room 1001, Washington, D.C. 20230. The request may cover any of the categories in the trigger price manual published by the U.S. Department of Commerce for the fourth quarter of 1980. Notice of and opportunity to comment on a preclearance request will be published in the Federal Register.

Dated: December 24, 1980.

John Greenwald,

Deputy Assistant Secretary for Import Administration.

Company and Products

Central Wire Industries, Ltd.—Stainless Steel Wire.

Interprovincial Steel and Pipe Corporation Ltd.—Sheets, Plates, Pipe and Tube.

Jensen Steel Limited—Bars, Sheets, Structurals, Plates, Pipe and Tube.

Mutual Steel Corporation—Structurals, Bars, Pipe and Tubing, Plates, Sheets.

Niagarasteel Service Centre—Structurals, Plates, Rail and Track Accessories, Bars.

Dated: December 22, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80–40652 Filed 12–30–80; 8:45 am]

activities authorized under Sections A–2 and A–3 until December 31, 1983.

This modification is effective on December 22, 1980.

The permit as modified, and

Defense Science Board Task Force on the M-X Environmental Impact Statement; Advisory Committee Meeting

The Defense Science Board Task Force on the Environmental Impact

ADDRESS: University of California-Berkeley, Berkeley, California.

FOR FURTHER INFORMATION CONTACT: Arturo Madrid, Director, Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, S.W.,

On August 20, 1980, the Assistant Secretary for Management redelegated that authority to various Departmental officers.

The purpose of this notice is to inform the public of the redelegation.

Jensen Steel Limited—Bars, Sheets, Structurals, Plates, Pipe and Tube.
Mutual Steel Corporation—Structurals, Bars, Pipe and Tubing, Plates, Sheets.
Niagarasteel Service Centre—Structurals, Plates, Rail and Track Accessories, Bars, Pipe and Tubing, Sheets.
Vallance Brown & Co. Limited—Bars, Structurals, Plates, Sheets.
Prudential Steel Ltd.
Russelsteel—Bars, Structurals, Sheets, Plates, Tubes, Pipe, Wire.
Union Draw Steel Co., Ltd.—Bars.
Bridge & Tank—Structural Shapes, Plates, Bars, Sheets.
Acier Casteel Inc.—Plate, Structurals, Bars, Pipe.
Casteel Inc.—Plate, Structurals, Bars, Pipe.
Titan Steel & Wire Co., Ltd.—Nails, Wire.

[FR Doc. 80-40568 Filed 12-30-80; 8:45 am]
BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Marine Mammals; Modification to Permit No. 217; Dr. Bruce R. Mate, Oregon State University

On November 18, 1980, Notice was published in the **Federal Register** (45 FR 76216) that a request for modification of Permit No. 217 had been received by the National Marine Fisheries Service from Dr. Bruce Mate, Oregon State University.

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) the Scientific Research Permit No. 217 issued to Dr. Bruce R. Mate, Marine Science Center, School of Oceanography, Oregon State University, Newport, Oregon 97365 on December 27, 1977 (43 FR 30) and as modified on February 7, 1978 (45 FR 5035) and on September 21, 1979 (45 FR 54748), is further modified as follows:

A new section A–3 is added as follows:

"3. The Holder is authorized to conduct experiments involving the acoustical harassment of harbor seals as described in supplemental documents to the application."

This modification became effective on December 22, 1980.

The modification and related documents are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue North, Seattle, Washington 98109.

Dated: December 22, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80-40652 Filed 12-30-80; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals; Modification of Permit No. 288; Craig N. McLean and Steven R. Morello.

Notice is hereby given that pursuant to the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) the Scientific Research Permit No. 288 issued to Craig N. McLean, 352 Riverside Avenue, Rutherford, New Jersey 07070, and Steven R. Morello, 182 Michigan Avenue, Paterson, New Jersey 07503 on July 24, 1980 (45 FR 50621), is modified as follows:

Section B–5 is deleted and replaced by the following new Section:

5. This Permit is valid with respect to the taking authorized herein until December 31, 1981.

This modification became effective on December 22, 1980.

The Permit as modified and documentation pertaining to the modification is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: December 22, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80-40690 Filed 12-30-80; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals; Modification of Permit No. 208; Ocean Research and Education Society, Inc.

Notice is herey given that pursuant to the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) the Scientific Research Permit No. 208 issued to the ocean Research and Education Society, Inc., 64 Commercial Wharf, Boston, Massachusetts on December 23, 1977, is modified a follows:

1. Section B–8 is deleted and replaced by;

8. This Permit is valid with respect to the activities authorized under Sections A–2 and A–3 until December 31, 1983.

This modification is effective on December 22, 1980.

The permit as modified, and documentation pertaining to the modification is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Regional director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731;

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue, North, Seattle, Washington 98109;

Regional Director, National Marine Fisheries Service, Northeast Region, 14 ELm Street, Federal Building, Gloucester, Massachusetts 01930; and

Regional director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: December 22, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80-40691 Filed 12-30-80; 8:45 am]
BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Water in Southwest Asia; Change in Meeting Date

The Defense Science Board Task Force on Water in Southwest Asia meeting scheduled for 14–15 January 1981 at the Pentagon, Arlington, Virginia, as published in the Federal Register (Vol. 45, No. 246, dated Friday, December 19, 1980, FR Doc. 80–39433) has been changed to 21–22 January 1981. In all other respects, the original notice cited above remains the same.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 23, 1980.

[FR Doc. 80-40606 Filed 12-30-80; 8:45 am]
BILLING CODE 3810-70-M

Defense Science Board Task Force on the M-X Environmental Impact Statement; Advisory Committee Meeting

The Defense Science Board Task Force on the Environmental Impact Statement for the M–X Program will meet in closed session on January 14–15, 1980 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on Scientific and Technical matters as they affect the perceived needs of the Department of Defense.

At its meeting on January 14–15, 1981 the Defense Science Board Task Force on the EIS for the MX Program will review the basic design and operation of the entire MX system, the threat to which the system is designed to respond, how the system fits into our overall defense posture, and other relevant introductory material necessary for the Task Force review of the EIS. A substantial part of this information to be presented on design, operation, threat, and defense posture is classified.

In accordance with 5 U.S.C. App. 1 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 22, 1980.

[FR Doc. 80-40605 Filed 12-30-80; 8:45 am]
BILLING CODE 3810-70-M

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: Fund for the Improvement of Postsecondary Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the Board of Advisors to the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463, Sec. 10(a)(2)).

DATES: January 14, 1980, 5:00 p.m. to 9:00 p.m.; January 15, 1980, 9:00 a.m. to 5:00 p.m.

ADDRESS: University of California-Berkeley, Berkeley, California.

FOR FURTHER INFORMATION CONTACT: Arturo Madrid, Director, Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202 (202–245–8091).

SUPPLEMENTARY INFORMATION: The Board of Advisors to the Fund for the Improvement of Postsecondary Education was established under Section 404 of the General Education Provisions Act. The Board of Advisors to the Fund was established to:

Recommend to the Director of the Fund, the Assistant Secretary for Educational Research and Improvement, and the Secretary priorities for funding and the approval or disapproval of grants and contracts of a given kind or over a designated amount.

The meeting of the Board shall be open to the public.

The Proposed Agenda Includes: Advising on significant issues and policies in postsecondary education. Specifically:

—How large institutions can provide quality services for postsecondary learners.
—Relationship of federal and state support.
—How the Fund can work with the entire postsecondary system of a state.

Records shall be kept of all Board proceedings, and shall be available for public inspection at the Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, SW, Room 3123, Washington, D.C. 20202, between the hours of 8:00–4:30 weekdays, except Federal Holidays.

Dated: December 23, 1980.

F. James Rutherford,

Assistant Secretary, Educational Research and Improvement.

[FR Doc. 80-40624 Filed 12-30-80; 8:45 am]
BILLING CODE 4000-01-M

Office of the Assistant Secretary for Management

Authority Delegation; Certify True Copies of Department of Education Records

AGENCY: Department of Education.

ACTION: Notice of redelegation of authority to certify true copies of Department of Education records.

SUMMARY: On May 30, 1980, the Secretary of Education delegated to the Assistant Secretary for Management the authority to certify true copies of Department of Education records and to cause the Departmental Seal to be affixed to those records.

On August 20, 1980, the Assistant Secretary for Management redelegated that authority to various Departmental officers.

The purpose of this notice is to inform the public of the redelegation.

FOR FURTHER INFORMATION CONTACT: Thomas Stack, Director, Division of Organization Development/Delegation Control Officer, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4525 Switzer Building), Washington, D.C. 20202. Telephone: (202) 426–7250.

Notice of Redelegation of Authority To Certify True Copies of Department of Education Records and To Affix the Department Seal

By the authority the Secretary of Education vested in me on May 30, 1980, I have redelegated to the officers listed below the following authority—

(a) To certify true copies of any books, records, papers, other documents on file in the Department, or of extracts from these documents;

(b) To certify that true copies are copies of the entire file;

(c) To certify the complete, original record of a Department file;

(d) To certify that Department files do not contain particular records; and

(e) To cause the Seal of the Department to be affixed to these certifications.

To whom delegated	Area of authority
General Counsel	Department.
Inspector General	Department.
Executive Secretary	Offices of the Deputy Under Secretaries. Office of Public Affairs. Office of Legislation. Office of Planning and Budget. Office of Non-Public Education.
Controller	Office of Management.
Deputy Assistant Secretary for Evaluation and Program Management.	Office of Management.
Deputy Assistant Secretary for Human Resources.	Office of Management.
Assistant Secretary for Civil Rights.	Office of Civil Rights.
Assistant Secretary for Elementary and Secondary Education.	Office of Elementary and Secondary Education.
Assistant Secretary for Postsecondary Education.	Office of Postsecondary Education.
Assistant Secretary for Vocational and Adult Education.	Office of Vocational and Adult Education.
Assistant Secretary for Special Education and Rehabilitative Services.	Office of Special Education and Rehabilitative Services.
Assistant Secretary for Educational Research and Improvement.	Office of Educational Research and Improvement.
Director of Bilingual Education and Minority Languages Affairs.	Office of the Director of Bilingual Education and Minority Languages Affairs.
Administrator of Education for Overseas Dependents.	Office of Education for Overseas Dependents.

This authority may be redelegated.

Dated: December 17, 1980.

John Gabusi,

Assistant Secretary for Management.

[FR Doc. 80-40520 Filed 12-30-80; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

Energy Conservation Program for Consumer Products; Petition for Waiver of Consumer Product Test Procedures From Hydro-Pulse Boilers (Case No. D–001)

Petitioner has sold approximately 3200 such boilers and presently has approximately 2400 in inventory.

3. *Previous Application For Exception.*

On January 25, 1979, following the grant of a stay by the Department of Energy ("DOE") accurately measured energy efficiency of the Hydro-Pulse boiler using the method described below is approximately 91 percent. Based on its marketing experience thus far, Petitioner believes that this differential will be crucial to its ability successfully to

Dated: December 17, 1980.

John Gabusi,

Assistant Secretary for Management.

[FR Doc. 80-40520 Filed 12-30-80; 8:45 am]

BILLING CODE 4000-01-M

Office of Secretary

Authority Delegations; Certify True Copies of Department of Education Records

AGENCY: Department of Education.

ACTION: Notice of delegation of authority to certify true copies of Department of Education records.

SUMMARY: On May 30, 1980, the Secretary delegated to the Assistant Secretary for Management the authority to certify true copies of Department of Education records and to cause the Departmental Seal to the affixed to those records.

The purpose of this notice is to inform the public of that delegation.

FOR FURTHER INFORMATION: Thomas Stack, Director, Division of Organization Development/Delegation Control Officer, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4525 Switzer Building) Washington, D.C. 20202. Telephone (202) 426-7250.

Notice of Delegation of Authority To Certify True Copies of Department of Education Records and To Affix the Departmental Seal

By the authority vested in me under Pub. L. 96-88 I have delegated to the Assistant Secretary for Management the authority—

(a) To certify true copies of any books, records, papers, other documents on file in the Department, or of extracts from such documents;

(b) To certify true copies are copies of the entire file;

(c) To certify the complete, original record of a Department file;

(d) To certify that Department files do no contain particular records; and

(e) To cause the Seal of the Department to be affixed to these certifications.

The Assistant Secretary for Management may redelegate this authority.

Dated: December 23, 1980.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 80-40519 Filed 12-30-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

Energy Conservation Program for Consumer Products; Petition for Waiver of Consumer Product Test Procedures From Hydro Therm, Inc. (Case No. F-002)

AGENCY: Department of Energy.

SUMMARY: The energy conservation program for consumer products, other than automobiles, was established pursuant to the Energy Policy Conservation Act. The Department of Energy (DOE) has amended the Department's regulations for the energy conservation program for consumer products by allowing the Assistant Secretary for Conservation and Solar Energy temporarily to waive test procedure requirements for a particular covered product (45 FR 64108, Sept. 26, 1980). Waivers may be granted when characteristics of the product prevent use of the prescribed test procedures or lead to results that provide materially inaccurate comparative data. Pursuant to paragraph (b) of § 430.27 of the Code of Federal Regulations, DOE is required to publish in the Federal Register all received Petitions for Waiver and supporting documents from which confidential information has been deleted in accordance with 10 CFR 1004.11. Also, DOE is required to solicit comments data and information with respect to the determination of the petition.

DATES: DOE will accept comments, data, and information no later than January 30, 1981.

ADDRESS: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Solar Energy, Case No. D-001, Mail Stop GH-068, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: James A. Smith, U.S. Department of Energy Office of Conservation and Solar Energy, Room GH-065, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 252-9127. Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Room 6B-128, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 252-9526.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1980, Hydro Therm, Inc. filed a Petition for Waiver from the DOE test procedures for consumer products. Specifically, the petitioner believes that the use of the existing furnace test procedure will lead to results that provide materially inaccurate comparative data when these test procedures are applied to a particular design of furnace manufactured by Hydro Therm, Inc.

In consideration of the foregoing and in accordance with the provisions of § 430.27(b) of Chapter II of Title 10, Code of Federal Regulations, DOE is hereby publishing the "Petition for Waiver" in the Federal Register in its entirety. The petition contains no confidential information. DOE is hereby soliciting comments, data and information respecting the determination of the petition.

The actual petition for waiver from Hydro Therm, Inc. was inadvertently ommitted from the Federal Register publication of December 17, 1980 (45 FR 82988). This notice corrects this error by including the Hydro Therm petition for waiver in today's publication.

Issued in Washington, D.C., December 22, 1980.

Maxine Savitz,

Deputy Assistant Secretary for Conservation and Solar Energy.

November 21, 1980.

Re: Petition for Waiver, *10 CFR 430.27.*

Gentlemen: 1. *Petition For Waiver.*

This is a petition for a waiver from the test procedure specified in Appendix N to Subpart B contained in 10 CFR Part 430, as amended on August 12, 1980, as it applies to a pulse combustion boiler produced and sold by Hydrotherm, Inc. ("Petitioner"). Appendix N to Subpart B specifies the test procedures which manufacturers of furnaces are required to utilize in determining the relative energy efficiency of each furnace which they produce. Section 430.24(n) of Subpart B prohibits a furnace manufacturer from making any representation with respect to the energy efficiency of its products unless such representation is based on the results obtained from the testing procedures specified in Appendix N to Subpart B.

2. *General Description Of Petitioner's Business.*

Since 1953, Petitioner has manufactured conventional, cast iron boilers and hydronic baseboards for sale to residential, commercial and industrial markets through sales representatives, plumbing wholesalers and installers. In July 1979, following a product development program begun in 1977, Petitioner began the production and marketing, under the trademark Hydro-Pulse™, of a new boiler which operates on the pulse combustion principle. In tests conducted by Petitioner, the Hydro-Pulse boiler consistently achieved an energy efficiency of more than 91 percent. This has been confirmed in tests conducted by the American Gas Association Laboratories ("AGA"). Petitioner's Hydro-Pulse boiler was the first and remains the only pulse combustion boiler on the market. To date, Petitioner has sold approximately 3200 such boilers and presently has approximately 2400 in inventory.

3. *Previous Application For Exception.*

On January 25, 1979, following the grant of a stay by the Department of Energy ("DOE") on January 3, 1979, Petitioner filed an Application for Exception with the Office of Hearings and Appeals from the provisions of 10 CFR Part 430 as it applied to the Hydro-Pulse boiler. The basis for the Application for Exception was that the test procedures provided for in Part 430 were designed to apply to conventional boilers and, because of certain features in the design of a pulse combustion boiler, did not provide an accurate measure of energy efficiency when applied to a pulse combustion boiler and that unless an exception were granted Petitioner would experience gross inequity and serious hardship. The exception was granted on February 12, 1979, to remain in effect until new test procedures applicable to pulse combustion boilers were issued by DOE. Such new test procedures were issued by DOE on August 12, 1980, effective September 11, 1980.

4. *DOE Test Does Not Adequately Measure Condensate.*

At the time of receipt of the proposed new test procedures early in 1980, Hydrotherm did not have available appropriate test facilities to conduct such new test. Subsequently, when it was able to conduct such test, it became evident that the new DOE test procedure did not accurately measure the significant increment of efficiency which is achieved by a Hydro-Pulse boiler in the extraction of latent heat by the condensation of water vapor contained in flue gases. The DOE test infers condensate from an average flue temperature. The DOE test as appplied to a Hydro-Pulse boiler either understates the amount of condensate or indicates that there is no condensate when, in fact, a significant amount of condensate has been collected. The magnitude of the discrepancy is between 1 and 2 percentage points in relative efficiency. Petitioner then requested the AGA to conduct the DOE test on three Hydro-Pulse boilers. The results of the AGA tests confirmed the existence and magnitude of the discrepancy and were received by Petitioner on or about August 27, 1980.

5. *DOE Test Is Unfair To Petitioner.*

The introduction of the Hydro-Pulse boiler represents a State of the art effort by Petitioner to develop and produce significantly more energy efficient boilers and to educate and persuade consumers of the benefits and desirability of purchasing such boilers in preference to comparably rated convential and less expensive ones. When making this purchasing decision, the overriding consideration is energy efficiency. and this, virtually alone, will determine if a consumer is willing to pay more to purchase this novel type of boiler. In this context it would be difficult to exaggerate the importance to Petitioner of being able to accurately represent the full energy efficiency value of the Hydro-Pulse boiler. The present DOE test as conducted by Petitioner and independently by the AGA indicates an energy efficiency for the Hydro-Pulse boiler of approximately 89 percent. The more accurately measured energy efficiency of the Hydro-Pulse boiler using the method described below is approximately 91 percent. Based on its marketing experience thus far, Petitioner believes that this differential will be crucial to its ability successfully to continue marketing the Hydro-Pulse boiler. If Petitioner is denied the opportunity to accurately represent the full energy efficiency value of the Hydro-Pulse boiler, it will suffer a gross inequity and a serious hardship, in that it will be placed at a severe and unwarranted competitive disadvantage and its ability to recover its substantial development costs will be irreparably impaired.

6. *Proposed Use Of Alternative Method.*

At a meeting held at the National Bureau of Standards ("NBS") on October 30, 1980, attended by representatives of DOE, NBS, AGA and Petitioner, the problem described herein was discussed. Based on that discussion, it was agreed the AGA would prepare and submit to NBS data supporting a method for meauring condensate produced by pulse combustion boilers. Such data were submitted by AGA with a letter to NBS dated November 11, 1980. Petitioner believes that the method described in the AGA submission provides a more accurate measurement of the condensate which occurs in a pulse combustion boiler and which results in a significant increment in energy efficiency. Petitioner, therefore, respectfully requests that it be granted a waiver from the requirement that it comply with the test procedures specified in 10 CFR Part 430, and that in lieu thereof it be permitted to use the method described in the AGA submission to NBS. Specifically, the Petitioner proposes to follow the present DOE procedure for condensing boilers using heat up and cool down tests and to calculate the efficiency assuming no condensate (CI+1.0). The test would be continued through three standard cycles of 9.5 minutes on and 33 minutes off per cycle and the condensate collected and weighed. The amount of condensate collected would be converted into the amount of heat released and this would be expressed as a percentage of the input and added to the efficiency as calculated from the flue loss on a non-condensing dry basis.

7. *Public Policy.*

Petitioner believes that the nation's energy conservation policy will be best served by the granting of this waiver, since the use of the proposed method will effectively encourage a greater number of potential customers to purchase more energy efficient boilers and will better enable the manufacturer to recover the substantial costs of development.

If any additional information is needed, please contact Mr. A. B. Chadwick at 201-768-5500 or the undersigned.

Respectfully submitted,

Hydrotherm, Inc.

Thomas L. Flattery,

Vice President.

[FR Doc. 80-40694 Filed 12-30-80; 8:45 am]

BILLING CODE 6450-01-M

Energy Conservation Program for Consumer Products; Petition for Waiver of Consumer Product Test Procedures From Norris Industries (Case No. D-001)

AGENCY: Department of Energy.

SUMMARY: The energy conservation program for consumer products, other than automobiles, was established pursuant to the Energy Policy Conservation Act. The Department of Energy (DOE) has amended the Department's regulations for the energy conservation program for consumer products by allowing the Assistant Secretary for Conservation and Solar Energy temporarily to waive test procedure requirements for a particular covered product (45 FR 64108, Sept. 26, 1980). Waivers may be granted when characteristics of the product prevent use of the prescribed test procedures or lead to results that provide materially inaccurate comparative data. Pursuant to paragraph (b) of § 430.27 of the Code of Federal Regulations, DOE is required to publish in the Federal Register all received Petitions for Waiver and supporting documents from which confidential information, as determined by DOE, has been deleted in accordance with and 10 CFR 1004.11. Also, DOE is required to solicit comments, data and information with respect to the determination of the petition.

DATES: DOE will accept comments, data, and information no later than January 30, 1981.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Solar Energy, Case No. D-001, Mail Stop GH-068, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: James A. Smith, U.S. Department of Energy Office of Conservation and Solar Energy, Room GH-065, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 252-9127. Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Room 6B-128, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9526.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1980, Norris Industries filed a Petition for Waiver from the DOE test procedures for consumer products. Specifically, the petitioner believes that the use of the existing dishwasher test procedure will lead to results that provide materially

inaccurate comparative data when these test procedures are applied to a particular design of dishwasher manufactured by Norris Industries. Also on the same date, Norris Industries filed a "request for confidential treatment of

implemented by the DOE in 10 CFR Part 430 and the Federal Trade Commission in 16 CFR Part 305, provides for, among other things, a comprehensive plan for testing home dishwashers for energy consumption and using the test results as the basis for

design characteristics.—The KitchenAid Division of the Hobart Corporation manufactures a dishwasher with somewhat similar characteristics in that they claim it can operate with an inlet water temperature of 120°F.

8. *Alternate test procedures that will*

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 18, 1980, of an application of the Brooklyn Union Gas Company (Brooklyn Union) for authorization to

The volumes of Canadian natural gas equivalent in heating value to the LNG exchange will be delivered by TransCanada Pipelines Limited (TransCanada) for the account of Gaz Metro to Tennessee Gas Pipeline

issued December 19, 1980 is appended to this notice.

Issued in Washington, D.C. on December 23, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory

V 45 DE 31 80 UMI

inaccurate comparative data when these test procedures are applied to a particular design of dishwasher manufactured by Norris Industries. Also on the same date, Norris Industries filed a "request for confidential treatment of information contained in the petition for waiver." The petitioner believes the request for confidential treatment is justified in accordance with the applicable provisions of 10 CFR 1004.11.

In consideration of the foregoing and in accordance with the provisions of § 430.27(b) of Chapter II of Title 10, Code of Federal Regulations, DOE is hereby publishing the "Petition for Waiver" in the Federal Register with the information deleted which DOE has determined to be confidential in accordance with 10 CFR 1004.11. DOE is hereby soliciting comments, data, and information respecting the determination of the petition.

The actual petition for waiver from Norris Industries was inadvertently omitted from the Federal Register publication of December 17, 1980 (45 FR 82988). This notice corrects this error by including the Norris Industries petition for waiver in today's publication.

Issued in Washington, D.C., December 22, 1980.

Maxine Savitz,

Deputy Assistant Secretary for Conservation and Solar Energy.

[The original of this document contains information which is arguably confidential under 18 U.S.C. 1905. Such material has been deleted from this copy and replaced with XXXXX's.]

United States Department of Energy

In Re Norris Industries, Inc.; Petition for Waiver

Norris Industries, Inc. ("Norris"), pursuant to 10 CFR 430.27, requests the Department of Energy ("DOE") to grant a waiver to the method as provided for in 10 CFR 430, Subpart B, Appendix C, for measuring the energy consumption of home dishwashers.

1. *The particular basic model for which a waiver is requested.* Home dishwashers manufactured by the Petitioner designated as "LER Series."

2. *The design characteristics constituting the grounds for this Petition.*—The LER Series dishwashers use a unique steam generator to provide efficient heating of the water and the dish load. XXXXX Applications are pending before the U.S. Patent Office for patents on the novel features of the LER Series dishwasher.

3. *Specific requirements sought to be waived.*—In 10 CFR 430, Subpart B, Appendix C, that part of Section 2.6 requiring the test to be conducted without a test load, and Section 4.1, in respect to "T", the nominal water heater temperature rise of 90°F.

4. *The need for the requested waiver.*—That part of the Energy Policy and Conservation Act at 42 USC 6291 *et seq.*, as implemented by the DOE in 10 CFR Part 430 and the Federal Trade Commission in 16 CFR Part 305, provides for, among other things, a comprehensive plan for testing home dishwashers for energy consumption and using the test results as the basis for disclosing a calculated energy consumption and annual energy costs on labels attached to the dishwashers at point of sale. The ultimate purpose of this program is to conserve energy by disclosing to consumers through the "Energyguide" label the calculated energy consumption and the annual cost of energy to operate a particular dishwasher relative to other makes and/or models. The current test procedure for dishwashers as set forth in 10 CFR Part 430, Subpart B, Appendix C, by its very nature assumes the traditional model of machine which requires for its efficient operation inlet water at a temperature of 140°F. The test procedure as currently promulgated does not take into account a type of home dishwasher as the Petitioner's LER Series. By reason of the LER Series novel design features, it will save energy over the Petitioner's current models of home dishwashers. However, the present test procedure for home dishwashers does not account for the unique features of the Petitioner's LER Series in the collection of data for the purpose of preparing the "Energyguide" label. This limitation can be eliminated by incorporating in the test procedure in place of the specified 90°F the calculation of inlet water temperature rise. The present 90°F value was determined by the National Bureau of Standards ("NBS"), using that calculation at a time when no available dishwasher could operate with less than 140°F inlet water and water heaters were set at 145°F (FR 42 No. 55 p. 15425). In addition, to validly represent the energy consumed during heating, a dish load is required. This load was also recommended in the original NBS Test procedure, but was deleted as being unnecessary at the time of the final determination of the test procedure by DOE (FR 42 No. 152 p. 39965).

Accordingly, without the requested waiver, it is impossible to arrive at a calculated energy consumption figure for the LER Series dishwasher which would reflect energy consumption in a manner consistent with the intent of 10 CFR 430, Subpart B, Appendix C, nor a test result which would be a valid comparison with the calculated energy consumption of other home dishwashers. The final result would be to deny consumers objective comparative data for the LER Series on the "Energyguide" labels. The provisions of 16 CFR Part 305 would also prohibit relating those potential savings to the consumer by any means other than the testing required for the energy consumption label. In summary, the LER Series dishwasher contains a novel design characteristic which prevents its testing to the currently prescribed test procedures and the currently prescribed test procedures do not evaluate the LER Series dishwasher in a manner representative of its true energy consumption characteristics to provide materially accurate comparative data.

5. *Identification of manufacturers of other dishwashers marketed in the United States known to NORRIS to incorporate similar design characteristics.*—The KitchenAid Division of the Hobart Corporation manufactures a dishwasher with somewhat similar characteristics in that they claim it can operate with an inlet water temperature of 120°F.

6. *Alternate test procedures that will evaluate the LER Series home dishwasher in a manner representative of its energy consumption characteristics.*—Revise 10 CFR 430, Subpart B, Appendix C, Sections 2.6 and 4.1 to read as follows:

"2.6 Load. Use an eight place setting test load of dishes. One place setting consists of the following:

One glass—12 oz. straight sides, made of glass.
One cup—Corning "Centura" No. C–306.
One saucer—Corning "Centura" No. C–506.
One dinner plate—Corning "Centura" No. C–110.
One bread and butter plate—Corning "Centura" No. C–106.
One fruit bowl—Corning "Centura" No. C–409.
One dinner fork—Stainless steel.
One salad fork—Stainless steel.
One knife—Stainless steel.
Two teaspoons—Stainless steel."

"4. Calculation of derived results from test measurements.—4.1 Per-cycle water energy consumption using electrically heated water. Calculate for the cycle type under test the per-cycle water energy consumption using electrically heated water, W_e, expressed in kilowatt-hours per cycle and defined as: $W_e = VxTxK$,

where

V = reported water consumption in gallons per cycle for the cycle type under test.
T = inlet water temperature rise = measured inlet water temperature—55°F.
K = specific heat of water in kilowatt-hours per gallon per degree fahrenheit = .0240."

All other requirements of 10 CFR 430, Subpart B, Appendix C, would remain unchanged.

Norris Industries, Inc.

R. James Shaffer,

Vice President and General Counsel, Norris Industries, Inc., One Golden Shore, Long Beach, California 90802, (213) 435–6676.

November 5, 1980.

[FR Doc. 80-40692 Filed 12-30-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 81-03-LNG]

Brooklyn Union Gas Co., Temporary Emergency Export of Natural Gas to Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application to authorize the temporary emergency export of natural gas to Canada and order granting authorization.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 18, 1980, of an application of the Brooklyn Union Gas Company (Brooklyn Union) for authorization to export liquefied natural gas (LNG) to Canada in order to alleviate a temporary emergency LNG supply deficiency being experienced by Gaz Metropolitan Incorporated (Gaz Metro) of Montreal, Quebec. The ERA also gives notice that, because of the immediate nature of the emergency and transportation constraints, it issued an Order conditionally authorizing the export on December 19, 1980.

The application was filed and ERA's conditional authorization was issued pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–54. Protests or petitions to intervene are invited.

DATES: Protests or petitions to intervene are to be filed on or before January 7, 1981.

FOR FURTHER INFORMATION CONTACT:

Lawrence A. DiRicco (Division of Natural Gas), Economic Regulatory Administration, 2000 M Street, N.W., Room 7108, Washington, D.C. 20461. Telephone (202) 653–3220

James K. White (Acting Assistant General Counsel for Natural Gas and Mineral Leasing), 1000 Independence Ave., S.W., Forrestal Bldg., Room 5E–064, Washington, D.C. 20585, Telephone (202) 252–2900

SUPPLEMENTARY INFORMATION: In its application Brooklyn Union proposes to exchange up to 400,000 Mcf of LNG with Gaz Metro for a volume of Canadian natural gas of equivalent heating value. The LNG is alleged to be urgently needed by Gaz Metro to meet anticipated supply deficiencies through early January 1981 due to an unanticipated capacity problem on the pipeline serving Gaz Metro and a colder than normal winter.

The LNG to be exchanged is LNG which Brooklyn Union is entitled to receive from Distrigas of Massachusetts Corporation (Distrigas) and located in Distrigas' storage facilities in Everett, Massachusetts. Transgas Incorporated of Lowell, Massachusetts will provide truck transportation service from Everett to Montreal. Transgas must transport a substantial portion of the LNG prior to December 26, 1980 because of prior commitments of available truck capacity. Deliveries are expected to be completed by January 15, 1981. Gaz Metro will pay any and all costs incurred in connection with the transportation of the LNG to Montreal.

The volumes of Canadian natural gas equivalent in heating value to the LNG exchange will be delivered by TransCanada Pipelines Limited (TransCanada) for the account of Gaz Metro to Tennessee Gas Pipeline Company (Tennessee), at the existing TransCanada/Tennessee interconnection near Niagara Falls, New York, and will be transported by Tennessee to Brooklyn Union's meter station at White Plains, New York. Gaz Metro will pay any and all costs incurred in connection with the transportation of the natural gas to White Plains and will provide the fuel for the transportation service.

Because of the need for an immediate decision, public notice by ERA was not feasible prior to issuance of an order. A copy of the DOE/ERA Order issued December 19, 1980 conditionally authorizing the export is appended to this notice. By the terms of the Order, Brooklyn Union may export up to 400,000 Mcf of LNG during the thirty days after issuance of the Order and may import volumes of natural gas equivalent in heating value to any LNG exported, during the sixty days after issuance.

Other Information

The ERA invites protests or petitions for intervention in the proceeding. Such protests or petitions are to be filed with the Economic Regulatory Administration, Room 7108, RG–55, 2000 M Street, NW., Washington, D.C. 20461, in accordance with the requirements of the applicable rules of practice and procedure (18 CFR 1.8 and 1.10). Protests or petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on January 7, 1981.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene. Protests filed with the ERA will be considered in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

A hearing will not be held unless a motion for a hearing is made by any party and is granted by ERA, or if the ERA on its own motion believes that a hearing is required. A party filing a motion for hearing must demonstrate how a hearing will advance the proceeding. If a hearing is ordered, due notice will be given to the parties.

A copy of Brooklyn Union's application is available for public inspection and copying in Room 7108, 2000 M Street NW., Washington, D.C. 20461, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The ERA order issued December 19, 1980 is appended to this notice.

Issued in Washington, D.C. on December 23, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

The Brooklyn Union Gas Co.; Order Authorizing the Temporary Emergency Exportation of Liquefied Natural Gas to Canada and the Importation of Natural Gas From Canada

December 19, 1980.

On December 18, 1980, the Brooklyn Union Gas Company (Brooklyn Union) filed an application with the Economic Regulatory Administration (ERA) under section 3 of the Natural Gas Act, seeking authorization for a temporary emergency exportation of liquefied natural gas (LNG) to Gaz Metropolitain, Incorporated (Gaz Metro) of Montreal, Quebec, Canada, and a temporary authorization to import natural gas from Canada.

As more fully described in its application, Brooklyn Union states that the LNG is urgently needed by Gaz Metro to meet anticipated gas supply deficiencies. Exportation of the LNG is expected to be completed by January 15, 1981. Brooklyn Union also states that because of limited LNG truck transportation capacity, the transporter must transport a substantial portion of the LNG prior to December 26, 1980, or will be unable to guarantee timely deliveries to Gaz Metro.

Brooklyn Union intends to make available on an exchange basis up to 400,000 Mcf of LNG which it is entitled to receive from Distrigas of Massachusetts (Distrigas) at Distrigas' Everett, Massachusetts, storage facility. Gaz Metro will pay any costs and expenses incurred in connection with the transportation of the LNG to Montreal.

The LNG will be exchanged for a volume of Canadian natural gas of equivalent heating value to be imported by Brooklyn Union. That gas will be delivered by TransCanada Pipe Lines Limited (TransCanada) for the account of Gaz Metro to Tennessee Gas Pipeline Company for ultimate delivery to Brooklyn Union. All natural gas deliveries will be made within sixty days from the date export of the LNG commences.

Brooklyn Union states that it will incur no costs or expenses incident to the exchange and that the exchange will not impair its ability to render natural gas service to its customers.

Based on the description provided by Brooklyn Union of the circumstances

surrounding the proposed exportation of LNG and importation of natural gas, we find at this time that the proposed export and import are not inconsistent with the public interest and good cause

of Gaz Metro be exported, and

(3) That Brooklyn Union be bound by any further orders issued in this docket.

Issued in Washington, D.C. on December 19, 1980.

Location	Estimated Volume (MMCF)*	Estimated Oil Displacement (000 BBL)	
		0.3% sulfur No. 6 oil	0.2% sulfur No. 2 oil or 0.1% sulfur

the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a

Establishments which operate any boiler, gas turbine, internal combustion engine and/or combined cycle units with a maximum design firing rate of 50 million Btu/hr or greater and have not

Building, 1000 Independence Avenue, SW., Washington, D.C., between 8:00 am and 4:00 pm Monday through Friday, except Federal Holidays.

Issued at Washington, D.C. on December 23, 1980.

surrounding the proposed exportation of LNG and importation of natural gas, we find at this time that the proposed export and import are not inconsistent with the public interest and good cause exists for issuing a temporary authorization without delay. Based on available information, the export will only be needed for 30 days and, therefore, we have so limited the term of the export authorization.

Our granting of the requested authorizations in no way is intended to limit our further review of the validity of the representations set forth in the application and to take further action or hold further proceedings as may be necessary to remedy any unforeseen inconsistency with the public interest. Notice of this order and the application upon which it is based will be published in the Federal Register as soon as is practicable and will invite the filing of petitions to intervene by interested persons.

Order

For the reasons set forth above, ERA hereby orders that:

A. Pursuant to Section 3 of the Natural Gas Act, authorization is granted to the Brooklyn Union Gas Company (Brooklyn Union) to export up to 400,000 Mcf of LNG to Gaz Metropolitain, Incorporated (Gaz Metro), effective immediately and continuing through the thirtieth day after the date of this Order.

B. Pursuant to Section 3 of the Natural Gas Act, authorization is granted to Brooklyn Union to import from Gaz Metro a volume of natural gas of equivalent heating value of any LNG exported pursuant to Ordering Paragraph A, effective immediately and continuing through the sixtieth day after the date of this order.

C. Pursuant to Section 3 of the Natural Gas Act, the authorizations granted herein are conditioned upon the following:

(1) That Brooklyn Union ensure that the exportation of any LNG pursuant to Ordering Paragraph A will not impair its ability to render natural gas service at reasonable rates to its customers and that neither Brooklyn Union or its customers incur any costs or expenses incident to the authorized exportation and importation, or

(2) That Brooklyn Union take whatever steps are necessary to ensure that only the volumes of LNG necessary to meet the temporary supply emergency of Gaz Metro be exported, and

(3) That Brooklyn Union be bound by any further orders issued in this docket.

Issued in Washington, D.C. on December 19, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

[FR Doc. 80-40585 Filed 12-30-80; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 80-CERT-044]

Public Service Electric and Gas Co.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Public Service Electric and Gas Company (Public Service), 80 Park Place, Newark, New Jersey 07101, filed an application on December 2, 1980, with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at eight of its electric generating stations located in New Jersey: Bergen in Ridgefield; Essex in Newark; Hudson in Jersey City; Kearney in Kearney; Linden in Linden; Sewaren in Sewaren; Edison in Edison; and Mercer in Trenton, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file and available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, RG-55, 2000 M Street, NW., Washington, D.C. 20461, from 8:30 a.m.-4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Public Service states that the volume of natural gas for which it requests certification is approximately eight billion cubic feet. This volume is estimated to displace the use of approximately 1,200,000 barrels of No. 6 fuel oil (0.3 percent sulfur) and approximately 32,000 barrels of No. 2 fuel oil (0.2 percent sulfur) or kerosene (0.1 percent sulfur) per year.

The quantities at each location are subject to considerable variation with changes in demand and availability of the various generating units, but estimated gas usage and resulting oil displacement volumes are listed below:

Location	Estimated Volume (MMCF)*	Estimated Oil Displacement (000 BBL)	
		0.3% sulfur No. 6 oil	0.2% sulfur No. 2 oil or 0.1% sulfur kerosene
1. Bergen Generating Station, Ridgefield, N.J.	3552	552	.....
2. Essex Generating Station, Newark, N.J.	100	.....	16
3. Hudson Generating Station, Jersey City, N.J.	3088	472	.....
4. Kearny Generating Station, Kearny, N.J.	.....	.....	.....
5. Linden Generating Station, Linden, N.J.	.....	.....	.....
6. Sewaren Generating Station, Sewaren, N.J.	1160	176	.....
7. Edison Generating Station, Edison, N.J.	100	.....	16
8. Mercer Generating Station, Trenton, N.J.	.....	.....	.....
Totals	8,000	1,200	32

*MMCF is million cubic feet.

The eligible seller is the National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York 14203. The gas would be transported by the Transcontinental Gas Pipeline Corporation, P.O. Box 1396, Houston, Texas 77001.

Public Service has previously been issued certification by the ERA allowing purchases of natural gas from various eligible sellers for use at the same eight electric generating stations named in this certification as follows:

ERA Docket No.	Amount	Remarks
79-CERT-020	24.1 Bcf/yr	Expired June 24, 1980, and recertified as 80-CERT-020
80-CERT-014	5 Bcf/yr	Effective May 5, 1980
80-CERT-017	4 Bcf/yr	Effective May 5, 1980
80-CERT-020	17.5 Bcf/yr	Recertification of 79-CERT-020 and effective June 25, 1980
80-CERT-028	1 Bcf/yr	Effective September 17, 1980
80-CERT-032	16 MMcf/day	Effective September 30, 1980, and expired October 31, 1980

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 7108, RG-55, 2000 M Street, NW., Washington, D.C. 20461, Attention: Mr. Albert F. Bass, by January 12, 1981.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within

heating value to the LNG exchanged would be delivered by TransCanada for the account of Gaz Metropolitain to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) at

required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or

the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Public Service and any persons filing comments and will be published in the Federal Register.

Issued in Washington, D.C., on December 22, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-40619 Filed 12-30-80; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

1980 Manufacturing Industries Energy Consumption Study and Survey of Large Combustors, Form EIA-463

The U.S. Department of Energy has recently mailed out Form EIA-463. The information collected from this study will allow the Department to meet several statutory and regulatory mandates. These include, but are not limited to, the following: preparation of contingency plans for the purposes of advising the President should specific fuels be unavailable due to international events, labor stoppages, distribution malfunctions, or weather; forecasts of mid- and long-range energy needs in the industrial sector as required by the Congress; analysis of potential incentives for the conversion of certain capital equipment: a better understanding of a large percent of the Nation's energy consumption; and the need to determine the potential for the conversion of certain combustors and/or processes to alternative and more plentiful energy supplies.

In view of the importance of these data, industries' desire to provide quality data, and the possible difficulties encountered by mailing the questionnaires over the holiday season, the Department of Energy will grant reasonable extensions beyond the normal filing date on a company by company basis. Requests for extensions should be sent to Mr. Stephen J. Dienstfrey, Industrial Survey Manager, U.S. Department of Energy, P.O. Box 2100, Rockville, Maryland 20852. Further clarification of this notice can be obtained by calling the Survey Receipt Center at (800) 638-6584.

Establishments which operate any boiler, gas turbine, internal combustion engine and/or combined cycle units with a maximum design firing rate of 50 million Btu/hr or greater and have not received a copy of Form EIA-463 should contact the above address for inclusion in this study. This study is mandatory under the Federal Energy Administration Act of 1974 (Pub. L. 93-275), and the Powerplant and Industrial Fuel Use Act of 1978, (Pub. L. 95-620).

Issued in Washington, D.C., December 24, 1980.

Albert H. Linden, Jr.,

Acting Administrator, Energy Information Administration.

[FR Doc. 80-40695 Filed 12-30-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board; Advanced Conservation Technology Subpanel; Open Meeting

Notice is hereby given of the following meeting:

Name: Advanced Conservation Technology Subpanel of the Energy Research Advisory Board (ERAB). ERAB is a Committee consitituted under the Federal Advisory Committee Act (Public Lw 92-463, 86 Stat. 770).

Date and time: January 14, 1981—9:30 am to 4:00 pm.

Place: Department of Energy, Forrestal Building, Room 4E-069, 1000 Independence Avenue, SW., Washington, D.C. 29585.

Contact: Eudora M. Taylor, Staff Assistant, Energy Research Advisory Board, Department of Energy, Forrestal Building—M.S. 3F-032, 1000 Independence Avenue, SW., Washington, D.C. 20858, Telephone 202/252-8933.

Purpose of the parent board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative agenda: Review of Updated Outline of Proposed Draft Subpanel Report.

Note.—If the Subpanel does not complete its business on January 14, the meeting will continue on January 15.

Public participation: The meeting is open to the public. Written statments may be filed with the Subpanel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Energy Research Advisory Board at the address or telephone number listed above. Requests must be received five days prior to the meetng and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Subpanel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the freedom of Information Public Reading Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 8:00 am and 4:00 pm Monday through Friday, except Federal Holidays.

Issued at Washington, D.C. on December 23, 1980.

N. D. Pewitt,

Deputy Director of Energy Research.

[FR Doc. 80-40693 Filed 12-30-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP81-105-000]

Brooklyn Union Gas Co.; Application

December 19, 1980.

Take notice that on December 18, 1980, The Brooklyn Union Gas Company (Applicant), 195 Montaque Street, Brooklyn, New York 11201, filed in Docket No. CP81-105-000 an application pursuant to Section 3 to export liquefied natural gas (LNG) to Canada and to import natural gas from Canada and pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of up to 400,000 Mcf equivalent of LNG for a volume of Canadian natural gas equivalent in heating value, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to exchange 400,000 Mcf of LNG for a volume of Canadian natural gas equivalent in heating value to be delivered by TransCanada PipeLines Limited (TransCanada) for the account of Gaz Metropolitain, Inc. (Gaz Metropolitain). Applicant states that the LNG to be exchanged is LNG which Applicant is presently entitled to receive from Distrigas of Massachusetts Corporation (Distrigas) and is located in Distrigas' storage facilities in Everett, Massachusetts. The LNG would be transported by truck to Montreal for use by Gaz Metropolitain. It is asserted that the LNG is urgently needed by Gaz Metropolitain to meet anticipated supply deficiencies. Applicant states that Transgas, Inc. (Transgas) of Lowell, Massachusetts, which would provide the truck transportation to Montreal is prepared to commence deliveries immediately with deliveries to be completed by January 15, 1981. It is further asserted that Gaz Metropolitain would pay any and all costs and expenses incurred in connection with the transportation of the LNG to Montreal.

Applicant submits that volumes of Canadian natural gas equivalent in

heating value to the LNG exchanged would be delivered by TransCanada for the account of Gaz Metropolitain to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) at an existing TransCanada/Tennessee interconnection near Niagara Falls, New York. Such gas, it is asserted, would be transported by Tennessee to Applicant's meter station at White Plains, New York, for delivery to Applicant's franchise territory. It is further stated that Gaz Metropolitain would pay any and all costs and expenses incurred in connection with the transportation of the natural gas to White Plains and would provide the fuel for the transportation service. Applicant states that although the natural gas deliveries would commence after the commencement of the LNG deliveries, all natural gas would be made available within 60 days from the date that the exports of LNG commence. It is further explained that Tennessee would transport the gas under the authority of Section 311 of the Natural Gas Policy Act of 1978.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 5, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, purusant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-40561 Filed 12-30-80; 8:45 am]
BILLING CODE 6450-85-M

[Volume 337]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

December 22, 1980.

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before January 15, 1981.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,
Secretary.

BILLING CODE 6450-85-M

JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION							
-DOME PETROLEUM CORP				RECEIVED: 12/05/80 JA: KS			
8107708	K-80-0397	1507520305	103	SPUR LAND #1-A	BRADSHAW	91.3	SUNFLOWER ELECTRIC C
-ENERGY RESERVES GROUP INC				RECEIVED: 12/05/80 JA: KS			
8107707	K-79-1901	1509500000	108	EDNA M BLACKWELL #2	SPIVEY GRABS	8.6	KANSAS POWER & LIGHT
LOUISIANA OFFICE OF CONSERVATION							
-ALLIANCE EXPLORATION CORPORATION				RECEIVED: 12/03/80 JA: LA			
8107632		1705721650	102	DR E C HANSEN NO 1 166295	ROUSSEAU	1095.0	TEXAS GAS TRANSMISSI
-AMERICAN QUASAR PETROLEUM CO				RECEIVED: 12/05/80 JA: LA			
8107709		1702321424	102	DIXIE RICE WELL #1	SEC 24 T12S R3W	1825.0	COLUMBIA GAS DEVELOP
8107709		1702321424	103	DIXIE RICE WELL #1	SEC 24 T12S R3W	1825.0	COLUMBIA GAS DEVELOP
NEW MEXICO DEPARTMENT OF ENERGY & MINERALS							
-ADAMS EXPLORATION CO				RECEIVED: 12/04/80 JA: NM			
8107650		3002526733	103	STATE 16 NO 1		255.5	NORTHERN NATURAL GAS
-AMERADA HESS CORPORATION				RECEIVED: 12/04/80 JA: NM			
*8107633		3002500000	108	STATE WEB #3 (DUAL - OIL & GAS)	EUMONT	10.3	EL PASO NATURAL GAS
-AMOCO PRODUCTION CO				RECEIVED: 12/04/80 JA: NM			
8107702		3002526294	102	ANDERSON 3 COM #1	ANDERSON RANCH	1166.0	NATURAL GAS PIPELINE
8107663		3004524177	103	GALLEGOS CANYON UNIT NO 93E	BASIN DAKOTA	30.0	EL PASO NATURAL GAS
8107686		3004511574	108	GALLEGOS CANYON UNIT WELL #199	BASIN DAKOTA	20.0	EL PASO NATURAL GAS
8107694		3004523986	103	R BRUCE SULLIVAN NO 3E	BASIN DAKOTA	30.0	EL PASO NATURAL GAS
8107662		3002526695	103	STATE FU #4	AIRSTRIP UPPER BONE SPRI	1.0	WARREN PETROLEUM CO
8107701		3002500000	102	STATE GH WELL NO 1	TOWNSEND MORROW	1795.0	NATURAL GAS PIPELINE
8107699		3001523026	102	STATE HK COM #1	WILDCAT MORROW	546.1	
-ARCO OIL AND GAS COMPANY				RECEIVED: 12/04/80 JA: NM			
8107645		3002526689	103	W C ROACH #6	EUMONT YATES 7R QUEEN GA	300.0	NORTHERN NATURAL GAS
-CONSOLIDATED OIL & GAS INC				RECEIVED: 12/04/80 JA: NM			
8107652		3004524285	103	KLINE #1-M	BASIN-DAKOTA	0.0	SOUTHERN UNION GATHE
8107653		3004524285	103	KLINE #1-M	BLANCO MESAVERDE	0.0	SOUTHERN UNION GATHE
-COQUINA OIL CORPORATION				RECEIVED: 12/04/80 JA: NM			
8107642		3001522028	108	BASS STATE NO 1	NORTH BURTON (PENN)	70.0	EL PASO NATURAL GAS
-EL PASO NATURAL GAS COMPANY				RECEIVED: 12/04/80 JA: NM			
8107643		3003920100	108	CARTER MESA COM #1	OTERO-CHACRA GAS	22.0	EL PASO NATURAL GAS
8107641		3003905573	108	LINDRITH UNIT #49	BLANCO SOUTH - PICTURED	20.0	EL PASO NATURAL GAS
8107689		3003907203	108	SAN JUAN 27-5 UNIT #7	BLANCO-MESAVERDE GAS	16.0	EL PASO NATURAL GAS
8107640		3003907097	108	SAN JUAN 28-6 UNIT #67	BLANCO MESAVERDE	19.0	EL PASO NATURAL GAS
8107658		3003907282	108	SAN JUAN 28-7 UNIT NP #94 PC & MV	SOUTH BLANCO-PICTURED CL	18.0	EL PASO NATURAL GAS
8107697		3003922313	103	SAN JUAN 30-6 UNIT #14A	BLANCO MESAVERDE	220.0	EL PASO NATURAL GAS

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8107644		3002500000	108		SHELL STATE COM E #1	EUMONT QUEEN	26,0	EL PASO NATURAL GAS
*ENERGY RESERVES GROUP INC					RECEIVED: 12/04/80 JA: NM			
8107671		3004509636	108		FARNSWORTH GAS COM B #1	BASIN DAKOTA	18,7	EL PASO NATURAL GAS
8107670		3004523944	103		FEDERAL GAS COM UNIT #1=A	BLANCO MESAVERDE	329,0	EL PASO NATURAL GAS
*ENSERCH EXPLORATION INC					RECEIVED: 12/04/80 JA: NM			
8107635		3000560731	103		J G OBRIEN NO 2	WILDCAT	554,0	
*GETTY OIL COMPANY					RECEIVED: 12/04/80 JA: NM			
8107688		3002500000	108		B E SHIPP NO 2	LOVINGTON PADDOCK	1,0	PHILLIPS PETROLEUM C
8107690		3002510190	108		BAKER B NO 10	SOUTH EUNICE SAN ANDRES	3,1	GETTY OIL CO
8107634		3002500000	103		COOPER JAL UNIT WELL NO 154	LANGLIE MATTIX	6,6	EL PASO NATURAL GAS
8107677		3002509556	108		COOPER JAL UNIT WELL NO 303	JALMAT	11,9	EL PASO NATURAL GAS
8107638		3004523632	103		DON TURRIETTA WELL NO 1	BLANCO PICTURED CLIFFS	50,0	EL PASO NATURAL GAS
8107698		3002526772	102		GETTY 2 STATE WELL NO 2	EAST GRAMA RIDGE - MORRO	0,0	TUCO INC
8107691		3002510811	108		J C JOHNSON WELL NO 4	JALMAT GAS	5,0	INTERNORTH INC
8107667		3002526909	103		MYERS LANGLIE MATTIX UNIT #102	LANGLIE MATTIX	90,0	EL PASO NATURAL GAS
8107676		3002504860	108		SKELLY B STATE WELL NO 2	EUNICE-MONUMENT GRAYBURG	74,5	PHILLIPS PETROLEUM C
8107684		3002510674	108		SKELLY PENROSE B UNIT WELL NO 58	LANGLIE MATTIX	2,1	GETTY OIL CO
*GULF OIL CORPORATION					RECEIVED: 12/04/80 JA: NM			
8107678		3002511862	108		ARNOTT-RAMSAY (NCT-B) #2	JALMAT GAS	4,0	NORTHERN NATURAL GAS
*HARVEY E YATES CO					RECEIVED: 12/04/80 JA: NM			
8107668	T-2	3002526937	103		LOVINGTON 29 STATE #1	NE LOVINGTON PEN	100,0	
8107639		3001523278	102		TRAVIS 13 STATE 1	SOUTH EMPIRE MORROW	365,0	EL PASO NATURAL GAS
*J GREGORY MERRION					RECEIVED: 12/04/80 JA: NM			
8107649		3003922441	103		FEDERAL COM #4	BALLARD PICTURED CLIFFS	100,0	EL PASO NATURAL GAS
*J M HUBER CORPORATION					RECEIVED: 12/04/80 JA: NM			
8107681		3001522503	103		FEATHERSTONE-MCCOY NO 2	YARROW DELAWARE	180,0	TRANSWESTERN PIPELIN
*JAKE L HAMON					RECEIVED: 12/04/80 JA: NM			
8107700		3002500000	103		STATE E-8913 #2	NORTH OSUDO MORROW	1825,0	PHILLIPS PETROLEUM C
*LIVELY EXPLORATION COMPANY					RECEIVED: 12/04/80 JA: NM			
8107672		3004521262	108		LIVELY WELL NO 15	SAN JUAN (BASIN DAKOTA)	20,0	EL PASO NATURAL GAS
8107674		3004521579	108		LIVELY WELL NO 25	SAN JUAN	15,0	EL PASO NATURAL GAS
*MEMBOURNE OIL COMPANY					RECEIVED: 12/04/80 JA: NM			
8107685		3001500000	108		JOHNSON #1 WELL	CEMETARY	60,0	GAS CO OF NEW MEXICO
8107683		3001500000	108		NEW MEXICO OSAGE COM #1	CEMETARY (MORROW)	13,0	GAS CO OF NEW MEXICO
*MINERALS INC					RECEIVED: 12/04/80 JA: NM			
8107669		3002526690	102		LLANO 3 STATE COM NO 1	EAST GRAMA RIDGE MORROW	0,0	PHILLIPS PETROLEUM C
*MMJ PRODUCING COMPANY					RECEIVED: 12/04/80 JA: NM			
8107673		3002500000	103		BAUM STATE #1	BAUM (UPPER PENN)	3,0	WARREN PETROLEUM CO
*PHILLIPS PETROLEUM COMPANY					RECEIVED: 12/04/80 JA: NM			
8107679		3002502881	108		E VACUUM GB/SA TR 2622 #034	VACUUM GB/SA	5,0	EL PASO NATURAL GAS
8107637		3002526652	103		E VACUUM GB/SA TR 3202 NO 011	VACUUM GB/SA	10,0	EL PASO NATURAL GAS
8107657		3002526679	103		E VACUUM GB/SA TR 3332 NO 002	VACUUM GB/SA	19,0	EL PASO NATURAL GAS
8107659		3002526658	103		E VACUUM GB/SA TR 3345 NO 001	VACUUM GB/SA	124,0	EL PASO NATURAL GAS
8107693		3002526662	103		E VACUUM GB/SA TR 3333 #007	VACUUM GB/SA	18,0	EL PASO NATURAL GAS
8107636		3002526521	103		E VACUUM GB/SA TR 3440 #005	VACUUM GB/SA	30,0	EL PASO NATURAL GAS
8107640		3002526685	103		E VACUUM GB/SA TR 3456 #009	VACUUM GB/SA	1,0	EL PASO NATURAL GAS
8107656		3002526657	103		EVGB/SA UNIT TRACT 3333 #008	VACUUM GB/SA	25,0	EL PASO NATURAL GAS
8107675		3002524207	108		SANTA FE #125	VACUUM N (ABO)	8,0	EL PASO NATURAL GAS
*READ & STEVENS INC					RECEIVED: 12/04/80 JA: NM			
8107695		3002526783	103		QUAIL STATE NO 5	QUAIL QUEEN	5,0	WARREN PETROLEUM CO
8107647		3002526853	103		QUAIL STATE NO 6	QUAIL QUEEN	4,0	WARREN PETROLEUM CO
*SHELL OIL CO					RECEIVED: 12/04/80 JA: NM			

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8107660		3002500000	108		PEARL QUEEN EAST UNIT #30	PEARL	0,3	PHILLIPS PETROLEUM C
8107687		3002500000	108		STATE - SEC 2	WANTZ ABO	4,1	GETTY OIL CO
8107681		3002500000	108		STATE J #2	EUNICE NORTH	6,2	GETTY OIL CO
8107682		3002500000	108		STATE J #4	EUNICE NORTH	12,6	PHILLIPS PETROLEUM C
8107692		3002500000	108		STATE SEC 2 4	TUBB	4,0	GETTY OIL CO
*SOUTHLAND ROYALTY CO					RECEIVED: 12/04/80 JA: NM			
8107648		3004523958	103		PATTERSON A COM #1E	BASIN	90,0	SOUTHERN UNION GATHE
*SUPRON ENERGY CORPORATION					RECEIVED: 12/04/80 JA: NM			
8107651		3004524181	103		HAYNIE 2	BLANCO MESAVERDE	583,0	SOUTHERN UNION GATHE
8107696		3004524181	103		HAYNIE 2	BASIN DAKOTA	261,0	SOUTHERN UNION GATHE
*THRESHOLD DEVELOPMENT CO					RECEIVED: 12/04/80 JA: NM			
8107665		3001523289	103		CONOCO 10 A STATE NO 1Y (MURROW)	TURKEY TRACK MORROW	547,5	CONOCO INC
8107666		3001523289	103		CONOCO 10=A STATE NO 1=Y (ATOKA)	TURKEY TRACK ATOKA	547,5	CONOCO INC
*WM G ROSS					RECEIVED: 12/04/80 JA: NM			
8107680		3001521571	108		A D ROGERS COM #1	ATOKA PENN (GAS)	5,3	TRANSWESTERN PIPELIN
*YATES PETROLEUM CORP					RECEIVED: 12/04/80 JA: NM			
8107655		3001523419	103		GREASEWOOD BD STATE #10	PENASCO DRAW SA-YESO ASS	0,0	TRANSWESTERN PIPELIN
*YATES PETROLEUM CORPORATION					RECEIVED: 12/04/80 JA: NM			
8107646		3001523171	103		JOHNSON FE #2	EAGLE CREEK SA	0,0	TRANSWESTERN PIPELIN
8107654		3001523416	103		PENASCO DRAW SA YESO ASSOCIATION	PENASCO DRAW SA YESO ASS	0,0	TRANSWESTERN PIPELIN
**********								
NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION								
**********								
*TROY ENERGY CO					RECEIVED: 12/04/80 JA: NY			
8107705	674	3102912916	108		Y MANN WELL #1	EVANS	13,7	NATIONAL FUEL GAS DI
8107706	677	3102913580	108		Y SNYDER WELL #1	EVANS	26,2	NATIONAL FUEL GAS DI
*TROY PIPE AND SUPPLY CO INC					RECEIVED: 12/04/80 JA: NY			
8107704	670	3101311981	108		Y HAMM WELL #1	PORTLAND	23,3	NATIONAL FUEL GAS DI
8107703	671	3101311691	108		Y HAMM WELL #2	PORTLAND	68,8	NATIONAL FUEL GAS DI
**********								
WEST VIRGINIA DEPARTMENT OF MINES								
**********								
*APPALACHIAN EXPLORATION & DEVEL INC					RECEIVED: 12/05/80 JA: WV			
8107711		4701900416	102		J EAGEN #1	MT COVE	42,0	EQUITABLE GAS CO
8107713		4706100505	103		POCAHONTAS LAND CORP N=1	SLAB FORK	15,0	COLUMBIA GAS TRANSMI
8107712		4706700516	102		PRUCCIA HUGHES #1	GRANT	42,0	EQUITABLE GAS CO
*ASHLAND EXPLORATION INC					RECEIVED: 12/05/80 JA: WV			
8107714		4703903518	103		EASTERN ASSOCIATED COAL #66	PAINT CREEK	22,0	COLUMBIA GAS TRANSMI
*GEREA OIL AND GAS CORPORATION					RECEIVED: 12/05/80 JA: WV			
8107710		4700121215	102		C BOOTH #1	BARKER	20,0	
8107717		4700121213	102		JUNIOR BILLER #1	VALLEY	20,0	
8107718		4700121211	102		R QUATTRO #1	VALLEY	20,0	
8107716		4700121197	102		TALBOTT LUMBER CO #1	VALLEY	20,0	
8107715		4700121204	102		W T GEORGE #1	VALLEY	20,0	
**********								
** U.S. GEOLOGICAL SURVEY - ALBUQUERQUE,NM								
**********								
*AMOCO PRODUCTION CO					RECEIVED: 12/05/80 JA: NM 4			
8107801	NM 1423-80	3004524101	103		J C GORDON D WELL #1E	BASIN DAKOTA	29,5	EL PASO NATURAL GAS
*ARCO OIL AND GAS COMPANY					RECEIVED: 12/05/80 JA: NM 4			
8107745	NM 1249-80	3004524276	103		SCHLOSSER NM FED 2E	BASIN DAKOTA	200,0	EL PASO NATURAL GAS
*CHACE OIL COMPANY INC					RECEIVED: 12/05/80 JA: NM 4			

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8107799	NM=1411=80	3003921827	103		JICARILLA 70=7	SOUTH LINDRITH GALLUP=DA	108,0	EL PASO NATURAL GAS
=CONOCO INC					RECEIVED: 12/05/80 JA: NM 4			
8107770	NM=1339=80	3002526744	103		LOCKHART B NO 9	NEW MEXICO FEDERAL UNIT	245,0	EL PASO NATURAL GAS
=CONSOLIDATED OIL & GAS INC					RECEIVED: 12/05/80 JA: NM 4			
8107741	NM=1224=80	3003921510	108		TRIBAL C 11=A	BLANCO MESAVERDE	21,0	NORTHWEST PIPELINE C
=DEPCO INC					RECEIVED: 12/05/80 JA: NM 4			
8107734	NM=1136=80	3000520483	108		BEALL FEDERAL WELL NO 1	WHITE RANCH (MORROW)	7,0	EL PASO NATURAL GAS
=EL PASO EXPLORATION CO					RECEIVED: 12/05/80 JA: NM 4			
8107784	NM=1396=80=A	3003922273	103		JICARILLA 152M #1A	BLANCO MESAVERDE	150,0	NORTHWEST PIPELINE C
8107785	NM=1396=80=B	3003922273	103		JICARILLA 152M #1A	SOUTH BLANCO PICTURED CL	50,0	NORTHWEST PIPELINE C
8107791	NM=1401=80	3003922272	103		JICARILLA 152M #6	BASIN DAKOTA	70,0	NORTHWEST PIPELINE C
8107742	NM=1239=80	3004506443	108		SAN JUAN 27=8 B #4	BLANCO=SOUTH PICTURED CL	22,0	NORTHWEST PIPELINE C
=EL PASO NATURAL GAS COMPANY					RECEIVED: 12/05/80 JA: NM 4			
8107733	NM=1042=80	3004520898	108		ATLANTIC A #12	BLANCO = PICTURED CLIFFS	22,0	EL PASO NATURAL GAS
8107790	NM=1400=80	3004524264	103		ATLANTIC A #15	BLANCO PICTURED CLIFFS	90,0	EL PASO NATURAL GAS
8107793	NM=1403=80	3004524203	103		ATLANTIC B #16	BLANCO MESAVERDE	50,0	EL PASO NATURAL GAS
8107794	NM=1404=80	3004524062	103		ATLANTIC B #23	BLANCO PICTURED CLIFFS	90,0	EL PASO NATURAL GAS
8107798	NM=1408=80	3004524061	103		ATLANTIC B #24	BLANCO PICTURED CLIFFS	90,0	EL PASO NATURAL GAS
8107731	NM=1021=80	3003920898	108		CANYON LARGO UNIT #242	BALLARD = PICTURED CLIFF	21,0	EL PASO NATURAL GAS
8107782	NM=1380=80	3003906187	108		CANYON LARGO UNIT #65	BLANCO SOUTH = PICTURED	21,0	EL PASO NATURAL GAS
8107780	NM=1362=80	3004508606	108		FANNIN #1	AZTEC=PICTURED CLIFFS GA	19,0	EL PASO NATURAL GAS
8107725	NM=0519=80	3004506444	108		FLORANCE D #10	BLANCO=MESAVERDE GAS	26,0	EL PASO NATURAL GAS
8107797	NM=1407=80	3004524078	103		HANCOCK B #5E	BASIN DAKOTA	90,0	EL PASO NATURAL GAS
8107727	NM=0532=80	3004521543	108		HUBBELL #16	AZTEC=FRUITLAND GAS	21,0	EL PASO NATURAL GAS
8107722	NM=0268=80	3004520395	108		HUERFANO UNIT #193	BASIN=DAKOTA GAS	17,5	EL PASO NATURAL GAS
•8107732	NM=1039=80	3003906409	108		JICARILLA F #8	SOUTH BLANCO = PICTURED	20,0	EL PASO NATURAL GAS
8107726	NM=0523=80	3004320110	108		JICARILLA 183 #6	BALLARD=PICTURED CLIFFS	20,0	EL PASO NATURAL GAS
8107768	NM 1332=80=A	3004523719	103		JONES A #4A	BLANCO MESAVERDE	250,0	EL PASO NATURAL GAS
8107769	NM=1332=80=B	3004523719	103		JONES A #4A	SOUTH BLANCO PICTURED CL	90,0	EL PASO NATURAL GAS
8107737	NM=1189=80	3003920919	108		LINDRITH UNIT #77	BLANCO SOUTH = PICTURED	22,0	EL PASO NATURAL GAS
8107779	NM=1360=80	3003921809	108		LINDRITH UNIT COM #93	SOUTH BLANCO = PICTURED	18,0	EL PASO NATURAL GAS
8107738	NM=1207=80	3004520893	108		MANSFIELD #12	BLANCO=PICTURED CLIFFS	22,0	EL PASO NATURAL GAS
8107730	NM=0854=80	3004507056	108		MICHENER A NO 1	BLANCO SOUTH=PICTURED CL	21,0	EL PASO NATURAL GAS
8107788	NM=1398=80	3003922227	103		RINCON UNIT #82A	BLANCO MESAVERDE	70,0	EL PASO NATURAL GAS
8107800	NM=1414=80	3004521089	108		ROELOFS #7	BLANCO=PICTURED CLIFFS	17,0	EL PASO NATURAL GAS
8107778	NM 1359=80	3004521031	108		ROELOFS #5	BLANCO=PICTURED CLIFFS	16,0	EL PASO NATURAL GAS
8107766	NM 1331=80A	3003921044	103		SAN JUAN 27=4 UNIT #133	BLANCO MESAVERDE	180,0	EL PASO NATURAL GAS
8107767	NM 1331=80=B	3003921044	103		SAN JUAN 27=4 UNIT #133	BASIN DAKOTA	60,0	EL PASO NATURAL GAS
8107740	NM=1213=80	3003900000	108		SAN JUAN 28=5 UNIT #18	BLANCO=MESAVERDE	20,0	EL PASO NATURAL GAS
8107795	NM=1405=80	3003922203	103		SAN JUAN 28=6 UNIT #11A	BLANCO MESAVERDE	70,0	EL PASO NATURAL GAS
8107736	NM=1188=80	3003920601	108		SAN JUAN 28=6 UNIT #173	SOUTH BLANCO = PICTURED	20,0	EL PASO NATURAL GAS
8107739	NM=1210=80	3003907271	108		SAN JUAN 28=6 UNIT #32	BLANCO = MESAVERDE	18,0	EL PASO NATURAL GAS
8107796	NM=1406=80	3003922225	103		SAN JUAN 28=6 UNIT #67A	BLANCO MESAVERDE	70,0	EL PASO NATURAL GAS
8107771	NM=1341=80	3003922228	103		SAN JUAN 28=6 UNIT #69A	BLANCO MESAVERDE	100,0	EL PASO NATURAL GAS
8107724	NM=0515=80	3003920797	108		SAN JUAN 28=7 UNIT #179	BLANCO=PICTURED CLIFFS G	25,0	EL PASO NATURAL GAS
8107723	NM=0514=80	3003920960	108		SAN JUAN 28=7 UNIT #202 CH & PC	LARGO=CHACRA AND SOUTH B	22,0	EL PASO NATURAL GAS
8107761	NM 1328=80A	3004523848	103		SAN JUAN 28=7 UNIT #40A	BLANCO MESAVERDE	150,0	EL PASO NATURAL GAS
8107762	NM 1328=80=B	3004523848	103		SAN JUAN 28=7 UNIT #40A	SOUTH BLANCO PICTURED CL	30,0	EL PASO NATURAL GAS
8107764	NM=1330=80=A	3003921918	103		SAN JUAN 29=7 UNIT #40A	BLANCO MESAVERDE	200,0	EL PASO NATURAL GAS
8107765	NM=1330=80=B	3003921918	103		SAN JUAN 29=7 UNIT #40A	BASIN DAKOTA	150,0	EL PASO NATURAL GAS
8107786	NM=1397=80=A	3003921917	103		SAN JUAN 29=7 UNIT #65A	BLANCO MESAVERDE	220,0	EL PASO NATURAL GAS
8107787	NM=1397=80=B	3003921917	103		SAN JUAN 29=7 UNIT #65A	BASIN DAKOTA	30,0	EL PASO NATURAL GAS

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8107792	NM=1402=80	3003921941	103		SAN JUAN 30=6 UNIT #49A	BLANCO MESAVERDE	180,0	EL PASO NATURAL GAS
8107781	NM=1376=80	3003900000	108		SAN JUAN 32=5 UNIT #17	BASIN=DAKOTA	20,0	EL PASO NATURAL GAS
8107777	NM=1348=80	3004521824	108		SCOTT #13	BLANCO = PICTURED CLIFFS	20,0	EL PASO NATURAL GAS
8107735	NM=1180=80	3004522073	108		SCOTT #16	BLANCO = PICTURED CLIFFS	17,0	EL PASO NATURAL GAS
8107783	NM=1394=80	3004511955	108		STOREY B #1	BLANCO MESAVERDE GAS	18,0	EL PASO NATURAL GAS
8107763	NM=1329=80	3004524079	103		SULLIVAN #1A	BLANCO MESAVERDE	150,0	EL PASO NATURAL GAS
8107789	NM=1399=80	3004524069	103		SUNRAY #6	BLANCO PICTURED CLIFFS	70,0	EL PASO NATURAL GAS
=ENERGY RESERVES GROUP INC					RECEIVED: 12/05/80 JA: NM 4			
8107756	NM=1320=80	3004524373	103		E M PIPKIN #11=E	BASIN DAKOTA	144,0	SOUTHERN UNION GATHE
8107757	NM=1321=80	3004524376	103		E M PIPKIN #5=E	BASIN DAKOTA	68,4	SOUTHERN UNION GATHE
=M L BROWN JR					RECEIVED: 12/05/80 JA: NM 4			
8107803	NM=1425=80	3001521041	108		FEDERAL DOOD NO 1 WELL LC=028731=A	GRAYBURG JACKSON (MORROW	7,1	TRANSWESTERN PIPE LI
8107755	NM=1316=80	3004120504	103		FEDERAL G NO 1 WELL NM=23018	BLUITT (WOLFCAMP)	90,8	TRANSWESTERN PIPE LI
8107754	NM=1315=80	3004120505	103		FEDERAL J NO 1 WELL NM 23018	BLUITT (WOLFCAMP)	78,9	TRANSWESTERN PIPE LI
•J GREGORY MERRION&ROBERT L BAYLESS					RECEIVED: 12/05/80 JA: NM 4			
8107729	NM=6717=80	3003900000	103		CANADA MESA #1=E	BASIN DAKOTA	200,0	EL PASO NATURAL GAS
8107728	NM=6716=80	3004500000	103		SOUTHLAND #5	WAW FRUITLAND/PICTURED C	85,0	EL PASO NATURAL GAS
=JEROME P MCHUGH					RECEIVED: 12/05/80 JA: NM 4			
8107760	NM=1326=80	3003922336	103		JICARILLA #2E	BASIN DAKOTA	462,0	NORTHWEST PIPELINE C
8107759	NM=1325=80	3003922339	103		JICARILLA #3E	BASIN DAKOTA	918,0	NORTHWEST PIPELINE C
8107758	NM=1324=80	3003922343	103		JICARILLA #4E	BASIN DAKOTA	910,0	NORTHWEST PIPELINE C
=KOCH INDUSTRIES INC					RECEIVED: 12/05/80 JA: NM 4			
8107776	NM=1346=80	3004522767	103		GARDNER #3=A	BLANCO MESA VERDE	183,0	NORTHWEST PIPELINE C
=MESA PETROLEUM					RECEIVED: 12/05/80 JA: NM 4			
8107802	NM=1424=80	3001522561	108		RUNYAN FEDERAL COM #1	RUNYAN RANCH ABO	6,0	NATURAL GAS PIPELINE
=NORTHWEST PIPELINE CORPORATION					RECEIVED: 12/05/80 JA: NM 4			
8107772	NM=1342=80	3003921028	108		SAN JUAN 29=5 UNIT #61	BLANCO MESAVERDE	1,0	EL PASO NATURAL GAS
=ODESSA NATURAL CORPORATION					RECEIVED: 12/05/80 JA: NM 4			
8107720	NM=5068=79	3003921706	108		JICARILLA JV PC NO 108	BALLARD PICTURED CLIFFS	0,0	EL PASO NATURAL GAS
=OKLAHOMA OIL COMPANY					RECEIVED: 12/05/80 JA: NM 4			
8107721	NM=0161=80	3004523030	108		BOLACK B=1 B=28=27N=11W	WEST KUTZ FRUITLAND	15,0	EL PASO NATURAL GAS
=SOUTHLAND ROYALTY CO					RECEIVED: 12/05/80 JA: NM 4			
8107804	NM=1426=80	3004523981	103		DAVIS #11E	BASIN	80,0	SOUTHERN UNION GATHE
8107747	NM 1251=80=A	3004523873	103		DAVIS #7E	BASIN	90,0	SOUTHERN UNION GATHE
8107748	NM 1251=80=B	3004523873	103		DAVIS #7E		50,0	SOUTHERN UNION GATHE
8107749	NM 1253=80=A	3004524146	103		EAST #7E	BASIN	80,0	SOUTHERN UNION GATHE
8107750	NM 1253=80=B	3004524146	103		EAST #7E	BLANCO	90,0	SOUTHERN UNION GATHE
8107752	NM=1313=80=A	3004524020	103		THOMPSON #5M	BASIN	85,0	SOUTHERN UNION GATHE
8107753	NM=1313=80=B	3004524020	103		THOMPSON #5M	BLANCO	125,0	SOUTHERN UNION GATHE
=W M GALLAWAY					RECEIVED: 12/05/80 JA: NM 4			
8107719	NM 1478	3004520961	108		DELO #4	PULCHER KUTZ PICTURED CL	20,0	EL PASO NATURAL GAS
=WESTERN OIL PRODUCERS INC					RECEIVED: 12/05/80 JA: NM 4			
8107805	NM=1430=80	3002526180	103		WOOLWORTH RANCH UNIT #1	CINTA ROJO MORROW GAS	21,9	EL PASO NATURAL GAS
=YATES PETROLEUM CORPORATION					RECEIVED: 12/05/80 JA: NM 4			
8107751	NM=1257=80	3001522832	103		FEDERAL CX COM NO 3	EAGLE CREEK PERMO PENN	0,0	TRANSWESTERN PIPELIN
8107743	NM 1247=80	3001523327	103		IRISH HILLS=YESO NM FEDERAL #2	PENASCO DRAW SA YESO (AS	0,0	TRANSWESTERN PIPELIN
8107744	NM 1248=80	3001523328	103		IRISH HILLS=YESO NM FEDERAL #3	PENASCO DRAW SA YESO (AS	0,0	TRANSWESTERN PIPELIN
8107746	NM 1250=80	3001523335	103		MOBIL CI FEDERAL #11	UND PENASCO DRAW MORROW	0,0	TRANSWESTERN PIPELIN
=SOUTHLAND ROYALTY CO					RECEIVED: 12/05/80 JA: UT 4			
8107806	UA=1437=80	4303700000	108		GOTHIC MESA 588 #6	GOTHIC MESA	5,5	EL PASO NATURAL GAS
8107773	UA=1343=80	4303730296	103		WHITE MESA UNIT #113	WHITE MESA	30,0	EL PASO NATURAL GAS
8107774	UA=1344=80	4303730330	103		WHITE MESA UNIT #115	WHITE MESA	25,0	EL PASO NATURAL GAS
8107775	UA=1345=80	4303730331	103		WHITE MESA UNIT #116	WHITE MESA	60,0	EL PASO NATURAL GAS

OTHER PURCHASERS VOLUME NO 1337

8107633	PHILLIPS PETROLEUM CO
8107732	NORTHWEST PIPELINE CORP

[FR Doc. 80-40562 Filed 12-30-80; 8:45 am]

BILLING CODE 6450-85-C

[Volume 338]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

[Volume 338]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

December 22, 1980.

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within on or before January 15, 1981.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

BILLING CODE 6450-85-M

JD NO	JA DKT	API NO	SEC TWN RGE NAME	FIELD NAME	PROD	PURCHASER
OKLAHOMA CORPORATION COMMISSION						
*ADAMS PETROLEUM ENTERPRISES CORP						
8107826	06356	3506300000	103	RENEGADE #1-A	279.0	TRANSOK PIPE LINE CO
*AMAREX INC						
8107844	09323	3512920472	107	CLIFT #1-2	700.0	EL PASO NATURAL GAS
*AMERADA HESS CORPORATION						
8107833	06162	3515150000	108	W H FARRIS UNIT #1	1.4	MICHIGAN WISCONSIN P
*AMOCO PRODUCTION CO						
8107811	06271	3513921138	108	HUNGERFORD GAS UNIT #2	17.0	PHILLIPS PETROLEUM C
*APACHE CORPORATION						
8107822	09237	3500920335	107	HOLLETT #1-A	912.5	
*BROOKS HALL OIL CORP						
8107827	06355	3507920339	103	CRAIN #1	180.0	ARKANSAS-LOUISIANA G
*CLEMENTS EXPLORATION CO						
8107813	06194	3510320818	103	FRANK BRISCOE NO 1	180.0	AMINOIL USA INC
8107812	06195	3510320817	103	SEWELL NO 1	200.0	AMINOIL USA INC
*CLEMENTS EXPLORATION CO						
8107845	06192	3510320770	103	STATE OF OKLAHOMA NO 1-36	300.0	AMINOIL USA INC
*CONOCO INC						
8107807	06306	3501100000	108	BESSIE SNYDER UNIT NO 1	1.8	OKLAHOMA GAS & ELECT
*DALCO PETROLEUM INC						
8107835	05867	3507322402	103	BOWMAN #1	91.3	CITIES SERVICE GAS C
8107839	06041	3507322372	103	BRUEGGEN #1	91.3	DALCO PETROLEUM US L
8107832	06047	3507322160	103	HUMPHREY NO 2	0.0	DALCO PETROLEUM US L
8107836	05868	3507322294	103	THRONE #1	91.3	DALCO PETROLEUM US L
*DAVIS OIL COMPANY						
8107834	06159	3501721443	103	J L NO 1	450.0	PHILLIPS PETROLEUM C
*F HOWARD WALSH JR						
8107823	06815	3505129600	102	ROSWELL #1	540.0	ARKANSAS LOUISIANA G
8107824	06814	3505120936	102	GREGORY #1	730.0	ARKANSAS LOUISIANA G
*FALCON PETROLEUM COMPANY						
8107829	06352	3500721678	103	PATTERSON NO 1	110.0	PANHANDLE EASTERN PI
*FALCON PETROLEUM COMPANY						
8107844	06351	3515321015	103	BRUNER NO 1-16	305.0	PANHANDLE EASTERN PI
*FARMERS INVESTMENTS INC						
8107828	06353	3511900300	103	LASATER #1	0.0	EASON OIL CO
*GODDYNE RESOURCES INC						
8107809	06236	3504722086	103	FELBER 7-1	75.0	UNION TEXAS PETROLEU
*GULF OIL CORPORATION						
8107837	05575	3509321618	103	CALLAWAY STATE #2-16	3.5	MICHIGAN WISCONSIN P
*JET OIL COMPANY						

JD NO	JA DKT	API NO	SEC TWN RGE NAME	FIELD NAME	PROD	PURCHASER
8107814	06193	3510320769	103	STATE OF OKLAHOMA NO 1-36	0.0	OKLAHOMA GAS & ELECT
*KERR-MCGEE CORP						
8107825	06356	3507322401	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107838	06042	3507322371	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107831	06048	3507322161	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107840	05869	3507322293	103	THRONE #1	0.0	CITIES SERVICE GAS C
*KOCH INDUSTRIES INC						
8107808	06237	3501100000	108	BESSIE SNYDER UNIT NO 1	1.8	OKLAHOMA GAS & ELECT
*MAGNOLIA PETROLEUM CO						
8107841	06357	3507322403	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107842	06043	3507322373	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107843	06049	3507322162	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107846	05870	3507322295	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MARATHON OIL COMPANY						
8107816	06196	3510320819	103	FRANK BRISCOE NO 1	0.0	AMINOIL USA INC
8107817	06197	3510320816	103	SEWELL NO 1	0.0	AMINOIL USA INC
*MARATHON OIL COMPANY						
8107847	06193	3510320768	103	STATE OF OKLAHOMA NO 1-36	0.0	AMINOIL USA INC
*MOBIL OIL CORPORATION						
8107848	06358	3507322404	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107849	06044	3507322374	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107850	06050	3507322163	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107851	05871	3507322296	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107810	06198	3510320815	103	SEWELL NO 1	0.0	AMINOIL USA INC
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107852	06359	3507322405	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107853	06045	3507322375	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107854	06051	3507322164	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107855	05872	3507322297	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107856	06360	3507322406	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107857	06046	3507322376	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107858	06052	3507322165	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107859	05873	3507322298	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107860	06361	3507322407	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107861	06053	3507322377	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107862	06054	3507322166	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107863	05874	3507322299	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107864	06362	3507322408	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107865	06055	3507322378	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107866	06056	3507322167	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107867	05875	3507322300	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107868	06363	3507322409	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107869	06057	3507322379	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107870	06058	3507322168	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107871	05876	3507322301	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107872	06364	3507322410	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107873	06059	3507322380	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107874	06060	3507322169	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107875	05877	3507322302	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107876	06365	3507322411	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107877	06061	3507322381	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107878	06062	3507322170	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107879	05878	3507322303	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107880	06366	3507322412	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107881	06063	3507322382	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107882	06064	3507322171	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107883	05879	3507322304	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107884	06367	3507322413	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107885	06065	3507322383	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107886	06066	3507322172	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107887	05880	3507322305	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107888	06368	3507322414	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107889	06067	3507322384	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107890	06068	3507322173	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107891	05881	3507322306	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107892	06369	3507322415	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107893	06069	3507322385	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107894	06070	3507322174	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107895	05882	3507322307	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107896	06370	3507322416	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107897	06071	3507322386	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107898	06072	3507322175	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107899	05883	3507322308	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107900	06371	3507322417	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107901	06073	3507322387	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107902	06074	3507322176	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107903	05884	3507322309	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107904	06372	3507322418	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107905	06075	3507322388	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107906	06076	3507322177	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107907	05885	3507322310	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107908	06373	3507322419	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107909	06077	3507322389	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107910	06078	3507322178	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107911	05886	3507322311	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107912	06374	3507322420	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107913	06079	3507322390	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107914	06080	3507322179	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107915	05887	3507322312	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107916	06375	3507322421	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107917	06081	3507322391	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107918	06082	3507322180	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107919	05888	3507322313	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107920	06376	3507322422	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107921	06083	3507322392	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107922	06084	3507322181	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107923	05889	3507322314	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107924	06377	3507322423	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107925	06085	3507322393	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107926	06086	3507322182	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107927	05890	3507322315	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107928	06378	3507322424	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107929	06087	3507322394	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107930	06088	3507322183	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107931	05891	3507322316	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107932	06379	3507322425	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107933	06089	3507322395	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107934	06090	3507322184	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107935	05892	3507322317	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107936	06380	3507322426	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107937	06091	3507322396	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107938	06092	3507322185	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107939	05893	3507322318	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107940	06381	3507322427	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107941	06093	3507322397	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107942	06094	3507322186	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107943	05894	3507322319	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107944	06382	3507322428	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107945	06095	3507322398	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107946	06096	3507322187	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107947	05895	3507322320	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107948	06383	3507322429	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107949	06097	3507322399	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107950	06098	3507322188	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107951	05896	3507322321	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107952	06384	3507322430	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107953	06099	3507322400	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107954	06100	3507322189	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107955	05897	3507322322	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107956	06385	3507322431	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107957	06101	3507322401	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107958	06102	3507322190	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107959	05898	3507322323	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107960	06386	3507322432	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107961	06103	3507322402	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107962	06104	3507322191	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107963	05899	3507322324	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107964	06387	3507322433	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107965	06105	3507322403	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107966	06106	3507322192	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107967	05900	3507322325	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107968	06388	3507322434	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107969	06107	3507322404	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107970	06108	3507322193	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107971	05901	3507322326	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107972	06389	3507322435	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107973	06109	3507322405	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107974	06110	3507322194	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107975	05902	3507322327	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107976	06390	3507322436	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107977	06111	3507322406	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107978	06112	3507322195	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107979	05903	3507322328	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107980	06391	3507322437	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107981	06113	3507322407	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107982	06114	3507322196	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107983	05904	3507322329	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107984	06392	3507322438	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107985	06115	3507322408	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107986	06116	3507322197	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107987	05905	3507322330	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107988	06393	3507322439	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107989	06117	3507322409	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107990	06118	3507322198	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107991	05906	3507322331	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107992	06394	3507322440	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107993	06119	3507322410	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107994	06120	3507322199	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107995	05907	3507322332	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8107996	06395	3507322441	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8107997	06121	3507322411	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8107998	06122	3507322200	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8107999	05908	3507322333	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8108000	06396	3507322442	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8108001	06123	3507322412	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8108002	06124	3507322201	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8108003	05909	3507322334	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8108004	06397	3507322443	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8108005	06125	3507322413	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8108006	06126	3507322202	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8108007	05910	3507322335	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8108008	06398	3507322444	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8108009	06127	3507322414	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8108010	06128	3507322203	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8108011	05911	3507322336	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8108012	06399	3507322445	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8108013	06129	3507322415	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8108014	06130	3507322204	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8108015	05912	3507322337	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8108016	06400	3507322446	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8108017	06131	3507322416	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8108018	06132	3507322205	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8108019	05913	3507322338	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8108020	06401	3507322447	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8108021	06133	3507322417	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8108022	06134	3507322206	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8108023	05914	3507322339	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8108024	06402	3507322448	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8108025	06135	3507322418	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8108026	06136	3507322207	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8108027	05915	3507322340	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8108028	06403	3507322449	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8108029	06137	3507322419	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8108030	06138	3507322208	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8108031	05916	3507322341	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8108032	06404	3507322450	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8108033	06139	3507322420	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8108034	06140	3507322209	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8108035	05917	3507322342	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8108036	06405	3507322451	103	BOWMAN #1	0.0	CITIES SERVICE GAS C
8108037	06141	3507322421	103	BRUEGGEN #1	0.0	CITIES SERVICE GAS C
8108038	06142	3507322210	103	HUMPHREY NO 2	0.0	CITIES SERVICE GAS C
8108039	05918	3507322343	103	THRONE #1	0.0	CITIES SERVICE GAS C
*MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC						
8108040	06406	3507322452	103	BOWMAN #1

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JD NO	JA DKT	API NO	SEC	D WELL NAME		FIELD NAME	PROD	PURCHASER
8107830	06324	3507322387	103	BECKNER #1		SOONER TREND	12.0	CITIES SERVICE GAS C
8107819	06322	3504722079	103	COOPER #1		NORTH ELKHORN	0.0	EASON OIL CO
8107818	06323	3504721854	103	MEYER #1		N ELKHORN	14.0	AMINOIL USA INC
-KAISER-FRANCIS OIL COMPANY				RECEIVED: 12/05/80	JA: OK			
8107851	06331	3513900000	108	C M REYNOLDS #1		HUGOTON FIELD	20.0	CITIES SERVICE GAS C
-KENNEDY & MITCHELL INC				RECEIVED: 12/05/80	JA: OK			
8107841	05527	3500700000	103	CLENNEY #24-393		UNALLOCATED (SW SW 6-1N-	275.0	NORTHERN NATURAL GAS
8107842	05528	3515100000	103	MYERS #20-312		AVARD NW (SE NE 20-26N-1	180.0	PANHANDLE EASTERN PI
8107840	05526	3504500000	103	SALON #24-401		UNALLOCATED (SW NE 9-23N	275.0	NORTHERN NATURAL GAS
-L G WILLIAMS OIL COMPANY INC				RECEIVED: 12/03/80	JA: OK			
8107821	06309	3501721277	103	INDEPENDENCE 28-1		YUKON	0.0	PHILLIPS PETROLEUM C
8107820	06310	3501721195	103	PARK CENTER 29-1		YUKON	0.0	PHILLIPS PETROLEUM C
-LENHART & BENNETT INC				RECEIVED: 12/05/80	JA: OK			
8107852	05170	3507121079	103	MOLACEK NO 11-1		EAST DILWORTH	25.0	CITIES SERVICE CO
8107853	05171	3507121102	103	MOLACEK NO 11-2		EAST DILWORTH	25.0	CITIES SERVICE
-NATURAL GAS ANADARKO INC				RECEIVED: 12/05/80	JA: OK			
8107856	06328	3500721683	103	SPRAGUE #1-22		SOUTH SIX MILE	180.0	NORTHERN NATURAL GAS
8107857	06775	3500721761	102	STAKER #1-26		LORENA	270.0	NORTHERN NATURAL GAS
-NIXON-DAVIS ENERGY CO INC				RECEIVED: 12/04/80	JA: OK			
8107831	05449	3508321226	103	FERGUSON #1		WEST MULHALL	120.0	EASON OIL CO
-PETROLEUM INC				RECEIVED: 12/05/80	JA: OK			
8107855	06327	3508720770	103	NICHOLS B #1		N DIBBLE	3000.0	SUN GAS CO
-PORTS OF CALL CO				RECEIVED: 12/05/80	JA: OK			
8107843	06803	3501721580	102	SHEPHERD #2-1		NW YUKON	0.0	DELHI GAS PIPELINE C
-PROVIDENCE ENERGY CORP				RECEIVED: 12/05/80	JA: OK			
8107854	06326	3505920863	103	KRAUS #1		N W DOBY SPRINGS	100.0	NORTHERN NATURAL GAS
-RED EAGLE OIL CO				RECEIVED: 12/03/80	JA: OK			
8107808	06292	3509321781	103	BENJAMIN NO 1		FAIRVIEW	75.0	PIONEER GAS PRODUCTS
-SAMSON RESOURCES COMPANY				RECEIVED: 12/05/80	JA: OK			
8107847	06193	3503920253	103	MUELLER UNIT NO 1		ANTHON	730.0	ARKANSAS LOUISIANA G
-SHAR-ALAN OIL CO				RECEIVED: 12/03/80	JA: OK			
8107815	06295	3509321762	103	OLGA MARTENS A-1		W FAIRVIEW	250.0	DELHI GAS PIPELINE C
-SOUTHLAND ROYALTY CO				RECEIVED: 12/03/80	JA: OK			
8107816	06294	3513921046	108	LEHMBECK #1-30		BAKERSBURG	0.5	KANSAS NEBRASKA NATU
8107817	06296	3513900000	108	WALL #1-4		CAPLE	11.0	NORTHERN NATURAL GAS
-SOUTHWESTERN EXPLOR CONSULTANTS INC				RECEIVED: 12/03/80	JA: OK			
8107810	06301	3510320923	103	EDWARDS #2		POLO	0.0	ARCO OIL & GAS CO
-SOUTHWESTERN EXPLOR CONSULTANTS INC				RECEIVED: 12/05/80	JA: OK			
8107848	06302	3510320935	103	ISABEL #1		POLO	0.0	ARCO OIL & GAS CO
-WESTERN CONTINENT OIL CORP				RECEIVED: 12/05/80	JA: OK			
8107850	05929	3507121425	103	BRAZELTON 3-36		PERMIAN	35.0	CORONADO TRANSMISSIO
8107849	05922	3507121223	102	JOHNSON 1-30		PERMIAN	35.0	CORONADO TRANSMISSIO
-WM J OCONNOR				RECEIVED: 12/03/80	JA: OK			
8107814	06350	3500320728	103	GLADYS NO 2		OAKDALE	180.0	MICHIGAN-WISCONSIN P
-WM J OCONNOR				RECEIVED: 12/05/80	JA: OK			
8107838	06188	3515121021	103	BROWN #1		ALINE	185.0	MICHIGAN-WISCONSIN P
-WOODS PETROLEUM CORPORATION				RECEIVED: 12/03/80	JA: OK			
8107825	06469	3512920421	102	SUMMERS #13-1		NORTH STRONG CITY	730.0	ARKANSAS LOUISIANA G

** U.S. GEOLOGICAL SURVEY - METAIRIE,LA

-AMOCO PRODUCTION CO	RECEIVED: 12/08/80	JA: 3

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JD NO	JA DKT	API NO	SEC	D WELL NAME		FIELD NAME	PROD	PURCHASER
8107865	GO-1675	4271140462	102	OCS-G-2427 #A-4		E ADD HIGH IS AREA-S EXT	1500.0	MICHIGAN-WISCONSIN P
8107884	GO-1676	4271140468	102	OCS-G-2427 #A-5		HIGH ISLAND AREA-SOUTH E	1500.0	MICHIGAN-WISCONSIN P
-CNG PRODUCING COMPANY				RECEIVED: 12/08/80	JA: 3			
8107859	GO-1589	1771240198	102	F-381		SHIP SHOAL	1460.0	CONSOLIDATED GAS SUP
-EXXON CORPORATION				RECEIVED: 12/08/80	JA: 3			
8107861	GO-1598	1771540329	102	OCS-G 1250 NO C-9		S TIMBALIER	1095.0	TRUNKLINE GAS CO
-GULF OIL CORPORATION				RECEIVED: 12/08/80	JA: 3			
8107875	GO-1672	1771540332	102	OCS G-3336 WELL NO D-12		SOUTH TIMBALIER	100.0	TEXAS EASTERN TRANSM
-MCMORAN OFFSHORE EXPLORATION CO				RECEIVED: 12/08/80	JA: 3			
*8107873	GO-1698	1770540363	102	OCS-G 3390 #9		VERMILION	9000.0	TRANSCONTINENTAL GAS
-MOBIL OIL EXPLORATION & PROD S E				RECEIVED: 12/08/80	JA: 3			
8107880	GO-1669	1771740110	102	GRAND ISLE 83 #2		GRAND ISLE	2737.0	NORTHERN NATURAL GAS
*8107858	GO-1633	1771340072	102	SOUTH PELTO #10 #10C		SOUTH PELTO	2500.0	TRANSCONTINENTAL GAS
*8107876	GO-1632	1771340072	102	SOUTH PELTO 10 #10A		SOUTH PELTO	7.0	TRANSCONTINENTAL GAS
8107863	O-1601	1771340039	102	SOUTH PELTO 9 #4A		SOUTH PELTO	88.0	TRANSCONTINENTAL GAS
-PENNZOIL OIL & GAS INC				RECEIVED: 12/08/80	JA: 3			
8107870	GO-1691	4270940304	102	OCS-G 2372 #B-15		HIGH ISLAND AREA	157.0	UNITED GAS PIPE LINE
-SHELL OIL CO				RECEIVED: 12/08/80	JA: 3			
*8107866	GO-1686	1770540402	102	OCS-G 3119 NO 1		VERMILION	750.0	FLORIDA GAS EXPLORAT
*8107874	GO-1619	4270840080	102	OCS-G 3236 A-18		HIGH ISLAND	288.2	UNITED GAS PIPELINE
8107864	GO-1678	4270340060	102	OCS-G 3467 A-1		MATAGORDA ISLAND	10.0	TRANSCONTINENTAL GAS
8107881	GO-1679	4270340063	102	OCS-G 3467 A-2		MATAGORDA ISLAND	0.0	TRANSCONTINENTAL GAS
8107877	GO-1680	4270340064	102	OCS-G 3467 A-3		MATAGORDA ISLAND	1.0	TRANSCONTINENTAL GAS
8107882	GO-1681	4270340065	102	OCS-G 3467 A-4		MATAGORDA ISLAND	0.3	TRANSCONTINENTAL GAS
8107860	GO-1682	4270340068	102	OCS-G 3467 A-5		MATAGORDA ISLAND	1.3	TRANSCONTINENTAL GAS
8107862	GO-1683	4270340071	102	OCS-G 3467 A-6		MATAGORDA ISLAND	10.0	TRANSCONTINENTAL GAS
-TENNECO OIL COMPANY				RECEIVED: 12/08/80	JA: 3			
8107878	O-1384	1770440376	102	EAST CAMERON 380 C-1		EAST CAMERON	3600.0	TENNESSEE GAS PIPELI
8107867	O-1473	1770040293	102	WEST CAMERON 180 G-7		WEST CAMERON 180	1.5	TENNESSEE GAS PIPELI
-TRANSCO EXPLORATION COMPANY				RECEIVED: 12/08/80	JA: 3			
8107879	O-1627	4270940422	102	OCS-G 3243 A-11		HIGH ISLAND	2900.0	TRANSCONTINENTAL GAS
*8107869	GO-1654	1771940154	102	OCS-G 3414 #4		WEST DELTA	8.0	TRANSCONTINENTAL GAS
*8107872	GO-1655	1771940163	102	OCS-G 3414 #6		WEST DELTA	8.0	TRANSCONTINENTAL GAS
8107871	GO-1656	1771940167	102	OCS-G 3414 #7		WEST DELTA	8.0	TRANSCONTINENTAL GAS
-SHELL OIL CO				RECEIVED: 12/08/80	JA: LA 3			
8107868	GO-1684	1772340096	102	OCS-G 1609 NO D-43		SOUTH PASS	11.7	SOUTHERN NATURAL GAS
-TEXACO INC				RECEIVED: 12/08/80	JA: LA 3			
*8107883	GO-1661	1771040748	102	E BLOCK 313 OCS G-2608 B-15		EUGENE ISLAND	365.0	COLUMBIA GAS TRANSMI

OTHER PURCHASERS VOLUME NO 1338

8107858	FLORIDA GAS CO
8107866	TRANSCONTINENTAL GAS PIPELINE CORP
8107869	PUBLIC SERVICE ELECTRIC AND GAS CO
8107872	PUBLIC SERVICE AND GAS CO
8107873	TRANSCONTINENTAL GAS PIPELINE CO
8107874	TRANSCONTINENTAL GAS PIPELINE CORP
8107876	FLORIDA GAS TRANSMISSION CO
8107883	TEXAS EASTERN TRANSMISSION CORP

[FR Doc. 80-40563 Filed 12-30-80; 8:45 am]

BILLING CODE 6450-85-C

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-1718-3]

Availability of Environmental Impact Statements

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review, Environmental Protection Agency, 401 M Street, SW., Washington, D.C.20460, (202) 245-3006.

Dated: December 29, 1980.

are planned requiring 80,000 acres for right-of-way. (EIS Order No. 800986.)

Extension: The review period for the above EIS has been extended to April 1, 1981. (No. 800986.)

ENVIRONMENTAL PROTECTION AGENCY

Final

OCS Oil and Gas Sales, No. A66 and No. 66, Gulf of Mexico, December 24: Proposed are two OCS oil and gas lease sales for tracts A66 and 66 in the Gulf of Mexico. The tracts comprise 1,979,794 acres offshore of the states of Texas, Louisiana, Alabama,

approximate length of 3.6 miles. The facility would have interchanges with full access in all directions. (FHWA-VA-EIS-80-01-D.) (EIS Order No. 800984.)

Final Supplement

HI-3, North Halawa Valley alignment (FS-1), Honolulu County, Hawaii, December 23:

Requests for hearing should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460.

The public docket for these temporary

V 45 D E 3 1 8 0 UMI

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-1718-3]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review (A-104), U.S. Environmental Protection Agency.

PURPOSE: This notice lists the environmental impact statements (EISS) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's regulations (40 CFR Part 1506.9).

PERIOD COVERED: This notice includes EIS's filed during the week of December 22, 1980 to December 24, 1980.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from December 31, 1980 and will end on February 16, 1981. The 30-day review period for final EIS's as calculated from December 31, 1980 will end on January 30, 1981.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this notice you should contact the Federal agency which prepared the EIS. This notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following source: Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209, (703) 558-8270.

SUMMARY OF NOTICE: This notice sets forth a list of EIS's filed with EPA during the week of December 22, 1980 to December 26, 1980. The Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the state(s) and county(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number, if available, is listed in this notice. Commenting entities on draft EIS's are listed for final EIS's. All additional information relating to EIS's such as time extensions or reductions of prescribed review periods, withdrawals, retractions, corrections or supplemental repotrs is also noticed under the appropriate agency.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review, Environmental Protection Agency, 401 M Street, SW., Washington, D.C.20460, (202) 245-3006.

Dated: December 29, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104).

U.S. Army Corps of Engineers

Contact: Mr. Richard Makinen, Office of the Chief of Engineers, Attn.: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272-0121.

Final

Irondequoit Bay navigation improvements, Monroe County, N.Y., December 2: Proposed are recreational navigation improvements for Irondequoit Bay in Monroe County, New York. The preferred alternatives consider opening the bay at the existing outlet with a fixed, four-lane highway bridge or dredging a deeper channel at the same location with a lift bridge providing unlimited vertical clearance. The dredged material disposal options preferred are wetland creation and open-water dumping in the deepest waters of Irondequoit Bay. (Buffalo District.) Comments made by: USDA, DOI, EPA, DOC, DOT. (EIS Order No. 800980.)

DEPARTMENT OF COMMERCE

Contact: Dr. Robert T. Miki, Acting Deputy Assistant Secretary, for Regulatory Policy, Room 7614, Department of Commerce, Washington, D.C. 20230, (202) 377-2482.

National Oceanic and Atmospheric Administration

Draft Supplement

Groundfish Fishery FMT, WA/OR/CA, (DS-1), Pacific, December 24: This statement supplements draft EIS, #791172, filed 11-23-79. Proposed is a fishery management plan for the groundfish fishery of the Pacific Ocean offshore of Washington, Oregon and California. This supplement examines several major revisions and improvements and considers groundfish resources, fisheries, harvest levels and detailed management options. (EIS Order No. 800987.)

Department of Defense, Air Force

Contact: L/C William Verkest, AFRCE-MX/DEV, Ballistic Missile Office, Box EIS, Norton Air Force Base, California 92409, (714) 382-4891.

Draft

MX Missile, Deployment Area Selection, Several, December 2: Proposed is the selection of sites for the deployment of the MX missile. Possible sites under consideration include (1) Coyote Spring Valley or Ely, Nevada; (2) Milford, Beryl or Delta, Utah; (3) Dalhart, Texas; and (4) Clovis, New Mexico. The system is expected to be dispersed over approximately 8,500 sq. miles. Approximately 8,500 miles of new road are planned requiring 80,000 acres for right-of-way. (EIS Order No. 800986.)

Extension: The review period for the above EIS has been extended to April 1, 1981. (No. 800986.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: RTP Library, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-2777.

Draft

Bulk Gasoline Terminals, Standards, Regulatory, December 22: Proposed are performance standards to limit emissions of volatile organic compounds (VOC) from new, modified, and reconstructed bulk gasoline terminals, four regulatory alternatives consider outlet levels of VOC, levels of State involvement and various industry restrictions and requirements. (EPA-450/3-80-038A.) (EIS Order No. 800982.)

Final

Contact: Mr. Eugene Wojcik, Region 5, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2157.

Springvale-Bear Creek, Case Study 3, Emmet County, Mich., December 22: Proposed is the awarding of a grant for a 201 facility plan for the Crooked/Pickerel Lakes facility planning area located in Emmet County, Michigan. The preferred alternative is a limited action alternative and includes: (1) The upgrading of most on-site systems by replacing undersized septic tanks, and upgrading existing drainfields or replacing them with elevated sand mounds, (2) service of the Ellsworth Point and Botsford Landing areas by cluster systems, and (3) service of the Crooked/Pickerel channel area by holding tanks. Five other alternatives are considered. This is a case study 3 for alternative waste treatment systems for rural lake projects. Comments made by: HEW, USDA, DOT, DOI. (EIS Order No. 800981.)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755-6300.

Draft

Saddlebrook Farms, Mortgage Insurance, Gloucester, County, N.J., December 2: Proposed is the issuance of HUD mortgage insurance for the Saddlebrook Farms Subdivision in Washington Township, Gloucester County, New Jersey. The development would consist of approximately 751 single family dwelling units on 417 acres. (EIS Order No. 800977.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of Interior, Washington, D.C. 20240, (202) 343-3891.

Final

OCS Oil and Gas Sales, No. A66 and No. 66, Gulf of Mexico, December 24: Proposed are two OCS oil and gas lease sales for tracts A66 and 66 in the Gulf of Mexico. The tracts comprise 1,979,794 acres offshore of the states of Texas, Louisiana, Alabama, Mississippi and Florida. The project will include the construction of 175 development wells, 185 exploration wells, 375 miles of offshore pipeline and 30 new platforms. The alternatives consider: (1) hold sale as proposed, (2) modify via potential tract deletions, (3) delay sales, and (4) withdraw sales. (FES-80-54.) Comments made by: AHP, DOC, DOI, DOT, EPA, FERC, USAF, USA, state agencies, groups, individuals, and businesses. (EIS Order No. 800988.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environment and Safety, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, (202) 426-4357.

Federal Aviation Administration

Final

Boston-Logan Airport, Bird Islands Flats, Suffolk County, Mass., December 22: Proposed is Development of the Bird Island Flats located at the southwest corner of Boston-Logan International Airport in Suffolk County, Massachusetts. The flats encompass approximately 65 acres of a 234 acre landfill. Each alternative includes cargo facilities, freight forwarders and a noise buffer zone. The development alternatives consider: (1) Low intensity cargo, (2) high intensity cargo, (3) mixed use, and (4) no action. Each of the development alternatives are examined with and without general aviation land use. Comments made by: HHS, DOT, COE, HUD, EPA, DOI, DOE. (EIS Order No. 800979.)

Federal Highway Administration

Draft

Romence Road Extension, Portage, Kalamazoo County, Mich., December 22: Proposed is the extension of Romence Road from South Westnedge Avenue to Portage Road in the city of Portage, Kalamazoo County, Michigan. The extension will include additional lanes, right-of-way and construction of an access road. The alternatives considered are: (1) Various alignments, (2) non action, and (3) other transportation modes. (FHWA-MI-EIS-80-03-D.) (EIS Order No. 800978.)

TX-71 Upgrading, City of La Grange, Fayette County, Tex., December 22: Proposed is the upgrading of TX-71 within the city of La Grange, Fayette County, Texas, The improvements would involve reconstructing TX-71 as a four lance divided facility with partial access. The length of TX-71 involved is approximately 10.1 miles. (FHWA-TX-EIS-80-03-D.) (EIS Order No. 800983.)

Bluefield Bypass, VA-19/460 to VA-720, Tazewell County, Va. December 22: Proposed is the construction of the Bluefield Bypass from the intersection of existing VA-19/460 west of Bluefield in Tazewell County, Virginia. The bypass would provide a complete four lane facility to the West Virginia State line extending for an approximate length of 3.6 miles. The facility would have interchanges with full access in all directions. (FHWA-VA-EIS-80-01-D.) (EIS Order No. 800984.)

Final Supplement

HI-3, North Halawa Valley alignment (FS-1), Honolulu, County, Hawaii, December 23: This statement supplements final EIS, No. 730808, filed 5-21-73. Proposed is the realignment of HI-3 through the North Halawa Valley in Honolulu County, Hawaii. The facility would be either a six lane or four lane highway. This supplement specifically addresses the four lane segment of HI-3 which would skirt the perimeter of Ho'omaluhia Park in Kaneohe. (FHWA-HI-EIS-77-01-F(S).) (EIS Order No. 800985.)

[FR Doc. 80-40704 Filed 12-30-80; 8:45 am]

BILLING CODE 6560-37-M

[SWH-FRL 1717-2]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Grant of temporary exclusions and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is today temporarily excluding solid wastes generated at several particular generating facilities from hazardous waste status. This action responds to delisting petitions submitted under 40 CFR 260.20 and 260.22 and are granted pursuant to 40 CFR 260.22(m). The effect of this action is to temporarily exclude certain wastes generated at particular facilities from listing as hazardous wastes under 40 CFR Part 261, and from the management standards issued by EPA under Sections 3002 through 3006 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA) (40 Parts 262 through 265 and 122 through 124 of this Chapter).

DATES: Effective date: December 24, 1980.

EPA will accept public comments on these temporary exclusions until March 2, 1981. Any person may request a hearing on these temporary exclusions by filing a request with John P. Lehman, whose address appears below, by January 21, 1981. The request must contain the information prescribed in § 260.20(d) of this chapter.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001/Delisting Petitions."

Requests for hearing should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460.

The public docket for these temporary exclusions is located in Room 2711, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Myles Morse, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. (202) 755-9187.

SUPPLEMENTARY INFORMATION: On July 18, 1980 and November 12, 1980 as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published lists of hazardous wastes from non-specific and from specific sources. See 40 CFR 261.31 and 261.32 (45 FR 47832-47836 and 74890-74892). These wastes were listed as hazardous because they typically and frequently exhibit either any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (ignitability, corrosivity, reactivity and EP toxicity) or meet the criteria for listing contained in § 261.11(a)(2) or § 261.11(a)(3).

The Agency, however, recognizes that individual waste streams may vary depending on raw materials, industrial processes and other factors. Thus, while a type of waste described in these regulations generally is hazardous, a specific waste meeting the listing description from an individual facility may not be hazardous. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste. To be excluded, petitioners must show that the waste produced at their facilities does not meet any of the criteria under which the waste was listed. (See § 260.22(a).) Wastes which are "delisted" (i.e., excluded) may, however, still be hazardous if they exhibit any of the characteristics of a hazardous waste and generators remain obligated to make this determination.

In addition to wastes listed as hazardous in §§ 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See §§ 261.31(c) and (d)(2).) Again, the substantive standard for "delisting" is that the waste not meet any of the criteria for which the waste was listed

originally. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent listed waste, or the waste mixture as a whole.

I. Virginia Chemicals Inc.

A. Petition for Exclusion

Virginia Chemicals Inc. (Virginia Chemicals), involved in the production of sodium hydrosulfate, has petitioned

Section 261.21(a)(i) of the regulations also indicates that solutions with flashpoints above 140°F are considered non-ignitable. Flashpoint tests run on Virginia Chemicals distillation still

K063 [1]—Sludge from lime treatment of spent pickle liquor from steel finishing operations.

The constituents of concern for these wastes are cadmium, chromium, nickel, cyanide and lead. Bekaert has petitioned

samples of this sludge are well below the EP maximum toxicity levels. These low leachate levels indicate that the constituents are present essentially in an immobile form. Leachate analyses also indicate that the nickel present is

levels indicate that the constituents are present essentially in an immobile form. A final pH of 8.5 indicates that FWC's waste treatment process effectively neutralizes its acid wastes. The Agency therefore has granted a temporary

originally. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent listed waste, or the waste mixture as a whole. (See § 260.22(b).) Like other excluded wastes, excluded hazardous waste treatment, storage or disposal residues remain subject to Subpart C of Part 261, and so may be hazardous if they exhibit any of the characteristics of hazardous waste.

EPA recognizes as well that there will be circumstances where immediate action on petitions is appropriate. Therefore, upon Agency review of a submitted petition, the Administrator may under § 260.22(m) grant a temporary exclusion if there is substantial likelihood that an exclusion will finally be granted.

It should be noted that the Agency has not run spot checks on the test data submitted to date in exclusion petitions. The Agency believes that the sworn affidavits submitted with each petition sufficiently binds the petitioners to ensure presentation of truthful and accurate test results. The Agency may, however, spot sample and analyze wastes or groundwater before a final decision is made whether to exclude any particular waste from the hazardous waste regulations.

We also note that the temporary exclusions granted today apply only to the Federal hazardous waste management system established under the RCRA. States remain free to take any action they deem appropriate with regard to these wastes.

The temporary exclusions published today involve the following petitioners: Virginia Chemicals Inc. for its facilities in Bucks, Alabama and Leeds, South Carolina; Bekaert Steel Wire Corporation, Rome, Georgia; the Florida Wire and Cable Company, Jacksonville, Florida; Wiremill Incorporated, Sanderson, Florida; the Firestone Steel Products Company, Spartanburg, South Carolina; the American Recovery Company, Baltimore, Maryland; Armco Incorporated, Middletown, Ohio; the Reynolds Aluminum Company for its facilities in Richmond, Virginia; Ewa Beach, Hawaii; Houston, Texas; Kansas City, Missouri; Guayama, Puerto Rico; Woodbridge, New Jersey; Salisbury, North Carolina; Hayward, California; Kent, Washington; Tampa, Florida; Torrance, California; and Middletown, New York; and Monroe Auto Equipment, Paragould, Arkansas.

I. Virginia Chemicals Inc.

A. Petition for Exclusion

Virginia Chemicals Inc. (Virginia Chemicals), involved in the production of sodium hydrosulfate, has petitioned the Agency to exclude its distillation column bottom sludge presently listed as EPA Hazardous Waste No. F003. (The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethylbenzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; and the still bottoms from the recovery of these solvents), at their facilities in Bucks, Alabama and Leeds, South Carolina. Virginia Chemicals has petitioned to exclude its residue because they claim that its still bottoms no longer meet the criteria for which the waste was listed in (40 CFR 261.11(a)(1)).

Virginia Chemicals utilizes the sodium formate process in the production of sodium hydrosulfate. The reaction is run in a methanol solution which is not part of the reaction. The methanol is then recovered from the water of reaction and recycled to the process. The distillation still bottoms discharged from the methanol recovery process are comprised primarily of sodium and sulfur salts and are sold as a co-product of the sodium hydrosulfate process.

Virginia Chemicals has submitted descriptions of its sodium hydrosulfate production and methanol recovery processes, constituent analyses of the distillation bottom material for methanol, and flash point tests for this material. Virginia Chemicals claims that since its methanol recovery is 99.9+% efficient, less than 0.1% methanol remains in the distillation still bottoms and therefore, this residue cannot be considered hazardous. Virginia Chemicals further states that its residue does not exhibit the characteristic of ignitability (§ 261.21) for which EPA Hazardous Waste F003 is listed in Part 261 Subpart D and as described in § 261.21 of the regulations.

Results of ignitability tests for both facilities indicate that the flash point of the still bottom material is greater than 212°F.

B. Agency Analysis and Action

EPA Hazardous Waste No. F003 is listed due to the ignitability of spent nonhalogenated solvents, one of which is methanol, the solvent used in Virginia Chemical's process. Analyses submitted by Virginia Chemicals indicate that methanol is present in the distillation still bottoms in only low percentages (<0.1%) by volume. This is well below the limit of 24 percent alcohol by volume set in § 261.21(a)(i) of the regulations. Section 261.21(a)(i) of the regulations also indicates that solutions with flashpoints above 140°F are considered non-ignitable. Flashpoint tests run on Virginia Chemicals distillation still bottom discharges at both facilities indicate that the flash point is greater than 212°F.

Virginia Chemicals has sufficiently demonstrated the non-hazardous nature of its distillation still bottoms due to the efficiency of its methanol recovery system. The Agency, therefore, has granted a temporary exclusion to Virginia Chemicals' Bucks, Alabama and Leeds, South Carolina facilities, for its distillation bottom discharges from its sodium hydrosulfite process, as described in its petition, from its listing under EPA Hazardous Waste No. F003.

C. Agency Information Needs for Final Delisting

The Agency believes that Virginia Chemicals has submitted sufficient data for the final delisting of its distillation still bottoms. The Agency has granted a temporary exclusion to expedite delisting action for Virginia Chemicals. Final exclusion will be granted upon review of comments received in response to this publication.

II. Bekaert Steel Wire Corporation

A. Petition for Exclusion

The Bekaert Steel Wire Corporation (Bekaert), involved in the manufacture of steel wire, has petitioned the Agency to exclude its wastewater treatment sludge, presently listed for the following EPA Hazardous Wastes:

F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

F007—Spent cyanide plating bath solutions from electroplating operations (except for precious metals electroplating spent cyanide plating bath solutions)

F008—Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process (except for precious metals electroplating bath sludges)

F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (except for precious metals electroplating spent stripping and cleaning bath solutions)

K063 [1]—Sludge from lime treatment of spent pickle liquor from steel finishing operations.

The constituents of concern for these wastes are cadmium, chromium, nickel, cyanide and lead. Bekaert has petitioned to exclude its waste because it does not meet the criteria for which they were listed.

Bekaert utilizes the processes of wire drawing, hydrochloric acid pickling, and electroplating of copper and zinc in its production of steel wire. Bekaert's wastewater treatment process for pickling and plating rinse water involves caustic soda neutralization, chlorine treatment for cyanide destruction, calcium hydroxide neutralization (to a pH of 8–10), clarification/precipitation, and pressure filtration. Bekaert claims that its wastewater treatment process produces an environmentally stable sludge containing non-hazardous levels of cadmium, chromium, nickel, cyanide and lead.

Bekaert has submitted a detailed description of its sludge treatment system, EP toxicity test results for all toxic constituents specified in § 261.24 of the regulations, and total constituent analyses of the sludge for cyanide. The samples were taken over a one month period which the petitioner claims represents the uniformity of the constituent concentrations in the waste.

EP toxicity tests for cadmium, total chromium, nickel and lead produced maximum leachate concentrations of <0.02, 0.05, 0.22, and <0.2 ppm, respectively. Constituent analysis of the wastewater sludge for cyanide revealed a maximum concentration of 0.01 ppm.

B. Agency Analysis and Action

The constituents of concern for which EPA Hazardous Waste Nos. F006, F007, F008, F009 and K062 are listed are cadmium, chromium, nickel, lead and cyanide. Although each of these constituents appear in Bekaert's wastewater, it has sufficiently demonstrated that its wastewater treatment sludge is non-hazardous. Bekaert's waste treatment operation destroys the majority of cyanides in the wastewater, leaving residue concentrations not exceeding 0.01 ppm, which are considered negligible. Additionally, the concentrations of cadmium, chromium, and lead in extract samples of this sludge are well below the EP maximum toxicity levels. These low leachate levels indicate that the constituents are present essentially in an immobile form. Leachate analyses also indicate that the nickel present is substantially immobile and therefore not of regulatory concern. A final pH range of 8–10 indicates that Bekaert's waste treatment system effectively neutralizes its acid wastes. The Agency therefore has granted a temporary exclusion to Bekaert's facility in Rome, Georgia for its treated electroplating and pickle liquor rinse waters, as described in its petition.

[1] On November 12, 1980 (45 FR 74884), EPA removed waste K063 from the hazardous waste list (§ 261.32). However, since these lime treatment sludges are generated from the treatment of a listed hazardous waste (K062), they still are considered to be a hazardous waste (§ 261.3(c)(2)). Further, they remain hazardous wastes until they no longer meet any of the characteristics of hazardous wastes and are excluded (§ 261.3(d)(2)).

III. Florida Wire and Cable Company

A. Petition for Exclusion

The Florida Wire & Cable Company (FWC), involved in the manufacture of galvanized high carbon steel wire and guy wire, has petitioned the Agency to exclude its sludge, formerly listed as EPA Hazardous Waste No. K063, sludge from lime treatment of spent pickle liquor from steel finishing operations.[2] FWC has petitioned to exclude its waste because it does not meet the criteria for which it was listed.

FWC's operation includes the processes of cold drawing, hydrochloric acid pickling, and hot dip galvanizing, and stranding in the production of galvanized high carbon steel wire and guy wire. Its waste treatment process for pickle liquor rinse and overflow wastes involves neutralization, lime and polymer flocculation, settling, and pressure filtration. FWC claims that its sludge is environmentally stable and non-hazardous, and specifically that the sludge does not contain hazardous levels of chromium and lead, the constituents of concern for spent pickle liquor (waste K062).

FWC submitted a detailed description of its sludge treatment system, and EP toxicity test results for all toxic constituents specified in § 261.24 of the regulations. The samples were taken over a one month period which the petitioner claims represents the uniformity of constituent concentrations in the waste. EP toxicity tests showed maximum chromium and lead levels in the waste extract of 0.015 and 0.058 ppm, respectively.

B. Agency Analysis and Action

The constituents of concern in this waste, are chromium and lead. EP extracts from sludge samples analyzed by FWC show chromium and lead consistently well below the maximum EP toxicity levels. These low leachate levels indicate that the constituents are present essentially in an immobile form. A final pH of 8.5 indicates that FWC's waste treatment process effectively neutralizes its acid wastes. The Agency therefore has granted a temporary exclusion to FWC's facility in Jacksonville, Florida for its treated pickle liquor rinse and overflow wastes, as described in its petition.

[2] See footnote 1.

IV. Wiremill Incorporated

A. Petition for Exclusion

Wiremill Inc. (Wiremill), involved in the manufacture of high carbon steel wire, has petitioned the Agency to delist its sludge, formerly listed as EPA Hazardous Waste No. K063, sludge from time treatment of spent pickle liquor from steel finishing operations.[3] Wiremill has petitioned to exclude its waste because it does not meet the criteria for which it was listed.

Wiremill uses the processes of cold drawing and hydrochloric acid pickling in the production of high carbon steel wire. Its waste treatment process for pickle liquor rinse and overflow wastes involves neutralization, lime and polymer flocculation, clarification, and pressed filtration. Wiremill claims that its sludge is environmentally stable and non-hazardous, and specifically that the sludge does not contain hazardous levels of chromium and lead, the constituents of concern for spent pickle liquor (waste K062).

Wiremill has submitted a detailed description of its sludge treatment system, and EP toxicity test results for all toxic constituents specified in § 261.24 of the regulations. The samples were taken over a one-month period which the petitioner claims represents the uniformity of constituent concentrations in the waste. EP toxicity tests produced maximum leachate concentrations of <0.01 and 0.018 ppm for chromium and lead, respectively.

B. Agency Analysis and Action

The constituents of concern in this waste are chromium and lead. EP extracts from sludge samples analyzed by Wiremill show chromium and lead consistently well below the maximum EP toxicity levels. These low leachate levels indicate that the constituents are present essentially in an immobile form. A final pH of 8.7 indicates that Wiremill's waste treatment process effectively neutralizes its acid wastes. The Agency therefore, has granted a temporary exclusion to Wiremill's facility in Sanderson, Florida for its

[3] See footnote 1.

treated pickle liquor rinse and overflow wastes, as described in its petition.

V. Firestone Steel Products Company

A. Petition for Exclusion

VI. American Recovery Company

A. Petition for Exclusion

The American Recovery Company (ARC), located in Baltimore, Maryland currently operates a waste treatment

Samples of dewatered sludge were obtained for EP toxicity analyses. Maximum chromium and lead levels in the waste extracts were 0.17 and <0.01 ppm, respectively.

B. Agency Analysis and Action

extracts from sludge samples analyzed by Armco show chromium and lead consistently well below the maximum EP toxicity levels. These low leachate levels indicate that the constituents are present essentially in an immobile form. A final pH of 8.5 indicates that Armco's

the conversion coatings used by Reynolds. None of the formulations contain chromium or cyanide.

EP toxicity test results of dewatered sludge samples indicate a maximum chromium concentration of 0.04 ppm.

treated sludge, presently listed as EPA Hazardous Waste No. F006—wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on

treated pickle liquor rinse and overflow wastes, as described in its petition.

V. Firestone Steel Products Company

A. Petition for Exclusion

The Firestone Steel Products Company (Firestone), involved in the manufacture of stainless steel food containers and carbon steel automotive body panels, has petitioned the Agency to exclude its sludge, formerly listed as EPA Hazardous Waste No. K063, sludge from the lime treatment of spent pickle liquor from steel finishing operations.[4] Firestone has petitioned to exclude its waste because it does not meet the criteria for which it was listed.

Firestone uses the processes of forming, welding, assembly, and metal finishing (nitric and hydrofluoric acid pickling and sulfuric acid anodizing of aluminum) in the production of food container. Its waste treatment process for spent pickle liquor and pickle liquor rinse and overflow wastes involves neutralization, lime and polymer flocculation, clarification, and pressed filtration. Firestone claims that its sludge is environmentally stable and non-hazardous and specifically that the sludge does not contain hazardous levels of chromium and lead, the constituents of concern in the spent pickle liquor (waste K062).

Firestone has submitted a detailed description of its sludge treatment system, and EP toxicity test results for all toxic constituents specified in § 261.24 of the regulations. The samples were taken over a 2 month period which the petitioner claims represents the uniformity of constituent concentrations in the waste. EP toxicity tests produced maximum leachate concentrations of 0.16 and 0.056 ppm for chromium and lead, respectively.

B. Agency Analysis and Action

A final pH range of 6 to 8.5 indicates that Firestones' waste treatment system effectively neutralizes its acid wastes. EP extracts from sludge samples analyzed by Firestone show chromium and lead concentrations consistently well below the maximum EP toxicity levels. These low leachate levels indicate that the constituents of concern are present essentially in an immobile form. The Agency therefore has granted a temporary exclusion to Firestone Steel Products Company's facility in Spartenburg, South Carolina, for its treated spent pickle liquor, as described in its petition.

[4] See footnote 1.

VI. American Recovery Company

A. Petition for Exclusion

The American Recovery Company (ARC), located in Baltimore, Maryland currently operates a waste treatment facility which neutralizes acidic electroplating and spent pickle liquor wastes. ARC has petitioned the Agency (as required by § 261.3(b)(2)) to exclude only the treatment residue produced by its treatment facility for spent pickle liquor wastes formerly listed as EPA Hazardous Waste K063, sludge from lime treatment of spent pickle liquor from steel finishing operations.[5] ARC claims that its treatment residue for the spent pickle liquor no longer meets the criteria for which the waste was originally listed, since it is non-corrosive and the hazardous constitutents of concern are present in an immobile form.

ARC has submitted a detailed description of its treatment process, and EP toxicity test results for all toxic constituents specified in § 261.24 of the regulations. ARC claims that the samples of residue obtained for analysis are representative of the range of spent pickle liquor wastes accepted for treatment at its facility.

ARC uses a batch treatment process which involves the separate neutralization of hydrofluoric, nitric and sulfuric acid pickle liquor wastes, followed by the precipitation of metals as hydroxide salts, and the belt filter press dewatering of the sludge. The pH, which is raised to a level of 8.5 is constantly monitored in the reactor tank. The supernatent is monitored for chromium and lead prior to transfer to the settling tank. Additional liming is necessary ony if supernatent samples exceed effluent guideline discharge permit parameters. The dewatered sludge is stockpiled for three to five days prior to landfilling.

Acidic wastes from electroplating processes are segregated and treated separately from spent pickle liquor wastes. The dewatered sludge from these wastes are currently manifested and disposed of at a Subtitle C landfill. ARC claims that there is no commingling of other wastes with the spent pickle liquor wastes processed at its facility.

ARC has characterized its treatment process quantitively for each of the eight companies utilizing ARC's treatment services. ARC has assured the Agency that its treatment process will be monitored using EP toxicity tests to calibrate the treatment of any additional sources of pickle liquor.

[5] See footnote 1.

Samples of dewatered sludge were obtained for EP toxicity analyses. Maximum chromium and lead levels in the waste extracts were 0.17 and <0.01 ppm, respectively.

B. Agency Analysis and Action

The constituents of concern in this waste, are chromium and lead. EP extracts from sludge samples analyzed by ARC show lead and chromium consistently well below the maximum EP toxicity levels. These low leachate levels indicate that the constituents are present essentially in an immoble form. A final pH range of 8.2 to 8.8 indicates that ARC's waste treatment system effectively neutralizes its acid wastes. The Agency therefore, has granted a temporary exclusion to ARC's facility in Baltimore, Maryland for its spent pickle liquor treatment residue, generated from the treatment process described in its petition.

VII. Armco Incorporated

A. Petition for Exclusion

Armco Incorporated (Armco), involved in the manufacture of stainless and electrical (silicon and high carbon) sheet steel has petitioned the Agency to delist its sludge, formerly listed as EPA Hazardous Waste No. K063, sludge from lime treatment of spent pickle liquor from steel finishing operations.[6] Armco has petitioned to exclude their waste because it does not meet the criteria for which it was listed.

Armco uses the process of hydrofluoric, nitric, and sulfuric acid pickling, for the cleaning of silcon, carbon and stainless steel produced at its facility. Its waste treatment process for spent pickle liquor wastes involves lime neutralization, settling, and gravity and pressed filtration. They claim their sludge is environmentally stable and non-hazardous, and specifically that the sludge does not contain hazardous levels of chromium and lead, the constitutents of concern in the spent pickle liquor (waste K062).

Armco submitted a detailed description of their sludge treatment system, and EP toxicity test results for chromium and lead. The samples were taken over a three month period which the petitioner claims represents the uniformity of constituent concentrations in the waste. EP toxicity tests revealed maximum chromium and lead levels in the waste extract of 0.17 and 0.19 ppm, respectively.

B. Agency Analysis and Action

The constituents of concern in this waste are chromium and lead. EP

[6] See footnote 1.

extracts from sludge samples analyzed by Armco show chromium and lead consistently well below the maximum EP toxicity levels. These low leachate levels indicate that the constituents are present essentially in an immobile form. A final pH of 8.5 indicates that Armco's waste treatment process effectively neutralizes its spent pickle liquor wastes. The Agency, therefore, has granted a temporary exclusion to Armco's facility in Butler, Pennsylvania for its treated spent pickle liquor, as described in its petition. It should be noted, however, that the Agency is concerned about the level of nickel in leachate analyses of the petitioner's stainless pickle liquor residues, even though nickel is not listed as a constitutent of concern. The Agency is presently analyzing its position on nickel concentration ranges in EP leachate. If after further analyses the Agency determines that these levels are of regulatory concern, nickel leachate concentrations may be considered prior to granting a final exclusion to Armco.

VIII. Reynolds Metals Company

A. Petition for Exclusion

The Reynolds Metals Company, (Reynolds), involved in the manufacture of one-piece aluminum cans, has petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F019, wastewater treatment sludges from the chemical conversion coating of aluminum. Reynolds has petitioned to exclude its waste because it does not meet the criteria for which it was listed. Reynolds has indicated that since its aluminum conversion coating processes do not use either chromium or cyanide, the constituents for which Hazardous Waste F019 is listed, its waste cannot contain hazardous levels of chromium or cyanide.

Reynolds has submitted a description of its wastewater treatement process, formulation lists from its suppliers of chemicals and mixtures used in the chemical conversion process, EP toxicity test results for all toxic constituents specified in § 261.24 of the regulations, and a constituent analysis of the sludge for cyanide.

Reynold's treatment process of chemical conversion rinse wastes involves lime neutralization to a pH of 8.0–8.5, precipitation of metal hydroxides, and dewatering via pressure filtration.

Formulation lists indicate that zirconium and fluoride compounds, nitric acid, hydrofluoric acid, hydrofluosilic acid, tannic acid, and phosphates are the major constituents of the conversion coatings used by Reynolds. None of the formulations contain chromium or cyanide.

EP toxicity test results of dewatered sludge samples indicate a maximum chromium concentration of 0.04 ppm. Constitutent analysis of the sludge revealed a cyanide concentration of 0.03 ppm.

Reynolds has certified that the production process, chemical conversion process, formulation lists, waste treatment process, EP test data and the constituent analysis for cyanide are representative and do not vary at each of the following facility sites: Richmond, Virginia; Ewa Beach, Hawaii; Houston, Texas; Kansas City, Missouri; Guayama, Puerto Rico; Woodbridge, New Jersey; Salisbury, North Carolina; Hayward, California; Kent, Washington; Tampa, Florida; Torrance, California; and Middletown, New York.

B. Agency Analysis and Action

It is apparent from the formulation lists submitted that chromium and cyanide are not used in Reynold's chemical conversion process. EP toxicity data indicate that chromium leachate concentrations are below the national primary interim drinking water standard. The cyanide concentrations found in the sludge are considered negligible and are well below the Public Health Service's suggested drinking water standard. The presence of these constituents in Reynolds wastes is probably a result of background levels and non-specific process contamination sources. Therefore, based on formulation lists, EP toxicity data, sludge constituent analysis and since Reynolds has certified that its production and treatment processes do not vary at any of its facilities, the Agency has granted temporary exclusions to the Reynolds Metals Company's facilities in Richmond Virginia; Ewa Beach, Hawaii; Houston, Texas; Kansas City, Missouri; Guayama, Puerto Rico; Woodbridge, New Jersey; Salisbury, North Carolina; Hayward, California; Kent, Washington; Tampa, Florida; Torrance, California; and Middletown, New York, for its wastewater treatment sludge from the chemical conversion of aluminum, as described in its petition, from its listing under EPA Hazardous Waste No. F019.

IX. Monroe Auto Equipment

A. Petition for Exclusion

The Monroe Auto Equipment Company (Monroe), involved in the manufacture of automotive ride control products (shock absorbers), has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. Monroe has petitioned to exclude its waste because it does not meet the criteria for which it was listed.

The production process at Monroe's facility which generates the listed hazardous waste is hard chrome plating of carbon steel rods. The hazardous constituents of concern in this waste (F006) are cadmium, chromium, nickel and cyanides. Monroe uses only chromium (chromic acid) in its plating operation, while cadmium, nickel and cyanide compounds are not used in any of its processes. Monroe claims that its treated wastewater sludge is non-hazardous due to the immobile and non-toxic form of chromium and negligible levels of cadmium, nickel and cyanide in the sludge.

Monroe has submitted a description of its wastewater treatment process, EP toxicity test results for cadmium, chromium, and nickel, and constituent analyses of the sludge for cyanide.

Monroe's chromic acid rinse wastewater passes through a Heil chrome reduction unit which uses sulfur dioxide in sulfuric acid to reduce hexavalent chromium to the trivalent form. The reduced chromium solution then enters a Walker process clarifier along with alkaline cleaning and phosphating solutions, lime and ploymers, resulting in neutralization and precipitation of metal hydroxides. After settling, the sludge is pumped to a storage lagoon from where the sludge passes through vacuum filtration for dewatering.

EP toxicity tests involving chromium, cadmium, and nickel produced maximum leachate levels of 0.75, <0.01, and 0.05 ppm, respectively. Constituent analyses of the sludge for total cyanide produced a maximum concentration of 3.9 ppm, while free cyanide was reported as <0.001 ppm.

B. Agency Analysis and Action

The constituents for which EPA Hazardous Waste No. F006 is listed are cadmium, chromium, nickel, and cyanide. Monroe has demonstrated that its hard chromium plating process does not use cadmium, nickel, and cyanide compounds. EP extracts show cadmium

levels consistently below the interim primary drinking water standard. Nickel leachate concentrations are considered negligible as are free cyanide levels in the dewatered sludge, and are therefore

the plant. According to the Applicant, the pepper industry could lose an estimated $500,000 if the pepper blight was not controlled.

Zineb and copper oxychloride sulfate

interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, was advised of this action.

11. The EPA was to be immediately

complete its review of a PMN within 90 days of its receipt by the Agency. However, under section 5(c) EPA may extend the notice period for good cause for additional periods, not to exceed an

(3) the exposure associated with the manufacture, processing, use, and disposal of the PMN substance.

Extension of the Notice Review

Headquarters address given above. The public record is available from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. All information that the manufacturer has claimed to be

levels consistently below the interim primary drinking water standard. Nickel leachate concentrations are considered negligible as are free cyanide levels in the dewatered sludge, and are therefore not of regulatory concern. The low concentrations of cadmium, nickel, and cyanide are probably a result of unknown minor sources of contamination and background levels, rather than the direct use of these constituents in the plating process. Total chromium concentrations in the EP extract are consistently well below the maximum EP toxicity levels. These low leachate levels indicate that the constituents are present essentially in an immobile form. The Agency therefore, has granted a temporary exclusion to Monroe Auto Equipment's facility in Paragould, Arkansas, for the treated wastes generated by its hard chromium plating process as described in its petition, listed under EPA Hazardous Waste No. F006.

Dated: December 24, 1980.

Eckhardt C. Beck,

Assistant Administrator.

[FR Doc. 80-40632 Filed 12-30-80; 8:45 am]

BILLING CODE 6560-30-M

[OPP-180526; PH-FRC 1715-8]

Connecticut; Issuance of Specific Exemption for Use of Captafol on Peppers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA granted a specific exemption to the Connecticut Department of Environmental Protection (hereafter referred to as the "Applicant") for use of captafol (Difolatan 4F) on 370 acres of peppers in Fairfield, Hartford, Litchfield, Middlesex, New London, New Haven, and Tolland Counties, Connecticut, to control pepper blight. The specific exemption was issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expired on October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Libby Welch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St. SW., Washington, D.C. 20460 (202-426-0223).

SUPPLEMENTARY INFORMATION: Pepper blight is caused by a fungus that lives in the soil from year to year and may be carried on the seed. The infected plant commonly is girdled at the soil line, causing a sudden wilting and death of the plant. According to the Applicant, the pepper industry could lose an estimated $500,000 if the pepper blight was not controlled.

Zineb and copper oxychloride sulfate (COCS) are registered for this use. The Applicant stated that zineb and COCS proved generally ineffective for control of this disease in tests and commercial fields.

Difolatan 4F is currently registered for both ground and air application to a large variety of crops at rates greater than those requested for this use. Residues of captafol in or on peppers are not expected to exceed 10 parts per million (ppm) as a result of this use, with a 4-day preharvest interval. This level has been judged adequate to protect the public health. The proposed use was not expected to have an unreasonable adverse effect on birds, mammals, or aquatic organisms; nor should it have posed a hazard to endangered species and/or their habitats.

After reviewing the application and other available information, EPA determined that the criteria for an exemption had been met. Accordingly, the Applicant was granted a specific exemption to use the pesticide noted above until October 31, 1980, to the extent and in the manner set forth in the application. The specific exemption was also subject to the following conditions:

1. The product Difolatan 4F (EPA Reg. No. 239-2211), manufactured by Chevron Chemical Company, might be applied. If an unregistered label was used, it was to have contained the identical applicable precautions and restrictions which appear on the registered label.

2. Captafol was to be applied at a rate of 1.5 pounds a.i. per acre.

3. A maximum of 5 applications were to be made with a preharvest interval of 4 days.

4. A maximum of 370 acres were to be treated in the counties named above.

5. A maximum of 2,775 pounds of captafol were to be applied.

6. Applications were to be made with air or ground equipment on a 10-day schedule.

7. Spray mixture volumes of 5 gallons of water per acre were to be applied by air equipment.

8. Application was not to begin until conditions favorable for the disease became established.

9. All applicable directions, restrictions, and precautions on the EPA-registered product label were to be followed.

10. Peppers treated according to the above provisions should not have residues of captafol in excess of 10 ppm. Peppers with residues of captafol which do not exceed this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, was advised of this action.

11. The EPA was to be immediately informed of any adverse effects resulting from the use of captafol in connection with this exemption.

12. The Applicant was responsible for assuring that all of the provisions of this specific exemption were met and must submit a report summarizing the result of this program by April 1, 1981.

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: December 18, 1980.

Robert V. Brown,

Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-40660 Filed 12-30-80; 8:45 am]

BILLING CODE 6560-32-M

[OPTS-51159A; TSH-FRC 1716-5]

Substituted Phenol, Reaction Products With Sulfur Chloride; Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for a premanufacture notice (PMN), P80-267, under section 5(c) of the Toxic Substances Control Act (TSCA). The PMN review period for this substance commenced on September 29, 1980, and was scheduled to end on December 28, 1980. The period will not expire on February 11, 1981. The generic identity for the substance covered by the PMN is "substituted phenol, reaction products with sulfur chloride." The PMN described a chemical substance that would be manufactured for use as an additive for lubricant formulations. The submitter of the PMN claimed its identity to be confidential along with the specific chemical identity of the substance.

FOR FURTHER INFORMATION CONTACT: Cynthia Work, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202-426-2601).

SUPPLEMENTARY INFORMATION:

Background

Under section 5 of TSCA any person who intends to manufacture in or import into the United States a new chemical substance for commercial purposes must submit a premanufacture notice (PMN) to EPA prior to commencement of manufacture or import. In general, section 5 provides that EPA must

complete its review of a PMN within 90 days of its receipt by the Agency. However, under section 5(c) EPA may extend the notice period for good cause for additional periods, not to exceed an aggregate of 180 days from the date of receipt.

EPA issued proposed rules to implement the premanufacture notification program published in the **Federal Register** of January 10, 1979 [44 FR 2263]. Section 720.35 of the proposed regulations addressed the section 5(c) extension authority and provided examples of situations in which the Agency believed there would be good cause to extend the notice period. Although EPA has not yet promulgated these rules, the example in the proposal that would apply in this case is that:

EPA has received the notice and has determined that there is a significant possibility that the chemical will be regulated under section 5(e) or section 5(f) of the Act, but the Agency is unable to initiate regulatory action within the initial 90-day period (44 FR 2273).

Review to Date

EPA's initial evaluation of the subject PMN substance entailed review of information that the manufacturer supplied in the PMN, subsequent telephone conversations with EPA staff and subsequent submissions to EPA. EPA also conducted literature searches on the PMN substance and on structurally similar substances, i.e., structural analogues.

Using this information, EPA assessed seven major areas of potential concern: process chemistry, uses, worker and consumer exposures, environmental releases, health effects, environmental fate, and ecological effects. The Agency also considered other factors, such as economics and impacts on technological innovation, that are not directly associated with the assessment of the risks that the PMN substance may present to human health and the environment. When EPA completed this initial screening of the substance, the Agency concluded that it needed to conduct a more thorough review of certain aspects to focus on specific areas of concern. Therefore EPA has entered the PMN into another series of analyses, the Detailed Review Process. During the Detailed Review, Agency staff is conducting further evaluations and assessments of the following: (1) the degree to which structural and use analogues of the PMN substance can be relied upon to assess the risks that the PMN substance may present to human health and to the environment; (2) the nature and character of those risks; and (3) the exposure associated with the manufacture, processing, use, and disposal of the PMN substance.

Extension of the Notice Review

The results of the initial screen review discussed above are summarized below:

(1) EPA is concerned about potential risks that this substance may present to humans as a skin sensitizer. Because the manufacturer did not provide any data on the potential skin sensitizing effect of the substance, EPA's review relied heavily on data on structurally analogous substances. EPA believes that a metabolite of the PMN substance is structurally related to other substances which have skin sensitizing effects, and therefore the Agency believes the PMN substance may have sensitization potential;

(2) EPA can predict some potential dermal exposure of workers and significant potential for dermal exposure of consumers to the substance during use of the final products containing the substance. The manufacturer provided no information on worker exposure during processing and no estimates of consumer exposure to the PMN substance;

(3) EPA's exposure estimates and concern regarding potential skin sensitization, coupled with the lack of data on this effect, give rise to a significant possibility that this chemical will be regulated under section 5 of the Act.

On the basis of the cited concerns raised during EPA's evaluation of the PMN substance, the significant possibility of further regulation under section 5, and because of the limited time before the end of the review period for the substance (which closes on December 28, 1980), EPA has determined that good cause exists to extend the notice period for an additional 45 days, until February 11, 1981.

EPA needs additional time to assess this chemical substance to determine if regulatory control is appropriate. During the additional 45 days EPA will: (1) evaluate the need for additional data on the PMN substance; (2) determine the need for regulatory control in light of EPA's concerns about the PMN substance; and (3) examine possible control options. Extension of the notice period preserves EPA's authority to initiate a regulatory action under section 5 of the TSCA if the Agency concludes that such an action is appropriate.

The PMN, summaries of communications between the submitter and EPA, and other written material, are available for public inspection in Room 447, East Tower, at the EPA Headquarters address given above. The public record is available from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. All information that the manufacturer has claimed to be confidential has been deleted from the documents in the public record.

Dated: December 23, 1980.

Edwin H. Clark II,

Acting Administrator.

[FR Doc. 80-40661 Filed 12-30-80; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-50022; TSH-FRL 1716-1]

Versar, Inc.; Data Transfer to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data transfer.

SUMMARY: EPA will transfer to its contractor, Versar, Inc., information submitted under subsection 8(b) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(B), so that Versar may perform its task of providing technical assistance in making exposure assessments to support regulations under Section 4 of TSCA. Some of this information may be confidential. Other confidential business information needed by Versar will be obtained by it directly from chemical companies, as agreed upon by the parties.

DATE: The transfer of information to Versar will occur no sooner than January 3, 1981.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, 202-554-1404, or Toll free 800-424-9065.

SUPPLEMENTARY INFORMATION: In accordance with section 4(e) of TSCA, the TSCA Interagency Testing Committee (ITC) has periodically recommended lists of chemicals or categories of chemicals to EPA for priority testing in connection with the promulgation of rules under TSCA section 4(a). The Agency is analyzing available data on the listed substances to determine the extent to which testing on each substance will be required. Chemical industry task forces have submitted to the Agency reports on four chemicals recommended by the ITC: mon- and dichlorinated benzenes, tri-, tetra- and pentachlorinated benzenes, cresols, and pyridine. These reports, while not themselves containing confidential business information, include aggregated data that were

prepared from individual company data claimed confidential by the companies. The aggregation of the data was in each case entrusted by industry to a third party such as a private consultant or a law firm. For the Agency to verify the information in the task force reports, it will need to review the original data submitted by individual companies. As

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Privacy Act of 1974; Adoption of System of Records

AGENCY: Equal Employment Opportunity Commission.

ACTION: Adoption of an additional system of records, "EEOC-14, Grievance

For the Commission.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

EEOC-14

System name:

Grievance Records.

System location:

necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

These records are maintained in file folders.

Retrievability:

These records are retrieved by the names of the individuals on whom they

copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the agency personnel or designated office where the action was processed.

Individuals must provide the following information for their records to be located and identified:

prepared from individual company data claimed confidential by the companies. The aggregation of the data was in each case entrusted by industry to a third party such as a private consultant or a law firm. For the Agency to verify the information in the task force reports, it will need to review the original data submitted by individual companies. As part of this evaluation it will also examine information, including confidential business information, submitted for the TSCA Inventory of Chemical Substances under section 8(b) of the Act.

Under an existing contract, number 68–01–5791, as modified, Versar, Inc., of Springfield, Virginia, will help in this evaluation by providing EPA with technical assistance in performance of exposure assessments on the pertinent chemicals. The Agency will transfer to Versar the necessary TSCA Inventory information including any confidential business information. Versar will acquire the remaining data needed to evaluate the task force reports directly from the individual companies or their third party representatives, as agreed upon by the parties involved. On completion of its evaluation of each task force report, Versar will transfer all originals and copies of documents containing confidential business information to EPA and will retain no confidential business information.

Pursuant to 40 CFR 2.306(j), it has been determined that it is necessary for Versar to have access to this information in order to perform its work satisfactorily under this contract. Versar has been authorized to have access to this information under the EPA TSCA Confidential Business Information Security Manual. A security plan for Versar has been approved and the Versar facilities have been inspected and found to be in compliance with the requirements of the TSCA Confidential Business Information Security Manual. Versar is required to treat all TSCA confidential business information in accordance with the requirements of that manual, and its personnel will be required to sign a nondisclosure agreement before they are permitted access to such information.

(Secs. 4 and 8 of TSCA (Pub. L. 94–469; 90 Stat. 2003, 15 U.S.C. 2601 *et seq.*))

Dated: October 7, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

[FR Doc. 80–40659 Filed 12–30–80; 8:45 am]

BILLING CODE 6560–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Privacy Act of 1974; Adoption of System of Records

AGENCY: Equal Employment Opportunity Commission.

ACTION: Adoption of an additional system of records, "EEOC–14, Grievance Records."

SUMMARY: The Privacy Act of 1974, 5 U.S.C. § 552a, requires that an agency publish notice of the existence and character of its systems of records in the **Federal Register.** See 5 U.S.C. § 552a(e)(4).

EFFECTIVE DATE: Notice of the system of records is effective December 31, 1980.

FOR FURTHER INFORMATION: Clement L. Hyland, Legal Counsel Division, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506, (202) 653–5490.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is planning to delete its government-wide system of records, "OPM/GOVT–2, Grievance Records," from its 1980 annual republication of system of records. The Equal Employment Opportunity Commission (EEOC) hereby gives notice that it has voted to adopt an additional system of records to be entitled "EEOC–14, Grievance Records."

The EEOC's new system duplicates OPM's prior system with some minor changes. The system location and system manager sections have been revised to reflect the EEOC's grievance procedures. New authority for the maintenance of the system has been cited. References to EEOC Order No. 571, which sets out the agency's employee grievance procedures, have been added to the description of the categories of individuals covered by the system, the categories of records in the system, the records access procedure, and the procedures for contesting records. Subparagraph (g) of the description of routine uses has been amended to allow the EEOC or OPM to use the records in the production of statistics or studies. Subparagraph (h) of the description of routine uses has been changed to provide that the EEOC may disclose information to OPM when requested in the performance of its authorized duties. Finally, a reference to the EEOC's Privacy Act regulations has been inserted in the discussion of records access procedures.

EEOC–14 shall be effective December 31, 1980.

Signed in Washington, D.C., this 22nd day of December, 1980.

For the Commission.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

EEOC–14

System name:

Grievance Records.

System location:

These records are located in the Office of Personnel, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506, or in other offices of the EEOC's headquarters and field offices in which the grievances have been filed.

Categories of individuals covered by the system:

Current or former Federal employees who have submitted grievances with the EEOC in accordance with part 771 of the regulations of the Office of Personnel Management (OPM) (5 CFR Part 771) and EEOC Order No. 571, or a negotiated procedure.

Categories of records in the system:

The system contains records relating to grievances filed by the EEOC employees under Part 771 of OPM's regulations and EEOC Order No. 571. These case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that the agency has or may establish through negotiations with recognized labor organizations.

Authority for maintenance of the system:

5 U.S.C. section 301; 44 U.S.C. section 396(a); 5 U.S.C. section 7121.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2908.

g. By the EEOC or OPM in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose information to officials of the Merit Systems Protection Board including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or OPM when requested in performance of their authorized duties.

i. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

These records are maintained in file folders.

Retrievability:

These records are retrieved by the names of the individuals on whom they are maintained.

Safeguards:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

Retention and disposal:

These records are disposed of 3 years after closing of the case. Disposal is by shredding or burning.

System manager(s) and address:

a. When a grievance is pending at the field office level, the system manager is the Director of the Area or District Office. Addresses for these offices are listed in Appendix A of the EEOC's Republication of Privacy Act Systems of Records. See 44 FR 54024 (Sept. 17, 1979), as amended by 45 FR 67459 (Oct. 10, 1980).

b. When a grievance is pending at the headquarters office level, the system manager is the head of the office. Names of headquarters offices, which are located at 2401 E Street, N.W., Washington, D.C. 20506, are listed in Appendix A of the EEOC's Republication of Privacy Act Systems of Records. See 44 FR 54024 (Sept. 17, 1979), as amended by 45 FR 67459 (Oct. 10, 1980).

c. In all other situations, the system manager is the Chief, Labor Relations Branch, Personnel Division, 2401 E Street, N.W., Washington, D.C. 20506.

Notification procedure:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Records access procedures:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the agency personnel or designated office where the action was processed.

Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individual requesting access must also follow the EEOC's Privacy Act regulations regarding access to records and verfification of identity [29 CFR Part 1611].

Contesting record procedures:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the agency personnel or designated office where the grievance was processed. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organizational component involved.

Individual requesting access must also follow the EEOC's Privacy Act regulations regarding amendment to records and verfification of identity [29 CFR Part 1611].

Record source categories::

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By agency officials.

d. From related correspondence from organizations or persons.

[FR Doc. 80–40443 Filed 12–30–80; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Finding of no Significant Impact on Environment of Relocation of Federal Emergency Management Agency

Section 8a of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1428a)] to the said Council:

Federal Savings and Loan Advisory Council Charter

Federal Savings and Loan Advisory Council.

Robert D. Linder,

Executive Secretary.

Federal Home Loan Bank Board.

J. J. Finn,

[4 FLRA No. 99]

United States of America Before the Federal Labor Relations Authority, Washington, D.C.

[Case No. O–PS–15]

1. Title VII of the Civil Service Reform Act of 1978—Federal Service Labor-Management Relations

The enactment of title VII, the Federal Service Labor-Management Relations Statute, was a recognition of the right of Federal

V 4 5 D E 3 1 8 0 UMI

FEDERAL EMERGENCY MANAGEMENT AGENCY

Finding of no Significant Impact on Environment of Relocation of Federal Emergency Management Agency Personnel From Thomasville, Georgia, to Atlanta, Georgia

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508) and the Federal Emergency Management Agency (FEMA) (44 CFR Part 10), FEMA has prepared an environmental assessment of the relocation, consolidation and related moves of personnel with associated functions, records, furniture and equipment from Thomasville, Georgia to Atlanta, Georgia.

The assessment concludes that this action will not result in a significant impact on the natural or man-made environment.

It is hereby found that this action does not constitute a major Federal action significantly affecting the quality of the human environment. On this basis, an environmental impact statement will not be prepared.

Dated: December 16, 1980.

John W. Macy, Jr.,

Director.

[FR Doc. 80-40625 Filed 12-30-80; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 80-834]

Federal Savings and Loan Advisory Council; Renewal of Charter

Dated: December 22, 1980.

Pursuant to the provisions of Section 8a of the Federal Home Loan Act, as amended (12 U.S.C. 1428a), the following notice has been adopted by the Federal Home Loan Bank Board for publication in the **Federal Register**:

Pursuant to the provisions of Section 9 of the Federal Advisory Committee Act (5 U.S.C. App. I), and the implementing regulations issued by the Office of Management and Budget, the Federal Home Loan Bank Board, having determined that the continuation of the Federal Savings and Loan Advisory Council is in the public interest in connection with the performance of the duties imposed on it by law, hereby renews the existence of the Federal Savings and Loan Advisory Council for two years to January 31, 1983, and in connection therewith reissues the following charter (which appears as Section 8a of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1428a)) to the said Council:

Federal Savings and Loan Advisory Council Charter

There is hereby created a Federal Savings and Loan Advisory Council, which shall continue to exist as long as the Bank Board biannually determines, as a matter of formal record, with timely notice in the **Federal Register**, to be in the public interest in connection with the performance of duties imposed on the Council by law. The Council shall, in all other respects, be subject to the provisions of the Federal Advisory Committee Act. The Council shall consist of one member for each Federal Home Loan Bank district to be elected annually by the Board of Directors of the Federal Home Loan Bank in such district and twelve members to be appointed annually by the Bank Board to represent the public interest. Each such elected member shall be a resident of the district for which he is elected. All members of the Council shall serve without compensation, but shall be entitled to reimbursement from the Bank Board for actual subsistence expenses, not to exceed $75.00 per day and transportation and other incidental travel expenses in accordance with the Federal Travel Regulations, as amended. The Council shall meet in Washington, District of Columbia, at least twice a year and oftener if requested by the Bank Board. The Council shall select its chairman, vice chairman, and secretary, and adopt methods of procedure, and shall have power——

(1) To confer with the Bank Board on general business conditions, and on special conditions affecting the Federal Home Loan Banks and their members and the Federal Savings and Loan Insurance Corporation.

(2) To request information, and to make recommendations, with respect to matters within the jurisdiction of the Bank Board and the Federal Savings and Loan Insurance Corporation.

The Federal Home Loan Bank Board also has directed, in connection with the foregoing, that—

1. The Federal Savings and Loan Advisory Council's estimated budget of $75,000 paid for by the self-supporting Federal Home Loan Bank System, and none of its annual operating costs shall be charged to or paid by the United States;

2. The said Charter of the Federal Advisory Council shall not be amended, altered, or repealed except by Congress or by the Federal Home Loan Bank Board; and

3. The said Charter shall terminate on January 31, 1983, unless reissued prior to that date by the Federal Home Loan Bank Board.

Federal Savings and Loan Advisory Council.

Robert D. Linder,

Executive Secretary.

Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 80-40653 Filed 12-30-80; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL LABOR RELATIONS AUTHORITY

Interpretation and Guidance Relating to Inclusion of Employees in Units and Coverage of Merit Pay Provisions

AGENCY: Federal Labor Relations Authority.

ACTION: Interpretation and guidance relating to inclusion of employees in units and coverage of merit pay provisions.

SUMMARY: This interpretation and guidance relates to the impact of an agency determination concerning "merit pay" coverage on a unit of exclusive recognition.

EFFECTIVE DATE: December 16, 1980.

FOR FURTHER INFORMATION CONTACT: James J. Shepard, Executive Director, 1900 E Street, NW., Washington, D.C. 20424, 202–254–9595.

SUPPLEMENTARY INFORMATION: The Federal Labor Relations Authority was established by Reorganization Plan No. 2 of 1978, effective January 1, 1979 (43 FR 36037). Since January 11, 1979, the Authority has conducted its operations under the Federal Service Labor-Management Relations Statute (92 Stat. 1191).

As previously announced (45 FR 24231, April 9, 1980), the Authority determined, in accordance with its regulations and the Federal Service Labor-Management Relations Statute (92 Stat. 1191), to issue an interpretation and guidance relating to the impact of an agency determination concerning "merit pay" coverage on a unit of exclusive recognition. Interested persons were invited to express their views in writing on the matter involved. After careful consideration of the submissions by diverse labor organizations and agencies, the Authority issued its Interpretation and Guidance, expressing the views of the Authority on the matter.

[4 FLRA No. 99]

United States of America Before the Federal Labor Relations Authority, Washington, D.C.

[Case No. O–PS–15]

Interpretation and Guidance

Introduction

As announced in its Notice of April 1, 1980,[1] the Authority determined, in conformity with § 2427.2 of its rules and regulations (5 CFR 2427.2), and the Federal Service Labor-Management Relations Statute (the Statute) (5 U.S.C. 7101 *et seq.*), that an interpretation of the Statute was warranted on the following question:

What is the impact, if any, of an agency determination that an employee is a supervisor or management official for purposes of coverage under the "merit pay" provisions of the Civil Service Reform Act of 1978 (92 Stat. 1179) on such employee's inclusion in a unit of exclusive recognition under section 7112 of the Statute (92 Stat. 1200)?

The Authority invited interested persons to express their views in writing concerning the question. The responses submitted to the Authority by seven labor organizations and six Federal agencies were detailed and helpful and have been carefully considered. In view of the extent and detail of these submissions, the Authority has determined that no useful purpose would be served by providing for an oral hearing.

Conclusion

When an agency determines that an employee is a supervisor or management official for purposes of coverage under the "merit pay" provisions of the Civil Service Reform Act of 1978, that Determination has no impact on such employee's inclusion in or exclusion from a unit of exclusive recognition under section 7112 of the Statute.

Background

The Civil Service Reform Act of 1978 effected several major changes in the system of Federal personnel management. Among these changes were the establishment of a statutory labor-management relations program under title VII and the introduction of a program for merit pay under title V.

[1] Federal Labor Relations Authority, *Notice Reloting to Inclusion of Employees in Units and Coverage of Merit Pay Provisions*, 45 FR 24,231 (April 9, 1980). This Notice was issued in response to a request for a major policy determination submitted by the National Federation of Federal Employees.

1. Title VII of the Civil Service Reform Act of 1978—Federal Service Labor-Management Relations

The enactment of title VII, the Federal Service Labor-Management Relations Statute, was a recognition of the right of Federal employees to organize, bargain collectively, and participate through labor organizations in decisions which affect them.[2] In so recognizing, Congress specifically found that labor organizations and collective bargaining in the civil service are in the public interest.[3]

Title VII prescribes, *inter alia*, the composition, organization, and responsibilities of the Federal Labor Relations Authority. The Authority's powers and duties are set forth in section 7105 of the Statute. In section 7105(a)(1) the Authority is given the general responsibility for providing "leadership in establishing policies and guidance relating to matters under this chapter," and, except as otherwise provided, "for carrying out the purpose of this chapter." In furtherance of this general charge, the Authority is given the power, *inter alia*, in section 7105(a)(2)(A), to "determine the appropriateness of units for labor organization representation under section 7112 of this title[.]" The Authority among its other responsibilities, is also empowered by section 7105(a)(2)(G) to "conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title[.]"

With regard to the Authority's power to determine appropriate bargaining units under section 7105(a)(2)(A), section 7112(b)(1) prohibits finding a proposed unit to be appropriate "if it includes [except in circumstances not relevant here] any management official or supervisor[.]" The terms "supervisor" and "management offical" are defined respectively in section 7103(a)(10) and (11) of the Statute.[4] Thus, in the process of determining the appropriateness of bargaining units, the Authority is required to interpret and apply the definitions of "supervisor" and "management official" in the Statute.

Decisions as to interpretation and application of the terms "supervisor" and "management official" have even wider implications since section 7102 guarantees certain rights to "employees," but section 7103(a)(2)(B)(iii) explicitly excludes a "supervisor" or a "management official" from the definition of "employee" and, as a consequence, from the rights granted by section 7102. By means of the unfair labor practice procedures set forth in section 7118, the Authority is charged with assuring the rights granted to employees and labor organizations are not abridged.

2. Title V. of the Civil Service Reform Act of 1978—Merit Pay

The policy underlying the enactment of title V is that in appropriate instances, pay increases should be based on quality of performance rather than length of service.[5] Therefore, title V provides for a Merit Pay System to "recognize and reward quality performance by varying pay adjustments." [6] According to section 5401(b)(1), title V is applicable "to any supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of title VII,[7] respectively) who is in a position which is in GS–13, 14, or 15 of the General Schedule * * *." (Footnote added.) Section 5402(a) of title V provides that the "Office of Personnel Management shall establish a merit pay system which shall provide for a range of basic pay for each grade to which the system applies * * *." Section 5405 of title V states that the "Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter." In compliance with this latter responsibility, the Office of Personnel Management has published regulations.[8] Section 540.102(c) of the regulations requires that, "The head of each agency shall identify employees who are supervisors or management officials for purposes of coverage by the Merit Pay System."[9]

Thus, the Congress assigned to the Office of Personnel Mangement responsibility for the establishment and regulation of the Merit Pay System prescribed by title V of the Civil Service Reform Act. In furtherance of that responsibility, the Office of Personnel Management has charged agency heads with the authority to determine which employees meet the criteria for coverage by the Merit Pay System, i.e., which employees are "supervisors" or "management officials" for merit pay purposes. This determination is made by reference to the definition of "supervisor" and "management official" contained in title VII.

Discussion

While procedures are available to acertain employee rights under title VII, it is a fundamental purpose of that title to afford both labor organizations and agencies an opportunity to work out their differences arising under title VII to the maximum extent possible without

[2] 5 U.S.C. 7101(a)(1) (Supp. II 1978).

[3] 5 U.S.C. 7101(a) (Supp. II 1978).

[4] Section 7103 provides in pertinent part:

(a) For the purpose of this chapter—

* * * * *

(10) "supervisor" means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment exept that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority;

(11) "management official" means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency[.]

[5] *See* Civil Service Reform Act of 1978, Findings and Statement of Purpose, Sec. 3(7). 5 U.S.C. 1101 note (Supp. II 1978).

[6] 5 U.S.C. 5401(a)(1)(A) (Supp. II 1978).

[7] Note 4, *supra*.

[8] 44 FR 52,161 (1979), codified at 5 CFR Part 540 (1980).

[9] 5 CFR 540.102(c) (1980).

resort to the processes of the Authority, and they are encouraged to do this. The instant request for a major policy determination arose from an alleged management practice of removing employees from bargaining units

jurisdiction of the Authority to determine whether an individual is a supervisor or management official for merit pay purposes under title V, it follows that it is outside the jurisdiction of the Authority to direct agencies to

to 5:30 p.m. and January 16, 1981, from 9:00 a.m. to 4:30 p.m. in Room 105, National Archives and Records Service, 8th and Pennsylvania Avenue, N.W., Washington, D.C. 20408. The meeting will be devoted to a review of the

maintenance organization (HMO). In addition, a service area revision of a previously qualified HMO is reported.

FOR FURTHER INFORMATION CONTACT: Howard R. Veit, Director, Office of

SOCIAL SECURITY ADMINISTRATION

Dominica; Finding Regarding Foreign Social Insurance or Pension System

AGENCY: Social Security Administration,

requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

FOR FURTHER INFORMATION CONTACT: Armand Esposito, Room 4234, West High Rise Building, 6401 Security

resort to the processes of the Authority, and they are encouraged to do this. The instant request for a major policy determination arose from an alleged management practice of removing employees from bargaining units pursuant to merit pay determinations.

From the plain language of the provisions of title VII as summarized above, it is clear Congress assigned final responsibility to the Federal Labor Relations Authority for determinations as to whether an individual is, for purpose of title VII, a supervisor or management official, and, therefore, whether such an individual should or should not be included in a unit of exclusive recognition.

There is no indication of any kind in the legislative history of title VII that Congress intended otherwise. Thus, an agency would act at its own peril in removing an employee from an established bargaining unit simply because of a determination that such employee is a supervisor or management official for merit pay purposes. If there is a move contemplated to remove an employee from an established bargaining unit simply because of a merit pay determination, there are procedures available under title VII to resolve questions related to the removal.

It must be noted that there is no provision in the Civil Service Reform Act nor any indication in its legislative history that any responsibility has been assigned to the Federal Labor Relations Authority for the determination of whether an individual is a supervisor or management official for purposes of the Merit Pay System under title V (other than within the Authority itself). Rather, it is evident that the Authority is without such jurisdiction since the merit pay provisions of title V must be implemented by agencies relying upon the definitions contained in title VII, regardless of whether or not a collective bargaining unit has been established. Such provisions apply not only to supervisors and managers as defined in title VII, but also to individuals who are not included in collective bargaining units, as well as individuals excluded from the coverage of title VII.

Determinations as to an individual's supervisory or management status made under titles V and VII of the Civil Service Reform Act are related to the extent that those who administer the respective separate titles utilize the same definitions of supervisor and management official. However, determinations under title V of status as a supervisor or management official for merit pay purposes does not confer supervisory or managerial status under title VII. Since it is not within the jurisdiction of the Authority to determine whether an individual is a supervisor or management official for merit pay purposes under title V, it follows that it is outside the jurisdiction of the Authority to direct agencies to follow the binding determinations of the Authority as to whether an individual is a supervisor or management official under title VII when agencies are implementing the merit pay provisions of title V.

In summary, it is within the jurisdiction of the Authority to make final determinations under appropriate representation or unfair labor practice case procedures as to whether an individual is a supervisor or management official for the purposes of title VII of the civil Service Reform Act. It is not within the jurisdiction of the Authority to make determinations as to whether an individual is a supervisor or management official for the purposes of title V of the Civil Service Reform Act. Conversely, when an agency determines that an employee is a supervisor or management official for purposes of coverage under the "merit pay" provisions of title V of the Civil Service Reform Act of 1978, that determination has no impact on whether such employee is or is not a supervisor or management official for purposes of title VII. Thus, when an agency determines that an employee is a supervisor or management official for purposes of coverage under the "merit pay" provisions of the Civil Service Reform Act of 1978, that determination has no impact on such employee's inclusion in or exclusion from a unit or exclusive recognition under section 7112 of the Statute.

Issued: Washington, D.C., December 16, 1980.

Ronald W. Haughton,
Chairman.

Henry B. Frazier, III,
Member.

Leon B. Applewhite,
Member.

[FR Doc. 40586 Filed 12-24-80; 11:32 am]
BILLING CODE 6325-19-M

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

National Archives Advisory Council; Meeting

Notice is hereby given that the National Archives Advisory Council will meet on January 15, 1981, from 2:30 p.m. to 5:30 p.m. and January 16, 1981, from 9:00 a.m. to 4:30 p.m. in Room 105, National Archives and Records Service, 8th and Pennsylvania Avenue, N.W., Washington, D.C. 20408. The meeting will be devoted to a review of the current state of the Archives, reports from Council Subcommittees, discussion of future role of Archives Advisory Council, and related matters of concern to the operation of the National Archives and Records Service of the United States.

The meeting will be open to the public.

Dated: December 18, 1980.

Robert M. Warner,
Archivist of the United States.

[FR Doc. 80-40602 Filed 12-30-80; 8:45 am]
BILLING CODE 6820-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Consumer Affairs Council; Meeting

SUMMARY: This notice announces the date and time of the next regular HHS Consumer Affairs Council meeting. All are welcome to attend as observers and participate in an open discussion period that will be held during the last half hour of the meeting. If you would like an agenda, please contact Susan L. Randolph. A hearing interpreter will be provided for the deaf.

DATE: Thursday, January 8, 1981, 10–12 noon.

ADDRESS: 200 Independence Avenue, SW., Rooms 403A–425A, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Susan L. Randolph, Assistant—Office of Consumer Affairs, 200 Independence Avenue, SW.—Rm. 622E, Washington, D.C. 20201, (202) 245–0409.

Dated: December 22, 1980.

Belle B. O'Brien,
Assistant to the Secretary for Consumer Affairs.

[FR Doc. 80-40620 Filed 12-30-80; 8:45 am]
BILLING CODE 4110-12-M

Public Health Service

Health Maintenance Organizations

AGENCY: Public Health Service, HHS.

ACTION: Notice, November—qualified health maintenance organization.

SUMMARY: This notice sets forth the name, address, service area, and date of qualification of an entity determined by the Secretary to be a qualified health maintenance organization (HMO). In addition, a service area revision of a previously qualified HMO is reported.

FOR FURTHER INFORMATION CONTACT: Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building—Third Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443–4106.

SUPPLEMENTARY INFORMATION: Regulations issued under Title XIII of the Public Health Service Act, as amended, (42 CFR 110.605(b)) require that a list and description of all newly qualified HMOs be published on a monthly basis in the **Federal Register**. The following entity has been determined to be a qualified HMO under Section 1310(d) of the Public Health Service Act (42 U.S.C. 300e–9(d)):

Qualified Health Maintenance Organizations

Name, Address, Service Area, and Date of Qualification

(Operational Qualified Health Maintenance Organization: 42 CFR 110.603(a))

1. International Medical Centers, Inc., (Staff Model, see section 1310(b)(1) of the Public Health Service Act), 2900 Palm Avenue, Hialeah, Florida 33012. Service area: Dade County, Florida. Date of qualification: November 26, 1980.

Service Area Revision

1. Foundation Health Plan, 650 University Avenue, Sacramento, California 95825. Service area: Add the following to the information contained in the cumulative list of qualified HMOs published on March 3, 1980, in the **Federal Register**, 45 FR 13895: Amador, Calaveras, Tuolumne, and San Joaquin Counties, California. Effective date: November 3, 1980.

Files containing detailed information regarding qualified HMOs will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m. on Tuesdays and Thursdays, except for Federal holidays, in the Office of Health Maintenance Organizations, Office of the Assistant Secretary for Health, Department of Health and Human Services, Park Building, 3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857.

Questions about the qualification review process or requests for information about qualified HMOs should be sent to the same office.

Dated: December 18, 1980.

Howard R. Veit,
Director, Office of Health Maintenance Organizations.

[FR Doc. 80-40576 Filed 12-30-80; 8:45 am]
BILLING CODE 4110-85-M

SOCIAL SECURITY ADMINISTRATION

Dominica; Finding Regarding Foreign Social Insurance or Pension System

AGENCY: Social Security Administration, HHS.

ACTION: Notice of finding regarding foreign social insurance or pension system—Dominica.

FINDING: Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly social security benefits to any individual who is not a U.S. citizen or national for any month after he or she has been outside the United States for six consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in section 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through (t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old-age, retirement, or death; and

(b) Permits individuals who are U.S. citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Commissioner has redelegated that authority to the Director, Office of International Policy. Under that authority the Director, Office of International Policy, has approved a finding that Dominica, beginning November 3, 1978, has a social insurance system of general application which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old-age, retirement, or death; and

(b) Permits U.S. citizens who are not citizens of Dominica to receive such benefits, or their acturial equivalent, at the full rate without qualification or restriction while outside Dominica.

Accordingly, it is hereby determined and found that Dominica has in effect, beginning November 3, 1978, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

FOR FURTHER INFORMATION CONTACT: Armand Esposito, Room 4234, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7455.

(Catalog of Federal Domestic Assistance Programs No. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors Insurance)

Dated: December 12, 1980.

Thomas C. Parrott,
Director, Office of International Policy.

[FR Doc. 80-40582 Filed 12-30-80; 8:45 am]
BILLING CODE 4110-07-M

DEPARTMENT OF INTERIOR

Bureau of Land Management

Multiple Use Advisory Council Meeting

December 18, 1980.

Notice is hereby given, in accordance with Pub. L. 94–579 and 43 CFR Part 1780, that the second meeting of the Elko District Multiple Use Advisory Council will be held on February 4, 1981, at the Stockmen's Motor Hotel, 340 Commercial Street, Elko, Nevada 89801. The meeting will begin at 8:30 a.m. and is open to the public.

The agenda for the meeting includes:

1. The Desert Land Entry program, and specifically, the processing of applications in Ruby Valley;

2. Issues and draft planning criteria developed for the Wells Resource Management Plan;

3. Proposed amendments to the Bureau's grazing regulations (43 CFR Parts 4100, 4110, 4120, 4130, 4140, 4150, 4160, and 4170); and

4. Final regulations regarding surface management of the public lands under the U.S. mining laws (43 CFR Part 3809).

Other topics may be introduced for the Council's consideration by district personnel, Council members or members of the public.

Written comments from the public are invited and may be filed with the District Manager in advance of the meeting. The Council will hear oral statements between 11:30 a.m. and 12:00 p.m. Any person wishing to make a statement should notify the District Manager at 2002 Idaho Street, P.O. Box 831, Elko, Nevada 89801, phone (702) 738–4071, by February 2. Depending on the number of persons wishing to make oral statements, a time limit may be imposed for each speaker.

Summary minutes of the meeting will be maintained in the District Office, and will be available for public inspection

and reproduction from 7:30 a.m. to 4:30 p.m., Monday—Friday, within 30 days after the meeting.

Rodney Harris,
District Manager.

[FR Doc. 80-40578 Filed 12-30-80; 8:45 am]

2. This plat represents a survey of Zwagg Island, and reestablishment of a lost meander corner.

3. Zwagg Island is located in the Pacific Ocean offshore of the City of Brookings, Oregon. Bare 100' cliffs

SUPPLEMENTARY INFORMATION: The purpose of the public sale is to settle an unintentional trespass involving the above-described lands. The sale has been discussed with Utah County and State of Utah officials, and is consistent with planning. The public interest will

Moab District

UT–060–023 Sids Mountain
UT–060–054 Mexican Mountain
UT–060–068A Desolation Canyon
UT–060–068B Floy Canyon
UT–060–100B Diamond Canyon

Cedar City District

UT–040–041B Black Ridge-LaVerkin
UT–040–061 Steep Creek
UT–040–074 Colt Mesa
UT–040–081 Allen Dump
UT–040–085 Dance Hall Rock

Vernal District

UT–080–200 Stone Bridge Draw
UT–080–208 Boone Springs
UT–080–414 Daniel's Canyon
UT–080–415 Moonshine Draw
UT–080–605 Sand Wash
UT–080–612 Nine Mile Canyon

and reproduction from 7:30 a.m. to 4:30 p.m., Monday—Friday, within 30 days after the meeting.

Rodney Harris,

District Manager.

[FR Doc. 80-40578 Filed 12-30-80; 8:45 am]

BILLING CODE 4310-84-M

Nevada; Filing of Plats of Survey and Order Providing for Opening of Lands

1. The Plat of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on February 1, 1981:

Mount Diablo Meridian, Nevada

T. 40 N., R. 54 E.,
Sections 37 and 38 and Tract Numbers 39, 40, 41 and 42.

2. The portion of the township surveyed is rolling, draining easterly into the North Fork of the Humboldt River. Soil is clay loam and gravel. The vegetation is mostly sagebrush and bunchgrass. There is no timber and no mineral formations noted during the survey. There are no settlements in the township.

3. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable law, the lands are hereby opened to such applications and petitions as may be permitted. All such valid applications received at or prior to 10:00 a.m. on February 1, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

Inquiries concerning these lands shall be addressed to the Nevada State Office, Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Dated: December 17, 1980.

Loyd C. Miller,

Chief, Branch of Records and Data Management.

[FR Doc. 80-40579 Filed 12-30-80; 8:45 am]

BILLING CODE 4310-84-M

Oregon; Filing of Plat of Survey

December 19, 1980.

1. Plat of survey of the lands described below will be officially filed in the Oregon State Office, Portland, Oregon at 7:30 a.m. on February 6, 1981.

Willamette Meridian

T. 41 S., R. 13 W.,
Sec. 6, Lot 9;
Sec. 7, Lot 2.

The area described aggregates 2.88 acres.

2. This plat represents a survey of Zwagg Island, and reestablishment of a lost meander corner.

3. Zwagg Island is located in the Pacific Ocean offshore of the City of Brookings, Oregon. Bare 100' cliffs surround the flat top of the island. Rich soil on top of the island supports dense growth of brush and small sitka spruce. Access is readily available at low tides from Mill Beach, and the top is accessible by a primitive trail which cuts across the rock face on the northeast end of the island. The character of the island is non-mineral.

4. Zwagg Island is public land being studied by the Bureau of Land Management to determine whether the island should be recommended for designation as a wilderness area by Congress.

Roger F. Dierking,

Chief, Branch of Records and Data Management.

[FR Doc. 80-40577 Filed 12-30-80; 8:45 am]

BILLING CODE 4310-84-M

Salt Lake District, Utah; Realty Action Public Sale

AGENCY: Bureau of Land Management, Salt Lake District.

ACTION: Notice.

SUMMARY: The following described public lands have been determined to be suitable for disposal by public sale under Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713:

Commencing west 1320 feet from the quarter corner common to Sections 34 and 35 in T 9 S., R 1 E., SLB&M, Utah, thence west 265.62 feet to a fence line, thence N 1°54' W 156.50 feet along a fence line, thence N 0°34' W 364.40 feet along a fence line, thence N 0°09' E 459.00 feet along a fence line, thence N 2°35' E 306.00 feet to a fence corner, thence N 83°57' E 250.43 feet along a fence line, thence south 1311.89 feet to the point of beginning, totalling 7.87 acres.

DATE: For a period of 45 days interested parties may submit comments to the Secretary of the Interior, LLM-320, Washington, D.C. 20240. Any adverse comments will be evaluated by the Secretary, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the Secretary, this realty action will become the final determination of the Department.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale, including the environmental assessment and the record of public discussions, is available for review at the Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

SUPPLEMENTARY INFORMATION: The purpose of the public sale is to settle an unintentional trespass involving the above-described lands. The sale has been discussed with Utah County and State of Utah officials, and is consistent with planning. The public interest will be well served by making the sale.

The sale will be made at the fair market value of the land; the sale will be non-competitive and will be offered only to Mrs. Myrtle B. Rowley, Santaquin, Utah. No bids will be accepted. The following patent reservations will be made at the time of the sale:

(1) Ditches and canals.

(2) All minerals, together with the right of ingress and egress to prospect for, mine and remove the same under applicable law.

(3) Valid existing rights.

Frank W. Snell,

District Manager.

[FR Doc. 80-40573 Filed 12-30-80; 8:45 am]

BILLING CODE 4310-84-M

Utah; Final Wilderness Inventory Decisions Are in Effect

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the final decisions on the Intensive Wilderness Inventory findings within the state of Utah became effective on December 15, 1980 at 4:30 p.m., except for the following units on which a formal protest was filed:

Salt Lake District

UT-020-037 New Foundland Mountains
UT-020-129/050-130A Dugway Mountains

Cedar City District

UT-040-075 Horse Spring Canyon
UT-040-076 Carcass Canyon
UT-040-077 Mud Spring Canyon
UT-040-078 Death Ridge
UT-040-079 Burning Hills
UT-040-080 Fifty Mile Mountain
UT-040-082 Scorpion
UT-040-104 Mountain Home Range
UT-040-132 Red Mountain
UT-040-204B Central Wah Wah Range
UT-040-216 White Rock Range
UT-040-217 Moquith Mountain
UT-040-230 Parunuweap Canyon
UT-040-247 Paria-Hackberry
UT-040-248 Wahweap
UT-040-255 Upper Kanab Creek
UT-040-266 East of Bryce

Richfield District

UT-050-061 Swasey Mountain
UT-050-221 Fremont Gorge
UT-050-237 Horseshoe Canyon
UT-050-238 Blue Hills—Mt. Ellen
UT-050-241 Fiddler Butte
UT-050-248 Mt. Pennell
UT-050-257 Notom Bench

Moab District

UT-060-023 Sids Mountain
UT-060-054 Mexican Mountain
UT-060-068A Desolation Canyon
UT-060-068B Floy Canyon
UT-060-100B Diamond Canyon
UT-060-100C Cottonwood Canyon
UT-060-116/117 Wrigley Mesa/Jones Canyon
UT-060-122 Granite Creek
UT-060-138 Negro Bill Canyon
UT-060-139A Mill Creek
UT-060-165 Sixshooter Peak
UT-060-171 Sweet Alice Canyon
UT-060-175 Middle Point
UT-060-181 Mancos Mesa
UT-060-188 Pine Canyon
UT-060-191 Cheese Box Canyon
UT-060-194 Harmony Flat
UT-060-196 Bullet Canyon
UT-060-197/198 Slickhorn Canyon
UT-060-201 Road Canyon
UT-060-204 Fish Creek Canyon
UT-060-205A Arch Canyon
UT-060-205B Mule Canyon
UT-060-224 Sheiks Flat
UT-060-227 Squaw & Papoose Canyons
UT-060-229 Cross Canyon

Vernal District

UT-080-103 West Cold Springs
UT-080-104 Wild Mountain
UT-080-110 Hoy Mountain
UT-070-113 Diamond Breaks
UT-080-419 Bull Canyon
UT-080-730 Winter Ridge

Instant Study Areas (ISA's)

ISA Grand Gulch

The units listed above will remain under management restrictions imposed by Section 603(c) of the Federal Land Policy and Management Act (FLPMA). The effective date of the decision on those units will be deferred unitl the BLM Utah State Director issues a decision on the individual unit protest. The decisions on all other inventory units listed below and as announced in the November 14, 1980 **Federal Register**, (vol. 45, No. 222) are now in effect.

Salt Lake District

UT-020-001 Little Goose Creek No. 1
UT-020-011 Wagon Box Pass
UT-020-012 Wagon Box Pass
UT-020-040A Silver Island Mountains
UT-020-040B Silver Island Mountains
UT-020-040C Silver Island Mountains
UT-020-042 North Salt Desert
UT-020-044 Ferber Wash
UT-020-046 Utah Peak
UT-020-047 Utah Peak
UT-020-050 Ferber Flat
UT-020-053 Northeast Corner
UT-020-054 Northeast Corner
UT-020-057 Northeast Corner
UT-020-087 North Cedar Mountains
UT-020-089 North Stansbury Mountains
UT-020-094 Cedar Mountains
UT-020-010 Big Creek
UT-020-102 Dry Canyon
UT-020-105 Big Hollow
UT-020-111 Onaqui Mountains

Cedar City District

UT-040-041B Black Ridge-LaVerkin
UT-040-061 Steep Creek
UT-040-074 Colt Mesa
UT-040-081 Allen Dump
UT-040-085 Dance Hall Rock
UT-040-087 Sooner Water
UT-040-088 Sooner Bench
UT-040-089 Willow Gulch
UT-040-090 Cave Point
UT-040-091 Fifty Mile Creek
UT-040-092 Coyote Gulch
UT-040-142 Crater Hill
UT-040-144 Shunes Hollow
UT-040-145 Orderville Canyon
UT-040-146 Deep Creek
UT-040-147 Red Butte
UT-040-148 Spring Canyon
UT-040-149 The Watchman
UT-040-150 North Fork Virgin River
UT-040-153 LaVerkin Creek Canyon
UT-040-154 Taylor Creek Canyon
UT-040-155 Sunset Canyon
UT-040-173 Shunesburg
UT-040-174 Jolley Gulch
UT-040-175 Home Valley Knoll
UT-040-178 Goose Creek Canyon
UT-040-177 Beartrap Canyon
UT-040-179 Rockville Bench
UT-040-235 Flood Canyon
UT-040-245 Brigham Plains
UT-040-246 Nephi Wash
UT-040-249 Coyote Creek
UT-040-268 The Blues

Richfield District

UT-050-019 Kern Mountains
UT-050-029 Granite Spring
UT-050-073 Wah Wah Mountains
UT-050-113 Thomas Range
UT-050-127 Fish Springs Range
UT-050-242 Bull Mountain
UT-050-244 Ragged Mountain
UT-050-247 Little Rockies
UT-050-249 Mt. Hillers
UT-050-253 Long Canyon

Moab District

UT-060-025 Devils Canyon
UT-060-026 North Big Ridge
UT-060-028A Crack Canyon
UT-060-028B Cistern Canyon
UT-060-028C Chute Canyon
UT-060-029A San Rafael Reef
UT-060-045 Horseshoe Canyon
UT-060-053 Cedar Mountain
UT-060-067 Turtle Canyon
UT-060-070 Jack Creek
UT-060-072 Dry Canyon
UT-060-075 Harmon Canyon
UT-060-076 Cow Canyon
UT-060-077 Argyle Ridge
UT-060-088 South Goose Neck
UT-060-100A Westwater Creek
UT-060-118 West Water Canyon
UT-060-119 Big Triangle
UT-060-120 Renegade Point
UT-060-131A North Lost Spring Canyon
UT-060-131B South Lost Spring Canyon
UT-060-137 Mary Jane Canyon
UT-060-140A Behind the Rocks
UT-060-164 Lockhart Basin
UT-060-167 Bridger Jack Mesa
UT-060-169 Butler Wash
UT-060-232 Little Ruin Canyon

Vernal District

UT-080-200 Stone Bridge Draw
UT-080-208 Boone Springs
UT-080-414 Daniel's Canyon
UT-080-415 Moonshine Draw
UT-080-605 Sand Wash
UT-080-612 Nine Mile Canyon
UT-080-615 Argyle Canyon
UT-080-616 Devils Canyon
UT-080-707 East Big Pack Mountain
UT-080-708 Big Pack Mountain
UT-080-709 West Pack Mountain
UT-080-715 Bitter Creek
UT-080-721 Atchee Ridge
UT-080-722 Rat Hole Ridge

Instant Study Areas (ISA's)

Cedar City District

North Escalante Canyon (ISA)
The Gulch (ISA)
Phipps-Death Hollow (ISA)
Escalante Canyons (ISA)
Tract 1
Tract 2,3,4
Tract 5

Moab District

Dark Canyon Primitive Area (ISA)

The areas identified as Wilderness Study Areas (WSA's) will remain under management restrictions imposed by Section 603(c) of FLPMA. Those units or portions thereof dropped from further wilderness review will no longer be subject to those restrictions.

The final decisions on the following interstate units between Utah & Arizona will not be in effect until the protest period closes in Arizona. December 30, 1980. At that time the decisions as announced in the November 14, 1980, **Federal Register**, (vol. 45, No. 222) will become effective unless a formal protest is received.

UT-044-134/AZ-010-073 Quail Draw
UT-040-135/AZ-010-072 East Mesa
UT-040-137/AZ-010-069 Canaan Gap
UT-040-138/AZ-010-071 Cottonwood Canyon
UT-040-143/AZ-010-041 Canaan Mountain
UT-040-218/AZ-010-040 Bull Pasture
UT-040-219/AZ-010-027 Shinarump Cliffs
UT-040-223/AZ-010-026 Muggins Flat
UT-040-224/AZ-010-023 Pasture Canyon
UT-040-226/AZ-010-022 Buckskin Mountains
UT-040-274/AZ-010-021 Pine Hollow Canyon

If the BLM Utah State Director changes a decision on any inventory unit as a result of the protest as filed, any person adversely affected by the decision may appeal that individual unit decision to the Interior Board of Land Appeals (IBLA) by following normal administrative procedures outlined 43 CFR Part 4. If the individual unit decision on the protest remains the same as announced in the November 14, 1980, **Federal Register**, that decision will become effective immediately upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kent Biddulph, BLM Utah State Office, (801) 524-5326.

Dated: December 19, 1980.

Gary Wicks,

set forth in a general management plan supplement and wilderness study report. Also, this document will be used to determine whether the National Park Service will prepare an environmental

and the Analysis/Assessment document.

DATES/TIMES/PLACES: Public meetings will be held in 1981 as follows:

January 20, 7:00 p.m.—Second Court Room,

FOR FURTHER INFORMATION CONTACT: Mr. Derek O. Hambly, Superintendent, Capitol Reef National Park, Torrey, Utah 84775.

James B. Thompson,

Acting Regional Director, Rocky Mountain

Leasing Program. The June 1980 leasing program consists of a schedule of proposed OCS oil and gas lease sales for the period June 1980 through June 1985. Based on the responses to this request and other information available

Longitude and Latitude Descriptions

Area and Approximate Location [1]

1. *North Atlantic:* North of 39° N. lat., east of 71° W. long.
2. *Mid-Atlantic:* Between approximately 36°

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FOR FURTHER INFORMATION CONTACT:
Kent Biddulph, BLM Utah State Office, (801) 524–5326.

Dated: December 19, 1980.

Gary Wicks,
State Director.

[FR Doc. 80–40571 Filed 12–30–80; 8:45 am]
BILLING CODE 4310–84–M

Utah; Correction of Wilderness Inventory Decision on Devils Garden Instant Study Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: The **Federal Register** notice published December 11, 1980 (Vol. 45, No. 240, page 81672) stated that "the restrictions imposed by Section 603 of the Federal Land Policy and Management Act are no longer in effect" on Devils Garden Instant Study Area. This should read: The restrictions imposed by Section 603 of the Federal Land Policy and Management Act will remain in effect until Congress acts upon a recommendation on wilderness suitability.

FOR FURTHER INFORMATION CONTACT:
Kent Biddulph, Utah BLM State Office (801) 524–5326.

Dated: December 18, 1980.

Gary Wicks,
State Director.

[FR Doc. 80–40572 Filed 12–30–80; 8:45 am]
BILLING CODE 4310–84–M

National Park Service

Guadalupe Mountains National Park, Texas; Availability of Environmental Assessment, Master Plan Supplement

Pursuant ot the National Environmental Policy Act of 1969; the Council on Environmental Quality's Implementing Regulations, 40 CFR Parts 1500–1508; Section 401 of the Act of November 10, 1978, 92 Stat 3489; 16 U.S.C. 1132 (Supplement II, 1978), the National Park Service has prepared an Environmental Assessment, Master Plan Supplement, for Guadalupe Mountains National Park, Culberson and Hudspeth Counties, Texas.

The Environmental Assessment sets forth and analyzes five alternatives for park boundary expansion, wilderness area expansion, and west side development for Guadalupe Mountains National Park. This document, along with public review comments, will be used by National Park Service managers in selecting an alternative, or combination of alternatives, that will be set forth in a general management plan supplement and wilderness study report. Also, this document will be used to determine whether the National Park Service will prepare an environmental impact statement for the proposals selected.

Copies of the Environmental Assessment, Master Plan Supplement, are available at the following locations:

Southwest Regional Office, National Park Service, 1100 Old Santa Fe Trail, Post Office Box 728, Santa Fe, New Mexico 97501

Guadalupe Mountains National Park, c/o Superintendent, Carlsbad Caverns/Guadalupe Mountains National Parks, 3225 National Parks Highway, Carlsbad, New Mexico 88220

An open house session will be held on January 14 between 1:30 and 3:30 p.m. at the park headquarters, which is located at the address provided above; and a public meeting will be held on January 15 at 7:00 p.m. at the Recreation Hall of the El Paso Natural Gas Company's facilities on U.S. Highway 62/180, located 68 miles west of Carlsbad, New Mexico, and 99 miles east of El Paso, Texas.

Anyone wishing to express an opinion on the Environmental Assessment, Master Plan Supplement, should attend either the open house session or the public meeting or send written comments to the Superintendent at the Carlsbad Caverns/Guadalupe Mountains National Parks address by February 15, 1981.

Dated: December 17, 1980.

Robert Kerr,
Regional Director, Southwest Region.

[FR Doc. 80–40691 Filed 12–30–80; 8:45 am]
BILLING CODE 4310–70–M

Statue of Liberty National Monument: General Management Planning

AGENCY: National Park Service, Interior.

ACTION: Notice of public meetings on general management planning for Statue of Liberty National Monument, New York/New Jersey.

SUMMARY: On December 22, 1980, Vol. 45, Page 84160, the National Park Service announced the availability of an Analysis of Alternatives (including Environmental Assessment) for public review and comment. The assessment is an initial step in the General Management Planning for Statue of Liberty National Monument, New York/New Jersey.

Now the Service is giving notice, as listed below, of a series of meetings to give the public further opportunity to comment on management alternatives and the Analysis/Assessment document.

DATES/TIMES/PLACES: Public meetings will be held in 1981 as follows:

January 20, 7:00 p.m.—Second Court Room, Borough Hall, Cadman Plaza, Brooklyn, New York

January 21, 7:00 p.m.—Council Chambers, City Hall, 280 Grove Street, Jersey City, New Jersey

January 22, 6:00 p.m.—First Floor Auditorium, Police Headquarters, One Police Plaza, Manhattan, New York

January 27, 5:30 p.m.—Room 213, Queens Borough Hall, 120–55 Queens Boulevard, Queens, New York

January 28, 7:00 p.m.—Newark Public Library, 5 Washington Street, Newark, New Jersey

January 29, 7:00 p.m.—Staten Island Borough Hall, Richmond Terrace, Staten Island, New York

ADDRESSES: A limited number of copies of the Analysis of Management Alternatives remain available upon request from the Superintendent, Statue of Liberty National Monument, Liberty Island, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT:
Mr. David Moffitt, Superintendent, Statue of Liberty National Monument, Liberty Island, New York, New York 10004 (212–964–3451).

SUPPLEMENTARY INFORMATION: Written comments on the Analysis/Assessment will be accepted until March 2, 1981. All written comments should be directed to Superintendent, Statue of Liberty National Monument, Liberty Island, New York, New York 10004.

Dated: December 18, 1980.

Richard L. Stanton,
Regional Director, North Atlantic Region.

[FR Doc. 80–40690 Filed 12–30–80; 8:45 am]
BILLING CODE 4310–70–M

Utility Corridor at Capitol Reef National Park

AGENCY: National Park Service, Interior.

ACTION: Selection of utility corridor

SUMMARY: As directed by Pub. L. 92–207 (85 Stat. 740), the National Park Service has selected a corridor for granting rights-of-way and easements for utilities through the park. The corridor is approximately 4 miles in length and is located on North Coleman Bench in the park's South District. This corridor along with three other alternatives were considered in the Environmental Impact Statement for Capitol Reef National Park's Wilderness Recommendation prepared in 1974.

FOR FURTHER INFORMATION CONTACT:
Mr. Derek O. Hambly, Superintendent, Capitol Reef National Park, Torrey, Utah 84775.

James B. Thompson,
Acting Regional Director, Rocky Mountain Region.

[FR Doc. 80–40600 Filed 12–30–80; 8:45 am]
BILLING CODE 4310–70–M

Office of the Secretary

5-Year Outer Continental Shelf Oil and Gas Leasing Program—Revision or Reapproval—Request for Comments

AGENCY: Office of Outer Continental Shelf (OCS) Program Coordination.

ACTION: Notice of request for comments on the possible revision or reapproval of the 5-year OCS Oil and Gas Leasing Program.

SUMMARY: Section 18 of the OCS Lands Act, as amended, requires the Secretary of the Interior to prepare, periodically revise and maintain an oil and gas leasing program. This request for information will be used to help determine whether a revision or reapproval of the final 5-Year OCS Oil and Gas Leasing Program approved in June 1980 would be appropriate and consistent with the purposes of the OCS Lands Act, as amended, and if so, what particular modifications would be desirable.

DATES: Comments and information must be received by February 2, 1981.

ADDRESS: Information should be submitted to Director, Office of OCS Program Coordination, Office of Assistant Secretary—Policy, Budget and Administration, Department of the Interior, Room 5150, 18th and C Streets, N.W., Washington, D.C. 20240. Envelopes or packets should be marked "Request for Comments on 5-Year OCS Oil and Gas Leasing Program."

FOR FURTHER INFORMATION CONTACT:
Carolita Kallaur, Office of OCS Program Coordination, Department of the Interior, Room 5150, 18th and C Streets, N.W., Washington, D.C. 20240, telephone 202/343–9314, or Linda Gantt, same address, telephone 202/343–9311.

AUTHOR: Linda Gantt, Office of OCS Program Coordination, Department of the Interior, Room 5150, 18th and C Streets, N.W., Washington, D.C. 20240, telephone 202/343–9311.

SUPPLEMENTARY INFORMATION: Suggestions and information are requested from States, local governments, industry, other Federal agencies and all interested parties to assist the Department of the Interior in the possible revision or reapproval of the June 1980 5-year OCS Oil and Gas Leasing Program. The June 1980 leasing program consists of a schedule of proposed OCS oil and gas lease sales for the period June 1980 through June 1985. Based on the responses to this request and other information available to the Department of the Interior, a decision will be made whether a revision or reapproval of the program would be appropriate and consistent with the purposes of the OCS Lands Act, as amended, and if so, what particular modifications would be desirable.

The OCS Lands Act, as amended, states that any revision and reapproval of the 5-year program, except in the case of a revision which is not significant, shall be in the same manner as originally developed. A decision as to whether a proposed revision is significant within the terms of the statute can best be made when the outlines of the proposal are apparent. This will occur in the present case following receipt of responses to this request and a decision about whether to revise the program. If a decision to revise is made, the proposed revision will be evaluated to determine if it is significant. If it is, the proposal will become the draft proposed program envisaged by Section 18(c)(2) of the OCS Lands Act, as amended. If not, the proposal will be handled under the less extensive procedures used by the Department in approving leasing schedules prior to 1978. A determination on NEPA compliance for any schedule revision will be made at the same time as a determination of significance under Section 18.

The OCS leasing schedule enables the Federal Government, affected States, industry, and other interested parties to plan for their involvement in the steps leading to the consideration of lease sales. A decision on whether to proceed with specific sales on the schedule will be made only after all of the applicable requirements of the Outer Continental Shelf Lands Act, as amended, the National Environmental Policy Act, and other statutes have been met.

Oil and gas resources of the continental margin and subject to jurisdiction of the United States are to be considered for possible leasing. Precise marine boundaries between the United States and opposite or adjacent nations have not been determined in all cases. Accordingly, certain areas are or may be subject to negotiation or dispute. No decision has been made to undertake leasing in actual or potential disputed areas while efforts are being made to reach agreement with the nations concerned.

The areas to be commented on are as follows:

Longitude and Latitude Descriptions

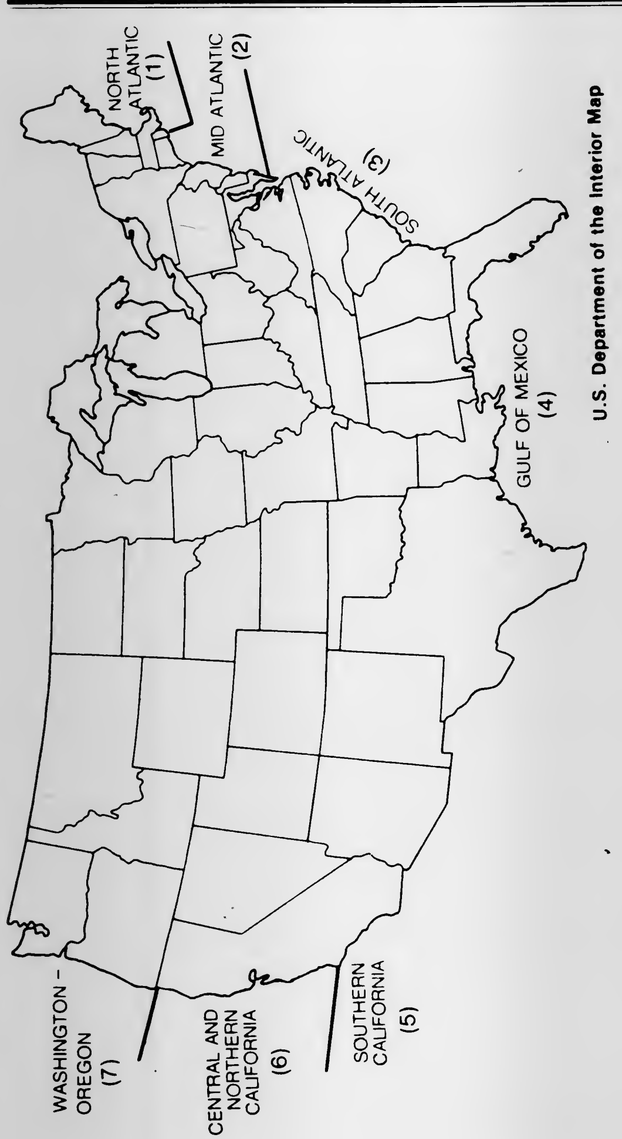
Area and Approximate Location [1]

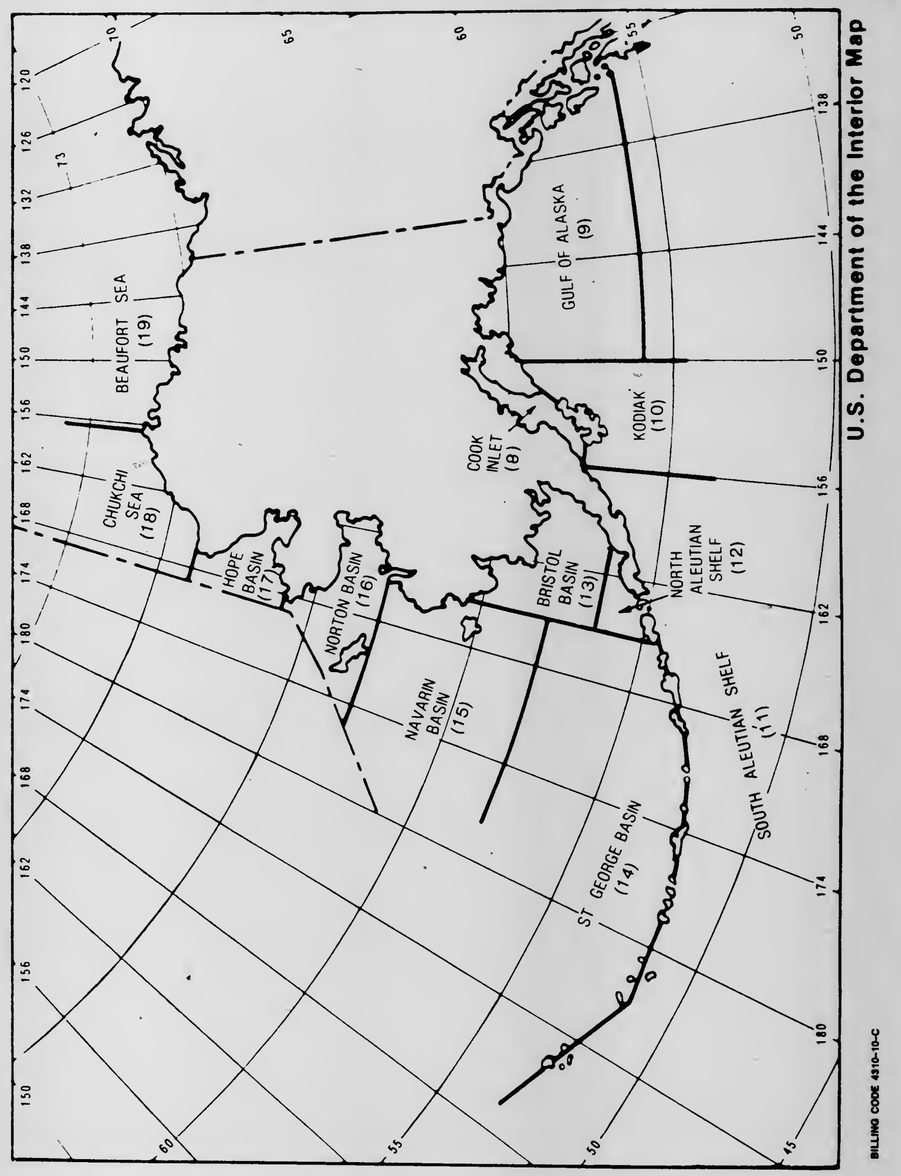
1. *North Atlantic:* North of 39° N. lat., east of 71° W. long.
2. *Mid-Atlantic:* Between approximately 36° 30′ N. lat. (the line of latitude east of the Virginia-North Carolina border) and 39° N. lat. with that portion north of 39° N. lat. west of 71° W. long.
3. *South Atlantic:* South of 36° 30′ N. lat.
4. *Gulf of Mexico:* South from Florida along 81° W. long. to approximately 25° N. lat., west to 82° W. long., south to 24° 30′ N. lat., west to 83° W. long., south to 24° N. lat., and west to the Mexican border.
5. *Southern California:* South of 34° 30′ N. lat. to the boundary with Mexico.
6. *Central and Northern California:* North of 34° 30′ N. lat. to approximately 42° N. lat., the line of latitude west from the California-Oregon border.
7. *Washington-Oregon:* North of approximately 42° N. lat., the line of latitude west from the California-Oregon border.
8. *Cook Inlet:* Lower Cook Inlet from 60° 15′ N. lat., south through Shelikof Strait to 57° N. lat.
9. *Gulf of Alaska:* North of 56° N. lat., east of 150° W. long.
10. *Kodiok:* Between 150° W. and 156° W. long.
11. *South Aleutian Shelf:* West of 156° W. long. and south of a line drawn through the Aleutian Island Chain.
12. *North Aleutian Shelf:* North of the Alaskan Peninsula and Unimak Island from 165° W. long. east to the Peninsula and south of 56° 30′ N. lat.
13. *Bristol Basin:* East of 165° W. long. and north of 56° 30′ N. lat.
14. *St. George Basin:* South of 58° N. lat., west of 165° W. long.
15. *Navarin Basin:* Between 58° and 63° N. lat., west of 165° W. long.
16. *Norton Basin:* Between 63° and 66° N. lat.
17. *Hope Basin:* Between 66° and 69° N. lat.
18. *Chukchi Sea:* North of 69° N. lat., west of 156° 30′ W. long.
19. *Beaufort Sea:* East of 156° 30′ W. long.

Maps of the 19 areas follow.

BILLING CODE 4310–10–M

[1] The Government of the United States is engaged in consultations and negotiations with governments of neighboring countries concerning the delimitation of areas subject to their respective jurisdictions. The Department of State published in the March 7, 1977, Federal Register at p. 12937, a notice of limits pursuant to the Fishery Conservation and Management Act of 1976.





Information and comments submitted during the preparation of the June 1980 program need not be resubmitted for the views to be reconsidered; if commenters believe any of this material is still relevant, they should cite it by

National Environmental Policy Act; Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of final procedures for the Lowell Historic Preservation

NEPA process can be obtained by contacting the Planning Director at the Commission office.

(2) Is responsible for integrating the NEPA process into the Commission's activities and will insure that

not adversely alter the integrity of the setting or increase public use of the area to the extent of compromising the nature and character of the property or cause a nuisance to adjacent property owners or occupants. This includes the case where

of Crest would not end the investigation as three other respondents would remain. This notice requests comments from the public on the licensing agreement on or before January 30, 1981.

SUPPLEMENTARY INFORMATION: This

pursuant to 19 CFR 210.14(a)(2), the Commission has requested comments from the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service on the

Information and comments submitted during the preparation of the June 1980 program need not be resubmitted for the views to be reconsidered; if commenters believe any of this material is still relevant, they should cite it by reference. Information and comments submitted should be relevant and useful in determining the appropriate size, timing, and location of sales to be included in the planning schedule. As required by Section 18(c)(1) of the OCS Lands Act, as amended, any suggestions from the executive of any affected local government in an affected State shall be first submitted to the Governor of such State.

Information Requested

A. The following information is requested with respect to each area:

(1) Existing information concerning geographical, geological, and ecological characteristics.

(2) An equitable sharing of developmental benefits and environmental risks among the various regions.

(3) Other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the OCS.

(4) Relative environmental sensitivity and marine productivity of different areas of the OCS.

(5) Relevant environmental and predictive information.

(6) Technological feasibility of conducting exploration and development within specified time periods.

(7) Ranking by order of oil and gas potential.

(8) Ranking by order of interest in exploration and development, including reasons for any possible differences in this ranking compared to that in item (7).

(9) The location of such regions with respect to, and the relative needs of regional and national energy markets.

(10) Availability of transportation networks to bring oil and gas supplies to demand areas, both on a current and projected basis.

B. Suggestions are also requested for possible revisions in the boundaries of the 19 areas described earlier in this notice, with reasons for any such revisions.

Dated: December 23, 1980.

Carolita Kallaur,

Acting Director, Office of OCS Program Coordination.

[FR Doc. 80-40566 Filed 12-30-80; 8:45 am]

BILLING CODE 4310-10-M

National Environmental Policy Act; Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of final procedures for the Lowell Historic Preservation Commission.

SUMMARY: This notice announces final NEPA implementing procedures for the Lowell Historic Preservation Commission, a component of the Department of the Interior. The Departmental procedures were published in the **Federal Register** on April 23, 1980 (45 FR 27541).

DATE: The procedures were adopted.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director, Office of Environmental Project Review, Office of the Secretary, Washington, D.C. 20240. Telephone: (202) 343-3891. FTS: 343-3891. For Lowell Historic Preservation Commission, contact Nancy Bellows, Telephone: (617) 458-7653. FTS: 223-0766.

SUPPLEMENTARY INFORMATION: These implementing procedures were proposed in the **Federal Register** on August 28, 1980 (45 FR 57556), and no comments were received. They provide more specific NEPA compliance guidance to the Lowell Historic Preservation Commission, and were prepared in consultation with the Office of Environmental Project Review in accordance with 516 DM 6.5(C). They should be read in conjunction with the Departmental procedures (516 DM 1-6) which are published in the **Federal Register** on April 23, 1980, and with the regulations of the Council on Environmental Quality (40 CFR Parts 1500-1508). Copies of these procedures are also available for inspection at the Commission's offices at 204 Middle Street, Lowell, MA 01825.

Dated: December 22, 1980.

James H. Rathlesberger,

Special Assistant to Assistant Secretary of the Interior.

Lowell Historic Preservation Commission

1. *NEPA Responsibility*

A. *Chairman* is responsible for NEPA compliance for Lowell Historic Preservation Commission (the Commission) activities.

B. *Executive Director* is responsible for insuring that the Commission staff activities and recommendations are conducted in accordance with the requirements and the spirit of NEPA.

C. *Planning Director* (1) Is responsible for coordination and oversight of the NEPA process. Information about Commission NEPA documents or the NEPA process can be obtained by contacting the Planning Director at the Commission office.

(2) Is responsible for integrating the NEPA process into the Commission's activities and will insure that environmental concerns, as covered in environmental documents, are addressed when the Commission carries out its preservation and cultural activities.

2. *Guidance to Applicants.* A. Actions that are initiated by private or non-Federal entities through applications include: Grants for private residential and commercial facade rehabilitation; grants for cultural programs; loans to private firms for facade improvement programs; emergency grants or loans for facade stabilization.

B. Applicants are required to complete an application form which includes a checklist of environmental impacts that may result from the work; they will be informed by the Commission staff as to what environmental information is needed when they initiate their application. The Commission staff, using this information, will advise applicants whether further environmental documentation is required.

C. A Grant Application Package is available on request from the Commission office, 204 Middle Street, Lowell, MA 01852.

3. *Major Actions Normally Requiring an EIS.* There are no categories of actions where an EIS will normally be prepared.

4. *Categorical Exclusions.* In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix I of 516 DM 2, many of which the Commission also performs; the following Commission actions are designated categorical exclusions unless the actions qualify as an exception under 516 DM 2.3A(3):

A. *Operating Activities.* (1) Professional services, including such things as architectural plans, studies, maps, renderings, and photographs; engineering studies; apprisals; graphic design; and building inventories and surveys.

(2) Identifying the eligibility for and nominating properties for the National Register of Historic Places and the National Historic Landmark and National Natural Landmark programs.

B. *Development Activities.* (1) Minor revisions in the boundaries of the Preservation District recommended pursuant to Section 101(2)(b) of Pub. L. 95-290.

(2) Grants to private property owners on a matching basis for the rehabilitation of building facades: *Provided,* That this rehabilitation does not adversely alter the integrity of the setting or increase public use of the area to the extent of compromising the nature and character of the property or cause a nuisance to adjacent property owners or occupants. This includes the case where the owner intends to change the use of the building.

(3) Matching grants to private property owners for construction or rehabilitation work on existing non-Federal properties which are required to meet health, safety, and handicapped regulations.

(4) Grants for construction, addition, expansion of new non-residential facilities: *Provided,* That the new facilities will not increase public use of the area to the extent of compromising the nature and character of the property or causing physical damage to it; institute noncompatible uses which might compromise the nature and characteristics of the property or cause physical damage to it; or cause a nuisance to adjacent property owners or occupants.

(5) Leasing or disposition or any interagency transfer or use of rail right-of-way for continued rail-related uses.

(6) Operation of a trolley system for resident and visitor use utilizing existing rights-of-way and tracks.

(7) Long and short term leasing of office, display, or other space from public or private owners.

(8) Acquisition or disposition of interests in real property, including but not limited to leaseholds, easements, rights-of-way, or fee interests.

(9) Cultural programs, including such things as outdoor summer theater programs; art exhibits, demonstrations, and feasibility studies.

[FR Doc. 80-40569 Filed 12-30-80; 8:45 am]

BILLING CODE 4310-KB-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-76]

Certain Food Slicers and Components Thereof; Commission Request for Comments Regarding Licensing Agreement

AGENCY: United States International Trade Commission.

ACTION: Request for comments from the public regarding licensing agreement.

SUMMARY: The Commission is presently considering whether to terminate Investigation 337-TA-76 as to respondent Crest Industries Corp. on the basis of a licensing agreement entered into by complainant Prodyne Enterprises, Inc. and Crest. Termination of Crest would not end the investigation as three other respondents would remain. This notice requests comments from the public on the licensing agreement on or before January 30, 1981.

SUPPLEMENTARY INFORMATION: This investigation, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), concerns alleged unfair acts in the importation and sale in the United States of certain food slicers. The unfair act specifically complained of is the infringment of claims of U.S. Letters Patent 3,766,817.

The Commission instituted this investigation on December 4, 1980 and published notice thereof in the **Federal Register** on December 21, 1979 (44 FR 75738). The notice named E. Mishan and Sons, Albert E. Price, Inc., Crest Industries Corp., and Taiwan Timing Trading Co. as respondents.

On August 1, 1980 complainant Prodyne Enterprises, Inc., and respondent Crest Industries Corp. entered into a licensing agreement. Pursuant to the agreement, Prodyne agreed to grant Crest a license to practice the invention covered by U.S. Letters Patent 3,766,817, and to permit Crest to import up to 10,000 food slicing devices covered by the patent per year. The license is royalty free. In return, Crest agreed to withdraw from the active defense of Investigation No. 337-TA-76.

On September 10, 1980, Prodyne and the Commission investigative attorney submitted a joint motion for summary determination against Crest and two other respondents. The Commission has determined to deny the motion for summary determination as to all three respondents.

The Commission is presently considering whether to terminate the investigation as to Crest on the basis of the licensing agreement entered into by Crest and Prodyne.

Written Comments Requested

There will be no oral argument regarding the proposed termination of the investigation as to Crest. However, in order to discharge its statutory obligation to consider the public interest, the Commission seeks written comments from interested persons regarding the effects of terminating the investigation as to Crest on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers. All written comments must be filed with the Secretary to the Commission no later than January 30, 1981. In addition, pursuant to 19 CFR 210.14(a)(2), the Commission has requested comments from the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service on the effects of the proposed settlement agreement.

The Licensing Agreement

A copy of the Prodyne/Crest licensing agreement follows this notice.

Additional Information

The original and 19 true copies of all written submissions must be filed with the Secretary to the Commission, 701 E Street NW, Washington, D.C. 20436; telephone (202) 523-0161. All comments must be filed no later than January 30, 1981. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request *in camera* treatment. Such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW, Washington, D.C. 204436; telephone (202) 523-0143.

By order of the Commission.

Issued: December 22, 1980.

Kenneth R. Mason,

Secretary.

License Agreement

Agreement made as of August 1, 1980 by and between Prodyne Enterprises Inc., a corporation organized under the laws of the State of California and having its principal office at P.O. Box 212, Monclair, California 91763 (hereinafter called Prodyne) and Crest Industries Corp., a corporation organized under the laws of State of New York and having a principal office at 593 Acorn Street, Deer Park, New York 11729 (hereinafter called Crest).

Whereas, Prodyne is the owner of and has the right to grant licenses under United States Letters Patent No. 3,766,817, issued on October 23, 1973 (hereinafter called Patent Right);

Whereas, an investigation no. 337-TA-76 by the United States International Trade Commission, Washington, D.C., directed at the importation of certain food slicers and components thereof, initiated upon a complaint by Prodyne and involving as one of the Responsents, Crest; and

Whereas, the parties desire to resolve the conflict in the International Trade Commission and it is agreed that Crest will

withdraw from active defense of this investigation upon the taking of a license upon the terms and conditions hereinafter set forth;

Now, therefore, in consideration of the premises and the performance of the

[Investigation No. 337-TA-94]

Certain Wet Motor Circulating Pumps and Components Thereof; Investigation

1. Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(b)), an investigation be instituted to determine whether there is reason to believe there is a violation and whether there is a violation of subsection (a) of

Failure of respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the

in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's

commodities, except household goods and class A and B explosives, between points in IL, IN, KY, MD, MI, NY, OH, PA, and WV for 270 days, under contract with CGM Contractors.

withdraw from active defense of this investigation upon the taking of a license upon the terms and conditions hereinafter set forth;

Now, therefore, in consideration of the premises and the performance of the covenants herein contained, it is agreed;

1. Prodyne warrants that it is the owner of the entire right, title and interest in and to the Patent Right and has a right to grant the within license.

2. Prodyne grants to Crest and Crest hereby accepts from Prodyne upon the terms and conditions hereinafter specified a non-exclusive and non-assignable license to practice the invention covered by the Patent Right in the United States in the manufacture, importation, use and sale of cheese slicing devices to the full end of the term for which the Patent Right is issued, unless sooner terminated as hereinafter provided.

3. The license shall be royalty free and no payment of any kind need be made by Crest to Prodyne with respect to the granting of this license.

4. Crest shall be entitled to import within the terms of the license granted up to 10,000 cheese slicing devices covered by the Patent Right per year. Prodyne shall give authorization to allow such importation by Crest when requested to do so by Crest.

5. Crest shall keep accurate books of account containing the quantity of cheese slicers covered by the Patent Right imported per year. Said books shall be kept by Crest at its usual places where its like books are kept and shall be open at all reasonable times for one year following the end of the calendar year to which they pertain, to the inspection by an independent certified public accountant to whom Crest shall have no reasonable objection, retained by Prodyne for the purpose of verifying Crest's importation of said cheese slicers per year.

6. This constitutes the entire agreement between the parties with respect to the subject matter hereunder and supersedes all previous communications, representations and agreements, either oral or written between the parties.

7. All notices shall be made by certified or registered mail addressed as first noted above unless written notification to the contrary shall be given.

8. This agreement shall be binding upon the successors or assigns of the parties hereto.

In witness whereof, the parties hereto have duly executed this agreement in duplicate as of the day and year first written above.

Dated: August 27, 1980.

Prodyne Enterprises, Inc.

Christopher J. McArdle,

Vice President.

Crest Industries Corp.

Herbert Adler,

President.

[FR Doc. 80-40679 Filed 12-30-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-94]

Certain Wet Motor Circulating Pumps and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of an investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 20, 1980, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Taco, Inc., 1160 Cranston Street, Cranston, R.I. 20920. The complaint was amended on November 21 and December 2, 1980. The amended complaint (hereinafter referred to as the complaint) alleges unfair methods of compensation and unfair acts in the importation into the United States of certain wet motor circulating pumps and components thereof, or in their sale, because of the alleged infringement by such wet motor circulating pumps and components thereof of at least claims 1, 2, 3, 6, 8, 15, 19, and 20 of U.S. Letters Patent 3,264,653 and the alleged misappropriation of Taco's trade secrets. The complaint further alleges that the effect or tendency of such unfair methods of competition and unfair acts is to substantially injure an industry, efficiently and economically operated, in the United States.

The complaint requests the Commission to institute an investigation; during the investigation, to issue a temporary exclusion order on an expedited basis prohibiting importation of the articles in question into the United States, except under bond, and to issue a temporary cease and desist order on an expedited basis forbidding Mr. Curtis V. Givan from disclosing or disseminating Taco's trade secrets; and, after the full investigation, to issue an order permanently excluding the articles in question from entry into the United States and to issue a cease and desist order permanently forbidding Curtis V. Givan from disclosing or disseminating Taco's trade secrets.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of the Investigation

Having considered the complaint, the U.S. International Trade Commission, on December 18, 1980, ordered that—

1. Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(b)), an investigation be instituted to determine whether there is reason to believe there is a violation and whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain wet motor circulation pumps and components thereof into the United States, or in their sale, because of the alleged infringement by such wet motor circulating pumps and components thereof of claims 1, 2, 3, 6, 8, 15, 19, and 20 of U.S. Letters Patent 3,264,653 and the alleged misappropriation of Taco's trade secrets, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of this investigation so instituted the following are hereby named as parties upon which is notice of investigation shall be served:

(a) The complainant is—Taco, Inc., 1160 Cranston Street, Cranston, R.I. 20920.

(b) The respondents are the following persons alleged to be in violation of section 337 upon whom the complaint is to be served:

Grundfos Pumps Corp., 2555 Clovis Avenue, Clovis, Calif. 93612
Grundfos A.S., Bjerringbro, Denmark
Curtis V. Givan, 2555 Clovis Avenue, Clovis, Calif. 93612

(c) The Commission investigative attorney, a party to this investigation, is—Robert M. M. Seto, Unfair Import Investigation Division, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

SUPPLEMENTARY INFORMATION: Curtis V. Givan has been named a party respondent in this investigation because the allegatons of the complaint warrant his inclusion.

With respect to complainant's request for expedition of the temporary relief hearing, action on such request is deferrred to the presiding officer.

Repsonses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(b) of the rules, such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Robert M. M. Seto, Esq., Commission Investigative Attorney, Unfair Import Investigations Division, U.S. Interantional Trade Commission, telephone 202-523-0419.

By order of the Commission.

Issued: December 23, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-40680 Filed 12-30-80; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Temporary Authority Application

Important Notice: The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-82

THE FOLLOWING APPLICATIONS WERE FILED IN REGION 2. SEND PROTESTS TO: ICC, FEDERAL RESERVE BANK BLDG., 101 N. 7TH ST., ROOM 620, PHILADELPHIA, PA 19106.

MC 146676 (Sub-II-6TA), filed December 8, 1980. Applicant: BURKS TRUCKING, INC., P.O. Box 37, Old Fort, OH 44861. Representative: E. H. van Deusen, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. *Stereo speaker systems and components thereof, and vinyl covered board* between Chicago and Winslow, IL, on the one hand, and, on the other, points in IN, MI, MN, MO, NY, OH, and WI, for 270 days. Supporting shippers: Matrecs Electronics, Inc., 805 Woodman Ave., Winslow, IL 61089; American Case Co., Inc., 629 W. Cermak Rd., Chicago, IL 60616.

MC 153057 (Sub-II-1TA), filed December 9, 1980. Applicant: WAGONER TRUCKING, 945 Safin Rd., Columbus, OH 43204. Representative: E. L. Wagoner, 2017 Hythe Rd., Upper Arlington, OH. *Contract: Regular: Machinery and equippment requiring special equipment,* from points in IL, IO, MO, WI, and IN to points in KY, MI, OH, WV, PA and NY, for 270 days. Supporting Shippers: Rojac Waste Equipment, Inc., 513 Broad St., Rochester, NY 14608; Road Machinery Sales, Inc., 3620 Pin Oak Parkway, Avon Lake, OH 44012; Wagoner Machinery, Inc., 945 Safin Rd., Columbus, OH 43204.

MC 150522 (Sub-II-6TA), filed December 1, 1980. Applicant: VIRGINIAN ELECTRIC COMPANY, a corporation, d.b.a. VIRGINIAN POWER TRANSPORT, 530 29th St., Parkersburg, WV 26101. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. *Contract Carrier, General commodities,* except household goods and class A and B explosives, between points in IL, IN, KY, MD, MI, NY, OH, PA, and WV for 270 days, under contract with CGM Contractors. Supporting Shipper: CGM Contractors, P.O. Box 550, Vienna, WV 26101.

MC 150511 (Sub-II-5TA), filed November 28, 1980. Applicant: BETTER HOME DELIVERIES, INC., 3700 Park East Dr., Cleveland, OH 44122. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. *Contract carrier,* irregular routes, transporting: *Such merchandise as is dealt in by retail department stores, and equipment, materials and supplies used in the conduct of such business,* between Savage, MD and Washington, DC, on the one hand, and, on the other, points in DE, MD, NC, NJ, NY, PA, SC, VA and WV, under continuing contract(s) with Hecht's Division of May Department Stores, for 270 days. Supporting Shipper: Hecht's May Department Stores, 7th and F Street, NW., Washington, DC 20004.

MC 123255 (Sub-II6TA), filed November 28., 1980. Applicant: B & L MOTOR FREIGHT, INC., 1984 Coffman Rd., Newark, Ohio 43055. Representative: C. F. Schnee Jr., 1984 Coffman Rd., Newark, Ohio 43055. *Cabinets, Television* between Chicago, Illinois and Evansville, Indiana, for 270 days. An underlying ETA seeks 120 days authority. Supporting Shipper: Zenith Radio Corporation, 1900 North Austin Ave., Chicago, IL 60639.

MC 142559 (Sub-II-21TA), filed November 28, 1980. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *Such commodities as are dealt in by manufacturers and distributors of filters* (except commodities in bulk) between Vance County, NC, on the one hand, and, on the other, pts. in the US (except AK and HI) for 270 days. Supporting shipper: Facet Enterprise, Inc., P.O. Box 1637, Henderson, NC 27536.

MC 61977 (Sub-II-6TA), filed November 28, 1980. Applicant: ZERKLE TRUCKING CO., 2400 Eighth Ave., P.O. Box 5628, Huntington, WV 25703. Representative: N. W. Bowen, Jr. (same address as applicant). *Building and Excavating Contractor's Machinery, Equipment and Supplies; Agricultural Implements—Farm Tractors, Parts, Attachments and Accessories,* between Kananha County, WV, and Franklin County, OH. Restricted to traffic originating at or destined to facilities used by Discount Parts Co., Inc., Kubota Tractors, Charleston, WV. Supporting shipper: Discount Parts Co., Inc., Kubota Tractors, P.O. Box 2588, Charleston, WV 25329.

MC 123540 (Sub-II-2TA), filed December 2, 1980. Applicant: WERLIN CORPORATION, 3415 Southside Ave.

MC 63838 (Sub-II-4TA), filed November 26, 1980. Applicant: BOLUS MOTOR LINES, INC., 700 N. Keyser Ave., Scranton, PA 18508. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *Candy commodities in bulk, and those requiring special equipment),* between Pittsburgh, PA, on the one hand, and, on the other, points in Armstrong, Beaver, Butler, Cameron, Clearfield, Elk, Fayette, Greene, Indiana, Jefferson, Lawrence, originating at or destined to the facilities of Swan Hose Division, Amerace Corporation. Supporting shipper: Swan Hose Division, Amerace Corporation, 8929 Columbus Pike, P.O. Box 509, Worthington, OH 43085.

MC 21866 (Sub-2-37TA), filed

MC 107403 (Sub-II-38TA), filed December 11, 1980. Applicant: MATLACK, INC., 10 W. Baltimore Ave., Landsdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same as applicant). *24D Insecticide, in bulk, in tank vehicles,* from Portland, OR, to St.

MC 58851 (Sub-4-2TA), filed December 10, 1980. Applicant: RUDOLF EXPRESS CO., 1650 Armour Road, Bourbonnais, IL 60914. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. Common, Regular: *General Commodities (Except*

shipper: Discount Parts Co., Inc., Kubota Tractors, P.O. Box 2588, Charleston, WV 25329.

MC 123540 (Sub-II–2TA), filed December 2, 1980. Applicant: WERLIN CORPORATION, 3415 Southside Ave., Cincinnati, OH 45204. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. *Contract,* Irregular: *Caustic soda, in bulk, in tank vehicles,* from Cincinnati, OH to points in IN, KY, WV, and IL, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Stauffer Chemical Co., Nyala Farms Rd., Westport, CT 06880.

MC 139395 (Sub-II–1TA), filed December 3, 1980. Applicant: BULK TRANSIT CORPORATION, 7177 Industrial Parkway, Plain City, OH 43064. Representative: Paul F. Beery, 275 East State St., Columbus, OH 43215. *Alka-Ment, in bulk, in tank vehicles* from Knoxville, TN to pts. and places in Upshur, Monongalia and Marion Counties in WV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Allyn Corporation, Box 527, Worthington, OH 43085.

MC 117613 (Sub-II–5TA), filed November 28, 1980. Applicant: D. M. BOWMAN, INC., Rt. 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. *General commodities,* between Baltimore City, MD, Alexandria, VA, Washington County, MD, and IL, on the one hand, and, on the other, points in DE, MD, PA, VA, WV & DC, under a continuing contract with Fort Pitt Consolidating, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Fort Pitt Consolidating, Inc., 5008 Erbs Bridge Rd., Mechanicsburg, PA 17055.

MC 63836 (Sub-II–3TA), filed November 24, 1980. Applicant: BOLUS MOTOR LINES, INC., 700 N. Keyser Ave., Scranton, PA 18508. Representative: Joseph A. Keating, Jr., 121 S. Main St., Scranton, PA 18517. *Bicarbonate of soda, Washing Compounds, Cleaning Compounds and Scouring Compounds,* from Onondaga Cty, NY, to points in that part of the US on and East of a line beginning at the mouth of the Mississippi River and extending along the Mississippi River to its junction along the western boundary of Itasca Cty, MN, thence northward along the western boundaries of Itasca and Koochiching Counties, MN to the US-Canada boundary line, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Church & Dwight Co., P.O Box 369, Piscataway, NJ 08854.

MC 63838 (Sub-II–4TA), filed November 26, 1980. Applicant: BOLUS MOTOR LINES, INC., 700 N. Keyser Ave., Scranton, PA 18508. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *Candy and confectionery,* From Hackettstown, NJ to PA, NY, CT, MA, RI, MI & OH, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: M & M Mars, Div. of Mars, Inc., High St., Hackettstown, NJ.

MC 150776 (Sub-II–2TA), filed December 11, 1980. Applicant: ALFRED DANIELS, INC., Rt. 1, P.O. Box 272–I, Jackson, OH 45640. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215. *Contract; irregular: building materials* from Ft. Wayne, IN to San Fernando and Santa Fe Springs, CA, Dallas, TX and Atlanta, GA under contracts with Stonhard, Inc. for 270 days. Supporting shipper: Stonhard, Inc., Rt. 73 & Park Ave., Maple Shade, NJ 08052.

MC 113666 (Sub-II–14TA), filed December 11, 1980. Applicant FREEPORT TRANSPORT, INC., P.O. Drawer A, Freeport, PA 16229. Representative: R. Scott Mahood (same address as applicant). *Calcium Carbide,* in bulk, in tank vehicles from Ashtabula, OH to ports of entry on the International Boundary Line between the U.S. and Canada located at Niagara Falls, NY, for 270 days. Supporting shipper: Cyanamid Canada, Inc., 2255 Sheppard Ave., E., Willowdale, Ontario, M2J 4Y5.

MC 72069 (Sub-II–10TA), filed December 11, 1980. Aplicant: BLUE HEN LINES, INC., P.O. Box 280, Milford, DE 19963. Representative: R. Emery Clark, 366 Executive Bldg., 1030 15th St., NW, Washington, DC 20005. *Foodstuffs and materials, equipment and supplies* used in the manufacture and distribution thereof, between Clifton, NJ, on the one hand, and on the other, points in the U.S. for 270 days. An underlying ETA seeks 120 days authority. Restriction: Restricted to traffic originating at or destined to the Globe Products Company, Inc. Supporting shipper: Globe Products Company, Inc., 55 Webro Rd., Clifton, NJ 07012.

MC 488 (Sub-II–5TA), filed December 9. 1980. Applicant: BREMAN'S EXPRESS CO., 318 Haymaker Rd., Monroeville, PA 15146. Representative: Leslie S. Breman, Executive Vice President, Breman's Express Co., 318 Haymaker Rd., Monroeville, PA 15146. Authority sought to operate as a *common carrier,* by motor vehicle over *irregular routes,* transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Pittsburgh, PA, on the one hand, and, on the other, points in Armstrong, Beaver, Butler, Cameron, Clearfield, Elk, Fayette, Greene, Indiana, Jefferson, Lawrence, Washington, and Westmoreland Counties, PA, for 270 days. Applicant intends to interline with present connecting carriers at authorized points. Supporting shipper: The Sherwin-Williams Co., 1400 Valley Belt Rd., Brooklyn Hts., OH 44131.

MC 153069 (Sub-II–1TA), filed December 10, 1980. Applicant: ROBERT HODGE, d.b.a. B & H TRUCKING, 5022 Sullivant Ave., Columbus, OH 43228. Representative: E. H. van Deusen, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. *Waste Sludge, in dump vehicles,* from Hilliard, OH to points in Wayne County, MI, for 270 days. An underlying ETA seeks 120 authority. Supporting shipper: Systech Liquid Treatment Corp., 245 N. Valley Rd., Xenia, OH 45385.

MC 123744 (Sub-II–14TA), filed December 10, 1980. Applicant: BUTLER TRUCKING CO., P.O. Box 88, Woodland, PA 16881. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfield, PA 16830. *Iron and steel articles,* between pts. in the US in and east of ND, SD, NB, KS, OK, and TX, restricted to traffic moving for the account of Metal Purchasing Co., Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Metal Purchasing Co., Inc., 501–551 West 30th St., New York, NY 10001.

MC 144434 (Sub-II–2TA), filed December 11, 1980. Applicant: APOLLO TRUCKING, INC., P.O. Box 356, 2712 Bertwynn Dr., Dayton, OH 45439. Representative: James Duvall, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. *Coal* from points in Breathitt, Knott, Knox, Laurel, Lee, Leslie, Letcher, Owsley, Perry, Whitley and Wolfe Counties, KY, to points in Montgomery County, OH, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Regent Energy Corporation, 1025 Dove Run Rd., Lexington, KY 40502.

MC 146820 (Sub-II–7TA), filed December 11, 1980. Applicant: B & G TRUCKING, INC., P.O. Box 581, Worthington, OH 43085. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *Contract: Irregular: General commodities (except household goods as defined by the Commission, Classes A and B explosives, and commodities in bulk)* between points in and east MN, IO, MO, KA, OK, and TX for the account of Swan Hose Division, Amerace Corporation, for 270 days. Restricted to traffic originating at or destined to the facilities of Swan Hose Division, Amerace Corporation. Supporting shipper: Swan Hose Division, Amerace Corporation, 8929 Columbus Pike, P.O. Box 509, Worthington, OH 43085.

MC 21866 (Sub-2–37TA), filed December 11, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. *Athletic equipment, toys and games,* from the facilities of Eagle Rubber Company, Inc. at Ashland, OH to Philadelphia, PA and Bayonne, Edison, Jersey City and Secaucus, NJ, for 270 days. Supporting shipper: Eagle Rubber Company, Inc., 710 Orange Street, Ashland, OH 44805.

MC 151707 (Sub-II–5TA), filed December 11, 1980. Applicant: PIONEER TRUCKING, INC., 1105 N. Market St., 15th Floor, Wilmington, DE 19801. Representative: Dennis Kupchik (same address as applicant). *Copper Products and materials used in the manufacture thereof* between points in CT, DE, DC, MD, MA, NH, NJ, NY, PA, and RI for 270 days under continuing contract(s) with Phelps Dodge Copper Products Co. Supporting shipper: Phelps Dodge Copper Products Co., 300 Park Ave., New York, NY 10022.

MC 150339 (Sub-2–25TA), filed December 12, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same as applicant). *Contract; irregular; Mechanical and diffusion pump fluids, in packages and in bulk,* (1) from Churchville, NY, to points in TX and CA; and (2) from Norfolk, VA, Baltimore, MD, Wilmington, DE, Philadelphia, PA and New York, NY, Churchville, NY, under a continuing contract(s) with Inland Vacuum Industries, Inc., 35 Howard Ave., Churchville, NY 14428. Supporting shipper: Inland Vacuum Industries, Inc., 35 Howard Ave., Churchville, NY 14428.

MC 151707 (Sub-II–4TA), filed December 11, 1980. Applicant: PIONEER TRUCKING, INC., 1105 N. Market St., 15th Floor, Wilmington, DE 19801. Representative: Dennis Kupchik (same address as applicant). *Aluminum, Brass, Bronze or Copper Articles* between points in CT, IL, IN, KY, MA, MI, MN, MO, NJ, OH, PA, RI, and WI for 270 days under continuing contract(s) with Commonwealth Metal Corp., Englewood Cliffs, NJ. An underlying ETA seeks 120 days authority. Supporting shipper: Commonwealth Metal Corp., 560 Sylvan Ave., Englewood Cliffs, NJ.

MC 107403 (Sub-II–38TA), filed December 11, 1980. Applicant: MATLACK, INC., 10 W. Baltimore Ave., Landsdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same as applicant). *24D Insecticide, in bulk, in tank vehicles,* from Portland, OR, to St. Joseph, MO, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Rhone Poulenc Chemical Co., 6200 N. W. St. Helens Rd., Portland, OR 97210.

MC 107012 (Sub-II–117TA), filed December 12, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *(1) Doors, door frames, and partitions; and (2) parts and accessories for the commodities named in (1) above* from Brooklyn, NY to points in the US (except AK and HI) for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Williamsburg Steel Products Co., Inc., 73 Paidge Ave., Brooklyn, NY 11222.

Note.—Common control may be involved.

MC 152766 (Sub-II–1TA), filed December 9, 1980. Applicant: NORTHERN VIRBINIA MOVING & STORAGE CO., P.O. Box 1125 CS, Fredericksburg, VA 22401. Representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1112, Washington, DC 20036. *Used household goods and unaccompanied baggage* between pts. in Stafford County, Prince William County, Spotsylvania County and the City of Fredericksburg, VA; DC; and MD for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: U.S. Army Legal Services Agency, 5611 Columbia Pike, Falls Church, VA 22041.

THE FOLLOWING PROTESTS WERE FILED IN REGION 4. SEND PROTESTS TO: CONSUMER ASSISTANCE CENTER, INTERSTATE COMMERCE COMMISSION, 219 SOUTH DEARBORN STREET, ROOM 1304, CHICAGO, IL 60604.

MC 148167 (Sub-4–1TA), filed December 10, 1980. Applicant: ALL FREIGHT EXPRESS, INC., 7200 South Ferdinand Avenue, Bridgeview, Il 60455. Representative: Anthony E. Young, 29 South LaSalle Street, Suite 350, Chicago, Il 60603. *Copper and brass articles, aluminum and aluminum products, and scrap* between Chicago, IL and its commercial zone on the one hand, and on the other, points in IN, WI, MI, under a contract or continuing contracts with R. Lavin & Sons. An underlying ETA seeks 120 days authority. Supporting shipper: R. Lavin & Sons, 3426 South Kedzie Avenue, Chicago, IL 60623.

MC 58851 (Sub-4–2TA), filed December 10, 1980. Applicant: RUDOLF EXPRESS CO., 1650 Armour Road, Bourbonnais, IL 60914. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. Common, Regular: *General Commodities (Except Commodities in Bulk, Household Goods as defined by the Commission, and Classes A and B Explosives)* Between points in that part of IA on and East of U.S. 61 and on and South of U.S. 30. There are 34 shippers supporting this application. Applicant proposes to tack this authority with its existing authority at Davenport, IA, to serve authorized points in IL and IN.

MC 133689 (Sub-4–56TA), filed December 11, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naple Street N.E., Blaine, MN 55434. Representative: Anthony E. Young, 29 South LaSalle Street, Chicago, IL 60603. *Such merchandise as is dealt in by craft and nursery stores and in connection therewith equipment, materials, and supplies used in the conduct of such business (except commodities in bulk),* between points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. Restricted to shipments originating or destined to the facilities of Frank's Nursery & Crafts, Inc. Supporting shipper: Frank's Nursery & Crafts, Inc., 6399 East Nevada, Detroit, MI 48234.

MC 153074 (Sub-4–1TA), filed December 11, 1980. Applicant: F. RILEY'S EXPRESS, INC., 7611 W. Lincoln Ave., Summit, IL 60501. Representative: Daniel C. Sullivan, Sullivan & Associates, Ltd., 10 S. LaSalle Street, Suite 1600, Chicago, IL 60603. (1) *Acoustical suspension systems,* (2) *metal studs and metal floor track,* (3) *metal ceiling track,* (4) *metal hoses and metal tubing,* and (5) *iron and steel articles,* between Cook County, IL, on the one hand, and, on the other, points in IL, IN, IA, MI, MO, and WI. Supporting shipper: Chicago Metallic Corporation, 4849 S. Austin Avenue, Chicago, IL 60638.

MC 153074 (Sub-4–1TA), filed December 11, 1980. Applicant: F. RILEY'S EXPRESS, INC., 7611 W. Lincoln Ave., Summit, IL 60501. Representative: Daniel C. Sullivan, Sullivan & Associates, Ltd., 10 S. LaSalle Street, Suite 1600, Chicago, IL 60603. *Food or kindred products,* between Cook County, IL and Milwaukee County, WI, on the one hand, and, on the other, points in IL, IN, IA, MI, MO, and WI. Supporting shipper: V. LaRosa & Sons, Inc., 1495 Greenleaf, Elk Grove Village, IL 60007.

MC 106674 (Sub-4–38TA), filed December 11, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). *Silica sand* from La Salle County, IL to Jacksonville, FL. An underlying ETA seeks 120 days authority. Supporting shipper: Abbott Laboratories, Inc., 16th & Sheridan Road, Dept. 29B, North Chicago, IL 60064.

MC 114632 (Sub-4–23TA), filed December 11, 1980. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *Plastic articles* from Argo, IL to points in IA, KS, MN, MO, NE, ND, SD, and WI, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Wayne Chemicals Corporation, 546 S. Water St. Milwaukee, WI.

MC 141318 (Sub-4–2TA), filed December 11, 1980. Applicant: WEATHER SHIELD MANUFACTURING, INC., P.O. Box 1943, Wausau, WI 54401. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *Wood doors and door frames* from Wausau, WI to points in the U.S. (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Weather Shield Manufacturing, Inc., P.O. Box 1943, Wausau, WI 54401.

MC 142303 (Sub-4–2TA), filed December 11, 1980. Applicant: MIDWEST TRANSPORTATION, INC., 1000 Lake Road, Medina, OH 44256. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *Paper and paper products and materials, equipment and supplies used in the manufacture and distribution of paper and paper products,* between points in the U.S. (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Dry Storage Corporation, 2005 West 43rd Street, Chicago, IL 60609.

MC 153070 (Sub-4–1TA), filed December 10, 1980. J. HOOVER ENTERPRISES, INC., d.b.a. CO-FER TRANSPORT, 1000 Lake Road, Medina, OH 44256. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *Paper and paper products and materials, equipment and supplies used in the manufacture and distribution of paper and paper products,* between points in the U.S. (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Dry Storage Corporation, 2005 West 43rd Street, Chicago, IL 60609.

MC 123194 (Sub-4–3TA), filed December 11, 1980. Applicant: ENTERPRISE TRUCK LINES, INC., 7336 West 15th Avenue, Gary, IN 46406. Representative: Anthony E. Young, 29 S. LaSalle St., Chicago, IL 60603. *Meat*

MC 106674 (Sub-4–38TA), filed December 11, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). *Silica sand* from La Salle County, IL to the facilities of Thatcher Glass Manufacturing Company, Division of Dart Industries at Lawrenceburg, IN. An underlying ETA seeks 120 days authority. Supporting shipper: Thatcher Glass Manufacturing Company, P.O. Box 285, Elmira, NY 14902.

MC 142715 (Sub-4–12TA), filed December 11, 1980. Applicant: LENERTZ, INC., P.O. Box 479, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *Alcoholic beverages and equipment, materials and supplies used in the manufacture and distribution of alcoholic beverages.* From Chicago, IL, Cincinnati, OH and Frankfort, KY to Wausau, WI. Supporting shipper: Ed Phillips and Sons Co., 801 Jefferson St., Wausau, WI 54401.

MC 129645 (Sub-4–5TA), filed December 11, 1980. Applicant: SMEESTER BROS., INC., 1330 South Jackson Street, Iron Mountain, MI 49801. Representative: H. G. Denny (same address as applicant). *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. Supporting shipper: Superwood Corporation, P.O. Box 6267, Duluth, MN 55806.

MC 133689 (Sub-4–51), filed December 12, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples St. NE, Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Electrical accessories and electrical articles and materials, supplies and equipment used in the manufacture and distribution of electrical accessories and electrical articles,* between points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. Restricted to the facilities of L & L Manufacturing Co. at or near Minneapolis, MN. Supporting shipper: L & L Manufacturing Co., 8290 Main Street NE, Fridley, MN 55433.

MC 110420 (Sub-4–11TA), filed December 3, 1980. Applicant: QUALITY CARRIERS, INC., 100 Waukegan Road, P.O. Box 1000, Lake Bluff, IL 60044. Representative: John R. Sims, Jr., 915 Pennsylvania Building, 425 13th Street NW, Washington, DC 20004. (1) *Empty marine containers with chassis* from Jacksonville, FL to Argo, and (2) *Corn Steepwater,* in bulk, in marine containers, from Argo, IL to Jacksonville, FL. An underlying ETA seeks 120 days authority. Supporting shipper: Abbott Laboratories, Inc., 16th & Sheridan Road, Dept. 29B, North Chicago, IL 60064.

MC 114632 (Sub-4–23TA), filed December 10, 1980. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson, (same address as applicant). *Paint, lacquer, enamel, epoxies, resins, pigments, adhesives, rubber cement and thinning and removing compounds, and materials, equipment and supplies used in the manufacture and distribution of such commodities,* between points in the U.S. (except AK and HI); Restricted to the transportation of traffic originating at or destined to the facilities of Pratt & Lambert, Inc. and its subsidiaries. Supporting shipper: Pratt & Lambert, Inc., P.O. Box 22, Buffalo, NY 14240.

MC 20992 (Sub-4–2TA), filed December 10, 1980. Applicant: DOTSETH TRUCK LINE, INC., Knapp, WI 54749. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Farm equipment,* from the Brodhead, WI, commercial zone, to points in UT, CO, OR, WA, SD, NY, VA, MD, VT and GA. An underlying ETA seeks 120 days authority. Supporting shipper: Knight Manufacturing Corporation, 1401 West Eighth Ave., Brodhead, WI 53520.

MC 94430 (Sub-4–3TA), filed December 10, 1980. Applicant: WEISS TRUCKING COMPANY, INC., P.O. Box 7, Mongo, IN 46771. Representative: James R. Stiverson, 1396 W. Fifth Avenue, Columbus, OH 43212. *Calcium Chloride,* in bulk, from Midland and Ludington, MI to Cleveland, OH. An underlying ETA seeks 120 days authority. Supporting shipper: Lowe Chemical Company, 1210 West 69th Street, Cleveland, OH 44102.

MC 151636 (Sub-4–2TA), filed December 12, 1980. Applicant: RULEAU BROS. TRANSPORT, INC., Cedar River, MI 49813. Representative: Michael S. Varda, 121 S. Pinckney Street, Madison, WI 53703. *Pet food,* from Kansas City, KS to points in IL, IN, IA, MN, MO, and WI. An underlying ETA seeks 120 days authority. Supporting shipper: Perk Foods Company, a subsidiary of CHB Foods, Inc., 4141 Fairbanks Avenue, Kansas City, KS 66106.

MC 124078 (Sub-4–49TA), filed December 9, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601 Milwaukee, WI 53201. *Chemicals,* in bulk, in tank vehicles, between points in Milwaukee, WI on the one hand and on the other, points in the U.S. Supporting shipper: Wayne Chemicals Corporation, 546 S. Water St. Milwaukee, WI.

MC 141318 (Sub-4–2TA), filed December 11, 1980. Applicant: WEATHER SHIELD TRANSPORTATION, LTD., 531 North Eighth Street, Medford, WI 54451. Representative: Robert S. Lee, 1600 TCF Tower, Minneapolis, MN 55402. *Fiber containers and container components* from points on the U.S.-Canada Border in ND and MN to points in the U.S., restricted to traffic originating at the facilities of Fibre Form Industries, Ltd. at Tisdale, Saskatchewan, Canada. Supporting shipper: Fibre Form Industries, Ltd., 900 CN Tower, Midtown Plaza, Sasketoon, Saskatchewan, CN 57K1J7.

MC 152046 (Sub-4–1TA), filed December 11, 1980. Applicant: JERRY HOLMER, d.b.a. HOLMER TRUCKING, Route 2, Park Rapids, MN 56470. Representative: David C. Britton, 1425 Cottonwood Street, Grand Forks, ND 58201. *Lumber, and wood products* between points in WA, ID, and MT on the one hand, and, on the other, points in MN. Supporting shipper: Midwest Lumber Associates, 6875 Washington Avenue, South, Suite 212, Minneapolis, MN.

MC 145636 (Sub-4–4TA), filed December 11, 1980. Applicant: BOB BRINK, INC., 165 Steuben St., Winona, MN 55987. Representative: Edward H. Instenes, 128½ Plaza East, P.O. Box 676, Winona, MN 55987. *(1) Cabinets, metal; Desks, wood and steel; Sheet steel articles; Seat cabs; and (2) Such articles as are used in the assembly, manufacture, sale and distribution of those commodities named in (1) above and (3) Commodities which are otherwise exempt from economic regulation when in mixed loads with those named in (1) and/or (2) above:* Between Rochester, MN on the one hand and points east of ND, SD, IA, MO, AR, and LA on the other. Supporting shipper: G. F. Crenlo, Inc., 1600 NW 4th Ave., Rochester, MN 55901.

MC 11928 (Sub-4–1TA), filed December 11, 1980. Applicant: C & E TRUCKING CORPORATION, 1818 West Sample Street, South Bend, IN 46621. Representative: Anthony E. Young, 29 South LaSalle Street, Suite 350, Chicago, IL 60603. *Such commodities as are dealt in or used by wholesale, retail, and chain grocery and food business houses* from Chicago, IL and points in its commercial zone to points in MI, IN, and OH restricted to the transportation of traffic originating at the facilities of Dry Storage Corporation. Any underlying ETA seeks 120 days authority.

Supporting shipper: Dry Storage Corporation, 2005 West 43rd Street, Chicago, IL 60609.

MC 153070 (Sub-4–1TA), filed December 10, 1980. J. HOOVER ENTERPRISES, INC., d.b.a. GO-FER EXPRESS. Applicant: 903 East Lincolnway, LaPorte, IN 46350. Representative: Patrick H. Smyth, 19 South LaSalle Street, Suite 401, Chicago, IL 60603. *Machinery parts, plastic products, equipment and supplies,* between points in Porter, LaPorte, St. Joseph, Elkhart and Marshall Counties, IN, on the one hand, and, on the other, points in IL, IA, MI, MO and WI. Supporting shippers: There are 5.

MC 153072 (Sub-4–1), filed December 10, 1980. Applicant: KARL T. BROWNING, R.R. #1, Palestine, IL 62451. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. *Contract,* irregular: *Electric motors,* from Highland and Palestine, IL to points in the U.S. under continuing contracts with Jakel Motors of Palestine, Inc. and Jakel Motors, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Jakel Motors of Palestine, Inc. and Jakel Motors, Inc., P.O. Box 104, Industrial Park Rd., Palestine, IL 62451.

MC 148966 (Sub-4–5TA) filed December 9, 1980. Applicant: DROTZMANN, INC., P.O. Box 667, Yankton, SD 57078. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* from the facilities of Terminal Freight Cooperative Association at Los Angeles, CA to Eugene, OR. Restricted to traffic which is at the time moving on bills of lading of a non-profit shipper association. An underlying ETA seeks 120 days authority. Supporting Shipper: Terminal Freight Cooperative Association, 1430 Brading Lane, Downers Grove, IL 60515.

MC 124078 (Sub-4–48TA) filed December 12, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Plasticizer,* in bulk, in tank vehicles between points in AL, FL, GA, NJ, NC, PA, SC, and TN. An underlying ETA seeks 120 days. Supporting shipper: East Coast Chemicals Co., P.O. Box 160, Cedar Grove, NJ 07009.

MC 70557 (Sub-4–9TA), filed December 11, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 West Homer Street, Chicago, IL 60639. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *Paper and paper products and materials, equipment and supplies used in the manufacture and distribution of paper and paper products,* between points in the U.S. restricted to traffic originating at or destined to the facilities of Manville Forest Products Corporation. Supporting shipper: Forest Manville Products Corporation, P.O. Box 488, West Monroe, LA 71291.

MC 153114 (Sub-4–1TA), filed December 11, 1980. Applicant: OLYMPIC EXPRESS, INC., 2690 East 81st, Bloomington, MN 55420. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Non-exempt food or kindred products, as set forth in STCC Major Industriol Grouping No. 20,* between Stark County, ND, Eau Claire County, WI, Martin, Nobles, Watonwan and Wright Counties, MN, and the Minneapolis/St. Paul Commercial Zone, on the one hand, and, on the other, points in IA, MN, ND, SD, and WI. Supporting shipper: Trans-Consolidated, Inc., 17745 Ward Lake Drive, Cedar, MN 55011.

MC 30504 (Sub-4–3TA), filed December 11, 1980. Applicant: TUCKER FREIGHT LINES, INC., 1415 South Olive Street, P.O. Box 3144, South Bend, IN 46619. Representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. *Common:* Regular: *General commodities* (except commodities of unusual value, commodities in bulk, and those requiring special equipment): (1) between Benton Harbor, MI, and Clyde, OH, serving all intermediate points: From Benton Harbor over U.S. Hwys 31 and 33 to South Bend, IN, then over U.S. Hwy 20 to Clyde, and return over the same route; (2) between Benton Harbor, MI, and Marion, OH, serving all intermediate points: (a) from Benton Harbor over U.S. Hwys 31 and 33 to South Bend, IN, then over U.S. Hwy 33 to junction U.S. Hwy 23, then over U.S. Hwy 23 to Marion, and return over the same route; (b) from Benton Harbor over U.S. Hwys 31 and 33 to South Bend, IN, then over U.S. Hwy 33 to junction U.S. Hwy 30, then over U.S. Hwy 30 to junction U.S. Hwy 30S, then over U.S. Hwy 30S to Marion, and return over the same route; and (c) from Benton Harbor over U.S. Hwys 31 and 33 to junction U.S. Hwy 20, then over U.S. Hwy 20 to junction OH Hwy 4, then over OH Hwy 4 to Marion, and return over the same route. Supporting shipper: Whirlpool Corporation, 2000 U.S. 33, North, Benton Harbor, MI 49022.

MC 123194 (Sub-4–3TA), filed December 11, 1980. Applicant: ENTERPRISE TRUCK LINES, INC., 7336 West 15th Avenue, Gary, IN 46406. Representative: Anthony E. Young, 29 S. LaSalle St., Chicago, IL 60603. *Meat, meat products, and meat by-products* from the facilities of Peschke Packing Company located at or near Detroit, MI to points in IL, IN, WI, KY, OH, and PA. An underlying ETA seeks 120 days authority. Supporting shipper: Peschke Packing Company, 18615 Sherwood Ave., Detroit, MI 48204.

MC 153113 (Sub-4–1TA), filed December 12, 1980. Applicant: MENASHA TRANSPORT, INC., P.O. Box 367, Neenah, WI 54956. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *General commodities (except Class A & B Explosives and articles of Unusual value)* between points in the U.S., restricted to traffic to, from or between the facilities operated by Menasha Corporation and its subsidiaries. An underlying ETA seeks 120 days authority. Supporting shipper: Menasha Corporation and subsidiaries, Hwy 41, Neenah, WI 54956.

MC 113009 (Sub-4–1TA), filed December 11, 1980. Applicant: L. J. BEAL & SON, INC., 212 South Main Street, Brooklyn, MI 49230. Representative: Gary T. Rose, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. *Cement* from Detroit, MI to Paulding, OH. Supporting shipper: General Portland, Inc., Paul Knerr, P.O. Box 1019, Ft. Wayne, MI 46801.

MC 119619 (Sub-4–6TA), filed December 11, 1980. Applicant: DISTRIBUTORS SERVICE CO., 2000 W. 43rd Street, Chicago, IL 60609. Representative: Arthur J. Piken, Queens Office Building, 95–25 Queens Boulevard, Rego Park, NY 11374. *Foodstuffs (except in bulk).* From the facilities of Doric Foods at Findlay, OH to points in CT, DE, ME, MD, MA, NH, NJ, RI, VA, VT and WV. An underlying ETA seeks 120 days authority. Supporting shipper: Doric Foods Corporation, P.O. Box 986, Mount Dora, FL 32757.

MC 148314 (Sub-4–34TA), filed December 11, 1980. Applicant: INTER-FREIGHT TRANSPORTATION, INC., 855 East 114th Street, Chicago, IL 60628. Representative: Joel H. Steiner, 39 South LaSalle, Suite 600, Chicago, IL 60603. *Crude silicon carbide and silicon carbide briquettes,* between Milwaukee, WI; Saginaw, MI; and Birmingham, AL, on the one hand, and, on the other, points in the U.S. in and east of the States of ND, SD, NE, CO and NM. Supporting shipper: Miller & Company,

55 East Monroe Street, Chicago, IL 60603.

MC 58851 (Sub-4–3TA), filed December 10, 1980. Applicant: RUDOLF EXPRESS CO., 1650 Armour Road, Bourbonnais, IL 60914. Representative:

apparatus, between points in the U.S. An underlying ETA seeks a 120 days. Supporting shippers: R. S. Electric, Jordon, MN and B & B Transformers, Farmington, MN.

MC 148665 (Sub-4–4), filed December 10, 1980. Applicant: CFS CONTINENTAL TRANSPORTATION COMPANY, 2550 N. Clybourn Ave., Chicago, IL 60614. Representative: Leanord R. Kofkin, 39 S. La Salle St.,

other, points in the U.S. (except AK and HI), under continuing contract(s) with Ipsen Industries of Cherry Valley, IL; (4) *Pet food, and materials and supplies* used in the manufacture and distribution of pet food, from Rockford, IL, to

materials, supplies and equipment used in the manufacture and distribution of foodstuffs (except commodities in bulk), from Chicago, IL, and its commercial zone to Arlington, TX, Atlanta, GA, Baltimore, MD, Birmingham, AL, Boston,

converters, printers, and distributors of paper and paper products (except commodities in bulk), between points in OH on the one hand, and, on the other, points in WI. An underlying ETA seeks 120 days authority. Supporting shippers:

55 East Monroe Street, Chicago, IL 60603.

MC 58851 (Sub-4–3TA), filed December 10, 1980. Applicant: RUDOLF EXPRESS CO., 1650 Armour Road, Bourbonnais, IL 60914. Representative: Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603. *Common.* Regular: *General Commmodities* (except commodities in bulk, household goods as defined by the Commission, and classes A and B explosives) between Chicago, IL, and Milwaukee, WI, over U.S. 41, serving all intermediate points and the off-route point of Kenosha, WI. There are 38 shippers supporting this application. Applicant proposes to: (1) Serve all points in the Commercial Zones of Chicago, IL, and Kenosha and Milwaukee, WI; and (2) Interline at Chicago, IL, and Milwaukee, WI, and points in the respective Commercial Zones; and (3) Tack at Chicago, IL, and points in its Commercial Zone with its existing authority to serve points in IL and IN.

MC 153071 (Sub-4–1TA), filed December 9, 1980. Applicant: LENAWEE COUNTY RAILROAD CO., INC., 708 E. Michigan Street, Adrian, MI 49221. Representative: John D. Heffner, Esq., Suite 500, 2011 I Street, NW., Washington, DC 20006. *General commodities* (except classes A and B explosives and household goods), between points in Detroit, MI, Toledo, OH, and Montpelier, OH, and their respective commercial zones, and points in Lenawee, Monroe, and Washtenaw Counties, MI. Supporting shipper(s): Approximately 6 supporting shippers are supporting this application.

Note.—Applicant intends to interline at Detroit, MI; Toledo, OH; and Montpelier, OH.

MC 153077 (Sub-4–1TA), filed December 9, 1980. Applicant: TOTAL TRANSPORTATION, INC., 1601 99th Lane NE., Minneapolis, MN 55434. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Non-exempt food or kindred products as set farth in STCC Major Industrial Grouping No. 20,* between points in Stark County, ND, Eau Claire County, WI, Martin, Nobles, Watonwan and Wright Counties, MN, and points in the Minneapolis/St. Paul Commercial Zone, on the one hand, and, on the other, points in the U.S. Supporting shipper: Trans-Consolidated, Inc., 17745 Cedar Lake Drive, Cedar, MN 55011.

MC 146314 (Sub-4–5TA), filed December 10, 1980. Applicant: G & T TRUCKING CO., Route 1, County Road 2 and I–35 S, Elko, MN 55020. Representative: Thomas Zwiers (same as above). *Transformers and related apparatus,* between points in the U.S. An underlying ETA seeks a 120 days. Supporting shippers: R. S. Electric, Jordon, MN and B & B Transformers, Farmington, MN.

MC 147644 (Sub-4–7TA), filed December 10, 1980. Applicant: JMC TRANSPORT, INC., 1719 Potters Lane, Jeffersonville, IN 47130. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Drive, Gaithersburg, MD 20760. *Such commodities as are dealt in and used by producers and distrubutors of alcoholic beveroges* from Bardstown, Clermont, Frankfort, Lawrenceburg, Louisville, and Owensboro, KY, Lawrenceburg, IN, Kansas City, MO, St. Louis, MO, and Cincinnati, OH, on the one hand, and, on the other hand, Phoenix, AZ, Tuscon, AZ, Little Rock, AR, Harahan, LA, Layfayette, LA, Shreveport, LA, and Amarillo, Corpus Christi, Dallas, El Paso, Ft. Worth, Houston, Odessa, and San Antonio, TX. Underlying ETA seeks 120 days authority. Supporting shipper: Glazer's Wholesale Drug Co., Inc., 508 Park Ave., Dallas, TX 75201.

MC 152995 (Sub-4–1TA), filed December 10, 1980. Applicant: JAMES THOMAS TRUCKING, INC., 17708 Stonebridge Drive, Hazel Crest, IL. 60429. Representative: James Thomas (same address as applicant). *Contract,* irregular: *Paint, paint materials, aerosal cans, and materials, equipment and supplies, (except in bulk), used in the manufacture, sales, and distribution of paint products,* between the facilities of Illinois Bronze Powder Paint Company on the one hand, and, on the other hand, points in AR, CO, GA, IL, IN, IA, LA, KS, KY, MO, NE, NV, NJ, OH, OK, PA, TN, TX, UT, and WY. An underlying ETA seeks 120 days authority. Restricted to traffic moving under continuing contract(s) with Illinois Bronze Powder Paint Company. Supporting shipper: Illinois Bronze Powder Paint Company, 300 E. Main Street, Lake Zurich, IL. 60047.

MC 108185 (Sub-4–13TA), filed December 10, 1980. Applicant: JACK COLE-DIXIE HIGHWAY COMPANY, 2625 Territorial Road, St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Lumber; posts and poles; building materials, wooden* from the Plant Site of B. B. Springer Lumber Company, Millport, AL to points in AR, FL, IL, IN, IA, KY, MI, MN, MO, NE, OH, PA, TN, TX, VA, WV and WI. An underlying ETA seeks 120 days authority. Supporting shipper: B. B. Springer Lumber Company, Box 278, Millport, AL 35576.

MC 148665 (Sub-4–4), filed December 10, 1980. Applicant: CFS CONTINENTAL TRANSPORTATION COMPANY, 2550 N. Clybourn Ave., Chicago, IL 60614. Representative: Leanord R. Kofkin, 39 S. La Salle St., Chicago, IL 60603. *Frozen foodstuffs* from the facilities of Omaha Cold Storage Terminals, Inc. at Ft. Dodge, IA to Chicago, IL; Indianapolis, IN; Detroit, MI; and Minneapolis, MN, and their respective commercial zones. An underlying ETA seeks 120 day authority. Supporting shipper: CFS Continental, Inc., 100 S. Wacker Dr., Chicago, IL 60606.

MC 151934 (Sub-4–3TA), filed December 10, 1980. Applicant: KING'S EXPRESS, INC., Rural Route 2, St. Joseph, MN 56374. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Blvd., Suite 411, Edina, MN 55435. *Foodstuffs,* between Portage, WI; on the one hand, and, on the other, points in IA, MN and SD. Supporting shipper: Copps Distributing—IGA Chain Stores, 2828 Wayne Street, Stevens Point, WI 54481.

MC 127187 (Sub-4–3TA), filed December 5, 1980. Applicant: FLOYD DVENOW, INC., P.O. Box 86, Savage, MN 55378. Representative: Stanley C. Olsen, Jr., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Lumber and lumber products,* from points in ID, MT, OR and WA to points in IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD and WI. Supporting shippers: Emmers Brothers Co., 520 Southdale Office Center, Minneapolis, MN 55435. T. W. Hager Lumber Company, 1545 Marquette SW., P.O. Box 9040, Grand Rapids, MI 49509.

MC 151482 (Sub-4–5), filed December 5, 1980. Applicant: ROCK VALLEY CONTRACT CARRIERS, INC., 3571 Merchandise Dr., Rockford, IL 61109. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. *Contract Irregular* (1) *Printed Material and related materials and supplies,* between Mt. Morris, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Kable Printing Co. of Mt. Morris, IL; (2) *Machinery and related accessories, and equipment, materials and supplies* used in the manufacture and distribution of the above commodities, between Rockford, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with W. A. Whitney Corp. of Rockford, IL; (3) *Heat treating equipment, and equipment, materials and supplies* used in the manufacture and distribution of the above commodities, between Cherry Valley, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Ipsen Industries of Cherry Valley, IL; (4) *Pet food, and materials and supplies* used in the manufacture and distribution of pet food, from Rockford, IL, to Shiremanstown, PA, Bethel, CT and Marion, OH, under continuing contract(s) with The Quaker Oats Company of Chicago, IL; Supporting shippers: Kable Printing Co., Mt. Morris, IL; W. A. Whitney Corp., 650 Race Street, Rockford, IL; Ipsen Industries, 984 Ipsen Road, Cherry Valley, IL; The Quaker Oats Company, Merchandise Mart Plaza, Chicago, IL 60654.

MC 152019 (Sub-42TA), filed December 4, 1980. Applicant: C.A.T. TRUCKING INC., State Hwys. 3 and 46 W., P.O. Box 487, Greensburg, IN 47240. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204. *Contract; Irregular: General commodities* (except classes A and B explosives and household goods as defined by the Commission) between points in the U.S., under continuing contract(s) with Crown Zellerbach Corporation of South Glens Falls, NY. Supporting shipper: Crown Zellerbach Corporation, One River St., So. Glens Falls, NY 12801.

MC 108223 (Sub-4–5), filed December 4, 1980. Applicant: CENTURY-MERCURY MOTOR FREIGHT, INC., P.O. Box 43050, St. Paul, MN 55164. Representative: Warren K. Wahoske, P.O. Box 43050, St. Paul, MN 55164. *Furnoces, heating equipment and parts and accessories* between St. Paul, MN, on the one hand, and, on the other, points in the U.S. Supporting shipper: Applied Air Systems, 2475 Doswell Ave., St. Paul, MN 55108.

MC 139482 (Sub-4–20TA), filed December 4, 1980. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Barry M. Bloedel, P.O. Box 877, New Ulm, MN 56073. (1) *Hospital supplies* and (2) *materials, equipment and supplies used in the manufacture and distribution of hospital supplies,* between points in the U.S. (except AK and HI). Restricted to the facilities originating at or terminating at the facilities of Medline Industries, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Medline Industries, Inc., 1825 Shermer, Northbrook, IL 60062.

MC 139482 (Sub-4–19TA), filed December 3, 1980. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Barry M. Bloedel, P.O. Box 877, New Ulm, MN 56073. (1) *Foodstuffs,* (2) *materials, supplies and equipment used in the manufacture and distribution of foodstuffs (except commodities in bulk),* from Chicago, IL, and its commercial zone to Arlington, TX, Atlanta, GA, Baltimore, MD, Birmingham, AL, Boston, MA, Buffalo, NY, Charlotte, NC, Cincinnati, OH, Cleveland, OH, Columbus, OH, Davenport, IA, Denver, CO, Des Moines, IA, Detroit, MI, Grand Rapids, MI, Green Bay, WI, Huntington, WV, Jacksonville, FL, Jersey City, NJ, Kansas City, MO, Los Angeles, CA, Memphis, TN, Milwaukee, WI, Minneapolis, MN, Nashville, TN, New Orleans, LA, Omaha, NE, Pittsburgh, PA, Portland, OR, St. Louis, MO, Salt Lake City, UT and San Francisco, CA. Restricted to the facilities of Tootsie Roll Industries, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Tootsie Roll Industries, Inc., 7401 S. Cicero Ave., Chicago, IL 60629.

MC 143630 (Sub-4–2TA), filed December 3, 1980. Applicant: FLOYD M. GRIEBEL, SR., FLOYD M. GRIEBEL, JR., and WILLIAM GRIEBEL, d.b.a. GRIEBEL'S TRUCKING, a partnership, P.O. Box 243, Marengo, IL 60152. Representative: Robert J. Gill, First Commercial Bank Bldg., 410 Cortez Rd. West, Bradenton, FL 33507. *Contract, irregular such commodities as are dealt in by a manufacturer or distributor of road construction products and building materials,* except commodities in bulk and commodities which require the use of specialized equipment, between Elgin and Hampshire, IL on the one hand, and, on the other points in the U.S. under continuing contract(s) with W. R. Meadows, Inc. Supporting shipper: W. R. Meadows, Inc., P.O. Box 543, Elgin, IL 60120.

MC 152322 (Sub-4–1), filed December 4, 1980. Applicant: B&D TRUCKING CORPORATION, 8730 Chesaning Rd., Chesaning, MI. Representative: David Earl Tinker, 1000 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20036. *Meats, meat products, meat byproducts, and commodities dealt in, bought, and/or distributed by Peet Packing Company,* between points in the U.S. under continuing contract(s) with Peet Packing Company of Chesaning, MI. An underlying ETA seeks 120 days authority. Peet Packing Company, 1100 N. Line Street, Chesaning, MI 48616.

MC 138420 (Sub-4–2TA), filed December 4, 1980. Applicant: CHIZEK ELEVATOR & TRANSPORT, INC., Route 1, P.O. Box 147, Cleveland, WI 53063. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. *Such commodities as are dealt in or used by manufacturers, converters, printers, and distributors of paper and paper products* (except commodities in bulk), between points in OH on the one hand, and, on the other, points in WI. An underlying ETA seeks 120 days authority. Supporting shippers: Continental Group, Inc.—Continental Forest Industries—Fiberdrum Division, 1200 Harger Road, Suite Oak Brook, Il 60521; Rhinelander Paper Company, Inc., 515 W. Davenport St., Rhinelander, WI 54501.

MC 2277 (Sub-4–5), filed December 3, 1980. Applicant: FRUTH MOTOR TRUCK SERVICE, INC., 720 Scheel Street, P.O. Box 992, Belleville, IL 62221. Representative: Lesliean G. Maxey, 907 South Fourth St., Springfield, IL 62703. *General commodities* from points in the State of NJ to the facilities of WAL-MART Corporation at Bentonville, AK and Searcy, AK. Supporting shipper: WAL-MART Corporation, Bentonville, AK 72712.

MC 105501 (Sub-4–5TA), filed December 4, 1980. Applicant: TERMINAL WAREHOUSE COMPANY, 1851 Raddison Road N.E., Blaine, MN 55434. Representative: Joseph J. Dudley, Dudley and Smith, W–1260 First National Bank Bldg., Saint Paul, MN 55101. *General Commodities* (except in Bulk) between IA, IL, IN, KS, MI, MN, MO, ND, NE, OH, MT, CO, SD, WI. Restricted to traffic originating at, or destined to the facilities used by The Pillsbury Company, and its subsidiaries. Supporting shipper: The Pillsbury Company, 608 Second Ave. South, Minneapolis, MN 55402.

MC 42537 (Sub-4–1TA), filed December 4, 1980. Applicant: CASSENS TRANSPORT COMPANY, P.O. Box 468, Edwardsville, IL. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Motor vehicles,* from Chicago, IL to points in MN, ND, and SD. Supporting shipper: Volkswagen of America, Inc., Sylvan Avenue, Englewood Cliffs, NJ 07632.

MC 127079 (Sub-4–1TA), filed December 5, 1980. Applicant: G & M COACHES, INC., 1536 Fuller, S.E., Grand Rapids, MI 49507. Representative: Robert E. McFarland, 2855 Coolidge, Suite 201A, Troy, MI 48084. *Passengers and their baggage, in special and charter operations, in round-trip pleasure and sightseeing tours,* beginning and ending at points in Oceana, Newaygo, Mecosta, Isabella, Muskegon, Montcalm, Gratiot, Ionia, Kent, Ottawa, Mason, Lake, Osceola, Allegan and Barry Counties, MI, and extending to points in the U.S. (except HI). There are 7 statements of support.

MC 116273 (Sub-4–6TA), filed December 5, 1980. Applicant: D & L TRANSPORT, INC., 3800 Larami, Cicero, IL 60650. Representative: William Lavery, (same as applicant). *Castor Oil* in bulk, in tank vehicles, from New Walworth County, WI, on the one hand, and on the other points in and east of MT, WY, CO, and NM. Supporting shipper: Leisure Recreational Products, Geneva, WI 53147.

MC 133566 (Sub-4–12TA), filed December 4, 1980. Applicant: REDWAY CARRIERS, INC., P.O. Box 104, Waukegan, IL 60085. Representative: Paul J. Maton, 10 S. LaSalle St., Rm. 1620, Chicago, IL 60603. *Contract, Irregular: Such commodities as are dealt in or used by manufacturers, converters, printers, and distributors of paper and paper products* (except commodities in bulk), between points in OH on the one hand, and, on the other, points in WI. An underlying ETA seeks 120 days authority. Supporting shippers: Continental Group, Inc.—Continental Forest Industries—Fiberdrum Division, 1200 Harger Road, Suite Oak Brook, Il 60521; Rhinelander Paper Company, Inc., 515 W. Davenport St., Rhinelander, WI 54501.

MC 138824 (Sub-4–4TA), filed December 4, 1980. Applicant: REDWAY CARRIERS, INC., P.O. Box 104, Waukegan, IL 60085. Representative: Paul J. Maton, 10 S. LaSalle St., Rm. 1620, Chicago, IL 60603. *Contract, Irregular: Such commodities as are dealt in or used by manufacturers, converters, printers, and distributors of paper and paper products* (except commodities in bulk), between points in OH on the one hand, and, on the other, points in WI. An underlying ETA seeks 120 days authority. Supporting shippers: Continental Group, Inc.—Continental Forest Industries—Fiberdrum Division, 1200 Harger Road, Suite Oak Brook, Il 60521; Rhinelander Paper Company, Inc., 515 W. Davenport St., Rhinelander, WI 54501.

Nashville, TN; Greeley, CO; Dallas, TX; and Chicago, IL under continuing contract(s) with Hydro-Dynamics, Inc. Supporting shipper: Hydro-Dynamics, Inc., 2000 Industrial Blvd, Lake Havasu City, AZ 86403.

MC 150798 (Sub-4–3), filed December 2, 1980. Applicant: CKR TRANSPORT, LTD., P.O. Box 599, Elmhurst, IL 60126. Representative: D. R. Beeler, 1261 Columbia Ave., Franklin, TN 37064. *Chemcials, drugs, toilet preparations, materials, supplies and equipment used in the manufacture and distribution of foodstuffs (except commodities in bulk),* from Chicago, IL, and its commercial zone to Arlington, TX, Atlanta, GA, Baltimore, MD, Birmingham, AL, Boston, MA, Buffalo, NY, Charlotte, NC, Cincinnati, OH, Cleveland, OH, Columbus, OH, Davenport, IA, Denver, CO, Des Moines, IA, Detroit, MI, Grand Rapids, MI, Green Bay, WI, Huntington, WV, Jacksonville, FL, Jersey City, NJ, Kansas City, MO, Los Angeles, CA, Memphis, TN, Milwaukee, WI, Minneapolis, MN, Nashville, TN, New Orleans, LA, Omaha, NE, Pittsburgh, PA, Portland, OR, St. Louis, MO, Salt Lake City, UT and San Francisco, CA. Restricted to the facilities of Tootsie Roll Industries, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Tootsie Roll Industries, Inc., 7401 S. Cicero Ave., Chicago, IL 60629.

MC 143630 (Sub-4–2TA), filed December 3, 1980. Applicant: FLOYD M. GRIEBEL, SR., FLOYD M. GRIEBEL, JR., and WILLIAM GRIEBEL, d.b.a. GRIEBEL'S TRUCKING, a partnership, P.O. Box 243, Marengo, IL 60152. Representative: Robert J. Gill, First Commercial Bank Bldg., 410 Cortez Rd. West, Bradenton, FL 33507. *Contract, irregular such commodities as are dealt in by a manufacturer or distributor of road construction products and building materials,* except commodities in bulk and commodities which require the use of specialized equipment, between Elgin and Hampshire, IL on the one hand, and, on the other points in the U.S. under continuing contract(s) with W. R. Meadows, Inc. Supporting shipper: W. R. Meadows, Inc., P.O. Box 543, Elgin, IL 60120.

MC 152322 (Sub-4–1), filed December 4, 1980. Applicant: B&D TRUCKING CORPORATION, 8730 Chesaning Rd., Chesaning, MI. Representative: David Earl Tinker, 1000 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20036. *Meats, meat products, meat byproducts, and commodities dealt in, bought, and/or distributed by Peet Packing Company,* between points in the U.S. under continuing contract(s) with Peet Packing Company of Chesaning, MI. An underlying ETA seeks 120 days authority. Peet Packing Company, 1100 N. Line Street, Chesaning, MI 48616.

MC 138420 (Sub-4–2TA), filed December 4, 1980. Applicant: CHIZEK ELEVATOR & TRANSPORT, INC., Route 1, P.O. Box 147, Cleveland, WI 53063. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. *Such commodities as are dealt in or used by manufacturers, converters, printers, and distributors of paper and paper products* (except commodities in bulk), between points in OH on the one hand, and, on the other, points in WI. An underlying ETA seeks 120 days authority. Supporting shippers: Continental Group, Inc.—Continental Forest Industries—Fiberdrum Division, 1200 Harger Road, Suite Oak Brook, Il 60521; Rhinelander Paper Company, Inc., 515 W. Davenport St., Rhinelander, WI 54501.

MC 2277 (Sub-4–5), filed December 3, 1980. Applicant: FRUTH MOTOR TRUCK SERVICE, INC., 720 Scheel Street, P.O. Box 992, Belleville, IL 62221. Representative: Lesliean G. Maxey, 907 South Fourth St., Springfield, IL 62703. *General commodities* from points in the State of NJ to the facilities of WAL-MART Corporation at Bentonville, AK and Searcy, AK. Supporting shipper: WAL-MART Corporation, Bentonville, AK 72712.

MC 105501 (Sub-4–5TA), filed December 4, 1980. Applicant: TERMINAL WAREHOUSE COMPANY, 1851 Raddison Road N.E., Blaine, MN 55434. Representative: Joseph J. Dudley, Dudley and Smith, W–1260 First National Bank Bldg., Saint Paul, MN 55101. *General Commodities* (except in Bulk) between IA, IL, IN, KS, MI, MN, MO, ND, NE, OH, MT, CO, SD, WI. Restricted to traffic originating at, or destined to the facilities used by The Pillsbury Company, and its subsidiaries. Supporting shipper: The Pillsbury Company, 608 Second Ave. South, Minneapolis, MN 55402.

MC 42537 (Sub-4–1TA), filed December 4, 1980. Applicant: CASSENS TRANSPORT COMPANY, P.O. Box 468, Edwardsville, IL. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Motor vehicles,* from Chicago, IL to points in MN, ND, and SD. Supporting shipper: Volkswagen of America, Inc., Sylvan Avenue, Englewood Cliffs, NJ 07632.

MC 127079 (Sub-4–1TA), filed December 5, 1980. Applicant: G & M COACHES, INC., 1536 Fuller, S.E., Grand Rapids, MI 49507. Representative: Robert E. McFarland, 2855 Coolidge, Suite 201A, Troy, MI 48084. *Passengers and their baggage, in special and charter operations, in round-trip pleasure and sightseeing tours,* beginning and ending at points in Oceana, Newaygo, Mecosta, Isabella, Muskegon, Montcalm, Gratiot, Ionia, Kent, Ottawa, Mason, Lake, Osceola, Allegan and Barry Counties, MI, and extending to points in the U.S. (except HI). There are 7 statements of support.

MC 150798 (Sub-4–3), filed December 2, 1980. Applicant: CKR TRANSPORT, LTD., P.O. Box 599, Elmhurst, IL 60126. Representative: D. R. Beeler, 1261 Columbia Ave., Franklin, TN 37064. *Chemcials, drugs, toilet preparations, materials, supplies and equipment used in the manufacture and distribution of foodstuffs (except commodities in bulk),* from Chicago, IL, and its commercial zone to Arlington, TX, Atlanta, GA, Baltimore, MD, Birmingham, AL, Boston, MA, Buffalo, NY, Charlotte, NC, Cincinnati, OH, Cleveland, OH, Columbus, OH, Davenport, IA, Denver, CO, Des Moines, IA, Detroit, MI, Grand Rapids, MI, Green Bay, WI, Huntington, WV, Jacksonville, FL, Jersey City, NJ, Kansas City, MO, Los Angeles, CA, Memphis, TN, Milwaukee, WI, Minneapolis, MN, Nashville, TN, New Orleans, LA, Omaha, NE, Pittsburgh, PA, Portland, OR, St. Louis, MO, Salt Lake City, UT and San Francisco, CA. Restricted to the facilities of Tootsie Roll Industries, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Tootsie Roll Industries, Inc., 7401 S. Cicero Ave., Chicago, IL 60629.

MC 143630 (Sub-4–2TA), filed December 3, 1980. Applicant: FLOYD M. GRIEBEL, SR., FLOYD M. GRIEBEL, JR., and WILLIAM GRIEBEL, d.b.a. GRIEBEL'S TRUCKING, a partnership, P.O. Box 243, Marengo, IL 60152. Representative: Robert J. Gill, First Commercial Bank Bldg., 410 Cortez Rd. West, Bradenton, FL 33507. *Contract, irregular such commodities as are dealt in by a manufacturer or distributor of road construction products and building materials,* except commodities in bulk and commodities which require the use of specialized equipment, between Elgin and Hampshire, IL on the one hand, and, on the other points in the U.S. under continuing contract(s) with W. R. Meadows, Inc. Supporting shipper: W. R. Meadows, Inc., P.O. Box 543, Elgin, IL 60120.

MC 152322 (Sub-4–1), filed December 4, 1980. Applicant: B&D TRUCKING CORPORATION, 8730 Chesaning Rd., Chesaning, MI. Representative: David Earl Tinker, 1000 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20036. *Meats, meat products, meat byproducts, and commodities dealt in, bought, and/or distributed by Peet Packing Company,* between points in the U.S. under continuing contract(s) with Peet Packing Company of Chesaning, MI. An underlying ETA seeks 120 days authority. Peet Packing Company, 1100 N. Line Street, Chesaning, MI 48616.

MC 138420 (Sub-4–2TA), filed December 4, 1980. Applicant: CHIZEK ELEVATOR & TRANSPORT, INC., Route 1, P.O. Box 147, Cleveland, WI 53063. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. *Such commodities as are dealt in or used by manufacturers, converters, printers, and distributors of paper and paper products* (except commodities in bulk), between points in OH on the one hand, and, on the other, points in WI. An underlying ETA seeks 120 days authority. Supporting shippers: Continental Group, Inc.—Continental Forest Industries—Fiberdrum Division, 1200 Harger Road, Suite Oak Brook, Il 60521; Rhinelander Paper Company, Inc., 515 W. Davenport St., Rhinelander, WI 54501.

MC 2277 (Sub-4–5), filed December 3, 1980. Applicant: FRUTH MOTOR TRUCK SERVICE, INC., 720 Scheel Street, P.O. Box 992, Belleville, IL 62221. Representative: Lesliean G. Maxey, 907 South Fourth St., Springfield, IL 62703. *General commodities* from points in the State of NJ to the facilities of WAL-MART Corporation at Bentonville, AK and Searcy, AK. Supporting shipper: WAL-MART Corporation, Bentonville, AK 72712.

MC 105501 (Sub-4–5TA), filed December 4, 1980. Applicant: TERMINAL WAREHOUSE COMPANY, 1851 Raddison Road N.E., Blaine, MN 55434. Representative: Joseph J. Dudley, Dudley and Smith, W–1260 First National Bank Bldg., Saint Paul, MN 55101. *General Commodities* (except in Bulk) between IA, IL, IN, KS, MI, MN, MO, ND, NE, OH, MT, CO, SD, WI. Restricted to traffic originating at, or destined to the facilities used by The Pillsbury Company, and its subsidiaries. Supporting shipper: The Pillsbury Company, 608 Second Ave. South, Minneapolis, MN 55402.

MC 42537 (Sub-4–1TA), filed December 4, 1980. Applicant: CASSENS TRANSPORT COMPANY, P.O. Box 468, Edwardsville, IL. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Motor vehicles,* from Chicago, IL to points in MN, ND, and SD. Supporting shipper: Volkswagen of America, Inc., Sylvan Avenue, Englewood Cliffs, NJ 07632.

MC 127079 (Sub-4–1TA), filed December 5, 1980. Applicant: G & M COACHES, INC., 1536 Fuller, S.E., Grand Rapids, MI 49507. Representative: Robert E. McFarland, 2855 Coolidge, Suite 201A, Troy, MI 48084. *Passengers and their baggage, in special and charter operations, in round-trip pleasure and sightseeing tours,* beginning and ending at points in Oceana, Newaygo, Mecosta, Isabella, Muskegon, Montcalm, Gratiot, Ionia, Kent, Ottawa, Mason, Lake, Osceola, Allegan and Barry Counties, MI, and extending to points in the U.S. (except HI). There are 7 statements of support.

MC 116273 (Sub-4–6TA), filed December 5, 1980. Applicant: D & L TRANSPORT, INC., 3800 Larami, Cicero, IL 60650. Representative: William Lavery, (same as applicant). *Castor Oil* in bulk, in tank vehicles, from New York, NY and its commercial zone to Dover, OH. Supporting shipper: Union Camp Corporation, 1600 Valley Road, Wayne, NJ 07470.

MC 133689 (Sub-4–53), filed December 5, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples St. NE, Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Such merchondise as is dealt in by wholesale, retail and chain grocery and food business houses and in connection therewith, equipment, materials and supplies used in the conduct of such* business (except commodities in bulk) between points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, restricted to the shipments originating at or destined to the TOPCO Associates and/or its members. Supporting shipper: Topco Associates, Inc., 7711 Gross Point Road, Skokie, IL 60077.

MC 133689 (Sub-4–54TA), filed December 5, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples St. NE, Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *General commodities* (except Classes A and B explosives, household and commodities in bulk), from the facilities of The Charter Oaks Shippers Cooperative Association at West Haven, CT to points in and east of ND, SD, NE, KS, MO, AR, and LA. Supporting shipper: The Charter Oaks Shippers Cooperative Association, Berlin, CT.

MC 69833 (Sub-4–12), filed December 4, 1980. Applicant: ASSOCIATED TRUCK LINES, INC., 200 Monroe Avenue, NW—6th Floor, Grand Rapids, MI 49503. Representative: Harry Pohlad (same address as applicant). *Common,* regular; *General Commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk; and those requiring special equipment), serving the points of Midland, MI, and Mt. Pleasant, MI, as off-route points in connection with carrier's authorized regular route operations. Underlying ETA seeks 120 days authority. There are eight supporting shippers.

MC 103993 (Sub-4–25TA), filed December 3, 1980. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (address same as applicant). *Motor Vehicles* between Walworth County, WI, on the one hand, and on the other points in and east of MT, WY, CO, and NM. Supporting shipper: Leisure Recreational Products, Geneva, WI 53147.

MC 133566 (Sub-4–12TA), filed December 4, 1980. Applicant: GANGLOFF & DOWNHAM TRUCKING, P.O. Box 479, Logansport, IN 46947. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Av., Park Ridge, IL 60068. *Packaging materials and paperboard cartons,* between Bow, NH, on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper: Universal Packaging Corporation, P.O. Box 918, Concord, NH 03301.

MC 152996 (Sub-4–1), filed December 4, 1980. Applicant: B&I TRUCKING, INC., 1509 No. Main, Georgetown, IL 61846. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. *Contract,* Irregular: *Personal care, health, drug and grooming products, and materials, equipment and supplies used in the manufacture and distribution of said commodities,* between points in the U.S., under continuing contracts with A.T.I., Inc. An underlying E/T/A seeks 120 days authority. Supporting shipper: A.T.I., Inc., 800 So. Gilbert, Danville, IL 61832.

MC 139994 (Sub-4–1TA), filed December 4, 1980. Applicant: JIM AND BOB STENCEL d.b.a. STENCEL TRUCKING, Box 321, Minnesota Lake, MN 56058. Representative: William J. Gambucci, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. *Animal pelts,* from Denver, CO; Sioux Falls, SD; Albert Lea, MN; Chicago, IL; Detroit, MI; Boston, MA; New York, NY and San Angelo, TX, to Camden, ME; Gloversville, NY; San Antonio and Ft. Worth, TX; Denver and Eaton, CO; Albert Lea, MN; Los Angeles, CA, and Winchester, NH. A corresponding ETA seeks 120 days authority. Supporting shippers: Southern Wool and Skin Company, Box 7266, San Antonio, TX 78207, Wilson Foods Corp., 4545 North Lincoln Blvd., Oklahoma City, OK 73105; Deifik Trading Corporation, Box 2524, Fort Worth, TX 76113.

MC 138824 (Sub-4–4TA), filed December 4, 1980. Applicant: REDWAY CARRIERS, INC., P.O. Box 104, Waukegan, IL 60085. Representative: Paul J. Maton, 10 S. LaSalle St., Rm. 1620, Chicago, IL 60603. *Contract,* irregular; *Glass containers,* from Burlington, WI to Eau Claire, WI, under continuing contract with Eau Claire Packing Company. Supporting shipper: Eau Claire Packing Company, 7600 Lynn St., Eau Claire, WI 49111.

MC 138824 (Sub-4–4TA), filed December 4, 1980. Applicant: REDWAY CARRIERS, INC., P.O. Box 104, Waukegan, IL 60085. Representative: Paul J. Maton, 10 S. LaSalle St., Rm. 1620, Chicago, IL 60603. *Contract,* irregular; (1) *Wood doors,* from Plymouth, IN to points in IL, KY, MI, OH, WI, MN, MO, NE, ND and SD; and (2) *hardboard door skins,* from Plymouth, IN to Sunbury, PA, under continuing contract with Young Door Company. Supporting shipper: Young Door Company, P.O. Box 700, Plymouth, IN 46563.

MC 138824 (Sub-4–4TA), filed December 4, 1980. Applicant: REDWAY CARRIERS, INC., P.O. Box 104, Waukegan, IL 60085. Representative: Paul J. Maton, 10 S. LaSalle St., Rm. 1620, Chicago, IL 60603. *Contract,* irregular; *Automotive supplies, spring assemblies, cushions and backs,* from Vincennes, IN to the facilities of American Motors Corp. at Detroit, MI, under continuing contracts with Hoover Universal. Supporting shipper: Hoover Universal, 2525 W. 6th St., Vincennes, IN 47591.

MC 152978 (Sub-4–1TA), filed December 3, 1980. Applicant: GEORGE L. POWELL, 356 Dale Rd., Beaverton, MI 48612. Representative: Edward Malinzak, 900 Old Kent Bldg. Grand Rapids, MI 49503. *Contract;* Irregular: *General commodities (except in bulk)* between points in CA, IL and MI, under a continuing contract with Michigan Maple Block Company. Supporting shipper: Michigan Maple Block Company, P.O. Box 245, Petoskey, MI 49770.

MC 136635 (Sub-4–12TA), filed December 5, 1980. Applicant: UNIVERSAL CARTAGE, INC., 640 W. Ireland Road, South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Iron and steel articles* between the facilities of Jones & Laughlin Steel Corporation at Indianapolis, IN, on the one hand, and, on the other, points in CA, AZ, OR, and WA. Supporting shipper: Jones & Laughlin Steel Corporation, 2301 S. Holt Road, Indianapolis, IN 46241.

MC 152935 (Sub-4–1TA), filed December 5, 1980. Applicant: HILL-ROM COMPANY, INC., Highway 46, Batesville, IN 47006. Representative: Edward F. Schiff, 1333 New Hampshire Avenue, Suite 400, Washington, DC 20036. *Complete waterbedding such as bedsheets, pillowcases, comforters, bedspreads, mattress pads and other such bedding used for waterbeds* from Lake Havasu City, AZ to points in Bristol, WI; Houston, TX; Memphis, TN; Nashville, TN; Greeley, CO; Dallas, TX; and Chicago, IL under continuing contract(s) with Hydro-Dynamics, Inc. Supporting shipper: Hydro-Dynamics, Inc., 2000 Industrial Blvd, Lake Havasu City, AZ 86403.

MC 145703 (Sub-4–1TA), filed December 3, 1980. Applicant: FRL TRANSPORTATION, INC., 96 Doty Street, Fond du Lac, WI 54935. Representative: James Kiepke, 96 Doty Street, Fond du Lac, WI 54935. *Contract;* Irregular: (1) *Doors, windows, materiols, equipment, and supplies* used or useful in the manufacture, sale, or distribution from Fond du Lac County, WI, to points in the U.S. (except AK and HI). Restricted to service performed under a continuing contract(s) with The Combination Door Company. Supporting shipper: The Combination Door Company, 1000 Morris Street, Fond du Lac, WI.

MC 142059 (Sub-4–12TA), filed December 3, 1980. Applicant: CARDINAL TRANSPORT, INC., P.O Box 911, Joliet, IL 60434. Representative: Jack Riley (same address as applicant). *Adhesives in packages* from Paxton, IL to points in the U.S. (except AK and HI). Supporting shipper: Krause Milling Co., P.O. Box 1156, Milwaukee, WI 53201.

MC 152756 (Sub-4–1TA), filed November 28, 1980. Applicant: A.F. TRUCKING, LTD., P.O. Box 346, Grndthal, Manitoba, Canada Roa oRo. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. *Contract;* irregular: (1) *Cat litter,* from Mounds, IL, to ports of entry between the U.S. and Canada at Pembina, ND and Noyes and Warroad, MN; (2) *coffee creamer* from Huntley, IL to ports of entry between the U.S. and Canada at Pembina, ND and Noyes and Warroad, MN; (3) *rice,* from Crowley, LA to ports of entry between the U.S. and Canada at Pembina, ND and Noyes and Warroad, MN, under contract with Westfair Foods, Ltd., of Winnipeg, Manitoba, Canada. A 120 day ETA has been filed. Supporting shipper: Westfair Foods, Ltd., 101 Weston St., Winnipeg, Manitoba, Canada R3C 281.

MC 152936 (Sub-4–1), filed December 3, 1980. Applicant: ADIA CORPORATION, 13101 South Torrence Ave., Chicago, IL 60633. Representative: Daniel C. Sullivan, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. *Motor vehicles,* between points in IL, IN, MI, OH, and WI, on the one hand, and, on the other, points in OR and WA. An underlying ETA seeks 120 days authority. Supporting shipper: Mazda Motors of America (Central), Inc., 3040 East Ana Street, Compton, CA. 90221.

MC 150798 (Sub-4–3), filed December 2, 1980. Applicant: CKR TRANSPORT, LTD., P.O. Box 599, Elmhurst, IL 60126. Representative: D. R. Beeler, 1261 Columbia Ave., Franklin, TN 37064. *Chemcials, drugs, toilet preparations, health care items, foodstuffs, and materials and supplies used in the manufacture of the aforementioned* between the facilities of Alberto-Culver Company at Melrose Park, IL; Buffalo, NY; Fredonia, NY; and Milltown, NJ on the one hand and points in MO, NE, CO, KS, VA, NV, WA, CA, OR, MA, NY, MD, GA, and PA on the other. Supporting shipper: Alberto-Culver Company, 2525 Armitage Avenue, Chicago, IL 60160.

MC 55896 (Sub-4–10TA), filed December 2, 1980. Applicant: R–W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: George E. Batty (same address as applicant). *Glassware, components, color TV picture tubes* (referred to as face plates and funnels), from Bluffton, IN to Chicago, IL and its Commercial Zone. Supporting shipper: Raulaud Division, Zenith Radio Corporation, 2407 W. North Avenue, Melrose Park, IL 60160.

MC 51146 (Sub-4–57TA), filed December 2, 1980. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Matthew J. Reid (same address as applicant). *General commodities* (except household goods as defined by the Commission and Classes A and B explosives) from Northfield, IL to St. Paul, MN; Chattanooga, TN; and Jacksonville, FL, restricted to traffic originating at or destined to the facilities of Foremost-McKesson, Inc. Supporting shipper: Foremost-McKesson, Inc., One Post St., Crocker Plaza, San Francisco, CA 94104.

MC 120184 (Sub-4–3TA), filed December 2, 1980. Applicant: PEP LINES TRUCKING CO., 32600 Dequindre Road, Warren, MI 48092. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. *Motor vehicle parts,* between points in Wayne County, MI, on the one hand, and, on the other, points in the Lower Peninsula of MI. Supporting shipper: Ford Motor Company, One Parklane Blvd., 200 Parkland Twrs. East, Dearborn, MI 48126.

THE FOLLOWING APPLICATIONS WERE FILED IN REGION 5. SEND PROTESTS TO: CONSUMER ASSISTANCE CENTER, INTERSTATE COMMERCE COMMISSION, P.O. BOX 17150, FORT WORTH, TX 76102.

MC 5227 (Sub-5–12TA), filed December 9, 1980. Applicant: ECKLEY TRUCKING, INC., P.O. Box 201, Mead, NE 68041. Applicant's representative: A. J. Swanson, Quaintance & Swanson, P.O. Box 1103, 226 N. Phillips Avenue, Sioux Falls, SD 57101. (1) *Irrigation equipment and manufactured metal articles,* from Platte County, NE to points in GA, AL, NC, SC, LA, TX, OK, AR, OR, WA, ID, WY, MT, ND, SD, IA, MN, WI, MI, KS, MO, IL, IN, and VA and (2) *materials and supplies used in the manufacture or distribution of commodities named in (1) above,* from Alton and Quincy, IL; St. Paul, Minneapolis, MN; Sioux City and Davenport, IA; Philadelphia, MS; Los Angeles, CA; Beloit, WI; Macon, GA; Pueblo, CO; Kansas City, MO; Birmingham, AL; and Sinking Springs, PA; and points in their respective commercial zones, to Platte County, NE. Supporting shipper: Lindsay Manufacturing Company, Inc., Box 156, Lindsay, NE 68601.

MC 11592 (Sub-5–6TA), filed December 9, 1980. Applicant: BEST REFRIGERATED EXPRESS, INC., P.O. Box 7365, 824 Livestock Exchange Bldg., Omaha, NE 68107. Representative: F. E. Myers, P.O. Box 7365, Omaha, NE 68107. *Meats, meat products, meat by-products and articles distributed by meat packing houses, as defined in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except commodities and hides in bulk, in tank vehicles).* From Hillsborough County in FL to points in GA, AL, LA, AR, MS, TN, KY and OH. Supporting shipper: Lykes Bros. Meat Company, P.O. Box 518, Plant City, FL 33566.

MC 114211 (Sub-5–22TA), filed December 10, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren, P.O. Box 420, Waterloo, IA 50704. *General commodities (except Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk),* between points in the U.S. (except AK and HI). Restriction: Restricted to traffic originating at or destined to the facilities of or used by Ardan, Inc., Supporting shipper: Ardan, Inc., 2320 Euclid Avenue, Des Moines, IA 50310.

MC 114211 (Sub-5–23TA), filed December 10, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren, P.O. Box 420, Waterloo, IA 50704. *Such commodities as are dealt in or used by manufacturers and distributors of clay products,* from Henderson, TX, to points in IA, IL, MN, and NE. Supporting shipper: United

Brick and Tile, P.O. Box 654, Des Moines, IA 50303.

MC 114211 (Sub-5–24TA), filed December 10, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Inc., Kansas City, MO. Supporting shipper: Roll'n Grow Lawns, 3125 Wyandotte, Kansas City, MO 64111.

MC 152021 (Sub-5–10TA), filed December 9, 1980. Applicant: IMPALA

General commodities (except classes A and B explosives), household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between

FREEDOM TRUCKING, INC., P.O. Box 68, 125 Vinita Road, Nowata, OK 74048. Representative: Larry D. Douglas, P.O. Box 711, 135 E. Emma, Springdale, AR 72764. *Contract;* Irregular: *Frozen meats* from points in IA, NE, WI, MN, IL, IN, CA, and MO to the State of TX under

and those requiring special equipment), between Shreveport, LA and Dallas, TX, over U.S. Hwy 80, serving all intermediate points. Supporting shipper: There are nine supporting shippers. Applicant intends to tack and interline.

vehicles, from Enid, OK to Springfield, IL. Supporting shipper: The Pillsbury Company. 515 E. Spruce, Enid, OK 73701.

MC 117119 (Sub-5–45TA), filed December 12, 1980. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O.

Brick and Tile, P.O. Box 654, Des Moines, IA 50303.

MC 114211 (Sub-5–24TA), filed December 10, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren, P.O. Box 420, Waterloo, IA 50704. *General commodities (except Classes A and B explosives and household goods as defined by the Commission),* between points in the U.S. Restriction: Restricted to the transportation of shipments from, to or between the facilities of or used by Northwestern Bell Telephone Co., Inc., or its affiliates. Supporting shipper: Northwestern Bell Telephone Co., Inc., 312 South Cliff Avenue, Sioux Falls, SD 57103.

MC 135797 (Sub-5–89TA), filed December 10, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esq. (address same as applicant). (1) *Filters, filter parts and water purifying compounds and* (2) *materials, equipment and supplies* used in the manufacture of (1) above, between OK and points in the U.S. (excpet AK and HI). Supporting shipper: Perry Filters, 6420 So. Air Depot, Oklahoma City, OK 73115.

MC 135797 (Sub-5–90TA), filed December 12, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esq. (address same as applicant). *Such commodities as are dealt in by wholesale and retail discount, variety and department stores,* between points in the U.S. (except AK and HI). Restricted to traffic moving for the account of E. S. Originals. Supporting shipper: E. S. Originals, Inc., 20 W. 33rd Street, New York, NY 10001.

MC 144510 (Sub-5–2TA), filed December 10, 1980. Applicant: JERRY J. KOBS, INC., 131 Bridge Court, Sgt. Bluff, IA 51054. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. *Non-Exempt Food or Kindred Products, as described in Item 20 of the STCC Tariff* From Plymouth and Woodbury Ctys, IA, To points in CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV.

MC 150008 (Sub-5–3TA), filed December 9, 1980. Applicant: KUELLA, INCORPORATED, a Missouri corporation, Route 2, King City, MO 64463. Representative: Lee Reeder, Michael A. Knepper, 1221 Baltimore Avenue, Suite 310, Kansas City, MO 64105. *Contract;* irregular: *Grass seed and fertilizer products* between points in the U.S. except AK and HI, under continuing contracts with Roll'n Grown Lawns, a Division of Memorial Heritage, Inc., Kansas City, MO. Supporting shipper: Roll'n Grow Lawns, 3125 Wyandotte, Kansas City, MO 64111.

MC 152021 (Sub-5–10TA), filed December 9, 1980. Applicant: IMPALA TRANSPORTATION SERVICES, INC., P.O. Box 678, Irving, TX 75060. Representative: Larry P. Cardin (same as applicant). *Contract;* irregular: *Iron and Steel Articles, NOI* (A) between Dallas, TX and all points in the continental U.S. under contract with Church and Clark, Inc., (B) between Lewisville, TX and all points in the continental U.S. under contract with Metal Art Stud, Inc. Supporting shippers: (A) Church and Clark Inc., 13561 Denton Drive, Dallas, TX 75234. (B) Metal Art Stud Inc., 208 Railroad Rd., Lewisville, TX 75067.

MC 152764 (Sub-5–1TA), filed December 10, 1980. Applicant: L. V. L. INC., P.O. Box 762, Jacksonville, AR 72076. Representative: Richard L. Vassar, President, L. V. L., Inc., P.O. Box 762, Jacksonville, AR 72076. *Household appliances, parts and accessories for household appliances, TV sets, recorders (tape or wire) parts and accessories for recorders, and materials and supplies used in the manufacture and distribution of all the above (except in bulk)* between Pulaski County, AR on the one hand and, on the other, points in LA, MS, NM, OK, and TX. Supporting shipper: Michael A. Roan, Supervisor-Transportation Services, General Electric Company, 6901 Lindsey Road, Little Rock, AR 72206.

MC 153010 (Sub-5–1TA), filed December 10, 1980. Applicant: HEAVY HAULING, INC., 1100 West Grand, Salina, KS 67401. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Contract;* irregular: *Iron and steel articles* (Part 1) between the Denver, CO Commercial zone and points in WY, KS, NE, TX and MT. (Part 2) between points in Wyandotte County, KS and points in NE, OK, TX, MO, CO and the commercial zone of Salt Lake City, UT. (Part 3) from points in TX, IL, NE and IA to points in KS, CO, MO, NE, WY, MT and OK. (Part 4) between the commercial zone of Salt Lake City, UT and Wyandotte County, KS. Supporting shipper: Brown-Strauss Corp., a division of Azcon, 12075 E. 45th Ave., Denver, CO 80239. Brown-Strauss Corp., 14th & Osage Ave., Kansas City, KS.

MC 153061 (Sub-5–1TA), filed December 9, 1980. Applicant: JAMES A. SCHENKER d.b.a. MERCHANTS DELIVERY SERVICE, 1901 Hawthorne Street, Dubuque, IA 52001. Representative: Carl E. Munson, 469 Fischer Building, Dubuque, IA 52001. *General commodities (except classes A and B explosives), household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* between points in Carroll and Jo Davies Counties, IL; Dubuque County, IA; and Grant, IA and Lafayette Counties, WI. Restriction: Restricted to shipments having no single articles or package weighing in excess of 100 pounds, and which have a total weight of 500 pounds or less per shipment. Supporting shippers: 19.

MC 153067 (Sub-5–1TA), filed December 10, 1980. Applicant: BILL LUTZ and JOHN COPELAND d.b.a. J&B TRUCKING, 301 N. Main Street, Springfield, MO 65806. Representative: Bruce McCurry, Dickey, Allemann & McCurry, 910 Plaza Towers, Springfield, MO 65804. *General commodities except commodities in bulk, household goods, commodities of unusual value, commodities requiring special equipment or commodities injurious or contaminating to other freight* (restricted to shipments having a prior or subsequent movement by rail) between Springfield, MO on the one hand and points in AR and MO within 100 miles of Springfield, MO on the other hand. Supporting shipper: Teters Floral Products Co., Inc., 1425 South Lillian, Bolivar, MO 65613; Marcaro International, INc., 6200 North Hiawatha Avenue, Chicago, IL 60648.

MC 153079 (Sub-5–1TA), filed December 10, 1980. Applicant: INTER-AMERICAN EXPORT IMPORT CO., INC., Johnson Blvd., Ind. Park, Del Rio, TX 78840. Representative: Severino Sanchez Jr., 106 Hermosa, Del Rio, TX 78840. *Industrial equipment, agricultural implements, tractors components and complete units.* From IL, KY, OH, IN, TX, and MS, to the Mexican points of entry of Laredo, Eagle Pass, Del Rio, El Paso and Brownsville, TX, Nogalez, AZ. Suporting shipper: International Harvester Mexico S.A.. Apartado Postal 131, Saltillo, Coahuila, Mexico.

MC 153080 (Sub-5–1TA), filed December 10, 1980. Applicant: FREEDOM TRUCKING, INC., P.O. Box 68, Nowata, OK 74048. Representative: Larry D. Douglas, P.O. Box 711, Springdale, AR 72764. *Contract;* irregular: *Restourant equipment and products used in the manufacturing thereof* between points in El Paso, TX, Jacksonville, AL, St. Louis, MO, Los Angeles, CA and Philadelphia, PA on the one hand and, on the other, points in the U.S. Supporting shipper: Falcon Products, Inc., 9387 Dielman Industrial Drive, St. Louis, MO 63132.

MC 153080 (Sub-5–2TA), filed December 12, 1980. Applicant:

FREEDOM TRUCKING, INC., P.O. Box 68, 125 Vinita Road, Nowata, OK 74048. Representative: Larry D. Douglas, P.O. Box 711, 135 E. Emma, Springdale, AR 72764. *Contract;* Irregular: *Frozen meats* from points in IA, NE, WI, MN, IL, IN, CA, and MO to the State of TX under contract for Agri-Energy Enterprises, Inc. Supporting shipper: Agri-Energy Enterprises, Inc., 8918 Tesoro, Suite 320, San Antonio, TX 78217.

MC 200 (Sub-5–69TA), filed December 12, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *General commodities, (except household goods as defined by the Commission, and classes A and B explosives),* between Chicago, IL and Flint, MI. Supporting shipper: J.C. Penney Co., Inc., 1301 Avenue of the Americas, NYC, NY 10019.

MC 200 (Sub-5–70TA), filed December 12, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *Lumber products (hardwood lumber, gunstock blanks, and walnut products),* between St. Joseph, MO, on the one hand, and, on the other, Ilion, NY. Restricted to shipments originating at or destined to facilities used by Iowa Missouri Walnut, its affiliates, suppliers, or vendors. Supporting shipper: Iowa Missouri Walnut, 2801 South 2nd, St. Joseph, MO 64503.

MC 18080 (Sub-5–1TA), filed December 12, 1980. Applicant: CONLEY TRUCK LINE, INC., P.O. Box 313, Wood River, NE 68883. Representative: John K. Walker, P.O. Box 313, Wood River, NE 68883. *Aluminum and plastic pipe; irrigation pipe and irrigation systems, and related articles; grain storage and grain drying equipment, grain augers and conveyors and related articles; iron, steel, and aluminum articles.* Between points in the State of NE on the one hand, and on the other, points in the U.S., except AK and HI. Supporting shippers: Heinzman Mfg., Co., West Highway 30 Grand Island, NE 68801, and Top Flite Corp. West Highway 34 Aurora, NE 68818.

MC 29910 (Sub-5–70TA), filed December 12, 1980. Applicant: ABF Freight System, Inc., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber (address same as applicant). *Common;* regular: *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* between Shreveport, LA and Dallas, TX, over U.S. Hwy 80, serving all intermediate points. Supporting shipper: There are nine supporting shippers. Applicant intends to tack and interline.

MC 41116 (Sub-5–29TA), filed December 12, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Byron Fogleman, P.O. Box 1504, Crowley, LA 70526. *Contract;* irregular: *General commodities (except household goods and class A and B explosives),* between points in the U.S. (except AK and HI), under continuing contract(s) with Boise Cascade Corporation. Supporting shipper: Boise Cascade Corporation, Assistant Manager—Transportation, Cost and Analysis, P.O. Box 7747, Boise, IA 83707.

MC 58902 (Sub-5–2TA), filed December 12, 1980. Applicant: MANLEY TRUCK LINE, INC., P.O. Box 1575 SSS, Springfield, MO 65806. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. *Common;* regular: *General commodities (except household goods as defined by the Commission and Classes A and B explosives),* between Joplin, MO and Fort Smith, AR, serving no intermediate points by operating from Joplin over U.S. Hwy 71 to Fort Smith, and return over the same route. Applicant proposes to serve the commercial zones of Joplin, MO and Fort Smith, AR and proposes to tack at Joplin, MO and to interline. There are 22 supporting shippers.

MC 102567 (Sub-5–16TA), filed December 12, 1980. Applicant: McNAIR TRANSPORT, INC., 4295 Meadow Lane, Bossier City, LA 71111. Representative: Mr. Joe C. Day, Vice President—Traffic, 13403 Northwest Hwy., Suite 130, Houston, TX 77040. *Sodium Hydrosulfide, in bulk, in tank vehicles,* from Big Lake, TX and Wynnewood, OK, to all points in FL. Supporting shipper: T & T Chemical, P.O. Box 782, El Dorado, AR 71730.

MC 111170 (Sub-5–8TA), filed December 12, 1980. Applicant: WHEELING PIPE LINE, INC., 301 N. Washington, El Dorado, AR 71730. Representative: Dennis Ledet (same address as applicant). *Hazardous Waste,* between El Dorado, AR and points in the U.S. Supporting shipper: Ensco, Inc., P.O. Box 1975, El Dorado, AR 71730.

MC 111401 (Sub-5–24TA), filed December 12, 1980. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Blvd., P.O. Box 632, Enid, OK 73701. Representative: Victor R. Comstock, Vice President, Traffic (same as above). *Flour, in bulk, in tank vehicles,* from Enid, OK to Springfield, IL. Supporting shipper: The Pillsbury Company, 515 E. Spruce, Enid, OK 73701.

MC 117119 (Sub-5–45TA), filed December 12, 1980. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). *Chemicals, blood analysis instruments, supplies, and parts (except commodities in bulk)* from Houston, TX to Atlanta, GA. Supporting shipper: Hycel, Inc., P.O. Box 36329, Houston, TX 77036.

MC 117119 (Sub-5–46TA), filed December 12, 1980. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). *Foodstuffs (except in bulk)* from Biloxi, MS to points in AZ, CA, NM, NV, and UT. Supporting shipper: DeJean Packing Company, P.O. Box 509, Biloxi, MS 39533.

MC 119399 (Sub-5–37TA), filed December 12, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Thomas P. O'Hara (same address as applicant). *Tires pneumatic, NOI, inner tubes, flaps and liners,* from Charlotte, NC to points in AZ and CO. Supporting shipper: Discount Tire Co., Inc., 4711 E. Cactus Rd., Phoenix, AZ 85032.

MC 120302 (Sub-5–4TA), filed December 12, 1980. Applicant: KNOX TRUCK LINES, INC., P.O. Box 12226, Grand Prairie, TX 75051. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. *Iron and steel articles;* between points in AL, AR, CO, KS, LA, NM, OK, and TX. Restricted to traffic originating at or destined to the facilities of Zelrich, Dallas, and Houston, TX, and Central Metals, Houston, TX. Supporting shipper: Zelrich Steel Company, Inc., P.O. Box 29667, Dallas, TX 75229, 8807 Old Liberty Road, Houston, TX and Central Metals, P.O. Box 40114, Houston, TX 77040.

MC 124174 (Sub-5–33TA), filed December 12, 1980. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811 "L" Street, Omaha, NE 68137. *Ferrous and non-ferrous metal products having value for remelting and recycling purposes only,* between all points in the USA for the shipper, Metalsco, Inc. Supporting shipper(s): Metalsco, Inc., 111 West Port Plaza, St. Louis, MO 63141.

MC 126118 (Sub-5–40TA), filed December 12, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box

81228, Lincoln, NE 68501. Representative: David R. Parker, (same address as applicant). *Printed matter, machinery, and supplies,* between Birmingham, AL, on the one hand, and, on the other, pts in the U.S. (except AK

MC 138469 (Sub-5–31TA), filed December 11, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Jack H. Blanshan, Suite 200, 205 W. Touhy Avenue, Park Ridge,

Street, Oak Park Office Building, Suite 210B, Omaha, NE 68114. *Meats, and packinghouse products,* from the facilities of Dubuque Packing Co., Omaha, NE to points in AZ, CA, FL, GA, IL, IN, KY, MN, NV, OR, TX, and WA. Supporting shipper: Dubuque Packing

Hwy. 71 to its junction with MO State Hwy. 7 then over MO State Hwy. 7 to its junction with MO State Hwy. 13 then over MO Hwy. 13 to its junction with U.S. Hwy. 60 then over U.S. Hwy. 60 to Poplar Bluff, and return over the same

OK. Supporting shipper: Paramount Forwarders, Inc., 3164 Springfield, P.O. Box 809, DeSota, TX 75115; Lyon Household Shipping, Inc., P.O. Box 78004, Los Angeles, CA 90016.

and Steel Articles, Pipe and related commodities, between points in OK, and NM, and (2) *Iron and Steel Articles, Pipe and related commodities,* between points in TX, on the one hand, and points in OK, and NM, on the other

81228, Lincoln, NE 68501. Representative: David R. Parker, (same address as applicant). *Printed matter, machinery, and supplies,* between Birmingham, AL, on the one hand, and, on the other, pts in the U.S. (except AK and HI). Supporting shipper: Wayne Dees Mailing Service, Inc., Wayne Dees, President, 2605 Commerce Blvd., Birmingham, AL 35210.

MC 127306 (Sub-5–3TA), filed December 12, 1980. Applicant: M. W. McCURDY & CO., 401 Nora's Lane, Houston, TX 77022. Representative: Daniel O. Hands, Attorney at Law, Blanshan & Summerfield, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Meat,* from the facilities of Portion-Trol Foods, Inc. at or near Mansfield, TX to Haywood, CA and points in its Commerical Zone, restricted to the transportation of traffic originating at the named origin and destined to the named destination. Supporting shipper: Portion-Trol Foods, Inc., 812 S. 5th Avenue, Mansfield, TX 76063.

MC 129032 (Sub-5–7TA), filed December 12, 1980. Applicant: TOM INMAN TRUCKING, INC., 5656 South 129th East Ave., Tulsa, OK 74145. Representative: Jerry Garland (same address as applicant). *Such items as are dealt in manufacturing and distribution of chemicals and related articles,* from Coffeyville, KS to Portland, OR; Phoenix, AZ; Olympia, WA; Seattle, WA; Salt Lake City, UT; San Diego, CA; Los Angeles, CA; Emeryville, CA; Calexico, CA; and Tuscon, AZ. Supporting shipper: The Sherwin Williams Chemicals, P.O. Box 855, Coffeyville, KS 67337.

MC 129134 (Sub-5–1TA), filed December 12, 1980. Applicant: BILL CARLYLE and HOWARD BARLOW d.b.a. SAFEWAY VAN LINES, 600 N Main Street, Warrensburg, MO 64093. Representative: Bill Carlyle, P.O. Box 25, Warrensburg, MO 64093. *Household goods, as defined by the Commission,* between points in Hickory and St. Clair Counties, MO., for the purpose of packing and crating Applicant intends to TACK. Supporting shipper: None.

MC 136888 (Sub-5–1TA), filed December 12, 1980. Applicant: NORMAN & SON, INC., 7255 Avenue N, Houston, TX 77011. Representative: Timothy Mashburn, P.O. Box 2207, Austin, TX 78768. *Asphalt and asphalt chunks, in dump vehicles,* between points in TX and LA. Supporting shipper: Imco Services, A Division of Halliburton Co., P.O. Box 22605, Houston, TX 77027; and Leanna Corporation, 1100 Milam Bldg., Suite 2170, Houston, TX 77002.

MC 138469 (Sub-5–31TA), filed December 11, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Jack H. Blanshan, Suite 200, 205 W. Touhy Avenue, Park Ridge, Il 60068. *Such commodities as are dealt in or used by confectioners (except commodities in bulk),* between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Pangburn Co. Supporting shipper: Pangburn Co., P.O. Box 15050, Ft. Worth, TX 76119.

MC 138627 (Sub-5–8TA), filed December 12, 1980. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. BOX 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 201, 9202 West Dodge Road, Omaha, NE 68114. *Iron and steel articles* between the facilities of North Star Steel Company at Monroe, MI, on the one hand, and, on the other, points in AR, CO, IL, IN, IA, KS, KY, MI, MN, MO, NE, ND, OH, OK, SD, TN, TX, WI, and WY. Supporting shipper: North Star Steel Company, 2901 Metro Drive, Minneapolis, MN 55420.

MC 145500 (Sub-5–1TA), filed December 12, 1980. Applicant: EAST TEXAS CARTAGE CO., 3300 West Front Street, Tyler, TX 75711. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Road, Fort Worth, TX 76103. Common; regular: *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) from Mt. Pleasant, TX via U.S. 271 to I–30, thence via I–30 to Texarkana, AR, and return, serving all intermediate points; (2) from Texarkana, AR via U.S. 59 to Atlanta, TX, and return, serving all intermediate points; (3) from Mt. Pleasant, TX via U.S. 271 to U.S. 67, thence via U.S. 67 to TX 77, thence via TX 77 to Atlanta, TX, and return, serving all intermediate points; and (4) from Pittsburg, TX via TX 11 to Linden, TX, thence via U.S. 59 to Atlanta, TX, and return, serving all intermediate points. Applicant intends to serve the commercial zone of each authorized point. Supporting shipper(s): There are 8 supporting shippers.

Note.—Applicant intends to tack and interline.

MC 146055 (Sub-5–8TA), filed December 12, 1980. Applicant: DOUBLE "S" TRUCKLINE, INC., 731 Livestock Exchange Building, Omaha, NE 68107. Representative: James F. Crosby, James F. Crosby & Associates, 7363 Pacific Street, Oak Park Office Building, Suite 210B, Omaha, NE 68114. *Meats, and packinghouse products,* from the facilities of Dubuque Packing Co., Omaha, NE to points in AZ, CA, FL, GA, IL, IN, KY, MN, NV, OR, TX, and WA. Supporting shipper: Dubuque Packing Co., 4003 Dahlman Avenue, Omaha, NE 68107.

MC 146078 (Sub-5–18TA), filed December 12, 1980. Applicant: CAL-ARK, INC., 854 Moline, P.O. Box 610, Malvern, AR 72104. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. *Metal containers,* from the facilities of the Thompson Can Company at or near Dallas, TX, to all points and places in AR, OK, MS, LA, and TN. Supporting shipper: Thompson Can Company, 13401 Denton Drive, Dallas, TX 75234.

MC 147147 (Sub-5–1TA), filed December 12, 1980. Applicant: RONALD R. CREED, R.R. 1, Bern, KS 66408. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Rock, crushed rock and lime,* from points in Pawnee and Richardson County, NE to points in Washington, Nemaha, Marshall and Brown Counties, KS. Supporting shipper: Martin Marietta Aggregates, Burchard, NE 68323.

MC 147348 (Sub-5–4TA), filed December 11, 1980. Applicant: SOUTHWEST FREIGHT DISTRIBUTORS, INC., 1320 Henderson, North Little Rock, AR 72114. Representative: James M. Duckett, 411 Pyramid Life Building, Little Rock, AR 72201. *Such commodities as are dealt in by wholesale, retail and variety discount stores* (except in bulk), (1) from the facilities of Warner-Lambert Company, at Grand Prairie, TX, and (2) from the facilities of Bristol-Myers Company and its subsidiaries, at Dallas, TX to all points in AR.

MC 148832 (Sub-5–5TA), filed December 11, 1980. Applicant: DELTA MOTOR FREIGHT, INC., 1616 Rowe Blvd., P.O. Box 1083, Poplar Bluff, MO 63901. Representative: Ronald D. Dodds, 161 Rowe Boulevard, Poplar Bluff, MO 63901. *Common* regular *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment and those injurious to other lading),* (1) between Kansas City, MO and its commercial zone, on the one hand, and, on the other Poplar Bluff, MO and its commercial zone serving the intermediate points between Seymour, MO and Fremont, MO and their commercial zones as follows: (1) From Kansas City over U.S. Hwy. 71 to its junction with MO State Hwy. 7 then over MO State Hwy. 7 to its junction with MO State Hwy. 13 then over MO Hwy. 13 to its junction with U.S. Hwy. 60 then over U.S. Hwy. 60 to Poplar Bluff, and return over the same routes. Supporting shipper: There are 50.

Note.—Applicant proposes to tack and interline.

MC 149031 (Sub-5–1TA), filed December 12, 1980. Applicant: WLD, LTD., Route 4, Fairfield, IA 52556. Representative: Richard D. Hoadley, 121 North Court, Fairfield, IA 52556. Contract; Irregular. *Iron and steel articles, automotive and machinery parts, shipping cartons, industrial equipment and supplies* between points in the U.S., under continuing contracts with Rockwell International Corp., Fairfield, IA. Supporting shipper: Rockwell International Corporation, 1081 West Stone Avenue, Fairfield, IA 52556.

MC 150578 (Sub-5–19TA), filed December 12, 1980. Applicant: STEVENS TRANSPORT, a Division of STEVENS FOODS, INC., 2944 Motley Drive, Suite 302, Mesquite, TX 75150. Representative: E. Lewis Coffey (same address as applicant). *Alcoholic beverages (except in bulk),* between points in AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY, on the one hand, and, on the other, points in NJ. Restricted to traffic originating at or destined to facilities of Fedway Associates, Inc. Supporting shipper: Fedway Associates, Inc., Bldg. 56, Port Kearny, P.O. Box 519, Kearny, NJ 07032.

MC 150645 (Sub-5–5TA), filed December 12, 1980. Applicant: TILEWAYS, INC., 7834 C. F. Hawn Freeway, Dallas, TX 75217. Representative: Lawrence A. Winkle, P.O. Box 45538, Dallas, TX 75245. Contract; irregular; *articles as dealt in by wholesale and retail chain grocery discount houses* from points in WI and MN to points in TX. Supporting shipper: Cullum Company, Inc., 14303 Inwood, Dallas, TX 75234.

MC 151978 (Sub-5–2TA), filed December 12, 1980. Applicant: ASSOCIATED VAN AND STORAGE CO., INC., 2421 Jefferson, Lawton, OK 73505. Representative: Kenneth M. Hughen, 111 Camelot Drive, Lawton, OK 73501. *Used household goods, personal effects, and baggage* between points in Comanche County, OK and between points in Comanche County, OK on the one hand, and, on the other hand, points in Caddo, Carter, Garvin, Grady, McClain, Murry, and Stephens counties, OK. Supporting shipper: Paramount Forwarders, Inc., 3164 Springfield, P.O. Box 809, DeSota, TX 75115; Lyon Household Shipping, Inc., P.O. Box 78004, Los Angeles, CA 90016.

MC 152813 (Sub-5–1TA), filed December 12, 1980. Applicant: FRESH EXPRESS, INC., 55 Produce Row, St. Louis, MO 63102. Representative: Vincent D. Vogler, Jr., 818 Olive, Suite 1100, St. Louis, MO 63101, (314) 241–8250. *General Commodities (except household goods as defined by the Commission, hazardous or secret materials, and sensitive weapons and munitions),* between St. Louis, MO and the following points and their commercial zones: Compton, City of Industry, San Francisco, Los Angeles and Tuskin, CA; Jacksonville, Miami and Tampa, FL; Phoenix, AZ; Portland, OR; Seattle, WA; Dallas, Fort Worth and Houston, TX. Supporting shippers: So-Good Potato Chip Co., 4190 Hoffmeister, St. Louis, MO 63125. W. K. Manufacturing Corp., Rt. 4, Arnold, MO 63010. Lever Brothers Company, 1400 N. Pennsylvania Ave., St. Louis, MO 63133. Purex Co., 6901 McKissock, St. Louis, MO 63141. Chemtech Industries, 139 E. Soper Street, St. Louis, MO 63102.

MC 153129 (Sub-5–1TA), filed December 12, 1980. Applicant: GENE FENTON, INC., 213 Hillcrest Drive, Audubon, IA 50025. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. *Meats, and packinghouse products,* from Spencer Foods Division Land O'Lakes, Oakland, IA to Elburn, IL and Chicago, IL (and points in their commercial zones). Supporting shipper: Spencer Foods, Inc., P.O. Box 544, Schuyler, NE 68661.

MC 153130 (Sub-5–1TA), filed December 12, 1980. Applicant: MERSCHMAN TRUCKING CORPORATION, P.O. Box 67, West Point, IA 52656. Representative: Gregory J. Humphrey, Deitchler, Thomas, Saunders, Krogmeier, Humphrey & Johnson, 627 Avenue G, Fort Madison, IA 52627. *Fertilizers and fertilizer ingredients, and fertilizer equipment and agricultural equipment and parts and accessories* between points in: IA, IL, MO, IN, KY, TN, AL, MS, AR, KS, NE, SD, ND, MN, WI, MI, for Seed and Fertilizer, Inc. Supporting shipper: Merschman Seed & Fertilizer, Inc., P.O. Box 67, West Point, IA 52656.

MC 153133 (Sub-5–1TA), filed December 12, 1980. Applicant: TRANS AMERICAN TRANSPORTATION SYSTEM INC., Highway 59 South, Post Office Box 422, Stafford, TX 77477. Representative: Patricia L. Altman, 2523 Avenue H, Rosenberg, TX 77471. *(1) Iron and Steel Articles, Pipe and related commodities,* between points in OK, and NM, and (2) *Iron and Steel Articles, Pipe and related commodities,* between points in TX, on the one hand, and points in OK, and NM, on the other hand. Supporting shipper: CK Fabricators, Rt. 3, Box 97, Mineral Wells, TX 76067.

MC 153135 (Sub-5–1TA), filed December 12, 1980. Applicant: JOHN DRENNON AND SONS COMPANY, INC., 353 North Nettleton, Springfield, MO. 65802. Representative: Thomas P. Rose, Attorney at Law, P.O. Box 205, Jefferson City, MO. 65102. *Telephone Equipment, Materials and Supplies used in the Construction and Maintenance of Telephone Systems* between Springfield, Mo. and its commercial zone, on the one hand, and on the other, points in Mo. Supporting shipper: Western Electric, 1111 Woods Mill road, Ballwin, Mo. 63011. Applicant intends to interline.

THE FOLLOWING APPLICATIONS WERE FILED IN REGION 6. SEND PROTESTS TO: INTERSTATE COMMERCE COMMISSION, REGION 6 MOTOR CARRIER BOARD, P.O. BOX 7413, SAN FRANCISCO, CA 94120.

MC 153041 (Sub-6–1TA), filed December 8, 1980. Applicant: ACTIVE TRANSFER, INC., 501 Hwy. 99 N., Eugene, OR 97402. Representative: Philip G. Skofstad, 1525 N.E. Weidler, Portland, OR 97232. *Contract carrier::* Irregular routes: *Iron & steel, fabricated iron & steel, steel beams, steel trusses, sawmill equipment, iron & steel buildings* and *steel towers,* between Eugene, OR on the one hand, and, on the other, points in OR, WA, CA, and ID for the account of Great Western Steel Fabricators, Inc. for 270 days. Supporting shipper: Great Western Steel Fabricators, Inc., 2490 Hwy. 99 N., Eugene, OR 97402.

MC 116544 (Sub-6–23TA), filed December 5, 1980. Applicant: ALTRUK FREIGHT SYSTEMS, INC., 1703 Embarcadero Road, Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. *Furniture parts, metal products, paper products and materials, equipment and supplies used in the manufacture, transportation and installation thereof* between Mason (Warren Co), OH; Nicholasville (Jessamine Co), KY; Simpsonville (Shelby Co), KY; and Winchester (Clark Co), KY, on the one hand, and, on the other, points in AL, FL, GA, IL, MS, MO, NJ, NY, OH, PA and TX, restricted to shipments originiating at or destined to the facilities of Leggett and Platt for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Leggett & Platt, Inc., P.O.B. 757, Carthage, MO 64836.

MC 116544 (Sub-6–24TA), filed December 5, 1980. Applicant: ALTRUK FREIGHT SYSTEMS, INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O.B. 10061, Palo Alto, CA 94303. *Animal feed, feed ingredients and such commodities as are dealt in or used by manufacturers of animal feed* between points in the U.S., restricted to *manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products and (2) Machinery, materials, equipment and supplies used in or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof* between points in Suite 400, 333 Hegenberger Road, Oakland, CA 94621. *Nonexempt food or kindred products,* between Sacramento County, CA, on the one hand, and, on the other, points in ID, MT, and UT, for 270 days. An underlying ETA seeks 120 day's authority. Supporting shipper: Campbell Soup Company, P.O. Box 1406, Sacramento, CA 95831.

MC 147702 (Sub-6–1TA), filed

MC 152625 (Sub-6–1TA), filed December 5, 1980. Applicant: GERALD G. GEER d.b.a. GEER BROS. TRUCKING, 3912 Park Dr., Olympia, WA 98502. Representative: Jim Pitzer, 15 S. Grady Way—Suite 321, Renton, WA 98055. *Contract Carrier,* Irregular routes: *Coal,* in end dump or bottom dump equipment, from Kent, WA to Toledo, OR, for 270 days. An underlying ETA *Coal,* from Jackson County, CO to Carbon County, WY for 270 days. Supporting shipper: Wyoming Fuel Co., 12055 W. 2nd Place, Lakewood, CO 80205. An underlying ETA seeks 120 days authority.

MC 150528 (Sub-6–2TA), filed December 2, 1980. Applicant: SOON LEE, MILTON LEE & DENNIS LEE, d.b.a. LEE & LEE, P.O. Box 528, Woodland, CA which, because of size and weight require the use of special equipment), (1) Between Denver, CO and The Rawhide Energy Project of The Platte River Power Authority located at or near Buckeye, CO, serving the intermediate and off-route points of Loveland, Ft. Collins, Wellington, Livermore, and Red Feather Lakes, (a) From Denver over Interstate Hwy 25 (also U.S. Hwy 87) to junction

MC 116544 (Sub-6–24TA), filed December 5, 1980. Applicant: ALTRUK FREIGHT SYSTEMS, INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O.B. 10061, Palo Alto, CA 94303. *Animal feed, feed ingredients and such commodities as are dealt in or used by manufacturers of animol feed* between points in the U.S., restricted to shipments originating at or destined to the facilities of Kal Kan Foods for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Kal Kan Foods, Inc., 3386 E. 44th St., Vernon, CA 90058.

MC 63562 (Sub-6–13TA), filed December 5, 1980. Applicant: BN TRANSPORT, INC., P.O. Box 22684—Wellshire Station, Denver, CO 80222. Representative: Cecil L. Goettsch, 1100 Des Moines Building, Des Moines, IA 50307. *Steel tubing* from Clinton, IA to points in AZ, AR, CO, IL, IN, KS, KY, LA, MI, MN, MO, MT, NE, NM, ND, OH, OK, SD, TX, and WY for 270 days. Supporting shipper: Central Steel Tube Company, Clinton, Iowa 52733.

MC 25869 (Sub-6–1TA), filed December 8, 1980. Applicant: C.O.D.E., INC., 4800 North Colorado Blvd., Denver, CO 80216. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. *General Commodities (except household goods as defined by the Commission and Classes A and B explosives),* between Monroe County, NY; DuPage County, IL; and Weld County, CO, for 270 days. Supporting shipper: Eastman Kodak Company, 2400 Mt. Read Boulevard, Rochester, NY 14650.

MC 153035 (Sub-6–1TA), filed December 8, 1980. Applicant: CALIFORNIA INDUSTRIAL PRODUCTS, INC., 11525 Shoemaker Avenue, Santa Fe Springs, CA 90670. Representative: Robert G. Ames (same address as applicant). *General Commodities (with usual restrictions),* moving on Freight Forwarders bills of lading, restricted to shippers moving on Acme ABC–TNT, Trans National Transport, bills of lading, between points in CA, AZ, NM, TX, OK, AR, IA, TN, and KY, for 270 days. Supporting shipper: ABC–TNT Acme Fast Freight, Inc., 2110 Alhambra Avenue, Los Angeles, CA 90031.

MC 153039 (Sub-6–1TA), filed December 8, 1980. Applicant: CARAVEAU'S HOT SHOT SERVICE, 302 No. 6th Ave., Casper, WY 82601. Representative: Roger D. Adamson, Box 1594, Mills, WY 82644. *(1) Machinery, material, equipment and supplies used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by-products and (2) Machinery, materials, equipment and supplies used in or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof* between points in WY, CO, ND, ID, SD, MT, UT and NM, for 270 days. Supporting shippers: There are 12 supporting shippers whose statements may be examined at the regional office listed.

MC 133828 (Sub-6–1TA), filed December 4, 1980. Applicant: CASAZZA TRUCKING CO., 1250 Glendale Avenue, Sparks, NV 89431. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. (1) *Gasoline, Diesel Fuel, Heating Oil and Lubricating Oils,* in bulk, in tank vehicles, and in metal containers, between points in and South of Monterey, Kings, Tulare and Inyo Counties, CA, Clark, Linclon and Nye Counties, NV and points in AZ, (2) *Construction, Logging and Mining Machinery, Equipment and Supplies,* and parts and materials when moving in the same shipments with such Machinery, Equipment and Supplies, between points in Monterey, Kings, Tulare and Inyo Counties, CA, Clark, Lincoln and Nye Counties, NV and points in AZ, OR, WA, CO and WY, for 270 days. Supporting shippers: There are 5 shippers. Their statements may be examined at the Regional office listed.

MC 7228 (Sub-6–2TA), filed December 5, 1980. Applicant: COAST TRANSPORT, INC., 1906 S.E. 10th Avenue, Portland, OR 97214. Representative: Jerry Cinnfra (same address as applicant). *Contract carrier,* irregular routes, *Frozen Bakery Goods, NOI and Foodstuffs, materials and supplies* used in the processing or distribution of foodstuffs; from, to, or between the following points or areas: Mrs. Smith's Frozenfoods Co. facilities, plants at Pottstown, PA, McMinnville, or, San Jose, CA, Atlanta, GA, Blue Anchor, NJ, Zeeland, MI; distribution whses at Philadelphia, PA, Fogelsville, PA, Lake Winola, PA, Jersey City, NJ, Syracuse, NY, Atlanta, GA, Tampa, FL, Dallas, TX, Lyons, IL, Denver, CO, Portland, or, San Francisco, CA, Los Angeles, CA and points in the U.S. for 270 days. Supporting shipper: Mrs. Smith's Frozen Foods Co., P.O. Box 298, Pottstown, PA 19464.

MC 56640 (Sub-6–8TA), filed December 5, 1980. Applicant: DELTA LINES, INC., 333 Hegenberger Road, Oakland, CA 94621. Representative: Kirk Wm. Horton, Wells Fargo Bank Building, Suite 400, 333 Hegenberger Road, Oakland, CA 94621. *Nonexempt food or kindred products,* between Sacramento County, CA, on the one hand, and, on the other, points in ID, MT, and UT, for 270 days. An underlying ETA seeks 120 day's authority. Supporting shipper: Campbell Soup Company, P.O. Box 1406, Sacramento, CA 95831.

MC 147702 (Sub-6–1TA), filed December 5, 1980. Applicant: DOUBLE AA PARKING & TRUCKING, INC., 465 W. Second St., Calexico, CA 92231. Representative: Arturo Rioseco (same as applicant). *Contract Carrier,* irregular routes: *Wheel rims, centers and shop supplies,* between Harbor City, CA, and U.S. Border at Calexico, CA, for the account of Appliance Industries, Inc. for 270 days. Supporting shipper: Appliance Industries, Inc., 23920 S. Vermont Ave, Harbor City, CA 90710.

MC 119038 (Sub-6–1TA), filed December 5, 1980. Applicant: EAGLE TRANSFER CO., INC., P.O. Box 617, Wenatchee, WA 98801. Representative: Jack R. Davis, 1100 IBM Building, Seattle, WA 98101. *General commodities* (except automobiles, commodities in bulk in tank type equipment and Classes A&B explosives) between points in Chelan, Okanogan, Grant, Douglas and Kittitas Counties, WA on the one hand, and, on the other, points in the State of WA, restricted to shipments having a prior or subsequent movement by rail, for 270 days. Supporting shipper: Pacific Northwest Perishable Shippers Association, P.O. Box C19075, Seattle, WA 98119.

MC 125433 (Sub-6–46TA), filed December 4, 1980. Applicant: F–B TRUCK LINE COMPANY, 1945 So. Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same as applicant). *Plumbing fixtures, materials, equipment and supplies* used in the manufacture, distribution and sales of the above commodities, between points in CA, FL, IL, IN, KY, MI, NV, and OK, on the one hand, and, on the other, points in the U.S. (except AK and HI), for 270 days. Supporting shipper: Delta Faucet Company, Route 46W, Greensburg, IN 47240.

MC 152549 (Sub-6–2TA), filed December 3, 1980. Applicant: BOB GARCIA d.b.a. B. GARCIA TRUCKING, 16234 Mallory Drive, Fontana, CA 92335. Representative: Donald R. Hedrick, P.O. Box 88, Norwalk, CA 90650. *Contract carrier,* Irregular routes: *Beer,* from Los Angeles, CA and its commercial zone, to Grand Junction, CO, for the account of Hub Distributing Co., for 270 days. Supporting shipper: Hub Distributing Co., 131 N. Spruce St., Grand Junction, CO 81501.

MC 152625 (Sub-6–1TA), filed December 5, 1980. Applicant: GERALD G. GEER d.b.a. GEER BROS. TRUCKING, 3912 Park Dr., Olympia, WA 98502. Representative: Jim Pitzer, 15 S. Grady Way—Suite 321, Renton, WA 98055. *Contract Carrier,* Irregular routes: *Coal,* in end dump or bottom dump equipment, from Kent, WA to Toledo, OR, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Morris & Sons, Inc., 21810 76th S. Kent, WA 98031.

MC 152814 (Sub-6–1TA), filed December 4, 1980. Applicant: GOOD TABLES, INC., 1118 E. 223rd St., Carson, CA 90745. Representative: Jim Pitzer 15 S. Grady Way—Suite 321, Renton, WA 98055. *Contract Carrier,* irregular routes: *General Commodities* (excluding classes A and B explosives, and household goods) from the Seattle, WA commercial zone to points in CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Puget Sound Shippers Association, P.O. Box 68927, Seattle, WA 98188.

MC 146411 (Sub-6–1TA), filed December 5, 1980. Applicant: KMD, INC., 18628 72nd Ave. S., Kent, WA 98301. Representative: Rebecca L. Bogard, 2000 IBM Bldg., Seattle, WA 98101. *Contract carrier;* irregular routes: *automotive mufflers, exhaust pipes, tail pipes, shock absorbers and related automotive parts,* as described in STCC Group 37, from the facilities of Midas International in Woodland, CA, to points in the U.S. for 270 days. Supporting shipper: Sounder Exhaust, INC., d.b.a. Midas Muffler Shops, 1120 Lind Ave. S.W., Renton, WA 98055; Silence, Inc., d.b.a. Midas Muffler Shops, 12360 Lake City Way N.E., No. 307, Seattle, WA 98125.

MC 147662 (Sub-6–2TA), filed December 8, 1980. Applicant: KMC TRANSPORT, INC., P.O. Box 962, Caldwell, ID 83605. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Contract,* irregular. *Such commodities as are dealt in or used by manufacturers of mobile homes,* between the facilities of Kit Manufacturing Company at or near Caldwell, ID, on the one hand, and, on the other, points in WA, OR, NV, UT, WY, ID, and MT, under a continuing contract(s) with Kit Manufacturing Company of Caldwell, ID, for 270 days. Supporting shipper: Kit Manufacturing Company, P.O. Box 962, Caldwell, ID 83605.

MC 129951 (Sub-6–3TA), filed December 2, 1980. Applicant: HARLEY I. KEETER, JR., 6379 Valmont Dr., Boulder, CO 80301. Representative: Harley I. Keeter, Jr. (same address as applicant). *Coal,* from Jackson County, CO to Carbon County, WY for 270 days. Supporting shipper: Wyoming Fuel Co., 12055 W. 2nd Place, Lakewood, CO 80205. An underlying ETA seeks 120 days authority.

MC 150528 (Sub-6–2TA), filed December 2, 1980. Applicant: SOON LEE, MILTON LEE & DENNIS LEE, d.b.a. LEE & LEE, P.O. Box 528, Woodland, CA 95695. Representative: J. H. Gulseth, 100 Bush Street—21st Floor, San Francisco, CA 94104. *Contract Carrier,* Irregular routes: *Cooked, cured or preserved meats and sausage,* in mechanically refrigerated trailers, between Sacramento, CA, on the one hand, and, on the other, White City and Eugene, OR for the account of Made-Rite Prepared Meats, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Made-Rite Prepared Meats, Inc., 3353 Second Ave., Sacramento, CA.

MC 153011 (Sub-6–1TA), filed December 5, 1980. Applicant: JOHN H. MANLEY, d.b.a. MANLEY'S TRANSPORT, 447 S. Olympia Way, Orange, CA 92669. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. *Contract Carrier,* Irregular routes: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in CA, on the one hand, and points in GA, IN, IL, KY, MO, NJ, NY, OH, OK, PA and TX, on the other hand, for the accounts(s) of Acme Fast Freight, Inc., for 270 days. Supporting shipper: Acme Fast Freight, Inc., Jay Harn, Vice President, 2110 Alhambra, Los Angeles, CA 90031.

MC 138237 (Sub-6–3TA), filed December 8, 1980. Applicant: METRO HAULING, INC., POB 88824, Tukwila Branch, Seattle, WA 98188. Representative: John A. Anderson, Suite 1600—One Main Pl., 101 SW Main St., Portland, OR 97204. *Aluminum ingots* from points in Flathead County, MT, to points in King and Pierce Counties, WA and Multnomah County, OR, for 270 days. Supporting shipper: Anaconda Aluminum, POB 32860, Louisville, KY 40232.

MC 98979 (Sub-6–1TA), filed December 4, 1980. Applicant: MILLER BROS., INC., 306 North 8th Ave., Greeley, CO 80631. Representative: Charles J. Kimball, Suite 350, 1600 Sherman, Denver, CO 80203. Irregular routes: *General commodities* (except commodities in bulk, Classes A and B explosives, household goods as defined by the Commission, and commodities which, because of size and weight require the use of special equipment), (1) Between Denver, CO and The Rawhide Energy Project of The Platte River Power Authority located at or near Buckeye, CO, serving the intermediate and off-route points of Loveland, Ft. Collins, Wellington, Livermore, and Red Feather Lakes, (a) From Denver over Interstate Hwy 25 (also U.S. Hwy 87) to junction Colorado Hwy 14, thence over Colorado Hwy 14 to junction U.S. Hwy 287, thence over U.S. Hwy 287 to junction of County Road No. 9 aka Buckeye Road, near Livermore, CO, and thence over Buckeye Road to junction with County Road No. 82, thence over County Road No. 82 to The Rawhide Energy Project of The Platte River Power Authority and return over the same route, (b) From Denver over U.S. Hwy 287 to junction of County Road No. 9 aka Buckeye Road near Livermore, CO, thence over Buckeye Road to junction with County Road No. 82, thence over County Road No. 82 to The Rawhide Energy Project of The Platte River Power Authority and return over the same route, (2) Between Denver, CO and Ault, CO, serving all intermediate points from Denver over U.S. Hwy 85 to Ault and return over the same route, (3) Between Ft. Collins, CO and The Rawhide Energy Project of The Platte River Authority located at or near Buckeye, CO, serving the off-route points of Livermore and Red Feather Lakes, CO, from Ft. Collins over U.S. Hwy 287 to the junction of County Road No. 9 aka Buckeye Road near Livermore, CO, thence over Buckeye Road to junction with County Road No. 82, thence over County Road No. 82 to The Rawhide Energy Project at The Platte River Authority for 270 days. Supporting shippers: There are 15 supporting shippers. Their statements may be examined at the Regional Office listed.

MC 129857 (Sub-6–6TA), filed December 3, 1980. Applicant: G.R.M., INC., d.b.a. PORT TERMINAL TRANSPORT, INC., 700 Henry Ford Ave., Long Beach, CA. Representative: Patricia M. Schnegg, 707 Wilshire, Suite 1800, Los Angeles, CA 90017. *Imported automobiles,* from Los Angeles County, CA to San Antonio, Houston and Austin, TX, for 270 days. Supporting shipper: PEUGEOT MOTORS OF AMERICA, INC., 1020 E. 230th St., Carson, CA 90745.

MC 143693 (Sub-6–3TA), filed December 4, 1980. Applicant: PROFICIENT FOOD COMPANY, 17872 Cartwright Rd., Irvine, CA 92705. Representatives: Floyd L. Farano, 2555 E. Chapman Ave., Suite 415, Fullerton, CA 92631; Alan F. Wohlstetter, 1700 K Street, N.W., Washington, D.C. 20006.

Contract Carrier; Irregular Routes: *Foodstuffs, Meat and Meat Products;* Between Orlando, FL, and Atlanta, GA. Supporting shipper: Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912.

MC 142586 (Sub-6–1TA), filed December 5, 1980. Applicant: DELAWARE VALLEY SHIPPERS ASSOCIATION, 2209 East Farragut Ave., Bristol, PA 19007. Representative: Lawrence A. Winkler (same as applicant). *Contract carrier,* irregular routes: *Meat, meat products, meat byproducts and articles distributed by meat packinghouses,* between points in Logan, Morgan and Denver Counties, CO, on the one hand, and, on the other, points in the States of Enforcement Administration, telephone 202–633–1276.

SUPPLEMENTARY INFORMATION: This notice is published in order to inform interested parties that the Department of State has transmitted to the Drug

MC 124679 (Sub-6–36TA), filed December 9, 1980. Applicant: C. R. ENGLAND & SONS, INC., 975 West 2100 South, Salt Lake City, UT 84119. Representative: Michael L. Bunnell (same as applicant). *General*

lading of Delaware Valley Shippers Association from Bristol, PA to points in CA for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Delaware Valley Shippers Association, 2209 East Farragut Ave.,

as applicant). *General commodities* (except Classes A and B explosives and except household goods) between Cook, Dupage, Kane, Kendall, Lake, McHenry, and Will Counties, IL on the one hand, and on the other, points in the United

Contract Carrier: Irregular Routes: *Foodstuffs, Meat and Meat Products;* Between Orlando, FL, and Atlanta, GA. Supporting shipper: Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912.

MC 143586 (Sub-6–1TA), filed December 8, 1980. Applicant: RANGEN TRANSPORTATION, INC., P.O. Box 706, Buhl, ID 83316. Representative: Bruce W. Shand, 430 Judge Building, Salt Lake City, UT 84111. *Animal by-products,* from Nampa, ID, to points in CA, OR, and WA, for 270 days. Applicant has filed an underlying ETA seeking up to 120 days authority. Supporting shipper: Armour and Company, Greyhound Tower, 111 West Clarendon, Phoenix, AZ 85077.

MC 153013 (Sub-6–1TA), filed December 5, 1980. Applicant: RONNEY L. ROGERS, d.b.a. R. L. ROGERS TRUCKING, Rt. 1, B 1724, Clatskanie, OR 97016. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. *Bananas,* from Long Beach, CA, and Port Hueneme, CA, to Tacoma, WA, for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Cody Produce Supply, 4525 So. Orchard, Tacoma, WA 98466.

MC 142941 (Sub-6–16TA), filed December 8, 1980. Applicant: SCARBOROUGH TRUCK LINES, INC., P.O. Box 6716, Phoenix, AZ 85005. Representative: Doug W. Sinclair (same address as applicant). *Alcoholic beverages* (except in bulk) between points in AR and LA and points in AZ, CA, and NV, for 270 days. Supporting shipper: All American Distributing, 235 East Pima Street, Phoenix, AZ 85004.

MC 142941 (Sub-6–17TA), filed December 8, 1980. Applicant: SCARBOROUGH TRUCK LINES, INC., P.O. Box 6716, Phoenix, AZ 85005. Representative: Doug W. Sinclair (same address as applicant). *Frozen prepared foodstuffs* between Deerfield, IL; Chicago, IL (and its commercial zone) and New Hampton, IA, and points in CO, ID, MT, OR, TX, UT, WA and WY, restricted to the transportation of traffic originating at said plantsites and storage facilities, for 270 days. Supporting shipper: Kitchens of Sara Lee, 500 Waukegan Road, Deerfield, IL 60015.

Note.—Applicant states that it will tack this authority with existing authority not in continuing traffic movements, but to provide shipper with more desirable shipping options.

MC 126514 (Sub-6–10TA), filed December 4, 1980. Applicant: SCHAEFFER TRUCKING, INC., 5200 West Bethany Home, Glendale, AZ 85301. Representative: Leonard R. Kofkin, 39 South LaSalle St., Chicago, IL 60603. *General commodities* (except commodities in bulk) moving on bills of lading of Delaware Valley Shippers Association from Bristol, PA to points in CA for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Delaware Valley Shippers Association, 2209 East Farragut Ave., Bristol, PA 19007.

MC 135221 (Sub-6–8TA), filed December 14, 1980. Applicant: DICK SIMON TRUCKING, INC., P.O.B. 26724, Salt Lake City, UT 84125. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030-15th St., N.W., Washington, DC 20005. *Such merchandise as is dealt in and distributed by wholesale, retail, chain grocery stores and food businesshouses and materials and supplies* used in the manufacture and distribution of the aforementioned commodities (except in bulk), between Layton and Salt Lake City, UT, on the one hand, and, on the other, points in NM, TX, ID, NV, CA, CO, WA, OR and MT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Smith Management Corporation, Salt Lake City, UT 84104.

MC 152993 (Sub-6–1TA), filed December 1, 1980. Applicant: THOMAS E. TANZER d.b.a. TANZER & TANZER TRUCKING CO., 115 Eastwind Dr., Lake Havasu City, AZ 86403. Representative: Thomas E. Tanzer (same as applicant). *Machinery and supplies related thereto,* between Los Angeles County, CA and Lake Havasu City, AZ for 270 days. Supporting shipper: McCulloch Corporation, 900 Lake Havasu Ave., Lake Havasu, AZ 86403.

MC 26396 (Sub-6–54TA), filed December 8, 1980. Applicant: THE WAGGONERS TRUCKING, P.O.B. 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O.B. 82028, Lincoln, NE 68501. *Feed, feed ingredients, mineral mixtures, pesticides and feeding equipment,* from Quincy, IL to points in CA, ID, OR and WA, for 270 days. Supporting shipper: Moorman Manufacturing Co., P.O.B. 1C, Quincy, IL 62301.

MC 152429 (Sub-6–1TA), filed December 8, 1980. Applicant: C R & S TANK LINES, INC., P.O. Box 871, Benecia, CA 94510. Representative: Robert J. Gallagher, Esq., 1000 Connecticut Avenue, N.W., Suite 1112, Washington, D.C. 20036. *Petroleum,* between points in CA, on the one hand, and, on the other, points in OR and NV for 270 days. Supporting shippers: There are 5 shippers.

MC 125433 (Sub-6–47TA), filed December 8, 1980. Aplicant: F–B TRUCK LINE COMPANY, 1945 So. Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same as applicant). *General commodities* (except Classes A and B explosives and except household goods) between Cook, Dupage, Kane, Kendall, Lake, McHenry, and Will Counties, IL on the one hand, and on the other, points in the United States (except AK and HI), for 270 days. Supporting shipper: General Electric--Freight Forwarding Operation, 2015 Spring Road, Oak Brook IL 60521.

MC 148769 (Sub-6–3TA), filed December 8, 1980. Applicant: SHELDON J. GOLDFIN, d.b.a. NEVADA PRODUCE, 50 Freeport Blvd., Unit #17, Sparks, NV 89431. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Contract carrier,* irregular routes: *Non-exempt foodstuffs or kindred products* between points in the United States, for 270 days, under contract to Perfect Pac International, Ltd. An underlying ETA seeks 120 days authority. Supporting shipper: Perfect Pac International, Ltd., 5320 W. 159th Street, Oak Forest, IL 60452.

MC 113624 (Sub-6–1TA), filed December 8, 1980. Applicant: WARD TRANSPORT, INC, P.O.B. 753, Pueblo, CO 81002. Representative: Leslie R. Kehl, Jones, Meiklejohn, Kehl & Lyons, 1660 Lincoln St., Suite 1600, Denver, CO 80264. *LPG* between Rio Blanco and Garfield Counties, CO on the one hand, and, on the other points in San Juan County, MN for 270 days. An underlying ETA seeks 9 days authority. Supporting shipper: U.P.G. Inc., 720 S. Colorado Blvd., Denver, CO.

MC 148634 (Sub-6–1TA), filed December 9, 1980. Applicant: COMPASS TRANSPORTATION COMPANY, 620 "C" St., San Diego, CA 92101. Representative: David P. Downey, (same as applicant). *Contract carrier;* irregular routes: *Such commodities as are dealt in by wholesale, retail and chain grocery food business and discount houses, N.O.S.* between Los Angeles County, Orange County, San Diego County, California and Maricopa County, Arizona, for 270 days. Supporting shipper: San Diego Distribution Center, 7130 Miramar Rd., San Diego, CA 92121.

MC 145102 (Sub-6–11TA), filed December 9, 1980. Applicant: FREYMILLER TRUCKING, INC., 1400 S. Union Ave., Bakersfield, CA 93307. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. *Non-exempt foods and kindred products* from the facilities of or utilized by George A. Hormel & Co. in WI, IA, MN, and NE to points in CA. An underlying ETA seeks 120 days authority. Supporting shipper: George A. Hormel & Co., P.O. Box 800, Austin, MN 55912.

MC 124679 (Sub-6–36TA), filed December 9, 1980. Applicant: C. R. ENGLAND & SONS, INC., 975 West 2100 South, Salt Lake City, UT 84119. Representative: Michael L. Bunnell (same as applicant). *General commodities* (except those of unusual value. Class A and B explosives, household goods as defined by the Commission and commodities in bulk), from PA, NJ, DE, to OR, WA, CA, AZ, NV, UT, ID, and MT. Restricted to traffic originating at or destined to the facilities of the members of the Delaware Valley Shippers Association, for 270 days. Supporting shipper: Delaware Valley Shippers Association, 2209 E Farraquet Ave, Bristol, PA 19007.

Note.—Applicant holds motor contract carrier authority in number MC 128813 and sub numbers thereunder, therefore dual operations may be involved.

MC 151248 (Sub-6–2TA), filed December 10, 1980. Applicant: JIMMIE D. OTT d.b.a. JIM OTT & SON TRUCKING, 3400 Wood Ln., Bakersfield, CA 93309. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306. *Commodities used in the establishment, maintenance, or dismantling of oil, gas, steam or water wells, pipe lines, refineries and cracking or casinghead plants* between points in CA and points in AZ, CO, ID, KS, MT, MO, NV, NM, OK, OR, TX, UT, WA and WY for 270 days. Supporting shipper: WKM Division, 4110 Wible Rd., Bakersfield, CA 93309.

MC 153043 (Sub-6–1TA), filed December 8, 1980. Applicant: WEST SHORES LEASING CORPORATION, 7931 N.E. Halsey St., Suite 201, Portland, OR 97213. Representative: Robert E. Goldstein, 370 Lexington Ave., New York, NY 10017. *Contract carrier,* irregular routes, *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, beginning and ending at New York, NY; San Francisco, Los Angeles, San Diego, Sacramento, Bakersfield, Santa, Barbara, Carmel and Palm Springs, CA; Miami, FL; Phoenix/Scottsdale, AZ; Las Vegas, Reno, NV and extending to points in the United States, under continuing contract with Travellers International Tour Operators, Inc., for 270 days. Supporting party: Travellers International Tour Operators, Inc., 530 Fifth Avenue, New York, NY 10036.

MC 145466 (Sub-6–1TA), filed December 4, 1980. Applicant: BERYL WILLITS, d.b.a. WILLIE'S GRAIN, 1145 33rd Avenue, Greeley, CO 80631. Representative: Richard S. Mandelson, Suite 1600, Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. *Contract carrier,* irregular routes: *Meat, meat products, meat byproducts and articles distributed by meat packinghouses,* between points in Logan, Morgan and Denver Counties, CO, on the one hand, and, on the other, points in the States of CA, OR, WA, AZ, UT, ID and NV, for 270 days. Supporting shipper: Sterling Colorado Beef Company, P.O. Box 1728, Sterling, CO 80751.

MC 89684 (Sub-6–10TA), filed December 4, 1980. Applicant: WYCOFF COMPANY, INCORPORATED, P.O. Box 366, Salt Lake City, UT 84110. Representative: John J. Morrell (same address as applicant). *Sheets, pads, pillows, comforters and blankets,* between Los Angeles, CA and points in NV, UT, ID, WY, and CO, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: L & N Custom Design, 6855 Hermosa Circle, Buena Park, CA 90620.

MC 136228 (Sub-6–1TA), filed December 10, 1980. Applicant: LUISI TRUCK LINES, INC., P.O. Box "H", Milton-Freewater, OR 97862. Representative: Philip G. Skofstad, 1525 N.E. Weidler, Portland, OR 97232. (1) *Wine and malt beverages* from points in CA to Pullman, WA and (2) *bottles, kegs and pallets,* empty returned from Pullman, WA to Irwindale and Fairfield, CA for 270 days. Supporting shipper: Danday, Inc., d.b.a. Dantini Distributing, P.O. Box 362, Pullman, WA 99163.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-40205 Filed 12-30-80; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

International Drug Scheduling; Single Convention on Narcotic Drugs, 1961, Activity Concerning Dextropropoxyphene

AGENCY: Enforcement Administration, Department of Justice.

ACTION: Notice.

SUMMARY: Notice is to inform concerned parties that the Commission on Narcotic Drugs (CND) will consider the transfer of certain dextropropoxyphene preparations from Schedule II to Schedule III of the Single Convention at its February 1981 meeting; and that Spain has requested that the CND decision to schedule dextropropoxyphene in Schedule II be reversed.

FOR FURTHER INFORMATION CONTACT: William M. Lenck, Chief Counsel, Drug Enforcement Administration, telephone 202–633–1276.

SUPPLEMENTARY INFORMATION: This notice is published in order to inform interested parties that the Department of State has transmitted to the Drug Enforcement Administration notifications issued by the Secretary-General of the United Nations that the United Nations Commission on Narcotic Drugs (CND) will consider two matters which pertain to the drug, dextropropoxyphene, at the February 1981 meeting in Vienna, Austria.

The United States, as Party to the Single Convention on Narcotic Drugs, 1961, has been notified by the Secretary-General of the United Nations that the World Health Organization (WHO) in conformity with Article 3, paragraph 4 of the Single Convention has found that preparations for oral use containing not more than 150 milligrams of dextropropoxyphene per dosage unit or with a concentration of not more than 2.5 per cent in undivided preparations are not liable to abuse. If such preparations are compounded with another substance then that substance must not be one of those controlled by the Convention on Psychotropic Substances, 1971. The WHO recommends that preparations fulfilling all of the specifications mentioned above may be added to Schedule III of the Single Convention. The CND, in accordance with Article 3, paragraph 4, may consider this recommendation at the February 1981 meeting. Preparations (dosage forms) of dextropropoxyhene which could be affected by the WHO recommendation are controlled as Schedule IV narcotics under the Controlled Substances Act.

The Secretary-General of the United Nations in accordance with Article 3, paragraph 8 of the Single Convention, has also notified the Secretary of State that the Government of Spain has requested that the Economic and Social Council of the United Nations review the decision of the CND to include dextropropoxyphene in Schedule II of the Single Convention. All comments received by the U.N. Division of Narcotic Drugs will be submitted to the Council for consideration and appropriate action at its first regular session in 1981.

The Drug Enforcement Administration, and the Department of Health and Human Services are currently engaged in the preparation of comments in relations to above-described notifications received from the Secretary-General. These comments will be submitted to the Department of State to assist in developing the U.S.

Government position on these matters at the meetings of the CND and the Council.

Peter B. Bensinger,
Administrator.

10:30 a.m.–12:00 noon
Waste Management Report, John Knauss, Chairman, Committee review/approval
12:00 noon–1:00 p.m.
Lunch
1:00 p.m.–2:30 p.m.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (80–85)]

NASA Advisory Council, Space

Subcommittee members and participants).

Gerald D. Griffin,
Acting Associate Administrator for External Relations.

requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public

without subjecting the patients to unnecessary radiation.

In addition to the misadministrations, the investigation identified several items of non-compliance with the license

Government position on these matters at the meetings of the CND and the Council.

Peter B. Bensinger,

Administrator.

December 24, 1980.

[FR Doc. 80-40883 Filed 12-30-80; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Meeting

December 24, 1980.

Pursuant to Sec. 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a 3-day meeting on Monday, Tuesday, and Wednesday, January 12, 13, and 14, 1981. The meetings will be held in Room 418, Page Building 1, 2001 Wisconsin Ave., NW., Washington, DC 20235. The meetings will commence at 2:00 p.m. on Monday and 9:00 a.m. on Tuesday and Wednesday.

The Committee, consisting of 18 non-Federal members, appointed by the President from academia, business and industry, State and local government, and public interest groups, was established by Public Law 95-63, on July 5, 1977. Its duties are to: (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce on the carrying out the programs of the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The tentative meeting schedule follows:

January 12, 1981

Panel Session

2:00 p.m.-5:30 p.m.
Fisheries Panel

January 13, 1981

Plenary Session

9:00 a.m.-9:30 a.m.
Opening Remarks—Acting Chairman
9:30 a.m.-10:30 a.m.
Coastal Energy Impact Program
10:30 a.m.-12:00 noon
Waste Management Report, John Knauss, Chairman, Committee review/approval
12:00 noon-1:00 p.m.
Lunch
1:00 p.m.-2:30 p.m.
Services to Ocean Operations Report Committee review/proposal

Panel Meeting

2:30 p.m.-4:30 p.m.
Hydrology, Paul Bock, Chairman
Dr. Richard E. Hallgren, Director, National Weather Service, National Oceanic and Atmospheric Administration (NOAA)
Dr. John Schaake, Chief, Hydrologic Services Division, National Weather Service, National Oceanic and Atmospheric Administration (NOAA)

Adjourn

4:30 p.m.

January 14, 1981

Panel Session

9:00 a.m.-10:00 a.m.
Support for Atmospheric Research Facilities, Louis J. Battan, Chairman

Plenary Session

10:00 a.m.-12:00 noon
Law of the Sea, Burt H. Keenan, Member; Speaker: Conrad Welling; Topic: Deep Seabed Mining

Lunch

12:00 p.m.-1:00 p.m.
1:00 p.m.-3:30 p.m.
Panel Reports

Adjourn

3:30

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to impose limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., (Room 436, Page Building #1), Washington, DC 20235. The telephone number is (202) 653-7818.

Stephanie M. Jones,

Acting Executive Director.

[FR Doc. 80-40854 Filed 12-30-80; 8:45 am]

BILLING CODE 3510-12-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (80-85)]

NASA Advisory Council, Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces the following meeting:

NAME OF COMMITTEE: NASA Advisory Council, Space Systems and Technology Advisory Committee, Informal Subcommittee on Energy Technology.

DATE AND TIME: January 28, 29, 1981, 8:30 a.m. to 5 p.m., January 30, 1981, 8:30 a.m. to 11 a.m.

ADDRESS: Jet Propulsion Laboratory, Room 903, Building 180, Pasadena, California.

TYPE OF MEETING: Open.

Agenda

January 28, 1981

8:30 a.m.—Welcome and Introductory Remarks.
9 a.m.—Update of NASA Energy Programs.
1:30 p.m.—Review of Jet Propulsion Laboratory Energy Projects.

January 29, 1981

8:30 a.m.—Continuation of Jet Propulsion Laboratory Project Reviews.

January 30, 1981

8:30 a.m.—Subcommittee Discussions and Formulation of Recommendations.
11 a.m.—Adjourn.

FOR FURTHER INFORMATION CONTACT: Mr. Donald A. Beattie, Executive Secretary, National Aeronautics and Space Administration, Washington, DC 20546 (202/755-3127).

SUPPLEMENTARY INFORMATION: The Informal Subcommittee on Energy Technology of the NASA Advisory Council, Space Systems and Technology Advisory Committee, was established to provide advice and recommendations on the overall objectives, approach, content, structure and balance of NASA energy technology efforts. The Chairperson is Dr. Robert L. Hirsch. There are currently seven members.

The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the

Subcommittee members and participants).

Gerald D. Griffin,

Acting Associate Administrator for External Relations.

December 19, 1980.

[FR Doc. 80-40556 Filed 12-30-80; 8:45 am]

BILLING CODE 7510-01-M

Notice (80-84)]

NASA Advisory Council (NAC), Life Sciences Advisory Committee; Meeting

The NAC Life Sciences Advisory Committee (LSAC) will meet at the National Aeronautics and Space Administration Headquarters on January 16, 1981. The meeting will take place from 8:30 a.m. to 5 p.m. in Room 5026 of Federal Building 6, 400 Maryland Avenue SW, Washington, DC 20546. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including 12 Committee members and participants).

The Life Sciences Advisory Committee consults with and advises the Council and NASA on the accomplishments and plans of NASA's Life Sciences Programs. The Committee is chaired by Dr. Richard Wurtman. Following is the approved agenda for the meeting:

Agenda

January 16, 1981

8:30 a.m.—Introductory Remarks.
9:00 a.m.—Application of Section Criteria to LS-1 Experiments.
3:30 p.m.—Payload Options and Sample Payloads.
4:00 p.m.—Discussion: Actions From Previous Meeting.
5:00 p.m.—Adjourn.

For further information please contact Dr. Paul Rambaut, Executive Secretary for the Committee, Code SBR-3, National Aeronautics and Space Administration, Washington, DC 20546, Telephone (202) 755-3723.

Gerald Griffin,

Acting Associate Administrator for External Relations.

December 19, 1980.

[FR Doc. 80-40565 Filed 12-30-80; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence; Improper Use and Inadequate Control of Licensed Material (Radiopharmaceuticals)

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incident was determined to be an abnormal occurrence using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). Appendix A (Example I.d.3) criteria of the Policy Statement notes that a serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence. The following description of the event also contains the remedial action taken.

Date and Place.—On July 31, 1980, the Nuclear Regulatory Commission's Region III office in Glen Ellyn, Illinois received a communication indicating that patients of Lakeview Hospital in Wauwatosa, Wisconsin had routinely received double the prescribed dose of radiopharmaceuticals for diagnostic scans since 1976. The hospital currently holds an NRC license, originally issued in 1959 and most recently renewed in 1979, to possess radioactive isotopes for medical diagnostic procedures.

Nature and Probable Consequences.—Investagations revealed that the licensee's nuclear medicine staff were routinely administering more than the prescribed doses of radiopharmaceuticals to patients, most of them age 65 and over, for those diagnostic scans of brain, bone, liver, spleen and lung in which technetium-99m (Tc-99m) was incorporated as part of the scanning agent. This involved 20 to 30 patients per month. The doses administered were generally twice the prescribed; the highest dose admininstered to a patient was 42 millicuries of Tc-99m DTPA [1] for a brain scan, instead of the 15 millicuries which the hospital 's written protocol prescribed. This would have resulted in a whole body dose of 840 millirems, and a dose to the critical organ (urinary bladder) of 23 rems. (By comparison, a normal chest X-ray is equal to a whole body dose of 20 to 50 millirems.) The increased dosages were unnecessary because they did not result in any corresponding benefit to the patients.

The purposes of the dosage increases were to decrease scanning time (from about 30-45 minutes to about 15-20 minutes) and to obtain brighter images before the patients moved. This was done by administering increased dosages despite available alternative means to accomplish the same purpose without subjecting the patients to unnecessary radiation.

In addition to the misadministrations, the investigation identified several items of non-compliance with the license concerning failure to maintain accurate records, inadequate equipment calibration, and inadequate radiation surveys.

Cause or Causes.—The principal causes of the incident were the improper use of the radiopharmaceuticals by the licensee staff and inadequate procedural controls for the program. Further, the licensee's technetium utilization log was falsified to indicate that proper dosages had been administered. This prevented NRC inspectors from detecting this practice.

Actions Taken to Prevent Recurrence

Licensee.—The licensee cooperated in the investigation, took prompt action to correct deficiencies including suspension and later removal of two employees involved, and stopped all licensed activities when NRC suspended their license. Patients requiring nuclear medicine diagnostic procedures were referred to a nearby county medical complex which is authorized to perform procedures involving radiopharmaceuticals. In early September in the reply to the NRC Order to Show Cause and during a subsequent NRC-licensee management meeting, the licensee submitted new procedures aimed at correcting the identified problems. In addition, the two employees, initially suspended, were discharged.

NRC.—An NRC investigation, begun on August 1 and completed on August 7, 1980, included interviews with an authorized user and three nuclear medicine technicians, as well as a review of records. On August 11, 1980, the NRC issued an Order Suspending License, effective immediately, and an Order to Show Cause why the license should not be revoked; this was also published in the **Federal Register** (45 FR 56477). An investigation by the NRC Office of Inspector and Auditor is complete and has been forwarded to the Department of Justice for whatever action they deem appropriate. The licensee's response to the Order to Show Cause was reviewed by the NRC, and was determined to have shown sufficient cause why the license should not be revoked. The suspension order was rescinded and a Confirmatory Order Modifying License was issued to incorporate the licensee's corrective action in the license.

Dated at Washington, D.C., this 19th day of December, 1980.

[1] Diethylenetriamine pentaacetic acid (DTPA) labelled with Tc-99m is a radiopharmaceutical used for brain and kidney imaging.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-40835 Filed 12-30-80; 8:45 am]

BILLING CODE 7590-01-M

petition was published in the **Federal Register** July 7, 1980 (45 FR 45748).

The basis of Christa-Maria's petition is the contention that the steel containment at the Big Rock Point Plant is insufficient to contain radiation in the

impair safety equipment. As a result, by letter of October 30, 1979, we asked nuclear power plant licensees to perform a design review of plant shielding by January 1, 1980 and to implement needed changes by January 1

implementation of additional shielding requirements until January 1, 1982, as discussed above, the licensee had additional time to further assess this modification.

Because of the conservatism of the

request of January 6, 1980. Moreover, the eighth safety issue was added in the latter submittal. The petitions were not received by the Nuclear Regulatory Commission (the Commission) before restart of the facility. Consequently, the

and also the State of Illinois have requested a hearing.

A telephone conference was held on December 2, 1980 for the purpose of making sure that the petitioners understood the specificity requirements

For the Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary of the Commission.
[FR Doc. 80-40635 Filed 12-30-80; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-454 and 50-455]

Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2); Request for Action

Notice is hereby given that by a request of November 21, 1980, the Rockford League of Women Voters (League) petitioned that a proceeding be instituted pursuant to 10 CFR 2.202 to consider modification, suspension or revocation of the construction permit issued to Commonwealth Edison Company for the Byron Nuclear Power Station, Units 1 and 2, to insure proper resolution of all outstanding safety problems applicable to the Byron Station. Pending a full hearing and determination of its request, the League sought an immediate halt to the construction of the Byron Station. This petition is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the petition within a reasonable period of time.

Copies of the petition are available for inspection in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 and in the local public document room at the Byron Public Library, Third and Washington Streets, Byron, Illinois 61010.

Dated at Bethesda, Md., this 22nd day of December 1980.

For the Nuclear Regulatory Commission.
Harold R. Denton,
Director, Office of Nuclear Reactor Regulation.
[FR Doc. 80-40644 Filed 12-30-80; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co. (Big Rock Point Plant), Director's Decision

By petition dated April 1, 1980, Christa-Maria, on behalf of Concerned Citizens for the Charlevoix Area, requested that the Big Rock Point Plant be shutdown immediately because it does not meet minimal Nuclear Regulatory Commission (NRC) requirements relating to containment integrity. This petition has been considered under the provisions of 10 CFR 2.206 of the Commission's regulations. Notice of receipt of the petition was published in the **Federal Register** July 7, 1980 (45 FR 45748).

The basis of Christa-Maria's petition is the contention that the steel containment at the Big Rock Point Plant is insufficient to contain radiation in the event of an accident. Petitioner asserts that continued operation of the Big Rock Point Plant with an unshielded steel containment is in direct violation of NRC requirements. Upon consideration of the information set forth in Christa-Maria's petition, it has been determined that Christa-Maria has not presented any new information or reasons which constitute a basis for shutting down the Big Rock Point Plant.

Discussion

Christa-Maria asserts that the unshielded steel containment at the Big Rock Point Plant is insufficient to contain radiation and that this is in direct violation of "requirement 2.213" of NUREG 0578, "TMI-2 Lessons Learned Task Force Status Report and Short-Term Recommendations," which states that nuclear power plants must shut down immediately in the event of a complete loss of safety function.

It is assumed that the reference to "requirement 2.213" of NUREG 0578 in Christa-Maria's petition is a typographical error and that the reference was intended to be to Section 2.2.3. In that section, the NRC Lessons Learned Task Force had originally proposed that the Technical Specifications for each reactor should provide that the reactor be placed in a hot shutdown condition within 8 hours and a cold shutdown condition within 24 hours from the time that the reactor is found to be or has been in operation with a complete loss of safety function. However, based on further review, the NRC staff determined that rather than implement the original proposal at this time a broad new rulemaking should be undertaken which would require plant shutdown for various human and procedural errors. Accordingly, the NRC's September 13, 1979 letter to all licensees indicated that no further action on section 2.2.3 would be required by the licensees pending the actions of the rulemaking process. Consequently, the "requirement" which Christa-Maria asserts the Big Rock facility is violating is not currently a requirement for NRC licensees.

The issue of adequate shielding from post-accident radiation fields is still under active review. One of the lessons learned from the TMI-2 accident is that radiation fields resulting from contained radiation sources after an accident may make it difficult to effectively perform accident recovery operations or may impair safety equipment. As a result, by letter of October 30, 1979, we asked nuclear power plant licensees to perform a design review of plant shielding by January 1, 1980 and to implement needed changes by January 1, 1981. The NRC design criteria assume a very severe accident with a very large radiation source term and assume that stringent limits on radiation exposure to personnel would be met. Consumers Power Company submitted the design review by letter of December 27, 1979 and identified areas of the plant which would need additional shielding protection if NRC design criteria were to be met.

By letters dated February 22, April 2, May 6, August 25, and September 2, 1980, Consumers Power Company had requested a delay in implementation of additional shielding protection requirements until the completion of an ongoing risk assessment of the plant, estimated to be April 1981. The requested delay was effectively mooted by the publication of NUREG-0737, "Clarification of TMI Action Plan Requirements" which modifies the implementation date for necessary changes to January 1, 1982.

As required by the staff, the licensee has completed a review of vital areas in which personnel occupancy may be limited by radiation during post-accident operations. Our safety evaluation of the implementation of "Category A" Lessons Learned requirements was issued on May 2, 1980 and stated that the control room, the interim Technical Support Center and the Operational Support Center are sufficiently shielded that they would remain accessible for continuous occupancy. The vital areas in which personnel occupancy may be limited are the backup emergency diesel, backup cooling water supply hose to the core spray heat exchanger and the emergency diesel general fuel supply. The licensee initiated work to implement changes for these three items, and two of them, the relocation of the backup emergency diesel and the modification to the emergency diesel general fuel supply, should be completed shortly. With respect to the third item, the licensee began implementation of the modifications but has recently informed us that preliminary results from the probabilistic risk assessment being conducted for the Big Rock Point plant could affect the need for the modification to the backup cooling water supply hose to core spray heat exchanger. Accordingly, they indicated that work on this third item has been stopped. Because of the delay in the

implementation of additional shielding requirements until January 1, 1982, as discussed above, the licensee had additional time to further assess this modification.

Because of the conservatism of the design requirements against which the shielding acceptability must be evaluated, it is our judgment that a deferral of implementation until 1982 will not result in exposure of plant personnel to significant risk from a loss-of-coolant accident or a greater risk to the public than previously evaluated, if such an accident should occur.

Conclusion

Based on the foregoing discussion and the provisions of 10 CFR 2.206, I have determined that there is no adequate basis for shutting down the Big Rock Point Plant. The request by the Concerned Citizens of Charlevoix Area is, therefore, *denied.*

A copy of this Decision will be placed in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 and the Local Public Document Room for the Big Rock Point Plant, located at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720. A copy of this Decision will also be filed with the Secretary of the Commission for review by the Commission in accordance with 10 CFR 2.206(c) of the Commission's regulations.

In accordance with 10 CFR 2.206(c) of the Commission's regulations, this Decision will constitute the final action of the Commission twenty (20) days after the date of issuance, unless the Commission, on its own motion, institutes a review of this Decision within that time.

Dated at Bethesda, Md., this 18 day of December 1980.
Harold R. Denton,
Director, Office of Nucleor Reactor Regulation.
[FR Doc. 80-40638 Filed 12-30-80; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co. (Big Rock Point Plant); Issuance of Director's Decision

On December 11, 1979, notice was published in the **Federal Register** (44 FR 71489) that by petition dated November 4, 1979, Ms. JoAnn Bier and Ms. Shirley Johns, had requested that an order be issued to delay restart of the Big Rock Point Plant Unit 1. Seven alleged safety questions identified in the petition were resolved. Six of the seven issues identified in November 4, 1979, request were repeated with clarifications, in a request of January 6, 1980. Moreover, the eighth safety issue was added in the latter submittal. The petitions were not received by the Nuclear Regulatory Commission (the Commission) before restart of the facility. Consequently, the petitions have been treated as a request for an order to show cause why Facility Operating License No. DPR-6 issued to Consumer Power Company for the Big Rock Point Plant should not be suspended pending resolution of the issues raised.

The Commission's Director of Nuclear Reactor Regulation has treated these requests as requests for action under 10 CFR 2.206. Upon review of records pertinent to the issues raised by Ms. Bier and Ms. Johns, the Director has determined that the requests do not provide an adequate basis to issue an order to show cause why License No. DPR-6 for the Big Rock Point Plant should not be suspended. Accordingly, the requests have been *denied.*

Copies of the Director's decision are available for inspection in the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C., 20555 and at the Local Public Document Room for Big Rock Point, located at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720. A copy of this decision will also be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations.

As provided in 10 CFR 2.206(c), the decision will constitute the final action of the Commission twenty (20) days after the date of issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Bethesda, Md., this 18 day of December 1980.
Harold R. Denton,
Director, Office of Nuclear Reactor Regulation.
[FR Doc. 80-40639 Filed 12-30-80; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-461 OL and 50-462 OL]

Illinois Power Co., et al., (Clinton Power Station, Units 1 and 2, Application for Operating License); Memorandum and Order (Summarizing Telephone Conference and Ordering Special Prehearing Conference)

December 22, 1980.

Petitions to intervene in this operating licensing proceeding have been filed by two groups, Prairie Alliance and Bloomington-Normal Chapter of Prairie Alliance (hereinafter called "Bloomington-Normal"). Both petitioners and also the State of Illinois have requested a hearing.

A telephone conference was held on December 2, 1980 for the purpose of making sure that the petitioners understood the specificity requirements of 10 CFR 2.714(b) and to establish a date for a Special Prehearing Conference pursuant to 10 CFR 2.751(a).

The spokesman for Prairie Alliance stated that he had a copy of 10 CFR and understood the amendment requirement of 10 CFR 2.714(b). He requested postponement of the Special Prehearing Conference because he had not had access to the Application for facility operating license and the Applicants' Environmental Report. Counsel for Applicants agreed to assist the petitioner in locating these documents. The spokesman for Bloomington-Normal indicated that this petitioner intended to consolidate its efforts with Prairie Alliance. All conferees agreed upon January 29, 1981 as a date for the Special Prehearing Conference.

Order

In view of the foregoing, it is, this 22nd day of December 1980 **Ordered**

That the Special Prehearing Conference will be held at the Urbana Civic Center, 108 East Water Street, Urbana, Illinois on January 29, 1981 beginning at 9:30 a.m.

For the Atomic Safety and Licensing Board.
Oscar H. Pant,
Administrative Judge.
[FR Doc. 80-40634 Filed 12-30-80; 8:45 am]
BILLING CODE 7590-01-M

[Byproduct Material License No. 22-00057-06; EA-80-47]

Minnesota Mining and Manufacturing Company; Order Imposing a Civil Monetary Penalty

I

Minnesota Mining and Manufacturing Company, St. Paul, Minnesota (the "licensee"), is the holder of Byproduct Material License No. 22-00057-06 (the "license"), issued by the Nuclear Regulatory Commission (the "Commission"). The license authorizes research and development as defined in 10 CFR Part 30; manufacture and testing of products; and demonstration of sealed sources and devices containing sealed sources. This license was initially issued on February 17, 1964, and has an expiration date of May 31, 1979. A timely renewal application has been submitted.

II

An inspection was conducted on March 31, 1980, at the waste burial site in Hansford, Washington. As a result of this inspection, it appears the licensee has not conducted its activities in full compliance with the conditions of the

Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within twenty-five days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by

3M surveyed the vehicle before it left our site, the survey was limited to the vertical surfaces of the trailer and inside the cab of the tractor. We have no radiation survey data to confirm or deny the radiation dose rates which were measured underneath the trailer when it

warranted. But, because of the growing number of transportation incidents involving low specific activity materials and type A quantities of radioactive materials due, at least in part, to the use of defective shipping containers and

Unit No. 1 (the facility) located in Oswego County, New York. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to permit plant operation

Niagara Mohawk Power Corporation (the licensee) which revised the license and Technical Specifications for operation of the Nine Mile Point Nuclear Station, Unit No. 1 (the facility) located in Oswego County, New York. The

II

An inspection was conducted on March 31, 1980, at the waste burial site in Hansford, Washington. As a result of this inspection, it appears the licensee has not conducted its activities in full compliance with the conditions of the license and with the requirements of the Nuclear Regulatory Commission's "Packaging of Radioactive Material for Transport and Transportation of Radioactive Material Under Certain Conditions," Part 71, Title 10, Code of Federal Regulations. A written Notice of Violation was served upon the licensee by letter dated August 6, 1980, specifying the item of noncompliance in accordance with 10 CFR 2.201. A Notice of Proposed Imposition of a Civil Penalty was served concurrently upon the licensee in accordance with Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282) and 10 CFR 2.205, incorporating by reference the Notice of Violation which stated the nature of the item of noncompliance, and the provisions of the NRC and DOT regulations, with which the licensee was in noncompliance. An answer from the licensee to the Notice of Violation and the Notice of Proposed Imposition of a Civil Penalty was dated August 28, 1980.

III

Upon consideration of the answer received and the statements of fact, explanation, and argument in denial or mitigation contained therein, as set forth in the Attachment to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalty proposed for the item of noncompliance designated in the Notice of Violation should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282) and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the total amount of Two Thousand Dollars ($2,000) within twenty-five days of the date of this Order, by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement.

V

The licensee may, within twenty-five days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Secretary to the Commission, U.S.N.R.C., Washington, D.C. 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, U.S.N.R.C., Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within twenty-five days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by this time, the matter may be referred to the Attorney General for collection.

VI

In the event the license requests a hearing as provided above, the issues to be considered at such a hearing shall be:

a. whether the licensee was in noncompliance with the Commission's requirements as set forth in the Notice of Violation referenced in Sections II and III above; and,

b. whether on the basis of the item of noncompliance, this Order should be substained.

Dated at Bethesda, Md., this 17th day of December 1980.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Director, Office of Inspection and Enforcement.

Appendix A—Evaluation and Conclusion

For the item of noncompliance and associated civil penalty identified in the Notice of Violation (dated August 6, 1980) the original item of noncompliance is restated and the Office of Inspection and Enforcement's evaluation and conclusion regarding the licensee's response to the item (dated August 28, 1980) is presented.

Statement of Noncompliance

10 CFR 71.5 prohibits delivery of licensed material to a carrier for transport unless the licensee complies with applicable regulations of the Department of Transportation in 49 CFR Parts 170–189. 49 CFR 173.393(j)(2) requires that radiation levels not exceed 200 millirem per hour at any point on the external surface of the vehicle used to transport packages of radioactive material.

Contrary to the above, a shipment of licensed radioactive material was made from your Saint Paul, Minnesota facility to Richland, Washington, on March 25, 1980 in an exclusive use vehicle. A dose rate of 300 millirem per hour, was measured at contact with the bottom of the trailer upon receipt at Richland, Washington on March 31, 1980.

This a Severity II item of noncompliance.

(Civil Penalty—$2,000)

Licensee's Response

In the response dated August 28, 1980, the licensee stated, in part, "Although 3M surveyed the vehicle before it left our site, the survey was limited to the vertical surfaces of the trailer and inside the cab of the tractor. We have no radiation survey data to confirm or deny the radiation dose rates which were measured underneath the trailer when it arrived at Richland. Therefore, we accept your findings that a radiation level underneath the trailer exceeded 200 mR/hr."

"For more than 10 years, 3M shipped low level radioactive waste by exclusive use vehicle to approved disposal sites. Throughout this period, representatives of government and industry acknowledged that formal regulatory survey standards for assuring compliance with external radiation levels standards were needed. To fill this void, shippers developed practices based on verbal advice provided by federal and state agency personnel."

"The industry practices relevant here, developed with the knowledge of agency personnel, called for measuring surface dose rates on the four sides of the trailer, at a distance of six feet from the trailer and in the cab of the tractor. Routine measurements on the top and/or bottom of a trailer were not part of this accepted practice. On March 26, 1980, 3M followed this practice in belief that no additional measurements were required . . ."

"On April 1, 1980, NECO advised 3M that our March 26 shipment was in noncompliance. At the same time, NECO advised that routine surveys underneath vehicles had been conducted since the fall of 1979. At no time prior to April 1 was 3M so advised by NECO even though there were at least seven documented telephone conversations between representatives of the two companies during the previous eight months. No mention was made of a 175 mR/hr spot on the side of the truck and we were led to believe that one of the routine surveys detected the excessive dose rate. If this is correct, a finding of noncompliance is unfair to 3M becaue 3M had no knowledge that the NRC used routine surveys underneath vehicles."

Evaluation of the Licensee's Response

As you know, effective December 3, 1979, the Commission amended its regulations for packaging and transportation of radioactive materials to make compliance with the Department of Transportation (DOT) regulations explicit NRC requirements. This change did not alter any substantive requirements; it was designed to enable the NRC to inspect activities of its licensees in this area and to take enforcement actions if

warranted. But, because of the growing number of transportation incidents involving low specific activity materials and type A quantities of radioactive materials due, at least in part, to the use of defective shipping containers and improper loading and preparation of packages for shipment, the NRC determined that augmentation of the DOT inspection and enforcement efforts by those of NRC was necessary to assure compliance with applicable regulations. This change in the regulations, plus the addition of specific criteria for imposing civil penalties for transportation incidents, should have signalled Minnesota Mining & Manufacturing, as well as all licensees, that what may have been considered sufficient in industry practices to demonstrate compliance with a particular requirement in the past might no longer be adequate and certainly not in strict compliance with DOT requirements. It was incumbent on you to ascertain whether additional measures to assure strict compliance might now be necessary.

The applicable DOT requirement clearly limits the dose rate from licensed radioactive material to 200 millirem per hour *at any point* on the external surface of the car or vehicle consigned for exclusive use (49 CFR 173.393(j)(2)). Under the procedures in Nuclear Engineering Company's license, *i.e.*, Condition 31 and Appendix B, to which you referred, surveying underneath trailers is required when readings around the sides of the trailer are near allowable limits. Consequently, the NRC inspector would have surveyed under the vehicle in any event, because a spot reading 175mR/hr was found on one of the sides of the vehicle.

Conclusion

The item as stated is an item of noncompliance. The information presented by the licensee does not provide a basis for modification of this enforcement action.

[FR Doc. 80-40636 Filed 12-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 38 to Facility Operating License No. DPR-63 to Niagara Mohawk Power Corporation (the licensee) which revised the Technical Specifications for operation of the Nine Mile Point Nuclear Station, Unit No. 1 (the facility) located in Oswego County, New York. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to permit plant operation for four hours with increased secondary containment allowable leakage. This interim approval allows improvement work on safety related systems.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 29, 1980, (2) Amendment No. 38 to License No. DPR-63, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Oswego County Office Building, 46 E. Bridge Street, Oswego, New York 13126. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md. this 12th day of December, 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 80-40640 Filed 12-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 39 to Facility Operating License No. DPR-63 to Niagara Mohawk Power Corporation (the licensee) which revised the license and Technical Specifications for operation of the Nine Mile Point Nuclear Station, Unit No. 1 (the facility) located in Oswego County, New York. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to allow plant operation at reduced power with three primary coolant recirculation loops operable; i.e., N–2 loop operation.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated September 25, 1979 supplemented by letter dated October 22, 1980, (2) Amendment No. 39 to License No. DPR-63, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Oswego County Office Building, 46 East Bridge Street, Oswego, New York 13126. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 12th day of December, 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operation Reactors Branch No. 2, Division of Licensing.

[FR Doc. 80-40641 Filed 12-30-80; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has

been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some

[Byproduct Material License No. 12-02370-01; EA-80-29]

Superior Industrial X-Ray Co.; Order Imposing Civil Monetary Penalties

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 USC 2282), and 10 CFR 2.205, it is hereby ordered that:

1. Statement of Noncompliance for Item 1

10 CFR 20.207(b) requires that licensed material in a unrestricted area and not in storage be under the constant

exposure device unattended for periods of greater than one hour cannot be construed as meeting the requirements of 10 CFR 20.207(b). In addition, during radiographic operations, although the

Our radiographer maintained constant control through visual contact with the entire area.

Evaluation of Licensee's Response to Item 2

been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Revision 2 to Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants To Assess Plant and Environs Conditions During and Following an Accident," describes a method acceptable to the NRC staff for complying with the Commission's regulations to provide instrumentation to monitor plant variables and systems during and following an accident in a light-water-cooled nuclear power plant.

The guide endorses, with certain exceptions, ANSI/ANS 4.5–1980, "Criteria for Accident Monitoring Functions in Light-Water-Cooled Reactors." It has been revised as a result of lessons learned from investigations of the accident at Three Mile Island, public comment, and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 22nd day of December 1980.

For the Nuclear Regulatory Commission.

Ray G. Smith,

Acting Director, Office of Standards Development.

[FR Doc. 80-40608 Filed 12-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Byproduct Material License No. 12-02370-01; EA-80-29]

Superior Industrial X-Ray Co.; Order Imposing Civil Monetary Penalties

I

Superior Industrial X-Ray Company, Blue Island, Illinois (the "licensee") is the holder of Byproduct Material License No. 12–02370–01 (the "license") issued by the Nuclear Regulatory Commission (the "Commission") which authorizes the licensee to perform industrial radiography at temporary job sites in accordance with the conditions specified therein. The license was issued on April 5, 1957, and has a termination date of November 30, 1984.

II

A routine inspection was conducted of licensed activities under the license during the period April 25 through April 30, 1980. As a result of this inspection it appears that the licensee has not conducted its activities in full compliance with the conditions of the license and with the requirements of the Nuclear Regulatory Commission's "Notices, Instructions and Reports to Workers; Inspections", Part 19, "Standards for Protection Against Radiation", Part 20, and "License for Radiographer and Radiation Safety Requirements for Radiographic Operations," Part 34, Title 10, Code of Federal Regulations. A written Notice of Violation was served upon the licensee by letter dated June 23, 1980, specifying the items of noncompliance in accordance with 10 CFR 2.201. A Notice of Proposed Imposition of Civil Penalties was served concurrently upon the licensee in accordance with Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282), and 10 CFR 2.205, which incorporated by reference the Notice of Violation. An answer from the licensee to the Notice of Violation and the Notice of Proposed Imposition of Civil Penalties was received on July 21, 1980.

III

Upon consideration of the answers received and the statements of fact, explanation, and argument for deferral, compromise, mitigation, or cancellation contained therein, as set forth in Appendix A to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalties proposed for the items of noncompliance designated in the Notice of Violation should be imposed except for Item 3(a). Item 3(a) is withdrawn and the corresponding penalty for Items 3(a) and 3(b) is mitigated by $750.00.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 USC 2282), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the total amount of Nine Thousand Fifty Dollars ($9,050) within twenty-five days of the date of this Order, by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement.

V

The licensee may, within twenty-five days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Secretary to the Commission, U.S.N.R.C., Washington, D.C. 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, U.S.N.R.C., Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within twenty-five days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such a hearing shall be:

a. whether the licensee was in noncompliance with the Commission's regulations and the conditions of the license as set forth in the Notice of Violation referenced in Section II and III above; and,

b. whether on the basis of such items of noncompliance, this Order should be sustained.

Dated at Bethesda, Maryland this 17th day of December 1980.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Director, Office of Inspection and Enforcement.

Appendix A—Evaluations and Conclusions

For each item of noncompliance and associated civil penalty identified in the Notice of Violation (dated June 23, 1980) the original item of noncompliance is restated and the Office of Inspection and Enforcement's evaluation and conclusion regarding the licensee's responses to each item (received July 21, 1980) is presented.

1. Statement of Noncompliance for Item 1

10 CFR 20.207(b) requires that licensed material in a unrestricted area and not in storage be under the constant surveillance and immediate control of the licensee.

Contrary to the above, a Technical Operations Model 533 radiographic exposure device containing a 45 curie iridium-192 sealed source was left in an unrestricted area for periods up to one hour without being under the constant surveillance and immediate control of the licensee. This occurred at a field site in Bolingbrook, Illinois, on April 25 and 29, 1980.

This violation had the potential for causing an occurence related to health and safety.

(Civil Penalty—$3,000.00).

Licensee's Response to Item 1

The response from the licensee stated, in part:

We contend the radiographer did not expropriate his responsibilities to 10 CFR 20.207(b) during radiographic operations as inferred, but that he returned the source to its shielded container, surveyed it to assure its proper position and locked it. We assert that the immediate control of the licensed material was maintained through surveying and locking the exposure device. The radiographer then developed his film. This was when constant surveillance lapsed. The radiographic exposure device was not maintained under constant eyesight while the radiographer developed his film. We cannot dispute this point.

The concept constant surveillance of licensed material in an unrestricted area, however, is ambiguous. We received on a regular basis radioactive licensed material in unlocked containers which are not under the constant surveillance of a radiographer or a radiographer's assistant as they travel on common carriers and through busy airports. One of the reasons cited by the NRC for the potential occurrence detrimental to health and safety was the possibility of theft of our exposure device. The interception of the unlocked transitory licensed material would be much more probable than in our case where the surveyed and locked exposure device was left in close proximity to the licensee. We feel only an individual with a knowledge of the operation of exposure devices who had an intent to steal the source could have caused such an occurrence.

Evalutation of Licensee's Response to Item 1

10 CFR 20.207(b) states that licensed materials in an unrestricted area shall be tended under constant surveillance and immediate control of the licensee. Common dictionary definitions define surveillance as "close observation." Therefore, constant surveillance means constant close observation. The radiographer's action of leaving the exposure device unattended for periods of greater than one hour cannot be construed as meeting the requirements of 10 CFR 20.207(b). In addition, during radiographic operations, although the sealed source assembly was secured in the shielded position each time the source was returned to that position, as required by 10 CFR 34.22(a), the exposure device was not kept locked when not under the direct surveillance of a radiographer or radiographer's assistant.

NRC shares your concern about the potential problem of transporting licensed radioactive material in unlocked containers by common carriers and through busy airports. To minimize these risks, the U.S. Department of Transportation (DOT) regulations include a requirement for a security seal on the package while it is in transit. This seal, while intact, provides evidence that the package has not been illicitly opened. As you may be aware, common and contract carriers are not subject to licensing by, or requirements of the NRC; however, they are subject to the transportation requirement of DOT.

Conclusion

The item as stated is an item of noncompliance. The information presented by the licensee does not provide a basis for modification of this enforcement action.

2. Statement of Noncompliance for Item 2

10 CFR 34.42 requires areas in which radiography is being performed to be conspicuously posted with a sign or signs bearing the radiation caution symbol and words: "Caution—High Radiation Area" and "Caution Radiation Area."

Contrary to the above, no "Caution—High Radiation Area" or "Caution Radiation Area" signs were posted at a field site in Bolingbrook, Illinois, where radiographic exposures were being performed on April 25, and 29, 1980.

This is an infraction (Civil Penalty—$2,000.00).

Licensee's Response to Item 2

In the response the licensee stated, in part:

The failure to post these signs was not without contemplation and certainly was not a malicious disregard for 10 CFR 34.32 or our Operating Procedures. The field site where the above infraction occurred is frequented by automobile and truck traffic, only very rarely by pedestrians.

In these occasions we have felt that the less attention which is drawn to the area the better. This assures normal traffic flow and the prevention of gapers who might possibly accumulate an unwarranted radiation dose. Our radiographer maintained constant control through visual contact with the entire area.

Evaluation of Licensee's Response to Item 2

10 CFR 34.42 states that areas in which radiography is being performed shall be conspicuously posted with signs bearing the radiation symbol and the words: "Caution—Radiation Area" and "Caution—High Radiation Area." No provision is made in the regulations for exemption from this requirement at the whim of the radiographer or licensee.

Furthermore the radiographer stated that he seldom used warning signs on field jobs except when radiography was performed inside a building. He also stated that posting signs during pipeline work added a lot of work and slowed down production. This kind of attitude toward the requirements by a radiographer, in this case a Field Manager, shows a careless disregard for radiation safety.

Although the site where the infraction occurred is most frequented by autombile and truck traffic rather than pedestrians, it should also be noted that the pipe trench passed through the back yards of houses in a residential area and did not necessarily preclude pedestrian traffic.

In the response the licensee stated that the radiographer maintained constant control through visual contact with the entire area. This was not the case as demonstrated by the following events.

On April 25, 1980 two NRC inspectors observed the radiographer make several radiographic exposures. During these exposures they observed that a pipeline company truck occupied by two individuals was parked on the shoulder of the road along Route 53. This was about 25 feet from the exposed radiographic source. In the instant case, radiation from the exposed source was attenuated by the edge of an earth embankment and the individuals in the truck were not exposed to unnecessary radiation. When questioned about this matter the radiographer stated that he was not aware of the parked truck.

During another exposure sequence on April 25, 1980, the NRC inspectors observed a welder standing in the pipe trench about 25 feet from the exposed source. The welder was in a position where the collimator would provide maximum attenuation of the radiation field. Subsequent to this observation, the NRC inspectors made independent measurements during a re-enactment and noted the radiation level was 6 mR/hr at a position similar to where the welder was standing. When questioned

about this matter, the radiographer stated he did not see the welder standing in the pipe trench during the time the radiography source was exposed.

The licensee's contention that gapers might possibly accumulate unwarranted radiation doses is not well founded since, if the radiographic area was properly posted and the radiographer

Evaluation of Licensee Response to Item 3(a)

During the April 30, 1980, inspection at the home office in Blue Island, Illinois, the NRC inspectors discussed this matter with the RSO and with the President of Superior Industrial X-Ray Company. Also, on May 12, 1980, a meeting was held with the President of Superior Industrial X-Ray Company at

provide a basis for modification of this enforcement action.

4. Statement of Noncompliance for Items 4(a) 4(b) and 4(c)

License Condition No. 16 requires that the licensee possess and use licensed material in accordance with statements, representations and procedures contained in certain referenced

Licensee's Response to Item 4(a)

In the response the licensee stated, in part:

This infraction concerns the failure to perform a survey of the restricted area. We feel that this is a restatement of Item 2 of the Appendix A in which the restricted area was not posted. This item states that this unposted area was not surveyed. The radiographer however maintained constant control over the entire area in which

Evaluation of Licensee's Response to Item 4(b)

The licensee stated the general policy is that the survey will be made at the time the source is placed in the vehicle and prior to leaving the home office. The response also implies that the survey was made but the radiographer failed to make a proper record of the survey. However, during a field inspection on

Conclusion

The item as stated is an item of noncompliance. The information presented by the licensee does not provide a basis for modification of this enforcement action.

5. Statement of Noncompliance for Item 5

10 CFR 10.13(a) requires that the

about this matter, the radiographer stated he did not see the welder standing in the pipe trench during the time the radiography source was exposed.

The licensee's contention that gapers might possibly accumulate unwarranted radiation doses is not well founded since, if the radiographic area was properly posted and the radiographer was controlling access to the area, gapers would be at a distance sufficient to assure their safety.

Conclusion

The item as stated is an item of noncompliance. The information presented by the licensee does not provide a basis for modification of this enforcement action.

3. Statement of Noncompliance for Items 3(a) and 3(b)

10 CFR 34.33(a) prohibits an individual from acting as a radiographer or a radiographer's assistant unless, at all times during radiographic operation, each such individual wears a direct reading pocket dosimeter and either a film badge or a thermoluminescent dosimeter. 10 CFR 34.33(b) requires pocket dosimeters to be read and exposures recorded daily.

a. Contrary to 10 CFR 34.33(a), a radiographer made radiographic exposures without wearing a film badge or a thermoluminescent dosimeter. Specifically, the radiographer made radiographic exposures during June 1979 while his film badge was left inside his tackle box which was left in the exposure room.

b. Contrary to 10 CFR 34.33(b), another radiographer did not read his pocket dosimeter and record the exposures on April 24, 25, and 28, 1980, days on which he made radiographic exposures.

This is an infraction. (Civil Penalty—$1,500.00).

Licensee's Response to Item 3(a)

In the response the licensee stated, in part:

The radiographer who had a high film badge reading was neither operating an exposure device nor wearing his film badge when it was exposed. The film badge in his tackle box which was adjacent to a projector which was left in what became a radiation area. The radiographer's intent was to have the film badge with him the next day to conform to 10 CFR 34.32(a). To him, the most logical place to leave his film badge was in his tackle box that was left at the shop which subsequently became the radiation area. He was not present nor was he performing radiographic operations when the exposure occurred.

Evaluation of Licensee Response to Item 3(a)

During the April 30, 1980, inspection at the home office in Blue Island, Illinois, the NRC inspectors discussed this matter with the RSO and with the President of Superior Industrial X-Ray Company. Also, on May 12, 1980, a meeting was held with the President of Superior Industrial X-Ray Company at the NRC's Region III office in Glen Ellyn, Illinois. During both meetings the occurrence was reviewed with the President and based on his statements it was NRC's understanding that the radiographer made radiographic exposures without wearing a film badge or a thermoluminescent dosimeter. However, the information supplied in the licensee's letter, received July 21, 1980, was not brought to our attention previously.

Conclusion

Since we cannot confirm that an individual acted as a radiographer without wearing a film badge or a thermoluminescent dosimeter, this apparent item of noncompliance will be deleted from our records. Accordingly, the information presented by the licensee provides a basis for mitigation of the proposed penalties for Items 3(a) and 3(b) by $750.

Licensee's Response to Item 3(b)

The licensee responded in part, that the radiographer's error was not in the failure to monitor his dosimeter daily but in his failure to record the exposure.

Evaluation of Licensee's Response to Item 3(b)

This item of noncompliance is based on statements made to two NRC inspectors by a licensee radiographer during a field inspection on April 29, 1980. On that date, the radiographer stated he did not read his dosimeter on April 24, 25 and 28, 1980. Therefore, this item of noncompliance is constituted both by the failure to read a dosimeter and for failure to maintain a record on three specific days on which the individual performed radiographic exposures. The civil penalty is imposed primarily for the failure to read the dosimeter. Reading of the dosimeter is an extremely important act for determining the safe conduct of radiographic operations. It is also important for determining the radiographer's accumulating radiation exposure.

Conclusion

The item as stated is an item of noncompliance. The information presented by the licensee does not provide a basis for modification of this enforcement action.

4. Statement of Noncompliance for Items 4(a) 4(b) and 4(c)

License Condition No. 16 requires that the licensee possess and use licensed material in accordance with statements, representations and procedures contained in certain referenced documents.

a. One of these documents, the license application dated January 22, 1979, as amended August 27, 1979, states in the licensee's Operating and Emergency Procedures that the radiographer will check the perimeter of the restricted area with a gamma radiation survey meter.

Contrary to the above, the radiographer did not check the perimeter of the restricted area using a gamma radiation survey meter, at a field site in Bolingbrook, Illinois, where radiography was performed on April 25 and 29, 1980.

This is an infraction. (Civil Penalty—$1,000.00)

B. One of these documents, the license application dated January 22, 1979, states on page 18 of the Operating and Emergency Procedures Manual, "The outside surface of the vehicle shall be monitored with a survey meter to determine that the amount of radiation is not in excess of 2 milliroentgens per hour. The cab of the vehicle shall be monitored to determine that the radiation level within the cab does not exceed 2 milliroentgens per hour."

Contrary to the above, no radiation survey was made on April 28, 1980, of a vehicle that was used to transport a radiographic exposure device from the licensee's home office in Blue Island, Illinois, to a field site in Bolingbrook, Illinois, and back to the Blue Island, Illinois location.

This is a deficiency. (Civil Penalty—$300.00)

c. One of these documents, the license application dated January 22, 1979, as amended August 27, 1979, includes in the licensee's Management and Administrative Procedures Manual a description of the licensee's internal audit system. Section 8 of this Manual states that the licensee's Internal Audit System shall be performed on the licensee's radiographers at least quarterly on an announced or unannounced basis.

Contrary to the above, a review of the licensee's Internal Audit records on April 30, 1980, showed the required audit was not made at the required interval for seven radiographers.

This is an infraction. (Civil Penalty—$2,000.00)

Licensee's Response to Item 4(a)

In the response the licensee stated, in part:

This infraction concerns the failure to perform a survey of the restricted area. We feel that this is a restatement of Item 2 of the Appendix A in which the restricted area was not posted. This item states that this unposted area was not surveyed. The radiographer however maintained constant control over the entire area in which exposures were made. We feel that there was not a potential for causing an occurrence detrimental to the health and safety of the general public.

Evaluation of Licensee's Response to Item 4(a)

The licensee stated this item of noncompliance appears to be a restatement of Item 2 of the Appendix A in which the restricted area was not posted. However, the two items of noncompliance are not related. Radiation warning signs are used to inform nonradiation workers and members of the public that a hazardous activity is in progress and the areas should be avoided. The requirement for making a survey of the perimeter of the restricted area is to assure that the boundaries are defined in accordance with radiation levels permitted in unrestricted area as defined in 10 CFR 20.105(b). In addition, the licensee's Operating and Emergency Procedures state such surveys will be made and this commitment is incorporated into the license by reference. One of the purposes of defining the boundaries of the unrestricted area is to determine the location or placement of the radiation caution signs and to determine the perimeter of the area which must be accessible only to authorized radiography personnel.

The licensee stated that the radiographer maintained constant control over the entire area. This statement is unsupported as was previously discussed in our evaluation of the licensees' response to Item 2.

Conclusion

The item as stated is an item of noncompliance. The information presented by the licensee does not provide a basis for modification of this enforecement action.

Licensee's Response to Item 4(b)

In the response the licensee stated, in part:

Our general policy is that this survey is to be made at the time the source is placed in the vehicle prior to leaving the home office. Here again is a restatement of the radiographers failure to perform proper record keeping on a daily basis.

Evaluation of Licensee's Response to Item 4(b)

The licensee stated the general policy is that the survey will be made at the time the source is placed in the vehicle and prior to leaving the home office. The response also implies that the survey was made but the radiographer failed to make a proper record of the survey. However, during a field inspection on April 29, 1980, a licensee radiographer stated to two NRC inspectors that no vehicle survey was performed on April 28, 1980, therefore, the basis of this item of noncompliance is failure to perform a required survey and not for failure to make a record of the results of a survey.

Conclusion

The item as stated is an item of noncompliance. The information presented by the licensee does not provide a basis for modification of this enforcement action.

Licensee's Response to Item 4(c)

In the response the licensee stated, in part:

Our Quality Assurance Manager performed an Internal Audit described in Section 6 of that manual. We performed this action as required in our Operating and Emergency Procedures. We appeal this Civil Penalty on the basis that it had been corrected internally prior to this audit and ask for mitigation.

Evaluation of Licensee's Response to Item 4(c)

It appears from the licensee's letter that licensee management personnel completed the audit for all radiographers and radiographer's assistants prior to the NRC Inspection which was conducted on April 25, 29 and 30, 1980. However, during the field inspection on April 29, 1980, Michael Turner, a radiographer, stated to two NRC inspectors he was the field manager and one of his duties was to perform field audits of all radiographers and radiographer's assistants. However, because of the workload he had been unable to perform the required audits. This statement was substantiated by the RSO, Helen T. Paluch, during the inspection at the home office in Blue Island, Illinois, on April 30, 1980. In addition, the licensee's records showed that three radiographers, Michael Turner, Thomas Green and Roger Hickman, had never been audited and four other radiographers had not been audited between November 5, 1979, and April 30, 1980 (the date of this inspection). The RSO, Helen T. Paluch, confirmed that these individuals all worked routinely as radiographers or radiographer's assistants during this period.

Conclusion

The item as stated is an item of noncompliance. The information presented by the licensee does not provide a basis for modification of this enforcement action.

5. Statement of Noncompliance for Item 5

10 CFR 10.13(a) requires that the licensee furnish a report of radiation exposure data to individuals on termination of employment and this report shall contain certain specified information.

Contrary to the above, reports submitted to two former employees did not contain the following statement as required by 10 CFR 19.13(a): "This report is furnished to you under the provisions of the Nuclear Regulatory Commission regulation 10 CFR Part 19. You should preserve this report for further reference."

This is a deficiency. (Civil Penalty—$0.00)

Licensee's Response to Item 5

The licensee responded in part, that the deficiency was immediately rectified by its addition to said report while NRC auditors were present at our home office.

Evaluation of Licensee's Response to Item 5

The NRC inspection substantiated that the corrective action was completed during the inspection as stated by the licensee.

Conclusion

Appropriate corrective action for this item of noncompliance was taken during the inspection. As a result, no Civil Penalty was proposed for this item of noncompliance.

6. Statement of Noncompliance for Item 6

10 CFR 34.27 requires that each licensee shall maintain current utilization logs showing for each sealed source the following information:

(a) A description of the radiographic exposure device in which the sealed source is located; (b) the identity of the radiographer to whom assigned; and, (c) the plant or site where used and the dates of use.

Contrary to the above, no utilization log was maintained for radiographic exposures performed on April 24, 25 and 28, 1960 at the Bolingbrook, Illinois, field site.

This is a deficiency. (Civil Penalty—$0.00)

Licensee's Response to Item 6

In the response the licensee stated:

This deficiency, the failure of the radiographer to complete his daily utilization log has been specifically mentioned in Items 3(b), 4(b) and here again in Item 6. The Civil Penalties proposed for our radiographer's incomplete recordkeeping of a single document amount to eighteen hundred dollars, although no Civil Penalty is proposed

plant operation as well as at different leakage rates for a 30-day period.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR

Virginia. The amendment is effective as of its date of issuance.

The amendment makes changes in the axial power distribution surveillance turn on power and part power axial flux difference limits. The changes ensure that the total peaking factor as a function of core height limits currently specified for the facility will continue to

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-17390]

Denial of Petition for Rulemaking Concerning the Need for Consistent Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Denial of petition.

average net income or loss for the last three years; and (3) require all such submissions, regardless of materiality, to be filed with, and made publicly available by, the Commission. The Commission has determined to deny the petition. This letter shall constitute a brief statement of the grounds for such denial.

The Commission believes that its existing rules and regulations currently require disclosure of all material information relating to the impact of proposed or implemented statutes, rules, regulations or other actions of

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 40589 Filed 12-30-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21846; 70-6528]

Alabama Power Co., et al.; Proposed Issuance of First Mortgage Bonds for

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Licensee's Response to Item 6

In the response the licensee stated:

This deficiency, the failure of the radiographer to complete his daily utilization log has been specifically mentioned in Items 3(b), 4(b) and here again in Item 6. The Civil Penalties proposed for our radiographer's incomplete recordkeeping of a single document amount to eighteen hundred dollars, although no Civil Penalty is proposed in this particular instance. The corrective action stated in Item 3 applies here again.

Evaluation of Licensee's Response to Item 6

In the response the licensee states that the items of noncompliance noted in Items 3(b), 4(b) and 6 all related to a single document which shows incomplete recordkeeping. However, NRC inspection findings show that Item 3(b) was a citation for failure to read and record dosimeter results on April 24, 25, and 28, 1980. The civil penalty however, was primarily for failure to read the dosimeter. Also, NRC inspection findings show that Item 4(b) was a citation for failure to perform a survey of a vehicle on April 28, 1980, and not for failure to record the results of a vehicle survey. Therefore, the significance of these citations was not for failures to maintain records but instead were citations for failure to read a dosimeter and to perform a survey as required. In the case of the item of noncompliance noted in Item 6 this is clearly a failure to maintain a record.

Conclusion

The item as stated is an item of noncompliance. However, no Civil Penalty was proposed for this item of noncompliance. It is administrative in nature and has minor safety significance.

[FR Doc. 80-40642 Filed 12-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-327]

Tennessee Valley Authority; Issuance of Amendment Facility Operating License No. DPR-77

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 1 to Facility Operating License No. DPR-77, issued to Tennessee Valley Authority (licensee) for the Sequoyah Nuclear Plant, Unit 1 (the facility) located in Hamilton County, Tennessee. This amendment covers the authorization given on September 23, 1980, to TVA to proceed with proposed changes to the Technical Specifications which permitted testing of certain valves in a different Mode of plant operation as well as at different leakage rates for a 30-day period.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) Tennessee Valley Authority letter, dated September 24, 1980, (2) Amendment No. 1 to Facility Operating License No. DPR-77 with Appendix A Technical Specification page changes, and (3) the Commission's related Safety Evaluation.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and the Chattanooga Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402. A copy of Amendment No. 1 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 22nd day of December 1980.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 80-40643 Filed 12-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-338]

Virginia Electric and Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 22 to Facility Operating License No. NPF-4 issued to the Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Unit No. 1 (the facility) located in Louisa County, Virginia. The amendment is effective as of its date of issuance.

The amendment makes changes in the axial power distribution surveillance turn on power and part power axial flux difference limits. The changes ensure that the total peaking factor as a function of core height limits currently specified for the facility will continue to be met for the remainder of Cycle 2 and the forthcoming Cycle 3 operations.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated November 10, 1980; (2) Amendment No. 22 to Facility Operating License No. NPF-4; and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Board of Supervisor's Office, Louisa County Courthouse, Louisa, Virginia 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of items (2) and (3) may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 10th day of December 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 80-40637 Filed 12-30-80; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-17390]

Denial of Petition for Rulemaking Concerning the Need for Consistent Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Denial of petition.

SUMMARY: The Commission today issued a release announcing its denial of a rulemaking petition concerning the need for consistent disclosure submitted by Public Citizen.

FOR FURTHER INFORMATION CONTACT: Stephen W. Hamilton (202) 272-2390 Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today issued a release announcing its denial of the rulemaking petition submitted by Public Citizen. The proposed rules generally would have required corporations to disclose in their filings with the Commission any material information submitted to agencies or courts regarding the effect of regulations, and to file any agency or court submissions regarding the cost of regulations with the Commission. The Commission's Secretary today has transmitted a letter to counsel for Public Citizen briefly setting forth the reasons the Commission determined to deny Public Citizen's petition for rulemaking. A copy of this letter is attached.

By the Commission.

George A. Fitzsimmons,

Secretary.

December 18, 1980.

Re: Petition to Require Consistent Disclosure File No. 4-233.

Frederic Townsend, Esq.,
Alan B. Morrison, Esq.,
Counsel for Public Citizen, Suite 700, 2000 P Street, N.W., Washington, D.C.

Dear Messrs. Townsend and Morrison:

This is in response to the rulemaking petition (the "petition") filed by Public Citizen on May 5, 1980, as supplemented on May 27, 1980, concerning the need to require consistent disclosure.

Briefly summarized, the petition requests that the Commission adopt three rules which would (1) require every reporting corporation to disclose in its periodic reports any material information contained in submissions by the corporation or its representative to other government entities regarding the financial impact of (2) proposed or implemented statutes, rules, regulations or proceedings; deem the above submissions to be material if the stated cost of the proposed rule or regulation, if implemented, exceeds two percent of the corporation's consolidated average net income or loss for the last three years; and (3) require all such submissions, regardless of materiality, to be filed with, and made publicly available by, the Commission. The Commission has determined to deny the petition. This letter shall constitute a brief statement of the grounds for such denial.

The Commission believes that its existing rules and regulations currently require disclosure of all material information relating to the impact of proposed or implemented statutes, rules, regulations or other actions of government entities. Whether the disclosure is required depends upon a balancing of the likelihood of a proposed rule's enactment and the magnitude of the rule's impact on the corporation if enacted in its proposed form. *See SEC* v. *Texos Gulf Sulphur Co.*, 401 F. 2d 833, 849 (2d Cir. 1968), *cert. denied*, 394 U.S. 976 (1969); *SEC* v. *Mize*, 615 F. 2d 1046 (5th Cir. 1980), *cert. denied*, 49 U.S.L.W. 3267 (Oct. 14, 1980). Inconsistent disclosures may give rise to concerns about the adequacy of the information contained in Commission filings. If it appears that material misstatements or omissions have been made in filings with the Commission or have been otherwise publicly disseminated, the Commission will pursue whatever inquiries or remedial measures are in its opinion appropriate under the circumstances. In view of the scope of the disclosure requirements of the federal securities laws, the Commission does not believe that it is necessary to adopt the specific disclosure provision or materiality standard proposed by the petition's first and second rules. Largely for these reasons, while *per se* tests may be necessary for the effective implementation of certain disclosure provisions, the Commission does not believe that an objective test (such as that proposed in rule two) is desirable in assessing the materiality of proposed regulatory actions.

With respect to the third rule proposed by the petition, the Commission does not believe that is is consistent with its statutory responsibilities to require the filing of, or to act as central depository for, all agency cost submissions. In the Commission's view, information in such submissions which is material to an informed investment decision and the protection of investors will be made publicly available through disclosures contained in filings with the Commission. It does not appear appropriate, however, to use the securities disclosure process to obtain other information, which may be primarily of interest to the general public or to particular non-investor constituencies.

Although the Commission does not believe that the rules proposed by the petition are necessary or appropriate for the effective administration of the federal securities laws, the Commission does recognize, in its capacity as one of several regulatory agencies, that to the extent corporations actually do engage in a widespread practice of making inconsistent disclosure to various government entities, this practice could well be a matter of general concern to all regulatory bodies. Therefore, the Commission is furnishing a copy of your petition and this response to the U.S. Regulatory Council, of which the Commission is a member, for its information.

The Commission thanks you for your interest in this matter.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 40589 Filed 12-30-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21846; 70-6528]

Alabama Power Co., et al.; Proposed Issuance of First Mortgage Bonds for Sinking Fund Purposes

December 19, 1980.

In the Matter of Alabama Power Company, P.O. Box 2641, Birmingham, Alabama 35291; Georgia Power Company, P.O. Box 4545, Atlanta, Georgia 30302; Gulf Power Company, P.O. Box 1151, Pensacola, Florida 52520; Mississippi Power Company, P.O. Box 4079, Gulfport, Mississippi 39501.

Notice is hereby given that Alabama Power Company ("Alabama"), Georgia Power Company ("Georgia"), Gulf Power Company ("Gulf") and Mississippi Power Company (Mississippi) all of which are public utility subsidiaries of the Southern Company, a registered holding company, have filed a declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6 and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transactions.

Alabama, Georgia, Gulf and Mississippi propose to obtain the authentication and delivery of certain series of their respective First Mortgage Bonds and to surrender such bonds to the trustee under their respective indentures to satisfy sinking fund (improvement fund in the case of Alabama) requirements provided for in their Indentures to be satisfied on or prior to June 1, 1981.

The indentures provide for annual sinking fund (improvement fund) payments on or before June 1 of each year in an amount equal to 1% of the principal amount of bonds authenticated under the indenture prior to the preceding January 1 (less bonds retired directly or indirectly as a result of the release of property and less bonds authenticated to refund other bonds). Payment may be made in cash or in principal amount of bonds authenticated under the indenture, whether or not such bonds have previously been disposed of by the respective company. Any cash so deposited is to be used by the trustee under the respective indenture for the redemption or other retirement of bonds of such series as may be designated by the respective company or may be

withdrawn by that company against the deposit of bonds.

The amounts and the series of bonds proposed to be issued are as follows:

Name of company	Amount	Series (pct)

the Georgia Public Service Commission and the Florida Public Service Commission have jurisdiction over the issuance of the bonds by Alabama, Georgia and Gulf respectively. No other state or federal commission other than this Commission has jurisdiction over 1980, and December 15, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the

were thereafter distributed pro rata to Applicant's stockholders. Applicant states that it is liable for approximately $50,063.43 in legal, accounting and printing costs incurred in connection with Applicant's transfer of assets, and

request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As

Electric Cooperative Corporation, the City Water and Light Plant of the City of Jonesboro, Arkansas, the City of Conway, Arkansas, the City of West Memphis, Arkansas and the City of Osceola, Arkansas.

withdrawn by that company against the deposit of bonds.

The amounts and the series of bonds proposed to be issued are as follows:

Name of company	Amount	Series (pct)
Alabama	$22,014,000	3⅛ Due 1985.
Georgia	25,226,000	3⅛ Due 1984.
Gulf	3,609,000	3¼ Due 1984.
Mississippi	2,874,000	3¼ Due 1981.

The bonds will be issued on the basis of unfunded net property additions. Under the indentures the bonds may be issued in principal amounts not exceeding 60% of the amount of unfunded net property additions. The approximate amounts of such unfunded net property additions available for the issuance of the Bonds are as follows:

Name of company	Amount	As of
Alabama	$773,000,000	Sept. 30, 1980.
Georgia	379,000,000	Sept. 30, 1980.
Gulf	45,000,000	Sept. 30, 1980.
Mississippi	39,000,000	Sept. 30, 1980.

The approximate amounts of the unfunded net property additions necessary to issue the Bonds are as follows:

Name of company	Amount
Alabama	$36,690,000
Georgia	42,043,000
Gulf	8,015,000
Mississippi	4,790,000

The surrender of the bonds in satisfaction of the respective sinking fund (improvement fund) requirements will make available for general corporate purposes cash which would otherwise have to be used to satisfy such requirements or to purchase bonds to be used for such purposes, while at the same time reducing the principal amount of bonds which they could otherwise issue under the indenture at a later time by an equal principal amount. The bonds will not be delivered by the companies in such a manner as to make them obligation for the payment of money. Therefore, they will not be included on the books or in the published statements as liabilities of the respective companies.

The fees, commissions and expenses incurred or to be incurred directly or indirectly by Alabama, Georgia, Gulf, and Mississippi in connection with the issuance of the bonds are estimated at $6,000 including $1,600 for legal fees of the companies and $4,000 for charges of the trustees and their counsel. The Alabama Public Service Commission, the Georgia Public Service Commission and the Florida Public Service Commission have jurisdiction over the issuance of the bonds by Alabama, Georgia and Gulf respectively. No other state or federal commission other than this Commission has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 12, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated address and proof of service (by affidavit or, in case of any attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40596 Filed 12-30-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11499; 811-2776]

American Medical Association Tax-Exempt Income Fund, Inc.; Filing of Application

December 19, 1980.

Notice is hereby given that American Medical Association Tax-Exempt Income Fund, Inc. ("Applicant"), 535 North Dearborn Street, Chicago, Illinois 60610, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on October 22, 1980, and amendments thereto on October 28, 1980, and December 15, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Maryland corporation, registered under the Act on September 30, 1977. Applicant's Investment Adviser is Continental Illinois National Bank and Trust Company of Chicago; its Administrator is the American Medical Association. On September 30, 1977, Applicant filed a registration statement on Form S–5 under the Securities Act of 1933 covering 5,000,000 shares of its common stock in connection with a proposed public offering of its shares. On March 3, 1978, upon the effectiveness of this 1933 Act registration statement Applicant commenced a public offering of its common stock. As of September 17, 1980, 410,276.77 shares of Applicant's common stock were outstanding with a net asset value of $7.30 per share (approximately $2,994,066 aggregate).

The application states that on July 18, 1980, Applicant's board of directors authorized and approved an Agreement and Plan of Reorganization ("Agreement") providing for the transfer of substantially all of Applicant's net assets to Nuveen Municipal Bond Fund, Inc. ("Nuveen"), an open-end, diversified, management investment company registered under the Act, in exchange for shares of Nuveen common stock. The Agreement called for distribution of Nuveen's shares to Applicant's stockholders and the subsequent dissolution of Applicant. Applicant sates that its stockholders approved the Agreement at a special meeting held on September 16, 1980, with 77.66% of the outstanding shares voting in favor.

Applicant further states that on September 18, 1980, its net assets (consisting of cash and securities valued at $2,926,921 or $7.28 per share),[1] were transferred to Nuveen, after payment of or provision for all known liabilities of Applicant, including liquidation expenses, in exchange for 395,657 shares of Nuveen common stock having a net asset value of $7.55 per share. According to the application, the Nuveen shares

[1] The net asset value per share figure of $7.28 as of September 18, 1980, calculated by Nuveen differs from the valuation figure of $7.30 per share quoted by Applicant a day earlier. Applicant attributes the difference to the fact that Nuveen utilized a different evaluation method than Applicant in arriving at the net asset value per share amount.

were thereafter distributed pro rata to Applicant's stockholders. Applicant state's that it is liable for approximately $50,063.43 in legal, accounting and printing costs incurred in connection with Applicant's transfer of assets, and that these costs will be borne in full by Applicant's Investment Adviser and Administrator.

The application states that Applicant retained assets in the amount of $1,150.46 as of October 28, 1980, to pay certain accrued expenses of the Applicant unrelated to the Applicant's transfer of assets. The retained assets were not invested in any securities. Applicant further states that approximately $500 of these retained funds will not be required to meet actual billed expenses and will be paid to the Investment Adviser and Administrator because the Investment Adviser and Administrator reimbursed Applicant, pursuant to an expense limitation arrangement, an amount greater than Applicant was entitled to receive.

The application states that Applicant is not a party to any pending litigation or administrative proceeding and, further, that Applicant is not currently engaged in any business activities other than those necessary for the winding up of its affairs. Applicant is presently in good standing under the corporate laws of Maryland; however, Applicant states that it will file articles of dissolution with the state terminating its legal existence upon receipt of the requested order. Finally, Applicant states that it has not within the last eighteen months transferred any of its assets to a separate trust the beneficiaries of which were or are securityholders of Applicant.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 12, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40590 Filed 12-30-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21849; 70–6531]

Arkansas Power & Light Co.; Proposed Pollution Control Financing

December 22, 1980.

Notice is hereby given that Arkansas Power & Light Company ("AP&L"), First National Building, Little Rock, Arkansas 72203, a public utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a), 10 and 12(d) of the Act and Rule 44(b)(3) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

AP&L is in the process of constructing two 750 MW nominally rated coal-fired generating units known as the Independence Steam Electric Generating Station ("Independence Plant") to be located near Newark, in Independence County, Arkansas ("County"). In addition, in order to comply with prescribed federal, state or local standards with respect to air or water quality or disposal of sewage or solid waste, it has been and will be necessary to construct certain facilities for pollution control purposes at the Independence Plant. AP&L has sold undivided interests aggregating 43.5% in the Independence Plant to Arkansas Electric Cooperative Corporation, the City Water and Light Plant of the City of Jonesboro, Arkansas, the City of Conway, Arkansas, the City of West Memphis, Arkansas and the City of Osceola, Arkansas.

AP&L proposes to dispose of, and to contract to acquire, (i) its anticipated undivided interest ("Pollution Control Facilities") in certain of the pollution control facilities at the Independence Plant and (ii) its anticipated undivided interest ("Industrial Facilities") in certain machinery, equipment and other facilities at the Independence Plant.

In order to effect such transactions, AP&L proposes to enter into two separate installment sale agreements ("Agreements") with the County, which will provide for the acquisition, construction and installation of the Pollution Control Facilities and the Industrial Facilities on behalf of the County. The Agreement relating to the Pollution Control Facilities will contemplate the issuance by the County under a trust indenture between the County and a trustee of not to exceed $50,000,000 aggregate principal amount of its Pollution Control Revenue Bonds, Series 1981 (Arkansas Power & Light Company Project) ("Pollution Control Bonds"), the net proceeds of which would be used to defray the cost of construction of the Pollution Control Facilities. The Agreement relating to the Industrial Facilities will contemplate the issuance by the County under a trust indenture between the County and a trustee of $1,000,000 aggregate principal amount of its Industrial Development Revenue Bonds, Series 1981 (Arkansas Power & Light Company Project) ("Industrial Bonds"), the net proceeds of which would be used to defray the cost of construction of the Industrial Facilities. The operative terms and provisions of the two Agreements and the Pollution Control Bonds and the Industrial Bonds (collectively "Bonds") and the respective indentures ("Indentures") under which they are to be issued will be substantially indentical.

The Agreements will provide for the sale of the Facilities by the County to AP&L, subject to a lien and security interest retained by the County and the payment by AP&L of the purchase price of the Facilities, together with interest thereon, in semi-annual installments over a term of years. In the Agreements, AP&L will assent to the assignment and pledge to the trustee under the Indentures of the rights of the County in the Facilities and of the County's interest in, and of the moneys receivable by the County under, the Agreements,

except for certain rights to indemnification and reimbursement of expenses.

The Agreements will provide that the purchase price of the Facilities payable by AP&L will be such amount as shall mature at various times prior to the maturity of the Term Bonds. The effect of the mandatory cash sinking fund of the Term Bonds, if any, together with the serial maturities of the Serial Bonds, if

Commission, and upon consummation of the transactions proposed in File No. 70–6376, will be subject to the jurisdiction of the Public Service Commission of Missouri. It is stated that no other state or federal regulatory authority, other

dated as October 1, 1980 (the "1980 Indenture"), which was not qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify

such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and

an investment company it shall so declare by order and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any

except for certain rights to indemnification and reimbursement of expenses.

The Agreements will provide that the purchase price of the Facilities payable by AP&L will be such amount as shall be sufficient, together with other moneys held by the trustees under the Indentures and available therefor, to pay the principal of the Bonds as the same become due and payable. AP&L will also agree to pay interest on the unpaid balance of the purchase price of the Facilities equal to the premium, if any, and interest on the Bonds. AP&L will also be obligated to reimburse the County for certain of its expenses incurred in connection with the issuance of the Bonds, including: (i) The fees and charges of the trustee and any paying agent or agents under the Indentures, (ii) all expenses incurred by the County in connection with its rights and obligations under the Agreements, and (iii) all expenses necessarily incurred by the County or the trustee under the Indentures in connection with the transfer or exchange of Bonds.

The Agreements will provide that AP&L at any time prepay all or any portion of the unpaid balance of the purchase price of the Facilities, together with interest thereon, in whole or in part, such payment to be sufficient, together with other moneys held by the trustees under the Indentures and available therefor, to redeem Bonds in the manner and to the extent provided in the Indentures.

The Agreements will also provide that, upon occurrence of certain events relating to the operation of the Independence Plant or the Facilities, AP&L may at any time prepay the entire unpaid balance of the purchase price of the Facilities together with interest thereon. It will also provide that in the case of certain events relating to the taxability of the interest on the Bonds, AP&L shall be obligated to prepay the entire unpaid balance of the purchase price of the Facilities, together with accrued interest. The payments by AP&L in such circumstances shall be sufficient (together with other moneys held by the trustee under the Indentures and available therefor) to pay the principal of all Bonds together with interest accrued or to accrue to the redemption date.

It is proposed that the Bonds will be issued as either serial bonds ("Serial Bonds") or term bonds ("Term Bonds"), or a combination thereof. The Term Bonds, if any, will mature not later than 30 years from the first day of the month in which they are initially issued and will be subject to a mandatory cash sinking fund. Serial Bonds, if any, will mature at various times prior to the maturity of the Term Bonds. The effect of the mandatory cash sinking fund of the Term Bonds, if any, together with the serial maturities of the Serial Bonds, if any, will be calculated to retire no less than 25% of the aggregate principal amount of the Bonds prior to ultimate date of maturity of the Bonds. The Indentures will provide for the application of such of the proceeds of the Bonds which, after completion of the Facilities, may remain unused for the redemption or purchase of the Bonds, at the direction of AP&L.

In order to provide security for the performance of AP&L's obligations under the Agreements. AP&L will grant to the County a lien on and security interest in ("County Lien") the Facilities. The County will assign the County Lien to the trustees pursuant to the Indentures.

The Agreements will provide that prior to the sales of the Facilities by the County to AP&L, AP&L will convey to the County such portions of the Facilities as have already been constructed or acquired by AP&L, subject to the lien of AP&L's Mortgage and Deed of Trust, dated as of October 1, 1944, made by AP&L to Morgan Guaranty Trust Company of New York and John W. Flaherty, as Trustees, as supplemented and amended.

It is contemplated that the Bonds will be sold by the County pursuant to arrangements with a group of underwriters represented by Merrill Lynch, Pierce, Fenner & Smith Incorporated, Kidder, Peabody & Co. Incorporated and Stephens Inc. In accordance with the laws of the State of Arkansas, the interest rate to be borne by the Bonds will be fixed by the County. AP&L will not be party to the underwriting arrangements; however, the Agreements provide that the terms of the Bonds and their sale by the County, shall be satisfactory to AP&L. AP&L understands that interest payable on the Bonds will be generally exempt from federal income taxes. AP&L has been advised that the annual interest rates on obligations, interest on which is tax exempt, can be expected at the time of issuance of the Bonds to be 4% to 5% lower than the rates of obligations of like tenor and comparable quality, interest on which is fully subject to federal income tax.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transactions will be filed by amendment. The proposed transactions are subject to the jurisdiction of the Arkansas Public Service Commission and the Tennessee Public Service Commission, and upon consummation of the transactions proposed in File No. 70-6376, will be subject to the jurisdiction of the Public Service Commission of Missouri. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than January 15, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40588 Filed 12-30-80; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-10813]

Esterline Corp.; Application and Opportunity for Hearing

December 19, 1980.

Notice is hereby given that Esterline Corporation (the "Company") has filed an application under Clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeship of Manufacturers Hanover Trust Company ("Manufacturers") under an indenture dated as of December 20, 1974 (the "1974 Indenture"), heretofore qualified under the Act, and under a new indenture

dated as October 1, 1980 (the "1980 Indenture"), which was not qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers from acting as Trustee under such indentures.

The Company alleges that:

(1) As of July 31, 1980, there were issued and outstanding $2,267,950 principal amount of 12½% Subordinated Debentures due April 1, 1995 which were issued by the Company under the 1974 Indenture.

(2) Its wholly-owned subsidiary, Esterline International Finance N.V. ("International"), has issued under the 1980 Indenture among the Company, International and Manufacturers $20,000,000 principal amount of International's 8¼% Convertible Subordinated Guaranteed Debentures due 1995 (the "1980 Debentures"), which were guaranteed on a subordinated basis by the Company. The 1980 Debentures were not registered under the Securities Act of 1933 and the 1980 Indenture was not qualifed under the Act. The underwriters who purchased the 1980 Debentures have agreed not to offer any of the 1980 Debentures in the United States, its territories and possessions, or to nationals or residents thereof.

(3) The 1974 Indenture and the 1980 Indenture are wholly unsecured. All debentures issued under the 1974 Indenture rank equally with the guarantee to the Company of the 1980 Debentures. The Company is a party to the 1980 Indenture solely as guarantor of the 1980 Debentures. Such differences as exist between the 1974 Indenture and the 1980 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers from acting as trustees under either of said indentures.

The Company has waived notice of hearing and has waived a hearing.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is a public document on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that any interested person may, not later than January 12, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley F. Hollis,

Assistant Secretary.

[FR Doc. 80-40633 filed 12-30-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11501; 811-2463]

First Ecumenical Fund, Inc.; Proposal To Terminate Registration

December 19, 1980.

Notice is hereby given that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that The First Ecumenical Fund, Inc. ("Fund"), 551 Fifth Avenue, New York, New York 10017, registered under the Act as an open-end, diversified management investment company, has ceased to be an investment company as defined in the Act.

Information in the files of the Commission indicates that the Fund was organized on February 7, 1974, under the laws of the State of New York, and filed a Notification of Registration as an open-end, diversified, management investment company with the Commission on March 8, 1974.

In addition, the Fund filed a registration statement (File No. 2-50378) pursuant to the Securities Act of 1933 ("1933 Act") in connection with a proposed public offering of shares of its capital stock. The Fund requested withdrawal of this registration statement, pursuant to Rule 477 under the 1933 Act, and the Commission ordered it withdrawn on June 30, 1976. Finally, information in the files of the Commission indicates that after the withdrawal of its registration statement the Fund was abandoned, and that it is not profitably engaged in any business. Thus it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 12, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to,the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of this matter will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40594 Filed 12-30-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11498; 812-4765]

Mosher, Inc. and Maryland Casualty Co.; Filing of Application for an Order of the Commission Pursuant to Exempting a Proposed Transaction

December 19, 1980.

In the Matter of Mosher, Inc., 2777 Allen Parkway, Houston, Texas 77019, and Maryland Casualty Company, 2727 Allen Parkway, Houston, Texas 77019.

Notice is hereby given that Maryland Casualty Company ("Maryland Casualty"), a Maryland corporation, and a wholly-owned subsidiary of American General Insurance Company, and Mosher, Inc. (the "Fund"), registered under the Investment Company Act of 1940 (the "Act") as a closed-end, diversified management investment

company (collectively the "Applicants"), filed an application on November 10, 1980, and an amendment thereto on December 5, 1980, for an order of the Commission pursuant to Section 17(b) of the Act exempting from the provisions

amended (the "Code"), and as such cannot utilize the benefits afforded regulated investment companies by Subchapter M of the Code. Applicants state that the Fund's status as a personal holding company requires that

Fund's shareholders who are required to approve the proposed sale and recapitalization of the Fund. The plan of recapitalization of the Fund provides for an increase in the Fund's authorized common stock from 101,990 shares to

proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company

Applicants contend that the proposed sale transaction will benefit the shareholders of the Fund by eliminating the Fund's status as a personal holding company under the Code and will benefit Maryland Casualty by providing

connection with the lawsuit as discussed previously, and provides for registration rights of Maryland Casualty with respect to the shares of common stock to be purchased by it as described above, the Agreement might be deemed

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company (collectively the "Applicants"), filed an application on November 10, 1980, and an amendment thereto on December 5, 1980, for an order of the Commission pursuant to Section 17(b) of the Act exempting from the provisions of Section 17(a) of the Act the proposed sale of shares of the common stock of the Fund to Maryland Casualty in exchange for cash or municipal securities having a fair market value equal to the net asset value of the shares of common stock and pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder permitting the participation of the Fund in the proposed sale transaction under the provisions of the stock Purchase Agreement. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that in 1972 the Fund entered into an agreement with Trinity Industries, Inc. ("Trinity") whereby the Fund would sell substantially all its assets to Trinity for cash and that this transaction was consummated in January, 1973. Applicants further state that the Fund's shareholders approved the sale and adopted a plan of liquidation, but that the Fund later terminated the plan of liquidation and entered into a merger agreement with American General Convertible Securities, Inc. ("AG Convertible"), which is registered under the Act as a closed-end, diversified management investment company. According to the application, the proposed merger of the Fund into AG Convertible was not consummated because on the day before the scheduled closing date of the merger the Fund was served a subpoena from a Federal Grand Jury investing price fixing in the steel fabrication business, the Fund's prior business. Pending completion of this investigation the Fund's possible criminal or civil liability could not be computed. The Fund then registered under the Act on March 4, 1974, as a closed-end, diversified management investment company. The Applicants further state that American General Capital Management, Inc. ("Adviser") acts as investment adviser to the Fund. No officer or director of the Fund or any affiliated person thereof serves as an officer or director of Maryland Casualty or the Adviser or is affiliated person of either of these entities.

The application states that since the sale of its steel fabrication business, the Fund has been deemed a personal holding company under Section 542 of the Internal Revenue Code of 1954, as amended (the "Code"), and as such cannot utilize the benefits afforded regulated investment companies by Subchapter M of the Code. Applicants state that the Fund's status as a personal holding company requires that its shareholders pay federal income tax on all dividends they receive. Applicants further state that since substantially all of the Fund's assets are invested in tax-exempt, municipal debt securities, the dividends paid to its shareholders would be exempt from federal income taxation if the Fund was not considered a personal holding company under the Code.

Applicants state that the management of the Fund has been interested in terminating the Fund's status as a personal holding company, which it believes to be in the best interests of the shareholders, and has explored a number of possible alternatives. Applicants further state that on October 31, 1980, they entered into a Stock Purchase Agreement (the "Agreement") which provides for the sale by the Fund of a number of shares of its common stock equal to 25 percent of the number of the Fund's shares of common stock issued and outstanding immediately prior to the sale for cash or, at the option of Maryland Casualty, municipal securities or a combination of cash or municipal securities. According to the application, the shares of common stock of the Fund will be valued at their net asset value as of the close of business on the last business date preceding the closing date. Applicants further state that any municipal securities exchanged by Maryland Casualty as part of the purchase price of the Fund's common stock will be valued at their fair market value on such date. According to the application any municipal securities contributed by Maryland Casualty will be compatible with the investment objectives of the Fund and compatible with those securities currently in the Fund's portfolio. Applicants represent that as a condition to the contribution of any municipal securities by Maryland Casualty, the Adviser will be required to represent to the Fund that any such municipal securities would have been recommended by it for investment by the Fund at that time, and that the Adviser has no present intention of recommending the sale of any such securities in the immediate future.

According to the application, each of the Applicants will pay any expenses incurred by them as a result of the stock purchase transaction except that the Adviser of the Fund will pay the expenses resulting from the preparation and mailing of proxy materials to the Fund's shareholders who are required to approve the proposed sale and recapitalization of the Fund. The plan of recapitalization of the Fund provides for an increase in the Fund's authorized common stock from 101,990 shares to 5,000,000 shares and for a 15-for-1 stock split. In addition, the proposed plan of recapitalization provides for a change in the par value of the common stock of the Fund from $20 per share to $1 per share. Applicants state that after the sale of the Fund's common stock to Maryland Casualty it is contemplated that 381,000 shares of common stock will be held by Maryland Casualty which will be approximately 20% of the then outstanding shares. Under the terms of the Agreement, the Fund has agreed to indemnify Maryland Casualty for any reduction in the net asset value of the shares of common stock being purchased by it resulting from any amounts paid by the Fund in respect of any judgment against it, or settlement by it of claims against the Fund resulting from a suit filed against the Fund in 1967 relating to its previous steel fabrication business. The Agreement further provides that the Fund cannot convert to open-end status without the consent of Maryland Casualty. Applicants state that they believe this provision is desirable in helping to prevent the Fund from returning to the status of a personal holding company within the meaning of the Code. Applicants further state that under applicable securities laws the shares of common stock to be purchased by Maryland Casualty will not be transferable except in certain limited circumstances. The Agreement also provides that any time commencing six months after the sale of the common stock to Maryland Casualty is effected, while Maryland Casualty owns at least 10 percent of the Fund's outstanding common stock, that the Fund shall register shares of its common stock for sale under the Securities Act of 1933, the Fund will, at its expense, also include any shares of common stock that Maryland Casualty desires to sell in such registration.

Section 17(a) of the Act, in pertinent part, provides that it shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, knowingly to sell to or to purchase from such registered company any security or other property subject to certain exceptions not relevant here. Section 17(b) of the Act provides that the Commission, upon application, shall exempt a proposed transaction from the provisions of Section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company involved and with the general purposes of the Act. Under Section 2(a)(3) of the Act an investment adviser to an investment company is an affiliated person of such investment company, and anyone owning more than 5% of any person's outstanding voting securities is an affiliated person of such person. Accordingly, since American General Insurance Company owns 100% of the common stock of both the Adviser and Maryland Casualty, Maryland Casualty is an affiliated person of an affiliated person of the Fund, and the proposed sale of the common stock of the Fund to Maryland Casualty falls within the provisions of Section 17(a) of the Act.

Applicants assert that the terms of the proposed sale transaction are fair and reasonable and do not involve overreaching. Applicants state that under the terms of the Agreement Maryland Casualty has the option of purchasing the shares of common stock of the Fund either for cash equal to the net asset value of such shares on the date immediately preceding the date of closing or by contributing securities compatible with the Fund's investment objectives and securities in the Fund's portfolio having an aggregate fair market value equal to the net asset value of the shares of common stock being purchased or a combination of cash and such securities.

Applicants further state that the valuation of any securities contributed by Maryland Casualty will be made on the same basis as the Fund currently follows in the valuation of securities held in its portfolio. As stated previously, Applicants represent that as a condition to the contribution of any municipal securities by Maryland Casualty, the Adviser will be required to represent to the Fund that any such municipal securities would have been recommeded by it for investment by the Fund at that time and that the Adviser has no present intention of recommending the sale of such securities in the immediate future. In addition, each of the Applicants will pay its respective expenses of the transaction except, as stated previously, the Adviser will pay those expenses resulting from the preparation and mailing of proxy materials to the Fund's shareholders who are required to approve the proposed sale and recapitalization of the fund. Finally, Applicants contend that the proposed sale transaction will benefit the shareholders of the Fund by eliminating the Fund's status as a personal holding company under the Code and will benefit Maryland Casualty by providing it with an opportunity to invest a portion of its assets in a larger pool of assets and thereby achieve greater diversity in its investments.

Thus, Applicants contend that the terms of the proposed sale are fair and reasonable and do not involve overreaching on the part of any person concerned, consistent with the Fund's investment policy and consistent with the general purposes of the Act, and therefore request that the Commission enter an order exempting the proposed sale transaction from the provisions of Section 17(a) of the Act.

Rule 17d–1, adopted by the Commission pursuant to Section 17(d) of the Act, provides, in part, that no affiliated person of any registered investment company and no affiliated person of such a person, acting as principal, shall participate in, or effect any transaction in connection with any joint enterprise or other joint arrangement in which such registered company is a participant unless an application regarding such joint enterprise or arrangement had been filed with the Commission and has been granted by an order. A joint enterprise or other joint arrangement as used in this Rule is any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company and any affiliated person of such registered investment company, or affiliated person of such a person, have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking. In passing upon such application, the Commission will consider whether the participation of such registered investment company in such joint enterprise or joint arrangement on the basis proposed is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. As noted above, Maryland Casualty is an affiliated person of an affiliated person of the Fund within the meaning of Section 2(a)(3) of the Act. Because the Agreement requires the consent of Maryland Casualty to allow the Fund to convert to open-end investment company status, provides for the indemnification by the Fund of Maryland casualty for liabilities in connection with the lawsuit as discussed previously, and provides for registration rights of Maryland Casualty with respect to the shares of common stock to be purchased by it as described above, the Agreement might be deemed to constitute a joint enterprise or arrangement prohibited by Section 17(d) of the Act and Rule 17d–1 thereunder without Commission approval.

As stated above, the Agreement provides that the fund may not convert to open-end investment company status without the consent of Maryland Casualty. Applicants state the Maryland Casualty requested this condition because, given the distribution of the Fund's shareholders, a conversion by the Fund to open-end investment company status followed by the redemption of shares by a relatively small number of shareholders could result in the five largest individual shareholders of the Fund (utilizing the attribution rules of the Code) owning more than 50% of the outstanding common stock of the Fund, thereby causing it to become a personal holding company within the meaning of the Code to the disadvantage of the remaining shareholders and, thus, negating the purpose of the common stock sale. Applicants also state that the management of the Fund believes that the provision in the Agreement providing for the indemnification of Maryland Casualty with respect to the 1967 suit is appropriate. Applicants state that the Fund believes it will be able to settle the case within the policy limits of the applicable insurance policy then in effect. Finally, with respect to the registration rights afforded Maryland Casualty under the Agreement, the application states that the Fund has no plans to register any of its shares for sale under the Securities Act of 1933, but, if it did so, the management of the Fund believes that the additional expense of including the Fund shares of Maryland Casualty would be negligible.

Thus Applicants represent that the terms of the proposed sale transaction are reasonable and fair to all parties, do not involve overreaching and are consistent with the investment objectives of the Fund and with the policies of the Act. As noted above, Applicants contend that the proposed sale will benefit the shareholders of the Fund by eliminating the Fund's status as a personal holding company under the Code, and will benefit Maryland Casualty by providing it with an opportunity to invest a portion of its assets in a larger pool of assets and thereby achieve greater diversity in its investments.

Accordingly, the Applicants request an order of the Commission, pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, permitting the participation of the Fund in the proposed sale transaction under the provisions of the Agreement.

Notice is hereby given that Narragansett Capital Corporation ("Narragansett"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified, management investment company and licensed as a small business investment

Applicants state that Narragansett is a Rhode Island corporation with an authorized capital stock of 2,000,000 shares of common stock, $1.00 par value, of which 1,129,867 shares were issued and outstanding as of December 31, 1979. Applicants further state that

the Lydon operations. Accordingly, for those and other reasons outlined below, Applicants state that Photo Systems has agreed to sell the Lyndon Division to Lyndon, Inc., a company in which Thornburg will have a substantial

period of 10 years after payment in full of the Note to sell to Lyndon, Inc., all of Narragansett's equity interest in Lyndon, Inc., at a price based on a formula similar to the formula used to determine the purchase price of Lyndon

acquisition agreements; (2) that the parties felt it was important to fix a date after which Mr. Thornburg could be assured that his efforts would be for the benefit of the new concern; and (3) that April 30 is a date which has

Accordingly, the Applicants request an order of the Commission, pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, permitting the participation of the Fund in the proposed sale transaction under the provisions of the Agreement.

Notice is further given that any interested person may, not later than January 12, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

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[Release No. 11505; 812–4713]

Narragansett Capital Corp., et al.; Filing of Application for an Order Exempting a Proposed Transaction

December 19, 1980.

In the matter of Narragansett Capital Corporation, 40 Westminster Street, Providence, Rhode Island 02903; Photo Systems, Inc., 7200 W. Huron River Drive, Dexter, Michigan 48103; Lyndon Color Labs, Inc., 7200 W. Huron River Drive, Dexter, Michigan 48103; Robert E. Thornburg, Jr., 1004 Greenhills, Ann Arbor, Michigan 48105; William P. Considine, Whispering Pines, Narragansett, Rhode Island 02882.

Notice is hereby given that Narragansett Capital Corporation ("Narragansett"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified, management investment company and licensed as a small business investment company under the Small Business Investment Act of 1958, Photo Systems, Inc. ("Photo Systems"), a company controlled by Narragansett, Lyndon Color Labs, Inc. ("Lyndon, Inc."), a newly organized company currently controlled by an affiliate of an affiliate of Narragansett, Robert E. Thornburg, Jr. ("Thornburg"), an officer and director of Photo Systems, and William P. Considine ("Considine"), Chairman and President of Photo Systems, (hereinafter Narragansett, Photo Systems, Lyndon Inc., Thornburg and Considine are collectively referred to as "Applicants") filed an application on August 11, 1980, and amendments thereto on November 14, 1980, and December 5, 1980, for an order of the Commission pursuant to Section 17(b) of the Act exempting the proposed sale of a division of Photo Systems to Lyndon, Inc., from the provisions of Section 17(a) of the Act and pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, permitting certain proposed transactions which are to be made in connection with the restructuring and refinancing of Narragansett's investment in Photo Systems. All intested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants propose to sell Lyndon Color Labs Division ("Lyndon Division"), a division of Photo Systems, to Lyndon, Inc., a company created for the purpose of purchasing Lyndon Division. As stated in the application, Photo Systems is a Michigan corporation with an authorized capital stock of 600,000 shares, $.10 par value, of which 460,000 shares are issued and outstanding, and none of which are publicly traded. Applicants state that Narragansett holds 230,000 shares, or 50 percent of the outstanding capital stock and, therefore, may be presumed to control Photo Systems. The remaining 230,000 shares outstanding are divided among six shareholders, all of whom are or were employed by Photo Systems or are married to such a person. According to the application, Photo Systems currently has four directors, including two (Considine and Harvey J. Sarles) who are also directors of Narragansett, and one (Thornburg) who controls Lyndon, Inc.

Applicants state that Narragansett is a Rhode Island corporation with an authorized capital stock of 2,000,000 shares of common stock, $1.00 par value, of which 1,129,867 shares were issued and outstanding as of December 31, 1979. Applicants further state that Narragansett's shares are publicly traded in the over-the-counter market and held by approximately 1,500 shareholders. In addition to the equity investment in Photo Systems, Narragansett also holds a promissory note of Photo Systems with an outstanding principal amount of $1,705,000 as of June 30, 1980, which is subordinated to Photo Systems's indebtedness to Industrial National Bank of Rhode Island ("IN Bank") pursuant to a term loan having an outstanding principal balance of $170,000 as of April 30, 1980.

As stated in the application, Narragansett's investment in Photo Systems has undergone substantial changes as Photo Systems has sought to get on a solid business and financial footing. During the seven years since the organization of Photo Systems, Narragansett's investment has been restructured and refinanced on several occasions and two of Photo Systems's divisions, the C–K Division and the DNJ Division, were sold; the C–K Division to Sound Color Corporation, a company deemed to be controlled by Narragansett (See Investment Company Act Release No. 10240 May 12, 1978), and the DNJ Division to an unrelated third party. Applicants represent that the purchase price for the disposition of both divisions was negotiated between the parties based upon a formula conceived by Considine as a basis for determining his asking price for the divisions, namely five times the after-tax earnings of the division in the prior fiscal year plus the book value of the division at the time of the sale.

Photo Systems currently has two remaining divisions: the Lyndon Division, which operates a laboratory for processing color film for professional photographers; and the Unicolor Division, which manufacturers and distributes darkroom equipment and photographic supplies. Applicants state that the Lyndon Division has been, since the reorganization of Photo Systems in 1975, under the operational control of Thornburg, who serves as the chief executive of the division. Applicants further state that Thornburg has for several years expressed his interest in acquiring the Lyndon Division from Photo Systems and his dissatisfaction with the current arrangement, since he does not directly share in the success of

the Lydon operations. Accordingly, for those and other reasons outlined below, Applicants state that Photo Systems has agreed to sell the Lyndon Division to Lyndon, Inc., a company in which Thornburg will have a substantial interest.

The application states that Lyndon, Inc., is a Rhode Island corporation organized on May 16, 1980, with authorized capital stock consisting of 4,000 shares of Class A Common Stock, $1.00 par value ("Class A Common"), and 4,000 shares of Class B Non-Voting Common Stock, $1.00 par value. Applicants state that Thornburg has subscribed for and purchased 170 shares of Class A Common for a purchase price of $17,000 and that under the terms of an investment agreement, dated May 27, 1980, between Narragansett and Lyndon, Inc. ("Investment Agreement"), Narragansett will purchase 170 shares of Class A Common for $17,000. Under the terms of the Investment Agreement, Narragansett also will lend Lyndon, Inc., up to $916,000; $816,000 to be provided at the time of the closing of the purchase of the Lyndon Division and the remaining $100,000 to be available to Lyndon, Inc., for working capital at any time during the three-year period following the purchase of the Lyndon Division ("Commitment Period"). Thus, according to the application, Narragansett will have made an aggregate investment in Lyndon, Inc., of between $833,000 and $933,000, all but $17,000 of which will be in the form of unsubordinated indebtedness.

As indicated by Applicants, the indebtedness of Lyndon, Inc., to Narragansett will be represented by a promissory note ("Note") which will bear an interest rate of 15 percent per annum and will be payable as to principal over a ten-year period based upon the earnings and anticipated cash flow of Lyndon, Inc. In addition, the Investment Agreement provides that, during the Commitment Period, Narragansett is entitled to a fee equal to one percent of the unused portion of the loan commitment. Pursuant to the Investment Agreement, which Applicants represent is in substantially the same form as that utilized by Narragansett for virtually all its portfolio investments over the past few years, Narragansett will receive certain registration rights covering the shares of Lydon, Inc., held by Narragansett and the operations of Lyndon, Inc., will be subject to certain affirmative and negative covenants designed to protect Narragansett. In addition, the Investment Agreement grants Narragansett an irrevocable option for a period of 10 years after payment in full of the Note to sell to Lyndon, Inc., all of Narragansett's equity interest in Lyndon, Inc., at a price based on a formula similar to the formula used to determine the purchase price of Lyndon Division.

Applicants represent that Narragansett and Thornburg, as shareholders of Lyndon, Inc., will enter into an agreement ("Shareholders Agreement") providing, among other things, for restrictions on the transferability of their stock of Lyndon, Inc.; for a board of directors of four persons, of which two would be designated by Narragansett, except that in the event of a default on the Note, Narragansett would have the right to designated a majority of the directors; and for Thornburg to sell, as soon as reasonably practicable, no less than 68 shares of Class A Common to two management employees of Lyndon, Inc., selected by Thornburg and approved by the board of directors, for consideration not to exceed $10,000.

As proposed in the application, Lyndon, Inc., will purchase (pursuant to the terms of the Asset Purchase Agreement dated May 27, 1980, between Lyndon, Inc., and Photo Systems) the assets and business of the Lyndon Division of Photo Systems and assume its liabilities for a net purchase price of $925,000. As set forth in the Asset Purchase Agreement, the purchase price is payable by $850,000 in cash at or before the closing and the $75,000 balance by promissory note to Photo Systems, payable in three annual installments of $25,000 each with an interest rate of 12.5 percent per annum, payable quarterly. Applicants state that included in the assets to be purchased is $100,000 in cash, plus all additional cash collected by Lyndon Division subject to certain adjustments described below.

As stated in the application, the closing of the purchase of the Lyndon Division was scheduled for September 30, 1980. However, the Asset Purchase Agreement provides that the closing date shall be extended to a date, set by the parties, within two weeks following the issuance of an order with respect to the application, but no later than December 31, 1980. The Asset Purchase Agreement sets the effective date for all transactions covered by that agreement at the close of business on April 30, 1980. Applicants state that the effective date of April 30, 1980, was chosen for a variety of reasons, including: (1) That when the parties agreed to the transaction in late February, 1980, they felt that an April 30 date would provide adequate time for finalization of the acquisition agreements; (2) that the parties felt it was important to fix a date after which Mr. Thornburg could be assured that his efforts would be for the benefit of the new concern; and (3) that April 30 is a date which has traditionally been a transitional or slack time in the photo pocessing business and was a good time for the utilization of personnel to effect the transition. Accordingly, Applicants state that the business of the Lyndon Division will be operated for the account of Lyndon, Inc., until the date of actual closing and, therefore, Lyndon, Inc., will be obligated to pay Photo Systems interest on the $75,000 note from May 1, 1980, and that Photo Systems will be entitled to withhold from the cash being transferred to Lyndon, Inc., the following amounts: (1) $291.11 per day for each day after the effective date through the closing date; (2) the amount of actual out-of-pocket expenditures made for Lyndon Division by Photo Systems from its own funds after the effective date; and (3) all ordinary operating expenses of Lyndon Division customarily paid by Photo Systems from its own funds, whether or not paid by closing date. The Asset Purchase Agreement also provides that Photo Systems will sublease to Lyndon, Inc., a portion of the Photo Systems premises currently occupied by the Lyndon Division. Applicants represent that it is anticipated that Lyndon, Inc., will pay a pro rata share of the cost based upon the percentage of space utilized.

Applicants represent that Photo Systems will utilize the cash proceeds from the sale of the Lyndon Division to prepay $750,000 of the principal amount of its indebtedness to Narragansett ($1,705,000 as of June 30, 1980) and utilize the remaining $100,000 for working capital purposes. Applicants submit that as a result, Narragansett's aggregate investment in Photo Systems will be reduced from $1,935,000 to $1,185,000. In addition, Applicants represent that Photo Systems will refinance its outstanding indebtedness to IN Bank, replacing its current principal amount due of $170,000 with a $600,000 revolving line of credit arrangement, which will carry the same rate of interest (prime plus 1½ percent). Applicants further represent that Narragansett will agree that Photo Systems's promissory note will be subordinated with respect to only $170,000 of the refinanced indebtedness to IN Bank in the event of default or liquidation, so that while Photo Systems's indebtedness to IN Bank may increase, the indebtedness held by

Narragansett will continue to be subordinated to only $170,000.

According to the application, Considine currently divides his time between the two divisions operated by Photo Systems. Applicants state that it is anticipated that he will continue to do so, even after the assets and business of the Lyndon Division are sold, and thus, Applicants have agreed that Considine will continue to be compensated at his

provisions of Section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Applicants request

in large measure because of the personal relationships and reputation developed by the on-premise management in its relationships with it principal customers; and tend to achieve greatest financial success where the on-premise management has direct incentives for achieving that success. Accordingly, Applicants submit that the sale of the Lyndon Division will result in Thornburg's obtaining an equity interest

awareness of the posibility of such an increase; and (3) the actual price is within 6 percent of the average of the formula prices using 1979 and 1980 operating earnings. In addition, Applicants state that the sale provides an opportunity for the shareholders of Photo Systems to dispose of a business which, while currently profitable, has been a source of financial problems in

Applicants assert that the terms of Narragansett's investment in Lyndon, Inc., are fair and reasonable; the terms of the proposed investment are substantially similar to those of other investments by Narragansett in the recent past, and Narragansett will retain its current equity position in the Lyndon businesses. In addition, Applicants submit that while Narragansett's

a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such

Narragansett will continue to be subordinated to only $170,000.

According to the application, Considine currently divides his time between the two divisions operated by Photo Systems. Applicants state that it is anticipated that he will continue to do so, even after the assets and business of the Lyndon Division are sold, and thus, Applicants have agreed that Considine will continue to be compensated at his current rate of $45,000 per annum, of which $25,000 will be paid by Photo Systems and $20,000 will be paid by Lyndon, Inc. Applicants represent that this arrangement reflects the allocation of corporate charges made by Photo Systems to its two divisions with respect to Considine's compensation for the fiscal year ended June 30, 1980.

Section 2(a)(3) of the Act, in pertinent part, defines an affiliated person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (b) any person 5 per centum or more of whose outstanding securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, such other person; and (d) any officer, director or employee of such other person. Section 2(a)(9) of the Act provides, in part, that any person who owns beneficially more than 25 per centum of the voting securities of a company shall be presummed to control such company. Accordingly, Applicants acknowledge that Narragansett will be an affiliated person of both Photo Systems and Lyndon, Inc., and vice versa, and Photo Systems and Lyndon, Inc., are each affiliates of the other. Applicants also acknowledge that both Mr. Sarles and Mr. Considine are affiliated persons of Lyndon, Inc. Finally, Applicants state that Mr. Thornburg is an affiliated person of Photo Systems and Lyndon, Inc., and is an affiliate of an affiliate of Narragansett.

Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company or any affiliated person of such person, acting as principal, knowingly to purchase from or sell to such registered company or any company controlled by such registered company, any security or other property except securities of which the seller is the issuer. Section 17(b) of the Act provides generally that, upon application, the Commission shall exempt a proposed transaction from the provisions of Section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Applicants request an order pursuant to Section 17(b) of the Act, exempting the proposed sale of the Lyndon Division to Lyndon, Inc., from the provisions of Section 17(a) of the Act.

Section 17(d) of the Act and Rule 17d–1 thereunder, taken together, provide, in part, that it is unlawful for an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to effect any transaction in which such investment company, or a company controlled by such investment company, is a joint participant, without the permission of the Commission. Rule 17d–1 provides, in part, that in passing upon applications for orders granting such permission, the Commission will consider (i) whether the participation of the investment company or the controlled company in such transaction on the basis proposed is consistent with the provisions, policies and purposes of the Act, and (ii) the extent to which such participation is on a basis different from or less advantageous than that or other participants.

Applicants state that the proposed transactions may be said to involve a joint arrangement, and that the proposed transactions could be deemed to be prohibited under Rule 17d–1 unless the Commission issues an order permitting the transaction. Accordingly, Applicants request an order of the Commission, pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, permitting the proposed joint transactions in connection with the sale of the Lyndon Division to Lyndon, Inc.

Applicants submit that the separation of the Lyndon Division from Photo Systems furthers Narragansett's long-term objective of reorganizing Photo Systems in a way that will maximize managerial ability and incentives and minimize administrative costs and organizational risks and would produce a number of benefits. Applicants assert, that the experience of the managements of Photo Systems and Narragansett has shown that photographic processing laboratories, such as that by the Lyndon Division, are most appropriately managed and operated independent of other business activities; are successful in large measure because of the personal relationships and reputation developed by the on-premise management in its relationships with it principal customers; and tend to achieve greatest financial success where the on-premise management has direct incentives for achieving that success. Accordingly, Applicants submit that the sale of the Lyndon Division will result in Thornburg's obtaining an equity interest in a business he has been operating with increasing success over the past few years, thereby increasing his incentive for further success. Applicants argue that this enhance incentive will benefit Narragansett, which will hold a 50 percent ownership interest in Lyndon, Inc.

Moreover, Applicants assert that the terms of the proposed sale of the Lyndon Division are fair and reasonable and do not involve overreaching on the part of any party. Applicants state that the price to be received by Photo Systems for the Lyndon Division ($925,000) was and is a fair and reasonable price in light of the circumstances existing at the time the agreement was made, which included the trend toward a substantial increase in the operating income of the Lyndon Division for the fiscal year ended June 30, 1980. Applicants further assert that the purchase price was negotiated on an arms-length basis among Thornburg, Considine and the shareholder-managers of Photo Systems based upon the formula which was the basis for the prior sales of two other divisions (five times after-tax divisional earnings plus divisional book value at the time of sale). Applicants state that the formula pricing method, if earnings for fiscal year ended June 30, 1979, are used, yields a formula price of $831,500 (which is 9 percent less than the actual price agreed upon) while such formula, if earnings for the fiscal year ended June 30, 1980, are used, would yield a formula price of $1,121,500. Applicants acknowledge that the use of the 1980 earnings figures in calculating the formula price results in a price approximately 20 percent above the actual price. However, Applicants submit that the actual price of $925,000 agreed upon by the parties is a reasonable and fair price for several reasons: (1) The 1980 fiscal year was not complete at the time the parties reached agreement on the price and entered into the Asset Purchase Agreement; (2) Applicants do not feel that the substantial increase in the Lyndon Division's operating earnings in 1980 adversely impacts upon the fairness of the price, which was negotiated prior to the end of the fiscal year, but with an awareness of the posibility of such an increase; and (3) the actual price is within 6 percent of the average of the formula prices using 1979 and 1980 operating earnings. In addition, Applicants state that the sale provides an opportunity for the shareholders of Photo Systems to dispose of a business which, while currently profitable, has been a source of financial problems in the past and in which none of the shareholder-managers have a managerial interest. By disposing of Lyndon Division at this time, Applicants submit that Photo Systems will benefit in that: (a) the sale will produce a gain to Photo Systems of $370,000, representing the excess of the purchase price over book value; (b) the sale will produce cash proceeds in the amount of $850,000, $750,000 of which will be used to prepay its indebtedness to Narragansett (which bears interest at the rate of 12 percent), and which will improve sheet and enhance its future earnings potential; and (c) after the sale Photo Systems will be engaged in only one line of business, which will ease the administrative burden on its management and simplify the prospects and increase the incentives for improving both the profitability and efficiency of its remaining operation.

Applicants further assert that the proposed sale of the Lyndon Division is fair and reasonable to Narragansett. Applicants submit that Narragansett will improve its investment in Photo Systems because its net investment in Photo Systems will be reduced by $750,000, but the book value of its equity investment will be increased by $185,000 (before taxes). Furthermore, Applicants state that Narragansett will be in a better position to reduce its involvement in the day-to-day management of Photo Systems, helping Narragansett to meet Small Business Administration regulations which require Narragansett to relinquish operational control of Photo Systems at a future date.

Applicants represent that the terms of the purchase of the Lyndon Division by Lyndon, Inc., are also fair and reasonable to Lyndon, Inc. Applicants again point to the fact that the price was derived from substantially the same formula used for the sales of similar businesses. Applicants also stress that based upon projections prepared by Thornburg (which Narragansett's management believes reasonable), Lyndon, Inc., will be able to service the indebtedness incurred to finance the purchase while still providing a fair return to shareholders on their equity investment.

Applicants assert that the terms of Narragansett's investment in Lyndon, Inc., are fair and reasonable; the terms of the proposed investment are substantially similar to those of other investments by Narragansett in the recent past, and Narragansett will retain its current equity position in the Lyndon businesses. In addition, Applicants submit that while Narragansett's aggregate debt investment in the Lyndon and Unicolor Division's businesses will increase from $1,705,000 to between $1,771,000 and $1,871,000, the rate of interest on at least $816,000 (and perhaps as much as $916,000) of the aggregate debt will be increased from 12 percent to 15 percent per annum. Applicants also assert that the arrangements regarding Considine's employment are fair to all parties concerned because Considine will continue to perform the same services for the same salary, the only difference being that the Lyndon Division will be operated as a separately incorporated business.

Applicants assert that the proposed transactions are consistent with the policies of Narragansett. As stated in the application, Narragansett's board of directors has determined that the proposed transactions are in the best interests of its shareholders and that the proposed transactions would place Narragansett closer to its goal of relinguishing control of Photo Systems on or before June 30, 1982. Applicants also assert that the proposed transactions are consistent with the general purposes of the Act, in that they are in the interests of the shareholders of the participating companies and do not offer special beneifts to directors, officers or other affiliated persons. Finally, Applicants assert that the participation of each of the participants in the joint enterprise or arrangment is not on a basis less advantageous than that of other participants. Applicants state, in support of such assertion, that, among other facts, Narragansett and Thornburg will pay the same price for Lyndon, Inc., shares; Narragansett will retain its 50 percent interest in the Lyndon businesses; no special fees or compensation will be paid to any of the officers, directors or shareholders of Photo Systems in connection with the sale; and Considine and Thornburg will continue to provide the same management services at the same level of compensation.

Notice is further given that any interested person may, not later than January 13, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40591 Filed 12-30-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17396; SR-NASD-80-17]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

December 2, 1980.

On September 30, 1980, the National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006 (the "NASD" of the "Association") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the"Act") and Rule 19b–4 thereunder, copies of proposed rule change to amend Section C.4 of Part I of Schedule D of the Association's By-Laws to permit a market maker's initial registration in a security not previously authorized to become effective immediately. The proposed rule change would permit immediate registration of market makers during the initial week of a security's quotations on the National Association of Securities Dealers Automated Quotation System ("NASDAQ"), if the request for registration is received by the NASD within five (5) business days of authorization of the security.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17217 (October 14, 1980)) and by publication in the **Federal Register** (45 FR 69325 (1980)). Although public comments were solicited, none were received.

The Commission finds that the

companies' fleet of rail hopper cars which have been acquired through lease.

The post-effective amendment states that due to the fact that Sewco, Inc.'s assets were not purchased until November 14, 1979, none of the $375,000 for additional expenditures was expended in 1979. Ohio Power now contemplates that the expenditures related to equipment and accessories during the period from January 1, 1980,

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SMALL BUSINESS ADMINISTRATION

[License No. 09/09—0271]

Merrill, Pickard I

On November 3, 1980, a notice was published in the **Federal Register** (45 FR 72854) stating that Small Business Enterprise Associates whose name was subsequently changed to Merrill, Pickard I, 555 California Street, Suite 2170, San Francisco, California 94104,

According to the application, the Boards of Directors of the Applicant and NEL Cash Management Account I, Inc. ("Account I"), a money market fund registered under the Act unanimously voted for the merger of the Applicant into Account I on July 23, 1980. Applicant states that the action of the Boards of Directors of Applicant and Account I specifically followed the procedures set forth in Rule 6c–5(T) under the Act. Applicant further states

contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter,

Agreement on Government Procurement provided that the President determines that all, or all but one, of the major industrial countries (as defined in section 126(d)) is also accepting the agreement.

3. The Memorandum of the President of December 14, 1979, "Determination Regarding Multilateral Trade Negotiations", authorized the United States Trade Representative or his designee, pursuant to the provisions of

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17217 (October 14, 1980)) and by publication in the **Federal Register** (45 FR 69325 (1980)). Although public comments were solicited, none were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and reguations thereunder applicable to national securities associations, and in particular, the requirements of Sections 11A and 15A and the rules and regulations thereunder.

It is therefore, ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40593 Filed 12-30-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11504; 811-3035]

NEL Cash Management Account II, Inc.; Filing of Application

December 19, 1980.

Notice is hereby given that NEL Cash Management Account II, Inc., 501 Boylston Street, Boston, Massachusetts 02117, ("Applicant"), an open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on November 24, 1980, for an order of the Commission pursuant to Section 8(f) of the Act, and Rule 8f-1 thereunder, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a corporation organized under the laws of the Commonwealth of Massachusetts, registered under the Act on March 31, 1980, and filed a registration statement on Form N-1 under the Securities Act of 1933 ("1933 Act") for the public offer and sale of shares of its common stock on the same date. Applicant's 1933 Act registration statement was declared effective by the Commission on April 28, 1980, and an initial public offering of its securities commenced on April 29, 1980.

According to the application, the Boards of Directors of the Applicant and NEL Cash Management Account I, Inc. ("Account I"), a money market fund registered under the Act unanimously voted for the merger of the Applicant into Account I on July 23, 1980. Applicant states that the action of the Boards of Directors of Applicant and Account I specifically followed the procedures set forth in Rule 6c-5(T) under the Act. Applicant further states that all its portfolio securities were acquired by Account I and that no assets of Applicant were disposed of in connection with the merger. According to the application, all expenses incurred by the Applicant as a result of the merger were paid by the Applicant's investment adviser, New England Mutual Life Insurance Company.

Applicant states that it currently has no assets or outstanding liabilities, has no securityholders and is not a party to any pending litigation or administrative proceeding. Applicant further represents that it is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs and that on July 31, 1980, it filed Articles of Merger with the secretary of State of the Commonwealth of Massachusetts. Finally, Applicant represents that within the last eighteen months it has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

Section 8(f) of the Act provides, in part, that when the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 13, 1981, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted; or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40592 Filed 12-30-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21847; 70-6322]

Ohio Power Company; Proposed Acquisition of Assets Related to Rail-Car Maintenance

December 19, 1980.

Notice is hereby given that Ohio Power Company ("Ohio Power"), 301 Cleveland Avenue, S.W., Canton, Ohio 44702, an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission a post-effective amendment to the application in this proceeding pursuant to Sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transaction. All interested persons are referred to the amended application, which is summarized below, for a complete statement of the proposed transaction.

By order in this proceeding dated August 3, 1979 (HCAR No. 21173), Ohio Power was authorized to acquire for approximately $510,000 certain assets related to the repair of railroad cars, consisting of rail tracks, switches, buildings, and other rail-related inventory, from Sewco, Inc., a maintenance company. Ohio Power was also authorized to make additional expenditures for equipment and accessories related to rail-car maintenance and repair in an amount not to exceed $375,000 through December 31, 1979.

The rail-repair assets were to be used to maintain 1,765 or more railroad hopper cars which transport coal from the western United States to Ohio Power's Cook Coal Terminal ("Cook"), a rail-to-river coal transfer facility located near Metropolis, Illinois. These cars are part of the AEP system operating

companies' fleet of rail hopper cars which have been acquired through lease.

The post-effective amendment states that due to the fact that Sewco, Inc.'s assets were not purchased until November 14, 1979, none of the $375,000 for additional expenditures was expended in 1979. Ohio Power now contemplates that the expenditures related to equipment and accessories during the period from January 1, 1980, through June 30, 1981, will be in an amount not exceeding $586,000. Authorization is therefore requested for the expenditure of up to a total of $586,000 to acquire equipment and accessories related to rail-car maintenance from time to time through June 30, 1981.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 15, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as now amended or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40587 Filed 12-30-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09—0271]

Merrill, Pickard I

On November 3, 1980, a notice was published in the **Federal Register** (45 FR 72854) stating that Small Business Enterprise Associates whose name was subsequently changed to Merrill, Pickard I, 555 California Street, Suite 2170, San Francisco, California 94104, had filed an application with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102(1980)) for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (the Act).

(15 U.S.C. 661 et. seq.)

Interested persons were given 15 days to submit written comments on the application to the SBA.

Notice is hereby given that no written comments were received and, having considered the application and all other pertinent information, the Small Business Administration approved the issuance of License No. 09/09-0271, on November 26, 1980, to Merrill, Pickard I, pursuant to Section 301(c) of the Act.

(Catalogue of Federal Domestic Assistance Programs. No. 59.011, Small Business Investment Companies)

Dated: December 17, 1980.

Michael K. Casey,

Associate Administrator for Investment.

[FR Doc. 80-40581 Filed 12-30-80; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Acceptance and Application of the Agreement on Government Procurement

1. Pursuant to section 102 of the Trade Act of 1974 (19 U.S.C. 2112(b)), the President, through his duly empowered representative, on April 12, 1979, entered into the Agreement on Government Procurement negotiated in the Tokyo Round of Multilateral Trade Negotiations.

2. In accordance with sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112 and 2191), the Agreement on Government Procurement was submitted to Congress for its approval. Section 2 of the Trade Agreements Act of 1979 ("the Act") (93 Stat. 147, 19 U.S.C. 2503) approves the Agreement on Government Procurement and authorizes the President to accept the Agreement on Government Procurement provided that the President determines that all, or all but one, of the major industrial countries (as defined in section 126(d)) is also accepting the agreement.

3. The Memorandum of the President of December 14, 1979, "Determination Regarding Multilateral Trade Negotiations", authorized the United States Trade Representative or his designee, pursuant to the provisions of section 2 of the Act of 1979 (93 Stat. 147, 19 U.S.C. 2503) and section 301 of title 3 of the United States Code, to sign the Agreement on Government Procurement on behalf of the United States of America, subject to satisfactory completion of negotiations on entity coverage under the Agreement. Section 1-103(b) of Executive Order 12188 delegates the functions of the President under section 2(b) of the Act to the United States Trade Representative, who shall exercise such authority with the advice of the Trade Policy Committee.

Now, therefore, I, Robert D. Hormats, Acting United States Trade Representative, acting in conformity with the provisions of section 2 of the Act (93 Stat. 147, 19 U.S.C. 2503) and section 301 to title 3 of the United States Code, and Executive Code 12188, hereby determine that, with respect to the Agreement on Government Procurement,

1. in accordance with section 2(b) (1) and (3) of the Act (19 U.S.C. 2503(b) (1) and (3)) each major industrial country (as defined in section 126(d) of the Trade Act of 1974 (19 U.S.C. 2136(d)) is also accepting this agreement; and

2. negotiations with the major industrial countries concerning entity coverage under the Agreement have been satisfactorily completed, and, as to the major industrial countries, the conditions under section 2(b) of the Act (19 U.S.C. 2503(b)) on acceptance of the Agreement on Government Procurement have been fulfilled.

December 23, 1980.

Robert D. Hormats,

Acting United States Trade Representative.

[FR Doc. 80-40553 Filed 12-30-80; 8:45 am]

BILLING CODE 3190-01-M

VETERANS ADMINISTRATION

Procedures for Adjudication of Ionizing Radiation Claims

AGENCY: Veterans Administration.

ACTION: Revision of program guide.

SUMMARY: The Veterans Administration has revised a program guide for use by various regional offices in the

development and disposition of claims of veterans alleging exposure to ionizing radiation during service while participating in atmospheric testing of nuclear weapons. This guide provides

participation; 87% received less than 1 rem of external radiation; 97% less than 3 rem; and over 99% less than 5 rem. It should be pointed out that these estimates are based upon external film

positive results in these studies is attributed to the small sample sizes, since large samples are needed to reveal the relatively infrequent effects expected at low doses.

A recent study by the Center for

female breast
lung
bone
liver
skin

The following cancers show

participants which might be statistically related to radiation exposure. On the other hand, some 32,000 fatal cancers *not* related to this radiation can be expected.

c. *Genetic Effects.* Experimental

controlling, criterion. Consideration should be given to such factors as the estimated date of onset of the disease in relation to the dates of exposure, and where available, to such postservice personal and occupational histories as

V 45 D E 3 1 8 0 UMI

development and disposition of claims of veterans alleging exposure to ionizing radiation during service while participating in atmospheric testing of nuclear weapons. This guide provides background information concerning the atmospheric nuclear test program and potential health effects for veterans who participated. It is not directive.

FOR FUTHER INFORMATION CONTACT: Robert C. Macomber (202–389–2635).

SUPPLEMENTARY INFORMATION: A recent study by the Center for Disease Control, reported in the Journal of the American Medical Association issue of October 3, 1980, reported preliminary findings of the military maneuvers during the 1957 nuclear test explosion "Smoky". Because the contents of this article have a bearing upon the adjudication of claims for disabilities resulting from ionizing radiation, we have amended the program guide by making reference to it, and again give this notice as a matter of public interest.

Program guides are nondirective and non-rule or policy making. They are superseded by instructions, technical bulletins or other non-rule making issues which may be at variance on the same subject matter.

Approved: December 22, 1980.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

Rating Practices and Procedures—Disability Ionizing Radiation Exposure

1. *Claims Alleging Disabilities Attributed to Exposure to Ionizing Radiation.* From some time, claims have been received in which it is alleged that disabilities have resulted from veterans' exposure to ionizing radiation during service through their participation in atmospheric testing of nuclear devices.

Some 200,000 U.S. military personnel participated in the atmospheric testing of nuclear weapons in Nevada and the South Pacific between 1945 and 1962. Since the Limited Test Ban Treaty of 1963, all U.S. tests have been underground.

This testing and the resultant health hazard were discussed in a recent comprehensive study of the health effects of ionizing radiation by representatives of several executive agencies, including the VA, HEW, DoD, DoE, DoL, EPA, and NRC. The findings are contained in the "Report of the Interagency Task Force on the Health Effects of Ionizing Radiation," June 1979. The Interagency Task Force (hereafter referred to as "ITF") reported that an estimated 43% of the test participants received no exposure to ionizing radiation as a result of their participation; 87% received less than 1 rem of external radiation; 97% less than 3 rem; and over 99% less than 5 rem. It should be pointed out that these estimates are based upon external film badge readings of participants.

Although film badge readings are available for a large number of participants, not every participant was badged. In some cases, for units in which individuals operated in close proximity to each other (e.g., a ship's crew, and infantry squad), a representative sample of the unit was badged. In general, this was done for units which were not expected to be exposed to significant radiation. Individual badging was generally carried out for persons expected to be exposed to higher levels of radiation.

The badges measured external gamma and high energy beta radiation, as these were the types of greatest concern. They did not measure direct neutron radiation, to which few, if any, participants were exposed. Nor did the badges measure low energy beta, which would not penetrate the badge covering (just as it would not penetrate clothing or skin). Finally, the badges did not measure any dose commitment that may have occurred from inhalation or ingestion of radioactive particles. All research and analysis to date indicate that there is little likelihood that test participants inhaled or ingested any significant amounts of radiation; however additional studies are underway, and the possibility should not be entirely discounted.

Film badges and dosimeters were subject to errors that should be taken into account in assessing dose received. An error factor of ±20% is generally recognized as reasonable for the badges and dosimetes used at that time, and as high as ±50% in some instances.

2. *Health Effects of Ionizing Radiation.*

a. *Acute Somatic Effects.* Individuals exposed to high levels and rates of ionizing radiation may experience acute somatic effects within days or weeks after exposure. The ITF reported that single, wholebody doses of over 100 rem can affect bone marrow cells and cells lining the intestinal tract, causing such effects as anemia, hemorrhage, infections, nausea and diarrhea. High doses were also said to cause neural cell damage. Chromosomal damage occurs at lower dose levels, as well as high doses.

b. *Late Somatic Effects.* Although there are little positive data on the health effects of low-dose radiation, some negative data (Japanese atom bomb survivors, studies of background radiation) do exist. The failure to show positive results in these studies is attributed to the small sample sizes, since large samples are needed to reveal the relatively infrequent effects expected at low doses.

A recent study by the Center for Disease Control, reported in the Journal of the American Medical Association issue of October 3, 1980, noted preliminay findings indicating that nine cases of leukemia have occurred among 3,224 participants in military maneuvers during the 1957 nuclear test explosion "Smoky." This figure represents a statistically significant increase over the expected incidence of 3.5 cases in a population of that size. Film badge data for eight of the leukemia victims were available, with gamma doses ranging from zero to 2,977 mrem. Mean gamma dose among the eight cases was 1,167 mrem. the report noted that the dosage data were of uncertain accuracy, since the film badges may have been worn at other tests in addition to Smoky, and they recorded only external (gamma and beta) radiation without measuring possible internal exposure or neutron radiation. Further, the authors cautioned that inherent weaknesses of the study, such as the relatively small number of cases involved, make it difficult to draw useful conclusion as to the relationship between radiation exposure and subsequent health problems. Thus far, the authors have failed to note increased mortality from any form of cancer other than leukemia. A much larger group of former test participants is the subject of an extensive, Government-funded morbidity/mortality study currently being undertaken by the National Academy of Sciences.

Current estimates of low-dose health effects are based on studies of medical exposure, as well as the Japanese atom bomb survivors.

Cancer is the major disease associated with radiation exposure. Certain sites (e.g., blood-forming tissue, female breast) appear more sensitive, but other tissues also are shown to be at increased risk. It is not unlikely that eventually all tissue may be shown to be subject to radio-carcinogenesis.

Various types of cancer have been linked to radiation by epidemiological studies conducted among (1) persons exposed to atom bomb radiation and fallout, (2) persons exposed to diagnostic or therapeutic radiation, and (3) persons exposed to radiation in their occupations.

The following cancers show strong associations:

leukemia (except chronic lymphatic leukemia)
thyroid
female breast
lung
bone
liver
skin

The following cancers show associations that appear meaningful but are less striking:

lymphoma (including multiple myeloma)
stomach
esophagus
bladder
brain
salivary gland
colon
rectum

The following cancers show suggestive but unconfirmed associations:

uterus
cervix
kidney
pancreas
small intestine

The ITF acknowledged that ongoing and proposed reseach will permit a more definitive listing of late somatic effects of low-level ionizing radiation.

There are no distinguishable pathological features of the cancers induced by radiation from which they may be differentiated from cancers due to "natural" factors. It is thus impossible to say *with certainty* whether such a disease would have occurred regardless of the radiation exposure.

In the absence of acceptable hard data on the latent effects of low level radiation, the ITF reports, it has been necessary to assume that there is a directly proportional or "linear" relationship between the risks of high and low doses. This theory assumes as well that there is no threshold level of exposure below which radiation will not have any potentially carcinogenic effect. These assumptions have been criticized as both underestimating and overestimating the potential hazard of low-dose exposure, although it would appear that they currently offer a sound basis for projecting this risk.

The Work Group on Care and Benefits of the ITF reported a "natural" incidence of fatal cancer of 1,600 in any population of 10,000. They provided the estimate of one additional death for each additional rem to which the entire group was exposed; for example, if all in a group of 10,000 were exposed to one rem in addition to naturally occurring background radiation, there would be only one fatal cancer beyond the 1,600 otherwise expected. Since the 200,000 test participants received an average dose of about half a rem, some *ten* fatal cancers from among the entire group can be expected over the lifetime of the participants which might be statistically related to radiation exposure. On the other hand, some 32,000 fatal cancers *not* related to this radiation can be expected.

c. *Genetic Effects.* Experimental studies in animals have shown that radiation can produce gene mutations which can result in abnormalities in later generations. However, no genetic effects have ever been observed in humans, despite much data and extensive study.

3. *Development of Evidence.* Claims for disabilities based upon such exposure pose unique development problems for claimants and special assistance should be extended to them. Paragraph 22.05.1 of M21–1 provides for Central Office coordination of the search of Government records for exposure data, and lists the identifying information necessary for these special searches to ensue.

4. *Adjudication of Claims—Reasonable Doubt.* The problems inherent in the adjudication of claims in which there are allegations of late somatic effects of radiation are many. The records obtained may not conclusively place an individual at a test site or elsewhere, or document with certainty the dosage of exposure in a given claim. The resolution of reasonable doubt in a claimant's favor requires that, at a minimum, veterans be presumed to have been present at a test or series of tests as claimed unless the service department conclusively places them elsewhere at the time in question. Also, when an individual dosimetry reading for a claimant is not available but the service department is able to supply or estimate a range of exposure for the claimant's organizational unit, exposure at the upper limit of the range is to be conceded.

In keeping with the application of the reasonable doubt standard, even where an individual dosimeter reading is available, the reading should be carefully interpreted in light of the known variance in those readings. Further, an overall estimated exposure level for the veteran's organizational unit, if any, should be used if more beneficial to the veteran than the adjusted dosimeter reading.

The many remaining unknowns concerning the carcinogenic effects of low-level radiation make such determinations especially perplexing. It should presently be assumed, however, that there is no level of exposure below which some risk does not attach, and that the probability of radiation-induced disease increases with the intensity and duration of exposure. That is not to say that dosage should be the sole, or even controlling, criterion. Consideration should be given to such factors as the estimated date of onset of the disease in relation to the dates of exposure, and where available, to such postservice personal and occupational histories as cigarette smoking (in lung cancer cases) and significant contact with other known carcinogens (such as benzene in leukemia cases.)

Where the evidence in its entirety creates a reasonable doubt as distinguished from speculation or remote possibility, such doubt should be resolved in favor of service connection. Additionally, there should be no hesitancy in submitting claims based on malignancies to Central Office (212) for advisory opinions.

5. *Copies of Rating Sheets Furnished to Compensation and Pension Service.* The copies of rating sheets furnished in accordance with M21–1, paragraph 49.06a(6)(a), should contain the dates and branch of service; serial number; name, date and location of all A-tests attended; the military unit to which assigned at time of test; duty assignment at test; dosimetry reading or amount of radiation exposure, if known; and any other identifying information which would assist in any further search for information.

[FR Doc. 80-40823 Filed 12-30-80; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 252
Wednesday, December 31, 1980

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne,

PLACE: 1800 G Street NW., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE

Sunshine Act Meetings

Federal Register
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This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION.

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 11 a.m. on Monday, December 22, 1980, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:
Bronson, Bronson & McKinnon, San Francisco, California, in connection with the receivership of United States National Bank, San Diego, California.
Schall, Boudreau & Gore, San Diego, California, in connection with the receivership of United States National Bank, San Diego, California.
Gonzalez & Alonso, Hato Rey, Puerto Rico, in connection with the liquidation of Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: December 22, 1980.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[S-2363-80 Filed 12-29-80; 11:24 am]
BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 11:30 a.m. on Monday, December 22, 1980, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of State Bank of India (California), a proposed new bank, to be located at United California Bank Building, Suite 1995, 707 Wilshire Boulevard, Los Angeles, California, for Federal deposit insurance.
Application of Fidelity Management Trust Company, a proposed new bank, to be located at 82 Devonshire Street, Boston, Massachusetts, for Federal deposit insurance and for consent to exercise trust powers.
Application of Banco Central y Economias, San Juan (Hato Rey), Puerto Rico, for consent to exercise trust powers.
Application of Albany Savings Bank, Albany, New York, for consent to establish a branch in the Sangertown Square Mall, in the vicinity of the junction of Routes 5 and 5A, New Hartford, New York.
Application of Home Savings Bank of Upstate New York, Albany, New York, for consent to establish a branch on Columbia Turnpike, 200 yards southwest of Sherwood Avenue, Town of East Greenbush, New York.
Application of Auburn Savings Bank, Auburn, New York, for consent to establish a branch at 34 South Main Street, Moravia, New York.
Application of The Community Savings Bank, Rochester, New York, for consent to establish a branch at the southeast corner of Muller Boulevard and Jefferson Road, Town of Henrietta, New York.
Application of Monroe Savings Bank, Rochester, New York, for consent to establish a branch at 18 State Street, Village of Pittsford, New York.
Application of The Peoples State Bank of St. Joseph, St. Joseph, Michigan, an insured State nonmember bank, for consent to consolidate under its charter and title with The First National Bank of Watervliet, Watervliet, Michigan, and for consent to establish the four offices of The First National Bank of Watervliet as branches of the resultant bank.
Application of The Home Savings Bank in Boston, Boston, Massachusetts, an insured mutual savings bank, for consent to purchase th[illegible]ets of and assume the liability to [illegible]eposits made in Boston Progressive Credit Union, Boston (P.O. Roxbury), Massachusetts, a non-Federally-insured financial institution chartered under the laws of the Commonwealth of Massachusetts, and for consent to establish the sole office of Boston Progressive Credit Union as a branch of The Home Savings Bank in Boston.
Recommendation regarding First Pennsylvania Bank, Bala-Cynwyd, Pennsylvania, and First Pennsylvania Corporation, Philadelphia, Pennsylvania.
Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:
Case No. 44,580-L—Franklin National Bank, New York, New York
Case No. 44,584-SR—American Bank & Trust Company, New York, New York
Case No. 44,594-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee
Case No. 44,596-L—Franklin National Bank, New York, New York
Case No. 44,604-L—The Mission State Bank and Trust Company, Mission, Kansas
Case No. 44,606-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee
Case No. 44,611-L—Algoma Bank, Algoma, Wisconsin
Memorandum and Resolution re: Surety Bank and Trust Company, Wakefield, Massachusetts
Memorandum and Resolution re: American Bank & Trust Company, New York, New York
Memorandum and Resolution re: American Bank & Trust Company, New York, New York
Memorandum and Resolution re: Franklin National Bank, New York, New York
Memorandum and Resolution re: American City Bank & Trust Company, National Association, Milwaukee, Wisconsin
Reports of Committees and Officers:
Report of Director, Division of Liquidation:
Memorandum re: Reports Required Under Delegated Authority, Sale of Lots

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(4), (c)(8), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: December 22, 1980.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[S-2364-80 Filed 12-29-80; 11:26 am]
BILLING CODE 6714-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

December 24, 1980.
TIME AND DATE: 10 a.m., Wednesday, December 31, 1980.
PLACE: Room 600, 1730 K Street NW., Washington, D.C.
STATUS: Open.
MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Jackie Ray Hammonds v. National Mines Corp., Docket No. KENT 79-345-D. (Petition for Discretionary Review; issues include whether default was appropriate.)
2. Salt Lake County (Highway Division), Docket No. WEST 79-365-M. (Petition for Discretionary Review; issues include whether the activity involved is subject to the jurisdiction of the 1977 Mine Act.)
3. Local Union 781, District 17, United Mine Workers of America v. Eastern Associated Coal Corp., Docket No. WEVA 80-473-C. (Petition for Discretionary Review; issues include whether miners are due compensation under section III of the 1977 Mine Act.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5632.
[S-2360-80 Filed 12-29-80; 10:56 am]
BILLING CODE 6820-12-M

4

FEDERAL RESERVE SYSTEM.

Board of Governors.
TIME AND DATE: 10 a.m., Monday, January 5, 1981.
PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: December 29, 1980.
Theodore E. Allison,
Secretary of the Board.
[S-2062-80 Filed 12-29-80; 11:00 am]
BILLING CODE 6210-01-M

5

FEDERAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR 45, December 10, 1980, p. 81353.
PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, December 17, 1980.
CHANGES IN THE AGENDA: The Federal Trade Commission has deleted this matter from the agenda of its previously announced open meeting of Wednesday, December 17, 1980.
[S-2361-80 Filed 12-29-80; 10:58 am]
BILLING CODE 6750-01-M

6

[USITC SE-80-61]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Wednesday January 14, 1981.
PLACE: Room 117, 701 B Street, NW., Washington, D.C. 20436.
STATUS: Open to the public.
MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary:
   a. Surface grinding machines (Docket No. 701).
   b. Modular pushbutton switches (Docket No. 702).
   c. Steel rod treating apparatus (Docket No. 703).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.
[S-80-2366 Filed 12-29-80; 4:00 pm]
BILLING CODE 7020-02-M

7

NATIONAL SCIENCE BOARD.

DATE AND TIME:
January 15, 1981, 2 p.m., open session
January 16, 1981
8:30 a.m., open session
9:30 a.m., closed session
PLACE: 1800 G Street NW., Washington, D.C.
STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.
MATTERS TO BE CONSIDERED AT THE OPEN SESSIONS: Thursday, January 15, 2 p.m.:

1. Minutes—Open Session—221st Meeting
2. Chairman's Items
3. Director's Report
   a. Report on Grant & Contract Activity—11/20/80-1/14/81
   b. Organizational and Staff Changes
   c. Congressional and Legislative Matters
   d. NSF Budget for Fiscal Year 1981
   e. Status Report on NSF Reorganization
   f. Other Items
4. Board Committees—Reports on Meetings (continued on January 16)
5. Representation at Future NSF Advisory Groups
6. Faculty Effort Reporting Under OMB Circular No. A-21
7. Other Business
8. Next Meeting National Science Board—February 19-20, 1981

Friday, January 16, 8:30 a.m.:

4. Board Committees—Reports on Meetings (continued from January 15)
9. Grants, Contracts, and Programs

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION: Friday, January 16, 9:30 a.m.:

A. Minutes—Closed Session—221st Meeting
B. Grants, Contracts, and Programs
C. NSF Budgets for Fiscal Year 1982 and Subsequent Years
D. NSB Annual Reports
E. NSB and NSF Staff Nominees
F. Personnel Implications of Proposed Reorganization of NSF

CONTACT PERSON FOR MORE INFORMATION: Miss Vernice Anderson Executive Secretary, (202) 357-9582.
[S-2365-80 Filed 12-29-80; 4:00 pm]
BILLING CODE 7555-01-M

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

COMMERCE DEPARTMENT
International Trade Administration—
79025 11–28–80 / Certain fish from Canada; revocation of countervailing duty orders
National Oceanic and Atmospheric Administration—
82267 12–15–80 / Permit application fees

81728 12–12–80 / Federal Employees Health Benefits Program: amendments concerning benefits for medically underserved areas

POSTAL SERVICE
82925 12–17–80 / International express mail rates to Argentina

SECURITIES AND EXCHANGE COMMISSION

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

COMMODITY FUTURES TRADING COMMISSION

79416 12–1–80 / Minimum financial and related reporting requirements

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

68644 10–16–80 / Maximum rate of interest payable on negotiable order of withdrawal accounts

68641 10–16–80 / Use of premiums, finders fees, and prepayment of interest by depository institutions

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

57706 8–29–80 / Electric utilities; discontinuing reporting requirements R0211. "Report of impending emergencies, load reductions, and/or service interruptions in bulk electric power supply and related power supply facilities" [Originally published at 45 FR 38354, 6–9–80]

80617 12–8–80 / Revised alternative fuel price ceilings for the month of April 1980

ENVIROMENTAL PROTECTION AGENCY

79451 12–1–80 / Approval and promulgation of implementation plans; Ohio

FEDERAL DEPOSIT INSURANCE CORPORATION

79410 12–1–80 / Public access to application files

FEDERAL HOME LOAN BANK BOARD

66781 10–8–80 / Issuance of nationwide NOW accounts and overdraft authority

72631 11–3–80 / NOW Accounts, Give-aways, return on savings accounts and finders fee; interest rates

73468 11–5–80 / NOW account forms; requirements for Federal and other FSLIC-insured institutions

GENERAL SERVICES ADMINISTRATION

81045 12–9–80 / Bonds and insurance policies and procedures; transfer of provisions

76438 11–19–80 / Federal, State, and local taxes; transfer policies and procedures

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration—

79453 12–1–80 / Collection of unpaid Medicare premiums

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

81529 12–11–80 / Perishable Agricultural Commodities Act of 1930; increase in license fees

78619 11–28–80 / Cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland; revision of interest rate

Food and Nutrition Service—

79741 12–2–80 / Food stamp program: Standard deductions, dependent care/excess shelter expense deductions and thrifty food plan amounts for the 48 states and the District of Columbia, Alaska, Hawaii, Guam, the Virgin Islands, and Puerto Rico

84068 9–26–80 / School lunch program and State administrative expense funds; assessment, improvement and monitoring system

Food Safety and Quality Service—

78965 11–21–80 / Processing operations at official establishments, change in reporting frequency from weekly to quarterly

CIVIL AERONAUTICS BOARD

79750 12–2–80 / Automatic market entry procedures for first and second round applications

48867 7–22–80 / Elimination of certain reporting requirements and changes in monthly financial reporting for certificated carriers; amendment of statistical reporting requirements for small carriers and new entrants

67656 10–14–80 / Passenger origin-destination survey

COMMERCE DEPARTMENT

International Trade Administration—

79025 11–28–80 / Certain fish from Canada; revocation of countervailing duty orders

National Oceanic and Atmospheric Administration—

82267 12–15–80 / Permit application fees

COMMODITY FUTURES TRADING COMMISSION

79753 12–2–80 / Commodity Futures transactions; records requirements

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

76664 11–20–80 / Sales of natural gas; intrastate gas

FEDERAL COMMUNICATIONS COMMISSION

59880 9–11–80 / System of temporary licensing for multiple licensed mobile relay systems operating in the Business Radio Service

FEDERAL DEPOSIT INSURANCE CORPORATION

77411 11–24–80 / Employee responsibilities and conduct; maintenance of credit cards by bank examiners

67627 11–27–79 / Securities of insured state nonmember banks; proxy statements, reports and other matters

FEDERAL HOME LOAN BANK BOARD

82162 12–15–80 / Trust powers of Federal savings and loans associations

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Health Care Financing Administration—

29420 5–18–79 / Medicaid, State child health screening programs; effective for § 441.56(a)(3)

Social Security Administration—

37604 6–28–79 / Federal old-age, survivors, and disability insurance (1950–...); coverage of employees of State and local governments; annual wage reporting

72110 10–31–80 / Requirements for coverage of employees of state and local governments

[Corrected at 45 FR 78633, 11–26–80]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Commissioner, Office of Assistant Secretary for Housing—

54198 8–14–80 / Housing programs; previous participation review and clearance procedures

Interstate Land Sales Registration Office—

40474 6–13–80 / Land registration, purchaser's revocation rights, sales practices and standards, and formal procedures and rules of practice

INTERIOR DEPARTMENT

Indian Affairs Bureau—

81560 12–11–80 / San Carlos Indian Irrigation Project, Arizona; Revision of power rates

Land Management Bureau—

74722 11–12–80 / Modification of certain withdrawals: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming

78902 11–26–80 / Surface management of public lands under U.S. mining laws

[Corrected at 45 FR 82933, 12–17–80]

NUCLEAR REGULATORY COMMISSION

38340 6–9–80 / New requirements for labeling of gas and aerosol detectors, including smoke detectors, and labeling the point-of-sale packaging for these detectors

PENSION BENEFIT GUARANTY CORPORATION

82172 12–15–80 / Valuation of plan benefits; amendment adopting additional PBGC rates

81728 12–12–80 / Federal Employees Health Benefits Program: amendments concerning benefits for medically underserved areas

POSTAL SERVICE

82925 12–17–80 / International express mail rates to Argentina

SECURITIES AND EXCHANGE COMMISSION

73906 11–7–80 / Amendment of requirements applicable to filing by self-regulatory organizations of proposal rule changes and certain other materials

79425 12–1–80 / Self-regulatory organizations; record retention, production, and destruction; requirements extended to registered clearing agencies and Municipal Securities Rulemaking Board

76982 11–21–80 / Uniform and integrated reporting requirements: Management remuneration; final amendments

TRANSPORTATION DEPARTMENT

Coast Guard—

77434 11–24–80 / Casualty reporting requirements for deepwater ports and diving

77439 11–24–80 / Casualty reporting requirements for vessels

82248 12–15–80 / Design and equipment standards for tank vessels transferring Outer Continental Shelf oil

45269 7–3–80 / Equipment requirements for boat operators; acceptance of hand red flares as visual distress signals [Corrected at 45 FR 54042, 8–14–80]

73021 12–17–79 / Visual distress signal requirements

Federal Aviation Administration—

71919 10–30–80 / Limited IFR operations of rotorcraft

Federal Highway Administration—

25456 5–1–79 / Motor carriers and motor vehicles; parts and accessories necessary for safe operation to resolve inconsistencies between Federal safety standards

[Corrected at 44 FR 31981, 6–4–79]

Federal Railroad Administration—

72664 11–3–80 / Accident/incidents reports; biennial adjustment of reporting threshold

National Highway Traffic Safety Administration—

72131 12–13–79 / Child restraint systems; seat belt assemblies and anchorages

[Effective date changed at 45 FR 29045, 5–1–80]

Research and Special Programs Administration—

80829 12–8–80 / Change in mailing address for hazardous materials incident report

73682 11–6–80 / Elimination of certain reporting requirements

Deadlines for Comments on Proposed Rules for the Week of January 4 Through January 10, 1980

ACTION

80840 12–8–80 / Prohibitions on electoral and lobbying activities; comments by 1–7–81

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service—

73079 11–4–80 / Revision of tetanus toxoid potency test; comments by 1–5–81

Food Safety and Quality Service—

73947 11–7–80 / Accredited laboratory program for meat and poultry products inspection; comments by 1–6–81

71365 10–28–80 / Net weight labeling; meat and poultry; comments by 1–5–81

[Originally published at 45 FR 53002, 8–8–80]

Soil Conservation Service—

81210 12–10–80 / Great Plains Conservation Program, evaluation; comments by 1–5–81

CIVIL AERONAUTICS BOARD

73087 11–4–80 / Classification and exemption of air taxi operators; dual authority; comments by 1–5–81

73696 11–6–80 / State Implementation Plans; approval of 1982 ozone and carbon monoxide plan revisions for areas needing an attainment date extension; comments by 1–5–81

79118 11–28–80 / Tennessee's application for interim authorization, phase I, hazardous waste management program; comments by 1–5–81

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Secretary—

73454 11–4–80 / Nondiscrimination rules on basis of age in programs or activities receiving Federal financial assistance from HUD; comments by 1–5–81

INTERIOR DEPARTMENT

Internal Revenue Service—

73512 11–5–80 / Crude oil windfall tax; tax deposits and refunds based on the net income limitation; comments by 1–5–81

VETERANS ADMINISTRATION

81213 12–10–80 / Educational assistance eligiblity, character of

Soil Conservation Service—

81210 12–10–80 / Great Plains Conservation Program, evaluation; comments by 1–5–81

CIVIL AERONAUTICS BOARD

73087 11–4–80 / Classification and exemption of air taxi operators; dual authority; comments by 1–5–81

73092 11–4–80 / Rules of conduct in Board proceedings; comments by 1–5–81

DEFENSE DEPARTMENT

Office of the Secretary—

81213 12–10–80 / Education assistance eligibility, character of discharge; comments by 1–7–81

EDUCATION DEPARTMENT

73963 11–7–80 / Provisions for election to local advisory committees of oveseas dependents' schools; comments by 1–6–81

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

73684 11–6–80 / Electric and hybrid vehicle research, development, and demonstration program; equivalent petroleum-based fuel economy calculation; comments by 1–5–81

71746 10–29–80 / Price support loans for municipal waste energy projects; comments by 1–5–81

Federal Energy Regulatory Commission—

80125 12–3–80 / Natural Gas Policy Act of 1978; alternative fuel price ceilings for incremental pricing; comment period extended to 1–9–81

[Originally published at 45 FR 74505, 11–10–80]

81211 12–10–80 / Natural Gas Policy Act of 1978; alternative fuel price ceilings for incremental pricing; comments by 1–9–81

[*See also* 45 FR 74505, 11–10–80]

81063 12–9–80 / Procedures for jurisdictional agencies to submit recommendations of areas for designation as tight formations; comments by 1–5–81

ENVIRONMENTAL PROTECTION AGENCY

73696 11–6–80 / California State implementation plan revision: Amador, El Dorado, Nevada, Placer, and Tuolumne Counties; comments by 1–5–81

73971 11–7–80 / Consideration of approval of revision to New Jersey State Implementation Plan; comments by 1–6–81

81069 12–9–80 / Consideration of deadlines for revision of Illinois State Implementation plan; comments by 1–8–81

73967 11–7–80 / Consideration of revisions to California State Implementation Plan; comments by 1–6–81

73702 11–6–80 / Designation of areas for air quality planning purposes; State of Iowa; comments by 1–5–81

80558 12–5–80 / Idaho Implementation Plan; proposed revision; comments by 1–5–81

80314 12–4–80 / Implementation plans; North Carolina: air quality surveillance plan; comments by 1–5–81

80315 12–4–80 / Implementation plans; North Carolina: approval of plan revisions; comments by 1–5–81

80319 12–4–80 / Maine application for interim authorization, phase I, hazardous waste management program; comments by 1–10–81

80559 12–5–80 / Oregon Implementation Plan, proposed revision; comments by 1–5–81

66726 10–7–80 / Zone-depleting Chlorofluorocarbons; proposed production restriction; comments by 1–5–81

79117 11–28–80 / South Carolina's application for interim authorization, phase I, hazardous waste management program; comments by 1–6–81

73696 11–6–80 / State Implementation Plans; approval of 1982 ozone and carbon monoxide plan revisions for areas needing an attainment date extension; comments by 1–5–81

79118 11–28–80 / Tennessee's application for interim authorization, phase I, hazardous waste management program; comments by 1–5–81

FEDERAL COMMUNICATIONS COMMISSION

81797 12–12–80 / AM stereo broadcasting proceeding; comments by 1–9–81

[Originally published at 45 FR 59350, 9–9–80]

59350 9–9–80 / AM stereophonic broadcasting; reply comments by 1–8–81

63011 9–23–80 / Cable television systems and divestiture requirement; comments by 1–8–81

[Comment period extended at 45 FR 81217, 12–10–80]

71628 10–20–80 / Changes in the corporate structure and operations of COMSAT; reply comments by 1–9–81

79842 12–2–80 / FM broadcast station in Santa Barbara, Calif.; reply comments period extended to 1–5–81

[*See also* 45 FR 28770, 4–11–80]

71393 10–28–80 / FM broadcast station in South Lake Tahoe, Calif., table of assignments; reply comments by 1–9–81

55491 8–20–80 / FM quadraphonic broadcasting; reply comments by 1–9–81

70023 10–22–80 / Improvements to UHF television reception; comments by 1–5–81

79518 12–1–80 / Inquiry relating to the Commission's radio operator licensing program; reply comments extended to 1–5–81

[Originally published at 45 FR 54778, 8–18–80]

65639 10–3–80 / Maritime radio services; public coast stations operating on frequencies below 27,500 kHz, establishment limitation removed; reply comments by 1–9–81

79516 12–1–80 / Radio broadcast services TV channels 5 and 6 and FM channels 251–300 in the State of Hawaii; reply comments by 1–9–81

74946 11–13–80 / TV broadcast station in East St. Louis, Ill.; changes in table of assignments; reply comments by 1–4–81

70921 10–27–80 / TV broadcast station in Victoria, Tex., changes in table of assignments; reply comments by 1–4–81

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

73092 11–4–80 / Canned sardines and sardine-type products; establishment of standards; comments by 1–5–81

59540 9–9–80 / Establishment of conditions under which over-the-counter (OTC) anthelmintic drugs products, which destroy pinworms, are generally recognized as safe and effective and not misbranded; reply comments by 1–7–81

[Corrected at 45 FR 65609, 10–3–80]

71366 10–28–80 / Food labeling; net weight labeling requirements; comments by 1–5–81

[Originally published at 45 FR 53023, 8–8–80]

73095 11–4–80 / Frozen lobsters, rock lobsters, spiny lobsters and slipper lobsters; establishment of standards; comments by 1–5–81

74374 11–7–80 / Intent to amend performance standards for laser products; comments by 1–6–81

74158 11–7–80 / Restrictions on sale, use and distribution of alpha–fetoprotein test kits; comments by 1–6–81

Public Health Service—

76497 11–19–80 / Indian health; revision of regulations; comments by 1–5–81

Health Care Financing Administration—

74174 11–7–80 / Clinical laboratories: quality control standards for alpha-fetoprotein test kits; comments by 1–6–81

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Secretary—

73454 11–4–80 / Nondiscrimination rules on basis of age in programs or activities receiving Federal financial assistance from HUD; comments by 1–5–81

INTERIOR DEPARTMENT

Fish and Wildlife Service—

81081 12–9–80 / Proposed addition of national wildlife refuges to the list of open areas for migratory bird hunting, upland game hunting and big game hunting; comments by 1–8–81

66410 10–6–80 / Proposed threatened status for the Madison Cave Isopod; comments by 1–5–81

Land Management Bureau—

83580 12–19–80 / Grazing regulations amendments; comments by 1–9–81

Surface Mining and Reclamation Enforcement Office—

81526 12–10–80 / Coal processing waste banks performance standards; comments by 1–10–81

83544 12–19–80 / West Virginia Permanent Regulatory Program (resubmitted); comments by 1–6–81

INTERSTATE COMMERCE COMMISSION

76718 11–20–80 / Railroad cost accounting system compliance with uniform system of accounts; comments by 1–5–81

81217 12–10–80 / Railroad cost recovery index, general rate increases; comments by 1–9–81

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

74499 11–10–80 / Space transportation system, insurance and indemnification of NASA space vehicle users; comments by 1–9–81

NUCLEAR REGULATORY COMMISSION

73080 11–4–80 / Electric Utilities; petition for rulemaking published; comments by 1–5–81

PANAMA CANAL COMMISSION

80313 12–4–80 / Order of passage of vessels through the Panama Canal; comments by 1–5–81

POSTAL SERVICE

79104 11–28–80 / Proposed expansion of ZIP Code system by adding a hyphen and four new numbers; comments by 1–5–81

RAILROAD RETIREMENT BOARD

74510 11–10–80 / Statutory lien where sickness benefits paid; comments by 1–9–81

SECURITIES AND EXCHANGE COMMISSION

69479 10–21–80 / Individualized investment management services; comments by 1–9–81

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

80460 12–4–80 / Commuter pilot-in-command operating experience requirements and extension of compliance date for instrument rating requirement; comments by 1–5–81

67283 10–9–80 / Flight crewmember flight and duty time limitations and rest requirements; reply comments period extended to 1–10–81

[*See also* 44 FR 53316, 8–11–80]

67103 10–9–80 / Joint petition for rulemaking by Transamerica Airlines, Inc. and World Airways, Inc. to allow certificate holders' operations to be conducted under a flight operations control system; comments by 1–7–81

73688 11–6–80 / Petitions for rulemaking, summary of petitions received and dispositions of petitions denied; comments by 1–6–81

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau—

73692 11–6–80 / Finger Lakes Viticultural Area, establishment; comments by 1–5–81

73692 11–6–80 / "Tied-house" regulations, credit to retailers in arrears; comments by 1–5–81

Internal Revenue Service—

73512 11–5–80 / Crude oil windfall tax; tax deposits and refunds based on the net income limitation; comments by 1–5–81

VETERANS ADMINISTRATION

81213 12–10–80 / Educational assistance eligiblity, character of discharge; comments by 1–7–81

81787 12–12–80 / Government-furnished headstones or markers; increase in payment; comments by 1–9–81

81068 12–9–80 / Payment of educational assistance allowance to participants in the Veterans' Educational Assistance Program on active duty; comments by 1–7–81

Deadlines for Comments On Proposed Rules for the Week of January 11 Through January 17, 1981

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

75218 11–14–80 / Official Standards of the U.S. for the grades of sea island cotton and tentative standards for the preparation of long-staple cotton; comments by 1–15–81

Agricultural Stabilization and Conservation Service—

77035 11–21–80 / 1981 National Marketing quotas for burley tobacco; comments by 1–16–81

[Comments closing date corrected at 45 FR 79078, 11–28–80]

75219 11–14–80 / Proposed determinations of marketing quotas for the 1981–82, 1982–83 and 1983–84 marketing years for fire-cured, dark air-cured, virginia sun-cured, cigar-binder, and cigar-filler and binder tobacco, comments by 1–13–81

Food and Nutrition Service—

74725 11–12–80 / Food Stamp Program; criteria for authorizing wholesalers; comments by 1–12–81

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

77038 11–21–80 / Licensing of ocean thermal energy conversion facilities and plantships; comments by 1–16–81

DEFENSE DEPARTMENT

Defense Investigative Service—

82960 12–17–80 / Financial privacy; policies and procedures for obtaining information from financial institutions; comments by 1–16–81

ENVIRONMENTAL PROTECTION AGENCY

82964 12–17–80 / Air quality implementation plan, New Mexico; variance for Phelps Dodge Corp., Playas, N. Mex.; comments by 1–16–81

81789 12–12–80 / Colorado nonattainment area plans; comments by 1–12–81

76906 11–20–80 / Guideline for Federal procurement of cement and concrete containing fly ash; comments by 1–15–81

76076 11–17–80 / Hazardous waste management system; wastewater treatment tanks, neutralization tanks, containers, transport vehicles, etc.; comments by 1–16–81

80318 12–4–80 / Maryland application for interim authorization, phase 1; hazardous waste management program; comments by 1–15–81

75241 11–14–80 / Ocean dumping, proposed designation of sites; comments by 1–13–81

81792 12–12–80 / Ohio State Implementation Plan for sulfur dioxide; coments by 1–12–81

80317 12–4–80 / Pennslyvania application for interim authorization, phase 1; hazardous waste management program; comments by 1–13–81

81608 12–11–80 / Proposed revision of the State Implementation Plan for Kansas; comments by 1–12–81

[Corrected at 45 FR 84099, 12–22–80]

82675 12–16–80 / Proposed removal of revisions to Massachusetts State Implementation; comments by 1–15–81

81608 12–11–80 / Proposed revision of the State Implementation Plan for Kansas; comments by 1–12–81

82975 12–17–80 / Migratory bird hunting annual regulations, special procedures; comments by 1–16–81

68975 10–17–80 / Proposed endangered status and antical habitat for the Kentucky cave shrimp; comments by 1–15–81

Indian Affairs Bureau—

82667 12–16–80 / Attorney contracts with Indian tribes; comments by 1–15–81

Office of the Legal Adviser—

75687 11–17–80 / Coordinating and reporting of international agreements; comments by 1–16–81

[Corrected at 45 FR 81666, December 11, 1980]

TRANSPORTATION DEPARTMENT

81249 12–10–80 / Mid-Atlantic Fishery Management Council. Scientific and Statistical Committee, Philadelphia, Pa. (open), 1–7–81

81249 12–10–80 / North Pacific Fishery Management Council, Scientific and Statistical Committee, Advisory Panel, and Alaska Board of Fisheries, Seatle, Wash. (open), 1–5 and

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82675 12–16–80 / Proposed removal of revisions to Massachusetts State Implementation; comments by 1–15–81

81608 12–11–80 / Proposed revision of the State Implementation Plan for Kansas; comments by 1–12–81

78970 1–26–80 / Toxic substances; significant new uses; comments by 1–12–81

82678 12–16–80 / Receipt of request from State of New York to revise its State Implementation Plan; comments by 1–15–81

81793 12–12–80 / West Virginia State Implementation Plan; proposed revision; comments by 1–12–81

FEDERAL COMMUNICATIONS COMMISSION

46121 7–9–80 / American Telephone and Telegraph Co.; longterm cost allocation procedures; comments by 1–11–81

79841 12–2–80 / FM broadcast station in Ainsworth, Nebr.; proposed changes in table of assignments; comments by 1–13–81

78189 11–25–80 / FM broadcast station in Spirit Lake, Iowa; proposed changes in table of assignments; comments by 1–13–81

78190 11–25–80 / FM broadcast station in Wiggins, Miss.; proposed changes in table of assignments; comments by 1–13–80

68178 10–17–80 / Inquiry into the future role of low-power television broadcasting and television translators in the National Telecommunications System; comments by 1–15–81

74523 11–10–80 / MTS and WATS market structure; interstate telecommunications services; Alaska submarket, reply comments extended to 1–14–81

82280 12–15–80 / Overseas Communications Services; Comments extended to 1–16–81

[Originally published at 45 FR 82280, 11–19–80]

73718 11–6–80 / TV broadcast station in Sierra Vista, Ariz., proposed changes in table of assignments; reply comments by 1–12–81

FEDERAL TRADE COMMISSION

85076 12–24–80 / Credit practices; comments extended to 1–16–81

[*See also* 45 FR 56070, 8–22–80]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

69128 10–17–80 / Establishment of a monograph for ingrown toenail relief drug products for over-the-counter human use; comments by 1–14–81

69122 11–17–80 / Establishment of monograph for nailbiting and thumbsucking deterrent drug products for over-the-counter human use; comments by 1–14–81

75229 11–14–80 / General biological products standards; pyrogen test requirements; comments by 1–13–81

75226 11–14–80 / Provisionally listed color additives; Proposal to postpone the closing date for the provisional list of certain color additives; comments by 1–13–81

79093 11–28–80 / Restricted devices; comments period extended to 1–16–81

[*See also* 45 FR 65619, 10–3–80]

81734 12–12–80 / Stabilizers and emulsifiers in lowfat and skim milk; consumer interest regulations; objections by 1–12–81

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community Planning and Development, Office of the Assistant Secretary—

74940 11–13–80 / Community Development Block Grants; community development disaster assistance program; comments by 1–12–81

INTERIOR DEPARTMENT

Fish and Wildlife Service—

82975 12–17–80 / Migratory bird hunting annual regulations, special procedures; comments by 1–16–81

68975 10–17–80 / Proposed endangered status and antical habitat for the Kentucky cave shrimp; comments by 1–15–81

Indian Affairs Bureau—

82667 12–16–80 / Attorney contracts with Indian tribes; Payments of tribal attorney fees with appropriated funds; comments by 1–15–81

[Corrected at 45 FR 84088, 12–22–80]

81781 12–12–80 / Grants under Indian Child Welfare Act; comments by 1–12–81

Mines Bureau—

82669 12–16–80 / Revision of provisions for purchases of helium by Federal agencies; comments by 1–15–81

National Park Service—

82278 12–15–80 / Gulf Islands National Seashore; Off-road vehciles; comments by 1–14–81

INTERNATIONAL TRADE COMMISSION

82957 12–17–80 / Ethics rules, proposed amendments; comments by 1–15–81

INTERSTATE COMMERCE COMMISSION

85133 12–24–80 / Improvement of trailer on flatcar and container on flatcar service regulations; comments by 1–12–81

LABOR DEPARTMENT

Employment and Training Administration—

81768 12–12–80 / Grant awards; migrant and other seasonally employed farmworkers program under Comprehensive Employment and Training Act; comments by 1–12–81

Office of the Secretary—

81785 12–12–80 / Labor standards for Federal service contracts; comments by 1–12–81

NUCLEAR REGULATORY COMMISSION

75536 11–14–80 / Fracture toughness requirements for nuclear power reactors; comments by 1–13–81

[Corrected at 45 FR 77450, 11–24–80]

79820 12–2–80 / Intent to prepare environmental impact statement for reactor siting criteria; comments by 1–16–81

79492 12–1–80 / Searches of individuals at Power Reactor facilities; comments by 1–15–81

POSTAL SERVICE

81787 12–12–80 / Enclosures with special fourth-class matter; amendments to Domestic Mail Manual; comments by 1–11–81

RAILROAD RETIREMENT BOARD

78704 11–26–80 / Annuities under the Railroad Retirement Act; comments by 1–12– 81

SECURITIES AND EXCHANGE COMMISSION

70890 10–27–80 / Equity securities; purchases by issuer and others; comments by 1–15–81

83259 12–18–80 / Exemption from registration of interests and participations in certain H.R. 10 plans; comments by 1–14–81

69911 10–22–80 / Net capital requirement for brokers and dealers; comments by 1–15–81

69915 10–22–80 / Net capital requirements for brokers and dealers; comments by 1–15–81

69909 10–22–80 / Proposed comprehensive revision to system for registration of securities offerings; comments by 1–15–81

STATE DEPARTMENT

75687 11–17–80 / International agreements, coordination and reporting; comments by 1–16–81

Consular Affairs Bureau—

81778 12–12–80 / Change in fees for consular services; comments by 1–12–81

Office of the Legal Adviser—

75687 11–17–80 / Coordinating and reporting of international agreements; comments by 1–16–81

[Corrected at 45 FR 81668, December 11, 1980]

TRANSPORTATION DEPARTMENT

Coast Guard—

77439 11–24–80 / Casualty reporting requirements for vessels; comments by 1–15–81

81607 12–11–80 / Drawbridge operation regulations; Skull Creek, S.C.; comments by 1–12–81

Federal Aviation Administration—

75138 11–13–80 / Air carrier; carry-on baggage; accessible storage of flexible travel canes carried by blind passengers; comments by 1–12–81

TREASURY DEPARTMENT

Alcohol, Tobacco, and Firearms Bureau—

74942 11–13–80 / Multivantage dates under the labeling and advertising regulations for wine under the Federal Alcohol Administration Act; comments by 1–12–81

Internal Revenue Service—

75695 11–17–80 / Foreign oil and gas taxes; limitation on foreign tax credit; comments by 1–16–81

75695 11–17–80 / Foreign taxes, credibility; comments by 1–16–81

75709 11–17–80 / Limited liability companies, classification, comments by 1–16–81

75692 11–17–80 / Oil and gas not considered taxes; payments to foreign counties; comments by 1–16–81

75231 11–14–80 / Windfall profit tax; Clarification of rules relating to base prices of Tier 2 and Tier 3 oil; comments by 1–13–81

WATER RESOURCES COUNCIL

76701 11–20–80 / Protection and management of historic and cultural environment; comments by 1–12–81

Next Week's Meetings:

AGRICULTURE DEPARTMENT

80852 12–8–80 / Written contracts for the motor transportation of exempt agricultural commodities, Newark, N.J. (open), 1–5–81

ARTS AND HUMANITIES, NATIONAL FOUNDATION

79204 11–28–80 / Humanities Panel, Washington, D.C. (closed), 1–8–81

81133 12–9–80 / Humanities Panel, Washington, D.C. (closed), 1–6–81

81904 12–12–80 / Humanities Panel, Washington, D.C. (closed), 1–5 and 1–6, 1–8 and 1–9–81

83068 12–17–80 / National Council on the Arts, Media Arts Panel (Film/Video Production), Washington, D.C (closed), 1–5 through 1–7–81

83068 12–17–80 / National Council on the Arts, Special Projects Panel (Inter-Arts Program), Washington, D.C. (partially open), 1–5 and 1–6–81

CIVIL RIGHTS COMMISSION

82687 12–16–80 / New Jersey Committee press conference on domestic violence, Newark, N.J. (open) 1–8–81

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

81803 12–12–80 / Gulf of Mexico Fishery Management Council, Metairie, La. (open), 1–7–81

81249 12–10–80 / Mid-Atlantic Fishery Management Council, Surf Clam/Ocean Quahog Resources Subpanel, Dover, Del. (open), 1–9–81

81249 12–10–80 / Mid-Atlantic Fishery Management Council, Scientific and Statistical Committee, Philadelphia, Pa. (open), 1–7–81

81249 12–10–80 / North Pacific Fishery Management Council, Scientific and Statistical Committee, Advisory Panel, and Alaska Board of Fisheries, Seatle, Wash. (open), 1–5 and 1–6–81

[Changed at 45 FR 84115, 12–22–80]

Office of the Secretary—

84841 12–23–80 / Commerce Technical Advisory Board, Washington, D.C., 1–6–81

DEFENSE DEPARTMENT

Army Department—

82986 12–17–80 / Army Science Board, Washington, D.C. (open), 1–8 and 1–9–81

Office of the Secretary—

78194 11–25–80 / Wage Committee, Washington, D.C. (partially open), 1–6–81

EDUCATION DEPARTMENT

National Advisory Council on Indian Education—

81645 12–11–80 / Meeting, Washington, D.C. (open), 1–9 and 1–10–81

ENERGY DEPARTMENT

84844 12–23–80 / Radioactive Waste Management State Planning Council, Phoenix, Ariz. (open), 1–8 and 1–9–81

Energy Research Office—

84138 12–22–80 / Energy Research Advisory Board, Direct Heat Subpanel, Burlingame, Calif. (open), 1–9–81

Federal Energy Regulatory Commission—

81211 12–10–80 / Natural Gas Policy Act of 1978; alternative fuel price ceilings for incremental pricing, Washington, D.C., 1–6–81

[*See also* 45 FR 74505, 11–10–80]

80125 12–3–80 / Natural Gas Policy Act 1978; alternative fuel price ceilings for incremental pricing; informal technical conference, Washington, D.C., 1–6–81

[*See also* 45 FR 74505, 11–10–80]

ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH, PRESIDENT'S COMMISSION FOR THE STUDY OF

81907 12–12–80 / Compensation of subjects injured in research, et al., Washington, D.C. (open), 1–9 and 1–10–81

FEDERAL COMMUNICATIONS COMMISSION

80902 12–8–80 / Radio Broadcasting Advisory Committee, Technical and Allocations Subgroups, Washington, D.C. (open), 1–8–81

83328 12–18–80 / Radio Technical Commission for Marine Services, Washington, D.C. (open), 1–7–81

HEALTH AND HUMAN SERVICES DEPARTMENT

Alcohol, Drug Abuse, and Mental Health Administration—

85158 12–24–80 / Community Alcoholism Services Review Committee, Bethesda, Md. (partially open), 1–10 and 1–11–81

Centers for Disease Control—

83330 12–18–80 / Alpha-Fetoprotein Work Group, Atlanta, Ga. (open), 1–8 and 1–9–81

80906 12–8–80 / Work Group on Tuberculosis Therapy, Atlanta, Ga. (open), 1–8 and 1–9–81

[Date corrected at 45 FR 81262, 12–10–80 and at 45 FR 83331, 12–18–80]

Human Development Services Office—

84153 12–22–80 / White House Conference on Aging, Technical Committee on Age—Intergrated Society: Implications for Governmental Structure, Washington, D.C. (open), 1–8–81

National Institutes of Health—

79386 11–28–80 / Recombinant DNA Advisory Committee, Bethesda, Md. (partially open), 1–8–81

80357 12–4–80 / Recombinant DNA Advisory Committee, Working Group, Bethesda, Md. (open), 1–7–81

NUCLEAR REGULATORY COMMISSION

79955 12–2–80 / Screening Committee for Technical Vacancies on the Atomic Safety and Licensing Board Panel (closed), 1–6–81

84181 12–22–80 / Reactor Safeguards Advisory Committee, Washington, D.C. (partially open), 1–8 through 1–10–81

ENVIRONMENTAL PROTECTION AGENCY

78980 11–26–80 / Beverage can surface coating industry, Research Triangle Park, N.C., 1–6–81

76906 11–20–80 / Guideline for Federal procurement of cement and concrete containing fly ash, Washington, D.C., 1–8–81

80316 12–4–80 / Intent to promulgate a maintenance of pay provision as part of the Idaho State Implementation Plan

H.R. 6796 / Pub. L. 96-583 To amend and extend title VII of the Comprehensive Employment and Training Act (Dec. 23, 1980; 94 Stat. 3375) Price $1.

H.R. 7682 / Pub. L. 96-584 To amend title 10, United States Code; to provide greater flexibility for the Armed Forces in ordering Reserves to active duty, and for other purposes (Dec. 23, 1980; 94 Stat. 3377) Price $1.

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National Institutes of Health—

79386 11–28–80 / Recombinant DNA Advisory Committee, Bethesda, Md. (partially open), 1–8–81

80357 12–4–80 / Recombinant DNA Advisory Committee, Working Group, Bethesda, Md. (open), 1–7–81

Office of the Secretary—

83172 12–17–80 / Adoption Assistance and Child Welfare Act of 1980, implementation; demonstration project assisting those wishing to comment on proposed regulations: Boston, Mass., 1–9–81, and Atlanta, Ga., 1–9–81 (both sessions open)

Public Health Service—

85159 12–24–80 / Health Care Technology National Council, Criteria Subcommittee, New York, N.Y. (open), 1–9–81

INTERGOVERNMENTAL RELATIONS ADVISORY COMMISSION

83677 12–19–80 / Grants policymaking meeting, Chicago, Ill. (open), 1–8 and 1–9–81

INTERIOR DEPARTMENT

Fish and Wildlife Service—

82474 12–15–80 / Chihuahua Chub, Silver City, N. Mex. (open), 1–6–81

Land Management Bureau—

81890 12–12–80 / Carson City District Multiple Use Advisory Council, Carson City, Nev. (open), 1–9–81

83332 12–18–80 / Minnesota Land Use Planning, Fergus Falls, Minn. (open), 1–8–81

83332 12–18–80 / Minnesota Land Use Planning, International Falls, Minn. (open), 1–5–81

83332 12–18–80 / Minnesota Land Use Planning, St. Paul, Minn. (open), 1–8–81

81872 12–11–80 / Multiple Use Advisory Council, Ely, Nev. (open), 1–8–81

79172 11–28–80 / Phoenix District Multiple Use Advisory Council, Phoenix, Ariz. (open), 1–9–81

82366 12–15–80 / Rock Springs District Advisory Council, Rock Springs, Wyo. (open), 1–8–81

81129 12–9–80 / Arizona Ship District Multiple Use Advisory Council, St. George, Utah (open), 1–8–81

83332 12–18–80 / Minnesota Land Use Planning, Brainerd, Minn. (open), 1–7–81

81129 12–9–80 / Multiple Use Advisory Council, Moab, Utah (open), 1–9–81

81673 12–11–80 / Salt Lake District Office, Utah; Preparation of Box Elder County Resource Management Plan, Brigham City, Utah (open), 1–6–81

80190 12–3–80 / Yuma District Multiple Use Advisory Council, Yuma, Ariz. (open), 1–8 and 1–9–81

[*See also* 45 FR 73807, 11–6–80]

National Park Service—

81892 12–12–80 / Santa Monica Mountains National Recreation Area Advisory Commission, Ventura, Calif. (open), 1–6–81

Office of the Secretary—

21273 12–10–80 / Regional Oil Shale Coal Team, Denver, Colo. (open), 1–6–81

INTERSTATE COMMERCE COMMISSION

80853 12–8–80 / Written contracts for the motor transportation of exempt agricultural commodities, Newark, N.J. (open), 1–5–81

NATIONAL SCIENCE FOUNDATION

83069 12–17–80 / Social and Economic Science Advisory Committee, Executive Committee, Washington, D.C. (closed), 1–9 and 1–10–81

NUCLEAR REGULATORY COMMISSION

79955 12–2–80 / Screening Committee for Technical Vacancies on the Atomic Safety and Licensing Board Panel (closed), 1–6–81

84181 12–22–80 / Reactor Safeguards Advisory Committee, Washington, D.C. (partially open), 1–8 through 1–10–81

84183 12–22–80 / Reactor Safeguards Advisory Committee, Metal Components Subcommittee, Washington, D.C. (open), 1–7–81

84185 12–22–80 / Reactor Safeguards Advisory Committee, NRC Safety Research Program Subcommittee, Washington, D.C. (open), 1–7–81

84183 12–22–80 / Reactor Safeguards Advisory Committee, Regulatory Activities Subcommittee, Washington, D.C. (open), 1–6–81

84184 12–22–80 / Reactor Safeguards Advisory Committee, Safety Philosophy, Technology and Criteria Subcommittee, Washington, D.C. (open), 1–8–81

84184 12–22–80 / Reactor Safeguards Advisory Committee, Sequoyah Nuclear Plant Subcommittee, Washington, D.C. (open), 1–6–81

79955 12–2–80 / Screening Committee for Lawyer Vacancies on the Atomic Safety and Licensing Board, Bethesda, Md. (closed), 1–7–81

SOCIAL SECURITY NATIONAL COMMISSION

83734 12–19–80 / Meeting to discuss drafts for final report, Washington, D.C. (open), 1–8 and 1–7–81

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

83375 12–18–80 / Alternative Separation Concepts, Atlantic City, N.J. (open), 1–7–81

75040 11–13–80 / Alternative Strategies for the Implementation of Microwave Landing Systems, El Segundo, Calif., 1–5–81; Denver, Colo., 1–7–81; Rosemont, Ill., 1–9–81 (all sessions open)

National Highway Traffic Safety Administration—

84195 12–22–80 / Biomechanics Advisory Committee, Washington, D.C. (open), 1–8–81

TREASURY DEPARTMENT

Comptroller of the Currency—

80948 12–8–80 / Fair housing lending enforcement, Washington D.C. (open), 1–7–81

VETERANS ADMINISTRATION

82785 12–16–80 / Wage Committee, Washington, D.C. (closed), 1–8–81

Next Week's Public Hearings

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

77038 11–21–80 / Licensing of ocean thermal energy conversion facilities and plantships, Washington, D.C., 1–7–81

Office of the Secretary—

83306 12–18–80 / National Voluntary Laboratory Accreditation Program; acoustical testing services; Washington, D.C., 1–9–81

ENERGY DEPARTMENT

Economic Regulatory Administration—

84920 12–23–80 / Amendments to propane pricing regulations, Washington, D.C., 1–7–81

Western Area Power Administration—

80349 12–4–80 / Compliance with Title II of the Public Utility Regulatory Policies Act, Denver, Colo., 1–6–81

ENVIRONMENTAL PROTECTION AGENCY

78980 11–26–80 / Beverage can surface coating industry, Research Triangle Park, N.C., 1–6–81

76906 11–20–80 / Guideline for Federal procurement of cement and concrete containing fly ash, Washington, D.C., 1–8–81

80316 12–4–80 / Intent to promulgate a maintenance of pay provision as part of the Idaho State Implementation Plan, Kellogg, Idaho, 1–6–81

80319 12–4–80 / Maine application for interim authorization, phase 1, hazardous waste management program, Portland, Maine, 1–5–81

80318 12–4–80 / Maryland application for interim authorization, phase 1; hazardous waste management program, Baltimore, Maryland, 1–8–81

80317 12–4–80 / Pennsylvania application for interim authorization, phase 1; hazardous waste management program, Harrisburg, Pa., 1–6–81

79390 11–28–80 / Standards of performance for new stationary sources, Research Triangle Park, N.C., 1–9–81

INTERIOR DEPARTMENT

Land Management Bureau—

81127 12–9–80 / Consideration of proposed wilderness designation of Scab Creek Area, Sublette County, Rock Springs District, Wyo., Pinedale, Wyo., 1–6–81

Surface Mining Reclamation and Enforcement Office—

84824 12–23–80 / Resubmitted Utah permanent regulatory program, Salt Lake City, Utah, 1–7–81

83544 12–19–80 / West Virginia Permanent Regulatory Program (resubmitted), Charleston, W. Va., 1–5–81

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

80295 12–4–80 / Issuance of airman medical certificates for certain conditions, Washington, D.C., 1–6 and 1–7–80

Office of the Secretary—

83252 12–18–80 / Special Air Traffic Rules and Airport Traffic Patterns Slot Allocation at Washington National Airport, Washington, D.C., 1–8–81

TREASURY DEPARTMENT

Internal Revenue Service—

80837 12–8–80 / Imputed interest rates, Washington, D.C., 1–8–81

List of Public Laws

Last Listing December 30, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

H.R. 7709 / Pub. L. 96–578 To amend the Tariff Schedules of the United States to increase the quantity of cigarettes that may be accorded duty-free treatment if acquired in the insular possessions and entered by returning United States residents (Dec. 23, 1980; 94 Stat. 3358) Price $1.

H.R. 7626 / Pub. L. 96–579 Military Pay and Allowances Benefits Act of 1980 (Dec. 23, 1980; 94 Stat. 3359) Price $1.25.

H.R. 8195 / Pub. L. 96–582 To amend the Railroad Retirement Act of 1974 to extend certain cost-of-living increases (Dec. 23, 1980; 94 Stat. 3374) Price $1.

S. 1985 / Pub. L. 96–581 To authorize the Secretary of Agriculture to convey certain lands in the State of Arizona, to authorize the Secretary of the Interior to convey certain interests in lands in the State of Arizona, to amend the Act of March 14, 1978 (92 Stat. 154), and for other purposes (Dec. 23, 1980; 94 Stat. 3371) Price $1.

S. 3096 / Pub. L. 96–580 To amend the Wild and Scenic Rivers Act to authorize the acquisition of certain lands in Douglas County, Wisconsin (Dec. 23, 1980; 94 Stat. 3370) Price $1.

H.R. 6796 / Pub. L. 96–583 To amend and extend title VII of the Comprehensive Employment and Training Act (Dec. 23, 1980; 94 Stat. 3375) Price $1.

H.R. 7682 / Pub. L. 96–584 To amend title 10, United States Code; to provide greater flexibility for the Armed Forces in ordering Reserves to active duty, and for other purposes (Dec. 23, 1980; 94 Stat. 3377) Price $1.

H.R. 7814 / Pub. L. 96–585 To designate certain lands of the Fire Island National Seashore as the "Otis Pike Fire Island High Dune Wilderness", and for other purposes (Dec. 23, 1980; 94 Stat. 3379) Price $1.

H.R. 7306 / Pub. L. 96–586 To provide for the orderly disposal of certain Federal lands in Nevada and for the acquisition of certain other lands in the Lake Tahoe Basin, and for other purposes (Dec. 23, 1980; 94 Stat. 3381) Price $1.

S. 1142 / Pub. L. 96–587 Authorizing appropriations to the Secretary of the Interior for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts, and for other purposes (Dec. 23, 1980; 94 Stat. 3387) Price $1.

Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published in the **Federal Register** during the previous week.

RULES GOING INTO EFFECT

84998 12–24–80 / EPA—Grants for construction of treatment works; Clean Water Acts effective 12–16–80

84037 12–22–80 / DOT/NHTSA—Highway Safety innovative project grants program; effective 12–22–80

DEADLINES FOR COMMENTS ON PROPOSED RULES

85082 12–24–80 / ED—Education of handicapped children—Implementation of the Handicapped Act; Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance; comments by 2–9–81

APPLICATIONS DEADLINES

84195 12–22–80 / DOT/NHTSA—Safety innovative project grants program; preapplications accepted until 2–1–81

85145 12–24–80 / ED—College library resources program; apply by 3–23–81

85144 12–24–80 / ED—Library Career training program; apply by 3–2–81

85144 12–24–80 / ED—Strengthening research library resources program; apply by 3–16–81

84843 12–23–80 / ED—State educational agencies; special needs of migratory children; apply by 4–15–81

84843 12–23–80 / ED—State Student Incentive Grant (SSIG) Program; apply by 1–26–81

84154 12–22–80 / HHS/Sec'y—Poverty Research Center grant applications; apply by 2–16–81

APPLICATIONS DEADLINES

84898 12–23–80 / Labor/ETA—Comprehensive Employment and Training Act programs; youth community conservation and improvement projects and employment and training programs; members of migrant and other seasonally employed farmworker families; preapply by 1–9–81

MEETINGS

85158 12–24–80 / HHS/ADAMHA—Community Alcoholism Service Review Committee, Bethesda, Md. (partially open), 1–10 and 1–11–80

85158 12–24–80 / HHS/ADAMHA—Mental Health Small Grant Review Committee, Washington, D.C. (partially open), 1–29 through 1–31–81

85158 12–24–80 / HHS/ADAMHA—Psychiatry Education Review Committee, Rockville, Md. (partially open), 1–28 through 1–30–81

OTHER ITEMS OF INTEREST

84768 12–23–80 / ED—College Work-Study; supplemental educational opportunity grant; annual revision of sample

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85158 12–24–80 / HHS/ADAMHA—Psychiatry Education Review Committee, Rockville, Md. (partially open), 1–28 through 1–30–81

OTHER ITEMS OF INTEREST

84768 12–23–80 / ED—College Work-Study; supplemental educational opportunity grant; annual revision of sample cases and benchmark figures

84058 12–22–80 / ED—Education Department General Administrative Regulations (EDGAR)—Grant programs without specific regulations

85422 12–24–80 / ED—Library career training program (Title II—BHEA)

85430 12–24–80 / ED—Strengthening research library resources program (Title II–C HEA)

84147 12–22–80 / FMCS—Labor-Management Cooperation Program; comments by 1–18–81

84899 12–23–80 / Labor/ETA—Employment transfer and business competition determinations; list of applications filed

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WHEN: January 16 and 30; February 13 and 27; at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call King Banks, Workshop Coordinator, 202–523–5235.

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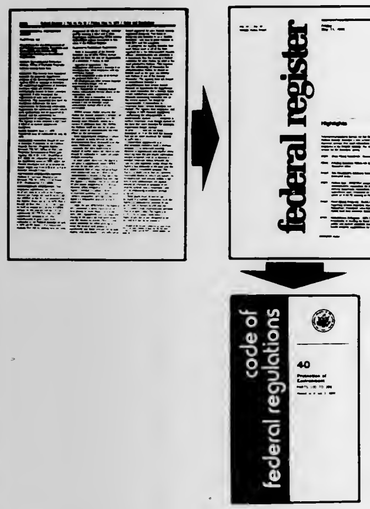


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86672 **Part II—OFR:**
Approved Incorporations by Reference in Titles 1–16 and Title 46

86694 **Part III—EPA:**
Noise Emission Standards for Transportation Equipment; Motorcycles and Motorcycle Exhaust Systems; Final Rule

86732 **Part IV—EPA:**
Noise Emission Standards for Transportation Equipment; Additional Testing Requirements for Motorcycles and Motorcycle Exhaust Systems; Proposed Rulemaking

86736 **Part V—ICC:**
Motor Carrier Rate Bureaus; Tariffs Containing Joint Rates and Through Routes; Freight Forwarder Contract Rates; Elimination of Gateway Restrictions and Circuitous Route Limitations; Removal of Restrictions From Authorities of Motor Carriers of Property; Intercorporate Hauling Reform; Lease of Equipment and Drivers to Private Carriers; Interpretation—Intercorporate Hauling; Applications and Acceptable Forms of Request for Operating Authority

86812 **Part VI—HHS/HDSO/HCFA:**
Foster Care

86854 **Part VII—ED:**
Student Assistance General Provisions; Final Regulations and Request for Comments

86872 **Part VIII—ED:**
International Education Programs; Final Regulations and Request for Comments

86886 **Part IX—ED:**
Institutional Grants for Graduate and Professional Study; Proposed Rulemaking

86890 **Part X—ED:**
Law School Clinical Experience Program; Proposed Rulemaking

86894 **Part XI—ED:**
Educational Opportunity Centers Programs; Proposed Rulemaking

86900 **Part XII—ED:**
Special Services for Disadvantaged Students Program

86908 **Part XIII—ED:**
Talent Search Program

86914 **Part XIV—ED:**
Upward Bound Program

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86922 Part XV—ED:
Training Program for Special Programs Staff and Leadership Personnel

86928 Part XVI—ED:
National Graduate Fellows Program

86932 Part XVII—ED:
Cooperative Education Program

86946 Part XVIII—EPA:
Control of Air Pollution From Aircraft; Standards Amended

86950 Part XIX—OMB/FPPO:
Research and Development Procurement; Control of Management Systems and Data Required of Contractors; Proposed Policy Letters

86966 Part XX—EPA:
Hazardous Waste Management System: Storage by Transporters; Shipments From Treatment, Storage, or Disposal Facilities; Transportation by Rail

86976 Part XXI—DOE:
Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions

86988 Part XXII—DOE-WAPA:
Colorado River Storage Project; Order Confirming, Approving, and Placing Increased Power Rates in Effect on an Interim Basis

87002 Part XXIII—USDA/AMS:
Regulations and Policy Statements Under the Packers and Stockyards Act

87008 Part XXIV—CAB:
Pre-Filing Tariff Approval Procedures and Special Tariff Permission

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Part II

Office of the Federal Register

Approved Incorporations by Reference in Titles 1–16 and Title 46

Title 7 Chapter I, Agricultural Marketing Service, Department of Agriculture
Chapter III, Animal and Plant Health Inspection Service, Department of Agriculture
Chapter IX, Agricultural Marketing Service, Department of Agriculture
Chapter XVII, Rural Electrification Administration, Department of Agriculture
Chapter XXVIII, Food Safety and Quality Service, Department of Agriculture
Title 9 Chapter I, Animal and Plant Health Inspection Service, Department of Agriculture
Chapter III, Food Safety and Quality Service, Department of Agriculture
Title 10 Chapter I, Nuclear Regulatory Commission
Chapter II, Department of Energy
Title 12 Chapter VII, National Credit Union Administration
Title 13 Chapter I, Small Business Administration
Title 14 Chapter I, Federal Aviation Administration, Department of Transportation
Title 16 Chapter II, Consumer Product Safety Commission
Title 46 Chapter I, Coast Guard, Department of Transportation

OFFICE OF THE FEDERAL REGISTER

1 CFR Part 51

Approval of Incorporations by Reference

responsible for making this material reasonably available to the affected public, and must indicate where the material may be obtained. Amendments are not properly incorporated until the

7 CFR Parts 28, 31, 32, 201, 982—Agricultural Marketing Service, U.S. Department of Agriculture

	CFR citation
Association of Official Seed Analysts (AOSA)	
Secretary Treasurer, AOSA, c/o U.S. Department of Agriculture, Seed Standardization Branch, Rm. 213, Bldg. 306 Agricultural Re-	

OFFICE OF THE FEDERAL REGISTER

1 CFR Part 51

Approval of Incorporations by Reference

AGENCY: Office of the Federal Register.

ACTION: Approval of incorporations by reference.

SUMMARY: The Director of the Federal Register has received requests from several agencies to approve materials incorporated by reference into Titles 1 through 16 of the Code of Federal Regulations (CFR). This document contains a table of items that have been approved by the Director for Titles 1 through 16 as well as some material for Title 46 of the CFR.

EFFECTIVE DATE: The Director approves the following incorporations by reference for one year effective January 1, 1981, unless otherwise noted.

FOR FURTHER INFORMATION CONTACT: Rose Anne Lawson, (202) 523–4534.

SUPPLEMENTARY INFORMATION:

Authority

Each agency that wishes material incorporated by reference in the CFR to remain effective must annually submit to the Director a list of that material and the date of the applicable edition (1 CFR 51.13).

The materials included on the table below are incorporated by reference in the CFR under 5 U.S.C. 552(a) and 1 CFR Part 51. These procedures provide that material approved for incorporated by reference by the Director of the Federal Register has the same legal status as if it were published in full in the **Federal Register.**

Availability

Before an agency may incorporate by reference any material into the Code of Federal Regulations, it must make the material reasonably available to the class or persons affected by it.

Agencies have indicated where each item included in the table may be obtained. The materials approved for incorporation by reference are available for inspection and copying at the Office of the Federal Register, 1100 L Street, NW, Washington, D.C. (202) 633–6930.

Amendments

If the producer of materials approved for incorporation by reference changes or updates the material and the agency wishes to enforce the changed or updated version, the agency must publish an amendatory document in the **Federal Register** indicating that the material is amended. The agency also is responsible for making this material reasonably available to the affected public, and must indicate where the material may be obtained. Amendments are not properly incorporated until the amendatory document is published in the **Federal Register,** and the amended material is filed at the Office of the Federal Register and is made available to the public.

Extensions

The Director has granted extensions of approval with respect to some material. These extensions are necessary in order to complete the review process under 1 CFR 51.13. Materials to which an extension applies are marked in the table.

Other CFR Titles

For materials approved for incorporation by reference in Titles 28 through 41 of the CFR, see documents published on June 30, 1980 at 45 FR 44090; on July 14, 1980 at 45 FR 47111; and on September 9, 1980 at 45 FR 59297.

For materials approved for incorporation by reference in Titles 42 through 50 of the CFR, see documents published on September 30, 1980 at 45 FR 64816; on October 31, 1980 at 45 FR 72464; on December 1, 1980 at 45 FR 79489; and on December 10, 1980 at 45 FR 81484. In addition, this document announces some final approvals for incorporation by reference into Title 46 of the CFR.

For material approved for incorporation by reference in Titles 17 through 27 of the CFR, a document will be published on March 31, 1981.

Problems

If there is a problem getting the material, notify the agency. If the material is not available at all, notify the Director of the Federal Register (NARS), Washington, D.C. 20408, or call (202) 523–4534.

Dated: December 18, 1980.

John E. Byrne,

Director of the Federal Register.

7 CFR Parts 28, 31, 32, 201, 982—Agricultural Marketing Service, U.S. Department of Agriculture

	CFR citation
Association of Official Seed Analysts (AOSA)	
Secretary Treasurer, AOSA, c/o U.S. Department of Agriculture, Seed Standardization Branch, Rm. 213, Bldg. 306 Agricultural Research Center, Beltsville, Maryland 20705	
Contribution No. 26, "Microbiological Assay of Fungicide—Treated Seeds," revised May, 1964.	201.58c
Contribution No. 28, "A Standardized Phenol Mehod for Testing Wheat Seed for Varietal Purity," revised June 1965.	201.58a(c)
NOTE: All contributions listed are to the *AOSA Handbook on Seed Testing*	
American Society for Testing and Materials (ASTM)	
1916 Race Street, Philadelphia, Pennsylvania 19103	
ASTM D584 Standard Method of Test for Wool Content of Raw Wool (1972).	31.204 (a)(5)(i)
ASTM D1060 Standard Method of Core Sampling of Raw Wool in Packages for Determination of Percentages of Clean Wool Fiber Present (1971).	31.204 (a)(5)(i) and 32.204 (b)(4)(i)
ASTM D2255 Standards for Appearance Grade Yarn on Bobbins. (1979).	28.956 (Item 17.1)
Federal-State Inspection Service	
Oregon Department of Agriculture, Agriculture Bldg., Salem, Oregon 97310.	
Extensions granted to Feb. 1, 1981 for the following publications:	
Oregon Grade Standards Filberts in Shell (August 25, 1975 Edition).....	982.45; 51; 453
Oregon Grade Standards for Filberts (Hazelnut) Kernels (July 20, 1976 Edition).	982.50; 101

7 CFR CHAPTER III (Parts 300 to 399)—Animal and Plant Health Inspection Service, U.S. Department of Agriculture

U.S. Department of Agriculture	*CFR Citation*
Regulatory Support Staff, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, USDA, Room 635, Federal Bldg., Hyattsville, MD 20782	
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USDA Walnut Color Chart: (Shelled Walnuts), (Walnuts in the Shell)... 2851.2276; 2946

American Public Health Association

1015 18th Street, NW., Washington, DC 20036

Standard Methods for the Examination of Dairy Products, 14th ed..... 2858.2726; .2728; .2730; .2732.

9 CFR CHAPTER I (PARTS 0 TO 199) Animal and Plant Health Inspection Service, U.S. Department of Agriculture

U.S. Department of Agriculture

CFR Citation

Veterinary Services, Animal and Plant Health Inspection Service, USDA, Federal Bldg., Hyattsville, MD 20782.

Recommended Brucellosis Eradication Uniform Methods & Rules (APHIS 91–1; July 1977).. 78.1; 78.8; 78.9; 78.29

Uniform methods & Rules-Bovine Tuberculosis Eradication (March 1980 Edition).. 77.1; 77.4; 77.5

World Health Organization

World Health Organization, Distribution and Sales Service, 1211 Geneva 27, Switzerland

United Nations Book Shop, New York, NY 10017

Laboratory Techniques in Rabies, Third Edition (1973) Edited by Martin M. Kaplan and Hilary Kaprowski. 113.129

9 CFR CHAPTER III (PARTS 300 TO 399) Food Safety and Quality Service, Department of Agriculture

CFR Citation

Association of Official Analytical Chemists

1111 N. 19th Street,

Suite 210, Arlington, VA 22209

Official Methods of Analysis of the Association of Official Analytical Chemists, 1980 ed.. 319.5

United States Department of Agriculture

Food Safety and Quality Service, Meat and Poultry Inspection Program, 14th and Independence Avenue, SW.; Washington, DC 20250

Diagram 1 of the Meat Denaturing Guide (MP Form 91)..... 325.13

Copies of MP Form 91 may also be obtained without charge, by writing to the Food Safety and Quality Service, U.S. Department of Agriculture, Compliance Program, Evaluation and Enforcement Division, Washington, DC 20250

10 CFR Chapter I (Parts 0—199)—Nuclear Regulatory Commission

Each of the following documents is available for inspection at the Nuclear Regulatory Commission's Library, 7920 Norfolk Avenue, Bethesda, Maryland. The individual documents are available through the sources listed below.

CFR Citation

American Association of Physicists in Medicine

335 E. 45th Street, New York, New York 10017

"Scientific Committee on Radiation Dosimetry of the American Association of Physicists in Medicine", Physics in Medicine and Biology, Volume 16, No. 3, 1971, 379–396. 35.21(c)

10 CFR Chapter I (Parts 0—199)—Nuclear Regulatory Commission—Continued

Each of the following documents is available for inspection at the Nuclear Regulatory Commission's Library, 7920 Norfolk Avenue, Bethesda, Maryland. The individual documents are available through the sources listed below.

CFR Citation

Baker Just, "Studies of Metal Water Reactions at High Temperatures, Part 50, App. K.

10 CFR Chapter I (Parts 0—199)—Nuclear Regulatory Commission—Continued

Each of the following documents is available for inspection at the Nuclear Regulatory Commission's Library, 7920 Norfolk Avenue, Bethesda, Maryland. The individual documents are available through the sources listed below.

CFR Citation

American Nuclear Society (ANS)

555 North Kensington Avenue, La Grange Park, Illinois 60525

Proposed American Nuclear Society Standard—"Decay Energy Release Rates Following Shutdown of Uranium Fueled Thermal Reactors," Approved by Subcommittee ANS–5, ANS Standards Committee, October 1971. Part 50, App. K, I.A.4

American National Standards Institute

1430 Broadway, New York, New York 10018

American Standard Code for Pressure Piping ASA B31.1 1955 Edition.... 50.55a

U.S.A. Standard Code for Pressure Piping USAS B31.1.0 1967 Edition, Addenda A, B & C. 50.55a

U.S.A. Standard Code for Pressure Piping USAS B31.7 1969 Edition, Addenda A, B & C. 50.55a

ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors, March 16, 1972. Part 50, App. J, III.A.3.a

ANSI Standard MH5.1 "Basic Requirements for Cargo Containers" (1971): 73.26

Extension granted to Feb. 1, 1981

International Standards Organization (ISO) 1496 "General Cargo Containers" 1978. 73.26

Extension granted to Feb. 1, 1981

International Standards Organization (ISO) 389 "Standard Reference Zero for the Calibration of Puretone Audiometer" (1965). 73, App. B, I.B.b(2)

Extension granted to Feb. 1, 1981

ANSI S3.6, "Specifications for Audiometers" (1979)..... Part 73, App. B, I.B.b(2)

Extension granted to Feb. 1, 1981

American Society of Mechanical Engineers (ASME)

United Engineering Center, 345 East 47th Street, New York, New York 10017

ASME Boiler and Pressure Vessel Code Section III..... 50.55a

Edition 1963: Addenda Summer 64; Winter 64.....

Edition 1965: Addenda Summer 65; Winter 65; Summer 66; Winter 66; Summer 67; Winter 67.

Edition 1968: Addenda Summer 68; Winter 68; Summer 69; Winter 69; Summer 70; Winter 70.

Edition 1971: Addenda Summer 71; Winter 71; Summer 72; Winter 72; Summer 73; Winter 73.

ASME Boiler and Pressure Vessel Code Section III, Division 1..... 50.55a

Edition 1974: Addenda Summer 74; Winter 74; Summer 75; Winter 75; Summer 76; Winter 76.

Edition 1977: Addenda Summer 77; Winter 77; Summer 78.....

ASME Boiler and Pressure Vessel Code Section XI, Division 1..... 50.55a

Edition 1970: Addenda Winter 70

Edition 1971: Addenda Summer 71; Winter 71; Summer 72; Winter 72; Summer 73; Winter 73.

Edition 1974: Addenda Summer 74; Winter 74; Summer 75; Winter 75; Summer 76; Winter 76.

Edition 1977: Addenda Summer 77; Winter 77; Summer 78

Draft ASME Code for Pumps and Valves for Nuclear Power dated November 1968 and 1 addenda dated 1970. 50.55a

American Society of Mechanical Engineers

United Engineering Center, 2nd Flood Library, 345 East 47th Street, New York, New York 10017

F. J. Moody, "Maximum Flow Rate of a Single Component, Two-Phase Mixture," Journal of Heat Transfer, Trans American Society of Mechanical Engineers, 87, No. 1, February 1965. Part 50, App. K, I.C.1.b.

American Society for Testing Materials (ASTM)

1916 Race Street, Philadelphia, Pennsylvania 19103

ASTM E–185–73 and E–185–79 Standard Recommended Practice for Surveillance Tests for Nuclear Reactor Vessels. Part 50, App. H, II.B

U.S. Department of Commerce National Technical Information Service

5285 Port Royal Road, Springfield, Virginia 22161

10 CFR Chapter II (Parts 200–699)—Department of Energy—Continued

Part 212 Mandatory petroleum price regulations—Continued

American Society for Testing and Materials

CFR Citation

ASTM Standard D 1655–73 "Standard Specification for Aviation Tur- 212.31

10 CFR Chapter I (Parts 0—199)—Nuclear Regulatory Commission—Continued

Each of the following documents is available for inspection at the Nuclear Regulatory Commission's Library, 7920 Norfolk Avenue, Bethesda, Maryland. The individual documents are available through the sources listed below.

	CFR Citation
Baker-Just, "Studies of Metal Water Reactions at High Temperatures, III. Experimental and Theoretical Studies of the Zirconium-Water Reaction," ANL–6548, page 7, May 1962.	Part 50, App. K, I.A.5
"PWR FLECHT (Full Length Emergency Cooling Heat Transfer) Final Report," Westinghouse Report WCAP–7665, April 1971.	Part 50, App. K, I.D.5
Federal Specifications	
Naval Publications and Forms Center, 5801 Tabor Road, Philadelphia, PA 19120	
GSA Interim Federal Specification W–A–00450B (GSA–FSS): Alarm Systems, Interior, Security, Components For.	73.50
General Electric Company	
Nuclear Energy Business Group, Technical Support Services, MC–211, 175 Curtner Avenue, San Jose, CA 95125	
"Loss-of-Coolant Accident and Emergency Core Cooling Models for General Electric Boiling Water Reactors." General Electric Company Report NEDO–10329, April 1971.	Part 50, App. K, I.D.7.c
International Atomic Energy Agency (IAEA)	
(Available from: Assistant Director for Export/Import and International Safeguards, Office of International Progams, Nuclear Regulatory Commission, Washington, DC 20555)	
IAEA INFCICR/225 Rev. 1, "The Physical Protection of Nuclear Material".	110.43(a)(1)
Institute of Electrical and Electronic Engineers (IEEE)	
United Engineering Center, 345 East 47th Street, New York, New York 10017	
IEEE–279, "Criteria for Protection Systems for Nuclear Generating Stations," dated August 30, 1968 and June 3, 1971.	50.55a(h)
National Rifle Association (NRA)	
Competitions & Training Division, 1600 Rhode Island Avenue, N.W., Washington, D.C. 20036	
NRA Target Manufacturers Index, December 1976	Part 73, App. B, IV.C.2–n.2
Nuclear Regulatory Commission	
Office of Standards Development, Washington, DC 20666	
Regulatory Guide 8.15 "Acceptable Programs for Respiratory Protection" October, 1976.	20.103(c)

10 CFR Chapter II (Parts 200–699)—Department of Energy

Part 210-General allocation and price rules

	CFR Citation
American Society for Testing and Materials	
1916 Race Street, Philadelphia, PA 19103	
ASTM D–288–61 (R 1973) Standard Definition of terms Relating to Petroleum.	210.34

Part 211-Mandatory petroleum allocation regulations

American Society for Testing and Materials	
1916 Race Street, Philadelphia, Pennsylvania 19103	
ASTM Standard D 396–73 "Standard Specification for Fuel Oils"	211.51
ASTM Standard D 975–74 "Standard Specification for Diesel Fuel Oils".	211.51
Gas Processors Association	
1812 First Place, Tulsa, Oklahoma 74103	
GPA Publication 2140 (1977) "Gas LPG Specification and Test Methods".	211.51; 211.82
GPA Publication 3132 (1974) "GPA Natural Gasoline Specifications and Test Methods".	211.82

Part 212 Mandatory petroleum price regulations

American Society for Testing and Materials	
1916 Race Street, Philadelphia, Pennsylvania 19103	
ASTM D 86–67 "Standard Method of Test for Distillation of Petroleum Products".	212.31
ASTM Standard D 910–70 "Standard Specifications for Aviation Guidelines".	212.31

10 CFR Chapter II (Parts 200–699)—Department of Energy—Continued

Part 212 Mandatory petroleum price regulations—Continued

	CFR Citation
American Society for Testing and Materials	
ASTM Standard D 1655–74 "Standard Specification for Aviation Turbine Fuels".	212.31
ASTM Test Method D 2699–70 "Standard Method of Test for Knock Characteristics of Motor Fuels by the Research Method". Extension Granted to Feb. 1, 1981.	212.31
ASTM Test Method D 2700–70 "Standard Method of Test for Knock Characteristics of Motor and Aviation Type Fuels by the Motor Method". Extensions granted to Feb. 1, 1981.	212.31
Military Specifications	
Naval Publication and Forms Center, 5801 Tabor Road, Philadelphia, PA 19120	
MIL–T–5624 J "Department of Defense Military Specifications for Turbine Fuel, Aviation, Grade JP–4 and JP–5".	212.31

Part 420 State energy conservation plans

American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc.	
345 East 47th Street, New York, NY 10017	
Standard 90, Energy Conservation in New Building Design, Sections 4–9 (Aug. 11, 1975).	420.2; 420.7

Part 430-Energy conservation program for consumer products

All standards incorporated into Part 430 are contained in Subpart B, Appendix A–O.

Association of Home Appliance Manufacturers	
20 N. Wacker Drive, Chicago, IL 60606	
AHAM HRF–2–ECFT—1975 Test Procedures to Determine the Temperature and Energy Consumption of Household Refrigerators, Combination Refrigerator-Freezers, and Freezers.	
AHAM ER–4–MWO—1977 Performance Evaluation for Microwave Cooking Appliances.	
AHAM ER–5–EC—1976 Proposed AHAM Standard Test Method for Measuring Energy Consumption of Electric and Gas Ovens and Surface Units and Microwave Ovens.	
AHAM HWL–1, Dec. 1971 Household Washer Performance Evaluation Procedure. (ANSI Z 224.1–1971).	
AHAM HLD–1, June 1974 Performance Evaluation Procedure for Household Tumble Type Clothes Dryers.	
AHAM HLD–2EC, Dec. 1975 Test Method for Measuring Energy Consumption of Household Tumble Type Clothes Dryers.	
AHAM HLW–2EC, Dec. 1975 Test Method for Measuring Energy Consumption of Household Clothes Washers.	
AHAM HU–1—72, Appliance Humidifier Standard (ANSI Z 235.1–1972).	
American National Standards Institute	
1430 Broadway, New York, NY 10018	
B38.1—1970, Method of testing for Household Refrigerators, Combination Refrigerator Freezers and Household Freezers.	
B149.1—1972, Dhumidifiers	
C16.13—1961, Monochrome Television Broadcast Receivers	
C71.1—1972, Household Electric Ranges	
C72.1—1972, ANS for Household Automatic Electric Storage-Type Water Heater.	
Z11.182—1965 (R 1971), Standard Method of Test for Smoke Density in the Flue Gases from Distillate Fuels.	
Z21.1—1974, As amended by Z21.1a—1974 and Z21.1b—1976—Household Cooking Gas Appliances.	
Z21.10.1—1975, Gas Water Heaters	
Z21.11.1—1974, ANS for Gas-Fired Room Heaters, Vol. 1, Vented Room Heaters. Extension granted to Feb. 1, 1981.	
Z21.13—1974, ANS for Gas-Fired Low Pressure Steam and Hot Water Heating Boilers. Extension granted to Feb. 1, 1981.	
Z21.44—1973, Gas Fired Gravity and Fan Type Direct Vent Wall Furnaces.	
Z21.47—1978, Gas Fired Central Furnaces	
Z21.48—1976, Gas Fired Gravity and Fan Type Floor Furnaces Extension granted to Feb. 1, 1981.	
Z21.49—1975, Gas Fired Gravity and Fan Type Vented Wall Furnace	

10 CFR Chapter II (Parts 200–699)—Department of Energy—Continued

Part 430-Energy conservation program for consumer products—Continued

American National Standards Institute—Continued

	CFR Citation
Z91.1—1972, ANS Performance Requirements for Oil-Powered Central Furnaces.	
Z224.1—1971, Performance Evaluation Procedures for Household Washers.	
Z234.1—1972, Room Air Conditioners	
Z235.1—1972, Appliance Humidifier Standard (AHAM HU–1–72)	
Air-Conditioning and Refrigeration Institute	
1815 N. Fort Myer Drive, Arlington, VA 22209	
ARI 210—79, Standard for Unitary Air Conditioning Equipment	

10 CFR Chapter II (Parts 200–699)—Department of Energy—Continued

Part 456—Residential energy conservation program—Continued

American National Standards Institute—Continued

	CFR Citation
ANSI Z21.20—1979 ANSI Standard for Automatic Gas Ignition Systems and Components.	456.814
ANSI Z21.47–1978 ANSI Standard for Gas-fired Central Furnaces	456.814; 456.914
ANSI Z21.59—Gas-fired High Pressure Steam and Hot Water Heating Boilers.	456.814
ANSI Z21.66–1978 ANSI Standard for Electrically-Operated Automatic Vent Damper Devices for Use with Gas-fired Appliances.	456.814; 456.914
ANSI Z21.67–1978 ANSI Standards for Mechanically-Actuated Automatic Vent Damper Devices for Use with Gas-fired Appliances.	456.814; 456.914
ANSI Z21.68–1978 ANSI Standard for Thermally-Actuated Automatic	456.814; 456.914

10 CFR Chapter II (Parts 200–699)—Department of Energy—Continued

Part 430-Energy conservation program for consumer products—Continued

American National Standards Institute—Continued

	CFR Citation
Z91.1—1972, ANS Performance Requirements for Oil-Powered Central Furnaces.	
Z224.1—1971, Performance Evaluation Procedures for Household Washers.	
Z234.1—1972, Room Air Conditioners	
Z235.1—1972, Appliance Humidifier Standard (AHAM HU-1-72)	
Air-Conditioning and Refrigeration Institute 1815 N. Fort Myer Drive, Arlington, VA 22209	
ARI 210—79, Standard for Unitary Air Conditioning Equipment	
ARI 240—77, Standard for Air-Source Unitary Heat Pump Equipment	
ARI 280—74, Standard for Central Forced-Air Electric Heating Equipment.	
ARI 320—78, Standard for Water Source Heat Pumps	
ARI 610—74, Standard for Central system Humidifiers	
American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc 345 East 47th Street, New York, NY 10017	
ASHRAE Standard 16—69 Method of Testing for Rating Room Air Conditioners.	
ASHRAE Standard 37—78 Method of Testing for Rating Unitary Air Conditioning and Heat Pump Equipment. Extension granted to Feb. 1, 1981.	
American Society for Testing and Materials 1916 Race Street, Philadelphia, PA 19103	
D396—78, Standard Specification for Fuel Oils	
D2156—65, Method of Test for Smoke Density in Flue Gases from Distillate Fuels (ANSI Z 11.182–1965 (R 1971)).	
Hydronics Institute	
35 Russo Place, Berkeley Heights, NJ 07922	
Testing and Rating Standards for Cast Iron and Steel Heating Boilers. Jan. 1977.	
International Electrotechnical Commission (Available from: American National Standards Institute, 1430 Broadway, New York, NY 10018)	
IEC Publication 335–25—1976 Method of Measuring Performance of Microwave Cooking Appliances for Household and Similar Purposes. Extension granted to Feb. 1, 1981.	
Underwriters' Laboratories, Inc. 207 East Ohio Street, Chicago, IL 60611	
UL 729—1976, Std. for Safety: Oil-Fired Floor Furnaces	
UL 730—1974, Std. for Safety: Oil-Fired Wall Furnaces Extension granted to Feb. 1, 1981.	
UL 858—1974 Household Electronic Ranges	
UL 896—1973, Std. for Safety: Oil-Burning Stoves	
Part 436—Federal energy management and planning programs	
American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. 345 East 47th Street, New York, NY 10017	
Standard 93–77, Methods of Testing to Determine the Thermal Performance of Solar Collectors.	436.76
Part 440—Weatherization assistance for low-income persons An extension to Feb. 1, 1981 has been granted for all standards incorporated by reference in Part 440 to complete the review process under 1 CFR 51.13.	
Part 456—Residential energy conservation program	
American National Standards Institute 1430 Broadway, New York, NY 10018	
ANSI/AAMA 1002.9—1977 Voluntary Specification for Aluminum Combination Storm Windows for External Applications.	456.813
ANSI/AAMA 1102.7—1977 Voluntary Specifications for Aluminum Storm Doors.	456.813
ANSI/ASTM B 152–79 Standard Specification for Copper Sheet, Strip, Plate, and Rolled Bar.	456.810
ANSI/ASTM B 446–75 Standard Specification for Nickel-Chromium-Molybdenum-Columbium Allow (UNSO6625) Rod and Bar.	456.810
ANSI/ASTM D 2156–65 (1975) ANSI Standard Method of Tests for Smoke Density in the Flue Gases from Distillate Fuels.	456.913
ANSI Z21.13–1977 Gas-Fired Low Pressure Steam Hot Water Heating Boilers..	456.814; 456.914

10 CFR Chapter II (Parts 200–699)—Department of Energy—Continued

Part 456—Residential energy conservation program—Continued

American National Standards Institute—Continued

	CFR Citation
ANSI Z21.20—1979 ANSI Standard for Automatic Gas Ignition Systems and Components.	456.814
ANSI Z21.47–1978 ANSI Standard for Gas-fired Central Furnaces	456.814; 456.914
ANSI Z21.59—Gas-fired High Pressure Steam and Hot Water Heating Boilers.	456.814
ANSI Z21.66–1978 ANSI Standard for Electrically-Operated Automatic Vent Damper Devices for Use with Gas-fired Appliances.	456.814; 456.914
ANSI Z21.67–1978 ANSI Standards for Mechanically-Actuated Automatic Vent Damper Devices for Use with Gas-fired Appliances.	456.814; 456.914
ANSI Z21.68–1978 ANSI Standard for Thermally-Actuated Automatic Vent Damper Devices for Use with Gas-fired Appliances.	456.814; 456.914
ANSI Z91.2–1976 Performance Requirements for Automatic Pressure Oil Burners of the Mechanical Draft Type.	456.814; 456.914
ANSI Z96.1–1978/UL 727 Oil-fired Central Furnaces	456.814
ANSI Z96.2–1974/UL 296 "Oil Burners"	456.814
ANSI Z96.3–1975/UL 726 "Oil-fired Boiler Assemblies"	456.814
ANSI/NWMA I.S. 2–73 "Industry Standard for Wood Windows"	456.813
ANSI/NWMA I.S. S–73 "Ponderosa Pine Doors"	456.813
American Society for Testing and Materials 1916 Race Street, Philadelphia, PA 19103	
ASTM C–177–76 "Standard Test Method for Steady State Thermal Transmission Properties by Means of the Guarded Hot Plate.	456.810
ASTM C–236–66 (Reapproved 1971) "Standard Test Method for Thermal Conductance and Transmittance of Built-up Sections by Means of the Guarded Hot Box".	456.810
ASTM C–516–75 "Standard Specification for Vermiculite Loose Fill"	456.806
ASTM C–518–76 "Standard Test Method for Steady State Thermal Transmission Properties by the Means of Heat Flow Meter".	456.810
ASTM C–520–65 (Reapproved 1975) "Standard Method for Density of Granular Loose-fill Insulation".	456.806; 456.807
ASTM C–570–72 "Specification for Oil and Resin Based Caulking Compound for Building Construction".	456.812
ASTM C–578–69 "Standard Specification for Preformed, Block-Type Cellular Polystyrene Thermal Insulation".	456.808
ASTM E–737–80 "Standard Practice for the Installation of Storm Windows, Replacement Windows, Multi-Glazing, Storm Doors and Replacement Doors".	456.911
ASTM C–755–73 "Standard Recommended Practice for Selection for Vapor Barriers for Thermal Insulation".	456.903
ASTM C–790–74 "Standard Recommended Practices for Use of Latex Sealing Compounds".	456.916
ASTM C–797–75 "Standard Recommended Practices and Terminology for Use of Oil- and Resin-Based Putty and Glazing Compounds".	456.916
ASTM C–804–75 "Standard Recommended Practices for Use of Solvent Release Type Sealants".	456.916
ASTM C–834–76 "Specification for Latex Sealing Compounds"	456.812
ASTM D–257–78 "Test for DC resistance or Conductance of Insulating Materials".	456.810
ASTM D–1622–63 (Reapproved 1975) "Standard Method of Test for Apparent Density of Rigid Cellular Plastics".	456.810
ASTM E–84–79B "Standard Test Method for Surface Burning Characteristics of Building Materials".	456.808; 456.809; 456.810; 456.812
ASTM E–96–66 (Reapproved 1972) "Standard Test Method for Water Vapor Transmission of Materials in Sheet Form".	456.805
ASTM E–119–79 "Standard Methods of Fire Tests of Building Construction and Materials".	456.906; 456.907
ASTM E–136–79 "Test for Non-Combustibility of Elementary Materials".	456.905; 456.906
ASTM E–283–73 "Standard Test Method for Rate of Air Leakage Through Exterior Windows, Curtain Walls and Doors".	456.813
ASTM E–576–76 "Standard Test Method for Dew/Frost Point of Sealed Insulating Glass Units in Vertical Position".	456.813
ASTM G–1–72 (Reapproved 1979) "Standard Recommended Practice for Preparing, Cleaning, and Evaluating Corrosion Test Speciments".	456.810
Building Officials and Code Administrators, International Inc. 17926 S. Halsted Street, Chicago, IL 60430	
BOCA Research Report No. 72–23	456.813
Environmental Protection Agency CERI-SB-53, Cincinnati, OH 45268	
EPA Report No. 600/2–75–069a "Guidlines for Residential Oil Burner Adjustments".	456.913

10 CFR Chapter II (Parts 200–699)—Department of Energy—Continued

Part 456—Residential energy conservation program—Continued

	CFR Citation
Federal Specifications	

10 CFR Chapter II (Parts 200–699)—Department of Energy—Continued

	CFR Citation
Part 475 Electric and hybrid vehicle research, development, and demonstration project	
Society of Automotive Engineers 400 Commonwealth Drive, Warrendale, PA 15096	
SAE J227a, as revised Feb. 1976, Electrical Vehicle Test Procedure	475.3; 475.10; 475.11

10 CFR Chapter II (Parts 200–699)—Department of Energy—Continued
Part 456—Residential energy conservation program—Continued

	CFR Citation
Federal Specifications	
Naval Publication and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120	
HH–I–515D (6/78) "Insulation, Thermal (loose-fill for Pneumatic or Poured Application): Cellulosic or Wood Fiber".	456.603; 456.604; 456.605
HH–I–524B (11/72—Interim Amendment, 1/76) "Insulation, Board, Thermal (Polystyrene)".	456.608
HH–I–530A (1971 and Interim Amendment 3, 5/76) "Insulation, Board, Thermal (Polyurethane and Polyisocynurate)".	456.609
HH–I–558B (1971 and Interim Amendment 3, 5/76) "Insulation Blocks, Boards, Blankets, Felts, Sleeving, and Pipe Fitting Coverings".	456.812
HH–I–573B (1968 and Interim Amendment, 1976) "Insulation Thermal, (Flexible Unicellular Sheet and Pipe Covering)".	456.812
HH–I–574B (1974 and Interim Amendment 1, 9/76) "Insulation, Thermal (Perlite)".	456.607
HH–I–585C (1974 and Interim Amendment 1, 9/76) "Insulation, Thermal (Vermiculite)".	456.606
HH–I–1030A (1973 and Interim Amendment 1, 9/76) "Insulation, Thermal (Mineral Fiber for Pneumatic or Poured Application)".	456.604; 456.605
HH–I–1252B (1976) "Insulation, Thermal Reflective (Aluminum Foil)"	456.610
TT–S–001543A (1971) "Sealing Compound, Silicone Rubber Base (for Caulking, Sealing, and Glazing in Buildings and Other Structures)".	456.812
TT–S–00227E (1969 and Amendment 3, 10/70) "Sealing Compound, Elastomeric Type, Multi-Component (for Caulking, Sealing, and Glazing in Buildings and Other Structures)".	456.812
TT–S–001657 (COM-NBS) (1970) "Sealing Compound, Single Component Butyl Rubber Base, Solvent Release Type (for Buildings and Other Types of Construction)".	456.812
TT–S–00230C (COM-NBS) (1970 and Amendment 2, 10/70) "Sealing Compound, Elastomeric Type, Single-Component, (for Caulking, Sealing, and Glazing in Buildings and Other Structures)".	456.812
TT–C–00598C (COM-NBS) (1970) "Caulking Compound, Oil and Resin Type, (for Building Construction)".	456.812
TT–P–00791B (GSA-FSS) (1969 and Amendment 2, 1970) "Putty Linseed-Oil Type, (for Wood-Sash-Glazing)".	456.812
Fir and Hemlock Door Association	
Yeon Building, Portland, OR 97204	
FHDA 6–79 "Industry Standard for Douglas Fir, Western Hemlock, and Sitka Spruce Doors and Blinds".	456.813
Department of Housing and Urban Development	
Office of Technical and Credit Standards, Room 6156, 451 Seventh Street, SW., Washington, DC 20410	
HUD Intermediate MPS Supplement 4930.2–1977 "Solar Heating and Domestic Hot Water Systems".	456.702; 456.703; 456.704
Department of Commerce, National Bureau of Standards	
Washington, DC 20234	
NBS/PS 26–70 "Rigid Polyvinyl-chloride Profile Extrusions"	456.813
National Fire Protection Administration	
470 Atlantic Avenue, Boston, MA 02210	
NFPA–31–1978 "1978 National Fire Code," Standard for the Installation of Oil and Burning Equipment".	456.905; 456.906; 456.907; 456.909; 456.913
NFPA–54/ANSI Z223.1–1–1974 National Fuel Gas Code, Part I, "Installation of Gas Piping and Gas Equipment on Non-Industrial Premises".	456.905; 456.906; 456.907; 456.909; 456.914
NFPA–70–1978 "National Electric Code," 1978	456.914; 456.705
NFPA–211–1977 "National Fire Code" Standard for Chimneys, Fireplaces, and Vents.	456.905; 456.906; 456.907; 456.909; 456.912
Sandia Laboratory	
Environmental Research Division–5333, Albuquerque, NM 87185	
Sandia Laboratories Report SAND 77–1375–1978—Peformance Evaluation of Wind Energy Conversion Systems Using the Method of Bins".	456.705
Underwriter Laboratory	
Publication Stock, 333 Pfingston Road, Northbrook, IL 60612	
UL 599, 3rd Ed.–1975, Amendments through 1978 "Standard for Heat Pumps".	456.814

10 CFR Chapter II (Parts 200–699)—Department of Energy—Continued

	CFR Citation
Part 475 Electric and hybrid vehicle research, development, and demonstration project	
Society of Automotive Engineers	
400 Commonwealth Drive, Warrendale, PA 15096	
SAE J227a, as revised Feb. 1976, Electrical Vehicle Test Procedure	475.3; 475.10; 475.11

12 CFR Chapter VII (Parts 700–799)—National Credit Union Administration

	CFR Citation
National Credit Union Administration	
1776 G Street, NW., Washington, D.C. 20456	
NCUA 8022—Accounting Manual for Federal Credit Unions (Jan. 1975 edition reprinted with changes in July 1980).	701.2(d)(1); 701.14(a)
NCUA 8001—Federal Credit Union Bylaws (August 1972 & Dec. 1977, July 1978, and August 1980 changes).	701.2(d)(2); 701.14(b)
NCUA 8009—Data Processing Guidelines for Federal Credit Unions (Sept. 1972).	701.2(d)(3); 701.14(c)
These documents are also available from:	
NCUA Region I	
441 Stuart Street, 6th Floor, Boston, MA 02116	
NCUA Region II	
New Federal Building, 228 Walnut Street, Box 926, Harrisburg, PA 17108	
NCUA Region III	
1365 Peachtree Street, N.E., Suite 500, Atlanta, GA 30367	
NCUA Region IV	
Federal Office Building, Room 704, 234 N. Summit Street, Toledo, Ohio 43604	
NCUA Region V	
515 Congress Avenue, Suite 1400, Austin, Texas 78701	
NCUA Region VI	
Two Embarcadero Center, Suite 1830, San Francisco, CA 94111	

13 CFR Chapter I (Parts 100 to 199)—Small Business Administration

	CFR Citation
American National Standards Institute (ANSI)	
1430 Broadway, New York, New York 10018	
American National Standard Specifications for Making Buildings and Facilities Accessible to and usable by, the Physically Handicapped (ANSI A–117.1—1980).	113.3–3(c)

14 CFR Chapter I (Parts 23, 25, 27, 29, 36, 91, 121, 127, 135)—Federal Aviation Administration, Department of Transportation

	CFR Citation
American National Standards Institute	
1430 Broadway, New York, NY 10018	
IEC Publication No. 179, "Precision Sound Level Meters", (1973)	36, Appendix A, Section A36.3
IEC Publication No. 225, "Octave, Half-Octave, Third-Octave Band Filters Intended for the Analysis of Sounds and Vibrations", (1966).	36, Appendix A, Sec. A36.3
Department of Transportation	
400 7th Street, S.W., Washington, D.C. 20590	
Extensions granted to Feb. 1, 1981 for the following publications:	
Advisory Circular 20–110—Index of Aviation Technical Standard Orders.	
TSO–C77, "Gas Turbine Auxiliary Power Units" (May 20, 1963)	25.1522; 29.1522
TSO–C91, "Emergency Locator Transmitters", (October 21, 1971)	25.1415; 29.1415; 91.52; 121.339; 121.353; 135.167
TSO–C74, Airborne ATC "Transponder Equipment" (February 20, 1973).	91.24; 121.345; 127.123; 135.143
TSO–10b, "Aircraft, Altimeter, Pressure, Actuated, Sensitive Type" (September 1, 1959).	91.36; 127.103
TSO–C88, Automatic Pressure Altitude Dicitizer Equipment" (February 10, 1967).	91.36; 127.103
TSO–C92B, "Ground Proximity Warning-Glide Slope Deviation Alerting Equipment" (August 19, 1976).	121.360
International Civil Aviation Organization	
(Attention: Distribution Officer), P.O. Box 400, Succursale; Place de l'Aviation Internationale, 1000 Sherbrooke Street West, Montreal, Quebec, Canada, H3A 2R2	
Annex 2 to the Convention on International Civil Aviation, Rules of the Air, 6th Edition (1970), with amendments through Amendment 20 (August 1976).	91.1 and 135.3(b)

14 CFR Chapter I (Parts 23, 25, 27, 29, 36, 91, 121, 127, 135)—Federal Aviation Administration, Department of Transportation—Continued

	CFR Citation
Pratt & Whitney Aircraft Co.	
400 East Main Street, East Hartford, CT 06108	
Engineering Change No. 197707	11–SFAR 27, Sec. 14(b); 91–SFAR 27, Sec. 14(b).
Service Bulletin 2531	11–SFAR 27, Sec. 14(b); 91–SFAR 27, Sec. 14(b).

14 CFR Chapter I (Part 97)—Federal Aviation Administration—Department of Transportation

	CFR Citation
Standard Instrument Approach Procedures (SIAPS)	97

14 CFR Chapter I (Part 152)—Federal Aviation Administration—Department of Transportation

	CFR Citation
(All Advisory Circulars are contained in 14 CFR 152.11. Copies of FAA Advisory Circulars are available from the addresses listed at the end of this table.)	
Federal Aviation Administration Advisory Circulars	152
(a) Circulars available free of charge.	

14 CFR Chapter I (Parts 23, 25, 27, 29, 36, 91, 121, 127, 135)—Federal Aviation Administration, Department of Transportation—Continued

	CFR Citation
Pratt & Whitney Aircraft Co.	
400 East Main Street, East Hartford, CT 06108	
Engineering Change No. 197707	11-SFAR 27, Sec. 14(b); 91-SFAR 27, Sec. 14(b).
Service Bulletin 2531	11-SFAR 27, Sec. 14(b); 91-SFAR 27, Sec. 14(b).
Service Bulletin 2417	11-SFAR 27, Sec. 14(b); 91-SFAR 27, Sec. 14(b).
Radio Technical Commission for Aeronautics (RCTA)	
2000 K Street, N.W., Washington, D.C. 20006	
RTCA Paper 23-63/DO-117 (March 14, 1963), "Standard Adjustment Criteria for Airborne Localizer and Glide Slops Receivers".	91, Appendix A, Para 3(a)
Society of Automotive Engineers, Inc.	
400 Commonwealth Drive, Warrenton, PA 15096	
SAE ARP 866A—Standard Values at Atmospheric Absorption as a Function of Temperature and Humidity for Use in Evaluating Aircraft Flyover Noise, (March 15, 1975).	36, Appendix A, Sec A36.9
U.S. Government Printing Office	
Washington, D.C. 20402, Superintendent of Documents	
ANC-18 Bulletin "Design of Wood Aircraft Structures" (June 1951, Second Edition).	23.613; 25.613; 27.613; 29.613.
Military Handbook MIL-HDBK-5C, Vol 1 & Vol 2 "Metallic Materials and Elements for Flight Vehicle Structures", (September 15, 1976, as amended through December 15, 1978).	23.613; 23.615; 25.693; 27.613; 29.613; 29.685.
Military Handbook MIL-HDBK-17A "Plastics for Aerospace Vehicles" (January, 1971).	23.613; 25.613; 27.613; 29.613.
Military Handbook MIL-HDBK-23A "Structural Sandwich Composites" (December 30, 1968).	23.613; 25.613; 27.613; 29.613.

14 CFR Chapter I (Part 39)—Federal Aviation Administration, Department of Transportation

(All Manufacturer's Service Bulletins in Airworthiness Directives are contained in 14 CFR 39.13. Manufacturer's Service Bulletins in Airworthiness Directives are available from the Manufacturer, or from the addresses listed at the end of this table.)

Extension for Manufacturer's Service Bulletins in Airworthiness Directives has been granted to March 1, 1981.

	CFR Citation
Manufacturer's Service Bulletins In Airworthiness Directives	39.13

Available for public inspection at:

Office of The Chief Council Rules Docket, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20590.

Available from:

New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts
Eastern Regional Office, Federal Building, John F. Kennedy (JFK) International Airport, Jamaica, N.Y.
Southern Regional Office, 3400 Whipple Street, East Point, Georgia
Great Lakes Regional Office, 2300 East Devon, Des Plaines, Illinois
Central Regional Office, 601 East Twelfth Street, Kansas City, Missouri
Southwest Regional Office, 4400 Blue Mound Road, Ft. Worth, Texas
Rocky Mountain Regional Office, 10255 East 25th Avenue, Aurora, Colorado
Northwest Regional Office, FAA Building, 9010 East Marginal Way South, King County International Airport (Boeing Field), Seattle, Washington
Western Regional Office, 15000 Aviation Boulevard, Hawthorne, California
Alaskan Regional Office, 632 Sixth Avenue, Anchorage, Alaska
Pacific Asia Regional Office, 1833 Kolakoua Avenue, Honolulu, Hawaii
European Regional Office, Tour Madou Building 1, Place Madou, 1020 Brussels, Belgium

14 CFR Chapter I (Part 97)—Federal Aviation Administration, Department of Transportation

(All Standard Instrument Approach Procedures are contained in 14 CFR Part 97.)

Federal Aviation Administration

National Flight Data Center, 800 Independence Avenue SW., Washington, D.C. 20590

14 CFR Chapter I (Part 97)—Federal Aviation Administration—Department of Transportation

	CFR Citation
Standard Instrument Approach Procedures (SIAPS)	97

14 CFR Chapter I (Part 152)—Federal Aviation Administration—Department of Transportation

(All Advisory Circulars are contained in 14 CFR 152.11. Copies of FAA Advisory Circulars are available from the addresses listed at the end of this table.)

Federal Aviation Administration Advisory Circulars	
(a) Circulars available free of charge.	152
150/5100-12 Electron Navigational Aids Approved for Funding Under the Airport Development Aid Program (ADAP).	
150/5190-3A Model Airport Hazard Zoning Ordinance.	
150/5210-7A Aircraft Fire and Rescue Communications.	
150/5210-10 Airport Fire and Rescue Equipment Building Guide.	
150/5300-2C Airport Design Standards—Site Requirements for Terminal Navigational Facilities.	
150/5300-4B Utility Airports—Air Access to National Transportation.	
150/5300-6 Airport Design Standards—General Aviation Airports—Basic and General Transport.	
150/5300-8 Planning and Design Criteria for Metropolitan STOL Ports.	
150/5320-6B Airport Pavement Design and Evaluation.	
150/5320-10 Environmental Enhancement at Airports—Industrial Waste Treatment.	
150/5320-12 Methods for the Design, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces.	
150/5325-2C Airport Design Standards—Airports Served by Air Carriers—Surface Gradient and Line-of-Sight.	
150/5325-4 Runway Length Requirements for Airport Design.	
150/5325-6A Airport Design Standards—Effect and Treatment of Jet Blast.	
150/5325-8 Compass Calibration Pad.	
150/5335-1A Airport Design Standards—Airports Served by Air Carriers—Taxiways.	
150/5335-2 Airport Aprons.	
150/5335-3 Airport Design Standards—Airports Served by Air Carriers—Bridges and Tunnels on Airports.	
150/5335-4 Airport Design Standards—Airports Served by Air Carriers—Runway Geometrics.	
150/5340-1D Marking of Paved Areas on Airports.	
150/5340-4C Installation Details for Runway Centerline and Touchdown Zone Lighting Systems.	
150/5340-5A Segmented Circle Airport Marker System.	
150/5340-8 Airport 51-foot Tubular Beacon Tower.	
150/5340-14B Economy Approach Lighting Aids.	
150/5340-17A Standby Power for Non-FAA Airport Lighting System.	
150/5340-18 Taxiway Guidance Sign System.	
150/5340-19 Taxiway Centerline Lighting System.	
150/5340-20 Installation Details and Maintenance Standards for Reflective Markers for Airport Runway and Taxiway Centerlines.	
150/5340-21 Airport Miscellaneous Lighting Visual Aids.	
150/5340-22 Maintenance Guide for Determining Degradation and Cleaning of Centerline and Touchdown Zone Lights.	
150/5340-23A Supplemental Wind Cones.	
150/5340-24 Runway and Taxiway Edge Lighting System.	
150/5340-25 Visual Approach Slope Indicator (VASI) Systems.	
150/5345-1E Approved Airport Lighting Equipment.	
150/5345-2 Specifications for L-810 Obstruction Light.	
150/5345-3C Specification for L-821 Panels for Remote Control of Airport Lighting.	
150/5345-4 Specification for L-829 Internally Lighted Airport Taxi Guidance Sign.	
150/5345-5 Specification for L-847 Circuit Selector Switch, 5,000 Volt 20 Ampere.	
150/5345-7C Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits.	
150/5345-10C Specification for L-828 Constant Current Regulators.	
150/5345-11 Specification for L-812 Static Indoor Type Constant Current Regulator Assembly: 4 KW and 7½ KW, With Brightness Control for Remote Operation.	
150/5345-12A Specification for L-801 Beacon.	

14 CFR Chapter I (Part 152)—Federal Aviation Administration—Department of Transportation

	CFR Citation
150/5345-13 Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits.	

14 CFR Chapter I (Part 152)—Federal Aviation Administration—Department of Transportation

Airports District Office, MSP-ADO, Federal Aviation Administration, 6301 34th Avenue South, Minneapolis, Minnesota 55450

Airports Division, ACE-600, Federal Aviation Administration, Federal Building, 601 East 12th

14 CFR Chapter I (Part 152)—Federal Aviation Administration—Department of Transportation

CFR Citation

150/5345-13 Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits.
150/5345-18 Specification for L-811 Static Indoor Type Constant Current Regulator Assembly, 4 KW; With Brightness Control and Runway Selection for Direct Operation.
150/5345-21 Specification for L-813 Static Indoor Type Constant Current Regulator Assembly; 4 KW and 7½ KW; for Remote Operation of Taxiway Lights.
150/5345-26A Specification for L-823 Plug and Receptacle, Cable Connectors.
150/5345-27A Specification for L-807 Eight-foot and Twelve-foot Unlighted or Externally Lighted Wind Cone Assemblies..
150/5345-28C Specification L-851 Visual Approach Slope Indicators and Accessories.
150/5345-36 Specification for L-808 Lighted Wind Tee.....
150/5345-39A FAA Specification for L-853, Runway and Taxiway Retroreflective Markers.
150/5345-42A FAA Specification L-857, Airport Light Bases, Transformer Housings, and Junction Boxes..
150/5345-43B FAA/DOD Specification L-856, High Intensity Obstruction Lighting Systems.
150/5345-44A Specification for L-858 Retroreflective Taxiway Guidance Sign.
150/5345-45 Lightweight Approach Light Structure.....
150/5345-46 Specification for Semiflush Airport Lights.....
150/5345-47 Isolation Transformers for Airport Lighting Systems.....
150/5345-48 Specification for Runway and Taxiway Edge Lights.....
150/5360-6 Airport Terminal Building Development with Federal Participation.
150/5360-7 Planning and Design Considerations for Airport Terminal Building Development.
150/5370-7 Airport Construction Controls to Prevent Air Water Pollution.
150/5370-9 Slip-Form Paving—Portland Cement Concrete.....
150/5370-11 Use of Nondestructive Testing Devices in the Evaluation of Airport Pavements.
(b) Circulars for sale.
150/5320-5B Airport Drainage; $1.30.....
150/5370-10 Standards for Specifying Construction of Airports; $7.25. ...
150/5390-1A Heliport Design Guide; $1.50.] .....

Address Table

FAA Distribution Unit, M-443.1, Department of Transportation Warehouse, 1725 15th Street NE., Washington, D.C. 20002
Airports Division, ANE-600, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803
Airports Division, AEA-600, Federal Aviation Administration, Federal Building, Room 329, John F. Kennedy International Airport, Jamaica, New York 11430
Airports District Office, ADO-NYC, Federal Aviation Administration, Colonial Building, 181 S. Franklin Avenue, Valley Stream, New York 11581
Airports District Office, ADO-HAR, Federal Aviation Administration, Terminal Building, Capital City Airport, New Cumberland, Pennsylvania 17070
Airports District Office, ADO-WASH, Federal Aviation Administration, 900 South Washington Street, Falls Church, Virginia 22046
Airports Field Office, Federal Aviation Administration, Route 9—Box 31-C, Beaver, West Virginia 25813
Airports Division, ASO-600, Federal Aviation Administration, 3400 Whipple Street, East Point, Georgia 30344
Airports District Office, ADO-ATL, Federal Aviation Administration, Suite C, Room 116, 1568 Willingham Drive, College Park, Georgia 30337
Airports District Office, ADO-MIA, Federal Aviation Administration, FAA/NWS Building, Miami International Airport, Miami, Florida 33159
Airports District Office, ADO-MEM, Federal Aviation Administration, 3973 Knight Arnold Rd., Suite 103, Memphis, Tennessee 38118
Airports District Office, ADO-JAN, Federal Aviation Administration, FAA Building—Municipal Airport, Jackson, Mississippi 39208
Airports Division, AGL-600, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018
Airports District Office, CHI-ADO, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018
Airports District Office, DET-ADO, Federal Aviation Administration, Building 358, Detroit Metropolitan Airport, Detroit, Michigan 48242

14 CFR Chapter I (Part 152)—Federal Aviation Administration—Department of Transportation

Airports District Office, MSP-ADO, Federal Aviation Administration, 6301 34th Avenue South, Minneapolis, Minnesota 55450
Airports Division, ACE-600, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Missouri 64106
Airports Division, ASW-600, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76131
Airports District Office, ASW-HOU-ADO, Federal Aviation Administration, Wm P. Hobby Airport, 8800 Paul B. Koonce Dr., Houston, Texas 77061
Airports District Office, ASW-ABQ-ADO, Federal Aviation Administration, NWS/FAA Building, Albuquerque International Airport, P.O. Box 9253, Albuquerque, New Mexico 87119
Airports District Office, ASW-OKC-ADO, Federal Aviation Administration, FAA Building, Room 204, Wiley Post Airport, Bethany, Oklahoma 73008
Airports Division, ARM-600, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colorado 80010
Airports Field Office, BIS-662, Federal Aviation Administration, 2000 Airport Road, Bismarck, North Dakota 58501
Airports Field Office, HLN-662, Federal Aviation Administration, FAA Building, Room 2, Helena County Airport, Helena, Montana 59601
Airports Division, ANW-600, Federal Aviation Administration, FAA Building, Boeing Field, King County International Airport, Seattle, Washington 98108
Airports Division, AWE-600, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261
Airports Field Office, AWE-680, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261
Airports Field Office, SFO-680, Federal Aviation Administration, 831 Mitten Road, Burlingame, California 94010
Airports Division, AAL-600, Federal Aviation Administration, Anchorage Federal Office Building, P.O. Box 14, 701 C. Street, Anchorage, Alaska 99513
Airports Division, APC-600, Federal Aviation Administration, Prince Jonah Kuhio Kalanianaole Bldg., 300 Ala Moana Boulevard, Honolulu, Hawaii 96813

Title 16—Chapter II (Parts 1000 To End)—CONSUMER PRODUCT SAFETY COMMISSION

American Association of Textile Chemists and Colorists (AATCC)
Post Office Box 12215, Research Triangle Park, North Carolina 27709

	CFR Citation
AATCC Test Method 124-1969, "Appearance of Durable Press Fabrics After Repeated Home Laundering".	1615.4; 1615.32; 1616.5; 1616.32; 1632.5

American National Standards Institute
1430 Broadway, New York, New York 10018

ANSI Standard C101.1-1971, "American National Standard for Leakage Current for Applicances".	1505.6(e)(3)(iv)
ANSI Z53.1-1971, "Safety Color Code for Marking Physical Hazards" ...	1402.4(a)(1)(i)
ANSI Z97.1-1972 or 1975, "Performance Specifications and Methods of Test for Safety Glazing Material Used in Buildings".	1201.7

American Society for Testing and Materials (ASTM)
1916 Race Street, Philadelphia, Pennsylvania 19103

ASTM C96.1-1964, "American Standard for Temperature Measurement Thermocouples, approved June 9, 1964..	1505.6
ASTM D256-73, "Test for Impact Resistance of Plastics and Electrical Insulating Materials", Method B, November 27, 1973.	1201.4
ASTM D765-65 "Standard Method of Test for Rockwell Hardness of Plastics and Electrical Insulating Materials", August 31, 1975, (Reapproved 1970).	1201.4
ASTM D790-71, "Standard Method of Test for Flexural Properties of Plastics", October 29, 1971.	1201.4
ASTM D1535-68, "Specifying Color by the Munsell System"	1402.4
ASTM D2565-70, "Standard Recommended Practice for Operating Xenon-Arc Type (Water Cooled) Light- and Water Exposure Apparatus for Exposure of Plastics", Procedure B, June 12, 1970.	1201.4
ASTM G-26-70, "Standard Recommended Practice for Light- and Water Exposure Apparatus (Xenon-Arc Type) for Exposure of Nonmetallic Materials," April 13, 1970, as augmented for plastics by ASTM.	1201.4

National Fire Protection Association
470 Atlantic Avenue, Boston, Mass. 02210

NFPA No. 70-1978, 1978 Edition of National Electrical Code, Article 400, Flexible Cords and Cables, pp. 70-230—70-241.	1505.5
NFPA No. 70-1971, 1971 National Electrical Code, Article 400, Flexible Cords and Cables, pp. 70-184—70-194.	1505.5

Title 16—Chapter II (Parts 1000 To End)—CONSUMER PRODUCT SAFETY COMMISSION

46 CFR—U.S. Coast Guard, Department of Transportation

The Director approves the following incorporations by reference from December 10, 1980 through September 30, 1981.

CFR Citation

Wednesday
December 31, 1980

Title 16—Chapter II (Parts 1000 To End)—CONSUMER PRODUCT SAFETY COMMISSION

46 CFR—U.S. Coast Guard, Department of Transportation

The Director approves the following incorporations by reference from December 10, 1980 through September 30, 1981.

	CFR Citation
Compressed Gas Association, Inc. (CGA)	
500 Fifth Avenue, New York, N.Y. 10036	
S-1.2, Pressure Relief Device Standards, Part 2—Cargo and Portable Tanks for Compressed Gases, 1979.	54.15-25
Inter-Governmental Maritime Consultative Organization (IMCO)	
IMCO Sales, New York Nautical Instrument and Service Corp., 140 West Broadway, New York, N.Y. 10013	
A.264 (VIII), Amendment to Chapter VI of the International Convention for the Safety of Life at Sea (Carriage of Grain), 1960, adopted 1973.	31.10-33; 93.20-5
Institute of Electrical and Electronics Engineers, Inc. (IEEE)	
345 East 47th Street, New York, N.Y. 10017	
IEEE Std 45-1977, IEEE Recommended Practice for Electric Installations on Shipboard.	167.40-1
Tubular Exchanger Manufacturers Association, Inc.	
707 Westchester Avenue, White Plains, N.Y. 10604	
Mechanical Standards for Heat Exchangers, Class "B," "C," or "R," 1978.	54.01-2
Underwriters Laboratories (UL)	
333 Pfington Rd., Northbrook, Ill. 60062	
UL-595, Marine-Type Electric Lighting Fixtures, 1979	183.01-15; 183.10-20

[FR Doc. 80-39745 Filed 12-30-80; 8:45 am]

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federal register

Wednesday
December 31, 1980

Part III

Environmental Protection Agency

Noise Emission Standards for Transportation Equipment; Motorcycles and Motorcycle Exhaust Systems; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 205

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the regulation; the not-to-exceed level is reduced to 80 decibels for vehicles manufactured after January 1, 1986. All off-road motorcycles with an engine displacement greater than 170 cc

regulation are discussed in § 3.0. Other changes to the proposed regulation are discussed in § 4.0.

All questions, comments, and issues raised in the public testimony and in

After the above effective dates original equipment and replacement exhaust systems designed and installed on Federally-regulated motorcycles shall not cause those motorcycles to produce noise levels in excess of the new vehicle

See the Docket Analysis for a detailed discussion of all the substantive issues raised by the commenters.

3.1 Issue

What should be the most stringent

the level representative of "best available technology" for street motorcycles is 78 dB as measured by the proposed test procedure. No significant differences in quieting technology appear to exist between large and small

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 205

[N-FRL—1517-8]

Noise Emission Standards for Transportation Equipment; Motorcycles and Motorcycle Exhaust Systems

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) hereby establishes noise emission standards for newly manufactured motorcycles and motorcycle exhaust systems. This action is taken under the authority of the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.). The regulation also incorporates an enforcement program which includes production verification requirements, selective enforcement auditing, compliance labeling, provisions for maintenance instructions, and anti-tampering provisions.

The Administrator has determined that the standards are feasible and represent those noise limits requisite to protect the public health and welfare taking into account the magnitude and conditions of use of the products, the degree of noise reduction achievable through the application of the best available technology, and the cost of compliance as required by Section 6(c)(1) of the Noise Control Act.

Compliance with the standards is expected to cause an average 5 decibel reduction in noise levels of new street motorcycles and a 2 to 7 decibel reduction in noise levels of new off-road motorcycles by 1986. In addition the standards for motorcycle exhaust systems are expected to cause significant reductions in motorcycle noise impact by controlling the availability of ineffective motorcycle exhaust systems. Without establishing these noise standards, the public's health and welfare would continue to be adversely affected by high levels of motorcycle noise. Lowering motorcycle noise levels is expected to result in approximately a 55–75 percent reduction in interference with human activities, and a 7–11 reduction in the extent and severity in overall traffic noise impact.

EFFECTIVE DATES: Effective January 1, 1983, all street and off-road motorcycles with an engine displacement of 170 cc and less manufactured after this date must not emit a noise level (A-weighted) in excess of 83 decibels (dB) when measured in the manner prescribed in the regulation; the not-to-exceed level is reduced to 80 decibels for vehicles manufactured after January 1, 1986. All off-road motorcycles with an engine displacement greater than 170 cc manufactured after January 1, 1983, must not emit a noise level in excess of 86 decibels; this not-to-exceed level is reduced to 82 decibels for vehicles manufactured after January 1, 1986. All moped-type street motorcycles manufactured after January 1, 1983 must not emit a noise level in excess of 70 decibels.

After the effective dates, all original equipment and replacement exhaust systems designed to be installed on Federally-regulated motorcycles must not cause those motorcycles to exceed the noise emission standards above.

ADDRESS: A copy of the Regulatory Analysis can be obtained from Mr. Charles Mooney, U.S. Environmental Protection Agency, EPA Public Information Center (PM-215), Room 2194 D—Waterside Mall, Washington, D.C. 20460.

FOR FURTHER INFORMATION, CONTACT: Mr. Fred Newberry, Project Officer, Standards and Regulations Division (ANR 490), U.S. Environmental Protection Agency, Washington, D.C. 20460; or phone (202) 557-7666.

SUPPLEMENTARY INFORMATION:

1.0 Introduction

On March 15, 1978, EPA proposed noise standards for newly-manufactured motorcycles and motorcycle exhaust systems (43 FR 10822). The purpose of the present notice is to establish final noise emission standards for motorcycles and motorcycle exhaust systems by adding Subpart D and Subpart E to amend Part 205 of Title 40 of the Code of Federal Regulations.

The legal basis and factual conclusions which support promulgation of this regulation were set forth in substantial detail in the proposed rule. In addition the Agency solicited public participation and established a comment period from March 15, 1978 through June 14, 1978. During this time, issues related to the proposed regulation were addressed in public hearings held in Anaheim, California, April 28–May 1, 1978; in St. Petersburg, Florida, May 5, 1978; and in Washington, D.C. May 9, 1978. All public comments submitted with respect to the proposed regulation have been given careful review and consideration. As a result a number of changes have been made to the regulation as proposed. The principal issues that emerged from the public comments, EPA's responses, and the resulting changes to the proposed regulation are discussed in § 3.0. Other changes to the proposed regulation are discussed in § 4.0.

All questions, comments, and issues raised in the public testimony and in written submissions to the docket, as well as other information supporting the regulation, are addressed in detail in the EPA document accompanying this rulemaking entitled "Regulatory Analysis of the Noise Emission Regulations for Motorcycles and Motorcycle Exhaust Systems."

Materials relevant to this rulemaking, as well as the written comments received during the comment period and transcripts of the public hearings, are available to the public at the EPA Headquarters Public Information Center, 401 M Street, SW., Washington, D.C. 20460. Transcripts of the public hearings are also available for inspection at each of EPA's 10 regional offices.

2.0 Summary of the Regulation

The regulation establishes noise emission standards for newly manufactured motorcycles and motorcycle exhaust systems. EPA evaluated several test procedures for measuring motorcycle noise and concluded that a test procedure developed by modifying the SAE J-331a test is the most appropriate for the final rule. This test procedure measures noise emissions of motorcycles under full throttle acceleration at specified percentages of the motorcycle's maximum rated engine speed, and at a fixed point in relation to a microphone location. For a comprehensive description of the test procedures, refer to Appendix I of the regulation. A detailed technical discussion is in the Regulatory Analysis.

Table 2-1

(Motorcycle Standards and Effective Dates)

Motorcycle type	Not-to-exceed a-weighted noise level (dB)	Effective date
1. Street Motorcycles	83	Jan. 1, 1983.
	80	Jan. 1, 1986.
2. Moped type street motorcycles.	70	Jan. 1, 1983
3. Off-road motorcycles:		
a. Displacement 170cc and below.	83	Jan. 1, 1983
	80	Jan. 1, 1986
b. Displacement more than 170 cc.	86	Jan. 1, 1983.
	82	Jan. 1, 1986

Effective on the dates listed, newly manufactured motorcycles must not produce noise levels in excess of those listed in Table 2-1 for a specified period, when tested and evaluated according to the methodology provided in Appendix I of Subpart D and E.

After the above effective dates original equipment and replacement exhaust systems designed and installed on Federally-regulated motorcycles shall not cause those motorcycles to produce noise levels in excess of the new vehicle standards listed in Table 2-1.

To ensure lasting benefits from this regulation, the Agency requires that manufacturers design and build each product so that, when properly maintained and used, its noise level will not degrade (increase) above the applicable levels in Table 2-1 for a specified period of time or use, from the date of the product's sale to the ultimate purchaser. This period is called the Acoustical Assurance Period (AAP). For street motorcycles and street motorcycle exhaust systems the AAP is 1 year or 6,000 km (3,730 mi.), whichever occurs first. The AAP for off-road motorcycles and off-road motorcycle exhaust systems is 1 year or 3,000 km (1,865 mi.), whichever occurs first.

In §§ 205.162-4 of Subpart D and 205.173-5 of Subpart E, a manufacturer must establish records regarding the anticipated increase in the noise level of his product during the AAP. These records may consist of a statement of engineering judgment, the results of durability testing or other information which the manufacturer deems adequate to support the fact that his products comply with the standard for the AAP.

Under the authority of Section 15 of the Act, § 205.152 of this regulation specifies the levels for a product to qualify as a Low Noise Emission Product (LNEP). Effective January 1, 1982, the following LNEP levels are specified: 75 dB for off-road motorcycles with engine displacements greater than 170 cc; 73 dB for street motorcycles with engine displacements greater than 170 cc; 71 dB for street motorcycles and off-road motorcycles with engine displacements 170 cc and lower; and 60 dB for moped-type street motorcycles. Effective January 1, 1989, the LNEP level for street motorcycles with engine displacements greater than 170 cc is lowered to 71 dB.

The regulation also incorporates an enforcement program which includes production verification requirements, selective enforcement auditing, compliance labeling, provisions for maintenance instructions, and anti-tampering warnings to consumers.

3.0 Discussion of Major Issues and Resolutions

The following is a summary of the major issues raised in the public hearings and in the written submissions during the public comment period, and the Agency's decision on those issues. See the Docket Analysis for a detailed discussion of all the substantive issues raised by the commenters.

3.1 Issue

What should be the most stringent noise standard for street motorcycles?

Comments

Several motorcycle manufacturers and motorcycle trade groups commented that they were strongly in favor of Federal regulations at the 83 dB level which would preempt state and local regulations, but argued that the increased costs of meeting the 80 and 78 dB levels were not justified by the increased health and welfare benefits. Most state and local governments urged EPA to adopt standards at least as stringent as 78 dB.

Decision

EPA has set 80 dB as the most stringent noise standard for street motorcycles. In examining this issue the Agency recognized four factors, (1) that motorcycles are a major source of noise in the environment and regulations to restrict their noise must be issued, pursuant to the statute, if feasible; (2) Federal action is essential for motorcycle noise because of a number of differing state and local standards on new motorcycles impacting on commerce, thus necessitating national uniformity of treatment; (3) a major part of the national motorcycle noise problem can be attributed to the offering for sale and subsequent use of aftermarket exhaust systems which cause the otherwise conforming motorcycle to make substantially more noise than when the motorcycle was first offered for sale; and (4) that primary responsibility for control of noise rests with state and local governments, and therefore the Federal government's actions should complement and aid, where practicable, the efforts of state and local governments to meet their responsibilities.

Studies indicate that the 78 dB level is representative of best available technology. Although the 78 dB standard is affordable, cost effectiveness at the 78 dB level diminishes markedly from the 80 dB level. After a product has been identified as a major source of noise, Section 6(c) of the Act requires EPA to set noise levels requisite to protect public health and welfare taking into account the extent to which it is operated in the presence of other noise sources, what is achievable through application of best available technology and the cost of compliance. As mentioned above studies indicate that the level representative of "best available technology" for street motorcycles is 78 dB as measured by the proposed test procedure. No significant differences in quieting technology appear to exist between large and small motorcycles at this level so subcategorization of street motorcycles was not pursued. The 78 dB not-to-exceed regulatory level (estimated to require 76 dB production level motorcycles) would have probably required liquid cooling or other major engine changes for many motorcycles above 200 cc displacement. These changes would have also resulted in weight increases, performance penalties, and some styling difficulties as well as an increase in purchase prices (sales-weighted estimated 8% or $120). Aftermarket replacement (Non-OEM) exhaust systems which would have been manufactured to comply with regulations at a 78dB level would be expected to lose performance and styling advantages over the original equipment and have purchase prices rise about 50% ($60 increase). Similar performance and styling penalties are also expected for these exhaust sytems at the 80 dB level. However, purchase prices should now rise about 25% or $30.

Although most manufacturers have expressed opposition to a 78 dB standard, most also stated during the public comment period that they were in favor of the Federal regulations since they will provide preemption against the states and localities regulating this industry, thereby providing national uniformity of treatment. Many states and localities have such motorcycle noise ordinances now and, in some cases, have regulations projected to the future which are more stringent than the 80 dB standard, which EPA is promulgating under this rulemaking, or the 78 dB standard that was proposed.

A large part of the current motorcycle noise problem is attributable to vehicles with modified exhaust systems. This is demonstrated in Table 1 which compares the benefits of increasingly stringent noise standards for newly manufactured motorcycles and the benefits of reducing the percentage of motorcycles with modified exhaust systems.

An initial standard is necessary to implement the replacement exhaust system standards, and the labeling and anti-tampering provisions of the regulations as rapidly as possible (most new street motorcycles currently being produced already meet the 83 dB level). These provisions, together with the non-availability of noisy replacement exhaust system for new motorcycles, are

expected to lower the rate of exhaust system modifications from the current 12% of the motorcycle population of 7%. This is expected to result in a total reduction in noise impact at the 83 dB reduction in impact at the 83 dB level.

After the initial 83 dB standard for new motorcycle and replacement exhaust systems has been established, any further reduction in noise impact systems for pre-regulation motorcycles and install them on their regulated motorcycles. Others may use straight pipes or attempt to remove the baffles from the complying exhaust system. It is

provide themselves. Congress added a provision in 1978 which will allow states to petition EPA for more stringent standards, should the Agency set ones which are less stringent than they would

systems could be promoted as a positive factor. Trade associations and other interested parties could support public awareness programs to increase the sensitivity of motorcyclists to the

of the 80 dB standard for street motorcycles apply here, as well.

The Agency has reason to believe that small off-road motorcycles, the most populous class of off-road motorcycles,

expected to lower the rate of exhaust system modifications from the current 12% of the motorcycle population of 7%. This is expected to result in a total reduction in noise impact at the 83 dB level of 17–36% (See Table 1). It is believed that more effective enforcement programs at the state and local level which make use of the labeling and the anti-tampering provisions in these regulations could reduce the incidence of exhaust system modifications to as low as 3% of the motorcycle population. This would be expected to bring a total 24–62% reduction in impact at the 83 dB level.

After the initial 83 dB standard for new motorcycle and replacement exhaust systems has been established, any further reduction in noise impact must come either from such reduction in the rate of exhaust modifications or from further reducing the noise levels of newly manufactured motorcycles. The benefit to be derived from an 80 dB standard, regardless of the level of exhaust modifications, is an additional 24% reduction in impact. At 78 dB there would have been an additional 8% reduction.

Table 1.—*Benefits and Costs*

EPA regulatory level	Reduction in Impact [1]				
	With current 12% modifications [2]	With current 7% modifications [3]	With current 3% modifications [4]	Motorcycle price increase	Total annualized cost [5]
83 dB	4–9%	17–36%	24–62%	6 (0.3%)	$12 M
80 dB	15–43%	47–56%	61–75%	36 (2.0%)	94 M
78 dB	22–57%	53–67%	78–83%	120 (7.6%)	218 M

[1] Percentage reduction in noise impact shown here apply to interferences with human activities. The range of values is attributable to differences in the impact of the regulation on various types of human activities (e.g., sleep, speech.) These measurements are used as an indicator of people's adverse reaction to noise intrusions.
[2] Effect of reducing noise level of new motorcycles only.
[3] Combined expected effect of exhaust system regulations, tampering and labeling provisions, and new motorcycle standards.
[4] With effective program at the state and local level.
[5] 1978 dollars.

Compared to the incremental benefits achievable through strong enforcement efforts at the state and local level the incremental benefits of setting a 78 dB standard over an 80 dB standard are small. Before the 80 dB level was selected as the final standard, the Agency had already started directing considerable efforts to working with states and localities under the Quiet Communities Act to establish complementary programs. EPA is hopeful that, through these and continued efforts, the additional projected reduction in modifications will be possible, although the Act gives EPA no authority to require communities to adopt and then enforce complementary ordinances. However, even if such a further reduction in modifications is not forthcoming, the 80 dB standard is expected to achieve at least a 33% reduction in motorcycle noise impact.

The Agency also considered the cost-effectiveness of a 78 dB level as compared to an 80 dB level. Namely, if the projected reduction in the number of modified motorcycles due solely to the Federal regulation is achieved, about 90% of the benefits provided by a 78 dB standard could be achieved by an 80 dB standard at less than one-half the costs, as shown in Table 1. It is not surprising, of course, that the marginal costs go up as standards become more stringent. This is a natural consequence of the way in which manufacturers are expected to apply noise abatement techniques. First, the manufacturers will apply those noise abalement techniques which can be done with least expense. Then the manufacturers will apply the next most expensive techniques and so on, until they achieve the necessary noise level reduction. A 78 decibel regulation would have made motorcycles cost an average of eight percent more while the price increase for motorcycles at the 80 dB level will be about two percent.

EPA also examined whether setting a 78 dB standard rather than an 80 dB standard with the associated increased performance losses would have been accompanied by an increased incidence in consumer modification of the exhaust system to regain performance, thereby more than offsetting the projected additional health and welfare benefits. The motorcycle exhaust system regulation will make it illegal to manufacture or sell non-complying exhaust systems for regulated motorcycles, thereby precluding many of the consumer modifications. Of course, some motorcyclists may buy exhaust systems for pre-regulation motorcycles and install them on their regulated motorcycles. Others may use straight pipes or attempt to remove the baffles from the complying exhaust system. It is possible that more consumers would have made such modifications to their exhaust system at a 78 dB level than at an 80 dB level in an attempt to regain any associated loss of performance. In any event, setting the final standard at 80 dB decreases the risk that such modifications might increase.

The Agency also examined the potential impact of the regulations on motorcycle manufacturers. Most motorcycle manufacturers are expected to meet the 80 dB level with little difficulty. Harley-Davidson has indicated that, although they can build a motorcycle which can meet a 78 dB standard, to do so they would have been forced to drop their air-cooled V-twin engine upon which their current unique niche in the market is substantially based. Thus, a 78 dB standard would have posed a serious marketing problem for Harley-Davidson. For Bombardier of Canada and many of the European manufacturers, a 78 dB standard could have caused some of them to discontinue exporting some of their models of street motorcycles to the U.S.

Although the primary responsibility for control of noise rests with state and local governments, the Agency plans to assist states and localities by effectively enforcing these regulations as to manufacturers of motorcycles and aftermarket exhaust systems, and providing them with strong support for adopting complementary programs. As mentioned earlier, the Agency is already directing considerable efforts to working with states and localities under the Quiet Communities Act. EPA believes that through such efforts, the projected reductions in aftermarket exhaust system modifications (Table 1) will be possible, resulting in significant health and welfare benefits at the 80 dB level.

The Agency also believes it needs to be cognizant of the fact that, with the preemptive features of the Act, it is taking away the state and local jurisdictions' power to regulate manufacturers and must in return make sure the Federal regulations are sufficiently stringent. In the latest amendments to the Noise Control Act, Congress expressed some real concern about the extent to which the Agency was preempting states and localities without providing them protection comparable to that which they could

provide themselves. Congress added a provision in 1978 which will allow states to petition EPA for more stringent standards, should the Agency set ones which are less stringent than they would like.

The Agency believes, as discussed above, that a large part of the current motorcycle noise problem can be attributed to vehicles with modified exhaust systems. To give the public relief from this noise problem the Agency is issuing these regulations with provisions to control the number of modified motorcycles, in addition to setting noise limits on newly manufactured motorcycles. The regulations will not only provide for national uniformity of treatment for manufacturers, but will also assist states and localities in their efforts in reducing the number of modified motorcycles.

In conclusion, although a 78 dB standard is affordable, we believe that 80 dB represents a more reasonable choice for the Agency. The costs of reaching a 78 dB standard are twice the costs of the 80 dB standard. Although this factor, standing alone, would not necessarily cause EPA to select 80 dB as the final standard, this in combination with other factors argues for an 80 dB level. Specifically, an 80 dB standard will avoid much of the performance penalties and the resulting possibility of increased consumer modifications at the 78 dB level, and will also avoid the potential economic dislocation to Harley-Davidson and foreign manufacturers discussed above. Moreover, ther 80 dB standard retains 90% of the benefits compared to the 78 dB level. EPA intends to further maximize the benefits of the 80 dB standard with a vigorous Federal enforcement effort and support for complementary state and local programs aimed at reducing the rate of modifications. In these circumstances, EPA has decided to set 80 dB as the most stringent noise standard for street motorcycles.

The Agency believes that to make these regulations highly effective, it will need additional support from the motorcycle public. EPA solicits the sincere efforts of the motorcycle industry including motorcycle and exhaust system manufacturers, distributors and dealers, motorcycle trade associations, motorcyle enthusiast associations, and motorcycle publications, to work with EPA, states, and communities to discourage illegal modifications to motorcycle exhaust systems. For example, in advertisements and elsewhere, the quietness of new motorcycles and replacement exhaust systems could be promoted as a positive factor. Trade associations and other interested parties could support public awareness programs to increase the sensitivity of motorcyclists to the viewpoint that excessive noise is an unwanted intrusion to the community and a public relations problem for motorcyclists and the motorcycle industry. Also, the motorcycle manufacturers could warn their dealers against offering for sale or installing illegal exhaust systems. The motorcycle manufacturers could provide salient warnings to purchasers that their warranty is voided by improper modifications. Peer pressure against making modifications which increase a motorcycle's noise level could also go a long way toward reducing this problem. Finally, the industry could work closely with states and localities in the design and implementation of fair and effective local noise control ordinances aimed at reducing illegal modification of these vehicles.

3.2 Issue

What should be the final-step standard for off-road motorcycles?

Comments

Several manufacturers commented that the proposed standards for off-road motorcycles are too stringent and will result in performance penalties. Manufacturers and trade associations questioned the Agency's justification for setting different standards for small and large displacement off-road motorcycles. One manufacturer stated that small off-road motorcycles are more difficult to quiet than large off-road motocycles because the smaller motorcycles have greater sensitivity to weight increases and less space for modifications. State and local governments and several interest groups, on the other hand, argued that the large off-road motorcycles should have to meet the same standards as street motorcycles and small off-road motorcycles. The statutory requirements, as discussed for street motorcycles, will apply here as well.

Decision

The standards proposed by the Agency for small and large off-road motorcycles are based on technology, cost, and health and welfare considerations. The Agency still finds that small displacement off-road motorcycles require substantially different degrees of treatment to reach reduced noise levels, with substantially lower costs and performance penalties then large displacement motorcycles. The factors discussed above in support of the 80 dB standard for street motorcycles apply here, as well.

The Agency has reason to believe that small off-road motorcycles, the most populous class of off-road motorcycles, are more likely to be operated in and around urban fringe areas where noise level reductions and significant noise impact relief could be achieved at a 78 dB or an 80 dB level. Although some small off-road motorcycles already meet the proposed levels, small displacement semi-competition models often exceed 90 dB.

The 82 dB regulatory level is selected for large off-road motorcycles because technology is available at reasonable costs with acceptable associated performance penalties. Studies indicate that levels stricter than 82 dB for large off-road motorcycles would exact severe performance penalties that would have a substantial impact on the character of the sport of off-road motorcycling as it is known today. Stricter levels could also increase the tendency of users either to modify their off-road motorcycles or to abuse the intended distinction between genuine competition and non-competition motorcycles by using uncontrolled competition off-road motorcycles for recreational riding.

Since some new off-road motorcycles are extremely loud, any reasonable Federal regulation, with its tampering, replacement muffler and labeling provisions, can help reduce the impact of off-road motorcycling noise considerably. However, even with the most stringent Federal noise standards for large off-road motorcycles, incompatible land use will continue to exist, and restrictions on the use of off-road motorcycles in wilderness areas and in residential areas will still be necessary in many jurisdictions.

3.3 Issue

Are the proposed lead times sufficient?

Comments

Several motorcycle manufacturers and two motorcycle trade associations reported that the proposed lead times are too short, making compliance with the standards difficult and possibly unattainable. A motorcycle interest group commented that the proposed lead times are very generous. A citizen's group against noise suggested lead times are more stringent than the proposed lead times.

Decision

The Agency has extended the compliance lead times in response to the industry comments. Since the replacement exhaust system standards

and tampering and labeling enforcement tools in these regulations are expected to have the largest initial impact in reducing motorcycle noise, an initial, essentially status quo standard of 83 dB for street motorcycles and small off-road

Comments

Several exhaust system manufacturers commented that the correlation between stationary tests and pass-by tests is poor. One manufacturer stated that exhaust system

the motorcycle in a stationary position and the transmission in neutral.

Prior to publication of the proposed regulation, consideration was given to proposing this SID test as the Federal test procedure. However, the

work on a stationary test procedure and welcomes the participation of other interested parties in the continued development of a suitable procedure.

Because no currently available stationary test shows adequate

F50 value is correct only for the original equipment manufacturer's (OEM) exhaust system. Our tests show that motorcycles with aftermarket exhaust systems, even though those systems may in fact not cause that motorcycle to

state and local governments to deal with the motorcycle modification problem affects the need for the proposed stationary test value to be on the label as well as the likelihood of state and local utilization of such a scheme. There

and tampering and labeling enforcement tools in these regulations are expected to have the largest initial impact in reducing motorcycle noise, an initial, essentially status quo standard of 83 dB for street motorcycles and small off-road motorcycles (engine displacement 170 cc and less) and an 86 dB standard for large off-road motorcycles (engine displacement greater than 170 cc) will go into effect as quickly as possible (January 1, 1983). Most of these motorcycles already meet this level, although a few will need limited additional quieting.

Based on submissions during the public comment period, the short lead times (three years for the 80 dB standards and 6 years for the 78 dB standard) in the proposed rule could pose problems for AMF/Harley-Davidson, the only major U.S. manufacturer, and for other smaller motorcycle manufacturers (mostly European). Similarly, some manufacturers of large off-road motorcycles contended that the 82 dB standard would be difficult to meet in a three year lead time. In the final rule, street motorcycles and small off-road motorcycles will be required to meet the 80 dB standard, effective January 1, 1986 (five years lead time.) Large off-road motorcycles (engine displacement greater than 170 cc) will be required to meet an initial standard of 86 dB, effective January 1, 1983, and a final standard of 82 dB, effective January 1, 1986 (5 years lead time). The standards can be achieved by the four largest manufacturers in the industry (all Japanese—accounting for 90% of the U.S. market) on an orderly basis. The standards are achievable by the smaller manufacturers provided they are willing to make the necessary investments in research and development to redesign their engines. For these manufacturers the extended effective dates should allow them ample time to develop, retool, and manufacture their redesigned, complying products.

It is relevant that several States, with more stringent standards than the Federal standards, have given the motorcycle industry notice that quieted products would be required by them in the near future, assuming Federal standards were not issued. Thus, the industry has known for several years that increasingly more stringent noise levels would be required in the 1980's.

3.4 Issue

Should the stationary test value on the motorcycle label be used as the noise standard by replacement exhaust system manufacturers?

Comments

Several exhaust system manufacturers commented that the correlation between stationary tests and pass-by tests is poor. One manufacturer stated that exhaust system manufacturers will be forced to use the pass-by test procedure to demonstrate compliance because of the poor correlation of the stationary test.

Decision

The Agency agrees that the poor correlation of the proposed F50 stationary test with the proposed pass-by test makes the use of the F50 label value as a standard for exhaust system manufacturers undesirable. In reviewing the test data, EPA found that an F50 test, which shows that an aftermarket system exceeds the level on the motorcycle label, provides no assurance that the aftermarket system fails to comply with the Federal pass-by standard. Likewise, an F50 test, which shows that an aftermarket system complies with the level on the F50 label on the motorcycle, provides inadequate assurance that the aftermarket system complies with the Federal pass-by standard. This lack of correlation argued against the adoption of this scheme in the final rulemaking.

The purpose of the proposed F50 test was to provide a means by which manufacturers could certify that their exhaust systems meet the Federal standard, using a less complicated and less expensive test procedure than the Federal pass-by test procedure. The Agency investigated the possible substitution of a high-correlation stationary test for the F50 test. A significant amount of work towards the development of such a test procedure has been done. This test is called the "stationary ignition disable," or SID, test procedure.

The preliminary study of the feasibility of such a test was conducted by McDonnell Douglas under contract to EPA prior to the publication of the proposed regulation. The results of that study were summarized in Appendix J of the Background Document for the proposed regulation. The data were encouraging, showing a correlation coefficient with the pass-by test procedure of .97 to .98. This stationary test procedure differs substantially from the F50 stationary test procedure. The F50 test procedure is a static test in which the motorcycle engine is run at a constant 50% of max rated RPM for the noise measurement. The SID test, on the other hand, requires that the motorcycle engine be accelerated at full throttle to the same closing RPM as is required in the pass-by test. This is conducted with the motorcycle in a stationary position and the transmission in neutral.

Prior to publication of the proposed regulation, consideration was given to proposing this SID test as the Federal test procedure. However, the availability of only relatively limited data, and the inexperience with this test procedure, and its possible limitations caused the Agency to ask for comment on the procedure in the proposed regulation while not formally proposing it for regulatory compliance.

Because the subsequent comments indicated significant problems with the F50 test procedure, the Agency further investigated the SID test. Improved "ignition disable" instrumentation was developed by EPA for a special evaluation of this test procedure. The results of this evaluation were encouraging but the instrumentation for the test procedure required further refinement to be useful to small replacement exhaust system manufacturers and to state and local enforcement agencies. In addition, several of the motorcycles in the test program were not compatible with the instrumentation for the SID test procedure. These problems remain to be solved.

The Agency encourages further work towards the development of a suitable stationary test by voluntary consensus standards organizations, or by manufacturers or manufacturer associations which may see potential cost savings in doing so. EPA would consider adopting such a stationary test procedure in the future, in addition to or in lieu of the Federal pass-by test procedure for motorcycles and replacement exhaust systems, if adequate correlation can be demonstrated and the test is compatible with all types of motorcycles. Section 205.167 was added to Subpart E of the final rule to provide for the Agency's consideration of alternative test procedures.

The Agency also recognizes that a stationary test procedure with good correlation to the Federal pass-by procedure is desirable for use by state and local governments in enforcing against illegal modifications and in identifying those motorcycle exhaust systems which degrade rapidly in their noise attenuation capability. Also, the Agency is interested in using a stationary test procedure in surveillance testing of products in use. Namely, the stationary test would be used to screen products in use for subsequent testing by the Federal pass-by procedure to determine compliance during the Acoustical Assurance Period. The Agency has already done preliminary work on a stationary test procedure and welcomes the participation of other interested parties in the continued development of a suitable procedure.

Because no currently available stationary test shows adequate correlation with the Federal pass-by test procedure, the final rulemaking requires the exhaust system manufacturers to use the Federal pass-by test procedure to demonstrate compliance with the standards. EPA anticipates that most of the aftermarket exhaust system manufacturers will have to hire an independent contractor with the required facility to conduct the testing. The Federal pass-by procedure is not a highly complicated test procedure requiring special "test facilities." Rather, the only major additional requirement of the pass-by test over a stationary test is a 50 foot by 100 foot flat section of pavement. The cost difference between using a short test and using the Federal pass-by test is expected to cause a 1 to 2 percent price increase in replacement exhaust systems.

3.5 Issue

Should motorcycle manufacturers be required to label their motorcycles with F50 stationary test values for use by state and local officials to detect tampering and the use of ineffective or faulty exhaust systems. (Note: The previous issue addressed only the use of the F50 test by exhaust system manufacturers for demonstrating compliance with the Federal standards.)

Comment

Two motorcycle trade associations questioned the usefulness of the stationary test values on the motorcycle label because of correlation difficulties. One representative of a state government commented that the F50 stationary test value stamped on the motorcycle frame only applies to the original equipment muffler. Further, he commented that unless the F50 labeling scheme is linked to the exhaust rather than to the motorcycle, in-use enforcement will not be workable. Many commented that the label needed to be simplified.

Decision

The primary purpose of the F50 label was to provide a guide for State and local in-use enforcement in their efforts to detect tampering and the use of ineffective or faulty exhaust systems. In the proposed regulation, we proposed that the motorcycle manufacturers label each of the motorcycles that they sell with a F50 value that corresponds to that particular model of motorcycle. However, the Agency agrees that this F50 value is correct only for the original equipment manufacturer's (OEM) exhaust system. Our tests show that motorcycles with aftermarket exhaust systems, even though those systems may in fact not cause that motorcycle to exceed the Federal pass-by standard, can have F50 levels considerably in excess of or considerably below the level on the motorcycle label.

As a result, motorcyclists riding in those jurisdictions which looked to the F50 label value on each motorcycle as the in-use noise standard could have experienced the following: when tested by state or local officials, some motorcyclists could have been ticketed for operating excessively loud exhaust systems even though they would pass the Federal pass-by standard; other motorcyclists who had tampered with their replacement exhaust system could have passed the F50 test even though they would have failed a pass-by test by a considerable margin. Thus, the Agency agrees that the proposed F50 labeling program is undesirable.

In fact, for the F50 label scheme to be workable, each different exhaust system, whether OEM or aftermarket, would have to be lableled with an F50 value on the label for each motorcycle that it fits. However, this scheme would require aftermarket manufacturers to place a relatively complex label on each replacement exhaust system intended for regulated motorcycles. And, the Agency would need an extensive enforcement effort to determine whether the manufacturers had labeled correctly. A final consideration is that state and local enforcement officials are unlikely to make use of such a complex label. These considerations, taken together, ruled against this approach.

Another possibility that the Agency considered was not to require any F50 values on either the motorcycle or muffler label, but rather to set a single F50 standard for use by state and local enforcement which would hopefully provide detection of at least the more serious instances of tampering. Preliminary analysis has indicated, however, that to avoid incorrectly citing motorcycles which would pass the Federal pass-by standard, the single F50 standard would have to be set fairly high. And if the standard were set at this level, enforcement officials would be able to cite only one-fourth of the loud motorcycles which they stopped. Further, the 25% which would be cited would not necessarily be the truly noisiest motorcycles (as determined by the pass-by test). Thus, this approach is also in doubt.

How an F50 labeling scheme relates to other approaches that might be taken by state and local governments to deal with the motorcycle modification problem affects the need for the proposed stationary test value to be on the label as well as the likelihood of state and local utilization of such a scheme. There are essentially three approaches that state and local governments can use to address a motor vehicle noise problem.

One approach is the street noise standard. This usually consists of a not-to-exceed level measured at curb side or some specified distance from the roadway. The specified not-to-exceed level may be different for various roadway situations. For example, in several states on streets with speed limits less than 35 mph, it is illegal for a motorcycle to exceed one specified noise level, and on streets with speed limits greater than 35 mph, it is illegal for a motorcycle to exceed a higher specified noise level. Some jurisdictions differentiate between streets with less than 1% grade and streets with more than 1% grade with regard to allowable noise levels. As provided by Section 6(e)(2) of the Act, state and local governments are not preempted by Federal regulations from establishing and enforcing such controls on environmental noise.

The fundamental difference between this type of standard and an F50 standard is that the way a motorcyclist operates his motorcycle (i.e., whether he accelerates rapidly or slowly) strongly affects the street level measurement. By contrast, the F50 standard is an equipment standard as opposed to an environment standard and is unaffected by whether a particular motorcyclist may be more aggressive or less aggressive than the norm in operating his motorcycle. Thus, it is possible for a person with a very loud modified motorcycle to operate it in such a way as to pass the street standard even though he would certainly fail an F50 test. Likewise, it is possible for a complying motorcycle to be operated so aggressively as to violate a stringent street standard.

A second approach available to state and local jurisdictions is to adopt and enforce the Federal labeling and anti-tampering provisions provided by these final regulations. For example, competition exhaust systems are required to be labeled as proper for use on competition motorcycles only; all other exhaust systems intended for regulated or unregulated motorcycles must be labeled as such. State and local jurisdictions will thereby have a means of keeping the competition type exhaust systems off the street and out of non-competition events in off-road riding.

and of keeping unregulated exhaust systems off the quieter regulated motorcycles.

The third approach is the in-use equipment standard, be it a stationary

and definitions in § 205.151(a)(8) and (20).

3.6 Issue

Should mopeds be omitted from the

insurance requirements. By function, they are small motorcycles with limited engine displacement. For these reasons, the Agency considers mopeds to be a part of the motorcycle class.

products as racing exhaust pipes for mopeds can be expected. The use of such exhaust systems can increase vehicle noise levels by as much as 20 dB. Modified mopeds would be

to use the carry-over provision to reduce the production verification testing requirements in subsequent model years. The Agency believes that moped manufacturers can make effective use of this carry-over provision because the

systems, the motorcycle and motorcycle exhaust system noise emission regulation includes an Acoustical Assurance Period (AAP). Products must, when properly maintained and used,

and of keeping unregulated exhaust systems off the quieter regulated motorcycles.

The third approach is the in-use equipment standard, be it a stationary test standard or a pass-by test standard. The pass-by test established by this regulation is intended for use by manufacturers. Because of its complexity, it is not generally suitable for state and local enforcement purposes. The simple stationary tests usually offer such a poor correlation that they would seem to be highly ineffective in actual use.

The scheme of requiring a label on the muffler with an F50 value for each different motorcycle that it fits does significantly reduce the correlation problem. But it is complex because of the need for the enforcement officer to determine the RPM for the test from the label on the motorcycle frame, to identify which model of the motorcycle he is inspecting and to interpret which levels should be applied to this motorcycle from the several different levels on the muffler label. It also relies on an expansive enforcement program or on the good faith of many exhaust system manufacturers and still suffers, albeit to a reduced extent, from correlation-related difficulties.

Few of the comments received from state and local governments mentioned either criticisms of or support for the proposed F50 label scheme. Of 84 written submissions by state and local governments, only 12 specifically mentioned labeling. Eleven of the 12 endorsed the labeling concept, but only 2 of the 11 specifically mentioned the stationary test. The one submission that did not endorse the labeling concept specifically did not support the stationary test.

In summary, it is likely that most state and local governments would not utilize a Federal F50 labeling scheme. Other approaches to controlling motorcycle noise at the state and local level, such as the street noise standard and enforcement of the Federal labeling and anti-tampering provisions, are more workable at the present time.

As a result of these considerations, the requirement for motorcycle manufacturers to conduct F50 stationary tests and place the resulting measurement on a label is deleted in the final rulemaking. Product labeling, however, is still required. To respond to comments that the proposed label needed to be simplified and to remove the F50 stationary sound level information from the label format, the label wording has been substantially condensed. See § 205.158 and § 205.169 and definitions in § 205.151(a)(8) and (20).

3.6 Issue

Should mopeds be omitted from the final motorcycle noise regulation?

Comments

Several moped manufacturers, a moped trade association, and an individual commented that EPA does not have the statutory authority to regulate mopeds since EPA has not identified mopeds as a major source of noise either individually or as a part of a class. A moped trade association and two moped manufacturers contended that regulating mopeds will not provide health and welfare benefits to the public because mopeds are currently quiet and are likely to remain quiet. One manufacturer stated that it will be difficult to get a test site for mopeds that has an acceptable ambient noise level.

Decision

EPA has retained mopeds in the final motorcycle noise regulation. Motorcycles were identified under the authority of Section 5(b)(1) of the Act as a major source of noise on May 28, 1975 (40 FR 23105). The intent of that notice was to identify the class of motorcycles as a major source of noise; and the identification was based on the total impact of motorcycle operations. The identification did not specify which types of motorcycles or motorcycle operations were responsible or further define at that time all of the various vehicles which are included in the class of vehicles known as motorcycles.

States refer to mopeds as motorized bicycles, bicycles with helper motors, class "C" motorcycles (New York), and simply as mopeds. The noise standards of the International Standards Organization (ISO) refer to mopeds as "motorcycles" with an engine capacity which does not exceed 50 cc's. The National Highway Traffic Safety Administration (NHTSA) refers to mopeds as motor driven cycles with specified limits on maximum speed, horsepower, and engine displacement. However, "most mopeds cannot be considered truly pedalable because of their heavy weight (100 lbs. compared to 20 to 40 lbs. for bicycles) and extremely low gearing which means the rider has to pedal fast and hard" (Consumer Guide Magazine). The pedals and other special attributes, such as a top speed of 25 to 30 mph and a maximum engine power rating of 1 to 2 hp, are designed to qualify the moped for less restrictive operator licensing restrictions, nominal state registration fees, and exclusion from otherwise mandatory helmet and insurance requirements. By function, they are small motorcycles with limited engine displacement. For these reasons, the Agency considers mopeds to be a part of the motorcycle class.

Although most new mopeds are quieter than other new motorcycles during acceleration, their noise levels are comparable to new motorcycles during low speed cruising because the moped must operate at or near full throttle to maintain its top speed of 25 or 30 mph. The average A-weighted noise level of current new larger motorcycles at a cruising speed of 25 mph is about 68 dB while the level of 7 mopeds that were tested, at their maximum speed of 25 to 30 mph varied from 60 to 69 dB (based on a 50 foot microphone distance from the vehicle's path). Notably, the average new automobile has an average noise level at a cruising speed of 25 mph of only 61 dB, which is lower than the average moped at the same speed.

EPA has identified a day-night sound level (L_{dn}) of 55 dB as the environmental noise level below which no significant adverse impact on public health and welfare occurs. The Agency therefore desires, from a health and welfare perspective, to quiet all noise sources substantially below the 70 dB level in order to bring about an acceptable environmental noise level. Standards have not been set this low in regulations for trucks and other sources because of the limits of available technology and the cost of compliance. Although new mopeds may be quiet when compared to new trucks, EPA does not believe that new mopeds should be permitted to have increased noise levels in the future especially when there are no costs (other than the small cost of showing compliance to EPA) associated with meeting the 70 dB standard. All mopeds that the Agency has tested, which are being sold in the U.S., easily comply with the standard.

In Europe where mopeds are much more numerous than in the United States, mopeds with ineffective exhaust systems contribute significantly to the motor vehicle noise problem. This noise problem can be attributed to the removal of mufflers to make the moped engine sound more powerful and the failure to replace faulty exhaust systems. EPA believes that the European experience with mopeds, similar in many respects to the current motorcycle noise problem in the U.S., is also likely to be repeated in this country as the moped population continues to grow. One aftermarket company is already marketing parts and services to increase moped horsepower and performance. A substantial market for such performance

products as racing exhaust pipes for mopeds can be expected. The use of such exhaust systems can increase vehicle noise levels by as much as 20 dB. Modified mopeds would be considerably noisier than larger motorcycles meeting the noise standards. Because mopeds are likely to be operated on local residential streets and in back yards where ambient noise levels are lower than more highly trafficked areas, such modified mopeds would stand out and would likely be quite annoying to the residents exposed to the noise.

However, if mopeds and moped replacement exhaust systems are regulated, sales of replacement exhaust systems designed specifically to increase the noise levels of mopeds will be curbed. Without such a regulation, sales of these noise producing products could be expected to continue to grow as the moped population increases, and similar problems caused by noisy replacement exhaust systems for larger motorcycles would result.

In the absence of a Federal rule for mopeds and moped replacement exhaust systems, the resources required by state and local governments to counter the moped noise problem could be substantial. By including mopeds in this rulemaking, state and local governments will receive significant benefits even if they take no further steps. With this rulemaking, coupled with anti-tampering efforts by state and local officials, a serious moped noise problem in this country could be substantially avoided.

Those moped manufacturers that find it difficult to locate test sites with acceptable ambient noise levels will be allowed to test with the microphone at 7.5 meters from the vehicle path, rather than 15 meters specified in the moped test procedure, and subtract a correction factor of 6 dB from their measurements. Since the tested noise levels would then be higher, the problem of finding a test site with an ambient level 10 dB below the regulatory level should be effectively eliminated.

The intent of the final rule is the same as originally proposed; that is, to set a not-to-exceed standard for mopeds, to prevent replacement exhaust systems from causing mopeds to exceed that noise emission standard, to institute the anti-tampering provisions of the Noise Control Act, and to require product labeling.

The specified administrative requirements in the final rule for moped manufacturers to show compliance with the standard are the same as for other motorcycles. However, the manufacturers of mopeds are expected to use the carry-over provision to reduce the production verification testing requirements in subsequent model years. The Agency believes that moped manufacturers can make effective use of this carry-over provision because the standard is a one time standard and because mopeds are expected to have noise levels well below the standard. Furthermore, moped manufacturers will have a limited number of models which must be production verified in the first year.

The final rule has been changed to clarify that "nopeds" (mopeds without pedals) are covered by the regulation. Paragraph 205.151(a)(2)(ii)(D) has been deleted from the proposed definition of mopeds, so that mopeds with and without pedals are included in the moped definition and will be required to comply with the not-to-exceed noise standard.

3.7 Issue

How should EPA deal with the problem posed by exhaust systems with removable baffles and highly degradable components? In the proposed regulation, the Agency asked for comments on the feasibility of establishing design criteria for exhaust systems to determine whether systems would be able to meet the applicable noise standard for the duration of the Acoustical Assurance Period (AAP).

Comments

Manufacturers and trade associations opposed the establishment of design criteria on the basis of lack of statutory authority and, in the words of one manufacturer, because "design criteria restrict innovation, reduce competition, and foster the continuation of obsolete technology." One major manufacturer commented that insufficient data were available to evaluate muffler durability by design criteria.

A motorcycle interest group and a public interest group suggested that EPA require that replacement exhaust systems be sealed with no removable fibrous packing or baffles.

Decision

It is of paramount importance to the success of these final regulations that motorcycle exhaust systems retain their noise suppression performance in actual use. Exhaust systems which lose their noise attenuation characteristics, whether due to removal of baffles or degradation of components, will seriously diminish the health and welfare benefits that would otherwise be derived from this rulemaking. To deal with the problem of highly degradable components in motorcycle exhaust systems, the motorcycle and motorcycle exhaust system noise emission regulation includes an Acoustical Assurance Period (AAP). Products must, when properly maintained and used, continue to meet the applicable standard for the duration of the AAP.

In the proposed regulation, EPA solicited comments concerning a program by which exhaust systems' potential compliance with the standards for the AAP would be judged based on design characteristics. It was thought that conformance to design criteria rather than noise levels might make it easier for manufacturers to demonstrate and for EPA to ensure compliance with the applicable Federal performance standards over the specified AAP. However, based on the unfavorable public comments and upon further analysis, the Agency has decided against establishing design criteria for exhaust systems.

Also in the proposed regulation, manufacturers were required to develop a Sound Level Degradation Factor (SLDF). The SLDF was the manufacturer's estimate of the increase in noise emissions during the AAP expected when the exhaust system was installed on a motorcycle for which it was designed and marketed. In the proposed regulations, EPA required that manufacturers design products which, when installed on the intended motorcycle, limited noise emission at the time of sale to levels no greater than the standard set by the regulations minus the manufacturer's SLDF for the product. The requirement that manufacturers compute and use an SLDF, as described in the proposed rule, has been deleted from the final rule. However, as discussed later, each manufacturer must retain records containing the information or statements of engineering judgments upon which the manufacturer relied in determining that his product will meet the standards throughout the acoustical assurance period.

The Agency deleted the requirement for several reasons. First, degradation of noise emission components and the removal of baffles is not expected to be a uniformly serious problem for all types of exhaust systems. Noise suppression performance of properly designed motorcycle mufflers and silencers generally does not degrade significantly over the life of the product when used and maintained in a proper manner, and some manufacturers produce internally baffled or sealed exhaust systems which present little opportunity or incentive to owners or users of the product to remove baffling material. Second, the

Agency is considering action, described below, more directly focused on the problem of removable baffles. Finally, EPA believes adequate enforcement activity with respect to highly degradable components can be

regulated motorcycle exhaust system would constitute a tampering violation of Federal law under the provisions of the Noise Control Act, this is and can be expected to remain a major noise problem unless the Agency takes further

Noise Emission Standards involving production verification, selective enforcement auditing, recordkeeping and labeling requirements, and testing by the Administrator were amended (42 FR 61457, December 5, 1977). Where

for each category and configuration subject to a noise emission standard a sample of a compliance label which is completed with all information required by § 205.158 or § 205.169 as the case may be.

analogous to that of the aftermarket motorcycle exhaust system manufacturers.

5.0 Estimated Effects of the Regulation

5.1 Health and Welfare

EPA estimates that approximately 93 million, this regulation is expected to reduce the number of persons exposed to a day-night level of traffic noise greater than 55 dB from 129 million persons to between 113 and 117 million persons.

Agency is considering action, described below, more directly focused on the problem of removable baffles. Finally, EPA believes adequate enforcement activity with respect to highly degradable components can be conducted without requiring manufacturers to compute a discrete SLDF, and to report it to EPA. Therefore, the SLDF has been deleted from this regulation.

The requirement remains that manufacturers design and build products that will meet the standard for the AAP. Manufacturers must take whatever steps they find necessary to assure their products' compliance. The Agency will conduct noise emission testing of products after those products have been in use to determine if the products are meeting the standard for the AAP. If it appears from the results of surveillance testing, from state and local enforcement activity, or from other information that particular products are exceeding the standard during the AAP, the Agency may order individual manufacturers to perform such testing (including reasonable durability testing) as EPA determines is necessary to demonstrate whether the products are in compliance with the regulation. EPA may order that the manufacturer report the results of such testing to EPA, or in the alternative, the agency may itself conduct such testing. The authority for this testing is Section 13(a) of the Act.

The final regulation also provides for maintenance of records by the manufacturer concerning durability of the noise attenuation characteristics of the product during the AAP. Although the manufacturer determines how much analysis or testing will provide him with adequate assurance that his products meet the standard, the information upon which he relies is required to be maintained and is subject to inspection by EPA. Because of the difference in the durability of currently marketed products, the Agency expects that the types and volume of records will differ considerably among the mufffler categories. In some cases, a brief statement of engineering judgment may suffice. In other cases, more extensive noise emission testing and analysis may be necessary for the manufacturer to be confident of compliance.

Finally, there is the problem of removable baffles. EPA is aware of several four-stroke exhaust systems currently available which have easily removable baffles. Removal of these baffling units can cause a motorcycle's acceleration noise level to increase by as much as twenty decibels. Although the removal of baffles from a Federally-regulated motorcycle exhaust system would constitute a tampering violation of Federal law under the provisions of the Noise Control Act, this is and can be expected to remain a major noise problem unless the Agency takes further action.

To deal directly with the problem of removable baffles, elsewhere in today's **Federal Register**, the Agency is proposing an amendment to these regulations. The proposed amendment would require that manufacturers conduct the testing required to demonstrate compliance with the noise standards *with all easily removable components of the exhaust system removed.* An "easily removable component" is defined as "any part (not to include header pipes, expansion chanbers, or the muffler shell) that can be removed without causing highly visible damage to the exterior of the exhaust system by removing bolts, screws, or similar fastening devices, or by shearing spot welds with hammer and chisel, or by other simple means of dislodgement." The purpose of this proposed amendment is to encourage manufacturers to design exhaust systems which will reduce the incidence of tampering by consumers. Comments are solicited in the preamble to the proposed amendment and will be analyzed prior to the adoption of a final rule.

4.0 Other Changes to the Proposed Regulation

205.151 Definitions

The following definitions were added to clarify the wording changes in the labeling Sections (205.158 and 205.169): (13) "Closing rpm," (25) "Noise Emission Standard," (30) "Serial Number."

Wording changes were made to clarify the definition of (11) "Closed course competition event."

Subpart E Title

The word "Replacement" was removed from the title of Subpart E to made it clear that the provisions of the subpart apply to original equipment exhaust systems as well as replacement exhaust systems.

Subparts D and E

[Changes related to litigation of other EPA noise emission regulations.]

Parts of other EPA noise regulations have been challenged in court. A case with particular relevance to this final motorcycle noise emissions regulation is *Chrysler Corp. v. EPA* (600 F.2d 904 (D.C. Cir. 1979)). Pursuant to stipulations between the parties to that case, parts of the New Medium and Heavy Trucks Noise Emission Standards involving production verification, selective enforcement auditing, recordkeeping and labeling requirements, and testing by the Administrator were amended (42 FR 61457, December 5, 1977). Where EPA has deemed the changes relevant to this regulation, the changes have been incorporated.

A change to the warranty section of the truck regulation was mandated by the decision in the *Chrysler* case. A similar change to this final regulation is discussed in detail below.

Sections 205.160 and 205.171 Selective Enforcement Audit (SEA)

The proposed SEA provisions have been changed in order to decrease the amount of time needed to perform an SEA. The changes also more efficiently accommodate categories and configurations with low production volumes.

Overall, the new SEA procedure requires fewer manufacturer and EPA resources to perform, yet it does not change in any way the risk of SEA failure for the manufacturer.

Sections 205.157 and 205.168 Production Verification

A new parameter, "amount of absorption materials," was added. Since the amount of absorption material plays a major part in the noise level of exhaust systems, it was added as a parameter to assure that aftermarket exhaust system manufacturers would consider it when they assemble and rank their test configurations.

Sections 205.157–2 and 205.168–2 Production Verification Procedures

Sections 205.157–2(f) and 205.168–2(g) are revised to state that EPA Enforcement Officers or other employees of the Agency may be present to monitor or conduct testing in lieu of the manufacturer. Such observance will be contingent upon the Agency obtaining the manufacturer's consent or valid warrant in the absence of his consent. This change imposes no additional burdens on the manufacturer and is made to allow the Agency more flexibility in the use of its available resources to ensure compliance by all regulated manufacturers with the production verification procedures which are described in the preceding paragraphs of these sections.

Sections 205.157–4 and 205.166–3 Production Verification Report; Required Data

Paragraph (b) of each of these sections is revised to require that the production verification report include for each category and configuration subject to a noise emission standard a sample of a compliance label which is completed with all information required by § 205.158 or § 205.169 as the case may be.

Sections 205.157–9 and 205.168–10 Production Verification Based on Data from Previous Years

The proposed carry-over provisions in Subparts D and E have been revised to allow with certain restrictions the manufacturers to have automatic carry-over in subsequent years when the initial production verification noise emission level is at least 2 dB below the applicable standard. However, in any year when a more stringent standard becomes effective, the manufacturers must conduct the required production verification tests for all categories and configurations.

Also, § 205.168–10 has been revised to clarify the fact that a manufacturer who continues in subsequent years to produce replacement exhaust systems for earlier model years of Federally-regulated motorcycles need not conduct production verification tests in those subsequent years unless design changes which reduce the noise attenuating ability of those replacement systems are made.

Sections 205.162–1 and 205.173–1 Warranty

The warranty statement in § 205.162–1 has been reserved. The proposed motorcycle warranty was similar to the new medium and heavy truck warranty (40 CFR 205.58–1(a)) which was recently invalidated by the U.S. Court of Appeals for the D.C. Circuit (*Chrysler Corp. v. EPA*, 600 F.2d 904 (D.C. Cir. 1979)). Manufacturers must still submit their proposed warranty provisions to EPA. However, at this time, we are not prescribing the exact wording of the warranty statement. Manufacturers may refer to the alternate warranty statement for trucks as an example of acceptable wording. (See 44 FR 67659, November 27, 1979.)

EPA is preparing a new warranty provision for trucks, buses, and motorcycles to be proposed in the **Federal Register** which will be consistent with the *Chrysler* decision. Comments on the proposal will be solicited and studied before a final warranty provision is published for trucks, buses, and motorcycles.

The proposed warranty language in § 205.173–1 is retained because subsequent manufacturing operations do not usually occur on aftermarket exhaust systems. Therefore, the situation in the *Chrysler* case is not analogous to that of the aftermarket motorcycle exhaust system manufacturers.

5.0 Estimated Effects of the Regulation

5.1 Health and Welfare

EPA estimates that approximately 93 million people are currently exposed to traffic noise levels equal to or greater than a day-night sound level (L_{dn}) of 55 dB. Since motorcycles are a component of the urban noise problem, the Agency assessed the health and welfare benefits associated with this regulation for street motorcycles and off-road motorcycles.

1. Street Motorcycles

Two different methods of assessing the current noise impact and impact reductions due to Federal regulation of street motorcycles were studied by the Agency. The reduction in the impact of single event motorcycle pass-bys was assessed, as was the effect of lowered motorcycle noise levels and exhaust modifications on total urban/suburban traffic noise levels and the associated general adverse response.

Assessment of the intrusive nature of motorcycle noise pass-bys led the Agency to a single event activity interference analysis as the most meaningful measure for assessing the health and welfare impact of motorcycle noise. Interference with everyday human activities is very closely related to the dissatisfaction and objection that the public feels towards noise. For example, at the final-step 80 dB regulatory level, the Agency estimates that the extent and severity of interference with human activities attributable to motorcycle noise will be reduced from current levels by 47–75 percent. These figures assume that regulation of replacement exhaust systems will reduce the numbers of exhaust-modified motorcycles from the currently estimated 12 percent of the street motorcycle population (nationwide) to between 3 and 7 percent.

Motorcycles account for less than 2 percent of total vehicular traffic mileage. However, because they are presently among the noisiest vehicles in the traffic stream, reductions of overall traffic noise levels and associated reductions in the extent and severity of traffic noise impact due to Federal motorcycle noise regulation are greater than what otherwise would be expected. From current levels, with medium and heavy trucks regulated to 80 dB, this regulation of motorcycle noise is expected to reduce the impact from overall traffic noise by 7–11 percent. In the year 2000, with an expected U.S. population of 285 million, this regulation is expected to reduce the number of persons exposed to a day-night level of traffic noise greater than 55 dB from 129 million persons to between 113 and 117 million persons.

2. Off-Road Motorcycles

The reductions in the noise impact achieved by Federal regulations for off-road motorcycles are less easily quantified in terms of population impact. This is because the vehicles are used in many areas that are not densely populated. However, it is these same areas where quiet is valued as a national resource, and the sheer aural detectability of a vehicle may create an adverse impact. Nevertheless, reductions in land area and the number of people exposed above the aural detectability level by off-road motorcycle noise can be estimated using an aural detectability criterion and reasonable assumptions about the locations of off-road motorcycle operations. At noise level standards of 82 dB and 80 dB for large and small off-road motorcycles, respectively, the Agency estimates that the number of people exposed to off-road motorcycle noise will be reduced from 3.1 million to approximately 2.3 million persons. This figure assumes a 80 dB regulatory level for street motorcycles which are sometimes used off-road, and a reduction in the proportion of exhaust system modifications from the currently estimated 26 percent of the off-road population to between 8 and 16 percent.

5.2 Cost and Economic Impact

Costs of applying noise reduction technology to meet the regulatory levels, and the associated increases in retail prices, vary according to the type and size of the specific motorcycle model. Expected unit purchase price increases at the 80 db regulatory level range from 0.2 percent for street motorcycles with a displacement less than 100 cc, to 4 percent for medium size street motorcycles, to 2 percent for large street motorcycles (average retail price increase). Unit prices of large off-road motorcycles are projected to increase 2 percent at the 82 dB level, while unit price increases of small off-road motorcycles are projected to increase an average of less than one percent at the final-step 80 dB level.

The total annualized cost of the noise emission standards for street and off-road motorcycles is estimated to be approximately $95 million per year. This figure, projected through the year 2010, accounts for increases in retail prices and the increased cost of operating and

maintaining the vehicle due to noise control regulation.

Federal noise standards for replacement exhaust systems are expected to cause retail prices of current quiet systems (meeting California's 83 dB requirement) to rise to levels comparable to those predicted for stock replacement systems for 80 dB motorcyles, or approximately 25 percent more than the average price of current original equipment systems, a $30 price rise. Additionally, over time, a shrinkage

2. Impact on Replacement Exhaust System Manufacturers

The regulations are expected to have a substantial impact on the replacement exhaust system industry. To meet the 80 dB standard, aftermarket replacement exhaust system manufacturers will need to incorporate relatively sophisticated noise attenuation techniques into the design of their mufflers and exhaust systems. Of the more than 150 firms currently in the market, most are small, low volume enterprises devoted

5. Impact on Employment

If demand reduction forecasts based on historical relationship are applicable, eventual reductions in current U.S. motorcycle industry employment resulting from the final Federal noise standards could be approximately 1,760 positions from future levels in the absence of noise regulations. This impact would occur at least in part in the absence of Federal regulations because of the more stringent State regulations that would otherwise go into

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maintaining the vehicle due to noise control regulation.

Federal noise standards for replacement exhaust systems are expected to cause retail prices of current quiet systems (meeting California's 83 dB requirement) to rise to levels comparable to those predicted for stock replacement systems for 80 dB motorcyles, or approximately 25 percent more than the average price of current original equipment systems, a $30 price rise. Additionally, over time, a shrinkage of the total market for replacement systems is forecast, provided that such replacement exhaust system manufacturers fully conply with the standards established by these regulations, since styling and performance advantages of many current systems will largely disappear. The total annualized cost of the motorcycle replacement exhaust system standards is estimated to be $3.4 million per year at the final 80 dB level.

The assessed costs and impacts of this regulation will be in addition to those costs and impacts attributed to EPA's motorcycle air emission regulations (42 FR 1122, January 5, 1977). EPA studies, using information supplied by various manufacturers, indicated that the cost of compliance with the air emission standards for 1978 would result in an average retail cost increase of $47 per motorcycle. This cost would be partially offset by an average discounted lifetime fuel savings in maintenance and improved reliability of the product. The average incremental cost increase for 1980 air emission standards was estimated to be $9, which included a small additional improvement in fuel economy. The manufacturers estimated that fuel economy improvements associated with the 1978 emission standards would range as high as 65 percent with an average increase of 20 percent. No significant decrease in sales or shift in market share (between manufacturers) was expected to result from the implementation of that regulation.

Several economic impacts were studied by EPA to determine the possible effects of noise control regulations on the various segments of the motorcycle industry. These impacts are summarized as follows:

1. Impact of Motorcycle Manufacturers

A net reduction in motorcycle demand is expected as a result of the noise standards. Forecasting based on historical price-demand relationships indicates that the demand for street and off-road motorcycles combined would be about 2.1 percent below expected demand in the absence of noise regulations. It should be noted, however, that this demand forecast would have resulted in part even in the absence of these Federal rules because of the State motorcycle noise laws planned to take effect. Significant shifts in historic market shares due to Federal noise standards, however, are not expected to occur among the major Japanese motorcycle manufacturers. Their profitability is likewise not expected to be impacted to any large extent since cost increases due to noise control are expected to be passed on to consumers. Although higher retail prices will result in some lost sales, total industry sales in terms of both units and dollars are projected to significantly expand in the next decade.

For AMF/Harley-Davidson to achieve as 80 dB standard, major redesigning of its current large engine types incorporating current engine quieting techniques will be necessary. One attraction of Harley-Davidson motorcycles is a uniquely identifiable exhaust tone that must dominate other subsources to be heard. Engine redesign to meet 80 dB could change tonal characteristics and cause performance penalties that may reduce the demand for Harley-Davidson motorcycles. The economic impact of a 78 dB standard on AMF/Harley-Davidson, the principal domestic manufacturer, would have been manifested primarily in terms of the ability of the firm to manufacture large displacement motorcycles which would conform to EPA standards. Therefore, Harley-Davidson does not consider compliance with a 78 dB regulatory level achievable with modification to current engine designs. Complete engine redesigns, in addition to major exhaust and intake treatment, would likely have been necessary for Harley-Davidson to meet a 78 dB level.

AMF/Harley-Davidson motorcycles occupy a unique position in the U.S. motorcycle market with a devoted following, and are expected to be relatively insensitive to small price changes. Consequently, if engine designs acceptable to the consumer can be developed which meet the standards, the firm is expected to be able to sell the new designs at little sacrifice in profitability.

The other North American manufacturer of street motorcycles is Canada's Bombardier, Ltd., which manufactures high performance dual purpose motorcycles based on their off-road and competition models. The remaining street motorcycle manufacturers are predominantly European firms which export large displacement models on a limited scale to the United States, although several export a sizable portion of their production to this country. Most of these firms are considered capable of producing motorcycles at the 80 dB regulatory level. Bombardier and some of the European manufacturers may or may not be able to continue exporting street motorcycles to the United States if a 78 dB standard took effect.

Although AMF/Harley-Davidson and several of the other smaller manufacturers are capable of designing motorcycles that will comply with the standards, they argued, in comments to the proposed regulation, that the proposed lead time would make it extremely difficult or impossible for them to produce motorcycles that would meet the noise standards by the effective dates. The Agency carefully evaluated these comments, and extended the effective dates in the final rule, in part to allow these manufacturers more lead time to introduce new motorcycles in parallel with existing products.

Japanese manufacturers of off-road motorcycles are not expected to experience serious technical difficulty producing off-road motorcycles which comply with these noise standards since the quieting technology is well understood. Overcoming weight and horsepower penalties to produce high performance motorcycles, however, will be a challenge. The smaller, predominantly European manufacturers, which often rely on superior performance for marketing advantages, are expected to experience difficulty in maintaining their present market positions at these regulatory levels, due to the considerable impact to the performance of current models. The 82 dB regulatory level for large off-road motorcycles is considered to be technically achieveable for almost all current manufacturers without requiring conversion to four-stroke engines. However, the performance and cost impacts of this level may make it unprofitable for some of the smaller firms to remain in the U.S. market.

Moped-type street motorcycles will be required to meet a 70 dB standard. All mopeds that the Agency tested, which are sold in the U.S., comply with the 70 dB standard. The costs of compliance with this rule for these vehicles are the administrative costs of production verification testing, recordkeeping and labeling, which are expected to be minimal as a result of the anticipated use of the carry-over provision by moped manufacturers.

2. Impact on Replacement Exhaust System Manufacturers

The regulations are expected to have a substantial impact on the replacement exhaust system industry. To meet the 80 dB standard, aftermarket replacement exhaust system manufacturers will need to incorporate relatively sophisticated noise attenuation techniques into the design of their mufflers and exhaust systems. Of the more than 150 firms currently in the market, most are small, low volume enterprises devoted exclusively to manufacturing motorcycle exhaust systems, with little or no capability for innovative product design or development. To produce complying systems for post-1980 (regulated) motorcycles, these firms are expected to copy the designs of other manufacturers, a common practice at present. The ten to twenty leading firms in the industry are expected to be able to design and produce their own complying systems, although at similar price and performance penalties associated with replacement systems sold by the original equipment manufacturer (OEM).

The demand for non-OEM exhaust systems is expected to be severely impacted. The price of a typical "4 into 1" or "2 into 1" replacement exhaust system, both OEM and non-OEM, is expected to increase by 20 to 25 percent to meet the 80 dB motorcycle regulatory level. And the differences in styling, performance characteristics, tonal quality, and noise levels between non-OEM and OEM replacement exhaust systems is expected to become less. Since an exhaust system maufacturer's success is very dependent on the special styling, performance, and tonal characteristics, and often high noise level, of his product, the impacts on demand due to changes in these factors are believed to be extremely significant, perhaps more significant than the price change. Based on discussions with aftermarket manufacturers, a 25% reduction in demand for aftermarket exhaust systems is forecast by the year 2000 when regulated motorcycles at the 80 dB level will have replaced most unregulated motorcycles in use.

The adverse impact of the regulations on aftermarket manufacturers will be gradual since the standards are phased in over a five-year period and since firms can continue to produce systems for motorcycles manufactured prior to the applicability of each noise standard. However, in the longer term, as unregulated motorcycles are gradually scrapped, and as the demand for complying non-OEM systems falls, many of the small volume manufacturers are likely to switch to alternate product lines, or go out of business. While the revenues of the ten to twenty leading firms are expected to also decrease as a result of this regulation, these larger firms are expected to continue manufacturing replacement exhaust systems. In fact, although a net shrinkage in the replacement exhaust system is forecast, these larger firms may actually experience increased sales as other manufacturers exit from the market. This adverse impact on aftermarket manufacturers is not projected on the basis of technical incapability or the cost of compliance testing which is a small fraction of total price increase. Rather, these impacts are expected to result as the special characteristics of increased performance, gutteral tone, higher noise level, and styling provided by non-complying exhaust systems on which sales are substantially dependent are partially eliminated by the requirement to produce quiet exhaust systems.

The expected impacts are based upon the implementation of a successful national Federal enforcement program along with complementary enforcement programs by some state and local jurisdictions to identify manufacturers who continue to sell loud non-complying exhaust systems for regulated motorcycles (discussed in section 3.7).

To minimize the burden posed by the compliance testing requirements, the Agency will provide technical assistance to small manufacturers in the testing and certification of their exhaust systems with all provisions of the regulation. The Agency will also actively support manufacturers in their sharing of test facilities for compliance demonstration.

3. Impact on Foreign Trade

Since motorcycles comprise substantially less than 1 percent of total U.S. foreign trade with Europe and North America, the impact of a Federal motorcycle noise regulation on the balance of trade with these areas is expected to be négligible. Motorcycles currently account for some 15 percent of the approximately $10 billion in annual imports from Japan. EPA does not, however, anticipate any substantial changes in net revenue to Japanese motorcycle manufacturers resulting from these noise standards, and thus no appreciable change in the U.S.-Japan balance of trade is forecast.

4. Impact on Exports

The small percentage of AMF/Harley-Davidson's domestic motorcycle production that is currently exported is not expected to change significantly as a result of noise regulations.

5. Impact on Employment

If demand reduction forecasts based on historical relationship are applicable, eventual reductions in current U.S. motorcycle industry employment resulting from the final Federal noise standards could be approximately 1,760 positions from future levels in the absence of noise regulations. This impact would occur at least in part in the absence of Federal regulations because of the more stringent State regulations that would otherwise go into effect. However, projected growth in the industry is expected to more than compensate for any employment losses that do occur.

If these standards prevent AMF/Harley-Davidson from being able to remain in the market, its 3,300 motorcycle-related jobs in Milwaukee, Wis. and York, Pa. would be affected. However, as is discussed earlier, EPA does not expect these regulations to force Harley-Davidson out of the market. The aftermarket exhaust system industry is the only segment of the total industry predicted to experience an actual net decline in employment, possibly impacting some 500 positions, assuming compliance with these standards.

6. Impact on Gross Notional Product

The proposed regulations are not expected to have nay consequential effect either direct or indirectly, on the U.S. Gross National Product (GNP).

7. Impact on Energy Consumption

Additional weight and increased backpressure due to noise suppression components are expected to negatively impact motorcycle fuel economy by an estimated 2 percent. The average fuel consumption of current street motorcycles is 47 m.p.g. Off-road motorcycles are estimated to currently have an average fuel consumption of 60 m.p.g. Based on an average of 2300 miles per year for street motorcycles, and 1200 miles per year for off-road motorcycles, increased fuel consumption of about one gallon per year for street motorcycles and less that one gallon per year for off-road motorcycles is expected. By the year 2000, when the majority of motorcycles in use will have been manufacturered to comply with the 80 dB standard, the current population of motorcycles is projected to have more than doubled to approximately 16 million vehicles. The fuel penalty translates to about 15 million gallons of gasoline in the year 2000, or one-half million barrels of crude oil, which would represent less than one-tenth of one

percent of the total U.S consumption of crude oil at that time.

6.0 Enforcement

The enforcement strategy encompasses both time of sale and in-use compliance requirements.

to a U.S. Court of Appeals decision. For a more complete discussion on this topic, refer to Section 4 of this preamble.

The in-use provisions containing the requirement that a tampering warning and maintenance instructions be provided to the purchaser remain

a limit on noise emissions from such new product, or components of such new product, which is not identical to the standard prescribed by the Federal regulation. Subsection 6(e)(2), however, provides that nothing in Section 6 precludes or denies the right of any state

Surface tranportation noise is considered by EPA as one of the major contributors to environmental noise levels on a national basis. To further reduce this major national noise source, the Agency intends to continue its

constitutes a significant action. Accordingly, the Agency has prepared the Regulatory Analysis required by Executive Order 12044. This analysis is entitled "Regulatory Analysis of the Noise Emission Regulation for

Sec.
205.160–8 Prohibition of distribution in commerce; manufacturer's remedy.
205.161 Maintenance of records; submittal of information.
205.162 In-use requirements.
205.162–1 Warranty.

percent of the total U.S consumption of crude oil at that time.

6.0 Enforcement

The enforcement strategy encompasses both time of sale and in-use compliance requirements.

1. Time of Sale Requirements

Manufacturers of new motorcycles and new replacement exhaust systems must produce products which comply with the standard at the time of their distribution in commerce. The process of testing these products is called production verification (PV). Manufacturers performing PV must report the test results to EPA to demonstrate compliance.

Production verification is required yearly of all manufacturers. However, manufacturers may apply to EPA for carry-over of the prior year's PV to a new year. EPA's decision to allow or not allow carry-over will be based on the standard for that year, number and level of PV and quality control tests reported to EPA, changes made in the design and construction of the units from the prior year, and other information acquired by or provided to EPA and relevant to the overall industry, the particular manufacturer, and the subject product. Particularly in the case of the moped noise emission standard, the Agency anticipates that it may be possible to approve many of the carry-over requests from manufacturers since information available to the Agency shows that mopeds are, in general, well below the standard.

The Selective Enforcement Audit (SEA) provisions of this regulation are intended to provide EPA with an additional tool to verify manufacturers' compliance by requiring manufacturers to test or to allow EPA to test a sample of vehicles or exhaust systems of a certain category or configuration. If a manufacturer fails an SEA, EPA may take corrective action such as ordering the manufacturer to cease distribution of that product or to recall those products determined not to be in compliance.

The SEA procedures have been revised such that SEA's can be completed more quickly and with less burden on manufacturers and EPA. EPA does not expect any additional burden on manufactures from this change to the regulation.

2. In-Use Requirements

The warranty provisions are intended to provide consumers with a remedy if products purchased by them do not meet the applicable standard at the time of sale. Part of the warranty provisions for this final rule was reserved, in response to a U.S. Court of Appeals decision. For a more complete discussion on this topic, refer to Section 4 of this preamble.

The in-use provisions containing the requirement that a tampering warning and maintenance instructions be provided to the purchaser remain unchanged from those proposed. These provisions provide additional assurance that the products will remain quiet during use.

3. Civil Penalty Policy

Under Sections 10(a) and 11(a) of the Noise Control Act, as amended, a manufacturer who distributes in commerce any new product after the effective date of an applicable regulation prescribed under Section 6, other than in conformity with that regulation, is subject to civil or criminal penalties. Civil penalties under Section 11(a)(2) shall not exceed $10,000 per day of violation. The EPA is adopting a Civil Penalty Policy for assessment of judicial civil penalties for violations of regulations promulgated under Section 6 and Section 8. A notice of this policy is planned to be published in the **Federal Register** in the near future.

It had been EPA's experience with other noise emission regulations that the overwhelming majority of manufacturers subject to those regulations have complied with applicable noise emission standards. The Civil Penalty Policy is designed to encourage continued compliance and to deter violations by ensuring that appropriate penalties will be sought in cases of violation and by seeking to require the manufacturer to achieve compliance as quickly as possible.

The Civil Penalty Policy does not limit the authority of the Administrator to take administrative action under Section 11(d) of the Act to protect the public health and welfare. EPA will also seek injunctions or pursue other remedies, as appropriate, to assure full compliance with the regulations promulgated under the Noise Control Act. Payment of a civil penalty will in no case excuse a violator or substitute for other available remedies which the Administrator, in exercising his authority under Section 11(d), or the courts, in exercising their authority under Sections 11(a)(1) and 11(c), determine to be necessary to protect the public health or to restrain violations.

7.0 Preemption

Under Subsection 6(e)(1) of the Noise Control Act, after the effective date of a Federal regulation limiting noise emissions from a new product, no state or political subdivision may adopt or enforce any law or regulation which sets a limit on noise emissions from such new product, or components of such new product, which is not identical to the standard prescribed by the Federal regulation. Subsection 6(e)(2), however, provides that nothing in Section 6 precludes or denies the right of any state or political subdivision to establish and enforce control on environmental noise (or one or more sources thereof) through the licensing, regulation or restriction of the use, operation or movement of any product or combination of products.

The noise controls which are reserved to state and local authority by Section 6(e)(2) include, but are not limited to, the following:

1. Controls on the manner of operation of products.
2. Controls on the time of day or night in which products may be operated.
3. Controls on the places in which products may be operated.
4. Controls on the number of products which may be operated together.
5. Controls on noise emissions from the property on which products are used.
6. Controls on the licensing of products.
7. Controls on environmental noise level.

EPA stronly encourages state and local authorities to adopt and enforce laws and ordinances which complement this Federal motorcycle noise rulemaking. The Agency specifically urges in-use noise regulations which are consistent with reasonable operation of Federally-regulated vehicles. Restrictions on the registration of off-road motorcycles for highway operations are also encouraged, as are vehicle inspection programs which involve either stationary sound level testing or visual inspection of motorcycle exhaust systems.

8.0 Future Intent

EPA is pursuing a strategy through which products that are major contributors to overall environmental noise will be identified and subsequently controlled. This coordinated approach is necessary because a number of different noise sources may be operating in residential neighborhoods at the same time, and the quieting of only one such source may not in itself be sufficient to reduce the environmental noise to a level the Agency believes is requisite to protect the public health and welfare.

As indicated in the first EPA Report on Identification of Major Sources of Noise (39 FR 22297–99, June 21, 1974), the principal candidates for potential future regulatory efforts are known.

Surface tranportation noise is considered by EPA as one of the major contributors to environmental noise levels on a national basis. To further reduce this major national noise source, the Agency intends to continue its investigations pursuant to noise regulatory actions for other surface transportation vehicles. Consequently, the levels specified for the standard in this rulemaking are consistent with the Agency's objective of ultimately reducing the total noise emitted from all surface tranportation vehicles.

The Agency also plans further regulatory action on other noise sources. These include wheel and crawler tractors, pavement breakers and rock drills, and lawnmowers.

EPA believes that the motorcycle standards are necessary to protect the public health and welfare and are achievable through use of best available technology, taking into account the cost of compliance. However, as technological advances occur, lower levels may be achievable. EPA will consider all new information and data which become available or are presented to it, and may subsequently revise this regulation. The Agency, however, has no current plans to further lower the noise standards for motorcycles and does not foresee doing so in the near future.

9.0 Reporting and Recordkeeping Requirements

The reporting and recordkeeping requirements of this regulation are detailed in §§ 205.161 and 205.172.

Under the EPA's new "sunset" policy for reporting requirements in regulations, the reporting requirements in this regulation will automatically expire five years after implementation of the January 1, 1986 standard unless the Administrator extends them. This provision is prescribed in §§ 205.161(c) and 205.172(c).

10.0 Evaluation Plan

EPA intends to review the effectiveness and need for continuation of the provisions contained in this action no more than five years after the effective date of the final step standard of this regulation. In particular, the Agency will solicit comments from affected parties with regard to actual costs incurred and other burdens associated with compliance and will also review noise data to evaluate the effectiveness of the regulation after it has gone into effect.

11.0 Supporting Information

EPA has determined that promulgation of this regulation constitutes a significant action. Accordingly, the Agency has prepared the Regulatory Analysis required by Executive Order 12044. This analysis is entitled "Regulatory Analysis of the Noise Emission Regulation for Motorcycles and Motorcycle Exhaust Systems," EPA 550/9–80–217. Included with this Regulatory Analysis is an Environmental Impact Statement which presents the effects of the regulation. These documents may be obtained from Mr. Charles Mooney, U.S. Environmental Protection Agency, EPA Public Information Center (PM–215), Room 2194 D, 401 M Street SW., Washington, D.C. 20460.

This regulation is promulgated under the authority of Sections 6, 10, 11, 13, and 15 of the Noise Control Act. (Pub. L. 92–574, 86 Stat. 1237, 1242, 1244, and 1245 (42 U.S.C. 4905, 4909, 4910, 4912, and 4914)).

Dated: December 19, 1980.

Douglas M. Costle,

Administrator.

PART 205—TRANSPORTATION EQUIPMENT NOISE

In consideration of the foregoing, 40 CFR Part 205 is amended by adding Subparts D and E as follows:

Subpart D—Motorcycles

Sec.
205.150 Applicability.
205.151 Definitions.
205.152 Noise emission standards.
205.153 Engine displacement.
205.154 Consideration of alternative test procedures.
205.155 Motorcycle class and manufacturer abbreviation.
205.156 [Reserved]
205.157 Production verification.
205.157–1 General requirements.
205.157–2 Production verification procedures.
205.157–3 Configuration identification.
205.157–4 Production verification report; required data.
205.157–5 Test vehicle selection.
205.157–6 Test preparation.
205.157–7 Testing.
205.157–8 Changes to, addition of and deviation from a vehicle configuration during the model year.
205.157–9 Production verification based on data from previous model years.
205.157–10 Order to cease distribution.
205.158 Labeling requirements.
205.159 Testing by the Administrator.
205.160 Selective enforcement auditing (SEA) requirements.
205.160–1 Test request.
205.160–2 Test sample selection.
205.160–3 Test sample preparation.
205.160–4 Testing procedures.
205.160–5 Reporting of the test results.
205.160–6 Passing or failing under SEA.
205.160–7 Continued testing.
205.160–8 Prohibition of distribution in commerce; manufacturer's remedy.
205.161 Maintenance of records: submittal of information.
205.162 In-use requirements.
205.162–1 Warranty.
205.162–2 Tampering.
205.162–3 Instructions for maintenance, use, and repair.
205.162–4 Rentention of durability records.
205.163 Recall of noncomplying motorcycles; relabeling of mislabeled motorcycles.

Authority: Sec. 6 of the Noise Control Act (42 U.S.C. 4905) and additional authority as specified.

Subpart E—Motorcycle Exhaust Systems.

205.164 Applicability.
205.165 Definitions.
205.166 Noise emission standards.
205.167 Consideration of alternative test procedures.
205.168 Production verification.
205.168–1 General requirements.
205.168–2 Production verification procedures.
205.168–3 Production verification report; required data.
205.168–4 Test exhaust system selection.
205.168–5 Test exhaust system preparation.
205.168–6 Test motorcycle selection.
205.168–7 Test motorcycle preparation.
205.168–8 Testing.
205.168–9 Changes to, addition of, and deviation from an exhaust system category or motorcycle class during the model year.
205.168–10 Production verification based on data from previous model years.
205.168–11 Order to cease distribution.
205.169 Labeling requirements.
205.170 Testing by the Administrator.
205.171 Selective enforcement auditing (SEA) requirements.
205.171–1 Test request.
205.171–2 Test exhaust system sample selection.
205.171–3 Test motorcycle sample selection.
205.171–4 Test exhaust system preparation.
205.171–5 Test motorcycle preparation.
205.171–6 Test procedures.
205.171–7 Reporting of the test results.
205.171–8 Passing or failing under SEA.
205.171–9 Continued testing.
205.171–10 Prohibition on distribution in commerce; manufacturer's remedy.
205.172 Maintenance of records; submittal of information.
205.173 In-use requirements.
205.173–1 Warranty.
205.173–2 Tampering.
205.173–3 Warning statement.
205.173–4 Information sheet.
205.173–5 Retention of durability records.
205.174 Remedial orders.
Appendix I Motorcycle Noise Emission Test Procedure
Appendix I–1 Test Procedure for Street and Off-road Motorcycles
Appendix I–2 Test Procedure for Street Motorcycles That Meet the Definition of § 205.151(a)(2)(ii) (Moped-type street motorcycles)
Appendix II Sampling Tables

Authority: Sec. 6 of the Noise Control Act (42 U.S.C. 4905) and additional authority as specified.

Subpart D—Motorcycles

inspection under a Selective Enforcement Audit.

(7) "Acoustical Assurance Period" (AAP) means a specified period of time or miles driven after sale to the ultimate purchaser during which a newly

the motorcycle manufacturer, class, and "advertised engine displacement," respectively.

(19) "Model year" means the manufacturer's annual production period, which includes January 1 of any

(i) Street motorcycles other than those that meet the definition of § 205.151(a)(2)(ii):

Motorcycle model year	A-weighted noise level

(5) At the time of sale to the ultimate purchaser, all products must comply with the standards set forth in paragraphs (a) (1) and (2) of this section.

(b) *Measurement procedure.* (1) The standards set forth in paragraph (a) of

(4) For street motorcycles that meet the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles):

Motorcycle model year	A-weighted noise level

Authority: Sec. 6 of the Noise Control Act (42 U.S.C. 4905) and additional authority as specified.

Subpart D—Motorcycles

§ 205.150 Applicability.

(a) Except as otherwise provided in these regulations, the provisions of this subpart apply to 1983 and subsequent model year motorcycles manufactured after December 31, 1982, which meet the definition of "new product" in the Act.

(b) The provisions of this subpart do not apply to electric or battery-powered motorcycles.

(c) Except as provided in § 205.158, the provisions of this subpart do not apply to competition motorcycles as defined in § 205.151(a)(3).

§ 205.151 Definitions.

(a) As used in this subpart and in Subpart E, all terms not defined herein shall have the meaning given them in the Act or in Subpart A of this part.

(1) "Motorcycle" means any motor vehicle, other than a tractor, that:

(i) Has two or three wheels;

(ii) Has a curb mass less than or equal to 680 kg (1499 lb); and

(iii) Is capable, with an 80 kg (176 lb) driver, of achieving a maximum speed of at least 24 km/h (15 mph) over a level paved surface.

(2) "Street motorcycle" means:

(i) Any motorcycle that:

(A) With an 80 kg (176 lb) driver, is capable of achieving a maximum speed of at least 40 km/h (25 mph) over a level paved surface; and

(B) Is equipped with features customarily associated with practical street or highway use, such features including but not limited to any of the following: stoplight, horn, rear view mirror, turn signals: or

(ii) Any motorcycle that:

(A) Has an engine displacement less than 50 cubic centimeters;

(B) Produces no more than two brake horse power;

(C) With a 80 kg (176 lb) driver, cannot exceed 48 km/h (30 mph) over a level paved surface.

(3) "Competition motorcycle" means any motorcycle designed and marketed solely for use in closed course competition events.

(4) "Off-road motorcycle" means any motorcycle that is not a street motorcycle or competition motorcycle.

(5) "Acceleration test procedure" means the measurement methodologies specified in Appendix I.

(6) "Acceptable quality level" (AQL) means the maximum allowable average percentage of vehicles or exhaust systems that can fail sampling inspection under a Selective Enforcement Audit.

(7) "Acoustical Assurance Period" (AAP) means a specified period of time or miles driven after sale to the ultimate purchaser during which a newly manufactured vehicle or exhaust system, properly used and maintained, must continue in compliance with the Federal standard.

(8) "Advertised Engine Displacement" means the rounded off volumetric engine capacity used for marketing purposes by the motorcycle manufacturer.

(9) "Category" means a group of vehicle configurations which are identical in all material aspects with respect to the parameters listed in § 205.157–2 of this subpart.

(10) "Class" means a group of vehicles which are identical in all material aspects with respect to the parameters listed in § 205.155 of this subpart.

(11) "Closed course competition event" means any organized competition event covering an enclosed, repeated or confined route intended for easy viewing of the entire route by all spectators. Such events include short track, dirt track, drag race, speedway, hillclimb, ice race, and the Bonneville Speed Trials.

(12) "Closing rpm" means the engine speed in Figure 2 of Appendix I.

(13) "Configuration" means the basic classification unit of a manufacturer's product line and is comprised of all vehicle designs, models or series which are identical in all material aspects with respect to the parameters listed in § 205.157–3 of this subpart.

(14) "Engine displacement" means volumetric engine capacity as defined in § 205.153.

(15) "Exhaust system" means the combination of components which provides for the enclosed flow of exhaust gas from the engine exhaust port to the atmosphere. "Exhaust system" further means any constituent components of the combination which conduct exhaust gases and which are sold as separate products. "Exhaust System" does not mean any of the constituent components of the combination, alone, which do not conduct exhaust gases, such as brackets and other mounting hardware.

(16) "Failing vehicle" means a vehicle whose noise level is in excess of the applicable standard.

(17) "Maximum rated RPM" means the engine speed measured in revolutions per minute (RPM) at which peak net brake power (SAE J–245) is developed for motorcycles of a given configuration.

(18) "Model specific code" means the designation used for labeling purposes in §§ 205.158 and 205.169 for identifying the motorcycle manufacturer, class, and "advertised engine displacement," respectively.

(19) "Model year" means the manufacturer's annual production period, which includes January 1 of any calendar year, or if the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

(20) "Motorcycle noise level" means the A-weighted noise level of a motorcycle as measured by the acceleration test procedure.

(21) "Noise control system" means any vehicle part, component or system, the purpose of which includes control or the reduction of noise emitted from a vehicle, including all exhaust system components.

(22) "Noise emission standard" means the noise levels in § 205.152 or § 205.166.

(23) "Noise emission test" means a test conducted pursuant to a measurement methodology specified in this subpart.

(24) "Production verification vehicle" means any vehicle selected for testing, tested or verified according to the production verification requirements delineated in this subpart.

(25) "Serial number" means the identification number assigned by the manufacturer to a specific production unit.

(26) "Tampering" means the removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any product in compliance with regulations under Section 6, prior to its sale or delivery to the ultimate purchaser or while it is in use; or the use of a product after such device or element of design has been removed or rendered inoperative by any person.

(27) "Test vehicle" means a vehicle in a Selective Enforcement Audit test sample or a production verification vehicle.

(28) "Tractor" means for the purposes of this subpart, any two or three wheeled vehicle used exclusively for agricultural purposes, or for snow plowing, including self-propelled machines used exclusively in growing, harvesting or handling farm produce.

(29) "Vehicle" means any motorcycle regulated pursuant to this subpart.

(30) "Warranty" means the warranty required by Section 6(d)(1) of the Act.

§ 205.152 Noise emission standards.

(a) *Noise emission standards.* (1) Street motorcycles of the following and subsequent model years must not produce noise emissions in excess of the levels indicated:

(i) Street motorcycles other than those that meet the definition of § 205.151(a)(2)(ii):

	A-weighted noise level (dB)
Model Year:	
(A) 1983	83
(B) 1986	80

(ii) Street motorcycles that meet the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles):

	A-weighted noise level (dB)
Model Year:	
(A) 1983	70

(2) Off-road motorcycles of the following and subsequent model years must not produce noise emissions in excess of the levels indicated:

(i) Off-road motorcycles with engine displacements of 170 cc and lower:

Motorcycle model year	A-weighted noise level (dB)
(A) 1983	83
(B) 1986	80

(ii) Systems designed and marketed for use on off-road motorcycles with

	A-weighted noise level (dB)
Model Year:	
(A) 1983	86
(B) 1986	82

(3) Street motorcycles must be designed, built and equipped so that, when properly maintained and used, they will not produce noise emissions in excess of the levels specified in paragraph (a)(1) of this section, for an Acoustical Assurance Period of one year or a distance of 6000 km (3730 mi) after the time of sale to the ultimate purchaser, whichever occurs first.

(4) Off-road motorcycles must be designed, built and equipped so that, when properly maintained and used, they will not produce noise emissions in excess of the levels specified in paragraph (a)(2), of this section, for an Acoustical Assurance Period of one year or a distance of 3000 km (1865 mi) after the time of sale to the ultimate purchaser, whichever occurs first.

(5) At the time of sale to the ultimate purchaser, all products must comply with the standards set forth in paragraphs (a) (1) and (2) of this section.

(b) *Measurement procedure.* (1) The standards set forth in paragraph (a) of this section refer to noise emissions as measured in accordance with the measurement methodology specified in Appendix I–1 for all motorcycles except those street motorcycles that meet the definition of § 205.151(a)(2)(ii).

(2) The standards set forth in paragraph (a) of this section for street motorcycles that meet the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles) refer to noise emissions measured in accordance with the measurement methodology specified in Appendix I–2.

(c) *Low noise emission product standard.* For the purpose of Low-Noise-Emission Product certification pursuant to 40 CFR Part 203, motorcycles procured by the Federal government after the following dates must not produce noise emissions in excess of the noise levels indicated:

(1) For street motorcycles with engine displacement greater than 170 cc:

Motorcycle model year	A-weighted noise level (dB)
Date:	
(i) January 1, 1982	73
(ii) January 1, 1989	71

(2) For off-road motorcycles with engine displacements greater than 170 cc:

Motorcycle model year	A-weighted noise level (dB)
Date:	
(i) January 1, 1982	75

(3) For off-road motorcycles with engine displacement 170 cc and lower and street motorcycles with engine displacement 170 cc and lower that do not meet the definition of § 205.151(a)(2)(ii):

Motorcycle model year	A-weighted noise level (dB)
Date:	
(i) January 1, 1982	71

(4) For street motorcycles that meet the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles):

Motorcycle model year	A-weighted noise level (dB)
Date:	
(i) January 1, 1982	60

These levels refer to noise emissions as measured in accordance with the measurement methodologies specified in Appendix I. LNEP's must also meet all requirements contained in paragraphs (a) (3), (4), and (5), of this section.

(Secs. 10 and 15 of the Noise Control Act, (42 U.S.C. 4909, 4914))

§ 205.153 Engine displacement.

(a) Engine displacement must be calculated using nominal engine values and rounded to the nearest whole cubic centimeter, in accordance with American Society for Testing Materials (ASTM) E 29–67.

(b) For rotary engines, displacement means the maximum volume of a combustion chamber between two rotor tip seals minus the minimum volume of that combustion chamber between those two rotor seals times three times the number of rotors.

cc=(Maximum chamber volume−minimum chamber volume) × 3 × number of rotors.

§ 205.154 Consideration of alternative test procedures.

The Administrator may approve applications from manufacturers of motorcycles for the approval of test procedures which differ from those contained in this subpart so long as the alternative procedures have been demonstrated to correlate with the prescribed procedure. To be acceptable, alternative test procedures must be such that the test results obtained will identify all those test motorcycles which would not comply with the noise emission standards prescribed in § 205.152 when tested in accordance with the measurement methodology specified in Appendix I. After approval by the Administrator, testing conducted by manufacturers using alternative test procedures will be accepted by the Administrator for all purposes including, but not limited to, production verification testing, and selective enforcement audit testing.

§ 205.155 Motorcycle class and manufacturer abbreviation.

(a) Motorcycles must be grouped into classes determined by separate combinations of the following

demonstrate compliance with a particular standard, must satisfy all other provisions of this subpart applicable to that standard, including but not limited to, record keeping, reporting and in-use requirements.

testing. The requirements of representative testing are:

(i) Grouping configurations into categories where each category is determined by a separate combination of at least the following parameters (a

vehicle from another configuration must be selected and production verified according to the requirements of paragraph (c) of this section, in order to production verify the other configurations in that category originally

manufacturer and must include the following:

(1) The name, location, and description of the manufacturer's noise emission test facilities which meet the specifications of Appendix I and are

and test results, if any, for replaced vehicles.

(5) A complete description of the sound data acquisition system if other than those specified in Appendix I.

(6) For each configuration a sample of

§ 205.155 Motorcycle class and manufacturer abbreviation.

(a) Motorcycles must be grouped into classes determined by separate combinations of the following parameters:

(1) Engine type:

(i) Gasoline—two stroke.

(ii) Gasoline—four stroke.

(iii) Gasoline—rotary.

(iv) Other.

(2) Engine displacement.

(3) Engine configuration:

(i) Number of cylinders.

(ii) Cylinder arrangement (i.e., in line, opposed, etc.)

(4) Exhaust system:

(i) Muffler: (A) Type, (B) Location, (C) Number.

(ii) Expansion chambers: (A) Location, (B) Size.

(iii) Spark arrestors.

(iv) Other exhaust system components.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.156 [Reserved]

§ 205.157 Production verification (PV).

§ 205.157–1 General Requirements.

(a) Each manufacturer of vehicles manufactured for distribution in commerce in the United States which are subject to the standards prescribed in this subpart and not exempted in accordance with Subpart A, § 205.5:

(1) Must verify each vehicle in accordance with the production verification procedures described in this subpart;

(2) Must submit a product verification report, as required by § 205.157–4 of this subpart;

(3) Must label each vehicle in accordance with the requirements of § 205.158 of this subpart; and

(4) Must ensure that each vehicle conforms to the applicable noise emission standard establishd in § 205.152 of this subpart.

(b) The requirements of paragraph (a) of this section apply to new products which conform to the definition of vehicles in these regulations and at the time such new products are assembled to that state of completeness in which the manufacturer sends them to a subsequent manufacturer or otherwise distributes them in commerce.

(c) A subsequent manufacturer of a new vehicle need not fulfill the requirements of paragraphs (a) (1), (2) or (3) of this section where such requirements have already been complied with by a prior manufacturer.

(d) The manufacturer who is required to conduct product verification testing to demonstrate compliance with a particular standard, must satisfy all other provisions of this subpart applicable to that standard, including but not limited to, record keeping, reporting and in-use requirements.

(Secs. 10 and 13 of the Noise Control Act (42 U.S.C. 4909 and 4912))

§ 205.157–2 Production verification procedures.

(a)(1) Prior to distribution in commerce of vehicles of a specific configuration, the first manufacturer of the vehicles shall verify the configuration in accordance with this subpart.

(2) Notwithstanding paragraph (a)(1) of this section, the manufacturer may distribute in commerce vehicles of that configuration for up to 90 days if weather or other conditions beyond the control of the manufacturer make production verification of a configuration impossible and if the following conditions are met:

(i) The manufacturer performs the tests required under paragraphs (b) or (c) of this section on such configuration as soon as conditions permit;

(ii) The manufacturer maintains records of the conditions which make production verification impossible; and

(iii) If on the 45th day following distribution in commerce of vehicles of that configuration, the manufacturer has not performed the tests required by paragraphs (b) or (c) of this section, the manufacturer within 5 days notifies the Administrator in writing that such vehicles have been distributed in commerce and provides to the Administrator documentation of the conditions which have made production verification impossible.

(3) At any time following receipt of notice under paragraph (a)(2)(iii) of this section with respect to a configuration, the Administrator may require that the manufacturer ship test vehicles to an EPA test facility for the required production verification testing.

(b) The production verification requirements with regard to each vehicle configuration consist of:

(1) Testing in accordance with § 205.157–7 of a vehicle selected in accordance with § 205.157–5;

(2) Compliance of the test vehicle with the applicable standard, when tested in accordance with Appendix I; and

(3) Submission of a production verification report pursuant to § 205.157–4.

(c)(1) In lieu of testing vehicles of every configuration as described in paragraph (b) of this section, the manufacturer may elect to verify the configuration based on representative testing. The requirements of representative testing are:

(i) Grouping configurations into categories where each category is determined by a separate combination of at least the following parameters (a manufacturer may use more parameters):

(A) Engine type: (*1*) Gasoline-two stroke; (*2*) gasoline-four stroke; (*3*) gasoline-rotary; and (*4*) other.

(B) Engine displacement.

(C) Engine configuration: (*1*) Number of cylinders; and (2) cylinder arrangement (i.e., in line, opposed, etc.)

(ii) Identifying the configuration within each category which emits the highest A-weighted sound level (in dB).

(iii) Testing in accordance with Appendix I of a vehicle of the configuration identified pursuant to paragraph (c)(1)(ii) of this section selected in accordance with § 205.157–5.

(iv) Demonstrating compliance of that vehicle with the applicable standard when tested in accordance with the test procedure specified in Appendix I; and

(v) Submission of a production verification report pursuant to§ 205.157–4.

(2) If there has been compliance with the requirements of paragraph (c)(1), of this section, all those configurations contained within a category are considered to be represented by the tested vehicle and are considered to be production verified.

(3) If there has been compliance with all other requirements of paragraph (c)(1) of this section, except that the manufacturer tests a configuration which does not have the highest noise level in a category (as identified in paragraph (c)(1)(ii) of this section), all those configurations in the category which have noise levels no greater than that of the tested configuration are considered to be production verified. However a manufacturer must production verify according to the requirements of paragraphs (b) or (c) of this section any configurations in the category which have a higher noise level than that of the configuration tested.

(d) A manufacturer may elect to production verify all or part of his product line using representative testing pursuant to paragraph (c) of this section.

(e) The manufacturer has the following alternatives if any test vehicle is determined to not be in compliance with applicable standards:

(1) Delete the configuration from which the test vehicle was selected from the production verification report. Configurations so deleted may be included in a later report under § 205.157–4. However, in the case of representative testing, a new test vehicle from another configuration must be selected and production verified according to the requirements of paragraph (c) of this section, in order to production verify the other configurations in that category originally represented by the vehicle that did not comply; or

(2) Modify the test vehicle and demonstrate by testing that it meets applicable standards. All modifications and test results must be reported in the production verification report. The manufacturer must modify all production vehicles of the same configuration in the same manner as the test vehicle before distribution into commerce.

(f) Upon request by the Director of the Noise and Radiation Enforcement Division, the manufacturer shall notify the Director of any production verification testing scheduled by the manufacturer pursuant to this section so that EPA Enforcement Officers or other employees of the Agency may be present to monitor or conduct the testing in lieu of the manufacturer.

(Secs. 10 and 13 of the Noise Control Act (42 U.S.C. 4909, 4912))

§ 205.157–3 Configuration identification

(a) A separate vehicle configuration shall be determined by each combination of the following parameters:

(1) Exhaust system (engine): (i) Mufflers; (ii) expansion chambers; (iii) spark arrestors; and (iv) other exhaust system components.

(2) Air induction system (engine): (i) Intake muffler; (ii) intake ducting; and (iii) air cleaner element.

(3) Vehicle drive train: (i) Chain; and (ii) shaft.

(4) Transmission gear ratio: (i) Standard transmission; and (ii) automatic transmission.

(5) Cooling system configuration: (i) Natural air cooled; (ii) liquid cooled; and (iii) forced air cooled.

(6) Category parameters listed in § 205.157–2.

(b) [Reserved]

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.157–4 Production verification report; required data.

(a) Before the distribution in commerce of any product to which this regulation applies, the manufacturer must submit a production verification report to the Director, Noise and Radiation Enforcement Division (EN–387), U.S. Environmental Protection Agency, Washington, D.C. 20460.

(b) The report must be signed by an authorized representative of the manufacturer and must include the following:

(1) The name, location, and description of the manufacturer's noise emission test facilities which meet the specifications of Appendix I and are used to conduct testing pursuant to this subpart. A test facility that has been described in a previous submission under this subpart need not be described again, but must be identified as such.

(2) A description of normal predelivery maintenance procedure.

(3) A description of all vehicle configurations, including the model specific code applicable for each configuration, as determined in accordance with § 205.158, to be distributed in commerce by the manufacturer. This description must include a list identifying or defining any device or element of design (including its location and method of operation) incorporated into vehicles for the purpose of noise control and any device that affects noise emission from the vehicle and does not operate during the normal operating modes of the vehicle. The manufacturer may satisfy the vehicle configuration description requirements of this paragraph by submitting as part of the production verification report a copy of sales literature that describes the product line including options and supplementing this literature with any additional information necessary to fulfill the requirements of this paragraph. If a manufacturer elects to production verify pursuant to § 205.157–2(c), the configuration within each category which is estimated to have the highest A-weighted noise level at the end of the Acoustical Assurance Period must be identified. The manufacturer may estimate the noise level based on his best technical judgment, test data, or both. The criteria used to estimate each noise level must be stated with the estimates.

(4) The following information for each noise emission test conducted:

(i) The individual record for the test vehicles required by § 205.161(a)(2) for all official tests conducted in accordance with § 205.157–7 including, for each invalid test, the reason for invalidation.

(ii) A complete description of any preparation, maintenance or testing which could affect the noise emissions of the vehicle, and which was performed on the test vehicle but will not be performed on all other production vehicles, and

(iii) The reason for replacement where a replacement vehicle was necessary, and test results, if any, for replaced vehicles.

(5) A complete description of the sound data acquisition system if other than those specified in Appendix I.

(6) For each configuration a sample of the completed label which is required under § 205.158 of this Subpart. The label must be completed in accordance with § 205.158(a)(5).

(7) The following statement and endorsement:

"This report is submitted pursuant to Section 6 and Section 13 of the Noise Control Act of 1972. To the best of (company name) knowledge, all testing for which data are reported here was conducted in strict conformance with applicable regulations under 40 CFR Parts 205 *et seq.*, all the data reported here are a true and accurate representation of such testing and all other information reported here is true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder. (authorized representative)."

(c) Where a manufacturer elects to submit separate production verification reports for portions of his product line as provided in paragraph (a) of this section, information provided in previous reports need not be resubmitted. Information necessary to update or make current previously submitted information must be submitted.

(d) Any change with respect to information reported under this section must be reported as soon as the information becomes available.

(Secs. 10 and 13 of the Noise Control Act (42 U.S.C. 4909 and 4912))

§ 205.157–5 Test vehicle selection.

Test vehicles of a configuration for which production verification testing is required by § 205.157–1 must be assembled using the manufacturer's normal production processes and intended for distribution in commerce.

(Secs. 10, 13 of the Noise Control Act (42 U.S.C. 4909, 4912))

§ 205.157–6 Test preparation.

(a) Before the official test, the test vehicle selected in accordance with § 205.157–5 must not be prepared, tested, modified, adjusted, or maintained in any manner unless such preparation, tests, modifications, adjustments or maintenance (1) are part of the manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal vehicle assembly and inspection procedures, (2) are required or permitted under this

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subpart, or (3) are approved in advance by the Administrator.

(b) For purposes of this section and § 205.157–5, prescribed manufacturing and inspection procedures include quality control testing and assembly

verification report including the reason for the replacement.

(d) If a vehicle fails to comply with the standards of this subpart when tested in accordance with the procedures specified in paragraph (a) of this section.

configurations from previous production verification reports. Considerations relevant to the Administrator's decision to permit production verification carry-over on these configurations may include, but are not limited to:

(5) The label must contain the following information:

(i) The label heading: Motorcycle Noise Emission Control Information;

(ii) The statement:

This —— (model year) —— (model

Riviera	RIV
Sachs	SAC
Safari	SAF
Scorpion	SCO
Smily	SMI
Snark	SNA
Son II	SON
Speed Bird	SPE
Sprinter	SPR

upon good engineering practice and meet or exceed the requirements of Appendix I of the regulations.

(2) If the Administrator specifies that he will conduct such testing at the manufacturer's facility, the

subpart, or (3) are approved in advance by the Administrator.

(b) For purposes of this section and § 205.157–5, prescribed manufacturing and inspection procedures include quality control testing and assembly procedures normally performed by the manufacturer on like products during early production if the resulting testing is not biased by this procedure. In the case of imported products, the manufacturer may perform adjustments, preparations, modification or tests normally performed at the port of entry by the manufacturer to prepare the vehicle for delivery to a dealer or customer.

(c) Equipment or fixtures necessary to conduct the test may be installed on the vehicle if such equipment or fixtures have no effect on the noise emissions of the vehicle, as determined by the measurement methodology.

(d) In the event of a vehicle malfuction (i.e., failure to start, etc.) the manufacturer may perform the maintenance that is necessary to enable the vehicle to operate in a normal manner. This maintenance must be documented and reported in the PV report on that vehicle's configuration prepared and submitted by the manufacturer.

(e) No quality control, quality assurance testing, assembly or selection procedures may be used on the test vehicle or any portion of the test vehicle including parts and subassemblies, unless such quality control, quality assurance testing, assembly or selection procedures (1) are used normally during the production and assembly of all other vehicles of this configuration which will be distributed in commerce, (2) are required or permitted under this subpart or (3) are approved in advance by the Administrator.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912)).

§ 205.157–7 Testing.

(a) The manufacturer shall conduct one valid test in accordance with the test procedures specified in Appendix I of this subpart for each vehicle selected for production verification testing.

(b) The manufacturer shall not perform any maintenance on the test vehicle, except as provided for by § 205.157–6.

(c) If a vehicle is unable to complete the noise test, the manufacturer may replace the vehicle. Any replacement vehicle must be a production vehicle of the same configuration as the replaced vehicle or a noisier configuration and will be subject to all the provisions of these regulations. Any replacement must be reported in the production verification report including the reason for the replacement.

(d) If a vehicle fails to comply with the standards of this subpart when tested in accordance with the procedures specified in paragraph (a) of this section, the manufacturer must proceed in accordance with § 205.157–2(e) of this subpart.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.157–8 Changes to, addition of, and deviation from a vehicle configuration during the model year.

(a) Any change to a configuration with respect to any of the parameters stated in § 205.157–3 constitutes the addition of a new and separate configuration or category to the manufacturer's product line.

(b) (1) When a manufacturer introduces a new category or configuration to his product line, he must proceed in accordance with § 205.157–2.

(2) Where the configuration to be added can be grouped within a verified category and is estimated to have a lower A-weighted noise level than a previously verified configuration within the same category then the manufacturer may submit a report according to § 205.157–4 with respect to the new configuration, and the configuration will be considered verified.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.157–9 Production verification based on data from previous model years.

(a)(1) Except as provided in paragraph (a)(2) of this section, production verification of each configuration will not be required for subsequent model years when the manufacturers' initial production verification noise emission level is at least 2 dB below the noise emission standard in effect for that model year and when the manufacturer has not made any changes (which increase the noise emission level) to the noise control components or elements of design used on that configuration.

(2) Production verification of each configuration will be required for those model years when the more stringent noise emission standards become effective.

(b) For those configurations whose initial PV noise emission level is less than 2 dB below the standard in effect, production verification will be required when production of that configuration commences each model year, unless the Administrator, upon request by the manufacturer, permits the use of production verification data for specific configurations from previous production verification reports. Considerations relevant to the Administrator's decision to permit production verification carry-over on these configurations may include, but are not limited to:

(1) The level of the standard in effect for the year in question.

(2) Performance based on production verification data from previous years.

(3) Performance based on data obtained from selective enforcement tesfing during previous years.

(4) The number and type of changes in the design of noise control features incorporated in the new models that affect the noise emission level.

(5) Any other noise emission test data that the manufacturer may wish to submit to support his request.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.157–10 Order to cease distribution.

(a) If a category or configuration is found not to comply with this subpart because it has not been verified properly pursuant to § 205.157–2, the Administrator may issue an order to the manufacturer to cease distribution in commerce vehicles of that category or configuration. This order will not be issued if the manufacturer has made a good faith attempt to properly production verify the category or configuration and can establish such good faith.

(b) Any such order shall be issued after notice and opportunity for a hearing which will be held in accordance with 5 U.S.C. 554.

(Sec. 11 of the Noise Control Act (42 U.S.C. 4910))

§ 205.158 Labeling requirements.

(a)(1) The manufacturer of any vehicle subject to the production verification requirements of this subpart must, at the time of manufacture, affix a label, of the type specified in paragraph (a)(2), (3), and (4) of this section, to all such vehicles to be distributed in commerce.

(2) The label must be plastic or metal and be welded, riveted, or otherwise permanently attached in a readily visible position.

(3) The label must be affixed by the vehicle manufacturer who has production verified the vehicle, in such a manner that the label cannot be removed without destroying or defacing it, and must not be affixed to any piece of equipment that is easily detached from such vehicle.

(4) The label must be lettered in the English language in legible block letters and numerals, which must be of a color that contrasts with the background of the label.

(5) The label must contain the following information:

(i) The label heading: Motorcycle Noise Emission Control Information;

(ii) The statement:

This —— (model year) —— (model specific code) motorcycle, —— (serial number), meets EPA noise emission requirements of —— (noise emission standard) dBA at —— (closing rpm) rpm by the Federal test procedure. Modifications which cause this motorcycle to exceed Federal noise standards are prohibited by Federal law. See owner's manual.

(6) The model specific code is limited to ten spaces which includes three spaces for the manufacturer's abbreviation (see paragraph 7 of this section), three spaces for the class identification, and four spaces for the advertised engine displacement respectively.

(7) All motorcycle manufacturers shall use the following abbreviations in their model specific code.

BMW	BMW
Bultaco	BUL
Can-Am Bombardier	CAB
Chaparral	CHA
Cheeta	CHE
Ducati	DUC
Fox	FOX
Harley Davidson	HAR
Heald	HEA
Hercules	HER
Hodaka	HOD
Honda	HON
Husqvarna	HUS
JAWA/CZ	JAW
Kawasaki	KAW
KTM	KTM
Laverda	LAV
Moto Benilli	BEN
Moto Guzzi	GUZ
Moto Morini	MOR
MV Agusta	MVA
Norton Triumph	TRI
Rokon	ROK
Suzuki	SUZ
Yamaha	YAM

(8) Moped manufacturers only shall use the following abbreviations in their model specific code.

AMF	AMF
Benelli	BEL
Califfo	CAL
Carabela	CAR
Cimatti	CIM
Columbia	COL
E-Z Rider	EZR
Flying Dutchman	FLY
Foxi	FOI
Gadaboul	GAD
Garelli	GAR
Sitane	GIT
Honda	HON
Indian	IND
Intramotor	INT
Italvelo	ITA
Kreidler	KRE
Lazer	LAZ
Malagati	MAL
Morini	MOI
Motobecane/Solex	MBE
Moto Guzzi	GUZ
Negrini	NEG
Odyssey	ODY
Pacer	PAC
Pack-A-Way	PAK
Peugeot	PEU
Puch	PUC
Riviera	RIV
Sachs	SAC
Safari	SAF
Scorpion	SCO
Smily	SMI
Snark	SNA
Soni II	SON
Speed Bird	SPE
Sprinter	SPR
SuVega	SUV
Tomas	TOM
Vaespa	VES
Yankee Peddler	YAN

(9) If a new motorcycle manufacturer begins production of vehicles subject to this regulation, the Administrator will assign him a 3-letter manufacturer abbreviation as soon as reasonably practical after his existence is known to the Agency.

(b) Any vehicle manufactured in the United States solely for use outside the United States must be clearly labeled in accordance with the provisions of paragraphs (a)(2), and (3) and (4) of this section with the statement; "For Export Only".

(c) Any competition motorcycle as defined in § 205.151(a)(3), shall be labeled in accordance with the provisions of paragraphs (a)(1), (2), (3) and (4) of this section with the statement:

This motorcycle is designed for closed course competition use only. It does not conform to U.S. EPA motorcycle noise standards.

(d) It will be permissible for manufacturers to meet the requirements of this section by consolidating these labeling requirements with other government labeling requirements in one or more labels, provided the provisions of paragraphs (a) (2), (3) and (4) of this section are met.

(e) The manufacturer must maintain and provide to the Administrator upon request, such records which enable the Administrator to ascertain the month of manufacture.

(Secs. 10 and 13 of the Noise Control Act (42 U.S.C. 4909 and 4912))

§ 205.159 Testing by the Administrator.

(a)(1) In order for the Administrator to determine whether such vehicles or a manufacturer's test facility conform to applicable regulations, the Administrator may require that vehicles to be tested pursuant to the Act be submitted to him, at such place and time as he reasonably designates. He may designate the quantity of vehicles and the duration of time he reasonably requires for the purpose of conducting tests in accordance with test procedures described in Appendix I. The manner in which the Administrator conducts such tests, the EPA test facility, and the test procedures employed will be based upon good engineering practice and meet or exceed the requirements of Appendix I of the regulations.

(2) If the Administrator specifies that he will conduct such testing at the manufacturer's facility, the manufacturer shall make available instrumentation and equipment of the type required for test operations by these regulations. The Administrator may conduct such tests with his own equipment, having specifications equal to or exceeding the performance specifications of the instrumentation and equipment required in these regulations.

(3) The manufacturer may observe tests conducted by the Administrator pursuant to this section on vehicles produced by the manufacturer and may copy the data accumulated from such tests. The manufacturer may inspect any of the vehicles before and after testing by the Administrator.

(b)(1) If, based on tests conducted by the Administrator, or on other relevant information, the Administrator determines that the test facility does not meet the requirements of Appendix I (or the requirements for an alternative test procedure approved under 205.154), the Administrator will give notice to the manufacturer in writing of his determination and the reasons underlying it.

(2) The manufacturer may, at any time within 15 days after receipt of a notice issued under paragraph (b)(1) of this section, request a hearing conducted in accordance with 5 U.S.C. 554 on the issue of whether his test facility met the requirements as specified in Appendix I (or the alternative procedure). Such notice will not take effect until 15 days after its receipt by the manufacturer or, if a hearing is requested under this paragraph, until adjudication by the Administrative law judge.

(3) After any notice issued under paragraph (b)(1) of this section has taken effect, no data thereafter derived from that test facility will be acceptable for purposes of this subpart.

(4) The manufacturer may request in writing that the Administrator reconsider his determination under paragraph (b)(1) of this section based on data or information which indicates that changes have been made to the test facility and that those changes have resolved the reasons for disqualification.

(5) Within 10 working days after receipt of the manufacturer's request for reconsideration pursuant to paragraph (b)(4) of this section, the Administrator will notify the manufacturer of his determination and of the reasons underlyng it with regard to the requalification of the test facility.

(c) The Administrator will assume all reasonable costs associated with shipment of vehicles to the place designated pursuant to paragraph (a) of this section except with respect to:

(1) Any production verification testing is unavailable for testing. The test request may include an alternative category, configuration, or configuration subgroup designated for testing in the event that vehicles of the first specified category, configuration, or configuration time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) The Administrator may issue an order to the manufacturer to cease distribution in commerce of vehicles of a

category, configuration or configuration subgroup specified in the test request which are next scheduled for production after receipt of the test request.

(e) The manufacturer must keep on hand all products in the test sample

(1) The name, location, and description of the manufacturer's noise emission test facilities which meet the specifications of Appendix I, and were utilized to conduct testing reported under this section, except, that a test

the number of failing vehicles is less than or equal to the number in Column A, the sample passes.

(c) Pass or failure of an SEA takes place when a decision that a vehicle is a

(c) The Administrator will assume all reasonable costs associated with shipment of vehicles to the place designated pursuant to paragraph (a) of this section except with respect to:

(1) Any production verification testing performed at a place other than the manufacturer's facility as provided in § 205.157–2(a), or as a result of the manufacturer's not owning or having access to a test facility;

(2) Testing of a reasonable number of vehicles (i) for purposes of selective enforcement auditing under § 205.160, (ii) or if the manufacturer has failed to establish that there is a correlation between its test facility and the EPA test facility, (iii) or the Administrator has reason to believe, and provides the manufacturer with a statement of such reason, that the vehicles to be tested would fail to meet the standard prescribed in this subpart if tested at the EPA test facility even though they would meet such standard if tested at the manufacturer's test facility;

(3) Any testing performed during a period when a notice issued pursuant to paragraph (b) of this section is in effect;

(4) Any testing performed at a place other than the manufacturer's facility as a result of the manufacturer's failure to permit the Administrator to conduct or monitor testing as required by this subpart; and

(5) Testing of up to 10 percent of the manufacturer's production verification test vehicles for a model year if the Administrator determines testing these vehicles at the EPA test site is necessary to assure that a manufacturer has acted or is acting in compliance with the Act.

(Secs. 11 and 13 of the Noise Control Act (42 U.S.C. 4910 and 4912))

§ 205.160 Selective enforcement auditing (SEA) requirements.

§ 205.160–1 Test request.

(a) The Administrator will request all testing under § 205.160 by means of a test request addressed to the manufacturer.

(b) The test request will be signed by the Assistant Administrator for Enforcement or his designee. The test request will be delivered to the plant manager or other responsible official as designated by the manufacturer.

(c) The test request will specify the vehicle category, configuration or configuration subgroup selected for testing, the manufacturer's plant or storage facility from which the vehicles must be selected, and the time at which the vehicles must be selected. The test request will also provide for situations in which the selected category, configuration, or configuration subgroup is unavailable for testing. The test request may include an alternative category, configuration, or configuration subgroup designated for testing in the event that vehicles of the first specified category, configuration, or configuration subgroup are not available for testing because the vehicles are not being manufactured at the specified plant, are not being manufactured during the specified time, or are not being stored at the specified plant or storage facility.

(d)(1) If the manufacturer projects a yearly production of fewer than 50 vehicles of the specified category, configuration or configuration subgroup to be tested, then within five (5) days of receipt of the request, the manufacturer must notify the Administrator of such low volume production. The Administrator will then provide a revised test request specifying a testing plan which imposes no greater risk of failure (5%) at the acceptable quality level (10%) than the plan in Appendix II. Upon receipt of the revised test request, the manufacturer must select and test a sample of vehicles from the category, configuration or configuration subgroup specified in the test request in accordance with this subpart and the conditions specified in the test request.

(2) If the manufacturer produces 50 or more vehicles of the specified category, configuration or configuration subgroup per year, then upon receipt of the test request, the manufacturer must select and test a sample of vehicles from the category, configuration or configuration subgroup specified in the test request in accordance with this subpart and the conditions specified in the test request.

(e)(1) Any testing conducted by the manufacturer under a test request must be initiated within the time period specified in the test request; except that initiation may be delayed for increments of 24 hours or one business day where ambient test site weather conditions, or other conditions beyond the control of the manufacturer, in that 24-hour period, do not permit testing. The manufacturer must record the conditions for this period.

(2) The manufacturer must complete noise emission testing on a minimum of ten vehicles per day unless otherwise provided by the Administrator or unless ambient test site conditions permit only the testing of a lesser number in which case the ambient test site weather conditions for that period must be recorded.

(3) The manufacturer is allowed 24 hours to ship vehicles from a sample from the assembly plant to the testing facility if the facility is not located at the plant or in close proximity to the plant. The Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) The Administrator may issue an order to the manufacturer to cease distribution in commerce of vehicles of a specified category, configuration, or configuration subgroup being manufactured at a particular facility, if:

(1) The manufacturer refuses to comply with the provisions of a test request issued by the Administrator under this section; or

(2) The manufacturer refuses to comply with any of the requirements of this section.

(g) A cease distribution order will not be issued under paragraph (f) of this section if the manufacturer's refusal is caused by conditions and circumstances outside his control which render compliance with the provisions of a test request or with any other requirements of this section impossible. Conditions and circumstances outside the control of the manufacturer include, but are not limited to, the temporary unavailability of equipment and personnel needed to conduct the required tests caused by uncontrollable factors, such as equipment breakdown or failure or illness of personnel. Failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests do not constitute uncontrollable factors. The manufacturer must bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(h) Any order to cease distribution will be issued only after a notice and opportunity for a hearing in accordance with 5 U.S.C. 554.

(Secs. 11 and 13 of the Noise Control Act (42 U.S.C. 4910 and 4912))

§ 205.160–2 Test sample selection.

(a) Vehicles comprising the sample which are required to be tested under a test request in accordance with this subpart must be selected consecutively as they are produced. The provisions of § 205.157–7 (b) and (c) also pertain to this section.

(b) The Acceptable Quality Level (AQL) is 10 percent. The appropriate sampling plans associated with the designated AQL are contained in Appendix II or the test request.

(c) The vehicles of the category, configuration or configuration subgroup selected for testing must be assembled by the manufacturer for distribution in commerce using the manufacturer's normal production process.

(d) Unless otherwise indicated in the test request, the manufacturer must initiate testing with the vehicles of the

category, configuration or configuration subgroup specified in the test request which are next scheduled for production after receipt of the test request.

(e) The manufacturer must keep on hand all products in the test sample until the sample is accepted or rejected in accordance with § 205.160–6; except that vehicles actually tested and found to be in conformance with this regulation need not be kept.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.160–3. Test sample preparation.

Prior to the official test, each test vehicle selected in accordance with § 205.160–2 must be prepared in accordance with § 205.157–6.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.160–4 Testing procedures.

(a) The manufacturer must conduct one valid test in accordance with the appropriate test procedures specified in Appendix I, on each vehicle selected for testing under this subpart.

(b) No maintenance may be performed on test vehicles except as provided by § 205.160–3. In the event a vehicle is unable to complete the noise emission test, the manufacturer may replace the vehicle. Any replacement vehicle must be a production vehicle of the same category, configuration or subgroup as the vehicle which it replaced, and it is subject to all the provisions of this subpart.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.160–5 Reporting of the test results.

(a)(1) The manufacturer must submit a copy of the test report for all testing conducted pursuant to § 205.160 at the conclusion of each 24-hour period during which testing is done.

(2) For each test conducted the manufacturer must provide the following information:

(i) Category, configuration or configuration subgroup identification where applicable;

(ii) Year, make, assembly date, and model of vehicle;

(iii) Vehicle serial number; and

(iv) Test results by serial numbers.

(b) In the case where an EPA Enforcement Officer is present during testing required by this subpart, the written reports requested in paragraph (a) of this section may be given directly to the Enforcement Officer.

(c) Within 5 days after completion of testing of an SEA, the manufacturer must submit to the Administrator a final report which will include the following:

(1) The name, location, and description of the manufacturer's noise emission test facilities which meet the specifications of Appendix I, and were utilized to conduct testing reported under this section, except, that a test facility that has been described in a previous submission under this subpart need not again be described, but must be identified as that facility.

(2) The following information for each noise emission test conducted:

(i) The individual records for the test vehicles required by § 205.161(a)(2) for all noise emission tests including for each invalid test, the reason for invalidation.

(ii) A complete description of any modification, repair, preparation, maintenance, or testing which could affect the noise emissions of the product and which was performed on the test vehicle but not performed on all other production vehicles; and,

(iii) The test results for any replaced vehicle and the reason for its replacement.

(3) A complete description of the sound data acquisition system if other than those specified in Appendix I.

(4) The following statement and endorsement:

This report is submitted pursuant to Section 6 and Section 13 of the Noise Control Act of 1972. To the best of——(company name) knowledge, all testing for which data are reported here was conducted in strict conformance with applicable regulations under 40 CFR Parts 205 *et seq.*, all the data reported here are a true and accurate representation of such testing, and all other information reported here is true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder.——(authorized representative).

(5) Additional information required by the test request.

(d) Information required to be submitted to the Administrator under this section must be sent to the following address: Director, Noise and Radiation Enforcement Division, (EN–387), U.S. Environmental Protection Agency, Washington, D.C. 20460.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.160–6 Passing or failing under SEA.

(a) A failing vehicle is one whose measured noise level is in excess of the applicable noise emission standard in § 205.152.

(b) The number of failing vehicles in a sample determines whether the sample passes or fails (See applicable tables in Appendix II). If the number of failing vehicles is greater than or equal to the number of Column B, the sample fails. If the number of failing vehicles is less than or equal to the number in Column A, the sample passes.

(c) Pass or failure of an SEA takes place when a decision that a vehicle is a passing or failing unit is made on the last vehicle required to make a decision under paragraph (b) of this section.

(d) If the manufacturer passes the SEA, he will not be required to perform any additional testing on subsequent vehicles to satisfy the test request.

(e) The Administrator may terminate testing earlier than required in paragraph (b) of this section, based on a request by the manufacturer, accompanied by voluntarily ceasing distribution in commerce of vehicles from the category, configuration or configuration subgroup in question, manufactured at the plant which produced the products being tested. Before reinitiating distribution in commerce of that vehicle category, configuration or configuration subgroup from that plant, the manufacturer must take the action described in § 205.160–8(a) (1) and (2).

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.160–7 Continued testing.

(a) If an SEA failure occurs according to paragraph (b) of § 205.160–6, the Administrator may require that any or all vehicles of that category, configuration or configuration subgroup produced at that plant be tested before distribution in commerce.

(b) The Administrator will notify the manufacturer in writing of his intent to require continued testing of vehicles under paragraph (a) of this section.

(c) The manufacturer may request a hearing on the issues of whether the SEA was conducted properly; whether the criteria for SEA failure have been met; and the appropriateness or scope of a continued testing order. If a hearing is requested, the hearing will begin no later than 15 days after the date on which the Administrator received the hearing request. Neither the request for a hearing nor the fact that a hearing is in progress will affect the responsibility of the manufacturer to commence and continue testing required by the Administrator pursuant to paragraph (a) of this section.

(d) Any tested vehicle which demonstrates conformance with the applicable standard may be distributed into commerce.

(e) Any distribution into commerce of a vehicle which does not comply with the applicable standard is a prohibited act.

(Secs. 10 and 13 of the Noise Control Act (42 U.S.C. 4909 and 4912))

§ 205.160–8 Prohibition of distribution in commerce; manufacturer's remedy.

(a) The Administrator will permit the

subpart used to perform noise emission tests on any test vehicle.

(iii) A record of the calibration of the acoustical instrumentation as described in Appendix I.

(iv) A record of the date of

steps to repromulgate or modify the reporting requirements at that time.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.162 In-use requirements.

acts would be done on any one or more configurations, then the manufacturer may submit one list to cover his entire product line. The manufacturer must state his estimate, wherever possible, of the amount of increase in noise level

been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.152, the act will not constitute tampering.

(including the record book) required by paragraphs (a) and (b) of this section.

(d)(1) The Administrator will require modifications to the instructions if they do not meet the requirements of paragraph (a) of this section.

(2) The manufacturer may file a

(Secs. 10 and 13 of the Noise Control Act (42 U.S.C. 4909 and 4912))

§ 205.160–8 Prohibition of distribution in commerce; manufacturer's remedy.

(a) The Administrator will permit the manufacturer to cease testing under § 205.160–7 after the manufacturer has taken the following actions:

(1) Submission of a written report to the Administrator which identifies the reason for the noncompliance of the vehicles, describes the problem and describes the proposed quality control or quality assurance remedies to be taken by the manufacturer to correct the problem or establishes that the requirements for an engineering change pursuant to § 205.157–8 have been completed, and

(2) Demonstration that the specified vehicle category, configuration or configuration subgroup has passed a retest conducted in accordance with § 205.160, and the conditions specified in the test request.

(b) The manufacturer may begin testing under paragraph (a)(2) of this section upon submitting the report required by paragraph (a)(1) of this section, and may cease continued testing upon making the demonstration required by paragraph (a)(2) of this section. The Administrator may require resumption of continued testing if he determines that the manufacturer has not satisfied the requirements of paragraphs (a) (1) and (2) of this section.

(c) Any vehicle failing the prescribed noise emission tests conducted pursuant to Appendix I may not be distributed in commerce until necessary adjustments or repairs have been made and the vehicle passes a retest.

(Secs. 10 and 13 of the Noise Control Act (42 U.S.C. 4909 and 4912))

§ 205.161 Maintenance of records: Submittal of information.

(a) Except as otherwise provided in the regulation, the manufacturer of any vehicle subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records:

(1) General records:

(i) Identification and description by category, configuration, and class parameters of all vehicles in the manufacturer's product line for which testing is required under this subpart and the identification and description of all devices incorporated into the vehicle for the purpose of noise control and attenuation.

(ii) A description of any procedures other than those contained in this subpart used to perform noise emission tests on any test vehicle.

(iii) A record of the calibration of the acoustical instrumentation as described in Appendix I.

(iv) A record of the date of manufacture of each vehicle subject to this subpart, keyed to the serial number.

(2) Individual records for test vehicles:

(i) A complete record of all noise emission tests performed for Production Verification and Selective Enforcement Audit (except tests performed by EPA directly), including all individual worksheets and other documentation or exact copies relating to each test.

(ii) A record of the information required, recorded as described in Appendix I, and

(iii) A record and description of all repairs, maintenance and other servicing which were performed before successful testing of the vehicle pursuant to these regulations and which could affect the noise emissions of the vehicle, giving the date and time of the maintenance or service, the reason for it, the person authorizing it, and the names of supervisory personnel responsible for the conduct of the maintenance or service.

(3) A properly filed production verification report following the format prescribed by the Administrator in § 205.157–4 fulfills the requirements of paragraphs (a)(1) (i) and (ii) of this section.

(4) All records required to be maintained under this subpart must be retained by the manufacturer for a period of three (3) years from the production verification date. Records may be retained as hard copy or alternatively reduced to microfilm, punch cards, etc., depending on the record retention procedures of the manufacturer; however, when an alternative method is used, all information contained in the hard copy must be contained in the copy made by the alternative method.

(b) The manufacturer must, upon request, submit to the Administrator the following information with regard to new vehicle production:

(1) Number of vehicles, by category, configuration, or class scheduled for production for the time period designated in the request.

(2) Number of vehicles, by category, configuration, or class produced during the time period designated in the request.

(c) The reporting requirements of this regulation will no longer be effective after five (5) years from the last effective date of this regulation. However, the requirements will remain in effect if the Administrator is taking appropriate steps to repromulgate or modify the reporting requirements at that time.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.162 In-use requirements.

§ 205.162–1 Warranty.

(a) The vehicle manufacturer who is required to production verify under this subpart must include in the owner's manual or in other information supplied to the ultimate purchaser the following statement:

NOISE EMISSIONS WARRANTY [RESERVED]

(b) Not later than the date of submission of the production verification report required by § 205.157–4, the manufacturer must submit to the Administrator two (2) copies of all information provided to the ultimate purchaser which could reasonably be construed as impacting on the warranty required by paragraph (a) of this section as well as two (2) copies of each page on which the warranty appears.

(c) The manufacturer must submit two (2) representative copies of all information of a general nature, or modifications thereto, which is provided to dealers, zone representatives, or other agents of the manufacturer regarding the administration and application of the noise emission warranty. Information regarding noise emission warranty claims which is provided to a dealer or representative in response to a particular warranty claim or dealer inquiry is not considered to be information of a general nature, if such information does not receive broad distribution to dealers. Such information must be submitted not later than ten (10) days after distribution by the manufacturer.

(d) All information required to be sent to the Administrator pursuant to this section must be addressed to:

Director, Noise and Radiation Enforcement Division (EN–387), U.S. Environmental Protection Agency, Washington, D.C. 20460.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.162–2 Tampering.

(a) For each model year and for each configuration of vehicles covered by this subpart, the manufacturer must submit to the Administrator a list of those acts which, in the manufacturer's estimation, might be done to the vehicle in use on more than an occasional basis and cause an increase in noise emissions above the standards prescribed in § 205.152. If, in the manufacturer's estimation, the same acts might be done for all configurations, and no additional acts would be done on any one or more configurations, then the manufacturer may submit one list to cover his entire product line. The manufacturer must state his estimate, wherever possible, of the amount of increase in noise level each act may cause.

(b) The above information must be submitted to the Administrator within adequate time prior to the introduction into commerce of each configuration to allow for the development and printing of tampering lists, as provided in paragraphs (c) and (d) of this section.

(c) On the basis of the above information, the Administrator will develop a list of acts which, in his judgment, constitute the removal or rendering totally or partially inoperative, other than for purposes of maintenance, repair, or replacement, of noise control devices or elements of design of the vehicle. This list will be provided to the manufacturer by the Administrator within 30 days of the date on which the information required in paragraph (a) of this section is received by the Administrator. The list must be included in the statement to the ultimate purchaser as required by paragraph (d)(2) of this section. If the list is not provided by the Administrator within 30 days of the date on which the information required in paragraph (a) of this section is submitted, the manufacturer shall include only the statement in paragraph (d)(1) of this section until such time as the owner's manual is reprinted for other purposes.

(d) The manufacturer shall include in the owner's manual the following information:

(1) The statement:

TAMPERING WITH NOISE CONTROL SYSTEM PROHIBITED: Federal law prohibits the following acts or the causing thereof: (1) The removal or rendering inoperative by any person other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new vehicle for the purpose of noise control prior to its sale or delivery to the ultimate purchaser or while it is in use, or (2) the use of the vehicle after such device or element of design has been removed or rendered inoperative by any person.

(2) The statement:

AMONG THOSE ACTS PRESUMED TO CONSTITUTE TAMPERING ARE THE ACTS LISTED BELOW

Immediately following this statement, the manufacturer must include the list developed by the Administrator under paragraph (c) of this section.

(e) Any act included in the list prepared pursuant to paragraph (c) of this section is presumed to constitute tampering; however, in any case in which a presumed act of tampering has been committed and it can be shown that such act resulted in no increase in the noise level of the vehicle or that the vehicle still meets the noise emission standard of § 205.152, the act will not constitute tampering.

(f) The provisions of this section are not intended to preclude any State or local jurisdiction from adopting and enforcing its own prohibitions against the removal or rendering inoperative of noise control systems on vehicles subject to this part.

(g) All information required by this section to be furnished to the Administrator must be sent to the following address: Director, Noise and Radiation Enforcement Division (EN–387), U.S. Environmental Protection Agency, Washington, D.C. 20460.

(Secs. 10, 13 of the Noise Control Act (42 U.S.C. 4909, 4912))

§ 205.162–3 Instruction for maintenance, use, and repair.

(a)(1) The manufacturer must provide to the purchaser of each vehicle covered by this subpart written instructions for the proper maintenance, use, and repair of the vehicle in order to provide reasonable assurance of the elimination or minimization of noise emission degradation throughout the life of the vehicle.

(2) The purpose of the instructions is to inform purchasers and mechanics of the acts necessary to reasonably assure that degradation of noise emission level is eliminated or minimized during the life of the vehicle. Manufacturers shall prepare the instructions with this purpose in mind. The instructions shall be clear and, to the extent practicable, written in non-technical language.

(3) The instructions must not be used to secure an unfair competitive advantage. They shall not restrict replacement equipment to original equipment or restrict service to dealer service unless such manufacturer makes public the performance specifications on such equipment.

(b) For the purpose of encouraging proper maintenance, the manufacturer must provide a record or log book which shall contain a schedule for the performance of all required noise emission control maintenance. Space must be provided in this record book so that the purchaser can note what maintenance was done, by whom, where, and when.

(c) Not later than the date of submission of the production verification report required by § 205.157–4, the manufacturer must submit to the Administrator two (2) copies of the maintenance instructions (including the record book) required by paragraphs (a) and (b) of this section.

(d)(1) The Administrator will require modifications to the instructions if they do not meet the requirements of paragraph (a) of this section.

(2) The manufacturer may file a petition for review of such modifications.

(3) The manufacturer's proposed instructions must be provided to the consumer pursuant to § 205.162–3(a)(1) pending review of the proposed instructions by the Agency.

(e) Information required to be submitted to the Administrator pursuant to this section shall be sent to the following address: Director, Noise and Radiation Enforcement Division (EN–387), U.S. Environmental Protection Agency, Washington, D.C. 20460.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.162–4 Retention of durability records.

(a) Each manufacturer reponsible for compliance with the standards specified in § 205.152 must establish and maintain records for each vehicle configuration containing the information upon which the manufacturer relied in determining that the products will meet the standards throughout the acoustical assurance period.

(b) The records may include, but need not be limited to, the following:

(1) Durability data and actual noise testing on critical noise producing or attenuating components,

(2) Noise level deterioration curves on the entire vehicle,

(3) Data from products in actual use, or

(4) Engineering judgment.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.163 Recall of noncomplying motorcycles; relabeling of mislabeled motorcycles.

(a) Pursuant to section 11(d)(1) of the Act, the Administrator may issue an order to the manufacturer to recall, repair, modify, or relabel any vehicles distributed in commerce which are not in compliance with this subpart.

(b) A recall order issued under this section shall be based upon a determination by the Administrator that vehicles of a specified category, configuration, or class which do not conform to the regulations or are improperly labeled have been distributed in commerce. This determination may be based on: (1) A technical analysis of the noise emission characteristics of the category, configuration, or class in question; or (2)

any other relevant information, including test data.

(c) For the purpose of this section, noise emissions are to be measured by the appropriate test procedure

all material aspects with respect to the parameters listed in § 205.168 of this subpart.

(2) "Exhaust header pipe" means any tube of constant diameter which

(ii) Systems designed and marketed for street motorcycles that meet the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles):

	A-weighted

of Subpart D of this part, and when both the motorcycle and the exhaust system are properly maintained and used, they will not cause that motorcycle to produce noise emissions in excess of the levels specified in subparagraph (2) of

identify all those test exhaust systems which would not comply with the noise emission standards prescribed in § 205.166 when tested in accordance with the measurement methodology specified in Appendix I. After approval

production verification of a category impossible and if the following conditions are met:

(i) The manufacturer performs the tests required under paragraphs (b) or (c) of this section on such category as

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any other relevant information, including test data.

(c) For the purpose of this section, noise emissions are to be measured by the appropriate test procedure prescribed in Appendix I prior to sale or any other test which has been demonstrated to correlate with the prescribed test procedure in accordance with § 205.154.

(d) Any order to recall shall be issued only after notice and an opportunity for a hearing.

(e) All cost, including labor and parts, associated with the recall and repair or modification of noncomplying vehicles and relabeling of mislabeled vehicles under this section shall be borne by the manufacturer.

(f) This section shall not limit the discretion of the Administrator to take any other actions which are authorized by the Act.

(Sec. 11 of the Noise Control Act (42 U.S.C. 4910))

Subpart E—Motorcycle Exhaust Systems

§ 205.164 Applicability.

(a) Except as otherwise provided in these regulations, the provisions of this subpart apply to any motorcycle replacement exhaust system or motorcycle replacement exhaust system component which:

(1) Meets the definition of the term "new product" in the Act; and

(2) Is designed and marketed for use on any motorcycle subject to the provisions of Subpart D of this part.

(b) The provisions of § 205.169 additionally apply to the motorcycle exhaust systems originally installed on vehicles subject to the requirements of Subpart D of this part.

(c) The provisions of § 205.169(d)(3) additionally apply to motorcycle replacement exhaust systems manufactured after January 1, 1983 that are designed and marketed for use on motorcycles manufactured before January 1, 1983.

(d) Except as provided for in § 205.169, the provisions of this subpart do not apply to exhaust systems which are designed and marketed solely for use on competition motorcycles as defined in § 205.151(a)(3).

(e) The provisions of the subpart do not apply to exhaust header pipes sold as separate products.

§ 205.165 Definitions.

(a) As used in this subpart, all terms not defined herein have the meaning given them in subpart D or in the Act.

(1) "Category" means a group of exhaust systems which are identical in all material aspects with respect to the parameters listed in § 205.168 of this subpart.

(2) "Exhaust header pipe" means any tube of constant diameter which conducts exhaust gas from an engine exhaust port to other exhaust system components which provide noise attenuation. Tubes with cross connections or internal baffling are not considered to be "exhaust header pipes."

(3) "Failing exhaust system" means that, when installed on any Federally regulated motorcycle for which it is designed and marketed, that motorcycle and exhaust system exceed the applicable standards.

(4) "Federally regulated motorcycle" means, for the purpose of this subpart, any motorcycle subject to the noise standards of Subpart D of this part.

(5) "Federal standards" means, for the purpose of this subpart, the standards specified in § 205.152(a)(1), (2) and (3).

(6) "Production verification exhaust system" means any exhaust system selected for testing, tested or verified pursuant to the production verification requirements of this subpart.

(7) "Stock configuration" means that no modifications have been made to the orginal equipment motorcycle that would affect the noise emissions of the vehicle when measured according to the acceleration test procedure.

(8) "Test exhaust system" means an exhaust system in a Selective Enforcement Audit test sample or a production verification system.

(b) [Reserved]

§ 205.166 Noise emission standards.

(a) *Noise emission standards.* (1) Exhaust systems and exhaust system components that are designed and marketed for use on any Federally regulated street motorcycle of the following and subsequent model years must be designed and built so that when installed on any such motorcycle which is in compliance with the requirements of Subpart D of this part, they will not cause that motorcycle to produce noise emissions in excess of the levels indicated:

(i) Systems designed and marketed for use on street motorcycles other than those that meet the definition of § 205.151(a)(2)(ii):

Motorcycle model year	A-weighted noise level (dB)
(A) 1983	83
(B) 1986	80

(ii) Systems designed and marketed for street motorcycles that meet the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles):

Motorcycle model year	A-weighted noise level (dB)
(A) 1983	70

(2) Exhaust systems and exhaust system components that are designed and marketed for use on any Federally regulated off-road motorcycle of the following and subsequent model years must be designed and built so that, at the time of sale, when installed on any such motorcycle which is in compliance with the requirements of Subpart D of this part, they will not cause that motorcycle to produce noise emissions in excess of the levels indicated:

(i) Systems designed and marketed for use on off-road motorcycles with engine displacements of 170 cc and lower:

Motorcycle model year	A-weighted noise level (dB)
(A) 1983	83
(B) 1986	80

(ii) Systems designed and marketed for use on off-road motorcycles with engine displacements greater than 170 cc:

Motorcycle model year	A-weighted noise level (dB)
(A) 1983	86
(B) 1988	82

(3) Exhaust systems and exhaust system components that are designed and marketed for use on any Federally regulated street motorcycle shall be designed and built so that, when installed on any such motorcycle which is in compliance with the requirements of Subpart D of this part, and when both the motorcycle and the exhaust system are properly maintained and used, they will not cause that motorcycle to produce noise emissions in excess of the levels specified in subparagraph (1) of this paragraph, for an Acoustical Assurance Period of one year or a distance of 6000 km (3729 mi) after the time of sale to the ultimate purchaser, whichever occurs first.

(4) Exhaust systems and exhaust system components that are designed and marketed for use on any Federally regulated off-road motorcycle must be designed and built so that, when installed on any such motorcycle which is in compliance with the requirements

of Subpart D of this part, and when both the motorcycle and the exhaust system are properly maintained and used, they will not cause that motorcycle to produce noise emissions in excess of the levels specified in subparagraph (2) of this paragraph, for an Acoustical Assurance Period of one year or a distance of 3000 km (1865 mi) after the time of sale to the ultimate purchaser, whichever occurs first.

(5) At the time of sale to the ultimate purchaser all products must comply with the standards set forth in paragraphs (a)(1) and (2) of this section.

(b) *Measurement procedure.* (1)(i) The standards set forth in paragraph (a) of this section refer to the noise emissions as measured in accordance with the measurement methodology specified in Appendix I–1 for all motorcycles except those street motorcycles meeting the definition of § 205.151(a)(2)(ii). Exhaust systems which alter a motorcycle's maximum rated RPM shall be tested using the unmodified motorcycle's maximum rated RPM to determine closing RPM or test RPM.

(ii) The standards set forth in paragraph (a) of this section for street motorcycles meeting the definition of § 205.151(a)(2)(ii) (moped-type street motorcycles) refer to noise emissions measured in accordance with the measurement methodology specified in Appendix I–2.

(2) Exhaust system components sold as separate products shall be tested as part of a system made up of that part and original equipment components to complete the system.

(3) Exhaust system components sold as separate products which are incompatible with original equipment components necessary to make a complete exhaust system, or which would not meet standards as prescribed in this subpart in such configuration, may be tested with non-original equipment components provided that the provisions of § 205.169(e)(1)(ii)(B) are carried out.

(Sec. 10 of the Noise Control Act (42 U.S.C. 4909))

§ 205.167 Consideration of alternative test procedures.

The Administrator may approve applications from manufacturers of original equipment and replacement exhaust systems for the approval of test procedures which differ from those contained in this subpart so long as the alternative procedures have been demonstrated to correlate with the prescribed procedure. To be acceptable, alternative test procedures must be such that the test results obtained will identify all those test exhaust systems which would not comply with the noise emission standards prescribed in § 205.166 when tested in accordance with the measurement methodology specified in Appendix I. After approval by the Administrator, testing conducted by manufacturers using alternative test procedures may be accepted by the Administrator for all purposes including, but not limited to, production verification testing and selective enforcement audit testing.

§ 205.168 Production verification.

§ 205.168–1 General requirements.

(a) Each manufacturer of motorcycle exhaust systems manufactured for Federally regulated motorcycles and distributed in commerce in the United States which are subject to the noise emission standards prescribed in this subpart and not exempted in accordance with Subpart A, § 205.5:

(1) Must verify each exhaust system in accordance with the production verification procedures described in this subpart;

(2) Must submit a production verification report, as required by § 205.168–3 of this subpart;

(3) Must label each exhaust system in accordance with the requirements of § 205.169 of this subpart; and

(4) Must only manufacture exhaust systems which conform to the applicable noise emission standard established in § 205.166 of this regulation when installed on any Federally regulated motorcycle for which it has been designed and marketed.

(b) The manufacturer who is required to conduct product verification testing to demonstrate compliance with a particular standard must satisfy all other provisions of this subpart applicable to that standard, including, but not limited to, record keeping, reporting, and in-use requirements.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.168–2 Production verification procedures.

(a)(1) Prior to distribution into commerce of exhaust systems of a specific category, the manufacturer of the exhaust system shall verify the category in accordance with this subpart.

(2) Notwithstanding paragraph (a)(1) of this section, the manufacturer may distribute in commerce exhaust systems of that category for up to 90 days if weather or other conditions beyond the control of the manufacturer make production verification of a category impossible and if the following conditions are met:

(i) The manufacturer performs the tests required under paragraphs (b) or (c) of this section on such category as soon as conditions permit;

(ii) The manufacturer maintains records of the conditions which make production verification impossible; and,

(iii) If on the 45th day following distribution in commerce of exhaust systems of that category, the manufacturer has not performed the tests required by paragraphs (b) or (c) of this section, the manufacturer within 5 days notifies the Administrator in writing that such exhaust systems have been distributed in commerce and provides to the Administrator documentation of the conditions which have made production verification impossible.

(3) At any time following receipt of notice under paragraph (a)(2)(iii) of this section with respect to a category, the Administrator may require that the manufacturer ship test exhaust systems to an EPA test facility for the required production verification testing.

(b) The production verification requirements for each exhaust system category consist of:

(1) Testing in accordance with § 205.168–8 of an exhaust system selected in accordance with § 205.168–4;

(2) Compliance of the test exhaust system on a motorcycle for which it is marketed with the applicable standard when tested in accordance with Appendix I; and

(3) Submission of a production verification report pursuant to § 205.168–3.

(c) A manufacturer is required to verify all categories of exhaust systems within his product line for each class of Federally regulated motorcycle for which it is designed and marketed. A category of a replacement exhaust system is defined by a separate combination of at least the following parameters:

(1) Muffler/Silencer: (i) Volume; (ii) type of absorption material; (iii) amount of absorption material; (iv) length; (v) diameter; (vi) directional flow of exhaust gas; (vii) interior construction; (viii) shell and inner construction material; (ix) number of header pipes entering muffler; and (x) specific motorcycle application.

(2) Expansion Chamber: (i) Volume; (ii) diameter; (iii) construction material; (iv) directional flow of exhaust gas; (v) length; and (vi) specific motorcycle application.

(3) Spark Arrestors: (i) Volume; (ii) construction material; (iii) directional flow of exhaust gas; (iv) length; (v) diameter; and (vi) specific motorcycle application.

(4) Other Exhaust System

used to conduct testing pursuant to this subpart. A test facility that has been described in a previous submission under this subpart need not be described again but must be identified as such.

accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder. (authorized representative)."

(c) Where a manufacturer elects to submit separate production verification

or (3) are approved in advance by the Administrator.

(Sec. 13 of the Noise Control Act (42 U.S.C 4912))

§ 205.168–6 Test motorcycle selection.

specified in Appendix I with his exhaust system installed in place of the original equipment exhaust system. Exhaust system components sold as separate products shall be tested as provided in § 205.168–2(d).

level to increase, and when the new model motorcycle has not been changed with respect to its noise control elements such that its noise level increases.

(2) Production verification of each

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(3) Spark Arrestors: (i) Volume; (ii) construction material; (iii) directional flow of exhaust gas; (iv) length; (v) diameter; and (vi) specific motorcycle application.

(4) Other Exhaust System Components: (i) Volume; (ii) shape; (iii) length; (iv) diameter; (v) material; (vi) directional flow of exhaust gas; and (vii) specific motorcycle application.

(d) Exhaust system components sold as separate products shall be tested pursuant to § 205.166(b).

(e) Original equipment exhaust systems that are also sold as replacement systems for the same motorcycle configuration need not be tested under this subpart if they have been tested or represented in a test report under Subpart D of this part.

(f) A manufacturer has the following alternatives if any test exhaust system is determined to not be in compliance with applicable standards:

(1) Delete the category from the production verification report. Categories so deleted may be included in a later report under § 205.168–3.

(2) Modify the test exhaust system and demonstrate by testing that it meets applicable standards. All modifications and test results must be reported in the production verification report. The manufacturer must modify all production exhaust systems of the same category in the same manner as the test exhaust system before distribution in commerce.

(g) Upon request by the Director of the Noise and Radiation Enforcement Division, the manufacturer shall notify the Director of any production verification testing scheduled by the manufacturer pursuant to this section so that EPA Enforcement Officers or other employees of the Agency may be present to monitor or conduct the testing in lieu of the manufacturer.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.168–3 Production verification report; required data.

(a) Before distribution in commerce of any product to which this regulation applies, the manufacturer must submit a production verification report to the Director, Noise and Radiation Enforcement Division (EN–387), U.S. Environmental Protection Agency, Washington, D.C. 20460.

(b) The report must be signed by an authorized representative of the manufacturer and must include the following:

(1) The name, location, and description of the manufacturer's noise emission test facilities which meet the specifications of Appendix I and are used to conduct testing pursuant to this subpart. A test facility that has been described in a previous submission under this subpart need not be described again but must be identified as such.

(2) A description of all exhaust system categories to be distributed in commerce by the manufacturer (including those exhaust systems not intended for use on Federally-regulated motorcycles), including the part number for each exhaust system category that is designed and marketed for a Federally regulated motorcycle. The manufacturer may satisfy the exhaust system description requirements of this paragraph by submitting as part of the production verification report a copy of his sales literature that describes his product line (by part number) including options, provided, that this literature is supplemented with any additional information necessary to fulfill the requirements of this section.

(3) The following information for each noise emission test conducted:

(i) The individual record for the test vehicles required by § 205.172(a)(2) for all official tests conducted in accordance with § 205.168–8 including, for each invalid test, the reason for invalidation;

(ii) A complete description of any preparation, maintenance, or testing which could affect the noise emissions of test motorcycles, and which was performed on the test motorcycle or the test exhaust system and will not be performed on all other production vehicles or exhaust systems; and

(iii) The reason for replacement, where a substitute exhaust system or replacement motorcycle was necessary, and test results, if any, for substitute exhaust systems and replaced motorcycles.

(4) A complete description of the sound data acquisition system if other than those specified in Appendix I.

(5) For each category subject to the noise emission standards of § 205.166, a sample of the completed label which is required under § 205.169 of this Subpart. The label must contain for each category the information which is required by § 205.169(c)(1).

(6) The following statement and endorsement:

"This report is submitted pursuant to Section 6 and Section 13 of the Noise Control Act of 1972. To the best of (company name) knowledge, all testing for which data are reported here was conducted in strict conformance with applicable regulations under 40 CFR Part 205 *et seq.*, all the data reported here are a true and accurate representation of such testing and all other information reported here is true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder. (authorized representative)."

(c) Where a manufacturer elects to submit separate production verification reports for portions of his product line as provided in paragraph (a) of this section, information provided in previous reports need not be resubmitted. Information necessary to update or make current previously submitted information must be submitted.

(d) Any change with respect to information reported under this section must be reported as soon as the information becomes available.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.168 Test exhaust system selection.

(a) A test exhaust system for which production verification testing is required by § 205.168–2 must be assembled using the manufacturer's normal production processes and intended for distribution in commerce.

(b) For purposes of this section and 205.168–5, prescribed manufacturing and inspection procedures include quality control testing and assembly procedures normally performed by the manufacturer on like products during early protection if the resulting testing is not biased by this procedure.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4909, 4912))

§ 205.168–5 Test exhaust system preparation.

(a) Before the official test, the test exhaust system selected in accordance with § 205.168–4 must not be prepared, tested, modified, adjusted, or maintained in any manner unless such preparation, tests, modifications, adjustments or maintenance (1) are part of the manufacturer's prescribed manufacturing and inspection procedures and are documented in the manufacturer's internal exhaust system assembly and inspection procedures, (2) are required or permitted under this subpart, or (3) are approved in advance by the Administrator.

(b) No quality control, quality assurance testing, assembly or selection procedures may be used on the exhaust system or any portion of it, including parts and subassemblies, unless such quality control, quality assurance testing, assembly or selection procedures (1) are used normally during the production and assembly of all other exhaust systems of the category which will be distributed in commerce, (2) are required or permitted under this subpart.

or (3) are approved in advance by the Administrator.

(Sec. 13 of the Noise Control Act (42 U.S.C 4912))

§ 205.168–6 Test motorcycle selection.

Test motorcycles to be used for production verification testing of exhaust systems must be of the subject class which has been assembled using the manufacturer's normal production processes, in stock configuration including exhaust system, as sold or offered for sale in commerce.

(Secs. 10, 13 of the Noise Control Act (42 U.S.C. 4909, 4912))

§ 205.168–7 Test motorcycle preparation.

(a) Before the official test, the test motorcycle selected in accordance with § 205.168–6 must not be prepared, tested, modified, adjusted, or maintained in any manner unless such preparation, tests, modifications, adjustments or maintenance are part of the original equipment manufacturer's prescribed manufacturing and inspection procedures, and are documented in the manufacturer's internal motorcycle assembly and inspection procedures, or (2) are required or permitted under this subpart, or (3) are approved in advance by the Administrator.

(b) Equipment or fixtures necessary to conduct the test may be installed on the motorcycle, if such equipment or fixtures shall have no effect on the noise emissions of the motorcycle as determined by the measurement methodology.

(c) In the event of a motorcycle malfunction (i.e., failure to start, etc.) maintenance that is necessary may be performed to enable the vehicle to operate in a normal manner. This maintenance must be documented and reported in the final report prepared and submitted in accordance with this subpart.

(d) No quality control, quality assurance testing, assembly or selection procedures may be used on the test vehicle or any portion thereof, including parts and subassemblies, that will not normally be used during the production and assembly of all other motorcycles of that class which will be distributed in commerce, unless such procedures are required or permitted under this subpart or are approved in advance by the Administrator.

(Sec. 13 of the Noise Control Act (42 U.S.C 4912))

§ 205.168–8 Testing.

(a) The manufacturer of the exhaust system must conduct one valid test in accordance with the test procedure specified in Appendix I with his exhaust system installed in place of the original equipment exhaust system. Exhaust system components sold as separate products shall be tested as provided in § 205.168–2(d).

(b) In order to be considered a passing exhaust system, the test noise level must not exceed the applicable standard (§ 205.166).

(c) The manufacturer must not perform maintenance on the test motorcycles or test exhaust systems except as provided for by § 205.168–5 and § 205.168–7.

(d) If a motorcycle or test replacement exhaust system is unable to complete the emission test, the motorcycle or exhaust system may be substituted. Any substitute motorcyle or exhaust system must be a production motorcycle or exhaust system of the same model as the motorcycle or exhaust system that was replaced and will be subject to all the provisions of these regulations. Any replacement must be reported in the production verification report including the reason for the replacement.

(e) If an exhaust system category fails to comply with the requirements of this section when tested in accordance with the procedures specified in paragraph (a) of this section, the manufacturer must proceed in accordance with § 205.168–2(f) of this subpart.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.168–9 Changes to, addition of, and deviation from an exhaust system category or motorcycle class during the model year.

(a) Any change to an exhaust system category or motorcycle class (see § 205.168–2 and § 205.151) with respect to any of the parameters stated in those respective sections, constitutes the addition of a new and separate category or motorcycle class to the manufacturer's product line.

(b) When a manufacturer introduces a new category or motorcycle class to his product line, he must proceed in accordance with § 205.168–2.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.168–10 Production verification based on data from previous model years.

(a)(1) Production verification of each category will not be required for subsequent model years when the manufacturer's initial production verification noise emission level is at least 2 dB below the noise emission standard in effect for that model year, when the manufacturer has not changed the noise control components or elements of design used on that category which would cause the noise emission level to increase, and when the new model motorcycle has not been changed with respect to its noise control elements such that its noise level increases.

(2) Production verification of each category will be required for those model years when the more stringent noise emission standards become effective.

(b) For those configurations whose initial PV noise emission level is less than 2 dB below the standard in effect, production verification will be required when production of that configuration commences each model year, except as provided in paragraph (c) of this section or unless the Administrator, upon request by the manufacturer, permits the use of production verification data for specific configurations from previous production verification reports. Considerations relevant to the Administrator's decision to permit production verification carry-over on these configurations may include, but are not limited to:

(1) The level of the standard in effect for the year in question;

(2) Performance based on production verification data for previous years;

(3) Performance based on data obtained from selective enforcement testing during previous years;

(4) The number and type of changes in the design of noise control features incorporated in the new model motorcycles that could effect the noise emission level;

(5) The number and type of changes in the design of noise attenuation systems incorporated in the new model exhaust systems; and

(6) Any other noise emission test data which the manufacturer may care to submit.

(c) In succeeding years a manufacturer does not have to conduct production verification tests on exhaust systems which he continues to manufacture for regulated motorcycles of a previous model year and for which he has already conducted a PV test. If a manufacturer makes a change in the design of an exhaust system which reduces its attenuation and which has been verified for a previous model year, he must conduct a production verification test with respect to the earlier model year motorcycles.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 206.168–11 Order to cease distribution.

(a) If a category of exhaust systems is found not to comply with this subpart because it has not been verified or labeled, as required by § 205.168–2 and § 205.169, the Administrator may issue

an order to the manufacturer to cease distribution in commerce exhaust systems of that category. This order will not be issued if the manufacturer has made a good faith attempt to properly production verify the category and can

This (manufacturer's name) (type of component) (serial number), when installed with a legal (type of component), meets EPA noise emission requirements of (noise emission standard) dBA for the following motorcycles: (list of model specific codes). Installation of this exhaust system

manner in which the Administrator conducts such tests, the EPA test facility, and the test procedures employed will be based upon good engineering practice and meet or exceed the requirements of Appendix I.

(2) If the Administrator specifies that

determination and the reasons underlying it with regard to the requalification of the test facility.

(c) The Administrator will assume all reasonable costs associated with shipment of exhaust systems to the

(c) The test request will specify the exhaust system category, model and model year of motorcycle selected for testing, the manufacturer's plant or storage facility from which the exhaust systems must be selected, the method of

(3) The manufacturer is allowed 24 hours to ship exhaust systems from a sample from the assembly plant to the testing facility if the facility is not located at the plant or in close proximity to the plant. The Administrator may

an order to the manufacturer to cease distribution in commerce exhaust systems of that category. This order will not be issued if the manufacturer has made a good faith attempt to properly production verify the category and can establish such good faith.

(b) Any such order shall be issued after notice and opportunity for a hearing which will be held in accordance with title 5 U.S.C. 554.

(Sec. 11 of the Noise Control Act (42 U.S.C. 4910))

§ 205.169 Labeling requirements.

(a) The manufacturer of any product (including the manufacturer of newly produced motorcycles) subject to production verification requirements of this subpart must, at the time of manufacture, affix a permanent, legible label, or mark of the type and in the manner described below, containing the information provided below, to all such exhaust systems or exhaust system components to be distributed in commerce.

(b) The labels or marks shall be affixed in such a manner that they cannot be removed without destroying or defacing them, and must not be applied to any part which is easily detached from such product.

(c) The label or mark shall be in a readily visible position when the exhaust system or exhaust system component is installed on all motorcycles for which it is designed and marketed.

(d) All required language shall be lettered in the English language in block letters and numerals in a color that contrasts with its background.

(e) The label or mark must contain the following information:

(1) For exhaust systems subject to the noise emission standards of § 205.166:

(i) The label heading: Motorcycle Exhaust System Noise Emission Control Information;

(ii)(A) For original equipment and replacement exhaust system, the following statement:

This (manufacturer's name) exhaust system (serial number) meets EPA noise emission requirements of (noise emission standard) dBA for the following motorcycles: (list of model specific codes). Installation of this exhaust system on motorcycle models not specified may violate Federal law.

(B) For exhaust system components designed and marketed for motorcycles, and tested in accordance with § 205.168 as a constituent of a complete exhaust system comprising non-original equipment components (other than itself), as provided for in § 205.166(b)(3), the following statement:

This (manufacturer's name) (type of component) (serial number), when installed with a legal (type of component), meets EPA noise emission requirements of (noise emission standard) dBA for the following motorcycles: (list of model specific codes). Installation of this exhaust system components on motorcycle models not specified may violate Federal law.

(iii) The model specific code must be the same as used by the motorcycle manufacturer and described in § 205.158(a)(6).

(2) For exhaust systems designed solely for use on competition motorcycles (as defined by § 205.151(a)(3) and so designated and labeled by the manufacturer), the statement:

This product is designed for use on closed course competition motorcycles only and does not conform to U.S. EPA noise emission standards. Used on motorcycles subject to EPA noise regulations constitutes tampering and is a violation of Federal law unless it can be shown that such use does not cause the motorcycle to exceed applicable Federal standards.

(3) For exhaust systems designed solely for use on motorcyles manufactured before January 1, 1982, the statement:

This product is designed for use on pre-1982 model year motorcycles only and does not conform to U.S. EPA noise emission standards. Use on motorcycles subject to EPA noise regulations constitutes tampering and is a violation of Federal law unless it can be shown that such use does not cause the motorcycle to exceed applicable Federal standards.

(4) For replacement exhaust systems manufactured in the United States solely for use outside the U.S. and not conforming to the noise emissions standards of this regulation, the statement: "For Export Only."

(f) The manufacturer must maintain and provide to the Administrator upon request, such records which enable the Administrator to ascertain the month of manufacture.

(Secs. 10 and 13 of the Noise Control Act (42 U.S.C. 4909 and 4912))

§ 205.170 Testing by the Administrator.

(a)(1) In order for the Administrator to determine whether such exhaust systems or a manufacturer's test facility conform to applicable regulations, the Administrator may require that exhaust systems to be tested pursuant to the Act be submitted to him, at such place and time as he reasonably designates. He may designate the quantity of exhaust systems and the duration of time he reasonably requires for the purpose of conducting tests in accordance with test procedures described in Appendix I. The manner in which the Administrator conducts such tests, the EPA test facility, and the test procedures employed will be based upon good engineering practice and meet or exceed the requirements of Appendix I.

(2) If the Administrator specifies that he will conduct such testing at the manufacturer's facility, the manufacturer shall make available instrumentation and equipment of the type required for test operators by these regulations. The Administrator may conduct such tests with his own equipment, having specifications equal to or exceeding the performance specifications of the instrumentation and equipment required in these regulations.

(3) The manufacturer may observe tests conducted by the Administrator pursuant to this section on exhaust systems produced by the manufacturer and may copy the data accumulated from such tests. The manufacturer may inspect any of the exhaust systems before and after testing by the Administrator.

(b)(1) If, based on tests conducted by the Administrator or on other relevant information, the Administrator determines that the test facility does not meet the requirements of Appendix I or the requirements for an alternative test procedure approved under § 205.154, the Administrator will give notice to the manufacturer in writing of his determination and the reasons underlying it.

(2) The manufacturer may, at any time within 15 days after receipt of a notice issued under paragraph (b)(1) of this section, request a hearing conducted in accordance with 5 U.S.C. 554 on the issue of whether his test facility met the requirements. Such notice will not take effect until 15 days after its receipt by the manufacturer, or, if a hearing is requested under this paragraph, until adjudication by the administrative law judge.

(3) After any notice issued under paragraph (b)(1) of this section has taken effect, no data thereafter derived from that test facility will be acceptable for purposes of this subpart.

(4) The manufacturer may request in writing that the Administrator reconsider his determination under paragraph (b)(1) of this section based on data or information which indicates that changes have been made to the test facility and that such changes have resolved the reasons for disqualification.

(5) Within 10 working days after receipt of the manufacturer's request for reconsideration pursuant to paragraph (b)(4) of this section, the Administrator will notify the manufacturer of his

determination and the reasons underlying it with regard to the requalification of the test facility.

(c) The Administrator will assume all reasonable costs associated with shipment of exhaust systems to the place designated pursuant to paragraph (a) of this section with respect to:

(1) Any production verification testing performed at a place other than the manufacturer's facility as provided in § 205.168–2(a)(3), or as a result of the manufacturer's not owning or having access to a test facility;

(2) Testing of a reasonable number of exhaust systems (i) for purposes of selective enforcement auditing under § 205.171, or (ii) if the manufacturer has failed to establish that there is a correlation between its test facility and the EPA test facility, or (iii) the Administrator has reason to believe, and provides the manufacturer with a statement of such reason, that the exhaust systems to be tested would fail to meet the standard prescribed in this subpart if tested at the EPA test facility, even though they would meet such standard if tested at the manufacturer's test facility;

(3) Any testing performed during a period when a notice of nonconformance of the manufacturer's test facility issued pursuant to paragraph (b) of this section is in effect;

(4) Any testing performed at a place other than the manufacturer's facility as a result of the manufacturer's failure to permit the Administrator to conduct or monitor testing as required by this subpart; and

(5) In addition to any exhaust systems included in paragraph (c) (1), (2), (3), or (4) of this section, testing of up to 10 percent of the manufacturer's production verification test exhaust systems for a model year if the Administrator determines testing these exhaust systems at the EPA test site is necessary to assure that a manufacturer has acted or is acting in compliance with the Act.

(Secs. 11 and 13 of the Noise Control Act (42 U.S.C. 4910, 4912))

§ 205.171 Selective enforcement auditing (SEA) requirements.

§ 205.171–1 Test Request.

(a) The Administrator will request all testing under § 205.171 by means of a test request addressed to the manufacturer.

(b) The test request will be signed by the Assistant Administrator for Enforcement or his designee. The test request will be delivered to the plant manager or other responsible official as designated by the manufacturer.

(c) The test request will specify the exhaust system category, model and model year of motorcycle selected for testing, the manufacturer's plant or storage facility from which the exhaust systems must be selected, the method of selection and the time at which the exhaust systems must be selected. The test request will also provide for situations in which the selected exhaust system is unavailable for testing. The test request may include an alternative exhaust system category designated for testing in the event that exhaust systems of the first specified category are not available for testing because the exhaust systems are not being manufactured at the specified plant or are not being manufactured during the specified time or are not being stored at the specified plant or storage facility.

(d)(1) If the manufacturer projects a yearly production of fewer than 50 exhaust systems of the specified category to be tested, then, within five (5) days of receipt of the request, the manufacturer must notify the Administrator of such low volume production. The Administrator will then provide a revised test request specifying a testing plan which imposes no greater risk of failure (5%) at the acceptable quality level (10%) than the plan in Appendix II. Upon receipt of the revised test request, the manufacturer must select and test a sample of exhaust systems from the category specified in the test request in accordance with this subpart and the conditions specified in the test request.

(2) If the manufacturer produces 50 or more of the specified category, then, upon receipt of the test request, the manufacturer must select and test a sample of exhaust systems for the category specified in the test request in accordance with this subpart and the conditions specified in the test request.

(e)(1) Any testing conducted by the manufacturer under a test request must be initiated within the time period specified in the test request; except that initiation may be delayed for increments of 24 hours or one business day where ambient test site weather conditions, or other conditions beyond the control of the manufacturer, in that 24-hour period do not permit testing. The manufacturer must record the conditions for this period.

(2) The manufacturer must complete noise emission testing on a minimum of ten exhaust systems per day unless otherwise provided by the Administrator or unless ambient test site conditions permit only the testing of a lesser number, in which event the ambient test site weather conditions for that period must be recorded.

(3) The manufacturer is allowed 24 hours to ship exhaust systems from a sample from the assembly plant to the testing facility if the facility is not located at the plant or in close proximity to the plant. The Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) The Administrator may issue an order to the manufacturer to cease distribution in commerce of exhaust systems of a specified category being manufactured at a particular facility if:

(1) The manufacturer refuses to comply with the provisions of a test request issued by the Administrator under this section; or

(2) The manufacturer refuses to comply with any of the requirements of this section.

(g) A cease distribution order will not be issued under paragraph (f) of this section if the manufacturer's refusal is caused by conditions and circumstances outside his control which render compliance with the provisions of a test request or with any other requirements of this section impossible. Conditions and circumstances outside the control of the manufacturer include, but are not limited to, the temporary unavailability of equipment and personnel needed to conduct the required tests, caused by uncontrollable factors such as equipment breakdown or failure or illness of personnel. Failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests does not constitute uncontrollable factors. The manufacturer must bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(h) Any order to cease distribution will be issued only after notice and opportunity for a hearing in accordance with 5 U.S.C. 554.

(Secs. 11, 13 of the Noise Control Act (42 U.S.C. 4910 and 4912))

§ 205.171–2 Test exhaust system sample selection.

(a) Exhaust systems comprising the sample which are required to be tested under a test request in accordance with this subpart must be selected consecutively as they are produced. The provisions of § 205.168–7 (d) and (e) also pertain to this section.

(b) The Acceptable Quality Level (AQL) is 10 percent. The appropriate sampling plans associated with the designated AQL are contained in Appendix II or the test request.

(c) The exhaust systems of the category selected for testing must be assembled by the manufacturer for

distribution in commerce using the manufacturer's normal production process.

(d) Unless otherwise indicated in the test request, the manufacturer must is subject to all the provisions of this subpart.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

reported here are a true and accurate representation of such testing, and all other information reported here is true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations

all exhaust systems of that category produced at that plant be tested before distribution in commerce.

(b) The Administrator will notify the manufacturer in writing of his intent to

(c) Any exhaust system failing the noise emission tests conducted pursuant to Appendix I may not be distributed into commerce until necessary adjustment or repairs have been made

may be retained as hard copy or alternatively reduced to microfilm, punch cards, etc., depending on the record retention procedures of the manufacturer; however, when an alternative method is used, all

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distribution in commerce using the manufacturer's normal production process.

(d) Unless otherwise indicated in the test request, the manufacturer must initiate testing with the exhaust systems of the category specified in the test request which are next scheduled for production after receipt of the test request.

(e) The manufacturer must keep on hand all products in the test sample until the sample is accepted or rejected in accordance with § 205.171–8; except that exhaust systems actually tested and found to be in conformance with this regulation need not be kept.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.171–3 Test motorcycle sample selection.

A test motorcycle to be used for selective enforcement audit testing of exhaust systems must be a motorcycle of the subject class which has been assembled using the manufacturer's normal production process, in stock configuration including exhaust system, and sold or offered for sale in commerce.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.171–4 Test exhaust system preparation.

Prior to the official test, each test exhaust system selected in accordance with § 205.171–2 must be prepared in accordance with § 205.168–6.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.171–5 Test motorcycle preparation.

Prior to the official test, each motorcycle selected in accordance with § 205.171–3 must be prepared in accordance with § 205.168–7.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.171–6 Testing procedures.

(a) The manufacturer of the exhaust system must conduct one valid test in accordance with the appropriate test procedure specified in Appendix I for each exhaust system selected for testing under this subpart.

(b) No maintenance may be performed on test exhaust systems except as provided by § 205.171–4. In the event an exhaust system is unable to complete the noise emission test, the manufacturer may replace the exhaust system. Any replacement exhaust system must be a production exhaust system of the same category as the exhaust system which it replaced, and it is subject to all the provisions of this subpart.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.171–7 Reporting of the test results.

(a)(1) The manufacturer must submit a copy of the test report for all testing conducted pursuant to § 205.171 at the conclusion of each 24-hour period during which testing is done.

(2) For each test conducted, the manufacturer must provide the following information:

(i) Category identification where applicable;

(ii) Year, manufacturing date, serial number and model of exhaust system;

(iii) Year, make serial number, and model of test motorcycle; and

(iv) Test results by serial numbers.

(b) In the case where an EPA Enforcement Officer is present during testing required by this subpart, the written reports requested in paragraph (a) of this section may be given directly to the Enforcement Officer.

(c) Within 5 days after completion of an SEA, the manufacturer must submit to the Administrator a final report which will include the following:

(1) The name, location, and description of the manufacturer's noise emission test facilities which meet the specifications of Appendix I and where utilized to conduct testing reported under this section, except, that a test facility that has been described in a previous submission under this subpart need not again be described, but must be identified as that facility.

(2) The following information for each noise emission test conducted:

(i) The individual records required by § 205.172 (a)(2) for all noise emission tests including for each invalid test, the reason for invalidation;

(ii) A complete description of any modification, repair, preparation, maintenance, or testing, which could affect the noise emissions of the product and which was performed on the test exhaust system but not performed on all other production exhaust systems;

(iii) The test results for any replacement exhaust system and the reason for its replacement.

(3) A complete description of the sound data acquisition system if other than that specified in Appendix I.

(4) The following statement and endorsement:

This report is submitted pursuant to Section 6 and Section 13 of the Noise Control Act of 1972. To the best of (company name) knowledge, all testing for which data is reported here was conducted in strict conformance with applicable regulations under 40 CFR Parts 205 *et seq.*, all the data reported here are a true and accurate representation of such testing, and all other information reported here is true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder. (authorized representative).

(5) Additional information required by the test request.

(d) Information required to be submitted to the Administrator under this section must be sent to the following address: Director, Noise and Radiation Enforcement Division, (EN–387), U.S. Environmental Protection Agency, Washington, D.C. 20460.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.171–8 Passing or failing under SEA.

(a) A failing exhaust system is one which, when installed on any motorcycle which is in compliance with the requirements of subpart D and for which it is designed an marketed, together with such motorcycle produces a measured noise level in excess of the applicable noise emission standard in § 205.166.

(b) The number of failing vehicles in a sample determines whether the sample passes or fails (See applicable tables in Appendix II). If the number of failing vehicles is greater than or equal to the number in Column B, the sample fails. If the number of failing vehicles is less than or equal to the number in Column A, the sample passes.

(c) Pass or failure of a SEA takes place when a decision that an exhaust system is a passing or failing unit is made on the last exhaust system required to make a decision under paragraph (b) of this section.

(d) If the manufacturer passes the SEA, he will not be required to perform any additional testing on subsequent exhaust systems to satisfy the test request.

(e) The Administrator may terminate testing earlier than required in paragraph (b), based on a request by the manufacturer, accompanied by voluntarily ceasing distribution in commerce of exhaust systems from the category in question, manufactured at the plant which produced the exhaust systems being tested. Before reinitiating distribution in commerce of that exhaust system category from that plant, the manufacturer must take the action described in § 205.171–10(a)(1) and (2).

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.171–9. Continued testing.

(a) If an SEA failure occurs according to paragraph (b) of § 205.171–8, the Administrator may require that any or

all exhaust systems of that category produced at that plant be tested before distribution in commerce.

(b) The Administrator will notify the manufacturer in writing of his intent to require continued testing of exhaust systems under paragraph (a) of this section.

(c) The manufacturer may request a hearing on the issues of whether the SEA was conducted properly; whether the criteria for SEA failure have been met; and the appropriateness or scope of a continued testing order. If a hearing is requested, the hearing will begin no later than 15 days after the date on which the Administrator received the hearing request. Neither the request for a hearing nor the fact that a hearing is in progress will affect the responsibility of the manufacturer to commence and continue testing required by the Administrator pursuant to paragraph (a) of this section.

(d) Any tested exhaust system which demonstrates conformance with the applicable standard may be distributed into commerce.

(e) Any distribution into commerce of an exhaust system which does not comply with the applicable standard is a prohibited act.

(Secs. 10 and 13 of the Noise Control Act (42 U.S.C. 4909 and 4912))

§ 205.171–10. Prohibition on distribution in commerce; manufacturer's remedy.

(a) The Administrator will permit the manufacturer to cease testing under § 205.171–9 after the manufacturer has taken the following actions:

(1) Submission of a written report to the Administrator which identifies the reason for the noncompliance of the exhaust systems, describes the problem and describes the proposed quality control or quality assurance remedies to be taken by the manufacturer to correct the problem, or establishes that the requirements for an engineering change pursuant to § 205.168–9 have been completed, and

(2) Demonstration that the specified exhaust system category has passed a retest conducted in accordance with § 205.171 and the conditions specified in the test request.

(b) The manufacturer may begin testing under paragraph (a)(2) of this section upon submitting the report, required by paragraph (a)(1) of this section any may cease continued testing upon making the demonstration required by paragraph (a)(2) of this section. The Administrator may require resumption of continued testing if he determines that the manufacturer has not satisfied the requirements of paragraphs (a)(1) and (2) of this section.

(c) Any exhaust system failing the noise emission tests conducted pursuant to Appendix I may not be distributed into commerce until necessary adjustment or repairs have been made and the exhaust system passes a retest.

(Secs. 11 and 13 of the Noise Control Act (42 U.S.C. 4910, 4912))

§ 205.172 Maintenance of records; submittal of information.

(a) Except as otherwise provided in regulation, the manufacturer of any new exhaust system subject to any of the standards or procedures prescribed in this subpart must establish, maintain and retain the following adequately organized and indexed records:

(1) General records:

(i) Identification and description by category parameters of all exhaust systems in the manufacturer's product line;

(ii) A description of any procedures other than those contained in this subpart used to perform noise emission tests on any test exhaust system;

(iii) A record of the calibration of the acoustical instrumentation as is described in Appendix I;

(iv) A record of the date of manufacture of each exhaust system subject to this subpart, keyed to the serial number.

(2) Individual records for test exhaust systems:

(i) A complete record of all noise emission tests performed for Production Verification and Selective Enforcement Audit (except tests performed by EPA directly), including all individual worksheets and other documentation or exact copies relating to each test;

(ii) A record of the information recorded as described in Appendix I; and

(iii) A record and description of all repairs, maintenance and other servicing which were performed before successful testing of the exhaust system pursuant to these regulations and which could affect the noise emission of the exhaust system, giving the date and time of the maintenance or service, the reason for it, the person authorizing it, and the names of supervisory personnel responsible for the conduct of the maintenance or service.

(3) A properly filed production verification report following the format prescribed by the Administrator in § 205.168–3 fulfills the requirements of paragraphs (a)(1)(i) and (ii) of this section.

(4) All records required to be maintained under this subpart must be retained by the manufacturer for a period of three (3) years from the production verification date. Records may be retained as hard copy or alternatively reduced to microfilm, punch cards, etc., depending on the record retention procedures of the manufacturer; however, when an alternative method is used, all information contained in the hard copy must be contained in the copy made by the alternative method.

(b) The manufacturer must, upon request, submit to the Administrator the following information with regard to new exhaust system production:

(1) Number of exhaust systems, by category, scheduled for production for the time period designated in the request.

(2) Number of exhaust systems, by category, produced during the time period designated in the request.

(c) The reporting requirements of this regulation will no longer be effective after five (5) years from the last effective date of this regulation. However, the requirements will remain in effect if the Administrator is taking appropriate steps to repromulgate or modify the reporting requirements at that time.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.173 In-use requirements.

§ 205.173–1 Warranty.

(a) The exhaust system manufacturer who is required to production verify under this subpart must include in the information supplied to the ultimate purchaser pursuant to section 205.173–4, the following statement:

Noise Emission Warranty

[The manufacturer] warrants that this exhaust system, at time of sale, meets all applicable U.S.E.P.A. Federal noise standards. This warranty extends to the first person who buys this exhaust system for purposes other than resale, and to all subsequent buyers. Warranty claims should be directed to ————. (Manufacturer shall fill in this blank with his name, address and telephone number.)

(b) The manufacturer must submit to the Administrator a copy of all information of a general nature provided to dealers and other agents on the administration or coverage of the noise emission warranty. Such information must be submitted not later than ten (10) days after distribution.

(c) All information must be sent to:

Director, Noise and Radiation Enforcement Division (EN–387), Environmental Protection Agency, Washington, D.C. 20460.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 206.173–2 Tampering.

The manufacturer who conducts production verification of a category

must include the following statement pursuant to § 205.173–4 with each product of that category the manufacturer distributes into commerce:

Tampering Prohibition

(1) Durability data and actual noise testing on critical noise attenuating components.

(2) Noise level deterioration curves on the exhaust system.

(3) Data from products in actual use.

(ii) The vehicle tachometer may be used to ascertain:

(A) The approach RPM provided its meets the specifications in subparagraph (a)(3)(i)(A).

(B) The closing RPM provided it meets the specifications in subparagraphs (a)(3)(i)(A)

from the reverse of the intended test direction at a constant engine speed of 50% of maximum rated RPM or closing RPM less ten percent of (of maximum rated RPM), whichever is lower, (±2.5% of observed reading). When the front of the motorcycle reaches the end point (approached from the throttle must be smoothly and fully opened. Full acceleration must continue until closing RPM is reached, which must occur within ± 1.0 m (3.3 ft.) of the end point, and at which time the throttle must be smoothly and fully closed. An ignition disable device may be used to turn off the engine at closing RPM in

(10) Maximum noise level for each pass on each side of the motorcycle including invalid readings and reasons for invalidation.

(11) Reported noise level.

(12) Other information as appropriate to completely describe testing conditions and procedure.

must include the following statement pursuant to § 205.173–4 with each product of that category the manufacturer distributes into commerce:

Tampering Prohibition

Federal law prohibits any modification to this exhaust system which causes the motorcycle to exceed the Federal noise standard. Use of the motorcycle with such a modified exhaust system is also prohibited.

Acts likely to constitute tampering include removal or puncturing the muffler, baffles, header pipes, or any other component which conducts exahust gases.

(Secs. 10, 13 of the Noise Control Act (42 U.S.C. 4909, 4912))

§ 205.173–3 Warning statement.

The manufacturer who conducts production verification on a category must include the following statement pursuant to § 205.173–4 with each product of that category the manufacturer distributes into commerce:

Warning: This product should be checked for repair or replacement if the motorcycle noise has increased significantly through use. Otherwise, the owner may become subject to penalties under state and local ordinances.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.173–4 Information sheet.

The manufacturer must include the Noise Emissions Warranty statement, Tampering Prohibition statement and the Warning statement with each product. All three statements must be printed on a white sheet or card at least 8½"×11". Each statement must cover no more than ⅓ of the sheet or card. No other printing must be on the sheet. The statements must be printed in black ink; the statement headings must be in capital letters in a minimum size type of 12 point (pica type) or its equal; and the test of the statement must be a minimum size type of 10 point (elite type) or its equal. The sheet or card must be placed with the exhaust system inside any packaging. If there is no packaging, the sheet or card must be affixed to the exhaust system so that it will not be accidentally detached in shipping.

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.173–5 Retention of durability records.

(a) Each manufacturer responsible for compliance with the standards specified in § 205.166 must establish and maintain records for each exhaust system category containing the information upon which the manufacturer relied in determining that the products will meet the standards for the acoustical assurance period.

The records may include, but need not be limited to, the following:

(1) Durability data and actual noise testing on critical noise attenuating components.

(2) Noise level deterioration curves on the exhaust system.

(3) Data from products in actual use.

(4) Engineering judgment.

(b) [Reserved]

(Sec. 13 of the Noise Control Act (42 U.S.C. 4912))

§ 205.174 Remedial orders.

The Administrator may issue appropriate remedial orders to a manufacturer if products are distributed into commerce not in compliance with the regulations of this subpart. Potential orders are stop sale orders, orders to cease distribution, relabel, replace or recall, or any other orders appropriate in the specific circumstances. A remedial order will be issued only after notice and opportunity for a hearing in accordance with 5 U.S.C. 554.

(Sec. 11 of the Noise Control Act (42 U.S.C. 4910))

Appendix I to Subparts D and E—Motorcycle Noise Emission Test Procedures Appendix I–1 to Subparts D and E—Test Procedure for Street and Off-road Motorcycles

(a) *Instrumentation.*

Proper usage of all test instrumentation is essential to obtain valid measurements. Operating manuals or other literature furnished by the instrument manufacturer must be referred to for both recommended operation of the instrument and precautions to be observed. The following instrumentation must be used, where applicable:

(1) A sound level measurement system which meets the type S1A requirements of American National Standard Specification for Sound Level Meters, ANSI S1.4–1971. As an alternative to making direct measurements using a sound level meter, a microphone or sound level meter may be used with a magnetic tape recorder and/or a graphic level recorder or indicating instrument provided that the system meets the performance requirements of ANSI S1.4–1971. The sound level measurement system must be calibrated at least annually to insure that the system meets the performance requirements of ANSI S1.4–1971.

(2) An acoustic calibrator with an accuracy of within ±0.5 dB. The calibrator must be checked annually to verify that its output is within the specified accuracy.

(3) (i) An engine speed measurement system having the following characteristics:

(A) Steady-state accuracy of within ±3% of actual engine speed in the range of 45% to 100% of the engine speed (RPM) where peak net brake power (maximum rated RPM) is developed; and

(B) Response characteristics such that, when closing RPM is indicated under an acceleration as described below, actual engine speed is no more than 3 percent (of closing RPM) greater than the specified closing RPM.

(ii) The vehicle tachometer may be used to ascertain:

(A) The approach RPM provided its meets the specifications in subparagraph (a)(3)(i)(A).

(B) The closing RPM provided it meets the specifications in subparagraphs (a)(3)(i)(A) and (B).

(iii) Indirect engine speed measurement systems, such as systems which determine engine speed from vehicle speed measurement, may be used provided the specifications of paragraph (a)(1)(i) are met.

(4) An anemometer with steady-state accuracy of within ±10% at 20 km/h (12.4 mph).

(5) A microphone wind screen which does not affect microphone response more than ±0.5 dB for frequencies of 20–4000 Hz or ±1.0 dB for frequencies of 4000–10,000 Hz, taking into account the orientation of the microphone.

(b) *Test site.*

(1) The measurement area within the test site must meet the following requirements and be laid out as described:

(i) The following points must be established:

(A) Microphone target point—a reference point on the vehicle path;

(B) End point— a point on the vehicle path 7.5 ± 0.3m (24.6 ± 1.0 ft) beyond the microphone target point, and

(C) Microphone location point—a point 15 ± 0.3m (49.2 ± 1.0 ft) from the microphone target point on a normal to the vehicle path through the microphone target point.

(ii) The microphone must be:

(A) Positioned at the microphone location point 1.2 ± 0.1 m (3.9 ± 0.3 ft) above the ground plane; and

(B) Oriented in a plane perpendicular to the vehicle path, and at an angle for which the microphone was calibrated to have the flatest response characteristics over the frequency range of 100 Hz to 10,000 Hz when measured with respect to the motorcycle source.

(iii) the surface of the ground within at least the triangular area formed by the microphone location and the points 15 ± 0.3m (49.2 ±1.0 ft.) prior to and 15 ± 0.3 m (49.2 ± 1.0 ft.) beyond the microphone target point must be flat (+ 5 cm (2.0 in)) and level (grade not more than 0.5% along vehicle path), have a concrete or sealed asphalt surface, and be free from snow, soil or other extraneous material.

(iv) The vehicle path must be relatively smooth and of sufficient length for safe acceleration, deceleration and stopping of the motorcycle.

(2) The test site must be flat, open space free of large sound-reflecting surfaces (other than the ground), such as parked vehicles, sign-boards, buildings or hillsides located within a 30 ± 0.3 m (98.4 ± 1.0 ft) radius of the microphone location and the following points on the vehicle path (see Figure 1):

(i) The microphone location point;

(ii) A point 15 ± 0.3 m (49.2 ± 1.0 ft.) before the microphone target point; and

(iii) A point 15 ± 0.3 m (49.2 ± 1.0 ft) beyond the microphone target point.

(c) *Measurement procedure.*

(1) To establish the acceleration point, the end point must be approached in second gear from the reverse of the intended test direction at a constant engine speed of 50% of maximum rated RPM or closing RPM less ten percent of (of maximum rated RPM), whichever is lower, (±2.5%-of observed reading). When the front of the motorcycle reaches the end point (approached from the reverse direction), the throttle must be smoothly and fully opened to accelerate the motorcycle past the microphone target point under wide open throttle. When the motorcycle reaches closing RPM the throttle must be smoothly and fully closed. An ignition disable device may be used to turn off the engine at closing RPM in lieu of closing the throttle manually. The location of the front of the motorcycle at the time of throttle closure is the acceleration point for the test runs. The test runs must be made in the opposite direction. A sufficient number of trial runs must be made to assure accurate establishment of the acceleration point.

(2) Closing RPM must be determined according to the motorcycle engine displacement, as follows (see Figure 2):

Displacement (cc)	Closing RPM (Fraction of Maximum Rated RPM—Percent)
0–175	95
176–675	109–0.08 × (engine displacement in cc)
676 and above	55

(3) The distance from the acceleration point to the end point must be at least 10 m (32.8 ft). If this distance is less than 10 m (32.8 ft) by the procedure specified in paragraph (c)(1), above, third gear, if the motorcycle is so equipped, must be used. If the distance is still less than 10'm (32.8 ft), fourth gear, if the motorcycle is so equipped, must be used, and so on. If closing RPM is reached before the vehicle travels 10 m (32.8 ft), with the vehicle in its highest gear, the throttle must be opened less rapidly, but in such a manner that full throttle and closing RPM are attained at the end point.

(4) If the motorcycle is equipped with an automatic transmission, the procedure specified in paragraph (c)(1), above, must be followed except that the lowest selectable range must be employed, and the procedure specified in paragraph (c)(3) must be followed using the next selectable higher range, if necessary, and if the vehicle is so equipped. If closing RPM is reached before the vehicle travels 10 m (32.8 ft.), the throttle must be opened less rapidly, but in such a manner that full throttle and closing RPM are attained at the end point.

(5) Throttle opening must be controlled to avoid excessive wheel slip or lift-off.

(6) To conduct a sound measurement, the motorcycle must proceed along the vehicle path in the forward direction in second gear (or higher gear as applicable under paragraph (c)(3)) at a constant engine speed of 50% of maximum rated RPM or at closing RPM less ten percent (of maximum rated RPM), whichever is lower (± 2.5 percent of observed reading). When the front of the vehicle reaches the acceleration point, the throttle must be smoothly and fully opened. Full acceleration must continue until closing RPM is reached, which must occur within ± 1.0 m (3.3 ft.) of the end point, and at which time the throttle must be smoothly and fully closed. An ignition disable device may be used to turn off the engine at closing RPM in lieu of closing the throttle manually.

(7) A sufficient number of preliminary runs must be conducted before the testing to familiarize the rider with the test procedure and operating conditions of the vehicle. The engine temperature must be within the normal operating range prior to each run.

(d) *Measurements.*

(1) The sound level meter must be set for fast response and for the A-weighting network. The microphone wind screen must be used. The sound level meter must be calibrated with the acoustic calibrator as often as is necessary throughout testing to maintain the accuracy of the measurement system.

(2) The sound level meter must be observed throughout the acceleration period. The highest sound level obtained for the run must be recorded.

(3) Measurements must be made until at least four readings from each side are within 2 dB of each other. The noise level for each side is the average of the four which are within 2 dB of each other. The noise level reported must be for that side of the motorcycle having the highest noise level.

(4) While making sound level measurements, not more than one person other than the rider and the observer reading the meter may be within 15 m (49.2 ft) of the vehicle or microphone, and that person must be directly behind the observer reading the meter, on a line through the microphone and the observer.

(5) The ambient noise level (including wind effects) at the test site due to sources other than the motorcycle being measured must be at least 10 dB lower than the noise level at the microphone location produced by the motorcycle under test.

(6) Wind speed at the test site during tests must be less than 20 km/h (12.4 mph).

(e) *Required data.* For each valid test, the following data must be recorded:

(1) Motorcycle type, serial number, model year, and date of manufacture.

(2) Names of persons conducting test.

(3) Test location.

(4) Wind speed and ambient noise level measured on the same day as the test and representative of conditions during the test.

(5) Motorcycle engine displacment, maximum rated RPM, and closing RPM.

(6) The gear used for testing if other than second gear; or type of transmission and description of testing if motorcycle is equipped with automatic transmission.

(7) Description of the sound level meter including type, serial number, and calibration date.

(8) Description of the external acoustic calibrator including type, serial number, and calibration date.

(9) Description of the tachometer or engine speed measurement system used for conducting the test.

(10) Maximum noise level for each pass on each side of the motorcycle including invalid readings and reasons for invalidation.

(11) Reported noise level.

(12) Other information as appropriate to completely describe testing conditions and procedure.

Appendix I–2 to Subparts D and E—Test Procedure for Street Motorcycles That Meet the Definition of § 205.151(a)(2)(ii) (Moped-type Street Motorcycles).

(a) *Instrumentation.* Proper usage of all test instrumentation is essential to obtain valid measurements. Operating manuals or other literature furnished by the instrument manufacturer must be referred to for both recommended operation of the instrument and precautions to be observed. The following instrumentation must be used, where applicable:

(1) A sound level measurement system which meets the type S1A requirements of American National Standard Specification for Sound Level Meters, ANSI S1.4–1971. As an alternative to making direct measurements using a sound level meter, a microphone or sound level meter may be used with a magnetic tape recorder and/or a graphic level recorder or indicating instrument provided that the system meets the performance requirements of ANSI S1.4–1971. The sound level measurement system must be calibrated at least annually to insure that the system meets the performance requirements of ANSI S1.4–1971.

(2) An acoustic calibrator with an accuracy of within ±0.5 dB. The calibrator must be checked annually to verify that its output is within the specified accuracy.

(3) An anemometer with steady-state accuracy of within ±10% at 20 km/h (12.4 mph).

(4) A microphone wind screen which does not affect microphone response more than ±0.5 dB for frequencies of 20–4000 Hz or ±1.0 dB for frequencies of 4000–10,000 Hz, taking into account the orientation of the microphone.

(b) *Test site.* (1) The measurement area within the test site must meet the following requirements and be laid out as described:

(i) The following points must be established:

(A) Microphone target point—a reference point on the vehicle path;

(B) End point—a point on the vehicle path 7.5±0.3 m (24.6±1.0 ft) beyond the microphone target point; and

(C) Microphone location point—a point 15±0.3 m (49.2±1.0 ft) from the microphone target point on a normal to the vehicle path through the microphone target point. Alternately, the microphone location point may be a point 7.5±0.3 m (24.8±1.0 ft) from the microphone target point provided that the sound level reported is adjusted as provided in this appendix under paragraph (d)(3).

(ii) The microphone must be:

(A) Positioned at the microphone location point 1.2±0.1 m (3.9±0.3 ft) above the ground plane; and

(B) Oriented in a plane perpendicular to the vehicle path, and at an angle for which the microphone was calibrated to have the flattest response characteristics over the

frequency range of 100 Hz to 10,000 Hz when measured with respect to the motorcycle source.

(iii) The surface of the ground within at least the triangular area formed by the microphone location and the points 15±0.3 m (49.2±1 ft) prior to and 15±0.3 m beyond the

Measurements must be made until at least three readings from each side are within 2 dB of each other. The noise level for each side must be the average of the three. The noise level reported must be for that side of the motorcycle

FIGURE 1 — TEST MEASUREMENT AREA

frequency range of 100 Hz to 10,000 Hz when measured with respect to the motorcycle source.

(iii) The surface of the ground within at least the triangular area formed by the microphone location and the points 15±0.3 m (49.2±1 ft) prior to and 15±0.3 m beyond the microphone target point must be flat (±5 cm (2.0 in)) and level (grade not more than 0.5% along vehicle path), have a concrete or sealed asphalt surface, and be free from snow, soil or other extraneous material.

(iv) The vehicle path must be relatively smooth and of sufficient length for safe acceleration, deceleration and stopping of the motorcycle.

(2) The test site must be a flat, open space free of large sound-reflecting surfaces (other than the ground), such as parked vehicles, signboards, buildings or hillsides located within a 30±0.3 m (98.4±1.0 ft) radius of the microphone location and the following points on the vehicle path (see Figure 1):

(i) The microphone location point;

(ii) A point 15±0.3 m (49.2±1 ft) before the microphone target point; and

(iii) A point 15±0.3 m (49.2±1 ft) beyond the microphone target point.

(c) *Measurement procedure.* (1) The combined weight of the test rider and test equipment used on the motorcycle must not be more than 80 kg (176 lb) nor less than 75 kg (165 lb). Weights shall be placed on the motorcycle saddle behind the rider to compensate for any difference between the actual driver/equipment load and the required 75 kg (165 lb) minimum.

(2) The motorcycle must approach the microphone target point with the throttle fully open and in the highest gear. The motorcycle must start such that maximum speed is reached before the vehicle is within 7.5 m of the microphone target point. The motorcycle must continue along the vehicle path with fully open throttle and at maximum speed past the end point, at which time the throttle must be closed.

(3) If the motorcycle is equipped with an automatic transmission, the procedure of subparagraph (1), above, must be followed except that the highest selectable range shall be employed.

(d) *Measurements.* (1) The sound level meter must be set for fast response and for the A-weighting network. The microphone wind screen must be used. The sound level meter must be calibrated with the acoustic calibrator as often as is necessary throughout testing to maintain the accuracy of the measurement system.

(2) The sound level meter must be observed throughout the passby period. The highest noise level obtained for the run must be recorded.

(3) At least three measurements shall be made for each side of the motorcycle. Measurements must be made until at least three readings from each side are within 2 dB of each other. The noise level for each side must be the average of the three. The noise level reported must be for that side of the motorcycle having the highest noise level. If the microphone location point is 7.5 m from the vehicle path as allowed in this appendix under paragraph (b)(1)(i)(c), the noise level must be adjusted by subtracting 6 dB prior to being reported.

(4) While making noise level measurements, not more than one person other than the rider and the observer reading the meter may be within 15 m (49.2 ft) of the vehicle or microphone, and that person must be directly behind the observer reading the meter, on a line through the microphone and the observer.

(5) The ambient sound level (including wind effects) at the test site due to sources other than the motorcycle being measured must be no greater than 60 dB if the microphone is located 15 m from the vehicle path or 66 dB if the microphone is located 7.5 m from the vehicle path as allowed in this appendix under paragraph (b)(1)(i)(c).

(6) Wind speed at the test site during tests must be less than 20 km/h (12.4 mph).

(e) *Required data.* For each valid test, the following data must be recorded:

(1) Motorcycle type, serial number, model year, and date of manufacture.

(2) Names of persons conducting test.

(3) Test location.

(4) Wind speed and ambient noise level measured on the same day as the test and representative of conditions during the test.

(5) Description of the sound level meter including type, serial number, and calibration date.

(6) Description of the external acoustic calibrator including type, serial number, and calibration date.

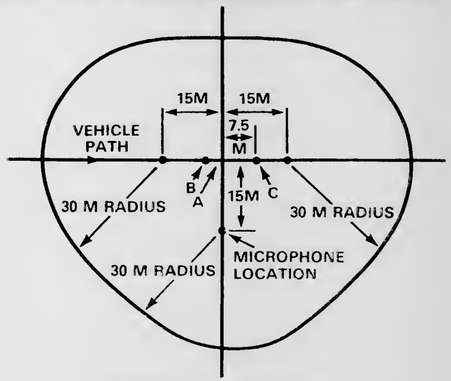
(7) Maximum noise level for each pass on each side of the motorcycle including invalid readings and reasons for invalidation.

(8) Reported noise level.

(9) Other information as appropriate to completely describe testing conditions and procedure.

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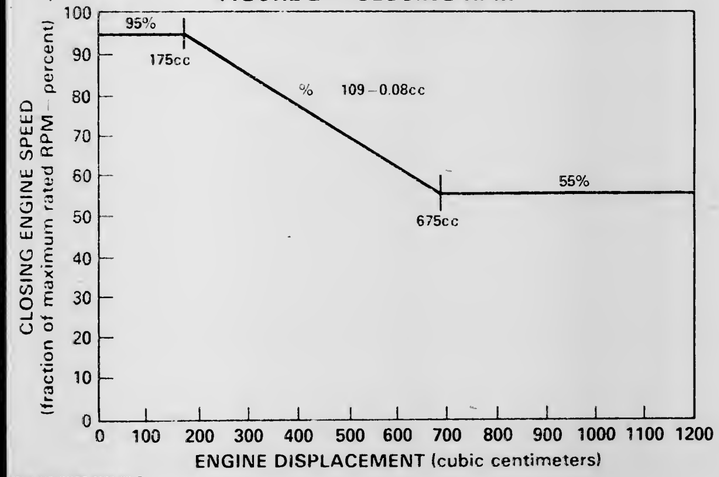
FIGURE 1 — TEST MEASUREMENT AREA



A—MICROPHONE TARGET POINT
B—ACCELERATION POINT (VARIABLE)
C—END POINT

TEST MEASUREMENT AREA

FIGURE 2 — CLOSING RPM



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Appendix II to Subparts D and E

Table 1—Model Year Production Volume of 50–99 Vehicles

Cumulative number of tests	Number of failing vehicles	
	Column A	Column B
10	3	3
11	3	4
12	3	4
13	3	4
14	3	4
15	3	4
16	3	4
17	3	4
18	3	4
19	3	4
20	3	4
21	3	4
22	3	4
23	3	4
24	3	4
25	3	4
26	3	4
27	3	4
28	3	4
29	3	4
30	3	4
31	3	4
32	3	4
33	3	4
34	3	4
35	3	4
36	3	4
37	3	4
38	3	4
39	3	4
40	3	4
41	3	4
42	3	4
43	3	4
44	3	4
45	3	4
46	3	4
47	3	4
48	3	4
49	3	4
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84	4	4
85	4	4
86	4	4
87	4	4
88	4	4
89	4	4
90	4	4
91	4	4
92	4	4
93	4	4
94	4	4
95	4	4
96	4	4
97	4	4
98	4	4
99	4	4

Table 4—Model Year Production Volume of 400 or More Vehicles

Cumulative number of tests	Number of failing vehicles	
	Column A	Column B
100	5	5
101	5	5
102	5	5
103	5	5
104	5	5
105	5	5
106	5	5
107	5	5
108	5	5
109	5	5
110	5	5
111	5	5
112	5	5
113	5	5
114	5	5
115	5	5
116	5	5
117	5	5
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Appendix II to Subparts D and E

Table 1—Model Year Production Volume of 50–99 Vehicles

Cumulative number of tests	Number of failing vehicles	
	Column A	Column B
1		
2		
3		3
4		3
5		3
6		3
7	0	3
8	0	4
9	0	4
10	0	4
11	1	4
12	1	4
13	1	5
14	1	5
15	2	5
16	2	5
17	2	5
18	2	5
19	2	5
20	4	5

Table 2—Model Year Production Volume of 100–199 Vehicles

Cumulative number of tests	Number of failing vehicles	
	Column A	Column B
1		
2		
3		3
4		3
5		3
6		3
7	0	4
8	0	4
9	0	4
10	0	4
11	1	4
12	1	5
13	1	5
14	1	5
15	1	5
16	2	5
17	2	5
18	2	5
19	2	5
20	4	5

Table 3—Model Year Production Volume of 200–399 Vehicles

Cumulative number of tests	Number of failing vehicles	
	Column A	Column B
1		
2		
3		3
4		3
5		3
6		3
7	0	4
8	0	4
9	0	4
10	0	4
11	0	5
12	1	5
13	1	5
14	1	5
15	1	5
16	2	5
17	2	5
18	2	5
19	2	5
20	4	5

Table 4—Model Year Production Volume of 400 or More Vehicles

Cumulative number of tests	Number of failing vehicles	
	Column A	Column B
1		
2		
3		3
4		3
5		3
6		4
7	0	4
8	0	4
9	0	4
10	0	4
11	0	5
12	1	5
13	1	5
14	1	5
15	1	5
16	2	5
17	2	5
18	2	5
19	2	5
20	4	5

[FR Doc. 80-40478 Filed 12-30-80; 8:45 am]
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Part IV

Environmental Protection Agency

Noise Emission Standards for Transportation Equipment; Additional Testing Requirements for Motorcycles and Motorcycle Exhaust Systems; Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 205

[N-FRL 1518-1]

severity in overall traffic noise impact. However, the success of these final regulations is largely dependent on motorcycle exhaust systems retaining their noise suppression performance beyond the time of sale. Exhaust

exhaust system constitutes a tampering violation under the provisions of the Noise Control Act, the Agency believes that this is and can be expected to remain a major noise problem unless the Agency takes further action. The

systems with "easily removable components" unless their product can pass the test with these components removed.

Note.—EPA has determined that this action is not a "significant" regulation, and therefore

respectively, and by adding a new paragraph (c) as follows:

Appendix I–2. Test Procedure for Street Motorcycles That Meet the Definition of § 205.151(a)(2)(ii) (Moped-type Street Motorcycles).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 205

[N-FRL 1518-1]

Noise Emission Standards for Transportation Equipment; Additional Testing Requirement for Motorcycles and Motorcycle Exhaust Systems

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend the testing requirements for Noise Emission Standards for Motorcycles and Motorcycle Exhaust Systems, published elsewhere in today's Federal Register. The proposed amendments will require manufacturers to remove all easily removable components from their exhaust systems before conducting the tests necessary to show compliance with applicable standards. This action is necessary because the control of motorcycle noise is dependent on exhaust systems retaining their noise suppression performance beyond the time of sale. These amendments are expected to encourage manufacturers to design exhaust systems in ways which will reduce the incidence of tampering by consumers.

DATE: The official docket for this proposed rulemaking will remain open for submission of written comments until 4:30 pm, March 31, 1981.

ADDRESS: Written comments to the docket should be mailed to the following address: Director, Standards and Regulations Division, Attention: ONAC Docket 81-01 (Motorcycles), ANR-490, U.S. Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Newberry, Project Officer, Standards and Regulations Division (ANR-490), U.S. Environmental Protection Agency, Washington, D.C. 20460; or phone (202) 557-7666.

SUPPLEMENTARY INFORMATION: Elsewhere in today's Federal Register, EPA is promulgating Noise Emission Standards for Motorcycles and Motorcycle Exhaust Systems. By establishing these noise standards the Agency expects to reduce the adverse effects of high levels of motorcycle noise on the public's health and welfare. Lowering motorcycle noise levels is expected to result in approximately a 60-80 percent reduction in interference with human activities and an 8-12 percent reduction in the extent and severity in overall traffic noise impact. However, the success of these final regulations is largely dependent on motorcycle exhaust systems retaining their noise suppression performance beyond the time of sale. Exhaust systems lose their noise attentuation characteristics because of two factors: Degradation of components and simple removal of components. The problem of highly degradable components such as certain "glass packs" in motorcycle exhaust systems is dealt with in the regulation by the requirement that motorcycle exhaust systems when properly used and maintained on Federally-regulated motorcycles must meet applicable noise emission standards over a specified period of time. The Agency plans to deal with the problem of easily removable components in exhaust systems, such as baffles, by proposing these amendments to the regulation.

Several aftermarket manufacturers offer exhaust systems with a variety of removable baffles or adjustable vanes that can be added or decreased in number to obtain the desired results in performance and noise level. Some mufflers are distributed with a kit containing two baffles: One for use in off-road situations which will increase performance (and noise) and a second baffle for quieter street use. Removal of these baffles is usually accomplished by simply removing bolts or screws. Table 4-1 of the "Regulatory Analysis of Noise Emission Regulations for Motorcycles and Motorcycle Exhaust Systems" (EPA Document No. 550/9-80-217) shows the effects of changing exhaust system baffles on performance and noise levels. Exchanging the baffles on one manufacturer's exhaust system increased the noise levels of the test motorcycle by 10 dB.

The effects of completely removing baffles from motorcycle exhaust systems are shown on page 4-25 of the Regulatory Analysis. Removal of these baffles caused the noise level of motorcycles to increase from 15 to 29 dB above the noise levels of the same motorcycle with an original equipment (OEM) exhaust system. By comparison, when the OEM muffler was completely removed, the motorcycle's noise level increased between 16 and 22 dB. Thus, the effects of removing baffles from a muffler can be more significant than removing the muffler itself. This is because a muffler without baffles can act as a megaphone and actually amplify the noise levels emitted by the motorcycle.

Although the removal of baffles from a Federally-regulated motorcycle exhaust system constitutes a tampering violation under the provisions of the Noise Control Act, the Agency believes that this is and can be expected to remain a major noise problem unless the Agency takes further action. The Agency had considered a program by which exhaust systems would be evaluated on the basis of design characteristics, to discourage the manufacture of motorcycle exhaust systems with easily removable baffles and highly degradable components. (Refer to Issues 3.8 and 9.21 of the Docket Analysis to the NRM.) However, the unfavorable public comments and analyses by the Agency indicated that a better solution for this issue was necessary. Accordingly, the Agency is proposing this amendment to require manufacturers to conduct the testing required to demonstrate compliance to the noise standards with all easily removable components of the exhaust system removed. The Agency believes that this requirement will encourage manufacturers to design exhaust systems which will reduce the incidence of tampering by consumers, or which will comply with applicable standards when easily removable components are removed.

The Agency proposes that these amendments be effective one year after promulgation to allow manufacturers adequate lead time for design and production of complying exhaust systems. A number of manufacturers currently produce replacement exhaust systems with permanent fixtures. Making a baffle a permanent fixture, rather than removable, by welding or other simple means is not expected to require extensive redesign of current exhaust systems nor increase their costs. The following discusses the provisions of the proposed amendments.

1. The Agency proposes to amend § 205.151(a) by adding subparagraph (31) which defines "easily removable component."

2. and 3. The Agency proposes to amend Appendix I-1 and Appendix I-2 by adding a new paragraph, *Vehicle Preparation.* The new paragraph requires motorcycle and motorcycler replacement exhaust system manufacturers to remove all "easily removable components" of exhaust systems before testing their products. Since Appendix I-1 and Appendix I-2 are the EPA test procedures for showing compliance with applicable noise emission standards for EPA Product Verification Testing and Selective Enforcement Audits, the Agency predicts that these manufacturers will be discouraged from designing exhaust systems with "easily removable components" unless their product can pass the test with these components removed.

Note.—EPA has determined that this action is not a "significant" regulation, and therefore does not require a Regulatory Analysis in accordance with Executive Order 12044.

The Agency is committed by statute and policy to public participation in the decisionmaking process for its environmental regulations. That policy encourages and solicits communications and public comments on all aspects of the proposed amendments to the regulation. These contributions are desired from as many diverse views as possible and when received, such information will be fully analyzed. Necessary changes in these proposed amendments will be made and explained when the amendments are published in final form.

These amendments are proposed under authority of Sections 6 and 13 of the Noise Control Act of 1972, 42 U.S.C., 4095, and 4912.

Dated: December 19, 1980.

Douglas M. Costle,
Administrator.

The Environmental Protection Agency (EPA) proposes to amend 40 CFR Part 205 as follows.

Subpart D—Motorcycles

1. In §205.151 EPA proposes to amend paragraph (a) by adding subparagraph (31) as follows:

§205.151 Definitions.

(a) * * *

(31) "Easily removable component" means any exhaust system part (not to include headerpipes, expansion chambers, or the muffler shell) that can be removed, without causing highly visible damage to the exterior of the exhaust system, by removing bolts, screws, or similar fastening devices, or by shearing spot welds with hammer and chisel, or by other simple means of dislodgement.

2. EPA proposes to amend Appendix I-1 by redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively, and by adding a new paragraph (c) as follows:

Appendix I-1 Test Procedure for Street and Off-road Motorcycles

* * * * *

(c) *Vehicle Preparation.* All easily removable components of the exhaust system must be removed before testing.

* * * * *

3. EPA proposes to amend Appendix I-2 by redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively, and by adding a new paragraph (c) as follows:

Appendix I-2. Test Procedure for Street Motorcycles That Meet the Definition of § 205.151(a)(2)(ii) (Moped-type Street Motorcycles).

* * * * *

(c) *Vehicle Preparation.* All easily removable components of the exhaust system must be removed before testing.

* * * * *

[FR Doc. 80-40479 Filed 12-30-80; 8:45 am]

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Part V

Interstate Commerce Commission

Motor Carrier Rate Bureaus; Tariffs Containing Joint Rates and Through Routes; Freight Forwarder Contract Rates; Elimination of Gateway Restrictions and Circuitous Route Limitations; Removal of Restrictions From Authorities of Motor Carriers of Property; Intercorporate Hauling Reform; Lease of Equipment and Drivers to Private Carriers; and Interpretation—Intercorporate Hauling; Rules Governing Applications and Acceptable Forms of Request for Operating Authority

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1331

[Ex Parte No. 297 (Sub No. 5)]

Motor Carrier Rate Bureaus—

6. Section 1331.6(a)(3) is amended by deleting the phrase "section 5a or 5b of the Interstate Commerce Act, 49 U.S.C. 5b, 5c," and inserting in its place "49 U.S.C. 10706(a)."

7. Section 1331.6(a)(5) is reserved.

8. Section 1331.6(a)(6) is renumbered

49 CFR Part 1331

[Ex Parte No. 297 (Sub. No. 5)]

Motor Carrier Rate Bureaus—Implementation of Pub. L. 96-296

AGENCY: Interstate Commerce

5. The quorum for holding meetings of the organization is 30 percent of the membership for committees. It is 50 percent of the members.

6. The bureaus are required to maintain detailed minutes of all meetings where tariff items were

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1331

[Ex Parte No. 297 (Sub No. 5)]

Motor Carrier Rate Bureaus—Implementation of Pub. L. 96-296

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: In this proceeding [49 FR 55734, August 21, 1980], we proposed new standards to govern the activities of motor carrier rate bureaus. Our final decision (issued concurrently with this notice) setting these standards requires conforming amendments to the CFR. Amendments are also required to conform the regulations to the codification of the Interstate Commerce Act.

EFFECTIVE DATE: These amendments are effective December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275-7656.

SUPPLEMENTARY INFORMATION: The changes to 49 CFR 1331 are as follows:

PART 1331—SECTION 10706 APPLICATIONS.

1. Part 1331 is retitled—Section 10706 Applications

§ 1331.2 [Amended]

2. Section 1331.2(e) is amended by deleting the phrase "section 5a of the Interstate Commerce Act, as amended" and inserting in its place "49 U.S.C. 10706."

§ 1331.4 [Amended]

3. Section 1331.4 is amended by deleting the phrase "section 5a(4) of the Interstate Commerce Act" and inserting in its place "49 U.S.C. 10706(d)."

§ 1331.5 [Amended]

4. Section 1331.5 is retitled—Public notice—non-motor independent actions.

§ 1331.45 [Amended]

Section 1331.45 is amended by deleting the phrase "section 5a of the Interstate Commerce Act" and inserting in its place "49 U.S.C. 10706."

§ 1331.6 Changing or cancelling railroad rates established by independent action.

* * * * *

§ 1331.6 [Amended]

5. Section 1331.6 is retitled—Changing or cancelling railroad rates established by independent action.

6. Section 1331.6(a)(3) is amended by deleting the phrase "section 5a or 5b of the Interstate Commerce Act, 49 U.S.C. 5b, 5c," and inserting in its place "49 U.S.C. 10706(a)."

7. Section 1331.6(a)(5) is reserved.

8. Section 1331.6(a)(6) is renumbered 1331.6(a)(5).

9. Section 1331.6(a)(7) is removed.

10. Section 1331.6(b) is amended by deleting the phrase "Motor carrier and railroad" and inserting in its place "Railroad."

11. Section 1331.6(c) is revised as follows:

* * * * *

(c) *Opportunity to be heard.* Before the Committee or other group designated under the terms of a railroad rate bureau's agreement meets to consider a proposal to change or cancel a rate established by independent action (whether for the purpose of voting to accept or reject the proposal or to consider whether to recommend it to the rate bureau membership for a final vote), shippers and other interested parties shall have no less than fourteen days (not counting the day of the notice of the proposal is sent to these parties) to respond to the notice to express their views to the appropriate committee or group in whatever manner they so choose, be it in writing, in person or by some other means.

12. Section 1331.6(d) is removed.

13. Section 1331.6(e) is renumbered 1331.6(d). In the newly renumbered 1331.6(d) delete the phrase "paragraphs (b) and (d)" and insert in its place the phrase "paragraph (b)".

14. Section 1331.6(f) is renumbered 1331.6(e). In the newly renumbered 1331.6(e) delete the phrase "paragraph (e)" and insert in its place "paragraph 6(d)", delete the remainder of the section following the first sentence.

This decision does not significantly affect the quality of human environment, energy consumption, or small business. The amended rules are issued under the authority of 49 U.S.C. 10321 and 10706.

Decided: December 19, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam. Commissioner Gilliam concurring with a separate expression. Commissioner Clapp reserves his right to submit a separate expression at a later date.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40514 Filed 12-30-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1331

[Ex Parte No. 297 (Sub. No. 5)]

Motor Carrier Rate Bureaus—Implementation of Pub. L. 96-296

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision; policy statement.

SUMMARY: The Commission has issued a final decision in this proceeding establishing standards for motor carrier rate bureau activities. This decision implements the rate bureau provisions of the Motor Carrier Act of 1980. Copies of the complete decision are available from the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, (202) 275-7428.

EFFECTIVE DATE: The decision is effective December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall (202) 275-7656.

SUPPLEMENTAL INFORMATION: Notice of this proceeding was given at 45 FR 55734, August 21, 1980. The major findings in this decision are as follows:

1. Rate bureau agreements must provide each carrier the absolute right to decide whether or when an independent action, released rate, or rate within the zone of freedom, will be docketed. If independent actions are docketed they may not be discussed prior to the effective date of the tariff item.

2. Rate bureau employees and employee committees are restricted from initiating or determining whether to adopt, reject, or otherwise dispose of tariff proposals. They may provide individual member carriers with expert analysis and technical assistance, provided that all communications are kept confidential.

3. Rate bureaus will promptly divulge the name(s) of the proponent(s) of tariff matter and the voting record. They will provide detailed public notice of their meetings and agenda and they will admit all persons and permit them to take notes and make sound recordings.

4. To vote for an absentee, a carrier must possess a written proxy containing the grantor(s) signature, the specific item(s) for which the vote is released, directions on voting, and affirmation of authority. A copy of the proxy and the written affirmation or authority executed by the proxy holder for the grantor will be made part of the voting record and ballot.

5. The quorum for holding meetings of the organization is 30 percent of the membership for committees, it is 50 percent of the members.

6. The bureaus are required to maintain detailed minutes of all meetings where tariff items were discussed. The bureaus will be subject to withdrawal of their immunity for serious continuing violations of Commission standards, and individual tariff publications will be subject to rejection, suspension, or investigation for improprieties in the rate bureau process.

7. Carriers are immunized from the effect of the anti-trust laws only after filing with the Commission an approved agreement consistent with this decision and only for those activities conducted within the explicit terms of that agreement.

This decision does not significantly affect the quality of the human environment, energy consumption, or small business. The amended policy is issued under the authority of 49 U.S.C. 10321 and 10706.

Decided: December 19, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam. Commissioner Gilliam concurring with a separate expression.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-40515 Filed 12-30-80; 8:45 am]

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1300

[Ex Parte No. 261 (Sub-No. 1)

the Motor Carrier Act, 1980 Public Law 96-296, freight forwarders have the statutory authority to establish and participate in joint rates and international through route tariffs. In Ex Parte 364 (Sub-No. 1) *Freight Forwarder*

intermodal freight tariffs, by adding NVO's to the provisions.

It is proposed that in 49 CFR, the second sentence of § 1300.0(a)(1), introductory text of §§ 1300.12, 1300.12(e), and 1300.67(b)(1) are revised

by paragraph (b) of this section which are made effective subsequent to the date of actual discontinuance of service must contain a statement that service was discontinued on ———— as per supplement No. ———— to ICC No.

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1300

[Ex Parte No. 261 (Sub-No. 1]

In the Matter of Tariffs Containing Joint Rates and Through Routes—Freight Forwarders and Nonvessel Operating Common Carriers by Water (NVO)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is reopening this proceeding in response to the Motor Carrier Act of 1980, Public Law 96–296. We are reconsidering the finding of our prior decision (355 I.C.C. 913 (1977)) that rail, motor, or water carriers subject to our jurisdiction are precluded, as a matter of policy, from entering into international joint rates with nonvessel operating common carriers. We are therefore proposing to modify 49 CFR § 1300 *et seq.* which governs intermodal freight tariffs by adding nonvessel operating common carriers to the provisions.

DATES: Comments are due on or before January 30, 1981.

ADDRESS: Send comments to: Office of Proceedings, Room 5356, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard Felder or Jane F. Mackall, (202) 275–7656.

SUPPLEMENTARY INFORMATION: In our prior decision we considered the possible application of 49 CFR 1300 *et seq.* to the intermodal operations of freight forwarders and nonvessel operating water common carriers (NVO's) between points in foreign countries. We found that (1) freight forwarders have no statutory authority to establish and participate in joint rates and international through route tariffs; and (2) rail, motor, or part III water carriers are precluded, as a matter of policy, from entering into joint rates with nonvessel operating water common carriers.

Since the passage of Section 22(h) of the Motor Carrier Act, 1980 Public Law 96–296, freight forwarders have the statutory authority to establish and participate in joint rates and international through route tariffs. In Ex Parte 364 (Sub-No. 1) *Freight Forwarder Contract Rates—Implementation of Pub. L. 96–296,* (decided December 19, 1980), we extend the application of 49 CFR 1300 *et seq.* to freight forwarders.

Our refusal in Ex Parte No. 261 (Sub-No. 1), to allow NVO's to establish international joint rates with carriers subject to our jurisdiction was based on policy considerations. We do not believe these considerations are still valid.

First, we reasoned that because the Federal Maritime Commission (FMC) imposes no restrictions on who may become NVO's freight forwarders could easily become NVO's. We were afraid that, were we to extend tariff rules to NVO's, freight forwarders could circumvent ICC rules by becoming NVO's and establishing joint rates with ICC regulated carriers. Since freight forwarders are now allowed to establish joint rates, there is no longer, an incentive for freight forwarders to circumvent our rules.

Second, we believed that allowing NVO's to establish joint rates with ICC regulated carriers would allow an NVO to engage in freight forwarding in the United States without a certificate from the Commission in competition with ICC regulated forwarders. This would render valueless the certificates which forwarders obtained at the expense of large investments of money and time. We have since eased our entry requirements. We no longer think that freight forwarders should be insulated from competition with NVO's.

Finally, we believed the FMC did not impose enough restrictions on who could become an NVO. Therefore, we were afraid that we could not assure the shipping public that the NVO's are able to perform the service properly. However in light of spirit of increased competition in the transportation industry and the fact that we should rely on the FMC's judgment that NVO's are fully able to serve the shipping public, we are no longer concerned with this issue.

We are therefore proposing to modify 49 CFR 1300 *et seq.*, which governs intermodal freight tariffs, by adding NVO's to the provisions.

It is proposed that in 49 CFR, the second sentence of § 1300.0(a)(1), introductory text of §§ 1300.12, 1300.12(e), and 1300.67(b)(1) are revised as follows:*

1. The second sentence of § 1300.0(a)(1) is revised to read as follows:

§ 1300.0 General provisions; definition.

(a)(1) * * *

The regulations in this part shall also govern the construction and filing of tariffs naming through routes and joint rates over the lines of common carriers by freight forwarders, water, or pipeline, subject to the Interstate Commerce Act, on the one hand, and nonvessel or vessel-operating common carriers by water engaged in the foreign commerce of the United States, as defined in the Shipping Act, 1916, on the other hand, for the transportation of property between any place in the United States and any place in a foreign country; and between freight forwarders and railroads. See § 1300.67.

2. The introductory text of § 1300.12 is revised to read as follows:

§ 1300.12 Restoration and discontinuance of water service.

Tariffs containing rail-and-water, freight forwarder-and-water, rail-and-nonvessel operating water common carriers, or all-water rates applicable via routes upon which it is necessary to close navigation during a portion of each year, must provide for the restoration and discontinuance of service over such routes in the manner prescribed in paragraphs (a) to (e) of this section.

3. In § 1300.12 paragraph (e) is amended to read as follows:

§ 1300.12 Restoration and discontinuance of water service.

* * * * *

(e) *Tariffs may be reissued.* Tariffs containing rail-and-water, freight forwarder-and-water, rail-and-nonvessel operating water common carrier, or all-water rates may be reissued or amended at any time in the regular manner, but tariffs containing the clause prescribed by paragraph (b) of this section which are made effective subsequent to the date of actual discontinuance of service must contain a statement that service was discontinued on ———— as per supplement No. ———— to ICC No. (former tariff) and that supplement announcing discontinuance of service for that season will not be filed.

4. In § 1300.67(b)(1) is revised as set forth below.

§ 1300.67 Export and import traffic—ocean carriers.

* * * * *

(b) *Through routes and joint rates.* (1) A common carrier by pipeline, freight forwarder, or water, subject to the Interstate Commerce Act (hereinafter referred to in this section as the domestic carrier), may establish a through route and joint rate with either a nonvessel or a vessel-operating common carrier by water engaged in the foreign commerce of the United States (hereinafter referred to in this section as the ocean carrier), as defined in the Shipping Act, 1916, for the transportation of property between any place in the United States and any place in a foreign country. Every tariff naming such a through route and joint rate shall be filed with this Commission. The tariff may be filed in the name of the ocean carrier, a conference of ocean carriers, the domestic carrier or the duty appointed tariff publishing agent of such carriers.

Comments, limited to the rule changes proposed in this notice are invited. Comments should also include discussion of what, if any, significant effect the rule changes would have on the quality of the human environment, conservation of energy resources, or small businesses.

(49 U.S.C. 10321, 10703, 10762, 5 U.S.C. 553)

Decided: December 19, 1980.

By the Commission, Chairman Gaskins Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Gresham concurring. Commissioner Clapp absent and not participating.

James H. Bayne,

Acting Secretary.

[FR Doc. 80-40517 Filed 12-30-80; 8:45 am]

BILLING CODE 7035-01-M

*The modification to 49 CFR 1300.0(a)(1) and 1300.67(b) conforms with the proposed changes in Ex Parte No. 230 (Sub-No. 5) Improvement of TOFC/COFC Regulation, served November 21, 1980.

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1080, 1300 and 1308

[Ex parte No. 364 (Sub-No. 1)]

Freight Forwarder Contract Rates—Implementation of P. L. 96–296

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its rules governing freight forwarder contract rates to implement the provisions of Public Law 96–296. The rules are, for the most part, removed as obsolete. The rules are expected to reduce energy consumption and improve operating efficiencies in the property and motor carrier industry.

EFFECTIVE DATE: The rules become effective on December 28, 1980.

FOR FURTHER INFORMATION CONTACT: Richard Felder or Jane F. Mackall, (202) 275–7656.

SUPPLEMENTARY INFORMATION: In our prior decision we considered the possible application of 49 CFR 1300 *et seq.* to the intermodal operations of freight forwarders and nonvessel operating water common carriers (NVO's) between points in foreign countries. We found that (1) freight forwarders have no statutory authority to establish and participate in joint rates and international through route tariffs; and (2) rail, motor, or part III water carriers are precluded, as a matter of policy, from entering into joint rates with nonvessel operating water common carriers.

Since the passage of Section 22(h) of the Motor Carrier Act, 1980 Public Law 96–296, freight forwarders have the statutory authority to establish and participate in joint rates and international through route tariffs. In Ex Parte 364 (Sub-No. 1) *Freight Forwarder Contract Rates—Implementation of Pub. L. 96–296,* (decided December 19, 1980), we extend the application of 49 CFR 1300 *et seq.* to freight forwarders.

Our refusal in Ex Parte No. 261 (Sub-No. 1), to allow NVO's to establish international joint rates with carriers subject to our jurisdiction was based on policy considerations. We do not believe these considerations are still valid.

First, we reasoned that because the Federal Maritime Commission (FMC) imposes no restrictions on who may become NVO's freight forwarders could easily become NVO's. We were afraid that, were we to extend tariff rules to NVO's, freight forwarders could circumvent ICC rules by becoming NVO's and establishing joint rates with ICC regulated carriers. Since freight forwarders are now allowed to establish joint rates, there is no longer, an incentive for freight forwarders to circumvent our rules.

Second, we believed that allowing NVO's to establish joint rates with ICC regulated carriers would allow an NVO to engage in freight forwarding in the United States without a certificate from the Commission in competition with ICC regulated forwarders. This would render valueless the certificates which forwarders obtained at the expense of large investments of money and time. We have since eased our entry requirements. We no longer think that freight forwarders should be insulated from competition with NVO's.

Finally, we believed the FMC did not impose enough restrictions on who could become an NVO. Therefore, we were afraid that we could not assure the shipping public that the NVO's are able to perform the service properly. However in light of spirit of increased competition in the transportation industry and the fact that we should rely on the FMC's judgment that NVO's are fully able to serve the shipping public, we are no longer concerned with this issue.

We are therefore proposing to modify 49 CFR 1300 *et seq.*, which governs intermodal freight tariffs, by adding NVO's to the provisions.

It is proposed that in 49 CFR, the second sentence of § 1300.0(a)(1), introductory text of §§ 1300.12, 1300.12(e), and 1300.67(b)(1) are revised as follows:*

1. The second sentence of § 1300.0(a)(1) is revised to read as follows:

§ 1300.0 General provisions; definition.

(a)(1) * * *

The regulations in this part shall also govern the construction and filing of tariffs naming through routes and joint rates over the lines of common carriers by freight forwarders, water, or pipeline, subject to the Interstate Commerce Act, on the one hand, and nonvessel or vessel-operating common carriers by water engaged in the foreign commerce of the United States, as defined in the Shipping Act, 1916, on the other hand, for the transportation of property between any place in the United States and any place in a foreign country; and between freight forwarders and railroads. See § 1300.67.

2. The introductory text of § 1300.12 is revised to read as follows:

§ 1300.12 Restoration and discontinuance of water service.

Tariffs containing rail-and-water, freight forwarder-and-water, rail-and-nonvessel operating water common carriers, or all-water rates applicable via routes upon which it is necessary to close navigation during a portion of each year, must provide for the restoration and discontinuance of service over such routes in the manner prescribed in paragraphs (a) to (e) of this section.

3. In § 1300.12 paragraph (e) is amended to read as follows:

§ 1300.12 Restoration and discontinuance of water service.

* * * * *

(e) *Tariffs may be reissued.* Tariffs containing rail-and-water, freight forwarder-and-water, rail-and-nonvessel operating water common carrier, or all-water rates may be reissued or amended at any time in the regular manner, but tariffs containing the clause prescribed by paragraph (b) of this section which are made effective subsequent to the date of actual discontinuance of service must contain a statement that service was discontinued on ———— as per supplement No. ———— to ICC No. (former tariff) and that supplement announcing discontinuance of service for that season will not be filed.

4. In § 1300.67(b)(1) is revised as set forth below.

§ 1300.67 Export and import traffic—ocean carriers.

* * * * *

(b) *Through routes and joint rates.* (1) A common carrier by pipeline, freight forwarder, or water, subject to the Interstate Commerce Act (hereinafter referred to in this section as the domestic carrier), may establish a through route and joint rate with either a nonvessel or a vessel-operating common carrier by water engaged in the foreign commerce of the United States (hereinafter referred to in this section as the ocean carrier), as defined in the Shipping Act, 1916, for the transportation of property between any place in the United States and any place in a foreign country. Every tariff naming such a through route and joint rate shall be filed with this Commission. The tariff may be filed in the name of the ocean carrier, a conference of ocean carriers, the domestic carrier or the duty appointed tariff publishing agent of such carriers.

Comments, limited to the rule changes proposed in this notice are invited. Comments should also include discussion of what, if any, significant effect the rule changes would have on the quality of the human environment, conservation of energy resources, or small businesses.

(49 U.S.C. 10321, 10703, 10762, 5 U.S.C. 553)

Decided: December 19, 1980.

By the Commission, Chairman Gaskins Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Gresham concurring. Commissioner Clapp absent and not participating.

James H. Bayne,

Acting Secretary.

[FR Doc. 80-40517 Filed 12-30-80; 8:45 am]

BILLING CODE 7035-01-M

*The modification to 49 CFR 1300.0(a)(1) and 1300.67(b) conforms with the proposed changes in Ex Parte No. 230 (Sub-No. 5) Improvement of TOFC/COFC Regulation, served November 21, 1980.

for the transportation of property between any place in the United States and any place in a foreign country and between freight forwarders and railroads. See § 1300.67.

b. In § 1300.12 the introductory text and paragraph (e) are revised to read as

§ 1308.0 General provisions; definitions.

* * * * *

(c) *Nonapplication.* Tariff governed by the regulations in this subpart must not contain:

Joint water-rail rates;

Joint water-motor rates;

V 45 DE 31 80 UMI

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1080, 1300 and 1308

[Ex parte No. 364 (Sub-No. 1)]

Freight Forwarder Contract Rates—Implementation of P. L. 96-296

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission has modified existing rules allowing: 1) the filing of contract rates between freight forwarders and motor common and contract carriers; and 2) the filing of joint rates and through routes between freight forwarders and rail and water carriers. Other editorial changes are adopted to comport with other legislated changes and to eliminate obsolete provisions.

DATES: The modifications shall become effective January 30, 1981.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275-7656.

SUPPLEMENTARY INFORMATION: We instituted this proceeding by Notice of Proposed Rulemaking, 45 Fed. Reg. 53190 (August 11, 1980) in response to the Motor Carrier Act of 1980, Public Law 96-296. The notice addressed two sections of the new Act, section 10(d) and section 22(h). We have, on this date, issued a final decision making the necessary CFR changes to implement the legislation. *Copies of the complete decision are available from the Secretary, ICC, Washington, D.C.* The rule changes and a summary of our reasoning follows.

Section 10(d) amends 49 U.S.C. 10766, "Freight forwarder traffic agreements." That section describes the types of agreements freight forwarders may make with one another and with other carriers. Section 10(d) deletes the 450 mile requirement concerning agreements with motor common carriers. It also permits freight forwarders to contract with motor contract carriers. We received no objections to our proposed rules to implement these changes and we will make them as they affect these contracts.

However we find that our original proposal to implement Section 22(h) in Part 1080, is inadequate for describing the arrangements between freight forwarders and water carriers and railroads intended by the Congress.

We have therefore examined Part 1300 and found it a more appropriate vehicle for implementing the new legislation.

In our decision we also found that the term "contracts" as it appears in section 22(h) means agreements for joint rates and through routes. Our analysis was based on the placement of the subsection in the Motor Carrier Act, the legislative history, and the problem associated with a literal interpretation of the term "contracts."

It was also clear from the legislative history of this section,[1] that freight forwarders are to be considered common carriers. The history also states that the contemplated contracts are negotiated arrangements between common carriers relative to a mutual understanding, and that intermodalism is to be fostered. We found no bar to this conclusion in section 10744. We concluded that these negotiated arrangements are for through routes and joint rates between carriers.

Finally, in response to comments from water interests and the FMC, we found that Congress intended that we read Section 22(h) of the Motor Carrier Act the same way for rail and water carriers.

Final Rules

1. Accordingly, 49 CFR 1080 is revised to read as follows:

PART 1080—CONTRACTS, FORWARDERS—MOTOR COMMON AND CONTRACT CARRIERS

Sec.
1080.1 Filing.
1080.2 Specifications.
1080.3 Amendments.
1080.4 Time of filing and notice of termination.
1080.5 Public inspection.

Authority: 49 U.S.C. 10321, 10703, 10749, 10762, 10766(b) and 5 U.S.C. 553.

§ 1080.1 Filing.

All contracts and amendments between freight forwarders and motor common and contract carriers entered into under 49 U.S.C. 10766(b) shall be in writing. The freight forwarder must file 2 copies of all these contracts with the Interstate Commerce Commission.

§ 1080.2 Specifications.

Contracts shall show:

(a) In the upper right-hand corner, a number in the consecutive series of the forwarder;

(b) The full name and address of each party to the contract, and the ICC number, omitting subnumbers, identifying the operating authority of each;

(c) A description of the transportation and other services to be performed by the motor, rail, or water carrier; the points or area where the service will be performed; the compensation (set forth in dollars or cents per unit of weight or other measure, or as a specific percentage of the otherwise applicable motor or freight forwarder charge. If the latter method is used, the contract must cite the governing tariff by ICC number or by ICC Alpha Code deisgnation);

(d) The effective date of the contract; and

(e) All other terms and conditions agreed upon between the parties to the contract.

§ 1080.3 Amendments.

Amendments to contracts shall show their effective dates, and indicate all superceded provisions. They shall reflect the same series number as the original contract and be consecutively numbered.

§ 1080.4 Timing of filing and notice of termination.

Contracts, amendments, and termination notices shall be filed within 10 days after their effective dates. If a new contract, rather than an amendment, is filed, it shall specifically cancel the old contract. If names of parties are changed but the contract is to be continued, a new contract showing the names of the new parties or a document adopting the old contract and reflecting the new names shall be filed within 30 days.

§ 1080.5 Public inspection.

All contracts and amendments filed with the Commission under the rules and regulations of this part shall be open to public inspection.

2. 49 CFR 1300(a)(1) is amended, and the introductory text of 1300.12, 1300.12(e), 1300.67(b), and 1308.0(c) are revised as follows: *

a. Section 1300.0(a)(1) is amended by revising the second sentence to read as follows:

§ 1300.0 General provisions; definition.

(a)(1) * * *.

The regulations in this part shall also govern the construction and filing of tariffs naming through routes and joint rates over the line of common carriers by freight forwarders, water, or pipelines, subject to the Interstate Commerce Act, on the one hand, and vessel-operating common carriers by water engaged in the foreign commerce of the United States, as defined in the Shipping Act, 1916, on the other hand,

[1] H.R. Rep. No. 96-1069, 96th Cong., 2d Sess. (1980). House Comm. on Public Works and Transportation, Motor Carrier Act of 1980, Report Together with Additional, and Minority Views.

* The modification to 49 CFR 1300.0(a)(1) and 1300.67(b) conforms with the proposed changes in Ex Parte No. 230, (Sub-No. 5) Improvement of TOFC/COFC Regulation, served November 21, 1980.

for the transportation of property between any place in the United States and any place in a foreign country and between freight forwarders and railroads. See § 1300.67.

b. In § 1300.12 the introductory text and paragraph (e) are revised to read as follows:

§ 1300.12 Restoration and discontinuance of water service.

Tariffs containing rail-and-water, freight forwarder-and-water, rail-and-nonvessel operating water common carrier, or all-water rates applicable via routes upon which it is necessary to close navigation during a portion of each year, must provide for the restoration and discontinuance of service over such routes in the manner prescribed in paragraphs (a) to (e) of this section.

* * * * *

(e) Tariffs may be reissued. Tariffs containing rail-and-water, freight forwarder-and-water, or all-water rates may be reissued or amended at any time in the regular manner, but tariffs containing the clause prescribed by paragraph (b) of this section which are made effective subsequent to the date of actual discontinuance of service must contain a statement that service was discontinued on ———— as per supplement No. ———— to ICC No. ———— (former tariff) and that supplement announcing discontinuance of service for that season will not be filed.

c. Section 1300.76(b)(1) is revised to read as follows.

§ 1300.67 Export and import traffic—ocean carriers.

* * * * *

(b) *Through routes and joint rates.* (1) A common carrier by pipeline, freight forwarder, or water, subject to the Interstate Commerce Act (hereinafter referred to in this section as the domestic carrier), may establish a through route and joint rate with a vessel-operating common carrier by water engaged in the foreign commerce of the United States (hereinafter referred to in this section as the ocean carrier), as defined in the Shipping Act, 1916, for the transportation of property between any place in the United States and any place in a foreign country. Every tariff naming such a through route and joint rate shall be filed with this Commission. The tariff may be filed in the name of the ocean carrier, a conference of ocean carriers, the domestic carrier or the duly appointed tariff publishing agent of such carriers.

d. Section 1308.0(c) is revised to read as follows.

§ 1308.0 General provisions; definitions.

* * * * *

(c) *Nonapplication.* Tariff governed by the regulations in this subpart must not contain:

Joint water-rail rates;
Joint water-motor rates;
Joint water-rail-motor rates;
Passenger fares;
Joint water-freight forwarder rates;
Joint water-rail-freight forwarder rates;
Contract carrier rates or charges.

Furthermore, tariffs published under this subpart must not contain joint rates and through routes over the lines of common carriers by water subject to the Interstate Commerce Act, on the one hand, and vessel-operating common carriers by water engaged in the foreign commerce of the United States, as defined in the Shipping Act, 1916, on the one hand, for the transportation of property between any place in the United States and any place in a foreign country. For applicable regulations, see §§ 1300.67 and 1307.49.

This decision will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10321, 10703, 10749, 10762, 10766(b), and 5 U.S.C. 553)

Dated: December 19, 1980

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Vice Chairman Gresham concurring. Commissioner Clapp absent and not particlpating.

James H. Bayne,

Acting Secretary.

[FR Doc. 80-40516 Filed 12-30-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1042

[Ex Parte No MC-142]

Elimination of Gateway Restrictions and Circuitous Route Limitations

Decided: December 19, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting rules which eliminate gateway restrictions and circuitous route limitations, as required by Section 6 of the Motor Carrier Act of 1980. The rules allow a property carrier which can lawfully provide through service either by joining together separate grants of operating authority, or by operating over a single regular route, to perform that service over any available route. Property Superhighway and Deviation Rules are, for the most part, removed as obsolete. The rules are expected to reduce energy consumption and improve operating efficiencies in the property and motor carrier industry.

EFFECTIVE DATE: The rules become effective on December 28, 1980.

FOR FURTHER INFORMATION CONTACT: Karl Morell, (202) 275-7953, or Edward E. Guthrie, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Section 6 of the Motor Carrier Act of 1980, enacted July 1, 1980, added a new subsection (h)(1)(A) to 49 U.S.C. 10922 which requires the Commission to eliminate gateway restrictions and circuitous route limitations on the operations of motor common carriers of property. On September 16, 1980, we instituted this proceeding by issuing a notice of proposed rulemaking (45 FR 61333) to implement this new statutory requirement. In that notice, we announced that we were considering adopting rules which would allow any property carrier which can lawfully provide through service either by joining together separate grants of operating authority, or by operating over a single regular route, to perform that service over any available route. In a supplemental notice (45 FR 75717), we addressed the effect of Section 6 of the Act on those proceedings involving interim gateway restrictions which were not administratively final on July 1, 1980. In the supplemental notice, we proposed to consider those interim gateway restrictions to be subject to automatic elimination by virtue of the requirements of Section 6.

We invited the public to comment and 20 statements were received. Our discussion will be limited to three procedural matters and those provisions of the proposed rules which we have been requested to modify or clarify by various parties.

Procedural matters.—Congress has required that we eliminate gateway restrictions and circuitous route limitations by December 28, 1980. Because of the limited time Congress has provided for the promulgation of these rules, we believe there is good cause to make them effective in less than 30 days. See 5 U.S.C. 553(d)(3). The rules are permissive and do not require carriers to change their operations. Also, since the purpose of these rules is to relieve restrictions in outstanding authorities, they do not require the normal 30 days notice before their effective date. See 5 U.S.C. 553(d)(1). Therefore, the rules will be made effective on December 28, 1980.

The Motor Carrier Lawyers Association (MCLA) requests oral

argument in this proceeding to address the issue of whether the Commission should retain the distinction between regular- and irregular-route operations. The MCLA contends that the proposed rules will eliminate this longstanding

Past operations through gateways.—The MCLA and a group of 15 carriers, which filed a joint comment, contend that the proposed rules are beyond the scope of the Congressional intent in that the rules fail to draw a distinction

actively operate. Congress, in Section 6, directed the Commission to "eliminate gateway restrictions" and it made no distinction between actual and potential operations over a gateway. Also, since Congress did not define the term

they will be discouraged from using more direct routes. Therefore, it recommends that we allow carriers to offer full intermediate point service on any route over which they chose to operate pursuant to the involved rules.

The language of part (A) of Section 6

Inc. (RCCC), supports adoption of the proposed rules but questions the intended interpretation of proposed § 1042.11(c). Section 1042.11(c) of the proposed regulations essentially would retain the "25-mile" rule and the "intermediate-point service" provision

used along permissible superhighway routes under the rules. In essence, a carrier may use a permissible superhighway route much like any regular certificated service route operating vehicles over it essentially in the manner the carrier desires.

argument in this proceeding to address the issue of whether the Commission should retain the distinction between regular- and irregular-route operations. The MCLA contends that the proposed rules will eliminate this longstanding distinction without the affected public having had an opportunity specifically to address this issue. The purpose of this proceeding is to implement the statutory requirement that we eliminate "gateway restrictions and circuitous route limitations." We do not believe that this statutory language can be logically interpreted as excluding the circuitous operations of regular-route carriers. The proposed rules generally will permit regular-route carriers to use any available route in operating between their authorized service points. This, of course, will erode, to some extent, the distinctions between regular- and irregular-route motor carrier operations. Congress presumably was aware of this when the legislation was drafted. Congress' expressed concerns about efficiency, economy, and productivity in the motor carrier industry may well require a reevaluation of the distinctions between regular- and irregular-route operations as established in *Transportation Activities, Brady Transfer & Storage Co.*, 47 M.C.C. 23 (1947). However, we do not believe that it is necessary or practicable to hold oral arguments on this issue in this proceeding, especially because of the statutory requirement that we promulgate final rules by December 28, 1980. Accordingly, the request for oral argument is denied.

The MCLA also contends that this proceeding is fundamentally flawed because the Commission has not met its obligations under the national policies of environmental and energy concerns. It contends that we are required by law to prepare an environmental impact statement and a statement of energy impact. Therefore, the MCLA requests that we hold this proceeding in abeyance and, once the necessary statements are prepared, that we renotice the proceeding. In the notice in this proceeding, we indicated that it did not appear that this action would significantly affect the quality of the human environment, but it was expected to contribute to the conservation of energy resources. Comments were expressly invited on these issues. Moreover, the question of the effect of the proposal on the environment and energy conservation has been studied by the Commission's Energy and Environment unit and will be discussed later in this document. Therefore, the MCLA's motion to renotice is denied.

Past operations through gateways.—The MCLA and a group of 15 carriers, which filed a joint comment, contend that the proposed rules are beyond the scope of the Congressional intent in that the rules fail to draw a distinction between a carrier that is actually operating over a gateway and one which merely holds authority that would permit such an operation. The MCLA argues that there can be only a "gateway restriction", as contemplated by Congress, when a carrier is now actively operating over the gateway. The group of carriers contends that it is imperative that the Commission include in the rules an appropriate definition of the term "gateway", and that this term be given its natural meaning as developed in past Commission decisions. They assert that in *Gateway Elimination*, 119 M.C.C. 170 (1973) and 119 M.C.C. 530 (1974), the Commission defined a "gateway" in terms of a carrier providing an active service through a specific point. Therefore, the MCLA and the group of carriers contend that the Commission must require carriers to submit evidence of actual operations over a gateway before that gateway can be eliminated.

In *Gateway Elimination, supra* 119 M.C.C. at 197, the Commission adopted the following definitional statement. "Where a motor common carrier holds *separate* and *unrestricted* authorities which have a common point of service *to* which a given shipment may be transported under one authority and *from* which the same shipment may be transported under the other the carrier may furnish through service on the shipment under a combination of the authorities provided the authorities are not restricted *through* the common service point or points (the gateway). The import of this statement is that a common point of service becomes a gateway whenever two authorities may be joined together at that point to render a through service and not only upon the actual commencement of operations through that point. This definitional statement clearly speaks in terms of potential as well as actual operations. Therefore, consistent with this longstanding definition of a "gateway", we do not believe that it is necessary to require proof of actual operations through a gateway in order to authorize direct service. Similarly, we do not believe that it is necessary specifically to include the definition of a gateway in the rules.

Nor do we believe that the language of Section 6 can be reasonably interpreted as pertaining only to those gateways over which carriers now actively operate. Congress, in Section 6, directed the Commission to "eliminate gateway restrictions" and it made no distinction between actual and potential operations over a gateway. Also, since Congress did not define the term "gateway restriction" (which is a word of art in the industry), we assume that it was familiar with the common, industry-wide meaning of that term, which, as we discussed above, includes potential operations. Furthermore, Congress has clearly treated the removal of gateway restrictions and circuitous route limitations different from the removal of other types of restrictions. Compare subsection (h)(1)(A) with (h)(1)(B) of 49 U.S.C. 10922. Congress has told us to remove all gateway restrictions within 180 days of enactment of the statute, *i.e.*, by no later than December 28, 1980. In contrast, Congress has required simply that we establish procedures within 180 days to remove other types of restrictions on an application-by-application basis over time, and it established certain criteria to guide our determinations in this regard. Had Congress intended that we require individual carriers to demonstrate active movements through a gateway to qualify that gateway for elimination, it simply would have included gateway restrictions in the application procedures provided for in subsection (h)(1)(B) rather then treating them separately in subsection (h)(1)(A). Clearly, it would be impossible for us to meet our statutory deadline if, as suggested, we were to require carriers to file evidence of existing operations through gateways. Accordingly, we believe that the rules we are adopting in this proceeding are consistent with the provisions of Section 6 of the Act and its legislative history.

Intermediate point service.—In the notice in this proceeding we explained that, except as provided by proposed Section 1042.11(c), regular-route carriers conducting operations under the proposed rules would not be permitted to serve any point not otherwise specifically authorized to be served by them in certificated operating authorities. The United States Department of Transportation (DOT) contends that not allowing carriers to serve intermediate points while conducting operations under the involved rules is inconsistent with the Motor Carrier Act and the legislative history and contradicts our proposals in Ex Parte No. MC-142 (Sub-No. 1), *Removal of Restrictions, Motor Car. of Property*, 132 M.C.C. 114 (1980). DOT maintains that, unless carriers are permitted to serve intermediate points, they will be discouraged from using more direct routes. Therefore, it recommends that we allow carriers to offer full intermediate point service on any route over which they chose to operate pursuant to the involved rules.

The language of part (A) of Section 6 of the Act refers merely to the removal of those restrictions and limitations which prevent carriers from providing service by way of the most direct routes. We believe that Congress' intent in drafting this section was simply to improve the operating economies and efficiencies of carriers by allowing them to operate over new, more direct routes between points already authorized under their certificates, and not to enable carriers to acquire new service points. To permit maximum operational flexibility, § 1042.11(a) of the rules will allow regular-route motor common carriers to use, without limitation, any route they desire in operating between their authorized service points. These routes need not necessarily be more direct, nor is there any requirement that carriers file for authority to operate over them. Therefore, if carriers were permitted to serve intermediate points while operating under this rule, they would be able, essentially, to commence unlicensed service operations along any route over which they choose to operate. We do not believe that Congress intended such a result when it enacted the Motor Carrier Act of 1980.

Also, we do not believe that the rules being adopted in this proceeding are inconsistent with the rules adopted in Ex Parte No. MC-142 (Sub-No. 1). Under the procedures adopted in that proceeding, carriers will be able to acquire authority to serve all intermediate points on their existing authorized regular service routes. This will enable carriers to perform a more efficient and economical service while operating over their regular routes. The rules being adopted in this proceeding will provide for more efficient overall operations by allowing carriers to use any route they desire in operating between the authorized service points on their regular routes. We emphasize, in this connection, that the rules promulgated here are designed solely to implement certain restriction removal aspects of the Motor Carrier Act. To the extent that carriers may wish to serve points on these more direct routes, they can always apply for the requisite regular-route authority under the substantially eased entry provisions of Section 5 of the Act and our regulations promulgated in Ex Parte 55 (Sub-No. 43).

The "same vehicle" rule.—The Regular Common Carrier Conference, Inc. (RCCC), supports adoption of the proposed rules but questions the intended interpretation of proposed § 1042.11(c). Section 1042.11(c) of the proposed regulations essentially would retain the "25-mile" rule and the "intermediate-point service" provision of the Property Motor Carrier Superhighway Rules which, in most other respects, are rendered superfluous by the proposed rules. RCCC notes that proposed § 1042.11(c) does not contain the "depart from and return to" language of the existing Superhighway Rules. It questions whether, by not including that language, the Commission intends to repudiate the "same vehicle" interpretive ruling made in *Petition for Declaratory Order—Superhwy. Opers.*, 125 M.C.C. 688 (1976). RCCC contends that the "same vehicle" rule imposes insurmountable operational impediments on the normal handling of less-than truckload shipments and forces carriers to perform inefficient and uneconomical operations.

In *Petition for Declaratory Order—Superhwy. Opers., supra*, at 692–93, Division 1 concluded that, in order to comport with the Superhighway Rules, the same vehicle that departs from the underlying regular service route to perform operations pursuant to the rules must also return to the underlying route. We believe that this interpretive ruling involved too literal a reading of the words of the rules (i.e., "depart from and return to" as connoting necessarily a vehicle moving, and not just a route extending, between these points) and not the spirit and intent of the rules. The Superhighway Rules were intended to allow superhighway services but not to make the performance of these services inefficient and uneconomical. Moreover, the "same vehicle" rule is inconsistent with the intent of Section 6 of the Act and the rules being promulgated in this proceeding. Therefore, the rules should be interpreted logically and with common sense reasonably not to compel that the same vehicle departing the service route must return or that the vehicle operating under the rules must depart and return. Accordingly, in this regard the decision in *Petition for Declaratory Order—Superhwy. Opers., supra*, is overruled.

Where a carrier has a superhighway route which otherwise qualifies for use under proposed § 1042.11(c), it may use that route with no obligation that the same vehicle that departs from the service route must return to that route or that vehicles used in operations along the route must in fact depart and return. This leaves to the carrier's discretion the manner in which its vehicles will be used along permissible superhighway routes under the rules. In essence, a carrier may use a permissible superhighway route much like any regular certificated service route operating vehicles over it essentially in the manner the carrier desires.

Contract carriers and regular-route carriers of specified commodities.—In the notice in this proceeding, we requested comments on whether contract carriers and specific commodity carriers should be included in the proposed regular-route rules. We noted that contract carriers and transporters of specific commodities cannot generally be classified appropriately as bona fide regular-route operators. Therefore, we invited these carriers to convert their existing rights to corresponding irregular-route authority. In their comments, DOT and Overnite Transportation Company urge that we include common carriers of specific commodities within the scope of the proposed regular-route rules.

We believe that the conversion by contract carriers and carriers of specified commodities from regular- to irregular-route authority would cure any operational circuity for these carriers, and our invitation, in this regard, still stands. However, we do not believe that Section 6 of the Act can be reasonably interpreted as applying only to regular-route carriers of general commodities. The requirement of section 6 that we eliminate circuitous route limitations imposed on motor common carriers of property, as reasonably interpreted, would extend to carriers of specified as well as general commodities. Accordingly, proposed § 1042.11(a) will be modified by deleting the exclusion pertaining to transporters of specific commodities. However, since Section 6 pertains only to common carriers of property, contract carriers will not be included within the scope of the rules adopted in this proceeding.

Certificates of Registration.—In the notice, we also requested comments on whether the rules should be made applicable to authorities issued by the Commission under Section 10931 of the Act. These are authorities based on initial findings by State regulatory bodies, and authorize operations solely within a single State.

Overnite is of the view that allowing single State operators to use more direct routes is a matter that should be left to the States. RCCC points out that these carriers generally conduct intrastate and interstate operations in conjunction with one another to take advantage of operational efficiencies. Therefore, RCCC questions whether these carriers could feasibly separate the intrastate

and interstate aspects of their operations merely to take advantage of alternative routings that necessarily can apply only to the interstate portion of the traffic being handled.

We are aware, of course, that our jurisdiction in this matter extends only

route carriers from the scope of the rule and fails to state the purpose of the rule which is to update the Commission's files and not to reissue a certificate whenever a carrier's route is redesignated. We have modified

authorities, to the extent they are inconsistent with these rules, govern that carrier's operations until such restrictions or conditions are properly removed. Therefore, motor common carrier affiliates of railroads holding

govern the elimination of interim gateway restrictions from interim authorities.

Contrary to the MCLA's argument, the underlying authorities on which the involved interim tacking rights are

limitations imposed upon motor common carriers of property was made by Congress in the Motor Carrier Act. In implementing that Congressional directive, the environmental and energy impacts of this rulemaking have been

1. Retitle Part 1042 of Title 49 of the Code of Federal Regulations as "Motor Carrier Routing Regulations."

PART 1042—MOTOR CARRIER ROUTING REGULATIONS

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and interstate aspects of their operations merely to take advantage of alternative routings that necessarily can apply only to the interstate portion of the traffic being handled.

We are aware, of course, that our jurisdiction in this matter extends only to the interstate portion of these carriers' operations. However, to that extent we see no reason to exclude single State operators from the scope of the rules. The Congressional directive that we eliminate circuitous route limitations pertains to all motor common carriers engaged in interstate or foreign commerce. Therefore, we believe that single State carriers, to the extent of their interstate operations, should be able to take advantage of the involved rules. These carriers, of course, would have to continue conducting the intrastate portion of their operations in a manner consistent with the applicable State laws, as is the case with any carrier combining interstate and intrastate traffic.

Commonly controlled carriers.—ANR Freight System requests that we adopt a specific rule to eliminate routing restrictions for commonly controlled carriers. Affiliated carriers that join their respective authorities do so at interchange points and not at gateways. The elimination of interchange points is clearly beyond the scope of Section 6 of the Act and this proceeding. If a carrier finds that its operations via an interchange at a circuitous point are energy wasteful or inefficient, it may use existing procedures and file an application either for direct single-line authority or for the relocation of the interchange point.

Combining regular and irregular routes.—Georgia Highway Express, Inc., believes that the proposed rules are ambiguous in their treatment of gateways formed by the combination of regular and irregular routes. It points out that proposed § 1042.12, which is the pertinent section governing the elimination of these types of gateways, contains no express reference to regular-route authority and that the heading of that section suggests that it applies only to irregular-route carriers. To avoid confusion, we have modified proposed § 1042.12 expressly to include regular-route authorities.

Redesignated highways provision.—Proposed Section 1042.13 would retain the provision in the current deviation rules which requires a carrier to notify the Commission in case a highway over which it is authorized to operate is given a new designation. Rate Comparison Services, Inc., points out that, unlike the current provision, the proposed section does not expressly exclude irregular-route carriers from the scope of the rule and fails to state the purpose of the rule which is to update the Commission's files and not to reissue a certificate whenever a carrier's route is redesignated. We have modified proposed § 1042.13 to reflect more accurately the scope and purpose of this section.

Other suggested matters.—CRST requests that the Commission reverse its present and proposed policy of prohibiting the tacking of two or more irregular-route authorities, and, at the same time, issue a general rule of construction which would permit direct service where indirect operations may be performed over combinations of irregular routes.

We do not believe that the language of Section 6 of the Act can be logically interpreted as indicating that existing limitations precluding tacking must be eliminated. The term "gateway restriction" is generally employed when referring to the legal necessity that a carrier operate through authorized gateways (i.e., common service points) in joining separate authorities. The term "circuitous route limitations" is more generalized and speaks for itself. Both terms clearly deal with the concept of operational circuity. Where authorities cannot be tacked and, consequently, the carrier cannot render a through service on a given commodity, the potential for operational circuity is obviated insofar as that carrier's system is concerned. Congress, in drafting Section 6 of the Act, clearly sought to eliminate operational circuity in existing authorized services and not to create totally new operations. It is just as plain, however, that Congress intended to foster efficiency in fuel use and operations generally and that elimination of tacking restrictions would serve these ends. Nevertheless, we feel the most appropriate way to remove such restrictions is by filing a new application for direct authority in individual instances or to consolidate existing fragmented certificates to eliminate multiple restrictions.

Seaboard Coast Line Railroad Company and Seacoast Transportation Company, Inc., assert that the proposed rules should be extended to motor carrier affiliates of railroads. The rules being adopted in this proceeding do not expressly exclude these carriers. Motor common carrier affiliates of railroads can take full advantage of these rules unless, of course, their underlying authorities are restricted to the contrary, as is the case with any motor common carrier of property. Restrictions or conditions contained in any carrier's authorities, to the extent they are inconsistent with these rules, govern that carrier's operations until such restrictions or conditions are properly removed. Therefore, motor common carrier affiliates of railroads holding certificates which contain conditions requiring them to perform circuitous operations should avail themselves of the appropriate Commission procedures to have such conditions removed. Finally, Mr. Weiner requests that the Commission abolish Administrative Ruling 84. This matter is clearly beyond the scope of this proceeding.

Interim gateway restrictions.—The regulations adopted in *Gateway Elimination, supra,* allow carriers which have filed applications in good faith under the rules to continue providing service through their gateways until final disposition of their application proceedings. 49 C.F.R. 1065.1(b). A few proceedings instituted under those rules remain to be processed. There are also carriers which have pending gateway elimination applications directly related to finance proceedings under 49 U.S.C. 11344 or 10926, in which the finance transaction has already been consummated. Under these circumstances, carriers now hold *interim*—i.e., *pendente lite*—authority to tack their underlying authorities and operate through gateways to the extent that such operations are the subject of the pending proceedings. In the supplemental notice, we indicated that Section 6 of the Act should govern the removal of these interim gateway restrictions.

DOT and Wheaton Cartage Co., individually, and Cartwright Van Lines, Inc., Lester C. Newton Trucking Co., and Richardson Transfer and Storage Co., Inc., jointly, filed comments generally supporting the removal of interim gateway restrictions pursuant to the provisions of Section 6. The MCLA, on the other hand, opposes our proposed action in this regard.

In response to the supplemental notice, the MCLA reiterates its argument that there is no gateway restriction to be eliminated unless the carrier has been actually operating through the common point of service. There is no need to address further the MCLA's argument in this regard, since we have already discussed the proper definition of a gateway restriction. The MCLA also contends that Congress, in drafting section 6, intended the removal of certain operating restrictions from motor carrier certificates or permits. It argues that, since a grant of temporary authority cannot be considered a certificate or permit, Section 6 does not govern the elimination of interim gateway restrictions from interim authorities.

Contrary to the MCLA's argument, the underlying authorities on which the involved interim tacking rights are based are not temporary authorities, but permanent certificates. Permanent irregular-route authorities may be tacked with one another, on an interim basis, to the extent that such authorities are the basis of a pending gateway elimination application either filed under the regulations adopted in *Gateway Elimination, supra,* or directly related to a finance proceeding where the finance transaction has already been consummated. Carriers which have such applications pending hold lawful authority to continue providing through service by observing their gateways until final disposition of their application proceedings. Therefore, it is not the underlying authorities that are provisional in nature, but rather it is the right to tack these authorities.

Under the circumstances discussed above, carriers hold lawful interim authority to operate through gateways. Congress, in directing the Commission to eliminate gateway restrictions, made no distinction between "permanent" and "interim" gateways. Also, we do not believe that Congress intended that we impose different standards for the removal of interim, as opposed to permanent, gateway restrictions. Therefore, we believe that section 6 should properly be read to govern the removal of all gateway restrictions. Accordingly, in processing those pending proceedings involving interim gateway restrictions which were not administratively final on July 1, 1980, the Commission will consider all *bona fide* gateway restrictions to be automatically eliminated by virtue of the requirements of Section 6 of the Act.

Finally, contrary to the contention of Cartwright, Newton, and Richardson, we do not believe that it is necessary or practicable to promulgate a specific rule which would govern the elimination of the interim restrictions. Unlike permanent gateway restrictions, the interim restrictions are few in number and all are the subject of pending proceedings. Also, it is necessary that we issue appropriate certificates to these carriers to reflect accurately the scope of their authorized direct operations. Therefore, we will continue to process these individual pending cases and issue the carriers the appropriate operating authority.

Environmental and energy considerations.—The fundamental determination to eliminate gateway restrictions and circuitous route limitations imposed upon motor common carriers of property was made by Congress in the Motor Carrier Act. In implementing that Congressional directive, the environmental and energy impacts of this rulemaking have been examined and found not to be significant. To the degree that there may be environmental or energy effects flowing from our action, we believe that elimination of gateway restrictions and circuitous route limitations will improve, on a nationwide basis, energy efficiency and public safety, and reduce air and noise pollution. Although not deemed significant, the improvements in energy consumption and environmental quality are consistent with established national objectives. The environmental and energy documents which support these conclusions are set forth in Appendix B.

Accordingly, we adopt the rules proposed in the prior **Federal Register** notice, as set forth in Appendix A.

(49 U.S.C. 10321 and 10922(h)(1)(A) and 5 U.S.C. 553)

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Vice Chairman Gresham concurring in part and dissenting in part with a separate expression. Commissioner Clapp concurring in part and dissenting in part with a separate expression.

James H. Bayne,
Acting Secretary.

Vice Chairman Gresham, concurring in part and dissenting in part:

I disagree with the majority only to the extent that it applies the automatic gateway elimination provisions of Section 6 of the Motor Carrier Act of 1980 to interim tacking authority.

Commissioner Clapp, concurring in part and dissenting in part:

As I noted in my comments to the interim rules, Section 6 of the Motor Carrier Act of 1980 requires the elimination of gateway restrictions from "motor carrier certificates". (H.R. Rep. No. 96–1069 96th Cong. 2nd Sess. 17 (1980)). This means that restrictions must be removed only in the case of certificates which can be joined to form permanent gateways and not where there are so-called "temporary gateways". The temporary tacking allowed under the gateway procedures were provisional and intended only to provide administrative relief during the pendency of proceedings designed to establish *if* there is a gateway and if so whether it should be eliminated. If there is no gateway there is nothing to remove.

Appendix A

49 CFR 1042 is amended as follows:

* * * * *

1. Retitle Part 1042 of Title 49 of the Code of Federal Regulations as "Motor Carrier Routing Regulations."

PART 1042—MOTOR CARRIER ROUTING REGULATIONS

2. Designate current §§ 1042.1 and 1042.2 as a new subpart A entitled "Motor Carriers of Passengers."

Subpart A—Motor Carriers of Passengers

§§ 1042.3 and 1042.4 [Removed]

* * * * *

3. Remove current §§ 1042.3 and 1042.4.

4. Add to part 1042 a new subpart B entitled "Motor Carriers of Property" to read as follows:

Subpart B—Motor Carriers of Property

Sec.
1042.10 General.
1042.11 Elimination of routing restrictions—regular-route carriers.
1042.12 Elimination of gateways—regular- and-irregular-route carriers.
1042.13 Redesignated highways.

Authority: 49 U.S.C. 10321 and 10922(h)(1)(A) and 5 U.S.C. 553.

§ 1042.10 General.

(a) *Scope of this subpart.*—This subpart implements 49 U.S.C. 10922(h)(1)(A) by eliminating gateway restrictions and circuitous route limitations imposed upon motor common carriers of property. It permits direct service where indirect operations may be performed (1) over a single regular route or (2) over combinations of regular routes or irregular routes, or both, through a common service point.

(b) *Separate authorities that may be tacked.*—In the absence of a restriction to the contrary, a motor common carrier of property holding separate authorities which have common service points may join, or "tack," those authorities at the common point, or "gateway," for the purpose of performing through service under the following circumstances:

(1) Regular-route authorities may be tacked with one another.

(2) Regular-route authority may be tacked with irregular-route authority.

(3) Irregular-route authorities may be tacked with one another if the authorities were granted pursuant to applications filed on or before November 23, 1973, and the distance between the points at which service is provided, when measured through the gateway point, is 300 miles or less.

(4) Irregular-route authorities may be tacked with one another if the authorities involved contain a specific provision granting the right to tack.

§ 1042.11 Elimination of routing restrictions—regular-route carriers.

(a) *Regular-route authorities—construction.*—All certificates which, either singly or in combination, authorize the transportation by a motor common carrier of property over (1) a single regular route or (2) over combinations of regular routes or irregular routes, or both, through a common service point." Separate grants of regular route operating authority which have common service points (gateways) may be combined or assigned a new designation, such as a new number, letter, or name, the carrier shall advise the Commission by letter, and shall provide information concerning the new and the old designation, the points between which the highway is redesignated, and each

costs (3), the potential cost savings for regular route motor carriers amounts to approximately 0.78 percent.[3] Again, a more reasonable projection of cost savings is one half of the potential cost savings or 0.39 percent. Although cost savings of this magnitude are not

non-attainment area.[5]

Again, no substantial modal shifts are expected from the gateway elimination. Changes in modal air pollution emissions, therefore, are not expected.

2.4 *Public Safety*

Based upon 1974 accident statistics (4)

49 CFR Parts 1002 and 1137

[Ex Parte No. MC–142 (Sub-No. 1)]

Removal of Restrictions From Authorities of Motor Carriers of Property

§ 1042.11 Elimination of routing restrictions—regular-route carriers.

(a) *Regular-route authorities—construction.*—All certificates which, either singly or in combination, authorize the transportation by a motor common carrier of property over (1) a single regular route or (2) over two or more regular routes which can lawfully be tacked at a common service point shall be construed as authorizing transportation between authorized service points over any available route.

(b) *Service at authorized points.*—A common carrier departing from its authorized service routes under paragraph (a) of this section shall continue to serve points authorized to be served on or in connection with its authorized service routes.

(c) *Intermediate point service.*—A common carrier conducting operations under paragraph (a) of this section may serve points located within 1 airline mile of an alternative route it elects to use if all the following conditions are met:

(1) The carrier is authorized to serve all intermediate points (without regard to nominal restrictions) on the underlying service route.

(2) The alternative route involves the use of a superhighway (that is, a limited access highway with split-level crossings).

(3) The alternative superhighway route, including highways connecting the superhighway portion of the route with the carrier's authorized service route, (i) extends in the same general direction as the carrier's authorized service route and (ii) is wholly within 25 airline miles of the carrier's authorized service route.

(4) Service is provided in the same manner as, and subject to any restrictions that apply to, service over the authorized service route.

§ 1042.12 Elimination of gateways—regular- and irregular-route carriers.

A motor common carrier of property holding separate grants of authority (including regular-route authority), one or more of which authorizes transportation over irregular routes, where the authorities have a common service point at which they can lawfully be tacked to perform through service, may perform such through service over any available route.

§ 1042.13 Redesignated highways.

Where a highway over which a regular-route motor common carrier of property is authorized to operate is assigned a new designation, such as a new number, letter, or name, the carrier shall advise the Commission by letter, and shall provide information concerning the new and the old designation, the points between which the highway is redesignated, and each place where the highway is referred to in the carrier's authority. The new designation of the highway will be shown in the carrier's certificate when the Commission has occasion to reissue it.

Note.—Appendix B will not appear in the Code of Federal Regulations.

Appendix B—Environmental Assessment; Elimination of Gateway Restrictions and Circuitous Route Limitations

[Ex Parte No. MC–142]

Summary and conclusion: Elimination of gateway restrictions and circuitous route limitations, as proposed in Ex Parte MC–142, would improve, on a nationwide basis, energy efficiency and public safety, and reduce air and noise pollution. Although not deemed significant, the improvements in energy consumption and environmental quality are consistent with established national objectives.

1.0 *Description of the proposed action*

Section 6 of the Motor Carrier Act of 1980 directs the Interstate Commerce Commission to eliminate gateway restrictions and circuitous route limitations previously imposed upon motor common carriers of property. The proposed rules have been drafted to comply with the legislative directive.

As proposed, the rules would permit "direct service where indirect operations may be performed (1) over a single regular route or (2) over combinations of regular routes or irregular routes, or both, through a common service point." Separate grants of regular route operating authority which have common service points (gateways) may be combined or "tacked" for the purpose of performing direct service. Regular route and irregular route authorities may also be combined. Irregular route authorities may be combined if (1) the authorities were granted prior to November 23, 1973, *and* the distance through the gateway(s) is 300 miles or less, or (2) the authorities contain specific provisions which permit tacking.

2.0 *Environmental impacts*

By encouraging a reduction in motor carrier vehicle miles travelled, the proposed rules will reduce energy consumption, noise pollution, and air pollution, and will improve public safety. Through other actions,[1] the Commission has attempted to counteract potentially adverse impacts which could result if substantial amounts of rail traffic are diverted to motor carriage.

The class of motor carriers affected by the proposed rules includes regular route common carriers which, in the data used in the calculations, are classified as common carrier vehicle-owned or leased without driver. In 1979 trucks in this class logged 12,125,519,000 miles with an average load of 12.59 tons(1).

2.1 *Energy consumption*

The projected potential reduction in energy consumption as a result of the proposed gateway elimination is 76,392,288 gallons annually. This projection is based on an average circuity factor of 1.03362, [2] and an average fuel efficiency ratio of 65 ton-miles per gallon. The projection was derived as follows:

$$(12{,}125{,}519{,}000 \text{ miles} - \frac{12{,}125{,}519{,}000}{1.03362}) \times (12.59 \text{ tons}) \times \frac{\text{gallon}}{(65 \text{ ton-miles})} = 76{,}392{,}288 \text{ gallons}$$

It is unlikely that carriers will totally eliminate circuity following promulgation of the proposed rules. A more reasonable projection of fuel savings is one half of the potential fuel savings, or 38,196,144 gallons.

Assuming that motor carrier fuel costs are 24 percent of total motor carrier costs (3), the potential cost savings for regular route motor carriers amounts to approximately 0.78 percent.[3] Again, a more reasonable projection of cost savings is one half of the potential cost savings or 0.39 percent. Although cost savings of this magnitude are not expected to induce any substantial diversion of rail traffic to motor carriage, there may be some modal shift in highly competitive geographical or commodity markets. The rail service most vulnerable to motor carrier diversion is trailer-on-flatcar (TOFC) service.[4]

2.2 *Noise Pollution*

Employing the same vehicle mile and circuity figures used in the energy consumption analysis, the proposed rules could potentially reduce regular route common carrier vehicle miles by approximately 3.25 percent, or 394,400,214 vehicle miles annually. A more reasonable expectation of vehicle mile reduction is one half of the potential reduction, or 197,200,107 vehicle miles annually. Compared with all motor carriers regulated by the ICC (which includes irregular route and contract carriers), the projected savings amount to 1.05 percent of total *vehicle miles.* This projected reduction in vehicle miles will reduce single event noise intrusions by regulated carriers on a nationwide basis by approximately 1 percent. Although some roads may experience an increase in truck traffic, none is expected to have a significant increase in noise intrusions.

Since there is not likely to be any substantial diversion of rail traffic to motor carriage, changes in modal noise emissions are not expected.

2.3 *Air Pollution*

Because of the expected reductions in energy consumption and vehicle miles travelled, a slight reduction in air pollution emissions from regulated carriers on a nationwide basis is expected. Some specific roads and communities may experience additional traffic and a concomitant increase in emissions, but not enough to constrain substantially efforts to meet National Ambient Air Quality Standards in any non-attainment area.[5]

Again, no substantial modal shifts are expected from the gateway elimination. Changes in modal air pollution emissions, therefore, are not expected.

2.4 *Public Safety*

Based upon 1974 accident statistics (4) and based upon projected reductions in vehicle miles, the potential reduction in accidents resulting from the proposed rules is approximately 3518 accidents per year.[6] A more reasonable projection of vehicle accident reduction is one half of the potential reduction, or 1759 accidents per year.[7]

Intermodal shifts in operating mileage and associated changes in modal accident levels are not anticipated.

Sources Used

1. *Trinc's Blue Book of the Trucking Industry, 1980 Edition,* Trinc Transportation Consultants, Washington, D.C., Sept. 1980. Pages S–6 and S–8.

2. *Potential Fuel Conservotion Meosures by Motor Carriers in the Intercity Freight Market, Vol II,* Charles River Associates, Cambridge, MA, March 1977. Page E–12.

3. "The Energy Crisis and Intermodal Competition", paper presented to the Transportation Research Board, by David S. Paxson, Washington, D.C., January 1980. Page 15.

4. *Reference Manual: Assessment of Environmental Impacts Associated with Railroad Abondonment Proposals,* Interstate Commerce Commission, Washington, D.C., October 1976. Page 6–2.

Statement of Energy Impact—Elimination of Gateway Restriction and Circuitous Route Limitations

[Ex Parte No.]

The rules proposed in Ex parte No. MC–142 would permit regular route common carriers to use less circuitous routes than currently permitted. The net effect of the rules will be a reduction of approximately 398,400,214 vehicle miles and approximately 76,392,288 gallons of fuel each year. This reduction in energy consumption, although insignificant in the context of total yearly transportation fuel consumption, comports with the national goal of energy conservation.

[FR Doc. 80-40456 Filed 12-30-80; 8:45 am]

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[1] See e.g., Ex Parte 230 (Sub-No. 5), *Improvement of TOFC/COFC Regulation,* and Ex Parte 282 (Sub-No. 7), *Speciol Intermodol Authority.*

[2] For this circuity factor a truck must travel 1.03363 times the shortest ground distance. The circuity factor was derived from an empirial observation of one regular route common carrier by Charles River Associates (2).

[3] (1−1/1.03362] × (.24) = .0078.

[4] Ex Parte 230 (Sub-No. 5), *Improvement of TOFC/COFC Regulation,* and Ex Parte 282 (Sub-No. 7), *Special Intermodal Authority,* should encourage use of TOFC service, however, through exemption of the rail portion of TOFC and through relaxed regulations for rail-affiliated motor carriers to gain operating authority for movements prior and subsequent to TOFC carriage.

[5] A non-attainment area is a geographical region which exceeds on a regular basis the National Ambient Air Quality Standard for one or more pollutant.

[6] (394,400,214 vehicle miles) × 8.92 accidents/(million vehicle miles) = 3518 accidents/year.

[7] (50 percent) × (3518 accidents/year) = 1759 accidents/year.

49 CFR Parts 1002 and 1137

[Ex Parte No. MC–142 (Sub-No. 1)]

Removal of Restrictions From Authorities of Motor Carriers of Property

Decided: December 19, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: This document contains final rules which implement Section 6 of the Motor Carrier Act of 1980. Section 6 requires the Commission to implement, by regulation, procedures to process expeditiously applications of individual motor carriers of property seeking to remove operating restrictions or to broaden unduly narrow authorizations in their outstanding certificates or permits. The procedures must be effective by December 28, 1980. This proceeding was instituted by a notice of proposed rulemaking served and published on September 16, 1980, at 132 M.C.C. 114, and 45 FR 61326, respectively. Because of the Congressional directive that we have rules in place by December 28, 1980, the final rules will be made effective on that date.

EFFECTIVE DATE: These rules will be effective December 28, 1980.

FOR FURTHER INFORMATION CONTACT: Ombudsman's Office (202) 275–7440; Howell I. Sporn (202) 275–7575; Edward E. Guthrie (202) 275–7691.

SUPPLEMENTARY INFORMATION:

Background

The Motor Carrier Act of 1980, Public Law 96–296, enacted July 1, 1980, added a new subsection (h) to 49 U.S.C. 10922 which, as set forth in the previous notice, directs the Commission to implement regulations to process applications filed by motor carriers of property seeking to remove operating restrictions from their certificates or permits in order to:

(1) broaden reasonably the categories of property authorized by the carrier's certificate or permit;

(2) authorize transportation service to intermediate points on the carrier's route;

(3) provide round trip authority where only one-way authority exists;

(4) eliminate unreasonable or excessively narrow territorial limitations; or

(5) eliminate any other unreasonable restriction that the Commission deems to be wasteful of fuel, inefficient, or contrary to the public interest.

Section 10922 requires that action be taken on the basis of individual

the exception of section 553(d)(3).[1] In any event, the exemption in 5 U.S.C. 553(d)(1) for rules which grant or recognize an exemption or relieve a restriction also applies here. Furthermore, no person will be

We believe that opponents to our proposed procedure misread our congressional mandate in this area. We affirm the approach to developing these regulations stated in the previous notice. We have, however, made two

argue that at least 40 days is necessary. On the other hand, Arrow Truck Lines, Inc., states that 20 days is sufficient time due to the statutory mandate for expeditious treatment of restriction removal applications.

We believe that the parties opposing our proposed procedures overlook several significant factors. First, there is clear significance in the fact the Congress imposed a time limit of *180 days* for the Commission to issue an

stated at page 117 of our previous notice:

In determining what Congress intended to provide in the way of adversarial process in restriction removal cases, there are a number of

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(5) eliminate any other unreasonable restriction that the Commission deems to be wasteful of fuel, inefficient, or contrary to the public interest.

Section 10922 requires that action be taken on the basis of individual applications. Time limitations are set for both the promulgation of final rules and the processing of individual applications. The regulations we adopt must be effective by December 28, 1980, and they must provide for final Commission action within 120 days after the application is filed with the Commission. Only under "extraordinary circumstances" may we extend this time for an additional 90 days.

In granting or denying applications the Commission is to (A) consider, among other things, the impact of the proposed restriction removal upon the consumption of energy resources, potential cost savings and improved efficiency, and the national transportation policy set forth in 101101(a), and (B) give special consideration to providing and maintaining service to small and rural communities and small shippers.

In the previous notice, we proposed rules that would establish expedited procedures for the filing of applications to eliminate restrictions or to broaden unduly narrow authorizations. The rules also included proposed guidelines for the public by listing certain types of authority which the Commission believes may appropriately be reformed under the restriction removal procedures. The Commission invited comments on all aspects of the rules. In addition, we pointed out certain aspects of the proposed rules on which we believed public comment would be particularly helpful.

The final rules we are adopting are set forth in Appendix A. They are substantially similar to the ones proposed. In light of numerous helpful suggestions made by commentors, some modifications and additions have been made to both the application process and our guidelines to the public. The changes are highlighted in the text of this document.

Preliminary Procedural Matters

The rules adopted in this proceeding will be effective on December 28, 1980.

Under Section 553(d)(3) of the Administrative Procedure Act [5 U.S.C. 553(d)(3)], an agency may deviate from the normal 30-day period before rules promulgated by the agency become effective "for good cause found and published in the rules." We conclude that the Congressional mandate for final rules to be in place by December 28, 1980, constitutes good cause to trigger the exception of section 553(d)(3).[1] In any event, the exemption in 5 U.S.C. 553(d)(1) for rules which grant or recognize an exemption or relieve a restriction also applies here. Furthermore, no person will be adversely affected. The regulations neither require any carrier to do nor to refrain from doing anything. Rather, the new regulations serve as an open-ended invitation for motor carriers to take advantage of the Congressional initiative to enable carriers to remove restrictions or to broaden unduly narrow authorizations in outstanding certificates and permits.

The Motor Carrier Lawyers Association (MCLA) requests oral argument. We doubt that oral argument would add anything of substance to the excellent comments we have received. The proposed regulations are essentially procedural and are intended to implement a well understood Congressional policy favorable to the elimination of useless restrictions. We do not perceive any significant policy, legal, or factual matters that could be elucidated through oral presentation. Given these conclusions, as well as the time constraints we face in implementing final rules, we shall deny the request for oral argument.

The MCLA also includes a motion that the Commission renotice this proceeding because we did not include a Statement of Energy Impact and Environmental Impact Statement in our notice of proposed rulemaking. For the reasons set forth in detail later in this decision, we believe the petition is without merit, and it will be denied.

Procedures for Processing Applications

A number of parties object to the procedures we have proposed to process restriction removal applications. These parties generally argue that the proposed rules are violative of the Administrative Procedure Act and deny due process. Their position is that we are required to employ a formal adjudication procedure similar to that used for processing applications for conventional operating rights authority.[2] Several parties assert that the 20-day period for filing comments to individual applications is unreasonably short.

We believe that opponents to our proposed procedure misread our congressional mandate in this area. We affirm the approach to developing these regulations stated in the previous notice. We have, however, made two procedural changes to the rules.[3]

First, at the suggestion of numerous parties, the final rules contain a provision requiring any applicant to furnish a copy of its application package to any interested party upon the payment of a $10.00 fee. Second, to account for that procedural addition, we will extend the time to file comments from the 20-day period we proposed initially to 25 days from the date of publication of the application in the **Federal Register.** These changes should provide additional notice for potential commentors and better enable those parties to file well-reasoned comments to restriction removal applications.

Our previous notice solicited comments on the question of whether new 49 U.S.C. 10322(b) required **Federal Register** publication of each restriction removal application, and whether some other form of notice might be legally sufficient and more expeditious. We expressed our concern that **Federal Register** publication is a time consuming process that will absorb much of the limited time allowed for final disposition of the applications.

The comments we received on this issue almost universally expressed the viewpoint that **Federal Register** publication is necessary to adequately inform interested parties of restriction removal applications.[4] Although no party has argued that such notice is required by 49 U.S.C. 10322(b), they generally agree that from a practical standpoint there is no other means by which notice can be given to carriers having a potential interest in given applications.

In light of the comments, we will require that each application be published in the **Federal Register.** In making this decision we do not believe that it is necessary to reach a legal determination as to whether such notice is in fact required by Section 10322(b).

As noted above, several parties argue that the 20-day period (which has been lengthened to 25 days) is inadequate. C & H Transportation Co., Inc., *et al,*

[1] The need for an agency to comply with a legislative directive for expeditious promulgation of regulations has been found by courts to constitute "good cause" under section 553(d)(3). *See e.g., U.S. Steel Corp.* v. *U.S.E.P.A.*, 605 F.2d 283 (7th Cir. 1979); *Clay Broadcasting Corp. of Texas* v. *United States*, 464 F.2d 1313 (5th Cir. 1972), rev'd on other grounds 415 U.S. 336 (1974).

[2] *See* Ex Parte No. 55 [Sub-No. 43), *Rules Governing Applications for Operating Authority*, 45 FR 45534 (1980).

[3] We have also added a new section to the rules—1137.15 Compliance, which is discussed later in this decision.

[4] Two commentors contend that **Federal Register** publication is not required. American Cyanamid Company asserts that Section 10322(b)(3) requires publication only in cases of original applications for authority. The Aluminum Association, Inc., states that it is only necessary to publish restrictions which the Commission determines to be excessively broad or outside the mandate of the statute.

argue that at least 40 days is necessary. On the other hand, Arrow Truck Lines, Inc., states that 20 days is sufficient time due to the statutory mandate for expeditious treatment of restriction removal applications.

We believe, on balance, that 25 days is an adequate length of time to file comments to individual applications.

As we noted in our previous notice, the congressional demand for speed, and the very tight time limits imposed, mean that we must adopt procedures that will impose difficult burdens on the parties and the Commission.

An important factor to note in this area is that comments are limited by the rules to either (1) the merits of the particular proposal, or (2) whether the proposal should properly be considered under these rules. See § 1137.13 (of the *final* rules). The limited issues to address in these proceedings should not necessitate a period longer than 25 days.

Finally, where parties file comments to an application, the Commission will be left with approximately 60 days to issue a final Commission decision (barring a showing of "extraordinary circumstances"). Given the large volume of applications we expect, this should provide us with no more than the bare minimum time needed to comply with our statutory time limits.

A. The Congressional Mandate

As noted above, the statute mandates that we process restriction removal applications "expeditiously", since the regulations we adopt must provide for final Commission action within 120 days after the application is filed. Only under "extraordinary circumstances" may we extend this time, and then only for an additional 90 days.

To comprehend fully the magnitude of the legislative directive, one must recognize that there are about 21,000 motor carriers of freight holding authority issued by this Commission. These carriers collectively hold approximately 500,000 outstanding certificates and permits. We believe that it is reasonable to assume that a large percentage of these authorities contain restrictions or unreasonably narrow authorizations susceptible respectively to removal or broadening under these rules. Given the new competitive environment in the motor carrier industry, we expect many carriers will take early, and full, advantage of the congressional initiative implemented in this proceeding. Moreover, at the present time we see no desirable manner of staggering the application filings for our administrative convenience in handling the large number of applications we expect.

We believe that the parties opposing our proposed procedures overlook several significant factors. First, there is clear significance in the fact the Congress imposed a time limit of *180 days* for the Commission to issue an *initial decision* in modified procedure cases for operating rights and only *120 days* for *final* Commission actions in restriction removal applications. Hence, if the Congress intended that similar types of issues be explored in these two types of proceedings, it would not have imposed such disparate time limitations.

We believe that the different time periods to a large extent reflect a Congressional appreciation that the two types of cases raise dissimilar issues for ultimate Commission resolution. In conventional licensing, after all, we ordinarily deal with the introduction of new carriers or the extension of existing carriers into new markets, where the issues of new or improved service and competitive impact, and the resultant public benefits or harm, play pivotal roles in the decisionmaking process. Restriction removal cases, although plainly of importance from both a public and private viewpoint, involve a narrower focus. There, we are concerned mainly with issues of improving efficiency and allowing existing operators to provide service in a more economical manner. Quite often (although not necessarily always) they will not involve the injection of a carrier into a new market or the redistribution of competitive relationships.

Our view is supported by Section 10922(h)(2) which states that the regulations we adopt must "provide for notice and the opportunity for interested parties to comment, but need not provide for oral evidentiary hearings." This language describes precisely the procedures normally followed by agencies conducting informal rulemaking under the Administrative Procedure Act, 5 U.S.C. 553. This language also suggests strongly that Congress did not envision these as conventional adversary licensing proceedings, where the decision would depend on the resolution of disputed facts and require the opportunity for the cross-examination of witnesses. Our preliminary determination, which we affirm here, is that the terms of the statute call for informal adjudicatory procedures of the type ordinarily employed in rulemaking proceedings, rather than procedures used in conventional adversary licensing proceedings.

Third, contrary to MCLA's assertion, our procedures are not founded solely upon the provision of the statute. As we stated at page 117 of our previous notice:

> In determining what Congress intended to provide in the way of adversarial process in restriction removal cases, there are a number of considerations apart from the words of the statute which we think are pertinent. Congress has clearly expressed its policy to the effect that narrow restrictions and narrowly drawn authorities in the certificates and permits of motor carriers of property are contrary to the public interest. That policy, obviously, does not need to be litigated in each individual case. Furthermore, we will normally be faced in these proceedings not with issues whose resolution would be aided by an adversary proceeding, but with the reformation of certificates issued by the agency itself and within the terms of guidelines to be established by the agency.

B. Applicability of the Administrative Procedure Act

In our previous notice we stated our preliminary conclusion that these proceedings need not be made on the record after an opportunity for hearings, and that the provisions of Sections 554, 556, and 557 of the APA that are pertinent to formal hearings do not apply. We proposed the adoption of simplified and expedited procedures in accordance with that conclusion.

We affirm our determination that the above-cited provisions of the APA are not applicable to our restriction removal application procedures. We do, however, believe that the requirements of Section 555(e) of the APA should be applied.[5]

It is well settled that the APA does not require the adjudicatory procedures of section 554, 556, and 557 in all cases of "adjudication". These sections apply only to "every case of adjudication required by the statute to be determined on the record after opportunity for agency hearing." [6]

As noted above, Section 10922(h)(2) states that the regulations we adopt must "provide for notice and the opportunity for interested parties to

[5] Section 555(e) of the APA, as pertinent, provides: "(e) Prompt notice shall be given of the denial in whole or in part of a written application . . . in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial." This subsection applies to all agency proceedings—formal or informal. *See* Davis, *Administrative Law Treatise*, § 16.00–5 at 391–392 (1970 ed.), citing Administrative Procedure Act, S. Rep. No. 79–248, 79th Cong., 2nd Sess., at 206 (1946).

[6] Davis, *Administrative Law Treatise*, § 16.00–4, pp. 390–391 (1970 Ed.).

comment, but need not provide for oral evidentiary hearings." The parties opposing the proposed procedure have not offered any rational explanation to support their contention that this language should properly be interpreted

fair and meaningful opportunity to be heard. On the other hand, the application procedures we adopt will aid the Commission in coping with the statutorily imposed time constraints.

C. Alternative Procedures

authorities containing objectionable restrictions. To deal with the permissible scope of new authority, we are contemporaneously issuing a final policy statement in Ex Parte No. 55 (Sub-No. 43A), *Acceptable Forms of Requests for Operating Authority*, 45

adopted. Most believe, as we do, that our mandate in Section 10922(h) is to be read broadly, and in concert with the balance of the legislation which recognizes the benefits of competition. However, some commentors take

applicable only to proceedings under the two above-mentioned sections. It is not applicable to, for example, motor carrier or broker of passenger licensing. Second, in any event, we will be determining applications on a case-by-case basis as required by the statute. As

raised by commentors or the Commission on its own initiative.

We stated in our previous notice at 120:

> As we read the new legislation, a finding of fitness is not a prerequisite to a grant of an application seeking restriction removal under

comment, but need not provide for oral evidentiary hearings." The parties opposing the proposed procedure have not offered any rational explanation to support their contention that this language should properly be interpreted to require the Commission to provide for a formal adjudication on the record after opportunity for agency hearings. We see no need for a full-scale adversary proceeding.

Section 10922(h)(2) leaves the Commission with a significant amount of discretion in both the procedures to be established and the substantive decisions that can be made under them.

The Supreme Court has stressed that regulatory agencies "should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties." [7] Also, where an agency fashions its regulations to implement its congressional mandate, courts generally will not interfere with the prerogative of the agency to select the remedy which through rational reasons it deems most appropriate.[8]

As we stated in our previous notice (at 117), "the tight time limits, may, in some instance, even make it impossible to prepare a decision detailing the reasons for the agency's disposition of each and every issue involved." [9] Also, we observed (at 119) that a discussion of all the 10922(h)(2) criteria relevant to a particular application would not be included in decisions on routine restriction removal applications due to time constraints.

We stand by our previous statements and findings will be issued in contested cases. We should emphasize that every decision rendered under these procedures will have a rational basis. We also shall issue decisions briefly explaining the reasons an application was granted or denied in cases where interested parties have filed comments raising material issues.

We believe that our procedures are fully consistent with the congressional mandate. We also believe that no party will be denied due process because our procedures provide all parties with a fair and meaningful opportunity to be heard. On the other hand, the application procedures we adopt will aid the Commission in coping with the statutorily imposed time constraints.

C. Alternative Procedures

Significantly, no party has offered a viable alternative to the procedures we have proposed. The MCLA, for example, has suggested that we provide for an expedited modified procedure, including a provision for an applicant's rebuttal statement, and an appeal of right from an initial decision. Their proposed procedure is premised upon having an application published in the Federal Register within 7 days of its receipt by the Commission. This is simply unrealistic. As we explain in detail in our final rule in Ex Parte No. 55 (Sub-No. 43), through diligent effort we are publishing applications for operating rights authority within 30 days from the date of filing, as compared to the 3- to 6-month period experienced in 1979 and early 1980. Nor can the Commission put all its work on new conventional applications "on hold" to handle restriction removal applications, because of the 180-day satutory time limit imposed by the Act (49 U.S.C. 10322) for issuing an initial decision in modified procedure cases.

The American Trucking Associations, Inc. (ATA), argues that the statute calls for formal adjudication under the APA. However, they basically agree with our proposed procedure, with one major exception. The ATA would add a provision allowing applicants to file a reply to a comment if it could demonstrate that "extraordinary circumstances" exist which would justify the Commission's extending the deadline and permitting a reply. They express their belief that such replies "would not be common" because of carriers' anticipated general reluctance to forego the benefits of restriction removal for up to an additional 90 days. We do not believe that a reply stage would be of significant benefit to the parties, or to the Commission's decisionmaking process. We believe that the "extraordinary circumstances" provisions would be more productively used as a mechanism for parties to file a discretionary appeal.

Proposed Standards for Applying for New Authority

In our previous notice we observed that, since certain restrictions will be removed under the procedures mandated by Section 10922(h)(1)(b), it would be pointless for the Commission to continue to issue, pursuant to applications for new authority, authorities containing objectionable restrictions. To deal with the permissible scope of new authority, we are contemporaneously issuing a final policy statement in Ex Parte No. 55 (Sub-No. 43A), *Acceptable Forms of Requests for Operating Authority*, 45 F.R. 45545 (1980). That proceeding and this one are obviously closely related.[10]

The rules that we have adopted in our restriction removal applications are consistent with the policy statement to assist carriers in applying for new authority.[11]

Substantive Considerations

The Congress has now spoken out clearly as to the undesirability of narrowly drawn authority and unreasonable restrictions. It has given us the responsibility for establishing procedures for eliminating objectionable restrictions.

As noted above, the terms of the statute leave to the Commission broad discretion as to the procedures to be adopted and the substantive decisions made under those procedures. We are to establish procedures for the removal of restrictions against service at intermediate points on the routes of regular-route carriers, and we are to provide round trip authority where only one-way authority exists. 49 U.S.C. 10922(h)(1)(B)(ii) and (i). In all other respects, the statute gives the Commission discretion to determine what restrictions and forms of authority are unduly narrow. We are to "reasonably broaden" commodity authorizations; to eliminate "unreasonable or excessively narrow" territorial limitations; and to eliminate any other "unreasonable" restriction that we deem "wasteful of fuel, inefficient, or contrary to the public interest."

The comments we received largely support our proposed framework for handling substantive decisions under the rules (using "preliminary finding") as a reasonable approach given the time limits under which we must process restriction removal applications. The comments generally support our preliminary determination as to the types of authority which could be broadened and restrictions which could be removed under the rules to be

[7] *F.C.C.* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940); *F.C.C.* v. *Schreiber*, 381 U.S. 279 (1965).

[8] *Condor Operating Co.* v. *Sowhill*, 514 F.2d 351 (Emer. Ct. App. 1975), cert. denied 421 U.S. 970 (1975).

[9] Courts have recognized the inherent difficulties that agencies face in meeting tight statutory deadlines and generally have found agency procedures which deal with time constraints, to be reasonable. *See* e.g., *United States Steel Corp.* v. *United States Environmental Protection Agency*, 605 F.2d 283 (7th Cir. 1979), cert. denied, 100 S.Ct. 710 (1980), —— U.S. —— (1980). *International Harvester Company* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973).

[10] No party takes exception to our position that the final regulations adopted in this proceeding should be consistent with the policy statement in Ex Parte No. 55 (Sub-No. 43A).

[11] Several issues, such as the appropriateness of using the two-digit Standard Transportation Commodity Code (STTC) classification to devise broad general commodity description, are discussed at length in Ex Parte No. 55 (Sub-No. 43A). Accordingly, those issues will be discussed only briefly in this decision.

adopted. Most believe, as we do, that our mandate in Section 10922(h) is to be read broadly, and in concert with the balance of the legislation which recognizes the benefits of competition. However, some commentors take exception to our fundamental view of Section 10922(h), our proposed use of preliminary findings, and the specific provisions of our guidelines. Most commentors, expressing disagreement with our proposed rules, however, limit their opposition to our proposal on one or various aspects of the guidelines for determining applications.

Overall, these comments lead us to confirm our proposal, and we will adopt the rules proposed under Subpart C—Guidelines for Determining Applications, with minor modifications discussed in the body of this decision.

A. Use of Preliminary Findings

Our proposed rules include guidelines (termed "preliminary findings") indicating examples of particular restrictions which the Commission believes should appropriately be removed pursuant to the procedures being adopted. We use the term preliminary findings, because our guidelines would merely provide guidance to the public rather than act as a final determinant of a particular application. We noted in our previous notice that we consider it essential that we provide guidelines because of the time limits under which we must process restriction removal applications.

The MCLA, C & H Transportation, *et al.*, and Arrow Truck Lines, Inc., argue that the Commission is in effect making general findings of public convenience and necessity or public interest in a rulemaking proceeding, thus violating the statutory proscription against master licensing in 49 U.S.C. 10922(b)(3) and 10923(b)(6).

On the other hand, William J. Monheim argues that it is imperative that the Commission provides guidelines and examples for the filing of restriction removal applications. The ATA, while questioning the use of the term "preliminary findings" in light of the proscription against "general findings", expresses its support for our concept. The other comments we received do not dispute our use of guidelines, but rather, comment on specific restrictions to be included or excluded within the guidelines.

The charge that we are engaging in master licensing is unfounded. First, we are not making findings that a grant of the application is consistent with the public convenience and necessity or in the public interest. The proscription against making general findings is applicable only to proceedings under the two above-mentioned sections. It is not applicable to, for example, motor carrier or broker of passenger licensing. Second, in any event, we will be determining applications on a case-by-case basis as required by the statute. As we emphasized in our previous notice, the rules would require the submission by applicants of information related to the Section 10922(h)(2) criteria. Parties would have the opportunity to comment or rebut the preliminary findings as they pertain to an individual application. Master certification, which was the subject of the Congressional concern reflected in section 5(a) of the Motor Carrier Act, was a specific procedure, well understood by the Congress as, for example, reflected in the now-abandoned proceedings in Ex Parte MC-135, adopted by the Commission in the past which, in essence, foreclosed the litigation of certain public interest issues in subsequent application proceedings. As adopted by the Commission in the past, Master Licensing was, in essence, a proceeding which foreclosed the litigation of public convenience and necessity issues in subsequent application proceedings. We are not foreclosing the litigation of any issue in response to individual applications. In prohibiting the Commission from making findings relating to public convenience and necessity based on general findings developed in rulemaking proceedings the Congress did not, in our judgment, intend to restrict our authority to engage in the conventional type of guidance to the public which is a traditional function of administrative agencies.

Overall, we find support for our use of guidelines as a reasonable approach to handle substantive decisions under the regulations. This approach will enable us to meet our statutory mandate to process individual applications in 120 days. Accordingly, it will be retained in the final rules.

The balance of this section of our decision will discuss the substantive decisions to be made under the restriction removal procedures.

B. Fitness Considerations

Our proposed and final § 1137.10(b), which lists the information that must accompany the application, does not require the submission of information concerning the applicant's fitness or ability to receive a grant of authority. We do, however, conclude that a recent finding by the Commission of a carrier's unfitness on safety grounds will be considered as a factor in granting or denying that carrier's restriction removal applications. The issue can be raised by commentors or the Commission on its own initiative.

We stated in our previous notice at 120:

> As we read the new legislation, a finding of fitness is not a prerequisite to a grant of an application seeking restriction removal under these procedures. Applicants have previously been found fit to receive the certificates or permits which they seek to reform, and a further fitness finding does not appear necessary in the absence of a specific statutory requirement.

We did, however, note that Section 10922(h)(2) requires the Commission to consider several criteria in granting or denying applications, one of which is the transportation policy set forth in section 10101(a)(7). That policy includes improving and maintaining a sound and safe motor carrier system. Accordingly, we sought comments on whether a recent finding of a carrier's unfitness on safety grounds should be considered as a factor in granting or denying that carrier's restriction removal application.[12]

The comments we received on the issue of fitness generally take one of three positions. Several parties [13] argue that the same fitness finding must be made under these regulations as those required under ordinary licensing proceedings for new operating rights. The New Orleans Traffic and Transportation Bureau takes the position that we should require evidence of a carrier's financial ability to conduct any broadened authority it seeks under these rules. Finally, several parties [14] argue that, while the Commission is not required to make a fitness finding in each application for restriction removal, a carrier's unfitness on safety grounds should be considered as one factor in determining applications filed under these regulations. We find ourselves in agreement with this last position.[15]

We base our decision that no fitness findings are required principally on the two significant factors set forth in our previous notice, and cited above. No party provides a convincing argument as to why we should ignore the lack of a statutory requirement for a fitness finding, and the fact that all applicants

[12] In a concurring opinion, Commissioner Clapp requested comments on "whether more than just a safety analysis should be required."

[13] The MCLA, Nelson & Harding, Celeryvale Transport *et al.*, and C & H Transportation Co., Inc., *et al.*

[14] The ATA, The Teamsters Union, American Cyanamid Company, Arrow Truck Lines, Inc., and William J. Monheim.

[15] We do, however, reject the ATA's contention that prior or pending findings of unfitness based on safety factors should effect a blanket disqualification of a carrier from receiving the benefits otherwise available under Section 10922(h).

under these rules will have been found fit to operate in the Commission proceeding in which they obtained their underlying operating rights, and make a fitness finding a prerequisite for a grant of a restriction removal application.

concerning the possible use of the STCC in reforming narrowly drawn authorizations.

A number of parties which had expressed disagreement with the proposal in Ex Parte No. 55 (Sub-No. 43A), concerning future grants of general commodities authority.

Steere Tank Lines opposes our proposal to include the "in bulk" exception. It argues that general commodities carriers have not in the

We suggested the possibility that carriers requesting backhaul authority under the rules would receive authority (if so requested) to transport materials, equipment, and supplies used in the manufacture, sale, and distribution of the already authorized outbound

Implied in the commodity description is authority to transport the already authorized commodity (or the exapnded authority) in addition to materials, equipment, and supplies, in *both directions.*

conjunction with the fact that the Commission does not authorize "routes" to irregular route carriers, is dispositive of the intent of Congress in the area of intermediate point authority.

F. Territorial Descriptions

under these rules will have been found fit to operate in the Commission proceeding in which they obtained their underlying operating rights, and make a fitness finding a prerequisite for a grant of a restriction removal application.

We are persuaded, however, that there might be circumstances where a carrier's unfitness on safety grounds should bar it from removing restrictions or expanding authority. Parties will be able to raise the issue with specific, rather than general, statements concerning the particular restrictions removal application. As alluded to earlier, the Commission could also raise the issue on its own initiative.

In this area, we observe that, while our directive to maintain a safe and sound motor carrier system is included in the National Transportation Policy (49 U.S.C. 10101(a)(7)), that policy also includes other relevant directives such as to allow the most productive use of equipment and energy resources. These other directives, as well as the other factors we are to consider in rendering our decisions in restriction removal cases, might, in certain cases, outweigh a carrier's past safety violations.

Finally, we can see no reason to require an applicant under these regulations to submit financial information on its ability to conduct any expanded authority sought, as the New Orleans Traffic and Transportation Bureau proposes. As we have stated, a fitness finding (safety or financial) is not required by the statute. Moreover, imposing such a requirement here would run contrary to our decision in adopting final rules in Ex Parte No. 55 (Sub-No. 43), to delete the requirement that applicants for new operating rights file financial information concerning their ability to conduct the operations they propose. As we note in that proceeding, bankruptcy laws and the insurance requirements imposed on carriers serve as adequate protection to the public in cases where existing carriers go out of business.

C. Commodity Descriptions

We proposed in § 1137.21(b) to allow carriers holding authority framed in terms of one or a limited class of commodities, to replace that description with a broad, generic one. To accomplish this, we proposed that carriers be given the choice of replacing unduly narrow authority with (1) the appropriate two-digit STCC level; (2) a commodity description contained in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 (1952) and 766 (1953); or (3) a broad class description (we provided several examples). We sought comments concerning the possible use of the STCC in reforming narrowly drawn authorizations.

A number of parties which had expressed disagreement with the proposal in Ex Parte No. 55 (Sub-No. 43A) to use STCC for all future requests for new authority, reiterated their position in this proceeding.

In our final policy statement in Ex Parte No. 55 (Sub-No. 43A), we have concluded that the STCC approach should not be adopted as an exclusive and comprehensive listing of permissible descriptions for all future operating rights applications. Rather, the STCC, as modified in that proceeding, will be used as an indication of the kinds of broad, generic commodity descriptions we find generally acceptable. Any other description proposed by a carrier will be considered acceptable if it is as broad or broader than STCC groupings.

We believe that our proposal in this proceeding regarding broadening of existing commodity authorizations is perfectly consistent with our conclusions as to the proper breadth of future commodity descriptions. Accordingly, we will affirm our preliminary determination to give carriers seeking broadening of their commodity authorizations the option of choosing an applicable classification from one of the three categories described above. Frankly, we do not believe our determination in this area of restriction removal to be contentious. No carrier will be forced to reform its commodity authority. If such a decision is made, however, it makes little sense of allow a carrier to seek a commodity classification which is narrower than the kinds of descriptions found in the three sources we have discussed.

Section 1137.21(a) concerns the exceptions in outstanding general commodities authority. Grants of general commodities authority have in the past consistently excepted certain commodities.[16] We proposed that all of the past commonly imposed exceptions to such authority, except household goods and classes A and B explosives, be susceptible to removal under the procedure to be adopted.

We have decided that our final rule will provide that all exceptions, except classes A and B explosives, will be subject to removal under these procedures. This is consistent with our decision in Ex Parte No. 55 (Sub-No. 43A), concerning future grants of general commodities authority.

Steere Tank Lines opposes our proposal to include the "in bulk" exception. It argues that general commodities carriers have not in the past provided tank-truck service and have no desire to do so.

We cannot agree with Steere's proposal. We believe that its request runs contrary to the National Transportation Policy to encourage competition. While it may be true that many general commodities carriers do not operate tank trailers, nothing is gained by limiting a carrier's ability to expand its operations, if it chooses to do so. To limit authorities merely because a carrier does not already have special equipment would only tend to entrench existing carriers contrary to the new Act.

Regarding household goods, we were concerned that the pending Household Goods Act of 1980, would establish an exclusive licensing category for household goods. That Act, as finally passed, did not set up separate licensing standards for households goods. Since there was no other reason to exclude household goods from the other exceptions which will be subject to removal under these rules, we will not do so.

Classes A and B explosives will not be subject to removal because of safety reasons.

Part (c) of Section 1137.21 involves commodities dealt in by a particular business. In our previous notice, we solicited comments on our preliminary determination that the description "such commodities as are dealt in by" a particular industry is to be considered acceptably broad authority, and thus not susceptible to broadening under these rules. This is because the holder of such authority can transport a broad range of commodities which satisfies the needs of the relevant shipping public and the carrier. All the comments which addressed this issue were in agreement with our position. Accordingly, we affirm our treatment of this issue. Of course, a carrier holding such authority can use the normal application procedures to broaden its authority.

D. Round-Trip Service

As we have noted, one of the two explicit instructions we have in this area is to "provide round-trip authority where only one-way authority exists." 49 U.S.C. 10922(h)(1)(B)(iii). In discussing this provision in our previous notice, we expressed our concern that granting carriers "mirror image" authority would frequently have little practical effect in achieving two-way loaded movements.

[16] These included commodities in bulk, those requiring special equipment, commodities of unusual value, classes A and B explosives, and household goods as defined by the Commission.

We suggested the possibility that carriers requesting backhaul authority under the rules would receive authority (if so requested) to transport materials, equipment, and supplies used in the manufacture, sale, and distribution of the already authorized outbound commodities in addition to those outbound commodities. We solicited comments on the methods for expanding the commodity description beyond the mere mirror image.

Many commentors concur with our assessment that granting carriers "mirror image" authority probably would do little to further the goals of Section 10922(h). Most parties agree with our proposal to include complementary return authority as express authority.[17]

The ATA suggests that all items contained in the descriptive language "materials, equipment, and supplies . . ." be considered as being subsumed within the scope of a related generic classification, thereby making express language unnecessary. We agree with this concept and believe it to be better than our above-described proposal. The final rules will state that complementary authority (e.g. materials, equipment, and supplies) will be included as implied authority when a carrier requires round-trip authority, based on our findings of need for the authority expressly granted.

This approach is consistent with decision in Ex Parte No. 55 (Sub-No. 43A) that materials, equipment, and supplies will now be included as implied authority in future grants of authority. This will allow carriers to provide a complete service, with the ability to transport all items used in the manufacture or distribution of a group of commodities, as well as the commodity itself. Also, inclusion of these commodities within a class of commodities is consistent with Congress' expressed interest in facilitating round-trip authority and eliminating fuel inefficient operations.[19]

To summarize, where a carrier holds one-way authority, it can obtain round-trip authority under these rules. The carrier can either maintain its present authority description or expand its commodity in the manner described in Section 1137.21.[20]

Implied in the commodity description is authority to transport the already authorized commodity (or the exapnded authority) in addition to materials, equipment, and supplies, in *both directions.*

E. Intermediate Point Service

Two issues have been raised in the comments in connection with our proposed Section 1137.22—Intermediate Point Service. First, Woodline Motor Freight, Inc., takes the position that, where an application involves the removal of restrictions against service to intermediate points, the Commission *must* permit the removal of such restriction. Second, Allied Chemical Corporation proposed that we grant intermediate point authority under these procedures in connection with irregular route authority.

Section 1137.22 will be adopted as proposed. However, we believe it necessary to discuss the issues raised in this area.

As to the first issue, we disagree with Woodline's interpretation of the statute. As we have noted, the statute gives us specific direction in two substantive areas. We are to establish procedures for the removal of restrictions against service on the routes of regular-route carriers, and we are to provide round-trip authority where only one-way authority exists. 49 U.S.C. 10922(h)(1)(B)(ii) and (iii). However, nothing in Section 10922(h)(2) suggests that the Commission is to have no discretion to deny an application seeking the removal of restrictions against service to intermediate points, as Woodline contends. To the contrary, Section 10922(h)(2) uses the language, "In granting or denying applications under paragraph (1)(B) of this subsection, the Commission shall * * *." Paragraph (1)(B) includes applications concerning intermediate point authority. Accordingly, we conclude that applications involving intermediate point authority must be treated identically to the other categories in section 10922(h)(1)(B).

As to the second issue, policy consideration aside, we believe that it would be exceeding our mandate to grant intermediate point authority in connection with irregular-route authority. Allied Chemical correctly observes that we have consistently ruled that intermediate points are not granted for irregular-route authority. More importantly, we are convinced that the language used by the Congress that we implement regulations to "authorize transportation or service to intermediate points on the *carrier's routes*" (emphasis added) read in conjunction with the fact that the Commission does not authorize "routes" to irregular route carriers, is dispositive of the intent of Congress in the area of intermediate point authority.

F. Territorial Descriptions

Our preliminary determination, expressed in § 1137.24(a), was that authorizations to serve a territory less extensive than a county would be considered excessively narrow. Our proposed rules stated that use of these procedures would be normally appropriate for applications seeking the expansion of territorial authority to include all points in the county in which the authorized service point (including any portion of the commercial zone of an authorized point) or other limited service area is located. Comments were sought on the possibility of allowing applicants, at their discretion, to seek expansion of smaller authorities to embrace a given city and points in its commercial zone, as an alternative to a county.

None of the comments express any serious reservations with our use of county-wide authority as the basic method for expanding excessively narrow territorial descriptions. Nor do we see any problems that have been raised concerning our definition of "county" in Section 1137.3(a). No alternative has been suggested to the use of counties for this purpose. Furthermore, we have decided in Ex Parte No. 55 (Sub-No. 43A) that countywide authority will generally be considered as the minimum territorial description which will be acceptable for future applications.

No party specifically opposes our proposal to allow applicants the option of choosing authority to embrace a city, as an alternative to a county. Accordingly, we conclude that, where a service point is within both a county and a city, we will allow the applicant, at its discretion, to apply for the city description (which includes the implied authority of points in its commercial zone). We recognize that the city description can sometimes produce a broader grant of authority than would county-wide authority, and we believe that this result would be fully consistent with the legislative intent in allowing carriers holding narrow territorial authorities to expand their authorities.

Southern Freight Lines, *et al.*, raises the issue of whether a carrier authorized to serve various counties in a State can use these procedures to obtain statewide authority. We believe that such an expansion of authority is outside the scope of restrictions removal. Carriers in such a position are

[17] The Department of Transportation (D.O.T.) suggests several alternative approaches to expand backhaul authority, such as allowing carriers to pick up shipments anywhere within a certain radius of the terminating point of any fronthaul or deliver backhauls to points within a certain radius of the orginating point of any fronthaul.

[19] H. Rept. 96-1069, 69th Cong., 2d Sess. 17-18 (1980).

[20] This responds to the question raised by the D.O.T. as to whether authority could be expanded in conjunctinn with obtaining round-trip authority under our rules.

encouraged to use the normal application procedures to expand and consolidate their authorities.

In our previous notice we raised the issue of how we should handle those instances where a carrier has authority to serve a broad territory limited to

unsafe carriers to expand their operations. Of course, the type of limited-term authorities the MCLA describes is by far the most prevalent. However, we believe that a better view is to allow all carriers to file restriction removal applications. First, as we noted

application procedures promulgated in Ex Parte No. 55 (Sub-No. 43).

I. Miscellaneous Restrictions

In § 1137.25 of the proposed rules we described "miscellaneous" restrictions which we believed would be susceptible

mode of transportation." The proposal was based on our belief that such restrictions were generally wasteful of fuel, inefficient, contrary to the public interest, and frustrating to Congressional efforts at encouraging

We believe that the issue of whether restrictions imposed pursuant to Section 11344(c) should be removable under the restriction removal program are better considered in a separate proceeding. Under the statutory proviso of 49 U.S.C.

Commission would not impose such foreign commerce restrictions in the future and that such restrictions in authority issued after March 3, 1975, were null and void. Also, we noted that this policy statement was found

encouraged to use the normal application procedures to expand and consolidate their authorities.

In our previous notice we raised the issue of how we should handle those instances where a carrier has authority to serve a broad territory limited to service at the facilities of a specified company whose locations are not stated in the certificate. Our preliminary conclusion was that we would not consider such limitations excessively narrow and, therefore, not appropriate for restriction removal. We noted in this regard, that removal of such limitations could require an extensive fact-finding effort which may be impossible given the limited time we have to process restriction removal applications.

The comments we received support our proposed treatment of this type of territorial limitation, and we will adopt our proposed rule. Carriers holding authorities with such limitations can expand their authorities through the normal application procedures.

We note that D.O.T. suggests that we treat carriers with such authority in a manner analogous to procedures for contract carriers in § 1137.26. It suggests that we grant these carriers authority to serve the named shipper between points in the United States. We believe the proper method to accomplish this is for the carrier to request contract carrier authority, which, if granted, would result in a territorially unrestricted authority.

Finally, no serious argument has been made against our proposal in subsection (b) that carriers holding authorities limited to a particular business' facilities at named points be able to use the regulations to offer broader authority to the same extent as other authority containing unreasonable or excessively narrow territorial limitations. We will, accordingly, maintain this provision in our final rules.

G. Limited-Term Authority

Under Section 1137.22 we proposed allowing carriers holding limited-term authority to participate fully in the restrictions removal program. Any limited-term authority modified under this program would be limited to the same term imposed in the original authority. Carriers would not be able to use these rules to eliminate the limited-term conditions.

We will maintain this provision in the final rules.

The MCLA states that only carriers holding authority limited because of the nature of the commodities they transport (generally explosives or hazardous commodities) be allowed to participate in the restriction removal program. They argue that otherwise we may allow unsafe carriers to expand their operations. Of course, the type of limited-term authorities the MCLA describes is by far the most prevalent. However, we believe that a better view is to allow all carriers to file restriction removal applications. First, as we noted above in our discussion of fitness issues, safety issues can be raised by commentors or by the Commission on its own initiative. Second, carriers holding limited-term authority are already operating and there is a mechanism in place for the Commission to evaluate such carriers' performance records under their original and any reformed authority. A grant of a restriction removal application may allow them to operate more efficiently and economically.

H. Contract Carriers

We have reworded the text of § 1137.26 for purposes of clarity. The final section on contract carriers will clearly indicate that a contract carrier holding a permit to serve a single named shipper, number of shippers, or a class of shippers can use these rules to obtain authority to serve those shippers "between points in the United States." Also, to eliminate apparent confusion, the final section will state that contract carriers may use these procedures to the same extent as common carriers to eliminate restrictions or to broaden unduly narrow commodity authorizations.

In Ex Parte No. 55 (Sub-No. 43A) we have observed that the proper territorial request for a contract carrier permit is "between points in the United States." We reached this conclusion, because the Commission by law cannot limit the territorial scope of contract carrier operations. As stated above, we will affirm our proposal to give contract carriers holding outstanding permits the same opportunity to obtain nationwide authority.

Brink's Inc., a contract carrier, has requested that we allow contract carriers authorized to serve a single named shipper to use these rules to expand their authority to a class of shippers. We must conclude that these procedures are not an appropriate vehicle to broaden the number of shippers a contract carrier can serve. Such applications would in many instances require an extensive fact-finding effort concerning whether there is a need for service, which may be impossible given the statutory time limits imposed on applications filed under the restriction removal procedures. Contract carriers can, of course, expand their authority in such a manner through the final expedited application procedures promulgated in Ex Parte No. 55 (Sub-No. 43).

I. Miscellaneous Restrictions

In § 1137.25 of the proposed rules we described "miscellaneous" restrictions which we believed would be susceptible to removal under the restrictions removal program. We solicited comments on other restrictions which should be included in this list.

Our final § 1137.25 will adopt the four types [20] of restrictions we proposed, with some changes made in light of the comments we received. We have also added two types—freight forwarder bills of lading restrictions and territorial service limitations on irregular route authority. These are discussed later in this decision. Based on the comments we received, and our preliminary determination, we will not include authority limited to transportation services for the United States Government because such authority is appropriately broad.

1. In subsection (1), we included restriction which "require or preclude the use of a specific type of equipment, such as 'in tank trailers' or 'except in dump or hopper type equipment'."

A number of parties [21] basically argue that equipment restrictions are not anticompetitive, but rather reflect the "natural" divisions present in the motor carrier industry.

We believe that equipment restrictions generally prevent carriers from expanding their operations to provide an efficient and competitive service to the public. The only reason we can see for not permitting carriers to remove such restrictions under normal circumstances would be to limit competition by isolating various types of specialized carriers. As we have noted earlier in this decision, the maintenance of the "status quo", or limiting future competition, are not valid reasons for excluding unreasonable restrictions from removal in this program. Furthermore, we have decided in Ex Parte No. 55 (Sub-No. 43A) that equipment restrictions will not be imposed in future application proceedings.

2. In subsection (2), we included restrictions which "prevent a common carrier from participating in joint-line service with another carrier or from handling traffic having a prior or subsequent movement by a specified mode of transportation." The proposal was based on our belief that such restrictions were generally wasteful of fuel, inefficient, contrary to the public interest, and frustrating to Congressional efforts at encouraging intermodalism.

Several issues have been raised which are relevant to this subsection. Georgia Highway Express (GHE) questions whether the prior or subsequent movement aspect of our subsection could be interpreted to cover only restrictions which *prevent* a carrier from handling traffic having a prior or subsequent movement by rail, air, or water (commonly referred to as ex-rail, ex-air, and ex-water transportation).

GHE requests the Commission explicity to sanction in this subsection applications seeking to remove restrictions limiting the carriers to ex-rail traffice. GHE desires to remove such a restriction so that it may perform joint-line service with other motor carriers. The Air Freight Motor Carriers Conference (AFMCC) wants to be certain that ex-air restrictions are embraced in subsection (a).[22]

GHE and AFMCC basically argue that enabling the removal of intermodal restrictions generally would have a favorable impact on fuel consumption, would yield operating efficiencies, and would be in the public interest.

We agree that authorities which restrict traffice to, or against, movement with a specified mode of transportation are objectionable and should be embraced in this subsection. We also agree that ex-air motor traffic should be included. This is also in keeping with the mandate of the National Transportation Policy that the Commission encourage intermodal transportation. See 49 U.S.C. 10101(a)(7)(H). These matters are reflected in our final rules.

The second issue concerns the ability of railroad-controlled motor carriers to use the restriction removal program. Seaboard Coast Line Railroad Company and Seacoast Transportation Company, its wholly owned motor carrier subsidiary submitted a joint comment. They urge that in order to promote intermodal competition according to the amended National Transportation Policy, it is necessary to treat railroad-controlled motor carriers the same as independent motor carriers.

We believe that the issue of whether restrictions imposed pursuant to Section 11344(c) should be removable under the restriction removal program are better considered in a separate proceeding. Under the statutory proviso of 49 U.S.C. 11344(c)[23] where railroads seek to consolidate or merge with, or acquire control of a motor carrier, such a transaction cannot be approved unless the Commission finds that it will be consistent with the public interest, enabling the rail carrier to use the motor services in its operations to public advantage without unreasonably restraining competition. In implementing this statutory provision, the Commission has in the past required the imposition of special restrictions[24] on grants of motor carrier authority to a railroad or railroad affiliate so as functionally, as well as geographically, to limit the motor carrier service to that auxillary of or supplementary to rail service. We are examining these matters separately.[25]

3. In subsection (3), we proposed including restrictions which "impose size or weight limitations on a specified commodity or limited class of commodities." We will adopt this provision in the final rule. The MCLA has asked for a clarification of this provision. To clarify our rule, size or weight restrictions which are descriptive and contain the sole limitations on the commodity that may be transported, such as "shipments weighing less than 100 pounds" or the normal "size and weight" description of heavy haulers, are not considered objectionable and will not be removable under these rules. On the other hand, limitations on the size of individual articles or a class of commodities to be shipped will be covered by subsection (3).

4. Subsection (4), of the proposed § 1137.25 concerned outstanding authorities which are restricted to (1) the transportation of traffic orginating at or destined to specific points in Canada, or Mexico, and (2) specific point of entry on the international boundary line between the United States and the two neighboring countries.

We observed in our previous notice that we had issued a revised policy statement advising the public that the Commission would not impose such foreign commerce restrictions in the future and that such restrictions in authority issued after March 3, 1975, were null and void. Also, we noted that this policy statement was found unlawful in *American Bus Association v. ICC*, 627 F.2d 525 (D.C. Cir. 1980) due solely to the Commission's failure to provide notice and take comment pursuant to 5 U.S.C. 553.

The Trucking Association of Quebec, *et al.*, argues that the requirement for a carrier to specify the port of entry to be used is not a restriction, but rather, the functional equivalent of a grant of authority to a named origin or destination point in the United States. It argues that the naming of specific ports of entry does not impede the free flow of commerce.

We disagree and we will affirm our preliminary determination that the above-described foreign commerce restrictions impede the free flow of international trade, cause operating efficiencies, and are contrary to the public interest. Accordingly, we will retain this provision in Section 1137.25.

The ATA asks that we clarify the practical effect of removing ports-of-entry restrictions through these regulations. We will attempt to do so. Where a certificate describes a specific port of entry, or ports of entry along the international boundary line within a State, and one restriction as removed, the certificate will authorize service to and from all ports of entry in the involved State. This will allow the carrier to use any convenient port of entry in the State.

5. As we have mentioned above, we will include a new subsection in § 1137.25 to include freight forwarder bills of lading restrictions as a type of restriction which could normally be removed under the restriction removal program. We solicited comments on this proposal in our previous notice.

Midwest Haulers, Inc., a motor carrier of general commodities, specializing in the transportation of traffic for freight forwarders, supports our proposal. Midwest Haulers contends that the involved restriction contributes to wasteful utilization and operating inefficency. Because the restriction prevents it from moving non-forwarder traffic in its authorized traffic lane, which it could otherwise handle with its equipment, the restriction stifles its ability to meet the needs of shippers and make more productive use of its equipment.

Brannan Systems, Inc., *et al.*, argues that there is nothing to show or suggest that such limitations are unreasonable restrictions which are wasteful of fuel, inefficient, or contrary to the public interest. It states that there is no legislative history to suggest that Congress intended the elimination of this type of restriction.

We conclude that freight forwarder bills of lading restrictions fall within the ambit of Congress' intent concerning restriction removal. We are convinced that these restrictions are unreasonable because they result in operations that are wasteful of fuel, inefficient, and contrary to the public interest. The only reason for not allowing carriers to

We see no reason to give a carrier only "one bite of the apple". However, we strongly encourage carriers carefully to analyze their authority and their needs before filing a restriction removal application. Also, a carrier should not file a request to have a certificate or permit reformed until the prior request related to that authority has been processed by the Commission. Given the time limits under which we must operate, this should not cause any undue hardship.

answered on a separate basis. For the time being, we will retain the $350 filing fee in our final rules.

D. Application Procedures

As we have stated in the past, carriers seeking to reform their authorities by consolidating a number of fragmented authorities into one or more certificates and simultaneously to remove restrictions are encouraged to use the expedited application procedures promulgated in Ex Parte No. 55 (Sub-No. 43). See 45 FR 45535–6 (1980). Numerous

[20] The fifth type was "restrictions which the Commission found to be inappropriate and has refused to impose on another proceeding.

[21] These include the National Tank Truck Carriers, Inc., the ATA, the MCLA, the New Orleans Traffic and Transportation Bureau, and William J. Monheim.

[22] AFMCCC notes that, while 49 U.S.C. 10527(b)(8)(B) exempts almost all ex-air motor traffice from Commission jurisdiction, ex-air traffice performed in conjunction with a foreign air carrier that has not reached an appropriate agreement with the United States still requires specific operating authority from the Commission.

[23] Former Section 5(2)(b) of the Interstate Commerce Act.

[24] These restrictions include "key points," "auxiliary and supplementary," and "interchange" restrictions.

[25] Insofar as the carriers concern centers on intermodal traffic, we note that two pending rulemaking proceedings involve intermodal issues. See Ex Parte No. 230 (Sub-No. 5), *Improvement of TOFC/COFC Regulation*, 45 FR 79123 (Nov. 28, 1980); and Ex Parte No. 287 (Sub-No. 7), *Special Intermodal Authority*, 45 FR 77032 (Nov. 21, 1980), and 45 Fr 79488 (Dec. 1, 1980).

implement a Congressional directive that we are to establish procedures to allow carriers to eliminate certain restrictions and to broaden unduly narrow authority. Second, the Congressional mandate resulted to a large extent from finding that many restrictions imposed by the Commission in the past often result in operational inefficiencies and wasted fuel.[27] Third, these regulations provide for the proper consideration of environmental and energy issues in individual restriction removal applications. These issues can

concurring in part, and reserving his right to submit a separate expression at a later date.

James H. Bayne,

Acting Secretary.

Appendix A—Revisions to the Code of Federal Regulations, Title 49

Part 1002—FEES

(1) 49 CFR 1002 is revised by adding 49 CFR 1002.2(d)(9) as follows:

§ 1002.2 Filing fees.

* * * * *

(d) * * *

(c) Provide round-trip authority where only one-way authority exists;

(d) Eliminate unreasonable or excessively narrow territorial limitations; or

(e) Eliminate any other restriction that the Commission deems to be wasteful of fuel, inefficient, or contrary to the public interest.

These regulations implement of 49 U.S.C. 10922(h)(1)(B) and 10922(h)(2).

§ 1137.2 Applicability of rules.

Applications may be filed under these

inefficient, or contrary to the public interest. It states that there is no legislative history to suggest that Congress intended the elimination of this type of restriction.

We conclude that freight forwarder bills of lading restrictions fall within the ambit of Congress' intent concerning restriction removal. We are convinced that these restrictions are unreasonable because they result in operations that are wasteful of fuel, inefficient, and contrary to the public interest. The only reason for not allowing carriers to remove this restriction under normal circumstances would be to protect existing general freight carriers from competition, which would be contrary to the National Transportation Policy. We also note that the Commission has in the past rejected imposition of bill of lading restrictions. See *North Star Transport, Inc., (Extension—Lumber,* 128 M.C.C. 803 (1978), aff'd mem. sub nom. International Transport, Inc. v. *I.C.C.*, 607 F.2d 493 (D.C. Cir. 1979).

6. In response to our request for comments on possible additions to § 1137.25, Mercury Motor Express, Inc., raises the issue of service restrictions imposed on irregular-route authority.

Mercury Motor observes that the Commission has granted irregular-route authority between areas or between States restricted to movement through a named point, area, or State. For example, "between points in Tennessee, on the one hand, and, on the other, points in Florida . . . limited to the transportation of traffic moving from, to, or through points in North Carolina."

This type of restriction serves to limit the service that the carrier can offer the public, and normally will result in operating inefficiencies and excessive fuel consumption. As such, we conclude that the described type of restriction should be included in § 1137.25, as a restriction which could normally be removed under the regulations.

7. As we noted in our previous notice, our guidelines are not intended to be an all-inclusive list of the restrictions which can be removed under the procedures we are adopting. Accordingly, we will include in our final rules [at 1137.25(7)] our propose subsection (5), restrictions which "the Commission has found inappropriate and has refused to impose in another proceeding."

Miscellaneous Matters

A. Repeat Applications

Section 1137.10 has been amended to specify that a carrier may reform authority (granted pursuant to applications filed before December 28, 1980), more than once under these rules. We see no reason to give a carrier only "one bite of the apple". However, we strongly encourage carriers carefully to analyze their authority and their needs before filing a restriction removal application. Also, a carrier should not file a request to have a certificate or permit reformed until the prior request related to that authority has been processed by the Commission. Given the time limits under which we must operate, this should not cause any undue hardship.

B. Compliance

We have added a new § 1137.15 to the rules dealing with compliance. The purpose of the addition is to indicate that where a restriction removal application is granted, a new certificate or permit will be issued without prior verification of the normal compliance requirements (rates, process agents, and insurance). Before commencing operations under the newly issued authority, a carrier must, of course, comply with the pertinent statutory and regulatory requirements. This is the same procedure which we have adopted in Ex Parte No. 55 (Sub-No. 43) at 45 FR 80109 (1980).

The ATA suggests that in cases where no party files comments to a restriction removal application, a carrier should be allowed to begin operating immediately at the close of the 20th day after the due date for filing comments. They express their concern that in the past substantial delays have been experienced by carriers while awaiting issuance of a certificate. Since we have no experience under the new law and are unable to predict the number of filings, we share their concern. However, we believe that the best course is to follow the procedure we have outlined. Long delays have occurred in the past largely as the result of the Commission awaiting verification of carriers' compliance with applicable requirements. Under our procedure, we expect that in uncontested proceedings, reformed authority could be issued shortly following the conclusion of the 25 day comment period. However, we stand ready to reexamine our procedures should an inordinate number of filings cause lengthy delays.

C. Filing Fees

A number of parties have suggested that we eliminate or reduce the filing fee for restriction removal applications. One commentor, the Aluminum Association, Inc., suggests that we have a sliding scale of filing fees tied into the class of carrier filing the application. The question of filing fees has complex policy implications which should be answered on a separate basis. For the time being, we will retain the $350 filing fee in our final rules.

D. Application Procedures

As we have stated in the past, carriers seeking to reform their authorities by consolidating a number of fragmented authorities into one or more certificates and simultaneously to remove restrictions are encouraged to use the expedited application procedures promulgated in Ex Parte No. 55 (Sub-No. 43). See 45 FR 45535–6 (1980). Numerous carriers have filed applications to reform their authorities in such a manner.

Energy and Environmental Considerations

In our previous notice we stated that we did not believe that adoption of the proposed rules would have any significant impact upon the quality of the human environment. We also stated that we anticipated that their adoption would improve operating efficiencies and reduce mileage, thu contributing to the conservation of energy resources. We solicited comments on the issues of environmental and energy considerations.

We affirm our previous statements on both issues. We received only one substantive comment on these issues. D.O.T. cites a report issued by that Agency [26] which found that if the restrictions involved in this proceeding and in Ex Parte No. MC–142 were removed, annual fuel savings of at least 30 to 60 million gallons could be anticipated.

Our Office of Policy and Analysis—Energy and Environmental Branch, has prepared an Environmental Assessment and Statement of Energy Impact, which are found in Appendix B of this document. The first statement concludes that the quality of the human environment will not be affected significantly by this action. In fact, the environmental impacts (including energy consumption) of the proposed rules is expected to be slightly beneficial. The second statement concludes that, by permitting a slight improvement in load factors and a reduction of empty mileage, the proposed rules are expected to induce a modest reduction in energy consumption.

Three factors figure significantly in our consideration of the environmental implications of our action. First, as noted above, these rules are essentially procedural and are intended to implement a Congressional directive that we are to establish procedures to allow carriers to eliminate certain restrictions and to broaden unduly narrow authority. Second, the Congressional mandate resulted to a large extent from finding that many restrictions imposed by the Commission in the past often result in operational inefficiencies and wasted fuel.[27] Third, these regulations provide for the proper consideration of environmental and energy issues in individual restriction removal applications. These issues can be raised by the parties to a proceeding or by the Commission on its own initiative.

We cannot agree with the MCLA's contention that the Commission's regulations specifically mandate publication of environmental and energy statements in a notice of proposed rulemaking. We are convinced that our consideration of environmental and energy implications of the regulations being adopted is in full compliance with the National Environmental Policy Act of 1969, the Energy Policy and Conservation Act, and the Commission's regulations implementing these Acts (49 C.F.R. Parts 1108 and 1106).

Alternative Procedures

In establishing these regulations for the elimination of restrictions, we emphasize that carriers continue to have available the conventional application procedures authorized in Ex Parte 55 (Sub-No. 43). The statutory deadline for Commission decisions with respect to those applications is only 180 days and, in fact, the Commission is processing unopposed applications in approximately 90 days, and opposed applications in less than the statutory 180 days. As a consequence, applicants can receive prompt attention to their applications even in cases which do not qualify under the special provisions applicable to restriction removal. Indeed, in close cases, we encourage applicants to proceed under the conventional certification procedures rather than litigate the metes and bounds of our restriction removal regulations.

Adoption of Rules

Accordingly, we adopt the rules set forth in the Appendices below.

This action is taken under the authority of 49 U.S.C. 10321 and 10922(h) and 5 U.S.C. 553.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Clapp dissenting in part and concurring in part, and reserving his right to submit a separate expression at a later date.

James H. Bayne,
Acting Secretary.

[26] Final report of D.O.T. entitled "Potential Fuel Conservation From Regulatory Reform of the Trucking Industry" (July 1980).

[27] House Report, *supra,* at 6.

Appendix A—Revisions to the Code of Federal Regulations, Title 49

Part 1002—FEES

(1) 49 CFR 1002 is revised by adding 49 CFR 1002.2(d)(9) as follows:

§ 1002.2 Filing fees.

* * * * *

(d) * * *

(9) An application to remove a restriction or broaden unduly narrow authority under 49 CFR Part 1137..... $350

(2) 49 CFR Part 1137 is added to Title 49 as follows:

PART 1137—REMOVAL OF RESTRICTIONS FROM AUTHORITIES OF MOTOR CARRIERS OF PROPERTY

Subpart A—General

Sec.
1137.1 Purpose.
1137.2 Applicability of Rules.
1137.3 Definitions.

Subpart B—Procedures

1137.10 Form and Content of Application.
1137.11 Notice.
1137.12 Participation of Interested Persons.
1137.13 Furnishing a Copy of the Application Package to Interested Persons.
1137.14 Disposition of the Application.
1137.15 Compliance.

Subpart C—Guidelines for Determining Application

1137.20 Scope of this Subpart.
1137.21 Commodity descriptions.
1137.22 Intermediate point service.
1137.23 Round-trip service.
1137.24 Territorial authority.
1137.25 Miscellaneous restrictions.
1137.26 Contract carriers.
1137.27 Limited term authority.
1137.28 Availability of other application procedures.
1137.29 Impact of restrictions removal.

Authority: 49 U.S.C. 10321 and 10922(h); 5 U.S.C. 553.

Subpart A—General

§ 1137.1 Purpose.

These regulations govern applications filed by motor carriers of property seeking to remove operating restrictions from their certificates or permits in order to:

(a) Broaden reasonably the categories of property authorized by the carrier's certificate or permit;

(b) Authorize transportation service to intermediate points on the carrier's routes;

(c) Provide round-trip authority where only one-way authority exists;

(d) Eliminate unreasonable or excessively narrow territorial limitations; or

(e) Eliminate any other restriction that the Commission deems to be wasteful of fuel, inefficient, or contrary to the public interest.

These regulations implement of 49 U.S.C. 10922(h)(1)(B) and 10922(h)(2).

§ 1137.2 Applicability of rules.

Applications may be filed under these rules to remove restrictions or to broaden authority in certificates and permits issued pursuant to applications filed before December 28, 1980.

§ 1137.3 Definitions.

(a) *County.*—"County" means (1) a county in any State, a judicial district in Alaska, and a parish in Louisiana and (2) a city, town, or village in any State which is not administratively part of a county, New York, NY, and Washington, D.C., and their commercial zones as defined by the Commission.

(b) *STCC.*—"STCC" means the Standard Transportation Commodity Code Tariff currently on file with the Commission at any given time.

Subpart B—Procedures

§ 1137.10 Form and content of application.

(a) *Form and filing requirements.*—No application form is prescribed for filing applications under these rules. Applicants shall submit an original and one copy of their applications to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. Applicants shall also file a copy of the complete application in the regional office of the Commission for the region in which they are domiciled. Applications shall be typewritten or printed on paper measuring approximately 8½ by 11 inches, with a 1½ inch left-hand margin. Only the original need be signed. A check or money order payable to the Interstate Commerce Commission covering the applicable filing fee must accompany the application. The envelope containing the application and check shall be clearly marked "RESTRICTION REMOVAL APPLICATION". Also each application shall be clearly marked, in the upper right-hand corner of the top page: "RESTRICTION REMOVAL".

(b) *Information which shall accompany the application.*—The application shall contain the following information, in the same order as set forth below:

(1) The exact name and address of the applicant and the docket number

assigned by the Commission to the applicant's authorities.

(2) The name, address, and telephone number of applicant's representative.

(3) A copy of the certificate or permit from which applicant seeks to have restrictions removed or which it proposes be broadened.

(4) A proposed draft of the certificate or permit (commodity and territorial descriptions) with the restrictions removed or the authority broadened as proposed, together with sufficient information for the Commission to

(2) Potential cost savings and improved efficiency;

(3) The provisions of the transportation policy set forth in 49 U.S.C. 10101(a); or

(4) The provision and maintenance of service to small and rural communities and small shippers.

(d) *Related restriction removal.*—Applicants are expected to combine reasonably related restriction removal requests or requests for broadening of authority in a single application. Two categories of requests are generally

through which the operations described in the application would be performed upon their written request. Applicant shall make copies of the application available for public inspection at its principal place of business and at the office of its representative if at a different location. A copy of the application is also available for inspection at the ICC, Washington, D.C., Office of the Secretary.

§ 1137.12 Participation of interested persons.

final action of the Commission. Review of such an action on appeal is discretionary and is governed by the Commission's appeal regulations at 49 CFR 1100.98. Any party seeking review should specify the "extraordinary circumstances" involved in the proceeding to enable the Commission to extend the deadline for final Commission action an additional 90 days.

§ 1137.15 Compliance.

A reformed certificate or permit will

limited class of commodities, except as indicated in subsection (c) of this section. Commodity classes which carry designations of three digits or more in the Standard Transportation Commodity Code are normally considered unduly narrow. Use of these procedures is normally appropriate for applications which seek—

(1) to expend such a commodity authorization to the two-digit STCC level;

(2) to replace such an authorization with a commodity description contained

§ 1137.24 Territorial authority.

(a) *Less than county-wide authority.*—Except as indicated in paragraph (b) of this section, authorizations to serve a territory less extensive than a county (including authorizations to serve named facilities or limited in a similar manner) are considered excessively narrow. Use of these procedures is normally appropriate for applications seeking the expansion of territorial authority to include all points in the county in which the authorized service point (including any portion of the

assigned by the Commission to the applicant's authorities.

(2) The name, address, and telephone number of applicant's representative.

(3) A copy of the certificate or permit from which applicant seeks to have restrictions removed or which it proposes be broadened.

(4) A proposed draft of the certificate or permit (commodity and territorial descriptions) with the restrictions removed or the authority broadened as proposed, together with sufficient information for the Commission to determine readily the precise portions of the existing authority which applicant proposes be modified. The redrafted certificate or permit shall be in the same format as the original so that, if the application is granted, it can be issued promptly without further redrafting by the Commission.

(5) In the case of an application to remove a restriction of a type found by the Commission to be inappropriate (see § 1137.25(7) of this part), a reference to the Commission decision in which an identical or substantially similar restriction was found inappropriate.

(6) A caption summary (an original and one copy) of the modifications proposed, suitable for publication in the **Federal Register.** The caption summary shall include *an accurate summary of the restrictions applicant seeks removed, the authority applicant seeks broadened under these rules, or the authority the applicant would hold if its application were granted. It shall also include the authority (including specific sub numbers) which would be superseded by a grant of the application. For example, a caption summary could state that, "The application seeks to modify Sub-Nos. 1–10, by broadening the commodity description in the authorities from liquid chemicals to chemicals or allied products; by replacing the plantsite restrictions in the authorities with county-wide authority in X, Y, and Z Counties, IL; and by eliminating the in bulk restriction* in *all of the named authorities.* The caption summary shall be double-spaced on plain white paper (no letter heads). Each summary will be checked by Commission staff for its accuracy and *failure to describe accurately the changes applicant seeks may result in a rejection of the application.*

(c) *Information that shall accompany the application.*—The application shall include a statement describing the effect of the proposal upon one or more of the following factors:

(1) The consumption of energy resources;

(2) Potential cost savings and improved efficiency;

(3) The provisions of the transportation policy set forth in 49 U.S.C. 10101(a); or

(4) The provision and maintenance of service to small and rural communities and small shippers.

(d) *Related restriction removal.*—Applicants are expected to combine reasonably related restriction removal requests or requests for broadening of authority in a single application. Two categories of requests are generally considered related: (1) requests related to the same certificate or permit authority. An example of this category would be a carrier which holds a one-way certificate and desires to obtain backhaul authority as well as to broaden its territorial and commodity authority under these rules. (2) Requests seeking to remove the same restriction, or restrictions having a similar effect, from different authorities. An example of this would be a carrier which desires to remove the same equipment restriction from a number of certificates under these rules. In applications combining requests as described above, each request shall be clearly marked and segregated, and each request shall comply with the requirements set forth in § 1137.10(b) (3), (4), (5), and (6). Failure to comply will result in a rejection of the application. Carriers are free to file consolidated applications which do not fit into the two categories described above.

(e) *Incomplete applications.*—Due to the time limits imposed by 49 U.S.C. 10922(h)(2), the Commission cannot await the supplementing of incomplete applications or make extensive revisions to draft **Federal Register** captions. The failure to submit a complete application or to include a proper caption summary will result in rejection of the application.

(f) *Repeat applications.*—A certificate or permit can be reformed under these rules more than one time. However, a restrictions removal application shall not be filed before a preceding application to reform the same authority has been processed by the Commission.

§ 1137.11 Notice.

Notice to the public of the filing of an application under these rules will be given by the Commission through publication of a caption summary in the **Federal Register.** Applicant shall deliver (by mail or in person) a copy of the caption summary to the State transportation board or official of applicant's domicile. Applicant shall mail a copy of the application to this State board or official or any State through which the operations described in the application would be performed upon their written request. Applicant shall make copies of the application available for public inspection at its principal place of business and at the office of its representative if at a different location. A copy of the application is also available for inspection at the ICC, Washington, D.C., Office of the Secretary.

§ 1137.12 Participation of interested persons.

Any interested person may comment on the applicant's proposal. Comments (an original and one copy) shall be filed with the Commission within 25 days of the date of publication of notice of the application in the **Federal Register.** The envelope containing the comment and the comments shall be clearly marked "RESTRICTION REMOVAL COMMENTS." Comments shall be directed to either (1) the merits of the particular proposal, or (2) whether the proposal should properly be considered under these rules.

§ 1137.13 Furnishing a copy of the application package to interested persons.

Applicant's representative is required to furnish a copy of the application package to interested persons after publication. The request must be in writing and must contain a check or money order for $10, payable to applicant's representative. Applicant's representative need not supply copies to any person not sending the appropriate payment. Applicant is required to mail the copy within 5 days of receipt of the request. Non-compliance with this section by applicant may result in dismissal of the application.

§ 1137.14 Disposition of the application.

(a) *Basis for determining the application.*—Except in extraordinary circumstances, applications will be determined solely on the basis of the application itself and any comments that are received. There will be neither oral hearings nor the opportunity for the submission of evidence under modified procedure.

(b) *The Commissions's decision.*—Applications will be published in the **Federal Register** in the form of tentative decisions granting the authority requested. If no comments are filed, the application will stand granted at the *conclusion of the 25-day comment period,* unless the Commission, prior to that time, stays the effectiveness of the tentative decision.

(c) Administrative finality and appeals.—A decision disposing of an application subject to these rules is a final action of the Commission. Review of such an action on appeal is discretionary and is governed by the Commission's appeal regulations at 49 CFR 1100.98. Any party seeking review should specify the "extraordinary circumstances" involved in the proceeding to enable the Commission to extend the deadline for final Commission action an additional 90 days.

§ 1137.15 Compliance.

A reformed certificate or permit will be issued upon a grant of an application. Prior to beginning operations under the newly issued authority, compliance must be made with the following statutory and regulatory requirements: (a) for motor common carriers—49 CFR 1043, 1044, and 1310, and (b) for motor contract carriers—49 CFR 1043, 1044, and 1310.

Subpart C—Guidelines for Determining Applications

§ 1137.20 Scope of this subpart.

This subpart contains guidelines designed to assist applicants in filing applications for the removal of operating restrictions. The guidelines indicate certain types of restrictions or operating limitations in operating authorities which the Commission considers, under normal circumstances, to be excessively narrow, wasteful of fuel, inefficient, or contrary to the public interest. They suggest ways in which some such restrictions might reasonably be eliminated or in which limited authorities might be broadened. The guidelines are not intended to constitute a prejudgment of any individual application.

§ 1137.21 Commodity descriptions.

(a) *General commodities carriers.*—Where a carrier is authorized to transport general commodities, restrictions having the effect of precluding the transportation of classes A and B explosives are not considered unduly restrictive and are not normally subject to removal under these procedures. Other restrictions on the commodities which a general commodities carrier may transport are considered unduly restrictive and may normally be removed under these procedures.

(b) *Named commodities or limited classes of commodities.*—Where a carrier is authorized to transport one or more named commodities, the authority is considered unduly restrictive and may normally be broadened under these procedures. The same is true where a carrier is authorized to transport a limited class of commodities, except as indicated in subsection (c) of this section. Commodity classes which carry designations of three digits or more in the Standard Transportation Commodity Code are normally considered unduly narrow. Use of these procedures is normally appropriate for applications which seek—

(1) to expend such a commodity authorization to the two-digit STCC level;

(2) to replace such an authorization with a commodity description contained in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 (1952) and 766 (1953); or,

(3) to replace such an authorization with a broader class description generally accepted by the Commission, such as commodities in bulk, commodities which because of their size or weight require special equipment, or oilfield commodities as described in *Mercer Extension-Oilfield Commodities,* 74 M.C.C. 459 (1946).

(c) *Commodities dealt in by a particulor business.*—Where a carrier is authorized to transport "such commodities as are dealt in by" a particular industry, such as mail order houses or retail grocery stores, the authority is not considered excessively narrow, and applications for modification should not normally be filed under these procedures.

§ 1137.22 Intermediate point service.

Certificates which authorize regular-route service and preclude service at intermediate points on the carrier's service routes, either by way of a specific restriction against performing such service or by virtue of the fact that they allow service at certain intermediate points but fail to name other points, are considered unreasonably restrictive. Use of these procedures is appropriate for seeking removal of any restriction or operating condition which inhibits service at intermediate points on a regular-route carrier's service route.

§ 1137.23 Round-trip service.

Certificates or permits which authorize service in one direction only are considered unduly restrictive. Use of these procedures is appropriate for applications which seek return movement authority limited to the same commodities the carrier is authorized to transport on the outbound trip or applications which seek to expand the round-trip authority in a manner described in § 1137.21. Implied in the round-trip commodity description is materials, equipment, and supplies in both directions.

§ 1137.24 Territorial authority.

(a) *Less than county-wide authority.*—Except as indicated in paragraph (b) of this section, authorizations to serve a territory less extensive than a county (including authorizations to serve named facilities or limited in a similar manner) are considered excessively narrow. Use of these procedures is normally appropriate for applications seeking the expansion of territorial authority to include all points in the county in which the authorized service point (including any portion of the commercial zone of an authorized point) or other limited service area is located. Where an authorized service point is located within a given city as well as a county, an applicant can seek expansion of authority to the city (which includes implied authority of points in its commercial zone). Use of these procedures is also normally appropriate for applications to remove restrictions which preclude service at points or areas smaller than a county.

(b) *Service at facilities not precisely located.*—Where a carrier has authority to serve a broad territory limited to service at the facilities of a specified person, company, or type of business, and where the precise location of the facilities, by reference to a city, county, or the like, is not apparent from the certificate or permit, the limitations are not considered excessively narrow, and applications for modification should not normally be filed under these procedures. These procedures can, however, be used to expand authority limited to a particular business' facilities at named points.

§ 1137.25 Miscellaneous restrictions.

Use of these procedures are normally appropriate for applications seeking the removal of the following types of restrictions, which the Commission considers to be contrary to the public interest.

(a) Restrictions which require or preclude the use of a specific type of equipment, such as "in tank vehicles" or "except in dump or hopper type equipment."

(b) Restrictions which have the effect of preventing a common carrier from participating in joint-line service with another carrier or from handling traffic having prior or subsequent movement by any mode of transportation or type of carrier.

(c) Restrictions which impose size or weight limitations, or both. This does not include restrictions relating to shipments weighing 100 pounds or less under certificates granted under the so-called "fitness only" procedures in 49 U.S.C. 10922(b)(4)(D).

(d) Restrictions which specify Canadian and Mexican destinations or origins to be served, or designate specific port of entry points which must be used.

(e) Restrictions which limit the movements of a common carrier to

modification of authorities designated in this subpart as unduly restrictive, unreasonable, excessively narrow, or contrary to the public interest will reduce the consumption of energy resources, will offer potential cost savings and improved efficiency, will be

carry the commodity bound for the intermediate point. These and other restrictions have contributed to depressed load factors which tend to increase vehicle miles and to reduce energy-consumption.

Environmental Impacts

Statement of Energy Impact

Removal of Restrictions From Authorities of Motor Carriers of Property

The rules proposed in Ex Parte No. MC-142 (Sub-No. 1) would permit motor

length. It is unnecessary here to expand on that discussion. Our final rules are based on the comments received.

In addition to procedural issues, the comments raise a number of substantive questions concerning the meaning and impact of Section 9 of the Motor Carrier

fee for supplemental filings. Unless the notice carried in the cab of the motor carrier correctly identifies each corporate subsidiary involved in CIH, the notice would be pointless. Therefore, we will require supplemental filings when the name of a corporate member

(d) Restrictions which specify Canadian and Mexican destinations or origins to be served, or designate specific port of entry points which must be used.

(e) Restrictions which limit the movements of a common carrier to transportation performed on freight forwarder bills of lading.

(f) Restrictions which limit the services an irregular-route carrier can provide to traffic moving through a named point, area, or State. For example, irregular-route authority "limited to the transportation of traffic moving from, to, or through points in (a specific State)."

(g) Restrictions which the Commission has found to be inappropriate and has refused to impose in another proceeding.

§ 1137.26 Contract carriers.

Where a permit of a contract carrier limits the carrier's territorial scope of service for a named shipper, shippers, or a class of shipper, such authority is considered unduly restrictive. Use of these procedures is normally appropriate for applications seeking to broaden the territorial scope of such permits. Such applications can request authority to serve the single-named shipper, shippers, or class of shippers, "between points in the United States." The commodity description in contract permits can be broadened, and unreasonable restrictions removed, to the extent specified in Subpart C of this Section.

§ 1137.27 Limited term authority.

Certificates and permits limited to a specified duration ("term" limitation) can be modified under these procedures to the same extent as authority without a term limitation. Any modified authority approved under these rules will contain the same limitation as the original authority. These procedures cannot be used to remove the limited term condition from existing authority.

§ 1137.28 Availability of other application procedures.

The provisions of this subpart which describe as inappropriate the use of these procedures for applications seeking the elimination of certain types of restrictions or the modification of certain types of limited authorities should not be consulted as discouraging the filing of applications seeking such relief pursuant to the Commission's normal application procedures under 49 U.S.C. 10922(b) and 10923(b).

§ 1137.29 Impact of restrictions removal.

The Commission has found that, under normal circumstances, the elimination of restrictions or the modification of authorities designated in this subpart as unduly restrictive, unreasonable, excessively narrow, or contrary to the public interest will reduce the consumption of energy resources, will offer potential cost savings and improved efficiency, will be consistent with the provisions of the transportation policy set forth in 49 U.S.C. 10101(a), and will assist in providing and maintaining service to small and rural communities and small shippers.

Note.—Appendix B will not appear in the Code of Federal Regulations.

Appendix B—Environmental Assessment; Removal of Restrictions From Authorities of Motor Carriers of Property

[Ex Parte No. MC–142 (Sub-No. 1)]

Summary and Conclusion

The establishment of procedures to expedite removal of operating restrictions, as proposed in Ex Parte No. MC–142 (Sub-No. 1), would slightly improve on a nationwide basis, energy efficiency and public safety, and reduce air and noise pollution. Although not deemed significant in the context of the National Environmental Policy Act, the enhancement of energy efficiency and environmental quality comport with established national objectives.

1.0 Description of the Proposed Action

The rules proposed in Ex Parte No. MC–142 (Sub-No. 1) would establish a framework for expediting applications to remove excessively narrow operating restrictions in individual carriers' operating authorities. Among the restrictions which could be relaxed or removed under the proposed rules are commodity restrictions, backhaul restrictions, intermediate point restrictions, territorial restrictions, and restrictions on the classes of shippers which can be served.

The restrictions which could be removed under the proposed rules historically may have inhibited carrier efforts to attain maximum operating efficiency. A motor carrier hauling goods from point A to point B cannot pick up an available return load at point B bound for point A unless the carrier has authority to carry the commodity *and* unless the carrier has bidirectional operating authority between points A and B. A motor carrier operating between points C and D cannot fill up a partial load with a shipment bound for an intermediate point unless the carrier has authority to serve the intermediate point and unless the carrier has authority to serve the intermediate point and unless the carrier has authority to carry the commodity bound for the intermediate point. These and other restrictions have contributed to depressed load factors which tend to increase vehicle miles and to reduce energy-consumption.

Environmental Impacts

The environmental impacts (including energy consumption) of the proposed rules should be slightly beneficial. Information obtained by the ICC during 1976 in the *Empty/Loaded* survey suggests that a small fraction of trucks are forced to travel empty or partially empty because the ICC operating restrictions. Of the 3032 empty trucks in the survey sample, only 16 were empty because they lacked ICC operating authority.[1] Of the 2007 partially empty trucks in the survey sample, none was partially empty because they lacked ICC operating authority. Based on the survey results, it is not expected that any major savings in vehicle mileage or improvements in load factors will result from the proposed rules. The minor reduction in vehicle mileage and improvement in load factors resulting from the proposed rules will, on a nationwide basis, slightly reduce energy consumption, roadway accidents, air pollution, and noise pollution.

The issues considered in this document were also the subject of a recently completed report entitled "Consequences of Motor Carrier Deregulation on Fuel Efficiency" prepared by Thomas Corsi and Merrill Roberts for the ICC Office of Policy and Analysis. There it was determined that restrictions on motor carrier operating authorities artificially and unreasonably contributed to motor carrier energy inefficiency. It was suggested that removal of such restrictions, in the long run, would enhance energy efficiency within the motor carrier industry. The report of Corsi and Roberts was based to a large extent on studies by others on this and related topics.[2]

[1] It should be noted, however, that 1,184 of the empty trucks were on their way to pick up another load. It is possible that a portion of these drivers could have obtained another load closer to the previous destination had ICC authority been available. See Bureau of Economics, Interstate Commerce Commission, *Empty/Loaded Truck Miles on Interstate Highways in 1976*, Washington, D.C., April, 1977.

[2] See e.g., Stephen Sobotka and Thomas Domeneich, "Traffic Diversion and Energy Use Implications: Another View," in Paul W. MacAvoy and John W. Snow (eds.) *Regulation of Entry and Pricing in Truck Transportation*, American Enterprise Institute, 1977, p. 198; Drake Sheahan/Stewart Dougall, Inc., *Evaluation of Potential Changes to Federal Economic Regulations Governing Private Carriage*, U.S. Department of Transportation, Washington, D.C., December 6, 1974; and Roland K. Kolins, "The Regulatory

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Statement of Energy Impact

Removal of Restrictions From Authorities of Motor Carriers of Property

The rules proposed in Ex Parte No. MC–142 (Sub-No. 1) would permit motor carriers of property to amend or eliminate operating restrictions which have impeded operational efficiency. By permitting a slight improvement in load factors and a reduction in empty mileage, the proposed rules will induce a modest reduction in energy consumption.

[FR Doc. 80–40512 Filed 12–30–80; 8:45 am]

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49 CFR 1002 and 1136

[Ex Parte No. MC–122 (Sub-No. 1)]

Implementation of Intercorporate Hauling Reform Legislation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules.

SUMMARY: Interim rules were adopted in this proceeding at 45 FR 45526–28 on July 3, 1980, to implement 49 U.S.C. 10524(b) notice conditions. The interim rules implemented legislation which allows related but separately incorporated members of the same corporate family to provide transportation service to each other without obtaining a license from the commission, subject to certain conditions and limitations. Experience with these rules indicates that several adjustments are needed to enable more efficient processing of notices, or to lessen the burdens of compliance. As modified, the interim rules are adopted as final regulations for filing of notices of intent to engage in Compensated Intercorporate Hauling (CIH) operations.

EFFECTIVE DATE: January 30, 1981.

FOR FURTHER INFORMATION CONTACT: Melvin B. Werner, (202) 275–7987, or Kathleen King, (202) 275–0956.

SUPPLEMENTARY INFORMATION: Our notice of interim rules sets out the background for this proceeding at some length. It is unnecessary here to expand on that discussion. Our final rules are based on the comments received.

In addition to procedural issues, the comments raise a number of substantive questions concerning the meaning and impact of Section 9 of the Motor Carrier Act of 1980 (Pub. L. 96–296, 93 Stat. 798–99). We note in this regard that compensated intercorporate hauling (CIH) is specifically exempted from Commission regulation. Thus, we must exercise caution to avoid actions having the effects of prescribing the mechanics of CIH service. Where no substantial controversial questions are involved, they will be addressed in this notice. Others, as more fully described below, which may be more controversial, warrant separate consideration.

We will first consider issues relating to the operation and effectiveness of the interim rules, identifying changes which have been shown necessary. Next, we will address various substantive questions. Finally, we will resolve various incidental matters.

I. Procedural Matters

Issues will be considered in relation to the volume of comments received, beginning with those receiving the greatest attention.

A. Filing Fees

Various comments contend either that we lack authority to impose such a requirement, or that the amount of $150 is excessive in light of the minimal processing involved. Our authority for this provision is 31 U.S.C. 483(a) allowing imposition for filing fees by agencies providing,

"* * * publication * * * or similar thing of value or utility performed, * * * or issued by any Federal agency * * * to or for any person. * * *" Our purpose in this regard is to recover part of the direct costs the Government would otherwise have to bear for the Federal Register notices which are mandated by the new statute. It does not appear an undue burden on enterprise to pass through an amount approximating our cost. In addition, the fee must necessarily accompany an original or updated notice submitted for publication, and rules will be modified to clarify the interim rules in this regard.

Another proposal relating to fees is to reduce the charge for supplemental filings. Other comments suggest that we eliminate the charge for filings of a technical nature, such as to indicate a change of name of a member of a corporate family. Given the basis for the imposition of the fee it would be inappropriate to lower the amount of the fee for supplemental filings. Unless the notice carried in the cab of the motor carrier correctly identifies each corporate subsidiary involved in CIH, the notice would be pointless. Therefore, we will require supplemental filings when the name of a corporate member is changed.

There is another situation where the substance of the service does not change in such a way that a new notice should be necessary. That is a situation where a subsidiary listed as a participant in CIH operations is absorbed into a parent corporation and its separate corporate identity is extinguished. The comments indicate that this is a relatively common practice in some corporate structures. While the prior notice would be rendered inaccurate as to the scope of the corporate family involved, it would be unlikely that the extent of operations involved would change to any extent. We will eliminate the refiling requirement in this case to reduce the burden on the business community. This change is not contrary to the intent of the legislation to advise the public of the intent of a corporation to engage in CIH service and to describe the relative scope of such operations.

It has also been suggested that the time period for submitting a new notice where a change in ownership has occurred, be extended to 30 days from the 10 days provided in the interim rules. While we would expect that some delay would occur in spreading word of such changes through a far-flung corporate empire, the 10-day rule does not appear to be unreasonably short and it will be retained. Further, CIH carriers are reminded that where ownership in a subsidiary falls below 100 percent, actual operations under the exemption must end immediately.

B. Notarization

A number of parties ask whether the affidavit accompanying a proposed notice is to be notarized. We believe such a requirement is an unnecessary formality which may be dispensed with. Title 28 of the U.S. Code provides in Section 1746, as follows:

Wherever * * * any matter is required or permitted to be supported, * * * by * * *, affidavit, * * * such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, * * * or statement, * * * of such person which is subscribed by him, as true under penalty of perjury, * * *.

It is clear that the notice in 49 U.S.C. 10524(b) is a type of document requiring accurate statement of certain factual matters. If the ownership conditions of the statute are represented as being

Footnotes continued from last page

Program: The Effect on Entry Backhaul, and Energy Consumption," *Motor Carrier Economic Regulation* National Academy of Sciences, Washington, D.C., 1978, pp. 179–198. Charles River Associates, Inc. and Cambridge Systematics, Inc., *Potential Fuel Conservation Measures by Motor Carriers in the Intercity Freight Market*, Vols. I and II, prepared for Federal Energy Administration, Washington, D.C., April 1977. Domenic J. Maio, *Freight Transportation Petroleum Conservation Opportunities—Viability Evaluation*, U.S. Department of Transportation, Transportation Systems Center, Cambridge, Mass., March 1979, pp. 4–13 to 4–16.

satisfied when, in fact, they are not, a question of either fraud or perjury may be present. Under 18 U.S.C. 1001, a person guilty of the former is subject to a fine of $10,000, while under the terms of 18 U.S.C. 1821, the latter conduct

D. Who Must Prepare Notice

Another question raised is who within a corporation or corporate family must sign the required affidavit of intent. It appears consistent with legislative intent to expect someone in the capacity

early as possible. See Floor Debate on S2245, reported in the *Congressional Record—Senate* at p. S3596 (daily ed. April 15, 1980). Considering the language of 49 U.S.C. 10524(b) in light of the legislative history, we believe that the

these suggestions and observations at this juncture.

II. Substantive Matters

A. Ownership Limitations

individual or partnership is the owner. Thus, we see no prohibition against operations by such firms within the exemption involved. No modification of the interim rules appears necessary to effectuate this policy.

permits corporate families to set up separate, exempt transportation subsidiaries to serve the corporate family, the question has arisen whether a subsidiary's operations must be limited only to proprietary service in

satisfied when, in fact, they are not, a question of either fraud or perjury may be present. Under 18 U.S.C. 1001, a person guilty of the former is subject to a fine of $10,000, while under the terms of 18 U.S.C. 1621, the latter conduct carries a fine of $2,000. Knowledge of these sanctions, and recognition of their applicability should ensure accuracy of reporting far more than would an anachronistic notarial seal.

Because of our findings, it will be necessary to revise the affidavit format prescribed in proposed 49 CFR 1136.3 to conform with 28 U.S.C. 1746. We will do so by adding a new section 49 CFR 1136.3(d) which will require the affirmation of ownership prescribed in the preceding subsection, 49 CFR 1136.3(c), to be accompanied by one of the declarations set out in 28 U.S.C. 1746. We note in this regard that this formula applies to foreign corporations, as well as to domestic firms. Many firms based abroad which conduct operations within the United States state that obtaining notarization of documents in their native countries involves substantial problems and red tape. These provisions should resolve any such problems, and ease compliance by all concerns with the requirements of 49 U.S.C. 10524(b).

C. Addresses

A question raised in a number of the comments concerns the requirement that the tendered notice include the address of the principal office of each of the subsidiaries within the corporate family which are intended to engage in CIH operations. It has been pointed out that in many instances a corporation may have components located in a number of places with no single one being an actual "principal office." Alternatively, the subsidiaries may share the headquarters of the parent which renders duplicative the additional listing of all of the subsidiary addresses.

We believe that, rather than attempting to specify what address should be used in any given case, we should require identification of only the State of incorporation of the subsidiaries included in a list. This approach will reduce the **Federal Register** notice and afford a means to contact a subsidiary if there is question of the *bona fides* of particular CIH operations. We will require submission of the complete address of the parent corporation which is responsible for filing the notice. This address should identify the location of the offices from which the corporate family is managed or the location from which central or financial control of the parent, if not of the various subsidiaries, is exercised.

D. Who Must Prepare Notice

Another question raised is who within a corporation or corporate family must sign the required affidavit of intent. It appears consistent with legislative intent to expect someone in the capacity of an officer of the filing corporation, rather than an employee or representative of the corporation, to be the person who performs this function. Our interim rules are unclear in this regard and will be changed to state that the affidavit must be executed by an officer of the parent.

E. Record-Keeping

Other comments address our observation that the Commission would not retain extensive records of notices submitted for publications. The Private Carrier Conference and Private Truck Council of America, Inc., among others, suggest that it would be worthwhile to have some central repository of data indicating the extent of participation in CIH operations. The Office of Secretary must retain information of the filings it has received. Those records would appear adequate to satisfy the interests of outside parties expressing concern for some record retention. The public interest plainly does not require us to retain extensive records relating to CIH operations. To facilitate recordkeeping, our final rules will require the submission of an original and one copy of a notice of intent to initiate CIH service.

F. Initiation of Operations

Several parties submitted comments requesting specific changes in proposed Rule 49 CFR 1136.2, "Applicability", which states that operations under the exemption may be performed as soon as the notice is filed with the Commission. Under Commission Rules (49 CFR 1100.4(b)), filing is accomplished at the time pleadings, requests, or other papers or documents are received at the Commission. One position, which is specifically espoused by the ATA, is that operations should not be allowed until the notice is actually published in the **Federal Register** (which may not occur until a month after filing). Alternatively, the Private Carrier Conference requests a statement in the rule that operations may begin upon transmission of the notice to the Commission. This would enable operations to begin, for example, upon placing the notice in the mail in instances where hand delivery or other means is not used.

The ATA position is without merit. It is clearly consistent with legislative intent to enable operations to begin as early as possible. See Floor Debate on S2245, reported in the *Congressional Record—Senate* at p. S3596 (daily ed. April 15, 1980). Considering the language of 49 U.S.C. 10524(b) in light of the legislative history, we believe that the various filing requirements stated in that subsection are not to be considered preconditions for valid CIH operations.[1] Nor is there any indication that the copy of the notice required to be carried in the cab of vehicles conducting CIH operations under 49 U.S.C. 10524(b)(4) must be the notice published in the **Federal Register.**

Because of the foregoing, we will retain our rule allowing operations to begin upon filing of a notice. Our interim rules, however, will be revised to indicate that where transmission is by mail, it is unnecessary to defer service until the notice is received and acknowledged by the Commission; rather, they may begin upon placing such notice in the mails. Our final rule at 49 CFR 1136.2 will be modified accordingly. In view of the 30-day publication requirement in 49 U.S.C. 10524(b)(3), we will continue to compute the date of receipt as the filing date for all notices for purposes of determining our internal deadlines.

Also in conjunction with the technicalities of notice preparation, we suggest that if the corporate office which will conduct CIH service differs from the one executing the notice, the operating office should be identified in case questions arise which require clarification prior to publication. The name of the traffic department or legal department, for example, should appear in a cover letter to enable us to meet the statutory deadlines. A new section 49 CFR 1136.3(f) will be added to implement this proposal. Subsequent subsections will be relettered accordingly.

Several parties seek various types of additional provisions to deal with specific concerns. We will consider

[1] In so finding we realize that a contrary view may be implied from comments on page 22 of the Report of the Committee on Public Works and Transportation, No. 96-1069, June 3, 1980, as follows:

(T)he parent company need only notify the Interstate Commerce Commission of its intent (to engage in CIH) . . . Following publication the Commission will receipt and return a copy of the notice. A copy of the notice must be kept in the "cab of all vehicles conducting the transportation."

This language, however, appears to be intended as a statement of procedural guidelines, rather than an interpretation of statutory requirements. Since we have adopted comprehensive procedures to implement 49 U.S.C. 10524(b), we consider the cited report section as precatory only. In view of the matters discussed in the text, we believe the language of the section clearly supports a rule allowing pre-publications.

these suggestions and observations at this juncture.

II. Substantive Matters

A. Ownership Limitations

Comments by several parties point out that corporate situations often arise where true 100-percent ownership is impossible. The examples given are situations where tender-offers have been made and a minimal number of shares have not been made available for purchase, or situations where the founders of an acquired company retain some shares in their firm while in the employ of the acquiring parent. Comments propose that additional language be added to part 1136 CFR defining the term "100 percent ownership" in such a way as to include alternative situations.

The Commission's authority to implement legislative proposals is relatively broad. *Am. Trucking Ass'n., Inc.* v. *I.C.C.*, 602 F. 2d 444, 451 (D.C. Cir. 1979). There is no reference to statutory history, however, which indicates that the drafters intended to enable operations in a situation where less than complete ownership is present. Therefore, we will decline, at this time, to adopt a rule having the effect of varying this requirement. We will monitor the situation, though, and if it should develop that the lack of a provision of the type requested substantially frustrates the legislative intent and hinders the ability of corporations to engage in CIH operations, we may readdress the matter.

We wish to distinguish the situation in the preceding paragraph from another type of interlocking ownership which appears to be within the purview of this statute, that is where two or more companies are entirely owned by a single individual or a group of individuals organized as a partnership, or in some other manner. In these situations of horizontal organization, although it is not organized in the corporate model, it appears to be proper for the non-corporate parent or parents of such companies by or for which service is proposed to be identified as such in an appropriately modified notice form. The provision of 49 U.S.C. 10524(b) (preceding subsection (b)(1)), makes it clear that the exemption is available to all qualifying "persons." By definition this term includes individuals as well as incorporated entities. There is nothing to indicate that the provisions of 49 U.S.C. 10524(b) were intended to bar operations where the 100-percent ownership is present, but the organizations are structured so that an individual or partnership is the owner. Thus, we see no prohibition against operations by such firms within the exemption involved. No modification of the interim rules appears necessary to effectuate this policy.

B. Scope of Notice

Another question is whether a notice may be filed by a corporation other than the ultimate parent of a corporate family. It is our interpretation that 49 U.S.C. 10524(b) does not prevent one other than the ultimate parent from filing the notice of intent required in 49 U.S.C. 10524(b) (1) and (2). This could typically occur in firms with vertical forms of organization. If only one firm is engaged in operations to which CIH service rules pertain, only the parent of that firm need file a notice listing its directly- or indirectly-owned subsidiaries. It may not, however, include in its notice firms which would be subsidiaries of the ultimate parent which comprise a different branch of the conglomerate. It could serve these only if the ultimate parent were to file the notice. Along these lines, if American operations of a foreign corporation were grouped under one domestic corporate entity, it would be appropriate for that entity to file the notice identifying itself as the parent. It would only be necessary for the foreign corporation to comply with the notice requirements, and identify itself as ultimate parent, if traffic which is under its specific control moves within this country. Other situations, where only limited operations are intended, would also appear to warrant limited filing.

C. Separate Incorporation of CIH Operations

Much comment within this category relates to the observation in the notice of interim rules that it would be proper for private carriers to establish separate, wholly-owned subsidiaries to perform CIH operations. Those parties which commented on this issue support our position that such means may be used to perform CIH operations. In this regard, we have considered the language and legislative history of Section 9, and are convinced that its central purpose is to terminate the prohibition against CIH service, and thus to reverse the underlying policy approved in *Schenley* v. *United States*, 326 U.S. 432 (1946). That policy was to subject to regulation those separate transportation subsidiaries established to serve affiliates.

Given that the statute removes CIH by a "person", which includes separately incorporated subsidiaries, from the Commission's jurisdiction and thus permits corporate families to set up separate, exempt transportation subsidiaries to serve the corporate family, the question has arisen whether a subsidiary's operations must be limited only to proprietary service in CIH operations. We believe the answer is clearly *no*. First of all, nothing in the statutory language or the legislative history requires or suggests such a result. Moreover, in our recent ruling in *Toto Purchasing & Supply Co., Inc.*, 128 M.C.C. 873 (1978), as implemented in Ex Parte No. MC-118, 43 Fed. Reg. 55051 (November 22, 1979), we adopted a policy of allowing private carriers to obtain for-hire authority while maintaining their unregulated, private transportation operations. Congress was aware of our decision. As long as the conditions of Ex Parte No. MC-118 are satisfied, we see no impropriety in dual, private-regulated service by a corporate subsidiary set up to render CIH. None of the comments on this question offered views supporting a contrary position.

This in turn raises a correlative issue. When a conglomerate is the 100-percent owner of a for-hire transportation firm, can that subsidiary transportation firm engage in CIH for its corporate affiliates? We believe the answer to this question is *yes*. Our decision in *Toto, supra*, recognizes that there is no statutory prohibition against issuing for-hire authority to a private carrier, because both regulated and exempt operations may be conducted by the same firm. That principle would apply, as well, to operations by a for-hire carrier under the provisions of 49 U.S.C. 10524(b) for its corporate affiliates, even though the service is not, in a strict sense, complementary to private carriage service. More importantly, however, because qualifying CIH operations are exempt, private carriage, prevent for-hire carriers from also providing CIH service.

We note, furthermore, that carriers are not restricted to serving corporate affiliates only by means of the CIH exemption. In the recent decision in *Atlantic Coast Exp., Inc., Ext—East Coast Ports*, 132 M.C.C. 184 (1980), the Commission expressly removed the bar to carriers' serving affiliates in certificated operations. Corporate families, therefore, have numerous options in arranging the movement of their traffic, which should enormously increase the efficiency of their operations.

D. Additional Proceedings Needed

Other substantive matters have been raised in the comments that are of import to both the regulated and unregulated segments of the

transportation industry. Because of their significance, it appears that they should be afforded consideration independent of this proceeding. The first of these issues is whether private carriers may perform CIH operations by using owner-operators. It has been the position of the

In essence, MTTDC argues that the intercorporate hauling rules will divert traffic from minority carriers. While section 9 may have an impact on the amount of traffic available to for-hire carriers in general, it is not obvious that

or otherwise hinder the actual performance of service within the exemption. We believe our rules achieve this objective and represent a balanced approach to adopting effective procedures while imposing minimum

§ 1136.2 Applicability.

Motor carrier service under this exemption may be performed as soon as the notice required by these rules is filed with the Commission. Where transmission of the notice is through use

notation shall appear on the envelope in which the notice is transmitted as follows: *"CIH Notice"*. On receipt the Secretary's Office will issue an acknowledgment indicating whether the submission is in order, and stating a

PART 1002—FEES

Section 1002.2 Filing Fees is amended as follows:

(1) In paragraph (c) new material is added to the end of paragraph (1). As

transportation industry. Because of their significance, it appears that they should be afforded consideration independent of this proceeding. The first of these issues is whether private carriers may perform CIH operations by using owner-operators. It has been the position of the Commission that when an owner of equipment contracts to provide service to an individual or company not engaged in transportation operations, the lessor is engaged in for-hire transportation unless the shipper assumes all the burdens of transportation. See *United States* v. *Drum*, 368 U.S. 370 (1962). Certain comments contend that the *Drum* decision does not preclude CIH operations by use of owner-operators.

Another question which has been raised is whether the exemption may be seen as extending to CIH service by warehouses or air freight forwarder. The example given is a situation where the unregulated warehouse or air freight forwarder sets up a subsidiary to provide for-hire surface transportation of traffic controlled by that entity. It has been posed that such firms may not, upon compliance with our prescribed notice requirments, move traffic under the control of the parent by reason of the CIH exemption. Both of these matters involve issues of sufficient difficulty to warrant being considered separately from this proceeding.

III. Other Matters

A. Procedural Defects Alleged

It is asserted that there has been a failure to analyze energy consumption consequences as required by 49 CFR 1106 and 1108 in developing the interim rules. This position is without merit, for our notice of interim rules specifically found that no signficant environmental or energy impacts are likely to result from this action. Nothing has been identified in the considered comments which would warrant a different result.

B. Minority Opportunities.

In yet another vein, the Minority Trucking-Transportation Development Corp. (MTTDC), questions the sufficiency of the interim rules to meet the needs of minority carriers. it states: . . . (T)he intercorporate hauling plan must allow for the principal to agree that where the traffic is moving for the account of the U.S. Government the tenets in Public Law 95–507 must apply. Our position is that these giant corporations, with 20 to 30 wholly-owned subsidiaries, will now be taking opportunities away from the minority transportation industry, in contradiction to the National Transportation Policy.

In essence, MTTDC argues that the intercorporate hauling rules will divert traffic from minority carriers. While section 9 may have an impact on the amount of traffic available to for-hire carriers in general, it is not obvious that such diversion would occur at the expense of minority-owned carriers. In fact, Congress, recognizing the detrimental affect of regulation on minority participation in the trucking industry included in a fitness-only entry test for the hauling of government freight. The new competition and improved service fostered by the participation of minority firms in this traffic may actually dissuade private carriers from entering the government freight market on the scale they may have anticipated prior to entry reforms. Congress specifically intended that qualifying carriers have the freedom to transport their own products in their own vehicles. It appears clearly violative of Congressional intent to attempt to condition that freedom in the circumstances involved here.

C. Clarifications

In addition to revisions in accordance with the responses, we will also modify the final rule in minor respects to make the requirements more specific and easy to follow. The reference in proposed 49 CFR 1136.4(c) to 49 CFR 1136.4(a) will be changed to 49 CFR 1136.3(a). This change is made to correct an obvious error in the notice of interim rules. We note that when an updated notice is filed, it should be in the same form as an original notice, with appropriate additions or deletions.

As an additional matter, our interim rules require that mailed notices be sent by "Certified" mail. This requirement appears unnecessarily burdensome and will be deleted. Companies are welcome to use a form of mailing which will result in their receiving a return-receipt: however, we will not impose this as a requirement. When notices are received for processing, the Secretary's Office will then issue an acknowledgment advising whether the notice is in order and stating a projected publication date. Interim rules 49 CFR 1136.2 and 1136.3(e) will be revised to conform with these findings.

We believe the interim rules as modified here will enable prompt, efficient processing of the notices required by the Motor Carrier Act. While some substantive matters have been considered in this notice, and others have been identified for consideration in related proceedings, we reaffirm that our function is essentially one of defining limits for these operations. We do not intend to regulate or otherwise hinder the actual performance of service within the exemption. We believe our rules achieve this objective and represent a balanced approach to adopting effective procedures while imposing minimum burdens on those subject to the provisions at issue.

We adopt our preliminary finding in the notice of proposed rules that this action does not significantly affect the quality of the human environment or conservation of energy resources. No comments have been submitted on any matter indicating that a contrary position is warranted, these rules being essentially procedural to implement requirements established by Congress.

Final rules adopted in this proceeding are set out in the appendix.

This notice of final rules is issued under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Dated: December 19, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Clapp concurs in part and dissents in part and will submit a separate expression at a later date.

James H. Bayne,

Acting Secretary.

Appendix—Final Rules Implementing 49 U.S.C. 10524(b)

Accordingly, 49 CFR Part 1136 is revised to read as set forth below:

PART 1136—COMPENSATED INTERCORPORATE HAULING OPERATIONS

Sec.

1136.1 Scope.
1136.2 Applicability.
1136.3 Notification.
1136.4 Change(s) in participation intercorporate hauling.

Authority: 49 U.S.C. 103231 and 5 U.S.C. 553.

§ 1136.1 Scope.

Compensated transportation service by a member of a corporate family for other members of the same corporate family ("Compensated Incorporate Hauling" or "CIH") is exempt from Commission regulation except for certain notice requirements. To qualify for the exemption, the participants shall be members of the corporate family in which the parent owns, directly or indirectly, a 100-percent interest in the subsidiaries. These regulations prescribe procedures for compliance with the notice requirements of 49 U.S.C. 10524 (b) and (c).

§ 1136.2 Applicability.

Motor carrier service under this exemption may be performed as soon as the notice required by these rules is filed with the Commission. Where transmission of the notice is through use of the mails, operations may begin as soon as the materials are placed in the mail. In all cases the date of filing will be the date of receipt at the Interstate Commerce Commission Offices.

§ 1136.3 Notification.

(a) General requirements—Whenever a corporation seeks to initiate compensated intercorporate hauling it shall be necessary for the corporation to prepare a **Federal Register** notice in accordance with the following format:

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:
2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:
   (i) • • •
   (ii) • • •
   (iii) • • •

(b) Parties subject to requirements—All notices must be submitted by the parent of the corporate family for whose members the proposed compensated intercorporate hauling operations are to be performed.

(c) Affidavit—The notice shall include the following affidavit from an officer or other person legally qualified to act on behalf of the parent:

I affirm that ———— is a corporation which directly or indirectly owns a 100 percent interest in the subsidiaries participating in compensated intercorporate hauling under 49 U.S.C. 10524(b), listed in the attached notice.

(d) Declarations—An affidavit of 100-percent ownership under subsection (c) shall be accompanied by a declaration of the individual making the affidavit, in substantially the following form:

I, ————, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

The declaration shall be signed by the person making the affidavit. An affidavit executed in this manner does not need to be notarized.

(e) To whom notice sent—The original and one copy of a notice of intent to engage in CIH operations shall be sent to: Secretary, Interstate Commerce Commission, Washington, D.C. 20423. A notation shall appear on the envelope in which the notice is transmitted as follows: *"CIH Notice"*. On receipt the Secretary's Office will issue an acknowledgment indicating whether the submission is in order, and stating a projected publication date.

(f) Cover letter requirement—Where the office which has prepared a notice on behalf of a corporate family differs from the one executing the notice, that office shall be identified in a cover letter attached to the tendered notice.

(g) Miscellaneous—The filing of a CIH notice does not initiate a proceeding before the Commission nor is any right of protest created by publication of a notice in the **Federal Register**; publication is a ministerial function and does not indicate Commission investigation or affirmation of the representations appearing in the notice concerning corporate affiliation.

(h) Filing fees—Filing fees as provided for in 49 CFR 1002 shall accompany the original notice of intent required by this Part. A separate filing fee shall also accompany each updated notice required by this part.

§ 1136.4 Change(s) in participation in intercorporate hauling.

(a) If the parent intends that an additional subsidiary participate in the compensated intercorporate hauling, it shall file an updated notice.

(b) Whenever the interest which a corporation owns in a subsidiary participating in compensated intercorporate hauling becomes less than 100 percent, operations under 49 U.S.C. 10524(b), by or for that subsidiary, shall be discontinued and the parent shall file an updated notice within 10 days.

(c) Updated notices will be subject to publication in the **Federal Register** and shall be submitted in the format prescribed in § 1136.3(a). These will be subject to the filing fee provided in 49 CFR 1002.2(d)(46).

(d) Where there is action by a corporate family which affects the status of a member participating in CIH operations, but the scope of the operations remain unchanged, an updated notice need not be filed. Such actions include, but are not limited to: name changes by a parent or subsidiary; absorption of a subsidiary into a parent resulting in extinction of its separate, corporate status. However, name changes by a parent or subsidiary require a supplemental notice under 49 CFR 1136.4. Appropriate changes to indicate such occurrences shall appear in any updated notices required by subsections (a) and (b) of this section.

PART 1002—FEES

Section 1002.2 Filing Fees is amended as follows:

(1) In paragraph (c) new material is added to the end of paragraph (1). As amended, paragraph (c)(1) reads as follows:

§ 1002.2 Filing fees.

* * * * *

(c) Related or consolidated proceedings. (1) Separate fees need not be paid on related applications filed by the same applicant which would be the subject of one proceeding, such as a single petition for modification of more than one certificate or permit held by the same person; a related plan of track relocation, joint use, purchase of trackage rights, and issuance of securities; a section 5 motor common carrier acquisition application combined with a related section 207 application for a certificate of public convenience and necessity; or the like. In such instances, the only fee to be assessed will be that applicable to the embraced proceeding which carries the highest filing fee as listed in paragraph (b) of this section; except that, directly related applications involving a transfer under section 206(a)(6) or section 212(b), and an application on Form OP–OR–9 for gateway elimination and/or a conversion, the sole fee shall be the basic fee for the transfer application. Each filing of an original or updated notice of intent to engage in compensated intercorporate hauling operations shall be considered a separate filing, and shall be subject to payment as described in paragraphs (d)(45), or (d)(46) of this section.

2. In paragraph (d), new items (45) and (46) are added to the listing under "Part IV" as follows:

* * * * *

(45) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling	$150
(46) A notice required by 49 CFR 1136.4 to update a previously filed notice of intent to engage in compensated intercorporate hauling	$150

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INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC–122 (Sub-No. 2)]

Lease of Equipment and Drivers to

without obtaining authority from the Commission. Specifically, the Motor Carrier Act of 1980 exempts CIH operations from Commission jurisdiction, subsequent to certain notice

the Commission stated that:

Essentially, the issue is as to who has the right to control, direct, and dominate the performance of the service. If that right remains in the carrier, the carriage is for hire

allow private carriers to engage owner-operators in order to ensure that the competitive relationship established between private and regulated carriers in the Motor Carrier Act of 1935 would

source and drivers from a separate source. *Rittenhouse, Investigation of Certificate*, 78 M.C.C. 389 (1958); *Personnel Service, Inc. Et. Al.-Investigation*, 110 M.C.C. 695 (1969). But

on the amount of control or responsibility which will allow owner-operator leasing to private carriers, yet also maintain a clear and practical distinction between private and for-hire

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INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC-122 (Sub-No. 2)]

Lease of Equipment and Drivers to Private Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Proposed policy statement.

SUMMARY: The Interstate Commerce Commission proposes to reexamine its policy behind the restriction which prohibits owner-operators and others who do not hold authority from this Commission from leasing their equipment with drivers directly to private carriers.

DATE: Comments are due on or before February 17, 1981.

ADDRESS: Send an original and 15 copies, if possible, of comments to:
Ex Parte No. MC-122 (Sub-No. 2), Room 5416, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Robert G. Rothstein, 202-275-7912;
or
Edward E. Guthrie, 202-275-7691.

SUPPLEMENTARY INFORMATION:

History—Related Rules

This proceeding is an outgrowth of changes in the trucking environment brought about by the Motor Carrier Act of 1980, Pub. L. 96-296, 94 Stat. 793, particularly the diminished concern over the protection of traffic and revenues of individual certificated common carriers and the increased flexibility accorded private carriers under Section 9 of the Act. In Ex Parte No. MC-122 (Sub-No. 1), Implementation of Intercorporate Hauling Reform Legislation, (45 FR 45526, July 3, 1980) as required by Section 9 of the Motor Carrier Act of 1980, we implemented the law now permitting affiliated or separately incorporated wholly-owned members of the same corporate family or affiliated companies to provide for-hire transportation services within the corporate family or affiliated companies (compensated intercorporate hauling, or CIH), subject to certain conditions, without obtaining authority from the Commission. Specifically, the Motor Carrier Act of 1980 exempts CIH operations from Commission jurisdiction, subsequent to certain notice and publication requirements, where the participating companies are 100 percent owned by another company. As a substantive matter, Ex Parte No. MC-122 (Sub-No. 1) concludes that CIH operations performed by a subsidiary established for the specific purpose of providing for-hire transportation for their parent or corporate affiliates are exempt under the Act.

The changes made by the Act and the conclusions reached in Ex Parte No. MC-122 (Sub-No. 1) have caused us to consider whether, in light of the exempt nature of private carriage operations, we should modify our current policy prohibiting persons who do not hold operating authority from this Commission (e.g., owner-operators) from leasing their equipment with drivers directly to private carriers for the performance of private carriage operations, whether performed pursuant to the CIH regulations or not. We have instituted this proceeding specifically to address this issue. We solicit comments from carriers, shippers, and other interested parties.

Background

Under the existing scheme of regulation, a person must obtain operating authority from the Commission before engaging in most types of interstate for-hire motor carrier transportation. Private carriage operations are exempt from regulation under 49 U.S.C. § 10524(a) when "(a) the property is transported by a person engaged in a business other than transportation; and (2) the transportation is within the scope of, and furthers, a primary business (other than transportation) of the person." This distinction has caused careful scrutiny of operations to determine whether the transportation service actually performed is for-hire or private carriage.

In the leading Commission decision addressing this issue, *H. B. Church Truck Service Co. Com. Car. Application*, 27 M.C.C. 191, 195 (1941), the Commission stated that:

> Essentially, the issue is as to who has the right to control, direct, and dominate the performance of the service. If that right remains in the carrier, the carriage is for hire and subject to regulation. If it rests in the shipper, it is private carriage and not subject to regulation * * *.

The Commission noted that so-called leases of equipment by a carrier to a shipper are sometimes subterfuges and devices to evade regulation, particularly as to operating authority and rates. In order to protect its regulatory jurisdiction, it thus created the rebuttable presumption that such equipment leases would be considered for-hire transportation, subject to regulation. The Commission maintained that the presumption would yield to a showing that the shipper has the exclusive right and privilege of directing and controlling the transportation service. *Id,* at 196.

The Commission subsequently required that shippers not only "control" the transportation operation, but that they also assume, in significant measure, the characteristic burdens of the transportation business. The Supreme Court upheld the Commission's "burdens" test in *United States* v. *Drum,* 368 U.S. 370, 375 (1962), and affirmed the finding that owner-operators who had leased their equipment to the shipper were engaged in unauthorized for-hire contract carriage operations, despite evidence of genuine shipper control, because the shipper had shifted the actual burdens of the transportation service to the lessors. *Supra,* at 381. The Commission's "burdens" test, then, clearly went beyond the "control" test formulated earlier, and effectively precluded any arrangement whereby an owner-operator could lease both equipment and driving services to a shipper.

We believe that the "burdens" test is no longer necessary to achieve legitimate regulatory objectives in light of recent statutory changes. That test was articulated during an early period of motor carrier regulation as part of a comprehensive regulatory program designed to ensure a practical distinction between private and for-hire carriage. The Commission declined to

allow private carriers to engage owner-operators in order to ensure that the competitive relationship established between private and regulated carriers in the Motor Carrier Act of 1935 would not be altered in such a way as to encroach upon the established province of regulated carriers. In the Motor Carrier Act of 1980, Congress has plainly indicated that we should accord less concern to the existing traffic and revenues of individual companies while private carriers are to enjoy increased freedom in a way that will contribute to operating efficiencies and achievement of the goals set forth in the national transportation policy. This latter purpose is reflected in the exemption of compensated intercorporate hauling from economic regulation. In our view, there is no longer any regulatory need to retain a "burdens" test designed to restrict the flexibility of private carriage operations to the degree formerly required, on the one hand, and protect the enclave of common carriers, on the other. Indeed, in our view, such restraint on private carriers would tend to frustrate Congressional directives to accord that group increased opportunities for improved efficiency. At the same time, allowing private carriers to employ owner-operators under properly controlled circumstances will promote a more competitive common carrier sector consistent with the underlying thrust of the Motor Carrier Act of 1980.

We do, however, acknowledge the continued need to maintain a workable distinction between private and for-hire carriage. We propose to return to the original concept of "control", set forth in *Church, supra,* to achieve this distinction.

It is no longer apparent, for this agency's regulatory purposes, that the mere employment of owner-operators divests the private carrier of responsibility in derogation of the definition of private carriage. Under our regulations set forth at 49 CFR Part 1057, regulated carriers may properly augment their equipment fleets by leasing equipment and drivers from other carriers on a long-term or single-trip basis. 49 U.S.C. 10922(e)(3)(A): *American Trucking Associations* v. *United States,* 344 U.S. 298, 303-04 (1953). Authorized carriers availing themselves of the leasing regulations must maintain exclusive possession, control, use of and responsibility for the leased equipment. Private carriers, however, enjoy no such flexibility in augmenting their fleets. They may add to their fleets by renting vehicles only, and by obtaining vehicles from one source and drivers from a separate source. *Rittenhouse, Investigation of Certificate,* 78 M.C.C. 389 (1958); *Personnel Service, Inc. Et. Al.-Investigation,* 110 M.C.C. 695 (1969). But they may not supplement their fleets with equipment leased from owner-operators. *United States* v. *Drum, supra.* We see no regulatory purpose to be served by continuing this distinction of fleet augmentation between private and for-hire carriers, and believe that both classes of carriers can exercise proper control or responsibility over equipment leased with drivers.

The Supreme Court, in *Drum,* characterized our earlier decision as resting, in part, on the conclusion that to constitute valid private carriage, no party other than the shipper could have "*any* right to control, direct, and dominate the transportation." 368 U.S. at 381 (emphasis added). At the time *Drum* was decided, the Commission was far more concerned than we are today with ensuring that private carriers maintained a narrowly defined role in a heavily regulated motor carrier industry. Indeed, the Court's opinion recognizes this. The Commission properly read the for-hire definition broadly to ensure that private carriers could operate only where they exercised all the key elements of control. We believe, however, there is no longer any regulatory purpose to be served by maintaining an absolute requirement as set forth in *Drum,* and that control or responsibility can properly be shared between private carriers and owner-operators. No longer apprehensive that equipment leases could be surreptitious arrangements to evade our regulatory jurisdication as announced in *Church, supra,* we now believe that the use of owner-operators by private carriers would reflect an independent business judgment that such use constitutes a more efficient employment of a shipper's resources. Thus, a keystone of our prior policy has evaporated.

While we are not prepared to broaden the rights of private carriers to an unlimited degree, we are satisfied that the decision of private carriers to use owner-operators in lieu of establishing or augmenting their own fleets in more traditional ways may well involve sufficient indicia of of responsibility over the entire operation so as to constitute permissible private carriage. The spectrum of control contains a point at which the amount of control is so lax that beyond it is, for all intents and purposes, an area subject to Commission jurisdiction. We seek comments, therefore, from the industry which this proposed policy would affect, on the amount of control or responsibility which will allow owner-operator leasing to private carriers, yet also maintain a clear and practical distinction between private and for-hire carriage. Some indicia of responsibility which we believe would ensure an operation's legitimacy as private carriage would be the shipper's exclusive use and control of the owner-operator's equipment and services use and control of the owner-operator's equipment and services for the period of the lease; the shipper's assumption of variable costs of the transportation; liability in the event of loss; or requiring the shipper to bear the costs of safety and regulatory compliance. Related issues are the length of the lease; whether trip-leasing can or should be allowed; and whether to limit the number of shippers an owner-operator may serve.

In addition, there are certain implications of the proposal on which we believe public comment would be particularly helpful.

1. *Utility*—Privately-owned or leased truck fleets may represent a relatively substantial portion of corporate capital, management, and other resources. The Congressional mandate in the national transportation policy to promote competition and efficient transportation services to meet the needs of shippers and to allow for the productive use of equipment and energy resources, 49 U.S.C. 10101(a)(7), suggests that we explore the option of owner-operator leasing as a means of achieving those goals. The amount and types of benefits that could prospectively redound to existing private fleet operators would depend, of course, on a shipper's particular transportation requirements and the extent of private operations. Comments are sought on these and related issues concerning operators of private fleets.

2. *Commercial Lessors*—The Interstate Commerce Act, of course, recognizes the right of shippers to transport their own goods in bona fide private carriage. 49 U.S.C. § 10524(a). However, in many instances, the various arrangements which are made to accomplish this goal raise the question whether the shipper involved is actually engaged in bona fide private carriage or, rather, whether it is the recipient of for-hire motor carrier service. Many shippers operating their own equipment fleets do not own their vehicles but rather, for various business reasons, lease the vehicles from independent, non-carrier equipment leasing organizations. Drivers are employed by the shipper or are procured from a

separate and unrelated personnel source. In these situations, the shipper characteristically assumes the burdens of the transportation enterprise, and would properly be engaged in private transportation services, similar to the shipper's private carriage operations in which a driver was employed. The amount of control that may ultimately be required in order to legitimize private action, if any, on these issues will have any significant impact upon the quality of the human environment. We do anticipate that further action will improve operating efficiencies, reduce

being transported. Other provisions require notification to the Commission, publication of the notice in the **Federal Register**, and carrying of the notice in the cab of vehicles performing CIH

the same time, we are not concerned that improvements in the intermodal capability will adversely affect regulated carriers since, on balance, we see no public harm flowing from such

warehouses, may set up affiliates to move their freight under the CIH exemption. In *I.C.C.* v. *V.S.C. Wholesale-Warehouse Co., supra,* it

separate and unrelated personnel source. In these situations, the shipper characteristically assumes the burdens of the transportation enterprise, and would properly be engaged in private carriage operations. *Drum, supra.* We seek public comment on whether our conclusions regarding owner-operators necessarily lead to the conclusion that commercial lessors may offer, in addition to equipment, drivers to lessees engaged in private carriage, without disturbing the principles upon which *Drum, Personnel Service, supra,* and related decisions rely.

3. *Effect upon owner-operators*—We contemplate that this proposal would have a salutary effect upon the owner-operator segment of the motor carrier industry. At the same time, we realize that individual owner-operators are perhaps the most ill-equipped of the potentially affected parties to comment on this proceeding. They are generally unfamiliar with the notice and comment process of administrative law, and do not have the facilities to direct their attentions to proceedings such as these. Nevertheless, we urge representatives of the owner-operator industry to file comments and to encourage individual owner-operators to participate.

Owner-operators, at public Commission conferences, have opposed Commission policy which precludes them from leasing their equipment directly to shippers. Such a policy, they conclude, prohibits them from becoming effective competitors for traffic. Their desire is to achieve the same efficiency of operations, productivity of equipment, and balance of operations that larger carriers strive to maintain. A policy allowing the leasing of equipment with drivers to private carriers would effectively place a new source of traffic at owner-operators' disposal. This could, in turn, preserve the integrity of the owner-operator sector in the overall scheme of motor carrier transportation by removing unnecessary regulatory impediments to achieving increased operating efficencies, increased revenues, greater fuel savings, and more productive use of equipment.

An additional yet pivotal issue concerns owner-operator employment status. In the regulated sector of motor carrier transportation, the leasee's assumption of exclusive possession, control, use of, and responsibility for the leased equipment does not normally disturb the equipment lessor's status as an independent contractor. Arrangements can be perceived, however, whereby an owner-operator could lease equipment to a private carrier and perform in-house transportation services, similar to the shipper's private carriage operations in which a driver was employed. The amount of control that may ultimately be required in order to legitimize private carriage operations conducted with owner-operators may raise serious questions, for the owner-operator and the lessee, concerning owner-operators' continued and commonly held status as independent contractors. Resolution of this issue will have a bearing on the extent to which owner-operators would be used by private carriers and shippers.

We see no reason why the leasing of owner-operators to private carriers should result in a change in status; leasing to common carriers, after all, does not convert independent owner-operators into employees. We nonetheless request comments on whether, through custom, practice, or arrangement, owner-operator lessors engaging in private carriage operations may experience a change in status from "independent contractor" to "employee".

4. *Effect upon Authorized Carriers*—Many authorized carriers have engaged the services of owner-operators exclusively or to augment their equipment fleets. Shippers commonly use authorized carriers, who in turn use owner-operators, either exclusively or for overflow traffic during peak periods to augment their own private fleets. If it is determined that owner-operators may lease their equipment to private carriers, then traffic normally handled by an authorized carrier may be diverted to the owner-operator who negotiates independently to transport a private carrier's frieght.

Comments are sought from authorized carriers explaining how and why traffic may be diverted from them, setting forth, with substantiation, any projected materially adverse effects. We stress, in this connection, that we should be alerted to *public* harm as opposed to simply private harm to individual firms. Carriers should also address other relevant issues that would arise in the promotion of competitive and efficient transportation services mandated by the national transportation policy. They must bear in mind that while freight transported by private carriers is exempt and could therefore be transported by owner-operators, authorized carrierrs would not be precluded from participating in the negotiations for and transportation of private freight.

Environmental and Energy Considerations

We do not believe that this request for comments or subsequent Commission action, if any, on these issues will have any significant impact upon the quality of the human environment. We do anticipate that further action will improve operating efficiencies, reduce empty mileages, and increase productivity of revenue equipment, thus contributing to the conservation of energy resources. In any event, we invite comments which identify significant effects this proceeding may have on either the quality of the human environment or conservation of energy resources.

This notice is issued pursuant to 5 U.S.C. 553.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Decided: December 19, 1980.

James H. Bayne,

Acting Secretary.

[FR Doc. 80-40445 Filed 12-30-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-122 (Sub-No. 3)]

Interpretation—Intercorporate hauling

AGENCY: Interstate Commerce Commission.

ACTION: Petition for Declaratory Order.

SUMMARY: We have been asked to determine whether the exemption of Section 9 of the Motor Carrier Act of 1980 (Pub. L. 96-296, 94 Stat. 798) is available to certain types of companies. We believe that 49 U.S.C. 10524 (a) and (b) are interrelated so as to render the exemption of Section 9 unavailable to transportation firms and their subsidiaries. We propose, however, to allow affiliates of warehousing operations to perform private carriage service by reason of the intercorporate hauling exemption.

DATE: Comments are due on or before February 17, 1981.

ADDRESSES: Send an original, and, if possible, 15 copies of comments to: Ex Parte No. MC-122 (Sub-No. 3), Room 5416, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Melvin B. Werner, (202) 275-7985, or Edward E. Guthrie, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Section 9 of the Motor Carrier Act, exempts compensated intercorporate hauling (CIH) from licensing provisions otherwise applicable to for-hire motor carrier operations. Its terms, however, limit the applicability of the exemption to situations where the corporation providing service is a 100 percent owner of the company by or for which traffic is

being transported. Other provisions require notification to the Commission, publication of the notice in the **Federal Register**, and carrying of the notice in the cab of vehicles performing CIH service.

On July 3, 1980, the Commission published a notice of interim rules implementing the CIH provisions of the Act in Ex Parte No. MC.122 (Sub-No. 1) (45 FR 45526). That notice requested comments on the suitability of the proposed rules as final implementing regulations. Several comments raised substantive questions which it did not appear appropriate to consider in a proceeding dealing essentially with procedureal matters. One comment, filed by Cape Air Freight was framed in the alternative as a petition for a declaratory order concerning possible limitations on the CIH exemption. This pleading raises questions of statutory interpretation which will be described below.

The question posed in the Cape petition is whether a carrier, particularly an air freight forwarder or airline, may "spin-off" a 100 percent-owned trucking company established to provide service for the parent carrier under the CIH provisions of the Act.[1] Other comments have, more hypothetically, inquired whether such a course may be followed by non-carriers, such as warehouses, which control freight but are not themselves able to perform transportation as unregulated, private carriers. See *I.C.C.* v. *V.S.C. Wholesale-Warehouse Co.*, 312 F. Supp. 542 (S.D. ID 1969).

In the petition for declaratory order Cape Air Freight posits that various regulated carriers are in the business of providing alternate, surface transportation for air carriers and their frequently affiliated forwarders. It observes that if air carriers are found able to perform surface service under their own corporate umbrellas without becoming subject to ICC regulation, the operations of independent, regulated carriers stand to be adversely affected.

We conclude that affiliates of carriers operating in the air transportation mode are not subject to the CIH exemption. We recognize that combined air and surface capability within the same company would increase the flexibility of the transportation system to the likely benefit of users of air freight services. At the same time, we are not concerned that improvements in the intermodal capability will adversely affect regulated carriers since, on balance, we see no public harm flowing from such redistribution of existing traffic. Our determination flows from our belief that Congress has not seen fit to extend the CIH exemption to companies whose principal business is the provision of transportation.

We note that the CIH exemption is codified at 49 U.S.C. 10524(b). The prior subsection, 49 U.S.C. 10524(a), embodies the so-called "principal-business" test which allows private carriage operations to be performed only when such operations are in furtherance of some primary, *non-transportation* enterprise. In view of the inclusion under the same code section of the "primary business" standard and the CIH exemption, we believe that 49 U.S.C. 10524(a) must be complied with before the exemption in subsection 10524(b) applies. Where an air freight forwarder or other non-regulated transportation entity is the parent of a separate motor carrier this test would not be satisfied.

We further believe that the concurrent adoption in the Motor Carrier Act of 49 U.S.C. 10526(a)(8)(B) supports our interpretation. That provision exempts from our regulation transportation of passengers or property by motor vehicles, "as part of a continuous movement, which has been or will be transported by an air carrier." By having specifically exempted such continuous operations, and also having exempted emergency substitute service in 49 U.S.C. 10526(a)(8)(C), it appears that it is not within the legislative intent to authorize those operating within the mode of air carriage freely to substitute surface operations for movements by air, without those operations becoming subject to Commission scrutiny.

As a consequence, we conclude that affiliates of carriers operating in the air transportation mode are not subject to the CIH exemption. We request comments on that view and on the related questions which follow: (1) Would such a finding apply equally to motor carriers affiliated with carriers operating in other modes (e.g. rail, water)? (2) Should specific regulations be adopted to preclude the filing of CIH notices provides for in 49 U.S.C. 10524(b)(1), (2) and (4), by firms which are engaged only in transportation operations? and (3) If so, what form should such regulations take?

We turn now to the other question framed in comments in Ex Parte No. MC-122 (Sub-No. 1), of whether non-transportation businesses, such as warehouses, may set up affiliates to move their freight under the CIH exemption. In *I.C.C.* v. *V.S.C. Wholesale-Warehouse Co., supra,* it was determined that warehouses in particular, could not engage in private carriage, because of the requirements of then 49 U.S.C. 303 (c) [now 49 U.S.C. 10524(a)] that such operations be both in furtherance of a principal or primary non-transportation enterprise, and also, within the scope of such activities. Under the facts presented, the transportation of freight for patrons was found to constitute for-hire, contract carriage, as defined in then 49 U.S.C. 303(b)(15).

The facts in the *V.S.C.* case are sufficiently germane to warrant restatement here. In that proceeding, the warehouse operator maintained a truck fleet with which it transported exempt produce in interstate commerce. It also moved nonexempt traffic between its various storage locations, assertedly to enable it to meet customer delivery instructions in a more responsive manner. While the advantages of the transportation service to patrons of the warehouse were implicitly recognized, the principal purpose of the operations was found to be that of repositioning equipment used in exempt haulage. The Court specifically concluded that while these operations made defendant's carrier service more efficient, this factor did not warrant finding the nonexempt service within the *scope* of the warehousing business in which it was engaged.

It is our view that it would now be proper to hold that such carrier operations are within the scope of a primary non-transportation business. We note that all of the various entities involved in moving goods and products from their source to the ultimate market must provide a broader range of services to enhance the efficiency of the overall transportation system. We believe that warehouses should be able readily to reposition stock of their clientele while in their possession by means of interstate hauling, and that we should facilitate these operations whenever possible. Comments of interested parties should address the question of whether this premise is correct, and provide data in support, if possible.

We observe that a finding that motor transportation by warehouses is within the scope of a non-transportation business would not be contrary to the legislative intent prompting Congress to adopt the "primary business" standard. This provision was largely corrective in nature, with its objective being to bring

[1] Our notice of interim rules in Ex Parte No. 122 (Sub-No. 1) observed that under section 9, it would be proper for shippers to establish separate transportation subsidiaries to provide exempt, CIH service, previously such operations had been considered subject to regulation, and required a license from this Commission. See *Schenley Corp.* v. *United States*, 326 U.S. 432 (1946).

an end to many clandestine transportation operations being conducted under the guise of private carriage. See *Church Point Wholesale Bev. Co.* v. *United States*, 200 F. Supp. 508 (W.D. LA 1961), citing Senate Report

"motor private carrier" that must be the *owner, lessee,* or *bailee* of the property being transported. It is also important that we receive comments concerning how such an exemption for a "warehouse" would affect our regulation

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1003, 1011, and 1100

[Ex Parte No. 55 (Sub-No. 43)]

a. Content of oral hearings
b. Notice of oral hearings
7. Supporting evidence in motor common carrier cases
8. Prior Commission policy statements which affect the application process
a. Related issues in a single application

governed the Commission's activities. Most of these changes related to the law governing motor carriers of property. Significantly, however, 49 U.S.C. 10322 adopted statutory time limits for the processing of applications, as set forth

an end to many clandestine transportation operations being conducted under the guise of private carriage. See *Church Point Wholesale Bev. Co.* v. *United States*, 200 F. Supp. 508 (W.D. LA 1961), citing Senate Report No. 1647, 85th Cong. 2d Sess. 523–525 (1958). The particular services to which the provision was directed involved "buy-sell" transactions which imparted a misleading appearance to the operations being performed. Warehouses providing transportation services have not historically engaged in such practices, and it appears that extending the primary business test to their operations may have been more to insulate regulated carriers from competition than to protect the public from unscrupulous operators. While such insulation may have once been a valid regulatory objective, it clearly is no longer in light of the Motor Carrier Act of 1980.

In addition to discussing the matters set out above, comments should identify what, if any, significant effect this proceeding may have on either the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10101, and 10321 and 5 U.S.C. 554(e))

Decided December 19, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Gilliam concurring with a separate expression. Commissioner Clapp concurs in part and dissents in part and will submit a separate expression at a later date.

James H. Bayne,

Acting Secretary.

Commissioner Gilliam concurring:

While we are only seeking comments here on whether motor carriers affiliated with carriers operating in other modes (e.g. rail, water) are subject to the CIH exemptions, it is my opinion that they are not. We make this conclusion relating to motor carrier affiliates of carriers operating in the air transportation mode. Section 10524 of the Motor Carrier Act of 1980 specifically states that to be eligible for the exemption, the "property is transported by a person engaged in a business other than transportation." I do not know how we can logically conclude that rail and water carriers are not primarily engaged in transportation.

In addressing the question of whether a person engaging in a warehousing business is subject to the CIH exemption, parties should address the question of whether a warehousing business meets the definition of a "motor private carrier" that must be the *owner, lessee,* or *bailee* of the property being transported. It is also important that we receive comments concerning how such an exemption for a "warehouse" would affect our regulation of freight forwarders.

[FR Doc. 80-40448 Filed 12-30-80; 8:45 am]

BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1003, 1011, and 1100

[Ex Parte No. 55 (Sub-No. 43)]

Rules Governing Applications for Operating Authority

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: This document adopts final rules which govern applications for operating authority filed with the Interstate Commerce Commission. The rules modify the Commission's permanent authority procedures governing the issuance of certificates, permits and licenses to motor and water carriers, freight forwarders, and brokers to speed up administrative processes. Interim rules were adopted at 45 FR 45534, July 3, 1980, and amended at 45 FR 80109, December 3, 1980. Comments were requested on their suitability as final rules. These rule changes are made necessary by the Motor Carrier Act of 1980, which altered entry standards for motor carriers of property, and which imposed statutory deadlines on non-rail proceedings.

DATES: Applications affected by these rules: Applications filed on or after February 9, 1981 will use these rules. Applications filed between July 3, 1980, and February 9, 1981, will continue to use the imterim rules.

FOR FURTHER INFORMATION CONTACT: Obudsman's Office—202–275–7440, Peter Metrinko—202–275–7805, Edward E. Guthrie—202–275–7691.

For copies of these rules: Office of the Secretary 202–275–7307 or 800–424–5230.

SUPPLEMENTARY INFORMATION:

Appropriate Application Form

Applications under these final rules shall be filed on the modified OP–1 form dated 1–81.

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Background

The Motor Carrier Act of 1980 ("Act") made many changes in the law which governed the Commission's activities. Most of these changes related to the law governing motor carriers of property. Significantly, however, 49 U.S.C. 10322 adopted statutory time limits for the processing of applications, as set forth in the previous notice. In brief, in modified procedure cases, we must issue an initial decision 180 days after the application is filed. In orally heard cases, 270 days are allowed for the initial decision, of which 180 days may be used for the completion of evidentiary proceedings.

The Commission adopted interim rules to handle operating rights applications filed immediately after the passage of the Act. Since that time, in addition to receiving many comments, we have gained much experience in the daily use of the rules. This experience, coupled with the public comments, warrants modifications in the rules. The final rules are listed in Appendix A. The rules are substantially similar to the ones proposed. However, a number of minor modifications have been made to clarify rules or ease the paperwork burden on the public. Persons practicing before the Commission are especially urged to examine the changes carefully in order to avoid case processing problems.

Handbooks to Guide Applicants and Protestants

In addition to these rules, the Commission will soon issue booklets to guide potential applicants and protestants. The availability of these booklets will be announced in the **Federal Register** and through other appropriate outlets.

These booklets will provide a complete guide to participants in the operating rights application process. For example, information will be provided on post-decision compliance requirements. We considered providing some of this information in the rules themselves, but decided that the rules would have become unnecessarily detailed with information outside the application process itself.

Terminology and Renumbering

To avoid confusion in our discussions, please note the following:

The "former rules" or "former procedures" means those in effect for applications filed prior to passage of the Motor Carrier Act of 1980, which were superseded by the "interim rules" published in the **Federal Register** of July 3, 1980, at 45 FR 45534 (1980). The "final rules" are those being adopted in this decision and notice.

The term "fitness only" applications replaces "fitness related" applications.

The discussion of the interim rules will refer to the numbering used in the July 3, 1980, **Federal Register** publication, which numbered the parts as follows:

use of time are outlined in the chart set forth in Appendix C.

The chart details what the median decision time frames were under those procedures. Clearly the Commission

Adequacy of 45–Day Time Limit for Protests

Many persons argue that the 45-day time limit provided for protests is inadequate; some suggest 60 days would

found by the Commission to violate an applicant's opportunity for proper notice as required by Section 554(b) of the APA. See *Revision of Application Forms, supra.* They contend that the Protestants' filings in opposition, when served upon applicant, provide that notice.[6] Existing Commission regulations provide for this notice in the form of protests which must be filed within 45

standard of "public convenience and necessity" for applications by passenger carriers, the policy enunciated in Ex Parte No. MC–121, *Policy Statement on Motor Carrier Regulation,* 44 FR 60296

The discussion of the interim rules will refer to the numbering used in the July 3, 1980, **Federal Register** publication, which numbered the parts as follows:

§ 1100.247(A)—How to Apply for Operating Authority
§ 1100.247(B)—How to Oppose Requests for Authority
§ 1100.247(C)—General Rules Governing the Application Process

Subsequent to this publication, however, the **Federal Register** required that we change our numbering (45 FR 64958, Oct. 1, 1980). The final rules will use the following numbering:

§ 1100.251—How To Apply for Operating Authority
§ 1100.252—How To Oppose Requests for Operating Authority
§ 1100.253—General Rules Governing the Application Process

The "Case-in-Chief" Format

A number of parties object to the "case-in-chief" format.[1] A basic objection is the belief that the time limits imposed by 49 U.S.C. 10322 can be met by more expedited internal handling and a restructuring of times when statements are due.

We find none of the many submitted alternatives suitable. In each instance, times for the numerous steps which composed the former procedures are so compressed as to be unworkable. The Motor Carrier Lawyers Association (MCLA), for example, states that the interim rules are a "telling admission of regulatory inefficiency" (MCLA, p. 15). Typical of the alternative approaches suggested, it would give the Commission 45 days from the date the applicant's rebuttal statement is received by the Commission to serve the initial decision.

The former procedures' and interim procedures' basic steps and projected use of time are outlined in the chart set forth in Appendix C.

The chart details what the median decision time frames were under those procedures. Clearly the Commission under the old format could not meet the new deadlines. Some change from those procedures is necessary. The issue, therefore, is how to allocate between the Commission and the public that portion of the 180-day statutory period that is somewhat discretionary. We believe it is reasonable to give the Commission somewhat more time to process applications than is accorded private litigants. The Commission, unlike private litigants, may not choose whether to participate or not in particular cases depending upon the relative interest in the given case.

We must process and keep proper records for all applications. The complexity involved in accomplishing this task, which may not be well known to private parties, is detailed in Appendix C to this decision.[2] Furthermore, our procedures must be designed to permit us to accomplish our business within the initial statutory deadline in the great majority of cases even though we may not consume the allotted time in a given application. We have not, we might add, drafted our regulations in order specially to accommodate the most complex cases. We are confident that, with extraordinary effort in specific cases, we will be able to meet the statutory deadline even in the most complex situations.

Our experience since July has been favorable. By and large, private parties have met the timetables we established on an interim basis and we have been able to meet the statutory deadlines in all cases to date. Admittedly, the number of cases processed to final decision since July has been small. Our procedures, moreover, are not set in stone. We are prepared to review them in light of the experience gained over the next several months in order to determine whether (i) the time available to private parties is sufficient, and (ii) the time allowed for decisionmaking at the Commission is unnecessarily long. We can adjust the allocation of time if circumstances warrant. We do not wish to upset this procedure by modifying the allocation of time in the ordinary case.

Adequacy of 45-Day Time Limit for Protests

Many persons argue that the 45-day time limit provided for protests is inadequate; some suggest 60 days would be an appropriate figure.

Typical of those comments are the ones submitted by Central Freight Lines, Inc., *et al.*, which assert that this is not enough time to gather the specific traffic data that is needed. This is especially true because the new rules "require" the protestants to provide the information set forth in interim rule 1100.247(B)(d)(4). These persons believe that this is an oppressive rule amounting to a denial of due process. They assert that applicants have an unlimited amount of time to prepare an application, and that fairness dictates that a comparison of the situations requires an extension.

We believe that 45 days is sufficient time to protest an application. After all, this is 25% of the total time in the initial decision stage of the process.

First, protestants are not operating from "scratch" when they see an application in the **Federal Register.** Many protestants have developed their traffic data representations so that they can readily extract such information. And, while an applicant has to do original research on its application, protestants have a finite, known body of financial and operational data with which to work. Many of the items supplied by the protestant do not change from case to case, e.g., service capabilities, equipment lists, etc.

Finally, we hasten to add that following the factual evidence *format* is the only *requirement.* Protestants are free to present whatever data they wish. The format is nothing more than a guide, and a protestant can present any argument or data that it wants to. The guideline is merely an attempt to help protestants structure their evidence, and also a device to help us analyze it more quickly.

Is applicant deprived of an opportunity for proper notice under section 554(b) of the Administrative Procedure Act (APA) since it cannot know the extent of its opposition at the time it files its evidence?

The MCLA contends that the interim procedures violate fundamental due process. The rules, they argue, deprive an applicant of the opportunity fairly to present its position by requiring it to file its evidence in support of its application before interested parties are allowed to submit protests. The Association asserts that a similar proposal to revise the application process by requiring an applicant to file a so-called "case-in-chief" at the outset of a proceeding was found by the Commission to violate an applicant's opportunity for proper notice as required by Section 554(b) of the APA. See *Revision of Application Forms, supra.* They contend that the basis for rejecting the "case-in-chief" requirement at that time remains valid under the Motor Carrier Act of 1980, in that the prima facie showing of need which is still required of an applicant may not be established in certain instances without the applicant properly addressing issues respecting existing services. The Commission, it urges, should retain the existing licensing procedures, allowing protestants to respond to the notice of an application before an applicant submits its statements, in order to encourage and ensure the presentation by applicant of a complete record.

I. The notice requirement of 5 U.S.C. 554 of the APA and its applicability to the Commission's proceedings

It has long been held that an application of a motor carrier for a certificate of public convenience and necessity is the type of adjudicatory proceeding to which the notice requirements of Section 554 apply.[3]

Section 554(b) provides in relevant part:

(b) Persons entitled to notice of an agency hearing shall be timely informed of:

(1) The time, place, and nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held; and

(3) The matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law.

Commission regulations provide, first, that notice to interested persons, including competitors, be provided by publication in the **Federal Register** of an accurate summary of the authority sought.[4] The applicant is required to make known the entire scope of its application to ensure the adequacy of the required notice. What is required essentially is that potential protestants be given a reasonable opportunity to know the claims of adverse parties and an opportunity to meet them.[5]

Applicant, in turn, is entitled to "prompt notice" of the issues in fact or law controverted by interested persons. Protestants' filings in opposition, when served upon applicant, provide that notice.[6] Existing Commission regulations provide for this notice in the form of protests which must be filed within 45 days of the **Federal Register** publication, and in which the protestant must specify those matters in controversy.

MCLA's contentions, in fact, go not to the notice requirements of the APA, but rather to the fairness of the procedures adopted. An applicant is entitled to file an answer or other form of *responsive pleading,* and the Commission's rules so provide,[7] but an applicant is not "entitled" to know the protestant's anticipated contentions before submitting initial evidence. While it might be marginally helpful to an applicant to be knowledgeable of the issues protestants intend to raise, before submitting its evidence in support of the application, applicant is entitled under Section 554 only to a "response" to protestants' pleadings.

Commission regulations provide for the filing by applicant of a reply to any protests, ensuring that applicant is given the opportunity to sustain any issues in its application which protestants controvert.

II. The applicant's opportunity for a "fair hearing" under the revised licensing procedures proposed pursuant to the Motor Carrier Act of 1980

The Commission, in *Revision of Application Forms, supra,* at 818–20, rejected a proposal to require an applicant to submit with its application all of the evidence upon which it intends to rely. It viewed the provisions of Section 554(b) and 554(c) together and concluded that, in examining the fairness and feasibility of the proposal in terms of an applicant, the proposal was not in the public interest. The Commission examined the statutory provision and prevailing interpretations and noted that the determinative considerations, as set forth in *Pan-American Bus Lines Operation,* 1 M.C.C. 190, 203 (1936), require consideration of the adequacy of existing services. It concluded that an applicant would be better able to address fully the requirement once opposing carriers were made known to it.

The statutory provisions at 49 U.S.C. 10922 and the determinative considerations governing applications for motor carrier authority have been altered significantly in recent months.[8] While part (a) retains the controlling standard of "public convenience and necessity" for applications by passenger carriers, the policy enunciated in Ex Parte No. MC–121, *Policy Statement on Motor Carrier Regulation,* 44 FR 60296 (1970), states that the adequacy of existing service is no longer a factor in considering those applications.

Motor carrers of property are governed by the changes brought about in section 5 of the Act. We believe that "adequacy of existing service" is no longer a factor to be considered in determining whether a property motor carrier applicant has made a threshold case. Once having determined this, it is clear that these former objections to adoption of a case-in-chief approach are eliminated, since applicant will not have to prove something which is more fully within the knowledge of existing carriers.

In motor common carrier cases, the Act instructs the Commission that diversion of revenue or traffic from an existing carrier is not in and of itself inconsistent with the public convenience and necessity, 49 U.S.C. 10922(b)(2)(B). It is clear that Congress has required us to go beyond the Commission's historic approach to entry, which included evaluating adequacy of existing service. Here, Congress is stating that existing service may be perfectly adequate and recognizes that a new operation may draw traffic away from existing carriers, but nonetheless instructs us to grant applications unless public harm is shown. This is consistent with the House Report's language that increased competition and potential competition will bring about the best "delivery of transportation service to the public."[9] Thus, not only is adequacy of existing service not an issue in applicant's establishing a threshold case, but it is not a significant issue in the case at all.

In the contract carrier area, an issue that remains for consideration is the effect a denial of the permit will have on the applicant or the shippers. This may technically be seen as requiring somewhat of an evaluation of adequacy of existing services, but it is not an evidentiary burden for the applicant. Numerous Commission cases have granted applications for contract carrier authority where this was a "neutral" factor. It is not a significant evidentiary hurdle for the applicant. Finally, applicant will have knowledge of adequacy of existing services for shippers it seeks to serve under contract, based on its assessment of needed services in the shipper-applicant discussions prior to submittal of the application. It is only in the common

[1] So-called because of an earlier Commission proposal called "case-in-chief", developed in Ex Parte No. 55 (Sub-No. 14), and rejected in large part in *Revision of Application Forms,* 125 M.C.C. 790 (1976). The two cases are much different, however. The major objections of the Commission against adoption were (1) applicant would face increased costs since it would have to serve copies of its evidence on all parties who submitted "protests" (not including protestants' verified statements, however); and, (2) applicant's inability to discover existing services, linked with its burden of proof to meet the second part of the three-part test in *Pan-American Bus Lines Operation,* 1 M.C.C. 190, 203 (1936).

These objections have been removed, since an applicant no longer has the "adequacy of existing service" burden of proof. Further, our different version of case-in-chief requires the opposition to file its entire case, which makes frivolous protests unlikely. Applicant is partially remunerated for copying costs in our rules. Finally, all choices of an application system require compromises and trade-offs. The 180-day time limit cannot, however, be compromised.

[2] The public should also be aware that we are handling our growing case load with fewer employees. In fiscal year 1976 the Commission's 2,125 employees handled 8,657 proceedings. Presently we handle over 25,000 proceedings with a staff of 1,843.

[3] *North American Van Lines, Inc.,* v. *I.C.C.,* 386 F. Supp. 665 (N. D. Ind. 1974)

[4] See final rule 1100.251(j)(2).

[5] *North Alobama Exp., Inc.,* v. *United States,* 585 F.2d 783 (5th Cir. 1978).

[6] See final rule 1100.252(h)(2).

[7] See final rule 1100.251(o).

[8] H.R. Rep. 96–1069, 96th Cong., 2d Sess. 13–15 (1980).

[9] House Report, Id., at 14.

carrier area (which involves services to the general public, often over a broad territory) that the lack-of-notice issue as to adequacy of existing services becomes even a theoretical problem.

No other form of application handled published, the Commission has preliminarily determined that the burden has shifted, and has found that the proposed service will serve a useful public purpose, responsive to a public demand or need. At that point, the the nature of the proceeding, and the public interest permit; and

(2) To the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and

Where any agency believes that the informal settlement will not accomplish the ultimate purpose of the proceeding, such as future compliance with the law, it would be justified in concluding that settlement by consent would not be in

submitted formal pleadings and became parties. While the decision as to the acceptability of the restrictive amendment can be fairly easy, a greater problem remains. The public interest requires that we continue to examine

competitive and efficient transportation services. Restrictive amendments compromise these goals.

Restrictive amendments have also tended to reduce competitive operations, rather than enhance them. Such

carrier area (which involves services to the general public, often over a broad territory) that the lack-of-notice issue as to adequacy of existing services becomes even a theoretical problem.

No other form of application handled by the Commission requires the applicant to discuss initially the adequacy of existing services, as can be seen in the major broker, forwarder, and water carrier cases cited in the prior notice.

In view of the varied considerations on which the Commission may find that applicant's operation will serve a useful public purpose, responsive to a public demand or need,[10] the elimination of adequacy of existing service as an issue in all motor carrier application proceedings, and the opportunity for rebuttal afforded applicant, we no longer believe that our prior concern over the lack of notice is warranted. Applicant under these final rules will be able to submit a complete record at inception to establish a threshold case, to rebut controverted evidence, and to be otherwise assured of a fair hearing.

Restrictive Amendments

The interim rules forbid the use of restrictive amendments. We adopt that approach for the final rules.

Our prior decision gave several reasons for ending this practice. We agree with the contentions of some parties that we might possibly work the amendment practice into our process without undue delay being caused, but further reflection leads us to conclude that the practice serves no useful purpose and would not be in the public interest.

While we have fully considered the comments of the parties on this issue,[11] we believe the parties overlook the import of the new motor carrier entry section of the Act and the Commission's public interest function in the licensing process for all types of authority. In a motor common carrier of property case, once applicant carries its threshold burden, the burden of proof shifts. In other words, once the application is published, the Commission has preliminarily determined that the burden has shifted, and has found that the proposed service will serve a useful public purpose, responsive to a public demand or need. At that point, the restrictive amendment process serves no public interest purpose. It is up to protestants to present substantial evidence to meet their burden of evidence and proof. While the determination of the threshold case is subject to re-examination, there is less reason, as a practical matter, for the applicant to accede to a request for a restrictive amendment, since, without a substantial evidentiary showing by protestants, it will have won its case.

The MCLA argues that if an applicant has no intention of providing a certain type of service, the Commission should not impose "its bureaucratic will on the carrier by refusing to entertain a narrowing of a service proposal." This construction of our rules misconceives our purpose. We expect that, in preparing its application, the applicant will have made a reasoned business decision as to the demands for service and the nature of the operation it can perform, now and in the future. It will have filed evidence in an effort to demonstrate that the public purpose will be served by its proposed operation. Allowing other parties to attempt to narrow this proposal through the threat of continued litigation is counter to the public interest. If opposing parties believe that the public interest will best be served by a narrowing of the grant of authority from that proposed, they can file protests to the application demonstrating these views. As to all types of applications, we stress that Congress has entrusted the Commission to analyze evidence and arrive at a correct assessment as to the needs for additional service or competition, including whether an application should be only partially granted. The restrictive amendment process in actuality distorts this reasoned analysis, because it encourages protesting parties to coerce an applicant into accepting a fragmented grant of authority when the applicant is willing to offer the public a broader service.

MCLA also argues that Section 554(c)(1) of the Administrative Procedure Act specifically allows parties to make offers of settlement.

Section 554(c) provides, in relevant part:

(c) The agency shall afford all interested parties opportunity of:

(1) The submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) To the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

It is important to understand the purpose of this APA provision. The whole purpose of the provision is to eliminate costly and lengthy proceedings in those cases where the parties are able to reach a resolution of their own which the agency finds compatible with the public interest.

The legislative history accompanying this section recognizes this provision as being of the greatest importance to the efficient functioning of the administrative process.[12]

Considering the settlement provision in S. 7, 79th Cong., 1st Sess. (1945), which ultimately became Section 554(c) of the Administrative Procedure Act, the Senate Judiciary Committee stated:

> Subsection (b) (now Section 554(c) of the Administrative Procedure Act) provides that, even where formal hearing and decision procedures are available to parties, the agencies and parties are authorized to undertake the informal settlement of cases in whole or in part before undertaking the more formal hearing procedure. Even courts through pretrial proceedings dispose of much of their business in that fashion. There is much more reason to do so in the administrative process, for informal procedures constitute the vast bulk of administrative adjudication and are truly the lifeblood of the Administrative process * * *. The statutory recognition of such informal methods should both strengthen the administrative arm and serve to advise private parties that they may legitimately attempt to dispose of cases at least in part through conferences, agreements, or stipulations. It should be noted that the precise nature of informal procedures is left to development by the agencies themselves.[13]

However, it is clear from the statute that there are certain qualifications to the settlement provision. The Attorney General's Manual on the Administrative Procedure Act (1947) is instructive on these limitations. The requirement that agencies provide such opportunities is limited to cases where "time, the nature of the proceeding, and the public interest permit." The quoted language is to be treated in the alternative, however. The "nature of the proceeding" may include those situations where statutes require that hearings be held in any event.[14]

[10] See, for example, *Art Pape Transfer, Inc., Ext.—Commod. in End-Dump Vehicles*, 132 M.C.C. 84, 93–94 (1980).

[11] Major contentions include: The practice will not delay case processing; if the Commission believes the amendment is being used to eliminate opposition at the expense of the public interest, it can reject the amendment; many amendments are offered at the insistence of the supporting party; it will lead to applications overly broad in scope; inexperienced parties will mistakenly apply for overly broad authorities; allowance of the practice leads to unopposed cases; the practice allows applicant to reassess public need; and, protestants with strong interests will have to litigate instead of using the amendment process to make applicants reduce their requests.

[12] Senate Judiciary Committee, Administrative Procedure Act—Legislative History. S. Doc. No. 248. 79th Cong., 2d Sess. 203 (1945).

[13] S. Doc. No. 248. *supra*, note 4, at 24.

[14] On this point, the Manual refers to the Civil Aeronautics Board requirement that hearings be

Footnotes continued on next page

Where any agency believes that the informal settlement will not accomplish the ultimate purpose of the proceeding, such as future compliance with the law, it would be justified in concluding that settlement by consent would not be in the public interest.[15]

The Attorney General's statements are supported by the legislative history. Despite the language which states that agencies would be required to state settlement procedures in their rules, it is clear that Congress did not intend that parties should be granted an absolute right to make settlement offers.[16] Referring to the qualifying language in section 554(c), limiting application to cases in which "time, the nature of the proceeding, and the public interest permit," the Senate concluded:

> It is intended to exempt only situations in which, for example, (1) time is unavoidably lacking, (2) the nature of the proceeding is such that, for example (as in some forms of rulemaking), the great number of parties or possible parties makes it unlikely that any adjustment could be reached, and (3) the administrative function requires immediate execution in order to protect the tangible and demonstrable requirements of public interest.[17]

* * * * *

The intent of the provision, rather, is to streamline cases in the administrative process within the confines of the public interest. Under the procedures outlined in this proceeding, we have accomplished substantial streamlining of the process, and little benefit would accrue as a result of allowing restrictive amendments.

We will assume, for sake of argument, that in a given case, all protestants would drop out if a settlement were reached. However, to accord proper notice to the public and allow a suitable time for response to notice of the application, the Commission must in any event wait 45 days from Federal Register publication to see what interested persons oppose the application. This will occur whether or not any individual settlements have been reached. If at this point the protestants and applicant were to submit pleadings which indicated settlement, the Commission would still have to consider the acceptability of the amendment, and arrive at a decision, regardless of whether the persons interested in opposing the application submitted formal pleadings and became parties. While the decision as to the acceptability of the restrictive amendment can be fairly easy, a greater problem remains. The public interest requires that we continue to examine the needs of the public without regard to the technical acceptability of the amendment, so an evidentiary examination by the decisionmaker would still be required.[18] Since we would be required to analyze the completed record, little time would be saved by the process.

It is well established that the Commission must reject restrictive amendments where the public interest dictates.

A major consideration must be whether the public interest precludes consideration of restrictive amendments. We conclude that the public interest requires that we listen to all parties' arguments, unfettered by the restraints of compromise and fear of litigation.

We believe that in all types of applications handled under these rules, the evidentiary standards have evolved to the point that competition is seen to be in the public interest. While our discussion will center on motor carrier of property applications, the most common type of case handled under these procedures, a look at the entry standards in all other types of applications will show similar trends. It should also be remembered that the entry standard for motor common carrier applications has always been considered to be higher than for other types of applications. We believe that the restrictive amendment process has the same debilitating effect on all types of applications filed under these rules.

We believe that the Interstate Commerce Act, as revised by the Motor Carrier Act of 1980, requires us to assess the benefits of competition in our motor carrier application cases. Competition is generally presumed to be in the public interest, not contrary to it.[19]

In examining the concept of what is in the public interest, it has been stressed in the Act that broad service authorizations are favored in the motor carrier area. The Act directs the Commission to eliminate existing restrictions, gateways, and circuitous routes. It provides that the Transportation Policy with respect to the motor carrier industry is to promote competitive and efficient transportation services. Restrictive amendments compromise these goals.

Restrictive amendments have also tended to reduce competitive operations, rather than enhance them. Such amendments do not allow for maximum utilization of equipment and energy resources, nor do they enable carriers to provide the range of service that would ultimately benefit the public. As was pointed out in our first decision in Ex Parte No. 55 (Sub-No. 43), many carriers simply protest applications in order to pressure an applicant into reducing its broad request for authority. The end result is that the granted authority simply does not reflect the goal of service that is "responsive to a public demand or need." Such negotiations between carriers on restrictive amendments are tantamount to agreements not to compete. The Commission adheres to the statutory and judicial pronouncements that competition is in the public interest. We believe our mission is to further the public interest, not the private interest of any particular carrier.[20]

Additionally, the "nature of the proceeding" qualification language in Section 554(c) may preclude negotiations where the statute requires that hearings be held in any event.[21] The Commission is required to examine individual requests for all types of operating authority, and provide appropriate persons an opportunity to oppose an application.

Applicants' Threshold Burden—Motor Carrier Proceedings

The American Trucking Associations, Inc., and specified affiliated conferences (ATA) urge that we establish criteria for the prima facie case. ATA contends that it is imperative that the Commission deal with the issue of prima facie criteria now, since it should give guidance to applicants for operating authority. We agree that it is useful to offer general guidance at this time. We believe it is best, however, to develop policy on this issue in actual proceedings, and proceed on a case-by-case basis. Our first analysis of this issue is contained in *Pre-Fab Transit Company Extension—General Commodities*, 132 M.C.C. —— (1980).

Additionally, we believe we should discuss guidelines for the processing of opposed and unopposed cases. These sections follow.

Footnotes continued from last page

held before granting a certificate of public convenience and necessity for a new route, which seems analogous to this Commission's function. *Manual, supra*, at 49.

[15] *Id.*, 49–50.

[16] S. Doc. No. 248, *supra*, note 4, at 261.

[17] *Id.* at 203.

[18] *Producers Transport, Inc., Extension, Asphalt Emulsion*, 86 M.C.C. 323 (1961); *Convoy Co., Extension—Arizona*, 91 M.C.C. 461 (1962); *Barrett Mobile Home Transit, Inc., Extension-Buildings*, 126 M.C.C. 73 (1976).

[19] *May Trucking Co.* v. *United States*, 593 F.2d 1349, 1356 (D.C. Cir. 1979), and cases cited therein.

[20] *Liberty Trucking Co., Extension-General Commodities*, 130 M.C.C. 243, 246, and 131 M.C.C. 573, 576 (1979), *aff'd sub nom., Assure Comp. Transp. Inc.* v. *United States*, 629 F.2d 467 (7th Cir. 1980).

[21] Manual, *supra*, at 49.

Guidelines for the Processing of Opposed Cases

There has been some confusion in the public's mind and within the Commission's staff on how applications impair the operations of existing common carriers to an extent contrary to the public interest.

When the *Policy Statement, supra*, at 60299, was adopted, the mechanics of revenue, unaccompanied by demonstrable public harm, does not constitute inconsistency with the public convenience and necessity.

We believe that the changes brought

of proof shifts to persons opposing the application to show that the proposed service is inconsistent with the public convenience and necessity. In sum, once the threshold case is established, the statute creates a presumption in favor of

hearings are compulsory only when the statute governing the agency's actions make an oral hearing mandatory.[23]

The codified Interstate Commerce Act (ICA) does not provide that parties in

of the APA that an administrative agency may adopt procedures for receiving evidence in written form, see 5 U.S.C. 556(d). Moreover, the courts have noted that the Commission's written procedures protect procedural due

Guidelines for the Processing of Opposed Cases

There has been some confusion in the public's mind and within the Commission's staff on how applications will be processed after opposing statements have been filed. We will thus set forth guidelines to clarify the situation for the benefit of all concerned. We also wish to dispell any doubts on how we believe the Congress intended for us to reform procedures governing applications. Our aim is to make fundamental changes in the decisional process.

While in many respects our discussion in this regard is based on the new legislation, its roots can be traced back to precedent developed through case law and policy statements in the last few years. These not only have been affirmed by the courts when they were challenged on appeal, but also in our view were specifically endorsed by the Congress in the Motor Carrier Act of 1980. In fact, the new law seems to go even further than our prior decisions, although for the most part we do not believe it is necessary to delineate this specifically for our purposes here, since we are dealing with a comprehensive application process rather than one just for motor carriers of property.

In licensing, the "public convenience and necessity" standard is clearly the most stringent of the decisional criteria which we must apply. It follows, then, that the method for applying this criterion would be legally sufficient for lesser standards as well. In *Liberty Trucking Co., Ext.—General Commodities, supra,* at n. 20, we discussed the methodology for resolving the issue of public convenience and necessity in opposed cases. There, we stated that competing interests would be weighed by balancing the benefits which would flow from a grant of authority against the destructive impact a new service might have on competing carriers. However, the balancing process is not even begun unless protestants have demonstrated the potential for harm. They must show that the ability of existing carriers to serve the public would be placed in material jeopardy to trigger the process.

In Ex Parte No. MC–121, *Policy Statement on Motor Carrier Regulation,* 44 FR 60296, 60299 (1979), we clarified the scope of the decisional outline discussed in *Liberty, supra.* We indicated that the Commission will grant authority commensurate with the demonstrated purpose unless it is established by parties opposing the application that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an extent contrary to the public interest.

When the *Policy Statement, supra,* at 60299, was adopted, the mechanics of the application process were significantly different. At that time, the **Federal Register** notices were tentative grants of authority in the sense that if protests were filed, the merits of the application would be considered *de novo,* and applicant was accorded the opportunity of submitting additional evidence beyond what had already been furnished with the application. In sum, the system was designed to expedite unopposed cases and had little or no effect on the remainder of the docket. See *Revision of Application Procedures,* 42 FR 62486 (1977).

In contrast, under the procedures we have used on an interim basis and adopt as final rules in this document, applicant initially submits with the application the totality of the evidence upon which it relies. If the evidence is minimally sufficient, a threshold finding is made in the **Federal Register** notice that applicant is fit, willing, and able to provide the transportation and that the service will serve a useful public purpose, responsive to a public demand or need. Protestants are then accorded an opportunity to rebut the findings. If protestants wish to place the findings in issue, they will be expected to do so through specific evidence controverting what applicant has submitted. This could, for example, include fitness matters not mentioned in the applicant's presentation or substantially grounded attacks on the veracity of applicant's testimony or that of its supporting witnesses. Assuming that protestants in any given application proceeding are unable to rebut applicant's threshold case, the burden of proof shifts to protestants to demonstrate that the application should not be granted. This burden will be particularly stringent, since the new legislation significantly altered the decisional framework by placing increased importance on the role of competition in the national trucking industry. *La Bar's, Inc., Extension—Mountaintop Insulation,* 132 M.C.C. 263 (1980). Impact on existing carriers remains a factor for our consideration, although its importance is greatly diminished by the statutory injunction against our finding that diversion of revenue or traffic from an existing carrier in and of itself is inconsistent with the public convenience and necessity. *Id.* at 289. As we recently explained in *Art Pape Transfer, Inc., Ext.—Commod. in End-Dump Vehicles, supra,* at n. 10, diversion of traffic and revenue, unaccompanied by demonstrable public harm, does not constitute inconsistency with the public convenience and necessity.

We believe that the changes brought about by the Motor Carrier Act are likely to alter the traditional analysis in Commission decisions and produce somewhat shorter opinions. To begin with, issues which were generally always relevant in an earlier era are no longer decisionally significant, e.g., adequacy of existing services, and need not be addressed. Most important, in this connection, as noted above, evidence relating to diversion of traffic and revenue is irrelevant unless protestants explicitly demonstrate a connection between harm to themselves and harm to the public.

Moreover, as we explained in *Art Pape, supra,* at 93, Congress has now established an explicit evidentiary process giving significant new advantages to the applicant. Under the new entry procedures, the applicant must still come forward with some information demonstrating the utility of its proposed service. Once that is established, however, minimal applicant's case may be, the statute creates a presumption in favor of entry and competition, and we can deny the application (in whole or in part) only where the opponents can persuasively demonstrate that a grant would be inconsistent with the public convenience and necessity. To arrive at that conclusion, we must find that there is a demonstrated public harm which outweighs the benefits which are presumed to flow from a grant of authority.

Status of Unopposed Cases

MCLA states that the interim rule assumes all unopposed applications must be granted. It may, they contend, mislead applicants which have not presented a prima facie case with their public support. They further argue that the interim rules mistakenly assume that unopposed applications have no statutory burden under the new Act.

We will amend the rules to indicate the role of the review boards in the decisionmaking process prior to publication of the notice of the application in the **Federal Register.**

We have addressed the entry requirements of the Act in the prior section. A fuller explication is contained in *Art Pape, supra,* at 93–94, and *La Bar's, supra,* at 269–272. Under the Act, the applicant must still come forward with some evidence of the utility of its proposed service. Once the applicant has carried its threshold burden under the relaxed entry standard, the burden

of proof shifts to persons opposing the application to show that the proposed service is inconsistent with the public convenience and necessity. In sum, once the threshold case is established, the statute creates a presumption in favor of entry and competition.

The review board screens the presentation of applicant prior to **Federal Register** publication. If an application is materially incomplete, it will be rejected. On the other hand, if the necessary documentation is substantially present, the review boards will examine the contents of the application to see whether there is sufficient evidence to establish a threshold case. If there is not, the application will be rejected[22] by a letter explaining the deficiencies in the substantive evidence. If the threshold test has been met, the application will be published in the **Federal Register.** Once published, the burden of proof has shifted to protestants. If the application is unopposed, there will be a grant of authority without further examination of the evidence. The only exception will be in those circumstances where Commission staff discover the possibility that applicant may have fitness problems, or if there is evidence of veracity problems.

We thus find that where applicant has carried its initial evidentiary burden and the evidence is unrebutted, applicant has sustained its overall burden of proof.

Oral Hearings

Numerous parties contend that the interim rules' treatment of the oral hearing process is unlawful or inappropriate. They argue that "extraordinary circumstances" is not a proper standard, and generally object to the guidelines set forth in interim rule 1100.247(B)(f). It is also contended that a specific ruling is required on requests for oral hearing in each case.

Under the provisions of the Administrative Procedure Act (APA), an agency is not required to provide oral hearings. While the APA stresses the due process opportunity to be heard, a party is entitled to present its case either by oral or by documentary evidence, 5 U.S.C. 556(d). The Supreme Court has construed these provisions of the APA as not requiring hearings consisting of oral presentations in agency proceedings. Rather, such hearings are compulsory only when the statute governing the agency's actions make an oral hearing mandatory.[23]

The codified Interstate Commerce Act (ICA) does not provide that parties in operating authority proceedings be granted an opportunity for an oral hearing. The Motor Carrier Act of 1980 does not change that situation. In fact, the legislative history of the Motor Carrier Act indicates that Congress envisions most operating rights applications will be handled under the modified procedure.[24]

The Commission has never found there to be a compulsory requirement of an oral hearing in application proceedings.[25]

The courts have long supported the Commission's proceedings for handling application proceedings in documentary form under the modified procedure. In *Riss & Co.* v. *United States,* 341 U.S. 907 (1951), the Supreme Court reversed a lower court's holding that an oral hearing was required in an application proceeding. The Court merely cited *Wong Yang Sung, supra.* Subsequently, in the second *Riss & Co.* decision on remand, 117 F. Supp. 296 (W.D. Mo.), *aff'd per curiam,* 346 U.S. 890 (1952), a hearing consisting of pleadings and written argument only was held to be adequate.

Many courts have considered the validity of the Commission's modified procedure in light of the APA, the Interstate Commerce Act, and the due process guarantees of the U.S. Constitution.[26] Uniformly, the courts have held that the modified procedures are fundamentally fair.

Part of the consideration upholding the modified procedure is the provision of the APA that an administrative agency may adopt procedures for receiving evidence in written form, see 5 U.S.C. 556(d). Moreover, the courts have noted that the Commission's written procedures protect procedural due process rights in light of the safeguards provided under the rules of practice.

The safeguards referred to by the courts include several provisions of the rules of practice. First, oral hearings may still be provided under appropriate circumstances. These circumstances are primarily where material issues of fact are in dispute.

The courts have also noted that availability of discovery procedures in the rules of practice safeguards a party's procedural due process rights. The discovery procedures have been found to obviate the need for confrontation and cross-examination of witnesses and the alleged necessity for an oral hearing.[27]

Our newly revised rules of practice similarly safeguard procedural due process rights by providing a means by which a party can obtain an oral hearing. Although the rules indicate that the Commission will handle most cases under the modified procedure, and that oral hearings will be held only in extraordinary cases, the rules clearly and fully set forth what information a protestant must submit in a request for oral hearing and the standard for setting a case for oral hearing—material issues of fact in dispute. See 49 CFR 1100.253(i).

Certain commentors complain that our limitation of oral hearings to extraordinary cases is too narrow. It was not our intent to suggest that we had arbitrarily concluded that oral hearings would never be either necessary or desirable. Our limitation of oral hearings to extraordinary circumstances was intended, instead, to reflect our judgment that the ordinary issues which had triggered an oral hearing in the past—*e.g.,* the large number of protesting parties, the magnitude of the potential diversion of traffic and revenue, or the breadth of the application—would alone no longer constitute grounds for setting an application for hearing before an administrative law judge. To better reflect this intention, we shall modify the standard as set forth in final rule § 1100.253(i).

We offer certain observations in this connection. To begin with, it is clear that there is no requirement for oral hearings in motor carrier licensing

[22] An applicant can file an appeal of this rejection or can refile the application after eliminating the deficiencies. If an applicant chooses to resubmit, it should refer to its prior application and fee payment so as to avoid a second fee being assessed. If no refiling or appeal is made, then there is no fee refund.

[23] *Wong Yang Sung* v. *McGrath,* 339 U.S. 33 (1950).

[24] See the statements of Senator Cannon ["We expect * * * the end of virtually all oral hearings * * *"] and Senator Packwood ["* * * the new law gives the ICC the kinds of procedural tools to greatly expedite applications * * *"]. 57 Cong. Rec. S7685.

[25] *Kingrok, Inc., Investigation of Operations,* 103 M.C.C. 319, 344 (1966). See also *Theatres Service Co., Extension–Duluth, Ga.,* 113 M.C.C. 744, 746–47 (1971) (no oral hearing required in the case of an application that might otherwise be sent to a joint board).

[26] *Eastern Oil Transport, Inc.* v. *United States,* 413 F. Supp. 121 (E.D.N.C. 1976); *Frozen Foods Express, Inc.* v. *United States,* 346 F. Supp. 254 (W.D. Tex. 1972); *Richard Dehn, Inc.* v. *I.C.C.,* 335 F. Supp. 337 (D.N.J. 1971); Howard Hall Co. v. *United States,* 332 F. Supp. 1076 (N.D. Ala. 1971); *C. I. Whitten Transp. Co.* v. *United States,* 328 F. Supp. 1120 (S.D. W. Va. 1971); *Allied Van Lines Co.* v. *United States,* 303 F. Supp. 742 (D.D. Cal. 1969); *National Trailer Convoy, Inc.,* v. *United States,* 293 F. Supp. 634 (N.D. Okla. 1968); *Lincoln Transit Co.* v. *United States,* 256 F. Supp. 990 (S.D. N.Y. 1966); *Chemical Leaman Tank Lines, Inc.* v. *United States,* 251 F. Supp. 269 (E.D. Pa. 1965); and *Brotherhood of Locomotive Engineers* v. *United States,* 217 F. Supp. 96 (N.D. Ohio 1963).

[27] See *Frozen Foods Express, supra,* at 261; *Ashworth Transfer, Inc.* v. *United States,* 315 F. Supp. 199, 203–03 (D. Utah 1970); *Howard Hall Co., supra,* at 1080, n.17; and *Allied Van Lines, supra,* at 749.

cases. In determining whether or not to employ oral hearings, nevertheless, we believe we should be guided by three considerations—the private interest at stake, the value of oral hearings to the decisional process, and the

the reply stage, since it would have made an assessment of the evidence presented in opposition. Late requests for oral hearing may be denied where prejudice would occur to other parties, even if new facts come to light which

record which discloses a need for oral hearing will result in the issuance of an order resetting the case for hearing.

Note that a party is able to appeal an initial decision on the grounds that oral hearing was necessary.

under the modified procedure, and since that office is the best judge of the ability of its staff to handle complex cases. The following material shall be added to the last sentence in 49 CFR 1011.7(c)(3):

The Director of the Office of Proceedings

hearing is scheduled. Normally this should be accomplished well within 30 days from the rebuttal due date. However, it is not possible to adhere to this deadline in every case because not all cases are designated for oral hearing

In the above context we believe MCLA's support of narrowing acceptable evidence under the new Act to that submitted by potential users lacks merit. Section 10922(b)(1)(B) refers to evidence presented by *"persons*

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cases. In determining whether or not to employ oral hearings, nevertheless, we believe we should be guided by three considerations—the private interest at stake, the value of oral hearings to the decisional process, and the administrative burdens associated with oral hearings. See *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Two private interests are ordinarily involved in licensing cases—the applicant and those supporting the application, on the one hand, and the protestants, on the other. We believe that a reading of the Motor Carrier Act and its legislative history demonstrates that Congress has struck the public interest balancing in favor of applicants. While there may be public interest reasons for altering this balance in individual cases, we believe, by and large, that applicants should receive prompt processing under modified procedure.

A critical purpose of oral hearings is development of a record adequate to permit a reasoned decision. Our experience with modified procedures over the years convinces us that we can reach a reasoned decision in most cases without the necessity of oral hearings. Under the new law factual issues which traditionally occupied much of the time and effort associated with oral hearings—such as the determination of the traffic and revenue likely to be diverted, or the feasibility of the applicant's proposal—are no longer of critical decisional importance. As a consequence, we doubt that critical factual issues will arise to quite the same degree as in the past.

Finally, we cannot overlook the burdens to both the parties and the Commission which flow from the employment of oral hearings. There are costs, such as witness and travel expenses, and differences in consulting and legal fees, which vary depending upon the type of procedure employed. While we are plainly prepared to incur these costs, or have the parties incur them, when necessary to reach an informed decision, we will be reluctant to add administrative and other burdens in the absence of a plan showing that oral hearings are required.

We note that a request for oral hearing lies at any time during a proceeding, although normally this should be done prior to or immediately after the submission of evidence by protesting parties. Thus, a protesting party would normally request oral hearing with the submission of its evidence, since it has already had an opportunity to review applicant's statements. Applicant's request would normally come upon application or at the reply stage, since it would have made an assessment of the evidence presented in opposition. Late requests for oral hearing may be denied where prejudice would occur to other parties, even if new facts come to light which might otherwise make oral hearing preferable. Parties are advised that late requests must be considered against the need to adhere to the statutory deadlines.

Some commentators have argued that complexity of a case is sufficient to warrant its handling under the oral hearing process. See *General Policy Statement Concerning Motor Carrier Licensing Procedures*, Ex Parte No. 55, 31 FR 6600 (1966). That policy statement indicated that the more complex cases would be assigned to oral hearing.

We note that it has been Commission practice in the past to assign cases to oral hearing solely because of their size. In the future, cases will not be sent to oral hearing solely because of the magnitude of the record. There may be occasions when, in our discretion, it will appear that the *complexity* (as distinguished from the size of the record) of a case warrants handling under oral hearing. Our focus is on the ability to decide a case upon substantial written evidence and arrive at a well reasoned result. Many large cases are quite simple in content. The structure of the application, the cohesiveness of the shipper evidence, and the interests of the opposing parties are major determinants in deciding when a case is so complex that it can only fairly be handled under the oral hearing process. These circumstances are impossible to determine in the abstract, and should be left for case-by-case judgments.

We would also point out that our appellate process has always been handled entirely from the large written record developed at a hearing. Our staff is well versed in handling large, written records. Oral hearing's determinative standard is need for cross-examination and the credibility of the parties where material issues are in dispute.

It is argued that the Commission must make individual affirmative rulings on an oral hearing request, and that we cannot deem a request to be denied merely by publishing a decision. We would note that in the past we never explicitly ruled on the oral hearing request when a case was set for the modified procedure. We merely issued an order directing the parties to submit modified procedure statements, and the oral hearing request was deemed denied. Under the final rules, applications are, in essence, deemed set for modified procedure handling upon filing. Subsequent examination of the record which discloses a need for oral hearing will result in the issuance of an order resetting the case for hearing.

Note that a party is able to appeal an initial decision on the grounds that oral hearing was necessary.

We believe that the public should be apprised of our internal "designation" process. Additionally, our new process will require modification of our regulation pertaining to delegation of authority by the Chairman, 49 CFR 1011.7, as explained below.

The general power of delegation of authority within the Commission is found in 49 U.S.C. 10305. These delegations are delineated in the regulations set forth in 49 CFR 1011. Previously these delegations were contained in Organization Minutes.

The Chairmen is given authority over procedural matters in the Commission. See especially 49 U.S.C. 10301(f)(3) and 49 CFR 1011.4(b)(2)(ii). Under these powers, the Chairman has the power to designate proceedings for handling under the modified procedure or oral hearing procedures.

The Chairman has delegated some of his powers over procedural matters to both the Chief Administrative Law Judge (49 CFR 1011.7(c)(2)) and the Director of the Office of Proceedings (49 CFR 1011.7(c)(3)). In the past they have used this power concurrently in the designation of proceedings. Modified procedure orders are issued in the name of the Director of the Office of Proceedings, and oral hearing orders are in the name of the Chief ALJ. This procedure has developed through informal understandings between the two offices. The procedure is not set forth in any regulation. Any public documents merely state that the Commission will determine whether the application should be placed on the hearing docket or the modified procedure docket.

In order to clarify this procedure, the delegation regulations should be amended to add a section clearly defining the lead responsibility of designating proceeding for handling either under the modified procedure or the oral hearings procedures.

Delegating lead responsibility to one office will obviate the need for duplicative review of the cases, which occurred in the past. The need for expeditious handling of our cases internally requires that we wring every unnecessary handling step out of our processes. We, therefore, will assign lead responsibility for designating cases to the Office of Proceedings, since that Office has physical possession of the records through their early processing stages, since most cases will be handled

under the modified procedure, and since that office is the best judge of the ability of its staff to handle complex cases. The following material shall be added to the last sentence in 49 CFR 1011.7(c)(3):

> The Director of the Office of Proceedings shall also have authority, unless otherwise ordered by the Chairman in individual proceedings, to decide whether operating rights applications and complaint proceedings shall be handled under the modified procedure or assigned to the Office of Hearings.

To facilitate the designation process, we have changed the placement of the request for oral hearing in the parties' verified statements to the end of the verified statement. A separate attachment labeled "Oral Hearing Request" is preferred.

Content of Oral Hearings

Overnite Transportation Company questions whether, in light of the requirement that applicants and protestants file their evidence at the initial stages of a proceeding, the content of the oral hearing will be limited in any way. We recognize that much of the operational evidence of the parties will have been submitted in the verified statements. We believe, however, that the Administrative Law Judge should be given discretion to analyze the evidentiary needs in each case. There may be instances where additional operational evidence should be admitted. In other cases, cross examination of a key witness may be sufficient. Certainly there is no need for the parties to present orally what has already been submitted in written form, unless clarification or credibility is in issue.

Not only will we be making less use of oral hearing, but we anticipate that in many instances the duration and complexity of those hearings will be reduced, resulting in additional savings to the public.

Notice of Oral Hearing

Nelson & Harding states that as a matter of fairness to the parties, as well as for the Commission's own administrative convenience, a deadline for apprising the parties of oral hearing should be established. They suggest that the notice be given within 30 days after the rebuttal statements are due.

We are sensitive to this problem, but believe conscientiousness on our part, rather than a firm rule, will produce the desired results. Almost all cases set for oral hearing will be determined about the time the rebuttal statement is received, and the Commission will make every attempt to notify parties as soon as possible after that date that an oral hearing is scheduled. Normally this should be accomplished well within 30 days from the rebuttal due date. However, it is not possible to adhere to this deadline in every case because not all cases are designated for oral hearing at the rebuttal date. The Section of Operating Rights screens the file before or at the time rebuttal statements are due, and analyzes requests for oral hearing. It is possible that the review board assigned the case may later believe that oral hearing is necessary, and it has the authority to make the determination under its decisionmaking powers. In that case, again, we will try to issue an oral hearing notice as soon as possible, but it may be outside of the 30-day period suggested.

Supporting Evidence in Motor Common Carrier Cases

A number of persons complain that we improperly read the Act and that shipper or user support is required in motor common carrier of property proceedings.

In this regard, the MCLA attacks our apparent reliance on H.R. Rep. 96–1069, *supra*, as a guide to the type of evidence permissible under section 10922(b)(1). They argue that the report is not conclusive evidence of legislative intent and cannot be relied on as providing insight into Congressional intent, citing *National Small Shipments Traffic Conference, Inc.* v. *C.A.B.*, No. 782163 (D.C. Cir., decided February 11, 1980).

We believe MCLA's reliance on *N.S.S.T.C.* v. *C.A.B., supra*, is misplaced. The case involved a challenge to the Board's action under the amended Federal Aviation Act, Pub. L. No. 95–63, 91 Stat. 1278, exempting carriers from tariff filing requirements. The challenge was based on legislative history suggesting that the Congress did not intend the Board to use its exemption power as it did. In upholding the Board's action, the reviewing court held that "* * * the plain language of the statute authorizes the Board's action * * *", slip op. 16. The court reasoned that absent any *"clear contrary evidence* (court's emphasis) of legislative intent," the plain language of a statute controls. Slip op. 17. Thus, the court did not suggest that legislative histories provide no insight as to Congressional intent, as MCLA suggests. Rather, it reaffirmed the importance of following unambiguous statutory language.[28]

[28] We note in passing that the MCLA's blanket attack on the value of the H. Rept. 96–1096, *supra*, as a guide to our implementation of the new Act seems somewhat disingenuous since its pleading contains several references to both H.R. Rep. No. 96–1069, *supra*, and S. Rep. No. 96–641, 96 Cong., 2d Sess. (1980), when those reports support its positions.

In the above context we believe MCLA's support of narrowing acceptable evidence under the new Act to that submitted by potential users lacks merit. Section 10922(b)(1)(B) refers to evidence presented by *"persons* supporting the issuance of a certificate." (emphasis supplied). The Act defines "persons" to include a trustee, receiver, assignee, or a personal representative of a person in addition to its meaning in 1 U.S.C. 1 (49 U.S.C. 10102(15)). Section 1 defines person to include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals. We believe these definitions to be clearly inclusive and not exclusive.

In our view the plain language of section 10922(b)(1) requires that the Commission receive evidence from any person supporting issuance of a motor carrier of property certificate. Our denomination of the types of evidence allowable under the interim rules should have been seen as illustrative of the types of evidence that may be received under the new application procedures. While this may not assuage MCLA's fears that such evidence could prove insurmountable, the fact remains that the new Act on its face requires the Commission to consider any evidence from persons offered to show that a proposed service will serve a useful public purpose although as the House Report states, shippers evidence is still the best evidence. Further, such an approach is consistent with the Commission's past practice of liberal receipt of evidence even though some evidence was accorded little or no weight. Finally, we cannot subscribe to MCLA's belief that the expansion of the types of evidence allowable in an applicant's attempt to make a threshold case will inevitably lead to a threshold showing in every case. The new Act does not preclude us from weighing even uncontroverted threshold evidentiary submissions. Rather it ensures that out determinations can be made with the benefit of as broad as evidentiary view as possible. For the above reasons, we see no compelling reason to limit evidentiary submissions to that of potential users.

Prior Commission Policy Statements Which Affect the Application Process

The Commission has previously issued policy statements which relate to the application process. In this portion of our report we will discuss the continuing validity of those policy statements.

Related issues in a single application

The Commission issued a policy statement, at 41 FR 5380 (1976), concerning limitations on the scope of authority sought in an individual

Operational feasibility

The Commission issued a general policy statement concerning motor carrier operational feasibility, dated November 15, 1973. The now superseded

proceeding. We arrive at this conclusion for the following reasons.

Giving significant weight to operational feasibility evidence would suggest that we can administratively allocate the productive use of resources

55051 (1978) we affirmed the Commission's decision in *Toto Purchasing & Supply Co., Inc.*, 128 M.C.C. 873 (1978), which marked a departure from our adherence to the policy of *Geraci Contract Carrier*

for motor contract carrier of passenger authority.

The interim and final rules thus contain a requirement that a motor contract carrier of passengers state the name and address of persons or

Many parties state that 3 working days are not enough to cover situations where good cause would warrant an extension, and suggestions are made to increase the time to 7 days.

The adopted rules (1) are more

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Related issues in a single application

The Commission issued a policy statement, at 41 FR 5380 (1976), concerning limitations on the scope of authority sought in an individual application for permanent operating rights authority. The Commission determined that the scope of authority sought should be limited to a single issue and related issues with common support or moving in a related fashion with the primary issue. Multiple unrelated requests for authority would not be accepted for filing.

We now overrule that policy and will allow applicants to have free choice of what the scope of their application should be. We realize that even prior to the Act we accepted many applications which were not limited to single issues due to the broadness of the application. We recognize that under our "consolidation" type application proceeding it is possible that some protestants will be concerned with only certain portions of the proceeding, while another set of protestants will have another set of interests. This has always been true.

We believe that the applicant's decision to increase the scope of its operations systemwide is sufficient indication that the matters should be handled under one proceeding. Examinations of the initial submittals will often not reveal the underlying related issues or systemic changes being proposed by applicant. On the other hand, an applicant should be aware that, for strategic purposes, proposing many different types of operations in a single proceeding may result in portions of the application that would have been unopposed now being required to undergo the opposed application process. Still, that is a choice best left to applicant. We therefore overrule the policy statement issued at 41 FR 5380.

New evidence in rebuttal statements

The Commission issued a policy statement concerning new evidence in rebuttal statements filed under the modified procedure at 40 FR 42810 (1975). We stated that we would reject new evidence submitted by an applicant in its rebuttal statements under the modified procedure relative to alleged service deficiencies of a protestant regardless of when such alleged service deficiencies may have occurred. We continue to adhere to that policy, and the policy statement issued in the **Federal Register** of September 16. 1975, at 40 FR 42810, is affirmed.

Operational feasibility

The Commission issued a general policy statement concerning motor carrier operational feasibility, dated November 15, 1973. The now superseded OP–OR–9 application form contained a requirement that applicant present operational feasibility information. The policy statement required that an applicant must present evidence respecting how equipment was expected to be returned to an origin point, as well as other data relating to the operational feasibility of the proposal, including the incidence of dead head operations.

If an applicant stated in its initial evidentiary presentation that empty or partially empty vehicle movements would result upon a grant of its application, applicant was expected (1) to specify the extent of such operations, by mileages and the number of vehicles, that would be incurred, and (2) to designate where such empty vehicle operations would be conducted.

The Commission later announced that the policy of requiring evidence of return movements was intended to be applied as an equitable factor militating in favor of granting applications where applicants show that efficient traffic movements on return were a part of their proposals, but it was not intended to serve generally as a basis for denying an application where a need had been established for the proposed service, where backhaul traffic may have been unavailable, or where return traffic movements were otherwise not possible.[29]

We conclude that applicant may present such evidence in its application, but that this is not required, and to this extent we overrule the policy statement. We adhere to the line of cases mentioned immediately above that submission of this evidence is permissive for the applicant. It can enhance an applicant's position, but other factors normally outweigh this factor. We also believe that a protestant should be allowed to present energy and economic efficiency evidence in support of its position.

We are aware that the Transportation Policy as amended by the Act provides that energy and economic efficiencies be provided for in our regulation of the industry. Normally, however, operational feasibility will not be a decisive factor in an application proceeding. We arrive at this conclusion for the following reasons.

Giving significant weight to operational feasibility evidence would suggest that we can administratively allocate the productive use of resources better than the marketplace; that we can decide which carrier should transport certain percentages of the available traffic; and whether this will be done at the maximum efficiency. Stated differently, it assumes we can decide whether an applicant will operate exactly as it proposes, what response existing carriers will make (such as to compete more aggressively) and whether our powers of prediction are reliable in the long term. We think that in most cases these assumptions are unfounded.

The new Act gives recognition to this observation. Congress has now recognized that marketplace competition is the better allocation mechanism. Unless there are clear reasons in a specific case for believing that the marketplace will not produce the better results, we should not disturb that process.

The marketplace is dynamic. Carrier and shipper managements make decisions based on today's economic circumstances. Our review of the evidence is at best several months late. During this time, there are many options open to all parties for making their operations more efficient. An existing carrier, faced with the prospect of a new competitor, can lower prices and attract more business. It can seek additional authority from the Commission to ensure balanced operations. It can drop or rearrange service in the market area and put its resources to work where it can operate more efficiently.

What is most critical, from the administrative point of view, is that deciding cases using operational feasibility as a significant factor in every case results in a blunting of market incentives for existing carriers to reassess the efficiency of their existing operations; it further dulls the cutting edge of competition and its reinforcing tendency to let the most efficient operation rise to the top. In sum, a careful, calculated look at operational feasibility should only be used as a last resort, where we are suspicious that the marketplace allocation scheme is breaking down.

Toto policy

In Ex Parte No. MC–118, *Grant of Motor Carrier Operating Authority To An Applicant Who Intends To Use It Primarily As An Incident To The Carriage Of Its Own Goods And Its Own Non-transportation Business*, 43 FR

[29] *MDI, Inc., Long Prairie, MN Contr. Car. Applic.*, 129 M.C.C. 346 (1978); *Timlaph Corp. of Virginia*, 129 M.C.C. 367 (1978); and *C.R.M. Inc., Ext.—Automobiles from California*, 131 M.C.C. 919 (1980). See also *Worren Transport, Inc.* v. *U.S.*, No. 79–2030 (D.C. Cir., October 6, 1980).

55051 (1978) we affirmed the Commission's decision in *Toto Purchasing & Supply Co., Inc.*, 128 M.C.C. 873 (1978), which marked a departure from our adherence to the policy of *Geraci Contract Carrier Application*, 7 M.C.C. 369 (1938). The *Geraci* policy provided that the Commission would not grant a motor carrier certificate or permit to an applicant who intended to use it primarily as an incident to the carriage of its own goods and its own non-transportation business.

The Commission's present policy is that motor carrier operating authority will be granted to an applicant who intends to use it primarily as an incident to the carriage of its own goods and its own non-transportation business, provided (1) that the standard criteria for motor common or contract carrier applications, as the case may be, are met, and (2) that the applicant is agreeable to the imposition of conditions requiring it to conduct its for-hire motor carrier activities and its other activities independently and to maintain separate records for each.

The policy mentioned above will continue in effect for carriers engaged in proprietary operations. The carrier will have to conduct its for-hire motor carrier activities and its other activities independently and to maintain separate records for each. We see no reason, however, to impose these conditions in individual grants of authority. This is a time consuming process. Instead, we shall adopt a new regulation, at 49 CFR 1041.25, which requires these carriers to follow that policy. Carriers engaging in such operations are expected to know general Commission administrative requirements, just as they are held accountable to be aware of all relevant statutes and regulations. Imposition of these conditions in individual authorities is a time consuming procedure which serves little purpose. It will not be followed in the future.

Rule of eight

The Commission laid to rest its "rule of eight" policy in Ex Parte No. MC–119, *Policy Statement Regarding the "Rule of Eight" in Contract Carrier Applications*, published at 44 FR 2470 (1979). That policy statement dealt with all contract carriers. The policy statement with regard to property carriers is moot. See Ex Parte No. 55 (Sub-No. 42). *Deletion of Dual Operations Policy*, 45 FR 45528 (1980). It retains its validity with regard to passenger carriers. To this extent, the policy statement is reaffirmed, and we will continue to ask for information relating to persons served by applicants for motor contract carrier of passenger authority.

The interim and final rules thus contain a requirement that a motor contract carrier of passengers state the name and address of persons or shippers now served under contract.

Solicitation of withdrawal of shipper support by protestants

The Commission issued a strongly worded policy statement condemning any attempt by parties to its proceedings to persuade opposing witnesses to withdraw support for an application, at 39 FR 43374 (1974). This policy is reaffirmed.

Ex Parte No. MC–121

In Ex Parte No. MC–121, *Policy Statement on Motor Carrier Regulation*, 44 FR 68296 (1979), the Commission adopted a policy statement describing its standards for deciding applications seeking motor carrier authority.

Further refinement of this policy statement has occurred in *Art Pape, supra*, at 93, and *La Bar's, supra*, at 266–272, with regard to applications for property motor carrier authority. The Ex Parte No. MC–121 policy retains its validity with regard to passenger carrier applications, however, since the Act did not change the substantive law regarding passenger carrier entry.

Extensions of time

The Commission issued a policy statement concerning requests for extensions of time in 41 FR 8454 (1976). The policy statement emphasized that a request must be supported by a thorough and detailed explanation of the reasons for the request, with a demonstration of substantial good cause. It was contemplated that no more than one extension of any filing date would be granted, absent a showing of unique circumstances.

In addition, the Commission further addressed the general issue of the standards for granting extensions in *Revision of Application Forms, supra*, at 812. It there adopted a rule, former 49 CFR 1100.247(f)(3), stating that requests for extensions of time within which to file modified procedure statements will be granted only in the most extraordinary circumstances. It was stated that ordinary business occurrences such as vacations, scheduling problems, excessive caseload, and turnover in personnel are not valid reasons, *supra*, at 812.

The interim rules essentially adopted that standard, § 1100.247(C)(d), and limited the requests to no more than 3 working days.

Many parties state that 3 working days are not enough to cover situations where good cause would warrant an extension, and suggestions are made to increase the time to 7 days.

The adopted rules (1) are more detailed in their treatment of the issue of extensions of time than the former or the interim rule, and (2) retain the 3-day rule.

The practicing bar must share the burden of the statutory time limits. Our experience under the interim rules is that the bar is adhering to the more stringent rules with exceptional results. Few problems have been manifested, and members of the bar have exhibited a cooperative attitude in such matters as lost application submittals to protestants. We will monitor this situation closely, but believe that for the time being the 3-day rule should be retained.

The major problem with longer outside time limits is that we would be required to grant requests of the same length to adversary parties in the same proceeding if equally valid reasons were given. If, for example, illness of a person required 7 days be given to protestant, an identical request made by applicant would have to result in a like extension. A valuable 14 of the 180 days would be lost.

We believe that one answer, for those persons practicing before us, is to add their own precautionary measures, such as early mailing of pleadings, to ensure defaults or nonappearances do not occur.

The final rules adhere to the prior policy statement, as well as the philosophy expressed in *Revision of Application Rules*.

Similarly, the final rules require that such requests be made in documentary form (letter or telegraph) with notice of the request transmitted to known parties. The Commission will continue its practice of requiring the requesting party to notify known parties that an extension request has been acted upon.

We should note that there will be some circumstances where system malfunctions will require "adjustments" to filing times. These are not extensions of time in the normal sense because they result from something beyond the control of the parties and fault lies somewhere in the mechanics of the postal system or the application process. For example, during the period of the interim rules, there was an occasion where the **Federal Register** erroneously misprinted an address, and a potential protestant was slightly delayed in receiving its application copy. Where a system malfunction occurs, persons should bring it to the attention of the

Section of Operating Rights as soon as possible. The public should be advised that purposeful delay by an applicant in submitting a copy of the application package to potential protestants may

Substitution of unsworn written declarations under penalty of perjury in lieu of verifications subscribed and sworn under oath is permissible under applicable federal statutory provisions.

undertake the specific operations it intends to conduct.[30]

We can think of no substantial reason to continue this examination. In a more heavily regulated environment, where

carriers serve as adequate protection to the public. Our past examination has had little or no correlation to the ongoing ability of a company to survive.

Therefore we will delete the financial

We do not agree with ABA's position that a separate "passenger" certification statement should be used. The witness certification form adopted here contains appropriate references to passenger type

that even rather unspecific predictions by potential users are difficult.

We should point out that the modified procedure has been used for many years in all forms of passenger cases, and past experience dictates that the oral hearing

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Section of Operating Rights as soon as possible. The public should be advised that purposeful delay by an applicant in submitting a copy of the application package to potential protestants may result in dismissal. See *Glenn McClendon Trucking Co., Inc., Ext.—Containers*, 132 M.C.C. 318 (1980).

Finally, inquiries as to the decision made on an extension request should not be accompanied by attempts to argue the merits of the request to members of the Operating Rights' staff. This is an improper practice under the Commission's Code of Ethics for Practitioners Before the Interstate Commerce Commission, Canon 8.

The issue of rates in application proceedings

The interim rules eliminated reference to former rule 1100.247(n), the policy statement concerning the issue of rates. We did so because we believed the former rule was unnecessarily cumbersome and merely stated obvious evidentiary rules. Under the Act, the issue of rates may be pertinent for discussion in individual cases since, among other things, we are to allow a variety of price and service options, see 49 U.S.C. 10101(a)(7)(B). We continue to adhere to the general policy expressed in the former rule—that the introduction of rate evidence is optional, and introduction of counter-argument is also optional by any party. We do not believe that any of the other requirements in the former policy statement serve a useful purpose, however, and the final rules will contain no reference to the issue.

Elimination of Notarization Requirement

Several parties suggest, and we agree, that the notarization requirement is burdensome and unnecessary. We will eliminate the requirement from the application form and all witness statements, and will substitute language which, when agreed to in writing by the signer of the statement, is legally sufficient to constitute an oath.

We have encountered many problems with the notarization requirement in the past. For example, a number of applications have been rejected because of a failure to notarize some part. Persons practicing before the Commission have stated informally in the past that their witnesses sometimes have difficulty finding a notary official.

The Interstate Commerce Commission's controlling statute contains provisions requiring various applications for operating authority filed with the Commission to "be under oath."

Substitution of unsworn written declarations under penalty of perjury in lieu of verifications subscribed and sworn under oath is permissible under applicable federal statutory provisions. Specifically, such declaration procedures are sanctioned by 28 U.S.C. 1746 (1980 Supp.), the pertinent portion of which provides for use of unsworn declarations under penalty of perjury whenever, under any law of the United States, any matter is required to be supported by the oath of the declarant. Reliance upon this declaration-in-lieu-of-oath provision to change the standard verification procedures prescribed by the Commission's Rules of Practice ensures comparable solemnity in application forms and related pleadings.

Use of declarations in lieu of formal oaths will not diminish the legal sanctions available to the Commission. Sanctions are found in two types of statutes in the United States Code, involving prosecution for fraud and perjury. See 18 U.S.C. 1001 and 19 U.S.C. 1621.

We have decided to adopt the declaration language with the addition of the phrase "under the laws of the United States of America" to cover situations, as noted in 28 U.S.C. 1746, where statements are executed outside of the United States. The phrase's inclusion will cover all potential declarers.

Deletion of Financial Information

As several persons pointed out, we had no specific requirement under the interim rules for an applicant in a fitness only application to file financial information. We have eliminated this requirement for all types of applications in the final rules, since we do not believe that this information serves any useful purpose.

To determine fitness we have historically considered the financial fitness of an applicant, applicant's willingness to adhere to Commission regulations, and the carrier's ability to perform service in a safe manner for the protection of the public.

The Commission has never established a fixed, minimum dollar limitation as a prerequisite for a carrier's entry into the regulated trucking industry. We have recognized that many new entrants start small. In recent years we have adopted a standard that the financial fitness of an applicant is pertinent only in relation to whether it can adequately conduct the proposed operation. The question for resolution has been whether an applicant is sufficiently capitalized to undertake the specific operations it intends to conduct.[30]

We can think of no substantial reason to continue this examination. In a more heavily regulated environment, where the regulatory agency rather than the marketplace was the prime guarantor of service, a policy that we wanted to ensure that an applicant could actually conduct the operation it was proposing may have had validity. Since the newly authorized carrier would soon be accorded the benefits of all the evidentiary presumptions which historically ran in its favor, it was reasonable that the new carrier should be required to uphold its part of the regulatory bargain, i.e., it would perform the operation as proposed.

The basis for this policy no longer exists. Under Ex Parte No. MC–121, *supra*, and the new Act, carriers are encouraged to tailor price and service options in such a way that the public will have greater choices. The marketplace will ultimately determine the financial success of a proposed operation. At the same time, a financial failure will not translate into any long-term service vacuums since our entry policies will permit the rapid replacement of carriers that fail. This is not to say that we are unconcerned with the common carrier obligation and service to small shippers and communities.[31]

We will continue to examine equipment availability, however, and an applicant will be required to describe its equipment, or how it would obtain equipment to perform the operation in the short run; see final rule § 1100.251(f)(5).

We are concerned that undue regulatory reliance on a carrier's unfavorable financial picture may unnecessarily block entry for many small companies. It is axiomatic that many small companies survive just on the basis of hard work, an asset that cannot be portrayed in balance sheets. In other cases, additional authority is the very means by which a struggling company can reverse its financial fortunes.

Finally, we have great doubts about the past effectiveness of the financial fitness examination. Many carriers have received an affirmance of their overall fitness, including financial fitness, only to file bankruptcy petitions soon thereafter. The bankruptcy laws and the insurance requirements imposed on

[30] *Consolidated Carriers, Inc., Common Carrier Application*, 131 M.C.C. 104, 106 (1978).

[31] We believe that with freer entry, carriers, in the absence of high regulatory barriers, will more willingly seek authority to serve less busy, and perhaps less profitable areas.

carriers serve as adequate protection to the public. Our past examination has had little or no correlation to the ongoing ability of a company to survive.

Therefore we will delete the financial information requirement for all motor carriers. We will also delete this requirement for water carriers, forwarders, and brokers, who are governed by similar insurance and bankruptcy laws.

We do offer one observation in connection with financial information. Although we shall eliminate an affirmative requirement that the applicant file evidence demonstrating financial fitness in the traditional sense, we are prepared to examine any financial activity which may bear on the carrier's treatment of its customers. We expect parties raising fitness questions to point with specificity to customer abuses.

Passenger Carrier Interests

Comments were filed by the American Bus Association (ABA), the national trade association for the bus industry. It notes that the Motor Carrier Act of 1980 makes no substantive changes in the entry standards in the passenger carrier area, and it believes the differences in the entry standards must be reflected in the application form and the application process as a whole.

ABA believes that the supporting witness' certification should contain an indication of the scope of the application, since a witness should know the scope of the application he or she is supporting. We agree. This concern was voiced by other interests as well, and the certification form shall contain this information.

ABA also points out that the current application form's request for common control information about other transportation "entities" may be too broad. We will change the language in the affiliation portion of the application to indicate that we are referring only to "carriers" regulated by the Commission.

ABA also notes that there is no reason to ascertain in advance where an oral hearing might be held, or to note this in the caption summary. We agree. The Office of Hearings can arrange hearing sites at their own discretion in consultation with the parties.

ABA believes that the witness certification form in the appendix to form OP–1 implies that support from one public witness is sufficient, which may be inappropriate for passenger application cases. While we do not agree that the previous form implies this, as a precautionary measure we will make an appropriate instructional change in the form.

We do not agree with ABA's position that a separate "passenger" certification statement should be used. The witness certification form adopted here contains appropriate references to passenger type applications.

ABA argues that nothing in the Act suggests that the number of oral hearings in passenger cases be reduced. The ABA contends that the quality of existing service can be documented more easily for freight transportation and there is generally more of a need to cross-examine a passenger witness.

We do not believe that there should be a different "oral hearing" standard for passenger applications. The requirements of the APA apply equally to passenger and property applications.

It should be remembered that with the adoption of Ex Parte No. MC–121, passenger carrier applicants no longer carry the burden of proving the second *Pan-American* criterion, "whether this purpose can and will be served as well by existing lines or carriers." Applicant must only demonstrate that the operation proposed will serve a useful public purpose, responsive to a public demand or need, or, the first *Pan-American* criterion. The Commission will grant authority in passenger carrier cases commensurate with that demonstrated purpose unless it is established by parties opposing the application that the entry of the new carrier would endanger or impair the operations of existing common carriers to an extent contrary to the public interest.

Thus, Ex Parte No. MC–121 lifts a significant evidentiary burden from applicant. No longer will an unsophisticated passenger witness have to defend its testimony that existing carriers cannot serve its needs as well. The issues are more sharply focused under Ex Parte No. MC–121, and we believe that in general there will be less necessity to cross-examine passenger witnesses.

Second, the Commission has long recognized the difficulties inherent in presenting a passenger application case. *Brush Hill Transp. Co. Cam. Cor. Applic.*, 112 M.C.C. 348 (1970). The very nature of this evidence is that it will be generalized. The testimony is often given by laymen, the service needed is nonrepetitive in nature, and often includes leisurely travel for which a future need or commitment cannot directly be stated.

We see little reason to subject unsophisticated passenger witnesses to extensive cross-examination in routine cases merely to drive home a point the Commission has recognized for years—the nature of passenger travel is such that even rather unspecific predictions by potential users are difficult.

We should point out that the modified procedure has been used for many years in all forms of passenger cases, and past experience dictates that the oral hearing standard discussed elsewhere in this decision is an appropriate standard for all types of cases.

ABA contends that the policy against restrictive amendments should not apply to passenger cases, since the Motor Carrier Act of 1980 does not substantively apply to passenger carriers. It also raises other general points about the need for restrictive amendments which are answered in our discussion of the restrictive amendment process in general. Some policy matters specifically relating to passenger transportation should be addressed separately, however.

ABA and other parties realize that the lack of a restrictive amendment process does not mean that the Commission will automatically grant an application in full, or deny it in full. We still have the capability to grant applications in part. With each adversary presenting the appropriate evidence, we can get a complete picture as to what public need for the service exists even in the absence of restrictive amendments.

Finally, ABA correctly points out that certain portions of the fitness only descriptions in the interim rules do not clearly designate that these fitness applications refer to property applications only.

Elimination of Petitions to Modify Restrictions Contained in Operating Authority, or to Modify the Scope of Authority

The former rules provided for a petition method to modify operating authority. This was nowhere explicitly set forth in the rules of practice, but was merely contained in the fee section, 49 CFR 1002.2(d)(15). There is no longer any need to retain a special modification procedure. Reforms in the application process have been successful and the petition method is outmoded and now only serves to complicate processing, while the application process is flexible enough to handle any change in authority.

There were no special rules governing petitions for modification. After notice of the petition was published in the **Federal Register**, further evidence was to be submitted even if the matter was unopposed. Extra expense was required both for the parties and the Commission, and the entire process took longer. Many times tendered petitions for modification had to be rejected because the request involved a major change in

operating authority—this also involved extra work for the Commission and the public.

There were no legal differences in the treatment of parties under either process. Whether major or minor in

Petitions to Modify Permits Under 49 CFR 1002.2(d)(8)

An unintentional inclusion in our interim rules was the petition to modify a permit by adding the name of a

An added question regarding whether the application is supported by public witnesses is designed to assist in internal processing.

The certification of shipper or witness

"Pack-and-Crate Applications"

Section 10 of the Household Goods Transportation Act of 1980 ("HG Act") adds another classification of applications to our "fitness only"

the information required by the Commission. Thus, the property broker applicant need not give information concerning its description of equipment and safety program. The "description of circumstances" likewise is not

information may or may not be within the sole province of opposing carriers, depending on the knowledge which abandoned shippers may be able to impart.

operating authority—this also involved extra work for the Commission and the public.

There were no legal differences in the treatment of parties under either process. Whether major or minor in scope, any increase in operating authority must conform to the requirements of due process, the APA, and the relevant entry standards as set forth in the revised Interstate Commerce Act. Therefore, elimination of the petition method will not affect any party's substantive or procedural due process rights. In short, the petition for modification process is duplicative and, therefore, unnecessary.

Petitions for Correction

We shall continue to accept petitions which are corrective in nature, since they do not require being tied into the applications process. Nor must they be published in the Federal Register, since these ministerial corrections are technical in nature and do not affect any parties' rights.

49 CFR 1002.2(d)(4) in the final rules will continue to read as in the interim rules.

(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, a change in the name of the shipper or owner of a plantsite, or the change of a highway name or number—no fee.

Petitions for Clarification or Interpretation

We unintentionally deleted another petition form in the interim rules, the petition for interpretation or clarification. This device has proved useful to carriers in the past who wish to have an official ruling on an ambiguity in their authority.

It is necessary, however, to assure that these proceedings conform to the statutory deadlines, and that some definite procedure be outlined. Therefore we will add a new paragraph to final rule 1100.253 to indicate that such petitions may be filed. The petition method will conform to the application process—petitioner will file its argument in full with the petition. No application form will be used. Comments from the public will be due 45 days from the date of Federal Register publication, and shall be served on the petitioner. Petitioner may file a reply on all parties of record. The fee will be that charged in former 49 CFR 1002.2(d)(15), or, $200. We will place this fee change in the appropriate section, 49 CFR 1002.2(d)(2) as follows:

(2) A petition to interpret or clarify an operating authority under 49 CFR 1100.253(e)—$200.

Petitions to Modify Permits Under 49 CFR 1002.2(d)(8)

An unintentional inclusion in our interim rules was the petition to modify a permit by adding the name of a shipper. This was used in the past where no change in the scope of a permit was sought, but the permit holder merely wanted to serve an additional shipper.

However, a substantive addition to an authority requires notice and opposition rights. It is, in all respects, an extension of authority.

Permit holders would thus be able to extend their authority through this process at a fee lower than that required for common carrier extensions. There is no public interest rationale for this disparate treatment. Further, these substantive additions to authority require that the permit holder file the same information as would be filed in a normal application (including, in the contract carrier area, submission of shipper support). For this reason, we believe there is no justification to retain a process which differs from the application process in name only, and which has a different fee structure for essentially the same processing work by the Commission and same benefit to the party. In view of this, we shall delete 49 CFR 1002.2(d)(8) and reserve that number for future use.

Note that ministerial corrections, such as a change in the name of the shipper or owner of a plan site, are allowed without fee under 49 CFR 1002.2(d)(4).

Changes to the Application Form

A number of revisions have been made to the application form to clarify the information required.

We have dropped the requirement that applicant supply the form of its business (e.g., corporation) and the listing of corporate officers and directors. We did not use this information in operating rights proceedings.

We will require maps in the future for regular route applications and, in addition, those irregular-route applications where an unusual boundary is involved, such as a river or highway.

The notarization/verification requirements have been simplified in conjunction with our previous discussion of the need for notarization.

The form will require that applicant list the authority it seeks on the application form. The witness support statement will enable the supporting individual or organization to show the extent to which it supports the application, since some persons relate that witnesses are reluctant to sign an unqualified support form.

An added question regarding whether the application is supported by public witnesses is designed to assist in internal processing.

The certification of shipper or witness support has been refined. Among other things, it will reflect that, in passenger cases, persons normally are testifying as to their personal travel service needs. In property cases, we are asking that shipper witnesses disclose the actual or potential commodities they will tender to the carrier, frequency and volume of the traffic, and a more meaningful description of the geographical movement of the traffic.

The final rules will also give the review boards the power to accept an application which is in substantial compliance with the rules. The boards have in the past rejected some applications with adequate evidentiary showings but which were deficient in one filing element. Where an applicant has substantially submitted appropriate fitness and threshold evidence, rather than delay the processing of the application, the review boards should accept these applications for filing. We note that this is not an invitation to the public to become careless in the preparation of their applications. We believe, however, that immaterial omissions should not delay the processing of applications. If a pattern of omissions from one party or practitioner is found, the board should properly reject the application with appropriate instructions to the party.

The application form will indicate that a lack of a response to a question will indicate it is not applicable.

Caption Summary Examples

Several parties asked that a sample caption summary be attached to the application form, or that an acceptable format be contained in the instructions.

We have some hesitation about doing this in the form, since the variety of forms of authority is quite large. We are dealing not only with many different types of applications, but many different descriptive terms within the request for authority. A previous attempt was made in *Revision of Application Forms, supra,* at 838–46, but in retrospect the attempt was only partially successful, as some of the suggested caption summaries became outdated. We believe it preferable to continue to advise persons requesting authority to seek instructions from a commission office, or consult a copy of the Federal Register, which itself contains numerous examples. Finally, we will put general examples in the advisory booklets we are planning.

"Pack-and-Crate Applications"

Section 10 of the Household Goods Transportation Act of 1980 ("HG Act") adds another classification of applications to our "fitness only" procedures, transportation for the United States Government of used household goods which transportation is incidental to a pack and crate service on behalf of the Department of Defense. This essentially replaces the special regulations for this licensing that existed in 49 CFR 1046.40. These were deleted in our interim rules because of the proscription against master licensing procedures.

To accommodate the pack-and-crate amendment to 49 U.S.C. 10922(b)(9) we shall add the pack-and-crate application to our list of fitness only applications in the application rules.

We shall not, however, impose all the informational requirements found in former section 49 CFR 1056.40, since they are now unnecessary. In many instances, the information is called for in the current application form and remains relevant, e.g., affiliation with other regulated carriers, or, is obviated by the fact that we will be issuing certificates of public convenience and necessity to these carriers, which carry with them the corresponding duties to maintain insurance and make tariff filing before operations commence.

The former rules did require a description of the territory which the applicant intended to serve, 49 CFR 1056.40(a)(2)(v). We view the fitness only type operation, however, as a type similar to the general commodities U.S. Government traffic, small shipments, and owner-operator food transportation provisions which Congress has exempted from the "need" provisions of the entry statute. The pack-and-crate carrier, as with these aforementioned carriers, has been accorded a special status. It should not be required to provide information which relates to our former economic regulation of the types of operations. There is no need to describe to us the territory which would be served. That information is no longer germane to our regulation, and need only be provided to the public through appropriate tariff filings. Therefore, all authority granted under these procedures will be "between points in the United States."

Property Broker Applications

Barry Weintraub points out that the information required to be given in the fitness only verified statements is inapplicable, in part, for the application of the property broker. We agree and will key the type of authority sought to the information required by the Commission. Thus, the property broker applicant need not give information concerning its description of equipment and safety program. The "description of circumstances" likewise is not applicable to property broker applications—its intended use pertains to "community not regularly served" and "rail service substitution" applications.

Property Broker Affiliations

Arrow Truck Lines, Inc., *et al.,* state that we should require the applicant for a property broker license to disclose affiliations between itself and shippers or warehouses. However, we believe that the rebating rules at 49 CFR 1045.9 serve as the proper vehicle to protect the public interest. These rules were recently revised in Ex Parte No. MC–96 (Sub-No. 3), *Property Broker Practices,* 132 M.C.C. 233 (1980).

Requirement That Applicant Describe Circumstances Why Community Not Regularly Served

The Act applied the fitness only standard to applications for motor common carrier of property authority to serve communities not regularly served by certificated motor common carriers of property. In our interim rules we required the applicant to describe in detail the location of the community, the highways which serve the community, the last date of service from other motor carriers and their identity, and the last date when service was requested from these carriers. The Department of Justice, while agreeing with the lawfulness of our interim rules as a whole, disputes that this should be the evidentiary burden of applicant.

In their view, the burden of coming forth with this evidence should be borne by those planning to protest the application. They argue that this information is not likely to be within the scope of knowledge of an applicant. We agree to the following extent. Applicant may well not have full knowledge of all the relevant facts, but it should be required to make a good faith initial showing.

The final rules, § 1100.251(a)(6), require the applicant to name the location of the community and highways which serve the community. It shall state, if known, the last date of service from other carriers and their identity, and the date when service was requested from these carriers.

We believe the final rule establishes a proper burden of evidence. Applicant is testifying that to the best of its knowledge the community does not receive regular service. Other information may or may not be within the sole province of opposing carriers, depending on the knowledge which abandoned shippers may be able to impart.

Obtaining Copies of the Application From the Applicant

A number of modifications are suggested with regard to interim rules 1100.247(A)(1)(3) and 1100.247(h). The interim rules require the applicant, upon receipt of a $10 check or money order payable to applicant from an interested person, to furnish a copy of its entire application package within 5 days of the request being received.

The comments suggest that 5 days is too long to allow for the response. Some suggest that the request should be allowed by telephone or that applicant be required to send the material by express mail or other expedited means if the requester is willing to pay for this service. It is contended that $10 is insufficient to pay for copying large applications, and a charge for page or actual costs should be considered. Finally, it is argued that an applicant, or its representative, should be penalized if it fails to mail the material in a timely fashion.

We agree that 5 days is too long and will change the time limit for returning the material to 3 days. Our initial concern was that an applicant might unexpectedly receive a large number of requests for copies, or that requests might come in so sporadically that a printing schedule would be impossible to set up. In retrospect, however, the ready availability of reproduction machines should allow an applicant to respond to sudden requests.

We believe that in the long run it is better to use a simple, automatic rule in this situation. A system which allows applicant to compute actual costs and bill in the future will only lead to more paperwork for everyone. Applicants not represented by counsel (or by counsel not used to practicing before the Commission) may be uncomfortable with a telephone system, and we believe that there should be some documentation in the event there are disputes about who agreed to pay for what. Requiring express mail service or similar service would only be possible from selected cities, and would require future billing with its attendant burdensome paperwork.

We believe that the most sensible rule is to allow applicant, at a minimum, to insist upon receiving written request, paid in advance, for copies. The $10 fee, computed at 25 cents a page, would allow coverage of printing costs for an application up to 40 pages in length,

surely a sizeable amount.[32] An automatic system obviates complex inter-office billing systems.

However, we believe that applicants and interested parties agreeing in allowing resolution of many proceedings to be accomplished in a single decision.

Unfortunately, similar applications may be filed weeks apart. Under the statutory time limits we will be unable of a protestant. Protests containing more than a 5-page summary will be rejected.

We are aware that some protestants may have more complex authorities than others. Regular-route carriers, for

existing operations; and, to determine what reasonable notice of the intent to provide a through service as a result of this joinder should be provided to potential protestants.

appropriate language to indicate that where a carrier seeks regular-route authority, the authority, when granted, may be joined with applicant's existing authority to perform a direct service,

Is Federal Register Notice Sufficient for Potential Protestants?

We asked the public to comment on whether Federal Register notice of an

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surely a sizeable amount.[32] An automatic system obviates complex inter-office billing systems.

However, we believe that applicants and interested parties agreeing in advance to informal arrangements should be allowed to do so. Rather than prescribe the specifics, we would rather allow those persons to work out arrangements among themselves. It should be noted, however, that should abuse of this system occur in individual cases, we will be hard pressed to achieve equity where we have no documentation to rely upon.

We will treat abuses brought to our attention on a case-by-case basis. An applicant should not be penalized by dismissal through inadvertent paperwork foulups. A continuing series of complaints against a practitioner or an applicant will be watched carefully. Where delays occur in the transmittal of the application, the parties should attempt immediately to contact each other by telephone. Only in extraordinary cases will we grant 3-day extensions of time, so parties should request the copy of the application early in the 45-day period. Mail delays will not be sufficient cause for extensions.

Finally, the check or money order should be made payable to applicant's representative. The representative will normally be mailing the copies. It will have the option of crediting its client's account or signing the check over to the client.

Limited Time to Reply

Where in the course of a proceeding one party files a motion, under our existing rules, a reply may be filed within 20 days. 49 CFR 1100.21. We believe that this amount of time is excessive under the statutory time limits. We will therefore limit the reply time to 10 days. Motions are generally uncomplicated pleadings and the reply time given is adequate. The replying party shall certify to the date when it received the pleading in its reply.

Consolidation of Separate Applications

National Automobile Transporters Association (NATA) notes that the interim rules do not contain a means for parties to request consolidation.

In the past, consolidation (available under 49 CFR 1100.46) was employed to enable the Commission to evaluate like applications on an equitable basis, and to increase administrative efficiency by allowing resolution of many proceedings to be accomplished in a single decision.

Unfortunately, similar applications may be filed weeks apart. Under the statutory time limits we will be unable to hold up applications which are not concurrently filed. However, we will entertain requests for applications to be treated in a consolidated manner where the request is made upon filing of the application, and the applications are submitted together. Since it may be impossible for applicants to coordinate their applications and mail them in one package, we will entertain consolidation requests where the applications are filed within 5 days of each other.

As shown in the rules, these requests should be made to the Section of Operating Rights of the Commission. The applications will be published in the **Federal Register** with indications that they are going to be treated in a consolidated manner. Thus, protestants will have the opportunity to file a single pleading which shall refer to the lead docket number in the consolidated proceeding. (Normally, the lead docket is merely the carrier with the lowest MC– number).

Representatives of the consolidating applicants should indicate their agreement with the consolidation in their individual submissions. Alternatively, if mutual agreement has been reached in advance, one representative may indicate that he or she has contacted all representatives and they are mutually agreeable to consolidated disposition.

Page Limitation on Abstract of Protestants' Authorities

Under the interim rules, a protestant was required to submit a description or copy of the specific pertinent authority in conflict with that sought in the application, see § 1100.247(B)(d). Protestants were requested not to send copies of all authorities. In spite of this request, many carriers continued to send in copies of all their authorities, even in cases where only one or a few authorities were in issue.

This causes internal problems. Since dockets must be microfilmed, an enormous amount of time and money is spent copying irrelevant material.

Additionally, it is also our experience that the exact wording or scope of authority of a protestant is only in issue in a small number of cases. We believe that a summary of the conflicting authority will suffice to give notice to applicant and the Commission as to the legally authorized extent of a protestant's conflicting authority. Therefore, we are placing a 5-page limit on the authority description or summary of a protestant. Protests containing more than a 5-page summary will be rejected.

We are aware that some protestants may have more complex authorities than others. Regular-route carriers, for example, often submit their entire scope of authorities, apparently believing that the structure or network of their operations must be disclosed to the Commission. In the future, a citation to the specific line of their authority which allows them to serve the origin points of the traffic along with a summary of their network of their authority or a map will be sufficient.

In all situations where an issue arises as to the scope of the authority, we can consult the Commission's records on the carrier and determine the exact extent or description of the authority.

Speedy Service of Decisions

North American Van Lines, Inc., comments that service of decisions in operating rights cases takes an excessive amount of time, and an applicant must assume a 3 to 6 month lag between service of a final decision and the issuance of an authority. It thus believes that these delays may render illusory the decisional time limits established by the legislation. We have modified our issuance of authority procedures in 45 FR 80109 (1980) as reflected in final rule § 1100.251(1)(3).

Carriers Who Wish To Join Their Existing Authority With the Requested Authority to Provide a Through Service

Applicants for motor common carrier of property authority occasionally desire to join their existing authority with the authority they are seeking in the application. These efforts may include the joining of irregular-to-irregular, regular-to-regular, or irregular-to-regular route authority.

The history and present status of "tacking" is set forth in the recent notice of proposed rulemaking in Ex Parte No. MC–142, *Elimination of Gateway Restrictions*, 132 M.C.C. 174 (1980).

We believe that Congress' enactment of Section 6 of the Act had the effect of precluding the future granting of authorities where gateways or circuitous routings would have to be observed. Clearly, Congress did not intend that we continue to grant authorities with defects similar to those to be removed. We also believe that it is reasonable to infer that Congress recognized the existing abilities of motor carriers of property to tack; these are described in full in *Elimination, supra*, at 176.

That being the case, it is incumbent upon us to decide the proper mechanism for motor carriers of property who wish to combine a proposed operation with existing operations; and, to determine what reasonable notice of the intent to provide a through service as a result of this joinder should be provided to potential protestants.

Irregular-to-irregular route

Irregular-route applicants wishing to provide a direct service which encompasses, in part, existing irregular-route operations, shall be required to file a regular OP–1 application for the complete direct authority. The proper method to accomplish this is not by filing a so-called gateway elimination application, as might have been done in the past. We are not troubled that in some cases duplications of authority may result, since the authority will be construed as conferring a single operating right.

These applications do not require special notice provisions in the **Federal Register.** The public is aware what the full extent of the service is from the face of the publication. The public is also aware that the carrier would not be able to tack the newly acquired irregular-route authority with existing irregular-route authority to provide a direct service.

Regular-to-regular route

As a preface to our discussion of regular-route "tacking" it should be emphasized that while the carrier is authorized to "tack" common authorities, it has the option to provide a direct service without observance of circuitous routings or gateways; the public should consult the final rules adopted in Ex Parte No. MC–142 for further information on this subject.

Regular-route authorities historically have been tacked with one another. This practice should be allowed to continue. These operations may, of course, be conducted directly.

The industry is well aware that this form of tacking has been allowed. When a regular-route application is published in the **Federal Register,** the potential protestant is on notice that the proposed operation must be viewed in light of the applicant's existing network of routes. There are a number of sources for a potential protestant to obtain copies of the applicant's authorities to determine the extent of this network. The Commission has long followed the view that it need not publish the entire scope of a regular-route carrier's operations every time a new piece is added to the carrier's network of routes; reasonable notice is all that is required.

Out of an abundance of caution, however, we shall include in the preface which accompanies notice of the applications in the **Federal Register** appropriate language to indicate that where a carrier seeks regular-route authority, the authority, when granted, may be joined with applicant's existing authority to perform a direct service.

Regular-to-irregular route

In this situation, we are presented with two different possibilities. The carrier may be applying for irregular-route authority, but may have existing regular-route authority, or vice versa. The industry is aware that such tacking is permissive; see *Elimination, supra*, at 176.

Where a carrier is applying for regular-route authority, the public has adequate notice of the tacking possibilities, for the reasons stated above. In addition, the new language inserted in the preface puts the public on notice of the possibility. Where, however, the applicant seeks irregular-route authority, the public may not have notice of the tacking potential. To cover this situation we have adopted the rule set forth at § 1100.251(u). This will reasonably and properly apprise the public of the full extent of the tacking possibilities. Consistent with the rules adopted in Ex Parte No. 55 (Sub-No. 43A), Acceptable Forms of Requests for Operating Authority, an irregular-route applicant with regular-route authority must indicate the tacking possibilities, since it will not be able to restrict its ability to provide a through irregular-to-regular (or vice versa) route service.

Service of Motions by Protestants

Nelson & Harding bring the following matter to our attention. Under the interim rules, a protestant is required to serve motions and replies to motions on all parties, including all other protestants. Due to the structure of the rules, protestants will not know who the other protestants are until the initial decision is served.

Nelson & Harding suggests, and we agree, that protestants' motions and replies to applicant's motions concern only the immediate parties. For example, an applicant may file a motion asserting that the protestant's statement should be stricken. The protestant's defense of the pleading concerns only that party. Likewise, where a protestant believes that an applicant's statements are defective, its assertions can stand or fall without the additional views of protestants. Therefore, the final rules will require that protestants need only serve the applicant in these matters. Likewise, applicant need only serve replies on the moving party.

Is Federal Register Notice Sufficient for Potential Protestants?

We asked the public to comment on whether **Federal Register** notice of an application was sufficient notice to potential protestants prior to the filing of their opposition statements. We now reject this proposal, since we believe that potentially interested persons must have sufficient information to apprise themselves of the intended operations of the applicant.

Serving Notice of Applications on All Truckers

Rep. Gillespie Montgomery, Member, U.S. House of Representatives, urges that we require that existing carriers be affirmatively informed by the Commission when an application for authority affects their interests. Most of these truckers, he asserts, do not receive the **Federal Register.**

We are unable to implement this request. We cannot ascertain in advance when a carrier may be interested in an application. We do not have the capabilities to serve the more than 21,000 carriers in the nation with every notice of an application—it would be an almost impossible burden. We should point out that the **Federal Register** serves this purpose very well, and persons interested in opposing applications can receive subscriptions to the **Federal Register** for a nominal sum. Various services, moreover, routinely monitor the **Federal Register** publication and motor carriers can subscribe to these services at a relatively modest cost.

Notification to the Commission of Erroneous Federal Register Publication

Arrow Truck Lines, Inc., *et al.*, point out that the interim rules require the applicant to inform the Commission of an erroneous **Federal Register** publication within 10 days of the publication date. However, they argue this may not be sufficient time if the **Federal Register** is delayed. They believe that the interim rules 1100.247(A)(j)(3) should be reworded so that the applicant may inform the Commission of the error as soon as possible.

We agree that it is critical that the public operate under a correct presumption—that the **Federal Register** publication is correct. On balance, it is more important that a slightly delayed correct republication be made so that the whole proceeding is not aborted. Consequently, the rule will merely require that the notification be as soon as possible, and that where notification occurs within 10 days the Commission

[32] We note that in the past applicant was required to send its witness certifications to interested parties, and its verified statments to protestants, without being compensated. The intent of this rule is to strike a balance between average remuneration and simplicity.

shall correct material errors and republish the notice. Notifications after 10 days will require publication only at the Commission's discretion. For example, a very late notification may present us with no real option, because

Discovery Under the Adopted Rules

The Commission's discovery rules, 49 CFR 1100.55–65, were adopted in *Revision of Application Forms, supra*, at 813–17. We continue in the belief that

summarization will not affect their evidentiary presentation.

Filing of Separate Fitness Applications

We believe that the fitness only

(3) The Department of Defense's suggestion that we adopt an applicant certification of minority status, where that is to be relied upon as a factor to determine whether the service is responsive to a public demand or need.

dissenting in part and reserving his right to submit a separate expression at a later date.

James H. Bayne,
Acting Secretary.

Appendix A—Revisions to the Code of Federal Regulations, Title 49

the headings "Applications—Motor Carrier and Broker," and "Applications—Water Carrier and Freight Forwarder."

49 CFR 1100.251 through 1100.253 are revised to read as follows:

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shall correct material errors and republish the notice. Notifications after 10 days will require publication only at the Commission's discretion. For example, a very late notification may present us with no real option, because of the statutory time frames, to do other than request that applicant refile the application.

Qualifications for Protesting

ATA argues that there is no need for the qualifications format since carriers have the right to protest if they meet the statutory criteria listed at 49 U.S.C. 10922(b)(7) (A) and (B). ATA misunderstands our intent in having adopted a qualifications format. This merely enables the Commission to determine whether a carrier has the statutory right to intervene, or whether intervention is discretionary. The qualifications format in no way lessens the statutory right of carriers to protest.

ATA also urges that the Commission eliminate the use of the term "extraordinary circumstances" found in interim rule 1100.247(B)(c)(6), and substitute language which delineates the circumstances under which the Commission will normally accept protests from organizations representing carrier interests. ATA suggests that it be couched in terms of the presence of industry-wide impacts or economic impacts emerging from individual cases. We will adopt the language suggested by ATA, since it appears to be a clearer definition of when persons should be permitted to intervene where they have no specific connections with a particular application, but seek to address broader issues. Therefore, we will allow persons to intervene under the "permissive" intervention provisions of 49 U.S.C. 10922(b)(7)(C) under the following circumstances:

> A person seeking to qualify under this paragraph shall describe in detail the circumstances which warrant its participation and how they are consistent with 49 U.S.C. 10101(a). The Commission shall normally permit such person to intervene when it shows that a proceeding is novel or of first impression, is of industry wide importance, or has significant ecomomic impact.

Duplicative Operating Rights

Alamo Express, Inc., *et al.*, argue that the interim rules should be amended to require a statement by applicant of all operating authorities presently held by the applicant which are duplicative of the authority sought.

This is unnecessary, since the Commission now automatically imposes a non-duplicating provision in its issuance of operating authorities.

Discovery Under the Adopted Rules

The Commission's discovery rules, 49 CFR 1100.55–65, were adopted in *Revision of Application Forms, supra*, at 813–17. We continue in the belief that discovery has marginal utility in modified procedure cases, but we will entertain petitions seeking discovery where good cause has been demonstrated, see 49 CFR 1100.55(a). We note that in cases where discovery lies, we may be required to extend the statutory time frames as allowed in extraordinary circumstances by 49 U.S.C. 10322(i).

Further Supplementation of Evidence Prior to Federal Register Publication

During the period of the interim rules, some persons attempted to supplement original filings after their original submittal. Typically, it would be cited that certain shipper statements had recently arrived at their office. The final rules explicitly state that supplementation is not permitted. We find that such statements frequently do not find their way into the appropriate record until after material action has occurred in the case.

Equipment List Summary

It has been a common practice for carriers to provide the Commission with a list of individual pieces of equipment when providing their description of equipment. The final rules will show that all we require is a summary of pertinent equipment, and we do not need individual identifications of the equipment. Where pertinent, a carrier may segregate certain types of equipment in the summary list. We request carriers to stop submitting unnecessarily detailed lists of their equipment.

Unnecessary Documentation in General

The Commission bears extraordinary expense in copying and preserving the official records of proceedings. We find that many parties to proceedings habitually provide detailed lists or wholly irrelevant material. Many applicants and protestants submit lengthy computer printout traffic studies. A summary of these studies would in many cases be a more effective and less costly means to present this evidence. Applicants on occasion send copies of their operating authorities when they are irrelevant to disposition of the case. We ask that all persons reexamine their filings to remove unnecessary information, and attempt to consolidate or summarize all information that appears in list form where this summarization will not affect their evidentiary presentation.

Filing of Separate Fitness Applications

We believe that the fitness only applications are substantially related in issue, and we will allow a person to file for more than one fitness only authority in a single application.

Marking Envelopes to Identify Type of Pleading

We are requesting the public to identify the type of pleading being submitted so that our mail room can more quickly direct the mail to the appropriate office. We shall request, but not explicitly require, that party representatives mark, in the lower LEFT hand corner of an envelope containing a pleading, the docket number (not the title) and the type of pleading. Please refer to 1100.253 for a description of the appropriate identifications. This will speed the handling of your requests for extensions of time, and the handling of the proceeding in general. Persons are requested to begin this practice immediately.

Copies

These rules require an original and one (1) copy of all matters filed in application proceedings. Accordingly, we shall delete that portion of Appendix F following 49 CFR 1100.250 under the headings "Applications—Motor Carrier and Broker," and "Applications—Water Carrier and Freight Forwarder."

Comments That Were Not Addressed

We have addressed all comments which were directly relevant to the application process and which raised substantial issues. A number of issues were worthy of comment but were not directly relevant, and we will attempt to address these in future proceedings. Some of these include:

(1) The comments of the General Services Administration (GSA) concerning the definitions of used household goods and hazardous materials.

(2) GSA's suggestion that in fitness only applications the application fee be limited to the cost of publishing the application in the **Federal Register**. This question, while relevant to the application process, has complex policy considerations which should be answered on a separate basis. See our discussion of filing fees for owner-operator food transportation applications in Ex Parte No. MC-143, Owner-Operator Food Transportation, notice of proposed rulemaking published at 45 FR 61337 (1980).

(3) The Department of Defense's suggestion that we adopt an applicant certification of minority status, where that is to be relied upon as a factor to determine whether the service is responsive to a public demand or need. We believe that any party to a proceeding may properly raise this issue in their argument and verified statement. A separate checkoff is unnecessary. We may address this issue in a future proceeding.

Technical Correction

The interim decision deleted the property broker application rules formerly found at 49 CFR 1045A, but failed to include the necessary deletion language in Appendix C of the interim decision. We reaffirm the policy for making that deletion, and will insert the necessary deletion language in Appendix A of the final decision.

Oral Argument Request

A number of parties request oral argument. We believe it to be unnecessary. A large number of knowledgeable parties have responded to our request for comments and have offered numerous helpful suggestions.

We note that in the past the Commission has been very receptive to petitions for modifications to our rules of practice. If at a later date there appears to be a continuing serious problem (although we foresee none at this time), we invite affected persons to petition us.

Environmental and Energy Considerations

This action will not significantly impact the quality of the human environment or conservation of energy resources. The rules provide for the proper consideration of these issues in individual application proceedings.

Adoption of Rules

Accordingly, we adopt the rules and the application form set forth in the Appendices, below, and make the other revisions and deletions noted.

This action is taken under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Dated: December 19, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Clapp concurring in part and dissenting in part and reserving his right to submit a separate expression at a later date.

James H. Bayne,
Acting Secretary.

Appendix A—Revisions to the Code of Federal Regulations, Title 49

PART 1011—COMMISSION ORGANIZATION; DELEGATION OF AUTHORITY

§ 1011.7 [Amended]

49 CFR 1011.7(c)(3) is amended by adding this material to the last sentence:

* * * * * *

(c) * * *
(3) * * *

The Director of the Office of Proceedings shall also have authority, unless otherwise ordered by the Chairman in individual proceedings, to decide whether operating rights application and complaint proceedings shall be handled under the modified procedure or assigned to the Office of Hearings.

PART 1041—INTERPRETATION—CERTIFICATION AND PERMITS

49 CFR 1041 is amended by adding a new § 1041.25, to read as follows:

§ 1041.25 Operating authority granted to private motor carriers.

Where a motor carrier receives operating authority and intends to use it primarily as an incident to the carriage of its own goods and its own non-transportation business, the carrier's issued authority implies that the carrier shall conduct its for-hire motor carrier activities and its other activities independently, and shall maintain separate records for each activity.

PART 1002—FEES

49 CFR Part 1002 is amended by removing 49 CFR 1002.2(d)(8) and reserving it for future use, and by adding 49 CFR 1002.2(d)(2) as follows:

* * * * * *

(d) * * *
(2) A petition to interpret or clarify an operating authority under 49 CFR 1100.253(e)—$200.

* * * * * *

PART 1045A—PROPERTY BROKER LICENSING [REMOVED]

49 CFR 1045A is removed.

PART 1100—COMMISSION ORGANIZATION; DELEGATION OF AUTHORITY

Appendix F [Amended]

Remove that portion of Appendix F, which follows 49 CFR 1100.250, under the headings "Applications—Motor Carrier and Broker," and "Applications—Water Carrier and Freight Forwarder."

49 CFR 1100.251 through 1100.253 are revised to read as follows:

§ 1100.251 How to apply for operating authority.

(a) *Applications governed by these rules.* These rules govern the handling of applications for permanent operating authority of the following type:

(1) Applications for certificates and permits to operate as a motor common or contract carrier of passengers or property.

(2) Applications for permits to operate as a freight forwarder.

(3) Applications for certificates, permits, and exemptions for water carrier transportation of property and passengers.

(4) Applications for licenses to operate as a broker of motor vehicle transportation.

(b) *Applications for operating authority which require only fitness proof ("fitness only" applications).* There are certain types of authority which can be obtained by an applicant showing only that it is fit, willing and able to perform the service and to comply with the law and Commission regulations. These are listed below. The applicant does not provide any supporting witness testimony. The application can be opposed only on the grounds that applicant is not fit or does not fall within the statutory definition. These applicants shall skip paragraphs (e) and (f) of this section, and substitute the information called for in paragraphs (g) and (h) of this section.

(1) Motor common carrier of property transportation to serve any community not regularly served by a certificated motor common carrier.

(2) Motor common carrier of property transportation to provide service as a direct substitute for complete abandonment of all rail service in a community.

(3) Motor common carrier transportation for the United States Government of property (except used household goods, hazardous or secret materials, and sensitive weapons and munitions).

(4) Motor common carrier property transportation of shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds.

(5) Motor common or contract carrier of property transportation of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for

human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers, when the transportation is provided with the owner of the motor vehicle in the

described in this paragraph according to the type of application being filed (see KEY). The information shall be provided in separately numbered paragraphs. If a particular item seems inapplicable,

(11) Legal argument supporting the application. [optional for all].

(12) Any oral hearing request [optional for all]. *Verification:* Separate verification of this statement is not necessary. Applicant understands that the oath in the application

direct substitute for complete abandonment of all rail service in a community, state docket number and abandonment approval date by the Commission; give the location of the points sought to be served, and indicate to what portion of the rail line they are

within 10 days of the publication, ministerial errors will be correctecd and the notice will be republished. Notifications after 10 days will result in republication only at the Commission's discretion, and may result in an

(2) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(3) The reply statement need not be notarized or verified. Applicant

V 4 5 D E 3 1 8 0 UMI

human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers, when the transportation is provided with the owner of the motor vehicle in the vehicle (except in emergency situations). After issuance of the authority, such transportation (measured by tonnage) shall not exceed, on an annual basis, the transportation provided by the motor vehicle (measured by tonnage) which is exempt from the Commission's jurisdiction under 49 U.S.C. 10526(a)(6).

(6) Transportation for the U.S. Government of used household goods which transportation is incidental to a pack-and-crate service on behalf of the Dept. of Defense.

(7) Motor carrier brokerage of general commodities (except household goods).

(c) *Procedures used generally.*—(1) *Modified procedure.* Most cases are handled under the modified procedure. The applicant and protestants send statements made under oath (verified statements) to each other and to the ICC. There are no personal appearances or formal hearings.

(2) *Oral hearings.* Oral hearings are used infrequently. Either an applicant or a protestant may request oral hearing at any time during the proceeding. The rules governing requests for oral hearings are set forth at § 1100.253(i).

(d) *Starting the application process:* Form OP–1.

(1) All applicants shall use form OP–1.

(2) Obtain the form at Commission regional and field offices, or call the Office of the Secretary at 800–424–5230.

(e) *Information to be submitted by applicants (except fitness only applications).* (1) A completed application form, OP–1. (2) A caption summary which describes the authority sought. (3) A separate verified statement from the applicant, as described in paragraph (f) of this section. (4) Verified certifications of witness or shipper support (see the appendix to the OP–1 form).

(i) *Motor common carriers of property.* Applicants for this authority normally file verified certifications of witness or shipper support. Alternatively, an applicant may elect to file other evidence showing that the service proposed will serve a useful public purpose, responsive to a public demand or need. This evidence shall be submitted in part (10) of applicant's verified statement, as shown in paragraph (f) of this section.

(ii) *Water carrier exemption applications.* No shipper or witness support evidence is required.

(f) *Applicant's verified statement (except fitness only applications).* Applicant shall file the information described in this paragraph according to the type of application being filed (see KEY). The information shall be provided in separately numbered paragraphs. If a particular item seems inapplicable, write "N/A".

Key For Regular Applications

(1) Motor common carrier of property application
(2) Motor common carrier of passengers application
(3) Motor contract carrier of property application
(4) Motor contract carrier of passengers application
(5) Passenger broker application
(6) Freight forwarder application
(7) Water common carrier application
(8) Water contract carrier application
(9) Water carrier exemption application

Information to be Submitted

(1) Legal name and domicile of applicant. [all]

(2) Name of witness presenting evidence for applicant and why this person is qualified to speak for applicant (as, position with applicant and experience). [all]

(3) Authority requested in this application. [all]

(4) Brief description of present ICC regulated operations, or, any other transportation experience. Do not submit copies of existing authority unless they are an issue in the application. [all]

(5) Description of equipment. It is not necessary to list separately all pieces. A summary is preferred. If applicant has no equipment, it shall specify its plans to obtain equipment (e.g., owner-operators under lease). (all except 5)

(6) *Safety evidence.* Motor carriers holding ICC authority should indicate that they are in compliance with D.O.T. safety regulations. New entrants shall state the following:

"I certify that I have access to and am familiar with all applicable regulations of the U.S. Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations."

Note to applicants: These regulations are found in Title 49, Code of Federal Regulations, Parts 171 to 179 and Parts 390 to 399. Information concerning safety and hazardous materials regulations may be obtained by calling this toll free number: 800–424–9158.

(7) Service now provided to supporting shipper or witness, if any, or, service provided within area sought by application. [all]

(8) Description of service that will be provided if this application is granted. State whether services of this type are not now available. [all]

(9) Name and address of persons or shippers now served under contract [4 only].

(10) Any other evidence in support of the application. *Motor common carrier of property applicants:* If no shipper support statements are being provided, applicant shall submit other evidence under this paragraph.

(11) Legal argument supporting the application. [optional for all].

(12) Any oral hearing request [optional for all]. *Verification:* Separate verification of this statement is not necessary. Applicant understands that the oath in the application form applies to this statement.

(g) Information to be submitted in fitness only applications:

(1) A completed OP–1 form, except for the appendix.

(2) A caption summary describing the authority sought.

(3) A separate verified statement from the applicant, as described in paragraph (h) of this section.

(h) *The applicant's verified statement in fitness only applications.* Applicant shall file the information described in this paragraph according to the type application being filed (see following KEY). The information shall be provided in separately numbered paragraphs. If a particular item seems inapplicable, write "N/A".

Key For Fitness Only Applications

(1) Motor carrier applications
(2) Property broker applications

Information to be Submitted

(1) Legal name and domicile of applicant. [all].

(2) Name of witness presenting evidence and why this person is qualified to speak for applicant (as, position with applicant and experience). [all].

(3) Authority requested in this application. [all].

(4) Description of equipment. It is not necessary to list separately each piece. A summary is preferred. If applicant has no equipment, it shall specify its plans to obtain equipment (e.g., owner-operators under lease). [1 only].

(5) *Safety evidence:* Motor carriers holding ICC authority shall indicate that they are in compliance with D.O.T. safety regulations. New entrants shall state the following:

"I certify that I have access to and am familiar with all applicable regulations of the U.S. Dept. of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations."

Note to applicants: These regulations are found in Title 49 of the Code of Federal Regulations, Parts 171 to 179 and Parts 390 to 399. Information concerning safety and hazardous materials regulations may be obtained by calling this toll free number: 800–424–9158. [1 only].

(6) *Application under § 1100.251(b)(1):* If the application is to serve a "community not regularly served", describe the location of the community and the highways which serve the community. If known, state the last known date of service from other carriers and their identity, and the date when service was requested from these carriers.

(7) *Application under § 1100.251(b)(2):* If the application is for transportation services as a direct substitute for complete abandonment of all rail service in a community, state docket number and abandonment approval date by the Commission; give the location of the points sought to be served, and indicate to what portion of the rail line they are adjacent (submit maps where obscure, rural points are involved); certify that rail service was offered at the points for which authority was sought; and, certify that all rail service has been terminated, and give the date, if known. [1 only].

Verification: Separate verification of this statement is not necessary. Applicant understands that the oath in the application form applies to this statement.

(i) *Where to send the application.* (1) The original and one copy shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC, with the proper application fee. Make checks payable to the Interstate Commerce Commission.

(2) One copy of the application shall be sent to the ICC regional office in which applicant is domiciled. A copy of the caption summary only is sent to the state transportation regulatory body of applicant's domicile.

(j) *Commission review of the application.* (1) ICC staff will review the application for correctness, completeness, and for adequacy of the evidence (the prima facie case).

(i) Minor errors will be corrected without notification to the applicant.

(ii) Materially incomplete applications will be rejected. Applications that are in substantial compliance with these rules may be accepted.

(iii) A review board will decide whether there is adequate evidence so that the full scope of the authority applicant seeks may be published in the **Federal Register.** If there is not, the application will be rejected in a letter. An applicant may appeal rejections under paragraph (j)(1) (ii) and (iii) of this section. See § 1100.251(t). If an applicant chooses to resubmit the application, it shall refer to its prior application by docket number and give the ICC fee number stamped on the canceled check so as to avoid a second fee being assessed. If no appeal or resubmittal is made, the fee will not be refunded. The date of refiling will be considered the filed date of the application.

(2) The caption summary will be published in the **Federal Register** to give notice to the public in case anyone wishes to oppose the application. The application will be published in the form of a grant of authority.

(3) If the **Federal Register** publication does not properly describe the authority being sought because of ministerial error, applicant shall inform the ICC's Section of Operating Rights as soon as possible. Where notification is received within 10 days of the publication, ministerial errors will be corrected and the notice will be republished. Notifications after 10 days will result in republication only at the Commission's discretion, and may result in an application being rejected without prejudice to refiling.

(k) *changing the request for authority or filing supplementary evidence after the application is filed.* (1) An applicant may not supplement evidence once the application is filed (unless directed to do so by the Commission).

(2) Amendments to the application are not permissible.

(l) *After publication in the* **Federal Register.** (1) Interested persons have 45 days to file protests. See § 1100.252.

(2) If no one opposes the application, the grant published in the **Federal Register** will become effective.

(3) If no one opposes an application for an extension of authority, the grant published in the **Federal Register** will be made effective by issuance of a certificate, permit, or license. If no one opposes an application for initial authority, the grant published in the **Federal Register** will be made effective by a Commission Notice outlining compliance requirements which must be met before applicant commences the proposed service.

(m) *Furnishing a copy of the application package to interested persons.* (1) Applicant's representative is required to furnish a copy of the application package to interested persons after publication. The request must be made in writing to applicant's representative and must contain a check or money order for $10, payable to applicant's representative. Applicant's representative need not supply copies to any person not sending the appropriate payment. Applicant's representative is required to mail the copy within 3 days of the receipt of the request being received. Non-compliance with this rule may result in dismissal of the application.

(2) Representatives of applicants and potential protestants are urged to communicate by telephone if problems occur in the furnishing of the application. Requests for extensions of time where no attempt has been made to correct matters informally are looked upon with disfavor.

(n) *Opposed applications.* If the application is opposed, opposing parties are required to send a copy of their protest to the applicant.

(o) *Filing a reply statement.* (1) If the application is opposed, applicant may file a reply statement. This statement is due at the Commission within 60 days of the **Federal Register** publication.

(2) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(3) The reply statement need not be notarized or verified. Applicant understands that the oath in the application form applies to all evidence submitted in the application. Separate legal argument by counsel need not be notarized or verified.

(p) *After all statements are submitted.* (1) When the proceeding is to be handled under the modified procedure, the next notification to the parties will be the service of the initial decision.

(2) If the proceeding is to be handled by oral hearing, parties will receive a notice to this effect.

(q) *Applicant withdrawal.* If applicant wishes to withdraw an application, it shall request dismissal in writing.

(r) *Caption summary.* The caption summary, which shall accompany all applications, shall be in the form prescribed by the Commission. Commission field and regional offices offer assistance in preparing correct caption summaries, or examples may be found in the daily **Federal Register.**

(s) *Compliance.* Prior to beginning operations under a certificate, permit, or license, compliance must be made with the following statutory and regulatory requirements for obtaining insurance or bonding, filing tariffs or schedules, and designating agents to receive service of process.

(1) For Motor Common Carriers of Property: 49 CFR 1043, 1044, and 1310

(2) For Motor Contract Carriers of Property: 49 CFR 1043, 1044, and 1307

(3) For Motor Common and Contract Carriers of Passengers: 49 CFR 1043, 1044, and 1306

(4) For Brokers of Motor Vehicle Transportation: 49 CFR 1043, and 1044

(5) For Water Carriers: 49 CFR 1308; 49 U.S.C. 10329

(6) For Freight Forwarders: 49 CFR 1084, and 1309; 49 U.S.C. 10329

(t) *Appeals to rejections of the application.* (1) Where a review board or other decisional body rejects an application, applicant has a right of appeal. The appeal must be filed at the Commission within 10 days of the date of the letter of rejection.

(2) If the appeal is successful and the filing is found to be proper, the application shall be deemed to have been properly filed as of the decision date of the appeal.

(u) *Tacking or joinder of authority.* (1) An applicant for irregular-route motor common carrier authority which holds regular-route motor carrier authority shall indicate this in its caption summary. The caption summary shall

indicate the sub-numbers of this regular-route authority. The purpose of this requirement is to inform the public that direct operations are able to be performed after combining the irregular-

§ 1100.252 How to oppose requests for authority.

(a) *Definitions.* A person wishing to oppose a request for permanent authority files a *protest.* A person filing a valid protest becomes a *protestant.*

and which is substantially for the same traffic, *or*

(7) Description of any other legitimate interest not contrary to the transportation policy set forth in 49

(1) A description of the specific grounds upon which it is alleged that applicant cannot meet the statutory fitness criteria.

(2) Alternatively, evidence that the

(2) All pleadings other than the application shall contain a statement (certificate of service) that the pleading has been served in accordance with paragraph (b)(1) of this section.

within 10 days of the date the motion is filed at the Commission.

(g) *Consolidation of applications.* (1) Applicants may request consolidation of applications. The request shall be made

indicate the sub-numbers of this regular-route authority. The purpose of this requirement is to inform the public that direct operations are able to be performed after combining the irregular-and-regular route authorities.

(v) *Freight forwarder applicants only.* An applicant for freight forwarder authority shall submit the following additional information: Applicant shall state whether it is a person engaged principally in the business of manufacturing, buying, or selling articles and commodities, and whether it controls, is controlled by, or is under common control with any such person. If *yes,* applicant shall describe such persons and advise to what extent such persons use the services of freight forwarders; or if applicant is such a person, whether it performs its own similar operations of assembling, consolidating, and shipping in connection with the transportation of such articles or commodities.

(w) *Water carrier applicants only.* (1) If an exemption is being claimed, applicant shall describe the operations proposed to be exempted and in each instance refer to the statutory provisions under which the exemption is claimed.

(2) If an applicant for exemption under 49 U.S.C. 10544(f) is engaged solely in transporting the property of the parent company, it shall list persons owning all or substantially all of the voting stock of the applicant.

(3) If applicant seeks approval of dual operations under 49 U.S.C. 10930, it shall specify those that would result from a grant of the application.

(4) An applicant for exemption under 49 U.S.C. 10544(e) shall furnish a copy of the charter, lease, or other agreement under which it proposes to operate.

(5) If applicant is a water common carrier seeking a revised certificate covering extension of service pursuant to 49 U.S.C. 10922(e)(3)(B), the following shall be furnished: (i) Describe the portion of the waterway project newly opened for navigation, including the U.S. Engineer District, project number, description of project, and date opened for navigation; (ii) Describe operations performed thus far on uncompleted portion of waterway newly opened for navigation, including date service was extended and points served; see 49 CFR 1140.2; (iii) Describe operations performed under present certificate authorizing service on previously completed portion of waterway, naming points served, indicating when service commenced, and if operation has not been continuous.

§ 1100.252 How to oppose requests for authority.

(a) *Definitions.* A person wishing to oppose a request for permanent authority files a *protest.* A person filing a valid protest becomes a *protestant.*

(b) *Time for filing.* A protest shall be filed (received at the Commission) within 45 days after notice of the application appears in the **Federal Register.** A copy of the protest shall be sent to applicant's representative at the same time. Failure to timely file a protest waives further participation in the proceeding.

(c) *Contents of the protest.* (1) All information upon which the protestant plans to rely is put into the protest.

(2) A protest must be verified, as follows:

I, ———, verify under penalty of perjury under the laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this protest. (See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties).

————(Signature and date).

(3) A protest not in substantial compliance with these rules may be rejected.

(4) A protestant files two separate types of evidence. The first is its qualifications evidence, see paragraph (d) of this section. All protestants shall submit qualifications evidence under the format in paragraph (d) of this section. Protestants shall also file factual evidence, according to the guidelines in paragraph (e) or (f) of this section.

(d) *Qualifications format.* This information shall be submitted in separately numbered paragraphs:

(1) Docket number of application being opposed.

(2) Name and domicile of protestant, including lead docket number, if any.

(3) Name and address of protestant's representative.

(4) Name and address of witness presenting the evidence, and why qualified to speak for protesting party.

(5) Description of the extent to which the person seeking to protest possesses authority to handle the traffic for which authority is applied, is willing and able to provide service that meets the reasonable needs of the shippers or public involved, and has either performed service within the scope of the application during the 12-month period before the application was filed or has actively in good faith solicited service within the scope of the application during that period, *or*

(6) Description of any application which the prospective protestant has pending before the Commission which was filed before applicant's application and which is substantially for the same traffic, *or*

(7) Description of any other legitimate interest not contrary to the transportation policy set forth in 49 U.S.C. 10101(a), or of any right to intervene under a statute. A person seeking to qualify under this paragraph shall describe in detail the circumstances which warrant its participation and how they are consistent with 49 U.S.C. 10101(a). The Commission shall normally permit such person to intervene when it shows that a proceeding is novel or of first impression, is of industry wide importance, or has significant economic impact.

Note.—A motor contract carrier of property may not protest an application to provide transportation as a motor common carrier of property.

(e) *Factual evidence format* [except fitness only applications]. (1) A summary, description or copy of the *specific* authorities in conflict with that sought in the application. Protests containing copies of authority or authority abstracts which are more than 5 pages in length may be rejected.

(2) A description of the type and amount of equipment and facilities available to meet the avowed purpose of the application.

(3) A description of present operations that pertain to the application, including a description of the specific services provided to those supporting the application or within the same territory.

(4) Adverse impacts on its business generally and on the public, such as: (a) need to close terminals or other facilities, (b) number of employees that would be furloughed or dismissed, (c) resulting imbalance or inefficiencies caused to its operations, (d) effects on fuel efficiency, or (e) inability to continue its existing service to the public due to a reduction in total business, or loss of essential services that would not be replaced, or other factors.

(5) Evidence that applicant is not fit, willing or able to comply with the appropriate statutes or regulations governing its activities.

(6) Legal or other argument (optional).

(7) Verification.

(8) Certificate of service.

(9) Any request for oral hearing.

(f) *Factual evidence format for fitness only applications: Scope.* The types of applications listed in § 1100.251(b) may be protested on the grounds listed here. Factual evidence in opposition shall consist of the following, where applicable:

(1) A description of the specific grounds upon which it is alleged that applicant cannot meet the statutory fitness criteria.

(2) Alternatively, evidence that the application does not properly fall within the scope of one of the statutorily described categories.

Note.— If the Commission finds that the application does not properly fall within the scope of one of the categories, the application shall be dismissed without prejudice to the filing of an application for authority under other criteria.

(3) Legal argument (optional).

(4) Verification.

(5) Certificate of service.

(6) Any request for oral hearing.

(g) *Requests for oral hearing by a protestant.* It is the policy of the Commission to handle application proceedings under § 1100.251 using the modified procedure if at all possible. See § 1100.253(i). Protestants shall file any request at the end of their protest.

(h) *To whom the protest is sent.* (1) An original and one copy of the protest shall be sent to the Office of the Secretary, I.C.C., Washington, D.C. 20423. The docket number of the proceeding shall be placed conspicuously on the top of the first page of the protest.

(2) Concurrently with the filing in paragraph (h)(1) of this section, a copy shall be sent to applicant's representative.

(i) *Obtaining a copy of the application.* (1) A copy of the application is available for inspection at the Commission's offices in Washington, D.C., or the regional office of applicant's domicile. In addition, applicant is required to send a copy to interested persons upon payment of a $10.00 charge. See § 1100.251(m).

(j) *Withdrawal.* A protestant wishing to withdraw from a proceeding shall inform the Commission and the applicant in writing.

§ 1100.253 General rules governing the application process.

(a) *Contacting another party.* When a person wishes to contact a party or serve a pleading or letter on that party, it shall do so through its representative. The phone number and address of applicant's representative shall be listed in the **Federal Register.**

(b) *Serving copies of pleadings, letters; the certificate of service.* (1) When the rules require service of a pleading or letter on another party, that material shall be mailed or delivered by hand to the party concurrently with its service on the Commission. See, in addition, 49 CFR 1100.20.

(2) All pleadings other than the application shall contain a statement (certificate of service) that the pleading has been served in accordance with paragraph (b)(1) of this section.

(3) An applicant must serve all pleadings and letters on the Commission and all known participants in the proceeding, except that a reply to a motion need only be served on the moving party.

(4) A protestant need serve only the Commission and applicant with pleadings or letters.

(5) All pleadings or letters, unless otherwise specified, shall be sent to the Office of the Secretary.

(c) *Copies.* All material forwarded to the Commission in Washington, D.C., except for telegraphic material, shall consist of an original and one copy.

(d) *Requests for extension of time.* (1) Requests for extensions of time are granted only in extraordinary circumstances. Parties' or their representatives' workload, personnel changes, or scheduling problems are not sufficient cause.

(2) No extensions will be granted for more than 3 working days.

(3) Requests shall be made in documentary form (letter or telegraph) addressed to the Section of Operating Rights, with a notice of the request sent to known parties. The Commission will notify the requesting party as soon as possible of the decision. The requesting party shall immediately notify all known parties of the action taken on the request.

(4) If the time for filing a protest is extended, the time for submitting applicant's reply is automatically extended.

(5) Oral communications with Commission personnel pertaining to the merits of an extension request are a violation of the Commission's Code of Ethics for Practitioners.

(e) *Petitions to clarify or interpret formally an operating authority.* (1) A person seeking to clarify or interpret its operating authority shall file a petition under these rules.

(2) No application form need be used. Petitioner shall file its entire argument with the petition, with the fee of $200. The petition shall be sent to the Office of the Secretary.

(3) Notice of the petition will be published in the **Federal Register.** Interested persons may obtain copies of the petition from petitioner's representative in the same manner as provided in § 1100.251(m). Petitioner may file a reply to any opposing argument.

(f) *Replies to motions.* Replies to motions filed under these rules are due within 10 days of the date the motion is filed at the Commission.

(g) *Consolidation of applications.* (1) Applicants may request consolidation of applications. The request shall be made when the applications to be consolidated are filed. Requests for consolidation shall be made in writing to the Section of Operating Rights.

(2) Requests to consolidate applications not concurrently filed shall only be considered to the extent that the applications are filed within 5 days of each other.

(3) Representatives of the consolidating applicants shall indicate their agreement with the consolidation either in the initial request or in their individual submissions. If mutual agreement has been reached in advance, one representative may indicate representatives' assent to the consolidation.

(4) The applications will be published in the **Federal Register** and their consolidation will be indicated. Protestants may file a single protest which will apply to all the proceedings.

(h) *Marking contents on envelopes and submission of pleadings.* (1) Send all documents to Office of the Secretary, ICC, Washington, D.C. 20423, unless the rules specify otherwise.

(2) The Commission requests that persons participating in proceedings under these rules mark the lower left hand corner of the envelope with the docket number, where known (not the full title), and the pleading type. To assist the Commission further, use these designations where appropriate:

APPLICATION
PROTEST
REPLY TO PROTEST
EXTENSION OF TIME REQUEST
MOTION
REPLY TO MOTION
APPEAL
REPLY TO APPEAL
DISMISSAL BY APPLICANT
PROTESTANT WITHDRAWAL
PETITION TO CLARIFY

(i) *Requesting oral hearing.* (1) If a protestant (or applicant) believes that a proceeding should be orally heard the person may request an oral hearing. It is the policy of the Commission to handle application proceedings under § 1100.251 using the modified procedure if at all possible.

(2) The request shall specifically state the evidence that would be presented, the reason why the evidence is material to determine the merits of the proceeding, why an oral hearing with cross-examination is necessary to bring it out, and what evidence already in the record would be contravened (with specific page reference).

(3) The Commission intends to assign matters for oral hearing only where use of modified procedure would prejudice a party, material issues of decisional fact cannot adequately be resolved without

[ ] Passengers
[ ] Property (freight)

(c) Describe the authority sought (this should be identical to the authority described in the caption summary; see

a significant effect on the quality of the human environment? [ ] YES [ ] NO. If YES, a statement complying with the requirements of 49 CFR 1108 must be attached to this application.

for which transportation services have been designed):

IX. Map Submittal:

Applicants for regular-route motor carrier authority and applicants for

would be performed or by the State Board of applicant's domicile, I will mail it upon written request.

(7) Transportation services now used, if any:

(8) Unsatisfactory aspects of these services, if any:

(9) Specialized service needs, if any:

(10) Any other information:

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matters for oral hearing only where use of modified procedure would prejudice a party, material issues of decisional fact cannot adequately be resolved without an oral hearing, or assignment of an application for oral hearing is otherwise required by the public interest.

(4) Denial of an oral hearing request will not be made in writing where the denial is made prior to issuance of the initial decision. The request will be deemed denied when the proceeding is handled under the modified procedure.

Note.—The following appendices B and C will not appear in the Code of Federal Regulations.

Appendix B—New Application Form

FORM OP–1 (Revised 1/81)
Supersedes Forms
OP–OR–9, OP–OR–11, OP–FF–10, OP–WC–10, and OP–WC–20

INTERSTATE COMMERCE COMMISSION

Docket No. ———— (Office Use Only)

APPLICATION

For Motor or Water Carrier Certificate or Permit, Broker License, Freight Forwarder Permit, or Water Carrier Exemption:

Attention: Read Instructions Before Answering.

I. (a) Application of ———— (Name, and trade name, if any) whose business address is ———— (street) ———— (City) ———— (State) ——— (Zip) ——— (Phone).

(b) Applicant's representative to whom inquiries may be made (persons may be representing themselves—put your name and address here); ————(Name) ———— (Street address) ———— (City) ———— (State) ——— (Zip) ———— (Phone, including area code).

(c) Does applicant now hold, or have an application pending, for authority from this Commission? [ ] YES [ ] NO. If YES, identify the lead docket number or numbers:

II. (a) Type of authority applicant is seeking:

Check one:

[ ] MOTOR COMMON CARRIER
[ ] MOTOR CONTRACT CARRIER
[ ] WATER COMMON CARRIER
[ ] WATER CONTRACT CARRIER
[ ] BROKER
[ ] FREIGHT FORWARDER
[ ] WATER CARRIER EXEMPTION

(b) Applicant seeks to transport (or, if a broker applicant, arrange the transportation of)

Check one:

[ ] Passengers
[ ] Property (freight)

(c) Describe the authority sought (this should be identical to the authority described in the caption summary; see paragraph X. of the form):

Fitness-Only Applications

III. Is this an application where the applicant need only prove it is fit, willing and able to perform the service? [ ] YES [ ] NO If yes, check applicable box(es). (Note: if applicant is filing this type application, do not complete the Appendix because witness support is unnecessary).

[ ] Motor common carrier of property authority to serve any community not regularly served by a certificated motor common carrier.
[ ] Motor common carrier of property to provide service as a direct substitute for abandonment of all rail service in a community.
[ ] Motor common carrier of property transportation for the U.S. Government of general commodities (except used household goods, hazardous or secret materials, and sensitive weapons and munitions).
[ ] Motor common carrier of property transportation of shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds.
[ ] Motor common or motor contract carrier of property transportation of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers, when such transportation is provided with the owner of the motor vehicle in the vehicle (except in emergency situations). After issuance of authority, such transportation (measured by tonnage) shall not exceed, on an annual basis, the transportation provided by the motor vehicle (measured by tonnage) which is exempt from the Commission's jurisdiction under 49 U.S.C. 10526(a)(6).
[ ] Transportation for the U.S. Government of used household goods which transportation is incidental to a pack-and-crate service on behalf of the Dept. of Defense.
[ ] Motor carrier broker of general commodities (except household goods).

IV. Will granting the authority or exemption sought in this application constitute a major Federal action having human environment? [ ] YES [ ] NO. If YES, a statement complying with the requirements of 49 CFR 1108 must be attached to this application.

V. Is this application a major regulatory action under the Energy Policy and Conservation Act of 1975? (Refer to 49 CFR 1106.1 through 1106.6, especially 1106.5). [ ] YES [ ] NO. If YES, attach information as to why this proceeding is a major regulatory action, and a description of important energy impacts.

VI. Does applicant hold a certificate of registration as a single-State operator? [ ] YES [ ] NO. If YES, identify number

---

VII. Common Control:

(a) Indicate any interest (whether stock, loans, voting, or management arrangements) which the applicant, or any officer or director of applicant, has in the affairs of other I.C.C. regulated transportation companies. If none, check here [ ].

(b) Indicate any interest (whether stock, loans, voting or management arrangements), which any I.C.C. regulated transportation company including officers and directors, or any person authorized to control such a company, has in the affairs of applicant. If none, check here [ ].

(c) Indicate any interest (whether stock, money, or management arrangements) in the applicant held by any person who also holds an interest (whether stock, money, voting, or management arrangements) in another I.C.C. regulated transportation company. If none, check here [ ].

(d) If any interest has been indicated in (a), (b) or (c) above, state whether this interest has been approved by the Commission in an appropriate proceeding (give docket number) or explain why Commission approval is unnecessary.

VIII. Contract Carrier Applicants Only:

(a) If applicant seeks contract carrier authority, list the person(s) or firm(s) it would serve in the proposed operation:

(b) If applicant seeks motor contract carrier authority, state the ways in which statutory provisions are to be fulfilled (i.e. either (1) by furnishing transportation service through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served, or (2) by furnishing transportation services designed to meet the distinct need of each individual customer, and if the latter, describe briefly the distinct need

parts of the application are missing, (3) fee collection and recordation, (4) docket number assignment, (5) Chaindex master record creation, (6) case status record creation for computer system, (7) service cards preparation, (8) docket file creation and filming for public use, (9) confidential file creation for decision writers, (10) review board review and possible correction of **Federal Register** notice, (11) notice reproduction and release to **Federal Register** clerk, (12) notice release to **Federal Register** for composition, and printing by Government Printing Office (8 day

requires review by three board members. Corrections may be made at that point, and the decision is typed in final form. At the present time, we expect the review board to receive the "average" case at about the 135th day from filing. A case of large magnitude, however, may take several more days at each step, and every step in the process we have just mentioned is harder if the magnitude of the case is substantial.

Once a final decision is reached by the review board, and final typing is accomplished, the case must be served on the public. Decisions must be printed

IX. Map Submittal:

Applicants for regular-route motor carrier authority and applicants for irregular-route authority who employ unusual geographical descriptions in their request for authority (such as rivers or highways) shall submit a detailed map of the proposed operation. Regular-route applicants shall also indicate pertinent connecting portions of their present authority with their proposed authority.

X. Caption Summary:

All applicants must submit an original and one copy of a caption summary, which lists (a) the name and address of the applicant and applicant's representative and, (b) a description of the authority sought. This shall be on a separate sheet of plain paper.

XI. Support from Public Witnesses (Check one or both):

Is this application supported by public witnesses other than applicant itself [ ] or is it based on other types of evidence [ ]?

Applicant's Oath

I, ————(Name), verify under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. In addition, I verify that the information submitted in applicant's verified statement and all other evidence to be filed by applicant is true and correct. Further, I certify that I am qualified and authorized to file this application. (Note: knowing and willful misstatements or omission of material facts constitute federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to $2,000 or imprisonment up to 5 years for each offense.)

(Signature and date).

Certificate of Service

I certify that I have delivered a copy of this application, in person or by mail, to the Regional Director of the Commission's Office of Consumer Protection for the Region in which the applicant has its headquarters.

I further certify that I have delivered a caption summary in person or by mail to the appropriate State Board (or official) of applicant's State of domicile. If a copy of the application is desired by the appropriate State Board (or official) in any State in or through which the operations described in this application

Board of applicant's domicile, I will mail it upon written request.

(Signature)

Appendix—Certification of Shipper or Witness Support

Instructions:

1. Notarization of this statement is not necessary.

2. Where the space provided is not sufficient, it is permissible to label a plain sheet of paper "Appendix" and, using the same numbered paragraphs, answer the questions in greater detail.

3. If you need additional copies of the Appendix for applications supported by multiple witnesses, you may reproduce the blank form. Mark one as original and have the witness sign that form.

4. Witnesses may be testifying as to their personal transportation needs, e.g., passenger applications. These witnesses need not answer 1 and 4 under question II.

* * * * *

I, I, or the company which I represent, support the application filed by

---

(Name of applicant) to the extent that applicant seeks authority to (describe commodities and territory sought by applicant which you support)————

II. The following information describes the type of freight or passenger traffic movements which could be made by me or my company.

(1) Legal name and domicile of company or organization:

(2) Identity of witness. If representing a company, why qualified to offer evidence: (as, position with company and experience):

(3) General description of company, and any relevant facility locations:

(4) Description of commodities which will or may be transported under the authority. List actual commodities. Do not merely repeat the applicant's caption summary or generic commodity descriptions:

(5) Volume and frequency of traffic that will or may be tendered to applicant if the application is granted. In passenger applications, given number and frequency of trips. List projected volumes or future needs, if applicable:

(6) Describe the geographical movement of the involved traffic, and provide actual, future, or representative origins and destinations from and to which the traffic will or may be transported (in passenger applications, points from and to which witness will or may travel). List origins and destinations separately.

(7) Describe the services provided, if any:

(8) Unsatisfactory aspects of these services, if any:

(9) Specialized service needs, if any:

(10) Any other information:

I, ————, verify under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. If representing a company or organization, I certify that I am qualified and authorized to offer this evidence. I know that willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to $10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to $2,000 or imprisonment up to 5 years for each offense.

(Signature and date)

Instructions

1. First-time applicants are strongly urged to request the Commission for a publication designed to assist persons to understand the application process. It is available from Commission regional and field offices and the main office in Washington, D.C. Failure to consult this guide may lead to an incomplete filing which could be rejected.

2. Applications shall be either typewritten or written in ink. Applications made out in pencil will be rejected.

3. If the space provided in the form or appendix is not sufficient, attach separate sheets with applicant's name on the top, and use the same number as the paragraph in the form to which the answer refers.

4. Where a question or item is not applicable, leave the space blank or write "N/A".

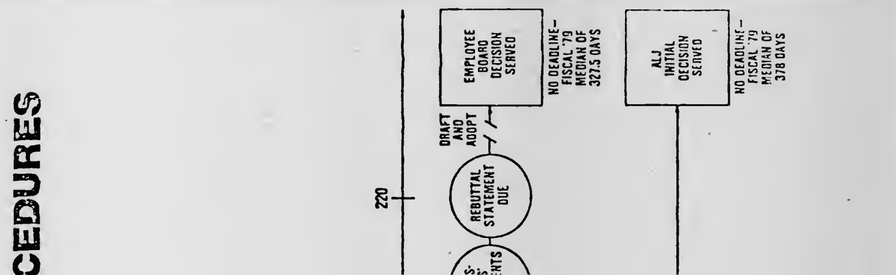
5. Be sure to send in the correct application fee, and an original and one copy of the application form.

6. Assistance in filling out forms may be obtained from Commission regional and field offices. Before requesting assistance, prepare a draft of the application: to be used for discussion purposes.

7. Keep a copy of the application for future reference.

Appendix C—Internal Handling and Flow Charts

The first 30 days an application is at the Commission (the time prior to **Federal Register** publication) is taken up with: (1) Mail room receipt, logging and forwarding, (2) clerical review in fee branch and possible rejection if critical



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parts of the application are missing, (3) fee collection and recordation, (4) docket number assignment, (5) Chaindex master record creation, (6) case status record creation for computer system, (7) service cards preparation, (8) docket file creation and filming for public use, (9) confidential file creation for decision writers, (10) review board review and possible correction of **Federal Register** notice, (11) notice reproduction and release to **Federal Register** clerk, (12) notice release to **Federal Register** for composition, and printing by Government Printing Office (8 day cycle), and (13) **Federal Register** publication.

We note that through diligent effort we are now publishing the applications within the projected 30-day time frame, as compared to the 3 to 6 month delays experienced in 1979 and early 1980.

The public should also understand that the case load itself creates complexities. It is more efficient to use trained specialists for each step. Due to the large flow of proceedings, entire offices may be devoted to one step. Each step requires physical transfer of files, although our computer network has helped reduce this problem in the past few years.

Protestants' statements are due at the 45th day from publication, usually, about the 75th day from filing. However, a letter containing a pleading does not automatically find its way into the appropriate docket and confidential file on the 75th day. The mail room must properly route the pleading, and the pleading must be recorded. The pleading is given to the appropriate application processing team, and the confidential file is finalized for submittal to the decisionmaker. The case is assigned (without the rebuttal) to the Office of Hearings where a hearing is required, or, more typically, to the Section of Operating Rights for continued modified procedure handling. Cases are allocated to individual staff members according to the currency of their workload. However, preparation of a decision cannot be begun until some days after the applicant's rebuttal is filed, received, and recorded, or about the 90th to 100th day.

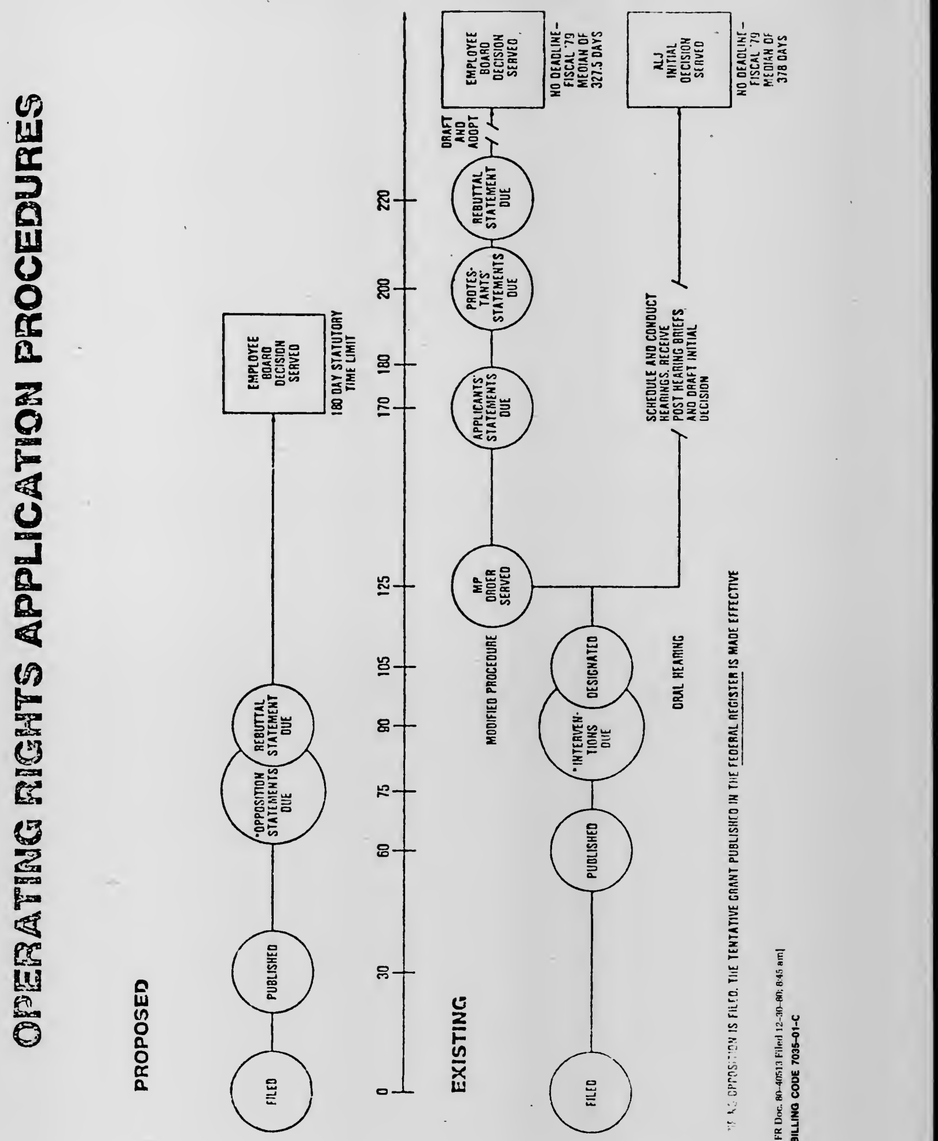
The decisionwriter, typically an attorney, has other responsibilities in addition to decision writing, which include responding to numerous inquiries from the public, preparing policy and rulemaking papers, and performing other legal research projects.

Once the decision is written, it must be typed, usually on a unit which preserves the draft so that editing can be accomplished. It is then referred to a review board for decision, which requires review by three board members. Corrections may be made at that point, and the decision is typed in final form. At the present time, we expect the review board to receive the "average" case at about the 135th day from filing. A case of large magnitude, however, may take several more days at each step, and every step in the process we have just mentioned is harder if the magnitude of the case is substantial.

Once a final decision is reached by the review board, and final typing is accomplished, the case must be served on the public. Decisions must be printed in substantial number for internal and external distribution. Once again, the larger the case, the more time it takes to print. For this reason, the review board in the average case should be given a total of 45 days prior to service. In many instances, this will be more than sufficient time. However, the review board members may disagree among themselves or with the drafter of the decision, and substantial rewriting may occur.

Finally, every step in the process, including final decision, must be recorded, not only for the sake of public inquiry, but to enable us internally to keep track of our deadlines.

BILLING CODE 7035-01-M



[FR Doc. 80-40513 Filed 12-30-80; 8:45 am]
BILLING CODE 7035-01-C

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 55 (Sub-No. 43A)]

Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property)

AGENCY: Interstate Commerce Commission.

ACTION: Policy statement.

SUMMARY: The Commission issues this policy statement to guide carriers in requesting authority under the Motor

applicants. The removal of existing burdens will be accomplished in final rules to be adopted in Ex Parte No. MC-142 (Sub-No. 1), *Removal of Restrictions, Motor Car. of Property*, 132 M.C.C. 114 (1980), and Ex Parte No. MC-142, *Elimination of Gateway Restrictions*, 132 M.C.C. 174 (1980).

Broad authorities are necessary to effectuate the National Transportation Policy, as amended by Section 4 of the Act [49 U.S.C. 10101(a)(7)], which directs us:

with respect to transportation of property by

create a larger class of potential entrants and thus place increasing pressure on incumbent operators to offer responsive service.

Third, narrowly drawn authority contributes to the unnecessary economic costs associated with regulatory processing by injecting the Commission into the regulatory arena even in circumstances in which no public purpose is served by our involvement. The facts that 60 to 70 percent of the applications for permanent authority are unopposed, and that upwards of 95 percent of the applications are granted

Act. These considerations support our inference that we must grant broad, unencumbered authority to future applicants.

Furthermore, we do not believe that Congress intended that contract carrier authority be limited with respect to territories or industries. See 49 U.S.C. 10923(d)(1). We are also to grant authorities to certain carriers upon only a showing of fitness. See 49 U.S.C. 10922(b)(4) and (9), 10923(b)(5)(A), and 10924(b). Finally, since motor carrier dual operations are no longer of

Preliminary Matter

There are a number of requests for oral hearings in this proceeding. We have received extensive and cogent representations in this matter and find no need for oral argument. In addition, we are dealing with guidelines, not binding rules. When a party sufficiently justifies a need for a variation from a guideline, we are free to consider and adopt that position in that application. Unusual items not covered are those best addressed in individual applications.

for authority and subsequently restricted to avoid litigation expenses and delays. These authorities do not exemplify our policy, but reflect, instead, a recognition by applicants that, during an earlier regulatory period when the prosecution of applications was time-consuming and expensive, it was more prudent to accomodate the interests of one's competitor rather than litigate the full scope of the needed authority. While we were not unsympathetic to these motives in the past, their legitimacy has been

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 55 (Sub-No. 43A)]

Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property)

AGENCY: Interstate Commerce Commission.

ACTION: Policy statement.

SUMMARY: The Commission issues this policy statement to guide carriers in requesting authority under the Motor Carrier Act of 1980. Carriers are now to apply for broad, unencumbered authority. Commodities shall be stated in terms of generic groups. Territories are to be countywide or larger for irregular-route carriers and between points in the United States for contract and most fitness-only carriers. Two-way routes with no intermediate point restrictions are to be applied for by regular-route carriers. Restrictions will be allowed only in highly unusual cases.

EFFECTIVE DATE: This policy statement applies to all applications for motor carrier and broker of property authority filed after December 31, 1980.

FOR FURTHER INFORMATION:
Ombudsman's Office, 202–275–7440;
David B. Gaynor, 202–275–7904;
Edward E. Guthrie, 202–275–7691.

FOR COPIES OF THIS DECISION: The Federal Register publication does not contain Appendix B, which is a summary of the public comments received. The Commission will publish the entire decision, copies of which may be obtained by calling 202–275–7307 or 800–424–5230.

SUPPLEMENTARY INFORMATION: The Motor Carrier Act of 1980 (the Act) establishes as Federal Policy the promotion of competition and efficiency among carriers and brokers of property. See 49 U.S.C. 10101(a)(7). The overall purpose of the Act is to reduce unnecessary regulation by the Federal Government. See Section 2 of the Act. We are to implement these policies in the entry area by granting broad authorities to future applicants. The removal of existing burdens will be accomplished in final rules to be adopted in Ex Parte No. MC–142 (Sub-No. 1), *Removal of Restrictions, Motor Car. of Property*, 132 M.C.C. 114 (1980), and Ex Parte No. MC–142, *Elimination of Gateway Restrictions*, 132 M.C.C. 174 (1980).

Broad authorities are necessary to effectuate the National Transportation Policy, as amended by Section 4 of the Act [49 U.S.C. 10101(a)(7)], which directs us:

> with respect to transportation of property by motor carrier, to promote competitive and efficient transportation services in order to (A) meet the needs of shippers, receivers, and consumers; (B) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public; (C) allow the most productive use of equipment and energy resources; (D) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions; (E) provide and maintain service to small communities and small shippers; (F) improve and maintain a sound, safe, and competitive privately-owned motor carrier system; (G) promote greater participation by minorities in the motor carrier system; and (H) promote intermodal transportation.

Three principal considerations underlie our view. First, highly restricted authority narrows the range of operational options available to carriers and prevents them from making optimally efficient use of their equipment. It compromises overall efficiency and necessarily increases fuel use. At the same time, it prevents carriers from offering service designed to meet the full extent of a shipper's needs or responding promptly to changing market demands.

Second, restricted authority compromises the ordinary competitive activity of motor carriers and blunts the opportunity of carriers to attack markets that may be inadequately served. Since the time required for processing entry applications often exceeds the time needed for carriers to adjust their business operations, narrowly drawn authority serves as a genuine barrier to allowing a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public. The grant of broader authority will, at the same time, create a larger class of potential entrants and thus place increasing pressure on incumbent operators to offer responsive service.

Third, narrowly drawn authority contributes to the unnecessary economic costs associated with regulatory processing by injecting the Commission into the regulatory arena even in circumstances in which no public purpose is served by our involvement. The facts that 60 to 70 percent of the applications for permanent authority are unopposed, and that upwards of 95 percent of the applications are granted, strongly suggest that the Commission becomes involved more often than necessary. While the continuation of the licensing process requires that we scrutinize requests for entry into the industry or expansion of existing carriers into new markets, direct regulatory intervention should occur only when the operation of market forces would be inadequate to achieve the performance goals which the National Transportation Policy largely assumes will result from competition. While the creation of broader commodity and geographic descriptions is only one tool, we believe it will go a long way toward reducing unnecessary regulation by the Federal Government in furtherance of the Congressional mandate.

Specific provisions of the Act reinforce our view. Under Section 6 of the Act ["Removal of Certain Restrictions on Motor Carrier Operators," 49 U.S.C. 10922(h)], we must eliminate gateway and other unnecessary restrictions, circuitous route limitations, and unreasonably limited commodity and territorial authorities. Logic dictates that, if we take these actions for carriers with existing authorities, we must also assure that future authorities are not subject to the same defects the Congress perceived in our past practices. It is obvious that competition and efficiency on the scale envisioned by the Congress cannot be achieved if we broaden existing authorities, while continuing to grant narrow authorities. We would thereby create a class of competitively disadvantaged carriers (at least initially), which would be entirely inconsistent with the purposes of the

Act. These considerations support our inference that we must grant broad, unencumbered authority to future applicants.

Furthermore, we do not believe that Congress intended that contract carrier authority be limited with respect to territories or industries. See 49 U.S.C. 10923(d)(1). We are also to grant authorities to certain carriers upon only a showing of fitness. See 49 U.S.C. 10922(b)(4) and (9), 10923(b)(5)(A), and 10924(b). Finally, since motor carrier dual operations are no longer of significance, we also cannot prohibit authority because of carriers' dual capacities. Thus, many actions we take here are not really matters over which we may exercise discretion, but rather are mandated explicitly by the Act.

In our notice proposing this policy statement, we indicated we would implement this new policy by directing future applicants to follow certain guidelines in casting their requests for authority. Briefly, these call for descriptions of commodities in terms of groups based on the Standard Transportation Commodity Code (STCC), and routes or territories in broad terms. As a general rule, no restrictions would be allowed except in highly unusual instances.

The comments largely support our proposed policy. Most believe, as we do, that Congress intended significant changes in the way we issue authorities. However, others disagree both with this statement and with our fundamental view of the extent of the Act.

Overall, these comments lead us to confirm our proposals. We shall now grant authorities in terms of generic groups, which describe territories and routes on a reasonably broad basis, and with virtually no restrictions.

The major change from our original proposal is our decision not to prescribe the exact form of commodity descriptions. Instead, we shall leave to each applicant the selection of a broad description that it believes will best meet its business requirements. Since we are required to eliminate unreasonably narrow descriptions, we expect applicants to employ commodity descriptions which are at least as broad as the standard industry groupings we earlier proposed. Our Employee Boards will screen applications to ensure that broad commodity descriptions are being used. But the choice over the scope of the broad commodity description is in the hands of the applicant. Carriers are to be able to perform as complete a service as possible for shippers, with competition—not narrowly limited authority—defining the boundaries of service.

Preliminary Matter

There are a number of requests for oral hearings in this proceeding. We have received extensive and cogent representations in this matter and find no need for oral argument. In addition, we are dealing with guidelines, not binding rules. When a party sufficiently justifies a need for a variation from a guideline, we are free to consider and adopt that position in that application. Unusual items not covered are those best addressed in individual applications.

Jurisdictional Matters

This Commission is empowered to issue appropriate authority to persons wishing to conduct operations pursuant to the provisions of the Act. See 49 U.S.C. 10922, 10923, and 10924. This implies the ability to determine how grants of authority are to be framed. See 49 U.S.C. 11102. Our duty is to ensure that they are broad and unencumbered to promote competition and efficiency.

Attacks on our proposal are made on five principal grounds:

(1) The Act gives us the ability to eliminate only clearly unnecessary language in existing authorities.

(2) Grants based on the proposed descriptions would usually go beyond the public need shown.

(3) Extremely broad grants are tantamount to master licensing.

(4) Extremely broad grants carry with them duties wider than the recipients can realistically meet under their common carrier obligation.

(5) The terms of the policy statement are so direct that the statement is actually a rulemaking and must be conducted as such.

Finally, we are asked to state whether this proceeding applies to passenger applications. We shall address each of these matters in turn.

A. Ability Limited To Changing Terms of Existing Grants.

Section 6 of the Act only addresses removal of constricting terms in existing authorities. Some commentors thus argue that, as a matter of law, we have no ability to change the type of terminology to be used in future grants of authority. We disagree. This argument assumes that in the past we followed a conscious policy of issuing only picayune grants. Our policy, however, has been to issue authority as broad as warranted by the circumstances. It is true that there are (unfortunately, in our mind) numerous instances of limited authorities. This resulted largely from applicants who narrowly framed their initial requests for authority and subsequently restricted to avoid litigation expenses and delays. These authorities do not exemplify our policy, but reflect, instead, a recognition by applicants that, during an earlier regulatory period when the prosecution of applications was time-consuming and expensive, it was more prudent to accomodate the interests of one's competitor rather than litigate the full scope of the needed authority. While we were not unsympathetic to these motives in the past, their legitimacy has been substantially undermined by the procompetitive substance of the Motor Carrier Act of 1980 and the changes we are making in the procedural infrastructure of the licensing process.

In any event, Section 6 implicitly confirms that new authorities be framed in broad terms. Surely, Congress would not have directed us to broaden existing authorities unless it intended that future grants would be of equal latitude. The inference is clear that Congress sought to achieve a parity in the scope of the operating rights of existing carriers and new entrants.

Equally important, we are not prescribing limited lists of acceptable commodity or geographic descriptions. We are, instead, establishing guidelines for acceptable minima. In the commodity area in particular, we are prepared to entertain applications using commodity descriptions different from those proposed in our original notice as long as they are not unreasonably narrow. We appreciate that Congress did not specifically direct us to standardize commodity descriptions, and we shall not do so. We will accept reasonably broad commodity descriptions in the future, even if they are not the group used in STCC.

B. Grants Beyond the Public Need Shown.

We go beyond public need, according to opponents, because we will necessarily authorize more commodity and territorial authority than is warranted by the evidence. Carriers seeking authority must show that their proposals would serve a useful public purpose, responsive to a public demand or need. Therefore, in the opponents' view, we must examine each application minutely and grant only to the actual extent of support given.

We believe this view contains hypotheses which too narrowly interpret the evidentiary bases on which we may grant authorities. The Act does not limit us merely to considering and granting authorities based on shipper support or presently moving traffic. Just as in the past, we may consider other evidence,

such as traffic studies or anticipated future movements. And we are to consider all evidence in light of a number of factors, most notably those in the National Transportation Policy [49 U.S.C. 10101(a)(7)]. Therefore, we must

E. Policy Statement as Opposed to a Rulemaking.

This policy statement need not be renoticed as a rulemaking or dismissed entirely, as some commentors suggest.

economic spectrum do we have the type of competition and efficiency envisioned by the National Transportation Policy [49 U.S.C. 10101(a)(7)].

In our notice, we proposed that applicants seek broad authorities by

distribution of the items (including advertising), all return or rejected shipments, all empty returned containers, and all parts and accessories to the items. In other words, the authorization is intended to let the

descriptions, use of descriptions based on the National Motor Freight Classification (NMFC), the *Descriptions* case, the Standard Industrial Code (SIC), or those proposed in Ex Parte No. MC–135, *Master Certificates and*

The holding of operating authority from the Commission in a broad form has the salutary effect of making those certificate holders potential entrants into new markets once equipment is obtained and there is no regulatory

such as traffic studies or anticipated future movements. And we are to consider all evidence in light of a number of factors, most notably those in the National Transportation Policy [49 U.S.C. 10101(a)(7)]. Therefore, we must weigh in each application, when applicable, "a need or demand for new services, innovative quality or price options, increased competition, greater fuel efficiency, improved service for small communities, improved opportunities for minorities, and any other benefits that would serve a useful public purpose." H. Rept. No. 96–1069. p. 15. Shipper support is only part of a schematic representation which can evince a public purpose sufficient to justify a grant of new authority. Other evidence can and will be considered, and grants broader than existing shipper needs can and will be made.

It is well established that the Commission can grant authority based on representative evidence. Thus, a grant of Statewide authority has never needed support from all, or even most, municipalities in the State. All that has been required is a representative number. Similarly, broad commodity descriptions have been granted based on evidence of a representative showing of commodities falling within that broad description. Our proposal, therefore, does not represent any significant departure from prior decisional norms in many cases.

C. Grants Tantamount to Master Licensing.

The argument that we are engaging in master licensing is without merit. The sections prohibiting master licensing, 49 U.S.C. 10922(b)(3) and 10923(b)(6), state that we may not make findings of public need based upon general findings developed in rulemaking proceedings. Since we shall be making findings of a need for service in each application in accord with the procedures and standards affirmatively stated in the Motor Carrier Act of 1980, no master licensing is involved.

D. The Common Carrier Obligation.

We do not believe that the common carrier obligation present a problem. We frankly admit that the traditional view of the common carrier obligation is in some respects in conflict with our expression here. On the other hand, we do not believe the Congress would have charted this course for us if the traditional view dictated an absolute and inflexible aproach to the issue. We shall be examining this question in a separate proceeding where our views will be set out more fully.

E. Policy Statement as Opposed to a Rulemaking.

This policy statement need not be renoticed as a rulemaking or dismissed entirely, as some commentors suggest. The opponents to our proposal [citing such decisions as *American Bus Association* v. *United States*, 627 R.2d 525 (D.C. Cir. 1980)] are in essence arguing that this policy statement leaves no room for discretion in its application.

We note, as a threshold matter, that the court's concerns in the *American Bus Association* case involved our failure to offer interested persons an opportunity for comment before implementing our proposal. In the instant case, we gave full notice of our proposal in the **Federal Register**, received comments from interested persons, and have modified our proposal in light of those comments. Consequently, even if our proposal was to be considered a rule instead of a policy statement, we have fully complied with the procedural requirements of 5 U.S.C. 553. Moreover, the court in *American Bus Association* was concerned with the retrospective application of policy statement under review. Our instant proposal is prospective in nature only, and therefore not subject this concern expressed by the court.

In any event, what we propose is not mandatory. If an applicant justifies the use of another reasonably broad description of the authority needed, we will allow that description to be used.

For the reasons stated above, we will also not void authority granted since July 1, as requested. Based upon the evidence presented when reviewed under the new statute, the grants have been properly made.

F. Passenger Applications.

This notice applies only to the transportation of property. To extend it to regular-route passenger applications would be unwarranted for several reasons, not the least of which is that the new Act does not appreciably apply to passenger carriers. Legislation in this area is in its formative stages. We can make corresponding changes, if warranted, after it is adopted.

Acceptable Commodity Descriptions

Many of the commodity descriptions we have authorized in the past have given carriers less authority than they needed to perform a complete service for the public. Authorizations of less than the total public need can no longer be tolerated. Only when carriers can provide complete service to an industry, area, or other cognizable part of the economic spectrum do we have the type of competition and efficiency envisioned by the National Transportation Policy [49 U.S.C. 10101(a)(7)].

In our notice, we proposed that applicants seek broad authorities by requesting commodity descriptions similar to the groupings of the STCC. In light of the comments filed, we are now of the view that the STCC should not be mandatory. Instead, we shall permit applicants to seek authority commensurate with their business requirements as long as the requested authority is not unduly narrow. While STCC describes many groups of commodities, it alone is not enough because it does not necessarily combine groups of commodities in the same grouping as we may authorize, e.g., bulk commodities. Moreover, the STCC groupings do not contain a fixed, exhaustive list of all commodities that may be transported under the various types of broad authority we intend to grant.

A STCC group or any other group will not limit the holder of authority to transporting only those items given on any specific list defining that group. Any other description proposed will be considered acceptable *if* it is as broad or broader than the STCC groupings.

STCC, or any other group, does not limit the holder to transport only those items listed under a STCC generic group. Rather, the carrier shall also be able to transport all items that logically can be categorized as part of the group and any other commodities that relate to the manufacture or distribution of the specific items. Again, this recognition of implied authority as a corollary to a specific grant is hardly revolutionary.

What we mean when we speak of all items that can be categorized as part of a group is that a carrier, upon making a representative showing of items to be transported, will be authorized to transport any item generally accepted as being within the ambit of the group. This is the concept we now employ when we determine the scope of a carrier's authority which is described in terms of one of the categories listed in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (1952), but which is not limited specifically to items in the *Descriptions* case. In these circumstances, carriers are allowed to transport any item logically in the *Descriptions* group, regardless of whether it is specifically listed.

Related to the manufacture or distribution of items shall mean that a carrier will be able to move the named items, all materials, equipment, and supplies used in the manufacture or distribution of the items (including advertising), all return or rejected shipments, all empty returned containers, and all parts and accessories to the items. In other words, the authorization is intended to let the carrier transport items reasonably implied in the grant. Therefore, when we authorize a carrier to transport a group, we will authorize a carrier to transport the commodities logically related to it in that group. Once a representative showing of the group is made, we will consider a need for the entire group proven and shall authorize a carrier to perform a complete service. A similar approach has been used by the Commission in the past. For example, no specific authority to transport accessorial commodities and advertising materials in conjunction with and at the same time as authorized commodities is required. The authority to do so was implied. See *Pre-Fab Transit Co., Ext.—International Falls*, 112 M.C.C. 664, 692–94 (1970), *Warren Transport, Inc., Ext.—Lodi, NJ*, 119 M.C.C. 107, 116–17 (1973). A representative showing will be deemed sufficient to constitute a prima facie case of need for the entire group. Such an approach, we believe, is consistent with the overall statutory and regulatory objections described here. Carriers will be expected to ask for groups like those stated in Appendix A whenever possible as these reflect our determination of what constitutes reasonably broad descriptions and most conform to the authorizations we will make.

Our proposal has drawn a number of comments with respect to the specifics of the STCC code. Many remark that we should use another set of descriptions in our authorities. Other views are expressed about: (1) those STCC categories, subdivisions, and exceptions which should be included or excluded, (2) how we should deal with unclassified commodities and private industry classifying them, and (3) whether materials, equipment and supplies should be included in each group.

A. The Descriptions To Be Used.

Most of the concerns over the employment of the STCC code are rendered moot by our decision to make the code permissive rather than mandatory. We do, however, urge the use of the descriptions in Appendix A whenever possible, as it best illustrates the generic forms of authority which we believe consistent with the statutory requirement that we broaden unreasonably narrow descriptions. Other alternatives suggested by the comments—retention of certain existing descriptions, use of descriptions based on the National Motor Freight Classification (NMFC), the *Descriptions* case, the Standard Industrial Code (SIC), or those proposed in Ex Parte No. MC–135, *Master Certificates and Permits*—have merit (if modified to generic forms). These suggestions, although offering alternatives to the STCC code, nonetheless reinforce our view that the shipping and trucking communities recognize the utility and desirability of reasonably broadening commodity groups into an understandable, yet discrete list—even though given commentors may disagree as to the precise scope of the list. While we see no need to discuss potential alternatives to the STCC code in the context of this proceeding, we offer our view on the alternatives presented to give the public some guidance concerning commodity descriptions likely to be accepted in the future.

We believe, in general, that NMFC and SIC contain too many classifications, while *Descriptions* and Ex Parte No. MC–135 in their present form do not cover the full range of commodities carried, contain too few. NMFC, which now provides thousands of groupings, would have to be pared to a number and type almost identical to the STCC to achieve a useful purpose. SIC, as proposed with modifications by North American Van Lines, suffers from this same fault. Even though it is organized in terms of industry rather than commodity, there are too many categories which, when pared down, will given roughly the same number and kind as those under the STCC approach. *Descriptions* and *Master Certificates*, on the other hand, would have to be expanded to cover all categories in a fashion that is not unduly narrow.

Thus, none of the alternatives appears to be more realistic than STCC as reflective of our overall objectives.

B. Items To Be Included or Excluded from STCC.

Numberous comments ask us to combine two categories into one category, subdivide categories, exclude types of traffic from categories or add additional categories.

We need not address these issues since we have decided to leave to individual carriers the option of selecting those reasonably broad commodity definitions which best meet their business needs, either immediately or in the reasonably near future. In this connection, we reject the suggestion of those commentors who argue that we should preclude a carrier from seeking authority to carry goods unless it currently holds the proper equipment. The holding of operating authority from the Commission in a broad form has the salutary effect of making those certificate holders potential entrants into new markets once equipment is obtained and there is no regulatory reason to restrict the certificate only to those specific commodities for which the carrier currently possesses the requisite equipment. We will, instead, leave those operational and marketing determinations to managerial discretion.

For similar reasons, we see no public interest purpose in expressly excluding particular items from various categories.

We will make one exception relating to general commodities. In our notice, we proposed to exclude household goods and classes A and B explosives from this authority. Household goods were to be excluded because of pending legislation and classes A and B explosives because of safety reasons. We now decline to except household goods, but classes A and B explosives shall remain excluded for safety reasons. The Household Goods Transportation Act of 1980, as finally passed, did not set up an exclusive licensing category for household goods. Since there was no other reason for our original proposal to exclude household goods from general commodities, we will not do so. As we have stated, type of service is no longer a valid reason to exclude a subcategory of goods.

We offer two observations with regard to aggregating commodity groups. On the one hand, some comments suggest that we allow a composite of several proposed groups where a new field-of-service description is better suited to the needs of the industry. This appears reasonable. Included now as groups will be commodities in bulk, commodities which because of their size or weight require the use of special handling or equipment, household goods, building materials, and *Mercer* commodities [*Mercer Extension-Oil Field Commodities*, 74 M.C.C. 459 (1946)]. These categories all deal with specialized services for a variety of goods that would fall into several STCC groups. Since the field-of-service terminology is consistent with the generic view of licensing and is attractive to both carriers and shippers, we will allow its use in the instances described above.

On the other hand, we are urged by some commentors to segregate commodities within existing groups. Commodities such as mail and express traffic, freight forwarder traffic, shipper association traffic, and traffic under the descriptions of such commodities as are dealt in or used by specific business concerns are all within the category of

general commodities and carriers should consider whether they wish to receive general commodity authority, although we plainly do not foreclose applications narrower than requests for general

E. Summary.

In sum, we believe the use of a limited number of generic commodity descriptions will best serve the purpose of the new Act. The ones that carriers it pertains to the goals set forth above, namely the inability of existing carriers to provide needed service because they do not possess the necessary authorities.

The inability to provide service as it

a policy matter, we should not authorize counties, because they are not integral economic units like cities. Finally, there is belief that the term county is too inexact, because places can better be

remedy. As stated there, counties mean a county in a State, a judical district in Alaska, a parish in Louisiana, a city, town or village in any State which is not administratively part of a county. New

regulations and insurance. On the other hand, the Contract Carriers Conference believes that this particular territorial authorization is exactly what contract carriers need to render complete service.

We are inclined to agree with the

general commodities and carriers should consider whether they wish to receive general commodity authority, although we plainly do not foreclose applications narrower than requests for general commodity authority. Secret and sensitive materials will be deemed as subsumed in ordnance and accessories for our purposes. Drugs and alcohol, as requested by Nelson and Harding, are chemicals and food products respectively and they should be so applied for.

C. Addition or Reduction of Items.

Many commentors suggest we have special petition proceedings to determine in which group a new commodity belongs. However, we shall deal with unclassified items as we always have. New items may be transported under any logical generic category until there is a formal determination to the contrary. Our use of generic terms does not limit licenses specifically to the articles in the STCC listing, but includes anything logically within the ambit or the broad wording. This also means nongovernmental authorities do not control our lists, although their decisions will be given great weight in any determination we are called upon to make about the proper classification of an item.

D. Materials, Equipment and Supplies.

Congress, in mandating that we encourage competition and efficiency, intended that weauathorize carriers to perform complete services for shippers. We cannot grant less than authority for total service and remain within the statutory bounds.

Part of the complete services is the ability to transport those items needed to produce the principal goods. Requiring proof of the movement of these goods would obviously serve no purpose, because authority to transport them will be granted whether or not there is proof of their movement. We will therefore as a rule not require proof to authorize their movements as an adjunct to the principal commodities.

We note in this regard that the Commission has traditionally granted return authority for these commodities as a matter of course. Requests for materials, equipment, and supplies on return were rarely, if ever, protested. Thus, a stricter view as advocated by the commentors would serve no useful regulatory purpose. Moreover, in light of the Congressional policies evinced in 49 U.S.C. 10922(h)(1)(B)(iii), requiring that round-trip authority be provided, adoption of the commentors' stricter views are not warranted.

E. Summary.

In sum, we believe the use of a limited number of generic commodity descriptions will best serve the purpose of the new Act. The ones that carriers ordinarily should apply for are listed in Appendix A. All others are discouraged, and deviations will require some justification. Alternative descriptions must be framed in broad, generic terms.

Territorial Descriptions

The Act introduces new considerations in our determination of route and territorial descriptions in motor carrier authorities. As we considered in broadening commodity descriptions, we must consider the productive use of equipment (including fuel efficiency), the salutary effects of competition and potential competition, service to small communities, the promotion of intermodal transportation and the ability of carriers to meet changing market demands in considering geographic descriptions [49 U.S.C. 10101(a)(7)]. Furthermore, as previously explained, we must in the future grant authority free of gateway restrictions and narrow terriorial limitations. See 49 U.S.C. 10922(b).

In our notice, we proposed to implement these goals by using broad terms in route and territorial grants. While many commentors agree that we should issue broad authorities, a number question if there will be sufficient public support in most applications to warrant a grant of authority under traditional Commission or judicial decisions. The decisional standards for Commission action have been substantially changed by the Motor Carrier Act of 1980 and we believe that the critical underpinnings of the new law support our modest expansions of the geographic descriptions in most cases. We confirm their use and request that applicants, whenever possible, frame all future grants in these terms.

A. Common-Carrier, Irregular-Route Service.

We proposed three modifications to common-carrier, irregular-route authority to grant broader territories. They are use of two-way authorizations,[1] service areas no smaller in size than countywide, and receipt of authority to serve points in Alaska and Hawaii as part of an authorization to serve points in the United States. These changes should help eliminate the basic problem with irregular-route service as it pertains to the goals set forth above, namely the inability of existing carriers to provide needed service because they do not possess the necessary authorities.

The inability to provide service as it pertains to two-way authority manifests itself as an inability to return from the destination area with a load in spite of available traffic. The Act, in Section 6, recognizes this as a problem with existing authorities and directs that existing carriers be given two-way authorities to curtail this problem. We believe future grantees are in no less of a need for two-way authorities and that the bilateral imperative is equally valid for new entrants.

Commentors argue that we cannot grant such authorities automatically because carriers must still show public need for return service. We believe we can make such authorizations without specific evidence in this regard. We must as a rule authorize carriers to perform a complete service. With respect to specific commodity groups, this means granting the ability to carry all items needed in the goods' manufacture or distribution, as well as the goods themselves. The items needed in the manufacture or distribution (principally materials, equipment and supplies) are generally moving to the production facilities, for that is where they will be used. Congress recognized this in the part of Section 6 dealing with two-way authority. We interpret the legislation as intending that carriers get two-way authority not only for the identical items but also for material, equipment, and supplies. Thus, evidence of a public need for return service, while useful, is not necessary. The useful public purpose is inherent in the evidence for outbound movements.

Countywide minima are but a minor incursion but do begin to attack the problem of carriers having an insufficient service base. Carriers often cannot serve other consignors or consignees in the general area of existing customers because their authority is limited to plantsites or very narrowly defined places. Discouraging minute limitations on the area an irregular-route carrier can serve should cure this problem.

Comments about countywide service minima fall into four general groups. Many remark that typically there will be insufficient express support for authorizing an entire county, especially when support is limited to one shipper. Others state, with some justification, that authorizing counties will limit the authority carriers would otherwise receive through grants of commercial zones. The third group believes that, as

[1] Grants are to be framed radically, i.e., between points in ' ', on the one hand, and, on the other, points in ' ' or nonradically, i.e., between points in ' '.

a policy matter, we should not authorize counties, because they are not integral economic units like cities. Finally, there is belief that the term county is too inexact, because places can better be described by city names and not all areas to be served are described as counties.

The sufficiency of evidence in support of authority for an entire county is, we believe, largely a residue from Commission and court decisions before the Motor Carrier Act of 1980. As discussed in more detail in our unanimous decision in *Art Pope Transfer, Inc., Ext.-Commod., in End-Dump Vehicles*, 132 M.C.C. 84 (1980). Congress has substantially altered the decisional standards in motor carrier licensing cases. While we do not purport to predict here what evidence would be sufficient in any given case to support a grant of new authority, we believe that the statutory directive to expand unreasonably narrow geographic descriptions, coupled with the new emphasis on competition and efficiency, should, by themselves, be sufficient to justify the grant of countywide authority in the absence of a showing to the contrary in a given case.

The commercial zone problem raised in the comments can be resolved by having an applicant seek authority to serve a city if that city's commercial zone is territorially larger than all points in the county in which the city is located. Thus in these circumstances the city and its commercial zone would be the territorial minima (e.g., Chicago, IL, rather then Cook County, IL).

We appreciate that a county is not necessarily an integral economic unit, i.e., a community. Since the countywide description is merely a minimum, the issue is the smallest unit which will be consonant with statutory policy. We believe most often this will be the county. We are not wholly inflexible on this point, however, and will accept an alternative geographic unit—such as a large city which is included physically within a county—if parties can show this would be justified and not inimical to Congressional policy.

Lastly, the problems of name recognition and county descriptions are not deterrents to our proposal. Most points recognizable by name are large enough to come within the commercial zone option. In any event, we expect applicants to seek authority much more extensive than the minimum. Grants for entire States would tend to obviate recognition problems.

The county description problem arises in very few situations and the rule proposed in Ex Parte No. MC-142 (Sub-No. 1), *supra*, offers an appropriate remedy. As stated there, counties mean a county in a State, a judical district in Alaska, a parish in Louisiana, a city, town or village in any State which is not administratively part of a county, New York, NY, Washington, DC, and their commercial zones.

Transportation to Alaska and Hawaii is authorized to encourage service to these points, especially by intermodal arrangements. The Sea-Land companies oppose the proposal on the basis of the difficulty in serving points in Alaska. This is not a reason for denying service to these points. Rather, we shall leave the decision to applicants and the marketplace. Where applicants justify a need for service in the entire United States, it will include service to points in Alaska and Hawaii.

B. Common-Carrier, Regular-Route Service.

Service over regular routes under our proposal is to be two-way, with authorization to all intermediate points and those off-route points specifically sought by applicants. Authorizations styled in this manner will provide for the productive use of equipment and service to small communities, two of the major goals of the Act.

Comments on these features of our proposal again question whether we can grant two-way authority without proof and also question whether prohibition of all intermediate point restrictions will lead to circuitous routes to avoid serving an unprofitable point.

Two-way authority, in our belief, goes to the very core of regular-route service which almost always is for general commodities. It is rare that a shipper or community would not have both inbound and outbound service needs. Our view here is analogous to the policy for irregular-route carriers, where every grant should include authority to ship the materials, equipment, and supplies needed to produce the items. Moreover, it is supported by Section 6 of the new Act, as previously stated.

We doubt that carriers will apply for irregularly shaped regular-route authorities to avoid serving some intermediate points. The Act gives carriers the ability to price their services at profitable levels so service to all points on a route should be desirable. Finally, service volume can be tailored to points where there is little traffic.

C. Contract Carriage.

Many commentors argue that we cannot automatically authorize service between points in the United States to contract carriers because there will be no support for such grants and since there will be problems with State regulations and insurance. On the other hand, the Contract Carriers Conference believes that this particular territorial authorization is exactly what contract carriers need to render complete service.

We are inclined to argee with the Contract Carrier Conference, and further believe that the Commission by law cannot limit the territorial scope of contract-carrier operations [49 U.S.C. 10923(d)(1)]. We do not intend to examine the territorial scope of a contract carrier's proposed operation. Any review of applicants' evidence in these applications must be limited to whether there is a need for service at all, not how extensive that need is.

Unacceptable Restrictions

Restrictions have been a part of motor carrier law since its inception in 1935. They have been imposed either to reflect accurately the service to be provided when there is no other means by which to describe the service or to protect the interest of protestants. In the latter connection, they have also been used over time to eliminate opposition by preventing authorization of competing services. See *Fox-Smythe Transp. Co. Extension—Oklahoma*, 106 M.C.C. 1 (1967).

No matter what reason is given for imposing restrictions, it cannot be denied that restrictions create burdens on interstate commerce. Our task has been to make sure that these burdens do not outweigh the benefits otherwise expected to flow from authorizations of service. We have made numerous expressions on restrictions to delineate those which are nothing but burdens. See *Fox-Smythe, supra*. Yet, there are many restrictions still being used which for one reason or another create wholly unwarranted burdens on commerce.

Congress in the Act has clearly instructed us to eliminate restrictions which needlessly burden interstate commerce. Carriers now must be authorized to make the most productive use of equipment and energy resources while meeting the diverse demands of the shipping public [49 U.S.C. 10101(a)(7)]. Carriers with existing authority may obtain this service goal by expanding their authority beyond narrow territorial and commodity descriptions and unreasonable restrictions, including those which are wasteful of fuel, inefficient, or contrary to public interest [49 U.S.C. 10922(h)]. We believe future grants should be equally as broad and as unencumbered as those which are to be cleansed through the restrictions removal programs. Therefore, we intend generally to disallow all restrictions except those implicitly or expressly

acceptable in the Act (as discussed in other sections of this decision).

The prior notice details how restrictions like those relating to facilities, interlining, equipment, and commodities militate against the related restrictions claim they are needed to define service that cannot otherwise be defined.

Once again we find none of these reasons persuasive in light of the National Transportation Policy to the existence of indirect routes, recognized and approved of the existing abilities of motor carriers of property to tack. These abilities are described in detail in Ex Parte No. MC-142, *supra*, at 176.

contract carrier, 49 U.S.C. 10923(b)(5)(A); and (7) brokers of property, 49 U.S.C. 10924(b). We here confirm use of our proposed descriptions for these authorities with some minor changes.

industry to ameliorate any problems brought to our attention.

B. The Descriptions in Specific.

Comments about specific descriptions tend to address difficulties with either

We indicated general commodities is the proper description, because railroads typically handle all types of freight. Where lesser authority is appropriate we will entertain more

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acceptable in the Act (as discussed in other sections of this decision).

The prior notice details how restrictions like those relating to facilities, interlining, equipment, and commodities militate against the purposes of the Act and therefore cannot be tolerated in the future. The comments on this subject confirm our original judgment. Those arguing for retention of the traditional types of restrictions claim that they are needed to prevent needless protests, that they delineate types of service and service areas, and that they are allowed by the Act since only unreasonable restrictions are to be prohibited.

We do not believe that restrictions are likely to affect protests under our current application process. The evidence filed with the application is the totality of an applicants case. Once a decision-notice is published in the **Federal Register** (prerequisite for protests), applicant will ordinarily receive the authority unless the protestants can show fitness problems or that the grant would be inconsistent with public convenience and necessity. Protestants have a difficult burden to bear, whereas applicant has already done all that is expected of it, although it may file a reply statement. Consequently, restrictions would save applicants little or no costs. The time differential between opposed and unopposed cases is also essentially inconsequential, given that all our decisions must be issued within strict limits. Totally unopposed applications are being decided in about 90 days while opposed applications are being decided in under 180 days. In sum, we see no real benefits to applicants by allowing restrictions and a large public benefit from not doing so.

Those stating that restrictions properly delineate services or service areas give a host of reasons. The American Trucking Associations believes this furthers economies and efficiencies because carriers can confine their service to the type they wish to perform. Others follow this argument by claiming that size and weight, automobile services, and bulk services all require special equipment that most carriers do not operate and should not have authority to operate since they cannot do so efficiently. In addition, proponents of bulk restrictions claim that many operators do not have cleaning facilities for bulk equipment, do not know the safety regulations for hazardous bulk items, and cannot meet the special insurance limits for the handling of hazardous materials. Lastly, proponents of plantsite, interline and related restrictions claim they are needed to define service that cannot otherwise be defined.

Once again we find none of these reasons persuasive in light of the National Transportation Policy to encourage competition. In the first place, the opposing arguments are based in part on the assumption that new carriers should not compete with existing services. The statute, however, assumes that overall transportation economies and efficiencies are obtained by encouraging competition. While it is true that every carrier does not operate every type of equipment all of the time, nothing is gained by limiting authorities merely because the applicant does not already have the special equipment. To do so would only tend to entrench the status quo contrary to the new Act. Secondly, the arguments assume that carriers will be required in the future to perform service to the full extent authorized in their certificates.

The Commission will consider the scope of the common carrier obligation. Full explanation of our ideas concerning the common carrier obligation will be presented in a future proceeding, along with an opportunity for the public to participate fully in the development of the final approach to the topic.

Also, nothing is gained by limiting service because of the special demands of bulk service. These demands are ones that can be mastered by others; thus, limiting authority because of them is unnecessary. Lastly, since territories can be framed without plantsite, interline, or similar restrictive language, the only purpose in continuing to use such language is to limit competition. This, of course, cannot continue.

Those arguing that we cannot foreclose restrictions aver that the Act only gives us the ability to eliminate obviously unreasonable restrictions from existing authority. As we have discussed throughout this statement, we do not view the Act in such narrow terms. We have the ability to specify what language is used in future grants as well as existing grants, and this ability includes prohibiting restrictive language.

Finally, we must discuss the future imposition of tacking restrictions on carriers' authorities. We believe that Congress enactment of Section 6 of the Act had the effect of precluding the future granting of authorities where gateways or circuitous routes would have to be observed. Clearly, Congress did not intend that we continue to grant authorities with defects similar to those to be removed. We also believe that it is reasonable to infer that Congress, in not addressing capability to tack but merely the existence of indirect routes, recognized and approved of the existing abilities of motor carriers of property to tack. These abilities are described in detail in Ex Parte No. MC–142, *supra*, at 176.

That being the case, it is incumbent upon us to decide what is the proper mechanism for motor carriers of property who wish to combine a proposed operation with an existing operation to provide a direct service.

Irregular- to irregular-route tacking has been largely abolished. As is explained in the final rules in Ex Parte No. 55 (Sub-No. 43), *Rules Governing Application For Operating Authority*, the proper, and more simple method, is for the applicant to request direct service in its application. So-called "gateway elimination" applications involving irregular- to irregular-route authority are forbidden in the future. However, this does not in any way alter the irregular-route applicant's ability to seek direct authority which would accomplish the same thing. We see this as more a change in form than in substance. The public will benefit, however, since many of the inherent complexities of gateway elimination proceedings will be avoided.

Regular- to irregular-route tacking (and vice versa), with resultant direct service being permissible, will continue to be allowed. The Commission will not entertain restrictions against tacking those combinations of authorities. The final rules in Ex Parte No. 55 (Sub-No. 43) indicate the proper caption summaries for those applications; irregular-route applicants have to indicate in their caption summaries the fact that they hold regular-route authority with which a direct service may be provided.

Fitness Only Applications

In our last report, we proposed individual descriptions for the seven different authorities to be granted upon a showing of applicant's fitness. The seven authorities are (1) transportation to a community not regularly served by a carrier, 49 U.S.C. 10922(b)(4)(A); (2) transportation as a substitute for abandoned rail service, 49 U.S.C. 10922(b)(4)(B); (3) transportation for the United States Government, 49 U.S.C. 10922(b)(4)(C); (4) transportation of shipments weighing 100 pounds or less when no shipment in the vehicle exceeds 100 pounds, 49 U.S.C. 10922(b)(4)(D); (5) transportation by an owner operator of food and related products when acting as a common carrier, 49 U.S.C. 10922(b)(4)(E); (6) transportation by an owner operator of the same products when acting as a

contract carrier, 49 U.S.C. 10923(b)(5)(A); and (7) brokers of property, 49 U.S.C. 10924(b). We here confirm use of our proposed descriptions for these authorities with some minor changes. We shall establish a new description for pack-and-crate authority which also is subject to fitness-only licensing by the Household Goods Transportation Act of 1980. See 49 U.S.C. 10922(b)(9).

A. The Descriptions in General.

We have received several comments that argue granting these authorities to points in the United States is broader than necessary. Authority not limited in territory, it is argued, is beyond the scope of the service to be provided by most applicants and will subject applicants to violation of the common carrier obligation. It will also create problems in obtaining insurance and complying with the requirement of a registered agent for service of process in each State.

We do not believe that excessive authority will be granted. Since these applications are based only on applicants' fitness, willingness, and ability to serve the public, not on a showing of public need for the service, limiting the territorial scope of the authority to protect competitors is a moot issue. Congress, in adopting specified "fitness" categories, has determined that the Commission shall have no economic regulatory control over this traffic. The only issue that remains for consideration is whether the carrier is fit, willing and able to perform the service, as set forth in the statutory definition. The only purpose in framing grants at all is where this is required to conform the authorized operation to the scope of the statutory definition. Thus, for example, the service authorized to a community not regularly served must be defined in terms of a community. Once having determined the proper extent of what a "community" is, we must end our attempt to describe further the terms of the service, since we are to have no role in assessing the economic impact of the authorized operation.

Lastly, we find no difficulty with insurance or registered agents. The comments argue that the costs of these items to a carrier with nationwide authority are so high that they will deter potential entrants from even seeking this authority in the first place. There is no evidence to support such a conclusion, and we see no reason to limit authority because of these theoretical problems. If however, experience shows that insurance and the designation of agents is a problem for the small specialized carrier we will of course, work with the industry to ameliorate any problems brought to our attention.

B. The Descriptions in Specific.

Comments about specific descriptions tend to address difficulties with either the scope of the authority underlying the description or the language we use in the description. The remarks will be summarized in our discussion of each topic.

1. *Transportation to Any Community Not Regularly Served by a Motor Carrier.*

This authority is designed to encourage service to communities with a chronic lack of supply. The Department of Justice (DOJ) remarks that we should not require a carrier to show that no service is ever available to such a community prior to granting this type of authority. We agree with DOJ that the terms "not regularly served by a motor common carrier of property" does not mean a community must have a total lack of service; rather, it means the community must have something less than adequate service from common carriers for its particular transportation needs. An example would be bulk service is not regularly available when there are bulk items regularly to be moved. However, the statute does indicate that unmet demand must be a recurring problem. Problems that create emergencies should be handled by obtaining emergency temporary authority; problems that recur should be handled by obtaining permanent authority. Infrequent problems should be handled by obtaining temporary authority.

The description to be used for this authority shall be the following:

To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce over irregular routes, transporting (commodity group)———between (the specified community(s)),———on the one hand, and, on the other, points in the United States.

2. *Transportation Service as a Direct Substitute for Abandoned Rail Service.*

This authority is issued as a direct substitute for rail service if an abandonment results in a community not having any rail service and if the application is filed within 120 days after we have approved the abandonment. The questions raised by commentors are whether authority under this section must always be for general commodities, whether the term "community" is synonymous with county (the minimum area we intend to authorize in other common carrier applications), and when does abandonment for purposes of this section occur.

We indicated general commodities is the proper description, because railroads typically handle all types of freight. Where lesser authority is appropriate we will entertain more limited applications. However, these situations should be rare.

The term community here, as well as in the previous section, is an exception to our county rule because of the statutory terminology. A carrier may apply for smaller sized areas where the evidence would support only that.

Abandonment for purposes of this section occurs when two things happen. First, all rail service to the community is eliminated by the abandonment in issue. Second, either the certificate of abandonment is issued by us or another pronouncement by us states abandonment has occurred. Carriers thereafter have 120 days from the date of issuance of either the pronouncement to file for this authority.

Applications for this authority shall read as follows: To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* between ———, on the one hand, and, on (the abandoned community(s)) the other, points in the United States.

3. *Transportation for the United States Government.*

The Act largely codifies the rules we adopted in *Transportation of Government Traffic*, 131 M.C.C. 835 (1980). The Department of Defense (DOD) therefore believes the description for government traffic should be the one established in those rules. The General Services Administration (GSA) further claims that the household goods exclusion should only run to so called "first proviso" traffic [as defined by the Commission at 49 CFR 1056.1(a)(1)], since "second" and "third proviso" traffic [49 CFR 1056.1(a)(2) and (3)] represent normal commercial freight. GSA also urges that hazardous materials should be defined as in *Government Traffic, supra*.

We agree with DOD that the description use in *Government Traffic, supra*, is generally appropriate, but there must be certain modifications. The description, slightly modified to comport with the terms of the Motor Carrier and Household Goods Acts, is set forth at the end of this subsection. However, we cannot agree that the definitions proposed by GSA for used household goods and hazardous materials are appropriate. They lack the proper context needed to apply the two new laws.

GSA's claim that second and third proviso commodities should be included in these grants (by limiting the exclusion

for household goods to the first proviso), misconstrues the meaning of household goods. The definition of household goods, now codified by the Household Goods Transportation Act of 1980 at 49 contraband even if the carrier holds other authority under which they may be moved. We must agree that interpretative difficulties can best be overcome by using the statutory

United States, under continuing contract(s) with (company) ——— of (domicile) ———.

7. *Brokers of Property Moving in Motor Carriage.*

Clapp, Trantum, Alexis, and Gilliam. Commissioner Clapp concurring in part and dissenting in part, and reserving his right to submit a separate expression at a later date.

James H. Bayne,

Acting Secretary.

summarized in the body of the policy statement.

A. Trucking and Other Associations

American Trucking Associations, Inc. (ATA), agrees with us that the intent of

either in bulk, in containers, or in both. NTTC notes there are special insurance limits in the Act for hazardous chemicals as well as explosives and believes these too must remain excluded from descriptions like general

for household goods to the first proviso), misconstrues the meaning of household goods. The definition of household goods, now codified by the Household Goods Transportation Act of 1980 at 49 U.S.C. 10102(10), is nonexclusive. When an item listed under the definition moves by a carrier using the special handling and equipment associated with household goods, it is considered to be a household good. When the same item moves otherwise, as GSA claims can happen, it is within the ambit of general commodities authority. Thus, excluding of second and third provisio traffic from the exception would serve no useful purpose.

The *Government Traffic* decision does not use the term "hazardous materials" in its description. Rather, it refers to "classes A and B explosives, radioactive materials, and etiologic agents" as hazardous items to be excluded. "Hazardous materials" actually includes more items than these three classifications. A prominent example would be corrosive chemicals. Thus, the statutory exclusion of hazardous materials is broader than the ones we used in *Government Traffic, supra,* and we are bound to comply with the Act.

The description for these items shall be:

To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the United States.

4. *Transportation of Shipments Weighing 100 Pounds or Less if Transported in a Motor Vehicle in Which No One Package Exceeds 100 Pounds.*

The commodity description of "shipments weighing 100 pounds or less" has resulted in some confusion. Commentors ask whether this should be phrased in the statutory language. Otherwise, as shown by one company's query, we will constantly be asked to state whether there can be other traffic in the same vehicle.

This provision is designed to encourage small shipment services. The statute not only eases entry for this particular type of service but also creates a class of contraband which cannot be moved in the same vehicle without destroying the authority. Thus, on any given day, a carrier is only allowed to ship a package or aggregate of packages weighing 100 pounds or less from one consignor to one consignee if no package in the vehicle exceeds 100 pounds. See H. Rept. 96–1069, p. 16. Any higher-weighted packages are contraband even if the carrier holds other authority under which they may be moved. We must agree that interpretative difficulties can best be overcome by using the statutory language. Therefore, all applications for this authority are now to be phrased as:

To operate, as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *shipments weighing 100 pounds* or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the United States.

5. and 6. *Transportation by Either a Common or Contract Carrier of Food and Other Edible Products and Related Farm Items.*

Two points are raised by the comments we received about these authorities.

One states that we incorrectly describe the test for the amount of traffic an owner operator can handle. We stated that the operator can carry traffic in an amount equal to the exempt commodities transported, while the Act states an operator may transport an amount not to exceed the exempt tonnage transported. The correct usage of terms should be an amount not to exceed; thus, no owner operator may transport more than the exempt tonnage handled.

Second, several commentors ask what are the emergency situations in which the owner of the vehicle does not have to be in the vehicle as stated in 49 U.S.C. 10922(b)(4)(E)(i) and 10923(b)(5)(A)(i). These situations are under study in Ex Parte No. MC–143, *Owner-Operator Food Transportation,* 132 M.C.C. 165 (1980), and are beyond the scope of the instant proceeding.

Finally, we will rephrase these descriptions to a minor extent to eliminate verbiage. Carriers are now to use these two descriptions.

For common carriage:

To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the United States.

For contract carriage:

To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the United States, under continuing contract(s) with (company) ——— of (domicile) ———.

7. *Brokers of Property Moving in Motor Carriage.*

We have received no comments on this proposal. We remind all applicants that the proper description is:

To operate, in interstate or foreign commerce, as a *broker* of *general commodities* (except household goods), between points in the United States.

8. *Transportation for the United States Government of Used Household Goods Which Transportation is Incidental to a Pack-and-Crate Service on Behalf of the Department of Defense.*

Section 10 of the Household Goods Transportation Act of 1980 adds this type of authority as one requiring only a showing of fitness. It pertains only to pack-and-crate operations performed on behalf of the Department of Defense. We will use authority between points in the United States for the reasons described above, although carriers are warned that the transportation must be incidental to their pack-and-crate service. Any line-haul service requires regular authority. So called pack-and-crate movements with no prior or subsequent line-haul service are expressly prohibited. The proper description is the following:

To operate, as a *common carrier, by motor vehicle,* in interstate or foreign commerce, over irregular routes, transporting *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the United States.

We emphasize, in connection with all fitness-only applications, that the Congress has carved out specific categories for special treatment. Although, in certain circumstances, we are required to read the potential grants of authority narrowly, in conformance with the basic purpose of the statutory exceptions, nothing in our discussion should be understood to discourage applicants from seeking broader authority under the conventional certification process.

Energy and Environmental Considerations

The policy statement does not significantly affect the quality of the human environment or conservation of energy resources.

This statement is issued pursuant to 49 U.S.C. 10101, 10922, 10923, 10924, 11102, and 5 U.S.C. 553.

Decided: December 19, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Cresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Clapp concurring in part and dissenting in part, and reserving his right to submit a separate expression at a later date.

James H. Bayne,

Acting Secretary.

Appendix A

The descriptions contained here are stated in the terms to be used in our authorizations. They differ from the list originally proposed in that they seek to group products better. The STCC number is given for reference only and is not to be asked for. The meaning of a group is to be determined by reference to STCC, as defined by our explanation in this statement, or, if there is no STCC, to the meaning usually ascribed by the Commission. Other descriptions may be used if they comport with the principles in the decision.

STCC

01—Farm Products
08—Forest Products
10, 14—Ores and Minerals
11, 29—Coal and Coal Products
13, 29—Petroleum, Natural Gas and Their Products
19—Ordnance and Accessories
20—Food and Related Products
21—Tobacco Products
22, 23—Textile Mill Products
24—Lumber and Wood Products
25—Furniture and Fixtures
26—Pulp, Paper and Related Products
27—Printed Matter
28—Chemicals and Related Products
30—Rubber and Plastic Products
31—Leather and Leather Products
32—Clay, Concrete, Glass or Stone Products
33, 34—Metal Products
35, 36—Machinery
37—Transportation Equipment
38—Instruments and Photographic Goods
40—Waste or Scrap Materials Not Identified by Industry Producing
49—Hazardous Materials
—General Commodities (except Classes A and B Explosives)
—Commodities in Bulk
—Those Commodities Which Because of Their Size or Weight Require the Use of Special Handling or Equipment
—Household Goods
—Building Materials
—*Mercer* Commodities

Appendix B

Comments received by the Commission indicate divergent points of view about both what the Motor Carrier Act of 1980 (the Act means for the industry and how we, through this policy statement, should interpret the Act. We here summarize the comments, categorizing each by the group represented. The categories are trucking and other associations, Commission practitioners, individual carriers, government agencies, and miscellaneous groups. The evidence is also summarized in the body of the policy statement.

A. Trucking and Other Associations

American Trucking Associations, Inc. (ATA), agrees with us that the intent of Congress is to have reasonably broad grants of authority in the future. However, it believes this proceeding goes beyond the Congressional mandate and attempts to master license carriers. As an example of this attempt, it cites our failure to deal with conversion of contract to common authority when a contract carrier holds points in the United States and is providing much less service. It also argues that we should treat the Notice and the comments received as an advanced notice of proposed rulemaking because the policy statement attempts to enact rules in a manner prohibited by *American Bus Association* v. *United States,* No. 79–1207 (D.C. Cir., 1980).

More specifically, ATA believes plantsite restrictions can be eliminated, but that countywide origins are too broad. It argues nothing is wrong with basing grants on representative showings, but if there is less evidence, carriers should be given an opportunity to limit their authority appropriately. ATA believes that equipment and service restrictions promote economies and efficiencies. It argues that without restrictions there is master licensing and the opportunity for unnecessary protests.

The majority of ATA's statement is devoted to commodity descriptions. It believes a code concept is workable. However, it believes the proposed STCC is too broad and not responsive to motor carrier transportation. As a result, ATA proposes a STCC code of its own using 51 parts and subparts. It also urges the Commission to allow for three types of descriptions to meet carrier needs. These are service descriptions, specific commodity descriptions and generic descriptions. It further urges that several common descriptions such as the size-and-weight descriptions should be kept so carriers do not have to ask for a myriad of STCC groupings. Finally, ATA comments that new items to a group should be Commission approved with carriers operating under temporary authority until approval.

Other trucking associations enter evidence as it pertains to their particular specialty area. The National Tank Truck Carriers, Inc. (NTTC), favors retention of the bulk restriction. It argues that bulk arose historically, not as a line of demarcation for commodities, but as a type of service. It states that if STCC is used there should be a bulk group so that a carrier may ask for a STCC class either in bulk, in containers, or in both. NTTC notes there are special insurance limits in the Act for hazardous chemicals as well as explosives and believes these too must remain excluded from descriptions like general commodities.

The Regular Common Carrier Conference, Inc., believes none of the general commodities limitations should be removed because removal would compel carriers to perform service they are not equipped to perform. It also believes we should continue allowing carriers to ask for restrictions because Section 6 of the Act says we may, not must, remove unnecessary restrictions. The only provisions it finds mandatory is the section on circuity limitation.

The Contract Carrier Conference totally supports giving contract carriers authority to serve points in the United States. It states that authorities now are too restricted to meet public needs.

The American Bus Association asks that all carriers of shipments weighing 100 pounds or less be required to seek authority in terms of the statutory language. It does not agree with the idea of countywide authority and the prohibition of equipment restrictions and restrictive amendments. The Association believes this proceeding should not apply to passenger applications.

The National Automobile Transporters Association (NATA) wants the status quo maintained for automobile carriers. It believes there should be a STCC class for automobiles with restrictions to initial or secondary movements and driveaway or truckaway service. NATA would also like general commodities and plantsite restrictions maintained. It argues overall that this proceeding is an attempt to master license and that this proceeding must be a rulemaking since there is no discretion in its application.

A variety of comments are entered by five independent associations including one traffic bureau. The Midwest Packers Traffic Association believes shippers, not carriers, should name the commodities and territories to be served. It wants to retain present descriptions and plantsite restrictions to obtain this goal.

Food Marketing Institute supports authorizing contract carriage between points in the United States as a way of getting more carriers for the food industry.

The Aluminum Association, Inc., believes the primary and fabricated metal products categories should be one, since the same carriers haul both types of goods. It also urges that categories be open-ended, that "materials and

supplies" be maintained as a description and that two-way and countywide authority be granted.

The St. Louis Regional Commerce and Growth Association wants commercial zones detailed on a county basis if alcohol. They also would like an index to the code. Among the items they wish to see maintained are general commodities with exceptions, materials restrictions, commercial zones over countywide descriptions, and plantsite

Interstate Motor Freight System believes our language about owner-operators hauling food and other edible products in an amount equal to the amount of exempt products is a misinterpretation.

by the Commission, used household goods in containers, and *Kingpak* authority [*Kingpak, Inc., Investigation of Operations,* 103 M.C.C. 318 (1966)] delineate different services so there is no reason to combine them.

Steere Tank Lines, Inc., a bulk carrier,

Overnite Transportation Company favors the STCC code. It believes that any commodity not included can become included by applicant petition. It also argues that the *Descriptions* case should be automatically combined into the code. Overnite finds nothing wrong

explosives, and household goods. It believes such a scheme will maintain the common carrier obligation.

Alamo Express, Inc., and five other carriers argue that we cannot call this a policy statement because of its contents. They believe we are trying to grant more

supplies" be maintained as a description and that two-way and countywide authority be granted.

The St. Louis Regional Commerce and Growth Association wants commercial zones detailed on a county basis if countywide is the minimum territory.

Finally, the Motor Carriers Service Bureau, Inc., believes contract carrier service to all points in the United States is too broad, since there are rates and process service agent problems. It also states all carriers should be able to limit the scope of their authority by their holdings out in their tariffs.

B. Commission Practitioners.

The Motor Carrier Lawyers Association on behalf of its members enters a statement expressing the belief that there is little legal support for the policy statement and that the statement is contrary to Congress' intent. MCLA also asserts that this cannot be a policy statement because of the *ABA* decision and other precedent. It seeks dismissal of this proceeding and to have all authority issued to applicants filing after July 2, 1980, voided.

MCLA further argues that the proposal ignores applicants' burden of making a prima facie case and the common carrier obligation. It believe the modifications proffered are unfounded for this reason. It, however, indicates that a proceeding less broad in scope that builds on existing precedent would be acceptable.

Remarks from individual practitioners are in the same vein as those from the MCLA. William J. Monheim agrees with MCLA that this proceeding goes beyond Congress' intent. He believes the STCC code is impractical, and that countywide authority for common carriers and points in the United States for contract carriers and owner operators is too broad. Furthermore, the removal of most restrictions, especially those on general commodities grants, is beyond the realm of the new Act.

James C. Hardman feels that this is an attempt to master license. He finds fault with not allowing carriers and shippers to shape their own grants and with removal of any restrictions beyond those found to be unreasonable.

Francis E. Barrett argues that countywide and statewide grants are beyond actual need shown and should not be given.

The law firm of Nelson and Harding also is against the STCC code. They believe the overbroad categories subvert the intent to help new carriers into the market by increasing the number of protests to be received. Even if a STCC code is used, they believe there should be a separate code for drugs and alcohol. They also would like an index to the code. Among the items they wish to see maintained are general commodities with exceptions, materials restrictions, commercial zones over countywide descriptions, and plantsite restrictions.

Michael S. Varda believes the classifications made in Ex Parte No. MC-135, *Master Certificates and Permits*, would better serve the industry than the STCC code. He sees lack of proper equipment as a problem with giving someone STCC code authority. He also believes commercial zones larger than counties should be maintained and that contract carriers should be allowed to specify less territory to prevent insurance and process agent problems. Mr. Varda also wishes to keep restrictive amendments to aid in obtaining authority.

John W. Frame sees commodity description problems with the STCC code, but likes countywide authority as a way to deal with urban flight. He sees difficulties in granting two-way authority and wants us to rule that government traffic can move in the same vehicle as one carrying shipments weighing less than 100 pounds.

Thomas J. O'Loughin, Jr. wants us to retain STCC groups 44, 45 and 46. He states his clients deal in shipper association traffic only, the traffic described by 45, and do not want to obtain general commodities authority.

Lastly, Kermit N. McManus asks us to do an environmental statement in this proceeding.

C. Individual Carriers.

Comments from individual carriers tend to discuss both how the decision affects their operation individually and how it affects the industry overall.

American Farm Lines, Inc., believes that expedited processing of its petition to remove government traffic restrictions from its authority will let it meet the goals set forth in this proceeding to encourage competition.

C. B. Johnson, Inc., states that metallic ores is an incomplete description. A complete description would be one that allows carriers to transport ores and concentrates.

American Auto Shippers asks that decisions filed prior to the Act not be considered under the Act. It also believes there should be liberal backhaul and service extension policies.

C. W. Transport, Inc., wants all tacking restrictions removed. It now tacks irregular- to regular-route authorities in a circuitous manner and wants the ability to perform its operation more directly.

Interstate Motor Freight System believes our language about owner-operators hauling food and other edible products in an amount equal to the amount of exempt products is a misinterpretation.

Miller Transfer and Rigging Co. wants a size and weight group in the STCC and wants size and weight excluded from general commodities. It believes STCC groups are too broad and will be giving carriers more authority than they want or need.

Kenosha Auto Transport Corp., and Dallas and Mavis Forwarding Co., Inc., believe transportation equipment as a description is not as good as the automobile descriptions now in use. They believe STCC overall is not good for motor carriers and would like to have field of service descriptions by expansion of *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 (1952).

CRST, Inc., notes that tacking of irregular-route authority shall be prohibited. It argues that rather than prohibit this tacking, we should have a rule of construction allowing carriers to go directly without passing through the gateway. This will help save energy and let irregular-route carriers compete more with regular-route carriers. CRST otherwise supports this proceeding.

Sea-Land Service, Inc., and Sea-Land Freight Service, Inc., believe we should continue to exclude points in Alaska from grants of authority, citing the unique Alaskan problems of no return loads, severe weather, sparse population, the fact many locations can only be served by water, higher costs and use of so much fuel.

The Maxwell Company believes most of our proposals are sound not believes we should have a bulk group. This can be further refined to dump vehicles and tank vehicles, according to Maxwell. It also believes we should keep the bulk restriction to prevent protests and problems with hazardous materials. Finally, Maxwell states that we should continue to use commercial zones instead to counties because this will simplify descriptions.

Home Transportation Company, Inc., a heavy hauler, believes the proceeding is biased in favor of general commodities carriers, especially by removal of the restrictions. It believes we must in fairness issue authority as broad as the new general commodities authority to heavy haulers.

Global Van Lines, Inc., Imperial Van Lines, Inc., and Wheaton Van Line, Inc., household goods movers, believe that the three household goods descriptions now used should be maintained. They state that household goods as defined by the Commission, used household goods in containers, and *Kingpak* authority [*Kingpak, Inc., Investigation of Operations*, 103 M.C.C. 318 (1966)] delineate different services so there is no reason to combine them.

Steere Tank Lines, Inc., a bulk carrier, believes the Act put the *Pan American* criteria into law. It wishes that we strictly enforce STCC or forego using it for no one will pay attention to it if it is mandatory. Steere would like to seek STCC expanded to include field of service authorizations such as commodities in bulk. It also wants the bulk restriction retained to prevent needless protests and supports countywide authorizations when there is proof. Steere calls for us to renotice this proceeding with the refinements mentioned.

W. S. Hatch Company, another bulk carrier, believes that this policy statement is a flawed rulemaking. It believes that STCC is not adaptable to trucks and that it should include a bulk category if used. Hatch wants a bulk restriction maintained as there are many hazardous bulk materials that are as dangerous as Classes A & B explosives.

Central Freight Lines, Inc., and 11 other carriers express the view that this should be a rulemaking, not a policy statement. It is seen as an attempt to master license. Also, they believe there is no authority in the Act to do anything except remove restrictions on existing authority. Specifically, they believe that the *Descriptions* case with amendments is better than the STCC code, that countywide authority and nationwide contract authority are too broad and that proven restrictions should be maintained.

Alvan Motor Freight, Inc., and twenty-three other concerns adopt the position taken by the Motor Carrier Lawyers Association in their comments. They further state that changes in existing authority should be made prior to institution of any changes in new authority.

Keep on Trucking Company, Inc., Steel Transporters of California, Ditto Freight Lines, and Interstate Distributor Company believe use of the STCC code is ludicrous; the better solution is to give all carriers general commodities authority between points in the United States. These carriers also believe our territorial ideas are too broad. They believe contract carriers do not need authority to Alaska and Hawaii and that larger authority will cause problems in complying with state requirements. These carriers also see a problem with redefining commercial zones if countywide authority is used.

Overnite Transportation Company favors the STCC code. It believes that any commodity not included can become included by applicant petition. It also argues that the *Descriptions* case should be automatically combined into the code. Overnite finds nothing wrong with elimination of general commodities exceptions since carriers will not provide services for which they are not equipped. It finds the hazardous materials class unnecessary and states that the **Federal Register** notice on tacking and interlining should be changed to conform to the Act.

Cooper Motor Lines, Inc., states that this proceeding is an attempt to master license and calls for it to be converted into a rulemaking.

Frozen Food Express, Inc., wants grants of authority limited to specific shipper intent. It argues that existing descriptions more adequately describe the service to be rendered than the STCC code.

Daily Express, Inc., a heavy hauler, recognizes Congress' intent of reasonable broad authority but believes we are allowing master licensing. It believes it must be authorized authority which is the *quid pro quo* of what general commodities carriers will receive. Daily asks that the *Descriptions* case be revised instead of using the STCC code. It believes we must promptly determine this matter, for people are already asking for authority.

North American Van Lines, Inc., contends that the STCC is inadequate. It proposes instead a modification of the Standard Industrial Classification of the Department of Commerce which groups by industry, not by commodity. Carriers would be granted authority to transport such commodities as are dealt in or used by one of 51 different categories. This, according to NAVL, will prevent constant administrative determinations of whether specific commodities are within certain groups.

Anderson Trucking Service, Inc., feels that this proceeding goes beyond the intent of Congress to have reasonable authorities. It also finds the proceeding defective in practical terms because it contains no field of service doctrine and grants unrealistic territories.

Matlack, Inc., a bulk carrier, seeks retention of bulk restrictions. It does not believe its attitude is protectionist but a natural division of the industry. It states that general commodities carriers do not own the proper equipment or cleaning facilities for bulk equipment. Matlack wants us to recognize six groupings of service and to build commodity descriptions from them. They are general commodities, bulk, special equipment, unusual value, class A & B explosives, and household goods. It believes such a scheme will maintain the common carrier obligation.

Alamo Express, Inc., and five other carriers argue that we cannot call this a policy statement because of its contents. They believe we are trying to grant more than what is shown for public need, that there will be needless protests, and that violations of the common carrier obligation will arise because of STCC. These carriers want heavy-hauler service preserved as a class. They find all territorial proposals too broad and that all restrictions cannot be eliminated. The six carriers seek energy and environment impact statements.

Brannan Systems, Inc., and seven other carriers argue that the Act specifies authority only to the public need shown in each application. They argue that commodity descriptions should be framed on a case-by-case basis, that two-way authority should be granted only when supported by evidence, and that restrictions, including plantsite and intermediate point restrictions, are necessary. These carriers see our job as one of balancing interests under the criteria of the Act.

Arrow Truck Lines, Inc., and 15 other concerns are opposed to STCC for the problems it causes with broad grants of authority. They believe we should begin with the *Descriptions* case to build new authorities. These carriers also feel two-way and countywide grants and nationwide contract carrier authority are beyond the scope of evidence presented. Other items they wish retained are plantsite restrictions where there is only one supporting shipper and special service exceptions.

In a supplemental pleading, the aforementioned carriers reiterate their claim that communities, not counties, are the proper areas of service since counties are not intergral economic units.

A group of 12 carriers and their law firm, Grefe and Sidney, also oppose STCC as too broad and not representative. However, they believe that shippers and carriers should determine the authority granted. They believe two-way and countywide grants will be too broad except for two-way regular routes. They are against all intermediate points being served because they feel this will lead to circuitous, energy-wasting routes. They assert that nationwide contract carrier authority is too broad, presents problems of state regulation compliance, and is against Congressional intent. They wish to retain plantsite and tacking restrictions, stop interlining in cases filed after July 3, 1980, and eliminate equipment restrictions.

Finally, they wish to have restrictive amendments to conform to the proof offered.

Celeryvale Transport, Inc., and eight other carriers believe the new Act constricts our powers to act and does not be beyond the scope of the evidence and applicants' ability to serve. In conjunction with this point, the Union states that contract carriers do not need nationwide authority and countywide

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Finally, they wish to have restrictive amendments to conform to the proof offered.

Celeryvale Transport, Inc., and eight other carriers believe the new Act constricts our powers to act and does not grant us authority to shape grants as we propose. They would like to see descriptions phrased in terms of such commodities as are dealt in or used by. General commodities with exceptions should be maintained, and no countywide descriptions should be used. They believe elimination of restrictions will violate the common carrier duty as carriers will simply sell their services to the highest bidder.

D. Government Agencies.

Government agencies participating in this proceeding are the Departments of Justice and Defense and the Government Services Administration. The Department of Justice believes that we have enacted Congress' intent in this proceeding. It finds the STCC code to be productive and urges us to discontinue regular-route authority.

The Department of Defense believes all fitness only grants to carriers hauling traffic for the United States Government should use the terms in *Transportation of Government Traffic*, 131 M.C.C. 835 (1980). It also wants household goods carriers to be limited to statewide authority as a minimum except for pack-and-crate operators which do not serve a broad territory. The Department wishes there to be a narrow definition of hazardous materials and would like to see a STCC for secret and sensitive shipments.

The General Services Administration believes that there is an inconsistency between this proceeding and Ex Parte 55 (Sub-No. 43), *Rules Governing Applications for Operating Authority*, because of a lack of definitions as to what are household goods and hazardous materials. A definition is needed to determine what traffic falls within government traffic fitness only applications. GSA urges that only first proviso household goods traffic be found to be outside of the fitness only criteria as second and third proviso household goods traffic is routinely shipped like general commodities. It also seeks to have hazardous materials defined as they were in *Transportation of Government Traffic, supra.*

E. Miscellaneous Groups.

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America believes that the common carrier obligation must be emphasized in making grants of authority. It believes that grants should not be beyond the scope of the evidence and applicants' ability to serve. In conjunction with this point, the Union states that contract carriers do not need nationwide authority and countywide origins and destinations are too broad.

Kraft, Inc., states that its commodities fall under numerous STCC codes and that using STCC codes would increase paperwork in the applications it supports. It urges us to maintain "such commodities as are dealt in by food business houses" as a description. It believes this will help with backhauls for carriers. Kraft likes removal of all restrictions and believes statewide territory is more appropriate then countywide. For contract carriers, it wishes to see descriptions of "property for Kraft, Inc."

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federal register

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December 31, 1980

Part VI

Department of Health and Human Services

Office of Human Development Services and Health Care Financing Administration

Foster Care

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

3. transfer unused title IV-E foster care funds to title IV-B for use in the provision of child welfare services, when appropriations under title IV-B have equaled or exceed $266 million for two consecutive years (Section

Chicago, Illinois 60606, Contact: Forrest Lewis, (312) 353-1784.
January 14, Dallas Public Library, Room: Auditorium, 1954 Commerce Street, Dallas, Texas 75202, Contact: Patricia Newlin, (214) 767-6596.

1980. These Amendments made some changes in title IV-B of the Act which provides States with child welfare services funds and create a new title >IV-E to provide reimbursement to States for foster care maintenance and adoption assistance for eligible children.

The inventory shall be a listing of all children who have been in foster care for six months or more, by case number, date of birth, date of initial and current placement, and date of last administrative or judicial review, and for each child listed in the inventory the

months; to help ensure progress in moving children into permanent status wherever possible, through return home or through adoption; to document preplacement preventive services; to support proper case management; to provide a source of data for the

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1357

Requirements Applicable to Title IV–B

AGENCY: Office of Human Development Services (OHDS), HHS.

ACTION: Interim Final Rule.

SUMMARY: The Office of Human Development Services is issuing a regulation which describes the systems and programs that the Secretary will find satisfactory as meeting the requirements of Section 427 of the Social Security Act (the Act).

The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96–272) amended the Social Security Act. The amended Act requires that in order to be eligible—

(1) for title IV–B funds in excess of its proportionate share of $141 million (Sec. 427(a)), or

(2) to transfer unused title IV–A or IV–E foster care funds to title IV–B for use in the provision of child welfare services in an amount which, together with the States IV–B allotment would exceed its share of $141 million (474(c)(4)(A)), a State must meet the following conditions of Section 427(a):

1. *An inventory* of all children who have been in foster care in the State for 6 months or more including certain determinations as to the appropriate placement of the child.

2. Implementation and operation of—

A. A *Statewide information system* for children in foster care.

B. a *case review system* for children in foster care.

C. a service program designed to reunify families or achieve other permanent placement.

The Act further provides that in addition to the systems and programs described above for Section 427(a) of the Act, a State must also implement and operate a program of preplacement preventive services designed to help children remain with their families (Sec. 427(b)[3]) in order to—

1. avoid reduction of its funds to the Fiscal Year 1979 level, if title IV–B appropriations reach $266 million for 2 consecutive years (427(b)); or

2. receive federal financial participation under titles IV–A or IV–E for foster care maintenance payments made on behalf of children placed pursuant to a voluntary placement agreement (Section 102, Pub. L. 96–262); or

3. transfer unused title IV–E foster care funds to title IV–B for use in the provision of child welfare services, when appropriations under title IV–B have equaled or exceed $266 million for two consecutive years (Section 474(c)(4)(B)); or when the State has claimed reimbursement under IV–B in a sum equal to or exceeding its share of $266 million for two consecutive years (Section 474(c)(4)(C)).

These provisions are also being published as part of the proposed rule for Pub. L. 96–272 so that the reader will not have to refer to the Interim Final Regulation when reviewing the NPRM. This regulation is the same provision published as Section 1357.30 in the NPRM, with one exception. The requirement for a case review system appears in Section 1356.40(d) of the NPRM and is added as an additional paragraph in this regulation, Section 1357.30(d). A complete discussion of these provisions is contained in the Supplemental Information to the proposed rule governing Pub. L. 96–272, 45 CFR Parts 1355, 1356, and 1357. The proposed rule is published concurrently with this interim final rule.

DATES: This regulation is effective December 31, 1980. We will accept written comments on this regulation through March 16, 1981. See "Supplementary Information" for dates of public meetings.

ADDRESS: Comments must be in writing and sent to: Frank Ferro, P.O. Box 1182, Washington, D.C. 20013. See "Supplementary Information" for addresses of public meetings.

FOR FURTHER INFORMATION CONTACT: Frank Ferro, Associate Chief, Children's Bureau, (292) 755–7418.

SUPPLEMENTARY INFORMATION: *Public Meetings.* Public meetings on this proposed rulemaking will be held on the dates and at the locations listed below. For further information, contact the appropriate Regional Office of the Agency for Children, Youth and Families.

January 9, Federal Reserve Bank Building Auditorium, 600 Atlantic Avenue, Boston, Massachusetts 02210, Contact: Tina Janey Burell, (617) 223–6450.

January 9, Richard B. Russell Building, 75 Spring Street, N.W., Atlanta, Georgia 39323, Contact: James K. Vaughn, (404) 221–2300.

January 12, Federal Building, Rooms 13029 and 15018, 450 Golden Gate Avenue, San Francisco, California 94102, Contact: Beverly Wood, (415) 556–6153.

January 13, American Dental Society Building, 211 E. Chicago Avenue, Chicago, Illinois 60606, Contact: Forrest Lewis, (312) 353–1784.

January 14, Dallas Public Library, Room: Auditorium, 1954 Commerce Street, Dallas, Texas 75202, Contact: Patricia Newlin, (214) 767–6596.

January 16, Federal Building, Room 140, 601 E. 12th Street, Kansas City, Missouri 64106, Contact: Richard Schrader, (816) 374–5401.

January 19, The Regency Inn, 3900 Elati Street, House of Common, Denver, Colorado 90204, Contact: Sue Dignum, (303) 837–3106.

January 23, William J. Green, Federal Building, 600 Arch Street, Philadelphia, Pennsylvania 19101, Contact: Donald Barrow, (215) 596–0390.

January 28, World Trade Center Building, Room 4430, 2 World Trade Center, New York, New York, Contact: Caroline Gionta, (212) 264–4118.

January 29, New Federal Building, 915 Second Avenue, Seattle, Washington 98101, Contact: Jeanne Craig, (206) 442–0838.

The Department finds that it is impracticable and contrary to the public interest to follow notice and comment rulemaking procedures for this regulation and that good cause exists to publish this portion of the regulations as an interim final. This provision is being published as an interim final rule because the Department recognizes that States must be notified of the standards the Secretary will apply in determining whether the requirements of Section 427 of the Act have been met. It is particularly important that States be notified of these standards since States meeting these standards are eligible now to receive federal financial participation in the cost of voluntary placements. States also must be notified of these standards so that appropriate planning activities may occur to qualify States for the additional funds under Section 427(a) of the Act. Issuance of this regulation as interim final will also allow States to make application for one or more of the above options to be effective as early as the first quarter of FY 81 rather than waiting until the final regulation is issued.

Notwithstanding the omission of notice and comment procedures, comments will be accepted for a seventy-five (75) day comment period. The Department will carefully review all comments received during this period before publishing the final rule.

Legislative Authority

The President signed the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272) into law on June 17, 1980. These Amendments made some changes in title IV–B of the Act which provides States with child welfare services funds and create a new title >IV–E to provide reimbursement to States for foster care maintenance and adoption assistance for eligible children.

Regulatory Analysis

Based upon the conditions established in Executive Order 12044 and the Secretary's implementing instructions, a threshold study has determined that a full regulatory analysis is not required of this significant regulation.

(Catalog of Federal Domestic Assistance Program No. 13.645 Child Welfare Services—State Grants)

Dated: December 22, 1980.

Cesar A. Perales,

Assistant Secretary for Human Development Services.

Approved: December 23, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

45 CFR is amended by adding a new Part 1357 to contain requirements applicable to Title IV–B of the Social Security Act.

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV–B

§ 1357.30 Requirements for state eligibility for additional payments.

(a) For any fiscal year after FY 1979 in which a sum in excess of $141,000,000 is appropriated under Section 420 of the Act, a State shall not be eligible for payment of an amount greater than the amount for which it would be eligible if the appropriation were equal to $141,000,000 unless the following conditions have been met—

(1) The State has conducted an inventory of all childen who have been in foster care under the responsibility of the State for a period of six months or more preceding the inventory as described in paragraph (a)(3) of this section.

(2) The State has implemented and is operating—

(i) A Statewide information system as described in paragraph (a)(4) of this section;

(ii) A case review system as described in paragraph (d) of this section for all children receiving foster care under the supervision of the State; and

(iii) A program of services designed to reunify children with their parents or families or to provide alternative permanent placements through adoption or legal guardianship as described in paragraph (a)(5) of this section.

(3) *Inventory.*

The inventory shall be a listing of all children who have been in foster care for six months or more, by case number, date of birth, date of initial and current placement, and date of last administrative or judicial review, and for each child listed in the inventory the State agency shall determine—

(i) The appropriateness of and necessity for the current foster care placement;

(ii) Whether the child can or should be returned to his parents or freed for adoption; and

(iii) The services necessary to facilitate either return to the parents, placement for adoption or legal guardianship for the child.

(iv) In making the determinations required in this paragraph the State agency may use information from a case review conducted within the preceding six months, or the determinations may be made at the time of the child's next scheduled case review or earlier, at the option of the State. If the determinations are made independently from the case review, the State agency shall follow the procedures required in paragraph (d) of this section, (Case Review System), to determine—

(A) The appropriateness and necessity of the current foster care placement;

(B) Whether to focus on reunification or adoption; and

(C) The services necessary to attain the placement goals.

(v) The State shall submit to the Secretary (in a form and manner to be prescribed) a report of the data gathered and the manner in which the inventory was conducted. The report shall be submitted no later than seven (7) months after the start of the inventory and shall include—

(A) The total number of children in foster care at the time of the inventory by age, legal status, race, and sex;

(B) The number of children in foster care six months or more at the time of the inventory, by case plan goal, age, race, and sex. Case plan goals to be used in the report shall be returned to own home; place for adoption; place with legal guardian(s); independent living; other permanent placement; long term foster care; and other (specify).

(C) The number of children who are free for adoption and the approximate number thought to be eligible for adoption assistance under title IV–E.

(4) *Information System.*

The State agency shall establish a permanent Statewide information system. The system shall make it possible: to determine the locations of all children who have been in foster care during the preceding twelve months; to help ensure progress in moving children into permanent status wherever possible, through return home or through adoption; to document preplacement preventive services; to support proper case management; to provide a source of data for the reporting, monitoring, evaluation and inventory requirements of the Act; and to provide the State and Federal government with information for planning, policy development, technical assistance and budgeting.

(i) The statewide information system shall be capable of providing data from which the legal status, demographic characteristics, location and goals for placement of every child currently receiving foster care services or who has been in foster care within the preceding twelve months, may readily be determined.

(ii) The information system shall, at a minimum, meet the following criteria—

(A) Provide individual and aggregate data on all children receiving services for each political subdivision of the state;

(B) Provide for the use of uniform definitions as the Secretary may require;

(C) Provide for aggregation of data for the State consistent with dates, format and procedures as the Secretary may require; and

(D) Provide for access to the case record for each child which will facilitate tracking and case management. The data record shall include—

(*1*) A unique identifier

(*2*) Child and family information (identification of child and family: name, ID number, address, and demographics including special needs;

(*3*) Date case opened (new or reopened);

(*4*) Legal/custody status;

(*5*) Eligibility status (IV–A, IV–B, IV–E, SSI);

(*6*) Living arrangement;

(*7*) Placement history for voluntary and involuntary placement beginning with the date of the current continuous placement including (as appropriate), reasons for removal from home; type of adoptive home (relatives, foster parents, other); adoption subsidy status; date freed for adoption and awaiting placement;

(*8*) Case plan goals;

(*9*) Time tables;

(*10*) Frequency of parental contact with the child and agency over the previous six months;

(*11*) Services provided;

(*12*) Source of services provided (public/private agency, direct or purchased);

(*13*) Dates when reviews and dispositional hearings are due and held; outcomes;

(*14*) Date of revocation of voluntary placement;

(*15*) Date and reason for client

maintaining and strengthening parent-child relationships through frequent and regular visits. The guidelines shall contain principles, policies and procedures which workers must follow—

paragraph (a)(6)(i)(C) or (a)(6)(ii)(C) as appropriate.

(iv) A description of the program of services to reunify families to achieve other permanent placement shall be submitted to the RPD for review and

arrangements for, mental health, drug and alcohol abuse counseling, and vocational counseling or vocational rehabilitation;

(iii) Written guidelines which workers shall use for assessing the feasibility

and is able to participate in the decision or process without excessive anxiety or fear.

(iii) *Close Proximity to Parent(s) Home* means a placement nearest the

(B) A description of the type of home or institution in which the child is to be placed;

(C) A justification of appropriateness of placement that discusses the child's best interests and any special needs, and whether the placement is in the

(13) Dates when reviews and dispositional hearings are due and held; outcomes;

(14) Date of revocation of voluntary placement;

(15) Date and reason for client discharge or case closure (record retained for 12 months); and

(16) Identifier for local agency, caseworker and supervisor;

(E) Assure compliance with Part 95, Subpart F of title (HHS approval of systems procurements in excess of $100,000 for which Federal financial participation is requested); and

(F) Assure protection of government rights to systems developed with Federal financial participation, as described in 45 CFR 74.145, Nonrevocable, royalty-free license.

(iii) The requirements under paragraph (a)(4)(ii) of this section shall be applicable to all children in foster care on October 1, 1980, or the date upon which the State desires to be found eligible for funds.

(iv) The case-specific information described in paragraph (a)(4)(ii)(D) of this section shall be maintained in a manner which will facilitate State annual reporting on title IV–E eligible children in placement under voluntary agreement beginning in FY 81. This report shall be submitted to the ACYF on the last day of November each year.

(v) States shall report and cooperate with studies [as prescribed by the Secretary] on children served in foster care or while remaining at home and on services provided to their parents. Forms and instructions will be furnished to the States after OMB approval.

(vi) To meet Federal reporting requirements, States shall provide information as the Secretary specifies.

(5) *Services Designed to Reunify Families or Achieve Other Permanent Placements.*

(i) The program of services designed to help children return to their homes shall include—

(A) A core of reunification services which shall include day care services, homemaker or caretaker services, and family or individual counseling for parent(s) and child;

(B) Other services which the State agency identifies as necessary and appropriate to facilitate reunification of children and families may be provided, such as respite care; parent education; self-help groups; provision of, or arrangements for, mental health, alcohol and drug abuse counseling, and vocational counseling or rehabilitation.

(C) Written guidelines which stress the value of worker involvement with the family of the child early in the placement and the importance of maintaining and strengthening parent-child relationships through frequent and regular visits. The guidelines shall contain principles, policies and procedures which workers must follow—

(1) In determining the appropriate reunification services for each family's situation;

(2) In providing (for at least three months) post-placement supportive services; and

(3) In determining that a child cannot be returned home.

(ii) The program of services designed to facilitate adoption or legal guardianship shall include—

(A) Legal services to free children for permanent placement, including voluntary relinquishment, termination of parental rights, or activites required by the State to establish legal guardianship;

(B) Adoptive services, including recruitment and preparation of adoptive families, registration with adoption exchanges; identification of current foster families as appropriate adoptive parents for children in their care, counseling, and follow-up services to support the placement;

(C) Other activities identified by the agency as necessary and appropriate for permanent placement, such as training families to care for special needs children; training workers to meet legal requirements for court actions; post-adoption services, including parent support groups and other self-help groups; and

(D) Written guidelines which contain principles, policies and procedures which workers shall follow—

(1) In determining the most appropriate paln for the child who cannot return to his or her family, giving first consideration to adoption, followed by alternatives such as legal guardianship, or long-term foster care in exceptional circumstances; and

(2) In determining the appropriate procedures for placement, including preparation for placement, follow-up, and support services as needed for parents, legal guardians, foster parents, and children.

(iii) For each child under the care of the State, the case plan as required in paragraph (d) of this section, Case Review System, shall include—

(1) Goals for reunification with families, or a discussion of factors considered in a determination that the child cannot be returned home and goals for alternative permanent placement; and

(2) Documentation of the caseworker's actions in application of the principles, policies, and procedures set forth in the State's guidelines as required in subparagraph (a)(6)(i)(C) or (a)(6)(ii)(C) as appropriate.

(iv) A description of the program of services to reunify families to achieve other permanent placement shall be submitted to the RPD for review and approval.

(6) Determinations as to whether a State agency has met the requirements of paragraph (a) of this section shall be based upon the reports submitted and on-site surveys of implementation and shall be made prior to award of additional payments.

(b) If, for any two consecutive fiscal years after Fiscal Year 1979, there is appropriated under Section 420 of the Act a sum equal to or greater than $266,000,000, a State's allotment amount for any fiscal year after those two consecutive fiscal years shall be reduced to an amount equal to its allotment amount for Fiscal Year 1979 unless the following conditions have been met—

(1) The State agency has completed an inventory of children in foster care and determination of the appropriateness of placement and the report of the type specified in paragraphs (a), (3), and (4) of this section;

(2) The State agency has implemented and is operating—

(i) A statewide information system as described in paragraph (a)(4) of this section;

(ii) A case review system as described in paragraph (d) of this section for all children receiving foster care under the supervision of the State; and

(iii) A program of services designed to reunify children with their parents or families or to provide alternative permanent placements through adoption or legal guardianship as described in paragraph (a)(5) of this section.

(3) The State agency has implemented and is operating a program of pre-placement preventive services, policies and procedures designed to help children remain with their families.

The State agency's program of pre-placement preventive services shall include—

(i) Twenty-four hour emergency caretaker and homemaker services, day care, crisis counseling, individual and family counseling, emergency shelters, procedures and arrangements for access to available emergency financial assistance; and arrangements for the provision of temporary child care to provide respite to the family for a brief period, as part of a plan for preventing foster care placement.

(ii) Other services which the agency identified as necessary and appropriate, such as home-based family services; self-help groups; provision of, or

arrangements for, mental health, drug and alcohol abuse counseling, and vocational counseling or vocational rehabilitation;

(iii) Written guidelines which workers shall use for assessing the feasibility and appropriateness of services to support and improve family functioning or for determining when a child should be removed from a home and which specify the factors to be considered in making such a decision, including who within the agency shall be involved in the decision.

(iv) Written guidelines which specify the circumstances in which prior efforts to prevent placement would not be required, including situations when—

(A) The circumstances in the home present a substantial risk of harm to the child's welfare; or

(B) Preventive services have been offered but were refused by the family.

(4) For each child under the care of the State, there shall be documentation in the case plan of caseworker efforts to prevent placement through the application of the principles, policies and procedures set forth in the State's guidelines as specified in paragraph (b)(3)(iii) and a statement as to why such efforts failed to prevent the child's removal or why these efforts were not required.

(5) A description of the program of pre-placement preventive services shall be submitted to the RPD for review and approval.

(6) Determination as to whether a State agency has met the conditions of paragraph (b) of this section shall be based upon the reports submitted and on-site surveys of implementation.

(c) Amount expended by the State for the purposes of complying with the requirements of paragraphs (a) and (b) of this section shall be conclusively presumed to have been expended for child welfare services.

(d) *Case Review System.* The State agency shall develop and implement a case review system that shall ensure, for each child receiving foster care maintenance payments under the State title IV–E plan, a case plan, periodic review of the child's status, and procedural safeguards regarding the rights of the child and the parent(s).

(1) *Definition of Terms.*

(i) *Appropriate Notice to the Child* means written notice or person-to-person discussion that takes into account the child's ability to understand what is being conveyed without raising excessive anxiety or fear.

(ii) *Child of Appropriate Age* means that the child is able to understand the circumstances and implications of the situation in which he or she is involved and is able to participate in the decision or process without excessive anxiety or fear.

(iii) *Close Proximity to Parent(s) Home* means a placement nearest the home community or residence of the child's parent(s) or legal guardian(s) that is consistent with the child's best interest and special needs. Factors to be considered include ease with which the child, his or her parent(s) and family may visit each other and the availability of services the child may require.

(iv) *Determining the Continuing Necessity and Appropriateness of Placement* means an assessment of the conditions in the child's own home to determine whether the child should return home. If the review of the home indicates that continued foster care is required, the assessment shall also include a determination of whether the placement and the services provided are appropriate to the child's needs and whether the service goals in the case plan are still appropriate.

(v) *Placement in the Least Restrictive Setting* means the most family-like setting that can provide the environment and services needed to serve the child's best interests and special needs. In order of consideration, this means placement with relative(s), tribal member(s), foster family care, group home care and institutional care.

(2) *Case Plan.*

(i) The State agency shall develop written policies and appropriate procedures to be in effect throughout the State which will assure that children will be placed in the least restrictive setting available and in close proximity to the parent(s)' or family home, consistent with the best interests and special needs of the child. The State agency shall develop a Statewide procedure for approving out-of-State placements or placements beyond a specified distance from the child's home.

(ii) The case plan shall be a separate, identifiable written document which includes for each child a relevant history and diagnostic assessment, sets goals, and describes significant transactions involving the child, including, after October 1, 1983, the preventive services which were offered or provided prior to placement.

(iii) The case plan shall be developed within a 30 day period, starting at the time the agency assumes responsibility for providing services or placing the child, and shall include at a minimum—

(A) After October 1, 1983, a description of the services offered or provided which were intended to help the child remain with his family;

(B) A description of the type of home or institution in which the child is to be placed;

(C) A justification of appropriateness of placement that discusses the child's best interests and any special needs, and whether the placement is in the least restrictive setting available and in the closest proximity to the parent(s)' home;

(D) A statement of all requirements of the court at the time of judicial determination or recommendations of the administrative review panel and a discussion of how the agency responsible for the child's care will meet the requirements and recommendations;

(E) An analysis of the circumstances that necessitated the placement and the improvements required for the child's return to his or her home;

(F) A statement of the goals, developed in consultation with the child and his or her family, to be achieved during the period of placement, a description of the services to be provided to the child, the child's parent(s) and family, and a discussion of the appropriateness of these services in meeting the goals and the child's special needs, if any;

(G) A statement of the agency's plan for assuring that the child receives proper care while in the foster home or institution including services to the foster parent(s) to facilitate and support the child's adjustment, and that services are provided to the parent(s) and child in order to improve the conditions in the parent(s)' home;

(H) An estimated date by which a decision will be made to return the child to his or her parent(s) or family, or to seek an alternative permanent placement including adoption;

(I) A description of the extent to which the child, if or appropriate age, the parent(s) or other relatives participated in the development of the case plan;

(J) Where long term foster care is determined to be the plan for the child's future, the responsible agency shall include a statement in the case plan of the special needs or circumstances that would not allow the child to be returned home or placed for adoption, and shall specify the efforts that were made to place the child with parent(s) or other family or in adoption;

(K) All parties to the development of the case plan, including the child, his/her parent(s) or other relative(s), shall receive a copy of the plan, which will include, whenever possible, signature(s) indicating that they have read and understood the plan;

(L) The case record shall contain a continuing, updated notation of the

results of each court and administrative action or review affecting the child, and significant agency actions, services, or encounters relative to the case plan for the child, parent(s) and family, and the foster family.

dispositional hearing(s) annually thereafter, unless otherwise determined by a court of competent jurisdiction.

(ii) The dispositional hearing shall be held by a family, juvenile or other court of competent jurisdiction, including a

the parent(s) or family two weeks in advance, with a statement advising them of their right to comment and to a review and discussion of the proposed change with a person not responsible for the case management or delivery of

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

for Children, Youth and Families.

January 9: Federal Reserve Bank Building Auditorium, 600 Atlantic Avenue, Boston, Massachusetts 02210, Contact: Tina Janey Burell, (617) 223–

eligibility, on reimbursable costs and on completing the application form. The following is a summary of the demonstration project.

Four of the ten meetings to be held

results of each court and administrative action or review affecting the child, and significant agency actions, services, or encounters relative to the case plan for the child, parent(s) and family, and the foster family.

(3) *Periodic Review.*

The case review system shall provide for a review of the status of each child no less frequently than once every six months by a court, or by an administrative review. The periodic review shall include—

(i) A determination of the continuing necessity for and appropriateness of the child's placement;

(ii) A discussion of the extent to which all parties have complied with the case plan and achieved the goals described in the plan;

(iii) A summary of progress toward alleviating or mitigating the circumstances necessitating placement; and

(iv) A target date by which the child may be returned home or placed for adoption, legal guardianship or other permanent placement.

(4) *Administrative Review.*

(i) When the periodic review is an administrative review it shall be conducted by a panel of appropriate persons, at least one of whom is not a part of the direct line of supervision in the delivery of services to the child or parent(s) being reviewed. The review panel may include agency staff, staff of other agencies, officers of the court and citizens qualified by experience, professional background or training.

(ii) Members of the administrative review panel shall receive instructions which will enable them to understand the review process and their roles as participants.

(iii) The administrative review shall be open to the participation of the parent(s) and the child, if of appropriate age, and may include the foster parents. The agency shall develop methods and procedures for assuring that written notice will be sent to the child's parent(s) two weeks prior to the review, notifying them of the date and location of the review, and the rights of parent(s) and the child to be accompanied by a representative of their choice.

(iv) Following the review, a written statement of the conclusions and recommendations shall be made available to all participants in the review, subject to agency safeguards relative to the confidentiality of information.

(5) *Dispositional Hearings.*

(i) The case review system shall require a dispositional hearing for each child no later than 18 months after placement; and shall have additional dispositional hearing(s) annually thereafter, unless otherwise determined by a court of competent jurisdiction.

(ii) The dispositional hearing shall be held by a family, juvenile or other court of competent jurisdiction, including a tribal court, or by an administrative body appointed or approved by the court.

(iii) The hearing shall determine the child's future status, including whether—

(A) The child should be returned to his or her parent(s) or other family member(s);

(B) The child should be continued in foster care for a specified period;

(C) The child should be placed for adoption or legal guardianship; or

(D) The child, because of exceptional circumstances, should remain in foster care on a long term basis as a permanent plan or with a goal of independent living.

(6) *Procedural Safeguards for the Rights of Parents and Children.*

(i) Procedural safeguards shall be applied with respect to the rights of parents, families and children pertaining to—

(A) Removal of the child from the home of his or her parent(s) or other family member(s);

(B) Any change in the child's foster care placement; and

(C) Any determination affecting the visitation arrangements of the parent(s) or other family member(s).

(ii) Procedural safeguards shall include—

(A) Prior written notice of the agency's intent to petition the court to remove a child from the home of his or her parent(s) or other family member(s). Notice shall be provided two weeks in advance of the intended action and shall specify the nature of the hearing; how counsel may be obtained; the right to written findings from the hearing and how they may be obtained; and the right to appeal. The State shall have a method of verifying that the parent(s) or family received the notice.

This prior notice requirement will apply to all court proceedings with regard to neglect, dependency or termination of parental rights unless the child's health or well-being would be endangered if prior notice were given.

(B) A method of ensuring that notice of the intent to petition the court to remove the child from the home or to terminate parental rights is given in the language of the family and/or is given orally if there are indications that the parent does not read.

(C) Written notice of any intended change in placement or visitation agreement. The Notice shall be sent to the parent(s) or family two weeks in advance, with a statement advising them of their right to comment and to a review and discussion of the proposed change with a person not responsible for the case management or delivery of services to the parent(s) or child, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given;

(D) Procedures which shall ensure review of the parent(s)' objection(s) and provide for a discussion of the proposed change with the parent(s); and

(E) Appropriate notice of the intended change in placement or visitation arrangement to the child, given two weeks in advance, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given.

(Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96–272, 42 U.S.C. 670 et seq., 94 Stat. 501, 42 U.S.C. 620, 94 Stat. 516 et seq., Section 1102 of the Social Security Act, as amended, 42 U.S.C. 1302)

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1355, 1356, and 1357

Foster Care Maintenance Assistance and Adoption Assistance; Child Welfare Services

AGENCY: Office of Human Development Services (OHDS), HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department is proposing regulations to govern the new title IV–E program, Federal financial participation for Foster Care and Adoption Assistance, and revisions to the title IV–B program, Child Welfare Services, of the Social Security Act, contained in Pub. L. 96–272, the Adoption Assistance and Child Welfare Act of 1980.

Interim Final Regulations have also been issued to notify States of the procedures and protections that must be in place before a State can receive its share of title IV–B funds if appropriations are made in excess of $141 million. These provisions also apply to transfer of funds from title IV–E to title IV–B for use in child welfare services, and to reimbursements for the allowable costs of voluntary placements of children in foster care.

DATES: Comments must be received on or before March 16, 1981. Comments on the proposed rule for fiscal requirements, including allotments, the transfer of funds and administrative and training expenditures under title IV–E (Sec. 1356.80) must be received on or before January 30, 1981.

ADDRESS: Send written comments to: Frank Ferro, P.O. Box 1182, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Frank Ferro, Associate Chief, Children's Bureau, (202) 755–7418.

SUPPLEMENTARY INFORMATION: Public Meetings.

Public meetings on this proposed rulemaking will be held on the dates and at the locations listed below. For further information, contact the Regional Program Director in the appropriate Regional Office of the Administration for Children, Youth and Families.

January 9: Federal Reserve Bank Building Auditorium, 600 Atlantic Avenue, Boston, Massachusetts 02210, Contact: Tina Janey Burell, (617) 223–6450.

January 9: Richard B. Russell Building, 75 Spring Street, N.W., Atlanta, Georgia 39323, Contact: James K. Vaughn, (404) 221–2300.

January 12: Federal Building, Rooms 13029 and 15018, 450 Golden Gate Avenue, San Francisco, California 94102, Contact: Beverly Wood, (415) 556–6153.

January 13: American Dental Society Building, 211 E. Chicago Avenue, Chicago, Illinois 60606, Contact: Forrest Lewis, (312) 353–1784.

January 14: Dallas Public Library, Room: Auditorium, 1954 Commerce Street, Dallas, Texas 75202, Contact: Patricia Newlin, (214) 767–6596.

January 16: Federal Building, Room 140, 601 E. 12th Street, Kansas City, Missouri 64106, Contact: Richard Schrader, (816) 374–5401.

January 19: The Regency Inn, 3900 Elati Street, House of Common, Denver, Colorado 90204, Contact: Ms. Sue Dignum, (303) 837–3106.

January 23: William J. Green Federal Building, Room 3306, 600 Arch Street, Philadelphia, Pennsylvania 19101, Contact: Donald Barrow, (215) 596–0390.

January 28: World Trade Center Building, Room 4430, 2 World Trade Center, New York, New York, Contact: Caroline Gionta, (212) 264–2405.

January 29: New Federal Building, 915 Second Avenue, Seattle, Washington 98101, Contact: Ms. Jeanne Craig, (206) 442–0838.

The Department has established a demonstration project to assist qualified applicants with certain costs of commenting on these proposed regulations. The purpose of this project is to learn whether this kind of assistance will achieve a more complete discussion of significant issues and a greater diversity of oral and written comments. This project is described in a Notice published in Part VI of the **Federal Register** on December 17, 1980 (45 FR 83172). Please refer to that Notice for complete information on criteria for eligibility, on reimbursable costs and on completing the application form. The following is a summary of the demonstration project.

Four of the ten meetings to be held during the comment period—Kansas City (Jan. 16), Denver (Jan. 19), Philadelphia (Jan. 23), and Seattle (Jan. 29)—have been chosen for the demonstration project as sites where selected applicants can be assisted to participate if they could not otherwise afford to do so. Applicants for the regional meeting in Kansas City must live in Iowa, Kansas, Missouri or Nebraska; applicants for the meeting in Denver must live in Colorado, Montana, North Dakota, South Dakota, Utah or Wyoming; and applicants for the meeting in Philadelphia must live in Delaware, Maryland, Pennsylvania, Virginia, West Virginia or the District of Columbia. Finally, applicants for the meeting in Seattle must live in Alaska, Idaho, Oregon or Washington State. The states listed are the states served by each of the four regional offices.

In addition, interested persons throughout the country and the territories are eligible to apply for funding to prepare written comments (such as compilations of membership surveys) or to gather informtion to back up their positions on the issues in these proposed regulations. The Department will give special consideration to applications for written comments from those regions where assistance to attend regional meetings is not available.

Applications for assistance to participate in one of the four regional meetings must be postmarked on or before the following dates: for the Kansas City meeting—December 26, 1980; for the Denver meeting—December 29, 1980; for the Philadelphia meeting—January 2, 1981; and for the Seattle meeting—January 8, 1981. Applications for assistance in preparing written comments must be postmarked on or before January 21, 1981. These deadlines have been set to allow the Department sufficient time to review applicants and notify successful applicants. However, late applications will be considered to the extent possible.

An Evaluation Board will review all applications. To approve an application,

the Board must be able to decide that it meets all the following three criteria:

1. The information the applicant plans to present will help the Department decide the issues in the proposed regulations.

2. The applicant represents an interest

requisite changes. This regulation is drafted in recognition of the diversity of States and the variety of problem solving approaches extant. The Department has made every effort to be sensitive to State practice and has

and improves the program of Federal support for foster care of needy and dependent children, establishes a program of Federal Financial participation to encourage adoptions of children with special needs, and

reunited with their families and who have "special needs" as defined in the regulation, financial assistance will be available to families adopting these children. In short, the new law rests on three pillars:

Prevention of unnecessary separation

caseload which is expected to decline a further 15% from the average number of children in care in FY 81. Continuing declines of approximately 5% per year are expected in FY 83 and FY 84 when the caseload size is expected to stabilize

D. Coordination

The Department believes that coordination of services in a time of scarce resources is vital to ensure the most appropriate and cost effective use of available resources. Pub. L. 96–272 is

the Board must be able to decide that it meets all the following three criteria:

1. The information the applicant plans to present will help the Department decide the issues in the proposed regulations.

2. The applicant represents an interest that otherwise might not be heard.

3. The applicant cannot otherwise afford the costs of participating in a regional meeting or developing written comments.

An application must contain the information necessary to show whether these three criteria are met. It must identify the issues of concern to the applicant, his or her positions on the issues, and for whom the applicant speaks. It must also describe the applicant's financial situation.

For further information and for application forms, contact: Carel Hedlund, Demonstration Project, Department of Health and Human Services, Room 706.E, 200 Independence Avenue, S.W., Washington, D.C. 20201, Telephone: (202) 245-7545.

The Department urges everyone interested in the regulations to make their views known during the comment period by attending a regional meeting or submitting written comments, whether or not they wish to apply for assistance.

I. Background

The landmark Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272) was enacted on June 17, 1980. Section 101 of Pub. L. 96-272 amended title IV of the Social Security Act (the Act) and created a new part E—Federal Payments for Foster Care and Adoption Assistance (IV-E). That section provides for a phased repeal of Section 408 of the Act, which currently provides authority for Federal matching in State foster care payments under the Aid to Families with Dependent Children program (AFDC-FC). States may continue to receive Federal matching for AFDC-FC payments under Title IV, Part A of the Act (IV-A) until September 30, 1982 or, if earlier, the quarter in which the State implements an approved State plan under title IV-E.

Public Law 96-272 also amended Title IV, Part B of the Act (IV-B) to consolidate, restate and in some instances modify the existing Child Welfare Services program. The most significant modification set new conditions on the States for receipt of their share of increased appropriations intended to improve protections for children in foster care.

The new law mandates needed improvement in the States' child welfare and social service programs, strengthens and improves the program of Federal support for foster care of needy and dependent children, establishes a program of Federal Financial participation to encourage adoptions of children with special needs, and encourages support for the family.

The impetus behind the passage of Pub. L. 96-272 was the belief of Congress, and most State child welfare administrators, supported by extensive research, that the public child welfare system responsible for serving children, youth and families had become a receiving or holding system for children living away from parents rather than a system that assists parents in carrying out their roles and responsibilities and provides alternative permanent placement for children who cannot return to their own homes. Studies show that under current policies and procedures thousands of children are stranded in the public foster care system with little hope of being reunited with their families or having a permanent home through adoption or other permanency planning, thereby causing harm to the children and high costs to the States.

The passage and enactment into law of Pub. L. 96-272 (formerly HR 3434) demonstrates a Federal commitment to provide financial and technical assistance to States to make changes in their child welfare services systems. To reduce the number of children entering foster care, emphasis is placed upon the use of preplacement preventive services to help solve or alleviate the family problems that would otherwise result in the child's removal from the home. To reduce the number of children already in the foster care system, the law requires States to undertake several initiatives.

A State must enact a law by October 1, 1982, establishing annual goals for reducing the number of IV-E children remaining in foster care over 24 months. If a State is to receive Federal financial participation (FFP) in foster care maintenance payments under title IV-E after October 1, 1983, it must provide services in all political subdivisions to facilitate the reunification of foster children with their families. To ensure that children do not remain adrift in the foster care system, a State must implement case plan and case review procedures that cyclically assess the appropriateness of the child's placement and reevaluate the services provided to assist the child and the family. To encourage family reunification, a State must attempt to place a child in close proximity to the family and in the least restrictive (most family like) setting, and finally, for those children who cannot be reunited with their families and who have "special needs" as defined in the regulation, financial assistance will be available to families adopting these children. In short, the new law rests on three pillars:

Prevention of unnecessary separation of the child from the parents;

Improved Quality of Care and Services to children and their families;

Permanency through reunification with parents or through adoption or other permanency planning.

The foregoing is a brief summary of the major goals of the law. Sections II, III and IV of the Supplemental Information will discuss the more important provisions of the proposed regulation.

A. Approach to Writing the Regulation

Pub. L. 96-272 establishes a new program, the title IV-E program, which will replace the title IV-A foster care program not later than October 1, 1982. In addition, the law makes changes in the IV-B child welfare services program and it ties the two programs together with numerous program and fiscal incentives. Thus, careful attention should be given to the cross references and linkages between Parts B and E. These linkages are discussed under the specific sections to which they apply. They include funding provisions with respect to amount and timeliness of appropriations, transfer of funds, service requirements, administrative costs and training regulations.

While the goals of the law can become somewhat obscured by the complexity of the interrelationship of the IV-B and IV-E programs, numerous provisions are drafted in the law with great specificity and leave little doubt as to intent. Consequently, the Department was able to incorporate into the regulation nearly verbatim many provisions of the law.

The law gave the Department discretion in implementing other important provisions. The Department held a public meeting to discuss the issues with outside organizations and established a senior level policy group to discuss alternative policy options and make formal recommendations to the Secretary.

Inevitably in writing regulations, difficult choices must be made from alternatives representing competing values and goals. This regulation is aimed to bring about changes within a reasonable timetable and may require participating States to make fundamental changes in their child welfare systems. Ultimately, the States will be the instrument of change. Many States have already begun to make the requisite changes. This regulation is drafted in recognition of the diversity of States and the variety of problem solving approaches extant. The Department has made every effort to be sensitive to State practice and has incorporated State recommendations in its approach and in framing the provisions of the proposed regulation. At the same time the regulation is specific enough to produce consistency in interpretation and uniformity in implementation.

The Department's purpose has been to draft a regulation designed to foster the desired changes, while allowing flexibility in the means of producing the changes required by the law. The requirements were developed after seriously weighing their consequences for children, parents, State practice, caseworkers, and others affected by the regulation.

B. Financial Impact

Cost considerations are a critical element in the regulatory decision process. Full implementation of the intent of Pub. L. 96-272 and of the proposed regulation is expected to have considerable impact on the Nation's public child welfare services system.

Cost consequences, although not solely determinative, were carefully considered in drafting the regulation provisions. For example, the Department chose to require only those preplacement preventive services and reunification services that are essential to accomplishing the goals of the legislation, rather than a more extensive list of required services which the Department concluded was too costly and would cause a financial drain from other vitally needed services. In dealing with the information and reporting requirements, cost and program considerations were combined. The information and reporting requirements in the Act have been interpreted to allow development of a Statewide information system that will meet the reporting requirements of both Pub. L. 95-266, the Adoption Opportunities Act, and of Pub. L. 96-272.

The Department believes the regulation will protect the best interests of children and families served, carry out legislative requirements, address the diverse range of capabilities existing in the States, and lead to a marked reduction of the average number of children in foster care. It is estimated that the foster care caseload will decline 5% in FY 81 compared to the average number of children in care in FY 80. Improved permanency planning practices begun in FY 81 will have their greatest impact on the average FY 82 caseload which is expected to decline a further 15% from the average number of children in care in FY 81. Continuing declines of approximately 5% per year are expected in FY 83 and FY 84 when the caseload size is expected to stabilize at approximately 360,000, or nearly 30% lower than the average number of children in care during FY 80.

If the cost maintaining children in substitute care continues to inflate at the same average rate that occurred between 1975 and 1978, cost savings per year by FY 84, due to the anticipated reduction in the number of children in out-of-home placement, would be over one billion dollars for the Nation's foster care system.

Based upon conditions established in Executive Order 12044 and the Secretary's implementing instructions, the Department has conducted a threshold study and has determined that a full regulatory analysis is not required. The Department has classified this regulation as a significant regulation under Executive Order 12044.

C. Reporting and Recordkeeping Requirements

The proposed regulation contains reporting and recordkeeping requirements. The Department is required to submit to the Office of Management and Budget, for review and approval, the following sections and/or forms pertaining to reporting and recordkeeping requirements:

—Inventory of Children in Foster Care (Sec. 1357.30(a)(3))

—Statewide Information System (Sec. 1357.30(a)(4))

—Report on Voluntary Placements (Sec. 1357.30(a)(4)(iv))

—Federal Reports on Child Welfare Services (Sec. 1357.20(c)(10))

The Department will submit these sections and forms to OMB.

The following sections and/or forms have been submitted to OMB for approval.

—IV-B Child Welfare Services State Plan Guidelines which contain an Annual Summary of Child Welfare Services and an Annual Budget Request (Section 1357.40(a)(4)) Approved by OMB for one year.

—Interim State Plan for title IV-E of the Social Security Act. The permanent IV-E State plan will be submitted following publication of the final regulations for Pub. L. 96-272.

IV-E Expenditures Reports (Section 1356.60)

IV-E Estimates of Expenditures (Section 1356.60)

D. Coordination

The Department believes that coordination of services in a time of scarce resources is vital to ensure the most appropriate and cost effective use of available resources. Pub. L. 96-272 is explicit in requiring that the title IV-E and title IV-B programs be coordinated with each other, with the title XX services program and with other Federal and State programs.

The proposed regulations facilitates coordination by mandating the common organizational location of the IV-E, IV-B and title XX programs within the single State Agency and by encouraging the development of common service programs to meet the plan requirements of title IV-E and title IV-B.

The proposed regulation also contains requirements that States assess the relevance and appropriateness of related programs and services. This assessment, along with supporting policies and procedures, must be provided to local agencies to facilitate inter-program referrals and to enable periodic assessment of the effectiveness of the State's system for coordinating services.

E. Immediate Implementation Activities

States may immediately apply for available funds under title IV-E provided they have a DHHS approved State Plan. At this time, title IV-E does not authorize the Secretary to make estimated payments in advance of State expenditures. Therefore, Federal funds will be available on a reimbursement basis only.

The Congress has passed a technical amendment to the Act to permit the making of estimated payments in advance of State expenditures. As of the date of publication of the proposed regulation, the President has not signed the technical amendment. For Fiscal Year 1981, the Department will issue an interim title IV-E State Plan preprint to be used by the States to certify they have met the necessary requirements in the law. The present interim preprint is based solely on the provisions of the Act and not on this NPRM. Federal funds will be made available for FFP to reimburse States that have an approved interim IV-E State plan. A revised IV-E State Plan preprint will be made available to the States when the final regulation is issued.

F. Contents of **Federal Register** *Regulation Package*

The Department is concurrently publishing several regulatory documents pertaining to the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272). These documents are all published in this edition of the **Federal Register**. They include:

1. Notice of Proposed Rulemaking for Pub. L. 96-272. The NPRM contains new Parts 1355, 1356 and 1357 of title 45 of

Payments, 45 CFR 1357.30. This regulation governs criteria that apply to several provisions in Pub. L. 96-272 whereby States may qualify to receive additional funds for child welfare services, transfer funds from Title IV-E

to prevent removal, in order for the child to receive title IV-E assistance payments (Sec. 472(a)(1) of the Act).

Foster Care Maintenance Payment Program: Title IV-E authorizes FFP in

adoption assistance payments are not available under title IV-A.

The IV-E program will eventually replace the IV-A foster care program. Beginning October 1, 1982, foster care funds will no longer be available under

made after September 30, 1980 and before October 1, 1983 (and under title IV-A, expenditures made after September 30, 1979, and before October 1, 1983) for foster care maintenance

rights of the child and the parent (Sec. 1356.40(d)(6)).

(1) *Case Plan.*—The law as implemented by the proposed regulation (Sec. 1356.40(d)(2) requires that each

96–272). These documents are all published in this edition of the **Federal Register**. They include:

1. Notice of Proposed Rulemaking for Pub. L. 96–272. The NPRM contains new Parts 1355, 1356 and 1357 of title 45 of the Code of Federal Regulations to implement the new IV–E program, revise the IV–B regulation, and implement new provisions in the IV–B program required by the amended Act. The NPRM also includes the provisions pertaining to State eligibility for additional payments (Section 427 of Pub. L. 96–272) which are also being published as an interim final rule in this issue of the **Federal Register**. The current regulation for the IV–B program is commingled with that of the IV–A services program for the territories in 45 CFR Part 1392. The proposed regulation for 45 CFR Parts 1355, 1356 and 1357 which is included in this document, will replace the provisions for IV–B in Part 1392.

The fiscal requirements for title IV–E are stated in section 1356.60. Included in this section are the conditions for the Federal financial participation in State payments and administration and training expenditures, and foster care allotment limitations. A shorter comment period has been provided for this section because States may be faced with a limitation on foster care funds, therefore the basis for the allotment must be finalized. Further, the regulations governing administrative and training expenditures must be finalized in order to have cost allocation plans approved. Finally, the allotment limitations govern the possible transfer of title IV–E funds not used for foster care to title IV–B. These activities will all occur during the fiscal year, no later than halfway through the third quarter of fiscal year 1981. Also, the State legislatures must appropriate State and local funds to match the Federal funds. Advance knowledge will be needed in order for the correct amounts to be requested by the State agencies and approved by the State legislatures.

2. Notice of Proposed Rulemaking for amendments to Medicaid Provisions in 42 CFR Parts 431, 435 and 436. This regulation would amend the Medicaid Program to implement the provisions of Pub. L. 96–272 that apply to Title XIX. The proposed rule extends Medicaid eligibility to children for whom payments are made under the title IV–E Foster Care Maintenance Payments Program or the Adoption Assistance Program, and the two additional groups now eligible for IV–A foster care (children voluntarily placed in foster care and children in public institutions).

3. Interim Final Rule for Requirements for State Eligibility for Additional Payments, 45 CFR 1357.30. This regulation governs criteria that apply to several provisions in Pub. L. 96–272 whereby States may qualify to receive additional funds for child welfare services, transfer funds from Title IV–E to Title IV–B for use in child welfare services, or be partially reimbursed for costs of voluntary placement of children in foster care. These provisions are also being published as part of the proposed rule for Pub. L. 96–272 so that the reader will not have to refer to the Interim Final Rule provisions when reviewing the NPRM. Discussion of these provisions is contained in the Supplemental Information to the NPRM for Pub. L. 96–272. The Interim Final Rule contains a reproduction of the relevant sections of the NPRM requirements, but does not reiterate the discussion of these provisions set forth in the Supplemental Information section of the NPRM.

The Department finds that it is impracticable and contrary to the public interest to follow rulemaking procedures for this provision, and that good cause exists to publish this portion of the regulations as an interim final. These provisions are being published as an interim final rule because the Department recognizes that States must be notified of the standards the Secretary will apply in determining whether the requirements of Section 427(a) and (b) of the Act have been met. States meeting these requirements are immediately eligible to receive federal funds for foster care maintenance payments for voluntarily-placed children. It is also important that States be notified of these standards so that they may make appropriate plans to meet the standards and qualify for the additional funds under Section 427(a) of the Act. Notwithstanding the omission of rulemaking proceedings, public comments will be accepted for seventy-five days following publication. Based on the comment received, the Department will make appropriate changes. The changes will not be retroactive.

II. Title IV–E—Federal Payments for Foster Care Maintenance and Adoption Assistance

The law creates a new program under title IV–E (IV–E) of the Social Security Act. The IV–E program closely parallels the foster care program currently provided under title IV–A, Aid to Families with Dependent Children program. However, the IV–E program also makes available Federal financial participation (FFP) in adoption assistance payments for "special needs" children. Federal matching funds for adoption assistance payments are not available under title IV–A.

The IV–E program will eventually replace the IV–A foster care program. Beginning October 1, 1982, foster care funds will no longer be available under title IV–A. Until September 30, 1982 a State may operate its foster care programs under either title IV–E or IV–A. If a State chooses to continue under the IV–A program, the State must meet the title IV–A requirements. Although the Federal agency responsibility for the administration of the title IV–A foster care program will be transferred to the Office of Human Development Services, the essential application and financial management procedures for title IV–A will not be altered.

For purposes of summarizing the IV–E provisions of Pub. L. 96–272, the law may be divided into the following general areas: State Plan Requirements; Foster Care Maintenance Payment Program; Children Voluntarily Placed in Foster Care; and, the Adoption Assistance Program.

State Plan Requirements: The State plan requirements contained in the amended Act (Sec. 471 of the Act (include many requirements applicable to AFDC State plans under title IV–A. Title IV–E State plans are also subject to additional administrative requirements. The plan would have to be administered by the same State agency that administers the Child Welfare State Grant Program under title IV–B of the Act. An independent audit would be required, at least once every three years, of the programs under titles IV–B and IV–E (Sec. 471(a)(13) of the Act). State plans must contain provisions to restrict the use or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with the administration of the plan and other Federal programs. States are required to establish by law, by October 1, 1982, for each fiscal year beginning with fiscal year 1984, goals as to the maximum number of IV–E children in the State who will remain in foster care after having been in care over 24 months (Sec. 471(a)(14) of the Act).

The amended Act (Sec. 471(a)(16) of the Act) strengthens the requirements for case plans and case reviews for children in foster care. Effective October 1, 1983, State plans must provide that reasonable efforts are made to prevent removal of the child from his or her home prior to foster care placement and that reasonable efforts are made to enable the child to return home (Sec. 471(a)(15) of the Act). Also effective October 1, 1983, the agency must show that reasonable efforts had been made

to prevent removal, in order for the child to receive title IV–E assistance payments (Sec. 472(a)(1) of the Act).

Foster Care Maintenance Payment Program: Title IV–E authorizes FFP in assistance for all children currently eligible for AFDC–FC funds under title IV–A. Under title IV–A, Federal AFDC–FC payments are funds available for maintenance payments for a child otherwise eligible for AFDC payments, who is placed in a foster home or nonprofit private child care institution. Eligibility for FFP under title IV–E includes children in public child care institutions which accommodate no more than 25 children. Children receiving foster care maintenance payments under title IV–E are deemed, for purposes of titles XIX and XX, to be dependent children as defined in title IV–A, and are, therefore, eligible for Medicaid as categorically needy and the title XX services (Sec. 472(d) of the Act).

In the past, Federal matching funds for AFDC–FC payments have been available to States on an open-ended, entitlement basis. Under Pub. L. 96–272 and under the amended title IV–A Foster Care program, there is a ceiling on foster care FFP funds for each fiscal year 1981 to 1984, if appropriation for title IV–B child welfare services equals or exceeds specified amounts: $163.55M for fiscal year 1981, $220M for fiscal year 1982, and $266M for each of fiscal years 1983 and 1984 (Sec. 474(b)(1) and (2) of the Act).

Federal funds made available to a State under its IV–E foster care allotment ceiling, which are not used for maintenance payments, may be transferred for use for child welfare services under title IV–B (at a 75 percent matching rate), under certain conditions (Sec. 474(c) of the Act). No State may increase its IV–B funds by a transfer of IV–E funds beyond certain specified amounts until it has implemented the protections required by Section 427(a) and (b) of the Act.

Under the old law, States received Federal matching for AFDC payments (including AFDC–FC payments) on the basis of either the AFDC formula (used by only four States) or the Medicaid matching formula. All FFP for foster care maintenance payments and adoption assistance payments under the title IV–E program is determined using the Medicaid matching formula (Sec. 474(a)(1) and (2) of the Act).

Children Voluntarily Placed in Foster Care: In the past, Federal AFDC matching funds were not available for children placed in foster care without a judicial determination. Section 102 of Pub. L. 96–272 temporarily amends title IV–E to authorize FFP in expenditures made after September 30, 1980 and before October 1, 1983 (and under title IV–A, expenditures made after September 30, 1979, and before October 1, 1983) for foster care maintenance payments with respect to a child removed from home under a voluntary placement agreement. FFP is available only for expenditures made on behalf of voluntarily placed children after the State has implemented the protections and procedures mandated by Section 427(b) of the Act including a program of preplacement preventive services.

Adoption Assistance Program: Pub. L. 96–272 provides for FFP in State adoption assistance payments (Sec. 473 of the Act). There was no such authority prior to Pub. L. 96–272. States participating in the title IV–E program are required to establish a program of adoption assistance payments (Sec. 471(a)(1) of the Act).

Adoption assistance payments must be made under an adoption assistance agreement to parents who adopt an eligible child after the effective date of a State's approved title IV–E State plan. With an approved State plan, adoption assistance payments will also be available for assistance payments for adoptions made on or after June 17, 1980. FFP for these payments will not be retroactive but will be available from the effective date of the Plan.

FFP for adoption assistance is available for a child with "special needs" who is eligible for SSI, AFDC, or foster care maintenance payments under title IV–E. An adoption assistance agreement is required for each child.

Children receiving adoption assistance payments under title IV–E would be considered to be receiving AFDC and therefore, eligible for Medicaid (as categorically needy) and title XX services (Sec. 473(b) of the Act).

FFP for adoption assistance payments is permanent, on an open-ended entitlement basis, and is determined based on the Medicaid matching formula (Sec. 474(a)(2) of the Act).

The following is a discussion of the significant provision of the proposed IV–E regulation.

A. Case Review System

The proposed regulation, in Section 1356.40, requires that the State agency administering or supervising the administration of the IV–E State plan implement a case review system that will apply to each child receiving foster care maintenance payments. The case review system includes a case plan (Sec. 1356.40(d)(2)), periodic review of the child's status (Sec. 1356.40(d)(3)), and procedural safeguards to protect the rights of the child and the parent (Sec. 1356.40(d)(6)).

(1) *Case Plan.*—The law as implemented by the proposed regulation (Sec. 1356.40(d)(2) requires that each child receiving foster care maintenance payments have a case plan. The proposed regulation also requires that the State agency ensure that the child's case plan address the essential elements. These elements are: the type of facility in which each child is placed; the appropriateness of the placement and how it serves the best interests, as well as any special needs, of the child; service requirements and recommendations made by the court or administrative review panel and how the agency will comply with these requirements and recommendations; an assessment of the circumstances which necessitated placement and what conditions in the child's own home need improvement before the child can be returned home, and what services will be provided to meet this objective; identification of goals to be achieved for the child while in placement, and what services will be provided to attain these goals; an estimated date when the child will be returned home or an alternative plan, including adoption will be undertaken. The plan must indicate the extent to which the child, if of appropriate age, and the parent(s) have been involved in the development of the case plan.

The elements stated above are in the law either as part of the definitions of a case plan or the case review system. In addition to being minimal requirements of a case plan, they are considered to exemplify the best professional practice and be most essential to ensure that the best interests of the child and family are continually served, and that agencies adhere to the provisions of the law which are designed to protect those best interests. Further, these elements will emphasize a close working relationship among the agency, the child and the parent(s) by involving the parent(s) in case planning. This effort should facilitate early reunification with the biological family. The continuing involvement of the parent(s) and courts further reduces the possibility of the child being "lost" in the foster care system, and will ensure that the services needed, will be provided in a timely fashion.

A written case plan is a dynamic document, changing periodically as the child's and family's situation and progress is reviewed. This regulation requires that the initial case plan covering all of the essential elements be developed within a 30-day period

starting at the time the agency assumes responsibility for providing services or placing the child. This time span permits the agency and the family to access the situation, set goals, identify needed services, and estimate a point in time

in aiding the return of children to their homes. The placement must be consistent with the best interest and special needs of the child.

(3) *Periodic Review and Composition of Administrative Review Board.*—The

process. Workers should also be able to assist and support any child in preparation for and participation in the administrative review and other activities related to planning and placement.

unless the court orders a different time period (Sec. 1356.40(d)(5)(i)). A second dispositional hearing consequently would occur only if the child had been in care approximately 30 months, with subsequent hearings every 12 months thereafter. The Department believes that

1357.20(c)(11)). The current IV–B and IV–A regulations require a grievance system. The Department believes that such a system is necessary in order to allow recipient involvement in a form that will ensure efficient administration of the State plan. It is also a cost

program of services must contain individual counseling for parent(s) and child (Sec. 1357.30(a)(5)(i)(A)) and other reunification services the state identifies as necessary and appropriate (Sec. 1357.30(a)(5)(i)(B)). To ensure that reasonable efforts are made to provide

starting at the time the agency assumes responsibility for providing services or placing the child. This time span permits the agency and the family to access the situation, set goals, identify needed services, and estimate a point in time when reunification is to take place or an alternative plan undertaken.

The proposed regulation also requires documentation in the case record of agency actions, services provided, and decision-making. This record will provide accountability for the child's movement within the foster care system (Sec. 1356.40(d)(2)(iii)). Essential information required by the Act draws heavily from the language found in the current regulation for AFDC–FC, 45 CFR 233.110. The recordkeeping required by the proposed regulation is similar to that required under title IV–A Foster Care; however, the proposed regulation provides more detailed guidance in the continuous updating and recording of the results of administrative actions or reviews affecting the child. Systematic and meaningful recording will contirbute to agency accountability for the best interests of the child.

(2) *Least Restrictive Placement in Close Proximity to the Parents or Family Home.*—The law as implemented by the proposed regulation requires that the case plan ensure that children in foster care be placed in the least restrictive (most family-like) setting available. In drafting the proposed regulations, the Department was particularly sensitive to the importance of keeping children in their own community and in the most family-like setting while still meeting the needs of the child (Sec. 1356.40(d)(2)(i)). The draft regulation lists the order of consideration for foster care placements, starting with family care and proceeding to group arrangements and institutional care (Sec. 1356.40(d)(2)(i)). In selecting the appropriate foster care setting for each child, agencies are required to explore the possibility of placement in the extended family of the child or with other relative(s) before exploring the resources of foster parents unknown to the child (Sec. 1356.40(d)(2)(i)). The regulation underscores the need for sensitivity and attention to the child's cultural, ethnic and racial group in the selection of the placement.

The requirement of placement in close geographical proximity to the home of the child's parent(s) reinforces the emphasis of the legislation to keep children who are in placement in close contact with their families. Research supports the conclusion that frequent visitation has a direct and positive effect in aiding the return of children to their homes. The placement must be consistent with the best interest and special needs of the child.

(3) *Periodic Review and Composition of Administrative Review Board.*—The law as implemented by the proposed regulation requires that the State agency must conduct a case review no less frequently than once every six months for each child in foster care (Sec. 1356.40(d)(3)). This review may be conducted by a court or administrative review panel (Sec. 1356.40(d)(3)).

The administrative review panel, constituted by the State agency to meet the obligation to conduct administrative reviews every six months, must include at least one person who is not responsible for direct case management or delivery of services to the family or child being reviewed (Sec. 1356.40(d)(4)(i)). The proposed regulation lists some of the possible sources for selecting this person(s) including the use of citizens qualified by experience, training or professional background (Sec. 1356.40(d)(4)(i)).

The administrative review is the point at which the principal parties to a foster care placement and in the child's life have the opportunity to discuss the case plan, progress made toward resolution of problems and achievement of goals, and to reach some understanding about the child's current and future status. It is of particular importance that the child be present and participate in the process, so that the child has immediate access to the information presented and can offer his or her own point of view, ask questions, and share in the planning for the future. Participation in this critical activity will relieve the anxiety of awaiting the decisions of others, increase the likelihood of a decision the child can understand, meets the child's unique and individual needs and allows for an experience in personal growth related to responsibility for his or her own life. Unless there are reasons of age or condition that would preclude attendance, the foster child should be a part of the administrative review.

The regulation defines "children of an appropriate age" and "appropriate notice to the child" in order to provide guidelines within which States may determine when children should be involved in the events which vitally concern them. The definitions take into account the child's ability to understand the events without excessive anxiety or emotional stress (Sec. 1356.40(d)(1) (i) and (ii)).

This assumes that caseworkers will be prepared to make a judgment about the child's ability to understand the proceedings and to participate in the process. Workers should also be able to assist and support any child in preparation for and participation in the administrative review and other activities related to planning and placement.

As stated previously, the administrative review panel must include at least one person who is not directly responsible for the case management of, or the delivery of services to the child and parent(s) who are subjects of the review (Sec. 1356.40(d)(4)(i)). This individual, who is outside of the direct line of supervision may not be the worker, that worker's supervisor, or other levels of supervision or administration who could directly influence the lower levels of decision-making regarding the placement of the child. This provision does not exclude these agency personnel from being a part of the review panel. However, at least one other member who is not in that direct line of influence and who can provide a point of view independent of those in line authority must be a member of the review panel.

The proposed regulation requires that persons involved in the administrative review receive instruction in their role and the purposes of their review (Sec. 1356.40(d)(4)(ii)). An administrative review panel may be comprised of a majority of persons who are not agency personnel. It is important that they understand their roles within the context of the purpose of the review, the agency's child welfare services system and the program objectives. An understanding and awareness of the rights and responsibilities of the public agency as well as the family, foster family, and child will help to ensure that their participation in the review process will promote the best interests of the child and family.

The State Agency has responsibility for establishing its own review system, according to its own geographic needs and resources available. The proposed regulation does not prescribe how a State is to do this, as logical limitations on the time of agency staff and volunteers will adequately determine the number of panels that must be appointed to review the State agency's cases.

(4) *Dispositional Hearings.*—The law requires that dispositional hearings be held by a court of competent jurisdiction or an administrative body appointed or approved by the court, no later than eighteen months after the original placement and periodically thereafter during the child's continuation in foster care. We are proposing that after the initial dispositional hearing, subsequent hearings be held every twelve months unless the court orders a different time period (Sec. 1356.40(d)(5)(i)). A second dispositional hearing consequently would occur only if the child had been in care approximately 30 months, with subsequent hearings every 12 months thereafter. The Department believes that the need for protection increases rather than decreases as the child remains in foster care without a permanent home.

(5) *Procedural Safeguards for the Child and Parents.*—The law and the Department recognize the need for specific procedural safeguards for the child and parent(s). The proposed regulation specifies procedural safeguards in a significant action or event undertaken by the agency which affects the child or the family. These safeguards require that the child and family be given advance notice of the action (Sec. 1356.40(d)(6)(ii)(A)), and an opportunity to present their opinions to the preson responsible for the case management or delivery of services (Sec. 1356.40(d)(6)(ii)(D)).

Procedural safeguards will apply to every child under title IV–E (Sec. 1356.40(d)(6)) unless the agency can demonstrate that the child's health or well-being would be endangered by prior notification of the actions planned.

(B) Appeals, Foir Hearings, and Grievances

States are required to provide a system of appeals and fair hearings for title IV–E (Sec. 1356.30(g)) and title IV–B (Sec. 1357.20(c)(11)). Under this system applicants or recipients may appeal denial, reduction, or termination of service(s) or benefit(s); or the failure of the State agency to act on a request for service(s) or benefit(s) with reasonable promptness.

The requirement for a system of fair hearings and appeals is written into the new regulation in essentially the same form as is currently in effect under the IV–A Foster Care program, the IV–B program and the title XX program. The mechanism for fair hearings is already in place for these programs. Many children receive services from all of these programs, and all programs are operated by the same agency. For these reasons the Department believes that establishment of this common requirement will not create an additional burden on State agencies. Moreover, the requirement encourages coordination and consistency to protect the rights of the applicants for and recipients of services under these programs.

States must also provide a system for recipients to present grievances to the State agency concerning the operation of a service or benefit program (Sec. A regulations require a grievance system. The Department believes that such a system is necessary in order to allow recipient involvement in a form that will ensure efficient administration of the State plan. It is also a cost efficient requirement, in that an informal grievance system will serve to reduce the number of cases requiring a full scale hearing and appeal.

C. Program Manuals and Issuances

The availability of program manuals is necessary to assure recipients knowledgeable participation in the program and informed exercise of their fair hearings rights.

D. Safeguarding Information; Personnel Standards.

Departmental provisions for safeguarding information currently in effect for title IV–A and XX programs are made applicable to the IV–E and IV–B programs under this regulation by referral to the existing regulations (Sec. 1356.30(f) and Sec. 1357.20(c)(12). The government-wide requirement with respect to use of merit personnel standards in 5 CFR Part 900 will apply to the title IV–E and IV–B programs.

E. Reasonable Efforts: Reunification Services and Preplacement Preventive Services Under Title IV–E.

Section 471(a)(15) of the Act requires that effective October 1, 1983, States make reasonable efforts in each case: (a) prior to placement in foster care, to prevent or eliminate the need for removal of the child from his or her home; and (b) make it possible for the child to return home. Reasonable effort is broadly defined as the State having services systems in place that are required in Sec. 1357.30(a)(5) and (b)(3) and ensuring that they are appropriately applied in each case according to this proposed regulation and the State developed guidelines for workers.

States may meet the requirement under IV–E (Sec. 1356.40(e)) by meeting the respective requirements for reunification (1357.30(a)(5)) and preplacement preventive services (Sec. 1357.30(b)(3)) provided under title IV–B. The reasonable efforts provision under IV–E cross references the relevant IV–B provisions. For a more complete discussion of the relevant IV–B provisions, see *Requirements for State Eligibility for Additional Payments* under the IV–B section of this Supplemental Information.

To meet the reunification service requirement, a State must implement a program of services designed to reunify children with their families. That individual counseling for parent(s) and child (Sec. 1357.30(a)(5)(i)(A)) and other reunification services the state identifies as necessary and appropriate (Sec. 1357.30(a)(5)(i)(B)). To ensure that reasonable efforts are made to provide these services to each child or family in need, the proposed regulation requires that there be documentation in the case plan of efforts to reunify the child with his/her family, and statement as to why these efforts failed or were not required. The law and proposed regulation intend that services be readily accessible to each IV–E child and family in need.

The preplacement preventive services requirement in the proposed regulation parallels the reunification services requirement in that a program of essential preventive services must be implemented and operating. The program must contain the following services: twenty-four hour emergency caretaker and homemaker services; day care; crisis counseling; individual and family counseling; emergency shelters; and access to emergency financial assistance and arrangements for the provision of temporary child care to provide respite to the family for a brief period (Sec. 1357.30(b)(3)(i)). In addition, the State must provide other services which it identifies as necessary and appropriate (Sec. 1357.30(b)(3)(ii)). To comply with the provision in the law requiring that reasonable efforts be made in each case to prevent removal of the child from the family, the regulation requires that there must be documentation in the case plan of efforts to prevent the need for placement and a statement of why those efforts have failed. The required services must be available and accessible to all children and families in need, not just the IV–E child who by definition is already in foster care. Preventive services are intended to reach the child before he or she becomes a IV–E foster child, and therefore, must be available to all children in need.

The Department believes it is important to reiterate that reunification and preplacement services be available and readily accessible to all children and families in need. A reasonable effort must go beyond an explanation in the case plan that these services were not available. The caseworker must be given the tools essential to implementing the goals of the law and proposed regulation. The required services are essential tools and must be available for the caseworker to utilize.

The regulations also require that written guidelines be prepared by the State Agency to assist the caseworker in

providing reunification and preplacement preventive services (Sec. 1357.30(b)(3)(iii)). These guidelines are intended to assist the worker to make appropriate case assessments, to determine appropriate services, and to ensure that decisions serve the best interests of the child and family.

F. Standards for Foster Homes and Institutions.

Pub. L. 96–272 provides that the standards for child care institutions or foster family homes must be reasonably in accord with recommended standards

children, provision of basic care needed by all children and activities which are needed to cary out permanency planning.

G. Review of State Standards and Reimbursement

The law as implemented by this proposed regulation requires that States periodically review their standards for foster care homes and child care institutions (Sec. 1356.40(j)). It also requires that States review the level of payment for foster care maintenance and adoption assistance to ensure their

the parents and must be revocable upon the request of the parents or guardian(s), unless the State opposes the request for revocation and obtains a judicial determination that the child's best interests would not be served by returning the child home (Sec. 1356.50(f)). The regulation requires that the parent(s) gives the State agency at least five work days notice of their intent to revoke the agreement. The State must either return the child or obtain a court order continuing the child in care within the five days. DHHS considered 24 hours and 72 hours as

25 residents. However, the law excludes FFP for placements in detention facilities, forestry camps, training schools or other facilities operated primarily for the detention of children who are determined to be delinquents (Sec. 1355.20(d)). Group homes in the community which primarily serve delinquent youth fall within the restriction of the definition and are not eligible for FFP under this program.

K. Establishment of Goals in State Law.

The law (Sec. 471(a)(14) of the Act) as

the State informed of any change in circumstances.

The proposed regulation requires an annual recertification of the Adoption Assistance agreement including the amount of the payment to families that have adopted children with special needs (Sec. 1356.60(f)). The annual recertification is adapted from the Model State Subsidized Adoption Act and Regulation published by the Department in 1976. The Model Act has been implemented by several States with adoption subsidy programs.

automatically eligible for both programs by virture of their AFDC status. By providing for "deemed" AFDC status, the new legislation provides mandatory title XIX and title XX coverage for children receiving payments under the States' IV–E program.

The Health Care Financing Administration's proposed regulation amendment accompanying this NPRM amends the title XIX program to require the State making the foster care maintenance payments or the adoption assistance payments to provide Medicaid coverage. This consistent with

providing reunification and preplacement preventive services (Sec. 1357.30(b)(3)(iii)). These guidelines are intended to assist the worker to make appropriate case assessments. to determine appropriate services. and to ensure that decisions serve the best interests of the child and family.

F. Standards for Foster Homes and Institutions.

Pub. L. 96–272 provides that the standards for child care institutions or foster family homes must be reasonably in accord with recommended standards of national organizations including standards related to admission policies, safety, sanitation, and protection of civil rights (Sections 471(a)(10) and 2003(d)(i)(F) of the Act).

In writing the regulatory provision implementing the law the Department considered a wide range of options from preparing detailed, required Federal standards to regulating only the areas to be covered in standards. thus permitting States to develop the specific requirements. The Department has adopted the latter approach by presenting the basic elements that each State must address in its standards for foster care homes and child care institutions (Sec. 1356.40(h)). The detailed standards must be reasonably in accord with the recommended national standards. The required areas to be addressed in State standards must be present to adequately safeguard children in foster care and promote permanency planning. The Department believes that States must have flexibility in determining the specific requirements. The Department also considers that the proposed approach will protect the child and will not create extensive or burdensome new Federal requirements.

With regard to the use of standards developed by national organizations and already adhered to by many States. it is proposed that the State have flexibility to use one or all of the designated sets of standards as the basis for development of their own requirements (Sec. 1356.40(h)(2)). The sets of standards addressed in this proposed regulation were developed by national organizations with experience and established credentials in the field of child welfare.

The national standards cover more areas than those addressed in this regulation. The selection of particular areas does not imply that other areas are not important in operating and providing services to children. The areas addressed were selected because they deal with matters that impact directly upon children and their families. This includes health and safety for the children. provision of basic care needed by all children and activities which are needed to cary out permanency planning.

G. Review of State Standards and Reimbursement

The law as implemented by this proposed regulation requires that States periodically review their standards for foster care homes and child care institutions (Sec. 1356.40(j)). It also requires that States review the level of payment for foster care maintenance and adoption assistance to ensure their continuing appropriateness (Sec. 1356.40(k) and Sec. 1356.60(e)). The Department is proposing that standards be reviewed every three years. and the level of payment for foster care maintenance and adoption assistance be reviewed every two years (Sec. 1356.40 (j) and (k) and Sec. 1356.60(e)). The Department considered making the review periods consistent, but recognized that costs change rapidly. Also, review of payment amounts should be a less complex process than review of the standards. Methodology for data gathering and analysis of cost variables affecting amounts can be standardized to provide the agency with valuable and current information. The Department proposed a longer cycle for standards review, believing that the three year cycle is appropriate to the difficulty of the task. States can develop their own method of review provided that public participation occurs in the review process.

H. Placement Pursuant to a Voluntary Agreement

The new provision in the Act for FFP in expenses for voluntary foster care placements is a significant departure from the title IV–A foster care program in which only placements resulting from judicial orders were considered eligible for FFP. For the first time. FFP can be claimed for foster care maintenance payments made on behalf of children placed under a voluntary placement agreement as long as specified requirements are met (Sec. 1356.50(a)). Many of these requirements protect the rights of the child and the parent(s) when the child enters foster care under a voluntary agreement and with the assurance of appropriate services to the child and the family. The voluntary placement agreement must be a written binding agreement which states the legal status of the child, and the rights and obligations of the parent(s) or guardian(s). the child, and the agency while the child is in placement (Sec. 1356.50(c)(2)). The voluntary placement agreement must be clearly explained to the parents and must be revocable upon the request of the parents or guardian(s). unless the State opposes the request for revocation and obtains a judicial determination that the child's best interests would not be served by returning the child home (Sec. 1356.50(f)). The regulation requires that the parent(s) gives the State agency at least five work days notice of their intent to revoke the agreement. The State must either return the child or obtain a court order continuing the child in care within the five days. DHHS considered 24 hours and 72 hours as alternatives to the five day period. Both were rejected as being too brief a time for the agency to take the proper action to respond to the revocation. If, on the other hand, the child and family are easily prepared for the child's return. the return should proceed with all due speed. The Department requests comment on the period of advance notice.

I. Conditions for Payment of Voluntary Placements.

The use of the voluntary placement agreement reduces agency and court costs and offers maximum protection to the child and family. Federal financial participation in the costs for voluntary foster care placements are available when the basic title IV–E plan requirements are met and all the provisions contained in Sec. 427(b) of the Act are in place and operating in the State. These provisions are: completion of an inventory (Sec. 1357.30(a)(3)); implementation and operation of Statewide information system (Sec. 1357.30(a)(4); case review system (Sec. 1356.40(d)); a reunification services program designed to return children in foster care to their families (Sec. 1357.30(a)(5)); and preplacement preventive services designed to help children remain with their families (Sec. 1357.30(b) (3) and (4)). No Federal payments will be available for a child in care for more than 180 days without a determination by a court of competent jurisdiction to the effect that continued placement is in the child's best interest (Sec. 1356.50(b)). Pub. L. 96–272 (Sec. 102(a)(1)) provides for FFP in allowable expenditures for voluntary placements made after September 30, 1980. and before October 1, 1983.

J. Availability of Federal Funds To Reimburse Public Child Care Institutions.

The law and this implementing regulation have broadened eligibility for FFP in foster care maintenance payments to include public child care insitutions accommodating no more than

25 residents. However, the law excludes FFP for placements in detention facilities, forestry camps, training schools or other facilities operated primarily for the detention of children who are determined to be delinquents (Sec. 1355.20(d)). Group homes in the community which primarily serve delinquent youth fall within the restriction of the definition and are not eligible for FFP under this program.

K. Establishment of Goals in State Law.

The law (Sec. 471(a)(14) of the Act) as implemented by this proposed regulation, requires that States write specific foster care goals into State law for each fiscal year beginning with Fiscal Year 1983. The State law must be enacted on or before October 1, 1982 (Sec. 1356.40(f)). This provision is a State plan requirement which must be met if a State is to be eligible for IV–E payments (Sec. 1356.60(c)). The Department encourages State agencies to begin working with their State legislatures immediately and *not* await publication of the final regulation to make preparations to comply with this provision.

L. Adoption Assistance Program.

For the first time. Federal financial participation is available to provide adoption assistance for children with "special needs" (Sec. 1356.60). Previously , either the State or the adoptive parents were responsible financially for the care of the child. The severe costs of providing proper care for children with special needs has been a significant hindrance to the adoption of thousands of AFDC-foster care children.

(1) *Initiation of Adoption Assistance Payments.*—Congress specified that adoption assistance payments were to begin at the time of adoption. However, if an interlocutory decree granting the prospective adoptive parent(s) guardianship or legal custody pending a final decree of adoption is issued, payments may begin at that time (Sec. 1356.60(a)(3)). The intent of Congress was to ensure that these children have the additional procedural safeguards provided by a judicial determination. The option of having assistance begin at placement for adoption was rejected as contrary to Congress' desire to have judicial involvement before initiating assistance payments.

(2) *Periodic Recertification of Adoption Assistance Payment.*—Pub. L. 96–272 specifies that the amount of the adoption assistance payments may be readjusted periodically by the State with the concurrence of the adopting parent(s) and that the parents shall keep the State informed of any change in circumstances.

The proposed regulation requires an annual recertification of the Adoption Assistance agreement including the amount of the payment to families that have adopted children with special needs (Sec. 1356.60(f)). The annual recertification is adapted from the Model State Subsidized Adoption Act and Regulation published by the Department in 1976. The Model Act has been implemented by several States with adoption subsidy programs.

(3) *Interstate Continuance of the Adoption Assistance Agreement.*—Adoption assistance agreements must contain a provision protecting the interests of the child when the adoptive family moves to another State (Sec. 1356.60(b)(3)(ix)). Effective October 1983, the adoption assistance agreement shall remain in effect regardless of the State of residence of the adoptive parent(s) and the child move to another State (Sec. 1356.60(b)(4)).

The Department has concluded that the adoptive parent(s) is entitled to know the parameters of coverage under agreements executed prior to October 1, 1983 (Sec. 1356.60(b)(3)). Therefore, the regulation has been drafted to require the State to include, in agreements executed prior to October 1, 1983, a clear statement on whether the agreement and attendant responsibilities remain in force if the adoptive parent(s) change their State of residence (Sec. 1356.60(b)(3)). While recognizing the October 1, 1983 effective date imposed by Sec. 476(b)(4)(A) of the Act, the Department believes that the pre-1983 informational requirement in the regulation will enable an adoptive parent(s) to make necessary and informed decisions about the child and themselves.

(4) *Eligibility for Title XX and Title XIX Services.*—The Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96–272, mandates title XIX and title XX eligibility for children for whom payments are made under the Foster Care Maintenance Payments Program or the Adoption Assistance Program. These children are deemed to be recipients of Aid to Familes with Dependent Children (AFDC) under title IV–A or IV–E of the Social Security Act (Sections 472(d) and 473(b) of Pub. L. 96–272) for purposes of title title XIX and title XX of the Act.

Both Medicaid (title XX of the Act) and title XX are State-administered programs, jointly financed by the Federal and State governments, that provide medical assistance and social services to certain groups of low-income persons. AFDC recipients are automatically eligible for both programs by virture of their AFDC status. By providing for "deemed" AFDC status, the new legislation provides mandatory title XIX and title XX coverage for children receiving payments under the States' IV–E program.

The Health Care Financing Administration's proposed regulation amendment accompanying this NPRM amends the title XIX program to require the State making the foster care maintenance payments or the adoption assistance payments to provide Medicaid coverage. This consistent with the longstanding requirement that the State providing cash assistance that triggers Medicaid eligibility is also fiscally responsible for providing Medicaid for the individuals involved.

Usually, when a recipient of a cash assistance program that is linked to Medicaid moves to another State. the individual loses eligibility for that program and Medicaid in the originating state, and is covered for both programs by the new State if he or she meets that State's requirements. However, as explained earlier, for purposes of title IV–E, the Department has determined that, when a family moves to another State, eligibility and responsibility for adoption assistance payments will remain with the originating State (Sec. 1356.40(c) and 1356.60(g)). Therefore, eligibility and responsibility for providing Medicaid coverage will remain with the originating State.

This is a continuation and extension of the Department's policy that has been applied to the AFDC Foster Care program previoulsy authorized under title IV–A of the Act. That program required that the originating State continue responsibility for AFDC foster care and Medicaid when a foster care placement is made out-of-State. It is also consistent with the general intent of the title XIX statute and the requirement noted above that ties State responsibility for Medicaid to State responsibility for cash assistance.

The proposed regulation provides that children for whom adoption assistance payments are made will be deemed eligible in the State of residence and that State will be responsible for the provision of title XX services if these services are requested and needed. This provision is consistant with current program provisions in title XX.

Because eligibility for title XIX and title XX are triggered by an actual cash payment under the adoption assistance program, however minimal, States should be sure that at least a minimal payment is made to families who particularly need title XIX coverage but not necessarily other assistance or

services. The Department welcomes comment on this proposed regulation.

(5) *Active Promotion of Adoption Assistance Program.*—The Department recognizes the need to promote and

withhold funds based on non-compliance are stated in the proposed regulation (Sec. 1356.75). The proposed regulation adopts present Department-wide procedures (45 CFR 213) for

the same activities and costs and to allocate these costs to the appropriate programs as outlined in the State cost allocation plan.

A. Allotments

to HHS within the time limits specified in Section 306 of Pub. L. 96–272. The Act uses the word "payable" rather than "paid". However, it is clear that Congress intended to allow only actual

them to the Department for inclusion in the base amount.

Second, in the regulation we have adopted a formula for administrative expenditures based on actual costs per

Foster Care to all AFDC cases for FY 1978, multiplied by the total AFDC training expenditures for FY 1978, multiplied by the Federal share of these expenditures (75%). All data used are

services. The Department welcomes comment on this proposed regulation.

(5) *Active Promotion of Adoption Assistance Program.*—The Department recognizes the need to promote and publicize the availability of adoption assistance so that prospective adoptive parents, including current foster families, will be aware that this program exists. This will enable a larger number of potential adoptive parents to be informed about the program and to consider adopting children with special needs. The dissemination of information is necessary to the success of the entire adoption assistance effort which rests on willingness of the citizenry to become involved in the program. Active promotion also provides the opportunity to share this information with the general public so that an understanding of the purpose and existence of the adoption assistance program is more widespread (Sec. 1356.60(h)).

M. Training Under Title IV-E.

The implementation of the title IV-E program requires the use of a wide range of skills on the part of the child welfare worker providing services to children, parents, foster parents, and potential adoptive parents. To ensure the availability of essential skills, staff training must be an important element of the State agency's management plan. Federal financial participation is available at the 75% rate for training expenditures incurred under title IV-E (Sec. 1356.80(b)). The regulation currently governing staff development expenditures under title IV-A, 45 CFR 235.60-66, is being applied to title IV-E. That regulation appears to be most advantageous to the program. However, State agencies should give careful consideration, in their planning, to the Assessment of training needs and development of training plans in those programs which are to be coordinated with title IV-E so that resources for staff development can be combined beneficially. This will aid in achieving optimal use of those resources. The regulation includes training costs for foster parents, adoptive parents and child care institution staff related to providing foster care (Sec. 1356.80(b)). Title IV-E of the Act establishes a continuing relationship between adoptive parent(s) and the agency to provide continued support, as needed, to the adoptive parent(s) in the care of the child. This provision is interpreted to include training for this purpose.

N. Withholding of IV-E Funds for Non-Compliance.

The basis and procedure by which the Department, would if necessary withhold funds based on non-compliance are stated in the proposed regulation (Sec. 1356.75). The proposed regulation adopts present Department-wide procedures (45 CFR 213) for handling this type of action. However, it is anticipated that the Department will not use this authority unless and until other less formal methods of ensuring compliance with the approved title IV-E State plan requirements have been exhausted.

III. Fiscal Requirements

Federal financial participation is available for state expenditures for foster care maintenance payments and adoption assistance payments at the Federal medical assistance percentage rate as promulgated by the Secretary in accordance with Section 1905(b) of the Act. In addition, the regulation provides for an FFP rate of 75% for State training expenditures and 50% for other expenditures needed for proper and efficient administration of the State plan (Sec. 1356.80).

Training expenditures may include both in-service training and training at educational institutions, both long-term and short-term, through grants to the institution or direct financial assistance to trainees. Reimbursement is available for training persons employed, about to be employed foster parents or other child care staff providing foster care services to IV-E children (Sec. 1356.80).

The costs of conducting the activities essential to fulfilling the plan requirements under Sections 471 of the Act (Sec. 1356.80) are considered as necessary for the proper and efficient administration of the State plan under title IV-E, except for the nonrecurring costs of adoption and the cost of complying with the reporting requirements which are deemed to be child welfare services costs and may not be reimbursed under this part. Furthermore, the costs of direct services to children, parents or foster parents to ameliorate personal problems and which go beyond the activities specified in the regulation are to be funded from other programs. The regulation delineates such social service costs from those required to carry out the provisions under title IV-E. Apart from these exceptions it is recognized that the activities prescribed in the law and the protections provided under Section 427 may overlap. The regulation, therefore, provides flexibility to the States to choose which program to charge these costs and the method used for charging and claiming costs (Sec. 1356.80 (c) and (d)). Because of this flexibility it is important that there be assurances and controls to prevent duplicate charges for the same activities and costs and to allocate these costs to the appropriate programs as outlined in the State cost allocation plan.

A. Allotments.

There are a number of provisions in the Amendments that emphasize the primary goal of helping children remain with their families when problems arise. One of these provisions is the limitation, in the form of State allotments, on the Federal funds that may be paid on behalf of foster children under AFDC-FC programs. *This provision is directed toward limiting the inappropriate use of foster care and it will apply equally to titles IV-A and IV-E foster care.* We are planning to issue regulations to state this for title IV-A-Foster Care. The allotment represents the maximum amount of FFP available in foster care. The allotments are mandatory only if the title IV-B appropriation reaches certain "trigger" levels specified in the Act. However, even if the appropriations under IV-B do not reach the specified levels, and the trigger is not activated, the allotment must be computed. Funds allotted but not used for title IV-A or IV-E foster care may be transferred to title IV-B and used for child welfare services, if States meet certain other conditions, to protect children and their families, as specified in Section 1356.80(e)(6). In summary, then, the allotments must be computed and will serve as a planning aid for States and the District of Columbia. (The Territories have a separate ceiling under Section 1108(a) of the Act.)

The law specifies three methods for the determination of the amount of allotment.

Each State is entitled to the higher of the amount calculated under paragraphs (1) or (2) of Section 1356.80(e). Some States may be entitled to choose the amount calculated (3) of Section 1356.80(e). The State need not select the same option each year.

The first method uses the 1978 expenditures for AFDC-FC as a base amount and provides for a percentage increase (or decrease) based on the changes in the Consumer Price Index for each fiscal year (1.3332% for FY 1981 (Sec. 1356.80(e)).

The base amount is composed of FFP in three types of State expenditures computed for fiscal year 1978 and added together: maintenance payments, administrative costs and training costs.

Maintenance payments: The regulation describes the payments as limited to two categories. The first is allowable payments matched by Federal funds that have been claimed or may be claimed and paid, which are submitted

to HHS within the time limits specified in Section 306 of Pub. L. 96-272. The Act uses the word "payable" rather than "paid". However, it is clear that Congress intended to allow only actual payments or timely claims that may be paid if funds are available, with one exception, which is discussed below.

The clear purpose of the first allotment, for which the base amount is the foundation, is to limit FFP to the Fiscal Year 1978 payments but allow an annual increase (ten percent per year, compounded) for inflation (Sec. 1356.80(e)).

The exception mentioned above and the second category of maintenance payments included in the regulation is the *Youakim* Children. On February 22, 1979, the Supreme Court of the United States in *Miller vs. Youakim* 440 U.S. 125 (1979), ruled that children whose foster care was provided by relatives who met the requirements of Section 408 of the Act (for AFDC-FC) were entitled to be paid at the FC rate rather than the AFDC rate, which is generally lower. The ruling was not applied retroactively (except in the case of the individuals bringing the lawsuit). Therefore, the thirteen States that had been paying AFDC rates to relatives were not required to make increased retroactive payments to recipients eligible for AFDC-FC during Fiscal Year 1978. However, those States have been required to make foster care payments to eligible recipients after the case was decided. In effect then, the court required thirteen States to increase their AFDC-FC payments to one class of recipients. Congress wanted to make the ceiling fair to those States and to avoid a potentially costly burden to those States. Therefore, the proposed regulation (Sec. 1356.80(e)) specifically includes the Youakim Children, where a State by law, regulations or policy did not make foster care payments in FY 1978. The expenditures that would have been made on their behalf are included in the base amount for Fiscal Year 1978, even though they were not paid at the AFDC-FC rate in FY 1978.

Section 474(b)(4)(C) of the Act includes administrative and training expenditures in the base amount: "administrative expenditures attributable to the provision of such aid [payments under Section 408] as determined by the Secretary." We have provided three procedures for attributing those administrative expenditures, for inclusion in the base amount.

First, any State which can document actual administrative expenditures for FY 1978 AFDC-Foster Care may report them to the Department for inclusion in the base amount.

Second, in the regulation we have adopted a formula for administrative expenditures based on actual costs per AFDC case, and the number of foster care cases for whom payments were made, as described in the maintenance payments portion of the allotment. In order to allow for the changed nature of the foster care program, from a payments program to a goal-oriented program to return children home, we have specified the functions which may be attributed to administrative expenditures for the cases included in the maintenance payments section even if not claimed or paid under title IV-A. Those functions are the costs of conducting eligibility determination and redetermination, quality control, fair hearings, agency activities related to judicial determination, placement, case review, case management, case supervision, rate-setting, recruitment of foster care homes and institutions, licensing and a proportionate share of general related agency overhead.

The third procedure available to States is to provide the Department with a report specifying the administrative costs associated with the payments for foster care maintenance for the functions specified above for a period of at least 3 calendar months of fiscal year 1981. That amount is reduced for inflation since FY 1978 (using the Implicit Price Deflator for State and Local Government Purchases calculated by the Department of Commerce for each State). The amount is adjusted for an annual amount and reduced by 50 per cent (the FFP rate in administrative expenditures). Reports must be submitted no later than 30 days after the end of fiscal year 1981. In effect, this method permits States to use actual FY 1981 costs, which may be higher for AFDC foster care than for AFDC, as a substitution for the second procedure. We invite comment on all three procedures.

For the attributable training expenditures as a part of the base amount (fiscal year 1978), the same explanation generally holds true except that the third procedure is not available because of the small amount of funds that would be included. No actual fiscal year AFDC-FC training claims have been submitted (or were required to be submitted) to the Department separate from other AFDC training claims, but States may now send that information (Sec. 1356.80(e)(l)(iii)(c). Alternatively, the Secretary has determined that attributable training expenditures for each State should be: the ratio of AFDC-Foster Care to all AFDC cases for FY 1978, multiplied by the total AFDC training expenditures for FY 1978, multiplied by the Federal share of these expenditures (75%). All data used are State-by-State data.

We have also specified in the regulation that the actual claims for maintenance payments must meet the following conditions: they must be allowable, supported by documentation and submitted under the time constraints of Section 306 of Pub. L. 96-272. Reports must also be for allowable costs and supported by documentation. They must be submitted to the appropriate ACYF regional office no later than 45 days after the end of the second quarter of Fiscal Year 1981, except for the reports in the third procedure for attributing administrative expenditures.

The regulations (at Section 1356.80(e)(1)(iii)(E) allow the inclusion of claims or reports in which the State and the Secretary have a dispute to remain as a part of the computed base amount until the Department has resolved the dispute by final administrative action.

For the second method of determining the State's allotment, the State's allotment is $100 million times a percentage equal to the State's population under 18 compared to the U.S. population under 18 (fifty States and District of Columbia) (Sec. 1356.80(e)(2).

For the third method of determining the State's allotment (Sec. 1356.80(f)(3)), the base amount determined under the first method is used. If for a fiscal year, the average monthly number of children in the State's foster care program under IV-E in the State is less than the comparable national average both in FY 78 and in *each* of Fiscal Years 1982-84 the State's base amount (FY 78) is increased by the percentage of AFDC-FC increase (in the average monthly number of children) up to a maximum (ten percent per year compounded over FY 78, beginning with 33.1% for FY 81). The child count for these calculations includes the same *Youakim* children discussed under the base amount maintenance payments.

The Commissioner, as the Secretary's designee, will publish interim allotments established under the third method within six months after the beginning of the fiscal year, and final allotments not later than nine months after the end of that same fiscal year (Sec. 1356.80(f)(3)(vi)).

The State must make a choice and notify the Commissioner of the selected option no later than 45 days after the end of second quarter of the fiscal year. This choice is necessary in order to

insure States that payments can be made to them in a timely fashion for AFDC-FC and for IV-B.

B. Transfer of Funds.

Section 474(c) of the Act permits State governments for the provision of child welfare services by the State.

Under title IV-B, formula grants are allocated to the States for providing and improving child welfare services to

"Statewideness" provision contained in the old regulation.

D. Description of The Staff Development and Training Plan.

The proposed regulation (Sec.

F. General Requirements Common to Social Service Programs.

Fair hearings, safeguarding information, access to program manuals and issuances, and adherence to the

to determine the procedures. The Inventory should be perceived as a source of initial data on which to construct the case review program and to provide baseline data for the Statewide information system. The

In specifying the national reporting and evaluation requirements, only data elements essential to Federal planning, Congressional reporting and administrative functions have been included in order to minimize the

insure States that payments can be made to them in a timely fashion for AFDC–FC and for IV–B.

B. Transfer of Funds.

Section 474(c) of the Act permits States to transfer unexpended funds within a State's foster care allotment under title IV–E to title IV–B, provided the State's allotment was determined on the basis of either the first or second method described in paragraphs (1) or (2) of Section 1356.80(f). To transfer an amount which added to the title IV–B allotment would exceed the share the State would have been entitled to had the IV–B appropriation exceeded $141 million, the State must comply with the protections of Section 427(a) of the Act (Sec. 1357.30(a)), concerning inventory, a case review system, an information system and services to return children to their families or have them adopted. If the title IV–B appropriation for two earlier consecutive years has equalled $266 million, the State must meet the requirements of Section 1357.30(b) in order to transfer any funds to IV–B.

Even if the IV–B appropriations do not reach the "trigger" levels specified in Section 474(b) and no limitation is in effect on the Foster Care allotments, A State may transfer unused funds under the allotment amount to title IV–B for child welfare services. States must meet the same requirements as when the limitations are in place. In addition, the amount that can be transferred is limited by the difference between the funds received under title IV–B (Section 420) and the amount of the IV–B allotment that would have been available had the IV–B appropriation been equal to or greater than the amount necessary to make the foster care allotments mandatory.

Funds transferred to title IV–B must be obligated for expenditures in title IV–B within the same fiscal year for which they were first made available. Requests for transfer of the funds must be made 45 days before the end of the third quarter of the fiscal year.

IV. Title IV–B—Child Welfare Services

The Child Welfare Services Program has been a part of the Social Security Act since the Act's inception. In 1968 Congress transferred the program to title IV, Part B of the Act (Section 420–425 of the Act). Historically, title IV–B has provided Federal grants to establish, extend and strengthen child welfare services in the States. Grants are made to State agencies on the basis of a plan developed jointly by the ACYF Children's Bureau and the State agency. The amended Act reaffirms this partnership between the Federal and State governments for the provision of child welfare services by the State.

Under title IV–B, formula grants are allocated to the States for providing and improving child welfare services to children and their families in need of services, without regard to income (Sec. 1357.20(b)).

In recent years States have used approximately 70–80% of IV–B funds for foster care maintenance payments. Other services including adoption, day care and protective services to abused and neglected children have also been provided with the IV–B funds.

A. Availability of Services in All Political Subdivisions.

The existing requirement that child welfare services be available in all political subdivisions of the State by July 1, 1975 has been replaced by the requirement that the State Plan "contain a description of the steps which the State will take to provide child welfare services and to make progress in: (Sec. 1357.20(c)(4)):

(a) covering additional political subdivisions;

(b) reaching additional children in need of services; and

(c) expanding and strengthening the range of existing services and developing new types of services"

The emphasis in this proposed regulation is to continue to make progress toward the ultimate goal of making comprehensive, quality child welfare services available on a Statewide basis.

B. The Single State Agency and Single Organizational Unit.

The proposed regulation (Sec. 1357.20) paraphases Pub. L. 96–272 (Sec. 422(b)(1) and specifies responsibility of the unit chief for the policy development and program operation of the title IV–B Child Welfare Service program. The change embodied in the proposed regulation is not significantly different from the current requirement.

C. Description of Services.

The proposed regulation (Sec. 1357.20) requires a description of all child welfare services to be provided, the geographic areas in which they are available and what is being done to expand, improve and strengthen those services or provide new ones. As part of ensuring a rational planning and priority setting process, the States are asked to describe the basis for determining services to be added or expanded and how these new services are related to extending the services and reaching additional children in need of services. These conditions replace the former "Statewideness" provision contained in the old regulation.

D. Description of The Staff Development and Training Plan.

The proposed regulation (Sec. 1357.20(c)(5)) requires that the State agency staff development and training plan include, at a minimum, the manner of allocating resources, assessing the need for training, procedures for evaluation of plan implementation and the agency's plans for use of paraprofessionals and volunteers. These activities have been identified as necessary to a rational and well thought out plan. The State agency's staff development and training plan will supplement the training plan required by title XX submitted to the Regional Administrator of the Office of Human Development Services. The State agency's entire IV–B staff development and training plan need not be submitted to ACYF, but it must be available for review by Federal staff. Only the description required by the Long Range Strategy must be submitted (Sec. 1357.40(a)(2)(ii)(C)).

E. Advisory Committee.

The current IV–B requirement mandating advisory committees (45 CFR 1392.4) has been in effect for many years. Nothing in the Act amended by Pub. L. 96–272 is in direct conflict with the requirement. The statutory basis remains the same under the statute as amended by Pub. L. 96–272. Pursuant to the Secretary's responsibilities for joint development, and his/her general rulemaking authority under Section 1102 of the Act, public participation has been required in the development of the child welfare services plan (Sec. 1357.20(c)(8)).

The Department has a continuing and strong commitment to involve the public in the child welfare service program. Most States have established these committees. The viability and success of the Federal regulation development and implementation depend on the input, involvement and investment of the States and other public and private constituencies as demonstrated in the meetings, publication, comment period and regional hearings. Similar involvement must also occur at the state and local levels. These Committees will form the partnership and assure the resources for the states to accomplish the Congressional intent of Pub. L. 96–272.

Through involvement of public and private agencies and citizens, the mandates of this new law can be fully realized at the local, service delivery and community levels.

F. General Requirements Common to Social Service Programs.

Fair hearings, safeguarding information, access to program manuals and issuances, and adherence to the merit system of personnel administration are also required in the proposed regulation. The changes in these provisions do not represent a substantive departure from present policy (Sec. 1357.20(c)). For a full discussion of these provisions see Section II. B. of the Supplemental Information.

G. Requirements for State Eligibility for Additional Payments

To help finance the services required and to encourage changes in the foster care system, Congress provided in Pub. L. 96–272 (Sec. 427 of the Act) that in any year in which the title IV–B appropriation exceeded $141M, a State can not receive its share of title IV–B funds in excess of that $141M unless it has implemented the following procedures and protections.

1. Conduct an inventory of all children who have been in foster care more than 6 months, make determinations about the necessity and appropriateness of their placements, and provide a report to the Secretary (Sec. 1357.30(a)(3));

2. Have a Statewide information system capable of tracking every child who is in foster care or who had received care within the preceding 12 months (Sec. 1357.30(a)(4));

3. Have a case review system for each foster child under the State's supervision (Sec. 1356.40(d)); and

4. Have a service program designed to return children to their own home or to achieve another permanent placement at the earliest possible time (Sec. 1357.40(A)(5)).

1. *Inventory.*—The Inventory (Sec. 1357.30(a)(3)) is a key element in requiring States to help reunify children in foster care with their parents. It impels States to establish basic information about the status of each child in foster care and to develop a plan for that child based on a case review. The Inventory required in the Act, as implemented by the proposed regulation, serves to establish an accounting of children in foster care so that their status may be reviewed and actions taken to facilitate their return home as quickly as possible. For children who cannot be returned home, alternative services leading to permanence for the child must then become the goal.

While the proposed regulation (Sec. 1357.30(a)(3)) specifies the content of the Inventory, the States are given latitude to determine the procedures. The Inventory should be perceived as a source of initial data on which to construct the case review program and to provide baseline data for the Statewide information system. The determination of whether a State has completed the inventory is based upon a one-time report with specified content which summarizes the respective data (Sec. 1357.30(a)(3)(v)). This report provides an accounting of children in foster care and an indication that the inventory has been completed.

2. *Statewide Information System.*—The Statewide information system (Sec. 1357.30(a)(4)) is critical to the successful management of a child welfare program. The regulation which applies to the information system is framed to leave the States maximum flexibility in the design, configuration and technical features of the State system's hardware and software. In addition, flexibility in systems design is encouraged to accommodate the information required to satisfy the law. This includes essential information requirements (Sec. 1357.30(a)(4)(ii) (c) and (D)), State and local agency information needs for monitoring and evaluation (Sec. 1357.20(c)(10)), and audit functions (Sec. 1357.20(c)(9)). The information requirements are also intended to assist the States in complying with the reporting requirements of joint planning, the IV–B and IV–E State plans, fiscal documents and records, and the Federal Child Welfare Reporting System. Included in the System is the intended use of the Child Welfare Dictionary of Common Usage which will establish nationwide definitions of important terms and elements. The System including the "Dictionary", is currently being field tested in eight States, California, Florida, Maryland, Ohio, Vermont, North Dakota, Mississippi and Oklahoma. The System's documentation carefully specifies the data elements, definitions and reporting format that the Department will need, and proposes to require to meet the Congressional reporting mandates of Sections 471(a)(6), 476 of the Act and Section 102(e) of Pub. L. 96–272. While the field test is underway, the Department will concurrently request OMB clearance for nationwide implementation of the System, including the Dictionary.

The requirements for information evolving from the Pub. L. 96–272 are consistent with the data that the States use in the daily operation of their case tracking and management systems. The Department has been sensitive to State reporting requirements and the burden which they impose.

In specifying the national reporting and evaluation requirements, only data elements essential to Federal planning, Congressional reporting and administrative functions have been included in order to minimize the burden.

3. *Case Review System.*—The case review system is discussed in the IV–E portion of this Supplementary Information.

4. *Program of Reunification Services.*—Pub. L. 96–272 (Sec. 427(a)(2)(C)) requires that States implement and operate a service program to help children, where appropriate, return to families from which they have been removed or be placed for adoption or legal guardianship. To meet the reunification service requirement in the law, the regulation requires States to implement a program of services designed to unify children with their families. That program of services must contain day care services, homemaker or caretaker services, family or individual counseling for parent(s) and child (Sec. 1357.30(a)(5)(i)(A)) and other reunification services the state identifies as necessary and appropriate (Sec. 1357.30(a)(5)(i)(B)).

The Department has required only those services it considers essential to accomplish the goals of the law—to reunite children and families. The three mandated reunification services are basic components of a support system to the family and child, following separation from and preparatory to return to the home. The specific focus and context of the services will be influenced by the circumstances under which the child was removed from the home. The services should represent the remedial response to the problems identified in the case plan.

The selection of the three mandated reunification services was based on the findings of the National Study of Social Services to Children and Their Families (Shyne and Schroeder, 1978), which listed five of the primary reasons for children and families receiving social services, including foster care: neglect of the child, unwillingness to care for the child, abandonment, emotional problems of the parent, and abuse of the child. Homemaker and Caretaker, Day Care, and Individual and Family Counselling are the services most likely to effect change in the home situation and lead to the return home of the child.

Homemaker services are those services which provide a qualified person to assist families with children in home maintenance and management in order to strengthen, support, supplement and restore parental capacity to care for

the children. An emergency caretaker provides care and supervision of a child in his or her own home at times when supervision is lacking because parent(s) are either temporarily absent or

1357.30(a)(5)(i)(C) and (b)(3)(iii)). These guidelines are intended to assist the worker to make appropriate case assessments, to determine appropriate service, and to assure that decisions

achieving the goals of the law. State agencies currently operate programs to prevent removal from the home similar to those required in the regulation. Between 1961 and 1977 the number of

accessible to the child and family in need.

For the first time, FFP in the costs of voluntary foster care placements (Sec. 1356.50(a)) is available when all provisions contained in Section 427 of

requirements of the law and regulations. They are submitted only once, unless otherwise required by the Commissioner of ACYF.

2. *Long Range Strategy*—In the Long Range Strategy, the State develops the

The goals and objectives of the Long Range Strategy, therefore, belong in two categories: (1) those goals and objectives which address the Assurances as State Plan Requirements and whose implementation are essential

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the children. An emergency caretaker provides care and supervision of a child in his or her own home at times when supervision is lacking because parent(s) are either temporarily absent or temporarily incapacitated. Day Care is the means for providing protection, care, and developmental experiences for children who parents need help in making child care arrangements for reasons other than employment, education or training and for children with special needs (e.g., disadvantaged, mentally retarded or emotionally disturbed children). Individual and family counseling provide help in the identification and resolution of problems related to personal functioning, social interaction, family stability and environmental factors. As described, the services are the core of agency support to families which allow reunification while reducing the risk of neglect, abuse, etc. and reinforcing the family's own strengths.

The Department considered requiring the provision of other services in addition to these services. The Department decided to make the provision of additional services optional (Sec. 1357.30(a)(5)(i)(B)) to give a State flexibility in tailoring its child welfare services program to the precise needs of its local constituencies under title IV–B. The States must have a program of essential services available for children in need. The Department does not intend to require that a program containing these core services be established in each political subdivision. The test of compliance with this provision is that the required services are available and readily accessible to each child and family in need of these services.

Under title IV–E, the law requires that by October 1, 1983, States make reasonable efforts to prevent the placement or eliminate the need for placement of the child and to make it possible for the child to return to his home (Sec. 471(a)(15) of the Act). This provision emphasizes the need for appropriate services to reach the child and family. This approach has been adopted under title IV–B. While requiring the establishment of a program of essential services, the Department is ultimately concerned that the relevant services reach the child and family in need. States can meet the requirement by ensuring that essential services are available and readily accessible to each child and family in need.

The proposed regulations require that written guidelines be prepared to assist the caseworker in providing the reunification and preplacement preventive services (Sec. 1357.30(a)(5)(i)(C) and (b)(3)(iii)). These guidelines are intended to assist the worker to make appropriate case assessments, to determine appropriate service, and to assure that decisions serve the best interests of the child and family.

The proposed regulation also requires States to have a program of services designed to facilitate adoption or legal guardianship (Sec. 1357.30 (a)(5)(ii)). The Adoption services provision is structured similarly to the reunification services program in that the State must implement and operate a program of required essential services comprised of legal services and adoption services (Sec. 1357.30(a)(5)(ii) (A) and (B)). In addition, the State program must contain other activities identified by the Agency as necessary and appropriate for permanent placement through adoption (Sec. 1357.30(a)(5)(ii)(c)). The State must also provide written guidelines to assist the caseworker in developing and implementing an appropriate plan for adoptive placement of the child (Sec. 1357.30(a)(5)(ii)(D)). The required services must be available to each child and family in need of these services.

In addition, Section 427(b) of the Act requires that if title IV–B funds are appropriated at the maximum of $266 million for two consecutive years, the title IV–B allocation for that State would be reduced to its share of $56.5 million, unless the State has implemented the required preplacement preventive services program in addition to the above described procedures and protections. The preplacement preventive services program (Sec. 1357.30(b)(3)) must contain the following essential services: twenty-four hour emergency caretaker and homemaker services; day care; crisis counseling; individual and family counseling; emergency shelters; procedures and arrangements for access to available emergency financial assistance; and arrangements for provision of temporary care to provide respite to the family for a brief period (Sec. 1357.30(b)(3)(i)). In addition, the State must provide other services which it identifies as necessary and appropriate (Sec. 1357.30(b)(3)(ii)).

The proposed regulation requires that there must be documentation in the case plan of efforts to prevent the need for removal from the home and a statement of why such efforts have failed (Sec. 1357.30(b)(4)). The required services must be available and accessible to all children and families in need.

Based on information available, the Department belives that the establishment of a program of preplacement preventive services is both cost-effective and essential to achieving the goals of the law. State agencies currently operate programs to prevent removal from the home similar to those required in the regulation. Between 1961 and 1977 the number of children in placement increased from 181,000 to 530,000 even though the total number of children decreased by one million over the same period. Permanency planning programs regularly find that about one-third of the children in long term foster care can, in fact, be returned to their own parent(s) usually after some services are provided to the family. These findings strongly suggest that earlier preplacement services to the families were not provided or were seriously deficient.

In a related effort, Davidson County Social Services, Nashville, Tennessee found that a system of Comprehensive Emergency Services operating 24 hours a day reduced the number of children placed in the various types of substitute care by almost 50% over a three year period. The Department has incorporated most of the elements of that system in this proposed regulation. There were also decreases in the number of repeat cases of child abuse and neglect, and in the reporting of delinquency among the older children. More recent prevention projects also report various degrees of success. All programs report that their efforts are cost-effective.

The proposed regulation also requires that written guidelines be prepared to assist the caseworker in providing the preplacement preventive services (Sec. 1357.30(b)(4)(iv)). These guidelines are intended to assist the worker to make appropriate case assessments, to determine appropriate servcies, and to assure that decisions serve the best interests of the child and family. In addition, the proposed regulation requires that each case plan contain documentation of efforts made to prevent the need for placement and a statement as to why such efforts failed to prevent the child's removal from the home. The Department believes it is important to emphasize that reunification and preplacement services be available and readily assessible to all children and familes in need. As proposed for reunification services, the Department has avoided imposing the more comprehensive and stringent requirement that these required services be established in every political subdivision because States must be permitted to exercise discretion in allocating essential services in a way that best matches demand with resources available. However, these required services must be readily accessible to the child and family in need.

For the first time, FFP in the costs of voluntary foster care placements (Sec. 1356.50(a)) is available when all provisions contained in Section 427 of the Act are in place and operative. Section 427 requirements include the Inventory, the Statewide information system, the case review system, reunification services program and preplacement preventive services program.

The specificity in this regulation for each of the required procedures and protections provides clarity and gives direction to the States in knowing what is expected of them and gives direction to the Department in reviewing and approving requests from those States that apply for funds above $141M under title IV–B, the transfer of funds from title IV–E to title IV–B or reimbursement for the costs of voluntary placements of children in foster care.

To claim its share of funds appropriated under title IV–B when available funds are greater than $141M or to transfer money from IV–E to IV–B, a state must request the additional funds or transfer of funds and must certify that it has implemented the procedures and protections under Sec. 1357.30(a) of the proposed regulation.

To claim FFP in payments made for children voluntarily placed in foster care, the state must certify that it meets the provisions of Sec. 1356.50 (Voluntary Placements).

A State's eligibility for funds under this Part will be determined by review of State policies, procedures and practices and a sample review of case records.

H. Development of State Child Welfare Services Plan

Title IV–B requires that a State Child Welfare Services Plan be developed jointly by the Secretary and the State agency. For the past several years the State plans in effect were those developed in 1969. Since 1969, States have been submitting amendments to their plans (the last in 1975), and an annual budget that has been the basis for awarding the grants. In order to make the State plan and the planning process more relevant to the legislation the proposed guidelines for State plan development were revised and published in the **Federal Register** on February 22, 1980 (45 FR 12049) have been revised and will be republished.

The joint planning format consists of the following sections:

1. *Assurances*—The Assurances consitute the State Agency's commitment to meet the basic requirements of the law and regulations. They are submitted only once, unless otherwise required by the Commissioner of ACYF.

2. *Long Range Strategy*—In the Long Range Strategy, the State develops the goals for establishing, strengthening, extending and otherwise improving its child welfare services program over a period of two or three years. The Strategy is jointly developed by the State agency and the Children's Bureau. It must be submitted by the State agency to the ACYF Regional Office every two or three years at the State's option.

The Long Range Strategy consists of two discrete sections, the needs analysis and the long range goals and objectives. These two processes are interdependent. The needs analysis includes identification of needs and setting proirities among needs. Meeting the more important of these needs is a fundamental consideration in establishing the State's long range goals. The objectives are specific, measurable, short range activities necessary to achieve the goals.

3. *Annual Operating Plan*—The Annual Operating Plan is the yearly update of the State Child Welfare Services Plan. It will report the current status of the long range goals and objectives, indicate changed and new initiatives, and present an Annual Summary of Child Welfare Services.

4. *Annual Budget Request*—The Annual Budget Request is prepared by the State agency and submitted with the Annual Operating Plan. IV–B funds are disbursed quarterly based on this annual submission.

The guidelines and this regulation require that any Assurances which the State is not meeting must be included as goals and/or objectives in the Long Range Strategy section of the Child Welfare Services Plan. There are other Assurances which require the State to include certain information in its State plan, such as the description of services to be provided, geographic areas of availability, staff development and training plans and steps to be taken to improve and expand services.

The intent of the joint planning process, however, is for the States and Federal Government to work together to analyze the needs of children, youth and families, to plan and ultimately to accomplish initiatives and activities which respond to these needs and which may transcend the minimal requirements of law, regulation and good practice. The Long Range Strategy is that part of the plan in which these initiatives and activities are developed and set forth in measurable goals and objectives.

The goals and objectives of the Long Range Strategy, therefore, belong in two categories: (1) those goals and objectives which address the Assurances as State Plan Requirements and whose implementation are essential to the continued compliance by the State with the law and regulations; and (2) goals and objectives designed to further expand, extend and strengthen the child welfare services program in the State but whose implementation, while a concern of the Children's Bureau, will not be monitored with a view to compliance.

The proposed regulation includes a provision that expressly applies 45 CFR Part 74 termination procedures in a case of State noncompliance with the State plan requirements. It is anticipated that the Department will not invoke this authority unless the issue cannot be resolved through the joint planning process.

I. Payments to Indian Tribal Organizations

Pub. L. 96–272 gives the Secretary discretion to decide whether a program of direct grants to Indian tribal organizations should be established, which Indian tribal organizations should be funded directly, and under what circumstances direct payments should be made.

The Department believes that direct funding of Indian tribes will strengthen the tribal child welfare services programs consistent with the goals and requirements of Pub. L. 96–272. In the legislative history to Pub. L. 96–272 (Congressional Record, June 13, 1980. S. 6944), Senator Cranston indicated that direct funding was included in the legislation because jurisdictional and other problems sometimes caused Indian communities to be left out of social service programs funded through State agencies. The proposed rule will permit tribes meeting the eligibility requirements to apply directly to the Federal government for their share of the IV–B funds (totalling approximately $1.08 million for all tribes). Tribes not applying for direct grants may continue to apply to the State for their share of IV–B funds. The Department believes that eligible Indian tribes should receive their proportionate share of the IV–B allocation, that the principle is important and is affirmed by the Indian Self-Determination Act (Pub. L. 93–638) and other Federal programs. The Department recognizes that many tribes may choose not to apply for direct funding for various reasons. For example, the tribe may consider the money available too small to warrant application; the tribe may have

established a productive IV–B program relationship with the State; or the tribe may determine that fewer services are available under direct grants than under a State's regular IV–B program. The Department is also aware that direct other programs such as title II of the Indian Child Welfare Act (Pub. L. 95–608) and the Native American Programs Act of 1974 (Pub. L. 93–644 as amended).

In determining the amount of direct funding that would be available to an

The plan which can be in effect for two or three years must contain the following elements: assurances that the specific requirements of the regulations are met; a long range strategy which calls for a needs analysis and goals and

FY 82 and $266 million in FY 83 and FY 84.

L. Maintenance of Effort

During each phase of its deliberations on HR 3434, Congress expressed

Dated: December 22, 1980.

Cesar A. Perales,

Assistant Secretary for Human Development Services.

Approved: December 23, 1980.

Patricia Roberts Harris,

(2) To strengthen and improve the program of Federal support for foster care of needy and dependent children;

(3) To establish a program of Federal support to encourage adoptions of children with "special needs".

(4) To preserve, strengthen and

established a productive IV–B program relationship with the State; or the tribe may determine that fewer services are available under direct grants than under a State's regular IV–B program. The Department is also aware that direct funding may cause preliminary adjustments in the working relationships between States and tribes. (However, States will not be relieved of their responsibility under other Federal programs and under the Constitution to serve Indians in a non-discriminatory manner.) The decision to permit funding of eligible Indian tribes was reached after weighing these and other factors, and ultimately determining that Indian tribes should have the right to apply for their own IV–B funds.

In determining which Indian tribal organization will be eligible for direct funding, the Department decided to make the option of applying for direct funding available to those Indian tribal organizations which have contracted under Pub. L. 93–638 (Indian Self-Determination Act) for child welfare services provided under 25 U.S.C. 13 (25 CFR 20). This proposed regulation addresses the concern expressed about the lack of services to Indians by permitting direct funding to Indian tribal organizations that have established the need for child welfare services and have taken advantage of the opportunity for direct management and operation of child welfare services. Under this approach, direct grants will be added to existing, ongoing Indian child welfare programs operated by the tribes. The IV–B funds will be linked to the major Indian Federal social services program, will support Indian self-determination, and will complement the provisions of the Indian Child Welfare Act of 1978 (Pub. L. 95–608). This is important since IV–B funds alone are insufficient for an Indian tribe to establish and operate a basic child welfare services program. Aggregating funds from different Federal sources to intensify their impact is consistent with the thrust of the IV–B law which promotes progressive, comprehensive, quality child welfare services to children and families.

The Department considered other options for determining tribal eligibility to receive direct grants. One option, relating eligibility to a minimum number of children in each tribe, was rejected as arbitrary and lacking in programmatic justification. A second option established eligibility criteria based on management capability and adherence to specific IV–B requirements. This option was rejected as duplicative of the developmental and capacity-building resources currently available through other programs such as title II of the Indian Child Welfare Act (Pub. L. 95–608) and the Native American Programs Act of 1974 (Pub. L. 93–644 as amended).

In determining the amount of direct funding that would be available to an Indian tribal organization eligible under this provision, in the interests of equity, the Secretary, will apply a formula similar to the one used to calculate State title IV–B allotments. This formula takes into consideration the Indian tribe's resident population under 21 and its per capita income.

Because current per capita income figures for Indian tribes are not available and most Indian tribes have very low per capita income similar to the Territories, a maximum allotment percentage of 70.0 per centum, the same per centum used for the territorial IV–B allotments, has been used.

For the balance of a State's population, excluding tribal population, the per capita income is estimated to be slightly higher than the State's average per capita income for the entire population. This results in an allotment percentage of 46.7 per centum for the balance of the State excluding the Indian tribes.

Using these allotment percentages to calculate an Indian tribal organization's allotment results in an amount which bears approximately the same ratio to the total State's IV–B allotment as the product of 1.5 and the proportion of the Indian tribe's resident population under 21 bears to the State's total population under 21.

This provision does not affect funding under titles IV–A, IV–E and XX of the Social Security Act. Other funding allocation options were considered and rejected as unsupportable by the intent of the law.

The Department has proposed to begin direct funding in the first quarter of Fiscal Year 1982. Implementation of this provision must follow publication of this proposed rule in final form. The 1982 FY date will give eligible tribes, who choose to apply, the necessary lead time to develop child welfare plans.

Each eligible Indian tribal organization or consortium applying for direct IV–B grants will be required to submit a child welfare services plan that has been developed jointly by Federal and Indian tribal organization representatives. Although the requirements in the jointly developed plan for Indian tribal organizations will differ slightly from the requirements in the State plan, the tribal organization's plan will foster the improvements in services envisioned in, and consistent with, the requirements in the law.

The plan which can be in effect for two or three years must contain the following elements: assurances that the specific requirements of the regulations are met; a long range strategy which calls for a needs analysis and goals and objectives designed to meet unmet needs; an annual operating plan; and, an annual budget request.

If eligible Indian tribal organizations applying for direct funds wish to receive their share of additional IV–B funds above $141 million, they must meet the requirements under Section 427 of the Act (Sec. 1357.30) which relate to children who have been in foster care under the responsibility of the tribe. The requirements under IV–B and additionally those related to eligibility for funds above $141 million are discussed more fully under the IV–B section of this Supplemental Information.

J. Fiscal Requirements

This section of the regulation (Sec. 1357.50) sets forth the procedures for determining each State's allotment percentage and the process for reallotment. It details the change in FFP rate from the existing individual State rate (33⅓% to 66⅔%) to 75% for each State. The section on allowable costs gives numerous examples of how title IV–B funds may be spent, but the list is not inclusive. The regulation also lists the limitation on expenditures: FFP in expenditures for foster care maintenance, day care because of employment of the parent or adoption assistance may not exceed the FY 1979 State allotment. The funds expended to meet the requirements of Section 427 (a) and (b) of the Act may definitely be charged to title IV–B. Some of them, such as case reviews for children on behalf of whom foster care payments are made under title IV–E, may be charged as IV–E administrative expenditures.

K. Provision for Advance Funding

Beginning in FY 1981, Congress is to approve the title IV–B appropriation one fiscal year in advance of the issuance of allocations to the States. Knowledge of the IV–B appropriation level a year in advance will provide States budget development lead time and will facilitate child welfare services planning. This is an important provision because it is one of the two conditions necessary for the IV–E and IV–A foster care maintenance ceiling to go into effect. The other condition necessary to trigger this ceiling is that the IV–B appropriation equal or exceed the levels specified in Pub. L. 96–272; namely: $163.55 million in FY 81; $220 million in FY 82 and $266 million in FY 83 and FY 84.

L. Maintenance of Effort

During each phase of its deliberations on HR 3434, Congress expressed concern that if the goals of the law are to be realized, funds must be available to pay for the increased responsibilities placed on the State social service systems by the new law. In addition to taking steps to protect current State investments in services to children, youth, and families, Congress clearly indicated that any increases in IV–B appropriations would go for service systems' improvements by prohibiting the fund's use for foster care maintenance payments, employment or training related day care, and adoption assistance payments. The bill passed by the House included Federal title XX expenditures in the maintenance of effort. Not wanting to limit how States spend their title XX funds, the Senate-House Conference Committee removed expenditures under title XX from the requirement. The House Ways and Means Committee Report No. 96–136 expressed the legislative intent of the maintenance of effort provision by stating that the maintenance of effort provision was to prevent the substitution of new Federal funds for existing State expenditures.

The proposed regulation effectively excludes all donated funds and any Federal title XX expenditures from the maintenance of effort provision. States obviously cannot control the receipt of donated funds and should not be accountable for their continuation. States will be expected to determine their FY 1979 expenditure level, certify their level and have supporting information available for review.

As a condition for claiming their share of the increased title IV–B appropriation above $56.5 million, the proposed rule will require States to maintain expenditures of State and local appropriated funds for public child welfare services in fiscal year 1981 and years thereafter that are no lower than the total of those expenditures in fiscal year 1979. The maintenance of effort provision does not include expenditures for foster care maintenance payments, adoption assistance payments, and employment or work related day care. These exclusions comprised most of the child welfare service State expenditure in fiscal year 1979.

(Catalog of Federal Domestic Assistance Program No. 13.645 Child Welfare Services—State Grants)

Dated: December 22, 1980.

Cesar A. Perales,

Assistant Secretary for Human Development Services.

Approved: December 23, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

A. In 45 CFR, Chapter XIII, Subchapter F, Administration for Children, Youth and Families, Child Welfare Services; Foster Care Maintenance Assistance and Adoption Assistance, new Parts 1355, 1356 and 1357 are established to contain the rules for child welfare services, foster care maintenance assistance and adoption assistance programs as follows:

PART 1355—GENERAL

1355.10 Program scope.
1355.20 Definitions of terms.

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV-E

1356.10 Program scope.
1356.20 State plan requirements—general.
1356.30 Organization and administration.
1356.40 Foster Care Maintenance Program.
1356.50 Voluntary placements.
1356.60 Adoption Assistance Program.
1356.70 Plan format and approval.
1356.75 Withholding of funds for non-compliance with an approved Title IV-E State Plan.
1356.80 Fiscal requirements (IV–E).

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV-B

357.10 Program scope and definitions.
357.20 State Child Welfare Services Plan requirements under Title IV–B.
357.30 Requirements for State eligibility for additional payments.
357.40 Development of the State's Child Welfare Services Plan.
357.45 Requirements for direct payments to Indian Tribal Organizations.
357.50 Fiscal requirements (IV–B).

Authority: Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96–272, 42 U.S.C. 670 et seq., 94 Stat. 501, 42 U.S.C. 620, 94 Stat. 516 et seq., Section 1102 of the Social Security Act, as amended, 42 U.S.C. 1302.

PART 1355—GENERAL

§ 1355.10 Scope.

(a) *Scope.* Parts 1355, 1356 and 1357 apply to State programs under titles IV–E and IV–B of the Social Security Act, as amended.

(b) *Purpose.* Parts 1355, 1356 and 1357 set forth the requirements which must be met to receive Federal financial participation under titles IV–E and IV–B of the Social Security Act, as amended.

(c) *Background.* The purpose of these programs and regulations are—

(1) To make needed improvements in child welfare and social services programs;

(2) To strengthen and improve the program of Federal support for foster care of needy and dependent children;

(3) To establish a program of Federal support to encourage adoptions of children with "special needs";

(4) To preserve, strengthen and rehabilitate family life in order to prevent disruption and unnecessary or precipitous removal of children from their homes;

(5) To provide preventive services through early identification of problems and provision of supportive and supplemental services to families and individual children;

(6) To protect and promote the welfare of handicapped children and all other vulnerable children;

(7) To prevent or remedy neglect, abuse, exploitation, or delinquency of children and youth;

(8) To provide children temporarily removed from their families with foster care that meets their particular needs, and to ensure the earliest possible return of children to their families;

(9) To seek an adoptive homes for eligible children including those with special needs in foster care who cannot be returned to their own homes;

(10) To provide for other permanent arrangements through legal guardianship, independent living, or planned, long-term foster care in those exceptional cases where it is appropriate;

(11) To protect the welfare of children, while respecting parental rights and responsibility for custody and guardianship, and avoiding unnecessary disruption of family relationships; and

(12) To promote effective and efficient management and delivery of services to children, youth and families.

§ 1355.20 Definition of terms.

Unless otherwise specified, the following terms as they appear in Parts 1355, 1356, and 1357 of this title are defined as follows—

(a) *The Act* means the Social Security Act, as amended.

(b) *ACYE* means the Administration for Children, Youth and Families, Office of Human Development Services, United States Department of Health and Human Services.

(c) *ASHDS* means the Assistant Secretary for Human Development Services, United States Department of Health and Human Services.

(d) *Child care institution* means a licensed or approved public residential child care facility that accommodates no more than 25 children, or a private, nonprofit residential child care facility that is licensed or approved, by the agency of the State responsible for

licensing or approval of institutions of this type, (or with respect to child care institutions on Indian reservations, by an Indian Tribal Council as defined in Section 1396.1 of this title), as meeting the standards established for licensing

(p) *State* means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands.

and 1356.50 are met as they apply in each case;

(2) Review and evaluation of other Federal requirements under this Part no less frequently than once every three years and a description of the methods

care maintenance and adoption assistance, or child welfare services. The provisions of Section 1391.3 of this title, Safeguarding Information for Social Services Programs, shall be applicable to programs and activities funded under

The State agency shall comply with any provisions established by the Secretary needed to ensure the correctness and verification of these reports.

(j) *Audits.* The State plan shall provide for audits of the programs

(4) The child received assistance under the State plan approved under title IV–A (AFDC) of the Act in or for the month in which the voluntary agreement was entered into or judicial proceedings leading to the removal of

licensing or approval of institutions of this type, (or with respect to child care institutions on Indian reservations, by an Indian Tribal Council as defined in Section 1396.1 of this title), as meeting the standards established for licensing. Group homes are included in the term if they are licensed or approved as meeting licensing standards by the State as a child care facility. The term shall not include correctional facilities, forestry camps, training schools or any other facility operated primarily for the detention, care, or treatment of children who have been found or are alleged to be juvenile delinquents.

(e) *Commissioner* means the Commissioner, Administration for Children, Youth and Families (ACYF), Office of Human Development Services, United States Department of Health and Human Services.

(f) *DHHS* means the United States Department of Health and Human Services.

(g) *Family* means persons related by blood, adoption or marriage, including siblings, cousins, aunts, uncles, grandparents and relatives in-law.

(h) *Foster care* means 24-hour, out-of-home care provided in a licensed or approved foster family home, group home, or child care institution.

(i) *Foster family home* means the home of an individual or family licensed or approved by the State licensing authority(ies) (or with respect to foster family homes on Indian reservations, by an Indian Tribal Council as defined in Section 1396.1 of this titles), that provides 24-hour out-of-home care for children. The term may include group homes if they are licensed or approved by the State as foster homes.

(j) *Initiation of court proceedings* means the point at which a petition or other legal document seeking removal of a child from his or her home is filed with a court of competent jurisdiction.

(k) *OHDS* means the Office of Human Development Services, United States Department of Health and Human Services.

(l) *Parents* means biological or adoptive parents or legal guardians, as determined by applicable State law.

(m) *Regional Administrator (RA)* means the Regional Administrator of Human Development Services, United States Department of Health and Human Services.

(n) *Regional Programs Director (RPD)* means the Regional Program Director, Administration for Children, Youth and Families.

(o) *State agency* means the State agency administering or supervising the administration of the title IV–B and IV–E State plans.

(p) *State* means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands.

(q) Secretary means the Secretary of Health and Human Services, United States Department of Health and Human Services.

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

§ 1356.10 Program scope.

These regulations apply to State programs for foster care maintenance payments, adoption assistance payments and related administrative expenditures under title IV–E of the Act.

§ 1356.20 State plan requirements—general.

A State plan for foster care and adoption assistance must provide that the requirements of the following sections are met:

- Section 1356.30
- Section 1356.40
- Section 1356.50
- Section 1356.60
- Section 1356.70
- Section 1356.80

§ 1356.30 Organization and administration.

(a) *Designation of a State Agency.* The State plan shall provide for designation of a State agency by the Chief Executive Officer of the State or as otherwise provided by State law that will have authority to administer or supervise the administration of the State's program for foster care maintenance payments and adoption assistance.

(1) The State agency designated to administer or supervise the administration of the foster care and adoption assistance program under title IV–E shall be the same agency that administers or supervises the administration of the State's title IV–B program.

(b) *Plan in Effect Statewide.* The State plan shall be in effect in all political subdivisions of the State and, if administered by the political subdivisions, shall be mandatory upon them.

(c) *Monitoring and Evaluation.* The State plan shall provide for monitoring and periodic evaluation of the programs and activities conducted under title IV–E which shall include—

(1) Annual review of valid statistically selected samples of case records of individual services recipients to ensure that the requirements of Section 1356.40 and 1356.50 are met as they apply in each case;

(2) Review and evaluation of other Federal requirements under this Part no less frequently than once every three years and a description of the methods to be used and the schedule to be followed;

(3) The reviews and evaluations shall be documented and supporting documentation shall be available for inspection and duplication by ACYF, DHHS, other Federal staff or the appropriate committees and staff of Congress.

(d) *Coordination of Services.* (1) The State plan shall assure coordination of services between titles IV–A, IV–B, IV–D, IV–E, XIX and XX and any other appropriate Federal or State program to ensure maximum availability and utilization of resources that promote and enhance the welfare of children, youth, and families served under titles IV–B and IV–E.

(2) The State plan shall provide for procedures that will ensure coordination of services including—

(i) An assessment of the relevance and appropriateness of other programs and services to the needs of children and their families;

(ii) Provision of information to local agencies on the relevance and availability of related programs and services;

(iii) Establishment of policies and procedures to facilitate referrals at the local level;

(iv) Periodic assessment of the effectiveness of the State agency's arrangements for coordination of program services and activities;

(e) *Reporting Child Abuse and Neglect.* The State plan shall provide that the State agency has procedures to ensure that employees and other public and private service providers of any State agency who have reason to believe that the health or well-being of a child is harmed or threatened with harm shall bring the condition to the attention of the appropriate court or law enforcement agency, as well as to the State agency mandated to receive reports. The procedures shall apply to all children whose care is funded in whole or in part under title IV–E or IV–B of the Act whose home or institution is unsuitable due to suspected neglect, abuse or exploitation as defined in Section 1340 of this title, Child Abuse and Neglect.

(f) *Safeguarding Information.* The State plan shall provide for the establishment and maintenance of methods to safeguard the use and disclosure of information with respect to persons applying for or receiving foster

care maintenance and adoption assistance, or child welfare services. The provisions of Section 1391.3 of this title, Safeguarding Information for Social Services Programs, shall be applicable to programs and activities funded under title IV–E. For the purposes of this paragraph, Section 1391.3, of this title, shall also apply to disclosure of information for purposes directly related to the administration of State plans approved under title V of the Act.

(1) Nothing contained in these regulations or the methods, provisions, or rules developed by the State shall be used to restrict the Federal government's access to statistical data which in the judgment of the Secretary, his/her designee, or the appropriate Committees of Congress, are necessary to the proper and efficient administration and supervision of these programs.

(2) A State may establish standards which restrict disclosure of information other than statistical data to purposes more limited than those specified in these regulations, or which, in the case of adoption, may prevent disclosure entirely.

(g) *Appeals, Fair Hearings and Grievances.* (1) The State plan shall provide for a system for fair hearings, appeals and grievances and the methods of informing applicants and recipients of their rights under the system.

(2) The State's system for fair hearings and appeals shall provide a process under which applicants and recipients, or someone acting on their behalf, may appeal denial, reduction, or termination of service(s) or benefit(s) or the failure of the State agency to act on a request for services or benefits with reasonable promptness. For purpose of this paragraph, the provisions of Section 205.10 of this title, Hearings, shall apply.

(3) There shall also be a system through which recipients of service(s) or benefit(s) may present grievances to the State agency about the operation of a service or benefit program.

(h) *Program Manuals and Policy Issuances.* The State plan shall provide that program manuals and other policy issuances that affect the public, including regulations governing client rights and responsibilities, are maintained in the State office and each local office for review, study or reproduction by individuals, upon request, on regular workdays during regular work hours.

(i) *Reports and Evaluations.* The State shall submit statistical reports and participate in such evaluations as the Secretary may require with respect to children for whom payments are made. The reports shall be in a form specified by the Secretary, or his/her designee. The State agency shall comply with any provisions established by the Secretary needed to ensure the correctness and verification of these reports.

(j) *Audits.* The State plan shall provide for audits of the programs assisted under title IV–E no less frequently than once every three years and conducted in accordance with standards and procedures as the Secretary may require.

(k) *Personnel Standards.* The State plan shall provide for use of methods relating to the establishment and maintenance of a personnel system on a merit basis in accordance with Federal standards and procedures as the Secretary may require.

(l) *General Requirements.* The following DHHS regulations are applicable to programs funded under title IV–E—

45 CFR Part 16—DHHS Grant Appeals Process.
45 CFR Part 74—Administration of Grants.
45 CFR Part 80—Civil Rights.
45 CFR Part 81—Practice and Procedures for Hearings Under Part 80.
45 CFR Part 84—Non-discrimination on the Basis of Handicap.
45 CFR Part 91—Non-discrimination on the Basis of Age in DHHS Programs and Activities Receiving Federal Financial Assistance (when issued).
45 CFR 1396.53—Restriction on State's share in claiming FFP.

§ 1356.40 Foster Care Maintenance Program.

(a) *Application of Eligibility Criteria.* The plan shall provide for foster care maintenance payments on behalf of a child who would meet the definition of Section 406(a) or 407 of the Act but for his or her removal from the home of a relative specified in Section 406(a) of the Act, if:

(1) The removal was the result of a judicial determination that the child's continued residence in the home would be contrary to his or her welfare; or

(2) The child's removal from the home was the result of a voluntary placement agreement entered into (after September 30, 1980 and before October 1, 1983) by the child's parent(s); and

(3) The child's placement and care are the responsibility of the State agency administering or supervising the administration of the State plan; or any other public agency with which the State agency administering or supervising the administration of the State plan approved as meeting the requirements of Section 1356.20 has made an agreement which is still in effect; and

(4) The child received assistance under the State plan approved under title IV–A (AFDC) of the Act in or for the month in which the voluntary agreement was entered into or judicial proceedings leading to the removal of the child from the home were initiated; or the child would have received assistance under AFDC in or for that month if an application had been made; or the child had been living with a relative specified in Section 406(a) of the Act within six months prior to the month the judicial proceedings were initiated or voluntary agreement entered into and would have received AFDC in or for that month if in that month he or she had been living with such relative and an application for AFDC had been made; and

(5) The child has been placed in a licensed or approved foster family home or a child care institution as a result of a voluntary placement agreement or judicial determination referred to in paragraphs (1) and (2) of this Section.

(6) Effective October 1, 1983, reasonable efforts have been made to prevent removal from the home and to make return possible.

(b) *Foster Care Maintenance Payments.* (1) The State plan must provide—

(i) a Statewide standard for foster care rates, expressed in money amounts, to be used in determining the amount of the foster care payment, and to be applied uniformly throughout the State; and

(ii) the method used in determining the amount of the foster care payment; and

(iii) for taking into consideration the income available to the child in determining the amount of the foster care maintenance payment.

(2) Foster care maintenance payments shall be made only on behalf of an eligible child who is placed in a foster family home or a child care institution, whether the payments are made directly to the foster parent(s) or the child care institution or to a public or non-profit private child placement or child care agency.

(3) Federal financial participation is available for allowable costs in foster care maintenance payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of child care institutions, payments shall also include the reasonable cost of administration and operation that are necessarily required to provide the items described in this paragraph.

(4) For purposes of determining eligibility (initial) and continuing) and the income and resources of the child, the State's procedures under the State's approved title IV–A plan shall apply.

(c) *Eligibility for Other Services.* For

(2) *Case Plan.*—(i) The State agency shall develop written policies and appropriate procedures to be in effect throughout the State which will assure that children will be placed in the least restrictive setting available and in close

other appropriate family members in order to improve the conditions in the parent(s)' home;

(H) An estimated date by which a decision will be made to return the child to his or her parent(s) or family, or to

experience, professional background or training.

(ii) Members of the administrative review panel shall receive instructions which will enable them to understand the review process and their roles as

(ii) Procedural safeguards shall include—

(A) Prior written notice to the parent(s) or relative(s) with whom the child is living of the agency's intent to petition the court to remove a child from

the number of children receiving assistance under title IV–E who will be in foster care more than 24 months.

(i) goals shall be set for each fiscal year, beginning with the fiscal year that starts on October 1, 1983;

(4) For purposes of determining eligibility (initial and continuing) and the income and resources of the child, the State's procedures under the State's approved title IV–A plan shall apply.

(c) *Eligibility for Other Services.* For purposes of eligibility for services under title XIX and title XX, a child eligible for foster care maintenance payments under title IV–E shall be considered to be a dependent child as defined in Section 406 of the Act and shall be considered to be a recipient of AFDC under title IV–A of the Act.

(d) *Case Review System.* The State agency shall develop and implement a case review system that shall ensure, for each child receiving foster care maintenance payments under the State title IV–E plan, a case plan, periodic review of the child's status, and procedural safeguards regarding the rights of the child and the parent(s).

(1) *Definition of Terms.* (i) *Appropriate Notice to the Child* means written notice or person-to-person discussion that takes into account the child's ability to understand what is being conveyed without raising excessive anxiety or fear.

(ii) *Child of Appropriate Age* means that the child is able to understand the circumstances and implications of the situation in which he or she is involved and is able to participate in the decision or process without excessive anxiety or fear.

(iii) *Close Proximity to Parent(s) Home* means a placement nearest the home community or residence of the child's parent(s) or legal guardian(s) that is consistent with the child's best interest and special needs. Factors to be considered include ease with which the child, his or her parent(s) and family may visit each other and the availability of services the child may require.

(iv) *Determining the Continuing Necessity and Appropriateness of Placement* means an assessment of the conditions in the child's own home to determine whether the child should return home. If the review of the home indicates that continued foster care is required, the assessment shall also include a determination of whether the placement and the services provided are appropriate to the child's needs and whether the service goals in the case plan are still appropriate.

(v) *Placement in the Least Restrictive Setting* means the most family-like setting that can provide the environment and services needed to serve the child's best interests and special needs. In order of consideration, this means placement with relative(s), tribal member(s), foster family care, group home care and institutional care.

(2) *Case Plan.*—(i) The State agency shall develop written policies and appropriate procedures to be in effect throughout the State which will assure that children will be placed in the least restrictive setting available and in close proximity to the parent(s)' or family home, consistent with the best interests and special needs of the child. The State agency shall develop a Statewide procedure for approving out-of-State placements or placements beyond a specified distance from the child's home.

(ii) The case plan shall be a separate, identifiable written document which includes for each child a relevant history and diagnostic assessment, sets goals, and describes significant transactions involving the child, including, after October 1, 1983, the services which were offered or provided to prevent removal from the home prior to placement.

(iii) The case plan shall be developed within a 30 day period, starting at the time the agency assumes responsibility for providing services or placing the child, and shall include at a minimum—

(A) After October 1, 1983 a description of the services offered or provided which were intended to help the child remain with his family;

(B) A description of the type of home or institution in which the child is to be placed;

(C) A justification of appropriateness of placement that discusses the child's best interests and any special needs, and whether the placement is in the least restrictive setting available and in the closest proximity to the parent(s)' home; and

(D) A statement of all requirements of the court at the time of judicial determination or recommendations of the administrative review panel and a discussion of how the agency responsible for the child's care will meet the requirements and recommendations.

(E) An analysis of the circumstances that necessitated the placement and the improvements required for the child's return to his or her home.

(F) A statement of the goals, developed in consultation with the child and his family, to be achieved during the period of placement, a description of the services to be provided to the child, the child's parent(s), and family, and a discussion of the appropriateness of these services in meeting the goals and the child's special needs, if any;

(G) A statement of the agency's plan for assuring that the child receives proper care while in the foster home or institution including services to the foster parent(s) to facilitate and support the child's adjustment, and that services are provided to the parent(s), child and other appropriate family members in order to improve the conditions in the parent(s)' home;

(H) An estimated date by which a decision will be made to return the child to his or her parent(s) or family, or to seek an alternative permanent placement including adoption;

(I) A description of the extent to which the child, if of appropriate age, the parent(s) or other relatives participated in the development of the case plan.

(J) Where long term foster care is determined to be the plan for the child's future, the responsible agency shall include a statement in the case plan of the special needs or circumstances that would not allow the child to be returned home or placed for adoption, and shall specify the efforts that were made to place the child with parent(s) or other family or in adoption.

(K) All parties to the development of the case plan, including the child of appropriate age, his or her parent(s) or other relative(s), shall receive a copy of the plan, which will include, whenever possible, signature(s) indicating that they have read and understood the plan.

(L) The case record shall contain a continuing, updated notation of the results of each court and administrative action or review affecting the child, and significant agency actions, services, or encounters relative to the case plan.

(3) *Periodic Review.*—The case review system shall provide for a review of the status of each child no less frequently than once every six months by a court, or by an administrative review. The periodic review shall include—

(i) A determination of the continuing necessity for and appropriateness of the child's placement;

(ii) A discussion of the extent to which all parties have complied with the case plan and achieved the goals described in the plan;

(iii) A summary of progress toward alleviating or mitigating the circumstances necessitating placement; and

(iv) A target date by which the child may be returned home or placed for adoption, legal guardianship or other permanent placement.

(4) *Administrative Review.*—(i) When the periodic review is an administrative review it shall be conducted by a panel of appropriate persons, at least one of whom is not a part of the direct line of supervision in the delivery of services to the child or parent(s) being reviewed. The review panel may include agency staff, staff of other agencies, officers of the court and citizens qualified by experience, professional background or training.

(ii) Members of the administrative review panel shall receive instructions which will enable them to understand the review process and their roles as participants.

(iii) The administrative review shall be open to the participation of the parent(s) and the child, if of appropriate age, and may include the foster parents. The agency shall develop methods and procedures for assuring that written notice will be sent to the child's parent(s) two weeks prior to the review, notifying them of the date and location of the review, and the rights of parent(s) and the child to be accompanied by a representative of their choice.

(iv) Following the review, a written statement of the conclusions and recommendations shall be made available to all participants in the review, subject to agency safeguards relative to the confidentiality of information.

(5) *Dispositional Hearings.*—(i) The case review system shall require a dispositional hearing for each child no later than 18 months after placement; and shall have additional dispositional hearing(s) annually thereafter, unless otherwise determined by a court of competent jurisdiction.

(ii) The dispositional hearing shall be held by a family, juvenile or other court of competent jurisdiction, including a tribal court, or by an administrative body appointed or approved by the court.

(iii) The hearing shall determine the child's future status, including whether—

(A) The child should be returned to his or her parent(s) or other family member(s);

(B) The child should be continued in foster care for a specified period;

(C) The child should be placed for adoption or legal guardianship; or

(D) The child, because of exceptional circumstances, should remain in foster care on a long term basis as a permanent plan or with a goal of independent living.

(6) *Procedural Safeguards for the Rights of Parents and Child.*—(i) Procedural safeguards shall be applied with respect to the rights of parent(s), family and child pertaining to—

(A) Removal of the child from the home of his or her parent(s) or other family members;

(B) Any change in the child's foster care placement; and

(C) Any determination affecting the visitation arrangements of the parent(s) or other family member(s).

(ii) Procedural safeguards shall include—

(A) Prior written notice to the parent(s) or relative(s) with whom the child is living of the agency's intent to petition the court to remove a child from the home of his or her parent(s) or other family members. Notice shall be provided two weeks in advance of the intended action and shall specify the nature of the hearing; how counsel may be obtained; the right to written findings from the hearings and how they may be obtained; and the right to appeal. The State shall have a method of verifying that the parent(s) or family received the notice. This prior notice requirement will apply to all court proceedings with regard to neglect, dependency or termination of parental rights unless the child's health or well-being would be endangered if prior notice were given.

(B) A method of ensuring that notice of the intent to petition the court to remove the child from the home or to terminate parental rights is given in the language of the family and is given orally if there are indications that the parent does not read.

(C) Written notice of any intended change in placement or visitation agreement. The notice shall be sent to the parent(s) or family two weeks in advance of the change, with a statement advising them of their right to object, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given;

(D) Procedures which shall ensure review of the parent(s) objection(s) and provide for a discussion of the proposed change with the parent(s); and

(E) Appropriate notice to the child of the intended change in placement or visitation arrangement, given two weeks in advance of the change, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given.

(e) *Efforts to Prevent Removal from the Home and to Reunify Families.*—By October 1, 1983 the State agency shall develop and implement policies and procedures to ensure that in each case reasonable efforts shall be made to provide the services described in Section 1357.30(b)(4) to prevent or eliminate the need for removal of a child from his or her own home and to provide the services described in Section 1357.30(a)(5) to make it possible for each child in foster care to return to his or her own home.

(f) *Establishment of Specific Foster Care Goals.*—(1) On or before October 1, 1982, the State shall enact a statute that provides specific goals for reducing the number of children receiving assistance under title IV–E who will be in foster care more than 24 months.

(i) goals shall be set for each fiscal year, beginning with the fiscal year that starts on October 1, 1983;

(ii) the goals shall be stated in absolute number of children in foster care or as a percentage of all children for whom assistance is provided during the year, and shall apply to children who at any time during the year will have been in foster care for a period in excess of 24 months.

(2) The State Plan shall contain a description of the steps the State will take to achieve its foster care goals.

(g) *Placements Outside the State.*—If a child is in foster care outside the State, the State agency shall retain responsibility for foster care payments, and for services under titles XIX and XX of the Act, and for ensuring that protections under the case plan, case review and reunification procedures are provided, until—

(1) The State agency has been relieved of its responsibility by court action; or

(2) A voluntary agreement has expired or has been revoked; or

(3) The date that the receiving state indicates that it will begin payments and services.

(h) *Standards for Foster Care Homes and Child Care Institutions.*—(1) The State shall establish and maintain Statewide standards for foster family homes and child care institutions receiving funds under titles IV–E and IV–B. These standards shall be reasonably in accord with recommended standards of national standard-setting organizations.

(2) The State shall identify the particular national standards, or a combination of national standards, with which its standards are reasonably in accord.

(i) The standards for foster family homes established by the following national organizations shall be used in the development of State standards–

(A) American Public Welfare Association; or

(B) Child Welfare League of America.

(ii) The standards for child care institutions established by the following national organizations shall be used in the development of State standards—

(A) Child Welfare League of America;

(B) National Association of Homes for Children;

(C) Council on Accreditation Services for Families and Children, Inc.;

(D) Interstate Consortium on Residential Care for Children; or

(E) Joint Commission on Accreditation of Hospitals.

(3) The State standards shall be incorporated into State licensing or approval requirements for foster family homes private child care institutions, and for manuals for State-administered

care and the criteria for setting rates for foster care maintenance payments.

(k) *Public Participation in Review of State Standards and Payment.*—The method of review of the State's

costs in expenditures for foster care maintenance payments for children who were voluntarily removed from the home of a relative prior to October 1, 1978 if—

(1) There was a judicial determination

(2) Who received aid under the State plan approved under Section 402 of the Act in or for the month in which court proceedings leading to the removal of that child from the home were initiated; or would have received the aid in or for

(ii) The additional assistance or services to be provided by the State, and how the costs for these items are to be met;

(iii) The duration of the agreement;

(iv) The process for recertification and

or changes in the adoption assistance payment rate.

(d) *Termination of Adoption Assistance Payments.*—(1) No payments shall be made to adoptive parents—

(i) For any child who reaches the age

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(3) The State standards shall be incorporated into State licensing or approval requirements for foster family homes private child care institutions, and for manuals for State-administered child care institutions as appropriate.

(4) Licensing requirements established for foster family homes shall cover, at a minimum, the following areas—

(i) Character, physical and emotional health, and financial status, of the foster families;

(ii) Maximum number of children per home, including the maximum number of children under the age of two;

(iii) Participation of foster parent(s) in case planning when requested by the agency; and

(iv) Participation of foster parent(s) in available training deemed appropriate by the agency.

(5) Licensing requirements established for child care institutions shall cover, at a minimum, the following areas—

(i) Organization, administration, and financial management;

(ii) Policies for admission, personnel, and operation;

(iii) Case recordkeeping;

(iv) Treatment plans;

(v) Services which provide for the child's developmental, social, and educational needs;

(vi) Policies and procedures for assisting permanency planning for children;

(vii) Coordination of the child's treatment plan with services provided to family;

(viii) Education and experience qualifications of administrative, social work and child care staff;

(ix) Staff-child ratio;

(x) Physical plant and equipment safety; and

(xi) Health care.

(6) The State licensing or approval requirements shall provide for sanctions for failure to comply with the requirements by a licensed or approved facility.

(i) *Review of State Standards.*—The State agency shall conduct a review of its standards for child care institutions and foster family homes no less frequently than once every three years to assure their continuing appropriateness to the child care setting and to the service needs of children.

(j) *Review of Foster Care Maintenance Payments.*—The amount of the State's payments for foster care maintenance payments shall be reviewed no less frequently than once every two years to ensure their continuing appropriateness. The review shall include an examination of the costs of maintaining a child in foster care and the criteria for setting rates for foster care maintenance payments.

(k) *Public Participation in Review of State Standards and Payment.*—The method of review of the State's standards for child care institutions and foster family homes, and for review of the payment systems shall be developed by the State agency. However, there shall be public participation in the review so that, at a minimum, representatives of the following groups shall have an opportunity to participate—

(1) Advisory Boards;

(2) Foster parent(s);

(3) Child care institutions;

(4) Other public and private child welfare, human services and advocacy organizations; and

(5) Parent(s) of children for whom foster care has been, or is being, provided.

§ 1356.50 Voluntary placements.

(a) Federal financial participation is available for allowable costs in expenditures made after September 30, 1980 and before October 1, 1983, when the requirements of this Section, Sections 1356.40(a) and 1357.30(b) are met for foster care maintenance payments and adoption assistance payments made for a dependent child removed from his or her home pursuant to a voluntary placement agreement.

(b) Federal financial participation is limited to expenditures made within the first 180 days of voluntary placement unless there has been a judicial determination by a court of competent jurisdiction within the first 180 days of placement to the effect that the continued voluntary placement is in the best interests of the child.

(c) *Definitions.*—(1) *Voluntary Placement* means an out-of-home placement of a minor, by or with the participation of a State agency, after parent(s) of a minor have requested the assistance of the agency and signed a voluntary placement agreement.

(2) *Voluntary Placement Agreement* means an executed written agreement, binding on all parties, between the State agency or another agency authorized to execute voluntary placement agreement(s) and the parent(s) of a child. The agreement shall specify at a minimum the legal status of the child; the rights, obligations, and responsibilities of the parent(s) the child, and the placing agency while the child is in placement; and the conditions under which the agreement may be terminated by the parent(s).

(d) *Certain Voluntarily Placed Children.*—Federal financial participation is available for allowable costs in expenditures for foster care maintenance payments for children who were voluntarily removed from the home of a relative prior to October 1, 1978 if—

(1) There was a judicial determination prior to October 1, 1978, to the effect that continuation therein would be contrary to the welfare of the child; and

(2) The child is found to be in need of foster care.

Each such child is considered to have been removed as a result of judicial determination if and from the date that a case plan meeting the requirements of Section 1356.40(d)(2) and a case review meeting the requirements of Section 1356.40(d) have been made for each child. The date of the voluntary removal shall be deemed to be the date on which court proceedings were initiated which led to the child's removal.

(e) *Voluntary Placement Agreement.*—Upon request of the parent(s) or legal guardian(s) and after the State agency has determined that a voluntary placement would be in the best interests of the child, a written agreement, binding on all parties, shall be executed between the child's parent(s) and the State agency (or another agency acting on its behalf).

(f) *Revocation of the Voluntary Placement Agreement.*—(1) In order to request return of a child placed under a voluntary placement agreement, the parent(s) of the child shall give written notice to the agency at least five (5) working days in advance of the effective date.

(2) The Voluntary Placement Agreement shall be considered to be revoked on the effective date of the request unless the State agency has obtained a judicial determination under applicable State law that return to the home would be contrary to the child's best interest.

§ 1356.60 Adoption Assistance Program.

(a) *Eligibility Criteria.*—Adoption assistance payments shall be made under an adoption assistance agreeement to adoptive parents who, after the effective date of the title IV-E State Plan, adopt a child—

(1) Who at the time adoption proceedings were initiated, met the requirements of Section 406(a) or Section 407 of the Act or would have met those requirements except for his removal from the home of a relative (specified in Section 406(a)) as a result of judicial determination to the effect that continuation therein would be contrary to the welfare of that child, or under a voluntary placement agreement entered into after September 30, 1980 and before October 1, 1983; and

(2) Who received aid under the State plan approved under Section 402 of the Act in or for the month in which court proceedings leading to the removal of that child from the home were initiated; or would have received the aid in or for that month if application for the aid had been made; or had been living with a relative specified in Section 406(a) of the Act, within six months prior to the month in which the proceedings were initiated, and would have received the aid in or for that month if in that month he had been living with a specified relative and application for the aid had been made; and

(3) With respect to whom a determination has been made that the child cannot or should not return to his parent(s); and

(4) Who is determined by the State to be a child with special needs.

(i) *Child with Special Needs* means a child whom the State has determined has specific factor(s) or condition(s) such as ethnic background, age, minority or sibling group membership, medical conditions, or physical, mental or emotional handicaps that would make unassisted adoption unlikely; and

(ii) For whom reasonable, but unsuccessful, efforts to place without adoption assistance have been made, unless the best interests of the child would not be served by such efforts, as in the case of a child who has significant emotional ties to prospective adoptive parent(s) while in the care of such parent(s) as a foster child.

(5) Who meets all the requirements of title XVI of the Act with respect to eligibility for Supplemental Security Income benefits and paragraphs (3) and (4) of this subsection.

(b) *Adoption Assistance Agreement.*—(1) A written adoption assistance agreement binding on the parties to the agreement between the State agency, other relevant agencies, and the prospective adoptive parent(s), must be in effect for any child for whom adoption assistance payments are made. The agreement shall be signed and in effect prior to the final decree of adoption. A copy of the signed agreement shall be given to each party.

(2) For the purposes of eligibility for services under titles XIX and XX of the Act, a child for whom adoption assistance payments are made under title IV-E shall be considered to be a dependent child as defined in Section 406 of the Act and shall be considered to be a recipient of AFDC under title IV-A of the Act.

(3) The agreement shall specify, at a minimum—

(i) The amount of assistance payments;

(ii) The additional assistance or services to be provided by the State, and how the costs for these items are to be met;

(iii) The duration of the agreement;

(iv) The process for recertification and that failure to recertify will result in termination of the agreement (see paragraph (f) of this section, Recertification);

(v) That the child is eligible for benefits and services under the State's title XIX and title XX of the Act;

(vi) How adoptive parent(s) shall notify the agency of changes in the needs of the child or circumstances of the adoptive family that would affect the eligibility for, or amount of, adoption assistance payments;

(vii) How adoptive parent(s) shall be notified or any changes in the rates of adoption assistance payments and how they may request changes in the adoption assistance agreement;

(viii) Whether the adoption assistance agreement remains in effect if the adoptive parent(s) move out of State; and

(ix) Contain provisions for the protection of the interests of the child in cases where the adoptive parent(s) and child move to another State while the agreement is effective.

(4) Effective with respect to agreements entered into on or after October 1, 1983, the adoption assistance agreement shall remain in effect regardless of the State in which the adoptive family resides.

(c) *Adoption Assistance Payments.*—(1) There shall be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments.

(2) The amount of the adoption assistance payments—

(i) Shall not exceed the foster care maintenance payment levels for that child if he or she were in a foster family home;

(ii) Shall be based upon the needs of the child and the circumstances of the adoptive family; and

(iii) Shall be determined by agreement between the prospective adoptive parent(s) and the State agency.

(3) Payment shall begin after final decree of adoption or from the date of an interlocutory decree.

(i) *Interlocutory decree* means a court order granting legal custody or guardianship to the adoptive petitioners prior to the final decree of adoption.

(4) Adjustments in payments may be made only with the concurrence of the adoptive parent(s) and may be based upon changes in the needs of the child, the circumstances of the adoptive family or changes in the adoption assistance payment rate.

(d) *Termination of Adoption Assistance Payments.*—(1) No payments shall be made to adoptive parents—

(i) For any child who reaches the age of 18 (or 21, if the State determines that the child has a mental or physical handicap that warrants continuation); or

(ii) If the State determines that the adoptive parent(s) are no longer legally responsible for the support of the child; or

(iii) If the State determines that the child is no longer receiving any support from the adoptive family.

(e) *Review of Adoption Assistance Payments.*—(1) The State's system of adoption assistance payments shall be reviewed no less frequently than once every two years to ensure their continuing appropriateness.

(2) There shall be public participation in the review that shall involve, at a minimum, representatives of the following groups—

(i) Advisory Boards;

(ii) Adoptive parents; and

(iii) Public and private child welfare, human services and advocacy organizations.

(f) *Recertification.*—The State agency shall develop a process for annual recertification of adoption assistance agreements to determine whether changes in the needs of the child or the circumstances of the family affect eligibility for, or amount of, adoption assistance payments. The process of recertification shall ensure:

(1) That written notice of the recertification requirement is given to the adoptive parent(s) no less than 60 days prior to the anniversary date of the adoption assistance agreement;

(2) that assistance will not be terminated without a legally sufficient second notice to the adoptive parents, and

(3) that the adoptive parents are aware that termination of adoption assistance will result from failure to recertify.

(g) *Entitlement to Other Services and Benefits.*—(1) The State making the adoption assistance payment shall retain financial responsibility for services under titles XIX regardless of the child's State of residence.

(2) If an adoptive family moves to another State, they may apply for services under title XX in that State. (The child for whom an adoption assistance payment is made is eligible for title XX services as though he/she were an AFDC recipient.) However, if the needed service(s) spelled out in the adoption assistance agreement are not available, the State making the adoption

assistance payment remains financially responsible for providing the service(s).

(h) *Promotion of the Adoption Assistance Program.*—The State agency shall actively seek ways to promote the adoption assistance program.

Management and Budget Circular A-95 prior to OHDS/ACYF approval.

(2) State plans (new or amendments thereto) for the title IV-E program shall be submitted to the RPD in the format and within the period set in

ASHDS determines appropriate, until the ASHDS is satisfied that there is no longer failure to comply.

(c) No further payments shall be made to the State, or the payment shall be reduced by the amount specified in the

(other than training) necessary for the proper and efficient administration of the State plan. To the extent that such activities may also be claimed under another federally-assisted program, the State may decide in which program

as determined under paragraph (1) or (2); or, at the option of the State, under paragraph (3) below. This determination is made without regard to the allotment for any prior fiscal year except as specified under paragraph (3)(iii) below.

Section 408 of the Act for children for whom maintenance payments are included under paragraph (A)(1) and (2) above, regardless of whether payment for the administrative expenditures might have been made under Section 403

assistance payment remains financially responsible for providing the service(s).

(h) *Promotion of the Adoption Assistance Program.*—The State agency shall actively seek ways to promote the adoption assistance program, including—

(1) Distribution of written notices to local offices and private agencies with whom the State contracts for adoption services; foster parents and foster parent organizations; community-based agencies and networks including civic, social and religious organizations affiliated with the population of children who are in need of placement; caretakers for children in institutions and residential treatment centers; and other interested persons and organizations about the availability of adoption subsidies.

(2) The notice shall specify the eligibility criteria for children and describe the benefits available and the procedures through which interested persons may apply to become adoptive parents under the State's adoption assistance program.

(i) *Federal Financial Participation.*—(1) Federal financial participation may be claimed for any child adopted on or after June 17, 1980 if all other requirements of this part have been met.

(2) Federal financial participation is available for allowable costs in adoption assistance payments in accordance with a valid adoption assistance agreement and these regulations.

§ 1356.70 Plan format and approval.

(a) *General.*—(1) The State plan shall certify that the State's program will conform with the statutory requirements of title IV–E, these regulations, and other applicable DHHS issuances.

(2) The State plans for titles IV–E and IV–B of the Act may be combined for submittal to ACYF. However, the State shall clearly identify those programs and activities to be funded under title IV–E and those to be funded under title IV–B.

(b) *Plan Amendments.*—(1) The State title IV–E plan provisions shall be amended when necessary to reflect new or revised Federal statutes or regulations and court decisions. After approval of the original State Plan, all relevant changes shall be submitted to the RPD, ACYF to determine whether the State Plan continues to meet Federal requirements and policies.

(c) *Submittal of State Plans.*—(1) The State title IV–E plan shall be submitted to the Governor's Office, or his/her designated agency; for review and comment in accordance with Office of Management and Budget Circular A–95 prior to OHDS/ACYF approval.

(2) State plans (new or amendments thereto) for the title IV–E program shall be submitted to the RPD in the format and within the period set in implementing instructions.

(d) *Review and Approval of State Plans.*—(1) The ACYF Regional Program Director shall determine whether a State plan or amendment conforms to the requirements under the Act and these regulations no later than 45 days after the plan or amendment is received in the appropriate ACYF Regional Office.

(2) The effective date of a new plan or plan amendment(s) shall be no earlier than the first day of the quarter in which an approvable plan or plan amendment is submitted.

(e) *Review of State and Local Administration and Implementation.*—To provide a basis for determining that State agencies are adhering to federal requirements and to the substantive legal and administrative provisions of the State plan, ACYF will review State and local program administration and implementation. The review shall include analysis of procedures and policies of State and local agencies, examination of case records of individual services recipients and a review of supporting documentation.

§ 1356.75 Withholding of funds for non-compliance with the approved Title IV–E State Plan.

(a) A State agency shall be cited for non-compliance when it fails substantially to comply with the requirements of this Part. An issue of non-compliance exists when—

(1) A State plan which has been approved by the Regional Program Director no longer complies with the provisions of this Part.

(2) In the administration of the plan there is a substantial failure to comply with provisions of the plan; or

(3) When the State fails to amend its approved plan to conform to new federal requirements for State plans.

(b) When a determination has been made that a State agency has failed to comply with the provisions of this Part, the State shall be entitled to reasonable notice and opportunity for a hearing in accordance with the provisions of Part 213 of this title. If after such notice and hearing, a final determination is made that the State agency has failed to comply with the provisions of this Part and the plan has not been amended to conform with the requirements, the State agency shall be notified that further payments will not be made to the State under this Part, or that such payments will be reduced by the amount which the ASHDS determines appropriate, until the ASHDS is satisfied that there is no longer failure to comply.

(c) No further payments shall be made to the State, or the payment shall be reduced by the amount specified in the notification, until the noncompliance is corrected to the satisfaction of the Secretary.

§ 1356.80 Fiscal requirements (IV–E).

(a) *Payments to States for Foster Care Maintenance and Adoption Assistance.*—(1) Effective October 1, 1980, Federal financial participation is available to States with an approved State plan for allowable costs in expenditures for:

(i) Foster care maintenance payments made in accordance with this Part (subject to the limitations in paragraph (b)); and

(ii) For adoption assistance payments made in accordance with this Part.

(2) Federal financial participation is available at the rate of the Federal medical assistance percentage as defined in section 1905(b), Definitions, of the Act, and pertinent regulations as promulgated by the Secretary, or his/her designee.

(b) *Federal Matching Funds for State and Local Training for Foster Care and Adoption Assistance under Title IV–E.*

(1) Federal financial participation is available at the rate of seventy-five percent (75%) in the costs of training for foster care and for adoption assistance under the State plan under title IV–E of the Act.

(2) All training activities and costs funded under title IV–E shall be included in the State agency's training plan for title IV–B as required in Section 1357.20(c)(5).

(3) Short and long term training at educational institutions and in-service training may be provided to employees of the State agency and persons preparing for employment in the State agency in accordance with the provisions of Sections 235.63 through 235.66 of this title.

(4) Foster and adoptive parents, and staff of child care institutions providing foster care shall be eligible for short-term training at the initiation of or during their provision of care. Federal financial participation directly related to such training shall be limited to travel and per diem and the costs listed under paragraph (b) of § 235.64 of this title.

(c) *Federal Matching Funds for Other State and Local Administrative Expenditures for Foster Care and Adoption Assistance Under Title IV–E.*

Federal financial participation is available at the rate of fifty percent (50%) for administrative expenditures

(other than training) necessary for the proper and efficient administration of the State plan. To the extent that such activities may also be claimed under another federally-assisted program, the State may decide in which program costs for such activities will be claimed, subject to the regulations under 45 CFR Part 74, Administration of Grants. The State plan shall identify which categories of program-specific costs are allowable and claimed. The State shall provide assurances and adequate controls under its cost allocation plan to prevent duplicate charges for the same activities to multiple programs and to allocate costs applicable to children not covered under title IV–E to the appropriate program.

(1) The following are examples of allowable administrative costs necessary for the administration of the foster care program:

(i) Determining and redetermining eligibility;

(ii) Referral to services;

(iii) Preparation for and participation in judicial determinations;

(iv) Placement of the child;

(v) Development of the case plan;

(vi) Case reviews;

(vii) Fair hearings, appeals and grievances;

(viii) Case management and supervision;

(ix) Recruitment and licensing of foster homes and institutions; and

(x) Rate setting.

(2) Allowable administrative costs do not include the costs of social services provided to the child, family or foster family which provide counseling or treatment to ameliorate or remedy personal problems, behaviors or home conditions.

(3) Funds expended with respect to nonrecurring costs of adoption proceedings for children on behalf of whom adoption assistance is provided under the State plan may *not* be reimbursed as administrative costs under I–VE.

(d) *Other Applicable Regulations.* The procedures in the following sections of 45 CFR shall apply:

(1) Section 201.5, Grants (except that ACYF shall supply appropriate forms and instructions);

(2) Section 201.6, Withholding/Reduction of FFP;

(3) Section 201.7, Judicial Review;

(4) Section 201,15, Deferral;

(5) Section 201.66, Repayment of Federal funds in installments.; and

(6) Section 205.150, Cost Allocation.

(e) *State Allotment.* The State allotment for foster care under this Part for Fiscal Years 1981 through 1984 shall be the greater amount as determined under paragraph (1) or (2); or, at the option of the State, under paragraph (3) below. This determination is made without regard to the allotment for any prior fiscal year except as specified under paragraph (3)(iii) below. The State need not select the same option each year. The allotment is a single dollar amount, limiting Federal funds reimbursed to a State for foster care payments and related administrative expenditures (including training).

(1) The first method provides for the calculation of the base amount and adjustments for each fiscal year as follows:

(i) For Fiscal Year 1980, the State's allotment is the base amount increased by 21.2%.

(ii) For each of the Fiscal Years 1981 through 1984, the allotment for the State shall be an amount equal to the State's allotment for the preceding fiscal year, increased or decreased by twice the change (but not more than 10%) in the percentage of the Consumer Price Index, prepared by the U.S. Department of Labor, and used to determine the cost of living adjustments for Social Security benefits under Section 215(i) of the Act, Cost of Living Increases in Benefits. For this calculation, second quarter data of the preceding fiscal year shall be compared to those for the second preceding fiscal year. The arithmetic mean for the three months of the second quarter shall be used to establish the Consumer Price Index for the quarter.

(iii) The base amount in paragraph (1)(i) is calculated using the following formula:

Maintenance payments plus attributable administrative expenditures plus attributable training expenditures.

For the purposes of this formula:

(A) Maintenance payments are determined by:

(*1*) The amount of Federal funds that have been or may be paid on behalf of allowable claims for foster care maintenance payments for FY 1978 submitted to DHHS in accordance with Section 306 of Pub. L. 96–272 (94 Stat 530); and

(*2*) The amount of Federal funds that would have been paid for allowable claims on behalf or children meeting all requirements of Section 408 of the Act for FY 1978 except that the State, on a Statewide basis, did not make such payments under State law, regulation or policy solely because the foster care was provided by relative(s) of a child;

(B) *Attributable Administrative Expenditures* means State expenditures for fiscal year 1978 attributable to the performance of activities required under Section 408 of the Act for children for whom maintenance payments are included under paragraph (A)(1) and (2) above, regardless of whether payment for the administrative expenditures might have been made under Section 403 of the Act. Expenditures which may be included are limited to costs of conducting for those children: eligibility determination and redetermination, quality control, fair hearings, agency activities, judicial determination, placement, case review, case management, case supervision, rate-setting, recruitment of foster care homes and institutions, licensing and a proportionate share of general related agency overhead. The amount of these expenditures is determined: by one of the following three methods:

(*1*) By actual administrative expenditures attributable to the provision of foster care maintenance payments for Fiscal Year 1978, multiplied by 50%, if a State submits a report of these expenditures which is satisfactory to the Secretary and which is supported by documentation,

(*2*) By an amount determined by the following formula:

(*i*) The State's total AFDC administrative expenditures for fiscal year 1978 divided by State's average monthly number of AFDC cases in fiscal year 1978;

(*ii*) The result of step (*i*) multiplied by 50%;

(*iii*) The product of step (*ii*) multiplied by the average monthly number of AFDC–FC cases in Fiscal Year 1978; or

(*3*) By an amount determined as follows:

(*i*) The State's administrative expenditures (as limited in paragraph (e)(1)(iii)(B) of this section) attributable to foster care maintenance payments made under title IV–E or IV–A during a period of three or more calendar months of FY 1981 divided by the number of months in the period;

(*ii*) The result of (*1*) reduced to the comparable FY 1978 amount by use of the Implicit Price Deflator for State and Local Government Purchases (issued by the U.S. Department of Commerce);

(*iii*) The result in (*ii*) multiplied by the ratio of the average monthly number of AFDC-Foster Care cases in FY 1978 compared to the comparable number for the period used in (*i*);

(*iv*) The product in (*iii*) multiplied by 12 (for an annual amount); and

(*v*) The product in (*iv*) multiplied by 50 percent (the FFP rate in administrative expenditures).

(*vi*) The data in paragraph (*i*) need not have been or be claimed under Section 403 or 474 of the Act. They must be reported to the RPD no later than 30

days after the end of fiscal year 1981 and must be in accordance with instructions from the Commissioner.

(C) *Attributable Training Expenditures* are determined by:

(*1*) Actual training expenditures which bears the same ratio to $100 million as the under age 18 population of that State bears to the under 18 population of the fifty States and the District of Columbia.

(3) Eligible States may select that their allotment be calculated by a third AFDC-Foster Care under Section 408 of the Act shall be included even though they did not receive foster care maintenance payments.

(v) In the event that there is a dispute between a State and the Secretary as to the number of such children (with

has met the requirements in Section 1357.30(a) of this title.

(iii) If the appropriation for the two previous fiscal years under Section 420 of the Act equaled $266,000,000, the State may transfer funds under

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV–B

§ 1357.10 Scope and definitions.

(a) *Scope.* These regulations apply to State programs for child welfare services and related administrative

(b) Child welfare services will be available on the basis of need for services and shall not be denied on the basis of financial need or legal residence.

(c) The State child welfare services plan shall—

days after the end of fiscal year 1981 and must be in accordance with instructions from the Commissioner.

(C) *Attributable Training Expenditures* are determined by:

(*1*) Actual training expenditures attributable to the provision of foster care maintenance payments for FY 1978 multiplied by 75%, if a State submits a report of these expenditures which is satisfactory to the Secretary and supported by documentation; or

(*2*) An amount determined by the following formula:

(*i*) The State's total AFDC training expenditures for FY 1978 divided by the State's average monthly number AFDC cases in FY 1978;

(*ii*) The result of (*i*) multiplied by 75%;

(*iii*) The product of (*ii*) multiplied by the average monthly number of AFDC-FC cases in FY 1978.

(D) *Sources of Data and Documentation.*

(*1*) All claims in this section must be submitted on forms provided by the Secretary and in accordance with the constraints of Section 306 of the Pub. L. 96-272 (94 Stat. 530).

(*2*) All reports to establish the claims which would have been allowable under sub-paragraph (iii)(A) (*2*), (iii)(B) (*1*) or (iii)(C)(*1*) of this paragraph must be submitted on forms provided by the Secretary within forty-five (45) days after the end of the second quarter of FY 1981.

(E) *Disputed Claims or Reports.*

(*1*) Only the following claims or reports in which DHHS and a State have a dispute will be included in the base amount:

(*i*) For maintenance payments, the claims submitted to DHHS in accordance with Section 306 of Pub. L. 96-272, and the reports submitted to DHHS on expenditures and reported numbers of children under paragraph (iii)(A)(*2*) of this section;

(*ii*) For attributable administrative expenditures, the dollar amount reported to DHHS in accordance with paragraph (iii)(B)(*1*);

(*iii*) For attributable training expenditures, the dollar amount reported to DHHS in accordance with paragraph (iii)(C)(*1*);

(*2*) Any claims or reported data in which a State and the Secretary have a dispute will be included in the base amount until the beginning of the fiscal year after the fiscal year in which the dispute is finally resolved by the Department. Allotments for fiscal years after resolution of the dispute will be computed using the revised base amount.

(2) Under the second method, the allotment for the State equals an amount which bears the same ratio to $100 million as the under age 18 population of that State bears to the under 18 population of the fifty States and the District of Columbia.

(3) Eligible States may select that their allotment be calculated by a third method.

(i) A State may not exercise this option unless:

(A) The percentage of the average monthly number of children in the State under 18 who received AFDC foster care maintenance payments as a proportion of all children under 18 in the State in FY 1978 was less than the corresponding national percentage for the 50 States and the District of Columbia;

(B) Beginning in FY 1982, the State's average monthly number of children under 18 who received AFDC-foster care maintenance payments compared to the State's total number of children under 18 has not exceeded the corresponding national percentage of the 50 States and the District of Columbia for Fiscal Year 1978.

(ii) Under this method, the allotment is calculated as follows:

(A) The base amount is determined by applying the provisions of paragraph (e)(1)(ii) of this section.

(B) If for any of the fiscal years 1981-1984, the percentage of children receiving foster care maintenance payments in the State under titles IV-A or IV-E of the Act exceeds the average monthly number of such children for fiscal year 1978, the base amount for that fiscal year shall be further increased by the percentage increase in the State's foster care maintenance payment caseload over its AFDC-FC case load for fiscal year 1978. This percentage increase may not exceed: for fiscal year 1981—33.1 percent; fiscal year 1982—46.4 percent; fiscal year 1983—61.1 percent; and fiscal year 1984—77.2 percent.

(C) Adjustments to the base amount for each fiscal year are made in accordance with paragraphs (e)(1) (i) and (ii) of this section.

(iii) If the State no longer meets the conditions for excercising the State option provided in subparagraph (e)(3)(i) of this section, but selected this option for the determination of its allotment for the preceding fiscal year, the allotment for the preceding fiscal year shall be used for the purpose of determining allotments for subsequent fiscal years through fiscal year 1984.

(iv) For the purpose of establishing the average monthly number of children receiving AFDC foster care maintenance payments under this section, children who, except for their placement with related persons, would have received AFDC-Foster Care under Section 408 of the Act shall be included even though they did not receive foster care maintenance payments.

(v) In the event that there is a dispute between a State and the Secretary as to the number of such children (with respect to whom foster care maintenance payments were not made) for any fiscal year, then until the beginning of the fiscal year immediately following the fiscal year in which the dispute is finally resolved by DHHS, determinations under the foregoing subparagraphs shall be made on the basis of the number of such children claimed by the State.

(vi) Interim allotments for each fiscal year shall be issued by the Secretary, or his/her designee, for States eligible under the option described in paragraph (e)(3)(i) of this section not later than six months after the beginning of the fiscal year. The interim allotments shall be based on the most recent satisfactory data then available. The final allotment shall be issued not later than nine months after the end of that fiscal year and shall be based on the most recent satisfactory data then available.

(4) The limitation on available funds imposed by the allotment will be effective only if:

(A) The appropriation under Section 420 of the Act for that fiscal year equals or exceeds the following amounts: for fiscal year 1981—$163,550,000; 1982—$220,000,000 and for fiscal years 1983 and 1984—$266,000,000; and

(B) With respect to each of the fiscal years 1982-1984, the appropriation for title IV-B under Section 420 of the Act has been made before the beginning of the fiscal year to which the limitation applies.

(5) The State shall select the method for determining its allotment no later than forty-five (45) days after the end of the second quarter of the applicable (Federal) fiscal year.

(6) *Transfer of Funds from Title IV-E to Title IV-B.*

(i) Funds available to the State within the foster care allotment for title IV-E which the State does not claim as reimbursement under title IV-E may be transferred to title IV-B and claimed by the State as reimbursement under that program only if the State has selected an allotment described under paragraphs (e)(1) or (e)(2) of this section.

(ii) If the amount transferred to title IV-B, when added to the IV-B allotment, exceeds the amount which would be allotted to the State under title IV-B if the appropriation for title IV-B equaled $141 million, the State may transfer funds under subparagraph (i) only if it has met the requirements in Section 1357.30(a) of this title.

(iii) If the appropriation for the two previous fiscal years under Section 420 of the Act equaled $266,000,000, the State may transfer funds under subparagraph (i) only if it has met the requirements of Section 1357.30(b) of this title.

(iv) If the total reimbursement for expenditures under IV-B (including transferred funds) equalled the State's share of $266,000,000 for each of two fiscal years in which the limitation under this section did not apply, the State may not transfer funds under subparagraph (i) in any succeeding year unless the State has met the requirements of Section 1357.30(b) of this title.

(7) *Amount that may be Transferred from Title IV-E to Title IV-B.*

(i) The amount of funds that a State may transfer from title IV-E to title IV-B is:

(A) For any year in which the limitation specified under this section is in effect, the amount by which the State's title IV-E foster care allotment exceeds the FFP in State expenditures for foster care maintenance payments and administrative expenditures, including training expenditures; and

(B) For any year in which the limitation specified in this section is *not* in effect, the amount determined under paragraph (A), above, is further limited to the amount which when added to the amount the State receives under Section 420 of the Act (including all re-allotments) does not exceed the amount of the State's allotment under Section 420 of the Act if the amount described under Section 474(b)(2)(A) of the Act had been appropriated.

(ii) Transferred funds must be used to reimburse expenditures under title IV-B for the same fiscal year for which they were orginally available.

(A) The State must apply for approval of transfer of these funds to the Regional ACYF office no later than the end of the third quarter of the fiscal year in which they will be obligated.

(B) The procedures for application for funds and plans under title IV-B, including joint planning, shall apply to these funds, except as modified by the Commissioner.

(iii) A State shall operate its foster care program under its State plan continuously throughout the time the plan is in effect, regardless of whether or not it has transferred funds under paragraph (e)(7) of this section.

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV-B

§ 1357.10 Scope and definitions.

(a) *Scope.* These regulations apply to State programs for child welfare services and related administrative expenditures under title IV-B.

(b) *Definition of Terms.* (1) *Child Welfare Services* means *public* social services intended to accomplish the following purposes—

(i) Protect and promote the welfare of all children, including handicapped, homeless, dependent or neglected children;

(ii) Prevent, remedy, or assist in the solution of problems which may result in the neglect, abuse, exploitation or delinquency of children;

(iii) Prevent the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems and preventing the removal of a child from his/her family whenever possible;

(iv) Restore to their families children who have been removed, by providing services to the child and family;

(v) Place children in suitable adoptive homes in cases where restoration to the birth family is not possible or appropriate; and

(vi) Assure adequate care of children away from their homes, for temporary periods or for extended periods, where the child cannot be returned home or cannot be placed for adoption.

(2) *Child Welfare Services Plan (CWSP)* means the document developed through joint planning which describes the State agency's total child welfare program, including services, program deficiencies, plans for program improvement, and allocation of resources by type of service.

(3) *Joint Planning* means State and Federal review and analysis of the State's child welfare services, including analysis of the service needs of children and their families, selection of unmet services needs that will be addressed in a plan for program improvement, and development of measurable goals and objectives that will assure the State's ability to meet these needs.

§ 1357.20 State Child Welfare Services Plan requirements under Title IV-B.

(a) To be eligible for Federal financial participation payment under title IV-B, a State must have a child welfare services plan, jointly planned and developed by the Secretary or his/her designee, and the State agency designated under paragraph (c)(1) of this section.

(b) Child welfare services will be available on the basis of need for services and shall not be denied on the basis of financial need or legal residence.

(c) The State child welfare services plan shall—

(1) Provide for designation by the Chief Executive Officer of the State, or as otherwise provided by State law, of a State agency that will administer or supervise the administration of the State's child welfare services program:

(i) The State agency designated to administer, or supervise the administration of, the child welfare services program shall be the same agency that administers, or supervises the administration of, the social services program for individuals and families under title XX of the Act.

(ii) When the staff of the State or local agency responsible for administering, or supervising the administration of, the child welfare services plan is also responsible for furnishing child welfare services under title IV-B at the State or local level, a single organizational unit within the agency shall be responsible for providing, or supervising the provision of, child welfare services.

This unit shall be under the direction of a chief other than the head of the agency and shall—

(A) Furnish directly, or otherwise ensure delivery of, child welfare services under title IV-B; and,

(B) On the State level, develop policy and maintain policy control for all parts of the child welfare services program funded under title IV-B; and

(C) Directly supervise local agency program implementation or otherwise ensure proper program implementation.

(iii) If, on December 1, 1974, separate agencies at the State and/or local levels administered the title IV-A and IV-B social services programs, the requirements in paragraphs (i) and (ii) of this section do not apply but only so long as such agency is not the agency administering the State's program under title XX; and

(iv) In Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Virgin Islands, the plan for the child welfare services program under title IV-B and the plan for services under title IV-A shall be administered or supervised by the same agency. To the extent that child welfare services are furnished by staff of the State or local agency administering the Child Welfare Services Plan, the single organizational unit shall be responsible for providing or supervising the delivery of services under both title IV-A and IV-B.

(2) Provide that the State agency shall ensure coordination of services in accordance with Section 1356.30(d) of this title.

(3) Contain a description of all child

title IV-B, except with respect to eligibility for services;

(7) Provide for appropriate use of the services, facilities, and experience of voluntary agencies including:

participation under title IV-B of the Act and these regulations.

(12) *Safeguarding Information.* The provisions of Section 1356.30(f) of this title shall be applicable to programs and

or legal guardianship as described in paragraph (a)(5) of this section.

(3) *Inventory.* The inventory shall be a listing of all children who have been in foster care for six months or more, by case number, date of birth, date of initial

determine the locations of all children who have been in foster care during the preceding twelve months; to help ensure progress in moving children into permanent status wherever possible, through return home or through

(*13*) Dates when reviews and dispositional hearings are due and held; dispositions;

(*14*) Date of revocation of voluntary placement;

(*15*) Date and reason for case closure;

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(2) Provide that the State agency shall ensure coordination of services in accordance with Section 1356.30(d) of this title.

(3) Contain a description of all child welfare services as defined in Section 1357.10(b) of this title, provided to children and their families in the State, and specify, by political subdivisions, the geographic areas where these services will be available;

(4) Contain a description of the steps the State will take to make progress in—

(i) Extending the services described in paragraph (3) to cover additional political subdivisions, including the basis on which the political subdivisions were chosen; and

(ii) Reaching additional children in need of services, including the basis for determining the children to be reached and their services needs.

(5) Contain a description of the State agency child welfare staff development and training plan. This description shall include a summary of—

(i) How the agency's training activities will serve the goals and objectives for improving child welfare services;

(ii) The training needs assessment process used to collect the data for the development of the training plan. The needs assessment shall cover the activities which must be performed by supervisors, social workers, paraprofessionals and volunteers; the knowledge and skills required to perform these activities; an assessment of the actual levels of competence of these staff currently providing child welfare services; and the training needs of the staff as determined through this process;

(iii) Arrangements for training and use of paid paraprofessional staff, with particular emphasis on full-time or part-time employment of persons of low income as community aides, and for use of non-paid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency;

(iv) Plans for staff recruitment and selection which will increase the number of professionally trained personnel so as to ensure that the tasks and responsibilities of child welfare workers required in the Act are handled with maximum competence; and

(v) The agency's plan for monitoring and evaluating the overall staff development and training program and for ensuring that the training needs are met in all political subdivisions.

(6) Provide that the standards and requirements imposed with respect to child day care under title XX of the Act shall apply to day care services under title IV–B, except with respect to eligibility for services;

(7) Provide for appropriate use of the services, facilities, and experience of voluntary agencies including:

(i) Coordination of State and local arrangements for development and delivery of services to children and their families; and

(ii) Emphasis on the use of community agencies and organizations which have established identification and experience with serving the unique needs of major local racial and ethnic populations.

(8) Provide for establishment of Advisory Committees on child welfare services at the State and local levels.

(i) The Committee(s) shall advise the agency's principal policy-setting and administrative officials on policy development, policy setting based on community needs and methods of program administration that facilitate client use of agency services.

(ii) The Committee(s) shall include representatives of other State and local agencies concerned with child welfare services; relevant professional, civic, and advocacy organizations; foster and adoptive parent organizations; private citizens interested in service programs; and clients or their representatives. Clients or their representatives shall constitute at least one-third of the membership, and shall to be selected in a manner that ensures opportunity for client participation in the selection process; and

(iii) Staff assistance from within the agency and other technical assistance shall be provided as necessary to enable the Committee(s) to function effectively. Funding assistance shall also be provided where necessary to allow client participation in the work of the Committee(s).

(9) Provide for independently conducted audits of the programs and activities, funded in whole or in part under title IV–B of the Act, as described in Section 1356.30(j) of this title.

(10) *Reports and Evaluations.* Each State shall submit such reports containing such information and participate in such evaluations as the Secretary may require. The reports shall be in a form specified by the Secretary or his or her designee. The State agency shall comply with any provisions established by the Secretary needed to assure the correctness and verification of these reports.

(11) *Fair Hearings, Appeals and Grievances.* The provisions of Section 1356.30(g) of this title shall be applicable to programs and activities assisted in whole or in part by Federal financial participation under title IV–B of the Act and these regulations.

(12) *Safeguarding Information.* The provisions of Section 1356.30(f) of this title shall be applicable to programs and activities assisted in whole or in part by Federal financial participation under title IV–B of the Act and these regulations.

(13) *Personnel Standards.* The State agency shall use methods relating to the establishment and maintenance of personnel system on a merit basis in accordance with Federal standards and procedures as the Secretary may require.

(14) *General Requirements.* The following DHHS regulations are applicable to programs funded under title IV–B—

45 CFR Part 16—DHHS Grant Appeals Process.
45 CFR Part 74—Administration of Grants.
45 CFR Part 80—Civil Rights.
45 CFR Part 81—Practice and Procedures for Hearings Under Part 80.
45 CFR Part 84—Non-discrimination on the Basis of Handicap.
45 CFR Part 91—Non-discrimination on the Basis of Age in DHHS Programs and Activities Receiving Federal Financial Assistance (when issued).
45 CFR 1396.53—Restriction on State's share in Claiming FFP.

§ 1357.30 Requirements for State eligibility for additional payments.

(a) For any fiscal year after FY 1979 in which a sum in excess of $141,000,000 is appropriated under Section 420 of the Act, a State shall not be eligible for payment of an amount greater than the amount for which it would be eligible if the appropriation were equal to $141,000,000 unless the following conditions have been met—

(1) The State has conducted an inventory of all children who have been in foster care under the responsibility of the State for a period of six months or more preceding the inventory as described in paragraph (a)(3) of this section.

(2) The State has implemented and is operating—

(i) A Statewide information system as described in paragraph (a)(4) of this section;

(ii) A case review system as described in Section 1356.40(d) of this title for all children receiving foster care under the supervision of the State; and

(iii) A program of services designed to reunify children with their parents or families or to provide alternative permanent placements through adoption or legal guardianship as described in paragraph (a)(5) of this section.

(3) *Inventory.* The inventory shall be a listing of all children who have been in foster care for six months or more, by case number, date of birth, date of initial and current placement, and date of last administrative or judicial review, and for each child listed in the inventory the State agency shall determine—

(i) The appropriateness of and necessity for the current foster care placement;

(ii) Whether the child can or should be returned to his parents or freed for adoption; and

(iii) The services necessary to facilitate either return to the parents, placement for adoption or legal guardianship for the child.

(iv) In making the determinations required in this paragraph the State agency may use information from a case review conducted within the preceeding six months, or the determinations may be made at the time of the child's next scheduled case review or earlier, at the option of the State. If the determinations are made independently from the case review, the State agency shall apply the consideration as referred to in subparagraphs (C) and (F) of Section 1356.40(d)(2)(iii) of this title. (Case Review System), to determine—

(A) The appropriateness and necessity of the current foster care placement;

(B) Whether to focus on reunification or adoption; and

(C) The service necessary to attain the placement goals.

(v) The State shall submit to the Secretary (in a form and manner to be prescribed) a report of the data gathered and the manner in which the inventory was conducted. The report shall be submitted no later than seven (7) months after the start of the inventory and shall include—

(A) The total number of children in foster care at the time of the inventory, by age, legal status, race, and sex;

(B) The number of children in foster care six months or more at the time of the inventory, by case plan goal, by age, race, and sex. Case plan goals to be used in the report shall be return to own home, place for adoption, place with legal guardians, independent living, other permanent placement, long term foster care, and other (specify);

(C) The number of children who are free for adoption and the approximate number eligible for adoption assistance under title IV–E.

(4) *Information System.* The State agency shall establish a permanent Statewide information system. The system shall make it possible to determine the locations of all children who have been in foster care during the preceding twelve months; to help ensure progress in moving children into permanent status wherever possible, through return home or through adoption; to document preplacement preventive services; to support proper case management; to provides a source of current data for the reporting, monitoring, evaluation and inventory requirements of the Act; and to provide the State and Federal government with information for planning, policy development, technical assistance and budgeting.

(i) The statewide information system shall be capable of providing data from which the legal status, age, sex, ethnicity/race, family structure, location and goals for placement of every child currently receiving foster care services or who has been in foster care within the preceding twelve months, may readily be determined.

(ii) The information system shall, at a minimum, meet the following criteria—

(A) Provide individual and aggregate data on all children receiving services for each political subdivision of the state;

(B) Provide for the use of uniform definitions as the Secretary may require;

(C) Provide for aggregation of data for the State consistent with dates, format and procedures as the Secretary may require; and

(D) With respect to each child, provide that the following information is readily accessible to the State agency:

(*1*) A unique identifer

(*2*) Child and family information (identification of child and family: name, ID number, address, age, ethnicity/race, family structure and special needs;

(*3*) Date case opened (new or reopened);

(*4*) Legal custody status;

(*5*) Eligibility status (IV–A, IV–B, IV–E, SSI);

(*6*) Living arrangement;

(*7*) Placement history for voluntary and involuntary placement beginning with the date of the current continuous placement (as appropriate), including reasons for removal from home; type of adoptive home (relatives, foster parents, other); adoption subsidy status; date freed for adoption and awaiting placement;

(*8*) Case plan goals;

(*9*) Time tables;

(*10*) Frequency of parental contact with the child and agency over the previous six months;

(*11*) Services provided;

(*12*) Source of services provided (public/private agency, direct or purchased);

(*13*) Dates when reviews and dispositional hearings are due and held; dispositions;

(*14*) Date of revocation of voluntary placement;

(*15*) Date and reason for case closure; and

(*16*) Identifier for local agency, caseworker and supervisor;

(E) Assure compliance with Part 95, Subpart F of this title (HHS approval of systems procurements in excess of $100,000 for which Federal financial participation is requested); and

(F) Assure protection of government rights to systems developed with Federal financial participation, as described in 45 CFR 74.145, Nonrevocable, royalty-free license.

(iii) The requirements under paragraph (a)(4)(ii) of this section shall be applicable to all children in foster care on October 1, 1980, or the date upon which the State desires to be found eligible for funds.

(iv) The case-specific information described in paragraph (a)(4)(ii)(D) of this section shall be maintained in a manner which will facilitate State annual reporting on Part IV–E eligible children in placement under voluntary agreement beginning in FY 81. This report shall be submitted to the ACYF on the last day of November each year.

(v) States shall report and cooperate with studies as prescribed by the Secretary, on children served in foster care or while remaining at home and on services provided to their parent(s). Forms and instructions will be furnished to the States.

(vi) To meet Federal reporting requirements, States shall provide information as the Secretary specifies.

(5) *Services Designed To Reunify Families or Achieve Other Permanent Placements.*

(i) The program of services designed to help children return to their homes, shall include—

(A) Day care services, homemaker or caretaker services, and family or individual counseling for parent(s) and child available to all children and families in need;

(B) Other services which the State agency identifies as necessary and appropriate to facilitate reunification of children and families such as respite care; parent education; self-help groups; provision of, or arrangements for, mental health, alcohol and drug abuse counseling, and vocational counseling or rehabilitation.

(C) Written guidelines which stress the value of worker involvement with the family of the child early in the placement and the importance of maintaining and strengthening parent-

child relationships through frequent and regular visits. The guidelines shall contain principles, policies and procedures which workers must follow—

(1) In determining the appropriate reunification services for each family's situation;

(2) In providing (for at least three months) supportive services following reunification; and

(3) In determining that a child cannot be returned home.

(ii) The program of services designed to facilitate adoption or legal guardianship shall include—

(A) Legal services to free children for permanent placement, including voluntary relinquishment, termination of parental rights, or activities required by the State to establish legal guardianship; and

(B) Adoptive services, including recruitment and preparation of adoptive families, registration with adoption exchanges; identification of current foster families as appropriate adoptive parents for children in their care, counseling, and follow-up services to support the placement.

(C) Other activities identified by the agency as necessary and appropriate for permanent placement, such as training families to care for special needs children; training workers to meet legal requirements for court actions; post-adoption services, including parent support groups and other self-help groups; and

(D) Written guidelines which contain principles, policies and procedures which workers shall follow—

(1) In determining the most appropriate plan for the child who cannot return to his or her family, giving first consideration to adoption, followed by alternatives such as legal guardianship, or long-term foster care in exceptional circumstances; and

(2) In determining the appropriate procedures for placement, including preparation for placement, follow-up, and support services as needed for parent(s), legal guardian(s), foster parent(s), and children.

(iii) For each child under the care of the State, the case plan as required in Section 1356.40(d) of this title, Case Review System, shall include—

(1) Goals for reunification with families, or a discussion of factors considered in a determination that the child cannot be returned home and goals for alternative permanent placement; and

(2) Documentation of the caseworker's actions in application of the principles, policies, and procedures set forth in the State's guidelines as required in sub-paragraph (a)(5)(i)(C) or (a)(5)(ii)(D) of this section, as appropriate.

(iv) A description of the program of services to reunify families or to achieve other permanent placement shall be submitted to the RFD for review and approval.

(6) Determinations as to whether a State agency has met the requirements of paragraph (a) of this section shall be based upon the reports submitted and on-site surveys of implementation and shall be made prior to award of additional payments.

(b) If, for any two consecutive fiscal years after Fiscal Year 1979, there is appropriated under Section 420 of the Act a sum equal to or greater than $266,000,000, a State's allotment amount for any fiscal year after those two consecutive fiscal years shall be reduced to an amount equal to its allotment amount for Fiscal Year 1979 unless the following conditions have been met—

(1) The State agency has completed an inventory of children in foster care and determination of the appropriateness of placement and the report of the type specified in paragraph (a)(3) of this section;

(2) The State agency has implemented and is operating—

(i) A Statewide information system as described in paragraph (a)(4) of this section;

(ii) A case review system as described in Section 1356.40(d) of this title for all children receiving foster care under the supervision of the State; and

(iii) A program of services designed to reunify children with their parent(s) or families or to provide alternative permanent placement through adoption or legal guardianship as described in paragraph (a)(5) of this section.

(3) The State agency has implemented and is operating a program of pre-placement preventive services, policies and procedures designed to help children remain with their families. The State agency's program of pre-placement preventive services shall be available to all children and families in need and shall include—

(i) Twenty-four hour emergency caretaker, and homemaker services, day care, crisis counseling, individual and family counseling, emergency shelters, procedures and arrangements for access to available emergency financial assistance; and arrangements for the provision of temporary child care to provide respite to the family for a brief period, as part of a plan for preventing children's removal from home;

(ii) Other services which the agency identifies as necessary and appropriate such as home-based family services; self-help groups; provision of, or arrangements for, mental health, drug and alcohol abuse counseling, and vocational counseling or vocational rehabilitation;

(iii) Written guidelines which workers shall use for assessing the feasibility and appropriateness of services to support and improve family functioning or for determining when a child should be removed from a home and which specify the factors to be considered in making such a decision, including who within the agency shall be involved in the decision.

(iv) Written guidelines which specify the circumstances in which prior efforts to prevent placement would not be required, including situations when—

(A) The circumstances in the home present a substantial risk of harm to the child's welfare; or

(B) Preventive services have been offered but were refused by the family.

(4) For each child under the care of the State, there shall be documentation in the case plan of caseworker efforts to prevent removal from home through the application of the principles, policies and procedures set forth in the State's guidelines as specified in paragraph (b)(3)(iii) and a statement as to why such efforts failed to prevent the child's removal or why these efforts were not appropriate.

(5) A description of the program of pre-placement preventive services shall be submitted to the RPD for review and approval.

(6) Determination as to whether a State agency has met the conditions of paragraph (b) of this section shall be based upon the reports submitted and onsite surveys of implementation.

(c) Amounts expended by the State for the purposes of complying with the requirements of paragraphs (a) and (b) of this section shall be conclusively presumed to have been expended for child welfare services.

§ 1357.40 Development of the State's Child Welfare Services Plan.

(a) The State Child Welfare Services Plan shall contain the following four components—

(1) *Assurances.*

(i) The Assurances are the State agency's commitment to meet the basic requirements of the law and the regulation as described in this part.

(ii) The Administrator of the State agency shall certify on a pre-printed form that the State child welfare services program meets these requirements. If the State's CWSP does not meet all of the requirements specified in the Assurances, the State shall develop goals for correcting the deficiencies. The goals shall be contained in the Long Range Strategy.

(2) *The Long Range Strategy.*

(i) The Long Range Strategy shall express in measurable goals and objectives the steps the State will take as described in Section 1357.20(c)(4) to cover additional political subdivisions, reach additional children, and strengthen, extend and otherwise improve the scope and quality of child welfare services.

(ii) The Long Range Strategy shall include—

(A) An analysis of the deficiencies in existing services and discrepancies between the services needed and the services provided in the State as described in Section 1357.20(c)(3) and (3);

(B) Goals and objectives for the activities the State will undertake to make progress in child welfare services program development and improved services delivery as described in Section 1357.20(c)(3) during the plan period;

(C) The description of the State's staff development and training plan as required by Section 1357.20(c)(5).

(iii) The State agency shall establish the program period for its Long Range Strategy beginning with either the State, local or Federal government fiscal year and extend for at least two years but not more than three years.

(iv) The Long Range Strategy shall be jointly planned and developed with ACYF Regional Office staff.

(3) *The Annual Operating Plan.* The Annual Operating Plan shall—

(i) Include a report of the State's progress in attaining the goals and objectives in the Long Range Strategy.

(ii) Include a summary of child welfare services to be provided by the State and local agencies for the current plan year with estimates of the anticipated child welfare services expenditures and the number of clients, in a form and manner to be prescribed by the Commissioner.

(iii) Be jointly planned and developed with the ACYF Regional Office staff.

(4) *The Annual Budget Request.*

(i) The Annual Budget Request is the State's request for the award of funds allotted under title IV–B which shall be based on the Federal Fiscal Year and signed by the State agency administrator and the director of the single organizational unit.

(ii) Funds will be disbursed quarterly on the basis of the Annual Budget Request without submission of additional forms.

(b) *Plan Submittal and Review.*

(1) The Assurances, the Long Range Strategy, the Annual Operating Plan and the Annual Budget Request of the jointly developed Child Welfare Services Plan shall be submitted to the ACYF Regional Office 30 days before the effective date in the initial year of the plan.

(2) The Assurances shall be submitted only once and upon review and acceptance by the ACYF Regional Program Director, shall remain continuously in effect for the purposes of the Act, unless amended.

(3) In subsequent years, the Annual Operating Plan, the Annual Budget Request and the Long Range Strategy, when appropriate, shall be submitted 30 days before the effective date.

(4) The State Child Welfare Services Plan shall be submitted to the Governor's office or his/her designated agency for review and comment in accordance with the Office of Management and Budget Circular A–95 prior to OHDS/ACYF acceptance.

(5) State plans (new or amendments thereto) shall be submitted to the ACYF Regional Office in the format and within the period set in the implementing instructions.

(6) The ACYF Regional Program Director shall review the State Plan material to determine whether the requirements of Part 1357 of this title are met and that the document accurately represents the agreements reached through the joint planning process. If the requirements are not met or the document does not accurately reflect joint planning, the plan shall be revised through further discussion and negotiation between the State agency and ACYF Regional staff.

(7) If the final plan submitted by the State agency does not meet the requirements of Section 422(b) of the Act and Part 1357, FFP under title IV–B may be withheld, in whole or in part, after notice and opportunity for a hearing under 45 CFR Part 213.

(c) The title IV–B State plan provisions shall be amended when necessary to reflect new or revised Federal statutes or regulations and court decisions. After acceptance of the original plan, all relevant changes shall be submitted to the ACYF Regional Program Director to determine whether the plan continues to meet federal requirements and policies.

(d) *Review of State and Local Administration and Implementation.* To provide a basis for determining that State agencies are adhering to federal requirements and to the substantive legal and administrative provisions of the State plan, ACYF will review State and local program administration and implementation. The review shall include analysis of procedures and policies of State and local agencies and examination of case records of individual services recipients and a review of supporting documentation.

(1) FFP may be denied for a specific expenditure(s) not made in accordance with the provisions of the State plan.

(2) A grant may be terminated, in whole or in part, under 45 CFR 74.115 when the State agency has materially failed to comply with the terms of the grant.

§ 1357.45 Requirements for direct payments to Indian tribal organizations.

(a) *Program Scope and Definitions.*

(1) *Scope.* Grants are available under title IV–B for allowable costs in expenditures by Indian tribal organizations or consortia in establishing, extending and strengthening child welfare services. To be eligible the Indian tribal organization shall have a child welfare services plan that has been developed jointly by the Indian tribal organization and the Secretary, or his or her designee, and that meets the requirements of these regulations.

(2) *Definition of Terms. Consortium* means a group of tribal organizations which is authorized by the membership to act for them for the purpose of providing services under title IV–B.

Indian tribal organization means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body.

Indian tribe means any tribe, band, nation, or other organized group or community of Indians [including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Pub. L. 92–203; 85 Stat. 688)] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians or is located on, or in proximity to a Federal or State reservation or rancheria.

(b) *Child Welfare Services Plan Requirements Under Title IV–B.*

(1) To be eligible for a grant under title IV–B, an Indian tribal organization must have contracted pursuant to the Indian Self-Determination Act, (title I of Pub. L. 93–638) to provide those child welfare services formerly provided directly by the Secretary of the Interior (25 U.S.C. 13).

(2) To be eligible for a grant under title IV–B, an Indian tribal organization must have a plan for child welfare services jointly planned and developed by the Secretary and the Indian tribal organization or consortium.

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(3) The Indian Tribal organization's plan shall—

(i) Describe the tribal organization, including:

(A) The name of the tribal organization;

(B) The legal and organizational relationship of the tribal organization to the Indians in the area to be served;

(C) Legal responsibility for children who are in foster care on the reservation and for adoption. Jurisdiction in civil and criminal matters, existence or nonexistence of a tribal court and the type of court and codes, if any;

(D) Standards for foster family and institutional care and day care;

(E) Tribe's political subdivisions, if any;

(F) Whether the tribal organization is controlled, sanctioned or chartered by the governing body of Indians to be served, and, if so, documentation of such fact;

(G) Any limitations on authorities granted the tribal organization; and

(H) The tribal resolution(s) authorizing it to apply for a grant under this part.

(ii) The Indian tribal organization's plan shall meet the requirements in Section 1357.20(b) and (c)(3) through (c)(14). Substitute "Indian tribe" for "State" and disregard references to title IV–E whenever they occur. The coordination requirement has been modified as follows:

Coordination of Services

(1) The Indian tribal organization's plan shall assure coordination of services with other Federal or tribal programs to ensure maximum availability and utilization of resources that promote and enhance the welfare of children, youth and families served under title IV–B.

(2) The Indian tribal organization's plan shall provide for procedures that will ensure coordination of services including—

(i) An assessment of the relevance and appropriateness of other programs and services to the needs of children and their families;

(ii) Periodic assessment of the effectiveness of the tribal organization's arrangements for coordination of program services and activities.

(c) Requirements for Eligibility for Additional Payments

(1) For any fiscal year after FY 1979 in which a sum in excess of $141,000,000 is appropriated under Section 420 of the Act, a tribe shall not be eligible for payment of an amount greater than the amount for which it would be eligible if the appropriation were equal to $141,000,000 unless the Indian tribal organization shall implement the requirements in Section 1357.30(a). Substitute "Indian tribe" for "State," "Indian tribal organization" for "State agency," and "tribal geographic area" for "Statewide" wherever they occur.

(2) If, for any two consecutive fiscal years after Fiscal Year 1979, there is appropriated under Section 420 of the Act a sum equal to or greater than $266,000,000, a tribe's allotment amount for any fiscal year those two consecutive fiscal years shall be reduced to an amount equal to what the allotment amount would have been for Fiscal Year 1979 unless the Indian tribal organization shall implement the requirements in Section 1357.30(b) and (c). Substitute "Indian tribe" for "State," "Indian tribal organization" for "State agency," and "tribal geographic area" for "Statewide" wherever they occur.

(d) Development of Indian Tribal Organization's Child Welfare Services Plan

(1) The Indian Tribal Organization shall meet the requirements of 1357.40 with the exception of 1357.40(b)(4). This requirement can be disregarded unless the tribe has a procedure for review similar to that described in the Office of Management and Budget Circular A–95. Substitute "Indian tribe" for "State" and "Indian tribal organization" for "State agency" wherever they occur.

(e) Grant Distribution Formula and Fiscal Requirements

(1) Grants shall be made beginning in October, 1982 to eligible Indian tribal organizations in a State which has a Child Welfare Services Plan under title IV–B. Only one Indian tribal organization within an Indian reservation (service area) can be eligible for a grant. A consortium of Indian tribal organizations can be eligible for a grant.

(2) The allotment for each tribe is determined as follows:

(i) The Indian tribe's (or consortium's) resident population under 21 is divided by the State's total population under 21;

(ii) The result of paragraph (i) is multiplied by 1.5;

(iii) The State's total IV–B allotment is multiplied by the result of paragraph (ii).

(3) Funds for eligible Indian tribal organizations shall be paid from the allotment for the State in which the tribal organization is located.

(4) If an eligible Indian tribal organization (or consortium) includes population from more than one State, a proportionate amount of the grant will be paid from each State's allotment.

(5) In determining the Indian population under 21, Bureau of Census data will be used, or if unavailable, the most recent and reliable independent data available.

(6) The Indian tribal organization shall adhere to the requirements in Section 1357.50 (c), (d), (f) and (g). Substitute "Indian tribe" for "State," "Indian tribal organization" for "State agency."

(7) The Secretary need not make an award to any Indian tribal organization if it can be clearly demonstrated that the receipt of a grant would reduce services to Indian children and their families.

(8) The receipt of title IV–B funds shall be in addition to and not a substitute for funds otherwise previously expended by the Indian tribal organization or consortium for child welfare services.

§ 1357.50 Fiscal requirements (IV–B).

(a) *Allotments to State.*

(1) The Commissioner shall publish the allotment percentage for each State between October 1 and November 30 of each even numbered year—

(i) Data used shall be the average per capita income of each State and the United States for the three most recent calendar years for which satisfactory data is available from the U.S. Department of Commerce.

(ii) The published allotment percentages shall be conclusive for each of the next two fiscal years which begin October 1st, following the publication.

(2) The allotment of Federal funds for child welfare services for each State with an approved State plan, jointly developed by the State agency and the Commissioner, shall be calculated in the following manner—

(i) Each State shall receive a "base" amount of $70,000; plus

(ii) An amount which is computed as follows—

(A) For each State, multiply the State's population under age twenty-one (21) by that State's allotment percentage as published by the Commissioner;

(B) Add all the products computed under paragraph (A) for all the States together;

(C) Subtract the sum of the "base amount" from the total funds available;

(D) Divide the amount calculated under paragraph (C) by the sum of the products in paragraph (B); and

(E) Multiply the result in (D) by the product for each State in paragraph (A).

(3) For the purposes of this section only, the term United States means the fifty States and the District of Columbia.

(4) Payments made directly to an Indian Tribal Organization under Section 1357.45 are included within the allotment of the State within which the tribal organization is located.

(b) *Reallotment.*

(1) When a State certifies to the Commissioner that funds available to that State under its title IV–B allotment will not be required for carrying out that

State's plan, those funds shall be available for reallotment to another State.

(2) The Commissioner may reallot available funds to another State when he or she determines that—

(i) The requesting State's plan requires funds in excess of the State's original allotment; and

(ii) The State will be able to obligate the additional funds during the current fiscal year.

(c) *Allowable Costs.*

FFP is available for allowable costs in expenditures under title IV–B to establish, extend and strengthen child welfare services and to effectively administer, evaluate and monitor the State plan. These expenditures include, but are not limited to:

(1) In-home services that support or supplement parental care of children to avoid the necessity of out-of-home placement, such as services, respite care, day care, after care and counseling which meet standards set by the State agency;

(2) Professional education for appropriate State agency staff and for inservice training of all State agency staff providing or regulating child welfare services; for professional staff attending an educational facility, the provisions of 45 CFR 235.63 and 235.64 shall apply;

(3) Training of other providers of services, under contract or other agreement with the State agency, such as foster parents, child care institution staff and day care personnel;

(4) State and local agency staff attendance at meetings pertinent to the development and implementation of child welfare services in the State and local communities.

(5) State and local advisory committees for day care services, child welfare advisory committees of the State or local agency, and foster care review boards appointed by and responsible to the State or local agency, including expenses of members to attend meetings;

(6) Supervision and related costs of the use of volunteers;

(7) State and local agency membership in organizations related to child welfare services;

(8) Foster Care Maintenance payments; made on behalf of children placed in foster family homes, group homes or child care institutions which are licensed or are approved as meeting the standards for licensing or approval specified in Section 1356.40(h);

(9) Services, including transportation, to assist in the reunification of children with their families when out-of-home care has been necessary;

(10) Adoption services, before and after finalization of the adoption and the non-recurring costs of adoption proceedings;

(11) Non-recurring costs of establishing a special needs child or children in the home of adoptive parent(s), including the costs of special furniture for a handicapped child or additional beds for a large sibling group.

(12) Day care services for children in out-of-home care in family day care homes, groups homes, group day care homes and day care centers, when the State or local agency has accepted responsibility for the provision of the care for these children and the caretaker is licensed or approved as meeting the requirements for licensing or approval;

(13) Care for children in emergency care facilities which meet standards set by the State agency;

(14) Counselling and other appropriate services to youth, including status offenders and their families in crisis;

(15) Care of unmarried mothers and their children in maternity homes and centers which meet the standards set by the agency;

(16) Development of the State's child welfare services through activities which show promise of advancing the State's child welfare services and are conducted by public or private non-profit institutions of higher education, other public or voluntary agencies, or organizations that engage in research or demonstration of child welfare activities;

(17) Case management, including monitoring, evaluation, reporting and the costs of compiling statistical report(s) required by these regulations;

(18) Independent living arrangements for children under State agency supervision and guardianship;

(19) Care for runaway children who are not yet age 18, in facilities which meet standards set by the State agency and transportation for returning these children (including, if necessary transportation of an attendant) to their own communities when their parents or other persons, agencies or institutions legally responsible for support of these children cannot assume that responsibility; and

(20) Costs for the inventory, Statewide information system, case review system, the service program designed to prevent placement in foster care, and the service program designed to return children to their families or place them for adoption or legal guardianship, as described in Section 1357.30.

(d) *Restrictions on the Use of Title IV–B Funds.*

(1) The total of Federal funds used for the following purposes under title IV–B (whether paid under Section 420 of the Act or transferred from unused title IV–E or IV–A Foster Care allotments) may not exceed an amount equal to the FY 1979 Federal payment under title IV–B:

(i) Child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living.

(ii) Foster care maintenance payments.

(iii) Adoption assistance payments.

(2) Notwithstanding paragraph (1), State expenditures required to match the title IV–B allotment may include foster care maintenance expenditures in any amount.

(3) Funds awarded under title IV–B may not be used for the costs, purchase, construction, or other capital costs of child care facilities.

(e) *Federal Financial Participation.*

Federal financial participation is available at the rate of 75% for allowable costs in expenditures made under this Part.

(f) *Payments to States.*

The procedures in the following sections of 45 CFR shall apply to grants made under the provisions of these regulations and title IV–B of the Act—

(1) Section 201.5, Grants (except that ACYF shall supply appropriate forms and instructions)

(2) Section 201.6, Withholding/Reduction of FFP

(3) Section 201.7, Judicial Review

(4) Section 201.15, Deferral

(5) Section 201.66, Repayment of Federal funds in installments

(g) *Apportionment of Costs.*

(1) *General.*

Federal financial participation is available only if costs are incurred in accordance with the grants administration requirements of Part 74 of this title and where appropriate, allocated in accordance with the provisions of Section 205.150 of this title, Cost Allocation.

(i) Non-public third party in-kind contributions may not be used to meet the requirements of the non-Federal share of the costs of programs funded under this Part 1357.

(ii) Subpart I, Financial Reporting Requirements, of Part 74 of this title does not apply. ACYF will provide forms and instructions for financial reporting.

(h) *Maintenance of Effort.*

(1) A State may not receive an amount of Federal funds under title IV–B greater than the amount of Federal funds received under title IV–B in Federal fiscal year 1979 unless the State's expenditure of State and local appropriated funds for public child

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welfare services (as defined in 1357.10(b)(1)) is equal to or greater than the total of that State's expenditure from State and local appropriated funds for similar covered services and programs in Federal fiscal year 1979.

(2) In computing a State's expenditure in Federal FY 79 and any subsequent fiscal year expenditure level under the Act and these regulations, the following costs may not be included—

(i) Expenditures and costs for child day care necessary to support the employment of a parent or other relative;

(ii) Foster care maintenance payments; and

(iii) Adoption assistance payments.

(3) A State applying for an amount of Federal funds under title IV–B greater than the amount of title IV–B funds received by that State in Federal fiscal year 1979 must certify:

(i) The amount of their expenditure in Federal fiscal year 1979 for child welfare services as described in paragraphs (1) and (2) of this section, and

(ii) The amount of State and local funds that have been appropriated and are available for child welfare services as described in paragraph (i) above for the Federal fiscal year for which application for additional funds is being made.

Records verifying the required certification shall be maintained by the State and made available to the Secretary as necessary to confirm compliance with this section.

[FR Doc. 80-40356 Filed 12-30-80; 8:45 am]

BILLING CODE 4110-92-M

Health Care Financing Administration

42 CFR Parts 431, 435, and 436

Medicaid Program; Entitlement of Individuals Receiving Cash Assistance Under the Foster Care Maintenance Payments Program or the Adoption Assistance Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposal would implement the Medicaid provisions of the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272). The Act establishes a new title IV–E of the Social Security Act, providing for adoption subsidies for certain hard-to-place children and for an expanded foster care program. Under the law, children for whom adoption assistance or foster care maintenance payments are made are entitled to Medicaid. This proposal specifies State financial responsibility for Medicaid.

DATES: To assure consideration, comments should be mailed by March 16, 1981.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17076, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave. S.W., Washington, D.C., or to Room 789, East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP–113–P. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave, S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 to 5:00 p.m. (202–245–7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

FOR FURTHER INFORMATION CONTACT: Dennis McNown, 301–594–8220.

SUPPLEMENTARY INFORMATION: The Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272), enacted June 17, 1980, seeks to assure adequate planning for children who need help in preserving their homes or who need care away from their homes. The law creates a new title IV–E of the Social Security Act, which replaces the foster care program under title IV–A (Aid to Families with Dependent Children (AFDC)) and established an adoption assistance program, which provides continuing adoption subsidies, Medicaid, and title XX (social services) benefits for hard-to-place children with special needs.

The children covered under the adoption program are those who are eligible for AFDC, title IV–E foster care maintenance payments, or Supplemental Security Income (SSI). Proposed implementing regulations are provided in a separate document published by the Office of Human Development Services in this issue of the Federal Register.

In addition to providing Federal funds to finance continuing adoption assistance for hard-to-place SSI, AFDC, and title IV–E foster care children with special needs, Pub. L. 96–272 also entitles two new groups to benefits under the foster care maintenance payment program: (1) certain children voluntarily removed from their homes; and (2) children in public non-detention-type child-care facilities that house no more than 25 children. Previously, the law had provided for foster care only for children removed from their homes as a result of a judicial determination, and did not provide foster care coverage for children in public institutions.

The new provisions of law mandate Medicaid eligibility for all children for whom payments are made under the foster care maintenance payments program or the adoption assistance program. These children are deemed to be recipients of Aid to Families With Dependent Children (AFDC) under title IV–A of the Social Security Act (see section 101 of Pub. L. 96–272 which adds sections 472(d) and 473(b) of the Social Security Act). Since AFDC recipients are automatically eligible for Medicaid by virtue of their AFDC recipient status, the new legislation, by providing for "deemed" AFDC recipient status, provides mandatory Medicaid coverage for these individuals.

Under the proposed regulations, the State making the foster care maintenance payments or the adoption assistance payments would be required to retain financial responsibility for Medicaid. This is consistent with current HCFA policy requiring the State providing cash assistance resulting in Medicaid eligibility to also have responsibility for Medicaid for the individuals involved (see CFR 435.110, 435.120, 435.130, and 436.110).

Usually, when a recipient of a cash assistance program that is linked to Medicaid moves to another State, the individual loses eligibility for that cash assistance program (and Medicaid) in the originating State, and is covered for both programs by the new State if he or she meets that State's requirements. However, as explained in the preamble to the proposed regulations implementing title IV–E, the Department has determined with respect to foster care that, when a family moves to another State, responsibility for foster care payments will remain with the originating State. Therefore, these proposed regulations require that responsibility for Medicaid remain with the originating State.

This represents a continuation of policy in effect under the title IV–A AFDC foster care program, which required that the State with initial responsibility for foster care payments retain that financial responsibility.

including Medicaid, when the foster care placement is made out-of-State.

With respect to adoptions, section 101(a)(4)(A) of Pub. L. 96–272 (new section 475(3)(B) of the Social Security Act) requires that, for adoption assistance agreements entered into on or after October 1, 1983, the agreement must remain in effect regardless of the State in which the adoptive parents reside at any given time. Thus, the originating State will remain responsible for continuing the assistance even if the family moves. (Before that date, if the family moves to another State, the originating State may either continue the payments or end the agreement.) If a family does move out-of-State and continues to receive payments, a question arises as to whether the child is still a resident of the first State and should continue to receive Medicaid coverage from that State.

We believe that the State making the adoption payments should retain financial responsibility for Medicaid. We think that this is consistent with the intent of Congress, as expressed in section 101(a)(a)(A) of the new statute, and with the longstanding relationship between AFDC and Medicaid. Since the original State must continue to provide the subsidy, and since the statute, by providing that these children are deemed to be AFDC recipients, specifically continues the existing linkage between Medicaid and the cash programs, we think there is no basis to consider the child a deemed AFDC recipient in a State other than the one carrying out the adoption assistance contract, nor to impose on any other State the obligation, stemming from such a contract, to be financially responsible for Medicaid. The proposed regulations would specify this policy.

It should be noted that new section 475 of the Act also provides for interstate compacts as one means of protecting the interests of the child when the family moves to another State. This is compatible with existing Medicaid regulations, which allow for interstate agreements on resolving questions of residency for Medicaid eligibility purposes (42 CFR 435.403(i) and 436.403(h)). States involved in adoption assistance agreements may wish to explore the possibility of interstate compacts for financial responsibility and the provision of Medicaid services.

We propose to make the following changes in current regulations:

(1) 42 CFR 431.52, regulations on payments for Medicaid services furnished out of State, would be changed to clarify that the originating State retains financial responsibility for Medicaid when a child whose eligibility is based on receipt of title IV–E payments from that State moves to another State.

(2) We would amend our current rules on mandatory coverage of AFDC recipients (42 CFR 435.110 and 436.110) to provide that States and jurisdictions must provide Medicaid to children for whom foster care maintenance payments or adoption assistance payments are made.

(3) We propose to amend our current rules on State residency requirements (42 CFR 435.403 and 436.403) to clarify that the State of residence, for purposes of Medicaid eligibility for these children, is the State making the foster care maintenance payments or adoption assistance payments.

(4) We would amend the definitions relating to institutional status (42 CFR 435.1009) to implement the provision concerning public child care institutions that accommodate no more than 25 children. Since AFDC-foster care under title IV–A will not be completely phased out until October 1, 1982, the provision applies both to that program and to the foster care maintenance program under title IV–E. The definition of a child care institution added to § 435.1009 specifies that such institutions not include detention facilities, forestry camps, training schools, or any other type of facility primarily operated for detention of delinquent children. This exclusion is based on the new section 472(c)(2) of the Social Security Act.

(5) We would make two technical changes by adding the statutory basis for these regulations to 42 CFR 435.2 and 436.2.

42 CFR Chapter IV, Subchapter C, is amended as set forth below:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302)

A. Part 431 is amended as follows:

Section 431.52 is amended by revising paragraphs (b)(3) and (b)(4) and by adding a new paragraph (b)(5). As revised, paragraphs (b)(3) and (b)(4) and new paragraph (b)(5) read as follows:

§ 431.52 Payments for services furnished out of State.

* * * * *

(b) *Payment for services.* A State plan must provide that the State will furnish Medicaid to a recipient who is a resident of the State while that recipient is in another State, to the same extent that Medicaid is furnished to residents in the State, when—

* * * * *

(3) The State determines, on the basis of the attending physician's medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other State;

(4) It is general practice for recipients in a particular locality to use medical resources in another State; or

(5) The State is making adoption assistance or foster care maintenance payments under title IV–E of the Act for the recipient.

* * * * *

B. Part 435 is amended as follows:

1. Section 435.3 is amended by adding citations 472(d) and 473(b) in numerical order, to read as follows:

§ 435.3 Basis.

This part implements the following sections of the Act, which state eligibility requirements and standards:

472(d) Eligibility for children receiving foster care maintenance payments.

473(b) Eligibility for children receiving adoption assistance payments.

* * * * *

2. Section 435.110 is amended by revising paragraph (a) as follows:

§ 435.110 Individuals receiving aid to families with dependent children.

(a) A Medicaid agency must provide Medicaid to individuals receiving cash assistance under AFDC. Individuals receiving foster care maintenance payments or adoption assistance payments under title IV–E of the Act are considered to be receiving AFDC.

* * * * *

3. Section 435.403 is amended by revising paragraph (e) as follows:

§ 435.403 State residence.

* * * * *

(e) *Individuals receiving a State supplementary payment (SSP), or for whom an adoption assistance payment or foster care maintenance payment is made.*

(1) For any individual who is receiving a SSP, the State of residence is the State making the payments.

(2) For any individual whose Medicaid eligibility is based on the receipt of foster care maintenance payments or adoption assistance payments under title IV–E of the Act, the State responsible for Medicaid is the State making title IV–E payments.

* * * * *

4. Section 435.1009 is amended by adding in alphabetical order the definition of the "child care institution" and by revising the definition of "public institution" as follows:

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§ 435.4009 Definitions relating to institutional status.

For purposes of FFP, the following definitions apply:

* * * * *

"Child-care institution" means a public child-care institution that accommodates no more than twenty-five children, and is licensed by the State in which it is situated or has been approved, by the agency of the State responsible for licensing or approval of institutions of this type, as meeting the standards established for licensing. The term does not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquents.

* * * * *

"Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. The term "public institution" does not include (1) a medical institution as defined in this section; (2) an intermediate care facility as defined in §§ 440.140 and 440.150 of this chapter; (3) a publicly operated community residence that serves no more than 16 residents, as defined in this section; or (4) child care institutions as defined in this section, with respect to (i) children for whom foster care maintenance payments are made under title IV-E of the Act, and (ii) children receiving AFDC—foster care under title IV-A of the Act.

* * * * *

C. Part 436 is amended as follows:

§ 436.2 [Amended]

1. Section 436.2 is amended by adding citations 472(d) and 473(b) in numerical order to read as follows:

472(d) Eligibility for children receiving foster care maintenance payments.
473(b) Eligibility for children receiving adoption assistance payments.

* * * * *

2. Section 436.110 is amended by revising paragraph (a) as follows:

§ 436.110 Individuals receiving cash assistance.

(a) A Medicaid agency must provide Medicaid to individuals receiving cash assistance under OAA, AFDC, AB, APTD, or AABD. Individuals receiving foster care maintenance payments or adoption assistance payments under title IV-E of the Act are considered to be receiving AFDC.

* * * * *

3. Section 436.403 is amended by revising paragraph (c), redesignating paragraphs (e) through (i) as paragraphs (f) through (j) and adding a new paragraph (e). As revised new paragraph (c) and new paragraphs (e) through (j) read as follows:

§ 436.403 State residence.

* * * * *

(c) *Who is a State resident.* A resident of a State is any individual who:

(1) Meets the conditions in paragraphs (d) through (g) of this section; or

(2) Meets the criteria specified in an interstate agreement under paragraph (i) of this section.

* * * * *

(e) *Individuals for whom foster care maintenance payments or adoption assistance payments are made.* For any individual whose Medicaid eligibility is based on the receipt of foster care maintenance payments or adoption assistance payments under title IV-E of the Act, the State responsible for Medicaid is the State making the title IV-E payments.

(f) *Non-institutionalized individuals.* (1) For any non-institutionalized individual under age 21, the State of residence is determined in accordance with 45 CFR 233.40, the rules governing residence under the AFDC program.

(2) For any other individual over age 21, the State of residence is the State where he is—

(i) Living with the intention to remain there permanently or for an indefinite period (or if incapable of stating intent, where he is living); or

(ii) Living and which he entered with a job commitment or seeking employment (whether or not currently employed).

(g) *Institutionalized individuals.* (1) For any institutionalized individual who is under age 21 or who is age 21 or older and became incapable of indicating intent before age 21, the State of residence is—

(i) That of his parents, or his legal guardian if one has been appointed; or

(ii) That of the parent applying for Medicaid on the individual's behalf, if the parents reside in separate States and there is no appointed legal guardian.

(2) For an institutionalized individual who became incapable of indicating intent at or after age 21, the State of residence is the State in which the individual was living when he became incapable of indicating intent. If this cannot be determined the State of residence is the State in which he was living when he was first determined incapable of indicating intent.

(3) Under both paragraphs (g) (1) and (2) of this section, the State where the institution is located is the individual's State of residence unless that State determines that the individual is a resident of another State, by applying the rules under paragraphs (g) (1) and (2).

(4) For any other institutionalized individual over age 21, the State of residence is the State where he is living with the intention to remain there permanently or for an indefinite period.

(h) *Specific prohibitions.* (1) The agency may not deny Medicaid eligibility because an individual has not resided in the State for a specified period.

(2) The agency may not deny Medicaid eligibility to an individual in an institution, who satisfies the residency rules set forth in this section, on the grounds that the individual did not establish residence in the State before entering the institution.

(3) The agency may not deny or terminate a resident's Medicaid eligibility because of that person's temporary absence from the State if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid.

(i) *Interstate agreements.* A State may have a written agreement with another State setting forth rules and procedures resolving cases of disputed residency. These agreements may establish criteria other than those specified in paragraphs (b) through (g) of this section, but must not include criteria that result in loss of residency in both States or that are prohibited by paragraph (h). The agreements must contain a procedure for providing Medicaid to individuals pending resolution of the case.

(j) *Continued Medicaid for institutionalized recipients.* If, on the effective date of this section, an agency is providing Medicaid to an institutionalized recipient who, as a result of this section, would be considered a resident of a different State—(1) The agency must continue to provide Medicaid to that recipient for two years unless it makes arrangements with another State of residence to provide Medicaid at an earlier date; and (2) Those arrangements must not include provisions prohibited by paragraph (h) of this section.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: December 22, 1980.

Earl M. Collier, Jr.,

Acting Administrator, Health Care Financing Administration.

Approved: December 23, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-40557 Filed 12-30-80; 8:45 am]
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federal register

Wednesday
December 31, 1980

Part VII

Department of Education

Student Assistance General Provisions; Final Regulations and Request for Comments

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DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final Regulations with comments invited.

SUMMARY: These regulations include definitions, special terms and provisions that are common to student financial assistance programs authorized by Title IV of the Higher Education Act (Subpart A), and the student consumer information provisions currently codified in 34 CFR Part 686 (Subpart C). Several provisions in this part have also been amended to conform to statutory changes made in Title IV of the Higher Education Act by the Education Amendments of 1980, Pub. L. 96–374. For example, the regulations regarding the limitation, suspension and termination of the eligibility of institutions have been amended to provide for the Secretary's new authority to impose fines for program violations. With regard to the common definitions, terms and provisions in Subpart A, it is the Secretary's intention to delete those provisions from the individual program regulations when those regulations are republished.

DATES: All comments, suggestions, or objections must be received on before March 2, 1981.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to the Congress. Regulations are usually transmitted to the Congress several days before they are published in the Federal Register. The effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: William L. Moran or Robert E. Jamroz, Office of Student Financial Assistance, Room 4318, ROB–3, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 472–4300.

SUPPLEMENTARY INFORMATION: The following is a discussion of the changes made in part 668.

Subpart A—General

The following definitions have been taken from the individual title IV student financial assistance program regulations and have been included in this subpart: "public and nonprofit private institution of higher education," "proprietary institution of higher education," "postsecondary vocational institution," "recognized equivalent of a high school diploma," "ability to benefit," "one year training program" and "six month training program." These definitions and terms will be deleted from each program's regulations when those regulations are published.

The various civil rights requirements and criminal penalties that institutions are subject to in their administration of title IV student financial assistance programs have also been included in this subpart. Again, if such provisions are currently in existing program regulations, they will be deleted when those regulations are published.

The Education Amendments of 1980 amended the definition of a postsecondary vocational institution in two respects. A postsecondary vocational institution may now admit as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the education or training offered. Further, these institutions no longer need to be fully accredited but may qualify under the statutory definition if they are making reasonable progress toward accreditation, i.e., candidacy status, or if the credits of at least three of their students are fully accepted upon transfer by at least three accredited institutions.

The "ability to benefit" requirement that certain institutions must meet has been modified. Institutions no longer need to document and keep records for each student. An institution may now satisfy this requirement if it can demonstrate that it had developed and consistently applies criteria for determining that its students have the ability to benefit from the education or training it offers. Of course, however, the institution must be able to justify, upon request, that the students it admits have that ability.

Subpart B—Standard for Audits, Records, Financial Responsibility, Administrative Capability and Disposition of Refunds.

The Education Amendments of 1980 require institutions that wish to participate in the title VI student assistance programs, other than the State Incentive Grant Program, to enter into a program participation agreement with the Secretary. Section 668.11 has been revised to incorporate this requirement.

The Education Amendments of 1980 deleted the aggregate maximum grant amount in the Supplemental Educational Opportunity Grant program and also deleted the requirement that limited a student's eligibility for the Supplemental Grant Program to four academic years. The law now provides that a student is eligible for a Supplemental Grant as long as he or she has not received his or her first baccalaureate degree.

The Secretary has revised the financial aid transcript requirement, § 668.14, to accommodate this change by eliminating the need to report on the transcript the amount of Supplemental Grants a student received over the years while attending the institution. The institution shall indicate if the student ever received a Supplemental Grant and report only the amount of Supplemental Grants disbursed to a student for the award period in which the student transfers. This information is needed to prevent a student from receiving grants totaling more than $2000 per academic year under that program.

The financial aid community has noted that the information requested on the transcript regarding the dependent-independent status of a student is not of any value to the institution the student transfers to. Therefore, the Secretary has dropped this requirement.

Section 668.22 has been added and includes the provision that is currently in each title IV student assistance program that funds received by an institution under any such program are held in trust by the institution for the intended student beneficiaries and may not be used for any other purpose.

As a result of the creation of the Education Department, the functions and responsibilities formerly handled by the HEW Audit Agency with regard to education matters are now handled by the Education Department's Inspector General's Office. Thus the changes in §§ 668.12 and 668.13.

Subpart C—Student Consumer Information Services

The Student Consumer Information Services regulations currently codified in Part 686 of Title 34 of the Code of Federal Regulations are incorporated into the Student Assistance General Provisions as Subpart C. Upon publication of these regulations, part 686 will be revoked. These regulations are being transferred to this part since they are now, as a result of the Education Amendments of 1980, applicable to all institutions participating in any title IV student assistance program. Before this statutory change, only institutions receiving an administrative cost allowance were subject to these provisions.

Other changes made by the Education Amendments of 1980 in the consumer information services requirements include: (1) Deleting the requirement that an institution inform students of the retention and drop-out rates for particular programs it offers, (2) adding the requirement that the institution describe to its students or prospective students, any special facilities or services available to handicapped students, and (3) adding the requirement that the institution inform its enrolled or prospective students of the names of the associations, agencies or governmental bodies which accredit, approve or license the institution or its programs.

As a result of the Education Amendments of 1980, institutions no longer need to use their administrative allowances to carry out these information activities. Therefore, the audit and recordkeeping requirements for administrative allowances in the current regulations have been deleted.

Subpart F—Misrepresentation

This subpart, currently Subpart C, is recodified as Subpart F. No other changes have been made to these regulations.

Subpart G—Fine, Limitation, Suspension and Termination Procedures

This subpart, currently Subpart H, is recodified as Subpart G. This subpart has also been amended to include the authority given to the Secretary by the Education Amendments of 1980 to impose fines on institutions which fail to properly administer the title IV student assistance programs. The procedures used for fines are identical to the ones used for limitations and terminations.

Other minor procedural changes were made in this subpart. These changes include, for example, changes in relevant sections in the subpart in order to accomodate the authority to impose fines, the deletion of all references to the HEAL program, and the adding of references to the Parent Loan for Undergraduate Students Program (PLUS). The reference to the HEAL program, the Health Education Assistance Loan Program authorized by title VII–C–1 of the Public Health Service Act, was deleted since statutory authority to administer that program is lodged in the Secretary of Health and Human Services.

Miscellaneous.

Other changes of a minor, technical or procedural nature have been made as a result of the reorganization of the part.

Invitation to Comment:

Many members of the financial aid community have indicated that these Student Assistance General Provisions should be expanded to include all statutory provisions and title IV student assistance program regulations that are common to all the title IV student assistance programs. For example, it has been proposed that the regulations addressing student eligibility (Section 484 of the Higher Education Act) be incorporated into these regulations and deleted from the individual title IV program regulations. Interested persons are invited to submit comments or recommendations regarding this proposal.

Written comments and recommendations may be sent to the address given at the beginning of this preamble. Comments must be received no later than March 2, 1981.

All comments submitted in response to this proposal will be available for public inspection in Room 4318, ROB–3, 7th & D Streets, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, of each week except Federal holidays.

Assessment of Educational Impact

On November 14, 1980, the Secretary published a notice in the Federal Register of the Department's intent to publish regulations necessary to implement the Education Amendments of 1980. In that notice, the Department listed the existing regulations affected by the new law and requested comments whether those regulations required information that is already being gathered by or is available from any other agency or authority of the United States. The regulations in this document are based on regulations listed in the November 14, 1980 notice. Based on any comments received and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

Waiver of Notice of Proposed Rulemaking.

The regulatory changes made in this part merely reflect statutory changes made in title IV of the Higher Education Act, nonsubstantive organizational changes required by the incorporation of existing regulatory provisions from other regulations, or minor technical revisions. In addition, the Secretary wishes to give the program community as much advance notice as possible of these changes. Accordingly, the Secretary finds that publication of a proposed rule in this instance would be unnecessary, impracticable and contrary to the public interest within the meaning of 5 U.S.C. 533(b), and is publishing these rules as final regulations.

Dated: December 23, 1980.

(Catalogue of Federal Domestic Assistance Numbers: Pell Grant program, 84.063; Supplemental Educational Opportunity Grant Program, 84.007; State Student Incentive Grant program, 84.069; Guaranteed Student Loan Program, 84.032; College Work-Study Program, 84.033; National Direct Student Loan Program, 84.038)

Shirley M. Hufstedler,

Secretary of Education.

1. Part 668 of Title 34 of the Code of Federal Regulations is amended as follows:

(a) The table of sections and subparts is revised to read as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

Subpart A—General

Sec.
668.1 Scope.
668.2 Public or private nonprofit institution of higher education.
668.3 Proprietary institution of higher education.
668.4 Postsecondary vocational institution.
668.5 Recognized equivalent of a high school diploma.
668.6 Ability to benefit.
668.7 One year training program.
668.8 Six month training program.
668.9 Civil rights requirements.
668.10 Criminal penalties.

Subpart B—Standards for Audits, Records, Financial Responsibility, Administrative Capability and Disposition of Refunds

668.11 Scope—Participation agreement.
668.12 Audits, records, and examinations.
668.13 Audit exceptions and repayments.
668.14 Financial aid transcript.
668.15 Factors of financial responsibility.
668.16 Standards of administrative capability.
668.17 Additional factors for evaluating administrative capability and financial responsibility.
668.18 Change in ownership and control.
668.19 Contracting for educational programs or courses.
668.20 Institutions stop providing educational instruction—Loss of eligibility.
668.21 Distribution formula for institutional refunds and repayments of cash disbursements made directly to the student.
668.22 Federal interest in title IV student assistance funds.

Subpart C—Student Consumer Information Services

668.31 Scope.
668.32 Definitions.
668.33 Preparation and dissemination of materials.
668.34 Financial assistance information.
668.35 Institutional information.
668.36 Availability of employees for information dissemination purposes.

Subparts D-E [Reserved]

Subpart F—Misrepresentation

Sec
668.61 Scope.
668.62 Special definitions.
668.63 Nature of educational program.
668.64 Nature of financial charges.
668.65 Employability of graduates.
668.66 Endorsements and testimonials.
668.67 Procedures.

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

668.71 Scope.
668.72 Definitions.
668.73 Informal compliance procedures.
668.74 Emergency action.
668.75 Fine proceedings.
668.76 Suspension proceedings.
668.77 Limitation or termination proceedings.
668.78 Initial and final decisions—appeals.
668.79 Verification of mailing and receipt dates.
668.80 Fines.
668.81 Limitation.
668.82 Termination.
668.83 Reimbursements, refunds, and offsets.
668.84 Reinstatement after termination.
668.85 Removal of a limitation.
Appendix A—[Reserved]
Appendix B—Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)
Appendix C—Appendix I, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)

Authority: Sections 435, 481, 485, 487, 490 and 1201(a) of the Higher Education Act of 1965 as amended (20 U.S.C. 1085, 1088, 1092, 1094, 1097, and 1141(a)).

(b) Subpart A is revised to read as follows:

Subpart A—General

§ 668.1 Scope.

(a)(1) This part establishes general rules that apply to an institution of higher education or a vocational school that participates in any student financial assistance program authorized by title IV of the Higher Education Act of 1965 as amended. (title IV student assistance programs)

(2) As used in this part:

(i) An institution of higher education includes a public or private nonprofit institution as defined in § 668.2, a proprietary institution as defined in § 668.3, and a postsecondary vocational institution as defined in § 668.4, and

(ii) A vocational school is a school as defined in section 435(c) of the Higher Education Act of 1965 as amended. (20 U.S.C. 1085(c)).

(b) The title IV student assistance programs include—

(1) The Pell Grant Program previously known as the Basic Educational Opportunity Grant program (20 U.S.C. 1070a; 34 CFR Part 690);

(2) The Supplemental Educational Opportunity Grant Program (SEOG or Supplemental Grants—20 U.S.C. 1070b *et seq;* 34 CFR Part 676);

(3) The State Student Incentive Grant Program (SSIG—20 U.S.C. 1070c *et seq;* 34 CFR Part 692);

(4) The Guaranteed Student Loan Program (GSL—20 U.S.C. 1071 *et seq;* 34 CFR Part 682);

(5) The Parent Loans for Undergraduate Students Program (PLUS—20 U.S.C. 1078–2; 34 CFR Part 683);

(6) The College Work-Study Program (CWS—42 U.S.C. 2751 *et seq;* 34 CFR Part 675); and

(7) The National Direct Student Loan Program (NDSL—20 U.S.C. 1087aa *et seq;* 34 CFR Part 674);

(20 U.S.C. 1070 *et seq.*)

§ 668.2 Public or private nonprofit institution of higher education.

A "public or private nonprofit institution of higher education" is:

(a) An educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma,

(ii) Have the recognized equivalent of a high school diploma, or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and, if the institution seeks to participate in a title IV student assistance program other than the GSL or PLUS program, have the ability to benefit from the training offered;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

(4) Provides—

(i) An educational program for which it awards an associate, baccalaureate, graduate, or professional degree, or

(ii) At least a two-year program which is acceptable for full credit toward a baccalaureate degree, or

(iii) At least a one-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; and

(5) Is—

(i) Accredited by a nationally recognized accrediting agency or association,

(ii) Approved by a State agency recognized by the Secretary as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution is a public postsecondary vocational educational institution,

(iii) An institution which has satisfactorily assured the Secretary that it will meet the accreditation standards of an approved agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards, or

(iv) An institution whose credits are determined by the Secretary to be accepted on transfer by at least three accredited institutions on the same basis as transfer credits from fully accredited institutions;

(b)(1) If an institution seeks to participate solely in the GSL or PLUS programs and cannot be accredited or approved because there is no nationally recognized accrediting agency or association qualified to accredit or approve that type of institution, the institution satisfies the requirement of paragraph (a)(5) of this section if it is approved by a committee appointed by the Secretary for that purpose in accordance with the standards of content, scope, and quality that the committee prescribes.

(2) An institution that has been approved by the Committee must, in order to remain an eligible school, become accredited within three years after the Secretary has designated a nationally recognized accrediting agency for the type of institution applying for eligibility.

(c) For the purpose of this definition, the Secretary publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authority as to the quality of education or training offered.

(20 U.S.C. 1085, and 1141(a))

§ 668.3 Proprietary institution of higher education.

A "proprietary institution of higher education" is:

(a) An educational institution which—

(1) Is not a public or other nonprofit institution;

(2) Is in a State;

(3) Admits as regular students only persons who—

(i) Have a high school diploma,

(ii) Have the recognized equivalent of a high school diploma, or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered;

(4) Is legally authorized to provide postsecondary education in the State in which it is physically located;

(5) Provides at least a six-month program of training to prepare students for gainful employment in a recognized occupation;

(6) Is accredited by a nationally recognized accrediting agency or association; and

(7) Has been in existence for at least two years. The Secretary considers a school to have been in existence for two years if it has been legally authorized to provide, and has provided, a continuous training program to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(b) For the purpose of this definition, the Secretary publishes a list of nationally recognized accrediting agencies or associations that the Secretary has determined to be reliable authority as to the quality of education or training offered.

(20 U.S.C. 1141(a), 20 U.S.C. 1088(b))

§ 668.4 Postsecondary vocational institution.

A "postsecondary vocational institution" is:

(a) A public or private nonprofit educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma,

(ii) Have the recognized equivalent of a high school diploma, or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located and have the ability to benefit from the training offered;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located;

(4) Provides at least a six-month program of training to prepare students for gainful employment in a recognized occupation;

(5) Is—

(i) Accredited by a nationally recognized accrediting agency or association,

(ii) Approved by a State agency recognized by the Secretary as a reliable authority on the quality of public postsecondary vocational education in its State, if the institution is a public postsecondary vocational educational institution,

(iii) An institution which has satisfactorily assured the Secretary that it will meet the accreditation standards of an approved agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards, or

(iv) An institution whose credits are determined by the Secretary to be accepted on transfer by at least three accredited institutions on the same basis as transfer credits from fully accredited institutions;

(6) Has been in existence for at least two years. The Secretary considers an institution to have been in existence for two years if it has been legally authorized to provide, and has provided, a training program on a continuous basis to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.

(b) For the purposes of this definition the Secretary publishes a list of nationally recognized accrediting agencies or associations and State approval agencies that the Secretary has determined to be reliable authority as to the quality of education or training offered.

(20 U.S.C. 1141(a), 20 U.S.C. 1088)

§ 668.5 Recognized equivalent of a high school diploma.

The "recognized equivalent of a high school diploma" is—

(a) A General Education Development (GED) Certificate, or

(b) A State certificate received by a student after the student has passed a State authorized examination, which that State recognizes as the equivalent of a high school diploma.

(20 U.S.C. 1141(a))

§ 668.6 Ability to benefit.

(a) "Ability to benefit" means that a person admitted to an institution of higher education has the ability to benefit from the education or training he or she is to receive.

(b)(1) An institution that admits as regular students persons who do not have a high school diploma or the recognized equivalent of a high school diploma and who are beyond the age of compulsory school attendance in the State in which the institution is located, shall develop and consistently apply criteria for determining whether these students have the ability to benefit from the education or training offered.

(2) An institution must be able to demonstrate, upon request of the Secretary, that these students have the ability to benefit.

(20 U.S.C. 1088, 1141)

§ 668.7 One year training program.

A "one year training program" is a program which is at least—

(a) 24 semester or trimester hours or units, or 36 quarter hours or units at an institution using credit hours or units to measure progress;

(b) 900 clock hours of supervised training at an institution using clock hours to measure progress; or

(c) 900 hours of preparation in a correspondence program.

(20 U.S.C. 1141(a))

§ 668.8 Six month training program.

(a) A "six month training program" is a program which is at least—

(1) 16 semester or trimester hours or units, or 24 quarter hours or units, at an institution using credit hours or units to measure progress;

(2) 600 clock hours of supervised training at an institution using clock hours to measure progress;

(3) 600 hours of preparation in a correspondence program.

(b) In lieu of the credit or clock hour requirements of paragraphs (a)(1) or (a)(2) of this section, the Secretary may determine that an institution offers a six-month training program if—

(1) The accrediting association that accredits the institution certifies that the program offered by the institution is equal in course content and student work load to the comparable clock or credit hour program described in paragraphs (a)(1) or (a)(2) of this section, and

(2) the Secretary determines that the institution's course content and student work load requirements support that determination.

(20 U.S.C. 1088)

§ 668.9 Civil rights requirements.

An institution participating in any title IV program must comply with the following civil rights statutes and regulations.

Subject	Statute	Regulation
Discrimination on the basis of race, color or natural origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4).	34 CFR Part 100.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	34 CFR Part 106
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR Part 104
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	

§ 668.10 Criminal penalties.

Section 490 of the Higher Education Act of 1965 provides as follows:

(a)(1) Any person who knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery any funds, assets, or property provided or insured under any title IV student assistance program shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(2) However if the amount so embezzled, misapplied, stolen, or obtained by fraud, false statement, or forgery does not exceed $200, the fine shall not be more than $1,000 and imprisonment shall not exceed one year, or both.

(b) Any person who knowingly and willfully makes any false statement, furnishes any false information, or conceals any material information in connection with the assignment of a loan which is made or insured under this title shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

(c) Any person who knowingly and willfully makes an unlawful payment to an eligible lender under the GSL or PLUS programs as an inducement to make, or to acquire by assignment, a loan insured under one of those programs shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

(d) Any person who knowingly and willfully destroys or conceals any record relating to the provision of assistance under any title IV student assistance program with intent to defraud the United States or to prevent the United States from enforcing any right obtained by subrogation under this part, shall, upon conviction thereof, be fined not more than $10,000 or imprisoned not more than five years, or both.

(20 U.S.C. 1097)

(c) Subpart B is revised to read as follows:

Subpart B—Standards for Audits, Records, Financial Responsibility, Administrative Capability and Disposition of Refunds

§ 668.11 Scope—Participation agreement.

(a) This subpart applies to an education institution that satisfies the definition of:

(1) A public or private nonprofit institution of higher education set forth in § 668.2;

(2) A proprietary institution of higher education set forth in § 668.3;

(3) A postsecondary vocational institution set forth in § 668.4; and

(4) A vocation school set forth in section 435(c) of the Higher Education Act.

(b) This subpart describes standards that an institution referred to in paragraph (a) of this section must meet in order to participate in any title IV student assistance program. These standards concern the conduct of audits, the maintenance of records, financial responsibility, administrative capability, and the distribution of institutional refunds.

(c) Noncompliance with these provisions may subject an institution to proceedings under Subpart G. These procedures may lead to a fine or a limitation, suspension, or termination of the institution's eligibility to participate in any or all of the title IV student assistance programs.

(d) *Institutional participation agreement.* (1) An eligible institution must enter into a written agreement with the Secretary, on a form approved by the Secretary, in order to participate in any of the title IV student assistance programs other than the State Student Incentive Grant Program.

(2) This agreement conditions the initial and continued eligibility of the institution to participate in the title IV student assistance programs upon compliance with the provisions of this part and the individual program requirements.

(20 U.S.C. 1094)

§ 668.12 Audits, records and examination.

(a) If an institution participates in the National Direct Student Loan (34 CFR Part 674), College Work-Study (34 CFR Part 675), Supplemental Educational Opportunity Grant (34 CFR Part 676), Guaranteed Student Loan (34 CFR Part 682), the Parent Loans for Undergraduate Students (34 CFR Part 683), or Pell Grant (34 CFR Part 690) Programs, it shall comply with the regulations for those programs concerning (1) fiscal and accounting systems, (2) biennial audits of institutional transactions, (3) program and fiscal recordkeeping, and (4) record retention.

(b)(1) Any individual who conducts an audit must be sufficiently independent of those authorizing the expenditure of Federal funds to produce unbiased opinions, conclusions, or judgments. The independence of this individual shall be judged by the criteria set forth in part III, chapter 3 of the U.S. General Accounting Office publication *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.* Additionally, auditors other than employees of a State or local government shall meet the qualifications criteria set forth in appendix I of the GAO document. (These documents are included as Appendices B and C of this part.)

(2) The institution must provide that any individual or firm conducting an audit described in this section shall give the Education Department's Inspector General or the Secretary access to records or other documents necessary to review the results of the audit.

(3) Upon written request, an institution shall give the Secretary access to all program and fiscal records, including records reflecting transactions with any financial institution with which it deposits or has deposited any title IV funds.

(c)(1) With respect to each student recipient of title IV financial aid, an institution shall establish and maintain on a current basis records regarding—

(i) The student's admission to, and enrollment status at, the institution;

(ii) The program and courses in which the student is enrolled;

(iii) Whether—according to the written standards and practices of the institution—the student is making satisfactory progress toward completion of his or her course of study;

(iv) Any refunds due or paid the student;

(v) The student's placement by the institution in a job if the institution provides a placement service and the student uses that service; and

(vi) The student's receipt of financial aid (see § 668.14).

(2)(i) An otherwise eligible institution shall establish and maintain records regarding the educational qualifications of each regular student, whether or not the student receives title IV aid, which are relevant to the institution.

(ii) An institution where only certain programs have been determined eligible shall establish and maintain records regarding the admissions requirements and educational qualifications of each regular student enrolled in the eligible program(s) whether or not the student received title IV aid.

(3) Records shall be—

(i) Systematically organized; and

(ii) Readily available for review by the Secretary at the geographical location where the students will receive their degrees or certificates of program or course completion.

(20 U.S.C. 1094.)

§ 668.13 Audit exceptions and repayments.

(a)(1) If—as a result of its own audit or an audit performed at the direction of the institution—the Education Department's Inspector General questions an expenditure or the institution's compliance with an applicable requirement, the Inspector General notifies the Secretary and the institution of the questioned expenditure or procedure.

(2) If the institution believes that the questioned expenditure or procedure was proper, it shall notify the Secretary in writing of its position and the reasons for its position.

(3) The institution's response must be received by the Secretary within 35 days of the date of the audit agency's notification to the institution.

(b)(1) Based on the audit finding and the institution's response, the Secretary determines the amount of funds improperly spent, if any, and instructs the institution as to the manner or repayment.

(2) The institution shall repay those funds within 60 days of the date of the Secretary's notification, unless the Secretary permits a longer repayment period.

(20 U.S.C. 1094.)

§ 668.14 Financial aid transcript.

(a)(1) *Disbursing money only after receiving a transcript—general rule.* If informed by a student that he or she attended another eligible institution on at least a half-time basis, the institution the student is currently attending shall not disburse any title IV funds (other than Guaranteed Student Loan and Parent Loans for Undergraduate Students checks where the institution is not the lender) to that student before obtaining a properly signed financial aid transcript from the institution or institutions the student previously attended, unless the other institution or institutions each indicate, in writing that they are not required to provide a transcript under the provisions of paragraph (b) or paragraph (c)(2) or (c)(3) of this section. The student's current institution may disburse title IV funds on the basis of such a written notice or notices.

(2) *Limited exception to the general rule.* The institution the student is currently attending may disburse title IV funds to a student for one payment period if it does not receive in a timely manner the requested transcript or a written notice that the transcript will not be forthcoming as provided in paragraph (d) of this section.

(b) *Providing a transcript—general rule.* (1) Upon request, an institution shall provide to another institution a financial aid transcript for a current or former student who received, while attending the institution—

(i) A Pell Grant during the award period in which the request for the transcript is made;

(ii) A Supplemental Grant; or

(iii) A National Direct Student Loan.

(2) The institution shall honor a request for a transcript from a student or the institution the student is attending or planning to attend.

(3) The institution shall provide the transcript in a timely manner.

(4) The transcript must be signed by an official authorized by the institution to sign such transcripts.

(c) *Exceptions to the general rule in paragraph (b) of this section.* An institution does not have to provide the requested transcript if—

(1) The subject student—

(i) Is in default on any title IV loan made or received for attendance at that institution; or

(ii) Owes a refund on any title IV grant received for attendance at that institution;

(2) The transcript would only include information based on records that the institution is no longer required to keep under the record retention regulations referred to under § 668.12(a); or

(3) The institution participates in the Pell Grant Program under the Alternate Disbursement System and does not also participate in the Supplemental Grant or National Direct Student Loan program in the award period in which the request for the transcript is received.

(d) *Notifying the student's new institution in a timely manner that the transcript is not forthcoming.* If an institution has been requested to provide a transcript but is not required to do so according to paragraph (b) or paragraph (c) of this section, it must notify the student's new institution in writing in a timely manner that the transcript will not be forthcoming and specify the reason for the refusal.

(e) *Information included in a student's financial aid transcript.* A student's financial aid transcript shall include, with respect to any year for which the institution is required to keep that student's financial aid records, at least the following information—

(1) The student's name and social security number;

(2) Whether the student received a Supplemental Grant in any award year;

(3) For the award period in which the request for the transcript is made,

(i) the student's Scheduled Pell Grant and the amount of Pell Grant funds disbursed to the student.

(ii) The amount of Supplemental Grants disbursed to the student;

(4) The amount of National Direct Student Loans advanced to the student during each award year;

(5) Whether the student is in default on—

(i) A National Direct Student Loan made by the institution, or

(ii) A Guaranteed Student Loan or a Parent Loan for Undergraduate Students the student received for attendance at the institution if the institution is aware of the default status, and

(6) Whether the student owes a refund on—

(i) A Pell or Supplemental Grant for attendance at the institution, or

(ii) A State Student Incentive Grant received for attendance at the institution, if the institution is aware that the student owes the refund.

(20 U.S.C. 1091, 1094.)

§ 668.15 Factors of financial responsibility.

(a) An institution is financially responsible if it is able to—

(1) Provide the educational services stated in its official publications and statements;

(2) Provide the administrative resources necessary to comply with the requirements of this subpart; and

(3) Meet all its financial obligations including refunds.

(b) The Secretary considers that an institution is not financially responsible if—

(1) Under a cash or accrual system of accounting, it—

(i) Has a history of operating losses, or

(ii) Had, for its latest fiscal year, a deficit net worth. A deficit net worth occurs when the institution's liabilities exceed its assets; or

(2) Under an accrual system of accounting, it had at the end of its latest fiscal year, a ratio of current assets to current liabilities of less than 1:1; or

(3) Under a fund accounting system its unrestricted current or operating fund reflects a history of sustained material deficits.

(c) The Secretary determines that an institution is financially responsible under paragraphs (a) and (b) of this section by evaluating documents submitted by the institution. Upon request of the Secretary, the institution must submit for its *latest* complete fiscal year—

(1) A statement of profit and loss and a balance sheet, or for fund accounting, a fund statement; or

(2) An audit prepared by a State or local audit agency for a public institution; or

(3) A certified audit prepared by a certified or licensed public accountant for a non-public institution.

(d) The Secretary may determine that an institution is financially responsible

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even though it does not appear so under paragraphs (a), (b) and (c) of this section. To enable the Secretary to make this determination, the Secretary may request the institution to submit for its *current* fiscal year—

(1) (i) A statement of profit and loss and a balance sheet, or for fund accounting, a fund statement, or

(ii) An audit prepared by a State or local audit agency for a public institution; or

(iii) A certified audit prepared by a certified or licensed public accountant for a non-public institution; and

(2) Other appropriate documents that will demonstrate to the Secretary that it has sufficient financial responsibility and capability to continue to participate in the title IV programs in spite of its inability to meet the requirements of paragraphs (a), (b), and (c) of this section.

(e)(1) The Secretary may require that the statement of profit and loss, balance sheet and fund statement referred to in paragraphs (c)(1) and (d)(1) of this section be audited and certified by a certified public accountant.

(2) If the Secretary requires an institution to submit under paragraphs (c) and (d) of this section a statement of profit and loss a balance sheet, a fund statement or an audit, the Secretary may also require the institution to submit the accountant's notes for that work which must be audited and certified by a certified public accountant.

(f)(1)(i) An otherwise eligible institution shall obtain and keep current adequate fidelity bond coverage in order to protect the Government's interest in the title IV funds it receives as a trustee.

(ii) However, a public institution that is bonded by the State against the type of losses described in paragraph (f)(2) of this section does not have to obtain additional fidelity bond coverage.

(2) A fidelity bond indemnifies the holder against losses resulting from fraud of lack of integrity, honesty, or fidelity of one or more of its employees or officers.

(3) Any bond required under this paragraph shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

(20 U.S.C. 1094.)

§ 668.16 Standards of administrative capability.

To participate in a title IV student financial aid program, an institution must be able to adequately administer those programs. The Secretary considers an institution to have that capability if it establishes and maintains required student and financial records and if it—

(a) Designates a capable individual to be responsible for—

(1) Administering all the title IV student assistance programs in which it participates, and

(2) Coordinating the title IV programs with the institution's other Federal and non-Federal programs of student financial assistance;

(b) Communicates to the individual designated to be responsible for administering title IV programs, all the information received by any institutional office that bears on a student's title IV eligibility.

(c) Uses an adequate number of qualified persons to administer those programs. In determining whether an institution uses an adequate number of qualified persons, the Secretary considers the number of students aided, the number and types of programs in which the institution participates, the number of applications evaluated, the amount of funds administered, and the financial aid delivery system used by the institution;

(d)(1) Administers title IV programs with adequate checks and balances in its system of internal controls, and

(2) Divides the functions of authorizing payments and disbursing funds so that no office has responsibility for both functions with respect to any particular student aided under the programs;

(e) Establishes, publishes, and applies, reasonable standards for measuring whether a student receiving aid under any title IV program is maintaining satisfactory progress in his or her course of study;

(f) Develops an adequate system to verify the consistency of the information it receives from different sources with respect to a student's application for financial aid under title IV programs. In determining whether the institution has an adequate verification system, the Secretary considers whether the institution reviews—

(1) All student aid applications, need analysis documents, statements of educational purpose, and eligibility notification documents presented by or on behalf of each applicant,

(2) Any documents, including any copies of State and Federal Income Tax returns, that are normally collected by the institution to validate information received from other sources, and

(3) Any other information normally available to the institution regarding a student's citizenship, previous educational experience or other factors relating to the student's eligibility for title IV funds; and

(g) Provides adequate financial aid counseling to eligible students who apply for title IV aid. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding—

(1) The source and amount of each type of aid offered.

(2) The method by which aid is determined and disbursed or applied to a student's account, and

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, its standards of satisfactory progress, and other conditions that may alter the student's aid package.

(20 U.S.C. 1094.)

§ 668.17 Additional factors for evaluating administrative capability and financial responsibility.

(a) The Secretary considers that loan default and withdrawal rates may impair an institution's capability of properly administering student financial aid programs authorized under title IV if—

(1) The default rate on Guaranteed Student Loans, Parent Loans for Undergraduate Students or National Direct Student Loans made to students for attendance at that institution exceeds 20 percent of the principal of all those loans that have reached the repayment period; or

(2) For an institution that has a common academic year for a majority of its students, more than 33 percent of the regular students who are enrolled at the beginning of an academic year withdraw from enrollment at that institution during that academic year; or

(3) For an institution which does not have a common academic year for a majority of its students, more than 33 percent of the regular students enrolled at the beginning of any 8-month period withdraw during that period.

(b)(1) If the default or withdrawal rates for an institution are as high as or higher than the rates set forth in paragraph (a), of this section and the Secretary believes that these rates impair the institution's administrative capability, the Secretary may require the institution to submit for its *latest complete* fiscal year a profit and loss statement, balance sheet or audit.

(2) An audit must be—

(i) Prepared by a State or local audit agency for a public institution, or

(ii) Prepared by a certified public accountant or licensed public accountant for a nonpublic institution;

(3) The date of the statement's preparation shall be within 12 months of the date of the Secretary's request.

(c) The Secretary may require that the profit and loss statement and balance sheet referred to in paragraph (b)(1) of this section be audited and certified by a certified public accountant.

(d)(1) If the Secretary determines that the loan default or withdrawal rates for an institution impairs its capability to administer any financial aid program authorized under title IV, the Secretary requires the institution to take reasonable and appropriate measures to alleviate those conditions as a requirement for its continued participation in those programs.

(2) Before initiating that action, the Secretary informs the institution of the findings and provides it at least 35 days to respond.

(3) The institution may respond by—

(i) Demonstrating that the conditions do not have an adverse effect on the administration of the programs, or

(ii) Submitting a plan of the action it will take to alleviate those conditions.

(20 U.S.C. 1094)

§ 668.18 Change in ownership or control.

(a) An eligible institution, or a previously eligible institution that participated in any title IV student assistance program, that changes ownership resulting in a change in control is not considered by the Secretary to be the same institution unless—

(1) The new owner agrees to be liable, or the old and new owners agree to be jointly and severally liable, for all improperly spent title IV funds provided to the institution before the effective date of the change;

(2) The new owner agrees—

(i) To abide by the institution's refund policy in effect before the effective date of the change for students who were enrolled before the effective date, and

(ii) To honor all student enrollment contracts that were signed by the institution before the effective date of the change; and

(3) The institution submits individual statements for both new and former owners listing their assets, liabilities, and net worth, and either—

(i) A profit and loss statement and balance sheet for the institution's latest complete fiscal year, or

(ii) An audit for the institution's latest complete fiscal year prepared by a certified or licensed public accountant; and

(4) The institution submits additional financial documents if requested by the Secretary because the financial information provided in subparagraph (3) of this paragraph is insufficient.

(b) The Secretary may require that the statements provided in paragraphs (a)(3)(i) and (a)(3)(ii) of this section be audited and certified by a certified public accountant.

(c) For purposes of this subpart, "change in ownership that results in a change in control," means any action by which a person or corporation obtains authority to control the actions of an institution. These actions may include, but are not limited to—

(1) The transfer of the controlling interest of stock of an institution to its parent corporation;

(2) The merger of two or more institutions;

(3) The division of one institution into two or more institutions;

(4) The transfer of the assets of an institution to its parent corporation; or

(5) The transfer of the liabilities of an institution to its parent corporation.

(20 U.S.C. 1094)

§ 668.19 Contracting for educational programs or courses.

(a) An institution may, without losing its eligibility to participate in any title IV student assistance program, enter into a written contract or agreement to have a portion of its educational programs provided by another institution, school, or organization if the written contract or agreement satisfies the requirements of paragraphs (b) and (c) of this section.

(b) The otherwise eligible institution must give credit to students in the contracted portion portion of the program on the same basis as if it provided the portion of the program itself.

(c) The otherwise eligible institution must enter into a contract with—

(1) Another eligible institution; or

(2) An ineligible institution, school or organization if:

(i) The contracted portion of the program does not exceed 25 percent of the student's total program of study; or

(ii) The otherwise eligible institution's accrediting agency, or State agency for the approval of public postsecondary vocational education, determines that its contractual arrangement meets the agency's standards for contracting for educational services.

(20 U.S.C. 1094.)

§ 668.20 Institutions stop providing educational instruction—loss of eligibility.

(a) When an institution stops providing educational instruction or loses eligibility it shall—

(1) Notify the Secretary of that fact;

(2) Refund to the Federal government, or otherwise dispose of by instructions from the Secretary, any unobligated title IV funds it has received, except—

(i) Those funds it has committed but not yet paid to students in that payment period, and

(ii) Its administrative allowance, if applicable;

(3) Submit to the Secretary within 45 days after the effective date of closing or loss of eligibility—

(i) All financial, performance, and other reports required by each appropriate title IV program regulation, and

(ii) An audit of all title IV funds it received;

(4) Inform the Secretary of the arrangements it has made for the proper retention and storage of all records concerning the administration of title IV programs. These records must be retained for a minimum of five years;

(5) Inform the Secretary of how it will provide for the collection of any outstanding title IV student loans; and

(6) Make refunds of unearned tuition and fees according to § 668.21 of this subpart.

(20 U.S.C. 1094.)

§ 668.21 Distribution formula for institutional refunds and repayments of cash disbursements made directly to the student.

(a) *Institutional refunds to title IV programs.* (1) If a refund is due to a student under the institution's refund policy and the student received financial aid under any title IV student financial aid program other than the College Work-Study Program, a portion of the refund shall be returned to the title IV student assistance program(s).

(2) Except as provided in paragraph (a)(3) of this section the institution shall multiply the institutional refund by the following fraction to determine the portion of the refund to be returned to the title IV program(s):

$$\frac{\text{total amount of title IV aid (exclusive of work earnings) awarded for the payment period}}{\text{total amount of aid (exclusive of work earnings) awarded for the payment period}}$$

(3) If a student has received Pell Grant funds at the institution under the Alternate Disbursement System,

(i) The institution shall use the following fraction in lieu of the fraction in paragraph (a)(2) of this section to determine the portion of the refund to be returned to the title IV programs (other than the Pell Grant program.)

$$\frac{\text{total amount of title IV aid (exclusive of work earnings and Pell Grant funds) awarded for the payment period}}{\text{total amount of aid (exclusive of work earnings and Pell Grant funds) awarded for the payment period}}$$

(ii) the institution shall notify the Secretary of the amount of money that it is returning to the title IV program according to paragraph (a)(3)(i) of this section.

(b) *Distribution among the title IV programs.* (1) The institution shall develop written policies allocating the title IV portion of the refund to the various title IV programs from which the student received aid. These policies shall be applied on a consistent basis to all students receiving title IV funds.

(2) The portion of a refund allocated to a program may not exceed the amount a student received from that program.

(3) As provided in 34 CFR 682.610 of the Guaranteed Student Loan Program regulations and 34 CFR 683.85 of the Parent Loans for Undergraduate Students Program regulations, the institution shall return to the student's lender any portion of a refund which is allocable to a loan made under the Guaranteed Student Loan Program or the Parent Loans for Undergraduate Students Program.

(c) *Distribution of repayments of cash disbursements made directly to the student for non-institutional costs.* (1) Any cash that an institution disbursed to a student for a payment period under any title IV program other than the College Work-Study, Guaranteed Student Loan or Parent Loans for Undergraduate Students Program becomes an overpayment if before the first day of classes of that payment period the student officially withdraws, drops out, or is expelled.

(2) An institution shall determine, under paragraph (c)(3) of this section, whether any cash it disbursed to a student for a payment period under any title IV program other than the College Work-Study, Guaranteed Student Loan or Parent Loans for Undergraduate Students program amounts to an overpayment if the student withdraws, drops out, or is expelled on or after the first day of classes of that payment period.

(3) In determining whether a student received an overpayment for purposes of paragraph (c)(2) of this section, and the amount of that overpayment, the institution shall subtract from the cash disbursed to the student for non-institutional costs, the non-institutional costs that were to be paid by the disbursement for the portion of the payment period during which the student was enrolled. Non-institutional educational costs may include, but are not limited to, room and board (if not contracted for with the institution), books and supplies, transportation and miscellaneous expenses.

(4) If a student drops out, the institution shall use the last recorded day of class attendance by the student as the end of the student's enrollment. However, if it is unable to document the student's last day of attendance, any cash it disbursed to that student for that payment period is an overpayment.

(5) The institution shall multiply the overpayment by the following fraction to determine the portion of the overpayment to be returned to the title IV program(s):

total amount of title IV aid (exclusive of work earnings and GSL and PLUS loans) awarded for the payment period—

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total amount of aid (exclusive of work earnings and GSL and PLUS loans) awarded for the payment period

(d) *Distribution among the title IV programs.* (1) The institution shall develop written policies allocating the title IV portion of the overpayment owed by the student to the various title IV programs from which the student received aid. These policies shall be applied on a consistent basis to all students receiving title IV aid.

(20 U.S.C. 1094)

§ 668.22 Federal interest in title IV student assistance program funds.

(a) Except for funds received for the administrative cost allowance, funds received by an institution under—

(1) The Pell Grant Program (Regular Disbursement System),

(2) The Supplemental Educational Opportunity Grant Program,

(3) The College Work-Study Program, and

(4) The National Direct Student Loan Program, are held in trust for the intended student beneficiaries. The institution, as a trustee of Federal funds, may not use or hypothecate (i.e., use as collateral) title IV funds for any other purpose.

(b) An institution's administrative cost allowance is established for the Pell Grant Program, the Supplemental Educational Opportunity Grant Program, the College Work-Study Program, and the National Direct Student Loan Program by section 489 of the Higher Education Act of 1965.

(20 U.S.C. 1070 *et seq.*; 20 U.S.C. 1096)

(d) Subpart C is added to read as follows:

Subpart C—Student Consumer Information Services

§ 668.31 Scope.

Each institution participating in any student financial assistance program authorized under title IV of the Higher Education Act, including the Pell Grant Program under the Alternate Disbursement System (ADS), shall disseminate to all enrolled students, and to prospective students upon request through appropriate publications and mailings, information concerning—

(a) The institution (see § 668.35) and

(b) Any student financial assistance available to students enrolled in the institution (see § 668.34).

(20 U.S.C. 1092).

§ 668.32 Definitions.

As used in this subpart:

Act means Title IV of the Higher Education Act (HEA) of 1965, as amended.

Award year means the period of time between July 1 of one year and June 30 of the following year.

Prospective student means any individual who has contacted an institution participating in a title IV student financial assistance program for the purpose of requesting information concerning admission to the institution.

(20 U.S.C. 1092).

§ 668.33 Preparation and dissemination of materials.

For each award year in which it participates in a title IV student assistance program, an institution shall—

(a) If necessary, prepare and publish material covering the topics set forth in § 668.34 and § 668.35,

(b) Make such material available through appropriate publications and mailings to—

(1) All currently enrolled students, and

(2) Any prospective student upon request of that student.

(20 U.S.C. 1092).

§ 668.34 Financial assistance information.

(a)(1) The information on financial assistance that the institution must publish and make readily available to current and prospective students shall include, but is not limited to, a description of all the Federal, State, local, private and institutional student financial assistance programs available to students who enroll at that institution.

(2) These programs include both need-based and non-need-based programs.

(3) The institution may describe its own financial assistance programs by listing them in general categories.

(b) For each program discussed in paragraph (a) of this section, the information provided by the institution shall describe—

(i) The procedures and forms by which students apply for assistance,

(ii) The student eligibility requirements,

(iii) The criteria for selecting recipients from the group of eligible applicants, and

(iv) The criteria for determining the amount of a student's award;

(c) The institution shall describe the rights and responsibilities of students receiving financial assistance and specifically assistance under the Pell Grant, Supplemental Educational Opportunity Grant, State Student Incentive Grant, College Work-Study, National Direct Student Loan, Guaranteed Student Loan, and Parent Loans for Undergraduate Students Programs. This description shall include specific information regarding—

(1) Criteria for continued student eligibility under each program;

(2)(i) Standards which the student must maintain in order to be considered to be making satisfactory academic progress in his or her course of study for the purpose of receiving financial assistance payments, and

(ii) Criteria by which the student who has failed to maintain satisfactory academic progress may re-establish his or her eligibility for financial assistance payments;

(3) The method by which financial assistance payments will be made to the student and the frequency of such payments;

(4) The terms of any loan received by a student as part of the student's financial assistance package, a sample loan repayment schedule for sample loans and the necessity for repaying loans; and

(5) The general conditions and terms applicable to any employment provided to a student as part of the student's financial assistance package.

(20 U.S.C. 1092).

§ 668.35 Institutional information.

(a) The institutional information that the institution must publish and make readily available to current and prospective students shall include, but is not limited to information on the following subjects:

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Transportation costs for commuting students or for students living on or off-campus, and

(v) Any additional cost of a program in which the student is enrolled or expresses a specific interest;

(2) A statement of the refund policy of the institution for the return of unearned tuition and fees or other refundable portion of costs paid to the institution;

(3) A statement of the institution's policies regarding any refund due to the title IV student assistance programs as required by § 668.21;

(4) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs,

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(5) The names of associations, agencies or governmental bodies which accredit, approve or license the institution and its programs and the procedures by which the documents describing that activity may be reviewed under paragraph (b) of this section.

(6) A description of any special facilities and services available to handicapped students;

(7) A discussion of whether instructional or other physical facilities are readily accessible by handicapped students; and

(8) The titles of persons designated under § 668.36 and information regarding how and where such persons may be contacted.

(b) The institution shall make available for review to any current or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(20 U.S.C. 1092)

§ 668.36 Availability of employees for information dissemination purposes.

(a) *Availability.* (1) Except as provided in paragraph (b) of this section, each institution shall designate an employee or group of employees who shall be available on a full-time basis to assist current students or prospective students in obtaining the information specified in § 668.34 and § 668.35.

(2) If the institution designates one person, that person shall be available, upon reasonable notice, to any current or prospective students throughout the normal working hours of that institution.

(3) If more than one person is designated, their combined work schedules shall be arranged so that at least one of them is available, upon reasonable notice, throughout the normal administrative working hours of that institution.

(b) *Waiver.* (1) The Secretary may waive the requirement that the employee or group of employees designated under paragraph (a) of this section be available on a full-time basis if the institution's total enrollment, or the portion of the enrollment participating in any title IV student assistance program, is too small to necessitate an employee or group of employees being available on a full-time basis.

(2) In determining whether an institution's total enrollment or the number of title IV recipients is too small, the Secretary will consider whether there will be an insufficient demand for information dissemination services among its current students or prospective students to necessitate the full-time availability of an employee or group of employees.

(3) To receive a waiver, the institution must apply to the Secretary at the time and in the manner prescribed by the Secretary.

(c) The granting of a waiver under paragraph (b) of this section does not exempt an institution from designating a specific employee or group of employees to carry out on a part-time basis the information dissemination requirements.

(20 U.S.C. 1092)

(e) Subparts D and E are reserved.

(f) Subpart C is redesignated as Subpart F and is revised to read as follows:

Subpart F—Misrepresentation

§ 668.61 Scope

(a) This subpart applies to an institution listed in § 668.11(a) of these regulations.

(b) This subpart establishes the standards and rules by which the Secretary may initiate a fine or suspension or termination proceedings against an otherwise eligible institution for any substantial misrepresentation made by that institution regarding the nature of its educational program, its financial charges, or the employability of its graduates.

(20 U.S.C. 1094)

§ 668.62 Special definitions.

"Misrepresentation" means any false, erroneous, or misleading statement an otherwise eligible institution makes to a student enrolled at the institution, to any prospective student, to the family of an enrolled or prospective student, or to the Secretary.

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"Prospective student" means any individual who has contacted an otherwise eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution—or indirectly through general advertising—about enrolling at the institution.

"Substantial misrepresentation" means any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

(20 U.S.C. 1094)

§ 668.63 Nature of educational program.

Misrepresentation by an institution of the nature of its educational program includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) The particular type(s), specific source(s), nature, and extent of its accreditation;

(b) Whether a student may transfer course credits earned at the institution to any other institution;

(c) Whether successful completion of a course of instruction qualifies a student for—

(1) Acceptance into a labor union or similar organization, or

(2) Receipt of a local, State, or Federal license or nongovernmental certification required as a precondition for employment or to perform certain functions;

(d) Whether its courses are recommended—

(1) By vocational counselors, high schools, or employment agencies, or

(2) By government for government employment;

(e) Its size, location, facilities, or equipment;

(f) The availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;

(g) The nature, age, and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;

(h) The number, availability, and qualifications, including the training and experience, of its faculty and other personnel;

(i) The availability of part-time employment or other forms of financial assistance;

(j) The nature and availability of any tutorial or specialized instruction, guidance, and counseling, or other supplementary assistance it will provide its students before, during, or after the completion of a course; or

(k) The nature or extent of any prerequisities established for enrollment in any course.

(20 U.S.C. 1094)

§ 668.64 Nature of financial charges.

Misrepresentation by an institution of the nature of its financial charges includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge, unless a scholarship is actually used to reduce tuition charges made known to the student in advance. The charges made known to the student in advance are the charges applied to all students not receiving a scholarship; or

(b) Whether a particular charge is the customary charge at the institution for a course.

(20 U.S.C. 1094)

§ 668.65 Employability of graduates.

Misrepresentation by an institution regarding the employability of its graduates includes, but is not limited to, false, erroneous, or misleading statements—

(a) That the institution is connected with any organization or is an employment agency or other agency providing authorized training leading directly to employment;

(b) That the institution maintains a placement service for graduates or will otherwise secure or assist its graduates to obtain employment, unless it provides the student with a clear and accurate description of the extent and nature of this service or assistance; or

(c) Concerning Government job market statistics in relation to the potential placement of its graduates.

(20 U.S.C. 1094)

§ 668.66 Endorsements and testimonials.

The Secretary views as misrepresentation endorsements and testimonials that are not given voluntarily or do not describe current practices and conditions of an institution.

(20 U.S.C. 1094)

§ 668.67 Procedures.

(a) On receipt of a written allegation or complaint from a student, prospective student, the family of a student or prospective student, or a governmental official, the designated ED official, as defined in Subpart G, reviews the allegation or complaint to determine its factual base and seriousness.

(b) If the misrepresentation is minor and can be readily corrected, the designated ED official informs the institution and endeavors to obtain an informal, voluntary correction.

(c) If the designated ED official finds that the complaint or allegation is a substantial misrepresentation as to the nature of the educational programs, the financial charges of the institution, or the employability of its graduates, the official—

(i) Initiates action to fine or to limit, suspend, or terminate the institution's eligibility according to the procedure set forth in subpart G, or

(2) Takes other appropriate action.

(20 U.S.C. 1094)

(g) Subpart H is redesignated as Subpart G and is revised to read as follows:

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

§ 668.71 Scope.

(a) This subpart establishes rules for the imposition of a fine upon, or for the suspension, limitation or termination of, an otherwise eligible institution's participation in any or all of the title IV student assistance programs.

(b) These rules apply to an institution which violates any title IV statutory provision, or any regulation, special arrangement, agreement or limitation prescribed under authority of title IV.

(c) This subpart does not apply to a determination that—

(1) An institution of higher education fails to meet the statutory definition set forth in sections 435, 481 or 1201 of the Higher Education Act;

(2) A vocational school fails to meet the statutory definition set forth in Section 435(c) of the Act; or

(3) An institution fails to qualify for certification to participate in the title IV student assistance programs because it does not meet the fiscal and administrative standards set forth in subpart B of this part.

(d) This subpart does not apply to administrative action by the Department of Education based on any alleged violation of—

(1) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR Part 100;

(2) Title IX of the Education Amendments of 1972, (relating to sex discrimination) which is governed by 34 CFR Part 106;

(3) The Family Educational Rights and Privacy Act of 1974 (Section 438 of the General Education Provisions Act, as amended) which is governed by 34 CFR Part 99;

(4) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap) which is governed by 34 CFR Part 104; or

(5) The Age Discrimination Act of 1975 which is governed by 45 CFR Part 90.

(20 U.S.C. 1094)

§ 668.72 Definitions.

As used in this subpart:

"Designated ED official" means an official of the Education Department, to whom the Secretary has delegated responsibilities indicated in this subpart.

"Funds" means any money, commitments to provide money and commitments of insurance or reinsurance provided under any or all title IV student assistance programs covered under this subpart to an institution or to students enrolled and attending an institution.

"Institution" means (1) an institution of higher education as defined in Subpart A of this part, (2) a vocational school as defined in section 435(c) of the Higher Education Act (HEA), or (3) with respect to students who are nationals of the United States, an institution outside the United States which is comparable to an institution of higher education or to a vocational school and which has been approved by the Secretary for purposes of participation in title IV student assistance programs covered under this subpart.

(20 U.S.C. 1094)

§ 668.73 Informal compliance procedures.

(a) If the Secretary receives a complaint, or has other information which the Secretary believes to be reliable, indicating that an institution is, or may be, in violation of applicable laws, regulations, special arrangements, agreements, or limitations, the Secretary may call the matter to the attention of the institution and may give it a reasonable opportunity—

(1) To respond to the complaint or other information;

(2) To show that the matter has been corrected; or

(3) To submit an acceptable plan to correct the violation and prevent its recurrence.

(b) The procedures provided in this subpart for a fine or for a suspension, limitation, or termination need not be delayed during the informal compliance procedure if the Secretary believes—

(1) The delay would have an adverse effect on any or all title IV student assistance programs covered under this subpart, or

(2) The informal compliance procedure will not result in a correction of the alleged violation.

(20 U.S.C. 1094)

§ 668.74 Emergency action.

(a) The Secretary through a designated ED official, may take emergency action to withhold funds from an institution or its students and to withdraw the authority of an institution to obligate funds under the HEAL program or any or all title IV student assistance programs covered under this subpart if the designated ED official—

(1) Receives information which the official believes to be reliable that an institution is in violation of applicable laws, regulations, special arrangements, agreements, or limitations,

(2) Determines that such action is necessary to prevent the likelihood of substantial loss of funds to the Federal Government or to the students at the institution, and

(3) Determines that the likelihood of loss outweighs the importance of following the procedures set forth in this subpart for suspension, limitation, or termination.

(b) The designated ED official begins an emergency action by notifying the institution, by certified mail with return receipt requested, of the action and the basis on which it is taken. The effective date of the action is the date on which the notice is received by the institution.

(c) An emergency action shall not exceed 30 days unless a suspension, limitation, or termination proceeding is begun under this subpart before the expiration of that period. In such case, the period may be extended until the completion of that proceeding, including any appeal to the Secretary.

(d) If a suspension, limitation, or termination proceeding is begun, the Secretary will provide the institution, if it so requests an opportunity to show cause that the emergency action is unwarranted, pending the outcome of that proceeding.

(20 U.S.C. 1094)

§ 668.75 Fine proceedings.

(a) *Scope and consequences.* The Secretary may impose a fine of up to $25,000 on an institution that

(1) Violates any provision of title IV of the Higher Education Act or any regulation or agreement implementing that title; or

(2) Substantially misrepresents the nature of its educational program, its finance charges, and the employability of its graduates.

(b) *Procedures.* The designated ED official begins a fine proceeding, whether or not a suspension, limitation or termination proceeding has begun under § 668.76 or § 668.77 by sending the institution a notice, by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the Secretary's intent to fine the institution and the amount of the fine, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the fine, which shall be at least 20 days from mailing of the notice of intent;

(iii) Inform the institution that the fine will not be effective on the date specified in the notice if the designated ED official receives, at least five days before that date, a written request for a hearing or written material indicating why the fine should not be imposed.

(2) If the institution does not request a hearing but submits written material, the designated ED official, after considering that material, notifies the institution that—

(i) The fine will not be imposed; or

(ii) The fine is imposed as of a specified date, and in a specified amount.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated ED official sets the date and the place. The date is at least 15 days after the designated ED official receives the request.

(4) A presiding officer conducts a hearing on the record.

(5) At the hearing the presiding officer shall consider any written material presented to him or her before the hearing, or any written material or other evidence presented during the course of the hearing.

(6) If the presiding officer concludes that the fine is warranted, he or she issues an initial decision confirming the imposition of a fine against the institution and the amount of the fine.

(c) *Expedited hearings.* With the approval of the presiding officer and the consent of the designated ED official and the institution, any time schedule specified in this section may be shortened.

(20 U.S.C. 1094)

§ 668.76 Suspension proceeding.

(a) *Scope and consequences.* From its effective date, a suspension removes an institution's eligibility for any or all of the title IV student assistance programs covered under this subpart for a period of time not exceeding 60 days unless—

(1) The institution and the designated ED official agree to an extension where the institution has not requested a hearing, or

(2) The designated ED official begins a limitation or termination proceeding under § 668.77.

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(b) *Procedures.* (1) The designated ED official begins a suspension proceeding by sending a notice to an institution by certified mail with return receipt requested. The notice must—

(i) Inform the institution of the intent of the Secretary to suspend the institution's eligibility, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the suspension, which shall be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the suspension will not be effective on the date specified in the notice if the designated ED official receives, at least 5 days before that date, a request for a hearing or written material indicating why the suspension should not take place.

(2) If the institution does not request a hearing, but submits written material, the designated ED official, after considering that material, notifies the institution that—

(i) The proposed suspension is dismissed, or

(ii) The suspension is effective as of a specified date.

(3) If the institution on a timely basis requests a hearing, the designated ED official sets a date and place for it. The date will be at least 15 days after the designated ED official receives the request. No suspension takes place until a hearing is held.

(4) A presiding officer conducts a hearing on the record.

(5) At the hearing, the presiding officer shall consider any written material presented to him before the hearing or any material or other evidence presented to him during the course of the hearing.

(6) If, after considering the evidence, the presiding officer concludes that the suspension is warranted, the presiding officer will issue an initial decision that may suspend the eligibility of all or part of the institution.

(7) The Secretary will review the initial decision of the presiding officer and will issue a final decision adopting the initial decision, unless the initial decision is clearly unsupported by the evidence.

(c) Notice of the suspension will be promptly mailed to the institution. The suspension takes effect either upon the date on which the notice is received by the institution or the original proposed effective date stated in the notice of intent, whichever is later.

(d) A suspension shall not exceed 60 days unless a limitation or termination proceeding is begun under this subpart before the expiration of that period. In such case, the period may be extended until the completion of that proceeding, including any appeal to the Secretary.

(20 U.S.C. 1094)

§ 668.77 Limitation or termination proceedings.

(a) *Scope and consequences.* From its effective date, a limitation or termination shall either—

(1) Result in limitations on an institution's eligibility, or

(2) End the eligibility of an institution to participate in any or all title IV student assistance programs covered under this subpart.

(b) *Procedures.* The designated ED official begins a limitation or termination proceeding whether or not a fine or suspension proceeding has begun under § 668.75 or § 668.76, by sending an institution a notice, by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the intent of the Secretary to limit or terminate the institution's eligibility, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action, and in the case of a limitation proceeding, state the limits to be imposed;

(ii) Specify the proposed effective date of the limitation or termination, which shall be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the limitation or termination will not be effective on the date specified in the notice if the designated ED official receives, at least 5 days before that date, a request for a hearing or written material indicating why the limitation or termination should not take place.

(2) If the institution does not request a hearing but submits written material, the designated ED official, after considering that material, notifies the institution that:

(i) The proposed action is dismissed,

(ii) Limitations are effective as of a specified date, or

(iii) The termination is effective as of a specified date.

(3) If the institution on a timely basis requests a hearing, the designated ED official sets a date and a place for it. The date will be at least 15 days after the designated ED official receives the request. No proposed limitation or termination takes place until after a hearing is held.

(4) A presiding officer conducts the hearing on the record.

(5) At the hearing the presiding officer shall consider any written material presented to him before the hearing, or any material or other evidence presented to him during the course of the hearing.

(6) If, after considering the evidence, the presiding officer concludes that limitation or termination is warranted, the presiding officer will issue an initial decision that may limit or terminate the institution's eligibility in whole or in part. If a termination action is brought against an institution, the presiding officer may issue a decision to impose one or more limitations on an institution rather than terminating its eligibility, if the presiding officer believes the limitation to be more appropriate.

(c) *Expedited hearing.* With the approval of the presiding officer and the mutual consent of the parties, any time schedule specified in this section may be shortened.

(20 U.S.C. 1094)

§ 668.78 Initial and final decisions—Appeals.

(a)(1) The presiding officer shall issue a written initial decision within 30 days after

(i) the last brief is filed, or

(ii) the last day of the hearing, if the presiding officer does not request the parties to submit briefs.

(2) The presiding officer shall promptly deliver his or her decision to the institution and the designated ED official.

(3) The presiding officer shall base findings of fact only on evidence considered at the hearing and on matters given official notice. If a hearing is conducted by written submissions, findings of fact shall be based on the facts stipulated by the parties.

(b) In a suspension proceeding, the Secretary reviews the presiding officer's initial decision and issues a final decision within 20 days after the initial decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence presented at the hearing.

(c) In a fine, limitation or termination proceeding, the presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued unless, within that 20 day period, the institution or the designated ED official appeals the decision to the Secretary.

(d)(1) Within a period specified by the Secretary, the party that appeals shall submit a brief or written materials to the Secretary explaining why the initial decision of the presiding officer should be overturned or modified.

(2) The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by:

(i) The evidence introduced into the record at hearing,

(ii) Stipulations of the parties if the hearing consisted of written submissions, or

(iii) Matters that may be judicially noticed.

(3) The opposing party shall respond within the time period specified by the Secretary.

(4) Neither party may introduce new evidence on appeal.

(5) Each party shall provide a copy of its brief to the other party.

(e) The initial decision of the presiding officer imposing a fine or limiting or terminating the eligibility of the institution does not take effect pending the appeal unless the Secretary determines that a stay would provide a serious and adverse effect upon the programs involved.

(f)(1) The Secretary renders a final decision.

(2) In rendering that decision, the Secretary shall consider only evidence introduced into the record at the hearing, stipulations of facts if the hearing consisted of only written submissions, and matters that may be judicially noticed.

(3) The Secretary's decision may affirm, modify or reverse the presiding officer's initial decision, and shall include a statement of the reasons for the decision.

(20 U.S.C. 1094)

§ 668.79 Verification of mailing and receipt dates.

(a) Verification of the Department of Education's mailing dates and receipt dates referred to in this subpart is evidenced by the original receipt from the U.S. Postal Service.

(b) If an institution refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the institution refuses to accept the notice.

(20 U.S.C. 1094)

§ 668.80 Fines.

(a) In determining the amount of a fine, the designated ED official, presiding officer and Secretary shall take into account—

(1)(i) The gravity of the institution's violation or failure to carry out the relevant statute, regulation or agreement, or

(ii) The gravity of its misrepresentations, and

(2) The size of the institution.

(b) Upon the request of the institution, the Secretary may compromise the fine.

(20 U.S.C. 1094)

§ 668.81 Limitation.

A limitation may include, as appropriate to the program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive title IV student assistance funds covered under this subpart;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from title IV student assistance funds covered under this subpart;

(c) A requirement that an institution obtain a bond, in a specified amount, to assure its ability to meet its financial obligations to students who receive title IV student assistance funds covered under this subpart; or

(d) Such other conditions as may be determined to be reasonable and appropriate.

(20 U.S.C. 1094)

§ 668.82 Termination.

(a) *Effect.* Except as provided in paragraph (b) of this section, a termination—(1) Ends an institution's eligibility for any or all of the title IV student assistance programs;

(2) Prohibits an institution or the Secretary from making or increasing financial aid awards;

(3) Prohibits an institution from making any other new obligations against title IV student assistance funds covered under this subpart; and

(4) Prohibits further commitments of Federal insurance by the Secretary under the GSL or PLUS programs for loans to students to attend that institution, and prohibits further disbursements by an institution which is a lender under the GSL or PLUS programs (whether or not insurance commitments have been issued by the Secretary or a guarantee agency for such disbursements).

(b) *Payment period.* (1) If an institution is terminated during a payment period, any student at that school who has received an award or to whom a commitment has been made before the effective date of the termination may receive payment for that payment period.

(2) For the purposes of this section, the payment period is a semester, trimester, or quarter for institutions using these academic periods. For all other institutions, the payment period is the period from the beginning to the midpoint of the academic year, or from the midpoint to the end of the academic year.

(c) *Commitment.* For the purposes of this section (1) a commitment under the Pell Grant program occurs after a student is enrolled and attending the institution and has submitted a valid student eligibility report to the institution, or to the Secretary if the student is attending an institution which is under the alternate disbursement system, (2) a commitment under the Supplemental Grant, College Work-Study, or National Direct Student Loan Programs occurs when the student is enrolled and attending the institution and has received an award letter from the institution, and (3) a commitment under the GSL or PLUS Programs occurs when the Secretary or a guarantee agency advises the lender that the loan will be insured.

(20 U.S.C. 1094)

§ 668.83 Reimbursements, refunds, and offsets.

(a) The designated ED official, presiding officer, or Secretary may require an institution to take reasonable and appropriate corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment of any funds, to the Commissioner or to designated recipients, which the institution improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to (1) with respect to the GSL or PLUS programs—(i) ineligible interest benefits, special allowances or other claims paid by the Secretary, and (ii) discounts, premiums, or excess interest paid in violation of part 682 or 683 of title 34 of the Code of Federal Regulations; and (2) with respect to all title IV student assistance programs covered under this subpart—(i) refunds due to students under the regulations, and (ii) any grants, work-study assistance, or loans made in violation of program regulations.

(c) If any final decision requires an institution to reimburse or make any other payment to the Secretary the Secretary may offset these claims against any benefits or claims due to the institution.

(20 U.S.C. 1094)

§ 668.84 Reinstatement after termination.

(a) An institution whose eligibility for any or all title IV student assistance programs covered under this subpart has been terminated may not file a request for reinstatement of its eligibility before the expiration of 18 months from the effective date of its termination.

(b) After the minimum termination period, the institution may request reinstatement of its eligibility. The

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request must be in writing and must show that the institution has corrected the violations on which the termination was based and that it meets all qualifications for eligibility.

(c) Not later than 60 days after receipt of the request for reinstatement, the Secretary shall respond to the institution—

(i) Granting its request;

(ii) Denying its request; or

(iii) Granting the request subject to limitations.

(d)(1) If the Secretary denies the institution's request, or allows reinstatement subject to limitation(s), the institution, upon request, will be granted an opportunity to show cause why it should be fully reinstated.

(2) In the event the Secretary's response allows reinstatement subject to limitation, the institution, by requesting a show cause meeting, shall not be deemed to waive its rights to participate in the HEAL program or any or all title IV programs covered under this subpart if it complies with the reinstatement limitations pending the outcome of the meeting.

(20 U.S.C. 1094)

§ 668.85 Removal of limitation.

(a) An institution whose eligibility for any or all title IV student assistance programs covered under this subpart has been limited may not apply for removal of the limitation of its eligibility before the expiration of 12 months from the effective date of the limitation.

(b) After the minimum limitation period, the institution may request removal of the limitation. The request must be in writing and show that the institution has corrected the violations on which the limitation was based.

(c) No later than 60 days after the receipt of the request, the Secretary shall respond to the institution—

(i) Granting its request;

(ii) Denying its request; or

(iii) Granting the request subject to other limitations.

(d) If the Secretary denies the request, or establishes other limitations, the institution upon request will be granted an opportunity to show cause why its eligibility should be fully reinstated.

(e) The institution's request for a show cause meeting shall not be deemed to waive its right to participate in any or all title IV student assistance programs covered under this subpart if it complies with such continuing limitations pending the outcome of the meeting.

(20 U.S.C. 1094)

Appendix A—[Reserved]

Appendix B—Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)

Part III Chapter 3—Independence

(a) The Third general standard for governmental auditing is: In matters relating to the audit work, the audit organization and the individual auditors shall maintain an independent attitude.

(b) This standard places upon the auditor and the audit organization the responsibility for maintaining sufficient independence so that their opinions, conclusions, judgments, and recommendations will be impartial. If the auditor is not sufficiently independent to produce unbiased opinions, conclusions, and judgments, he should state in a prominent place in the audit report his relationship with the organization or officials being audited.[1]

(c) The auditor should consider not only whether his or her own attitude and beliefs permit him or her to be independent but also whether there is anything about his or her situation which would lead others to question his or her independence. Both situations deserve consideration since it is important not only that the auditor be, in fact, independent and impartial but also that other persons will consider him or her so.

(d) There are three general classes of impairments that the auditor needs to consider; these are personal, external, and organizational impairments. If one or more of these are of such significance as to affect the auditor's ability to perform his or her work and report its results impartially, he or she should decline to perform the audit or indicate in the report that he or she was not fully independent.

Personal Impairments

There are some circumstances in which an auditor cannot be impartial because of his or her views or his or her personal situation. These circumstances might include:

1. Relationships of an official, professional, and/or personal nature that might cause the auditor to limit the extent or character of the inquiry, to limit disclosure, or to weaken his or her findings in any way.

2. Preconceived ideas about the objectives or quality of a particular operation or personal likes or dislikes of individuals, groups, or objectives of a particular program.

3. Previous involvement in a decisionmaking or management capacity in the operations of the governmental entity or program being audited.

4. Biases and prejudices, including those induced by political or social convictions, which result from employment in or loyalty to a particular group, entity, or level of government.

5. Actual or potential restrictive influence when the auditor performs preaudit work and subsequently performs a post audit.

6. Financial interest, direct or indirect, in an organization or facility which is benefiting from the audited programs.

External Impairments

External factors can restrict the audit or impinge on the auditor's ability to form independent and objective opinions and conclusions. For example, under the following conditions either the audit itself could be adversely affected or the auditor would not have complete freedom to make an independent judgment.[2]

1. Interference or other influence that improperly or imprudently eliminates, restricts, or modifies the scope or character of the audit.

2. Interference with the selection or application of audit procedures of the selection of activities to be examined.

3. Denial of access to such sources of information as books, records, and supporting documents or denial or opportunity to obtain explanations by officials and employees of the governmental organization, program, or activity under audit.

4. Interference in the assignment of personnel to the audit task.

5. Retaliatory restrictions placed on funds or other resources dedicated to the audit operation.

6. Activity to overrule or significantly influence the auditors judgment as to the appropriate content of the audit report.

7. Influences that place the auditor's continued employment in jeopardy for reasons other than competency or the need for audit services.

8. Unreasonable restriction on the time allowed to competently complete an audit assignment.

Organizational Impairments

(a) The auditor's independence can be affected by his or her place within the organizational structure of governments. Auditors employed by Federal, State, or local government units may be subject to policy direction from superiors who are involved either directly or indirectly in the government management process. To achieve maximum independence such auditors and the audit organization itself not only should report to the highest practicable echelon within their government but should be organizationally located outside the line-management function of the entity under audit.

(b) These auditors should also be sufficiently removed from political pressures to ensure that they can conduct their auditing objectively and can report their conclusions completely without fear of censure. Whenever feasible they should be under a system which will place decisions on compensation, training, job tenure, and advancement on a merit basis.

(c) When independent public accountants or other independent professionals are engaged to perform work that includes inquiries into compliance with applicable laws and regulations, efficiency and economy of operations, or achievement of program results, they should be engaged by someone other than the officials responsible for the direction of the effort being audited. This practice removes the pressure that may result if the auditor must criticize the performance of those by whom he or she was engaged. To remove this obstacle to independence, governments should arrange to have auditors engaged by officials not directly involved in operations to be audited.

Appendix C—Appendix I. Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (GAO)

Qualifications of Independent Auditors Engaged by Governmental Organizations

(a) When outside auditors are engaged for assignments requiring the expression of an opinion on financial reports of governmental organizations, only fully qualified public accountants should be employed. The type of qualifications, as stated by the Comptroller General, deemed necessary for financial audits of governmental organizations and programs is quoted below:

"Such audits shall be conducted * * * by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States: Except that independent public accountants licensed to practice by such regulatory authority after December 31, 1970, and persons who although not so certified or licensed, meet, in the opinion of the Secretary, standards of education and experience representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations may perform such audits until December 31, 1975; Provided, That if the Secretary deems it necessary in the public interest, he may prescribe by regulations higher standard than those required for the practice of public accountancy by the regulatory authorities of the States."[1]

(b) The standards for examination and evaluation require consideration of applicable laws and regulations in the auditor's examination. The standards for reporting require a statement in the auditor's report regarding any significant instances of noncompliance disclosed by his or her examination and evaluation work. What is to be included in this statement requires judgment. Significant instances of noncompliance, even those not resulting in legal liability to the audited entity, should be included. Minor procedural noncompliance need not be disclosed.

(c) Although the reporting standard is generally on an exception basis—that only noncompliance need be reported—it should be recognized that governmental entities often want positive statements regarding whether or not the auditor's tests disclosed instances of noncompliance. This is particularly true in grant programs where authorizing agencies frequently want assurance in the auditor's report that this matter has been considered. For such audits, auditors should obtain an understanding with the authorizing agency as to the extent to which such positive comments on compliance are desired. When coordinated audits are involved, the audit program should specify the extent of comments that the auditor is to make regarding compliance.

(d) When noncompliance is reported, the auditor should place the findings in proper perspective. The extent of instances of noncompliance should be related to the number of cases examined to provide the reader with a basis for judging the prevalence of noncompliance.

(The pamphlet "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" is for sale by the Superintendent of Document, U.S. Government Printing Office, Washington, D.C. 20402. Stock number 2000–01000. Price: 85 cents.)

PART 686 [Removed]

2. Part 686 of Title 34 of the Code of Federal Regulations is removed.

[FR Doc. 80–40522 Filed 12–30–80; 8:45 am]

BILLING CODE 4000–01–M

[1] If the auditor is not fully indpendent because he or she is an employee of the audited entity, it will be adequate disclosure to so indicate. If the auditor is a practicing certified public accountant, his or her conduct should be governed by the AICPA "Statements on Auditing Procedure."

[2] Some of these situations may constitute justifiable limitations on the scope of the work. In such cases the limitation should be identified in the auditor's report.

[1] Letter (B–148144, September 15, 1970) from the Comptroller General to the heads of Federal departments and agencies. The reference to "Secretary" means the head of the department or agency.

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Part VIII

Department of Education

International Education Programs; Final Regulations and Request for Comments

DEPARTMENT OF EDUCATION

34 CFR Parts 655,656,658, 660 and 667

International Education Programs

AGENCY: Department of Education.

ACTION: Final regulations with comments invited.

SUMMARY: The Secretary of Education issues regulations for the International Education Programs. These regulations have been amended to reflect statutory changes resulting from the Education Amendments of 1980 and to reflect changes required by the Education Division General Administrative Regulations (EDGAR). These regulations will assist potential applicants by specifying the selection criteria that the Secretary uses in evaluating applications for assistance under these programs.

DATES: Comments must be received on or before March 2, 1981. These regulations are expected to take effect 45 days after they are transmitted to the Congress. Regulations are usually transmitted to the Congress several days before they are published in the **Federal Register**. The effective date is changed if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contract person.

ADDRESS: Comments should be addressed to: Dr. Richard Krasno, Deputy Assistant Secretary for International Education, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3918, ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Krasno. Telephone: (202) 245-9758.

SUPPLEMENTARY INFORMATION:

Waiver of Proposed Rulemaking Procedures

In accordance with Section 431(b)(2)(a) of the General Education Provisions Act (20 U.S.C. 12232(b)(2)(A)), it has been the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. The Secretary then reviews these comments and makes appropriate changes before republishing the regulations in final form.

For the reasons described in the following paragraphs, the use of that practice in connection with the provisions of these regulations is impracticable and contrary to the public interest under 5 U.S.C. 553(b). However, the Secretary invites the public to comment on these regulations and will consider appropriate comments before publishing the regulations again.

The Secretary has waived proposed rulemaking procedures for the following reasons:

The programs for which regulations are published (34 CFR Parts 655, 656, 658, 660, and 667) were formerly authorized under Title VI of the National Defense Education Act (NDEA) of 1958, as amended. Final regulations for the programs authorized under Sections 601 and 602 of the NDEA were published in May 1977. For the program authorized under Section 603 of the NDEA, final regulations were published in May 1978, and amended in May 1979. Public comment was provided for prior to the issuing of final regulations for these programs.

Amendments to the current regulations for these programs were made to comply with EDGAR and were published as proposed regulations for public comment in the **Federal Register** of April 3, 1980. No comments were received.

On November 14, 1980, the Secretary published a notice in the **Federal Register** of the Department's intent to publish regulations necessary to implement the Education Amendments of 1980. In that notice, the Department listed the existing regulations affected by the new law and requested comments whether those regulations required information that is already being gathered by or is available from any other agency or authority of the United States.

The regulations in this document are based on regulations listed in the November 14, 1980 notice. Based on any comments received and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

The changes in the legislation governing these programs for which the Secretary is publishing regulations are not considerd to be major. These regulations represent a shortened and simplified version of the former ones, consonant with the terms of the new legislation. No major departure in the administration of these programs is proposed. For these reasons, and in order to permit the Secretary to make awards in fiscal year 1981 in a timely manner, the regulations are published in final form.

Prior to taking any action with respect to the award of new grants for fiscal year 1982 and subsequent fiscal years, the Secretary intends to issue new regulations taking into account public comment received on this document. This will permit interested parties to study the regulations governing the programs and to make comments and suggestions to the Secretary without undue delay to the 1981 grant cycle.

Effect of Education Amendments of 1980

The International Education Programs constitute a group of Federal programs of assistance to institutions of higher education and other agencies and organizations. The programs are designed to aid in the development of resources and trained personnel for international study, international research, and foreign language study (20 U.S.C. 1121).

Section 601(a) of the Higher Education Act of 1965, as amended by the Education Amendments of 1980 (Pub. L. 96-374), contains the congressional findings underlying the programs:

> Sec. 601. (a) The Congress finds that—
> (1) knowledge of other countries is important to promote mutual understanding and cooperation between nations;
> (2) strong American educational resources are a necessary base for strenghthening our relations with other countries;
> (3) present and future generations of Americans should be given the opportunity to develop to the fullest extent possible their intellectual capacities in all areas of knowledge pertaining to other countries, peoples, and cultures; and
> (4) the economy of the United States and the long range security of the Nation are dependent upon acquiring such knowledge.

Prior to the enactment of the Education Amendments of 1980, these programs were authorized by Title VI of the National Defense Education Act of 1958, 20 U.S.C. 511-513. Certain of these programs were also authorized by Title I of the International Education Act of 1966, 20 U.S.C. 1172-1177.

Section 395(c) (1) and (2) of the Education Amendments of 1980 repealed Title VI of the National Defense Education Act and Title I of the International Education Act. Section 601 transferred certain of the programs previously authorized by the repealed acts to a new Title VI of the Higher Education Act, to be codified at 20 U.S.C. 1121-1132.

The new Title VI provides authority for programs to assist: Graduate and Undergraduate Language and Area Centers (section 602), referred to in these regulations as National Resource Centers; International Studies Centers (section 603), referred to in these regulations as Regional Resource Centers; Undergraduate International Studies and Foreign Language Programs (section 604); Research and Studies (section 605); and Business and International Education Programs (sections 611-613).

In addition, the Education Amendments of 1980 provided for a program of assistance for International Understanding as Part N of the elementary and Secondary Education Act of 1965 (sections 393-395), as amended.

Several of these programs correspond to international education programs previously conducted under the National Defense Education Act, Title VI. For example, the language and area centers and fellowships program previously conducted under Section 601 of the National Defense Education Act is now, with some revisions, authorized by Section 602 of the Higher Education Act, 20 U.S.C 1122.

Programs for Which No Regulations Are Issued

In the case of some of the programs authorized by the new Title VI of the Higher Education Act, funds have not been provided for fiscal year 1981. These programs include the International Studies Centers, also referred to as Regional Resource Centers (section 603), and the Business and International Education Programs (sections 611-613). In addition, funds are not available for aiding graduate programs (as distinguished from centers), as authorized by section 602.

Regulations are not issued or proposed for programs or program components for which funds are not available during the current fiscal year. Any obligation of the Secretary to develop and publish regulations for these programs is considered to have been satisfied by the publication of the general regulations governing newly funded programs, 34 CFR Parts 75 and 76, 45 FR 84058, December 22, 1980.

Programs for Which Regulations Are Issued

Regulations are included in this document for the programs under the following statutory authorities:

—Section 602 of the Act (National Resource Centers and Fellowships) (34 CFR Part 656);

—Section 604 of the Act (Undergraduate International Studies and Foreign Language Program) (34 CFR Part 658);

—Section 605 of the Act (International Research and Studies) (34 CFR Part 660); and

—Section 393 of the Elementary and Secondary Education Act of 1965, as amended (International Understanding) (34 CFR Part 667).

Part 655 contains definitions and certain provisions—including some selection criteria common to all four programs and applies to all of the programs. It is designed to shorten and simplify the regulations for the programs by avoiding needless repetition of common provisions.

The following paragraphs describe each of the programs for which regulations are provided in this document and the major regulatory provisions and issues:

1. National Resource Centers and Fellowships Program (34 CFR Part 656)

Section 602 of the Higher Education Act (20 U.S.C. 1122) authorizes the Secretary of Education to assist institutions of higher education, or combinations of institutions of higher education, to establish, strengthen, and operate graduate and undergraduate centers that will be national resources for—

(a) The teaching of any modern foreign language;

(b) Instruction in fields needed to provide a full understanding of the areas, regions, or countries in which that language is commonly used; or

(c) Research and training in international studies and the international aspects of professional and other fields of study.

The Secretary is also authorized to pay stipends to persons undergoing training.

The National Resource Centers and Fellowships Program carried out under section 602 of the Act corresponds in large part to the language and area centers and fellowships previously administered under Section 601 of the National Defense Education Act. Emphasis is placed on assistance to centers that provide advanced training in modern foreign languages, coupled with area or international studies, as a means of meeting the needs for trained specialists.

A center will be evaluated on the extent to which its resources—including faculty, teaching program, and library collections—are sufficiently strong to carry out the purposes of the Act.

The regulations in 34 CFR Parts 655 and 656 apply to this program. They provide that the Secretary considers granting assistance to centers that focus on a single country or one or more world areas or a center that focuses on international studies or the international aspects of contemporary issues or topics. In each case, language instruction must be made available (§ 656.11). Training may be provided at the graduate and undergraduate levels, or at the undergraduate level only (§ 656.12).

An applicant for a center must show that it provides appropriate advanced training and research opportunities as required by the Act; maintains specialized library collections and employs scholars engaged in appropriate research; and provides outreach and consultative services (§ 656.10).

To receive a fellowship, an individual must be engaged in advanced training in a foreign language and in area or international studies at an institution of higher education approved by the Secretary. The Secretary makes allocations of fellowships to institutions of higher education. Individual applicants for fellowships apply to the institutions (§ 656.3). The selection criteria that the Secretary uses in evaluating applications are contained in §§§ 656.31, 656.32, and 656.33.

The Secretary is authorized to set annual priorities for both centers and fellowships.

The regulations also contain provisions governing allowable costs and the duration of grants and fellowships (§§ 656.36 and 656.37), and the amount and payment methods for fellowships (§§ 656.41-656.44).

2. The Undergraduate International Studies and Foreign Language Program (34 CFR Part 658)

Section 604 of the Higher Education Act (20 U.S.C. 1124) authorizes the Secretary to make grants to assist institutions of higher education, or combinations of institutions, in planning, developing, and carrying out comprehensive programs to strengthen and improve undergraduate instruction in international studies and foreign languages.

The Secretary may also make grants to public and nonprofit private agencies and organizations, including professional and scholarly associations, if the Secretary determines that grants to those parties will make an especially significant contribution to attaining the objectives of the section.

The Undergraduate International Studies and Foreign Language Program carried out under section 604 of the Act corresponds in large part to the Undergraduate International Studies Program previously carried out under the authority of the National Defense Education Act. The latter called for the establishment of both graduate and undergraduate language and area centers and programs.

The regulations in 34 CFR Parts 655 and 658 apply to this program. The Secretary awards grants under Part 658 to assist projects and activities that are an integral part of a comprehensive

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program (§ 658.11). In addition to evaluating applications on the basis of the funding criteria in, as appropriate, 34 CFR 658.31, 658.32, and 658.33, the Secretary seeks to achieve an equitable distribution of awards throughout the United States and encourages diversity by ensuring that a variety of types of institutions receive funding (§ 658.34).

3. The International Research and Studies Program (34 CFR Part 660)

Section 605 of the Higher Education Act (20 U.S.C. 1125) authorizes the Secretary to provide assistance—for the conduct of research, studies, and surveys and the development of specialized instructional materials that furthers the purposes of Part A of Title VI of the Higher Education Act and Part N of Title III of the Elementary and Secondary Education Act of 1965.

The Research and Studies Program can serve as an instrument for coordination across educational levels. These activities are intended to serve as an effective tool for follow-up to the President's Commission on Foreign Language and International Studies in determining present and future needs in foreign languages and other fields.

The projects conducted under section 605 of the Act correspond in large part to the foreign language and area studies research activities previously administered under Section 602 of the National Defense Education Act. They include activities designed to strengthen the aims of the International Understanding Program, also covered by these regulations.

Under the Research and Studies Program the Secretary awards grants and contracts for—

(a) Studies and surveys to determine the need for increased or improved instruction in modern foreign languages and in other fields needed to provide a full understanding of the areas and countries in which those languages are commonly used;

(b) Research on more effective methods of teaching and evaluating competency in foreign languages and related fields;

(c) The development of materials for use in the expansion or improvement of instruction in foreign languages and foreign area studies; and

(d) Research, studies, and the development of materials that contribute to Americans' understanding of the cultures, actions, policies, and interrelationships of nations.

4. The International Understanding Program (34 CFR Part 667)

Part N of the Elementary and Secondary Education Act of 1965 (Section 394) (20 U.S.C. 3064) (formerly Section 603 of NDEA) authorizes the Secretary to stimulate, on all levels of education, programs that increase the understanding of students and the public about the cultures, actions, and interconnections of nations and peoples.

The purpose is to enable the public to make more informed judgments with regard to the international policies and actions of the United States.

Under this program, the Secretary may award grants to any public or private agency or organization. These may include, but are not limited to, institutions of higher education, State and local educational agencies, professional associations, education consortia, and organizations of teachers.

References to EDGAR

Readers will note that references to the Education Division General Administrative Regulations (EDGAR) cite Title 34 of the Code of Federal Regulations. EDGAR was transferred to Title 34, through final regulations published in the Federal Register on November 21, 1980 (45 FR 77368).

However, EDGAR was initially published in the Federal Register on April 3, 1980 (45 FR 22494) under Title 45 of the Code of Federal Regulations (CFR). For readers wishing to refer to that EDGAR document, the following cross-references will be helpful:

45 CFR Part 74 is now 34 CFR Part 74
45 CFR Part 100a is now 34 CFR Part 75
45 CFR Part 100b is now 34 CFR Part 76
45 CFR Part 100c is now 34 CFR Part 77

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments submitted on or before March 2, 1981, will be considered before the Secretary issues new regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3918, ROB-3, 7th and D Streets SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: December 23, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers 84.015, International Studies Centers and Foreign Language and Area Studies Fellowships; 84.016, International Studies Programs; 84.017, Foreign Language and Area Studies Research; and 84.095, Citizen Education and Cultural Understanding Program)

The Secretary revises Part 655 of Title 34 of the Code of Federal Regulations to read as follows:

PART 655—INTERNATIONAL EDUCATION PROGRAMS—GENERAL

Subpart A—General

Sec.
655.1 Which programs do these regulations govern?
655.3 What regulations apply to the International Education Programs?
655.4 What definitions apply to the International Education Programs?

Subpart B—What Kinds of Projects Does the Secretary Assist? [Reserved]

Subpart C—How Does One Apply for a Grant?

655.20 How does one apply for funds?

Subpart D—How Does the Secretary Make a Grant?

655.30 How does the Secretary evaluate an application?
655.31 What general selection criteria does the Secretary use?

Authority: Higher Education Act of 1965, Pub. L. No. 89-329, as amended, 20 U.S.C. 1121-1127; Elementary and Secondary Education Act of 1965, Pub. L. 89-10, 20 U.S.C. 3063-3065.

Subpart A—General

§ 655.1 Which programs do these regulations govern?

The regulations in this part govern the administration of the following programs in international education:

(a) The National Resource Centers and Fellowships Program (Section 602 of the Higher Education Act of 1965);

(b) The Undergraduate International Studies and Foreign Language Program (Section 604);

(c) The International Research and Studies Program (Section 605); and

(d) The International Understanding Program (Sections 393-95 of the Elementary and Secondary Education Act of 1965).

(20 U.S.C. 1121-1132, 3063-3065)

§ 655.3 What regulations apply to the International Education Programs?

The following regulations apply to the International Education Programs:

(a) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General).

(b) The regulations in this Part 655: and

(c) As appropriate, the regulations in—

(1) 34 CFR Part 656 (National Resource Centers and Fellowships Program);

(2) 34 CFR Part 658 (Undergraduate International Studies and Foreign Language Program);

(3) 34 CFR Part 660 (International Research and Studies Program); and

(4) 34 CFR Part 667 (International Understanding Program).

(20 U.S.C. 1121-1127, 3063-3065)

§ 655.4 What definitions apply to the International Education Programs?

(a) *Definitions in EDGAR.* The following terms used in this part and 34 CFR Parts 656-667 are defined in 34 CFR Part 77:

Acquisition
Applicant
Application
Award
Budget
Contract
Equipment
Facilities
Fiscal year
Grant
Grantee
Grant period
Local educational agency
Nonprofit
Project
Project period
Private
Public
Secretary
State educational agency
Supplies

(20 U.S.C. 1121-1127, 3063-3065)

(b) *Definitions that apply to these programs.* The following definition applies to these programs:

"Institution of higher education," which is defined in Section 1201 of the Higher Education Act of 1965, means—

An educational institution in any State that

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of that type of certificate;

(2) Is legally authorized within that State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward a bachelor's degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited—

(i) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance—considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made—that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or

(ii) Is an institution whose credits are accepted, on transfer, by not fewer than three institutions that are so accredited, for credit on the same basis as if transferred from an institution so accredited. The term also includes any school that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of this definition.

(20 U.S.C. 1141)

Subpart B—What Kinds of Projects Does the Secretary Assist? [Reserved]

Note.—Subpart B of 34 CFR Parts 656, 658, 660, and 667 describes the kinds of projects that the Secretary assists under this Act.

Subpart C—How Does One Apply for a Grant?

§ 655.20 How does one apply for funds?

(a) The introduction at the beginning of EDGAR includes general information about how to apply for a grant under a Department of Education program.

(20 U.S.C. 1121-1127, 3063-3065)

(b) An applicant must demonstrate, on the application form furnished by the Secretary, that the proposed project meets the requirements of the Act and the applicable regulations.

(20 U.S.C. 1121-1127, 3063-3065)

Subpart D—How Does the Secretary Make a Grant?

§ 655.30 How does the Secretary evaluate an application?

The Secretary evaluates all applications for International Education Programs on the basis of—

(a) The general criteria in § 655.31; and

(b) The specific criteria in, as applicable, 34 CFR Parts 656, 658, 660, and 667.

(20 U.S.C. 1121-1127, 3063-3065)

§ 655.31 What general selection criteria does the Secretary use?

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

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(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1121–1127, 3063–3065)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 656 to read as follows:

PART 656—NATIONAL RESOURCE CENTERS AND FELLOWSHIPS PROGRAM FOR LANGUAGE AND AREA OR LANGUAGE AND INTERNATIONAL STUDIES

Subpart A—General

Sec.

656.1 What is the National Resource Centers and Fellowships Program?
656.2 Eligible parties: National Resource Centers.
656.3 Eligible parties: National Resource Fellowships
656.4 What are the eligibility requirements an individual must meet to qualify for a fellowship?
656.5 What regulations apply to the National Resource Centers and Fellowship Program?
656.6 What definitions apply to the National Resource Centers and Fellowship Program?

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

656.10 What activities must a National Resource Center conduct?
656.11 What types of centers receive assistance?
656.12 What levels of instruction may a National Resource Center provide?

Subpart C—How Does One Apply for a Grant or Fellowship?

656.20 How does an institution submit an application?
656.21 How does an individual apply for a fellowship?

Subpart D—How does the Secretary Make a Grant?

656.30 How does the Secretary evaluate an application under the National Resource Centers and Fellowships Program?
656.31 What selection criteria does the Secretary use?
656.32 What additional criterion does the Secretary use for National Resource Centers?
656.33 What additional criteria does the Secretary use for National Resource Fellowships?
656.34 What priorities may the Secretary established for National Resource. Centers?
656.35 What priorities may the Secretary establish for National Resource Fellowships?
656.36 What is the duration of a project for a National Resource Center?
656.37 What is the duration of a National Resource Fellowship?

Subpart E—What Conditions Must Be Met by a Grantee?

656.40 National Resource Centers: Which costs are allowable, and which costs are unallowable?
656.41 What is the amount of a fellowship?
656.42 What is the payment method for fellowships?
656.43 What are the limitations on use of funds for undergraduate travel?
656.44 Under what circumstances must an institution teminate a fellowship?

Subpart F—What Are the Administrative Responsibilities of a Fellow?

656.50 What are the reporting requirements for a fellow?

Authority: Sec. 602 of Pub. L. 96–374, Title VI.

Subpart A—General.

§ 656.1 What is the National Resource Centers and Fellowships Program?

(a) The National Resource Centers and Fellowships Program for Language and Area or Language and International Studies—

(1) Assists institutions of higher education to establish, strengthen, and operate centers that will be national resources—

(i) For the teaching of any modern foreign language;

(ii) For instruction in fields needed to provide a full understanding of the areas, regions, or countries in which the modern language is commonly used; or

(iii) For research and training in international studies and the international aspects of professional and other fields of study; and

(2) Assists students undergoing advanced training—in fields related to this part—by providing fellowships, awarded through an institution of higher education approved by the Secretary under section 602(b) of the Act.

(b) Fellowships awarded under this part are designed to enable students specializing in various disciplines or professional fields of study simultaneously to acquire—

(1) A high level of competence in one or more languages critical to national needs of the United States; and

(2) A fuller understanding of the areas, regions, or countries in which that language is commonly used.

(20 U.S.C. 1122(a) and (b))

§ 656.2 Eligible parties: National Resource Centers.

(a) An institution of higher education is eligible to apply for assistance under this part to establish and operate a National Resource Center.

(b) As used in this part, the term "institution of higher education" includes a combination of institutions of higher education.

(20 U.S.C. 1122(a)(1))

§ 656.3 Eligible parties: National Resource Fellowships.

(a)(1) Under section 602(b) of the Act, the Secretary allocates fellowships to an institution of higher education that offers advanced training in a foreign language and in area or international studies.

(2) However, an institution need not receive—or apply for—assistance to establish and operate a center under section 602(a) of the Act in order to receive an allocation of fellowships.

(b) An individual is eligible for a National Resource Fellowship if he or she—

(1) Is engaged in advanced training in a foreign language and in area or international studies at an institution approved by the Secretary under section 602(b) of the Act to receive fellowships; and

(2) Meets the requirements of § 656.4 of these regulations.

(c) An individual applies for an award to an institution of higher education with an allocation of fellowships.

(20 U.S.C. 1122(b))

§ 656.4 What are the eligibility requirements an individual must meet to qualify for a fellowship?

(a) An institution may award a fellowship to an individual who—

(1) Is a citizen or permanent resident of the United States;

(2) Is accepted for advanced training at an institution with an allocation of fellowships in language and area or language and international studies;

(3) Shows potential for high academic achievement, based on such indices as grade point average, class ranking, or similar measures that the institution may determine; and

(4) Is undergoing training in subject areas that are consonant with the institution's major fields of expertise and concentration in language and relevant area, international, or professional studies, as described in the institutional application.

(b) An institution may award a fellowship to an individual for use overseas if the individual—

(1) Meets the requirements under paragraph (a) of this section; and

(2) Is enrolled in an advanced language program overseas established by a United States institution; or

(3)(i) Is doing dissertation research that cannot be done in the United States; and

(ii) Is affiliated with an overseas institution of higher education or an appropriate organization.

(c) To award a fellowship for use overseas, an institution must obtain the advance approval of the Secretary.

(20 U.S.C. 1122(b); Sen. Rept. No. 96–733, 96th Cong. 2nd Sess. pages 60–61)

§ 656.5 What regulations apply to the National Resource Centers and Fellowship Program?

The following regulations apply to this program:

(a) The regulations referred to in 34 CFR 655.3(a) and (b).

(b) The regulations in this Part 656.

(20 U.S.C. 1121–1127)

§ 656.6 What definitions apply to the National Resource Centers and Fellowship Program?

The following definitions apply to this program:

(a) The definitions in 34 CFR 655.4.

(b) "Fellow" means a person who receives a stipend under Title VI of the Act.

(20 U.S.C. 1121–1127)

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

§ 656.10 What activities must a National Resource Center conduct?

A National Resource Center receiving Federal assistance under this part must conduct the following activities:

(a) Provide advanced training and research opportunities for students and faculty in any modern foreign language—

(1) In fields needed to provide a full understanding of the areas, regions, or countries in which that language is commonly used; or

(2) In international studies and the international aspects of professional and other fields of study.

(b) Maintain specialized library collections and employ scholars engaged in research on topics of contemporary relevance to the purposes of the program as stated in § 656.1.

(c) Provide outreach and consultative services primarily at the national level.

(20 U.S.C. 1122(a) and (b); Conf. Rept., page 188. Sen. Rept., page 60)

§ 656.11 What types of centers receive assistance?

The Secretary may assist a National Resource Center that—

(a)(1) Focuses on a single country or on one or more world areas (such as East Asia, Africa, or the Middle East); and

(2) Offers instruction in the principal language or languages of that country or area; or

(b)(1) Focuses on international studies, or on the international aspects of contemporary issues or topics (such as international business or energy); and

(2) Makes instruction in modern foreign languages available to students undergoing training at the center.

(20 U.S.C. 1122(a)).

§ 656.12 What levels of instruction may a National Resource Center provide?

(a) A center may provide training—

(1) At the graduate and undergraduate level, including professional fields; or

(2) At the undergraduate level only.

(b) A four-year institution that provides instruction at the undergraduate level only must demonstrate to the Secretary in its application that its program is of national importance and is exemplary in terms of excellence and innovation.

(20 U.S.C. 1122(a); Sen. Rept., page 60, Conf. Rept. 188)

Subpart C—How Does One Apply for a Grant or Fellowship?

§ 656.20 How does an institution submit an application?

(a) An eligible institution may apply under this part for—

(1) Assistance for a National Resource Center;

(2) An allocation of National Resource Fellowships; or

(3) Both.

(b) The institution need file only one application.

(20 U.S.C. 1122)

§ 656.21 How does an individual apply for a fellowship?

(a) An institution of higher education that has received an allocation of fellowships shall notify potential applicants that fellowship awards are available.

(b) To be considered for a fellowship award, an individual must apply to an institution having an allocation of fellowships.

(c) An individual applicant must demonstrate that he or she meets the requirements in § 656.4.

(d) The institution acts as an agent for the Secretary in selecting fellows and disbursing the stipends.

(20 U.S.C. 1122(b))

Subpart D—How Does the Secretary Make a Grant?

§ 656.30 How does the Secretary evaluate an application under the National Resource Centers and Fellowships Program?

(a) The Secretary evaluates an application for a National Resource Center under the criteria in §§ 656.31 and 656.32.

(b)(1) The Secretary evaluates an application for an allocation of National Resource Fellowships under the criteria in §§ 656.31 and 656.33.

(2) In the case of an application for an allocation of National Resource Fellowships, the word "center," as used in § 656.31, means—

(i) A National Resource Center; or

(ii) In the case of an institution either not applying for or not receiving a grant for a National Resource Center, a concentration of resources focusing on a particular topic relevant to this part.

(c) The Secretary awards up to 125 possible points for these criteria. The maximum possible points for each criterion are shown in parentheses.

(20 U.S.C. 1122(a) and (b))

§ 656.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (15) (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (10) (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (10) (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (10) (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (5) (See 34 (CFR 655.31(e))

(f) *Commitment to the subject area on which the center focuses.* (15)

(1) The Secretary reviews each application for information that shows the applicant's commitment to the subject area on which the center focuses. (See § 656.11)

(2) The Secretary reviews each application for information that shows—

(i) The degree of institutional commitment to the subject area for which funding is sought as shown by the

institution's previous record of accomplishment and support for that subject area;

(ii) The extent to which the institution provides financial and other support to the center, to tenured faculty members of the center, and to qualified students in fields related to the center; and

(iii) The strength of the institution's library in the subject area on which the center focuses, and the extent to which the institution provides financial support for the acquisition of library materials in that subject area.

(g) *Quality of the center's instructional program.* (15)

(1) The Secretary reviews each application for information that shows the quality of the applicant's program of instruction in the subject area on which the center focuses.

(2) The secretary reviews each application for information that shows—

(i) The quality and extent of the center's course offerings;

(ii) The quality of the center's language training program: and

(iii) The extent to which the center employs a sufficient number of scholars to enable the center to carry out its purposes.

(h) *Quality of the center's relationships within the institution.* (10)

(1) The Secretary reviews each application for information that shows the quality of the center's relationships within the institution.

(2) The Secretary reviews each application for information that shows—

(i) The extent to which the center includes multi- and interdisciplinary instruction: and

(ii) The extent to which the center has entered into cooperative arrangements with other departments, schools, and professional programs of the institution.

(i) *Overseas activities.* (10)

(1) The Secretary reviews each application for information that shows—with regard to the subject area on which the center focuses—the extent of the applicant's overseas activities and cooperation with foreign scholars, institutions, and governments.

(2) The Secretary looks for information that shows—

(i) The adequacy of the provisions for relevant overseas experience for faculty and students in the center's program; and

(ii) The extent to which provision is made for cooperation with foreign scholars, institutions, and governments.

(j) *Need and potential impact.* (15)

(1) The Secretary reviews each application for information that shows the need for, and potential impact of, the applicant's proposed activities.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed activities are needed at the institution or are needed nationwide;

(ii) The extent to which an improved program in language and area studies or language and international studies will be available at the applicant institution at the termination of the grant period; and

(iii) The potential impact of the proposed project in improving the knowledge of languages, areas, or international studies at the national level.

(20 U.S.C. 1122)

§ 656.32 What additional criterion does the Secretary use for National Resource Centers?

(a) *Outreach activities* (10).

(1) The Secretary reviews each application for assistance for a National Resource Center for information that shows the extent of the applicant's outreach activities.

(2) The Secretary looks for information that shows—

(i) The quality of the services the center provides to persons and organizations outside the center as these services relate to the provision of information and training primarily for national groups, but, also, for regional and local groups; and

(ii) The contribution of these outreach services to curriculum development, faculty development, pre-professional training, and public understanding.

(20 U.S.C. 1122 Sen. Rept. 60–61)

§ 656.33 What additional criteria does the Secretary use for National Resource Fellowships?

(a) *Relevance to national needs and priorities.* (5)

(1) The Secretary reviews each application for an allocation of National Resource Fellowships for information that shows that the fields of study in which fellowships are to be awarded are relevant to current and anticipated national needs and priorities.

(2) The Secretary looks for information that shows—

(i) The relationship between the applicant's proposed program of instruction and national needs and priorities; and

(ii) The institution's recent record of placement of graduate students.

(b) *Degree and linguistic proficiency requirements.* (5)

The Secretary reviews each application for the adequacy of the degree requirements, including the requirements for language proficiency, for students enrolled in the program.

(20 U.S.C. 1122(b))

§ 656.34 What priorities may the Secretary establish for National Resource Centers?

(a) The Secretary may establish priorities each year for the selection of the National Resource Centers. These priorities relate to the following:

(1) *Educational levels;* for example, centers whose instructional level is both undergraduate and graduate or centers emphasizing undergraduate instruction only.

(2) *Types of centers;* for example, centers focusing on a single area; on international studies; or on particular issues or topics, such as business or energy; or on a combination of these.

(3) *Specific countries or geographic regions or areas of the world;* for example, Canada or Mexico, East Asia. Africa, or the Middle East.

(b) The Secretary announces any priorities in the application notice published in the **Federal Register.**

(20 U.S.C. 1122(a))

§ 656.35 What priorities may the Secretary establish for National Resource Fellowships?

(a) The Secretary may establish priorities each year for the allocation of the National Resource Fellowships. These priorities relate to the following:

(1) Certain world areas, countries, languages, levels of language offerings, academic disciplines, topics, issues, or combinations of any of these categories; for example, a specific language, such as Chinese; a world area or country, such as East Asia or Mexico; an academic discipline, such as linguistics or sociology; or an issue or topic, such as population growth and planning or international trade and business.

(b) The Secretary may assign lower priority to the following:

(1) Certain languages or world areas or levels of study for certain languages or world areas if the Secretary determines that adequate instruction exists nationwide.

(2) Certain applicants for fellowship support, such as—

(i) Those who already have the equivalent fluency of native speakers in the language for which the award is sought and, therefore, have less need for instruction; or

(ii) Those at certain educational levels; for example, undergraduates.

(3) Certain overseas regions or countries.

(c) The Secretary announces any priorities in the application notice published in the **Federal Register.**

(20 U.S.C. 1122(b))

§ 656.36 What is the duration of a project for a National Resource Center?

The Secretary may approve a project period of up to three years.

(Sen. Rept., page 61)

§ 656.37 What is the duration of a National Resource Fellowship?

(a) The Secretary may approve a project period at an institution for up to three years.

(b) An institution may award a National Resource Fellowship to a student for—

(1) One academic year;

(2) One academic year and one summer session;

(3) Subject to paragraph (c) of this section, one summer session; or

(4) As many academic terms or summer sessions as it takes to complete his or her academic study.

(c) A student may receive a fellowship for a summer session only if the fellow is enrolled in a summer program that offers the equivalent of one academic year of modern foreign language study.

(20 U.S.C. 1122(b), Sen. Rept., page 61)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 656.40 National Resource Centers: which costs are allowable, and which costs are unallowable?

(a) The recipient of a grant under this part for a National Resource Center may use its grant to pay all or part of the cost of establishing or operating a center. This includes—

(1) Subject to the limitation of § 656.43, the cost of faculty, staff, and student travel in foreign areas, regions, or countries;

(2) The cost of teaching and research materials;

(3) The cost of curriculum planning and development;

(4) The cost of bringing visiting scholars and faculty to the center to teach or conduct research;

(5) The cost of training and improvement of staff; and

(6) The cost of maintaining a library collection, if the Secretary determines that the collection has national importance under the purposes of the Act.

(b) EDGAR, 34 CFR 75.530–75.534, makes reference to applicable cost principles.

(c) The following costs are unallowable:

(1) Construction and other capital costs.

(2) Equipment costs exceeding five percent of the grant amount.

(20 U.S.C. 1122(a)(2))

§ 656.41 What is the amount of a fellowship?

(a) A fellowship under this part includes the cost of tuition and fees and an allowance for maintenance.

(b) The Secretary announces the amount of maintenance allowances and the amount of summer fellowships, as well as any other fellowships costs, in the annual application notice published in the **Federal Register.**

(20 U.S.C. 1122(6))

§ 656.42 What is the payment method of fellowships?

(a) An institution of higher education particpating in the fellowship program makes payments to fellows in installments during the term of the fellowship.

(b) An institution shall make a payment only to a fellow who is enrolled and in good standing.

(c)(1) A fellow shall notify the institution that made the award of any overpayment or underpayment of award benefits.

(2) The insitution shall make appropriate adjustments.

(20 U.S.C. 1122(b))

§ 656.43 What are the limitations on use of funds for undergraduate travel?

No funds may be expended under this part for undergraduate travel—

(a) Without the advance approval of the Secretary; and

(b) Unless the Secretary determines that these funds will be expended as part of a formal program of supervised study.

(20 U.S.C. 1122(c))

§ 656.44 Under what circumstances must an institution terminate a fellowship?

An insitution shall terminate a fellowship to an individual if the individual is:

(a) No longer enrolled at the institution; or

(b) No longer in good standing.

(20 U.S.C. 1122(b))

Subpart F—What Are the Administrative Responsibilities of a Fellow?

§ 656.50 What are the reporting requirements for a fellow?

(a) A fellow shall inform the institution of any change in his or her program of study or academic status.

(b) After each award period, the fellow shall submit to the Secretary, through the grantee institution, a full report of his or her—

(1) Accomplishment under the award; and

(2) Future study or employment plans.

(c) Until the fellow submits the report referred to in paragraph (b) of this section, an institution may not award further fellowship funds to that person.

(20 U.S.C. 1122(b))

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 658 to read as follows:

PART 658—UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAM

Subpart A—General

Sec.

658.1 What is the Undergraduate International Studies and Foreign Language Program?
658.2 Who is eligible to apply for assistance under this program?
658.3 What regulations apply to the Undergraduate International Studies and Foreign Language Program?
658.4 What definitions apply to the Undergraduate International Studies and Foreign Language Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

658.10 For what kinds of projects does the Secretary assist institutions of higher education?
658.11 What projects and activities may a grantee conduct under this program?
658.12 For what kinds of projects does the Secretary assist associations and organizations?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

658.30 How does the Secretary evaluate an application?
658.31 What selection criteria does the Secretary use?
658.32 What additional criteria does the Secretary apply to institutional application?
658.33 What additional criterion does the Secretary apply to applications from organizations and associations?
658.34 What additional factors does the Secretary consider in selecting grant recipients?
658.35 What priorities may the Secretary establish?
658.36 What is the duration of a grant?

Subpart E—What Conditions Must be Met by a Grantee?

658.40 What are the limitations on allowable costs?

Authority: Sec. 604 of Publ. L. 96–374, Title VI.

Subpart A—General

§ 658.1 What is the Undergraduate International Studies and Foreign Language Program?

The Undergraduate International Studies and Foreign Language Program

provides Federal financial assistance to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

(20 U.S.C. 1124)

§ 658.2 Who is eligible to apply for assistance under this program?

The following are eligible to apply for assistance under this program:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public and nonprofit private agencies and organizations, including professional and scholarly associations.

(20 U.S.C. 1124(a) and (b))

§ 658.3 What regulations apply to the Undergraduate International Studies and Foreign Language Program?

The following regulations apply to this program:

(a) The regulations referred to in 34 CFR 655.3(a) and (b).

(b) The regulations in this Part 658.

(20 U.S.C. 1121–1127)

§ 658.4 What definitions apply to the Undergraduate International Studies and Foreign Language Program?

The definitions in 34 CFR 655.4 apply to this program.

(20 U.S.C. 1121–1127)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 658.10 For what kinds of projects does the Secretary assist institutions of higher education?

(a) The Secretary may provide assistance to an institution of higher education to plan, develop, and carry out a comprehensive program to strengthen and improve undergraduate instruction in international studies and foreign languages.

(b) The proposed comprehensive program must—

(1) Include plans to initiate new or revised courses in international studies;

(2) Make instruction in foreign languages available to students in the program; and

(3) Take place primarily in the United States, and cover both a summer and an academic year.

(c) The comprehensive program may focus on—

(1) International or global studies;

(2) A single world area and its languages; or

(3) Issues or topics, such as environmental studies or international business.

(20 U.S.C. 1124(a))

§ 658.11 What projects and activities may a grantee conduct under this program?

The Secretary awards grants under this part to assist projects and activities that are an integral part of a comprehensive program. These include the following:

(a) Planning for the development and expansion of the undergraduate curriculum in international studies and modern foreign languages.

(b) Teaching, research, curriculum development, and related activities, including—

(1) Faculty workshops, conferences, and special lectures;

(2) Developing and testing new curricular materials, including self-instructional materials in foreign languages, or specialized language materials dealing with a particular subject matter (such as business or law);

(3) Initiating new and revised courses in international studies and foreign languages;

(4) Developing ways to use the media, or developing projects to improve the effectiveness of sharing resources, and materials;

(5) Developing standards to identify successful strategies for incorporating international aspects into the curriculum.

(c) Training faculty members in foreign countries or bringing foreign scholars to U.S. institutions.

(d) Placing U.S. faculty members in internships with international associations or with governmental and nongovernmental organizations in the U.S. or abroad to improve their understanding of international affairs.

(e) Initiating special bi-national or bilateral programs.

(f) Integrating undergraduate education with master's degree programs.

(g) Developing an international dimension in teacher training.

(h) Combining the teaching of international studies with professional or pre-professional training.

(20 U.S.C. 1124(a))

§ 658.12 For what kinds of projects does the Secretary assist associations and organizations?

The Secretary awards grants under this part to assist associations and organizations proposing projects that will make an especially significant contribution to strengthening and improving undergraduate instruction in international studies and foreign languages.

(20 U.S.C. 1124(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 658.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application from an institution of higher education on the basis of the criteria in §§ 658.31 and 658.32. The Secretary awards up to 85 possible points for these criteria.

(b) The Secretary evaluates an application from a public or nonprofit private agency, organization, or professional association on the basis of the criteria in §§ 658.31 and 658.33. The Secretary awards up to 75 possible points for these criteria.

(c) The maximum possible points for each criterion are indicated in parentheses.

(20 U.S.C. 1124)

§ 658.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (10) (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (10) (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (10) (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (10) (Sec. 34 CFR 655.31(e))

(20 U.S.C. 1124)

§ 658.32 What additional criteria does the Secretary apply to institutional applications?

In addition to the criteria referred to in § 658.31, the Secretary applies the following criteria to applications submitted by institutions of higher education or by combinations of institutions of higher education:

(a) *Commitment to international studies.* (15)

(1) The Secretary reviews each application for information that shows the applicant's commitment to the international studies program.

(2) The Secretary looks for information that shows—

(i) The institution's current strength as measured by the number of international studies courses offered;

(ii) The extent to which planning for the implementation of the proposed program has involved the applicant's faculty, as well as administrators;

(iii) The institutional commitment to the establishment, operation, and continuation of the program as demonstrated by optimal use of available personnel and other resources; and

(iv) The institutional commitment to the program as demonstrated by the use of institutional funds in support of the program's objectives.

(b) *Elements of the proposed international studies program.* (15)

(1) The Secretary reviews each application for information that shows the nature of the applicant's proposed international studies program.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed activities will contribute to the implementation of a comprehensive program in international studies and foreign languages at the applicant institution;

(ii) The interdisciplinary aspects of the program;

(iii) The number of new and revised courses with an international perspective that will be added to the institution's programs; and

(iv) The applicant's plans to improve or expand language instruction.

(c) *Need for and prospective results of the proposed program.* (10)

(1) The Secretary reviews each application for information that shows the need for and the prospective results of the applicant's proposed program.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed activities are needed at the applicant institution;

(ii) The extent to which the proposed use of Federal funds will result in the implementation of a comprehensive program in international studies and foreign languages at the applicant institution;

(iii) The likelihood that the activities initiated with Federal funds will be continued after Federal assistance is terminated; and

(iv) The adequacy of the provisions for sharing the materials and results of the program with other institutions of higher education.

(20 U.S.C. 1124)

§ 658.33 What additional criterion does the Secretary apply to applications from organizations and associations?

In addition to the criteria referred to in § 658.31, the Secretary applies the following criterion to applications from organizations and associations:

Need for and potential impact of the proposed project in improving international studies and the study of modern foreign language of the undergraduate level. (30)

(a) The Secretary reviews each application for information that shows the need for and the potential impact of the applicant's proposed projects.

(b) The Secretary looks for information that shows—

(1) The extent to which the applicant demonstrates need for Federal funds for this project;

(2) The extent to which the applicant's proposed apportionment of Federal funds among the various budget categories for the proposed project will contribute to achieving results;

(3) The international nature and contemporary relevance of the proposed project;

(4) The extent to which the proposed project will make an especially significant contribution to the improvement of the teaching of international studies or modern foreign languages at the undergraduate level;

(5) The extent to which the proposed project will have major regional and national impact on undergraduate education; and

(6) The adequacy of the applicant's provisions for sharing the materials and results of the proposed project with the higher education community.

(20 U.S.C. 1124(b); Sen. Rept. page 62)

§ 658.34 What additional factors does the Secretary consider in selecting grant recipients?

In addition to applying the selection criteria in, as appropriate, §§ 658.31, 658.32, and 658.33, the Secretary seeks to—

(a) Achieve an equitable geographic distribution of awards throughout the U.S.; and

(b) Encourage diversity by ensuring that a variety of types of projects and institutions receive funding.

(20 U.S.C. 1124; Conf. Rept., page 188)

§ 658.35 What priorities may the Secretary establish?

(a) The Secretary may establish in any given year specific categories for priority funding consideration in the Undergraduate International Studies and Foreign Language Program.

These priorities relate to the following:

(1) Types of eligible parties; for example, institutions, organizations, or associations.

(2) Types of institutions; for example, universities, colleges, or community colleges.

(3) Categories of activities or projects from among those listed under § 658.10 or § 658.11.

(b) The Secretary announces any priorities in the application notice published in the **Federal Register.**

(20 U.S.C. 1124)

§ 658.36 What is the duration of a grant?

(a) In awarding a grant to an institution of higher education under this part, the Secretary usually approves a project period of two years.

(b) In awarding a grant to a combination of institutions of higher education under this part, the Secretary usually approves a project period of three years.

(c) Associations or organizations are also eligible to apply for multi-year project periods.

(20 U.S.C. 1124)

Subpart E—What Conditions Must be Met by a Grantee?

§ 658.40 What are the limitations on allowable costs?

(a) Allowable costs under a grant for an undergraduate international studies program are direct and indirect costs incurred by the grantee in carrying out the approved project, subject to the applicable cost principles provided or referenced in EDGAR, 34 CFR 75.530 through 75.534, except that—

(1) Construction and other capital costs are not allowable; and

(2) Equipment costs may not exceed five percent of the grant amount.

(20 U.S.C. 1124)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 660 to read as follows:

PART 660—THE INTERNATIONAL RESEARCH AND STUDIES PROGRAM

Subpart A—General

Sec.

660.1 What is the International Research and Studies Program?
660.2 Who is eligible to apply for grants under this program?
660.3 What regulations apply to the International Research and Studies Program?
660.4 What definitions apply to the International Research and Studies Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

660.10 What activities does the Secretary assist?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

660.30 How does the Secretary evaluate an application?
660.31 What selection criteria does the Secretary use for all applications for a grant?
660.32 What additional selection criteria does the Secretary use for an application for a research project, a survey, or a study?

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660.33 What additional selection criteria does the Secretary use for an application to develop specialized instructional materials?
660.34 What priorities may the Secretary establish?

Subpart E—What Conditions Must Be Met by a Grantee?

660.40 What are the limitations on allowable costs?

Authority: Sec. 605, Higher Education Act of 1965, as amended (20 U.S.C. 1125), unless otherwise noted.

Subpart A—General

§ 660.1 What is the International Research and Studies Program?

(a) The International Research and Studies Program provides Federal financial assistance—

(1) To improve and expand instruction in modern foreign languages and area and other related studies; and

(2) To strengthen international understanding on all educational levels in the United States.

(b) To meet the objectives of paragraph (a) of this section, the program provides assistance for—

(1) Research;

(2) Studies;

(3) Surveys; and

(4) The development of specialized materials.

(20 U.S.C. 1125 Sen. Rept. No. 96–733, 96th Congress, 2nd Session, page 62)

§ 660.2 Who is eligible to apply for grants under this program?

The following are eligible to apply for grants under this part:

(a) Public and private agencies, organizations, and institutions.

(b) Individuals.

(20 U.S.C. 1125 Sen. Rept. No. 96–733, 96th Congress, 2nd Session, p. 59, 1980)

§ 660.3 What regulations apply to the International Research and Studies Program?

The following regulations apply to this program:

(a) The regulations referred to in 34 CFR 655.3 (a) and (b).

(b) The regulations in this Part 660.

(20 U.S.C. 1121–1127)

§ 660.4 What definitions apply to the International Research and Studies Program?

The definitions in 34 CFR 655.4 apply to this program.

(20 U.S.C. 1121–1127)

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

§ 660.10 What activities does the Secretary assist?

An applicant may apply for funds to carry out any of the following types of activites:

(a) Studies and surveys to determine the need for increased or improved instruction in—

(1) Modern foreign languages; and

(2) Area studies and related fields needed to provide full understanding of the places in which those languages are commonly used.

(b) Research and studies—

(1) On more effective methods of instruction in modern foreign languages, area studies, or related fields; or

(2) To evaluate competency in those foreign languages, area studies, or related fields.

(c) The development of specialized materials for use by students and teachers of modern foreign languages, area studies, and related fields.

(d) Research, surveys, studies, or the development of instructional materials that serve to enhance international understanding.

(e) Other projects of research or the development of materials that further the purposes of Part A of Title VI of the Act and Part N of Title III of the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1125)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 660.30 How does the Secretary evaluates an application?

(a) The Secretary evaluate an application for a research project, a study, or a survey on the basis of the criteria in §§ 660.31 and 660.32.

(b) The Secretary evaluates an application for the development of specialized instructional materials on the basis of the criteria in §§ 660.31 and 660.33.

(c) The Secretary awards up to 100 possible points for these criteria. The maximum possible points for each criterion are shown in parentheses.

§ 660.31 What selection criteria does the Secretary use for all applications for a grant?

(a) *Plan of operation.* (10) (See CFR 655.31(a))

(b) *Quality of key personnel.* (10) (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (10) (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (5) (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (5) (See 34 CFR 655.31(e))

(20 U.S.C. 1125)

§ 660.32 What additional selection criteria does the Secretary use for an application for a research project, a survey or a study?

In addition to the criteria referred to in § 660.31, the Secretary applies the following criteria to an application for assistance for a reserach project, a study, or a survey:

(a) *Need for the project.* (10)

The Secretary reviews each application for information that shows—

(1) A need for the proposed project in the field of studies on which the project focuses; and

(2) That the proposed project is likely to be helpful in determining present and future needs in foreign language and other fields in the context of the national interest of the United States.

(b) *Usefulness of expected results.* (10)

The Secretary reviews each application for information that shows the extent to which the results of the proposed project are likely to be used by other research projects or programs established for similar purposes.

(c) *Development of new knowledge.* (10)

The Secretary reviews each application for information that shows that the extent to which the proposed project is likely to develop new knowledge that will contribute to the purposes of Part A of Title VI of the Act or Part N of Title III of the Elementary and Secondary Education Act of 1965, as amended.

(d) *Formulation of problems and knowledge of related research.* (10)

The Secretary reviews each application for information that shows that problems, questions, or hypotheses to be dealt with by the applicant—

(1) Are well formulated; and

(2) Reflect adequate knowledge of related research.

(e) *Specificity of statement of procedures.* (10)

The Secretary reviews each application for the specificity and adequacy of the statement of procedures to be followed, including sampling techniques, controls, data to be gathered, and statistical and other analyses to be undertaken.

(f) *Adequacy of methodology and scope of project.* (10)

The Secretary reviews each application for information that shows—

(1) The adequacy of the proposed teaching, testing, and research methodology; and

(2) The size, scope, and duration of the proposed project.

(20 U.S.C. 1125; Sen. Rept. No. 96–733, 96th Congress, 2nd Session, page 62)

§ 660.33 What additional selection criteria does the Secretary use for an application to develop specialized instructional materials?

In addition to the criteria referred to in § 660.31, the Secretary applies the following criteria to an application for assistance to develop specialized instructional materials.

(a) *Need for the project.* (10)

The Secretary reviews each application for information that shows that—

(1) The proposed materials are needed in the educational field of study on which the project focuses; and

(2) The language or languages; the area, region, or country; or the issues or studies for which the materials are to be developed are of sufficient priority for, and of potential significance to, the national interest to warrant financial support by the Federal Government.

(b) *Potential for the use of materials in other programs.* (10)

The Secretary reviews each application for information that shows the extent to which the proposed materials may be used elsewhere in the United States.

(c) *Account of related materials.* (10)

The Secretary reviews each application for information that shows that—

(1) All existing related or similar materials have been accounted for and the critical commentary on their adequacy is appropriate and accurate; and

(2) The proposed materials will not duplicate any existing adequate materials.

(d) *Likelihood of achieving results.* (10)

The Secretary reviews each application for information that shows that the outlined methods and procedures for preparing the materials are practicable and can be expected to produce the anticipated results.

(e) *Expected contribution to other programs.* (10)

The Secretary reviews each application for information that shows the extent to which the proposed work may contribute significantly to the strengthening, expansion, or improvement in the United States of programs of foreign language studies, area studies, or international studies.

(f) *Description of final form of materials.* (5)

The Secretary reviews each application for information that shows a high degree of specificity in the description of the contents and final form of the proposed materials.

(g) *Provisions for pretesting and revision.* (5)

The Secretary reviews each application for information that shows that adequate provision has been made for—

(1) Pretesting the proposed materials; and

(2) If necessary, revising the proposed materials before publication.

(20 U.S.C. 1125)

§ 660.34 What priorities may the Secretary establish?

(a) The Secretary may establish in any given year categories for priority funding consideration in the International Research and Studies Program. These priorities relate to the following:

(1) Categories of eligible projects described in § 660.10.

(2) Specific languages or regions for study or materials development; for example, the Near or Middle East, South Asia, Southeast Asia, Eastern Europe, Inner Asia, the Far East, Africa or Latin America, or the languages of those regions.

(3) Topics of research and studies; for example, language acquisition processes, methodology of foreign language instruction, foreign language proficiency testing, or assessments of resources and needs.

(4) Levels of education; for example, elementary, secondary, postsecondary or university-level education, or teacher education.

(b) The Secretary announces any priorities in the application notice published in the **Federal Register**.

(20 U.S.C. 1125)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 660.40 What are the limitations on allowable costs?

(a) A grant under this part may be used to pay all or part of the cost of conducting approved research or an approved study, survey, or materials development project.

(b) General cost principles in EDGAR, 34 CFR 75.530 through 75.534, apply to this part.

(c) Funds awarded under this part may not be used for training of students and teachers.

(20 U.S.C. 1125)

The Secretary revises Part 667 of Title 34 of the Code of Federal Regulations to read as follows:

PART 667—THE INTERNATIONAL UNDERSTANDING PROGRAM

Subpart A—General

Sec.
667.1 What is the International Understanding Program?
667.2 Who is eligible to apply for a grant under this program?
667.3 What regulations apply to the International Understanding Program?
667.4 What definitions apply to the International Understanding Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

667.10 What types of projects does the Secretary assist?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

667.30 How does the Secretary evaluate an application?
667.31 What selection criteria does the Secretary use?
667.32 What priorities may the Secretary establish?

Subpart E—What Conditions Must Be Met by a Grantee?

667.41 What costs are ineligible?

Authority: Part N of Title III of the Elementary and Secondary Education Act of 1965, (Pub. L. No. 89–10), as amended, 20 U.S.C. 3063–3065.

Subpart A—General

§ 667.1 What is the International Understanding Program?

The International Understanding Program provides Federal financial assistance to stimulate, at all levels of education, programs to—

(a) Increase the understanding of students and the public in the United States about the cultures, actions, and interconnections of nations and peoples; and

(b) Enable these students and the public to better evaluate the international and domestic impact of major national policies and actions of the United States.

(20 U.S.C. 3064)

§ 667.2 Who is eligible to apply for a grant under this program?

Any public or private agency or organization is eligible to apply for a grant under this program. This includes, but is not limited to, institutions of higher education, State and local educational agencies, professional associations, educational consortia, and organizations of teachers.

(20 U.S.C. 3064(a))

§ 667.3 What regulations apply to the International Understanding Program?

The following regulations apply to this program:

(a) The regulations referred to in 34 CFR 655.3 (a) and (b).

(b) The regulations in this Part 667.

(20 U.S.C. 3063–3065)

§ 667.4 What definitions apply to the International Understanding Program?

The definitions in 34 CFR 655.4 apply to this program.

(20 U.S.C. 3063–3065)

Subpart B—What Kinds of Projects Does the Secretary Assist under This Program?

§ 667.10 What types of projects does the Secretary assist?

(a) An applicant may apply for a grant to conduct any of the following types of projects:

(1) The in-service training of teachers and other educational personnel with regard to the cultures, actions, and interconnections of nations and peoples.

(2) The development of materials to link language learning to international studies.

(3) The compilation—in forms useful to various types of educational programs—of existing information and resources pertaining to—

(i) Cultures, actions, and interconnections of nations and peoples;

(ii) Regions of the world; or

(iii) Global issues.

(4) The dissemination—to educators and educational officials on their request—of information and resources pertaining to the cultures, actions, and interconnections of nations.

(5) The introduction by a local educational agency (LEA) of instruction in foreign languages—

(i) Designated by the Secretary as having critical importance for the Nation; and

(ii) That have not been offered by the schools of that LEA in the three academic years ending prior to the calendar year in which the grant is made.

(b) The projects described in paragraphs (a)(1) through (a)(4) of this section may include projects at all levels of education, as well as projects conducted as part of community, adult, and continuing education programs.

(20 U.S.C. 3064)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 667.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 667.31.

(b) The criteria are equally weighted.

(c) In addition to considering the criteria in § 667.31, the Secretary seeks to achieve a wide distribution of awards throughout the United States.

(20 U.S.C. 3064)

§ 667.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (See 34 CFR 655.31(e))

(f) *Need.* (1) The Secretary reviews each application for information that shows the need for the proposed project.

(2) The Secretary looks for information that shows—

(i) That the proposal is based on a demonstrated need;

(ii) That the need is of sufficient importance to warrant Federal assistance; and

(iii) A direct relationship between the expressed need and the plan, goals, and objectives of the project.

(g) *Relevance to the International Understanding Program.* (1) The Secretary reviews each application for information that shows the relevance of the proposed project to the International Understanding Program.

(2) The Secretary looks for information that shows that the proposed project is likely to—

(i) Increase the understanding of students and the public about the cultures, actions, and interconnections of nations and peoples; and

(ii) Enable these students and the public to make more informed judgments with respect to the policies and actions of the United States.

(h) *Non-Federal resources.* (1) The Secretary reviews each application for information that shows the applicant's commitment to the maximum use of non-Federal resources for the proposed project.

(2) The Secretary looks for information that shows—

(i) The applicant's use of non-Federal resources in the establishment of the proposed project; and

(ii) The applicant's use of non-Federal resources in the operation of the proposed project.

§ 667.32 What priorities may the Secretary establish?

(a) The Secretary may announce in any given year that all or portions of the funds available for awards will be reserved for projects that focus on specific aspects or authorized activities from among the types of projects in § 667.10.

(b) These priorities relate to the following:

(1) Projects involving the media.

(2) Projects that focus on particular global issues or regional or cultural studies.

(3) Projects that serve clientele—

(i) From particular levels of education;

(ii) From specific disciplines; or

(iii) Associated with certain educational endeavors.

(c) The Secretary announces any priorities referred to in paragraph (a) of this section in the application notice published in the **Federal Register.**

(20 U.S.C. 3064)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 667.41 What costs are ineligible?

Funds awarded under this part may not be used for the acquisition of equipment or the remodeling of facilities.

(20 U.S.C. 3064 (b)(1)).

[FR Doc. 80-40521 Filed 12-30-80; 8:45 am]

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Wednesday
December 31, 1980

Part IX

Department of Education

Institutional Grants for Graduate and Professional Study; Proposed Rulemaking

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DEPARTMENT OF EDUCATION

34 CFR Part 648

Institutional Grants for Graduate and Professional Study

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to implement the Institutional Grants for Graduate and Professional Study program. These regulations implement Title IX, Part A of the Higher Education Act of 1965, as amended by the Education Amendments of 1980 and to conform these regulations with the Education Division General Administrative Regulations (EDGAR). These regulations describe the purpose of the program and specify the selection criteria to be used in evaluating applications for institutional grants for graduate and professional study. These regulations also described the application procedures, eligibility requirements, and the terms and conditions of an award.

DATES: Interested persons are invited to submit comments, suggestions, or objections regarding these proposed regulations on or before February 17, 1981.

ADDRESSES: Comments should be addressed to Donald N. Bigelow, Chief, Graduate Training Branch, Division of Training and Facilities, Room 3060, ROB #3, 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Donald N. Bigelow, Chief, Graduate Training Branch. Telephone number (202) 245-2347.

SUPPLEMENTARY INFORMATION: The Education Amendments of 1980 make minor changes in Title IX, Part A of the Higher Education Act. The amendments delete the phrase, "to strengthen, improve, and where necessary, expand", and replace it with, "to maintain, strengthen, and improve graduate and professional school programs." These regulations implement that change.

A separate regulation has been developed for Part A of Title IX of the Act, instead of merging it with Parts B and C as had previously been done under the former regulations.

These regulations, for the first time, clarify the relationship of Part A to Part B as currently in effect by giving priority to projects that strengthen activities which support categories of fellowships funded under Title IX-B of the Act.

These proposed regulations reflect in § 648.31(a), (b), and (h) the concern experessed in the legislative history regarding the opportunity of predominantly minority institutions of higher education to participate in the program (S. Rep. No. 96-733, p. 73, 1980).

These regulations have been modified to reflect the format and criteria of EDGAR.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before February 17, 1981 will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3060, ROB#3, 7th and D Streets, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

The Department particularly requests comments on whether the proposed regulations in this document would require the submission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.094, for Graduate and Professional Study Institutional Grants)

Dated: December 23, 1980.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary proposes to revise Part 648 of Title 34 of the Code of Federal Regulations to read as follows:

PART 648—INSTITUTIONAL GRANTS FOR GRADUATE AND PROFESSIONAL STUDY

Subpart A—General

Sec.

648.1 Institutional grants for graduate and professional study.
648.2 Eligible parties.
648.3 Regulations that apply to the Institutional Grant Program.
648.4 Definitions.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

648.10 Eligible activities.

Subpart C—How Is Application Made for a Grant?

648.20 How does one apply for funds?

Subpart D—How Is a Grant Made?

648.30 How does the Secretary evaluate an application?
648.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must a Grantee Meet?

648.40 Costs.

Authority: Part A of Title IX of the Higher Education Act as amended by Pub. L. 96-374 (94 Stat. 1367, 1487; 20 U.S.C. 1134-1134b).

Subpart A—General

§ 648.1 Institutional grants for graduate and professional study.

Institutional Grants for Graduate and Professional Study—referred to in these regulations as the Institutional Grant Program—provide Federal financial assistance to enable institutions of higher education to maintain, strengthen, and improve the quality of graduate and professional programs leading to an advanced degree (other than a medical degree), and to strengthen undergraduate programs when it is determined that strengthened undergraduate programs will contribute to the purposes of Title IX-A of the Act.

(20 U.S.C. 1134)

§ 638.2 Eligible parties.

Institutions of higher education are eligible to apply for a grant under this program.

(20 U.S.C. 1134; 1134b(b)(4))

§ 648.3 Regulations that apply to the Institutional Grant Program.

The following regulations apply to this program:

(a) The Education Division General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and Part 77 (General); and

(b) The regulations in this Part 648.

§ 648.4 Definitions.

(a) *Definition in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.

Applicant.
Application.
Award.
Budget Period.
Department.
Secretary.

(b) The following definitions apply secifically to this Part:

"Act" means the Higher Education Act of 1965, as amended.

"Professional study" means post-baccalaureate study leading to the advanced degree that enables an individual to enter a professional career, such as a Doctor of Jurisprudence, Master of Business Administration, Master of Public Affairs, or Master of Science in Engineering.

(20 U.S.C. 1134-1134b)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 648.10 Eligible activities.

Eligible activities include, but are not limited to, the following: faculty improvement; maintenance and improvement of quality of graduate and professional programs of study; acquisition of appropriate instructional equipment and materials; cooperative arrangements among graduate and professional schools; strengthening graduate and professional school administration; development of proposed graduate and professional programs; and needed innovation in graduate and professional programs.

(20 U.S.C. 1134b(b))

Subpart C—How Is Application Made for a Grant?

§ 648.20 How does one apply for funds?

(a) To apply for funds, an institution of higher education shall submit an application that responds to the criteria described in § 648.31.

(b) An application under this part must include the following:

(1) A description of the proposed graduate or professional project which contributes to achieving the program's goals.

(2) An assurance that the appropriate State entity that performs planning functions under Title I of the Act has been given an opportunity to offer recommendations on the application both to the applicant and to the Secretary.

(20 U.S.C. 1134a(c), 1143)

Subpart D—How Is a Grant Made?

§ 648.30 How does the Secretary evaluate an application?

(a) For applications of substantially equal quality, the Secretary gives priority to projects that strengthen activities that support categories of fellowships funded under Title IX-B of the Act.

(b)(1) The Secretary evaluates an application on the basis of the criteria in § 648.31.

(2) The Secretary awards up to 100 possible points for these criteria.

(3) The maximum possible score for each criterion is indicated in parentheses following the title of the criterion.

(20 U.S.C. 1134(b))

§ 648.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows the project that has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the projects, and to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Strength of the academic program.* (15 points)

The Secretary reviews each application for information that shows that the overall graduate or professional academic program of the institution is strong enough to assure the success of the proposed project.

(g) *Impact of the project on the institution.* (15 points)

The Secretary reviews each application for information that shows the project's proposed activities are likely to result in maintaining, strengthening, or improving programs in graduate and professional study in relation to the identified needs.

(h) *Activities proposed for underrepresented groups.* (10 points)

The Secretary reviews each application for information that shows the project proposes activities that would assist in providing graduate and professional education to persons with varied backgrounds and experiences including, but not limited to, members of minority groups and women who are underrepresented in colleges and universities and in the academic and professional career fields to which the education leads.

(i) *Cooperative arrangements.* (5 points)

The Secretary reviews each application for information that shows that in planning the project, the institution has considered, and where appropriate, has entered into cooperative arrangements with other graduate or professional units of the institution, or outside institutions or agencies in supportive efforts of mutual benefit.

(j) *Local, State or national priorities.* (5 points)

The Secretary reviews each application for information that shows the project is consistent with local, State, or national priorities. Any national priorities will be determined on the basis of documentation of national needs in the application submitted.

(20 U.S.C. 1134; 1134b(b))

Subpart E—What Conditions Must a Grantee Meet?

§ 648.40 Costs.

Funds awarded under these regulations may not be used for:

(a) Payment in excess of 66⅔ percent of the total cost of the approved project or activity;

(b) Payment in excess of 50 percent of the cost of the purchase or rental of books, audiovisual aids, scientific apparatus, or other materials or equipment, less any percent of such cost, as determined by the Secretary, that is paid from sums received (other than under this part) as Federal financial assistance; and

(c) Fellowship assistance to students.

(20 U.S.C. 1134(b)(c))

[FR Doc. 80-40527 Filed 12-30-80; 8:45 am]

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federal register

Wednesday
December 31, 1980

Part X

Department of Education

Law School Clinical Experience Program; Proposed Rulemaking

V 45 D E 3 1 8 0 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 639

Law School Clinical Experience Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary of Education proposes regulations for the Law School Clinical Experience Program. These regulations implement Title IX, Part E of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. These proposed regulations will give better guidance to applicants and improve program management by broadly defining the types of projects the Secretary intends to support under this program. These regulations also specify the selection criteria to be used in evaluating applications.

DATES: Interested persons are invited to submit comments, suggestions, or objections regarding these proposed regulations on or before February 17, 1981.

ADDRESSES: Comments should be addressed to: Donald N. Bigelow, Chief, Graduate Training Branch, Division of Training and Facilities, (Room 3060, ROB#3), 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Donald N. Bigelow, Telephone (202) 245-2347.

SUPPLEMENTARY INFORMATION: The Law School Clinical Experience Program provides assistance to accredited law schools to establish or expand their programs of clinical experience for students in the practice of law. Clinical programs are designed to instill professional responsibility and to improve learning among law students, through actual or simulated legal services to clients, by clinical staff and students. Under the provisions of the Higher Education Act, prior to reauthorization, support has been provided almost solely to those programs concerned with the trial and preparation of cases. The Higher Education Act, as amended, broadens the focus of the program to include training for lawyers in a wide variety of lawyering skills through simulated experiences as well as actual client services. However, consistent with the legislative history of the statute, preference in the award of funds will continue to be given to those programs providing experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom.

The legislation permits the Secretary to pay up to 90 percent of the costs of projects at law schools. The proposed regulations permit the Secretary to establish annually a lower maximum Federal share. In implementing this provision we propose to establish, in the application notice, for fiscal year 1981 a maximum Federal share of 80 percent.

The proposed regulations include sections on eligible parties, authorized activities, selection criteria to be used by the Secretary in evaluating applications, and eligible project costs.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before February 17, 1981 will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3060, ROB#3, 7th and D Street, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

The Department particularly requests comments on whether the proposed regulations in this document would require the submission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: December 23, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.097, Law School Clinical Experience Program)

The Secretary proposes to revise Part 639 of Title 34 of the Code of Federal Regulations to read as follows:

PART 639—LAW SCHOOL CLINICAL EXPERIENCE PROGRAM

Subpart A—General

Sec.

639.1 Law School Clinical Experience Program.
639.2 Eligible parties.
639.3 Regulations that apply to the Law School Clinical Experience Program.
639.4 Definitions.

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

639.10 Project activities.

Subpart C—[Reserved]

Subpart D—How Is a Grant Made?

639.30 How does the Secretary evaluate an application?
639.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must a Grantee Meet?

639.40 Costs.

Authority: Part E of Title IX of the Higher Education Act as amended by Pub. L. 96-374 (94 Stat. 1367, 1487; 20 U.S.C 1134n-1134p).

Subpart A—General

§ 639.1 Law School Clinical Experience Program.

(a) The Law School Clinical Experience Program provides assistance to accredited law schools for establishing or expanding programs of clinical experience for students in the practice of law.

(b) Expanding programs of clinical experience include, but is not limited to, any of the following:

(1) Development of new areas of clinical experience;

(2) Increase in the number of participating students;

(3) Provision of appropriate and improved supervision; and

(4) Development and implementation of new teaching techniques.

(20 U.S.C. 1134n)

§ 639.2 Eligible parties.

The following are eligible to apply:

(a) Individual law schools that have been accredited by a nationally recognized agency approved by the Secretary.

(b) A combination or consortium of accredited law schools.

(20 U.S.C. 1134n(d))

§ 639.3 Regulations that apply to the Law School Clinical Experience Program.

(a) The following regulations apply to grants under the Law School Clinical Experience Program:

(1) The Education Divison General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General); and

(2) The regulations in this Part 639.

(b) If the Secretary decides to issue contracts under this program, they will be issued in accordance with the provisions of 41 CFR Part 34.

§ 639.4 Definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in EDGAR, 34 CFR Part 77:

Applicant.	Department
Application.	Grant.
Award.	Project.
Contract.	Secretary.

(b) *Definitions that apply to this part.* The following definition applies to this part:

"Simulation" is a learning exercise that examines and helps to explain a theory or concept by requiring a law student, as an active participant, to simulate the role of a lawyer confronted with a legal problem of a client.

(20 U.S.C. 1134n(a))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 639.10 Authorized activities.

(a) Authorized activities include the development through simulation and actual experience of skills usable in the practice of law.

(1) These skills include, but are not limited to, interviewing witnesses, factual and related investigation and analysis, counseling clients, negotiating compromises, drafting documents, advocacy before legal decision-makers, and training in professional responsibility.

(2) These skills may be taught by involving the students in any one or more of the following:

(i) Judicial, administrative, executive, or legislative proceedings;

(ii) Office or house counsel problems; or

(iii) Factual investigation, empirical research, or policy or legal analysis.

(b) The Secretary does not fund most court activities or student exercises of the type usually performed in courses on legal research and writing.

(20 U.S.C. 1134n(a); H. Rept. 96-520 at 55-56)

Subpart C—[Reserved]

Subpart D—How is a Grant Made?

§ 639.30 How does the Secretary evaluate an application?

(a) Unless other applications are of outstanding quality (those applications that score in the top 10 percent of all applications for which funds are available), the Secretary first funds applications that propose the following activities:

(1) Preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom; and

(2) Service to clients who have difficulty in gaining access to legal representation.

(b) Subject to paragraph (a) of this section, the Secretary evaluates an application on the basis of the criteria in § 639.31.

(1) The Secretary awards up to 100 possible points for these criteria.

(2) The maximum possible score for each criterion is indicated in parentheses following the title.

(c) Among applications of relatively equal quality, the Secretary may give priority to applications that:

(1) Ensure a wide geographic distribution throughout the United States of law school clinical experience programs; and

(20 U.S.C. 1134(b))

(2) Ensure that a wide variety of client groups are served.

(20 U.S.C. 1134n(a); S. Rept. 96-733 at 73; H. Rept. 96-520 at 55)

§ 639.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Fiscal commitment.* (15 points)

The Secretary looks for information that shows the degree to which the institution's regular budget is devoted to its clinical legal education program.

(g) *Faculty supervision.* (20 points)

The Secretary reviews each application for information that shows

that the proposed program of law school clinical experience provides for the award of academic credits to participating students.

(20 U.S.C. 1134n(a))

Subpart E—What Conditions Must a Grantee Meet?

§ 639.40 Costs.

(a) The Secretary makes available funds to cover up to 90 percent of the cost of establishing and expanding a Law School Clinical Experience Project, subject to the limitations and applicable cost principles in EDGAR. The Secretary annually may establish lower maximum Federal shares that may take into account the number of years that a grantee has been funded under this program.

(b) Federal funds for a particular law school may not exceed $100,000 in any fiscal year, no part of which may be used to pay for indirect costs or charges.

(c) Allowable costs are direct costs incurred in carrying out an approved project in accordance with the cost principles in 34 CFR Part 74, including:

(1) Planning, preparation of related teaching materials, and administration;

(2) The training of faculty members;

(3) Payment for the director of supervision and other faculty or attorneys directly involved in supervision;

(4) Appropriate travel and per diem; and

(5) Other activities directly related to the establishment or expansion of the program.

(d) Student stipends are not an allowable cost under this program.

(20 U.S.C. 1134n (b) and (c))

[FR Doc. 80-40526 Filed 12-30-80; 8:45 am]

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federal register

Wednesday
December 31, 1980

Part XI

Department of Education

Educational Opportunity Centers Program: Proposed Rulemaking

V 45 DE 31 80 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 644

Educational Opportunity Centers Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Educational Opportunity Centers Program. The regulations are being amended to reflect the statutory changes contained in the Education Amendments of 1980 and to clarify the simplify the requirements governing the program.

DATES: Comments must be received on or before March 2, 1981.

Currently the Department of Education plans to hold public meetings in four cities. The tentative date for each meeting follows:

February 9, 1981, Washington, D.C.
February 11, 1981, Chicago, Illinois.
February 17, 1981, San Francisco, California.
February 19, 1981, Dallas, Texas.

ADDRESSES: Comments should be addressed to Mary Kathleen Smith, Room 3514 (ROB–3), Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

The public will be advised—through a notice published in the **Federal Register**—of the time and specific location of each public meeting listed in the Dates section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mary Kathleen Smith, Telephone No. (202) 245–2511.

SUPPLEMENTARY INFORMATION: On April 29, 1974, the Commissioner of Education published in the **Federal Register** final regulations for the Educational Opportunity Centers Program. The funding criteria were subsequently revised and published in final form on May 14, 1976. Those regulations, as revised, govern the grant awards made during fiscal year 1981. The Education Amendments of 1980 changed the Educational Opportunity Centers Program in several respects, and these proposed regulations reflect those changes.

The Secretary proposes to make changes in the substance and structure of the regulations for the Educational Opportunity Centers Program. The changes in substance are the result of both statutory changes and policy clarifications. The structural changes were made for reasons of clarity and consistency.

Restructuring the Regulations

In comparing these proposed regulations with those previously governing the program, the reader will notice major revisions in format. These proposed changes reflect the Secretary's concern that the regulations be easy to understand and follow. The proposed regulations for the Special Programs for Students from Disadvantaged Backgrounds, of which the Educational Opportunity Centers Program is a part, are consistent with these format changes. In restructuring the regulations, the Secretary has followed the format of the Education Department General Administrative Regulations (EDGAR).

These regulations incorporate by reference Part 75 and Part 77 of EDGAR; therefore, the regulations do not repeat certain types of information and requirements that are found in EDGAR. However, the general selection criteria found in EDGAR (34 CFR 75.202 through 75.206) have been repeated in these regulations for the convenience of the applicant (§ 644.31 (a) through (e)).

Statutory and Policy Changes

A significant change made by the Education Amendments of 1980 involves requirements for eligible participation. An Educational Opportunity Center must assure that not less than two thirds of the persons participating in the project be low-income individuals who are also first-generation or potential, first-generation college students. The remaining individuals participating in the Center need not meet this requirement but must reside in the target area or attend a target school, and need the services offered.

The Educational Amendments of 1980 define both first-generation college student and low-income individual. These definitions have been repeated in these regulations.

Another major change made by the Education Amendments of 1980 is the requirement that the Secretary, in making grants for Educational Opportunity Centers projects, consider the prior experience of service delivery under the Educational Opportunity Centers Program for each applicant. The Secretary proposes to make "prior experience" one of the selection criteria for this program. The public is invited to comment on this approach and on the weighting of that criterion, as well as that of the other selection criteria.

The Secretary intends to base the evaluation of prior experience on published performance standards. These performance standards have not yet been developed. The public is invited to submit suggestions for performance standards at this time. The Secretary will develop the performance standards at a later date, and the public will have the opportunity to comment on the specific standards when they are published as proposed rules.

A final change as a result of the amendments is the authority for Educational Opportunity Centers to provide tutoring and counseling for those individuals who are not participating in an Upward Bound or a Special Services project.

The policy changes expressed in this notice of proposed rulemaking would, for the most part, reduce existing restrictions and limitations on grantees. An Educational Opportunity Center would not be required to provide every activity and service indicated in § 644.10(a); a project would be required to provide only those services and activities needed by the participants. Grantees would also be encouraged to coordinate their efforts with other programs offered in the target area. Educational Opportunity Centers projects should supplement and complement those services and activities that are otherwise available to project participants.

The Secretary proposes to include requirements for determining whether an area qualifies as a target area. For an area to qualify, at least 20 percent of the resident families would be required to have family incomes that do not exceed the low-income family level contained in "Current Population Reports," published annually by the Bureau of the Census. The Bureau of the Census maintains information on census tracts and minor civil divisions that have 20 percent or more of the families at or below the low-income level.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3514, ROB–3, 7th and D Streets, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.066, Educational Opportunity Centers Program)

Dated: December 23, 1980.

Shirley M. Hufstedler,
Secretary of Education.

The Secretary proposes to revise Part 644 of Title 34 of the Code of Federal Regulations to read as follows:

PART 644—EDUCATIONAL OPPORTUNITY CENTERS PROGRAM

Subpart A—General

Sec.
644.1 The Educational Opportunity Centers Program.
644.2 Eligible grantees.
644.3 Eligible project participants: General.
644.4 Eligible project participants: Selection requirements.
644.5 Target area.
644.6 Regulations that apply to the Educational Opportunity Centers Program.
644.7 Definitions that apply to the Educational Opportunity Centers program.

Subpart B—What Kinds of Projects Does the Department of Education Assist under This Program?

644.10 Kinds of projects assisted under the Educational Opportunity Centers Program.
644.11 Project location.

Subpart C—How Does One Apply for a Grant?

644.20 How to apply for funds.

Subpart D—How Does the Secretary Make a Grant?

644.30 How the Secretary evaluates an application.
644.31 Selection criteria the Secretary uses.
644.32 Prior experience.

Subpart E—What Conditions Must Be Met by a Grantee?

644.40 Allowable costs.
644.41 Nonallowable costs.
644.42 Matching.
644.43 Performance standards. [Reserved]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

644.50 Recordkeeping.

Authority: Secs. 417A and 417E of the Higher Education Act of 1965, as amended (20 U.S.C. 1070d; 1070d–1c), unless otherwise noted.

Subpart A—General

§ 644.1 The Educational Opportunity Centers Program.

The Educational Opportunity Centers Program provides Federal financial assistance to meet up to 75 percent of the cost of establishing and conducting Educational Opportunity Centers designed to provide participants with—

(a) Information concerning financial and academic assistance available for individuals desiring to pursue a program of postsecondary education; and

(b) Assistance in applying for admission to institutions of postsecondary education, including preparing applications for use by admissions and financial aid officers.

(20 U.S.C. 1070d, 1070d–1c)

§ 644.2 Eligible grantees.

The following are eligible to apply for a grant to carry out an Educational Opportunity Center:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public and private agencies and organizations.

(d) Secondary schools, in exceptional cases, if there are no other grantees capable of providing this program in the target areas to be served by the proposed projects.

(20 U.S.C. 1070d, 1070d–1c)

§ 644.3 Eligible project participants: General.

An individual is eligible to participate in an Educational Opportunity Center if the individual—

(a)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States, for other than a temporary purpose, with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Resides in the target area or attends a target school;

(c) Is at least 19 years old. However, if there is no Talent Search project serving the same target area as the Educational Opportunity Center, an individual may be younger than 19 and still be an eligible participant. In no case may an individual be younger than 12 years of age or have completed less than the sixth grade;

(d) Needs one or more of the services provided by the center in order to pursue a program of postsecondary education; and

(e) Expresses a desire to pursue or is pursuing a program of postsecondary education.

(20 U.S.C. 1070d, 1070d–1c)

§ 644.4 Eligible project participants: selection requirements.

(a)(1) At least two thirds of the eligible individuals an applicant proposes to serve under an Educational Opportunity Center must be low-income individuals who are also first-generation college students or potential, first-generation college students.

(2) A "low-income individual" means an individual who comes from a family whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

(3)(i) A "first-generation college student" or a "potential, first-generation college student" means a person neither of whose parents received a bachelor's degree.

(ii) With respect to an individual 18 years and under, only the natural or adoptive parents who are currently residing with the individual are considered the individual's parents in determining whether the individual meets the criterion of being a first-generation college student or a potential, first-generation college student.

(iii) With respect to an individual over 18, only the natural or adoptive parents who were residing with the individual before the individual's eighteenth birthday are considered the individual's parents in determining whether the individual meets the criterion of being a first-generation college student or a potential, first-generation college student.

(b) A grantee may not select an individual who is or will be served by a Talent Search project or by another Educational Opportunity Center.

(c) The grantee shall make every effort to provide that the participant population reflects the ethnic and racial diversity of the individuals eligible to be served by the project.

(20 U.S.C. 1070d, 1070d–1c)

§ 644.5 Target area.

An Educational Opportunity Center provides services to eligible participants residing in a target area or attending a target school.

(20 U.S.C. 1070d, 1070d–1c)

§ 644.6 Regulations that apply to the Educational Opportunity Centers Program.

The following regulations apply to the Educational Opportunity Centers Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General).

(b) The regulations in this Part 644.

(20 U.S.C. 1221e–3(a)(1))

§ 644.7 Definitions that apply to the Educational Opportunity Centers Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant	Grantee
Application	Nonprofit
Award	Private
Budget	Project
EDGAR	Public
Equipment	Secondary school
Facilities	Secretary
Fiscal year	State
Grant	Supplies

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

(20 U.S.C. 1001 et seq.)

"Combination of institutions of higher education" means:

(1) A group of institutions of higher education that have entered into a cooperative arrangement to carry out a common objective; or

(2) A public or nonprofit private agency, organization, or institution designated or created by a group of institutions of higher education to carry out a common objective on their behalf.

(20 U.S.C. 1141(j))

"Institution of higher education" means an educational institution as defined in Sections 1201(a) and 481 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141(a); 1088)

"Target area" means a discrete geographic area in which at least 20 percent of the resident families have a family income that does not exceed the low-income family level contained in "Current Population Reports," Series P, Bureau of the Census, Department of Commerce.

(20 U.S.C. 1070d, 1070d–1c)

"Target school" means a secondary school that serves students residing in a target area and is or would be served by an Educational Opportunity Center.

(20 U.S.C. 1070d, 1070d–1c)

"Veteran" means a person who served on active duty in the United States Armed Forces and was discharged or released under conditions other than dishonorable.

(38 U.S.C. 101(2))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 644.10 Kinds of projects assisted under the Educational Opportunity Centers Program.

(a) An Educational Opportunity Center shall, as needed by its participants—

(1) Collect and disseminate information regarding available financial and academic assistance to participants desiring to pursue a program of postsecondary education;

(2) Assist participants in preparing applications and other necessary materials—

(i) For admission to postsecondary institutions; and

(ii) For financial assistance at these institutions;

(3) Identify those eligible persons in the target area with an interest in pursuing a postsecondary education and encourage them to continue or resume their educational careers;

(4)(i) Identify and establish a relationship with those public and private programs in the target area providing counseling services and educational and career information, such as the Information Services Program (formerly the Educational Information Centers Program), that could benefit the Educational Opportunity Center participant; and

(ii) Refer participants, as needed, to these programs;

(5) Collect and disseminate information regarding the variety of postsecondary educational opportunities and career options available to participants;

(6)(i) Advise and counsel each participant regarding available student financial assistance, career options, and the appropriate postsecondary institution or institutions for that person;

(ii) However, if the grantee is an institution of higher education, it shall not use the project as part of its recruitment program;

(7) Develop and use an assessment procedure that includes the results of standardized measurement instruments or other verifiable indicators to determine each participant's interests, career goals, academic potential, and need for specific services; and

(8) Follow-up on participants who have received services or who have been referred elsewhere for services.

(b) An Educational Opportunity Center that serves veterans shall, in addition to carrying out the functions in paragraph (a) of this section—

(1) Refer veterans to high school equivalency certification programs, if necessary; and

(2)(i) Establish a relationship with the Veterans Administration, projects under the Veterans-Cost-of-Instruction Program at postsecondary institutions, State veterans agencies, and other veterans associations so that center is aware of the various benefits and services available to veterans; and

(ii) Refer veterans to these agencies and associations as appropriate.

(c) A center shall set specific objectives—stated in measurable terms—that the project should attain during each project year to meet the goals of the program.

(d) A center shall develop and use procedures to measure the impact of the program in the target area and in the target schools.

(e) A center shall engage a full-time project director. However, the Secretary may waive the full-time requirement as specified in EDGAR, 34 CFR 75.511.

(f) Each center may—

(1) Provide tutoring and counseling for project participants who are not enrolled in an Upward Bound or Special Services project that provides tutoring or counseling; and

(2) Serve as a centralized recruiting resource for institutions of higher education desiring to admit educationally disadvantaged persons. The Secretary encourages the center, in carrying out this function, to develop relationships with a variety of institutions offering postsecondary educational programs.

(20 U.S.C. 1070d, 1070d–1c)

§ 644.11 Project location.

Educational Opportunity Center services shall be provided in a setting that is accessible and approachable by the participants.

(20 U.S.C. 1070d, 1070d–1c)

Subpart C—How Does One Apply for a Grant?

§ 644.20 How to apply for funds.

To apply for a new or continuation grant, an applicant shall follow the procedures and meet the requirements contained in EDGAR, 34 CFR Part 75, Subpart C.

(20 U.S.C. 1221e–3(a)(1); 1070d, 1070d–1c)

Subpart D—How Does the Secretary Make a Grant?

§ 644.30 How the Secretary evaluates an application.

(a) The Secretary evaluates an application on the basis of the criteria in § 644.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(b) For applicants that have conducted an Educational Opportunity Center project within the previous three years, the Secretary considers the prior experience of the applicant on the basis of § 644.32. The Secretary awards up to 30 additional points for prior experience.

(c) In selecting proposed projects for funding, the Secretary considers the need for the project in the area the applicant proposes to serve as compared to the need in areas other applicants propose to serve.

(20 U.S.C. 1070d, 1070d–1c)

§ 644.31 Selection criteria the Secretary uses.

The Secretary uses the following criteria—in paragraphs (a) through (h)—to evaluate applications for new awards:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need for the center.* (25 points)

(1) The Secretary reviews each application for documented evidence that a need for an Educational Opportunity Center exists in the target area the applicant plans to serve.

(2) The Secretary looks for information that shows—

(i) The extent to which the precentage of low-income families residing in the geographically defined target area exceeds 20 percent;

(ii) The number and percentage of individuals who are eligible to be served by an Educational Opportunity Center who reside in the target area or attend target schools; and

(iii) The extent to which the target area lacks the services and activities that are provided by an Educational Opportunity Center.

(3) To determine the extent of the need for a project, the Secretary also considers—

(i) For each of the three preceding years, the estimated dropout rates for each of the target schools;

(ii) For each of the three preceding years, the estimated number and percentage of students from each target school who enrolled in postsecondary institutions;

(iii) For each of the three preceding years, the estimated number and percentage of students in each target school who are from low-income families;

(iv) The number of veterans in the target area who need Educational Opportunity Center services to pursue postsecondary education; and

(v) Other verifiable data that show the need of the adults in the target area for services that are provided by an Educational Opportunity Center.

(g) *Likelihood of success.* (20 points)

(1) The Secretary reviews each application for information that shows the likelihood of success.

(2) The Secretary looks for information that shows—

(i) The comprehensiveness of the applicant's plan for carrying out the activities under §644.10; and

(ii) The extent to which the activities are likely to result in increases in the enrollment and retention of disadvantaged persons in postsecondary institutions and increases in their graduation from postsecondary institutions.

(h) *Community participation and coordination.* (15 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to use and coordinate community and other resources.

(2) The Secretary looks for information that shows—

(i) The extent to which representatives from the community, secondary schools, and postsecondary

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schools have participated in the formulation of the application;

(ii) The extent to which the applicant has received and has included in the application written commitments by community organizations and other appropriate groups for the use of community and other resources to supplement authorized activities;

(iii) If applicable, the extent to which all members of a consortium will make resources available and participate in the activities of the center as defined by the work plan;

(iv) The center's defined relationship with Talent Search, Upward Bound, and Special Services for Disadvantaged Students projects in the target area and similar programs and services in the target area in terms of—

(A) Coordinating services to individuals who participate in more than one program;

(B) Providing services not otherwise available from other projects and programs; and

(C) Avoiding duplication of services; and

(v) The degree to which the center is likely to develop relationships with a variety of institutions offering postsecondary education programs to coordinate the resources and staff efforts of those institutions in admitting disadvantaged persons.

(20 U.S.C. 1221e-3(a)(1); 1070d, 1070d-1c)

§ 644.32 Prior experience.

For each applicant that has conducted an Educational Opportunity Center project within the previous three years, the Secretary—

(a) Reviews materials and documents, such as performance reports, evaluation reports, and site visit reports, for information that shows that the applicant has successfully carried out an Educational Opportunity Center project during that time;

(b) Looks for information that shows the extent of the applicant's success in meeting the performance standards listed in § 644.43; and

(c) Awards up to 30 additional points for this criterion.

(20 U.S.C. 1070d, 1070d-1c)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 644.40 Allowable costs.

Allowable project costs may include the following costs reasonably related to carrying out an Educational Opportunity Center:

(a) Transportation and meal costs for participants and staff for—

(1) Approved visits to postsecondary educational institutions in the area;

(2) Participation in "College Days" activities; and

(3) Field trips to observe and meet with persons who are employed in various career fields and who can act as role models for participants.

(b) Purchase or testing materials.

(c) If approved by the Secretary, in-service training of project staff.

(d) Tutorial and counseling services if none are available to participants through an Upward Bound or a Special Services project in the target area.

(e) The rental of space if space is not available at the sponsoring institution and the space rented is not owned by the sponsoring institution.

(20 U.S.C. 1070d, 1070d-1c)

§ 644.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) Tuition, fees, stipends, or other forms of direct financial support for individuals participating in project activities.

(b) Application fees for enrollment or financial aid.

(c) Lodging for project participants.

(d) Duplication of services that are available to participants through—

(1) State, local, or private sources;

(2) The institution or agency sponsoring the project; or

(3) Other Federal programs.

(e) Research not directly related to the evaluation or improvement of the project.

(f) The purchase of major equipment, unless the grantee demonstrates to the Secretary's satisfaction that purchase is less expensive than renting.

(g) The construction, renovation, or remodeling of any facilities.

(20 U.S.C. 1070d, 1070d-1c)

§ 644.42 Matching.

(a) The Secretary pays up to 75 percent of the costs reasonably related to the establishment and operation of an Educational Opportunity Center.

(b) A grantee shall provide at least 25 percent of the costs related to the establishment and operation of an Educational Opportunity Center.

(c) The grantee's share may be derived from cash or in-kind contributions.

(d) In order to be considered as part or all of the grantee's share, in-kind contributions must be activities or services that qualify as allowable costs.

(20 U.S.C. 1070d, 1070d-1c)

§ 644.43 Performance standards. [Reserved]

[The Secretary will publish, as a separate notice of proposed rulemaking, proposed performance standards.]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 644.50 Recordkeeping.

(a) Each grantee shall keep records on the services provided to individuals and groups.

(b) For each participant who receives project services through personal contact on more than two occasions, the grantee shall keep the following on file:

(1) The participant's name, age, sex, ethnic and racial background, telephone number, and permanent address.

(2) The information used to select the participant, including—

(i) Documentation of the participant's eligibility to receive services; and

(ii) Copies of the participant's high school transcripts and test scores such as aptitude and achievement scores and interest inventories.

(3) Documentation of services received by the participant, including—

(i) Counseling services;

(ii) Tutorial services;

(iii) Visits made to postsecondary institutions;

(iv) Assistance in applying for admission to postsecondary institutions; and

(v) Assistance in applying for student financial aid.

(4) Documentation of follow-up of the participant, including, if appropriate—

(i) The names of the postsecondary institutions that accepted the participant for admission, and the one in which the participant enrolled;

(ii) The amount and type of student financial aid received by the participant; and

(iii) The services the participant received when referred by the Center to other programs.

(c) For each participant who receives project services through personal contact on one or two occasions, the grantee shall keep records that include the participant's——

(1) Name;

(2) Telephone number;

(3) Address;

(4) Age;

(5) Sex;

(6) Ethnic and racial background; and

(7) Service(s) received.

(d) For those services that are not provided exclusively to individual participants, the grantee shall maintain records that include—

(1) The types and kinds of group services provided;

(2) The number of participants;

(3) The time and place the services were provided; and

(4) Documentation of outreach activities.

(20 U.S.C. 1070d, 1070d-1c)

[FR Doc. 80-40533 Filed 12-30-80; 8:45 am]

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federal register

Wednesday
December 31, 1980

Part XII

Department of Education

Special Services for Disadvantaged Students Program

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DEPARTMENT OF EDUCATION

34 CFR Part 646

Special Services for Disadvantaged Students Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Special Services Program. The regulations are being amended to reflect the statutory changes contained in the Education Amendments of 1980 and to clarify and simplify the requirements governing the program.

DATES: Comments must be received on or before March 2, 1981.

Currently the Department of Education plans to hold public meetings in four cities. The tentative date for each meeting follows:

February 9, 1981, Washington, D.C.
February 11, 1981, Chicago, Illinois.
February 17, 1981, San Francisco, California.
February 19, 1981, Dallas, Texas

ADDRESSES: Comments should be addressed to Mary Kathleen Smith, Room 3514 (ROB–3), Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

The public will be advised—through a notice published in the **Federal Register**—of the time and specific location of each public meeting listed in the Dates section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mary Kathleen Smith, Telephone No. (202) 245–2511.

SUPPLEMENTARY INFORMATION: On May 24, 1977, the Commissioner of Education published in the **Federal Register** the final regulations for the Special Services Program. Those regulations govern the grant awards made during fiscal year 1981. The Education Amendments of 1980 changed the Special Services Program in several respects and these proposed regulations reflect those changes.

The Secretary proposes to make changes in the substance and structure of the regulations for the Special Services Programs. The changes in substance are the result of both statutory changes and policy clarifications. The structural changes were made for reasons of clarity and consistency.

Restructuring the Regulations

In comparing these proposed regulations with those previously governing the program, the reader will notice major revisions in format. These proposed changes reflect the Secretary's concern that the format of the regulations be easy to understand and follow. The proposed regulations for the Special Programs for Students from Disadvantaged Backgounds, of which the Special Services Program is a part, are made consistent with these format changes. In restructuring the regulations, the Secretary has followed the format of the Education Department General Administrative Regulations (EDGAR).

These regulations incorporate by reference Part 75 and Part 77 of EDGAR; therefore, the regulations do not repeat certain types of information and requirements that are found in EDGAR. However, the general selection criteria found in EDGAR (34 CFR Part 75.202 through 75.206) have been repeated in these regulations for the convenience of the applicant (section 646.31 (a) through (e)).

Statutory and Policy Changes

A significant change made by the Education Amendments of 1980 involves the requirement for eligible participation. Special Services grantees must assure that not less than two thirds of the persons participating in the project be physically handicapped, or be low-income individuals who are first-generation college students. The remaining students participating in the project must be either low-income individuals, first-generation college students, or physically handicapped students.

The Education Amendments of 1980 define both first-generation college student and low-income individual. These definitions have been repeated in these regulations.

Another significant change made by the Education Amendments of 1980 is the assurance that the Special Services project will receive sufficient financial assistance to meet the student's full financial need.

A final major change as a result of the new amendments is the requirement that the Secretary, in making grants for Special Services projects, consider the prior experience of service delivery under the Special Services Program for each applicant. The Secretary proposes to make "prior experience" one of the selection criteria for this program. The public is invited to comment on this approach and on the weighting of that criterion, as well as that of the other selection criteria.

The Secretary intends to base the evaluation of prior experience on published performance standards. These performance standards have not yet been developed. The public is invited to submit suggestions for performance standards at this time. The Secretary will develop the performance standards at a later date and the public will have the opportunity to comment on the specific standards when they are published as proposed regulations.

The policy changes expressed in this notice of proposed rulemaking for the most part reduce existing restrictions and limitations on grantees. Proposed section 646.10, paragraphs (c) and (e), would encourage the coordination of Special Services activities with those of similar programs on campus and in the area. A Special Services project would not be required to provide every listed activity and service. A project would only be required to provide those services needed by the participants if those services are not otherwise available at the institution. The Special Services grantee would be encouraged to use its project to supplement and complement those services and activities currently available to participants through other sources.

Proposed § 646.10(f)(2) would continue to require grantee institutions to retain project participants for a period of time sufficient to enable them to adjust to and participate meaningfully in the academic program at the institution. The requirements of a minimum of two years in a four-year program and one year in a two-year program would be removed. Instead, the project director and the administration of the institution would be required to decide on a case-by-case basis the period of time sufficient for an individual participant to be retained.

The Secretary proposes to revise § 646.40, *Allowable Costs*, paragraph (a). Projects would no longer be allowed to charge to the grant the total cost of providing the remedial and special classes that are limited to project participants and that do not duplicate identical instruction at the institution. The costs of these classes may be shared between the institution and the project. The Secretary believes that the tuition fees paid by the project participants as enrolled students at the institution already defray part of the costs of any special or remedial classes the participants might require.

Invitation To Comment

Interested persons ar invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before March 2, 1981 will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3514, ROB–3, 7th and D Streets, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 64.042, Special Services for Disadvantaged Students)

Dated: December 23, 1980.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary proposes to revise Part 646 of Title 34 of the Code of Federal Regulations to read as follows:

PART 646—SPECIAL SERVICES FOR DISADVANTAGED STUDENTS PROGRAM

Subpart A—General

Sec.
646.1 The Special Services for Disadvantaged Students Program.
646.2 Eligible grantees.
646.3 Eligible project participants: general.
646.4 Eligible project participants: selection requirements.
646.5 Regulations that apply to the Special Services Program.
646.6 Definitions that apply to the Special Services Program.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

646.10 Kinds of projects assisted under the Special Services Program.
646.11 Educational component for students with limited proficiency in English.

Subpart C—How Does One Apply for a Grant?

646.20 How to apply for funds.

Subpart D—How does the Secretary Make a Grant?

646.30 How the Secretary evaluates an application.
646.31 Selection criteria the Secretary uses.
646.32 Prior experience.

Subpart E—What Conditions Must Be Met by a Grantee?

646.40 Allowable costs.
646.41 Nonallowable costs.
646.42 Performance standards. [Reserved]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

646.50 Recordkeeping.

Authority: Secs. 417A and 417D of the Higher Education Act of 1965, as amended (20 U.S.C. 1070d; 1070d–1b), unless otherwise noted.

Subpart A—General

§ 646.1 The Special Services for Disadvantaged Students Program.

The Special Services for Disadvantaged Students Program—referred to in these regulations as the Special Services Program—provides Federal financial assistance for projects designed to increase the retention and graduation rates of qualified post-secondary students and, as appropriate, facilitate their entrance into graduate and professional programs.

(20 U.S.C. 1070d, 1070d–1b)

§ 646.2 Eligible grantees.

The following are eligible to apply for a grant to carry out a Special Services project:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(20 U.S.C. 1070d, 1070d–1b)

§ 646.3 Eligible project participants: general.

An individual is eligible to participate in a Special Services project if the individual—

(a)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Is enrolled or accepted for enrollment for the next session, excluding the summer session, at the grantee institution;

(c) Has a need for academic support in order to successfully pursue a postsecondary education program; and

(d)(1) Is a low-income individual;

(2) Is a first-generation college student; or

(3) Is physically handicapped.

(20 U.S.C. 1070d, 1070d–1b)

§ 646.4 Eligible project participants: Selection requirements.

(a)(1) At least two-thirds of the eligible individuals an applicant proposes to serve under a Special Services project must be—

(i) Physically handicapped; or

(ii) Low-income individuals who are first-generation college students.

(2) The remaining individuals the applicant proposes to serve under the Special Services project must be—

(i) Physically handicapped;

(ii) Low-income individuals; or

(iii) First-generation college students.

(3) A "low-income individual" means an individual who comes from a family whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

(4)(i) A "first-generation college student" means a person neither of whose parents received a bachelor's degree.

(ii) With respect to individuals 18 years of age and under, only the natural or adoptive parents who are currently residing with the individual are considered the individual's parents in determining whether the individual meets the criterion of being a first-generation college student.

(iii) With respect to individuals over 18, only the natural or adoptive parents who were residing with the individual before the individual's eighteenth birthday are considered the individual's parents in determining whether the individual meets the criterion of being a first-generation college student.

(5)(i) "Physically handicapped," with reference to an individual, means a person who, because of a physical disability, needs specifically designed instructional materials or programs, modified physical facilities, or related services in order to participate fully in the experience and opportunities offered by postsecondary institutions.

(ii) Physical disability includes, but is not limited to, the following:

(A) Legal blindness.
(B) Deafness.
(C) Cerebral palsy.
(D) Epilepsy.
(E) Mobility or manipulative difficulties due to use of appliances or prosthesis.
(F) Quadriplegia or paraplegia.
(G) Serve arthritis or other crippling diseases.
(H) Severe heart condition.
(I) Multiple disabilities.

(b) The grantee shall make every effort to provide that the participant population reflects the ethnic and racial diversity of the individuals eligible to be served by the project.

(20 U.S.C. 1070d, 1070d–1b)

§ 646.5 Regulations that apply to the Special Services Program.

The following regulations apply to the Special Services Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 . (Definitions).

(b) The regulations in this Part 646.

(20 U.S.C. 1221e–3(a)(1))

§ 646.6 Definitions that apply to the Special Services Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant; Application; Award; Budget; EDGAR; Equipment; Facilities; Fiscal year; Grant; Grantee; Nonprofit; Private; Project; Public; Secretary; State; Supplies.

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

(20 U.S.C. 1001 et seq.)

"Combination of institutions of higher education" means:

(1) A group of institutions of higher education that have entered into a cooperative arrangement to carry out a common objective; or

(2) A public or nonprofit private agency, organization, or institution designated or created by a group of institutions of higher education to carry out a common objective on their behalf.

(20 U.S.C. 1141(j))

"Institution of higher education" means an educational institution as defined in Sections 1201(a) and 481 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141(a); 1088)

"Limited proficiency in English," with reference to an individual, means an individual—

(1)(i) Who was not born in the United States or whose native language is other than English;

(ii) Who comes from a home in which a language other than English is most relied upon for communication; or

(iii) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant impact on his or her level of English language proficiency; and

(2) Who, as a result of the circumstances described in paragraph (1) of this definition, has sufficient difficulty in understanding, speaking, reading, or writing the English language to deny him or her the opportunity to learn successfully in classrooms in which the language of instruction is English.

(20 U.S.C. 3223(a)(1))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 646.10 Kinds of projects assisted under the Special Services Program.

(a) A Special Services project shall, as needed by the participants—

(1) Develop and use procedures to identify individuals who are eligible to participate;

(2) Develop and use procedures to select participants from among eligible individuals;

(3) Determine for each participant academic and other educational deficiencies that must be corrected to enable that individual to graduate;

(4) Develop for each participant an individualized plan of program support to improve the participant's skills;

(5) Provide instruction in reading, writing study skills, mathematics, and other subjects necessary for that individual's success beyond high school;

(6) Provide personal counseling;

(7) Provide academic advice and assistance in course selection;

(8) Provide career counseling and activities designed to acquaint participants with the range of career options available to them;

(9) Provide tutoring;

(10) Assist participants to secure admission to and financial assistance for enrollment in graduate and professional programs; and

(11) Document the effects of project activities on a student's performance and progress while he or she is participating in the project.

(b) A Special Services project may—

(1) Provide exposure to academic programs and cultural events not usually available to disadvantaged students; and

(2) Refer participants, on an individual basis, to health, employment, housing and legal agencies and other resources to resolve noneducational problems related to academic success.

(c) The Special Services project shall provide the activities and services in paragraph (a) of this section through the project, the institution, or other programs.

(d) The Special Services project shall set specific objectives—stated in measurable terms—that the project should attain during each project year to meet the goals of the program.

(e) If coordination is cost effective and improves the provision of services to participants, the Special Services project shall coordinate with—

(1) Talent Search, Upward Bound, and other Special Services projects, and Educational Opportunity Centers operating in close geographic proximity; and

(2) Federal, State, and local projects that are similar to the Special Services project and are located on the same campus as the Special Services project.

(f) Each institution receiving a Special Services grant shall provide—

(1) Assure that each participant enrolled in the project will receive sufficient financial assistance to meet the student's full financial need;

(2) Assure that project participants will be retained at the institution for a period of time sufficient to enable them to adjust to and participate successfully in the academic program at the institution;

(3) Assure that all resources and facilities that are available to other students of the institution will be available to project participants;

(4) Locate the project in an area that is accessible to participants, especially handicapped participants;

(5) Engage a full-time project director. However, the Secretary may waive the full-time requirement as specified in EDGAR, 34 CFR 75.511;

(6) Use the facilities and, if possible, the staff of the institution to provide preservice and in-service training for the project staff;

(7) Inform the institutional community of the goals of its Special Services project; and

(8) Assure that the project does not duplicate services regularly available to participants through State, local, or private funding sources.

(20 U.S.C. 1070d, 1070d–1b)

§ 646.11 Educational component for students with limited proficiency in English.

(a) A Special Services project may have a component to serve students with limited proficiency in English.

(b) A project with that component shall—

(1) Provide special instruction in the English language either through the project or the institution's regular program of instruction;

(2) Provide programs, services, and activities—as described in § 646.10(a)(1) through (11)—that are specifically designed for students of limited proficiency in English; and

(3) If the project cannot serve all students eligible for the component, select for participation students who have the greatest difficulty understanding, speaking, reading, and writing English.

(20 U.S.C. 1070d, 1070d–1b)

Subpart C—How Does One Apply for a Grant?

§ 646.20 How to apply for funds.

To apply for a new or a continuation grant, an applicant shall follow the procedures and meet the requirements contained in EDGAR, 34 CFR Part 75, Subpart C.

(20 U.S.C. 1221e–3(a)(1); 1070d, 1070d–1b)

Subpart D—How Does the Secretary Make a Grant?

§ 646.30 How the Secretary evaluates an application.

(a) The Secretary evaluates an application on the basis of the criteria in § 646.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(b) For applicants that have conducted a Special Services project within the previous three years, the Secretary considers the prior experience of the applicant on the basis of § 646.32. The Secretary awards up to 30 additional points for prior experience.

(c) In selecting proposed projects for funding, the Secretary considers the need for the project in the institution the applicant proposes to serve as compared to the need in institutions other applicants propose to serve.

(20 U.S.C. 1070d, 1070d–1b)

§ 646.31 Selection criteria the Secretary uses.

The Secretary uses the following criteria—in paragraphs (a) through (h)—to evaluate applications for new awards:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project partcipants who are members of grfoups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages, applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need for the project at the applicant institution.* (25 points)

(1) The Secretary reviews each application for information that shows that a need for a Special Services project exists at the institution(s) applying for a grant.

(2) The Secretary looks for information that shows—

(i) The number and percentage of students enrolled or accepted for enrollment at the institution who meet the eligibility requirements of § 646.3;

(ii) The academic and other problems that eligible students encounter at the time of entry into the institution; and

(iii) The academic and other problems that eligible students encounter while pursuing their education at the institution.

(3) To determine the extent of the need for a project, the Secretary compares factors with regard to students who would have been eligible for Special Services and those who would not have been eligible. The comparisons may include such factors as—

(i) The attrition rates;

(ii) The average length of stay for incoming freshmen;

(iii) The number and percentage having grade point averages equivalent to A, B, C, D, and F; and

(iv) The number and percentage of graduating students who enrolled in graduate and professional programs.

(g) *Project design.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the project's design.

(2) The Secretary looks for information that shows the comprehensiveness of the applicant's plan for—

(i) Identifying students eligible to be served by the project and selecting participants from those eligible to be served;

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(ii) Conducting an assessment of supportive services needed by each participant;

(iii)(A) Providing—through the project, the institution, or other sources—the services and activities listed in § 646.10, and, if a component for students of limited proficiency in English is proposed, the services and activities in § 646.11;

(B) To determine the comprehensiveness and adequacy of these services and activities, the Secretary considers, in addition to other information that the applicant provides, the sources and levels of support for each activity and service to be provided; and

(iv) Using institutional resources, including the time of institutional faculty and staff made available to the project.

(h) *Institutional commitment.* (15 points)

(1) The Secretary reviews each application for information that shows the commitment of the applicant to the Special Services project.

(2) The Secretary looks for information that shows—

(i) The degree to which the administrative and academic policies, grading systems, retention policies, and probation procedures indicate institutional commitment to the participant's chances for graduating from the institution;

(ii) The extent to which the institution has made available in the previous three years, educational opportunities for low-income students, first-generation college students, and physically handicapped students. The Secretary considers efforts of the institution to retain these students and to improve their chances for graduating from the institution;

(iii) The extent to which the project director will contribute to the administrative and academic policies that affect the partcipant's chances of completing an educational program at the institution;

(iv) The extent to which the applicant proposes to inform the institutional community of the goals and objectives of the Special Services project; and

(v) The extent to which the applicant will make available to the project institutional resources, including the commitment of time from institutional faculty and staff.

(20 U.S.C. 1322le-3(a)(1); 1070d, 1070d-1b)

§ 646.32 Prior experience.

For each applicant that has conducted a Special Services project within the previous three years, the Secretary—

(a) Reviews materials and documents, such as performance reports, evaluation reports, and site visit reports, for information that shows that the applicant has successfully carried out a Special Services project during that time;

(b) Looks for information that shows the extent of the applicant's success in meeting the performance standards listed in § 646.43; and

(c) Awards up to 30 additional points for this criterion.

(20 U.S.C. 1070d, 1070d-1d)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 646.40 Allowable costs.

Allowable project costs may include the following costs reasonably related to carrying out a Special Services project:

(a) A portion of the cost of existing faculty and staff at the institution to conduct remedial and special classes if these classes are limited to project participants and the institution does not provide identical instruction as part of its program of instruction or through another Federal program or a State, local, or privately funded program.

(b) Courses in English language instruction for students of limited proficiency in English if these classes are limited to project participants and if these classes are not otherwise available.

(c) In-service training of project staff is approved by the Secretary.

(d) Activities of an academic or cultural nature, such as trips to museums, laboratories, and work sites, that have as their purpose the improvement of the participant's academic progress and personal dvelopment at the institution.

(e) Transporation of participants to and from educational and cultural activities sponsored by the project and approved in writing by the Secretary.

(f) The rental of space if space is not available at the sponsoring institution and the space rented is not owned by the sponsoring institution.

(20 U.S.C. 1070d, 1070d-1b)

§ 646.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) The costs involved in the recruiting of students for enrollment at the institution.

(b) The purchase of major equipment, unless the grantee demonstrates to the Secretary's satisfaction that purchase is required to meet the purposes of the project and is less expensive than renting.

(c) The payment of tuition, stipends, or any other form of student financial support to staff or participants.

(d) Research not directly related to the evaluation or improvement of the project.

(e) The construction, renovation, or remodeling of any facilities.

(20 U.S.C. 1070d, 1070d-1b)

§ 646.42 Performance standards. [Reserved]

[The Secretary will publish, as a separate notice of proposed rulemaking, proposed performance standards.]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 646.50 Recordkeeping.

(a) A grantee shall keep records on the services provided to each participant, including—

(1) Counseling activities, such as family contacts, career explorations, referrals, and assistance in course selection;

(2) Contacts with the participant, the the services provided, the measurements of progress, and reports that relate to the academic and other types of assistance provided the student; and

(3) If applicable, assistance provided the participant to secure admission and financial assistance for enrollment in graduate and professional programs.

(b) To doument the progress of each participant, the grantee shall keep the following on file;

(1) The name, age, sex, and ethnic and racial background of the participant.

(2) Documentation of the participant's eligibility to receive services.

(3) The rationale, used to select the participant, including records of interviews.

(4) A summary at the end of each academic term of—

(i) Credit hours attempted by the participant;

(ii) Credit hours earned;

(iii) Credit hours earned toward graduation;

(iv) Grade point average;

(v) Cumulative average;

(vi) Courses dropped, if any, and the reasons for dropping them;

(vii) Remedial courses taken; and

(viii) Noncredit hours taken.

(5) Documentation that the participant received sufficient financial assistance to meet his or her full financial need.

(6) Documentation of follow-up on each participant, including—

(i) The date of graduation and degree awarded; and

(ii) If applicable, the names of postsecondary institutions that accepted the participant in graduate or professional programs and the one in which the participant enrolled.

(7) The date and nature of the participant's last contact with the project, including, if available—

(i) The reason for the participant's leaving the project;

(ii) The participant's permanent mailing address and telephone number; and

(iii) Any recommendations made to the participant regarding the participants educational and career potentials.

(20 U.S.C. 1070d, 1070d-1b)

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December 31, 1980

Part XIII

Department of Education

Talent Search Program

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DEPARTMENT OF EDUCATION

34 CFR Part 643

Talent Search Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Talent Search Program. The regulations are being amended to reflect the statutory changes contained in the Education Amendments of 1980 and to clarify and simplify the requirements governing the program.

DATES: Comments must be received on or before March 2, 1981.

Currently the Department of Education plans to hold public meetings in four cities. The tentative date for each meeting follows:

February 9, 1981, Washington, D.C.;
February 11, 1981, Chicago, Illinois;
February 17, 1981, San Francisco, California;
February 19, 1981, Dallas, Texas.

ADDRESSES: Comments should be addressed to Mary Kathleen Smith, Room 3514 (ROB–3), Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

The public will be advised—through a notice published in the **Federal Register**—of the time and specific location of each public meeting listed in the Dates section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mary Kathleen Smith, Telephone No. (202) 245–2511.

SUPPLEMENTARY INFORMATION:

On May 24, 1977, the Commissioner of Education published in the **Federal Register** final regulations for Talent Search Program. Those regulations govern the grant awards made during fiscal year 1981. The Education Amendments of 1980 changed the Talent Search Program in several respects, and these proposed regulations reflect those changes.

The Secretary proposes to make changes in the substance and structure of the regulations for the Talent Search Program. The changes in substance are the result of both statutory changes and policy clarifications. The structural changes were made for reasons of clarity and consistency.

Restructuring the Regulations

In comparing these proposed regulations with those previously governing the program, the reader will notice major revisions in format. These proposed changes reflect the Secretary's concern that the format of the regulations be easy to understand and follow. The proposed regulations for the Special Programs for Students from Disadvantaged Backgrounds, of which the Talent Search Program is a part, are made consistent with these format changes. In restructuring the regulations, the Secretary has followed the format of the Education Department General Administrative Regulations (EDGAR).

These regulations incorporate by reference Part 75 and Part 77 of EDGAR; therefore, the regulations do not repeat certain types of information and requirements that are found in EDGAR. However, the general selection criteria found in EDGAR (34 CFR 75.202 through 75.206) have been repeated in these regulations for the convenience of the applicant (§ 643.31 (a) through (e)).

Statutory and Policy Changes

A significant change made by the Education Amendments of 1980 involves the requirements for eligible participation. Talent Search grantees must assure that not less than two thirds of the persons participating in the project be low-income individuals who are also potential, first-generation college students. The remaining individuals participating in the project need not meet this requirement, but must reside in the target area or attend a target school, and need the services offered.

The Education Amendments of 1980 define both first-generation college student and low-income individual. These definitions have been repeated in these regulations.

Another major change made by the Education Amendments of 1980 is the requirement that the Secretary, in making grants for Talent Search projects, shall consider the prior experience of service delivery under the Talent Search Program for each applicant. The Secretary proposes to make "prior experience" one of the selection criteria for this program. The public is invited to comment on this approach and on the weighting of that criterion, as well as that of the other selection criteria.

The Secretary intends to base the evaluation of prior experience on published performance standards. These performance standards have not yet been developed. The public is invited to submit suggestions for performance standards at this time. The Secretary will develop the performance standards at a later date, and the public will have the opportunity to comment on the specific standards when they are published as proposed rules.

A final change as a result of the amendments is the authority for Talent Search projects to provide tutoring to enable participants to undertake postsecondary educational programs or to re-enter them. A Talent Search project may provide tutoring only to those individuals who are not participating in an Upward Bound or a Special Services project.

The policy changes expressed in this notice of proposed rulemaking would, for the most part, reduce existing restrictions and limitations on grantees. A Talent Search project would not be required to provide every activity and service indicated in the proposed § 643.10(a); a project would be required to provide only those services and activities needed by the participants. Grantees would also be encouraged to coordinate their efforts with other programs offered in the target area. Talent Search projects should supplement and complement those services and activities that are otherwise available to project participants.

The Secretary proposes to remove the requirement that a Talent Search project serve a minimum of 1,000 individuals, or 500 individuals if the area is sparsely populated or geographically isolated. Each applicant would propose the number it could adequately serve with the budget it proposes.

Finally, the Secretary proposes to revise the requirements for determining whether an area qualifies as a target area. For an area to qualify, at least 20 percent of its resident families would be required to have family incomes that do not exceed the low-income family level contained in "Current Population Reports" published annually by the Bureau of the Census. The Bureau of the Census maintains information on census tracts and minor civil divisions that have 20 percent or more of the families at or below the low-income level.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3514, ROB–3, 7th and D Streets, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority:

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.044, Talent Search Program)

Dated: December 23, 1980.

Shirley M. Hufstedler,
Secretary of Education.

The Secretary proposes to revise Part 643 of Title 34 of the Code of Federal Regulations to read as follows:

PART 643—TALENT SEARCH PROGRAM

Subpart A—General

Sec.
643.1 The Talent Search Program.
643.2 Eligible grantees.
643.3 Eligible project participants: general.
643.4 Eligible project participants: selection requirements.
643.5 Target area.
643.6 Regulations that apply to the Talent Search Program.
643.7 Definitions that apply to the Talent Search Program.

Subpart B—What Kinds of Projects Does the Department of Education Assist under This Program?

643.10 Kinds of projects assisted under the Talent Search Program.
643.11 Project location.

Subpart C—How Does One Apply for a Grant?

643.20 How to apply for funds.

Subpart D—How Does the Secretary Make a Grant?

643.30 How the Secretary evaluates an application.
643.31 Selection criteria the Secretary uses.
643.32 Prior experience.

Subpart E—What conditions Must Be Met by a Grantee?

643.40 Allowable costs.
643.41 Nonallowable costs.
643.42 Performance standards. [Reserved]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

643.50 Recordkeeping.

Authority: Secs. 417A and 417B of the Higher Education Act of 1965, as amended (20 U.S.C. 1070d, 1070d–1), unless otherwise noted.

Subpart A—General

§ 643.1 The Talent Search Program.

The Talent Search Program provides Federal financial assistance to projects designed to enable participants to continue in and graduate from secondary schools and to enroll—with adequate financial aid and supportive services, if needed—in postsecondary educational programs.

(20 U.S.C. 1070d, 1070d-1)

§ 643.2 Eligible grantees.

The following are eligible to apply for a grant to carry out a Talent Search project:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public and private agencies and organizations.

(d) Secondary schools, in exceptional cases, if there are no other grantees capable of providing this program in the target areas to be served by the proposed projects.

(20 U.S.C. 1070d, 1070d-1)

§ 643.3 Eligible project participants: general.

(a) An individual is eligible to participate in a Talent Search project if the individual—

(1)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Island;

(2) Resides in the target area or attends a target school;

(3) Has completed the sixth grade or is at least 12 years old and is not older than 27. However, if there is no Educational Opportunity Center serving the same target area as the Talent Search project, an individual may be older than 27 and still be an eligible participant;

(4) In the case of an individual enrolled in or graduated from secondary school, has potential for education at the postsecondary level;

(5) In the case of an individual who has not completed a program of education at the secondary or postsecondary level, has the ability to re-enter and complete a program of education at the secondary or postsecondary level;

(6) Needs one or more of the services provided by the Talent Search project in order to pursue successfully a program of education beyond high school; and

(7) Is not currently enrolled in a postsecondary education program.

(b) *Veterans.* A veteran, regardless of age, is eligible to participate in a Talent Search project if he or she satisfies the eligibility requirements in paragraph (a) of this section other than the requirement of paragarph (a)(3).

(20 U.S.C. 1070d, 1070d-1)

§ 643.4 Eligible project participants: selection requirements.

(a)(1) At least two thirds of the eligible individuals an applicant proposes to serve under a Talent Search project must also be low-income individuals who are potential, first-generation college students.

(2) A "low-income individual" means an individual who comes from a family whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

(3)(i) A "potential, first-generation college student" means a person neither of whose parents received a bachelor's degree.

(ii) With respect to an individual 18 years and under, only the natural or adoptive parents who are currently residing with the individual are considered the individual's parents in determining whether the individual meets the criterion of being a potential, first-generation college student.

(iii) With respect to an individual over 18, only the natural or adoptive parents who were residing with the individual before the individual's eighteenth birthday are considered the individual's parents in determining whether the individual meets the criterion of being a potential, first-generation college student.

(b) A grantee may not select an individual who is or will be served by an Educational Opportunity Center or by another Talent Search project.

(c) The grantee shall make every effort to provide that the participant population reflects the ethnic and racial diversity of the individuals eligible to be served by the project.

(20 U.S.C. 1070d, 1070d-1)

§ 643.5 Target area.

A Talent Search project provides services to eligible participants residing in a target area or attending a target school.

(20 U.S.C. 1070d, 1070d-1)

§ 643.6 Regulations that apply to the Talent Search Program.

The following regulations apply to the Talent Search Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 643.

(20 U.S.C. 3474)

§ 643.7 Definitions that apply to the Talent Search Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant	Grantee
Application	Nonprofit
Award	Private
Budget	Project
EDGAR	Public
Equipment	Secondary school
Facilities	Secretary
Fiscal year	State
Grant	Supplies

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

(20 U.S.C. 1001 et seq.)

"Combination of institutions of higher education" means:

(1) A group of institutions of higher education that have entered into a cooperative arrangement to carry out a common objective; or

(2) A public or nonprofit private agency, organization, or institution designated or created by a group of institutions of higher education to carry out a common objective on their behalf.

(20 U.S.C. 1141(j))

"Institution of higher education" means an educational institution as defined in Sections 1201(a) and 481 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141(a); 1088)

"Target area" means a discrete geographic area in which at least 20 percent of the resident families have a family income that does not exceed the low-income family level contained in "Current Population Reports," Series P, Bureau of the Census, Department of Commerce.

(20 U.S.C. 1070d, 1070d–1)

"Target school" means a secondary school that serves students residing in a target area and is or would be served by a Talent Search project.

(20 U.S.C. 1070d, 1070d–1)

"Veteran" means a person who served on active duty in the United States Armed Forces and was discharged or released under conditions other than dishonorable.

(20 U.S.C. 101(2))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 643.10 Kinds of projects assisted under the Talent Search Program.

(a) A Talent Search project shall, as needed by participants—

(1) Collect and disseminate information regarding the variety of postsecondary educational opportunities, student financial aid, academic assistance, and career options available to participants;

(2)(i) Advise and counsel each participant regarding available student financial assistance, career options, and the appropriate postsecondary institution or institutions for that person;

(ii) If the grantee is an institution of higher education, it shall not use the project as part of its recruitment program;

(3) Assist participants in applying for—

(i)(A) Admission to postsecondary institutions; or

(B) Readmission to secondary schools, or postsecondary institutions that provide supportive services needed by participants; and

(ii) Student financial aid;

(4) Determine each participant's interests, career goals, academic potential, and need for services through the use of standardized measurement instruments or other verifiable indicators such as written recommendations from educators, counselors, or employers;

(5) In conjunction with schools, agencies, and organizations in the target area, develop, publicize, and implement strategies that will—

(i) Increase the probability of participants completing secondary school;

(ii) Increase the probability of participants being admitted to postsecondary school;

(iii) Increase the probability of dropouts being readmitted to secondary or postsecondary school; and

(iv) Decrease the probability of participants dropping out of secondary school;

(6) Establish a relationship with service agencies in the target area—so that the grantee is aware of the various services available to participants—and refer participants to these service agencies as appropriate; and

(7) Establish a relationship with postsecondary institutions to determine current admission requirements, filing and deadline dates for required application materials—such as admission and financial aid applications—course requirements, academic policies, and the availability of appropriate supportive services.

(b) Talent Search projects that serve veterans shall, in addition to carrying out the functions in paragraph (a) of this section—

(1) Refer veterans to high school equivalency certification programs, if necessary; and

(2)(i) Establish a relationship with the Veterans Administration, projects under the Veterans-Cost-of-Instruction Program at postsecondary institutions, State veterans agencies, and other veterans associations so that the grantee is aware of the various benefits and services available to veterans; and

(ii) Refer veterans to these agencies and associations as appropriate.

(c) A Talent Search project may provide tutorial services for a participant who is not enrolled in an Upward Bound or a Special Services project that provides tutoring.

(d) A Talent Search project shall set specific objectives—stated in measurable terms—that the project should attain during each project year to meet the goals of the program.

(e) Each project shall engage a full-time project director. However, the Secretary may waive the full-time requirement as specified in EDGAR, 34 CFR § 75.511.

(f) Each project shall determine—

(1) Whether a participant admitted to a secondary or postsecondary institution actually enrolled in that institution; and

(2) Whether a participant enrolled in a postsecondary institution received adequate financial assistance and supportive services, if needed.

(g) Each project shall document the effect that the project had on—

(1) Increasing the secondary school completion rate of participants;

(2) Increasing the postsecondary school admissions rate of participants;

(3) Increasing the secondary and postsecondary readmission rates for participants who had not completed secondary or postsecondary education; and

(4) Decreasing the secondary school dropout rates of participants.

(20 U.S.C. 1070d, 1070d–1)

§ 643.11 Project location.

Talent Search services shall be provided in a setting that is accessible and approachable by the participants.

(20 U.S.C. 1070d, 1070d–1)

Subpart C—How Does One Apply for a Grant?

§ 643.20 How to apply for funds.

To apply for a new or continuation grant, an applicant shall follow the procedures and meet the requirements contained in EDGAR, 34 CFR Part 75, Subpart C.

(20 U.S.C. 1221e–3(a)(1); 1070d, 1070d–1)

Subpart D—How Does the Secretary Make a Grant?

§ 643.30 How the Secretary evaluates an application.

(a) The Secretary evaluates an application on the basis of the criteria in § 643.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in parentheses next to the heating of that criterion.

(b) For applicants that have conducted a Talent Search project within the previous three years, the Secretary considers the prior experience of the applicant on the basis of § 643.32. The Secretary awards up to 30 additional points for prior experience.

(c) In selecting proposed projects for funding, the Secretary considers the need for the project in the area the applicant proposes to serve as compared to the need in areas other applicants propose to serve.

(20 U.S.C. 1070d, 1070d–1)

§ 643.31 Selection criteria the Secretary uses.

The Secretary uses the following criteria—in paragraphs (a) through (h)—to evaluate applications for new awards:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need for the project.* (25 points)

(1) The Secretary reviews each application for information that shows that a need for a Talent Search project exists in the area the applicant plans to serve.

(2) The Secretary looks for information that shows—

(i) The extent to which the percentage of low-income families residing in the geographically defined target area exceeds 20 percent;

(ii) The number and percentage of individuals who are eligible to be served by a Talent Search project who reside in the target area or attend target schools; and

(iii) The extent to which the target area lacks the services and activities that are provided by a Talent Search project.

(3) To determine the extent of the need for a project, the Secretary also considers—

(i) For each of the three preceding years, the estimated dropout rates for each of the target schools;

(ii) For each of the three preceding years, the estimated number and percentage of students from each target school who enrolled in postsecondary institutions;

(iii) For each of the three preceding years, the estimated number and percentage of students in each target school who are from low-income families; and

(iv) The number of veterans in the target area who need Talent Search services to pursue postsecondary education.

(g) *Likelihood of success.* (20 points)

(1) The Secretary reviews each application for information that shows the likelihood of success.

(2) The Secretary looks for information that shows the extent to which the project is likely to, in the target area—

(i) Increase the secondary school completion rate of project participants;

(ii) Increase the postsecondary school admission rate of project participants;

(iii) Increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education; and

(iv) Decrease the secondary school dropout rates of project participants.

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(3) The Secretary looks for information that shows the comprehensiveness of the applicant's plan for providing the services and activities listed in § 643.10.

(h) *Resources and organization.* (15 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources and organization to the project.

(2) The Secretary looks for information that shows—

(i) The extent to which the applicant plans to publicize and inform the target schools and residents of the target area of the services provided by the Talent Search project; and

(ii) The extent to which the applicant has received and has included in its application written commitments by community organizations and other appropriate groups for the use of community and other resources to supplement authorized activities.

(20 U.S.C. 1221e-3(a)(1); 1070d, 1070d-1)

§ 643.32 Prior experience.

For each applicant that has conducted a Talent Search project within the previous three years, the Secretary—

(a) Reviews materials and documents, such as performance reports, evaluation reports, and site visit reports, for information that shows that the applicant has successfully carried out a Talent Search project during that time;

(b) Looks for information that shows the extent of the applicant's success in meeting the performance standards listed in § 643.42; and

(c) Awards up to 30 additional points for this criterion.

(20 U.S.C. 1070d, 1070d-1)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 643.40 Allowable costs.

Allowable project costs may include the following costs reasonably related to carrying out a Talent Search project:

(a) Transportation and meal costs for participants and staff for—

(1) Approved visits to postsecondary educational institutions in the area;

(2) Participation in "College Days" activities; and

(3) Field trips to observe and meet with persons who are employed in various career fields and who can act as role models for participants.

(b) Purchase of testing materials.

(c) If approved by the Secretary, in-service training of project staff.

(d) Tutorial services if none are available to participants through an Upward Bound or a Special Services project in the target area.

(e) The rental of space if space is not available at the host institution and the space rented is not owned by the host institution.

(20 U.S.C. 1070d, 1070d-1)

§643.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) Tuition, fees, stipends, or other forms of direct financial support for individuals participating in project activities.

(b) Application fees for enrollment or financial aid.

(c) Lodging for project participants.

(d) Duplication of services that are available to participants through—

(1) State, local, or private sources;

(2) The institution or agency sponsoring the project; or

(3) Other Federal programs.

(e) Research not directly related to the evaluation or improvement of the project.

(f) The purchase of major equipment, unless the grantee demonstrates to the Secretary's satisfaction that puchase is less expensive than renting.

(g) The construction, renovation, or remodeling of any facilities.

(20 U.S.C. 1070d, 1070d-1)

§ 643.42 Performance standards. [Reserved]

[The Secretary will publish, as a separate notice of proposed rulemaking, proposed performance standards.]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§643.50 Recordkeeping.

(a) Each grantee shall keep records on the services provided to individuals and groups.

(b) For each participant who receives project services through personal contact on more than two occasions, the grantee shall keep the following on file:

(1) The participant's name, age, sex, ethnic and racial background, telephone number, and permanent address.

(2) The information used to select the participant, including—

(i) Documentation of the participant's eligibility to receive services; and

(ii) Copies of the participant's high school transcripts and test scores such as aptitude and achievement scores and interest inventories.

(3) Documentation of services received by the participant, including—

(i) Counseling services;

(ii) Tutorial services;

(iii) Visits made to postsecondary institutions;

(iv) Assistance in applying for admission to postsecondary institutions; and

(v) Assistance in applying for student financial aid.

(4) Documentation of follow-up of the participant including, if appropirate—

(i) The names of the postsecondary institutions that accepted the participant for admission and the one in which the participant enrolled; and

(ii) The amount and type of student financial aid received by the participant.

(c) For each participant who receives project services through personal contact on one or two occasions, the grantee shall keep records that include the particpant's—

(1) Name;

(2) Telephone number;

(3) Address;

(4) Age;

(5) Sex;

(6) Ethnic and racial background; and

(7) Service(s) received.

(d) For those services that are not provided exclusively to individual participants, the grantee shall maintain records that include—

(1) The type and kind of group services provided;

(2) The number of participants;

(3) The time and place the services were provided; and

(4) Documentation of outreach activities.

(20 U.S.C. 1070, 1070d-1)

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federal register

Wednesday
December 31, 1980

Part XIV

Department of Education

Upward Bound Program

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DEPARTMENT OF EDUCATION

34 CFR Part 645

Upward Bound Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Upward Bound program. The regulations are being amended to reflect the statutory changes contained in the Education Amendments of 1980, and to clarify and simplify the requirements governing the program.

DATES: Comments must be received on or before March 2, 1981.

Currently the Department of Education plans to hold public meetings in four cities. The tentative date for each meeting follows:

February 9, 1981, Washington, D.C.
February 11, 1981, Chicago, Illinois
February 17, 1981, San Francisco, California
February 19, 1981, Dallas, Texas

ADDRESSES: Comments should be addressed to Mary Kathleen Smith, (Room 3514 ROB–3), Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

The public will be advised—through a notice published in the Federal Register—of the time and specific location of each meeting listed in the Dates section of this Preamble.

FOR FURTHER INFORMATION CONTACT: Mary Kathleen Smith, Telephone No. (202) 245–2511.

SUPPLEMENTARY INFORMATION: On May 24, 1977, the Commissioner of Education published in the Federal Register the final regulations for the Upward Bound program. Those regulations govern the grant awards made during fiscal year 1981. The Education Amendments of 1980 changed the Upward Bound program in several respects and these proposed regulations reflect these changes.

The Secretary proposes to make changes in the substance and structure of the Upward Bound regulations. The changes in substance are the result of both statutory changes and policy clarifications. The structural changes were made for reasons of clarity and consistency.

Restructuring the Regulations

In comparing these proposed regulations with those previously governing the program, the reader will notice major revisions in format. These proposed changes reflect the Secretary's concern that the format of the regulations be easy to understand and follow. The proposed regulations for the Special Programs for Students for Disadvantaged Backgrounds, of which the Upward Bound program is a part, are made consistent with these format changes. In restructuring the regulations, the Secretary has followed the format of the Education Department General Administrative Regulations (EDGAR).

These regulations incorporate by reference 34 CFR Parts 75 and 77 of EDGAR; therefore, the regulations do not repeat certain types of information and requirements that are found in EDGAR. However, the general selection criteria found in EDGAR (34 CFR Part 75.202 through 75.206) have been repeated in these regulations for the convenience of the applicant (Section 644.31(a) through (e)).

Statutory and Policy Changes

A significant change made by the Education Amendments of 1980 involves the eligible participant requirements. Upward Bound grantees must assure that not less than two-thirds of the persons participating in the project be low-income individuals who are also potential, first-generation college students. The remaining individuals participating in the project must be either low-income individuals, or potential, first-generation college students.

The Education Amendments of 1980 define both first-generation college student and low-income individual. These definitions have been repeated in these regulations.

Another major change made by the Education Admendments of 1980 is the requirement that the Secretary, when making grants for Upward Bound projects, shall consider the prior experience of service delivery under the Upward Bound program for each applicant. The Secretary proposes to make "Prior experience" one of the selection criteria for this program. The public is invited to comment on this approach and on the weighting of that criterion as well as that of the other selection criteria.

The Secretary intends to base the evaluation of prior experience on published performance standards. These performance standards have not yet been developed. The public is invited to submit suggestions for performance standards at this time. The Secretary will develop the performance standards at a later date and the public will have the opportunity to comment on the specific standards when they are published as proposed rules.

A final significant change made by the Education Amendments of 1980 is the exception permitted so that projects may serve persons who are younger than 13 or who have completed less than 8 years of elementary school. This exception is permitted if the secondary schools in the project's target area have a high dropout rate.

The policy changes expressed in this notice of proposed rulemaking would, for the most part, reduce existing restrictions and limitations on grantees. The proposed summer component provision, section 645.12 paragraph (f), would permit a project to have either a residential or a nonresidential summer component with no restrictions on the percentage of nonresidential projects funded in any year.

The Secretary proposes to clarify the requirements for determining whether an area qualifies as a target area. For an area to qualify at least 20 percent of its resident families would be required to have family incomes that do not exceed the low-income family level contained in "Current Population Reports", published annually by the Bureau of the Census. The Bureau of the Census maintains information on census tracts and minor civil divisions that have 20 percent or more of the families at or below the low-income level.

Invitation to Comment:

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this Preamble. All comments received on or before March 2, 1981, will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3514, ROB–3, 7th and D Streets, SW, Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: December 23, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.047, Upward Bound)

It is proposed that Part 645 of Title 34 of the Code of Federal Regulations, be revised to read as follows:

PART 645—UPWARD BOUND PROGRAM

Subpart A—General

Sec.

645.1 The Upward Bound Program.
645.2 Eligible grantees.
645.3 Eligible project participants: General.
645.4 Eligible project participants: Section requirements.
645.5 Target area.
645.6 Regulations that apply to the Upward Bound Program.
645.7 Definitions that apply to the Upward Bound Program.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

645.10 Kinds of projects assisted under the Upward Bound Program.
645.11 Academic year component.
645.12 Summer component.
645.13 Veterans' projects.
645.14 Educational component for participants with limited proficiency in English.
645.15 Project size.

Subpart C—How Does One Apply for a Grant?

645.20 How to apply for funds.

Subpart D—How Does the Secretary Make a Grant?

645.30 How the Secretary evaluates an application.
645.31 Selection criteria the Secretary uses.
645.32 Prior experience.

Subpart E—What Conditions Must Be Met by a Grantee?

645.40 Allowable costs.
645.41 Nonallowable costs.
645.42 Stipends.
645.43 Performance standards.

Subpart F—What Are the Administrative Responsibilities of a Grantee?

645.50 Recordkeeping.

Authority: Secs. 417A and 417C of Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 107d; 1070d–1a), unless otherwise noted.

Subpart A—General

§ 645.1 The Upward Bound Program.

The Upward Bound program provides Federal financial assistance to projects designed to improve academic performance and increase motivational levels to enable eligible participants to complete secondary school and successfully pursue postsecondary educational programs.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.2 Eligible grantees.

The following are eligible to apply for a grant to carry out an Upward Bound project:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public and private agencies and organizations.

(d) Secondary schools, in exceptional cases, if there are no other applicants capable of providing this program in the target areas to be served by the proposed projects.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.3 Eligible project participants: general.

(a) An individual is eligible to participate in an Upward Bound project if the individual—

(1)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(iv) Is a permanent resident of the Trust Territory of the Pacific Islands;

(2)(i) Resides in the target area or attends a target school; or

(ii) Is a dropout who resides in the target area and is committed to re-entering secondary school the fall semester immediately following participation in the Upward Bound summer component;

(3) Is a potential, first-generation college student or is, at the time of initial selection, a low-income individual;

(4) Has a need for academic support in order to successfully pursue a program of education beyond high school; and

(5)(i) At the time of initial selection, has completed the eighth grade but has not entered the twelfth grade and is at least 13 years old but not older than 19.

(ii) However, the project may serve individuals who are less than 13 or have not completed the eight grade if the secondary schools in the project's target area have an unusually high dropout rate.

(b) *Veterans.* A veteran, regardless of age, is eligible to participate in an Upward Bound project if he or she satisfies the eligibility requirements in paragraph (a) of this section other than the requirements of paragraph (a)(5).

(20 U.S.C. 1070d, 1070d–1a)

§ 645.4 Eligible project participants: selection requirements.

(a)(1) At least two thirds of the eligible individuals the applicant proposes to serve under an Upward Bound project must be low-income individuals who are also potential, first-generation college students.

(2) The remaining individuals the applicant proposes to serve must quality as either low-income individuals or potential, first-generation college students.

(3) A "low-income individual" means an individual who comes from a family whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census, U.S. Department of Commerce.

(4)(i) A "potential, first-generation college student" means a person neither of whose parents received a bachelor's degree.

(ii) With respect to individuals 18 years of age and under, only the natural or adoptive parents who are currently residing with the individual are considered the individual's parents in determining whether the individual meets the criterion of being a potential, first-generation college student.

(iii) With respect to individuals over 18, only the natural or adoptive parents who were residing with the individual before the individual's eighteenth birthday are considered the individual's parents in determining whether the individual meets the criterion of being a potential, first-generation college student.

(b) The grantee shall make every effort to provide that the participant population reflects the ethnic and racial diversity of the individuals eligible to be served by the project.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.5 Target area.

(a) An Upward Bound project provides services to eligible participants residing in a target area or attending a target school.

(b)(1) In general, no part of the target area may be more than 50 miles from the applicant.

(2) However, the target area may be more than 50 miles from the applicant if the applicant can show to the satisfaction of the Secretary that the increased distance will not hinder the effectiveness of the project or prevent the project from achieving its stated goals and objectives.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.6 Regulations that apply to the Upward Bound Program.

The following regulations apply to the Upward Bound Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and in 34 CFR Part 77 (Definitions).

(b) The regulations in this Part 645.

(20 U.S.C. 3474)

§ 645.7 Definitions that apply to the Upward Bound Program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant	Grantee
Application	Nonprofit
Award	Private
Budget	Project
EDGAR	Public
Equipment	Secondary School
Facilities	Secretary
Fiscal year	State
Grant	Supplies

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

(20 U.S.C. 1001 et seq.)

"Combination of institutions of higher education" means:

(1) A group of institutions of higher education that have entered into a cooperative arrangement to carry out a common objective; or

(2) A public or nonprofit private agency, organization, or institution designated or created by a group of institutions of higher education to carry out a common objective on their behalf.

(20 U.S.C. 1141(j))

"Institution of higher education" means an educational institution as defined in Sections 1201(a) and 481 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141(a); 1088)

"Limited proficiency in English," with reference to an individual, means an individual—

(1)(i) Who was not born in the United States or whose native language is other than English;

(ii) Who comes from a home in which a language other than English is most relied upon for communication; or

(iii) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant inpact on his or her level of proficiency in the English language; and

(2) Who, as a result of the circumstances described in paragraph (1) of this definition, has sufficient difficulty in understanding, speaking, reading, or writing the English language to deny him or her the opportunity to learn successfully in classrooms in which the language of instruction is English.

(20 U.S.C. 3223(a)(1))

"Target area" means a discrete geographic area in which at least 20 percent of the resident families have a family income that does not exceed the low-income family level contained in "Current Population Reports," Series P, Bureau of the Census, Department of Commerce.

(20 U.S.C. 1070d, 1070d–1a)

"Target school" means a secondary school that serves students residing in a target area and is or would be served by an Upward Bound project.

(20 U.S.C. 1070d, 1070d–1a)

"Veteran" means a person who served on active duty in the United States Armed Forces and was discharged or released under conditions other than dishonorable.

(38 U.S.C. 101(2))

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 645.10 Kinds of projects assisted under the Upward Bound Program.

(a) Three kinds of projects are assisted under the Upward Bound Program:

(1) Regular Upward Bound projects that have both an academic year and a summer component.

(2) Upward Bound projects that have an additional component that provides services for persons with limited proficiency in English.

(3) Upward Bound Veterans projects that provide services exclusively to veterans.

(b) An Upward Bound project, except an Upward Bound Veterans project, shall have both an academic year component, as described in § 645.11, and a summer component, as described in § 645.12.

(c) An Upward Bound project, including an Upward Bound Veterans project, shall—

(1) Publicize in the target area, particularly in the target schools, the opportunity to participate in the project informing interested students, parents, and veterans of the criteria for eligibility and selection;

(2) Develop and use procedures to identify, through a variety of sources, individuals who are eligible to participate;

(3) Develop and use procedures to select participants from among eligible individuals;

(4) Diagnose specific areas of academic strengths and weaknesses in each participant through the use of standardized tests or other recognized procedures;

(5) Set specific objectives—stated in measurable terms—that each participant needs to attain while in the project in order to increase his or her opportunity to gain admission as a regular student at an institution of higher education appropriate to the individual's abilities and career ambitions;

(6) Set specific objectives—stated in measurable terms—that the project should attain during each project year to meet the goals of the program;

(7) Develop an individualized plan of program support to improve each participant's skills;

(8) Engage a full-time project director. However, the Secretary may waive the full-time requirement as specified in EDGAR, 34 CFR § 75.511;

(9) Design and implement an evaluation mechanism to test the effectiveness of the project's—

(i) Progress in meeting approved goals and objectives;

(ii) Efforts in remedying academic deficiencies of participants; and

(iii) Activities that are designed to effect in the academic and personal skills of project participants changes that are necessary for success in postsecondary education;

(10) Assure that all the facilities of the grantee, both academic and nonacademic, are made available to project participants on the same basis as they are made available to the grantee's regularly enrolled students;

(11) Identify and use institutional and community resources to diagnose in participants health problems that are impeding learning and, to the extent possible, use these resources to alleviate those problems;

(12)(i) Establish a relationship with service agencies in the target area so that the grantee is aware of the various services available; and

(ii) Refer participants to these service agencies as appropriate;

(13) Implement a plan for following participants through their postsecondary educational programs;

(14) If coordination is cost-effective and improves the provisions of services to participants, coordinate the project with—

(i) Talent Search, Upward Bound, Special Services, and Educational Opportunity Centers projects operating in close geographic proximity; and

(ii) Federal, State, and local projects that are similar to Upward Bound and are operating in close geographic proximity; and

(15) Make every effort to secure for each successful graduate from the project admission, with adequate financial aid, to an institution of postsecondary education that is appropriate to that participant's abilities and ambitions. This effort shall include, if necessary, special review from the admissions and financial aid personnel of the host institution.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.11 Academic year component.

(a) During the academic year an Upward Bound project shall—

(1) Provide to participants on a weekly basis—

(i) Individualized guidance and personal, career, and academic counseling;

(ii) Tutoring in those courses being studied by the participant at the secondary school; and

(iii) Exposure to academic programs and other educational activities—not usually available to disadvantaged youth—that have as their purpose the intellectual, social, and cultural development of the participants. These programs and activities may include trips to museums, laboratories, work sites, and educational institutions;

(2) Provide as may be needed by the participants—

(i) Advice and assistance in high school course selection;

(ii) Counseling and orientation in the requirements for postsecondary education;

(iii) Assistance in preparing admission, financial aid, and other forms necessary to attend a postsecondary institution;

(iv) Assistance in preparing for national standardized tests required for postsecondary admission; and

(v) Activities designed to acquaint participants with the range of career options available to them;

(3) Provide a continuing evaluation of each participant's progress toward achieving adequate academic skills and motivation necessary for success in postsecondary education, including an assessment of each participant's realistic postsecondary educational opportunities and potential; and

(4) Provide—with the specific approval of the Secretary—those activities that have as their purpose the educational preparation of participants for postsecondary admission.

(b) If the project location or the project staff are not readily accessible to participants because of distance or lack of transportation, the grantee may, with the Secretary's permission, provide the services described in paragraph (a)(1) of this section every two weeks.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.12 Summer component.

(a) The summer component of an Upward Bound project shall last at least six weeks.

(b)(1) The project shall enroll students for the summer component and shall establish a waiting list for the component before the summer component begins.

(2) If a vacancy arises, the project may provide summer component activities to individuals on the waiting list.

(c)(1) The project shall make special provisions by offering a Bridge Summer Component for those participants who have graduated from secondary school and who intend to enroll at a postsecondary institution in the upcoming fall semester. In this component, the project shall provide participants with activities that aid in the transition from high school to postsecondary education.

(2) The project may provide, through the Bridge Summer Component—

(i) College courses that participants may take for credit;

(ii) College courses that participants may audit;

(iii) Preview courses that anticipate college courses because they are taught by the lecture method, require notetaking, or have other characteristics of college courses; and

(iv) Study skills seminars.

(d) During the summer component, the project shall provide facilities to adequately and effectively carry out the activities listed in paragraphs (e)(1) through (e)(7) of this section.

(e) During the summer component, the project shall, as needed by the participants—

(1) Provide, as appropriate to meet the individual needs of participants who have not completed secondary school, intensive skills development and instruction in academic subjects—such as reading, writing, study skills, and mathematics—that are required for secondary school graduation and for success in postsecondary education;

(2) Provide to participants instruction designed to prepare them for careers in which persons from disadvantaged backgrounds have been historically underrepresented, such as careers based on science and mathematics;

(3) Provide motivational activities through—

(i) Personal, career, and academic counseling that meet the individual needs of each participant;

(ii) Activities—such as field trips to museums, laboratories, work sites, and educational institutions—that have as their purpose the intellectual, social, cultural, and career development of the participants;

(4) Provide a qualified staff that includes but is not limited to—

(i) Teachers from the target schools;

(ii) Postsecondary instructors from the host institution, including graduate assistants; and

(iii) Other individuals with areas of specialization that will enhance the educational experience of the participants;

(5) Provide tutors and peer counselors who are postsecondary or graduate students who have demonstrated success in postsecondary education;

(6) Provide other services that have as their purpose the educational preparation of participants for admission to postsecondary institutions. These services may include assisting participants in preparing applications for admission and financial aid forms and, if necessary, ensuring that participants take national standardized tests required for postsecondary admission; and

(7) Provide meals to participants.

(f)(1) The summer component may be either a residential program or a nonresidential program.

(2) If the summer component is residential, the project must house the Upward Bound participants in the dormitories on campus that are used by regularly enrolled students at the host institution during the academic year.

(3) The Secretary may waive the requirement of paragraph (f)(2) of this section if the project location is not readily accessible to participants because of distance or lack of transportation and the grantee does not have residential facilities on campus.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.13 Veterans' projects.

The Secretary may fund Upward Bound projects for veterans. In addition to the requirements of § 645.10(c), Upward Bound Veterans projects shall—

(a) Be composed exclusively of veterans; and

(b)(1) Provide intensive basic skills development in those academic subjects required for the successful completion of a high school equivalency program, if necessary, and for admission to postsecondary institutions;

(2) Provide short-term remedial-refresher courses for those veterans who

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are high school graduates but who have delated pursuing postsecondary education. If the grantee is an institution of higher education, these courses shall not duplicate courses otherwise available to veterans at the institution;

(3) Provide individualized guidance, including personal, academic, and career counseling;

(4) Establish a relationship with the Veterans Administration, projects under the Veterans-Cost-of-Instruction Program at postsecondary institutions, State veteran agencies, and other veteran association so that the grantee and the veteran are aware of the various benefits and services available to the veteran;

(5) Refer veterans, as needed and on an individual basis, to health, employment, housing, and legal agencies, to the Veterans Administration, and to other resources to resolve educational and noneducational problems;

(6) Assist veterans to secure certification for the payment of veterans' educational benefits by appropriate State and Federal agencies before the beginning of educational activities; and

(7) Assist veterans in securing admission to postsecondary educational programs and in obtaining financial aid.

(20 U.S.C. 1070d–1a)

§ 645.14 Educational component for participants with limited proficiency in English.

(a) An Upward Bound project, including an Upward Bound Veterans project, may have a component to serve individuals with limited proficiency in English.

(b) A project with this component shall—

(1) Provide instruction in the use of the English language, either through the project or through other programs available in the area;

(2) Provide, as applicable, programs, services, and activities described in §§ 645.10, 645.11, 645.12, and 645.13 that are specifically designed for participants of limited proficiency in English; and

(3) If the project cannot serve all individuals eligible for the component, select for participation individuals who have the greatest difficulty understanding, speaking, reading, and writing the English language.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.15 Project size.

(a) Each Upward Bound project, other than an Upward Bound Veterans project, shall serve between 65 and 150 participants.

(b) Each Upward Bound Veterans project shall serve a minimum of 120 veterans during a project year.

(c) The Secretary may authorize exceptions to paragraphs (a) and (b) of this section if the applicant can show that granting the exception will not hinder the effectiveness of the project or prevent it from achieving its stated goals or objectives.

(20 U.S.C. 1070d, 1070d–1a)

Subpart C—How Does One Apply for a Grant?

§ 645.20 How to apply for funds.

To apply for a new or continuation grant, an applicant shall follow the procedures and meet the requirements contained in EDGAR, 34 CFR Part 75, Subpart C.

(20 U.S.C. 3474; 1070d, 1070d–1a)

Subpart D—How Does The Secretary Make a Grant?

§ 645.30 How the Secretary evaluates an application.

(a) The Secretary evaluates an application on the basis of the criteria in § 645.31.

(1) The Secretary awards up to 100 possible points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of the criterion.

(b) For applicants that have conducted an Upward Bound project within the previous three years, the Secretary considers the prior experience of the applicant on the basis of § 645.32. The Secretary awards up to 30 additional points for prior experience.

(c) In selecting proposed projects for funding, the Secretary considers the need for the project in the area the applicant proposes to serve as compared to the need in areas other applicants propose to serve.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.31 Selection criteria the Secretary uses.

The Secretary uses the following criteria—in paragraphs (a) through (h)—to evaluate applications for new awards

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Need for the project.* (25 points)

(1) The Secretary reviews each application for information that shows that a need for an Upward Bound project exists in the area the applicant plans to serve.

(2) The Secretary looks for information that shows—

(i) The extent to which the percentage of low-income families residing in the geographically defined target area exceeds 20 percent;

(ii) The number and percentage of individuals who are eligible to be served by an Upward Bound project who reside in the target area or attend target schools, and their grade levels; and

(iii) The extent to which the target area lacks the services and activities that are provided by an Upward Bound project.

(3) To determine the extent of the need for a project, the Secretary also considers—

(i) The number of students enrolled in target schools who are from low-income families;

(ii) The number and percentage of those students who subsequently enroll in postsecondary education;

(iii) In the target schools, the ratio of students to counselors;

(iv) The dropout rate of students from the target schools; and

(v) For veterans' projects only, the number of veterans in the target area who are eligible for and need Upward Bound services.

(g) *Likelihood of success.* (20 points)

(1) The Secretary reviews each application for information that shows the likelihood of success.

(2) The Secretary looks for information that shows—

(i) The extent to which the project is likely through the academic year and summer components or through the veterans' project, to—

(A) Generate academic skills and motivation that will enable the participants to gain admission to postsecondary institutions; and

(B) Enable the participants to attain through the proposed project design those academic skills—such as reading, writing, mathematics, and science—essential for postsecondary education and in which participants are deficient; and

(ii) The comprehensiveness of the applicant's plan for providing the activities and services listed in—

(A) Sections 645.10, 645.11, and 645.12 if the application is for a regular Upward Bound project; and

(B) Sections 645.10(c) and 645.13 if the application is for an Upward Bound Veterans project; and

(C) Section 645.14 if the application includes an educational component for participants of limited proficiency in English, in addition to a regular Upward Bound project or an Upward Bound Veterans project.

(h) *Resources and organization.* (15 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources and organization to the project.

(2) The Secretary looks for information that shows—

(i) The extent to which the applicant plans to publicize and orient residents of the target area, target schools, and the institutional community to the goals and objectives of the Upward Bound program; and

(ii) The extent to which the applicant has provided for the use of community and other resources to supplement authorized activities.

(20 U.S.C. 1221e–3(a)(1); 1070d, 1070d–1a)

§ 645.32 Prior experience.

For each applicant that has conducted an Upward Bound project within the previous three years, the Secretary—

(a) Reviews materials and documents, such as performance reports, evaluation reports, and site visit reports, for information that shows that the applicant has successfully carried out an Upward Bound project during that time;

(b) Looks for information that shows the extent of the applicant's success in meeting the performance standards listed in § 645.43; and

(c) Awards up to 30 additional points for this criterion.

(20 U.S.C. 1070d, 1070d–1a)

Subpart E—What Conditions Must be Met by a Grantee?

§ 645.40 Allowable costs.

Allowable project costs may include the following costs reasonably related to carrying out an Upward Bound project:

(a) In-service training of project staff if approved by the Secretary.

(b) The rental of space if space is not available at the host institution(s) and the space rented is not owned by the host institution(s).

(c)(1) Room and board expenses for Upward Bound participants for a summer residential component—computed on a weekly basis—if the weekly rate charged the Upward Bound project does not exceed the weekly rate the host institution charges regularly enrolled students at the institution for the summer session.

(2) If the host institution does not have a summer session operating at the some time as the Upward Bound project, the room and board rate—computed on a weekly basis—may be no higher than the rate the institution charges its regularly enrolled students during the academic year.

(d) Room and board for those persons responsible for dormitory supervision of participants during a residential summer component.

(e) Meal expenses for Upward Bound participants in a nonresidential summer component.

(f) Transportation, meals, and overnight accommodations for staff members when they are required to accompany participants in project activities, such as field trips, that are specifically approved by the Secretary in writing and in advance of those trips.

(g) Student activities fees.

(h) Admission fees to educational activities, museums, and other events that have as their purpose the intellectual, social, and cultural development of participants.

(i) Entertainment costs for one project-sponsored banquet or ceremony.

(j) Tuition costs for college credit courses at the host institution for participants in the Bridge Summer Component.

(k)(1) Accident insurance to cover any injuries to project participants while participating in a project activity; and

(2) Medical insurance for the project participant while participating full-time in the summer component.

(l) Courses in English language instruction for participants with limited proficiency in English if these classes are limited to project participants and if these classes are not otherwise available in the target area.

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(m) Educational field trips to places in resonable proximity to the project's location.

(n) Transportation costs of participants for regularly scheduled project activities.

(o)(1) Transportation costs for project-scheduled visits to the campus of the host institution by parents, foster parents, or legal guardians of participants; and

(2) Overnight accommodation costs for these persons if necessary because of the distance between their home and the campus.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:

(a) The duplicaton of services that are available to participants through—

(1) State, local, or private sources;

(2) The institution or agency sponsoring the project; or

(3) Other Federal programs.

(b) Research not directly related to the evaluation or improvement of the project.

(c) The purchase of any equipment, unless the grantee demonstrates to the Secretary's satisfaction that purchase is less expensive than renting.

(d) Meals for staff except as provided in § 645.40(d) and (f).

(e) Clothing.

(f) Room and board for administrative and instructional staff personnel who do not have responsibility for dormitory supervision of projects participants during a residential summer component unless these costs are approved by the Secretary.

(g) Room and board for participants in Upward Bound Veterans projects.

(h) The construction, renovation, or remodeling of any facilities.

(i) Tuition, stipends, or any other form of student financial support for project staff.

(j) Stipends for veterans.

(20 U.S.C. 1070d, 1070d–1a)

§ 645.42 Stipends.

For all participants who participate on an essentially full-time basis, an Upward Bound project shall provide stipends as follows:

(a) *Academic year component.*

(1) The stipend shall not exceed $40 per month during the academic year component.

(2) The grantee shall prorate the amount of the stipend according to the number of scheduled sessions in which the student participated during the month.

(b) *Summer component.*

(1) The stipend shall not exceed $15 per week during the summer component.

(2) In order to receive the stipend, the participant must show evidence of satisfactory participation in the project activities for the week, including—

(i) Regular attendance; and

(ii) Performance in accordance with standards established by the grantee and described in the application.

(20 U.S.C. 1070d. 1070d-1a)

§ 645.43 Performance standards [Reserved]

Note.—The Secretary will publish, as a separate Notice of Proposed Rulemaking, proposed performance standards.

Subpart F—What Are the Administrative responsibilities of a Grantee?

§ 645.50 Recordkeeping.

(a) A grantee shall keep records on the services provided to all participants and groups, including—

(1) Counseling activities, such as family contracts, career explorations, college visits, referrals, and assistance in course selections;

(2) Contacts with participants, services provided, measurements of progress, and reports that relate to the academic and other types of assistance provided the participants;

(3) Assistance to participants in applying for and gaining admission to postsecondary institutions; and

(4) Assistance to participants in applying for student financial aid.

(b) To document the progress of each participant, the grantee shall keep the following on file:

(1) The participant's name, age, sex, ethnic and racial background, telephone number, and permanent address.

(2) A medical consent form signed by the participant's parent or guardian.

(3) The information used to select the participant including—

(i) Documentation of the participant's eligibility to receive services;

(ii) Records of interviews; and

(iii) Copies of the participant's high school transcripts, aptitude and achievement test scores, interest inventories, and other diagnostic measures of the participant's academic strengths and weaknesses at the time of his or her entry into the project.

(4) An individualized plan of program support developed to improve the participant's skills.

(5) Documentation of follow-up on the participant, with particular emphasis on his or her postsecondary enrollment and status.

(6) Any recommendations made to the participant, on the completion of the project, regarding his or her educational and carreer potentials.

(7) The reasons for a participant's leaving the project if he or she left prior to enrollment in a postsecondary educational institution.

(c) Files for projects serving veterans shall include all of the records indicated in paragraphs (a) and (b) of this section other than the medical consent form required by §645.50(b)(2).

(20 U.S.C. 1070d, 1070d-1a)

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Wednesday
December 31, 1980

Part XV

Department of Education

Training Program for Special Programs Staff and Leadership Personnel

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DEPARTMENT OF EDUCATION

34 CFR Part 642

Training Program for Special Programs Staff and Leadership Personnel (Training Program)

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to adopt the regulations for the Training Program. The regulations are being adopted to reflect the statutory changes contained in the Education Amendments of 1980. The regulations will permit the funding of grants to meet the training needs of Special Programs Staff and Leadership Personnel.

DATES: Comments must be received on or before March 2, 1981.

Currently the Department of Education plans to hold public meetings in four cities. The tentative date for each meeting follows:

February 9, 1981—Washington, D.C.
February 11, 1981—Chicago, Illinois
February 17, 1981—San Francisco, California
February 19, 1981—Dallas, Texas

ADDRESSES: Comments should be addressed to Mary Kathleen Smith (Room 3514 ROB–3), Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

The public will be advised—through a notice published in the Federal Register—of the time and specific location of each public meeting listed in the Dates section of this Preamble.

FOR FURTHER INFORMATION CONTACT: Mary Kathleen Smith, Telephone No. (202) 245–2511.

SUPPLEMENTARY INFORMATION: On January 12, 1978, the Commissioner of Education published in the Federal Register the proposed regulations for the Training Program for Special Programs Staff and Leadership Personnel. The Commissioner subsequently decided that program regulations were not necessary to govern the Training Program, which was then a contract program. As a result, no final regulations were published.

The Education Amendments of 1980 changed the Training Program from a contract program to a discretionary grant program. These proposed regulations reflect this change as well as the other statutory changes made by the Amendments.

In organizing these proposed regulations, the Secretary has followed the format of the Education Department General Administrative Regulations (EDGAR). These changes reflect the Secretary's concern that the regulations be easy to understand and follow. The proposed regulations for the Special Programs for Students from Disadvantaged Backgrounds, of which the Training Program is a part are made consistent with these format changes.

These proposed regulations incorporate by reference 34 CFR Parts 75 and 77 of EDGAR; therefore, the regulations do not repeat certain types of information and requirements which are found in EDGAR. However, the general selection criteria found in EDGAR (34 CFR Part 75.202 through 75.206) have been repeated in these regulations for the convenience of the applicant (Section 642.31 (a) through (e)).

The Education Amendments of 1980 require the Secretary, when making grants for the Training Program, to consider the prior experience of service delivery under the Training Program by each applicant. The Secretary proposes to make "prior experience" one of the selection criteria for this program. The public is invited to comment on this approach and on the weighting of that criterion as well as that of the other selection criteria.

The Secretary intends to base the evaluation of prior experience on published performance standards. These performance standards have not yet been developed. The public is invited to submit suggestions for performance standards at this time. The Secretary will develop performance standards at a later date and the public will have the opportunity to comment on the specific standards when they are published as proposed rules.

In order to meet the training needs of local areas, the Secretary has allowed for some flexibility in these proposed regulations. The Secretary proposes to announce in the application notice published in the Federal Register the kinds and scope of training, the training topics, and the categories of individuals to be trained in any year. The Secretary would establish these parameters after consultation with regional and State professional association personnel who have special knowledge of the training needs of Special Programs staff and leadership personnel.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3514, ROB–3, 7th and D Streets, SW, Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.103, Training Program for Special Programs Staff and Leadership Personel)

Dated: 23 December 1980.

Shirley M. Hufstedler,
Secretary of Education.

The Secretary proposes to add the new Part 642 to Title 34 of the Code of Federal Regulations to read as follows:

PART 642—TRAINING PROGRAM FOR SPECIAL PROGRAMS STAFF AND LEADERSHIP PERSONNEL

Subpart A—General

Sec.
642.1 Training program for special programs staff and leadership personnel.
642.2 Eligible grantees.
642.3 Eligible project participants.
642.4 Regulations that apply to the training program.
642.5 Definitions that apply to the training program.

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

642.10 Kinds and scope of projects assisted under the training program.
642.11 Training program topics.
642.12 Consultation with regional and State professional associations.
642.13 Training activities and services.

Subpart C—How Does One Apply for a Grant?

642.20 How to apply for funds.

Subpart D—How Does the Secretary Make a Grant?

642.30 How the Secretary evaluates an application.
642.31 Selection criteria the Secretary uses.
642.32 Prior experience.
642.33 Geographic distribution.

Subpart E—What Conditions Must Be Met by a Grantee?

Sec.
642.40 Allowable costs.
642.41 Nonallowable costs.
642.42 Performance standards. [Reserved]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

642.50 Recordkeeping.

Authority: Secs. 417A and 417F of Title IV of the Higher Education Act of 1965, as amended by Sec. 405, Pub. L. 96–374, 94 Stat. 1407–1411 and 94 Stat. 1504.

Subpart A—General

§ 642.1 Training program for special programs staff and leadership personnel.

The Training Program for Special Programs Staff and Leadership Personnel—referred to in these regulations as Training Program—provides Federal financial assistance for projects that improve—

(a) The skills of persons employed or preparing for employment in projects under the Special Programs for Students from Disadvantaged Backgrounds;

(b) The skills of staff and leadership personnel who are directly involved in the education of participants served by Special Programs projects; and

(c) The operation of Special Programs projects.

(20 U.S.C. 1070d, 1070d–1d)

§ 642.2 Eligible grantees.

(a) The following are eligible to apply for a grant to carry out a Training Program project:

(1) Institutions of higher education.

(2) Combinations of institutions of higher education.

(3) Public and nonprofit private agencies and organizations.

(b) Unless it is applying for a grant for a Training Program project that is national or inter-regional, an applicant may apply for a grant only for a project to serve the region or State, as applicable, in which the applicant is located.

(20 U.S.C. 1070d, 1070d–1d)

§ 642.3 Eligible project participants.

(a) The following are eligible for training under this program:

(1) Project directors and staff members of Special Programs projects who are employed to deliver services to participants in Special Programs projects.

(2) Staff and leadership personnel who are—

(i) Employed by institutions, agencies, or organizations that have been awarded grants to carry out a Special Programs project; and

(ii) Directly involved in the delivery of services to participants served by these Special Programs projects.

(3) Individuals who are preparing for employment as staff or leadership personnel in Special Programs projects.

(4) Other staff and leadership personnel who are directly involved in the education or participants served by Special Programs projects.

(b) Unless an individual is participating under this program in training that is national or inter-regional—

(1) The individual must be employed by or corrected with a Special Programs project in the State or region in which the Training Program project is conducted; or

(2) If the individual is preparing for employment in a Special Programs project, the individual must currently reside in the State or region in which the Training Program project is conducted.

(c)(1) The Secretary may each year select—from among the categories of persons listed in paragraph (a) of this section—the category or categories of persons eligible to receive training under this program during that year.

(2) The Secretary announces this selection in the application notice published in the Federal Register.

(20 U.S.C. 1070d, 1070d–1d)

§ 642.4 Regulations that apply to the training program.

The following regulations apply to the Training Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and in 34 CFR Part 77 (General).

(b) The regulations in this Part 642.

(20 U.S.C. 1221e–3(a)(1))

§ 642.5 Definitions that apply to the training program.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant	Nonprofit
Application	Private
Award	Project
Budget	Project period
EDGAR	Public
Equipment	Secondary school
Facilities	Secretary
Fiscal year	State
Grant	Supplies
Grantee	

(b) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Higher Education Act of 1965, as amended.

(20 U.S.C. 1001 et. seq.)

"Combination of institutions of higher education" means:

(1) A group of institutions of higher education that have entered into a cooperative arrangement to carry out a common objective; or

(2) A public or nonprofit private agency, organization, or institution designated or created by a group of institutions of higher education to carry out a common objective on their behalf.

(20 U.S.C. 1141(j))

"Institution of higher education" means an educational institution as defined in Sections 1201(a) and 481 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1141(a); 1088)

"Leadership personnel" are persons directing or providing services to individuals participating in Special Programs projects. These persons include—but are not limited to—teachers, trainers of teachers, counselors, secondary and postsecondary school administrators, supervisors, researchers, State Educational consultants, and school psychologists.

(20 U.S.C. 1070d, 1070d–1d)

"Region" means any one of the following 10 regions of the United States:

(1) Region I includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

(2) Region II includes New Jersey, New York, Puerto Rico, the Virgin Islands.

(3) Region III includes Delaware, Maryland, Pennsylvania, Virginia, District of Columbia.

(4) Region IV includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

(5) Region V includes Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

(6) Region VI includes Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

(7) Region VII includes Iowa, Kansas, Missouri, Nebraska.

(8) Region VIII includes Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

(9) Region IX includes Arizona, California, Hawaii, Nevada, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam.

(10) Region X includes Alaska, Idaho, Oregon, Washington.

(20 U.S.C. 1070d, 1070d–1d)

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Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 642.10 Kinds and scope of projects assisted under the training program.

(a) Training Program projects may include—

(1) Conferences;
(2) Internships;
(3) Seminars; and
(4) Workshops.

(b) The scope of the Training Program projects may be—

(1) State;
(2) Regional;
(3) Inter-regional; or
(4) National.

(c)(1) The Secretary may each year select—from among the kinds and scope of training in paragraphs (a) and (b) of this section—the kinds and scope of training that may be considered for funding in that year.

(2) The Secretary announces this selection in the application notice of the **Federal Register.**

(20 U.S.C. 1070d, 1070d–1d)

§ 642.11 Training program topics.

(a) Training Program topics may include—

(1) Project evaluation;
(2) Recordkeeping, data collection, analysis, and dissemination;
(3) Assessments of the needs of a project, its staff, and its participants;
(4) Curricula design;
(5) Instructional models;
(6) Techniques of instruction;
(7) In-service training approaches and programs;
(8) Theories of counseling;
(9) Techniques of counseling;
(10) Career counseling;
(11) Tutorial theories;
(12) Tutorial models;
(13) Management skills;
(14) Program management;
(15) Staffing;
(16) Fiscal management and reporting;
(17) The relationship between the Special Programs project and the Department of Education;
(18) Tests and measurements;
(19) Orientation to other programs and projects that can supplement or complement a Special Programs project; and
(20) Techniques of coordination and referral.

(b)(1) The Secretary may each year select—from among the topics in paragraph (a) of this section—the specific topics of training that may be considered for funding in that year.

(2) The Secretary announces this selection in the application notice in the **Federal Register.**

(20 U.S.C. 1070d, 1070d–1d)

§ 642.12 Consultation with regional and State professional associations.

Before announcing the categories of personnel, kinds and scope of training, and training topics to be funded in any given fiscal year, the Secretary consults with persons of regional and State professional associations having special knowledge of the needs and problems of Special Programs projects and of the needs of persons working with participants of the Special Programs projects.

(20 U.S.C. 1070d, 1070d–1d)

§ 642.13 Training activities and services.

Each Training Program project must—

(a) Identify specific strengths, needs, and weaknesses of project participants in terms of their job or potential job in the Special Programs;

(b) If not otherwise available, design and develop training materials, methods, and programs to meet the identified needs;

(c) Provide training based on the materials, methods, and programs;

(d) Evaluate the effectiveness of the training materials, methods, and programs in meeting the needs of the participants. The evaluation should include follow-up on the participants;

(e) Assure that the project will cooperate with any followup studies of project participants conducted or authorized by the Secretary;

(f) Provide for the dissemination of the results of the project;

(g) Make available—to other Training Program projects and to Special Programs projects—materials, techniques, and results of the project;

(h) Engage a staff that is commensurate with the workload and time needed to carry out the training activities;

(i) Ensure that, during the project period, participants in the Training Progrma project are not used in research being conducted by project staff or other individuals; and

(j) Assure that training materials and content comply with the regulations and policies of the Special Programs.

(20 U.S.C. 1070d, 1070d–1d)

Subpart C—How Does One Apply for a Grant?

§ 642.20 How to apply for funds.

To apply for a new grant, an applicant shall follow the procedures and meet the requirements contained in EDGAR, 34 CFR Part 75, Subpart C.

(20 U.S.C. 1221e–3(a)(1); 1070d, 1070d-1d)

Subpart D—How Does the Secretary Make a Grant?

§ 642.30 How the Secretary evaluates an application.

(a) The Secretary evaluates an application on the basis of the criteria in § 642.31.

(1) The Secretary awards up to 100 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in the parentheses next to the heading of that criterion.

(b) In addition, for applicants that have conducted a Training Program project within the previous three years, the Secretary considers the prior experience of the applicant as indicated in § 642.32. The Secretary awards up to 30 additional points for prior experience.

(20 U.S.C. 1070d, 1070d–1d)

§ 642.31 Selection criteria the Secretary uses.

The Secretary uses the following criteria—in paragraphs (a) through (j)—to evaluate applications for new awards:

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for this project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Project design.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the project design.

(2) The Secretary looks for information that shows—

(i) The extent to which the techniques are designed specifically to enable project participants to better meet the needs of those served by the Special Programs;

(ii) The extent to which the training objectives are—

(A) Clear and specific;

(B) Measurable; and

(C) Related to the duties and responsibilities of the training participants;

(iii) The extent to which provision is made for making materials, techniques, and results of the project available to Special Programs projects and to other Training Program projects; and

(iv) The comprehensiveness of the applicant's plan for providing the activities and services required by § 642.13.

(g) *Benefit and impact.* (10 points)

(1) The Secretary reviews each application for information that shows that the training will benefit the participants and affect those served by the Special Programs.

(2) The Secretary looks for information that shows—

(i) The extent to which the training will increase the qualifications and skills of staff and leadership personnel who are employed in or are preparing for employment in the Special Programs;

(ii) The extent to which the training will increase the participants' knowledge and understanding of the objectives of the Special Programs and of the ways of meeting the needs of disadvantaged students;

(iii) The extent to which the training will improve the operation of Special Programs projects; and

(iv) The extent to which the training will complement and not duplicate the training efforts of the Department of Education.

(h) *Commitment.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant is committed to the education of disadvantaged students in general and to the project's objectives in particular.

(2) To determine the extent of commitment, the Secretary considers—

(i) Relevant excerpts from official documents, such as course catalogs and the applicant's charter, constitution, and by-laws, which stipulate that the applicant is committed to the education of disadvantaged students and to the training project's objectives; and

(ii) Efforts by the applicant to improve the educational opportunities of disadvantaged students and its accomplishments in this area.

(i) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows a need for a Training Program project.

(2) The Secretary looks for information that shows the extent to which the project addresses a specific need for training not addressed by other training projects available to the training participants.

(j) *Staff and consultants.* (10 points)

(1) The Secretary reviews each application to determine the quality and diversity of the staff and consultants that the applicant plans to use.

(2) The Secretary looks for information that shows—

(i) The quality of the applicant's plan to recruit and employ a diverse group of qualified staff and consultants who reflect the ethnic and racial diversity of the training participants and projects to be involved in the training; and

(ii) The extent to which the applicant will recruit and employ staff and consultants who are knowledgeable of the Special Programs and of the needs of disadvantaged students served in the Special Programs.

(20 U.S.C. 1221e–3(a)(1); 1070d, 1070d–1d)

§ 642.32 Prior experience.

For each applicant that has conducted a Training Program project within the previous three years, the Secretary—

(a) Reviews materials and documents, such as performance reports, evaluation reports, and site visit reports, for information that shows that the applicant has successfully carried out a Training Program project during that time;

(b) Looks for information that shows the extent of the applicant's success in meeting the performance standards listed in § 642.42; and

(c) Awards up to 30 additional points for this criterion.

(20 U.S.C. 1070d, 1070d–1d)

§ 642.33 Geographic distribution.

Except when making grants that are national or interregional in scope, the Secretary funds one Training Program grant per region before funding additional grants in any regional if—

(a) There are sufficient funds to permit the funding of at least 10 grants;

(b) There is an eligible application from the region; and

(c) There is a need for a Training Program project in the region.

(20 U.S.C. 1070d, 1070d–1d)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 642.40 Allowable costs.

Allowable project costs may include the following costs reasonably related to carrying out a Training Program project:

(a) Rental of space, if space is not available at the sponsoring institution

and if the space is not owned by the sponsoring institution.
(b) Printing.
(c) Postage.
(d) Purchase or rental of equipment if approved in writing by the Secretary.
(e) Consumable supplies
(f) Transportation costs for participants, staff, and consultants.
(g) Lodging and subsistence costs for participants, staff, and consultants.
(h) Fees for consultants.
(i) Honorariums for keynote speakers.
(j) Other costs that are specifically approved in advance and in writing by the Secretary.

(20 U.S.C. 1070d, 1070d–1d)

§ 642.41 Nonallowable costs.

Costs that may not be charged against a grant under this program include the following:
(a) Research not directly related to the evaluation or improvement of the project.
(b) The construction, renovation, or remodeling of any facilities.
(c) Stipends, tuition fees, and other direct financial assistance to trainees other than those participating in internships.

(20 U.S.C. 1070d, 1070d–1d)

§ 642.42 Performance standards. [Reserved]

[The Secretary will publish a separate notice of proposed rulemaking proposed performance standards.]

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 642.50 Recordkeeping.

Each project shall maintain records of project activities and services. The records shall include—
(a) The number of training sessions;
(b) The number of participants attending each session;
(c) The number of consultants used at each session;
(d) The ethnic and racial distribution of participants;
(e) The ethnic and racial distribution of staff and consultants;
(f) The distribution of participants by types of Special Programs projects;
(g) The materials provided to the participants; and
(h) The evaluations, including participant evaluations, of each training session.

(20 U.S.C. 1070d, 1070d–1d)

[FR Doc. 80–40529 Filed 12–30–80; 8:45 am]
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federal register

Wednesday
December 31, 1980

Part XVI

Department of Education

National Graduate Fellows Program

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DEPARTMENT OF EDUCATION

34 CFR Part 650

National Graduate Fellows Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary is issuing proposed regulations for the National Graduate Fellows Program. The purpose of these regulations is to implement Title IX, Part C of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. These regulations specify how an individual applies for a fellowship and what conditions must be met by a fellow for continued eligibility. In addition, these regulations describe the responsibilities of the National Graduate Fellowship Program Board (the Fellowship Board).

DATES: Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulations on or before March 2, 1981.

ADDRESSES: Comments should be addressed to: Donald N. Bigelow, Chief, Graduate Training Branch, Division of Training and Facilities, (Room 3060, ROB–3), 400 Maryland Avenue SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Donald N. Bigelow, telephone: (202) 245–2347.

SUPPLEMENTARY INFORMATION: The National Graduate Fellow Program is a new program authorized under Title IX, Part C, of the Higher Education Act, as amended. The statute provides for fellowships to be awarded directly to students to study at the doctoral level in selected fields of the arts, humanities, and social sciences. Many of the responsibilities under this program regarding procedures and criteria for selection of fellows and general policies for the program and are vested in the Fellowship Board. The Board is composed of individual representatives of both public and private institutions of higher education appointed by the President. These proposed regulations do not address matters that will have to be addressed by the Fellowship Board.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. They are also invited to make suggestions on matters to be decided by the Fellowship Board, including general policies for the program, the fields in which fellowships are to be awarded, the number of fellowships in each designated field, and the criteria for selection of fellows.

Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before the 60th day after publication of this document will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3060, ROB#3, 7th and D Streets SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

The Department particularly requests comments on whether the proposed regulations in this document would require the submission of information that is already being gathered by or is available for any other agency or authority of the United States

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: December 23, 1980.

(Catalog of Federal Domestic Assistance number has not been assigned)

Shirley M. Hufstedler,

Secretary of Education.

The Secretary proposes to amend Part 650 of Title 34 of the Code of Federal Regulations to read as follows:

PART 650—NATIONAL GRADUATE FELLOWS PROGRAM

Subpart A—General

Sec.

650.1 National Graduate Fellows Program.
650.2 Eligible parties.
650.3 Definitions.

Subpart B—How Does an Individual Apply for a Fellowship?

650.10 How to apply for funds.

Subpart C—How are Fellows Selected?

650.20 Procedures for selection.
650.21 Selection criteria.

Subpart D—What Conditions Have to be Met by Fellows?

650.30 Where fellows may study.
650.31 Tenure of fellowship.
650.32 Fellowship conditions.
650.33 Interruption of tenure.
650.34 Change in award.

Subpart E—What are the Administrative Responsibilities of the Institution?

650.40 Amount of fellowship.
650.41 Records and reports.

Authority: Part C of Title IX of the Higher Education Act, as amended by Pub. L. 96–374 (94 Stat. 1367, 1487; 20 U.S.C. 1134h–1134k).

Subpart A—General

§ 650.1 National Graduate Fellows Program.

The Secretary may award up to 450 competitive fellowships annually for study at the doctoral level in selected fields of the arts, humanities, and social sciences.

(20 U.S.C. 1134h(a); H. Conf. Rept. 96–1337 at 194)

§ 650.2 Eligible parties.

(a) Fellowships are awarded only to students of superior ability selected on the basis of demonstrated achievement and exceptional promise, as measured by their academic record, recommendations regarding their qualifications, and other evidence.

(b) At the time of application, a student may not have begun graduate study in the field for which application is made but shall be eligible to begin graduate study not later than the next academic year.

(c) An eligible student shall be a national of the United States or reside in the United States for other than a temporary purpose and intend to become a permanent resident or be a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands.

§ 650.3 Definitions.

The following definitions apply to this Part:

"Act" means the Higher Education Act of 1965, as amended.

"Fellow" means a fellowship recipient.

"Fellowship" means an award made to a person for graduate study under Title IX–C of the Act.

"Fellowship Board" means the National Graduate Fellowship Program Board composed of individual representatives of both public and private institutions of higher education appointed by the President to establish general policies for the program and oversee its operation.

"Secretary" means the Secretary of Education, or designee.

"Stipend" means the amount paid to an individual awarded a fellowship, including an allowance for subsistence and other expenses for the individual and his or her dependents, not to exceed the fellow's demonstrated level of need.

(20 U.S.C. 1134k)

Subpart B—How does an individual Apply for a Fellowship?

§ 650.10 How to apply for funds.

Students apply directly to the Secretary for a fellowship award in response to an application notice and in accordance with forms and instructions provided by the Secretary.

(20 U.S.C. 1134h)

Subpart C—How are Fellows Selected?

§ 650.20 Procedures for selection.

The Board annually selects fields in which fellowships are to be awarded, determines the number of fellowships in each field, and appoints distinguished panels to select the fellows in each field.

(20 U.S.C. 1134i(a)(2))

§ 650.21 Selection criteria.

The Board establishes criteria for selection of fellows.

Subpart D—What Conditions Have to be Met by Fellows?

§ 650.30 Where fellows may study.

Each fellow is entitled to use the fellowship in a doctoral program at any accredited institution of higher education to which the recipient applies and is accepted for graduate study.

(20 U.S.C. 1134i(c))

§ 650.31 Tenure of fellowship.

An individual may receive a fellowship under this program for up to 48 months. Each award is for a period of one year and is subject to renewal within the 48 month period.

(20 U.S.C. 1134h(a))

§ 650.32 Fellowship conditions.

In order to continue to receive payments under a fellowship, a fellow must:

(a) Maintain satisfactory progress as determined by the institution of higher education at which the fellow is enrolled;

(b) Devote essentially full time to study or research in the field in which the fellowship was awarded; and

(c) Not engage in gainful employment during the period of the fellowship, except on a part-time basis in teaching, research, or similar activities approved by the Secretary.

(20 U.S.C. 1134k(a))

§ 650.33 Interruption of tenure.

(a) A fellow may take a leave of absence for a period of up to 12 months for the purpose of work, travel, or independent study away from the campus if:

(1) The leave of absence is approved by the institution at which the fellow is enrolled and by the Secretary; and

(2) The work, travel, or independent study is supportive of the fellow's academic program.

(b) The Secretary makes no payemnts to the fellow or the institution during this period.

(20 U.S.C. 1134h(b))

§ 650.34 Change in award.

After an award is made, any change in the field of study or institution requires prior approval by the Secretary.

(20 U.S.C. 1134h)

Subpart E—What are the Administrative Responsibilities of the Institution?

§ 650.40 Amount of fellowship.

(a) The Secretary establishes a maximum stipend level, institutional allowance, and payment procedures.

(b) The amount of the fellowship will be determined according to the fellow's demonstrated financial need. With the advice of the Board, the Secretary develops and publishes appropriate measures and procedures to determine financial need.

(20 U.S.C. 1134j(b))

§ 650.41 Records and reports.

(a) Each individual who is awarded a fellowship shall keep such records and submit such reports as are required by the Secretary.

(b) Such reports shall include a certification from an appropriate official at the institution of higher education, library, archive, or other research center approved by the Secretary, stating that the fellow is making satisfactory progress in and is devoting essentially full time to the program for which the fellowship was awarded.

(c) Such certification from the institution of higher education must indicate that the fellow is not engaging in gainful employment other than part-time employment (approved by the institution) in teaching, research, or similar activities.

(20 U.S.C. 1134k(b))

[FR Doc. 80-40528 Filed 12-30-80; 8:45 am]

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Wednesday
December 31, 1980

Part XVII

Department of Education

Cooperative Education Program

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DEPARTMENT OF EDUCATION

34 CFR Parts 631, 632, 633, 634, and 635

Cooperative Education Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Cooperative Education Program. The regulations are being amended to reflect the statutory changes contained in the Education Amendments of 1980. The regulations establish uniformity in the administration of projects conducted with grants under the Cooperative Education Program. They also define terms and establish minimum requirements. The criteria place emphases on the priorities contained in each part to indicate the emphasis of the various types of projects. The regulations are divided into five parts: A general part containing provisions common to the several components of the Cooperative Education Program, and separate parts containing provisions specific to each component.

DATES: Comments must be received on or before February 17, 1981.

ADDRESSES: Comments should be addressed to Ms. Barbara W. Freeman, Cooperative Education Program, U.S. Department of Education (Room 3053 ROB–3), 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Barbara W. Freeman. Telephone: (202) 245–2146.

SUPPLEMENTARY INFORMATION: Administration grants are awarded to institutions of higher education and combinations of institutions of higher education. The purpose of these grants is to enable grantees to enrich the quality of postsecondary education by providing educationally related off-campus work experiences for their students. These work experiences offer students opportunities to become better prepared to achieve their educational or career objectives, as well as opportunities to earn funds needed for their educational pursuits. Grantees may carry out projects that provide for either or both alternating or parallel periods of academic study and public or private employment. Thus, projects carried out under these grants bring education, business, and industry into direct cooperation to develop an educated and trained labor force.

Demonstration grants are awarded to institutions of higher education, combinations of institutions of higher education, and, in certain circumstances, public and private nonprofit agencies and organizations. The purpose of the grants is to help recipients demonstrate or explore the feasibility or value of Cooperative Education. Demonstration grants are awarded primarily for the development and operation of comprehensive Cooperative Education projects. These projects involve structured linkages between institutions of postsecondary education and a variety of employers to create long-term resources for and commitments to Cooperative Education. Projects carried out under these grants emphasize the relationship between academic study and the world of work.

Demonstration grants may also be awarded to support Cooperative Education—

For special populations, such as the handicapped;

In isolated locations;

In international locations; and

To make cooperative education vailable throughout an educational program, including graduate or professional training.

Research grants are awarded to institutions of higher education, combinations of institutions of higher education, and public and nonprofit private agencies and organizations. Research grants are awarded for studies that have broad implications and application to the larger Cooperative Education community rather than to the immediate needs of an individual institution. Grants may be awarded for but not limited to—

Experimental or developmental research;

Cost-benefit studies;

Testing methods of evaluating work experiences in academic curricula; or

Research specific to the needs of varied student populations served in Cooperative Education projects.

Training grants are awarded to institutions of higher education, combinations of institutions of higher education, and public and nonprofit private agencies and organizations. Training grants are awarded to provide a specialized experience for a carefully selected group of individuals who currently participate, or are interested in participating, in the administration of Cooperative Education projects. These participants may include—

Directors or coordinators of Cooperative Education projects;

Chief administrators and faculty of institutions of postsecondary education;

Employers or prospective employers of students in Cooperative Education;

Guidance and counseling personnel in secondary and postsecondary schools; and

Members of professional or scholarly organizations.

Grantees offer training to meet the needs of various participants—from those persons new to the concept of Cooperative Education to those with years of experience who wish to expand their efforts to have a greater influence on their institutions or organization to foster the goals of Cooperative Education.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before February 17, 1981 will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3053 ROB–3, 7th and D Streets, SW, Washington, D.C., between the hours of 8:30 and 4:00 p.m., Monday through Friday of each week, except Federal Holidays.

Assessment of Educational Impact

The Department particularly requests comments on whether the proposed regulations in this document would require transmission of information that is already being gathered by or is available from any other agency or authority of the United States.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: December 23, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.055, Cooperative Education Program; 84.055A, Cooperative Education—Administration; 84.055B, Cooperative Education—Demonstration; 84.055C, Cooperative Education—Research; 84.055D, Cooperative Education—Training)

The Secretary proposes the following regulations to govern the administration of the Cooperative Education Program.

Part 631 is revised to read as follows:

PART 631—COOPERATIVE EDUCATION PROGRAM

Subpart A—General

Sec.
631.1 The Cooperative Education Program.
631.2 Regulations that apply to the Cooperative Education Program.
631.3 Definitions that apply to the Cooperative Education Program.

Subpart B—Projects the Department of Education Assists Under this Program

631.10 Administrative projects.
631.11 Demonstration projects.
631.12 Research projects.
631.13 Training projects.

Subpart C—How to Apply for a Grant

631.20 Limitation on number of applications.
631.21 Applications from combinations of institutions of higher education.
631.22 Application information.

Subpart D—How the Secretary Makes a Grant

631.30 Evaluation of applications from combination of institutions of higher education.
631.31 How the Secretary makes a grant.
631.32 Selection criteria the Secretary uses.
631.33 Minimal acceptable score.

Subpart E—What Conditions Must Be Met by a Grantee?

631.40 Status of project director.
631.41 Allowable costs.
631.42 Unallowable costs.
631.43 Coordination with other Federal programs.
631.44 Evaluation by grantee.

Authority: Title VIII of the Higher Education Act of 1965, as amended, Pub. L. 96–374 (20 U.S.C. 1133–1133b), unless otherwise noted.

Subpart A—General

§ 631.1 The Cooperative Education Program.

The Cooperative Education Program has four distinctive components: administration, demonstration, research, and training. The goal of each component is to ensure that institutions of higher education are assisted in providing students an opportunity to gain career exposure in work experiences closely related to their academic and career pursuits.

The four components are administered in accordance with this part, as well as the following parts:

34 CFR Part 632—Cooperative Education—Administration

34 CFR Part 633—Cooperative Education—Demonstration

34 CFR Part 634—Cooperative Education—Research

34 CFR Part 635—Cooperative Education—Training

(20 U.S.C. 1133)

§ 631.2 Regulations that apply to the Cooperative Education Program.

The following regulations apply to the Cooperative Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 75 (Direct Grant Programs) and 34 CFR Part 77 (General).

(b) The regulations in this Part 631, and in 34 CFR Parts 632, 633, 634, and 635.

(20 U.S.C. 1221–3(a)(1), 1133)

§ 631.3 Definitions that apply to the Cooperative Education Program.

(a) Definitions in EDGAR. The following terms used in 34 CFR Parts 631 through 635 are defined in 34 CFR Part 77.

Applicant.
Application.
Contract.
Equipment.
Grant.
Grantee.
Nonprofit.
Private.
Project.
Secretary.
State.

(b) *Definitions that apply to the program components.*

The following definitions apply to terms used in 34 CFR Parts 631 through 635.

"Acts" means Title VIII of the Higher Education Act of 1965, as amended.

"Alternating periods of study and employment" means a program at an institution in which a student engaged in rotating periods of classroom study and supervised employment in a valid Cooperative Education project, each period lasting for at least a quarter or semester term.

"Additive credit" means the credit earned at an institution of higher education for the work experience is in addition to the credits required for the academic work to earn a degree.

"Combination of institutions of higher education" means a group of institutions of higher education, as defined in Section 1201(a) of the Higher Education Act of 1965, as amended, that has entered into a cooperative arrangement for the purpose of carrying out a common objective.

"Comprehensive Cooperative Education project" means a Cooperative Education project in an institution of higher education that—

(1) Involves all or nearly all academic disciplines or major units of the institution;

(2) Serves a student population that is diverse by reason of age, sex, ethnic or racial background, or physical ability;

(3) Offers alternating or parallel periods of study and employment with a variety of employers;

(4) Acts as a liaison between selected feeder high schools and the institution's admissions office to apprise high school students of the availability and advantages of Cooperative Education; and

(5) Plans to institutionalize Cooperative Education into the academic and administrative practices and policies of the institution.

"Cooperative education" means an educational approach that provides planned alternating or parallel periods of classroom study and supervised public or private employment in which—

(1) There is a written training agreement between the institution of higher education, student, and employee;

(2) The work experience is related to a student's academic study or career goals;

(3) The rotation between academic study and work is planned and supervised to further the student's education and employability; and

(4) Students are employed and compensated in conformity with Federal, State, and local laws.

"Experiential learning" means the acquisition of knowledge, skill, or practice by direct observation of or participation in activities.

"Extended day" means the pursuit of academic study in addition to full or part-time employment in a job not acquired through the auspices and control of a Cooperative Education project.

"Institution of higher education" means an institution of higher education as defined in Section 1201(a) of the Higher Education Act of 1965, as amended.

"Internship" means a one-time work experience in an assignment—

(1) That is related to a student's academic or career goals; and

(2) For which a student may or may not receive compensation.

"Nonadditive credit" means the credit earned at an institution of higher education for the work experience is included in the credits awarded for the academic work to earn a degree.

"Parallel periods of study and employment" means a program at an institution in which a student engages in both classroom study and supervised employment, with the study and employment having nearly equal significance during the course of the school day or the school week.

"Student" means a person—

(1) Enrolled in a postsecondary institution other than by correspondence;

(2) Enrolled in a degree program of not less than two years; and

(3) Carrying at least half the academic workload normally required of persons who are full-time degree candidates.

"Unit of an institution of higher education" means the organizational entity that has the final, noncentral administrative authority to recommend or administer the requirements, standards, and credits necessary to earn degrees in one or more of the academic majors awarded by the institution. In a university, unit means a college or its equivalent within the university. In a four-year college, unit means a school or its equivalent within the college. In a two-year college, unit means a department or division, whichever is the higher level.

(20 U.S.C. 1221c–3(a)(1); 1133)

Subpart B—Projects the Department of Education Assists Under This Program

§ 631.10 Administrative projects.

Administration projects enable institutions to provide students an opportunity to pursue alternating or parallel periods of academic study with supervised off-campus employment related to their academic majors or career goals. Projects carried out under these grants bring education, business, and industry into direct cooperation to develop educated and trained manpower.

(20 U.S.C. 1133a)

§ 631.11 Demonstration projects.

Demonstration grants are awarded primarily to provide Federal financial assistance for projects designed either to—

(a) Demonstrate the feasibility of expanding Cooperative Education in an institution to encompass nearly all academic departments or disciplines and a significant majority of a diverse student population; or

(b) Explore the feasibility of instituting innovative methods for carrying out Cooperative Education projects in various geographic setting, and in various types and sizes of institutions to meet the special problems or needs of these populations.

(20 U.S.C. 1133b)

§ 631.12 Research projects.

Research grants are awarded for studies that have broad implications for and application to the entire Cooperative Education community including but not limited to students, institutions, and employers rather than to the immediate needs of an individual institution. Grants may be awarded for, but not limited to, experimental or developmental research; cost-benefit studies; tests of methods of evaluating work experiences in academic curricula; or research specific to the needs of the varied student populations that are served in Cooperative Education projects.

(20 U.S.C. 1133b)

§ 631.13 Training projects.

Training grants are awarded to provide a specialized experience for a carefully selected group of individuals who currently participate, or are interested in participating, in the administration of Cooperative Education projects.

(20 U.S.C. 1133b)

Subpart C—How to Apply for a Grant

§ 631.20 Limitation on number of applications.

(a) The Secretary evaluates only one application for one of the four components under the Cooperative Education Program from an eligible applicant.

(b) If the Secretary receives more than one application for a specific component from the same applicant, the Secretary regards the first application from the applicant as the official application.

(c) Each application must be signed by the chief executive officers of the institution or organization.

(20 U.S.C. 1133)

§ 631.21 Applications from combinations of institutions of higher education.

In addition to the requirements specified in 34 CFR § 75.107 and 34 CFR 75.127 through § 75.129, an application from a combination of institutions of higher education must include, for each member institution, the following:

(a) A certification of support for the proposed project from the chief executive officer;

(b) A detailed narrative budget for each year of the proposed project period, certified by the chief fiscal officer, including the purposes of staff travel and explanation of fringe benefits in excess of 20 percent of the total costs of personnel; and

(c) A narrative description of the expected benefits that will be derived by the member of institution because of participation as a member of a combination of institutions of higher education.

(20 U.S.C. 1133)

§ 631.22 Application information.

In addition to the information specified in 34 CFR 75.107, an application must contain a detailed narrative budget for each year of the proposed project, including the purposes of staff travel, the purposes for the use of consultants, and an explanation of payment of fringe benefits in excess of 20 percent of the total costs of personnel.

(20 U.S.C. 1133)

Subpart D—How the Secretary Makes a Grant.

§ 631.30 Evaluation of applications from combinations of institutions of higher education.

(a) The Secretary evaluates an application from a combination of institutions of higher education as a single application.

(b) The Secretary does not give member institutions of a group individual rating scores for the applicable selection criteria.

(20 U.S.C. 1133)

§ 631.31 How the Secretary makes a grant.

(a) The Secretary evaluates an application on the basis of the selection criteria in 34 CFR 631.32 and in the appropriate part governing the component for which an application is made.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses following the selection criteria in each of the nest four parts.

(20 U.S.C. 1133)

§ 631.32 Selection criteria the Secretary uses.

The Secretary uses the following criteria in evaluating all applications for grants under Title VIII:

(a) *Plan of operation.*

(1) The Secretary reviews each application for information that show the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) The high quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under-represented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons: and

(D) The elderly.

(b) *Quality of key personnel.*

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine personnel qualifications, the Secretary considers evidence of past experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.*

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the projects activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.*

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR § 75.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.*

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The facilities that the applicant plans to use are adequate; and

(if) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 1221e-3(a)(1))

§ 631.33 Minimal acceptable score.

The Secretary will not five further consideration for funding to any application that receives an average score below 50 points from the panel of experts in the review process conducted in accordance with 34 CFR 75.217.

(20 U.S.C. 1133)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 631.40 Status of project director.

In addition to the requirements of 34 CFR 75.510, the project director or principal investigator shall be full-time, unless the full-time status is waived by the Secretary in accordance with 34 CFR 75.511.

(20 U.S.C. 1133)

§ 631.41 Allowable costs.

A grantee may pay those costs that are necessary and reasonable for proper and efficient administration of its project. Costs for activities may include, but are not limited to, the following:

(a) Release or overload time for faculty to help administer the program in such areas as—

(1) Student counseling and supervision;

(2) Job development, location, and placement; or

(3) Promotional activities for Cooperative Education.

(b) Conducting Cooperative Education seminars or courses for students.

(c) Student level, if a student is a member of the advisory board for the project.

(d) Services of consultants and trainers.

(e) In-service training related to Cooperative Education.

(f) Registration fees for training sessions sponsored by Cooperative Education.

(g) Travel and per diem costs for unpaid consultants, such as key personnel of Cooperative Education projects.

(h) Development, printing, and dissemination of materials related to the project.

(i) Project evaluation;

(j) Graduate students to serve as research assistants.

(k) Computer costs, if specifically approved by the Secretary.

(l) Reproduction of illustrative materials for small-scale classroom use.

(m) Dissemination of project results.

(20 U.S.C. 1133)

§ 631.42 Unallowable costs.

A grantee may not use its grant to pay the following costs:

(a) Compensation of students for work experiences or for travel cost to and from the work site;

(b) Financial assistance to students to meet educational costs;

(c) Teaching salaries for academic courses.

(d) Consultant fees or honoraria to key personnel in Cooperative Education projects who are salaried under Title VIII or any other Federal program;

(e) Purchase or lease of equipment, unless specifically authorized by the Secretary;

(f) Materials designed as a recruitment instrument for an individual institution;

(g) Development or production of audio-visual materials, unless specifically authorized by the Secretary.

(h) Individual membership fees in professional organizations.

(i) Activities associated with lobbying before Federal, State, and local legislative bodies.

(20 U.S.C. 1133)

§ 631.43 Coordination with other Federal programs.

(a) In accordance with 34 CFR 75.580, a grantee shall not duplicate activities funded under Title III of the Higher Education Act, as amended, or under the College Work-Study Program, Title IV, Part C, of the Higher Education Act, as amended.

(b) If the grantee has other projects funded under the Cooperative Education Program, the grantee shall, to the greatest extent possible, coordinate facilities, staff, supplies, telephone services, and similar operations.

(20 U.S.C. 1133)

§ 631.44 Evaluation by grantee.

In addition to the requirements of 34 CFR 75.590 relating to a self-assessment evaluation, a grantee shall provide for an outside summative evaluation by an independent consultant during each budget period at such times and in such manner as may be specified by the Secretary.

(20 U.S.C. 1133)

The Secretary proposes the following regulations to govern administration grants under the Cooperative Education Program.

Part 632 is added to read as follows:

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PART 632—COOPERATIVE EDUCATION PROGRAM—ADMINISTRATION

Subpart A—General

Sec.
632.1 The Cooperative Education Program—Administration.
632.2 Eligible applicants.
632.3 Eligible students.

Subpart B—Projects the Department of Education Assists Under this Program

632.10 Projects with alternating periods of study and employment.
632.11 Projects with parallel periods of study and employments.
632.12 Ineligible projects.

Subpart C—How to Apply for a Grant

632.20 Application information.
632.21 Certification of matching funds.

Subpart D—How the Secretary Makes a Grant

632.30 Limit on years of participation.
632.31 Funding priorities.
632.32 Competition among equals.
632.33 How the Secretary makes a grant.
632.34 Selection criteria the Secretary uses.
632.35 Limit on amount of grant.

Subpart E—What Conditions Must Be Met by a Grantee

632.40 Fiscal requirements.
632.41 Extent of Federal support.

Subpart F—Administrative Responsibilities of a Grantee

632.50 Student work experience.
632.51 Frequency and duration of work experiences.
632.52 Supervision of students.
632.53 Student records.
632.54 Inservice training.

Authority: Title VIII of the Higher Education Act of 1965, as amended, Pub. L. 96-374 (20 U.S.C. 1133-1133a), unless otherwise noted.

Subpart A—General

§ 632.1 The Cooperative Education Program—Administration.

(a) The Cooperative Education Program—Administration provides Federal financial assistance for projects designed to enrich the quality of postseconday education by providing students with educationally related work experiences.

(b) The purpose of the work experiences is to enable students to—

(1) Gain knowledge that better prepares them to achieve their career objectives; and

(2) Earn funds needed for educational expenses.

(20 U.S.C. 1133a)

§ 632.2 Eligible applicants.

The following are eligible to apply for grants under this part:

(a) Institutions of higher education;

(b)(1) Combinations of institutions of higher education.

(2) A combination of institutions of higher education may be composed of not more than four member institutions that shall be located within the boundaries of a State.

(20 U.S.C 1133a)

§ 632.3 Eligible students.

(a) Students participating in Cooperative Education projects funded under this part must be—

(1) Enrolled in an institution of higher education at least half-time; and

(2) Pursuing study leading to an associate degree or a higher degree.

(b) Students employed in full-time or part-time jobs not obtained or arranged by the Cooperative Education project funded under this part are not eligible for program services.

(20 U.S.C. 1133a)

Subpart B—Projects the Department of Education Assists under this Program.

§ 632.10 Projects with alternating periods of study and employment.

The Secretary makes awards under this part for projects in which students engages in rotating periods of classroom study and supervised employment in a valid Cooperative Education project, each lasting for at least a quarter or semester term.

(20 U.S.C. 1133a)

§ 632.11 Projects with parallel periods of study and employment.

The Secretary may make awards under this part for projects in which the student, engages in both classroom study and supervised employment, with the study and employment having nearly equal significance during the course of the school day or the school week.

(20 U.S.C. 1133a)

§ 632.12 Ineligible projects.

The Secretary does not fund projects that provide for experiential learning programs, single work experiences, extended day programs, or single term internships.

(20 U.S.C. 1133a)

Subpart C—How to Apply for a Grant

§ 632.20 Application information.

In addition to the information specified in 34 CFR 75.107 through § 75.117, and 34 CFR 75.127 through § 75.129 if applicable, an applicant must provide the following:

(a) A listing of the recognized units of the institution of higher education, as defined in 34 CFR 631.3, that are eligible to apply for funds under Title VIII.

(b) Certification by the chief executive officer(s) and the chief fiscal officer(s) of the number of years each unit has received prior funding under Title VII.

(20 U.S.C. 1133a)

§ 632.21 Certification of matching funds.

(a) An applicant shall indicate the sources of funds that will be used to satisfy the matching requirements, specified in 34 CFR 632.41, for the four years subsequent to the initial grant.

(b) The budget must show evidence of review and approval by the applicant's chief fiscal officer(s) and chief administrator(s).

(c) An applicant shall compute the valuation of its contribution in accordance with 34 CFR 74.51 through § 74.57.

(20 U.S.C. 1133a)

Subpart D—How the Secretary Makes a Grant

§ 632.30 Limit on years of participation.

(a) A unit of an institution of higher education, individually or as a participant in a combination of institutions of higher education, may not receive funding under this part for more than five fiscal years.

(b) A combination of institutions that has entered into an agreement in accordance with 34 CFR 75.127 through § 75.129 may not receive a grant under this part for more than five fiscal years.

(20 U.S.C. 1133a)

§ 632.31 Funding priorities.

(a) The Secretary give priority to applicants for fifth and fourth year competing grants over applicants for funding of third and second year competing grants and new applicants.

(b) The Secretary give priority for multi-year awards to the highest ranking applications from new applicants.

(c) If an institution is not funded for consecutive years and reapplies for a grant in a subsequent fiscal year, the Secretary regards that institution as a new applicant for the year for which it is seeking funds.

(20 U.S.C. 1133a)

§ 632.32 Competition among equals.

(a) To assure equitable treatment of all applicants, the Secretary evaluates an application with others from applicants who have had the same number of years experience in carrying our Federal Cooperative Education Program projects.

(b) The Secretary evaluates an application from a combination of

institutions with applications from other combinations of institutions.

(20 U.S.C. 1133a)

§ 632.33 How the Secretary makes a grant.

(a) The Secretary evaluates an application on the basis of the general selection criteria in 34 CFR 631.32 and the criteria in § 632.34 of this Part.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses following the criterion.

(20 U.S.C. 1133a)

§ 632.34 Selection criteria the Secretary uses.

The Secretary uses the following selection criteria in awarding grants under this part:

(a) *Plan of operation.* (10 points) (For description of criterion, see 34 CFR 631.32.)

(b) *Quality of key personnel.* (7 points) (For description of criterion, see 34 CFR 631.32.)

(c) *Budget and cost effectiveness.* (5 points) (For description of criterion, see 34 CFR 631.32.)

(d) *Evaluation plan.* (5 points) (For description of criterion, see 34 CFR 631.32.)

(e) *Adequacy of resources.* (3 points) (For description of criterion, see 34 CFR 631.32.)

(f) *Institutional philosophy.* (4 points)

The Secretary reviews each application for evidence that shows that the applicant has a written Cooperative Education philosophy appropriate to the needs and characteristics of the applicant and has a clear understanding of Cooperative Education.

(g) *Administrative support.* (5 points)

The Secretary reviews each application for evidence that shows the extent to which and how the first-line administrators of the applicant have supported or are likely to support the proposed project.

(h) *Involvement in planning and implementation.* (4 points)

The Secretary reviews each application for evidence that shows the extent to which and how the applicant has involved administrators, faculty, students, employers, and Cooperative Education specialists in planning and, if a Cooperative Education project is already in existence, in carrying out the project for which funds are requested.

(i) *Expansion of Cooperative Education.* (10 points)

The Secretary reviews each application for evidence that shows the extent to which and how the applicant has used or will use its own resources to increase the size, scope, and quality of its Cooperative Education project during the period of Federal support.

(j) *Curriculum and calendar adaptability.* (5 points)

The Secretary reviews each application for evidence that shows the extent to which the applicant has modified or will modify the schedule of courses as necessary to meet the particular needs of students.

(k) *Continuing support of Cooperative Education.* (8 points)

The Secretary reviews each application for evidence that shows the extent to which and how the applicant demonstrates its intention and ability to continue Cooperative Education at the same or increased level, after Federal financial assistance ends.

(l) *Related work experiences.* (5 points)

The Secretary reviews each application for evidence that shows the extent to which the applicant has arranged for a sufficient number of employment opportunities that are related to its students' educational, professional, or occupational objectives.

(m) *Employer acceptance.* (8 points)

The Secretary reviews each application for evidence that shows the extent to which employers have provided or will provide work and career development opportunities related to academic disciplines of students involved or to be involved in the project.

(n) *Integration of work experiences.* (5 points)

The Secretary reviews each application for evidence that shows the applicant will develop, promote, and monitor close relationships between the students' work experiences and their academic studies.

(o) *Recordkeeping.* (3 points)

The Secretary reviews each application for evidence that shows the extent to which the applicant has or will develop a recordkeeping system that documents each student's academic status, classroom periods, and work periods.

(p) *Work experiences.* (5 points)

The Secretary reviews each application for evidence that shows that the number, frequency, length, and quality of work experiences are sufficient to make a significant contribution toward meeting the educational, professional, and occupational objectives of the students involved or to be involved in the project.

(q) *Supervision of students.* (4 points)

The Secretary reviews each application for evidence that shows the extent and quality of the supervision students will receive from the grantee or employer during their work experiences.

(r) *Past experience.* (4 points)

(1) The Secretary reviews each application for evidence that shows whether the applicant has carried out a project under the Cooperative Education Program or one similar to a Cooperative Education type project.

(2) If the applicant has had experience in this area, the Secretary reviews the application for evidence that shows the quality of the project in terms of—

(i) The number of full-time and the number of part-time student served by the project, by age, sex, and ethnic and racial backgrounds.

(ii) The academic disciplines served by the project.

(iii) The average number of weeks per year spent by each student in a work experience.

(iv) The average number of hours per week spent by each student in a work experience.

(v) The number and percentage of students who, on graduation, were hired in positions in which they had gained experience through the Cooperative Education or similar project.

(20 U.S.C. 1221e-(3)(a), 1133a)

§ 632.35 Limit on amount of grant.

(a) An institution of higher education may not receive a grant under this part of more than $325,000 in any fiscal year.

(b) An institution of higher education that is a member of a combination of institutions may not receive a grant of more than $250,000 under this part in any fiscal year.

(20 U.S.C. 1133a)

Subpart E—What Conditions Must Be Met by a Grantee

§ 632.40 Fiscal requirements.

(a) Unless otherwise approved by the Secretary, a grantee awarded funds under this part in any fiscal year may not use those funds to supplant Cooperative Education activities conducted by the grantee prior to the receipt of the award.

(b) The grantee shall expend for its Cooperative Education project during the fiscal year in which a grant is received an amount not less than the amount the grantee expended pended from non-Federal funds for its project during the previous fiscal year for which Federal funds were received.

(20 U.S.C. 1133a)

§ 632.41 Extent of Federal support.

Federal support or projects under this Part are established as follows:

(a) 100 percent of the total project costs in the first fiscal year for which an award is made.

(b) 90 percent of the total project costs in the second fiscal year for which an award is made.

(c) 80 percent of the total project costs in the third fiscal year for which an award is made.

(d) 60 percent of the total project costs in the fourth fiscal year for which an award is made.

(e) 30 percent of the total project costs in the fifth fiscal year for which an award is made.

(20 U.S.C. 1133a)

Subpart F—Administrative Responsibilities of a Grantee

§ 632.50 Student work experience.

(a) The work experience of each student in a Cooperative Education project under this part shall, to the greatest extent possible, be related to the student's program of study.

(b) An employer shall compensate a student in a Cooperative Education project at a rate comparable to that paid to trainees who do similar work.

(c) A student in a Cooperative Education project may work at less than the prevailing rate for employees if—

(1) The student works for a nonprofit, social, welfare, or educational organization; and

(2) The position in which the student works is one in which other employees in the organization have not been paid a higher salary.

(20 U.S.C. 1133a)

§ 632.51 Frequency and duration of work experiences.

(a)(1) A Cooperative Education project in a two-year institution of higher education must provide at least two work experiences for each participating student.

(2) Each work experience must—

(i) Be of a duration consistent with the grantee's academic calendar; and

(ii) Provide sufficient opportunities for each student to gain indepth experiences in an area related to his or her academic or career goals.

(b)(1) A Cooperative Education project in a four-year institution of higher education must provide at least four work experiences for each participating undergraduate student.

(2) Each work experience must—

(i) Be of a duration consistent with the grantee's academic calendar; and

(ii) Provide the student with sufficient opportunities to gain indepth experiences in an area related to his or her academic or career goals.

(c)(1) A Cooperative Education project for graduate students must provide two work experiences.

(2) Each work experience must—

(i) Be of a duration consistent with the grantee's academic calendar; and

(ii) Provide sufficient opportunities for each student to gain indepth experiences in an area related to his or her academic or career goals.

(20 U.S.C. 1133a)

§ 632.52 Supervision of students.

A grantee shall insure that students are adequately supervised during their work experiences and shall determine that the students are—

(a) Performing the job for which they were selected;

(b) Receiving the training necessary to gain proficiency in the areas to which they were assigned;

(c) Achieving learning objectives appropriate to their major academic fields and/or career objectives;

(d) Exhibiting professional work habits;

(e) Compensated at the rate designated; and

(f) Working in safe conditions.

(20 U.S.C. 1133a)

§ 632.53 Student records.

A grantee shall maintain individual records on each student participating in its project. The records shall include, but are not limited to, the following:

(a) Name, age, sex, and ethnic and racial background;

(b) Permanent mailing address;

(c) Major field of study;

(d) Career objective(s);

(e) The number and types of the student's work experiences in this project, including reports from employers;

(f) If applicable, the reason(s) student left project;

(g) First employment after graduation, if known.

(20 U.S.C. 1133a)

§ 632.54 In-service training.

A grantee shall insure that the staff of its Cooperative Education project has an opportunity to participate in training that will enable the staff to—

(a) Operate the project more effectively; and

(b) Develop the expertise to expand the Cooperative Education project.

(20 U.S.C. 1133a)

The Secretary proposes the following regulations to govern demonstration grants under the Cooperative Education Program:

Part 633 is added to read as follows:

PART 633—COOPERATIVE EDUCATION PROGRAM—DEMONSTRATION

Subpart A—General

Sec.

633.1 The Cooperative Education Program—Demonstration.
633.2 Eligible applicants.
633.3 Eligible participants.

Subpart B—Projects the Department of Education Assists Under This Program

633.10 Comprehensive projects.
633.11 Special Projects

Subpart C—How To Apply for a Grant [Reserved]

Subpart D—How the Secretary Makes a Grant

633.30 Extent of support for demonstration projects.
633.31 How the Secretary makes a grant.
633.32 Selection criteria the Secretary uses for all demonstration projects.
633.33 Additional selection criteria the Secretary uses for comprehensive projects.
633.34 Additional selection criteria the Secretary uses for special projects.

Subpart E—What Conditions Must Be Met by the Grantee [Reserved]

Subpart F—Administrative Responsibilities of a Grantee

633.50 Staffing requirements.
633.51 Student work experience.
633.52 Frequency and duration of work experiences.
633.53 Supervision of students.
633.54 Student records.
633.55 In-service training.

Authority: Title VIII of the Higher Education Act of 1965, as amended, Pub. L. 96-374 (20 U.S.C. 1133, 1133b), unless otherwise noted.

Subpart A—General

§ 633.1 The Cooperative Education Program—Demonstation.

The Cooperative Education Program—Demonstration provides Federal financial assistance for projects designed either to—

(a) Demonstrate the feasibility of expanding Cooperative Education in an institution to encompass nearly all academic departments or disciplines and a significant majority of a diverse student population, or

(b) Explore the feasibility of instituting innovative methods for carrying out Cooperative Education project in various geographic settings and in various types and sizes of institutions to meet the special problems or needs of these populations.

(20 U.S.C. 1133b)

§ 633.2 Eligible applicants.

The following are eligible to apply for grants under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public or private nonprofit agencies or organizations, if the agency or organization is serving as the coordinating and fiscal agent for a combination or institutions of higher education.
this part.

(20 U.S.C. 1133b)

§ 633.3 Eligible participants.

(a) Students participating in Cooperative Education projects funded under this part must be—

(1) Enrolled in an institution of higher education at least half-time; and

(2) Pursuing study leading to an associate degree or a higher degree.

(b) Students employed in full-time or part-time jobs not obtained or arranged by Cooperative Education projects funded under this part are not eligible for program services.

(20 U.S.C. 1133b)

Subpart B—Projects the Department of Education Assists Under this Program

§ 633.10 Comprehensive projects.

The Secretary may make awards under this part for comprehensive Cooperative Education projects that demonstrate—

(a) The feasibility of expanding the Cooperative Education concept throughout an institution to encompass nearly all academic departments or disciplines and serve a significant majority of a diverse student population; and

(b) A commitment to continue Cooperative Education at or above the level of Federal financial assistance received under Title VIII after such assistance has ended.

(20 U.S.C. 1133b)

§ 633.11 Special projects.

The Secretary makes awards under this part for special Cooperative Education projects that explore the feasibility of innovative methods for any of the following:

(a) Serving graduate students.

(b) Serving handicapped students.

(c) Implementi g an international Cooperative Education project.

(d) Implementing a Cooperative Education project or projects in various isolated settings or in various sizes and types of institutions; and

(e) Furthering the concept of Cooperative Education in other ways proposed by an applicant and approved by the Secretary.

(20 U.S.C. 1133b)

Subpart C—How to Apply for a Grant [Reserved]

Subpart D—How the Secretary Makes a Grant

§ 633.30 Extent of support for demonstration projects.

(a) The Secretary awards grants under this part for single-year or multi-year project periods.

(b) If the Secretary approves a multi-year project period, for a special project, the continuation of the multi-year project will be in accordance with 34 CFR 75.253.

(c) Comprehensive Cooperative Education projects will receive one multi-year award out of a single fiscal year appropriation.

(20 U.S.C. 1133b)

§ 633.31 How the Secretary makes a grant.

(a) The Secretary evaluates an application on the basis of—

(1) The general criteria in 34 CFR 631.32; and

(2) The criteria in 34 CFR 633.33 or 633.34.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses following the criterion.

(20 U.S.C. 1133b)

§ 633.32 Selection criteria the Secretary uses for all projects.

The Secretary uses the following selection criteria in awarding demonstration grants under this part:

(a) *Plon of operation.* (10 points) (For description of criterion, see 34 CFR 631.32.)

(b) *Quolity of key personnel.* (7 points) (For description of criterion, see 34 CFR 631.32.)

(c) *Budget and cost effectiveness.* (5 points) (For description of criterion, see 34 CFR 631.32.)

(d) *Evaluotion plon.* (5 points) (For description of criterion, see 34 CFR 631.32.)

(e) *Adequacy of resources.* (3 points) (For description of criterion, see 34 CFR 631.32.)

(20 U.S.C. 1221e-(3)(a), 1133b)

§ 633.33 Additional selection criteria the Secretary uses for comprehensive projects.

In addition to the criteria in § 633.32, the Secretary uses the following criteria in awarding grants for comprehensive projects:

(a) *Cooperative Education philosophy.* (5 points)

The Secretary reviews each application for evidence that shows the extent to which a written Cooperative Education philosophy—

(1) Is reflected in the applicant's mission statement; and

(2) Clearly supports the expansion required for a comprehensive Cooperative Education project.

(b) *Preplanning for o comprehensive project.* (5 points)

The Secretary reviews each application for evidence that shows the extent to which the applicant has conducted the necessary preplanning that is required to develop and demonstrate a comprehensive Cooperative Education project.

(c) *Acceptance of plan.* (10 points)

The Secretary reviews each application for evidence that shows the extent to which the plan for implementing the comprehensive project has been accepted by the responsible officials of the institution, agency, or organization, and by faculty, employers, students, and the community.

(d) *Integration of the comprehensive project.* (10 points)

The Secretary reviews each application for evidence that shows the extent of the actions taken by administrators and faculty to integrate the comprehensive Cooperative Education project into the academic policies, programs, and objectives of the institution.

(e) *Continued commitment.* (10 points)

The Secretary reviews each application for evidence that shows the extent to which the applicant will continue the comprehensive project after Federal financial assistance has ended.

(f) *Employer support.* (10 points)

The Secretary reviews each application for evidence that shows the extent of employer support for the development of a comprehensive Cooperative Education project.

(g) *Schedule for institutionalization.* (15 points)

The Secretary reviews each application for evidence that shows the extent to which the schedule for institutionalizing Cooperative Education, including the rationale and procedures associated with each activity, will result in changes in—

(1) The organizational structure of the applicant;

(2) The curricula to meet the needs of students participating in Cooperative Education;

(3) The academic calendar;

(4) The awarding of credits;

(5) Increased faculty involvement;

(6) Increased employer involvement;
(7) Counseling techniques; and
(8) Supervision of students during their work experiences.

(h) *On-going dissemination of pro sses and results.* (5 points)

The Secretary reviews each application for evidence that shows the quality of the plan to disseminate, on an ongoing basis, the processes and results of the comprehensive project.

(20 U.S.C. 1133b)

§ 633.34 Additional selection criteria the Secretary uses for special projects.

In addition to the criteria in 34 CFR 633.32, the Secretary uses the following criteria in awarding grants for a special project:

(a) *Cooperative Education philosophy.* (5 points)

The Secretary reviews each application for evidence that shows the extent to which a written Cooperative Education philosophy—

(1) Is reflected in the applicant's mission statement; and

(2) Clearly supports the operation of a special project.

(b) *Preplanning for a special project.* (5 points)

The Secretary reviews each application for evidence that shows the extent to which the applicant has conducted the necessary preplanning that is required to develop and demonstrate a special project.

(c) *Acceptance of plan.* (10 points)

The Secretary reviews each application for evidence that shows the extent to which the plan for implementing the special project has been accepted by the responsible officials of the institution, agency, or organization, and by faculty, employers, students, and the community.

(d) *Need for the special project.* (20 points)

The Secretary reviews each application for a substantive explanation of the need for the special project.

(e) *Employer support.* (10 points)

The Secretary reviews each application for evidence that shows the extent of employer support for the development of the special project.

(f) *Uniqueness of approach.* (15 points)

The Secretary reviews each application to determine the extent to which the applicant has developed and explained the rationale and procedures that demonstrate an innovative or unique approach to Cooperative Education and the value or relevance the project will have for the Cooperative Education community.

(g) *Dissemination.* (5 points)

The Secretary reviews each application to determine the quality of the plan to disseminate the processes and results of the special project to the Cooperative Education community.

(20 U.S.C. 1133b)

Subpart E—What Conditions Must Be Met by a Grantee [Reserved]

Subpart F—Administrative Responsibilities of a Grantee

§ 633.50 Staffing requirements.

To the greatest extent possible, the staff of a project funded under this part shall reflect the sex, ethnic, racial, and other demographic characteristics of the students to be served by the project.

(20 U.S.C. 1133b)

§ 633.51 Student work experience.

(a) The work experience of each student in a Cooperative Education project funded under this part shall, to the greatest extent possible, be related to the student's program of study.

(b) An employer shall compensate a student under this program at a rate comparable to that paid to trainees who do similar work.

(c) A student in a Cooperative Education project may work at less than the prevailing rate for employees if—

(1) The student works for a nonprofit, social, welfare, or educational organization; and

(2) The position in which the student works is one in which other persons in the organization have not been paid a higher salary.

(20 U.S.C. 1133b)

§ 633.52 Frequency and duration of work experiences.

(a)(1) A Cooperative Education project in a two-year institution of higher education must provide at least two work experiences for each participating student.

(2) Each work experience must—

(i) Be of a duration consistent with the grantee's academic calendar; and

(ii) Provide the student with sufficient opportunities to gain indepth experience in an area related to his or her academic or career goals.

(b)(1) A Cooperative Education project in a four-year institution of higher education must provide at least four work experiences for each participating undergraduate student.

(2) Each work experience must—

(i) Be of a duration consistent with the grantee's academic calendar; and

(ii) Provide the student with sufficient opportunities to gain indepth experiences in an area related to his or her academic or career goals.

(c)(1) A Cooperative Education project for graduate students must provide two work experiences.

(2) Each work experience must—

(i) Be of a duration consistent with the grantee's academic calendar; and

(ii) Provide sufficient opportunities for each student to gain indepth expereinces in an area related to his or her academic or career goals.

(20 U.S.C. 1133b)

§ 633.53 Supervision of students.

A grantee shall ensure that students are adequately supervised during their work experiences and shall determine that the students are—

(a) Performing the job for which they were selected;

(b) Receiving the training necessary to gain proficiency in the areas to which they were assigned;

(c) Achieving learning objectives appropriate to their major academic fields and/or career objectives;

(d) Exhibiting professional work habits;

(e) Compensated at the rate designated; and

(f) Working in safe conditions.

(20 U.S.C. 1133b)

§ 633.54 Student records.

A grantee shall maintain individual records on each student participating in its project. The records shall include, but are not limited to, the following:

(a) Name, age, sex and ethnic and racial background;

(b) Permanent mailing address;

(c) Major field of study;

(d) Career objective(s);

(e) The number and types of the student's work experiences in this project, including reports from employers;

(f) If applicable, the reason(s) student left project;

(g) First employment after graduation, if known.

(20 U.S.C. 1133b)

§ 633.55 In-service training.

A grantee shall insure that the staff of its Cooperative Education project has an opportunity to participate in training that will enable the staff to—

(a) Operate the project more effectively; and

(b) Develop the expertise to expand the Cooperative Education project.

(20 U.S.C. 1133b)

The Secretary proposes the following regulations to govern research grants under the Cooperative Education Program.

Part 634 is added to read as follows:

PART 634—COOPERATIVE EDUCATION PROGRAM—RESEARCH

Subpart A—General

Sec.

634.1 The Cooperative Education Program—Research.
634.2 Eligible applicants.

Subpart B—Projects the Department of Education Assist Under This Program

634.10 Eligible projects.
634.11 Priority areas for research.

Subpart C—How to Apply for a Grant [Reserved]

Subpart D—How the Secretary Makes a Grant

634.30 How the Secretary makes a grant.
634.31 Selection criteria the Secretary uses.

Subpart E—What Conditions Must be Met by a Grantee [Reserved]

Subpart F—Administtrative Responsibilities of a Grantee

634.50 Dissemination of results.

Authority: Title VIII of the Higher Education Act of 1965, as amended, Pub. L. 96-374 (20 U.S.C. 1133, 1133b), unless otherwise noted.

Subpart A—General

§ 634.1 The Cooperative Education Program—Research.

The Cooperative Education Program—Research provides Federal financial assistance for research into methods that can result in—

(a) Improving the operation of the Cooperative Education Program;

(b) Promoting the use of Cooperative Education as an alternative educational approach to assist students to prepare for careers and to finance their educational pursuits; and

(c) Developing better cooperation between secondary schools, institutions of higher education, business, and industry to enhance the opportunity for students to participate in work experiences related to academic preparation.

(20 U.S.C. 1133b)

§ 634.2 Eligible applicants.

The following are eligible to apply for grants under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher education.

(c) Public or private nonprofit agencies or organizations, if the agency or organization is serving as the coordinating and fiscal agent for a combination of institutions of higher education.

(20 U.S.C. 1133b)

Subpart B—Projects the Department of Education Assists Under This Program.

§ 634.10 Eligible projects.

The Secretary makes awards under this part for research projects that yield information and direction in dealing with, but not limited to, the following:

(a) Improving the way services are provided by Cooperative Education projects.

(b) Expanding the Cooperative Education concept in institutions of higher education.

(c) Evaluating the benefits of Cooperative Education, such as the correlation between participation and nonparticipation.

(d) Identifying and assessing the effective institutionalization of Cooperative Education.

(e) Promoting the Cooperative Education Program within secondary schools, institutions of higher education, industry, business, and the community.

(20 U.S.C. 1133b)

§ 634.11 Priority areas for research.

(a) The Secretary may, from time to time, select for priority funding research one or more of the following:

(1) Identification and assessment of commonalities in quality Cooperative Education projects.

(2) The correlation between former grantees that continued or did not continue Cooperative Education after Federal financial assistance ended.

(3) Assessment of the impact of varied factors that hinder or enhance—

(i) Student participation;

(ii) Faculty particiption; or

(iii) Upper mobility.

(6) Assessment of the impact of Cooperative Education on the retention and grade point averages of students participating in Cooperative Education.

(7) Assessment of the impact of a comprehensive Cooperative Education project on—

(i) Student life at the institution;

(ii) Faculty;

(iii) Community resources; or

(iv) Employment opportunities.

(8) Other areas that may be identified by the Secretary.

(b) The Secretary announces subjects for priority funding, if any, in the annual application notice published in the Federal Register.

(20 U.S.C. 1133b)

Subpart C—How to Apply for a Grant [Reserved]

Subpart D—How the Secretary Makes a Grant

§ 634.30 How the Secretary makes a grant.

(a) The Secretary evaluates an application on the basis of the general criteria in 34 CFR 631.32 and the criteria in § 634.32, below.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses following the criterion.

(20 U.S.C. 1133b)

§ 634.31 Selection criteria the Secretary uses.

The Secretary uses the following selection criteria in awarding grants under this part:

(a) *Plan of operation.* (15 points) (For description of criterion, see 34 CFR 631.32.)

(b) *Quality of key personnel.* (10 points) (For description of criterion, see 34 CFR 631.32.)

(c) *Budget and cost effectiveness.* (5 points) (For description of criterion, see 34 CFR 631.32.)

(d) *Evaluation plan.* (5 points) (For description of criterion, see 34 CFR 631.32.)

(e) *Adequacy of resources.* (5 points) (For description of criterion, see 34 CFR 631.32.)

(f) *Relevancy of research.* (20 points)

The Secretary reviews each application for evidence that shows—

(1) The extent to which the applicant demonstrates that the proposed research is responsive to a major problem or need in Cooperative Education; and

(2) The extent to which the findings would be of value to the whole or a specific population of the Cooperative Education community.

(g) *Design of research.* (35 points)

The Secretary reviews each application for evidence that shows the quality of the research design that includes—

(1) A clear description of the problem at which the research is directed;

(2) A well-defined hypothesis;

(3) A clear description of research methods to prove or disprove the hypothesis.

(4) The sampling method to be used, including the size and proportion of the sample population to the universe of the population being studied; and

(5) A well-defined and organized data analysis plan.

(h) *Dissemination.* (5 points)

The Secretary reviews each application for evidence that shows the

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quality of the plan for the dissemination of the research findings.

(20 U.S.C. 1221e–(3)(a), 1133b)

Subpart E—What Conditions Must Be Met by a Grantee [Reserved]

Subpart F—Administrative Responsibilities of a Grantee

§ 634.50 Dissemination of results.

(a) A grantee's final report to the research findings much include at least the following:

(1) A description of the problem.
(2) The hypothesis.
(3) The research method(s) employed.
(4) An explanation of the sampling methods if applicable.
(5) The data analysis methodology.
(6) The findings.
(7) The conclusion(s).
(8) An executive summary.

(b) Any information or documents produced as a result of research under this part is the property of the Department of Education and may not be used for the personal benefit of the grantee, principal investigator, or key personnel involved in the research.

(c) A grantee shall make available to the public, without charge other than postage, its report of the findings of the research.

(20 U.S.C. 1133b)

The Secretary proposed the following regulations to govern training grants under the Cooperative Education Program.

Part 635 is added to read as follows:

PART 635—COOPERATIVE EDUCATION PROGRAM—TRAINING

Subpart A—General

Sec.
635.1 The Cooperative Education Program—Training
635.2 Eligible applicants.
635.3 Eligible participants.

Subpart B—Projects the Department of Education Assists Under This Program

635.10 Eligible projects.
635.11 Priority areas for training.

Subpart C—How to Apply for a Grant [Reserved]

Subpart D—How the Secretary Makes a Grant.

635.30 How the Secretary Makes a grant.
635.31 Selection criteria the Secretary uses.
635.32 Geographic distribution.

Subpart E—What Conditions Must Be Met by a Grantee [Reserved]

Subpart F—Administrative Responsibilities of a Grantee

635.50 Announcements of training sessions.
635.51 Availability of training material of the public.

Authority: Title VIII of the Higher Education Act of 1965, as amended, Pub. L. 96–374 (20 U.S.C. 1133, 1133b), unless otherwise noted.

Subpart A—General

§635.1 The Cooperative Education Program—Training

(a) The Cooperative Education Program—Training provides Federal financial assistance to train persons who participate or wish to participate in the administration of Cooperative Education projects at institutions of postsecondary education.

(b) The purpose of the training under this part is to enable participants to provide more effectively the academic and work experiences that will enable students to realize their academic and career objects.

(20 U.S.C. 1133b)

§635.2 Eligible applicants.

The following are eligible to apply for grants under this part:

(a) Institutions of higher education.

(b) Combinations of institutions of higher eduction.

(c) Public or nonprofit private agencies or organizations, if the agency or organization is serving as the coordinating and fiscal agent for a combination of institutions of higher education.

(20 U.S.C. 1133b)

§635.3 Eligible participants.

Funds under this part may be used to provide training for the following:

(a) Presidents and administrators of institutions of postsecondary education with or without federally-funded Cooperative Education projects.

(b) Faculty and staff of institutions of postsecondary education with or without federally-funded Cooperative Education projects.

(c) High school personnel responsible for career and academic guidance.

(d) Employers or prospective employers of students in Cooperative Education projects.

(e) Members of professional and scholarly organizations.

(20 U.S.C. 1133b)

Subpart B—Projects the Department of Education Assists Under This Program

§ 635.10 Eligible projects.

(a) Training projects funded under this part shall be designed to develop skills necessary to administer Cooperative Education projects.

(b) The Secretary makes awards under this part to provide training dealing with, but not limited to, the following:

(1) Responsibilities of directors or coordinators in administering Cooperative Education projects;

(2) Modification of teaching practices, academic calendars, and curricula;

(3) Relationships between work experiences and students' academic programs;

(4) Roles and responsibilities of employers and supervisors of students in Cooperative Education projects;

(5) Integration of the Cooperative Education project into the academic programs and policies of an institution of higher education;

(6) Placement, supervision, and evaluation of students in Cooperative Education work experiences;

(7) Placement and supervision of special student populations;

(8) Cooperative Education for graduate students;

(9) Effective communications and relationships within the grantee structure;

(10) Improving employer participation in Cooperative Education;

(11) Improving college-community relations affecting Cooperative Education;

(12) Improving faculty attitudes toward Cooperative Education;

(13) Development of large-scale or comprehensive Cooperative Education projects;

(14) Planning, management, and evaluation of Cooperative Education projects; and

(15) Improving the use of management information systems.

(20 U.S.C. 1133b)

§ 635.11 Priority areas for training.

(a) The Secretary may, from time to time, select for priority funding training in one or more of the following:

(1) The development of appropriate skills to manage effectively Cooperative Education projects.

(2) The development of comprehensive Cooperative Education projects.

(3) The development of student, faculty, and employer receptivity.

(4) The integration of the Cooperative Education project into the academic programs and policies of the grantees.

(5) The development of Cooperative Education trainers.

(6) Determinining cost and income implications for various constituents of the Cooperative Education Community.

(7) Other areas that may be identified by the Secretary.

(b) The Secretary announces subjects for priority funding, if any, in the annual application notice published in the Federal Register.

(20 U.S.C. 1133b)

Subpart C—How To Apply for a Grant [Reserved]

Subpart D—How the Secretary Makes a Grant

§ 635.30 How the Secretary makes a grant.

(a) The Secretary evaluates an application on the basis of the general criteria listed in 34 CFR 631.32 and the criteria listed in § 635.31 of this Part.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each completed criterion is indicated in parentheses following the criterion.

(20 U.S.C. 1133b)

§ 635.31 Selection criteria the Secretary uses.

The Secretary uses the following selection criteria in awarding grants under this part:

(a) *Plan of operation.* (10 points) (For description of criterion, see 34 CFR 631.32.)

(b) *Quality of key personnel.* (7 points) (For description of criterion, see 34 CFR 631.32)

(c) *Budget and cost effectiveness.* (5 points) (For description of criterion, see 34 CFR 631.32.)

(d) *Evaluation plan.* (10 points) (For description of criterion, see 34 CFR 631.32.)

(e) *Adequacy of resources.* (3 points) (For description of criterion, see 34 CFR 631.32.)

(f) *Needs assessment.* (20 points) The Secretary reviews each application for evidence that shows the extent of which the applicant provides evidence of a need for—

(1) Training in its geographic area; or

(2) Training of a specialized nature addressed to a nationwide clientele.

(g) *Thoroughness of training design.* (10 points) The Secretary reviews each application for evidence that shows the extent to which the applicant gives evidence of comprehensive planning, including the procedures used in developing the design.

(h) *Scope of training.* (10 points) The Secretary reviews each application for evidence that shows the extent to which the proposed project will address the needs of the consitutency selected to receive training, based on the use of needs analysis data.

(i) *Anticipated results.* (10 points) The Secretary reviews each application for evidence that shows the extent to which the proposed project has promise of fulfilling the proposed objectives identified in the needs assessment, training design, and scope of training.

(j) *Prior experience.* (10 points) The Secretary reviews each application for evidence that shows the extent to which the key personnel have demonstrated their experience in related and effective Cooperative Education projects, or with innovations which have been or can be successful in a Cooperative Education project:

(20 U.S.C. 1221–e(3)(a), 1133b)

§ 635.32 Geographic distribution.

The Secretary, to the greatest extent possible, awards grants for training projects at locations within reasonable distance to Title VIII Cooperative Education projects funded under 34 CFR Parts 632 and 633. For this purpose, the Secretary considers sites based on Federally-recognized regions.

(20 U.S.C. 1133b)

Subpart E—What Conditions Must Be Met by a Grantee [Reserved]

Subpart F—Administrative Responsibilities of a Grantee

§ 635.50 Announcements of training sessions.

(a) All announcements inviting participants to training sessions shall contain, as a minimum, the following information:

(1) Target population to be served, such as by position, experience level, type of institution, or other similar characteristic;

(2) Any specific eligibility or prerequisite requirements for participants;

(3) Anticipated outcomes or skills to be acquired;

(4) Identification and qualifications of trainer(s) to be used;

(5) Registration or other fees to be charged, including the purpose for the fees.

(b) The grantee shall send a copy of any announcement for training to the appropriate official of the Department of Education.

(20 U.S.C. 1133b)

§ 635.51 Availability of training material to the public.

(a) All training materials developed by a grantee under this part are the property of the Department of Education.

(b) The grantee, during the life of the grant, shall disseminate training material developed under this part to interested parties on written request or furnish overage to the Department of Education for distribution.

(c) The grantee shall make available to interested parties for duplication purposes the training films develped under this part.

(20 U.S.C. 1133b)

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federal register

Wednesday
December 31, 1980

Part XVIII

Environmental Protection Agency

Control of Air Pollution From Aircraft; Standards Amended

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 87

[AMS-FRL-1699-7; Docket No. OMSAPC-78-1]

Control of Air Pollution From Aircraft; Amendment to Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule sets back by 2 years, until January 1, 1983, the effective date for all gaseous emissions standards which would otherwise have been effective on January 1, 1981, for aircraft gas turbine engines. This change in compliance date is necessary because the final amendments to these standards which were proposed on March 24, 1978 (43 FR 12615) have not yet been promulgated and there would be insufficient time remaining in 1980 for the Federal Aviation Administration to develop enforcement regulations following their promulgation, if the compliance date remained at January 1, 1981. Also being published in this notice is a minor addition to the exemption provisions of the aircraft emissions standards. This notice also announces the public availability for comment of a report covering a joint investigation by FAA and EPA of the air quality basis for aircraft emissions standards.

DATES: The amendments to the compliance date are effective December 31, 1980; the change to the exemption provision is effective January 30, 1981. All comments relating to the report "Impact of Aircraft Emissions on Air Quality in the Vicinity of Airports" (FAA-EE-80-09A) should be submitted on or before March 2, 1981.

ADDRESS: Interested persons may submit written comments on the Air Quality Investigation to the Central Docket Section (A-130), Environmental Protection Agency, Washington, D.C. 20460, (Docket OMSAPC-78-1).

FOR FURTHER INFORMATION CONTACT: George Kittredge, Senior Technical Advisor, Office of Mobile Source Air Pollution Control (ANR-455), Environmental Protection Agency, Washington, D.C. 20460, 202-426-2514.

SUPPLEMENTARY INFORMATION: On July 17, 1973 (38 FR 19090) EPA promulgated gaseous emissions standards applicable to engines which power most categories of turbine powered commercial aircraft, to take effect on January 1, 1979, following the development and certification of the necessary technological means for compliance. On March 24, 1978 (43 FR 12615), EPA proposed extensive changes to these standards, based on new information concerning the technological means for compliance. At the same time, the January 1, 1979, compliance date for the original standards was set back to January 1, 1981, to allow more time to complete final rulemaking following the public hearing, technical analysis of the comments, and completion of other supporting activities. In the preamble to the March 24, 1978, proposal it was stated that "The air quality justification for control of airport NO_x emissions has been questioned. ("Potential Impact of NO, Emissions from Commercial Aircraft on NO_2 Air Quality," Bruce C. Jordan, EPA, November 15, 1977). Therefore, a study has been planned which will incorporate the up-to-date aircraft emissions estimates referenced above, the most recent meteorological information, and the most advanced available mathematical modelling techniques for prediction of ambient air concentrations of pollutants in the airport environment. This study will be carried out jointly by the EPA and the Federal Aviation Administration and is expected to be completed in 1979."

Circumstances prevented completion of the study in 1979, in part because its scope was expanded to include carbon monoxide as well as nitrogen oxides. It has now been completed and the final report is available for public review and comment. A limited number of copies are available upon request to the Office of Environment and Energy (AEE-300), Federal Aviation Administration, Washington, D.C. 20591.

Over and above the airport air quality consideration, EPA's evaluation of the comments on the March 24, 1978, proposal and the economic costs of applying such technology has taken much longer than expected. Therefore, it has not been possible to proceed with implementation of revised final standards.

There is insufficient time available during the remainder of 1980 to announce the availability of the report covering the airport air quality analysis, to allow a reasonable period of time for public comment on the report, to evaluate these comments, to promulgate final revised standards and for FAA to then propose and promulgate appropriate enforcement regulations.

For all of the reasons cited above it is necessary to postpone the January 1, 1981 implementation date for all gaseous emissions standards. Otherwise, manufacture of the affected engines could not legally continue after that date, since there are no known techniques available to permit compliance.

On May 13, 1980, and again on October 27, 1980, EPA received letters from the Federal Aviation Administration explaining the concerns of that agency over the short time remaining to accomplish effective rulemaking action before the end of 1980 and urging that EPA postpone the effective date for the standards by at least two more years.

Several of the manufacturers who are affected by this pending rulemaking have also written to EPA during the past year, citing reasons which would make it impossible for them to comply with the proposed revised standard by January 1, 1981.

Copies of the Airport Air Quality Report, May 13, 1980, FAA letters and all relevant correspondence with manufacturers on this topic are available for public review in EPA Docket OMSAPC-78-1, Central Dockets Section, West Tower Lobby, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays and a reasonable fee may be charged for copying.

Following the receipt and evaluation of public comments received on this report, EPA will proceed with promulgation of the final standards. In so doing, EPA will take careful note of the conclusions and recommendations of the International Civil Aviation Organization (ICAO) Committee on Aircraft Engine Emissions (CAEE) at its second meeting May 14-29, 1980.

Action: With due consideration of the foregoing, EPA has determined that the effective date for all gaseous emissions standards scheduled to be implemented on January 1, 1981, should, as an interim measure, be postponed by 2 years to January 1, 1983, so as to permit the continued manufacture of aircraft gas turbine engines during the period between January 1, 1981, and the compliance date specified in the final amended standards. This action should allow reasonable time for completion of all activities discussed above and will facilitate the establishment of final revised standards based on the best obtainable information on the air quality impact of commercial aircraft operations.

The Agency finds that to propose the revisions of the compliance date prior to final rulemaking would be impractical and contrary to the public interest. These revisions are critical to the activities of the manufacturers of aircraft engines, and must be effective prior to the present January 1, 1981, effective date for gaseous emission standards to allow for continued manufacture of aircraft gas turbine engines. The Agency finds further that there is good cause to make these revisions effective earlier than 30 days after their promulgation, because these revisions relieve restrictions in the present regulations.

An additional amendment being promulgated at this time concerns exemptions from Federal emission standards. On July 18, 1979, EPA proposed a revision to 40 CFR Part 87 to exempt aircraft engines from emission standards in certain situations. These situations include, but are not limited to, (1) flights for the purpose of export, including flights needed to demonstrate the integrity of an aircraft prior to its flight to a site outside the United States, (2) flights to a base where repairs, alterations or maintenance are to be performed, or to a point of storage, and flights to return an aircraft to service, and (3) official visits by representatives of foreign governments.

On August 22, 1979, EPA held a hearing in Washington, D.C., to afford the public an opportunity to comment on the proposal. No individuals presented testimony at the hearing and only two written submissions were received in response to the proposal.

The National Business Aircraft Association expressed support for this action. The Air Transport Association of America (ATA) expressed concern over the fact that § 87.7(d) contained vague terminology. They specifically asked whether foreign charter operations would be considered flights "for short durations at infrequent intervals."

The EPA proposal published on July 18, 1979, intended specifically to exempt those flights described in §§ 87.7(a), (b), and (c). With the exception of official visits by representatives of foreign governments, such flights are solely of a non-passenger and non-freight nature. Section 87.7(d) was added to enable the EPA and DOT to make determinations related to flights of a similar nature, but which have not been contemplated at this time. The Agency does not regard a charter operation as being of a similar nature even if it occurs only once and, therefore, such operations would not be exempted from aircraft standards.

The ATA also questioned whether determinations under § 87.7(d) must be made before or after the flights take place and, if after, whether an operator could face retroactive prosecution. The EPA intends such determinations to be made before flights occur and has revised the language of this section to clearly indicate this fact.

Note.—This rulemaking action does not constitute a regulation which will result in major economic impact. Accordingly, the Environmental Protection Agency has determined that this document does not constitute a "significant" regulation requiring the preparation of a Regulatory Analysis under Executive Order 12044.

These amendments are made pursuant to Sections 231 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7571 and 7601(a)).

Dated: December 22, 1980

Douglas M. Costle,

Administrator.

Part 87, Chapter I, Title 40 of the Code of Federal Regulations, is amended as follows:

1. Section 87.21 (d) and (e)(1) are revised to read as follows:

§ 87.21 Standards for exhaust emissions.

* * * * *

(d) Exhaust emissions from each aircraft gas turbine engine of the classes specified below manufactured on or after January 1, 1983, shall not exceed:

(1) Class T1:

(i) Hydrocarbons—1.6 pounds/1,000 pound-thrust hours/cycle

(ii) Carbon monoxide—9.4 pounds/1,000 pound-thrust hours/cycle

(iii) Oxides of nitrogen—3.7 pounds/1,000 pound-thrust hours/cycle

(iv) Smoke—Smoke number from Figure 1.

(2) Class T2, T3, T4:

(i) Hydrocarbons—0.8 pound/1,000 pound-thrust hours/cycle

(ii) Carbon monoxide—4.3 pounds/1,000 pound-thrust hours/cycle

(iii) Oxides of nitrogen—3 pounds/1,000 pound-thrust hours/cycle

(iv) Smoke—Smoke number from Figure 1.

(3) Class P2:

(i) Hydrocarbons—4.9 pounds/1,000 horsepower-hours/cycle

(ii) Carbon monoxide—26.8 pounds/1,000 horsepower-hours/cycle

(iii) Oxides of nitrogen—12.9 pounds/1,000 horsepower-hours/cycle

(iv) Smoke—Smoke number from Figure 2.

(4) Class T5:

(i) Hydrocarbons—3.9 pounds/1,000 pound-thrust hours/cycle

(ii) Carbon monoxide—30.1 pounds/1,000 pound-thrust hours/cycle

(iii) Oxides of nitrogen—9.0 pounds/1,000 pound-thrust hours/cycle

(iv) Smoke—Smoke number from Figure 1.

(e) Exhaust emissions from each newly certified aircraft gas turbine engine of the classes specified below manufactured on or after the dates indicated shall not exceed:

(1) Class T2, T3, or T4 (January 1, 1983).

* * * * *

2. A new § 87.7 is added as follows:

§ 87.7 Exemptions.

The emission standards of this part do not apply to engines which power aircraft operated in the United States for short durations at infrequent intervals. Such operations are limited to:

(a) Flights of an aircraft for the purpose of export to a foreign country, including any flights essential to demonstrate the integrity of an aircraft prior to its flight to a point outside the United States;

(b) Flights to a base where repairs, alterations or maintenance are to be performed, or to a point of storage, and flights for the purpose of returning an aircraft to service;

(c) Official visits by representatives of foreign governments; and

(d) Other flights the Secretary of Transportation determines, after consultation with the Administrator of the Environmental Protection Agency, to be for short durations at infrequent intervals. A request for such a determination shall be made before the flight takes place.

(Secs. 231 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7571 and 7601(a)))

[FR Doc. 80-40622 Filed 12-30-80; 8:45 am]

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federal register

Wednesday
December 31, 1980

Part XIX

Office of Management and Budget

Office of Federal Procurement Policy

Research and Development Procurement; Control of Management Systems and Data Required of Contractors; Proposed Policy Letters

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Proposed Policy Letter on Federally Funded Research and Development Centers

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: A draft Office of Federal Procurement Policy (OFPP) policy letter on Federally Funded Research and Development Centers (FFRDCs) is being published for public review and comment.

SUMMARY: The proposed policy sets forth guidelines for the establishment, use, periodic review, and termination of FFRDCs. An order of precedence in alternatives for meeting the agencies' special technical needs is included: (1) use of the private sector; (2) use of in-house Government capabilities; (3) use of existing FFRDCs; and (4) establishment of a new FFRDC.

DATE: Comments must be received by February 20, 1981.

ADDRESS: Send comments to Mr. Fred H. Dietrich, Associate Administrator for Major System Acquisitions and Procurement Strategies, Office of Federal Procurement Policy, 726 Jackson Place, N.W., Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Fred H. Dietrich, 202–395–6810.

SUPPLEMENTARY INFORMATION: The Commission on Government Procurement, in its 1972 report, included the following recommendation:

B–5 "Continue the option to organize and use FFRDCs to satisfy needs that cannot be satisfied effectively from other organizational resources. Any proposal for a new FFRDC should be reviewed and approved by the agency head and special attention should be given to the method of termination, including ownership of assets, when the need for the FFRDC no longer exists. Existing FFRDCs should be evaluated by the agency head periodically (perhaps every three years) for continued need."

In January 1977, as part of a proposed policy on research and development procurement, OFPP issued for informal comment a draft policy on FFRDCs to the agencies and to industry groups which had indicated an interest. The comments supported the need for such a policy and, as appropriate, are reflected in this draft policy letter.

The following is a list of the current FFRDCs arranged by the sponsoring agency (source: National Science Foundation):

Department of Defense

Office of the Secretary of Defense

Administered by non-profit institution:
- Institute for Defense Analyses (IDA)

Department of the Navy

Administered by universities:
- Center for Naval Analyses (University of Rochester)

Department of the Air Force

Administered by universities:
- Lincoln Laboratory (Massachusetts Institute of Technology)

Administered by non-profit institutions:
- Aerospace Corporation
- C³ Division (MITRE Corporation)
- Project Air Force (RAND Corporation)

Department of Health and Human Services

National Institutes of Health

Administered by industrial firms:
- Frederick Cancer Research Center (Litton Bionetics, Inc., Litton Industries)

Department of Energy

Administered by industrial firms:
- Bettis Atomic Power Laboratory (Westinghouse Electric Corp.)
- Hanford Engineering Development Laboratory (Westinghouse Hanford Corp.)
- Oak Ridge National Laboratory (Union Carbide Corp.)
- Idaho National Engineering Laboratory (Aerojet Nuclear Corp.)
- Knolls Atomic Power Laboratory (General Electric Company)
- Liquid Metal Engineering Center (Rockwell International Corporation)
- Mound Laboratory (Monsanto Research Corp.)
- Sandia Laboratory (Western Electric Co., Inc.—Sandia Corp.)
- Savannah River Laboratory (E. I. duPont de Nemours & Co., Inc.)

Administered by Universities:
- Ames Laboratory (Iowa State University of Science and Technology)
- Argonne National Laboratory (University of Chicago and Argonne Universities Association)
- Brookhaven National Laboratory (Associated Universities, Inc.)
- E. O. Lawrence Berkeley Laboratory (University of California)
- E. O. Lawrence Livermore Laboratory (University of California)
- Fermilab (Universities Research Association, Inc.)
- Los Alamos Scientific Laboratory (University of California)
- Oak Ridge Institute of Nuclear Studies (Oak Ridge Associated Universities)
- Plasma Physics Laboratory (Princeton University)
- Stanford Linear Accelerator Center (Stanford University)

Administered by other non-profit institutions:
- Pacific Northwest Laboratory (Battelle Memorial Institute)
- Solar Energy Research Institute (Midwest Research Institute)

National Aeronautics and Space Administration

Administered by universities:
- Jet Propulsion Laboratory (California Institute of Technology)

National Science Foundation

Administered by universities:
- Cerro Tololo Inter-American Observatory (Association of Universities for Research in Astronomy, Inc.)
- Kitt Peak National Observatory (Association of Universities for Research in Astronomy, Inc.)
- National Astronomy and Ionosphere Center (Cornell University)
- National Center for Atmospheric Research (University Corporation for Atmospheric Research)
- National Radio Astonomy Observatory (Associated Universities, Inc.)
- Sacramento Peak Observatory (Association of Universities for Research in Astronomy, Inc.)

Karen Hastie Williams,
Administrator.
December 24, 1980.

OFPP Policy Letter 81—

December 24, 1980.

To the heads of executive departments and establishments.

Subject: Federally Funded Research and Development Centers.

1. *Purpose.* Government procurement policy should be uniform and consistent in application. This directive establishes Government-wide policies for the establishment, use, periodic review, and termination of Federally Funded Research and Development Centers (FFRDCs).

2. *Rescission.* Memorandum from the Chairman to the Members of the Federal Council for Science and Technology, dated November 1, 1967, which set forth criteria for identification of FFRDCs and the requirement for a master Government listing of these centers, is rescinded by this policy letter.

3. *Authority:* This policy letter is being issued pursuant to 41 U.S.C. 405, Sections 6d and 6h, which require final disposition of the Commission on Government Procurement

recommendations and authorize the issuance of policy directives.

4. *Background.* The Departments of Energy, Defense, and Health and Human Services, and the National Aeronautics and Space Administration and the National Science Foundation currently sponsor a total of 35 FFRDCs. In addition to these primary sponsors, many other departments and agencies utilize these FFRDEs. The contracts with the FFRDCs represent an estimated annual expenditure of $3 billion.

In 1967, a Government-wide policy for the identification and maintenance of a master listing of these FFRDCs was issued (reference paragraph 2—Rescission). In 1972, the Commission on Government Procurement recommended that guidance be provided on the establishment, use, periodic review and termination of FFRDCs. This policy is based on the executive branch consideration of the Commission's recommendation.

5. *Policy.*

a. Agencies will carefully consider alternatives for meeting their special technical needs before using an existing FFRDC or establishing a new FFRDC. Alternatives for meeting the agency needs shall be considered in the following order of precedence:

(1) Use of the private sector, including non-profit organizations.

(2) Use of in-house Government capabilities.

(3) Use of existing FFRDCs.

(4) Establishment of a new FFRDC.

b. Arrangements with FFRDCs which are also Government-owned, contractor-operated (GOCO) facilities will comply with the provisions of OMB Circular No. A–49.

c. Task assignments given to FFRDCs which are consulting services, as defined by OMB Circular No. A–120, will comply with the provisions of that Circular.

d. FFRDCs will not receive manufacturing or production tasks or contracts.

e. *Establishment of an FFRDC.* In establishing a new FFRDC, the principal sponsor shall ensure that:

(1) The alternatives in 5.a. for obtaining support of agency requirements cannot meet the needs.

(2) Before concluding that there is no other adequate performer available, the agency will place at least three notices over a 90-day period in the *Commerce Business Daily* and in the Federal Register soliciting identification of private sector performers.

(3) Agency efforts to find satisfactory private sector performers, especially small and minority-owned businesses, will include obtaining assistance from the Small Business Administration and the Domestic and International Business Administration in the Department of Commerce.

(4) There is sufficient Government expertise available to objectively and perceptively evaluate the work performed by the FFRDC.

(5) Controls are established to ensure that costs of services being provided to the Government are reasonable.

(6) The responsibility for capitalization has been defined in such a manner that ownership of assets may be readily and equitably determined upon termination of the FFRDC.

(7) The FFRDC will maintain currency in its field(s) of expertise.

f. *Sponsoring Agreements.* A contract shall be the only instrument used for transactions with FFRDCs. Long-term contract arrangements are encouraged to provide the continuity that will attract high quality personnel to the FFRDC, maintain its objectivity and independence, preserve familiarity with the principal sponsor's needs, and provide a quick response capability. The contract with an FFRDC shall include, as a minimum:

(1) Cost items on which advance agreements are to be negotiated; e.g., salary structure, depreciation, indirect costs, etc.

(2) Special factors affecting negotiation of fees; e.g., risks, use of Govenrment furnished property and facilities, etc.

(3) Criteria for the orderly termination of the contract and disposal of assets.

(4) A prohibition against the FFRDC soliciting work from any source and from competitively bidding for work.

g. *Use of an Existing FFRDC.* The principal sponsor will ensure that task assignments proposed for an existing FFRDC are within the scope of the contract, that the alternatives in 5.a. for obtaining support of agency requirements cannot meet the needs, and, if for consulting services, that the requirements of OMB Circular No. A–120 have been met.

h. *Use of an Existing FFRDC by an Agency Other than the Principal Sponsor.* When an agency has determined, in accordance with 5.a. and 5.d.(2), that the alternatives for obtaining support of agency requirements cannot meet the needs, it may request the principal sponsor to place the work with an existing FFRDC. If the principal sponsor concurs in the placing of the work with its FFRDC and the work is within the scope of the contract, task assignments can be given to the FFRDC. The principal sponsor will continue to be responsible for contract administratioan, but the other agency will be responsible for management of the specific work involved.

i. *Periodic Review.* Principal sponsors shall conduct comprehensive periodic reviews at least every three years of their use and need for the FFRDC(s). The annual planning and budget process and associated performance reviews of FFRDCs are not substitutes for the comprehensive period review. The head of the principal sponsor may approve the continuance of the FFRDC(s), if recommended by the periodic review. The periodic review will include:

(1) The examination of the agency's special technical needs to determine if they continue to exist.

(2) The examination of the preferred alternatives in 5.a. to meeting the agency's needs.

(3) The efficiency and effectiveness of the FFRDC in meeting the agency's needs.

(4) The adequacy of the FFRDC management in assuring a cost effective operation.

j. *Termination of an FFRDC.* When the principal sponsor's need for the FFRDC no longer exists, the sponsorship shall be phased out and the assets disposed of under the terms and conditions of the contract.

6. *Definitions*

a. A *Federally Funded Research and Development Center* is an organization established by the Federal Government to perform, analyze, integrate, support or administer research and development. FFRDCs exist to work for and operate under the direct monitorship of the principal sponsor. FFRDCs are not-for-profit organizations administered by universities, non-profit organizations, or industrial firms as an autonomous organization or an identifiable separate operating unit of a parent organization. FFRDCs have an average annual operation and capital equipment budget of at least $3 million.

b. *Principal Sponsor* means the executive agency which established and monitors an FFRDC and is responsible for contract administration of the contract with the FFRDC.

7. *Action Requirements*

a. Each agency head has the responsibility to ensure that the provisions of this policy are followed.

b. The principal sponsor will provide the Administrator of Federal Procurement Policy with a copy of the final report(s) of the comprehensive period reviews required by 5.i.

c. The principal sponsors will notify the National Science Foundation of the status of the FFRDCs.

d. The National Science Foundation will maintain the master Government list of FFRDCs.

8. *Information Contact.* All questions or inquiries should be submitted to the Office of Management and Budget, Administrator for Federal Procurement Policy, telephone 202–395–6810.

9. *Sunset Review Date.* This policy letter will be reviewed five years after its effective date for extension, modification, or rescission.

[FR Doc. 80–40675 Filed 12–30–80; 8:45 am]
BILLING CODE 3110–01–M

Proposed Policy Letter on Cost Sharing in Research and Development Contracts

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: A draft Office of Federal Procurement Policy (OFPP) policy letter on cost sharing in research and development contracts is being published for public review and comment.

SUMMARY: The proposed policy prohibits cost sharing in any form in Government research and development contracts. The proposed policy does not apply to assistance transactions (grants and cooperative agreements). This proposed policy should be reviewed in conjunction with the proposed OFPP policy letter on Recoupment of Research and Development Contract Costs.

DATE: Comments must be received by February 20, 1981.

ADDRESS: Send comments to Mr. Fred H. Dietrich, Associate Administrator for Major System Acquisitions and Procurement Strategies, Office of Federal Procurement Policy, 726 Jackson Place, N.W., Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Fred H. Dietrich, 202–395–6810.

SUPPLEMENTARY INFORMATION: One of the first statutory requirements for cost sharing was the limitation placed on indirect costs for research grants in the Labor-Health, Education and Welfare (HEW) Appropriations Act for fiscal year 1958. This enacted into law the 15% limitation previously applied by agency policy.

The statutory indirect cost limit was raised to 20% for fiscal year 1963, and the Labor-HEW Appropriations Act for fiscal year 1966 substituted a clause which has been used each succeeding year:

"None of the funds provided herein shall be used to pay any recipient of a grant for the conduct of a research project an amount equal to as much as the entire cost of the project."

In 1970, cost sharing was legislatively introduced (Appropriation Act for the Independent Offices and Housing and Urban Development) as applicable to some contracts as well as grants:

"None of the funds provided in this Act may be used for payment, through grants or contracts, to recipients that do not share in the cost of conducting research resulting from proposals for projects not specifically solicited by the Government: provided that the extent of cost sharing by the recipient shall reflect the mutuality of interest of the grantee or contractor and the Government in research."

This language governed such agencies as the National Aeronautic and Space Administration and National Science Foundation, but Health and Human Services (HHS) is the agency covered by prior language in this appropriation act. In the absence of statutory requirements, Department of Defense observed the language applicable to HHS. The Atomic Energy Commission, while not subject to statutory requirement for cost sharing, required cost sharing in most of its research support agreements.

The Office of Management and Budget (OMB) issued Circular No. A–100, replacing Circular No. A–74, expanding cost sharing to research contracts as well as grants and making the requirements of the 1970 Appropriation Act for the Independent Offices and HUD applicable to all executive agencies for unsolicited proposals. In December 1973, General Services Administration Federal Management Circular (FMC) 73–3 superseded OMB Circular A–100 with essentially the same requirements. The Commission on Government Procurement in its report of December 1972, recommended:

"Eliminate cost sharing on R&D projects except in cases where the performer of the project would clearly benefit; e.g., through economic benefits on commercial sales. Decisions with respect to the placement of R & D contracts or grants should not be influenced by potential cost sharing except where cost competition is a factor."

In June 1973, an interagency task group was established to consider the Commission's recommendation. This task group recommended in its February 1974 report:

"Eliminate mandatory cost sharing on R&D projects provided, however, that sharing may be required in cases where the performer would clearly benefit from commercial sales as a result of performance of the research and development. Decisions with respect to the placement of R&D awards should not be influenced by potential cost sharing except where cost competition is a factor."

Subsequent review by 27 agencies resulted in 8 concurrences, 9 nonconcurrences, one conditional concurrence and 2 abstentions. As a result, the task group was reconstituted to reconsider the proposed position. In December 1974, the task group recommended:

"Cost participation on research and development projects may be encouraged or required at the discretion of individual agencies, as deemed in the best interest of the Government. Such participation is subject to statutory or interagency guidelines. Statutory cost participation not directed to specific agency programs or projects should be eliminated."

This December 1974 report of the task group was distributed for private sector comments only since agency views had already been obtained. Strong opposition was expressed from both commercial and nonprofit performer organizations.

The interagency task group was reconstructed and reconstituted to once again reconsider the proposed position. In January 1976, the task group recommended:

"Cost participation under any R&D agreement shall not be imposed except as set forth below:

a. Cost participation shall be implemented when required by statute.

b. Cost participation may be imposed at the option of the agency when there is a high probability that the performer will receive a significant present or future benefit as a direct result of the performance effort."

In the January 1976 report, the task group further defined cost participation as follows:

"Cost participation is a generic term denoting any situation where the Government does not fully reimburse the performer for all allowable costs, profits, or fees associated with the specified effort. The term encompasses cost sharing, cost matching, cost limitation (direct or indirect) and similar phrases. Cost participation may be in any form, including, but not limited to, cash, personal property or services, or real property or interest therein, needed for the project, the value of which shall be established by mutual agreement between the agency and the performer."

OFPP Policy Considerations

—The attitude of having a contractor share in costs when benefits are expected from the performance could easily lead to cost sharing on all Federal R&D contracts. This is not the Government's intent.

—Obtaining an agreement which is in the best interest of the Government does not mean the least immediate cost to the Government.

—Discouraging contractors from doing business with Government is a concern.

—Cost sharing does not include all forms of cost limitations or disallowances, many of which are covered in regulations on cost principles.

—Solicited versus unsolicted proposals. Many believe cost sharing is appropriate for unsolicted proposals, even though the agency may well desire to procure the R&D effort proposed to meet the agency's missions. Consideration is not always given to encouraging contractors to present alternatives to meeting agency missions.

—Procurement with small R&D firms. If cost sharing were to continue to be imposed when the Government is procuring research and development for its use, small R&D firms would continue to be excluded from these procurements because only the larger firms may be able to afford to accept the imposition of cost sharing in this situation.

The Commission observed the philosophical difference in *supporting* research and *procuring* research. Agencies such as DOD, NASA and Federal Aviation Administration procure R&D, while other agencies such as the Department of Energy both procure and support R&D. Agencies such as Urban Mass Transportation Administration, National Institute of Health, and NSF are in a predominately R&D support role. Public Law 95–224 provides statutory distinction between "assistance" (supporting) and "procurement" transactions.

The Commission was clear that sharing should not be imposed when the agencies are procuring R&D, but may be imposed if the Government is assisting the performer. The Commission also recognized that voluntary cost sharing, however justified, should not be eliminated, but controlled. For example, known voluntary cost sharing would not be in the best interest of the Government when the Government is procuring R&D products or services for Government use because, in effect, it would be condoning a "buy-in." Existing procurement policies do not condone "buy-ins."

The proposed policy does not permit cost sharing in contracts. However, the prohibition of cost sharing by the contractor when an agency is procuring R&D products or services for its use and when there is a clear potential benefit to the contractor through commercial sales is being counterbalanced in the proposed policy on recoupment.

In January 1977, as part of a proposed policy in research and development procurement, OFPP issued for informal comment a draft policy on cost sharing to the agencies and to industry groups which had indicated an interest. Appropriate revisions have been incorporated in the proposed policy based on the comments received.

Karen Hastie Williams,
Administrator.
December 24, 1980.
December 24, 1980.

OFPP Policy Letter 81—

Heads of Executive Departments and Establishments.

Subject: Cost Sharing in Research and Development Contracts.

1. *Purpose.* Government procurement policy should be uniform and consistent in application. This directive prohibits cost sharing in any form in research and development contracts.

2. *Rescission.* The provisions of Federal Management Circular (FMC) No. 73–3, "Cost Sharing on Federal Research," dated December 4, 1973, which relate to contracting, are rescinded by this policy letter.

3. *Authority.* This policy is being issued pursuant to 41 U.S.C. 405, Sections 6d and 6h, which require final disposition of the Commission on Government Procurement recommendations and authorize the issuance of policy directives.

4. *Background.* The Commission on Government, in its 1972 report, recommended that recoupment of research and development contract costs be prohibited and that cost sharing be used in research and development contracts when there was a clear potential of commercial benefit. However, in August 1974, the Council on International Economic Policy, with the President's concurrence, issued Decision Memorandum 23, which requires recoupment on Government-owned and financed technologies and products when they are sold to non-U.S. Government buyers, both domestic and foreign.

By requiring recoupment (see OFPP Policy Letter 81—) but prohibiting cost sharing, the intent of the Commission's recommendation for repayment to the Government of sponsored research and development is being met.

5. *Policy.* Agencies shall ensure that for research and development (R&D) contracts, the funds, scope of work, and evaluation criteria are in balance. Cost sharing shall not be imposed on or permitted by an agency in R&D contracts.

6. *Definitions.* See OMB Circular No. A–11, Section 44, for definitions of research and development.

7. *Action Requirements.*

a. Each agency head has the responsibility to ensure that the provisions of this policy are followed.

b. Copies of agency implementation will be sent to the Administrator for Federal Procurement Policy.

8. *Information Contact.* All questions or inquiries should be submitted to the Office of Management and Budget, Administrator for Federal Procurement Policy, telephone 202–395–6810.

9. *Sunset Review Date.* This policy letter will be reviewed, in conjunction with OFPP Policy Letter 81—, "Recoupment of Research and Development Contract Costs," five years after its effective date for extension, modification, or rescission.

[FR Doc. 80–40676 Filed 12–30–80; 8:45 am]
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Proposed Policy Letter on Recoupment of Research and Development Contract Costs

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: A draft Office of Federal Procurement Policy (OFPP) policy letter on recoupment of research and development contract costs is being published for public review and comment.

SUMMARY: The proposed policy sets forth guidelines for the financial repayment to the Government of part or all the Government funded research and development costs of contracts leading to products or services that are sold to buyers other than the Government. This proposed policy should be reviewed in conjunction with the proposed OFPP policy letter on Cost Sharing in Research and Development Contracts.

DATE: Comments must be received by February 20, 1981.

ADDRESS: Send comments to Mr. Fred H. Dietrich, Associate Administrator for Major System Acquisitions and Procurement Strategies, Office of Federal Procurement Policy, 726 Jackson Place, N.W., Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Fred H. Dietrich, 202–395–6810.

SUPPLEMENTARY INFORMATION: During late 1973 and the first half of 1974, the Council on International Economic Policy conducted a study which resulted in a recommendation that recoupment be sought on Government-owned and financed technologies and products when these are proposed for sale to non-U.S. Government buyers. The President reviewed the issue and approved the Council's recommendations. On August 2, 1974, the Executive Director of the Council issued Decision Memorandum 23, setting forth the policy.

Council on International Economic Policy Decision Memorandum 23

requires that recoupment will be sought on Government-owned and financed technologies and products when these are proposed for sale to non-U.S. Government buyers. Further, it requires that recoupment will:

(1) Be disigned to achieve a return on Government investment and not to arbitrarily limit transfers of technology to foreign nations;

(2) Entail proportionate (i.e., pro rata) cost recovery on product sales;

(3) Allow a fair market recovery on technology sales, execution to be predicated on a satisfactory determination of fair market pricing policy and procedures; and

(4) Allow reasonable agency flexibility and discretion in implementation, permitting exceptions because of national security, foreign policy and overriding public interest.

OMB had the responsibility to provide implementation guidance to the agencies for this policy. In the process of developing the guidance, OMB found that the application of the policy was very complex because of potential legitimate reasons for granting exceptions in certain cases involving national secuity, foreign policy, and the general public interest. Therefore, on April 15, 1975, OMB requested that the Federal Coordinating Council for Science and Technology assist in development of the needed criteria and guidelines. In May 1975, NSF's Office of National Research and Development Assessment provided a white paper entitled, "Recoupment of Government R&D Expenditures: Issues and Practices." This paper was used by the Federal Coordinating Council for Science and Technology in developing the recoupment guidelines.

On June 29, 1976, the Chairman of the Federal Coordinating Council for Science and Technology distributed to the agencies and OFPP/OMB the guidelines requested by OMB. OFPP was assigned the responsibility to provide the uniform Government-wide procurement policy.

The Commission on Government Procurement, in its December 1972 report, recommended:

"Eliminate recovery of R&D costs from Government contractors and grantees except under unusual circumstances approved by the agency head."

On September 16, 1974, the interagency task group established by OMB to develop the executive branch position on the Commission's recommendation, recommended rejection of the Commission's recommendation in favor of the Council on International Economic Policy Decision Memorandum 23. In October 1974, the task group's position was adopted as the executive branch position and notice to this effect was published in the Federal Register.

The Councils' recommendation and executive branch position on the Commission recommendation are reflected in the proposed policy.

In January 1977, as part of a proposed policy on research and development procurement, OFPP issued for informal comment a draft policy on recoupment to the agencies and to industry groups which had indicated an interest. Appropriate revisions have been incorporated in the proposed policy based on the comments received.

It is recognized that the Departments of Defense and Energy, and the National Aeronautics and Space Administration have issued implementing instructions on recoupment.

Karen Hastie Williams,

Administrator.

December 24, 1980.

December 24, 1980.

OFPP Policy Letter 81-—

To the heads of executive departments and establishments.

Subject: Recoupment of Research and Development Contract Costs.

1. *Purpose.* Government procurement policy should be uniform and consistent in application. This directive establishes Government-wide policies for the recoupment of research and development contract costs.

2. *Authority.* This policy letter implements Council on International Economic Policy Decision Memorandum 23 of August 2, 1974, and is issued pursuant to 41 U.S.C. 405, Section 6h, which authorizes the issuance of policy directives.

3. *Background.* The Commission on Government Procurement, in its 1972 report, recommended that recoupment of research and development contracts costs be prohibited and that cost sharing be used in research and development contracts when there was a clear potential of commercial benefit. In August 1974, the Council on International Economic Policy, with the President's concurrence, issued Decision Memorandum 23, which requires recoupment on Government-owned and financed technologies and products when these are sold to non-U.S. Government buyers, both domestic and foreign.

By requiring recoupment but prohibiting cost sharing (see OFPP Policy Letter 81-—, the intent of the Commission's recommendation for repayment to the Government of sponsored research and development is being met.

Council on International Economic Policy Decision Memorandum 23 specified that recoupment will:

—Be designed to achieve a return on Government investment and not to arbitrarily limit transfers of technology to foreign nations;

—Entail proportionate (i.e., pro rata) cost recovery on product sales;

—Allow a fair market recovery on technology sales, execution to be predicated on a satisfactory determination of fair market pricing policy and procedures; and

—Allow reasonable agency flexibility and discretion in implementation, permitting exceptions because of national security, foreign policy, or overriding public interest.

In April 1975, OMB requested that the Federal Coordinating Council for Science and Technology assist in development of the needed criteria and guidelines. In June 1976, the Council provided the requested guidelines and OFPP was assigned implementing responsibility.

4. *Policy*

a. Agencies will consider recoupment of research and development (R&D) contract costs from a for-profit contractor when:

(1) The R&D contract is for $10 million or more;

(2) There is a clear potential commercial sales benefit to the contractor; and

(3) None of the conditions cited under 4.b. exist.

b. Recoupment of R&D contract costs will not be sought when:

(1) The contracted R&D effort involves basic research, applied research or technology development in the technology base;

(2) Recoupment would conflict with agency responsibilities for exchange and dissemination of information and encouragement of widespread use of the technology, or is prohibited by statute;

(3) The administrative costs of recoupment are likely to be greater than the amount recouped;

(4) Recoupment would conflict with important overriding concerns of national policies, such as national security, foreign policy, trade balance, employment, loss of Federal taxes, or other public considerations;

(5) R&D expenditures are being supported by joint agreement with other countries and recoupment would cause discrimination against U.S. contractors; or

(6) The Government has no contractural or other rights in the particular products, service, or technology.

c. Recoupment is not a product value tax; it is cost allocation derived from a pro rata cost distribution. Recoupment will normally be made by determining the Government contract costs for R&D, estimating expected sales, and establishing a pro rata amount per item by distributing total costs to be recouped over expected sales. This allocation may be made after the R&D has been accomplished and commercial possibilities become apparent, provided the rights of the Government to do so are established in the R&D contract. Where a pro rata approach is infeasible, a percent of the sales price for a product may be established in the recoupment amount.

5. *Definitions.* See OMB Circular No. A-11, Sections 44 and 55, for definitions of basic research, applied research, technology development, technology base, and development.

6. *Action Requirements*

a. Each agency head has the responsibility to ensure that the provisions of this policy are followed.

b. Copies of agency implementation will be sent to the Administrator for Federal Procurement Policy.

7. *Information Contact.* All questions or inquiries should be submitted to the Office of Management and Budget, Administrator for Federal Procurement Policy, telephone 202-395-6810.

8. *Sunset Review Date.* This policy letter will be reviewed, in conjunction with OFPP Policy Letter 81-—, "Cost Sharing in Research and Development Contracts," five years after its effective date for extension, modification, or rescission.

[FR Doc. 80-40677 Filed 12-30-80; 8:45 am]

BILLING CODE 3110-01-M

Proposed Policy Letter on Control of Management Systems and Data Required of Contractors

ACTION: A draft Office of Federal Procurement Policy (OFPP) policy letter on Control of Management Systems and Data Required of Contractors is being published for public review and comment.

SUMMARY: The proposed policy would require agencies to establish a central control function to assure that all contractually required management system criteria and data requirements are cost beneficial. The agencies would develop authorized lists of such requirements, and future solicitations and contracts would have these requirements specified on specially designed forms for that purpose. The intent of the proposed policy is to significantly reduce the expense to the Government of these contractually imposed requirements by reducing the expense to the contractors.

DATE: Comments must be received by February 20, 1981.

ADDRESS: Send comments to: Mr. Fred H. Dietrich, Associate Administrator for Major System Acquisitions and Procurement Strategies, Office of Federal Procurement Policy, 726 Jackson Place, N.W., Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Fred H. Dietrich, 202-395-6810.

SUPPLEMENTARY INFORMATION: The Commission on Government Procurement, in its 1972 report, included the following recommendations:

A-33 "Establish standards and criteria for estimating costs and benefits of product data requirements. The need for product data should be determined on the basis of cost-benefit analyses. Selective after-the-fact reviews should be used as a basis for eliminating unnecessary requirements."

A-34 "Establish Government-wide criteria for management systems which are prescribed for use by contractors, including standards for determining mission-essential management data requirements."

An interagency task group was established to consider the executive branch position on these recommendations. The task group recommended acceptance of the recommendations and the policy implementation was assigned to OFPP. In April 1978, OMB issued for comment a draft policy to the agencies and to industry groups which had indicated an interest. The comments generally supported the approach in the proposed policy letter contained herein.

A number of agencies, however, requested more detailed procedural guidance on how to effect the proposed controls. Because of the uniqueness of agency missions and to be consistent with the proposal policy, it has been determined that the policy direction should specify what is needed, not how each agency will accomplish the requirements. The agency submittals of detailed implementation plans to OFPP will provide an opportunity to share these plans among agencies. Additionally, OFPP is available to work with the agencies to resolve any questions of implementation.

It has been determined, however, in order to meet the objective of providing one face to industry across the executive branch, to direct the use of standard contract forms to be used in solicitations and contracts to identify the agencies requirements. These are included as Attachments B, C, and D to the proposed policy letter.

A number of agencies also questioned the inclusion of design analyses and test data as nonproduct data. It is intended to separate the data which provides configuration, identification, use instruction, and maintenance instruction of end products from the other data acquired. This product data is acquired for different reasons than other (nonproduct) data and requires Government inspection upon delivery which is not required of nonproduct data. It is recognized that there has been a traditional reference to "technical" and "non-technical" data. However, that distinction does not apply. While such data as design analyses and test data can be characterized as technical data, they are acquired for management decision purposes and do not define end products and are, therefore, nonproduct data in the proposed policy.

This proposed policy letter should be considered as an interim action in implementing the proposed Uniform Procurement System submitted by OFPP to Congress in October 1980. This action is in accordance with the schedule shown on page 38 of OFPP's Report to the Congress, "On the Commission on Government Procurement Recommendations," dated October 1980.

Formal coordination with the heads of the agencies will be accomplished after receipt of comments and appropriate revisions have been incorporated.

Karen Hastie Williams,

Administrator.

December 24, 1980.

December 24, 1980.

OFPP Policy Letter 81—

To the heads of executive departments and establishments.

Subject: Control of Management System Criteria and Data Required of Contractors.

1. *Purpose.* Government procurement policy should be uniform and consistent in application. This directive establishes Government-wide policies to control the development and application of contractually specified management system criteria and product and nonproduct data in the acquisition of goods and services.

2. *Authority.* This policy letter is being issued pursuant to 41 U.S.C. 405, Sections 6d and 6h, which require final disposition of the Commission on Government Procurement recommendations and authorized the issuance of policy directives.

3. *Background.* Government contr for goods and services frequently

specify management systems to be used by contractors in performance of the contracts. Additionally, records are required to be kept, nonproduct data to be submitted, and product data retained or submitted. While the cost of such requirements varies significantly among individual procurements, the total annual cost on all procurements has been estimated to be billions of dollars. Although some of these requirements are essential, a system of checks and balances is needed to ensure that such requirements are necessary, that management system criteria rather than management systems are used, and that such requirements are coordinated and compatible. The system set forth here is illustrated in Attachment A to this policy letter.

The Commission on Government Procurement recommended more effective control over the selection and imposition of such management systems and data requirements. This policy is based on executive branch consideration of the Commission's recommendations.

4. *Policy*

a. The Federal Government relies on the private sector to provide needed goods and services (see OMB Circular A–76). Agencies should minimize specific instructions to the contractor on methods to be employed in the performance of the contract. Specifically, when agencies must impose such requirements, they will specify their management system criteria, requirements for product data and nonproduct data, and the required standards for accuracy and timeliness in a manner that allows the contractor flexibility in selecting the management systems and other tools used to satisfy these requirements.

b. Agencies will control the development and application of management system criteria, product data requirements, and nonproduct data requirements used or intended for use in more than one procurement. Agencies will establish and maintain a list(s) of approved management system criteria, product data requirements, and nonproduct data requirements, and assure that unauthorized requirements are not used in procurements. Agencies will verify that there is a demonstrated need for each specific management system criteria, product data requirement, and nonproduct data requirement and that they are cost beneficial before approving them for use and inclusion on the authorized list(s).

c. Agencies will assure compatibility among management system criteria, product data requirements, and nonproduct data requirements and make maximum use of uniform terminology and classification. Intra-agency coordination is mandatory and interagency coordination is encouraged to reduce the expense to the Government incurred by placing differing and incompatible requirements on contractors doing business with several agencies or agency components.

d. For individual procurements, the Government program manager or contracting officer will: (1) identify the Government requirements for management system criteria, nonproduct data and product data in the solicitation using the forms contained in Attachments B, C, and D; (2) request contractors to propose how the requirements will be met; and (3) encourage contractors to recommend alternatives to the stated requirements. The Government program manager, or when no program manager has been designated, the contracting officer will tailor the application of management system criteria, product data requirements, and nonproduct data requirements to the specific needs of individual procurements, taking into consideration the objective of the procurement, the type of contract, the Government's needs, practical utility, the contractor's proprietary interests, the contractor's proposal, and the necessary form and depth of Government management control (prior approval of proposed contractor actions, surveillance, or visibility). Approval of management system criteria, a product data requirement, or a nonproduct data requirement for general use shall not relieve the Government program manager or contracting officer from tailoring the requirement to a specific procurement. In major system acquisitions (reference OMB Circular No. A–109) the contractors will be required to recommend the tailoring of these requirements as part of their alternative system design concept proposals and subsequent proposals throughout the acquisition process.

e. Agencies will not mandate specific management systems for use by contractors. Only approved management system criteria will be specified in contracts. Selected requirements will be specified on Form ——— (see Attachment B). Contractors will be provided the flexibility to select the management systems and other tools they use to satisfy these requirements.

f. Agency product data and nonproduct data requirements will permit the use of contractors' formats whenever possible. Only approved product data and nonproduct data requirements may be specified in contracts. Selected requirements will be specified on Form ——— (see Attachment C) and on Form ——— (see Attachment D).

g. Consideration should be given to have the contractor be a product data repository for the Government.

h. A firm commitment to procure product data will, whenever practicable, be deferred until the time an actual need is identified. The intention to procure product data will, however, be identified in the solicitation and subsequent contract. Delivery of product data will be scheduled so as to be within the time frame when the data are normally generated by the contractor.

i. The price of and rights to product data will be negotiated at the time of contracting, where circumstances permit identification of the requirements at that time. In any event, the price and rights will be negotiated no later than the time they are ordered.

j. Agency nonproduct data requirements covered by OMB Circular No. A–40 shall conform to the provisions of that Circular.

5. *Definitions*

a. *Management system* is a term used to identify management tools which are employed to assist managers in: (1) defining or stating policy, objectives, criteria, and requirements; (2) assigning responsibility; (3) achieving efficient and effective utilization or resources; (4) periodically measuring performance; (5) comparing that performance against stated objectives and requirements; and (6) taking appropriate action. A management system may encompass part or all of the above areas.

b. *Management system criteria* means the contractual document which specifies the required output and performance standards but does not specify detailed procedures or methods of accomplishment. Management system criteria may require generation, preparation, maintenance, analysis, evaluation, display, and dissemination of information.

c. *Product data requirement* means a documented contract requirement which directs contractors to collect, organize, prepare, maintain, transmit, deliver or retain information incident to the design, development, production, operation, preservation, maintenance or repair of contract end items. Product data include engineering drawings, product specifications and standards, part breakdown lists, catalog item identifications, operation and/or maintenance instructions, descriptions of product physical qualities and characteristics, computerized product definition media, and reprocurement data.

Note.—Products, including computer programs and software, are excluded from this policy.

d. *Nonpraduct data requirement* means a documented contract requirement which directs contractors to collect, organize, prepare, maintain, transmit, deliver, or retain information, plans or reports other than product data. Nonproduct data include financial and administrative reports, progress reports, design analyses, test data, configuration management reports, engineering change proposals, and other such business and technical management information. *Note:* The final report of a study contract is excluded as a data requirement in this policy.

e. *Tailoring* means the careful selection from a list of approved requirements of only those management system criteria, product data, and non-product data requirements which are essential for application to each individual solicitation or contract.

6. *Action Requirements*

a. Each agency head has the responsibility to ensure that the provisions of this policy are followed.

b. This policy letter applies to agency or interagency regulations or other issuances included in purchase solicitations or contracts that: (1) directly or indirectly specify management system criteria for use by contractor; (2) specify product data or nonproduct data required by the Government from the contractor; or (3) establish standards of accuracy and timeliness for the specified data. Nothing in this policy supersedes or modifies the provision of OMB Circular A–40.

c. All agencies will work closely with the Office of Federal Procurement Policy in resolving implementation problems. Existing agency documents may need to be revised, consolidated or cancelled to assure that only management system criteria are specified and that product data and nonproduct data requirements meet the provisions of this policy.

d. Agencies will submit the following to the Office of Federal Procurement Policy, OMB:

(1) Within six months after the date of this document, a time-phased action plan for meeting the requirements of this policy.

(2) Implementing policy directives, regulations and guidelines as they are issued.

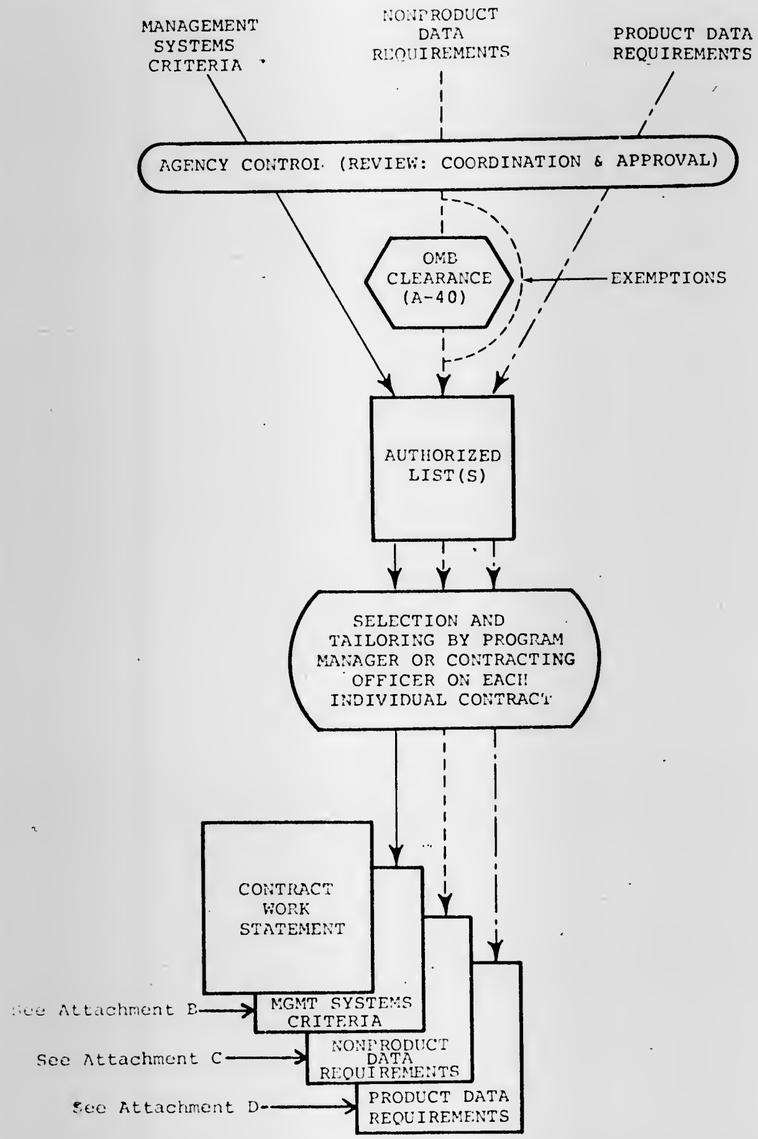
7. *Information Contact.* All questions or inquiries should be submitted to the Office of Management and Budget, Administrator for Federal Procurement Policy, telephone (202) 395–6810.

8. *Sunset Review Date.* This policy letter will be reviewed five years after its effective date for extension, modification, or rescission.

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ATTACHMENT A



ATTACHMENT B

MANAGEMENT SYSTEMS CRITERIA LIST

SOLICITATION CONTRACT NUMBER

ITEM NO.	DOCUMENT NO.	DATE	TITLE

PAGE OF PAGES

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CONTRACT NONPRODUCT REQUIREMENTS LIST

SOLICITATION CONTRACT _____ CONTRACTOR _____

SEQUENCE NUMBER	TITLE OR DESCRIPTION OF DATA / SUBTITLE	OFFICE	FREQUENCY	DATE OF 1ST SUBMISSION	DISTRIBUTION AND ADDRESSES (Addressee; Regular Copies; Reproducibles)
AUTHORITY (Data Item Number)	CONTRACT REFERENCE	ADP CODE A	INPUT TO ADP A	AS OF DATE	DATE OF SUBSEQUENT SUBMISSION
REMARKS					TOTAL
REMARKS					TOTAL
REMARKS					TOTAL
REMARKS					TOTAL
PREPARED BY	APPROVED BY				DATE

PAGE OF PAGES

CONTRACTOR'S DOCUMENT NUMBER
ESTIMATED NUMBER OF PAGES
PRICE GROUP
ESTIMATED TOTAL PRICE
CONTRACT VALUE

ATTACHMENT 3

INSTRUCTIONS FOR COMPLETING FORM (NON–PRODUCT DATA)

FOR GOVERNMENT PERSONNEL

This form shall be used whenever data is required to be delivered under a contract. The form (*except Items 15 through 18*) shall be completed in accordance with Departmental procedures, and furnished to the contracting officer by the personnel responsible for determining the data requirements of the contract.

FOR THE CONTRACTOR

1. The estimated prices filled in in Item 18 will not be separately used in evaluation of offers.

2. Each offeror may complete Items 15 and 16 in accordance with the following instructions:

Item 15. Contractor File/Document Number — Enter bidder's or offeror's internal filing or document number, if applicable.

Item 16. Estimated Number of Pages — Enter the estimated number of pages, drawings, etc., for single preparation.

3. Each offeror shall complete Items 17 and 18 in accordance with the following instructions (*this does not apply to advertised contracts or to negotiated contracts under $100,000*).

Item 17. Price Group — Contractors shall specify one of the four following groups of effort in developing estimated prices for each items of data listed on the Form.

a. Group I. Definition — Data which is not otherwise essential to the contractor's performance of the primary contracted effort (*production, development, testing, and administration*) but which is required by Form.

Estimated Price — Costs to be considered under Group I are those applicable to preparing and assembling the data item in conformance with Government requirements, and the administrative and other expenses related to reproducing and delivering such data items to the Government.

b. Group II. Definition — Data which is essential to the performance of the primary contracted effort but the contractor is required to perform additional work to conform to Government requirements with regard to depth of content, format, frequency of submittal, preparation, control or quality of the data item.

Estimated Price — Costs to be considered under Group II are those incurred over and above the cost of the essential data item without conforming to Government requirements, and the administrative and other expenses related to reproducing and delivering such data item to the Government.

c. Group III. Definition — Data which the contractor must develop for his internal use in performance of the primary contracted effort and does not require any substantial change to conform to Government requirements with regard to depth of content, format, frequency or submittal, preparation, control and quality of data.

Estimated Price — Costs to be considered under Group III are the administrative and other expenses related to reproducing and delivering such data item to the Government.

d. Group IV. Definition — Data which is developed by the contractor as part of his normal operating procedures and his effort in supplying these data to the Government is minimal.

Estimated Price — Group IV items should normally be shown on the Form at no cost.

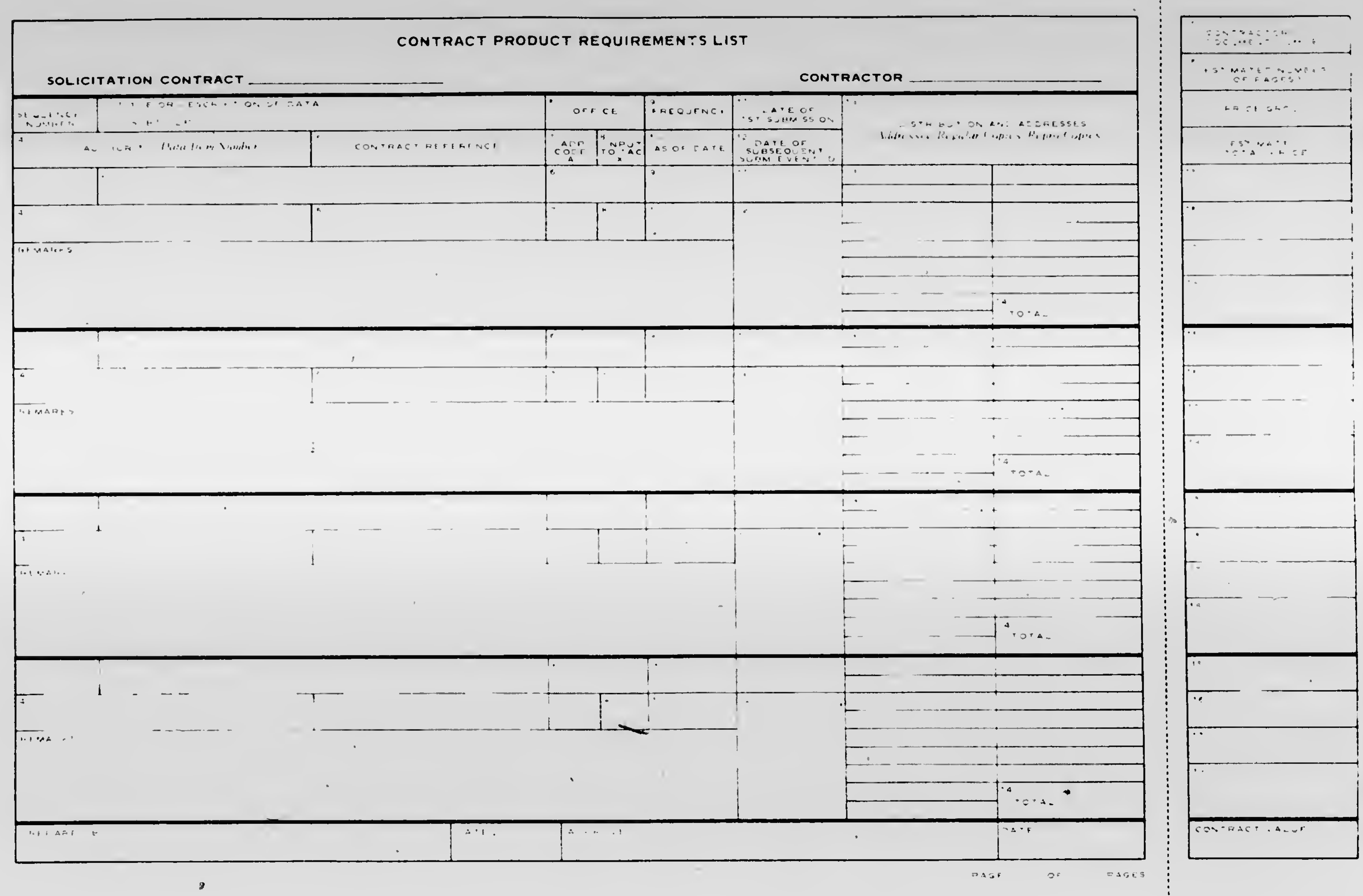
Example for Group IV — A brochure or short manual used in a company's normal commercial business, that is acquired by the Government in such small quantities that cost of determining a charge would not be practical.

Item 18. Estimated Total Price.

a. For each item of data listed, the bidder or offeror shall enter an amount equal to that portion of the total price which is estimated to be attributable to the production or development for the Government of that item of data. These estimated data prices shall be developed only from those costs which will be incurred as a direct result of the requirement to supply the data, over and above those costs which would otherwise be incurred in performance of the contract if no data were required.

b. The estimated data prices shall not include any amount for rights in data. The Government's right to use the data shall be governed by the pertinent provisions of the contract.

ATTACHMENT D



INSTRUCTIONS FOR COMPLETING FORM (PRODUCT DATA)

FOR GOVERNMENT PERSONNEL

This form shall be used whenever data is required to be delivered under a contract. The form (*except Items 15 through 18*) shall be completed in accordance with Departmental procedures, and furnished to the contracting officer by the personnel responsible for determing the data requirements of the contract.

FOR THE CONTRACTOR

1. The estimated prices filled in in Item 18 will not be separately used in evaluation of offers.

2. Each offeror may complete Items 15 and 16 in accordance with the following instructions:

Item 15. Contractor File/Document Number — Enter bidder's or offeror's internal filing or document number, if applicable.

Item 16. Estimated Number of Pages — Enter the estimated number of pages, drawings, etc., for single preparation.

3. Each offeror shall complete Items 17 and 18 in accordance with the following instructions (*this does not apply to advertised contracts or to negotiated contracts under $100,000*).

Item 17. Price Group. Contractors shall specify one of the four following groups of effort in developing estimated prices for each item of data listed on the Form.

a. Group I. Definition — Data which is not otherwise essential to the contractor's performance of the primary contracted effort (*production, development, testing, and administration*) but which is required by Form.

Estimated Price — Costs to be considered under Group I are those applicable to preparing and assembling the data item in conformance with Government requirements, and the administrative and other expenses related to reproducing and delivering such data items to the Government.

Example for Group I. A technical manual prepared for Government use only. The estimated price of the manual would be noted on the Form exclusive of cost for any of the manual material that had been generated for other purposes.

b. Group II. Definition — Data which is essential to the performance of the primary contracted effort but the contractor is required to perform additional work to conform to Government requirements with regard to depth of content, format, frequency of submittal, preparation, control or quality of the data item.

Estimated Price — Costs to be considered under Group II are those incurred over and above the cost of the essential data item without conforming to Government requirements, and the administrative and other expenses related to reproducing and delivering such data item to the Government.

Example for Group II — In the case of *drawings to Government standards* the estimated price of the data item begins only after the engineering and manufacturing information has been developed and the final form original drawings have been initiated. The estimated price shall not include the cost of configuration control, but shall include any additional quality assurance and control of the drawings but not related to engineering configuration control. Not to be considered is "design effort" expended on layout drawings and other data which serve principally as a medium for developing design and are not used in manufacture, production or test of the end item.

c. Group III. Definition — Data which the contractor must develop for his internal use in performance of the primary contracted effort and does not require any substantial change to conform to Government requirements with regard to depth of content, format, frequency or submittal, preparation, control and quality of data.

Estimated Price — Costs to be considered under Group III are the administrative and other expenses related to reproducing and delivering such data item to the Government.

Example for Group III — *Drawings to company standards* which had been used in the manufacturer's normal plant activities.

d. Group IV. Definition — Data which is developed by the contractor as part of his normal operating procedures and his effort in supplying these data to the Government is minimal.

Estimated Price — Group IV items should normally be shown on the Form at no cost.

Example for Group IV — A brochure or short manual used in a company's normal commercial business, that is acquired by the Government in such small quantities that cost of determining a charge would not be practical.

Item 18. Estimated Total Price

a. For each item of data listed, the bidder or offeror shall enter an amount equal to that portion of the total price which is estimated to be attributable to the production or development for the Government of that item of data. These estimated data prices shall be developed only from those costs which will be incurred as a direct result of the requirement to supply the data, over and above those costs which would otherwise be incurred in performance of the contract if no data were required.

b. The estimated data prices shall not include any amount for rights in data. The Government's right to use the data shall be governed by the pertinent provisions of the contract.

[FR Doc. 80-40678 Filed 12-30-80; 8:45 am]

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federal register

Wednesday
December 31, 1980

Part XX

Environmental Protection Agency

Hazardous Waste Management System: Storage by Transporters; Shipments From Treatment, Storage, or Disposal Facilities; Transportation by Rail

V 45 DE 31 80 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 263, 264, and 265

[SW FRL 1715-5]

Hazardous Waste Management System: Storage Requirements Applicable to Transporters of Hazardous Waste, Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities and EPA Administered Permit Program: The Hazardous Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Interim final amendments and request for comments.

SUMMARY: In February and May of 1980, EPA promulgated final regulations applicable to transporters of hazardous waste and to owners and operators of hazardous waste storage facilities. 45 FR 12722 (February 26, 1980) and 45 FR 33066 (May 19, 1980). These amendments supplement those regulations by clarifying when a transporter handling shipments of hazardous waste is required to obtain a storage facility permit. Under these amendments a transporter may hold a manifested shipment of hazardous waste for up to ten days without a RCRA permit and without complying with the standards applicable to hazardous waste storage facilities. If the waste is held for more than ten days, an RCRA permit is required, and the transporter must comply with the applicable storage standards and permit requirements.

DATES: Effective date: December 31, 1980. Comment date: EPA will accept public comments on this interim final rule until March 2, 1981.

ADDRESS: Comments on the amendment should be sent to the Docket Clerk (Docket 3003—Transportation Storage), Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

For general information concerning these regulations, contact Rolf P. Hill, or Carolyn Barley, (202) 755-9150, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Authority

This interim final regulation is issued under the authority of Sections 2002(a), 3002, 3003, 3004, and 3005, of Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6912(a), 6923, 6924, 6925.

II. Background Information

A. Introduction

In regulations promulgated in February of 1980, EPA established standards applicable to generators and transporters of hazardous waste. 45 FR 12742 (February 26, 1980). These standards created, among other things, a manifest system which was designed to track hazardous wastes from their generation through their ultimate disposition. In addition, for the transportation of hazardous waste, EPA adopted many of the requirements of the Department of Transportation (DOT) under the Hazardous Materials Transportation Act designed to ensure the proper and safe transportation of hazardous materials. In May of 1980, DOT amended its regulations to include hazardous wastes in its regulatory program. 45 FR 34560 (May 22, 1980).

In May of 1980, EPA promulgated regulations that, among other things, set standards and permit requirements applicable to owners and operators of hazardous waste management facilities. 40 CFR Parts 264, 265 and 122. 45 FR 33220 (May 19, 1980). These regulations prescribe general operating practices for all hazardous waste management facilities as well as set specific requirements for the storage of hazardous waste. All hazardous waste management facilities must have an RCRA permit to operate or, prior to the issuance of a permit, be in "interim status".

Many transporters own or operate transfer facilities (sometimes called "break-bulk" facilities) as part of their transportation activities. At these facilities, for example, shipments may be consolidated into larger units or shipments may be transferred to different vehicles for redirecting or re-routing. Shipments generally are held at these facilities for short periods of time. The length of time may vary due to such factors as scheduling and weather, but because these facilities are intended to facilitate transportation activities, rather than storage, the time is typically as short as practicable.

In developing the hazardous waste regulations EPA recognized that in the normal course of transportation hazardous waste might be held for short periods of time in vehicles (e.g. in trucks parked at the transporter's terminal overnight or over a weekend) or at transfer facilities. The Agency did not, however, clearly state that the holding of hazardous waste by a transporter incidental to transportation would not require a RCRA storage permit and compliance with the standards applicable to storage of hazardous waste. A literal application of the regulations, however, might require all transporters who hold waste during transportation or who own or operate transfer facilities to obtain RCRA permits. The transportation industry has asked EPA whether the Agency intended to require transporters to file permit applications and comply with the substantive standards for storage.

B. Transfer Facility Requirements

For the reasons set forth below, EPA believes that transporters who hold hazardous wastes for a short period of time in the course of transportation should not be considered to be storing hazardous wastes and should not be required to obtain a RCRA permit or interim status and comply with the standards of Parts 264 or 265. For the amendments published today, EPA allows transporters to hold wastes in the course of transportation for up to 10 days if the waste is accompanied by a manifest and remains in containers which meet the Department of Transportation (DOT) packaging requirements. These amendments relieve transporters who own or operate a transfer facility of the necessity of obtaining a RCRA permit and of complying with the substantive requirements for storage for the holding of wastes which is incidental to normal transportation practices. The term transfer facility, as used in this amendment, refers to transportation terminals (including vehicle parking areas, loading docks and other similar areas) break-bulk facilities or any other facility commonly used by transporters to temporarily hold shipments of hazardous waste during transportation.

The transportation system established by EPA's regulations should achieve adequate protection of human health and the environment. Transporters have a natural incentive to move shipments quickly and efficiently; their business, in most cases, is the movement of hazardous wastes rather than the storage of such waste. In addition, the manifest system requires that the generator receive a copy of the manifest, signed and dated by the designated facility within 35 days. To avoid the necessity of locating shipments of hazardous waste and filing Exception Reports with EPA, generators will desire

prompt transportation and delivery of hazardous waste shipments. These factors, working together, should operate to ensure that wastes will not be held in storage for lengthy periods by transporters.

In addition, the amended regulations set a ten day period for in-transit holding of hazardous waste. This will of course provide a further incentive for transporters to quickly move shipments of hazardous waste. EPA chose a ten day period in order to allow short term holding of waste for transfer and to account for such things as scheduling problems, weather delays, temporary closing and other factors which might cause unforseen delays. The Agency also received information from the transportation industry indicating that shipments of hazardous waste normally take no longer than fifteen days (including both the actual transportation and the temporary holding of the shipment.) Therefore, providing ten days for in-transit storage of waste will cover almost all transportation related holding activities.

The amendments provide that the hazardous wastes being held at transfer facilities must be in containers (including tank cars and cargo tanks) which meet DOT specifications for packaging under 49 CFR 173, 178 and 179. This provision should ensure that the hazardous waste remains properly packaged during this phase of transportation. Although the Agency believes that this requirement should provide adequate protection of human health and the environment during the short period that hazardous wastes are held at a transfer facility, we solicit comments on whether additional requirements should be imposed, such as contingency plans, personnel training, and inspections. Comments are specifically requested on which, if any, of the Part 265 requirements should be placed on transporters who hold shipments of hazardous waste for ten days or less.

It is important to note that the provisions of Subpart C of Part 263, regarding transporter responsibilities in the event of a discharge, apply to transfer facilities. Specifically, a transporter is required to clean up any hazardous waste discharge and to report the discharge in accordance with the provisions of Department of Transportation's Regulations (49 CFR Part 171).

The Agency believes that adequate protection of human health and the environment can be achieved by limiting the length of in-transit holding of wastes and by requiring the use of DOT containers. These simple requirements do not have to be implemented through the issuance of RCRA permits and compliance with all the requirements for hazardous waste storage facilities. EPA further believes that the administrative burdens on both the regulated community and EPA are substantially reduced without detriment to the protection of human health and the environment.

In addition, by allowing limited in-transit storage without a RCRA permit or interim status, these amendments better serve the important purposes of the manifest system by enabling and requiring the generator to designate the ultimate treatment, storage or disposal facility, rather than a transporter transfer facility and by ensuring the prompt delivery of hazardous waste shipments to such facilities. If hazardous wastes had to be manifested to a permitted or interim status transfer facility where the wastes were held temporarily, then the generator would be unintentionally relieved of the important responsibility of designating and assuring delivery to the ultimate treatment, storage or disposal facility.

The ten day exemption only applies when a transporter is holding the manifested shipment of hazardous waste in containers which meet applicable Department of Transportation regulations for packaging. The Agency decided to exclude the holding of hazardous waste in stationary storage tanks from these amendments because the intent of this action is to accommodate those normal and routine transfer activities raised by the transportation industry. Specifically, the industry was concerned about RCRA's application to transport vehicles parked at transfer facilities and to containers which, in the course of being transferred from one vehicle to another, were held on a loading dock or other similar facility for a short period of time. The Agency specifically requests comments on whether the ten day exemption should be expanded to include temporary storage in tanks meeting the requirements of Subpart J of 40 CFR Part 265 (except § 265.193).

These amendments do not affect the manifest system established in the February and May regulations. The generator, each transporter and the designated facility are still required to sign the manifest. The Agency is, however, considering requiring additional entries on the manifest. Specifically, comments are requested on whether signatures and dates should appear on the manifest indicating when the shipment entered and left the transfer facility.

These amendments do not place any new requirements on transporters re-packaging waste from one container to another (e.g., consolidation of wastes from smaller to larger containers) or on transporters who mix hazardous wastes at transfer facilities. The Agency solicits comments on whether regulatory controls over the consolidation of shipments and mixing of hazardous waste by transporters are warranted. Specifically, should controls similar to those in Part 265 regarding the mixing of incompatible waste be placed on transporters?

IV. Interim Final Regulations and Effective Date

A. Interim Final Regulations

EPA has determined under Section 553 of the Administrative Procedures Act, 5 U.S.C. 553, that there is good cause for promulgating these amendments without prior notice and comment. Without these amendments, transporters who own or operate transfer facilities, under a literal application of the regulations, could continue to operate such facilities on or after November 19, 1980 only if they had a permit or interim status and complied with the applicable requirements of Parts 264 or 265. We believe that it is essential to correct this and to clearly set forth the obligations of transporters.

B. Effective Dote

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after promulgation. The purpose of this requirement is to allow persons handling hazardous waste sufficient lead time to prepare and to comply with major new regulatory requirements. For the amendments promulgated today, however, the Agency believes that an effective date six months after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would not be in the public interest. Since the amendments reduce, rather than increase, the existing requirements for transporters, there is no basis for allowing a lengthy period of time for transporters to prepare for compliance. Therefore, the regulatory provisions that these amendments modify take effect immediately.

V. Environmental, Economic and Regulatory Impacts

These amendments reduce the economic, reporting and record-keeping impacts on transporters who own or operate transfer facilities by virtue of eliminating, in most cases, the

requirement for applying for an individual RCRA permit and complying with the substantive requirements of Parts 264 or 265. The proposed amendments will also reduce the resource demands on the Agency by reducing the number of individual RCRA permits that otherwise would have to be issued. The Agency believes that these savings can be achieved without significantly reducing the protection of human health and environment.

VI. Request for Comment

The Agency invites comments on all aspects of these amendments and on all of the issues discussed in this preamble. EPA recognizes that a wide variety of situations exist and is anxious to make its regulations as reasonable and workable as possible.

All comments should be addressed to the Docket Clerk (see address above) and should contain specific documentation which supports the comment.

Dated: December 22, 1980.

Douglas M. Costle,

Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. Add the following definition to § 260.10.

§ 260.10 [Amended]

* * * * *

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

§ 263.10 [Amended]

2. Remove the note following § 263.10(c)(2)

3. Add the following section to Subpart A:

§ 263.12 Transfer facility requirements.

A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of § 262.30 at a transfer facility for a period of ten days or less is not subject to regulation under Parts 122, 264, and 265 of this chapter with respect to the storage of those wastes.

Part 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

4. Add the following subparagraph to § 264.1(g)

§ 264.1 [Amended]

* * * * *

(g) * * *

(6) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR § 262.30 at a transfer facility for a period of ten days or less.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

5. Add the following subparagraph to § 265.1(c)

§ 265.1 [Amended]

* * * * *

(c) * * *

(10) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR § 262.30 at a transfer facility for a period of ten days or less.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; THE HAZARDOUS WASTE PERMIT PROGRAM; AND THE UNDERGROUND CONTROL PROGRAM

6. Add the following definition to § 122.3

§ 122.3 [Amended]

* * * * *

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

7. Add the following subparagraph to § 122.21(d)(2)

§ 122.21 [Amended]

* * * * *

(d) * * *

(2) * * *

(vi) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of 40 CFR § 262.30 at a transfer facility for a period of ten days or less.

[FR Doc. 80-40647 Filed 12-30-80; 8:45 am]

BILLING CODE 6560-30-M

40 CFR Parts 262, 264 and 265

[SW FRL 1715-6]

Hazardous Waste Management System; Standards for Generators of Hazardous Waste, and Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule and request for comments.

SUMMARY: This regulation amends §§ 262.10, 264.71 and 265.71 to provide that owners or operators of hazardous waste treatment, storage, and disposal facilities must comply with the requirements of Part 262 whenever a shipment of hazardous waste is initiated at their facilities. The effect of this provision is to require owners and operators to comply with the standards applicable to generators including the preparation of manifests, all pre-transport requirements and the recordkeeping and report provisions of Part 262.

DATES: Effective Date: December 31, 1980. Comment Date: The Agency will accept comments on this interim final rule until March 2, 1981.

ADDRESSES: Comments should be sent to Docket Clerk (Docket No. 3002-Shipments from Permitted Facilities), Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For information concerning these regulations, contact Rolf P. Hill, (202) 755-9150, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

I. Authority

This interim final rule is issued under the authority of sections 2002(a), 3002, 3003, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 USC 6912(a), 6923, 6924.

II. Background

Section 3004 of RCRA requires the Environmental Protection Agency (EPA) to promulgate standards for owners and operators of hazardous waste treatment, storage, and disposal facilities. EPA promulgated the initial set of these standards on May 19, 1980 45 FR 33220.

These regualtions, which are set forth in 40 CFR Parts 264 and 265, establish operating standards and practices for the management of hazardous wastes in treatment, storage and disposal facilities.

In addition, EPA has promulgated regulations establishing standards applicable to generators of hazardous waste. 40 CFR Part 262, 45 FR 12722 (February 26, 1980) and 45 FR 33140 (May 19, 1980). These regulations, require generators, among other things, to determine whether their waste is hazardous; initiate a manifest; properly label, package, mark and placard shipments of hazardous waste; and to comply with certain recordkeeping and reporting requirements.

Owners and operators of hazardous waste management facilities may generate hazardous waste (e.g., residues created by treatment processes). With respect to the hazardous waste that these persons generate, they, like other generators, must comply with the applicable provisions of Part 262. Accordingly, if owners and operators of these facilities transport hazardous waste off-site that they have generated, they must undertake certain activities, including initiating the manifest, and properly labeling and packaging the waste.

Owners and operators of hazardous waste management facilities may also ship off-site hazardous waste which they did not generate. The most obvious example is the removal of hazardous waste from a storage facility. The owner or operator of a storage facility does not "generate" a waste simply by removing it from storage. Removing hazardous waste from storage for shipment offsite, however, means that the waste will be transported and subsequently handled elsewhere.

Other examples are off-site transportation of (1) hazardous waste removed from a disposal facility, (2) wholly or partially treated hazardous waste which has not been "delisted" under § 261.3(d) and (3) solid waste generated from the treatment, storage or disposal of hazardous waste [see § 261.3(c)(2)] which has not been "delisted" under § 261.3(d). Although, in these situations, the owner or operator has not, in fact, "generated" the hazardous waste, EPA believes he should assume the responsibilities of a generator to assure that the off-site shipments of these wastes are properly managed.

Members of the regulated community have requested that EPA clarify what regulations apply when a facility initiates a shipment of hazardous waste which it did not generate. Some comments indicated that persons thought that such shipments would not require a manifest. However, in the preamble to the May 19 Part 261 regulations, under the heading "When does a hazardous waste cease to be a hazardous waste?", EPA stated, "as a practical matter, . . . facilities which store, dispose of, or treat hazardous waste must be considered hazardous waste management facilities for as long as they continue to contain hazardous waste, and . . . *any waste removed from such facilities, . . . must be managed as a hazardous waste.*" (emphasis added) 45 FR 33096 (May 19, 1980). Further, in comments included in the closure requirements of various sections of Part 265 (e.g. § 265.197), the Agency stated that shipments from facilities at closure as well as throughout the operating period must be managed in accordance with Parts 262 and 263. Thus it is evident that EPA intended owners and operators of these facilities to comply with the Part 262 standards when shipping hazardous wastes from their facilities. EPA failed, however, to specify that intent in the regulations.

III. Requirements on Shipments of Hazardous Waste From Facilities

This amendment requires owners and operators of hazardous waste management facilities to comply with the Part 262 generator standards when they initiate a shipment of hazardous waste which they have not "generated" from their facilities. (These owners and operators, like other generators of hazardous waste, must comply with all the Part 262 standards for hazardous wastes they in fact generate). The owner or operator is required to determine if the waste is hazardous (§ 262.11). If the owner or operator is removing from storage hazardous waste which was originally manifested by the generator, he may rely on the information on the manifest to make the determination pursuant to § 262.11(c)(2). He is required to prepare a manifest to accompany the shipment, pursuant to Subpart B of Part 262. He must package, label, mark, and placard the waste in accordance with the applicable EPA and Department of Transportation regulations, as provided in Subpart C of Part 262. He must also comply with the Subpart D recordkeeping and reporting requirements and the special conditions applicable to international shipments (§ 262.50).

The owner or operator is not required to obtain a new EPA identification number when manifesting shipments of hazardous waste. The number already assigned to the owner or operator of the facility should be used.

The provisions of § 262.34 do not apply, however, to hazardous wastes which the owner or operator did not generate, that is, hazardous wastes which he received are not eligible for the accumulation time provisions. Those provisions relate to accumulation of waste immediately after it has been generated at the site of generation in order to allow the generator an opportunity to accumulate sufficient quantities of waste prior to treatment, storage or disposal and to make the necessary arrangements for the waste's disposition.

Today's amendment applies when the owner or operator initiates a shipment of hazardous waste. Some facilities which have storage permits may handle, in the course of transportation, hazardous waste shipments which are accompanied by a manifest designating another facility for treatment, storage or disposal of the waste. For example, a transfer facility operated by a transporter may engage in longterm storage of hazardous waste and may also hold manifested waste for short periods related to the transportation of that waste. Another amendment to the hazardous waste regulations states that the holding of manifested wastes for short periods in the course of transportation does not constitute storage requiring a RCRA permit or interim status or compliance with the 264/265 standards. The amendment discussed in this preamble applies to the removal of hazardous waste from long-term storage; the waste held for short periods (ten days or less) as part of the routine transportation of that waste would be subject to the original manifest.

These amendments do not apply to inactive facilities or to the inactive portions of treatment, storage and disposal facilities. The applicability of the RCRA hazardous waste regulations to those facilities is the subject of another amendment which is currently being developed by the Agency. In the interim, persons shipping hazardous waste from inactive facilities or inactive portions of facilities are advised to manifest each shipment and comply with the other requirements of Part 262.

The rationale for applying these requirements to owners and operators of hazardous waste management facilities parallels that underlying the entire Subtitle C system. Congress established the system to protect public health and the environment during management of hazardous waste from the time of generation through ultimate disposition. The key to the system is the manifest, which enables EPA (or the states, when

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their programs are approved) to track individual shipments of hazardous waste. RCRA places the initial burden of preparing the manifest, recordkeeping, and reporting on the generator. Other requirements placed upon the generator—proper packaging, labeling, placarding and marking—are essential in ensuring transportation of hazardous wastes in a manner which protects human health and the environment. Further, section 3004(2) requires facilities to comply with the manifest system established under section 3002 which assures that hazardous wastes are sent to permitted facilities. Therefore, the owner or operator of a facility who ships hazardous waste elsewhere is in a position analogous to the generator. It is his act which ought to trigger the application or regulatory controls designed to ensure the safe transportation of hazardous wastes. For this reason, EPA believes that it is entirely appropriate for the owner or operator to comply with the Part 262 requirements.

IV. A. Interim Final Regulations

EPA has determined that good cause exists to promulgate these amendments without prior notice and comment. They conform the regulations to their original intent, and ensure "cradle-to-grave" control over hazardous waste. The failure to explicitly include these requirements has caused substantial uncertainty and confusion in the regulated community. To prolong this confusion during the completion of formal rulemaking could result in substantial hardship on the regulated community.

In addition, there are compelling environmental reasons for EPA to undertake this procedural course. There are no explicit requirements without these amendments for persons who remove hazardous waste from storage facilities. This means that a substantial volume of hazardous waste which is otherwise subject to regulation may be shipped and handled without any regulatory controls. Based on the literal language of the regulations, as presently drafted, these wastes need not be manifested, nor properly labeled or packaged, nor sent to a proper treatment, storage or disposal facility. EPA has determined, however, that these requirements are necessary to protect human health and the environment. These requirements are equally necessary whether a generator initiates a shipment of hazardous waste or whether an owner or operator of a storage facility does so.

V. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions take effect six months after promulgation. The purpose of this requirement is to allow persons handling hazardous waste sufficient time to comply with major new regulatory requirements. For most facilities, EPA believes that these amendments conform the regulations to normal operating practices and therefore the amendments do not impose new obligations on these persons. The Agency does, however, recognize that certain facilities may have to take some time to bring their practice up to the new requirements. Because of the urgency of these amendments, however, EPA has decided to make these amendments effective immediately. Without such effect, as discussed in the preceding section, serious threat to human health and the environment exists.

VI. Environmental, Economic and Regulatory Impacts

For the most part, the economic, reporting and recordkeeping impacts of these amendments are minimal. The estimated impacts developed for the May 19 regulations included the majority of those impacts related to shipments of hazardous waste from treatment at the generator's facility were included in the calculations. The Agency is unable to estimate the cost and impact increase from these amendments but believes, for the reasons stated above, that the additional environmental benefits greatly outweigh the minimal burden placed on the regulated community.

Dated: December 22, 1980.

Douglas M. Costle,

Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. Add the following paragraph to § 262.10:

§ 262.10 Purpose, scope and applicability.

* * * * *

(f) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this Part. [Note: The provisions of § 262.34 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of § 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.]

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

2. Add the following paragraph to § 264.71:

§ 264.71 Use of the manifest system.

* * * * *

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of Part 262 of this chapter. [Comment: The provisions of § 262.34 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of § 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.]

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

3. Add the following paragraph to § 265.71:

§ 265.71 Use of the manifest system.

* * * * *

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of Part 262 of this chapter. [Comment: The provisions of § 262.34 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of § 262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.]

[FR Doc. 80-40650 Filed 12-30-80; 8:45 am]

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40 CFR Parts 262, 263, 264, and 265

[SWH-FRL 1715-7]

Transportation of Hazardous Waste by Rail

AGENCY: Environmental Protection Agency.

ACTION: Interim final amendment and request for comments.

SUMMARY: Regulations promulgated in May 1980, established requirements for the transportation of hazardous waste by rail 45 FR 33150 (May 19, 1980). The amendments published today change the regulations to allow in certain instances shipments of hazardous waste to be transported by rail transporters without a manifest, provided the shipment is accompanied by certain information on the manifest; to require under certain circumstances initial rail transporters to forward copies of the manifest to the next non-rail transporter or the designated facility; to clarify signature requirements of the manifest and rail shipping paper; and to eliminate recordkeeping requirements for intermediate rail transporters.

DATES: Effective date: December 31, 1980. Comment date: This amendment is promulgated as an interim final rule. The Agency will accept comments on it until March 2, 1981.

ADDRESSES: Comments on the amendment should be sent to Docket Clerk [Docket No. 3003-Railroads], Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For general information contact Rolf P. Hill or Carolyn Barley (202) 755-9150, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M. Street, SW, Washington, DC 20460. for information on implementation, contact:

Region I, Dennis Huebner, Chief, Radiation, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5777

Region II, Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-0504/5

Region III, Robert L. Allen, Chief, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-0980

Region IV, James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 881-3016

Region V, Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6148

Region VI, R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 787-2645

Region VII, Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374-3307

Region VIII, Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-2221

Region IX, Arnold R. Den, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105, (415) 556-4606

Region X, Kenneth D. Feigner, Chief, Waste Management Branch, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-1260

I. Authority

These amendments are issued under the authority of Sections 2002(a), 3002, 3003, 3004, 3005 and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended (RCRA), 42, U.S.C. 6912(a), 6921, 6922, 6923, 6924, 6925 and 6926.

II. Background

On February 26, 1980 and May 19, 1980, EPA promulgated regulations establishing a federal hazardous waste management system. 45 FR 12722 (February 26, 1980) 45 FR 33066 (May 19, 1980). A central feature of this program is a manifest system which is designed to track shipments of hazardous waste from the point of generation through ultimate disposition. Parts 262, 263, 264 and 265 contain requirements for the transportation of hazardous waste and the use of an accompanying manifest.

The regulations set special requirements when hazardous waste is delivered to a hazardous waste management facility by rail. Recognizing that railroads had sophisticated computerized tracking and information systems, the regulations allow railroads to use a shipping paper rather than a manifest and waive signature requirements between intermediate rail carriers.

Since the promulgation of the regulations, representatives of the rail industry have contended that EPA did not go far enough and that special requirements were also necessary for intermodal shipments of hazardous waste (i.e. those which involve both railroads and other types of transportation). It was the position of the rail industry that the manifest system, if applied without adjustment to intermodal shipments, would so disrupt the normal operating practices of railroads as to effectively prevent the use of this method of transportation. Several railroads have indicated that they would refuse all shipments of hazardous waste.

EPA had no intention of discouraging rail transportation of hazardous wastes. The original regulations limited rail transportation requirements to shipments delivered to facilities by rail because the Agency believed that it was essential that non-rail transporters comply with all the requirements of the manifest system. Unlike railroads, these transporters may not have established tracking and information systems. In discussions with the rail industry EPA was able to devise a workable system which would facilitate intermodal rail transportation without undermining the operation of the manifest system or jeopardize protection to human health or the environment.

The amendments promulgated today establish a system which allows intermodal transportation involving railroads without the need for a manifest accompanying the waste during the rail portion of the shipment; ensures that non-rail transporters carry a manifest; and imposes no increased burden upon any person involved in the transportation of hazardous waste. EPA believes that these minor changes in the regulations achieve a practical solution to this problem without any sacrifice to the objectives underlying the manifest system.

EPA has not extended today's amendments to include transportation of bulk shipments by water, which in the original regulations were treated in a manner similar to the railroads. EPA has not received information indicating that that the manifest requirements are not working in these situations. Therefore, with the exception of the change regarding international shipment, the changes made today concern only the manifest requirements for railroads.

III. Interim Final Amendments

A. Shipments Delivered to Facilities by Rail

One substantive change and several minor wording changes have been made in the manifest requirements when the shipment is delivered to the designated facility by rail. If a railroad picks up the hazardous waste at the generator's site, or if a non-rail transporter delivers the shipment to a rail transporter, the railroad must sign the manifest, return a copy to the generator or non-rail transporter, and ensure that a shipping paper containing the essential manifest information accompanies the waste. Signatures between intermediate rail transporters are not required. The generator must send copies of the manifest to the designated facility if the railroad picks up the shipment at the generator's facility. When a rail transporter receives a shipment from a non-rail transporter this amendment requires the intitial rail carrier (rather than the non-rail transporter as required in the May 19, regulations) to forward the manifest to the designated facility or next non-rail transporter. In this situation it appears that the rail transporter is better situated to take the

steps necessary to forward the manifest. The transfer of the waste occurs typically at a rail yard or terminal where the rail transporter has the personnel and facilities to ensure transmittal of the manifest.

Upon delivery of the waste to the facility, the manifest or shipping paper (if the manifest has not arrived) must be signed. The owner or operator of the hazardous waste management facility must return the manifest or signed shipping paper to the generator and also retain copies of the manifest and the shipping paper (if it has been signed in lieu of the manifest at the time of delivery).

A change in the recordkeeping requirements has been made. Intermediate rail transporters are not required to retain a copy of the manifest or shipping paper; the recordkeeping requirements are keyed to the initial and final rail transporter. The existing recordkeeping practices of the rail industry include detailed interchange information which track the movement of individual railcars. This information will enable EPA, if necessary, to determine where and when transfers between rail transporters occurred. Because of the adequacy of exisiting practices in the industry, EPA has determined that intermediate rail transporters do not need to physically retain a copy of the shipping paper. The initial and final rail transporters, however, play more important roles in the transportation of these shipments, including signing and dating the manifest, and the regulations maintain responsibilities on them. It appears appropriate, therefore, for the recordkeeping requirements of the original regulations to remain applicable to them.

B. Intermodal Transportation of Hazardous Waste

The regulations, as amended today, recognize that shipments of wastes may involve different types of transportation and that the special requirements for rail transportation should apply in these situations. The regulations have been accordingly adjusted to take into account situations in which the final transportation is not by railroad.

The only difference in this case is that the amendments require the manifest to be forwarded to the next non-rail transporter designated on the manifest. The amended regulations allow the rail transporter to transfer the waste shipment to non-rail transporters without having carried the manifest with the waste shipment. At this time, however, the manifest must be signed and dated by both transporters. This means, of course, that the non-rail transporter must have received the manifest from either the generator or the initial rail transporter before accepting the waste. The Agency remains convinced that the manifest, rather than the shipping paper, is essential for the transportation of hazardous waste by means other than rail. The manifest, signed by all appropriate parties, must accompany all non-rail transportation of hazardous waste.

Once a non-rail transporter accepts the waste shipment with the manifest, the general manifest requirements of Part 262 apply and the manifest becomes the operative document. The non-rail transporter must deliver the shipment to the next designated person, obtain the signature and date of that person and retain a copy of the manifest.

C. Signature Requirements for Owners and Operators of Hazardous Waste Management Facilities

One minor change has been made in the Part 264 and 265 regulations applicable to owners and operators of hazardous waste management facilities. Sections 264.71(b) and 265.71(b) of the May 19, 1980, regulations required the owner or operator of the facility to sign and date the shipping paper, note discrepancies on this document, and return a copy of the shipping paper to the transporter. These regulations were keyed to the situation in which the facility had not received the manifest from the generator. EPA intended, however, that if the manifest has been received, it would be used. The regulations have been amended to clarify this.

D. International Shipments

The May 19, 1980 regulations required that transporters who ship hazardous waste out of the United States to sign and date the manifest, return a copy to the generator, and retain a copy of the manifest. For rail and water (bulk) shipment, however, the regulations established no mechanism to ensure that the rail or water bulk transporter had a copy of the manifest. These transporters, if not the initial transporter, are required to have a shipping paper but the manifest does not have to accompany the shipment. The regulations have been amended to require the generator (or the initial rail transporter if the waste is delivered to the railroad) to forward copies of the manifest to the last rail or water bulk transporter to handle the waste shipment in the United States.

E. State Program Requirements

Part 123 of the May regulations specifies certain requirements that a State program must meet in order to obtain interim authorization and final authorization under section 3006 of RCRA. Specific sections of Parts 262 and 263 related to rail transportation were cited. These amendments to Part 262 and 263 added new provisions. Part 123 has therefore been amended to correctly cite these new provisions. This action, which is simply a change in the sections cited, does not place any additional burden on States seeking interim or final authorization.

F. Department of Transportation Amendments

The May regulations concerning the transportation of hazardous waste resulted from a joint rulemaking effort with the Department of Transportation (DOT). EPA adopted certain DOT regulations and DOT revised its hazardous materials transportation regulations to encompass the transportation of hazardous waste.

These amendments to the May regulations, in order to be fully implemented, require DOT to amend its regulations. DOT has indicated that it plans to publish corresponding amendments to its regulations in the near future.

IV. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after promulgation. The purpose of this requirement is to allow persons handling hazardous waste sufficient lead time to prepare to comply with major new regulatory requirements. The amendment promulgated today, however, reduces and simplifies the existing requirements applicable to rail transporters. In addition the Agency believes that an effective date six months after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would not be in the public interest. The regulatory provisions that these amendments modify took effect on November 19, 1980. In the absence of the effectuation of these amendments, rail transportation of hazardous wastes would be severely disrupted. The Agency has decided, that without these changes, the rail industry would be unduly burdened with no additional protection afforded to human health or the environment. Therefore, this amendment is effective immediately.

V. Promulgation in Interim Final Form

These amendments make the practical operation of the manifest system possible in situations involving rail and non-rail transportation of hazardous waste. They will prevent the disruption of rail transportation by relieving the rail industry from complying with impractical requirements. They do not, in any appreciable manner, reduce the protection of human health and the environment, nor do they change the essential features of the manifest system.

Although the Agency would prefer to engage in formal rulemaking prior to the promulgation of these amendments, it believes that good cause exists to waive these procedures. (See 5 U.S.C. 553(b)(B)). Without immediate promulgation, substantive hardship would be imposed on all sectors of the regulated community, particularly upon generators dependent on railroads to transport their hazardous waste to proper hazardous waste management facilities. The changes are, furthermore, the outgrowth of extensive, and ongoing, discussions with the rail industry. The amendments, although promulgated without formal prior opportunity to comment, do reflect substantial consideration of the position of one central portion of the regulated community.

VI. Regulatory Impacts

The effect of these amendments is to reduce the overall costs, economic impacts, and recordkeeping requirements of EPA's hazardous waste management regulations. This is principally achieved by removing the recordkeeping requirements for intermediate rail transporters. The Agency is unable to estimate these cost and impact reductions. The Agency believes, however, that the protection of human health and the environment of these regulations is not reduced by these amendments.

Dated: December 22, 1980.

Douglas M. Costle,

Administrator.

Title 40 CFR is amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. Paragraph (c) of § 262.23(c) is revised to read as follows:

§ 262.23 [Amended]

* * * * *

(c) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

2. A new § 262.23(d), is added to read as follows:

* * * * *

(d) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must send at least three copies of the manifest dated and signed in accordance with this section to:

(i) The next non-rail transporter, if any; or

(ii) The designated facility if transported solely by rail; or

(iii) The last rail transporter to handle the waste in the United States if exported by rail.

3. The note following § 262.23, is changed to read as follows:

Note.—See § 263.20(e) and (f) for special provisions for rail or water (bulk shipment) transporters.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

4. Section 263.20(e) introductory text, (1), (4) and (5), is revised to read as follows:

§ 263.20 [Amended]

* * * * *

(e) The requirements of paragraph (c), (d) and (f) of this section do not apply to water (bulk shipment) transporters if:

(1) The hazardous waste is delivered by water (bulk shipment) to the designated facility; and

* * * * *

(4) The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

(5) A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with § 263.22.

* * * * *

5. A new § 263.20(f) is added to read as follows and remaining paragraph (f) of § 263.20 is renumbered as paragraph (g):

(f) For shipments involving rail transportation, the requirements of paragraphs (c), (d) and (e) do not apply and the following requirements do apply:

(1) When accepting hazardous waste from a non-rail transporter, the initial rail transporter must:

(i) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(A) The next non-rail transporter, if any; or,

(B) The designated facility, if the shipment is delivered to that facility by rail; or

(C) The last rail transporter designated to handle the waste in the United States;

(iv) Retain one copy of the manifest and rail shipping paper in accordance with § 263.22.

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) accompanies the hazardous waste at all times.

Note.—Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(3) When delivering hazardous waste to the designated facility, a rail transporter must:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with § 263.22.

(4) When delivering hazardous waste to a non-rail transporter a rail transporter must:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with § 263.22.

(5) Before accepting hazardous waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

6. § 263.22(b) introducing text is amended to read as follows:

§ 263.22 [Amended]

* * * * *

(b) For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of the shipping paper containing all the information * * *.

7. A new § 263.22(c) is added to read as follows and paragraph (c) and (d) of

§ 263.22 are re-numbered as paragraphs (d) and (e), respectively.

* * * * *

(c) For shipments of hazardous waste by rail within the United States:

(i) The initial rail transporter must keep a copy of the manifest and shipping paper with all the information required in § 263.20(f)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter; and

(ii) The final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

Note.—Intermediate rail transporters are not required to keep records pursuant to these regulations.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

8. Section 264.71(b) introductory text, (2) and (4) are amended and (1), (3), and (5) are revised as follows:

§ 264.71 [Amended]

* * * * *

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest

* * *

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies (as defined in § 264.72(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper. * * *

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and * * *

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

9. Section 265.71(b) introductory text, (2) and (4) are amended and (1), (3), and (5) are revised as follows:

§ 265.71 [Amended]

* * * * *

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest

* * *

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies (as defined in § 265.72(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper

* * *

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and * * *

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

PART 123—STATE PROGRAM REQUIREMENTS

10. Revise § 123.34(f)(3) to read as follows:

123.34 [Amended]

(f) * * *

(3) Ensure that all wastes offered for transportation are accompanied by the manifest, except in the case of shipments by rail or water specified in 40 CFR §§ 262.23 (c) and (d) and §§ 262.20 (e) and (f). The State program shall provide requirements for shipments by rail or water equivalent to those under 40 CFR §§ 262.23 (c) and (d) and §§ 263.20 (e) and (f).

11. Revise § 123.35(c) to read as follows:

§ 123.35 [Amended]

* * * * *

(c) The State must require the transporter to carry the manifest during transport, except in the case of shipments by rail or water specified in 40 CFR 263.20 (e) and (f) and to deliver waste only to the facility designated on the manifest. The State program shall provide requirements for shipments by rail or water equivalent to those under 40 CFR §§ 263.20 (e) and (f).

12. Revise § 123.128(b)(7)(ii) to read as follows:

§ 123.128 [Amended]

* * * * *

(b) * * *

(7) * * *

(ii) The manifest accompany all wastes offered for transport, except in the case of shipments by rail or water specified in § 262.23 (c) and (d) and § 263.20 (e) and (f); and

13. Revise § 123.128(c)(5) to read as follows:

§ 123.128 [Amended]

* * * * *

(c) * * *

(5) The State program must require that transporters carry the manifest with all shipments, except in the case of shipments by rail or water specified in 40 CFR 263.20 (e) and (f).

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Part XXI

Department of Energy

Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions

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DEPARTMENT OF ENERGY

10 CFR Part 903

Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions

AGENCY: Department of Energy, Resource Applications.

ACTION: Final regulations.

SUMMARY: Notice is given that the Assistant Secretary, Resource Applications has adopted regulations establishing common public participation procedures for power and transmission rate adjustments and extensions for four Power Marketing Administrations (PMAs) of the Department of Energy: Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration. The Bonneville Power Administration is not included because the newly enacted Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501 (December 5, 1980), establishes unique procedural requirements for Bonneville rate adjustments. The regulations govern the development of rate proposals by the administrators of the four PMAs and the confirmation and approval of rates on an interim basis, subject to refund, by the Assistant Secretary for Resource Applications pursuant to the authority delegated by the Secretary of Energy in Delegation Order No. 0204–33, 43 FR 60636 (December 28, 1978).

Proposed procedures were published in the **Federal Register** July 5, 1979, 44 FR 39184. Opportunities for oral presentation of views were provided in Washington, D.C., on July 27 and August 17, 1979, and written and oral comments were received from more than 40 individuals and entities.

DATE: The regulations are effective December 31, 1980.

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SUPPLEMENTARY INFORMATION:

I. Introduction

The Assistant Secretary for Resource Applications by Delegation Order No. 0204–33, 43 FR 60636 (December 28, 1978) has been delegated, effective January 1, 1979, the authority to develop, acting by and through the Administrators, power and transmission rates for the Alaska, Bonneville, Southeastern, Southwestern, and Western Area Power Administrations (PMAs). The Assistant Secretary, by the same delegation order, was given the authority to confirm, approve, and place such rates in effect on an interim basis subject to refund. The order also delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve such rates on a final basis.

The regulations adopted herewith are designed to establish common procedures for public participation in the devlopment of new, revised, or extended power and transmission rates for four of the five PMAs, for confirming, approving, and placing such rates in effect on an interim basis, and for submittal of the rates and supporting documents to the FERC for confirmation and approval on a final basis. The procedures apply only to the activities of the four PMAs and the Assistant Secretary. The FERC is responsible for the formal or informal procedures it will follow in exercising its authority under the delegation order.

The first formal procedures for public participation by any of the five PMAs were published in the **Federal Register** on August 15, 1975, 40 FR 34431, for the Bureau of Reclamation after review of the public comments on the proposed rules, 40 FR 22156 (May 21, 1975). The other PMAs have followed similar procedures. The Alaska and Southwestern Power Administrations follow an informal practice on a case-by-case basis. The Bonneville Power Administration follows the "Procedures for Public Participation in Marketing Policy Formulation," 42 FR 62950 (December 14, 1977), amended by 45 FR 73531 (November 5, 1980); the Southeastern Power Administration has available the "Procedure for Public Participation in the Formulation of Marketing Policy," 43 FR 29186 (July 6, 1978); and the Western Area Power Administration follows the procedures previously used by the Bureau of Reclamation with amendments to adapt them to the establishment of the Western Area Power Administration in the Department of Energy, 43 FR 12076 (March 23, 1978), amended by 44 FR 7798 (February 7, 1979).

The regulations adoped herewith are in large part based on the experience that has been gained by the PMAs since 1975 in the conduct of 20 or so rate adjustment proceedings. The procedures used in the previous proceedings have received substantial acceptance by the customers. Basically, they have consisted of the preparation of power repayment studies, showing the need for a rate adjustment and the revenue level necessary to meet the repayment requirements; and a rate design study which explains how the unit charges were derived. A consultation and comment period of at least 90 days has been allowed to answer questions concerning the proposed rate and to receive written and oral comments. During this time interested customers and others were supplied with copies of the repayment and rate design studies, a public information forum was typically held at which questions concerning the rate proposal were answered, and a public comment forum was held to afford interested members of the public the opportunity to submit comments to the Department.

A draft of the proposed regulations was published in the Federal Register of July 5, 1979, 44 FR 39184. Hearings were held in Washington, D.C., on July 27 and August 17, to receive oral comments, and written comments were invited to be submitted by September 4, 1979. In response to these opportunities, written and oral comments were received from more than 40 individuals or groups, a list of which is included in the notice. Also, written comments were submitted by the PMAs and by staff of the Assistant Secretary for Policy and Evaluation. Subsequent comments were received from staffs of the FERC and the Economic Regulatory Administration (ERA). In addition to reviewing and considering all of the comments, we also have had the benefit of the experience gained in the issuance of several additional rate orders after the proposed regulations were published for comment. Of these, the rate adjustment involving the largest amount of money was Rate Order BPA–2, 44 FR 70517 (December 7, 1979). This also was the most complex rate proceeding.

During this period, the Department converted the Department of the Interior's guidelines for Financial Reporting, which appeared as Chapter 4 of Part 730 for the Departmental Manual (DM), into an order of the Department of Energy, designated RA 6120.2, "Power Marketing Administration Financial Reporting." The provisions of 730 DM 3 relating to the repayment interest rates also have been incorporated into RA 6120.2 as paragraph 11. This conversion was technical only, and no substantive changes were made. RA 6120.2 supplements the regulations adopted today.

Because of the existence of RA 6120.2, it has been decided to eliminate the

sections of the proposed regulations which essentially duplicate it; that is, § 903.4 (Cost recovery), § 903.10 (Corrective action), and the definition of and other references to power repayment studies.

Public commenters indicated strong opposition to portions of the proposed § 903.5 on rate design; namely subsection (b) on cost analysis, subsection (d) on conservation, and subsection (e) on the PURPA standards. Rate design is in a continuing stage of development and includes complex issues which have not been fully resolved. We have concluded that these regulations are not the appropriate vehicle to establish general rate design guidelines which would be followed by the PMAs in their development of various power rates. For these reasons, the section on rate design has been deleted from the regulations. This is discussed further under II(1) and II(2) below.

With the deletion of the cost recovery and rate design criteria sections, these regulations are now essentially limited to their primary purpose—procedures for public participation in the rate adjustment process.

The major issues raised by the oral and written comments are discussed in the next section of this statement followed by a section-by-section commentary explaining and discussing the minor and technical comments, and responses thereto.

Rate adjustments for the Bonneville Power Administration are not covered by these regulations because the newly enacted Pacific Northwest Electric Power Planning and Conservation Act establishes unique procedural requirements for new rate actions for Bonneville. It is anticipated that new regulations will be developed for application to Bonneville's rates only. However, the Act and any new regulations thereunder will not apply to the completion of the pending review of Bonneville's December 20, 1979, system rates and July 1, 1977, transmission rates.

These procedures shall become effective December 31, 1981, except that they will not apply to rate adjustments that have already been announced as required by § 903.13.

II. Major Issues

(1) Rate Design—PURPA Standards

As stated above, the entire section of the proposed regulations on rate design has been eliminated. This includes the proposed § 903.5(e), which would have required the PMAs to consider whether each of the six rate standards described in Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA), Public Law 95–617, is appropriate and should be implemented with respect to any or all of the rates. As pointed out in the July 5, 1979, **Federal Register** notice the proposal went beyond the provisions of PURPA, which requires consideration of the standards only with respect to sales for purposes other than resale when such sales exceed 500 million kilowatthours annually. At this time, this requirement applies only to the Bonneville Power Administration and to the Central Valley and Boulder Canyon Projects of the Western Area Power Administration (the statement erroneously included the Parker-Davis Project in this list).

This proposal received a great deal of discussion and critical comment, based on the facts, among others, that Section 102(b) of PURPA expressly exempts sales for resale, which constitute the bulk of the sales by the PMAs; that the power marketing statutes contain special provisions for ratemaking and revenue levels for PMAs which are different from the statutory standards applicable to other utilities; and that there is wide variation among the relevant marketing circumstances of the more than twenty power systems of the PMAs.

In the time since the proposal was made, a good deal of progress has been made in promoting a better understanding of how the six Section 111 rate standards, as well as the five Section 113 standards, have application to the PMAs. Thus, the Bonneville Power Administrator, after holding a public hearing on July 19, 1979, and reviewing written comments, issued a determination order on November 19, 1979, explaining the extent to which the Section 111 standards were adopted for application to Bonneville rate design for all classes and types of customers. 44 FR 68948 (November 30, 1979). This policy had been followed in developing system rates which were placed in effect December 20, 1979, on an interim basis by the Assistant Secretary for Resource Applications. 44 FR 70517 (December 7, 1979).

The Western Area Power Administration issued a brochure on preconsideration of the PURPA standards and invited the public to discuss the subject at a hearing on November 6, 1980, and to submit written comments. 45 FR 69289 (October 20, 1980). The oral and written comments received in this proceeding are now being studied prior to issuance of a determination order.

Historically, many PURPA-type standards have been used in designing wholesale rates for the sale of Federal hydroelectric power. PMAs analyze costs to establish revenue requirements and consider this information in designing rates. Declining block rates for energy were once used by the PMAs but subsequently were found inappropriate and eliminated from rate schedules. Many of the PMAs for years have been effectively using various forms of load management measures in their rate schedules, such as scheduling limitations, loadshaping, capacity and energy overrun charges, etc. BPA has had a history of using seasonal rates for wholesale firm capacity and energy and also offered its direct service industrial customers interruptible rates some time ago. Southwestern has had interruptible capacity rates in effect since 1957. These examples demonstrate the willingness of the PMAs to implement PURPA-type standards where applicable.

Many of these PURPA-type standards, when applied appropriately in the design of PMA rates, can serve to implement the purposes of PURPA by encouraging conservation of energy, efficient use of resources and facilities, and equitable rates. The public participation process will provide an opportunity to examine these and other appropriate concepts.

The PMAs will continue to review and revise their power marketing practices on a system-by-system basis to serve the PURPA objectives. The Assistant Secretary for Resource Applications, working with the Administrators of the power administrations, and after receiving public comment, will consider the adoption of rate design guidelines, similar in form to the guidelines in RA 6120.2 on financial accounting and ratemaking, which will reflect the experience gained by the PMAs in their system-by-system approach to rate design.

(2) Rate Design—Cost Determination

§ 903.5(b) of the proposed procedures, after stating that a cost of service analysis should be made, contained the following sentence: "However, cost need not be the sole determinant of price." The fear was expressed that the sentence would be used by the Department arbitrarily to increase rates to market value to promote conservation which would be a radical departure from and in violation of the requirement of the power marketing statutes that rates shall be the lowest possible to recover costs consistent with sound business principles. Others recognized that such an interpretation was ruled out by the provision of § 903.5(a) that overall revenue levels were to be determined in accordance with the cost

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recovery criteria of § 903.4(a), but nonetheless urged that the sentence be deleted as misleading in singling out one factor, namely cost, which would not be the sole determinant of price, while failing to recognize that there were numerous other factors which also might be considered but also would not be the sole determinant of the final judgment as to price. One participant in the August 17 hearing pointed out that the sentence dealt not with the determination of the costs to be recovered (this is determined by the power repayment studies) but rather the "allocation" of such cost recovery responsibility to the different units or classes of service.

The deletion of § 903.5 moots this controversy. This deletion does not change the intent, however. As the Western Area Power Administration points out in its comments, cost of service is not dispositive for a Federal hydrosystem where there are nonpower costs, such as irrigation assistance and desalinization plants, that were statutorily required to be repaid from power revenues and where there are no fuel costs. Also, in rate design, there are other factors to be considered than cost, such as conservation, efficient use of resources, equity, rate continuity, and ease of administration. However, revenue levels will continue to be established to recover costs, as required by law.

(3) Amortization Method

The statement issued with the proposed regulations in July 1979 contained the following explanation on the subject of amortization method:

"The provisions of the paragraph entitled 'Priority of Revenue Application,' 730 DM 4.5C(3), have been incorporated into § 903.4(b) except that, in view of the review mentioned above, the following sentence has been omitted: 'To the extent possible, while still complying with the repayment periods established for each increment of investment and unless otherwise indicated by legislation, amortization of the investment will be accomplished by application to the highest interest bearing investment first.' Although no change in the amortization practices will be made at this time, the omission of this sentence signifies that the subject is under review and that changes may be made following the conclusion of the ongoing study."

The omission of the quoted sentence received widespread criticism. Strong objections were voiced to any change in the present amortization method. The fear was expressed that because of the omission of the sentence, the Department would feel that it was free to go ahead and change the amortization method without affording an opportunity for public comment on any specific change that was under consideration.

The controversy over the omission of the sentence has served the purpose of alerting the customers to the fact that studies of alternative amortization methods are underway. We have decided to delete § 903.4, setting forth cost recovery criteria; § 903.10, requiring corrective action when studies show that revenues do not recover costs; and the references to power repayment studies, as these subjects are now covered by the Department of Energy guidelines in RA Order 6120.2. Section 8.c(3) of that order includes the same sentence that formerly was in 730 DM 4.5C(3) on the subject of amortizing the highest interest bearing investment first. The Department will not change that practice for any PMA without providing an opportunity for further public participation and comment.

(4) Information Procedures

A number of commenters questioned the adequacy of the opportunities provided in § 903.14–16 for customers and other interested members of the public to obtain adequate information concerning the factual and policy basis for the proposed rates. Without this information meaningful and constructive comments would not be possible.

One suggestion was that the holding of at least one public information forum should be mandatory rather than optional. This is a reasonable recommendation and has been adopted for all major rate adjustments.

Another comment was that the public information forums are usually held too early in the comment period to permit meaningful questioning, because the supporting studies are so complex that it takes a long time to become familiar with them and the data and assumptions that are incorporated in them. For this reason, it was suggested that the public comment forum provide an opportunity for questioning of the Government officials responsible for preparing these studies.

In general, there are two purposes to be served with respect to providing information about the proposed rates. One is to acquaint the public generally with the magnitude of the rate increase and with the principal reasons for it. The other is to allow rate experts employed or retained by the customers or other interested parties to have access to the detailed data, assumptions and studies utilized in developing the rates. Sometimes the public information forums serve the first function, sometimes the second, and sometimes a combination of both. The first purpose suggests that the forum should be held early; the second, that it should be held later.

The forums are not the only opportunity provided the public to obtain information about the rate proposal. § 903.14 states that the 90-day consultation period is to afford all interested persons "the opportunity to consult with and obtain information from the PMA" and "to examine backup data." § 903.15(b) states that "questions that involve voluminous data contained in the PMA records may best be answered by providing an opportunity for consultation and for a review of the records at the PMA offices." In other words, the rate experts may obtain from staff all necessary backup data and may examine all relevant records. In some cases, arrangements have been made for the rate experts to have access to the PMA's computer program so they can run their own alternative computer studies. Members of the public who are not rate experts also are welcome to meet with PMA staff to learn more about the rate proposal.

In many cases the small informal arrangements for informing the customers of the need for and basis for the proposed rate increase, including meetings with the customers, have fully satisfied the customers so that a formal forum is unnecessary. The Southeastern Power Administration, for example, has been particularly successful in utilizing this informal approach. However, to avoid the possibility that a genuine need for an information forum might be overlooked, the regulations have been revised to require that at least one such forum will be held for a major rate adjustment. This may, however, be combined with the public comment forum held in accordance with § 903.16. In other words, the one forum provides the opportunity of the PMA staff to explain the proposed rates, answer questions, and receive comments. Southeastern has done this with respect to its rate proceedings and has found that these meetings usually are brief, pro forma, and with very low attendance.

There are several reasons for holding the forum earlier in the process. One is to give the public a general understanding of the need for and the basis for the rate increase; another is to give the experts themselves a general understanding so that they know where to pursue further inquiries into the details. Lastly, as it may not be possible to answer some questions raised at the forum at the time, § 903.15 provides that they shall be answered at a subsequent

forum or in writing at least 15 days before the end of the consultation and comment period. If the forum is held late in the process, this requirement to answer the questions might further and unnecessarily extend it. Also, the suggestion that the public comment forum be utilized as an opportunity to ask questions of the persons who prepared the rate proposal leads to the dilemma that comments cannot always be made which are meaningful until after all questions are answered. By continually asking new questions at comment forums, the public participation process could be continued indefinitely.

In view of the variety of possible situations that might occur, and in the interest of giving the Administrator adequate flexibility, no minimum time period for holding the information forums has been written into the regulations. Normally, the forum will not be held until at least 30 days after the notice. The Administrator is always free to schedule additional forums upon request. In fact, this has happened on a number of occasions. The date for the second or continuation forum is usually discussed and announced at the first forum thus giving interested parties in attendance adequate notice.

Several commenters complained that the format of the public information forum would not allow for cross-examination because the opportunity to follow up an answer to the first question with a clarifying question generally is not available in open meetings with this format. For this, and other reasons, it was recommended that evidentiary or adjudicatory type hearings be required.

Contrary to the assumption of the suggestion, the public information forums have allowed follow up questioning similar to that which takes place under cross-examination. In the Central Valley Project rate proceedings, for example, one attorney spent many hours questioning the Government representatives. There have been two basic differences, however, between the forum and the normal evidentiary hearings before an administrative law judge. One is that the questions at the forums are addressed to a panel of Government witnesses, rather than just to one individual at a time. This has proven useful because no staff person is knowledgeable about all aspects of the repayment studies and rate design. On occasion, two or more members of the panel have disagreed among themselves as to the correct answer to a question. In such cases, and in cases where none of the members of the panel know the answer, the information is provided subsequently in writing, or at another forum, or, if it requires detailed data, the data is made available to the questioners and to others who might be interested.

The second difference is that the Chairman has interrupted the questioning by one person from time to time as convenient or appropriate, for example, to allow others to question who might not wish to stay for the whole session; or to take up questioning by all persons on each different topic as, for example, to take up all questions dealing with hydrology, then all questions dealing with purchased power expenses, and so forth.

The normal process of an adjudicatory hearing by which one lawyer cross-examines one witness at a time without interruption, followed by redirect examination and recross-examination, can be time consuming and inefficient. The experience of the information forums which have been held since 1975 in ratemaking for the PMAs has proven successful and efficient, in our opinion, in bringing out all of the relevant factual and policy issues without unnecessary delay.

Another suggestion that was made is to add a requirement that the decision of the Assistant Secretary be made on the record of the proceeding developed through the transcripts of the public information and public comment forums, the answers to questions, and the written comments that were received. We believe such a limitation would be unnecessarily restrictive and would harm rather than facilitate proper decisionmaking.

Although the record developed in the proceeding will serve as the principal body of material upon which the decision of the Assistant Secretary is made, there is additional material which might be utilized in reaching this decision. One major category of such additional material is the backup data for the supporting studies. Both the PMA and the Assistant Secretary may wish to question and review some of this data even though it was not questioned by the public during the comment period. A second category is the up-to-date financial entries for the most recent fiscal year for the power system. Not infrequently, the comment period extends from one fiscal year to the next and new historical data is available before the decision is made. A third category of additional material is studies, information and ideas developed by departmental experts in response to comments that are filed during the course of the comment period. A fourth category is a significant event that is known to the public or to power rate experts which may not have been introduced or acknowledged in the record. For example, a flood occurs that causes major damage to a project powerplant; Congress passes legislation authorizing a new project; an appropriation act is passed which cuts back the appropriation for a project under construction to the point that it is evident that the in-service date of a key powerplant will be delayed 1 or more years; a court issues an injunction suspending the construction of a major facility pending preparation of an environmental impact statement which, in turn, will delay the in-service date of a powerplant; or a new interest rate is required under RA 6120.2.11. Events of this kind may take place during the consultation and comment period, and purdent financial management would dictate that they be taken into consideration in making the final decision upon which the provisional rates are based.

(5) Role of the Administrator—Consultation

Several commenters suggested that the references in the proposed § 903.12 to "consultation" by the Administrator "with the Assistant Secretary, and through the Assistant Secretary with other departmental officials" before the Administrator develops Proposed Rates, and the reference in § 903.17 to "consultation" by the Administrator with the Assistant Secretary before the Administrator develops Revised Proposed Rates, violates the mandate of Section 302(a) of the Department of Energy organization Act, Public Law 95–91, that the rulemaking function shall be exercised by the Secretary "acting by and through" the Administrators. The argument is that the requirement for prior consultation defeats the intent of Congress that the rates will be developed to reflect regional needs and concerns and furthermore leads to the prospect that ratemaking policy will be set or at least heavily influenced by nameless individuals in Washington who will not be available for questioning at public information forums.

We believe that these concerns are exaggerated. Our interpretation of the Act is that Congress intended that the Secretary would exercise policy supervision over ratemaking but that all of the rate work and the original basic recommendations would be made by the Administrator reflecting the particular needs and concerns of the power systems and the interests of the region. This has been borne out in practice in the case of the 22 rate orders which were issued in the period from March 1,

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1979, to July 1, 1980, pursuant to Delegation Order No. 0204–33. Nine of these rate orders approved rate increases, 12 were rate extensions, and one was a rate decrease. In some cases there was consultation between the Administrator and the Assistant Secretary prior to the announcement of a proposed rate or revised proposed rate and in some cases there was not.

In all cases there was consultation with the Assistant Secretary in the development of the rate order. As it turned out, contrary to earlier expectations, there was virtually no consultation on individual rate cases with the Administrator of the Economic Regulatory Administration or the Assistant Secretary for Policy and Evaluation. This occurred in large part because ratemaking for the PMAs is highly specialized and complex and bears little relationship to ratemaking for regulated utilities.

Because of our decision to eliminate provisions relating to rate design, cost recovery criteria, and power repayment studies, we have eliminated § 903.12. In doing so, however, policy consultation between the Assistant Secretary and each Administrator will continue at various steps of the ratemaking process as appropriate and that the Assistant Secretary will consult with other policy persons in the Department if special occasions arise where this is appropriate. These consultative processes, however, are internal, and do not need to be spelled out in these procedures. Any such consultations do not detract from the requirement in § 903.21 that a statement shall be issued explaining the principal factors leading to the Assistant Secretary's decision. Other DOE offices have the option of submitting comments in response to the advance announcement, § 903.11; or during the consultation and comment period, § 903.14.

§ 903.12 as originally proposed included the description of certain supporting statements A through E which we anticipated would be required by the FERC when rates were approved by the Assistant Secretary for Resource Applications on an interim basis and submitted to the FERC for approval on a final basis. Detailed requirements concerning these statements have not been finally determined. They may be included in future regulations by the FERC.

(6) Need for Common Procedures

The proposal to establish common procedures for all five PMAs was both praised and condemned on the grounds that it might restrict the flexibility of the Administrators to respond to regional concerns. We do not believe this will be a problem for the four PMAs to which these procedures apply because the procedures have been drafted to provide maximum flexibility. Bonneville has been excluded because of the unique procedural provisions in the Pacific Northwest Electric Power Planning and Conservation Act.

Any drawback of this kind is outweighed by the advantage to be gained from establishing standard terminology and standard steps in the ratemaking process. This will facilitate the ability of the public to understand and to make input to rate development and will facilitate the review by the FERC in the exercise of its responsibilities under Delegation Order No. 0204–33.

(7) Minor Rate Adjustments; Rates for minor new services

§ 903.23 of the proposed regulations waived the notice and comment requirements for rate adjustments designated as "minor," for extensions of existing rates, and for certain rates for "new services." This received considerable criticism. In response to these comments, the regulations adopted herewith include definitions of "new service," "minor new service," and "major rate adjustment," revise the definition of "minor rate adjustment," and eliminate the waiver of all notice and comment requirements; but substitute a requirement for 30 days' notice for minor rate cases, with the holding of forums optional. The distinctions between minor and major rate adjustment procedures have been incorporated in § 903.14–16.

III. Section-by-Section Commentary

Title

It was suggested that the title of these regulations be expanded to include reference to rate standards or criteria because of the inclusion of § 903.4 on cost recovery and § 903.5 on rate design. We recognize that this was a valid suggestion, but it has been rendered unnecessary because the two sections have been deleted.

In view of the fact that the shortened procedures deal almost entirely with the subject of "public participation," we have added those words to the title.

Authority

Western has recommended that the citations to the authority for the regulations be amended to include a reference to Section 9 of the Flood Control Act of 1944. Section 9 authorizes the Pick-Sloan Missouri Basin Program. Thus, it is only one of hundreds of laws which authorizes or otherwise relates to individual projects or power systems. To cite them individually would be a major undertaking. Instead they are now referred to generally under the last phrase "the acts specifically applicable to individual projects or power systems."

§ 903.1—*Applications*

There were several objections to the provision in § 903.1(b) authorizing the Administrators to apply these new procedures to pending rate adjustment proceedings. Another comment was that the decision as to whether they should be applied to proceedings should be made by the Assistant Secretary, not by the Administrator.

The new procedures eliminate the requirement applicable only under Western procedures that the proposed decision of the Assistant Secretary be published for a final round of comments before the Assistant Secretary issues a rate order approving rates on an interim basis. To avoid controversy over the objections raised, the provision authorizing the Administrator to apply the new procedures to pending proceedings has been eliminated.

These procedures will supersede those published by Western entirely, and will supersede those published by Southeastern only insofar as those published procedures apply to rate adjustments. They shall become effective immediately except that they will not apply to rate adjustments that have already been announced as required by § 903.13.

§ 903.2—*Definitions*

New service. A new definition has been added for a "new service." It is defined as "service not previously provided." The term "new service" was used in connection with § 903.23 of the proposed procedures, which waived all public comment requirements for "rates for a new project or system or rates for a new service." The fear was expressed by several commenters that this would permit a loophole under which existing services would be simply covered by a new rate. This was not the intent, and the new definition would prevent this.

Minor new service. A new definition has been added for a "minor new service," which is included in the definition of a minor rate adjustment. The new definition is employed to describe various situations in which simplified rate procedures may be utilized. Four different situations are described. The first is for a rate for a new service which will produce less than a one percent change in the annual revenues of the power system. Examples

include rates for the provision of emergency service as part of a power pool or a rate for the sale of reserves or standby service.

The second is rates for a new power system which has either annual sales normally less than 100 million kilowatthours or an installed capacity of less than 20,000 kilowatts. It is anticipated that a number of these new power systems may be established as the Army Corps of Engineers or the Water and Power Resources Service install small powerplants at existing Federal dams or at undeveloped sites.

Third, there are services which will not be provided for more than one year. An example is the special contract rate of the Bonneville Power Administration for the sale of withdrawn Hanford energy during the period January 1, 1978, through June 30, 1978, which was approved by order of the ERA and published in the Federal Register on October 3, 1978 (43 FR 45630).

The fourth is for the temporary disposition of the output of a new powerplant for not more than one year. An example of this is the rate for the short-term sales of the output of the Laurel Project, Kentucky, which was approved by an order by the ERA, published on April 26, 1978 (43 FR 17857), and extended by ERA orders published on June 15, 1978 (43 FR 25856), September 26, 1978 (43 FR 43547), and January 15, 1979 (44 FR 1445), and by a FERC order published on September 4, 1979 (44 FR 51654).

Minor rate adjustment. The definition of a "minor rate adjustment" has been revised to exclude the continuation of an existing rate, because this is now covered in § 903.23 by use of the term "rate extensions," and to add two other conditions which qualify a rate as a minor rate adjustment. These are (1) a rate adjustment for a power system which has either annual sales normally less than 100 million kilowatthours or an installed capacity less than 20,000 kilowatts, or (2) is a rate for a minor new service. The addition numbered (1) above was recommended by Western to take care of the situation of a possible adjustment in the rate for a small project which has a minor impact relative to the overall area power supply.

Major rate adjustment. A new definition has been added for a "major rate adjustment." It is defined as "a rate adjustment other than a minor rate adjustment." The new term is used in connection with § 903.14 to make a 90-day consultation and comment period applicable only to major rate adjustments, whereas, a shorter time period of 30 days would be applicable to minor rate adjustments.

Also, the term is used in connection with § 903.15 and § 903.16 to make public information and public comment forums mandatory for major rate adjustments, but optional for minor rate adjustments.

Power system. The term "project or system" utilized in the proposed regulations to denote the operating unit to which the rate applies is cumbersome and confusing. The term "power system" has been substituted. This phrase was used in 730 DM 4 and has been continued in RA 6120.2. The change leads to the desirable result that the same term "power system" is used both in the published procedures and in these internal Department of Energy policy guidelines. For clarity, the definition has been modified slightly from that used in RA 6120.2.

Rate adjustment. The definition of "Rate adjustment" has been revised to clarify that it does not include changes in the monetary charge made pursuant to a formula stated in a rate schedule or contract. Some examples are, certain generating charges, fuel replacement sales, purchased power passthrough, and transmission service over a joint transmission system where charges vary as operation and maintenance costs change.

Rate terms. One suggestion was that the use of the terms "Revised Proposed Rate," "Substitute Rate," and "Proposed Substitute Rate" be deleted as unnecessary. The term "Revised Proposed Rate" was recommended by Bonneville to distinguish the proposal coming after the conclusion of the initial public comment period from the proposal at the beginning of that period. This term was utilized by Bonneville in connection with its public comment process which ran for almost a year from August 1978 to August 1979 and has proven to be useful. The term "Substitute Rate" is useful in drafting the regulations to identify a rate which is being put into effect following FERC disapproval of a provisional rate. It is a term that is used in Delegation Order 0204–33. The term "Proposed Substitute Rate" is useful for drafting purposes to denote a proposed rate which responds to FERC disapproval of a provisional rate and which is under consideration while a provisional rate is still in effect.

The heading for former subsection (1) on "Rate definitions" has been changed to "Rate types."

The words "by the Assistant Secretary" have been inserted after "submitted" in the definition of "Substitute Rate" for clarification.

One commenter suggested that "rates" be defined the way the FERC defines the term. The FERC definition of "rate schedule" is far too broad for use in these procedures. It covers all classifications, practices, rules, regulations or contracts which in any manner affect or relate to electric service. Use of so broad a definition would require submission to the FERC of matters relating to power and transmission operations and contracts which are reserved by Section 302(a) of the Department of Energy Organization Act to the PMAs. It was not the intent of the delegation order that the FERC review these matters. The review is limited to the monetary charges, as indicated in the definition that is used.

Definitions deleted. The definitions of "power repayment study" and "rate design" have been eliminated.

§ 903.11—*Advance Announcement of Rate Adjustment*

This section provides that the Administrator may give advance notice of his determination that new or revised rates are under consideration and give the public an opportunity to submit advance comments on the rate adjustment process. Several commenters suggested that the announcement should be made mandatory rather than permissive so that public involvement will always occur prior to the Administrator's notice of proposed rates. This suggestion has not been adopted in order to provide greater flexibility and to reduce the time needed in appropriate cases to place revised rates into effect. The PMAs are in regular communication with their customers and are able to judge whether there is sufficient controversy to justify an advance announcement.

A sentence was added to require consideration of any comments received.

§ 903.13—*Notice of Proposed Rates*

It was suggested that to minimize delays, the Administrator should be required to mail copies of all relevant studies to customers at the time notice of proposed rates is given rather than to mail such material upon request. This will be done in most cases, particularly where the customers have previously expressed an interest in rates and ratemaking, but we do not believe it is wise to require it in every case. This could be unnecessarily cumbersome where there are a large number of customers who do not have an interest in detailed rate studies.

Another suggestion was that customers be allowed access to the data base, including computer programs used to prepare the current and revised power repayment studies, Statements A through E, and the rate design study, on

reasonable terms and conditions at the time the proposed rate increase is noticed in the **Federal Register.** The PMAs have made and will continue to make backup data available to any interested customer or other person upon request at reasonable times and in a reasonable manner. This is consistent with § 903.14; thus, resort to the formalities of the Freedom of Information Act is not necessary.

Subsection (a) has been revised to require that the Notice contain an explanation of the need for and derivation of the Proposed Rates. Subsection (b) has been revised to eliminate the references to specific studies and statements because the provisions relating to these studies and statements have been deleted. Upon request, customers or interested persons will be furnished the principle documents used in developing the Proposed Rates.

§ 903.14—*Consultation and Comment Period*

Several commenters suggested that the minimum of 90 days for the consultation and comment period be increased to 180 days, arguing that 90 days is too short a time to enable effective examination by customers of voluminous repayment studies and rate design studies and the backup data. The experience to date has been that when customers have requested more time and have had good reason for their requests, the extension has been granted. We are reluctant to extend the minimum for all cases because experience has shown that 90 days is ample for most rate adjustments.

It was suggested that this section be revised to require the Administrators to prepare and circulate a service list of all interested parties to the rate proceedings to assure that each person commenting knows what the others have said. This suggestion reflects what has been done in actual practice in some cases. A sentence has been added to the section requiring the Administrator to maintain, and distribute upon request, a list of interested persons. This list is not called a "service list" because this is not an adversary proceeding similar to the normal evidentiary or adjudicatory proceeding before an administrative law judge. Also, a requirement for formal intervention has not been included, nor a requirement that each person submitting comments send copies to everyone else on the [illegible], because such requirements would make the proceedings unnecessarily formal and might discourage some persons with a legitimate interest in the proceedings from participation.

Another suggestion was that a 90-day pre-Federal Register notice to customers be required to allow a knowledgeable exchange of information on an informal basis. Under § 903.11 dealing with the advance announcement, we feel that the Administrator has discretion to allow sufficient time for exchange of information and ideas with the customers and other interested parties.

This subsection was revised to require a 90-day consultation and comment period for major rate adjustments and a 30-day consultation and comment period for minor rate adjustments.

§ 903.15—*Public Information Forum(s)*

Comments relating to the conduct of the information forums, including recommendations that they be adjudicatory-type hearings with the right of formal cross-examination are discussed under II(4) above. As stated therein, the section has been revised to require that at least one public information forum be held.

Subsection 903.15(a) was revised to make public information forums mandatory for major rate adjustments, but optional for minor rate adjustments.

§ 903.16—*Public Comment Forum(s)*

Comments relating to the conduct of public comment forums also are discussed under II(4) above.

Subsection 903.16(a) was revised to make public comment forums mandatory for major rate adjustments, but optional for minor rate adjustments.

§ 903.17—*Revised Proposed Rates*

The reference to consultation with the Assistant Secretary has been deleted for the reasons explained under II(5) above.

§ 903.21—*Provisional Rates*

The suggestion that the decision should be made on the basis of the record is discussed under II(4) above.

Several commenters questioned the statement in subsection (a) that "The Administrator shall develop rates which, in the Assistant Secretary's judgment, should be confirmed, approved, and placed in effect on an interim basis," on the grounds that this violates the Administrator's statutory authority and responsibility to propose rates. This does not follow. At this stage of the proceedings, it is necessary for the Assistant Secretary to exercise the function of policy supervision of ratemaking by approving a rate which is deemed acceptable. Inasmuch as the Assistant Secretary does not have the rate staff, the basic data or the computer capability necessary to develop rates, the rate work itself must be done by the PMA.

One commenter expressed opposition to implementation of provisional rates in every case prior to independent review by the FERC. Instead, it was suggested that the Administrator's proposed rates only go into effect after the FERC's approval. The experience of the last year shows that the FERC may take a relatively long time before approving rate increases on a final basis. It would place the financial position of most power systems in jeopardy if revenues from increased rates could not be collected during this delayed period on an interim basis. The customers are protected by the provisions for refunds of any overpayment with interest if the rate finally approved by the FERC is lower than the provisional rate. The Assistant Secretary retains the option to have the rate go into effect upon final approval by the FERC.

§ 903.22—*Final Rate Approval*

The comments indicate that the refund provisions under the delegation order and under these regulations are confusing. A new subsection (f) has been added to help eliminate this confusion.

§ 903.23—*Rate Extensions*

A separate section is included in the regulations to explain how rate extensions are handled. In the proposed regulations, rate extensions were included in the definition of minor rate adjustments, but this led to confusion.

Basically, it is anticipated that rate extensions will fall into three categories. One category would include provisional rates for power systems approved by the Assistant Secretary for Resource Applications on an interim basis for a fixed period and not expected to be approved or disapproved by the FERC within the fixed period. Thus, it becomes necessary to extend the interim approval of provisional rates to give the FERC additional time to act on the original rate approval by the Assistant Secretary for Resource Applications. A second category would be rates for power systems which require a rate adjustment to be in compliance with repayment criteria, but for any one or more of several reasons, revised rates have not been developed which will be approved by the Assistant Secretary for Resource Applications prior to the expiration of the approval of the existing rates. A third category of rate extension would be rates for power systems which do not need a rate adjustment to be in compliance with repayment criteria.

For a rate extension previously confirmed and approved by the FERC or prior authority, a 30-day notice is required unless shortened for good cause, the consultation and comment period shall be as provided in § 903.14, and public forums may be held as provided in § 903.15–16. Rate extensions shall be governed by § 903.21(d) and § 903.22.

Provisional rates may be extended by the Assistant Secretary for Resource Applications without advance notice or comment. Notice of such action shall be published in the Federal Register.

Entities who commented—Listed below are the parties that submitted comments in response to the proposed procedures published in the **Federal Register** on July 5, 1979 (44 FR 39184), and those that presented comments at hearings held in Washington, D.C., on July 27 and August 17, 1979:

*American Public Power Association (APPA)
2. Eugene Water and Electric Board, Oregon
3. City of Tacoma, Washington
4. Intercompany Pool Companies, Seattle, Washington
5. Public Power Council, Vancouver, Washington
6. Public Utility District of Clark County, Vancouver, Washington
*7. Missouri Basin Municipal Power Agency
8. Municipal Electric Authority of Georgia
9. Plains Electric Generation & Transmission Cooperative, Inc., New Mexico
10. City of Doerun, Georgia
11. City of East Point, Georgia
12. City of Barnesville, Georgia
13. City of Thomasville, Georgia
14. City of Griffin, Georgia
15. Big Rivers Electric Corporation, Southern Illinois Power Cooperative, East Kentucky Power Cooperative, and Hoosier Energy Corporation
16. Fitzgerald Water, Light & Bond Commission, Georgia
17. City of Douglas, Georgia
18. City of Moultrie, Georgia
19. Electric Cities of Georgia
20. Tri-State Generation & Transmission Association, Inc.
21. Irrigation & Electrical Districts Association of Arizona (IEDA)
22. San Diego Gas & Electric
23. Northern California Power Agency
24. Intermountain Rural Electric Association, Inc. (IREA)
25. National Rural Electric Cooperative Association (NRECA)
26. Committee on Power for the Southwest, Inc., Tulsa, Oklahoma
27. East River Electric Power Cooperative, Inc.
28. Irrigation Districts, Central Valley Project, California

* Comments received during hearings on July 27 and August 17, 1979.

29. Intermountain Consumer Power Association (ICPA), Utah
30. City of Page, Arizona
31. Arizona Power Authority
32. Basin Electric Power Cooperative, North Dakota
33. Bureau of Reclamation, Department of the Interior
*34. Mid-West Electric Consumers Association, Inc.
*35. Department of Water and Power of the City of Los Angeles
36. California Energy Commission
37. Western Area Power Administration
*38. Arizona Municipal Power Users' Association (AMPUA)
*39. Enerjoules Limited, Mukilteo, Washington
*40. Colorado River Energy Distribution Association, Inc. (CREDA) and Salt River Project Agricultural Improvement and Power District (Salt River)
*41. R. W. Allin, Oak Harbor, Washington

In view of the foregoing, the Department of Energy hereby adds a new Part 903 to Title 10, Code of Federal Regulations entitled "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions" as set forth below:

Issued in Washington, D.C., December 23, 1980.

Ruth M. Davis,

Assistant Secretary, Resource Applications.

The Department of Energy hereby adds Subpart A of Part 903 to Title 10, Code of Federal Regulations as set forth below:

PART 903—POWER AND TRANSMISSION RATES

Subpart A—Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations

Sec.

903.1 Purpose and scope; application.
903.2 Definitions.
903.11 Advance announcement of rate adjustment.
903.13 Notice of proposed rates.
903.14 Consultation and comment period.
903.15 Public information forum(s).
903.16 Public comment forum(s).
903.17 Revised proposed rates.
903.21 Provisional rates.
903.22 Final rate approval.
903.23 Rate extensions.

Authority: Sections 301(b), 302(a), and 644 of Department of Energy Organization Act Pub. L. 95–91 (42 U.S.C. 7101 *et seq.*); Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and the acts specifically applicable to individual projects or power systems.

Subpart A—Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations

§ 903.1 Purpose and scope; application.

(a) These regulations establish procedures for the development, and for the confirmation and approval on an interim basis by the Assistant Secretary for Resource Applications, of new, revised, or extended power and transmission rates of the Alaska Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration, and opportunities for interested members of the public to participate in the development of such rates. These regulations supplement Delegation Order No. 0204–33 dated December 21, 1978, of the Secretary of Energy, effective January 1, 1979, which was published in the **Federal Register** on December 28, 1978 (43 FR 60636), with respect to the activities of the Assistant Secretary for Resource Applications and the Power Marketing Administrators.

(b) These regulations shall apply to all power and transmission rate adjustment proceedings for the four power marketing administrations which are commenced after these regulations become effective. Thus, for all new rate proceedings they supersede the informal practices followed by the Alaska and Southwestern Power Administrations and supersede the following published regulations only as they apply to rate adjustments: (1) for the Southeastern Power Administration, the "Procedure for Public Participation in the Formulation of Marketing Policy," 43 FR 29186 (July 6, 1978); and (2) for the Western Area Power Administration, the "Procedures for Public Participation in General Adjustments in Rates for Power Marketed by the Western Area Power Administration," 43 FR 12076 (March 23, 1978), as amended by 44 FR 7796 (February 7, 1979).

§ 903.2 Definitions.

As used herein—

(a) "Administrator" means the Administrator of the Power Marketing Administration (PMA) whose rate is involved in the rate adjustment, or anyone acting in such capacity.

(b) "Assistant Secretary" means the Assistant Secretary for Resource

Applications of the Department, or anyone acting in such capacity.

(c) "Department" means the Department of Energy including the PMAs and excluding the Federal Energy Regulatory Commission.

(d) "FERC" means the Federal Energy Regulatory Commission.

(e) "Major adjustment" means a rate adjustment other than a minor rate adjustment.

(f) "Minor new service" means a new service which (1) will produce less than a 1 percent change in the annual revenues of the power system, or (2) is for a new power system which has either annual sales normally less than 100 million kilowatthours or an installed capacity of less than 20,000 kilowatts, or (3) will not be provided for more than one year, or (4) is for the temporary disposition, for not more than one year, of the output of a new powerplant.

(g) "Minor rate adjustment" means a rate adjustment which (1) will produce less than a 1 percent change in the annual revenues of the power system, or (2) is for a power system which has either annual sales normally less than 100 million kilowatthours or an installed capacity of less than 20,000 kilowatts, or (3) is a rate for a minor new service.

(h) "New service" means a service not previously provided. The term includes, but is not limited to, service from a new powerplant, where this is sold under a separate rate, or service from a new power system.

(i) "Notice" means the statement which informs customers and the general public of Proposed Rates, Revised Proposed Rates, Proposed Substitute Rates, rate extensions or proposed rate extensions, opportunities for consultation and comment, and public information and public comment forums. The Notice shall be by and effective on the date of publication in the **Federal Register**. Whenever a time period is provided, the date of publication in the **Federal Register** shall determine the commencement of the time period, unless otherwise provided in the Notice. The Notice shall include the name, address, and telephone number of the person to contact if participation or further information is sought.

(j) "Power Marketing Administration" or "PMA" means Alaska Power Administration (APA), Bonneville Power Administration (BPA), Southeastern Power Administration (SEPA), Southwestern Power Administration (SWPA), Western Area Power Administration (WAPA), or such additional PMAs as may be created to administer power marketing functions of the Department.

(k) "Power system" means a powerplant or a group of powerplants and related facilities, including transmission facilities or a transmission system, that the PMA treats as one unit for the purpose of establishing rates and demonstrating repayment.

(l) "Rate" means the monetary charge or the formula for computing such a charge for any electric service provided by the PMA, including but not limited to charges for capacity (or demand), energy, or transmission service, and discounts or surcharges; however, it does not include leasing fees, service facility charges, or other types of facility use charges. A rate may be set forth in a rate schedule or in a contract.

(m) "Rate adjustment" means a change in an existing rate or rates, or the establishment of a rate or rates for a new service. It does not include a change in rate schedule provisions or in contract terms, if such change does not involve a change in the price per unit of service, nor does it include changes in the monetary charge pursuant to a formula stated in a rate schedule or a contract.

(n) "Rate schedule" means a document identified as a "rate schedule," "schedule of rates" or "schedule rate" which designates the rate or rates applicable to a class of service specified therein and may contain other terms and conditions relating to the service.

(o) Rate types:

(1) "Proposed Rate" means a rate revision or a rate for a new service which is under consideration by the Department on which public comment is invited.

(2) "Revised Proposed Rate" means a revision of a Proposed Rate on which, in the Administrator's judgment, further public comment should be invited.

(3) "Provisional Rate" means a rate that has been confirmed and approved on an interim basis by the Assistant Secretary.

(4) "Proposed Substitute Rate" means a proposed substitute for a Provisional Rate that has been disapproved by the FERC on which, in the Administrator's judgment, further public comment should be invited.

(5) "Substitute Rate" means a rate submitted by the Assistant Secretary to the FERC as a proposed substitute for a Provisional Rate or a previous Substitute Rate that has been disapproved by the FERC.

§ 903.11 Advance announcement of rate adjustment.

The Administrator may announce that the development of rates for a new service or revised rates for an existing service is under consideration. The announcement shall (1) specify the rates which are to be developed or revised, and (2) contain any other pertinent information relevant to the rate adjustment process. The announcement may be through direct contact with customers, at public meetings, by press release, by newspaper advertisement, and/or **Federal Register** publication. Written comments relevant to rate policy and design and to the rate adjustment process may be submitted by interested parties in response to the announcement. Any comments received shall be considered in the development of Proposed Rates.

§ 903.13 Notice of proposed rates.

(a) The Administrator shall give Notice that Proposed Rates have been prepared and are under consideration. The Notice shall include:

(1) The Proposed Rates;

(2) An explanation of the need for and derivation of the Proposed Rates;

(3) The location(s) at which data, studies, reports or other documents used in developing the Proposed Rates are available for inspection and/or copying;

(4) The date(s), time(s) and location(s) of any initially scheduled public information and comment forum; and

(5) Addresses to which written comments relative to the Proposed Rates may be submitted.

(b) Upon request, customers of the power system and other interested persons will be provided with copies of the principal documents used in developing the Proposed Rates.

§ 903.14 Consultation and comment period.

All interested persons will have the opportunity to consult with and obtain information from the PMA, to examine back-up data, and to make suggestions for modification of the Proposed Rates for a period ending (1) (90) days, in the case of major rate adjustments, or 30 days in the case of minor rate adjustments, after the Notice of Proposed Rates is published in the **Federal Register**, except that such periods may be shortened for good cause shown; (2) 15 days after written answer is provided pursuant to § 903.15(b); (3) 15 days after the close of the (last) public comment forum described in § 903.16 below; or (4) such other time as the administrator may designate; whichever is later. At any time during this period, interested persons may submit written comments to the PMA regarding the Proposed Rates. The Administrator may also provide additional time for the submission of written rebuttal comments. All written comments shall be available at a designated location for inspection, and copies also will be furnished on request for which the Administrator may assess a fee. Prior to the action described in § 903.21, the Administrator may by appropriate announcement postpone any procedural date or make other procedural changes for good cause shown at the request of any party or on the Administrator's own motion. The Administrator shall maintain, and distribute on request, a list of interested persons.

§ 903.15 Public information forum(s).

(a) One or more public information forums shall be held for major rate adjustments and may be held for minor rate adjustments, to explain, and to answer questions concerning, the Proposed Rates and the basis of and justification for proposing such rates. The number, date(s) and location(s) of such forum(s) will be determined by the Administrator in accordance with the anticipated or demonstrated interest in the Proposed Rates. Notice shall be given in advance of such forum(s) and shall include the purpose, date, time, place, and procedures for such forum(s). A public information forum may be combined with a public comment forum held in accordance with § 903.16.

(b) The Administrator shall appoint a forum chairperson. Questions raised at the forum concerning the Proposed Rates and the studies shall be answered by PMA representatives at the forum, at a subsequent forum or in writing at least 15 days before the end of the consultation and comment period. However, questions that involve voluminous data contained in the PMA records may best be answered by providing an opportunity for consultation and for a review of the records at the PMA offices. As a minimum, the proceedings of the forum(s) held at the one principal location shall be transcribed. Copies of all documents introduced, and of questions and written answers shall be available at a designated location for inspection and copies will be furnished by the Administrator on request for which a fee may be assessed. Copies of the transcript may be obtained from the transcribing service.

§ 903.16 Public comment forum(s).

(a) One or more public comment forums shall be held for major rate adjustments and may be held for minor rate adjustments, to provide interested persons an opportunity for oral presentation of views, data, and arguments regarding the Proposed Rates. The number, date(s), and location(s) of such forum(s) will be determined by the Administrator in accordance with the anticipated or demonstrated interest in the Proposed Rates. Notice shall be given at least 30 days in advance of the first forum at each location and shall include the purpose, date, time, place, and other information relevant to the forum, as well as the locations where pertinent documents are available for examination and/or copying.

(b) The Administrator shall designate a forum chairperson. At the forum, PMA representatives may question those persons making oral statements and comments. The chairperson shall have discretion to establish the sequence of and time limits for oral presentations and to determine if the comments are relevant and noncumulative. Forum proceedings shall be transcribed. Copies of all documents introduced shall be available at a designated location for inspection, and copies shall be furnished on request for which the Administrator may assess a fee. Copies of the transcript may be obtained from the transcribing service.

§ 903.17 Revised proposed rates.

During or after the consultation and comment period and review of the oral and written comments on the Proposed Rates, the Administrator may develop Revised Proposed Rates upon which, in the Administrator's judgment, further public comment should be invited. In such a case, the Administrator shall afford interested persons at least 30 days to submit further written comments to the PMA regarding the Revised Proposed Rates and may convene one or more additional public information and/or public comment forums. The Administrator shall give Notice of any such additional forums and opportunity to submit written comments.

§ 903.21 Provisional rates.

(a) Following completion of the consultation and comment period and review of any oral and written comments on the Proposed Rates, or Revised Proposed Rates, the Administrator shall develop rates which, in the Assistant Secretary's judgment, should be confirmed, approved, and placed in effect on an interim basis. A statement shall be prepared and made available to the public of the principal factors on which the Assistant Secretary's decision was based. It shall include an explanation responding to the major comments, criticisms, and alternatives offered during the comment period.

(b) The Assistant Secretary shall set the effective date for the rates he or she has confirmed and approved on an interim basis (Provisional Rates). The effective date shall be at least 30 days after the Assistant Secretary's decision, except that the effective date may be sooner when appropriate to meet a contract deadline, to avoid financial difficulties, to provide a rate for a new service, or to make a minor rate adjustment.

(c) The effective date of the Provisional Rates for the purpose of billing may be adjusted by the Administrator to coincide with the beginning of the next billing period following the date set by the Assistant Secretary.

(d) The Provisional Rates shall remain in effect until (1) they are confirmed and approved on a final basis by the FERC under § 903.22(b), (2) the rates last previously confirmed and approved on a final basis become effective under § 903.22(d), (3) higher Substitute Rates are confirmed and approved and placed in effect by the FERC under § 903.22(e), (4) lower Substitute Rates are confirmed and approved on a final basis by the FERC under § 903.22(f), or (5) they are superseded by other Provisional Rates placed in effect by the Assistant Secretary, whichever occurs first.

§ 903.22 Final rate approval.

(a) Following confirmation and approval of rates on an interim basis, the Provisional Rates shall be submitted promptly to the FERC for confirmation and approval on a final basis, together with such supporting data, studies and documents as the FERC may require, transcripts of forums, written answers to questions, written comments, and the statement of principal factors leading to the Assistant Secretary's decision. A listing of current customers and other participants in the rate proceeding also shall be furnished.

(b) If the FERC confirms and approves Provisional Rates on a final basis, such confirmation and approval shall be effective as of the date such rates were placed in effect by the Assistant Secretary.

(c) In the event Provisional Rates or Substitute Rates are disapproved by the FERC, the Assistant Secretary shall develop, acting by and through the Administrator, and submit to the FERC Substitute Rates which take into consideration the reasons given by the FERC for its disapproval. A statement explaining the Assistant Secretary's decision shall accompany the submission. Prior to such submission, the Assistant Secretary and the Administrator may develop Proposed Substitute Rates on which, in the Administrator's judgment, further public

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comment should be invited, in which case the Administrator shall afford interested persons at least 30 days to submit written comments to the PMA and may convene one or more additional public information and/or public comment forums. The Administrator shall give Notice of any such additional forums and opportunity to submit written comments.

(d) A Provisional Rate that is disapproved by the FERC shall remain in effect, until one of the events described in § 903.21(d)(3), (4) or (5) occurs; *Provided,* That if the Assistant Secretary does not file a Substitute Rate within 120 days of the disapproval or such greater time as the FERC may provide, and if the rate has been disapproved because the FERC determined that it would result in total revenues in excess of those required by law, the rate last previously confirmed and approved on a final basis will become effective on a date and for a period determined by the FERC and revenues collected in excess of such rate during the interim period will be refunded with interest to the extent determined by the FERC.

(e) If a Substitute Rate confirmed and approved on a final basis by the FERC is higher than the rate in effect on an interim basis, such higher rate shall become effective on a subsequent date set by the FERC.

(f) In the case where a Substitute Rate confirmed and approved by the FERC on a final basis is lower than the rate in effect on an interim basis, such lower rate shall become effective as of the date the higher rate was placed in effect on an interim basis by the Assistant Secretary, and the amount of the refund will be the overpayment on all transactions, that is, the difference between the amount paid for the transaction and the amount that would have been paid under the Substitute Rate, unless the FERC determines that there will be no refund because the administrative cost of a refund would exceed the amount to be refunded..In the case covered by the proviso in subsection (d) the amount of the refund is determined by the FERC. In both cases, the amount of the interest on the refund will be determined by the FERC.

(g) A rate confirmed and approved by the FERC on a final basis shall remain in effect for such period or periods as the FERC may provide or until the Assistant Secretary places a new Provisional Rate into effect; *Provided,* That the Assistant Secretary may extend the rate on an interim basis beyond the period specified by the FERC as provided in § 903.23.

§ 903.23 Rate extensions.

(a) The following regulations shall apply to the extension of rates which were previously confirmed and approved by the FERC, the Federal Power Commission or the Administrator of the Economic Regulatory Administration, or established by the Secretary of the Interior:

(1) The Administrator shall give Notice of the proposed extension at least 30 days before the expiration of the prior confirmation and approval, except that such period may be shortened for good cause shown.

(2) the Administrator shall allow for consultation and comment, as provided in § 903.14, for such period as he or she may provide. One or more public information and comment forum(s) may be held, as provided in § 903.15 and § 903.16, at such time(s) and location(s) and with such advance notice as the Administrator may provide.

(3) Following the conclusion of the consultation and comment period, the Assistant Secretary may extend the rates on an interim basis. Such extension shall be governed by § 903.21(d) and § 903.22.

(b) Provisional Rates may be extended by the Assistant Secretary without advance notice or comment. The Assistant Secretary shall publish notice in the **Federal Register** of such extension and shall promptly advise the FERC of the extension.Q02

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federal register

Wednesday
December 31, 1980

Part XXII

Department of Energy

Western Area Power Administration

Colorado River Storage Project, Order Confirming, Approving, and Placing Increased Power Rates in Effect on an Interim Basis

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DEPARTMENT OF ENERGY

Western Area Power Administration

Colorado River Storage Project; an Order Confirming, Approving, and Placing Increased Power Rates in Effect on an Interim Basis

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of a rate order—Colorado River storage project.

SUMMARY: Notice is given of Rate Order No. WAPA–4 of the Assistant Secreary for Resource Applications placing increased power rates into effect on an interim basis for Colorado River Storage Project (CRSP) power marketed by the Western Area Power Administration (Western).

The rate adjustment would increase average annual revenues about $8.3 million to meet cost recovery criteria.

The proposed wholesale firm-power rate consists of a capacity charge of $1.655 per kW-month and an energy charge of 4.0 mills per kWh. At 58.2-percent load factor, the composite rate is 7.89 mills per kWh, a 20.5-percent increase over the existing rate.

This rate order also contains statement and discussions of the principal factors leading to the decisions on the rate increase, and responses to the comments, criticisms, and alternatives offered during the rate increase proceedings.

EFFECTIVE DATE: The rate adjustments and new rates would be effective the first day of the first full billing period beginning on or after January 23, 1981.

FOR FURTHER INFORMATION CONTACT:

Mr. A. M. Gabiola, Area Manager, Salt Lake City Area Office, Western Area Power Administration, Department of Energy, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524–5493

Mr. Conrad Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, CO 80401, (303) 231–1535

Marlene A. Moody, Office of Power Marketing Coordination, Department of Energy, Mail Station 3344, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC 20461, (202) 633–8338.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204–33, effective January 1, 1979 (43 FR 60636, December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis.

Rate adjustments on the CRSP are being conducted consistent with procedural rules applicable to Western. Final procedures for public participation in general adjustments were published in the **Federal Register** on March 23, 1978 (43 FR 12076), April 5, 1978 (43 FR 14359), and February 7, 1979 (44 FR 7796).

Proceedings on the proposed rate were initiated in April 1979, with an announcement published in the **Federal Register** at 44 FR 19533 (April 3, 1979) stating that a 38-percent power rate increase for the CRSP was proposed beginning with an estimated date of January 1, 1980. This announcement was subsequently amended by **Federal Register** notices 44 FR 24154 (April 24, 1979) and 44 FR 30759 (May 29, 1979) to add references to Public Utility Regulatory Policies Act standards and written comments.

After consideration of comments received, Western prepared a new power repayment study in August 1979 incorporating reductions in some estimated future costs and delays in some other estimated future costs, and correcting the misinterpretation of one of the provisions of Pub. L. 84–485. After proper notification to customers and to others by letter, press releases, and by an August 24, 1979, **Federal Register** notice (44 FR 49785), a public information forum was held on September 5, 1979, at which a revised proposed power rate increase of 23.8 percent was announced, in lieu of the 38-percent increase announced on April 3, 1979.

Subsequent to the September 5, 1979, forum, Western discovered that the price levels for all CRSP participating projects were at the January 1976 price level except for the Animas-La Plata, San Miguel, and West Divide Projects which were at the October 1967 price level. The costs of the three aforementioned projects were indexed to the January 1976 price level and the fiscal year 1977 CRSP power repayment study was revised to include the revised costs. This revision resulted in a rate increase of 25.8 percent (2 percent higher than the 23.8 percent advocated in the September 5, 1979, forum). The customers were given proper notification of the aforementioned revision by letter and by a February 15, 1980, **Federal Register** notice (45 FR 10399), and comments were received until March 17, 1980.

Customer comments were again considered in preparing the proposed rate order which was issued on August 1, 1980, by the Assistant Secretary for Resource Applications and published in the **Federal Register** (45 FR 52900) on August 8, 1980. There was a request by a customer to make an oral presentation before the Assistant Secretary, and a public comment forum was scheduled to be held on September 11, 1980, in Salt Lake City, Utah, and was announced in the **Federal Register** on August 21, 1980 (45 FR 55808). A notice of an extension until September 19, 1980, of the time that written comments could be submitted (extended from the September 8 date initially given) was published in the **Federal Register** on September 3, 1980 (45 FR 58407). The forum was held as scheduled.

Comments received have been considered during preparation of the November 1980 revision of the power repayment study and of this rate order.

Therefore, Rate Order No. WAPA–4 confirming and approving increased power rates on an interim basis is hereby issued, and the rates will be promptly submitted to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued in Washington, D.C., December 23, 1980.

Ruth M. Davis,

Assistant Secretary for Resource Applications.

United States of America, Department of Energy, Assistant Secretary for Resource Applications

In the Matter of: Western Area Power Administration—Colorado River Storage Project Power Rates, Rate Order No. WAPA–4; Order Confirming, Approving, and Placing Increased Power Rates in Effect on an Interim Basis

December 23, 1980.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior under the Reclamation Act of 1902, 43 U.S.C. 372 *et seq.*, as amended and supplemented by subsequent enactments, particularly by section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Colorado River Storage Project (CRSP), for the Water and Power Resources Service (Service) (formerly the Bureau of Reclamation), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. This rate order is issued pursuant to the delegation to the Assistant Secretary and the rate adjustment procedures at 43 FR 12076 (March 23, 1978), as amended by 44 FR 77967 (February 7, 1979). The major topics included in the rate order are listed below.

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Order

Background

Existing Rates

The increased rates which are the subject of this order supersede the following existing CRSP rates:

	Effective date	Existing rate	Increased rate
Existing rate schedule UC-F2 for wholesale firm power	June 1, 1977		
Demand charge, $/kW-month		$1.34	$1.655
Energy charge, mills/kWh		3.4	4.0
Composite rate at 58.2-percent load factor in mills/kWh		6.55	7.89
Existing rate schedule UC-FP2 for peaking power	June 1, 1977		
Peaking capacity without energy in $/kW-month		1.34	1.655

This order does not change the rates for the sale of nonfirm power or for wheeling power over the CRSP transmission system.

Public Notice and Comments

Pub. L. 84–485 authorized the CRSP, including participating projects. This legislation requires that an annual report be made to Congress to show the status of the project including "* * * the progress of return and repayment thereon, and the estimated rate of progress, year by year, in accomplishing full repayment * * *." To comply with this legislation, a power repayment study is made annually and its results are included in the annual report to Congress.

The FY 1977 power repayment study which was made for the 21st Annual Report showed that the existing power rate would be sufficient to pay annual expenses, but would not repay the power investment cost and the assistance needed to accomplish repayment of the irrigation features within the allowable time frames. A power rate increase of 43 percent (at 58.2-percent load factor) was found to be necessary to provide the required revenue. The result of this power repayment study was announced at a customer meeting on March 5, 1978.

An updated power repayment study was completed in August 1978. This study included some adjustments (primarily wheeling costs) to the 21st Annual Report study and indicated that a 2.49 mill/kWh (38-percent) rate increase (at 58.2-percent load factor) would be necessary to provide the required revenue.

At the request of the Colorado River Energy Distributors Association (CREDA), meetings were held with CREDA representatives on December 19, 1978, January 19, 1979, and March 30, 1979. CREDA represents the majority of CRSP customers; however, all CRSP customers were formally invited to the CREDA metings. At the first meeting, copies of a draft of the proposed power rate brochure were distribued to those present. At the three meetings, questions were asked by CREDA representatives and written answers were distributed at the meetings or mailed subsequently.

Federal Register notice 44 FR 19533 (April 3, 1979) announced the proposed CRSP rate adjustment and the public information and comment forums for public participation. This notice was subsequently amended by **Federal Register** notices 44 FR 24154 (April 24, 1979) and 44 FR 30759 (May 29, 1979) to add references to the PURPA standards and references to written comments. A press release was issued on April 3, 1979, to announce the proposed rate adjustment and the forums. On April 5, 1979, letters were sent to customers and other interested parties to announce the proposed rate adjustment and the forums and to transmit copies of the CRSP brochure dated April 1979, entitled "Proposed Power Rate Adjustment." Public information forums were held on the proposed rate increase in Phoenix, Arizona; Salt Lake City, Utah; and Denver, Colorado, on April 24,

25, and 26, 1979, respectively. At those forums numerous customers and other interested persons were in attendance. Procedures were reviewed, a summary of the brochure was presented, and all questions asked were answered at the forums or in writing before June 1, 1979.

In accordance with notices previously given, as referred to above, and reminder notices given by May 10, 1979, letters to customers and the June 6, 1979, press release, a public comment forum was held in Salt Lake City, Utah, on June 26, 1979, with customers and other interested persons in attendance. Written comments were received until the close of the comment period on July 11, 1979.

Several of the customers' comments seemed to merit further consideration, and a revised repayment study was made in August 1979. By means of an August 22, 1979, letter to all customers, an August 24, 1979, **Federal Register** notice (44 FR 49785), and a press release dated August 24, 1979, announcement was made of another public forum to be held in Salt Lake City, Utah, on September 5, 1979. At this forum a revised proposed rate increase (1.56 mills/kWh or 23.8 percent) was announced and copies of the August 1979 revised repayment study, the overhead projections used at the forum, and a September 5, 1979, brochure entitled "Revised Proposed Power Rate Adjustment" were distributed. Further comments were received through October 5, 1979.

Subsequent to the September 5, 1979, public forum, the Western Area Power Administration (Western) discovered that, contrary to a statement in the April 1979 rate brochure, the investment costs for all except three participating projects were at the January 1976 level and the costs of the three (Animas-La Plata, San Miguel, and West Divide Projects) were at the October 1967 price level. A second revision of the repayment study, with the three projects' costs indexed to the January 1976 level was made in February 1980. This study showed a need for a 1.69 mill/kWh, or 25.8-percent, rate increase, 2 percent higher than the previously revised proposed rate. A brief report showing the details of the study was sent to all customers by letter on February 12, 1980, (February 15, 1980, for CRSP customers in the Boulder City area) and the second proposed revision was published in the February 15, 1980, **Federal Register** (45 FR 10399) and was announced in a press release dated February 15, 1980. Customers were given an opportunity to comment until March 17, 1980.

Customer comments were again considered in preparing the proposed rate order which was issued on August 1, 1980, by the Assistant Secretary for Resource Applications and published in the **Federal Register** (45 FR 52900) on August 8, 1980. There was a request by a customer to make an oral presentation before the Assistant Secretary.

Therefore, a public comment forum was scheduled to be held on September 1, 1980, in Salt Lake City, Utah, and was announced in the **Federal Register** on August 21, 1980, (45 FR 55808). A notice of an extension until September 19, 1980, of the time that written comments could be submitted (extended from the September 8 date initially given) was published in the **Federal Register** on September 3, 1980, (45 FR 58407). The forum was held as scheduled. Comments received have been considered during preparation of the November 1980 revision of the power repayment study and of this rate order.

Project History

On April 11, 1956, the CRSP and participating projects were authorized by Pub. L. 84–485. By means of the four storage units authorized, the flow of the Colorado River is regulated in such a way that irrigation, municipal, industrial, and other water use developments in the Upper Colorado River Basin can be made while still maintaining water flows into the lower basin as required by the Colorado River Compact. Facilities have also been provided at the storage units for flood control, for recreation, and for other beneficial purposes. In order to maximize the use of water and to obtain revenues to assist in the repayment of the irrigation developments, power generating plants have been installed at three of the four storage units. A power generating plant has been installed on one of the participating projects and generating plants will be included on other participating projects where such developments are found to be feasible.

The table below lists the existing powerplants, with their installed capacity and dates of initial service.

CRSP	Installed capacity MW	Inservice date
Glen Canyon	950	Sept. 1964
Flaming Gorge Powerplant	108	Nov. 1963
Curecanti Unit—Blue Mesa Powerplant	60	Sept. 1967
Curecanti Unit—Morrow Point Powerplant	120	Dec. 1970
Curecanti Unit—Crystal Powerplant	28	Aug. 1978
Subtotal	1,266	
Participating Projects		
Seedskadee Project—Fontenelle Powerplant	10	May 1968
Grand Total	1,276	

Transmission facilities include a high-voltage transmission grid to deliver power to the established delivery points in the market area, to provide interconnections among the plants of the CRSP units and participating projects, and to interconnect with other existing Federal and utility systems withing the market area.

Discussion

Power Repayment Studies

General

The power repayment studies for the CRSP are prepared by Western with the cooperaton of the Service. Basic river basin hydrology, water depletions, power generation, and project development data are among the many items the Service contributes to the studies.

The power repayment studies are prepared in accordance with CRSP authorizing legislation and with DOE Order No. RA 6120.2 on Power Marketing Administration financial reporting, which basically adopted policy criteria originally established in the Department of the Interior's Manual, parts 730.3 and 730.4. The studies array historic income, expense, and investment to be repaid from power revenues, along with estimates for future years, and portray the annual repayument of power production and transmission costs of a power system, as well as nonpower costs assigned to power for repayment, through the application of revenues over the repayment period of the project. The studies show, among other items, estimated revenues and expenses year by year over the remainder of a project's repayment period, the estimated amount of Federal investment amortized during each year, and the total estimated amount of Federal investment remaining to be amortized. The studies do not deal with rate design.

The power repayment studies are also prepared in accordance with the Reclamation Project Act of 1939. As part of its marketing policy, Western stirves to transmit and dispose of CRSP power and energy in such a manner as to encourage the most widespread use thereof at the lowest possible rates consistent with sound business principles. With the rate increase which is the subject of this Order, the power

will be sold at the lowest possible rates in accordance with statutory mandate. Without the increase, the statutory requirements will not be met. Insofar as possible, the increase is in keeping with both sound business principles and statutory requirements.

The August 1978 Study

A repayment study made in August 1978 for fiscal year 1977 showed that the existing power rate is insufficient to pay within allowable time frames the costs assigned to the power function, mainly because of rapidly escalating construction and operating expenses. The study showed that in the time period between January 1974—the price level date for the present rate—and January 1977, the total costs to be paid by power increased by about $1,228 million. The August 1978 repayment study indicated that a power rate increase of about 38 percent (total cost of 9.04 mills/kWh and 58.2-percent load factor) would be needed to accomplish the repayment required by the project authorizing act.

The August 1979 Changes From August 1978 Study

The August 1978 power repayment study which resulted in the recommendation for a 2.49 mill/kWh (38 percent) rate increase was used in the April 1979 rate adjustment brochure entitled "Proposed Power Rate Adjustment." An analysis of customer comments and recommendations on this brochure resulted in Western adopting some of their recommendations. These changes are reflected in the August 1979 repayment study and are described in the September 5, 1979, brochure. The following is a discussion of the changes from the study in the April 1979 brochure:

Future Wheeling Expense

The repayment study in the April 1979 brochure included the estimated excalation of wheeling rates in future years. At the suggestion of the customers, Western reconsidered the matter and decided that the wheeling rates should not have been escalated. Elimination of the excalation reduced the future average annual wheeling cost for the 1978–2052 period from $4,347,000 to $3,071,000 and reduced the proposed power rate adjustment by 3.5 percent.

Application of Central Utah Project (CUP) and Seedskadee Power Revenues

The repayment study in the April 1979 brochure was based on deferring the application of CUP (Utah) and Seedskadee (Wyoming) power revenues to the repayment of the irrigation costs of participating projects in Utah and Wyoming until 50 years after the CUP and Seedskadee power inservice dates. The customers recommended that CUP and Seedskadee power revenues be applied to repayment of irrigation costs of Utah and Wyoming participating projects, respectively, as soon as the CUP and Seedskadee power costs are repaid. In comparing the early repayment studies with current studies, it was discovered that an unexplained change was made in 1973 and continued in subsequent years so that studies prepared from 1973 through 1976 have not been in compliance with the law on this point. Section 5(e) of P.L. 84–485 states that power revenues from a participating project should be applied to repayment of projects within the State and not be used to meet the requirements of participating projects in other States. Due to the express language in P.L. 84–485, Western adjusted the August 1979 repayment study to the original method, which retains CUP and Seedskadee power revenues to the credit of the States where the two projects are located. This reversion to the pre-1973 method of handling revenues from the participating projects reduced the proposed power rate adjustment by 7.3 percent.

Unidentified Future Transmission Investments

The repayment study in the April 1979 brochure included an estimated unidentified future transmission investment of about $71 million in the 1981–1984 period. The customers recommended that the $71 million be deleted. P.L. 84–485 authorized specific storage units, specific participating projects, and transmission facilities related to the foregoing, but did not specify any particular transmission facilities. In the 1958 repayment study and in all repayment studies since then, amounts have been included for unidentified transmission facilities. It was concluded that the historic policy, which was being followed by Western in the rate adjustment proposal, was a reasonable implementation of the law.

Western restudied the matter and decided that the $71 million of unidentified transmission facilities should be deferred from the 1981–1984 period to the 1990–2020 period, with approximately one-seventh of the cost being placed in service every 5 years. The effect of this change was to reduce the proposed power rate adjustment by about 3.4 percent.

Summary of August 1979 Changes

A summary of the changes made in the August 1979 study as compared to the August 1978 study is tabulated below:

Item	Decrease in proposed rate adjustment (pct)
Eliminate escalation of future wheeling expense	3.5
Apply CUP and Seedskadee power revenues to Utah and Wyoming as in repayment studies prior to 1973	7.3
Defer unidentified future transmission investments from 1981–1984 period until 1990–2020 period	3.4
Total decrease	14.2

The result of the above was to increase the existing rate by 1.56 mills/kWh (23.8 percent) instead of by the 2.49 mills/kWh (38 percent) stated in the April 1979 brochure.

February 1980 Changes From the August 1979 Study

Costs for the Animas-LaPlata, San Miguel, and West Divide Projects

Subsequent to the September 5, 1979, forum, Western discovered that, contrary to a statement in the April 1979 rate brochure indicating that all costs were at 1977 price levels, the investment costs of all except three of the participating projects were at 1976 price levels. The costs of the three projects (Animas-LaPlata, San Miguel, and West Divide) were at 1967 price levels.

The investment costs of these three projects were indexed to January 1976 price levels and another revised repayment study was run in February 1980. This second revision showed that an overall rate increase of 1.69 mills/kWh (from 6.55 mills/kWh to 8.24 mills/kWh) or 25.8 percent was needed, 2 percent higher than the previously revised proposed rate.

November 1980 Changes From February 1980 Study

Deletion of Unidentified Future Transmission Investments

During a September 11, 1980, public hearing concerning the then proposed rate order, commenters asserted that Department of Energy Order RA 6120.2, which was adapted from 730 DM 4 of the Department of the Interior Manual, limits the period of time during which future estimates of power system costs may be modified to reflect changing conditions, such as transmission additions, to a cost evaluation period which is normally 5 years. Deferring the unidentified transmission facilities to the 1990–2020 period placed them outside the normal cost evaluation period. Consideration was given to the

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possibility of moving the unidentified transmission facilities back into the 1981–1984 period and, based on developments since the FY 1977 studies were initially prepared, identifying them. However, such use of later developments would open the studies to a multitude of other developments and prolong the rate adjustment efforts.

As analyzed in more detail in a later section of this rate order, Order No. RA 6120.2 allows for exceptions "specifically approved by the Secretary" or "authorized by statute." The inclusion of unidentified transmission during the 1990–2020 period was one of these exceptions. However, since it is the practice of the Secretary to market power at the lowest possible rates consistent with sound business practices, weight was given to the policy underlying the 5-year cost evaluation period in this instance. A decision was made to delete the unidentified transmission facilities. Transmission facilitieswill be identified in the next repayment study, however, and will be considered in the evaluation of project costs and revenues in the future. The effect of this deletion is to reduce the rate by 5.3 percent, to a 20.5 percent (1.34 mills/kWh) increase.

Repayment Issues

Other public comments were received which were critical of a number of assumptions made in the repayment study. The areas of comment are discussed below.

Inclusion of Future Projects in Repayment Study

The primary thrust of a number of the public comments relating to the repayment study revolved around whether or not all participating projects which have been authorized by Congress should be included in the repayment study. This concern has apparently emerged due to the amount of time which has elapsed between authorization and construction.

Several customers suggested that the proposed rate increase be based on a repayment study which excludes the costs of participating projects not yet in service or nearing completion, and that future or "stepped" rate increases be made as the projects reach or approach the inservice dates. It is clear, however, from the provisions of the Act, the legislative history of Pub. L. 84–485 which established CRSP, and from the first repayment study—which provides a contemporaneous interpretation and guide for repayment procedures—that it was the intent of Congress that current rates be based on the inclusion of all authorized participating projects in CRSP repayment studies. The Western Area Power Administration's Office of the General Counsel has issued a legal memorandum supportive of the present ratemaking methodology. The inclusion of all authorized participating projects is legislatively and administratively proper.

The appropriateness, within legal restraints, of including each of the participating projects has been considered. Only one authorized participating project has ever been deauthorized. The Pine River Extension was authorized by Congress on April 11, 1956, by Pub. L. 84–485, and was deauthorized by Congress on September 30, 1968, by Pub. L. 90–537. No costs have been included for the Pine River Extension.

The status of four other participating projects, although still authorized, is subject to question. The entire LaBarge Project and the irrigation development on the Seedskadee Project have both been declared by the Bureau of Reclamation to be indefinitely deferred and Congress has been so informed. Costs included for these two projects are limited to sunk costs based on their indefinitely deferred status. More recently, President Carter has recommended deauthorization of the Fruitland Mesa and Savery-Pot Hook Projects; however, no legislative action has been taken to deauthorize either of the projects and, although no funds have been expended on them since the President's recommendation, they have not been declared to be indefinitely deferred. Except for the delay, their status remains as it was before the President's recommendation, and their costs have accordingly been included. A more complete summary of the status of these four projects is given below.

LaBarge Project

The project was authorized by the Congress on April 11, 1956, by Pub. L. 84–485. On February 2, 1961, the Regional Director, U.S. Bureau of Reclamation, Salt Lake City, Utah, wrote the Commissioner of the Bureau of Reclamation recommending that construction not be undertaken. The Commissioner concurred by letter of February 27, 1961, in the recommendation ". . . that construction of the project not be undertaken at this time. . . ." In the CRSP 9th Annual Report to Congress for FY 1965, the Bureau of Reclamation stated that construction had been deferred indefinitely, as suggested in the Senate Subcommittee Appropriation Hearings for FY 1962, page 216. Tables of repayment data for the LaBarge Project follow the discussion of the Savery-Pot Hook Project.

Seedskadee Project

The project was authorized by Congress on April 11, 1956, by Pub. L. 84–485. Congressional hearings on the Riverton and Eden Projects in 1962 brought to light that serious financial and economic problems were encountered by farmers on these high-altitude irrigation projects. As a result of these hearings, the Commissioner of the Bureau of Reclamation issued a stop order on May 21, 1962, suspending construction of irrigation features of the Seedskadee Project until a review of Wyoming reclamation projects could be accomplished. The Secretary of the Interior on August 10, 1962, appointed the Wyoming Reclamation Projects Survey Team to analyze problems on Wyoming projects and recommend possible solutions. One of the recommendations made by the survey team was that a development farm be established on the Seedskadee Project. Data collected from the operation of the development farm resulted in the conclusion that only 34,000 acres of the original 58,000 acres were suitable for irrigation, that even the 34,000 acres would be marginally feasible, and that the developed project water supplies should be made available for municipal and industrial (M&I) and other purposes. As a result of the investigations, and because of the desire of the State of Wyoming to purchase Seedskadee water for M&I purposes, the United States sold the State all the storage space in the Fontenelle Reservoir excluding the last 65,000 acre-feet. The State was given the first right of refusal to the last 65,000 acre-feet upon notice of its availability for M&I purposes. All the foregoing is documented in the October 8, 1973, letter from the Assistant Secretary of the Interior to the President, with copies to the President of the Senate, to the Speaker of the House, and to the Chairman of the Senate and House Committees on Interior and Insular Affairs.

In December 1974, the Bureau of Reclamation in Salt Lake City, Utah, prepared a cost allocation report on the Seedskadee Project. After review by various offices of the Bureau of Reclamation and by the Wyoming reclamation representative, the report was submitted to the Commissioner of the Bureau of Reclamation for use in a report to the Congress as required by section 6 of P.L. 84–485. The report stated that "Irrigation development has been indefinitely deferred...." and established revised repayment schedules. Tables of repayment data for the Seedskadee Project follow the discussion for the Savery-Pot Hook Project.

Fruitland Mesa Project

The project was authorized on September 2, 1964, by P.L. 88–568. The Definite Plan Report was approved October 9, 1967, and a repayment contract with Fruitland Mesa Water Conservancy District (District) was validated September 29, 1969. As a result of new water supply studies and changes in plan formulation, the Definite Plan Report and contract with the District were in the process of revision in early 1977. On April 18, 1977, the President recommended deauthorization of the project. No action has been taken to deauthorize the project and the project has not been declared to be indefinitely deferred, although no funds have been expended on the project since that time. Tables of repayment data for the Fruitland Mesa Project follow the discussion of the Savery-Pot Hoop Project.

Savery-Pot Hook Project

The project was authorized on September 2, 1964, by P.L. 88–568. The Definite Plan Report was approved December 2, 1971. As a result of changes in plan formulation, the Definite Plan Report was in the process of revisions in early 1977. Repayment contracts with the Pot Hook and Little Snake Water Conservancy Districts were also being negotiated in early 1977. On April 18, 1977, the President recommended deauthorization of the project. No action has been taken to deauthorize the project and the project has not been declared to be indefinitely deferred, although no funds have been expended on the project since that time. Tables of repayment data for the LaBarge, Seedskadee, Fruitland Mesa, and Savery-Pot Hook Projects follow.

Tables

LaBarge Project

1964 Data Before Deferment

Irrigation repaid by:	
Irrigators	250,000
Apportionment (power)	1,501,000
Others	0
Municipal and Industrial	0
Power	0
Nonreimbursable	65,000
Total	1,816,000

1965 Data After Deferment

Irrigation repaid by:	
Irrigators	0
Apportionment (power)	136,000
Others	0
Municipal and Industrial	0
Power	0
Nonreimbursable	86,000
Total	222,000

1977 Repayment Study

Irrigation repaid by:	
Irrigators	0

Tables—Continued

Apportionment (power)	136,000
Others	0
Municipal and Industrial	0
Power	0
Nonreimbursable	86,000
Total	222,000

Seedskadee Project

1964 Data Before Deferment

Irrigation repaid by:	
Irrigators	7,300,000
Apportionment (power)	39,672,000
Others	402,000
Municipal and Industrial	908,000
Power	3,574,000
Nonreimbursable	7,724,000
Total	59,580,000

1965 Data After Deferment

Irrigation repaid by:	
Irrigators	0
Apportionment (power)	1,428,000
Others	411,000
Municipal and Industrial	12,310,000
Power	3,574,000
Nonreimbursable	16,586,000
Total	34,309,000

1977 Repayment Study

Irrigation repaid by:	
Irrigators	0
Apportionment (power)	1,228,000
Others	411,000
Municipal and Industrial	12,310,000
Power	3,574,000
Nonreimbursable	16,984,000
Total	34,507,000

Fruitland Mesa Project

1977 Repayment Study

Irrigation repaid by:	
Irrigators	3,790,000
Power	80,256,000
Others	181,000
Municipal and Industrial	0
Power	0
Nonreimbursable	4,373,000
Total	88,600,000

1978 22nd Annual Report

Irrigation repaid by:	
Irrigators	3,790,000
Power	80,256,000
Others	161,000
Municipal and Industrial	0
Power	0
Nonreimbursable	4,163,000
Total	88,390,000

Savery-Pot Hook Project

1977 Repayment Study

Irrigation repaid by:	
Irrigators	5,086,000
Power	66,630,000
Others	869,000
Municipal and Industrial	0
Power	0
Nonreimbursable	2,315,000
Total	74,900,000

1978 22nd Annual Report

Irrigation repaid by:	
Irrigators	5,086,000
Power	66,630,000
Others	869,000
Municipal and Industrial	0
Power	0
Nonreimbursable	2,340,000
Total	74,925,000

The total cost of all the participating projects is nearly $2,553 million, and the amount to be repaid from power revenues is nearly $1,090 million.

Effect of Elimination of Projects Discussed Above

As discussed later in this order, section 5(e) of P.L. 84–485 requires the apportionment of certain revenues among the four Upper Colorado River Basin States of Colorado, New Mexico, Utah, and Wyoming. The requirements of projects in one of the four States will determine the total revenue needed for apportionment. For the studies on which this rate increase is based, the controlling State which determines the total revenue needed for apportionment is Colorado. Since some of the projects discussed above are in Colorado, their elimination would reduce the total revenue required. However, the elimination of projects in Colorado would result in Utah becoming the controlling State which determines the total revenue for apportionment, and would result in a reduction of only 2 percent in the amount of increase needed. For reasons already discussed, the projects have not been eliminated.

Cost Evaluation Period

A number of customers raised the issue of whether 730 DM 4 of the Department of the Interior Departmental Manual (now also Department of Energy Order No. RA 6120.2) should not limit the analysis of future irrigation costs associated with CRSP to a maximum of about 5 years. Order No. RA 6120.2 does not conflict with the current CRSP ratemaking methodology for a number of reasons. The order provides, in the first paragraph, for exceptions "specifically approved by the Secretary" or "authorized by statute." The CRSP Act sanctions the departure from the 5-year limitation, as does the longstanding interpretation of the administrative agencies charged with the sale of CRSP power. Even if the "authorized by statute" exception did nor exist, the execution of this rate order demonstrates, as a matter of administrative policy, the approval of the current CRSP ratemaking methodology. This policy decision is based upon the Reclamation policy of irrigation assistance, past administrative practice, and the comprehensive purpose of the CRSP as a whole. Furthermore, the provisions in Order No. RA 6120.2 relating to a cost evaluation period apply only to power facilities. This is indicated by the second sentence of paragraph 10(k), which specifically refers to power facilities. The subject of future irrigation investment is not covered and therefore a determination with respect to these future investments must be made on a project-by-project basis.

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Federal Projects Use Repayment Basis to Set Revenue Levels

Further comments raised the issue of whether the Federal Energy Regulatory Commission restrictions on the inclusion of the costs of future facilities in ratesetting for private utilities would restrict FERC approval of the CRSP rates.

Generally, the FERC does not allow the inclusion of construction work in progress (future facilities) in setting current rates. As one of the commenters stated, "The basis of the Commission's decisions along these lines is that a utility's plant facilities should not be paid for by the utility's ratepayer through the utility's rates until such facilities become 'used and useful' to the ratepayer." The CRSP is not an electric utility as defined in the Federal Power Act, but rather is a reclamation water project to which hydroelectric generation has been added to assist in paying for certain of the water features. Irrigation projects and salinity control are not "used and useful" to power customers per se. It is essential that costs of such features to be paid by power should be spread as evenly as possible over all power users for the entire life of the project, while at the same time being sure that all investments are repaid by the end of their respective repayment periods.

Further, Federal power rates are required by law to be established on a repayment basis. The repayment studies that set revenue level requirements show that annual operating costs will be recovered in the year in which they are incurred and that all investments will be amortized within a reasonable period of years, which has been determined to be 50 years in most cases. This analysis includes future revenues and costs—in this case to the year 2052—as well as historical revenues and costs. The methodology differs substantially from the ratesetting approach based on cost-of-service studies incorporating depreciation as used in the private utility sector.

Benefits Versus Costs

Some customers questioned whether the benefits of unbuilt projects would exceed the costs and/or outweigh the environmental consequences.

At one time, all authorized unbuilt projects had benefit-cost analyses indicating that the benefits exceeded the costs. Shortly before construction begins, new benefit-cost analyses and environmental impact statements will be made, based on the final plan adopted. It is not possible at this time to accurately predict what the final results will be.

Apportionment of Revenues

In the repayment studies, revenues in the Upper Colorado River Basin (Basin) fund for irrigation assistance to authorized participating projects are apportioned to the States by the percentages specified in section 5(e) of P.L. 84–485. This results in a credit to some States in excess of that required for currently authorized participating projects.

Power customers refer to this excess as "surplus surplus" and, to prevent it, advocate application of the revenues to repayment of each participating project feature as the feature repayment comes due. The power customers and Western made repayment studies based on the originally proposed rate adjustment, which show that the method advocated by the customers would have reduced the 38-percent rate adjustment to about 19.8 percent. Western made a similar study using the 25.8-percent increase as a base, and it showed that the method advocated by the customers would reduce the rate adjustment from 25.8 percent to about 15.1 percent.

It is clear that this "surplus surplus" will accrue in the future because P.L. 84–485 requires that certain revenues in the Basin fund are to be apportioned among the States for repayment of the participating projects.

The law prohibits the use of revenues apportioned to any State from being used in any other State without the consent of the legally constituted authority of the State to which they are apportioned.

Western met with the governors of the four Upper Basin States to inform them of the need for the rate adjustment and the appropriate provisions of the law. Subsequently, on October 2, 1979, the governors of the affected States adopted the recommendation of the September 17, 1979, resolution passed by the Upper Colorado River Commission that they ". . . support the position that the proposed power rate adjustment for the marketing of Colorado River Storage Project power be established in accordance with the requirements of Public Law 84–485, as amended, to achieve the purposes of the Act. . . ." While the adoption of this resolution does not rule out the possibility of a State with surpluses allowing those surpluses to be used in another State, it does preclude the use of such a possibility in the present rate adjustment.

Energy Losses

Several customers questioned using energy losses of 7 percent of the energy delivered at designated delivery points and suggested that it should be about 3 to 5 percent instead. CRSP's average percent loss of energy delivered to designated delivery points from 1972 through 1978 (excluding the drought year of 1977) is 7.38 percent; therefore, the 7 percent as used in the rate study seems reasonable.

Diversity Versus Capacity Losses

Some customers suggested that diversity may exceed capacity losses and that this should be analyzed. Western looked at the 1972–1978 period (excluding the 1977 drought year) and found that, in some of the years, the diversity exceeded losses and in other years, the diversity was less than losses. On the average for the 6-year period, the diversity exceeded the losses by 22 MW in the summer and 2 MW in the winter. With the exclusion of the summer of 1976 during which there was an extraordinarily high diversity (in addition to excluding the 1977 drought year), the diversity varied between 35 MW higher and 30 MW lower than losses. On the average, the diversity exceeded the losses by 8 MW in the summer and 2 MW in the winter. In view of the foregoing, it appears that the assumption of diversity equaling capacity losses is reasonable.

Depletions

Some customers suggested that the water depletions used in the power repayment study are too high because they include depletions for future participating projects and also for unidentified developments.

The customers also commented that all possible M&I revenues from the sale of water (i.e., depletions for M&I use) are not included, and that, if included, the required power rate would decrease.

As stated elsewhere in this order, P.L. 84–485 requires that the study must include all authorized water developments which are components of the CRSP. The water depletion schedule has been developed by the Water and Power Resources Service, and incorporates the reasonable assumption that the pressures of a growing population will eventually result in water developments utilizing each State's entitlement of the flow of the Colorado River. These developments may not necessarily be Federal projects, but anticipated water demands indicate that the water will be used. The Water and Power Resources Service's schedule appears to be a reasonable basis to use for the power repayment study, recognizing that any prediction about the future is speculative at best. In any event, subsequent power repayment studies will reflect updated depletion schedules based on the more current information.

Because of uncertainties about the outcome of the President's recommendation to deauthorize the Fruitland Mesa and Savery-Pot Hook Projects, depletions for those two projects were omitted from the FY 1977 hydrological study, which later was used as the basis for the CRSP power repayment study. These projects should not have been deleted because, as explained elsewhere in this order, they have neither been deauthorized nor declared to be indefinitely deferred. However, the depletions used in the hydrology study included unidentified depletions which, except for the one year 1990, exceeded the magnitude of the depletions for the Fruitland Mesa and Savery-Pot Hook Projects. Therefore, there would have been no change in the power rate even if depletions for the Fruitland Mesa and Savery-Pot Hook Projects has been identified in the study.

M&I revenues from storage units in excess of costs allocated to M&I are apportioned to the States for irrigation assistance. However, M&I water users of participating projects pay only their allocated costs and do not assist in the repayment of the irrigation allocation; therefore, future depletions caused by M&I water use will not result in extra revenue to reduce the power rate.

Replacements

The customers suggested that, since replacement factors used in the rate study were developed in 1969, replacement cost estimates should be reevaluated. It is true that the factors for replacements were developed in 1969. However, these factors were based on the historical service lives of the equipment; and while updated experience may modify some of the service lives, it is unlikely that there would be a significant change. Western and the Service are currently in the process of updating the replacement factors, and any revisions will be reflected, when available, in future power repayment studies.

Power Revenue Assistance to Irrigation Projects

Some customers questioned why CRSP power revenues are used to provide assistance for irrigation projects, whereas Parker-Davis and Boulder Canyon Project power revenues are not.

Pursuant to enabling legislation, CRSP power revenues must provide assistance for irrigation projects, whereas enabling legislation for Parker-Davis and Boulder Canyon Projects does not provide for such assistance. The power rates proposed for each project must be adequate to effect repayment as contemplated by its authorizing legislation. Such legislation does not always allow uniformity among the projects as to what costs must be paid from power revenues and in methods for determining power rates. While power revenues from the Parket-Davis Project are not used for irrigation assistance, they are used to repay investment in noninterest-bearing electrical facilities used to support irrigation on several projects, as well as to repay certain costs associated with the Mexican Water Treaty. Revenues from the Boulder Canyon Project are not used to repay costs of irrigation projects. Repayment on both projects is in accordance with authorizing legislation, and Western has made no changes in either study.

M&I Water Rates and Irrigators' Ability to Repay

Some customers suggested that M&I rates should be raised when power rates are increased and that the irrigators' calculated ability and obligation to repay should also be revised at the same time. The M&I rate for water from mainstem CRSP reservoirs was set by Service policy to recover construction costs allocated to M&I water plus contingencies and operation and maintenance (O&M). The rates are fixed for the term of the contracts. Upon the expiration of these contracts, the need for changing the rates will be explored. The M&I rates for water from participating projects are set to repay the costs allocated to M&I plus O&M. All contracts for irrigation water on participating projects require the water users to repay a fixed amount of investment plus operation, maintenance, and replacements (OM&R). The irrigators and participating projects's M&I water users automatically pay any increased costs of OM&R.

Reserves

One of the customers suggested that the amount assumed for reserves is too high. The reserve assumed for the repayment study was 10 percent of the load, a percent factor that has been used in previous repayment and other studies. The Western Systems Coordinating Council (WSCC) power supply design criteria recommend that reserve capacity should meet or exceed the sum of the capacity associated with the two largest risks or the largest risk plus 5 percent of load. A comparison between the reserves, as used in the CRSP rate study and the WSCC standard for the year 1990, is as follows:

Rate study reserves	144 MW
WSCC standard	216 MW

From this comparison, it appears that the reserves as used in the repayment study are not too high.

Extraordinary O&M Expenses

One customer suggested that the extraordinary O&M expenses for FY 1979 in the power repayment study should be amortized over a reasonable period of years rather than being completely paid for in the year in which they occur. The extraordinary O&M expenses of $800,000 are for spillway tunnel repairs at Flaming Gorge and for road construction at Glen Canyon.

Without any rate increase, revenues are available in 1979 to pay the extraordinary O&M expenses in that year. If the revenues are not applied to the extraordinary O&M expenses, they would be applied toward repayment of other investments bearing the same interest rate (2.875 percent) as would be applicable to the unpaid extraordinary O&M expenses. The $800,000 expense could be treated either way with no effect on the rate increase.

Present Status of CRSP Repayment

Some customers stated that the CRSP is $87 million ahead of its required repayment of Federal investment. However, the $87 million is the total amount through FY 1977 that has been applied to repayment of storage units' investment costs which are allocated to power. CRSP generally has 50 years in which to repay each investment, but cannot wait until the last year for each investment and then repay the whole thing. This would cause sudden and severe changes of rates. Instead, CRSP spreads the repayment over the 50 years (paying highest interest-bearing investments first to the extent possible) in such a way as to maintain as level (and low) rates as possible. Based on CRSP repayment criteria and the power reapayment study, repayment of Federal investment is behind instead of ahead of schedule.

Repayment of Salinity Control Construction Costs

Some customers recommended that, instead of assuming in the study that the interest-free salinity control construction costs would be repaid in 50 equal annual installments, the study should have been based on deferring such repayment until interest-bearing

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costs are repaid. This would eliminate about $3 million in interest payments.

Pub. L. 93–320 provides that, among other things, the portion of the salinity control costs allocated to the Basin will be paid by CRSP power revenues, and furthermore that " * * * the Secretary is authorized to make upward adjustments in rates * * * as soon as practicable and to the extent necessary to cover the costs of construction, operation, maintenance, and replacement of units * * * Provided, That revenues derived form said rate adjustments shall be available solely for the construction, operation, maintenance, and replacement of salinity control units in the Colorado River Basin. * * * "

In early 1976, the then Bureau of Reclamation sought advice from the Regional Solicitor of the Department of the Interior on this matter. By a memorandum dated April 13, 1976, the Solicitor advised the Regional Director that in view of the provisions of Pub. L. 93–320 quoted above, the repayment of salinity control construction costs could not legally be delayed until after noninterest-bearing costs are repaid. Therefore, CRSP repayment studies made since 1976 have included repayment of salinity control construction costs in 50 equal annual installments.

Uprating the Generators at Glen Canyon Powerplant

Some customers suggested that the additional capacity at Glen Canyon Powerplant due to uprating the generators should have been included in the February 1980 repayment study and that, based on data from power repayment studies for the CRSP 23rd Annual Report (after FY 1979), the sale of such added capacity would have increased the revenues by more than twice those needed to counteract the increased costs of the three participating projects added in the February 1980 revised repayment study.

The power repayment studies for the proposed rate increase have for the most part been based upon conditions that existed as of the end of FY 1977, when the CRSP 21st Annual Report was prepared. At that time, maintenance funds were budgeted for future replacement of Glen Canyon generator stator windings and rotor pole piece collars becaue of normal wear and tear. However, the Service had not investigated the matter fully enough to determine whether or not the units could be uprated. Commenters pointed out that the 21st Annual Report contains this statement: "an award was made April 14, 1977, for stator windings on two existing generators at the Glen Canyon Powerplant. Work was initiated on September 28, 1977, on Unit 7. The new windings will increase the generator capacity of each unit by 25 megawatts." Western has been unable to locate either the source or the basis for the stated 25 megawatt increase for each unit. The power repayment study included in the 21st Annual Report does not include the claimed additional capacity.

When the studies for the CRSP 23rd Annual Report were made, the Service had made further investigations and operational tests, and felt that with some additional modifications it was reasonable to assume the uprating could be realized. Therefore, the repayment study for the 23rd Annual Report included increased sales due to uprating. It should be noted that, taking the planned uprating into account as well as other changes between 1977 and 1979, the 23rd Annual Report shows the need for a rate increase greater than the 20.5 percent promulgatged by this order.

Revenues from Capacity Above Lower Quartile

Revenue form future capacity sales used in the power repayment study is based on capacity available under lower quartile water conditions. It was suggested that capacity during years when water conditions exceed the lower quartile could be sold and that the effect of this should be included in the rate determination.

Power repayment stdies prior to the FY 1976 studies included capacity revenues only from the long-term dependable capacity (capacity available during the most adverse water year). However, in recognition of the fact that capacity above that available under adverse water conditions is almost always available, and is usually sold, the present study is based on sales of capacity under lower quartile water conditions. Consideration was given to using capcity available under average water conditions based on the theory that half the time there would be more capacity available, and half the time there would be less capacity available, and that all the capacity available would be sold. A comparison of the historical capacity offered for sale with the amount sold indicates that there has generally been a market for the excess capacity. However, in order to achieve capacity revenues which over the long-term average the same as capacity sales under average water conditions, all the capacity available would have to be sold every month. To assume that this could be done would be imprudent—there are too many possible conditions which might prevent this from happening, such as the inability to locate a purchaser because of market conditions, or because of the inability of the power system to produce and deliver power due to maintenance of powerplants and/or transmission facilities. The use of lower quartile capacity is therefore both reasonable and prudent.

Historically, all revenues from capacity sales are included in the study.

Amortization of Parker-Davis Project Facilities

Some customers suggested that the construction costs of the portion of the Parker-Davis Project facilities paid for by CRSP revenues be repaid in the same manner as the construction costs of CRSP facilities, instead of the CRSP paying Parker-Davis Project a uniform annual amortization amount.

By Contract No. 14–06–304–1548 between the then Regions 3 and 4 of the Bureau of Reclamation (now Water and Power Resources Service), agreement was made that the CRSP would pay the Parker-Davis Project for construction repayments in equal annual amortization amounts based on 3-percent interest and a 30-year repayment period. The contract has been transferred to Western, and the contract provisions are used to develop the payment used in the CRSP repayment study. Since the 3-percent interest is higher than the interest rates of CRSP facilities, except central Utah, application of the general rules for CRSP repayment; i.e., repay highest interest-bearing costs first, would probably show a small reduction in the magnitude of the CRSP power rate increase needed. However, the change would be very minor, since the total construction cost involved is less the $3 million and the 3-percent interest rate is only slightly higher than the 2⅞-percent interest rate of the major portion of CRSP investments.

Increase in Investment Versus Increase in Required Irrigation Assistance

One group of customers pointed out that, in the February 1980 power repayment study, the investment costs of the Animas-La Plata, San Miguel, and West Divide participating projects increased by only 61 percent, whereas the required irrigation assistance to the aforementioned projects from power and M&I revenues increased by 80 percent. The customers claimed that the disproportionate increae of irrigation assistance as compared to investment is improper.

The reason why the required irrigation assistance increased by a greater percentage than did the investment

costs is that the revised costs shown in the repayment study are based partly on cost indexing and partly on revised plan formulations for the participating projects. The irrigators' ability to repay did not increase in proportion to the cost increases. Thus, these changes result in the irrigation assistance being increased accordingly.

Rate Design Issues

Description of the Design of the Rotes

Much of the CRSP cost paid by power revenues, such as aid to irrigation, is not normally considered to be a cost of service in the usual sense. The CRSP power is sold at the rate required to pay operating costs and to recover the costs specified in Pub. L. 84–485 and in Pub. L. 93–320. The rate schedule also has a provision that unauthorized overruns shall be billed at 10 times the base rate. Although this provision is intended as an incentive for the customer to find supplemental power suppliers, it may encourage energy conservation to some minor extent.

The CRSP firm-power rate includes a capacity component and an energy componet. A cost classification analysis was made by assigning various costs to the two components. The main costs assigned to the capacity component include: power capital and replacement investments, interest on power investments, irrigation investments of the storage units to be repaid by power revenues, and one-half the irrigation aid to participating projects. The major costs assigned to the energy component include: O&M, firming-energy purchases, power wheeling, salinity construction costs, and one-half the irrigation aid to participating projects. Results of the cost classification analysis indicated that revenues from the sale of capacity and energy should be given approximately equal weight.

A low demand rate would probably benefit those customers who purchase CRSP peaking capacity, but could be detrimental to project irrigation pumpers. In consideration of the cost classification and in order to minimize discrimination among types of power users, it is felt that the new power rate should be based on equal revenues from capacity and energy sales at 58.2-percent load factor. The first rate established in 1962 also was on this basis. The energy component has been rounded off to the nearest 0.1 mill/kWh and the capacity component to the nearest 0.5 cent/kW-month, resulting in a revised proposed CRSP rate of 4.0 mills/kWh and $1.655/kW-month. Because of rounding in this fashion, the revised repayment study of November 1980 indicated a small surplus (approximately $4.0 million) in power revenues above the requirements of the law by the critical year 2046.

Adjustment Provision For Purchased Energy Costs

During the April 1979 public information forums Western announced that it was considering the possibility of including, in the new rate schedules, provision to pass through purchased power costs. Such a provision was under consideration because during periods of adverse hydro conditions large purchases are required, and funds for such purchases can be quickly depleted without some means of quick (i.e., monthly) recovery. However, such a provision has not been included for the following reasons:

1. Purchases are often made in the autumn and winter as a hedge against the possibility of poor water conditions in the following spring and summer. It is often late summer before the extent to which such purchases were necessary for firming is known. Purchases may turn out to have been in excess of firming requirements and, to that extent, are available for other uses, such as oil conservation sales. For this reason the purchased power costs cannot be passed on at the time they are made and at the time when the revenues are needed.

2. When firming purchases are necessary for the CRSP, they are also apt to be necessary for the Parker-Davis Project, which is downstream from the CRSP. This project purchases its firming requirements from the CRSP, further complicating the determination on a monthly basis of just how much of the power purchased by the CRSP is for firming the supply to and at the cost of its own firm-power customers.

3. The power repayment studies on which the rate increase is based have been prepared using average hydro conditions for energy production, and assume that revenues from the sales of surplus energy in better-than-average water years will offset the cost of the purchase of firming energy during poorer-than-average water years. Implementation of a passthrough provision for purchased power costs would upset this balance.

Alternative Power Rates and Conservation

Some customers stated that the repayment study implies that the rate is being increased because of conservation desires or to bring it closer to alternative rates. As stated in the rate brochures, in presentations at forums, and in all written and verbal answers to questions, the level of the rate increase determination is based on payment of costs and investments and was not influenced by alternative power rates or conservation desires. Rather, any comparison with other power rates in the general area is to demonstrate that the proposed cost-based rates are not in excess of market value. Were project costs such that required rates would be in excess of market value, the rates would be based on the market value and the project would operate at a loss until such time as market value increased sufficiently to allow the rates to be increased to recover costs, including repayment of the deficit with interest.

Charges for Wheeling Over Parker-Davis Project System

Some customers who receive CRSP power over the Parker-Davis Project system contend that the CRSP power rate should include the cost of wheeling over that system so that they would not have to pay for such wheeling (except as a component of the CRSP rate for power). The present CRSP marketing criteria, which were adopted and published in the **Federal Register** on February 9, 1978, after consultation with the customers, include a provision that any wheeling charges over other project systems such as the Parker-Davis Project system are to be paid by the customers receiving the power. The current Parker-Davis Project rate increase proposal includes provisions for such a rate, and, under the criteria, the customers receiving the power over that system must pay the costs.

Phased or Stepped Rate Increases

Some customers recommended that the proposed rate increase, if adopted, be phased or stepped over a period of years. To try to avoid confusion on this issue, Western has distinguished between phased increases and stepped increases. Western considers a phased increase to be one in which the rate is increased at regular intervals, unrelated to costs, until the final rate is in place. This was done for the Rio Grande Project because of the magnitude of the increase (from 8.15 mills per kilowatthour to over 16 mills per kilowatthour). The magnitude of this CRSP rate increase is much less and use of a phased increase is not warranted.

Western considers a stepped increase to be one in which the rate is increased based on and at the time of anticipated significant future additions to the system. The arguments for and against stepped increases are the same as those which are discussed in the second paragraph under the heading "Federal Projects Use Repayment Basis to Set

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Revenue Levels" earlier in this order. The anticipated significant future additions for the CRSP are not power features, but rather are irrigation features, and, as discussed in the paragraph already cited, it is essential to spread the costs of such features among as many power customers over as long a period as possible.

Applicability of the Public Utility Regulatory Policies Act of 1978 (PURPA)

The standards set forth in the PURPA, 16 U.S.C. 2601 *et seq.* are not applicable to sales that are for resale, and are not currently applicable to CRSP sales that are not for resale because CRSP has not had such sales in excess of 500 million kWh in any year. Nonetheless, each of the 11 standards was considered and briefly discussed in the April 1979 brochure entitled "Colorado River Storage Project and Participating Projects—Proposed Power Rate Adjustment" and interested parties were given opportunity to comment on the discussion in writing and/or orally at the forums which were held. Although not subject to the PURPA standards, CRSP is complying with those standards to the extent that it can reasonably do so as discussed in the referenced brochure.

Other Considerations

Public Comment Procedures

A number of comments reflected concern that the procedures followed by Western in promulgating the proposed rate increase did not conform to basic due-process-of-law requirements. The lack of opportunity for cross examination of witnesses and the absence of other formalities of evidentiary hearings were among the alleged deficiencies cited.

We are satisfied that the opportunities provided by Western for public information and comment were more than adequate. The reasons for the rate increase and the methodology used in developing it were fully explained. Requested information was supplied. The parties were afforded access to Western's computer program. All questions were answered. Because of the two occasions upon which changes were made, the comment period lasted more than 11 months. Formal evidentiary procedures are not required in the development and review of Federal power rates.

National Environmental Policy Act (NEPA)

A number of comments raised the issue of whether the rate adjustment is subject to provisions of the NEPA. Procedures for compliance with NEPA are applicable to CRSP ratemaking. A preliminary environmental evaluation was made for and reported in the April 1979 proposed power rate adjustment brochure. Subsequently, an environmental assessment has been made in accordance with NEPA. The environmental assessment indicates there are no significant environmental impacts expected as a result of the proposed rate adjustment.

Leavitt Act

Commenters also questioned whether the Leavitt Act, which is cited in Section 4 of Pub. L. 84–485, authorized reduced rates for Indians. Section 4 of Pub. L. 84–485 provides, in relevant part, that: "(d) as to Indian lands within, under or served by any participating project, payment of construction costs within the capability of the land to repay shall be subject to the Act of July 1, 1932 [Leavitt Act] (47 Stat. 564)."

The first provision of the Leavitt Act authorizes and directs the Secretary of the Interior ". . . to adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians in such a way as shall be equitable and just in consideration of all the circumstances under which such charges were made . . ." (Act of July 1, 1932, 47 Stat. 564, 25 U.S.C. 386a). This portion of the Leavitt Act authorized the Secretary of the Interior to grant relief on a project-by-project basis from then existing obligations under the Indian Appropriations Act for Fiscal Year 1915 (Act of August 1, 1914, 38 Stat. 582, 583) to reimburse the Government for expenditures made for Indian irrigation projects. First, neither it nor the first proviso, which defers construction costs assessed ". . . against Indian-owned lands within any Government irrigation project . . .", applied to Reclamation projects. Solicitor Finney Opinion, 54 I.D. 90 (1932). Second, both portions of the act, which derived from separate bills, provide relief only from irrigation costs and do not apply to power costs. Section 4 of Pub. L. 84–485 specifically makes the Leavitt Act applicable to participating projects, which are Reclamation projects. However, Pub. L. 84–485 does not extend the relief provided by the Leavitt Act. Consequently, since the Leavitt Act provides relief only from irrigation costs and not from power costs, neither Section 4 of Pub. L. 84–485 nor the Leavitt Act authorize reduced power rates for Indians.

Price Stability

There was a question whether any rate increases which Western might promulgate would be limited by the Council on Wage and Price Stability. On March 19, 1979, the Director of the Council on Wage and Price Stability stated in the peamble to the Interim Final Price Standard that ". . . while the price standard is intended to apply to all 'Government enterprises,' any statute mandating a particular pricing policy will, of course, take precedence." 44 FR 17910, 17911 (March 23, 1979). This interpretation of the price standards was verified in a letter to the Secretary of Energy from R. Robert Russell, the Acting Director for the Council on Wage and Price Stability. In that letter, dated August 28, 1979, the Council confirmed the Department of Energy's belief that "statutory requirements take precedence over the voluntary price standard" where power marketing administrations are involved.

Some concern remained within the Department of Energy over whether the price standard applied to the portion of the CRSP rate increase attributable to assistance for future participating CRSP projects which had not yet been funded. Differing opinions were offered on the matter as administrative interaction took place. In reaching the decision that the price standards were not applicable to any portion of the CRSP rate, the Western Area Power Administration concluded that there is no discretion to set a rate lower than that which would accumulate revenues for irrigation assistance in accordance with the apportionment formula of 43 U.S.C. 620 (e). The CRSP Act gives the Secretary discretion in the carrying out of the will of the Congress, but not to the point where repayment obligations become impaired. Revenues sufficient to assist future participating projects must be accumulated in the same manner as the Secretary of the Interior has done since the passage of the legislation in 1956. This approach is consistent with the CRSP Act, the legislative history, long/standing administrative interpretation and the ratification of that interpretation through the informed actions of Congress since 1956.

Availability of Information

Information regarding this rate adjustment, including studies, comments, transcripts, and other supporting material, is availalbe for public review in the Salt Lake City Area Office, Western Area Power Administration, 438 East 200 South, Suite 2, Salt Lake City, Utah 84147; in the office of the Administrator, Western Area Power Administration, 1536 Cole Boulevard, Golden, Colorado 80401; and in the office of the Director of Power Marketing Coordination, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461.

Submission to the FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective Jaunary 23, 1981, Rate Schedules SP–F1 and SP–FP1. These rates shall remain in effect on an intermin basis for a period of 12 months unless such period is extended or until the FERC confirms and approves these or substitute rates on a final basis, whichever occurs first.

Issued in Washington, DC, December 23, 1980.

Ruth M. Davis,

Assistant Secretary, Resource Applications.

UNITED STATES DEPARTMENT OF ENERGY, WESTERN AREA POWER ADMINISTRATION

Colorado River Storage Project; Schedule of Rates for Wholesale Firm Power Service

[Rate Schedule SP–F1 (Supersedes Schedule UC–F2)]

Effective: The first day of the first full billing period beginning on or after January 23, 1981.

Available: In the area served by the Colorado River Storage Project.

Applicable: To wholesale power customers for general power service supplied through one meter at one point of delivery.

Character and Conditions of Service: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate:

Capacity Charge: $1.655/kW of billing demand.

Energy Charge: 4.0 mills/kWh for all energy use up to, but not in excess of, the energy obligation under the power sales contract.

Billing Demand: The billing demand will be the greater of (1) the highest 30-minute integrated demand established during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at ten (10) times the above rate.

Adjustments:

For transformer losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95-percent lagging and 95-percent leading.

United States Department of Energy, Western Area Power Administration

Colorado River Storage Project; Schedule of Rates for Wholesale Peaking Power Service

Rate Schedule SP–FP1 [Supersedes Schedule UC–FP2]

Effective: The first full day of the first full billing period beginning on or after January 23, 1981.

Available: Within and adjacent to the marketing area of the Colorado River Storage Project.

Applicable: To wholesale power customers purchasing such service under long-term contracts. Because of the nature of this class of service, it is applicable only to customers with other resources enabling them to utilize it.

Character and Conditions of Service: As specifically established by contract. Delivery will be made from the transmission system of the United States at transmission voltage, and normally only during peak hours of the purchaser's load. Return of all energy furnished shall normally be required.

Montly Rate: Capacity Charge: $1.655/kW of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is the greater.

Energy Charge: 4.0 mills/kW for all energy scheduled for delivery without return.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for peaking capacity and/or energy, such overrun shall be billed at ten (10) times the above rate.

Adjustments:

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95-percent lagging and 95-percent leading.

[FR Doc. 80–40684 Filed 12–31–80; 8:45 am]

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Wednesday
December 31, 1980

Part XXIII

Department of Agriculture

Agricultural Marketing Service

Regulations and Policy Statements Under the Packers and Stockyards Act

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

9 CFR Parts 201 and 203

Regulations and Policy Statements Under the Packers and Stockyards Act

AGENCY: Agricultural Marketing Service (Packers and Stockyards), U.S. Department of Agriculture.

ACTION: Proposed changes in regulations and policy statements pursuant to complete review.

SUMMARY: The agency proposes to change surety bond requirements for livestock market agencies and dealers, extend the time for deposits in custodial accounts, change some reporting forms, and enlarge the scope of the policy statement on packer sales promotion programs.

DATES: Comments must be received on or before March 2, 1981.

ADDRESS: Send comments to Deputy Administrator, Packers and Stockyards, Agricultural Marketing Service, USDA, Room 3039 South Building, 14th and Independence Avenue, SW., Washington, D.C. 20250. All comments received may be reviewed by any interested person in the Deputy Administrator's office during normal business hours.

FOR FURTHER INFORMATION CONTACT: John A. Sands, Director, Packer and Poultry Division, phone (202) 447–6771, or Harry L. Williams, Director, Livestock Marketing Division, phone (202) 447–6951, Agricultural Marketing Service, Packers and Stockyards, U.S. Department of Agriculture, Washington, D.C. 20250. The Draft Impact Analysis describing the options considered in developing these proposed amendments and the impact of implementing each option is available on request from Mr. Sands.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "significant."

This proposed action may have a significant economic effect on a substantial number of small businesses. Direct notification of all of them is not feasible as they number many thousands. However, in addition to other mailings and publication in the **Federal Register**, the agency is mailing copies of this notice to all known organizations of such businesses and issuing a nationwide press release about it, to give them an opportunity to participate in this rulemaking.

On March 31, 1980, a notice was published in the **Federal Register** (45 FR 21168) requesting comments on a review of selected regulations and policy statements issued under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), under the procedures described in the notice, "Improving USDA Regulations," 43 FR 50988 (November 1, 1978). The Department also requested comments on specific changes to be considered in its reports and recordkeeping requirements under the P&S Act. See also the notice at 44 FR 71802, December 11, 1979.

A total of 21 comments were received in time for consideration, in addition to the 66 comments received in response to the earlier notice.

Persons Filing Comments

Five comments were received from State and Commonwealth Departments of Agriculture; four comments were from various livestock producer organizations; four comments were from organizations representing auction markets; one comment was from an association of livestock market agencies; one comment was from an association of stockyard operators; two comments were from national meat packers' associations; one comment was from an individual meat packer; two comments were from individual auction market operators and one comment was from a banker representing an auction market operator.

The following groups, individuals or associations recommended changes in the regulations or policy statements.

	:State : :Depts.: of :Agric.	:Indiv. :Auction: Markets	:National :Livestock: Mktg.Assn	:Natl. :Packer: Assn.	: Law Firm	:Lstk. :Pro- :ducers: Orgs.	:Financial: :Insts. :Serving: Mkt.Agies	:Indiv. :Meat :Packers	:Stock- :yard Assn.	:Market :Agency: Assn.	:Livestock: Insurance: Services	:Producers Marketing Assn.
No. of Comments Per Group	5	2	2	2	1	3	1	1	1	1	1	1
Regulations:												
201.2			2		1							
201.3			1									
201.4			1									
201.5			1									
201.6			1									
201.7			1			1						1
201.30		1	2	1	1	1	1				1	1
201.39			1			1						
201.40			1									
201.41			1									
201.42			2		1	1	1	1				
201.43			1					1				
201.51			2	1	1				1	1		
201.97			2	1	1							
Policy Statements:												
203.2	1											
203.3	1			1								
203.4	2											
203.6	1			1					1			
203.7			1	1		1						1
203.14	1											

*The numbers in the table represent the number of comments received out of each grouping.

General Comments

The general tone of the comments supported the agency's effort to review the majority of its regulations. Several of the regulations proposed for review received no comments. One comment recommended deleting all regulations on livestock marketing. Several comments were received supporting all or some of the regulations now under review and recommending no chnges be made. A comment recommended that regulations § 201.27 and § 201.34 be changed from category I (believed not to need review at this time because reviewed since July 1976) to category III (proposed for complete review). P&S has considered a change in the categories of these regulations and has determined it is not in the public interest to change these regulations now. Therefore after reviewing all comments P&S is not publishing any proposed revision of these regulations: §§ 201.3, 201.4, 201.5, 201.6, 201.7, 201.27, 201.34, 201.39, 201.40, 201.41 and 201.97 and the following policy statements: §§ 203.2, 203.4, 203.6, 203.7 and 203.14.

Bonding

Several comments were received concerning the level of bonding. One comment recommended the lowering of the amount of bonds for order buyers because the market should look to the packer principal for payment. Five comments recommended increased bond coverage. After reviewing all comments P&S is proposing revision of regulation § 201.30. The minimum bond would be increased to $10,000 for market agencies buying on commission and dealers who buy in excess of $260,000 of livestock annually. Market agencies and dealers buying $260,000 or less annually would be required to file a $5,000 bond. The regulation requires only 10 percent of the amount otherwise required for a bond above $50,000 and this threshold would be raised to $75,000. For such persons and market agencies selling on commission, the multiple for required coverage would be raised from $2,000 to $5,000. There would be no other change for market agencies selling on commission.

A study was made of the bond claim data maintained on market agencies buying on commission and dealers for the period July 1, 1974, through July 30, 1980. Thirty-four pecent of the bonds called on were less than $10,000 and 15 percent of the bonds were over $50,000. Had the proposed bond formula been in effect an additional 23 percent of the bonds of less than $10,000 would have been adequate to cover all claims. Similarly, 19 percent more of the bonds over $50,000 would have provided sufficient funds to cover all claims. If the proposed bond formula had been in effect it would have provided at least $600,000 in additional funds to cover bond claims. Total bond coverage for market agencies buying on commission and dealers under the proposed formula will increase approximately $14 million at a cost of $140,000 to the dealers and market agencies.

Changing the formula for determining bonds for market agencies selling livestock on a commission basis is not proposed, other then the change in the multiple, mentioned above. A review of the bonds called on of market agencies selling livestock shows that 77 percent of the bonds were of sufficient size to cover the claims filed. However, had the formula of $75,000 plus 10 percent of the excess over $75,000 been in effect, six additional bonds would have been sufficient to cover claims filed and would have provided approximately $180,000 in additional funds to cover all bond claims. The change in the threshold would increase total bond coverage approximately $24 million at a cost of $240,000 to the selling agencies.

Custodial Accounts

Comments were received recommending changes in regulation § 201.42(c). These comments primarily addressed the financial burden on the market agency of placing into the custodial account funds equal to proceeds receivable from sale of consigned livestock but not collected by the end of the third day after the sale. Another comment recommended relaxing the requirements that custodial funds be deposited only in FDIC insured banks and that investment of the float of custodial funds in certificates of deposit be with the bank where the custodial account is maintained. Other comments received recommended no changes be made in this regulation.

Funds which are deposited by market agencies into custodial accounts are those held by the financial institution for the sellers of livestock. For this reason, the agency does not propose relating its present requirements that these custodial funds be deposited only in banking institutions fully insured by FDIC.

The proposed revisions of regulation 201.42 would delete superfluous language in (b), extend the time for market agencies selling on commission to deposit funds in their custodial accounts by excluding nonbusiness days from the three days now required, and permit custodial account funds to be invested in savings accounts as well as certificates of deposit in the same bank in which the custodial account is maintained.

Reports

Several comments were received concerning regulation 201.97 and the format of the various annual reports which P&S requires.

On the following forms: P&S–5, P&S–116, P&S–116–1, P&S–122, P&S–124, P&S–124–1, P&S–132, P&S–134, P&S–135, P&S–212, P&S–216 and P&S–218, no comments were received.

P&S–125, the packer annual report, was revised effective February 1979, as shown in the notice published on March 31, 1980. The revision substantially reduced the information required, and thus will decrease the workload for the industry. Two comments on it were received from packer associations, recommending broader use of information now provided to other government agencies and minimizing requirements for information which may be marginally useful to P&S but which would harm competition if released under a Freedom of Information Act request. Two other comments on it were received from state departments of agriculture, that the reports were necessary and needed no change. Packers are filing the revised report for the first time in 1980. The 1980 reports will be analyzed for effectiveness in administering the Act and further consideration will be given to additional revisions on the basis of the comments filed and our analysis.

P&S–126, The Annual Report of Market Agencies (Commission Firms), and P&S–129, the Annual Report of Posted (Terminal) Stockyards, were proposed to be revised as shown in the notice published on March 31, 1980. Comments were received from The River Markets Group, whose members represent the majority of those required to complete P&S–126. Comments were received from the American Stock Yards Association, whose members represent the majority of those required to complete P&S–129. Each group recommended prompt approval by OMB and utilization of the revised form applicable to its group. The OMB approval has now been obtained. The revised forms will be furnished to the persons required to file them. The use of both of these revised report forms will result in substantial reduction in the volume of information reported by such firms.

Regarding P&S–130, Annual Report of Market Agency (Auction Market), four comments were received recommending a reduction in the amount of information required, and three recommending that the form be left basically unchanged.

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Sales Promotion Programs

Two comments were received concerning policy statement 203.3—Statement With Respect to Meat Packer Sales Promotion Programs. One of the comments recommended deletion, because the policy was too restrictive and the other because if was superfluous and contrary to antitrust policy. P&S believes the policy statement is still necessary and, based upon recent investigations, feels the practice has expanded to customers other than retailers. The statement has been rewritten to reflect this change so that it clearly applies to all sales promotion programs with a specified exception.

Packers Purchases for Export

Three comments were received concerning policy statement 203.6—Statement With Respect to Purchase of Livestock by Packers for Export. Based on the comments received, P&S does not intend to alter its present policy and will retain 203.6 in its present form.

Revisions Made and Proposed

Three forms have been revised and will be used for 1980 reports: P&S–124, Annual Report of Dealer or Market Agency Buying on Commission, P&S–124–1, Dealer Business Report, and P&S–130, Annual Report of Market Agency (Auction Market).

P&S–124 was revised as follows:

1. Section 1, items 5 and 7 were deleted.

2. Section 2 was revised to require bond information on a quarterly basis.

3. Sections 7 and 8 were deleted.

P&S–124–1 was revised by deleting item 2 of section 2 and deleting section 4.

P&S–130 was revised as follows:

1. Sections 5, 6, 11, 12, 13 and 14 were deleted

2. The profit and loss statement for dealer and market agency was combined with simplified.

3. The details of market support and dealer activity were eliminated and only head count will be requested.

These revisions will substantially reduce the volume of information required of auction markets and dealers on an annual basis and materially reduce the time required for compliance. For that reason firms will be required to file the revised report form to cover the operations conducted during 1980 even though comments have not been received concerning the changes in the report forms. Comments filed concerning changes in the report forms will be used to determine if other changes should be made. Businesses filing the reports will be advised when they can comment if they wish to suggest changes in the report form.

Copies of the report forms may be obtained from Jack W. Brinckmeyer, Rates and Registrations Branch, Livestock Marketing Division, Agricultural Marketing Services, U.S. Department of Agriculture, Washington, D.C. 20250, phone (202) 447–4366.

The changes proposed in the following regulations and policy statements are a result of the comments received after March 31, 1980, Federal Register publication and those applicable comments received in response to December 11, 1979, Federal Register publication. The comments were analyzed for the overall effect such changes would have on the entire livestock and meat packing industries. P&S proposes to amend the regulations and policy statements as set forth below.

If any information is communicated orally to personnel of the agency, which is not a matter of public record, and which may influence the final decision on the proposed rulemaking, such information and its source will be reduced to writing and made available for inspection the same as written submissions in response to this notice, and the time for submission of comments will be extended if and as appropriate to permit others to reply to such information.

Done at Washington, D.C. December 24, 1980.

Calvin W. Watkins,

Acting Deputy Administrator, Packers and Stockyards, Agricultural Marketing Service.

It is proposed to revise §§ 201.2, 201.30, 201.42 and 203.3 to read as set forth below.

§ 201.2 Terms defined.

The definitions of terms contained in the Act shall apply to such terms when used in the Regulations under the Packers and Stockyards Act, 9 CFR Part 201; Rules of Practice Governing Proceedings under the Packers and Stockyards Act, 9 CFR Part 202; Statements of General Policy under the Packers and Stockyards Act, 9 CFR Part 203; and Organization and Functions, 9 CFR Part 204. In addition the following terms used in these parts shall be construed to mean:

(a) "Act" means the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 *et seq.*).

(b) "Department" means the United States Department of Agriculture.

(c) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department authorized to act for the Secretary.

(d) "Administration" or "agency" means the Agricultural Marketing Service of the Department.

(e) "Administrator" or "agency head" means the Administrator of the Administration or any person authorized to act for the Administrator.

(f) "Regional Supervisor" means the regional supervisor of the Packers and Stockyards program for a given area or any person authorized to act for the regional supervisor.

(g) "Person" means individuals, partnerships, corporations, and associations.

(h) "Registrant" means any person registered pursuant to the provisions of the Act and the regulations in this part.

(i) "Stockyard" means a livestock market which has received notice under section 302(b) of the Act that it has been determined by the Secretary to come within the definition of "stockyard" under section 302(a) of the Act.

(j) "Schedule" means a tariff of rates and charges filed by stockyard owners and market agencies.

(k) "Custom Feedlot" means any facility which is used in its entirety or in part for the purpose of feeding livestock for the accounts of others, but does not include feeding incidental to the sale or transportation of livestock.

§ 201.30 Amount of market agency, dealer and packer bonds.

(a) *Market agency selling livestock on commission.* Each bond must be at least $10,000 or any higher amount as established by applicable state law. To compute the required amount of each bond, first divide the actual number of days on which livestock was sold into the dollar value of the livestock sold during the preceding business year, or the substantial part of that business year, in which the market agency did business. The amount of the bond must be the next multiple of $5,000 above the amount so determined. The divisor (number of days) must be no greater than 130. When the computation exceeds $50,000, the amount of the bond need not exceed $50,000 plus 10 percent of the excess over $50,000.

(b) *Dealer or market agency buying on commission.* For annual purchases of $260,000 or less each bond must be at least $5,000; for annual purchases of more than $260,000 at least $10,000; or any higher amount as established by applicable state law. To compute the required amount of each bond, first find the average amount of purchases of livestock during a period equivalent to 2 business days based on the total amount of purchases for the preceding business year, or the substantial part of that business year, in which the dealer or market agency or both did business. The amount of the bond must be the next multiple of $5,000 above that amount. For purposes of this computation, no more than 260 must be used as the number of business days in any year. When the computation exceeds $75,000, the amount of the bond need not exceed $75,000 plus 10 percent of the excess over $75,000.

(c) *Market agency acting as clearing agency.* Each bond must be at least $10,000 or any higher amount as established by applicable state law. To compute the required amount of each bond, first find the average amount of purchases of livestock of all persons for which the market agency served as a clearor during a period equivalent to 2 business days based on the total amount of purchases for the preceding business year, or the substantial part of that business year, in which the market agency acting as a clearing agency did business. The amount of the bond must be the next multiple of $5,000 above that amount. For purposes of this computation, no more than 260 must be used as the number of business days in any year. When the computation exceeds $75,000, the amount of the bond need not exceed $75,000 plus 10 percent of the excess over $75,000.

(d) *Packer.* Each bond must be at least $10,000. To compute the required amount of each bond, first find the average amount of purchases of livestock during a period equivalent to 2 business days, based on the total amount of purchases for the preceding business year, or the substantial part of that business year, in which the packer did business. The amount of the bond must be the next multiple of $5,000 above that amount. For purposes of this computation, no more than 260 must be used as the number of business days in any year.

(e) If a person applying for registration as a market agency or dealer has been engaged in the business of handling livestock before the date of the application, the value of the livestock handled, if representative of future operations, must be used in computing the required amount of bond. If the applicant for registration is a successor in business to a registrant formerly subject to these regulations, the bond of the applicant must be at least that required of the prior registrant, unless otherwise determined by the Administrator. If a packer becomes subject to these regulations, the value of livestock purchased, if representative of future operations, must be used in computing the required amount of bond. If a packer is a successor in business to a packer formerly subject to these regulations, the amount of bond of the successor must be at least that required of the prior packer, unless otherwise determined by the Administrator.

(f) Whenever the Administrator has reason to believe that a bond is inadequate to secure the performance of the obligations of the market agency, dealer or packer covered thereby, the Administrator shall notify such person to adjust the bond to meet the requirements of this section, or if a bond is inadequate because of the volume of business the market agency, dealer or packer conducts on a seasonal or otherwise irregular basis, the Administrator shall notify such person to adjust the bond to meet requirements the Administrator determines to be reasonable.

§ 201.42 Custodial accounts for trust funds.

(a) *Payments for livestock are trust funds.* Each payment that a livestock buyer makes to a market agency (whether selling or buying, on commission) is a trust fund until the market agency's custodial account has been paid in full. Funds deposited in custodial accounts are also trust funds. This is the case under either the net proceeds or gross proceeds method of maintaining the custodial account for market agencies selling livestock on commission.

(b) *Custodial accounts for shippers proceeds.* Every market agency engaged in selling livestock on a commission or agency basis shall establish and maintain a separate bank account designated as "Custodial Account for Shippers' Proceeds," or some similar identifying designation, to disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds. Each such market agency shall adopt, and thereafter continuously follow, one of the methods of making deposits in its custodial account as set forth in paragraphs (c) and (d) of this section.

(c) *Deposits in custodial accounts under gross proceeds method.* The market agency shall deposit in its custodial account before the close of the next business day (the day on which it is customary to do business whether or not the market agency does business on that day) after livestock is sold (1) the proceeds from the sale of livestock that have been collected, and (2) an amount equal to the proceeds receivable from the sale of livestock that are due from (i) the market agency, (ii) any owner, officer, or employee of the market agency, and (iii) any buyer to whom the market agency has extended credit. The market agency shall also deposit in the custodial account all proceeds collected until the account has been reimbursed in full, and shall, before the close of the third such business day following the sale of livestock, deposit an amount equal to all the remaining proceeds receivable whether or not the proceeds have been collected by the market agency.

(d) *Deposits in custodial account under net proceeds method.* The market agency shall deposit in its custodial account before the close of the next such business day after livestock is sold, the proceeds that have been collected and an amount equal to all the remaining proceeds receivable from the sale of the livestock less marketing charges due the market agency.

(e) *Withdrawals from custodial accounts.* The custodial account for shippers' proceeds shall be drawn on only for payment of (1) the net proceeds to the consignor or shipper, or to any person that the market agency knows is entitled to payment, (2) to pay legal charges against the consignment of livestock which the market agency shall, in its capacity as agent, be required to pay, and (3) to obtain any sums due the market agency as compensation for its services.

(f) *Custodial accounts for buyers funds.* If the Secretary finds that any market agency has used for its own purposes any funds received for the purchase of livestock on a commission or agency basis, or any other funds which have come into its possession in its capacity as agent of the buyer, the market agency shall thereafter deposit any such funds in a separate bank account designated as "Custodial Account for Buyers' Funds," or some similar identifying designation, to disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds. This account shall be drawn on only (1) for payment of the price of livestock purchased on behalf of a principal, (2) to pay all legal charges incurred in connection with the purchase of livestock which the market agency shall, in its capacity as agent, be required to pay, and (3) to obtain the sum due the market agency as compensation for its services.

(g) *Accounts and records.* Each market agency shall keep such accounts and records as will disclose at all times the handling of funds in such custodial accounts, whether for shippers' or buyers' funds. Accounts and records must at all times disclose (1) the names of the consignors and the amount due and payable to each from funds in the

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Custodial Account for Shippers' Proceeds, and (2) the names of principals from whom funds have been received in the market agency's capacity as buyer for principals, the amount of funds received from the principals, and the amount paid on behalf of principals from funds in the Custodial Account for Buyers' Funds.

(h) *Insured banks.* Such custodial accounts for either shippers' or buyers' funds must be established and maintained in banks whose deposits are insured by the Federal Deposit Insurance Corporation.

(i) *Certificates of deposit and/or savings accounts.* Funds in a custodial account for shippers' proceeds may, to the extent that these practices do not impair the market agency's ability to meet its obligations to its consignors, be maintained in an interest-bearing savings account and/or invested in one or more certificates of deposit. The savings account must be properly designated as a part of the custodial account of the market agency in its fiduciary capacity as trustee of the custodial funds and maintained in the same bank as the custodial account. The certificates of deposit must be issued by the bank in which the custodial account is kept and must be made payable to the market agency in its fiduciary capacity as trustee of the custodial funds.

§ 203.3 Statement with respect to meat packer sales promotion programs.

(a) Packers subject to the Act have sponsored meat and meat food product sales promotion programs under which valuable gifts, ranging from articles of clothing to automobiles and outboard motor boats and motors, have been offered and given to their retail food store customer accounts and to the employees of such customer accounts. Many of these promotion programs have been based upon a "point system" whereby "participating customer accounts" were credited with points for each unit of a promotion item purchased from a sponsoring packer during a specified period of time. At the end of such specified time, the accumulated points were redeemed by persons connected with the customer accounts for prizes and gifts selected from a gift catalog supplied by the sponsoring packer.

(b) Investigations have disclosed these sales promotion programs constitute a marketing practice under which sellers tend to compete in the sale of their products on the basis of inducements offered to their customers in the form of personal gifts, rather than on the basis of the merits and prices of competing products, and may result in (1) the lessening of competition by unfairly restricting sales of competing products, (2) an unreasonable competitive burden on small size packers, (3) the making or giving of undue or unreasonable preferences or advantages, and (4) an adverse impact on prices to consumers.

(c) It is the view of the Administration that sales promotion programs which tend to produce any of the results enumerated in paragraph (b) of this section constitute violations of section 202 of the Act. Packers subject to the Act should voluntarily discontinue sponsoring or conducting any such program. If any packer sponsors or conducts such sales promotion programs the Administration may issue a complaint charging the packer with violation of section 202 of the Act. In the formal administrative proceeding the Judicial Officer of the Department shall determine, after full hearing, whether the packer has violated the Act and should be ordered to cease and desist from continuing the violation, and whether any other sanction authorized by the Act should be imposed.

(d) Paragraphs (a), (b), and (c) of this section are not intended to apply to promotion programs by packers which are directed at wholesale customer accounts who do not sell or distribute meat products that compete directly with those of the sponsoring packer.

[FR Doc. 80-40688 Filed 12-30-80; 8:45 am]
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federal register

Wednesday
December 31, 1980

Part XXIV

Civil Aeronautics Board

Pre-Filing Tariff Approval Procedures and Special Tariff Permission

CIVIL AERONAUTICS BOARD

14 CFR Part 221

[Regulation ER-1205; Amdt. No. 54; Docket 38147]

Pre-Filing Tariff Approval Procedures

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB adopts new pre-filing tariff approval procedures for domestic fares of U.S. certificated airlines, so that fare reductions can be implemented within 1 day. The new procedures apply to both original fares and matching competitive fares.

DATES: Adopted: December 18, 1980; effective: December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas Moore, Domestic Fares & Rates Division, Bureau of Domestic Aviation; Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5038.

SUPPLEMENTARY INFORMATION: This rule sets up a procedure to minimize delay in acting on airlines' proposals to reduce domestic passenger fares. The procedure is designed to encourage a more responsive and dynamic pricing system without fundamentally changing the principles of the tariff system, which is required by the Federal Aviation Act to continue until 1983. Under the new procedure, if an airline files an application for a fare decrease in the morning, the Board will take action on it the same day. The airline can them begin charging the fare the next day, and the tariff amendment itself must be filed within 7 days. Special rules apply to applications that are filed on weekends and holidays. These procedures are not available for fares that raise significant questions of lawfulness.

Background

Airlines are required by section 403 of the Act to state their fares in tariffs filed with the Board, and to sell air transportation to passengers only in accordance with those tariffs. These tariffs are ordinarily required by section 403(c) to be filed at least 60, 30, or 25 days before they become effective, depending on the nature of the fare. For certain fares, however, the Board has a policy of granting Special Tariff Permission (STP) to file on less than statutory notice. The policy was liberalized by ER-1171 and PS-91 (45 FR 20059, 20071; March 27, 1980), so that the Board now grants STP for fares within its zones of fare flexibility as long as the fares do not present a significant question of lawfulness. The policy and rules governing STP appear in 14 CFR 399.35 and Subpart P of 14 CFR Part 221.

By reducing the waiting period for implementation of fares that are clearly lawful, these regular STP procedures foster competition and mitigate some of the disadvantages of the tariff system. They still require the airline to print and file the tariffs after the permission is granted, however, which can cause a delay of several days. Furthermore, they do not specify how long the Board will take to grant the permission, thus creating additional uncertainty.

The Notice of Proposed Rulemaking

To reduce further the potential delay in introducing fare reductions, the Board proposed procedures for expedited approval and implementation. (EDR-402/ODR-21; 45 FR 31411; May 13, 1980) (the NPRM). Under the proposal, carriers would file a request for pre-filing tariff approval combined with an STP application. Applications would be filed directly with the Chief of the Tariffs Division, who would have delegated authority to act on them. The key features of the proposal were that (1) applications would be acted upon the same day if filed before noon, and otherwise on the following business day, and (2) upon notification of the approval, the airline would charge the proposed fare when it became effective, which could be as early as 12:01 a.m. the next day. The airline would be exempted from section 403 of the Act to the extent necessary to charge the approved fare before the tariff was formally amended. That amendment would then have to be filed within 7 days after approval of the STP application. Meanwhile, the fare approved under the proposed procedures would be the legal fare to be charged by the airline, with the same legal status as a fare set forth in a filed tariff. No further change would be permitted in any fare approved by the proposed procedures until after the tariff amendment was filed.

Comments on the Proposed Rule

Comments on the NPRM were filed by the Airline Passengers Assocation (APA), Continental Air Lines, Hughes Airwest, Trans World Airlines, Transamerica Airlines, and Lucie Bamberger, a travel agent.

The APA and the airline commenters generally supported the proposed rule as a useful step toward full pricing deregulation that would promote competition and reduce unnecessary paperwork. The airlines also suggested some refinements and clarifications. Continental stated that an airline initiating a fare change under these procedures should be allowed to meet subsequently filed lower fares without having to wait until its tariff is filed. Continental also asked that we clarify the relationship between these procedures and the requirement in § 221.191(e) that airlines nofity interested persons of certain STP applications. Hughes Airwest stated that rapid changes in discount fares are making it harder for airlines to provide accurate fare quotations. It objected to a suggestion by the Bureau of Consumer Protection that inaccurate quotations may indicate "potential deception of prospective passengers and possible violations of Section 411 of the Federal Aviation Act." TWA stated that airlines should be allowed to implement matching fare reductions immediately upon approval rather than waiting until 12:01 a.m. the next day. It also noted that an airline obtaining approval of a fare reduction on a Friday would have an artificial advantage over other airlines, which could not obtain approval of matching filings over the weekend when Board offices are closed. TWA's suggested solution was to delay the effectiveness of Friday-approved fares until 12:01 a.m. Monday. Transamerica asked that we clarify that these procedures apply only to domestic air transportation.

Ms. Bamberger opposed the procedures as making travel agents' work difficult and time consuming, and implied that the opportunity to implement discount fares within a matter of hours did not amount to a real benefit.

The Final Rule

After considering all the comments we have decided to adopt pre-filing tariff approval procedures essentially as proposed. The comments have prompted some changes, which are discussed below. These procedures should promote innovation and enable the pricing of domestic air transportation to more closely resemble a freely competitive market. We disagree with Ms. Bamberger's implication that there would be no real benefits. The advantage of speeding up the implementation of fare reductions is not merely that the lowered fares will be available to passengers a few days earlier than otherwise. The new scheme promotes fare reductions that would otherwise not be introduced at all.

We agree with Continental's suggestion that the airline initiating a fare reduction should not be locked into the new fare during the several days it may take to file a tariff reflecting the change. If the initiating airline could not respond quickly enough to a matching or undercutting fare from another airline, there would be little advantage to using these procedures. The final rule therefore allows a succession of fare changes during the time it takes to file a tariff amendment reflecting the first change. Each change must appear in a tariff filing. A succession of changes may be reflected in a single tariff amendment by showing the superseded fares and their effective dates in footnotes. A single filing is not required, however, as long as each change is filed within 7 days after it is approved.

We are not adopting TWA's suggestion that airlines be allowed to implement fare changes immediately upon approval instead of having to wait until 12:01 a.m. on the next day. The effect of the 1-day delay between approval and effectiveness is to give an airline that decides to put in a new lower fare at least a 1-day lead on any response by its competitors. In an ideal competitive environment where no governmental approval was required and price changes could be effected immediately, innovators could obtain an advantage over their competitors by choosing the time and method of disclosing their price cuts. The necessarily centralized nature of filing and obtaining Board approval, however, takes the edge off the innovator's advantage. To preserve the advantage and most closely replicate unrestricted competition, some artifical lag in competitors' implementation times is necessary. The final rule therefore includes the proposed 1-day lag for all approvals under the new procedures.

The 3-day advantage that the proposed rule would allow for a Friday-approved fare, however, is longer than necessary. It would also result in most filings for approval under the new procedures being made just before noon on Fridays. TWA's suggested approach of merely delaying the effectiveness of the new fare until Monday morning, however, would still skew the filings toward Fridays. We have chosen instead a procedure that creates less distortion. As set forth in the NPRM, a fare that is approved on a Friday or a day before a holiday can be put into effect at 12:01 a.m. the next day. The final rule differs from the proposed one, however, by allowing applications to be filed on weekends or holidays as long as they propose to match a fare approved under these procedures on the preceding business day. The applications must be file by Western Union TWX (7108229066 CABAIR WSH). Along with the other information required in applications (§ 221.195(b)(1)), it must identify the fare to be matched, by airline, fare class (e.g. Coach, Super Saver), and dollar amount. If it is filed before noon, as indicated on the TWX, the airline may consider it as having been granted on that day and so put the new fare into effect at 12:01 a.m. the next day. The Board will act on the application on the next day that it is open for business. We expect that nearly all weekend applications will be approved. If an application is disapproved, as it might be for a procedural defect or for proposing a fare that was not a matching fare, the disapproval will be prospective only.

Section 221.191(e) of the current rules requires an airline seeking STP to notify other airlines and affected civic parties "whenever the airline has reason to believe the tariff will be controversial." Continental suggested that, in light of the rapid introduction and approval of fare decreases that is contemplated with these new procedures, no fare decreases should be considered controverial within the meaning of § 221.191(e) and no notice of the application should be required. We agree with this interpretation of "controversial," and that the immediate telegraphic notice requirement would frustrate the use of these procedures. But under the first clause of § 221.191(e), notice is required even for noncontroversial fares when the fare will be outside the *statutory* zone of reasonableness, which extends only 50 percent below the standard industry fare level. In a separate notice of proposed rulemaking (EDR-418) issued along with this final rule, we are proposing to amend that clause to cover only fares that are outside the broader Board-established zone (§ 399.32). That zone allows full downward fare flexibility. The proposal also addresses international fares and is accompanied by Order 80——, which grants an exemption from the notice requirement for all noncontroversial fare filings within Board-established fare flexibility zones while the rulemaking is in progress.

In response to Transamerica's suggestion, § 221.195(c) has been revised to make it clear that these new procedures apply only to domestic passenger fares. Hughes Airwest's argument that the procedures could make it harder for airlines to provide accurate fare quotations did not call for any changes in the proposed rule. We will not speculate on whether fare misquotes are unfair or deceptive practices within the meaning of section 411 unless a specific case is presented.

Section 221.191(a) prescribes the form and, by cross reference to § 221.241, the content of STP applications in general. We are amending it to clarify that applications under the procedures adopted today are governed by the simpler form and content provisions of new § 221.195. The amendment also substitutes "statutory notice" for an obsolete reference to 30-day notice. Finally, the authority citation for Part 221 is revised to eliminate unnecessary references to the Administrative Procedure Act and conform to current Federal Register practice.

We plan to evaluate the usefulness of this rule by monitoring the number of filings under the new procedures.

Because this rule relieves a restriction and creates no additional burden, we find that it may become effective immediately.

Accordingly, the Civil Aeronautics Board amends Subpart P of 14 CFR Part 221, *Tariffs*, as follows:

1. The authority citation for Part 221 is revised to read:

Authority: Secs. 102, 204, 401, 402, 403, 404, 411, 416, 1001, 1002, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 754, 757, 758, 760, 769, 771, 788; 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1374, 1381, 1386, 1481, 1482.

2. The Table of Contents is amended by adding a new § 221.195, to read:

Subpart P—Special Tariff Permission to File on Less than Statutory Notice

Sec.

* * * * *

221.195 Pre-filing tariff approval for fare reductions.

* * * * *

3. In § 221.191, paragraph (a) is revised to read:

§ 221.191 How to prepare and file applications for Special Tariff Permission.

(a) *Form.* Except as set forth in § 221.195, each application for Special Tariff Permission to file a tariff on less than statutory notice shall be prepared in the form prescribed in § 221.241 and shall show all of the information required by that section.

* * * * *

4. A new § 221.195 is added to Subpart P, to read:

§ 221.195 Pre-filing tariff approval for fare reductions.

(a) Carriers obtaining Special Tariff Permission under this section are exempt from section 403 (b) and (c) of the Act to the extent necessary to charge passenger fares approved by the Board under these procedures.

(1) Applications shall be filed with the Chief, Tariffs Division, Bureau of Domestic Aviation, and be entitled "Special Tariff Permission Application No. —Pre-filing Approval

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Requested." The title page of the application shall include the name and telephone number of the contact person for the carrier.

(2) Applications filed with the Board before 12 noon on any business day will be acted on the same day. Applications filed with the Board after 12 noon will be acted on by the end of the next business day. The Chief, Tariffs Division, will inform the carrier by telephone as soon as a decision is made on the application.

(3) The new fare may be put into effect by the carrier at 12:01 a.m. on the day following approval of the application.

(4) Within 7 days after approval of any application under this section, the carrier shall file a tariff reflecting the changed fare. The tariff shall show the date on which the fare became effective. A succession of fare changes in acordance with this section may be reflected in a single tariff filing by showing the superseded fares and their effective dates in footnotes.

(b) Applications shall be in easily readable and understandable format.

(1) The application shall describe: (i) the fare for which approval is sought, (ii) the tariff to be amended, (iii) the current fare to be changed, if any, and (iv) the current page and revision number of the affected tariff.

(2) Extensive or complicated exhibits included with the application shall be summarized in a statement explaining the intent of the proposal.

(c) The procedures in this section apply to interstate and overseas passenger fares. They shall be used only for proposing either (1) a decrease in an existing fare, or (2) a fare that is within the downward zone set for interstate and overseas passenger fares in Subpart C of 14 CFR Part 399 and does not increase an existing fare. For these purposes an increase or decrease in an existing fare means a change in the fare amount without changing any of the conditions.

(d) The procedures in this section do not apply to proposals to match other fares already filed on statutory notice set forth in § 221.60. Applications proposing fares that raise significant questions or lawfulness, as set forth in § 399.35 of this chapter, will be denied.

(e) An application under this section may be filed on a weekend or holiday if it proposes to match a fare approved under this section on the preceding business day. Such an application shall be filed by Western Union TWX (7108229066 CABAIR WSH). Along with the information set forth in paragraph (b)(1) of this section, it shall identify the fare to be matched, by carrier, fare class, and amount. If the application is filed before noon, as indicated on the TWX, the carrier may consider it as having been granted on that day and so put the new fare into effect at 12:01 a.m. the next day. The application will be acted on by the end of the first business day after it is filed. Any disapproval will be prospective only.

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-40198 Filed 12-30-80; 8:45 am]

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14 CFR Part 385

[Regulation OR-177; Amdt. No. 108; Docket 38147]

Delegations and Review of Action Under Delegation; Nonhearing Matters; Delegation to the Chief of the Tariffs Division

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: In ER-1205, also adopted today, the CAB established pre-filing tariff approval procedures for domestic fares of U.S. certificated airlines, so that fare reductions can be implemented within 1 day. In this rule the CAB delegates authority to the Chief of the Tariffs Division to approve and deny applications filed under the new procedures. Supplementary information about this rule appears in ER-1205.

DATES: Adopted: December 18, 1980; effective: December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas Moore, Domestic Fares & Rates Division, Bureau of Domestic Aviation; Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5038.

The Civil Aeronautics Board amends 14 CFR Part 385, *Delegations and Review of Action Under Delegation; Nonhearing Matters,* as follows:

1. The authority for Part 385 is:

Authority: Sec. 204(a), 1001, Pub. L. 85-726, as amended, 72 Stat. 743, 788, 49 U.S.C. 1324(a), 1481; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989, 49 U.S.C. 1324 (note), unless otherwise noted.

2. Section 385.15, *Delegation to the Chief, Tariffs Division, Bureau of Pricing and Domestic Aviation,* is retitled, the opening sentence is revised, and a new paragraph (k) is added, so that the section reads:

§ 385.15 Delegation to the Chief, Tariffs Division, Bureau of Domestic Aviation.

The Board delegates to the Chief, Tariffs Division, Bureau of Domestic Aviation, the authority to:

* * * * *

(k) Approve or deny applications for Special Tariff Permission filed under § 221.195 of this chapter to allow carriers to provide reduced passenger fares before filing a tariff.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-40075 Filed 12-30-80; 8:45 am]

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14 CFR Part 221

[Order 80-12-93]

Special Tariff Permission; Blanket Exemption

AGENCY: Civil Aeronautics Board.

ACTION: Order 80-12-93 granting Blanket Exemption.

SUMMARY: By this exemption, the Board is relaxing its Special Tariff Permission procedures, which require an airline to notify competitors and civic parties in certain cases. The Board takes this action while a rulemaking is in progress to reduce the anti-competitive effect of this notice requirement and to reduce the costs to the airlines and travelers when fare decreases are delayed.

DATES: Effective: December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas Moore, Domestic Fares and Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5038.

SUPPLEMENTARY INFORMATION: Section 221.191(e) of the Board's rules requires an air carrier to notify competitors and affected civic parties when the carrier files an application for Special Tariff Permission—

to offer passenger fares that would be outside a statutory zone of reasonableness, or to file any tariff that the carrier believes is likely to be controversial. (14 CFR 221.191(e))

Notification is required for any fare outside the applicable statutory zone of fare flexibility, even if it is within the broader Board-established flexibility zones. Since the burden and anticompetitive effects of the notice requirement outweigh its benefits in such cases, the Board is proposing in EDR-418, issued along with this order, to amend § 221.191(e) to refer to a "Board-established" instead of "statutory" zone. Also, the reference to

controversial filings would be changed to reflect the Board's interpretation that price decreases are not "controversial." As amended, the section would require notice—

(1) To offer passenger fares that would be outside a Board-established zone of fare flexibility or, in markets for which the Board has not established such a zone, outside the statutory zone of fare flexibility; or

(2) To file any price increase or rule change that the carrier believes is likely to be controversial.

This order grants a blanket exemption from § 221.191(e) to all air carriers and foreign air carriers, to the extent that the existing requirement is stricter than the proposed requirement. In view of the burdens and anticompetitive effects of enforcing the requirement with respect to fare increases that are within the Board's zones of fare flexibility, along with our continuing ability to preserve procedural fairness by requiring notice in individual cases, we find that this exemption is in the public interest.

Accordingly,

1. All air carriers and foreign air carriers are hereby exempted from the notification requirement of 14 CFR 221.191(e), to the extent that that requirement is stricter than the requirement proposed in EDR-418, Docket 39076.

2. This exemption will terminate upon final Board action in Docket 39076.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-40199 Filed 12-30-80; 8:45 am]

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CIVIL AERONAUTICS BOARD

14 CFR Part 221

[EDR-418; Docket 39076]

Special Tariff Permission; Fare Changes

Dated: December 18, 1980.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under Special Tariff Permission procedures, the CAB allows airlines to implement certain fare changes quickly instead of having to wait 30 to 60 days. This notice proposes to relax the requirement that an airline notify competitors and civic parties in certain cases when it requests Special Tariff Permission. An accompanying order exempts airlines from the requirement while the rulemaking is in progress. This action is at the CAB's initiative.

DATES: Comments by: February 23, 1981.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: January 5, 1981.

The Docket Section prepares the Service List and sends it to each person listed who then serves his comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 39076, Civil Aeronautics Board, 1325 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Copies may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Thomas Moore, Domestic Fares & Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5038.

SUPPLEMENTARY INFORMATION: An airline that obtains Special Tariff Permission (STP) from the Board can then implement certain passenger fare changes as little as 1 day after it files a tariff reflecting the changes with the Tariffs Division. In ER-1171 and PS-91 (45 FR 20059, 20071, March 27, 1980), the Board liberalized its rules and policies on this subject so that STP requests will ordinarily be approved for fares that are within a statutory or Board-established zone of fare flexibility. In ER-1205, also issued today, the Board adopted a procedure for pre-filing tariff approval to further expedite the introduction of fare decreases. That procedure applies only to domestic fares.

The statutory fare flexibility zones are prescribed domestically by the Airline Deregulation Act of 1978, Pub. L. 95-504, and internationally by the International Air Transportation Competition Act, Pub. L. 96-192. The Board has only limited authority to suspend fares that are within those zones. As a policy matter, the Board has voluntarily established broader zones of flexibility within which it will ordinarily not suspend fares—for most domestic markets in Subpart C of 14 CFR Part 399 (most recently amended by PS-98, 45 FR 70431, October 24, 1980), and for international markets in Order 80-5-139, May 20, 1980.

This notice of proposed rulemaking addresses the notification that airlines must give when they file an STP request with the Board. Once a fare change has become effective, the Board has no authority to suspend it, except in the case of certain international fares. Potential complainants therefore have an interest in being notified about an STP application quickly, so that they may file complaints and argue that a proposed fare should be suspended before the application is approved and the fare implemented. In deciding when to require notification, the Board must balance this interest against several factors. First, any advance notice requirement has an anticompetitive effect, which encourages price leadership and discourages the introduction of fare decreases. Second, there are costs imposed on travelers when fare decreases are delayed, and costs on airlines when increases are delayed. Finally, the notification requirement itself imposes costs on airlines. The balancing is also affected by the likelihood that the Board would suspend the fare. If we had absolutely no authority to suspend, for example, then notification would serve no regulatory purpose.

In ER-1171 we balanced these factors and adopted the following scheme: Notification must be provided for fares that are outside the statutory zones of flexibility, and for any fare that an airline has reason to believe will be controversial (§ 221.191(e)). The notification must be provided to competing airlines and affected civic parties at the same time the STP application is filed with the Board. It must be immediate and telegraphic, unless an alternative is approved by the Board's Tariffs Division. The notification is required for any fare that is outside the applicable statutory zone, even if it is within a Board-established zone of flexibility.

We now propose to amend § 221.191(e) to refer to the Board's broader flexibility zones, except in the few markets for which the Board has not established such zones. In view of all the factors discussed above, especially the rarity of suspensions of filings within these broader zones, any benefits of requiring notification for all such filings are outweighed by the costs and anticompetitive effects. In any event, since granting STP is discretionary, we can protect procedural fairness by requiring notification in individual cases when it appears that a complainant might persuade us to suspend a fare. Also, notification would still be required for controversial filings. This requirement would be restated to reflect our interpretation in ER-1205 of "controversial" as not covering fare decreases—by referring to increases and rule changes instead of all tariffs—and extend that interpretation to cargo rate decreases.

In Order 80-12-93, also adopted today, we are granting a blanket interim exemption from the notification requirement to the extent that this notice proposes to relax the requirement.

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Part 221, *Tariffs*, as follows:

In § 221.191, paragraph (e) would be revised to read:

§ 221.191 How to prepare and file applications for Special Tariff Permission.

* * * * *

(e) *When notice is required.* Notice in the manner set forth in paragraph (f) of this section is required when a carrier files an application for Special Tariff Permission—

(1) To offer passenger fares that would be outside a Board-established zone of fare flexibility or, in markets for which the Board has not established such a zone, outside the statutory zone of fare flexibility; or

(2) To file any price increase or rule change that the carrier believes is likely to be controversial.

* * * * *

(Secs. 102, 204, 401, 402, 403, 404, 411, 416, 1001, 1002, as amended, Pub. L. 85-726, 72 Stat. 740, 743, 754, 757, 758, 760, 769, 771, 788; 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1374, 1381, 1386, 1481, 1482)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

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